

## Howard Merrill Wasserman

FIU College of Law  
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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 Markel<sup>Z</sup>)

[\*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-Extant 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\*](#), SCOTUSBlog, 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