

# MICHAEL J. ZYDNEY MANNHEIMER

Salmon P. Chase College of Law  
Northern Kentucky University  
518 Nunn Hall  
Highland Heights, KY 41099  
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phone: (859) 572-5862

## EDUCATION

**COLUMBIA UNIVERSITY SCHOOL OF LAW**, New York, NY

*J.D. 1994*

*Columbia Law Review*

Writing & Research Editor (1993-94)

Staff member (1992-93)

Harlan Fiske Stone Scholar (1991-94)

Haft Foundation Moot Court Prize (best brief in first-year class) (1992)

**BINGHAMTON UNIVERSITY** (formerly SUNY-Binghamton), Binghamton, NY

*B.A. 1991, Philosophy and Political Science*

David L. Cingranelli Prize in American Politics and Public Policy (1991)

Founder and President, Binghamton Civil Liberties Union (1990-91)

Co-founder and Treasurer, Phi Alpha Delta Pre-Law Fraternity, Binghamton Chapter (1990-91)

Treasurer, Political Science Association (1990-91)

## TEACHING EXPERIENCE

**SALMON P. CHASE COLLEGE OF LAW, NORTHERN KENTUCKY UNIV.**, Highland Heights, KY

*Associate Dean for Faculty Development (2014-18)*

*Professor (2010-present)*

*Associate Professor (2007-10)*

*Assistant Professor (2004-07)*

Courses taught:

Criminal Law

Criminal Procedure

Death Penalty: Policy and Procedure

Evidence

Sentencing Law and Policy

**PENN STATE DICKINSON SCHOOL OF LAW**, State College, PA  
*Visiting Professor (2013-14)*

Courses taught:

Death Penalty: Policy and Procedure (Fall 2013)

Criminal Procedure (Spring 2014)

**BROOKLYN LAW SCHOOL**, Brooklyn, NY

*Adjunct Instructor (2000-02)*

Courses taught:

Legal Writing I

Legal Writing II

## **CLERKSHIPS**

**HON. ROBERT E. COWEN**, U.S. Court of Appeals for the Third Circuit, Trenton, N.J., (1996-97)

**HON. SIDNEY H. STEIN**, U.S. District Court for the Southern District of N.Y., New York, N.Y., (1995-96)

## **HONORS AND AWARDS**

2015 Northern Kentucky University Award for Excellence in Research/Scholarship/Creative Activity

2010 AALS Criminal Justice Section Junior Scholar Paper Award

## **PUBLICATIONS AND WORKS IN PROGRESS**

THE FOURTH AMENDMENT: ORIGINAL UNDERSTANDINGS AND MODERN POLICING (forthcoming Summer 2023) (University of Michigan Press)

“Institutional Deterrence and the Exclusionary Rule” (work in progress)

“The Impossibility Constraint in Criminal Law” (work in progress)

*Police Use of Force and the Original Meaning of “Due Process of Law,”* 50 N. KY. L. REV. \_\_\_\_ (forthcoming 2023) (invited symposium submission)

*Fugitives From Slavery and the Lost History of the Fourth Amendment*, 25 U. PA. J. CONST. L. \_\_\_\_ (forthcoming 2023), available at

[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3929123](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3929123)

*Vagueness as Impossibility*, 98 TEX. L. REV. 1049 (2020)

*Fraudulently Induced Confessions*, 96 NOTRE DAME L. REV. 799 (2020)

“Eighth Amendment Federalism,” in THE EIGHTH AMENDMENT AND ITS FUTURE IN A NEW AGE OF PUNISHMENT (William Berry & Meghan Ryan, eds) (Cambridge U. Press 2020)

*Three-Dimensional Dual Sovereignty: Observations on the Shortcomings of Gamble v. United States*, 53 TEX. TECH. L. REV. 67 (2020) (invited symposium submission)

*The Unusual Case of Anthony Chebatoris: The “New Deal for Crime” and the Federal Death Penalty*, 70 SYRACUSE L. REV. 851 (2020)

