

## THE POLITICS OF PROSECUTION: A Bibliography

### Explanation of How This Bibliography Was Constructed

1. When I first began to teach, one of my subjects was urban government. It was necessary to rely on the existing state and local government textbooks. Several of them contained the statement that the prosecutor was the most important official in local government. However, there was little or no empirical material from which a lay person could ascertain what prosecutors did. My recourse was to search as widely as possible in periodical material, since at that time I knew little about the legal process and its terminology. In 1963 or 1964, the first of a series of graduate students, at the University of Pittsburgh, were asked to review various major indexing sources. The end product of their work was shared with other colleagues interested in the general subject, notably George F. Cole<sup>1</sup> and James Eisenstein,<sup>2</sup> but I proceeded no further. In the 1980s, at the University of Virginia, one graduate student was in search of assistance for the summer. I retained him, from a small account at my disposal, to review and update this material, and similarly retained another graduate student. I had no time to sit and digest all the material at one time, and still have had not enough time for that. However, at that time I began to offer this undergraduate seminar, as a means of putting some issues related to prosecutors before students for our common consideration and serious discussion.

2. The process would be much easier, in some ways, in 1999 since the electronic search instruments are so powerful. In order to be sure that legal materials were included, they were asked to review the Index to Legal Periodicals. Similarly, they were asked to review the Social Sciences and Humanities Index (now Social Sciences Index) to elicit material as developed in any of the major social science journals there encompassed. The Public Affairs Information Service was put on the search list in order to encompass both academic and popular material as might seem relevant. This search was limited to the period since the Second World War. I do not suppose that the

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citations so gathered are exhaustive, and it is possible that important materials were excluded because neither the student assistants nor myself were legally-trained and, hence, might have missed some important categories. However, we tried to be inclusive rather than exclusive.

In order to enhance the usefulness of the bibliography, the citations have been annotated to the extent feasible. Those who need to do more bibliographic work may be helped to know exactly what sources we covered, for what times, and by what categories. The Index to Legal Periodicals and the Social Sciences and Humanities Index or its predecessor were examined for the period 1945 circa to September 1968. PAIS was examined from April 1943-March 1961 and April 1962-September 1966. The topic headings checked in PAIS were substantially the same. In addition, a few entries were based on scattered checks: (1) Cumulative Book Index (1957-62), (2) Journal of Criminal Law and Criminology (March-April 1958-59 to December 1963), (3) Journal of Public Law (1959-63), and (4) Dissertation Abstracts (1959-August 1964), but these did not seem to add much.

3. It was particularly important, and in 199 with electronic searching would still be important, to be as clear and consistent as possible about the categories being searched and the periodicals being searched. In the aforementioned sources, we looked for citations as follows:

<u>Categories</u>	<u>Index Legal</u>	<u>Social Sciences</u> <u>Humanities</u>
Attorneys General-U.S.		
Attorneys General	x	x
Crime, Criminals, etc.	no	x
Criminal Law (in general)	x	no
Criminal Law (preliminary complaint, etc.)	x	no
Criminal procedure	x	no
District Attorneys and Prosecuting Attorneys	x	x
Evidence	no	x
Grand juries	no	x
Indictment, information	x	x
Judicial procedure, etc.	no	x
Justice, Administration of, etc. and Politics, etc.	no	x
Law (Enforcement and in general)	no	x
Legal Procedure, Ethics, Rights		

Profession, etc.	x	x
Pre-trial procedure, etc.	x	x
Prosecutors, Public Prosecutors, etc.	x	x
Trials, trial practice and procedure, etc.	x	x

PROSECUTORS: ADMINISTRATIVE CONTROL OVER, AND ALLOCATIONS OF AUTHORITY AMONGST

L. B. Schwartz, "Federal Criminal Jurisdiction and Prosecutors Discretion." Law and Contemporary Problems. 13 (1948) 64-87.

Schwartz broadly reviews the steady growth of Federal criminal jurisdiction with attention to the circumstances under which prosecution should be initiated and the role of the U.S. district attorney in initiating such prosecutions. There is, he suggests, no purpose in debating whether there ought to be a significant Federal criminal jurisdiction, for it exists but ". . . with the present arsenal of federal criminal statutes, the discretion of the Department of Justice is replacing the command of Congress in determining the working line between federal and state enforcement activities. The United States district attorney can generally find some federal hold on a situation. What are the considerations which lead him to act or to withhold his hand?" Schwartz suggests that the major consideration which ought to be relevant are (1) whether the action is a major challenge to Federal authority or policy so that a "self-defensive" prosecution is required, (2) whether it is administratively appropriate in view of the magnitude of the particular issue and the existence of relevant state machinery and legislation, and (3) whether it will seriously overload the Federal administration or the Federal courts. In order to aid in a more rational Federal criminal jurisdiction, Schwartz suggests four lines of development. "(1) the evolution of a broader, more uniform jurisdictional formula for federal criminal statutes; (2) the expansion of the power of the United States Commissioners to try petty offenses; (3) an express authorization by Congress of a general policy of remitting local offenders to local authority; (4) articulation by the Department of Justice of a complete set of standards of this discretion to withhold federal prosecution."

J. Martin Lawless, "The Relationship between the Attorney-General and the State's Attorney in Illinois," University of Illinois Law Forum, (1949) 507-514.

This note discusses the extent to which the Attorney-General and the State's Attorney (an officer elected at the County Level in Illinois) each possesses by constitutional grant common law powers which the legislature cannot alter. The tendency of the note is that the State's Attorney is not subordinate to the Attorney-General. The author recommends a constitutional amendment to change this relationship.

John G. Heinberg, "Centralization in Federal Prosecutions," University of Missouri Law Review 15 (June 1950) 244-58.

Discussion of headquarters-field administrative relationships within the Department of Justice by a political scientist. Heinberg emphasizes the strong orientation of the U.S. District Attorneys (and their staffs) to the local area and the orientation of such personnel to law practice rather than to prosecution. Consequently, turnover is relatively high.

The effort at headquarters control is made through standardized manuals, sets of instructions, etc., but "... control over the initiation of prosecutions is not general and uniform, it depends upon the type of criminal law violated." (Author's italics). The most stringent controls apply to internal revenue problems, in the interest of a uniform national policy, and such matters initiate with the Internal Revenue authorities, and, thence, to the Tax Division of the Department of Justice. Other criminal matters are less closely controlled.

Dismissals and exercises of nolle prosequi require a memorandum of approval from the Department of Justice, except in urgent circumstances where the U.S. Attorney must then justify to Washington his exercise of discretion. Controls are also exercised through the appointments of special Assistants to the Attorney General who work with the local U.S. Attorneys on grand jury proceedings, trials, etc. which are of major interest to the Department. U.S. Attorneys regard their relationships to the Special Assistants as favorable about twice as often as they regard them as unfavorable, to judge from responses from the one Administrative Conference record available to the author. U.S. Attorneys strongly desire Hatch Act limitations to be repealed.

"Prosecutor's Discretion," University of Pennsylvania Law Review, 103 (June 1955) 1057.

In this well-documented article, the author concludes that increased public interest in the administration of the law, and greater attention by the Attorney-

General to prosecutorial discretion would be far more effective controls on prosecutor discretion that would additional legislation.

"Role of the Prosecutor in Utah," Utah Law Review, 15 (Spring 1956) 70.

This article is based upon interview data, correspondence, and "regular legal research" with prosecutors in Utah. Utah had a three-level system with county attorneys (not then required to be lawyers) responsible for certain minor cases, district attorneys, and the Attorney General. The author's objective is to indicate how effectively the system served the norms of efficient prosecution, expeditious trial of accused persons, and uniformity ("at the same time giving consideration to local policies.") Students will find particular assistance in a detailed appendix (which must be used carefully because of dating) which describes the constitutional and statutory allocations of responsibility to county, district, and state prosecuting officials in the then forty-eight states.

P. W. Williams, "Through the Looking Glass: The Office of the U.S. Attorney," Practical Lawyer, 3 (Nov. 1957) 46.

Description of organization and procedure in the Office of the U.S. Attorney.

"Attorney General's Power to Supersede and Elected District Attorney," (Note), Temple Law Quarterly, 33 (1959) 78-88.

In re Grand Jury Investigation of Violations of Law in Use of City Labor and Materials of City of Pittsburgh, 365 Penna. 330 (1950) and cognate Pennsylvania cases involved politically-controversial efforts by the Attorney General of the Commonwealth to supersede local District Attorneys. The Pennsylvania Supreme Court has, apparently in contrast to the supreme courts of most other states, upheld the Attorney General in such cases on the rationale that this is an exercise of his common law powers. The note cited here reviews the litigation and comments adversely upon the Supreme Court's ruling on, inter alia, the ground that this is contrary to the intent of "home rule." This Pennsylvania litigation is also discussed in University of Pennsylvania Law Review 99 (1951) 826-829, Temple Law Quarterly 24 (April 1951) 445-448, Virginia Law Review 37: 131-132, Yale Law Journal 60 (April 1961) 559-565. The Yale Law Journal note discusses the precedents from other states in somewhat greater detail. The Virginia Law Review note, in contrast to the Pennsylvania and Temple notes, finds merit in the Supreme Court ruling as a

means of permitting centralized control over local Prosecutor's decisions.

J. H. Skolnick, "Social Control in the Adversary System," Journal of Conflict Resolution, 11 (Mar. 1967)52-70.

The author contends that the ideal of the adversary system of criminal proceedings is based on the element of conflict and challenge between the prosecution and defense attorney in the courtroom. Social control is needed to maintain the truly competitive procedure, but an understanding of the reality is necessary before action can be taken. He explains that both the prosecutor and defendant are under pressure to reduce the conflict and bargain outside of court. The prosecution must keep the trial schedule intact, reduce the time and money he spends on cases and look good in the courtroom. The defendant must preserve his client from the wrath of the prosecutor who wants to settle out of court and also maintain a good court record. Because of these pressures much cooperation and teamwork take place between the two in pre-trial bargaining sessions rather than courtroom competition on which may yield more just results.

R. H. O'Brien, "California Prosecutors," Los Angeles Bar Journal 52:588-597 May 1977.

E. Schnapper, "Legal Ethics and the Government Lawyer," Record of the Association of the Bar of the City of New York 32:649-659 December 1977.

### PROSECUTORS, JUDICIAL CONTROL OVER

"District Court Discipline of State Prosecutor for Failure to Enforce State Laws," Yale Law Journal 57 (Nov. 1947) 125-132.

In Wilber v. Howard, 70 F. Supp. 930 (E., Ky., 1947) the United States District Court excluded the elected Commonwealth Attorney from its rolls, as a disciplinary measure, for "persistent and blatant failure to enforce anti-gambling laws," The law review note here cited contains a detailed discussion of the precedents for such an exercise of the court prerogative.

A. S. Goldstein, "State and the Accused: Balance of Advantages in Criminal Procedure," Yale Law Journal, 69 (June 1960) 1149.

In explicit rebuttal of the views of Learned Hand, Goldstein argues that the criminal prosecution is not handicapped by archaic rules but, on the contrary,

that the balance of advantage has been shifted against defendants by judicial relaxation of the standards (a) for defining "presumption of innocence" in instructions to the jury, and (b) for regulating procedures to be followed by prosecutors, police, and others in pre-trial decisions.

Robert S. Merriot, "Appeals by the Prosecution and Protection of the Accused in State Criminal Proceedings," University of Cincinnati Law Review, 35 (Summer, 1966) 501-522.

In this editorial, Merriott urges legislative change to aid both the prosecutor and the defendant. Countering all the legal protections of the defendants, the county attorneys have been able to bring a defendant to trial more than once for the same crime by charging him with offenses to each victim, through overlapping charges, by holding a trial subsequently if a vital witness refuses to testify, and by having the judge call a mistrial. New laws which would allow prosecution appeals, and eliminate multiple charges and prosecution of only part of the charges would help the defendants by limiting much of the prolonged harassment. The prosecutors would benefit by being able to present all evidence without leaving some in reserve and cutting down time and expense spent in each case.

## PROSECUTOR: DEFINITION OF THE ROLE OF THE POSITION

S. G. Hobbs, Prosecutor Bias, An Occupational Disease," Alabama Law Review 2, (Fall 1949) 40-60.

In this article, which has been extremely influential to judge from its citation by other writers for a number of years after publication, Hobbs takes the characteristic view that the prosecutor's discretionary powers make him one of the most powerful officials in State and local government. He also takes the view that such discretion constitutes a threat to due process. In contrast to most writers sharing his views, Hobbs emphasizes the psychological basis of "prosecutor bias", i.e. the prosecutor's feeling of being engaged in a "no-holds-barred" war against crime. His specific remedies do not, however, follow from the logic of this analysis but rather follow the characteristic prescriptions of removing prosecutors from politics by making them appointive (with explicit reference to the U.S. Attorneys as his model), of centralizing control over prosecutions, etc.

