

Gregory C. Sisk

Laghi Distinguished Chair in Law
University of St. Thomas School of Law (Minneapolis)
MSL 400, 1000 LaSalle Ave
Minneapolis, MN 55403-2005
651-962-4923
gcsisk@stthomas.edu
<http://personal.stthomas.edu/GCSISK/sisk.html>

Academic Positions

- **Pio Cardinal Laghi Distinguished Chair in Law, University of St. Thomas School of Law**, Minneapolis, Minnesota (on faculty since 2003; named Orestes A. Brownson Professor in 2007; invested as Laghi Distinguished Chair in 2011).

John Ireland Teacher-Scholar for 2014-15 (two faculty honored by the University of St. Thomas each academic year).

Dean's Award for Outstanding Teaching (2018); Dean's Award for Outstanding Scholarship (2010).

Courses Taught: Civil Procedure; Professional Responsibility; Litigation With the Federal Government; Appellate Clinic; Religion in Public Life (Rome Summer Program, 2007).

Faculty Leadership: Chair, University Faculty Senate (2016-17); Chair, University Faculty Affairs Committee (2012-13); Chair, Self Study Committee for ABA Visit (2014-15); Chair, Law School Faculty Appointments Committee (2010-20); Chair, Law School Promotion and Tenure Committee (2003-06).

Editor, University of St. Thomas Legal Studies Research Paper Series, Social Science Research Network, at <http://www.ssrn.com/link/st-thomas-legal-studies.html> (2006-present).

- **Richard M. & Anita Calkins Distinguished Professor of Law, Drake University Law School**, Des Moines, Iowa (1999-2003). Assistant Professor of Law (1991-1994). Associate Professor of Law (1994-1997). Professor of Law (1997-2003). Director: Certification Program in Litigation and Dispute Resolution

Faculty Advisor: Moot Court Program, 1991-2001 (Coach to National Moot Court appellate advocacy team, which won national championship in 2001 and finished second in nation in 1998, and which won regional competition seven times in ten years).

- **Adjunct Professor, University of Washington School of Law** (Legal Drafting), Seattle, Washington (1990).

Awards

- Law and Society Association Scholarship Award: Law and Society Association Article Prize (1999) — for “Charting the Influence of the Judicial Mind: An Empirical Study of Judicial Reasoning.”

Publications

Books

- Legal Ethics, Professional Responsibility, and the Legal Profession (Hornbook) (West Academic Press, 2019)
- Litigation With the Federal Government (Hornbook) (West Academic Press, 2016)
- Litigation With the Federal Government: Cases and Materials (with Teacher’s Manual) (Foundation Press, 2000) (2d ed., 2008) (2018 Update)
- Lawyer and Judicial Ethics: Iowa Practice (with Mark S. Cady, Chief Justice, Iowa Supreme Court) (Thomson-Reuters, 2021)
- Marital Privilege (A Novel) (North Star Press, 2014)

Journal and Law Review Articles

- Recovering the Tort Remedy for Federal Official Wrongdoing, 96 Notre Dame Law Review 1789 (2021)
- Measuring Law Faculty Scholarly Impact by Citations: Reliable and Valid for Collective Faculty Ranking, 60 Jurimetrics 41 (2020)
- Inputs and Outputs on Appeal: An Empirical Study of Briefs (with Adam Samaha as lead and Michael Heise), 17 Journal of Empirical Legal Studies 519 (2020)
- Holding the Federal Government Accountable for Sexual Assault, 104 Iowa Law Review 731 (2019)
- The Peculiar Obstacles to Justice Facing Federal Employees Who Survive Sexual Violence, 2019 University of Illinois Law Review 269
- Reading the Prisoner's Letter: Attorney-Client Confidentiality in Inmate Correspondence, 109 Journal of Criminal Law & Criminology 559 (2019)
- "The More Things Change, The More They Remain the Same:" Lawyer Ethics in the 21st Century, St. Mary's Journal of Legal Malpractice and Ethics (forthcoming 2019)
- Judicial Review of Personal Injury Claims by Federal Civilian Employees: Navigating Between the Shoals of FECA and the Crest of the FTCA, 51 Tort Trial & Insurance Practice Law Journal 893 (2016)
- "Too Many Notes"? An Empirical Study of Advocacy in Federal Appeals, 12 Journal of Empirical Legal Studies 578 (2015)
- The Legal Ethics of Real Evidence: Of Child Porn on the Choirmaster's Computer and Bloody Knives Under the Stairs, 89 Washington Law Review 819 (2014)
- Twilight for the Strict Construction of Waivers of Federal Sovereign Immunity, 92 North Carolina Law Review 1245 (2014)
- Lawyer Advertising in Iowa After 2012, 62 Drake Law Review 549 (2014) (with Ellen Yee)
- Muslims and Religious Liberty in the Era of 9/11: Empirical Evidence From the Federal Courts, 98 Iowa Law Review 231 (2012) (with Michael Heise)

