

Berkeley Law

Recent Faculty Scholarship

Fall 2020





Letter from Dean Erwin Chemerinsky

Why should law professors write books and articles?

Why is this regarded as an integral part of our jobs? There is no single answer to these questions and perhaps each professor would answer in a somewhat different way. I believe that we write to educate, to influence the development of the law, and to advance ideas and knowledge. All of these goals are reflected in the many publications by Berkeley Law faculty described in these pages.

Many of our faculty are authors of leading casebooks and treatises in a wide variety of different areas of law. This is a way in which we teach students outside our own law school and even help to educate other professors and lawyers and judges about the law.

There is no doubt that legal scholarship helps to shape the law. Sometimes legal scholarship is descriptive, illuminating problems and helping to inform decisions. Sometimes it is normative, evaluating the law. Sometimes it is prescriptive, suggesting a better path for the future. Lawyers and legislators and judges constantly use legal scholarship in dealing with the most difficult issues that face them.

I worry, though, that this makes scholarship sound too instrumental. Universities exist to advance knowledge and understanding. Often that is what legal scholarship is about: exploring ideas about law and the legal system. Some legal scholarship is the equivalent to basic science in the foundation that it provides for knowledge.

As these pages indicate, my colleagues at Berkeley Law are prolific and outstanding scholars in all of these ways. Every measure shows them to be among the most frequently cited and the most respected in their fields.

This pamphlet lists what our faculty members have written in the last year. I hope you will enjoy seeing this and hope that you read and benefit from their scholarship. I think you'll see why I so am proud to be dean of Berkeley Law.

Erwin Chemerinsky

New Faculty

Tech-law Maven and Race Scholar Join a Rapidly Rising Faculty

BY ANDREW COHEN

Berkeley Law's two newest professors are hardly fresh faces at the school: Chris Hoofnagle has strengthened its top-ranked intellectual property law program since 2006, and Asad Rahim earned his Ph.D. last year in its Jurisprudence and Social Policy Program.

Both relish Berkeley Law's unique boundary-free learning environment.

"It's a visionary institution," says Hoofnagle, a faculty co-director of the school's renowned Berkeley Center for Law & Technology. "In my years here, I have only found encouragement to do new things."

Rahim, a race scholar and recent Chancellor's Postdoctoral Fellow at UCLA Law, says the JSP Program carved out important space.

"The academy is generally marked by disciplinary boundaries: You're either a historian or a sociologist or an economist ... but being a good race scholar requires you to look across disciplines for insights," he says. "The JSP Program gave me a range of tools to study the questions I found most interesting without forcing me to adhere to set boundaries."

Hoofnagle and Rahim join a stellar faculty that's been on a hiring spree, adding 19 scholars since 2017.



Asad Rahim

A former American Bar Foundation Law and Inequality Doctoral Fellow and associate editor of the journal *Law & Social Inquiry*, Rahim writes on constitutional law, critical race theory, and employment discrimination. His current research explores racism in the adult film industry. He will teach Anti-Blackness and the Law and Race and the Law this year, and later Contracts and undergraduate legal studies classes.

Raised in a working class Chicago community and named the most outstanding student of his

Babson College class, Rahim moved to Hong Kong after graduating to work at JPMorgan Chase as an equity derivatives specialist. He had made it — just not to where he truly wanted to be.

“Whenever I had downtime at my desk, I’d pull up articles about race and gender discrimination because those were the topics I was actually interested in,” he says.

UCLA Law Professor Devon Carbado credits Rahim’s “distinctive and bold scholarly voice” and calls him “precisely the kind of legal scholar the moment demands — a person who mobilizes interdisciplinarity to engage pressing matters of public concern.”



Chris Hoofnagle

Hoofnagle’s appointment to the faculty with security of employment brings a renewed focus on teaching. This year, his courses include Cybersecurity in Context with Professor Jennifer Urban ’00, Torts, and a new class to help students better grasp software and computer decision-making.

“An understanding of information and software will be relevant to all practice areas,” he says, in particular “how the transition from a world of information scarcity to one of information glut affects decision-making processes.”

