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PRESENT POSITION:

Benjamin N. Berger Professor of Criminal Law, University of Minnesota Law School (since 1991)

PRIOR POSITIONS:

Professor of Law (1981-91), Associate Prof. of Law (1977-81), Julius C. Davis Prof. of Law (1988-89), Co-Director, Institute on Criminal Justice (1998-2003), Director of Criminal Clinics (1977-2003), University of Minnesota Law School

Visiting Professor, Université Jean Moulin, Lyon, France (Spring Semesters 1982, 1986, and 1990; Summer 1997); Visiting Professor, Christian Albrecht Universität, Kiel, Germany (Summer 1990)

Research Associate and Arnold Shure Fellow, Center for Studies in Criminal Justice, University of Chicago Law School (1974-77)

Associate Attorney, Sidley & Austin, Chicago (1972-74)

Law Clerk to Hon. Luther M. Swygert, Chief Judge, U.S. Court of Appeals, Seventh Circuit (1970)

EDUCATION:

J.D., University of Chicago Law School (1970)  
Law Review staff member (1968-69); Editorial Board, Comment Editor (1969-70)

B.A., Haverford College (1967); Phi Beta Kappa

Public Schools in Falls Church, Virginia (1951-63)  
Senior Class Valedictorian, George Mason Jr.-Sr. High School (1963)

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## PUBLICATIONS

### Books:

Just Sentencing: Principles and Procedures for the Twenty-first Century (in progress, under contract with Oxford University Press)

Proportionality Principles in American Law: Controlling Excessive Government Actions (with E. Thomas Sullivan) (Oxford University Press, 2009)

Sentencing and Sanctions in Western Countries (Co-editor: Michael Tonry) (Oxford University Press, 2001)

The Encyclopedia of Crime and Justice, 2<sup>nd</sup> Edition (4 Volumes) (editor, with J. Dressler, T. Bernard, D. Denno, J. Hagan, D. Kahan, & C. Steiker] (Macmillan Reference USA, 2001)

Minnesota Misdemeanors and Moving Traffic Violations, 3<sup>rd</sup> Edition (2 Volumes) (Co-authors: Martin J. Costello and Stephen M. Simon) (Lexis Law Publishing 1999; annual supplements through 2007); Second Edition and supplements (same co-authors) (Lexis 1990-98; First Edition and supplements (Co-authors: Phebe S. Haugen and Martin J. Costello) (Butterworth's 1982-88).

The French Code of Criminal Procedure, Revised Edition (translation) (Co-author: Gerald L. Kock) (Rothman & Co. 1988)

Criminal Evidence: Constitutional, Statutory, and Rules Limitations (Butterworth's 1985)

The Criminal Justice System: Materials on the Administration and Reform of the Criminal Law (Co-author: Franklin E. Zimring) (Little, Brown & Co. 1980)

### Articles, essays, monographs, and chapters in books:

“Research on Race and Sentencing: Goals, Methods, and Topics,” commenting on: Eric P. Baumer, “Reassessing and Redirecting Research on Race and Sentencing” (essay in progress)

“Theories of Proportionality and Desert”, in: Oxford Handbook on Sentencing and Corrections (Joan Petersilia and Kevin Reitz, eds.) (Oxford Univ. Press, forthcoming)

“Can Above-desert Penalties Be Justified by Competing Deontological Theories?” in: Retributivism Has a Past. Has it a Future? (Michael Tonry, ed.) (Oxford Univ. Press, 2011)

“Punishment Justifications and Goals,” in: Oxford Bibliographies Online: Criminology (Richard B. Rosenfeld, ed.) (Oxford Univ. Press, 2011), <http://www.oxfordbibliographiesonline.com/>

“*Graham*’s Good News – and Not,” Federal Sentencing Reporter, vol. 23, pp. 54-57 (2010)

“Prior-Conviction Sentencing Enhancements: Rationales and Limits Based on Retributive and Utilitarian Proportionality Principles and Social Equality Goals,” in: Previous Convictions at Sentencing: Theoretical and Applied Perspectives (J. Roberts & A. von Hirsch, eds) (Hart Publishing Co., 2010).