James D. Barnett, "Prosecution or Persecution," Oregon Law Review 30: 322-329.

Restatement, by a political scientist, of the normative case for emphasizing the prosecutor's quasi-judicial role in preference to his role as advocate on one side. Citation of case materials to indicate divergence from this norm in practice.

"Statutory Discretion of the District Attorney in Wisconsin," Wisconsin Law Review 1953 (Jan. 1953) 170-176.

Comparison of mandatory responsibilities of prosecutor with respect to major offenses and discretionary responsibilities (which usually are not acted upon) for certain minor offenses. Suggests that in minor offenses of no great public concern, private prosecution might be allowed.

Whitney North Seymour, Jr., "Why Prosecutors Act Like Prosecutors," Association of the Bar of the City of New York Record 11 (Jan. 1956) 302-313.

Seymour, then Assistant U.S. Attorney in New York City, significantly qualifies the prosecutorial role usually found in legal literature. In this personal essay, Seymour divided the flow of the \*p.305 waiting game before the trial, (c) trial preparation, and (d) actual trial conduct. Discretionary problems for the

prosecutor arise before the indictment when we "have the responsibility of deciding whether to accept prosecution or to decline." p. 304 The "decision not to prosecute" is usually made on the ground that no crime has occurred or that the legal evidence is insufficient. In the Federal District Courts, guilty pleas predominate and this is connected to "the waiting game," there being two reasons for delay. One reason is the preparation of the trial, a matter on which a number of practical suggestions are offered. The other is that the Government is often unsure whether the defendant actually means to go on trial. At arraignment, not guilty pleas predominate and it is during the waiting period that defendants and their lawyers must decide to change pleas, etc.

Seymour is quite clear about his view of the prosecutor's function.\* "The Canons of Professional Ethics define the prosecutor's job as follows: 'The primary duty of a lawyer engaged in public prosecution is not to convict, but to see that justice is done.' That is precisely the way we conceive our jobs. This definition comes into play, however, when a case is first brought in to the office and is being readied for Grand Jury presentation. This is where we exercise our judicial role in making decision as to whether to prosecute or to decline. (Italics supplied-MH)

"Role of the Prosecutor in Utah," Utah Law Review, 15 (Spring 1956) 70. This article is based upon interview data, correspondence, and "regular legal research" with prosecutors in Utah. Utah had a three-level system with county attorneys (not then required to be lawyers) responsible for certain minor cases, district attorneys, and the Attorney General. The author's objective is to indicate how effectively the system served the norms of efficient prosecution, expeditious trial of accused persons, and uniformity ("at the same time giving consideration to local policies.") Students will find particular assistance in a detailed appendix (which must be used carefully because of dating) which describes the constitutional and statutory allocations of responsibility to county, district, and state prosecuting officials in the then forty-eight states.

"Duty of Prosecutor to Insure Defendant a Fair Trial," New York Law Review, 32 (March 1957) 607.

People v. Savvides (NY), 136 NE2d 853 held that by failing to make clear to court and jury that the witness expected reduced punishment in return for cooperation, the district attorney breached his duty to ensure a fair trial. This

article discusses the Savvides rule and suggest that were it too rigorously applied, the prosecutor would be obliged to impeach his own witness. The rule should function, the author suggests, more as a reminder to the district attorney of his ethical obligations than as an excessively severe curb.

"Legal methods for the Suppression of Organized Crime," (A Symposium) Journal of Criminal Law, 48 (Nov.-Dec. 1957) 414-430, 48 Jan.-Feb.-1958) 526-41.

Three papers of this symposium are relevant to prosecutorial discretion.

(a) The first discusses legal remedies against corrupt law enforcement officers and the prosecutor's possible role in such remedies.

(b) "The Investigative Function of the District Attorney," discussed the statutory basis of prosecutor investigations, prescribes proper investigative methods, and comments on the overlapping jurisdictions of prosecutors and other administrative officers of the law (i.e. coroner, sheriff, etc.)

(c) "Circumventing: The Corrupt Prosecutor" discusses statutory and common-law methods for circumventing corrupt prosecutors. The author recommends that the attorney-general supersede the prosecutor under some such circumstances, but also recommends that statutes and judicial precedents be expanded to permit the trial judge to appoint special prosecutors, subject to appeal.

Paul W. Williams, "The Prosecutor and Civil Rights," Association of the Bar of the City of New York Record. 13 (Mar. 1958) 129-38.

This article presents a discussion of: (1) civil rights as applied to criminal law, (2) growth and techniques of organized crime, and (3) the task of prosecution in enforcing law and order within limits of our traditional criminal procedure. The author cites three requirements he deems necessary for an effective prosecutor: (1) integrity and professional competence, (2) providing efficient investigatory techniques and methods, (3) insuring the accused a speedy trial. He portrays the role of a prosecutor as one of a trustee in maintaining constitutional requirements in the administration of criminal law. He also emphasizes that laws must keep pace with crime.

Samuel Brezner, "How the Prosecuting Attorney's Office Processes Complaints," Detroit Lawyer 27 (Jan. 1959), 3.

Out of the many complaints received by the prosecutor, a substantial number

do not go on to court. Assistant prosecutor in charge of criminal appeals discusses how the prosecutor exercises discretion about which cases should be sent on to trial.

C. W. Luther and J. F. De Meo, "Prosecutor's Dilemma," California State Bar Journal, 34 (May-June 1959) 273.

The article shows the problem of the prosecutor in conferring with a party under arrest without the permission or presence of the party's counsel. Canon 9 of the Canons of Professional Ethics of American Bar Association which refers to this problem does not specify criminal cases. The authors suggest that in order to avoid this dilemma Canon 9 should be made applicable to criminal cases and each state should adopt a code of ethics and principles for the prosecution and defense of criminal cases.

D. B. Wright, "Duties of a Prosecutor," Connecticut Bar Journal 33 (Sept. 1959), 293. Duties of a prosecutor itemized as prosecution of crime; upholding the law and protecting the innocent; conferring with the defense; suggesting punishments; filing charges against defendants; and, preparing cases for trial.

F. E. Moss, "Professional Prosecutor," Journal of Criminal Law, Criminology and Police Science, 51 (November-December 1960) 461, points up the significance of the office and duties, leading to an argument that a "well-trained, competent, and imaginative professional prosecutor."

A. H. Gates, Jr., "Can We Ignore Laws? - Discretion Not to Prosecute," Alabama Law Review 14 (Fall 1961) 1.

Gates argues that many laws are obsolescent and that it would be intellectually impossible for a prosecutor to know them all or to enforce them all. Prosecutors not only can and do ignore laws, but should do so.

On this basis, he suggests eight decision rules to guide prosecutors' judgements about what to enforce or not enforce: (1) judgement as to sufficiency of the evidence for conviction -- the underlying premise being that failure to convict undermines respect for the law, (2) judgement as to who will benefit by the prosecution and whether it is worth it in those terms, (3) whether State-wide uniformity of

enforcement is desirable (as in Sunday closing laws), (4) the degree of legal responsibility of the accused, (5) the previous entanglement of the accused with the law, (6) problems of publicity, (7) whether the case allows the potentiality of blackmail to private parties or to the prosecutor himself, and (8) whether prosecution would tend to martyr the accused.

J. P. Hoey, "Prosecuting Attorney and Organized Crime," Crime and Delinquency, 8 (Oct. 1962) 379.

Discussion of (a) executive and administrative capabilities appropriate to a prosecutor, (b) major areas of prosecutorial discretion, and (c) appropriate prosecutorial role in eliciting public support for suppression of organized crime.

With respect to discretion, the author emphasizes that this involves not only whether to prosecute and whether to accept a lesser plea, but also whether to pursue an investigation, which subject for investigation shall be chosen, and how intensively the investigation shall be pursued.

D. R. Nedrud, "The Role of the Prosecutor for Criminal Procedure," University of Missouri at Kansas City Law Review 32 (Winter 1964) \*142-173. Survey of criminal procedure roles and statutes of fifty states. Based on this survey the author analyzes the role played by the prosecutor in (a) arrest, complaint and preliminary hearing; (b) dismissal [preliminary hearing]; (c) accusation, indictment, and information; (d) discovery procedure; (e) trial by jury; (f) punishment, and (g) new trials and appeals.

J. Kaplan, "Prosecutorial Discretion -- A Comment," Northwestern University Law Review, 60 (May-June 1965) 174.

Personal reflections by former Assistant U.S. Attorney indicating some considerations upon which action seem to be based, e.g. the belief in guilt, the probability of conviction, and the status of the attorney prosecuting. Author makes plea for further research and study leading to meaningful generalizations.

J. Elliott Bunce and Eric Youngquist, "Discovery and Disclosure: Dual Aspects of the Prosecutor's Role in Criminal Procedures," George Washington Law Review, 34 (October 1965) 92-109.

In these editorial notes, it is pointed out that the duty of the prosecutor to

reveal evidence to the defendant upon his request has grown progressively stronger over the years through court rulings, as has his duty to disclose evidence even without a request. The article traces these trends through court history which seems to vindicate the idea that the prosecutor must ensure that justice is done both to the defendant and society placing him in a dual role. The authors conclude with a suggestion for a federal rule which would require the prosecutors to disclose possible exculpatory evidence and witness names to the court which would release it to the defense after it has shown that the material is needed in its defense.

Shelton C. Williams, "Discretion Exercised by Montana County Attorneys in Criminal Prosecutions," Montana Law Review 28 (Fall, 1966) 41-95.

These notes are essentially a result of an extensive survey concerning discretion in prosecution of the county attorneys in Montana. Prosecutors exercise many extra-legal reasons for not prosecuting; therefore, at the prosecutor's discretion, many cases are not prosecuted and less serious charges and sentences are imposed. This is accomplished by bargaining with the defendant, limited effort in prosecution procedures in cases it wishes to be dismissed, and the failure to procure a special prosecutor.

There are some limitations, however, on the prosecutor's discretion which include: (1) his duty to investigate, (2) his duty to prosecute, (3) control by the courts to dismiss and initiate action, (4) the supervision by the attorney general, and (5) the effects of public pressure. The sanctions on the county attorneys include: (1) removal from office, (2) criminal prosecution when he does not enforce particular laws, (3) disbarment, (4) private court suits. Some suggestions for statutory changes are made by the author, and an extensive appendix of research procedures and results of the survey on the Montana county attorneys' attitudes and practices concerning discretion. It contains (among other things) the character of the cases and defendants prosecuted, opinions on the prosecutorial discretion practices, the effects of the various discretion-limiting variables mentioned above, etc.

Richard Mills, "The Prosecutor: Charging and 'Bargaining'" University of Illinois Law Forum, 1966 (Fall 1966) 511-522.

This is a record of a rather impressionistic talk at a symposium on Illinois criminal procedure. The author states that the attorney must satisfy himself that certain parties are guilty, determine charges, deal with juvenile offenders as he sees fit, use the grand jury in his decision-making, participate in both trial and pre-trial conferences in order to expedite the criminal proceedings, and recommend sentencing. All of these

often require "bargaining" with the defendant which should be carried out with common sense and high professional standards while constantly trying best to serve the public interest.

Ann Balanger, "Criminal Law: The Prosecutor's Duty to Disclose Exculpatory Evidence," Oklahoma Law Review 19 (November 1966) 524-530.

Through explanations of various court rulings on criminal cases, which are mainly based on Brady v. Maryland 373 U.S. 83, the author shows that in a criminal prosecution, the state must disclose all material which may help the accused in his defense. It is also the prosecutor's duty to take the initiative to disclose the evidence in time for it to be beneficial.

"Civil Rights--Section 1983--Prosecuting Attorney Held Immune from Civil Liability for Violation of Civil Rights Act," New York University Law Review, 42 (March 1967) 160-166.

"Disclosure of the Prosecutor's Evidence," New York University Law Review 42 (October 1967) 764-71.

The article is based on Levin v. Katzenbach (363 Fed. 287). It was held in this case that the prosecutor has a duty to ensure that the defendant gets a fair trial. Therefore he must present all such evidence in his possession, irrespective of the fact that such evidence could have been obtained by the defense.

"Disclosure of Grand Jury Materials in Powers v. Ohio Actions, Columbian Law Review 81:410-425 March, 1981.

"Professional Ethics in Government Side-Switching," 96 Harvard Law Journal 31914-1930 June 1983.

C. D. Bell, "The Role of the Law Officers in the Legal System," 127 Solicitors' Journal 433-435 July 1, 1983.

The state prosecutor is immune from civil liability for violation of Civil Rights Act of 1871 if he can show that his act was (1) within his judicial authority and (2) inside his jurisdiction. Since it is so difficult to

differentiate between acts in excess of the prosecutor's authority from those outside his jurisdiction, the second criterion has been rendered fairly useless as illustrated by the Bauers v. Heisel decision. 361 F 2d 581 [3rd Cir., 1966] says the author. He further suggests that as long as the prosecutor acts within the scope of his authority despite his ran or intent (unless "malice, corruption, and cruelty and ruthless indifference to a citizen's rights" is shown.)

