

THEODORE W. RUGER

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FACULTY APPOINTMENTS

University of Pennsylvania Law School (2004-Present)

Dean and Bernard G. Segal Professor of Law, 2015-present.
Deputy Dean, 2013-2015. Professor, 2006-2015. Assistant Professor, 2004-06.
Current or recent courses: Health Law and Regulation, Legislation, Food and Drug Law and Policy, Constitutional Law, Theories of Judicial Behavior (seminar), “Doctors, Death Panels and Democracy” (seminar).

New York University School of Law (Fall 2012)

Visiting Professor of Law. Taught courses in Health Law and Policy.

Harvard Law School (Fall 2009)

Eli Goldston Visiting Professor of Law. Taught courses in Health Law and Health Care Reform.

Yale Law School (Fall 2007)

Visiting Professor. Taught courses in Health Law, and Legislation.

Washington University School of Law (2001-2004)

Associate Professor. Courses taught: Constitutional Law, Health Law and Regulation, Religion and the Constitution, Government Lawyering Clinic.

LEGAL EXPERIENCE

Williams & Connolly, Washington, DC (1998-2000)

Litigation Associate. Worked primarily in civil litigation and federal administrative and appellate practice. Some areas of focus included pharmaceutical regulation, complex products liability and commercial contract litigation, scientific expert testimony issues, RFRA and Free Exercise clause.

United States Supreme Court (1997-1998)

Law Clerk to Justice Stephen Breyer

United States Court of Appeals for the First Circuit (1996-1997)

Law Clerk to Judge Michael Boudin

Ropes & Gray, Boston, MA (1995-1996)

Associate in Litigation and Health Care departments.

EDUCATION

Harvard Law School, J.D. 1995

magna cum laude

Sears Prize, 1993 (1 of 2 top first-year GPAs in class of 500)

President, *Harvard Law Review*, Vol. 108

Editor, *Harvard Law Review*, Vol. 107

Ames Moot Court Semi-Finalist, 1994

Harvard Defenders

Williams College, B.A. in History with Highest Honors, 1990

magna cum laude

Rhodes Scholarship Semi-Finalist

Robert C.L. Scott Prize for best thesis in U.S. History: “*Changing Times:*

Industrial Transformation and Working-Class Culture in 19th-Century Williamstown”

PUBLICATIONS AND FORTHCOMING WORKS

“The Moral Economy of American Medicine,” forthcoming 2018.

“After the FDA: A Twentieth-Century Agency in a Post-Modern World,” in *FDA in the Twenty-First Century* (I. Glenn Cohen and Holly F. Lynch, eds, Columbia U. Press, 2014).

“Health Policy Devolution and the Institutional Hydraulics of the Affordable Care Act,” in *The Health Care Case: The Supreme Court’s Decision and Its Implications* 359 (Nathaniel Persily, Gillian E. Metzger & Trevor W. Morrison, eds., Oxford U. Press 2013).

“Our Federalism Moves Indoors,” 38 *J. Health Policy Politics & Law* 283 (2012).

“Of Icebergs and Glaciers: The Submerged Constitution of American Health Law,” 75 *L. and Contemp. Probs* 127 (2012).

“Plural Constitutionalism and the Pathologies of American Healthcare,” 120 *Yale L. J. Online* 347 (2011).

“A New Deal in a World of Old Ones,” 42 *Ariz. St. L. Rev.* 1297 (2011, response to Theda Skocpol & Vanessa Williamson).

“Can a Patient-Centered Ethos be Other Regarding? Ought it Be?” 45 *Wake F. L. Rev.* 1513 (2010).

“FDA v. Brown & Williamson and the Norm of Agency Continuity” in *Legislation Stories* (Eskridge, Garrett & Frickey, eds.) (2010).

“Health Law’s Coherence Anxiety,” 96 *Georgetown Law Journal* 583 (2008).

“Chief Justice Rehnquist’s Appointments to the Foreign Intelligence Surveillance Act Court: An Empirical Perspective,” 101 *Northwestern Law Review* 239 (2007).

“*Gonzales v. Oregon* and the Supreme Court’s (Re)Turn to Constitutional Theory”, 34 *Journal of Law, Medicine & Ethics* 817 (2006).

“The Chief Justice’s Special Authority and the Norms of Judicial Power,” 154 *University of Pennsylvania Law Review* 1551 (2006).

“Preempting the People: The Judicial Role in Regulatory Concurrency and Its Implications for Popular Lawmaking,” 81 *Chi.-Kent L. Rev.* 1029 (2006).

“Justice Harry Blackmun and the Phenomenon of Judicial Preference Change,” 70 *Missouri Law Review* 1209 (2005).

