

Joseph A. Seiner
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Academic Appointments

University of South Carolina School of Law, Columbia, SC

Oliver Ellsworth Professor of Federal Practice

Professor, Spring 2014 – Present

Associate Professor, Fall 2011 – Spring 2014

Assistant Professor, Fall 2007 – Spring 2011

Best Classroom Teacher Award (2018); Outstanding Faculty Service Award (2017)

Outstanding Faculty Publication Award (2013, 2018, 2020 & 2022)

Georgetown University Law Center, Washington, DC

Adjunct Professor, Fall 2004, Fall 2005, Spring 2007

Education

Washington and Lee University School of Law, Lexington, VA

Juris Doctor, *Magna cum Laude*, Order of the Coif, May 1998

Washington and Lee Law Review, Lead Articles Editor

University of Michigan, Ann Arbor, MI

Bachelor of Business Administration, *with High Distinction*, April 1995

Angell Scholar, Branstrom Freshman Prize

Judicial Clerkship

United States Court of Appeals for the Second Circuit, Rochester, NY

Law Clerk to the late Honorable Ellsworth Van Graafeiland, August 1998-August 1999

Publications

Books

The Virtual Workplace (Cambridge University Press 2021)

The Supreme Court's New Workplace (Cambridge University Press 2017)

Employment Discrimination: Procedure, Principles & Practice (Aspen Pub., 3d ed. Forthcoming 2023)

Employment Law in a Nutshell, 5th Edition (West 2022) (with R. Covington)

Articles

- Sensible Just Cause*, 103 B.U. L. REV. ____ (forthcoming 2023)
- Time, Equity, and Sexual Harassment*, 12 U.C. IRVINE L. REV. 573 (2022)
- Plausible Harassment*, 54 U.C. DAVIS L. REV. 1295 (2021)
- The Discrimination Presumption*, 94 NOTRE DAME L. REV. 1115 (2019)
- Platform Pleading*, 93 WASH. L. REV. 1947 (2019)
- Harassment, Technology, and the Modern Worker*, 18 EMP. RTS. & EMP. POL'Y J. 85 (2019)
- A Modern Union for the Modern Economy*, 86 FORDHAM L. REV. 1727 (2018) (with J. Hirsch)
- Tailoring Class Actions to the On-Demand Economy*, 77 OHIO STATE L.J. 21 (2017)
- Commonality and the Constitution*, 91 IND. L.J. 455 (2016)
- Navigating the Uber Economy*, 49 U.C. DAVIS L. REV. 1511 (2016) (with B. Means)
- The Issue Class*, 56 B.C. L. REV. 121 (2015)
- Weathering Wal-Mart*, 89 NOTRE DAME L. REV. 1343 (2014)
- Plausibility and Disparate Impact*, 64 HASTINGS L.J. 287 (2013)
- Punitive Damages, Due Process, and Employment Discrimination*, 97 IOWA L. REV. 473 (2012)
- Plausibility Beyond the Complaint*, 53 WM. & MARY L. REV. 987 (2012)
- After Iqbal*, 45 WAKE FOREST L. REV. 179 (2010)
- Does Ricci Herald a New Disparate Impact?*, 90 B.U. L. REV. 2181 (2010) (with B. Gutman)
- Pleading Disability*, 51 B.C. L. REV. 95 (2010)
- The Trouble with Twombly: A Proposed Pleading Standard for Employment Discrimination Cases*, 2009 U. ILL. L. REV. 1011 (2009)
- The Failure of Punitive Damages in Employment Discrimination Cases: A Call for Change*, 50 WM. & MARY L. REV. 735 (2008)
- Disentangling Disparate Impact and Disparate Treatment: Adapting the Canadian Approach*, 25 YALE L. & POL'Y REV. 95 (2006)
- Understanding the Unrest of France's Younger Workers: The Price of American Ambivalence*, 38 ARIZ. ST. L.J. 1053 (2006)

Court Citations & Congressional Testimony

Second Circuit Court of Appeals (twice)

- *GEOMC Co., Ltd. v. Calmare Therapeutics Inc.*, 918 F.3d 92 (2d Cir. 2019) (following approach set forth in law review article)
- *Briscoe v. City of New Haven*, 654 F.3d 200 (2d Cir. 2011) (identifying theory as “intriguing”)

