

Howard Merrill Wasserman

FIU College of Law
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Miami, Florida 33143
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Academic

Experience: **Florida International University College of Law • Miami, FL**

Associate Dean for Research and Faculty Development • July 2019-Present
Professor of Law • August 2011-Present
Tenure awarded • August 2009
Associate Professor of Law • August 2006-August 2011
Assistant Professor of Law • August 2003-August 2006
Founding Faculty Member
University Graduate Faculty
Professor of the Year (selected by students) • 2022
Graduation Hooder (selected by graduating class) • 2015; 2016; 2017
FIU Top Scholar • 2011
American Law Institute • Elected 2020

Courses:

- Civil Procedure
- Evidence
- Civil Rights
- Federal Courts

Service:

- Dean Search Committee (2018)
- Administer Faculty Speaker Series and Faculty Exchange Program
- Established Annual Decanal Lecture (in 8th year) and Judicial Lecture (in 6th year)
- Appointments Committee (Chair: 2011-12; 2024-25)
- Law Review Committee
- Academic Standards Committee (Chair: 2016-17; 2017-18)
- Ad Hoc University Working Group on Campus Demonstration and Protest Regulations
- University Academic Policies and Procedures Committee

Saint Louis University School of Law • St. Louis, MO

Visiting Associate Professor of Law • July 2007-May 2008

Courses:

- Civil Procedure
- Civil Rights

Florida State University College of Law • Tallahassee, FL

Visiting Assistant Professor • August 2001-May 2003

Courses:

- Civil Procedure
- First Amendment
- Civil Rights Survey
- Legislation
- Criminal Procedure II

Books:

[UNDERSTANDING CIVIL RIGHTS LITIGATION](#) (Carolina Academic Press 3d ed. 2023) ([2d ed. 2018](#)) ([1st ed. 2013](#) Lexis Nexis)

[PAINTING CONSTITUTIONAL LAW: XAVIER CORTADA'S IMAGES OF CONSTITUTIONAL RIGHTS](#) (M.C. Mirow & Howard M. Wasserman eds., Brill 2021)

[INFIELD FLY RULE IS IN EFFECT: THE HISTORY AND STRATEGY OF BASEBALL'S MOST \(IN\)FAMOUS RULE](#) (McFarland Press 2019)

[INSTITUTIONAL FAILURES: DUKE LACROSSE, UNIVERSITIES, THE NEWS MEDIA, AND THE LEGAL SYSTEM](#) (Howard M. Wasserman ed., Ashgate Publishing 2010)

Articles and Chapters:

Constitutional Litigation After Trump v. CASA (Under Submission)

Constitutional Nullification, Modern Constitutional Torts, and Exclusive Private Enforcement. 60 GA. L. REV. ____ (forthcoming 2026)

Revisiting Catalyzing Fans: How Dan Markel Predicted the Future of College Athletics, 52 FLA. ST. L. REV. 569 (2025) (*with* Michael McCann)

[Introduction to Perspectives on the International Criminal Court and International Criminal Law and Procedure: A Symposium in Memory of Megan Fairlie](#), 19 FIU L. REV. 483 (2025)

[303 Creative, Exclusive Private Enforcement, and Blue State Revenge](#), 51 J. LEGIS. 93 (2025) (*with* Charles W. “Rocky” Rhodes)

[Judicial Process and Vigilante Federalism](#), 108 CORNELL L. REV. ONLINE 125 (2023) (*with* Charles W. “Rocky” Rhodes)

[Solving the Procedural Puzzles of the Texas Heartbeat Act and its Imitators: New York Times v. Sullivan as Historical Analogue](#), 60 HOUS. L. REV. 93 (2022) (*with* Charles W. “Rocky” Rhodes)

[Solving the Procedural Puzzles of the Texas Heartbeat Act and its Imitators: The Potential for Defensive Litigation](#), 75 SMU L. REV. 187 (2022) (*with* Charles W. “Rocky” Rhodes)

[Solving the Procedural Puzzles of the Texas Heartbeat Act and its Imitators: The Limits and Opportunities of Offensive Litigation](#), 71 AM. U. L. REV. 1029 (2022) (*with* Charles W. “Rocky” Rhodes)

[Civil Procedure in the Chief Justice's Year-End Report on the Federal Judiciary](#), 51 STETSON L. REV. 317 (2022)

[Zombie Laws](#), 25 LEWIS & CLARK L. REV. 1047 (2022)

[A Court with No Names: Anonymity and Celebrity on the Kardashians Court](#), 106 IOWA L. REV. ONLINE 47 (2021)

[*Congress and Universal Injunctions*](#), 43 CARDOZO L. REV. DE NOVO 187 (2021)

[*Academic Feeder Judges*](#), 105 JUDICATURE 7 (2021)

[*Sport and Expression, Sport as Expression*](#), 14 FIU L. REV. 733 (2021)

[*The Forum-Defendant Rule, the Mischief Rule, and Snap Removal*](#), 62 WM. & MARY L. REV. ONLINE 51 (2021)

“May It Please the Court”: Of Florida, By Florida, For Florida, in [PAINTING CONSTITUTIONAL LAW: XAVIER CORTADA’S IMAGES OF CONSTITUTIONAL RIGHTS](#) (M.C. Mirow & Howard M. Wasserman eds., Brill 2021)

