George A. Mocsary

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ACADEMIC EXPERIENCE

UNIVERSITY OF WYOMING COLLEGE OF LAW **Laramie, WY**
Professor of Law **7/19 – PRESENT**
Director, Business Law Practicum.

- Recipient of the 2020 Extraordinary Merit Award.
- Mentor, John P. Ellbogen Entrepreneurship Competition.

Courses:

- Business Organizations
- Corporations
- Agency and Partnership
- Securities Regulation
- Contracts II
- Law and Economics Seminar
- Entrepreneurship and Business Law Practicum

SOUTHERN ILLINOIS UNIVERSITY SCHOOL OF LAW **Carbondale, IL**
Associate Professor **7/18 – 5/19**
Assistant Professor **7/13 – 6/18**
Director, Faculty Development.
Director, Business Boot Camp.
Director, Law and Economics Program.
Director, Gene and Katy Simonds Lectureship in Democracy.

- Recipient of the SIU Law Outstanding Scholar Award (April 13, 2017).

Courses:

- Business Organizations
- Corporations
- Agency and Partnership
- Contracts I and II
- Accounting for Lawyers
- Business Boot Camp
- Judicial Externship
- Firearms Law and the Second Amendment

UNIVERSITY OF CONNECTICUT SCHOOL OF LAW **Hartford, CT**
Visiting Assistant Professor **8/11 – 7/13**
Courses: Business Organizations, Legal Accounting.

TEACHING & RESEARCH INTERESTS

TEACHING INTERESTS

- Business Organizations
- Corporations
- Unincorporated Business Entities
- Securities Regulation
- Contracts
- Corporate Finance
- Blockchain Law
- Insurance Law
- Accounting for Lawyers
- International Business Transactions
- Law and Economics
- Firearms Law

RESEARCH INTERESTS

- Corporate law, including corporate governance, corporate purpose, and securities regulation.
- The intersection of financial regulation and financial-economic agency theory.
- Economic analysis of law.
- Organizational theory.
- Firearms law.
- Contract law.

PUBLICATIONS

LAW JOURNAL ARTICLES

- *Expressive Trading, Hypermateriality, and Insider Trading*, 22 TRANSACTIONS: TENN. J. BUS. L. (forthcoming 2022) (with John P. Anderson & Jeremy L. Kidd). (link)

- *Social Media, Securities Markets, and the Phenomenon of Expressive Trading*, 25 LEWIS & CLARK L. REV. 1223 (2022) (with John P. Anderson & Jeremy L. Kidd). (link)

- *A Brief History of Public Carry in Wyoming*, 21 WYO. L. REV. 341 (2021) (with Debora A. Person). (link)

- *Errors of Omission: Words Missing from the Ninth Circuit's* Young v. State of Hawaii, 2021 U. ILL. L. REV. ONLINE 172 (with David B. Kopel). (link)

- *Public Perceptions of Insider Trading*, 51 SETON HALL L. REV. 1035 (2021) (with John P. Anderson & Jeremy L. Kidd). (link)

- *A Close Reading of an Excellent Distant Reading of* Heller *in the Courts*, 68 DUKE L.J. ONLINE 41 (2018). (link)

- *Insuring the Unthinkable*, NEW APPLEMAN ON INS.: CURRENT CRITICAL ISSUES IN INS. L. 1 (Spring 2018) (lead article). (link)

- *Freedom of Corporate Purpose*, 2016 BYU L. REV. 1319 (2017) (lead article). (link)

- *Guns, Bird Feathers, and Overcriminalization: Why Courts Should Take the Second Amendment Seriously*, 14 GEO. J. L. & PUB. POL'Y 17 (2016) (with Robert J. Cottrol). (link)
  - Cited in *Kolbe v. Hogan*, 849 F.3d 114, 154 (4th Cir. 2017) (Traxler, J., dissenting).

- *Insuring Against Guns?*, 46 CONN. L. REV. 1209 (2014) (lead symposium article). (link)

- *The Embedded Firm: Corporate Governance, Labor, and Finance Capitalism—Commentary*, 3 ACCT., ECON. & L. 123 (2014) (peer reviewed essay on incentive issues in corporate governance as they relate to corporate purpose, based on participation in a symposium discussion panel on THE EMBEDDED FIRM: CORPORATE GOVERNANCE, LABOR, AND FINANCE CAPITALISM (Cynthia A. Williams & Peer Zumbansen eds., 2011)). (link)

- *Statistically Insignificant Deaths: Disclosing Drug Harms to Investors (and Patients) Under SEC Rule 10b-5*, 82 GEO. WASH. L. REV. 111 (2013). (link)

- *"This Right Is Not Allowed by Governments That Are Afraid of the People": The Public Meaning of the Second Amendment When the Fourteenth Amendment Was Ratified*, 17 GEO. MASON L. REV. 823 (2010) (with Clayton E. Cramer & Nicholas J. Johnson) (link).
  - Cited in *McDonald v. Chicago*, 561 U.S. 742, 773 n.21, 776 n.25, 780 (2010).
  - Cited in *Ezell v. City of Chicago*, 651 F.3d 684, 702 n.11 (7th Cir. 2011).

- Note, *Explaining Away the Obvious: The Infeasibility of Characterizing the Second Amendment as a Nonindividual Right*, 76 FORDHAM L. REV. 2113 (2008). (link)

BOOKS AND SUPPLEMENTS

- FIREARMS LAW AND THE SECOND AMENDMENT: REGULATION, RIGHTS, AND POLICY online chs. 17-23 (3d ed.

2021) (with Nicholas J. Johnson, David B. Kopel, E. Gregory Wallace & Donald Kilmer). (link)

- FIREARMS LAW AND THE SECOND AMENDMENT: REGULATION, RIGHTS, AND POLICY (3d ed. 2021) (with Nicholas J. Johnson, David B. Kopel, E. Gregory Wallace & Donald Kilmer).

