

MICHAEL SELMI  
michael.selmi@asu.edu

#### ACADEMIC EMPLOYMENT

ARIZONA STATE COLLEGE OF LAW, 2019-  
Foundation Professor of Law

GEORGE WASHINGTON UNIVERSITY LAW SCHOOL  
Samuel Tyler Research Professor 1996-2019  
Visited 1995-96, tenured 1998, promoted full Professor 1999.  
Editor, George Washington Public Law & Theory (SSRN), 2003-04.  
President, AALS Section on Labor Relations and Employment Law, 2008-09.

VISITING PROFESSOR OF LAW  
Boston University School of Law, 2006-07  
Harvard Law School, Spring 2005

DISTINGUISHED VISITING PROFESSOR, SUFFOLK LAW SCHOOL, 2002-03, FALL 2004.

ASSOCIATE PROFESSOR, UNIVERSITY OF NORTH CAROLINA LAW SCHOOL, 1993-95  
Awarded University Research Grant for study of the economic efficiency  
of the EEOC (1993-94). Public Interest Law Advisor.

#### COURSES TAUGHT

Civil Rights Litigation, Contracts, Constitutional Law I & II, Employment Law,  
Employment Discrimination, Torts, Art of Legal Persuasion,  
Law and Social Change (seminar), Advanced Const. Theory (seminar).

#### OTHER PROFESSIONAL EMPLOYMENT AND SERVICE

Citizen Member, Critical Incident Review, Maricopa County Attorney's Office,  
2021-present.

Board Member, Citizen Complaint Review Board, Washington, D.C.  
2000-02 (Mayoral Appointee, Civilian Oversight of police department).

Staff Attorney, Employment Discrimination Project, Lawyers' Committee for  
Civil Rights Under Law, Washington, D.C., 1991-93.

Trial Attorney, Employment Litigation Section, Civil Rights Division,  
United States Department of Justice, Washington, D.C., 1989-91.

Litigation Associate, Orrick, Herrington & Sutcliffe, Sacramento, Ca., 1988-89.

Law Clerk, Chief Judge James R. Browning, United States Court of Appeals for the Ninth Circuit, San Francisco, CA, 1987-88.

## EDUCATION

Harvard Law School, Cambridge, MA

J.D., magna cum laude, 1987

Articles Editor, Harvard Law Review

Myer Etta Dana University Scholar

Research Assistant: Professors Charles Ogletree, Laurence Tribe, and Lloyd Weinreb.

Stanford University, Stanford, CA

A.B. English, with Highest Honors and Distinction, 1983

Phi Beta Kappa

Research Assistant: Dr. John Bunzel & Dr. Peter Corning

## PUBLICATIONS

### Books and Book Chapters

EMPLOYMENT DISCRIMINATION (West 10th ed. 2021), co-authored with M. Ontiveros, R. Corrada, N. Bounocore Porter, M. McCormick (joined with Supplement 2006, 7th ed.).

WORK LAW: CASES AND MATERIALS (Carolina Academic Press, 4th ed. 2020) , co-authored with M. Crain ,P. Kim. B. Rodgers (1st Ed. 2005, 2d ed. 2010).

AGE AND EQUALITY LAW, EDITED COLLECTION OF ESSAYS (Ashgate 2013)

LAW OF DISCRIMINATION (Lexis 2011), co-authored with R. Brooks & G. Carrasco.

CIVIL RIGHTS LITIGATION (Carolina Academic Press, 3d Ed. 2005), co-authored with R. Brooks & G. Carrasco.

*Autism Spectrum Disorder and the Workplace*, HANDBOOK OF AUTISM SPECTRUM DISORDER AND THE LAW (Springer 2021) (edited by F. Volkmar, R. Loftin, A. Westphal & M. Woodbury-Smith) (chapter).

*The River Pilots on the Mississippi*, GREAT RIVERS AND LABOUR LAW (Laborum 2021) (edited by Antonio Ojeda) (chapter).

*Indirect Discrimination and the Anti-Discrimination Mandate*, PHILOSOPHICAL FOUNDATIONS OF DISCRIMINATION LAW (Oxford Univ. Press 2013) (edited by D. Hellman & S. Moreau) (chapter).

*The Stigma of Disabilities and the Americans With Disabilities Act*, DISABILITY AND AGING DISCRIMINATION (Springer 2010, edited by R. Weiner & S. Wilborn) (chapter)

*Contemporary Sex Discrimination: It is Not All Subtle*, BEHAVIORAL ECONOMICS AND EMPLOYMENT DISCRIMINATION (Yelnosky & Gulati eds. Kluwer 2007) (chapter).