## PROSECUTORS: EXERCISE OF DISCRETION - WARRANTS

Frank W. Miller and Lawrence P. Tiffany, "Prosecutor Dominance of the Warrant Decision: A Study of Current Practices," Washington University Law Quarterly, (Feb. 1964) 1.

This article is a by-product of the American Bar Foundation's Survey of the Administration of Criminal Justice in the United States. The ABF study, underwritten by a Ford Foundation grant, was concerned primarily with isolating and identifying the critical problems in current criminal justice administration. It is based upon detailed observation of the actual practices of police, prosecutors, courts and probation and parole agencies in Kansas, Michigan and Wisconsin.

## PROSECUTORS: CONDUCT OF THE TRIAL PROCEEDING

"R. Darde, "The Code of Ethics and Principles for the Prosecution and Defense of Criminal Cases," Alabama Lawyer 6 (Jan. 1945) 39-54.

The article emphasizes the need for a formal code of ethics for the prosecution and defense in criminal cases. The author presents the code as adopted by the Bar Association of Alabama on May 9, 1941.

"Inflammatory Pre-Trial Releases by the Prosecutor and the Due Process Clauses." NULR 47 (1952) 729.

Discusses Stoble v California 34 US 131 (1952) in two respects: (1) what evidence shows that newspapers articles themselves deprive and accused of a fair trial and (2) of what effect is the added fact that a prosecutor participates in "trial by press?"

William O. Douglas, "A Crusade for the Bar: Due Process in a Time of World

Conflict," American Bar Association Journal, 39 (Oct. 1953) 871-5.

Argument that the attempt of public prosecutors to unleash public fury against defendants is an area of "dry rot" (871) in Constitutional guarantee of due process.

"The Nature and Consequences of Forensic Misconduct in the Prosecution of a Criminal Case," Columbia Law Review, 54 (1954) 946.

Discussion of factors leading to forensic misconduct, major types of forensic misconduct, factors involved in judicial reversal due to misconduct, and remedies believed appropriate for prevention of misconduct.

"Improper and Prejudicial Conduct of the Prosecutor," New York Law Forum 3 (Jan 1957) 102.

In People v Lovello (NY), 136 NE2d 483, there was overwhelming proof that the defendant was guilty of buying and receiving stolen property. Nonetheless, improper and prejudicial conduct by the district attorney, coupled with an unnecessary delay in arraignment was held to be reversible error.

Note: This had to have been a circuit case. What effect did it have in actual practice thereafter? MH (April 22, 1999)

"Prosecutor Forensic Misconduct -- Harmless Error?", Utah Law Review, 16 (Spring 1958) 108.

Examination of case materials to show that adverse comment by prosecutors may be much more than "harmless error". (Note: On the "harmless error" doctrine, courts are inclined not to reverse unless the error can be shown to have deprived the accused of a fair trial. Of, the discussion of this point in the case of material cited in item number 41.) Accordingly, this author urges a more assertive policy in which trial judges would call attention to, or even strike, prejudicial remarks by prosecutors. Initially, such a policy would lead to an increase in reversals, but such reversals would tend to level off once the new policy became clear.

"Trial Procedure - Improper Remarks of Prosecutor as Grounds for Reversal," (People v. Dukes (ILL.) 146 NE 2d 14) West Virginia Law Review 60, (June

1958) 375.

A review of cases pertaining to the remarks of a prosecutor in a trial, which tend to prejudice the jury, is presented.

"Imputations on the Prosecutor's Character," (Regina v Cunningham 1959 2 WLP '63), Law Quarterly Review, 75 (April 1959) 176.

This citation refers chiefly to private prosecution in England. Here the contention is that a defendant may, or should be, able to comment upon the character of the plaintiff or private prosecutor as part of his defense.

"Adverse Comments by a Florida Prosecutor upon Defendant's Failure to Testify." University of Miami Law Review, 15 (Spring 1961) 293.

Review of cases in which prosecutor made adverse comments about defendant's failure to testify, with argumentation for and against such comment. The writer advocates legislation to authorize such comment.

Tom M. Hillin, "Prosecuting Attorney who violates an Accused's Constitutional Rights is Immune to Suit for Civil Damages under 42 U.S.C. 1983 if He is Acting Within the Scope of His Office," Houston Law Review 4 (Winter 1966) 551-557.

The author traces the common law history through the Bauers v Heisel decision on 42 U.S.C. 1983 (361 F 2d 581 [3rd Cir. 1966]). He then contends that the reasoning of the court was rather shaky and could not rectify the weaknesses of Section 1983. He therefore suggests that a new law could be formulated which would " (1) provide a remedy to an individual who had been injured by the malicious act of a public official, (2) serve as a check on the official, and (3) not inhibit the conscientious public official who innocently errs" (557).

F. A. Cone, "Some Problems of Ethics: Due Process in Criminal Prosecution," Idaho Law Review 1 (1964) 9-46.

The focus of this article is on "fair trial". The ideal criminal procedure is impartial weighing of evidence by the jurors who come to the trial without any prejudice. However, this impartiality may be affected by the extensive press reports initiated by the prosecution. Author suggests that the Bar should take necessary steps to prevent such misconduct on the part of attorneys.

Note: In 1999 this is far from true. Is it even an issue? MH

J. E. Amerman, "Fair Trial and the Free Press," Notre Dame Lawyer 42 (Summer 1967) 976-983.

This is a criticism of the Wisconsin Supreme Court's decision in State v Woodington (31. Wis. 2d 151). The attorney-general initiated pretrial publicity as to the offense of the accused. Following the conviction, the defendant made an appeal on the ground of pre-trial publicity which had the tendency of preventing fair trial. The appeal was dismissed. The author suggests that such pre-trial publicity should be avoided as it hinders fair trial.

"An Exception to Collateral Estoppel in Criminal Cases Because of Prosecutor's Incompetence," University of Pennsylvania Law Review 8 (June 1967) 1346-57.

In the case of Buatte v U.S. (350 F 2d 389), the accused was tried twice for the murder of two children with an insanity defense offered each time. He was acquitted in the first trial but due to some additional evidence he was convicted the second time. The author concludes that although some applications of collateral estoppel may perpetuate shocking injustices, the balance of public policy weighs against the allowance of any discretionary exception for prosecutor's incompetence.

B. Woldman, "Prosecutor's Closing Argument - Improper Comment, Prejudicial Infringement." DePaul Law Review 16, (Summer 1967) 504-10.

The article is based on the case of State v. Woodard (6 Ohio, St2d, 14) in which the prosecution made some abusive remarks in his concluding argument. On review of the alleged error the Ohio Supreme Court held that even though the portions of the prosecutor's summation were improper, they were not prejudicial in view of all the accompanying facts of the case. This case is demonstrative of the greater latitude allowed to the prosecutor in the closing argument. Where the evidence is strong and the

crime serious, the court will not reverse the decision on the basis of improper language used by the prosecutor.

Douglas J. Kellerman, "Civil Rights--Immunity--Prosecutor's Immunity from Civil Liability under # 1983 of the Civil Rights Act of 1871: A Revaluation," Wayne Law Review 13 (Winter 1967) 385-392.

History of court cases under the Civil Rights Act of 1871 and suggestion that a new statute be passed to grant immunity from personal law suits only when "liability will have no deterrent effect."

"Trial Before Trial?", Economist, 226 (March. 1968) 50.

The article deals with the rules bid down by ABA regarding what can be made public from the time a person is arrested until he is tried or released. Prosecutors, defense lawyers, police, judges and other court officials are precluded from giving any information regarding a case except, the name of the accused, the charge framed against him and the circumstance of the case.

## PROSECUTORS, RECRUITMENT AND SOCIAL BACKGROUNDS OF

Fred E. Inbau, "The Social and Ethical Requirements of a Criminal Prosecutor," Journal of Criminal Law, 52 (July-August 1961) 209.

Inbau does not have deal with discretion in the prosecutor's office so much as with the relationship between the police and the courts. He argues that judicial constraints have become excessive for at least three reasons (1) that it "has become far too fashionable for in judicial circles to line up 'on the liberal side'" in search of reputation, (2) that police advocates are relatively weak in the skills of exposition so that the civil-liberties case gets a disproportionate share of attention, in contrast to the case for police latitude, and (3) that civil liberties advocates 'rush in' and 'stamp out' the case for police latitude if it seems to be getting effective attention. "The Courts," says Inbau, "have no right to police the police. That is an executive and not a judicial function. [Note: Scalia? MH, April 1999.] Furthermore the courts have enough troubles of their own. Witness what goes on in some of the municipal or magistrate courts of our large cities. In my opinion there are, in such courts, more hurts to the innocent and more trampling over basic individual civil liberties and ethical considerations than you will find in most police departments. Much of the concern, energy, and effort that the courts expend with respect to police conduct could be better spent on getting their own house in order."

H.H. Bull, Career Prosecutor in Canada, Journal of Criminal Law, (March 1962), 53:89.

Comparison of Canadian and U.S. systems of prosecution. Advocacy of a system of career prosecutors.

Richardson Dilworth, "Problems in Reorganizing the District Attorney's Office in Philadelphia," Dickinson Law Review 57, (1952) 82-85.

The then "reform" District Attorney of Philadelphia discusses the administrative problems of an urban district attorney's office, particularly in a transition from seventy years' control by the opposite political party. The heavy and complex work could only be handled if (1) customary practice permitting Assistant District Attorneys to engage in private practice was abandoned -- which, since it meant reductions in income, led to lower age

levels and consequently less experience in the staff, (2) exclusion of county detectives from "politics," this placing them in a relationship analogous to that of the FBI and Attorney General of the United States, and (3) systematic revision of clerical-administrative procedures to expedite work-flow and reduce actual number of persons employed in the office. Discussion of new Rackets Division, with strong criticism of local officials who regard organized crime as a national problem which cannot be met locally.

NOTE: The rhetorical formulation of putting the county detectives in the same relation as that of the FBI to the AG may have been persuasive in 1952, but we know now that the AG did not control the FBI. MH (April 1999)

Herbert Jacob, "Politics and Criminal Prosecution in New Orleans," in Kenneth N. Vines and Herbert Jacob (eds.), Studies in Judicial Politics, (Tulane Studies in Political Science, Vol. 8) New Orleans: Tulane University, Department of Political Science, 1963, pp. 77-98.

Statistical comparison of District Attorney's office under two incumbents of different socio-economic status. In this community where crime is often a major electoral issue, "the political arena impinges on the criminal prosecution process less directly than expected. The district attorney's office is sensitive to community tensions, as its [harsher] treatment of Negroes since 1954 suggests. [NOTE: Harsher treatment of African Americans since 1954. MH April 1999] Likewise, it makes some -- though not a great deal -- of difference whether one man or another holds the office." The author is explicit that what he has "not been able to show" are the paths by which political influence is channeled and the barriers which impede such influence under specific conditions. That, as well as a more generalized assessment of the impact of politics on criminal prosecution must wait further research."

L.W. Kennedy, "Local Politics vs. Prosecuting Attorney," Journal of the American Judicature Society, November 1940, 23: 180-182.

Argument that the prosecutor's functions are of such importance that they demand the same kind of judgements and skills as explicitly judicial offices, but that prosecutors cannot perform these functions well so long as they are "in politics." Specific reference to a Pennsylvania county with population of about 250,000. Hortatory rather than analytical.

R. H. Kuh, "Careers in Prosecuting Offices," Journal of Legal Education, 14 (December 1961) 175.

Advocacy of a system of "career" prosecutors -- which apparently means as this author defines the idea -- not so much a bureaucratic or specially-trained civil service as prosecutors with long continuity in office. Satisfactions and tensions of the prosecutor's role are discussed, with particular emphasis on low money rewards.

Ken Ori, "The Political Nature of the County Prosecutor's Office. Fact or Fancy? -- The Case in Indiana," Notre Dame Lawyer, 40 (April 1965) 298.

It was concluded from questionnaires administered, in Indiana, to the county attorneys that, as traditionally assumed, county prosecutors are young, inexperienced, and politically ambitious and view their offices as stepping stones for higher political office. The prosecutorship has not been significant in the career pattern of Indiana governors or U.S. Senators. However, it has been more of a viable factor for a career in the U.S. House of Representatives and law enforcement agencies.

"Private Prosecution: A Remedy for District Attorneys' Unwarranted Inaction," Yale Law Journal 65 (December 1955) 209.

In the event of prosecutor's inaction, a private citizen should be allowed to prosecute if the court considers the criminal action justified. In effect, this proposes that the area of prosecutorial discretion be transferred to the judiciary.

