

ELIZABETH G. THORNBURG

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PUBLICATIONS

Books and Book Chapters

(Un)Conscious Judging, in A GUIDE TO CIVIL PROCEDURE: INTEGRATING CRITICAL LEGAL PERSPECTIVES (NYU Press 2022).

Public as Private and Private as Public: MTBE Litigation in the U.S., in CLASS ACTIONS IN CONTEXT: HOW ECONOMICS, POLITICS AND CULTURE SHAPE COLLECTIVE LITIGATION (Edward Elgar Publishing U.K.) (2016).

The Political Economy of Mass Litigation in *id.* (with Deborah Hensler).

LAWTALK (Yale U. Press) (with Galanter, Shapiro, and Clapp) (2011) (excerpts from reviews posted on Amazon.com [here](#)).

The Story of Lassiter: The Importance of Counsel in an Adversary System, in CIVIL PROCEDURE STORIES (Kevin Clermont, 2d ed. 2004) (and prior edition) [reviewed in 55 J. LEGAL ED. 138 (2005)].

QUESTIONS & ANSWERS: CIVIL PROCEDURE (LexisNexis 4th ed. 2015) (with Dorsaneo) (and prior editions).

Privatization and Power: Dispute Resolution for the Internet, in CONSUMERS' ACCESS TO JUSTICE: INTERNATIONAL PERSPECTIVES (RICKETTS & TELFORD eds.) (Cambridge University Press 2003).

TEXAS CIVIL PROCEDURE: PRE-TRIAL LITIGATION 2018-2019 (with Dorsaneo, Carlson, and Crump) (and prior editions).

TEXAS CIVIL PROCEDURE: TRIAL AND APPELLATE PRACTICE 2018-19 (with Dorsaneo,

Carlson, and Crump) (and prior editions).

Metaphors Matter, in DAVIS, MATHEWSON & SHROPSHIRE, SPORTS AND THE LAW: A MODERN ANTHOLOGY (1999).

Jury Instructions: A Persistent Failure to Communicate, in COURTS AND JUSTICE: A READER (Waveland Press 2008) (G. Larry Mays and Peter R. Gregware, eds.).

Interlocutory Review of Discovery Orders: An Idea Whose Time Has Come, in TEXAS LITIGATION READER 107 (1992) (Alexandra W. Albright, ed.).

Chapters 1-4 and 7, TEXAS CIVIL TRIAL GUIDE (1989) (Dorsaneo & Johnson, eds.).

The Open Records Act, in TEXAS MEDIA LAW HANDBOOK (1984) (with Leatherbury).

Articles

Observing Online Courts: Lessons from the Pandemic, 54 FAM. L.Q. 181 (2020).

(Un)Conscious Judging, 76 WASH. & LEE L. REV. 1567 (2019).

Twitter and the #SoCalledJudge, 70 S.M.U.L. REV. 749 (2018) (solicited for McKnight tribute issue).

Cognitive Bias, the "Band of Experts," and the Anti-Litigation Narrative, 65 DEPAUL L. REV. 755 (2016) (solicited for Clifford Symposium).

A Community of Procedure Scholars: Teaching Procedure and the Legal Academy, 51 OSGOODE HALL L. REV. 93 (2013) (solicited and co-authored) [reviewed at Janet Walker, *What if you woke up one day in a place where there was no Courts Law?: The Impact of Teaching Procedure on the Legal Academy*, JOTWELL Courts Law (August 18, 2014).

The Lure of the Internet: The Limits on Judicial Fact Research, LITIGATION, 40 (Summer/Fall 2012).

Defining Civil Disputes: Lessons from Two Jurisdictions, 35 MELBOURNE U. L. REV. 208 (2011) (with Cameron) (peer reviewed) (cited by Federal Court of Australia, *Case Management Handbook* 25 (Oct. 2011).

Reaping What We Sow: Anti-Litigation Rhetoric, Limited Budgets, and Declining Support for Civil Courts, 30 CIVIL JUSTICE QUARTERLY 74 (2011) (peer reviewed).

Saving Civil Justice, 84 TULANE L. REV. 247 (2010) (review essay of Hazel Genn,

JUDGING CIVIL JUSTICE).

The Managerial Judge Goes to Trial, 44 U. RICH. L. REV. 1261 (2010).

