

JEFFREY L. FISHER

Stanford Law School
559 Nathan Abbott Way
Stanford, CA 94305
(650) 724-7081

EXPERIENCE

Stanford Law School, Stanford, CA

Professor of Law, 2012-present

Associate Professor of Law, 2006-2012

Co-Director, Supreme Court Litigation Clinic, 2006-present

Courses taught:

- *Supreme Court Litigation Clinic*. Seminar-style class on the Supreme Court, and involvement in numerous Supreme Court cases as coordinator and supervisor of students' work.
- *Confrontation Clause Module*. Mini-Seminar on the modern development of, and current controversies involving, the right to confrontation.

Davis Wright Tremaine LLP, Seattle, WA

Associate, 1999-2004; *Partner*, 2005-2006; *Contract Partner*, 2006-2012

Co-Chair, Appellate Practice Group, 2004-2012

University of Washington School of Law, Seattle, WA

Part-Time Lecturer, 2001-2005

Courses taught: The Law of Democracy and Supreme Court Decision Making seminar

The Honorable John Paul Stevens, Supreme Court of the United States, Washington, DC

Law Clerk, 1998-99 Term

The Honorable Stephen Reinhardt, U.S. Court of Appeals for the Ninth Circuit, Los Angeles, CA

Law Clerk, 1997-98 Term

EDUCATION

University of Michigan Law School, Ann Arbor, MI

J.D., *magna cum laude*, 1997

Academic Honors:

- Order of the Coif
- West Publishing Company Award (for "outstanding scholarly accomplishments and extracurricular contributions to the Law School community")
- Helen L. DeRoy Memorial Award (best student note during past year of *Michigan Law Review*)

Activities:

- *Michigan Law Review*, Notes Editor
- Dean's Committee on the Educational Environment (student/faculty committee on diversity-related issues in the Law School)

Duke University, Durham, NC
A.B. in English, *cum laude*, 1992

Oxford University (New College), Oxford, England
Studies in Comparative Tort Law, Summer 1991

PROFESSIONAL HONORS AND AWARDS

Best Lawyers, Lawyer of the Year, San Francisco Area Appellate Practice (2014)
National Law Journal, 100 Most Influential Lawyers in America (2013 & 2006)
Daily Journal, Top 100 Lawyers in California (2014, 2012, and 2009)
Lawyers Weekly USA, Lawyer of the Year (one of ten) (2009)
Florida Association of Criminal Defense Lawyers, Steven M. Goldstein Criminal Justice Award
(organization's highest honor) (2009)
California Lawyer, California Lawyer of the Year (appellate law category) (2008)
National Association of Criminal Defense Lawyers, Robert C. Heeney Memorial Award (organization's
highest honor) (2008)
American Lawyer, "Fab 50" Litigators Under 45 (2007)
Daily Journal, Top 20 (in California) Under 40 (2007)
National Law Journal's "40 Under 40" (one of ten lawyers "of special note" within group) (2005)
Washington Association of Criminal Defense Lawyers William O. Douglas Award (organization's
highest honor) (2005)
Lawyers Weekly USA, Lawyer of the Year (one of ten) (2004)
National Law Journal Lawyer of the Year, Runner-Up (2004)
Washington State Bar Association, Young Lawyers Division, Professionalism Award (2004)
University of Washington School of Law, finalist for 2L/3L Philip A. Trautman Professor of the Year
(Small Section) (2003-04 academic year)

SELECTED SUPREME COURT CASES

Cases (26) in which I presented oral argument:

ONEOK Inc. v. Learjet, Inc.: briefed and argued case involving whether the Natural Gas Act preempts state-law antitrust claims for inflating prices for retail sales of natural gas. Case is still pending.

T-Mobile South LLC v. City of Roswell, 135 S. Ct. ____ (2015): petitioned, briefed, argued, and won case holding that the Telecommunications Act of 1996 requires localities to specify contemporaneous reasons in writing for denying applications to construct or modify certain wireless facilities.

Heien v. North Carolina, 135 S. Ct. 530 (2014): petitioned, briefed, and argued case in which the Court held that a reasonable mistake of law can supply the individualized suspicion that the Fourth Amendment requires to conduct a traffic stop.