"Prosecutor indiscretions such as adverse ethnic references, prolonged questioning without formal charges (cites Chambers v. Florida 309 US 277, 1940 as an extreme example of 5 days questioning, including one all-night session), and other behaviors of a similar nature constitute violations of proper trial court standards and appellate courts do not systematically correct such violations. The authors attributes such actions as the result of "seeking a conviction, rather than the ascertainment of truth and justice, and [these actions] stem from the political nature of the prosecutor's office." (p. 485). Political influence also produces bargaining by the prosecutor and uneconomical administration. The author proposes to remedy the purported difficulties by a system of appointment (on the manner of the U.S. attorneys)

rather than election saying that "the governor and senate could be trusted to make more carefully considered and unbiased appointments than can country and urban politicians."

". . .Yes, But Don't Stay Too Long." *The Shingle* 139 (1957).

Discussion of professional gains and losses involved in accepting appointments to U.S. Attorney's office.

D. R. Nedrud. "Career Prosecutor," (Part I-IV) Journal of Criminal Law, (1) 51 (S-O 1960), (2) 51 557, (3) 51 649, (4) 52 103.

Four parts constituting of chapters in Nedrud's Master of Laws thesis [Northwestern, 1958-59]. Part I examines qualifications, selections, jurisdiction, as well as other aspects of the prosecutors office in 48 states (continental U.S.) Part 2-4 present a normative evaluation and propose a Department of Criminal Justice to regulate and make more uniform the office of Prosecuting-attorney in the several states.

Lawless, Joseph F.: Prosecutorial misconduct: a battleground in criminal law.

### **PUBLIC PROSECUTORS**

Frampton, George T., Jr.: Some practical and ethical problems of prosecuting public officials. *Maryland Law Review* 36:5-34 No 1 '76.

Grand jury manual for prosecutors: criminal justice standards [New Jersey]. *Criminal Justice Quarterly*. 5:18-72 Winter '77.

Miller, Norman C.: The merit system vs patronage: Candidate Carter promised to appoint federal judges and prosecutors strictly on the basis of merit; President Carter appears to have largely abandoned that campaign promise. *Wall Street Journal* 189:14 F 28 '77.

Tuerkheimer, Frank M.: The executive investigates itself [evaluates proposals to assure impartiality when prosecutors investigate possible criminality within their governments; argues that Congress should block partisan appointments to the Justice department rather than create a permanent special prosecutor's office; finds that the states must presently depend on the federal government for prosecution of high level executive officials] *California Law Review*. 65:597-635 My '77.

Ethics in government: the president's message to the Congress urging enactment of the proposed Ethics in government act of 1977 and special prosecutor legislation, May 3, 1977.

United States. House. Com. on the judiciary: Special prosecutor legislation: hearing, May 18, 1977. 95th Cong. 1st sess.

Taylor, Lawrence: A needed legal specialty: the special prosecutor. *Judicature: the journal of the American Judicature Society*. 61:220-4 N '77.

Liebowitz, Benjamin: Prosecutorial immunity and liability from civil suit on the federal and state levels. *Criminal Justice Quarterly* 5:105-19 Fall/Winter '77.

Decision that backfired on Carter: an attempt to remove a U.S. attorney [David W. Marston, based in Philadelphia, Pa.] brought the president under intense attack, raising prospects of a major political tempest. *U.S. News and World Report*. 84:65 Ja 23 '78.

United States. Law enforcement assistance admin. Nat. criminal justice info. and statis. service: State and local prosecution and civil attorney systems. Mr '78.

Stansfield, W.: The right to prosecute [powers of the police, and especially the procurator fiscal, in determining when and whom to prosecute; Great Britain]. *Police Studies: the international review of police development*. 1:19-24 Mr '78.

The proposed court-appointed special prosecutor: in quest of a constitutional justification. *Yale Law Journal* 87:1692-1722 Jl '78.

Civiletti, Benjamin R.: The prosecutor as advocate [role of the prosecutor in the grand jury, in pre-trial discovery and at the trial itself; based on lecture]. *New York Law School Law Review*. 25:1-20 No 1 '79.

Weicker, Lowell, Jr. and Robert McClory: Should the government have a permanent special prosecutor? [opposing views]. *American Legion Magazine*. 108:8 Mr '80.

Merola, Mario: Modern prosecutorial techniques [eight innovative case management programs developed and initiated by the Bronx county, N.Y., district attorney's office]. *Criminal Law Bulletin*. 16:232-72 My/Je '80.

Stark, Allison T.: When the government goes to court, who should speak for Uncle Sam? In its reforms of the federal litigation system, the administration did not answer whether the Justice Department or the agencies should have prime responsibility. National Journal: the weekly on politics and government. 12:1098-9 JI 5 1980.

Cohen, William S.: Reforming the special prosecutor process: some provisions of the post-Watergate Ethics in Government Act need revision to assure equal treatment of public officials. American Bar Association Journal. 68:278-81 Mr '82.

United States. Senate Com. on Governmental Affairs. Subcom. on Oversight of Govt. Mgt.: Ethics in Government Act amendments of 1982: hearing, April 28, 1982. '82.

United States, Natl. Inst. of Justice: Basic issues in prosecution and public defender performance. JI '82.

Barzilay, Jonathan: The D.A.'s right arms. (Assistant district attorneys in Manhattan). The New York Times Magazine 118-21+ Nov 27 '83.

Paternoster, Raymond: Prosecutorial discretion in requesting the death penalty: a case of victim-based racial discrimination [based on a study of 300 homicides; South Carolina]. Law and Society Review. 18:437-78 no 3 '84.

Bertozzi, Mark: Separating politics from the administration of justice: the role of the federal special prosecutor. Judicature: the journal of the American Judicature Society. 67:486-98 My '84.

Goldstein, Abraham.: The victim and prosecutorial discretion: the federal Victim and Witness Protection Act of 1982. Law and Contemporary Problems. 47:225-48 Autumn '84.

Pinkele, Carl F. and William C. Louthan, ed.: Discretion, justice, and democracy: a public policy perspective. '85 ISBN 0-8138-0466-3.

Rekunkov reviews prosecutors' tasks. Current Digest of the Soviet Press. 37:4-7+ Ag 14 '85.

Symposium on child sexual abuse prosecutions: the current state of the art. University of Miami Law Review. 40: 184 N '85.

Blankenburg, Erhard and Hubert Treiber: The establishment of the public prosecutor's office in Germany. International Journal of the Sociology of Law 13:375-91 Nov '85.

Pritchard, David: Homicide and bargained justice: the agenda-setting effect of crime news on prosecutors. Public Opinion Quarterly. 50:143-59 Summer '86.

Mosteller, Robert P.: Discovery against the defense: tilting the adversarial balance. California Law Review 74:1567-1685 O '86.

Government declares war on criminal defense lawyers. (Federal prosecutors). USA Today (Periodical) 115:7-8 Dec '86.

Smith, Gordon B.: The Soviet procuracy and the supervision of administration. '87 ISBN 90-286-0358-1.

New Jersey, Criminal Disposition Comm. The criminal justice system: a public information booklet. '87.

Reeves, Richard: The Palme obsession. The New York Times Magazine 20-4+ Mar 1 '87.

Lacayo, Richard: Whose trial is it anyway? (Defense lawyers attacking victims and prosecutors in court). Time 129:62 May 25 '87.

Abstract: In the case of model Marla Hanson, a defense attorney claimed that Hanson was helping prosecutors frame the two men accused of slashing her face because they were black, and that she was sexually voracious and "preyed on men." In the case of preppie college dropout Robert Chambers, who is charged with strangling Jennifer Levin during a sexual encounter in Central Park, defense attorney Jack Litman attempted to obtain Levin's diary as evidence, calling it a chronicle of her "kinky and aggressive" sex life. Court observers have also detected a new virulence in some defense attacks on prosecutors. Defenders of the strategy maintain that making unsavory accusations is part of a lawyer's duty, and many judges are hesitant to step in because they are worried that their intervention might provide a basis for appeal.

Pritchard, David, Dilts, Jon Paul and Dan Berkowitz: Prosecutors' use of external agendas in prosecuting pornography cases. *Journalism Quarterly* 64:392-8 Summer/Autumn '87.

Gest, Ted and Donald Baer: The high price of indictment. (Problems of public officials). *U.S. News & World Report* 102:23-4 Jun 8 '87.

Crown prosecution service: lawyers lacking. *The Economist* 304:49-50 Jul 25 '87.

Pasztor, Andy: Legal maze: Iran-contra prober relentlessly pursues leads in complex case; Lawrence Walsh is assied for being too zealous and for doing too little. *Wall Street Journal* 211:1+ Ja 20 '88.

Maakestad, William J.: The mounting prosecution of corporate crime: at the state level, DAs are increasingly taking companies to court. *Business and Society Reviews: a quarterly forum on the role of business in a free society.* p15-19 Winter '88.

Langer, Vera: Public interest in civil law, social law, and common law systems: the role of the public prosecutor. *American Journal of Comparative Law.* 36:279-305 Spring '88.

Benson, Michael L., Maakestad, William J. and Francis T. Cullen: District attorneys and corporate crime: surveying the prosecutorial gatekeepers. *Criminology* 26:505-18 Aug '88.

Champion, Dean J., ed.: *The U.S. sentencing guidelines: implications for criminal justice.* '89. ISBN 0-275324-5.

Hetherington, Thomas: *Prosecution and the public interest.* '89 ISBN 0-08-033110-6.

Adler, Stephen J. and others: Litigator's legacy: after advancing use of racketeering law, Giuliani eyes politics; resigning U.S. attorney prosecuted insider traders and several Mafia dons; is he a too-hasty zealot? *Wall Street Journal.* 213:1+ Ja 11 '89.

Norton, Jerry E.: Government attorneys' ethics in transitions: increasingly aggressive investigative techniques are creating new ethical dilemmas for

government attorneys; what's needed is more vigorous oversight by the courts and state disciplinary bodies. *Judicature: the journal of the American Judicature Society.* 72:299-303 F/Mr '89.

Moore, W. John: Collaring white collars: federal prosecutors have garnered headlines and earned convictions in their all-out pursuit of "crime in the suites"; but now their tough-guy tactics are coming under attack. National Journal, 31:576-6 Mar 11, 89.

Bishop, Donna M. and others: Prosecutorial waiver: case study of a questionable reform. *Crime and Delinquency.* 35:179-201 Ap '89.

Wood, Robert A., McDonald, Thomas D. and George A. Youngs, Jr.: Professional perceptions of drunk driving countermeasures. *Sociology and Social Research* 3: 140-3 Apr '89.

Church, Thomas W. and Milton Heumann: The underexamined assumptions of the invisible hand: monetary incentives as policy instruments. *Journal of Policy Analysis and Management.* 8:641-57 Fall '89.

Ehrenhalt, Alan: Justice and ambition: U.S. attorneys can do what they want in prosecuting public corruption; is that wise? *Governing: the states and localities* 2:34-44 S '89.

Harshbarger, Scott: Prosecuting environmental crimes. (Address, July 17, 1989). *Vital Speeches of the Day* 55:760-3 Oct 1 '89.

Kaihl, Paul: The cost of patronage. (Privatizing public prosecutors).  
*Macleans* 102:17 Dec 11 '89.

Sigler, Robert T., Crowley, Joan M. and Ida Johnson: Judicial and prosecutorial endorsement of innovative techniques in the trial of domestic abuse cases. *Journal of Criminal Justice* 18 no 5:443-53 '90.

Hernandez, Tanya Kateri: Bias crimes: unconscious racism in the prosecution of "racially motivated violence." *Yale Law Journal.* 99:845-64 Ja '90.

Carlson, Margaret B.: Highly public prosecutors. (J. Stephens and D. Lehtinen). *Time* 135:20 Feb 5 '90.

Vingilis, Evelyn, Bleggen, Holly and Donald Colbourne: The adjudication of alcohol-related criminal driving cases in Ontario:a survey of Crown attorneys. Canadian Journal of Criminology 32:639-49 Oct '90.

Roberts, Paul Craig: Maybe they should call it the Injustice Dept. Business Week 16 June 10 '91.

### III. BIBLIOGRAPHY WITHOUT NOTES

A. K. Stavely, "Hints for County Prosecutors," Journal of the Bar Association of Kansas, 17 (May 1949) 387.

M. F. McDonald, "Problems of a Prosecutor," New York State Bar Bulletin 24 (1952) 221-33.

H. Epton, "Some Facts About County Attorneys in Oklahoma," Oklahoma Bar Association Journal, 25 (May 29, 1954) 1005-6.

O. Gorden, "Need to Eliminate Political Control of District Attorney's Office Urged," Panel, 15 (May-June 1957) 131.94.

R. Klein, "District Attorney's Discretion Not to Prosecute," Los Angeles Bar Bulletin, 32 (1957) 323.

"Prosecution's Privilege to Withhold the Identity of an Informer." Washburn Law Journal, 7 (Fall 1957).

