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Law-Related Employment

David L. Brennan Professor Emeritus of Law, Case Western Reserve University, 2023-present; David L. Brennan Professor Emeritus of Law and Adjunct Professor of Political Science, 2016-23; David L. Brennan Professor of Law and Professor of Political Science, 2012-16; Associate Dean for Academic Affairs (School of Law), January 2007-June 2010, and November 2011-June 2015; Professor of Law and Political Science, 1996-2012; Professor of Law, 1991-96; Associate Professor, 1987-91; Assistant Professor, 1984-87

Research Interests: Constitutional Law, First Amendment, Race and Sex Discrimination, Administrative Law, Supreme Court, Law and Social Science, Law and Public Policy

Courses Taught: Administrative Law; Constitutional Law; Courts, Public Policy, and Social Change; Law, Legislation, and Regulation; Law and Social Science; Mass Media Law; Property; Supreme Court Seminar

Lectures and Speeches: numerous presentations at academic, professional, and community programs, including American Bar Association, American Political Science Association, Association of American Law Schools, Association of the Bar of the City of New York, Federal Bar Association, International Conference on Applied Demography, International Union for the Scientific Study of Population, Judicial Conference of the Sixth Circuit, Law and Society Association, Population Association of America, Southern Demographic Association, International Congress on Peer Review in Biomedical Publication, Cleveland Tax Institute, City Club of Cleveland, Institute of Electrical and Electronic Engineers, National Association of College and University Attorneys, Ohio State Bar Association, Society for Applied Sociology, Southern Conference on Afro-American Studies, Southwestern Political Science Association, Woodrow Wilson Presidential Library, National Center for Geographic Information and Analysis (SUNY Buffalo), Baldwin-Wallace University, Bocconi University, Boston College, Bowling Green State University, Chapman University, Claremont McKenna College, Cleveland State University, Cuyahoga Community College, Denison University, Hebrew University of Jerusalem, Hofstra University, Howard University, Kent State University, Loyola University of Chicago, Morehouse College, Northwestern University, Oberlin College, Ohio Northern University, Seattle University, Stillman College, University of Akron, University of Bologna, University of Cincinnati, University of Detroit Mercy, University of Ghent, University of Mississippi, University of Nebraska, University of South Carolina, University of Utah, University of Western Ontario, Lake Ridge Academy, American Jewish Committee, American Jewish Congress, Cleveland Metropolitan Bar Association, Maltz Museum of Jewish Heritage

recipient of ten teaching awards, including Distinguished Teacher Award (CWRU Law Alumni Association, 2008) and Teacher of the Year (graduating classes of 1991, 2002, 2004, 2006, and 2016)

recipient of the Dennis J. Jenks Memorial Award as Administrator of the Year (graduating classes of 2014 and 2015)

recipient of Federal Bar Association's Excellence in Civics Education Award (2017) (first recipient of this national award)

Visiting Professor of Law, University of Nebraska, fall 2004

Judicial Fellow, Federal Judicial Center, 1991-92

Associate, Steptoe & Johnson, Washington, D.C., 1982-84

Law Clerk to Judge Ruth Bader Ginsburg, U.S. Court of Appeals for the District of Columbia Circuit, 1981-82

Professional Publications

Articles

Shadow Docket Rulings as Precedent, UCLA LAW REVIEW DISCOURSE (in press)

Judicial Independence and Political Polarization, SOUTH CAROLINA LAW REVIEW (in press)

Why the Federal Government Failed to Prosecute the Killers of Emmett Till, 95 MISSISSIPPI LAW JOURNAL 1 (2026)

How Activism Can Shape Legal Strategy: The Case of Pauli Murray, 10 HOWARD HUMAN & CIVIL RIGHTS LAW REVIEW 124 (2026)

Stare Decisis After the Rejection of Lockstepping in State Constitutional Law: An Ohio Perspective, 17 CONLAWNOW 101 (2025)

Using Common Law Property Doctrine to Advance Social Justice, 24 CONNECTICUT PUBLIC INTEREST LAW JOURNAL 218 (2025)

The Ohio Birth Certificate Fiasco: A Case of Institutional Failure, 25 JOURNAL OF APPELLATE PRACTICE AND PROCESS 419 (2025)

