

JAMES WEINSTEIN

Curriculum Vitae

Dan Cracchiolo Chair in Constitutional Law
Sandra Day O'Connor College of Law Arizona State University
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ACADEMIC EMPLOYMENT AND AFFILIATION

Sandra Day O'Connor College of Law, Arizona State University

Dan Cracchiolo Chair in Constitutional Law, September, 2016–Present
Amelia D. Lewis Professor of Constitutional Law, 1998–September, 2016
Professor of Law, 1991–1998
Associate Professor of Law, 1986–1991
Faculty Fellow, Center for Law, Science & Innovation, 2001–Present

University of Cambridge

Associate Fellow, Centre for Public Law, 2007–Present
Visiting Fellow, King's College, Easter Term 2011
Visiting Fellow Commoner, Trinity College

University of California at Los Angeles

Visiting Professor, Communications Department, Fall 2001

AREAS OF ACADEMIC INTEREST

Constitutional Law, Free Speech, Jurisprudence, Legal History

PRIVATE PRACTICE

1983–1986 Seyfarth, Shaw, Fairweather & Geraldson
Los Angeles, California
(Commercial Litigator)
1980–1983 O’Melveny & Myers
Los Angeles, California
(Litigation Department)

AREAS OF PRACTICE

General commercial litigation, including intellectual property, trademark, communications law, antitrust, securities, entertainment law, newspaper libel defense, labor law, and agricultural law

EDUCATION

Legal

University of Pennsylvania, Philadelphia
J.D., Cum Laude, May 1978
Activities: 3rd Year—Member, Law Review Board of Officers;
Research and Writing Editor
2nd Year—Law Review Associate Editor
Awards: Order of the Coif

Undergraduate

University of Pennsylvania, Philadelphia
B.A., Summa Cum Laude, May 1975
Major: Combined program of Medieval History, Medieval Literature and Folklore
Awards: Phi Beta Kappa

JUDICIAL CLERKSHIP

Honorable James R. Browning
Chief Judge
United States Court of Appeals for the Ninth Circuit
(1978–80)

Books

EXTREME SPEECH AND DEMOCRACY (co-edited with Ivan Hare) (Oxford Univ. Press 2009)
(paperback ed. 2010)

HATE SPEECH, PORNOGRAPHY AND THE RADICAL ATTACK ON FREE SPEECH DOCTRINE (Westview
Press 1999)

Book Chapters

The Context and Content of New York v. Ferber, in REFINING CHILD PORNOGRAPHY: DEFINING AND
DISTILLING A CATEGORY OF CRIMINAL SPEECH (Carissa Hessick, ed., Univ. of Michigan Press 2016)

The Story of Masses Publishing Co. v. Patten: Judge Learned Hand, First Amendment Prophet, in
FIRST AMENDMENT STORIES (R. Garnett & A. Koppelman, eds.) (Found. Press 2011)

Extreme Speech, Public Order, and Democracy: Lessons from the Masses, in EXTREME SPEECH
AND DEMOCRACY (I. Hare & J. Weinstein, eds.) (Oxford Univ. Press 2009)

An Overview of American Free Speech Doctrine and its Application to Extreme Speech, in EXTREME
SPEECH AND DEMOCRACY (I. Hare & J. Weinstein, eds.) (Oxford Univ. Press 2009)

Hate Speech, Viewpoint Neutrality, and the American Concept of Democracy, in THE BOUNDARIES
OF FREEDOM OF EXPRESSION AND ORDER IN A DEMOCRATIC SOCIETY (T. Hensley, ed.) (Kent State
Press 2001)

Entry on Nude Dancing, in ENCYCLOPEDIA OF THE CONSTITUTION (SUPPLEMENT II) (Macmillan
Reference 2000)

Co-author (with Paul Bender) of section on constitutional law in LOOKING AT LAW SCHOOL (S.
Gillers, ed.) (Penguin Books/Meridian 4th ed. 1994)

An American's View of the Canadian Hate Speech Decisions, in FREE EXPRESSION: ESSAYS IN
LAW AND PHILOSOPHY (W. Woluchow, ed.) (Clarendon Press 1994)

Author of section on freedom of speech issues and editor of section on constitutional causes of action
in B. Lindemann & D. Kadue, SEXUAL HARASSMENT IN THE WORKPLACE (BNA Books 1991)

Is Language Choice a Fundamental Right?, in PERSPECTIVES ON OFFICIAL ENGLISH (K. Adams &
D. Brink, eds.) (Mouton de Gruyter 1990)