[*Testing the Koufax Curse: How 18 Jewish Pitchers, 18 Jewish Hitters, and Rod Carew Performed on Yom Kippur*](#), 49 BASEBALL RSCH. J. 71 (2020)

[*Against Stealing First Base*](#), 27 NINE: J. BASEBALL HIST. & CULTURE 108 (2020)

[*Concepts Not Nomenclature: Universal Injunctions, Declaratory Judgments, Opinions, and Precedent*](#), 91 U. COLO. L. REV. 999 (2020)

[*Precedent, Non-Universal Injunctions, and Judicial Departmentalism: A Model of Constitutional Litigation*](#), 23 LEWIS & CLARK L. REV. 1077 (2020)

[*Keeping the Infield Fly Rule in Effect*](#), 13 FIU L. REV. 965 (2019)

[*Introduction: Barnette at 75*](#), 13 FIU L. REV. 585 (2019)

[*“Nationwide” Injunctions are Really “Universal” Injunctions and They Are Never Appropriate*](#), 22 LEWIS & CLARK L. REV. 335 (2018)
(cited in *Trump v. CASA, Inc.*, 606 U.S. ____ (2025))

[*Police Misconduct, Video Recording, and Procedural Barriers to Rights Enforcement*](#), 96 N.C. L. REV. 1313 (2018)

Recording Of and By Police: The Good, the Bad, and the Ugly, 20 J. GENDER, RACE & JUST. 543 (2017)

The Uncertain Hope of Body Cameras, in [FERGUSON’S FAULT LINES: THE RACE QUAKE THAT ROCKED A NATION](#) (Kimberly Jade Norwood, ed.) (ABA Publishing 2016)

[*Holmes and Brennan*](#), 67 ALA. L. REV. 797 (2016)

[*Just a Bit Aside: Perverse Incentives, Cost-Benefit Imbalances, and the Infield Fly Rule*](#), 164 U. PENN. L. REV. ONLINE 145 (2016)

[*The Process of Marriage Equality*](#), 42 HASTINGS CONST. L.Q. 243 (2015) (*with* Josh Blackman)

[*Fletcherian Standing, Substantive Merits, and Spokeo, Inc. v. Robins*](#), 68 VAND L. REV. EN BANC 257 (2015)

[*Crazy in Alabama: The Judicial Process and the Crawl Towards Marriage Equality in the Land of George Wallace*](#), 110 NW. U. L. REV. ONLINE 1 (2015)

[*Epilogue: Moral Panics and Body Cameras*](#), 92 WASH. U. L. REV. 845 (2015); [WASH. U. L. REV. COMMENTARIES](#) (2015)

[*Moral Panics and Body Cameras*](#), 92 WASH. U. L. REV. 831 (2015); [WASH. U. L. REV. COMMENTARIES](#) (2014)

[*Catalyzing Fans*](#), 6 HARV. J. SPORTS & ENT. L. 1 (2015) (*with* Michael McCann and Dan Markel²⁷¹)

[*Mixed Signals on Summary Judgment*](#), 2014 MICH. ST. L. REV. 1331

[*An Empirical Analysis of the Infield Fly Rule*](#), 4 J.L. (3 J. LEGAL METRICS) 127 (2014)

[*Football and the Infield Fly Rule*](#), 61 UCLA L. REV. DISCOURSE 272 (2014)

[*The Economics of the Infield Fly Rule*](#), 2013 UTAH L. REV. 479 (2013)

[*Reappropriating Judicial Activism*](#), 16 GREEN BAG 2D 463 (2013)

[*A Jurisdictional Perspective on New York Times v. Sullivan*](#), 107 NW. U. L. REV. 901 (2013)

[*Rejecting Sovereign Immunity in Public Law Litigation*](#), 80 FORDHAM L. REV. RES GESTAE 76 (2012)

The Roberts Court and the Civil Procedure Revival, 31 REV. LITIG. 311 (2012)

[*Prescriptive Jurisdiction, Adjudicative Jurisdiction, and the Ministerial Exemption*](#), 160 U. PA. L. REV. PENNUMBRA 289 (2012)

[*The Demise of "Drive-by Jurisdictional Rulings"*](#), 105 NW. U. L. REV. 947 (2011); [105 NW. U. L. REV. COLLOQUY 184](#) (2011)

Constitutional Pathology, the War on Terror, and United States v. Klein, 5 J. NAT'L SEC. L. & POL'Y 211 (2011) (Refereed Journal)

[*The Irrepressible Myth of Klein*](#), 79 U. CIN. L. REV. 53 (2010)

An Institutional Perspective on the Duke Lacrosse Case in INSTITUTIONAL FAILURES: DUKE LACROSSE, UNIVERSITIES, THE NEWS MEDIA, AND THE LEGAL SYSTEM (Howard M. Wasserman, ed.) (Ashgate Publishing) (2010)

Civil Rights and Federal Courts: Creating a Two-Course Sequence, 54 SAINT LOUIS U. L.J. 821 (2010) (in *Teaching Civil Rights*) (Symposium)

Iqbal, Procedural Mismatches, and Civil Rights Litigation, 14 LEWIS & CLARK L. REV. 157 (2010) (in *Pondering Iqbal*) (Symposium)

Orwell's Vision: Video and the Future of Civil Rights Enforcement, 68 MD. L. REV. 600 (2009)

Jurisdiction, Merits, and Procedure: Thoughts on a Trichotomy, 102 NW. U. L. REV. 1547 (2008)