The Contested Legacy of John Adams, 60 REAL PROPERTY, TRUST AND ESTATE LAW JOURNAL 65 (2025)

The Decline of Representation Reinforcement in the Supreme Court: Increasing Deference to the Political Process, 73 CLEVELAND STATE LAW REVIEW 41 (2024)

Kinship and Recusal, THE FEDERAL LAWYER, Fall 2024, at 78

Taxing Remote Workers: The Pandemic and Its Implications, JOURNAL OF TAXATION OF INVESTMENTS, Summer 2024, at 23

Judicial Ethics and Judicial Competence, 74 CASE WESTERN RESERVE LAW REVIEW 955 (2024)

Formalism, Realism, and State Taxes on Out-of-State Transactions: Quad Graphics and the Meaning of Wayfair, JOURNAL OF TAXATION OF INVESTMENTS, Summer 2023, at 57

Conservation Easements, the Internal Revenue Service, and the Administrative Procedure Act, JOURNAL OF TAXATION OF INVESTMENTS, Summer 2022, at 27

The American Rescue Plan Act and State Tax Cuts, JOURNAL OF TAXATION OF INVESTMENTS, Summer 2021, at 15

Supreme Court Appointments in Presidential Election Years: The Case of John Hessin Clarke, 127 OHIO HISTORY 30 (2020), reprinted with an Afterword at 42 CARDOZO LAW REVIEW 2961 (2021)

The Constitutional Challenge to the New Tariffs on Steel and Aluminum Imports, JOURNAL OF TAXATION OF INVESTMENTS, Winter 2019, at 45

Another Superseded Quill: The End of the Physical-Presence Rule for Requiring Out-of-State Businesses to Collect Use Taxes, JOURNAL OF TAXATION OF INVESTMENTS, Fall 2018, at 15

Physical Presence and State Taxing Authority: The Uncertain Legacy of Quill, JOURNAL OF TAXATION OF INVESTMENTS, Fall 2017, at 31

Fred Gray and the Role of Civil Rights Lawyers, 67 CASE WESTERN RESERVE LAW REVIEW 1277 (2017)

In Honor of Fred Gray: Making Civil Rights Law from Rosa Parks to the Twenty-first Century — Introduction, 67 CASE WESTERN RESERVE LAW REVIEW 1025 (2017)

State Power to Impose Capital Gains Taxes on Nonresidents: A Note on S Corporations and Other Pass-Through Entities, JOURNAL OF TAXATION OF INVESTMENTS, Fall 2016, at 39

The Curious Case of the Pompous Postmaster: Myers v. United States, 65 CASE WESTERN RESERVE LAW REVIEW 1059 (2015)

War Powers, Foreign Affairs, and the Courts: Some Institutional Considerations, 45 CASE WESTERN RESERVE JOURNAL OF INTERNATIONAL LAW 443 (2012)

Learning the Right Lesson from Watergate: The Special Prosecutor and the Independent Counsel, 16 CHAPMAN LAW REVIEW 151 (2012)

Justice Thomas, Race, and the Constitution Through the Lens of Booker T. Washington and W.E.B. DuBois, 88 UNIVERSITY OF DETROIT MERCY LAW REVIEW 755 (2011)

Getting What You Pay For: Judicial Compensation and Judicial Independence, 2011 UTAH LAW REVIEW 25

Responding to Political Corruption: Some Institutional Considerations, 42 LOYOLA UNIVERSITY CHICAGO LAW JOURNAL 255 (2011)

Of Squares and Uncouth Twenty-Eight-Sided Figures: Reflections on Gomillion v. Lightfoot After Half a Century, 50 WASHBURN LAW JOURNAL 133 (2010)

Parents Involved and the Meaning of Brown: An Old Debate Renewed, 31 SEATTLE UNIVERSITY LAW REVIEW 923 (2008)

City Governments and Predatory Lending, 34 FORDHAM URBAN LAW JOURNAL 757 (2007) (with Shadya Y. Yazback)

Toward Understanding the Dynamics of Criminal Enforcement of Environmental Laws, 31 COLUMBIA JOURNAL OF ENVIRONMENTAL LAW 171 (2006)