- *Free Exercise of Religion Before the Bench: Empirical Evidence From the Federal Courts*, 88 Notre Dame Law Review 1371 (2013) (with Michael Heise)
- *The Jurisdiction of the Court of Federal Claims and Forum-Shopping in Money Claims Against the Federal Government*, 88 Indiana Law Journal 83 (2012)
- *Religion, Schools, and Judicial Decisionmaking: An Empirical Perspective*, 79 University of Chicago Law Review 187 (2012) (with Michael Heise)
- *Ideology “All the Way Down”? An Empirical Study of Establishment Clause Decisions in the Federal Courts*, 110 Michigan Law Review 1201 (2012) (with Michael Heise)
- *Foreword: Official Wrongdoing and the Civil Liability of the Federal Government and Officers*, 8 University of St. Thomas Law Journal 295 (symposium) (2012)
- *The Inevitability of Federal Sovereign Immunity*, 55 Villanova Law Review 899 (2010) (Norman J. Shachoy Symposium)
- *A Ticking Time Bomb? University Data Privacy Policies and Attorney-Client Confidentiality in Law School Settings*, 2010 Utah Law Review 1277
- *Lifting the Blindfold From Lady Justice: Allowing Judges to See the Structure in the Judicial Code*, 62 Florida Law Review 457 (2010)
- *The Dynamic Attorney-Client Privilege*, 23 Georgetown Journal of Legal Ethics 201 (2010) (with Pamela J. Abbate) — Cited in *Gillard v. AIG Ins. Co.*, 15 A.3d 44, 58 (Pa. 2011); *Harington v. Freedom of Information Comm’n*, (Ct. 2016).
- *Returning to the PruneYard: The Unconstitutionality of State-Sanctioned Trespass in the Name of Speech*, 32 Harvard Journal of Law & Public Policy 389 (2009)
- *The Continuing Drift of Federal Sovereign Immunity Jurisprudence*, 50 William & Mary Law Review 517 (2008) — Cited in *Barnes v. United States*, 776 F.3d 1134, 1144 (10th Cir. 2015)
- *The Quantitative Moment and the Qualitative Opportunity: Legal Studies of Judicial Decisionmaking* (Book Review), 93 Cornell Law Review 873 (2008)

- *Uprooting the Pruneyard*, 38 Rutgers Law Journal 1145 (Annual Issue on State Constitutional Law) (2008)
- *Change and Continuity in Attorney-Client Confidentiality: The New Iowa Rules of Professional Conduct*, 55 Drake Law Review 347 (2007)
- *John Paul II: The Quintessential Religious Witness in the Public Square*, 45 Journal of Catholic Legal Studies 241 (2007)
- *A Primer on the Doctrine of Federal Sovereign Immunity*, 58 Oklahoma Law Review 439 (2006)
- *How Traditional and Minority Religions Fare in the Courts: Empirical Evidence from Religious Liberty Cases*, 76 University of Colorado Law Review 1021 (2005) (symposium essay)
- *The Willful Judging of Harry Blackmun*, 70 Missouri Law Review 1049 (2005) (symposium essay)
- *A Primer on Civil Discovery Against the Federal Government*, 52 The Federal Lawyer 28 (June, 2005)
- *Judges and Ideology: Public and Academic Debates About Statistical Measures* (with Michael Heise), 99 Northwestern University Law Review 743 (2005)
- *Signaling and Precedent in Federal District Court Opinions* (with Andrew P. Morriss and Michael Heise), 13 Supreme Court Economic Review 63 (2005)
- *Abortion, Bishops, Eucharist, and Politicians: A Question of Communion* (with Charles J. Reid, Jr.), 43 Catholic Lawyer 255 (2004)
- *Searching for the Soul of Judicial Decisionmaking: An Empirical Study of Religious Freedom Decisions* (with Michael Heise and Andrew P. Morriss), 65 Ohio State Law Journal 491 (2004)
- *Yesterday and Today: Of Indians, Breach of Trust, Money, and Sovereign Immunity*, 39 Tulsa Law Review 313 (2004) (symposium on Indian Trust Doctrine) — Cited in *Navajo Nation v. United States*, 501 F.3d 1327, 1334 (Fed. Cir. 2007); *Skokomish Indian Tribe v. United States*, 410 F.3d 506, 511 n.3 (9th Cir. 2005); *Rosebud Sioux Tribe v. United States*, 75 Fed. Cl. 15, 26. n.10 (Fed. Cl. 2007); *Wolfchild v. United States*, 62 Fed. Cl. 521, 550 n.19 (Fed. Cl. 2004)
- *The Trial Courts of the Federal Circuit: Diversity by Design*, 13 Federal Circuit Bar Journal 241 (2004) — Cited in *Former Employees of Quality*

Fabricating, Inc. v. U.S. Secretary of Labor, 448 F.3d 1351, 1355 (Fed. Cir. 2006)

