

# Negotiating Crime



# Negotiating Crime

Plea Bargaining, Problem Solving, and  
Dispute Resolution in the Criminal Context

**Cynthia Alkon**

PROFESSOR OF LAW AND  
DIRECTOR OF THE CRIMINAL LAW, JUSTICE & POLICY PROGRAM  
TEXAS A&M UNIVERSITY SCHOOL OF LAW

**Andrea Kupfer Schneider**

PROFESSOR OF LAW AND  
DIRECTOR OF THE DISPUTE RESOLUTION PROGRAM  
MARQUETTE UNIVERSITY LAW SCHOOL



CAROLINA ACADEMIC PRESS  
Durham, North Carolina

Copyright © 2019  
Carolina Academic Press, LLC  
All Rights Reserved

**Library of Congress Cataloging-in-Publication Data**

Names: Alkon, Cynthia, author. | Schneider, Andrea Kupfer, author.

Title: Negotiating crime : plea bargaining, problem solving, and dispute resolution in the criminal context / by Cynthia Alkon and Andrea Kupfer Schneider.

Description: Durham, North Carolina : Carolina Academic Press, LLC., 2019.

Identifiers: LCCN 2019023332 | ISBN 9781531000448 (paperback) | ISBN 9781531000455 (ebook)

Subjects: LCSH: Criminal procedure--United States. | Plea bargaining--United States. | Restorative justice--United States. | Therapeutic jurisprudence--United States. | LCGFT: Casebooks.

Classification: LCC KF9619 .A45 2019 | DDC 345.73/05--dc23

LC record available at <https://lcn.loc.gov/2019023332>

eISBN 978-1-5310-0045-5

Carolina Academic Press  
700 Kent Street  
Durham, North Carolina 27701  
Telephone (919) 489-7486  
Fax (919) 493-5668  
[www.cap-press.com](http://www.cap-press.com)

Printed in the United States of America

# Contents

---

Table of Principal Cases	xv
Preface	xvii
Acknowledgments	xix

## PART I

<b>Chapter 1 • Introduction</b>	3
I. The U.S. Criminal Legal System: A Basic Introduction	3
II. The Players	6
A. Judges	7
B. Prosecutors	8
C. Defense Attorneys	9
III. Theories of Punishment	12
A. Incapacitation/Public Protection	12
B. Deterrence	13
C. Retribution	13
D. Treatment/Rehabilitation	14
IV. Incarceration in the United States	14
Jacob Kang-Brown, Oliver Hinds, Jasmine Heiss & Olive Lu, <i>The New Dynamics of Mass Incarceration</i>	15
Mark W. Bennett, <i>Addicted to Incarceration: A Federal Judge             Reveals Shocking Truths About Federal Sentencing and             Fleeting Hopes for Reform</i>	17
Notes/Questions	19
V. Structure of This Book	24
A. Plea Bargaining	25
B. Problem Solving Courts/Therapeutic Justice	26
C. Restorative Justice	27
D. Juvenile Legal System	28
Additional Resources	30
<b>Chapter 2 • Charging, Discretion, and Diversion</b>	31
I. Prosecutorial Power in Filing Charges	32
Fortieth Annual Review of Criminal Procedure, <i>Prosecutorial Discretion</i>	32
Peter Krug, <i>Prosecutorial Discretion and Its Limits</i>	33