Author of the 2016 book *Federal Trade Commission Privacy Law and Policy*, Hoofnagle is writing a new book on quantum technologies with computer scientist Simson Garfinkel. His research on platform transaction costs has notable implications for consumer and antitrust law.

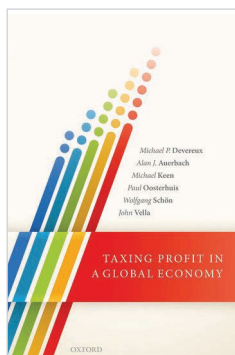
“Chris is a privacy rock star,” says Boston University law professor Danielle Citron. “He has made an indelible mark on our thinking, legislating, and law enforcement about information privacy.”

In March, when COVID-19 forced all Berkeley Law classes to be taught online, Hoofnagle’s tech savvy helped smooth the transition for his students. He breaks down lesson plans into small modules and uses Zoom tools such as polls, small discussion groups, and chat to spark engagement and interaction.

“Teaching online has made me realize how much wisdom is just beneath the surface of the class conversation and to recognize the need to draw it out in welcoming ways,” he says.

Bookshelf

Berkeley Law faculty are prolific authors. Here's a sampling of their many recent or forthcoming books.

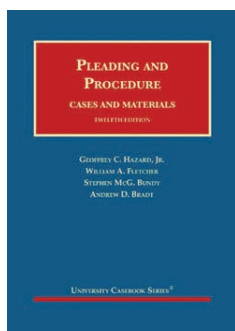


ALAN AUERBACH [CO-EDITOR WITH MICHAEL DEVEREUX, MICHAEL KEEN, PAUL OOSTERHUIS, WOLFGANG SCHÖN, AND JOHN VELLA]

Taxing Profit in a Global Economy

OXFORD UNIVERSITY PRESS, FORTHCOMING 2020

This book addresses fundamental issues of principle and practice involving the taxation of business profit as well as the allocation of taxing rights over such profit among countries. It also considers more radical methods of taxing rights — including those based on residence, destination, and formula apportionment — and evaluates potential reforms, particularly whether they are justifiable on a clear conceptual basis.

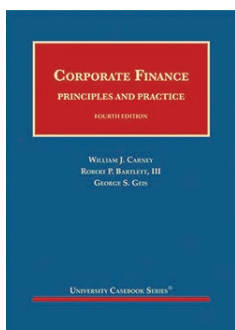


ANDREW BRADT [CO-AUTHOR WITH GEOFFREY C. HAZARD JR., WILLIAM A. FLETCHER, AND STEPHEN MCG. BUNDY]

Pleading and Procedure — Cases and Materials, 12th Edition

FOUNDATION PRESS, 2020

This edition thoroughly updates a classic casebook for today's students and faculty, keeping its perennially popular attributes while making it current. The book teaches students how to read cases while learning doctrine through lightly-edited cases supplemented with extensive notes. The new edition also has a trove of new material on personal jurisdiction, multidistrict litigation, the amended discovery rules, and mandatory arbitration.

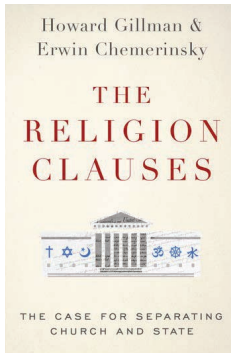


ROBERT BARTLETT [CO-AUTHOR WITH WILLIAM J. CARNEY AND GEORGE S. GEIS]

Corporate Finance, Principles and Practice, 4th Edition

FOUNDATION PRESS, 2020

This casebook provides a finance-oriented approach to corporate law, focusing on what students will need to know in corporate practice. Students learn financial fundamentals, such as balance sheets, income, and cash flow, as well as more complex topics, such as corporate debt and convertible securities.

