An Open Letter from Legal Scholars on Trump Impeachment Inquiry

For only the fourth time in American history, there is a serious inquiry concerning the impeachment of the President of the United States. We write as law professors because impeachment is a legal proceeding provided for by the Constitution of the United States. We write because the core principle of the rule of law is that no one, not even the President, is above the law and impeachment is the ultimate check provided for by the Constitution. We are writing not to express an opinion as to whether President Donald Trump should be impeached or removed, but to clarify the legal standards and procedures that should be followed.

Impeachment by the United States House of Representatives followed by a conviction in the United States Senate is one of only two methods under the Constitution for removing a President. (The 25th Amendment provides for the removal of the president due to incapacity, and while some have called for that as well, this letter does not address it.) Article II, §4, of the Constitution provides for impeachment for “Treason, Bribery, or other high Crimes and Misdemeanors.” There is no definitive answer to what constitutes a “high crime or misdemeanor.” There is no Supreme Court case addressing it. But the history of the phrase and the experience of prior impeachments make clear that “high crimes and misdemeanors” include a serious abuse of power while in office whether or not a crime has occurred. In other words, a criminal act is often sufficient to be an impeachable offense, but it is not necessary.

We urge that the President and those in the Executive Branch cooperate with an impeachment inquiry. Prior Presidents facing such inquiries – Andrew Johnson, Richard Nixon, and Bill Clinton – cooperated with the House of Representatives and its committees. We urge the House to act expeditiously, while providing the President and those in the Executive Branch a full and fair opportunity to be heard. This, however, does not include the right of the President, or the public, to know the identity of the whistleblower. Federal law explicitly provides for secrecy of whistleblowers precisely so they will come forward and report wrong-doing.

We strongly disagree with White House Counsel Pat Cipollone’s statements in an October 8, 2019 letter that the impeachment inquiry is “contrary to the Constitution … and all past bipartisan precedent” and violates “fundamental fairness and constitutionally mandated due process.” Quite the contrary, the Constitution does not mandate the process for impeachment and there is no constitutional requirement that the House of Representatives authorize an impeachment inquiry before one begins. Cipollone wrongly condemns the impeachment inquiry as the House “seeking to overturn the result of the 2016 election.” This fails to recognize the seriousness of the charges against President Trump for abusing executive power for personal political gain and violating federal election law.

If there is an impeachment by the House of Representatives, we believe that the Senate is constitutionally obligated to hold a trial to be presided over by the Chief Justice of the United
States. Unlike past trials following impeachments, we urge that this trial be conducted in public, not behind closed doors.

Signed,¹

**Erwin Chemerinsky**  
Dean and Jesse H. Choper Distinguished Professor of Law  
Berkeley Law School

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**Mark Aaronson**  
Professor of Law Emeritus  
UC Hastings College of the Law

**Susan Abraham**  
Professor of Law  
New York Law School

**Miriam Albert**  
Professor of Skills  
Maurice A. Deane School of Law at Hofstra University

**Anthony Alfieri**  
Professor of Law  
University of Miami School of Law

**Penelope Andrews**  
Distinguished Visiting Professor of Law  
New York Law School

**Claudia Angelos**  
Clinical Professor of Law  
NYU School of Law

**Catherine Archibald**  
Associate Professor of Law  
University of Detroit Mercy School of Law

**Jonathan Askin**  
Professor of Clinical Law  
Brooklyn Law School

**Barbara Atwood**  
Professor of Law Emerita  
University of Arizona James E. Rogers College of Law

**Beverly Balos**  
Clinical Professor of Law Emerita  
University of Minnesota Law School

**Mark Bartholomew**  
Professor of Law  
University at Buffalo School of Law

**Heather Baxter**  
Professor of Law  
Nova Southeastern University  
Shepard Broad College of Law

**Ron Beal**  
Professor of Law  
Baylor Law School

**Gordon Beggs**  
Clinical Professor Emeritus  
Cleveland-Marshall College of Law

¹ Affiliations noted for identification purposes only.
Julia Be
Associate Professor of Law
University of Detroit Mercy School of Law