Journal Articles

Climate Change Disinformation, Citizen Competence and the First Amendment, 89 U. COLO. L. REV. (forthcoming, 2017) (symposium)

Viewpoint Discrimination, Hate Speech and Political Legitimacy: A Reply, 32 CONST. COMMENT. (forthcoming, 2017)

Hate Speech Bans, Democracy and Political Legitimacy, 32 CONST. COMMENT. (forthcoming, 2017) (target article for symposium)

How Theory Matters: A Commentary on Robert Sedler's "The 'Law of the First Amendment' Revisited," 58 WAYNE L. REV. 1105 (2013)

Formal Equality, Formal Autonomy, and Political Legitimacy: A Response to Ed Baker, 115 W. VA. L. REV. (2012)

Seana Shiffrin's Thinker-Based Theory of Free Speech: Elegant and Insightful, but Will it Work in Practice, 27 CONST. COMMENT. 385 (2011) (symposium)

Free Speech and Political Legitimacy: A Response to Ed Baker, 27 CONST. COMMENT. 361 (2011) (symposium)

Participatory Democracy as the Basis of Free Speech Doctrine: A Reply, 97 VA. L. REV. 633 (2011) (symposium)

Participatory Democracy as the Central Value of American Free Speech Doctrine, 97 VA. L. REV. 491 (2011) (symposium)

Democracy, Individual Rights and the Regulation of Science, 15 SCI. & ENG. ETHICS 407 (2009) (symposium)

Free Speech and Democracy, 20 ENT. L. REV. 287 (2009)

The Dimensions of Constitutional Analysis: A Reply to Professor Hamburger, 101 NW. L. REV. 569 (2007) (symposium)

Institutional Review Boards and the Constitution, 101 NW. L. REV. 493 (2007) (symposium)

Free Speech Values, Hardcore Pornography and the First Amendment: A Reply to Professor Koppelman, 31 N.Y.U. L. & SOC. CHANGE 911 (2007) (symposium)

Democracy, Sex and the First Amendment, 31 N.Y.U. REV. L. & SOC. CHANGE 865 (2007) (symposium)

Fools, Knaves, and the Protection of Commercial Speech: A Response to Professor Redish, 41 LOY.
L.A. L.REV. 133 (2007) (symposium)

The Federal Common Law Origins of Judicial Jurisdiction: Implications for Modern Doctrine, 90 U.
VA. L. REV. 305 (2004)

Speech Categorization and the Limits of First Amendment Formalism: Lessons from Nike v. Kasky, 54 CASE W. RES. L. REV. 1091 (2004) (symposium)

Database Protection and the First Amendment, 28 DAYTON L. REV. 305 (2003) (symposium)

Campaign Finance Reform and the First Amendment: An Introduction, 34 ARIZ. ST. L.J. 1057 (2002) (symposium)

A Brief Introduction to Free Speech Doctrine, 29 ARIZ. ST. L.J. 461 (1997) (symposium)

Free Speech, Abortion Access, and the Problem of Judicial Viewpoint Discrimination, 29 U.C. DAVIS L. REV. 471 (1996) (symposium)

Hate Crime and Punishment, 73 OR. L. REV. 345 (1994)

First Amendment Challenges to Hate Crime Legislation: Where's the Speech?, 11 CRIM. JUST. ETHICS, No. 2, 6–20 (1992) (symposium)

Some Further Thoughts about "Thought Crimes," 11 CRIM. JUST. ETHICS, No. 2, 61–63 (symposium)

The Early American Origins of Territoriality in Judicial Jurisdiction, 37 ST. LOUIS L. REV. 1 (1992)

A Constitutional Roadmap to the Regulation of Campus Hate Speech, 38 WAYNE L. REV. 163 (1992) (symposium)

The Dutch Influence on the Conception of Judicial Jurisdiction in 19th Century America, 38 AM. J. COMP. L. 73 (1990)

The Language of Impeachment, 20 ARIZ. ST. L.J. 209 (1988) (symposium)

Book Reviews

Combining the Best of Gunther and Sullivan, 21 SEATTLE L. REV. 907 (1998) (reviewing GERALD GUNTHER & KATHLEEN SULLIVAN, CONSTITUTIONAL LAW (13th ed.))

