PURSuing A Career in Legal Academia

Michigan is well-known nationally and internationally for being among a handful of law schools that produce the majority of legal academics. Our graduates are well represented on the faculties of the top law schools in the United States, and Michigan alums can be found writing, teaching, and practicing in universities throughout the country as well as in schools and institutions overseas.

Michigan’s commitment to high-quality legal education and its record of producing successful academics opens many doors for our graduates interested in law teaching. But because every year law schools make hiring decisions in predictable (but not necessarily obvious) ways, aspiring academics from Michigan can, with planning and persistence, dramatically improve their chances of building a successful career in legal academia.

To that end, Michigan offers a diverse range of programs (available to students as early as the first day of their 1L year) to ensure that students and alumni both understand the academic market and receive the guidance and resources necessary to maximize their potential when they finally become teaching candidates. Successfully launching a career in academia hinges on understanding the hiring process as well as effective planning and preparation over a number of years.

The materials below outline the different kinds of teaching positions in legal academia, identify best practices for students and recent alums who are considering or preparing for a teaching position, offer a bare-bones outline of the hiring process, and describe the services and support that Michigan Law makes available to its students and graduates interested in this career track.

I. Career Possibilities in Legal Academia

There are four broad categories of professors who teach in law schools: “research” professors, clinical professors, legal writing or legal practice professors, and adjunct professors.

Research professors are perhaps the most visible faculty in a law school – especially for a 1L class – because they regularly teach “core” law school courses, including much of the first-year curriculum (e.g., torts, contracts, criminal law, constitutional law, and civil procedure). But law schools, universities, other academics, and the profession-at-large expect and encourage research professors to spend a majority of their time on research and writing. Consequently, individuals who lack a strong interest in legal scholarship are unlikely to be successful or happy as research professors in a law school. When seeking to hire a research professor, schools typically look for what are viewed as indicia of a future successful scholar, including a proven publication record, high-quality research and writing, success in law school, judicial clerkships, and/or graduate training in another academic field. Permanent research faculty positions are usually “tenure track.”

Clinical faculty members teach students by involving and guiding them in the practice of law. Clinical faculty supervise students providing direct representation to actual clients
(typically indigent), and teach a corresponding classroom component that complements the substantive area of practice. Practice areas run the gamut, including, among many others, civil and criminal litigation, child advocacy, immigration, as well as transactional fields such as representation of start-ups, small businesses, or nonprofits. At many schools, clinical faculty teach substantive law courses as well. Most schools expect their clinical faculty to produce legal scholarship. Faculty hired for full-time clinical positions usually have practiced for at least three years in the area in which they will teach. Many come from clinical fellowships, and some may also have had clerkship experience. About a third of full-time clinical positions are tenure track. The balance are largely fixed-term contracts with many mimicking pre- and post-tenure employment models. At Michigan, for example, full-time, permanent clinical faculty are appointed for a series of two 3-year contracts with potential promotion to a presumptively renewable 7-year contract.

Legal writing or legal practice faculty teach required courses in legal research, writing, and analysis as well as advanced courses in those areas or in other practice skills areas such as drafting, ethics, or advanced appellate advocacy. At some schools, especially when such positions are full-time, legal practice faculty may teach traditional substantive courses. Some amount of practice experience is generally required for such positions. Although most schools don’t impose a minimum requirement for the number of years in practice, candidates with less than 2-3 years of practice experience are less likely to be successful. Judicial clerkships in trial or appellate courts are often helpful sources of practice experience but aren’t required. A variety of employment arrangements exist, including traditional tenure-track appointments, three to seven-year clinical contracts, fixed-term renewable contracts of from one to five years, and adjunct contracts. Other schools have legal writing programs taught by “visiting assistant professors” (VAPs) or fellows on one, two or three year non-renewable contracts. Applicants for those positions are typically entry-level or pre-entry-level candidates for research faculty jobs who plan to spend the fellowship or VAP writing legal scholarship before seeking a tenure-track research faculty position. Increasingly, schools are hiring legal practice faculty members to teach transactional skills courses. These courses include basic or advanced drafting, and transactional "practicum" courses, in which faculty teach substantive law courses, such as securities law, using scenarios and documents from practice.

Adjunct professors typically teach part-time, usually continuing the practice of law as their principal occupation. Adjuncts may teach virtually any course, particularly in practice-related areas (e.g., bankruptcy, ethics, estate planning). Adjuncts are often hired on a per-course basis, with compensation tied to the number of credit hours taught. The pay is typically modest. Individuals interested in teaching as adjunct faculty often write directly to law schools in their geographic region. If you are interested in finding an opportunity to teach as an adjunct, you should communicate directly with the law schools in your region. If you know any faculty members at any of those schools, it makes sense to reach out to them and let them know that you are interested in teaching there as an adjunct and will be writing to the associate dean. Then, send an email to the associate dean attaching your CV and explaining what you would like to teach. If you have communicated with anyone on the faculty, or know anyone on the faculty, let the associate dean know about that. If the school has a need for a course you have offered to teach, the associate dean will probably check with that faculty member to get a general impression of whether you’re a likely adjunct teacher for that school. It can also be helpful to
speak with anyone at your workplace who has done or is doing adjunct teaching to indicate your interest — your coworkers who have taught are likely to know specifics of adjunct teaching at area law schools and will also be in a position to recommend you to the associate dean at schools at which they have taught.

There has been an increasing trend in recent years at some schools to hire what are called “professors from practice,” “professors of the practice,” or “professors of professional practice.” These positions are typically reserved for practitioners who are appointed because of skills and expertise acquired in nonacademic careers. They are untenured positions but are more full-time than a typical adjunct position. This track is pretty rare and limited to lawyers with very distinguished careers, many of whom begin their relationship with the law schools that hire them by teaching as adjuncts. Professors from practice teach doctrinal courses and, while they may produce scholarship, it is not a required part of the position. They are typically hired on short-term contracts by the Dean in much the same way that adjuncts are.

Figuring Out Why Kind of Teaching Position You Want: Some alumni come to this process knowing that they want to be research faculty or that they are interested in a clinical position. Others feel that they could see themselves doing either. It is important to give some thought to what track you’d like to pursue. Unfortunately, it is often a strategic mistake to try to present oneself as equally happy to teach as a clinician or as research faculty, even though it’s often true.

II. PREPARING FOR A CAREER AS A RESEARCH FACULTY MEMBER

a. What You Can Do While You Are a Student

Students who are interested in research teaching positions ought to do as well as they can in their law school classes (many of which ought to be rigorous doctrinal courses covering a number of fields), serve on a law-oriented student journal, and build in-depth intellectual and research relationships with their professors.

We cannot overstress how important it is for students to work closely with their professors while in law school. The relationships students form with professors allow students to observe how to become and thrive as scholars; they can also be useful from a networking perspective when it comes time for the student to apply for a clerkship, a legal position, or an academic position.

Having strong faculty recommendations (the more the better) is absolutely essential to success on the academic market. Hiring committees tend to be much more attuned to recommendations from faculty than from judges or lawyers with whom candidates may have practiced.

Therefore, while still in law school, future candidates should take advantage of every opportunity to interact with their professors. Taking seminars or paper-writing courses will make this easier, and will make it easier for professors to ascertain a future candidate’s writing skills and academic potential. Of course, not all professors will be equally effective in making
recommendations. Some hiring committees place a premium on the prestige of a recommending professor, but typically it is more important for the recommender to know the candidate well and to be able to speak in some detail about the candidate’s work as a student.

Although not strictly necessary, it is also usually very worthwhile for students to write and publish while in law school. This might take the form of a note published in a Michigan student-run law journal, or an article submitted for publication at Michigan or elsewhere. Students may enroll in for-credit independent research under the supervision of a faculty member to work on writing in addition to doing such work through journals.

Michigan Law also regularly hosts the Student Research Roundtable Lunch series, which provides current students with an interest in academic research a forum to present a paper proposal, a work-in-progress, or even a complete draft to a group of interested students and faculty. The roundtable not only offers student presenters an opportunity to receive feedback on their work and to practice their presentation of scholarly ideas, but allows student audience members to engage and collaborate with an intellectual community of peers and professors. Moreover, the regularity of the roundtable meetings (usually 4-6 times a semester) fosters the development of strong ties and support among students (and faculty) with a shared interest in pursuing an academic career.

b. Post-Graduation Ways to Prepare

After graduation, future candidates should maintain if not deepen their professional relationships with their professors by sending them copies of their published work, discussing research ideas with them, and making sure the professors are aware of how their career is developing.

Following graduation, it is often helpful to clerk with a judge, and it almost always makes sense for a future law professor to gain practical experience as a lawyer or policymaker. Real-world experience with clients, judges, policymakers, and other lawyers, and a deep working knowledge of the institutions in which law “happens” will stand a new academic in good stead when he or she begins to write and teach.

Law schools generally do not make distinctions among jobs after a clerkship. But two types of jobs can matter: jobs that are prestigious because they’re hard to get (e.g., a Bristow Fellowship at the Solicitor General’s Office) and jobs in which applicants have acquired significant substantive knowledge that will be directly relevant to their teaching and writing (e.g., staff member on the Joint Committee on Taxation intending to concentrate in tax; prosecutor or public defender intending to concentrate in criminal justice). It can be difficult to switch into teaching after too many years in practice. After more than several years of practice, especially without a publication record, law schools may worry that you will have trouble starting to write academic articles. Candidates who succeed in finding teaching jobs when they’re more than several years out of law school almost always have compiled strong publication records while in practice.
Aspiring professors also should attend academic workshops and lectures in their desired field(s), either at Michigan or at other law schools. These experiences with cutting-edge scholarship will provide you with an insight into the culture and thinking of the academic world and will better enable you to anticipate the questions that you may be asked in an interview or during a future job talk.

In addition to the above, recent graduates who hope to become research professors ought to keep in mind that candidates will be evaluated primarily on their ability to produce an important and substantial body of published, scholarly work over the course of their careers. A portfolio of good legal research will often be more important for research faculty jobs than grades, advanced degrees, judicial clerkships, fellowships, practical experience, or recommendations. Our alumni who have significant publication records have gotten good teaching jobs with no law practice experience and with 15 or 20 years of practice experience; some smart alumni with good grades, strong recommendations, one or more fellowships, prestigious practice, and only trivial publications have not.

Not surprisingly, two key indicators of the potential to produce a good body of scholarly work are the quantity and the quality of published and publishable writing at the time the candidate applies for teaching jobs. All else equal, more writing is better, not surprisingly. But candidates sometimes make the mistake of focusing too much on quantity and not enough on quality. Some of the most successful candidates every year have relatively little writing, but it is of the highest quality, making schools confident about the likely quality of future work. A candidate who has written five mediocre articles may be likely to be reliably productive, but will also be taken as less likely to start writing high-quality articles once hired than someone with fewer, high-quality pieces.

In today’s market, we recommend a candidate have a minimum of two articles (not including student publications) to be successful on the market. Both need not be published. For example, a candidate might have one article published and a second highly polished draft that they can use as a “job market paper.” Although some job market papers have been accepted at a journal and are forthcoming, they are usually not already out in print, which allows candidates to incorporate job talk feedback into their paper prior to its publication. (As explained below, research professor candidates are expected to describe their research during early interviews and to “present” a paper to interested faculties during a twenty minute “job talk” followed by a question and answer session in the final stages of the interview process.)

Assuming a future candidate can keep quality high, the job market is likely to be more receptive to a student with two or even three published papers, in addition to the draft “job market paper.” Note that faculties are usually interested in hiring research professors with a specific substantive focus and demonstrated expertise in a field, so in a perfect world a candidate’s published work would focus on one or maybe two areas of the law (presumably the areas in which the candidate is likely to teach, as well). For example, a candidate with four published papers on disparate topics may be viewed as less “focused” than a candidate with two or three published papers in the same field.
Keep in mind when you are choosing scholarly projects to pursue that schools expect entry-level candidates to be able to describe, intellectually, where they have been, where they are, and where they are headed over the next five years. It is important for candidates to be able to tell a story about how all of their research projects fit together, and support the research they hope to do in the future. Many candidates will draft a “research agenda” to describe their past and intended future scholarship to give schools a sense of the likely arc of their research.

If quantity of writing may be an issue, candidates in a jam may wish to consider reviewing an important book in their field or publishing a shorter piece in an on-line law review platform. Although law reviews usually solicit book reviews from professors, most journals will also consider publishing unsolicited book reviews and almost every law review now has an on-line companion that accepts shorter submissions on cutting edge topics. Book reviews and on-line journal articles are usually easier and faster to write than longer articles because they are more structured and require less independent research. Consequently, they “count” less than articles do toward any quantity expectation, but can fill a gap, especially if the book and the claims made in the review mesh well with the candidate’s research agenda.

Many aspiring research professors choose to pursue either a PhD in another field (e.g., economics, history, philosophy, or psychology) or a post-grad teaching fellowship in order to find the time to write.

**PhDs:** Pursuing an advanced degree has benefits and costs/risks. Candidates with PhDs have significant writing experience (perhaps with a book or many articles already published), and they have been closely mentored by their doctorate advisers (who can usually provide a detailed recommendation) in how to conduct scholarly research successfully. Accordingly, such candidates come to a research professor position with more certainty about what the job entails and how to make a successful transition quickly and easily. Where the PhD research is closely connected with the areas of legal teaching and research interest, these candidates can bring insights and tools from the allied methodology to bear on their legal scholarship and teaching.

At the same time, schools also *expect* more from candidates with PhDs and can be less forgiving of a “beginner’s” mistake. Some hiring committees will pay attention to how much time candidates have had to produce writing, such that they will expect more from a PhD candidate than from a law firm associate. (But that is not always the case: applicants coming from full-time practice should not assume that hiring committees will sensibly evaluate their productivity in light of competing demands on their time.) Likewise, schools often expect PhDs to use their training in their research, and may draw negative inferences from a failure to do so. Candidates with PhDs will typically also be assessed not just by their legal chops, but are also expected, at least in part, to be well thought of by scholars in their cognate field. It can thus be hard to march to the beat of two drums. Where the relationship between the PhD and the substantive legal focus seems attenuated, moreover, the PhD is unlikely to count as a plus in the file.

**Teaching Fellowships or Visiting Professorships:** Some law schools (including Michigan) offer one or two year fellowships or Visiting Assistant Professor (VAP) programs. These will give you time to write and publish and can also produce contacts that will be helpful to obtaining
a faculty position. The schools offering these programs are constantly changing as are the requirements of the fellowships. For examples, some research/teaching fellowships include no teaching responsibilities; other schools expect their fellows to teach first-year legal research and writing sections; still others permit fellows to teach doctrinal classes. The amount of research and teaching support that you will receive also varies by school. Additionally, some fellowship programs hire the best applicants regardless of area, while others are geared toward specific subject areas or are specifically targeted toward diversifying the legal profession. Appendix A includes a list of fellowships that the library produced in 2020 to give you a sense of the different kinds of fellowship opportunities that exist.

Advice on Timing: There are, of course, exceptions to every rule, but most people seeking tenure track research professor jobs go on the academic job market within a few years after graduating from law school. Most schools prefer that candidates have some practice experience. In the old days, it was increasingly difficult to get a tenure track job once a candidate had been out of law school for more than a few years, because hiring committees began to doubt that the candidate was serious about an academic agenda. But the amount of time between graduation from law school and teaching has been getting longer. Nowadays, people may be hired ten or even twelve years after graduating from law school. That said, the longer you have been out of law school, the more important it becomes that you have written and published significant legal scholarship.

Try to plan about two years ahead before you start teaching -- one year to put your writing together, perhaps to teach as an adjunct, hone your resume, and strategize with your recommenders, and then another year to be on the market and make the switch. If you earned your JD more than ten years ago, it’s especially important to talk with your recommenders and the members of the Alumni Academic Placement Committee about how you might most effectively present your experience and scholarly potential.

c. The Materials that You Will to Go on the Market

Candidates must begin preparing in earnest to apply for research teaching positions about 18 months before they hope to begin teaching. (Note: this chronology does not include conducting research, writing, and publishing, which really must begin long before the application process even starts to warm up.)

There are five key items that a candidate will need to prepare to go on the academic teaching market for a research faculty position:

1. **Job Talk Paper:** By 18 months before the candidate hopes to start teaching, the candidate should have begun drafting a scholarly article to use as the basis for interviews and job talks. This paper will need to be sufficiently polished to be circulated to schools by the middle of August. Preferably the article should not yet be published in a law review or journal, though it is fine if the draft is posted online on SSRN or BEPress.
2. **References List:** A candidate should begin regularly communicating with potential law professor references (as well as any other references, including advisers from other graduate programs) and obtain permission from each to be listed as a reference. Before the market begins in earnest, a candidate must help these recommenders become intimately familiar with their written work, scholarly agenda, and teaching interests. (It can be a candidacy killer if a hiring committee chair calls a reference who has no recollection of the candidate.)

3. **Curriculum Vitae:** A candidate should prepare an academic CV, which differs in many ways from other forms of resumes. A successful academic CV will list your education, relevant legal experience, academic publications, teaching experience, the courses you are interested in teaching, and a list of references. Appendix B includes sample CVs from alumni who have been successful on the academic market for research faculty positions. (The attached CVs were their CVs at the time they went on the academic job market.) In addition to these samples, candidates can also look on the websites for some of the most prestigious post-grad teaching fellowships (e.g., Harvard’s Climenko program, Chicago’s Bigelow program) and find their fellows’ CVs.

4. **Research Agenda:** A candidate should begin drafting a research agenda, with the support and advice of the candidate’s recommenders and the Alumni Academic Placement Committee. An effective research agenda briefly summarizes a candidate’s work-to-date (with a focus on the job market paper) and describes the scholarly trajectory the candidate anticipates following over the next few years (e.g., the next few articles). Appendix B contains some sample research agendas from alumni who have been successful on the academic market for research faculty positions.

5. **Faculty Appointments Register Application:** A candidate should also begin preparing a Faculty Appointments Register (FAR) application. This is an online questionnaire that asks for information on the candidate’s education, teaching and employment experience, publications, and teaching preferences. It also asks a candidate to upload their CV. This form, and the impression it conveys, is surprisingly important – schools often make initial screening decisions on the basis of this form alone. Consequently, it should be drafted with great care and attention to every detail, and feedback should be solicited early and often from a candidate’s recommenders and the Alumni Academic Placement Committee. Appendix B also contains some sample FAR forms that were filled out by alumni who are now research faculty members.

Don’t leave any of these documents to the last minute. All of these documents should be drafted with the advice and feedback of a candidate’s advisers and the Alumni Academic Placement Committee. This back and forth can take some time.

Candidates will want to have all of their documents finalized (especially their FAR applications, their academic CVs, and their research agendas) by early summer at the latest so they will be included in the AALS’s August distribution (the first and most important distribution) listing job market candidates. In addition, if these materials are finalized by early summer Michigan Law can take additional, timely steps to support the candidate on the market.
In the past, for example, Michigan has distributed a “CV book” containing the FAR forms and CVs of all Michigan candidates on the market to law schools around the country.

With the same goal, candidates during this time must be proactive and entrepreneurial, making their interest in particular schools clear, either by having a recommender reach out to someone on a school’s hiring committee or, more commonly, by sending an independent application packet directly to the hiring chair or the dean of the law school. Each packet should include a cover letter, an academic resume, and publication reprints or scholarly writing samples. Appendix B also has some sample cover letters. If there are genuine personal connections to the region or the school, a brief personalized paragraph summarizing these can sometimes also make sense for schools where it is relevant. More generally, candidates should reach out to every contact they have in the law teaching world, seek out every potential ally, write every thank-you letter, and make every phone call. As in all things, hustle and plain luck can matter a lot.

d. The Nuts and Bolts of the Hiring Market

Schools seek to hire different categories of law professors in very different ways, and even within a category, the process varies a lot over time and across schools and fields.

Hiring in all categories of law teaching can occur by word-of-mouth or as the result of a little-noticed announcement by a law school of an open position. Therefore, to stay in the loop and abreast of all “market” activity, candidates ought to stay in close contact with their former professors, recommenders, and mentors as well with the professors and administrators who make up Michigan Law’s Academic Placement Committee.

For research professor hiring there is a formal hiring process sponsored by the American Association of Law Schools (AALS). All students and graduates interested in full-time research teaching positions should plan and expect to participate in this process as it accounts for the vast majority of research professor hiring. The market is complicated, involving many steps and spanning months (the market begins more than a year before a successful candidate can expect to receive a paycheck of any kind!), so it is crucial that candidates look ahead and begin preparing years in advance.

AALS Faculty Recruitment Conference. Most entry-level law school hiring begins at the AALS Faculty Recruitment Conference (FRC), unfortunately known as the “meat market.” The conference takes place in October or November of every year in Washington, D.C., at the Marriott Wardman Park Hotel over approximately two days. More information on the AALS Conference can be found at [www.aals.org](http://www.aals.org).

Most candidates attend the FRC “by advanced invitation only,” in the sense that they will only come if they have scheduled interviews ahead of time with particular schools. Months (or at least weeks) before the conference is held, law school hiring committees scour the FAR forms and CVs of all the teaching candidates who have registered for AALS (typically using the August distribution) and identify the candidates they find most attractive as potential hires. Hiring committees then invite these candidates to meet with them for a 20- to 30-minute
interview (typically in a hotel room) during the conference. Some hiring committees schedule meetings with only a handful of candidates. Other schools meet with candidates essentially back-to-back for two exhausting days.

Hiring committees typically prioritize giving interviews to candidates who they are most excited about (usually relying on candidates’ FAR forms and CVs, but also on recommendations from faculty at other schools), which in turn gives these candidates more choice over potential interview slots and more flexibility in how they organize their day. Regardless, candidates should do their best to schedule as many interviews as they can in a way that makes the most of their natural rhythms and gives them time to rest, eat, use the bathroom, and get from one interview to another.

Most candidates receive a handful of AALS interviews at most. It does not make sense for a candidate to attend the conference if the candidate has not received any invitations to interview, and it may not make sense for some candidates to attend if they have received only one or two invitations to interview from schools they view as relatively unattractive. In most cases, however, candidates ought to meet with as many schools as they can.

AALS interviews are brief and so candidates must make their case efficiently. Over 20 to 30 minutes, candidates will meet with anywhere from two to ten faculty members in a single group. It is usually possible for candidates to ascertain who they will be meeting with in advance, which can sometimes help with preparation. Questions will relate primarily to a candidate’s research, and will often begin with something like, “Great to meet you. Let’s get to it. Tell us about your paper?” Anything on a candidate’s CV (or anything a candidate says) is of course fair game. Questions about a candidate’s past work or about future research are common. Candidates should also be prepared to entertain questions about their approach to pedagogy and any teaching experience they’ve had. Interviews often end with the candidate being invited to ask any questions he or she may have about the interviewing school, so it is a good idea to come up with a list of questions that you would want to ask. Be sure that you ask questions that are not about things you could find out just by looking at the school’s website. Candidates will often ask about how much mentoring there is for junior law professors or how much financial support is given for research.

Candidates should remember that AALS interviews are ultimately employment interviews. Candidates should smile, laugh, be polite, and show passion for their work. Schools obviously want to hire the best future scholars, but they are also selecting, potentially, a co-worker and a potential friend for the next thirty years of their lives.

Campus Visits and Job Talks: On the basis of these initial interviews, the interviewers’ impression of a candidate’s written work, conversations with a candidate’s recommenders, and a candidate’s CV, schools will decide whether to invite the candidate to campus for additional extended interviews with faculty members, a meal or two with a small group of faculty members, the center-piece of the on-campus interview – the “job talk,” and occasionally a meeting with students. During the visit, a school’s faculty will seek to discover what the candidate would be like as a scholar, a teacher, and a colleague.
The job talk is a scholarly presentation of research typically consisting of a twenty-minute presentation by the candidate on a scholarly topic (the candidate’s job market paper), followed by a question and answer session with the faculty. The questions posed are designed to reveal how your mind works, how you respond to questions, and how you handle new ideas, unexpected problems, and challenges. The topic should be one on which the candidate has done, or is doing, scholarly research and writing. It should make an argument and should display legal analysis and familiarity with the relevant scholarly literature, statutes and case law. The most important part of the job talk is the question and answer session, where potential future colleagues try to see how a candidate responds to different questions, ideas, and challenges.