- CONTRACTS: CASES AND THEORY OF CONTRACTUAL OBLIGATION (3d ed. 2021) (with Carter G. Bishop & Daniel D. Barnhizer).

- FIREARMS LAW AND THE SECOND AMENDMENT: REGULATION, RIGHTS, AND POLICY online chs. 12-16 (2020) (with Nicholas J. Johnson, David B. Kopel & E. Gregory Wallace).

- FIREARMS LAW AND THE SECOND AMENDMENT: REGULATION, RIGHTS, AND POLICY (2d ed. 2017) (with Nicholas J. Johnson, David B. Kopel & Michael P. O'Shea).
  - Cited in *Illinois v. Chairez*, 104 N.E.3d 1158, 1170 n.3 (Ill. 2018).

- 2015 SUPPLEMENT FOR FIREARMS LAW AND THE SECOND AMENDMENT: REGULATION, RIGHTS, AND POLICY (2015) (with Nicholas J. Johnson, David B. Kopel & Michael P. O'Shea).

- FIREARMS LAW AND THE SECOND AMENDMENT: REGULATION, RIGHTS, AND POLICY online chs. 12-15 (2014) (with Nicholas J. Johnson, David B. Kopel & Michael P. O'Shea). (link)

- FIREARMS LAW AND THE SECOND AMENDMENT: REGULATION, RIGHTS, AND POLICY (2012) (with Nicholas J. Johnson, David B. Kopel & Michael P. O'Shea) (first casebook on firearms law).
  - Cited in *Drake v. Filko*, 724 F.3d 426, 441 n.3, 441 n.5, 442 (3d Cir. 2013) (Hardiman, J., dissenting).
  - Cited in *Heller v. District of Columbia*, 670 F.3d 1244, 1287 (D.C. Cir. 2011) (Kavanaugh, J., dissenting).

OTHER ARTICLES

- *10 Truths About the Basis of Our Second Amendment Freedom That, Too Often, Are Not Being Taught*, AM. 1ST FREEDOM, March 2022, at 28 (with Joseph Greenlee).

- *Expressive Trading, Hypermateriality, and Insider Trading*, OXFORD BUS. L. BLOG (Feb. 24, 2022), https://www.law.ox.ac.uk/business-law-blog/blog/2022/02/expressive-trading-hypermateriality-and-insider-trading (with John P. Anderson & Jeremy L. Kidd).

- *An Economic Climate Change?*, L. & LIBERTY (Nov. 8, 2021), http://lawliberty.org/eco-disclosures (with John P. Anderson).

- *Surprising Support for the Right to Bear Arms*, REASON (Nov. 3, 2021), https://reason.com/volokh/2021/11/03/surprising-support-for-the-right-to-bear-arms (with David Kopel).

- *Insider Trading as a Response to Social Media Driven Trading*, THE FINREG BLOG (July 1, 2021), https://sites.law.duke.edu/thefinregblog/2021/07/01/insider-trading-as-a-response-to-social-media-driven-trading (with John P. Anderson & Jeremy L. Kidd).

- State of Vermont v. Misch, FEDERALIST SOC'Y STATE CT. DOCKET WATCH (May 10, 2021), https://fedsoc.org/commentary/publications/state-court-docket-watch-state-of-vermont-v-misch, *reprinted in* STATE COURT DOCKET WATCH: 2021 EDITION 65 (2022).

- *The Coming Second Amendment Court Fights*, AM. 1ST FREEDOM, April 2021, at 24 (with Joseph Greenlee).

- *Who Decides?*, LIVING CITY, Aug./Sept. 2020, at 22.

- *Imposing the DNR*, L. & LIBERTY (June 8, 2020), http://lawliberty.org/imposing-the-dnr.

- *Competition for the First Amendment—Teaching Firearms Law and the Second Amendment*, SECOND THOUGHTS (Jul. 8, 2019), https://sites.law.duke.edu/secondthoughts/2019/07/08/competition-for-the-first-amendment-teaching-firearms-law-and-the-second-amendment.

- *States have a constitutional duty to recognize gun rights nationwide*, THE HILL (Dec. 27, 2017), http://thehill.com/opinion/international/366599-states-have-a-constitutional-duty-to-recognize-gun-rights-nationwide (with Rafael Mangual).

- *Defying the Supreme Court in* Kolbe v. Hogan, L. & LIBERTY (Dec. 20, 2017), http://www.libertylawsite.org/defying-the-supreme-court-in-kolbe-v-hogan.

- *Are There Guns in Mayberry?*, L. & LIBERTY (Oct. 17, 2016), http://www.libertylawsite.org/book-review/are-there-guns-in-mayberry (reviewing JENNIFER CARLSON, CITIZEN-PROTECTORS: THE EVERYDAY POLITICS OF GUNS IN AN AGE OF DECLINE (2015)).

- *Incentive Engineering*, L. & LIBERTY (July 27, 2015), http://www.libertylawsite.org/book-review/incentive-engineering (reviewing ROBERT D. COOTER & ARIAL PORAT, GETTING INCENTIVES RIGHT: IMPROVING TORTS, CONTRACTS, AND RESTITUTION (2014)).

- *Shareholder Wealth Maximization: A Response to Cynthia Williams*, L. & LIBERTY (Feb. 20, 2014), http://www.libertylawsite.org/forum/shareholder-wealth-maximization-a-response-to-cynthia-williams.

- *Why the Corporation Is Not Merely a Nexus of Contracts: A Response to Alexei Marcoux,* L. & LIBERTY (Dec. 20, 2013), http://www.libertylawsite.org/forum/why-the-corporation-is-not-merely-a-nexus-of-contracts.

- *The Future of Shareholder Wealth Maximization*, L. & LIBERTY (Dec. 2, 2013), http://www.libertylawsite.org/forum/the-future-of-shareholder-wealth-maximization.

