

PUBLICATIONS:

Books:

Constitutional Law in Context (textbook with Michael Kent Curtis, J. Wilson Parker, Davison M. Douglas, and Paul Finkelman) (Carolina Academic Press, 3rd ed., 2011);

The Chief Justiceship of Charles Evans Hughes, 1930-1941 (University of South Carolina Press, 2007) (recipient of Lightfoot, Franklin & White Award for Faculty Scholarship, 2008);

Legal Fees: Law and Management (with John W. Toothman) (Carolina Academic Press, 2003);

The Honest Hour: The Ethics of Time-Based Billing By Attorneys (Carolina Academic Press, 1996) (revised second edition in progress);

Forging New Freedoms: Nativism, Education and the Courts, 1917-1927 (University of Nebraska Press, 1994) (recipient of the Outstanding Book Award from the Gustavus Myers Center for the Study of Human Rights in North America);

A Muted Fury: Populists, Progressives, and Labor Unions Confront the Courts, 1890-1937 (Princeton University Press, 1994).

Book Chapters:

“German-Americans ” in Charles Riggs, ed., *Immigrant Challenges, Immigrant Gifts* 15-35 (George Mason University Press, 2012);

“Meyer v. Nebraska,” in Alan Gless, ed., *A Legal History of Nebraska*, pp. 271-88 (Ohio State University Press, 2008);

“The Hughes Court (1930-1941): Evolution and Revolution,” in Christopher Tomlins. ed., *The United States Supreme Court: The Pursuit of Justice*, pp. 223-48 (Houghton Mifflin Company, 2005).

Selected Articles:

“The Controversy over U.S. Membership in the League of Nations, 1918-1920,”
53 *American Journal of Legal History* 1-88 (2013);

“The Supreme Court as an Issue in Presidential Campaigns,” 37 *Journal of Supreme Court History* 322-34 (2012);

“The Presidential Aspirations of U.S. Supreme Court Justices: A History and an Ethical

- Warning,” *Northern Kentucky Law Review* 115-72 (2011);
- “Abuse of Hourly Billing: Results of a Recent Survey,” *Accounting and Financial Planning Law Firms* (October 2007);
- “The Role of Religion in the 1937 Court Packing Controversy,” *23 Journal of Law and Religion* 629-72 (2007-08);
- “When Did the ‘Switch in Time’ Actually Occur?: Re-Discovering the Supreme Court’s ‘Forgotten’ Decisions of 1936-37,” *37 Arizona State Law Journal* 1153-1220 (2006);
- “The Ethics of Double Billing,” *Accounting and Financial Planning for Law Firms*, April 2004, at 1;
- “The Ethics of Billing by the Hour for Re-Cycled Work,” *Accounting and Financial Planning for Law Firms*, August 2003, at 1;
- “The Resilience of Marbury v. Madison: Why Judicial Review Has Survived So Many Court-Curbing Proposals” *38 Wake Forest Law Review* 733-792 (2003);
- “Attacks on the Warren Court by State Officials: A Case Study in Why Court-Curbing Movements Fail,” *50 Buffalo Law Review* 483-612 (2002);
- “The Role of Judicial Issues in Presidential Campaigns,” *42 Santa Clara Law Review* 391-482 (2002);
- “The Role of Ideology in the Federal Judicial Selection Process,” *7 Nexus: A Journal of Opinion* 39-45 (2002);
- “An Ironic and Unnecessary Dilemma: Restrictions on Billing Guidelines and Submission of Legal Bills to Outside Auditors,” *14 Notre Dame Journal of Law, Ethics, and Public Policy* 527-88 (2000) (reprinted in *51:3 Defense Law Journal* 409-70 (2002));
- “The Questioning of Lower Federal Court Nominees at Senate Confirmation Hearings,” *10 William and Mary Bill of Rights Journal* 119-76 (2001);
- “The 75th Anniversary of Pierce v. Society of Sisters: Reasons to Celebrate,” *78 Detroit Mercy Law Review* 443-462 (2001) (article solicited for conference);
- “The Contemporary Significance of Pierce v. Society of Sisters,” *34 Akron Law Review* 177-207 (2000) (article solicited for conference);
- “Civility among Judges: Charting the Bounds of Proper Criticism by Judges of Other Judges,” *51 Florida Law Review* 957-73 (1999);

