

## **NORMAN W. SPAULDING**

Nelson Bowman Sweitzer & Marie B. Sweitzer Professor of Law  
Stanford Law School  
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### **EDUCATION**

#### STANFORD LAW SCHOOL

J.D., Class of 1997.

*Stanford Law Review*: Articles Editor, Volume 49.

*Stanford Environmental Law Journal*: Member Editor, Volume 14.

Black Law Students Association: Second-year Representative, Steering and Recruitment Committees.

Senior Coordinator for Minority Admit Weekend, 1995.

#### WILLIAMS COLLEGE

B.A. in Political Science, Class of 1993. *Magna Cum Laude*.

Highest Honors for thesis: *Deconstruction and the Crisis in Constitutional Theory*.

Richard Lathers, 1877, Essay Prize in Government.

### **PROFESSIONAL EXPERIENCE**

STANFORD LAW SCHOOL: Nelson Bowman Swietzer & Marie B. Sweitzer Professor of Law and Associate Dean for Curriculum (2007-present); John A. Wilson Distinguished Faculty Scholar (2005-2007). Visiting Prof. of Law (2004-2005). Courses: civil procedure, professional responsibility, remedies, federal courts.

HARVARD LAW SCHOOL: Covington and Burling Distinguished Visiting Professor (Fall 2010).

UNIVERSITY OF CALIFORNIA, SCHOOL OF LAW (BOALT HALL): Acting Professor of Law; courses include civil procedure, complex litigation and professional responsibility (July 2000 – 2004).

NINTH CIRCUIT COURT OF APPEALS: Seattle, WA. Law Clerk to the Honorable Betty B. Fletcher (August 1999 - July 2000).

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA: San Francisco, CA. Law Clerk to the Honorable Thelton E. Henderson (September 1998 - August 1999).

SKADDEN, ARPS, SLATE, MEAGHER & FLOM: San Francisco, CA. Associate in Environmental Department. Drafted briefs for pre-trial motion practice and assisted in depositions for CERCLA litigation; conducted environmental due diligence; assisted in drafting and preparation of environmental disclosures as well as representations and warranties for corporate underwriting and mergers and acquisitions (August 1997 - September 1998).

STANFORD LAW SCHOOL: Research Assistant. Assisted Professor Margaret Jane Radin with the research, editing, and publication of articles on land use, copyright, the internet, and property theory, as well as her book, *CONTESTED COMMODITIES* (1996), a critical examination of law and economics; Assisted Professor Richard T. Ford with the development of course materials on housing law and policy, researched for an article on the Supreme Court's Voting Rights Act decisions (June 1995 - June 1996).

HARVARD BUSINESS SCHOOL: Research Associate. Assisted Jay W. Lorsch, Senior Associate Dean, Chairman of the Executive Education Programs, and Louis E. Kirsten Professor of Human Relations. Researched and wrote case studies for course on corporate governance, helped research and edit Harvard Business Review article on the legal and economic implications of corporate board practices (August 1993 - February 1994).

CHARLES HUFFORD FELLOW: Williams College. Fellowship awarded by Dept. of Political Science. Interviewed California judges, public defenders, district attorneys, probation officers, public television coordinators and educators for paper examining problems in criminal and juvenile law (Summer 1992).

## **PUBLICATIONS**

### **Articles, Book Chapters, Casebook, etc.**

*Revolutionary Law: Paradoxes of American Constitutional Foundationalism*, The Oxford Handbook of Historical Legal Research (Tomlins & Dubber, Eds. Oxford Univ. Press, forthcoming 2017)

*The Demise of Procedural Due Process*, \_ Fordham L. Rev. \_ (forthcoming Spring 2017)

CIVIL PROCEDURE: CASES AND PROBLEMS, Sixth Edition, with Barbara A. Babcock and Toni M. Massaro (forthcoming 2017).

*The Original Thirteenth Amendment*, 2 CRITICAL ANALYSIS OF LAW \_ (forthcoming Fall 2016).

*The History of Corporate General Counsel*, in \_ (Hensler, ed., forthcoming 2016).

