

JONATHAN WITMER-RICH

Cleveland-Marshall College of Law, Cleveland State University
2121 Euclid Avenue, LB 138, Cleveland, Ohio 44115
(216) 687-2535 · j.witmerrich@csuohio.edu

FACULTY POSITIONS

Cleveland-Marshall College of Law, Cleveland State University

| | |
|---|--------------|
| Joseph C. Hostetler—BakerHostetler Professor of Law | 2016-present |
| Associate Professor of Law | 2014-present |
| Assistant Professor of Law | 2009-2014 |

Courses: Criminal Law, Criminal Procedure I, Criminal Procedure II,
Legal Responses to Terrorism

Awards:

- 2010 Ohio Faculty Innovator Award from Chancellor of the Ohio Board of Regents
- 2015 Cleveland-Marshall Alumni Association Stapleton Award for Faculty Excellence
- 2015 Faculty of the Year Award (student-selected)

Case Western Reserve University School of Law

Adjunct Professor of Law 2008

EDUCATION

University of Michigan Law School, J.D., *magna cum laude*, December 2000

- Maurice Weigle Scholarship Award
- Certificates of Merit in Criminal Law, Contracts, Labor Law, Legal Ethics
- Order of the Coif
- *Michigan Law Review*, Associate Editor, 1999-2000; Contributing Editor, 2000-2001

Goshen College, B.A., December 1997

LEGAL EXPERIENCE

Research & Writing Attorney, Federal Public Defender, N.D. Ohio, 2006-2009

Associate, Jones Day (Cleveland), 2003-2006

Judicial Clerk

- Hon. Joseph R. Goodwin, U.S. District Court for the S.D. West Virginia, 2002-2003
 - Hon. M. Blane Michael, U.S. Court of Appeals for the Fourth Circuit, 2001-2002
-

ARTICLES & WORKS IN PROGRESS

Unpacking Affirmative Consent: Not as Great as You Hope, Not as Bad as You Fear, 49 TEXAS TECH LAW REVIEW ___ (forthcoming 2016) (symposium article)

Arbitrary Law Enforcement is Unreasonable, 66 CASE WESTERN RESERVE LAW REVIEW 1059 (2016) (symposium article)

“Sneak and Peek” Searches: Critique and Reform, 42 SEARCH AND SEIZURE LAW REPORT 83 (2015)

The Fatal Flaw of the “Sneak and Peek” Statute and How to Fix It, 65 CASE WESTERN RESERVE LAW REVIEW 121 (2014)

The Rapid Rise of “Sneak and Peek” Searches, and the Fourth Amendment “Rule Requiring Notice,” 41 PEPPERDINE LAW REVIEW 509 (2014)

It’s Good to be Autonomous: Prospective Consent, Retrospective Consent, and the Foundation of Consent in the Criminal Law, 5 CRIMINAL LAW & PHILOSOPHY 377 (2011) (peer-reviewed)

Interrogation and the Roberts Court, 63 FLORIDA LAW REVIEW 1189 (2011)

Corporate Complicity Claims: Why There Is No “Innocent Decision-Maker” Exception To Imputing An Officer’s Wrongdoing To A Bankrupt Corporation, 74 TENNESSEE LAW REVIEW 47 (2007) (with Mark Herrmann)

-Cited with approval, *In re CBI Holding Co.*, 529 F.3d 432, 447 n.5 (2d Cir. 2008)

The Heat of Passion and Blameworthy Reasons to be Angry (work in progress)
(offering a solution to the puzzle, in the provocation doctrine, of whether the law should examine the “reasonableness” of the provocation from the perspective of an objective reasonable person, or from the perspective of someone who shares the defendant’s specific cultural or religious beliefs)

Open Carry Loopholes (work in progress)
(examining and cataloguing various instances in which jurisdictions fail to adequately regulate the open carry of firearms, in ways that are likely due to legislative mistakes or inadvertence)

PRESENTATIONS

Cell Phones, Terrorism, and Privacy: Can the Government Force Apple to Unlock Your iPhone?, Cleveland-Marshall College of Law, September 8, 2016 (moderator)

The Heat of Passion as Partial Excuse, CrimFest 2016, Cardozo School of Law, July 11, 2016

Unpacking Affirmative Consent: Not as Great as You Hope, Not as Bad as You Fear, AALS Symposium: Violence Against Women, AALS Annual Meeting, January 9, 2016

Police Use of Force Program Series: The Community Police Commission and Bias-Free Policing, Cleveland-Marshall College of Law, November 10, 2015 (moderator)

Unpacking Affirmative Consent: Not as Great as You Hope, Not as Bad as You Fear, North East Ohio Faculty Colloquium, October 30, 2015

Arbitrary Law Enforcement is Unreasonable, Symposium: “*Whren* at Twenty: Systemic Racial Bias and the Criminal Justice System,” Case Western Reserve University School of Law, Oct. 23, 2015 (panel presentation)