Ninth Circuit Court of Appeals

- *Arizona v. ASARCO LLC*, 773 F.3d 1050 (9th Cir. 2014) (en banc)

Veterans Claims Court of Appeals

- *Monk v. Wilkie*, 30 Vet. App. 167 (Davis, C.J., concurring) (Vet. App. 2018)

Federal District Courts

- N.D. Iowa; D. Massachusetts; W.D. Kentucky; E.D. Wisconsin;
D. Puerto Rico; S.D. West Virginia; E.D. Louisiana

State Supreme Courts

- Supreme Court of Tennessee; Supreme Court of Nebraska

United States Congress

- U.S. Senate, Committee on the Judiciary (written testimony upon invitation)
- U.S. House of Representatives, Committee on the Judiciary (written testimony upon invitation)

Representative Media Quotations & Editorials

Chronicle of Higher Education, *What Colleges Can Learn from the Affirmative-Action Lawsuit Against Texas A&M* (September 20, 2022)

Business Insider, *Amazon's victory against a union drive in Alabama proved workers want better workplaces, but America's labor laws are too broken to help them get that, experts say* (April 10, 2021)

Bloomberg Law, *Canceling Anti-Racism Training Weakens Agency Liability Shields* (September 9, 2020)

CNN, *The Workplace Lawsuits Have Begun* (September 17, 2020)

The Conversation (reprinted in *Chicago Tribune, Houston Chronicle, Salon, and San Francisco Chronicle*) *Workplace sex discrimination claims are common - but they're not making it into court* (Oct. 8, 2019)

ProPublica, *Cutting 'Old Heads' at IBM* (March 22, 2018)

The Atlantic, *Donald Trump's Loud Silence on Unions* (February 17, 2017)

New York Times, *A Job Interview with the Whole Airport Departure Lounge* (April 29, 2016)

Fortune, *What Happens to your Employer if you Die at Work? Not Much* (May 4, 2015)

Inc. Magazine, *Uber Class Action Moves Closer to the Courtroom* (September 1, 2015)

New York Times, *Virginia Shooting Spotlights Riddle of Workplace Safety* (August 27, 2015)

Wall Street Journal, *Job Discrimination Cases Tend to Fare Poorly in Federal Court*

Washington Lawyer, *Pay Equity: Are Women Still Being Run Over in the Workplace?*

Blogs

Co-Editor and Author, WORKPLACE PROF BLOG
http://lawprofessors.typepad.com/laborprof_blog/

Co-Editor and Author, JOTWELL, WORKLAW SECTION
<http://worklaw.jotwell.com/>

Presentations

Presenter, *Revisiting Worker Protections from Employment at Will*, Colloquium on Current Scholarship in Labor & Employment Law, Vanderbilt Law School (October, 2021)

Presenter, *The Prevalence of Workplace Discrimination and Harassment and its Failure in the Courts*, University of New Hampshire School of Law (May, 2021)

Presenter, *Sexual Harassment and Equitable Tolling*, Colloquium on Current Scholarship in Labor & Employment Law, University of Louisville School of Law (October, 2020)

Presenter, Faculty Workshop, *The Discrimination Presumption*, Notre Dame School of Law (March, 2019)

Presenter, *The Virtual Workplace*, Colloquium on Current Scholarship in Labor & Employment Law, University of South Carolina School of Law (September, 2018)

Presenter, *A Modern Union for the Modern Economy*, Colloquium on Current Scholarship in Labor & Employment Law, Texas A&M University School of Law (September, 2017)

Presenter, *Class-Actions & The On-Demand Economy*, Employment & Labor Law Scholars' Forum, Seton Hall University School of Law (October, 2016)

Moderator, *New Scholars Workshop: Employment and Corporate Law*, Southeastern Association of Law Schools Annual Meeting (August, 2016)

Presenter, *Civil Rights & The Roberts Court*, The Present and Future of Civil Rights Movements: Race and Reform in 21st Century America, Duke University School of Law (November, 2015)

Presenter, *The Supreme Court's Use of Procedure to Limit Substantive Worker Rights*, Colloquium on Current Scholarship in Labor & Employment Law, University of Indiana School of Law (September, 2015)

Presenter, *Systemic Litigation: Past, Present & Future*, Colloquium on Current Scholarship in Labor & Employment Law, University of Colorado School of Law (September, 2014)

Presenter, *Class-Actions after Wal-Mart*, Law and Society Annual Meeting (May, 2013)

