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RICHARD S. FRASE

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PRESENT POSITIONS (all at the University of Minnesota Law School):

Benjamin N. Berger Professor of Criminal Law (since 1991); Board of Directors, Robina Institute of Criminal Law & Criminal Justice; Founder and Co-Director, Robina Sentencing Guidelines Resource Center, and Robina Criminal History Enhancements Project

PRIOR POSITIONS:

Co-Director, Robina Institute of Criminal Law and Criminal Justice (2014-18)

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

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, 7th 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)

PUBLICATIONS

Books:

Paying For the Past: The Case Against Prior Record Sentence Enhancements (with Julian V. Roberts). (Oxford University Press 2019).

Criminal History Enhancements Sourcebook (with Julian V. Roberts, Rhys Hester, & Kelly Lyn Mitchell) (University of Minnesota, Robina Institute of Criminal Law & Criminal Justice 2015).

Just Sentencing: Principles and Procedures for a Workable System (Oxford University Press 2013).

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, 2nd 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, 3rd 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:

“Proportionality of Punishment in Anglo-American and German Law” (with Carsten Momsen, Lisa Washington, and Thomas O’Malley). Forthcoming in Core Issues in Criminal Law and Criminal Justice, Volume 1 (Kai Ambos et al., eds.) (Cambridge University Press).

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Curriculum Vitae, Page 3

“Rethinking the Role of Criminal History in Sentencing” (with Rhys Hester, Julia Laskorunsky, and Kelly Lyn Mitchell). In: Sentencing Policies and Practices in the 21st Century (Cassia Spohn & Pauline Brennan, eds.), pp. 283-311 (Taylor and Francis 2019).

“Sentencing Guidelines in the U.S.” (with Kelly Lyn Mitchell). In: Sentencing Policies and Practices in the 21st Century (Cassia Spohn & Pauline Brennan, eds.), pp. 43-67 (Taylor and Francis 2019).

“Four Decades of American Sentencing Guidelines: What Have We Learned?” In: Crime and Justice: A Review of Research (Michael Tonry, ed.), vol. 48, pp. 79-136 (2019).

“Suspended Sentences and Free-standing Probation Orders in U.S. Guidelines Systems.” Law and Contemporary Problems, vol. 82, no. 1, pp. 51-79 (2019).

“The Problematic Role of Prior Record Enhancements in Predictive Sentencing” (with Julian V. Roberts). in The Ethics and Consequences of Predictive Sentencing (Jan de Keijser, Julian Roberts, and Jesper Ryberg, eds.), pp. 149-73 (Hart Publishing 2019).

A Consumer’s Guide to Sentencing Reform: Reflections on Zimring’s Cautionary Tale.” Berkeley Journal of Criminal Law, vol. 23, no. 3 (2018).

“Prior Record Enhancements at Sentencing: Unsettled Justifications and Unsettling Consequences” (with Rhys Hester, Julian V. Roberts, and Kelly Lyn Mitchell), in: Crime and Justice: A Review of Research (Michael Tonry, ed.), vol. 47, pp. 209-54 (2018), <https://www.journals.uchicago.edu/doi/abs/10.1086/695400>

“A Measure of Tolerance: Public Attitudes on Sentencing Enhancements for Old and Juvenile Prior Records” (with Rhys Hester, Julian V. Roberts, and Kelly Mitchell), Corrections> Policy, Practice and Research (2018), <https://www.tandfonline.com/doi/full/10.1080/23774657.2017.1343105>

"Principles and Procedures for Sentencing of Multiple Current Offenses," in: Sentencing Multiple Crimes (Jesper Ryberg, Julian V. Roberts, and Jan W. de Keijser, eds.), pp. 189-210 (Oxford University Press 2018).

Why Are Minnesota’s Prison Populations Continuing to Rise in an Era of Decarceration?” (with Kelly Lyn Mitchell),” Federal Sentencing Reporter, vol. 30, pp. 114-24 (2017).

“Examining the Operation and Impacts of Prior Record Sentencing Enhancements,” Federal Sentencing Reporter, vol. 30, pp. 74-79 (2017).

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<http://www.oxfordhandbooks.com/view/10.1093/oxfordhb/9780199935383.001.0001/oxfordhb-9780199935383-e-148?print=pdf>

"Learning from European Punishment Practices – and from Similar American Practices, Now and In the Past," Federal Sentencing Reporter, vol. 27, pp. 19-25 (2014).

