

RACHEL E. BARKOW
New York University School of Law

EXPERIENCE

- NEW YORK UNIVERSITY SCHOOL OF LAW, New York, NY** 2002-present
- Vice Dean for Intellectual Life, 2017-present
 - Charles Seligson Professor of Law, 2021-present
 - Faculty Director, Zimroth Center on the Administration of Criminal Law, 2008-present
- Previously:
- Segal Family Professor of Regulatory Law and Policy, 2011-2020
 - Professor of Law, 2007-2011
 - Associate Professor, 2005-2006
 - Assistant Professor, 2002-2005
- Courses:
- Administrative Law
 - Advanced Administrative Law
 - Criminal Law
 - Legislation and the Regulatory State (previously The Administrative and Regulatory State)
 - Public Law Colloquium (previously Constitutional Law Colloquium)
 - Punishment in Law, Politics, and Society (undergraduate university course)
 - 1L Reading Group: The Politics of Regulation
 - 1L Reading Group: Understanding and Reducing Mass Incarceration
- Honors:
- New York University Making A Difference Award (awarded to members of the NYU community who have had a “profound and lasting impact on changing the world for the better”), 2016
 - New York University Distinguished Teaching Award, 2013
 - New York University School of Law Podell Distinguished Teaching Award, 2007
- UNITED STATES SENTENCING COMMISSION, Washington, DC** 2013-2019
- Commissioner
- MANHATTAN DISTRICT ATTORNEYS’ OFFICE,
CONVICTION INTEGRITY POLICY ADVISORY PANEL, New York, NY** 2010-present
- Member
- HARVARD LAW SCHOOL, Cambridge, MA** Fall 2008
- Beneficial Visiting Professor of Law
 - Courses: Legislation and Regulation; The Power of Prosecutors Reading Group
- GEORGETOWN UNIVERSITY LAW CENTER, Washington, DC** 2001
- John M. Olin Fellow in Law
- KELLOGG, HUBER, HANSEN, TODD, EVANS, & FIGEL, P.L.L.C., Washington, DC** 1998-2002
- Associate
- THE HONORABLE ANTONIN SCALIA, SUPREME COURT OF THE UNITED STATES, Washington, DC** 1997-98
- Law Clerk
- THE HONORABLE LAURENCE H. SILBERMAN, U.S. COURT OF APPEALS
D.C. CIRCUIT, Washington, DC** 1996-97
- Law Clerk

EDUCATION

HARVARD LAW SCHOOL

J.D., *magna cum laude*, June 1996

- Honors: • Sears Prize (awarded for the two highest grade point averages in the first year)
 • Best Memorandum Award: First Year Ames Moot Court Competition
- Activities: • *Harvard Law Review*, Books and Commentaries Editor, 1995-96; Editor, 1994-95
 • Vice President, Dormitory and Student Affairs Council
 • Section Representative, Environmental Law Society

NORTHWESTERN UNIVERSITY

B.A., with Honors in both History and Psychology, and with Distinction in All Subjects, June 1993

- Honors: • Phi Beta Kappa
 • Mortar Board
 • Dean's List
 • James Alton James Scholar (most distinguished social science academic, junior year)
- Activities: • Vice President, College of Commerce and Industry (in charge of philanthropy)
 • Executive Board, Student Blood Services
- Theses: • *The Tragedy of Unheard Voices: Images of the Mentally Ill in an Era of Deinstitutionalization* (Honors in History)
 • *Implicit Memory Bias in Depressed Subjects* (Honors in Psychology)

ACADEMIC PUBLICATIONS

BOOKS

CRIMINAL LAW AND ITS PROCESSES: CASES AND MATERIALS (Aspen 11th Ed., 2022) (with Sanford Kadish and Stephen J. Schulhofer)

PRISONERS OF POLITICS: BREAKING THE CYCLE OF MASS INCARCERATION (Harvard University Press/Belknap, 2019) (Vera Institute Best Books of 2019; Counter Punch 20 Best Books of 2019)

CRIMINAL LAW AND ITS PROCESSES: CASES AND MATERIALS (Aspen 10th Ed., 2017) (with Sanford Kadish and Stephen J. Schulhofer)

CRIMINAL LAW AND ITS PROCESSES: CASES AND MATERIALS (Aspen 9th Ed., 2012) (with Sanford Kadish, Stephen J. Schulhofer & Carol S. Steiker)

PROSECUTORS IN THE BOARDROOM: USING CRIMINAL LAW TO REGULATE CORPORATE CONDUCT (Anthony Barkow & Rachel Barkow eds., NYU Press, 2011)

ARTICLES AND ESSAYS

The Wholesale Problem with Congress: The Dangerous Decline of Expertise in the Legislative Process, 90 FORDHAM L. REV. 1029 (2021)