“What Explains Persistent Racial Disproportionality in Minnesota’s Prison and Jail Populations?” in: Crime and Justice: A Review of Research (Michael Tonry, ed.), vol. 38, pp. 201-280 (2009).

“America’s Sentencing Future,” in: Corrections in the 21<sup>st</sup> Century, 4<sup>th</sup> Edit. (Frank Schmalleger & John Smykla, eds.) (McGraw-Hill, 2009)

“Norval Morris’s Contributions to Sentencing Structures, Theory, and Practice,” Federal Sentencing Reporter, vol. 21, pp. 254-60 (2009)

“Second-Look Provisions in the Proposed Model Penal Code Revisions,” Federal Sentencing Reporter, vol. 21, pp. 194-202 (2009)

“Limiting Excessive Prison Sentences under Federal and State Constitutions,” University of Pennsylvania Journal of Constitutional Law, vol. 11, pp. 39-72 (2008)

“Sentencing and Comparative Law Theory,” in: Crime, Procedure and Evidence in a Comparative and International Context: Essays in Honour of Professor Mirjan Damaska (John Jackson, Máximo Langer, & Peter Tillers, eds.)(Hart Publishing, 2008)

"The Defense Lawyer's Role in Negotiated Justice," in: Strafverteidigung vor neuen Herausforderungen [Criminal Defense Facing New Challenges] (Thomas Weigend, Susanne Walther, & Barbara Grunewald, eds.) (Duncker & Humblot 2008)

"National Report: United States of America," in: Strafverteidigung vor neuen Herausforderungen [Criminal Defense Facing New Challenges] (Thomas Weigend, Susanne Walther, & Barbara Grunewald, eds.) (Duncker & Humblot 2008)

"The Minnesota Sentencing Guidelines," in: Penal Populism, Sentencing Councils and Sentencing Policy (Arie Freiberg & Karen Gelb, eds.) (Willan Publishing, 2008) [excerpts reprinted in: Principled Sentencing: Readings on Theory and Policy, 3<sup>rd</sup> Edition (Andrew von Hirsch, Andrew Ashworth, and Julian Roberts, eds.), pp. 270-75 (Hart Publishing 2009)]

“The *Apprendi-Blakely* Cases: Sentencing Reform Counter-Revolution?” Criminology & Public Policy, vol. 6, pp. 403-31 (2007)

“France,” in: Criminal Procedure: A Worldwide Study, 2<sup>nd</sup> Edit. (Craig Bradley, ed.) (Carolina Academic Press 2007), pp. 201-42 [updating chapter in the first edition (1999)]

“Punishment and Sentencing Alternatives,” in: Encyclopedia of Law and Society: American and Global Perspectives (Sage Publications, 2007)

“*Blakely* in Minnesota, Two Years Out: Guidelines Sentencing Is Alive And Well,” Ohio State Journal of Criminal Law, vol. 4, pp. 73-94 (2006)

“Proportionality Principles in the American System of Criminal Justice,” Perspectives, The Magazine of the University of Minnesota Law School, Fall 2005, pp. 28-32

“Why Minnesota Will Weather *Blakely's* Blast” (with Dale G. Parent), Federal Sentencing Reporter, vol. 18, pp. 12-18 (2005)

“Punishment Purposes,” in: *Symposium, A More Perfect System: Twenty-five Years of Guideline Sentencing Reform*, Stanford Law Review, vol. 58, pp. 67-83 (2005)

“The Warren Court’s Missed Opportunities in Substantive Criminal Law,” Ohio State Journal of Criminal Law, vol. 3, pp. 75-103 (2005)

“The Impact of Contextual Factors on the Decision to Imprison in Large Urban Jurisdictions: A Multilevel Analysis.” (with Robert R. Weidner and Jennifer S. Schultz), Crime and Delinquency, vol. 51, pp. 400-424 (2005)