- *The Tapestry Unravels: Statutory Waivers of Sovereign Immunity and Money Claims Against the United States*, 71 *George Washington Law Review* 602 (2003) — Cited in *Suburban Mortg. Associates, Inc. v. U.S. Dept. of Housing and Urban Development*, 480 F.3d 1116, 1123 n.12 (Fed. Cir. 2007); *District of Columbia v. United States*, 67 Fed. Cl. 292, 305 (Fed. Cl. 2005)
- *Suspending the Pardon Power During the Twilight of a Presidential Term*, 67 *Missouri Law Review* 13 (2002)
- *Above the Rules: A Response to Epstein and King*, 69 *University of Chicago Law Review* 135 (2002) (with Frank Cross and Michael Heise)
- *Judges Are Human, Too*, 83 *Judicature* 178 (2000)
- *Teaching Litigation With the Federal Government*, 49 *Journal of Legal Education* 275 (1999)
- *Iowa's Legal Ethics Rules—It's Time to Join the Crowd*, 47 *Drake Law Review* 279 (1999) — Cited in *Sorci v. Iowa Dist. Court for Polk County*, 671 N.W.2d 482, 494 (Iowa 2003)
- *Charting the Influences on the Judicial Mind: An Empirical Study of Judicial Reasoning*, 73 *New York University Law Review* 1377 (1998) (with Michael Heise and Andrew P. Morriss) — Awarded Law and Society Association Best Article Prize (1999)
- *Stating the Obvious: Protecting Religion for Religion's Sake*, 47 *Drake Law Review* 45 (1998) (Symposium on *The Role of Freedoms*)
- *The Sun Sets on Federal Common Law: Corporate Successor Liability Under CERCLA After O'Melveny & Myers*, 16 *Virginia Environmental Law Journal* 505 (1997) (with Jerry L. Anderson)
- *The Balkanization of Appellate Justice: The Proliferation of Local Rules in the Federal Circuits*, 68 *University of Colorado Law Review* 1 (1997)
- *The Moral Incompetence of the Judiciary*, *First Things* (November, 1995)
- *The Essentials of the Equal Access to Justice Act: Court Awards of Attorney's Fees for Unreasonable Government Conduct (Part Two)*, 56 *Louisiana Law Review* 1 (1995) — Cited in *Role Models America, Inc. v. Brownlee*, 353 F.3d 962, 969 (D.C. Cir. 2004); *Maritime Management, Inc. v. United States*, 242 F.3d 1326, 1332 n.8 (11th Cir. 2001); *United*

States v. Real Property, 190 F.3d 977, 982 (9th Cir. 1999); *Morgan v. Perry*, 142 F.3d 670, 685 n.28 (3rd Cir. 1998), *cert. denied*, 525 U.S. 1070 (1999); *F.J. Vollmer Co. v. Magaw*, 102 F.3d 591 (D.C. Cir. 1996)

- *The Essentials of the Equal Access to Justice Act: Court Awards of Attorney's Fees for Unreasonable Government Conduct (Part One)*, 55 Louisiana Law Review 217 (1994) — Cited in *E.E.O.C. v. Great Steaks, Inc.*, 667 F.3d 510, 521-22 (4th Cir. 2012); *Broadbus v. U.S. Army Corps of Engineers*, 380 F.3d 162, 170 (4th Cir. 2004); *National Ass'n of Manufacturers v. Department of Labor*, 159 F.3d 597 (D.C. Cir. 1998), *cert. denied*, 522 U.S. 815, 906 (1997); *Kelly v. Secretary, U.S. Dept. of Housing and Urban Development*, 97 F.3d 118 (6th Cir. 1996); *Texas Food Indus. Ass'n v. United States Dept. of Agriculture*, 81 F.3d 578 (5th Cir. 1996)
- *Questioning Dialogue by Judicial Decree: A Different Theory of Constitutional Review and Moral Discourse*, 46 Rutgers Law Review 1691 (1994)
- *Comparative Fault and Common Sense*, 30 Gonzaga Law Review 29-51 (1994/95)
- *A Primer on Awards of Attorney's Fees Against the Federal Government*, 25 Arizona State Law Journal 733 (1994) — Cited in *Newmark v. Principi*, 283 F.3d 172, 178 (3d Cir. 2002)
- *Interpretation of the Statutory Modification of Joint and Several Liability: Resisting the Deconstruction of Tort Reform*, 16 University of Puget Sound Law Review 1 (1992) — Cited in *Tegman v. Accident & Medical Investigations, Inc.*, 75 P.3d 497, 504 (Wash. 2003); *Hiner v. Bridgestone/Firestone, Inc.*, 978 P.2d 505, 512 & n.71 (Wash. 1999); *Kottler v. State*, 963 P.2d 834 (Wash. 1998); *Juhl v. Airington*, 936 S.W.2d 640 (Tex. 1996); *Anderson v. City of Seattle*, 873 P.2d 489 (Wash. 1994)
- *Recovery for Emotional Distress Under the Warsaw Convention: The Elusive Search for the French Legal Meaning of Lésion Corporelle*, 25 Texas International Law Journal 127 (1990) — Cited in *Eastern Airlines, Inc. v. Floyd*, 499 U.S. 530 (1991); *Ehrlich v. American Airlines, Inc.*, 360 F.3d 366, 378 (2d Cir. 2004)
- *The Constitutional Validity of the Modification of Joint and Several Liability in the Washington Tort Reform Act of 1986*, 13 University of Puget Sound Law Review 433 (1990)
- *Interim Attorney's Fees Awards Against the Federal Government*, 68 North Carolina Law Review 117 (1989)

- *Two Proposals to Clarify the Tucker Act Jurisdiction of the Claims Court*, 37 Federal Bar News & Journal 47 (1990)
- *Tucker Act Appeals to the Federal Circuit*, 36 Federal Bar News & Journal 41 (1989)
- Comment, *Toward a Unified Reasonable Use Approach to Water Drainage in Washington*, 59 Washington Law Review 61 (1983) — Awarded Carkeek Prize of 1984 as outstanding student article; cited in *Currens v. Sleek*, 983 P.2d 626, 630, 631, 632 n.2 (Wash. 1999)

