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EDUCATION

Davidson College, Bachelor of Arts (History), 1973

Summa cum laude, high departmental honors
Algernon Sydney Sullivan Award
Phi Beta Kappa, Phi Eta Sigma (president), Omicron
Delta Kappa, Delta Sigma Rho-Tau Kappa Alpha
(president)

Harvard University, Master of Arts (History), 1974

Reading ability certified in French, German, Latin
Passed Ph. D. oral examinations (with distinction)

Yale University, Juris Doctor, 1978

The Yale Law Journal, 1976-78
Note & Topics Editor (volume 78), 1977-78
Yale prison services clinic, 1975-78

POSITIONS HELD

John A. Garver Professor of Jurisprudence, Yale Law School, 1998 to present
Deputy Dean, 2001-02

Visiting Professor of Law
NYU, 1993, 2004
Harvard, 1994
Yale, 1995
Stanford, 1995
Toronto, 1999, 2001
Vanderbilt, 2003
Columbia, 2003
Georgetown, 2006, 2012

Scholar in Residence
Columbia, 2005, 2011
Fordham, 2008

Simon A. Guggenheim Fellow, 1995

Professor of Law, Georgetown University
Full Professor, 1990 - 1998
Associate Professor, 1987 - 1990

Assistant Professor of Law, University of Virginia, 1982 - 1987

Attorney, Shea & Gardner, Washington, D.C., 1979 - 1982

Law Clerk, The Honorable Edward Weinfeld, Southern District of New York (U.S.), 1978
- 1979

(SELECTED) PUBLICATIONS

Books

Statutory Interpretation Stories (Foundation, 2010) (co-edited with Philip Frickey and Elizabeth Garrett)

A Republic of Statutes: The New American Constitutionalism (Yale, 2010)
(co-authored with John Ferejohn)

"Dishonorable Passions": Sodomy Law in America, 1861-2003 (Viking, 2008)

Gay Marriage: For Better or For Worse? What We Have Learned from the Evidence (Oxford, 2006) (co-authored with Darren Spedale)

Equality Practice: Civil Unions and the Future of Gay Rights (Routledge 2002)

Legislation and Statutory Interpretation (Foundation, 1999; 2d ed. 2005) (co-authored with Philip Frickey and Elizabeth Garrett)

Gaylaw: Challenging the Apartheid of the Closet (Harvard, 1999)

Constitutional Tragedies and Stupidities (NYU, 1998) (co-authored and edited with Sanford Levinson)

Sexuality, Gender, and the Law (Foundation Press, 1997; 2d ed. 2003; abridged ed. 2005) (co-authored with Nan Hunter)

The Case for Same-Sex Marriage: From Sexual Liberty to Civilized Commitment?
(Free Press, 1996)

Henry Hart, Jr. and Albert Sacks, **The Legal Process** (Foundation, 1994) (historical and critical edition of 1958 tentative draft) (co-author and -editor with Philip Frickey)

Dynamic Statutory Interpretation (Harvard, 1994)

Cases and Materials on Constitutional Law: Themes for the Constitution's Third Century (West Publishing Co. 1993; 2d ed. 1998; 3d ed. 2004) (co-authored with Daniel Farber & Philip Frickey)

Legislation: Statutes and the Creation of Public Policy (West Publishing Co. 1987; 2d ed. 1994; 3d ed. 2001) (co-authored with Philip Frickey and, after second edition, Elizabeth Garrett)

A Dance Along the Precipice: The Political and Economic Dimensions of the International Debt Problem (Lexington 1985) (editor and author of one chapter) (also published in Spanish and Portuguese editions)

(Selected) Articles

"The California Supreme Court, 2007-2008—Foreword: The Marriage Cases, Reversing the Burden of Inertia in a Pluralist Democracy," 97 Calif. L. Rev. 1785 (2009)

"A Pluralist Theory of Equal Protection," U. Pa. J. Const'l L. (2009)

"Constitutional Horticulture: Deliberation-Respecting Judicial Review," 87 Tex. L. Rev. 1273 (2009) (with John Ferejohn)

"Vetogates, Preemption, *Chevron*," 83 Notre Dame L. Rev. 1441 (2008).

