

DOUGLAS A. BERMAN

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

Full Professor (Fall 2004 - Present)

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 intellectual property and judicial administration issues.
- Course offerings have included Criminal Law, Criminal Punishment & Sentencing, Death Penalty Seminar, Criminal Procedure–Investigation, Advanced Sentencing Seminar, The Process of Judging and Clerking, Introduction to Intellectual Property, and Legal Writing & Analysis.
- On-going projects include revisions to sentencing casebook for Aspen Publishing, analysis of impact of *Blakely v. Washington* on modern sentencing reforms, and research on the institutions and dynamics of reforms to capital and non-capital sentencing systems.

Harvard Law School, First-Year Tutorial Program

Tutor (Spring 1993)

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

Harvard College Course, "Thinking About Thinking"

Teaching Fellow (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 (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
- Profiled in *Wall Street Journal* article, “Law Professor’s Web Log Is Jurists’ Must-Read,” July 19, 2004

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.
- Serving as editor of Volume 2, Issue 1 symposium on “Capital Juries.”

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

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; this grant is designed to facilitate the research of junior faculty and has been used to explore the influence of defense attorneys on sentencing outcomes under the Federal Sentencing Guidelines.

The Ohio State University Moritz College of Law Summer Research Grant

- Recipient every Summer from 1997 to the present; this grant is designed to facilitate summer research projects and has been used to fund work on a series of articles and essays published in various law journals.

PUBLICATIONS

Books

Sentencing Law and Policy: Cases, Statutes and Guidelines (Aspen Publishers 2004)
(with Nora Demleitner, Marc Miller and Ronald Wright)

Teachers' Manual for *Sentencing Law and Policy: Cases, Statutes and Guidelines* (Aspen Publishers available on-line 2004) (with Nora Demleitner, Marc Miller and Ronald Wright)

Major Articles

Conceptualizing Sentencing, ___ UNIVERSITY OF CHICAGO LEGAL FORUM ___ (forthcoming 2005)

The Roots and Realities of Blakely, CRIMINAL JUSTICE ___ (forthcoming Jan. 2005)

Conceptualizing Blakely, 17 FEDERAL SENTENCING REPORTER ___ (forthcoming Dec. 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)

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

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)

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 Writings

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)

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 Appendi’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 Appendi, 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) (with 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: The 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)

PRESENTATIONS, PANELS AND RELATED SCHOLARLY ACTIVITY

Keynote Speaker, "Punishment and Crime," University of Chicago Legal Forum symposium (November 2004)

Invited Presenter, "Reforming the Reform: Sentencing in the 21st Century" Oklahoma City University School of Law (October 2004)

Invited Participant and Presenter, "The Future of American Sentencing: A National Roundtable on *Blakely*" Stanford Law School (October 2004)

Invited Presenter, "The Legal Barriers to Reentry in Ohio: Collateral Sanctions in Theory and Practice" University of Toledo Law Review (September 2004)

Invited Panelist, "A Supreme Mess: *Blakely*, Sentencing, and the Separation of Powers" Harvard Law School (September 2004)

Invited Presenter, "Sentencing Reform and Mandatory Minimums" Congressional Black Caucus Foundation's 34th Annual Legislative Conference (September 2004)

Invited Presenter, "Developments in Federal Sentencing Law" presented at annual meeting of United States Attorneys for the Southern District of Ohio (July 2004)

Invited Presenter, "Developments in Federal Sentencing Law" presented at annual meeting of United States Attorneys for the Southern District of Ohio (July 2004)

Invited Presenter, “Developments in Federal Sentencing Law” presented at annual meeting of United States Attorneys for the Southern District of Ohio (July 2004)

Invited Presenter, “A Common Law of Sentencing” presented at annual meeting of Court of Appeals Judges Association in Ohio (June 2004)

Invited Presenter, “Death Penalty Developments” presented at 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, “Examination of the Internet Copyright Wars,” panel discussion at the Moritz College of Law (Oct. 2003)

