

STEPHANOS BIBAS

Professor, University of Pennsylvania Law School

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**RESEARCH &
TEACHING**

All criminal law, criminal procedure, and sentencing; the U.S. Supreme Court.

EXPERIENCE

University of Pennsylvania Law School

Professor of Law, Researching and teaching in criminal procedure, 2006-present

Professor of Criminology (secondary appointment), 2009-present

Director, Supreme Court Clinic, orally argued six cases on the merits, litigating a wide array of appellate and Supreme Court cases

(<http://www.law.upenn.edu/clinic/scc/>),

2009-present

Robert A. Gorman Award for Excellence in Teaching, 2008

University of Chicago Law School

Visiting Associate Professor, Taught first-year criminal law course, Winter/Spring 2006

University of Pennsylvania Law School

Visiting Associate Professor, Taught courses in criminal procedure, Fall 2005

University of Iowa College of Law

Associate Professor, Researched and taught in criminal law and criminal procedure, 2001-06

Yale Law School

Research fellow, 2000-01

U.S. Attorney's Office, Southern District of New York

Assistant U.S. Attorney, Criminal Division, 1998-2000

Prosecuted more than 100 narcotics, art, robbery, fraud, grave robbing, and other crimes.

Interviewed witnesses and coordinated investigations.

Argued countless motions in court.

Tried three criminal cases to juries.

Briefed and argued three appeals in the U.S. Court of Appeals, Second Circuit.

FBI & New York Police Department awards for outstanding performance in high-profile grave-robbing case that became the subject of a Bravo/BBC documentary.

Hon. Anthony Kennedy, Supreme Court of the United States,
Law clerk, 1997-98

Covington & Burling

Litigation associate. 1995-97

Litigated white-collar criminal defense, appeals, First Amendment,
employment discrimination, toxic torts, and insurance cases.

Personally tried a pro bono employment discrimination case before a federal
jury.

Briefed and argued a pro bono discrimination appeal to the U.S. Court of
Appeals for the D.C. Circuit, winning a unanimous reversal.

**Hon. Patrick E. Higginbotham, U.S. Court of Appeals for the Fifth
Circuit**

Law clerk, 1994-95

U.S. Department of Justice, Civil Division, Appellate Staff

Intern, summer 1994

Hon. Alex Kozinski, U.S. Court of Appeals for the Ninth Circuit

Extern, summer 1992

EDUCATION

Yale Law School

J.D., 1991-94

Yale Law Journal, Symposium Editor.

Moot Court: Thurman Arnold Prize (best oralist) & Stewart Prize (best
team).

Oxford University (University College)

B.A. and M.A., jurisprudence, 1989-91

Gibbs Book Prize in contracts, torts, and land law.

Alan Urbach Memorial Prize in jurisprudence.

1st Place Speaker, 1991 World Debate Championships (Toronto).

Columbia University

B.A., political theory, GPA: 3.94. 1985-89

Summa cum laude.

Phi Beta Kappa, early election (top 2% of the class).

Polity (Student Budgeting Committee), Financial Chair.

Parliamentary Debate: Winner of various public speaking awards.

BOOKS

**REBOOTING JUSTICE: MORE TECHNOLOGY, FEWER LAWYERS, AND THE
FUTURE OF LAW** (with Benjamin H. Barton) (Encounter Books,
forthcoming summer 2017)

THE MACHINERY OF CRIMINAL JUSTICE (Oxford University Press 2012)

Translated into Chinese and published as 刑事司法机器 (Peking Univ.

Publ'g Co. 北京大学出版社, 2016)

Reviewed in:

- Andrew Taslitz, Book Review, *Tinkering with the Machinery of Justice*,
JOTWELL: CRIMINAL LAW (Mar. 19, 2012),
<http://crim.jotwell.com/tinkering-with-the-machinery-of-justice/>

- Ronald Wright, Book Review, *The Machinery of Criminal Justice*, CRIMINAL LAW AND CRIMINAL JUSTICE BOOKS (Sept. 2012), http://clcjbooks.rutgers.edu/books/machinery_of_criminal_justice.html
- Michael M. O’Hear, Book Review, *(The History of) Criminal Justice as a Morality Play*, 161 U. PA. L. REV. ONLINE 132, 137 (2013), <http://www.pennlawreview.com/bookreview/1-2013/O’Hear.pdf>
- Nicola Lacey, Book Review, *Humanizing the Criminal Justice Machine: Re-Animated Justice or Frankenstein’s Monster?*, 126 HARV. L. REV. 1299 (2013), http://www.harvardlawreview.org/issues/126/march13/Book_Review_9448.php.
 - I published a response, *Criminal (In)Justice and Democracy in America*, 126 HARV. L. REV. F. 134 (2013), http://www.harvardlawreview.org/issues/126/march13/forum_997.php.
- Matthew Schmitz, *Unjust Secular Justice*, FIRST THINGS, Feb. 2013, at 60.

ARTICLES &
SCHOLARLY
WORKS

Rationing Criminal Justice, 116 MICH. L. REV. (forthcoming Oct. 2017) (coauthored with Richard A. Bierschbach)

Restoring Democratic Moral Judgment Within Bureaucratic Criminal Justice, 111 NW. U. L. REV. (forthcoming summer 2017) (symposium essay)

Improve, Dynamite, or Dissolve the Criminal Regulatory State?, in THE NEW CRIMINAL JUSTICE THINKING 61 (Sharon Dolovich & Alexandra Natapoff eds. 2017).

What’s Wrong With Sentencing Equality?, 102 VA. L. REV. 1447 (2016) (coauthored with Richard A. Bierschbach)

The Psychology of Defendant Plea Decision Making, 72 AM. PSYCHOLOGIST 339 (2017) (coauthored with Allison D. Redlich, Vanessa Edkins, & Stephanie Madon)

“Justice Scalia’s Originalism and Formalism: The Rule of Criminal Law as a Law of Rules,” in *The Legacy of Justice Antonin Scalia: Remembering a Conservative Legal Titan’s Impact on the Law*, Heritage Found., special report No. 186 (Aug. 30, 2016), <http://www.heritage.org/research/reports/2016/08/the-legacy-of-justice-antonin-scalia-remembering-a-conservative-legal-titans-impact-on-the-law>.