"The Continuum of Deference: Supreme Court Treatment of Agency Statutory Interpretations from *Chevron* to *Hamdan*," 96 Geo. L.J. 1083 (2008) (co-authored with Lauren Baer) (the Ryan Lecture)

"America's Statutory 'Constitution,'" 41 U.C. Davis L. Rev. 1 (2007) (the Barrett Lecture)

"No Frills Textualism," 119 Harv. L. Rev. 2041 (2006) (book review)

"*Chevron* and Agency Norm Entrepreneurship," 115 Yale L.J. 2623 (2006) (essay co-authored with Kevin Schwartz)

"Body Politics: *Lawrence v. Texas* and the Constitution of Disgust and Contagion," 57 Fla. L. Rev. 1011 (2005) (the Dunwoody Lecture)

"Pluralism and Distrust: How Courts Can Support Democracy by Lowering the Stakes of Politics," 114 Yale L.J. 1279 (2005)

"*Lawrence v. Texas* and the Imperative of Comparative Constitutionalism," 2 Int'l J. Const'l L. 555 (2004)

"*Lawrence's* Jurisprudence of Tolerance: Judicial Review to Lower the Stakes of Identity Politics," 88 Minn. L. Rev. 1021 (2004)

"Some Effects of Identity-Based Social Movements on Constitutional Law in the Twentieth Century," 100 Mich. L. Rev. 2062 (2002)

"Structuring Lawmaking to Reduce Cognitive Bias: A Critical View," 87 Cornell L. Rev. 616 (2002)

"Channeling: Identity-Based Social Movements and Public Law," 150 U. Pa. L. Rev. 419 (2001)

"All About Words: Early Understandings of the 'Judicial Power' in Statutory Interpretation, 1776-1806," 101 Colum. L. Rev. 999 (2001)

"The Relationship Between Obligations and Rights of Citizens," 69 Fordham L. Rev. 1721 (2001)

"Super-Statutes," 50 Duke L.J. 1215 (2001) (co-authored with John Ferejohn)

"Equality Practice: Reflections on the Jurisprudence of Civil Unions," 64 Alb. L.J. 853 (2001) (Sobota Lecture)

"January 27, 1961: The Birth of Gaylegal Equality Arguments," 58 NYU Ann. Survey Am. Law 39 (2001)

"No Promo Homo: The Sedimentation of Antigay Discourse and the Channeling Effect of Judicial Review," 75 NYU L. Rev. 1327 (2000)

"Destabilizing Due Process and Evolutive Equal Protection," 47 UCLA L. Rev. 1183 (2000)

"Comparative Law and the Same-Sex Marriage Debate: A Step-by-Step Approach Toward Recognizing Gay Unions," 31 McGeo. L.J. 641 (2000)

"The Circumstances of Politics and the Application of Statutes," 100 Colum. L. Rev. 558 (2000)

"Multivocal Prejudices and Homo Equality," 100 Ind. L.J. 558 (1999) (Harris Lecture)

"Norms, Empiricism, and Canons in Statutory Interpretation," 66 U. Chi. L. Rev. 671 (1999)

"*Hardwick* and Historiography," 1999 U. Ill. L. Rev. 631 (Baum Lecture)

"Relationships Between Formalism and Functionalism in Separation of Powers Cases," 22 Harv. J.L. & Pub. Pol'y 21 (1998)

"Should the Supreme Court Read the *Federalist* But Not Statutory Legislative History?," 66 Geo. Wash. L. Rev. 1301 (1998)

"Textualism, the Unknown Ideal," 96 Mich. L. Rev. 1509 (1998) (book review)