Taxation, Compensation, and Judicial Independence, 56 CASE WESTERN RESERVE LAW REVIEW 965 (2006) (with Erik M. Jensen)

Why the Billy Mitchell Case Still Matters: Some Notes on the First Amendment, International Law, Civil Rights, and a Pioneer of Military Aviation, 70 JOURNAL OF AIR LAW AND COMMERCE 577 (2005)

Being the Government Means (Almost) Never Saying You're Sorry: The Sam Sheppard Case and the Meaning of Wrongful Imprisonment, 38 AKRON LAW REVIEW 139 (2005)

"Destroying Everything Segregated I Could Find": Fred Gray and the Legal Campaign for Integration in Alabama, 7 CRITICAL REVIEW OF INTERNATIONAL SOCIAL AND POLITICAL PHILOSOPHY 252 (2004)

An Ohio Dilemma: Race, Equal Protection, and the Unfulfilled Promise of a State Bill of Rights, 51 CLEVELAND STATE LAW REVIEW 395 (2004)

Equal Protection, the Conscientious Judge, and the 2000 Presidential Election, 61 MARYLAND LAW REVIEW 576 (2002)

Judicial Selection and Political Culture, 30 CAPITAL UNIVERSITY LAW REVIEW 523 (2002)

Insubstantial Questions and Federal Jurisdiction: A Footnote to the Term-Limits Debate, 2 NEVADA LAW JOURNAL 608 (2002)

Judicial Supermajorities and the Validity of Statutes: How Mapp Became a Fourth Amendment Landmark Instead of a First Amendment Footnote, 52 CASE WESTERN RESERVE LAW REVIEW 441 (2001)

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Executive Privilege and Interbranch Comity After Clinton, 8 WILLIAM AND MARY BILL OF RIGHTS JOURNAL 657 (2000)

The Sign of "The Four": Judicial Assignment and the Rule of Law, 68 MISSISSIPPI LAW JOURNAL 369 (1998)

Commandeering, the Tenth Amendment, and the Federal Requisition Power: New York v. United States Revisited, 15 CONSTITUTIONAL COMMENTARY 355 (1998) (with Erik M. Jensen)

Scholarship About Teaching, 73 CHICAGO-KENT LAW REVIEW 847 (1998)

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Innumeracy and Jurisprudence: The Surprising Difficulty of Counting Petition Signatures, 33 JURIMETRICS JOURNAL 223 (1993) (awarded Loevinger Prize by the American Bar Association Section of Science and Technology)

Defeasible Fees, State Action, and the Legacy of Massive Resistance, 34 WILLIAM AND MARY LAW REVIEW 769 (1993)

Congress, the President, and the Separation of Powers: Rethinking the Value of Litigation, 43 ADMINISTRATIVE LAW REVIEW 31 (1991)

Separation of Powers, the Political Branches, and the Limits of Judicial Review, 51 OHIO STATE LAW JOURNAL 175 (1990)

The Law Professor as Advocate, 38 CASE WESTERN RESERVE LAW REVIEW 512 (1988)

Psychiatry, Insanity, and the Death Penalty: A Note on Implementing Supreme Court Decisions, 79 JOURNAL OF CRIMINAL LAW AND CRIMINOLOGY 218 (1988)

The Removal Power and the Federal Deficit: Form, Substance, and Administrative Independence, 75 KENTUCKY LAW JOURNAL 699 (1987)

Privacy, Emotional Distress, and the Limits of Libel Law Reform, 38 MERCER LAW REVIEW 835 (1987)

Sweatt v. Painter, the End of Segregation, and the Transformation of Education Law, 5 REVIEW OF LITIGATION 3 (1986)

Book Chapters

Court Packing and Judicial Independence: An American Perspective, in JUDICIAL INDEPENDENCE: CORNERSTONE OF DEMOCRACY 382 (Shimon Shetreet & Hiram E. Chodosh eds., 2024)

Family Ties and Judicial Independence, in CHALLENGED JUSTICE: IN PURSUIT OF JUDICIAL INDEPENDENCE 270 (Shimon Shetreet, Hiram Chodosh & Eric Helland eds., 2021)

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John Quincy Adams, in THE PRESIDENTS AND THE CONSTITUTION: A LIVING HISTORY 89 (Kenneth Gormley ed., 2016) (paperback edition 2020)

