BRENNER M. FISSELL

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ACADEMIC APPOINTMENTS

Villanova University (2022—Present)
Associate Professor of Law

- Courses taught: Criminal law, torts, local government, military law, legal ethics

Hofstra University (2018—2022)
Associate Professor of Law

- Courses taught: Criminal law, criminal procedure, torts, legal ethics

LEGAL EXPERIENCE

Guantanamo Bay Military Commissions, U.S. Dept. of Defense (2017—2018)
Appellate Defense Counsel

Paul Hastings LLP, Washington D.C. Office (2015—2017)
Associate

Chief Judge Scott Stucky, U.S. Court of Appeals for the Armed Forces (2014—2015)
Law Clerk

Judge Jerome Farris, U.S. Court of Appeals for the Ninth Circuit (2013—2014)
Law Clerk

EDUCATION

Georgetown University Law Center, J.D., *magna cum laude*, Order of the Coif, 2013

University of Cambridge, M.Phil. (Political Thought & Intellectual History), First Class Honors, 2010

Georgetown University, B.A., *summa cum laude*, Phi Beta Kappa, 2009

- Major: Government (Connecticut Alumni Medal for best government major)
- Minor: Catholic Studies

ARTICLES

Democracy and Prosecutorial Declination, JOURNAL OF CRIMINAL LAW & CRIMINOLOGY (Forthcoming, 2025) (symposium).

The Military's Constitutional Role, 103 NORTH CAROLINA LAW REVIEW __ (Forthcoming, 2025).

Police-made Law, 108 MINNESOTA LAW REVIEW __ (Forthcoming, 2024).

- Selected in blind peer review for 2023 Harvard/Stanford/Yale Junior Faculty Forum.
- Selected for Junior-Senior Conference of AALS Section on Criminal Procedure.
- "Highly Recommended" and "Download It While It's Hot" on Legal Theory Blog.

Rightsizing Local Legislatures, 2023 UTAH LAW REVIEW 393 (2023).

Against Criminal Law Localism, 81 MARYLAND LAW REVIEW 119 (2022)

- Mentioned on CrimProf Blog; mentioned on Sentencing Law & Policy Blog.

Equal Supreme Court Access For Military Personnel, 131 YALE LAW JOURNAL FORUM 1 (2021), with Eugene Fidell & Philip Cave.

Judicial Application of Strict Liability Local Ordinances, 53 ARIZONA STATE LAW JOURNAL 425 (2021) (symposium), with Guyora Binder.

Local Offenses, 89 FORDHAM LAW REVIEW 837 (2020).

- Selected for series of responses in fall issue of FORDHAM L. REV. ONLINE.
    - Responses by Laura Appleman (link), Michael Cahill (link), and Eric Miller (link). Cahill's essay recommended on Legal Theory Blog.
- Mentioned on CrimProf Blog.

When Agencies Make Criminal Law, 10 U.C. IRVINE LAW REVIEW 855 (2020).

- "Download of the Week" & "Highly Recommended" by Legal Theory Blog; mentioned on CrimProf Blog.
- Cited in *VanDerStok v. Garland*, 86 F.4th 179, 196 (5th Cir. 2023).

A Political Interpretation of Vagueness Doctrine, 2019 UNIV. ILLINOIS LAW REVIEW 1527 (2019), with Guyora Binder.

- Mentioned on CrimProf Blog.

Unusual: The Death Penalty for Inadvertent Killing, 93 INDIANA LAW JOURNAL 549 (2018), with Guyora Binder and Robert Weisberg.

- Mentioned on Sentencing Law and Policy Blog.

Federalism and Constitutional Criminal Law, 46 HOFSTRA LAW REVIEW 489 (2017).

- "Highly Recommended" by Legal Theory Blog; mentioned on CrimProf Blog; mentioned on Sentencing Law and Policy Blog.

Sanctions and Efficacy in Analytic Jurisprudence, 69 RUTGERS LAW REVIEW 1627 (2017).

- "Highly Recommended" by Legal Theory Blog.

Capital Punishment of Unintentional Felony Murder, 92 NOTRE DAME LAW REVIEW 1141 (2017), with Guyora Binder and Robert Weisberg.

- Reviewed in JOTWELL by William Berry, "Rethinking Capital Felony Murder," Feb. 12, 2018.
- "Highly Recommended" by Legal Theory Blog; mentioned on Sentencing Law and Policy Blog.
- Cited in LAFAVE, SUBSTANTIVE CRIMINAL LAW (2018).

Modern Critiques of Judicial Empathy: A Revised Intellectual History, 2016 MICHIGAN STATE LAW REVIEW 817 (2016).

- "Highly Recommended" by Legal Theory Blog.

Abstract Risk and the Politics of the Criminal Law, 51 AMERICAN CRIMINAL LAW REVIEW 657 (2014).

- "Highly Recommended" by Legal Theory Blog; mentioned on CrimProf Blog & Sentencing Law and Policy Blog.
- Cited in LAFAVE, SUBSTANTIVE CRIMINAL LAW (2018).