- *Monopoly of Violence,* CLAREMONT REV. OF BOOKS, Summer 2010, at 46 (reviewing ROBERT H. CHURCHILL, TO SHAKE THEIR GUNS IN THE TYRANT'S FACE (2008)). (link)

SELECTED LEGAL BRIEFS

- Brief for Professors of Second Amendment Law et al. as Amici Curiae Supporting Petitioner, New York State Rifle & Pistol Ass'n v. Bruen, No. 20-843 (U.S. July 13, 2021).

- Brief for Professors of Second Amendment Law et al. as Amici Curiae Supporting Appellant, Young v. Hawaii, 992 F.3d 765 (9th Cir. 2021) (No. 12-17808).
  - Cited in *Young v. Hawaii*, 992 F.3d 765, 796 (9th Cir. 2021).

- Brief for Firearms Policy Coalition et al. as Amici Curiae Supporting Petitioner, Caniglia v. Storm, 141 S. Ct. 1596 (2021).

- Brief for Firearms Policy Coalition et al. as Amici Curiae Supporting Appellant, Aposhian v. Barr, 973 F.3d 1151 (10th Cir. 2020) (No. 19-4036).

- Brief for Processors of Second Amendment Law et al. as Amici Curiae Supporting Plaintiffs, Ass'n of New Jersey Rifle and Pistol Clubs v. Attorney General New Jersey, 974 F.3d 237 (3d Cir. 2020) (No. 19-3142).

- Cited in *Ass'n of New Jersey Rifle and Pistol Clubs v. Attorney General New Jersey*, 974 F.3d 237, 255, 257 n.8, 258 (3d Cir. 2020) (Matey, J., dissenting).

- Brief for States Attorneys Steward J. Umholtz and Brandon J. Zanotti et al. as Amici Curiae Supporting Appellee Vivian Claudine Brown, People v. Brown, 164 N.E.3d 1187 (Ill. 2020) (No. 124100). (link)

PRESENTATIONS AND WORKSHOPS

- Participant and Discussant at the International Center for Law and Economics's Big Ideas: The Work of Armen Alchian (Dec. 23-13, 2021).

- *NYSRPA and the Law (and Wyoming History) of Public Firearms Carriage*, CLE Presentation at the University of Wyoming College of Law (Nov. 30, 2021).

- *Decentralized Autonomous Organizations*, Testimony Before the State of Wyoming Legislature's Select Committee on Blockchain, Financial Technology and Digital Innovation Technology Workshop (Sept. 22, 2021).

- *Recreational Marijuana and the Constitution*, Constitution Day Presentation to High School Seniors in Fountain-Fort Carson, Colorado, School District 8 (Sept. 17, 2021).

- *The Second Amendment as Tyranny Control in the Age of COVID-19?*, Address to the Federalist Society's New Mexico Lawyers Chapter (Sept. 10, 2021).

- *Guns and Moral Panic: Sound Bite Overcriminalization and Judicial Acquiescence*, Address to the Federalist Society's Tallahassee Lawyers Chapter (Aug. 2, 2021).

- Discussant at the Southeastern Association of Law Schools 2021 Annual Meeting Discussion Group: Insider Trading and Markets (Aug. 1, 2021).

- Organizer, Moderator, and Participant at the University of Wyoming College of Law, Firearms Research Center's Firearms Law Works-in-Progress Workshop (July 22-23, 2021).

- Participant at the George Mason University School of Law, Law and Economics Center's Introduction to the Economics of Information, Advertising, Privacy, and Data Security Workshop (May 19-23, 2021).

- *Antecedents of the Second Amendment*, Address at the Second Amendment Foundation's Gun Rights Policy Conference (Sept. 24, 2021).

- *Administrative Browbeating of Insurers*, Presentation at the 2021 Public Choice Society Conference, Occupational Licensing and Insurance Panel (Mar. 12, 2021).

- Discussant at the Online Business Law and Property Doctrine Colloquium (Feb. 5-19, 2021).

- *The Second Amendment as Tyranny Control in the Age of COVID-19?*, Address to the Federalist Society's Long Island Lawyers Chapter (Jan. 6, 2021).

- *Decentralized Autonomous Organizations*, Testimony Before the State of Wyoming Legislature's Select Committee on Blockchain, Financial Technology and Digital Innovation Technology (Dec. 16, 2020).

- *Public Benefit Corporations*, Testimony Before the State of Wyoming Legislature's Select Committee on Blockchain,

Financial Technology and Digital Innovation Technology (Nov. 2, 2020).

- Rhode v. Becerra *and* Young v. Hawaii, Address at the Second Amendment Foundation's Gun Rights Policy Conference (Sept. 18, 2021).

- *COVID-19 and the Constitution*, CLE Presentation to the Wyoming State Bar (Sept. 15, 2020).

- *What does the public really think about insider trading?*, Presentation at Mississippi College School of Law (Apr. 6, 2020).

- Organizer, Moderator, and Participant at the Introduction to Law and Economics through the Work of Elinor Ostrom Discussion Colloquium presented by the Institute for Humane Studies (Jan. 24-25, 2020).

- Instructor, Udmurt Law Student Project (Dec. 11, 2019) (presented an overview of U.S. contract law via videoconference to Russian law students at Udmurt State University in Izhevsk, Russia).

- Speaker, Courthouse Steps Preview: *New York State Rifle & Pistol Association Inc. v. City of New York, New York*, Federalist Society Criminal Law & Procedure and Civil Rights Practice Group Teleforum (Nov. 22, 2019), https://fedsoc.org/events/courthouse-steps-preview-new-york-state-rifle-pistol-association-inc-v-city-of-new-york-new-york.

- *Guns and Moral Panic: Sound Bite Overcriminalization and Judicial Underenforcement of the Second Amendment in New York, New Jersey, and Connecticut*, Address to the Federalist Society's New York City Young Lawyers Chapter (Nov. 7, 2019).

- Debater at the University of Utah S.J. Quinney College of Law's 36th Annual Jefferson B. Fordham Debate: *Be it resolved that the Second Amendment right to keep and bear arms should be limited to the home.* (Sept. 5, 2019).

