**CURRICULUM VITAE**

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Education:

High School: Northwood High School, Silver Spring, Maryland

Graduated June, l968.

College: Northwestern University, Evanston, Illinois

B.A. in History, June, l972.

o Honors: Graduated with Highest Distinction

Departmental Honors in History

Phi Beta Kappa

Law School: Harvard Law School, Cambridge, Massachusetts

Class of 1975.

o Honors: Editor, v. 88 Harvard Law Review

Graduated Cum Laude

Member: State Bar of Wisconsin

Employment: September, 2014-June, 2015, Garwood Fellow, James Madison Program, Princeton University

May, 2000 - June, 2003, Senior Content Consultant, National Constitution Center, The Bourse, Room 560, 111 S. Independence Mall E., Philadelphia,Pennsylvania 19106

July, 1980-Present, Assistant Professsor-Distinguished Professor, Rutgers University School of Law, 5th and Penn Streets, Camden, NJ 08102

August, l978 - July l980, Assistant Professor of Law, University of Arkansas at Little Rock, 400 W. Markham, Little Rock, Arkansas 7220l

September, l977 - May, l978, Visiting Assistant

Professor of Law, University of Oklahoma Law Center,Norman, Oklahoma 73069

July, l976 - May, l977, Associate, Foley & Lardner,777 E. Wisconsin Avenue, Milwaukee, Wisconsin 53202

September, l975 - July, l976, Law Clerk, Honorable Judge Harrison L. Winter, United States Court of Appeals for the 4th Circuit,

Baltimore, Maryland

June, l975 - August, l975, Summer Associate,

Foley & Lardner, 777 E. Wisconsin Avenue,

Milwaukee, Wisconsin 53202

June, l974 - August, l974, Summer Associate,

Dechert, Price & Rhoades, l600 Three Penn Center, Philadelphia, Pennsylvania l9l02

Various part-time and summer jobs.

Publications:

1. Books

**Reconstructing the Constitution: The Thirteenth, Fourteenth and Fifteenth Amendment** (forthcoming, under contract, University Press of Congress).

**The Coming of the Nixon Court: The 1972 Term of the Supreme Court and the Transformation of Constitutional Law** (2016).

**Fugitive Slave on Trial: The Anthony Burns Case and Abolitionist Outrage** (2010).

**Slavery and the Supreme Court, 1825-1861** (2009).

***Dred Scott* and the Politics of Slavery** (2007).

**The Fourteenth Amendment and the Law of the Constitution** (2003).

**Rehnquist Justice: Understanding the Court Dynamic** (edited volume of essays, 2003) (*Choice* Outstanding Academic Book).

**The Chief Justiceship of Warren Burger** (2000).

**Rethinking Constitutional Law: Originalism, Interventionism, and the Politics of Judicial Review** (1994).

**Civil Rights, The Constitution and Congress, 1863-1869** (1990).

1. Articles, Book Chapters, Extended Comments, and Review Essays

*Faint-Hearted Federalism: The Role of State Autonomy in conservative Constitutional Jurisprudence* (forthcoming, **South Carolina Law Review**).

*The Ripples of Backlash: Same-Sex Marriage, The Election of 2004, and the Evolution of Constitutional Law* (forthcoming, **University of Arkansas at Little Rock Law Review)**.

*Triumph of the Southern Man:* Dowell, Shelby County *and the Jurisprudence of Justice Lewis F. Powell, Jr.* 14 **Duke J. of Const. Law and Public Policy** 169 (2019).

*The Constitution and the Trump Travel Ban* 22 **Lewis and Clark L. Rev. 301** (2018)(symposium on The Immigration Nexus: Law, Politics and Constitutional Identity.)

*The Complexities of Race: Citizenship, Native Americans and People of Chinese Descent in the Era of the Civil War and Reconstruction* in **Paul Quigley, ed.**, **Citizenship in the Civil War Era** (2018).

*Inconvenient Truth: Originalism, Democratic Theory and the Reapportionment Cases* 86 **Miss. L. J.** 1 (2017).