Jurisdiction, Merits, and Non-Exant Rights, 56 KANSAS L. REV. 227 (2008)

[*Jurisdiction, Merits, and Procedure: Thoughts on Dodson's Trichotomy*](#), 102 NW. U. L. REV. COLLOQUY 215 (2008)

Video evidence and summary judgment: The procedure of Scott v. Harris, 91 JUDICATURE 108 (2008)

Jurisdiction, Merits, and Substantiality, 42 TULSA L. REV. 579 (2007) (*in Supreme Court Review 2005-06*) (Symposium)

Bartnicki as Lochner: Some Thoughts on First Amendment Lochnerism, 33 N. KY. L. REV. 421 (2006) (*in First Amendment Lochnerism? Constitutional Limitations on Economic Regulation of Communications, Information, and Technology Industries*) (Symposium)

Fans, Free Expression, and the Wide World of Sports, 67 U. PITT. L. REV. 525 (2006)

If You Build it, They Will Speak: Public Stadiums, Public Forums, and Free Speech 14 NINE: J. BASEBALL HIST. & CULTURE 15 (2006) (Invited)

Jurisdiction and Merits, 80 WASH. L. REV. 643 (2005)

Cheers, Profanity, and Free Speech, 31 J.C. & U.L. 377 (2005) (Refereed Journal)
Reviewed in *Elsewhere*, LEGAL AFFAIRS 60 (Jan./Feb. 2005)

Continuity of Congress: A Play in Three Stages, 53 CATH. U. L. REV. 949 (2004)

Symbolic Counter-Speech, 12 WM. & MARY BILL RTS. J. 367 (2004)

Civil Rights Plaintiffs and John Doe Defendants: A Study in § 1983 Procedure, 25 CARDOZO L. REV. 793 (2003)

The Trouble With Shadow Government, 52 EMORY L.J. 281 (2003)

Compelled Expression and the Public Forum Doctrine, 77 TUL. L. REV. 163 (2002)

Structural Principles and Presidential Succession, 90 KY. L.J. 345 (2002)

Two Degrees of Speech Protection: Free Speech through the Prism of Agricultural Disparagement Laws, 8 WM. & MARY BILL RTS. J. 323 (2000)

What's Good for General Motors: Corporate Speech and the Theory of Free Expression, 66 GEO. WASH. L. REV. 235 (1998) (with Martin H. Redish)

Comment, *Second-Best Solution: The First Amendment, Broadcast Indecency, and the V-Chip*, 91 NW. U. L. REV. 1190 (1997)

Ongoing
Writing:

Section Editor, [JOTWELL Courts Law](#)
Editor, Manager, and Contributor, [PrawfsBlawg](#)

SCOTUSBlog
Contributions:

[*Court endorses private § 1983 enforcement of spending clause enactments*](#), SCOTUSBlog, June 9, 2023

[*Court explores continued private enforcement of spending clause enactments*](#), SCOTUBLOG, Nov. 11, 2022

[*In family's lawsuit against public nursing home, court revisits private rights of action and the spending clause*](#), SCOTUSBLOG, Nov. 7, 2022

[*Court constricts, even if it does not quite eliminate, damages actions under Bivens*](#), SCOTUSBLOG, June 8, 2022

[*Criminal proceedings reach "favorable termination" when they end without conviction*](#), SCOTUSBLOG, Apr. 4, 2022

[*Justices weigh the effect of foreign borders and national security on Bivens actions*](#), SCOTUSBLOG, Mar. 3, 2022

[*Border agents, the First Amendment, and the continued vitality of Bivens*](#), SCOTUSBLOG, Mar. 1, 2022

[*Argument recap: Centaurs, Jean Valjean, and a proposed three-sentence ruling on the meaning of favorable termination*](#), SCOTUSBLOG, Oct. 13, 2021

[*Argument preview: Favorable termination and indications of innocence in Section 1983 malicious prosecution claims*](#), SCOTUSBLOG, Oct. 10, 2021

[*Opinion analysis: Selling cars in a forum state "relates to" a claim involving a car sold elsewhere*](#), SCOTUSBLOG, Mar. 26, 2021

[*Argument analysis: In Holocaust survivors' lawsuits, justices probe history and limits of comity abstention*](#), SCOTUSBLOG, Dec. 9, 2020

[*Case preview: Foreign sovereign immunity, comity, and the Holocaust*](#), SCOTUSBLOG, Dec. 6, 2020

[*Argument analysis: Due process, causation and stopping points for a 1945 doctrine in a 2020 world*](#), SCOTUSBLOG, Oct. 9, 2020

[*Case preview: Defining "relatedness" in personal jurisdiction*](#), SCOTUSBLOG, Oct. 5, 2020

[*Opinion analysis: Congress cannot subject states to suit for pirating and plundering copyrighted material*](#), SCOTUSBLOG, Mar. 23, 2020

[*Argument recap: Justices pillage state arguments for sovereign immunity from copyright infringement*](#), SCOTUSBLOG, Nov. 6, 2019

[*Argument preview: Copyright and sovereign immunity in Davy Jones' locker*](#), SCOTUSBLOG, Oct. 29, 2019

[*Opinion analysis: Fabricated-evidence claims accrue only on favorable termination of prosecution*](#), SCOTUSBLOG, June 20, 2019

[Opinion analysis: The First Amendment, probable cause, and questions left unanswered](#), SCOTUSBLOG, May 28, 2019

