

Jed Handelsman Shugerman
Professor and Joseph Lipsitt Scholar, Boston University School of Law
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Academic Appointments

Boston University School of Law, Boston, MA

Professor and Joseph Lipsitt Scholar, 2023-present; Visiting Professor, 2022-23.

Courses: Torts, Administrative Law, Federal Courts, The Presidency, Clark Legal History Workshop

Fordham University School of Law, New York, NY

Professor, 2016-2023; Associate Professor, 2013-2016

Courses: Torts, Administrative Law, Legislation & Regulation, Constitutional History Workshop,
The Warren Court (seminar), The Presidency (seminar)

Prize: Dean's Distinguished Scholar, 2019-20

Harvard Law School, Cambridge, MA, Assistant Professor, 2005-2013

Courses: Torts, Legal History Workshop, Law and Democracy

Teaching/Mentorship Award: Harvard Federalist Society's Charles Fried Intellectual Diversity
Award (2011) "for commitment to substantive debate and the free exchange of ideas."

Education

Yale University, Ph.D. in History, 2008

Dissertation: "The People's Courts: The Rise of Judicial Elections and Judicial Power in America"

Prize: American Society of Legal History's 2009 Cromwell Prize for best dissertation or article

Yale Law School, J.D. 2002

Yale Law Journal, Book Note/Case Note editor (2000-01); Senior Editor (2001-02)

Yale Journal of Law and the Humanities, Managing Editor (1999-2000)

Joseph Parker Prize (2000) for best paper in legal history

Israel Peres Prize (2001) for the best student note in the *Yale Law Journal*

Yale College, B.A. in History, May 1996

Magna cum laude, Phi Beta Kappa and Distinction in History

John Addison Porter Prize for best senior essay in American history

Publications

Book and Book Projects:

The People's Courts: Pursuing Judicial Independence in America (Harvard University Press, 2012)

Cited in *Williams-Yulee v. Florida Bar* (2015) by Chief Justice Roberts for the majority and Justice Ginsburg in concurrence.

Reviews: Edward Purcell, "The Ideal of Judicial Independence: Complications and Challenges,"
47 *Tulsa L. Rev.* 141 (2011) (book review issue)

Keith Whittington in [The Historian](#) (2013)

Sean Beienburg & Paul Frymer, "The People Against Themselves: Rethinking Popular
Constitutionalism," [41 Law & Social Inquiry](#) 242-66 (2016)

Stuart Banner, "Judicial Independence, but from What?" [Jotwell](#), Oct. 2012

“A Faithful President: The Framers vs. the Originalists” (forthcoming, see articles and drafts below)

“The Rise of the Prosecutor Politicians: Race, War, and the Roots of Mass Incarceration” (in progress)
Chapter in progress: “Earl Warren, the Japanese Internment, and the Campaign of 1942”
Interview on NPR’s [Throughline episode](#), “Mass Incarceration,” Aug. 15, 2019.
Summarized by Wendy Sawyer, “New Data: The Rise of the ‘Prosecutor Politician,’” *Prison Policy Initiative* ([link here](#)), July 13, 2017
Presented draft at UC-Berkeley Law Workshop, draft [here](#).

Articles

“The Un-Separation of Powers: The Original Ambiguities of ‘Executive’ and ‘Judicial’ Power” (in progress)

“The Construction of Executive Power: War-Time Prosecutions in the Early Republic” (with Matthew Boutros) (forthcoming 2024)

“Heads-I-Win, Tails-You-Lose Originalism and Vibe Originalism,” (in progress, [SSRN](#))

“An Emergency Question Doctrine: The Biden Student Debt Case Study,” (in progress, [SSRN](#)).

“Venality and Functionality: A Strangely Practical History of Selling Offices and Limited Executive Power,” 100 *Notre Dame L. Rev.* (forthcoming Fall 2024) ([SSRN](#))
Reviewed by Jodi Short in [Jotwell](#): “[In Search of a Presidential Removal Power.](#)”

“Freehold Offices vs. ‘Despotic Displacement’: Why Article II ‘Executive Power’ Did Not Include Removal” ([SSRN link](#))
Selected for presentation at the Originalism Conference, University of San Diego, Feb. 10-11, 2023; Conference honoring Jack Rakove’s retirement at Stanford University, Feb. 24, 2023; and historical panel at AALS San Diego, Jan. 3d, 2023

“Major Questions about Presidentialism: Untangling the ‘Chain of Dependence’ Across Administrative Law,” with Jodi Short, 65 *Boston College L. Rev.* 511-599 (2024) ([SSRN link](#)) ([BC link](#))

“*Biden v. Nebraska*: The New State Standing and the (Old) Purposive Major Question Doctrine,” *Cato* 2022-2023 *Supreme Court Review* 209-241 (2023). ([SSRN link](#)) ([Cato link](#))

“Movement on Removal: An Emerging Consensus about the First Congress and Presidential Power,” 63 *American Journal of Legal History* 258-279 (2023) (conference paper from “Histories of Presidential Power” Conference, Stanford Law School, May 20, 2022) ([SSRN link](#)) ([AJLH link](#))

“The Indecisions of 1789: Inconstant Originalism and Strategic Ambiguity,” 171 *U. Penn. L. Rev.* 753-867 (2023) ([link](#))

“January 6, Ambiguously Inciting Speech, and the Overt-Acts Rule,” 37 *Constitutional Commentary* 275-319 (2023) with Alan Rozenshtein ([SSRN link](#))

Reviewed on [Jotwell](#) by Mark Kende, “Former President Trump: Inflammatory Speaker or Criminal” (March 30, 2023)

“Vesting,” [74 *Stanford Law Review* 1479-1580](#) (2023).

“Removal of Context: Blackstone, Limited Monarchy, and the Limits of Unitary Originalism,” [33 *Yale Journal of Law & the Humanities* 125](#) (2022)

“Countering Gerrymandered Courts” (Comment on Miriam Seifter’s “Countermajoritarian Legislatures”), [122 *Columbia Law Review Online* 18-36](#) (March 2022).