After the campus visit and job talk: After the campus visit and job talk, your part in the process is over and it is up to the school to decide whether to extend you an offer. This process can be fairly quick but can also take weeks or months. Some committee chairs are very good at keeping candidates informed about their status and will tell you whether they are going to bring your candidacy to the faculty for a vote. Others are not so good at communication, and you will hear nothing from a school after a campus visit until it eventually becomes apparent that the school is not going to extend you an offer. You should keep in close contact with your references and the Alumni Academic Placement Committee during this time. Your references may know faculty members at the relevant schools and might be able to get a sense of where you stand if you have not heard anything.

III. PREPARING FOR A CAREER AS A CLINICAL FACULTY MEMBER

Aspiring clinicians should aim to do well in law school and should definitely enroll in law school clinics. In addition, it would be worthwhile to get other practical experience through pro bono work, externships, summer internships, etc. As is true with research positions, clinical candidates will need to have strong references so developing and maintaining relationships with clinical faculty while in law school is important.

Scholarship: While published scholarship is not an absolute must to enter the market, there are almost no permanent clinical teaching positions where scholarship isn’t expected or highly desired. Some clinical professors don’t begin to produce scholarship until their first teaching job, but better equipped candidates come with something published or a paper being prepared for publication in hand. While traditional law review articles are preferred, chapters in practice manuals, bar journal articles and the like can and do help, particularly with that first job.

Practical Experience and Knowledge of Clinical Pedagogy: Traditional indicia of academic success are, alone, rarely sufficient to land a job in clinical teaching. A candidate must have credentials and references that strongly support his or her excellence or potential for excellence in their substantive area of practice, lawyering more generally, and clinical teaching. If you are seeking a job as a clinical professor, two or three years of actual law practice is essential, and we are aware of no informal upper limit on practice experience. Applicants need to be very conversant not only in substantive areas of practice, but also in the fundamentals of clinic design and pedagogy. See, e.g., Anthony G. Amsterdam, Clinical Legal Education – A 21st Century Perspective, 34 J. LEGAL EDUCATION 612 (1984). Familiarity with scholarship in these areas is
often essential, particularly in landing a position that has the potential to be permanent (i.e.,
tenure, clinical tenure, presumptively renewable long-term contract).

Public Service: With one small exception, a record of public service is a must. The vast
majority of clinics serve low income populations and one’s record of commitment to that
mission or public service more generally is critical. Few are able to make the transition from
private practice to clinical teaching without some intervening public interest employment or
exceptional record of public service while in private practice. The exception here is a subset of
transactional clinics where there are relatively fewer substantively qualified candidates with
public interest backgrounds.

Teaching Fellowships: It is increasingly common for clinical teaching candidates to have
completed a 1-3 year clinical teaching fellowship. Fellowships provide an opportunity to teach
in a clinic, supervise law students on case work, and produce scholarship. Equally importantly,
they provide networking opportunities and allow candidates to build relationships with other
clinicians. Clinical teaching fellowships allow aspiring clinicians to get a sense of whether this
is the job for them. Most clinical fellowships are short-term contractual positions, although there
are several schools that confer LL.M. degrees in clinical legal education.

The Market: The law school clinical teaching market is more varied than the traditional
research faculty teaching market. Each year an increasing number of schools look to hire clinical
faculty by way of the traditional AALS hiring process. Accordingly, much of the advice given
above applies equally to those seeking clinical faculty appointments, though for aspiring
clinicians your lawyering experience and understanding of clinical pedagogy will be as
important, if not in at least some schools, more important than your scholarship. Some schools,
however, continue to hire clinical faculty using a wide variety of other approaches. As a result,
candidates seeking clinical teaching jobs should use a twofold approach: (i) register for and
participate in the AALS recruitment conference; and (ii) spend significant time making direct
applications for clinical openings irrespective of whether a school is also interviewing at the
conference.

The vast majority of clinical openings are posted on the Clinical Legal Education
Association’s website (http://cleaweb.org/jobs). Many jobs are also posted on the LawClinic
listserv (subscription information here: http://lists.washlaw.edu/mailman/listinfo/lawclinic/),
although list membership is limited to those with some present involvement in teaching law.
Once an opening is announced, the candidate should send an application package directly to the
school. Many job postings provide a deadline despite the fact that applications are reviewed as
they come in: it is best not to wait.

In preparing for a clinical teaching job interview, a candidate must research the school’s
clinical hiring process and expectations. The process differs from school to school and position
to position. For example, some schools expect a traditional job talk (delivered to the entire
faculty) describing a scholarly research project. Other schools expect a talk focused on clinical
teaching, sometimes delivered to a subset of the faculty. Still others expect the candidate to
“teach” a class to a group of faculty and/or students. Candidates must find out in advance exactly
what the school wants and expects and prepare for the interview accordingly. They should also
try to ascertain how a particular school hires and retains clinicians. You can find clinical professor hiring and promotion standards for over sixty schools (and other data on clinical teaching) here: www.C SALE.org.

Application materials for a clinical position should include a cover letter, an academic CV, and, if available, a reprint or copies of the applicant’s strongest scholarly publication. Appendix C contains examples of application materials from Michigan alumni who have been successful in obtaining clinical positions. Strong applications equally emphasize the candidate’s excellent academic record and practice experience. Generally, schools are interested in candidates with at least three years of practice experience. Importantly, the majority of clinical faculty are expected to produce legal scholarship with some regularity. Accordingly, a candidate’s materials should emphasize any publication record and promise for scholarship.

In addition, strong candidates must be conversant in clinical teaching methodology and pedagogy. One straightforward way for you to familiarize yourself with the clinical teaching profession is to become a member of the Clinical Legal Education Association (http://cleaweb.org). Its newsletters and the included subscription to the Clinical Law Review are well worth the $40.00 per year. The National Archive of Clinical Legal Education is also a great, free resource with an exhaustive bibliography of scholarly articles on clinical education (https://www.law.edu/nacle/index.html).

IV. PREPARING FOR A CAREER AS A LEGAL PRACTICE FACULTY MEMBER

Legal writing and legal practice programs follow a variety of hiring models. Because the goal of these sorts of courses is to help students develop the skills they’ll need to practice law, faculty need to be able to draw on their own experience as practicing lawyers. Accordingly, for those programs that hire full-time permanent faculty to teach legal writing or legal practice, successful candidates will almost certainly have a minimum of two or three years of actual law practice in addition to any experience clerking or working in a non-practice setting. Nor is extensive practice experience a detriment – many legal practice professors successfully make the jump to full-time teaching after a decade or more of practicing law.

In terms of what type of practice experience might be the most valuable, schools are likely to be most interested in candidates who have done the same sort of work that they’ll be teaching their students to do in class. For example, students in first-year legal writing courses will almost certainly be called upon to conduct legal research, write office memos and other professional documents like emails, client letters, and court briefs, give oral arguments, and begin developing other legal skills. Thus, schools will want to know that a candidate to teach that course has had repeated opportunities to perform these sorts of tasks in practice. (Along these lines, because teaching students how to become effective legal communicators is a key goal of legal writing and legal practice classes, many programs will want to see a sample of candidates’ writing from practice at some point in the hiring process.) The subject matter of a candidate’s experience (e.g., products liability vs. criminal defense vs. corporate law) is likely to be significantly less important, although schools where legal writing faculty create their own writing and other assignments may have some interest in whether and how candidates will be able to draw upon their specific practice background to devise new assignments for their students.
For the most part, schools don’t put much emphasis on where a candidate acquired professional experience. Many legal writing faculty have worked at large law firms at some point in their career, or have been a judicial clerk, but this sort of background is hardly a requirement. Legal writing programs typically want their faculty to collectively have a wide range of professional experience, and some schools may actually favor candidates with professional backgrounds that are more consistent with where the school’s graduates are typically employed.

In addition, some teaching experience is highly desirable. Understandably, many legal writing programs will favor candidates who’ve taught legal writing before in some form, for example as an adjunct professor, in a fellowship, or in connection with CLE programs. Candidates without such experience should highlight any other teaching or comparable experience they might have, which does not necessarily need to be in legal education.

For a great discussion of other things that people interested in legal writing and legal practice positions should consider to help strengthen their candidacy, see https://www.summarycommajudgment.com/blog/how-to-become-a-legal-writing-professor.

At many schools, the interview process for legal writing and legal practice faculty is the same as it is for all other faculty members. Almost all schools do an initial screening interview either at AALS or over the phone/Zoom. Because openings often become available after the traditional fall recruiting period has ended, most schools (including those interviewing at AALS) welcome direct applications for open positions.

The best way to find out about open positions is by joining the Legal Writing Institute’s listserv, which is open to “aspiring teachers of legal writing” (https://www.lwionline.org/lwis-listserv-lwie). Information about some open positions can also be found through the Legal Writing Institute’s website (https://www.lwionline.org/resources/employment-listings) or the Legal Writing Prof Blog (https://lawprofessors.typepad.com/legalwriting/). Many schools also advertise legal writing and skills positions in print and web-based legal publications. State bar journals, the National Law Journal, the Chronicle of Higher Education, and Lawyer's Weekly are excellent sources.

A candidate’s application materials should include a cover letter, an academic CV, and (of course) any other requested materials. A list of references and a writing sample are typically not required until later in the process. A successful candidate must do more than simply highlight excellent academic performance. A strong application will also stress a candidate’s practice experience, prior teaching experience, and scholarly or other legal practice-related publications, if any. Generally, schools are interested in candidates with at least two or three years of practice experience. Judicial clerkships and law journal experience are viewed favorably but are not required.

Candidates selected for more intensive interviews may then go through another round of telephone/Zoom interviews with program directors or hiring committee chairs. Candidates under serious consideration will be invited to the school for a half or full day of interviews.
Interviews may range from one-on-one interviews with the dean or the director of the program to small group interviews with faculty members and administrators.

A second model of legal writing and legal practice teaching uses fellows or “visiting assistant professors” as instructors. Unlike permanent legal practice faculty, who rarely move into research faculty jobs, these instructors are using the fellowship or visiting assistant professor position to assist their transition into a search for a tenure track research faculty job. The fellowships are typically one- or two-year non-renewable contracts. Applicants for these fellowships should write directly to the schools that have such programs. Different schools have different deadlines, but the season begins in late autumn.

An increasing number of schools (particularly those with tenure-track programs) expect a traditional job talk on a research project delivered either to the whole faculty or to the committee responsible for hiring legal practice faculty. Other schools require a talk focused on teaching philosophy and methodology. Still other schools require candidates to teach a mock class to a group of legal writing and legal practice faculty and other hiring committee members.

Some schools expect their legal writing and legal practice faculty to produce legal scholarship. Accordingly, an application to those schools should emphasize a candidate’s publication record and promise for future scholarship. But even for schools that don’t require producing scholarship, having some sort of publishing/presenting record on legal writing and other practice topics can help demonstrate that a candidate is committed to the legal writing/practice field. That said, candidates should not overweigh publications or their academic agenda at the expense of seeming to de-emphasize their commitment to teaching. A legal writing and legal practice position is very teaching-intensive. The best candidates will be those who express a commitment to (and an aptitude for) both teaching and scholarship, with teaching coming first. For this reason, an aspiring legal writing and legal practice professor’s CV should indicate any past teaching or mentoring experience, even if not in the legal teaching context, and a candidate should be prepared to discuss in a cover letter and interviews how that experience might translate to the legal writing/practice classroom.

To prepare for applications and interviews, candidates may also wish to consult various publications about legal writing and legal practice pedagogy. Helpful sources include the Journal of the Legal Writing Institute, the LWI Monograph Series, and The Second Draft (links to which are available here: https://www.lwionline.org/articles), Legal Communication and Rhetoric: J.ALWD (https://www.alwd.org/lcr/), the Scribes Journal of Legal Writing (https://www.scribes.org/the-journal-of-legal-writing), and Perspectives: Teaching Legal Research and Writing (https://info.legalsolutions.thomsonreuters.com/signup/newsletters/perspectives/).

V. **HOW THE ALUMNI ACADEMIC PLACEMENT COMMITTEE AT MICHIGAN LAW CAN HELP YOU**

Every summer (usually in late June or early July), the Dean appoints a group of faculty to serve one-year terms on the Alumni Academic Placement Committee. This committee advises UMLS alumni interested in seeking teaching positions. Members of the committee can review
your CV, advise on the Association of American Law Schools (AALS) hiring conference, and generally help you navigate the hiring process. In past years, the committee has also held a fall workshop for alumni who are on the teaching market that year where they can meet one another, get advice from a wide range of faculty members, and take the opportunity to present a mock job talk.

All students and alumni with any interest in law teaching should provide their contact details, any teaching interests, and a rough career timeline to the Alumni Academic Placement Committee at LawAlumAcademicPlacement@umich.edu. This is best done early (even 1L year, although future candidates ought to update the committee from time to time as their plans change) so that members of the committee know of the candidates’ existence and can reach them easily.

The Office of Career Services provides additional support. OCS counselors are available to review your application materials and provide advice to those interested in legal academia.
American Association of Law Schools Fellowships and VAPs Directory:

https://teach.aals.org/tenure-track/fellowships-vap/directory/

From PrawfsBlog:


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<th>School</th>
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<td>Yale</td>
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<td>Hong Kong</td>
<td>Global Academic Fellow</td>
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<td>Indiana</td>
<td>Jerome Hall Fellow</td>
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Fellowships for Aspiring Law Professors from TaxProf Blog:

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<td>Bruce R. Jacob Visiting Assistant Professor Program</td>
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<td>Tulane</td>
<td>Forrester Fellowships</td>
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<td>Villanova</td>
<td>Visiting Assistant Professor Program</td>
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**Subject Specific Programs:**

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<td>Baltimore</td>
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<td>Baltimore</td>
<td>Mediation Clinic for Families and Clinic on Legal Data and Design Fellowship</td>
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<td>Baltimore</td>
<td>Saul Ewing Civil Advocacy Clinical Fellowship</td>
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<td>Chicago</td>
<td>Olin Fellowship in Law &amp; Economics</td>
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<td>Wachtell Fellowship in Behavioral Law, Economics &amp; Finance</td>
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<td>Fellowship in Climate Change Law</td>
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<td>Columbia</td>
<td>James Milligan Law Review Fellowships (for Columbia Law Review alumni)</td>
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<td>Jaharis Faculty Fellow in Health Law and Intellectual Property</td>
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<td>George Washington</td>
<td>Business, Finance, and Entrepreneurship Law Fellowship</td>
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<td>George Washington</td>
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<td>Quattrone Center Research Fellowship 2019-2020</td>
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<td>Princeton</td>
<td>The Arthur J. Liman Public Interest Law Fellowship</td>
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<td>Stanford</td>
<td>Center for Law and History</td>
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<td>Yale</td>
<td>Robina Foundation Post-Graduate Fellowships in International Human Rights</td>
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VAPs for Diversity Candidates

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<th>School</th>
<th>Program Name</th>
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| Florida International University | The Olivas Faculty Recruitment Initiative         | This initiative is to attract interested students to send the initiative's founder, Professor Ediberto Roman, their CVs and draft articles. Professor Roman will review and work with each applicant and their materials. After improving said applications, Professor Roman will eventually forward these materials to law deans and appointments committee chairs from across the country. Thus far, over a 100 law faculty that have committed to reviewing interest students' materials, and forwarding them to their respective appointments committees, and a over a dozen law deans have similarly agreed to become active with this initiative.                                                                                     | Q: Who is eligible?  
A: Any law student or recent law grad interested in entering the legal academy. We will not turn anyone away. We will however be at times brutally honest—if we believe a candidate will need to improve their application by attaining an advanced degree, such as an LLM, SJD, or PHD, we will advise the candidate to pursue such paths. The legal academy is extremely competitive, and thus, only the most qualified candidates are hired. We at FRI aim to assist improve the chances of the best qualified, especially racial and ethnic minorities, who happen to be woefully underrepresented in the legal academy. |

This group of faculty friends will be asked to "adopt" individual candidates, and some will attend conferences such as a LLSA, NBA, HNBA, and others regional law conferences near their respective cities. This model will follow the Herculean efforts Michael Olivas undertook decades ago when he almost single-handedly changed the number of the Latinx law professoriate from 20+ members when he started to eventually over 200 members, a number that has remained largely stagnant for decades. Given that the initiative will include several committed law faculty, the initiative's team is confident they can reach and affect an even broader group. In the coming weeks, leaders at FIU will be sending out letters to student groups around the country, which will include Latinx, Black, Asian, and Native American student associations.

For those interested students that may not be ready to enter the academy, the initiative will recommend and direct these students to LLM programs, etc., and generally try to provide them useful advice on how they might be able to fulfill their dreams.                                                                                                                                                                                                                   | Q: What is the Process to become an FRI fellow?  
A: Interested persons should contact Professor Ediberto Roman via email. In your email, please put FRI in the subject line. After initial email exchanges where Professor Roman gathers educational and professional credentials, he typically arranges a phone conference with each potential fellow. Once that call is made, Professor Roman seeks to match the new FRI fellow with a mentor. The mentor then reaches out to the fellow and they work together on gathering information on the fellow's interest and potential. That effort may include reviewing writing samples, assisting with the faculty recruitment process—the AALS conference where candidates are interviewed, and even conducting mock interviews and reviewing all submissions each mentee submits to law schools.                                      |

Q: What does the FRI cost?  
A: There is a finder’s fee every FRI fellow must pay—they must commit to help other underrepresented groups. In addition, the FRI asks that each fellow once becoming a law professor, they agree to assist future
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<th>University</th>
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<tr>
<td>Lewis &amp; Clark</td>
<td><strong>VAP Position</strong></td>
<td>The position is ideal for those interested in transitioning to a career in academia. The VAP will have the opportunity to focus on teaching and scholarship in preparation for that transition. The VAP will teach three courses per academic year and should be prepared to write at least one article or other scholarly piece while at Lewis &amp; Clark. The VAP will receive mentoring from Lewis &amp; Clark Law School’s full-time faculty. The VAP may also participate in faculty colloquia, special visitor events, and other professional and social engagements throughout the academic year. Ideal candidates will have a J.D., at least 2 years of practical experience, the ability to teach and communicate effectively, and strong writing and research skills. Ideal candidates will also have experience working with diverse populations, demonstrated ability to contribute to campus diversity efforts, and/or evidence of cultural competence. We strongly encourage applications from persons in groups historically underrepresented in the legal profession.</td>
<td>The VAP will receive a competitive salary, research support, and contribution towards benefits. The VAP will have a private office and access to our excellent library resources.</td>
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<td>Harvard Law</td>
<td><strong>Reginald F. Lewis Fellowship for Law Teaching</strong></td>
<td>The Lewis Fellowship program particularly supports the training of prospective law teachers who will enhance the diversity of the profession. We especially encourage applications from candidates who will diversify the legal academy. The Lewis Fellow is required to prepare at least one major article for publication. Additionally, the Lewis Fellow has an opportunity to audit courses and attend workshops at the law school. The Lewis Fellow is expected to follow a schedule of research and work to be agreed upon with the Lewis Committee.</td>
<td>The term for the Lewis Fellowship will be from July 1, 2021, through June 30, 2022. The Lewis Fellow will receive an annual stipend of $55,000. This Fellowship may be renewed for one additional year through the mutual agreement of the Lewis Fellow and the Lewis Committee. The Lewis Fellow is expected to be in residence at Harvard Law School during the academic year.</td>
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<tr>
<td>The University of Memphis</td>
<td><strong>Maxine Smith Fellows Program</strong></td>
<td>The Maxine Smith Fellows Program was originally created as a TBR central office Geier initiative designed to provide opportunities for African-American TBR employees to participate in a working and fellowships and provide testimonials concerning the FRI process and its impact.</td>
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<td>School of Law</td>
<td>learning environment that would enhance work experience and career development. The TBR central office remains committed to the program as a tool for enhancing opportunities and as a means to increase the diversity of ideas, thoughts and experiences that ultimately enhance the educational environment at our institutions. The objectives of the program are: To increase the academic and professional credentials of the Fellows; To allow Fellows to observe and participate in decision-making situations; To provide Fellows the opportunity to experience how policy is made at the institution, senior administrative and governing board levels; and To help increase the number of qualified applicants from underrepresented groups for senior level administrative positions at TBR institutions. It is expected that this program will enhance the marketability and employment potential of all Fellows who successfully complete the program.</td>
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<tr>
<td>University of North Carolina</td>
<td>The Carolina Postdoctoral Program for Faculty Diversity As part of a continuing commitment to building a culturally diverse intellectual community and advancing scholars from underrepresented groups in higher education, The University of North Carolina at Chapel Hill Carolina Postdoctoral Program for Faculty Diversity is pleased to announce the availability of postdoctoral research appointments for a period of two years. The purpose of the Program is to develop scholars from underrepresented groups for possible tenure track appointments at the University of North Carolina and other research universities. Postdoctoral scholars will be engaged full-time in research and may teach only one course per fiscal year. The program supports 10 postdoctoral scholars, engaged full-time in research and writing for a two-year term starting July 1. Fellows in the program are provided with research funds as well as departmental mentor/s, office, computer, health benefits and $50,000 annual salary. Meetings and workshops are structured for the purposes of networking, social interaction and supporting professional development of diversity postdoctoral scholars within the program.</td>
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<tr>
<td>University of Wisconsin-Madison</td>
<td>James B. MacDonald The James B. MacDonald Distinguished Professorship was established in 1995 in honor of UW Law Professor James B. MacDonald. It is awarded to renowned</td>
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</table>
Distinguished Professorship scholars from East or Southeast Asia to teach and/or lecture short term at the Law School.

The Hastie Fellowship Program encourages scholarship in the full range of law studies. Wisconsin has a particularly strong tradition supporting studies of the law in action and interdisciplinary work. Fellows are encouraged to take full advantage of long-established ties between the law faculty and faculty in other disciplines, and they will have access to the vast resources of the entire University.

Each Hastie Fellow, before beginning work, establishes a relationship with a faculty member who will serve as the Fellow's principal research advisor. The Fellow may also be paired with a second mentor and will have many opportunities to engage with additional members of the faculty, including members of the Hastie Fellowship Committee.

Hastie Fellows devote the majority of their time to their own research agenda, researching and writing scholarly articles with support from a faculty advisor and the Hastie Fellowship Committee. Typically, a Fellow prepares two publishable articles during their time in residence, and relies upon these articles in their applications for law teaching positions. Hastie Fellows can also receive an LL.M. degree based upon the scholarly work they complete during the fellowship.

Another important aspect of the Hastie Fellowship Program is helping each Fellow develop strong teaching skills. Fellows have opportunities to observe teaching in their subjects of interest and discuss strategies with faculty members. In addition, Fellows typically elect to teach a course or seminar in their area of interest in the final semester of the program.

Fellows are also encouraged to become involved in the rich intellectual and social community of the Law School. For

Hastie Fellows will be appointed for a term of two years. The term and internal sequence of the Hastie Fellowship Program are designed to accommodate the needs for intensive research and writing, participation in the hiring process of law schools, and gaining teaching experience:

The first year of the program is devoted primarily to scholarship. By the fall of the second year, Fellows should be sufficiently advanced in their research to submit their applications to the law teaching market.

The final semester in residence focuses on providing, whenever possible, a teaching experience and finishing the Fellow's publications.

During the term of the appointment, Fellows are required to be in residence in Madison and enrolled at the University of Wisconsin Law School, with a commitment to participating fully in the life of the Law School.
example, Fellows are welcome to attend faculty workshops, colloquia, and social gatherings; to engage with the many scholars and public officials who visit the Law School each year; and to participate in a range of student-sponsored activities.

The Distinguished Visiting Scholars program brings to Washington University underrepresented minorities who have distinguished themselves as leaders and innovators in the academy, in business or in fields of endeavor.

Each scholar is hosted by a school or academic department within the university. The hosting department or school extending the invitation coordinates all of the appropriate and necessary arrangements for a successful visit. The Office of the Provost covers expenses (stipend, airfare, hotel room and official meals/events involving Washington University faculty, staff and students) that are part of the scholar’s visit.

