

# DOUGLAS A. BERMAN

Robert J. Watkins/Procter & Gamble Professor of Law

The Ohio State University Moritz College of Law

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## EDUCATION

### Harvard Law School

J.D., *Magna Cum Laude*, June 1993

Activities: *Harvard Law Review*, Editor and Developments Office Chair  
*Harvard Civil Rights & Civil Liberties Law Review*, Staff Member  
*Harvard Law Record*, Staff Member

### Princeton University

A.B., *Summa Cum Laude*, in Philosophy, June 1990

Honors: *Phi Beta Kappa*  
1869 Award for Best Thesis, "Killing, Letting Die, and the Right to Noninterference"

## TEACHING EXPERIENCE

### The Ohio State University Moritz College of Law

Robert J. Watkins/Procter & Gamble Professor of Law (Spring 2011 – Present)

William B. Saxbe Designated Professor of Law (Fall 2005 – Spring 2011)

Full Professor (Fall 2004 – Summer 2005)

Associate Professor (Fall 2001 - Summer 2004)

Assistant Professor (Fall 1997 - Summer 2001)

- Primary teaching/scholarship activities related to criminal sentencing and additional topics in criminal law and procedure, secondary teaching/research interests in legislative processes and judicial administration issues.
- Course offerings have included Criminal Law, Criminal Punishment & Sentencing, Second Amendment Seminar, Death Penalty Seminar, Criminal Procedure–Investigation, Advanced Sentencing Seminar, Legislation, Judging and Clerking, Legislation Clinic, Introduction to Intellectual Property, and Legal Analysis & Writing.
- On-going projects include authorship of death penalty casebook for Aspen Publishing and analysis of impact of leading Supreme Court cases on modern sentencing reforms and non-capital sentencing systems.

### Fordham University School of Law

Visiting Professor of Law (Spring 2010)

- Course offerings included Criminal Procedure–Investigative and Criminal Punishment & Sentencing Seminar

### Harvard Law School & Harvard College

Tutor in Harvard Law School's First-Year Tutorial Program (Spring 1993)

- Individually tutored first- and second-year law students in subjects including torts and administrative law.

Teaching Fellow for Harvard College (Spring 1991)

- Instructed and evaluated a class of 15 undergraduate students in upper-level philosophy course.
- Helped Professors Alan Dershowitz, Robert Nozick & Stephan Gould develop materials and assignments.

## **ADDITIONAL LEGAL EXPERIENCE**

### ***Sentencing Law & Policy Blog* — <http://sentencing.typepad.com>**

#### **Owner and Author** (Spring 2004 - Present)

- Creator and sole contributor to sentencing law “web log” providing resources, information and commentary about both capital and non-capital sentencing developments.
- First blog to be cited by the U.S. Supreme Court (for a document exclusively on site); blog posts have been cited in numerous federal circuit and district court opinions, in two state supreme court opinions, and in many briefs filed nationwide.
- Profiled or discussed at length in articles appearing in the *Wall Street Journal*, *The National Law Journal*, *Legal Affairs*, *Legal Times*, *Daily Court Review*, *Columbus Monthly*, and numerous other publications.

### ***Federal Sentencing Reporter***

#### **Co-Managing Editor** (Summer 2001 - Present)

#### **Editor** (Fall 1994 - Spring 2001)

- Responsible for managing, organizing and editing 360-page, five-issue periodical (University of California Press) devoted to criminal sentencing law and theory with an emphasis on the Federal Sentencing Guidelines.
- Author, co-author, or primary editor of Editors’ Observations and Editors’ Notes for each issue.

### ***Ohio State Journal of Criminal Law***

#### **Co-Founder and Co-Faculty Managing Editor** (Spring 2002 - Present)

- Worked with Professor Joshua Dressler on creating and developing a new and unique peer-reviewed law journal focused on criminal justice issues; Volume 1, Issue 1 was published in Fall 2003.
- Served as editor of Vol. 2, No. 1 symposium on “Capital Juries,” and of Vol. 4, No. 1 symposium on “*Blakely* in the States” and of Vol. 6, No. 1 symposium on “Sex Offender Law and Policy”

### **Paul, Weiss, Rifkind, Wharton & Garrison**

#### **Litigation Associate** (Fall 1995 - Summer 1997)

- Developed practice specialties in the fields of intellectual property, business torts and criminal law.
- Devoted considerable time to *pro bono* criminal defense, including representation of a Texas death row prisoner.

### **Judge Guido Calabresi, U.S. Court of Appeals for the Second Circuit**

#### **Law Clerk** (1994-95 Court Term)

- Served as part of Judge Calabresi’s first set of law clerks following his 1994 appointment to the bench.

