

EDWARD A. HARTNETT

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ACADEMIC POSITIONS

SETON HALL UNIVERSITY SCHOOL OF LAW, Newark, NJ
Richard J. Hughes Professor for Constitutional and Public Law and Service.
Professor. 1998-present.

Associate Professor. 1995-1998.

Assistant Professor. 1992-1995.

- Civil Procedure
- Constitutional Law
- Criminal Procedure: Prosecution and Adjudication
- District Court Opinion Drafting Simulation
- Evidence
- Federal Courts
- Independence and Deference in the Federal Courts
- New Jersey Constitutional Law
- The Supreme Court

NEW YORK UNIVERSITY SCHOOL OF LAW, New York, NY
Adjunct Professor of Law, Fall 2022.

- Civil Procedure

Adjunct Professor of Law, Spring 2020.

- Constitutionally Required Remedies

In Residence, 2019-20.

FORDHAM UNIVERSITY SCHOOL OF LAW, New York, NY
Visiting Professor, Spring 2013.

- Constitutional Law

BENJAMIN N. CARDOZO SCHOOL OF LAW, New York, NY
Distinguished Scholar in Residence, Fall 2012.

ST. PETER'S COLLEGE, Jersey City, NJ
Scholar in Residence, Department of Theology, 2005-2006.

UNIVERSITY OF PENNSYLVANIA LAW SCHOOL, Philadelphia, PA
Visiting Professor, 2000-2001.

- Civil Procedure
- Evidence
- Independence and Deference in the Federal Courts

UNIVERSITY OF VIRGINIA SCHOOL OF LAW, Charlottesville, VA
Scholar in Residence. Spring 1999.
Visiting Associate Professor. Fall 1998.

- Evidence

LEGAL EXPERIENCE

ROBINSON, ST. JOHN & WAYNE, Newark, NJ
Litigation Associate in general practice firm. 1990-92.

OFFICE OF THE FEDERAL PUBLIC DEFENDER, Newark, NJ
Assistant Federal Public Defender. 1988-90.

UNITED STATES CIRCUIT JUDGE JOHN J. GIBBONS, Newark, NJ
Law Clerk. 1987-88.

UNITED STATES DISTRICT JUDGE ROBERT E. COWEN, Trenton, NJ
Law Clerk. 1986-87.

UNITED STATES DISTRICT JUDGE FREDERICK B. LACEY, Newark, NJ
Law Clerk. 1985-86.

BOOKS

SUPREME COURT PRACTICE (11th edition, 2019) with Geller, Shapiro, Bishop & Himmelfarb

SUPREME COURT PRACTICE (10th edition, 2013) with Geller, Shapiro, Bishop & Himmelfarb

SUPREME COURT PRACTICE (9th edition, 2007) with Gressman, Geller, Shapiro & Bishop

Chapter 17 of Stern, Gressman, Shapiro & Geller, SUPREME COURT PRACTICE, (8th edition, 2002).

Third Circuit Model Civil Jury Instructions, (Thomson Reuters, 2018) updates available at <http://www.ca3.uscourts.gov/model-jury-instructions> (co-reporter for Committee).

Third Circuit Model Civil Jury Instructions, (Thomson Reuters 2015) (co-reporter for Committee).

LAW REVIEW PUBLICATIONS

Legislative Calibration of Constitutional Remedies, 128 PENN. STATE L. REV. (2023).

Distinguishing Permissible Preemption From Unconstitutional Commandeering, 96 NOTRE DAME L. REV. 351 (2020).

The Pathological Perspective and Presidential Election, 73 SMU L. REV. 445 (2020).

Summary Reversals in the Roberts Court, 38 CARDOZO L. REV. 591 (2016).

Facial and As-Applied Challenges to the Patient Protection and Affordable Care Act, 46 RICH. L. REV. 745 (2012).

Taming Twombly: An Update After Matrixx, 75 LAW AND CONTEMPORARY PROBLEMS 37 (2012).

Responding to Twombly and Iqbal: Where Do We Go From Here?, 96 IOWA LAW REVIEW BULLETIN 24 (2010).

Taming Twombly – Even After Iqbal, 158 U. PENN. L. REV. 473 (2010).

Catholic Judges and Cooperation in Sin, 4 ST. THOMAS L. REV. 221 (2006).

Modest Hope for a Modest Roberts Court: Deference, Facial Challenges, and the Comparative Competence of Courts, 59 SMU L. REV. 1735 (2006).

Against (Mere) Restyling, 82 NOTRE DAME L. REV. 155 (2006).