Peter Krug, <i>Prosecutorial Discretion and Its Limits</i>	37
Notes/Questions	39
II. Prosecutorial Power/Role in Grand Jury Indictments	39
Ric Simmons, <i>The Role of the Prosecutor and the Grand Jury in Police Use of Deadly Force Cases: Restoring the Grand Jury to Its Original Purpose</i>	42
Notes/Questions	43
III. Concerns about Prosecutorial Discretionary Power	45
Angela J. Davis, <i>The American Prosecutor: Independence, Power, and the Threat of Tyranny</i>	45
Shelby A. Dickerson Moore, <i>Questioning the Autonomy of Prosecutorial Charging Decisions: Recognizing the Need to Exercise Discretion — Knowing There Will Be Consequences for Crossing the Line</i>	48
Notes/Questions	49
IV. Diversion	53
Thomas E. Ulrich, <i>Pretrial Diversion in the Federal Court System</i>	54
Angela J. Davis, <i>The Prosecutor's Ethical Duty to End Mass Incarceration</i>	56
Notes/Questions	57
V. Comparative Prosecutorial Powers	58
Ronald F. Wright, <i>Reinventing American Prosecution Systems</i>	59
Notes/Questions	61
Additional Resources	61
<b>Chapter 3 • Plea Bargaining: An Introduction</b>	63
I. A Short History of Plea Bargaining	64
Albert A. Alschuler, <i>Plea Bargaining and Its History</i>	64
Jennifer L. Mnookin, <i>Uncertain Bargains: The Rise of Plea Bargaining in America</i>	67
II. Why We Have Plea Bargaining	70
Cynthia Alkon, <i>The U.S. Supreme Court's Failure to Fix Plea Bargaining: The Impact of Lafler and Frye</i>	71
III. The Underlying Interests	72
Notes/Questions	75
IV. The Foundational Cases	76
A. Plea Bargaining Is Constitutional	76
<i>Brady v. United States</i>	77
Notes/Questions	80
B. Limits on Prosecutorial Power?	81
<i>Santobello v. New York</i>	81
Notes/Questions	83
<i>Bordenkircher v. Hayes</i>	83
Notes/Questions	87
C. Requirements of a Guilty Plea	87
<i>Godinez v. Moran</i>	87

Notes/Questions	92
Additional Resources	93
<b>Chapter 4 • Plea Bargaining Rules and Practice</b>	95
I. Statutes Regulating Plea Bargaining?	96
Notes/Questions	97
Notes/Questions	100
II. Defense Lawyers: Constraints and Duties	100
A. Indigent Defense	100
Cynthia Alkon, <i>The U.S. Supreme Court's Failure to Fix Plea Bargaining: The Impact of Lafler and Frye</i>	100
B. The Right to Effective Assistance of Counsel	102
<i>Padilla v. Kentucky</i>	102
<i>Missouri v. Frye</i>	106
Notes/Questions	112
<i>Lafler v. Cooper</i>	113
Notes/Questions	121
C. Competent Assistance beyond Counseling?	122
III. Right to Discovery	123
Cynthia Alkon, <i>The Right to Defense Discovery in Plea Bargaining Fifty Years after Brady v. Maryland</i>	123
Additional Resources	127
<b>Chapter 5 • Plea Bargaining Concerns</b>	129
I. Coercion	131
John H. Langbein, <i>Torture and Plea Bargaining</i>	131
Notes/Questions	133
II. The Trial Penalty	133
Cynthia Alkon, <i>The U.S. Supreme Court's Failure to Fix Plea Bargaining: The Impact of Lafler and Frye</i>	134
Notes/Questions	135
III. Innocent Defendants	135
Jed S. Rakoff, <i>Why Innocent People Plead Guilty</i>	136
Notes/Questions	138
Josh Bowers, <i>Punishing the Innocent</i>	139
Notes/Questions	142
IV. Prosecutorial Conduct and Power in Plea Bargaining	143
A. Power to Charge	143
Cynthia Alkon, <i>The U.S. Supreme Court's Failure to Fix Plea Bargaining: The Impact of Lafler and Frye</i>	144
Notes/Questions	144
Cynthia Alkon, <i>An Overlooked Key to Reversing Mass Incarceration: Reforming the Law to Reduce Prosecutorial Power in Plea Bargaining</i>	145
Notes/Questions	146

