

CURRICULUM VITAE

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Education and Fellowships:

LL.B., Yale Law School, 1968

B.Phil., Oxford, 1965; Marshall Scholar, 1963-1965.

M.A., Johns Hopkins University, 1963

B.A., Johns Hopkins University, 1962; Phi Beta Kappa.

Professional Experience:

Professor of Law, University of Washington, School of Law, January 1995 to present.

Assistant Counsel, NAACP Legal Defense and Educational Fund, Inc.; general Supreme Court litigation, employment discrimination, voting rights, constitutional law; judicial confirmations. November 1969 to December 1994, except as noted below.

Lecturer, Yale Law School, spring 1990; legislative process and civil rights.

Lecturer, Columbia Law School, 1979-1994; equal protection and civil rights litigation

Administrative Assistant, Representative Thomas Lantos (D. Cal.). January 1981 to January 1982.

Clerk to Justice Matthew Tobriner, California Supreme Court. July 1968 to August 1969.

Law Clerk, Davis Polk and Wardwell. June 1967 to August 1967.

Intern, Office of the Mayor of the City of New York. June 1966 to August 1966.

Intern, Office of Representative Clarence Long (D. Md.). June 1965 to August 1965.

Other Professional Activities:

Member, Washington State Advisory Committee, United States Commission on Civil Rights (2020 to present)

Board Member, Lantos Foundation for Human Rights and Justice (2008-2017)

Secretary, Labor and Employment Section, American Bar Association (2011-12)

Seattle City Council Advisory Panel on Police Accountability (2007 – 2008)

Seattle City Council Panel on WTO Operations (2000)

Commission on Law and Social Action, American Jewish Congress, 1987-1994.

Chair, Committee on Consumer Affairs, Association of the Bar of City of New York, 1978-79

Member, Committee on State Legislation, Association of the Bar of the City of New York, 1975-1978.

Chair, Committee on Student Rights and Responsibilities, Young Lawyers Section of the American Bar Association, 1970-71.

Articles and Book Review Editor, Yale Law Journal 1967-68.

Legal Publications

Honest Belief and Proof of Unlawful Motive, --- Buffalo Law Review --- (2023)

Preface, FASD: A Guide for Forensic Mental Health Assessment (with Kathryn Kelly) (N.N. Brown, Ed. 2021)

“Review of Labor and Employment Decision for the United States Supreme Court’s 2010-2011 Term,” 27 ABA J. of Labor & Employment Law 329-363 (2012)

- "Employers" chapter in Lindemann and Grossman, eds., Employment Discrimination Law (4th ed. 2007)
- "Righting Wrongs Against Immigrant Workers", Trial, March 2003
- "Some of Them Still Don't Get It: Hostile Work Environment Litigation In the Lower Courts", 1999 University of Chicago Legal Forum 277.
- "Statutory Misinterpretations: A Legal Autopsy" 68 Notre Dame L. Rev. 1095 (1993).
- "New White Rights: The Transformation of Affirmative Action Jurisprudence," in R. Licht, ed., Old Rights and New (1993).
- "A Monell Update: Clarity, Conflict and Complications" in G. Pratt and M. Schwartz, ed., Section 1983 Civil Rights Litigation and Attorney's Fees, 1990, v.2, pp. 53-118.
- "'Libelous' Petitions for Redress of Grievances – Bad Historiography Makes Worse Law," 74 Iowa L.Rev. 303 (1989).
- "Judges Against Juries -- Appellate Review of Federal Civil Jury Verdicts," 1989 Wis. L.Rev. 237 (1989), reprinted in S. Saltzman and B. Wolvovitz, eds. Civil Rights Litigation and Attorney Fees Annual Handbook, v. 8, p. 333 (1992).
- "Becket at the Bar -- The Conflicting Obligations of the Solicitor General," 21 Loyola L.Rev. 1101 (1988).
- "The Varieties of Numerical Remedies," 39 Stan. L.Rev. 851 (1987).
- "The Capital Punishment Conundrum," 84 Mich. L.Rev. 715 (1986).
- "Municipal Liability: From Monell to Tuttle to Pembaur" in J. Lobel, ed., Civil Rights Litigation and Attorney Fees Annual Handbook. v.2. pp. 27-48 (1986).
- "Unreasonable Searches and Seizures of Papers," 71 Va. L.Rev. 869 (1985).
- "Affirmative Action and the Legislative History of the Fourteenth Amendment," 71 Va. L.Rev. 753 (1985).
- "The Supreme Court and Affirmative Action: An Exercise in Judicial Restraint," New Perspectives, Winter, 1985.
- "The Parliament of Wonders," 84 Col. L.Rev. 1665 (1984).

