

JAY D. WEXLER

Boston University School of Law • 765 Commonwealth Avenue
Boston, MA 02215
(617) 353-2789
jaywex@bu.edu

Academic Experience

Boston University School of Law

Professor of Law, September 2007-Present

Associate Professor, July 2001-September 2007

- Have taught classes in administrative law, American Indian law, environmental law, the first amendment, law and religion, legislation, natural resources law, and U.S. law for foreign students; received average student evaluations of 4.62 (out of 5) in JD classes since beginning teaching.
- Received the Michael Melton Award for Excellence in Teaching (2009).
- Served on the Law School's Career, Planning, Placement, and Clerkship Committee (chaired), Awards Committee (chaired), Admissions Committee, Promotion and Tenure Committee, Public Interest Committee, 2007 Conference Committee, Public Interest Alumni Loan Payment Working Group, and J.D. Program Committee. Served as faculty advisor for the Moot Court Program between 2002 and 2007. Faculty Advisor, American Constitution Society's Boston University Chapter, Environmental Law Society.
- Served on the University Promotions and Tenure Committee (2009-2011).
- Reviewed law and religion manuscripts and proposals for Oxford University Press, Aspen Press, the *Journal of Law and Religion*, *Educational Policy*, *Religion and Politics*, *Law and Society Review*, and the *Radical History Review*. Serve on the Advisory Boards of the American Constitution Society's Boston Lawyer's Chapter and the SSRN Natural Resources Law and Policy Journal.

Fulbright Lecturer, Jagiellonian University, Krakow, Poland. February-July 2008

Taught course in U.S. church-state law.

Visiting Professor, Lyon 3, Lyon, France. January-February 2008

Taught course in U.S. constitutional civil liberties.

Books

THE ADVENTURES OF ED TUTTLE, ASSOCIATE JUSTICE, AND OTHER STORIES (forthcoming Quid Pro Books 2012).

THE ODD CLAUSES: UNDERSTANDING THE CONSTITUTION THROUGH TEN OF ITS MOST CURIOUS PROVISIONS (Beacon Press 2011).

HOLY HULLABALOO: A ROAD TRIP TO THE BATTLEFIELDS OF THE CHURCH/STATE WARS (Beacon Press 2009).

Academic Articles, Essays, Book Chapters, and Reviews

I'm a Laycockian! (for the most part), 89 TEXAS LAW REVIEW 935-47 (2011) (invited contribution to book review symposium).

Judicial Minimalism and the Evolution Controversy: Further Thoughts on the "Is it Science?" Question, 4 ST. THOMAS JOURNAL OF LAW & POLICY 30-34 (2010) (invited contribution).

Justice Ginsburg's Footnotes, 43 NEW ENGLAND LAW REVIEW 857-867 (2010) (invited contribution).

Religion in Public Schools, in THE CHILD: AN ENCYCLOPEDIA COMPANION (University of Chicago Press 2009) (invited contribution).

What Should We Teach When We Teach About Religion? The Case for a Global Perspective, Conference Proceedings, "Religion and the Rule of Law in Southeast Asia: Continuing the Discussion" (Nov. 2-3, 2007) (in English and Vietnamese).

Protecting Religion Through Statute: The Mixed Case of the United States, THE REVIEW OF FAITH AND INTERNATIONAL AFFAIRS, Fall 2007, pp. 17-25.

From the Classroom to the Courtroom: Intelligent Design and the Constitution, in NOT IN OUR CLASSROOMS: WHY INTELLIGENT DESIGN IS WRONG FOR OUR SCHOOLS 83-104 (Beacon Press 2006) (invited contribution), reprinted in 3:2 *Evolution: Education and Outreach* 215-24 (2010) (peer reviewed).

Kitzmiller and the "Is it Science?" Question, 5 FIRST AMENDMENT LAW REVIEW 90-111 (2006) (invited contribution).

Too Much, Too Little: Religion in the Public Schools, 6 UNIVERSITY OF MARYLAND JOURNAL OF RACE, RELIGION, GENDER, AND CLASS 107-116 (2006) (invited contribution).