“Presidential Removal: The *Marbury* Problem and the Madison Solutions,” [89 *Fordham Law Review* 2085](#) (2021) (“The Federalist Constitution” Symposium)

“Faithful Execution and Article II,” [132 *Harvard Law Review* 2111](#) (2019) with Andrew Kent and Ethan Leib

SSRN link: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3260593

Prize: American Constitution Society’s 2019 Richard D. Cudahy Writing Competition on Regulatory and Administrative Law

Cited in *Seila Law v. CFPB*, Supreme Court No. 19–7 (June 29, 2020), slip op. at 12 (Kagan, J., dissenting)

Cited in *Thompson v. Trump*, Case No. 21-cv-00400(APM) (D.D.C. Feb. 18, 2022) (Mehta, J.)

Quoted and cited in House Impeachment Report, Dec. 16, 2020 (p. 35, 46, 79):

<https://docs.house.gov/billsthisweek/20191216/CRPT-116hrpt346.pdf>

Quoted in House Impeachment Opening Statement, Adam Schiff, Jan. 22, 2020.

<https://twitter.com/jedshug/status/1220466259281817602?s=21>

“Fiduciary Constitutionalism: Implications for Self-Pardons and Non-Delegation,” [17 *Georgetown Journal of Law & Public Policy* 463](#) (2019) with Ethan J. Leib

https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3177968

“Constitutional Hardball vs. Beanball: Identifying Fundamentally Antidemocratic Tactics” (Reply to David Pozen, Joseph Fishkin, and David Bernstein), [118 *Columbia Law Review Forum* No. 3](#) (2019)

“Professionals, Politicos, and Crony Attorneys General: A Historical Review of the U.S. Attorney General as a Case for Structural Reform,” [87 *Fordham Law Review* 1965](#) (2019)

“Emoluments, Zones of Interests, and Political Questions: A Cautionary Tale,” [45 *Hastings Constitutional Law Quarterly* 651-670](#) (2018) with Gautham Rao

“The Dependent Origins of Independent Agencies: The Interstate Commerce Commission, the Repeal of the Tenure of Office Act, and the Rise of Modern Campaign Finance,” [31 *Journal of Law & Politics* 139](#) (2016)

Reviewed by Jack Beermann, “The Surprising Origins of the Interstate Commerce Commission,” JOTWELL, March 20, 2017 (<http://adlaw.jotwell.com/the-surprising-origins-of-the-interstate-commerce-commission/>)

“Foreword: Fighting Corruption in America and Abroad,” 84 [*Fordham Law Review*](#) 407 (2015)

“The Legitimacy of Administrative Law” (review essay), [*Tulsa Law Review*](#) (March 2015) (reviewing books by Jerry Mashaw, Nicholas Parrillo, Daniel Ernst, Joanna Grisinger, and Philip Hamburger)

“The Creation of the Department of Justice: Professionalization without Civil Rights or Civil Service,” 66 [*Stanford Law Review*](#) 121 (2014)

“Economic Crisis and the Rise of Judicial Elections and Judicial Review,” 123 [*Harvard Law Review*](#) 1061 (2010).

Selected for Yale-Stanford Junior Faculty Forum, 2008 (legal history/humanities)

“The Twist of Long Terms: Elected Judges, Role Fidelity, and American Tort Law,” 98 [*Georgetown Law Journal*](#) 1349 (2010)

Selected for Yale-Stanford Junior Faculty Forum, 2007 (the legal profession)

“In Defense of Appearances: *Caperton v. Massey* and the Future of Judicial Elections,” “Rising Stars” Clifford Symposium, 59 [*DePaul Law Review*](#) 529 (2010)

“A Watershed Moment: Reversals of Tort Theory in the Nineteenth Century,” 2 [*Journal of Tort Law*](#) (2008)

Selected in the Junior Faculty Competition, “Tort Law and the Modern State” Conference, Columbia Law School, 2006

“A Six-Three Rule: Reviving Consensus and Deference on the Supreme Court,” 37 [*Georgia Law Review*](#) 893 (2003)

“*Marbury* and Judicial Deference: The Shadow of *Whittington v. Polk* and the Maryland Judiciary Battle,” 5 [*University of Pennsylvania Journal of Constitutional Law*](#) 58 (2002)

“The Louisiana Purchase and South Carolina’s Reopening of the Slave Trade in 1803,” 22 [*Journal of the Early Republic*](#) 263 (2002) (peer-review history journal)

Note, “The Floodgates of Strict Liability: Bursting Reservoirs and the Adoption of *Fletcher v. Rylands* in the Gilded Age,” 110 [*Yale Law Journal*](#) 333 (2000)

“Rights Revolutions and Counter-revolutions,” 13 *Yale Journal of Law & Humanities* 531 (review essay of Richard Primus, *The American Language of Rights* (1999) and Mary Dudziak, *Cold War Civil Rights* (2000)).

Shorter Law Publications, Book Reviews, & Book Chapters

“Walter O’Malley,” Chapter in “Eleven Men In: Lawyers in Baseball” (forthcoming 2025)

“Removal of Errata” (in progress) (also titled “The Indecisions of 1789: Appendices on the Misuse of Historical Sources in Unitary Executive Theory”) ([SSRN](#))

“The Bi-Partisan Enabling of Presidential Power: Review of David Driesen’s *The Specter of Dictatorship: Judicial Enabling of Presidential Power*,” [72 Syracuse L. Rev. 1521](#) (2022)

“Specters of Fear and Executive Power”: Review of David M. Driesen, *The Specter of Dictatorship: Judicial Enabling of Presidential Power* (Stanford University Press, 2021) [Lawfare](#), Feb. 1, 2022

“A Reply to the Unitary Executive Theorists on the Misuse of Historical Materials,” [Notice & Comment \(Yale Journal on Regulation Blog\)](#), Feb. 21, 2022.

“The Imaginary Unitary Executive,” [Lawfare](#) Essay, July 6, 2020

“The Stories of Newmyer and Cover: Hero or Tragedy?” (Tribute to Kent Newmyer) [52 Connecticut L. Rev. 1251](#) (2021)

“The Floodgates of Strict Liability: The Johnstown Flood of 1889, the Supreme Court, and the Rise of Modern American Tort Law” in *The Supreme Court of Pennsylvania: Life and Law in the Commonwealth, 1684–2017* (John J. Hare, ed., University Park, PA: Pennsylvania State University Press, 2018).