### **Chief Judge Jon O. Newman, U.S. Court of Appeals for the Second Circuit**

#### **Law Clerk** (1993-94 Court Term)

- Performed additional administrative duties as law clerk serving in Chief Judge Newman’s New York chambers.

## **AWARDS AND GRANTS**

### **Ohio State Bar Foundation 2006 Outstanding Research Award**

- Award recognizes “an outstanding publication that promotes or is consistent with the mission of the Foundation or fosters communication or improved relationships among lawyers, citizens and the courts of Ohio.”

### **The Ohio State University Alumni Award for Distinguished Teaching**

- Awarded during the 1999-2000 school year; this university-wide teaching award is presented each year to no more than ten Ohio State University faculty members from a pool of nearly 3000 eligible candidates.

### **Thurgood Marshall Award from the Association of the Bar of the City of New York**

- Awarded in April 1998; this award honors attorneys who “have contributed their invaluable time, resources, and energies to the representation of human beings under a sentence of death across this country.”

### **The Ohio State University Seed Grant**

- Recipient in Fall 1998 to facilitate the research of junior faculty.

### **The Ohio State University Moritz College of Law Summer Research Grant**

- Recipient every Summer from 1997 to the present.

# **PUBLICATIONS**

## **Books and Book Chapters**

DEATH PENALTY LAW AND POLICY: THEORIES, DOCTRINES AND PRACTICES (Aspen Publishers forthcoming 2012)

SENTENCING LAW AND POLICY: CASES, STATUTES AND GUIDELINES (Aspen Publishers 1<sup>st</sup> ed. 2004; 2<sup>nd</sup> ed. 2007; 3<sup>rd</sup> ed. forthcoming 2013) (with Nora Demleitner, Marc Miller and Ronald Wright)

*A Checks-and-Balances Approach to the Eighth Amendment* to be a chapter in THE CONSTITUTION AND THE FUTURE OF CRIMINAL JUSTICE (Cambridge University Press forthcoming 2012)

*The Virtues of Offense/Offender Distinctions*, Chapter 28 in CRIMINAL LAW CONVERSATIONS (Oxford University Press 2009)

*Extreme Punishments*, in MISCARRIAGES OF JUSTICE (NYU Press 2009)

*Finding Bickel Gold in a Hill of Beans*, in 2005-2006 CATO SUPREME COURT REVIEW (Cato Institute 2006)

*The Past, Present and Future of the Federal Sentencing Guidelines*, Chapter 1 in PRACTICE UNDER THE FEDERAL SENTENCING GUIDELINES (Aspen Publishers 19<sup>th</sup> ed. 2010) (with Mark Harris)

*Updated Teachers' Manual* for SENTENCING LAW AND POLICY: CASES, STATUTES AND GUIDELINES (available on-line) (with Nora Demleitner, Marc Miller and Ronald Wright)

*Annual Supplements for Sentencing Law and Policy: Cases, Statutes and Guidelines* (available on-line) (with Nora Demleitner, Marc Miller and Ronald Wright)

## **Major Articles**

*A Perfect Storm of Punishment Challenges: Federal Child Porn Sentencing after Booker* (forthcoming 2012)

*Making the Framers' Case, and a Modern Case, for Jury Involvement in Habeas Adjudication*, 71 OHIO STATE LAW JOURNAL 887 (2010) (invited)

*The Enduring (and Again Timely) Wisdom of the Original MPC Sentencing Provisions*, 61 FLORIDA LAW REVIEW 709 (2009) (invited)

*Exploring the Theory, Policy and Practice of Fixing Broken Sentencing Guidelines*, 21 FEDERAL SENTENCING REPORTER 182 (Feb. 2009)

*Reorienting Progressive Perspectives for Twenty-First Century Punishment Realities*, 3 HARVARD LAW & POLICY REVIEW (Online) (Dec. 8, 2008), [http://www.hlpronline.com/Berman\\_HLPR\\_120808.pdf](http://www.hlpronline.com/Berman_HLPR_120808.pdf) (invited)

*Engaging Capital Emotions*, 102 NORTHWESTERN UNIVERSITY LAW REVIEW COLLOQUIY 335 (2008) (with Stephanos Bibas)

*A Capital Waste of Time? A Critical Examination of the Supreme Court's Certiorari Choices in Criminal Cases*, 34 OHIO NORTHERN UNIVERSITY LAW REVIEW 861 (2008) (invited)

*Rita, Reasoned Sentencing, and Resistance to Chance*, 85 DENVER UNIVERSITY LAW REVIEW 7 (2007) (invited)

*Scholarship in Action: The Power, Possibilities and Pitfalls for Law Professor Blogs*, 84 WASHINGTON UNIVERSITY LAW REVIEW 1043 (2006) (invited)

*Making Sentencing Sensible*, 4 OHIO STATE JOURNAL OF CRIMINAL LAW 37 (2006) (with Stephanos Bibas) (cited in *Cunningham v. California*, 127 S. Ct. 856, 873 (2007) (Kennedy, J., dissenting))

