

**KADISH
SCHULHOFER
PAULSEN**

**CRIMINAL
LAW
AND ITS
PROCESSES**

**Cases
and
Materials**

***Fourth
Edition***

**CRIMINAL LAW
AND ITS PROCESSES
CASES AND MATERIALS**

FOURTH EDITION

Sanford H. Kadish

Alexander F. and May T. Morrison Professor of Law
University of California, Berkeley

Stephen J. Schulhofer

Professor of Law
University of Pennsylvania

Monrad G. Paulsen

Late Dean
Cardozo School of Law, Yeshiva University



Little, Brown and Company
Boston Toronto

Copyright © 1983 by Joshua D. Kadish, Trustee, Stephen J. Schulhofer, and
Jenny S. Paulsen

All rights reserved. No part of this book may be reproduced in any form or
by any electronic or mechanical means including information storage and re-
trieval systems without permission in writing from the publisher, except by a
reviewer who may quote brief passages in a review.

Library of Congress Catalog Card No. 82-081495
ISBN 0-316-47812-1

Eighth Printing

MV

*Published simultaneously in Canada
by Little, Brown & Company (Canada) Limited*

Printed in the United States of America

PREFACE TO THE FOURTH EDITION

This edition, while preserving continuity with its predecessors, contains many significant changes in organization and content. The substantive criminal law sections retain their basic structure and purposes. However, the content, organization, and pedagogical objectives of the procedural material are essentially new. Instead of attempting a full coverage of the subject of criminal procedure, we have included in this edition only those aspects of procedural law that seemed to us especially helpful for understanding the substantive criminal law.

Why substantive criminal law? We conceive of a criminal law course as both serving the ends of legal training in general and training in the criminal law in particular. The chief value of the course as a part of a general legal education is to enlarge insight into and understanding of the potentialities and limitations of the law as an instrument of social control. We have in mind the variety of hard problems associated with the use of the law for the attainment of social ends: the difficulty of giving legal form to the compromises made necessary when goals are poised in conflict; the creation of institutional arrangements — judicial and administrative — appropriate to the goals sought; the limitations — moral and practical — on the use of the law as a means of social control; the relation of legal controls to other social processes. We regard the study of the substantive criminal law as an unusually suitable introduction to these pervasive problems of the law. The ends criminal law serves involve social and human values of the highest order. Its means, entailing the imposition of brute force on the lives of individuals, are potentially the most destructive and abusive to be found within the legal system. The issues it raises and the setting in which it raises them are compelling and vivid. Its institutions are acutely controversial and often controverted. And one of its underlying themes is the momentous issue of the reconciliation of authority and the individual. As Professor Herbert Wechsler has written: “Whatever views one holds about the penal law, no one will question its importance in society. This is the law on which men place their ultimate reliance for protection against all the deepest injuries that human conduct can inflict on individuals and institutions. By the same token penal law governs the strongest force that we permit official agencies to bring to bear on individuals. Its promise as an instrument of safety is matched only by its power to destroy. If penal law is weak or ineffective, basic human interests are in jeopardy. If it is harsh or arbitrary in its impact, it works a gross injustice on those caught within its toils. The law that carries such responsibilities should surely be as rational and just as law can be. Nowhere in the entire legal field is more at stake for the community or for the individual.”¹

1. Wechsler, *The Challenge of a Model Penal Code*, 65 Harv. L. Rev. 1097, 1097-1098 (1952).

What of the course's narrower purpose of training students in the criminal law in particular? Here there are two main pedagogic objectives. One is to furnish a solid foundation for those who will, in greater or lesser degree, participate directly in the processes of the criminal law, whether they will represent the state or the individual before or during the stages of trial and appeal or during the sentencing or correctional stages. This solid foundation does not require mastery of the full range of technical skills and information held by the practicing criminal lawyer or administrator but rather the development of power and confidence in the handling of principles and rules — judge-made or statutory — through the acquisition of knowledge about and insight into the larger implications of the doctrines and institutions of the criminal law. The second purpose is to create in law school graduates who will have little occasion to practice criminal law an interest in and an understanding of the profound problems of the criminal law and of its functioning. As influential members of their communities — and more directly as judges, legislators, or teachers — lawyers versed in the principles of criminal law will be in a position to bring an informed intelligence to the challenge of solving some of the most vexing problems of our times.²

Revisions for the fourth edition. In the substantive sections we have updated the cases, added Notes and Problems dealing with many issues of current concern, and in many areas wholly recast the presentation and organization. We have also added two new chapters, one dealing with business crimes and the other with rape.

