

Mark Osler  
Associate Professor of Law  
Baylor University School of Law  
1114 South University Parks Dr.  
Waco, Texas 76706

### **Education**

**J.D. Yale Law School (1990)**  
New Haven, Connecticut  
Senior Editor, Yale Law Journal  
Coker Fellow

**B.A. College of William and Mary (1985)**  
Williamsburg, Virginia

### **Professional Experience**

**Assistant/Associate Professor of Law, Baylor University School of Law (2000 - present).** Courses taught include Criminal Practice, Oral Advocacy, Practice Court, Sentencing, Appeals and Habeas, Juvenile Justice and Advanced Evidence. Served as head coach of national champion trial advocacy team, was chosen by students as commencement speaker, testified before U.S. Sentencing Commission, and was quoted by Justice Stevens in the seminal Supreme Court opinion of *United States v. Booker* (holding federal mandatory sentencing guidelines unconstitutional).

**Assistant United States Attorney, United States Department of Justice, Detroit, Michigan (1995-2000).** Coordinated investigations and prosecuted major felonies, including those involving bank robberies, counterfeiting and domestic support of terrorism.

**Associate, Dykema Gossett, Detroit, Michigan (1991-1995).** Practiced in litigation section, including trial and appeal of civil cases.

**Clerk, U.S. District Court Judge Jan E. DuBois, Philadelphia, Pennsylvania (1990-1991).**

## **Publications**

**This Changes Everything: A Call for a Directive, Goal-Oriented Principle to Guide the Discretion of Federal Prosecutors**, 39 Valparaiso Law Review 625 (2005). This article suggests a simple approach to solve multiple problems relating to the abuse of discretion by federal prosecutors: The issuance by the Attorney General of a unifying principle to guide the exercise of such discretion.

**The Lawyer's Humble Walk**, 32 Pepperdine Law Review 483 (2005). This article reflects on a panel discussion which I moderated at Pepperdine's inaugural conference for their institute of Law, Religion and Ethics. The panel was composed of three prominent attorneys, including Kenneth Starr.

**Indirect Harms and Proportionality: The Upside-Down World of Federal Sentencing**, 74 Univ. of Mississippi Law Journal 1, (2005). Starting with a comparison of the relative values assigned certain crimes under the Federal Sentencing Guidelines (such as possession of crack being punished more harshly than the theft of \$6,000,000), this article substantiates the thesis that the Sentencing Guidelines reflect a focus on the indirect effects of crime rather than the underlying offenses themselves.

**The *Blakely* Problem and the 3x Solution**, 16 Federal Sentencing Reporter 344 (June 2004). This detailed description of a legislative response to an important Supreme Court decision was solicited to be published in a special issue devoted to the most urgent issue in criminal law. It was cited in the State of Washington's brief seeking rehearing from the U. S. Supreme Court in *Blakely v. Washington*.

**Uniformity and the Death of Traditional Sentencing Goals in the Age of Feeney**, 16:4 Federal Sentencing Reporter 253 (2004). A detailed proposal for reinvigorating the federal Sentencing Guidelines in the wake of the Feeney Amendment. This article was quoted by Justice Stevens in the landmark sentencing case of *United States v. Booker*.

**Unashamed and Unafraid**, in **The Baptist and Christian Character of Baylor** (2003). This book chapter presents a way of preserving both intellectual vigor and a Christian identity for Baylor by focusing on hiring some outstanding Christian scholars while remaining open to the hiring of those of other faiths and traditions.

**Must Have Got Lost: Traditional Sentencing Goals, The False Trail of Uniformity of Process, and the Way Back Home**, 54 South Carolina Law Review 649 (2003). Examines the structural flaws of the federal sentencing guidelines, and suggests broad reforms focused on the re-introduction of traditional sentencing goals into the federal sentencing scheme.

**Capone and bin Laden: The Failure of Government At the Cusp of War and Crime**, 55 Baylor L. Rev. 603 (2003). Argues that United States law and government create a gap between those agencies fighting wars and those fighting crime, and that entry into this gap poses particular dangers to rights.

**Criminal Procedure**, 34 Texas Tech Law Review 649 (2003) (with Brian Serr). A survey of case opinions issued by the federal Fifth Circuit Court of Appeals.

**Two Preachers, A Trial Lawyer and Aristotle**, 29 (Number 2) Religion and Education 78 (2002). A reflective analysis of an Oral Advocacy course taught at Baylor Law School.

**Criminal Procedure**, 33 Texas Tech Law Review 811(2002) (with Brian Serr). A survey of case opinions issued by the federal Fifth Circuit Court of Appeals.

**The Calculation of Criminal History by AUSAs and Defendants: A Study of Inefficiency in the Eastern District of Michigan**, 13:6 Federal Sentencing Reporter (2001) (with Hon. Avern Cohn). An insider analysis of practical problems plaguing criminal history calculation.

**Editor's Observations**, Volume 13:6, Federal Sentencing Reporter (2001) (with Douglas Berman). A scholarly overview of criminal history issues addressed in publication for which the author served as Guest Editor.

**Shock Incarceration: Hard Realities and Real Possibilities**, Volume LV, Federal Probation (1991). Critiques the expectations for boot camp prisons, and suggests more realistic expectations for these facilities.

## **Major Presentations**

Greater Waco Chamber of Commerce, "From Al Capone to Arthur Anderson: The Essential Nature of Criminal Organizations," September, 2003

Pepperdine Institute on Law, Religion and Ethics Inaugural Conference, "Can the Ordinary Practice of Law be a Religious Calling?" (With Ken Starr, Mark Heipler, and Tracy Dalton), February, 2004

J.W. Dawson Institute for Church-State Studies, "Nine Moralities: The Furman Opinions and the Remaking of the Death Penalty," March, 2004

Expert Testimony Before U.S. Sentencing Commission, "Blakely and the Federal Sentencing Guidelines," (With Frank Bowman, David Yellen, and James Felman), November, 2004

Valparaiso Law School Symposium, "Shifting Powers in the Federal Courts" (With Erwin Chemerinsky and Hon. Tim A. Baker), February, 2005

Wiley Lecture, "Issues in Presidential Appointments," Texas A & M, February, 2005.

## **Professional Activities**

Coached several mock trial teams, including 2003 NACDL National Champion team.

One of four professors elected by students to participate in law school graduation, 2001, 2002, 2003 & 2004.

Elected by students as Commencement Speaker at law school graduation, 2003.

Chairman, Baylor University Civil Rights Committee

Yale Law School Sentencing Project, 2000 and 2001.

Panel Attorney for Indigents, U.S. District Court for the Western District of Texas.

Member, Baylor Law School Hiring, Admissions and Curriculum Committees.

Sole paper presenter from Law School at University-wide Colloquy, Spring 2003.

Addressed Waco Chamber of Commerce, September, 2003.

Member: State Bar of Michigan  
Bar of the Western District of Texas  
Bar of the Fifth Circuit Court of Appeals