Jury Nullification and the Rule of Law, 19 LEGAL THEORY 217 (2013) (peer reviewed).

- "Highly Recommended" by Legal Theory Blog.

Taxpayers as Victims: Taxpayer Harm & Criminalization, 7 NYU J. OF LAW & LIBERTY 126 (2013).

- Mentioned on CrimProf Blog & TaxProf Blog.

Note, *The Dual Standard of Review in Contracts Clause Jurisprudence*, 101 GEORGETOWN LAW JOURNAL 1089 (2013).

The Justification of Positive Law in Plato, 56 AMERICAN JOURNAL OF JURISPRUDENCE 89 (2011) (peer reviewed).

Plato's Theory of Democratic Decline, 28 POLIS 216 (2011) (peer reviewed).

CASEBOOKS & TREATISES

MILITARY JUSTICE: CASES AND MATERIALS (4th Ed.) (Carolina Academic Press, 2023), with Eugene R. Fidell, Franklin D. Rosenblatt, and Dwight H. Sullivan.

GUIDE TO THE RULES OF PRACTICE AND PROCEDURE FOR THE UNITED STATES COURT OF APPEALS FOR THE ARMED FORCES (Lexis, 2023), with Eugene R. Fidell & Dwight H. Sullivan.

ESSAYS & REVIEWS

Entrapment, Provocation and Deception as Means of Investigation, in FUNDAMENTAL CONCEPTS IN CRIMINAL LAW AND CRIMINAL JUSTICE ("THE ANGLO-GERMAN DIALOGUES" VOL III.), Kai Ambos, Antony Duff, Julian Roberts, Thomas Weigend, Alexander Heinze (eds.) (Cambridge, Forthcoming 2024), with Paul Roberts & Dominik Brodowski.

Tort Remedies in Military Prisons & Brigs, JOURNAL OF NATIONAL SECURITY LAW & POLICY (2022) (symposium), with Max Goldberg.

Review, CORE CONCEPTS IN CRIMINAL LAW AND CRIMINAL JUSTICE: VOLUME 1. ANGLO-GERMAN DIALOGUES, eds. Kai Ambos & Antony Duff, et. al. (Cambridge 2020), in MODERN LAW REVIEW (2021).

Review, KAI AMBOS, NATIONAL SOCIALIST CRIMINAL LAW (Hart 2019), in CRIMINAL LAW & CRIMINAL JUSTICE BOOKS (2021).

The U.S. Court of Military Commission Review, in MILITARY COURT RULES OF THE UNITED STATES (Lexis 2019).

AFFILIATIONS & EDITORSHIPS

Vice President, National Institute of Military Justice

Co-Editor (with Prof. Colleen Berryessa, Rutgers University), CRIMINAL LAW & CRIMINAL JUSTICE BOOKS

Co-Convener (with Dean Michael Cahill, Dean Rick Bierschbach, Prof. Sarah Swan, & Prof. Justin Murray), Markelloquium! (NYC Criminal Law Colloquium)

Co-Editor, CAAFLOG (military justice blog)

PRESENTATIONS

"The Legality Principle & Criminal Law," SEALS, July 2024.

"Democracy and Prosecutorial Declination," Criminal Justice Ethics Schmooze, Fordham Law School, April 2024.

"Democracy and Prosecutorial Declination," Symposium on Progressive Prosecution, JOURNAL OF CRIMINAL LAW AND CRIMINOLOGY, Northwestern Law School, February 2024.

"The Constitutional Role of the Military," University of Baltimore Law School Faculty Workshop, February 2024.

"Private Collections Agencies and Criminal Fines," CrimFest, Brooklyn Law School, July 2023.

"Police-made Law," Harvard/Stanford/Yale Junior Faculty Forum, July 2023 (Yale Law School).

"Police-made Law," Junior-Senior Conference for the AALS Section on Criminal Procedure, April 2023.

Symposium Organizer, *Military Justice Reform: The Next 20 Years*, Villanova Law Review, February 2023.

"Police as Legislators," Pennsylvania State University Law School Faculty Workshop, February 2023.

"Police as Legislators," ABA Criminal Justice Section Academics Workshop, November 2022.

"Police as Legislators," Fordham Urban Law Journal Symposium, October 2022.

"Military Law Minimalism," Buffalo Law Faculty Law Review Camp, August 2022.

"Justifying Military Punishment," CrimFest, Cardozo Law School, July 2022.

Commentator, "White-Collar Crime's Pathologies: Underwritten Crimes," Conference on "Myths and Misunderstandings in White-Collar Crime" by Miriam Baer, Brooklyn Law School, May 2022.

Commentator, "Substantive Criminal Law of War Crimes," Justice in War Conference, UVA Law School, April 2022.

"Against Criminal Law Localism," Villanova Law School Faculty Presentation, October 2021.

"Tort Remedies in Military Prisons & Brigs," Georgetown Center on National Security, October 2021.