*Decentralizing Fourth Amendment Search Doctrine*, 107 KY. L.J. 169 (2019)

*The Local-Control Model of the Fourth Amendment*, 108 J. CRIM. L. & CRIMINOLOGY 253 (2018)

*The Coming Federalism Battle in the War over the Death Penalty*, 70 ARK. L. REV. 309 (2017), (invited symposium submission)

*The Two Mirandas*, 43 N. KY. L. REV. 317 (2016) (invited symposium submission)

*Gideon, Miranda, and the Downside of Incorporation*, 12 OHIO ST. J. CRIM. L. 401 (2015) (invited symposium submission)

*The Contingent Fourth Amendment*, 64 EMORY L.J. 1229 (2015)  
Excerpted at 46 SEARCH & SEIZURE L. REP. 39 (2019)

*Harmelin’s Faulty Originalism*, 14 NEV. L.J. 522 (2014)

*Cruel and Unusual Federal Punishments*, 98 IOWA L. REV. 69 (2012)

*Self-Government, the Federal Death Penalty, and the Unusual Case of Michael Jacques*, 36 VT. L. REV. 131 (2011) (invited submission)

*Proportionality and Federalism: A Response to Professor Stinneford*, 97 VA. L. REV. IN BRIEF 51 (2011)

*Not the Crime But the Cover-up: A Deterrence Based Rationale for the Premeditation-Deliberation Formula*, 86 IND. L.J. 879 (2011)  
Winner of the 2010 AALS Criminal Justice Section Junior Scholar Paper Award

*The Impact of Information Overload on the Capital Jury’s Ability to Assess Aggravating and*

*Mitigating Factors*, 17 WM. & MARY BILL OF RIGHTS J. 1089 (2009) (with Katie Morgan)

*Toward a Unified Theory of Testimonial Evidence Under the Fifth and Sixth Amendments*, 80 TEMP. L. REV. 1135 (2007)

*When the Federal Death Penalty Is “Cruel and Unusual,”* 74 U. CIN. L. REV. 819 (2006)

*Ripeness of Self-Incrimination Clause Disputes*, 95 J. CRIM. L. & CRIMINOLOGY 1261 (2005)

*Coerced Confessions and the Fourth Amendment*, 30 HASTINGS CONST. L.Q. 57 (2002)

*Equal Protection Principles and the Establishment Clause: Equal Participation in the Community as the Central Link*, 69 TEMP. L. REV. 95 (1996)

Note, *The Fighting Words Doctrine*, 93 COLUM. L. REV. 1527 (1993)

## **SELECTED PRESENTATIONS AND CONFERENCE PANELS**

Panelist, “Perception vs. Reality: How Evolving Understandings of Technology Influence Fourth Amendment Jurisprudence,” Association of American Law Schools 2023 Annual Meeting, Criminal Justice Section, San Diego, CA, Jan. 6, 2023.

“Splitting the Exclusionary Rule,” CrimFest! 2022, Benjamin N. Cardozo School of Law, New York, NY, July 18, 2022

“The Fourth Amendment: Original Understandings and Modern Policing,” ch. 9 and 10, Criminal Justice Roundtable, Vanderbilt Law School, Nashville, TN, Nov. 12, 2021

“Three-Dimensional Dual Sovereignty: Observations on the Shortcomings of *Gamble v. United States*,” Symposium on Double Jeopardy, Texas Tech Law School, Apr. 8, 2021 (remote)

Panelist, Say Her Name: A Day-Long Virtual Symposium on Breonna Taylor, Panel One: The Substantive Issues, University of Kentucky, J. David Rosenberg College of Law, Oct. 23, 2020 (remote)

“Eighth Amendment Federalism and Modern Sentencing,” Prison Brake: Rethinking the Sentencing Status Quo, NACDL’s 2020 Presidential Summit & Sentencing Symposium, Georgetown University Law Center, Oct. 20, 2020 (remote)

Senior Commenter, Chicagoland Junior Scholars Conference, Northern Illinois University College of Law Oct. 2, 2020 (remote)