Law, Facts, and Power, 114 PENN ST. L. REV. PENN STATIM 1 (2010), available at [http://pennstatelawreview.org/114/114 Penn Statim 1.pdf](http://pennstatelawreview.org/114/114%20Penn%20Statim%201.pdf). (translated into Spanish and published as *Derechos, Hechos & Poder*, 88 REVISTA DE DERECHO UNIVERSIDAD DE CONCEPCIÓN 149 (2020).

The Curious Appellate Judge: Ethical Limits on Independent Research, 28 REV. LIT. 133 (2008) [winner of 2008-09 Eisenberg Prize for best article on appellate practice and procedure, presented by American Academy of Appellate Lawyers].

Judicial Hellholes, Lawsuit Climates and Bad Social Science: Lessons from West Virginia, 110 W. VA. L. REV. 1097 (2008).

Designer Trials, 2006 J. DISPUTE RES. 181 (invited contribution for symposium on Vanishing Trial Project).

Just Say "No Fishing": The Lure of Metaphor, 40 U. MICH. J. L. REFORM 1 (2006).

Contracting with Tortfeasors: Mandatory Arbitration Clauses and Personal Injury Claims, 67 LAW & CONTEMP. PROBS. 253 (2004) (invited symposium contribution).

Detailed Fact Pleading: The Lessons of Scottish Civil Procedure, 36 INT. LAWYER 1185 (Winter 2002).

Book Review, PATHS TO JUSTICE AND PATHS TO JUSTICE SCOTLAND, 7 EDINBURGH L. REV. 123 (Jan. 2003).

The Tyranny of Fact Pleadings: Is Too Much Too Soon a Roadblock to Justice? Issue 296 SCOLAG L. J. 105 (June 2002) (reprinted in the Journal of the Law Society of Scotland).

Book Review, ADR AND COMMERCIAL DISPUTES, 10 INT. J. L. & INFO. TECH. 240 (2002).

Fast, Cheap, and Out of Control: Lessons from the ICANN Dispute Resolution Process, 7 J. SMALL & EMERGING BUS. 191 (2001) (invited symposium contribution) [reprinted in 6 COMP. L. REV. & TECH. J. 89 (2001); also reprinted in part in JULIE MACFARLANE, JOHN MANWARING, ELLEN ZWEIBEL & JONNETTE WATSON HAMILTON, DISPUTE RESOLUTION: READINGS AND CASE STUDIES (2d ed. 2002)].

Going Private: Technology, Due Process, and Internet Dispute Resolution, 34 U.C.

DAVIS L. REV. 151 (2000) [reprinted in part in JOHN ROTHCHILD, MARGARET JANE RADIN & GREGORY M. SILVERMAN, INTERNET COMMERCE: THE EMERGING LEGAL FRAMEWORK (2002)].

Giving the “Haves” a Little More: Considering the 1998 Discovery Proposals, 52 S.M.U.L. REV. 229 (1999) [reprinted in part, STEPHEN N. SUBRIN, MARTHA L. MINOW, MARK S. BRODIN & THOMAS O. MAIN, CIVIL PROCEDURE: DOCTRINE, PRACTICE & CONTEXT (2000)].

The Power and the Process: Instructions and the Civil Jury, 66 FORDHAM L. REV. 1837 (1998) (translated into Spanish and published by the University of Concepción Law Review in 2021).

Metaphors Matter: How Images of Battle, Sports, and Sex Shape the Adversary System, 10 WIS. WOMEN’S L.J. 225 (1995) [reprinted in part in MICHAEL J. COZZILLIO & ROBERT L. HAYMAN, JR., RACE, GENDER, AND SPORTS (2003)].

The Costs of the Corporate Attorney-Client Privilege, 27 THE BRIEF 14 (1994).

Sanctifying Secrecy: The Mythology of the Corporate Attorney-Client Privilege, 69 NOTRE DAME L. REV. 157 (1993) [reprinted in part in BABCOCK & MASSARO, CIVIL PROCEDURE: CASES AND PROBLEMS (2d. ed. 2006)].

Time Present, Time Past, Time Future: Understanding the Scope of Discovery in Texas Courts, 29 HOUSTON L. REV. 245 (1992) (with Dorsaneo).