L. J. Fein and Frederick Stockable, "The Subpeona Power of the Attorney General: A Review," East Lansing: Bureau of Social and Political Research, Michigan State University, 1959.

O. Bushby, "County Attorney System--Should It Be Replaced?" Oklahoma Bar Association Journal, 132 (December 30, 1961) 2317.

G. W. Anderson, "Statistical Survey of the County Attorney Salary and Work Load," New Hampshire Bar Journal, 7 (July 1965) 381.

H. B. Rothblatt, "Penal Code Section 654: Prosecutor's Dilemma," in Criminal Law and Criminal Procedures: A Symposium," Rastings Law Journal, 17 (October 1965) 3.

National Association of Attorneys-General Proceedings: 59th Annual Meeting in San Antonio, Nov., 1965, xii+p.ii, Council of State Government.

L. J. Banker, "Third Parties in Litigation: A Systematic View of the Judicial Function." Journal of Politics 29: 41-69, February 1967.

"Duty of the Prosecutor to Call Witnesses Whose Testimony Will Help the Accused to Establish His Innocence," Washington University Law Quarterly 1966 (Feb.) 68.

R. H. Mills, "Practicing Prosecutor--Beset with Conflicts," Illinois Bar Journal, 54 (March 1966) 606.

B. F. Sears, "Conspiracy--Final Argument for the Prosecution," Trial Lawyer's Guide, 10 (May 1966) 7.

"Standards of Conduct for Prosecution and Defense Personnel: A Symposium," American Criminal Law Quarterly, 5 (Fall 1966) 8.

R. Egan, "Antitrust Enforcement Objectives of the Illinois Attorney General," Antitrust Bulletin, 11 (July-Aug. 1966) 629.

"Metamorphosis in Criminal Court: A Symposium," Brief Case, 25 (December 1966) 52.

"Criminal Discovery by the Prosecution: Frontier Developments and Some Proposals for the Future," New York University Intramural Law Review, 27 (May 1967) 268.

D. C. Sullivan, "Prosecuting Attorney's Duty to Disclose," Washburn Law Journal, 6 (Spring 1967) 479.

"Limited Use of Unlawfully Obtained Evidence to Import Defendant's Credibility: The New York Rule in light of Escubedo and Miranda" (Miranda v. Arizona 8 Sup. Ct. 1602). New York Law Forum 13:146, Spring 1967.

"Criminal Law--Prosecutor's Closing Argument--Improper Comment versus Prejudicial Infringement," DePaul Law Review, 16 (Spring-Summer 1967) 504.

"Prosecutor's Pre-Trial Invocation of Informer's Privilege Held Not Constitutionally Objectionable Per Se," St. John Law Review, 42 (Oct. '67).

O. S. Walker, "Why Should Irresponsible Offenders Be Excused?" Journal of Philosophy 66:279-290, May 22, 1969.

"Impugning the Character of Prosecution Witness," Solicitors Journal 113:864, November 14, 1969.

M. D. Franks, "Prosecution in Civil Courts of Minor Offenses Committed on

Military Installations." Military Law Review 51:85, January 1971.

R. J. Engstrom, "Political Ambitions and the Prosecutorial Office." Journal of Politics 33:190-194, February 1971.

A. F. Matthews, "Criminal Prosecutions Under the Federal Securities Law and Related Statutes: The Nature and Development of SEC Criminal Cases." George Washington Law Review 39:901, July 1971.

"Silkin Won Some, But Not All." Economist 262:22+, February 5, 1972.

A. F. Matthews, "Criminal Prosecutions Under the Investment Company Act of 1940 and the Investment Advisers Act." Boston College Industrial & Commercial Law Review 13:1257, April 1972.

E. M. Mills, "Prosecutor Not Presumed Vindictive in Pretrial Charge Increases After Defendant's Request for a Jury Trial." Journal of Criminal Law & Criminology 73:1452-1473, Winter 1972.

"Criminal Law--Prosecution for Assault with Intent to Rape is Permissible Even after a Prior Acquittal for Rape, and Present Intent to Rape in Future Completes the Offense." Texas Law Review 51:360, January 1973.

P. Nejeleki and K. Finsterbunsch, "Prosecutor and the Researcher; Present and Prospective Variations on the Supreme Court's Brazbieng Decision." Social Problems 21:3-21, Summer 1973.

M. A. Shea, "Study of the Prosecution's Choice of Change on Magistrates Sentencing Behavior." British Journal of Criminology 14:18-33, January 1974.

K. Mossman, "In Criminal Justice, is the Name of the Game to Win?" Trial 10:31-39+, January 1974.

"Prosecutorial Cross Examination: Limitations Upon the Second of Justice." Journal of Criminal Law and Criminology 65:2-45, March 1974.

S. R. Lassar, "Ramification of United States vs. Falk on Equal Protection from Prosecutorial Discrimination." Journal of Criminal Law & Criminology 65: 62-74, March 1974.

M. J. Hindelag, bibliography, "Decisions of Shoplifting Victims to Invoke the Criminal Justice Process." Social Problems 21:580-593, April 1974.

R. G. Johnson, "Grand Jury--Prosecutorial Abuse of the Indictment System." Journal of Criminal Law & Criminology 65:157-169, June 1974.

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R. G. Johnston, "Grand Jury--Prosecutorial Abuse of the Indictment Process." Journal of Criminal Law & Criminology 65:157-169, June 1974.

H. Biegel, "Investigation and Prosecution of Police Corruption." Journal of Criminal Law & Criminology 65:135-136, June 1974.

F. J. Soloway, "Grand Jury and Post-Watergate America." Trial 10: 032-34, November 1974.

J. Hagan, "Parameters of Criminal Prosecution: An Application of Path Analysis to a Problem of Criminal Justice." Journal of Criminal Law & Criminology 65:536-544, December 1974.

"Authoritarianism, Pre-Trial Publicity and Consciousness of Bias in Simulated Jurors." S. Sue and others, Psychological Record 37:1299-1302, D pt. 2, 1975.

"Images of Conflict Resolution and Social Control: American and Japanese Attitudes Toward the Adversary System." R. W. Bennett, bibliography, Journal of Conflict Resolution 19:123-127, March 1975.

R. A. Corp, "Behavior of Grand Juries: Acquiescence or Justice." Social Science Quarterly 55:853-870, March 1975.

"Amendments to the Federal Rules of Criminal Procedure--Expansion of Discovery." Journal of Criminal Law and Criminology 66:22-43, March 1975.

T. D. Quinn, "Joinder of Substantive Offences and Perjury in One Indictment." Journal of Criminal Law & Criminology 66:44-55, March 1975.

M. Heumann, bibliography, "Note on Plea Bargaining and Case Pressure." Law & Society Review 9:515-528, Spring 1975.

Criminal Prosecution Under the Alaska Environmental Conservation Act of 1971: *Stock v. State* [Alaska 526 P 2d 3]." *UCLA-Alaska Law Review* 4:387-418, Spring 1975.

G. S. Grindler, "Prosecution Under the Hobbs Act and the Examination of Federal Criminal Jurisdiction," *Journal of Criminal Law and Criminology* 66:306-324, September 1975.

J. M. Kress, "Progress and Prosecution." *American Academy of Political Science and Social Science Annual* 423:99-116, January 1976.

J. Ovner and K. Johnson, "Use of Immunity: Jail Those Who Refuse to Play." *Trial* 12:66-67+, January 1976.

"Chivalrous Treatment of the Female Offender in the Arms of the Criminal Justice System: A Review of the Literature." E. A. Anderson, bibliography, *Social Problems* 23:350-357, February 1976.

L. Cobden, "Grand Jury Its Use and Abuse." *Crime and Delinquency* 22:149-15, April 1976.

H. P. Fuhringer, "Problem of Grand Jury Leaks." *Trial* 12:33+, May 1976.

"Plea Bargaining: Bargain Justice," bibliography, *Criminology* 14:55-64, May 1976.

J. W. Church, Jr., bibliography, "Plea Bargains, Concessions and the Courts: Analysis of a Quasi-Experiment." *Law and Society* 10:377-401, Spring 1976.

"Jurisdiction by Forcible Abduction: Reach Exceeds Due Process Grasp." P. Tullio and others, *Journal of Criminal Law and Criminology* 67:181-194, June 1976.

"Symposium on Witness Immunity," *Journal of Criminal Law & Criminology* 67:129-180, June 1976.

A. F. Robertson, bibliography, "Ousting the Chief: Deposition Changes in Ashante." *Man* 11:410-427, September 1976.

J. R. Toupis, "Pretrial Publicity." Journal of Criminal Law and Criminology 67:430-436, December 1976.

M. A. Teitlbaum, "Discover: Prosecutor's Failure to Disclose." Journal of Criminal Law & Criminology 67:408-415, December 1976.

J. Bertham, "Permission to Prosecute," New Statesman 92:901, December 24/31, 1976.

W. R. Rapson, "Criminal Prosecutions Under the Colorado Securities Act." University of Colorado Law Review 47: 233-60, Winter 1976.

"State Criminal Justice Superagencies: Antidote for the Nonsystem." D. L. Sholer, State Government 49:2-8, Winter 1976.

"What's Wrong with the Adversary System; Paranoia, Hatred, and Suspicion [Excerpts from Injustice for All]." A. Streich, Washington Monthly 8:19-26+, January 1977.

G. W. Flakne and A. H. Caplon, "Sports Violence and the Prosecution." Trial 13:33-35, January 1977.

"Ques Custodit?" Economist 262:11-12, January 22, 1977.

"Judge Puts Sam Silkin in His Place." Economist 262:14, January 29, 1977.

C. Dubnoff, "Pretrial Publicity and Due Process in Criminal Proceedings." Political Science Quarterly 92:89-108, Spring 1977.

"Law Will be Upheld at the Attorney General Discretion," Economist 264:17, July 30, 1977.

"Send in the Lawyers." Economist 264:32, August 20, 1977.

K. Polk, "Disclosure of Federal Grand Jury Material." Journal of Criminal Law and Criminology 68:399-411, September 1977.

E. Beckman, "Criminal Justice and Politics in America: From the Sedition Act to Watergate and Beyond." Journal of Police Science and Administration 5:285-289, September 1977.

M. Fisk, "Grand Jury Reform: Panacea or Trojan Horse," Trial 13: 15-18, September 1977.

D. Neville, "Prosecution Must Understand Conventional Environment." American Journal of Correction 39:18-19+, September 1977.

B. A. Smith, "Police and the Prosecutor's Right to Surgical Removal of Embedded Evidence from an Accused [Fourth Amendment]." Journal of Police Science and Administration 5:348-354, September 1977.

"Lively Corpse." Economist 264:55-56, September 24, 1977.

Relationship Between Recommendation Made to the Court and Sentences Passed." J. Thorpe and K. Pease, British Journal of Criminology 16:393-394, October 1976.

G. P. Dunsky, "Constitutionality of Increasing Sentences on Appellate Review." Journal of Criminal Law and Criminology 68:555-570, December 1977.

"Grand Jury Discrimination." Journal of Criminal Law and Criminology 68:533-542, December 1977.

N. Lemann, "Case for Political Patronage," Washington Monthly 9:8-17, December 1977.

C. E. Pope, bibliography, "Porn Arrest Release Decisions: An Empirical Examination of Social and Legal Criteria." Journal of Research in Crime and Delinquency 15:33-53, January 1978.

"Plea Bargain in Theory: A Behavioral Model of the Negotiated Guilty Plea." R. P. Adelstein, bibliography, Southern Economic Journal 44:488-503, January 1978.

M. E. Reesin, "Prosecutor's Duty to Disclose: From Brady to Agers and Beyond." Journal of Criminal Law and Criminology 69:197-225, Summer 1978.

J. A. Rath, "Prosecutor Perceptions of Crime Seriousness." Journal of Criminal Law & Criminology 69:232-242, Summer 1978.

"Is there An Attorney General in the House?" New Statesman 96:532-533, October 27, 1978.

R. Faglia, "Developments in the Attachment of Jeopardy." Journal of Criminal Law and Criminology 69:597-603, Winter 1978.

L. K. Rubin, "First Amendment--Double Jeopardy and the Single Tribunal Rule." Law and Contemporary Problems 69:597-603, Winter 1978.

J. Katz, bibliography, "Loyalty and Equality: Plea Bargaining in the Prosecution of White Collar and Common Crimes." Law and Society Review 13: 431-459. 1979

J. Cooper, "Structuring the Anti-Trust Case," Trial 15:30-35, April 1979.

M. A. Myers and J. Hagan, bibliography, "Private and Public Trouble: Prosecutors and the Allocation of Court Resources." Social Problems 26:439-451, April 1979.