Designing Plea Bargaining from the Ground Up: Accuracy and Fairness Without Trials as Backstops, 57 WM. & MARY L. REV. 1055 (2016) (symposium essay).

Observers as Participants: Letting the Public Monitor the Criminal Justice Bureaucracy, 127 HARV. L. REV. F. 342 (2014).

- The Limits of Textualism in Interpreting the Confrontation Clause*, 37 HARV. J.L. & PUB. POL'Y 737 (2014).
- Plea Bargaining's Role in Wrongful Convictions*, in EXAMINING WRONGFUL CONVICTIONS: STEPPING BACK, MOVING FORWARD 157 (Allison D. Redlich et al. eds. 2014).
- Constitutionally Tailoring Punishment*, 112 MICH. L. REV. 397 (2013) (coauthored with Richard A. Bierschbach).
- Criminal (In)justice and Democracy in America*, 126 HARV. L. REV. F. 134 (2013), http://www.harvardlawreview.org/issues/126/march13/forum_997.php.
- Shrinking Gideon and Expanding Alternatives to Lawyers*, 70 WASH. & LEE L. REV. 1287 (2013) (symposium essay).
- The Duties of Non-Judicial Actors in Ensuring Competent Negotiation*, 51 DUQ. L. REV. 625 (2013) (symposium essay).
- Justice Kennedy's Sixth Amendment Pragmatism*, 44 MCGEORGE L. REV. 211 (2013) (symposium essay).
- Bulk Misdemeanor Justice*, 85 S. CAL. L. REV. POSTSCRIPT 73 (2012).
- The Supreme Court, 2011 Term--Comment: Incompetent Plea Bargaining and Extra-Judicial Reforms*, 126 HARV. L. REV. 150 (2012).
- Notice-and-Comment Sentencing*, 97 MINN. L. REV. 1 (2012) (co-authored with Richard A. Bierschbach), *cited with approval in Betterman v. Montana*, No. 14-1457, 136 S. Ct. 1609 (2016).
- Taming Negotiated Justice*, 122 YALE L.J. ONLINE 41 (2012), <http://yalelawjournal.org/2012/06/21/bibas.html>.
- Triaging Appointed-Counsel Funding and Pro Se Access to Justice*, 160 U. PENN. L. REV. 967 (2012) (coauthored with Benjamin H. Barton).
- The Myth of the Fully Informed Rational Actor*, 31 ST. LOUIS U. PUB. L. REV. 79 (2011) (symposium essay).
- Sacrificing Quantity for Quality: Better Focusing Prosecutors' Scarce Resources*, 106 NW. U. L. REV. COLLOQUY 138 (2011), <http://www.law.northwestern.edu/lawreview/colloquy/2011/25/LRColl2011n25Bibas.pdf>.
- Regulating the Plea-Bargaining Market: From Caveat Emptor to Consumer Protection*, 99 CAL. L. REV. 1117 (2011), *quoted with approval in Lafler v. Cooper*, 132 S. Ct. 1376, 1387 (2012).
- The Pitfalls of Professionalized Prosecution: A Response to Josh Bowers's "Legal Guilt, Normative Innocence, and the Equitable Decision Not to Prosecute,"* 111 COLUM. L. REV. SIDEBAR 14 (2011),

http://www.columbialawreview.org/wp-content/uploads/2011/01/14_Bibas.pdf.

Two Cheers, Not Three, for Sixth Amendment Originalism, 34 HARV. J.L. & PUB. POL'Y 45 (2011).

Neuroprediction, Violence, and the Law: Setting the Stage, 4 NEUROETHICS (2010) (coauthored with Thomas Nadelhoffer, Scott Grafton, Kent A. Kiehl, Andrew Mansfield, Walter Sinnott-Armstrong, and Michael Gazzaniga).

New Perspectives on Brady and Other Disclosure Obligations: What Really Works?, 31 CARDOZO L. REV. 1961 (2010) (reporter for Part III of symposium, on prosecutorial training and supervision).

The Need for Prosecutorial Discretion, 19 TEMP. POL. & CIV. RTS. L. REV. 369 (2010) (symposium essay).

International Idealism Meets Domestic-Criminal-Procedure Realism, 59 DUKE L.J. 637 (2010) (coauthored with William W. Burke-White).

Prosecutorial Regulation Versus Prosecutorial Accountability, 157 U. PA. L. REV. 959 (2009).

Restoration, But Also More Justice, in CRIMINAL LAW CONVERSATIONS 595 (Paul H. Robinson, Kimberly Ferzan, & Stephen P. Garvey eds. 2009).

Political versus Administrative Justice, in CRIMINAL LAW CONVERSATIONS 677 (Paul H. Robinson, Kimberly Ferzan, & Stephen P. Garvey eds. 2009).

Invasions of Conscience and Faked Apologies, in CRIMINAL LAW CONVERSATIONS 196 (Paul H. Robinson, Kimberly Ferzan, & Stephen P. Garvey eds. 2009).

The Heart Has Its Value: The Justifiable Persistence of the American Death Penalty, in CRIMINAL LAW CONVERSATIONS 643 (Paul H. Robinson, Kimberly Ferzan, & Stephen P. Garvey eds. 2009) (coauthored with Douglas A. Berman).

Rewarding Prosecutors for Performance, 6 OHIO ST. J. CRIM. L. 441 (2009) (symposium essay).

Policing Politics at Sentencing, 103 NW. U. L. REV. 1371 (2009) (coauthored with Max M. Schanzenbach and Emerson H. Tiller).

Exacerbating Injustice, Response, 157 U. PA. L. REV. PENNUMBRA 53 (2008).

Engaging Capital Emotions, 102 NW. U. L. REV. COLLOQUY 355 (2008), <http://www.law.northwestern.edu/lawreview/colloquy/2008/17/LRColl2008n17Berman&Bibas.pdf> (coauthored with Douglas A. Berman).