Roxana Bell
Assistant Professor of Law
University of Detroit Mercy School of Law

Anya Bernstein
Professor of Law
University at Buffalo School of Law

Wendi “Warren” H. Binford
Professor of Law
Willamette University College of Law

Susan Bitensky
Professor of Law
Michigan State University School of Law

Derek Black
Professor of Law
University of South Carolina School of Law

Henry Blair
Robins Kaplan Distinguished
Professor of Law
Mitchell Hamline School of Law

Christopher Blakesley
Professor Emeritus of Law
UNLV William S. Boyd School of Law

Beryl Blaustone
Professor of Law
CUNY School of Law

Grace Ganz Blumberg
Distinguished Professor Emerita
UCLA School of Law

Elise Boddie
Professor of Law and Henry Rutgers Professor
Rutgers Law School

Carl T. Bogus
Professor of Law
Roger Williams University School of Law

Vincent Bonventre
Justice Robert H Jackson Distinguished
Professor of Law
Albany Law School

Michael Boucai
Associate Professor of Law
University at Buffalo School of Law

Bruce Boyer
Curt and Linda Rodin Professor of
Law and Social Justice
Loyola University Chicago School of Law

Robin Boyle
Professor of Legal Writing
St. John’s University School of Law

James Brook
Professor of Law Emeritus
New York Law School

Susan L. Brooks
Associate Dean and Professor of Law
Drexel University Kline School of Law
Patricia Broussard  
Professor of Law  
Florida A&M University College of Law

Allison Brownell Tirres  
Associate Professor of Law  
DePaul University College of Law

Mary Burns  
Academic Director, On-line Masters in Jurisprudence Degree in Children’s Law and Policy  
Loyola University Chicago School of Law

Mark Cammack  
Professor of Law  
Southwestern Law School

Eduardo Capulong  
Professor of Law  
CUNY School of Law

Susan Carle  
Professor of Law and Vice Dean  
American University  
Washington College of Law

Catherine Carpenter  
Professor of Law  
Southwestern Law School

Gilbert Carrasco  
Professor of Law  
Willamette University College of Law

David Cassuto  
Professor of Law  
Pace University Elisabeth Haub School of Law

Kim D. Chanbonpin  
Professor of Law  
UIC John Marshall Law School

Luis Chiesa  
Professor of Law  
University at Buffalo School of Law

Gabriel Chin  
Edward L. Barrett Jr. Chair and Martin Luther King Jr. Professor  
UC Davis School of Law

Carol Chomsky  
Professor of Law  
University of Minnesota Law School

Eric Christiansen  
Professor of Law and Associate Dean  
Golden Gate University School of Law

Morgan Cloud  
Charles Howard Candler Professor of Law  
Emory University School of Law

James Coben  
Professor of Law  
Mitchell Hamline School of Law

David S. Cohen  
Professor of Law  
Drexel University Kline School of Law

Anna Cominsky  
Visiting Associate Professor of Law  
New York Law School
Jenny-Brooke Condon  
Professor of Law  
Seton Hall Law School

Kim Diana Connolly  
Professor of Law and Vice Dean for Advocacy and Experiential Learning  
University at Buffalo School of Law

Terrye Conroy  
Research Instructor  
University of South Carolina School of Law

Laura Cooper  
Professor of Law Emerita  
University of Minnesota Law School

Caroline Mala Corbin  
Professor of Law and Dean's Distinguished Scholar  
University of Miami School of Law

Nathan Cortez  
Callejo Endowed Professor of Law  
SMU Dedman School of Law

Phyllis L Crocker  
Dean and Professor of Law  
University of Detroit Mercy School of Law

McKay Cunningham  
Associate Professor of Law  
Concordia University School of Law

Christopher Czerwonka  
Special Professor of Law  
Maurice A. Deane School of Law at Hofstra University

