

## **RICHARD A. BIERSCHBACH**

Benjamin N. Cardozo School of Law • 55 Fifth Avenue, Room 1003  
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### **ACADEMIC APPOINTMENTS**

#### **Benjamin N. Cardozo School of Law, Yeshiva University, New York, NY**

Vice Dean, 2015–16

Professor, 2013–present

Associate Professor, 2008–13 (on two-year leave of absence, 2008–10)

Assistant Professor, 2005–08

Visiting Assistant Professor, 2003–05

*Research and Teaching 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

*Teaching Honors:* Student Bar Association Best Professor Award, 2013 & 2015

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### **EDUCATION**

#### **University of Michigan Law School, Ann Arbor, MI**

J.D., *Magna Cum Laude*, May 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, Ann Arbor, MI**

**College of Literature, Science & the Arts**, 1992–1994

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

*Honors:* Phi Beta Kappa; James B. Angell Scholar (for straight-A average)

**College of Engineering**, 1990–92

*Honors:* James B. Angell Scholar; Regents-Alumni Merit Scholar; Dean's List

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### **JUDICIAL CLERKSHIPS**

#### **Justice Sandra Day O'Connor, United States Supreme Court, Washington, DC**

Law Clerk, July 2000–July 2001

**Judge A. Raymond Randolph, United States Court of Appeals for the District of Columbia Circuit, Washington, DC**  
Law Clerk, August 1997–August 1998

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**PUBLICATIONS AND WORKS IN PROGRESS**

*Rationing Criminal Justice*, 116 MICH. L. REV. \_\_\_\_ (forthcoming 2017) (with Stephanos Bibas)

*Fragmentation and Democracy in the Constitutional Law of Punishment*, 111 NW. U. L. REV. \_\_\_\_ (forthcoming 2017)

*White Paper of Democratic Criminal Justice*, 111 NW. U. L. REV. \_\_\_\_ (forthcoming 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)

*Allocution 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.legallaaffairs.org/webexclusive/debateclub\\_apology0405.msp](http://www.legallaaffairs.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)

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## LAW SCHOOL ADMINISTRATION AND SERVICE

**Vice Dean:** 2015–16 (responsible for day-to-day management and oversight of academic affairs, faculty and research, budget, and operations; worked closely with Dean and law school and university administrators on major strategic and financial planning matters)

**Committee Chairs:** Educational Policy, 2013–14 (designed, passed, and implemented significant upper-level curricular reforms)

**Committee Memberships:** Dean Search (spring 2015); Educational Policy (2014–15, 2005–06); Long-Term Planning (2012–14); Faculty Appointments (2011–12, 2006–07); Career Services Dean Search (summer 2011); Clerkship and Placement (2012–13, 2010–11); Faculty Development (2010–11); Academic Standards (2005–06)

**Other Service:** Co-Director, Washington, DC Intersession Seminar (winter 2014); SSRN Editor (fall 2014, spring 2013); Working Group on Technology (2012–13); Co-Director, Junior Faculty Workshop (2011–13); Director, Dean’s Distinguished Scholars (2005–08); Faculty Advisor, Cardozo Law Review (2007–08); Director, Japan Seminar Abroad (summer 2007); Cardozo Law Review Board of Advisors (2005–07); Co-Director, Oxford Colloquium in Comparative Corporate Governance (summer 2005, 2007, 2012); Director, Young Scholars Summer Workshop (summer 2005); Faculty Affiliate, Samuel and Ronnie Heyman Center on Corporate Governance (2005–present)

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**PROFESSIONAL SERVICE AND HONORS**

**AALS Criminal Justice Section**

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

**Southeastern Association of Law Schools**

Member, Criminal Law Resource Team, 2016–present

**American Bar Foundation**

Fellow, 2014–present

**American Bar Association, Administrative Law Section**

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

**American Bar Association, Criminal Justice Section**

Co-Chair, Amicus Practice Committee, 2010–13

**Legal Aid Society *Pro Bono Publico* Award** (2010) (for legal work on behalf of the  
Legal Aid Society’s Juvenile Rights Division)

**United States Attorney General’s Merit Award** (2000) (for coordinating major  
interdepartmental initiative addressing use of public information by terrorists to target  
chemical, nuclear, and biological facilities)

**Selected Peer Review and Referee Activity**

Cambridge University Press; University of California Press; Harvard Law Review; NYU  
Law Review; Journal of Law, Religion & State

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**SELECTED CONFERENCES AND PANELS ORGANIZED**

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

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) (scheduled)

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 with over 50 presenters), 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)

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## SELECTED PRESENTATIONS

Moderator and Discussant, *Administrative Law in Criminal Justice*, Annual Meeting of the Southeastern Association of Law Schools, Aug. 3, 2017 (scheduled)

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 & 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 & Discussant, *Perceptions, Attitudes, and Representations: How People View Courts, Law, and Justice*, Annual Meeting of the Law and 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 the 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

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## 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

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## SELECTED BRIEFS IN CRIMINAL AND REGULATORY MATTERS

*Lawson v. FMR LLC*, No. 12-3 (U.S. S. Ct. 2013) (merits amicus brief on behalf of Securities Industry and Financial Markets Association)

*Demiraj v. Holder*, No. 10-1545 (U.S. S. Ct. 2011) (petition for certiorari on behalf of wife and son of former cooperating witness)

*L.J., et al. v. Maul*, No. 2010 NY Int. 82 (N.Y. Ct. App. 2010) (merits amicus brief on behalf of Legal Aid Society’s Juvenile Rights Division)

*Carachuri-Rosendo v. Holder*, No. 09-60 (U.S. S. Ct. 2010) (merits amicus brief on behalf of the National Association of Criminal Defense Lawyers, National Legal Aid and Defender Association, Immigrant Defense Project, Immigrant Legal Resource Center, and National Immigration Project of the National Lawyers Guild)

*Padilla v. Kentucky*, No. 08-651 (U.S. S. Ct. 2010) (merits amicus brief on behalf of 37 legal ethics, criminal procedure, and criminal law professors)



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**PROFESSIONAL EXPERIENCE**

**Orrick, Herrington & Sutcliffe, New York, NY**

Associated Law Professor, Feb. 2017–present

Special Counsel, Sept. 2010–Jan. 2017

Consultant for appellate, legal and strategic, and practice-group strategy issues.

**Gibson, Dunn & Crutcher, New York, NY**

Of Counsel, July 2008–June 2010

Focused on appeals and legal and strategic counseling.

**Wilmer, Cutler & Pickering, New York, NY**

Associate, September 2001–May 2003

Focused on administrative law, white-collar crime, and appeals.

**Office of Legal Counsel, United States Department of Justice, Washington, DC**

Attorney-Advisor, July 1999–July 2000

Provided written and oral advice to the White House, the Attorney General, and other executive branch agencies on the statutory and constitutional contours of executive branch authority.

**Office of the Solicitor General, United States Department of Justice, Washington, DC**

Bristow Fellow, August 1998–July 1999

Drafted petitions for certiorari, briefs in opposition, and merits briefs in U.S. Supreme Court cases; reviewed appeals requests from Department components and executive agencies; consulted with Department components and agencies on critical appeals.

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**PROFESSIONAL MEMBERSHIPS AND BAR ADMISSIONS**

**Memberships:** American Association of Law Schools; Law and Society Association; American Bar Association (Criminal Justice, Administrative Law, and Legal Education and Admissions to the Bar Sections); New York State Bar Association

**Admissions:** New York; Maryland (Inactive); 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