"Taking Witherspoon Seriously: The Search for Death-Qualified Jurors," 62 Texas L.Rev. 977 (1984).

"Perpetuation of Past Discrimination," 96 Harv. L.Rev. 828 (1983).

"Two Categories of Discriminatory Intent," 17 Harv. Civ. Rts. Civ. Lib. L.Rev. 31 (1982).

"Civil Rights Litigation After Monell," 79 Col. L.Rev. 213 (1979)

"Legal Ethics and the Government Lawyer," 32 Record of The Association of the Bar of the City of New York 649 (1977).

"The Myth of Legal Ethics," 84 A.B.A.J. 202 (1978)

"The Wages of Virtue: Are Federal Judges Overpaid?" Juris Doctor, Spring 1973

"Consumer Legislation and the Poor," 76 Yale L.J. 745 (1967).

Other Publications:

"New Regime Has To Deal With Past Abuses," Seattle Post-Intelligencer, January 24, 2009

"Sarah Palin at the Controls", Seattle Post-Intelligencer, October 2, 2008

"Report Wages War on the War on Terror", Seattle Post-Intelligencer, June 6, 2006

"Individual Accounts Could Reduce Shortfall", Seattle Post-Intelligencer, April 8, 2005

"The Problem With Denying Felons the Right to Vote", Seattle Times, Feb. 8, 2005

"A Tale of Two States", Seattle Post-Intelligencer, June 10, 2001

"Reagan Court Nominee A 'Walking Amendment,'" Memphis Tennessean, August 30, 1987.

"Injudicious Planning," The New Journal, October 16, 1987.

"Bork Defeat Finally Ends Right Wing Threat to Court," New Haven Register, October 26, 1987.

Supreme Court Litigation:
Counsel for a Party:

Gonzalez v. Google, --- S.Ct. --- (2023) (meaning of section 230 of the Communications Decency Act)

Twitter v. Taamneh, --- S. Ct. --- (2023) (scope of aiding and abetting provision of the Anti Terrorism Act)

County of Los Angeles v. Mendez, 137 S.Ct. 1539 (2017) (excessive force)

Tyson Foods, Inc. v. Bouaphakeo, 136 S.Ct. 1036 (2016) (use of statistical evidence in class actions)

Alabama Legislative Black Caucus v. Alabama, 135 S.Ct. 1257 (2015) (constitutionality of race-based packing of minority districts)

Integrity Staffing v. Busk, 135 S.Ct. 513 (2014) (overtime claims under the Fair Labor Standards Act)

United States v. Wong, 135 S.Ct. 1625 (2015)(whether the statute of limitations for the Federal Tort Claims Act is jurisdictional)

Lawson v. FMR LLC, 134 S.Ct. 1158 (2013)(retaliation provision of Sarbanes-Oxley Act)

Sandifer v. U.S.Steel, 134 S.Ct. 870 (2013) (meaning of “changing clothes” in Fair Labor Standards Act)

Kloeckner v. Solis, 133 S.Ct. 596 (2012) (court with jurisdiction over “mixed cases” of federal employee alleging unlawful discrimination)

Borough of Duryea v. Guarnieri, 131 S.Ct. 2488 (2011)(scope of the First Amendment Petition Clause)

