

BENNETT L. GERSHMAN
Pace Law School
78 North Broadway
White Plains, NY 10603
Tele: (914) 422-4255
Email: Bgershman@law.pace.edu

EDUCATION

New York University School of Law, J.D.	1966
Princeton University, B.A., <u>cum laude</u>	1963

TEACHING EXPERIENCE

Courses taught: Constitutional Law, Evidence, Criminal Law, Criminal Procedure, Trial Advocacy, Criminal Justice Seminar, Prosecutorial Ethics, Judicial Ethics, Death Penalty Litigation, Law and Film.

Professor of Law (Tenured) Pace Law School White Plains, New York	1976-85, 1988-present
-------------------------------------------------------------------------	-----------------------

James D. Hopkins Professor of Law Pace Law School White Plains, New York	(2009-2011)
--------------------------------------------------------------------------------	-------------

Visiting Professor University College	1999 (Spring)
Faculty of Laws London, England	2002 (Spring)

Visiting Professor Syracuse College of Law Syracuse, New York	1984 (Spring)
---------------------------------------------------------------------	---------------

Visiting Professor Cornell Law School Ithaca, New York	1982-83
--------------------------------------------------------------	---------

PUBLICATIONS

Books

The Law School Experience: Law, Legal Reasoning, and Lawyering (with Lissa Griffin) (2000)

Trial Error and Misconduct (2d ed. 2007) (supplemented annually)

Prosecutorial Misconduct (2d ed. 1999) (supplemented annually)

Trial Error and Misconduct (1997) (supplemented annually)

Prosecutorial Misconduct (1985)

Book Chapter

The Prosecutor's Contribution to Wrongful Convictions, J. Acker et al., Examining Wrongful Convictions – Moving Back, Stepping Forward (Carolina Academic Press 2014).

Law Review Articles

Threats and Bullying by Prosecutors, 46 Loyola University Law Review 327 (2014)

Subverting Brady v. Maryland and Denying a Fair Trial: Studying the Schuelke Report, 64 Mercer Law Review 683 (2013)..

Pre-Plea Disclosure of Impeachment Evidence, 65 Vanderbilt Law Review En Banc 141 (2012).

Educating Prosecutors, and Supreme Court Justices, on Brady v. Maryland, 13 Loyola New Orleans Public Interest Law Journal 517 (2012).

Judicial Interference with Effective Assistance of Counsel, 31 Pace Law Review 560 (2011)

Prosecutorial Decision-Making and Discretion in Charging Decision, 62 Hastings Law Journal 1259 (2011)

The Zealous Prosecutor as Minister of Justice, 48 San Diego Law Review 151 (2011)

The New Prosecutors, 53 Pittsburgh Law Review 393 (1992) [reprinted in Criminal Practice Law Review (Michie Company, 1993)]

A Moral Standard for the Prosecutor's Exercise of the Charging Discretion, 20 Fordham Urban Law Journal 513 (1993)[reprinted in The Jury Trial in Criminal Justice (Koski ed. 2003)]

A Tribute to Thurgood Marshall, 13 Pace Law Review 297 (1993)

Justice William J. Brennan, Jr.: The Moral Force of His Language, 11 Pace Law Review 509 (1991)

The Thin Blue Line: Art or Trial in the Fact-Finding Process?, 9 Pace Law Review 275 (1989)

Proving the Defendant's Bad Character, 11 American Journal of Trial Advocacy 477 (1988)[reprinted in Criminal Practice Law Review, Michie Company (1989)]

Entrapment, Shocked Consciences and the Staged Arrest, 66 Minnesota Law Review 567 (1982)

Abscam, the Judiciary and the Ethics of Entrapment, 91 Yale Law Journal 1565 (1982)

The Perjury Trap, 129 University of Pennsylvania Law Review 624 (1981)

Book Reviews

Clarence Darrow, The Story of My Life, Trial, p. 80 (April 1997)

Wendy Kaminer, It's All the Rage, Trial, p. 85 (September 1995)

David Von Drehle, Among the Lowest of the Dead: The Culture of Death Row, New York Law Journal, p. 2 (May 16, 1995)

Martin Friedland, The Death of Old Man Rice, Trial, p. 90 (March 1995)

Hans Zeisel, The Limits of Law Enforcement, 33 Journal of Legal Education 745 (1983)