*Disorder in Court*, in TRIAL FILMS ON TRIAL (Sarat, et al., eds., forthcoming 2016).

*Impersonating Justice: Lynching, Dueling, and Wildcat Strikes in Nineteenth Century America*, ASHGATE RESEARCH COMPANION TO NINETEENTH CENTURY AMERICAN LAW AND CULTURE (Goodman & Stern, eds., forthcoming 2016).

*The Artifice of Advocacy: Perjury and Participation in the American Adversary System*, in LAW AND LIES (Sarat, ed., 2015).

*Resistance, Countermemory, Justice*, 38 CRITICAL INQUIRY 132 (2014).

*Compliance, Creative Deviance, and Resistance to Law*, 2013 ABA J. PROF. LAWYER 135.

*Remembering Our Second Revolution: Sesquicentennial Reflections on Civil War Historiography*, in NEIL COGAN, 150 YEARS AFTER SUMTER (2013).

*The Privilege of Probity: Forgotten Foundations of the Attorney Client Privilege*, 26 GEO. J. LEGAL ETHICS 301 (2013).

CIVIL PROCEDURE: CASES AND PROBLEMS, Fifth Edition, with Barbara A. Babcock and Toni M. Massaro (2013).

*The Practice of Law as a Useful Art*, 40 FORDHAM URB. L. J. 433 (2012).

*Facades of Justice*, 110 MICHIGAN L. REV. 1067 (2012).

*The Enclosure of Justice: Courthouse Architecture, Due Process, and the Dead Metaphor of Trial*, 24 YALE J. L. & HUMANITIES 311 (2012).

*The Historical Consciousness of the Resistant Subject*, 1 IRVINE L. REV. 677 (2011).

*Independence, Experimentalism, and Resistance to Law in the Department of Justice*, 63 STANFORD L. REV. 409 (2011).

*Perfectionism and Maximum Consciousness in Anti-Discrimination Law: A Tribute to Judge Betty B. Fletcher*, 85 U. WASH. L. REV. 33 (2010).

CIVIL PROCEDURE: CASES AND PROBLEMS, Fourth Edition, with Barbara A. Babcock and Toni M. Massaro (2009).

*Professional Independence in the Office of the Attorney General*, 60 STANFORD L. REV. 1931 (2008).

*The Rule of Law in Action*, 93 CORNELL L. REV. 1377 (2008) (reviewing David Luban's LEGAL ETHICS AND HUMAN DIGNITY (2007)).

*Review Essay: VICKSBURG'S LONG SHADOW: THE CIVIL WAR LEGACY OF RACE AND REMEMBRANCE (Christopher Waldrep 2005)*, 25 LAW & HISTORY REV. 640 (2007).

*Oscar Sutor: Biographical Essay*, YALE BIOGRAPHICAL DICTIONARY OF AMERICAN LAW (2006).

CIVIL PROCEDURE: CASES AND PROBLEMS, Third Edition, with Barbara A. Babcock and Toni M. Massaro (2006).

*The Discourse of Law in Time of War: Politics and Professionalism During the Civil War and Reconstruction*, 46 WILLIAM & MARY L. REV. 2001 (2005).

*The Luxury of the Law: The Codification Movement and the Right to Counsel*, 73 FORDHAM L. REV. 983 (2004) (reviewing Deborah L. Rhode's ACCESS TO JUSTICE (2004)).

*Constitution as Counter-Monument: Federalism, Reconstruction and the Problem of Collective Memory*, 103 COLUMBIA LAW REVIEW 1992 (2003).

*The Myth of Civic Republicanism: Interrogating the Ideology of Antebellum Legal Ethics*,

71 FORDHAM L. REV. 1397 (2003), reprinted in, *LAWYERS' ETHICS AND THE PURSUIT OF SOCIAL JUSTICE: A CRITICAL READER* (Critical America Series, NYU Press 2005).

*Reinterpreting Professional Identity*, 74 U. COLORADO L. REV. 1 (2003).

*The Prophet and the Bureaucrat: Positional Conflicts of Interest in Service Pro Bono Publico*, 50 STANFORD L. REV. 1395 (1998).