[Argument analysis: Spinning heads and swimming constitutional rights in debates over an accrual rule](#), SCOTUSBLOG, Apr. 17, 2019

[Argument preview: Searching for an accrual rule when the government fabricates evidence in a criminal proceeding](#), SCOTUSBLOG, Apr. 10, 2019

[Opinion analysis: Unanimous court rejects equitable tolling for interlocutory appeals of class-certification denials](#), SCOTUSBLOG, Feb. 26, 2019

[Argument analysis: Laughing and tolling the time to appeal class certification orders](#), SCOTUSBLOG, Nov. 28, 2018

[Argument analysis: "Contempt of cop"—Justices search for compromise standard for First Amendment retaliatory arrests](#), SCOTUSBLOG, Nov. 27, 2018

[Argument preview: Equitable tolling and appeals of class certification](#), SCOTUSBLOG, Nov. 20, 2018

[Argument preview: Probable cause, retaliatory arrests, and the First Amendment](#), SCOTUSBLOG, Nov. 19, 2018

[Opinion analysis: Constitutional challenge to shackling policy becomes moot when criminal prosecutions terminate](#), SCOTUSBLOG, May 14, 2018

[Opinion analysis: Consolidated cases retain their independent character for finality and appealability](#), SCOTUSBLOG, Mar. 27, 2018

[Argument analysis: "Bound and gagged in body armor, hung upside down": Considering reviewability of shackling decisions](#), SCOTUSBLOG, Mar. 27, 2018

[Argument preview: Appealability, mandamus, and mootness in the shadow of restraints on criminal defendants](#), SCOTUSBLOG, Mar. 19, 2018

[Argument analysis: "Make an all-purpose consolidation, ... like marriage": Debating the meaning of consolidation and its effects on finality](#), SCOTUSBLOG, Jan. 16, 2018

[Argument preview: Consolidation and finality](#), SCOTUSBLOG, Jan. 9, 2018

[Opinion analysis: Only Congress can make a jurisdictional rule](#), SCOTUSBLOG, Nov. 8, 2017

[Argument analysis: Alito and Ginsburg spar over the rules for timely appeals](#), SCOTUSBLOG, Oct. 10, 2017

[Argument preview: The court returns to the jurisdictionality of appellate time limits](#), SCOTUSBLOG, Oct. 3, 2017

[Opinion analysis: Majority sides with employee in civil service argument, but Justice Gorsuch announces his presence with authority](#), SCOTUSBLOG, June 26, 2017

[Opinion analysis: Standing, intervention, and a narrow disposition](#), SCOTUSBLOG, June 5, 2017

[Opinion analysis: But-for causation and inherent-power civil sanctions](#), SCOTUSBLOG, Apr. 18, 2017

[Argument analysis: Intervention, standing, and control over litigation](#), SCOTUSBLOG, Apr. 18, 2017

[Argument analysis: Pulling wings off flies and other efforts to make sense of the Civil Service Reform Act](#), SCOTUSBLOG, Apr. 17, 2017

[Argument preview: Revisiting the proper forum for civil service review in mixed cases](#), SCOTUSBLOG, Apr. 10, 2017

[Argument preview: Standing for intervention](#), SCOTUSBLOG, Apr. 10, 2017

[Argument Analysis: “The train jumped the track and it went in an entirely wrong direction”: The Court considers the causation standard for imposing sanctions](#), SCOTUSBLOG, Jan. 11, 2017

[Argument preview: Bad-faith discovery sanctions, inherent authority, and direct causation](#), SCOTUSBLOG, Jan. 3, 2017

[Opinion analysis: Improper motive can violate the First Amendment, even with a factual mistake](#), SCOTUSBLOG, Apr. 26, 2016

[Argument analysis: The First Amendment, political inactivity, and improper government motive](#), SCOTUSBLOG, Jan. 20, 2016

[Argument preview: The First Amendment, public employees, and misperceived political association](#), SCOTUSBLOG, Jan. 12, 2016

[Opinion analysis: Removing discretion in convening three-judge district courts](#), SCOTUSBLOG, Dec. 8, 2015

[Argument analysis: “Wow . . . That’s my comment”—a passive Court and a predictable outcome on three-judge courts](#), SCOTUSBLOG, Nov. 5, 2015

[Argument preview: Is a three-judge court “not required” when a pleading fails to state a claim?](#), SCOTUSBLOG, Oct. 19, 2015

[Opinion Analysis: Clear Statements, sovereign immunity, and timeliness](#), SCOTUSBLOG, Apr. 23, 2015

[Opinion analysis: Finality, appealability, and single-claim actions](#), SCOTUSBLOG, Jan. 21, 2015

[Argument analysis: A living Federal Tort Claims Act?](#), SCOTUSBLOG, Dec. 12, 2014

[Argument analysis: Finality and a tale of two rules](#), SCOTUSBLOG, Dec. 11, 2014

[Argument preview: Jurisdictionality, timeliness, and the Federal Tort Claims Act](#), SCOTUSBLOG, Dec. 8, 2014

[Argument preview: Finality, consolidation, and multi-district litigation](#), SCOTUSBLOG, Dec. 5, 2014

[Opinion recap: Operational consistency and predictability prevail in defining when a judgment is final](#), SCOTUSBLOG, Jan. 16, 2014,

[*Argument recap: Finding simple rules is not always so simple*](#), SCOTUSBLOG, Dec. 10, 2013