- “Kicking the Unethical Billing Habit,” 50 *Rutgers Law Review*, 2199-2210 (1998);
- “Some Religiously Devout Judges: Historical Notes and Comments” (with Thomas C. Berg), 81 *Marquette Law Review* 383-415 (1998);
- “The Senate's Constitutional Role in the Confirmation of Cabinet Members and Other Executive Officials,” 48 *Syracuse Law Review*, 1123-1221 (1998);
- “The Ethics of Time-Based Billing by Attorneys,” 58 *Alabama Lawyer* 40-43 (1997);
- “Scholarly Legal Monographs: Advantages of the Road Less Taken,” (part of symposium issue on legal scholarship), 30 *Akron Law Review* 259-266 (1996);
- “Measuring the Ethics of Hourly Billing Practices,” 9 No. 2 *Accounting for Lawyers* 1 (1996);
- “The Ratings Game: Ranking Supreme Court Justices,” 79 *Marquette Law Review* 401-452 (1996);
- “Formulating Standards for Ethical Billing,” 35 *Law Office Economics and Management* 301-07 (1994);
- “Walter Clark of North Carolina: Antagonist of the Federal Judiciary,” 3 *Journal of Southern Legal History* 1-35 (1994);
- “The Supreme Court Appointment Process: A Search for a Synthesis,” 57 *Albany Law Review* 993-1042 (1994);
- “The Ethics of Hourly Billing by Attorneys,” 44 *Rutgers Law Review* 1-100 (1991);
- “The Hazards of Recent Proposals to Limit the Tenure of Federal Judges and to Permit Judicial Removal Without Impeachment,” 35 *Villanova Law Review*, 1063-1138 (1990);
- “The Legal Career of John Quincy Adams,” 23 *Akron Law Review*, 415-453 (1990);
- “Participation by the Public in the Federal Judicial Selection Process,” 43 *Vanderbilt Law Review*, 1-84 (1990);
- “Extrajudicial Speech: Charting the Boundaries of Propriety,” 2 *The Georgetown Journal of Legal Ethics* 589-632 (1989);
- “A Judicial Janus: Meyer v. Nebraska in Historical Perspective,” 57 *The University of Cincinnati Law Review* 125-204 (1988);
- “The Need for an Exclusive and Uniform Application of ‘Neutral Principles’ in the

Adjudication of Church Property Disputes,” 32 *St. Louis Law Journal* 263-316 (1987);

“The Questioning of Supreme Court Nominees at Senate Confirmation Hearings: Proposals for Accommodating the Needs of the Senate and Ameliorating the Fears of the Nominees,” 62 *Tulane Law Review* 113-174 (1987);

“The Functions, Roles and Duties of the Senate in the Supreme Court Nomination Process,” 28 *William and Mary Law Review* 633-682 (1987).

Book Reviews:

Anne Emanuel, “Elbert Parr Tuttle: Chief Jurist of the Civil Rights Movement,” in *Judicature* 237-39 (March/April, 2012);

Paula Abrams, “Cross-Purposes: Pierce v. Society of Sisters and the Struggle over Compulsory Public Education,” 28 *Law and History Review* 1076-78 (2010);

D. Don Welch, “The Vanderbilt Law School: Aspirations and Realities,” in 27 *Law and History Review* 480-82 (2009);

Ruth O’Brien, “Worker’s Paradox: The Republican Origins of New Deal Labor Policy, 1886-1935,” in 106 *American Historical Review* 590-91 (April 2001);

Gilbert C. Gall, Lee Pressman, “The New Deal, and the CIO,” in 105 *American Historical Review* 952-953 (June 2000);

James W. Ely, “The Chief Justiceship of Melville W. Fuller,” in 101 *American Historical Review* 923 (June 1996);

David C. Frederick, “Rugged Justice: The Ninth Circuit Court of Appeals and the American West,” in 26 *Western Historical Quarterly* 251 (1995);

Owen Fiss, “History of the Supreme Court of the United States: Troubled Beginnings of the Modern State, 1888-1910,” in 34 *American Journal of Legal History* 99-100 (1995);

Philippa Strum, “Brandeis: Beyond Progressivism,” in 540 *The Annals of the American Academy of Social Science* 177-78 (1995).

Encyclopedia Articles:

– contributor to *The Oxford Encyclopedia of American Business, Labor, and Economic History* (forthcoming): “Godcharles v. Wigeman; United States v. E.C. Knight.”