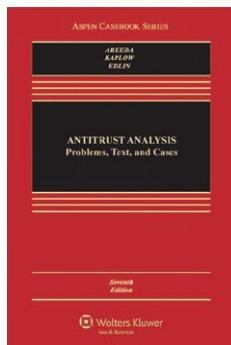


ERWIN CHERMERINSKY [CO-AUTHOR WITH HOWARD GILLMAN]

[The Religion Clauses: The Case for Separating Church and State](#)

OXFORD UNIVERSITY PRESS, 2020

Views on the proper balance between the state and religion have been sharply divided throughout this nation's history — and recent appointments to the Supreme Court suggest changes are coming to First Amendment law concerning religion. This book offers a primer on the meaning of the Constitution's religion clauses and a critique of the Court's interpretation of them recently, and argues a separationist approach is most in keeping with the intentions of the founders and the needs of a 21st century society that welcomes multiple religions.

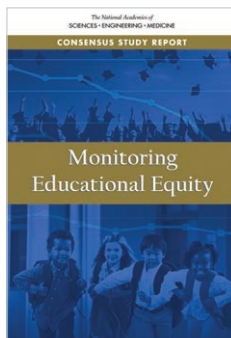


AARON EDLIN [CO-AUTHOR WITH PHILLIP AREEDA, LOUIS KAPLOW, AND SCOTT HEMPHILL]

[2019 Professor's Update to Antitrust Analysis: Problems, Text, and Cases](#)

WOLTERS KLUWER, 2019

This update continues the evolution of this casebook, originally written by the leading antitrust commentator of the 20th century, now continuing to be revised by some of the top lawyer economists of the early 21st century. The update adds new cases across a range of topics, including vertical and horizontal mergers, bundled restraints, and the reach of antitrust laws.



CHRISTOPHER EDLEY, JR. [CO-EDITOR WITH JUDITH KOENIG, NATALIE NIELSEN, AND CONSTANCE CITRO]

[Monitoring Educational Equity](#)

THE NATIONAL ACADEMIES PRESS, 2019

Education is sometimes characterized as the “great equalizer,” but to date, the country has not found ways to successfully address the adverse effects of socioeconomic circumstances, prejudice, and discrimination that suppress performance for some groups. This report proposes a system of indicators of educational equity and presents recommendations for implementation, and serves as a framework to help policy makers better understand and combat inequity in the United States' education system.



DANIEL A. FARBER

Environmental Law in a Nutshell (Japanese translation), 10th Edition

WEST ACADEMIC PUBLISHING, 2020

This book offers an up-to-date foundation for studying environmental law. It includes comprehensive coverage of a wide variety of environmental issues, from climate change to waste disposal to wetlands. It incorporates and explains both statutory and common-law regulations that shape the global application of environmental standards.

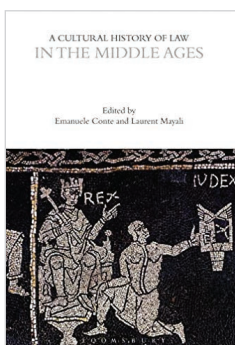


IAN HANEY LÓPEZ

Merge Left: Fusing Race and Class, Winning Elections, and Saving America

THE NEW PRESS, 2019

Merge Left offers an evidence-based approach to defeating political appeals rooted in racism. Building on his previous book, *Dog Whistle Politics*, Haney López shows how to inoculate the public against manufactured racial divisions and to build support for class-conscious, cross-racial alliances.

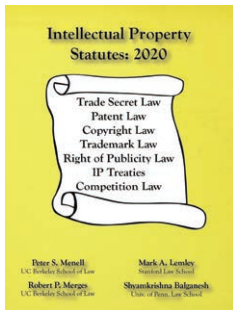


LAURENT MAYALI [CO-EDITOR WITH EMANUELE CONTE]

A Cultural History of Law in the Middle Ages

BLOOMSBURY ACADEMIC, 2019

Medieval law came to define an order that promoted new forms of individual and social representation, fostered the political renewal that heralded the transition from feudalism to the Early Modern state and contributed to the diffusion of a common legal language. Drawing upon a wealth of textual and visual sources, this book presents essays that examine key cultural case studies of the period on the themes of justice, constitution, codes, agreements, arguments, property and possession, wrongs, and the legal profession.