Judicial Fact-Finding at Sentencing, in ENCYCLOPEDIA OF THE SUPREME COURT OF THE UNITED STATES (2008).

- The Sixth Amendment and Criminal Sentencing*, 30 CARDOZO L. REV. 775 (2008) (symposium essay, coauthored with Susan R. Klein).
- Rita v. United States Leaves More Open Than It Answers*, 20 FED. SENTENCING REP. 28 (2007).
- Forgiveness in Criminal Procedure*, 4 OHIO ST. J. CRIM. L. 329 (2007).
- Making Sentencing Sensible*, 4 OHIO ST. J. CRIM. L. 37 (2006) (co-authored with Douglas A. Berman), *cited with approval in Cunningham v. California*, 549 U.S. 270, 297 (2007) (Kennedy, J., dissenting).
- Transparency and Participation in Criminal Procedure*, 81 NYU L. REV. 911 (2006), *cited with approval in Kansas v. Marsh*, 548 U.S. 163, 188 n.3 (2006) (Scalia, J., dissenting).
- The Rehnquist Court's Fifth Amendment Incrementalism*, 74 GEO. WASH. L. REV. 1078 (2006).
- Brady v. Maryland: From Adversarial Gamesmanship Toward the Search for Innocence?*, in CRIMINAL PROCEDURE STORIES 129 (Carol Steiker ed. 2005).
- White-Collar Plea Bargaining and Sentencing After Booker*, 47 WM. & MARY L. REV. 721 (2005).
- Originalism and Formalism in Criminal Procedure: The Triumph of Justice Scalia, the Unlikely Friend of Criminal Defendants?*, 94 GEO. L.J. 183 (2005).
- Regulating Local Variations in Federal Sentencing*, 58 STAN. L. REV. 137 (2005).
- The Blakely Earthquake Exposes the Procedure/Substance Fault Line*, 17 FED. SENTENCING REP. 258 (2005).
- Integrating Remorse and Apology into Criminal Procedure*, 114 YALE L.J. 85 (2004) (co-authored with Richard A. Bierschbach).
- Blakely's Federal Aftermath*, 16 FED. SENTENCING REP. 333 (2004).
- Plea Bargaining Outside the Shadow of Trial*, 117 HARV. L. REV. 2463 (2004). Translated into Chinese and published as 偏离庭审的辩诉交易 (China Legal Publishing House 中国法制出版社, Aug. 2017). (Professor William J. Stuntz published a response to this article at 117 HARV. L. REV. 2548 (2004).)
- Pleas' Progress*, 102 MICH. L. REV. 1024 (2004) (book review, reviewing GEORGE FISHER, PLEA BARGAINING'S TRIUMPH (2003)).
- The Feeney Amendment and the Continuing Rise of Prosecutorial Power to Plea Bargain*, 94 J. CRIM. L. & CRIMINOLOGY 295 (2004).

The Psychology of Hindsight and After-the-Fact Review of Ineffective Assistance of Counsel, 2004 UTAH L. REV. 1 (2004).

Apprendi in the States: The Virtues of Federalism as a Structural Limit on Errors, 94 J. CRIM. L. & CRIMINOLOGY 1 (2003).

Bringing Moral Values into a Flawed Plea Bargaining System, 88 CORNELL L. REV. 1425 (2003).

Harmonizing Substantive-Criminal-Law Values and Criminal Procedure: The Case of Alford and Nolo Contendere Pleas, 88 CORNELL L. REV. 1361 (2003). (Professor Albert W. Alschuler published a response to this article at 88 CORNELL L. REV. 1412 (2003), and I published a reply (listed immediately above).)

Using Plea Procedures to Combat Denial and Minimization, in JUDGING IN A THERAPEUTIC KEY: THERAPEUTIC JURISPRUDENCE AND THE COURTS 169 (Bruce J. Winick & David B. Wexler eds., 2003).

The Real-World Shift in Criminal Procedure, 93 J. CRIM. L. & CRIMINOLOGY 789 (2003) (book review, reviewing RONALD J. ALLEN ET AL., COMPREHENSIVE CRIMINAL PROCEDURE (2001) and MARC L. MILLER & RONALD F. WRIGHT, CRIMINAL PROCEDURES (1999)).

The Right to Remain Silent Helps Only the Guilty, 88 IOWA L. REV. 421 (2003).

Back from the Brink, 15 FED. SENTENCING REP. 79 (2002), *excerpted in* “Back from the Brink” (op-ed essay), LEGAL TIMES, Aug. 5, 2002, at 59, *and* “The High Court Finds a Balance Between Judges and Juries,” FULTON COUNTY DAILY REP., Aug. 13, 2002.

How Apprendi Affects Institutional Allocations of Power, 87 IOWA L. REV. 465 (2002).

Apprendi and the Dynamics of Guilty Pleas, 54 STAN. L. REV. 311 (2001).

Judicial Fact-Finding and Sentence Enhancements in a World of Guilty Pleas, 110 YALE L.J. 1097 (2001), *cited and discussed extensively in* *Blakely v. Washington*, 542 U.S. 296, 311, 331, 337 (2004) (Scalia, J., majority opinion and Breyer, J., dissenting), *and cited in* *Alleyne v. United States*, 133 S. Ct. 2151, 2172-73 (2013) (Alito, J., dissenting). (Professors Nancy J. King and Susan R. Klein published a response to this article at 54 STAN. L. REV. 295 (2001), and I published a reply (listed immediately above).)

Apprendi’s Perverse Effects on Guilty Pleas Under the Sentencing Guidelines, 13 FED. SENTENCING REP. 333 (Mar./Apr. 2001).

Note, *The Case Against Statutes of Limitations for Stolen Art*, 103 YALE L.J. 2437 (1994), *reprinted in* 5 INT’L J. CULTURAL PROPERTY 73 (1996).

A Contractual Approach to Data Privacy, 17 HARV. J.L. & PUB. POL’Y 591 (1994).