“The Impossibility Constraint in Criminal Law,” NIU CrimWip Series, Northern Illinois

University College of Law, June 18, 2020 (remote)

“Fraudulently Induced Confessions”

Federalist Society Annual Faculty Conference, Washington, DC, Jan. 4, 2020

CrimFest! 2019, Brooklyn Law School, Brooklyn, NY, July 15, 2019

“Vagueness as Impossibility”

University of Louisville, Brandeis School of Law, Mar. 5, 2019

Willamette University College of Law, Feb. 11, 2019

“Saving Constructions of Vague Penal Statutes,” CrimFest! 2018, Benjamin N. Cardozo School of Law, New York, NY, July 16, 2018

“Decentralizing Fourth Amendment Search Doctrine”

ABA/AALS CJS Roundtable, Washington, DC, Nov. 2, 2017

University of Kentucky College of Law, Lexington, KY, Sept. 6, 2017

Federalist Society Faculty Conference, San Francisco, CA, Jan. 6, 2017

CrimFest! 2016, Benjamin N. Cardozo School of Law, New York, NY, July 11, 2016

“The Coming Federalism Battle in the War Over the Death Penalty,” Symposium, “The Future of the Death Penalty,” University of Arkansas School of Law, Fayetteville, AR, Oct. 21, 2016

“The Two *Mirandas*,” Symposium, “*Miranda* at 50,” Salmon P. Chase College of Law, Northern Kentucky University, Highland Heights, KY, Feb. 26, 2016

“The Local-Control Model of the Fourth Amendment,” CrimFest! 2015, Benjamin N. Cardozo School of Law, New York, NY, July 21, 2015

“*Gideon*, *Miranda*, and the Downside of Incorporation,” CrimFest! 2014, Rutgers-Newark School of Law, Newark, NJ, July 22, 2014

“The Contingent Fourth Amendment,” Law & Society Ass’n Annual Conference, Boston, MA, May 30, 2013

“Dog Sniffs, Medical Marijuana, and the Coming Federalism Battle in the War on Drugs,” Southeastern Law Schools Association Annual Conference, Amelia Island, FL, Aug. 2, 2012

“The ABA Death Penalty Assessment Team Report on the Administration of the Death Penalty in Kentucky,” Kentucky Bar Ass’n Annual Conference, Louisville, KY, June 6, 2012

“Cruel and Unusual Federal Punishments”

Central States Law Schools Association, University of Toledo School of Law, Toledo, OH, Oct. 29, 2011

Law & Society Ass’n Annual Conference, San Francisco, CA, June 2, 2011

University of Toledo School of Law, Toledo, OH, Oct. 14, 2010  
Indiana University School of Law, Indianapolis, IN, Sept. 14, 2010

“Not the Crime But the Cover-up: A Deterrence Based Rationale for the Premeditation-Deliberation Formula”

University of Missouri-Kansas City Law School, Kansas City, MO, Mar. 6, 2009  
Pepperdine Law School, Malibu, CA, Feb. 13, 2009  
Central States Law Schools Association, Southern Illinois University Law School,  
Carbondale, IL, Oct. 25, 2008

“When the Federal Death Penalty Is ‘Cruel and Unusual’”

Bar Association of the City of New York (in conjunction with the annual meeting of the  
American Bar Association), New York, NY, Aug. 11, 2008  
Ohio Legal Scholars Workshop, University of Cincinnati School of Law, Cincinnati, OH,  
June 24, 2005

## **SHORTER WORKS AND MEDIA APPEARANCES**

Author, “Insurrectionists Could Be in More Trouble Than Presumed,” *Cincinnati Enquirer*, Feb. 1, 2021

Author, “DeWine’s Stay-at-Home Order is Unenforceable,” *Cincinnati Enquirer*, Apr. 22, 2020

Author, “Federal Execution of Iowa Killer Would be Virtually Unprecedented,” *Cincinnati Enquirer*, Feb. 14, 2020

Author, “A Sitting President Can Be Tried for a Crime in State Court,” *Cincinnati Enquirer*, Nov. 2, 2019

Co-Author (with Ilya Somin), “The Bill of Rights is the Best Defense Against a Travel Ban,” *The Hill*, Apr. 24, 2018

Author, “Face the Federal Death Penalty in Michigan? Let State’s Laws Decide,” *Detroit Free Press*, Oct. 5, 2011

Author, “The Kentucky Racial Justice Act: Workable Remedy or Window Dressing?” LEX LOCI, Dec. 2009, pp. 18-19.