As in previous editions, the substantive materials continue to focus on imparting an understanding of what is often called the “general part” of the criminal law — that is, those basic principles and doctrines that come into play across the range of specific offenses (for example, *actus reus*, *mens rea*, and the various justifications and excuses). We believe that mastery of the detailed elements of many particular crimes is a goal that is inappropriate for a basic criminal law course. Nevertheless, we have found that understanding of the basic principles is enhanced by testing their applications and interactions in the context of particular offenses. Accordingly, we now examine in detail four offense categories: rape (Chapter 5), homicide (Chapter 6), theft (Chapter 10), and business crimes (Chapter 11). The chapter on rape provides an opportunity to focus rigorously on the definitional elements of a major crime, examining the relationships among problems of *actus reus*, *mens rea*, and the rules of proof in a context that has become the focus of acute controversy because of changing perceptions and changing social values. The theme of the homicide chapter is the task of legislative grading of punishment in a particularly challenging area. The theft chapter explores the significance of the history and the continued impact of old doctrinal categories on the resolution of thoroughly modern difficulties in defining the boundaries of the criminal law. Finally, the chapter on business crimes focuses attention on the growing array of criminal statutes affecting the conduct of legitimate enterprise; the importance of assuring compliance with regulatory goals in a modern, highly interdependent society; and the special difficulties of effective enforcement in the context of complex business organizations.

2. For a fuller discussion of the role of the criminal law course in the law school curriculum, see Kadish, *Why Substantive Criminal Law — A Dialogue*, 29 Clev. St. L. Rev. 1 (1980).

The procedural sections of the third edition dealt comprehensively with the administration of the criminal process from the initial stages of police investigation and screening through trial, appeal, sentencing, and collateral attack. We believe that it is no longer feasible or desirable for the basic criminal law course to attempt to cover the ever-increasing intricacies of such subjects as search, electronic eavesdropping, arrest, interrogation, and line-ups. The issues in these areas are important enough to warrant detailed examination in their own right, and law teachers generally have concluded that this is best accomplished in a separate course devoted to criminal procedure. Accordingly, we have deleted virtually all of the previous treatment of procedure (Part Two in the third edition).

We continue to believe, however, that a sense of process is essential for appreciating the significance of issues in the substantive part of the course. Indeed, we have concluded that attention to the procedural framework ordinarily should precede the detailed examination of substantive criminal law and that this introduction is best provided not simply by some background reading or an opening lecture but rather by two to three weeks of sustained analysis of the fundamentals of the criminal process.

Which issues from the vast body of procedural doctrine warrant attention in a course primarily devoted to the substantive criminal law? The central objective is to impart understanding of the principles governing the proof of guilt. Students need to develop a sense of how “facts” and “elements of the offense” are actually established at trial; how testimony is presented and challenged in an adversary system; and how the process of proof is affected by the responsibilities assigned to the jury, to opposing counsel, and to the judge. Accordingly, many of the concerns that are central in criminal procedure courses are of only secondary importance for our purposes. We wanted to combine some of the classic topics in procedure — such as the right to counsel and the privilege against self-incrimination — with issues usually falling outside the bounds of the traditional procedure course — such as evidence-law materials dealing with the process of direct and cross-examination and the rules of relevancy and prejudicial effect. We also found it essential to focus on issues that fall somewhere between substantive criminal law, procedure, and evidence — issues such as the requirement of proof beyond a reasonable doubt, principles governing presumptions, jury nullification, and related questions concerning inconsistent or unsupported verdicts. Issues such as these, falling in a grey area between courses traditionally taught in law schools, sometimes fail to receive systematic attention anywhere in the curriculum; in any event, the student who will later study such matters in depth needs an introduction to these issues in order to have a perspective on problems that permeate the study of substantive criminal law.

Use of the materials in diverse teaching formats. Over the past decade, law schools have begun experimenting with a variety of formats for the basic criminal law course. Although the year-long five- or six-hour course remains common, some schools offer criminal law as a four- or even three-hour course, and some schedule the course in the second semester or even in the second or third years. Under these circumstances, a short book designed to be taught straight through, without adjustments or deletions, is bound to prove unsatisfactory for many users. In preparing the fourth edition we have sought to organize and edit the materials tightly enough to avoid significant surplusage for the

average course, but we have not attempted to preempt all possible judgments about inclusion and exclusion. Rather, we thought it essential to preserve some freedom for teachers to select topics that accord with their own interests and with the curricular arrangements at their own schools. Thus, we have aspired to create a flexible teaching tool, one that reflects the rich diversity of its subject.

For the five- or six-hour, year-long course, the book can be taught straight through, perhaps with some minor deletions. For a four-hour course, and especially in the case of a three-hour course, substantial omissions will be necessary. Many teachers will have their own preferences, of course. We present here our own thoughts, based on our experience in structuring the material for use in shorter courses, both in the first semester and in the second and third years.

Chapter 1 (Structure of the Criminal Justice System). This text material lends itself to class discussion, but in a shorter course it should be assigned as background reading, and the first class can begin instead with discussion of material in Chapter 2.

Chapter 2 (How Guilt Is Established). In schools that require a criminal procedure course before the study of criminal law, this chapter can be largely omitted. It may be appropriate, however, to take up Section B4 (proof beyond a reasonable doubt). In addition, Section C (guilty pleas) focuses on relationships between plea bargaining and the substantive principles of penal law; the treatment differs from that typically given to the topic in criminal procedure courses, and one or two classes can usefully be devoted to exploring the continuing importance of substantive principles in a world now largely dominated by bargaining.

