Breaking It Down:
Justice, Law & Society Abstracts for Policymakers and Practitioners

July 2010

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This publication, Breaking It Down: Justice, Law & Society Abstracts for Policy Makers and Practitioners, is the third publication from the CJLS abstracting service. These abstracts will help policymakers and practitioners follow contemporary academic research relevant to their work. Included articles have been published in recent years and reflect interests we believe to be most relevant to policy makers and practitioners. This edition of Breaking It Down focuses on access to justice, in addition to other relevant topics. The journals that have been followed are:

American Journal of Sociology
American Sociological Review
Court Manager
Court Review
Criminology and Public Policy
Development Policy Review
Human Rights Quarterly
Journal of Conflict Resolution
Journal of Criminal Law and Criminology
Journal of Development Studies
Journal of Empirical Legal Studies
Journal of Human Rights
Journal of International Public Affairs
Journal of Law and Public Policy
Journal of Law and Society
Journal of Legal Studies
Judges Journal
Judicature
Justice Quarterly
Law and Contemporary Problems
Law and Human Behavior
Law and Policy
Law and Social Inquiry
Law and Society Review
Psychology, Public Policy, and Law
Punishment and Society
Crime, Law & Social Change

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Abstracts have been grouped by subject. The following table of contents outlines these subject groupings and provides direct links to the included abstracts within each group. If there are other subjects you would like to see the CJLS abstracting service include, please contact us at cjls@gmu.edu.

### Table of Contents

<table>
<thead>
<tr>
<th>Subject</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Access to Justice</td>
<td>3</td>
</tr>
<tr>
<td>Civil Practice</td>
<td>10</td>
</tr>
<tr>
<td>Crime and Place</td>
<td>11</td>
</tr>
<tr>
<td>Criminalization</td>
<td>13</td>
</tr>
<tr>
<td>Criminal Case Processing</td>
<td>14</td>
</tr>
<tr>
<td>Gender and Race</td>
<td>18</td>
</tr>
<tr>
<td>Interrogations</td>
<td>21</td>
</tr>
<tr>
<td>Judicial Decision Making</td>
<td>22</td>
</tr>
<tr>
<td>Juvenile Justice</td>
<td>23</td>
</tr>
<tr>
<td>Law Enforcement</td>
<td>24</td>
</tr>
<tr>
<td>Legal Actors</td>
<td>27</td>
</tr>
<tr>
<td>Legal History and Consciousness</td>
<td>28</td>
</tr>
<tr>
<td>Tribal Courts</td>
<td>30</td>
</tr>
<tr>
<td>Contributors</td>
<td>31</td>
</tr>
</tbody>
</table>
**Access to Justice**


In Australia, as well as other places, the majority of the public's interaction with the judicial system comes in the form of decisions by lower courts and magistrates. However, much scholarly research and media attention focuses on superior court decisions dealing with constitutional issues and appeals. This article discusses how the local courts and magistrates are in position to effect social change at the individual and neighborhood and local levels through their interactions and techniques in dealing with participants in the judicial system and specialized courts.

While managing disputes and injustices, magistrates believe they can influence the operation of the courts and help the everyday citizens involved. Through surveys from 210 magistrates and several interviews with Australian magistrates, the authors found that many magistrates see their positions as opportunities to help society change and make a difference in the lives of citizens caught up in the criminal justice system. For example, one magistrate talked about her passion for the job and discussed wanting to make the court a valuable common resource with greater links to the community. Other magistrates focused on individuals' needs and access to resources as a way to affect positive change in the lives of individuals before them.

Therapeutic jurisprudence is another way magistrates attempt to make a difference—a perspective whereby law and legal processes can affect the physical and psychological well being of participants. It focuses not on the outcome of individual cases but the interactions that occur between the participants themselves and the criminal justice system as a whole. Emphasizing direct engagement and communication with people as individuals instead of defendants, therapeutic jurisprudence promotes a progressive social change within the system. One magistrate states that therapeutic jurisprudence “identifies the quality of interaction in court, emphasizing direct engagement with participants as individuals rather than as defendants, litigants or parties, and communication as essential components of their role, rather than being limited to making dispassionate decisions on legal issues and adjudicating the facts (p 191).”

Another way local courts are making a difference is through the development of specialized or problem-oriented courts focusing on drugs, mental health, and indigenous populations. These courts combine treatment and punishment objectives to create an individualized therapeutic approach. This individualized treatment provides the court ways to contribute to progressive social change in incremental ways by working with individuals and communities. Although this article focuses on local courts in Australia, many of the conclusions can be applied to the lower courts within the United States. Magistrates both in Australia and the US could focus more carefully on the nature of their interactions with individuals in the system to enhance the overall quality of justice that is delivered by the courts.

~C. Defibaugh

As the US faces difficult economic times, the ever-present issue of access to justice persists within the American criminal justice system. The purpose of this article is to inform the actors involved in the system about a range of low and no cost options available to increase access to justice during this difficult time. The authors present seven such options that have been developed and implemented successfully in various justice systems across the country. A brief description of each option is provided, along with suggestions for implementation and links to resources that may be helpful. One option is to simplify court forms by streamlining them and ensuring they are written in plain English. Examples of user-friendly forms are provided to justice systems free of charge at the [www.selfhelpsupport.org](http://www.selfhelpsupport.org) clearinghouse. Another option to reduce costs is to mobilize law students and volunteers to assist with the court workload. Links are given to assist with applying for grants to fund the volunteer training and to AmeriCorps, a nationally represented group to provide the training. The article concludes with optimism that the options presented will enable court systems to increase access to justice and efficiency with current processing in systems of all sizes and budgets, in all states, all with minimal cost.

~ S. Ainsworth

This article focuses on how the different philosophies of prosecutors in local court systems affect the quality of treatment that victims of intimate partner violence receive from the justice system. The authors’ goal is to examine two different case screening practices by prosecutors of domestic violence and their case outcomes in two jurisdictions in New York City: Brooklyn and the Bronx. Despite their proximity and their governance by identical laws and statutes, these locations differed markedly in how domestic violence cases were handled. In Brooklyn, prosecutors filed charges in nearly 100% of cases investigated by the police compared to the Bronx, where only 20% of cases resulted in charges being filed. These discrepancies are the result of different approaches to prosecution in the two boroughs. In Brooklyn, cases are filed regardless of victim cooperation, whereas in the Bronx cases are only filed if the victim is willing to proceed with charges. The author's main research question is whether filing charges against offenders, even when the victim does not support prosecution and conviction is unlikely, empowers victims and their sense of safety and/or reduces recidivism.