Can Prosecutors End Mass Incarceration?, 119 MICH. L. REV. 1365 (2021)

Classical Liberal Criminal Law, 50 J. LEG. STUD. 275 (2021)

Using the Corporate Prosecution and Sentencing Model for Individuals: The Case for a Unified Federal Approach, 83 LAW & CONTEMP. PROBS. 159 (2020)

ARTICLES AND ESSAYS (cont'd)

Prisoners of Politics: Breaking the Cycle of Mass Incarceration, 104 MINN. L. REV. 2625 (2020)

Categorical Mistakes: The Framework of the Armed Career Criminal Act and Mandatory Minimum Sentencing, 133 HARV. L. REV. 200 (2019)

Three Lessons for Criminal Law Reformers from Locking Up Our Own, 107 CAL. L. REV. 1967 (2019)

Making Connections with The Wire: Telling the Stories Behind the Statistics, 2018 U. CHI. LEGAL F. 25

Designed to Fail: The President's Deference to the Department of Justice in Advancing Criminal Law Reform, 59 WM. & MARY L. REV. 387 (2017)

- Williamson Prize for the most outstanding article published in volume 59 of the WM. & MARY L. REV.

Overseeing Agency Enforcement, Foreword, Annual Review of Administrative Law, 84 GEO. WASH. L. REV. 1129 (2016)

Clemency and Presidential Administration of Criminal Law, 90 N.Y.U. L. REV. 802 (2015)

Restructuring Clemency: The Cost of Ignoring Clemency and a Plan for Renewal, 82 U. CHI. L. REV. 1 (2015) (with Mark Osler)

Justice Sotomayor and Criminal Justice in the Real World, 123 YALE L.J. FORUM 409 (2014)

The New Policing of Business Crime, 37 SEATTLE U. L. REV. 435 (2014)

Prosecutorial Administration: Prosecutor Bias and the Department of Justice, 99 U. VA. L. REV. 271 (2013)

Sentencing Guidelines at the Crossroads of Politics and Expertise, 160 U. PA. L. REV. 1599 (2012)

Federalism and Criminal Law: What the Feds Can Learn from the States, 109 MICH. L. REV. 519 (2011)

Insulating Agencies: Using Institutional Design To Limit Agency Capture, 89 TEX. L. REV. 15 (2010)

Organizational Guidelines for the Prosecutor's Office, 31 CARDOZO L. REV. 2089 (2010)

The Court of Life and Death: The Two Tracks of Constitutional Sentencing Law and the Case for Uniformity, 107 MICH. L. REV. 1145 (2009)

Institutional Design and the Policing of Prosecutors: Lessons from Administrative Law, 61 STAN. L. REV. 869 (2009)

The Ascent of the Administrative State and the Demise of Mercy, 121 HARV. L. REV. 1332 (2008)

- “Exemplary Legal Writing 2008” Nominee in GREEN BAG

Originalists, Politics, and Criminal Law on the Rehnquist Court, 74 GEO. WASH. L. REV. 1043 (2006)

Delegating Punitive Power: The Political Economy of Sentencing Commission and Guideline Formation, 84 TEX. L. REV. 1973 (2006) (with Kathleen M. O'Neill)

The Political Market for Criminal Justice, 104 MICH. L. REV. 1713 (2006)

ARTICLES AND ESSAYS (*cont'd*)

Separation of Powers and the Criminal Law, 58 STAN. L. REV. 989 (2006)

- Winner of the Association of American Law Schools, Section on Criminal Justice 2006 Outstanding Paper Competition

Our Federal System of Sentencing, 58 STAN. L. REV. 119 (2005)

Federalism and the Politics of Sentencing, 105 COLUM. L. REV. 1276 (2005)

Administering Crime, 52 UCLA L. REV. 715 (2005)

Recharging the Jury: The Criminal Jury's Constitutional Role in an Era of Mandatory Sentencing, 152 U. PA. L. REV. 33 (2003)

More Supreme than Court?: The Fall of the Political Question Doctrine and the Rise of Judicial Supremacy, 102 COLUM. L. REV. 237 (2002)

A Tale of Two Agencies: A Comparative Analysis of FCC and DOJ Review of Telecommunications Mergers, 2000 U. CHI. LEGAL F. 29 (with Peter Huber)

BOOK CHAPTERS AND SHORTER WORKS

The Reformation of American Criminal Law, 29 NYU ENV'T'L L.J. 363 (2021)

The Evolving Role of the United States Sentencing Commission, 33 FED. SENTENCING REP. 3 (2020)

The Criminal Regulatory State, in *The New Criminal Justice Thinking* (Sharon Dolovich & Alexandra Natapoff, eds., NYU Press, 2017) (winner 2017 Choice Outstanding Academic Title Award)

In Memoriam: Justice Antonin Scalia, 130 HARV. L. REV. 9 (2016)