Thompson v. North American Stainless, 131 S.Ct. 863 (2011)(legality under Title VII of firing fiancé in retaliation for protected activity of employee)

Staub v. Proctor Hospital, 131 S.Ct. 1186 (2011)(employer liability under USERRA for violation involving several officials)

Kasten v. Saint-Gobain Performance Plastics Corp., 131 S.Ct. 1325 (2011)(whether anti-retaliation provision of the FLSA applies to oral complaints)

Gross v. FBL Financial Group, Inc., 129 S.Ct. 2343 (2009) (mixed-motive instructions in case under the Age Discrimination in Employment Act)

Crawford v. Metropolitan Government of Nashville, Etc., (No. 06-1595), 129 S.Ct. 846 (2009)(scope of anti-retaliation protection of Title VII)

CBOCS v. Humphries 128 S. Ct. 1951(applicability of section 1981 to retaliation claims)

Sprint v. Mendelsohn, 128 S. Ct. 1140 (2008) (types of evidence admissible to prove employment discrimination)

Parents Involved with Community Schools v. Seattle School District No. 1, 127 S. Ct. 2738 (2007) (constitutionality of affirmative action in the assignment of high school students)

Burlington Northern R.R. v. White 548 U.S. 53 (2006) (types of retaliatory actions forbidden by Title VII)

Arbaugh v. Y & H Corp., 546 U.S. 500 (2006)(whether 15 employee requirement for coverage by Title VII is jurisdictional)

Ash v. Tyson's Food, 546 U.S. 454 (2006)(use of evidence of comparative qualifications to prove discrimination in promotions)

Domino's Pizza v. McDonald, 546 U.S. 470 1246 (2006) (whether owner-operator of minority owned business can maintain a personal action for discrimination against the corporation)

Commissioner v. Banaitis, 543 U.S. 426 (2005)(tax treatment of contingent attorneys fees)

Johnson v. California, 545 U.S. 162 (2005)(peremptory challenges under *Batson*)

Aetna Health, Inc., v. Davila, 542 U.S. 426 (2005) (preemption of state malpractice claims by ERISA)

Breuer v. Jim's Concrete of Brevard, 538 U.S. 691 (2003) (removal of FLSA claims)

Desert Palace v. Costa, 539 U.S. 90 (2003) (mixed-motive instruction in Title VII case)

Black and Decker Disability Plan v. Nord, 538 U.S. 822 (2003) (ERISA)

Gisbrecht v. Barnhart, 535 U.S. 789 (2002) (counsel fees in Social Security cases)

Ragsdale v. Wolverine Worldwide, 535 U.S. 81 (2002)(validity of Department of Labor regulation under Family and Medical Leave Act)

Raygor v. Regents of University of Minnesota, 534 U.S. 533 (2002)(constitutionality of 28 U.S.C. §1367 (d))

US Airways v. Barnett, 535 U.S. 391 (2002) (relation of ADA and seniority rules)

Edelman v. Lynchburg College, 535 U.S. 106 (2002)(validity of 29 C.F.R. § 1601.12(b))

Pollard v. DuPont, 532 U.S. 843 (2001) (applicability of Title VII cap on compensatory damages to front pay)

Alexander v. Sandoval, 532 U.S. 275 (2001) (existence of implied cause of action to enforce Title VI regulations)

Troxel v. Granville, 530 U.S. 57 (2000) (constitutionality of grandparent visitation statutes)

Reeves v. Sanderson Plumbing, 530 U.S. 133 (2000) (age discrimination)

Kolstad v. American Dental Ass'n, 527 U.S. 526 (1999) (punitive damages under Title VII)

Burlington Industries, Inc. v. Ellerth, 524 U.S. 742 (1998) (sexual harassment)

Farragher v. City of Boca Raton, 524 U.S. 775 (1998) (sexual harassment)

Oncale v. Sundowner Offshore Oil Co., 523 U.S. 75 (1998) (sexual harassment)