The Endorsement Court, 21 WASHINGTON UNIVERSITY JOURNAL OF LAW & POLICY 263-306 (2006) (invited contribution).

Intelligent Design and the First Amendment: A Response, 84 WASHINGTON UNIVERSITY LAW REVIEW 63-98 (2006).

The (Non)Uniqueness of Environmental Law, 74 GEORGE WASHINGTON LAW REVIEW 260-316 (2006).

The Scopes Trope, 93 GEORGETOWN LAW JOURNAL 1693-1721 (2005) (reviewing Larry Witham's WHERE DARWIN MEETS THE BIBLE: CREATIONISTS AND EVOLUTIONISTS IN AMERICA).

Parks as Gyms? Recreational Paradigms and Public Health in the National Parks, 30 AMERICAN JOURNAL OF LAW & MEDICINE 150-184 (2004) (invited contribution).

Darwin, Design, and Disestablishment: Teaching the Evolution Controversy in Public Schools, 56 VANDERBILT LAW REVIEW 751-855 (2003).

Framing the Public Square, 91 GEORGETOWN LAW JOURNAL 183-218 (2002) (reviewing Stephen Carter's GOD'S NAME IN VAIN: THE WRONGS AND RIGHTS OF RELIGION IN POLITICS).

Preparing for the Clothed Public Square: Teaching About Religion, Civic Education, and the Constitution, 43 WILLIAM & MARY LAW REVIEW 1159-1263 (2002).

Defending the Middle Way: Intermediate Scrutiny as Judicial Minimalism, 66 GEORGE WASHINGTON LAW REVIEW 298-352 (1998).

Risk in the Balance, 30 CONNECTICUT LAW REVIEW 225-255 (1997) (reviewing John Graham and Jonathan Baert Wiener's RISK VERSUS RISK: TRADEOFFS IN PROTECTING HEALTH AND THE ENVIRONMENT).

Note, *Of Pandas, People, and the First Amendment: The Constitutionality of Teaching Intelligent Design in the Public Schools*, 49 STANFORD LAW REVIEW 439-470 (1997).

Book Note, *Cleaning the Mess?*, 49 STANFORD LAW REVIEW 667-689 (1997) (reviewing Jesse Choper's SECURING RELIGIOUS LIBERTY).

Book Review of *"Why Things Bite Back: Technology and the Revenge of Unintended Consequences,"* 16 STANFORD ENVIRONMENTAL LAW JOURNAL 334-337 (1997).

Selected Short Pieces, Blog Posts, Humor, and Fiction

The First Ever (Maybe) Original Jurisdiction Standings, Journal of Legal Metrics (forthcoming 2012) (with David Hatton).

Law and Disorder, Boston Globe, September 18, 2011, at K4 (reviewing LEO KATZ, WHY THE LAW IS SO PERVERSE and WILLIAM J. STUNTZ, THE COLLAPSE OF AMERICAN CRIMINAL JUSTICE).

Eagle Party, 14 GREEN BAG 2D 181-189 (2011).

Can Having an Eagle Feather Get You Arrested?, Mental Floss, March/April 2011, at 18.

Woodsy the Owl Loses His Mojo, McSweeney's Internet Tendency (February 2, 2011).

Ogletree's Take on Gates Case Focuses on Racial Profiling, Boston Globe, July 16, 2010, at G14 (reviewing CHARLES OGLETREE, THE PRESUMPTION OF GUILT: THE ARREST OF HENRY LOUIS GATES AND RACE, CLASS, AND CRIME IN AMERICA).

Rebalancing Act, Boston Globe, March 28, 2010, at C6 (reviewing JEFF SHESOL, SUPREME POWER: FRANKLIN ROOSEVELT VS. THE SUPREME COURT).

"Under God" and the Religion Clauses, Beacon Broadside (March 25, 2010).

Henry Clay Will Solve Our Problems, McSweeney's Internet Tendency (January 21, 2010).