Taking Liberties with the First Amendment, 12 L. & PHIL. 159 (1998) (reviewing OWEN FISS, THE IRONY OF FREE SPEECH (1998))

Online Publications

Statement Against Regulating Hate Speech in the United States, *in Pro/Con Section of Barbara Mantel, Far-Right Extremism*, 25 CQ RESEARCHER 769 (2015), <http://library.cqpress.com/cqresearcher/cqresrre2015091800>

In Search of the Constitutional Value of Commercial Speech, FIRST AMEND. CTR. (reviewing ROGER SHINER, FREEDOM OF COMMERCIAL EXPRESSION (2004)) [http://www.firstamendmentcenter.org/faclibrary/bookreview.aspx?id=18&case=\(2004\)](http://www.firstamendmentcenter.org/faclibrary/bookreview.aspx?id=18&case=(2004))

Translated Articles

Participatory Democracy as the Central Value of American Free Speech Doctrine, LAW OF THE USA (2013) (abridged version of my 2011 article by that title in the VIRGINIA LAW REVIEW, translated into Ukrainian and publishes as special supplement to Ukrainian legal periodical LAW OF THE UKRAINE)

ACADEMIC PRESENTATIONS (selected)

“How to Effectively Communicate Science in a Policy Era of Alternative Facts,” A Dialogue with Lawrence Krauss, Second Nature’s Presidential Climate Leadership Summit, Arizona State University, February, 2017

“Why *Obergefell v. Hodges* is a Hard Case,” presentation at panel discussion, Legal Bodies: Same-Sex Marriage, Transgender Bathrooms & Reproductive Rights,” Sandra Day O’Connor College of Law, September 2016

“Hate Speech Laws, Democracy, and Political Legitimacy,” University of Queensland, Brisbane Australia, June 2016 (invited lecture)

Speaker, Symposium on Freedom of Speech, Centre for Comparative Constitutional Studies, Melbourne Law School, June 2016

Faculty seminar, University of New South Wales Law School, Sydney, Australia June 2016 (talk on hate speech regulation in free and democratic societies)

“Freedom of Speech, Academic Freedom and the Law,” keynote address for conference on Academic Freedom and Economic Insecurity in the Neoliberal University, Northern Arizona University, May 2016.

“Hate Speech Laws, Democracy and Political Legitimacy,” Aix-Marseille Univ., Oct. 2015 (invited lecture)

34th Int’l Congress on Law & Mental Health, Vienna, Austria, July 2015 (talk on hate speech and

psychic injury)

Clashes between Civil Rights and Religious Liberty, plenary session of Annual Meeting of the Nat'l Asian Pac. Am. Bar Ass'n, Scottsdale, Nov. 2014 (speaker)

Am. Political Sci. Ass'n Annual Meeting, Washington, D.C., Aug. 2014 (talk on hate speech and political legitimacy)

Regulating Hate Speech: Necessary or Harmful?, Durham Univ., England, May 2014 (debate with Jeremy Waldron)

Conference on Evidence, Ideology and Orthodoxy: When Science Enters the Public Sphere, Arizona State Univ., Feb. 2014 (presenter on panel on The Role of the University in Modern Democracies: Challenges and Opportunities)

25th Annual Conference of the Nat'l Ctr. on Philanthropy, New York Univ. School of Law, Oct. 2013 (talk on academic freedom)

Faculty Workshop, Chicago-Kent College of Law, Sept. 2013 (talk on academic freedom and the First Amendment)

Rooting for the Real, a conference investigating the legal, ethical, and social implications of fact-based film and television, King's College, Cambridge, July 2013 (session leader and participant)

Author Meets Readers: BRANDISHING THE FIRST AMENDMENT by Tamara Piety, Law & Society Annual Meeting, Boston, June 2013 (commentator)

Discussion with Victoria Woeste, author of HENRY FORD'S WAR ON JEWS, April 2013, ASU (moderator and commentator)

Webcam Talk on the First Amendment Protection of Extreme Speech in the United States, U.S. State Dep't Virtual Lecture Series, March 2013 (broadcast to audience at U.S. embassies in Azerbaijan, Armenia, and Georgia)

The Legal Response to Hate Speech: Should the US be More Like Europe? Arizona State Univ., Oct. 2012 (debate with Jeremy Waldron)

Inaugural C. Edwin Baker Lecture for Liberty, Equality and Democracy, West Virginia Univ., Oct. 2011 (principal speaker with Vincent Blasi)

Politea, London, England, July 2011 (talk on the state of free speech in the UK)

Centre for Public Law Discussion Group, Univ. of Cambridge, June 2011 (talk on Holocaust denial and free speech)

King's College, Cambridge, May 2011 (talk comparing free speech in UK and US)

Conference on Genocide Denial and the Law, Univ. of Paris I Pantheon-Sorbonne, Paris, May 2011 (speaker)