B. Prosecutor Conduct during Plea Bargaining	147
Cynthia Alkon, <i>Hard Bargaining in Plea Bargaining: When Do Prosecutors Cross the Line?</i>	147
Notes/Questions	151
C. Constraints on Prosecutorial Power?	152
Josh Bowers, <i>Fundamental Fairness and the Path from Santobello to Padilla: A Response to Professor Bibas</i>	152
Notes/Questions	156
V. Impact on Lawyering Skills Development and the Adversarial System	156
Honorable William G. Young, <i>Vanishing Trials, Vanishing Juries, Vanishing Constitution</i>	156
Robert J. Conrad Jr. & Katy L. Clements, <i>The Vanishing Criminal Jury Trial: From Trial Judges to Sentencing Judges</i>	158
Notes/Questions	161
Additional Resources	162
<b>Chapter 6 • Plea Bargaining Reform</b>	163
I. Change the Law	164
A. Reform the Underlying Criminal Law	164
Cynthia Alkon, <i>An Overlooked Key to Reversing Mass Incarceration: Reforming the Law to Reduce Prosecutorial Power in Plea Bargaining</i>	164
Notes/Questions	167
B. Limits on the Possible Plea Discount	168
Notes/Questions	169
II. Change the Process	170
A. Better Regulation of Plea Bargaining	170
Stephanos Bibas, <i>Regulating the Plea-Bargaining Market: From Caveat Emptor to Consumer Protection</i>	170
Notes/Questions	173
B. Give Defendants More of a Role in the Process	173
Michael O'Hear, <i>Plea Bargaining and Procedural Justice</i>	173
C. Ban Plea Bargaining or Increase the Number of Trials	176
Roland Acevedo, <i>Is a Ban on Plea Bargaining an Ethical Abuse of Discretion? A Bronx County, New York Case Study</i>	179
Notes/Questions	181
III. Change the Players	181
A. Changes in How Defense Lawyers Do Their Job	181
B. Change Prosecutorial Behavior	183
1. Reduce Prosecutorial Hard Bargaining	183
Cynthia Alkon, <i>Hard Bargaining in Plea Bargaining: When Do Prosecutors Cross the Line?</i>	183
2. Improve Prosecutorial Screening of Cases	186
Ronald Wright & Marc Miller, <i>The Screening/Bargaining Tradeoff</i>	186
Notes/Questions	190



C. Increase the Role of Judges	191
Nancy J. King & Ronald F. Wright, <i>The Invisible Revolution in Plea Bargaining: Managerial Judging and Judicial Participation in Negotiations</i>	191
Notes/Questions	195
Additional Resources	195
<b>Chapter 7 • Plea Bargaining as Negotiation</b>	197
I. Plea Bargaining Is Negotiation — with Constraints	198
Cynthia Alkon, <i>Plea Bargaining: An Example of Negotiating with Constraints</i>	198
Gerard E. Lynch, <i>Our Administrative System of Criminal Justice</i>	200
Notes/Questions	202
Andrea Kupfer Schneider, <i>Cooperating or Caving In: Are Defense Attorneys Shrewd or Exploited in Plea Bargaining Negotiations?</i>	203
Notes/Questions	205
Robert L. Doyel, <i>The National College-Mercer Criminal Defense Survey: Preliminary Observations about Interviewing, Counseling, and Plea Negotiations</i>	206
Notes/Questions	209
II. Preparation for Plea Bargaining	210
A. Facts, Law and Policy Investigation — What Makes a Plea Fair?	212
Rodney J. Uphoff, <i>The Criminal Defense Lawyer as Effective Negotiator: A Systemic Approach</i>	214
Notes/Questions	216
Cynthia Alkon, <i>Plea Bargain Negotiations: Defining Competence beyond Lafler and Frye</i>	217
Notes/Questions	218
B. Elements of an Agreement, Bargaining Options and BATNA	219
Rebecca Hollander-Blumoff, <i>Getting To “Guilty”: Plea Bargaining as Negotiation</i>	219
Notes/Questions	222
Jenny Roberts & Ronald F. Wright, <i>Training for Bargaining</i>	223
Notes/Questions	225
A Note on Options and Flexibility in Negotiation	225
C. Outlining Interests and Setting Goals in Plea Bargaining	226
1. Understanding Interests of All Parties	226
Abbe Smith, <i>The Lawyer’s “Conscience” and the Limits of Persuasion</i>	226
Notes/Questions	228
Notes/Questions	229
2. Setting Goals and Asking for Them	230
Notes/Questions	231
Jenny Roberts & Ronald F. Wright, <i>Training for Bargaining</i>	232
Notes/Questions	233
Additional Resources	234