Riley v. California, 134 S. Ct. 2473 (2014): petitioned, briefed, argued, and won case holding unanimously that absent exigent circumstances, the Fourth Amendment prohibits police officers from searching cell phones seized from arrestees without first obtaining a warrant.

Fernandez v. California, 134 S. Ct. 1126 (2014): briefed and argued case in which the Court held that the police may rely on consent from a resident of a home to conduct a search even if the defendant, then

absent, previously objected to such a search.

Salinas v. Texas, 133 S. Ct. 2174 (2013): petitioned, briefed, and argued involving whether the Fifth Amendment's Self-Incrimination Clause forbids the prosecution from using a person's refusal to answer pre-arrest police questioning against him at trial. The Court held that a person in such a setting much expressly invoke his right to remain silent in order to enforce it at trial.

Decker v. Northwest Environmental Defense Center, 133 S. Ct. 1326 (2013): briefed and argued case involving propriety and validity of lawsuit arguing that the Clean Water Act's permitting system applies to discharges of pollutants from logging roads. The Court held that jurisdiction existed over the action but that the EPA's regulation exempting such discharges from the permit requirement was reasonable.

Chaidez v. United States, 133 S. Ct. 1103 (2013): petitioned and argued case concerning retroactivity of *Padilla v. Kentucky*, which determined that persons receive ineffective assistance of counsel if they are not warned that pleading guilty will subject them to deportation. The Court held that *Padilla* was a "new rule" and thus not completely retroactive, but it left open an alternative avenue of relief for client.

Lozman v. City of Riviera Beach, 133 S. Ct. 735 (2013): petitioned, briefed, and argued and won case holding that a floating home is not a "vessel" for purposes of triggering federal maritime law.

Mohamad v. Palestinian Authority, 132 S. Ct. 1702 (2012): briefed and argued case holding that victims bringing suit under the Torture Victim Protection Act may sue only natural persons, not entities, responsible for such acts.

Greene v. Fisher, 132 S. Ct. 38 (2011): petitioned, briefed and argued case holding that state prisoners may not seek federal habeas relief based on a Supreme Court decision announced after the last state-court decision on the merits but before their convictions became final.

Bullcoming v. New Mexico, 131 S. Ct. 2705 (2011): briefed, argued, and won case holding that the Confrontation Clause prohibits prosecution from introducing a nontestifying analyst's forensic laboratory report through the in-court testimony of a different analyst.

United States v. Tinklenberg, 131 S. Ct. 2007 (2011): briefed, argued, and won case holding that the federal Speedy Trial Act presumptively counts all days beyond ten calendar days expended for transportation to a competency determination toward the seventy-day period in which to commence trial.

Magwood v. Patterson, 130 S. Ct. 2788 (2010): petitioned, briefed, argued, and won case holding that a claim seeking federal habeas relief from a new sentence is not part of a "second or successive" petition even if the applicant could have, but did not, challenge an earlier judgment on the same grounds. Secured habeas relief on remand in the Eleventh Circuit.

United States v. O'Brien, 130 S. Ct. 2169 (2010): briefed, argued, and won case holding that the fact of machinegun usage, which carries mandatory minimum sentence of thirty years under 18 U.S.C. § 924(c)(1), is an element of the offense, not a mere sentencing factor.

Melendez-Diaz v. Massachusetts, 557 U.S. 305 (2009): petitioned, briefed, and argued, and won case holding that the Confrontation Clause prohibits the prosecution in criminal cases from introducing forensic laboratory reports in lieu of live testimony.

Waddington v. Sarausad, 555 U.S. 179 (2009): argued case involving whether jury instructions ambiguously defining a element of a state-law offense can give rise to a due process violation warranting

federal habeas corpus relief.

Kennedy v. Louisiana, 554 U.S. 407 (2008): petitioned, briefed, argued, and won case holding that Eighth Amendment prohibits imposing the death penalty for child rape or any other crime against a person in which the victim does not die.

Exxon Shipping Co. v. Baker, 554 U.S. 471 (2008): briefed and argued case for plaintiffs/respondents in case holding that plaintiffs could recover punitive damages under maritime law for *Exxon Valdez* oil spill in the amount of over \$500 million.