"A Jurisprudence of 'Coming Out': Religion, Sexuality, and Liberty/Equality Collisions in Public Law," 106 Yale L.J. 2411 (1997)

"Privacy Jurisprudence and the Apartheid of the Closet, 1946-1961," 24 Fla. St. U.L. Rev. 703 (1997) (Mason Ladd Lecture)

"Challenging the Apartheid of the Closet: Establishing Conditions for Lesbian and Gay Intimacy, Nomos, and Citizenship, 1961-1981," 25 Hofstra L. Rev. 817 (1997) (Visiting Scholar in Residence Lecture)

"Willard Hurst, Master of the Legal Process," 1997 Wis. L. Rev. 1181

"From the Sodomite to the Homosexual: American Regulation of Same-Sex Intimacy, 1885-1945," 82 Iowa L. Rev. (1997) (Murray Lecture)

"Steadying the Court's 'Unsteady Path': A Theory of Judicial Enforcement of Federalism," 68 U. So. Cal. L. Rev. 1447 (1995) (co-authored with Jenna Bednar)

"Virtual Logrolling: How the Court, Congress, and the States Multiply Rights," 68 U. So. Cal. L. Rev. 1545 (1995)

"Regulatory Variables and Statutory Interpretation," 73 Wash. U.L.Q. 1103 (1995) (co-authored with Judith Levi)

"Fetch Some Soupmeat," 16 Cardozo L. Rev. 2209 (1995)

"The Supreme Court, 1993 Term – Foreword: Law as Equilibrium," 108 Harv. L. Rev. 26 (1994) (co-authored with Philip Frickey)

"The Elastic Commerce Clause: A Political Theory of American Federalism," 49 Vand. L. Rev. 1355 (1994) (co-authored with John Ferejohn)

"The Making of 'The Legal Process,'" 107 Harv. L. Rev. 2031 (1994) (essay, co-authored

with Philip Frickey)

"From Handholding to Sodomy: The First Amendment and the Regulation of Homosexual Conduct," 29 Harv. C.R.-C.L. L. Rev. 319 (1994) (co-authored with David Cole)

"The Economics Epidemic in an AIDS Perspective," 61 U. Chi. L. Rev. 733 (1994) (review essay co-authored with Brian Weimer)

"Gaylegal Narratives," 46 Stan. L. Rev. 607 (1994)

"Post-Enactment Legislative Signals," 57 Law & Contemp. Probs. 75 (Winter 1994)

"The Judicial Review Game," 88 Nw. U.L. Rev. 382 (1993)

"Race and Sexual Orientation in the Military: Ending the Apartheid of the Closet," 2 Reconstruction 52 (1993)

"The Case of the Speluncean Explorers: Twentieth Century Statutory Interpretation in a Nutshell," 61 Geo. Wash. L. Rev. 1731 (1993)

"A History of Same-Sex Marriage," 79 Va. L. Rev. 1419 (1993)

"The Relationship Between Theories of Legislatures and Theories of Statutory Interpretation," in *The Rule of Law (Nomos, 1993)* (co-authored with John Ferejohn)

"A Gay Constructionist Critique of Posner's Sex and Reason: Steps Toward a Gaylegal Agenda," 102 Yale L.J. 333 (1992) (review essay)

"Quasi-Constitutional Law: Clear Statement Rules as Constitutional Lawmaking," 45 Vand. L. Rev. 593 (1992) (co-authored with Philip Frickey)

"The Article I, Section 7 Game," 80 Geo. L.J. 523 (1992) (co-authored with John Ferejohn)

"Overriding Supreme Court Statutory Interpretation Decisions," 101 Yale L.J. 331 (1991)

"Making the Deal Stick: Enforcing the Original Constitutional Understanding," *J.L. Econ & Org.* (1991) (co-authored with John Ferejohn)

"Reneging on History? Playing the Court/Congress/President Civil Rights Game," 79 Calif. L. Rev. 613 (1991)