*Tweaking Booker: Making Advisory Guidelines Work in the Federal System*, 43 HOUSTON LAW REVIEW 341 (2006) (invited)

*Conceptualizing Booker*, 38 ARIZONA STATE LAW JOURNAL 387 (2006) (invited)

*Distinguishing Offense Conduct and Offender Characteristics*, in *Twenty-Five Years of Guideline Sentencing Reform*, 58 STANFORD LAW REVIEW 277 (2005) (invited)

*Beyond Blakely and Booker: Pondering Modern Sentencing Process*, 95 JOURNAL OF CRIMINAL LAW AND CRIMINOLOGY 654 (2005) (invited) (honorable mention in 2007 Almanac & Reader issue of THE GREEN BAG as "example of excellent legal scholarship")

*Reconceptualizing Sentencing*, 2005 UNIVERSITY OF CHICAGO LEGAL FORUM 1 (invited)

*The Roots and Realities of Blakely*, CRIMINAL JUSTICE MAGAZINE, Winter 2005, at 5 (invited)

*Conceptualizing Blakely*, 17 FEDERAL SENTENCING REPORTER 89 (2004)

*From Lawlessness to Too Much Law? Exploring the Risk of Disparity From Differences in Defense Counsel under Guidelines Sentencing*, 87 IOWA LAW REVIEW 435 (2002) (invited)

*Appreciating Apprendi: Developing Sentencing Procedures in the Shadow of the Constitution*, 67 CRIMINAL LAW BULLETIN 627 (November-December 2001) (invited)

*Addressing Why: Developing Principled Rationales for Family-Based Departures*, 13 FEDERAL SENTENCING REPORTER 274 (2001)

*Passive Virtues and Casual Vices in the Federal Courts of Appeals*, 66 BROOKLYN LAW REVIEW 685 (2001) (with Jeffrey O. Cooper)

*Balanced and Purposeful Departures: Fixing a Jurisprudence that Undermines the Federal Sentencing Guidelines*, 77 NOTRE DAME LAW REVIEW 21 (2000)

*A Common Law for This Age of Federal Sentencing: The Opportunity and Need for Judicial Lawmaking*, 11 STANFORD LAW & POLICY REVIEW 93 (1999) (invited)

*In Defense of Less Precedential Opinions: A Reply to Judge Martin*, 60 OHIO STATE LAW JOURNAL 2025 (1999) (with Jeffrey O. Cooper)

*Sentencing Commission as Guidelines Supreme Court: Responding to Circuit Conflicts*, 7 FEDERAL SENTENCING REPORTER 142 (1994)

*The Second Circuit: Attributing Drug Quantities to Narcotics Offenders*, 6 FEDERAL SENTENCING REPORTER 247 (1994)

*The Rights and Wrongs of Norplant Offers*, 3 SOUTHERN CALIFORNIA REVIEW OF LAW AND WOMEN'S STUDIES 1 (1993)

Special Treatment and Tort Law, *Developments in the Law – Nonprofit Corporations*, 105 HARVARD LAW REVIEW 1677 (1992)

## **Commentaries and Other Significant Writings**

*Lots of Advice on Lots of Topics for the New (Post-Booker) U.S. Sentencing Commission*, 23 FEDERAL SENTENCING REPORTER 251 (2011)

*Are Sentences Fixed by a Plea Agreement “Based on” a Guideline Sentencing Range and Thus Eligible for Modification Pursuant to 18 U.S.C. § 3582(c)(2)?*, ABA PREVIEW OF US SUPREME COURT CASES, Vol. 38, No. 5 (2011)

*The Many (Opaque) Echoes of Compromise Crack Sentencing Reform*, 23 FEDERAL SENTENCING REPORTER 167 (2011)

*A Truly (And Peculiarly) American “Revolution in Punishment Theory”*, 42 ARIZONA STATE LAW JOURNAL 1113 (Winter 2010/2011) (invited)

*Does Fleeing the Police in a Car Qualify as a Violent Felony to Trigger the Severe Federal Sentencing Provisions of the Armed Career Criminal Act?*, ABA PREVIEW OF US SUPREME COURT CASES, Vol. 38, No. 4 (2011)

*Encouraging (And Even Requiring) Prosecutors To Be Second-Look Sentencers*, 19 TEMPLE POLITICAL & CIVIL RIGHTS LAW REVIEW 429 (2010) (invited)

*Turning Hope-and-Change Talk Into Clemency Action for Non-Violent Drug Offenders*, 36 NEW ENGLAND JOURNAL ON CRIMINAL AND CIVIL CONFINEMENT 59 (2010) (invited)