The Heat of Passion and Blameworthy Reasons to be Angry, Transformative Debate Series, Cleveland-Marshall College of Law, October 7, 2015 (with Professor Joshua Dressler)

Police Use of Force Program Series: Use of Technology in Policing, Cleveland-Marshall College of Law, September 28, 2015 (moderator)

The Heat of Passion and Blameworthy Reasons to be Angry, CrimFest 2015, Cardozo School of Law, July 21, 2015

Cleveland's Consent Decree: The Path Forward, Cleveland-Marshall College of Law, April 8, 2015 (moderator)

Criminal Justice Forum: *Ferguson, Staten Island and Cleveland: A Legal Discussion about the Use of Lethal Force by Law Enforcement Officers*, Cleveland-Marshall College of Law, January 26, 2015 (panelist)

The Fatal Flaws in the ‘Sneak and Peek’ Statute, and How to Fix It, CrimFest 2014, Rutgers School of Law—Newark, July 22, 2014

Criminal Justice Forum: *The Rapid Rise of ‘Sneak and Peek’ Searches, and the Fourth Amendment ‘Rule Requiring Notice’*, Cleveland-Marshall College of Law, March 20, 2014

JFK’s Assassination and the Law: 50 Years Later, (presenter on Lee Harvey Oswald’s Interrogation), Cleveland-Marshall College of Law, December 6, 2013

The Fatal Flaw in the ‘Sneak and Peek’ Statute, and How to Fix It, Central States Law Schools Association Annual Conference, University of Arkansas School of Law, Fayetteville, Arkansas, October 5, 2013

New Ideas for Practical Use by Practitioners, Federal Criminal Practice Seminar, Cleveland, Ohio, August 16, 2013 (with Professors Richard D. Friedman and Eve Brensike Primus)

The Provocation Doctrine and Tolerable Reasons to be Angry, Law & Society Association Annual Meeting, May 31, 2013

The Provocation Doctrine and Tolerable Reasons to be Angry, DePaul University College of Law, Junior Faculty Exchange Presentation, January 31, 2013

Covert, Delayed Notice Searching: A Constitutional and Policy Failure—and a Solution, ABA Criminal Justice Section and the AALS Section on Criminal Justice’s Joint Legal Educators Colloquium: Round Table Workshop, October 25, 2013

The Provocation Doctrine and Tolerable Reasons to be Angry, Central States Law Schools Association Annual Conference, Cleveland-Marshall College of Law, October 19, 2012

Delayed-Notice Search Warrants: A Constitutional Assessment, Duquesne University School of Law, Junior Faculty Exchange Presentation, February 22, 2012

Criminal Justice Forum II, Constitution Day Speaker: *Mapp v. Ohio and The Exclusionary Rule*, Cleveland-Marshall College of Law, September 20, 2011

The Problem of Prosecuting Acquaintance Rape: How the Criminal Justice System Responds to Harms in Private Relationships, Ohio Legal Scholarship Workshop, Cleveland-Marshall College of Law, June 23, 2011 (presenter and organizer)

Interrogation and the Roberts Court, Law & Society Association Annual Meeting, San Francisco, June 2, 2011

Interrogation and the Roberts Court, Ohio Legal Scholarship Workshop, Capital University Law School, February 5, 2011

BLSA Forum on the Lucasville Prison Riots, featuring Niki Schwartz and Staughton Lynd, Cleveland-Marshall College of Law, November 10, 2010 (moderator)

Fundamentals of Criminal Law and Procedure in the N.D. Ohio, Cleveland Metropolitan Bar Association Federal Court Training Seminar, December 2, 2010, and December 6, 2011

University of Toledo School of Law Symposium: *The Military Commissions Act of 2009: Back to the Future or the Fix for a Flawed System?*, February 19, 2010 (moderator)

Presenter: *Dissecting Rita v. United States: What It Means and What It Might Mean*, July 27, 2007, Carl B. Stokes United States Courthouse, Cleveland, Ohio.

MEDIA APPEARANCES

The Plain Dealer and Cleveland.com (Cleveland)