Findings:

The authors found that there was no significant difference between the two locations in the number of re-arrests of offenders over a six-month period. The Brooklyn sample had a 12% re-arrest rate while the Bronx results were only slightly different at an 11% re-arrest rate. Despite the existence of the protective orders in the mandatory arrest cases, which would seemingly make Brooklyn a safer location for the victim, there was no significant difference in the amount of time that it took for recidivism to occur when it took place. Further, it was not found that one group was more likely to receive victim services than another, which is an argument for mandatory arrest procedures. There was also no evidence that the prosecution policy impacted the intent to report future crimes.

In sum, the authors’ findings did not show a clear distinction between the outcomes of the two different prosecution policies across the measures chosen, and no benefit of the universal arrest policy was found in regard to reducing recidivism or increasing convictions of offenders. These findings are of interest as they relate to the support for the mandatory domestic violence arrest laws. The results indicate that support for such laws may not come from short-term recidivism measures, if at all. It is also clear that additional research is required regarding these policies in order to better understand intimate partner violence if we are to provide adequate access to justice for victims. It is the challenge of balancing the availability of key resources in prosecutor offices along with the fairness to the victim and offender that provides continued interest for future research.

~S. Fender

This article presents findings which challenge a fundamental assumption of the “access to justice” scholarship. Rather than finding support for the common belief that greater access to financial resources makes people more likely to hire an attorney, Kritzer’s review of ten studies from seven countries (the United States, England and Wales, Canada, Australia, New Zealand, the Netherlands, and Japan) finds that “income has relatively little impact on decisions to seek the assistance or advice of a lawyer. Although income may play some role in such decisions, that role is very small compared to the type (and size) of the matter at issue” (900).

Prior studies have supported the intuitive assumption that access to financial resources is a predictor of an individual’s decision to hire an attorney, but Kritzer’s article explains that this prior research is misleading because these studies have based this conclusion on an examination of only the differences between low-income and moderate-income groups. When all income groups are added to the analysis, the results demonstrate that the type of dispute is a much better predictor of the decision to use an attorney. Overall, very few people decide to pursue legal claims. Of those who do, however, Kritzer describes the decision to hire an attorney as a cost-benefit calculation in which the individual often does not expect the involvement of an attorney to be worth the cost. Citing his own prior research, Kritzer explains that this logic can be observed even among those in higher-income groups, for whom the same cost could be more easily borne than for low and moderate-income groups. As an example, Kritzer cites his observation of a high-income individual representing himself in a tax dispute over a gold mine investment. The investor explained that it didn’t make sense for him to hire an attorney because the fees would likely be more than the amount of money in dispute.

Kritzer argues that often “[r]esearchers and policymakers fail to ask the question of whether someone with adequate financial resources would choose to expend those resources to hire a lawyer to assist with [their] legal problems . . . ” (902). According to Kritzer, if individuals with the ability to hire an attorney are making the choice not to do so in certain situations, then “assessing unmet legal needs is a much more complex issue than most prior efforts in this regard have taken into account” (903).

~ D. McClure

Bisexual, gay, lesbian, and transgendered (BGLT) individuals maintain relationships that are not often recognized in law. Riggle, Rostosky, Prather, and Hamrin (2005) discuss the challenges individuals in legally-unrecognized relationships face when a medical crisis or death occurs if the individuals have not executed legal documents to provide their partners with the legal privileges the court generally only assigns to spouses and legally-recognized family. These documents include wills and living trusts, financial and medical powers of attorney, hospital visitation authorizations, and living wills.

Previous research related to the execution of legal documents suggests that less than half of all adults have executed these documents and, although the research is sparse on BGLT individuals, it suggests that these rates may be even lower in this subset of the population. Since research about this population is limited, the authors of this study sought to obtain a better understanding of the factors influencing decisions to execute these documents. The authors’ hypotheses are that demographic factors, lack of knowledge about the availability and necessity of these documents, internalized homophobia, and involvement in a committed relationship will affect the likelihood that BGLT individuals execute these documents. Data was obtained through online surveys of individuals who joined online listservs and other groups tailored towards BGLT individuals. This convenience sampling technique may have introduced some bias into the sample, as participation in these groups (and, therefore, the survey) was the result of self-selection. The study’s overall response rate was 83.6 percent. The almost 400 participants were split nearly equally in terms of gender. However, respondents were largely Caucasian, college-educated, employed, and living in major metropolitan areas. As a result, this sample may be representative of only one segment of the BGLT community. This set of respondents may feel more comfortable seeking out these services. Individuals with other demographics may experience greater discrimination and, thus, may execute these legal documents at lower rates.

In fact, the authors write that three out of four respondents to this survey reported themselves to be open about their sexuality with their families. This openness was accompanied by a self-reported low level of internalized homophobia (a mean of under two for both males and females on a five-point scale) in this population, which the authors argued would also impact document execution. These findings are unusual and underscore the argument that this sample represents only a portion of the BGLT community.

Despite the limitations of the sample, this study yields informative findings regarding the legal arrangements made by a community of individuals at risk of not having their relationships recognized by the courts. Even in this sample, the document that the respondents had executed most frequently was a will or living trust, with a frequency of only 59 percent. The odds of having executed one of the five legal documents mentioned in the survey doubled with involvement in a committed relationship. The authors did not find standard demographic variables (age, race, education, etc.) to be as influential in this sample as in samples of the general population.

Although the survey yields useful results, the authors caution against assuming that large numbers of the BGLT community are protected. In addition to the potential sampling bias, the
authors discuss the fact that individuals in committed homosexual relationships are not afforded the same legal protections in most states as those in committed heterosexual marriages. The result is that BGLT individuals require additional protective legal documents to ensure that their partners are able to participate in making legal decisions should they become incapacitated, incompetent or deceased. BGLT individuals must obtain these legal documents at considerable personal financial expense. Additionally, even obtaining all of these documents does not provide all protections offered through marriage or civil union in most states and some documents may not be transferable across jurisdictions. Future research might investigate further the specific situational, psychological and social factors that hinder those in BGLT relationships from obtaining these documents using a broader sample of the BGLT community.

