

# Lawrence Rosenthal

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My scholarship focuses on criminal law and procedure, constitutional law, and civil rights. In terms of teaching, I have a particular interest in curricular and pedagogical innovation. I strive to integrate the study of legal theory and doctrine with the development of professional skills, just as professional knowledge, skills, and abilities are integrated by practitioners. I have modified existing courses and developed new courses that offer multiple forms of formative assessment and an experiential pedagogy directed at developing professional skill and judgment.

## **Employment:**

**2005-Present: Professor of Law, Chapman University School of Law**  
(Associate Professor of Law 2005-08): Areas of Expertise: Civil Rights, Constitutional Law, Criminal Law, Criminal Procedure and Local Government Law.

**1990-2005: Deputy Corporation Counsel for Counseling, Appeals, and Legal Policy, City of Chicago Department of Law** - Responsible for supervising Chicago's appellate litigation, personally briefing and arguing matters of special importance (including three arguments in the United States Supreme Court); and for development of legal policy, including legislative drafting, client counseling, and coordination of impact litigation in these areas, including municipal litigation against the firearms and lead paint industries, anti-slum and anti-gang legislation and litigation.

**1994-1996: Adjunct Professor of Law, DePaul University College of Law**  
-- Instructor in Trial Advocacy and coach of mock trial team.

**1984-1990: Assistant United States Attorney, Northern District of Illinois -- Criminal Division.** Investigated and tried complex cases involving public corruption, organized crime, securities fraud, mail and wire fraud, and narcotics, and briefed and argued criminal appeals.

**1983-84: Law Clerk to the Hon. John Paul Stevens,** Associate Justice, United States Supreme Court.

**1981-83: Law Clerk to the Hon. Prentice H. Marshall,** United States District Judge, Northern District of Illinois

## **Publications:**

*An Empirical Inquiry into the Use of Originalism: Fourth Amendment Jurisprudence During the Career of Justice Scalia*, 70 HASTINGS L.J. \_\_\_\_ (forthcoming 2018).

*The Case for Surveillance*, in THE CAMBRIDGE HANDBOOK OF SURVEILLANCE LAW (David Gray & Stephen E. Henderson eds., 2017)

*Compulsion*, 18 U. PA. J. CONST. L. 889 (2017)

*Good and Bad Ways To Address Police Violence*, 48 URB. LAWYER 675 (2016)

*The Statement and Account Clause as a National Security Freedom of Information Act*, 47 LOY. U. CHI. L. REV. 1 (2015)

*The Limits of Second Amendment Originalism and the Constitutional Case for Gun Control*, 92 WASH. U. L. REV. 1187 (2015)

*Binary Searches and the Central Meaning of the Fourth Amendment*, 22 WM. & MARY BILL RTS. J. 881 (2014)

*The Constitutionality of Stop-and-Frisk in New York City*, 162 U. PA. L. REV. ONLINE 117 (2013) (debate with David Rudovsky)

*Saving Disparate Impact*, 34 CARDOZO L. REV. 2157 (2013)

*The Scope of Regulatory Authority under the Second Amendment*, in REDUCING FIREARMS VIOLENCE IN AMERICA: INFORMING POLICY WITH EVIDENCE AND ANALYSIS 225 (Daniel W. Webster & Jon S. Vernick eds., 2013 (with Adam Winkler)

*Seven Theses in Grudging Defense of the Exclusionary Rule*, 10 OHIO ST. J. CRIM. L. 525 (2013) (invited symposium article)

*Originalism in Practice*, 87 IND. L.J. 1183 (2012)

*McDonald v. Chicago: Which Standard of Scrutiny Should Apply to Gun-Control Laws?*, 105 NW. U.L. REV. 437 (2011) (debate with Professor Joyce Lee Malcolm of George Mason University School of Law) (invited article)

*Those Who Can't, Teach: What the Legal Career of John Yoo Tells Us About Who Should Be Teaching Law*, 80 MISS. L.J. 1563 (2011)

*First Amendment Investigations and the Inescapable Pragmatism of the Common Law of Free Speech*, 86 IND. L.J. 1 (2011)

*The Law Professor as Counterterrorist Tactician*, 89 TEX. L. REV. See Also 113 (2010) (responding to Aziz Z. Huq, *The Signaling Function of Religious Speech in Domestic Counterterrorism*, 89 TEX. L. REV. 833 (2011) (invited commentary)