Afterword, TEXAS LITIGATION READER 152 (1992).

Work Product Rejected: A Reply to Professor Allen, 78 VA. L. REV. 957 (1992).

Rethinking Work Product, 77 VA. L. REV. 1515 (1991).

Jury Instructions: A Persistent Failure to Communicate, 74 JUDICATURE 249 (February/March 1991) (with Steele) [condensed version of 67 N. CAR. L. REV. 77 (1988)].

Interlocutory Review of Discovery Orders: An Idea Whose Time Has Come, 44 SW. L. J. 1045 (1990).

Jury Instructions: A Persistent Failure to Communicate, 67 N. CAR. L. REV. 77 (1988) (with Steele) (reprinted in CRIMINAL PRACTICE LAW REVIEW and DEFENSE LAW REVIEW) (cited by U.S. Supreme Court in *CSX Transportation, Inc. v. McBride*, 131 S. Ct. 2630 (2011)).

Litigating the Zero-Sum Game: The Effect of Institutional Reform Remedies on Absent Parties, 66 OREGON L. REV. 843 (1987).

Attorney-Client Privilege: Issue-Related Waivers, 50 J. AIR LAW & COM. 1039 (1985).

Blogs

Prawfsblawg – a series of blog entries in September of 2015:

[*When Political Correctness Was, Well, Correct*](#)

[*Open Culture*](#)

[*Museum of Tort Law*](#)

[*Subconscious Juror Bias*](#)

[*Encouraging Jury Service*](#)

[*Piling On Judge Posner*](#)

[*Teaching Like It's 1801.*](#)

[*Teaching Like It's 2015*](#)

JOTWELL Courts Law blog entries 2014-17:

[*A Well-Pleaded Argument*](#)

[*The Vanishing Poor*](#)

[*Discovery and Self-Improvement*](#)

[*Discovery and Democracy*](#)

Faculty Lounge guest blogger October-November 2011:

[*Lawtalk, Old and New*](#)

[*Scofflaws*](#)

[*Law Professors, Corporate Veils, and Occupy Wall Street*](#)

[*Dr. Seuss Meets Immigration Law*](#)

[*Lawtalk: Home Edition*](#)

[*Waterboarding and the Third Degree*](#)

[*Lawyers, Guns & Money*](#)

Volokh Conspiracy guest blogger December 2011:

[*Of Time and Lawtalk*](#)

[*Censorship as Marketing*](#)

SELECTED SPEECHES AND ACTIVITIES

Attacks on the Courts, Berkeley Civil Justice Research Institute (January 2022)(online).

Interactive Techniques for the Occasional Teacher, Berkeley Judicial Institute (January 2021)(online).

Breaking the Backlog, National Center for State Courts (January 2021)(online).

Lessons Learned from Online Court Proceedings, Texas Appellate Law Podcast (November 2020)(online).

Observing Online Courts: Lessons from the Pandemic, Tsai Center Series on COVID-19 and the Law (September 2020)(online).

Presenter, Civil Procedure Workshop on Online Teaching (July 2020) (online).

Panelist, Pound Institute for Civil Justice Academic Symposium, *Class Actions, Mass Torts and MDLs: The Next 50 Years* (November 2019).

Commentator, 5th Annual Civil Procedure Workshop, University of Texas (October 2019).

Ethical Issues with Judges Using Social Media and Conducting Internet Research, Third Circuit Judicial Conference (October 2018).

Ethical Ways to Communicate About Justice on Social Media, Federal Judicial Center Workshop for District Judges (May & August 2018).

CALI Civil Procedure Fellow, 2017-18 (developed 5 new CALI lessons on Discovery).

The Curious Judge: Independent Factual Investigations, National College on Judicial Conduct & Ethics (October 2017).

Third Annual Civil Procedure Workshop (October 2017).

Social Media and #Judge, Second Circuit Judicial Conference (June 2017).

Small Changes to Improve Your Teaching, SMU Teaching Effectiveness Symposium (August 2016).

The Pedagogy of Procedure: Using Civil Procedure to Showcase Innovative Teaching Methods, AALS Annual Meeting, Joint Program of Sections on Civil Procedure and Teaching Methods (January 2016).

The Curious Judge: Limits to Social Media and Independent Research, 2015 Texas Judicial Education Conference (almost 500 Texas judges) (September 2015).