Panel transcript: “Bob Gordon and Critical History of the Legal Profession” (Stanford Law School conference), *Law and History Review*, The Docket (2018)

“State AGs Can Enforce Emoluments Clause Against Trump,” Law360.com, Feb. 10, 2017, <https://www.law360.com/articles/890935/state-ags-can-enforce-emoluments-clause-against-trump>

Panel Remarks, “Caperton’s Next Generation,” [18 NYU Journal of Legislation and Public Policy 587](#) (2016)

“Golden Age or Bronze Age of Judicial Selection?” *Iowa L. Rev. Bulletin* (essay) (March 2015)

“Affirmative Duties and Judges’ Duties: *Stockberger v. United States*,” [120 Harvard Law Review 1228](#) (2007) (symposium honoring Judge Richard Posner).

“Francis Hilliard,” in Roger Newman, ed., *The Yale Biographical Dictionary of American Law* (2009).

Case Note, “Unreasonable Probability of Error, *Coleman v. State*,” [111 Yale Law Journal 435](#) (2001)

Amicus Briefs

Securities & Exchange Commission v. Jarkey, for petitioners (filed Sept. 5, 2023), linked [here](#).

Biden v. Nebraska, Department of Education v. Brown, for respondents (oral argument Feb. 28, 2023), linked [here](#).

Citations in the House briefs in both the 2019 House Ukraine Impeachment and the 2021 Capitol Insurrection Impeachment.

Collins v. Mnuchin in support the court-appointed *amicus curiae* (solo authored on the First Congress and the president's removal power with Protect Democracy, oral argument Dec. 9, 2020), at https://www.supremecourt.gov/DocketPDF/19/19-422/159319/20201118104007663_20201118-102058-95752033-00000261.pdf

Certain Historians' Amicus Briefs filed in Emoluments cases in D.C. Cir. and Supreme Court cert petition (*Blumenthal v. Trump*) and 4th Circuit (*Maryland and D.C. v. Trump*)

Memorandum of Constitutional Scholars as Amici Curiae in Support of the State of Maryland, *Maryland v. United States* (D.Md 2018), Case No. 1:18-cv-02849 (ELH) (challenging the legality of Matthew Whitaker's appointment as Acting Attorney General).

Brief of Amici Curiae of Legal Historians in Support of Appellants, *Citizens for Responsibility & Ethics in Washington v. Trump* (2d Cir. 2018) (No. 18-474) (lead co-author).

D.C. and Maryland v. Trump, Nov. 14, 2017 (D.Md) (lead co-author)
https://drive.google.com/file/d/0BzmLEQBx1_PMc2JmdmdhdVhRU2ppQUNXeHR3VUdTcUhjaUJF/view

Blumenthal, et al. v. Trump, Nov. 2, 2017 (D.D.C.) (lead co-author)
[https://www.theconstitution.org/sites/default/files/briefs/Blumenthal v Trump DDC Legal Historians Brief As Filed.pdf](https://www.theconstitution.org/sites/default/files/briefs/Blumenthal_v_Trapm_DDC_Legal_Historians_Brief_As_Filed.pdf)

For Plaintiffs, *CREW v. Trump*, Aug. 11, 2017 (S.D.N.Y.) (lead author)
<https://s3.amazonaws.com/storage.citizensforethics.org/wp-content/uploads/2017/08/14181554/2017-08-11-EMOLUMENTS-Historians-Amicus-Motion.pdf>

Brief of Amicus Curiae in Support of Petitioner, *Lacaze v. Louisiana*, Petition for Certiorari to Supreme Court of the United States, [17-1566] (2018).

For Respondents, *Lanell Williams-Yulee v. Florida Bar*, Dec. 22, 2014 (U.S. Supreme Court)
(Chief Justice Roberts in majority and Justice Ginsburg in concurrence cited *The People's Courts: Pursuing Judicial Independence in America*)

Symposia/Conferences organized

"Unitary Executive: History and Practice" at Fordham Law School, Feb. 16, 2023
Writing Foreword for *Fordham Law Review*

["Histories of Presidential Power"](#) with Michael McConnell, Stanford Law School, May 20-21, 2022

Law Commentaries and Op-eds for General Audience

Author, [Shugerblog.com](http://shugerblog.com)

“The Trump Indictment is a Legal Embarrassment,” [New York Times](https://www.nytimes.com/2023/04/05/us/politics/trump-indictment-legal-embarrassment.html), April 5, 2023

“Biden’s Student-Debt Rescue Plan Is a Legal Mess. The good news is that there’s still time to fix it,” [The Atlantic](https://www.theatlantic.com/idea/archive/2022/09/biden-student-debt-rescue-plan-legal-mess/), Sept. 4, 2022.

“The Case for Prosecuting Donald Trump” (with Alan Z. Rozenshtein), [Persuasion](https://www.persuasion.com/the-case-for-prosecuting-donald-trump/), Aug. 2022

“Cassidy Hutchinson’s Testimony Changed Our Minds About Indicting Donald Trump,” (with Alan Rozenshtein), [Lawfare](https://www.lawfare.com/cassidy-hutchinsons-testimony-changed-our-minds-about-indicting-donald-trump/), July 1, 2022.

“Impeach an Ex-President? The Founders Were Clear: That’s How They Wanted It. And, oddly, the Senate GOP just voted against their own legal philosophy,” [Politico](https://www.politico.com/news/2021/02/11/impeach-an-ex-president-000002), Feb. 11, 2021
Argument in blogpost cited in the House Impeachment of Donald Trump, January 2021:
[“House Trial Memorandum in Impeachment of President Donald J. Trump,”](https://www.house.gov/imo/media/doc/1573381) p. 56

“Bleeding Kansas Republicans: Ted Cruz and His Pals Are Responsible for Wednesday’s Carnage and Mayhem,” [Slate](https://www.slate.com/2021/01/06/bleeding-kansas-republicans-ted-cruz/), Jan. 6, 2021

“Against Pardon Panic: Liberals are in full freakout mode about how a disruptive president could use his most unchecked powers. That’s a mistake.” [Politico](https://www.politico.com/news/2020/12/03/against-pardon-panic-000002), Dec. 3, 2020.

