

# Daniel Epps

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SSRN PAPERS: [http://papers.ssrn.com/sol3/cf\\_dev/AbsByAuth.cfm?per\\_id=462731](http://papers.ssrn.com/sol3/cf_dev/AbsByAuth.cfm?per_id=462731)

FIRST MONDAYS: <http://www.firstmondays.fm>

## Academic appointments

- 2016– **Washington University in St. Louis**  
*Associate Professor of Law*
- 2013–2016 **Harvard Law School**  
*Climenko Fellow & Lecturer on Law*
- Fall 2012 **University of Virginia School of Law**  
*Lecturer (part-time)*

## Research & teaching interests

criminal law • criminal procedure • public law • remedies & sanctions • U.S. Supreme Court

## Education

- 2008 **J.D. *magna cum laude***  
**Harvard Law School**  
*Harvard Law Review*, Articles Co-Chair  
John M. Olin Law & Economics Prize
- 2004 **A.B. in Philosophy *summa cum laude***  
**Duke University**  
Highest Distinction in Philosophy  
*Phi Beta Kappa*

## Scholarship

### ARTICLES

#### *The Lottery Docket*

116 MICHIGAN LAW REVIEW \_\_ (forthcoming) (with William Ortman)

#### *Adversarial Asymmetry in the Criminal Process*

91 NYU LAW REVIEW 762–854 (2016)

#### *The Consequences of Error in Criminal Justice*

128 HARVARD LAW REVIEW 1065–1151 (2015)

### SHORTER PIECES & STUDENT WORK

#### *One Last Word on the Blackstone Principle*

101 VIRGINIA LAW REVIEW ONLINE 34–47 (2016)

#### *Bailey v. United States: Another Win for that “Doggone Fourth Amendment”*

2012–2013 CATO SUPREME COURT REVIEW 187–214 (2013) (invited contribution)

#### Note, *Mechanisms of Secrecy*

121 HARVARD LAW REVIEW 1556–77 (2008)

#### Case Comment, *Bell Atlantic Corp. v. Twombly*

120 HARVARD LAW REVIEW 305–15 (2007)

#### Recent Case, *Harper v. Poway Unified School District*

120 HARVARD LAW REVIEW 1691–98 (2007)

### WORKS IN PROGRESS

“Jury Knowledge and Political Feedback”

“Criminal Procedure at Dusk”

“Harmless Constitutional Errors and Substantial Rights”

### COMMENTARY

Co-Host, *First Mondays* (podcast about the U.S. Supreme Court) (October 2016–present)

#### *Government Workers Can Ignore Trump’s Immigration Order — And We’ll Defend Them*

BOSTON GLOBE (Feb. 4, 2017) (with Leah Litman & Ian Samuel)

#### *Justice Kennedy’s Extraordinary Solo Opinion on Solitary Confinement*

CASETEXT.COM (June 20, 2015)

#### *What the ‘Bailey’ Case May Reveal About Supreme Court Ideology*

THEATLANTIC.COM (Oct. 31, 2012)

#### *In Health Care Ruling, Roberts Steals a Move from John Marshall’s Playbook*

THEATLANTIC.COM (June 28, 2012)

## Judicial clerkships

- 2009–2010 **Supreme Court of the United States**  
Chambers of Justice Anthony M. Kennedy  
*Law clerk*
- 2008–2009 **United States Court of Appeals for the Fourth Circuit**  
Chambers of Judge J. Harvie Wilkinson III  
*Law clerk*

## Other experience

- 2010–2013 **King & Spalding LLP**  
Washington, DC  
*Associate, National Appellate Litigation Practice*  
Notable cases included successful certiorari petition and merits briefing in *Walden v. Fiore*, 133 S. Ct. 1493 (2014); brief for Court-appointed amicus curiae in *Millbrook v. United States*, 133 S. Ct. 1441 (2013); and successful merits briefing in *Brady v. National Football League*, 644 F.3d 661 (8th Cir. 2011). Drafted 28 U.S.C. § 2255 motion to vacate federal mail- and wire-fraud convictions which resulted in numerous counts of conviction being overturned. Provided strategic counseling on corporate white-collar criminal matters.
- Summer 2007 **Mayer, Brown, Rowe & Maw LLP**  
New York, NY  
*Law Clerk, Supreme Court & Appellate Practice Group*
- Summer 2006 **Harvard Law School**  
*Summer Academic Fellow*
- Summer 2005 **The Daily Star**  
Beirut, Lebanon  
*Intern Reporter*
- Spring 2005 **Eugene Weekly**  
Eugene, OR  
*Intern Reporter*
- Fall 2004 **Kerry-Edwards 2004/North Carolina Democratic Victory 2004**  
Raleigh, NC  
*Press Assistant*

## Pro bono representation

*Ocasio v. United States*  
136 S. Ct. 1423 (2016)  
Served as co-counsel for defendant Samuel Ocasio in Supreme Court merits case involving the scope of conspiracy liability for extortion under the Hobbs Act, 18 U.S.C. § 1951. Previously served as counsel in appeal to the U.S. Court of Appeals for the Fourth Circuit, *United States v. Ocasio*, 750 F.3d 399 (4th Cir. 2014).

*Kane v. Lewis*

U.S. No. 15-193

Filed certiorari petition as counsel of record seeking to reverse a Fourth Circuit ruling that overturned a damages award in a 42 U.S.C. § 1983 suit arising out of a fatal police shooting during a military-style police raid.