Lisa Davis  
Associate Professor of Law  
CUNY School of Law

Kate Nace Day  
Professor of Law Emerita  
Suffolk University Law School

Frank Deale  
Professor of Law  
CUNY School of Law

Joy Delman  
Professor Emerita  
Thomas Jefferson School of Law

Meera Deo  
Professor of Law  
Thomas Jefferson School of Law

Michael Dorf  
Robert S. Stevens Professor of Law  
Cornell Law School

Joshua Douglas  
Thomas P. Lewis Professor of Law  
University of Kentucky College of Law

Joshua Dressler  
Distinguished University Professor of Law Emeritus  
The Ohio State University  
Moritz College of Law

Olympia Duhart  
Professor of Law  
Nova Southeastern University  
Shepard Broad College of Law
<table>
<thead>
<tr>
<th>Name</th>
<th>Title/Position</th>
<th>Institution</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ilene Durst</td>
<td>Associate Professor of Law</td>
<td>Thomas Jefferson School of Law</td>
</tr>
<tr>
<td>Heather Elliott</td>
<td>Alumni, Class of '36 Professor of Law</td>
<td>University of Alabama School of Law</td>
</tr>
<tr>
<td>Monica Eppinger</td>
<td>Associate Professor of Law</td>
<td>Saint Louis University School of Law</td>
</tr>
<tr>
<td>Marc Falkoff</td>
<td>Associate Dean and Professor of Law</td>
<td>Northern Illinois University College of Law</td>
</tr>
<tr>
<td>Stephen Feldman</td>
<td>Jerry W. Housel/Carl F. Arnold Distinguished Professor of Law and Adjunct Professor of Political Science</td>
<td>University of Wyoming College of Law</td>
</tr>
<tr>
<td>Pamela Foohey</td>
<td>Associate Professor of Law</td>
<td>Indiana University Maurer School of Law</td>
</tr>
<tr>
<td>Caroline Forell</td>
<td>Professor Emerita</td>
<td>University of Oregon School of Law</td>
</tr>
<tr>
<td>James Francis</td>
<td>Distinguished Lecturer</td>
<td>CUNY School of Law</td>
</tr>
<tr>
<td>Eric M. Freedman</td>
<td>Siggi B. Wilzig Distinguished Professor of Constitutional Law</td>
<td>Maurice A. Deane School of Law at Hofstra University</td>
</tr>
<tr>
<td>Mira Edmonds</td>
<td>Clinical Assistant Professor of Law</td>
<td>University of Michigan Law School</td>
</tr>
<tr>
<td>Atiba Ellis</td>
<td>Professor of Law</td>
<td>Marquette University Law School</td>
</tr>
<tr>
<td>Samuel Erman</td>
<td>Professor of Law</td>
<td>USC Gould School of Law</td>
</tr>
<tr>
<td>Daniel Farber</td>
<td>Sho Sato Professor of Law</td>
<td>Berkeley Law School</td>
</tr>
<tr>
<td>Eric Fink</td>
<td>Associate Professor of Law</td>
<td>Elon University School of Law</td>
</tr>
<tr>
<td>William Forbath</td>
<td>Lloyd M. Bentsen Chair in Law</td>
<td>The University of Texas at Austin School of Law</td>
</tr>
<tr>
<td>Eleanor Fox</td>
<td>Walter J. Derenberg Professor of Trade Regulation</td>
<td>NYU School of Law</td>
</tr>
<tr>
<td>Alexandra M. Franco</td>
<td>Visiting Assistant Professor of Law</td>
<td>IIT Chicago-Kent College of Law</td>
</tr>
<tr>
<td>Craig Futterman</td>
<td>Clinical Professor of Law</td>
<td>University of Chicago Law School</td>
</tr>
</tbody>
</table>
Ruben Garcia  
Professor of Law  
UNLV William S. Boyd School of Law

James Gardner  
SUNY Distinguished Professor  
University at Buffalo School of Law

Frederick Mark Gedicks  
Guy Anderson Chair and Professor of Law  
Brigham Young University Law School