Burgess v. United States, 553 U.S. 124 (2008): briefed and argued case for petitioner in case holding that a prior conviction for a state-law misdemeanor punishable by more than one year constitutes a prior “felony drug offense” for purposes of federal drug sentencing enhancements.

Global Crossing Telecommunications, Inc. v. Metrophones Telecommunications, Inc., 550 U.S. 45 (2007): lead counsel for petitioner in case holding that the Communications Act contains a private right of action to enforce the FCC’s regulations regarding compensation for coinless payphone calls.

Burton v. Stewart, 549 U.S. 147 (2007): lead counsel for petitioner in case involving whether *Blakely v. Washington* applies retroactively to federal habeas petitioners whose convictions were final when decision was announced. Court dismissed the case after oral argument on jurisdictional grounds.

United States v. Gonzalez-Lopez, 548 U.S. 140 (2006): briefed, argued and won case holding that an unjustified denial of a defendant’s right to be represented by counsel of his choice violates the Sixth Amendment’s right to counsel and requires automatic reversal of the defendant’s conviction.

Davis v. Washington, 547 U.S. 813 (2006): petitioned, briefed, and argued case holding that the Sixth Amendment right to confrontation partially limits the use of 911 calls in place of live testimony in criminal trials.

Blakely v. Washington, 542 U.S. 296 (2004): petitioned, briefed, argued, and won case holding that Sixth Amendment right to jury trial applies to sentencing guidelines.

Crawford v. Washington, 541 U.S. 36 (2004): petitioned, briefed, argued, and won case establishing the “testimonial” approach to the Confrontation Clause.

Cases in which I was the primary author of amicus briefs: *District Attorney’s Office v. Osborne*, 129 S. Ct. (2009) (arguing that prisoners who demonstrate beyond dispute that they are actually innocent historically receive and are entitled to clemency); *Arizona v. Gant*, 129 S. Ct. 1710 (2009) (arguing that police may not search vehicles incident to arresting occupants for traffic violations); *United States v. Rodriguez*, 128 S. Ct. 1783 (2008) (arguing that the “statutory maximum” prison term for a prior conviction should be calculated for purposes of federal mandatory minimum sentencing laws without respect to potential recidivism-based enhancements); *Hamdan v. Rumsfeld*, 548 U.S. 557 (2006) (arguing that military tribunals established to try detainees at Guantanamo Bay were unlawful because they denied defendants the right to be present when certain incriminating evidence was offered against them); *S.D. Warren Co. v. Maine Bd. of Env’tl Protection*, 547 U.S. 370 (2006) (arguing that states lacked authority under the Clean Water Act to impose extra conditions on federal licenses for run-of-river dams); *Brown v. Washington Legal Foundation*, 538 U.S. 216 (2003) (arguing that state IOLTA programs did not violate Just Compensation Clause); *Nike, Inc. v. Kasky*, 539 U.S. 654 (2003) (arguing that applying state consumer protection law to certain corporate speech violated First Amendment); *Stogner v. California*, 539 U.S. 607 (2003) (arguing that statute reviving limitations periods for certain crimes violated the Ex

Post Facto Clause); and *Lockyer v. Andrade*, 538 U.S. 63 (2003) (arguing that applying three-strikes law to petty offense violated Cruel and Unusual Punishment Clause).

PUBLICATIONS

Books:

THE NEW WIGMORE TREATISE ON EVIDENCE, Volume on the Right to Confrontation (with Richard D. Friedman) (work in progress)

Extended articles/essays:

Crawford v. Washington: *The Next Ten Years*, 113 Mich. L. Rev. First Impressions 9 (2014)

A Supreme Court Clinic's Place in the Supreme Court Bar, 65 STAN. L. REV. 137 (2013)

Originalism as an Anchor for the Sixth Amendment (Compilation from Federalist Society National Student Symposium), 33 HARV. J.L. & PUB. POL'Y 53 (2011)

Preface, *Reclaiming Criminal Procedure*, 38 GEO. L.J. ANN. REV. CRIM. PROC. iii (2009)

The Exxon Valdez Case and Regularizing Punishment, 26 ALASKA L. REV. 1 (2009)