SHORTER
WORKS

Defending the Jury: Crime, Community, and the Constitution (book review, reviewing LAURA I. APPLEMAN, *DEFENDING THE JURY: CRIME, COMMUNITY, AND THE CONSTITUTION* (2015)), RUTGERS CRIM. L. & CRIM. JUST. BOOKS, May 2016, <http://cljbooks.rutgers.edu/books/defending-the-jury.html>.

Shying Away from Mercy (book review, reviewing ALEX TUCKNESS & JOHN M. PARRISH, *THE DECLINE OF MERCY IN PUBLIC LIFE* (2014)), *FIRST THINGS*, Jan.-Feb. 2016, at 63.

The Sixth Amendment (coauthored with Jeffrey L. Fisher), National Constitution Center Interactive Constitutional Project (2015), <http://constitutioncenter.org/interactive-constitution/amendments/amendment-vi>.

Effective Lawyering and the Vanishing Jury in a World of Plea Bargaining, National Constitution Center Interactive Constitution Project (2015), <http://constitutioncenter.org/interactive-constitution/amendments/amendment-vi/effective-lawyering-and-the-vanishing-jury-in-a-world-of-plea-bargaining-st/interp/6>.

Prisoners Without Prisons, NATIONAL REVIEW, Sept. 21, 2015, at 27, <http://www.nationalreview.com/article/424059/mass-incarceration-prison-reform>.

Mechanized Justice (book review, reviewing NICK SMITH, *JUSTICE THROUGH APOLOGIES: REMORSE, REFORM, AND PUNISHMENT* (2014)), *FIRST THINGS*, Apr. 2015, at 59.

Justice of the People, by the People, for the People (with Richard A. Bierschbach), NATIONAL REVIEW, Dec. 31, 2014, at 36.

Justice Through Apologies: Remorse, Reform, and Punishment (book review, reviewing NICK SMITH, *JUSTICE THROUGH APOLOGIES: REMORSE, REFORM, AND PUNISHMENT* (2014)), RUTGERS CRIM. L. & CRIM. JUST. BOOKS, July 2014, <http://cljbooks.rutgers.edu/books/justice-through-apologies.html>.

Pardon Me, On the Square, *FIRST THINGS ONLINE* (Nov. 27, 2013), www.firstthings.com/onthesquare/2013/11/pardon-me

Making a Federal Case Out of It, NATIONAL REVIEW, Aug. 19, 2013, at 22.

Moral Debate, Secular Correctness, and Judge Edith Jones, On the Square, *FIRST THINGS ONLINE* (June 19, 2013), www.firstthings.com/onthesquare/2013/06/moral-debate-secular-correctness-and-judge-edith-jones

Leisure Time: Prisoners Should Work and Learn Rather Than Be Idle, NATIONAL REVIEW, Apr. 8, 2013, at 38.

Colson's Enduring Legacy, On the Square, FIRST THINGS ONLINE (May 2, 2012), www.firstthings.com/onthesquare/2012/05/colosnrquos-enduring-legacy

From Watergate to Redemption, On Faith, WASH. POST ONLINE (Apr. 24, 2012), www.washingtonpost.com/blogs/guest-voices/post/from-watergate-to-redemption/2012/04/24/gIQABBsYeT_blog.html

The Blakely Revolution, IOWA ADVOCATE 4 (Fall/Winter 2005).

The Future of American Sentencing: A National Roundtable on Blakely (remarks on a panel at a Stanford Law School Symposium, Oct. 9, 2004), *excerpted in* 17 FED. SENTENCING REP. 128 (2004) *and* 2 OHIO ST. J. CRIM. L. 619, 636-37 (2005).

Can the Supreme Court Clean Up Its Blakely Mess? (on-line debate with Douglas A. Berman), *Legal Affairs*, Sept. 27-Oct. 1, 2004 (available on-line at http://www.legalaffairs.org/webexclusive/debateclub_blakely1004.html)

How Long? A Close Supreme Court Decision Trades Decades of Sentencing Reform for a Confusing Future, LEGAL TIMES, July 6, 2004, at 52.

Above the Fray: Supreme Court Should Let Judges Keep a Hand in Who Gets Executed (op-ed essay), LEGAL TIMES, Feb. 4, 2002, at 43, *reprinted in* *Should There Be Apprehension over Apprendi?*, TEXAS LAWYER, Feb. 11, 2002, at 55, *and* *Should Jurors or Judges Decide Capital Sentences?*, FULTON COUNTY DAILY REP. Feb. 6, 2002.

Phones that Aid and Abet (letter to the editor), N.Y. TIMES, Aug. 16, 2001, at D5.

GOVERNMENT TESTIMONY

Testimony before the Delaware Access to Justice Commission, Subcommittee on Fairness in the Adult Criminal Justice System, *Bail and Pretrial Detention; Charging, Plea Bargaining, and Sentencing*, Nov. 13, 2015

Testimony before the United States Senate Judiciary Committee, *Ensuring that Federal Prosecutors Meet Discovery Obligations*, June 6, 2012

Testimony before the United States Sentencing Commission, *The Future of the Federal Sentencing Guidelines after Blakely v. Washington*, November 16, 2004 (available on-line at http://www.ussc.gov/hearings/11_16_04/Bibas.pdf)

PRESENTATIONS (SELECTED)

“Mass Incarceration: The New Jim Crow or the New Big Government?” discussant, University of Chicago Law School, Chicago, IL, May 17, 2017

Philadelphia DA Candidate Public Forum, panelist / questioner, University of Pennsylvania Law School, Philadelphia, PA, Mar. 27, 2017