Confirmation Bias, the "Band of Experts," and the Anti-Discovery Narrative, 21st Annual Clifford Symposium on Tort Law and Social Policy, DePaul University College of Law (April 2015).

The Lure of the Internet, Appellate Judges Education Institute (November 2014).

Hearts, Minds, and the Politics of Procedural Rulemaking, Through a Glass Starkly: Civil Procedure Reassessed, Northeastern University School of Law (April 2014).

Surfin' USA: Judges and Internet Research, U.S. District Judges, Western District of Missouri (March 2014).

Judicial Research on the Internet Outside the Record, Midwestern Conference of Chief Justices (NCSC-sponsored conference) (October 2013).

Surfin' USA: Judges and Internet Research, U.S. Attorney Annual Continuing Legal Education Program (May 2013).

National Judicial Ethics Workshop for U.S. Bankruptcy Judges (April & August 2013).

Lessons from Lawtalk, SMU Town & Gown (April 2013).

Teaching with Clickers for Increased Student Engagement, CTE@Law (February 2013).

Digital Humanities: Implications for Teaching, Futures for Humanistic Learning Research Cluster, Dedman College Interdisciplinary Institute (October 2012).

How Do I Promote Active Learning, Center for Teaching Excellence Workshop (October 2012 & September 2013).

Private as Public and Public as Private: U.S. MTBE Litigation, Law & Society Conference, June 2012 (part of Global Class Actions Research Group).

Judicial Research on the Internet Outside the Record, National Workshop for U.S. Magistrate Judges (April & July 2012).

Learning about Law from Lawtalk, John C. Ford Inn of Court (February 2012).

Interim Report on the MTBE Cases, Fifth Annual International Conference on the Globalization of Class Actions (December 2011).

Judicial Fact Research: Ethical Limits, and How Lawyers Can Fill the Gap, SMU Alumni Reunion (April 2011); Dallas Bar Association Ethics Luncheon (June 2011).

Panelist, *Ethics and Judicial Research*, Seventh Circuit Judicial Conference (May 2011).

Moderator, SMU IP Symposium: *Patent Litigation in the Eastern District of Texas* (February 2010) (EDTx Juries).

Invited Participant, *Teaching Civil Procedure in Common Law Countries Project* (England, June 2010).

Judicial Research and Judicial Ethics, West Virginia Judicial Conference (June 2010).

Google, Twitter and Facebook: Judicial Ethics Meets the Internet (June 2010).

Invited Participant, Advisory Committee on the Federal Rules of Civil Procedure, *Civil Litigation Conference*, Duke Law School (May 2010).

The Rhetoric of Tort Reform: Considering the U.S. and Australia, Sydney Law School (March 2010).

Manipulating Public Perception of Law and Courts, University of Melbourne Law School (March 2010).

Off Limits, Appellate Judges Education Institute (November 2009).

The Ethics of Judicial Research, Vermont Judicial College (June 2009).

Witness, Louisiana Supreme Court Ad Hoc Committee on Court Perception (May 2009).

The Curious Appellate Judge, University of Houston Colloquium: Re-envisioning Law (March 2009).

Where's the Hellhole?, West Virginia Association for Justice (February 2009).

Witness, West Virginia Senate Judiciary Committee, *Public Relations vs. Empirical Data and the Hellholes Debate* (February 2009).

Think Before You Google: Ethical Limits on Judicial Research, Appellate Judges Education Institute (November 2008).

Designated Disputant, PhD thesis on *Electronic Alternative Dispute Resolution*, University of Oslo (Norway, October 2008).

Judicial Hellholes, Lawsuit Climates and Bad Social Science: Lessons from West Virginia, Faculty Forum, SMU Dedman School of Law (March 2008).

West Virginia and the Hellholes Project, Faculty Workshop, WVU College of Law (March 2008).