- contributor to *The Oxford International Encyclopedia of Legal History* (Oxford University Press, 2009): “United States Law – Equity.”
- contributor to *Encyclopedia of American Civil Liberties* (Routledge Reference, 2006): “Sandra Day O’Connor.”
- contributor to *The American Midwest: An Interpretative Encyclopedia* (Indiana University Press, 2006): “Chief Justice Melville W. Fuller.”
- contributor to *Oxford Companion to the Supreme Court of the United States* (Oxford University Press, Kermit L.Hall, ed., 2d ed., 2005): “Public Opinion; First Amendment.”
- contributor to *Encyclopedia of the Great Plains* (University of Nebraska Press, 2004, David J. Wishart, ed.): “Meyer v. Nebraska.”
- contributor to *Major Acts of Congress* (MacMillan Reference USA, 2004): “Keatings-Owen Act of 1916.”
- contributor to *Great American Judges: An Encyclopedia* (ABC-CLIO, 2003): “Walter Clark.”
- contributor to *The Oxford Companion to American Law* (Oxford University Press, 2002): “Sacco and Vanzetti; Leopold and Loeb; RICO, Law Firms; The Haymarket Affair.”
- contributor to *Great American Lawyers: An Encyclopedia* (ABC-CLIO, 2001): “John Quincy Adams.”
- contributor to *Encyclopedia of the United States in the Nineteenth Century* (Charles Scribner’s Sons, 2000): “The Supreme Court; The Legal Profession.”
- contributor to *American National Biography* (Oxford University Press, 1999): “Walter Clark; William D. Guthrie; Leon Jaworski; Lorna Lockwood; Arthur T. Mullen; Theophilus Parsons; John J. Sirica; Robert von Moschzisker; and Edward Bennett Williams.”
- contributor to *The Encyclopedia of Law and Religion*, Paul Finkelman, ed.(Garland Press, 1999): “The Religion of the United States Supreme Court Justices; Jews and American Religious Freedom; United States v. MacIntosh; Jones v. Wolf; Meyer v. Nebraska; Vatican and Diplomatic Recognition; Snake-Handling Cults;

and Public Schools and Controversies over Religion during the Nineteenth Century.”

Other Publications:

Legal Times:

- “Debating a Legacy,” March 5, 2001, at 58;
- “Fighting Over the Court: It’s tough to make the Supreme Court into an election issue,” October 9, 2000, at 75.

JURIST columns (online):

- “Obama’s Comments and Challenges to Judicial Review,” April 12, 2012;
- “Popular Vote Compact: Fraught with Constitutional Peril,” February 28, 2012;
- “Arizona’s Immigration Law: Constitutional, but...,” May 3, 2010;
- “Roberts’s Response: Not Out of Line (Either),” March 16, 2010;
- “Constructive Criticism: Presidential Opposition to Supreme Court Rulings,” February 2, 2010;
- “Should Obama Nominate a Justice without Judicial Experience?,” May 15, 2009;
- “‘Advice and Consent’: How the Senate Should Vet Obama Cabinet Picks,” February 9, 2009;
- “Why the Supreme Court Matters in the Presidential Election,” October 20, 2008;
- “Mukasey Nomination Requires Robust Scrutiny on Senate Floor,” November 6, 2007;
- “Better Luck Next Time: Why Alito Is Hard to Beat,” October 31, 2005;
- “Two Cheers for Harriet Miers,” October 17, 2005;
- “Roberts Day 4: A Ritual of Democracy,” September 16, 2005;
- “Roberts Day 3: The Search for Compassion,” September 15, 2005;
- “Roberts Day 2: Questions and Answers,” September 14, 2005;
- “Roberts Day 1: Play Ball!,” September 13, 2005;
- “Supreme Test: the Questioning of John Roberts,” August 30, 2005;
- “Why the Supreme Court is Not an Election Issue, and Why it Should Become One,” October 21, 2004;
- “Scalia Explanation for Recusal Refusal is Unconvincing,” March 22, 2004;
- “Bush Immigration Plan Would Reward Lawlessness,” Jan. 8, 2004;
- “Supreme Court’s Judicial Speech Decision Compromises Judicial Independence,” July 25, 2002;
- “Bush v. Gore Has Not Wounded the U.S. Supreme Court,” May 2, 2002;
- “Bickering over Pickering is Good for Democracy’s Health,” Feb. 26, 2002;
- “Federal Judicial Nominees Should Have Nothing to Hide,” Dec. 19, 2001;
- “Go Slow on National Identification Cards,” Nov. 7, 2001;
- “Judge Jackson’s Disqualification in the Microsoft Case: An Object Lesson in the Perils of Extra-judicial Speech,” July 2, 2001;

- “Should Senators Who Switch Parties Be Compelled to Resign?,” May 30, 2001;
- “A Regrettable Step: Reflections on the End of Judicial Screening,” March 29, 2001;
- “Question the President’s Pardons, but Not the Pardon Power,” Feb. 6, 2001;

- “Rambunctious Cabinet Confirmation Hearings are Healthy,” Jan. 16, 2001;
- “Bush v. Gore and the Prestige of the Supreme Court: A ‘Self-Inflicted Wound’?,” Dec. 13, 2000;
- “Faithless Electors”- The Wild Card,” Dec. 9, 2000;
- “Election Roulette: The Pistol Finally Fires,” Dec. 4, 2000;
- “Don’t Litigate- Negotiate!,” Nov. 28, 2000;
- “Does the Supreme Court Rush in Where Wise Judges Would Fear to Tread?,” Nov. 26, 2000.