- *Tamir Rice case should go to a jury*, op-ed, Cleveland.com, 10.25.15, available at http://www.cleveland.com/opinion/index.ssf/2015/10/tamir_rice_case_should_go_to_a.html
- *Brelo Verdict's Legal Flaw*, op-ed, Cleveland Plain Dealer, 5.29.15, available at http://www.cleveland.com/opinion/index.ssf/2015/05/brelo_verdicts_legal_flaw_jona.html
- *Keep DNA evidence private*, op-ed, Cleveland Plain Dealer, Forum Section, 12.2.12 (with Brendan Heil), available at http://www.cleveland.com/opinion/index.ssf/2012/12/keep_dna_evidence_private_jona.html
- John Caniglia, *Jimmy Haslam phone calls to trucking companies for Pilot Flying J could present legal problem after federal raid, experts say*, Cleveland Plain Dealer, 4.23.13 (commenting on federal investigation), available at http://www.cleveland.com/metro/index.ssf/2013/04/jimmy_haslam_dials_up_legal_di.html
- Brandon Blackwell, *Many questions remain after deadly police chase*, Cleveland Plain Dealer, 12.7.12 (commenting on police chase and shooting), available at http://www.cleveland.com/metro/index.ssf/2012/12/many_questions_remain_after_de.html
- Stan Donaldson, *Cleveland woman holding 'idiot' sign only the latest oddball sentences from Northeast Ohio judges*, Cleveland Plain Dealer, 11.19.12 (commenting on public shaming in sentencing), available at http://www.cleveland.com/metro/index.ssf/2012/11/cleveland_woman_holding_idiot.html
- Harlan Spector, *Landmark hate crimes law allowed feds to build case in Amish attacks*, Cleveland Plain Dealer, 3.18.12 (commenting on hate crimes law), available at http://blog.cleveland.com/metro/2012/03/landmark_hate_crimes_law_allow.html
- Stan Donaldson, *Feds to look into case of 4 Cleveland police officers accused of beating a suspect*, Cleveland Plain Dealer, 4.6.11 (commenting on civil rights prosecutions), available at http://blog.cleveland.com/metro/2011/04/feds_to_look_into_case_of_4_cl.html
- Mark Gillespie, *Appeals court overturns murder verdict in Cuyahoga County 'Castle Doctrine' case*, Cleveland Plain Dealer, 9.23.11 (commenting on manifest weight of the evidence standard), available at http://blog.cleveland.com/metro/2011/09/appeals_court_overturns_murder_1.html
- James Ewinger, *Protections in place for people caught on corruption probe wiretapped*, Cleveland Plain Dealer, 12.4.10 (commenting on wiretapping), available at

http://www.cleveland.com/countyincrisis/index.ssf/2010/12/protections_in_place_for_peopl.html

- James Ewinger, *Federal investigators used delayed-notice search warrant to help crack Greater Cleveland heroin ring*, Cleveland Plain Dealer, 9.26.10 (commenting on delayed notice search warrants), available at http://blog.cleveland.com/metro/2010/09/federal_investigators_used_del.html

19 Action News (Cleveland)

- Interview, *Professor explains why Ariel Castro sentencing was filled with testimony*, 19 Action News, WOIO, 8.1.13, available at <http://www.19actionnews.com/category/240218/video-landing-page?autoStart=true&topVideoCatNo=default&clipId=9156618>
- Interview on Ohio Attorney General DeWine's report on Cleveland police chase and shooting, 19 Action News, WOIO, 2.5.13
- Interview with Paul Orlosky, *Ca\$h Call: Judge rules Jimmy Dimora, not taxpayers, must pay for corruption trial lawyers*, 19 Action News, WOIO, 11.10.10 (commenting on plea bargaining), available at <http://downtown.woio.com/content/cah-call-judge-rules-jimmy-dimora-not-taxpayers-must-pay-corruption-trial-lawyers>
- Interview with Paul Orlosky, *No Trial? Why wouldn't Frank Russo want to go to trial?*, 19 Action News, WOIO, 9.24.10 (commenting on plea agreement), available at <http://www.woio.com/Global/story.asp?S=13213541>, and <http://downtown.woio.com/content/no-trial-why-wouldnt-frank-russo-want-go-trial>

Fox 8 Cleveland

- Lorrie Taylor, *Hearing for Accused Chardon Shooter Delayed*, Fox 8 Cleveland, 3.27.12 (commenting on bindover proceedings), available at <http://fox8.com/2012/03/27/hearing-for-accused-chardon-shooter-delay/>
- Lorrie Taylor, *Chardon Shooting: Why Suspect Will Face Adult Charges*, Fox 8 Cleveland, 3.2.12 (commenting on Chardon shooting case), available at <http://fox8.com/2012/03/02/chardon-shooting-why-suspect-will-face-adult-charges/>

WCPN, 90.3 radio

- Nick Castele, *As Chardon shooting trial stalls, attorneys prepare arguments over sanity*, 90.3 WCPN, 1.31.13 (commenting on Chardon high school shooting and the insanity defense), available at <http://www.ideastream.org/news/feature/51784>
- Interview regarding Jimmy Dimora sentencing, 90.3 WCPN radio, The Sound of Ideas, 8.1.12, available at <http://www.ideastream.org/soi/entry/48191>

- *Law expert says grand jury will act fast in Madison murder case*, 90.3 WCPN radio, 7.24.12 (commenting on Michael Madison charging proceedings, available at <http://www.ideastream.org/news/feature/55130>)