"Recurring Policy Issues of Guidelines (and *non*-Guidelines) Sentencing: Risk Assessments, Criminal History Enhancements, and the Enforcement of Release Conditions," Federal Sentencing Reporter, vol. 26, pp. 145-157 (2014).

"What's 'Different' (Enough) in Eighth Amendment Law?" Ohio State Journal of Criminal Law, vol. 11, pp. 9-36 (2013).

"Research on Race and Sentencing: Goals, Methods, and Topics," commenting on: Eric P. Baumer, "Reassessing and Redirecting Research on Race and Sentencing," Justice Quarterly, vol. 30, pp. 262-69 (2013).

"Theories of Proportionality and Desert", in: Oxford Handbook on Sentencing and Corrections (Joan Petersilia and Kevin Reitz, eds.) (Oxford Univ. Press 2012).

"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/>

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"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, 3rd Edition (Andrew von Hirsch, Andrew Ashworth, and Julian Roberts, eds.), pp. 270-75 (Hart Publishing 2009)]

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“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)

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“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, 2nd Edit., vol. 1, pp. 371-93 [with Robert R. Weidner] (Macmillan Reference USA, 2001)

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“Victimless Crime,” Encyclopedia of Crime and Justice, 2nd 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)

“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).]

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"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, ol. 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

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"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)]

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"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)

"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," Univ. of Chicago Law Review, vol. 36, pp. 455-613 (1969) [editor and contributor]

Other Published Writing

"What are Sentencing Guidelines?" (with Kelly Lyn Mitchell) (2018 rev.),
http://sentencing.umn.edu/guidelines_commissions

"Prior Record Enhancements: High Costs, Uncertain Benefits" (2017),
<http://robinainstitute.umn.edu/news-views/prior-record-enhancements-high-costs-uncertain-benefits>

Federal Profile (Robina Sentencing Guidelines Resource Center, 2017).

"Criminal History Sentencing Enhancements Imprison Too Many Aging, Low-Risk Offenders" (2016), <http://robinainstitute.umn.edu/news-views/criminal-history-sentencing-enhancements-imprison-too-many-aging-low-risk-offenders>

"How Sentencing Guidelines and Other Reforms Can Reduce Unfair Penalties Imposed on Offenders Found Guilty at Trial" (2016), <http://robinainstitute.umn.edu/news-views>

Minnesota Case Law (with Kelly Lyn Mitchell) (2016),
http://sentencing.umn.edu/sites/sentencing.umn.edu/files/minnesota_case_law.2016.version_1.pdf

Minnesota Profile (with Kelly Lyn Mitchell) (2016),
http://sentencing.umn.edu/sites/sentencing.umn.edu/files/minnesota_profile.2016.version_1.pdf

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<http://sentencing.umn.edu/sites/sentencing.umn.edu/files/Oregon%20Profile.2015.v1.pdf>

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"American Sentencing Guidelines Reforms: Learning from Experience" (with Kelly Lyn Mitchell) (2015), <http://sentencing.umn.edu/content/american-sentencing-guidelines-reforms-learning-experience>

"Varying Binding Effects of Guidelines -- the Mandatory-to-Advisory Continuum" (2015),
http://sentencing.umn.edu/guidelines_commissions

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Curriculum Vitae, Page 11

Brief of The Institute on Criminal Justice at the University of Minnesota 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)

COURSES, SEMINARS, AND CLINICS CURRENTLY TAUGHT:

Criminal Law
Federal Defense Clinic
Sentencing Guidelines Seminar

COURSES, SEMINARS, AND CLINICS FORMERLY TAUGHT:

Criminal Procedure
Comparative Criminal Procedure Seminar
Criminal Justice System
Federal Prosecution Clinic
Misdemeanor Prosecution Clinic
Sentencing Policy Seminar

MEMBERSHIPS:

Bar admissions: Illinois (1970, inactive); Minnesota (1977, inactive); U.S. Supreme Court (2000)
American Bar Association
American Law Institute; Adviser, Model Penal Code: Sentencing project
American Society of Criminology
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: tennis, hiking, gardening, travel, languages (French, German)