Continuity and Change on the Border of Law and Culture, Faculty Workshop, Cornell Law

School (November 2007).
Interactions of Law and Popular Culture, Faculty Colloquium, Northeastern University School of Law (October 2007).
Panelist, *ABA National Symposium on the American Jury System* (2006).
Consultant, Scotland Sheriff Court Rules Council, Consultation on the Sheriff Court and Alternative Dispute Resolution (2006) (written testimony).
Invited Participant, Advisory Committee on the Federal Rules of Civil Procedure, *Conference on Electronic Discovery*, Fordham Law School (February 2004).
Comparative Pre-Proof Procedure: An American View, Law Society of Scotland (May 2004).
Visiting Fellow, AHRB Centre for Studies in Intellectual Property and Technology Law, University of Edinburgh, *ADR and Internet Disputes* (March 2003).
Contracting with Tortfeasors: Mandatory Arbitration of Personal Injury Claims, Roscoe Pound Institute Faculty Seminar, Duke Law School (2002).
Privatization and the Internet, Faculty Research Seminar, Universities of Glasgow and Strathclyde (2002).
Going Private: Procedural Lessons from the UDRP, Seventh Annual Lewis & Clark Law Forum, Deciding ICANN Domain Name Disputes: Questioning Delegation, Fairness, and Consent (2001).
Privatization and Power: Dispute Resolution for the Internet, The Eighth International Consumer Law Conference (2001).
Panelist, FTC Workshop on Dispute Resolution for On-Line Business-to-Consumer Contracts (2001).

LAW SCHOOL AND UNIVERSITY AWARDS

2016 Altshuler Distinguished Teaching Professor Award
2014 Peruna Professor Award, Dedman School of Law
2013 University Scholar/Teacher of the Year Award
2007 Distinguished University Citizen Award
1990-91 Dr. Don M. Smart Teaching Award

TEACHING EXPERIENCE AND INTERESTS

Experience: Civil Procedure; Conflict of Laws; Advanced Procedure Seminar; Jury Seminar; Complex Litigation; Remedies; Texas Procedure
Additional Interests: Federal Courts; Mass Tort Litigation; ADR; Law & Literature; Pretrial Litigation; Comparative Civil Procedure

LAW SCHOOL AND UNIVERSITY SERVICE

Law School
Senior Associate Dean for Academic Affairs, 2014 - 2017
Associate Dean for Academic Affairs, 1996 - 98

Executive Committee, 1990 - 1992; 2004 - 2006; 2008 - 2009; 2013 - 2014; 2019-2021
Appointments Committee, 1991 - 1994; 2004 - 2007; 2014 - 2017
Curriculum Committee, 1989 -1991, 1995 - 1996, 2006 - 2007; 2010 - 2011; 2013 - 2017
(Chair 1995 - 1996, 2006 - 2007, 2013 - 2014)
Teaching Committee, 2014 - 2022 (Chair, 2017 - 2018 & 2020-21)
Career Services Committee, 2008 - 2009, 2019-20
Ad Hoc Committee on ABA Standards, 2015 - 2022
Ad Hoc Committee on the SJD Degree, 2011 - 2013
Ad Hoc Committee on the Evening Program, 2002 - 2003, 2009, 2015
Ad Hoc Committee on Law School Grading, 2002 - 2004
Ad Hoc Self Study Committee, 2004 - 2006
Faculty Supervisor, externships at U.S. Attorney's Office; NTSB; U.S. District Court; U.S.
Bankruptcy Court, Human Rights Initiative; Southwest Airlines; Texas State
Court Education Program (various years 1998 - 2018)
Judicial Clerkship Committee, 1998 - 2004
Oxford Summer Program Faculty, 1991, 1994; Director 1995 - 1996, 1999 & 2019
Faculty Research and Writing Mentor, 1996 - 1998
Ad Hoc Legal Writing Committee, 1992 - 1998
Faculty Advisor, Muslim Law Students Association, 2007 - 2009
Faculty Advisor, Computer Law Review & Technology Journal, 2000 - 2004
Faculty Advisor, Journal of Air Law & Commerce, 1992 - 1996
Faculty Advisor, various 1L Inns of Court