*The 2016 Election and the Future of Constitutional Law: The Lessons of 1968* 43 **Hastings Constitutional Law Quarterly** 735 (2016)

*The Enforcement Clause of the Fourteenth Amendment* (with Erwin Chemerinsky) in **The Interactive Constitution**, on line athttp://constitutioncenter.org/interactive-constitution/amendments/amendment-xiv

*The Forgotten Provision of the Fourteenth Amendment: Section Two and the Evolution American Democracy* 76 **La. L. Rev.** 149 (2015) (symposium on 50th anniversary of the Voting Rights Act).

*Moving Beyond Race: The Joint Committee on Reconstruction and the Drafting of the Fourteenth Amendment* 42 **Hastings Constitutional Law Quarterly** 287 (2014).

*The Burger Court and the Conflict Over the Rational Basis Test: The Untold Stories of* Massachusetts Board of Retirement v. Murgia *and* Railroad Retirement Board v. Fritz 39 **Journal of Supreme Court History** 264 (2014).

*The Ghost of* Winberry: *Separation of Powers and Tort Reform Proposals* 44 **Rutgers L.J.** 39 (2013).

*The Presidency, the Electoral College and the Three Fifths Clause*, 43 **Rutgers L.J.** 439 (2013) (Symposium on *The Constitution and the Sectional Conflict*).

*Reapportionment: The Struggle for Political Power*

(National Constitution Center White Paper, 2011).

*Temporary Assignments to Fill Vacancies on the New Jersey Supreme Court* (Federalist Society White Paper, 2010).

*Ignoring the Real World: Justice O’Connor and Affirmative Action in Education*, 57 **Catholic U. L. Rev.** 1045 (2008)(symposium on *Justice O’Connor and Education*).

*Slavery, Federalism and the Constitution:* Ableman v. Booth *and the Struggle Over Fugitive Slaves*, 56 **Cleve. St. L. Rev.** 85 (2008).

Roe v. Wade *and* Dred Scott 17 **Widener L. J.** 55 (2007) (symposium on *Dred Scott*)*.*

*The Last Angry Man: Benjamin Robbins Curtis and the*  Dred Scott *Case* 82 **Chicago Kent L. Rev.** 265 (2007) (Symposium on *Dred Scott*).

*Jacob Howard: Radical Republican and Constitutional Theorist*,32 **Michigan Historical Review** 19 (2006).

*The Intractable Problem of Race*, in Craig Bradley, ed., **The Rehnquist Legacy** (2006).

*“I Give Up!” William Rehnquist and Commercial Speech*, in Craig Bradley, ed., **The Rehnquist Legacy** (2006).

*The Constitution and the Annexation of Texas*, 23  **Constitutional Commentary** 381 (2006).

*The Exigencies of War*, 36 **Rut. L.J.** 861 (2005) (Symposium, Free Speech in Wartime)

*Do Modern Theories of Conflict of Laws Work? The New Jersey Experience*, 36 **Rut. L.J.** 527 (2005).

*Larry Kramer, Same-Sex Marriage, and the Politics of Legal Scholarship*, 38 **Creighton L. Rev.** 533 (2005) (symposium on Interjurisdictional Recognition of Same-Sex Marriage).

Brown *and* Tee-Hit-Ton, 29 **Am. Ind**. **L. Rev.** 75 (2004).

*The Strange Career of Commercial Speech* 6 **Chapman L. Rev.** 161 (2003) (symposium on Economic Liberties).

*Justice Kennedy and the Jurisprudence of Respectable Conservatism* (in Earl Maltz, ed., **Rehnquist Justice**, (2003).

*The Trouble with Troxel*, 32 **Rutgers Law Journal** 695 (2001) (symposium on *Troxel v. Granville).*

*Sovereignty, Autonomy and Conditional Spending*, 4 **Chapman L. Rev.** 107 (2001). (symposium on Spending Clause).

*The Function of Supreme Court Opinions*  37 **Hous. L. Rev.** 1395 (2001).

*The Fourteenth Amendment and Native American Citizenship*  17 **Constitutional Commentary** 555 (2000).