- “De-Bureaucratization: Police and Prosecutors,”** panelist, Democratizing Criminal Justice Symposium, Northwestern University Law School, Chicago, IL, Nov. 18, 2016
- “Justice Scalia and the Criminal Law,”** panelist, Federalist Society National Lawyers’ Convention, Washington, DC, Nov. 17, 2016
- “The Life of Justice Scalia: Remembering a Conservative Legal Titan’s Impact on the Law,”** panelist, The Heritage Foundation, Washington, DC, May 19, 2016
- “The Life & Legacy of Justice Antonin Scalia,”** panelist, University of Pennsylvania Law School, Philadelphia, PA Mar. 2, 2016
- “Land of the Free, Home of the Jailed?”**, panelist, Federalist Society student chapter, Cardozo Law School, New York, NY Feb. 29, 2016
- “On Inequality and Family Well-Being: Mass Incarceration, Alternative Strategies, and Prison Re-Entry,”** panelist, “The Moynihan Report at 50: Reflections, Realities, and Prospects,” James Madison Program in American Ideals and Institutions, Princeton, NJ, Oct. 31, 2015
- “Guilty Pleas’ Contribution to Wrongful Convictions,”** panelist, “Elephants in the Courtroom: Examining Overlooked Issues in Wrongful Convictions,” NSF-NIJ Workshop, Arlington, VA, Oct. 15, 2015
- “The Truth About Mass Incarceration,”** presenter, Spotlight on Magazines, Washington Journal, C-SPAN, Oct. 14, 2015
- “What’s Wrong With Sentencing Equality?”** presenter, faculty workshops Cardozo Law School, New York, NY Nov. 16, 2015
CrimFest conference, New York, NY July 20, 2015
- “Defining Quality in Prosecution,”** moderator, “Defining Quality in Criminal Justice,” Quattrone Center symposium, Philadelphia, PA, May 13, 2015
- “The Virtues of Inequalities?,”** presenter, faculty workshops University of Pennsylvania Law School, Philadelphia, PA, Apr. 21, 2015
New York City Criminal Law Colloquium, Feb. 23, 2015
University of Utah Law School, Salt Lake City, UT, Feb. 11, 2015
- “*Petrella v. MGM* and Laches in IP Cases,”** presenter, Copyright Society of the USA presentation, Philadelphia, PA, Apr. 17, 2015
- “Civil Incarceration and the Right to Counsel,”** panelist, University of Pennsylvania Law School Journal of Law and Social Change lunch discussion, Philadelphia, PA, Apr. 16, 2015
- “Designing Plea Bargaining from the Ground Up: Accuracy and Fairness Without Trials as Backstops,”** panelist, William and Mary Law Review symposium, “Plea Bargaining Regulation: The Next Criminal Procedure Frontier,” Williamsburg, VA, Feb. 20, 2015

- “Criminal Procedure in the Classroom, Courtroom, and Faculty Lounge: Real-World Scholarship, Teaching, and Advocacy,”** Higgins Distinguished Visiting Lecture, Lewis & Clark Law School, Portland, OR, Oct. 7, 2014
- “The Secret Ambition of Equality,”** presenter, faculty workshop, Lewis & Clark Law School, Portland, OR, Oct. 7, 2014
- “*Petrella v. MGM*,”** panelist, Supreme Court Intellectual Property Review 2014, IIT Chicago-Kent School of Law, Chicago, IL (via Skype), Sept. 12, 2014
- “*The Machinery of Criminal Justice*,”** author / commentator / presenter, Drexel University, Philadelphia, PA, Apr. 8 & 15, 2013; Apr. 21 & May 5, 2014; May 4 & 11, 2015.
- “Steering Committee Meeting Roundtable Discussion,”** discussant, National Science Foundation Research Coordination Network on Guilty Pleas, University of Maryland, College Park, MD, Apr. 24-25, 2014
- “Fostering a Culture of Disclosure in Criminal Justice,”** moderator, “A Systems Approach to Conviction Integrity,” Quattrone Center inaugural symposium, Philadelphia, PA, Apr. 4, 2014
- “The Psychology of Wrongful Convictions,”** panel presentation, “Psycholegal Issues in Recent Cases,” American Psychology-Law Society Annual Conference, Mar. 7, 2014
- “*Gideon*’s Failure,”** presentation / debate
Philadelphia Lawyers’ Federalist Society chapter, Mar. 10, 2014
Temple University Law School, Federalist Society chapter, Nov. 21, 2013
- “Textualism and the Bill of Rights,”** showcase panelist, Federalist Society, National Lawyers’ Convention, Nov. 14, 2013
- “Inaugural Dialogue,”** discussant, Quattrone Center for the Fair Administration of Justice inaugural roundtable, Philadelphia, PA, Nov. 1, 2013
- “The Criminal Regulatory State,”** commentator, “Theorizing the Modern Criminal State: Law and Sociology in Conversation,” New York University Law School, Apr. 5, 2013
- “The Duties of Non-Judicial Actors in Ensuring Competent Negotiations,”** symposium panelist, “Plea Bargaining after *Lafler* and *Frye*,” Duquesne Law School, Feb. 28, 2013
- “Incompetent Plea Bargaining and Extrajudicial Reforms,”** symposium panelist, Harvard Law Review Supreme Court Forum, Harvard Law School, Nov. 19, 2012
- “Shrinking *Gideon* and Expanding Alternatives to Lawyers,”** symposium panelist, “*Gideon* at 50: Reassessing the Right to Counsel,” Washington & Lee Law School, Nov. 9, 2012
- “Making Prisoners Work,”** presentation / debate

Harvard Law School, Federalist Society chapter, Feb. 20, 2013
Boston University Law School, Federalist Society chapter, Sept. 10, 2012

“Justice Kennedy’s Sixth Amendment Pragmatism,” panelist,
symposium on the evolution of Justice Kennedy’s jurisprudence, University
of the Pacific McGeorge School of Law, Apr. 6, 2012

“Notice-and-Comment Sentencing,” workshop presentation
Loyola University-Los Angeles faculty workshop, Feb. 16, 2012
University of Pennsylvania Law School faculty workshop, Feb. 14, 2012

“Book Symposium: *The Machinery of Criminal Justice*,” author /
commentator
University of the Pacific McGeorge School of Law, Federalist Society
chapter, Mar. 5, 2013
University of California at Davis, Federalist Society chapter, Mar. 5, 2013
Northern New Jersey Lawyers’ Division, Federalist Society chapter, Dec.
13, 2012
New York University Law School, Hoffinger Colloquium, Nov. 26, 2012
Princeton University, James Madison Program workshop, Apr. 10, 2012
University of Pennsylvania Law School faculty workshop, Feb. 14, 2012