PETER MENELL [CO-AUTHOR WITH MARK A. LEMLEY, ROBERT MERGES, AND SHYAMKRISHNA BALGANESH]

Intellectual Property Statutes: 2020

CLAUSE 8 PUBLISHING, 2020

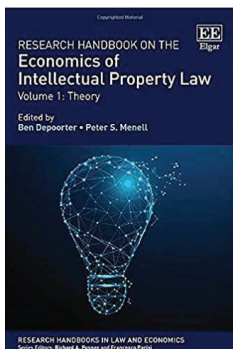
This just-updated version covers the principal U.S. property statutes and treaties. It's ideal used in conjunction with traditional casebooks as well as for IP practitioners and covers everything from copyright to trade secrets.



Intellectual Property in the New Technological Age: 2020 Volume I – Perspectives, Trade Secrets, and Patents and Volume II – Copyrights, Trademarks, and State IP Protections

CLAUSE 8 PUBLISHING, 2020

Offering an in-depth study of the fast-moving evolution of intellectual property law, *Intellectual Property in the New Technological Age* consists of two volumes meant to be used together in a fundamentals course. Volume I covers philosophical perspectives, trade secret law, and patent law; Volume II covers copyright law, trademark law, and state intellectual property law protections. As professors and practitioners in this field know all too well, Congress and the courts continue to develop intellectual property law and jurisprudence at a rapid pace, so these editions are significantly augmented and revised.

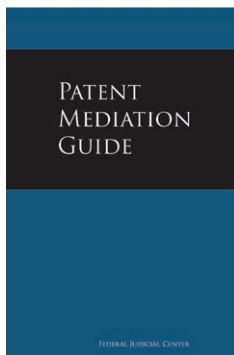


PETER MENELL [VOLUME I, CO-EDITOR WITH BEN DEPOORTER; VOLUME II, CO-EDITOR WITH DAVID L. SCHWARTZ]

Research Handbook on the Economics of Intellectual Property Law: Volume I – Theory; Volume II – Analytical Methods

EDWARD ELGAR PUBLISHING, 2019

Both law and economics and intellectual property law have expanded dramatically in tandem over recent decades. This field-defining two-volume handbook, featuring the leading legal, empirical, and law and economics scholars studying intellectual property rights, provides wide-ranging and in-depth analysis both of the economic theory underpinning intellectual property law, and the use of analytical methods to study it.

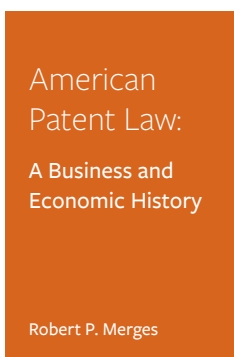


PETER MENELL [CO-AUTHOR WITH KATHI VIDAL, LEERON G. KALAY, MATTHEW POWERS, AND SARITA VENKAT]

Patent Mediation Guide

FEDERAL JUDICIAL CENTER, 2019

This stage-by-stage, issue-by-issue guide to the mediation of patent disputes supplements the Patent Case Management Judicial Guide, a comprehensive treatise developed for the federal judiciary. This book provides analogous guidance to patent mediators (magistrate judges and private mediators), in-house counsel, and litigation counsel.

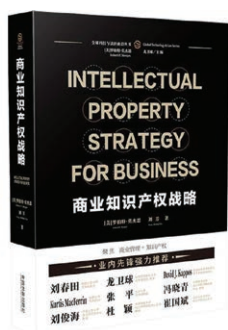


ROBERT P. MERGES

American Patent Law: A Business and Economic History

CAMBRIDGE UNIVERSITY PRESS, FORTHCOMING 2021

This book is a comprehensive history of the U.S. patent system from 1790, with an emphasis on how patents have been used by private enterprise for the pursuit of business goals. It highlights how Congress and the courts have adapted patent rules to support socially beneficial business practices, and tried (at times successfully) to modify those rules to re-channel investment and effort away from socially harmful practices, such as extortionate litigation.