“The United States Supreme Court and Health Law,” 33 *Journal of Law, Medicine & Ethics* 611 (2005).

“Supreme Court Forecasting Project: Legal and Political Science Approaches to Supreme Court Decision-Making,” 104 *Columbia Law Review* 1150 (2004) (with P. Kim, A. Martin, and K. Quinn).

“Symposium: Forecasting Supreme Court Decisions,” 2 *Perspectives on Politics* 761 (Dec. 2004) (with P. Kim, A. Martin, and K. Quinn). Analytical essay as centerpiece of symposium with responsive pieces from Gregory Caldera, Lee Epstein, Linda Greenhouse, Suzanna Sherry and Susan Silbey.

“‘A Question Which Convulses a Nation’: The Early Republic’s Greatest Debate About the Judicial Review Power,” 117 *Harvard Law Review* 827 (2004).

“The Judicial Appointment Power of the Chief Justice,” 7 *University of Pennsylvania Constitutional Law Journal* 341 (2004).

“The Supreme Court Federalizes Managed Care Liability,” 32 *Journal of Law, Medicine & Ethics* 528 (2004).

“Note: FDA Reform and the European Medicines Evaluation Agency,” 108 *Harvard Law Review* 2009 (1995).

Shorter Essays and Editorials

“The Elusive Right to Health Care under U.S. Law,” *New England Journal of Medicine*, June 25, 2015 (with George Annas and Jennifer Prah Ruger)

“Money, Sex and Religion – The Supreme Court’s ACA Sequel,” *New England Journal of Medicine*, Aug. 28, 2014 (with George Annas and Jennifer Prah Ruger).

“Real State Power Means Getting in the Obamacare Game,” *Harvard Business Review* online, April 2, 2013 (with Heather Gerken).

“Diagnosis and Cure for the FDA’s Failure,” *Detroit Free Press*, Jan. 5, 2013 (with Cary Coglianese).

“The Two Big Questions on Health Care,” *New York Times* online, June 28, 2012 (with Zeke Emanuel).

“Establishment Clause Issues” subchapter in *The Lobbying Manual* (William V. Luneberg, ed., 3d ed.) (2009).

“Foreword: The Chief Justice and the Institutional Judiciary” (symposium introduction), 154 *University of Pennsylvania Law Review* 1551 (2006).

“One Robe, Two Hats”, *New York Times*, July 17, 2005 (with Judith Resnik).

“Left to Their Own Devices: By Helping to Shield Manufacturers From Lawsuits, the FDA Is Pushing Tort Reform by Fiat,” *Legal Affairs*, October 2005, p. 24.

“New Federalism” (symposium essay), 16 *Washington University Journal of Law and Policy* 89 (2004).

“The Food Drug, and Cosmetic Act,” in *Major Acts of Congress* (Landsberg, Brophy, Sargentich and Staudt, eds., 2003).

RESEARCH INFRASTRUCTURE PROJECT

Principal Investigator, along with Lee Epstein, Jeff Segal, Andrew Martin, and Harold Spaeth, on 5-year National Science Foundation Grant to expand, update and revise the Supreme Court Database of historical case data for use in empirical research projects. Information on project and available at: <http://scdb.wustl.edu/about.php?s=3>

SUPREME COURT ADVOCACY

Sole author and Counsel of Record on *amicus* brief for Nat’l Association of Basketball Coaches in *Fisher v. University of Texas* (2013) (arguing for broad university discretion to advance diversity goals).

INVITED PRESENTATIONS

Pennsylvania Bar Institute, Public Policy Series, July & November 2018 (commentator on “Legal Issues Surrounding the President”).

Thomson Reuters Legal Executive Institute on “The Future of Law Schools: Envisioning a More Collaborative Educational Model,” November 2017 (commentator on “Training the 21st Century Lawyer: Envisioning a Public-Private Alliance”).

Philadelphia Bar Association, Chancellor’s Forum with Law School Deans, April 2017 (discussion on Trends, Challenges and the Future of Legal Education with other local Law Deans).

American Health Lawyers Association Conference, March 2017 (presented “Emerging Issues in the Area of FDA Regulation”).

Penn Law School, Trustees’ Council of Penn Women Spring Conference, April 2016 (discussion with Jeff Rosen on “The Supreme Court: The Path to Nomination and Key Upcoming Issues”).

Penn Law School, BLSA 28th Annual Sadie Alexander Conference, February 2016 (presented “Fisher v. University of Texas: A Discussion on the Fourteenth Amendment and the Constitutional, Social and Political Implications of Affirmative Action.”)

Renmin Law School, September 2015, (presented “New Developments in US Constitutional Law”).

Hong Kong University, September 2015, (discussion on Hong Kong’s Putative Constitutional Reforms of 2017).

