

## **Michael Vitiello**

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**Present Position**      Distinguished Professor of Law at the University of the Pacific, McGeorge School of Law

### **Education**

- University of Pennsylvania Law School, Philadelphia, PA  
J.D., May 1974
- Swarthmore College, Swarthmore, PA  
B.A. with Honors in English and Philosophy, June 1969  
Keele University, Staffordshire, England 1966-67

### **Memberships**

- American Law Institute (2002-present)
  - Member, Consultative Group on reforming MPC sentencing provisions
  - Member, Consultative Group on reforming MPC sex offenses
  - Member, Consultative Group on policing
  - Member, Consultative Group on Project on Sexual and Gender-based Misconduct on Campus
- American Bar Foundation (2010-present)
- Fulbright Senior Specialist (2007-12)

### **Employment**

- Distinguished Professor of Law      Fall 2006-present  
McGeorge School of Law
- Visiting Professor      Mar.-June 2017  
University of Parma
- Director, Center for Advocacy and Dispute Resolution      Jan. 2008-Jan. 2014  
McGeorge School of Law
- Fulbright Senior Specialist, teaching Comparative Criminal Law      Aug.-Dec. 2007  
University of Parma
- Professor of Law      Aug. 1990-2006  
McGeorge School of Law
- Adjunct Professor      Aug.-Dec. 2006

University of California Davis School of Law

- Visiting Professor of Law Jan.-May 1990  
Law Center, University of Mississippi
- Visiting Professor of Law, teaching Evidence, Torts, and Criminal Procedure Spring 1988, 1989  
Tulane University Law School
- Professor of Law 1977-1990  
Loyola University Law School
- Judicial Clerk Aug. 1974-July 1977  
The Honorable J. Sydney Hoffman  
Superior Court of Pennsylvania
- Law Intern June 1973-Apr. 1974  
Philadelphia District Attorney's Office  
Intern for Martin Belsky, Chief of Adult Prosecutions

**Courses**

- Advanced Criminal Procedure
- Appellate Advocacy
- Civil Procedure
- Comparative Criminal Procedure
- Comparative White Collar Crime
- Constitutional Law
- Criminal Law
- Criminal Procedure
- Evidence
- Federal Courts
- Law and Medicine
- Moot Court
- Torts
- White Collar Crime

### **Additional Teaching Experience**

- Taught Comparative Criminal Procedure in Salzburg, Austria, using Amanda Knox case to compare the Italian and American criminal justice systems Summer 2012
- Taught Comparative Criminal Procedure in Salzburg, Austria, with Professor Stefano Maffei Summer 2009
- Taught Comparative White Collar Crime in London, England Summer 2008
- Co-designed and taught month long program for California's Capital Defenders' Project (training provided for newly hired death penalty appellate attorneys) Summer 1998

### **Legislative Reports**

- Grand Jury Background Report (Co-authored with Clark Kelso) 2000
- A Review of Louisiana's Juvenile Transfer Procedures 1984
- Living Wills and the Right to Refuse Medical Treatment 1983
- The Power of the Legislature to Subpoena Federal Officials 1982

### **Books**

- *Animating Civil Procedure* (Carolina Academic Press 2017).
- *Bridge to Practice Series, Criminal Law Simulations* (co-authored with Emily Hughes) (West 2015).
- *Strategies and Techniques for Teaching Criminal Procedure* (Aspen Publishing Co. 2013).
- *Persuasive Written and Oral Advocacy: In Trial and Appellate Courts* (co-authored with Michael R. Fontham) (3d ed., Aspen Publishing Co. 2013).
- *Bridge to Practice Series, Criminal Procedure Simulations* (West 2012).
- *Bridge to Practice Series, Civil Procedure Simulations* (West 2012).
- *Persuasive Written and Oral Advocacy: In Trial and Appellate Courts* (co-authored with Michael R. Fontham and David W. Miller) (2d ed., Aspen Publishing Co. 2007).

- *Practicing Persuasive Legal Written and Oral Advocacy: Case File III* (co-authored with David W. Miller and Michael R. Fontham) (Aspen Publishing Co. 2005)
- *Practicing Persuasive Legal Written and Oral Advocacy: Case File II* (co-authored with David W. Miller and Michael R. Fontham) (Aspen Publishing Co. 2003).
- *Persuasive Written and Oral Advocacy: In Trial and Appellate Courts* (co-authored with Michael R. Fontham and David W. Miller) (1st ed., Aspen Publishing Co. 2002)
- *Practicing Persuasive Legal Written and Oral Advocacy: Case File I* (co-authored with David W. Miller and Michael R. Fontham) (Aspen Publishing Co. 2002).