*Pragmatism, Originalism, Race, and the Case against Terry v. Ohio*, 43 TEXAS TECH L. REV. 299 (2010) (invited symposium article)

*Second Thoughts on Damages for Wrongful Convictions*, 85 CHI.-KENT L. REV. 127 (2010) (contribution to symposium on criminal procedure)

*The New Originalism Meets the Fourteenth Amendment: Original Public Meaning and the Problem of Incorporation*, 18 J. CONTEMP. LEGAL ISSUES 361 (2009) (invited symposium article)

*Second Amendment Plumbing after Heller: Of Standards of Scrutiny, Incorporation, Well-Regulated Militias and Criminal Street Gangs*, 41 URB. LAW. 1 (2009)

*Confusing Cause and Effect*, in CRIMINAL LAW CONVERSATIONS (Paul H. Robinson, Kimberly Ferzan & Stephen Garvey eds. (Oxford Univ. Press 2009)

*Probability, Probable Cause, and the Law of Unintended Consequences*, 87 TEX. L. REV. See Also 63 (2009) (responding to Max Minzner, *Putting Probability Back into Probable Cause*, 87 TEX. L. REV. 913 (2009))

*The Emerging First Amendment Law of Managerial Prerogative*, 77 FORDHAM L. REV. 33 (2008)

*Against Orthodoxy: Miranda Is Not Prophylactic and the Constitution Is Not Perfect*, 10 CHAPMAN L. REV. 479 (2007)

*Does Due Process Have an Original Meaning? On Originalism, Due Process, Procedural Innovation . . . and Parking Tickets*, 60 OKLA. L. REV. 1 (2007)

*A Theory of Damages Against the Government: Torts, Constitutional Torts, and Takings*, 9 U. PA. J. CONST. L. 797 (2007)

*The Crime Drop and the Fourth Amendment: Toward an Empirical Jurisprudence of Search and Seizure*, 29 N.Y.U. REV. OF LAW & SOC. CHANGE 641 (2005) (invited symposium article)

*Policing and Equal Protection*, 21 YALE L. & POLICY REV. 53 (2003)

*Gang Loitering and Race*, 91 J. CRIM. L. & CRIMINOLOGY 99 (2000)

*Romer v. Evans as the Transformation of Local Government Law*, 31 Urban Law. 257 (1999)

*Permissible Content Discrimination Under the First Amendment: The Strange Case of the Public Employee*, 25 HASTINGS CONST. L.Q. 529 (1998)

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#### **Op-Eds and Short Essays:**

*Unanswered Questions at High Court*, Los Angeles and San Francisco Daily Journals, Mar. 27, 2017, at 7.

*CPD Can Balance Aggressive Patrols, Proactive Tactics*, Chi. Tribune, Sep. 8, 2016

*Effective Firearms Regulation is Constitutional*, N.Y. TIMES, Feb. 24, 2016 (with Hon. Abner Mikva)

*What the Second Amendment Really Says about Arms Control*, NEWSWEEK, Dec. 8, 2015

*Binary Searches after Florida v. Jardines*, 42 WEST SEARCH & SEIZURE L. REP. 13 (Feb. 2015).

*Charges in Kelly Thomas Case Defensible*, Orange County Reg., Sep. 22, 2012

*Second Amendment Plumbing after McDonald*, MUNICIPAL LAWYER, Nov./Dec. 2010, at 6.

*World Awaits Probe of CIA Tactics*, Sac. Bee, May 2, 2009

*Lowering the Bar: John Yoo Shouldn't Be Teaching Law, Based on His Memos*, L.A. Times, Apr. 9, 2009

*The Crime Drop and Racial Profiling: Toward an Empirical Jurisprudence of Search and Seizure*, 33 WEST SEARCH & SEIZURE REP. 9 (2006)

*Continuing the March Toward Reasonableness: Last Term's Fourth Amendment Decisions*, MUNICIPAL LAWYER, Nov./Dec. 2006, at 6

*Writing Public Order Laws that Pass Constitutional Muster*, MUNICIPAL ADVOCATE, Summer 2007, at 22.

*Public Order Laws after City of Chicago v. Morales*, MUNICIPAL LAWYER, Jan./Feb. 2000 at 6

**Education:**

**Harvard Law School, Cambridge, Massachusetts, J.D. 1981:**

Activities and Honors: Harvard Law Review (Articles Editor, vol. 94), Sears Prize, Fay Diploma, Beal Prize, Harvard Defenders, Massachusetts Defenders. Graduated first in Class of 560.