WKSU, 89.7 radio

- Kevin Niedermier, *Settlement could cost Haslam's Pilot Flying J \$40 million*, 7.16.13, WKSU radio interview (commenting on criminal investigation), available at <http://www.wksu.org/news/story/36206>
- Amanda Rabinowitz, *News Headlines 3/19/12*, 89.7 WKSU radio, 3.19.12 (commenting on securities fraud), available at <http://www.wksu.org/news/story/31087>
- Grant Engle, *Reps. Support JOBS Act bill for start up businesses*, 89.7 WKSU radio, 3.16.12 (commenting on warning signs of investment fraud), available at <http://www.wksu.org/news/story/31084>
- Maranda Shrewsberry et al, *Lawyers will take the Dimora case directly to jurors today*, 89.7 WKSU radio, 2.28.12 (commenting on federal corruption prosecution), available at <http://www.wksu.org/news/story/30948>
- Amanda Rabinowitz, *News Headlines 2/29/12*, 89.7 WKSU radio, 2.29.12 (commenting on federal corruption prosecution), available at <http://www.wksu.org/news/story/30951>

Other

- Interview, Civic Commons radio program (commenting on role of prosecutor), available as podcast, available at <http://theciviccommons.com/radioshow/radio-prosecution-not-persecution>, aired 1.31.12

BLOGGING

Lawfare, <http://www.lawfareblog.com/>

- *Jonathan Witmer-Rich on the Amawi case*, 8.25.12, posted by Ben Wittes, at <http://www.lawfareblog.com/2012/08/jonathan-witmer-rich-on-the-amawi-case/>
- *Jonathan Witmer-Rich on Hamdan II*, 10.19.12, posted by Jack Goldsmith, at <http://www.lawfareblog.com/2012/10/jonathan-witmer-rich-on-hamdan-ii/>

PrawfsBlawg, <http://prawfsblawg.blogs.com/>

- *Sneak and Peek*, 7.1.13, at <http://prawfsblawg.blogs.com/prawfsblawg/2013/07/sneak-and-peek.html>

- *Terminology: Sneak and Peek, Delayed Notice Search Warrants, Covert Searches, and Black Bag Jobs*, 7.3.13, at <http://prawfsblawg.blogs.com/prawfsblawg/2013/07/sneak-and-peek-delayed-notice-search-warrants-covert-searches-black-bag-jobs-terminology.html>
- *Sneak and Peek Statistics*, 7.10.13, at <http://prawfsblawg.blogs.com/prawfsblawg/2013/07/sneak-and-peek-statistics.html>
- *Covert Searching and the Fourth Amendment*, 7.15.13, at <http://prawfsblawg.blogs.com/prawfsblawg/2013/07/covert-searching-and-the-fourth-amendment.html>
- *Surveillance, chilling, and the First and Fourth Amendments*, 7.15.13, at <http://prawfsblawg.blogs.com/prawfsblawg/2013/07/surveillance-chilling-and-the-first-and-fourth-amendments.html>
- *Sneak and Peek, founding-era history*, 7.18.13, at <http://prawfsblawg.blogs.com/prawfsblawg/2013/07/sneak-and-peek-founding-era-history.html>
- *The fundamental flaw in the “sneak and peek” statute*, 7.24.13, at <http://prawfsblawg.blogs.com/prawfsblawg/2013/07/the-fundamental-flaw-in-the-sneak-and-peek-statute.html>
- *Fixing the Sneak and Peek Statute*, 7.31.13, at <http://prawfsblawg.blogs.com/prawfsblawg/2013/07/fixing-the-sneak-and-peek-statute.html>

Other

- Andrew Sullivan, *Is FISA An Effective Check? Ctd*, 7.11.13, at <http://dish.andrewsullivan.com/2013/06/11/is-fisa-an-effective-check-ctd/> (the bulk of the post, attributed to “a reader” (me), is an e-mail to Sullivan from me that Sullivan chose to post on his blog)

SERVICE

External

Counsel to the Criminal Rules Subcommittee, Commission on the Rules of Practice and Procedure in Ohio Courts, 2010-present

Law School

Bar Passage Committee

Judicial Clerkship Committee

Criminal Justice Forum Speaker Committee

Faculty Affairs Committee
Curriculum Committee (chair, 2011-2013)
Strategic Priorities Committee (elected)
Strategic Plan Task Force
Teaching Committee (chair, 2015-)

University

Faculty Senate representative, 2012-2014 (elected)
Faculty Senate Steering Committee, 2012-2013 (elected)

MEMBERSHIPS

American Bar Association
Law & Society Association

Ohio Bar, 2001-present

Court Admissions

United States Court of Appeals for the Fourth Circuit
United States Court of Appeals for the Sixth Circuit
United States District Court for the Northern District of Ohio