

RICHARD A. BIERSCHBACH
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ACADEMIC APPOINTMENTS

WAYNE STATE UNIVERSITY LAW SCHOOL, Detroit, MI

Dean, 2017–present

Professor of Law, 2017–present

BENJAMIN N. CARDOZO SCHOOL OF LAW, YESHIVA UNIVERSITY, New York, NY

Professor, 2013–2017

Vice Dean, 2015–2016

Associate Professor, 2008–2013 (on leave 2008–2010)

Assistant Professor, 2005–2008

Visiting Assistant Professor, 2003–2005

PROFESSIONAL EXPERIENCE

ORRICK, HERRINGTON & SUTCLIFFE, New York, NY

Associated Law Professor, 2017–present

Special Counsel, 2010–2017

GIBSON, DUNN & CRUTCHER, New York, NY

Of Counsel, 2008–2010

WILMER, CUTLER & PICKERING, New York, NY

Associate, 2001–2003

HON. SANDRA DAY O’CONNOR, UNITED STATES SUPREME COURT, Washington, DC

Law Clerk, 2000–2001

OFFICE OF LEGAL COUNSEL, UNITED STATES DEPARTMENT OF JUSTICE, Washington, DC

Attorney-Advisor, 1999–2000

OFFICE OF THE SOLICITOR GENERAL, UNITED STATES DEPARTMENT OF JUSTICE, Washington,
DC

Bristow Fellow, 1998–1999

HON. A. RAYMOND RANDOLPH, UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF
COLUMBIA CIRCUIT, Washington, DC

Law Clerk, 1997–1998

PUBLICATIONS AND WORKS IN PROGRESS

- The Administrative Law of the Eighth Amendment*, in THE EIGHTH AMENDMENT AND ITS FUTURE IN A NEW AGE OF PUNISHMENT (William Berry & Meghan Ryan eds., Cambridge University Press, forthcoming 2020)
- Remorse in American Criminal Justice*, in REMORSE AND CRIMINAL JUSTICE: MULTI-DISCIPLINARY PERSPECTIVES (Steven Tudor et al. eds., Routledge, forthcoming 2020)
- Equality in Multidoor Criminal Justice*, ___ NEW CRIM. L. REV. ___ (forthcoming 2019)
- Rationing Criminal Justice*, 116 MICH. L. REV. 187 (2017) (with Stephanos Bibas)
- Fragmentation and Democracy in the Constitutional Law of Punishment*, 111 NW. U. L. REV. 1437 (2017)
- White Paper of Democratic Criminal Justice*, 111 NW. U. L. REV. 1693 (2017) (with multiple co-authors)
- Making Criminal Justice Pay*, THE REGULATORY REVIEW, Mar. 2, 2017, available at <https://www.theregreview.org/2017/03/02/bierschbach-making-criminal-justice-pay/>
- What's Wrong With Sentencing Equality?*, 102 VA. L. REV. 1447 (2016) (with Stephanos Bibas)
- Review of RICHARD WEISMAN, SHOWING REMORSE: LAW AND THE SOCIAL CONTROL OF EMOTION, *Criminal Law and Criminal Justice Books*, Mar. 2015, available at <http://clcjbooks.rutgers.edu/books/showing-remorse.html>
- Justice of the People, by the People, for the People*, NATIONAL REVIEW, Vol. 66, No. 24, at 36 (2014) (with Stephanos Bibas)
- Constitutionally Tailoring Punishment*, 112 MICH. L. REV. 397 (2013) (with Stephanos Bibas)
- Notice-and-Comment Sentencing*, 97 MINN. L. REV. 1 (2012) (with Stephanos Bibas), quoted with approval in *Betterman v. Montana*, 136 S.Ct. 1609, 1617 (2016) (majority opinion)
- Proportionality and Parole*, 160 U. PA. L. REV. 1745 (2012)
- U.S. Supreme Court Extends Time to File Federal Securities Fraud Suits*, 24 INSIGHTS 28 (June 2010) (with Jonathan Li & Gregory Shill)
- Second Circuit Leaves Door Open For Foreign Plaintiffs' Securities Actions Against Foreign Issuers*, 22 INSIGHTS 34 (December 2008) (with Alex Southwell & Joshua Wilkenfeld)
- Deterrence, Retributivism, and the Law of Evidence*, 93 VA. L. REV. IN BRIEF 189 (2007) (with Alex Stein)