For students taking up criminal law in the first semester of their first year, Chapter 2 provides basic grounding in process. The teacher who is unable to cover the entire chapter can consider assigning Section A (overview), Sections B1 (counsel), B2 (evidence), B3 (self-incrimination), and B4 (assigning the burden-of-proof materials but omitting the material on presumptions), and Section C (guilty pleas). We believe that this material, which can be covered in roughly two weeks, provides a solid foundation for the subsequent study of substantive law. Teachers who skip Section B6 (role of counsel and judge) at the beginning of the course may wish to return to it later. This material raises provocative issues of pervasive importance for the study and practice of law; its themes can provide an appropriate and effective concluding topic for the course.

Chapter 3 (The Justification of Punishment) is basic to the substantive part of the course. Section A (Why Punish?) presents material that many teachers will wish to discuss directly and in depth in class. Others have found it useful, either because of time pressure or pedagogical taste, to assign Section A as background reading and then to bring those materials into focus by applying them to the concrete sentencing problems presented in Section B (Imposing Punishment). Section C (What to Punish?) raises basic problems that can be examined usefully either at this point or toward the end of the course.

Chapters 4 (Elements of Just Punishment), 6 (Homicide), 7 (Harm), 8 (Group Criminality), and 9 (Justification and Excuse) will constitute the core of the typical substantive criminal law course and generally teachers will want to cover them in depth.

Chapter 5 (Rape) is important in its own right and as a complement to the materials on mens rea. It can be studied immediately after the mistake-of-fact cases in Chapter 4 or after all of Chapter 4 has been completed. Section C of the chapter on rape (problems of proof) can be used to pursue in more detail

the themes studied in Chapter 2, or it can be used to introduce those themes when time does not permit full consideration of Chapter 2.

Chapters 10 (Theft), 11 (Business Crimes) and 12 (Disposition of the Convicted Offender) pursue the general themes of the course in specific contexts. In a three- or four-hour course, one of these three chapters can be chosen for detailed treatment while the other two are omitted or deferred for study in advanced courses.

Collateral reading. Students wishing to pursue further the questions raised in the readings and Notes will find helpful six outstanding works: One is the text and Commentary of the American Law Institute's Model Penal Code. Much of the text is reproduced as an Appendix to this casebook, but space limitations preclude reprinting all but a few excerpts from the Commentary. In thirteen Tentative Drafts published over the period 1954-1961, the Code's reporters presented succinct analyses of existing law and the major issues it presented. Students will still find it useful to consult these earlier commentaries. For Part II of the Code (Definition of Specific Crimes), there is now available an expanded set of commentaries, including analysis of legislative developments through the 1970s. This more recent Commentary has been published in a three-volume set, Model Penal Code and Commentaries, Part II (1980). The revised commentaries for Part I of the Code are now in preparation and publication is expected in the near future.

The second resource consists of two works by Professor Glanville Williams. His treatise, *Criminal Law: The General Part*, appeared in its second edition in 1961. His *Textbook of Criminal Law* was published in 1978 and is primarily directed to the law student. While they are concerned with English law, the American student will find in these books a rich discussion of many of the issues raised in the casebook.

The third important recommended work is the late Professor Herbert Packer's *The Limits of the Criminal Sanction*, which appeared in 1968. This is a nontechnical but thoughtful analysis of the limitations of the use of the criminal law as a means of influencing conduct. In the course of his study, Professor Packer explores with freshness and clarity most of the fundamentally troubling issues and tensions of the criminal law, both substantive and administrative.

Fourth is Wayne LaFare & Austin Scott, Jr., *Handbook on Criminal Law* (1972), the best contemporary hornbook on American substantive criminal law, with the further advantage that its treatment of problems in many areas substantially parallels that in this casebook.

Fifth is the collection of essays by Professor H. L. A. Hart entitled *Punishment and Responsibility* (1968), now available in paperback. These short, powerful, and lucid essays have strongly influenced our own treatment of the subjects of punishment and responsibility, as well as contemporary thought generally on these issues.

The sixth collateral reading is Professor George Fletcher's *Rethinking Criminal Law*, published in 1978. This challenging book retraces many of the doctrines and problems of the course from a perspective that contrasts sharply with the pragmatism and utilitarianism of the Model Penal Code. Professor Fletcher's theoretical and comparative approach will prove provocative for many readers.

Style. Citations in the footnotes and text of extracted material have been omitted when they did not seem useful for pedagogical purposes, and we have

not used ellipses or other signals to indicate such deletions. Ellipses are used, however, to indicate omitted text material. Where we have retained footnotes in readings and quotations, the original footnote numbers are preserved. Our own footnotes to excerpts and quotations from other works are designated by letters, while footnotes to our own Notes are numbered consecutively throughout each chapter.

Acknowledgments. Sanford H. Kadish wishes to express appreciation for the support provided by the Alexander F. and May T. Morrison Chair in Law at the Law School of the University of California, Berkeley; for the assistance of a number of students, including James Burke, Roger Dangerfield, Janet Hathaway, Lawrence R. Lincoln, Eduardo L. Quevedo, Lawrence Hajime Shinagawa and Alfredo L. Silva; for the excellent secretarial support of Tove Schalk and Joyce Millison; and, especially, for the aid and comfort of his wife, June. Stephen Schulhofer wishes to express his thanks for the research assistance of Maida Crane, J. Craig Fong, Joan Harrington, Kenneth Kress and Barry Temkin; for the excellent secretarial support of Maria Evangelou; and for the counsel of colleagues and associates who shared helpful comments on the manuscript: Peter Arenella, Mark Berger, Stephen Burbank, David Rudovsky, and James Strazzella. Stephen Schulhofer also wishes to express particular personal appreciation for support, professional and otherwise, to Laurie Wohl.