Author, “Is Alito the State’s Advocate in Criminal Cases,” American Constitution Society Blog (Nov. 30, 2005), available at <http://www.acsblog.org/guest-bloggers-2342-guest-blogger-is-alito-the-states-advocate-in-criminal-cases.html#discussion>

Contributing Editor, CrimProf Blog, [http://lawprofessors.typepad.com/crimprof\\_blog/](http://lawprofessors.typepad.com/crimprof_blog/), Jan. 2008

to Aug. 2009

Guest Blogger, <http://prawfsblawg.blogs.com/prawfsblawg/>, May 2011, Mar. 2012, Feb. 2013, July 2016, Dec. 2017-Jan. 2018

Guest, Ipse Dixit Podcast, “Chebatoris & The New Deal for Crime,” Season 1, Episode 496, Mar. 3, 2020, available at <https://shows.acast.com/ipse-dixit/episodes/michael-jz-mannheimer-on-chebatoris-the-new-deal-for-crime>

Guest, Ipse Dixit Podcast, “Vagueness as Impossibility,” Season 1, Episode 266, June 14, 2019, available at <https://shows.pippa.io/ipse-dixit/episodes/michael-mannheimer-on-vagueness>

Guest, “Federal Capital Cases in Non-Death Penalty States,” *Cincinnati Edition*, WVXU, Cincinnati, OH, Feb. 9, 2015, available at <http://wvxu.org/post/federal-capital-cases-non-death-penalty-states>

Guest, “The Execution of Clayton Lockett,” *Radio Times*, WHYY, Philadelphia, PA, May 5, 2014, available at <http://whyy.org/cms/radiotimes/2014/05/05/the-execution-of-clayton-lockett/>

Guest, “Slain Deputy’s Son Keeps Watchful Eye on Killer Ralph Baze’s Fate,” WKYT-TV, Lexington, KY, Mar. 4, 2011

Guest, “The Takeaway,” WNYC 820 A.M., New York, NY, Apr. 16, 2008 (discussing oral argument in *Kennedy v. Louisiana*)

Guest, Brian Fasulo, WWBA 1040 A.M., Tampa, FL, Oct. 25, 2006 (discussing imminent execution of Danny Rolling)

Quoted in Kevin Grasha, “Supreme Court Case Involving 1964 Cincinnati KKK Rally Could Shield Trump From Prosecution,” *Cincinnati Enquirer*, Jan. 15, 2021, available at <https://www.cincinnati.com/story/news/2021/01/15/cincinnati-case-could-shield-trump-prosecution-capitol-riot/4166604001/>

Quoted in Jamiles Lartey, “Why It’s Not So Simple To Arrest The Cops Who Shot Breonna Taylor,” *The Marshall Project*, Aug. 8, 2020, available at [https://www.themarshallproject.org/2020/08/08/why-it-s-not-so-simple-to-arrest-the-cops-who-shot-breonna-taylor?utm\\_medium=email&utm\\_campaign=share-tools&utm\\_source=email&utm\\_content=post-top](https://www.themarshallproject.org/2020/08/08/why-it-s-not-so-simple-to-arrest-the-cops-who-shot-breonna-taylor?utm_medium=email&utm_campaign=share-tools&utm_source=email&utm_content=post-top)

Quoted in Josh Gerstein, “Supreme Court Ruling Unlikely To Affect Manafort Case,” *Politico*, May 15, 2018, available at <https://www.politico.com/newsletters/politico-influence/2018/05/15/akin-gump-adds-portman-aide-219193>