Abscam Ethics: Moral Issues and Deception in Law Enforcement (M. Caplan ed.), 52 George Washington Law Review 166 (1983)

The Governor's Misguided Attempt to Change the Exclusionary Rule, New York Law Journal, p. 2 (February 5, 1996)

Judicial "Conservatism", New York Law Journal, p. 2 (June 21, 1995)

Federal-State Debate Put in Perspective, The Reporter Dispatch (February 2, 1995)

Prosecutorial Misconduct in Presenting Evidence – Backdooring Hearsay, 31 Criminal Law Bulletin 99 (1995)

Forfeiture and the Constitution, New York Law Journal, p. 1 (January 11, 1994)

Second Circuit Evidentiary Ruling Includes Caution to Prosecutors, New York Law Journal, p. 1 (April 1, 1994)

Abuse of Power in the Prosecutor's Office, 6 The World and I 476 (1991) [reprinted in Criminal Justice, Annual Editions (1992-93)]

Themes of Injustice: Wrongful Convictions, Racial Prejudice, and Lawyer Incompetence, 29 Criminal Law Bulletin 502 (1993) [reprinted in L. Stolzenberg & S. D'Alessio, Criminal Courts for the 21st Century, p. 354 (1998)]

Defending the Poor, Trial, p. 47 (March, 1993)

Update on Rape Law in New York, New York Law Journal, p.1 (June 9, 1993)

Reforming New York Criminal Discovery, New York Law Journal, p. 1 (January 27, 1993)

Tricks Prosecutors Play, Trial, p. 46 (April, 1992)

Will the Real Jim Garrison Please Stand Up?, New York Law Journal, p. 2 (January 27, 1993)

Entrapment Revisited, New York Law Journal, p. 1 (January 27, 1993)

Supervising Prosecutorial Misconduct in Grand Juries, New York Law Journal, p. 1 (August 3, 1992)

Disqualifying Judges for Bias: The Sarokin Case, New York Law Journal, p. 1 (September 21, 1992)

Justice Must Temper Zeal in Death Cases, The Reporter Dispatch (May 24, 1992)

Judicial Misconduct During Jury Deliberations, 27 Criminal Law Bulletin 291 (1991)
[reprinted in L. Stolzenberg & S. D'Alessio, Criminal Courts for the 21st Century, p. 289
(1998)]

State Constitutionalization of Criminal Procedure and the Prosecutor's Disclosure
Obligations, 18 Westchester Bar Journal 101 (1991)

Understanding and Challenging DNA Proof, 17 Westchester Bar Journal 91 (1990)

The New Omnibus Crime Bill, New York Law Journal, p. 1 (December 27, 1990)

Capital Punishment Fails Economic Test, The Reporter Dispatch (April 10, 1990)

The Prosecutor's New Power in Sentence Reduction, 5 Criminal Justice 2 (Fall, 1990)

IRS Form 8300, 5 Criminal Justice 22 (Spring, 1990)

The Right to Evidence, 61 New York State Bar Journal 52 (1989)

Prosecutorial Suppression of Evidence, 16 Westchester Bar Journal 275 (1989)

Lawyers Shunning Death Row Cases, 16 Westchester Bar Journal 17 (1988-89)

The Prosecutor as a "Minister of Justice", 60 New York State Bar Journal 8 (1988)
[reprinted in Criminal Justice, Annual Editions 1989-90]

The Prosecutor's Obligation to Grant Defense Witness Immunity, 24 Criminal Law
Bulletin 14 (1998)

The Harmless Error Rule: Overlooking Violations of Constitutional Rights, 14
Westchester Bar Journal 291 (1987)

Reflections on Client Perjury, 59 New York State Bar Journal 30 (1987)

Why Prosecutors Misbehave, 22 Criminal Law Bulletin 131 (1986) [reprinted in G. L.
Mayes, P.R. Gregware, Courts and Justice, 268 (1995); reprinted in M. Braswall, B. R.
McCarthy, B. J. McCarthy, Justice, Crime, and Ethics 163 (1991)]

The Burger Court and Prosecutorial Misconduct, 21 Criminal Law Bulletin 217 (1985)

Judicial Misconduct: Civil Rights Immunities and Liabilities, Civil Rights Litigation and
Attorney 1 0 t0 1 488.02 446L us11185)

Sanctioning Prosecutorial Misconduct, Bronx County Bar Journal 19 (Winter, 1985)

U.S. Supreme Court Deals with Prosecutorial Misconduct, New York Law Journal, (October 18, 1995)

Capital Punishment and Guilty Pleas, Journal News – June 14, 2003.