Criminal Law as Regulation, 8 N.Y.U. J.L. & LIBERTY 316 (2014)

Explaining and Curbing Capture, 18 N.C. BANKING INST. 17 (2013)

Law versus Politics: Comments on William J. Stuntz's The Collapse of American Criminal Justice, 63 U. TORONTO L.J. 138 (2012) (book review)

Life without Parole and the Hope for Real Sentencing Reform, in *LIFE WITHOUT PAROLE: AMERICA'S NEW DEATH PENALTY?* (Charles J. Ogletree, Jr., & Austin Sarat eds., NYU Press, 2012)

The Prosecutor as Regulatory Agency, in *PROSECUTORS IN THE BOARDROOM: USING CRIMINAL LAW TO REGULATE CORPORATE CONDUCT* (Anthony Barkow & Rachel Barkow eds., NYU Press, 2011)

Categorizing Graham, 23 FED. SENTENCING REP. 49 (2010)

The Politics of Forgiveness: Reconceptualizing Clemency, 21 FED. SENTENCING REP. 153 (2009)

Mercy's Decline and Administrative Law's Ascendance, in *CRIMINAL LAW CONVERSATIONS* (Paul H. Robinson et al. eds., 2009)

BOOK CHAPTERS AND SHORTER WORKS (*cont'd*)

An Ounce of Prevention: Realistic Treatment for Our Pathological Politics, in CRIMINAL LAW CONVERSATIONS (Paul H. Robinson et al. eds., 2009)

The Rise and Fall of the Political Question Doctrine, in THE POLITICAL QUESTION DOCTRINE AND THE SUPREME COURT OF THE UNITED STATES (Bruce Cain & Nada Mourtada-Sabbah eds., 2007)

Tribute to Justice Antonin Scalia, 62 N.Y.U. ANN. SURV. AM. L. 15 (2006)

Criminal Trials, in THE HERITAGE GUIDE TO THE CONSTITUTION (Edwin Meese III et al. eds., 2005)

The Devil You Know: Federal Sentencing After Blakely, 16 FED. SENTENCING REP. 312 (June 2004)

Mergers and Acquisitions, in P. HUBER ET AL., FEDERAL TELECOMMUNICATIONS LAW (2d ed. 1999) (with Peter Huber et al.)

Note, *And Justiciability for All?: Future Injury Plaintiffs and the Separation of Powers*, 109 HARV. L. REV. 1066 (1996)

Book Note, *A Bold Leap Backward?*, 108 HARV. L. REV. 2047 (1995) (reviewing MARY ANN GLENDON, A NATION UNDER LAWYERS (1994))

CONGRESSIONAL AND AGENCY TESTIMONY

Undoing the Damage of the War on Drugs: A Renewed Call for Sentencing Reform, Hearing before the Subcommittee on Crime, Terrorism, and Homeland Security of the House Committee on the Judiciary (June 17, 2021)

Presidential Clemency and Opportunities for Reform, Hearing before the Subcommittee on the Constitution, Civil Rights, and Civil Liberties of the House Committee on the Judiciary (March 5, 2020)

Regulatory Crime: Identifying the Scope of the Problem, Hearing before the House Judiciary Committee's Over-criminalization Task Force (October 30, 2013)

Regional Hearing on the 25th Anniversary of the Sentencing Reform Act of 1984, Hearing before the United States Sentencing Commission (July 10, 2009)

The Proposed Consumer Financial Protection Agency: Implications for Consumers and the FTC, Hearing before the Subcommittee on Commerce, Trade, and Consumer Protection of the House Committee on Energy and Commerce (July 8, 2009)

Blakely v. Washington and the Future of the Federal Sentencing Guidelines, Hearing before the Senate Committee on the Judiciary (July 13, 2004)

OTHER WRITING

Biden Can't Let Trump's DOJ Legacy Stifle Reform, The Hill, Nov. 17, 2021, <https://thehill.com/opinion/criminal-justice/581795-biden-cant-let-trumps-doj-legacy-stifle-reform> (with Mark Osler)

Where Reform Goes To Die, The Inquest, July 26, 2021, <https://inquest.org/doj-where-reform-goes-to-die/> (with Mark Osler)

We Know How to Fix the Clemency Process. So Why Don't We?, N.Y. Times, July 13, 2021 (with Mark Osler)

OTHER WRITING (*cont'd*)

Fourteen Steps Biden's DOJ Can Take Now To Reform America's Criminal Legal System, The Appeal, March 15, 2021 (with Mark Osler)

Our Leaders Have the Power to Release People in Prison. Now They Must Use It, The Appeal, March 27, 2020,

How We Judge Prosecutors Has to Change, New York Law Journal, April 9, 2019

Prosecutors Need to Treat Police Shootings Like a Threat to Public Safety, Washington Post, March 13, 2019