*Digging Deeper into, and Thinking Better about, the Interplay of Families and Criminal Justice*, 13 NEW CRIMINAL LAW REVIEW 119 (2010) (solicited review of PRIVILEGE OR PUNISH: CRIMINAL JUSTICE AND THE CHALLENGE OF FAMILY TIES (2009))

*How Much Sentencing Discretion Does a District Judge Possess When Modifying a Defendant's Prison Term Pursuant to 18 U.S.C. § 3582?*, ABA PREVIEW OF US SUPREME COURT CASES, Vol. 37, No. 6 (2010)

*How Must the Government Prove the Facts Needed to Trigger the Statutory Minimum Sentence for Use of Machinegun?*, ABA PREVIEW OF US SUPREME COURT CASES, Vol. 37, No. 4 (2010)

*A Look at Booker at Five*, 22 FEDERAL SENTENCING REPORTER 77 (2009) (with Paul J. Hofer)

*Pondering the U.S. Sentencing Commission's Future*, 21 FEDERAL SENTENCING REPORTER 1 (2008)

*Can a State Authorize a Judge to Find the Facts Needed to Impose Consecutive Sentences?*, ABA PREVIEW OF UNITED STATES SUPREME COURT CASES, Vol. 36, No. 1, p. 42 (2008)

*The Challenges of Undoing Sentencing Injustices*, 20 FEDERAL SENTENCING REPORTER 225 (2008)

*What Prior State Offenses Trigger the Severe Federal Sentencing Provisions of the Armed Career Criminal Act?*, ABA PREVIEW OF UNITED STATES SUPREME COURT CASES, Vol. 35, No. 4, p. 194 (2008)

*Baze-d and Confused: What's the Deal With Lethal Injection*, 156 U. PA. L. REV. PENNUMBRA 312 (2008) at [www.pennumbra.com/debates/](http://www.pennumbra.com/debates/). (invited) (with Alison Nathan)

*What a Snitch Culture Snatches*, writing as part of the TPMCafe's Book Club (2007), at <http://bookclub.tpmcafe.com/> (discussing Ethan Brown's *Snitch*)

*Looking at the Libby Case from a Sentencing Perspective*, 20 FEDERAL SENTENCING REPORTER 1 (2007) (with Alyson S. White)

*Federal Cocaine Sentencing in Transition*, 19 FEDERAL SENTENCING REPORTER 291 (2007) (with Steven L. Chanenson)

*Can and Will Information Spur Post-Modern Sentencing Reforms?*, 19 FEDERAL SENTENCING REPORTER 219 (2007) (with Steven L. Chanenson)

*Rita and Claiborne – Booker Clean-up or Continued Confusion?*, 19 FEDERAL SENTENCING REPORTER 151 (2007)

*The Real (Sentencing) World: State Sentencing in the Post-Blakely Era*, 4 OHIO STATE JOURNAL OF CRIMINAL LAW 27 (2006) (with Steven L. Chanenson)

*Blogs Are Liberating The Profession From Dull Writing: They're Emerging As A Powerful Tool For Lawyers And Law Professors*, NATIONAL LAW JOURNAL, Sept. 11, 2006

*Reasoning Through Reasonableness*, 115 YALE L.J. POCKET PART 142 (2006), available at <http://www.thepocketpart.org/2006/07/berman.html> (invited)

*Now What?: The Post-Booker Challenge for Congress and the Courts*, 18 FEDERAL SENTENCING REPORTER 157 (2006)

*What's the Future of Federal Sentencing?*, LEGAL AFFAIRS On-line "Debate Club", available at [http://legalaffairs.org/webexclusive/debateclub\\_sentencing0106.msp](http://legalaffairs.org/webexclusive/debateclub_sentencing0106.msp) (Jan. 2006) (invited) (with Frank Bowman)

*Same Old Sentencing*, LEGAL TIMES, Dec. 26, 2005, at 35

*Perspectives on Booker's Potential*, 18 FEDERAL SENTENCING REPORTER 79 (2005)

*Assessing Federal Sentencing After Booker*, 17 FEDERAL SENTENCING REPORTER 231 (2005)

*Perspectives and Principles for the Post-Booker World*, 17 FEDERAL SENTENCING REPORTER 231 (2005)

*Can the Court Clean Up Its Blakely Mess?*, LEGAL AFFAIRS On-line "Debate Club", available at [http://www.legalaffairs.org/webexclusive/debateclub\\_blakely1004.html](http://www.legalaffairs.org/webexclusive/debateclub_blakely1004.html) (Sept. 2004) (with Stephanos Bibas)

*Examining the Blakely Earthquake and Its Aftershocks*, 16 FEDERAL SENTENCING REPORTER 307 (2004)

*Supreme Court Clean up in Aisle 4: Blakely is too big and messy to ignore*, SLATE, July 16, 2004, available at <http://slate.msn.com/id/2104014> (invited)

