

Jeffrey L. Kirchmeier
Professor of Law, CUNY School of Law
Selected Publications

Legal Publications

Books and Study Guides:

Imprisoned by the Past: Warren McCleskey, Race, and the American Death Penalty (Oxford University Press 2015) (paperback edition 2016).

Barron's First Year Law School Flash Cards: 350 Cards with Questions and Answers, Barron's Educational Series, Inc. (2010) (wrote criminal law cards as part of set of cards developed to cover contracts, torts, and criminal law for first-year law students).

Law Reviews and Book Chapters:

“Justice Ginsburg and the Death Penalty: Precise Analysis But Broader Concerns,” chapter in *The Jurisprudential Legacy of Ruth Bader Ginsburg* (ed. Ryan Vacca and Ann Bartow) (NYU Press, March 2023).

“Race Discrimination in Punishment,” chapter in *The Eighth Amendment and Its Future in a New Age of Punishment* (Cambridge University Press, June 2020).

Beyond Compare? A Codefendant's Prison Sentence as a Mitigating Factor in Death Penalty Cases, 71 Fla. L. Rev. 1017 (2019).

“Counsel for the Despised and the Condemned: Capital Defense Attorneys,” chapter in *The Routledge Handbook on Capital Punishment* (Routledge Handbooks, Dec. 2017).

Confession for the Soul?: A Defense Lawyer's Moral Advice to a Guilty Client, 10 Ohio State J. Crim. L. 219 (2012) (invited symposium).

Scaling the Lexicon Fortress: The United States Supreme Court's Use of Dictionaries in the Twenty-First Century, 94 Marquette L. Rev. 75 (2010) (w/ Judge Samuel Thumma).

Vigilante Justice: Prosecutor Misconduct in Capital Cases, 55 Wayne L. Rev. 1327 (2010) (w/ co-authors).

The Undiscovered Country: Execution Competency & Comprehending Death, 98 Ky. L.J. 263 (2009-2010).

Our Existential Death Penalty: Judges, Jurors, and Terror Management, 32 Law & Psychol. Rev. 55 (2008).

Dead Innocent: The Death Penalty Abolitionist Search for a Wrongful Execution, 42 Tulsa L. Rev. 403 (2006) (invited symposium).

Casting a Wider Net: Another Decade of Legislative Expansion of the Death Penalty in the United States, 34 Pepp. L. Rev. 1 (2006) (lead article).

Empire State Injustice: Based Upon a Decade of New Information, A Preliminary Evaluation of How New York's Death Penalty System Fails to Meet Standards for Accuracy and Fairness, 4 Cardozo Pub. L. Pol'y & Ethics J. 85 (Report of the Association of the Bar of the City of New York) (with co-authors) (2006).

A Tear in the Eye of the Law: Mitigating Factors, Disease Theory, and the Progression Toward a New Theory of Criminal Justice, 83 Or. L. Rev. 624 (2004).

Scrupulous in Applying the Law: Justice Ruth Bader Ginsburg and Capital Punishment, 7 N.Y. City L. Rev. 701 (2004) (with Prof. Sidney Harring) (invited symposium).

Rethinking the Death Penalty: Can We Define Who Deserves Death?: Panel Presentation Before the Association of the Bar of the City of New York (May 22, 2002), in 24 Pace L. Rev. 107, 131-42, 185-86 (Fall 2003) (symposium).

Another Place Beyond Here: The Death Penalty Moratorium Movement, 73 Colo. L. Rev. 1 (2002) (lead article).

Capital Punishment in the Twenty-First Century: Introduction to Death Penalty Symposium, 4 N.Y. City L. Rev. 101 (2002) (invited symposium).

The Lexicon Remains a Fortress: An Update, 5 Green Bag 51 (2001) (with Samuel A. Thumma).

Let's Make a Deal: Waiving the Eighth Amendment By Selecting a Cruel and Unusual Punishment, 32 Conn. L. Rev. 615 (2000) (excerpt reprinted in Randall Coyne & Lyn Entzeroth, *Capital Punishment and the Judicial Process* 108-15 (3d ed. 2006)).

The Lexicon Has Become a Fortress: The United States Supreme Court's Use of Dictionaries, 47 Buff. L. Rev. 227 (1999) (with Samuel A. Thumma).

Aggravating and Mitigating Factors: The Paradox of Today's Arbitrary and Mandatory Capital Punishment Scheme, 6 Wm. & Mary Bill Rts. J. 345 (1998) (excerpt reprinted in Randall Coyne & Lyn Entzeroth, *Capital Punishment and the Judicial Process* 163-67, 364-67 (3d ed. 2006) (casebook); Evan J. Mandery, *Capital Punishment: A Balanced Examination* 254 (2005)).

Drink, Drugs, and Drowsiness: The Constitutional Right to Effective Assistance of Counsel and the Strickland Prejudice Requirement, 75 Neb. L. Rev. 401 (1997) (excerpt reprinted in Randall Coyne & Lyn Entzeroth, *Capital Punishment and the Judicial Process* 604-06 (3d ed. 2006)).

Case Note, *Murray v. United States: Legally Rediscovering Illegally Discovered Evidence*, 39 Case W. Res. L. Rev. 641 (1989).