*Commodification and its Discontents: Environmentalism and the Promise of Market Incentives*, 16 STANFORD ENV'T. L.J. 293 (1997).

*Totemism Transcended?: The Ambivalent Aspirations of Richard Posner's Jurisprudence*, 26 SETON HALL L. REV. 1810 (1996) (reviewing Judge Richard Posner's *OVERCOMING LAW* (1996)).

*American Express A & B*, Harvard Business School Case Studies, April 25, 1994, and June 23, 1994.

*Medtronic, Inc.*, Harvard Business School Case Study, April 14, 1994.

*Tower Air, Inc.*, Harvard Business School Case Study, April 13, 1994.

## **Commentary**

"Where Were the Lawyers? Enron and Legal Ethics," *Boalt Hall Transcript* (Fall 2002) (essay on the role of outside counsel in the Enron scandal).

"Ask the Ethicist," *JD Jungle* (Fall 2002) (essay advising how a firm should respond to discovering ongoing fraud by a corporate client).

## **AWARDS & FELLOWSHIPS**

John Bingham Hurlbut Award for Excellence in Teaching, Stanford Law School (2014).

Fred C. Zacharias Memorial Prize for Scholarship in Professional Responsibility, Honorable Mention, AALS Section on Professional Responsibility, for *The Privilege of Probity: Forgotten Foundations of the Attorney Client Privilege* (2013).

John Hart Ely Fellowship on Professional Responsibility, Yale Law School (2009).

Adhama Award for Excellence in Teaching and Commitment to Diversity, Berkeley Journal of African American Law & Policy (2008).

Outstanding Scholarly Paper Award, American Association of Law Schools, for *Constitution as Counter-Monument: Federalism, Reconstruction and the Problem of Collective Memory* (2004).

Regents' Junior Faculty Research Fellow, University of California (2003).

## PRESENTATIONS

*Legal Ethics and Corporate Governance*, CLE Panel Hosted by Arnold & Porter, San Francisco, California, November 19, 2015.

*Disorder in Court*, Conference on Trial Films on Trial, Amherst College (November, 2014)

*The Artifice of Advocacy*, Symposium on Law & Lies, University of Alabama, School of Law (October, 2014).

*Secession Winter*, University of Toronto Law School, August, 2014.

Comment on Amy Sepinwall's *Responsible Shares and Shared Responsibility: In Defense of Corporate Officer Liability*, Georgetown Law School (June 2013).

*Iconography, Ideology, and Authority in Revolutions*, Law and Humanities Senior Scholars Workshop, UCLA June 11, 2012.

*The Practice of Law as a Useful Art*, Conference: The Law: Business or Profession?, Fordham Law School, April 24, 2012.

*Compliance, Creative Deviance, and Resistance to Law: A Theory of the Attorney-Client Privilege*, AALS Section on Professional Responsibility, New Developments in the Attorney-Client Privilege, New Orleans, January, 5, 2012.

*The Privilege of Probity*, Spring 2012 Stanford Law School Faculty Workshop, Fall 2010 Harvard Law School Faculty Workshop, Fall 2011 UCLA Faculty Workshop, Fall 2011 American University Faculty Workshop, Fall 2011, Bay Area Civil Procedure Forum.

Comment on Katherine Gilbert's *The Inequalities of Equity and the Search for an Ethical Professional in Charles Dickens's Bleak House*, Columbia Law School, June 2010

*The Enclosure of Justice*, B.U. Legal History Workshop, Fall 2010.

*Independence Experimentalism and Resistance to Law in the Department of Justice*, Seminar on Government Lawyers, Yale Law School, November 17, 2009.

*Counseling Resistance to Law*, Yale Law School, November 17, 2009.

*Remedy as Injury: Comments on Sonia Thakkar's "Impossible Voices: Human Rights, Bodily Remains and the Injunction to Testify,"* Law and Humanities Junior Faculty Workshop, Georgetown Law School, (June 7, 2009).

*Experimentalism and Reform at DOJ*, New Directions for the Department of Justice, Berkeley Center for Criminal Justice, U.C. Berkeley School of Law (November 24, 2008).