Bennett Gershman  
Professor of Law  
Pace University Elisabeth Haub School of Law

Nancy Gertner  
Retired Federal Judge, Senior Lecturer  
Harvard Law School

Doni Gewirtzman  
Professor of Law  
New York Law School

A. Thomas Golden  
Professor of Law Emeritus  
Thomas Jefferson School of Law

Julie Goldscheid  
Professor of Law  
CUNY School of Law

Brandt Goldstein  
Visiting Professor of Law  
New York Law School

Jared Goldstein  
Associate Dean for Academic Affairs and  
Professor of Law  
Roger Williams University School of Law

Natalie Gomez-Velez  
Professor of Law  
CUNY School of Law

Anne Gordon  
Clinical Professor of Law  
Duke Law School

Mitchell Gordon  
Associate Professor of Law  
University of St. Thomas School of Law

Mark Graber  
Regents Professor  
University of Maryland Carey School of Law

John Greabe  
Professor of Law  
University of New Hampshire  
Franklin Pierce School of Law

Steven Green  
Fred H. Paulus Professor of Law  
Willamette University College of Law

Elayne Greenberg  
Professor of Legal Practice, Assistant Dean of  
Dispute Resolution Programs  
St. John’s University School of Law

Julie Greenberg  
Professor Emeritus  
Thomas Jefferson School of Law

Kent Greenfield  
Professor of Law and  
Dean’s Distinguished Scholar  
Boston College Law School

Lissa Griffin  
Professor of Law  
Pace University Elisabeth Haub School of Law
Carolyn Grose  
Professor of Law  
Mitchell Hamline School of Law

Jill Gross  
Associate Dean for Academic Affairs and  
Professor of Law  
Pace University Elisabeth Haub School of Law

Samuel Gross  
Thomas and Mable Long Professor of Law Emeritus  
University of Michigan Law School

Catherine Grosso  
Professor of Law  
Michigan State University School of Law

Martin Guggenheim  
Fiorello LaGuardia Professor of Clinical Law  
NYU School of Law

Pratheepan Gulasekaram  
Professor of Law  
Santa Clara University School of Law

Jennifer Gundlach  
Emily and Stephen Mendel Distinguished Professor of Law and Clinical Professor of Law  
Maurice A. Deane School of Law at Hofstra University

Susan Pace Hamill  
Professor of Law and Honors Professor  
University of Alabama School of Law

Vinay Harpalani  
Associate Professor of Law  
University of New Mexico School of Law

James Hathaway  
James E. and Sarah A. Degan Professor of Law  
University of Michigan Law School

Kenney Hegland  
James E Rogers Professor of Law  
University of Arizona  
James E. Rogers College of Law

Lynne Henderson  
Emerita Professor of Law  
UNLV William S. Boyd School of Law

Laura Hermer  
Professor of Law  
Mitchell Hamline School of Law

Helen Hershkoff  
Herbert M. and Svetlana Wachtell Professor of Constitutional Law and Civil Liberties  
NYU School of Law

Kathy Hessler  
Clinical Law Professor  
Lewis & Clark Law School

Steven Heyman  
Professor of Law  
IIT Chicago-Kent College of Law

Jim Hilbert  
Professor of Law  
Mitchell Hamline School of Law

Martha R. Hochberger  
Visiting Professor of Law  
New York Law School
Michael Hoffheimer  
Professor of Law and Jamie L. Whitten Chair of Law and Government 
University of Mississippi School of Law

K. Babe Howell  
Professor of Law  
CUNY School of Law

Margaret Hu  
Associate Professor of Law  
Washington and Lee University School of Law

Loren Jacobson  
Assistant Professor of Law  
UNT Dallas College of Law

Sandia Janin  
Professor of Legal Writing  
New York Law School

Eric Janus  
Professor of Law  
Mitchell Hamline School of Law

Danielle Jefferis  
Clinical Fellow  
University of Denver Sturm College of Law

Kari Johnson  
Professor of Research and Writing  
IIT Chicago-Kent College of Law