*Justice Kennedy's Vision of Federalism*, 31 **Rut. L.J.** 761 (2000). (symposium on Federalism after *Alden*).

*Majority, Concurrence and Dissent: Prigg v. Pennsylvania and the Structure of Supreme Court Decisionmaking 31* **Rut. L.J.** 345 (2000).

*Brown v. Board of Education*, in Robert George, ed. **Great Cases in Constitutional Law** (2000).

*The Concept of Incorporation*, 33 **U. Rich. L. Rev.** 525 (1999). (Symposium on **The Bill of Rights: Creation and Reconstruction**).

*The Full Faith and Credit Clause and the First Restatement: The Place of Baker v. General Motors in Choice of Law Theory 73* **Tulane Law Review** 305 (1999).

*Brown v. Board of Education*, in **William Eskridge and Sanford Levinson, eds. Constitutional Stupidities and Constitutional Tragedies** (New York University Press, 1999).

*The Idea of the Pro-Slavery Constitution*,17 **Journal of the Early Republic** 37 (1997).

*Originalism and the Desegregation Decisions: A Response to Professor McConnell*, 13 **Const. Comm.** 223 (1996).

*Citizenship, Alienage and the Constitution* 28 **Ariz. State L.J.** (1996)

*The Unlikely Hero of Dred Scott: Benjamin Robbins Curtis and the Constitutional Law of Slavery* 17 **Cardozo L. Rev.** 1995 (1996) (symposium on the law of slavery).

*The Waite Court and Federal Power to Enforce the Reconstruction Amendments*, in Jennifer M. Lowe, ed., **The Supreme Court and the Civil War** 75-88 (1996).

*Only Partially Color-Blind: John Marshall Harlan's View of Race and the Constitution*

12 **Ga. State Law Review** 973 (1996) (symposium on the 100th anniversary of *Plessy v. Ferguson*).

*A Dissenting Opinion to Brown*, 20 **So. Ill. L.J.** 93 (1995) (symposium on the 40th anniversary of **Brown v. Board of Education).**

*The Impact of the Constitutional Revolution of 1937 on the Dormant Commerce Clause--A Case Study in the Decline of State Autonomy,* 19 **Harv. J. of Law and Pub. Policy** 121 (1995).

*The Legacy of Griggs v. Duke Power Company: A Case Study in the Impact of a Modernist Statutory Precedent*, 1994 **Utah Law Review** 1353.

*Political Questions and Representational Politics: A Comment on Shaw v. Reno*, 26 **Rut. L.J.** 711 (1995).

*No Rules in a Knife Fight: Chief Justice Rehnquist and the Doctrine of Stare Decisis,* 25  **Rut. L.J.** 669 (1994).

*The Federal Government and the Problem of Chinese Rights in the Era of the Fourteenth Amendment,*  17 **Harv. J. Law and Public Policy** 223(1994).

*Abortion, Precedent and the Constitution: A Comment on Planned Parenthood of Southeastern*  Pennsylvania v. Casey, 68 **Notre Dame L. Rev.** 11 (1992).

*The Civil Rights Act and the Civil Rights Cases: Congress, Court and Constitution*, 44 **Fla. L. Rev.** 605 (1992).

*Slavery, Federalism and the Structure of the Constitution,* 36 **Am. J. L. H.** 498 (1992).

*Constitutional Protection for the Right to Marry: A Dissenting View*, 60 **Geo. Wash. L. Rev.** 949 (1992).

*Critical Theory, Neutral Principles, and the Future of Legal Scholarship*, 43 **U. Fla. L. Rev.** 445 (1991).

*Rhetoric and Reality in the Theory of Statutory Interpretation: Underenforcement, Overenforcement, and the Problem of Legislative Supremacy,* 71 **B. U. L. Rev.** 767 (1991).

*The State, The Family, and the Constitution: A Case Study in Failed Bipolar Analysis*, 1991 **B.Y.U. L. Rev.** 489.

Articles on *Race and Racism*, *Thirteenth Amendment*,and *Implied Powers*, in **Oxford Companion to the Supreme Court.**

*Personal Jurisdiction Law as Constitutional Theory: A Comment on Burnham v. Superior Court of California*, 22 **Rut. L.J.** 689 (1991).