What Happened and What is Happening to the Confrontation Clause, 15 J.L. & POL'Y 587 (2007) (Symposium Issue entitled *Crawford* and Beyond: Revisited in Dialogue)

Categorical Requirements in Constitutional Criminal Procedure, 94 GEO. L.J. 1493 (2006) (Symposium Issue entitled Just Right? Assessing the Rehnquist Court's Parting Words on Criminal Justice)

Why Format, Not Content, Is the Key to Identifying Commercial Speech (co-authored with Bruce E.H. Johnson), 54 CASE W. RES. L. REV. 1243 (2004) (Symposium Issue on *Nike v. Kasky* and the Modern Commercial Speech Doctrine)

Nike v. Kasky: Will the Shield of the Commercial Speech Doctrine Become a Sword?, 20 COMM. LAW. No. 4, at 1 (2003)

State Action and the Enforcement of Compulsory Arbitration Agreements Against Employment Discrimination Claims, 18 HOFSTRA LAB. & EMPL. L.J. 289 (2000)

Note, *The Unwelcome Judicial Obligation to Respect Politics in Racial Gerrymandering Remedies*, 95 MICH. L. REV. 1404 (1997) (voted best Note in the journal during 1996-97 academic year)

Note, *When Discretion Leads to Distortion: Recognizing Pre-Arrest Sentence-Manipulation Claims Under the Federal Sentencing Guidelines*, 94 MICH. L. REV. 2385 (1996) (voted second-best Note in the journal during 1996-97 academic year)

Short commentaries:

The Retroactivity of Padilla After Chaidez v. United States, 37 THE CHAMPION No. 2, at 43 (2013) (co-authored with Kendall Turner)

Op-Ed, *The Bill of Rights Doesn't Come Cheap*, N.Y. TIMES, December 2, 2011

Of Facts and Fantasies: Justice Stevens and the Judge/Justice Story, 14 GREEN BAG 2d 53 (Autumn 2010)

Remarks on Liberty Panel, 43 U.C. DAVIS L. REV. 877 (2010) (Symposium Issue entitled *The Honorable John Paul Stevens*)

Justice Stevens' Unfinished Revival of the Right to Jury Trial, SCOTUSBlog, June 14, 2010

Op-Ed, *My Boss, Justice Stevens*, N.Y. TIMES, April 11, 2010

The Truth About the Confrontation Clause's "Not for the Truth" Exception, 32 THE CHAMPION No. 1, at 18 (2008)

No Clear Ideologies, NAT'L L.J., Aug. 3, 2005, at 14

At the Supreme Court: Where First Principles Really Come First, (MICHIGAN) LAW QUAD. NOTES, (Spring 2005)

Drawing the Line in Crawford and Blakely, 28 THE CHAMPION No. 7, at 18 (2004)

RESEARCH AND TEACHING AREAS

The Supreme Court, federal courts and appellate decision making, particularly the power and responsibilities of the Supreme Court and the art of Supreme Court advocacy

Constitutional law and theory, particularly the parallels and paradoxes in the Supreme Court's treatment of civil and criminal constitutional rights.

Criminal procedure, particularly individual constitutional rights

SELECTED PRESENTATIONS

Academic events:

Privacy in the Digital Age (with Professor Jeffrey Rosen and Edward DuMont), National Constitution Center (June 2104)

Invited panelist, *Criminal Law and the Modern Court*, New York University Law School (April 2013)

Invited panelist, *Pro Bono Litigation in the United States Supreme Court: The Roles of Supreme Court Specialists and Public Interest Organizations*, Georgetown Law Center, Annual Conference of the Supreme Court Institute (February 2012)

Participant, Brooklyn Law School, Symposium, *Crawford and Beyond III* (November 2011)

Defending the Rights of the Accused Before a Law and Order Court, Duke Law School (October 2010)

Panelist on Pretrial Discovery of Evidence and *Brady* Disclosure, University of California Hastings School of the Law, Symposium: *Navigating Prosecutorial Ethics* (October 2010)

Justice Stevens and the Exclusionary Rule, Georgetown Law Center, Symposium, *Justice John Paul Stevens: "The Finest Legal Mind"* (October 2010)