Lawrence Joseph  
Tinnelly Professor of Law  
St. John’s University School of Law

David Kairys  
James E. Beasley Professor of Law Emeritus  
Temple University Beasley School of Law

Anil Kalhan  
Professor of Law  
Drexel University Kline School of Law

Ken Katkin  
Professor of Law  
Northern Kentucky University  
Chase School of Law

Michael Kaufman  
Dean and Professor of Law  
Loyola University Chicago School of Law

Eileen Kaufman  
Professor of Law Emerita  
Touro Law School

Mehmet Konar-Steenberg  
Professor of Law  
Mitchell Hamline School of Law

Gerald Korngold  
Professor of Law  
New York Law School

Minna Kotkin  
Professor of Law  
Brooklyn Law School

Alex Kreit  
Professor of Law  
Thomas Jefferson School of Law

Ellen Kreitzberg  
Professor of Law  
Santa Clara University School of Law

Mae Kuykendall  
Professor of Law  
Michigan State University School of Law
Brian Landsberg  
Professor of Law Emeritus  
University of the Pacific  
McGeorge School of Law

Eric Lane  
Eric J. Schmertz Distinguished Professor  
of Public Law and Public Service  
Maurice A. Deane School of Law at  
Hofstra University

Kyle Langvardt  
Associate Professor  
University of Detroit Mercy School of Law

Michael Lawrence  
Professor of Law  
Michigan State University College of Law

Anne Lawton  
Professor of Law  
Michigan State University School of Law

Laurie Leader  
Clinical Professor of Law  
IIT Chicago-Kent College of Law

Donna Lee  
Professor of Law  
CUNY School of Law

Philip Lee  
Professor of Law  
UDC David A. Clarke School of Law

Brant Lee  
Professor of Law  
University of Akron School of Law

Nancy Leong  
Professor of Law  
University of Denver Sturm College of Law

Raleigh Hannah Levine  
James E. Kelley Chair in Tort Law  
Mitchell Hamline School of Law

Sanford Levinson  
W. St. John Garwood and W. St. John  
Garwood, Jr. Centennial Chair and  
Professor of Government  
The University of Texas at Austin School of Law

Justin Levitt  
Associate Dean for Research and  
Professor of Law  
Loyola Law School

Anne Marie Lofaso  
Arthur B. Hodges Professor of Law  
West Virginia University College of Law

Stephen Loffredo  
Professor of Law  
CUNY School of Law

Gregory Magarian  
Thomas and Karole Green Professor of Law  
Washington University in St. Louis  
School of Law

Matthew Main  
Law Instructor  
CUNY School of Law

Peter Malaguti  
Professor of Law  
Massachusetts School of Law
Suzette Malveaux  
Provost Professor of Civil Rights Law  
University of Colorado Law School

Maya Manian  
Visiting Professor  
Howard University School of Law

Francisco Martin  
Former Ariel F. Sallows Professor of Human Rights  
University of Saskatchewan College of Law

Goldburn Maynard  
Associate Professor of Law  
University of Louisville Brandeis School of Law

Thomas McAffee  
Professor of Law  
UNLV William S. Boyd School of Law

Andrea Mc Ardle  
Professor of Law  
CUNY School of Law

Martha McCluskey  
Professor Emerita  
University at Buffalo School of Law

Karen McDonald Henning  
Associate Professor of Law  
University of Detroit Mercy School of Law

Thomas McDonnell  
Professor of Law  
Pace University Elisabeth Haub School of Law

M. Isabel Medina  
Ferris Family Distinguished Professor of Law  
Loyola University New Orleans College of Law

Vanessa Merton  
Professor of Law  
Pace University Elisabeth Haub School of Law

Elizabeth Mertz  
John and Rylla Bosshard Professor of Law Emerita  
University of Wisconsin Law School

Carlin Meyer  
Professor of Law Emerita  
New York Law School

Jon Michaels  
Professor of Law  
UCLA School of Law

John Montgomery  
Dean Emeritus  
University of South Carolina School of Law

Margaret Montoya  
Professor Emerita of Law  
University of New Mexico School of Law