Critical Race Studies Fellowships

<table>
<thead>
<tr>
<th>School</th>
<th>Name of Fellowship</th>
<th>Link</th>
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<tbody>
<tr>
<td>UCLA</td>
<td>CRS Law Teaching Fellowship</td>
<td><a href="https://law.ucla.edu/academics/centers/critical-race-studies-center/critical-race-studies-fellowship">https://law.ucla.edu/academics/centers/critical-race-studies-center/critical-race-studies-fellowship</a></td>
</tr>
<tr>
<td>Indiana University - Bloomington</td>
<td>Postdoctoral Fellowship in Race Studies</td>
<td><a href="https://crres.indiana.edu/programs/postdoctoral-fellowships/index.html">https://crres.indiana.edu/programs/postdoctoral-fellowships/index.html</a></td>
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</table>
APPENDIX B
Felix B. Chang  
*Visiting Assistant Professor*  
*Director, Institute for the Global Practice of Law*  
*University of Cincinnati College of Law*

### EDUCATION

**University of Michigan Law School,** JD, 2006  
- Clara Bates Fellowship for Overseas Research (Serbia)  
- Associate and Contributing Editor, *Michigan Journal of Race and Law*  
- Semifinalist, Henry Campbell Moot Court Competition

**Yale University,** BA, English Language and Literature, 1999  
- Parker Huang Fellowship for Postgraduate Research in Asia (Xinjiang, China)

### RESEARCH AND TEACHING INTERESTS

Financial Reform; Intersections of Antitrust Law with Banking and Securities Law; International Business Transactions (in particular, entrepreneurship and migration in transition economies)

### OTHER TEACHING INTERESTS

Corporations, Property, Commercial Law, Agency & Partnership, Torts, Contracts, Wills & Trusts, International Law

### WORK IN PROGRESS

*Death to Credit as Leverage: Using the Bank Anti-Tying Provision to Curb Financial Risk* (arguing that the Bank Holding Company Act’s anti-tying provision can curtail financial risk by limiting the types of investment products that can be tied to loans)

### ACADEMIC EXPERIENCE

**University of Cincinnati College of Law,** Cincinnati, OH  
*Visiting Assistant Professor,* Fall 2011–present  
- 2011-2012 Courses: Agency & Partnership; Corporations; Torts  
- 2012-2013 Courses: Agency & Partnership; Corporations; Introduction to the U.S. Legal System  
- Service  
  - Organized a panel on Dodd-Frank’s derivatives, consumer protection, and whistleblower provisions for the 2012 University of Cincinnati College of Law Corporate Law Society Symposium.  
  - Helped create the College of Law’s LL.M. in the U.S. Legal System.

**Adjunct Professor,** Spring 2009 & Spring 2011  
- Courses Taught: International Business Transactions; International Business Transactions Practicum
PUBLICATIONS

Can Chinese Migrants Bolster the Struggling Economies of Europe?, EUROPEANA (forthcoming Nov. 2012)

Chinese Migrants in Russia, Central Asia and Eastern Europe (Routledge, 2011) (co-editor and contributor)
- Chapter Contributions:
  - Globalization without Gravitas: Chinese Migrants in Transition Economies
  - Myth and Migration: Zhejiangese Merchants in Serbia
  - The Chinese under Serbian Laws

Get Your Canned Goods, Umbrellas, and Knock-off Pumas Here!, FOREIGN POLICY (Dec. 2009)


INVITED TALKS


CONFERENCES AND PRESENTATIONS


Presenter, Death to the Leveraged Monopoly Profits of Banks: Using the Anti-Tying Rule to Curb Risky Financial Products, Ohio Legal Scholarship Workshop, West Virginia University College of Law, Morgantown, WV, June 14, 2012.


FELLOWSHIPS AND GRANTS
Clara Bates Overseas Fellowship, University of Michigan Law School
Belgrade Centre for Human Rights, Research Fellow, Belgrade, Serbia, 2006
  • Researched the legal status of immigrants and trafficking victims in Serbia, Montenegro, and Bosnia. Helped devise solutions to discrimination against non-nationals.

Parker Huang Fellowship, Yale College
Researcher, Xinjiang, China. 1999-2000
  • Traced the roots of the Xinjiang separatist movement through interviews with dissidents, Communist Party cadres, and businessmen.

OTHER LEGAL EXPERIENCE
Institute for the Global Practice of Law, University of Cincinnati College of Law, Director, Cincinnati, OH, Fall 2010-present
  • Designed and oversaw an innovative training program for international lawyers on U.S. law and cross-border business transactions. Successfully recruited practitioners from Brazil, China, Costa Rica, Italy, Jordan, and Nigeria as participants. Coordinated with law firms, multinational companies, judges, and government attorneys in the delivery of the program.

Fifth Third Bank, Counsel and Assistant Vice President, Cincinnati, OH, 2009-2011
  • Derivatives – Documented swaps transactions (foreign exchange, interest rate, and commodities) through negotiation of ISDAs and foreign exchange agreements. Counseled derivatives group on clearing requirements of Dodd-Frank.
  • Private Equity and M&A – Advised the Bank and its private equity affiliate in their capacities as investors. Counseled private equity affiliate on Volcker Rule compliance.
  • Trusts – Assisted trustees to common and collective investment funds with contractual and regulatory stipulations on the movement of trust assets.

Dinsmore & Shohl LLP, Corporate Associate, Cincinnati, OH, 2007-2009
  • Securities – Drafted and filed SEC disclosures for public reporting companies. Counseled hedge funds and investment advisers on exemptions from registration. Drafted private placement memoranda and oversaw Regulation D filings for privately issued securities.
  • M&A – Drafted and negotiated merger agreements in the transportation, semiconductor, machinery manufacturing, and education industries.

Squire Sanders LLP, Litigation Associate, Cleveland, OH, 2006; Summer Associate, 2004 & 2005
  • Litigation – Drafted briefs and motions in securities fraud and toxic torts cases.
Felix Chang CV, page 4 of 4

Securities & Exchange Commission, Office of International Affairs, Summer Intern, Washington, DC, 2005
  • Devised warnings to deponents in jurisdictions with no privilege against self-incrimination. Provided technical assistance to foreign stock exchanges.

OTHER TEACHING
University of Michigan, English and Classics Departments, Ann Arbor, MI
Graduate Student Instructor, Spring 2005-Spring 2006
  • Courses Taught: Renaissance & Medieval Literature; Great Books

COMMUNITY AND PROFESSIONAL SERVICE
Legal Aid Society of Greater Cincinnati, Volunteer Lawyer for the Poor, Cincinnati, OH, 2007-2009

LANGUAGES
Mandarin Chinese, native fluency (spoken); German, intermediate; Russian, basic

BAR ADMISSION
State of Ohio

REFERENCES
Academic
James Boyd White  Louis D. Bilionis
L. Hart Wright Professor of Law Emeritus  Dean and Nippert Professor of Law
University of Michigan Law School  University of Cincinnati College of Law
Vikramaditya S. Khanna  Barbara Black
Professor of Law  Charles Hartsock Professor of Law
University of Michigan Law School  University of Cincinnati College of Law
Richard D. Friedman  Jacob Katz Cogan
Alene and Allan F. Smith Professor of Law  Professor of Law
University of Michigan Law School  University of Cincinnati College of Law
Practitioner
James R. Hubbard  George H. Vincent
Senior Vice President & Chief Legal Officer  Managing Partner & Chairman
Fifth Third Bancorp  Dinsmore & Shohl LLP
SCHOLARLY AGENDA

My research agenda consists of two strands. The first explores reform of the banking and finance sector, as well as the pitfalls of the Dodd-Frank Financial Reform Bill. I approach financial reform not from traditional banking and securities frameworks such as systemic risk and disclosure, but from other paradigms such as antitrust and legal ethics. The treatment of tying, monopolies, and cartels under antitrust law can help banking and securities scholars understand the post-financial crisis landscape. Since 2008, the finance sector has been beset with consolidations, as well as an interest-rate rigging scandal involving the London Interbank Offered Rate (LIBOR)—all of these are problems which implicate competition policy. A related topic that I intend to explore is the effect of heightened regulatory coordination on privileged and confidential information provided by financial entities.

The second line of research considers how law affects entrepreneurship and migration in transition economies. Research on immigrant merchants is well-established but has revolved around the sociology of middlemen minorities and push-pull theories of migration. I focus on the role of law in facilitating the influx of foreign merchants. My prior publications have examined Chinese merchants in the former Soviet Union and Eastern Bloc; my future work will expand to comparisons of merchant groups in multiethnic societies. I hope to explain several sets of contradictions—for example, why do merchants from robust economies go to relatively weaker economies? Why do some merchant-migrants thrive despite restrictive immigration, residency, and business regulations while others fail?

Financial Reform

I. Application of Antitrust Principles to Bank Lending and Sales Practices. My current work-in-progress, Death to Credit as Leverage: Using the Bank Anti-Tying Provision to Curb Financial Risk, argues that the Bank Holding Company Act’s anti-tying provision (the Anti-Tying Provision) can be used to limit sales of risky financial products. The Anti-Tying Provision prohibits a bank from requiring borrowers to purchase additional products in order to obtain a loan. Although it has been eroded by a slew of exceptions, I argue that bolstering the provision can reduce borrowers’ exposure to financial risk. By limiting the types of investment products that can be tied to loans, a firewall is installed between lending and investment activity. This mimics the approaches of the Glass-Steagall Act and the Volcker Rule in separating commercial banking from speculation and investment. My article also draws upon recent developments in general antitrust law on anticompetitive effects, consumer welfare, and the ultimate goals of antitrust law, which have yet to be incorporated into the scholarship on bank tying restrictions.
In a subsequent piece, I will explore procedural changes to the Anti-Tying Provision that would complement the above recommendations. Tying actions against banks are seldom brought because borrowers fear reprisals and because of the difficulty of gathering evidence. I plan to evaluate alternatives such as the adoption of a whistleblower regime, and the requirement of affidavits from loan officers that certify to the absence of tying.

II. The Creation of Systemically Significant Financial Intermediaries. Having illustrated the utility of a technical antitrust rule to financial reform, I intend to move to the broader notion of systemic risk. My next piece, The Systemic Risk Paradox, will look at how Dodd-Frank has created systemically significant securities and derivatives intermediaries that will eventually become too big to fail. Much has been written on banks which are too big to fail, and a few scholars have now remarked on the same trend with derivatives clearing organizations. My contribution would be to situate derivatives clearing organizations within a broader context of intermediaries such as custodians, securities lending agents, securities depositaries, and broker-dealers which have been allowed to consolidate and pre-empt competition. I will evaluate the roles of banking and securities regulations, as well as UCC Article 8, in catalyzing this trend. I will argue that we might look to antitrust law’s treatment of cartels for guidance, but ultimately the problems of industry custom and barriers to market entry require a more heavy-handed approach.

III. Heightened Regulatory Coordination and Its Effects on Privileged and Confidential Information. Finally, in the near future I will turn to the problems posed by heightened regulatory scrutiny and coordination. Dodd-Frank envisions greater oversight by regulators; yet because jurisdiction over financial institutions is divided among numerous agencies (such as the Federal Reserve, OCC, SEC, CFTC, FSOC, and CFPB), administrative coordination means that information passed to one regulator will likely be shared with others. This complicates the expectations with regard to privileged and confidential information. For example, will information given to the Consumer Financial Protection Bureau (CFPB) be used for prosecution by the Department of Justice? Agencies often assert that any information one regulator shares with another is privileged and confidential. I aim to explore this — regulatory privilege. I also will explore how developments in oversight and coordination square with whistleblower regimes under Dodd-Frank, which implicate different considerations for privileged and confidential information.

Entrepreneurship and Migration in Transition Economies

I. The Legal Dimensions of Chinese Migration into Transition Economies. My other area of research examines how law interacts with social, cultural, and political factors to affect the experiences of migrants—in particular, petty merchants—in unstable economies. My prior publications have focused on Chinese merchant-migrants in post-Communist societies. In CHINESE MIGRANTS IN RUSSIA, CENTRAL ASIA AND EASTERN EUROPE (Routledge 2011), on which I was a co-editor and contributor, I wrote three chapters framing Chinese migration as part of a greater trend of Chinese globalization. One chapter, The Chinese under Serbian Laws, analyzed the disparate enforcement of tax and business laws against Chinese merchants, as well as their recourse under Serbian anti-discrimination law. My other publications include Can Chinese Migrants Bolster the Struggling Economies of Europe?, forthcoming in the journal EUROPEANA (arguing that petty merchants can spur large-scale foreign direct investment), and Get Your Canned Goods, Umbrellas, and Knock-off Pumas Here!, in FOREIGN POLICY (arguing that Chinese migrants in former Yugoslavia supply goods where markets are too volatile for large multinational companies).
II. Comparative Analyses of Merchant-Migrants in Multiethnic Societies. While the above research has the potential for broad appeal, due to the general interest in Chinese globalization, I intend to turn more narrowly toward the legal dimensions of migration and entrepreneurship for my upcoming work. Specifically, I will do comparative analyses of merchant groups in multiethnic societies—for example, Chinese and Lebanese traders in Bulgaria—to see how the groups cope with corruption, discrimination, and nascent finance systems. Chinese merchants hail from a society with limited real property rights. In Bulgaria, the Chinese therefore do not fund business costs through bank loans secured by real property. By contrast, the Lebanese in Bulgaria are an older community which has lived through post-Communist reforms in private property rights and credit finance. I hope to address the following questions: How do the two merchant groups fund business operations? Do they rely on local banking systems? Do they resort to local courts to resolve disputes?

I would also like to compare the legal obstacles faced by Chinese merchants in Nigeria with those faced by Nigerian merchants in China. As with other countries in Sub-Saharan Africa, China has close trade relations with Nigeria. Alongside state-sanctioned bilateral trade, a shadow economy has burgeoned, with petty merchants from each country migrating to the other to set up small businesses. I am interested in how immigration, residency, and business laws render those activities illegal, as well as how the merchants respond to informality.
Greer Donley

EDUCATION:

University of Michigan School of Law, Ann Arbor, MI                    May 2014
Juris Doctor, GPA: 3.795, Order of the Coif, magna cum laude
- Editor-in-Chief (3L) and Article Editor (2L), Michigan Journal of Gender & Law
- Certificate of Merit (highest grade in the course): Conflict of Laws, FDA Law
- Jack N. Fingersh Merit Scholarship and Dean’s Merit Scholarship (partial tuition scholarships)

Claremont McKenna College, Claremont, CA                           May 2009
Bachelor of Arts in Philosophy with a Sequence in Ethics, cum laude, Honors in Philosophy
- Thesis entitled Economic Redistribution: Obligations for Nationalists
- Two-Year Captain and Four-Year Starter of CMC Volleyball Team, 2nd Team All Conference
- Projects for Peace $10,000 Grant Recipient (grant to conduct maternal health campaign in Honduras)
- AnneMerie Donoghue Fellowship in Human Rights (grant for work on human rights issues in Honduras)
- McKenna International Scholarship (summer scholarship to work on philanthropic project in Honduras)

TEACHING INTERESTS:

Doctrinal: Health Law, Legislation and Regulation, Administrative Law, Constitutional Law, Civil Procedure
Specialty: Bioethics, Reproductive Rights, Healthcare Fraud and Abuse, FDA Law, Public Health Law

SCHOLARLY PUBLICATIONS:


Marion Danis, Greer Donley & Reidun Forde, Moving Away from Silent Trepidation: Changing the Discussion of Rationing and Resource Allocation, in FAIR RESOURCE ALLOCATION AND RATIONING AT THE BEDSIDE 400 (Marion Danis et al. eds., 2014).

Marion Danis et al., Exploring Public Attitudes Towards Approaches to Discussing Costs in the Clinical Encounter, 29 J. GEN. INTERNAL MED. 223 (2014).

Greer Donley, Does the Constitution Protect Abortions Based on Fetal Anomaly? Examining the Potential for Disability-Selective Abortion Bans in the Age of Prenatal Whole Genome Sequencing, 20 MICH. J. GENDER & L. 291 (2013).

Greer Donley, Sara Chandros Hull & Benjamin E. Berkman, Prenatal Whole Genome Sequencing: Just Because We Can, Should We?, 42 HASTINGS CTR. REPORT 28 (2012).

Greer Donley & Marion Danis, Making the Case for Talking to Patients about the Costs of End-of-Life Care, 39 J.L. MED. & ETHICS 183 (2011).

OTHER PUBLICATIONS


ACADEMIC WRITING PRIZES AND AWARDS:

- 2nd Place, H. Thomas Austern Memorial Writing Prize  
  National Award for Student Scholarship in Food & Drug Law  
  Oct. 2014
- Michigan Law Scholarly Writing Award  
  Professor-Selected Award for Superior Scholarship  
  May 2014
- 1st Place, Sarah Weddington Writing Prize  
  National Award for Student Scholarship in Reproductive Rights  
  Feb. 2014
- Claremont McKenna Departmental Thesis Award  
  Departmental Award for Best Thesis in Philosophy  
  May 2009

EXPERIENCE:

U.S. Court of Appeals for the Second Circuit, New York City, N.Y.  
Sept. 2017 – Aug. 2018

- Accepted a clerkship with the Hon. Judge Robert Sack

Latham & Watkins, Healthcare & Life Sciences Associate, Washington, D.C.  
Oct. 2014 – Present

Latham & Watkins, Summer Associate, Washington, D.C.  
May 2013 – July 2013

- Defend healthcare clients against white collar investigations involving the False Claims Act, Anti-Kickback Statute, and Foreign Corrupt Practices Act
- Represent healthcare companies in filing administrative law complaints against the government
- Research healthcare regulations on the Medicare reimbursement and FDA approval processes to help clients obtain approval for their drug, biologics, and devices on the market
- Conduct regulatory diligence during the merger and acquisition of healthcare companies
- Represent homeless plaintiffs in a large, civil rights suit by taking depositions, researching legal issues on the Eighth and First Amendments, and drafting motions, settlement proposals, and a Ninth Circuit brief

National Women’s Law Center, Health Law Intern, Washington, D.C.  
May 2012 – July 2012

- Drafted comment letters in response to proposed rules implementing the Affordable Care Act
- Researched various provisions of the Employee Retirement Income Security Act, Emergency Medical Treatment and Active Labor Act, Family Medical Leave Act, and Americans with Disabilities Act

National Institutes of Health, Department of Bioethics, Fellow, Bethesda, M.D.  
Sept. 2009 – July 2011

- Researched bioethical issues related to medical research ethics, genetics, and resource allocation
- Worked as an ethics consultant for the active research protocols taking place at the NIH’s Clinical Center
- Participated in the National Human Genome Research Institute’s IRB as an observer for one year

Pan American Health Organization, Intern, Washington, D.C.  
Oct. 2010 – May 2011

- Analyzed research proposals submitted to PAHO’s Ethics Review Committee and wrote a report enumerating the common factors preventing ethics approval in submitted proposals

PRESENTATIONS:

Michigan Law School, Student Research Roundtable, Ann Arbor, Michigan  
Feb. 2014

Title: Encouraging Maternal Sacrifice: How Regulations Governing the Consumption of Pharmaceuticals in Pregnancy Prioritize Fetal Safety over Maternal Health and Autonomy

Bowie State University, Advanced Bioethics Course, Guest Lecturer, Bowie, Maryland  
March 2011

Title: The Dreaded “R” Word”: Should Rationing Be Used to Cut Healthcare Costs in the U.S.?

American Society for Bioethics and Humanities Conference, San Diego, California  
Sept. 2010

Title: The $1,000 Genome: Ethical Implications of Whole Genome Sequencing

Pediatric Bioethics Conference, Poster Presentation, Seattle, Washington  
July 2010

Title: Pre-natal Whole Genome Sequencing: Just Because We Can, Should We?

International Society on Priorities in Healthcare Conference, Boston, Massachusetts  
April 2010

Title: Moving Away from Silent Trepidation: Improving the Language of Rationing
BAR AND COURT ADMISSIONS:
Admitted to the state and federal bar in Missouri (2014) and the District of Columbia (2015)
Admitted to practice in front of the U.S. Court of Appeals for the Ninth Circuit (2015)

REFERENCES:
Unversity of Michigan Law School
- Rebecca Eisenberg, JD
  Robert and Barbara Luciano Professor of Law
- Carl Schneider, JD
  Chauncey Stillman Professor of Law
- Nicholas Bagley, JD
  Professor of Law
- J.J. Prescott, JD
  Professor of Law, Co-director of the Empirical Legal Studies Center and the Law and Economics Program
- Margo Schlanger, JD
  Henry M. Butzel Professor of Law
- Gabriel Mendlow, JD, PhD
  Assistant Professor of Law
- Norman Ankers, JD
  Adjunct Professor, Partner at Foley & Lardner
- Edward Goldman, JD
  Visiting Law Professor, Associate Professor in Dept. of ObGyn, Faculty at the Center for Bioethics

National Institutes of Health, Department of Bioethics
- Benjamin Berkman, JD MPH
  NIH Faculty, Deputy Director of the Bioethics Core at the National Human Genome Research Institute, Adjunct Professor at Georgetown Law
- Marion Danis, MD
  Head of the Section on Ethics and Health Policy, Chief of the Clinical Center’s Bioethics Consultation Service
- Sarah Chandros Hull, PhD
  NIH Faculty, Adjunct Assistant Professor at Johns Hopkins’ School of Public Health, Director of the Bioethics Core at the National Human Genome Research Institute
Greer Donley

My scholarly interests cover a broad array of healthcare topics related to bioethics, administrative law, and health policy. My work thus far has focused on constraints to administrative action in the healthcare context, the ethical implications of new medical technologies, and the constitutional and policy problems associated with the regulation of reproductive rights. I have also published in the field of resource allocation – in particular, on creating patient-centered strategies that both reduce healthcare costs and improve patient autonomy. I plan to build on this work in the future, continuing to explore the intersection of bioethics, policy, and law.

In the next three to five years, I will focus my research, writing, and publication in four areas. First, I will focus on the constitutional limitations on administrative agency action. Second, I plan to examine the bioethical implications of new healthcare technologies, an emerging area at the frontier of regulation and science. I am particularly drawn to the regulation of emerging technologies and look forward to wider collaboration in this area. Third, I am interested in the laws regulating reproductive decisions and their constitutional and practical limitations. Fourth and finally, I am concerned with the broad legal issues emerging from current debates in health policy over resource allocation.

Constraints on Agency Action in Healthcare

The limits of healthcare-related administrative action have become increasingly important given the federal government’s expanding role in healthcare. Centers for Medicare and Medicaid Services (CMS) regulations govern Medicare and Medicaid reimbursement and coverage decisions, which often have widespread implications for the coverage and reimbursement decisions of private insurers. The Office of the Inspector General (OIG) and Medicare contractors retrospectively review provider conduct to identify fraud, abuse, and overpayments. The Food and Drug Administration (FDA) governs the approval of new drugs, devices, biologics, and tobacco; it also polices companies responsible for those products once they are approved. U.S. Department of Health and Human Services (HHS) is responsible for regulations implementing the Affordable Care Act, establishing the bounds of ethical human subjects research and creating patient confidentiality in the healthcare system. Congressional delegation of these activities to agencies is vital. Yet administrative action is notoriously difficult to challenge, leaving many people affected by such action with limited remedies. An important aspect of my work will be exploring the limits of administrative regulation.

I am currently working on a manuscript that explores the due process limitations on the four-step Medicare Appeals process. This research will also provide the basis of my job talk. The argument proceeds roughly as follows. The process for appealing a retrospective Medicare overpayment determination involves four steps: Medicare contractors conduct the first two, Administrative Law Judges (ALJs) conduct the third, and the Medicare Appeals Council finalizes the process. The Centers for Medicare and Medicaid Services (CMS) are statutorily empowered to recoup a company’s future Medicare payments to offset the overpayment after the
second stage of the appeals process. Yet it is not until the ALJ hearing that a neutral arbiter reviews the provider’s appeal and the provider has an opportunity for a full evidentiary hearing. As one might expect, ALJs fully overturn the underlying decisions more than 50% of the time.