It was a source of profound regret that Monrad G. Paulsen's untimely death prevented his participating in the preparation of this edition. We dedicate it to his memory.

SHK
SJS

August 1982

ACKNOWLEDGMENTS

The authors would like to acknowledge the permissions kindly granted to reproduce excerpts from the following publications.

- Allen, Francis, *The Borderland of Criminal Justice* (1964). Copyright © 1964 by The University of Chicago Press. Reprinted by permission of The University of Chicago Press.
- Allen, Francis, *The Criminal Law as an Instrument of Economic Regulation* (International Institute for Economic Research, Original Paper #2, 1976). Reprinted by permission of the author.
- Allen, Ronald, *Structuring Jury Decisionmaking in Criminal Cases: A Unified Approach to Evidentiary Devices*, 94 *Harvard Law Review* 321 (1980). Copyright © 1980 by the Harvard Law Review Association. Reprinted by permission of the Harvard Law Review Association and the author.
- Alschuler, Albert W., *The Prosecutor's Role in Plea Bargaining*, 36 *University of Chicago Law Review* 50 (1968). Reprinted by permission.
- Alschuler, Albert W., *Book Review*, 12 *Criminal Law Bulletin* 629 (1976). Reprinted by permission from the *Criminal Law Bulletin*, Volume 12, Number 5, September-October 1976. Copyright © 1976 by Warren, Gorham and Lamont, Inc., 210 South Street. Boston, MA. All rights reserved.
- American Bar Association, *Code of Professional Responsibility* (1970). Copyright © 1970 by the American Bar Association, National Center for Professional Responsibility. Reprinted by permission.
- American Bar Association, *Minimum Standards for Criminal Justice* (1967). Reprinted by permission.
- American Bar Association, *Standards for Criminal Justice* (2d ed. 1980). Reprinted by permission of Little, Brown and Company.
- American Bar Association, *Commission on Evaluation of Professional Standards, Model Rules of Professional Conduct* (1981). Copyright © 1981 by the American Bar Association, National Center for Professional Responsibility. Reprinted by permission.
- American Bar Foundation, *Criminal Justice in the United States* (1967). Reprinted by permission.
- American Friends Service Committee, *The Struggle for Justice* (1971). Reprinted by permission.
- American Law Institute, *Model Penal Code and Commentaries* (Tentative Draft No. 1, 1953), *Model Penal Code and Commentaries* (Tentative Draft No. 4, 1955), *Model Penal Code and Commentaries* (Tentative Draft No. 8, 1958), *Model Penal Code and Commentaries* (Tentative Draft No. 9, 1959), *Model Penal Code and Commentaries* (Tentative Draft No. 10, 1960), *Model*

- Penal Code and Commentaries (1980). Copyright © 1953, 1955, 1958, 1959, 1960, 1980 by The American Law Institute. Reprinted by permission of The American Law Institute.
- Andenaes, Johannes, General Prevention, 43 *Journal of Criminal Law, Criminology & Police Science* 176 (1952). Reprinted by special permission. Copyright © 1952 by Northwestern University School of Law.
- Arenella, Peter, Reforming the Federal Grand Jury and the State Preliminary Hearing to Prevent Conviction Without Adjudication, 78 *Michigan Law Review* 463 (1980). Reprinted by permission.
- Austin, J. L., A Plea for Excuses, 57 *Proceedings of the Aristotelian Society* 1 (1956-1957). Copyright © 1956 by The Aristotelian Society. Reprinted by permission.
- Barzun, Jacques, In Favor of Capital Punishment, 31 *The American Scholar* 181 (1962). Reprinted from *The American Scholar*, Volume 31, Number 2, Spring 1962. Copyright © 1962 by the United Chapters of Phi Beta Kappa. By the permission of the publisher and the author.
- Bazelon, Honorable David L., The Defective Assistance of Counsel, 42 *University of Cincinnati Law Review* 1 (1973). Reprinted by permission.
- Bazelon, Honorable David L., The Realities of *Gideon* and *Argersinger*, 64 *Georgetown Law Journal* 811 (1976). Copyright © 1976 by the Georgetown Law Journal. Reprinted by permission.
- Bedau, Hugo Adam, The Death Penalty in America (1964). Copyright © 1964 by Hugo Adam Bedau. Reprinted by permission of Doubleday & Company, Inc.
- Bedau, Hugo Adam, The Case Against the Death Penalty (1977). Reprinted by permission of the American Civil Liberties Union Capital Punishment Project.
- Black, Charles, Capital Punishment: The Inevitability of Caprice and Mistake (2d ed. augmented 1981). Copyright © 1981, 1974 by W. W. Norton & Company, Inc.; copyright © 1977, 1978 by Charles L. Black, Jr., W. W. Norton, publisher. Reprinted by permission.
- Brown, Sharon Morey, & Nicholas J. Wittner, Criminal Law (1978 Annual Survey of Michigan Law), 25 *Wayne Law Review* 335 (1979). Reprinted by permission.
- Budd, M., & A. Lynch, Voluntariness, Causation and Strict Liability, [1978] *Criminal Law Review* 74. Reprinted by permission of Sweet & Maxwell Ltd.
- Coffee, John, Corporate Crime and Punishment: A Non-Chicago View of the Economics of Criminal Sanctions, 17 *American Criminal Law Review* 419 (1980). Reprinted by permission of the author.
- Cohen, Morris, Moral Aspects of the Criminal Law, 49 *Yale Law Journal* 987 (1940). Reprinted by permission of The Yale Law Journal Company and Fred B. Rothman & Company from the *Yale Law Journal*, Volume 49, pages 1012-1014.
- Comment, [1979] *Criminal Law Review* 120. Reprinted by permission of Sweet & Maxwell Ltd.
- Comment, The Law of Necessity as Applied in the Bisbee Deportation Case, 13 *Arizona Law Review* 264 (1961). Copyright © 1961 by the Arizona Board of Regents. Reprinted by permission.

