

Law, Social Science, and the Criminal Courts

Law, Social Science, and the Criminal Courts

SECOND EDITION

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*I dedicate this book to my lifelong friend, cousin,
and confidant, Diane Danella Malloy.*

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Laurens Walker and John Monahan's groundbreaking work, cited throughout the first and second editions, inspired this textbook. I am also grateful to the authors who permitted the use of their scholarly works in this text. Their research introduces readers (undergraduate, graduate, and law students as well as scholars and practitioners) to viewing legal and constitutional issues through the lens of social science and empirical study. I hope this text spurs greater interest in evidence-based approaches to reforming the criminal legal system.

A special thanks to Beth Hall and Ryland Bowman as well as to the many people behind-the-scenes from Carolina Academic Press who patiently worked on this second edition. Any errors that remain are indeed mine.

Without the support and encouragement of my husband, Dr. Jeffrey Klepfer, I could not have written this second edition. He is my soulmate, my life partner, and my biggest fan. Additionally, he copy-edited the introductory sections of each chapter, and he created the PowerPoint slides that accompany the teacher's manual.

PREFACE

First, thank you for beginning to read the preface, and not gloss over it—I think most people skip the preface. With that in mind, I will keep my comments brief and pointed. **Why did I write this book, and why is it important?** I wrote this book to fill a void in the undergraduate and graduate study of legal questions through an empirical lens. Many important criminal constitutional issues may be answered or informed by social science. For example, are six- and twelve-person juries functionally equivalent? The United States Supreme Court, in *Williams v. Florida*, said yes, however, empirical research disagrees. The extent to which the Court should rely on science and social science in deciding criminal constitutional issues has been debated, but over the years, many scholars have emphasized the importance of improving legal decisions and policies through valid and reliable empirical findings. Anecdotes and personal opinions should not provide the foundation for answering life-altering, constitutional questions. Roscoe Pound, a nineteenth century legal philosopher, observed that experience and social science should be used to better inform legal decisions and policy. This book was written to expose you (whoever you are: an undergraduate or graduate student or just someone interested in social justice) to these empirical questions and some of the empirical answers that have arisen in criminal cases that raise constitutional issues.

This second edition has added two chapters (an introduction to the courts and another on expectations of privacy). Each chapter was substantially rewritten and updated. The first edition was written fourteen years ago. The law and social science have changed radically during that time. It was challenging to choose the cases and articles to include in each chapter, so after each chapter, I listed other articles and cases for you to read and review. There are many resources available that provide up-to-date information, from oyez.com to scotusblog.com as well as research from organizations ranging from the National Association of Criminal Defense Lawyers to the National Center for State Courts. Most courts and findlaw.com publicly publish their cases, making them widely available on the Internet (no expensive service necessary). The Social Science Research Network (ssrn.com) provides free access to early-stage research papers from hundreds of thousands of researchers across many disciplines. Just sign up and search.

This book is introductory, and it is intended to pique your interest. I hope that you become interested in empirical legal research and take notice of and criticize court decisions that rely on less persuasive evidence or flawed empirical data. It is not enough for the courts to rely on empirical research. The scholarly work must be reli-

able and valid; the data must be sound. The tools to thoroughly critique empirical work are beyond the scope of this textbook, but there are plenty of courses and books that are available to become educated on what amounts to good science. As computer scientists have said of relying on flawed data: Garbage in, garbage out. Empirical garbage will harm (and has harmed) legal decision-making, so be a wary consumer of social science.

Alisa Smith, J.D., Ph.D.

June 2019

Note on Citations

In many instances, some or all of the footnotes in the cases and excerpts have been omitted or renumbered. Readers should consult the original sources for exact citation information.