School Prayer and Senate Prayer are Not the Same, Washington Post/Newsweek's "On Faith" Blog (September 24, 2009).

The Court's Cross to Bear, Huffington Post (September 16, 2009).

The Confirmation Hearing of Sonia Sotomayor, if the Hearing Were Held in Front of the 1977 Kansas City Royals Instead of the Senate Judiciary Committee, McSweeney's Internet Tendency (July 13, 2009).

The Advisor, Monkeybicycle #6 (June 2009).

The Adventures of Ed Tuttle, Associate Justice, Barrelhouse #6 (July 2008).

The Sound of Silence, Supreme Court Style, Beacon Broadside (March 4, 2008).

Laugh Track II – Still Laughin!, 117 YALE L.J. POCKET PART 130 (2007).

Responses to Recurrent Critiques of my "Toothbrush of the Month Club" Idea, McSweeney's Internet Tendency (November 14, 2006).

$E=mc^3$, Opium #3 (September 2006), reprinted in THE &NOW AWARDS: THE BEST INNOVATIVE WRITING (Lake Forest College Press 2009)

You are Not Tu Fu, Ink Pot #6 (April 2005).

Laugh Track, 9 GREEN BAG 2D 59-61 (2005) (subject of front page article in the NEW YORK TIMES and segment on ABC's Nightline).

The Linear Apartment, Bullfight #2 (February 2005).

Guestbook: Vermont Applebrook Inn, Lancaster Suite, January 1, 1999-May 1, 2001 (Excerpts), McSweeney's Internet Tendency (Feb. 2004).

Deathbed, Pindeldyboz.com (December 2003).

Black and White Zoo, Eyeshot.net (September 2003).

Consume Mass Quantities: Clinton's Secret Health Plan?, Spy (January, 1994).

Professional Presentations and Activities

"Meet the Author" Event—Discussion of *The Odd Clauses*, American Independence Museum, Exeter, New Hampshire (June 6, 2012).

Lecture on Class Actions and Damages in Environmental Cases to Justices of the Thailand Supreme Court and other Judges, Bangkok, Thailand (February 23, 2012).

Series of Lectures on Freedom of Expression in the United States at Universities in Bangkok, Thailand (February 18-26, 2012).

Guest Speaker, Worcester Humanists, Worcester MA (January 10, 2012).

Guest Speaker, Concord Humanists, Concord MA (January 4, 2012).

Discussion of *The Odd Clauses: Understanding the Constitution Through Ten of its Most Curious Provisions*, Harvard Institute for Learning in Retirement (November 9, 2011); Brookline Booksmith (November 10, 2011); Pinchills, Plymouth MA (February 10, 2012); Boston University School of Law Mini-Symposium (March 5, 2012).

Presenter and Non-Fiction Writing Workshop Leader, Sanibel Island Writers Conference (November 3-6, 2011).

Panel Presentation, "Disapproval of Religion under the U.S. Constitution," International Consortium for Law and Religion Studies (ICLARS), Second Conference on "Religion and Constitution," Santiago, Chile (September 9, 2011).

Presenter and Participant, Summer Workshop on Law, Religion & Culture, University of Colorado Law School (July 21-22, 2011).

Conference Speaker, American Humanist Association Annual Meeting, Cambridge, MA (April 8, 2011).

Panel Presentation, "Feathers and Freedom: What the Case of *U.S. v. Wilgus* Tells Us About Toleration in America," Conference on "Toleration and Freedom: The American Experience in Context," Hosted by Boston University's Institute for Philosophy and Religion and Boston College's Boisi Center for Religion and Public Life (March 25, 2011).

Workshop Presentation, "Illegal Eagles," Boston University Faculty Workshop Series (November 18, 2010).

Ed Likeover Memorial Lecturer, Ohio ACLU, Cleveland, OH (October 17, 2010).

Keynote Speaker, New Mexico ACLU Annual Meeting, Albuquerque, NM (May 22, 2010).

Commenter, Religion and Big Government: A Talk by Richard Garnett, Federalist Society Event, Boston University School of Law (March 24, 2010).