- Commenter at the Duke University School of Law, Center for Firearms Law's Firearms Law Works-in-Progress Workshop (Aug. 2, 2019).

- Discussant at the Southeastern Association of Law Schools 2019 Annual Meeting Discussion Group: Insider Trading Stories: Todd Newman & Anthony Chiasson (Aug. 1, 2019).

- Reviewer at the Southeastern Association of Law Schools 2019 Annual Meeting Prospective Law Teachers CV Review Session (Jul. 30, 2019).

- *Perceiving and Measuring Judicial Defiance of* Heller, CLE Presentation at the 22nd Annual National Firearms Law Seminar (Apr. 26, 2019).

- *Guns & Moral Panic: Sound-Byte Overcriminalization and Judicial Underenforcement of the Second Amendment*, Address to the Federalist Society's Long Island Lawyers Chapter (Apr. 17, 2019).

- Discussant at the Duke University School of Law, Center for Firearms Law and Center for Law, Ethics, and National Security's, The Second Amendment and the Prevention of Tyranny Panel (Feb. 28, 2019).

- Guest Speaker at the Duke University School of Law, Second Amendment: History, Theory, and Practice Class (Feb. 28, 2019).

- Participant at the Revisiting Corporate Social Responsibility Colloquium presented by the Federalist Society and the Liberty Fund (Jan. 25-26, 2019).

- Presentation at the Hastings Constitutional Law Quarterly and Giffords Law Center Symposium: *Heller* at 10, A "Second-Class Right"? The Second Amendment & Other Constitutional Rights Panel (Jan. 18, 2019).

- Presentation at the AALS 2019 Annual Meeting, Open-Source Panel: Judicial Supremacy (Jan. 5, 2019).

- *Administrative Browbeating*, Presentation at the Federalist Society 2019 Faculty Conference (Jan. 4, 2019).

- Instructor, Udmurt Law Student Project (Oct. 23, 2018) (presented an overview of U.S. contract law via videoconference to Russian law students at Udmurt State University in Izhevsk, Russia).

- Discussant at the Southeastern Association of Law Schools 2018 Annual Meeting Discussion Group: The Role of Corporate Personhood in *Masterpiece Cakeshop* (Aug. 11, 2018).

- Discussant at the Southeastern Association of Law Schools 2018 Annual Meeting Discussion Group: *United States v. Martoma* and the Future of Insider Trading Law (Aug. 9, 2017).

- Commenter at the Southeastern Association of Law Schools 2018 Annual Meeting Prospective Law Teachers Mock Interview Workshop (Aug. 7, 2018).

- *Insider Trading, Demonization of the Financial Sector, and Judicial Complacency*, Presentation at the 2018 National Business Law Scholars Conference (June 21, 2018).

- Presentation at the Campbell Law Review Symposium: *Heller* After Ten Years, *Heller* and Public Carry Restrictions Panel (Feb. 2, 2018).

- *Insider Trading, Demonization of the Financial Sector, and Judicial Complacency*, Presentation at the Federalist Society 2018 Faculty Conference (Jan. 4, 2018).

- Moderator at the Federalist Society 2018 Faculty Conference, Works in Progress Panel (Jan. 5, 2018).

- *Freedom of Corporate Purpose*, Presentation at Mercer University School of Law (Nov. 9, 2017) (invited to participate in speaker series).

- *Insider Trading, Demonization of the Financial Sector, and Judicial Complacency*, Presentation at the Central States Law Schools Association 2017 Annual Meeting (Oct. 7, 2017).

- *Guns, Bird Feathers, and Overcriminalization: Why Courts Should Take the Second Amendment Seriously*, Constitution Day Address at John A. Logan College (Sept. 18, 2017).

- Reviewer at the Southeastern Association of Law Schools 2017 Annual Meeting Prospective Law Teachers CV Review Session (Aug. 2, 2017).

- Discussant at the Southeastern Association of Law Schools 2017 Annual Meeting Discussion Group: Three Felonies a Day?: Is There a Problem of White-Collar Overcriminalization? (Aug. 1, 2017).

- *Guns, Bird Feathers, and Overcriminalization: Why Courts Should take the Second Amendment Seriously*, Keynote Address at the Federalist Society's Lawyer Division's Chicago Chapter's Fourth Annual Otis McDonald Memorial Second Amendment Lecture (May 6, 2017).

- Moderator at the Federalist Society 2017 Faculty Conference, Works in Progress Panel (Jan. 5, 2017).

- Commentator at the George Mason University School of Law, Law and Economics Center's Research Roundtable on Solving the Public Pension Crisis (Sept. 29-30, 2016) (invited to review and comment on nine scholarly papers accepted for publication).

- *Freedom of Corporate Purpose*, Presentation at the Southeastern Association of Law Schools 2016 Annual Meeting (Aug. 6, 2016).

- Commenter at the Southeastern Association of Law Schools 2016 Annual Meeting Prospective Law Teachers Mock Job Talk Workshop (Aug. 5, 2016).

- Commenter at the Southeastern Association of Law Schools 2016 Annual Meeting Prospective Law Teachers Mock Interview Workshop (Aug. 4, 2016).

- *Freedom of Corporate Purpose*, Presentation at the University of Iowa College of Law Faculty Workshop (Feb. 4, 2016).

- Workshop Participant at the George Mason University School of Law, Law and Economics Center's Workshop on the Contractual Theory of the Corporation (Jan. 20-22, 2016).

- Workshop Participant at the George Mason University School of Law, Law and Economics Center's Workshop for Law Professors on the Economics of the Rule of Law (Dec. 11-14, 2015).

- *Freedom of Corporate Purpose*, Presentation at the University of Chicago Law School Legal Scholarship Workshop (Nov. 23, 2015).