- Comment (on *Stephenson*), 31 Michigan Law Review 659 (1933). Reprinted by permission.
- Damaška, Mirjan R., Evidentiary Barriers to Conviction and Two Models of Criminal Procedure, 121 University of Pennsylvania Law Review 506 (1973). Copyright © 1973 by the University of Pennsylvania Law Review. Reprinted by permission of the publisher and the author.
- Denning, Alfred T., *Freedom Under the Law* (1949). Reprinted by permission of Sweet & Maxwell Ltd.
- Denzer, R. G., & P. McQuillan, Supplementary Practice Commentary, McKinney's Consolidated Laws of New York, Book 39, §35.20 (Cum. Ann. Pkt. Pt. 1973-1974). Reprinted by permission of West Publishing Company.
- Dershowitz, Alan, Abolishing the Insanity Defense: The Most Significant Feature of the Administration's Proposed Criminal Code — An Essay, 9 Criminal Law Bulletin 434 (1973). Published by Warren, Gorham and Lamont, Inc. Copyright © 1973 by The New York Times Company. Reprinted by permission.
- Devlin, Sir Patrick, Criminal Responsibility and Punishment: Functions of Judge and Jury, [1954] Criminal Law Review 661. Reprinted by permission of Sweet & Maxwell Ltd.
- Devlin, Sir Patrick, *The Enforcement of Morals* (1959). Copyright © 1959 by Oxford University Press. Reprinted by permission of Oxford University Press.
- Durkheim, Emile, *The Division of Labor in Society* (George Simpson translator 1933). Reprinted by permission of The Free Press, a division of Macmillan Publishing Company.
- Estey, John S., & David W. Marston, Pitfalls (and Loopholes) in the Foreign Bribery Law, 98 Fortune Magazine 182 (1978). Copyright © 1978 by Time Inc. All rights reserved. Reprinted by permission of Fortune Magazine and the authors.
- Ewing, A. C., A Study of Punishment II: Punishment as Viewed by the Philosopher, 21 Canadian Bar Review 102 (1943). Reprinted by permission of the publisher.
- Fletcher, George P., *Rethinking Criminal Law* (1978). Copyright © 1978 by George P. Fletcher. Reprinted by permission of Little, Brown and Company and the author.
- Fletcher, George P., The Metamorphosis of Larceny, 89 Harvard Law Review 469 (1976). Copyright © 1976 by George P. Fletcher. Reprinted by permission of the author.
- Frankel, Honorable Marvin E., *Criminal Sentences: Law Without Order* (1973). Copyright © 1972, 1973 by Marvin E. Frankel. Reprinted by permission of the author and Hill and Wang, a division of Farrar, Straus and Giroux, Inc.
- Frankel, Honorable Marvin E., The Search for Truth: An Umpireal View, 123 University of Pennsylvania Law Review 1031 (1975). Reprinted by permission of the author.
- Freedman, Monroe H., *Lawyers' Ethics in an Adversary System* (1975). Published by Michie, Bobbs-Merrill, Inc. Reprinted by permission of the author.
- Friendly, Honorable Henry, *The Fifth Amendment Tomorrow: The Case for*