Jennifer Moore  
Professor of Law  
University of New Mexico School of Law

Robin Morris Collin  
Professor of Law  
Willamette University College of Law
<table>
<thead>
<tr>
<th>Name</th>
<th>Title and Affiliation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alan Morrison</td>
<td>Associate Dean for Public Interest and Public Service Law The George Washington University Law School</td>
</tr>
<tr>
<td>Steven Mulroy</td>
<td>Bredesen Professor of Law University of Memphis Cecil C. Humphreys School of Law</td>
</tr>
<tr>
<td>Russell Murphy</td>
<td>Research Professor of Law Suffolk University Law School</td>
</tr>
<tr>
<td>Ann Murphy</td>
<td>Professor of Law Gonzaga Law School</td>
</tr>
<tr>
<td>Justin Murray</td>
<td>Associate Professor of Law New York Law School</td>
</tr>
<tr>
<td>Sheldon Nahmod</td>
<td>University Distinguished Professor of Law Emeritus IIT Chicago-Kent College of Law</td>
</tr>
<tr>
<td>Burt Neubleorne</td>
<td>Norman Dorsen Professor in Civil Liberties NYU School of Law</td>
</tr>
<tr>
<td>Xuan-Thao Nguyen</td>
<td>Gerald L. Bepko Chair in Law Indiana University McKinney School of Law</td>
</tr>
<tr>
<td>Gene Nichol</td>
<td>Boyd Tinsley Distinguished Professor of Law University of North Carolina School of Law</td>
</tr>
<tr>
<td>Anthony Niedwiecki</td>
<td>Dean and Professor of Law Golden Gate University School of Law</td>
</tr>
<tr>
<td>Luke Norris</td>
<td>Assistant Professor of Law University of Richmond Law School</td>
</tr>
<tr>
<td>Kevin O’Neill</td>
<td>Associate Professor of Law Cleveland-Marshall College of Law</td>
</tr>
<tr>
<td>Timothy O’Neill</td>
<td>Professor Emeritus UIC John Marshall Law School</td>
</tr>
<tr>
<td>John Orcutt</td>
<td>Professor of Law University of New Hampshire Franklin Pierce School of Law</td>
</tr>
<tr>
<td>Brian Owsley</td>
<td>Assistant Professor of Law UNT Dallas College of Law</td>
</tr>
<tr>
<td>Stephen Paskey</td>
<td>Lecturer University at Buffalo School of Law</td>
</tr>
<tr>
<td>Juan Perea</td>
<td>Professor of Law Loyola University Chicago School of Law</td>
</tr>
<tr>
<td>Michael Perino</td>
<td>George W. Matheson Professor of Law St. John’s University School of Law</td>
</tr>
<tr>
<td>Michael Perry</td>
<td>Robert W. Woodruff Professor of Law Emory University School of Law</td>
</tr>
<tr>
<td>Daniel Pi</td>
<td>Visiting Assistant Professor of Law Mitchell Hamline School of Law</td>
</tr>
</tbody>
</table>
Justin Pidot  
Professor of Law  
University of Arizona  
James E. Rogers College of Law

Tamara Piety  
Professor of Law  
University of Tulsa College of Law

Ascanio Piomelli  
Professor of Law  
UC Hastings College of the Law

Stacey Platt  
Curt and Linda Rodin Clinical Professor of Law & Social Justice  
Loyola University Chicago School of Law

Alicia Plerhopes  
Professor of Law  
Georgetown University Law Center

Leah Plunkett  
Associate Dean and Associate Professor  
University of New Hampshire  
Pierce School of Law

Samantha Pownall  
Visiting Associate Professor of Law  
New York Law School

Sharon Press  
Professor of Law  
Mitchell Hamline School of Law

Charles Press  
Clinical Professor of Law  
The University of Texas at Austin  
School of Law