*Locating the Feeney Amendment in a Broader Sentencing Reform Landscape*, 16 FEDERAL SENTENCING REPORTER 246 (2004)

*Taking Stock of the Feeney Amendment's Many Facets*, 16 FEDERAL SENTENCING REPORTER 93 (2003)

*The Model Penal Code Second: Might "Film Schools" be in Need of a Remake?*, 1 OHIO STATE JOURNAL OF CRIMINAL LAW 163 (2003)

*Introduction to the Ohio State Journal of Criminal Law*, 1 OHIO STATE JOURNAL OF CRIMINAL LAW 1 (2003) (with Joshua Dressler)

*Deciphering a Rosetta Stone of Sentencing Reform*, 15 FEDERAL SENTENCING REPORTER 307 (2003)

*Assessing Apprendi's Aftermath*, 15 FEDERAL SENTENCING REPORTER 73 (2002)

*The Start of the Next Revolution? Recent State Reforms in the Sentencing of Drug Offenders*, 14 FEDERAL SENTENCING REPORTER 327 (2002)

*Addressing Capital Punishment Through Statutory Reform*, 63 OHIO STATE LAW JOURNAL 1 (2002)

*Perspectives on the Federal Death Penalty*, 14 FEDERAL SENTENCING REPORTER 1 (2001) (with Adam Thurschwell)

*The Practices and Practicalities of Criminal History*, 13 FEDERAL SENTENCING REPORTER 307 (2001) (with Mark Osler)

*Appraising and Appreciating Apprendi*, 12 FEDERAL SENTENCING REPORTER 303 (2000)

*Thinking Outside the Boxes*, 12 FEDERAL SENTENCING REPORTER 63 (1999)

*Defense Advocacy Under the Guidelines*, 11 FEDERAL SENTENCING REPORTER 299 (1999)

*Considerations for Direction of Federal Sentencing Reform*, 11 FEDERAL SENTENCING REPORTER 175 (1999)

*Windows into Sentencing Policy & Practice: Crack/Cocaine Ratio and Appeal Waivers*, 10 FEDERAL SENTENCING REPORTER 179 (1998)

*Previewing Fourteen of the Most Significant Articles from Years Past*, 10 FEDERAL SENTENCING REPORTER 3 (1997) (with Daniel Freed)

*A Year in the Life of the Guidelines*, 9 FEDERAL SENTENCING REPORTER 280 (1997)

*The Koon Case: Departures and Discretion*, 9 FEDERAL SENTENCING REPORTER 4 (1996) (w/ Mark Harris)

*Is Fact Bargaining Undermining the Sentencing Guidelines?*, 8 FEDERAL SENTENCING REPORTER 300 (1996)

*Organizational Fines for Environmental Offenders*, 8 FEDERAL SENTENCING REPORTER 204 (1996)

*Time for Real Change: New Commission's Responsibilities*, 8 FEDERAL SENTENCING REPORTER 4 (1995)

*Home Detention as Alternative Punishment for Criminal Offenders: Research Guide*, 13 LEGAL REFERENCE SERVICES QUARTERLY 45 (1994)

Introduction, *Developments in the Law - Legal Responses to Domestic Violence*, 106 HARVARD LAW REVIEW 1501 (1993) (with Robert S. Loigman)

Comment, *Hudson v. McMillian*, in *Supreme Court, 1991 Term*, 106 HARVARD LAW REVIEW 220 (1992)

## **Major Academic/Pro Bono Appellate Briefs**

In recent years, I have frequently participated in the development of appellate briefs, drawing on my academic research and expertise concerning modern sentencing law, policy and practice. These briefs, which are usually filed as representative of a set of amici, have been filled in a variety of federal courts. Presented below is a select sample of these filings.

### **U.S. Supreme Court Briefs**

Merits Brief in support of Judgment, *Tapia v. United States* (2011)

Amicus Brief in support of Respondents, *United States v. O'Brien* (2010)

Amicus Brief in support of Respondents, *McDonald v. City of Chicago* (2010)

Amicus Brief in support of Petitioners, *Carr v. United States* (2010)

Merits Brief in support of Judgment, *Irizarry v. United States* (2008)

Amicus Brief in support of Respondents, *United States v. Rodriguez* (2007)

Amicus Brief in support of Petitioners, *Gall v. United States* (2007)

Amicus Brief not in support of either party, *Rita v. United States* (2007)

### **U.S. Court of Appeals Briefs**

Amicus Brief in support of Defendants, *United States v. Rubashkin* (8th Cir. 2010)

Amicus Brief in support of Defendants, *United States v. White* (6th Cir. 2008)

Amicus Brief in support of Defendants, *United States v. Rigas* (2d Cir. 2008)

Amicus Brief not in support of either party, *United States v. Hamad* (6th Cir. 2007) (invited by Sixth Circuit to submit brief)

Amicus Brief in support of Defendant, *United States v. Lett* (11th Cir. 2006)

Amicus Brief in support of Defendants, *United States v. Carty* (9th Cir. 2006)

Amicus Brief in support of Defendant, *United States v. Spears* (8th Cir. 2006)

Amicus Brief in support of Defendant, *United States v. Castillo* (2d Cir. 2006)

## **PRESENTATIONS, PANELS AND RELATED SCHOLARLY ACTIVITY**

Since becoming a law professor, I have given hundreds of lectures or presentations on a variety of scholarly topics to a variety of audiences. Presented below is a select sample of these activities.