Ten years ago, the system functioned without significant administrative delays. CMS is statutorily required to provide an ALJ determination on the merits within 90 days, so the fact that the agency could recoup overpayments in between the second and third steps was not burdensome. In 2010, however, CMS implemented a new type of Medicare audits, which entered the Medicare appeals system; however, there was no correlating increase in resources to accommodate the influx of new appeals. As a result, the number of Medicare appeals has ballooned over 1000% in the past 6 years; the D.C. Circuit recently found that a provider could wait a decade to receive an ALJ hearing. In the meantime, small providers face bankruptcy as the agency recoups significant funds before the provider receives a fair hearing (which they are more likely than not to win).

My manuscript explores the nature of the property interest at stake, which is defined by the Medicare Provider Agreement, and whether or not the system, as it functions today, is violating due process according to Mathews v. Eldridge and its progeny. The manuscript builds on ideas I first advanced in my article A System of Men and Not of Laws: What Due Process Tells Us about the Deficiencies in Institutional Review Boards,1 which also explored the due process concepts that are lacking in ethics review for medical research. The faculty at Michigan Law presented me with a Scholarly Research Award for my work on this article.

Bioethical Implications of Emerging Healthcare Technologies

As new technologies develop, their ethical impact and legal implications remain largely unexplored. To what extent should these new technologies be regulated? How can regulatory agencies promote innovation in healthcare without sacrificing other important interests? Finally, how will emerging law balance patient interest in cutting-edge technology with protective regulations? My article, Prenatal Whole Genome Sequencing: Just Because We Can, Should We?2 dealt with this cluster of questions, reviewing the ethical implications of prenatal whole genome sequencing. My co-authors and I were the first to publish on the topic, years before the technology entered clinical care. The article received national media attention and was cited by the President’s Commission for the Study of Bioethical Issues.

Building on this work, I plan to write an article that will explore whether, and under what circumstances, the FDA should consider allowing direct-to-consumer genetic testing companies, like 23andme, to resume its distribution of whole genome sequencing results to patients without a genetic counselor or physician overseeing the process. Similar issues are involved in the possibility of new pinprick laboratory testing companies, such as Theranos, which promised to offer a range of blood laboratory tests quickly and painlessly, on demand at the local pharmacy. What tests, if any, should we allow patients to run on themselves without a doctor’s order, and to what extent should health insurance cover such tests?

2 Greer Donley, Sara Chandros Hull & Benjamin E. Berkman, Prenatal Whole Genome Sequencing: Just Because We Can, Should We?, 42 Hastings Ctr. Report 28 (2012).
I am also interested in the FDA’s budding regulation of e-cigarettes and their accessories, which offer a potentially safer alternative to traditional tobacco products, but also risk attracting a new and younger group of consumers who believe the product is safe and may have not otherwise started using any tobacco products. The FDA is currently conducting a series of public conferences to debate the scientific issues involved in e-cigarette risk, but an ethical analysis is needed to consider how we should balance unidentified, potential lives with identifiable lives in the historical context of companies that have made their profits by lying to the public about risk.

Reproductive Rights

I have always been passionate about affirming the rights of pregnant women and of women making reproductive decisions. For instance, I considered an Indiana state law banning disability-selective abortion bans in Does the Constitution Protect Abortions Based on Fetal Anomaly? Examining the Potential for Disability-Selective Abortion Bans in the Age of Prenatal Whole Genome Sequencing? The article argued that it is unconstitutional for state legislatures to enact reasons-based abortion bans – i.e., abortion restrictions based solely on the reason a woman is choosing to terminate her pregnancy. A federal court recently heard the issue and enjoined enforcement of the law for the same reasons noted in my article. In another article, Encouraging Maternal Sacrifice: How Regulations Governing the Consumption of Pharmaceuticals in Pregnancy Prioritize Fetal Safety over Maternal Health and Autonomy, I explored a different aspect of reproductive rights: the right to participate in medical research while pregnant. This article won two national study writing competitions; one in food and drug law and the other, in reproductive rights.

In connection with these issues, I plan to explore the regulations affecting IUD use in women who have never had children. Although the FDA has only approved certain IUDs for use in women who have given birth, doctors often prescribe IUDs off-label as standard contraception regardless of whether a woman has given birth or not. I am interested in the relationship between doctors, who can prescribe off label, and drug companies, who are forbidden to market their products to those women who have not yet given birth.

The Affordable Care Act raises healthcare issues that will influence litigation for years to come. For instance, one issue concerns the limits and inclusions of the Act’s coverage of contraception for men. Drug companies are currently developing pharmaceutical birth control for men, yet it is unclear whether the Act will require full coverage of male birth control. There are also important pending issues for women’s coverage. On the bioethical front, I have considered drafting a manuscript that uses a Catholic doctrine, the Doctrine of Double Effect – which permits a bad outcome to occur as a side effect to promoting a good end – to argue that Catholic employers should not object to contraceptive coverage in certain instances, such as when women seek to use birth control for non-contraceptive purposes. This would add a new perspective in the


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litigation battles currently occurring about the Affordable Care Act’s contraceptive coverage in the Supreme Court.

Patient Rights and Resource Allocation

One of the largest challenges facing our healthcare system is cost. The Affordable Care Act may have slowed an uncontrolled upward financial trajectory, but real progress had yet to be made. One of the most difficult discussions about curbing financial costs is how to balance the concept of healthcare as a human right against the need for practical constraints on spending.

My article, *Making the Case for Talking to Patients about the Costs of End-of-Life Care*, argued that empowering patients late in their lives with information about the costs and benefits of end-of-life care might improve patient autonomy at the same time that it reduces healthcare costs. Yet patient knowledge and autonomy may not always serve to reduce costs, and these two interests can collide as well as coincide. I am interested in the points of contestation that occur when the ethics of patient empowerment conflict with the interests of insurance companies, including federal insurers, in reducing costs.

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Dear Faculty Appointments Committee,

I write to apply for the health law position at the University of Pittsburgh Law School. My publications and professional experiences focus on a broad range of health law topics – bioethics, administrative and regulatory law, reproductive rights, healthcare fraud and abuse, FDA law, constitutional law, and health policy. I have published seven articles in these fields and studied them through the lens of a practitioner at a large law firm in Washington, D.C. I will complement these experiences with an appellate clerkship for the Honorable Robert Sack at the U.S. Court of Appeals for the Second Circuit beginning in fall 2017.

I must emphasize that I have a deep and specific interest in the University of Pittsburgh Law School and the city in which it is located. The university maintains a strong competitive advantage in the area of bioethics and healthcare law. I would be honored to join a faculty where my teaching, publications, and research interests could complement a nationally recognized program. I also have close family ties to Pittsburgh. My in-laws are history professors at the University of Pittsburgh and Carnegie Mellon University, and my husband and I are very eager to return to the area and make our careers there. In fact, I have entered the academic market early solely to apply for this position. I will not submit applications elsewhere.

I have enclosed for your review my CV (including references), research agenda, and most recent publications. Through these materials you will see that my interest in bioethics and health law began during a pre-doctoral fellowship in the Department of Bioethics at the National Institutes of Health, where I published under the tutelage of the interdisciplinary NIH faculty. I developed my scholarly work further as a student at the University of Michigan Law School. During this time, I continued to publish articles in a variety of journals, and I also served as the Editor-in-Chief of *The Michigan Journal of Gender & Law*. Although my law firm maintains a blanket policy that prohibits its lawyers from publishing academic articles in their personal capacity, I have continued to develop my scholarship in the area of bioethics and healthcare law.

My doctrinal teaching preferences, subject to the faculty’s needs, would be in the area of administrative law, legislation and regulation, civil procedure, or constitutional law. Healthcare naturally intersects with administrative law in particular – where I have both worked and published – and my experience as a litigator and a clerk would enable me to teach civil
procedure. I could also offer specialty classes on healthcare fraud and abuse, bioethics, reproductive rights, FDA law, and public health law. I anticipate using alternative teaching methods in my smaller classes; for instance, I plan to teach seminars that are writing intensive and focus on interprofessional learning.

I am very excited about the opportunity to teach healthcare and administrative law at the University of Pittsburgh Law School and join a strong group of scholars in this area. Although I was not planning to attend the AALS Faculty Recruitment Conference, I live and work in Washington, D.C. and would be available to interview if the Faculty Appointments Committee would find this helpful. Please do not hesitate to contact me if you have questions.

Sincerely,

Greer Donley
Experience

Visiting Professor (2013-present)
Brigham Young University (Provo, UT), Department of Sociology
Courses: Law and Society, Marriage and Family, Introductory Sociology

Associate Attorney (2009-2013)
Ogletree, Deakins, Nash, Smoak & Stewart, P.C. (Dallas, TX)
Labor and Employment Practice Group

Associate Attorney (2006-2009)
Winstead PC (Dallas, TX)
Labor and Employment Practice Group

Graduate Student Instructor (2004-2006)
University of Michigan (Ann Arbor, MI), Department of Sociology
Courses: Criminology, Health and Medicine, Marriage and Family, Multicultural America

Education

J.D., University of Michigan Law School (2006)
Journal: MICHIGAN JOURNAL OF INTERNATIONAL LAW (Articles Editor)

M.S., Sociology, Brigham Young University (2003)

B.S., Sociology and Latin American Studies, Brigham Young University (2002)
Honors: Magna cum laude
Grants: Two-time grant recipient for field research in Bolivia

Publications

Dallan Flake, When Any Sentence is a Life Sentence: Employment Discrimination against Ex-Offenders, 93 WASHINGTON UNIVERSITY LAW REVIEW (forthcoming).


**Works in Progress**


**Other Writings**


Presentations

After Abercrombie: Religious Discrimination Based on Employer Misperception, Indiana University Maurer School of Law Colloquium on Scholarship in Employment and Labor Law, Bloomington, IN (2015).


Marginalizing Moms: Discrimination against Mothers in the Workplace, Brigham Young University Women’s Studies Conference, Provo, UT (2014).

Union Formation in Developing Countries: Trends, Determinants, and Cross-National Variance, American Sociological Association Conference, Atlanta, GA (2003).


Fighting Families: Personal and Relationship Factors Associated with Domestic Violence in Latin America, Population Association of America Conference, Atlanta, GA (2002).


Affiliations

State Bar of Texas
Utah State Bar (pending)
Texas Board of Legal Specialization, Certified in Labor and Employment Law (2011)
American Bar Association
American Sociological Association
Law and Society Association
J. Reuben Clark Law Society

Teaching Interests

Civil Procedure
Evidence
Employment Law/Employment Discrimination
Labor Law
Law and Society
Research Interests

Title VII of Civil Rights Act of 1964  
Religious Discrimination in the Workplace  
Employment of Ex-Offenders  
Dynamics of Discrimination in the Modern Workplace

References

Christopher McCrudden  
University of Michigan Law School  
Professor  
625 South State Street  
Ann Arbor, MI 48109-1215

Joseph Vining  
University of Michigan Law School  
Professor Emeritus  
3070 South Hall  
Ann Arbor, MI 48109-1215

Alicia Davis  
University of Michigan Law School  
Professor  
3210 South Hall  
Ann Arbor, MI 48109-1215

Craig Hart  
Brigham Young University  
Associate Academic Vice President - Faculty  
D387 ASB  
Provo, UT 84602

Ben Ogles  
Brigham Young University  
Dean, College of Family, Home, & Soc. Sci.  
990 SWKT  
Provo, UT 84602

Cardell Jacobson  
Brigham Young University  
Chair, Department of Sociology  
2023 JFSB  
Provo, UT 84602

Renata Forste  
Brigham Young University  
Professor, Department of Sociology  
2025 JFSB  
Provo, UT 84602

Bryant McFall  
Ogletree Deakins  
Managing Shareholder (Dallas Office)  
8117 Preston Road, Suite 500  
Dallas, TX 75225

Dan Dargene  
Ogletree Deakins  
Shareholder (retired)  
3212 Wentwood  
Dallas, TX 75225

Michael Buchanan  
Ogletree Deakins  
Shareholder  
8117 Preston Road, Suite 500  
Dallas, TX 75225
RESEARCH AGENDA

My scholarly interests focus on the legal and conceptual difficulties lawmakers encounter in adapting employment discrimination laws to the modern workplace. In the five decades since the enactment of Title VII of the Civil Rights Act of 1964, broad social forces have transformed not only who we are as workers, but also who we work for and how we perform our jobs. Despite these changes, employment discrimination laws have remained remarkably static. As an employment discrimination lawyer, I experienced firsthand how the disconnect between today’s workplace and yesterday’s discrimination laws undermines efforts to eradicate inequality and unfairness in employment. As a legal scholar, those experiences drive my research of three particularly challenging aspects of employment discrimination law: (1) modernizing religious discrimination jurisprudence, (2) the employment of ex-offenders, and (3) the changing dynamics of discrimination itself. My research primarily focuses on religious discrimination, whereas ex-offender employment and the nature of discrimination are exploratory interests. As described below, I have mapped out several projects over the next five years that I expect to make meaningful and lasting contributions to how the law operates in each of these areas.

Religious Discrimination

The United States is in the midst of unprecedented religious diversification, with greater variation in both religion and religious expression than ever before. This diversification is stretching Title VII in ways its drafters likely never imagined. I recently authored two pieces analyzing how growing religious diversity is straining business operations. In Image is Everything: Corporate Branding and Religious Accommodation in the Workplace (163 University of Pennsylvania Law Review 699 (2015)), I examine how religious accommodations can jeopardize a company’s image and argue that courts should more aggressively protect employers from having to accommodate employees in such instances. In Bearing Burdens: Religious Accommodations that Adversely Affect Coworker Morale (76 Ohio State Law Journal 169 (2015)), I consider how accommodations can negatively affect coworker morale and propose several ways that courts can exhibit greater sensitivity toward the psychological toll an accommodation may have on other employees.

My current project (and planned job talk), After Abercrombie: Religious Discrimination Based on Employer Misperception, addresses the circuit split over whether Title VII prohibits discrimination based on an employer’s mistaken perception of an employee’s religion. I argue that the Supreme Court’s recent decision in EEOC v. Abercrombie & Fitch Stores, Inc. should settle this matter, as the Court made clear that Title VII liability is premised on an employer’s motive rather than its actual knowledge of an employee’s religious practices. Although Abercrombie is a religious accommodation case, I explain how its holding is directly applicable to misperception discrimination cases. If an employer’s motive is the touchstone for liability under Title VII, it matters not whether the employer accurately perceives an employee’s religion, so long as religion motivates the adverse employment decision.
A follow-up project will examine the legal protections afforded to employees who are misperceived as nonreligious based on their lack of formal religious affiliation. This is a crucial issue, given the rapidly declining rate of formal religious affiliation in the United States. Pew recently found that one-fifth of adults (including one-third of Millennials) are religiously unaffiliated. Although one might expect this trend to result in less religious discrimination, it may have the opposite effect, as religiously unaffiliated workers may be misperceived as nonreligious, even though studies suggest most still profess a belief in deity and consider themselves “spiritual” or even “religious.” This presents a challenge for employers and courts accustomed to dealing with more established religious practices. I intend to explore how the shift away from formal religious affiliation challenges traditional notions of both religion and religiosity. I am especially interested in how nonaffiliation could affect employees’ eligibility for religious accommodations, as well as the types of accommodations to which they are entitled.

Just as nonaffiliation is increasing, so too is the percentage of Americans who claim multiple religious affiliations. In a related project, I plan to explore how this growing phenomenon challenges traditional views about religion under the law. Is Title VII equipped to protect employees with multiple religious identities? Does having more than one religious affiliation discredit an employee’s claim to an accommodation in the eyes of employers or the courts? How does having multiple faiths impact an employee’s ability to prove membership in a protected class?

A final project will explore a slightly different aspect of religious discrimination law. At present, courts are divided over how an employer can prove an accommodation is unreasonable. Some circuits require an employer only to show the “mere possibility” of adverse impact, whereas others demand strict proof of “actual imposition on coworkers and disruption of the work routine.” This project will quantitatively analyze whether these competing evidentiary standards affect the outcome of accommodation cases. Based on my preliminary analysis of data from two circuits, I expect to be able to show that employers are far more likely to prevail under the “mere possibility” standard. I intend to use my findings to propose a more uniform and balanced evidentiary standard that would require employers to prove with reasonable likelihood that an accommodation would cause undue hardship.

Ex-Offender Discrimination

For the 65 million Americans with a criminal record, employment is among the strongest predictors of recidivism. However, laws promoting the employment of ex-offenders are rare. As an exploratory matter, I am interested in researching how antidiscrimination laws can encourage ex-offender employment without unduly burdening employers or the public. My recent paper, *When Any Sentence is a Life Sentence: Employment Discrimination against Ex-Offenders* (93 Washington University Law Review (forthcoming)), proposes three amendments to Title VII to encourage ex-offender employment in certain cases: (1) prohibit discrimination against ex-offenders with “nondisqualifying” criminal records, (2) require most employers to delay inquiries into an applicant’s criminal history until after at least one interview, and (3) create a federal negligent hiring cause of action that provides a rebuttable presumption against negligence and that caps damages in certain cases where ex-offender employees cause harm. I argue that these proposal represent a sensible, middle-of-the-road approach that promotes the employment of ex-offenders in appropriate cases without unduly burdening employers or the public as a result.
I have planned two additional projects to assess the effectiveness of two of the amendments proposed in *Life Sentence*. The first project will examine whether state laws prohibiting ex-offender discrimination make a difference in how quickly ex-offenders find work, the duration of their employment, or the likelihood of recidivism. I will use a national dataset of released prisoners to compare employment and recidivism rates in the five states that prohibit ex-offender discrimination with the forty-five states without such laws. The second project will qualitatively examine whether ban-the-box laws, which prohibit employers from asking about an applicant’s criminal history on a job application, actually help ex-offenders get hired or, as critics suggest, merely postpone discrimination until later in the hiring process. I plan to interview several types of employers in ban-the-box jurisdictions to understand if and how these laws impact their hiring practices. As these projects will likely be the first to empirically test these ex-offender antidiscrimination measures, I am optimistic they will provide critical, data-driven insights into the effectiveness of existing laws and what changes, if any, to consider in future legislation.

**The Changing Dynamics of Discrimination**

Despite evidence that certain dynamics of discrimination are changing, employment discrimination jurisprudence remains steeped in traditional notions of discrimination that other disciplines have long since cast aside. An additional exploratory focus of my research is on how to incorporate modern knowledge of discrimination into employment law. My first project will challenge the same-actor doctrine, which grants employers a presumption of nondiscrimination if the same person hired and fired the plaintiff. Although most courts endorse this doctrine, two circuits have recently rejected it as a means of summary disposition. This emerging split reflects judicial uncertainty about the nature of discrimination. Can perpetrators of discrimination act both favorably and unfavorably toward their victims? I will argue that the same-actor doctrine is based on an antiquated notion that discrimination is intentional, conscious, and consistent, whereas contemporary research indicates it is usually unintentional, subconscious, and inconsistent. In light of this important research, courts should reject the same-actor doctrine.

A second project will confront the notion that people of the same protected class would never discriminate against each other based on their shared trait. It may seem counterintuitive that a female would discriminate against another female because of her sex. But should an employer necessarily be entitled to a presumption of nondiscrimination in such a case, as some courts suggest? I will argue that, as with the same-actor doctrine, an inference of nondiscrimination in these scenarios is unjustified in light of several recent studies that have found in-group discrimination to be more commonplace than once thought.

* * *

My goal in pursuing these projects is to offer unique and meaningful insights that will have a real impact on how employment discrimination laws are applied in the modern workplace. Drawing on both my practical experience as a lawyer and a deep academic grounding in these areas, I hope to bring a distinctive voice and new insights to a rapidly growing area of major future importance.
RICHARD LORREN JOLLY

ACADEMIC APPOINTMENTS

University of California, Berkeley, School of Law, Berkeley, CA
Nonresident Research Fellow for the Civil Justice Research Initiative 2018–Present

New York University School of Law, New York, NY
Research Fellow for the Civil Jury Project 2016–2018

EDUCATION

University of Michigan Law School, J.D., magna cum laude, 2014
Honors: Order of the Coif (Top 10%); Certificate of Merit, Alternative Dispute Resolution (highest grade); Dean’s Merit Scholarship (three-year partial scholarship)
Activities: American Constitution Society, Student Chapter President; Henry M. Campbell Moot Court Competition, Executive Board (faculty appointed); Research Assistant to Professor J.J. Prescott; Teaching Assistant in Legal Research & Writing to Professor Mark Osbeck; University of Michigan Journal of Law Reform, Contributing Editor

London School of Economics and Political Science, M.Sc., merit, Political Sociology, 2010

University of California, Berkeley, B.A., distinction, Political Science & Mass Communications, 2009
Honors: Highest Honors in Mass Communications (awarded to six students)

TEACHING & RESEARCH INTERESTS

Primary: Civil Procedure, Criminal Procedure, Alt. Dispute Resolution, Torts, Criminal Law
Secondary: Evidence, Contracts, Administrative Law, Remedies, Law & Society

PUBLICATIONS & WORKS IN PROGRESS

Law Review
The Seventh Amendment and the Administrative State (work in progress).

Jury Nullification as a Spectrum (job talk; draft available upon request).


Amicus Briefs

Other Legal Writing (selected)

Strengthening the Civil Jury, 31 Cal. Lit. 3 (2018) (w/ Anna Offit).


Where Have All the [Civil Juries] Gone?, Harvard Law Record, Apr. 9, 2017.


PROFESSIONAL EXPERIENCE

Susman Godfrey LLP, Los Angeles, CA
Litigation Associate 2018–Present

U.S. Court of Appeals for the Sixth Circuit, Akron, OH
Clerk to the Hon. Deborah Cook 2015–2016

Irell & Manella LLP, Los Angeles, CA
Summer Associate Summer 2014

U.S. Court of Appeals for the Ninth Circuit, San Francisco, CA
Judicial Extern to the Hon. John Noonan Summer 2013

California Supreme Court, San Francisco, CA
Judicial Extern to the Hon. Ming Chin Summer 2013

Michigan Unemployment Insurance Project, Ann Arbor, MI
Student Attorney 2012–2013

CONFERENCES & PRESENTATIONS (SELECTED)
Moderator, Civil Justice Research Initiative: Berkeley Boosts, University of California, Berkeley, School of Law, May 2020–Present (ongoing series of biweekly Zoom webinars).


Moderator, Ethics in Arbitration, Civil Justice Research Initiative Symposium on Arbitration, University of California, Irvine, School of Law, Apr. 2019.


**ADMISSIONS & PROFESSIONAL AFFILIATIONS**

American Constitution Society, Los Angeles Lawyers Chapter, Co-Chair, 2019
State Bar of California
U.S. Court of Appeals for the Sixth Circuit
U.S. District Courts for the Northern and Central Districts of California

**ACADEMIC REFERENCES**

**Professor J.J. Prescott**
University of Michigan Law School

**Dean Erwin Chemerinsky**
UC Berkeley, School of Law

**Professor Valerie Hans**
Cornell Law School

**Professor Nancy Marder**
Chicago-Kent College of Law

**Professor Anne Bloom**
UC Berkeley, School of Law

**Professor Samuel Issacharoff**
New York University School of Law
RICHARD LORREN JOLLY
Civil Justice Research Initiative, Nonresident Research Fellow
University of California, Berkeley, School of Law

ACADEMIC REFERENCES

Professor J.J. Prescott
University of Michigan Law School

Dean Erwin Chemerinsky
UC Berkeley, School of Law

Professor Valerie Hans
Cornell Law School

Professor Nancy Marder
Chicago-Kent College of Law

Professor Anne Bloom
UC Berkeley, School of Law

Professor Samuel Issacharoff
New York University School of Law
My research focuses on issues of public and private procedure. Specifically, I am interested in how parties customize procedures through contractual agreement in ways that can enhance or undermine the integrity of judicial institutions and the substantive development of law. As part of this theme, much of my writing focuses on the socio-political and structural role of lay participation in judicial decision making, namely through the use and nonuse of grand, civil, and criminal juries.

My interest in this area began while I was a research assistant in law school studying procedural contracts. In that role, I learned of a particular type of contract known as a high-low agreement in which a defendant agrees to pay a plaintiff a minimum recovery in return for the plaintiff’s agreement to accept a maximum recovery regardless of the outcome at trial. Critically, the jury is not informed of this private agreement. The jury therefore evaluates the dispute as if it were not constrained by the high-low agreement, even though their verdict will only be implemented if the damages fall within the parties’ agreed parameters. I published a note in *The University of Michigan Journal of Law Reform* arguing that non-disclosed high-low agreements should be void for public policy because they modify the jury’s institutional role and reduce the socio-political benefits of jury service.