## **Law Review Articles**

### *(a) Refereed Journals*

- *Joshua Dressler and “The Incident” – More Evidence of Liberal Bias?*, OHIO STATE CR. L. J. (forthcoming 2018).
- *Legalizing Marijuana: Lessons from the United States*, STUDI SENESI (forthcoming 2018).
- *Adultery: Infidelity and the Law*, CRIMINAL JUSTICE ETHICS (forthcoming 2017) (review essay of Deborah Rhode’s book of that title).
- *Sentencing Policies and Practices in California*, OXFORD HANDBOOKS ONLINE, (New York: Oxford University Press 2015).
- *Still Between a Rock and a Hard Place: Sentencing Reform in California*, 25 FED. SENTENCING REP. 233 (2013).
- *Personal Reflections on Connick v. Thompson*, 11 OHIO STATE CR. L. J. 217 (2013).

### *(b) Student-Run Law Reviews*

- *Legalizing Marijuana: A View From Among the Weeds*, 69 HASTINGS L. J. (forthcoming 2017) (co-authored with Rosemary Deck).
- *Brock Turner: Sorting Through the Noise*, 49 U. PAC. L. REV. (forthcoming 2017) (reprinted in ARCHIVIO PENALE 2017, n. 2).
- *Justice Scalia’s Eighth Amendment Jurisprudence: An Unabashed Foe of Criminal Defendants*, 50 AKRON L. REV. (forthcoming 2017).
- *The False Dichotomy between Theory and Skills Training: Why Good Lawyers Need to Pay Attention to Theory*, 48 U. PAC. L. REV. 915 (2017).

- *Bargained Justice: Lessons from the Italians*, 48 U. PAC. L. REV. 247 (2017) (reprinted in ARCHIVIO PENALE 2017, n. 2).
- *Legalizing Marijuana and Abating Environmental Harm: An Overblown Promise?*, 50 U.C. DAVIS L. REV. 773 (2016).
- *Mass Incarceration: Why Are Solutions So Difficult in California?*, 15 U. MD. J. RACE, RELIGION, GENDER & CLASS 229 (2015).
- *Teaching Oral Advocacy: Creating More Opportunities For an Essential Skill*, 45 SETON HALL L. REV. 1031 (2015).
- *Limiting Access to US Courts: The Supreme Court's New Personal Jurisdiction Case Law*, 19 U.C. DAVIS J. INT'L L. & POL'Y 209 (2015).
- *Reforming California Sentencing Practice and Policy: Are We There Yet?*, 46 MCGEORGE L. REV. 685 (2014).
- *Reflections on an Extraordinary Career: Thoughts About Gerald Caplan's Retirement*, 46 MCGEORGE L. REV. 459 (2014).
- *The Expanded Use of Genetic and Psychological Evidence: Finding Coherence in the Criminal Law?*, 14 NEV. L. J. 897 (2014).
- *Making Good Use of a Crisis*, 20 THE LAW TEACHER 63 (2013).
- *Joints or the Joint: Colorado and Washington Square Off Against the United States*, 91 OR. L. REV. 1009 (2013).
- *Chinese Homicide Law, Irrationality and Incremental Change*, 27 TEMPLE INT'L & COMP. L. J. 43 (2013) (co-authored with Cary Bricker).
- *Alternatives to Incarceration: Why is California Lagging Behind?*, 28 GEORGE STATE L. J. 1275 (2012).
- *Why the Initiative Process Was the Wrong Way to Go: Lessons We Should Have Learned from Proposition 215*, 43 MCGEORGE L. REV. 63 (2011).
- *Addressing the Special Problems of Mentally Ill Prisoners*, 88 DENVER L. REV. 57 (2010).
- *Defining the Reasonable Person in the Criminal Law: Fighting the Lernaean Hydra*, 14 LEWIS & CLARK L. REV. 1435 (2010).
- *Legalizing Marijuana: California's Pot of Gold?*, 2009 WIS. L. REV. 1349 (2009).