J. W. Clyde, bibliography, "Prosecution's Power, Procedural Rights, and Pleading Guilty: The Problem of Coercion in Plea Bargaining Drug Cases." Social Problems 26:452-466, April 1979.

"Future of Federal Prosecution of Organized Crime." George Washington Law Review 47:761-786, May 1979.

W. T. Westling, "Preliminary Hearing, Grand Jury or Both." Trial 15: 70-71, July 1979.

"Machiavelli in the Classroom." Business and Society Review 30:5-6, Summer 1979.

C. K. Rowland, bibliography, "Relationship Between Good Jury Composition and Performance." Social Science Quarterly 60:323-327, September 1979.

J. Griffith, "Unaccountable Prosecutor." New Statesman 98:550, October 19, 1979.

H. P. Fahringer, illustrated, "Representing a Witness Before the Grand Jury." Trial 15:30-33+, October 1979.

W. T. Wrestling, "Prosecutor's Duty of Charge." Trial 15:28-29+, October 1979.

J. W. Weber, "Criminal Prosecutions for Income Tax Evasion." Journal of Criminal Law and Criminology 70:355-359, Fall 1979.

E. R. Scheiman, "Grand Jury Subpoenas and First Amendment Privileges." American Academy of Political and Social Science Annals 446:106-115, November 1979.

T. W. Church, Jr., "In Defense of Bargain Justice" [with discussion]. Law and Society Review 13:509-525, 555-566, Winter 1979.

"Fifth Amendment--Use of Grand Jury Testimony at Trial," Journal of Criminal Law & Criminology 70:424-432, Winter 1979.

"Immunity of the U.S. Attorney General," Journal of Criminal Law and Criminology 71: 32-38, Spring 1980.

J. F. Halderman, "Preindictment Prosecutorial Conduct in the Federal." Journal of Criminal Law & Criminology 71: 1-31, Spring 1980.

P. W. Greenwood, "Career Criminal Prosecution: Potential Objectives." Journal of Criminal Law and Criminology 71:85-88, Summer 1980.

P. Houlden, "Impact of Procedural Modifications on Evaluations of Plea Bargaining" [with discussion]. Law and Society Review 15(2):267-316, 1980-81.

M. H. Fish, "Duplicative Statutes, Prosecutorial Discretion and the Illinois Armed Violence Statutes." Journal of Criminal Law and Criminology 71:226-43, Fall 1980.

S. H. Goldberg, "Harmless Error: Constitutional Sneak Thief." Journal of Criminal Law and Criminology 71:421-442, Winter 1980.

E. A. Stonko, bibliography, "Arrest versus the Case: Some Observations on Police/District Attorney Interaction." Urban Life 9:395-414, January 1981.

P. C. Freday and others, "Referral and Selection: Criteria in Deferred Prosecution; The Impact on the Criminal Justice System." 21:166-172, April 1981.

L. R. Mellor and others, "Prosecutor Constrained by His Environment: A New Look at Discretionary Justice in the United States," Journal of Criminal Law and Criminology 72:52-81, Spring 1981.

H. E. Abrams, "Systemic Coercion: Unconstitutional Conditions in Criminal Law." Journal of Criminal Law and Criminology 72:128-164, Spring 1981.

D. M. Barry and A. Green, bibliography, "Sentencing Versus Prosecutorial Discretion: The Application of a New Disparity." Journal of Research in Crime and Delinquency 18:254-271, July 1981.

D. M. Borg and A. Greer, bibliography, "Sentencing versus Prosecutorial Discretion: The Application of a New Disparity Measure." Journal of Research in Crime and Delinquency 18:254-271, July 1981.

L. Donovan, "Justice Department's Guidelines of Little Value to State and Local Prosecutors." Journal Criminal Law & Criminology 72:955-992, Fall 1981.

J. S. Hines, Jr., "Self Incrimination and the Likelihood of Prosecution Test," Journal of Criminal Law and Criminology 72:955-992, Fall 1981.

A. M. Pachciarek, "Fifth Amendment--Extension of Double Jeopardy to Sentencing." Journal of Criminal Law and Criminology 72:1276-1287, Winter 1981.

J. Peterselen, "Juvenile Record Use in Adult Court Proceedings: A Survey of Prosecutors." Journal of Criminal Law and Criminology 72:1746-1771, Winter 1981.

W. Pindor and S. D. Lipiec, "Creating Positive Police-Prosecutor Relations," Journal Police Science and Administration 10:28-33, March 1982.

T. Davis, "Motions in Limine: Tools for a Fair Trial." Trial 18:90-93, November

1982.

M. C. Myers, bibliography, "Common Law in Action: The Prosecution of Felonies and Misdemeanors." Sociological Inquiry 52:1-15, Winter 1982.

C. E. Moore, "Limited Protection Against Excessive Prosecutorial Delay." Journal of Criminal Law and Criminology 73:1491-1506, Winter 1982.

D. L. Schmett, "Twice Jeopardizing the Rights of the Accused. The Supreme Court Tibbs and Kennedy Discussion." Journal of Criminal Law and Criminology 73:1474-1490, Winter 1982.

Mills, Elizabeth M.: Prosecutor not presumed vindictive in pretrial charge increases after defendant's request for jury trial. The Journal of Criminal Law & Criminology 73:1452-73 Winter '82.

"The Campbell Case and the First Labor Government," North Ireland Legal Quarterly 20:19 March 1969.

B. M. Dickens, "Prosecuting Roles of the Attorney General and Director of Public prosecutions," Public Law 1974: 50-73 Spring 1974.

"Judge Puts Sam Silkin In His Place" Economist 262:14 January 29, 1977.

Casey, J.P.: The office of the Attorney General in Ireland. ISBN 0-90213-91-X, '80.

Edwards, John L. J.: The attorney general, politics and the public interest. (ISBN 0-421-30180-5) '84.

Scott, Ian: Law, policy, and the role of the attorney general. University of Toronto Law Journal 39:109-26, Spring '89.

## **GRAND JURIES AND INDICTMENT**

**A. K. Stavely, "Hints for County Prosecutors," Journal of the Bar Association of Kansas 17:387, May 1949.**

"Prosecutor's Privilege to Withhold the Identity of an Informer." Washburn

Law Journal 7 (Fall 1957).

Walton Coates, "Grand Jury, the Prosecutor's Puppet." Wasteful Nonsense of Criminal Jurisprudence," Pennsylvania Bar Association Quarterly, 33 (March 1912)sic [1962?] 311.

Practicing attorney argues that, in practice, the prosecutor does dominate grand jury proceedings. This point is illustrated with data from Montgomery County (Philadelphia Metropolitan Area), Pennsylvania, indicating that in a five-year period (February 1955-June 1960) 4006 bills of indictment were before the grand jury, of which the grand jury returned 3811 (95%) as true bills. Since the prosecutor dominates the grand jury, suggests the author, the more efficient procedure would be to adopt a constitutional amendment eliminating the grand jury and permit the prosecutor to initiate actions by information.

B. F. Sears, "Conspiracy--Final Argument for the Prosecution." Trial Lawyers Guide 10 (May 1966): 7.\*\*\*\*\*Major Chicago practitioner.\*\*\*\*\*

H. B. Rothblatt, "Penal Code Section 654: Prosecutor's Dilemma," in "Criminal Law and Criminal Procedures: A Symposium." Rastings Law Journal 17(October 1965):3.

Standards of Conduct for Prosecution and Defense Personnel: A Symposium." American Criminal Law Quarterly 5(Fall 1966):8.

D. C. Sullivan, "Prosecuting Attorney's Duty to Disclose." Washburn Law Journal 6:479, Spring 1967.

"Prosecutor's Pre-Trial Invocation of Informer's Privilege Held Not Constitutionally Objectionable Per Se." St. John Law Review 42: (October 1967).

"Crimes Without Plaintiffs." J. W. Westbrook, Baylor Law Review 25:37, Winter 1973.

"Grand Jury - Prosecutorial Abuse of the Indictment Process" R.S. Johnston Journal of Criminal Law and Criminology 65:157-169 June 1974.

"Grand Jury and Post-Watergate America" F.J. Solowey Trial 10:32-34

November 1974.

"Behavior of Grand Juries: Acquiescence or Justice?" R.A. Corp Social Science Quarterly 55:853-870. March, 1975.

"Joinder of Substantive Offenses and Perjury in One Indictment." T.D. Quinn Journal of Criminal Law and Criminology 66:44-55 March 1975.

"Use of Immunity: Jail for Those Who Refuse to Play" J. Avner and K. Johnson Trial 12:66-67 January 1976.

"Grand Jury Its Use and Abuse." L. Cobden. Crime & Delinquency 22:149-165 April 1976.

"Problem of Grand Jury Leaks." H.P. Fuhringer Trial 12:33 + May 1976.

Baime, David S. and Daniel L. Grossman: Altering the role of the grand jury: prosecution by information and the grand jury's residual function [focuses on the dual charging system which allows for either initiation of prosecution by an information, or in appropriate cases, by the grand jury; New Jersey]. Criminal Justice Quarterly. 4:47-73 Spring/Summer '76.

"Symposium on Witness Immunity." Journal of Criminal Law and Criminology 67: 129-180. June 1976.

United States. House. Com. on the judiciary. Federal grand jury: hearing, June 10-August 26, 1976. 94th Cong. 2nd sess. '76.

United States. Senate. Com. on the judiciary: subcom. on constitutional rights. Reform of the grand jury system: hearing, September 28, 94th Cong. 2nd sess. '76.

Naftalis, Gary P. and Marvin E. Frankel. The grand jury: an institution on trial. ISBN 0-8090-5092-7. '77.

Grand jury manual for prosecutors: criminal justice standards [New Jersey]. ISBN 0-8090-5092-7. '77.

United States. House. Com. on the judiciary. Subcom. on immigration, citizenship, and internat. law. 95th Cong., 1st sess. '77.

Hager, Barry M.: Another chance for revising grand juries. Congressional Quarterly Weekly Report. 35:855-7 My 7 '77.

Falk, Carol H.: Under indictment: GM [General Motors Corporation], other unlikely critics accuse grand juries of abusing rights they are supposed to protect. Wall Street Journal 189:42 Je 23 '77.

'Send in the Lawyers." Economist 264:32 August 20, 1977.

"Disclosure of Federal Grand Jury Material." K. Polk Journal of Criminal Law and Criminology 68:399-411 September 1977.

"Grand Jury Reform. Panacea or Trojan Horse?" M. Fisk Trial 13:15-18 September 1977.

"Grand Jury Discrimination" Journal of Criminal Law and Criminology 68:533-542. December 1977.

Nash, Ed.: The grand jury system: is it a protection for citizens or an instrument for prosecutors? Illinois Issues. 4:22-4 F '78.

Kelley, Dean M.: The church, the FBI and privacy: beyond the priest-penitent privilege [on the legal position of church workers, other than ordained clergy, who decline to testify before grand juries against individuals with whom they have worked in the church]. Christianity and Crisis: a Christian journal of opinion. 38:28-30 F 20 '78.

, Dean M.: A primer for pastors: what to do when the FBI knocks [church experiences with government investigations into alleged terrorist and other political activist operations: emphasis on use of the grand jury]. Christianity and Crisis: A Christian Journal. 37: 86-92 My 2 '77.

Gerstein, Richard E. and Laurie O. Robinson: Remedy for the grand jury: retain but reform [discusses proposals of the American Bar Association, house of delegates]. American Bar Association Journal. 64:337-40 Mr '78.

Rodis, William R.: A lawyer's guide to grand jury abuse. Criminal Law Bulletin 14:123-39 Mr/Ap '78.

Pike, David F.: Are grand juries getting out of line? not only minorities say that the answer is "yes"; pillars of the establishment, too, are beating the drums for reform. *U.S. News and World Report*. 84:65-7 Je 19 '78.

Heitz, Michael G.: The rights of a witness before the grand jury. *Missouri Law Review*. 43:714-33 Fall '78.

United States. Senate. Com. on the judiciary. Subcom. on admin. practice and procedure. The Grand Jury reform act of 1978: hearings: pts. 1-2, August 17-24, 1978, on S. 3405, to establish certain rules with respect to the appearance of witnesses before a grand jury in order to protect the constitutional rights of such witnesses under the Fourth, Fifth, and Sixth amendments to the constitution; to provide for independent inquiries by grand juries; to require periodic reports to Congress, and for other purposes. 95th Cong., 2nd sess. '79.

"Fifth Amendment - Use of Grand Jury Testimony at Trial Journal of Criminal Law and Criminology 70:424-432. Winter 1979.

Murov, Oscar: An examination of the grand jury: inquest and quest. *New York State Bar Journal*. 51:16-19+ Ja, 115-17+ F '79.

"Structuring the Anti-Trust Case" J. Cooper Trial 15:30-33 April 1979.