Workshop Presentation, "The Odd Clauses," Saint Louis University (February 17, 2010).

Presenter and Workshop Leader, Sanibel Island Writer's Conference, sponsored by Florida Gulf Coast University (November 4-8, 2009).

Workshop Presentation, "The Odd Clauses," University of Colorado Workshop Series (Oct. 9, 2009).

Constitution Day Speaker, "Two Errors About the Evolution Controversy (or What I Learned From My Trip to the Creation Museum)," Babson College (September 17, 2009).

Reading from *Holy Hullabaloo: A Road Trip to the Battlegrounds of the Church/State Wars* and Discussion of Church/State Law: Brookline Booksmith (June 17, 2009); Barnes & Noble, Des Peres, Missouri (July 9, 2009); Malaprop's Bookstore, Asheville, North Carolina (July 30, 2009); Barnes & Noble at Boston University (September 29, 2009); American Constitution Society, Denver CO (Oct. 8, 2009); The Pinchills, Plymouth, Massachusetts (October 16, 2009); Marin Academy, Conference on Democracy, San Rafael, California (October 23, 2009); Sanibel Island Writers Workshop, Sanibel Island, Florida (November 5, 2009); Newton North High School, Newton, Massachusetts (Huntington Lecture) (November 12, 2009); American Constitution Society, Boston MA (December 9, 2009); Social Law Library, Boston (December 10, 2009); American Constitution Society, Kansas City MO (February 18, 2010); American Constitution Society, New York Law School (April 8, 2010); Page One Bookstore, Albuquerque, NM (May 22, 2010); Jewish Community Relations Council of Greater Boston (June 16, 2010); Sam Weller's Bookstore, Salt Lake City UT (July 7, 2010); All Souls Unitarian Universalist Church, Braintree, MA (January 15, 2011).

Guest Speaker, National Endowment for the Humanities Summer Seminar 2009: "Religious Diversity and the Common Good," Boisi Center for Religion and Public Life at Boston College (June 25, 2009).

Lecturer on U.S. Church-State Law at three venues in Moscow, Russia: International Institute of Law of the Russian Ministry of Justice; People's Friendship University of Russia, Department of Law; and American Club (April 24, 2009).

Conference Presentation, "Justice Ginsburg's Footnotes," Symposium on Jurisprudence of Justice Ruth Bader Ginsburg, New England School of Law (March 12, 2009).

Workshop Presentation, "The Odd Clauses," Boston University Faculty Workshop Series (March 5, 2009).

Panel Moderator, "Religion and Public Life," J. Reuben Clark Law Society's Annual Conference, Harvard Law School (February 13, 2009).

Edward G. Donley Memorial Speaker, "Two Errors About the Evolution Controversy (or What I Learned From My Trip to the Creation Museum)," Darwinfest, University of West Virginia (February 9, 2009).

Symposium Speaker, "Intelligent Design and the Public Schools," Liberty University (February 6, 2009).

Presentation on Judicial Clerkships in the United States to Law Clerks and Justices of the Polish Constitutional Court, Warsaw University, Warsaw, Poland (June 11, 2008).

Panel Presentation on Teaching Religion and Values in the United States, Helsinki Foundation for Human Rights, Warsaw, Poland (June 11, 2008).

Panel Presentation, "Separation of Church and State in the United States: What Does it Mean?" Warsaw University, Warsaw, Poland (May 14, 2008).

Panel Presentation, "What Should We Teach When We Teach About Religion? The Case for a Global Perspective," Conference on "Religion and Rule of Law in Southeast Asia," Hanoi, Vietnam (November 3, 2007).

Panel Moderator, "The Presidency in Perspective," Boston University School of Law Conference, "The Role of the President in the 21st Century" (October 11, 2007).

Guest Speaker, National Endowment for the Humanities Summer Seminar 2007: "Religious Diversity and the Common Good," Boisi Center for Religion and Public Life at Boston College (June 28, 2007).