Tsinghua University, September 2015 (Distinguished Lecture on the “US Supreme Court and the Patient Protection and Affordable Care Act”).

Beijing University, September 2015 (presenter on “New Frontiers in Public law”).

Yale Law School, November 2014, Medicare and Medicaid at Fifty (“Weberian and Madisonian Deficits in American Health Care”).

National Constitution Center, September 2014 (debate with Richard Epstein on “The Classical Liberal Constitution”).

American Society for Law, Medicine & Ethics Health Law Professors Annual Meeting, June 2014 (“The ACA and the New Health Federalism”).

Penn Law School, Conference on Empirical Legal Studies, October 2013 (commenter on two peer papers).

International Summit on Health Privacy, Washington, DC, June 2013 (presenter on “The Supreme Court and Privacy”).

Harvard Law School, May 2013 (presented paper “After the FDA” at

conference on FDA in the 21st Century).

DePaul Law School, February 2013 (presented “The Moral Economy of American Medicine”).

Harvard Law School, January 2013 (remarks on FDA history and scholarship in honor of Peter Barton Hutt).

Columbia Law School, November 2012 (presented “The Moral Economy of American Medicine”).

New York University Law School, November 2012 (presented “The Moral Economy of American Medicine”).

St. Louis University Law School, October 2012 (responsive lecture to William Eskridge’s Childress Lecture).

Columbia Law School, September 2012 (presented “Health Policy Devolution” paper at symposium on ACA and Supreme Court).

St. Louis University Law School, September 2012 (commented on papers as a “senior scholar” at Junior Health Law Scholars’ conference).

Duke Law School, September 2011 (The Patient Protection and Affordable Care Act and the Constitution).

Southeastern Association of Law Schools, July 2011 (Implementation of the Patient Protection and Affordable Care Act).

Yale Law School, April 2011 (“Plural Constitutionalism and the Pathologies of American Health Care”).

Columbia Law School, April 2011 (participant in conference on statutory interpretation).

American Association of Medical History, April 2011 (abstract selected by blind peer review, presentation on “A Constitution Frozen in Time: Midcentury Statutory Interpretation and the Practice of Medicine”).

Villanova Law School, February 2011 (presenter at symposium on statutory interpretation and constitutionalism).

Yale Law School, December 2010 (presenter at conference on Eskridge and Ferejohn’s “Republic of Statutes”).

Yale Law School, November 2010 (invited commenter on Supreme Court judicial behavior papers at 2010 Conference on Empirical Legal Studies).

Penn Law School, October 2010 (participant and organizer of symposium on “The New American Health Care System”).

Yale Law School, October 2010 (seminar presentation on “Judicialized Rights to Health in Global Perspective”).

Penn Law School, September 2010 (presented “Ghosts of Health Law Past” to faculty retreat).

Wake Forest Law School, April 2010 (presented paper on health reform at symposium).

Yale Law School, March 2010 (workshop on “FDA v. Brown & Williamson and the Norm of Agency Continuity”).

Harvard Law School, February 2010 (workshop on “The Individuation of Authority in American Medicine and Medical Law”).

Penn Law School, January 2010 (participant in *Constitutional Law Journal* symposium on judicial review).

Harvard Law School, September 2009 (workshop on “The Thomsonian Movement and the Structures of American Health Law”).

University of Florida, June 2009 (keynote lecture on “The Supreme Court and the American Democracy”).

University of Pennsylvania Law School, May 2009 Import Safety Seminar (commenter on pharmaceutical and food safety issues).

NYU/Penn/USC Constitutional Theory Conference (hosted at USC), April 2009 (participant and commenter on works relating to constitutional theory).

University of Chicago Law School, Constitutional Theory Workshop, March 2009 (“Submerged Constitution of American Health Law”).

Indiana University Law School, Law/Political Science Conference on “What’s Law Got to Do With It”, March 2009 (“The Normative Foundations of Positive Scholarship on Judges”).

Temple Law School, October 2008 (“*Oregon v. Gonzales* and the Submerged Constitution of American Health Law”).

University of Pennsylvania Law School ad hoc series, August 2008 (“Submerged Constitution of American Health Law”).

American Society for Law, Medicine & Ethics Annual Conference, Philadelphia, PA, June 2008 (Current Developments in Health Law Scholarship).

Yale Law School, March 2008 (presentation to student group on recent developments in FDA preemption).

Yale Law School, November 2007 (“The Submerged Constitution of American Health Law”).

Harvard Law School, October 2007 (“Health Law’s Coherence Anxiety”).

Northwestern Law School, March 2007 (“The Supreme Court and Institutional Deference in the Health Law Field”).

Wharton School, Seminar on the Law and Economics of the Pharmaceutical Industry (“Legal and Political Change at the FDA”).