[*Argument preview: Attorney's fees and the final judgment rule*](#), SCOTUSBLOG, Dec. 2, 2013

[*Argument recap: When is "an action subject to judicial review" not a "judicially reviewable action"?*](#), SCOTUSBLOG, Oct. 3, 2012

[*Argument preview: Finding the proper Article III forum*](#), SCOTUSBLOG, Sept. 28, 2012

Other Publications:

[*A New Approach to Personal Jurisdiction*](#), JOTWELL, Feb. 2025 (review essay)

[*Question Selection, the Supreme Court, and Legitimacy*](#), JOTWELL, Oct. 2023 (review essay)

[*How at least one Jewish baseball player has beaten the Koufax jinx and the Kol Nidre curse*](#), The Forward, Oct. 14, 2022

[*Catching and Killing It in Federal Court*](#), JOTWELL, July 2022 (review essay)

[*These Jews were among baseball's all-time greats—but do they count as "Jewish baseball players?"*](#), THE FORWARD, June 1, 2022

[*Why this will be the most Jewish World Series in baseball history*](#), THE FORWARD, Oct. 25, 2021

[*Navigating the Procedure of Texas' Fetal Heartbeat Act*](#), LAW.COM, Oct. 18, 2021 (*with* Charles W. "Rocky" Rhodes)

[*Texas' fetal-heartbeat law creates a procedural morass, but it doesn't preclude judicial review*](#), DAILY J., Sept. 14, 2021 (*with* Charles W. "Rocky" Rhodes)

[*Why playing baseball on Yom Kippur Matters*](#), THE FORWARD, Aug. 2021

[*The Paths to Comprehensive Entity Liability in Constitutional Litigation*](#), JOTWELL, June 23, 2021 (review essay)

[*Are Jews who play baseball on the High Holidays really cursed? We ran the stats*](#), THE FORWARD, Sept. 12, 2020

[*Mischief and Snap Removal*](#), JOTWELL, June 2020 (review essay)

[*The Supreme Court is Broke, the Question is How to Fix It: Alternatives to Term Limits*](#), JOTWELL, June 4, 2019 (review essay)

[*A Step Towards a Proper Understanding of Constitutional Litigation*](#), JOTWELL, July 12, 2018 (review essay)

[*The Empirical Truth About Qualified Immunity*](#), JOTWELL, Feb. 23, 2018 (review essay)

[*Eight is Enough*](#), JOTWELL, Feb. 3, 2017 (review essay)

[*When They Were Kings: Greenberg and Koufax Sit on Yom Kippur*](#), TABLET MAGAZINE, Oct. 11, 2016

[*The Irrepressible Myth of SCOTUS*](#), JOTWELL, June 2016 (review essay)

[*Crazy in Alabama, but not for the reasons everything thinks*](#), JURIST, Mar. 14, 2015

[*University of Oklahoma expels the First Amendment*](#), JURIST, Mar. 14, 2015

[*Judicial Retention Meets Due Process*](#), JOTWELL, Sept. 30, 2014 (review essay)

[*The Truth About Empathy*](#), JOTWELL, July 2013 (review essay)

Introduction: *Football at the Crossroads*, 8 FIU L. REV. 1 (2013)

[*In Defense of Baseball's Infield Fly Rule*](#), THE ATLANTIC, Oct. 12, 2012

[*SCOTUS in Focus: Two Takes on Cameras in the Federal Courts*](#), JOTWELL, Aug. 2012 (review essay)

[*What If New York Fans Could Have Paid Jeremy Lin to Stay in New York?*](#), THE ATLANTIC, July 23, 2012 (with Dan Markel)

[*Evidence Meets Civil Procedure*](#), JOTWELL, Apr. 2011 (review essay)

The Phases and Faces of the Duke Lacrosse Controversy: A Conversation, 19 SETON HALL REVIEW OF SPORTS & ENT. L. 181 (2009)

Subsidized Speech, in ENCYCLOPEDIA OF THE SUPREME COURT OF THE UNITED STATES (Macmillan Reference 2008) (David Tanenhaus, ed.)

[*Allow 'cheering speech'*](#), USA TODAY, Mar. 7, 2008

[*The Mitchell Report on Steroids in Major League Baseball: Historical Accounting, Future Recommendations, and What Lies Ahead for the National Past time*](#), FINDLAW'S WRIT COMMENTARY, Dec. 21, 2007

[*The Civil Suit Arising Out of the Duke Lacrosse Rape Case: How it Illustrates the Limits of Civil Rights Litigation Even When Serious Wrongs Have Been Done*](#), FINDLAW'S WRIT COMMENTARY, Oct. 16, 2007

Can A Voluntary Athletic Association Prohibit Member Schools From Using 'Undue Influence' To Recruit Athletes?, PREVIEW OF UNITED STATES SUPREME COURT CASES (*TSSAA v. Brentwood Academy*), No. 7, p.370, Apr. 16, 2007

[*The Supreme Court's Recent Decision in Wallace v. Kato: Complicating the Process for Civil Rights Plaintiffs Challenging Unconstitutional Convictions*](#), FINDLAW'S WRIT COMMENTARY, Apr. 9, 2007

Introduction: *Mass Media in the Twenty-first Century*, 2 FIU L. REV. 1 (2007)

[*'The West Wing' and the VP: Constitutional Quandary*](#), NAT'L LAW JOURNAL, June 13, 2006