Why Undermine Executive Clemency?, Los Angeles Daily Journal, Thursday, Jan. 17, 2019

The Clemency Process is Broken. Trump Can Fix It., The Atlantic, Jan. 15, 2019 (with Mark Holden and Mark Osler)

Let's Hear from the Presidential Candidates on Clemency Reform, The Plain Dealer, August 2, 2015 (with Mark Osler)

The President's Idle Executive Power: Pardoning, Washington Post, November 26, 2014 (with Mark Osler)

Establishing Conviction Integrity Programs in Prosecutors' Offices, Center on the Administration of Criminal Law (2012)

The Problem with Mandatory Minimums, N.Y. Times Room for Debate, August 19, 2012, <http://www.nytimes.com/roomfordebate/2012/08/19/do-prosecutors-have-too-much-power/the-problem-with-mandatory-minimum-sentences>

Clarify What's Cruel and Unusual, N.Y. Times Room for Debate, July 8, 2012, <http://www.nytimes.com/roomfordebate/2012/07/08/another-stab-at-the-us-constitution/revisiting-the-constitution-clarify-whats-cruel-and-unusual-punishment>

Save the Jury, Slate.com, May 30, 2012, <http://hive.slate.com/hive/how-can-we-fix-constitution/article/save-the-jury>

How Health Care Can Reduce Crime, Forbes.com, June 22, 2010, <http://www.forbes.com/2010/06/22/health-care-crime-drugs-opinions-contributors-rachel-barkow-david-edwards.html> (with David B. Edwards)

Keeping Consumer Cops on the Beat, May 13, 2010, <http://www.politico.com/news/stories/0510/37148.html> (with Anne Milgram)

Sentencing Laws Needn't Drain Us, BOSTON HERALD, Dec. 6, 2008, at 17 (with Joshua J. Libling)

Confronting Mortality, Huffington Post, Oct. 31, 2008, http://www.huffingtonpost.com/rachel-barkow/confronting-mortality_b_139768.html

Electing Administrations, Not Just Presidents, Huffington Post, Oct. 13, 2008, http://www.huffingtonpost.com/rachel-barkow/electing-administrations_b_134269.html

The Feminist Threat, Huffington Post, June 27, 2008, http://www.huffingtonpost.com/rachel-barkow/the-feminist-threat_b_109619.html

BAR AND PROFESSIONAL ASSOCIATION MEMBERSHIP

- Member, District of Columbia Bar (1999-present) and Maryland Bar (1998, currently inactive status)
- Member, Bar of the Supreme Court of the United States
- Member, Bar of the United States Court of Appeals for the District of Columbia Circuit
- Member, American Law Institute (2008-present)
- Member, American Academy of Arts and Sciences (2019-present)
- Member, Council on Criminal Justice (2020-present)

PROFESSIONAL ACTIVITIES

- Co-Chair, DA-elect Alvin Bragg Transition, Police Integrity and Accountability Subcommittee (2021)
- Member, DA-elect Alvin Bragg Transition, Free the Wrongfully Convicted Subcommittee (2021)
- Fellow, The Justice Collaborative Institute (2019-present)
- Editorial Advisor, Wolters Kluwer (2016-present)
- Advisor Council, Harvard Law School Fair Punishment Project (2016-present)
- Instructor, Sponsors for Educational Opportunity (2009-present)
- Selection Panel, Mellon Foundation, New Directions Fellowship (2018-2020)
- Board Member, Clemency Resource Center (2015-2016)
- Lecturer, Criminal Law and Procedure, Themis Bar Review (2010-2014)
- Lecturer, Criminal Law and Procedure, Emanuel Bar Review (2008-2009)
- Lecturer, Criminal Law, Law Preview (2007-2012)
- Advisor, Department of Justice Transition Team for President-elect Barack Obama (2008-Jan. 2009)
- Criminal Justice Policy Team and Law and Judiciary Committee, Barack Obama for President (2007-2008)
- Justice Policy Team, John Kerry for President (2004)

ACADEMIC ACTIVITIES

- Chair, Dean Search Committee (2021-2022)
- NYU Society of Fellows (2019-present)
- Dean's Distinguished Scholar-in-Residence, Washington University School of Law (2018)
- Stanley M. Chesley Distinguished Visiting Professor of Law, University of Cincinnati Law School (2015)
- Member, Dean's Advisory Committee (2013-2014)
- Member, Dean Search Committee (2012-2013)
- Co-Chair, Academic Personnel Committee (2011-2012)
- Member, Academic Personnel Committee (2010-2011)
- Co-Director, Furman Scholars and Fellows Program (2006-2008)
- Chair, Clerkship Committee (2004-2005)
- Member, Clerkship Committee (2002-2004)
- Advisor, *New York University Law Review* (2003-2005)