Selected Presentations and Lectures

- Panel Member, AALS Hot Topics: Ranking Legal Scholarship: U.S. News & World Report's New Metric and Its Effect on the Legal Academy, Association of American Law Schools, Washington, D.C. Jan. 3, 2020.
- Panel Member, Section on Law Libraries and Legal Information: Measuring Scholarly Impact: Are Citation Metrics the Right Fit for Law Schools?, Association of American Law Schools, Washington, D.C. Jan. 4, 2020.
- “The More Things Change, The More They Remain the Same:’ Lawyer Ethics in the 21st Century,” St. Mary’s University, San Antonio, Texas, February 1, 2019.
- “Holding the Federal Government Accountable for Sexual Assault,” University of Iowa, Sept. 21, 2017; University of St. Thomas, Oct. 3, 2017; University of Minnesota, Oct. 5, 2017; George Mason University, Oct. 17, 2017.
- “Revising the Court of Federal Claims Statute of Limitations,” United States Court of Federal Claims Judicial Conference, Washington, D.C., May 2, 2016.
- “Too Many Notes: An Empirical Study of Advocacy in Federal Appeals,” American Academy of Appellate Lawyers, Seattle, April 2, 2016.
- “Legal Ethics of Real Evidence,” University of Washington School of Law, Seattle, Washington, February 6, 2014; University of St. Thomas School of Law, Minneapolis, January 29, 2014; Marine Corps Defense Services Organization, San Diego, February 6, 2015.

- “Legal Ethics of Real Evidence,” University of Washington School of Law, Seattle, Washington, February 6, 2014; University of St. Thomas School of Law, Minneapolis, January 29, 2014; Marine Corps Defense Services Organization, San Diego, February 6, 2015.
- “Muslims and Religious Liberty in the Era of 9/11: Empirical Evidence From the Federal Courts,” Conference on Empirical Legal Studies, Northwestern University, November 5, 2011; Twin Cities Law & Society Conference, University of Minnesota, October 14, 2011; Law & Society Annual Meeting, San Francisco, June 4, 2011.
- “Balancing the Budget,” Murphy Institute Series on Hot Topics, Cool Talk, University of St. Thomas School of Law, December 9, 2011. Video: http://www.stthomas.edu/murphyinstitute/events/20111209_hotTopics_b.html
- “Indian Cases Before the Supreme Court,” United States Court of Federal Claims Judicial Conference, Berkeley, California, October 19, 2011.
- “Official Wrongdoing and the Civil Liability of the Federal Government and Officers,” Symposium, United of St. Thomas School of Law, Minneapolis, March 18, 2011.
- “The Inevitability of Federal Sovereign Immunity,” Norman J. Shachoy Symposium, Villanova Law School, PA, September 11, 2009.
- “Prosecutors and the Iowa Rules of Professional Conduct,” Iowa County Attorneys Spring Conference, Okoboji, Iowa, June 10, 2008.
- “*Bivens*, Government Officer Liability, and Responsibility for Constitutional Wrongdoing: An Overview,” Law & Society Ass’n Annual Meeting, Montreal, Canada, May 30, 2008.
- “Tribal Claims in the Court of Federal Claims: An Introduction to Jurisdiction and the Trust Doctrine,” United States Court of Federal Claims, Judicial Conference, Boulder, Colorado, November 10, 2007.
- “John Paul II: The Quintessential Religious Witness in the Public Square,” Symposium on the Jurisprudential Legacy of John Paul II, St. John’s University School of Law, Queens, New York, March 24, 2006.
- Government Lawyers and the New Iowa Rules of Professional Conduct: The Civil Side,” Continuing Legal Education Seminar for Government Practitioners, Iowa Attorney General’s Office, Des Moines, Iowa, October 21, 2005.

- “The Willful Judging of Harry Blackmun,” Symposium: Reflection on Judging Following the Release of the Blackmun Papers, University of Missouri-Columbia School of Law, Columbia, Missouri, February 25, 2005.
- “How Traditional and Minority Religions Fare in the Courts: Empirical Evidence from Religious Liberty Cases,” Twelfth Ira C. Rothgerber, Jr., Conference on “Conscience and the Free Exercise of Religion,” Byron R. White Center for the Study of American Constitutional Law, the Keller First Amendment Center, and the University of Colorado Law Review, Boulder, Colorado, January 28, 2005.
- “Turning Square Corners with the Government: Issues of Authority of Government Agents,” Court of Federal Claims Judicial Conference, Washington, D.C., November 8, 2004.
- “Searching for the Soul of Judicial Decisionmaking: An Empirical Study of Religious Freedom Decisions,” Law and Society Association, Chicago, Illinois, May 29, 2004.
- “Three Adventures in the New Proposed Iowa Rules of Professional Conduct,” Drake University General Practice Review, Des Moines, Iowa, December 11, 2003.
- “The Trial Courts of the Federal Circuit: Diversity by Design,” Fifth Bench and Bar Conference of the Federal Circuit Bar Association, Amelia Island, Florida, May 25, 2003.
- “The Tapestry Unravels: Statutory Waivers of Sovereign Immunity and Money Claims Against the United States,” Public Contract Law Section, American Bar Association, Scottsdale, Arizona, May 2, 2003; United States Court of Federal Claims, 20th Anniversary Conference, Co-Sponsored by George Washington University Law Review, Washington, D.C., October 3, 2002.
- “Increasing and Improving Empirical Research in the Law Schools: A Positive Approach,” Law and Society Association Annual Meeting, Vancouver, British Columbia, May 30, 2002.
- “The Transition to the Iowa Rules of Professional Conduct,” Young Lawyers Division, Iowa State Bar Association, October 19, 2001; Iowa Trial Lawyers Association, November 1, 2001; Federal Practice Section, Iowa State Bar Association, December 14, 2001; Bench-Bar Conference, Iowa State Bar Association, May 17, 2002.
- “Iowa’s Legal Ethics Rules—Why Iowa Should Adopt the Model Rules of Professional Conduct,” Richard M. & Anita Calkins Lecture, Des Moines,