The West Wing *and Presidential Succession*, PICTURING JUSTICE: ON-LINE J. LAW AND POPULAR CULTURE, May 19, 2006

[Baseball, the Law, and the Rules, Part Three: Barry Bonds Takes on the First Amendment](#), FINDLAW'S WRIT COMMENTARY, Apr. 7, 2006

[Baseball, the Law, and the Rules, Part Two: Should the Pete Rose Hall-of-Fame Precedent Apply to Steroids-Era Players?](#), FINDLAW'S WRIT COMMENTARY, Mar. 27, 2006

[Baseball, the Law, and the Rules, Part One: Thoughts on Barry Bonds, Mark McGwire, Pete Rose, and the Baseball Hall of Fame](#), FINDLAW'S WRIT COMMENTARY, Mar. 24, 2006

Title VII: Does § 701(b) Limit the Subject Matter Jurisdiction of the Federal Courts?, PREVIEW OF UNITED STATES SUPREME COURT CASES (*Arbaugh v. Y&H Corp.*), No. 4, p.176, Jan. 9, 2006

[Fast Food Justice: Infamous Cases Involving French Fries, Obesity, Too-Hot Coffee, and Fingertips](#), FINDLAW'S WRIT COMMENTARY, Oct. 6, 2005,

May a Court Enjoin a Defendant's Speech as a Remedy in a Defamation Case?, PREVIEW OF UNITED STATES SUPREME COURT CASES (*Tory v. Cochran*), No. 6, p.320, Mar. 20, 2005

Free to Express His Views, MIAMI HERALD, Feb. 1, 2005

Must States Give Political Parties the Option of Holding Open Primaries?, PREVIEW OF UNITED STATES SUPREME COURT CASES (*Clingman v. Beaver*), No. 4, p.192, Jan. 10, 2005

[Fan Profanity](#), First Amendment Center Online, Freedom Forum, *reprinted* in BARBARA CLOUSE, PATTERNS FOR A PURPOSE (4th ed. 2005) (college-level textbook on rhetoric and writing)

[No Sacred Cows](#), NAT'L LAW JOURNAL, Jan. 26, 2004

Presentations:

303 Creative, *Exclusive Private Enforcement, and Blue State Revenge*, Southeastern Association of Law Schools Annual Meeting, July 2024; University of Miami Faculty Workshop, Mar. 2024

Organizer, *3rd Annual Law vs. Antisemitism Conference*, FIU Law Review, Feb. 2024

Organizer, *A Symposium in Memory of Megan Fairlie*, FIU Law Review, Feb. 2024

First Amendment and the Myth of the Preferred First Speaker, SEALS Works-in-Progress, July 2023

Panelist, *Supreme Court Review: Individual Rights*, SEALS Annual Meeting, July 2023

Solving the Procedural Puzzles of Texas' Fetal Heartbeat Act, Civil Procedure Unavailability Workshop, Oct. 2021; Civil Procedure Workshop, Aug. 2021; SEALS Works-in-Progress Program, Aug. 2021; FIU/UM Summer Brown Bag, July 2021

Panelist, *Cancel Culture and Lawyer Shaming: Ethics and First Amendment Issues*, Federalist Society of Broward and Palm Beach Counties Lawyers' Division, July 15, 2021

Painting Constitutional Law—An Author Discussion, AALS Art Law Section, Apr. 27, 2021

The Chief Justice's Year-End Reports and Civil Procedure, Stetson Law Review Symposium, Apr. 9, 2021

Testing the Koufax Curse: How 18 Jewish Pitchers, 18 Jewish Hitters, and Rod Carew Performed on Yom Kippur, 28th Annual NINE Spring Training Conference, Mar. 2021

Panelist, *Democracy Under Siege: What led to January 6th and what is next?*, FIU Insights, Jan. 8, 2021

Infield Fly Rule Is in Effect, [Baseball by the Book](#) (Podcast), Jan. 28, 2020

Academic Feeder Judges, University of Pittsburgh Law School, Oct. 2019; FIU College of Law, Oct. 2019

Debate, [When Should Judges Issue Nationwide Injunctions?](#), WE THE PEOPLE/NATIONAL CONSTITUTION CENTER, Sept. 2019

Book Talk, *Infield Fly Rule Is in Effect: The History and Strategy of Baseball's Most (In)Famous Rule*, Society for American Baseball Research/Forbes Field Chapter Annual Meeting, Oct. 2019; White Whale Books (Pittsburgh), Oct. 2019; after-Words (Chicago), Aug. 2019; Books & Books (Coral Gables, FL), June 2019

Discussant, *Pedagogical Choices and Challenges in Introductory and Advanced Civil Procedure Courses*, SEALS Annual Meeting, July 2019

Moderator, *The Limits of Expressive Conduct Under the First Amendment*, SEALS Annual Meeting, July 2019

Moderator, *Jurisdictional Deadlines, Claim-Processing Rules, and Equitable Exceptions*, 7th Cir. Judicial Conference, May 2019

Speaker, *Judgments and Injunctions, Opinions and Precedent*, 27th Annual Rothgerber Constitutional Law Conference, University of Colorado Law School, Apr. 2019

Speaker, *Precedent, Particularized Injunctions, and Judicial Departmentalism*, University of Miami School of Law Faculty Workshop, Mar. 2019; Federal Bar Association, S.D. Fla. Chapter Luncheon, Oct. 2018; SEALS Annual Meeting, Aug. 2018