**University of Illinois at Urbana-Champaign, B.A. 1978:**

Honors: Phi Beta Kappa, Phi Kappa Phi, Delta Sigma Rho-Tau Kappa Alpha, James Scholar, Bronze Tablet.

**Admitted To Practice:** Supreme Court of the United States, Supreme Court of Illinois, United States District Court for the Northern District of Illinois (Trial Bar), United States Court of Appeals for the Seventh Circuit.

**Other Legal Activities:** Seventh Circuit Advisory Committee (1993-1997), Member of the Board, Chicago Council of Lawyers (1996-2000), Chicago Bar Association.

**Representative Presentations and Conferences:**

Debate, *The Road To Heller* (with C.D. Michel), Annual Meeting, Ball/Hunt/Schooley American Inn of Court & Hon. Benhamin Aranda III American Inn of Court (March 2018)

Paper Presentation, *An Empirical Inquiry into the Use of Originalism in Constitutional Adjudication*, American Association of Law Schools Mid-Year Meeting (June 2017)

Panelist, LA Town Hall Meeting: Gun Violence and Trauma (May 2017)

Panelist, *False Confessions*, Annual Meeting, American Association of Law Schools (San Francisco Jan. 2017)

Paper Presentation, *Good and Bad Ways to Address Police Violence*, Cardozo School of Law (July 2016)

National Conference for Appellate Staff Attorneys, Judicial Conference of the United States, *Second Amendment Litigation* (May 2016)

Paper Presentation, *Fifth Amendment Compulsion, Miranda at 50 Symposium*, Northern Kentucky University Salmon P. Chase School of Law (Feb. 2016)

Panelist, Integrating Legal Writing into the Doctrinal Curriculum, Annual Meeting, American Association of Law Schools (New York City Jan. 2016)

Paper Presentation, Fifth Amendment Compulsion, Annual Faculty Meeting, Federalist Society (New York City Jan. 2016)

Paper Presentation, Fifth Amendment Compulsion, Cardozo School of Law (July 2015)

Convening on Affirmative Litigation to Enhance Gun Safety, Brennan Center for Justice at New York University School of Law (May 2015)

Second Amendment Litigation and Jurisprudence Conference, Law Center to Prevent Gun Violence, New York City (May 2015)

Panelist on the Second Amendment, Annual Judges' Conference, Central District of California (May 2015)

Annual Municipal Law Institute, California League of Cities (Feb. 2015)

"The Statement and Account Clause as a National Security Freedom of Information Act," presentation of work in progress, Prawfest at Rutgers (Newark) University School of Law (July 2014)

Second Amendment Litigation and Jurisprudence, Law Center to Prevent Gun Violence, Chicago, Illinois (May 2014)

Originalism and the Good Constitution, University of San Diego, Institute for the Study of Constitutional Originalism (April 2014)

Annual Meeting, American Political Science Association, Chicago, Illinois (Aug. 2013)

Privacy Law Scholars Conference, Berkeley, California (July 2013)

Firearms Violence Policy Conference: Johns Hopkins University School of Public Health (Jan. 2013)

Constitutional Day Speech: Is the Constitution Living or Dead?, California Polytechnic University San Luis Obispo (Oct. 2012)

Annual Meeting, State Solicitor Generals and Appellate Chiefs, National Association of Attorneys General (Washington, D.C.: July 2012)

Law and Society Conference Annual Meeting - Criminal Procedure Works in Progress (Honolulu: June 2012)

Conference on the Future of Second Amendment Litigation, Lawyers against Firearms Violence (Chicago: May 2012)

Debate (with Randy Barnett): The Constitutionality of the Affordable Health Care Act (Chapman Federalist Society Nov. 2011)

Annual Meeting, American Conference of Trial Lawyers: A Fireside Chat with Justice Stevens (Palm Springs: Sept. 2011)

Southeastern Association of Law Schools 2011 Annual Meeting: Criminal Procedure - Privacy and Security (Hilton Head: July 2011)

Law and Society Association Annual 2011 Conference, Panel on Criminal Justice: Privacy and Security (San Francisco: June 2011)