Presenter, *Weathering Wal-Mart*, Colloquium on Current Scholarship in Labor & Employment Law, Northwestern University School of Law & Loyola University Chicago School of Law (September, 2012)

Closing Remarks, *Trial by Jury or Trial by Motion? Summary Judgment, Iqbal and Employment Discrimination*, New York Law School (April, 2012)

Presenter, *Plausibility Beyond the Complaint*, Southeastern Association of Law Schools Annual Meeting (July, 2011)

Presenter, *The Future of Workplace Punitive Damages*, Colloquium on Current Scholarship in Labor & Employment Law, Washington University School of Law & Saint Louis University School of Law (September, 2010)

Moderator, *New Scholars Workshop: Employment and Labor Law*, Southeastern Association of Law Schools Annual Meeting (August, 2010)

Presenter, *Employment Discrimination Implications of Iqbal and Twombly*, Law and Society Annual Meeting (May, 2010)

Faculty Workshop, Washington and Lee University School of Law, *Employment Discrimination Implications of Iqbal and Twombly* (March, 2010)

Presenter, University of South Carolina School of Law, *Iqbal's Implications: Anticipating Change in Pleading Requirements* (with Professors Eichhorn & Stravitz) (November, 2009)

Presenter, *Employment Discrimination Implications of Iqbal and Twombly*, Colloquium on Current Scholarship in Labor & Employment Law, Seton Hall University School of Law (September, 2009)

Presenter, American Association of Law Schools Annual Meeting, *Pleading Standards in Employment Discrimination Cases* (January, 2009) [selected through call for papers]

Presenter, North Carolina/South Carolina Labor and Employment Law Update and Annual Meeting, *Trends in Punitive Damages* (October, 2008)

Presenter, Medical University of South Carolina Trustees Leadership Academy, *Identifying Employment Discrimination Issues as an Administrator* (September, 2008)

Presenter, *The Failure of Punitive Damages in Employment Discrimination Cases*, Southeastern Association of Law Schools Annual Meeting (August, 2008)

Presenter, *The Failure of Punitive Damages in Employment Discrimination Cases*, Law and Society Annual Meeting (May, 2008)

Presenter, University of South Carolina School of Law, *The Roberts Court and Issues of Gender Equality* (Co-sponsored by Women in Law) (with Professor J. Brown) (October, 2007)

Panel Participant, Labor and Employment Relations Association Annual Meeting, *What Private Employers Should Know About the EEO Process* (January, 2007)

Experience

Federal Mediation and Conciliation Service, Labor Arbitrator, November 2021-present

- Member of labor arbitration panel of independent U.S. labor-management agency

American Arbitration Association, Arbitrator & Mediator, February 2013-present

- Member of employment law arbitration panel and commercial law arbitration panel (2013-present); member of employment law mediation panel (2014-present)

U.S. Equal Employment Opportunity Commission, Washington, D.C.

Appellate Attorney, Office of General Counsel, September 2001-June 2007

- Presented oral argument as lead counsel in the United States Courts of Appeals
- Prepared appellate and *amicus curiae* briefs on employment discrimination issues
- Represented Commission as lead counsel in the following illustrative cases:
EEOC v. E.I. Du Pont de Nemours & Co., 480 F.3d 724 (5th Cir. 2007); *EEOC v. Heartway Corp.*, 466 F.3d 1156 (10th Cir. 2006); *EEOC v. Pipefitters Ass'n Local Union 597*, 334 F.3d 656 (7th Cir. 2003); *Shaver v. Indep. Stave Co.*, 350 F.3d 716 (8th Cir. 2003).
- Briefed Commission Chair and General Counsel on proposed and pending litigation
- Coordinated with the Department of Justice on cases involving employment issues

Jenner and Block, LLP, Chicago, IL

Associate, Labor and Employment Law Group, September 1999-September 2001

- Advised clients on various employment issues arising under ADA, ADEA, Title VII, FMLA, FLSA, WARN Act and traditional labor law
- Represented clients in federal and state courts in employment related cases
- Prepared and interviewed witnesses, conducted investigations, argued motions, drafted pleadings, assisted in reductions-in-force, drafted position statements, responded to discovery requests, and researched labor and employment law issues

Bar Admissions

Member, Illinois State Bar (May 1999);

Admitted to the Supreme Court of the United States (2004)