“State Sentencing Guidelines: Diversity, Consensus, and Unresolved Policy Issues,” in: *Symposium, Sentencing: What's At Stake for the States?* Columbia Law Review, vol. 105, pp. 1190-1232 (2005)

“Excessive Prison Sentences, Punishment Goals, and the Eighth Amendment: ‘Proportionality’ Relative To What?” Minnesota Law Review, vol. 89, pp. 571-651 (2005)

“Sentencing Guidelines in Minnesota, 1978-2003,” in: Crime and Justice: A Review of Research (Michael Tonry, ed.), vol. 32, pp. 131-219 (2005)

“Explaining Sentencing Severity in Large Urban Counties: A Multilevel Analysis of Contextual and Case-Level Factors” (with Robert R. Weidner and Iain Pardoe), The Prison Journal, vol. 84, pp. 184-207 (2004)

“Historical and Comparative Perspectives on the Exceptional Severity of Sentencing in the

United States,” reviewing: *Harsh Justice: Criminal Punishment and the Widening Divide Between America and Europe*, by James Q. Whitman (Oxford U. Press, 2003), George Washington International Law Review, vol. 36, pp. 227-37 (2004)

“Limiting Retributivism,” in: The Future of Imprisonment (Michael Tonry, ed.), pp. 83-119 (Oxford Univ. Press, 2004) [excerpts reprinted in: Principled Sentencing: Readings on Theory and Policy, 3<sup>rd</sup> Edition (Andrew von Hirsch, Andrew Ashworth, and Julian Roberts, eds.), pp. 135-42 (Hart Publishing 2009)]

“Legal and Extralegal Determinants of Inter-County Differences in Prison Use” (with Robert R. Weidner), Criminal Justice Policy Rev., vol. 14, pp. 377-400 (2003)  
Book Review, *The Japanese Way of Justice: Prosecuting Crime in Japan*, by David T. Johnson (Oxford U. Press, 2002), Criminal Law Bulletin, vol. 39, pp. 488-94 (2003)

“What Were They Thinking? Fourth Amendment Unreasonableness in *Atwater v. City of Lago Vista*,” Fordham Law Review, vol. 71, pp. 329-421 (2002) [a shorter version, subtitled: “How Can a Clearly Unreasonable Arrest be a ‘Reasonable’ Seizure?” appears in: Search & Seizure Law Report, vol. 30, no. 11, pp. 85-92 (West Group, 2003); a case summary appears in: David Schultz & John R. Vile, eds., Encyclopedia of Civil Liberties (M.E. Sharpe, 2005)]

“Criminal Punishments,” in: The Oxford Companion to American Law, pp. 197-202 (Kermit L. Hall et al., eds.) (Oxford University Press, 2002)

“Sentencing Guidelines,” in: The Encyclopedia of American Law, pp. 391-93 (David Schultz, ed.) (Facts On File, 2002)

“Criminal Justice System,” Encyclopedia of Crime and Justice, 2<sup>nd</sup> Edit., vol. 1, pp. 371-93 [with Robert R. Weidner] (Macmillan Reference USA, 2001)

“Criminalization and Decriminalization,” Encyclopedia of Crime and Justice, 2<sup>nd</sup> Edit., vol.1, pp. 347-61 (Macmillan Reference USA, 2001) [an earlier version appears in: The Encyclopedia of Crime and Justice, vol. 2, pp. 438-449 (Macmillan 1983).]

“Victimless Crime,” Encyclopedia of Crime and Justice, 2<sup>nd</sup> Edit., vol. 4, pp. 1626-29 (Macmillan Reference USA, 2001) [an earlier version appears in: The Encyclopedia of Crime and Justice, vol. 4, pp. 1608-1611 (Macmillan 1983).]