~ E. Crites
Before the 1970s, judicial process was largely unavailable to victims of domestic violence. Since then, all fifty states and the District of Columbia have created some form of legislation to assist these victims. The majority of these statutes have two parts (1) victims obtain an emergency *ex parte* order for a limited duration (usually no more than seven days), and (2) after the alleged abuser is notified of the temporary protection order, a full hearing is held when a “permanent” protection order of longer duration (one to two years) may be entered. This article identifies how creating easier access for domestic violence victims to obtain an emergency protection order has also created opportunities for abusers to exploit the system. The authors also address how the lack of notification prior to the issuance of an emergency protection order is a violation of the due process of the alleged offender.

Emergency protection orders have become increasingly accessible to victims of domestic violence and can be a useful weapon in obtaining relief. This can involve removing the alleged abuser from the home and/or retaining custody of any children. These measures help victims take control of the situation they find themselves in and possibly begin the process of leaving the relationship. Due to the danger of abuse, emergency orders are granted at a very high rate. Judges do not want to deny relief and have abuse occur at a later date. Unfortunately, increasing access to emergency protection orders for “true” victims of domestic violence also increases access for false claims by abusers. By requesting an emergency order of protection first, abusers can use the system as a way to gain a tactical advantage and maintain control over their victim by removing them from the home, taking custody of children and influencing possible divorce proceedings.

Providing greater access to emergency protection orders also raises a due process issue. Emergency *ex parte* orders are given without notifying all parties. However, no one has been successful in changing statutes to address the due process issue. Decisions in several court cases have indicated that since notification and a full hearing occur shortly after the emergency order, the rights of both the victim and the offender are protected. Many courts believe that when weighing the possibility of impending harm versus due process rights, erring on the side of those at risk is appropriate.

The key recommendation made by the authors is directed at the judges who oversee these cases. Judges should be more thorough in questioning victims, gaining insight into the facts of the case rather than simply scanning a form or written statement that could be misleading. Written findings should outline the specific circumstances of the case which justify the emergency order without notifying the alleged offender. This documents the court's decision and allows the alleged offender to challenge it, if desired. "To remain effective, the ease of access must not be exploited by persons who use the system to obtain unwarranted relief." It is up to the courts to ensure that orders of protection are granted only when necessary to prevent injury.

~C. Defibaugh
Contingency fees are a method for providing access to civil justice for plaintiffs who might not otherwise be able to afford legal representation to pursue a claim. These fees are not without their critics, but as McKee, Santore, and Shelton (2007) found contingency fees can provide optimal levels of attorney effort and payout for the client, even when the market for services is competitive in the clients’ favor. The authors test two criticisms of the contingency fee system in a laboratory setting. They hypothesize: (1) the effort expended by an attorney will be a function of the contingency fee and (2) competition for clients will, contrary to critics, yield fee bids beneficial to the client in both effort and payout.

The laboratory experiment was conducted using university undergraduate students. “Lawyers” and “clients” were given tables to show how much each level of effort would cost. In order to simulate an increased return with increased effort participants had a greater number of “winning” sides of the die, used to determine the case outcome, available for each level increase in effort chosen. In one test an equal number of lawyers (all participants) and clients (all researchers) were used. Each test was run on a different “fee” to determine the shift in effort chosen by lawyers based on the contingency fee amount. This round tested the first hypothesis. The second hypothesis was tested in two different sessions under the same conditions, but with two different fee schedules. In this scenario attorneys provided an anonymous bid that was made available to all clients. Clients upon seeing all available bids were able to pick the fee they desired to pay for attorney assistance. Using this method the authors tested how clients would behave towards attorney fee bidding. Clients were aware of the effort level associated with each fee amount, but were unaware of the payout associated with a win at that effort level. The results of both tests support the authors’ predictions: attorney effort is related to fee amount and competition for clients among contingent fee lawyers will only drop fees to levels that are sufficient to endorse moderate effort by lawyers and a decent payout for the client.

Findings from this laboratory exercise provide interesting insights into how contingency fees might operate. First, although clients cannot see the effort expended by their attorneys, they seem to have an implicit understanding that fees are related to effort. Second, the study shows that competition for clients can work in the clients’ favor. This second insight requires a client who is adept enough at gathering information on variations in contingency fees. For populations who are unfamiliar with the legal system and have very small claims, this need to pay higher fees to get more effort may seem inaccessible. Third, this exercise also assumes that a case is taken. An attorney, knowing the likelihood of a low payout even at the most basic expenditure of effort, may choose not to take a case. Other elements that were not addressed in this laboratory experiment may affect attorney and client decisions on fee amounts and effort level. These elements include attorney reputation, current caseload, and complexity of the case. Future studies might attempt to gather information on the hours expended for cases under varying contingency fees and with varying case characteristics to determine if these same economic theories supported in this laboratory experiment are true in practice.

~ E. Crites
In this article, the authors consider the influence of high violence rates in public housing developments in Southeast Los Angeles and their effects on surrounding neighborhoods. Findings of increased victimization rates within these communities have sparked interest in the relationship between crime and place and the role of housing developments in the larger crime rate picture. In this sample the street blocks that contain public housing have an average annual homicide rate of 131 per 100,000 compared to 69 per 100,000 in other locations. The public housing developments are a service that many economically disadvantaged populations avail themselves of within communities and as a result these locations tend to concentrate groups that are socially isolated. The concept of social isolation refers to the separation that residents feel from the larger social institutions and norms in society, a structural and cultural condition that has also been used to explain the high rates of violence in these areas. The authors explored the impact of this phenomenon on the crime rate that is found at these locations, hypothesizing that public housing may concentrate offenders, attract violent outsiders, or be a generator of violence itself thus leading to increases in victimization rates.

To address these questions a spatial typology of homicide was used to understand how the offenses were distributed among these neighborhoods. Spatial typology is a measure that aggregates data on the participation of public housing residents in homicides both inside and outside of their housing areas. As such it helps determine the effects of public housing on homicide rates in the community. This is done by recording the location of the victim, offender and the location of the criminal event. The main purpose of this measure is to understand where those living in public housing are committing criminal offenses in order to understand the mobility of the offenders and offending patterns. Doing so may have implications regarding the impact of public housing developments as they relate to crime rates within communities.