“Trump’s legal challenges to the election will help Democrats: Rejection in courts of Trump’s spurious claims will help legitimize Biden’s victory.” [Washington Post Outlook](https://www.washingtonpost.com/outlook/trumps-legal-challenges-to-the-election-will-help-democrats-rejection-in-courts-of-trumps-spurious-claims-will-help-legitimize-bidens-victory/2020/11/12/), Nov. 12, 2020.

“Reflections on Justice Ginsburg,” [Jewish Women’s Archive](https://www.jewishwomenarchive.com/reflections-on-justice-ginsburg/), September 2020

“Trump Could Use the Huge Number of Mailed and Absentee Votes to His Advantage. Here’s Why Democrats Should Consider Voting Early in Person,” [Time](https://www.time.com/2020/09/15/trump-could-use-the-huge-number-of-ailed-and-absentee-votes-to-his-advantage-here-s-why-democrats-should-consider-voting-early-in-person/), Sept. 15, 2020.
<https://time.com/5889013/absentee-mail-votes-recounts/>

“The Imaginary Unitary Executive,” [Lawfare](https://www.lawfareblog.com/imaginary-unitary-executive), July 6, 2020
<https://www.lawfareblog.com/imaginary-unitary-executive>

“The Founders checked and balanced the president’s finances,” [The Washington Post](https://www.washingtonpost.com/opinions/2020/05/12/founders-checked-balanced-presidents-finances/), May 12, 2020
<https://www.washingtonpost.com/opinions/2020/05/12/founders-checked-balanced-presidents-finances/>

“New York Can Subpoena Ukraine Witnesses and Documents,” [Slate](https://www.slate.com/news-and-politics/2020/01/new-york-cy-vance-subpoena-ukraine-witnesses-documents.html), Jan. 27, 2020
<https://slate.com/news-and-politics/2020/01/new-york-cy-vance-subpoena-ukraine-witnesses-documents.html>

“The Barr Presidency,” [Slate](https://www.slate.com/news-and-politics/2019/11/barr-speech-federalist-society-impeachment.html), Nov. 18, 2019
<https://slate.com/news-and-politics/2019/11/barr-speech-federalist-society-impeachment.html>

“Will the Supreme Court Hand Trump Even More Power?,” *New York Times*, Oct. 8, 2019 (with Ethan Leib)

<https://www.nytimes.com/2019/10/08/opinion/trump-supreme-court-fed.html>

“Supreme Court legend John Paul Stevens' Bill Clinton decision set a judicial standard that's now fading,” NBCnews.com, July 23, 2019,

<https://www.nbcnews.com/think/opinion/supreme-court-legend-john-paul-stevens-bill-clinton-decision-set-ncna1032826>

“How Congress Can Exploit Mueller’s Legal Mistakes,” *Politico*, July 22, 2019,

<https://www.politico.com/magazine/story/2019/07/22/congress-robert-mueller-hearing-227415>

“Mueller Missed the Crime: Trump’s Campaign Coordinated With Russia,” *Daily Beast*, July 10, 2019

<https://www.thedailybeast.com/robert-mueller-missed-the-crime-trumps-campaign-coordinated-with-russia>

“How Mueller Can ‘Fix His Mistakes’: He can help Congress and the Federal Election Commission clarify our vague campaign-finance law,” *New York Times*, June 27, 2019

<https://www.nytimes.com/2019/06/27/opinion/mueller-testimony-congress-fec-trump-mess.html>

“New York Just Gave Congress a New Reason for Impeachment,” *Atlantic*, May 9, 2019,

<https://www.theatlantic.com/ideas/archive/2019/05/ny-seeks-trumps-tax-returnsand-supports-impeachment/589123/>

“The Trump Campaign Conspired with the Russians. Mueller Proved It: By the standards of a potential impeachment inquiry, the evidence is clear,” *New York Times*, April 25, 2019

<https://www.nytimes.com/2019/04/25/opinion/mueller-trump-campaign-russia-conspiracy.html>

“Look for References to Michael Flynn in the Mueller Report to See How Much William Barr Has Redacted,” *Slate*, April 17, 2019

<https://slate.com/news-and-politics/2019/04/michael-flynn-mueller-report-redactions-william-barr.html>

“Why Did Barr Share Only Four Incomplete Sentences From the Mueller Report?,” *Slate*, March 24, 2019

“Cy Vance Has a Double Jeopardy Problem,” *Slate*, March 19, 2019

“New York Just Gave Congress a New Reason for Impeachment,” *The Atlantic*, March 9, 2019

<https://www.theatlantic.com/ideas/archive/2019/05/ny-seeks-trumps-tax-returnsand-supports-impeachment/589123/>

“New York State Should Investigate the Trump Organization,” *New York Times*, March 4, 2019

“Trump’s Shutdown Is a Natural Extension of Past GOP Brinkmanship,” *Slate*, Jan. 18, 2019

“The Single Fatal Flaw in the Legal Argument Against Indicting a Sitting President: Should a president be above the law because of the statute of limitations?,” *Slate*, Dec. 11, 2018

“Matthew Whitaker Hasn’t Obstructed Mueller Yet. Maybe He Remembers What Happened to Nixon’s Crooked Lawyers,” *Slate*, Dec. 4, 2018

“Think Matthew Whitaker is a hack? He’s one of many,” *Washington Post*, Nov. 16, 2018

“Why the Big Double Jeopardy Supreme Court Case Isn’t a Threat to the Mueller Probe” (with Teri Kanefield), *Slate*, Oct. 4, 2018

“A Lone Holdout Juror Actually Made It More Likely Manafort Will Go to Jail Even if Trump Pardons Him,” *Slate*, Aug. 23, 2018.

“Brett Kavanaugh’s Elevation to the Supreme Court After Michael Cohen’s Plea Would Be Court-Packing,” *Slate*, Aug. 22, 2018.