- Author Participant and Organizer at the Theory of the Firm Colloquium presented by the Federalist Society and the John Templeton Foundation (Nov. 6-7, 2015) (featured readings included George A. Mocsary, *Freedom of Corporate Purpose*, 2016 BYU L. REV. 1319 (2017) and George A. Mocsary, *Why the Corporation Is Not Merely a Nexus of Contracts: A Response to Alexei Marcoux,* LIBR. L. & LIBERTY (Dec. 20, 2013), http://www.libertylawsite.org/liberty-forum/why-the-corporation-is-not-merely-a-nexus-of-contracts).

- Workshop Participant at the George Mason University School of Law, Law and Economics Center's Workshop for Law Professors on the Economics of Public Pension Reform (Sept 17-20, 2015).

- Workshop Participant at the George Mason University School of Law, Law and Economics Center's Workshop for Law Professors on Austrian Law and Economics (Oct. 2-3, 2014).

- Guest Presenter and Workshop Participant at the George Mason University School of Law, Law and Economics Center's Economics Institute for Law Professors (June 15-26, 2014) (taught a segment on game theory in corporate law).

- Workshop Participant at the George Mason University School of Law, Law and Economics Center's Workshop for Law Professors on Risk, Injury, Liability, and Insurance (Jan. 30 - Feb. 1, 2014).

- Presentation at the AALS 2014 Annual Meeting, Criminal Justice Panel: The Problematics of Possessory Offenses (Jan. 5, 2014) (discussing the potential for liability insurance mandates to lead to status criminality).

- *Insuring Against Guns?*, Presentation at the University of Chicago Law School Legal Scholarship Workshop (Nov.

25, 2015).

- *Insuring Against Guns?*, Presentation at the Connecticut Law Review Symposium: Up in Arms: The Second Amendment in the Modern Republic, Tragedy and Gun Control: The Legislative Response Panel (Nov. 15, 2013).

- Moderator at the Connecticut Law Review Symposium: Up in Arms: The Second Amendment in the Modern Republic, Litigating the Affirmed Right to Arms Panel (Nov. 15, 2013).

- *The Second Amendment as Tyranny Control*, Presentation at the Indiana Tech Law School Symposium: On the Question of Regulating Guns (Nov. 8, 2013).

- *Insuring Against Guns?*, Presentation at the Indiana Tech Law School Faculty Workshop (Nov. 7, 2013).

- Discussant at the Society for the Advancement of Socio-Economics 2012 Annual Meeting, Authors meet Critics Panel (June 29, 2012) (discussing THE EMBEDDED FIRM: CORPORATE GOVERNANCE, LABOR, AND FINANCE CAPITALISM (Cynthia A. Williams & Peer Zumbansen eds., 2011)).

EDUCATION

FORDHAM UNIVERSITY SCHOOL OF LAW — **New York, NY**
Juris Doctor, *Summa Cum Laude*. — **MAY 2009**
G.P.A.: 3.9 (First in a class of 468).
- Notes & Articles Editor, Fordham Law Review.

UNIVERSITY OF ROCHESTER, SIMON GRADUATE SCHOOL OF BUSINESS — **Rochester, NY**
Master of Business Administration, Competitive and Organizational Strategy. — **MARCH 1997**
- Specialized in the application of financial-economic agency theory to business situations.
- Dean's list; 70% merit scholarship; selected to mentor first-year students.

THE COOPER UNION SCHOOL OF ENGINEERING — **New York, NY**
Bachelor of Engineering, Civil Engineering. — **MAY 1995**
- Dean's list; Full scholarship.

LEGAL EXPERIENCE

CRAVATH, SWAINE & MOORE — **New York, NY**
Associate, Bankruptcy & Restructuring — **12/10 – 8/11**
Summer Associate, Bankruptcy & Restructuring and Litigation — **SUMMER 2008**
- Represented a major derivatives creditor in Lehman Brothers' bankruptcy and handled other bankruptcy matters.
- Worked on restructuring transactions involving major American corporations.
- Assisted other Corporate Department groups with bankruptcy and restructuring matters.

HON. HARRIS L. HARTZ, U.S. COURT OF APPEALS FOR THE TENTH CIRCUIT — **Albuquerque, NM**
Law Clerk — **8/09 – 7/10**

HON. JOSE L. LINARES, U.S. DISTRICT COURT, DISTRICT OF NEW JERSEY — **Newark, NJ**
Judicial Intern — **SUMMER 2007**

HON. NOVALYN L. WINFIELD, U.S. BANKRUPTCY COURT, DISTRICT OF NEW JERSEY — **Newark, NJ**
Judicial Intern — **SUMMER 2007**

BUSINESS EXPERIENCE

GRENFELL CONSULTING **New York, NY**
Owner/Management Consultant **9/01 – 2/07**
Clients included:

Pictet & Cie., e-Business Group **Geneva, Switzerland**
Pictet & Cie. is one of the oldest private banks in Switzerland.

- Created a strategy for the wireless delivery of financial information that adhered to Swiss banking-secrecy laws.

Blister, LLC **New York, NY**

- Advised creative advertising business in its startup phase, helping to grow its revenues from $36,000 in its first year to over $800,000 in its second.

Office of the Mayor, City of New York **New York, NY**

- Oversaw projects for a $9 billion capital program.
- Taught training classes to City employees and vendors on the City's financial systems and business processes.

JPMorgan Chase & Co. **New York, NY**

- Analyzed the businesses of banks acquired via merger to identify synergies and areas for system integration.

CLICKTHINGS **New York, NY**
Manager, Professional Services **5/00 – 1/01**
ClickThings developed information-distribution technology for the business-services market.

- Created plans for entering new markets via reseller partnerships by analyzing clients' and competitors' strategies.

AMERICAN MANAGEMENT SYSTEMS **New York, NY**
Senior Business Analyst **6/97 – 5/00**

- Led a team of consultants in creating a business model that integrated budgeting, procurement, and accounting activities, enabling the City of New York to match forecasts with expenditures for the first time in its history.

CREDIT SUISSE FIRST BOSTON **New York, NY**
Change Management Coordinator, Fixed Income Division **9/94 – 1/97**
(Worked half-time while classes were in session, full-time during winter, spring, and summer recesses.)