"Preliminary Hearing, Grand Jury or Both." W.T. Westling Trial 15:70-71. July 1979.

"Relationship Between Grand Jury Composition and Performance." C.K. Rowland, Bibliography, Social Science Quarterly 60:323-327. September 1979.

"Representing a Witness Before the Grand Jury." H.P. Fahringer, illustrated, Trial 15:30-33+ October 1979.

Grand Jury Subpoenas and First Amendment Privileges." E.R. Scheiman American Academy of Political and Social Science Annals. 446:106-115. November 1979.

Diamond, William H.: Federal remedies for racial discrimination in grand juror selection. *Columbia Journal of Law and Social Problems*. 16:85-117 no 1 '80.

Arenella, Peter: Reforming the federal grand jury and the state preliminary hearing to prevent conviction without adjudication [contends that the substitution of plea-bargaining for the criminal trial as the primary method for determining legal guilt requires reassessment of pretrial screening processes]. Michigan Law Review. 78:463-585 F '80.

"Preindictment Prosecutorial Conduct in the Federal System." J.T. Holderman Journal of Criminal Law and Criminology 71:1-31 Spring 1980.

Weinberger, William E.:Congressional access to grand jury transcripts. Stanford Law Review. 33:155-77 N '80.

Arenella, Peter: Reforming the federal grand jury and the state preliminary hearing to prevent conviction without adjudication. National Journal of Criminal Defense. 7:299-443 Fall '81.

Berge, Tammy Jo: Grand jury--disclosure of grand jury materials to government attorneys for civil use under federal rule of criminal procedure 6 (e). The Journal of Criminal Law & Criminology 74:1425-45 Winter '83.

Casey, Patrick S.: The admissibility of grand jury testimony under 804 (b) (5): a two-test proposal. The Journal of Criminal Law & Criminology 74:1446-70 Winter '83.

Emerson, Deborah Day ed.: Grand jury reforms: a review of key issues. Ja'83.

Russell, Sabin: Grand jury demands AMD papers. (Dept. of Defense investigation of IC testing program. Electronic News 29:16+ Feb 28 '83.

Bernstein, Barton E. and Betty McCutchan: The grand jury vs. the social workers: friends or enemies? Social Work 28:224-7 May/Jun '83.

Symposium on the grand jury. The Journal of Criminal Law & Criminology 75:1047-1196 Winter '84.

Sullivan, Thomas P. and Robert D. Nachman: If it ain't broke, don't fix it: why the grand jury's accusatory function should not be changed. The Journal of Criminal Law & Criminology 75: 1047-69 Winter '84.

Emerson, Deborah Day and Nancy L. Ames ed.: The role of the grand jury and the preliminary hearing in pretrial sentencing. My '84.

United States. Admin. Office of the U.S. Courts. Statis Analysis and Repts. Div. Grand and Petit juror service in United States district courts, 1984. (SI) cat. no. Ju 10.13:984)

Gillett, Richard W.: Jailing grand-jury resisters: implications for church activists. (Advocates of Puerto Rican independence jailed in grand jury probe of FALN bombings). Christian Century Literary 101872-7 Sept 26 '84.

Gorelick, Jamie S. and Stephen L. Braga: Grand Jury representation: a primer on pre-indictment litigation. Trial 20:20-4 Oct '84.

Crackdown on crime: crime bosses charged with concrete caper. Engineering News-Record 214:65 Mar 7 '85.

Steif, William: Justice, American style. (Puerto Rican independentista C. Noya Murati jailed for refusing to testify before jury investigating FALN). The Progressive 49:17 Sep '85.

Net widens in airport probe. (Dallas/Forth Worth International Airport). Engineering News-Record 216:12 Apr 10 '86.

Dennis, Elissa.: Fate of an unwilling witness. (C. Hill, political activist who refused to testify before a federal grand jury). The Progressive 50:17 Jul '86.

Rhein, Reginald and Joseph F. Dunphy: EPA pushes criminal sanctions. (Criminal indictments for violations). Chemical Week 139:16+ Sept 17 '86.

Albonetti, Celesta A.: Criminality, prosecutorial screening, and uncertainty: toward a theory of discretionary decision making in felony case processings. Criminology 24:623-44 Nov '86.

United States. Admin. Office of the U.S. Courts. Statis., Analysis and Repts. Div. Grand and petit juror service in the U.S. district courts, 1987.

Fannin, Rebecca: A juicy bit of bad news. (Beech-Nut Nutrition Co. indictment for selling an apple flavored drink with colorings and sugar as pure apple juice. Marketing and Media Decisions 22:8 Jan '87. [Note: What has been

the outcome pattern in these cases? MH April 1999]

Massachusetts Legis. Research Council Report relative to the grand jury, February 25, 1987. (S. no. 1626).

Gest. Ted and Donald Baer: The high price of indictment. (Problems of public officials). U.S. News & World Report 102:23-4 June 8 '87.

Deaths spur indictments. (Los Angeles) ENR 219:59 Jul 30 '87.

Bradford, Hazel and Jeffrey Trewhitt: Fed probe raps TARP safety. (Death of foreman in construction of Chicago's Tunnel and Reservoir Plan). ENR 219:59 Nov 26 '87.

Zurer, Pamela: Researcher criminally charged with fraud. (S.E. Breuning). Chemical & Engineering News 66:5 Apr 25 '88.

Selwitz, Robert: Indictments: Helmsley advertising reviewed following tax evasion charges. Hotel & Motel Management 203: 1+ May 30, '88.

Radolf, Andrew.: Newspaper editor indicted on criminal libel charges. (J Fitts of the Voice in Kingstree, SC). Editor & Publisher, the Fourth Estate 121:11+ Jul 2 '88.

Hanson, David: Chemical engineers indicted in wastes case. (Aberdeen Proving Ground in Maryland). Chemical & Engineering News 66:21 Jul 11 '88.

Mecham, Michael: Government takes fraud, bribery cases before grand jury this week. (Defense contractors). Aviation Week & Space Technology 129:20-1 Jul 18 '88.

Mitchells, Rebecca Ann: Supervisory power meets the harmless error rule in federal grand jury proceedings: Bank of Nova Scotia v United States, 108 S. Ct. 2368 (1988). The Journal of Criminal Law & Criminology 79:1037-63 Fall '88.

Northrop, five employees indicted in fraud case. Aviation Week & Space Technology 130:29 Apr 17 '89.

MMR, executive convicted. (J.B. Rutland indicted for mail fraud and collusive bidding in 1981 electric power plant contract). ENR 222:8 May 18 '89.

Kunen, James S. Frustrated grand jurors say it was no accident got off easy. (Chappaquiddick incident). People Weekly 32:34-6 Jul 24 '89.

Epstein, Debbie: Pharmacist claims cover-up in Chappaquiddick Case. (Foreman L. Leland). Drug Topics 133:16-17 Aug 7 '89.

Engelmayer, Jean E.: Foreign policy by indictment: using legal tools against foreign officials involved in drug trafficking. Criminal Justice Ethics 8:3-31 Summer/Fall '89.

Pierog, Karen: Indictments from investigation raise fears in Chicago pits. (Chicago Board of Trade and Chicago Mercantile Exchange). Futures (Cedar Falls, Iowa) 18:56b+ Sep '89.

High Court to rule on states' right to prohibit statements. (M Smith challenging Florida law that bars making public grand jury testimony). Editor & Publisher, the Fourth Estate 122:28 Oct 28 '89.

La., Ala. grand juries indict Champion officials. National Underwriter (Property & Casualty/Risk & Benefits Management Edition) 94: 1+ Apr 2 '90.

La. regulator expects no Champion indictment. (D. Green). National Underwriter (Property & Casualty/Risk & Benefits Management Edition) 94:2 Apr 9 '90.

Smolla, Rodney A.: Grand jury secrecy. Trial 26:16-17+ Jul '90.

Wachtler, Sol and Matthew T. Crosson: Prosecution of felonies in New York State: should the Grand Jury system be changed? New York State Bar Journal 62:22-6 JI '90.

La. commissioner indicted by grand jury. National Underwriter (Property & Casualty/Risk & benefits Management Edition) 94:6 Jul 9 '90.

McKenna, James T.: Eastern, maintenance heads indicted by U.S. Grand Jury. Aviation Week & Space Technology 133:84-6 Jul 30 '90.

Andersen, Austin A.: The federal grand jury: exceptions to the rule of

secrecy. FBI Law Enforcement Bulletin. 59:26-31 Ag '90.

Eastern, Officials indicted over maintenance. (Records falsification). Air Transport World 27:11 Sep '90.

Bloch, Norman: Gagging bankers: grand jury nondisclosure statues and the First Amendment. Banking Law Journal. 107:441-54 S/O '90.

Flint, Perry: The Eastern indictments. (Management charged with falsifying aircraft maintenance documents; editorial). Air Transport World 27:2 Sep '90.

Criminal charges in collapse. (B&B Steel Erectors indicted in Construction worker death at warehouse construction near Fredericksburg, VA). ENG 226:10 Feb 18 '91.

Magnuson, Ed.: Hard days for the Mafia. (Arrests and indictments). Time 125:25+ Mar 4 '85. Recent arrests of Mafia families are signs of growing coop between fed and state authorities in fighting org. crime. NY US Attorney R. Giuliani and other fed prosecutors are relying on the 1970 RICO law that targets racketeer influenced and corrupt organizations; prosecutors need only prove support of racketeering crimes, not personal commission. Court-approved buggings had wire taps have furnished evidence for many of the recent indictments. At a recent hearing of the President's Commission on organized crime, former, mafioso described their careers. The current crackdown is expected to provoke a wave of mob executions intended to silence potential govt informants.

Glaberson, William B.: The punishment of Hutton doesn't fit the crime. Business Week 40 June 3 '85. Although E.F. Hutton pleaded guilty to 2000 counts of fraud on May 2, questions remain about the Justice Depts decision not to charge any of company's employees. The brokerage has paid a \$2 mill fine and must hand out millions more in restitution, but it claims its future performance will not suffer. Upcoming congressional hearings on individ. accountability will help focus attention on the fact that people are behind corporate lawbreaking. Although prosecutors in the Hutton case insist that the case was too complicated to bring charges against employees, judges and juries might well have found the evidence comprehensible. Hutton's march to justice may serve as a warning to other companies. Yet, by obscuring the question of culpability, the prosecution's willingness to bargain may encourage corporate crime.

Lawless, Joseph F.: Prosecutorial misconduct (BOOK REVIEW) law, procedure, forms. Trial 21:74+ Aug '85.

Spears, Franklin: Presenting an effective appeal: what appellate judges expect. Trial 21:95-8+ Nov. '85.

Reese, Michael: A child-abuse case implodes. Newsweek 107:26 Jan 27 '86. McMartin pre-school case: charges against 5 of 7 defendants dropped. Case involved 200 counts of molestation over ten years, but no substantiating evidence was found. Testimony of 14 child witnesses was also inconclusive. The Children's parents were outraged by D.A. Ira Reiner's decision not to press charges, because a preliminary hearing had found the evidence sufficient order the defendants to stand trial.

Henderson, Bruce Mighty mite vs the porn queen. (Conviction of child pornography dealer C. Wilson by attorney J. Karlin). Reader's Digest 128:116-20 Mar '86.

Assistant US Attny Joyce Karlin worked long and hard to put Catherine Wilson, "the queen of kiddie porn" behind bars. Wilson, who had been arrested many times, but never jailed, was believed to be the biggest commercial dealer of child porn. in the country. IN a 1983 trial, Karlin carefully laid out Wilson's operations through witnesses and evidence. A hung jury prevented Wilson's conviction. The stakes rose as Karlin prepared for a second trial: she knew if she lost, police and prosecutors might stop pressing similar cases. Karlin located a potential witness against Wilson, but the man died before the trial. In the mean time, Wilson waived a jury trial. SHE was found guilty on all charges and given a ten-year sentence, one of the longest of its kind in the U.S. Her conviction led to a congressional statute that makes distribution and receipt of child pornography a felony, even when money is not involved.

22Press, Aric: Trying spies in a house of mirrors. Newsweek 107:64-5 June 2 '86. Ronald Pelton, a National Security Agency employee, will be tried for selling classified info to the Soviets, but prosecutors will not be able to present much of the incriminating evidence. The NSA and CIA negotiated a compromise with the U.S. attny for Md. to prevent his office from disclosing info that could harm natl security. CIA director Wm Casey is worried about media coverage of the trial and has threaten to prosecute the Wash. Post and NBC News for stories on the Pelton case that he belived threatened

national security.

Goodpaster, Gary: On the theory of American adversary criminal trial. *The Journal of Criminal Law & Criminology* 78:118-54 Spring '87.