Moderator, Public Discussion of Elizabeth de la Vega's *U.S. v. George W. Bush et al*, Cambridge Forum (May 9, 2007).

Conference Participant, "Beyond the Culture Wars: A Leadership Conference on the Future of Religion in the Public Schools," First Amendment Center, Vanderbilt University (March 5-6, 2007).

Panel Presentation, "Protecting Religion Through Statute: The Mixed Case of the United States," Comparative Approaches to Implementing International Standards in Religion Legislation, Conference on Law and Religion in Transitional Societies, Oslo, Norway (December 3, 2006).

Workshop Presentation, "Civic Recreation," Boston University School of Law Workshop Series (October 28, 2006).

Panel Moderator, "Health and Well-Being," Boston University School of Law Conference, "Extraordinary Powers in Ordinary Times" (September 30, 2006)

Lunch Speaker, "Judging Intelligent Design: Should the Courts Decide What Counts as Science or Religion?" Boisi Center for Religion and Public Life at Boston College (September 28, 2006).

Conference Participant, Carnegie Foundation Conference, Boisi Center for Religion and Public Life at Boston College (April 21, 2006) (commenting, along with religious studies scholars, on draft papers introducing American Pluralism, Theology, and Church-State Separation to readers in Muslim countries).

Symposium Presentation, "Too Much, Too Little: Religion in the Public Schools," University of Maryland Journal of Race, Religion, Gender, and Class's Symposium on "Religion and the Law" (April 11, 2006).

Panel Participant, Frank J. Murray Inn of Court's Evening Program on Constitutional Issues at the Supreme Court (March 21, 2006).

Symposium Presentation, "Intelligent Design and the 'Is it Science?' Question," University of North Carolina First Amendment Law Review's Symposium on "Religion in the Public Schools" (February 24, 2006).

Panel Presentation, “Intelligent Design and the First Amendment,” American Association for the Advancement of Science’s 2006 Annual Meeting, Panel on “Science and the State” (February 18, 2006).

Conference Presentation, “The Endorsement Court,” Washington University Journal of Law and Policy’s Conference on “The Rehnquist Court and the First Amendment” (November 18, 2005).

Faculty Workshop Presentation, “Intelligent Design and the First Amendment: A Response,” Boston University School of Law Workshop Series (September 29, 2005).

Debate on the Constitutionality of Intelligent Design with Francis J. Beckwith (Baylor University), Harvard University Federalist Society Event (April 15, 2005).

Faculty Workshop Presentation, “Environmental Law and the Judicial Role,” Washington University, St. Louis (December 7, 2004).

Workshop Presentation, “Environmental Law and the Judicial Role,” Boston University School of Law Workshop Series (November 11, 2004).

Panel Moderator, “Congress and the *Lochner* Court,” Boston University School of Law’s *Lochner* Centennial Conference (October 16, 2004).

Panel Respondent, “Religion and Science: Should Schools Teach the Controversy?” PEW Forum on Religion and Public Life and First Amendment Center’s Conference on “Teaching About Religion: Where Do We Go From Here?” (May 22, 2003) (transcript located at <http://www.pewforum.org/events/index.php?EventID=48>).

Workshop Presentation, “Darwin, Design, and Disestablishment: Teaching About the Evolution Controversy in the Public Schools,” Boston University School of Law Workshop Series (January 16, 2003).

Education

Stanford Law School, J.D., June 1997

- Nathan Abbott Scholar for student graduating with highest cumulative GPA (4.08); Order of the Coif; First and Second-Year Honors for highest GPA after the first and second years.
- Steven M. Block Civil Liberties Award for best written work relating to issues of personal freedom; Irving J. Hellmann, Jr. Award for best note published in volume 49 of the *Stanford Law Review*; Hilmer Oehlmann, Jr. Memorial Prize for excellence in legal research and writing.
- Semifinalist and best preliminary round brief, Kirkwood Moot Court Competition.
- Member and Note Editor, *Stanford Law Review*; Member and Associate Managing Editor, *Stanford Journal of International Law*; Vice-President, Kirkwood Moot Court Competition.