Thompson-West, *McDonald v. City of Chicago* and the Future of Gun Control (July 2010) (webcast)

Criminal Procedure Discussion Forum, University of Marseille at Aix-en-Provence (June 2010)

American Bar Association, Beyond Gun Control: *McDonald v. City of Chicago and Incorporation of the Bill of Rights* (Feb. 2010) (webcast)

Federalist Society of Orange County, Debate: The Constitutionality of Health Care Reform (with Ken Klukowski) (Feb. 2010)

American Association of Law Schools Annual Conference, Hot Topics Panel: The United States Supreme Court's Increasing Attention to the Law of Lawyering (New Orleans: Jan. 2010)

Federalist Society of Orange County, Debate: The Politics of Judicial Appointments (with Manuel Miranda) (Nov. 2009)

The Future of the Second Amendment, the Joyce Foundation (Chicago: Jan. 2009)

The Fourteenth Amendment and the Bill of Rights: What Have We Learned? Why Does It Matter?, University of San Diego (January 2009)

Criminal Discussion Forum, Emory University School of Law (December 2008)

Southeastern Association of Law Schools Conference, Recipient of Call for Papers Award (Amelia Island: Aug. 2008)

Colloquium on Labor and Employment Law Scholarship, University of Colorado School of Law (October 2007)

Southeastern Association of Law Schools Conference, Supreme Court Preview panel (Amelia Island: Aug. 2007)

National Employment Law Institute: Public Employment Seminar, "The First Amendment Rights of Public Employees" (San Francisco: Sep. 1006)

Federalist Society of Orange County & Pacific Legal Foundation, "Debate on Proposition 90 and Eminent Domain," (September 2006)

Chapman Law School, "Guantanamo Teach-In" (October 2005)

Behind the Podium, Public Interest Law Foundation, Chapman University School of Law (Nov. 2005)

From the Rehnquist Court to the Roberts Court: A Constitution Day Conversation, Chapman University Constitution Day Presentation (Sep. 2005)

New York University, Symposium: Relearning *Brown*: Applying the Lessons of *Brown* to the Challenges of the Twenty-First Century (Feb. 2004)

University of Texas Law School, Seminar: Community Policing and Civil Rights (March 1999)

**Honors:**

Fellow, American Bar Foundation (2016-present)

Chapman University: Faculty Excellence in Scholarship Award (2010 & 2015)

International Municipal Law Association Amicus Service Award (2015 & 2016)

Southeastern Association of Law Schools, Call for Papers Award (2008)

Chicago Magazine, Thirty Toughest Lawyers in Chicago (March 2002);

The American Lawyer Magazine, "Public Sector 45 Under 45" (Jan./Feb. 1997);  
Commendation, City of Chicago Downtown Group (1992)

Special Commendation, Executive Office for United States Attorneys (1988)

Director's Commendation, Federal Bureau of Investigation (1990)

Award of Merit, United States Drug Enforcement Administration (1989)

**Amicus Briefs Filed in the United States Supreme Court:**

*Manuel v. City of Peoria*, No. 14-9496, Brief Amici Curiae of the National Association of Counties, National League of Cities, U.S. Conference of Mayors, International City/County Management Association and International Municipal Lawyers Association

*Rehberg v. Paulk*, No. 10-788, Brief Amici Curiae of the International Municipal Lawyers Association, National Association of Counties and National League of Cities

*McDonald v. City of Chicago*, No. 08-1521, Brief Amicus Curiae of the U.S. Conference of Mayors

*Pottawattamie County v. McGhee*, No. 08-1065, Brief Amici Curiae of the National Association of Counties, the National League of Cities, the U.S. Conference of Mayors, the International City/County Management Association, and the International Municipal Law Association

*Pearson v. Callahan*, No. 07-751, Brief Amici Curiae of the National League of Cities, the U.S. Conference of Mayors, the National Conference of State Legislatures, the International Municipal Lawyers Association, the International City/County Management Association, and the National Association of Counties

*Computer, Inc. v. LG Electronics, Inc.*, No. 06-937: Brief of Amicus Curiae Pabst Licensing, GmbH

*Sole v. Wyner*, No. 06-531: Brief Amici Curiae of the National League of Cities et al.

*Brigham City v. Stuart*, No. 05-502, Brief of Amici Curiae National League of Cities et al.

*Wallace v. Kato*, No. 05-240: Brief for Respondents