Symposium on Free Speech, Univ. of Virginia, Oct. 2010 (principal speaker with Robert Post)

Conference on Free Speech: Old Principles, New Circumstances, Univ. of Oxford, June 2010 (principal speaker with Jeremy Waldron & Agnes Calamard)

Cambridge Forum for Legal & Political Philosophy, Univ. of Cambridge, May 2010 (talk on free speech and political legitimacy)

Central European Univ., Budapest, May 2007 (talk on hate speech regulation and free speech)

L'Ecole Nationale de la Judicature, Paris, May 2007 (talk on American free speech doctrine)

Conference on Extreme Speech and Democracy, Univ. of Cambridge, April 2007 (speaker)

Faculty of Law, Univ. College London, March 2007 (talk on free speech and democracy)

Conference on Commercial Speech, Loyola Univ., Los Angeles, Feb. 2007 (speaker)

Centre for Public Law Discussion Group, Univ. of Cambridge, Feb. 2007 (talk on free speech and democracy)

Gates Distinguished Lecture, Trinity College, Cambridge, Nov. 2006 (talk on comparative law of free speech)

Univ. of Athens Law Faculty, Oct. 2006 (talk on American free speech doctrine)

Symposium on Censorship and Institutional Review Boards, Northwestern Univ. School of Law, April 2006 (speaker)

Symposium on Problems of Censorship in a New Technological Age, New York Univ. School of Law, April 2006 (speaker)

Distinguished Faculty Lecturer, Univ. of Pittsburgh School of Law, Oct. 2003 (lecturer on free speech theory)

Conference on the Constitutionality of Protecting Factual Compilations, Univ. of Dayton Law School, Nov. 2002 (speaker)

Edward W. Clyde Distinguished Visiting Scholar, Univ. of Utah College of Law, Nov. 2002 (lecture

on free speech theory)

Faculty Workshop, Frances Lewis Law Center, Washington & Lee Law School, March 2002 (lecture on free speech theory)

Communications Forum, Univ. of California at Los Angeles, Communications Department, Nov. 2001 (lecture on free speech theory)

Symposium on Campaign Finance Reform, Arizona State Univ. College of Law, Feb. 2001 (speaker)

30th Anniversary May 4 Commemoration, Kent State Univ., May 2000 (paper on hate speech regulation in America and Europe)

The Public Discussion Group, The Centre for Public Law, Univ. of Cambridge, March 2000 (talk comparing American and European regulation of hate speech)

Institute for Advanced Legal Studies, Univ. College London, March 2000 (talk comparing American and European regulation of hate speech)

Oxford Univ. Civil Liberties Union, Nov. 1999 (talk on American free speech doctrine and regulation of hate speech)

Symposium on Hate Speech and Pornography, in connection with my appointment as Amelia Lewis Professor of Constitution Law, Arizona State Univ., Nov. 1999 (speaker)

Conference on Law & the Internet, Arizona State Univ., Nov. 1997 (speaker)

Post Graduate Law Students Association, Univ. of Edinburgh, March 1997 (lecture on radical critique of American free speech doctrine)

Conference on Free Speech and Community, Arizona State Univ., Feb. 1997 (speaker)

Conference on the Relationship between Free Speech and Other Constitutional Rights, U.C. Davis Law School, Feb. 1996 (speaker)

Law & Society Annual Meeting, Phoenix, Arizona, June 1994 (participant on panel on hate speech regulation)

Centre for Criminology, Edinburgh Univ., May 1993 (lecture on American free speech doctrine)

Northwestern Univ. Law School, Oct. 1993 (debate with Martin Redish on constitutionality of hate crime legislation)

Univ. of Minnesota Law School, Oct. 1993 (faculty seminar on the First Amendment implications

of hate crime legislation)

Symposium on the First Amendment, Ohio State Univ., Oct. 1991 (speaker)

Conference on Freedom of Expression, McMaster Univ., May 1990 (speaker)

CONFERENCE ORGANIZING (selected)

Pharmaceutical Pricing and Marketing: Markets versus Regulation, Center for Law, Science & Innovation Conference, Arizona State Univ., Jan. 2016 (a principal organizer with Gary Marchant and Rafael Fonseca)

Free Speech, Privacy and Technology Panel, a plenary session of the Third Annual Conference on Governance of Emerging Technologies: Law, Policy and Ethics, May 2015, Scottsdale, Arizona (principal organizer and moderator)

Evidence, Ideology and Orthodoxy: When Science Enters the Public Sphere, Arizona State Univ., Feb. 2014 (principal organizer)