Findings:

The authors find that public housing developments do not experience a significant amount of violence from those who live outside of the developments themselves. Rather the risk of violence comes mainly from those that currently live within the public housing developments at the time of the offense. Further, homicides that occurred within the public housing developments were more likely to involve the residents of these developments as both victims and offenders. These findings indicate that public housing was not an attractor of criminal activity, nor did the residents commit homicides that affected the surrounding communities. Instead the crimes that took place involved those that already lived within the development. This suggested that the threat to surrounding communities of homicide was not increased due to the existence of a public housing neighborhood. This finding shows that public housing developments are not crime generators in the sense that they cause homicides to diffuse to surrounding areas.
These results illustrate the effects of social isolation associated with these communities and that social isolation may have an impact on patterns of crime. Further, since we see that the homicide rates are disproportionately high in public housing developments compared to other areas, it shows that the impact of this isolation is manifest in violent ways not seen outside of the developments. Ultimately this article provides empirical evidence of the impact of social isolation on the public housing population and in doing so raises questions about this population's ability to access justice in their communities as a result of its economic disadvantage.

~ S. Fender
Criminalization


Weitzer (2010) conducts a literature review of efforts to criminalize sex work, and the environment in which these efforts have occurred. According to Weitzer (2010) the sex industry in the United States has become more normalized in recent years. Pornography and stripping have spilt over onto mainstream media and are ever-present on the Internet. Furthermore, prostitution decriminalization statutes have received increasing support. In a 2008 ballot vote 42 % of San Francisco voters endorsed the decriminalization of prostitution. This “normalization” was met by a moral crusade of religious and feminist coalitions to criminalize sex work.

Weitzer (2010) defines a moral crusade as a social movement that combats an unqualified evil activity. Weitzer (2010) suggests that the sex industry moral crusade is dramatized by “the plight of traumatized victims, the demonizing of perpetrators, and the exaggeration of the problem” (pg. 63). According to Weitzer (2010) the sex work criminalization movement is unjustifiably linked to human trafficking. Pornography, stripping, and willing prostitution are being further criminalized under the anti-trafficking movement. Weitzer (2010) claims that this conflation of trafficking with other sex work is unjustified. Furthermore, Weitzer (2010) contends that the incidence of human trafficking is even exaggerated. While anti-trafficking organizations like The Polaris Project claim that human trafficking is increasing, government reports illustrate that it is actually decreasing.

Weitzer (2010) asserts that the moral crusade discourse uses three strategies to push their anti-sex industry agenda: (1) they inflate the magnitude of the problem, (2) the symbolically reference the most shocking a-typical horror stories, and (3) they conflate different types of sex work. These strategies in conjunction with the partnership between crusade groups and the Bush administration resulted in furthered intuitional criminalization of the sex industry. The mechanisms used to achieve this policy, and the argued normalization of sex work, suggest that this policy is not reflective of the public sentiment. However, it is unlikely that these laws will be rescinded in the foreseeable future.

~ Kim Mehlman
Criminal Case Processing


Alternative sentencing of criminal offenses has emerged as a response to overwhelmed jails and court dockets with no appreciable effect on recidivism rates. Yet, implementation of these alternative sanctions requires the help of community-based agencies. These agencies are entrusted by court officials to evaluate, treat, and control individuals who enter the criminal justice system. Castellano argues this new presence of community agencies within the criminal justice system, particularly the court system, demonstrates a larger contextual shift to restructure “courtroom justice.” In this article, Castellano introduces the case worker hired through non-profit agencies as a new actor in criminal justice processing. In doing so, Castellano explores the administration of community-based agents in applying criminal justice policies and their impact on criminal justice processing. Specifically, Castellano examines how caseworker discretion influences judicial outcomes at the pre-trial stage and the dynamic of the courtroom workgroup. Traditionally, the courtroom workgroup consists of judges and attorneys handling a particular criminal case. The judge, prosecutor and defense attorney are key decision-makers in the case processing and are key players in judicial decision making. However, after spending sixteen months doing ethnographic research as a participant observer, Castellano concludes caseworkers shift this dynamic and are important influences in traditional legal procedures. In other words, case workers have the discretion to frame defendants as “responsible” and “worthy” of leniency before the court, importing an empathetic and rehabilitative ethic to court room processes and ultimately, decision making. The exercise of such discretion operates outside and beyond the traditional courtroom workgroup, but still has significant influence on workgroup decision making. According to Castellano, this illustrates a fundamental shift of the courtroom workgroups internal culture and application of justice. Caseworkers “orbit” outside the workgroup, but retain their own rules and procedures in influencing decision making about criminal offenders.

~ A. Olaghere

Background

One of the primary goals of the Sentencing Reform Act of 1984 (the “Act”) was to eliminate sentencing disparities in the U.S. Federal courts. Using the “sentencing guidelines” mandated by the Act, discretionary sentencing decisions by judges were to be an outdated practice. In other words, the goal of the Act was to ensure reasonable uniformity in the sentencing of offenders, and the “sentencing guidelines” kept a tight leash on judges in their capacity to sentence offenders.

Although this law did limit the discretionary sentencing power once yielded by judges, it did not eliminate discretionary decisions in the sentencing of federal offenders as discretionary power was shifted to prosecutors. A provision in the Act presented a “loophole” for prosecutors in regards to crucial sentencing decisions. In short, the prosecutor may submit a motion for a downward departure from the sentencing guidelines if the defendant provides “substantial assistance.” According to the authors of this research, the substantial assistance provision was designed to “reward offenders who provide information and/or testimony that leads to the arrest and prosecution of [other offenders]” (p. 836). For example, suppose John Jones is arrested for selling 50 grams of cocaine to an undercover DEA agent. Soon after his arrest, Mr. Jones provides information that leads the DEA to a larger drug supplier and further arrests and drug seizures result. The sentencing guidelines may mandate a sentence range for John Jones between 60 and 70 months, but because of the assistance that he provided, the prosecutor may ask (via a motion to the court) for a sentence of 40 months. Hence, a prosecutor determines (and a judge ultimately agrees) that John Jones has “earned” a downward departure from the guidelines. What is clear from the article, however, is that not all defendants that receive downward departures have provided this kind (and perhaps any kind) of overt substantial assistance.

Because of the power of this prosecutorial tool, many commentators began asking questions regarding the downward departure. What constitutes “substantial assistance?” Which offenders are fortunate to benefit from a prosecutor submitting a motion of downward departure? What characteristics did prosecutors look for in offenders when making decisions regarding downward departure? Is the use of downward departure another way of showing preferential treatment when sentencing offenders? Are offenders rewarded or punished based on race or gender? The authors of this study highlight some of the problems that can occur in the use of downward departures, and how this tool shifts the power of sentencing previously held by judges to the prosecutors.