Speaker, *Barnette at 75*, First Amendment Lawyers Association Winter Meeting, Feb. 2019

Panelist, *Nationwide Injunctions*, National Association of Attorneys General Fall Meeting, Nov. 2018

Debate: *The Wisdom and Propriety of Universal Injunctions*, FIU College of Law, Oct. 2018 (with Profesora Amanda Frost)

Organizer and Moderator, *Barnette at 75: Past, Present, and Future of the "Fixed Star in Our Constitutional Constellation"*, FIU Law Review, Oct. 2018

Discussant, *The NFL Protests: Protest and Free Speech in Modern America*, SEALS Annual Meeting, Aug. 2018

Moderator, *Legislative Generality and the Constitution: Klein, Equal Protection, and Legislative and Presidential Singling-Out*, SEALS Annual Meeting, Aug. 2018

Universal (Not Nationwide) and Never Necessary or Appropriate: On the Scope of Injunctions in Constitutional Litigation, in [The Immigration Nexus: Law, Politics, and Constitutional Identity](#), Lewis & Clark Law Review Symposium, Lewis & Clark Law School, Mar. 2017

Video, Police Misconduct, and Judicial Procedure, in *Badge Cams as Data and Deterrent: Law Enforcement, the Public, and the Press in the Age of the Digital Video*, North Carolina Law Review Vol. 96 Symposium, University of North Carolina School of Law, Nov. 2017

Panelist, *The First Amendment on Campus: Identifying Principles for Best Practices for Managing and Resolving Disputes*, Center for the Study of Dispute Resolution, University of Missouri School of Law, Oct. 2017

Recording Of and By Police: The Good, the Bad, and the Ugly, in *Arbitrary Injustice: Reflections on the Exercise and Abuse of Discretion in the Justice System*, Journal of Gender Race, & Justice 20th Anniversary Symposium, University of Iowa School of Law, Feb. 2017

Panelist, *Cultivating Empathy*, Association of American Law Schools, Jan. 2017

Discussant, *Free Speech Under Siege on College Campuses?*, SEALS Annual Meeting, Aug. 2016

Panelist, *Supreme Court First Amendment Update*, Meeting of Florida Bar Association Section on Media Law, June 2016

Panelist, *Ferguson's Fault Lines Transcend Ferguson*, Law and Society Association, June 2016; ABA Webcast, May 2016

Panelist, *Scholarly Engagement Post-Tenure*, Association of American Law Schools, Jan. 2016

Panelist, *Supreme Court Review: Individual Rights*, SEALS Annual Meeting, July 2015

Moderator and Organizer, *Baseball and Law, Law and Baseball*, SEALS Annual Meeting, July 2015

An Empirical Analysis of the Infield Fly Rule, Cooperstown Symposium on Baseball and American Culture, May 2015; Twenty-Second Annual NINE Spring Training Conference, Mar. 2015; SABR Analytics Conference, Mar. 2015; FIU College of Law, Feb. 2015; American University-Washington College of Law Faculty Workshop, Mar. 2014

Panelist, *Criminal Law and Technology: Solutions and Potential Problems*, in *Law 2.0: Progress and Challenges for Justice in the Digital Age*, 34th Annual Edward V. Sparer Symposium, University of Pennsylvania Law School, Nov. 2014

Panelist, *Moving Forward from Ferguson*, FIU College of Law Headlines & Headnotes, Nov. 2014

Discussant, *New York Times v. Sullivan at 50*, SEALS Annual Meeting, Aug. 2014

Mixed Signals on Summary Judgment, in Procedural Hurdles and the Day in Court, SEALS Annual Meeting, Aug. 2014

The Economics of the Infield Fly Rule, Cooperstown Symposium on Baseball and American Culture, May 2014

Choice of Law in a Post-Nicastro Era, SEALS Annual Meeting, Aug. 2013

Supreme Court First Amendment Update, Meeting of Florida Bar Association Section on Media Law, June 2013

The Economics of the Infield Fly Rule, Twentieth Annual NINE Spring Training Conference, Mar. 2013; Northwestern University Sports Law Society, Feb. 2013

Discussant, *Pedagogical Choices and Challenges in Civil Procedure*, SEALS Annual Meeting, July 2012

Rejecting Sovereign Immunity in Public Law Litigation, in Ex Parte Young: For Whom the Bell Tolls?, SEALS Annual Meeting, July 2012

Discussant, *Impact of Remedies on Constitutional Law*, SEALS Annual Meeting, July 2012

Supreme Court First Amendment Update, Meeting of Florida Bar Association Section on Media Law, June 2012

Rejecting Sovereign Immunity in Public Law Litigation, University of Miami School of Law Faculty Workshop, Apr. 2012

Festschrift in Honor of Professor Martin H. Redish, Northwestern University Law Review 2012 Symposium, Northwestern University School of Law, Mar. 30, 2012

Libel Tourism, International Graduate Research Conference, Texas State University-San Marco, Nov. 2, 2011 (Keynote Address)

Prescriptive Jurisdiction, Adjudicative Authority, and the Ministerial Exemption, University of Richmond School of Law Faculty Colloquy Series, Sept. 2011; PrawfsFest! Workshop, July 2010; Junior Federal Courts Workshop, Oct. 2009; FIU College of Law, Oct. 2009; Law and Society Association, May 2009

Discussant, *Evolution or Revolution? American Civil Procedure in the 21st Century*, SEALS Annual Meeting, July 2011