My three most recent publications have continued to explore various aspects of lay participation in the judiciary. The thread linking these pieces is that despite developments recognizing litigants’ broad autonomy to shape public and private dispute resolution procedures, the jury remains a defined and integral part of the judicial and constitutional structure. By building on this idea, my writing touches on issues including access to justice, the role of Article III courts, and the continued importance of lay judicial participation—all with an eye toward courts’ procedural and substantive legitimacy.

**Recent Publications**


In my most recent published article, I advance a structural theory of the Constitution’s Impartial Jury Mandate. Courts have historically treated the mandate as a procedural right, meaning that the Constitution requires certain prophylactic procedures that are thought to secure a jury that is more likely to reach a verdict impartially. But in *Peña-Rodriguez v. Colorado*, 137 S. Ct. 855 (2017), the Supreme Court recognized for the first time an enforceable, substantive component to the mandate. There, the Court held that criminal litigants have a Sixth Amendment right to jury verdicts reached without reliance on extreme, overt bias on the basis of race or national origin.
With The New Impartial Jury Mandate, I explore the interplay between the Impartial Jury Mandate’s *ex ante* procedural and *ex post* substantive components. I argue that the mandate has traditionally taken shape as a collection of procedural guarantees because of the common law’s strict prohibition on reviewing the substance of jury deliberations. By removing this constraint, *Peña-Rodriguez* allows federal judges for the first time to review the rationales upon which jurors based their verdicts. From this, I offer a novel approach for applying substantive impartiality more broadly to both suspect and nonsuspect classes of individuals by looking to established Equal Protection Clause jurisprudence for guidance. I conclude that *ex ante* procedural rules and *ex post* substantive review can operate in conjunction to tease out undesirable, impermissible forms of jury bias, while still allowing for desirable, permissible forms of jury bias.


Many of the ideas I advance in The New Impartial Jury Mandate have their origin in my first article, which is a substantive critique of Professor Suja Thomas’s book *The Missing American Jury* (2016). The core of Professor Thomas’s explanation for the decline of grand, civil, and criminal juries is that the traditional government branches—the legislature, executive, and judiciary—have claimed for themselves powers that at common law were exclusively that of the jury. However, Professor Thomas explicitly chooses not to address the rise in procedural private ordering, such as arbitration and other procedural contracts, choosing to focus only on government-imposed procedures and those procedures to which the parties may not willingly consent, namely plea bargaining. I contend that this decision is a rare misstep.

My review incorporates private procedural ordering into Professor Thomas’s theory. I explain that procedural contracts were generally prohibited at common law and were only first widely authorized by jurists in the twentieth century. The emergence of these procedures has tracked and contributed to the decline in the civil jury’s constitutional esteem. The legislature and the judiciary have removed power from the jury and vested it in private parties’ hands. In so doing, I argue, they have allowed powerful social and economic actors to sideline the jury and have shielded their own behavior from public scrutiny. Due to these effects, developments in procedural private ordering are a necessary part of the discussion on the civil jury’s institutional decline.


As part of my research for Expanding the Search for America’s Missing Jury, I began to examine the origins of the Federal Rules of Civil Procedure and the merging of courts of law and equity. Around this same time, Judge Susan Graber and then-Judge Neil Gorsuch submitted a recommendation to the Federal Rules Advisory Committee recommending that the committee adopt a jury-trial default rule. Under their proposal, a litigant would receive a civil jury trial unless she affirmatively waived it, as opposed to the current rule in which a jury trial is waived unless the litigant affirmatively requests it.
In Toward a Civil Jury-Trial Default Rule, I review the history of the current jury-waiver default and explore the potential effects of adopting a jury-trial default. I demonstrate that although the current rule emerged at the federal level concomitantly with the merging of courts of law and equity, nothing about merged courts necessitated this rule. Instead, I explain that the drafters of the Federal Rules chose this default because it offered efficiency by settling the mode of dispute resolution early in the proceedings, and because the drafters were radically anti-jury and believed that automatic waiver would decrease the number of jury trials. I then argue that adopting the proposed jury-trial default rule would likely not dramatically increase the number of civil jury trials, but that it could simplify questions of when the jury right is maintained. Moreover, I submit that the proposed rule would have symbolic significance by reflecting the civil jury’s continued importance as a constitutional actor.

**Forthcoming Projects**

Moving forward, I aim to build on this foundation in lay judicial participation while also expanding my attention more explicitly into the areas of criminal and administrative law. I am particularly interested in how private litigants and the government create new procedures that sidestep democratic checks on their behavior, including through the use of complex criminal plea-bargaining agreements and the outsized authority of Article I tribunals. These topics dovetail with my general interest in how modified procedures shape judicial institutions and the substantive development of law.

*Jury Nullification as a Spectrum* (job talk; draft available upon request).

My current project expands on themes that I first touched upon in *The New Impartial Jury Mandate*, specifically that some forms of jury bias are more acceptable than others. I use this observation to explore and expand on the concept of jury nullification. Traditionally, jury nullification has only referred to those instances in which the jury delivers a verdict that is deliberately contrary to a clear outcome due to either the jurors’ disagreement with the law or partiality toward the parties. But this definition is largely unmoored from experience. The Supreme Court and many states have long eliminated the jury’s law-finding power, and novel procedural devices have made overturning both civil and criminal jury verdicts easy. Thus, nullification as traditionally understood exists only in contexts implicating the Fifth Amendment’s Double Jeopardy Clause.

In *Jury Nullification as a Spectrum*, I propose a more capacious understanding of jury nullification, conceptualizing it as the routine injection of extralegal considerations into the jury’s verdict. I contend that all jury verdicts fall upon a nullification spectrum in which extralegal considerations exert greater or lesser influence, regardless of whether the verdict might later withstand review. I argue that this spectrum is implicit in the rules and case law but has thus far been overlooked in the literature. Making it explicit allows us to reconsider how civil and criminal juries exercise institutional power both to bolster and undermine black letter law.
within modern procedural constraints. This conceptualization of nullification also allows us to better understand the continued vitality of the jury, even as a weakened constitutional actor.


Concurrent with my work on _Jury Nullification as a Spectrum_, I co-authored with University of Michigan Law Professor J.J. Prescott an article exploring the ways criminal defendants and prosecutors partially settle disputes. “Settlement” is a term rarely used in the criminal law; instead, scholars speak almost exclusively of plea bargaining. But as my co-author and I show, traditional plea bargaining is just the most common instance of criminal settlement and is not reflective of the universe of possible agreements. And in terms of their fundamentals, criminal settlements are essentially indistinguishable from civil settlements: The parties exchange what they have for what they prefer in order to advance their respective interests in cost minimization, risk mitigation, and value maximization as part of a comprehensive or atomized settlement agreement.

In _Beyond Plea Bargaining_, my co-author and I advance a comprehensive framework for analyzing criminal settlements. As in the civil context, criminal settlements need not resolve disputes outright but may instead limit or redefine a dispute in ways that the parties find mutually beneficial. A critical difference in the criminal context, however, is that these bargains necessarily take place in the shadow of judicial discretion regulating access to the state’s punitive power. Consequently, prosecutors and defendants consent to manipulate procedures, issues, and outcomes in order to constrain or influence judges in ways congruent with the parties’ preferences. Furthermore, we argue that judges are not passive and can act strategically to shape bargains. By modeling this interplay between the parties and judge, a more complete picture of the dynamics, outcomes, and policy implications of criminal settlement emerges.

_The Seventh Amendment and the Administrative State_ (work in progress).

In addition to the above articles, I plan to complete a project derived from an amicus brief that I principally authored in _Oil States Energy Services, LLC v. Greene’s Energy Group, LLC_, 138 S. Ct. 1365 (2018). This project—tentatively titled _The Seventh Amendment and the Administrative State_—will explore the Supreme Court’s administrative law exceptions to the jury trial right. Specifically, I will establish that the functionalist and public rights exceptions have no basis in common law. I will further argue that, properly understood, the Seventh Amendment should be read as a limitation on congressional authority to designate jurisdiction to juryless tribunals, and that its dictates concerning “suits at common law” refers to all legal rights regardless of the forum in which they are enforced. By exploring the relationship between the Seventh Amendment and the modern administrative state, I hope to extrapolate an analytical framework for addressing legislative acts that assign traditional legal rights to juryless Article I tribunals.

* * *
EDUCATION

UNIVERSITY OF MICHIGAN LAW SCHOOL, Ann Arbor, MI
J.D., magna cum laude, 2009

Activities: Editor-in-Chief, Michigan Journal of Gender & Law
Social Chair, Women Law Students Association
Student Attorney, Family Law Project
Coordinator, Student Research Roundtable
Research Assistant for:
  • J.J. Prescott (criminal law; empirical law and economics)
  • Marc Spindelman (gender, sexuality, & law)
  • E. Philip Soper (contracts)

Honors: Certificate of Merit Awards (top student):
  • Sex Equality
  • Sexuality, Violence, & Law
  • Contracts

Selected to President’s Advisory Commission on Women’s Issues

UNIVERSITY OF VERMONT, Burlington, VT
B.A., Philosophy and Political Science, cum laude, 2006

Honors: Departmental Prize (top senior student) in American Politics & Government


FELLOWSHIPS & CLERKSHIPS

UNIVERSITY OF MICHIGAN LAW SCHOOL, Ann Arbor, MI
Alumni Fellow, 2017–present

HONORABLE KERMIT V. LIPEZ
United States Court of Appeals for the First Circuit, Portland, ME
Law Clerk, 2010–11

HONORABLE PETER J. RUBIN
Massachusetts Appeals Court, Boston, MA
Law Clerk, 2009–10
TEACHING & RESEARCH INTERESTS

Primary: Criminal Law; Criminal Procedure; Evidence; Gender & Sexuality; Jurisprudence
Secondary: White-Collar Crime; Family Law; Privacy & Cybersecurity; Agency Regulation

PUBLICATIONS & WORKS IN PROGRESS

Rape As Indignity (in progress)


Rank Among Equals, 113 MIC. L. REV. 855 (2015)

Deconstructing Rape by Fraud, 28 COLUM. J. GENDER & L. 1 (2014)

OTHER EXPERIENCE

KING & SPALDING LLP, Atlanta, GA
Senior Associate, Special Matters / Government Investigations, 2015–17

• Represented clients in corporate misconduct investigations and related civil litigation.
• Specialized in health care fraud, medical devices, government procurements, and cybersecurity.
• Experienced in regulatory compliance investigations by federal agencies, including DOJ, DEA, FDA, SEC, FTC, FERC, CPSC and NHTSA.

COVINGTON & BURLING LLP, Washington, DC
Associate, White Collar Defense & Government Investigations, 2011–15
Summer Associate, 2008

• Represented clients in corporate misconduct investigations and related civil litigation.
• Spent seven months in-house at Neighborhood Legal Services Program litigating family law and landlord-tenant cases.

HONORABLE DAVID M. LAWSON
United States District Court for the Eastern District of Michigan, Detroit, MI
Intern, 2007

STATE’S ATTORNEY’S OFFICE OF CHITTENDEN COUNTY, Burlington, VT
Office Assistant, 2005–06

ADVANCED PRACTICE STRATEGIES, Boston, MA
Medical Malpractice & Demonstrative Evidence Group
Intern, 2002–03
OTHER PUBLICATIONS

Task Force Report and NIST Revisions Highlight Need for Increased Private-Sector Cybersecurity Efforts, KING & SPALDING ENERGY NEWSLETTER (2017) (with Christopher Burris, Nicholas Oldham, and Erin East)

Maritime Cybersecurity Regulation On The Horizon: Part 2, LAW360 (2017) (with Christopher Burris and Nicholas Oldham)

Maritime Cybersecurity Regulation On The Horizon: Part 1, LAW360 (2017) (with Christopher Burris and Nicholas Oldham)

SPEECHES & PRESENTATIONS

The Role of Judicial Clerks (invited guest lecture), March 2018
University of Vermont Law and Politics Lecture, Burlington, VT

Legal Writing and Reasoning (invited guest lecture), March 2018
University of Vermont Constitutional Law Lecture, Burlington, VT

Top Law Schools and Legal Careers, March 2018
University of Vermont Alumni Panel, Burlington, VT

Responding to Data Breaches: Advice for Corporate Counsel, February 2016
King & Spalding Special Matters Practice Group Panel, Atlanta, GA

Rape (invited three-day co-instruction), February 2015
University of Michigan Law School Criminal Law Lecture, Ann Arbor, MI

Deconstructing Rape by Fraud (invited guest lecture), October 2014
University of Vermont Gender & Law Seminar, Burlington, VT

Learning from the General Motors Recall, October 2014
Japan Auto Parts Industries Association, Detroit, MI

Post-Recall Investigations, July 2014
Covington & Burling Consumer & Advertising Law Panel, Washington, DC

Deconstructing Rape by Fraud, September 2013
Michigan Law School Future Law Professor’s Workshop, Ann Arbor, MI

Complaints and Answers, September 2013
Covington & Burling Nuts-and-Bolts Litigation Training, Washington, DC

Deconstructing Rape by Fraud, October 2008
Michigan Law School Student Research Roundtable, Ann Arbor, MI

BAR ADMISSIONS

New York
District of Columbia (inactive)
REFERENCES

**J.J. Prescott**
Professor of Law
University of Michigan Law School

**Catharine A. MacKinnon**
Elizabeth A. Long Professor of Law
University of Michigan Law School

**Eve Brensike Primus**
Professor of Law
University of Michigan Law School

**Sonja B. Starr**
Professor of Law
University of Michigan Law School

**Honorabele Peter J. Rubin**
Associate Justice
Massachusetts Appeals Court

**Marc Spindelman**
Isadore and Ida Topper Professor of Law
Moritz College of Law

**E. Philip Soper**
James V. Campbell Professor Emeritus
University of Michigan Law School

**Gabriel Mendlow**
Assistant Professor of Law
University of Michigan Law School

**Paul B. Murphy**
Partner, Special Matters
King & Spalding LLP

**Honorabele Kermit V. Liupe**
Senior Judge
U.S. Court of Appeals for the First Circuit
Research Agenda

My research centers on the criminalization and policing of sex offenses in the United States. To date, I have examined the Fourth Amendment implications of post-release sex offender monitoring, the Fourth Amendment’s “private-search” doctrine (a frequent tool for policing child pornography), the substantive crime of rape-by-fraud, and the use of human dignity as a normative justification for legal rules. My work in substantive criminal law routinely questions how the legal regulation of sex and sexuality shapes, and is shaped by, societal narratives about gender identity and sexual injury. My work in constitutional criminal procedure questions the prevailing conceptions of privacy, which tend to be overly individualistic and hostile to the values of mutuality and interdependence. As my scholarship progresses, I hope to connect these questions to broader themes in moral philosophy and gender theory, including by offering a critique of legal liberalism that is grounded in the expressive character of criminal laws—laws that communicate social values and establish duties intended to guide conduct.

I. Criminal Law

My current work in progress, Rape As Indignity, argues for reconceptualizing rape and sexual violence as an affront to human dignity, rather than as a violation of a particular individual’s autonomy. Autonomy is traditionally considered the touchstone for contemporary rape law, as evidenced by the centrality of non-consent in defining the crime of rape. Indeed, most rape law reforms over the past several decades have emphasized non-consent, and have worked to eliminate or comparatively de-emphasize traditional elements such as the perpetrator’s use of physical force to overcome the victim’s resistance. By and large, these legal reforms have been beneficial to the extent they encourage society to take victims’ accounts seriously and to expand understandings of rape beyond the classic paradigm of a violent stranger.

Grounding rape law in autonomy, however, is also problematic. Recent feminist critiques of domestic rape law have emphasized how consent, as constructed legally, is a poor proxy for genuine enthusiasm and tends to render much harmful, and even violent, sex invisible to the criminal system. Moreover, consent is modeled on gendered expectations about acquiescence to sexual initiation. These expectations perpetuate inequality and entrench narratives of normative masculinity. As I outlined in my very first article, Deconstructing Rape by Fraud, rape law’s focus on consent encourages men to see women, when pursued for sex, as opponents rather than partners—obstacles in the path to sexual achievement, hence masculine status. Rape As Indignity builds upon my prior work by exploring the recent rise of social movements, such as the incel (involuntary celibate) movement, and so-called “masculinity gurus” that are specifically targeting women’s entitlement to choose their sexual partners—i.e. women’s sexual autonomy.
I seek to respond to these particular problems by offering an account of rape grounded in the failure to respect the status of human dignity. At its most basic, human dignity represents a relatively straightforward imperative—respect for persons—that would seem to be a natural basis for substantive criminal prohibitions. Moreover, dignity is taking an increasingly prominent place in legal discourse. It has proven to be an especially useful tool for human rights advocates seeking legal recognition of group-based harms. If one starts, as I do, from the position that rape is a pervasive social practice of gender-based violence, dignity emerges as a promising touchstone for understanding the offense. Critics are likely to question whether human dignity is sufficiently specific to ground criminal prohibitions (many moral philosophers have been quick to characterize dignity as vacuous). However, dignity can be operationalized through narrow and tailored legal standards, much the way that many substantive criminal prohibitions are currently justified by reference to more abstract values, such as autonomy, equality, and security. In fact, the model rape statute I propose draws heavily from criminal laws against human trafficking, which are generally understood to be grounded in the protection of human dignity. Lastly, I explore the consequence of a commitment to a criminal dignity jurisprudence, including how emerging understandings of human dignity may mandate the criminalization of some otherwise consensual sexual conduct.

My next article in the field of criminal law will offer an account of criminal attempts that bridges two influential, yet seemingly competing, philosophical approaches to the subject. I am fascinated by the role of attempt liability as a means of mediating the moral luck problem in criminal law. Many scholars share the intuition that when multiple people engage in the same dangerous conduct, under the same circumstances, they should bear the same moral and legal culpability even if the outcomes of their conduct—i.e. the harms caused—diverge. Attempt liability reflects this intuition by imposing criminal punishment for failed attempts at completing crimes. However, criminal attempt statutes have historically required a mens rea of specific intent, even when the substantive offense does not. Attempt liability thus inadequately responds to the moral luck problem in cases of recklessness, negligence, or strict liability crimes. Criminal law theorists who are critical of the specific intent requirement have made a compelling case that intentional attempts are not uniquely worthy of sanction. However, they often fail to respond to the claim that an “attempt,” by definition, requires some nexus of commitment to the completed crime, an argument frequently advanced in defense of the specific intent requirement. I intend to advance an account of attempts premised on showing that some forms of unintentional conduct are implicitly prohibited by the prohibition of a completed crime, and that the failure to respect and respond to this expressive legal content is of sufficient moral character to warrant punishment on par with intentional attempts.

In the future, I intend to return to the topic of normative masculinity’s influence in shaping the criminal law by examining the development and enforcement of statutory rape laws. Superficially, statutory rape laws would appear to fit the model of gendered rape laws that I have explored in my prior work; such laws can plausibly be viewed as identifying and isolating a class of persons who are seen socially as powerless and hence unable to bestow masculine status on their sexual partners. However, if statutory rape laws actually trace strong gender norms regarding the status-value of sexual conduct involving minors, we should expect the alignment of social and criminal sanctions to make the prohibited conduct both rare and harshly punished. Instead, the opposite is true. Public interest in enforcing statutory rape laws has waned, and arrest and conviction rates have dropped precipitously even in the face of increased publicity. I intend to examine whether the infrequency of statutory rape enforcement lies in the growing
eroticization of the criminal prohibition itself. By juxtaposing the evolution of statutory rape laws with the emergence of social narratives sexualizing potential victims of statutory rape—most familiarly, the portrayal of sexually desired young girls as “jailbait”—I will explore the intuition that the law itself seemingly functions perversely as a surrogate for the interpersonal power that ordinarily makes sexual performances worthy of masculine status. This project will deepen and defend my earlier account of normative masculinity by demonstrating the capacity of gender norms to reorient themselves in response to legal regulation and the power it represents. This interplay between legal regulation and the formation of sexual identities socially may be a crucial site for future investigation by gender and sexuality scholars.

II. Criminal Procedure

My work in the field of criminal procedure is principally motivated by revealing the Fourth Amendment’s stronger-than-expected commitment to privacy in spheres that are ostensibly public. In Fourth Amendment Constraints on the Technological Monitoring of Convicted Sex Offenders, Professor J.J. Prescott and I evaluate the Fourth Amendment implications of post-release sex offender location monitoring, such as with GPS technology. In 2015, the Supreme Court announced in Grady v. North Carolina that physically occupying a person’s body in order to collect information is a Fourth Amendment search. However, the Grady Court left open the question whether such a search is unreasonable, and the early decisions from lower courts have evidenced skepticism about the privacy of location information. Our article surveys the doctrine and theory of Fourth Amendment reasonableness to isolate four distinct categories of intrusion that bear on the constitutionality of technological monitoring. We conclude that the Fourth Amendment may indeed serve as an effective check on post-release monitoring regimes, and that technological monitoring may need to be tailored to fit the characteristics and circumstances of individual convicted sex offenders in order to reduce the intrusiveness of the search.

In my forthcoming article The Private-Search Doctrine Does Not Exist, I likewise challenge a longstanding exception to the Fourth Amendment that was premised on the publicity of previously private information. For nearly four decades, courts and commentators have interpreted two (admittedly convoluted) Supreme Court precedents—Walter v. United States and United States v. Jacobsen—as holding that Fourth Amendment privacy is completely vitiated whenever information is exposed to private third parties, even when that exposure is the result of an unforeseeable and surreptitious search. Yet uncertainty over the limits, if any, of the doctrine has resulted in dramatically different approaches across the federal circuits. I demonstrate that the very existence of the private-search doctrine rests on a fundamental misreading of the seminal precedents and on an untenable theory of Fourth Amendment privacy that devalues interpersonal dependency and shared spaces. The Walter and Jacobsen opinions are best understood as extending an separate, pre-existing Fourth Amendment exception—the single-purpose container doctrine—into a new factual context. Correcting this decades-old mistake harmonizes many of the intuitions of lower courts that fragmented the private-search doctrine. It also simultaneously resolves two circuit splits: the split over the private-search doctrine and a longstanding split over the application of the single-purpose container doctrine. Perhaps more importantly, this correction sheds new light on the resiliency of Fourth Amendment privacy to third-party exposure.
For my next project, I would like to examine the implications of the Supreme Court’s recent decision in *Carpenter v. United States*, both for the continuing vitality of investigative subpoenas specifically and for the constitutional principle of public privacy generally. *Carpenter* held that the government was not entitled to access seven days’ worth of historical cell site records without a warrant, because individuals retain a legitimate expectation of privacy in the records of their physical movements, even though those records are made and kept by third-party companies. On one hand, *Carpenter* does not disturb the prior third-party doctrine precedents; indeed, the Court’s opinion purports to be a narrow one. On the other hand, as I have explained in my prior work, any account of Fourth Amendment privacy that can withstand the exposure of information to third parties quickly becomes hard to reconcile with the government’s extensive use of its subpoena power, particularly in white-collar criminal investigations. Synthesizing the various ways in which Fourth Amendment privacy survives exposure to third parties, I intend to construct an account of the third-party doctrine that emphasizes the nexus between governmental action and the collection of information, rather than the expectations and actions of the defendant invoking a claim to privacy. On such an account, third parties complying with compulsory subpoenas are most appropriately viewed as agents of the government, and thus subject to the Fourth Amendment’s strictures.
AALS 2018 - 2019 FACULTY APPOINTMENTS REGISTER FORM

Contact Info
Name: Ben A. McJunkin
Phone(s): 
Address: University of Michigan Law School
503 Legal Research Building
625 South State Street
Ann Arbor, MI 48109 United States

Email: 
Gender: Male
Race: White
Alt Address: 2231 South Main Street
Ann Arbor, MI 48103 United States

Education
The University of Michigan Law School, JD Graduated: 05/2009
Rank: 50 | Top 12.0%
Law Review: Michigan Journal of Gender & Law - Editor-in-Chief
Other Law Honors: Magna Cum Laude
University of Vermont, BA Philosophy & Political Science
Honors: Cum Laude; Departmental Prize in American Politics

Student Leadership
Organization: President's Advisory Committee on Women's Issues
Role: Invited Member

Organization: Women Law Student Association
Role: Social Chair

Organization: Family Law Project
Role: Student Attorney

From: 08/14/2008 - 05/12/2009
From: 10/02/2007 - 09/29/2008
From: 01/10/2007 - 09/15/2008

Teaching Preferences
Preferred Subjects
1) Criminal Law
2) Criminal Procedure
3) Evidence
4) Sexual Orientation and Gender Identity Issues
5) Jurisprudence

Additional Subjects
1) Criminal Justice (including Corrections, Administration & Sentencing)
2) Family Law
3) Privacy Law
4) Regulated Industries
5) Administrative Law

Employment
Employer Name: University of Michigan Law School
Employer Location: Ann Arbor, MI
Position Title: Alumni Fellow
Dates of Employment: 09/2017 - (You may contact my employer)

Employer Name: King & Spalding LLP
Employer Location: Atlanta, GA
Position Title: Senior Associate, White-Collar Investigations & Litigation
Dates of Employment: 09/2015 - 08/2017
(You may contact my employer)

Employer Name: Covington & Burling LLP
Employer Location: Washington, DC
Position Title: Associate, White-Collar Investigations & Litigation
(You may contact my employer)

Employer Name: The Honorable Kermit V. Lipez
Employer Location: Portland, ME
Position Title: Clerk, United States Court of Appeals for the First Circuit
Dates of Employment: 09/2010 - 08/2011
(You may contact my employer)

Employer Name: The Honorable Peter J. Rubin
Employer Location: Boston, MA
Position Title: Clerk, Massachusetts Appeals Court
Dates of Employment: 09/2009 - 08/2010
(You may contact my employer)

Practice experience centered on white-collar criminal defense, federal agency investigations of regulated industries, and related civil litigation.

