CRIMINAL JUSTICE ROUNDTABLE
Vanderbilt University
November 14 & 15, 2025

Friday, November 14

12:00-1:00—Lunch (Bass, Berry, Sims room, second floor)

1:00-2:00—Farhang Heydari (Vanderbilt), *Agency Police*. Commentator: David Harris (Pittsburgh)

"Agency Police"—law enforcement officers employed by administrative and regulatory agencies—now routinely operate alongside traditional municipal police, county sheriffs, and FBI agents. They are also an essential part of the administrative state. As such, they present their own unique benefits and challenges. On the one hand, Agency Police offer administrative and regulatory agencies a potentially more effective way to fulfill a specialized enforcement need than relying on traditional police. On the other hand, Agency Police present unique risks, particularly that they will engage in "mission drift" into enforcement of traditional policing priorities. Mission drift occurs when Agency Police, originally tasked with specific regulatory objectives, expand their role into areas more characteristic of general law enforcement. To confront the challenges presented by mission drift, this Article suggests a simple rethinking of the scope of police authority. Rather than assuming the only choice is between actors with full police authority and actors with no police authority, policymakers should rely more on "Limited Cops." Creating a Limited Cop requires unbundling the powers traditionally associated with police, and granting only those powers tailored to agency needs. Doing so helps ensure these actors remain dedicated to their designated functions without drifting toward broader criminal enforcement. This approach to police authority is both liberty enhancing and promotes a more robust separation of powers, without unduly restricting executive enforcement discretion.

2:15-3:15—Erin Murphy (N.Y.U), *Closed Universe Searches*. Commentator: Jeff Bellin (Vanderbilt)

A genetic genealogy search for a match to a crime scene profile zeroes in on eight relatives, one of whom is almost certain to be the perpetrator. A geofence warrant returns an anonymized list of four cell phones present at a series of bank robberies. Facial recognition software run on surveillance video generates hits to fifteen persons of interest. By now, these scenarios are commonplace. Technological searches have dramatically increased both the frequency with which law enforcement confronts a closed universe of suspects, rather than a single suspicious target, as well as the probability that the true perpetrator of a crime can be found by engaging in invasive technological searches within that closed universe. This article considers how Fourth Amendment doctrine has and might resolve closed universe search questions – questions like how intrusively police can investigate the suspects in that closed universe, how transparent investigative actions must be, and how accountable police are to rules designed to prevent abuse, misuse, or excess. The Article closes by exploring the special dynamics of closed universe searches that differentiate them from either indiscriminate, universal searches or targeted, individualized searches, which in turn reveals the inadequacy of applying existing analytical frameworks to this particularly vulnerable group.

3:30-4:30—Megan T. Stevenson (Va.), *Institutes for Defective Delinquents.* Commentator: Chris Slobogin (Vanderbilt)

In 1913, a prison administrator published an article called The Extinction of the Defective Delinquent. arguing that a certain subclass of prisoners should be segregated on indefinite-to-life sentences in isolated prison colonies to protect society from crime and prevent procreation. In 1922, the first Institute for Defective Delinquents (IDD) opened in New York. Over the next several decades, similar institutes opened in about half a dozen other states, housing between 10 and 25% of each state's prison population. There has never been a systematic study of this phenomenon and historical scholarship on the topic is almost nonexistent. This Article provides the first in-depth documentation of defective delinquency law and policy. In doing so, we (Thomas Frampton is a co-author) uncover three previously underappreciated facts. First, law and policy based on explicitly eugenic concepts lasted far beyond the era in which eugenics is commonly thought to have lost credibility and influence, i.e. far past the post-World War II era. Second, prior to the late 1960's, there was little distinction between criminal and civil commitment and incarceration based on supposed membership within an amorphously-defined subclass of humanity was commonplace and uncontested. Third, widespread acceptance of defective delinquency law – and its subsequent erasure from history – highlight how a combined rhetoric of public safety and care for those unable to care for themselves can normalize oppressive and anti-liberal government practices. While this Article tells a story from history, its lessons remain relevant today.

6:00-9:00: DRINKS AND DINNER AT GIOVANNI'S, 909 20TH AVE. SOUTH (SEE MAP)

<u>Saturday, November 15</u>

8:00-8:30: Breakfast (Bass, Berry, Sims room)

8:30-9:30—Russel Gold (Alabama), *Fiscally Restraining Criminal Lawmaking*. Commentator: Brandon Hasbrouck (W & L).

The costs of criminal law—even the purely fiscal ones—remain diffused and obscured such that we often get more criminal law than we'd be willing to pay for. This Article considers how procedural tools that legislatures use to force or encourage fiscal restraint might and occasionally already do prove useful to restrain criminal lawmaking. More specifically, the Article considers: total spending caps, budgetary offset requirements, sunset provisions, fiscal notes, and prohibitions on unfunded mandates. To a very limited extent, some states already use these tools in criminal law. A few states require themselves to cover increased prison costs when they pass carceral legislation, for instance. Most states' statutes or rules require fiscal notes that estimate what a law would cost before a bill can pass, but many of those same states exempt or ignore cost estimates for criminal law. As scholars have recognized, the costs of criminal law are diffused across different levels of government offices, so legislatures' ability to shift costs away from themselves requires sustained attention in the design of mechanisms for fiscal restraint.

9:45-10:45—Rachel Barkow (N.Y.U.), *Victims of the State*. Commentator: Sara Mayeux or Ed Rubin (Vanderbilt)

America's approach to crime victims is, like its approach to so many things, a neoliberal approach that involves limited state involvement, ignores structural dynamics, and instead focuses on individuals.

This article proceeds in four parts. Part I describes the victims' rights movement and its key achievements. This has been an enormously successful movement in many respects, but its goals have been relatively narrow. It is a framework that revolves around the criminal prosecution of individual defendants and the victims' role within that model. However, this approach often does little to support victims and their needs. Part II explains how America has rejected a state-centered model. There is almost no recourse against the state for failing to prevent victimization in the first place, and the state does little to compensate victims of crime. Part III explores why this model has prevailed, providing a description of the narrative framework that dominates of individual bad actors committing bad acts and the absence of state responsibility. Part IV offers a different path forward that recognizes the role for the state in both victimization prevention and victim compensation.

11:00-12:00—Joel Johnson (Pepperdine), *The Clemency Court*. Commentator: Richard Re (Harvard)

For decades, the Supreme Court treated its merits docket as a platform for deciding landmark decisions to manage and reform the criminal legal system through broad rules of constitutional law. Not anymore. The Court now picks cases with issues of limited significance and resolves them on narrow grounds, dispensing relief to small sets of beneficiaries without altering the machinery of the criminal legal system more broadly. The contemporary Court is functioning like a Clemency Court, with significant implications. When relief is dispensed as a matter of discretion only for a fortunate few, both the Court's legitimacy and the rule of law suffer. Doctrine stagnates. And the vertical and horizontal separation of powers are realigned, leaving more power in the hands of local authorities and the other federal branches. In addition, the Court's special solicitude for high-profile or powerful individuals results in neglect of issues that affect millions of ordinary people, with traditionally disadvantaged groups disproportionately bearing the cost.

12:00-1:00—Lunch (Alexander room)