"Local Legislatures: Democracy Without Representation," CrimFest, Cardozo Law School, July 2021.

"Localism and Prosecutorial Discretion," NYU Law School, Symposium: Prosecutorial Discretion, Spring 2021 (postponed).

"Against Criminal Law Localism," ABA Criminal Justice Section, November 2020.

"Judicial Review of Strict Liability Local Offenses," ASU Law School, Symposium: Mens Rea Reform, September 2020.

"Against Criminal Law Localism," CrimFest, Cardozo Law School, July 2020.

"Criminalization by Municipal Governments," ABA Criminal Justice Section Meeting, Washington DC, November 2019.

"When Agencies Make Criminal Law," Anglo-German Criminal Law Dialogue Project, Rutgers Law School, October 2019.

"Criminalization by Municipal Governments," CrimFest, Brooklyn Law School, July 2019.

"When Agencies Make Criminal Law," CUNY Law School, March 2019.

"Judicial Sympathy and Judicial Antipathy," NYC Legal Ethics Workshop, January 2019.

"Nondelegation and Criminal Law," George Mason Law School, October 2018.

"Nondelegation and Criminal Law," Buffalo Law Faculty Workshop, August 2018.

"Nondelegation and Criminal Law," CrimFest, Cardozo Law School, July 2018.

"Contempt of Court in Courts-Martial," U.S. Court of Appeals for the Armed Forces Annual Conference, March 2018.

"Federalism and Constitutional Criminal Law," University of Idaho, December 2017.

"Federalism and Constitutional Criminal Law," Hofstra University, November 2017.

"Federalism and Constitutional Criminal Law," University of Oregon, November 2017.

"Felony Murder," U.S. Court of Appeals for the Armed Forces Annual Conference, March 2017.

"Capital Punishment of Unintentional Felony Murder" Buffalo Law Faculty Workshop, August 2016.

AMICUS BRIEFS

Brief of National Institute of Military Justice in Support of Petitioner, *U.S. v. Gilmet*, U.S. Court of Appeals for the Armed Forces (2023) (principal author of brief addressing issue of whether the doctrine of apparent unlawful command influence remains viable in light of statutory changes).

Brief of Military and Veteran's Law Professors as Amici Curiae in Support of Appellant, *Jackson v. Secretary of the Navy*, U.S. Court of Appeals for the D.C. Circuit (2022) (principal author of brief addressing military record correction board's interpretation

of circuit law that purported to justify non-correction of a record merely because it would require additional adjudicative effort).

Brief of National Institute of Military Justice as Amicus Curiae in Support of Defendants-Appellants, *Navy Seals v. Biden*, U.S. Court of Appeals for the Fifth Circuit (2022) (principal author of brief addressing power of military to compel servicemembers to receive the COVID-19 vaccine).

Brief Of Criminal Legal Scholars in Support of Respondent, *New York State Rifle & Pistol Association, Inc., v. Bruen*, Supreme Court of the United States (2021) (co-signatory with George Fletcher & Guyora Binder) (addressing nature of self-defense and its limits in New York).

Brief of National Institute of Military Justice in Support of Petitioner, *Larrabee v. Harker*, U.S. Court of Appeals for the District of Columbia Circuit (2021) (addressing issue of whether military retirees may be subject to continuing court-martial jurisdiction after retirement).

Brief of Law Professors in Support of Petitioner, *Kareem v. Haspel*, U.S. Court of Appeals for the District of Columbia Circuit (2020) (primary author) (addressing issue of whether civil-criminal distinction is relevant when civil claim relates to extrajudicial killing of US citizen via drone strike).

Brief of Law Professors in Support of Petitioner, *United States v. Bergdahl*, U.S. Court of Appeals for the Armed Forces (2020) (primary author) (addressing issue of whether the President can commit unlawful command influence).

MEDIA

Jim Melwert, *Legal experts dissect Philly DA Krasner's impeachment trial challenge*

Op-Ed, *The Division of Authority Between the Special Trial Counsel and Commanders Under the Uniform Code of Military Justice: Planning Now for the Next Phase of Reform*, LAWFARE (2/28/22).

Chris Johnson, *'Less than credible': Investigation of HRC prez dismissed as conflict of interest*, THE WASHINGTON BLADE (8/18/21).

Steve Beynon, *Army Gives Colonel Facing Kidnapping and Assault Charges After Police Standoff an Honorable Discharge*, MILITARY.COM (8/13/21).

Op-Ed, *Can Service Members Fight Taking a Mandatory COVID Vaccine?*, MILITARY.COM (8/12/21), with Philip D. Cave.

Op-Ed, *Our New Praetorian Guard?*, THE HILL (6/21/21) (quoted by Senator Gillibrand on floor of Senate).

Shane Harris, *Volunteer lawyers will advise military personnel who question the legality of orders during protests, election disputes*, The WASHINGTON POST (10/9/20).

Carol Rosenberg, *Court Rules Guantanamo Detainees Are Not Entitled to Due Process*, The NEW YORK TIMES (9/2/2020).