Supreme Court Update, Meeting of Florida Bar Association Section on Media Law, June 2011

Discussant, *Supreme Court Update: Individual Rights*, SEALS Annual Meeting, July 2010

Supreme Court Update, Meeting of Florida Bar Association Section on Media Law, June 2010

Teaching Gasperini (With a Touch of Shady Grove), in Teaching the Toughest Cases, AALS Section on Civil Procedure, Mid-Year Meeting, June 2010

Judges as Umpires, Umpires as Judges: Rethinking the Metaphor, Law and Society Association Annual Meeting, May 2010

First Amendment Proceduralism and the Free Speech Protection Act, in *Enforcing Foreign Defamation Judgments*, SEALS Annual Meeting, Aug. 2009

Towards a First Amendment Understanding of Public Video, American Society of Law, Culture, and the Humanities, Apr. 2009

The Irrepressible Myth of Klein, Florida State University College of Law, February 2010; Rutgers School of Law-Camden, March 2009; FIU College of Law, Feb. 2009

The House that Taxpayers Built: Stadiums, Speech, and Public Funding, Villanova Sports and Entertainment Law Journal Symposium, Oct. 2008

The Phases and Faces of the Duke Lacrosse Controversy, (Panel Organizer and Moderator), SEALS Annual Meeting, July 2008

Video Evidence and the Future of Civil Rights Enforcement, Saint Louis University School of Law, Feb. 2008

Video Evidence and Summary Judgment, Central States Law Schools Annual Meeting, Oct. 2007
Jurisdiction, Merits, and Non-Existant Rights, William Mitchell College of Law, Mar. 2007, Marquette University Law School, Feb. 2007

Bartnicki as Lochner: Some Thoughts on First Amendment Lochnerism, in *First Amendment Lochnerism? Constitutional Limitations on Economic Regulation of Communications, Information, and Technology Industries*, Northern Kentucky Law Review Symposium, Salmon P. Chase College of Law, Mar. 2006

Merits Stripping, Central States Law Schools Association Annual Meeting, Nov. 2005; SEALS Annual Meeting, July 2005

The Constitution & the Court: Selecting Justices, Panelist, FIU/Constitution Day, Sept. 2005

If You Build it, They Will Speak: Fan Expression at the Old Ball Game, Seventeenth Cooperstown Symposium on Baseball and American Culture, June 2005

If You Build it, They Will Speak: Public Stadiums, Public Forums, and Free Speech, NINE: Journal of Baseball History and Culture Spring Training Conference, Mar. 2005

Cheers, Profanity, and Free Speech, Jack D. Gordon Institute for Public Policy & Citizenship Studies, Florida International University, Mar. 2005

Jurisdiction and Merits, Central States Law Schools Association Annual Meeting, Nov. 2004; Loyola-Chicago School of Law, Jan. 2004

Continuity of Congress: A Play in Three Stages, in *Ensuring the Continuity of Government in Times of Crisis*, Catholic University Law Review Spring Symposium, Jan. 2004

Admissions:

- *United States Court of Appeals for the Ninth Circuit* • February 2010
- *United States Court of Appeals for the Third Circuit* • June 2001
- *United States Court of Appeals for the Seventh Circuit* • November 1999
- *United States District Court for the Northern District of Illinois* • December 1997
- *Supreme Court of Illinois* • November 1997 (Inactive)

Memberships:

American Law Institute • Adviser, *Restatement of the Law, Constitutional Torts Rules Advisory Committee, United States District Court for the Southern District of Florida*
Association of American Law Schools
Southeastern Association of Law Schools

Education: **Northwestern University Pritzker School of Law**
Juris Doctor, Magna Cum Laude • May 1997 • GPA: 4.0/4.5

Honors:

- *Order of the Coif*
- *Northwestern University Law Review*
 - *Associate Articles Editor, 1996-1997*
 - *Staff Member, 1995-1996*
- *Dean's List, 6 Semesters*
- *Class Rank: 7/201, Top 3%*

Northwestern University • Medill School of Journalism
Bachelor of Science • June 1990 • GPA: 3.64/4.00
Journalism Major • *Concentration in History*

Honors:

- *Kappa Tau Alpha, National Journalism Honor Society*
- *Dean's List, 2 Quarters*
- *Student Manager/Assistant, Men's Basketball Team*

Legal

Experience: **Judge Jane R. Roth • U.S. Court of Appeals for the Third Circuit**
Law Clerk • August 2000-August 2001

Chief Judge James T. Giles • U.S. District Court for the Eastern Dist. of Pennsylvania
Law Clerk • August 1998-August 2000

Holleb & Coff • Chicago, Illinois
Litigation Associate • August 1997-August 1998
Summer Associate • May 1996-August 1996

Freedom to Read Foundation/American Library Association • Chicago, Illinois
Intern • August 1996-June 1997

Lambda Legal Defense & Education Fund • Chicago, Illinois
Intern • January 1996-June 1996

Professor Martin H. Redish • Northwestern University Pritzker School of Law
Research Assistant • May 1995-November 1995

Professor Michael J. Perry • Northwestern University Pritzker School of Law
Research Assistant • May 1995-August 1995

Other: **Lake Forest College • Lake Forest, Illinois**
Assistant Men's Basketball Coach • June 1990-June 1993

Personal

Interests: Chicago Cubs baseball; Northwestern basketball; running, bicycling, basketball, and softball;
sports, mass media, and popular culture