Community Service
Organization: Neighborhood Legal Services Program
Role: Pro-Bono Litigation (Family Law & Landlord-Tenant)
From: 07/01/2013 - 01/22/2014

Major Published Writings
Total publications: 5
Deconstructing Rape by Fraud 28 Colum. J. Gender & L. 1 (2014)
Rape As Indignity (in progress)

Bar Admissions
District of Columbia, New York

Geographic Restrictions

References
Professor Catharine A. MacKinnon
University of Michigan Law School
Professor J.J. Prescott
University of Michigan Law School
Professor Marc Spindelman
Moritz College of Law at The Ohio State University

Comments
Resume
Full resume available online

Research Agenda
Available online

The AALS makes the Faculty Appointments Register available on the express condition that the Register and any information contained in it be used solely for the purpose of evaluating individual candidates for possible faculty appointment and not for any other purpose.
ELEANOR R. WILKING

ACADEMIC APPOINTMENTS

**New York University School of Law**
Acting Assistant Professor of Tax Law
Courses Taught: Survey of Tax Procedure, Tax Policy, Corporate Tax I
Assistant Editor, Tax Law Review
2018 – Present

**Northwestern University Pritzker School of Law**
Fellowship in Empirical Legal Studies
Courses Taught: Tax Policy (w. Sarah Lawsky)
2017 – 2018

EDUCATION

**University of Michigan**
Ph.D., Economics
Committee: Joel Slemrod (chair), James R. Hines, Jr., J.J. Prescott, Charles Brown
Fields: Public Finance, Law and Economics, Labor Economics
2018

J.D., *cum laude*
M.A., Economics
2015, 2013

**Harvard University**
A.B., Economics & History
2009

RESEARCH AND TEACHING INTERESTS

*Primary:* Federal Income Taxation, Corporate Taxation, International Tax, Business Associations, Contracts
*Secondary:* Property, Estates and Trusts, State and Local Taxation, Empirical Methods, Law and Economics

OTHER EXPERIENCE

**U.S. Department of Treasury**
Economist, IRS Research Affiliate Program
2016 – Present

**University of Michigan Law School**
Student attorney, Low Income Taxpayer Clinic
Research Assistant, J.J. Prescott
2015 – 2016

**University of Michigan, Department of Economics**
Research Assistant, Joel Slemrod
Graduate Student Instructor, Money and Banking
Graduate Student Instructor, Intermediate Econometrics
**Why Does it Matter Who Remits? Evidence From a Natural Experiment Involving Airbnb and Hotel Taxes**

*Abstract:* How does the obligation to remit affect consumption tax incidence? In classical tax theory, assigning the responsibility to transfer tax revenue to the government has no effect on which party bears the economic burden of a consumption tax. I explore this prediction in the context of agreements between city governments and a large digital platform firm that shifted the obligation to remit hotel taxes from independent renters to the platform firm itself. Using variation in the location and timing of these agreements, I identify a substantial increase in advertised tax-inclusive rental prices—a violation of remittance invariance—but comparatively modest declines in completed reservations. A contemporaneous increase in hotel tax revenue collections suggests that the policy was an effective tax increase, assessed on previously non-compliant renters. I also explore heterogeneity in pass-through of this effective tax increase using several proxies for renter price-setting sophistication. Pass-through was lowest among full-space, frequent renters who likely faced smaller optimization frictions relative to more amateur renters. My results indicate that shifting the remittance obligation to the platform increases after-tax prices and raises revenue, suggesting that consumers bear a greater share of the tax burden when the remittance obligation is shifted to a party with fewer evasion opportunities.


*Abstract:* There is growing interest among policy makers and researchers in measuring the prevalence of independent contractors (ICs), partially due to concern that these workers do not enjoy the benefits provided to employees. However, identifying IC income is difficult because most existing datasets do not track it. We make two contributions to understanding changing patterns of IC income receipt. First, we translate the legal concept of an IC relationship into one that can be used to identify these relationships in tax data. Second, we use those data to establish several new empirical facts about individuals who receive IC income and the firms that contract with them. We find that the share of workers with IC income has grown by 1.5 percentage points, or 22 percent, since 2001, pre-dating the rise of the gig economy and in line with previous estimates of IC growth. Independent contractor income receipt and its growth are not evenly distributed across workers. The largest share of workers with IC income are those in the top quartile of earnings who primarily receive wage income. But the fastest growing group are those in the bottom quartile of earnings who primarily receive IC income. Women saw more growth in IC income receipt than men, and smaller firms saw more growth in IC labor usage than larger firms. Together, these trends suggest that the long-run growth in IC labor in the U.S. cannot solely be attributed to individuals seeking supplemental income, or to the rise of a few online platform firms, but may represent a structural shift in the labor market, particularly for women.

*Independent Contractors in Law and in Fact: Evidence from U.S. Tax Returns*

*Abstract:* In this paper, I refine a definition of contractors developed in my previous work, apply it to a novel and comprehensive data source—the universe of U.S. individual income tax filings—and yield two empirical results. First, I show that the characteristics of workers primarily providing contractor labor and those primarily providing employee labor have converged over time using several metrics that proxy for financial and behavioral control, two elements of the criteria used to classify workers. This suggests a
growing misalignment between the legal classification of contractors and the economic substance of firm-worker relationships, a trend that is more pronounced for lower-earning workers. Second, I show that how a worker is classified is responsive to firms’ financial incentives, using a difference-in-differences design involving a discontinuity in Medicare reimbursement rules between small and large firms. This result suggests that some firms may substitute away from employment relationships to avoid regulatory costs. I discuss several potential policy implications of these findings for the income tax system, including whether there is a continued basis for treating employees and contractors differently in light of a growing convergence in their economic reality.

*Does the Elasticity of the Sales Tax Base Depend on Enforcement? Evidence from U.S. States’ Voluntary Collection Agreements* (w. Yeliz Kacamak and Tejaswi Velayudhan).

*Abstract:* Sales taxes are an important source of revenue for U.S. states. A key parameter that determines the marginal excess burden associated with this tax is the elasticity of the consumption tax base with respect to the tax rate. We study empirically how an important development in U.S. sales tax policy—the requirement of online retailers to remit the sales tax instead of the consumer—impacts this elasticity using quasi-experimental variation from the staggered state-wise introduction of Voluntary Collection Agreements (VCAs). Using detailed purchase data from the Nielsen Consumer Panel and monthly, zip-code level information on local sales tax rates, we find that consumers reduce their online expenditure after the introduction of VCAs, consistent with an increase in compliance with sales taxes on online sales and suggesting that consumers took note of the tax change. We test whether consumers are less responsive to sales tax rate changes and more responsive to sales tax holidays as a result. On average, we do not find evidence of an impact of the remittance rule change on the elasticity of the tax base with respect to the tax rate.


*Abstract:* This paper uses confidential tax returns data from sole-proprietor businesses to estimate behavioral responses to the introduction of Form 1099-K, a third-party income reporting mandate that requires credit card companies to report to the Internal Revenue Service the gross amount of all payment transactions that businesses receive through their electronic payment systems. We estimate the causal impact of Form 1099-K on business reporting by exploiting a natural experiment in which many cities in the U.S. passed their own ordinances mandating that taxicab drivers install credit card readers in their vehicles, while other cities did not pass such ordinances. We find that taxpayers respond to third-party information reporting in offsetting ways. In particular, we find that firms from cities with mandatory credit card ordinances reported more receipts after the introduction of Form 1099-K compared to similar firms from cities without mandatory credit card ordinances, but they also reported an essentially offsetting increase in expenses. Overall, the net impact of third-party information reporting led to small and statistically insignificant changes in taxable income. These results are robust to a variety of alternative specifications and placebo tests.

*Published Papers*

WORKS IN PROGRESS

“Studied default: a natural experiment from employee cohorts and automatic enrollment in retirement plans”
(w. Ryan Bubb, David Kamin, Shanthi Ramnath, and Patrick Warren)

“What is the impact of federal income tax withholding on poor taxpayers? Evidence from U.S. tax data”
(w. Jacob Goldin)

SELECTED ACADEMIC PRESENTATIONS

Conference Presentations

*Independent Contractor or Employee? Why it matters for the U.S. income tax—and how firms choose*
Conference on Empirical Legal Studies, University of Michigan (Nov. 2018, Ann Arbor, MI); National Tax Association Annual Conference (Nov. 2017, Philadelphia, PA)

*Does the Elasticity of the Sales Tax Base Depend on Enforcement?*
Annual Law and Economics Association (May 2018, Boston, MA); International Institute of Public Finance, Annual Congress (Aug. 2017, Tokyo, Japan); National Tax Association Annual Conference (Nov. 2017, Philadelphia, PA)

*Hotel Tax Incidence with Heterogeneous Firm Evasion: Evidence from Airbnb Remittance Agreements*

Workshop Invitations

University of Texas Law and Economics Seminar *(scheduled)*
*TBD*
Austin, TX
October 2019

Georgetown Tax Law and Public Finance Workshop
*Why does it matter who remits? Evidence from Airbnb Remittance Agreements*
Washington, D.C.
April 2019

University California Los Angeles Colloquium on Tax Policy and Public Finance
*Why does it matter who remits? Evidence from Airbnb Remittance Agreements*
Los Angeles, CA
March 2019

FELLOWSHIPS, GRANTS, AND AWARDS

Russell Sage Foundation, “Future of Work” (w. Joel Slemrod) ($149,000) 2019
Michigan Economics Department Service Award 2018
Rackham Dissertation Award ($5,000) 2016
NSF Graduate Research Fellowship ($129,000) 2012 – 2017
Rackham Merit Fellowship (5 years tuition and stipend) 2012 – 2017
<table>
<thead>
<tr>
<th>Name</th>
<th>Position</th>
<th>Institution</th>
</tr>
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<tbody>
<tr>
<td>Joel Slemrod (Chair)</td>
<td>Professor of Business Economics</td>
<td>Stephen M. Ross School of Business, University of Michigan</td>
</tr>
<tr>
<td>Reuven Avi-Yonah</td>
<td>Irwin I. Cohn Professor of Law</td>
<td>University of Michigan Law School</td>
</tr>
<tr>
<td>James R. Hines, Jr.</td>
<td>Professor of Law and Economics</td>
<td>University of Michigan Law School</td>
</tr>
<tr>
<td>J.J. Prescott</td>
<td>Professor of Law</td>
<td>University of Michigan Law School</td>
</tr>
<tr>
<td>Sarah B. Lawsky</td>
<td>Professor of Law</td>
<td>Northwestern Pritzker School of Law</td>
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<tr>
<td>Ezra Friedman</td>
<td>Professor of Law</td>
<td>Northwestern Pritzker School of Law</td>
</tr>
<tr>
<td>Matthew L. Spitzer</td>
<td>Howard and Elizabeth Chapman Professor</td>
<td>Northwestern Pritzker School of Law</td>
</tr>
<tr>
<td>Daniel N. Shaviro</td>
<td>Wayne Perry Professor of Taxation</td>
<td>New York University School of Law</td>
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<tr>
<td>Noël B. Cunningham</td>
<td>Professor of Law</td>
<td>New York University School of Law</td>
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<tr>
<td>Ryan Bubb</td>
<td>Professor of Law</td>
<td>New York University School of Law</td>
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<tr>
<td>David Kamin</td>
<td>Professor of Law</td>
<td>New York University School of Law</td>
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<tr>
<td>Steven Dean</td>
<td>Professor of Tax Law</td>
<td>New York University School of Law</td>
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<tr>
<td>Alicia Miller</td>
<td>Manager, Partnership &amp; Innovation</td>
<td>Internal Revenue Service</td>
</tr>
<tr>
<td>Jacob Goldin</td>
<td>Assistant Professor of Law</td>
<td>Stanford University</td>
</tr>
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</table>
My main research interests are in tax law and policy. Specifically, I study how the legal rules, regulations, and administrative practices of tax systems affect compliance and distributional outcomes. To examine these relationships, I combine the skills I acquired in my graduate training—a range of empirical methods, interdisciplinary collaboration and original data collection—with a serious effort to understand the nuances of legal institutions and practice.

One aspect of my research agenda focuses on tax compliance and equity considerations raised by administrative aspects of the Federal income tax system, such as reporting requirements, remittance and withholding obligations, and threshold exemptions. These administrative considerations were long deemed irrelevant in classical economic models, but my research shows that they matter in the modern design of fair and efficient tax systems. Another aspect explores the tax and regulatory consequences of classifying workers as independent contractors rather than as employees. Both of these strands contend with tax and regulatory issues raised by the recent proliferation of digital platform firms such as Uber and Airbnb.

1. Effects of Tax Laws and Regulations on Compliance and Distribution

Tax system design has recently begun to figure prominently in the discussion of optimal taxation or incidence in the public finance literature. In a series of empirical projects, I contribute to this emerging sub-field and expand on the consequences of these findings for the legal tax literature. The results of this work suggest that administrative aspects can affect which party bears the economic burden of the tax, the amount of revenue that can be generated, the composition of market entrants, and, ultimately, the change in social welfare—a key parameter in evaluating the desirability of any fiscal policy.

Remittance

Classical economic theory under the “invariance theorem” holds that which party is assigned the responsibility of remitting tax revenue to the government has no effect on which party bears the economic burden imposed by the tax. In “Why Does it Matter Who Remits? Evidence From a Natural Experiment Involving Airbnb and Hotel Taxes,” I explore this prediction in the context of agreements between city governments and Airbnb. These agreements shifted the obligation to remit hotel taxes—but not the base or rate of tax—from independent renters to Airbnb itself. Using variation in the agreements’ location and timing, I identify a substantial increase in advertised tax-inclusive rental prices—a violation of the invariance theorem—but comparatively modest declines in completed reservations. A contemporaneous increase in hotel tax revenue collections suggests that the policy was an effective tax increase, assessed on previously non-compliant renters. I also explore heterogeneity in pass-through of this effective tax increase using several proxies for renter price-setting sophistication. My results indicate that shifting the remittance obligation to Airbnb increases after-tax prices and raises revenue, suggesting that consumers bear a greater share of the tax burden when the remittance obligation is shifted to a party with fewer evasion opportunities.

I further investigate the question of remittance in “Does the Elasticity of the Sales Tax Base Depend on Enforcement? Evidence from U.S. states’ Voluntary Collection Agreements,” coauthored with Teju Velayudhan and Yeliz Kacamak. In this paper, we explore how shifting the remittance obligation from consumers (who in principle owe a use tax on online purchases) to large online retailers affects the elasticity of a state’s sales tax base. To quantify this effect, we use quasi-experimental variation from the staggered, state-wide introduction of Voluntary Collection Agreements (VCAs) between Amazon and state tax authorities. Using detailed consumer purchase data from the Nielsen Consumer Panel and panel data on local sales tax rates, we find that consumers reduce their online expenditures after the introduction of VCAs, consistent with an increase in compliance with sales taxes on online sales. We then test whether consumers are less responsive to sales tax rate changes and more
responsive to sales tax holidays, as they can no longer evade use taxes by purchasing online. On average, we do not find evidence of an impact of the remittance rule change on the elasticity of the tax base with respect to the tax rate. This implies that the additional revenue raised using sales taxes may generate less economic efficiency loss after these policies are enacted. We plan to conduct follow-up work to better understand which consumers benefit most from the opportunity to evade sales taxes online. This work is particularly timely, as state tax authorities consider new policies to tax online purchases in the wake of South Dakota v. Wayfair, Inc., 138 S.Ct. 2080 (2018).

Finally, in a companion law review article to these two empirical papers, I will argue that the nature of firms as entities in the tax system is changing. These changes may affect the traditional role of firms as the locus of information about economic activity and, correspondingly, the most efficient point of tax collection. For example, consider the phenomenon of platform firms, which shift economic activity—sales and purchases of goods and services—away from traditional employers or retailers to individual providers. Current collection frameworks that rely on traditional employers or retailers to remit and/or provide information to tax authorities may be outdated in light of platform firms. Additionally, information on these taxable transactions is concentrated in the firm facilitating the transaction, rather than the individual supplying the good or service. I will discuss how this affords platform firms significant leverage in negotiating the terms of their cooperation with local tax authorities in remitting taxes, and the likely success of various political strategies, such as negotiating as a bloc or regulating early, that local authorities might employ to enhance their position.

Information Reporting

I also study the impact of another feature of the tax system: information reporting. In “Taxpayer Responses to Third-Party Income Reporting: Evidence from a Natural Experiment in the Taxicab Industry,” coauthored with Bibek Adhikari, James Alm, Brett Collins, and Michael Sebastiani, we explore the effects of information reporting on tax compliance among small business owners. This paper uses confidential tax return data from sole-proprietor businesses to estimate behavioral responses to the introduction of Form 1099-K, a third-party income reporting law that requires credit card companies to provide the gross amount of all payment transactions that businesses receive through their electronic payment systems to the IRS. We estimate the causal impact of Form 1099-K on business reporting by exploiting a natural experiment in which many cities in the U.S. passed ordinances mandating that taxicab drivers install credit card readers in their vehicles. We find that taxpayers respond to third-party information reporting in offsetting ways. In particular, we find that firms from cities with mandatory credit card ordinances reported more receipts after the introduction of Form 1099-K, but they also reported offsetting increases in expenses. Overall, the net impact of third-party information reporting led to small and statistically insignificant changes in taxable income.

Withholding

Policymakers are not only concerned with the revenue implications of statutory features of the income tax system, but with their distributional impacts as well. In an early-stage project, Jacob Goldin and I plan to examine the distributional consequences of income tax withholding. Tax penalties for under-withholding or failure to make estimated tax payments have the potential to significantly increase taxpayers’ effective liability. Yet we know very little about the prevalence of these penalties, and the taxpayer circumstances that cause them to be levied. This is particularly important given the rise of digital platform firms and the growing share of taxpayers who are, often for the first time, receiving self-employment income that is not subject to income tax withholding. We plan to explore the behavioral consequences of incurring tax penalties, including whether it encourages taxpayers [or whatever word is more appropriate here] to make estimated tax payments in subsequent years. Finally, we will examine a related phenomenon—failure to claim over-withheld income through non-filing.
Defaults

Administrative efforts to encourage saving through defaults have also received attention in both law and economic literatures. Tax-advantaged employer-sponsored retirement plans have undergone recent design changes to bolster participation, incorporating insights from behavioral economics. The most well-known of these changes is the switch from an “opt-in” design, in which workers must affirmatively elect to make deferrals into the plan, to an “opt-out” design, in which workers are automatically enrolled at a default contribution rate. However, while automatic enrollment is designed to increase saving participation rates, it may also lower the savings of employees who would have enrolled at higher rates on their own.

I will try to resolve this uncertainty in a forthcoming project, “The Population-Level Effect of Automatic Enrollment on the Distribution of Savings Outcomes,” coauthored with Ryan Bubb, David Kamin, Patrick Warren, and Shanthi Ramnath. Our goal is to measure the overall impact of automatic enrollment adoption on savings and, more specifically, whether the anticipated positive effect of automatic enrollment on participation in saving dominates the potential negative effect of automatic enrollment on the amount that some workers would save otherwise on their own. In addition to answering this question, we also plan to explore the impact of automatic enrollment on workers’ savings choices at subsequent employers, as well as its effects on workers’ propensity to take early withdrawals from retirement savings accounts.

2. Classifying Labor Income in the U.S. Tax System

The second strand of my research agenda is focused on the income tax system’s treatment of labor income. When firms purchase labor from individuals, they can choose to classify them as employees or independent contractors. Employers should not make this choice lightly and workers would be remiss if they did not consider their future classification before accepting a position. With firms’ labor and regulatory compliance costs, workers’ labor protections and benefits eligibility, and the tax treatment of both parties at stake, much hinges on the distinction between employee and independent contractor. In theory, this determination is made primarily according to criteria related to control over the work being performed, and the nature of the relationship between the worker and the service purchaser. However, in practice, there is substantial legal ambiguity about which classification is appropriate in a given firm-worker arrangement, and enforcement is challenging. Despite recent interest surrounding contractors related to the so-called “gig” economy and platform firms like Uber, we have little systematic information about contractors. Most datasets either do not track them or are incapable of distinguishing gig workers from those in other alternative work arrangements.

In “Independent Contractors in the U.S.: New Trends from 15 years of Administrative Tax Data,” coauthored with Katherine Lim, Alicia Miller, and Max Risch, we make two contributions to understanding changing patterns of contractor income receipt. First, we translate the legal concept of a contractor relationship into one that can be used to identify these relationships in tax data. Second, we use those data to establish several new empirical facts about individuals who receive contractor income and the firms that pay them. We find that the share of workers with contractor income has grown substantially since 2001, pre-dating the rise of the gig economy and in-line with previous estimates of contractor growth. Additionally, independent contractor income receipt and its growth are not evenly distributed across workers. The largest share of workers with contractor income are those in the top quartile of earnings who primarily receive wage income. But the fastest growing group are those in the bottom quartile of earnings who primarily receive contractor income. Women saw more growth in contractor income receipt than men, and smaller firms saw more growth in contractor usage than larger firms. Together, these trends suggest that the long-run growth in contractor labor in the U.S. cannot solely be attributed to individuals seeking supplemental income, or to the rise of a few online platform firms, but may represent a structural shift in the labor market, particularly for women.
I build on this work in a companion article, “Independent Contractors in Law and in Fact: Evidence from Tax Data.” In this paper, I further refine a tractable definition of contractors, apply it to a novel and comprehensive data source—the universe of U.S. individual income tax filings—and establish two empirical facts. First, I show that the characteristics of workers primarily providing contractor labor and those primarily providing employee labor have converged over time using several metrics that proxy for financial and behavioral control, two elements of the criteria used to classify workers. This suggests a growing misalignment between the legal classification of contractors and the economic substance of firm-worker relationships, a trend that is more pronounced for lower-earning workers. Second, I show that how a worker is classified is responsive to firms’ financial incentives, using a difference-in-differences design involving a discontinuity in Medicare reimbursement rules between small and large firms. This result suggests that some firms may substitute away from employment relationships to avoid regulatory costs. In closing, I discuss several potential policy implications of these findings for the income tax system, including whether there is continued justification for treating employees and contractors differently in light of a growing convergence in the economic reality of their circumstances.