*Invited Panelist*, “Plea Bargaining and Plea Agreements,” **Annual National Seminar on the Federal Sentencing Guidelines** (May 2011)

*Invited Panelist*, “Ohio’s Sentencing Policies and Practices, Costs and Consequences,” **University of Toledo College of Law** (February 2011)

*Invited Panelist*, “Symposium on Crime and Punishment,” **John Jay College of Criminal Justice Annual Symposium** (January 2011)

*Invited Speaker*, “The Modern Criminal Law Canon,” **American Bar Association Fall 2010 conference on "Sentencing Advocacy, Practice and Reform"** (Oct. 2010)

*Invited Presenter*, “Constitution in 2020 conference on The Future of Criminal Justice,” **Florida State University College of Law** (Oct. 2010)

*Invited Panelist*, “Criminal Law Update” **Annual Seminar for Florida District Judges** (Sept. 2010)

*Invited Presenter*, “Criminal Sentencing,” **Tenth Circuit Judicial Conference** (Aug. 2010)

*Invited Panelist*, “Guideline Departures & Variances Outside the Range Under 3553(a),” **Annual National Seminar on the Federal Sentencing Guidelines** (June 2010)

*Invited Presenter*, “A Look Forward and a Look Back Five Years After *Booker*,” **University of Utah College of Law symposium** (Feb. 2010)

*Faculty Symposium Editor* of academic conference at **The Ohio State University College of Law** entitled “Originalism and the Jury” during which I also served as a *Presenter* of “Wouldn’t the Framers Have Wanted Juries involved in Habeas Actions?” (Nov. 2009)

*Keynote Speaker*, “Prosecutorial Discretion and Sentencing Outcomes,” **Temple University School of Law symposium** (Oct. 2009)

*Invited Participant*, “Review of Federal Sentencing and Corrections Policy: Research and Academic Institutions Listening Session,” **United States Department of Justice** (July 2009)

*Invited Panelist*, “Blogging and the New Law Professor,” **Association of American Law Schools New Teachers Conference** (June 2009)

*Invited Panelist*, “Guideline Departures & Variances Outside the Range Under 3553(a),” **Annual National Seminar on the Federal Sentencing Guidelines** (June 2009)

*Invited Presenter*, “Media, Justice, and the Law,” **Stanford Law School symposium** (Jan. 2009)

*Invited Presenter*, “The Model Penal Code Sentencing Proposals” **American Association of Law Schools Annual Conference** (Jan. 2009)

*Keynote Speaker*, “The Impact of Politics and Perspectives in Sentencing Law and Policy,” **American Bar Association Fall 2008 conference on "Sentencing Advocacy, Practice and Reform"** (Oct. 2008)

*Invited Presenter*, “Criminal Sentencing,” **Tenth Circuit Judicial Conference** (Sept. 2008)

*Invited Participant*, “Symposium on the New Media and the Courts,” William H. Rehnquist Center, **University of Arizona College of Law** (Sept. 2008)

*Invited Presenter*, “Federal Sentencing After *Gall* and *Kimbrough*,” **Sixth Circuit Judicial Conference** (May 2008)

*Invited Presenter*, “Overview of Current Developments in Death Penalty Litigation,” Death Penalty Defense Workshop, **Ohio State Bar Association** (May 2008)

*Invited Speaker*, “The Second Amendment and the Plate Tectonics of Constitutional Criminal Law,” **Hoffinger Colloquium at New York University School of Law** (Apr. 2008)

*Invited Presenter*, “Can the Eighth Amendment be a Cross-Over Hit?,” **Symposium at the University of Pennsylvania School of Law**, *Journal of Constitutional Law* (Mar. 2008)

*Invited Participant*, “Back-end sentencing,” **annual conference of the National Association of Sentencing Commissions** (Aug. 2007)

*Invited to Testify*, “Hearing on the Use and Misuse of Presidential Clemency Power for Executive Branch Officials,” **U.S. House of Representatives Judiciary Committee** (July 2007)

*Invited Panelist*, “Scholarship and the New Law Professor,” **Association of American Law Schools New Teachers Conference** (June 2007)