Purpose of Study

Although prosecutors wield discretionary power in many areas (e.g., charging decisions), this research focuses exclusively on the decision to use a downward departure motion by an Assistant United States Attorney (“AUSA”). By examining data collected from several sources, the authors wanted to determine if significant variation exists in the use of downward departure motions between individual AUSAs (as opposed to an entire AUSA office). Furthermore, the
researchers attempted to examine which offender or case characteristics were more likely to trigger the use of a downward departure from a prosecutor.

Methodology

The authors examined three United States district courts: the District of Minnesota, the District of Nebraska, and the Southern District of Iowa. The data includes information on all offenders sentenced in these courts in the years 1998, 1999, and 2000. In addition, detailed information on the offender, the case, and the sentence was obtained from the United States Sentencing Commission (USSC) data file for each year and for each district. The authors also collected data from the presentence report and the judicial “order of judgment.” These last two sources were usually unavailable to the public, but the researchers were able to obtain special permission by the judges to collect data from these reports. Most importantly, these additional reports revealed the names of the AUSA who were assigned the cases which was critical for individual comparisons).

The original data file included 1,038 cases assigned to 48 AUSAs in Minnesota, 941 cases assigned to 29 AUSAs in Nebraska, and 822 cases assigned to 25 AUSAs in Southern Iowa. The dependent variable was a binary (yes/no) outcome (whether the prosecutor filed for downward departure). The independent variables were divided between offender characteristics (race, sex, age, education, citizenship status, employment status, marital status, number of dependent children, whether under criminal justice control, and drug use at the time of the offense), and case characteristics (presumptive sentence, number of charges, number of conviction counts, pretrial status, guilty plea, drug offense, and jurisdiction).

The authors asked the following four questions:

1) Does significant variation exist across AUSAs in the use of substantial assistance departures?
2) Is significant variation found in the use of substantial assistance departures across AUSAs after taking into account offender and case characteristics?
3) Do significant differences exist in the use of substantial assistance departure across AUSAs from different districts after controlling for offender and case characteristics?
4) Do AUSAs vary in how much they take specific offender and case attributes into account when obtaining substantial assistance departures?

Results

The research provides policymakers with robust results. Some of these results include:

- Significant differences were found across different AUSAs in the use of substantial assistance departures (a range of 10% to 50% of the time)
- Significant differences were observed across districts after accounting for offender and case characteristics
• AUSAs were more likely to request substantial assistance departures for offenders who were facing longer presumptive sentences and who were charged with a drug offense, released prior to trial, and who pled guilty
• The likelihood of a substantial assistance departure was higher for whites than for blacks, for females than for males, for younger offenders than for older offenders, for offenders with some college than for those without a high-school degree, for offenders who were citizens than for those who were not citizens, for offenders with more children than those with fewer children, and for offenders who were using hard drugs when the crime was committed

Policy Implications

The results seem to suggest that the use of downward departures for substantial assistance “have produced sentencing sentence disparity and have compromised the uniformity and certainty goals of the [sentencing] guidelines” (p. 834). Thus, the use of downward departures may have become a “loophole” to circumvent the consistency element of the federal sentencing guidelines. As a result, the true intent and purpose of the Sentence Reform Act may be compromised. This is especially troubling when the research reveals potential racial and gender characteristics that are being considered by federal prosecutor’s in their decisions for a downward departure to reduce an offender’s sentence.

This study illustrates the need to monitor disparity in the federal sentencing process. Critical data sources for this research which provide the names of judges and prosecutors for each case—the presentence report and the judicial order of judgment—are not normally available to the public. As mentioned previously, the researchers requested special access to these sources and this access is the basis for one of their major policy recommendations. They suggest that this information could be used as part of a more comprehensive monitoring of sentencing throughout the federal court system. To maintain confidentiality, numeric identifiers for each judge and prosecutor could be assigned to these reports and enable tracking of the specific decisions surrounding the sentencing process. By allowing greater access to this information, the oversight it creates may contribute to a more level playing field – a goal of the original Sentencing Reform Act.

~S. Liverman
Gender and Race


In 1920 the Nineteenth Amendment gave women the right to vote. However, it was well into the 1960s before all states gave women access to the jury box (McCammon et al., 2008). In fact, it took more than 50 years before a Supreme Court decision granted women jury service. In this article McCammon (2008) and her colleagues discuss Women’s Jury Rights Campaigns, the rate at which reform occurred and the methods employed to trigger change. Using a qualitative and comparative historical design, this study employs a 15-state sample where the authors collected data from records, newspaper articles, and information on Women’s Rights groups to assess what happened during the years before women in those states received jury rights. Overall this article concludes that states gaining jury rights more quickly were strategic in the political arena using social activism, political support and continued efforts to gain jury rights.

In particular, this study finds that social activism and Women’s Rights groups were crucial in giving women the right to sit on juries. These groups promoted education, held workshops for women on lobbying legislative action and focused on showing lawmakers that women were serious about participating in the jury process. Women’s Rights groups also sought political support, primarily from judges, to gain momentum. However, the states that quickly passed laws allowing women on juries were able to read the political environment. By doing so the groups could strike while the atmosphere was receptive to change. In sum, McCammon, et al. (2008) echoes past scholarship noting that when working toward political change social interest groups often succeed much more quickly than judicial action.

~ J. Gall

In this article, McCammon et al. explain how social movements affect legislative change through their framing of issues. They claim that there has been an empirical gap in the data on social movement framing. They explore the importance framing has empirically within the context of the U.S. women’s jury movements state by state in the first half of the twentieth century.

McCammon et al. found that within the differing women’s jury movements that the most successful movements framed their arguments to coincide with broader cultural contexts of the time. For instance, during times of war, i.e. World War I and II, movements which incorporated wartime themes into their framing were more likely to succeed politically.

Using logistic regression to test the viability of their hypothesis, they drew from annual data taken at the state level for 15 different states for the first half of the century. They gave numerical values to different discursive arguments used and cross-tabulated that with the cultural context of the time and they used a dichotomous measure of the passage of women’s state jury laws as a dependent variable.

The authors found that movements in the states with the greatest success at legislative change did so by involving the broader cultural context within their framing. From this the authors attest that in order to better understand the effectiveness of social movements there must be a greater understanding of framing and its contribution to the effectiveness of the social movements in general.