Township Board of Education of Piscataway v. Taxman, 522 U.S. 1010 (1997) (affirmative action)

Bogan v. Scott-Harris, 523 U.S. 44 (1998)(legislative immunity)

Johnson v. Fankell, 520 U.S. 911 (1997) (qualified immunity)

Robinson v. Shell Oil Co., 519 U.S. 337 (1997) (scope of Title VII anti-retaliation provision)

United States v. Armstrong, 517 U.S. 456 (1996) (selective prosecution)

McKennon v. The Nashville Banner Co. 513 U.S. 352 (1995) (after-acquired evidence under Title VII)

Landgraf v. USI Film Products, 511 U.S. 244 (1994) (retroactivity of 1991 Civil Rights Act)

Rivers v. Roadway Express, 511 U.S. 298 (1994) (retroactivity of 1991 Civil Rights Act)

Patterson v. McLean Credit Union, 491 U.S. 164 (1989) (racial discrimination in employment)

Harbison-Walker Refractories v. Briecck, 498 U.S. 226 (1989) (age discrimination in employment)

St. Louis v. Praprotnik, 485 U.S. 112 (1988) (municipal liability for constitutional violations)

Bowen v. Gilliard, 483 U.S. 587 (1987) (welfare rights).

St. Francis College v. Al-Khazraji, 481 U.S. 604 (1987)(applicability of section 1981 to discrimination in employment against Arabs)

City of Springfield v. Kibbe, 480 U.S. 257 (1987) (municipal liability for constitutional violations)

University of Tennessee v. Elliott, 478 U.S. 788 (1986) (exhaustion of administrative remedies)

Thornburg v. Gingles, 478 U.S. 30 (1986) (voting rights)

Bazemore v. Friday, 478 U.S. 386 (1986) (racial segregation; racial discrimination in employment)

Atascadero State Hospital v. Scanlon, 473 U.S. 234 (1985) (Eleventh Amendment)

City of Oklahoma City v. Tuttle, 471 U.S. 808 (1985) (municipal liability for constitutional violations)

Anderson v. City of Bessemer City, 470 U.S. 564 (1985) (clear error under Rule 52, Federal Rules of Civil Procedure).

NAACP v. Hampton County Board of Elections, 470 U.S. 166 (1985)(voting rights)

Brandon v. Holt, 469 U.S. 464 (1985) (substitution of parties under Rule 15, Federal Rules of Civil Procedure)

Alexander v. Choate, 469 U.S. 287 (1985) (discrimination on the basis of disability)

Memphis Fire Dept. v. Stotts, 467 U.S. 561 (1984) (affirmative action)

Cooper v. Federal Reserve Board, 467 U.S. 867 (1984) (preclusive effect of decision under Rule 23, Federal Rules of Civil Procedure)

Consolidated Rail Corporation v. Darrone, 465 U.S. 624 (1984) (discrimination on the basis of disability)

City of Mobile v. Bolden, 446 U.S. 55 (1980) (voting rights)

Williams v. Brown, 446 U.S. 236 (1980) (voting rights)

Furnco Construction Co. v. Waters, 438 U.S. 567 (1978) (racial discrimination in employment)

Hutto v. Finney, 437 U.S. 678 (1978) (Eighth Amendment; counsel fees)

Monell v. Department of Social Services, 436 U.S. 658 (1978) (municipal liability for constitutional violations)

United Jewish Organizations of Williamsburgh v. Carey, 430 U.S. 144 (1976) (voting rights)

Fitzpatrick v. Bitzer, 427 U.S. 445 (1976) (Eleventh Amendment)

Salone v. United States, 426 U.S. 917 (1976) (discrimination in employment)

Wallace v. House, 425 U.S. 947 (1976) (voting rights)

Brown v. General Services Administration, 425 U.S. 820 (1976) (racial discrimination in employment)

Beer v. United States, 425 U.S. 130 (1976) (voting rights)

East Carroll Parish School Board v. Marshall, 424 U.S. 636 (1976) (voting rights)