With support from the Russell Sage Foundation, I plan to continue this work in a series of empirical projects focused on the factors driving changes in independent contracting and their consequences. In the proposal our research team submitted, we suggest multiple research designs geared towards understanding whether firms respond to increases in the relative price of employees by substituting away from employees, toward contractors, and if so, whether this substitution represents a restructuring of their production or a re-classification of workers.

We will measure whether changes to state laws affecting the cost of hiring employees are related to changes in contractor usage. For example, changes to statutes concerning the minimum wage, workers’ compensation premiums, family leave, mandated provision of benefits, and collective bargaining can all potentially change the size of the “wedge” between the cost of hiring an employee and the cost of hiring an independent contractor. We will first construct a database of such state law changes over the last two decades. Then, we will provide descriptive evidence about contractor usage in states following the passage of changes to these laws. In the causal analysis, we propose two experimental designs to rigorously measure the impact that these laws had on independent contractor usage, and whether this impact was greater the more the laws affected the cost differential with employees. Our main approach exploits sharp discontinuities in the marginal cost of hiring an employee generated by size-based regulations. As other researchers have noted, some firms will reduce their size—usually defined by their number of employees—in response to laws and regulations that are only applicable to large firms.

Based on these findings, I plan to write a law review article that questions whether regulatory agencies should retain the common law test for determining whether a worker is an independent contractor for purposes of employer mandates and other tax policies. I will consider various policy alternatives, such as lessening the reliance on the distinction between independent contractors and employees in the tax code, in order to make treatment of these two workers more uniform. For example, the IRS could extend income tax withholding obligations to Form 1099-MISC issuers, as some economists and tax law scholars have suggested, and use a more expansive definition of “worker” in determining whether a firm is a large employer. Another strategy might be to make the current standard into a rule that can be more easily enforced. For example, Canada characterizes workers who earn 80 percent or more of their income from a single firm as being effectively dependent on their employer. This use of a rule rather than a standard avoids the need for costly adjudication of a worker’s status—a question that arises frequently—by setting forth unambiguous and difficult-to-game guidance at the outset for how this question will be resolved.
August 30, 2019

Professor Andrew Coan
University of Arizona Law School
1201 E. Speedway Boulevard
Tuscon, AZ 85721

Dear Professor Coan,

I am writing to express my strong interest in an entry-level faculty position at Univ. of Arizona Law School. Your law school has a long tradition of excellence in interdisciplinary legal scholarship. And as a native of Fargo, North Dakota and former long-time resident of Ann Arbor, MI, I am very familiar with, and appreciative of, the many amenities that college towns like Tuscon have to offer.

I received my law degree, cum laude, from the University of Michigan in 2015, where I also completed my Ph.D. in Economics in 2018. While at Michigan, I taught several undergraduate courses in statistics and causal inference and gained practical lawyering skills by working with clients at UM’s Low Income Taxpayer Clinic. After completing my studies, I spent a year as the Fellow in Empirical Studies at Northwestern’s Pritzker School of Law, where I taught Tax Policy with Prof. Sarah Lawsky. At present, I am serving in my second year as an Acting Assistant Professor of Tax Law at NYU School of Law. During my time at NYU, I have taught a six-credit course load each year (Survey of Tax Procedure, Tax Policy, Corporate Taxation I) open to both LL.M and JD students. In addition to being able to teach tax courses, my economics training and research interests substantially overlap with core business law concepts, such as choice of entity and mergers and acquisitions. As a result, I would be very comfortable teaching a class on Business Associations or a first-year class on Contracts.

My scholarship uses both empirical methods and economic theory to study the design, enforcement, and evolution of tax systems in response to technological change. In my job talk paper, I use confidential tax return data to explore how the distinction between independent contractors and employees for tax purposes is applied in practice. After providing a framework for interpreting my findings, I discuss how the appropriate policy response to the observed erosion of this legal boundary depends on what one determines to be the underlying cause—technological changes wrought by the “gig-economy,” increased legal uncertainty, or more aggressive intentional misclassification.

As a Michigan Law alum, I know first-hand the value of studying law at a public university, and I would feel fortunate to spend my academic career at an institution as highly regarded as the University of Arizona, which embodies the same values of excellence in the service of the public interest. I will be attending the AALS conference in October and would be delighted to interview with you there, beforehand, or at any other convenient time. You can reach me by phone at (701) 367-0487 or by email at ew75@nyu.edu. Enclosed, please find a copy of my CV, research agenda, and FAR form. I have also attached a copy of my job talk paper, “Independent Contractors in Law and in Fact: Evidence from U.S. Tax Returns,” as well as a peer-review writing sample, “Why Does it Matter Who Remits? Evidence From a Natural Experiment Involving Airbnb and Hotel Taxes.” Thank you for your consideration.

Sincerely,

Eleanor Wilking
AALS 2019 - 2020 FACULTY APPOINTMENTS REGISTER FORM

Contact Info
Name: Eleanor R Wilking
Phone(s): [Redacted]
Address: [Redacted]

Email
Gender: Female
Race: White

Education
The University of Michigan Law School, JD Graduated: 12/2015
Rank: NA | NA
Other Law Honors: cum laude
University of Michigan, PhD Economics Honors: NSF Graduate Research Fellowship; Rackham Merit Fellowship
Harvard University, BA Economics, History Honors: High honors in Economics

Student Leadership
Organization: Graduate Economic Society
Role: President

From: 05/01/2015 - 08/01/2017

Teaching Preferences
Preferred Subjects:
1) Taxation, Federal (including Income Tax, Corp. Tax, Partnerships & LLCs)
2) Taxation, State and Local
3) Estate and Gift Tax
4) Contracts
5) Business Associations (including Agency & Part., Corps, Bus. Planning)

Additional Subjects:
1) Property (including Landlord Tenant, Personal Prop., Real Prop.)
2) Law and Economics
3) Tax Policy
4) Welfare Law (including Poverty Law, Social Legis., Government Benefits)
5) Labor Law

I would also be happy to teach a course on the application of empirical methods to legal analysis, structured as either a lecture or seminar.

Employment

Employer Name: New York University School of Law
Position Title: Visiting Assistant Professor/Fellow
Subjects: Taxation, Federal (including Income Tax, Corp. Tax, Partnerships & LLCs), Tax Policy

Employer Name: Northwestern University Pritzker School of Law
Position Title: Visiting Assistant Professor/Fellow
Subjects: Tax Policy, Empirical Studies

Employer Name: IRS Research Affiliate Program
Position Title: Economist (part-time)

Employer Name: Low Income Taxpayer Clinic, University of Michigan Law School
Position Title: Student attorney (part-time)

At NYU, I taught 6 credit hours during the 2018-19 academic year (Survey of Tax Procedure, Tax Policy), and will teach 6 credit hours during the 2019-20 academic year (Survey of Tax Procedure, Tax Policy, Corporate Tax I). At Northwestern, I co-taught Tax Policy. As a doctoral student, I taught courses in introductory statistics and empirical methods.

Community Service
Role: Faculty Consultant/Referee
From: 02/13/2019 - 02/20/2019

Organization: Michigan Society of Women in Economics
Role: Founding Member
From: 05/01/2016 - 02/01/2018

Bar Admissions

References
Joel Slemrod, University of Michigan Ross School of Bussiness
Jim Hines, University of Michigan Law School
Dan Shaviro, New York University School of Law

Comments
Additional references: (NYU) Ryan Bubb, Steve Dean, and Noel Cunningham; (Northwestern) Ezra Friedman, Sarah Lawsky, and Matt Spitzer; (Michigan) JJ Prescott, Reuven Avi-Yonah; (Other) Jacob Goldin (Stanford) and Alicia Miller (IRS).

Resume
Full resume available online

Research Agenda
Available online

The AALS makes the Faculty Appointments Register available on the express condition that the Register and any information contained in it be used solely for the purpose of evaluating individual candidates for possible faculty appointment and not for any other purpose.
APPENDIX C
EDUCATION

University of Michigan Law School  J.D., cum laude, 2005

Honors
- Jane L. Mixer Award for the Advancement of Social Justice
- Clara Belfield and Henry Bates Fellow
- Scholarly Writing Award
  
  But One of Many?: An Analysis of the Higher Threshold of Serious Harm Applied to Domestic Violence Asylum Claims

- Certificate of Merit (International Refugee Law)

Activities
- Articles Editor, Michigan Journal of International Law
- Symposium Organizer, Indigenous People in International Fora
- Chair, Public Interest & Community Service Organization
- Founder, Food Stamp Advocacy Project
- Coordinator, Hunger Coalition Soup Kitchen

Yale University  B.A., with Distinction, 1998

Honors
- Mark Deitz Memorial Prize (annual prize for best original research in History of Art)

  Toward Nothing New: The Museum of Modern Art and the Entanglement of Architecture, Competition and Exhibition

TEACHING EXPERIENCE

Georgetown University Law Center, Washington, DC.

Clinical Teaching Fellow/Supervising Attorney (June 2013 – present)
- Supervise students in the Community Justice Project (CJP), an in-house, live-client clinic, in which students represent (1) individual clients in unemployment insurance appeals and (2) community organizations with non-litigation needs such as strategic planning, advocacy, and coalition building.
- Supervise projects on a broad range of topics including homelessness, LGBT issues, returning (formerly incarcerated) citizens, and the “school-to-prison pipeline.”
- Design and teach seminars for clinic students on trial preparation, trial advocacy, interviewing, legal analysis, and justice strategies.
- Design and teach seminars for externship students on interviewing, presentation, and leadership skills.
- Oversee solicitation of project proposals from organizational clients, selection of project clients, and initial project designs.
- Completed coursework in clinical pedagogy and expect to receive L.L.M. in Advocacy with Distinction in 2015.
**Georgetown University Law Center**, Washington, DC.  
*Practicum Placement Supervisor/Guest Lecturer* (Fall 2011, Spring 2013)  
- Supervised five Georgetown Law students in the *Immigration Law and the Rights of Detained Immigrants* practicum in their placement at Kids in Need of Defense.  
- Guest lectured on juvenile immigration law.

**Universidad San Francisco de Quito - Law Faculty**, Quito, Ecuador.  
*Adjunct Professor* (Jan. – Aug. 2006)  
- Designed and taught *Survey of Issues in U.S. Litigation* in both English and Spanish in Spring 2006.  
- Lectured on U.S. and comparative asylum law.

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**PUBLICATIONS**


*Pedagogical Lessons About Values: Cause Lawyering for Non-Profit Organizations* (co-author with Amber Baylor, in progress).

*Closing the Age-Out Gap?: An Assessment of Maryland’s Recent Statutory Amendment to Give All Eligible Youth the Opportunity to Seek Special Immigrant Juvenile Status* (forthcoming; accepted for publication at *U. Balt. L. Rev. Online*).

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**LEGAL AND POLICY EXPERIENCE**

**Kids in Need of Defense (KIND)**, Washington, DC.  
- Managed office with 250 active juvenile immigration cases and supervised attorneys and staff.  
- Conducted legal screenings and rights presentations for unaccompanied immigrant children.  
- Trained attorneys, social workers, and other service providers on juvenile immigration practice.  
- Mentored pro bono attorneys in SIJS, U visa, T visa, VAWA, asylum, and suppression cases, and appeals therefrom.  
- Advocated for systemic reform with federal and state agencies and court administrative bodies.

**Tahirih Justice Center**, Falls Church, VA.  
*Staff Attorney* (Nov. 2007 – Oct. 2008)  
- Represented immigrant women and girls in asylum, U visa, T visa, VAWA, and SIJS cases.  
- Drafted training materials and conducted trainings for attorneys, adjudicators, and lay audiences.  
- Collaborated with policy team on amicus brief and impact litigation strategy.  
- Supervised work of staff attorneys and intake paralegals.
U.S. Department of Justice, Office of Immigration Litigation, Washington, DC.
*Trial Attorney* (Aug. 2007 – Nov. 2007)
- Authored appellate briefs and motions in immigration cases in the Third and Ninth Circuits.

Africa & Middle East Refugee Assistance (AMERA), Cairo, Egypt.
*Unaccompanied Minors Team Leader /Legal Advisor* (Sept. 2006 – April 2007)
- Conducted intake of, and represented, approximately thirty adult and juvenile asylum seekers.
- Trained, assigned caseloads, and oversaw work of five legal advisors at any given time.
- Represented AMERA in all meetings and communications with UNHCR relating to minors.

Frente de Defensa de la Amazonia, Quito/Lago Agrio, Ecuador.
- Authored legal memos, strategy papers, press documents, and communications for plaintiffs in *Aguinda v. ChevronTexaco*, an environmental class action on behalf of communities affected by oil contamination.

Refugee Rights Project – University of Cape Town, Cape Town, R.S.A.
- Drafted issue papers and represented refugees regarding protection issues, voluntary repatriation, resettlement, and family reunification.
- Organized a know-your-rights program at refugee women’s shelter.
- Established a “mobile clinic” to serve refugees in more remote areas of the Western Cape province.

*Michigan Refugee/Asylum Law Fellow* (Summer 2004)
- Drafted policy statements and a comprehensive guide on gender-based asylum for use in AI field offices.
- Represented AI at UNHCR Standing Committee Meeting in Geneva.

GTZ/Ministry of Women’s and Veterans’ Affairs, Phnom Penh, Cambodia.
*Law Clerk* (Summer 2003)
- Interviewed stakeholders and designed system to monitor implementation and efficacy of country’s first domestic violence law.

**SELECTED PRESENTATIONS, PANELS, AND TRAININGS**

*Teaching Lawyering Values (Roundtable)*
Society of American Law Teachers Teaching Conference (upcoming Oct. 2014)

*Juvenile Immigration Practice: SIJS, Asylum, U and T Visas*
Presented on monthly basis at DC-area law firms (Jan. 2010 – May 2013)

*The Intersection of Immigration Law, Enforcement & Social Work Practice*

*Advanced Training on SIJS in Maryland*
Prince George’s County Circuit Court (Feb. 23, 2012)
Advanced Juvenile Immigration Practice  
Maggio & Kattar LLP (Apr. 20, 2011)

Immigration Relief for UAC Survivors of Trafficking (national webinar)  
Lutheran Immigrant & Refugee Services (Apr. 29, 2010)

Introduction to Juvenile Immigration Law for Social Workers  
Northern Virginia Family Services (Jan. 27, 2010)

Interviewing Immigrant Survivors of Violence  
USCIS Washington District Office (Dec. 4, 2009)

Challenges and Best Practices: Working with Law Enforcement on Trafficking Cases  
Women in Federal Law Enforcement / Embassy of Switzerland (Oct. 28, 2009)

Preparatory Meeting for the Second Meeting of National Authorities on Trafficking in Persons  
Organization of American States (Mar. 3-4, 2009)

Advanced Asylum Law: Constructing a Particular Social Group  
Fried, Frank, Harris, Shriver & Jacobson LLP (Jan. 14, 2009)

How U.S. Asylum Law Helps Women Fleeing Gender Violence  
NOW National Conference (Jul. 18, 2008)

Immigration Relief for Survivors of Trafficking  
DC Bar Association / Jenner and Block LLP (June 20, 2008)

Violence Against Women: Working with Survivors and U.S. Immigration Law  
Asian/Pacific Islander Domestic Violence Resource Project (Mar. 16, 2008)

SELECTED MEDIA REFERENCES AND QUOTATIONS

Reginald Black, Assisting Homeless Singles, STREET SENSE, Dec. 2013 (about CJP student work).

BAR ADMISSIONS

State of New York Court of Appeals (2006)  
U.S. Court of Appeals for the Third Circuit (2007)  
District of Columbia Court of Appeals (2012)

LANGUAGES

Proficient Spanish (speaking, reading, writing)  
Basic French (speaking, reading, writing)
REFERENCES

Jane H. Aiken
Professor of Law and Associate Dean for Experiential Education
Georgetown University Law Center
600 New Jersey Avenue NW, Washington, DC 20001

James C. Hathaway
James E. and Sara A. Degan Professor of Law and Director of the Program in Refugee and Asylum Law
University of Michigan Law School
625 South State Street, Ann Arbor, MI 48109

Elizabeth Keyes
Assistant Professor of Law and Director of the Immigrant Rights Clinic
University of Baltimore School of Law
address: 1401 North Charles Street, Baltimore, MD 21201

Nicholas J. Rine
Clinical Professor of Law
University of Michigan Law School
25 South State Street, Ann Arbor, MI 48109

Colleen F. Shanahan
Visiting Associate Professor of Law and Director of the Community Justice Project
Georgetown University Law Center
600 New Jersey Avenue NW, Washington, DC 20001

Wendy Young
President
Kids in Need of Defense (KIND)
1300 L Street NW, Suite 1100, Washington, DC 20005
My scholarship focuses on access to justice for women and juveniles in the administrative law and policy context. My current work arises from a close examination of the access to justice issues I encountered in immigration practice, while my future work will expand this examination to other contexts encountered in clinical supervision, including school discipline and special education hearings, and benefits determinations. I focus on areas of administrative law that are characterized by broad grants of discretion with limited review mechanisms, a limited bar, direct participation by unsophisticated parties, and heavy reliance on purportedly non-adversarial relationships, which, I show, tend to perpetuate particular access to justice challenges. In addition, my scholarship also engages clinical pedagogy and approaches to teaching students about access to justice, with an emphasis on both client and student narrative.

Current Work

My current articles look at the intersection of juvenile access to justice and administrative law through the lens of Special Immigrant Juvenile Status (SIJS), a path to legal status for undocumented immigrant youth who have been abused, abandoned, or neglected and for whom it is not in their best interest to return to their home country. The SIJS framework relies on the complicated interplay between state courts and federal agencies, state family law and federal immigration law. My forthcoming article, Closing the Age-Out Gap?: An Assessment of Maryland’s Recent Statutory Amendment to Give All Eligible Youth the Opportunity to Seek Special Immigrant Juvenile Status, considers the state court phase of SIJS. In many states, a youth aged 18 to 21, though eligible for SIJS under federal law, cannot access a state juvenile or family court. My article analyzes Maryland’s effort to align state and federal law by expanding equity court jurisdiction to youth until age 21. It articulates three limitations of the law that may impact its utility for youth in Maryland and its ability to serve as a model for other states with the same “age-out” gap.

My work in progress, The Tension Between Deference and Consent: An Analysis of AAO Jurisprudence in SIJS Cases, 1997-2014, looks at broader questions of deference and the allocation of fact-finding and adjudication roles in the unique state-federal context of SIJS. The article examines the relationship between SIJS’ foundational principle – delegation of fact-finding and certain legal conclusions to state courts and the concomitant expectation of deference – and its counter-weight known as “consent,” the agency’s asserted authority to determine if the SIJS application is bona fide. I trace the legislative, regulatory, and policy evolutions of both the deference and consent concepts and survey the SIJS jurisprudence of the Administrative Appeals Office (AAO), some 100 decisions, to identify trends in how the agency employs this consent authority.

Another work in progress, coauthored with Amber Baylor, engages my interest in clinical pedagogy and experiential education. Pedagogical Lessons About Values: Cause Lawyering for Non-Profit Organizations looks at how we teach the value of community accountability, defined as
the lawyer’s moral obligation to interact with, hear concerns, and receive direction from an affected population when the lawyer’s client is an organization that advocates for or provides services to that population. Relying on the robust literature on lawyer domination, the article presents two cases studies that highlight shortcomings in clinical supervision that may limit students’ ability to recognize the role of community accountability in the process and the product of representation.

Future Work

My scholarship in the near future will expand the access to justice analysis and insights from my current work to a wider range of administrative law contexts, both within the immigration field and without. These works will engage my interests, already apparent in my SIJS articles, in consistency of adjudications and the specialization of courts and dockets. Recently the federal government has begun implementing “rocket dockets” to expedite the cases of unaccompanied immigrant juveniles, making it a critical time to assess the policies and practices of existing juvenile dockets in immigration courts around the country. The Executive Office for Immigration Review (EOIR) has encouraged such dockets, but has done so with vague, largely discretionary guidance memos on when and how juvenile dockets should be implemented in immigration court. This has led to the creation of dockets with disparate approaches to children’s cases and inconsistent procedures and outcomes nationally. This project will examine immigration juvenile dockets through the lens of other specialized courts for children, such as juvenile justice courts, as well as looking at the court procedures for juvenile immigrants in other common law countries. I also plan to continue engaging these themes by exploring the parallels between maternal deportation and maternal incarceration in relation to children’s rights and the intersections of juvenile immigrants, school discipline, and language access.

My future research in experiential education will emphasize using the tools and theories of clinical pedagogy in new contexts to increase access to justice. I plan to consider the use of clinical methods in the private sector: as non-profit legal service providers bear more of the burden for training junior law firm associates through mentored pro bono cases, I am interested in how clinical methods can be harnessed by private sector actors to improve the quality of client representation. Another potential project would focus on the use of clinical teaching in a comparative setting: a comparative law clinic enabling students to represent refugees or asylum seekers in the U.S. and in a partner country with both a strong need for asylum advocates and burgeoning legal representation programs (such as Egypt, Turkey, Uganda, South Africa, Tanzania, Thailand, Hong Kong, or Ecuador). A model for such a comparative clinic, potentially replicable in any two countries, would give students exposure to competing legal systems and insight into the conditions faced by refugees or asylum seekers in receiving countries, as well as provide an opportunity for the supervised transfer of skills and increase the pool for legal representation in both countries.
LAUREN ROGAL
Georgetown University Law Center

EDUCATION

GEORGETOWN UNIVERSITY LAW CENTER, L.L.M., expected 2017

THE UNIVERSITY OF MICHIGAN LAW SCHOOL, J.D. cum laude, 2011
Honors: Clarence Darrow Scholar (full-tuition merit scholarship), Hessel E. Yntema Award for distinction in international and comparative law, Certificate of Merit (top grade) for International Law of War.

THE JOHNS HOPKINS UNIVERSITY, SCHOOL OF ADVANCED INTERNATIONAL STUDIES, M.A., 2012
Activities: PERSPECTIVES Journal of International Development, Associate Editor.

UNIVERSITY OF PENNSYLVANIA, B.A., magna cum laude in International Relations, 2004
Honors: Benjamin Franklin Scholar (four-year honors curriculum).

PUBLICATIONS

ARTICLES

WORKS-IN-PROGRESS
Reforming Executive Compensation in the Charitable Sector (draft available).

TEACHING EXPERIENCE

GEORGETOWN UNIVERSITY LAW CENTER, Washington, D.C.
Clinical Teaching Fellow and Supervising Attorney (2015 – Present)

Social Enterprise & Nonprofit Law Clinic: Directly supervise students in representation of social enterprises and nonprofit organizations in tax, corporate governance, and other transactional matters. Teach seminar classes on substantive law and lawyering skills. Design and teach new seminar classes on client financing options and international activities.

Participate in yearlong Clinical Pedagogy class taught by the Georgetown Law clinical faculty.

LAW PRACTICE & RELATED EXPERIENCE

KLAMP & ASSOCIATES P.C., Washington, DC
Of Counsel (August 2015 – present); Associate (August 2012 – July 2015)
Represent nonprofits and social enterprises in tax, corporate, employment, and intellectual property matters. Negotiate and draft commercial leases, financing instruments, and employment agreements. Advise clients on international humanitarian transactions and sanctions compliance. Developed a public seminar series on topics of interest to the D.C. nonprofit community.
Public International Law and Policy Group, Washington, DC
Law Fellow (February 2012 – August 2012)
Drafted client memoranda on comparative and international law issues pertaining to economics and development.

United Nations Development Programme, Geneva, Switzerland
Rule of Law and Development Extern (Spring 2010)
Assisted in developing indicators to measure rule of law development in areas of armed violence.

Financial Industry Regulatory Authority, Washington DC
International Affairs and Services Intern (Summer 2009)
Developed a paper on comparative regulation of broker-dealers and investment advisors.

The Community Legal Education Center, Phnom Penh, Cambodia
Law and Development Fellow (Summer 2008)
Assisted in litigation on behalf of victims of government land expropriation.