University

Director, SMU Center for Teaching Excellence (2012 - 2014)
Chair, Provost's Task Force on Online Education (Spring 2013)
Co-Chair, Provost's Committee on Semester Online (2013 - 2014)
Various SACS subcommittees (2015 - 2018)
Member, Provost's Ad Hoc Committee on Continuing Education (2016)
University Committee on Assessment & Accreditation (2013 - 2014)
University Steering Committee, SACS Re-Accreditation (2009 - 2011)
Provost's Academic Program Evaluation Committee, 2003 - 2007; 2010 - 2012 [chaired
internal reviews of Graduate Program in Religions Studies; Department of
Geology]
Provost's Commission on Educational Programs, 1999 - 2008
Provost's Commission on Teaching & Learning, 1998 - 2003
Provost's Ad Hoc Committee on Full Time Non-Tenure Track Faculty, 2002 - 2003
SMU Faculty Senate, 2002 - 2005
SMU Faculty Senate Committee on the Academic Calendar, 2002 - 2007
SMU Self-Study Committee for SACS Accreditation, 1997 - 2000
SMU Faculty Senate Bookstore Committee, 1990 - 1991

PROFESSIONAL MEMBERSHIPS

American Law Institute

State Bar of Texas

American Bar Association

Federal Court Bars (Northern District of Texas, Western District of Texas, Fifth Circuit)

Member, Mac Taylor Inn of Court, 2011 - 2022

Fellow, American Bar Foundation, 2011 - present

Fellow, Texas Bar Foundation, 2018 - present

Member, Global Class Action Exchange Research Group, 2009 - present

Member, Executive Committee, Conflict of Laws Section, AALS, 2007 - 2013

Member, Executive Committee, Civil Procedure Section, AALS, 1996-98 and 2012 - 2015

Member, Complex Litigation Committee, Civil Procedure Section, AALS, 1992-93

Member, Texas Supreme Court Task Force on Civil Litigation Improvements, 2001

PROFESSIONAL EXPERIENCE

Professor Emeritus, Southern Methodist University Dedman School of Law

Professor of Law, 1998 to 2022, Southern Methodist University (Assistant Professor 1989-1993; Associate Professor 1993-1998; Associate Dean for Academic Affairs 1996-98 and 2014-17). Appointed to Richard R. Lee Endowed Chair 2014. Retired May 2022.

Visiting Scholar, University of Melbourne, Spring 2010.

Visiting Professor (Judge John T. Copenhaver Chair), West Virginia University College of Law, 2007-08.

Visiting Professor, College of William & Mary School of Law, Fall 2003.

Visiting Scholar, University of Edinburgh Faculty of Law, Spring 2002.

Director of Legal Research & Writing, Southern Methodist University, 1984-1989 (and Visiting Assistant Professor, 1988-89).

Associate, Locke, Purnell, Boren, Laney & Neely, 1980-84 (now Locke Lord) (commercial litigation).

Law Clerk to the Hon. Robert M. Hill, U.S. District Judge for the Northern District of Texas, 1979-80.

Law Clerk, Law Offices of James C. Barber, 1977-79 (civil rights and employment litigation).

EDUCATION

Legal Education

Southern Methodist University School of Law - J.D. 1979

Honors and Awards: Order of the Coif; The Barristers; Federal Bar Association

Award; Passman, Jones, Andrews, Coplin Holly & Co. Award; Journal of Air Law and Commerce 1970 Board of Editors Award (best student Comment)

Previous Education

College of William and Mary - Bachelor of Arts in History 1976 (Highest Honors)

(exchange scholar at University of Exeter, England, 1974-75)

Honors and Awards: Phi Beta Kappa; Award for Best Honors Thesis in American History (Women Intellectuals in Greenwich Village from 1910-1920); Alpha

Lambda Delta (freshman women's honorary); Sigma Delta Pi (Spanish honorary);

Mortarboard

COMMUNITY SERVICE

Volunteer, Texas Appleseed (assisted in drafting forms for consumer cases in justice courts), 2021

Volunteer, Vickery Meadow Learning Center) (teaching adult ESL classes), 2016 - 2018)

Member, Vickery Meadow Youth Development Foundation Scholarship Committee, 2011 - 2017

Partner, Dallas Social Venture Partners, 2007 - 2009

Volunteer, Dallas Legal Hospice, 2002 - 2009

Standing Rules Committee, North Texas Annual Conference of the United Methodist Church, 1992 - 2000 (Chair, 1996 - 2000)

Scholarship Chair, Pearce Area Band Club, 1999 - 2001

Board of Advisors, Women's Legal Advocacy Center, 1998 - 2001

Board of Directors, Oak Lawn Community Services, 1994 - 1996

Writing Tutor, Prestonwood Elementary School, 1992 - 1993