“Sentencing in Germany and the United States: Comparing *Äpfel* with Apples.” (Max Planck Institute, Freiburg, 2001) [57-page monograph available on the Max Planck website – <http://www.mpicc.de/shared/data/pdf/frase-endausdruck.pdf>]

"A County-Level Comparison of the Propensity to Sentence Felons to Prison," International Journal of Comparative Criminology, vol. 1, no. 1, pp. 1-22 (2001) (with Robert R. Weidner)

"International Perspectives on Sentencing Policy and Research," in: Sentencing and Sanctions in Western Countries, pp. 259-92 (Michael Tonry & Richard Frase, eds.) (Oxford U. Press, 2001)

Brief of The Institute on Criminal Justice at the Univ. of Minn. Law School and Eleven Leading Experts on Law Enforcement and Corrections Administration and Policy, as Amici Curiae in Support of Petitioners, *Atwater v. City of Lago Vista* [532 U.S. 318 (2001)] (filed Sept., 2000)

"Review Essay: The Search for the Whole Truth about American and European Criminal Justice," (reviewing *Trials Without Truth*, by William Pizzi), Buffalo Criminal Law Review, vol. 3, pp. 785-849 (2000)

"Sentencing Guidelines in Minnesota, Other States, and the Federal Courts: A Twenty-Year Retrospective," Federal Sentencing Reporter, vol. 12, pp. 69-82 (1999) [abbreviated version: "Is Guided Discretion Sufficient? Overview of State Sentencing Guidelines," St. Louis University Law Journal, vol. 44, pp. 425-46 (2000).]

"Main-streaming Comparative Criminal Justice: How to Incorporate Comparative and International Concepts and Materials into Basic Criminal Law and Procedure Courses," West Virginia Law Review, vol. 100, pp. 773-98 (1998)

"Comparative Criminal Justice Policy, in Theory and in Practice," in: *Comparative Criminal Justice Systems: From Diversity to Rapprochement*, Nouvelles Etudes Pénales, vol. 17, pp. 109-21 (Eres, 1998)

"Jails," in Handbook of Crime & Punishment (Michael Tonry, ed.), pp. 474-506 (Oxford U. Press 1998)

"Fair Trial Standards in the United States of America," in: The Right to a Fair Trial (David Weissbrodt & Rüdiger Wolfrum, eds.), pp. 31-83 (Springer-Verlag, 1997)

"Sentencing Principles in Theory and Practice," Crime & Justice: A Review of Research (Michael Tonry, ed.), vol. 22, pp. 363-433 (1997)

"Lessons of State Guideline Reforms," Federal Sentencing Reporter, vol. 8, pp. 39-41 (1995)

"German Criminal Justice As a Guide to American Law Reform: Similar Problems, Better Solutions?" (with Thomas Weigend) Boston College International & Comparative Law Review,

vol. 18, pp. 317-60 (1995)

"Sentencing Laws and Practices in France," Federal Sentencing Reporter, vol. 7, pp 275-80 (1995)

"State Sentencing Guidelines: Still Going Strong," Judicature, vol. 78, no. 4, pp. 173-79 (1995)

"Sentencing Guidelines in Minnesota and Other American States: A Progress Report," in The Politics of Sentencing Reform (Chris Clarkson & Rod Morgan, eds.), pp. 169-98 (Clarendon Press, 1995)

"Purposes of Punishment Under the Minnesota Guidelines," Criminal Justice Ethics, vol 13, no. 1, pp. 11-20 (1994)

"Sentencing Guidelines 'Alive and Well' in the States," Overcrowded Times, vol. 5, no. 2. pp. 1, 11-14 (1994) [reprinted in: Sentencing Reform in Overcrowded Times: A Comparative Perspective (Michael Tonry & Kathleen Hatlestad, eds.), pp. 12-17 (Oxford U. Press 1997)]

"The Uncertain Future of Sentencing Guidelines," Law & Inequality, vol. 12, pp. 1-42 (1993)