Debate (with Professor Stephanos Bibas), *Originalism in Criminal Procedure: Ancient Checks or Newfangled Rights?*, Federalist Society National Student Symposium – "Originalism 2.0," University of Pennsylvania Law School (February 2010)

Panelist on Originalism in Advocacy, Ohio State Moritz College of Law, Symposium: *Originalism and the Right to Jury Trial* (November 2009)

Panelist on "Liberty," University of California at Davis Law School, Symposium, *The Honorable John Paul Stevens* (March 2009)

The Exxon Valdez Case and the Future of Punitive Damages, Duke Law School (February 2009)

Moderator and Participant, Duke Law School, *Litigating in the Roberts Court* (November 2007)

Panelist, Brooklyn Law School, Symposium: *Crawford* and Beyond: Revisited in Dialogue (September 2006)

Commencement Class Day Speaker, Harvard Law School (June 2005)

Adjusting to Blakely and Booker, Harvard Law School, Symposium: Criminal Sentencing at the Crossroads (March 2005)

Crawford, Blakely, and the Terrorism Decisions: Uncovering a Previously Silent Majority?, Annual Conference of Association of American Law Schools (January 2005)

Advocating Bright-Line Rules in an Age of Balancing, Santa Clara University School of Law, Distinguished Speaker Series (2004)

The Principles Underlying Blakely v. Washington, Stanford Law School, The Future of American Sentencing: A National Roundtable on *Blakely* (October 2004)

What Nike v. Kasky Should Have Said: Format, Not Content, Is the Key To Identifying Commercial Speech, Annual Conference of Association of American Law Schools (January 2004)

Judicial and professional conferences:

Constitutional Law Update, California Appellate Judiciary, San Diego, CA (June 2014)

Forensic Falsity, Joint Conference of Innocence Network and the National Association of Criminal Defense Lawyers, Charlotte, NC (April 2013)

Supreme Court Update, First Circuit Judicial Conference, Portsmouth, NH (December 2102)

The Value of Supreme Court Specialization, Annual Conference of the American Academy of Appellate Lawyers, Colorado Springs, CO (October 2012)

The Future of the Confrontation Clause, Annual Conference of the National Association of Appellate Court Attorneys, San Diego, CA (July 2011)

The Confrontation Clause Under a New Court, Annual Conference of the National Association of Federal Defenders, Baltimore, MD (June 2011)

Panelist, *The Confrontation Clause and Domestic Violence*, Annual Conference of the National Association of Women Judges, San Francisco, CA (October 2010)

What's Left of the Sixth Amendment in Federal Sentencing after Booker, Annual Conference of the National Association of Federal Defenders, Seattle, WA (June 2010)

Panelist, *Appellate Advocacy*, Sixth Circuit Judicial Conference, Columbus, OH (May 2010)

Panelist, *Booker and Its Progeny in N.D. of California: The Seismic Shift the Pundits Predicted?* Northern District of California Judicial Conference, Sonoma, CA (April 2010)

Strategies for Obtaining Supreme Court Review, Annual Conference of National Legal Aid and Defender Society, New Orleans, LA (January 2010)

Strategies for Obtaining Supreme Court Review, Annual Conference for Federal Death Penalty Litigators, Nashville, TN (November 2009)

Confronting Forensic Testimony, Annual Conference on DNA and Forensic Evidence, Sponsored by Los Angeles District Attorney's Office, Los Angeles, CA (September 2009)

Confrontation After Melendez-Diaz, Annual Conference of the National Association of Federal Defenders, Minneapolis, MN (May 2009)

Panelist, *Drugs, Guns, and Goat Hair*, Fifth Circuit Annual Judicial Conference, New Orleans, LA (May 2009)

Punitive Damages After Exxon, ABA Section on Litigation, Vail, CO (January 2009)

Reframing the Right to Confrontation, Oregon Judicial Conference, Glendon Beach, OR (October 2008)

Litigating a High Profile Case in the Supreme Court – The Exxon Valdez Case, Annual Conference of the American Academy of Appellate Lawyers, Portland, OR (September 2008)

Say You Want a Revolution? Litigating Cutting-Edge Issues on Appeal, Annual Conference of the National Association of Criminal Defense Lawyers, Milwaukee, WI (July 2008)