- Constitutional Change, 37 *University of Cincinnati Law Review* 671 (1968). Reprinted by permission.
- Galligan, D. J., *Guidelines and Just Deserts: A Critique of Recent Trends in Sentencing Reform*, [1981] *Criminal Law Review* 297. Reprinted by permission of Sweet & Maxwell Ltd.
- Glazebrook, P. R., *The Necessity Plea in English Criminal Law*, 30 *Cambridge Law Journal* 87 (1972). Copyright © 1972 by Cambridge University Press. Reprinted by permission.
- Goldstein, Joseph, & Jay Katz, *Abolish the "Insanity Defense"—Why Not?*, 72 *Yale Law Journal* 853 (1963). Reprinted by permission of The Yale Law Journal Company, Fred B. Rothman & Company, and the authors from the *Yale Law Journal*, Volume 69, pages 858-865.
- Gustman, David C., *The Foreign Corrupt Practices Act of 1977: A Transactional Analysis*, 13 *Journal of International Law & Economics* 367 (1979). Reprinted by permission.
- Hall, Jerome, *Theft, Law and Society* (2d ed. 1952). Published by Michie, Bobbs-Merrill, Inc. Reprinted by permission of the publisher and the author.
- Haney, Craig, & Michael J. Lowy, *Bargain Justice in an Unjust World: Good Deals in the Criminal Courts*, 13 *Law & Society Review* 633 (1979). Copyright © 1979 by the Law and Society Association. Reprinted by permission.
- Hart, H. L. A., *Book Review (Wootton, Crime and the Criminal Law (1963))*, 74 *Yale Law Journal* 135 (1965). Reprinted by permission of The Yale Law Journal Company, Fred B. Rothman & Company, and the author from the *Yale Law Journal*, Volume 74, page 1328.
- Hart, H. L. A., *Intention and Punishment*, *Oxford Review* No. 4 (Hilary 1967). Reprinted by permission of the author.
- Hart, H. L. A., *Law, Liberty and Morality* (1963). Reprinted by permission of Stanford University Press.
- Hart, H. L. A., *Legal Responsibility and Excuses*, reprinted by permission of the New York University Press from *Determinism and Freedom in the Age of Modern Science*, edited by Sidney Hook. Copyright © 1958, 1960 by New York University.
- Hart, H. L. A., *The Morality of the Criminal Law* (1965). Published by Magnes Press. Reprinted by permission.
- Hart, H. L. A., *Punishment and Responsibility* (1968). Copyright © 1968 by Oxford University Press. Reprinted by permission of Oxford University Press.
- Hughes, Graham, *Criminal Omissions*, 67 *Yale Law Journal* 590 (1958). Reprinted by permission of The Yale Law Journal Company, Fred B. Rothman & Company, and the author from the *Yale Law Journal*, Volume 67, pages 599-600.
- Jeffries, John Calvin, Jr., & Paul B. Stephan, *Defense, Presumptions and Burdens of Proof in the Criminal Law*, 88 *Yale Law Journal* 1325 (1979). Reprinted by permission of The Yale Law Journal Company, Fred B. Rothman & Company, and the authors from the *Yale Law Journal*, Volume 88, pages 1345-1347, 1389.
- Johnson, Philip E., *Importing Justice*, 87 *Yale Law Journal* 406 (1977). Reprinted by permission of The Yale Law Journal Company, Fred B. Rothman &

- Company, and the author from the Yale Law Journal, Volume 87, pages 410-414.
- Johnson, Philip E., *The Unnecessary Crime of Conspiracy*, 61 California Law Review 1137 (1973). Copyright © 1973 by the California Law Review, Inc. Reprinted by permission of Fred B. Rothman & Company.
- Junker, John M., *Criminalization and Criminogenesis*, 19 U.C.L.A. Law Review 697 (1972). Reprinted by permission.
- Kadish, Sanford H., *The Advocate and the Expert: Counsel in the Penitentiary Process*, 45 Minnesota Law Review 803 (1961). Reprinted by permission.
- Kadish, Sanford H., *The Crisis of Overcriminalization*, 374 Annals 157 (1967). Reprinted by permission of The American Academy of Political and Social Science.
- Kadish, Sanford H., *The Decline of Innocence*, 26 Cambridge Law Journal 273 (1968). Copyright © 1968 by Cambridge University Press. Reprinted by permission.
- Kadish, Sanford H., *Legal Norm and Discretion in the Police and Sentencing Process*, 75 Harvard Law Review 904 (1962). Copyright © 1962 by the Harvard Law Review Association. Used by permission.
- Kadish, Sanford H., *Respect for Life and Regard for Rights in the Criminal Law*, 64 California Law Review 871 (1976). Copyright © 1976 by California Law Review, Inc. Reprinted by permission.
- Kalven, Harry, & Hans Zeisel, *The American Jury* (1966). Reprinted by permission of Little, Brown and Company.
- Kant, Immanuel, *Metaphysical Elements of Justice* (J. Ladd translator 1965). Copyright © 1965 by Bobbs-Merrill, Inc. Reprinted by permission of Bobbs-Merrill, Inc., Indianapolis, Ind.
- Korn, Richard R., & Gregory B. Craig, *Making It All Perfectly Legal*, Washington Post (January 20, 1974). Reprinted by permission. Richard R. Korn is Professor of Sociology, John Jay College of Criminal Justice.
- Korn, Richard R., & Gregory B. Craig, excerpts from an article appearing in the Washington Post (March 3, 1974). Reprinted by permission.
- Langbein, John H., *Torture and Plea Bargaining*, 46 University of Chicago Law Review 3 (1978). Reprinted by permission.
- Lee, Stephen, & Donald H. Zuckerman, *Representing Parole Violators*, 11 Criminal Law Bulletin 327 (1975). Reprinted by permission from the Criminal Law Bulletin, Volume 11, May-June 1975. Copyright © 1975 by Warren, Gorham and Lamont, Inc., 210 South Street, Boston MA. All rights reserved.
- Levy, Leonard W., *Origins of the Fifth Amendment* (1968). Published by Oxford University Press. Reprinted by permission of the author.
- Lewis, Anthony, excerpts from an article appearing in the International Herald Tribune (June 20, 1978). Copyright © 1978 by The New York Times Company. Reprinted by permission.
- Lewis, Anthony, excerpts from an article appearing in the New York Times (August 7, 1963). Copyright © 1963 by The New York Times Company. Reprinted by permission.
- Low, Peter W., *Special Offender Sentencing*, 8 American Criminal Law Quarterly 70 (1970). Reprinted by permission of the American Criminal Law Quarterly