*Rights, Remedies, and Procedure in Civil Rights Litigation*, Comments on Christopher W. Schmidt's *The Sit-ins and the Failed State Action Revolution*, Law and Humanities Junior Faculty Workshop, UCLA School of Law, (June 8, 2008).

*Professional Independence*, Civil Justice Workshop, U.C. Berkeley School of Law (March 21, 2008).

*Professional Independence in the Office of the Attorney General*, Stanford Center on Ethics conference on The American Legal Profession, (March 14, 2008).

*Professional Independence*, USC Gould School of Law Faculty Workshop (February 29, 2008).

*The Interdependence of Law and History*, Association for the Study of Law, Culture and Humanities, Georgetown Law Center, (March 24, 2007).

*Theories of Recognition*, Comments on Christiane Wilke's *Recognizing Victimhood*, Law and Humanities Junior Faculty Workshop, USC School of Law, (June 6, 2006).

*A Brief History of Access to Justice in the United States*, Loyola Law School, Symposium: The Economics of Civil Justice, Panel: The Price of Civil Justice – How Do Americans Pay for Lawyers (September 30, 2005).

*Of Remedies and Resistance*, University of Montpellier, Joint Faculty Colloquium with Boalt Hall School of Law faculty, sponsored by the U.C. Berkeley Robbins Collection, Montpellier, France (June 13, 2005).

*Reconsidering Constitutional Remedies*, Center for Social Justice, Boalt Hall School of Law (April 14, 2005).

*Two Faces of Lawlessness*, Stanford Civil Rights Conference: Pursuing Civil and Voting Rights in a Multiracial Society, Stanford Law School (February 19, 2005).

*American and Japanese Traditions of Adversarialism*, Comments On Prof. Takao Takase's Chapter: *Invoking Law as Narrative: Lawyer's Ethics and the Discourse of Law*, 2005 Sho Sato Conference on Japanese Law, University of California, Boalt Hall School of Law, Honoring Prof. Takao Takase (February 12, 2005).

*The Discourse of Law in Time of War*, Faculty Workshop presentations at University of Arizona (October 14, 2004), Stanford Law School (November 17, 2004), and University of Michigan (November 29, 2004).

*Constitution as Counter-Monument*, paper presented for American Association of Law Schools Outstanding Scholarly Paper Award, AALS Annual Meeting, Atlanta, Georgia (January 2004).

*The Myth of Civic Republicanism*, paper presented for panel, "Looking Back at the Legal Profession: Lessons From the Past," American Society for Legal History Annual Conference, Washington, D.C. (November 16, 2003).

*Enron, Secrecy, and Creative Deviance*, University of Humboldt, Joint Faculty Colloquium with Boalt Hall School of Law faculty, sponsored by the U.C. Berkeley Robbins Collection, Berlin, Germany (October 2003).

*Collective Memory, Reparations and the Law*, guest speaker for graduate seminar in African American Studies, University of California (October 1, 2003).

*Constitution as Counter-Monument*, University of San Diego School of Law, Faculty Colloquium (September 26, 2003).

*Undermining the Right to Counsel: The Stewart Case and Government Monitoring of Attorney-Client Communication*, paper talk for panel at conference on “Holding the U.S. Accountable: Human and Civil Rights Abuses Post-9/11,” hosted by International Human Rights Board at Boalt Hall (March 15, 2003).

*The Myth of Civic Republicanism*, Stanford Faculty Workshop, Stanford Law School (December 2003).

*Remembering Reconstruction*, paper presented for panel on recent Supreme Court federalism cases sponsored by the Equal Justice Society, San Francisco, California, (July 16, 2002).

*Constitution as Counter-Monument and The Ethics of Memory*, Paper presented at the “Conference on Judicial Cultures” sponsored by the U.C. Berkeley Robbins Collection and the Max Planck Institute for European Legal History. Cardona, Spain (October 2001).

*Federalism and Access to the Courts*, Panel Coordinator and Steering Committee Member, 1<sup>st</sup> Annual Conference of the Equal Justice Society (June 1 & 2, 2001).