SELECTED PAPERS GIVEN AT CONFERENCES, AND OTHER PRESENTATIONS

- presentation on Charles Evans Hughes at Hughes, Hubbard & Reed, New York City, June 7, 2011;
- presentation on Arizona’s immigration law at Jones School of Law, Faulkner University, Oct. 21, 2010;
- interview about Arizona’s immigration law on CNN, July 6, 2010;
- keynote address at the first conference of the Council on Ethical Billing, Orlando, Florida, March 13, 2008;
- presentation on university press publishing at SEAALS conference, Kialeh Island, South Carolina, July 31, 2002;
- response to Barry Cushman’s Mitchell Lecture at the University at Buffalo Law School, April 5, 2002;
- presentations on judicial ethics at Advanced Judicial College conference sponsored by Texas Center for the Judiciary, Austin, Texas, March 21, 2001;
- member of State Bar of Texas professional development panel on “Ethics and Malpractice Avoidance for Business/Corporate Lawyers and Litigators,” Dallas, Texas, November 3, 2000;
- presentation at conference marking the 75th anniversary of Pierce v. Society of Sisters, University of Detroit Mercy School of Law, October 6, 2000;
- keynote address at U.S. Department of Education conference marking the 75th anniversary of Pierce v. Society of Sisters, Washington, D.C., July 11, 2000;
- presentation on ethical issues involving law clerks at conference of Florida staff attorneys, Tampa, Florida, April 12, 2000;
- presentation at conference on education and the Constitution, University of Akron Law Center, March 31, 2000;
- member of panel at conference on attorney fee issues, Phoenix, Arizona, February 22, 1999;

- member of panel on judicial ethics at ABA annual meeting, Toronto, Ontario, August 1, 1998;
- presentation on billing ethics at ABA National Conference on Professional Responsibility, Montreal, Quebec, May 29, 1998, published as ‘The Ethics of Time Based Billing by Attorneys,’ at pages 81-88 of the 1998 symposium issue of *The Professional Lawyer*;
- “The Constitutional Significance of the Scottsboro Cases,” response to Dan T. Carter at Roy Rushton Distinguished Lecturer Series, Cumberland School of Law, April 24, 1998; published at 28 *Cumberland Law Review* 591-97 (1998);
- keynote address at conference on attorney billing practices, Phoenix, Arizona, April 2, 1998;
- presentation on billing ethics at continuing legal education seminar, Dallas, Texas, October 10, 1997;
- presentation on billing ethics at continuing legal education seminar, Jackson, Mississippi, April 25, 1997;
- “The Enigma of Crime,” response to Lawrence M. Friedman at Roy Rushton Distinguished Lecturer Series, Cumberland School of Law, February 28, 1997; published at 27 *Cumberland Law Review* 951-57 (1997);
- “Finding the Lost Lawyers in a Civil Society,” response to Anthony Kronman at Roy Rushton Distinguished Lecturer Series, Cumberland School of Law, March 1, 1996; published at 26 *Cumberland Law Review* 851-57 (1996);
- “The Perils of Selective Abandonment of Double Jeopardy,” response to Akhil Reed Amar at Roy Rushton Distinguished Lecturer Series, Cumberland School of Law, March 1, 1995; published at 26 *Cumberland Law Review* 57-61 (1996);
- presentation on billing ethics to attorneys at Dun and Bradstreet, Inc., Murray Hill, New Jersey, July 25, 1995;
- speech on billing ethics at law seminar on attorneys' fees, London, England, July 11, 1995;
- conducted all-day seminar on judicial ethics to convocation of the New Hampshire judiciary, North Conway, New Hampshire, June 16, 1995;
- keynote address on billing ethics at law seminar, "Controlling Your Legal Costs," San Francisco, April 21, 1995;
- 27-minute interview on the Supreme Court appointments process, aired on C-SPAN, June 4, 1993;
- talk on the reform of the Supreme Court appointments process, given at Library of Congress

symposium, May 17, 1993;

- "A Muted Fury: Attempts by Populists, Progressives and Trade Unions to Curb Federal Judicial Power, 1890-1937," a paper delivered before the American Society for Legal History, San Francisco, October 23, 1991;
- "Meyer v. Nebraska: A Missing Link in Constitutional History?," a paper delivered at a symposium on "Law, the Bill of Rights and the Great Plains," sponsored by the Center for Great Plains Studies at the University of Nebraska, March 8, 1991;
- talk on the propriety of extra-judicial speech given at a conference on judicial ethics at Georgetown Law Center, sponsored by the National Judicial College and the *Georgetown Journal of Legal Ethics*, October 8, 1988.