<b>Chapter 8 • Plea Bargaining — Sitting Down at the Table</b>	235
I. Lawyer Reputation and Relationships — Preparing to Communicate	235
Andrea Kupfer Schneider, <i>Cooperating or Caving In: Are Defense Attorneys Shrewd or Exploited in Plea Bargaining Negotiations?</i>	238
Notes/Questions	240
II. Negotiation Styles	241
A. Competing	241
B. Accommodating	242
C. Avoiding	243
D. Collaborating	244
E. Compromising	245
Jenny Roberts & Ronald F. Wright, <i>Training for Bargaining</i>	245
Notes/Questions	247
III. Communication	248
A. Information Exchange	249
Jenny Roberts & Ronald F. Wright, <i>Training for Bargaining</i>	249
Notes/Questions	250
B. Social Intuition	250
Notes/Questions	252
C. Choosing among Modes of Communication	252
IV. Don't Screw It Up — Understanding Negotiation Errors	254
A. Working with Defendants in the Context of Plea Bargaining	254
Richard Birke, <i>Reconciling Loss Aversion and Guilty Pleas</i>	254
Notes/Questions	256
Stephanos Bibas, <i>Plea Bargaining Outside the Shadow of Trial</i>	257
Notes/Questions	263
B. Understanding Prosecutor Motivations and Perspectives	263
Alafair S. Burke, <i>Prosecutorial Passion, Cognitive Bias, and Plea Bargaining</i>	263
Notes/Questions	266
Ronald F. Wright & Kay L. Levine, <i>The Cure for Young Prosecutors' Syndrome</i>	267
Notes/Questions	269
Additional Resources	270

## PART II

<b>Introduction to Part II</b>	275
<b>Chapter 9 • Problem Solving Courts/Therapeutic Justice</b>	277
I. How Problem Solving Courts Got Started	278
A. Introduction	278
Bruce J. Winick, <i>Therapeutic Jurisprudence and Problem Solving Courts</i>	279
Notes/Questions	282
Phase 1 Requirements	284
Phase 2 Requirements	284

Phase 3 Requirements	285
Phase 4 Requirements	285
Phase 5 Requirements	286
Notes/Questions	286
Sarah Beller, <i>A Day at the Drug Court</i>	287
Notes/Questions	291
Aaron Levin, <i>Mental Health Courts: A Strategy That Works</i>	292
Notes/Questions	294
Center for Effective Justice, <i>Texas Public Policy Foundation, Veterans Are Frequently Incarcerated</i>	295
Notes/Questions	296
II. Why Does This Work? (Or What Is the Theory Behind These Courts?)	296
David M. Eagleman, Mark A. Corroero & Jyotpal Singh, <i>Why Neuroscience Matters for Rational Drug Policy</i>	297
Notes/Questions	301
Bruce J. Winick, <i>Therapeutic Jurisprudence and Problem Solving Courts</i>	301
III. Does This Work in Practice?	304
Richard C. Boldt, <i>The “Tomahawk” and the “Healing Balm”: Drug Treatment Courts in Theory and Practice</i>	304
Notes/Questions	307
Additional Resources	307
<b>Chapter 10 • Problem Solving Courts: Concerns</b>	309
I. Concerns with Judges and Attorneys	310
Richard C. Boldt, <i>Rehabilitative Punishment and the Drug Treatment Court Movement</i>	310
Notes/Questions	313
Tamar M. Meekins, <i>“Specialized Justice”: The Over-Emergence of Specialty Courts and the Threat of a New Criminal Defense Paradigm</i>	313
Notes/Questions	321
II. Concerns with Offenders and the Law	322
Norman L. Reimer, <i>Addicted to a Flawed Solution: Drug Courts Revisited</i>	322
Notes/Questions	324
James L. Nolan, Jr., <i>Redefining Criminal Courts: Problem-Solving and the Meaning of Justice</i>	324
Notes/Questions	330
What Do Medical Professionals Have to Say?	330
III. Ideas for Moving Forward	331
Greg Berman, <i>Redefining Criminal Courts: Problem-Solving and the Meaning of Justice</i>	331
Tamar M. Meekins, <i>“Specialized Justice”: The Over-Emergence of Specialty Courts and the Threat of a New Criminal Defense Paradigm</i>	336
Notes/Questions	339
Additional Resources	339