Quoted in Leon Neyfakh, “Cops Who Kill, on Trial,” *Slate*, Nov. 11, 2016, available at [http://www.slate.com/articles/news\\_and\\_politics/crime/2016/11/assessing\\_the\\_sam\\_dubose\\_and\\_walter\\_scott\\_trials.html](http://www.slate.com/articles/news_and_politics/crime/2016/11/assessing_the_sam_dubose_and_walter_scott_trials.html)

Quoted in “Pardons Might Not End Probe,” *Ky. Post*, Covington, KY, Aug. 31, 2005, p. 4K

Quoted in News broadcast, WLW-AM, Cincinnati, OH, Mar. 1, 2005, regarding decision in *Roper v. Simmons*, 543 U.S. 551 (2005)

## **INSTITUTIONAL SERVICE**

Supervisor, NKU-Chase Kentucky Innocence Project (2006-present)  
Advisor or Co-Advisor, *Northern Kentucky Law Review* (Spring 2017, 2018-20, 2022-23)  
Chair, Faculty Development Committee (2019-20)  
Chair, Ad Hoc Clinic Committee (2010-11)  
Chair, Law Review Committee (2006-07)  
Member, University Research Council (2016-20)  
Member, University Faculty Awards Selection Committee (2016)  
Member, University Regents Professorship Selection Committee (2016-18)  
Member, Curriculum Committee (2016-17)  
Member, Dean’s Task Force on Part-Time Program (2015-16)  
Member, Faculty Development Committee (2004-06, 2012-13, 2021-present)  
Member, Faculty Recruitment Committee (2009-10, 2014-16, 2017-18)  
Member, Reappointment, Promotion, and Tenure Committee (2010-12, 2021-present)  
Member, Admissions Committee (2008-09)  
Member, Academic Standing Committee (2007-08, 2011-12)  
Member, Honor Council (2005-06, 2007-08, 2011-12)  
Member, Clinics Task Force (2009-10)  
Member, Clinical and Externship Strategic Planning Task Force (2009-10)  
Member, Scholarship Task Force (2018-19)  
Member, Student Evaluations Task Force (2006-07)

## **SERVICE TO THE PROFESSION**

Organizer, Symposium on Modern Policing, Northern Kentucky University, Mar. 24, 2023

Author, Brief *Amicus Curiae* in *United States v. Tsarnaev*, No. 20-443, U.S. Supreme Court (filed Aug. 27, 2021)

Co-author (with Douglas Berman and William Berry, III), Brief *Amicus Curiae* in *Walker v. United States*, No. 19-373, U.S. Supreme Court (filed Jan. 13, 2020)



Co-author (with Kiel Brennan-Marquez, Stephen Henderson, and George Thomas), Brief *Amicus Curiae* in *Gamble v. United States*, No. 17-646, U.S. Supreme Court (filed Sept. 11, 2018)

Co-author (with Ilya Somin), Brief *Amicus Curiae* in *Trump v. Hawaii*, No. 17-965, U.S. Supreme Court, on behalf of seven constitutional law scholars (filed Mar. 30, 2018)

Co-author (with Ilya Somin), Brief *Amicus Curiae* in *Trump v. Int'l Refugee Assistance Proj.* and *Trump v. Hawaii*, Nos. 16-1436, 1540, U.S. Supreme Court, on behalf of six constitutional law scholars (filed Sept. 18, 2017)

Judge, AALS Criminal Justice Section Junior Scholar Paper Award, 2017, 2020, 2022, 2023

Author, Brief *Amicus Curiae* in *United States v. Roland*, cr. 12-298 (ES), U.S. District Court, District of New Jersey (filed Oct. 25, 2016)

Author, Brief *Amicus Curiae* in *United States v. Fell*, 5:01-cr-00012, U.S. District Court, District of Vermont (filed Apr. 15, 2016)

Organizer, Symposium on *Miranda* at 50, Northern Kentucky University, Feb. 26, 2016

