

Matthew A. Shapiro

*Associate Professor of Law
Hofstra University*

Matthew Shapiro is an Associate Professor of Law at the Maurice A. Deane School of Law at Hofstra University, where he teaches courses in civil procedure and evidence. He writes about civil procedure, alternative dispute resolution, and related aspects of private law, drawing on legal and political theory to examine the ways in which the state uses legal doctrine to shape the resolution of private disputes. His scholarship has appeared or will appear in the *Columbia Law Review*, *Boston University Law Review*, and *Yale Law & Policy Review*, as well as in an edited collection of essays on private law theory published by Oxford University Press. Two of his papers have been selected for the Yale/Stanford/Harvard Junior Faculty Forum and a third for the New Voices in Civil Justice Workshop.

Shapiro was a law clerk to Chief Justice John G. Roberts, Jr., on the Supreme Court of the United States and Judge J. Harvie Wilkinson III on the U.S. Court of Appeals for the Fourth Circuit. He also practiced with Hogan Lovells US LLP, specializing in appellate and complex civil litigation. Immediately before joining the Hofstra Law faculty, he was an Associate in Law and Lecturer in Law at Columbia Law School.

Shapiro received his J.D. from Yale Law School, where he was a Book Reviews and Features Editor of the *Yale Law Journal*, and his A.B., *magna cum laude* and Phi Beta Kappa, from Princeton University. He also earned an M.Phil., with Distinction, and D.Phil. in political theory from the University of Oxford, where he studied as a Keasbey Memorial Foundation Scholar.

The Indignities of Civil Litigation

Dispute resolution has become increasingly shrouded in secrecy, with the proliferation of protective orders in discovery, confidential settlement agreements, and private arbitration. While many civil procedure scholars have criticized this trend for undermining the systemic benefits of public adjudication, the desirability of secrecy in civil litigation proves to be a much more complicated question.

On the one hand, some of those same scholars have recently sought to justify civil litigation in terms that, ironically, highlight the benefits of secrecy. Although this new justification remains somewhat inchoate, it is best understood as a claim that the procedures of civil litigation allow individual plaintiffs to realize one aspect of their dignity—which this Article labels “dignity-as-status”—by empowering them to call those who have allegedly wronged them to account and to thereby reassert their standing as equals. The problem is that civil litigation can also undermine another aspect of plaintiffs’ dignity—which this Article labels “dignity-as-image”—by requiring them to divulge sensitive personal information and thus to cede control over their public self-presentation. Secrecy can help to preserve this second aspect of plaintiffs’ dignity.

On the other hand, secrecy can also deprive plaintiffs of a potentially powerful expressive weapon in their quest to hold wrongdoers accountable. In conditions of socioeconomic inequality, weaker plaintiffs can sometimes turn the humiliating aspects of civil litigation to their advantage, intentionally revealing sensitive personal information that emphasizes their lower social status in order to shame their more powerful adversaries. It turns out that civil litigation can indeed promote plaintiffs’ dignity-as-status, but by affording them a venue in which to deliberately compromise their dignity-as-image—to humiliate, as much as ennoble, themselves.

Given the complex nature of dignity and the complex tradeoff between secrecy’s dignitarian benefits and costs, plaintiffs should be given more control over how much of their personal information is disseminated beyond the immediate parties to a lawsuit—a prescription with implications not only for secrecy in civil litigation, but also for arbitration, pleading standards, and class actions.