Invited Moderator, “Debating Gun Control,” panel discussion sponsored by the Federalist Society at the Moritz College of Law (Sept. 2003)

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

Invited Presenter, “Supreme Court Developments in Sentencing Law” presentation to attendees of Judges’ Day at the Moritz College of Law in Columbus, Ohio (March 2003)

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

Invited Presenter, “The Realities of Federal Guideline Sentencing,” panel discussion sponsored by the American Constitution Society at the Moritz College of Law (Oct. 2002)

Invited Presenter, “Fifteen Years of Federal Guidelines Sentencing: The Good, The Bad, and The Ugly” presented at a sentencing workshop for federal defenders and CJA panel attorneys at the Federal Judicial Center in Washington D.C. (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 Reviewer, reviewing a draft casebook entitled “Criminal Law: Cases, Materials, and Strategies” authored by Professor David Crump for LexisNexis Law School Publishing (Spring 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 (October 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” (March 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 (March 2001)

Invited Presenter, “Why Everyone Should Want to Be a Law Journal Editor,” forum for students at The Ohio State University College of Law (March 2002, March 2001 and March 2000)

Invited Participant, “Federal Sentencing Policy for Economic Crimes and New Technology Offenses” sponsored by the U.S. Sentencing Commission at George Mason School of Law (October 2000)

Organizer and Presenter, “Faculty Panel on Judicial Clerkships,” forum for students at The Ohio State University College of Law (October 2000 and October 1999)

Presenter, “Addressing Capital Punishment Through Statutory Reform,” The Ohio State University College of Law as part of the Ohio State University Summer Law Workshop Series (June 2000)

Invited Presenter, “The Impact of the Federal Sentencing Guidelines on Plea Bargaining,” American Inns of Court of Franklin County (May 2000)

Invited Presenter, “Changes in Sentencing Policy in the United States” and “American Death Penalty Law,” both delivered to group of Moldavian lawyers at The Ohio State University College of Law (May 2000)

Invited Presenter, “Thoughts about the Direction of Search and Seizure Law in the 21st Century,” Meeting of the Ohio Municipal Attorney’s Association (December 1999)

Presenter, “The Political Dynamics of Sentencing Reform,” The Ohio State University College of Law as part of the Ohio State University Summer Law Workshop Series (June 1999)

Invited Presenter, “Balanced and Purposeful Departures,” Indiana University–Indianapolis School of Law Faculty Workshop Forum (October 1998)

Presenter, “Balanced and Purposeful Departures,” The Ohio State University College of Law as part of the Ohio State University Summer Law Workshop Series (June 1998)

Invited Panelist, “Representing Persons with Mental Retardation on Death Row in Texas,” panel discussion at The Ohio State University College of Law (March 1998)

Invited Panelist, “Why Persons with Mental Retardation Should not be on Death Row,” panel discussion at New York City Conference of the Association of Retarded Citizens (May 1997)

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 Committee (School Years 2003-2005)

- Serving as Chair seeking to facilitate greater student interest in, and access to, judicial clerkship opportunities

Minority Affairs Committee (School Year 2003-2004)

- Serving as Chair conducting climate study of student attitudes towards diversity issues

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 Year 2001-2002)

- Served as Chair of subcommittee which explored student housing options and other potential College space needs

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 (School Year 2004)

Faculty Advisor to Criminal Procedure Moot Court Team (School Years 2000-2004)

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

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

Ohio State Law Journal

Faculty Symposium Editor (School Year 2000-2001)

- Organizer of conference in March 2001 entitled "Addressing Capital Punishment Through Statutory Reform"

Association of the Bar of City of New York

Committee on Legal Education & Admission to the Bar

Secretary (Winter 1996 - Summer 1997)

- Worked on Committee's response to the Report of the Professional Education Project ("the Sullivan Report"), which addressed legal education and professional development in New York.

American Bar Association

Working Group on the Unmet Legal Needs of Children and 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:

Association of American Law Schools Section on Criminal Justice

The Ohio State University Academy of Teaching

American Bar Association

Association of the Bar of the City of New York