Environmental and Natural Resource Regulation, in DEVELOPMENTS IN ADMINISTRATIVE LAW AND REGULATORY PRACTICE, 2006-2007, at 257 (Jeffrey S. Lubbers ed., 2008)

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Environmental and Natural Resource Regulation, in DEVELOPMENTS IN ADMINISTRATIVE LAW AND REGULATORY PRACTICE, 2002-2003, at 311 (Jeffrey S. Lubbers ed., 2004) (with Courtney L. Hall, Jennifer R. Jackson, and Wendy Wagner)

Environmental and Natural Resource Regulation, in DEVELOPMENTS IN ADMINISTRATIVE LAW AND REGULATORY PRACTICE, 2001-2002, at 299 (Jeffrey S. Lubbers ed., 2003) (with Wendy E. Wagner and Carrie A. Von Hoff)

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Race and the Origins of Zoning in the Chicago Suburbs, in CONTESTED TERRAIN: POWER, POLITICS AND PARTICIPATION IN SUBURBIA 71 (Marc Silver & Martin Melkonian eds., 1995)

Ruth Bader Ginsburg: Scholar, Advocate, Justice, in LAW DAY STORIES 80 (Pamela Bliss ed., 1995)

Legal Considerations in Census Planning, 3 INTERNATIONAL POPULATION CONFERENCE PROCEEDINGS 157 (International Union for the Scientific Study of Population, 1993)

Essays

Recent Cases Expand Speech Rights for Judicial Candidates, INTER ALIA, Spring 2026, at 17

The Case That Really Overruled Plessy v. Ferguson, THE FEDERAL LAWYER, Spring 2026, at 70

Judicial Putdowns, INTER ALIA, Fall 2025, at 9

Keeping Track of Your Auers, INTER ALIA, Summer 2025, at 7

If Ohio Were Not a State, INTER ALIA, Spring 2025, at 5

Judicial Review of Agency Legal Interpretations After Loper Bright, INTER ALIA, Winter 2025, at 11

Minority Business Development and Section 1981: A New Front in the Affirmative Action War, INTER ALIA, Fall 2024, at 10

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Introduction to Symposium on AEDPA and the PLRA After 25 Years, 72 CASE WESTERN RESERVE LAW REVIEW 527 (2022)

Over the Top: Judges, Lawyers, and COVID-19 Rhetoric, 31 HEALTH MATRIX 51 (2021)

Ruth Bader Ginsburg: An Appreciation, 42 CARDOZO LAW REVIEW 2991 (2021)

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Introduction to Symposium on Fair Housing Past, Present, and Future: Perspectives on Moving toward Integration, 70 CASE WESTERN RESERVE LAW REVIEW 659 (2020)

State Taxation of Out-of-State Trusts: Minimal Guidance About Minimum Contacts, JOURNAL OF TAXATION OF INVESTMENTS, Fall 2019, at 65

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City Governments and Predatory Lending Revisited, 40 FORDHAM URBAN LAW JOURNAL CITY SQUARE 108 (2014)

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Introduction to Symposium on Baker v. Carr After 50 Years: Appraising the Reapportionment Revolution, 62 CASE WESTERN RESERVE LAW REVIEW 941 (2012)

Law School Clinics and the First Amendment, 61 CASE WESTERN RESERVE LAW REVIEW 1153 (2011)

Introduction to Symposium on Access to the Courts in the Roberts Era, 59 CASE WESTERN RESERVE LAW REVIEW 815 (2009)

Learning from Yonkers: On Race, Class, Housing, and Courts, 44 HOWARD LAW JOURNAL 375 (2001)

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Viola Liuzzo and the Gendered Politics of Martyrdom, 23 HARVARD WOMEN'S LAW JOURNAL 249 (2000)

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Going Around and Coming Around in Prince Edward County, 35 THE GAMUT 5 (1992)

Privacy Rights and Remedies, 41 CASE WESTERN RESERVE LAW REVIEW 689 (1991)

Reports

EVALUATING THE INSTITUTIONAL IMPACT OF THE SPECIAL OIL AND GAS PANEL OF THE U.S. COURT OF APPEALS FOR THE FIFTH CIRCUIT (Federal Judicial Center, 1993) (with David E. Pierce)