- *A Kiss is Just a Kiss, or Is It? A Comparative Look at Italian and American Sex Crimes*, 40 SETON HALL L. REV. 191 (2010) (co-authored with Alberto Cadoppi).
- *Herring v. United States: Mapp’s “Artless Overruling?”*, 10 NEV. L. J. 164 (2009).
- *Lies, Damn Lies and Claims of Judicial Activism*, 14 NEXUS JOURNAL 55 (2009)
- *Punishing Sex Offenders: When Good Intentions Go Bad*, 40 ARIZ. ST. L. J. 651 (2008).
- *Liberal Bias in the Legal Academy: Overstated and Undervalued*, 77 MISS. L. J. 507 (2007).
- *Introduction, Symposium on Sentencing Guidelines and Practice in a Post-Booker World*, 37 MCGEORGE L. REV. 487-512 (2006).
- *Teaching Effective Oral Argument Skills: Forget about the Drama Coach*, 75 MISS. L. J. 869 (2006).
- *Professor Kingsfield: The Most Misunderstood Character in Literature*, 33 HOFSTRA L. REV. 955 (2005).
- *A Proposal For a Wholesale Reform of California’s Sentencing Practice and Policy*, 38 LOYOLA L.A. L. REV. 903 (2004) (co-authored with Clark Kelso; contributions from Erwin Chemerinsky, Kevin Reitz, Jonathan Turley, and Franklin E. Zimring).
- *Reforming Three Strikes’ Excesses*, 82 WASH. U. L. Q. 1 (2004).
- *California’s Three Strikes and We’re Out: Was Judicial Activism Our Best Hope?*, 37 U.C. DAVIS L. REV. 1025 (2004).
- *Punishment and Democracy: A Hard Look at Three Strikes’ Overblown Promises*, 90 CAL. L. REV. 257 (2002) (book review).
- *Reform of California’s Grand Jury System*, 35 LOYOLA L.A. L. REV. 513 (2002) (co-authored with J. Clark Kelso).
- *What Marc Anthony, Lady Macbeth, and Iago Teach Us about the First Amendment*, 2 NEV. L. J. 631 (2002).
- *Somewhat Frantic: A Brief Response to Crime, Punishment and Romero*, 40 DUQ. L. REV. 615 (2002).
- *The Nuremberg Files: Testing the Outer Limits of the First Amendment*, 61 OHIO ST. L. J. 1175 (2000).

- *How Imperial Is the Supreme Court? An Analysis of Supreme Court Abortion Doctrine and Popular Will*, 34 U.S.F. L. REV. 49 (1999)
- *Article III Judges and the Initiative Process: Are Article III Judges Hopelessly Elitist?*, 31 LOYOLA L. A. L. REV. 1275 (1998) (co-authored with Andrew J. Glendon).
- *Proposition 215: De Facto Legalization of Pot and the Shortcomings of Direct Democracy*, 31 U. MICH. J. L. REFORM 707 (1998).
- *Three Strikes: Can We Return to Rationality?*, 87 J. CRIM. L. & CRIMINOLOGY 395 (1997).
- *Three Strikes and the Romero Decision: The Supreme Court Restores Democracy*, 30 LOYOLA L.A. L. R. 1643 (1997).
- *The Firm Revisited: Somebody at the Justice Department Has Been Reading John Grisham*, 4 NAT'L ITALIAN AM. BAR ASS'N J. 73 (1996).
- *More Noise from the Tower of Babel: Making "Sense" out of Reeves v. Ernst & Young*, 56 OHIO STATE L. J. 1363 (1995).
- *Has the Supreme Court Really Turned RICO Upside Down? An Examination of NOW v. Scheidler*, 85 J. CRIM. L. & CRIMINOLOGY 1223 (1995).
- *Payne v. Tennessee: "Stunning Ipse Dixit,"* 8 NOTRE DAME J. L., ETHICS & PUBLIC POLICY 165 (1994).
- *Does Culpability Matter? Statutory Construction Under 42 U.S.C. §6928*, 6 TULANE ENV. L. J. 187 (1993).
- *Reconsidering Rehabilitation*, 65 TULANE L. REV. 1011 (1991).
- *Journal Wars*, 22 ST. MARY'S L.J. 927 (1991).
- *The Appellate Lawyer's Role in the Caseload Crisis*, 58 MISS. L.J. 437 (1988).
- *Do We Really Want to Curtail Appeals?*, 6 FIFTH CIR. REP. 133 (1988).
- *In Defense of Student-Run Law Reviews*, 17 CUMBERLAND L. REV. 859 (1987).
- *Baby Jane Doe: Stating a Cause of Action Against the Officious Intermeddler*, 17 HASTINGS L. J. 863 (1986).
- *Louisiana's Natural Death Act and Dilemmas in Medical Ethics*, 46 LA. L. REV. 259 (1985).

