

DOUGLAS A. BERMAN

Newton D. Baker/Baker & Hostetler Chair in 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

Princeton University

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

Honors: *Phi Beta Kappa*; 1869 Award for Thesis, “Killing, Letting Die, and the Right to Noninterference”

TEACHING EXPERIENCES

The Ohio State University Moritz College of Law

Executive Director of Drug Enforcement & Policy Center (Fall 2017 – Present)

- Raised over \$10 million in outside funding to support creation and development of new criminal justice center

Newton D. Baker/Baker & Hostetler Chair in Law (Summer 2018 – Present)

Robert J. Watkins/Procter & Gamble Professor of Law (Spring 2011 – Summer 2018)

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)

- Course offerings have included Criminal Law, Punishment & Sentencing, Marijuana Law, Policy & Reform, Death Penalty, Clemency, Second Amendment Seminar, Criminal Procedure–Investigation, Advanced Sentencing Seminar, Legislation, Judging and Clerking, Legislation Clinic, Introduction to Intellectual Property, and Legal Analysis & Writing.

Fordham University School of Law

Visiting Professor of Law (Spring 2010)

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

University of Colorado Law School

Visiting Professor of Law (Wintersession 2016)

- Delivered “mini-course” version of Marijuana Law, Policy & Reform

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.

ADDITIONAL LEGAL EXPERIENCES

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

Creator and Sole Author (Spring 2004 - Present)

- 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.

***Marijuana Law, Policy & Reform Blog* — http://lawprofessors.typepad.com/marijuana_law/**

Creator and Author (Spring 2013 - Present)

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 system.

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

Shumaker, Loop & Kendrick, LLP

Of Counsel (Winter 2014 - Present)

Paul, Weiss, Rifkind, Wharton & Garrison

Litigation Associate (Summers 1992, 1993 and Fall 1995 - Summer 1997)

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

Law Clerk (1994-95 Court Term)

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

Law Clerk (1993-94 Court Term)

AWARDS

The Ohio State University Distinguished Scholar Award

- Awarded during the 2020-21 school year; this university-wide scholar award is presented to only six faculty to recognize “their exceptional scholarly accomplishments and substantial body of research.”

National Association of Sentencing Commissions Richard P. Kern Memorial Award

- Awarded in 2018 to recognize “individual who has contributed greatly to the development of sentencing policy and research”

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.”

PUBLICATIONS

Books and Book Chapters

Sentencing Law and Policy: Cases, Statutes and Guidelines (Wolters Kluwers 1st ed. 2004; 2nd ed. 2007; 3rd ed. 2013; 4th ed. 2018; 5th ed. 2021) (with Nora Demleitner, Marc Miller and Ronald Wright)

Marijuana Law and Policy (Carolina Academic Press 2020) (with Alex Kreit)

Sentencing Guidelines, in Reforming Criminal Justice (Academy for Justice 2017)

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 21st ed. 2012) (with Mark Harris)

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

Articles

Ensuring Marijuana Reform is Effective Criminal Justice Reform, 52 *Arizona State Law Journal* 741 (2020) (with Alex Kreit) (invited)

Leveraging Marijuana Reform to Enhance Expungement Practices, 30 *Federal Sentencing Reporter* 305 (April/June 2018) (invited)

Reflecting on the Abolition of Parole in the Federal System, *Federal Probation*, Vol. 81, No. 2, p. 18 (Sept 2017) (invited)

The Challenges of “Improving” the Modern Death Penalty, 11 *Duke Journal Of Constitutional Law & Public Policy* 35 (2016) (invited)

Towards a Theory of Mitigation, 96 *Boston University Law Review* 161 (2016) (with Carissa Hessick)

Re-Balancing Fitness, Fairness, and Finality for Sentences, 4 *Wake Forest Journal of Law & Policy* 151 (2014) (invited)

Graham and Miller and the Eighth Amendment’s Uncertain Future, *Criminal Justice Magazine*, Winter 2013, at 19 (invited)

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)

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 (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 (invited)

Engaging Capital Emotions, 102 Northwestern University Law Review Colloquy 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 Change, 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)

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 Notable Writings

Reviving the U.S. Sentencing Commission, ASU Crime and Justice News commentary (Feb. 2021), at <https://crimeandjusticeneeds.asu.edu/commentary-reviving-us-sentencing-commission>

Deciphering Data, 33 Federal Sentencing Reporter 216 (2021) (with Steven L. Chanenson)

Seeking Criminal Justice Clarity amid Historic Chaos, 33 Federal Sentencing Reporter 217 (2020).