<b>Chapter 11 • Restorative Justice</b>	341
I. What Is Restorative Justice?	342
Zach Brooke, <i>Behind the Walls</i>	342
Carrie Menkel-Meadow, <i>Restorative Justice: What Is It and Does It Work?</i>	345
Notes/Questions	348
Mark S. Umbreit, Betty Vos, Robert B. Coates & Elizabeth Lightfoot, <i>Restorative Justice in the Twenty-First Century: A Social Movement             Full of Opportunities and Pitfalls</i>	349
Hadar Dancig-Rosenberg & Tali Gal, <i>Restorative Criminal Justice</i>	355
Notes/Questions	360
II. Parties and Process in Restorative Justice	361
George Mousourakis, <i>Understanding and Implementing         Restorative Justice</i>	361
Notes/Questions	372
Additional Resources	373
<b>Chapter 12 • Restorative Justice Effectiveness and Concerns</b>	375
I. Does Restorative Justice Work?	375
Mark S. Umbreit, Betty Vos, Robert B. Coates & Elizabeth Lightfoot, <i>Restorative Justice in the Twenty-First Century: A Social Movement             Full of Opportunities and Pitfalls</i>	375
Notes/Questions	385
Notes/Questions	387
II. Critiques and Responses to Restorative Justice	387
Richard Delgado, <i>Goodbye to Hammurabi: Analyzing the Atavistic         Appeal of Restorative Justice</i>	388
Erik Luna, <i>Punishment Theory, Holism, and the Procedural Conception         of Restorative Justice</i>	394
Notes/Questions	397
Mary Ellen Reimund, <i>The Law and Restorative Justice: Friend or Foe?         A Systemic Look at the Legal Issues in Restorative Justice</i>	398
Notes/Questions	404
Additional Resources	406
<b>Chapter 13 • Juvenile Legal System: An Introduction</b>	407
I. History of Juvenile Courts	408
Daniel M. Filler & Austin E. Smith, <i>The New Rehabilitation</i>	408
Notes/Questions	412
II. Juvenile Courts	412
III. Plea Bargaining by Juveniles	415
Lacey Cole Singleton, <i>Say “Pleas”: Juveniles’ Competence to         Enter Plea Agreements</i>	415
Notes/Questions	420
IV. Concerns about the Juvenile Legal System	422

A. Discrimination	422
Samantha Michaels, <i>Black Kids Are 5 Times Likelier Than White Kids to Be Locked Up: And the Racial Disparity Is Only Growing</i>	422
Heather Cobb, <i>Separate and Unequal: The Disparate Impact of School-Based Referrals to Juvenile Court</i>	423
Notes/Questions	426
B. Innocent Juvenile Defendants	427
Steven A. Drizin & Greg Luloff, <i>Are Juvenile Courts a Breeding Ground for Wrongful Convictions?</i>	427
Notes/Questions	433
C. Transfer to Adult Court	434
Christopher Slobogin, <i>Treating Juveniles Like Juveniles: Getting Rid of Transfer and Expanded Adult Court Jurisdiction</i>	434
Notes/Questions	435
Additional Resources	436
<b>Chapter 14 • Are Juveniles Different?</b>	437
I. Introduction to Neuroscience and the Juvenile Brain	438
Lorelei Laird, <i>States Raising Age for Adult Prosecution Back to 18</i>	438
II. The Supreme Court Cases	439
<i>Roper v. Simmons</i>	440
Notes/Questions	444
<i>Graham v. Florida</i>	444
Notes/Questions	451
<i>Miller v. Alabama, Jackson v. Hobbs</i>	452
Notes/Questions	457
III. Juvenile Justice: A Comparative View	458
Anthony N. Doob & Michael Tonry, <i>Varieties of Youth Justice</i>	459
Notes/Questions	462
IV. Juvenile Justice Reforms Based on Brain Science?	462
A. Are We Adults at 18?	463
Tim Requarth, <i>Neuroscience Is Changing the Debate Over What Role Age Should Play in the Courts</i>	463
Notes/Questions	464
B. Should Juveniles Be Prosecuted?	465
<i>Adjusting Juvenile Justice</i>	465
Notes/Questions	466
Additional Resources	466
<b>Chapter 15 • Alternative Processes for Juveniles</b>	467
I. Juvenile Court: The Original Alternative Process	468
Christopher Slobogin, <i>Treating Juveniles Like Juveniles: Getting Rid of Transfer and Expanded Adult Court Jurisdiction</i>	468
Notes/Questions	469

