

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

Associate Dean for Academic Enrichment	2019-present
Joseph C. Hostetler—Baker Hostetler Professor of Law	2016-present
Professor of Law	2018-present
Associate Professor of Law	2014-2018
Assistant Professor of Law	2009-2014

Courses: Criminal Law, Criminal Procedure I, Criminal Procedure II,
Legal Responses to Terrorism, Serial Season 3: Understanding and Reforming the
Criminal Justice Process

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)
- 2019 CSU Distinguished Faculty Award for Outstanding Service
- 2019 CSU Golden Apple Award

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

PUBLICATIONS & WORKS IN PROGRESS

Consentability, Autonomy, and Self-Actualization, 66 LOYOLA LAW REVIEW __ (forthcoming 2020) (essay in reply to Nancy Kim, *CONSENTABILITY: CONSENT AND ITS LIMITS* (Cambridge UP 2019))

The Defense of Duress to Killing Innocents: Assessing the Mixed Legacy of the ICTR and ICTY (book chapter) in *THE LEGACY OF AD HOC TRIBUNALS IN INTERNATIONAL CRIMINAL LAW: ASSESSING THE ICTY'S AND THE ICTR'S MOST SIGNIFICANT LEGAL ACCOMPLISHMENTS*, Michael Scharf and Milena Sterio, eds. (Cambridge UP 2019)

Cuyahoga County Bail Task Force: Report and Recommendations, March 16, 2018 (principal drafter)

The Heat of Passion and Blameworthy Reasons to be Angry, 55 AMERICAN CRIMINAL LAW REVIEW 409 (2018)

Restoring Independence to the Grand Jury: A Victim Advocate for Police Use of Force Cases, 65 CLEVELAND STATE LAW REVIEW 535 (2017) (symposium article)

Unpacking Affirmative Consent: Not as Great as You Hope, Not as Bad as You Fear, 49 TEXAS TECH LAW REVIEW 57 (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)

PRESENTATIONS

Mass Surveillance and The Right to Be Secure in Your Person, CrimFest 2019, Brooklyn School of Law, July 16, 2019

Facial Recognition and Privacy Workshop, Cleveland-Marshall College of Law, Cleveland, Ohio, March 27, 2019 (conference co-organizer and panel moderator)

Raised in the System: Re-Examining Juvenile Justice with Michael K. Williams, Cleveland-Marshall College of Law, Cleveland, Ohio, November 29, 2018 (moderator)

Professors Take on the Serial Podcast, Cleveland Public Library, Cleveland, Ohio, November 28, 2018

Bail Reform Update, Annual Criminal Law Seminar, Lorain County Bar Association, November 13, 2018

Police Worn Body Cameras: Legal and Policy Issues, Cuyahoga County Common Pleas Court Judicial Retreat, October 26, 2018

Covert Seizures and Government Incitement of Violence, CrimFest 2018, Cardozo School of Law, July 17, 2018

Affirmative Consent and the Socio-Linguistic Evolution of Legal Concepts, ABA Criminal Justice Section and the AALS Section on Criminal Justice’s Joint Legal Educators Colloquium: Round Table Workshop, Washington, D.C., November 2, 2017

CSU TEDx Salon: The Resurgent City, Cleveland State University, March 31, 2017 (speaker)

A Victim Advocate for Police Use of Force Cases, Symposium: The Role of the Prosecutor and the Grand Jury in Police Use of Deadly Force Cases, Cleveland-Marshall College of Law, November 18, 2016 (presenter, moderator, symposium organizer)

Open Carry Loopholes, ABA Criminal Justice Section and the AALS Section on Criminal Justice’s Joint Legal Educators Colloquium: Round Table Workshop, Washington, D.C., November 3, 2016

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

Over 100 appearances as a regular commentator in local and national media outlets on issues of criminal law and criminal justice.

Op-eds:

- *When Cops 'Steal' Drugs, the Results Can Spin Out of Control*, The New York Times, 5.8.18, available at <https://www.nytimes.com/2018/05/08/opinion/police-drugs-warrants.html>
- *Baseless bias accusation in stay of President Trump's immigration order* (with Joseph Mead and Milena Sterio), op-ed, Cleveland.com, 2.16.17, available at http://www.cleveland.com/opinion/index.ssf/2017/02/accusations_of_judicial_bias_i.html
- *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

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/>

- *The Investigative Grand Jury in Police Use of Deadly Force Cases*, 2.4.16, <https://prawfsblawg.blogs.com/prawfsblawg/2016/02/the-investigative-grand-jury-in-police-use-of-deadly-force-cases.html>
- *Metaphysical Fourth Amendment question: how long could a tiny ATF agent sit atop a telephone pole?*, 2.8.16, <https://prawfsblawg.blogs.com/prawfsblawg/2016/02/ten-week-camera-surveillance-and-reasonable-expectation-of-privacy.html>

- *The Grand Jury as Democratic Sounding Board*, 2.19.16
<https://prawfsblawg.blogs.com/prawfsblawg/2016/02/the-grand-jury-as-democratic-sounding-board.html>
- *Victim Advocates in the Grand Jury in Police Use of Deadly Force Cases*, 2.26.16,
<https://prawfsblawg.blogs.com/prawfsblawg/2016/02/victim-advocates-in-the-grand-jury-in-police-use-of-deadly-force-cases-.html>
- *Affirmative Consent—Less Than Meets the Eye*, 2.29.16,
<https://prawfsblawg.blogs.com/prawfsblawg/2016/02/affirmative-consentless-than-meets-the-eye.html>
- “*Yes Means Yes*” is Not the Legal Standard, 3.1.16,
<https://prawfsblawg.blogs.com/prawfsblawg/2016/03/yes-means-yes-is-not-the-legal-standard.html>
- *Affirmative Consent versus Unambiguous Consent*, 3.2.16,
<https://prawfsblawg.blogs.com/prawfsblawg/2016/03/affirmative-consent-versus-unambiguous-consent.html>
- *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 Committee, Commission on the Rules of Practice and Procedure in Ohio Courts, 2010-present

Member (appointed), Commission on the Rules of Practice and Procedure in Ohio Courts, 2019-present

Member, Cuyahoga County Bail Task Force, co-chair of Jurisdictional Comparison sub-committee, 2016-2018

Member, Search and Seizure Working Group, Cleveland Community Police Commission, 2018-present

Law School

Bar Passage Committee

Judicial Clerkship Committee

Criminal Justice Forum Speaker Committee

Faculty Affairs Committee

Curriculum Committee (chair, 2011-2013, co-chair, 2017-2018)

Strategic Priorities Committee (elected)

Strategic Plan Task Force

Teaching Committee (chair, 2015-2017)

Strategic Planning Committee

Career Planning Committee (chair, 2018)

University

Faculty Senate representative, 2012-2014 (elected)

Faculty Senate Steering Committee, 2012-2013 (elected)

Ad Hoc Presidential Priorities Committee

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