**“A Prosecutor’s Perspective on the Use and Misuse of Neuroscience in
the Courtroom,”** presenter, MacArthur Foundation Law and
Neuroscience Project, Sept. 10, 2012

“A Debate About Original Intent,” panelist, Federalist Society,
Philadelphia Lawyers’ Chapter, Jan. 19, 2012

“Rights in the Bargain: Developments in Plea Bargaining,” panelist,
Criminal Justice Theory & Practice Workshop, Yale Law School,
December 7, 2011

**“Civil *Gideon*: Why the Government Shouldn’t Have to Provide Free
Lawyers for the Poor,”** presentation / debate
University of Minnesota Law School, Federalist Society chapter, Jan. 30,
2013
St. Louis University Law School, Federalist Society chapter, Mar. 27, 2012
George Washington University Law School, Federalist Society chapter,
Mar. 13, 2012
University of Georgia Law School, Federalist Society chapter, Feb. 7, 2012
Wayne State University Law School, Federalist Society chapter, Nov. 30,
2011
University of Michigan Law School, Federalist Society chapter, Nov. 10,
2011
University of Detroit-Mercy, Federalist Society chapter, Nov. 9, 2011
Lewis & Clark Law School, Federalist Society chapter, Oct. 24, 2011
Penn State Law School, Federalist Society chapter, Sept. 22, 2011
Rutgers University–Camden Law School, Federalist Society chapter, Sept.
20, 2011

“Prosecuting ‘Smart on Crime,’” panelist, Criminal Justice Theory &
Practice Workshop, Yale Law School, Apr. 12, 2011

Comparative Study of Prosecution Systems, invited participant,
University of Minnesota Law School, Apr. 7-9, 2011

“Improving Guilty Pleas Post-*Padilla*,” symposium on *The Aftermath of Padilla v. Kentucky: A New Era for Plea Bargaining and Sentencing?*, St. Louis University Law School, Feb. 25, 2011

“Returning Power to Laymen in a Lawyer-Driven System,” presentation
Loyola University Chicago workshop, Feb. 24, 2011
One Day University, Jan. 22, 2011

“Profiling and Consent: Regulation and Institutional Reform in Policing,” moderator, University of Pennsylvania department of criminology, Feb. 11, 2011

“Fourth Amendment Limits on Mandatory DNA Testing: North Carolina House Bill 1403,” panelist, Campbell University Federalist Society, Oct. 22, 2010

“Popular Moral Discourse Versus Assembly-Line Efficiency,”
presentation
Rutgers University–Camden Law School, faculty workshop, Mar. 1, 2010
University of Minnesota, public law workshop, Feb. 4, 2010
University of Houston Law Center, distinguished criminal law lecture, Feb. 3, 2010
University of Pennsylvania Law School, ad hoc workshop, Jan. 20, 2010

“Originalism in Criminal Procedure: Ancient Checks or Newfangled Rights?,” panelist, Originalism 2.0 Federalist Society National Student Symposium, University of Pennsylvania Law School, Feb. 27, 2010.

“Race, Wrongs, and Remedies,” commentator, University of Pennsylvania Law School, Jan. 19, 2010

“The Dangers of Excessive Originalism,” presentation, symposium on originalism and the jury, The Moritz College of Law at the Ohio State University, Nov. 17, 2009

Breakout section on prosecutorial training and supervision, reporter,
conference on **“New Perspectives on *Brady* and Other Disclosure Obligations: What Really Works?,”** Cardozo School of Law, Yeshiva University, Nov. 15-16, 2009

“Whose Voices Belong in Criminal Justice?,” presentation
Florida State University Law School, faculty workshop, Oct. 23, 2009
University of Pennsylvania Law School, faculty retreat, Sept. 21, 2009
American University Washington College of Law, faculty speaker series, Sept. 4 2009

“The Emotional Value of Capital Punishment,” presentation
University of Miami Law School, Federalist Society chapter debate, Mar. 7, 2012
Stetson University Law School, Federalist Society chapter, Mar. 6, 2012
University of Houston Law Center, Federalist Society chapter, Feb. 3, 2010
Florida State University Law School, Federalist Society chapter, Oct. 22, 2009

- University of Florida Law School, Federalist Society chapter, Oct. 21, 2009
- “The Need for Prosecutorial Discretion,”** presentation, symposium on modern approaches to prosecutorial discretion, Temple University James E. Beasley School of Law, Oct. 17, 2009
- Retribution and Justice: Federalist Society Faculty Colloquium,** moderator and discussant, Aspen, CO Aug. 11-12, 2009
- “Does the Punishment Fit the Crime? A Debate on Sentencing Practices,”** moderator, Sparer Symposium, University of Pennsylvania Law School, Mar. 20, 2009.
- Philadelphia DA Candidate Debate,** panelist / questioner, University of Pennsylvania, Philadelphia, PA, Feb. 16, 2009
- “Opaque, Unresponsive Criminal Justice,”** presentation
 Arizona State U. Sandra Day O’Connor College of Law, presentation, Nov. 5, 2008
 University of Arizona James E. Rogers College of Law, presentation, Nov. 3, 2008
 One Day University, presentation, Jan. 17, 2009
 One Day University, presentation, July 19, 2008
- “International Idealism Meets Domestic-Criminal-Procedure Realism,”** faculty workshop (with William W. Burke-White), University of Pennsylvania Law School, Nov. 12, 2008
- “The Long Drift from Morality Play to Assembly Line,”** faculty workshop at Notre Dame Law School, Oct. 31, 2008
- “Paying Prosecutors for Performance,”** presentation, Ohio State Journal of Criminal Law roundtable discussion, Moritz College of Law at the Ohio State University, July 2, 2008
- “The Sixth Amendment and Criminal Sentencing”** (with Susan R. Klein), presentation, *Cardozo Law Review* symposium on the future of self-incrimination: the Fifth Amendment, confessions, and guilty pleas, Cardozo Law School, Mar. 3, 2008.
- Debate on the United States military’s “Don’t Ask, Don’t Tell” policy,** moderator, University of Pennsylvania Law School, Federalist Society chapter, Oct. 3, 2007
- “Restoring Values and Relationships to Criminal Procedure,”** presenter, Willamette University College of Law, Sept. 28, 2007
- “The Gulf Between Insiders and Outsiders in Criminal Justice,”** lecture, Willamette Center for Law and Government, Willamette University College of Law, Sept. 27, 2007
- “Sentencing After *Rita*,”** presenter, Eighth and Tenth Circuit Judges’ Conference, Vail, CO July 12, 2007