“If Trump Knew About the Russia Meeting, He Could Be on the Hook for Conspiracy,” *Slate*, July 27, 2018

“Heartbreak Hotel: Judge Gives Plaintiffs a Major Victory in Emoluments Lawsuit Against Trump,” *Slate*, July 25, 2018

“Brett Kavanaugh’s Legal Opinions Show He’d Give Donald Trump Unprecedented New Powers,” *Slate*, July 19, 2018

“Kavanaugh Already Has One of the Clearest Records Against Roe of Any Recent Supreme Court Nominee” (with Dahlia Lithwick), *Slate*, July 18, 2018

“How to Prevent Future Family Separations: Prosecute Federal Officials” (with Teri Kanefield), *Slate*, July 3, 2018

“The Travel Ban Ruling Will Be the Roberts Court’s Shameful Legacy,” *Slate*, June 26, 2018

“The Courts Must Award Damages to Families Torn Apart by Trump’s Family-Separation Policy (with Teri Kanefield), *Slate*, June 21, 2018

“Rod Rosenstein Should Recuse. He Can Do It Without Jeopardizing the Mueller Investigation,” *Slate*, June 8, 2018

“The divine right of Donald? We fought a revolution over that,” *USA Today*, June 7, 2018 (with Norm Eisen).

“It Sure Looks Like President Trump’s Lawyers Admitted He Obstructed Justice,” *Slate*, June 3, 2018

“How Trump’s Dinesh D’Souza Pardon Should Backfire: If it pushes New York to change its double jeopardy laws, it could be a big defeat for the president,” *Slate*, June 1, 2018

What Rod Rosenstein Has to Do if the DOJ Meeting Doesn’t Satisfy Trump, *Slate*, May 24, 2018

“Nunes and Meadows Are Undermining Trump’s Argument Against the Mueller Investigation (with Asha Rangappa), *Slate* and *Just Security*, May 18, 2018

“Mike Pence Just Called for an End to the Mueller Probe. What Is He Afraid Of?,” *Slate*, May 10, 2018

“How Michael Cohen’s Apparent Russia Payment Might Help Prove Collusion, *Slate*, May 9, 2018

“Here’s What Happens to the Mueller Evidence if Trump Goes on a Firing Spree,” *Slate*, May 4, 2018

“Republican Senators’ Obsession with Antonin Scalia Is Leading Them to Make Sloppy Mistakes,” *Slate*, April 27, 2018

“New York Should Amend Its Double Jeopardy Law to Make Sure Trump Can’t Bail Out Michael Cohen,” *Slate*, April 17, 2018

“Why Robert Mueller Handed Off the Michael Cohen Raid,” *Slate*, April 9, 2018

"MERIT OVER MONEY: Judicial Elections Are a Mess—Here’s How to Fix the Problem," *Daily Beast*, April 6, 2018

“The Supreme Court Could Take a Lesson from the Emoluments Judge,” *Slate*, April 2, 2018

If a Trump Official Fires the Special Counsel To Protect Trump, Mueller Can Sue to Keep His Job (with Ethan Leib), *Slate*, March 19, 2018

“This Overlooked Part of the Constitution Could Stop Trump from Abusing his Pardon Power,” *Washington Post*, March 14, 2018 [with Ethan J. Leib].

“L’Affaire Kushner: A series of revelations about the White House princeling have added further credence to the key claim of the Steele dossier,” *Slate*, March 2, 2018.

“Emoluments, Zone of Interests, and Political Questions: The 13th and 14th Strokes of the Clock,” Dec. 26, 2017, Take Care blog

“The Trump Court-Packing Plan Is Based on a Fiction,” *Slate*, Dec. 5, 2017

“How Robert Mueller’s Deal with Michael Flynn Neutralizes Trump’s Pardon Power,” *Slate*, Dec. 5, 2017

“Robert Mueller’s Brilliant Strategy for Outmaneuvering Trump Pardons,” Slate, Nov. 3, 2017

“No Pardoning This Offense: If Trump tries to evade the Mueller investigation, states could bring these criminal charges,” Slate and Just Security blog, Sept. 5, 2017.

http://www.slate.com/articles/news_and_politics/jurisprudence/2017/09/states_could_bring_these_charges_if_trump_tries_to_pardon_his_way_out_of.html

“Pence and Obstruction of Justice,” Takecareblog, Sept. 5, 2017

<https://takecareblog.com/blog/pence-and-obstruction-of-justice>

“Trump Can’t Escape the States: No Matter Whom He Pardons, the President Won’t Be Able to Hide from the Attorneys General,” Slate.com, July 21, 2017.

http://www.slate.com/articles/news_and_politics/jurisprudence/2017/07/no_matter_who_he_fires_or_pardons_trump_won_t_be_able_to_escape_state_attorneys.html

“Presidential Revisionism,” Slate.com, July 17,

2017. http://www.slate.com/articles/news_and_politics/jurisprudence/2017/07/the_new_york_times_published_the_flimsiest_defense_of_trump_s_apparent_emoluments.html

“Neil Gorsuch and the Frozen Trucker,” Slate, March 21, 2017.

http://www.slate.com/articles/news_and_politics/jurisprudence/2017/03/neil_gorsuch_s_arrogant_frozen_trucker_opinion_shows_he_wants_to_be_like.htm

“Time to Dissolve the Trump Corporation: New York Courts Have the Power to Shut the Corporation Down,” *New York Daily News*, March 14, 2017 (with Ron Fein)

“Balanced Checks: It should take two-thirds of the Supreme Court to stop Congress,” slate.com, June 20, 2012.

“Revisiting the Senate’s ‘Nuclear’ Option,” *Boston Globe*, Sept. 12, 2005

“Perfection in Everything but the Opponent,” *New York Times*, July 24, 1999 (letter to the editor about David Cone’s perfect game against the Montreal Expos)

Awards/Prizes

Dean’s Distinguished Scholar, Fordham Law School, 2019-20

Teaching/Mentorship Award: The Harvard Federalist Society’s Charles Fried Intellectual Diversity Award (2011) “for commitment to substantive debate and for the free exchange of ideas.”