II. Problem Solving Courts in the Juvenile System	470
Daniel M. Filler & Austin E. Smith, <i>The New Rehabilitation</i>	470
Notes/Questions	472
Erin R. Collins, <i>Status Courts</i>	473
Notes/Questions	478
III. Teen Courts	478
Julieta Kendall, <i>Can It Please the Court? An Analysis of the Teen Court System as an Alternative to the Traditional Juvenile Justice System</i>	479
Notes/Questions	482
IV. Restorative Justice for Juveniles	482
Cara Suvall, <i>Restorative Justice in Schools: Learning from Jena High School</i>	482
Notes/Questions	489
Additional Resources	494
<b>Bibliography</b>	495
<b>Index</b>	503

# Table of Principal Cases

---

Bordenkircher v. Hayes, 434 U.S. 357 (1978), 83, 87, 154, 155  
Boykin v. Alabama, 395 U.S. 238 (1969), 76, 87, 89  
Brady v. Maryland, 373 U.S. 83 (1963), 8, 123, 182  
Brady v. United States, 397 U.S. 742 (1970), 76, 77, 81, 82, 87, 89, 153  
Gideon v. Wainwright, 372 U.S. 335 (1963), 10, 100  
Godinez v. Moran, 509 U.S. 389 (1993), 87  
Graham v. Florida, 560 U.S. 48 (2010), 28, 437, 444, 452, 457, 458  
Lafler v. Cooper, 132 S. Ct. 1376 (2012), 25, 106, 113, 121, 182  
Miller v. Alabama, 567 U.S. 460 (2012), 28, 437, 452, 457  
Missouri v. Frye, 106, 109, 113, 118, 121, 182, 197, 199  
Montgomery v. Louisiana, 136 S. Ct. 718 (2016), 457  
Padilla v. Kentucky, 98, 102, 107, 112, 114, 181  
Roper v. Simmons, 543 U.S. 551 (2005), 28, 416, 437, 440, 444, 457–459  
Santobello v. New York, 404 U.S. 2567 (1971), 25, 81, 110, 152  
Strickland v. Washington, 466 U.S. 668 (1984), 103, 106, 114, 209  
United States v. Jackson, 390 U.S. 570 (1968), 76  
United States v. Ruiz, 536 U.S. 622 (2002), 123–126





# Preface

---

This book is about how we resolve criminal cases in processes other than trials. Until now there has not been a single book that brings together reading about the concerns, critiques, proposals for reform, as well as focusing on the skills needed for the variety of processes beyond trial through which criminal cases are resolved.

To our readers who are law professors and law students, we understand that this book may look and feel different from a standard law school casebook. We do not focus on cases but instead have brought together reading from criminal law scholars, dispute resolution scholars, social scientists, and the media. Our focus is not on doctrine, in large part because there is very little doctrine in this area. Instead we focus on giving the reader a basic introduction, with a large dose of critical readings, to how criminal cases are actually resolved in the United States.

This book covers four topics: Plea bargaining, restorative justice, therapeutic justice, and juvenile justice. In covering each of these four topics we will first discuss what is happening on a practical level (for example, what are the stages of a plea negotiation? Who has more power in the plea negotiation process? How can you build your negotiation skills?) We will also discuss the evolution of these policies (for example, how did drug courts develop? How are these different than restorative justice processes?) Embedded into these discussions will be the policy reasons for these processes. Finally, for each topic, we will discuss concerns and recommendations for reform.