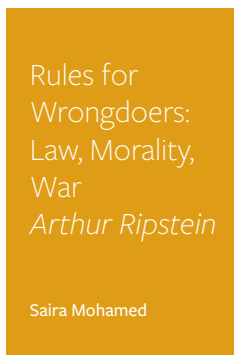


ROBERT P. MERGES [CO-AUTHOR WITH FANG LIU]

Intellectual Property Strategy for Business

CHINA LEGAL PUBLISHING HOUSE, 2020

While China has been making rapid progress in giving out and enforcing IP rights, and the tactics of the practice are becoming well-known, the idea of putting tactics into service of a business goal — such as entering a new market — is mostly under the radar. This primer is written in English and Chinese, and is designed to help corporate lawyers understand the tools and tactics that constitute an effective IP strategy, and to put them into action.

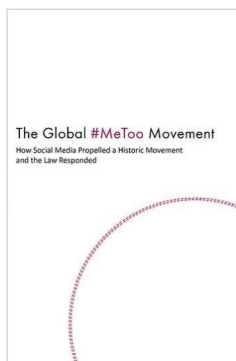


SAIRA MOHAMED [EDITOR]

Rules for Wrongdoers: Law, Morality, War *Arthur Ripstein*

OXFORD UNIVERSITY PRESS, FORTHCOMING 2021

This volume collects lectures given by Ripstein, a professor at the University of Toronto, at Berkeley in 2019. Arguing that the central wrong of war is that war is the condition which force decides, Ripstein contends that the rules governing the conduct of hostilities must apply equally to aggressor and defender in an armed conflict. Mohamed wrote the introduction, and the book also features commentaries, including by Berkeley Law Professor Christopher Kutz, and a reply by Ripstein.

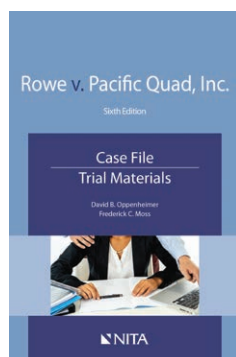


DAVID B. OPPENHEIMER [CO-EDITOR WITH ANN NOEL]

The Global #MeToo Movement: How Social Media Propelled a Historic Movement and the Law Responded

FULL COURT PRESS, 2020

Forty-eight authors from 28 countries spanning every continent but Antarctica tell the story of how social media has driven a social movement against sexual harassment, and how the law has responded, often by helping men to push back. Twenty-two of the 48 authors are women of color, and many are part of a new generation of young women bringing new insights to the fight against discrimination and harassment. The authors also include leading university professors, NGO activists, and government officials.

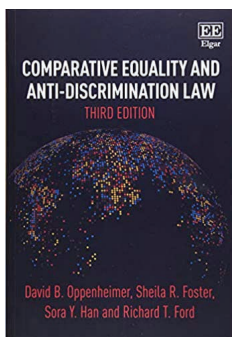


DAVID B. OPPENHEIMER [CO-AUTHOR WITH FRED MOSS]

Rowe v. Pacific Quad: Problems, Teaching Notes and Casefile, 6th Edition

WOLTERS KLUWER, 2020

This updated volume brings this practice case on sexual harassment into the current environment, including tweets referencing the #MeToo movement and text messages between the parties.

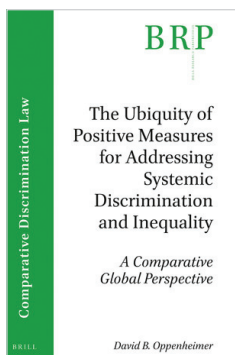


DAVID B. OPPENHEIMER [CO-AUTHOR WITH SHEILA FOSTER, SORA HAN, AND RICHARD FORD]

Comparative Equality & Anti-Discrimination Law: Cases, Codes, Constitutions & Commentary, 3rd Edition

EDWARD ELGAR PUBLISHING (UK), 2020

This revised and updated casebook comprehensively compares the U.S. legal approach to problems of inequality and discrimination with the approaches of a variety of other legal systems around the world, including those in Europe, South Africa, China, Colombia, India, and Brazil. It provides an introduction to theories of equality and sources of equality law, and examines inequality and discrimination based on gender, race, ethnicity, sexual orientation and identity, religion, and disability.