OTHER

BAR ADMISSIONS: Wyoming, New York, U.S. Supreme Court, U.S. Court of Appeals for the Ninth Circuit, U.S. Court of Appeals for the Tenth Circuit.

COMMUNITY SERVICE: Provided **Carbondale New School** with *pro bono* advisory work on contract-related matters; presented two *pro bono* **seminars on end-of-life matters** open to and attended by members of the public.

LANGUAGES: Fluent in conversational **Hungarian**, basic understanding of **French**.

REFERENCES

MARC M. ARKIN
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New York, NY 10023
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SEAN J. GRIFFITH
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Columbia Law School
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RESEARCH AGENDA

My scholarship focuses on business law and related subjects, with an emphasis on corporate law, including its federalization via the securities laws. My work seeks to combine my experience as a management consultant and transactional lawyer with novel applications of law and economics, organizational theory, and financial-economic agency theory.

WORKS-IN-PROGRESS

The Good, Bad, and Empirics of Insider Trading (four-part work with John P. Anderson & Jeremy L. Kidd)

This four-article project will empirically examine some of the asserted benefits and harms of insider trading. It will begin by joining the conversation about the economic efficiency of insider trading. It will review some of the arguments about insider trading's costs and benefits and present heretofore unanalyzed implications of these theories. For example, it is generally understood that insider buying would help long-term investors who sell based on time (i.e., they sell when they need the funds, rather than when their investment reaches a certain price level) and hurt speculators who sell based on price (i.e., they sell when their investments have reached their predetermined cash-out level). This is because insider buying exerts gradual upward pressure on a stock's price before it "pops" to a higher level upon the release of positive news, causing those who would have sold anyway to sell at a higher price than they would have in the absence of insider trading. Speculators are hurt, it is asserted, because they sell at a lower price than at the post-pop level at which they would have sold had all the positive news been absorbed into the market price at once. Yet the assumption that a speculator could get the post-pop price is likely to be false in an environment where, (1) although a stock's price increases rapidly upon the release of positive news, it does not instantly pop to its new level (i.e., although a stock's price curve may have a steep slope, it is not infinite), and (2) automated trading by speculators is the norm. In other words, any preset limit price that a price-based seller has set will be triggered, and the seller's order filled, whether or not insiders push the market price upward before the release of good news. (There are multiple iterations of this situation. Generally speaking, those who trade opposite an insider will benefit from the insider's trading, and those who trade in the direction of the insider will be hurt by it. The article will argue that, in today's trading environment, and contrary to the conventional wisdom, this applies to both time and price traders.) With this background set, the project will involve four empirical studies, each of which will be discussed in its own article.

The first empirical study surveyed modern public attitudes toward insider trading, with a goal of gaining insights about the market-confidence theory and morality views about the practice. It is forthcoming in the Seton Hall Law Review this year. The survey's first part (1) measured whether respondents would be more or less likely to invest in the market if insider trading were more common, (2) recreated two famous Business Week surveys from 1986 in which majorities said both that insider trading should be illegal and that they would trade if in possession of material nonpublic information. The survey's second part asked respondents to imagine themselves in various positions—from CEO to being in an elevator overhearing a rumor—with respect to a small corporation that is about to be purchased by a larger one. Each respondent was taken down either an "ethical" or a "pragmatic" track. The former asked whether it would be ethical to buy extra stock in the firm before the sale is announced, the latter whether the respondents would buy extra stock if they could do it without being caught. The third part of the survey presented equal proportions of respondents with a randomly assigned message that described insider trading as either harmful, irrelevant, or beneficial. The final part asked respondents modified versions of a subset of the questions in the first two parts to determine the extent to which the messages influenced opinions.

The project's second study will build on the first, inquiring into *how* and *why* the public forms its views on insider trading. It will seek to discover, for example the rationales for expressed opinions about why the public's views on insider trading are not firmly held. What is it about the diverse American experiences that prompts the different attitudes revealed herein? How do public perceptions of insider trading, including the appropriateness of punitive measures, compare with those of other crimes? Answers to these and other questions can be sought with a more detailed and focused survey instrument.

The third empirical study will test the validity of market-confidence and adverse-selection theories of insider trading, which suggest that the practice discourages market participation and hurts market makers. It will measure the market effects of 10 large insider-trading events, including the publication of important judicial decisions, news

of criminal indictments, and SEC prosecutions, to determine their effects on volume, price, bid-ask spreads, volatility, and other measures. The study will examine the effects both while the (possibly alleged) insider trading took place and after the news of the event reaches the market.

The final paper will report on the fourth empirical study, which involves both surveying and personally interviewing the market constituents who would be most directly impacted by the paper's proposed statutory reform. The study will collect the opinions of, at least, market makers, hedge funds managers, securities analysts, issuer representatives, and compliance attorneys. Based on these results, the paper will likely offer a phased approach to implementing its proposed solution. The ultimate goal of the proposal will be to align insider trading law with foundational societal beliefs about criminal justice and fairness. To that end, the final paper will, taking the previous economic analysis and empirical findings into account, situate the crime of insider trading in the criminal law. The article will argue that, as it stands, insider trading violates at least four central canons of our criminal law: that legislatures, rather than courts, define crimes; the rule of lenity; that criminal laws should be strictly construed; and, in many cases, the constitutional command that that the government, rather than a criminal defendant, bear the burden of proof. It will discuss how and why insider trading came to be criminalized, why it has remained a common-law crime, and propose a model statute the we anticipate would expand criminal liability for some trading activities while contracting it for others.

UPCOMING RESEARCH

Reimagining the Business Judgment Rule

This article will build on my work on the business judgment rule and shareholder wealth maximization most recently developed in my article, *Freedom of Corporate Purpose*. It will respond the assertion that corporate law would be better off without the business judgment rule, which, some argue, should be replaced with judicial focus on whether a fiduciary duty has been breached in any given situation. Under this view, the rule would be reduced to a policy statement that a court should not review the substantive soundness of corporate director actions when it is asked to review a board decision for a breach of the board's duty of care.