Rooting for the Real, a conference investigating the legal, ethical, and social implications of fact-based film and television, King's College, Cambridge, July 2013 (principal organizer)

Technology and the Rising Cost of Health Care: A Paradigm Shift, Arizona State Univ., March 2013 (organizer)

Threats to the University, Humanities and Science, British Academy, London and Univ. of Cambridge, July 2011 (principal organizer with Simon Blackburn & John Marenbon)

Origins of Morality, Arizona State Univ., Nov. 2010 (principal organizer with Simon Blackburn & Lawrence Krauss)

Unchallengeable Orthodoxy in Academia and Science, Arizona State Univ., March 2009 (workshop speaker and public event moderator)

Extreme Speech and Democracy, Univ. of Cambridge, April 2007 (principal organizer with Ivan Hare)

Commercial Speech: Past, Present and Future, Loyola Law School, Los Angeles, Feb. 2007 (principal organizer with Ronald Collins)

The Federal Election Laws, Campaign Finance, Free Speech, Soft Money, Hard Choices, Feb. 2001, Arizona State Univ. (assisted with organization)

Free Speech and Community: Who Speaks for American Values in Public Institutions, Feb. 1997
(principal organizer with Dan Shilling)

LAW SCHOOL SERVICE (selected)

Chair, Appointments Committee, 2007–08, 1994–95
Chair, Lateral and Visiting Appointments Committee, 1998–99
Chair, Diversity Task Force, 1994–95
Chair, Minority Recruitment Task Group, 1993–94
Chair, Tenure and Promotion Committee, 2001–02, 2003–04, 2004–05

UNIVERSITY SERVICE

Origins Project, Internal Advisory Board, 2010–present.

ACADEMIC AWARDS

Maricopa County Bar Association, Faculty Member of the Year, 2003
Centennial Professorship Award 2001 Finalist, Associated Students of Arizona State Univ.

PRO BONO LITIGATION (selected)

Korwin v. Cotton, 323 P.3d 1200 (2014) (participated in drafting of amicus brief filed by ACLU of Arizona in the Arizona Court of Appeals challenging Phoenix's policy of limiting advertising on public transportation that it operates to commercial speech)

United States v. Alvarez, 132 S. Ct. 2537 (2012) (with Eugene Volokh filed an amicus brief cited in the Court's decision)

Christian Legal Society v. Crow, U.S. Dist. Ct. Ariz. 2006 (advisor to counsel for Arizona State University and to the law school in lawsuit involving denial of official recognition to discriminatory religious organization)

Standhardt v. Superior Court, 2004 Ariz. Lexis 62 (of counsel on petition for review in case challenging Arizona law barring same sex marriage)

Mullally v. City of Los Angeles, 2002 U.S. App. Lexis 22535 (9th Cir. 2002) (counsel for whistle blower who revealed police coverup of domestic abuse by Los Angeles Police Department)

Children of the Rosary v. City of Phoenix, 154 F.3d 972 (9th Cir. 1998) (counsel for plaintiff in First Amendment challenge to Phoenix policy limiting advertisement on sides of city buses to commercial speech)

Sabelko v. City of Phoenix, 120 F.3d 161 (9th Cir. 1997) (counsel for plaintiff in First Amendment challenge to Phoenix "bubble" ordinance regulating demonstrations at health care facilities)

Zobrest v. Catalina Foothills School District, 509 U.S. 1 (1993) (co-author of amicus brief on behalf of Alexander Graham Bell Association)

Wisconsin v. Mitchell, 508 U.S. 476 (1993) (advised Wisconsin Department of Justice on briefing and argument in defense of constitutional challenge to hate crime law)

PROFESSIONAL MEMBERSHIP

American Law Institute
State Bar of California (inactive)
United States Court of Appeals for the Ninth Circuit
United States District Court: Central, Eastern, and Southern Districts of California
United States District Court for the District of Arizona

COMMUNITY ACTIVITIES (selected)

2007–present	TransparentDemocracy.org Board of Directors
1987–2003	Arizona Civil Liberties Union Legal Panel
1993–1996	Master, Sandra Day O’Connor Inn of Court
1994–1995	Arizona Civil Liberties Union Board of Directors
1980–1985	Lawyer in the Classroom Program and Law Day Panelist, Constitutional Rights Foundation
1982–1984	Consumer Advocacy Committee, State Bar of California
1981–1982	Volunteer Attorney, Public Counsel (indigent representation)
1980–1981	Criminal Indigent Defense Panel for the Central District of California