Prosecution Double Standards , Journal News – October 26, 2003.

Kelly Case Undermines Pirro Image, Journal News – February 16, 2004

Bush Will Lose ‘Presidential Power’ Cases, Journal News – June 13, 2004

Religious McCarthyism, Hearsay, Winter 2004.

Recent Blogs

Preet Bharara Talks Too Much, Slate, March 2, 2015

Smartphones, Smart Ruling, Huffington Post, June, 2014

Cruel Justice – The Case of Don Siegelman, Huffington Post, June, 2014

New Commission to Regulate Prosecutorial Misconduct, Huffington Post, May 2014

Don’t Let the Prosecutor Off the Hook, Huffington Post, May, 2014

Hurricane Carter’s “Pig Circus” Trials, Huffington Post, May, 2014

Smartphones and Befuddled Justices, April, 2014

The Senate's 7 Cowards, Huffington Post, March, 2014

Dumb District Attorneys, Huffington Post, March 2014

Clocking Trials, Huffington Post, May, 2011

"Rats" – Why Juries Believe Them, Huffington Post, May, 2011

DSK and Bail: But Aren't the French Right?, Huffington Post, May, 2011

Ashcroft Perverted Federal Law, the Supreme Court Blinked, Huffington Post, June 2011

When a Judge Stumbles, Do Appearances Matter? Huffington Post, June 2011

DSK and the Rest of Those on the Criminal Docket, Huffington Post, July, 2011

Was Casey Anthony's Jury Misled (By the Prosecutors)?, Huffington Post, July 2011

Did Lawyers Abet the Phone Hacking Scandal?, Huffington Post July, 2011

The Case for Prosecuting Strauss-Kahn: Or Should Prosecutors Play God?, Huffington Post August, 2011

Let's Get Real About Eyewitness Identifications, Huffington Post September, 2011

"Tent City" Is Protected Speech, Huffington Post October, 2011

Ticket-Fixing: It Isn't "Professional Courtesy," It's Racketeering, Huffington Post October, 2011

"Big Brother" is Really Watching You -- GPS Surveillance in the Supreme Court, Huffington Post November, 2011

'See No Evil, Hear No Evil': Joe Paterno, Kitty Genovese, and the Crime of Silence Huffington Post November, 2011

Let's Kill All the Law Students, Huffington Post November, 2011

Pardoning Criminals -- Appropriate Mercy or Perverting Justice?, Huffington Post January, 2012

Immigration Justice: Biased, Irrational, Unfair, Huffington Post January 2012

How Immigration Courts Contaminate American Justice, Huffington Post January, 2012

Criminalizing Lies -- An Unusual Free Speech Case in Supreme Court, Huffington Post, February, 2012

It's Not About Conscience, It's About Bullying, Huffington Post February, 2012

51st State -- "Tranquility" or Puerto Rico?, Huffington Post, February, 2012

Law Schools in the Dock, Huffington Post, March, 2012

Charging George Zimmerman: Why Bypass the Grand Jury? Huffington Post April 2012

Were Trayvon Martin Witnesses Coached? Huffington Post, May 2012

When Rabbis Muzzle Sex Crimes Victims, Huffington Post, May 2012

Corruption, Bribery, and the Quid Pro Quo Conundrum, Huffington Post, June 2012

The District Attorney and the Penn State Scandal, Huffington Post, July 2012

Teaching Tolerance to Boy Scouts, Huffington Post, July 2012

Why Hasn't Lance Armstrong Been Prosecuted? Huffington Post, October 2012

Did Puerto Rico Really Vote for Statehood? Huffington Post, November 2012

Recent Op Ed Pieces

The Eric Garner Case Cries Out for Disclosure, Newsday, December 9, 2014

Gun Owners have a Responsibility, Journal News, December 29, 2012

Alas, Assembly Scandal Nothing New, Journal News, September 9, 2012

Police Did Not Need to Kill Kenneth Chamberlain, Journal News, May 13, 2012

Silencing Amicus Curiae, National Law Journal, March 21, 2011

When Procedure Trumps Justice, National Law Journal, November 2, 2009

Jurisprudence of Labels, National Law Journal, March 30, 2009

Bell Shooting Critics Are Mistaken, National Law Journal, June 2, 2008.