Congress Clears Its Throat, 22 CONSTITUTIONAL COMMENT. 553 (2005).

The Constitutional Puzzle of Habeas Corpus, 46 BOSTON COLLEGE L. REV. 251 (2005).

Recess Appointments of Article III Judges, 26 CARDOZO L. REV. 377 (2005), reprinted in *JUROCRACY & DISTRUST: RECONSIDERING THE FEDERAL JUDICIAL APPOINTMENTS PROCESS* (Floerscheimer Center for Constitutional Democracy, 2005).

Not the King's Bench, 20 CONSTITUTIONAL COMMENT. 283 (2003).

Ties in the Supreme Court of New Jersey, 32 SETON HALL L. REV. 735 (2003).

Ties in the Supreme Court of the United States, 44 WILLIAM & MARY L. REV. 643 (2002).

§ 1367 *Producamus*, 51 DUKE L. J. 687 (2001).

Would the Kroger Rule Survive the ALI's Proposed Revision of § 1367?, 51 DUKE L. J. 647 (2001).

The Supreme Court and the American Character, 11 SETON HALL CONSTITUTIONAL L. J. 759 (2001).

Questioning Certiorari: Some Reflections Seventy-Five Years After the Judges' Bill, 100 COLUM. L. REV. 1643 (2000).

The Standing of the United States: How Criminal Prosecutions Show That Standing Doctrine Is Looking for Answers in All the Wrong Places, 97 MICH. L. REV. 2239 (1999).

The Akhil Reed Amar Bill of Rights, 16 CONSTITUTIONAL COMMENT. 373 (1999).

A Matter of Judgment, Not a Matter of Opinion, 74 N.Y.U. L. REV. 123 (1999).

A "Uniform and Entire" Constitution; or What if Madison Had Won?, 15 CONSTITUTIONAL COMMENT. 251 (1998).

Why is the Supreme Court of the United States Protecting State Judges from Popular Democracy?, 75 TEX. L. REV. 907 (1997).

Popular Sovereignty, Constitutional Interpretation, and the New Jersey Constitution of 1947: A Reply to Justice O'Hern and Professor Williams, 7 SETON HALL CONSTITUTIONAL L. J. 839 (1997).

A New Trick from an Old and Abused Dog: Section 1441(c) Lives and Now Permits the Remand of Federal Question Cases, 63 FORDHAM L. REV. 1099 (1995).

Becoming A Lawyer, 25 SETON HALL L. REV. 863 (1994).

REPORTS AND OTHER PUBLICATIONS

Invited Testimony Submitted to the Presidential Commission on the Supreme Court of the United States, available at <https://www.whitehouse.gov/wp-content/uploads/2021/08/Professor-Edward-A.-Hartnett.pdf>

Report to the Standing Committee on the Federal Judiciary of the American Bar Association Evaluating the Writings of Judge Merrick B. Garland, Nominee to the Supreme Court of the United States; the public report by the Standing Committee is available at http://www.americanbar.org/content/dam/aba/uncategorized/GAO/2016jun21_garlandstatement.authcheckdam.pdf

Report of the New Jersey State Bar Association Task Force on Judicial Independence (May 2015), available at <http://www.njsba.com/about/task-force-on-judicial-independence/index.html> (member of task force).

Occasional invited contributions to Concurring Opinions and SCOTUSblog.

A Districting Amendment—or a Districting Convention?: At Look at How We Can Address Gerrymandering, 338 New Jersey Lawyer Magazine 36 (October 2022).

Espinoza v. Montana: Religious Schools Cannot be Excluded From Funding Program, 326 New Jersey Lawyer Magazine 38 (October 2020).

Deciding to Decide: Reflections on the Judges' Bill of 1925, 84 JUDICATURE 120 (November / December 2000).

Can a State Court Injunction Prevent a Witness from Testifying in Federal Court? 1997-98 PREVIEW OF UNITED STATES SUPREME COURT CASES 32 (September 18, 1997).

To Dismiss or Not to Dismiss: Can a State Prisoner's First Federal Court Petition for a Writ of Habeas Corpus Be Dismissed as Abusive? 1995-96 PREVIEW OF UNITED STATES SUPREME COURT CASES 119 (November 17, 1995).

Does Violation of the Federal Six-Hour Judicial Presentment Requirement Warrant Suppression of a Voluntary Confession? 1993-94 PREVIEW OF UNITED STATES SUPREME COURT CASES 168 (February 18, 1994).

Does the Double Jeopardy Clause Apply to Non-Capital Sentencing? 1993-94
PREVIEW OF UNITED STATES SUPREME COURT CASES 91 (November 29, 1993).