Review of Criminal Provisions in Environmental Law: Task Force Report, 40 THE BUSINESS LAWYER 761 (1985)

Reviews

JOURNAL OF AFRICAN AMERICAN HISTORY (in press) (reviewing Daniel Rivero, *Just Freedom: Inside Florida's Decades-Long Voting Rights Battle* (2025))

111 JOURNAL OF AFRICAN AMERICAN HISTORY 160 (2026) (reviewing Elaine Weiss, *Spell Freedom: The Underground Schools That Built the Civil Rights Movement* (2025))

THE FEDERAL LAWYER, Fall 2025, at 70 (reviewing Zaakir Tameez, *Charles Sumner: Conscience of a Nation* (2025))

The Last Word on the Ohio Constitution, 73 CLEVELAND STATE LAW REVIEW ET CETERA 1 (2024) (reviewing Steven H. Steinglass & Gino J. Scarselli, *The Ohio Constitution* (2d ed. 2022))

131 OHIO HISTORY 99 (2024) (reviewing Stanley U. Robinson, *Tipping the Scales: One Man's Freedom* (2022))

77 ALABAMA REVIEW 109 (2024) (reviewing Dan T. Carter, *Unmasking the Klansman: The Double Life of Asa and Forrest Carter* (2023))

82 TENNESSEE HISTORICAL QUARTERLY 389 (2023) (reviewing Rachel Louise Martin, *A Most Tolerant Little Town: The Explosive Beginnings of School Desegregation* (2023))

107 JOURNAL OF AFRICAN AMERICAN HISTORY 628 (2022) (reviewing Charles McDew with Beryl Gilfix, *Tell the Story: A Memoir of the Civil Rights Movement* (2020))

75 ALABAMA REVIEW 262 (2022) (reviewing Cole S. Manley, *The Unlikely World of the Montgomery Bus Boycott: Solidarity Across Alabama, the United Kingdom, and South Africa* (2021))

129 OHIO HISTORY 159 (2022) (reviewing Karen Gray Houston, *Daughter of the Boycott: Carrying On a Montgomery Family's Civil Rights Legacy* (2020))

51 GEORGE WASHINGTON INTERNATIONAL LAW REVIEW 369 (2019) (reviewing *UCLA: Universal Citation in International Arbitration* (Stephen Anway gen. ed., 2018))

Ray Bliss in Retrospect, 9 CONLAWNOW 1011 (2018) (reviewing William L. Hershey & John C. Green, *Mr. Chairman: The Life and Times of Ray C. Bliss* (2017))

A Civil Rights Life, 68 CASE WESTERN RESERVE LAW REVIEW 651 (2017) (reviewing Nathaniel R. Jones, *Answering the Call: An Autobiography of the Modern Struggle to End Racial Discrimination in America* (2016))

CLEVELAND PLAIN DEALER, Sept. 16, 2007, at M5 (reviewing Egil Krogh, *Integrity: Good People, Bad Choices and Life Lessons from the White House* (2007))

CLEVELAND PLAIN DEALER, Apr. 22, 2007, at M4 (reviewing Kevin Merida & Michael Fletcher, *Supreme Discomfort: The Divided Soul of Clarence Thomas* (2007))

The Perils of Wishful Thinking About Abortion, 17 HEALTH MATRIX 101 (2007) ((reviewing Anne Hendershott, *The Politics of Abortion* (2006))

CLEVELAND PLAIN DEALER, July 2, 2006, at H1 (reviewing Artemus Ward & David L. Weiden, *Sorcerers' Apprentices: 100 Years of Law Clerks at the United States Supreme Court* (2006))

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On Understanding the History of Residential Segregation, 33 THE URBAN LAWYER 189 (2001) (reviewing Stephen Grant Meyer, *As Long as They Don't Move Next Door: Segregation and Racial Conflict in American Neighborhoods* (2000))

Learning from History in the Cigarette Debate, 10 HEALTH MATRIX 205 (2000) (reviewing Cassandra Tate, *Cigarette Wars: The Triumph of "The Little White Slaver"* (1999))