Iowa, October 25, 1999; Polk County Bar Association, Des Moines, Iowa, October 29, 1999; Iowa State Trial Lawyers Association, Des Moines, Iowa, November 4, 1999; American Corporate Counsel Association, Des Moines, Iowa, December 17, 1999; United States Attorney's Office, Southern District of Iowa, Des Moines, Iowa, December 20, 1999.

- “Learning That Judges Are Human,” Iowa Judges School, Des Moines, Iowa, August 3, 1999.
- “Charting the Influences on the Judicial Mind: An Empirical Study of Judicial Reasoning,” Law and Society Association Annual Meeting, Chicago, Illinois, May 27, 1999; Law and Courts Section Panel, American Political Science Association Annual Meeting, Boston, Massachusetts, September 6, 1998.
- “Stating the Obvious: Protecting Religion for Religion’s Sake,” Symposium, Drake Constitutional Law Resource Center, Des Moines, Iowa, April 18, 1998.
- “The Vince Lombardi Doctrine v. The Superman Principle: The Tension Between the Duty of the Zealous Advocate and the Responsibilities of the Officer of the Court,” National Conference of Appellate Court Clerks, Des Moines, Iowa, August 7, 1996.
- “Placing Comparative Fault in Historical Context: An Evolutionary Change and a Return to First Principles,” and “Comparative Fault, Common Sense, and Constitutionality,” Washington State Superior Court Judges Conference, Blaine, Washington, April 20, 1994.
- “A Primer on Attorney’s Fees Awards Against the Federal Government,” Litigators Conference sponsored by the Texas Legal Services Center and the Gulf Coast Legal Foundation in Houston, Texas on October 15, 1993; Seminar sponsored by Legal Assistance of North Dakota, North Dakota State Bar Convention, Grand Forks, North Dakota, June 9, 1993.
- Keynote speaker on freedom of expression and intellectual diversity on the college campus, College Faculty Seminar, Buena Vista College, Storm Lake, Iowa, May 1, 1992.

Other Writings

- *The Supreme Court Recently Ended Federal Court Forum-Shopping for Government Money Matters*, National Law Journal, May 13, 2020

- Scholarly Impact of Law School Faculties in 2018: Updating the Leiter Score Ranking for the Top Third (with Nicole Catlin, Katherine Veenis, and Nicole Zeman), 15 U. St. Thomas L.J. 95 (2018)
- Judicial Impact of Law School Faculties (with Valerie Aggerbeck, Nick Farris, Megan McNevin, and Maria Pitner), available online at SSRN.
- Scholarly Impact of Law School Faculties in 2015: Updating the Leiter Score Ranking for the Top Third (with Valerie Aggerbeck, Nick Farris, Megan McNevin, and Maria Pitner), 12 U. St. Thomas L.J. 100 (2015)
- “Judicial Opinions”, in *American Governance* (Stephen L. Schechter, ed. Detroit: Macmillan, 2016)
- Scholarly Impact of Law School Faculties in 2012: Applying Leiter Scores to Rank the Top Third (with Valerie Aggerbeck, Debby Hackerson, and Mary Wells), 9 U. St. Thomas L.J. 838 (2013)
- Against Calling on Government to Shape Souls, St. Thomas Lawyer (Summer 2013)
- “Millbrook v. United States: When is the United States Liable Under the Federal Tort Claims Act for the Intentional Torts of Law Enforcement Officers?”, in PREVIEW of United States Supreme Court Cases (ABA, 2013)
- “Levin v. United States: Has the United States Waived Sovereign Immunity for Claims of Medical Battery Based on the Acts of Military Medical Personnel?”, in PREVIEW of United States Supreme Court Cases (ABA, 2013)
- “United States v. Bormes: Has the United States Waived Sovereign Immunity Through the Tucker Act for Damages Claims Under the Fair Credit Reporting Act?”, in PREVIEW of United States Supreme Court Cases (ABA, 2012)
- Scholarly Impact of Law School Faculties: Extending the Leiter Rankings to the Top 70, October, 2010 (with Valerie Aggerbeck, Debby Hackerson, and Mary Wells)
- The Classic Tension Between the “Zealous Advocate” and the “Officer of the Court,” Iowa Lawyer, November 2010
- Rules and Morality: What a Lawyer Must Do Versus What He/She Should Do, Iowa Lawyer, April 2009