Why a Public Outing? National Law Journal, February 21, 2008

Reporters Under Subpoena, National Law Journal, January 10, 2005

Cracking Justice's Facade, National Law Journal, October 11, 2004

Let's Untie Judicial Hands, National Law Journal, August 9, 2004

Independent Labs Are Best, National Law Journal, June 14, 2004

Prosecutors Tell Lies, Too, National Law Journal, March 22, 2004

The Spin, Confidentially, National Law Journal, July 21, 2003

Prosecutors' Tug of War, National Law Journal, November 18, 2002

Scholarly Papers at Conferences and Symposia

Sentence Structure: The Elements of Punishment, Loyola University Chicago School of Law (April 4, 2014)

Prosecutorial Ethics and Brady v. Maryland: Mercer Law School (October 5, 2012).

Prosecutorial Immunity: Deconstructing Connick v. Thompson – Loyola University New Orleans Law School (November 4, 2011).

The Most Dangerous Power of the Prosecutor – James Hopkins Memorial Lecture – Pace Law School (Oct. 6, 2008)

Prosecutorial Ethics and the Right to a Fair Trial – Case Western School of Law (January 26, 2007)

Reflections on Brady v. Maryland – South Texas Law School (November 4, 2005).

Prosecutorial Ethics and Victim Rights – Lewis & Clark Law School (March 11, 2005)

Misuse of Forensic Evidence By Prosecutors – Oklahoma City University Law School (March 6, 2003)

Problems of Cooperating Witnesses – Benjamin Cardozo Law School (November 30, 2000)

The Prosecutor's Duty to Truth, Georgetown Law Center, Symposium on Government Ethics (March 30, 2000)

The "Term Limits" Case – Conference on the Supreme Court and Local Government Law: The 1994-95 Term – Touro Law School (October 6, 1995)

Urban Criminal Justice – Is It Fair? Does It Appear Fair? Stein Center for Ethics and Public Interest Law – Fordham University School of Law (November 18, 1992)

The Expanding Criminal Law – CATO Institute, Washington, D.C. (November 15, 1990)

Prosecutorial Discretion – Conference on Municipal Law, Brigham Young Law School, Salt Lake City, Utah (March, 1987)

The Struggle for Justice - Law Day Keynote Speech, Rockland County Bar Association (May 1, 1992)

How Just Are Our Courts? - The League of Women Voters, Ossining, New York (September 12, 1991)

Grand Jury Abuse, - League of Women Voters, Bronxville, New York (November, 1985)

The Hinckley Trial and the Insanity Defense - Cornell Law School (March, 1983)

Lectures at Training Programs for Judges and Lawyers

ABA Symposium for Judges and Prosecutors on Victims' Rights, Dubai, United Arab Emirates (January 19-21, 2011)

ABA Roundtable on Revisions to Criminal Justice Standards, Texas law School November 19, 2010

Criminal Discovery in New York State, New York State Judicial Institute, November 54, 2010

Missouri Office of Prosecutorial Training, Osage Beach, MO (March 21, 2008)

Update on New York State Criminal Law, Judicial Institute (January 8, 2004).

Orientation Program for Newly-Elected and Newly-Appointed Judges and Justices, N.Y.S. Office of Court Administration (1994-present)

Summer Judicial Seminar for New York State Trial Judges (1995, 1996)

Confronting and Handling Judicial Misconduct, Annual Meeting, New York State Defenders Association (September 22, 1995)

Fundamentals of Appellate Advocacy, New York State Bar Association (October 21, 1992)

Evidence Update, Practice Skills Seminar, Dutchess County Bar Association (March, 1992)

Current Trends in Criminal Law – Public Defender Training Program, Montpelier, Vermont (June, 1991)

Prosecutorial Misconduct – Practice Skills Seminar, New York State Defenders Association, Poughkeepsie, New York (January 1, 1991)

Closing Arguments to a Jury – Practice Skills Seminar, New York State Bar Association, Poughkeepsie, New York (September 16, 1987)

Prosecutorial Misconduct – National Legal Aid and Defenders Association, Washington, D.C. (December, 1985)

Prosecutorial Misconduct – Erie County District Attorney’s Office, Buffalo New York (September, 1985)