Place v. Weinberger, 419 U.S. 1040, 421 U.S. 906, 426 U.S. 932 (1976) (racial discrimination in employment)

Commonwealth of Virginia v. United States, 420 U.S. 901 (1975) (voting rights)

New York v. United States, 419 U.S. 888 (1974) (voting rights)

Bradley v. School Board of the City of Richmond, 416 U.S. 476 (1974) (counsel fees)

Curtis v. Loether, 415 U.S. 189 (1974) (Seventh Amendment)

NAACP v. New York, 413 U.S. 345 (1973) (voting rights)

Northcross v. Board of Education of the Memphis City Schools, 412 U.S. 427 (1973)
(counsel fees)

Mourning v. Family Publications Service, 411 U.S. 356 (1973) (Truth in Lending)

Amicus Briefs:

Attorney General of Florida v. NetChoice, -- S.Ct. --- (2023) (validity of Florida Law limiting ability of websites to remove offensive materials)

Green v. Brennan, 136 S.Ct. 1769 (2016) (statute of limitations in constructive discharge case)

Hosanna-Tabor Evangelical Lutheran Church v. EEOC, 132 S.Ct. 694 (2012)(constitutionality of applying Title VII to employees of religious organizations)

National Passenger R.R. Corp. v. Morgan, 536 U.S. 101 (2002)(continuing violations under Title VII)

Circuit City Stores, Inc. v. Adams, 532 U.S. 105 (2001)(mandatory arbitration)

Romer v. Davis, 517 U.S. 620 (1996)(constitutionality of anti-gay rights referendum)

Dunlap-McCuller v. Reise Organization, 510 U.S. 908 (1993) (Seventh Amendment)

Harris v. Forklift Systems, Inc., 510 U.S. 17 (1993) (sexual harassment)

Wisconsin v. Mitchell, 508 U.S. 476 (1993) (First Amendment)

Bailes v. United States, 503 U.S. 1001 (1992) (retroactivity of legislation)

Bray v. Alexander Women's Health Clinic, 506 U.S. 263 (1993) (applicability of section 1985 to obstruction of abortion clinics)

Edmondson v. Leesville Concrete Co., 500 U.S. 614 (1991) (peremptory challenges)

South Carolina v. Gathers, 490 U.S. 805 (1989) (capital punishment)

Jett v. Dallas Independent School District, 491 U.S. 701 (1989)(municipal liability for constitutional violations)

Sheet Metal Workers v. EEOC, 478 U.S. 421 (1985) (affirmative action)

Firefighters v. Cleveland, 478 U.S. 501 (1986) (affirmative action)

Wygant v. Jackson Board of Education, 476 U.S. 267 (1986) (affirmative action)

Boston Firefighters Local 718 v. Boston Chapter, NAACP, 461 U.S. 477 (1983) (affirmative action)

Bob Jones University v. United States, 461 U.S. 574 (1983) (tax exemption for discriminatory private schools)

Patsy v. Board of Regents, 457 U.S. 496 (1982) (exhaustion of administrative remedies)

Minnick v. California Department of Corrections, 452 U.S. 105 (1981) (affirmative action)

N.L.R.B. v. Retail Store Service Employees Union, 447 U.S. 607 (1980) (First Amendment)

Fullilove v. Klutznick, 448 U.S. 448 (1980) (constitutionality of set-aside program)

County of Los Angeles v. Davis, 440 U.S. 625 (1979) (affirmative action)

University of California Regents v. Bakke, 438 U.S. 265 (1978)(affirmative action)

Hazelwood School District v. United States, 433 U.S. 299 (1977)(racial discrimination in employment)

East Texas Motor Freight v. Rodriguez, 431 U.S. 395 (1977) (Rule 23, Federal Rules of Civil Procedure)

McDonald v. Santa Fe Transportation Co., 427 U.S. 273 (1976)(racial discrimination in employment).

Edelman v. Jordan, 415 U.S. 651 (1974) (Eleventh Amendment)