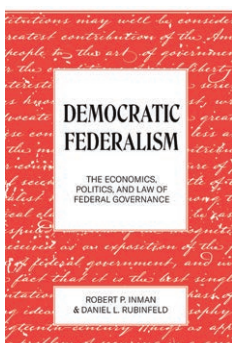


DAVID B. OPPENHEIMER

The Ubiquity of Positive Measures for Addressing Systemic Discrimination and Inequality: A Comparative Global Perspective

BRILL, 2019

Positive measures to prevent and remedy discrimination have been adopted in many parts of the world. By comparing the scope and form of such measures in different legal systems, we can gain a better perspective on our own system, and appreciate possible new approaches. This book compares positive anti-discrimination measures in the United States, India, Brazil, South Africa, Canada, the United Kingdom, and the European Union.

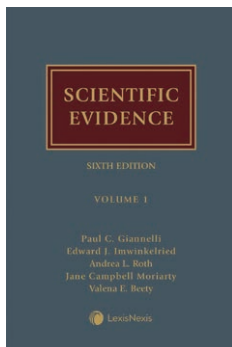


DANIEL L. RUBINFELD [CO-AUTHOR WITH ROBERT INMAN]

Democratic Federalism: The Economics, Politics, and Law of Federal Governance

PRINCETON UNIVERSITY PRESS, 2020

Around the world, federalism has emerged as the system of choice for nascent republics and established nations alike. In this book, Inman and Rubinfeld consider the most promising forms of federal governance and the most effective path to enacting federal policies. Drawing on the latest work from economics, political science, and law, they assess different models of federalism and their relative abilities to promote economic efficiency, encourage the participation of citizens, and protect individual liberties.

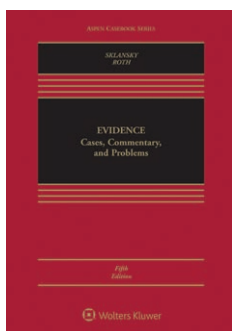


ANDREA ROTH [CO-AUTHOR WITH JANE MORIARTY, EDWARD IMWINKELRIED, AND VALENA BEETY]

Scientific Evidence, 6th Edition

LEXISNEXIS, FORTHCOMING 2020

This new update of a pathbreaking casebook is organized and written clearly to help prosecutors, defense attorneys, civil litigators, and judges keep abreast of scientific techniques to demonstrate or disprove a connection between forensic evidence and an individual. It covers rules and precedents, then analyzes the most frequently encountered scientific evidence and the latest developments in scientific evidence.

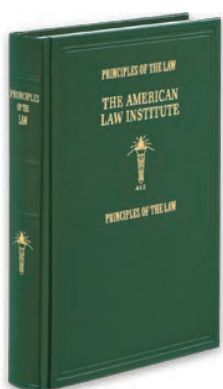


ANDREA ROTH [CO-AUTHOR WITH DAVID A. SKLANSKY]

Evidence: Cases, Commentary, and Problems, 5th Edition

WOLTERS KLUWER, 2020

This flexible and engaging casebook focuses on core concepts and central controversies in evidence law, presented through tightly edited cases, stimulating commentary from a wide range of perspectives, and carefully crafted problems. The latest edition includes excerpts from more than 50 new cases and 20 new articles, fresh problems and enhanced editorial material, and three entirely new sections: one on machine-generated proof, one on digital forensics, and one on authenticating electronic evidence.



PAUL M. SCHWARTZ [CO-AUTHOR WITH DAN SOLOVE]

Principles of the Law, Data Privacy

AMERICAN LAW INSTITUTE, FORTHCOMING 2020

Information privacy is more important than ever, with new concerns about digital data collection emerging almost daily. A significant debate is raging at the state and federal levels about the need for comprehensive data privacy laws. This volume lays out a framework for regulating data privacy, spells out best practices for entities that process personal data, and offers helpful guidance to legislators, judges, and policymakers.