*Due Process for Groups?*, Presentation at the American Association of Law Schools, Conference on Equal Access to Justice Panel, “Administration of Justice in a Time of Changing Demographics,” (March 17, 2000).

## **ACADEMIC AND PROFESSIONAL SERVICE**

### **Committee Work**

#### Stanford Law School

Curriculum Committee (2014-15, 2015-16)  
Chair, Legal Research and Writing Committee (2005-present)  
Clinical Tenure Promotion Committee (2014-15)  
Tenure Promotion Committee (2013-14)  
Associate Dean for Curriculum (2007-2009)  
Appointments Committee (2006-07)  
Building Committee (2007)  
Tenure Promotion Committee (2005-06)

#### Boalt Hall School of Law

Chair, Faculty Clerkship Committee (2001-04); Member, Faculty Clerkship Committee (2000-01).  
AALS Entry-Level Interviews, with Chair of the Appointments Committee (October 2002 and 2003).

Chair, Faculty Colloquium Committee (2001-02).  
Faculty Member of Selection Committee for new Director, Office of Career Services (October 2001).  
Member, Dean's Task Force for Capital Campaign, Sub-Committee on Student Life.  
Prepared report on ways to improve student life to shape priorities for alumni fundraising (Spring 2004).

University of California

Member, Police Review Board (2003-04).

**University Service**

Stanford Law School

*Public Interest Students/Service* -- "Pro Bono Legal Ethics," Co-Instructor on California Professional Responsibility Rules for 1L pro bono Training (October 2006); 1L Public Interest Student Mentor (2005-present).

*American Constitution Society* -- Faculty Advisor (2007-08); Moderator for Panel with Judges William Fletcher (9<sup>th</sup> Cir.), and Diana Motz (4<sup>th</sup> Cir.) (Fall 2006).

*Black Law Student's Association* -- Host welcome reception and dinner for new 1Ls (Fall 2005, 2006, 2008, 2009, 2013, 2014, 2015).

*Stanford Law Review* -- Faculty Speaker, Why Join SLR (Spring 2006, 2007); Faculty Guest Speaker, Stanford Law Review Training, "How to Write a Publishable Note" (September 2005, 2006, 2007, 2008, 2009); Panel Moderator, Judicial Ethics and Elections, SLR Symposium (February 20, 2010).

*Prospective Students* -- Prospective Student Weekend. Mock Class on *Goldberg v. Kelly* and due process for over 200 prospective students (April 2006, 2007); Host Desert for Prospective Students (April 2007, 2009, 2014); Faculty Panel for Minority Admit Students (April 2007, April 2014).

*Alumni* -- "The Rehnquist Court and Beyond: What is Next for the Supreme Court?" Stanford Day in Portland, (November 15, 2005), Stanford Day in Los Angeles, (January 21, 2006), Orange County Alumni Association (November 2006); Class of 1997 Ten Year Reunion Committee (2007).

*Speeches* -- "Professionalism," 1L Orientation Speech (August 2006, 2007, 2009, 2012); 1L Orientation Panelist (2015); "Inspire," Stanford Law School Dean's Gala, (October 12, 2006); Panelist, Federal Clerkship Interviews (September 12, 2005); "A New Day for Diversity," Panel Moderator, Stanford Law School, sponsored by Orrick, Herrington (September 3, 2005); Faculty Orientation Speaker, Stanford Law & Policy Review (Spring 2007).

DARE Doctoral Fellowship Program Mentor (2012-13)



## Boalt Hall School of Law

*Law Students of African Descent* – Speaker, Introduction for Judge Thelton Henderson’s Distinguished Alumni Lecture (February 2004), Speaker, First Annual Black History Month Distinguished Alumni Lecture (February 2003); Faculty host for Student-Law Firm Reception (2002, 2003); Faculty host for new first year students (Fall 2001, 2002, 2003).

*Alumni* – Alumni Weekend Panelist for “Enron’s End Run” and “Coming to Terms With America’s Past: Reparations for Slavery” (October 26, 2002); Boalt Alumni Board Dinner, Featured Speaker, “Reinterpreting Professional Identity” (September 19, 2002); Dean’s Alumni Lunch Speaker, “Rethinking Professional Identity,” scholarly talk on work in progress before Boalt Alumni (San Francisco, October 2001; Los Angeles, November 2001).