The American Society of Legal History’s 2009 Cromwell Prize for best dissertation or article in American legal history in 2008 for “The People’s Courts: The Rise of Judicial Elections and Judicial Power in America”

Yale-Stanford Junior Faculty Forum, 2008 (legal history/humanities) for “Economic Crisis and the Rise of Judicial Elections and Judicial Review,”

Yale-Stanford Junior Faculty Forum, 2007 (the legal profession) for “The Twist of Long Terms: Elected Judges, Role Fidelity and American Tort Law”

Junior Faculty Competition, “Tort Law and the Modern State” Conference, Columbia Law School, 2006: “A Watershed Moment: Reversals of Tort Theory in the Nineteenth Century”

Joseph Parker Prize (2000) jointly awarded for the best paper in legal history at Yale Law School

Israel Peres Prize (2001) for the best student note in the *Yale Law Journal*

Legal Experience, Service, and Fellowships

New York State Bar Association Task Force on the 2020 Election, Aug. 2020-Nov. 2020

Website and Final Report: <https://nysba.org/new-york-state-bar-association-task-force-on-the-presidential-election-maps-out-potential-constitutional-crisis-scenarios/>

Golieb Fellow in Legal History, New York University, 2004-2005

William Nelson Cromwell Fellowship in Legal History, 2005-2006

Yale Legal History Fellow, 2003-04

The Honorable John M. Walker, Jr., Chief Judge, Second Circuit Court of Appeals, 2002-2003
Law Clerk, Sept. 2002-Sept. 2003

Olin Fellow in Law and Economics, Yale Law School, Summer 2001.

Jerome Frank Legal Services Organization, Yale Law School, May-Sept. 2000
Prisoners’ Rights Clinic, Disabilities Clinic

Death Penalty Clinic (supervised by Stephen Bright, Southern Center for Human Rights/Yale Law School, 1999-2001)

Wrote petition for certiorari to the U.S. Supreme Court for Alton Coleman from *Coleman v. State*, 703 N.E.2d 1022 (Ind. 1998) on ineffective assistance of counsel. The U.S. Supreme Court granted certiorari, and vacated and remanded, 120 S.Ct. 1717 (2000).

Milah Fellowship, Jerusalem, Israel, Aug. 1997- June 1998
The Conservative Yeshiva. Studied Talmud, Bible, and philosophy

Dorot Fellowship, Jerusalem, Israel, July 1996- June 1997
The Pardes Institute. Studied Jewish law, Bible, Jewish history and ethics.
Rabbis for Human Rights, Intern. Advocated for Palestinians’ and Israeli Arabs’ rights
Little League baseball coach.

Law School Service

Boston University School of Law:

Appointments Committee, 2023-2024
Co-advisor, Federalist Society, 2023-
Co-advisor, Jewish Law Students Association 2023-

Fordham:

Creator and moderator of the Fordham Law Faculty-Student-Staff Conversation Series (part of the Covid Committee), Fall 2020-Spring 2022.
Series became the Constitutional Crisis Hotline Podcast with Julie Suk, link [here](#) (2022-2023);
Chair, Ad Hoc Committee on Clinical Tenure (Retention/Tenure/Promotion), Spring 2022
Scholarship Committee chair (2021-2022);
Special Committee on Covid-19 Reopening (2020-21);
Evening Program (2018-20)
Appointments Committee, 2017-18;
Teaching Committee, 2014-15, 2018;
University Institutional Review Board, 2015-18;
Retention/Tenure/Promotion Committee, 2014-18;
Curriculum Committee, 2013-14, 2015-20 (chair, 2015-16);
Long-Range Planning, 2013-14

Harvard:

Co-chair, Harvard Climenko Legal Research and Writing Program (2006-2011);
Chair, Harvard Legal History Colloquium (2006-2011);
Admissions Committee (2005-06).

Teaching

Boston University:

Torts Fall 2022: Overall evaluation of instructor, 4.21 out of 5; Overall course, 4.25 out of 5

Fordham Law:

Torts Fall 2017: Challenging and stimulating: 4.91, Held students' interest: 4.65
Administrative Law Spring 2016: Held students' interest: 4.57,
Challenging and stimulating: 4.43
Constitutional History Workshop Spring 2016: Held students' interest: 4.86,
Challenging and stimulating: 4.71
Torts Fall 2016: Challenging and stimulating: 4.67, Respecting students: 4.85
Torts Spring 2016: 4.86 for knowledge of subject, 4.71 for organization
Torts Fall 2015: 4.83 for knowledge of subject, 4.56 for organization
Torts Spring 2015: 4.71 for in-class performance, 4.87 for knowledge of subject
Torts 2014: 4.95 out of 5 for overall teaching
Torts 2013: 4.88 out of 5 for overall teaching

Harvard Law:

Torts 2012: 4.6 out of 5 for overall teaching performance, 4.6 for overall course
Torts 2011: 4.5 out of 5 for overall teaching performance, 4.5 for overall course
Law & Democracy Seminar 2012: 4.7 and 4.6 out of 5
Legal History Workshop 2011: 4.9 and 4.6 out of 5

Additional Service

Journal of American Constitutional History, editor and peer reviewer, 2022-present

Peer review: Harvard Law Review; Yale Law Journal; Columbia Law Review; University of Pennsylvania Law Review, University of Chicago Law Review.

American Society for Legal History

Preyer Award Committee (2016-2019), Chair (2017-18)

Surrency Prize Committee (2009-2011)

Committee for the American Council of Learned Societies legal history project (2008-09)

Co-Chair, Tikkun Olam Committee, and Refugee Liaison, Temple Beth Zion, Brookline, MA (2016-2018). Committee Member, 2016-2020

Fundraising Chair for NBARC (Refugee/Asylum support), raising \$40,000 in 2017 to support three families with housing and resources (2016 to 2020).

Parent-Teacher Organization Co-Chair, Bowen Elementary, Newton, MA (2013-2015)

Raised \$100,000 plus \$50,000 in city resources for completed new playground, 2013-2015

Board Member, State Court Leaders in the 21st Century, Kennedy School of Government, 2009-2011

Administrative Committee, Charles Warren Center for Studies in American History, Harvard University, 2007-2012

Selection Committee for Warren Center travel grants, spring 2009

Ames Foundation for Legal History, Cambridge, MA, board member, 2006-2020

Dorot Foundation fellowship selection committee, 2000-02

Academic Presentations and Talks

“Venality and Functionality,” ABA Administrative Law Section's Spring Conference academic workshop, George Washington University School of Law, May 9, 2024

Conference, “Protecting the Administrative State,” Princeton, University April 26-27

Panel, “Does *Humphrey's Executor* Still Matter?,” Federalist Society, DC, April 16

“Why Separate Powers?: Executive Power and Administration,” Federalist Society National Student Convention, Harvard Law School, March 9, 2024