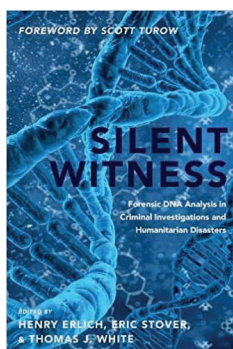


JEFFREY SELBIN [CO-AUTHOR WITH JULIET BRODIE, CLARE PASTORE, AND EZRA ROSSER]

Poverty Law, Policy and Practice, 2nd Edition

WOLTERS KLUWER, FORTHCOMING 2021

When the first edition was published in 2014, it was the first poverty law textbook to be published in 15 years. With updated literature from multiple viewpoints, the new edition provides an overview of the field, including cases, data and major government programs that map onto important theoretical, doctrinal, policy and practice questions.

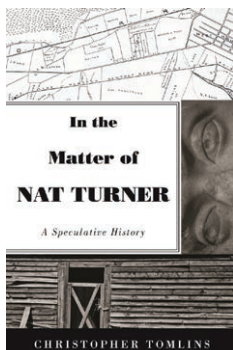


ERIC STOVER [CO-EDITOR WITH HENRY ERLICH AND THOMAS J. WHITE]

Silent Witness: Forensic DNA Analysis in Criminal Investigations and Humanitarian Disasters

OXFORD UNIVERSITY PRESS, 2020

Since its introduction in the late 1980s, DNA analysis has revolutionized the forensic sciences. Yet many of the scientific, legal, societal, and ethical concepts that underpin forensic DNA analysis remain poorly understood, and their application often controversial. Told by over 20 experts in genetics, law, and social science, *Silent Witness* relates the history and development of modern DNA forensics and its application in both the courtroom and humanitarian settings.

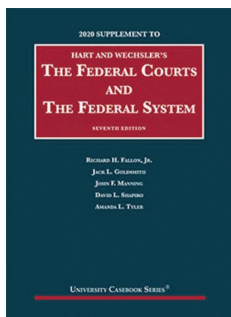


CHRISTOPHER TOMLINS

In the Matter of Nat Turner: A Speculative History

PRINCETON UNIVERSITY PRESS, 2020

This book is a spiritual biography of the Virginia slave Nat Turner, a critical examination of his rebellion, and an analysis of the rebellion's impact on antebellum Virginia, on the American South, and on the nation. Tomlins also turns a diagnostic eye on *The Confessions of Nat Turner* — both Thomas Ruffin Gray's hastily-compiled pamphlet issued a few days after Turner's execution, and William Styron's 1967 novel which borrows its title and narrative outline from Gray's pamphlet.

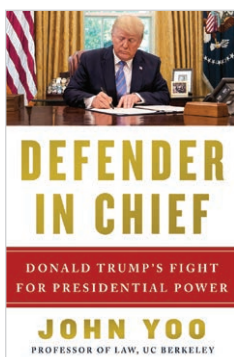


AMANDA TYLER [CO-AUTHOR WITH RICHARD H. FALLON, JR., JACK L. GOLDSMITH, JOHN F. MANNING, AND DAVID L. SHAPIRO]

2020 Supplement to Hart & Wechsler's Federal Courts and the Federal System, 7th Edition

FOUNDATION PRESS, 2020

This supplement makes the casebook, which last had a full update in 2015, current to recent developments in the law.

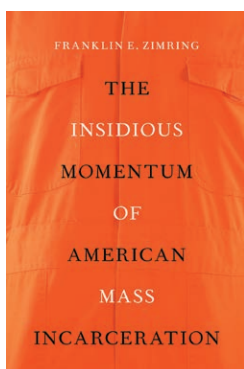


JOHN YOO

Defender-in-Chief: Donald Trump's Fight for Presidential Power

ALL POINTS BOOKS, 2020

Yoo argues that charges that President Trump is a threat to the rule of law and the Constitution has things exactly backwards. Instead, Yoo asserts, Washington, Jefferson, Madison and Hamilton would have seen Trump as returning to their vision of presidential power, even at his most controversial, and that unseating Trump would inflict permanent damage on the office of the presidency, the most important office in our constitutional system and the world.