Selected Presentations

Transactional Clinical Conference, University of Baltimore, Baltimore, MD (April 2016)
Presentation: Financing Nonprofits and Social Enterprises

Presentation: Legal Perspectives on NGO Risk Management

Lockton Companies, Washington, DC (May 2014)
Presentation: Shifting Sands: The Evolving Defense Base Act Insurance Market

Presentation: International Nonprofit Legal Issues

Security Working Group, InterAction, Washington, DC (December 2013)
Presentation: Duty of Care to International NGO Staff

International NGO Safety and Security Network, Washington, DC (November 2013)
Presentation: Duty of Care to International NGO Staff

Leadership

Board Member, The Women’s Collective (2016 - present)
Assist in stewarding a D.C. nonprofit dedicated to assisting women living with HIV/AIDS.

President, Public Interest Partnership for D.C. Legal Professionals (2014-2015)
Coordinated pro bono legal services for nonprofit organizations and immigrants affected by domestic violence.

Admitted To Practice

District of Columbia (Admitted 2014)
New York (Admitted 2012)
Research Agenda

My research focuses on tax and investment law as it pertains to community economic development and the charitable sector. The past two decades have seen rising interest in mission-based financing structures, innovative charity, and social entrepreneurship. The regulatory landscape, however, has not kept pace with either innovations in the field or with applicable economics scholarship. This outdated regulatory scheme impedes public interest organizations from effectively serving their vulnerable and marginalized constituencies. As such, the applicable laws often fail to achieve their stated purposes. My scholarship will explore ways to more closely align tax and investment policies with legislative intent by incorporating contemporary economics research and evidence from practice.

In my work in progress, Reforming Executive Compensation in the Charitable Sector, I argue that current law governing executive compensation by Section 501(c)(3) organizations subverts the underlying objectives of charitable tax exemption. Lavish remuneration of charity executives harms the intended beneficiaries, the subsidizing taxpayers, and public confidence in the sector. To prevent this, the statute limits these organizations to reasonable compensation and forbids the distribution of profits. In practice, however, charities only face accountability if an Internal Revenue Service audit determines that their compensation exceeds market rate for both the nonprofit and for-profit sectors.

I identify several problems with this construct, drawing on work by Professor Lucian Bebchuk and others. First, research indicates that the market rate standard facilitates an ever-increasing spiral of inflated compensation. Second, the for-profit analogue is inappropriate because of important cross-sector differences in organizational purpose, stakeholder accountability, and components of remuneration. Third, any accountability under this system requires a fact-intensive investigation by the IRS, which is increasingly unlikely due to resource constraints. In light of these findings, I explore options for reform based on analogous regulatory frameworks for compensation of federal employees, Chapter 11 bankruptcy trustees, and public corporation executives. I ultimately recommend a synthesis of these schemes that improves the metric for compensation reasonableness and provides more systematic accountability.

In future scholarship, I hope to address the intersection of tax and investment policy with respect to community economic development. Scholars and policymakers have long acknowledged that access to capital is vital for economic mobility on both the individual and community levels. Individuals require capital to develop their capabilities and engage in entrepreneurship. Marginalized communities need capital to build and maintain infrastructure and facilities that will create jobs and improve the quality of life. Despite this need, low-income individuals and communities encounter barriers in accessing capital due to a lack of collateral and income documentation, poor credit, and the perception of high location-related risk. Tax
incentives have been enacted for the purpose of redressing this gap and stimulate investment in low-income areas. Yet growing evidence shows that the design of such incentives often inadvertently concentrates benefits to individuals who are not low-income or otherwise disadvantaged.

One such example is the New Markets Tax Credit (NMTC), which aims to alleviate poverty by stimulating investment in economically distressed areas that struggle to attract private capital. In practice, however, the NMTC often accelerates gentrification by subsidizing chain businesses that hire employees from outside the community. This pattern may result from the same risk perceptions that impede low-income individuals from accessing capital in the first place. The effect is to increase rents and real estate taxes without fostering community entrepreneurship or employment. I plan to explore ways to strengthen the NMTC by importing certain standards that govern 501(c)(3) community development corporations, which must target assistance to disadvantaged workers and entrepreneurs. In addition, I hope to incorporate emerging evidence on poverty alleviation strategies such as financing worker cooperatives.

A related issue that I’m interested in exploring concerns how charities can obtain and provide investment in furtherance of their missions. The survival of charities is increasingly dependent on alternative and innovative revenue streams, which are necessary to compensate for the relatively recent decline in government funding. One such revenue stream is through debt capital markets, but charity access to such markets is highly circumscribed compared to for-profit businesses. While charities may issue debt securities under a federal exemption, they must still comply with a mazelike array of idiosyncratic state securities regulations. In contrast, small businesses without any track record may raise up to one million dollars in equity without federal or state registration. I hope to investigate the policy underpinnings of this disparity and analyze ways to reform the existing regulatory scheme to facilitate investment in charity.
I. EMPLOYMENT

UNIVERSITY OF MICHIGAN LAW SCHOOL, ANN ARBOR, MI  
2011–Present

Adj. Clinical Assistant Professor of Law  
(Sept. 2014-Present)
Asst. Director, Michigan Innocence Clinic  
(April 2016-Present)

- Courses Taught:
  - Michigan Innocence Clinic
  - Forensic Science and the Law

Clinical Fellow, Michigan Innocence Clinic  
(Sept. 2011–August 2014)

II. EDUCATION

UNIVERSITY OF MICHIGAN LAW SCHOOL, ANN ARBOR, MI  
J.D. (Cum Laude) Conferred May, 2011

- Student Attorney, Michigan Innocence Clinic
- Exec. Editor, Michigan Journal of Race & Law

UNIVERSITY OF MICHIGAN, COLLEGE OF LITERATURE, SCIENCE, AND THE ARTS, ANN ARBOR, MI  
B.A. Political Science (With Distinction) Conferred May, 2008

III. ACADEMIC PUBLICATIONS

- “‘Shifted Science’ Revisited: Percollation Delays and the Persistence of Wrongful Convictions Based on Outdated Science”; Cleveland State Law Review (2016)

IV. COMMITTEE SERVICE

- Innocence Network Executive Board (2019-)
  - Elected member of leadership board governing the umbrella organization that oversees 67 innocence projects across the country and the world.

- University of Michigan Provost’s Faculty Advisory Committee (2019-)
  - Appointed to serve by Provost Martin Philbert

- Michigan Supreme Court Committee on Criminal Jury Instructions (2018-)
  - Appointed to serve by Chief Justice Stephen Markman

- Univ. of Michigan Medical School Review Board for Human Subjects Research, Alternate Member (2016-)

V. AWARDS

- AMERICAN BAR ASSOCIATION TOP 40 YOUNG LAWYERS (2017)
  - Only attorney from Michigan named to this national list.

- STATE BAR OF MICHIGAN OUTSTANDING YOUNG LAWYER OF THE YEAR (2016)
  - “Recognizes a Michigan young lawyer who has demonstrated an overwhelming commitment to public service, service to the bar, as well as exceptional leadership.”
• DEPARTMENT OF JUSTICE WRONGFUL CONVICTION GRANT (2015)
  o Lead investigator in grant project focusing on investigation and litigation of an emerging category of wrongful convictions based on flawed forensic science.

• AUDIENCE CHOICE AWARD, GREAT LAKES FILM FESTIVAL (2015)
  o Presented to “The Price of Providence,” a documentary film that I wrote and produced.

• NATIONAL LAWYERS GUILD DETROIT CHAPTER EQUAL JUSTICE AWARD (2012)
  o Presented jointly to attorneys of the Michigan Innocence Clinic.

• ROCKWELL T. GUST ADVOCACY AWARD, UNIVERSITY OF MICHIGAN LAW SCHOOL (2011)
  o Presented to student demonstrating the greatest potential as a trial lawyer and advocate.

• BEST BRIEF AWARD, AMERICAN CONSTITUTION SOCIETY (2009)
  o Presented at regional competition of Constance Baker Motley Moot Court.

• STANFORD LIPSEY PRIZE FOR MERITORIOUS PUBLIC SERVICE, THE MICHIGAN DAILY (2009)
  o Presented annually in recognition of public service in student journalism.

VI. SIGNIFICANT APPELLATE ORAL ARGUMENTS

• People v. Kareem Swilley (March 2019, Michigan Supreme Court)
  o Pro bono case involving a juvenile serving life in prison. Briefed and argued in the Michigan Supreme Court on the issue of judicial misconduct leading to the conviction of an innocent defendant. After hearing arguments, the Court unanimously vacated the conviction and ordered a new trial in July 2019.

• People v. Shawn Brown (January 2019, Michigan Court of Appeals)
  o Innocence Clinic case involving forensic science and the legal standard for a Sixth Amendment claim of ineffective assistance of counsel. The Court vacated the client’s conviction and ordered a new trial in July 2019. The prosecution opted not to seek leave to appeal in the Supreme Court.

• People v. Justly Johnson & Kendrick Scott (April 2018, Michigan Supreme Court)
  o Innocence Clinic case involving co-defendants and the legal standard for obtaining a new trial on the basis of new evidence. I litigated this case for more than seven years, before the Michigan Supreme Court vacated the convictions and ordered new trials in July 2018. The clients were exonerated in Nov. 2018.

VII. SPEAKING EVENTS AND OTHER PROFESSIONAL ACTIVITIES

• Challenging Unreliable Forensic Science at Trial and on Appeal
  Presentation for Spring Conference of the Criminal Defense Attorneys of Michigan (March 2020)

• Litigating Judicial Misconduct in People v. Kareem Swilley
  Presentation in Justice Bridget McCormack’s Summer Law Program for Law School Staff (July 2019)

• Litigating Successive Federal Habeas Corpus Petitions
  Presentation at the Innocence Network Annual Conference, Atlanta (Apr. 2019)

• Litigating Advanced Forensic Science Issues on Post-Conviction
  Presentation at the Innocence Network Annual Conference, Atlanta (Apr. 2019)

• Advocacy in Appellate Oral Arguments- People v. Kareem Swilley
  Led Discussion in Criminal Appellate Practice Clinic at Michigan Law School (Apr. 2019)
Wrongful Convictions, Forensic Science, and the Michigan Innocence Clinic

Wrongful Conviction Day Discussion

Forensic Science and Wrongful Convictions
Annual Presentation for High School Forensic Science Class, Canton, MI (2013-19)

Proposed Amendments to Michigan Court Rules Concerning New Evidence and Forensic Science
Spoke at Michigan Supreme Court Public Hearing in Favor of Proposed Rule Amendment (Sept. 2018)

Wrongful Convictions and the Michigan Innocence Clinic
Presentation at Saginaw Valley State University (Aug. 2018)

Forensic Science Errors and Reforms
Presentation at Conference of the Criminal Law Section of the State Bar of Michigan (June 2018)

“Innocence and Science”
Panel Presentation at a Law School Symposium on Forensic Science Reform, Atlanta (Apr. 2018)

The Michigan Innocence Clinic and Non-DNA Exonerations
Presentation for Univ. of Michigan Undergraduate Class on Race and Social Justice (Mar. 2018)

Primer on Federal Habeas Corpus
Presentation at the Innocence Network Annual Conference, Memphis (Mar. 2018)

Litigating Arson Cases, Old and New
Presentation at the Innocence Network Annual Conference, Memphis (Mar. 2018)

Building Partnerships with Law Firms in Litigating Innocence Cases
Presentation at the Innocence Network Annual Conference, Memphis (Mar. 2018)

The Michigan Innocence Clinic and Non-DNA Exonerations
Presentation for Univ. of Michigan Political Science Class on the Death Penalty (Nov. 2017, Apr. 2019)

Wrongful Convictions and the Michigan Innocence Clinic
Community Presentation in Ann Arbor (Oct. 2017)

Investigating and Litigating Post-Conviction Arson Cases
Webinar for the Innocence Network (July 2017)

Major Updates in Forensic Science: Strategies and Case Law
Presentation at Conference of the Criminal Law Section of the State Bar of Michigan (June 2017)

Ethical Investigations and the Michigan Innocence Clinic
Talk for Professional Forensic Examiners in Southfield, MI (Apr. 2017)

Wayne County’s Criminal Justice System and Wrongful Convictions
Talk for Human Rights Weeks at the University of Michigan Law School (Mar. 2017)

Litigating Complex Cases Involving Scientific Shifts
Presentation at the Innocence Network Annual Conference, San Diego (Mar. 2017)
• Scientific Evidence at Trial and on Appeal
  Presentation at Conference of Criminal Law Section of the State Bar of Michigan (Feb. 2017)

• Closing Arguments after Post-Conviction Evidentiary Hearings
  Training Conducted for State Appellate Defender Office, Detroit (Feb. 2017)

• Overcoming and Preventing Wrongful Convictions
  Presentation at Greater Grace Temple, Detroit (May 2016)

• Recognizing and Litigating Shifts in Science
  Presentation at the Innocence Network Annual Conference, San Antonio (Apr. 2016)

• Litigation Strategies for Cases Involving Shifts in Science: Arson and Shaken Baby Syndrome
  Presentation at Forensic Fraud Symposium, West Virginia Law School (Mar. 2016)

• Litigating Daubert and Other Science Issues on Appeal
  Training Conducted for State Appellate Defender Office, Detroit (Feb. 2016)

• The Broader Story of “Making a Murderer”
  Presentation at Michigan Law School (Feb. 2016)

• The Wrongful Conviction of Victor Caminata
  Presentation at Central Michigan University (Nov. 2015)

• Wrongful Convictions and the Michigan Innocence Clinic
  Community Presentation in Farmington Hills, MI (Sept. 2015)

• Arson Case Review: Program Design, Implementation, and Strategies
  Presentation at the Innocence Network Annual Conference, Orlando (May 2015)

• The State of Forensic Science in Criminal Investigations
  Panel Discussion Sponsored by Criminal Law Society at Michigan Law School (Oct. 2014)

• The Arson Innocence Case of David Gavitt
  Presentation at the University of Michigan Law School (Oct. 2014)

• The Innocence Case of Dwayne Provience
  Presentation at the University of Michigan Law School (July 2014)

• Arson and Fire Science
  Presentation at Conference of Criminal Law Section of the State Bar of Michigan (June 2014)

• Innocence and Michigan’s Long Heritage of Opposition to Capital Punishment
  Keynote Speech at Jackson County Law Day (May 2014)

• Innocence and Capital Punishment
  Panel Discussion, Amnesty International, University of Michigan-Dearborn (Mar. 2014)

• Exoneration Mission: Attorney at Innocence Clinic Films Documentary About Case
  Interview Featured in Detroit Legal News (Feb. 2014)

• The Michigan Innocence Clinic, Wrongful Convictions, and the Legislative Process
  Presentation to Class at the University of Michigan School of Education (Sept. 2012; Feb. 2014)

• “Doubly Wronged in Detroit”
Op/Ed on Slate.com Regarding Compensation for an Exoneree (Dec. 2013)

- **The Arson Innocence Case of Victor Caminata**
  Presentation at the University of Michigan Law School (Sept. 2013)

- **Successes of the Michigan Innocence Clinic**
  Guest Speaker on Radio Show Called “Reality Strikes” (May 2013)

- **Litigating Shifts in Fire Science**
  Presentation at the Innocence Network Annual Conference, Charlotte, NC (Apr. 2013)

- **Screening Non-DNA Cases**
  Panel Discussion at the Innocence Network Annual Conference, Charlotte, NC (Apr. 2013)

- **Wrongful Convictions and the Importance of Thorough Investigations**
  Presentation to Labor Relations Division of Blue Cross/Blue Shield, Detroit (Dec. 2012)

- **They Didn’t Do It: True Stories of the Innocence Project**
  Presentation at Northville District Library, Northville, MI (Oct. 2012)

- **Arson Cases and the Michigan Innocence Clinic**
  Guest Speaker on Radio Show, “Your Voice, with Angelo Henderson” (June 2012)

- **Race, Wrongful Convictions and the Execution of Troy Davis**
  Panel Discussion at the Charles Wright Museum of African-American History, Detroit (Nov. 2011)

- **“Eyewitness testimony gets long-needed questioning”**
  Op/Ed in the *Detroit Free Press* (Sept. 2011)

- **Proposed Amendment to Student Practice Rule to Permit Students to Argue in the Court of Appeals**
  Spoke at Michigan Supreme Court Public Hearing in Favor of Amendment (Sept. 2010)

**VIII. PRIOR EMPLOYMENT**

* **LAW FIRM OF DYKEMA GOSSETT, PLLC**
  May 2010-Aug. 2010

* **STATE OF MICHIGAN: DEPT. OF CIVIL RIGHTS**

* **STATE OF MICHIGAN: DEPT. OF ATTORNEY GENERAL**

* **CITY OF ANN ARBOR, CITY ADMINISTRATOR’S OFFICE**
  May 2008-Aug. 2008

* **THE MICHIGAN DAILY**
  2005–2012
  Served terms as Editor in Chief and Editorial Page Editor
  Staff Writer and Columnist for Editorial Page and Arts/Entertainment
  Public Editor/Ombudsman (2011–12)

**IX. BAR ADMISSIONS**

- Licensed to Practice in Michigan in 2011 (P75415)
- Admitted to Practice in:
  o Michigan State Courts
  o U.S. District Court for the Eastern District of Michigan
  o U.S. District Court for the Western District of Michigan
  o U.S. Court of Appeals for the Sixth Circuit
  o Supreme Court of the United States
X. REFERENCES

1. **THE HON. BRIDGET M. MCCORMACK**
   
   **Position(s):** Chief Justice, Michigan Supreme Court; Former Asst. Dean for Clinical Affairs, University of Michigan Law School
   
   **Relationship:** Former law school professor and former supervisor at the Michigan Innocence Clinic
   
   **Contact:** 

2. **PROF. DAVID A. MORAN**
   
   **Position(s):** Clinical Professor of Law, University of Michigan Law School
   
   **Relationship:** Former law school professor and current supervisor at the Michigan Innocence Clinic
   
   **Contact:** 

3. **CAITLIN M. PLUMMER**
   
   **Position(s):** Appellate Defender, State of California; Former Clinical Fellow, University of Michigan Law School
   
   **Relationship:** Former law school classmate and colleague at the Michigan Innocence Clinic
   
   **Contact:** 

4. **THE HON. CHAD READLER**
   
   **Position(s):** Judge, U.S. Court of Appeals for the Sixth Circuit
   
   **Relationship:** Former pro bono collaborator and co-presenter at Innocence Network Conference
   
   **Contact:** 

5. **PROF. VALENA BEETY**
   
   **Position(s):** Professor of Law, Arizona State University School of Law
   
   **Relationship:** Former colleague in the Innocence Network, familiar with my casework and presentations
   
   **Contact:** 

6. **MICHAEL A. McKENZIE**
   
   **Position(s):** Former Partner, Cozen O'Conner (Atlanta)
   
   **Relationship:** Former co-counsel on significant forensic science litigation in the Michigan Innocence Clinic and frequent co-presenter at conferences
   
   **Contact:** 

7. **MARILENA DAVID MARTIN**
   
   **Position(s):** Training Director and Assistant Defender, Michigan State Appellate Defender Office, Board of Directors, Criminal Defense Attorneys of Michigan
   
   **Relationship:** Organizer of trainings I have done for attorneys on appellate litigation and forensic science
   
   **Contact:** 

6
Debra Chopp  
Assoc. Dean, Michigan Law School  
701 S. State St.  
Ann Arbor, MI 48109

Dear Assoc. Dean Chopp,

I write to apply for the posted position of clinical professor in the Michigan Innocence Clinic. As I explain below, I believe I am a uniquely well-qualified candidate for this position.

I started in the Michigan Innocence Clinic as a second-year law student in 2009 and returned to the MIC during my third year as well. Upon graduation, I was hired as a clinical fellow, and I have been an instructor in the MIC for eight years. I have worked with about 200 students on countless post-conviction cases, including 12 resulting in the release from prison of innocent people.

Along the way, I have published articles in the fields of criminal procedure/forensic science, designed and taught a seminar course on forensic science, and produced an award-winning documentary film about one of the MIC’s cases. In 2016, I received the Reganna Myrick Outstanding Young Lawyer of the Year Award from the State Bar of Michigan, and in 2017, I was the only lawyer from Michigan to be named to the American Bar Association’s national list of Top 40 Young Lawyers.

At the Clinic, I have supervised students on tasks ranging from the glamorous (oral arguments in the Sixth Circuit Court of Appeals and in the Michigan Court of Appeals) to the all-important, everyday things that make a successful clinic student and attorney (interviewing clients/witnesses, documenting reviews of records spanning thousands of pages, conducting effective legal and factual investigations, drafting pleadings short and long, etc.). This working relationship with students has been the most meaningful part of my time at the MIC; their talent, insights, and dedication eased my transition into clinical teaching and continue to help me grow as a teacher and lawyer.

Aside from working with students on cases, I also co-teach the MIC seminar course. I have led class sessions on substantive law relevant to the post-conviction context (new evidence standards, ineffective assistance of counsel, Brady violations, etc.) as well as practice-oriented sessions focusing on brief writing, oral arguments, and direct/cross examinations. I have also designed and added new components to the MIC seminar, including multiple training sessions on writing, an interactive session on cross-cultural lawyering, and additional sessions on litigation of forensic science issues.

While my cases have spanned many different fact patterns and legal claims, I have dealt significantly with forensic science, and those dealings have informed my academic writing. I have handled several cases where scientific advances deemed invalid a conviction that may have been perfectly valid at the time of trial. The Clinic has won many of these difficult cases with relatively novel legal claims, and I have written multiple law review articles on this emerging topic.

Stemming from this research interest, I co-designed and continue to teach a new seminar at Michigan
Law called "Forensic Science and the Law." I also designed and continue to teach three "lab" sessions in certain sections of the law school's first-year criminal law course.

Casework and clinical teaching informed my academic pursuits for the first few years, but more recently, those academic pursuits have begun to relate back to my casework and clinical teaching. I will speak of two examples that resulted in the exoneration of two innocent people.

Hattie Tanner’s was a complex habeas corpus case involving forensic science, which the MIC closed in 2015 because it did not fit the Clinic’s criteria. Ms. Tanner’s innocence was beyond doubt in my mind, and I knew she could not find alternate counsel on her own; she is completely illiterate and has a severe speech impediment. Knowing that she would otherwise spend the rest of her life in prison, I worked to find her pro bono counsel. My efforts paid off: Chad Readler, an M-Law alum who was then at Jones Day (and is now a judge on the Sixth Circuit Court of Appeals), agreed to litigate the case. Ms. Tanner prevailed in the Sixth Circuit and was fully exonerated and released in September 2017.

Following Ms. Tanner’s exoneration, I worked to overturn People v. Tanner, the disastrous 2003 Michigan Supreme Court opinion that had set an unconstitutional standard for indigent defendants seeking funding for experts. The opportunity arose quickly. I drafted an amicus brief in late 2017 in People v. Kennedy, encouraging the Michigan Supreme Court to reconsider the Tanner standard. In 2018, Kennedy overturned Tanner and instituted a proper, constitutional standard in its place. I now teach Kennedy in class, and have litigated cases under this standard at the MIC.

The second example begins with one of the several changes that I made to the MIC course. Around 2014, I noticed that while our seminar explored at length the roles that police officers, prosecutors, and defense attorneys play in wrongful convictions, there was almost no discussion about judges. I added a seminar session on how judges and judicial misconduct can effectuate poor outcomes, but remained disappointed at the dearth of directly relevant case law. So in 2016, when an opportunity arose to make some case law in this area, I jumped at the chance.

In November 2016, I took on as a pro bono matter the case of Kareem Swilley, Jr., a juvenile who had been wrongfully convicted of murder and sentenced to life in prison. I argued in an application to the Michigan Supreme Court that judicial misconduct had led to this miscarriage of justice. The Court agreed to hear the case, and after oral arguments, it unanimously overturned Mr. Swilley’s conviction in July 2019. That opinion is now included in our Clinic’s discussion of judicial misconduct.

I have grown immensely as a lawyer and as a clinical instructor in the past eight years. I have been fortunate enough to have my growth shaped by the casework and students, and the problems and triumphs of the Michigan Innocence Clinic. I take pride in my versatility as a lawyer and teacher, but there can be no question that the job I am most suited to is this job.

I would welcome the opportunity to continue teaching in the MIC as a clinical professor. My CV is enclosed along with this letter. I thank you very much for your consideration.

Sincerely,

s/Imran J. Syed