"Sentencing Guidelines in the States: Lessons for State and Federal Reformers," Federal Sentencing Reporter, vol. 6, pp. 123-28 (1993) [reprinted in: "FSR Highlights from a Decade of Guidelines Sentencing," Federal Sentencing Reporter, vol. 10, pp. 46-50 (1997)]

"The Role of the Legislature, the Sentencing Commission, and Other Officials Under the Minnesota Sentencing Guidelines," Wake Forest Law Review, vol. 28, pp. 345-79 (1993)

"Implementing Commission-based Sentencing Guidelines: The Lessons of the First Ten Years in Minnesota," Cornell Journal of Law & Public Policy, vol. 2, pp. 279-337 (1993)

"Prison Population Growing Under Minnesota Guidelines," Overcrowded Times, vol. 4, no. 1, pp. 1, 10-12 (February, 1993) [reprinted in: Sentencing Reform in Overcrowded Times: A Comparative Perspective (Michael Tonry & Kathleen Hatlestad, eds.), pp. 40-45 (Oxford U. Press 1997)]

"Criminal Justice System," Encyclopedia of the American Constitution, Supplement I, pp. 132-136 (Macmillan 1992)

"Defendant Amenability to Treatment or Probation as a Basis for Departure under the Minnesota and Federal Sentencing Guidelines," Federal Sentencing Reporter, vol. 3, pp. 328-33 (1991)

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"Sentencing Reform in Minnesota, Ten Years After: Reflections on Dale G. Parent's Structuring Criminal Sentences: the Evolution of Minnesota's Sentencing Guidelines," Minnesota Law Review, vol. 75, pp. 727-54 (1991)

"Comparative Criminal Justice as a Guide to American Law Reform: How Do the French Do It, How Can We Find Out, and Why Should We Care?" California Law Review, vol. 78, pp. 539-683 (1990)

"Criminal Procedure in a Conservative Age: A Time to Rediscover the Critical Nonconstitutional Issues," Journal of Legal Education, vol. 36, pp. 79-92 (1986)

"Review Essay: Defining the Limits of Crime Control and Due Process" (reviewing: The Limits of Law Enforcement, by Hans Zeisel), California Law Review, vol. 73, pp. 212-51 (1985)

"The Decision to File Federal Criminal Charges; A Quantitative Study of Prosecutorial Discretion," University of Chicago Law Review, vol. 47, pp. 246-330 (1980)

"The Speedy Trial Act of 1974," University of Chicago Law Review, vol. 43, pp. 667-723 (1976)

"Criminal Justice *in Extremis*: Administration of Justice During the April 1968 Chicago Disorder," University of Chicago Law Review, vol. 36, pp. 455-613 (1969) [editor and contributor]

#### COURSES, SEMINARS, AND CLINICS TAUGHT:

Criminal Law  
Criminal Procedure  
Federal Defense Clinic  
Comparative Criminal Procedure Seminar  
Sentencing Guidelines Seminar  
Sentencing Policy Seminar

#### COURSES, SEMINARS, AND CLINICS FORMERLY TAUGHT:

Criminal Justice System  
Federal Prosecution Clinic  
Misdemeanor Prosecution Clinic  
Sentencing Policy Seminar & Workshop

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MEMBERSHIPS:

Bar admissions: Illinois (1970, inactive); Minnesota (1977); U.S. Supreme Court (2000)

American, Minnesota, & Hennepin County Bar Associations

American Law Institute; Members Consultative Group, Model Penal Code: Sentencing project

American Society of Criminology

Minnesota Supreme Court, Advisory Committee on Rules of Criminal Procedure

Minnesota State Bar Association, Court Rules and Administration Committee

Advisory Board, Federal Sentencing Reporter

PERSONAL DATA:

Born: June 19, 1945, Washington, D.C.

Married: Brigitte Elizabeth Fitz (1969)

Children: Peter (1980) and Alexander (1983)

Hobbies: travel, languages (French, German), tennis, hiking, gardening