“Forgiveness in Criminal Procedure,” presenter, colloquium on justice and mercy in Jewish and Christian tradition and American criminal law, Harvard Law School and Harvard Divinity School, May 3, 2007

“The Effects of Cognitive Biases on Plea Negotiations,” panel commentator, conference on understanding and improving dispute resolution in criminal law, Marquette Law School, Apr. 14, 2007

“Originalism and Formalism in Criminal Procedure: The Triumph of Justice Scalia, the Unlikely Friend of Criminal Defendants?,” lecture

to Federalist Society student chapters

Boston College Law School, Feb. 4, 2013

Duke Law School, Oct. 21, 2010

NYU Law School, Sept. 8, 2010

University of Minnesota Law School, Feb. 4, 2010

Vanderbilt University Law School, Sept. 10, 2009

Georgetown University Law Center, Sept. 3, 2009

American University Washington College of Law, Nov. 11, 2008

Arizona State University Law School, Nov. 5, 2008

University of Arizona James E. Rogers College of Law, Nov. 4, 2008

Notre Dame Law School, Oct. 9, 2008

Western New England College of Law, Sept. 24, 2008

St. Louis University Law School, Apr. 1, 2008

University of Missouri at Columbia, Mar. 31, 2008

Penn State / Dickinson School of Law, Mar. 20, 2008

Widener Law School (Harrisburg), Mar. 20, 2008

University of Delaware Legal Studies Program, Nov. 30, 2007

New England School of Law, Nov. 5, 2007

Northeastern Law School, Nov. 5, 2007

Philadelphia Lawyers’ Chapter, Federalist Society, Nov. 1, 2007

Quinnipiac University Law School, Oct. 24, 2007

University of Connecticut Law School, Oct. 24, 2007

University of Cincinnati Law School, Oct. 10, 2007

Villanova University Law School, Oct. 8, 2007

Willamette University Law School, Sept. 28, 2007

Temple University Law School, Sept. 18, 2007

Rutgers University Law School–Camden, Sept. 6, 2007

Marquette University Law School, Apr. 13, 2007

University of Wisconsin Law School, Apr. 12, 2007

University of Chicago Law School, Apr. 11, 2007

Northwestern University Law School, Apr. 11, 2007

University of Illinois Law School, Apr. 10, 2007

“Roundtable discussion on the future of *Miranda v. Arizona*,”

discussant, conference on cautions and confessions: *Miranda v. Arizona*

After 40 Years, University of Colorado Law School, Oct. 21, 2006

“The Rehnquist Court’s Fifth Amendment Incrementalism,”

discussant, panel on criminal justice, *George Washington Law Review*

symposium on the legacy of the Rehnquist Court, George Washington

University Law School, Oct. 28, 2005

“Transparency and Participation in Criminal Procedure,” presenter, faculty workshops

University of Chicago Law School, Feb. 9, 2006

Temple University Law School, Oct. 26, 2005

University of Pennsylvania Law School, fall 2005
University of Iowa College of Law, summer 2005

“*Roper v. Simmons, Booker v. United States, and the Divergence of Capital and Non-Capital Sentencing Law,*” Seasongood Foundation College Visitor Series Speech, University of Cincinnati Law School, Apr. 20, 2005

“White-Collar Plea Bargaining and Sentencing After *Booker*,”
Symposium, Institute of Bill of Rights Law, William & Mary Law School, Mar. 25, 2005

“Will Originalism and Formalism Save Criminal Procedure or Destroy It?”
Duke Law School, debate with Professor Sara Sun Beale, Jan. 27, 2005
Federalist Society Faculty Conference, panelist, San Francisco, CA, Jan. 7, 2005.

“*Blakely v. Washington* and the Crumbling Divide Between Criminal Procedure and Substantive Law,” at *The Future of American Sentencing: A National Roundtable on Blakely*, Stanford Law School, Oct. 9, 2004.

“*Blakely’s* Federal Aftermath,” Eighth Circuit Judicial Conference, Rapid City, SD, July 14, 2004.

“*Apprendi* Updates” Panel, Federal Bar Association & U.S. Sentencing Commission National Seminar on the Federal Sentencing Guidelines, Miami, FL, May 30, 2004.

“Integrating Remorse and Apology into Criminal Procedure,” faculty workshop, University of Iowa College of Law, Feb. 20, 2004.

“Plea Bargaining Outside the Shadow of Trial,” faculty workshops
University of Nebraska Law School, Jan. 31, 2005
University of Chicago Law School Colloquium on Crime & Punishment, Jan 14 2005
University of Pennsylvania Law School, Dec. 13, 2004
University of Iowa College of Law, Sept. 12, 2003

“*Apprendi* in the States: The Virtues of Federalism as a Structural Limit on Errors,” Council of Appellate Staff Attorneys, Columbia, SC, July 19, 2003.

Panel, **“Plea Bargaining Under the Federal Sentencing Guidelines,”**
Federal Bar Association & U.S. Sentencing Commission National Seminar on the Federal Sentencing Guidelines, Miami Beach, FL, May 30, 2003.

Roundtable discussion, **“Ineffective Assistance of Counsel,”** Lexis/Nexis Criminal Procedure Discussion Forum, Washington & Lee University Law School, May 17, 2003.

“Harmonizing Substantive Criminal Law Values and Criminal Procedure: The Case of *Alford* and Nolo Contendere Pleas,” faculty workshops

Northwestern University Law School, Oct. 31, 2002
University of Kansas Law School, Oct. 3, 2002
University of St. Thomas (MN) Law School, Sept. 20, 2002
University of Iowa College of Law, Sept. 5, 2002

“Judicial Restrictions on Judicial Sentencing,” Loyola University
Chicago Law School, Feb. 14, 2002 (two presentations).