“Major Questions about Presidentialism: Untangling the ‘Chain of Dependence’ Across Administrative Law,” with Jodi Short, National Conference of Constitutional Law Scholars, Arizona, Feb. 21-23, 2024

“Venality and Functionality,” Seminar guest (Prof. John Mikhail) Georgetown University Law Center, Feb. 11, 2024

Debating 14th Amendment Disqualification of Presidents as “Officers Under the United States” with Josh Blackman, Boston University, Jan. 2024

Panel on the Major Questions Doctrine, Pacific Legal Foundation & *Harvard Journal of Law and Public Policy*, Jan. 2024

“Originalism on the Ground,” Federalist Society National Lawyers Convention, DC, Nov. 2023

Commentator, “Authors Meet Readers: Fishkin & Forbath, *The Anti-Oligarchy Constitution* & Novak, *New Democracy*,” American Society for Legal History, Oct. 28 2023

BU Federalist Society, commenting on Logan Beirne (Yale Law fellow) on “Big Brother Watching: History of Government Surveillance,” September 27, 2023

“Biden v. Nebraska,” *Cato Supreme Court Review* Panel, Sept. 18, 2023

Panel on Student Debt Waiver, Federalist Society Education Conference, Sept. 12

“*Biden v. Nebraska*: The New State Standing and the (Old) Purposive Major Question Doctrine,” Administrative Law Works-in-Progress, C. Boyden Gray Center, George Mason, Sept. 8, 2023

Commentator on Joseph Fishkin and William Forbath, *The Anti-Oligarchy Constitution*, University of Texas, April 28, 2023

Commentator on Pnina Lahav’s *The Only Woman in the Room: Golda Meir and Her Path to Power*, Boston University School of Law, April 19, 2023

Commentator, “Agency Adjudication and ALJs,” Conference at C. Boyden Grey Center, George Mason University, April 14, 2023

“Despotic Displacement, Vénalité, and Virtue: Why Article II ‘Executive Power’ Did Not Include Removal,” at “Rakoviad: A Conference Honoring Jack Rakove,” Stanford University; Originalism Conference, University of San Diego, Feb. 10-11, 2023; AALS San Diego, Jan. 3d, 2023

Chair, “The Founding” Panel, “Unitary Executive: History and Practice” Symposium, Fordham Law School, Feb. 17, 2023

Chair, “Constitutional Memory and Historical Authority in *Dobbs* and Beyond,” American Society for Legal History, Chicago, Nov. 2022.

“Fiduciary Constitutionalism” Panelist at “Histories of Presidential Power” Conference, Stanford Law School, May 20, 2022.

“The Indecisions of 1789”: Seton Hall Faculty Workshop, March 2021; Fordham Law Faculty Workshop, April 2021; Conference on “Histories of Presidential Power,” Stanford University; Northeastern Law Faculty Workshop, November 2022; Boston University Faculty Workshop, November 2022.

“The Bi-Partisan Enabling of Presidential Power,” Conference on David Driesen’s *The Specter of Dictatorship: Judicial Enabling of Presidential Power*,” Nov. 2021

“The *Marbury* Problem and the Madison Solutions,” Fordham Law Symposium, Nov. 2020

Comment on Bernadette Meyler’s *Theaters of Pardoning*, ASLH November 2019, Boston

“The Stories of Newmyer and Cover: Hero or Tragedy?” (Tribute to Kent Newmyer), *Connecticut L. Rev.*, Tributes to Professor Kent Newmyer, Nov. 2019

“Faithful Execution and Article II,” Columbia, NYU, Penn, National Conference of Constitutional Law Scholars, Georgetown, 2018-2019 (with Andrew Kent and Ethan Leib)

“Professionals, Politicos, and Crony Attorneys General,” ASLH, Dallas, November 2018

“The DOJ, State Prosecutors, and the Politics of Mass Incarceration,” Conference to Honor Glenda Gilmore, panel on historians and the Trump, April 22-23, 2018

Panel, “The History of the Legal Profession,” Conference to Honor Robert W. Gordon, Jan. 12, 2018

“Obstruction of Justice,” ACS Panel, Capitol Hill, Dec. 13, 2017
(broadcast on C-SPAN: <https://www.youtube.com/watch?v=3MkObf3U3YI>)

“Perspectives on the Emoluments Clause,” Federal Bar Association, Chicago Chapter, at Jones Day, Nov. 9, 2017 (<http://www.fedbarchicago.org/event/emoluments-clause-nov-2017/>)

“Historians’ Amicus Briefs in the Trump Era,” ASLH Las Vegas, Nov. 2017

“Judicial Selection in the Age of Trump,” Program in Law and Public Affairs, Princeton University, April 2017

“Election, ‘Merit,’ or Advice and Consent: Trends in Judicial Selection,” Panel, AJEI 2016 Summit, Nov. 2016

“Earl Warren, the Japanese Internment, and the Governor’s Race of 1942,” Berkeley, Jan. 2016, ASLH, Toronto, Nov. 2016.

“The Dependent Origins of Independent Agencies,” American Society for Legal History, 2015; NYU Legal History Colloquium 2013, Hebrew University Legal History Colloquium 2013.

“The Creation of the Department of Justice: Professionalization without Civil Rights or Civil Service,” NYU Legal History Colloquium, Yale Legal History Forum, Boston University Legal History Colloquium, American Society for Legal History, Fall 2012.

“The Department of Justice’s Founding and the Failure of Civil Service Reform, 1865-1870,” American Bar Foundation, Chicago; University of Chicago Legal History Colloquium; University of Toronto Legal History Colloquium; Georgetown University Law Center, Feb.-March 2012

Panelist, “Judicial Selection,” Goldfarb Center for Public Affairs and Civil Engagement, Colby College, April 2012

“The People’s Courts: Judicial Elections and Judicial Independence in America,” Fordham University; University of Connecticut; Connecticut Bar Foundation; University of Toronto; Northwestern University, Oct. 2011-Jan. 2012

“*Caperton* and Judicial Recusal Motions,” National Association of Criminal Defense Lawyers Symposium, DePaul University, Nov. 2011

“The Puzzle of Merit’s Spread,” Stanford Law School’s Legal History Workshop, Columbia Law School’s The Court and Legal Process Workshop, Boston University Law School’s Legal History Workshop, Fall 2010

“The People’s Courts: Judicial Elections and Judicial Independence in America,” NYU Legal History Workshop, Sept. 2010

“The Route Back to Judicial Independence,” Executive Session, State Court Leaders in the 21st Century, Kennedy School of Government, Sept. 2010

Commentator on Paul Frymer, “Building an American Empire: Territorial Expansion and Indian Removal, 1787-1850,” Harvard-MIT Joint Seminar on Comparative Historical Analysis, Feb. 2010

“Economic Crisis and the Rise of Judicial Elections and Judicial Review,” Harvard Center for Law and History, Harvard History Department, December 2009

“Economic Crises and Two Revolutions for Judicial Independence: The 1830s-40s and the 1930s-40s,” American Society for Legal History, Dallas, November 2009.