The article will argue that the business judgment rule should continue to retain its position as corporate law's most fundamental standard of judicial review, serving as the critical link between statutory corporate law and the duties of directors, with the latter derived from both statutory interpretation and equity. The judiciary employs the rule to ensure that it does not undermine the existing bargains between the nonjudicial parties to the corporate contract. These bargains—at least those between shareholders and managers, and those among shareholders—are embodied in the business judgment rule and are considered efficient (as compared with other presently available alternatives) because they are the products of market-driven corporate-governance arrangements. Reducing the rule to a policy statement could upset corporate law's delicate balance between board authority and judicial accountability.

The article will interrogate the proposition that the rule must be a subcategory of the duty of care. It will argue that the rule is best viewed as a sieve that sorts challenges to managerial actions and assigns to them various levels of judicial scrutiny. In the absence of an incentive irregularity—circumstances suggesting that directors may have acted self-interestedly or contrary to their duties—courts will not interfere with managerial decisions, instead presuming that they were made with the good faith intent to further the corporation's objectives.

If the circumstances suggest that directors are acting for their own benefit, rather than that of the business under their charge, the depth of review varies depending on how serious their misbehavior is likely to be. Fiduciary duties (including the duty of care), in their various iterations, are paths through the sieve leading to different levels of judicial review depending on the seriousness of the circumstances. The business judgment rule and fiduciary duties are therefore coincident with each other, rather than either being contained within the other. One of the article's primary assertions will be that fiduciary duties are best seen as different ways to get through the business judgment rule sieve, and in the process take on less importance as stand-alone doctrinal categories. The paper is likely to argue that, in addition to the officially recognized fiduciary duties, most or all managerial duties should be considered part of this framework.

The article will clarify that, although a bypassing of the business judgment rule results in entire-fairness review, it does not necessarily imply a finding of managerial fault. The paper will show that the rule is often equated with the absence of a judicial finding of fault, and therefore, sometimes, with the duty of care. Such obscuring of the filtering

purpose of the rule may, in turn, lead to both over- and underinclusive judicial review of managerial decisions vis-a-vis the well-established and efficient equilibrium that has developed in corporate law.

Who Should Vote on a Sinking Boat?: An Examination of Corporate Residual Risk Bearing

This paper will examine which corporate constituencies can be classified as having a residual interest in the firm in varying circumstances. It will be both descriptive and normative.

The paper will likely argue that it can only be safely said that shareholders are a corporation's residual risk bearers—those entitled to the firm's profits after the firm's debts have been paid, or who are last in line when the firm is being liquidated—when it is on solid financial footing. The most obvious situation when they are not is bankruptcy. In these situations, shareholders' equity interests are usually wiped out, and the remaining creditors are left to fight in bankruptcy court for what remains (the "residuum"). The Delaware Supreme Court has recognized that creditors take the place of shareholders as the residual beneficiaries of any increase in firm value when a corporation is insolvent, and are therefore entitled to maintain derivative actions. The court declined, however, to allow creditors to bring direct claims against an insolvent corporation's directors. It also held that creditors may not bring derivative actions against corporations in the "zone of insolvency." But directors' incentives to focus on short-term figures and take unnecessary risks by betting on negative-expected-value projects with high potential returns may be most acute when their firm is about to go out of business; such gambles may be the only way to save both their firms and their jobs.

Regulation and legislation can also cause the state—sometimes reluctantly, sometimes intentionally to serve a favored interest—to bear a firm's residual risk. The too-big-too-fail bailouts following the 2008 financial crisis are an example of the government bearing firms' residual risk. The Troubled Asset Relief Program included a preferred return for the government and warrants to give the government upside risk. Although the government generally profited on its TARP investments, the bailout of the auto makers was a stark exception.

Retirement plans are another case in point. If priced properly in a perfect market (an admittedly large assumption), defined-contribution and defined-benefit plans should have the same expected payout, and each should thus entail identical contributions from employees. If priced properly in an imperfect market, employers should offer a lower return on funds invested into defined-benefit plans because the employer would have to leave a cushion for market risk if the employer actually intends to pay the contracted-for pension. But if the state insures pensions, as does the Pension Benefit Guarantee Corporation in the United States in many industries, the state bears the downside residual risk (subject to a cap) in place of employers and employees. In these cases, both employers' and employees' incentives change: Employers, and management compensated in the short-term, have great incentive to offer higher returns than they anticipate earning on their employees' pension funds, and employees have great incentive to bargain for greater-than-market pension packages.

The paper will examine these and other situations in which nonshareholders bear residual risk. It will develop a taxonomy to describe varieties of residual risk bearing, and it will make recommendations on how corporate law should treat each variety.

Am I My Shareholders' Keeper?

This paper will question modern corporate law's assumptions about when shareholders need protection from management and each other. It will argue that many situations no longer warrant paternalistic treatment of certain shareholders because many of today's shareholders are more sophisticated and empowered than the shareholder model on which corporate fiduciary duties are based. This piece will join the discussion on this topic by questioning the ongoing applicability of common-law fiduciary-duty rules in an environment of increasing shareholder say in corporate decisions that have traditionally belonged to boards of directors.

One answer to the misalignment of management incentives with owner interests has been to shift power over corporate decisions from management to shareholders. For example, proxy-access statutes and rules have given shareholders greater say in when a corporation must reimburse the proxy-solicitation costs of insurgent bids for seats on the firm's board of directors, and court decisions have limited the takeover defenses that a corporate board may adopt. The Dodd-Frank Act likewise contains a provision allowing the Securities and Exchange Commission to adopt preemptive proxy-access rules. (The SEC attempted to pass such rules, but the rules were struck down by the U.S. Court of Appeals for the D.C. Circuit.) These and similar tools may appear to be desirable because they check

management misbehavior by shifting power to shareholders. But modern sophisticated shareholders can use these tools to further their short-term interests, often at the expense of the corporation's long-term health, much more effectively than could shareholders of decades past.