*Choice of Forum and Choice of Law in the Federal Courts: A Reconsideration of Erie Principles*, 79 **Ky. L. Rev.** 231 (1991).

*Judicial Activism Under State Constitutions: Boon or Bane?*, 21 **Rut. L.J.** 1113 (1990) (with Paul Bender).

*The Constitution and Non Racial Discrimination: Alienage, Sex, and the Framers' Ideal of Equality*  7 **Const. Comm.** 251 (1990).

*The Prospects for a Revival of Conservative Activism in Constitutional Jurisprudence*, 24 **Ga. L. Rev. 629** (1990).

*Affirmative Action and Employer Autonomy: A Comment on J.A. Croson Co. v. City of Richmond*, 68 **Ore. L. Rev.** 459 (1989).

*The Court, the Academy, and the Constitution: A Comment on Bowers v. Hardwick and its Critics*, 1989 **B.Y.U. L. Rev.** 59.

*Sovereign Authority, Fairness, and Personal Jurisdiction: The Case for Transient Jurisdiction*, 66 **Wash. U.L.Q.** 671 (1988).

*Individual Rights and State Autonomy*, 12 **Harv. J. of Law & Pub. Pol'y** 163 (1989).

*Statutory Interpretation and Legislative Power: The Case for a Modified Intentionalist Approach*, 63 **Tul. L. Rev.** 1 (1988).

*Fourteenth Amendment Concepts in the Antebellum Era*, 32 **Am. J. Leg. Hist.** 305 (1988).

*Visions of Fairness: Constitutional Limitations on Jurisdiction and Choice of Law*, 30 **Ariz. L. Rev.** 751 (1988).

*The Supreme Court and the Quality of Political Dialogue*, 5 **Const. Comm.** 375 (1988).

*False Prophet: Justice William Brennan and the Theory of State Constitutional Law*, 15 **Hast. Const. Law Q.** 429 (1988).

*Lockstep Analysis and the Concept of Federalism*, 496 **Ann. of the Am. Acad. of Pol. And Soc. Sci.** 98 (1988).

*Foreword: The Appeal of Originalism*, 1987 **Utah L. Rev.** 773.

*Unraveling the Connundrum of Personal Jurisdiction Law: A Comment on Asahi Metal Industry Co. v. Superior Ct.*, 1987 **Duke L. J.** 669.

*The Nature of Precedent*, 66 **N.C. L. Rev.** 367 (1988).

*Reconstruction Without Revolution: Republican Civil Rights Theory in the Era of the Fourteenth Amendment,* 24 **Hous. L. Rev.** 221 (1986).

*The Failure of Attacks on Originalist Theory*,

4 **Const. Comm.** 43 (1987).

*Reflections on a Landmark: Shaffer v. Heitner*

*Viewed From a Distance*, 1986 **B.Y.U. L. Rev.** 1043 (1986).

*"Separate but Equal" and the Law of Common Carriers in the Era of the Fourteenth Amendment*, 17 **Rutgers L. J.** 553 (1986).

*The Concept of Precedent in Choice of Law Theory*,

51 **Mo. L. Rev.** 192 (1986).

*The Dark Side of State Court Activism,* 63 **Texas L. Rev.** 995 (1985).

*Sex Discrimination in the Supreme Court: A Comment on Sex Equality, Sex Differences and the Supreme Court*, 85 **Duke L. J.** 177 (1985).

*The Concept of Equal Protection of the Laws--A Historical Inquiry,* 22 **San Diego L. Rev.** 501 (1984).

*The Fourteenth Amendment as Political Compromise-- Section One in the Joint Committee on*

*Reconstruction*, 45 **Ohio St. L. J.** 933 (1984).

*Some New Thoughts on an Old Problem: The Role of*

*the Intent of the Framers in Constitutional Theory,* 63 **B. U. L. Rev.** 8ll (l983).

*Title VII and Upper Level Employment--A Response To Professor Bartholet*, 77 **NW. U. L. Rev.** 776 (l983).