- “United States v. Navajo Nation: When May a Tribe Seek Damages from the Government for Breach of Trust?”, in PREVIEW of United States Supreme Court Cases (ABA, 2008)
- “Private Property (Expression on)”, in Encyclopedia of the First Amendment (CQ Press, 2008)
- *Dangers of Crossing the Lines of Professionalism and Civility in the Name of Zealous Advocacy*, Iowa Lawyer, March 2008
- “Standing” and “Ripeness”, in The Encyclopedia of the United States Constitution (Facts on File, 2009)
- *Hear Catholic Voice on Marriage*, Des Moines Register, August 13, 2003 (with Monsignor Frank Bognanno, Teresa Stanton Collett, and Charles Reid Jr.) (guest editorial)
- *Court Plays Politics With Democracy*, Des Moines Register, July 28, 2003 (guest editorial)
- *President Follows His Duties and the Law*, Des Moines Register, March 14, 2003 (guest editorial)
- *Outrageous Trespass on Privacy*, Des Moines Register, December 11, 2002 (with Ben Stone) (guest editorial)
- *Using PowerPoint in Class and on the Web*, Jurist: The Law Professors’ Network <<http://jurist.law.pitt.edu/>> (November, 2002)
- *Protect Children, Forgive Priests*, Des Moines Register, June 7, 2002 (guest editorial)
- *Striking a Truce in D.M. Culture Wars*, Des Moines Register, July 28, 2001 (guest editorial)
- *Begging Your Pardon*, National Law Journal, April 16, 2001 (Podium Special)
- *Devise a Better Way to Count Votes*, Des Moines Register, December 18, 2000 (guest editorial)
- *Illegal Protests Harm a Democratic Community*, Des Moines Register, June 26, 2000 (guest editorial)
- *Treat Ill and Disabled With More Compassion*, Des Moines Register, April 20, 2000 (guest editorial) (with Rev. Msgr. Frank E. Bognanno)

- *Make Year 2000 a Time of Renewal*, Omaha World-Herald, October 31, 1999 (guest editorial)
- *Iowa's Legal Ethics Rules—It's Time to Join the Crowd*, Iowa Lawyer, May 1999 (cover story)
- *Uphold the Integrity of Our Legal System (Pro-Impeachment of President Clinton)*, Des Moines Register, November 12, 1998 (guest editorial)
- *Freedom of Speech at the Shopping Malls: Landowners Determine Use of Property*, Des Moines Register, March 20, 1998 (guest editorial)
- *Targeting Big Tobacco; Who's Next?*, Des Moines Register, September 24, 1997 (guest editorial)
- *The Balkanization of Appellate Justice*, Appellate Practice Journal and Update, Spring, 1997
- *Court Ruling is a Defeat for Presidency*, Des Moines Register, June 4, 1997 (guest editorial)
- *Rigid Approach to Formal Diversity*, Des Moines Register, March 20, 1997 (guest editorial)
- *Keep Drake as Marketplace of Ideas*, Des Moines Register, Dec. 13, 1991 (guest editorial)

Professional Positions

- **Head of Appellate Department, Karr Tuttle Campbell**, Seattle, Washington (1989-91).

Headed firm's appellate department; briefed and argued cases in the United States Court of Appeals for the Ninth Circuit, the Washington Supreme Court, and the Washington Court of Appeals.

- **Attorney, Appellate Staff, Civil Division, United States Department of Justice**, Washington, D.C. (1986-89).

Briefed and argued cases in ten circuits of the United States Courts of Appeals; participated in briefing of cases before the United States Supreme Court.

Meritorious Award (1988); Special Achievement Award (1987); Outstanding Performance Ratings (1988, 1989).

Drafted statute on interlocutory appellate review by U.S. Court of Appeals for the Federal Circuit of jurisdictional rulings by District Courts on motions to transfer to Court of Federal Claims, enacted by Congress in 1988 and codified as 28 U.S.C. § 1292(d)(4)(A).

- **Judicial Clerk to Judge Robert R. Beezer, United States Court of Appeals for the Ninth Circuit**, Seattle, Washington (1985-86).
- **Legislative Assistant to United States Senator Slade Gorton**, Washington, D.C. (1984-85).

Drafted legislation on federal assistance to the homeless; job training programs; and labor union organizing rights.

Bar Admissions and Professional Associations

Bar Admissions

- State of Minnesota (2015).
- State of Iowa (1992).

Member, Iowa Supreme Court Rules of Professional Conduct Monitoring Committee (2005-present).

Reporter, Iowa Supreme Court Drafting Committee for Iowa Rules of Professional Conduct, 2000-2005.

- State of Washington (1985) (inactive status).
- Supreme Court of the United States (1988).
- United States Courts of Appeals for the District of Columbia (1987), First (1989), Second (1987), Third (1986), Fourth (1988), Fifth (1987), Eighth (1988), Ninth (1986), Eleventh (1987), and Federal (1987) Circuits.

Professional Associations

- American Law Institute (Elected Member).
- Fellow, American Bar Foundation.
- Federal Practice Committee, United States District Court for the District of Minnesota (responsible for drafting local rules) (2012-2014).