University of Chicago Divinity School. M.A., Religious Studies, August 1993

Studied modern religious thought, theological ethics, Buddhism, and Confucianism.

Inter-University Program for Chinese Studies. Taipei, Taiwan, September 1991-June 1992
Studied Chinese language in intensive program, emphasizing speaking and reading.

Harvard University. B.A., *Magna Cum Laude*, East Asian Studies, June 1991
Studied Chinese history and philosophy, Japanese history, religion, and Western political philosophy. Dean's list every semester. Wrote senior thesis on Western interpretations of the *Chuang Tzu*.

Experience

U.S. Department of Justice, Office of Legal Counsel, Washington, D.C.

Attorney-Advisor, August 1999-June 2001

Reviewed pending legislation for constitutionality. Advised Justice Department components and executive agencies, including the Attorney General and the White House Counsel, on constitutional and statutory matters. Wrote legal opinions on issues of administrative and constitutional law. Reviewed Attorney General and executive orders for form and legality. Areas of emphasis included national security, the pardon power, the appointment power, abortion rights, environmental law, federal land management, and separation of powers.

Hon. Ruth Bader Ginsburg, United States Supreme Court, Washington, D.C.

Law Clerk, July 1998-July 1999

Hon. David S. Tatel, D.C. Circuit Court of Appeals, Washington, D.C.

Law Clerk, August 1997-July 1998

Professor Kathleen Sullivan, Stanford, CA

Research Assistant, May 1996-June 1997

Researched and wrote memoranda on First Amendment issues to assist Professor Sullivan with articles, speeches, and the preparation of Gunther & Sullivan, *Constitutional Law*.

Professors Marc Franklin & Robert Rabin, Stanford, CA

Research Assistant, March 1995-June 1996

Researched tort law, tort reform policy, and media law issues to assist with preparation of Franklin & Rabin, *Cases and Materials on Tort Law and Alternatives*.

Hon. Stephen Reinhardt, Ninth Circuit Court of Appeals, Los Angeles, CA

Summer Extern, June 1995-July 1995

Researched and wrote bench memoranda. Discussed upcoming cases with clerks.

Lewis, D'Amato, Brisbois, Bisgaard, Buxbaum & Choy, Xiamen, P.R.C./Hong Kong

Legal Assistant, October 1993-June 1994

Translated legal documents from Chinese into English. Translated between English and Chinese at joint venture negotiations. Wrote memoranda on issues of Chinese law.

Other

- Member of the Illinois Bar since 1999.
- Scholarship cited by two federal circuit courts, two federal district courts, and the Vermont Supreme Court.

- Quoted in the *Atlanta Journal Constitution*, *Arizona Republic*, *Boston Globe*, *Chicago Tribune*, *Cleveland Plain Dealer*, *Harper's Magazine*, *International Herald Tribune*, *Los Angeles Times*, *New York Newsday*, *New York Times*, *U.S. News and World Report*, *USA Today*, and many other media publications.
- Appeared on ABC's *Nightline*, CSPAN's BookTv; FOX News Channel's *Fox Report*, WCVB Boston's *City Line*; TVN Morning News Show (Polish national television); National Public Radio's *On Point* and *All Things Considered*, Court TV Radio's *Court TV Morning*, WNYC's *Brian Lehrer Show*, Air America's *State of Belief*, Boston University Radio's *Here and Now*, WGBH Boston's "Emily Rooney Show," New Hampshire Public Radio's "Word of Mouth"; WBZ Boston Radio's "NightSide with Dan Rae"; KCUR Kansas City Public Radio's "Up to Date With Steve Kraske"; and many other media outlets.
- Blog regularly at my personal website and have guest blogged at PrawfsBlawg and other prominent sites.
- Paint and write fiction. Art show at Espresso Royale, 736 Commonwealth Avenue, Boston MA (March-April, 2011). Have published over forty short stories and humor pieces in various online and print journals (full list at www.jaywex.com). Represented by Don Fehr at Trident Media Group.