- (now the American Criminal Law Review (the quarterly journal of the American Bar Association's Section on Criminal Justice) and the Georgetown University Law Center) and the author.
- Mack, Eric, *Bad Samaritanism and the Causation of Harm*, 9 *Philosophy & Public Affairs* 230 (1980). Reprinted by permission of Princeton University Press from *Philosophy & Public Affairs*, Volume 9, Number 3 (Spring 1980). Excerpted from page 240.
- Martinson, Robert, *New Findings, New Views: A Note of Caution Regarding Sentencing Reform*, 7 *Hofstra Law Review* 243 (1979). Reprinted by permission of the publisher.
- Martinson, Robert, *What Works? — Questions and Answers about Prison Reform*, 36 *The Public Interest* 22 (1974). Reprinted by permission from *The Public Interest*, Number 35 (Spring 1974), pages 22-25. Copyright © 1974 by National Affairs, Inc.
- Moore, Robert A., M.D., *Legal Responsibility and Chronic Alcoholism*, 122 *American Journal of Psychiatry* 748 (1966). Reprinted by permission of the publisher and the author.
- Morris, Herbert, *On Guilt and Innocence* (1976). Copyright © 1976 by The Regents of the University of California. Reprinted by permission of the University of California Press.
- Morris, Norval R., *Somnambulistic Homicide: Ghosts, Spiders and North Koreans*, 5 *Res Judicatae* 29 (1951). Reprinted by permission of the publisher.
- Murphy, Jeffrie, G., *Marxism and Retribution*, 2 *Philosophy & Public Affairs* 217 (1973). Copyright © 1973 by Princeton University Press. Reprinted by permission from *Philosophy & Public Affairs*, Volume 2, Number 3 (Spring 1973).
- National Research Council, *Deterrence and Incapacitation: Estimating the Effects of Criminal Sanctions on Crime Rates* (1978). Reprinted by permission of the National Academy Press, Washington, D.C.
- New York Times, excerpts from articles appearing on February 17, 1980, March 14, 1980, February 7, 1968. Copyright © 1968, 1980 by The New York Times Company. Reprinted by permission.
- 1970 Sentencing Institute for California Superior Court Judges, 93 *California Reporter*, Appendix 25 (1970). Reprinted by permission of West Publishing Company.
- 1971 Sentencing Institute for California Superior Court Judges, 100 *California Reporter* 32 (1971). Reprinted by permission of West Publishing Company.
- Noonan, John T., *Book Review*, 29 *Stanford Law Review* 363 (1977). Copyright © 1977 by the Board of Trustees of Leland Stanford Junior University. Reprinted by permission.
- Note, *Corporate Homicide: A New Assault on Corporate Decision-Making*, 54 *Notre Dame Lawyer* 911 (1979). Copyright © 1979 by the Notre Dame Lawyer, University of Notre Dame. Reprinted by permission from *Notre Dame Lawyer*, Number 5 (1979).
- Note, *Developments in the Law — Corporate Crime: Regulating Corporate Behavior through Criminal Sanction*, 92 *Harvard Law Review* 1227 (1979). Copyright © 1979 by the Harvard Law Review Association. Reprinted by permission of the Harvard Law Review Association.