**“*Apprendi*’s Perverse Effects on Guilty Pleas Under the Federal
Sentencing Guidelines,”** National Symposium on the Federal Sentencing
Guidelines, University of Iowa, June 2, 2001.

**PROFESSIONAL
ACTIVITIES
AND SERVICE**

Awards:

Wasserman Award for Excellence in Litigation, American Immigration
Lawyers Association, 2011 (as part of the team that won *Padilla v. Kentucky*,
130 S. Ct. 1473 (2010))

Supreme Court Oral Arguments:

Encino Motorcars, LLC v. Navarro, No. 15-415, Apr. 20, 2016
Bank of America v. Caulkett / Bank of America v. Toledo-Cardona
Nos. 13-1421, 14-163, Mar. 24, 2015
Petrella v. MGM, No. 12-1315, Jan. 21, 2014
Vartelas v. Holder, No. 10-1211, Jan. 18, 2012
Tapia v. United States, No. 10-5400, Apr. 18, 2011: invited by the Supreme
Court to brief and argue as court-appointed *amicus curiae*
Turner v. Rogers, No. 10-10, Mar. 23, 2011

Supreme Court Briefs (on which I was principal author):

Brief in Opposition to Certiorari and merits Brief of Respondents, *Encino
Motorcars, LLC v. Navarro*, No. 15-415
Brief in Opposition to Certiorari and merits Brief of Respondents, *Bank of
America v. Caulkett / Bank of America v. Toledo-Cardona*, Nos. 13-1421 / 14-
163
Respondents’ Second Supplemental Brief, *Kellogg Brown & Root Servs., Inc. v.
Harris*, No. 13-817
Brief in Opposition to Certiorari, *Herald v. Steadman*, No. 14-131
Brief in Opposition to Certiorari, *Bank of America v. Bello*, No. 14-235
Certiorari Petition and Reply Brief, and Petitioner’s Merits Brief and Reply
Brief, *Petrella v. MGM*, No. 12-1315
Brief in Opposition to Certiorari, *Haluch v. Central Pension Fund*, No. 12-992
Brief of *Amicus Curiae* The National Crime Victim Law Institute (certiorari
stage), *Amy & Vicky v. Kennedy*, No. 12-651
Brief of Petitioner and Reply Brief (merits), *Chafin v. Chafin*, No. 11-1347
Brief *Amicus Curiae* in Support of Certiorari, *Jones v. Missouri*, No. 11-9036
Certiorari Petition and Reply Brief, *Velasquez-Otero v. Holder*, No. 11-1321
Certiorari Reply Brief, *Ketterer v. Yellow Transportation*, No. 11-1361
Petition for Rehearing En Banc, Reply thereto, and Certiorari Petition and
Reply Brief, *Rhodes v. Judiscalek*, No. 11-1177
Brief of Petitioner and Reply Brief (merits), *Vartelas v. Holder*, No. 10-1211

Brief Amicus Curiae by Invitation of the Court, *Tapia v. United States*, No. 10-5400
Brief of *Amici Curiae* Legal Historians and Criminal Procedure Law Professors, *Ashcroft v. Al-Kidd*, No. 10-98
Brief in Opposition to Certiorari and merits Brief of Respondents, *Turner v. Rogers*, No. 10-10
Certiorari Petition, Reply Brief, Supplemental Brief, and Petition for Rehearing En Banc, *City of Reno v. Conn*, No. 09-1361
Certiorari Reply Brief, *Robinson v. Lehman*, No. 09-697
Brief of Amicus Curiae Families Against Mandatory Minimums in support of petitioners, *Abbott v. United States*, No. 09-479, and *Gould v. United States*, No. 09-7073
Brief in Opposition to Certiorari, *United States v. Williams*, No. 09-466
Certiorari Petition and Reply Brief, *Svete v. United States*, No. 09-7576
Brief *Amici Curiae* Criminal and Immigration Law Professors et al. in Support of Certiorari petition in *Padilla v. Kentucky*, No. 08-651

Other Service:

Outside the University:

External Reviewer, *Criminology*, 2013-present
External Reviewer, *Law and Society Review*, 2010-present
External Reviewer, *Journal of Empirical Legal Studies*, 2011-present
Member, Philadelphia Mayor's Advisory Task Force on Ethics and Campaign Finance Reform, 2008-09
Member, Supreme Court Forecasting Project, 2002-03

In the University of Pennsylvania as a Whole:

Committee on Open Expression, 2012-16; Chair, 2014-15
Penn Fellowships Faculty Review Committee, 2014-present

Within the University of Pennsylvania Law School:

Appointments Committee, 2009-10, 2012-13, 2014-15; Chair, 2016-17
Academic Careers Committee, Chair, 2015-16
Dean of Students Search Committee, 2015-16
Educational Programs Committee, 2014-15
Co-Convener, Legal Studies (External Faculty) Workshops, 2010-11
Co-Convener, Ad Hoc (Internal Faculty) Workshops, 2008-09
Admissions Committee, 2007-09
Career Planning and Professionalism Committee, 2011-13, 2016-17; Chair, 2011-12
Student Conduct and Responsibility Committee, 2010-13
Student Conduct and Responsibility Appeals Panel, 2009-10
Academic Freedom and Responsibility Committee, 2008-11
Academic Standing Committee, 2007-08
Building Committee, 2010-12

**BAR
MEMBERSHIPS**

Pennsylvania, Pennsylvania Supreme Court
Virginia, Virginia Supreme Court
District of Columbia, District of Columbia Court of Appeals
Supreme Court of the United States
U.S. Courts of Appeals for the Second, Third, Fourth, Ninth, Tenth, and
D.C. Circuits
U.S. District Courts for the Eastern District of Virginia, District of
Columbia, and Central District of Illinois

PERSONAL

Brown belt in Tae Kwon Do
Solo travel in Europe, the Middle East, and the Far East