Mediating Rules in Criminal Law, 93 VA. L. REV. 1197 (2007) (with Alex Stein)

Allocation and the Purposes of Victim Participation under the CVRA, 19 FED. SENT. REP. 44 (2006)

Overenforcement, 93 GEO. L.J. 1743 (2005) (with Alex Stein)

Will An Apology Save You From Jail?, LEGAL AFFAIRS (April 4-8, 2005), available at http://www.legalaffairs.org/webexclusive/debateclub_apology0405.msp

Integrating Remorse and Apology into Criminal Procedure, 114 YALE L.J. 85 (2004) (with Stephanos Bibas)

Note, *One Bite at the Apple: Reversals of Convictions Tainted by Prosecutorial Misconduct and the Ban on Double Jeopardy*, 94 MICH. L. REV. 1346 (1996)

ACADEMIC LEADERSHIP AND SERVICE

WAYNE STATE UNIVERSITY LAW SCHOOL

Dean, 2017–present

Responsible for all aspects of management and oversight of law school, including fundraising, budget, academic affairs, faculty, operations, and external and university relations.

WAYNE STATE UNIVERSITY

Council of Deans, 2017–present

Budget Planning Council, 2017–present

Council on Entrepreneurship, 2017–present

Senior Associate Vice President for Finance and Deputy Chief Financial Officer Search Committee, 2018

Working Group on Guidelines for Faculty Interaction with Students, 2018

BENJAMIN N. CARDOZO SCHOOL OF LAW, YESHIVA UNIVERSITY

Vice Dean, 2015–2016

Responsible for day-to-day management and oversight of academic affairs, faculty and research, budget, and operations.

Committee Chairs:

Educational Policy, 2013–2014

Committee Memberships:

Faculty Development, spring 2017, 2010–2011

Dean Search, spring 2015

Educational Policy, 2014–2015, 2005–2006

Long-Term Planning, 2012–2014

Faculty Appointments, 2011–2012, 2006–2007

Career Services Dean Search, summer 2011

Clerkship and Placement, 2012–2013, 2010–2011

Academic Standards, 2005–2006

Other Service:

SSRN Editor, fall 2014, spring 2013

Working Group on Technology, 2012–2013

Co-Director, Junior Faculty Workshop, 2011–2013

Director, Dean's Distinguished Scholars Program, 2005–2008

Faculty Advisor, *Cardozo Law Review*, 2005–2008

Director, Young Scholars Summer Workshop, summer 2005

Faculty Affiliate, Samuel and Ronnie Heyman Center on Corporate Governance,
2005–2017

EDUCATION

UNIVERSITY OF MICHIGAN LAW SCHOOL, Ann Arbor, MI

J.D., *Magna Cum Laude*, 1997

Honors:

Henry M. Bates Memorial Scholarship Award (Law School's highest honor)

Daniel H. Grady Prize (for graduating first in class)

Class of 1908 Memorial Scholarship Award

Bodman-Longley Award

West Book Awards in Property, Criminal Law, Jurisdiction & Choice of Law,
Administrative Law, and Legal Writing & Advocacy

Activities:

Articles Editor, *Michigan Law Review*

Teaching Assistant, Criminal Law

UNIVERSITY OF MICHIGAN, COLLEGE OF LITERATURE, SCIENCE & THE ARTS, Ann Arbor, MI

B.A. (History), *Summa Cum Laude*, 1994

Honors:

Phi Beta Kappa

James B. Angell Scholar (for straight-A average)

UNIVERSITY OF MICHIGAN, COLLEGE OF ENGINEERING, Ann Arbor, MI, 1990–92

Honors:

James B. Angell Scholar

Regents-Alumni Merit Scholar

Dean's List

AWARDS

Cardozo Law School Student Bar Association Best Professor Award, 2013 and 2015

Legal Aid Society *Pro Bono Publico* Award, 2010

United States Attorney General's Merit Award, 2000

PROFESSIONAL LEADERSHIP AND SERVICE

AALS CRIMINAL JUSTICE SECTION

Scholarship Mentor, 2016–present
Mid-Year Meeting Planning Committee, 2016–2017

SOUTHEASTERN ASSOCIATION OF LAW SCHOOLS

Criminal Law Resource Team, 2016–present

AMERICAN BAR ASSOCIATION, ADMINISTRATIVE LAW SECTION

Vice Chair, Criminal Process Subcommittee, 2011–present
Amicus Practice Committee, 2012–present

AMERICAN BAR ASSOCIATION, CRIMINAL JUSTICE SECTION

Co-Chair, Amicus Practice Committee, 2010–2013

PROFESSIONAL MEMBERSHIPS AND BAR ADMISSIONS

Memberships:

American Law Institute (elected and *ex officio*)
American Bar Foundation (Fellow)
American Association of Law Schools
Law & Society Association
American Bar Association (Criminal Justice, Administrative Law, and Legal Education
and Admissions to the Bar Sections)
New York State Bar Association

Bar Admissions:

Maryland (1998, inactive status)
New York (2003)
U.S. Supreme Court
U.S. Courts of Appeals for the Second, Seventh, and Federal Circuits
U.S. District Courts for the Eastern and Southern Districts of New York
U.S. Court of International Trade

RESEARCH AND TEACHING

Research Areas:

Criminal Law; Criminal Procedure; Sentencing; Institutional, Procedural, and Regulatory
Structure of Criminal Justice; State and Local Government Law; Administrative Law;
Regulation; Corporate, White-Collar, and Regulatory Crime; Corporations

Major Courses:

Criminal Law; Administrative Law; Corporations

Short Courses:

“A Capitol Practice,” Intersession Seminar, Washington, DC, winter 2014
“Introduction to Law in Japan,” Seminar Abroad, Tokyo, Japan, summer 2007

Colloquium in Comparative Corporate Governance, Seminar Abroad, Oxford, UK,
summer 2005, 2007, 2012

SELECTED CONFERENCES AND PANELS ORGANIZED

Panel on Administrative Law in Criminal Justice, Annual Meeting of the Southeastern Association of Law Schools, Aug. 3, 2017

AALS Criminal Justice Section Mid-Year Meeting, American University Washington College of Law, June 2017 (with AALS Criminal Justice Section Mid-Year Meeting Planning Committee)

Conference on Democratizing Criminal Law, Northwestern University Pritzker School of Law, Nov. 18–19, 2016 (with Joshua Kleinfeld)

Eighth Annual CrimFest Conference (two-day national works-in-progress conference for criminal law and procedure scholars), Cardozo Law School, July 11–12, 2016 (with Carissa Hessick)

Panel on Rationing Criminal Justice, Annual Meeting of the Law & Society Association, June 3, 2016

Seventh Annual CrimFest Conference, Cardozo Law School, July 19–21, 2015 (with Carissa Hessick)

Workshop on Criminal Law and the Administrative State: Defining and Enforcing Regulatory Crimes, Washington, DC, May 13, 2014 (with the Administrative Conference of the United States)

Conference on George Fletcher's *THE GRAMMAR OF CRIMINAL LAW: AMERICAN, EUROPEAN, INTERNATIONAL*, Cardozo Law School, Nov. 5–6, 2006 (with Kyron Huigens)

SELECTED ACADEMIC PRESENTATIONS AND SPEAKING ENGAGEMENTS

Presenter, *Equality in Multidoor Criminal Justice*, Bar-Ilan University Faculty of Law and University of Haifa Faculty of Law, May 2019 (scheduled)

Presenter, *The Administrative Law of the Eighth Amendment*
Ninth Annual Constitutional Law Colloquium, Loyola University (Chicago) Law School, Nov. 2, 2018
Annual Meeting of the Southeastern Association of Law Schools, Aug. 8, 2018