Baseball and Civil Rights Down on the Farm, 35 TULSA LAW JOURNAL 317 (2000) (reviewing Bruce Adelson, *Brushing Back Jim Crow: The Integration of Minor-League Baseball in the American South* (1999))

10 LAW AND POLITICS BOOK REVIEW 337 (2000) (reviewing Neil Duxbury, *Random Justice: On Lotteries and Legal Decision-Making* (1999))

Using Great Cases to Think about the Criminal Justice System, 89 JOURNAL OF CRIMINAL LAW AND CRIMINOLOGY 1141 (1999) (reviewing Gilbert Geis & Leigh B. Bienen, *Crimes of the Century* (1998))

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48 JOURNAL OF LEGAL EDUCATION 153 (1998) (reviewing Fred D. Gray, *Bus Ride to Justice* (1995))

19 JOURNAL OF AMERICAN CULTURE 143 (1996) (reviewing Robert T. Michael et al., *Sex in America: A Definitive Survey* (1994), and Sharon Thompson, *Going All the Way: Teenage Girls' Tales of Sex, Romance, and Pregnancy* (1995))

70 SOCIAL SCIENCE QUARTERLY 996 (1989) (reviewing Robert J. Spitzer, *The Presidential Veto* (1988))

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Other Publications

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Mallory Ruling Doesn't Undermine NC Sales Tax Holding, LAW360, August 4, 2023, <https://www.law360.com/appellate/articles/1705971/mallory-ruling-doesn-t-undermine-nc-sales-tax-holding>

Voters Have Few Options to Remove George Santos from Congress—Aside from Waiting Until the Next Election, THE CONVERSATION, January 13, 2023, <https://theconversation.com/voters-have-few-options-to-remove-george-santos-from-congress-aside-from-waiting-until-the-next-election-197778>

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Fred Gray, the “Chief Counsel to the Protest Movement,” to Get Medal of Freedom for His Civil Rights Work, THE CONVERSATION, July 5, 2022,
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State Lawsuits Over Stimulus Tax Rule Face Uphill Battle, THE CONVERSATION, April 27, 2021,
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Dave Yost’s American Rescue Plan Challenge Should Fail, CRAIN’S CLEVELAND BUSINESS, March 29, 2021,
<https://www.craincleveland.com/opinion/personal-view-dave-yosts-american-rescue-plan-challenge-should-fail>

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<https://www.cleveland.com/opinion/2020/11/shakespeare-and-those-inaccurate-polls-jonathan-l-entin.html>

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Professional Activities

Co-editor, JOURNAL OF LEGAL EDUCATION, 1992-98

Member, Electronic Publishing Advisory Group, Association of American Law Schools, 1998-2001

Lecturer, programs on Ethics in Public Administration, Bialystok School of Public Administration, Bialystok, Poland, May 2000

Member, Organizing Committee, Sixth International Conference on Applied and Business Demography, 1995-96

Consultant, Ohio Advisory Committee to the U.S. Commission on Civil Rights, 1996

Member, Committee to Draft Code of Ethics, Population Association of America, 1994-95

Consultant, Panel on Census Requirements in the Year 2000 and Beyond, Committee on National Statistics, National Research Council, 1993

Consultant, Administrative Conference of the United States, 1989-91, 1993-94

Professional Memberships

Admitted to the District of Columbia Bar

American Bar Association

Reporter, Task Force to Review Criminal Provisions in Environmental Law, Section of Corporation, Banking, and Business Law, 1982-84

Co-Chair, Committee on Environmental and Natural Resource Regulation, Section of Administrative Law and Regulatory Practice, 2010-11; Vice-Chair, 2003-10

Standing Committee on Gavel Awards, 2020-23

American Bar Foundation (life fellow)

American Political Science Association

Federal Bar Association

Board of Directors, Northern District of Ohio Chapter, 2010-present

Fellow, Foundation of the Federal Bar Association

Law and Society Association

Ohio State Bar Association

Population Association of America

Education

Northwestern University, J.D. cum laude, 1981

Coordinating Executive Editor, NORTHWESTERN UNIVERSITY LAW REVIEW, 1980-81;
Staff Member, 1979-80

University of Michigan, graduate study in sociology, 1969-70

Charles Horton Cooley University Fellow

Brown University, A.B. with honors, sociology, 1969