“‘Crime Can Be Curbed’: The Puzzle of Merit Selection’s Rise,” University of Pennsylvania Law School, Oct. 26, 2009; American University, Sept. 26, 2009; University of Alberta, August 2009.

“The Past, Present and Future of Judicial Elections,” Executive Session, State Court Leaders in the 21st Century, Kennedy School of Government

“*Caperton* and the Past, Present and Future of Judicial Elections,” “Rising Stars” Clifford Symposium, DePaul Law School, April 2-3, 2009

“Debate: Judicial Elections vs. Appointments,” Boston College Law School, March 31, 2009

“The People’s Courts,” presented at NYU Law School, Yale Law School, and Princeton University, Fall 2008, Boston College Law School, Fall 2009.

“Localism in the Wave of Judicial Elections, 1846-1851”

Law and Society Association, Montreal, Quebec, May 2008

“The Twist of Long Terms,” Conference of Empirical Legal Studies, New York University, November 2007; Boston University Legal History Colloquium, February 2008

“The Wave of Judicial Elections, 1846-1851”

American Society for Legal History, Tempe, Arizona, October 2007

Panelist on Roundtable, “Whither Constitutional History: An Intergenerational and Interdisciplinary Conversation,” Institute for Constitutional Studies and American Political Science Association, Chicago, September 2007

Chair, “Democracy and the Continuing Battle for Free and Fair Elections,” Plenary Panel, Harvard Law School World Alumni Congress, Washington, DC, June 2007.

“The Second *Dred Scott*,” Historical Panel on the 150th Anniversary of Dred Scott, Harvard Law School, April 2007.

Chair and Discussant, “Contested Values and Authority in Nineteenth-Century America,” Organization of American History Annual Meeting, Minneapolis, MN, April 2007.

“Free Soil, Free Courts, Free Men: New York’s Adoption of Judicial Elections in 1846”

American Society for Legal History, Baltimore, Maryland, November 2006;

University of Alberta Law School, Edmonton, Alberta, August 2007

“A Watershed Moment: The Impact of Floods and Judicial Elections on Tort Law”

“Tort Law and the Modern State” Conference, Columbia Law School, 2006;

University of Alberta Law School, Edmonton, Alberta, August 2006

“Aristocrats’ vs. ‘Whole Hogs’: Mississippi’s Adoption of Judicial Elections in 1832”

American Society for Legal History, Cincinnati, Ohio, November 2005

“Theories of Morality and Economics in the Strict Liability Debate, 1870-1940,”

American Society for Legal History, San Diego, November 2002

“A Six-Three Rule: Balancing American Judicial Supremacy,”

University of Alberta Law School, Edmonton, Canada, March 2002

Media and Podcasts

Media

“Constitutional Crisis Hotline” Podcast with Julie Suk (Fordham Law podcast), on Simplecast, Apple, Spotify, Amazon/Audible, Fall 2022-Spring 2023

Gray Center, Feb. 2024

Frequent guest on CNN (Don Lemon, Wolf Blitzer); MSNBC (Rachel Maddow, Chris Hayes, Lawrence O’Donnell, Ari Melber), 2017-2021; CBC News, 2018-2019

Frequent podcast guest on Slate’s Amicus with Dahlia Lithwick, Slate’s TrumpCast with Virginia Heffernan and Jacob Weisberg, NPR’s Throughline and Embedded, WNYC’s On the Media, the Atlantic podcast, American Constitution Center’s “We the People” with Jeffrey Rosen.

NPR Throughline
NPR Embedded
Slate TrumpCast
Slate Amicus
Slate What Next
Atlantic Podcast
Unorthodox

Including:
MSNBC

“The Last Word” with Lawrence O’Donnell:

“Expert: Why Trump’s Tweet Is More Damning If Lawyer Helped,” Dec. 4, 2017,
<http://www.msnbc.com/the-last-word/watch/expert-why-trump-s-tweet-is-more-damning-if-lawyer-helped-1109601859681>

“The New Trump Exhibit in the Mueller Investigation,” Sept. 14, 2017,
<http://www.msnbc.com/the-last-word/watch/lawrence-the-new-trump-exhibit-in-the-mueller-investigation-1047127619632>

“Report: Some Trump Lawyers Wanted Kushner Out Over Russia Probe,” Sept. 11, 2017,
<http://www.msnbc.com/the-last-word/watch/report-some-trump-lawyers-wanted-kushner-out-over-russia-probe-1044463171608>

“Mueller May Have New Evidence of Trump Obstruction,” Sept. 1, 2017,
<http://www.msnbc.com/the-last-word/watch/mueller-may-have-new-evidence-of-trump-obstruction-1038078531817>

“What Mueller Working with New York AG Could Mean for the Trump-Russia Probe,” Aug. 30, 2017, <http://www.msnbc.com/the-last-word/watch/what-mueller-working-with-ny-ag-could-mean-for-trump-russia-probe-1036443715711>

“Velshi and Ruhle”

Segment on Mueller, obstruction of justice, and DeutscheBank, Dec. 5, 2017

“How Paul Manafort Is Trying to Get a Pardon from President Trump,” Cheddar, Jan. 4, 2017,
<https://cheddar.com/videos/how-paul-manafort-is-trying-to-get-a-pardon-from-president-trump>

PBS Newshour, “Did Donald Trump Jr. Break the Law?” July 12, 2017
<http://www.pbs.org/newshour/bb/donald-trump-jr-break-law-two-legal-experts-weigh/>