In many areas, corporate law's current profile of the typical shareholder remains based on the post-World War II, middle class "retail investor." (Until then, stock investing was primarily the domain of the rich.) Retail investors purchased shares in small blocks, with the result that the shareholder bases of most public companies consisted of a very large number of very small holders who were unable to act collectively with their peers to influence corporate policy. This model changed over the past several decades. In the early 1950s, retail investors owned about 75 percent of the nation's blue-chip stocks. Today, by contrast, 73 percent is owned by institutional investors. These institutional investors are sophisticated and, because of the ways in which they are compensated, often have short-term investment horizons.

These investors are empowered politically, legally, and economically. Many have demonstrated a willingness to cause corporations to pursue short-term profit. The result is that most modern shareholders have little or no long-term commitment to their investments. Thus, the model of the hands-off, patient retail investor, around whom today's corporate law developed, no longer comes close to approximating reality. The fiduciary-duty protections that courts continue to provide to all shareholders based on the retail-investor model therefore deserves reexamination.

Corporate takeovers is an area ripe for review under the new shareholder model. Current takeover law rests on the old assumption that shareholders are unable to understand or protect themselves from unfair outside offers for their shares. For example, in a context where an outside bidder offers to buy a company that would otherwise continue its business as-is, boards of directors are required to adopt takeover defenses against tender offers they believe undervalue the company under management's existing business plan, even if the offers are for more than the current market value of the company's stock. But where shareholders are sophisticated, able to coordinate their own defenses, and even control some of the board of directors, there may be no need for court resources to be spent on protecting them from themselves. (This situation resembles the seminal *Unocal v. Mesa Petroleum* case.) By contrast, in a context where a company is certain to be sold, with no chance of continuing operations as-is, and the board of directors sells to someone other than the highest bidder (perhaps in exchange for keeping their jobs, etc.), and/or adopts deal-protection measures that result in a losing bidder walking away with valuable corporate assets or a large cash fee, the need for shareholder protection is not lessened under the new shareholder profile because even sophisticated shareholders are unable to protect themselves from the misbehavior of their fiduciaries without court intervention. (This resembles the *Revlon v. MacAndrews* case.) These are but two examples that show that today's shareholders' ability to protect themselves may be different from that of retail investors, and that courts will overprotect if they always adopt the traditional shareholder model.

The paper will also account for both the situation of the retail investors who continue to hold 27 percent of blue-chip stocks. This group will likely continue to require the protections that courts have traditionally afforded; it may require stronger protection in some cases in light of the mounting power of institutional shareholders. This suggests both that (1) the protection of shareholders from each other is a different question than the protection of shareholders from their fiduciaries, and (2) shareholder profile matters in determining whether courts should interfere in corporate affairs.

Information Inefficiency and Attorney-Client Privilege: Inspection Clauses in Reinsurance Contracts

Another potential paper is tentatively titled *Information Inefficiency and Attorney-Client Privilege: Inspection Clauses in Reinsurance Contracts*. It relates to my interest in the effect that legally compelled adjustments to information flows have on incentives in business and will build on insights gained while writing *Statistically Insignificant Deaths: Disclosing Drug Harms to Investors (and Patients) Under SEC Rule 10b-5* and my two insurance-law articles.

The reinsurance industry now relies on "inspection clauses" in their contracts to keep close tabs on their cedents (i.e., primary insurers who deal directly with purchasers of coverage). These clauses allow reinsurers to access primary insurers' records relating to the risk assumed by the reinsurer. Unfortunately, however, the law is at best unclear on what happens under these clauses to an important category of records: a primary insured's otherwise-privileged attorney-client material. The mere presence of such a clause in a reinsurance contract, or perhaps its invocation by a reinsurer, arguably waives the primary insurer's privilege. One risk, from the primary insured's perspective, is that an inspection clause in its reinsurance contract may inadvertently allow an insured, in the course of discovery, to obtain some of its otherwise privileged records to use in a coverage dispute with the primary insurer,

as some insureds have tried to do. Similarly, a reinsurer may obtain otherwise-privileged documents relating to a claim against a third-party reinsurer, thus jeopardizing the third-party reinsurer's trade secrets.

This problem can be so severe that it could significantly harm the reinsurance industry in the United States, as primary insurers will resist inspection clauses or seek to except privileged material from them for fear of their effect in third-party litigation, but reinsurers cannot sensibly evaluate the risks of a potential reinsurance contract without access to this information. An incentive structure that stifles information sharing between insurers and reinsurers in this way also presents potentially insurmountable challenges to other doctrines that are deeply woven into the fabric of insurance law, primarily the doctrines of *utmost good faith* and *follow the fortunes*. It would also weaken the trust between insurers and reinsurers by effectively making reinsurance transactions anonymous in a business that relies on trust and disclosure to function. By contrast, in the United Kingdom, and perhaps in other countries that I plan to research further like Bermuda and Switzerland, the reinsurance industry does not confront these challenges because the law provides that otherwise privileged information does not lose its protection by being formally shared by contract.

The paper would consider the problem from either or both of two standpoints. First, it would examine whether the tools used in corporate transactions, where such problems are pervasive (for example, during due diligence between the parties to a potential acquisition), might be transferable to the reinsurance context. Under Delaware statute, for example, an investment banker's presence during attorney-client communications does not waive privilege. Second, it would query whether there are lessons for other situations in which the universe of available information may be expanded by enforcing a privilege or otherwise allowing information availability to be limited. Previous work examining the effect of inspection clauses on privilege has taken a purely contract-based approach or merely cataloged courts' treatment of the issue; none has seriously highlighted or analyzed the information inefficiencies created by forcing waiver of the privilege. It is hoped that the analysis will illuminate areas for further research on information-related agency costs, trust, and certainty in the law.