~ M. Rosen

In this study, Reddick, Nelson, and Caufield, examine the political and structural factors involved in choosing women and minorities to serve as jurists at various state court levels. The researchers utilized data from all state-level appellate court jurists in the United States, as well as a 10 percent representational sample derived from all general-jurisdiction judges in the U.S. for 2008. In addition, the researchers also included numerous other variables such as: the method used to select the judges (merit, election, or appointment), legal experience, political ideology, political representation of their state’s officials (e.g., governor), and the political representation of the electorate the judges are selected to serve.

This study reports four key findings. First, the authors find a rise in the number of minorities and women serving as judges on various levels of state courts since the 1970s. Specifically, in the 1970s, four percent of state-level judgeships comprised minorities, however, by 2000, the number of minority judges had increased to around 13 percent. In contrast, women judges accounted for 16 percent of overall judgeships in the 1970s but by 2008 female judges accounted for roughly 29 percent. Second, the authors also identified merit promotion systems as a specific factor that positively contributes to increasing the number of minority and women judges. Third, the study also noted that in states where legal experience is a significant determinate factor in the selection process of appellate court judges, minority selections were higher (68.6 percent versus the overall rate of 58.5 percent). Finally, the authors’ note that the political affiliation of appointed judges and their appointers matters when selecting judges. When contrasted across parties, the authors discovered that although 61 percent of judges serving as of 2008 were politically appointed, states controlled by democrats appoint a higher percentage of women and minorities at all state-court levels.

~ T. Moran
Interrogations


An evaluation of the *Miranda* vocabulary is essential to ensuring that there is sufficient comprehension of *Miranda* rights for an individual to decide whether to exercise or forgo these Constitutional protections. As precise wording was not mandated by the Supreme Court in the *Miranda* ruling, whenever the validity of a *Miranda* waiver is questioned, that individual suspect’s ability to understand and define the specific terminology must be examined. In this study, researchers collected and evaluated key vocabulary words used in *Miranda* warnings and waivers in order to aid in the development of the Miranda Vocabulary Scale (MVS). This scale provides a means by which the language used in *Miranda* warnings and waivers can be evaluated.

The current study is part of an ongoing National Science Foundation supported investigation of *Miranda* understanding. It integrates previously unanalyzed data relating to mentally-disordered defendants that was collected as part of an earlier study on recently-arrested detainees (n=376) in multiple jurisdictions in Texas and Oklahoma.

Dually trained *Miranda* experts (with both a J.D. and a Ph.D.) selected the two most representative *Miranda* warnings in 560 jurisdictions in order to create the Miranda Statements Scale (MSS). A two-step process for identifying vocabulary words relevant to *Miranda* comprehension and reasoning was used. The process evaluated the usefulness of each word by comparing poor versus good comprehension using benchmarks derived from previous research. Then, the experts rated the word’s importance to *Miranda* comprehension and reasoning.

Psychological, reading, and verbal comprehension tests were administered to all of the participants and the researchers found that both cognitive abilities (such as intelligence and achievement) and psychological functioning had a significant effect on the understanding of the MSS. The researchers measured the consistency of the results among the participants and found it to be very high. This implies that the scale can be dependably used to test the understandability of *Miranda* language in multiple jurisdictions.

This study is relevant to both policy and practice because it can help to standardize and regularize the forensic practice of evaluating each individual defendant’s disputed *Miranda* waiver. While the MVS is a composite and not a perfect match for any specific *Miranda* warning, it can potentially provide a consistent tool with which to measure representative vocabulary.

~ R. Rosenthal
Judicial Decision Making


Current scholarship lacks in understanding how oral arguments influence U.S. Supreme Court decisions. Johnson et al. argue oral arguments can influence Court judicial decisions. The authors argue oral arguments provide influential information that can help reconcile complex legal and factual issues and help address uncertainties about cases. To substantiate this assertion, Johnson et al. analyze archival evaluations made by Justice Harry Blackmun who was an associate justice of the Supreme Court from 1970 until 1994. The evaluations, created by Justice Blackmun, are comments about attorney arguments with a corresponding grade reflecting the quality of oral presentation. The authors use the following three part analysis for grades given to determine (1) if the grades were a reflection of attorney reputation in their professional community, (2) if the grades were believable measurements of the quality of oral arguments, and (3) whether final votes are influenced by oral arguments. Grades were analyzed from a random sample of 539 cases between 1970 and 1994. Johnson et al. find Supreme Court justices are sensitive to the quality of oral arguments. Findings show a strong correlation between oral argument quality and final vote, even while controlling for other influential factors such as ideology. By analyzing the grading system developed by Justice Blackmun, Johnson et al. conclude, regardless of ideology, high quality oral arguments make a difference and are more likely to sway Supreme Court justices’ final votes.

~ A. Olaghere

Gray (2009) suggests the United States has become more punitive (“tough on crime”) over the past several decades. Conversely, European countries have made it a priority to keep juveniles out of the justice system, offering different approaches to punishment. Gray (2009) notes that uninvolved youth, those who do not spend time gaining an education or at a job, are engage in more criminal acts than those who take part in conventional activities. In fact, a disproportionate amount of youth, coming from low-income households are involved in crime and are prospects for criminal careers. In other words, the playing field is not equal for all juvenile offenders because all youth do not have the same access to non-crime activities. However, a new wave of programs is available to keep underprivileged juveniles away from criminal activity.

The study by Gray (2009) reviewed several social programs in the United States and abroad available to all juveniles of all social backgrounds. These programs address the root causes of youthful criminal activity such as lack of involvement in education, unemployment, and low socioeconomic status. They seek to manage the behavior of juveniles and use risk assessments for measuring how likely a juvenile is to offend or re-offend. Furthermore, the programs seek to involve youth in academics or employment, to give juveniles something to work for, or lose, if they were to get involved in crime. Also, these programs are individualized, tailored to each juvenile and teaches them to be responsible for their actions. By doing so, the programs minimize the risk of re-offending.

Gray (2009) stresses the need for social programs designed to modify juvenile behavior. Her main concern is that without these programs society will continue to stigmatize and label juveniles as criminals. Social programs are more helpful than placing juveniles in correctional facilities. The programs are aimed at changing lifestyles and behaviors and are designed to make positive improvements in juvenile actions.