- *An Analysis of Mississippi's Natural Death Act*, 54 MISS. L. J. 459 (1984).
- *Letting Seriously Ill Minors Die: A Review of Louisiana's Natural Death Act*, 31 LOYOLA L. REV. 67 (1985).
- *The Senate's Report on HEREIU: Will RICO Take a Walk on the Boardwalk with Local 254?*, 16 RUTGERS L.J. 671 (1985).
- *Fifth Circuit Symposium: Criminal Law and Procedure*, 30 LOYOLA L. REV. 671 (1984).
- *The Baby Jane Doe Litigation: An Exercise in Raw Executive Power*, 17 CONN. L. REV. 95 (1984).
- *The Ethics of BRILAB*, 27 HOW. L. J. 905 (1984).
- *The Power of State Legislatures to Subpoena Federal Officials*, 58 TULANE L. REV. 548 (1983).
- *Congressional Withdrawal of Jurisdiction from Federal Courts: A Reply to Professor Uddo*, 28 LOYOLA L. REV. 61 (1982).
- *Mapp's Exclusionary Rule: Is the Court Crying Wolf?*, 86 DICKINSON L. REV. 15 (1981) (lead author; co-authored with Jane C. Burger).
- *Trial Manual* (1980; a book length volume co-authored with Arthur Lemann and Gerard Rault, for the East Baton Rouge District Attorney's office; funded by a grant from L.E.A.A.) (revised 1983).
- *Independent and Adequate State Grounds: A Stone Unturned by Louisiana's Criminal Defense Bar?*, 25 LOYOLA L. REV. 745 (1979).
- *Fifth Circuit Symposium: Civil Procedure and Federal Jurisdiction*, 24 LOYOLA L. REV. 529 (1978).
- *Speedy Trial Under Rule 1100: Administrative Ease or Administrative Agony?*, 50 TEMPLE L.Q. 513 (1977).
- *Constitutional Safeguards for Juvenile Transfer Procedure: The Ten Years Since Kent v. United States*, 26 DEPAUL L. REV. 23 (1976).

### **Selected Presentations**

- Advocate in Residence, Washburn Law School, 2015 (gave three presentations on advocacy).



- *Reforming California Sentencing Practice and Procedure*, 2014 (delivered symposium paper).
- *The New Personal Jurisdiction Case Law: Allowing Foreign Defendants to Avoid American Courts*, 2014 (delivered paper to the Northern California International Law Scholars).
- *Teaching Oral Advocacy: Creating More Opportunities for an Essential Skill*, 2014 (delivered a paper via Skype to Seton Hall symposium on advocacy).
- *Are We On the Road to Legalizing Marijuana?*, 2013 (delivered a lecture to the Northern California Association of Law Librarians).
- *Integrating Experiential Learning in Traditional Classrooms*, 2013 (along with my wife, delivered a lecture and demonstration on how to integrate experiential learning into a traditional classroom).
- *Wine and the Law*, 2013 (delivered a lecture on some of the constitutional issues surrounding the interstate shipment of wine).
- *Implications of the Legalization of Marijuana in Colorado and Washington*, 2013 (delivered a paper at the annual meeting of the Association of American Law Schools).

### **International Experiences and Presentations**

- Spring 2017, designed and taught a course at the University of Parma focusing on Recent Developments in American Criminal Law
- Spring 2017, lectured on Brock Turner and American sex offense law at Bicocca Law School in Milan
- Spring 2017, lectured on Miranda: Sounds and Fury Signifying Nothing? at Bicocca Law School in Milan
- Spring 2017, lectured sex offenses in the United States at the University of Florence
- Spring 2017, lectured on issues surrounding legalization of marijuana at the Quarte Giornate Di Studi Penalistici Per Dottorandi, Lake Garda/
- Spring 2017, lectured on issues surrounding legalization of marijuana at the University of Parma
- Spring 2017, lectured on issues surrounding legalization of marijuana at the University of Bergamo

- Spring 2017, lectured on issues surrounding legalization of marijuana at the Italian Parliament in Rome
- Spring 2016, wrote and presented an article at McGeorge's Global Center Annual Symposium (Crimes Without Borders: In Search for an International Justice System) (my presentation was entitled *Bargained for Justice: Lessons from Italy?* in which I discuss some of the advantages of the Italian bargained for justice system, lacking in the U.S.).
- Spring 2016, designed and taught a course at the University of Salzburg focusing on why European litigants want to avoid suit in the U.S. and how to advise clients to present suit in the U.S. court system.
- Summer 2012, designed and taught a course on Comparative Criminal Procedure in Salzburg (using the Amanda Knox case to explore differences between the Italian and U.S. criminal justice systems).
- Fall 2009, presented in Budapest at the meeting of the International Young Lawyers Association on the death penalty (our panel was chosen as the best program at the meeting).
- Summer 2009, designed and co-taught a course of Comparative Criminal Procedure in Salzburg.
- Summer 2008, designed and co-taught a course on Comparative White Collar Crime in London.
- Fall 2007, served as Fulbright Senior Specialist, taught a course on Comparative Criminal Procedure at the University of Parma.
- Summer 2007, participant, Comparative Law Seminar, University of Parma.