Remarks on the Investiture of Judge Stephanos Bibas, United States Court of Appeals for the Third Circuit, Philadelphia, PA, Apr. 19, 2018

Keynote Address, *Michigan Law Review* Annual Banquet, University of Michigan Law School, Mar. 8, 2018

- Commentator, *Reliance on the Office of Legal Counsel, or, The Problem of Self-Dealing Constitutional Interpretation in the Executive Branch*, AALS Criminal Justice Section Works-in-Progress Panel, AALS Annual Meeting, Jan. 6, 2018
- Moderator and Discussant, *Administrative Law and Criminal Justice*, Annual Meeting of the Southeastern Association of Law Schools, Aug. 3, 2017
- Panelist, *Constitutional Foundations and Community Voice*, Democratizing Criminal Justice Conference, Northwestern University Pritzker School of Law, Nov. 18–19, 2016
- Presenter, *Punishment, Community, and the Constitution*, Seventh Annual Constitutional Law Colloquium, Loyola University (Chicago) Law School, Nov. 4, 2016
- Presenter, *What's Wrong With Sentencing Equality?*
Faculty Workshop, University of Iowa College of Law, Sept. 16, 2016
Sixth Annual Constitutional Law Colloquium, Loyola University (Chicago) Law School, Nov. 6, 2015
Constructing Truth in Flux: Speaker Series on Advanced Criminal Law and Criminal Procedure, Fordham University Law School, Sept. 15, 2015
Seventh Annual CrimFest Conference, Cardozo Law School, July 20, 2015
Faculty Ad Hoc Workshop, University of Pennsylvania Law School, Apr. 21, 2015
Faculty Workshop, Loyola University (Los Angeles) Law School, Feb. 26, 2015
New York City Criminal Law Theory Colloquium, New York University School of Law, Feb. 23, 2014
- Presenter, *Rationing Criminal Justice*
Faculty Workshop, University of North Carolina School of Law, Sept. 8, 2016
Eighth Annual CrimFest Conference, Cardozo Law School, July 11, 2016
Annual Meeting of the Law & Society Association, June 3, 2016
- Discussant, *Booker After 10 Years—Making Sense of the Shift to Advisory Guidelines*, Annual Meeting of the Southeastern Association of Law Schools, Aug. 3, 2016
- Panelist, *The Implications of Burwell v. Hobby Lobby on Corporate Personhood, Religious Freedom, and Reproductive Health*, Cardozo Law School, Sept. 29, 2014
- Discussant, *Mercy in the Administration of Criminal Justice*, Annual Meeting of the Southeastern Association of Law Schools, Aug. 4, 2014
- Commentator, *Criminal Procedure Theory*, Sixth Annual CrimFest Conference, Rutgers University (Newark) School of Law, July 22, 2014
- Commentator, *Agency Enforcement and Prosecution of Regulatory Crimes*, Workshop on Criminal Law and the Administrative State: Defining and Enforcing Regulatory Crimes, Washington, DC, May 13, 2014
- Chair and Discussant, *Punishment and the Constitution*, Annual Meeting of the Law & Society Association, May 31, 2013

Presenter, *Constitutionally Tailoring Punishment*

Faculty Workshop, University of Notre Dame Law School, May 3, 2013
New York City Criminal Law Theory Colloquium, New York University School of Law,
Nov. 26, 2012

Presenter, *Notice-and-Comment Sentencing*

Faculty Workshop, Santa Clara University School of Law, Apr. 13, 2012
Faculty Ad Hoc Workshop, University of Pennsylvania Law School, Feb. 14, 2012
New York City Criminal Law Theory Colloquium, New York University School of Law,
Jan. 23, 2012

Panelist, *The Machinery of Criminal Justice*, Mini Book Symposium, University of
Pennsylvania Law School, Feb. 14, 2012