~ J. Gall
Law Enforcement


Background

This study addresses two major issues concerning a police officer’s decision to shoot someone in the course of their duties: the “reasonable officer at the scene” standard established by the U.S. Supreme Court, and the likelihood that a police officer will experience perceptual distortions before and after firing his or her weapon in a police shooting.

Since the landmark case of Graham v. Connor, 490 U.S. 386 (1989), the actions of a police officer during a police shooting must be analyzed using the “reasonable officer at the scene” standard. This case states that when police officers use their firearms in the course of their duties, a determination of the propriety of this shooting must be made based on an objective “reasonable officer at the scene [of the shooting] standard.” The authors of this study highlight some of the inherent problems with this standard, including when police administrators deem that a police officer’s actions are reasonable (thus, clearing the officer of any wrongdoing set forth by departmental policy), but the public disagrees. Furthermore, if the public determines that an officer shooting was unreasonable, this can have dire consequences for the officer (e.g., losing in a civil trial), as well as the police department (losing legitimacy and credibility with the public). Thus, this potential discrepancy between a police officer’s judgment and that of the public has serious consequences.

The authors also note that because police shootings involve a very high level of stress. Many officers experience some perceptual distortions before and during the event. Some of these perceptual distortions are visual (e.g., tunnel vision and heightened visual detail), auditory (e.g., blunting and acuity), and time distortions (e.g., slow motion and fast motion). Thus, the perceptions of an officer who is involved in a shooting may be different from reality. When one considers that so many police officers experience perceptual distortions during a police shooting, what effects should these distortions have on the reasonable officer at the scene standard?

Purpose of Study

The authors attempt to deepen understanding of some of the common anomalies that occur during police shootings. Based on previous research, the authors focus on perceptual distortions in vision, hearing and time. An important goal of this study was to determine if these perceptual distortions occurred at a significant rate for police officers. If some significance was found, the authors were interested in determining what impact these findings could have on examinations of police conduct and decision making before and during the shooting. Moreover, what effect can (or should) perceptual distortions have on the reasonable officer at the scene standard?
Methodology

The researchers conducted face-to-face interviews with 80 city and county law enforcement officers from four states and 19 different agencies who had shot citizens in the line of duty. This sample of officers represented 113 shooting incidents (some officers were involved in more than one incident) and included 74 male and six female officers. Sixty-two of these officers were white, nine were Hispanic, four were Asian/Pacific Islander, three were black, and two described themselves as “other.” Further, the mean age of the officers was 32 and the mean police experience was just under eight years.

The officers participated in a two-part interview. The first part was a questionnaire that included 144 major sets of items that were designed to determine whether officers experienced perceptual distortions during two points of time: just before the shooting, and during the shooting. The perceptual distortions were identified as tunnel vision, heightened visual detail, diminished sound, intensified sound, slow-motion time, and fast-motion time. Part two of this process included a one-on-one interview with the lead author of this study.

Results

The authors state “[i]t seems fair to conclude that reasonable officers on the scene of police shootings are subject to experiencing substantial levels of perceptual distortions—both prior to pulling the trigger and as they fire” (page 134).

Specifically, the authors summarize their findings as

- Most officers experience at least one form of perceptual distortion during a shooting incident
- Most often, officers experience at least two types of perceptual distortions during a shooting incident
- Officers’ perceptions and distortions often change substantially over the course of the shooting incident
- Some specific distortions are more likely to occur in tandem with others, whereas some are less likely. (page 134)

Policy Implications

The researchers identify some clear policy implications of their research. To be clear, the reasonable officer at the scene standard set forth in Graham must account for the high likelihood that the officer involved in this shooting may have seen or heard something contrary to reality. Therefore, police administrators, policy makers, and community leaders must be educated in this phenomenon. “Because reasonable officers at the scene are likely to experience distortions that can lead them to believe that their lives (or the lives of others) are in jeopardy when they factually are not, judgments [by police administrators, policy makers and community leaders] about the appropriateness of officers’ actions in such situations should take this into account” (p. 135).

~ S. Liverman

This article investigates whether organizations composed of the same proportion of minority group members as are found in the population they serve (called “passive representation”) will also provide fairer and more equal service to minorities, a circumstance labeled “active representation.” Prior work on this topic has suggested that passive representation automatically leads to active representation in situations: 1) where the agents of an organization have discretion over their decision-making, and 2) where consideration of race is relevant to their decision-making. Both of these requirements seem to be met in the case of police departments. The authors of this article examine how the official and unofficial aspects of police culture might alter the expectation that passive representation will lead to active representation.

The authors investigated racial profiling during police stops in eight different police divisions with varying racial compositions, all in San Diego, California. The data confirmed their hypothesis that simply having a proportion of minority officers that mirrored the population being served did not mean that the population was treated more equally in proportion to the racial composition. By examining the percentage of those stopped who were black and making comparisons to the demographics of the overall population, the authors actually found that minority profiling increased in this sample when there were disproportionately more black officers. Ultimately, however, the authors argued that officers of all races may be socialized to the point that they begin to identify more as police officers than perhaps as members of a racial group.

While this article provides some interesting findings, these results require further replication and testing. To conclude that black police officers are socialized to identify primarily as officers would require individual-level data regarding the actions of black officers. This article relied solely on aggregated data with respect to each police division as a whole, so it is difficult to draw conclusions about the behavior of particular individuals within those divisions. Further, it would be premature to assume that an increase in black officers resulted in a greater profiling; it is just as possible within the context of this study design that disproportionate amounts of profiling caused police administrators to hire more minority officers. While this article provides an interesting treatment of this topic, it does not fully resolve the question of whether a minority population will be treated in a more equal manner simply because the racial composition of a police force more closely mirrors the population it serves.

~ D. McClure
Criminal justice social workers are heavily influenced by their interpersonal relationships with other court members, especially judges. This article seeks to examine the nature and effects of inter-professional relations between street-level bureaucrats, including social workers and judges, within the Scottish criminal justice system. Previous research has explored the nature of street-level bureaucrats’ actions as they operate within their field, but does not consider how these actions are influenced by other professionals. This study utilizes ethnographic methods of observation and interviewing to observe the inter-professional relationship between judges and social workers to determine the nature of the relationship and its effects on the behavior of the social worker as a street-level bureaucrat. The authors argue that this relationship plays an important role in influencing the nature of the behavior of other front-line employees who regularly interact with the public. Findings indicate that the behavior of the Scottish social workers is influenced by their inter-professional relationships with the judges in such a manner that is inconsistent with the moral objectives of their job. As a result, the social workers are more likely to have less job satisfaction and are at an increased risk of burnout. These findings have important implications for the future of street-level bureaucracy studies. The nature of inter-professional relationships of street-level bureaucrats is an important and influential factor shaping the nature of street-level bureaucratic behavior. This relationship should be further examined to determine the full extent of influence that is felt by the front-line employees and how this influence alters their behaviors among a variety of street-level bureaucrats in varied settings.