Burns, Robert E Who will yell fire when the house is ablaze? (Conviction of anti-nuclear activist S. Komisaruk for damaging computer at Vandenburg Air Force Base). *U.S. Catholic* 54:2 Feb '89. Komisaruk was member of the Plowshares activist group She was expected to be punished for her actions, but hoped to call public attention to her aim of preventing the US from launching a first strike nuclear attack. The judge who tried the case honored the govt prosecutors request to exclude all evidence and testimony concerning her intent.

Michelmores, Peter: The startling Shelly Prine case (Use of DNA fingerprints to convict O Smith of Murder). *Reader's Digest* 135:179-80+ Jul '89.

Byron, Christopher: Conspiracy of strangers. (Charges against T Tabor, R. Wigton, and R. Freeman dropped). *New York* 22:16+ Sept 4 '89. Acting US Attny Benito Romano closed criminal investigations in to the stock-trading activities of Timothy Tabor and Richard Wigton. Tabor was arrested in Feb 1987, after being named by Drexal-Burnham Lambert deal-maker Martin Siegal as a member of an insider trading ring. There was no evidence against Tabor, but fed. prosecutors tried to force him to implicate himself, Wigton and Goldman, Sachs broker Robert Freeman in the alleged conspiracy. When Tabor refused to cooperate, Wigton and Freeman were immediately arrested. Freeman has since pleaded guilty to one count of mail fraud, but evidence of illegal activity on the part of Tabor and Wigton has never been found. Nonetheless their careers may have been destroyed by the harassment that they endured for nearly 3 years.

Cockburn, Alexander: British justice, Irish victims. (Release of Guildford Four who were wrongfully imprisoned in England for terrorist bombings). *The Nation* 249:554-5 Nov 13 '89. New investigations ordered by the director of public prosecutions in the face of heavy public pressure, reveal that the police had faked interview and obtained confessions through torture and threats and that Crown prosecutors had deliberately ignored or suppressed witnesses who could have provided alibis for the defendants. The prosecutors also concealed pertinent testimony and squelched evidence that linked the bombings to a IRA unit. The Guildford 4, all Irish, were convicted in 1975.

What that conviction has been overturned, it would be laughable to think that justice has been done. As long as the apparatus that allowed the framing of the Guildford 4 remains in place, there can be no justice for the Irish defendant in Britain.

Harbrecht, Douglas: The new evidence that could nail Noriega. Business Week 35 Jan 15 '90. Noriega's lawyers could argue that the evidence violates the 4th Amend; govt will counter that the 4th doesn't apply on foreign soil.

DeGeorge, Gail: The Noriega treasure chest'. (Money Laundering). Business Week 32-3 Jan 22 '90.

Bersharov, Douglas J.: Protecting the innocent. (McMartin Acquittals). National Review 42:44+ Feb 19 '90.

McConnell, Frank D 1942-: The trials of television (Coverage of the McMartin case). Commonweal 117:18 9-90 Mar 23 '90.

Rabinowitz, Dorothy: From the mouths of babes to a jail cell. (Case against day care teacher K. Michaels in New Jersey; cover story). Harper's 280:52-63 May '90. Substantial body of evidence indicates that Michaels, convicted in 1988 of 115 counts of sexual abuse of children, is innocent. Prosecutors alleged abuse although her abuse was never noticed by any adult and was substantiated by the children only after they were asked leading questions by investigators. As in other similar cases, society seems willing to cast aside constitutional rights, the rules of evidence, and common sense to condemn anyone accused of sexual abuse.

Kantrowitz, Barbara: Still shocking after a year. Newsweek 116:48-9 July 23 '90. Central park jogger case. If prosecutors bring the victim to the stand, her mere presence could overwhelm the defense's arguments of inconsistencies in the physical evidence and possible improprieties in the way police obtained statements from the defendants.

Byron, Christopher: Unreasonable doubt. (M Milken's hearing) New York 23:14+ Oct 15 '90. Govt prosecutors are trying to pin the max. sentence on Milkin by arguing that he committed dozens of other crimes in addition to the 6 that he was charged with in a plea-bargain last April. The charges are to be

debated in a Fatico hearing, a procedure which the prosecution and defense are allowed to argue over disputed evidence of alleged infractions that did not figure in the original conviction. Such hearings are designed to inform sentencing judges, but in this case, it looks more like a gimmack for prosecuting a case under no-lose conditions.

Wells, Chris and Michele Galen: Milken is taking the fall for a decade of greed. Business Week 30 Dec 10 '90. Judge Kimba Wood's rationales for the 10 year sentence seem inconsistent and weak. Her decision that he would serve 10 years in jail and three years in community service even took prosecutors by surprise and appeared to be based largely on the supposition that Milken played a major role in the so-called Greed Decade. The punishment ordered is out of proportion to the crimes Milken admitted to and those the judge found that he committed. It seems clear the judge intended to get Milken to cooperate with the investigators through his stiff sentence, but he may have little to tell.

Buzawa, Eve S. and Carl G. Buzawa: Domestic violence: the criminal justice response. ISBN 0-8039-3575-7 '90  
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Stephen Cresswell, Mormons, Moonshiner

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"Grand Jury - Prosecutorial Abuse of The Indictment System" R.G. Johnson  
Journal of Criminal Law and Criminology 65:157-169. June 1974.

"Parameters of Criminal Prosecution: An Application of Path Analyses to a  
Problem of Criminal Justice" J. Hagan Journal of Criminal Law and  
Criminology 65:536-544. December 1974.

Frampton, George T., Jr.: Some practical and ethical problems of prosecuting  
public officials [based on lecture]. Maryland Law Review. 36:5-34 no I 1976.

"Discovery: Prosecutor's Failure to Disclose" M.A. Feitlebaum Journal of  
Criminal Law and Criminology 67:408-415. December, 1976.

"Sports Violence and The Prosecutors" G.W. Flakne and A.H. Caplon Trial  
13:33-35 January 1977.

"Prosecution Must Understand Correctional Environment" D. Neville American  
Journal of Correction 39:18-19 September 1977.

"Case for Political Patronage" N. Lemann Washington Monthly 9:8-17,  
December 1977.

"Post Arrest Release Decisions: An Empirical Exomenation of Social and  
Legal Criteria" C.E. Pope Bibliography Journal of Research in Crime and  
Delinquency 15:33-53 January 1978.

"Prosecutor's Duty to Disclose: From Brady to Agiers and Beyond" M.E. Rusin  
Journal of Criminal Law and Criminology 69:197-225 Summer 1978.

"Loyalty and Equality: Plea Bargaining in the Prosecution of White Collar and  
Common Crimes." J. Katz, Bibliography. Law and Society Review 13:431-  
459. Winter 1979.

M.A. Myers and J. Hagan, "Private and Public Trouble: Prosecutors and the  
Allocation of Court Resources" Bibliography Social Problems 26:439-451.  
April 1979.

"Prosecution's Power, Procedural Rights and Pleading Guilty. The Problem of Coercion in Plea Bargaining Drug Cases" J.W. Clyde, Bibliography, Social Problems 26:452-466 April 1979.

"Machiavelli in The Classroom." Business and Society Review 30:5-6. Summer 1979.

"Criminal Prosecutions for Income Tax Evasion" J.W. Weber Journal of Criminal Law and Criminology 70:355-359 Fall 1979

"Prosecutor's Duty to Charge" W.T. Wresleng Trial 15:28-29+ October 1979

"Harmless Error: Constitutional Sneak Thief." S.H. Goldberg Journal of Criminal Law and Criminology 71:421-442 Winter 1980.

"Immunity of the U.S. Attorney General." Journal of Criminal Law and Criminology, 71:31-38, Spring 1980.

"Preindictment Prosecutorial Conduct in the Federal System." J.F. Haldeman Journal of Criminal Law and Criminology 71:1-31 Spring 1980.

"Duplicative Statues, Prosecutorial Discretion and the Illinois Armed Violence States." M.H. Fish Journal of Criminal Law and Criminology 71:226-43 Fall 1980.

"Fifth Amendment - Extension of Double Jeopardy Protection to Sentencing." A.M. Pachciarek Journal of Criminal Law and Criminology 72:1276-1287 Winter 1981.

"Common Law in Action: The Prosecution of Felonies and Misdemeanors" Mike Myers, Bibliography, Sociological Inquiry 52:1-15 Winter 1982.

"Twice Jeopardizing the Rights of the Accused. The Supreme Court Tibbs and Kennedy Discussion" D.L. Schmitt Journal of Criminal Law and Criminology 73:1474-1490 Winter, 1982.

"Prosecutor Not Presumed Vindictive in Pre-Trial Charge Increases After Defendant Request for a Jury Trial." E.M. Mills Journal of Criminal Law and

Criminology Winter, 1982.

"Limited Protection Against Excessive Prosecutorial Delay." C.E. Moore  
Journal of Criminal Law and Criminology 73:1491-1506 Winter 1982.

Myers, Martha A. and Gary D. LaFree: Sexual assault and its prosecution: a comparison with other crimes. The Journal of Criminal Law & Criminology. 73:1282-305 Fall '82.

"Motions in Limine: Tools for a Fair Trial." T. Davis Trial 18:90-93 November 1982.

Allen, Ronald J.: Rationality and accuracy in the criminal process: a discordant note on the harmonizing of the justices' views on burdens of persuasion in criminal cases. The Journal of Criminal Law & Criminology 74:1147-70 Winter '83.

McLeod, Maureen: Victim noncooperation in the prosecution of domestic assault: a research note. Criminology 21:395-416 Aug '83.

Kadish, Mark J., Kadish, Rosalyn Suna and Alan J. Baverman: The continuing criminal enterprise statute: a powerful weapon for federal prosecutors. Trial 19:66-70+ Oct '83.

\*Lawless, Joseph F. and Kenneth E. North: Prosecutorial misconduct: a battleground in criminal law. Trial 20:26-9 Oct '84.

Steinberg, Allen: From private prosecution to plea bargaining; criminal prosecution, the district attorney, and American legal history. Crime & Delinquency 30:568-92 Oct '84.

Steinberg, Allen: "The spirit of litigation:" private prosecution and criminal justice in nineteenth century Philadelphia. Journal of Social History 20:231-49 Winter '86.

Pritchard, David. "Homicide and Bargained Justice: the agenda setting effect of crime news on prosecutors," Public Opinion Quarterly, 50:143-59 Summer 1986.

Miethe, Terance D. "Charging and Plea Bargaining Practices under determinate sentencing: an investigation of the hydraulic displacement of

discretion." Journal of Criminal Law & Criminology 78:155-76 Spring 1987.

"Crown Prosecution Service: Lawyers Lacking," The Economist 304:49-50 July 25, 1987.

Maas, Arthur. "Public Policy by Prosecution" Public Interest 89:107-27 Fall 1987.

Huussen Arend H., Jr. "Prosecution of Sodomy in 18th century Frisia, Netherlands," Journal of Homosexuality 16 no1-2:249-62 1988.

Sanders, Andrew. "The Limits to diversion from Prosecution," British Jnl of Criminology 28:513-32, Autumn 88.

North, Kenneth. The Proffer Process: Unfair to Defendants Trial 24:49-50, Sept 88.

Reinganum, Jennifer M. "Plea Bargaining and Prosecutorial Discretion," American Economic Review 78:713-28 Sept 88.

Daugherty, Donald. "The Separation of Powers and abuses in Prosecutorial Function: Morrison v. Olson," Journal of Criminal Law and Criminology 79:953-96, Fall 88.

Arkin, Stanley S. "Prevention and Prosecution of Computer and High Technology Crime," Trial 24:106-7, Nov 88.

Adler, Stephen J.: Heated argument: are RICO seizures a violation of rights, as critics contend? presumption of innocence doesn't prevent restraint of accused before trial. Wall Street Journal. 213:1+ F 15 1989.

Bishop, Donna. Frazier, Charles E. Henretta, John C. "Prosecutorial Waiver: case study of of a questionable reform," (Florida) Crime & Delinquency 35:179-201, Apr 89.

Lau, Emily, "Carry on Carrian: Hong Kong Stumble Again in its Carrian Prosecution," Far East Economic Review, 144:90-1, May 19, 89.

United States. House. Com. on the Judiciary. Leaks during the course of criminal investigations: joint hearing, August 2, 1989, before the Subcommittee on Civil and Constitutional Rights and the Subcommittee on

Criminal Justice. 1989. 101st Cong., 1st sess.

Schmidt, Janell, and Steury, Ellen Hochstadler, "Prosecutorial Discretion in Filing Charges in Domestic Violence Cases," Criminology 27:487-510. Aug 89.

Newman, Eric S.: Eighth Amendment -- prosecutorial comment regarding the victim's personal qualities should not be permitted at the sentencing phase of a capital trial; *South Carolina v. Gathers*, 109 S. Ct. 2207 (1989). *The Journal of Criminal Law & Criminology* 80:1236-55 Winter '90.