Sentencing is Dang Hard... And So..., 32 Federal Sentencing Reporter 181 (2020)

Documenting the Challenges (and Documents) As Ohio Courts Respond to COVID-19, on DEPC website and SSRN at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3574733 (2020) (with multiple authors)

Struggling Through the Pandemic: Cannabis Social Equity During COVID-19, on DEPC website and SSRN at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3628533 (2020) (with multiple authors)

Teaching Drugs: Incorporating Drug Policy into Law School Curriculum, on DEPC website and SSRN at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3535548 (2020) (with multiple authors)

Tough and Smart: Federal Sentencing Provisions of the 1994 Crime Bill, Council on Criminal Justice report (2020), at <https://counciloncj.foleon.com/reports/crime-bill/ii-federal-sentencing/>

A First Look at the First Step Act, 32 Federal Sentencing Reporter 63 (2019)

Three Spheres of Sentencing Reform, 32 Federal Sentencing Reporter 1 (2019) (with Steven L. Chanenson)

Learning from Recent State Drug Sentencing Reform Efforts, 31 Federal Sentencing Reporter 169 (2019)

The 2018 Debate over Statutory Reforms to the Federal Criminal Justice System, 31 Federal Sentencing Reporter 99 (2018)

Montgomery's Messy Trifecta, 73 National Lawyers Guild Review 103 (2016)

Federal Sentencing Reform, Fast and Slow, 25 Federal Sentencing Reporter 1 (2015)

Fiddling with the Fraud Guidelines as Booker Burns, 27 Federal Sentencing Reporter 267 (2015)

Sentencing's Wild Ride Continues, 26 Federal Sentencing Reporter 283 (2014) (with Steven L. Chanenson)

Reflecting on the Latest Drug War Fronts, 26 Federal Sentencing Reporter 213 (2014)

Federal Sentencing Challenges Post-Booker: Introduction, 51 Houston Law Review 1207 (2014).

A Cynic's Guide to All the Federal Sentencing Reform Buzz, 26 Federal Sentencing Reporter 73 (2013)

Obama Can Fix the Race Gap in Sentencing Law: a Stroke of the Pen Can Undo Vast Racial Disparities in Criminal Sentences, Slate, July 29, 2013 (with Harlan Protass).

Can the Federal Criminal Justice System Effectively Identify and Respond to Modern Sentencing "Hot Spots"?, 25 Federal Sentencing Reporter 287 (2013)

A Saner Approach to Sentencing, Wall Street Journal, May 8, 2013, at A17 (with Harlan Protass)

Can the Federal Criminal Justice System Effectively Identify and Respond to Modern Sentencing "Hot Spots"? 25 Federal Sentencing Reporter 287 (2013)

New Data and New Questions: TRAC's Contribution to Federal Sentencing, 25 Federal Sentencing Reporter 1 (2012) (with Steven L. Chanenson)

Obama Hasn't Reformed Criminal Justice—Could Romney Do Better?, The Daily Beast, April 13, 2012

McCleskey at 25: Reexamining the "Fear of Too Much Justice", 11 Ohio St. J. Crim. L. 1 (2012)

What Will Deter Insider Trading? Longer prison sentences, like Rajaratnam's, don't necessarily have a greater impact. Maybe we should try public shaming, Time.com, Oct. 11, 2011

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)

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/. (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://legallaaffairs.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 (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 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 have been filed in a variety of federal courts. Presented below is a select sample of these filings.

U.S. Supreme Court Briefs

Amicus Brief in Support of Petitioner, *Wooden v. United States* (2021)

Amicus Brief in Support of Petitioner, *Walker v. United States* (2020)

Amicus Brief in Support of Petitioner, *Hughes v. United States* (2018)

Amicus Brief in Support of Petition for Certiorari, *United States v. Nahmani* (2018)

Amicus Brief in Support of Petitioner, *Beckles v. United States* (2016)

Amicus Brief in Support of Petitioner, *United States v. Welch* (2016)

Amicus Brief in Support of Petition for Certiorari, *United States v. Hebert* (2016)

Amicus Brief in Support of Petitioner, *Montgomery v. Louisiana* (2015)

Amicus Brief in support of Petition for Certiorari, *Young v. United States* (2014)

Amicus Brief in support of Petition for Certiorari, *Jones v. United States* (2014)

Amicus Brief in support of Petitioner, *Alleyne v. United States* (2012)

Merits Brief in support of Petitioner, *Hill v. United States* (2012)

Amicus Brief in support of Petition for Certiorari, *Rubashkin v. United States* (2012)

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)

Petition for Certiorari, *United States v. Lett* (2008) (with now-U.S. District Judge Douglas R. Cole)

Amicus Brief in support of Respondents, *United States v. Rodriquez* (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 Defendant, *Cruz v. United States* (2d Cir. 2020)