*United States v. Davila*

133 S. Ct. 2139 (2013)

Drafted amicus brief filed on behalf of 57 scholars of criminal law and criminal procedure arguing that judicial interference with the plea-bargaining process in violation of Federal Rule of Criminal Procedure 11(c)(1) is a structural error requiring automatic reversal of a conviction.

*Wolfe v. Clarke*

718 F.3d 277 (4th Cir. 2013)

Drafted brief arguing that federal habeas court properly exercised its authority in barring retrial as a remedy for the prosecution's serious *Brady* and *Giglio* violations in a state capital murder case.

*United States v. Churchwell*

465 F. App'x 864 (11th Cir. 2012)

Served as lead counsel in appeal of drug possession conviction arguing that the district court admitted out-of-court testimonial statements in violation of the Confrontation Clause.

*Virginia v. Moore*

553 U.S. 164 (2008)

Researched state arrest laws to help counsel for defendant prepare for Supreme Court argument in case involving the scope of the Fourth Amendment's search-incident-to-arrest exception to the warrant requirement.

*New York State Board of Elections v. López Torres*

552 U.S. 196 (2008)

Drafted Supreme Court amicus brief on behalf of New York State Senator, arguing that New York's system for selecting party candidates for judicial office violates the First Amendment rights of New York voters.

## Teaching

- 2016–17 Criminal Law, Structural Criminal Justice
- 2013–16 First-year Legal Research and Writing
- 2012 Supreme Court Decisionmaking

## Honors & awards

- 2016 **Finalist, Junior Scholars Paper Competition**  
Criminal Justice Section, American Association of Law Schools  
For *Adversarial Asymmetry in the Criminal Process*
- 2013 **Exemplary Legal Writing**  
*The Green Bag Almanac & Reader*  
For Brief of Professor Stephen E. Sachs as Amicus Curiae, *Atlantic Marine Construction Co. v. U.S. District Court*, 134 S. Ct. 568 (2013) (as co-counsel with Jeffrey S. Bucholtz & Stephen E. Sachs)

2008 **John M. Olin Law & Economics Prize**  
Harvard Law School  
For *Mechanisms of Secrecy*

## Presentations

Feb. 2017 Washington University School of Law, Panelist, *The New Supreme Court Nominee: Neil Gorsuch*

Nov. 2016 Eighth Annual Southwest Criminal Law Workshop, William S. Boyd School of Law, University of Nevada-Las Vegas, Commentator, *Surrendering Sixth Amendment Principles* (by Carrisa Hessick, UNC School of Law)

Oct. 2016 2016 Southeastern Junior-Senior Faculty Workshop, University of North Carolina School of Law, *The Lottery Docket*

Nov. 2015 Washington University School of Law, *Adversarial Asymmetry in the Criminal Process*

Sept. 2015 Seventh Annual Southwest Criminal Law Workshop, University of Utah S.J. Quinney School of Law, *Adversarial Asymmetry in the Criminal Process*

July 2015 CrimFest, Cardozo School of Law, *Adversarial Asymmetry in the Criminal Process*

Jan. 2015 Harvard Law School, *The Consequences of Error in Criminal Justice*

Nov. 2014 The University of Chicago Law School, *The Consequences of Error in Criminal Justice*

Nov. 2014 Harvard Law School Criminal Justice Program of Study, *The Consequences of Error in Criminal Justice*

## Media Appearances

St. Louis Public Radio, *St. Louis on the Air Legal Roundtable*, Feb. 20, 2017

Harry Bruinius, “Why Some Liberals are Warming to Trump’s Supreme Court Pick,” CHRISTIAN SCIENCE MONITOR, Feb. 10, 2017

Peter Baker, “Picking One Justice, Trump Has Eye on Choosing a Second,” N.Y. TIMES, Jan. 31, 2017

Lisa Belkin, “Civil Servant? Worried About Illegal Orders? These Lawyers Want to Defend You,” YAHOO NEWS, January 30, 2017

Kimberly Strawbridge Robinson, “Last Call for SCOTUS Grants, Amid Historically Slow Term,” U.S. LAW WEEK, Jan. 12, 2017

## Service

### **Fair Punishment Project, Harvard Law School**

2016– Member, Legal Advisory Council for Amicus and Issue Briefs

### **Committee Responsibilities**

2016–17 Clerkship Committee

### **Moot Court Judge**

Jan. 2016 *Puerto Rico v. Sanchez Valle* (for Petitioner)  
Oct. 2015 *Foster v. Chatman* (for Petitioner)  
Apr. 2014 *Lane v. Franks* (for Respondent)

### **Peer Review**

2015 *Harvard Law Review*

### **Bar Admissions**

2015 Supreme Court of the United States  
2015 United States Court of Appeals for the First Circuit  
2013 United States Court of Appeals for the Fifth Circuit  
2013 United States Court of Appeals for the District of Columbia Circuit  
2012 United States Court of Appeals for the Third Circuit  
2011 United States Court of Appeals for the Second Circuit  
2011 United States Court of Appeals for the Fourth Circuit  
2011 United States Court of Appeals for the Eighth Circuit  
2011 United States Court of Appeals for the Ninth Circuit  
2011 United States Court of Appeals for the Eleventh Circuit  
2011 District of Columbia