Case Note, *Torres v. Oakland Scavenger Co.: What's in a Name? -- Everything in a Federal Appeal*, 39 Case W. Res. L. Rev. 943 (1989).

Note, *The Illusion of the Fact-Opinion Distinction in Defamation Law*, 39 Case W. Res. L. Rev. 867 (1989).

Other Legal Publications:

Ginsburg, the Death Penalty and Strategic Gradualism, SCOTUS Blog (as part of symposium on the jurisprudence of Justice Ruth Bader Ginsburg), October 5, 2020, available at <https://www.scotusblog.com/2020/10/symposium-ginsburg-the-death-penalty-and-strategic-gradualism/>

Is the Supreme Court's Command on Mitigating Circumstances a Spoonful of Sugar with a Poison Pill for the Death Penalty?, ConLawNOW (journal by Center for Constitutional Law at University of Akron School of Law), Oct. 2018 (as part of symposium on *Lockett v. Ohio*), available at <https://ideaexchange.uakron.edu/conlawnow/vol10/iss1/5/>.

Memory, Mental Competency, and Capital Punishment, JURIST - Academic Commentary, December 1, 2017, <http://www.jurist.org/forum/2017/12/Jeffrey-Kirchmeier-Capital-Punishment.php>.

Crossroads or a Curve: The Death Penalty and the 2016 Election, JURIST - Academic Commentary, Dec. 7, 2016, <http://jurist.org/academic/2016/12/Jeffrey-Kirchmeier-Death-Penalty.php>.

Fearmongering in Nebraska: How the Death Penalty Lobby Fights Progress, The Conversation, August 5, 2015, <http://theconversation.com/fearmongering-in-nebraska-how-the-death-penalty-lobby-fights-progress-43021>.

The Supreme Court's Legacy on Race and Capital Punishment in McCleskey v. Kemp, Human Rights Magazine (American Bar Association), July 2015, http://www.americanbar.org/publications/human_rights_magazine_home/2015--vol--41-/vol--41--no--1---lurking-in-the-shadows--the-supreme-court-s-qui/the-supreme-courts-legacy-on-race-and-capital-punishment-in-mccl.html.

Racial Terror and the Echoes of American Lynchings, OUPblog (Oxford University Press), March 9, 2015, <http://blog.oup.com/2015/03/racial-terror-echoes-american-lynchings/>

Book Review: The Death of Punishment: Searching for Justice Among the Worst of the Worst (Robert Blecker), New York Law Journal, May 12, 2014.

The Constitution, the People and New York City's Stop-and-Frisk Policy, JURIST - Forum, Feb. 23, 2014, <http://jurist.org/forum/2014/02/jeffrey-kirchmeier-stop-frisk.php>

DNA Reminds Us That to Err is Human, Cato Unbound, March 9, 2012, available at <http://www.cato-unbound.org/2012/03/09/jeffrey-kirchmeier/dna-reminds-us-that-to-err-is-human/>

Brian MacQuarrie's The Ride, 51 Am. J. Legal Hist. 545 (July 2011) (book review).

Capital Punishment and *Furman v. Georgia* entries, in *Encyclopedia of Civil Liberties* (Routledge Publishers 2006).

Using a Negotiation Exercise to Teach Criminal Law, in *Teaching the Law School Curriculum* (ed. Steve Friedland and Gerry Hess) (Carolina Academic Press 2004).

Prosecution, Dismissal, Investigation and Restitution: The Search for Truth and Healing Through Retrospective Justice After the Fall of the Berlin Wall (reviewing A. James McAdams, *Judging the Past in Unified Germany* (2001)), 1 Annual of German and European Law 532-38 (ed. Russell A. Miller & Peer C. Zumbansen) (Berghahn Books 2004).

Public Defenders, in *Encyclopedia of Crime & Punishment* (Berkshire Publishing Group 2002).

Recent Developments in the Lawful Regulation of Cable Television, in *Patents, Copyrights, Trademarks, and Literary Property Course Handbook Series*, 283 PLI/Pat 201 (Practising Law Institute, Nov. 9, 1989) (with Norman M. Sinel, Patrick J. Grant, and William E. Cook).

OTHER PUBLICATIONS INCLUDE: *All Life is Worth Saving* (Essay), in program for the play *Clarence Darrow* (by David W. Rintels) at The Old Vic Theatre, London, England (March 2015), republished at Oxford University Press Blog (July 2015), at <http://blog.oup.com/2015/07/history-capital-punishment-abolition/>; *Our Existential Death Penalty*, CUNY Law Magazine 20 (Spring 2009); *To Live or Die: Is There a Moral Obligation to Execute the Worst of the Worst? Point/Counterpoint: No*, 1 N.Y.L.J. 10 (September 2002); *Sixth Amendment Ineffective Assistance of Counsel Claims -- Without Prejudice*, in *Habeas Corpus: Nebraska Criminal Defense Attorneys Association Newsletter* (July 1997); *ACRP Newsletter* (1991-95: editor and author of quarterly publication for Arizona capital defense attorneys regarding court decisions and legal developments); *Omnibus ACRP Newsletter* (1993) (200-page volume with summaries of recent important capital and habeas cases, organized and indexed by topic); During 1992-95, wrote newspaper essays on criminal justice that appeared in *The Arizona Republic*, *The Phoenix Gazette*, and *The Tucson Citizen*.