University of Pennsylvania Journal of Constitutional Law, Conference on Positive Political Theory and Law, February 2007 (“The Supreme Court and Institutional Deference in the Health Law Field”).

Pennsylvania Bar Institute, November 2006 (“The Free Exercise Clause and Pharmacy Conscientious Objection Statutes”).

Indiana University-Indianapolis School of Law, October 2006 (“The Food and Drug Administration’s Preemption Initiative”).

National Constitution Center, October 2006 (“Supreme Court Review and Preview”).

Georgetown Law School, Colloquium on Constitutional Law and Theory, April 2006 (“The Chief Justice’s Special Authority and the Norms of Judicial Power”).

National Constitution Center, January 2006 (“The Nomination of Samuel Alito and Implications for Supreme Court Decisionmaking”).

University of Pennsylvania Law School, Symposium on the Chief Justice, November 2005 (“The Chief Justice’s Special Authority and the Norms of Judicial Power”).

Chicago-Kent Law School, November 2005 (symposium on Larry Kramer’s *The People Themselves* and related topics)

University of Missouri Law School, February 2005 (“Justice Blackmun and the Phenomenon of Judicial Preference Change” (symposium)).

University of Pennsylvania Law School, October 2004 (“Implications of 2004 Presidential Election for Health Policy and Judicial Appointments”)

University of Connecticut Law School chapter, American Constitution Society, October 2004 (“Judicial Federalism and Statutory Interpretation”).

Cornell Law School, Journal of Empirical Legal Studies Junior Scholars Conference, October 2004 (“Chief Justice Rehnquist’s Appointments to the Foreign Intelligence Surveillance Act Court: An Empirical Perspective”)

Yale Law School chapter, American Constitution Society, April 2004 (“Current Developments in Law and Legal Academia”)

Notre Dame Law School Faculty Colloquium, March 2004 (“The Judicial Appointment Power of the Chief Justice”)

Yale Law School Faculty Workshop Series, March 2004 (“The Judicial Appointment Power of the Chief Justice”)

Bar Association of Metropolitan St. Louis, February 2004 (“Certiorari

Jurisdiction of the U. S. Supreme Court”)

Boston University Law School Faculty Workshop, February 2004 (“The Supreme Court Forecasting Project”)

University of Pennsylvania Law School Faculty Workshop, January 2004 (“The Supreme Court Forecasting Project”)

Fordham University Law School Faculty Workshop, December 2003 (“The Supreme Court Forecasting Project”)

American Society of Law, Medicine and Ethics and Saint Louis University Center for Health Law Studies annual Health Law Scholars Workshop, October 2003 (“The Health Law Jurisprudence of the Rehnquist Court”)

Working Group on Empirical Research and Law, Washington University in St. Louis, July 2003 (“The Judicial Appointment Power of the Chief Justice”)

Working Group on Empirical Research and Law, Washington University in St. Louis, July 2003 (“Supreme Court Forecasting Project”)

University of North Carolina Law and Public Policy Colloquium, March 2003 (“The Judicial Appointment Power of the Chief Justice”)

St. Louis University Law School Faculty Workshop Series, February 2003 (“A Question Which Convulses a Nation”)

Southern Illinois University Law School Faculty Workshop Series, January 2003 (“A Question Which Convulses a Nation”).

American Association of Law Schools Annual Meeting, Section on New Law Professors, January 2003 (panel discussion on legal scholarship)

OTHER PROFESSIONAL ACTIVITIES

Member, American Law Institute (2015 -)

University of Pennsylvania Law School and University of Pennsylvania

Member, Penn University Council (2016-2017)

Diversity Action Officer (2014-15)

Academic Director, Master’s in Health Law Program (2014 -)

Board Member, Society of Empirical Legal Studies (2013-2015)

Co-President and Organizer, Conference on Empirical Legal Studies (2013)

Chair, Ad Hoc Faculty Senate Committee to Revise University-wide Grievance Procedures (2013-2014)

Co-Author, Law School Diversity Action Plan (2012)

Member, Appointments Committee (2011-12)

Chair, Appointments Committee (2008-09)

Co-Chair, Appointments Committee (2006-07)

Advisor, American Constitution Society (2004-2006)

Advisor, *University of Pennsylvania Law Review* (2006-07)

Washington University School of Law

Judicial Clerkship Committee (2001-2004)

Appointments Committee (2002-2003)

Advisor, *Washington University Law Quarterly* (2001-2004)

Tyrell Williams Lecture Committee (2003-2004)

Reviewer:

Cambridge University Press

Oxford University Press

Yale Journal of Health Policy, Law & Ethics

BAR MEMBERSHIPS

District of Columbia

Supreme Court of the United States

Massachusetts (inactive)