- Note, *Developments in the Law — Criminal Conspiracy*, 72 *Harvard Law Review* 920 (1959). Copyright © 1959 by the Harvard Law Review Association. Reprinted by permission of the Harvard Law Review Association.
- Note, *Due Process and Legislative Standards in Sentencing*, 101 *University of Pennsylvania Law Review* 257 (1952). Copyright © 1952 by the University of Pennsylvania Law Review. Reprinted by permission.
- Note, *Individual Liability of Agents for Corporate Crimes under the Proposed Federal Criminal Code*, 31 *Vanderbilt Law Review* 965 (1978). Reprinted by permission.
- Note, *A Rationale of the Law of Aggravated Theft*, 54 *Columbia Law Review* 84 (1954). Reprinted by permission.
- Nozick, R., *Anarchy, State and Utopia* (1974). Reprinted by permission of Basic Books, Inc.
- Orkin, Mark M., *Defence of One Known to Be Guilty*, 1 *Criminal Law Quarterly* 170 (1958). Reprinted by permission of Canada Law Book, Ltd.
- Pearce, Jack, *Theft by False Promises*, 101 *University of Pennsylvania Law Review* 967 (1953). Copyright © 1953 by the University of Pennsylvania Law Review. Reprinted by permission.
- Posner, Richard A., *Optimal Sentences for White-Collar Criminals*, 17 *American Criminal Law Review* 409 (1980). Reprinted by permission of the author and the American Criminal Law Review (the quarterly journal of the American Bar Association's Section on Criminal Justice) and the Georgetown University Law Center.
- Radzinowicz, Leon, & J. W. C. Turner, *A Study of Punishment I: Introductory Essay*, 21 *Canadian Bar Review* 91 (1943). Reprinted by permission.
- Ross, Irwin, *How Lawless Are Big Companies?*, 103 *Fortune Magazine* 57 (1980). Copyright © 1980 by Time Inc. All rights reserved. Reprinted by permission of Fortune Magazine and the author.
- San Francisco Chronicle*, excerpts from article appearing on September 7, 1974, page 2. Reprinted by permission of the San Francisco Chronicle.
- San Francisco Chronicle*, excerpts from articles appearing on July 3, 1980, page 5, and November 14, 1964, page 4. Reprinted by permission of the Associated Press.
- Sayre, Francis, *Criminal Responsibility for the Acts of Another*, 43 *Harvard Law Review* 689 (1930). Copyright © 1930 by the Harvard Law Review Association. Reprinted by permission of the Harvard Law Review Association.
- Schlesinger, Rudolf, B., *Comparative Criminal Procedure: A Plea for Utilizing Foreign Experience*, 26 *Buffalo Law Review* 361 (1974). Reprinted by permission.
- Schulhofer, Stephen, *Due Process of Sentencing*, 128 *University of Pennsylvania Law Review* 733 (1980). Copyright © 1980 by the University of Pennsylvania Law Review. Reprinted by permission of the publisher and the author.
- Schulhofer, Stephen, *Prosecutorial Discretion and Federal Sentencing Reform* (1979). Reprinted by permission of the Federal Judicial Center and the author.
- Schwartz, Louis, *Reform of the Federal Criminal Laws*, [1977] *Duke Law Journal* 171. Reprinted by permission.

- Sellin, Johan Thorsten, *The Death Penalty* (1959). Copyright © 1959 by The American Law Institute. Reprinted by permission of The American Law Institute.
- Smith, John Cyril, *The Element of Chance in Criminal Liability*, [1971] *Criminal Law Review* 63. Reprinted by permission of Sweet & Maxwell Ltd. and the author.
- Solomon, Lewis D., & David C. Gustman, *Questionable and Illegal Payments by American Corporations*, 35 *Journal of Business Law* 67 (1980). Reprinted by permission of Sweet & Maxwell Ltd. and the authors.
- Twentieth Century Fund, *Task Force on Criminal Sentencing, Fair and Certain Punishment* (1976). Reprinted by permission of McGraw-Hill Book Company.
- Underwood, Barbara D., *The Thumb on the Scales of Justice: Burdens of Persuasion in Criminal Cases*, 86 *Yale Law Journal* 1299 (1977). Reprinted by permission of The Yale Law Journal Company and Fred B. Rothman & Company from the *Yale Law Journal*, Volume 86, pages 1299, 1312-1313, 1321-1324.
- van den Haag, Ernest, *On Deterrence and the Death Penalty*, 60 *Journal of Criminal Law, Criminology & Political Science* 141 (1969). Copyright © 1969 by Northwestern University School of Law. Reprinted by permission.
- van den Haag, Ernest, *Punishing Criminals: Concerning a Very Old and Painful Question* (1975). Copyright © 1975 by Basic Books, Inc. By permission of Basic Books, Inc., Publishers, New York, N.Y.
- von Hirsch, Andrew, *Doing Justice: The Choice of Punishments* (1976). Reprinted by permission of Hill and Wang, a division of Farrar, Straus and Giroux, Inc.
- Wasserstrom, Richard, *Lawyers as Professionals: Some Moral Issues*, 5 *Human Rights* 1 (1975). Reprinted by permission.
- Wechsler, Herbert, *The Challenge of a Model Penal Code*, 65 *Harvard Law Review* 1097 (1952). Copyright © 1952 by the Harvard Law Review Association. Reprinted by permission of the Harvard Law Review Association and the author.
- Wechsler, Herbert, *Sentencing, Correction, and the Model Penal Code*, 109 *University of Pennsylvania Law Review* 465 (1961). Copyright © 1961 by the University of Pennsylvania Law Review. Reprinted by permission.
- Wheeler, Malcolm E., *Products Liability: Manufacturers, Wrong Targets for Threat of Criminal Sanctions?*, *National Law Journal* (December 22, 1980). Reprinted by permission of New York Law Publishing Company.
- Wicker, Tom, *A Penalty That Fits Mr. Chapin*, *New York Times* (April 7, 1974). Copyright © 1974 by The New York Times Company. Reprinted by permission.
- Williams, Glanville, *Criminal Law: The General Part* (2d edition 1961). Reprinted by permission of Sweet & Maxwell, Ltd. and the author.
- Williams, Glanville, *Euthanasia*, 41 *Medico-Legal Journal* 14 (1973). Reprinted by permission of the publisher and the author.
- Williams, Glanville, *Police Control of Intending Criminals*, [1955] *Criminal Law Review* 6. Reprinted by permission of Sweet & Maxwell Ltd. and the author.
- William, Glanville, *The Proof of Guilt* (3d edition 1963). Reprinted by permission of Sweet & Maxwell Ltd. and the author.