FRANKLIN ZIMRING

The Insidious Momentum of American Mass Incarceration

OXFORD UNIVERSITY PRESS, 2020

This book challenges the conventional ways we consider the issue of mass incarceration in the United States and how we can combat the rising numbers, arguing that the most powerful enemy to reducing excess incarceration is simply the mundane features of state and local government, such as elections of prosecutors and state support for prison budgets. Zimring seeks a comprehensive understanding of when, how, and why the United States became the world leader in incarceration to further determine how the use of confinement can realistically be reduced.

Faculty Scholarship



CATHERINE ALBISTON

Jackson H. Ralston Professor of Law | Professor of Sociology
Faculty Director, Center for the Study of Law and Society

B.A., Stanford University (1987)

M.A., Stanford University (1989)

J.D., UC Berkeley School of Law (1993)

Ph.D., UC Berkeley (2001)

[What's so New about the #MeToo Movement?](#)

Albiston, Catherine in Trumpism and its Discontents (2020) Forthcoming

[Paid Leave for Precarious Workers During COVID-19](#)

Albiston, Catherine in Contexts (2020)

[Covid-19 Reveals Gaping Holes in the U.S. Social Safety Net](#)

Fisk, Catherine; Albiston, Catherine, Calif. L. Rev. Online (2020-05)

[Making Public Interest Lawyers in a Time of Crisis:](#)

[An Evidence Based Approach](#)

Albiston, Catherine; Cummings, Scott L; Abel, Richard, 34 Geo.

J. Legal Ethics (2021) Forthcoming

[Precarious Work and Precarious Welfare: How the Pandemic Reveals Fundamental Flaws of the U.S. Social Safety Net](#)

Albiston, Catherine; Fisk Catherine, 42 Berkeley J. Emp. & Lab. L.
(2021) Forthcoming



TY ALPER

Clinical Professor of Law

B.A., Brown University (1995)

J.D., New York University School of Law (1998)

LL.M., Georgetown University (2004)

[Third-Party Sexual Harassment: The Challenge of Title IX Obligations for Law School Clinics](#)

Alper, Ty, Wash. L. Rev. (2021) Forthcoming



ROXANNA ALTHOLZ

Clinical Professor of Law
Co-Director, International Human Rights Law Clinic

B.A., Brown University (1995)
J.D., UC Berkeley School of Law (1999)

[Living with Impunity: Unsolved Murders in Oakland and the Human Rights Impact on Victims' Family Members](#)

Altholz, Roxanna (2020)

[Brief of Catholic Legal Immigration Network et al as Amici Curiae Supporting Petition for a Writ of Certiorari, *Melinda Teresa Luna-Garcia v. William Barr*, U.S. Supreme Court, No. 19-673.](#)

Altholz, Roxanna (2019)



ABBYE ATKINSON

Assistant Professor of Law

B.A., UC Berkeley (1997)
J.D., Harvard Law School (2009)

[Borrowing Equality](#)

Atkinson, Abbye, Colum. L. Rev. (2020) Forthcoming



ALAN AUERBACH

Robert D. Burch Professor of Law and Economics
Director, Robert D. Burch Center for Tax Policy and Public Finance

B.A., Yale University (1974)
Ph.D., Harvard University (1978)

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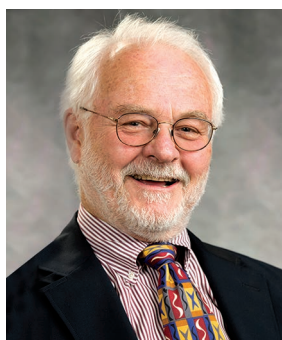
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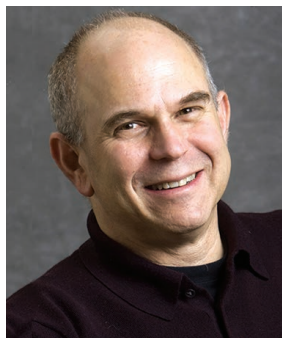
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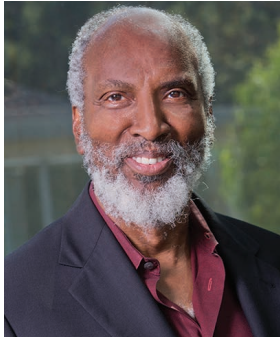
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