"The New Public Law Movement: Moderation as a Postmodern Cultural Form," 89 Mich. L. Rev. 707 (1991) (co-authored with Gary Peller)

"The Case of the Amorous Defendant: Criticizing Absolute Stare Decisis for Statutory

Cases)," 88 Mich. L. Rev. 2450 (1990)

"Legislative History Values," 66 Chi.-Kent L. Rev. (1990)

"Dynamic Interpretation of Economic Regulatory Statutes," 21 L. & Pol'y Int'l Bus. 663 (1990)

"Gadamer/Statutory Interpretation," 90 Colum. L. Rev. 609 (1990)

"The New Textualism," 37 UCLA L. Rev. 621 (1990)

"Statutory Interpretation as Practical Reasoning," 42 Stan. L. Rev. 321 (1990) (co-authored with Philip Frickey)

"Spinning Legislative Supremacy," 78 Geo. L.J. 319 (1989)

"Public Values in Statutory Interpretation," 137 U. Pa. L. Rev. 1007 (1989)

"Metaprocedure," 98 Yale L.J. 945 (1989) (review essay)

"Interpreting Legislative Inaction," 87 Mich. L. Rev. 67 (1988)

"Overruling Statutory Precedents," 76 Geo. L.J. 1361 (1988)

"Politics Without Romance: Implications of Public Choice Theory for Statutory Interpretation," 74 Va. L. Rev. 275 (1988)

"Dynamic Statutory Interpretation," 135 U. Pa. L. Rev. 1479 (1987)

"Legislation Scholarship & Pedagogy in the Post-Legal Process Era," 48 U. Pitt. L. Rev. 691 (1987) (co-authored with Philip Frickey)

"*Les Jeux Sont Faits*: Structural Origins of the International Debt Problem," 25 Va. J. Int'l L. 281 (1985)

"One Hundred Years of Ineptitude," 70 Va. L. Rev. 1083 (1984)

"The Iranian Nationalization Cases," 22 Harv. Int'l L.J. 525 (1981)

"*Dunlop v. Bachowski* & the Limits of Judicial Review under Title IV of the LMRDA," 86 Yale L.J. 885 (1977) (student note)

ENDOWED LECTURES

Seegers Lecture in Jurisprudence, Valparaiso School of Law, "Six Myths That Confuse the Same-Sex Marriage Debate," November 18, 2010, published in Val. U.L. Rev. (2011)

Foulston Siefkin Lecture, Washburn University School of Law, "Is Political Powerlessness a Requirement for Heightened Equal Protection Scrutiny?," March 26, 2010, published in Washburn L.J. (2010)

Sibley Lecture at the University of Georgia, School of Law, "Noah's Curse and Paul's Admonition: What the Civil Rights Cases Can Teach Us about the Clash Between Gay Rights and Religious Liberty," March 18, 2010, published in Ga. L. Rev. (2010)

Centennial Visitor, Public Lecture, Chicago-Kent College of Law, "Administrative Constitutionalism," March 5, 2009

Edward Barrett Lecture at the University of California, Davis, School of Law, "America's Statutory constitution," published in U.C. Davis L. Rev. (2008).

Ryan Lecture at Georgetown University Law Center, "The Supreme Court's Deference Continuum, An Empirical Study (from *Chevron* to *Hamdan*)," November 4, 2006, published in 86 Geo. L.J. (2008)

Center for Religious Studies at Princeton University, November 2005, "Nordic Bliss: What the American Same-Sex Marriage Debate Can Learn from Scandinavia"

Lockhart Lecture at University of Minnesota School of Law, "Same-Sex Marriage and Equality Practice," October 2005,

Dunwoody Lecture at University of Florida School of Law, "Body Politics: *Lawrence v. Texas* and the Constitution of Disgust and Contagion," March 2005, published in Fla. L. Rev. (2005)