Co-author (with Douglas Berman), Brief *Amicus Curiae* in *United States v. Young*, No. 14-8077, U.S. Supreme Court (in support of petition for certiorari) (filed Feb. 4, 2015)

Author, Brief *Amicus Curiae* in *United States v. Gabrion*, Nos. 02-1386, 02-1461, 02-1570, U.S. Court of Appeals, Sixth Circuit (filed Jan. 17, 2012)

Co-Chair, Kentucky Death Penalty Assessment Team, American Bar Association, July 2009 to Jan. 2012 (521-page final report available at: [https://www.americanbar.org/content/dam/aba/administrative/death\\_penalty\\_moratorium/final\\_ky\\_report.pdf](https://www.americanbar.org/content/dam/aba/administrative/death_penalty_moratorium/final_ky_report.pdf))

Co-counsel, *Leon v. New York*, 128 S.Ct. 2976 (2008) (denying petition for certiorari).

Volunteer attorney, Ohio Voter Protection Project, Nov. 2004, Nov. 2016

## **PRACTICE EXPERIENCE**

**CENTER FOR APPELLATE LITIGATION**, New York, NY

*Senior Appellate Counsel (2003-04)*

*Appellate Counsel (1999-2003)*

Briefed and/or argued over forty appeals and related collateral proceedings on behalf of indigent criminal defendants in New York Appellate Division, New York Court of Appeals, U.S. District Court for the Southern District of New York, and U.S. Court of Appeals for the Second Circuit.

Conducted hearings, argued motions, and handled sentencing proceedings in New York Supreme Court. Filed petition for writ of certiorari in U.S. Supreme Court.

**PAUL, WEISS, RIFKIND, WHARTON & GARRISON**, New York, NY

*Litigation Associate (1997-99)*

Practiced general commercial litigation and arbitration including antitrust, breach of contract, business torts, employment discrimination, ERISA, false advertising, product liability, and RICO. Pro bono work included (1) assisting Hon. A. Leon Higginbotham, Jr. with testimony before the House Judiciary Committee with regard to proposed Articles of Impeachment against President Clinton; and (2) assisting Lambda Legal Defense Fund with research on the Full Faith and Credit Clause in the service of establishing a nationwide right to same-sex marriage.

**LEGAL AID SOCIETY, CRIMINAL APPEALS BUREAU**, New York, N.Y.

*Staff Attorney (1994-95)*

Briefed and argued appeals on behalf of indigent criminal defendants in New York Appellate Division.

**PATTERSON, BELKNAP, WEBB & TYLER**, New York, N.Y.

*Summer Associate (Summer 1993)*

Conducted research regarding general commercial litigation including antitrust, breach of contract, and patent.

**AMERICAN CIVIL LIBERTIES UNION**, Washington, D.C.

*Summer Intern (Summer 1992)*

Conducted research regarding proposed bill to require private institutions of higher learning that receive federal funding to afford students the same free speech rights as those enjoyed by students at public institutions. Conducted research regarding possible religious discrimination by church-owned hotel.

## **BAR ADMISSIONS**

New York (1995)

U.S. District Court for the Southern District of N.Y. (1996)

U.S. District Court for the Eastern District of N.Y. (1997)

U.S. Court of Appeals for the Third Circuit (1997)

U.S. Court of Appeals for the Second Circuit (2003)

U.S. Supreme Court (2021)

## **PROFESSIONAL AFFILIATIONS**

American Bar Association (2007-present)

American Constitution Society for Law and Policy (2003-present)

American Law Institute (2021-present)  
Association of American Law Schools, Criminal Justice Section, (2008-22) (now defunct)  
    Executive Committee (2008-11)  
    Program Committee (2012-13)  
    ABA/AALS Program Planning Committee (2012-13)  
Association of American Law Schools, Criminal Law Section, (2022-present)  
Association of American Law Schools, Criminal Procedure Section, (2022-present)  
Federalist Society for Law and Public Policy Studies (2012-present)  
New York County Lawyers' Association, Appellate Courts Committee (2001-04)