Recent Trends in Criminal Justice in the Roberts Court, Annual Conference of the National Association of Federal Defenders, New Orleans, LA (May 2008)

Colorable Constitutional Claims, National Juvenile Defender Leadership Summit, Portland, OR (October 2007)

Sentencing Update, Annual Conference of the National Association of Criminal Defense Lawyers, San Francisco, CA (August 2007)

The Due Process Revolution, Annual Conference of the National Association of Federal Defenders, Miami, FL (May 2007)

Where Do We Go After Cunningham?, California Appellate Justices' Institute, San Francisco, CA (April 2007)

Confrontation After Crawford, Ninth Circuit Judicial Workshop, Santa Barbara, CA (January 2007)

The Fallout from Crawford, National Conference of Chief Judges, Washington, D.C. (November 2006)

Adjusting to Crawford, Kansas Judicial Conference (June 2006)

Preparing for Victory: Davis, Hammon, and Beyond, Annual Conference of Federal Defenders, San Francisco, CA (June 2006)

Sentencing After Booker and Blakely: How Much Has Changed?, Annual Conference of American Constitution Society, Washington, D.C. (moderated panel of federal judges) (July 2005)

Crawford v. Washington: The Battle Between Form and Function, Annual Conference of the National Association of Federal Defenders, Boston, MA (June 2005)

Giving Teeth to the Sixth Amendment: Reflections on What Is Motivating the Court in Crawford and Blakely (keynote address), Biennial Conference of the Federal Bar Association Criminal Law Section, New Orleans, LA (May 2005)

How a Northwest Lawyer Transformed Criminal Procedure in the United States (keynote address), University of Oregon Law School, O'Connell Conference for the Bench and Bar (March 2005)

Adjusting to Blakely and Booker; and *Following the Leader in Crawford* (two presentations), American Bar Association, Midyear Meeting, Salt Lake City, UT (February 2005)

Crawford v. Washington: Reframing the Right to Confrontation, presented at the 2004 annual conference of the National Association of Criminal Defense Lawyers; 2004 annual conference of the National Association of Federal Defenders; as well as numerous statewide criminal defense organizations' conferences

The Implications of Blakely v. Washington, presented at the 2004 annual meeting of the National Association of Criminal Defense Lawyers; 2004 annual meeting of the National Association of Federal Defenders; as well as numerous statewide criminal defense organizations' meetings

MEDIA PROFILES

Howard Mintz, *Lifting Digital Privacy Rights to a New Level*, San Jose Mercury News, July 7, 2014, at 1
Robert Iafolla, *Highest Before the High Court*, L.A. Daily Journal, June 7, 2012, at 1
Jeff Mortimer, *Approaching the Nation's Highest Bench*, Law Quadrangle Notes, Summer 2008, at 6
Richard Brust, *A Sixth Sense About Criminal Trials*, ABA Journal, April 2007, at 23
Brent Kendall, *Stanford Snares the "Criminal Procedure Guy,"* L.A. Daily Journal, July 24, 2006, at 1
Leonard Post, *An Associate Rocks Criminal Procedure*, Nat'l L.J., Dec. 20-27, 2004, at 1
David Feige, *The Supreme Beginner*, L.A. Times Magazine, Dec. 5, 2004, at 18
Kevin Drew, *At 33, He's a Two-Time Supreme Court Winner*, CNN.com, July 23, 2004

Maureen O'Hagan, *At Age 33, His Career Is Soaring*, Seattle Times, July 12, 2004, at A1
Robin Franzen, *Lawyer's Logic, Skills Sway Justices*, The Oregonian, July 6, 2004, at A1
Tony Mauro, *High-Profile Tryout*, American Lawyer, March 2004, at 24

PROFESSIONAL AFFILIATIONS AND ACTIVITIES

Co-Chair, Amicus Committee, National Association of Criminal Defense Lawyers (2001-present)
Co-Chair, Supreme Court Oral Arguments Committee, National Association of Criminal Defense Lawyers (2004-present)
Member of Legal Committee, ACLU of Washington (2003-2006)
Member of Washington State Bar (2000-present)
Member of the California State Bar (2008-present)
Member of Bar of U.S. Supreme Court, Ninth Circuit, and other federal courts