*Do Federal Courts Have to Follow the Commentary to the Sentencing
Guidelines?* 1992-93 PREVIEW OF UNITED STATES SUPREME COURT CASES 309
(March 19, 1993).

EDUCATION

NEW YORK UNIVERSITY SCHOOL OF LAW, New York, NY
J.D. *cum laude*, June 1985

- Frank H. Sommer Memorial Award for Outstanding Scholarship, Character, and Professional Activities
- Order of the Coif

HARVARD UNIVERSITY, Cambridge, MA
A.B. *magna cum laude* in Social Studies, June 1982

ST. PETER'S PREPARATORY SCHOOL, Jersey City, NJ

SAMPLE LITIGATION EXPERIENCE

Ford Motor Company v. Montana Eighth Judicial District Court, 141 S. Ct. 1017 (2021). Amicus brief in support of constitutionality of exercise of personal jurisdiction.

National Collegiate Athletic Ass'n v. Christie, 61 F. Supp. 3d 488 (D.N.J. 2014), *aff'd*, 832 F.3d 389 (3d Cir. 2016) (en banc), *rev'd*, 138 S. Ct. 1461 (2018). Defense of New Jersey state law challenged under the Professional and Amateur Sports Protection Act and challenge to the constitutionality of the Professional and Amateur Sports Protection Act (consultant and on the brief).

Patchak v. Zinke, 138 S. Ct. 897 (2018). Amicus brief in support of Act of Congress challenged as violating separation of powers.

Heffernan v. City of Paterson, 136 S. Ct. 1412 (2016). Defense of municipal employer against freedom of association claim by public employee (consultant and on the brief).

Bank Markazi v. Peterson, 136 S. Ct. 1310 (2016). Amicus brief in support of Act of Congress challenged as violating separation of powers.

National Collegiate Athletic Ass'n v. Christie, 926 F. Supp. 2d 551 (D.N.J.), *aff'd*, 730 F.3d 208 (3rd Cir. 2013), *cert. denied*, 134 S. Ct. 2866 (2014). Challenge to the

constitutionality of the Professional and Amateur Sports Protection Act (consultant and on the brief).

Ernst v. Child & Youth Services, 108 F.3d 486 (3d. Cir), *cert. denied*, 522 U.S. 850 (1997). Substantive due process claim against caseworkers and child welfare agency for interfering with family relationship and First Amendment claim that child dependency proceedings should be presumptively open to the public (briefed and argued).

Amato v. Wilentz, 753 F. Supp. 543 (D.N.J. 1990), *vacated*, 952 F.2d 742 (3d Cir. 1991). First Amendment claim against the Chief Justice of the New Jersey Supreme Court for barring the filming of scenes from “Bonfire of the Vanities” in a New Jersey courtroom (primary author of briefs).

United States v. Gallagher, 870 F.2d 652 (3d Cir. 1989) (table), *certiorari granted and judgment vacated*, 495 U.S. 926 (1990), *on remand*, 909 F.2d 1477 (3d Cir. 1990) (table), *on remand*, 751 F. Supp. 481 (D.N.J. 1990), *vacated*, 969 F.2d 1480 (3d Cir. 1992). Challenge to the admissibility of electronic surveillance evidence (briefed and argued).

PROFESSIONAL HONORS

- Reporter, Judicial Conference Advisory Committee on Appellate Rules (appointed by the Chief Justice of the United States, John Roberts, 2018).
- Co-Reporter, Committee on Model Civil Jury Instructions Within the Third Circuit (appointed 2013).
- Member, New Jersey Supreme Court Civil Practice Committee (appointed by the Chief Justice of the New Jersey Supreme Court, Stuart Rabner, 2015).
- Member, New Jersey State Bar Association Task Force on Judicial Independence.
- Commissioner (Dean’s representative), New Jersey Law Revision Commission (2015-2018;).
- Fellow, American Bar Foundation (elected 2001).
- Member, American Law Institute (elected 2002).
- Member, Lawyers Advisory Committee, United States Court of Appeals for the Third Circuit (2010-13).
- Member, Lawyers Advisory Committee, United States District Court for the District of New Jersey (since 2010).

- Member, Board of Trustees, Saint Peter's Preparatory School (2014-20).
- *Against (Mere) Restyling* listed as Recommended Reading and nominated for Exemplary Legal Writing award, GREEN BAG 2007 READER.
- Law School's Nominee for University Faculty Teacher of Year (2018).
- Listed in The Best Lawyers in America (area: First Amendment law) (1997-98; 1999-2000).