Commentator, *Juveniles in the Innocence Project: Current Cases in Practice*, Conference on
Stealing Innocence: Juvenile Legal Issues and the Innocence Project, Cardozo Law
School, Jan. 25, 2012

Presenter, *Proportionality and Parole*, Conference on The Future of Sentencing Law:
Rhetoric and Reality, University of Pennsylvania Law School, Oct. 28, 2011

Panelist, *Inside the Supreme Court*, Columbia University, Columbia College, Nov. 8, 2010

Moderator, *Courts and Agencies*, Festschrift in Honor of Paul Verkuil, Cardozo Law School,
Oct. 18, 2010

Commentator, *A More Perfect Union*, Epic Theater Ensemble Forum Series, New York, NY,
June 4, 2009

Presenter, *The New York City Term Limits Battle*, Faculty Development Workshop, Cardozo
Law School, Mar. 25, 2009

Presenter, *The New York City Term Limits Battle, the First Amendment, and the Limits of
Municipal Home Rule*, Election Law Section of the Association of the Bar of the City of
New York, Dec. 1, 2008

Commentator, *Big Brother or Small Sacrifice? Privacy and Security in the Information Age*,
Cardozo Law School, Jan. 30, 2008

Chair and Discussant, *Perceptions, Attitudes, and Representations: How People View Courts,
Law, and Justice*, Annual Meeting of the Law & Society Association, July 28, 2007

Presenter, *Mediating Rules in Criminal Law*

Faculty Workshop, UCLA Law School, Apr. 20, 2007
Faculty Workshop, Fordham University Law School, Mar. 30, 2007

Commentator, *Restorative Justice and Community and An Institutional Application of Restorative Justice*, Conference on Restorative Justice: Choosing Restoration over Retribution, Cardozo Law School, Nov. 10, 2006

Presenter, *Privatizing Punishment*, Young Scholars Workshop, Washington & Lee University Law School, Oct. 20, 2006

Commentator, *Reconciling Ring v. Arizona with the Current Structure of the Federal Capital Trial: The Case for Trifurcation*, Washington & Lee Law Review and Washington & Lee Law Alumni Association Annual Student Notes Awards, Washington & Lee University Law School, Oct. 19, 2006

Panelist, *The Jurisprudence of Justice Sandra Day O'Connor*, Floersheimer Center for Constitutional Democracy, Cardozo Law School, Apr. 26, 2006

Commentator, *Fraud and Federalism*, Samuel and Ronnie Heyman Center on Corporate Governance and Securities Industry Association Compliance and Legal Division Roundtable Discussion, Cardozo Law School, Mar. 27, 2006

Panelist, *Bad to the Bone*, Conference on The Justice of Recovery, New York University School of Law, Feb. 16, 2006

Panelist, *Constitutional Conversations*, Floersheimer Center for Constitutional Democracy, Cardozo Law School, Sept. 28, 2005

Panelist, *The Roberts Court*, Cardozo Law School, Sept. 20, 2005

Presenter, *Integrating Remorse and Apology into Criminal Procedure*
Faculty Workshop, Northwestern University Law School, Dec. 15, 2004
Faculty Workshop, University of Texas Law School, Dec. 10, 2004

Presenter, *Overenforcement*, Faculty Workshop, Fordham University Law School, Nov. 12, 2004

Commentator, *Can Corporations Commit Crimes? The Virtues and Vices of Corporate Criminal Liability*, Samuel and Ronnie Heyman Center on Corporate Governance Roundtable Discussion, Cardozo Law School Feb. 19, 2004

SELECTED MEDIA APPEARANCES AND CITATIONS

Print:

New York Times, Wall Street Journal, Chicago Tribune, Slate, Dallas Morning News, USA Today, Oregonian, Star Tribune, Des Moines Register, Village Voice, Legal Times, New York Law Journal, International Herald Tribune, Australian Business Review, Procuratorial Daily (China)

Television:

CNN “Live Today,” “Live Saturday,” “American Morning,” and “Live From...”; ABC News “Good Morning America”; WABC-Channel 7 Evening News, New York City

Radio:

WFUV, 90.7 FM, New York