Amicus Brief in support of Defendant, *United States v. Gozes-Wagner* (5th Cir. 2019)

Amicus Brief in support of Defendant, *United States v. Vederman* (3d Cir. 2019)

Amicus Brief in support of Defendant, *United States v. Lopez-Cabrera* (2d Cir. 2019)

Amicus Brief in Support of Petition for Rehearing en banc, *United States v. Briones* (9th Cir. 2018)

Amicus Brief in Support of Defendants, *Doe v. Snyder* (6th Cir. 2016)

Amicus Brief in Support of Petitioner seeking en banc review, *Matchett v. United States* (11th Cir. 2015)

Amicus Brief in support of Defendants, *United States v. Young* (6th Cir. 2014)

Amicus Brief in support of Defendants, *United States v. Blewett* (6th Cir. 2013)

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 6th Circuit)

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)

U.S. District Court Briefs

Brief in support of Motion for Sentence Reduction, *United States v. Millan* (E.D.N.Y. 2019)

Amicus Brief not in support of either party, *United States v. Polinski* (N.D. Ohio 2016)
(invited by U.S. District Judge James Carr to submit brief on federal habeas issues)

Amicus Brief in support of Defendant, *United States v. Stoliar* (D. Nev. 2015)

Amicus Brief not in support of either party, *United States v. Walli* (E.D. Tenn. 2014)

(invited by U.S. District Judge Amul Thapar to submit brief on sentencing issues)

Amicus Brief in support of Defendant, *United States v. Santana* (S.D.N.Y. 2010)

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.

Organizer and presenter, “Understanding Drug Sentencing and its Contributions to Mass Punishment,” **The Ohio State University Moritz College of Law** (Oct. 2021)

Invited Presenter, “Why Lawyers Matter: Criminal Defense During The Pandemic,” **University of Illinois College of Law** (Apr. 2021)

Invited Presenter, “Bringing a Successful Compassionate Release Application,” **New York Criminal Bar Association** (Jan. 2021)

Invited Presenter, “The 2020 Election and War on Drugs,” **online American Association of Law Schools Annual Conference** (Jan. 2021)

Invited Presenter, “Marijuana Law 2020: Lessons from the Past, Ideas for the Future,” **online Boston University Law Review Symposium** (Nov. 2020)

Organizer and presenter, “Prison Brake: Rethinking the Sentencing Status Quo,” **online Georgetown Law Symposium** (Oct. 2020)

Invited Presenter, “Apprendi at 20,” **online North Carolina Law Review Symposium** (Oct. 2020)

Commentator, “Guilty Minds: Conference on Mens Rea and Criminal Justice Reform,” **online conference Arizona State University College of Law** (Sept. 2020)

Panelist, “Social Equity in Cannabis Reform,” **Online Seminar for Attorney General Alliance** (July 2020)

Organizer and moderator, “The Work of Sentencing Commissions in Time of Change” **online event of the National Association of Sentencing Commissions** (June 2021)

Organizer and presenter, “The Controlled Substances Act @ 50,” **Arizona State University College of Law** (Feb. 2020)

Invited Presenter, “National and Ohio Marijuana Reform,” **Ohio State Bar Association** (Oct. 2019)

Organizer and presenter, “Buckeyes in Cannabis” **The Ohio State University Moritz College of Law** (Sept. 2019)

Organizer and lecturer, “Marijuana Reform and Public Health,” **The Ohio State University College of Public Health Summer Program** (June 2019)

Invited Speaker, “Sentencing Second Chances: Addressing Excessive Sentencing With Escape Valves,”

Aleph Institute conference at Columbia Law School (June 2019)

Invited to Testify, “Marijuana Reform Hearing,” **Columbus City Council** (April 2019)

Invited Speaker, “A Fully Constitutionalized Eighth Amendment,” **UC Hastings College of the Law endowed lecture** (Feb. 2019)

Invited Presenter, “Criminal Justice Reform Consensus?” **American Association of Law Schools Annual Conference** (Jan. 2019)

Invited Presenter, “Drug Law Reform in the States” **National Conference of State Legislatures meeting** (Dec. 2018)

Keynote Speaker, “Sentencing is Hard,” **annual conference of the National Association of Sentencing Commissions** (Aug. 2018)

Invited Speaker, “Marijuana Reform and Policy,” **Ohio Second District Court of Appeals' Judicial Symposium** (May 2018)

Guest Lecturer, “Mass Incarceration,” **Harvard Law School** (April 2018)

Invited Presenter, “Marijuana Justice Act” **American Association of Law Schools Annual Conference** (Jan. 2018)

Invited Presenter, “Criminal Sentencing,” **Sixth Circuit Judicial Conference** (May 2017)