Edward Purcell, Jr.  
Joseph Solomon Distinguished Professor  
New York Law School

Asifa Quraishi-Landes  
Professor of Law  
University of Wisconsin Law School

Richard Reuben  
James Lewis Parks Professor of Law and Journalism  
University of Missouri School of Law

Deborah Rhode  
McFarland Professor of Law  
Stanford Law School

Michelle Richards  
Assistant Professor of Law  
University of Detroit Mercy School of Law

David Ritchie  
Professor of Law and Philosophy  
Mercer University School of Law

Allie Robbins  
Associate Professor of Law  
CUNY School of Law

Anna Roberts  
Professor of Law  
St. John's University School of Law

Ruthann Robson  
Professor of Law and  
University Distinguished Professor  
CUNY School of Law
Sarah Rogerson  
Professor of Law  
Albany Law School

Tom Romero, II  
Associate Professor  
University of Denver Sturm College of Law

Stephen Rosenbaum  
Frank C. Newman Lecturer  
Berkeley Law School

Darren Rosenblum  
Professor of Law  
Pace University Elisabeth Haub School of Law

Laura Rovner  
Professor of Law  
University of Denver Sturm College of Law

Judith Royster  
Professor of Law  
University of Tulsa College of Law

Kenneth Rumelt  
Professor of Law  
Vermont Law School

Tifani Sadek  
Clinical Assistant Professor of Law  
University of Michigan Law School

Rosemary Salomone  
Kenneth Wang Professor of Law  
St. John’s University School of Law

Joyce Saltalamachia  
Professor Emeritus  
New York Law School

Jack Sammons  
Griffin B. Bell Professor of Law Emeritus  
Mercer University School of Law

James Sample  
Professor of Law  
Maurice A. Deane School of Law at Hofstra University

Eli Savit  
Adjunct Professor  
University of Michigan Law School

Christopher Schmidt  
Professor of Law  
IIT Chicago-Kent College of Law

Elizabeth Schneider  
Rose L. Hoffer Professor of Law  
Brooklyn Law School

Joshua Schwartz  
E.K. Gubin Professor of Law  
The George Washington University Law School

Herman Schwartz  
Professor of Law Emeritus  
American University  
Washington College of Law

Christopher Seaman  
Associate Professor of Law  
Washington and Lee University School of Law

Antoinette Sedillo Lopez  
Professor Emerita  
University of New Mexico School of Law

Robert Sedler  
Distinguished Professor of Law  
Wayne State University Law School
Eric Segall
Professor of Law
Georgia State College of Law

Bijal Shah
Associate Professor of Law
Arizona State University
Sandra Day O'Connor College of Law

Jeffrey Shaman
Vincent de Paul Professor of Law Emeritus
DePaul University College of Law

Joan Shaughnessy
Roger D. Groot Professor of Law
Washington and Lee University School of Law

Franklin Siegel
Distinguished Lecturer
CUNY School of Law

Gary Simson
Macon Chair in Law
Mercer University School of Law

William Slomanson
Instructor and Professor Emeritus
Thomas Jefferson School of Law

Nicole Smith
Associate Professor of Law
CUNY School of Law

Robert Solomon
Clinical Professor of Law
UC Irvine School of Law

Rachel Settlage
Associate Professor of Law
Wayne State University Law School

Sarah Shalf
Professor of Practice
Emory University School of Law

Peter Shane
Jacob E. Davis and Jacob E. Davis II
Chair in Law
The Ohio State University
Moritz College of Law

Richard Sherwin
Wallace Stevens Professor of Law
New York Law School

Andy Silverman
Joseph Livermore Professor Emeritus of Law
University of Arizona
James E. Rogers College of Law

Eric Sirota
Clinical Teaching Fellow
University of Michigan Law School

Charisa Smith
Associate Professor of Law
CUNY School of Law

Rachel H. Smith
Professor of Legal Writing
St. John's University School of Law

Sophie Sparrow
Professor of Law and Associate Dean of Faculty Research and Development
University of New Hampshire
Franklin Pierce School of Law
SpearIt  
Professor of Law  
Texas Southern University Thurgood Marshall School of Law