Driving While Intoxicated, Westchester County Bar Association (September, 1984)

Undercover Police Investigations, Onondaga County Bar Association (May, 1984)

Search and Seizure, Monroe County Bar Association (October, 1983)

Program Coordinator, Sing Sing Correctional Facility Paralegal Program. Taught and administered courses in evidence, criminal law, and criminal procedure to inmates and correctional staff at the Sing Sing Correctional Facility, Ossining, New York (1984-1988)

Cornell Institute on Organized Crime, Lecturer (Summer, 1976)

Other Recent Speaking Engagements

Keynote Speaker, Innocence Symposium, Albany Law School, April 23, 2015

Editorial Spotlight, Journal News. Future of Gun Laws, December 20, 2012

Debate Over Gun Control, League of Women Voters – Ridgefield Ct, September 13, 2012

American Bar Association, Annual Litigation Meeting, Panel on Prosecutorial Misconduct, Washington D.C. April 17, 2008

Victims and the Criminal Justice System, Judicial Institute – April 4, 2008

USA Patriot Act - Hudson River Museum – June 10, 2003.

Forensic Evidence – Moderator - Judicial Institute - May 22, 2003.

Lawyers and Media - Public Relations Association of America – Sept. 10, 2003.

The Brady Rule Forty Years After – Annual Mid-Hudson Trainer – November 14, 2003.

USA Patriot Act – White Plains Democratic Committee – December 3, 2003.

Religious McCarthyism – Benjamin Cardozo Society – December 8, 2003.

The Bill of Rights – 212th Anniversary – St. Paul’s Church – December 15, 2003.

Terrorism and Civil Liberties – Sarah Lawrence College – March 6, 2004.

Expert Opinion, Testimony, and Consultation

Bozella v. County of Dutchess (deposition)

Donald Eugene Gates v. The District of Columbia (deposition)

State Bar of Arizona v. Thomas, Aubuchon, and Alexander (Aug. 30, 2011)(deposition)

Oliver Jovanovic v. City of New York et al., (2009)(expert report)

Kevin Fox v. Will County (October 18, 2007)(deposition)

Harrington v. Pottawattamie County (January 22, 2007)(deposition)

New York State Assembly Codes Committee, Hearing on New York State’s Death Penalty (January 21, 2005)(testimony)

U. S. Congress, House Committee on Government Reform (February 25, 2002) (Amendment to 18 U.S.C. §1503)(testimony)

U.S. Congress, House Judiciary Subcommittee (July 27, 2000) (Testimony on H.R. 4015: Fair Justice Act of 2000)(testimony)

State of Louisiana v. Kyles (October 31, 1997)(testimony)

State of Connecticut v. Valentin (March, 1995)(testimony)

Commonwealth of Kentucky v. Davidson (April, 1992)(testimony)

Matter of Anonymous, Grievance Committee, Massachusetts Bar Council (March, 1986)(testimony)

PROFESSIONAL ACTIVITIES

Member, Editorial Advisory Board, Criminal Law Bulletin.

Consultant, New York State Board of Bar Examiners (2000-2012)

LITIGATION EXPERIENCE

Prosecutorial Work

Office of the New York State Anti-Corruption Prosecutor (1973-76)

Chief, Appeals Bureau, Special Assistant Attorney General (1974-76)

Chief, Bronx Anti-Corruption Unit (1973-74)

Argued cases in state and federal courts involving public and political officials charged with corruption. (See, e.g., Cunningham v. Nadjari, 39 N.Y.2d 314 (1976); Nigrone v. Murtagh, 36 N.Y.2d 421 (1975); People v. Mackell, 40 N.Y.2d 59 (1976)

Office of Frank S. Hogan, District Attorney, New York County (1967-72)

Assistant District Attorney, Homicide, Rackets, and Appeals Bureaus. Investigated, tried and argued on appeal hundreds of felony cases, including murder, kidnapping, and corruption cases. Conducted major rackets investigations (e.g., municipal loan scandal and organized crime)

Member, Mayor's Committee for the Enforcement of Law During Civil Disorders (1969)

Criminal Defense Litigation

Pace Law School Outstanding Professor of the Year Award (May 21, 2000)

Pace Law School Outstanding Professor of the Year Award (May 31, 1998)

New York State Bar Association, Criminal Justice Section Award for Outstanding Work in Criminal Law Education (January 24, 1991)