*Invited Presenter*, “Sentencing After *Booker*,” **Judicial Conference for District of Massachusetts** (June 2007)

*Invited Presenter*, “The Future of Legal Research,” **Chicago-Kent College of Law symposium** (May 2007)

*Invited Participant*, “Miscarriages of Justice,” **special conference at Harvard Law School** (Nov. 2006)

*Invited Participant*, “Federalism and Sentencing,” **annual conference of the National Association of Sentencing Commissions** (Aug. 2006)

*Invited Participant*, National Sentencing Policy Institute, **Federal Judicial Center** (July 2006)

*Invited Participant*, Sentencing Workshop Class of Judge Nancy Gertner, **Yale Law School** (May 2006)

*Invited Presenter*, “Bloggership: How Blogs Are Transforming Legal Scholarship,” **Harvard Law School symposium** (Apr. 2006)

*Invited Panelist*, “*Blakely* and *Booker*,” **Harvard Law School Blackletter Law Journal** (Apr. 2006)

*Invited Participant*, first meeting of Stanford Executive Sessions on Sentencing and Corrections, Stanford Criminal Justice Center, **special event at Stanford Law School** (Mar. 2006)

*Invited Lecturer*, “A Capital Waste of Time? A Critical Examination of the Supreme Court’s Certiorari Choices in Criminal Cases,” **Ohio Northern Pettit College of Law Dean’s Lecture Series** (Mar. 2006)

*Invited Presenter*, “The Rise of Law-Related Web Blogs: Growing Popularity and Influence,” **Columbus Federalist Society** (Mar. 2006)

*Invited Presenter*, “Tweaking *Booker*: Making Advisory Guidelines Work in the Federal System,” **Houston Law Review symposium** (Nov. 2005)

*Invited Presenter*, “Conceptualizing *Booker*,” **Arizona State Law Review symposium** (Nov. 2005)

*Invited Presenter*, “Conceptualizing *Booker*,” **2005 Friedman & Gilbert Criminal Law Forum lecture at the Cleveland-Marshall College of Law** (Oct. 2005)

*Invited Presenter*, “Federal Sentencing After *Booker*,” **New York State Bar Association** (Sept. 2005)

*Invited Presenter*, “Sentencing After *Blakely*,” **North Carolina Association of Trial Lawyers** (Sept. 2005)

*Invited Presenter*, “Mandatory Minimum Sentencing in the Federal System” **annual conference of the National Association of Sentencing Commissions** (Aug. 2005)

*Invited Presenter*, “Federal Sentencing After *Booker*,” **Sixth Circuit Judicial Conference** (June 2005)

*Invited Participant*, “Roundtable: Impact of *Booker*,” **University of Illinois College of Law** (Apr. 2005)

*Invited Presenter*, “The Modern Law and Politics of Sentencing Reform” **lecture to local chapter of American Constitutional Society at University of Minnesota School of Law** (Apr. 2005)

*Invited Presenter*, “Federal Sentencing Guidelines after *Booker* and *Fanfan*,” **National video conference hosted by ALI-ABA** (Mar. 2005)

*Invited Participant and Presenter*, “The New Media and its Impact on the Coverage of the Supreme Court” **United States Supreme Court Fellows Program** (Feb. 2005)

*Invited to Testify*, “U.S. v. *Booker/Fanfan* and the Impact on Federal Sentencing,” **United States Sentencing Commission** (Feb. 2005)

*Invited Presenter*, “Reconceptualizing Sentencing,” **faculty workshop at the University of North Carolina School of Law** (Jan. 2005)

*Invited to Testify*, “*Blakely* and the Future of the Federal Sentencing Guidelines,” **United States Sentencing Commission** (Nov. 2004)

*Keynote Speaker*, “Punishment and Crime,” **University of Chicago Legal Forum symposium** (Nov. 2004)

*Invited Participant and Presenter*, “The Future of American Sentencing: A National Roundtable on *Blakely*,” **Stanford Law School** (Oct. 2004)

*Invited Presenter*, “The Legal Barriers to Reentry in Ohio: Collateral Sanctions in Theory and Practice,” **University of Toledo Law Review symposium** (Sept. 2004)

*Invited Panelist*, “A Supreme Mess: *Blakely*, Sentencing, and the Separation of Powers,” **Harvard Law School** (Sept. 2004)

*Invited Presenter*, “Sentencing Reform and Mandatory Minimums,” **Congressional Black Caucus Foundation’s 34th Annual Legislative Conference** (Sept. 2004)

*Invited Presenter*, “Death Penalty Developments,” **annual meeting of Ohio Common Pleas Judges Association in Columbus, Ohio** (Dec. 2003)

*Invited Presenter*, “Who Decides Sentences?” testimony presented to **American Bar Association’s Justice Anthony Kennedy Commission in Washington D.C.** (Nov. 2003)