Mai Linh Spencer  
Associate Clinical Professor  
UC Hastings College of the Law

Mike Steenson  
Professor of Law  
Mitchell Hamline School of Law

Michael Steinberg  
Professor from Practice  
University of Michigan Law School

Joan Steinman  
Professor of Law Emerita, University Distinguished Professor Emerita  
IIT Chicago-Kent College of Law

Geoffrey Stone  
Edward H. Levi Distinguished Service Professor of Law  
University of Chicago Law School

Seth Stoughton  
Associate Professor of Law  
University of South Carolina School of Law

Symeon Symeonides  
Professor of Law  
Willamette University College of Law

Dan Tarlock  
University Distinguished Professor Emeritus  
IIT Chicago-Kent College of Law

Kim Taylor-Thompson  
Professor of Clinical Law  
NYU School of Law

Benjamin Templin  
Professor of Law  
Thomas Jefferson School of Law

Leslie Tenzer  
James D. Hopkins Professor of Law  
Pace University Elisabeth Haub School of Law

Claire R. Thomas  
Adjunct Professor  
New York Law School

Dana Thompson  
Clinical Professor of Law  
University of Michigan Law School

Gerald Tschura  
Professor of Law  
Western Michigan University Cooley Law School

Jenia Turner  
Robert G. Storey Distinguished Faculty Fellow and Amy Abboud Ware Centennial Professor in Criminal Law SMU Dedman School of Law

David Uhlmann  
Jeffrey F. Liss Professor from Practice  
University of Michigan Law School

Joseph Vining  
Hutchins Professor of Law Emeritus  
University of Michigan Law School
Michael Vitiello  
Distinguished Professor of Law  
University of the Pacific  
McGeorge School of Law

Michele Vollmer  
Clinical Professor of Law  
Penn State Law

Rachel Vorspan  
Professor of Law  
Fordham University School of Law

Dov Waisman  
Vice Dean and Professor of Law  
Southwestern Law School

Ari Waldman  
Professor of Law  
New York Law School

Adrian Walters  
Ralph L. Brill Professor of Law  
IIT Chicago-Kent College of Law

Lu-in Wang  
Professor of Law  
University of Pittsburgh School of Law

Ettie Ward  
Professor of Law  
St. John’s University School of Law

G. Ray Warner  
Professor of Law  
St. John’s University School of Law

Daniel Warshawsky  
Professor of Law  
New York Law School

Julie Waterstone  
Associate Dean  
Southwestern Law School

Anita Weinberg  
Curt and Linda Rodin Clinical Professor of Law and Social Justice  
Loyola University Chicago School of Law

Brandon Weiss  
Associate Professor of Law  
University of Missouri-Kansas City School of Law

Donal Wells  
Emeritus Associate Professor of Law  
Mercer University School of Law

Keith Werhan  
Ashton Phelps Chair in Constitutional Law  
Tulane Law School

Sonja West  
Brumby Distinguished Professor of First Amendment Law  
University of Georgia School of Law

Meijken Westenskow  
Professor of Practice  
UNT Dallas College of Law

Verna Williams  
Dean and Nippert Professor of Law  
University of Cincinnati College of Law

Anthony Winer  
Professor of Law  
Mitchell Hamline School of Law

Michael Wise  
Professor Emeritus  
Willamette University College of Law
Richard Wright  
University Distinguished Professor and  
Professor of Law  
IIT Chicago-Kent College of Law

Theresa Wright  
Adjunct Professor  
Willamette University College of Law

Sofia Yakren  
Associate Professor of Law  
CUNY School of Law

Anne Yantus  
Professor of Practice  
University of Detroit Mercy School of Law

Deborah Zalesne  
Professor of Law  
CUNY School of Law

Michelle Zierler  
Professor of Legal Writing  
New York Law School

Paul Zwier  
Professor of Law  
Emory University School of Law