Each of the four topics that we are covering in this book is a rich area for scholarship and writings, although the four topics have not yet been brought together in one book. In fact, this likely means that some material is very familiar for our readers and some is not. For those of us steeped in criminal law and process, readings on negotiation skills and perhaps some of the alternative processes of problem solving courts or restorative justice will be relatively novel. For those of us coming from the dispute resolution field, we expect that the early chapters on plea bargaining might be particularly necessary to remind us of the current state of criminal practice or that much of the materials from criminal procedure cases to state regulations to ethical guidelines is completely unfamiliar. And for those of us from a clinical perspective, there will yet again be certain readings or theories that seem familiar while others are quite foreign. Although this may at times be frustrating, we also hope that this cross-disciplinary approach reflects the richness of this area of the law ... as well as the need to bring all of these streams together in order to capture a fuller picture of what 21st Century lawyers need to know.

Each chapter in this book includes original text and excerpts from published material. Each chapter also includes discussion points, and questions to give additional information and to focus classroom discussion. Due to the wonderful wealth of material it is impossible for us to include everything in each chapter. Instead, we have pulled together some reading that helps to start the conversation in each topic and hope that classroom time will give rise to even more discussion. We have also included a list, at the end of each chapter, of additional resources. These lists include books, scholarly articles, and other materials that further illuminate the topics covered in each chapter.

Given the cross-disciplinary nature of the book, this book can easily be used in a variety of ways. This book could be used as the text in a standard 3-credit course or seminar or as the text for clinical classes in prosecution or defense. Parts of this book could be pulled out for stand-alone classes, such as a course on plea bargaining. Parts of this book could supplement reading in more standard doctrinal classes such as in criminal procedure. This book is intended to give students a basic introduction in these areas, to challenge our thinking about these topics, and to be a jumping off point for skill building, simulations and other exercises.

Finally, we want to note that this book is premised on the fact that criminal practice is constantly evolving. It is because of that evolution, and the likely continuation of change, that we think it is so important for new lawyers to understand all of the different processes that occur under the rubric of the criminal legal system. For example, mass incarceration was not always a defining feature of the US criminal legal system. Drug courts are also fairly new. We want to equip our readers with a critical understanding of how we resolve criminal cases now so that they can be part of the continuing process of change and contribute to improving our criminal legal system. We hope that this book will support more thoughtful and meaningful approaches to criminal justice reform.

# Acknowledgments

---

This book has been a wonderful collaboration and we are grateful to many supporters for all of their help along the way. When we first hatched this idea, we decided to spend a week together at Marquette to block out what we thought the book should look like and to write a book proposal. This one-week visit became a regular staple of the last six summers and we are thankful to both Texas A&M School of Law and Marquette Law School for supporting this time together as well as Susan Campbell and Tom Content for hosting Cynthia every summer in their subterranean suite!

As we started to write, we knew that this book would build on both shared expertise in dispute resolution and separate expertise in criminal law, criminal procedure and restorative justice. Our colleagues in all of these linked fields have been so helpful in reviewing everything from the book proposal to the table of contents to reading particular chapters. Much appreciation to Cara Drinan, Michael O'Hear, Peter Reilly, Jenny Roberts, and Ron Wright. Thank you also to Richard Birke, Amy Cohen, Aliza Cover, Eve Hanan, Art Hinshaw, Carrie Menkel-Meadow, and Melanie Reid. We are particularly grateful to Jen Reynolds who took our page proofs and taught with this book during her visit at Harvard Law School to really give this a test run. Thank you as well to Amber Baylor who introduced plea bargaining to her students in the Texas A&M Criminal Defense Clinic also using page proofs. And we thank all of the students in our respective classes at Texas A&M and Marquette who commented on the materials as they were being developed.

Andrea's assistant, Carrie Kratochvil, has both managed our visits and, more importantly, managed the permission process to permit us the wonderful excerpts in the book. We have both said there would be no book without her! Thanks to Andrea's research assistants Dom Rosso and Will Ruffing for their work on the book with an additional shout out to Will for his help throughout the past year on permissions. (Have we mentioned how hard that process is?)

We have also presented this outline, the proposal, and various pieces of the book at the AALS Dispute Resolution Works-in-Progress conference and to the Park City Writer's Workshop. We are grateful to all of the participant's feedback along the way.

We look forward to adding more thanks to each of you as you use these innovative materials and let us know how to continue to improve the book!