Invited Speaker, “State and National Marijuana Reforms,” **West Virginia Bar Conference** (April 2017)

Invited Presenter, “The Death Penalty: Historical and Doctrinal Perspectives,” **Northwestern Law School symposium** (Nov 2016)

Invited Presenter, “Defending the Convicted: Effective Sentencing Advocacy,” **Temple Law School symposium** (Oct 2016)

Invited Presenter, “The Enforcement Maze: Over-Criminalizing American Enterprise,” **U.S. Chamber of Commerce symposium** (May 2016)

Invited Presenter, “Future of the Death Penalty Litigation,” **Duke Law School symposium** (Feb 2016)

Keynote Speaker, “Future of Federal Sentencing,” **University of Toledo College of Law** (Oct 2015)

Invited Lecturer, “Sentencing Jurisprudence in the Roberts Era,” **Nevada Public Defenders** (Oct 2015)

Invited Lecturer, “Marijuana Reform in Ohio and Nationwide,” **Ohio State Bar Association** (Sept 2015)

Invited Presenter, “Drug Sentencing Reform,” **Sixth Circuit Judicial Conference** (May 2015)

Invited Presenter, “Federal Marijuana Policy and Practice,” **Tribal Marijuana Conference** (Feb 2015)

Invited Presenter, “Marijuana Legalization and the Law of Unintended Consequences” **Ohio Supreme Court** (May 2014)

Invited Lecturer, “Federal Sentencing Reform Developments,” **District of Arizona Annual Conference** (March 2014)

Invited Lecturer, “Federal Sentencing a decade after *Booker*,” **Iowa Federal Practice Seminar** (Oct 2014)

Invited Panelist, “Second Amendment Law and Jurisprudence,” **Chicago Bar Association** (May 2013)

Invited Presenter, “Marijuana Law and Policy Reforms” **American Association of Law Schools Annual Conference** (Jan. 2013)

Invited Presenter, “Criminal Sentencing,” **Eighth Circuit Judicial Conference** (August 2012)

Invited Panelist, “White-Collar Sentencing Practices after *Booker*,” **Annual National NACDL-USSG Seminar on the Federal Sentencing Guidelines** (May 2012)

Invited Presenter, “Reforming Federal Sentencing after *Booker*,” **ACLU-ACS Policy Event** (Jan 2012)

Invited Presenter, “Criminal Sentencing,” **Sixth Circuit Judicial Conference** (June 2011)

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** (Feb 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 at **The Ohio State University College of Law** on “Originalism and the Jury” and *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** (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 D. 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*,” **lecture at 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/Fanfao* 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, “New Voices in the Drug War,” **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,” **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

Association of American Law Schools (AALS)

Junior Scholar Mentor for Criminal Justice Section (Spring 2019-Present)

Reviewer of Junior Scholarly Papers Competition (multiple years)

Last Prisoner Project (LPP)

Member of Legal Committee (Spring 2019-Present)

- Serving as advisor and resource on LPP legal work, often done for persons incarcerated for marijuana offenses

National Association of Criminal Defense Lawyers (NACDL)

Member of FIRST STEP Act Implementation Task Force (Spring 2019-Present)

Member of organizing team for of Prison Brake symposium at Georgetown Law (Fall 2020)

Research Director of State Proportionality Project (Spring 2012-Fall 2013)

- Served as researcher and coordinator of on-line project assembling state proportionality jurisprudence

Joint Death Penalty Task Force on the Administration of Death Penalty in Ohio

Appointed Member (Fall 2011-Spring 2014)

- Served as member of 21-person task force created by Ohio Supreme Court and Ohio Bar Association to examine and report on whether Ohio’s administration of the death penalty “is as fair and judicial as possible”

The Ohio State University

Drug Enforcement & Policy Center, Creator and Director (Fall 2017 – Present)

- Raised over \$10 million in outside funding to support creation and development of new criminal justice center

Alliance for the American Dream (School Year 2019-2020)

- Served as member of advisory committee helping to select teams for national Schmidt Futures competition

Masterminds Lecturer (April 2018)

- Selected to present TED-style lecture to showcase innovative work of endowed faculty

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)

Promotion & Tenure Committee (School Years 2020-21, 2009)

Minority Affairs Committee (School Year 2003-2004)

Café Society (School Years 2002-2004)

Administration Committee (School Year 2019-2020)

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

Long-Range Planning Committee (School Years 2016-18, 2006-2011, 2001-2002)

Academic Affairs Committee (School Years 1998-2001, 2012-14, 2017-19)

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, 2012-Present)

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

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

American Bar Association, *Criminal Justice Magazine*

Editorial Board Member (Spring 2010-Fall 2015)

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