- American Bar Association (Committee on Appellate Practice).
Reporter, “Local Rules — Effect on Quality of Justice,” Subcommittee to Study Local Rules of the Federal Courts of Appeals, Appellate Practice Committee, American Bar Association, 1993-94. (Report was submitted to the United States Judicial Conference as comment by the Section on Litigation on pending amendments to the Federal Rules of Appellate Procedure.)
- Iowa State Bar Association.
Received Award for Service “Above and Beyond” to the Association, 2001.
Counsel for Iowa State Bar Association in Brief to Iowa Supreme Court Concerning Proposed Changes in Rules Governing Admission Pro Hac Vice, 2000.
Committee to Study Model Rules of Professional Conduct (Proposing Adoption of Model Rules of Professional Conduct in Iowa), 1999.
- Advisory Council, United States Court of Federal Claims.
- Federal Bar Association.

Significant Appellate Litigation (Examples)

Supreme Court of the United States

- *Simmons v. Himmelreich*, 136 S. Ct. 1843 (2016) (author along with Professor James Pfander of Northwestern University of amicus curiae brief arguing that the so-called Judgment Bar statute should not be read to prevent an injured plaintiff from seeking a damages remedy against an individual federal employee in a constitutional tort case when a parallel Federal Tort Claims Act suit is dismissed on statutory exception grounds rather than on the merits of substantive tort liability) (Amicus Curiae Brief in pdf format)
- *United States v. Tohono O’odham Nation*, 131 S. Ct. 1723 (2011) (author of amicus curiae brief in support of neither party arguing that the Court of Federal Claims has exclusive authority in cases where the substance of the dispute is a claim for money and suggesting that the better answer to the problem of duplicative lawsuits in multiple courts is to transfer the district court case to the Court of Federal Claims to be

resolved in a single case) ([Amicus Curiae Brief in pdf format](#)) ([podcast on decision](#))

- *John R. Sand & Gravel Co. v. United States*, 128 S. Ct. 750 (2008) (whether the statute of limitations for claims in the Court of Federal Claims is a jurisdictional condition on the waiver of sovereign immunity) ([Petitioner's Brief in pdf format](#)) ([Petitioner's Reply Brief in pdf format](#))
- *Mistretta v. United States*, 488 U.S. 361 (1989) (member of team of Justice Department attorneys who briefed case) (upholding constitutionality of Sentencing Reform Act creating the Sentencing Commission to promulgate federal criminal sentencing guidelines)

United States Courts of Appeals

- *Harris v. Escamilla*, --- Fed.Appx. ---- (9th Cir. 2018) (successful appeal by Muslim prisoner from dismissal of constitutional religious liberty claims involving deliberate desecration of his Quran by a correctional officer) ([Opening Brief in pdf format](#)) ([Amicus Brief of Center for Islam and Religious Freedom, Islamic Society of North America, KARAMAH, and the Muslim Public Affairs Council](#)) ([Reply Brief](#))
- *Nordstrom v. Ryan*, 856 F.3d 1265 (9th Cir. 2017), 762 F.3d 903 (9th Cir. 2014), (two successful appeals by death row prisoner challenging policy of Arizona prisons allowing corrections officers to read confidential mail by prisoners to their lawyers) ([Opening Brief in pdf format](#)) ([Arizona Answering Brief](#)) ([Reply Brief in pdf format](#)) ([Amicus Brief of Ethics Bureau at Yale](#)) ([Amicus Brief of N.Y. Cty. Lawyers' Ass'n and Nat'l Ass'n of Criminal Defense Lawyers](#)) ([Amicus Brief of Equal Justice Initiative](#))
- *Atchison, Topeka & Santa Fe Railway Co. v. Brown & Bryant, Inc.*, 132 F.3d 1295 (9th Cir. 1997), *amended*, 159 F.3d 358 (9th Cir. 1998) (briefed and argued case) (suggesting that federal courts lack power to expand corporate successor liability under environmental law through federal common law, although declining to overturn earlier circuit precedent, and refusing to further extend federal common law rules; court noted: "Litigation often produces criticism for its participants. This case, however, was extraordinarily well briefed and argued by consummate professionals on both sides and we are grateful for that.") ([Brief in pdf format](#))
- *Allende v. Baker*, 891 F.2d 7 (1st Cir. 1989) (briefed and argued case) (holding that government's denial of visa to alien on foreign policy

grounds was not without substantial justification so as to subject government to award of attorney's fees)