*The Concept of the Doctrine of the Court in*

*Constitutional Law*, l6 **Ga. L. Rev.** 357 (l982).

*"How Much Regulation is Too Much" --An Examination of Commerce Clause Jurisprudence,* 50 **G. W. L. Rev.** 47 (l98l).

*Illegitimacy and Equal Protection*

l980 **Ariz. St. L. Rev.** 83l.

*Some Thoughts on the Death of Stare Decisis in*

*Constitutional Law*, l980 **Wis. L. Rev.** 467.

*The Expansion of the Effects Test in Antidiscrimination Law--A Critical Analysis*

59 **Neb. L. Rev.** 345 (l980).

*On Keeping Pigs Out of the Parlor: Speech as Public Nuisance After FCC v. Pacifica Foundation*

(with L. Lynn Hogue) 3l **So. Car. L. Rev.** 377

(l980)

*Portrait of a Man in the Middle-Mr. Justice Powell Equal Protection and the Pure Classification Problem,* 40 **Ohio St. L. J.** 94l (l979).

*A Bakke Primer*, 32 **Okla. L. Rev.** ll9 (l979).

*The Burger Court, The Commerce Clause and the*

*Problem of Differential Treatment*, 54 **Ind. L. J.**

165 (l979).

*The Burger Court, The Regulation of Interstate*

*Commerce, and the Concept of Local Concern,* 46 T**enn. L. Rev.** 406 (l979).

*The Burger Court and Alienage Classifications,*

3l **Okla. L. Rev.** 67l (l978).

*The Equal Credit Opportunity Act and Regulation B*,(with Fred H. Miller) 3l **Okla. L. Rev.** l (l978).

*Justice Rehnquist at the Crossroads - Principle,*

*Politics and the Bakke Case*, 30 **Okla. L. Rev.** 922

(l977).

C. Other Publications

Review of Garry Wills,**“Negro President”: Jefferson and the Slave Power**, **National Review**, December 23, 2003.

*Toward a Minimalist Vision of the Fourteenth Amendment,* 19 **Harv. J. of Law and Pub. Policy** 451 (1996).

*Gender Discrimination and the Original Understanding*, 18 **Harv. J. of Law and Pub. Policy** 415 (1995).

*James Gardner and the Idea of State Constitutionalism*, 24 **Rut. L.J.** 1019 (1993).

*Legislative Inputs and Gender-Based Discrimination in the Burger Court,* 90 **Mich. L. Rev.** 1023 (1992).

*Introduction to State Constitutional Law Symposium*, (with Robert F. Williams), 20 **Rut. L.J.** 877 (1989).

Selected Bibliography on State Constitutional Law (with Williams and Aranet) 20 **Rut. L.J.** 877 (1989).

Review of M. Tushnet, Red, White and Blue: A Critical Analysis of Constitutional Law, 6  **Const. Comm.** 463 (1989).

*Unenumerated Rights and Originalist Methodology: A Comment on the Ninth Amendment Symposium*, 64 **Chi-Kent L. Rev.** 981 (1989).

*Legislative Inaction and the Patterson Case*, 87 **Mich. L. Rev.** 858 (1989).

Review of M. Hancock, Studies in Modern Choice of Law: Torts, Insurance, Land Contracts, 37 **J. of Legal Educ.** 148 (1987).

Review of R. Kaczorowski, The Politics of Judicial Interpretation: The Federal Courts, Department of Justice and Civil Rights, 1866-1876, 5 **Law and Hist. Rev.** 296 (1987).

*Trust Betrayed*, 97 **Harv. L. Rev.** l0l6 (l984).

*Murder in the Cathedral--The Supreme Court as*

*Moral Prophet*, 8 **Dayton L. Rev.** 623 (l983).

*Federalism & the Fourteenth Amendment: A Comment on Democracy and Distrust*, 42 **Ohio St. L. J.** 209

(l98l).

*Judicial Competence and Fundamental Rights--*

*A Reply to Professor Lupu*, 78 **Mich. L. Rev.** 284

(l979).

*State Action and Statutory Liens in Arkansas:*

*A Reply to Professor Nickles,* 2 **UALR L.J.** 357

(l979).