*Invited Presenter*, “The Feeney Amendment and Downward Departures,” **presented at University of Arkansas at Little Rock School of Law** (June 2003)

*Invited Participant*, “Symposium on the Federal Guidelines Sentencing,” **Yale Law School** (Nov. 2002)

*Invited Presenter*, “Fifteen Years of Federal Guidelines Sentencing: The Good, The Bad, and The Ugly” **workshop for federal defenders and CJA attorneys at the Federal Judicial Center** (July 2002)

*Invited Reviewer*, reviewing “Getting to Death: Fairness and Efficiency in the Processing and Conclusion of Death Penalty Cases after *Furman*” authored by Professors Jeffrey Fagan, James S. Liebman, and Valerie West and co-authors for **U.S. Department of Justice, National Institute of Justice** (Summer 2002)

*Invited Presenter*, “The Successes and Pitfalls of Drug Courts” presented during a two-day symposium entitled “New Voices in the Drug War” at the **Villanova College of Law** (Oct. 2001)

*Invited Presenter*, “From Lawlessness to Too Much Law? Exploring the Risk of Disparity From Differences in Defense Counsel under Guidelines Sentencing” presented during three-day symposium at the **University of Iowa** (June 2001)

*Faculty Symposium Editor* of two-day academic conference at **The Ohio State University College of Law** entitled “Addressing Capital Punishment Through Statutory Reform” during which I also served as a *Presenter* of “Legal Process Lessons: Reasons to Reconsider Opposition to the Death Penalty” (Mar. 2001)

*Invited Panelist*, 2001 Kastenmeier Colloquium, “Sentencing Criminals: After a Quarter Century of Reform, Where Are We?” **panel discussion at The University of Wisconsin Law School** (Mar. 2001)

## **OTHER SERVICE AND PROFESSIONAL ACTIVITIES**

### **The Ohio State University**

Alumni Award for Distinguished Teaching Selection Committee Member (School Years 2000-2003)

- Served as regular member, and then Chair in 2002-2003 of Committee which selects no more than ten Ohio State faculty members from a pool of nearly 3000 eligible candidates for this university-wide teaching award

NCAA Self Study Committee (School Years 2001-2003)

- Served on the Governance Working Group of the Governance and Compliance Sub-Committee to meet with University administrators and draft report documenting University's adherence to NCAA rules.

### **The Ohio State University Moritz College of Law**

Clerkship and Professional Development Committee (School Years 2003-2007)

- Served as Chair seeking to facilitate greater student interest in, and access to, clerkships and other opportunities

Promotion & Tenure Committee (School Year 2009)

Minority Affairs Committee (School Year 2003-2004)

Café Society (School Years 2002-2004)

- Served as member and the co-Chair of committee in charge of major renovation of Drinko Hall student lounge

Admissions Committee (School Years 2002-2003, 1997-1998)

- Served as Chair in 2002-2003 exploring revisions to criteria and processes for admission of Class of 2006

Long-Range Planning Committee (School Years 2006-2011, 2001-2002)

- Served as Chair of full Committee in 2006-07 and Chair of subcommittee in 2001-02

Academic Affairs Committee (School Years 1998-2001)

- Played an integral role in the development and ultimate approval of modifications to the first-year curriculum

Advisory Board Member for Center for Law, Policy and Social Science (2004 to present)

Faculty Advisor to Criminal Procedure Moot Court Team (School Years 2000-2007)

Advisory Board Member for *Pro Bono* Research Group (School Years 1998-2004)

Faculty Advisor to Criminal Law Society (School Years 1999-2004)

### ***Criminal Justice***

Faculty Symposium Editor (School Years 2000-2001, 2009-2010)

- Organizer of conference in March 2001 entitled "Addressing Capital Punishment Through Statutory Reform"
- Organizer of conference in November 2009 entitled "Originalism and the Jury"

### ***Ohio State Law Journal***

Faculty Symposium Editor (School Years 2000-2001, 2009-2010)

- Organizer of conference in March 2001 entitled "Addressing Capital Punishment Through Statutory Reform"
- Organizer of conference in November 2009 entitled "Originalism and the Jury"

### **Association of the Bar of City of New York, Committee on Legal Education**

Secretary (Winter 1996 - Summer 1997)

- Worked on Committee's response to the Report of the Professional Education Project ("the Sullivan Report").

### **American Bar Association, Group on Unmet Legal Needs of Children & Families**

Research Assistant (Summer 1993)

- Assisted with Working Group's report, *America's Children at Risk: A National Agenda for Legal Action* (1993).

### **Member of:**

**New York Bar**

Association of American Law Schools Section on Criminal Justice

The Ohio State University Academy of Teaching  
Admitted to practice in the U.S. Supreme Court and numerous lower courts