President's Lecture at Davidson College, March 2004, "The Case for Same-Sex Marriage"

Brennan Lecture at Oklahoma City University School of Law, March 2004, "*Lawrence v. Texas* and Constitutional Regime Shifts"

Dean's Diversity Lecture at Vanderbilt University School of Law, February 2000, "Prejudice and Theories of Equal Protection"

Steintrager Lecture at Wake Forest University, February 1999, "Jeremy Bentham and No Promo Homo Arguments"

Adrian C. Harris Lecture at the University of Indiana School of Law, "Multivocal Prejudices and Homo Equality," October 1998, published in Ind. L.J. (1999)

Robbins Distinguished Lecture on Political Culture and the Legal Tradition at the University of California at Berkeley School of Law, "Implications of Gaylegal History for Current Issues of Sexuality, Gender, and the Law," Feb. 1998

Baum Lecture at the University of Illinois School of Law, "*Hardwick* and Historiography," Nov. 1997, published in 1998 U. Ill. L. Rev.

Visiting Scholar in Residence Lecture at Hofstra University School of Law, "Challenging the Apartheid of the Closet: Establishing Conditions for Lesbian and Gay Intimacy, *Nomos*, and Citizenship, 1961-1981," Oct. 1996, published in Hofstra L. Rev. (1997)

Mason Ladd Lecture at Florida State University College of Law, "Privacy Jurisprudence and the Apartheid of the Closet," Apr. 1996, published in Fla. St. U.L. Rev. (1997)

Murray Lecture at the University of Iowa, "From the Sodomite to the Homosexual: American Regulation of Same-Sex Intimacy, 1885-1945," Jan. 1996, published in Iowa Law Review (1998)

Cutler Lecture at William and Mary School of Law, "The Many Faces of Sexual Consent," Feb. 1995, published in Wm. & Mary L. Rev. (1995)

Donley Lectures at West Virginia University School of Law, "Public Law from the Bottom Up," Dec. 1993, published in W.Va. L. Rev. (1994)

Congressional Testimony and Consultation

Senate Comm. on Labor, Pensions, 111th Congress, 1st Sess., *Proposed Employment Non-Discrimination Act of 2009* (Nov. 2009) (written testimony only)

House Comm. on Education & Labor, 111th Congress, 1st Sess., *Proposed Employment Non-Discrimination Act of 2009* (Sept. 2009)

Senate Comm. on the Judiciary, Senator Arlen Specter (Chair), Confirmation of Judge John Roberts as Chief Justice, United States Supreme Court (2005) (consultation only)

H.R. 1283, The Fairness in Asbestos Compensation Act, House Comm. on the Judiciary, 106th Cong., 1st Sess. (1999) (written testimony only) (jumbo consolidations in asbestos litigation)

Senate Comm. on the Judiciary, Senator Joseph Biden (Chair), Confirmation of Judge Stephen Breyer as Associate Justice, United States Supreme Court (1994) (consultation only)

S. 420, the Ethics in Government Reform Act of 1993, and S. 79, the Responsible

Government Act of 1993, Subcomm. on Oversight of Government Management of the Senate Comm. On Governmental Affairs, 103d Cong., 1st Sess. (1993)

Interpreting the Pressler Amendment: Commercial Military Sales to Pakistan, Senate Comm. on Foreign Relations, 102d Cong., 2d Sess. (1992)

S. 2279, the Lobbying Disclosure Act of 1992, Subcomm. On Oversight of the Senate Comm. on Governmental Affairs, 102d Cong., 2d Sess. (1992)

Statutory Interpretation and the Uses of Legislative History, Subcomm. on Courts, Intellectual Property, and the Administration of Justice of the House Comm. on the Judiciary, 101st Cong., 2d Sess. (1990)

Adjustable Rate Mortgages (ARMs), Subcomm. On Housing and Community Development of the House Comm. on Banking and Urban Affairs, 98th Cong., 2d Sess. (1984)