*California Law Review* – Faculty Advisor. Advise new 2L members on comment-writing process, review papers for compliance with the good-faith requirement, serve on Board of Directors (2003-2004).

*Prospective Students* – Prospective Student Weekend. Teach Mock Class on *Goldberg v. Kelly* and due process for over 200 prospective students (April 2001, 2002, 2003, 2004). Speech and mock class for prospective minority applicants (2001, 2002, 2003, 2004).

*Center for Social Justice* – Speaker for Social Justice Thursday Lunches with first year students on the history of legal theory in America and the development of critical race theory (2000, 2001, 2002, 2003); Panel Moderator, “Future Strategies,” Symposium on Reparations (April 2002).

*Other* – *Boalt Hall First-Year Moot Court Competition* – Judge (spring 2001, 2002). *Citation Award Speech* for Judge Thelton Henderson (May 2001).

*Speaker, La Familia*. Lecture on trial procedure to students of color from Oakland Charter School as part of student-run mock trial exercise designed to educate students about law and encourage applications to law school (April 2001).

*Faculty Advisor* to new organization of students of color interested in pursuing careers in law teaching (2004).

## **Professional Service**

Guest Editor, *Critical Analysis of Law* Vol. \_\_, Issue \_\_ (2016)

Convener, Law & Humanities Junior Faculty Workshop (2015)

Peer Reviewer, *Law & History* (2010)

Peer Reviewer, Law & Humanities Junior Faculty Workshop (2009, 2010, 2011, 2012, 2013, 2014, 2015)

“Discovery Abuse: Qualcomm v. Broadcom,” United States District Court for the Northern District of California Judicial Conference, Speaker and Panelist, Napa, Ca. May 3, 2008.

William A. Ingram Inn of Court, Stanford Law School Faculty Representative (2005-06).

“Legal Ethics and the History of American Legal Education,” Bay Area African American Lawyers’ Brown Bag Lunch, San Francisco, May 2005.

“Deliberate Ignorance and Creative Deviance: Are Corporate Lawyers and Corporate Officers Talking Too Much or Too Little?,” Keynote Speaker, Earl Warren Inn of Court, Oakland California, June 2004.

Panelist, Ethics Panel: “Pssst – Can You Keep a Secret? When a Lawyer’s Duty to the Client Becomes a Duty to Turn the Client In,” Northern District of California Judicial Conference, United States District Court for the Northern District of California, May 3, 2003.

“Positional Conflicts of Interest in Pro Bono Representation,” presentation to Bar Association of San Francisco, January 29, 2003.

Equal Justice Society. Founding Member, Steering Committee.

## **COURSES TAUGHT**

Civil Procedure  
Legal Profession / Professional Responsibility  
Federal Courts  
Remedies  
Law and Culture of Group Litigation (seminar on complex litigation)

## **MEMBERSHIPS, ADMISSIONS**

American Law Institute (2009)  
Ninth Circuit Court of Appeals (2000)  
Central District of California (2008)  
California State Bar (1997)

## **PRO BONO SERVICE**

Assisted employee in debt collection proceedings against former employer. (Jan.-Mar. 2012)

Obtained release of California prisoner in state habeas proceedings challenging constitutionality of plea bargain and constitutionality of the Governors arbitrary reversal of parole; pending state and federal habeas petitions to obtain discharge from parole (2005-present). In re Blake, (Nov. 18, 2008)

Assisted family in creation of testamentary documents to ensure care and future guardianship of 9 year old daughter (2007).

Represented Cambodian refugee in removal proceedings through Lawyers' Committee for Civil Rights of the San Francisco Bay Area pro bono Asylum Program. Successfully obtained bail and waiver of inadmissibility. Also briefed applicability of Article 3 of the United Nations Convention Against Torture. Brief is currently used as a template in the pro bono Asylum Program in other immigration cases involving the Convention Against Torture (1998).