*The Supreme Court*, *l973 Term*, 88 **Harv. L. Rev.** 4l

ll2-ll9 (l974).

Conferences Organized:

"Who Gets the Children? Third Party Parental Rights after Troxel v. Granville."

Rutgers Law School, Fall, 2000 (with Sally Goldfarb).

"Federalism after Alden"

Rutgers Law School, Fall, 1999 (with Allen Stein).

"Voting Rights after Shaw v. Reno"

Rutgers Law School, Fall, 1993.

"Perspectives on Chief Justice Rehnquist"

Rutgers Law School, Fall, 1992.

"Race Relations and the United States Constitution," Rutgers Law School, Spring, 1992. (with Joan Cashin).

"Burnham v. Superior Court," Rutgers Law School, Fall, 1990 (with Allen Stein).

"The Reconstrucion Amendments, Then and Now," Rutgers Law School, Fall, 1989.

Papers Presented:

“The History of the Fourteenth Amendment,” Temple Law School (2003).

“Equal Protection,” Constitutional Law Conclave, Philadelphia (2003).

“Substantive Due Process,” Constitutional Law Conclave, Philadelphia (2003).

“The Strange Career of Commercial Speech,” Chapman University School of Law (2003).

"Sovereignty, Autonomy and Conditional Spending,"

Chapman University School of Law (2001).

"The Trouble with Troxel,"

Rutgers Law School (2000).

"Comment on 'An Originalism for Nonoriginalists,"

Federalist Society (2000).

"Justice Kennedy's Vision of Federalism"

Rutgers Law School, (1999).

"Citizenship, Alienage and the Constitution,"

Quinnipiac College School of Law, (1997).

"The Case Against State Constitutional Activism," Conference on the 50th Anniversary of the New Jersey Constitution, (1997).

"The Dark Side of State Constitutional Activism," Annual Meeting, New Jersey State Bar Association, (1997).

"The Constitution and Same Sex Marriage," Rutgers (Newark), (1997).

“Brown v. Board of Education,” Princeton University, (1997)

"Brown v. Board of Education" Panel on Constitutional Tragedies," Annual AALS Meeting,

(1997).

"The Constitutionality of the Defense of Marriage Act," Seton Hall University, (1996)

"Toward a Minimalist Interpretation of the Fourteenth Amendment," Annual Symposium, Federalist Society, (1995).

"The Unlikely Hero of Dred Scott: Benjamin Robbins Curtis and the Constitutional Law of Slavery," Conference on the Law of Slavery,

Cardozo University (1995).

"Dissenting Opinion," Symposium on the Fortieth Anniversary of Brown v. Board of Education, Southern Illinois University, (1994).

Roundtable on the Impact of Civil Rights Laws,

American Political Science Association, New York, (1994).

"The Waite Court," Supreme Court Historical Society, Washington, D.C. (1994).

"Sex and the Constitution," Annual Symposium, Federalist Society, (1994).

"Shaw v. Reno as a Political Question," Conference on Shaw v. Reno, Rutgers Law School, (1993).

"Should Stare Decisis Matter?", Conference on Constitutional Law, Ann Arbor, Michigan, (1993).

"Chief Justice Rehnquist and Stare Decisis,"

Conference on Chief Justice Rehnquist, Rutgers Law School, (1992).

Comment on "Two Ohioans in Reconstruction," Organization of American Historians, (1991).

"The Law of Personal Jurisdiction as Constitutional Theory," Conference on Burnham v. Superior Court, Rutgers Law School (1990).

"Sex and the Framers' Idea of Equality,"

Organization of American Historians, Washington, D.C. (1990).

"The Coming of the Fifteenth Amendment," New York University Colloquium on Legal History, (1987);

"The Coming of the Fifteenth Amendment," American Society for Legal History, Philadelphia, Pa. (1987).

"The Origins of the Fourteenth Amendment," Boston University Legal History Study Group, (1986).

"The Origins of the Fourteenth Amendment,"

Middle Atlantic Section, American Society for Legal History, New York University (1985).

References

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