~ S. Ainsworth

In his article, Langford discusses the history of the use of “Fair Trial” and the contemporary understanding of it as an inherent human right. He claims that the original meaning of the phrase “fair trial” was very different than its contemporary meaning. Langford asserts that the contemporary right to a fair trial is more of a western cultural manifestation rather than an inherent universal right.

Langford examines the uses of the words “fair” and “fair trial” in their historical context, drawing from over 100,000 trials and appeals cases dating from 1674-2005. He finds that the original connotation of “fair” was one of cleanliness or beauty, and the phrase “fair trial,” was not only very rare but understood to mean a clean trial, free from blemish, valid and applies to the court proceedings. The transition of the words “fair” and more importantly “fair trial” changed over the last 200 years to what we know of them today as being *just* and *honest* and applies more directly to the individual being tried. Langford concludes that the right to a fair trial is not an inherent human right.

~ M. Rosen
In the 1970’s radical environmental activists began instrumentally breaking the law. As of 2002, the FBI categorized environmental activists as one of the most dangerous domestic terrorist threats to the United States. Using Ewick and Silbey’s (1998) framework of consciousness as a reference, this study examines the legal consciousness of environmental activists, and investigates the role of lawbreaking within their movement.

Ewick and Silbey (1998) categorized legal consciousness as being “Before the Law”, “With the Law”, or “Against the Law”. Legal consciousness “Before the Law” is the belief that law is “autonomous, objective, hierarchical, rational, and immobile” (Fritsvold, 2009, pg. 804). Essentially, an individual “Before the Law” believes that the law is superior, and doesn’t try to maneuver with it or rebel against it. According to Fritsvold (2009) environmental activists are not “Before the Law”. Legal consciousness “With the Law” is the belief that law is malleable and tactical (Fritsvold, 2009). In other words, if an individual’s legal consciousness is “With the Law” they believe that they can maneuver through the law and achieve their desired ends using legal means. Environmental activists are not “With the Law” either. Legal consciousness “Against the Law” is the belief that law is inaccessible and inequitable (Fritsvold, 2009). An individual “Against the Law” does not believe the law is superior, and does not believe the law is malleable. Consequently, individuals “Against the Law” rebel. However, Fritsvold (2009) finds that the legal consciousnesses of environmental activist’s are also not “Against the Law”.

Fritsvold (2009) conducts ethnographic fieldwork and content analysis to examine seventeen “radical” environmentalists. Participant observation complemented by semi-structured intensive interviews examines the legal consciousness of these “radical” environmentalists. Fritsvold (2009) finds that their type of legal consciousness does not fit under Ewick and Silbey’s (1998) categories, and is instead reflective of an alternative form of consciousness termed “Under the Law”. Radical environmental activists were not “Against the Law”, but rather against the whole social structure. They believe that they are being oppressed by a social order that uses the law to repress dissent, and further injustice. For example, one interviewee said that they felt that “law enforcement is a pawn in the dysfunctional relationship between government and business”. Consequently, Fritsvold (2009) suggests that environmental activists engage in civil disobedience in an attempt to symbolically fight a corrupt society. This form of legal consciousness is different from that proposed by Ewick and Silbey (1998) because it transcends law and focuses more generally on a corrupt and untrustworthy society.

~ K. Mehlman
Tribal Courts


Fletcher (2009) explains the various factors that affect how criminal convictions in tribal courts are handled in state and federal courts. The article synthesizes early American history, the Constitution, and legal precedent to untangle a complicated and often misunderstood jurisdictional issue. In doing so, Fletcher breaks down the process into three general premises: tribes as separate sovereigns, federal supremacy and court jurisdiction on tribal lands, and tribal court convictions and their recognition by state and federal courts.

In his first premise -- tribes are separate sovereigns -- Fletcher notes that the Constitution identifies three separate sovereigns: the United States, foreign nations, and Indian Tribes. As foreign criminal courts are not within the bounds of “American Constitutional structure” (Fletcher, 2009, p. 12), their rulings are not within the United States’ purview. This does not hold, however, for tribal courts, as they are considered a separate sovereign within the boundaries of the United States. However, Fletcher points out that until the U.S. Supreme Court ruled that state laws have no authority on tribal lands as set forth in *Worcester v. Georgia*, 31 U.S. 515 (1832), many states ignored the concept of Indian sovereignty. This express sovereignty prevents states from asserting their legal jurisdiction in both civil and criminal matters on tribal lands. Essentially, federally-recognized tribes possess the right to enact, enforce and adjudicate their own laws.

In addressing his second premise -- federal supremacy and court jurisdiction on tribal lands -- Fletcher attempts to sort out what court ultimately has jurisdiction over civil actions and crimes committed on tribal lands. Fletcher notes that, on some rare occasions, the federal government has provided states with limited jurisdiction in these matters. However, even in these instances, sorting out what entity has jurisdiction (federal or state) can be daunting. Even though tribes may technically hold jurisdiction over crimes committed by Indians on Indian lands, the federal government retains primary jurisdiction on crimes committed by non-Indians on tribal lands. In an attempt to remedy this confusion, some state governments are entering into cooperative agreements with tribal courts to increase comity.

In his last premise -- tribal court convictions and external court recognition -- Fletcher details how state and federal courts try to reconcile tribal court convictions within the confines of their own courts. In some instances, state and federal courts ignore tribal court convictions altogether due to their unfamiliarity with tribal courts’ adherence to Due Process. While in others, they may take the previous convictions under consideration during sentencing. However, under federal rules, there is no requirement that federal courts even consider these prior convictions. As Fletcher notes, regardless of what approach is taken, most judges are unfamiliar with tribal courts and may often discount their decisions without fully understanding their legitimacy. Ultimately, Fletcher argues that tribal court convictions, particularly those that were uncounseled, deserve both professional deference and legal scrutiny when being considered for comity in state and federal court proceedings.

~ T. Moran
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