- *In re Joint Eastern & Southern Districts Asbestos Litigation*, 891 F.2d 31 (2d Cir. 1989) (briefed and argued case) (holding that discretionary function exception, found implicit in the Suits in Admiralty Act based upon constitutional separation of powers, barred claims arising from exposure to asbestos on merchant marine ships operated by government during World War II)
- *Media Access Project v. Federal Communications Commission*, 883 F.2d 1063 (D.C. Cir. 1989) (briefed and argued case) (holding that facial challenge to agency regulations was not ripe for judicial review where the agency has discretion in application of the challenged regulations)
- *National Security Archive v. United States Department of Defense*, 880 F.2d 1381 (D.C. Cir. 1989), *cert. denied*, 494 U.S. 1029 (1990) (briefed and argued case) (holding that organization which makes Freedom of Information Act requests to produce sets of documents for sale qualifies as a representative of the news media was entitled to a fee preference on requests for government documents)
- *City of New York v. Baker*, 878 F.2d 507 (D.C. Cir. 1989), *rehearing denied with concurring opinion*, 888 F.2d 134 (D.C. Cir. 1989) (briefed and argued case) (holding that presidential proclamations barring Nicaraguan and Cuban aliens from entering the United States moots their challenges to visa denials, and reversing court order that a visa be issued to another alien)
- *American Federation of Government Employees, AFL-CIO, Local 2031 v. Federal Labor Relations Authority*, 878 F.2d 461 (D.C. Cir. 1989) (briefed and argued case) (holding federal employee's racially derogatory remarks about an agency manager not protected under the Federal Labor-Management Relations Statute)
- *United States v. Bolding*, 876 F.2d 21 (4th Cir. 1989) (briefed and argued case) (rejecting due process constitutional challenge to federal criminal sentencing guidelines)
- *Antolok v. United States*, 873 F.2d 369 (D.C. Cir. 1989) (briefed and argued case) (upholding international agreement and statute withdrawing jurisdiction from United States courts over claims alleging injuries from nuclear testing in the Marshall Islands and establishing and establishing compensation tribunal)
- *United States v. Frank*, 864 F.2d 992 (3d Cir. 1988), *cert. denied*, 490 U.S. 1095 (1989) (briefed and argued case) (ruling on constitutionality of

Sentencing Reform Act creating the Sentencing Commission to promulgate federal criminal sentencing guidelines)

- *Rosenfeld v. United States*, 859 F.2d 717 (9th Cir. 1988) (briefed and argued case) (holding government must pay interim attorney's fees in Freedom of Information Act litigation notwithstanding statute limiting payment from federal judgment fund to final judgments)
- *Gubiensio-Ortiz v. Kanahele*, 857 F.2d 1245 (9th Cir. 1988), *vacated sub nom. United States v. Chavez-Sanchez*, 488 U.S. 1036 (1989), *on remand*, 871 F.2d 104 (9th Cir. 1989) (briefed case) (ruling on constitutionality of Sentencing Reform Act creating the Sentencing Commission to promulgate federal criminal sentencing guidelines)
- *Wells v. United States*, 851 F.2d 1471 (D.C. Cir. 1988), *cert. denied*, 488 U.S. 1029 (1989) (briefed and argued case) (holding tort suit alleging negligent failure by Environmental Protection Agency to clean up pollution site was barred by the discretionary function exception to the Federal Tort Claims Act)
- *Wagner v. Director, Federal Emergency Management Agency*, 847 F.2d 515 (9th Cir. 1988) (briefed and argued case) (holding that the federal government may not be estopped from insisting that flood insurance claimants comply with procedural requirements and that landslide damages is not covered by flood insurance program)
- *Gordon v. United States*, 835 F.2d 96 (5th Cir.), *cert. denied*, 488 U.S. 825 (1988) (briefed and argued case) (holding admiralty action alleging injury from exposure to asbestos on merchant marine ships operated by government during World War II was barred by discretionary function exception)

State Courts

- *Planned Parenthood v. Iowa District Court*, Iowa Supreme Court, 2003 (appeal mooted) (authored amicus brief on behalf of Drake's Middleton Center for Child Rights regarding privacy objections to county attorney's subpoena to medical clinic for names of all women with positive pregnancy tests as part of criminal investigation into death of baby found abandoned at dump site) ([amicus brief available here in Word format](#))
- *City of West Des Moines v. Engler*, 641 N.W.2d 803 (Iowa 2002) (briefed and argued case) (holding that state constitutional free speech rights

does not apply on private property (a shopping center) to excuse trespass charges against protestors) (Brief in pdf format)

- *Colonial Imports, Inc. v. Carlton Northwest, Inc.*, 121 Wash. 2d 726, 853 P.2d 913 (1993) (briefed and argued case) (holding that duty to disclose, giving rise to a claim of negligent misrepresentation, does not arise outside of a special relationship between the parties)
- *Marshall v. Western Air Lines, Inc.*, 62 Wash. App. 251, 813 P.2d 1269 (1991) (briefed and argued case) (upholding grant of summary judgment against airline passenger with an inner ear injury allegedly caused by a sudden change in air pressure and holding that airline had no duty to warn passengers of dangers of ear damage associated with flying)
- *Berger v. Personal Products, Inc.*, 115 Wash. 2d 267, 797 P.2d 1148 (1990), *cert. denied*, 499 U.S. 961 (1991) (briefed case) (holding that state law tort claims for inadequate warnings about risk of contracting toxic shock syndrome associated with tampon use was preempted by federal statutes and regulations on tampon labeling)

Legal Education and Law School Activities

- University of Washington School of Law, Juris Doctor, 1984.
- Graduated First in the Class of 1984, with “Highest Honors in Law;” Voted “Honor Graduate” of 1984 by Law School Faculty.
- Order of the Coif.
- National Order of the Barristers.
- American Jurisprudence Awards in Constitutional Law, Civil Procedure, Real Property, Wills and Trusts, Personal Property Security.
- Washington Law Review – Managing Editor (1983-84), Editorial Staff (1982-83).
- Moot Court Honor Board – Board Chairman (1983-84).
- Philip C. Jessup International Law Moot Court Team (1983) – Third Place in Nation, First Place in Region, First Place Memorial (Brief) in Region.