*Difference and Solidarity: Unions in a Postmodern Age*, LABOUR LAW IN AN ERA OF GLOBALIZATION (K. Klare et al eds) (Oxford University Press 2002) (with Molly McUsic) (chapter).

*Indirect Discrimination: A Perspective from the United States*, in NON-DISCRIMINATION LAW: COMPARATIVE PERSPECTIVES (T. Loenen & P. Rodrigues, 1999) (chapter).

### Articles

1. *From Disparate Impact to Protecting White Men and Their Interests: The Early Development of Title VII*, forthcoming ARIZONA L.REV. (2023)
2. *Algorithms, Discrimination & the Law*, 82 OHIO ST. L.J. 611 (2021).
3. *The Paradox of Implicit Bias and a Plea for a New Narrative*, 50 ARIZ. ST. L.J. 173 (2018) (reprinted in CIVIL RIGHTS LITIGATION & ATTORNEY FEES ANNUAL HANDBOOK, S. Saltzman ed. 2018).
4. *The Evolution of Employment Discrimination Law: Changed Doctrine for Changed Social Conditions*, 2014 WISCONSIN L. REV. 937 (2014)
5. *Interpreting the Americans With Disabilities Act: Why the Supreme Court Rewrote the Statute, and Why Congress Did Not Care*, 76 GEO. WASH. L. REV. 101 (2008).
6. *Was the Disparate Impact Theory a Mistake?*, 53 UCLA L. REV. 701 (2006) (reprinted in CIVIL RIGHTS LITIGATION & ATTORNEY FEES ANNUAL HANDBOOK, S. Saltzman, ed., West, 2006).
7. *Sex Discrimination in the Nineties, Seventies Style: Evidence from Class Action Litigation*, 9 EMPLOYEE RTS. & EMPLOY. POL'Y J. 1 (2005).
8. *The Price of Discrimination: The Nature of Class Action Employment Discrimination Litigation and Its Effects*, 81 TEXAS L. REV. 1249 (2003) (reprinted in EMPLOYMENT CLASS AND COLLECTIVE ACTIONS, D. Sherwyn, ed., Kluwer 2009 and CIVIL RIGHTS

LITIGATION & ATTORNEY FEES ANNUAL HANDBOOK, S. Saltzman, ed., West, 2003).

9. *Remedying Societal Discrimination Through the Government's Spending Power*, 80 NORTH CAROLINA LAW REV. 1574 (2002).
10. *Family Leave and the Gender Wage Gap*, 78 N. CAR. LAW REV. 707 (2000).
11. *The Life of Bakke: An Affirmative Action Retrospective*, 87 GEORGETOWN LAW J. 981 (1999).
12. *Public v. Private Enforcement of Civil Rights: The Case of Housing and Employment*, 45 UCLA L. REV. 1401 (1998).
13. *Proving Intentional Discrimination: The Reality of Supreme Court Rhetoric*, 86 GEORGETOWN LAW J. 279 (1997).
14. *Postmodern Unions: Identity Politics in the Workplace*, 82 IOWA L. REV. 1339 (1997) (with Molly McUsic).
15. *The Value of the EEOC: Should the Agency Be Abolished?*, 57 OHIO ST. L.J. 1 (1996).
16. *Testing for Equality: Merit, Efficiency and the Affirmative Action Debate*, 42 UCLA LAW REV. 1251 (1995).
17. Note, *Felony Murder: A Tort Law Reconceptualization*, 99 HARV. L. REV. 1918 (1986).

#### Essays, Reviews and Commentary

18. *Bending Towards Justice: An Essay in Honor of Charles Sullivan*, 50 SETON HALL L. REV. 1465 (2020).
19. *Supreme Court Term 2017-18: The Umpires Play Ball*, 22 EMPLOYEE RIGHTS & EMPL. POL'Y J. (2018)
20. *Supreme Court Term 2016-17: Waiting for Justice Gorsuch*, 21 EMPLOYEE RIGHTS & EMPL. POL'Y J. (2019).
21. *Statistical Inequality and Intentional (Not Implicit) Discrimination*, 79 LAW AND CONTEMPORARY PROBLEMS 199 (2016) (symposium).
22. *Trending and the Restatement of Employment Law's Provisions on Employee Mobility*, 100 CORNELL L. REV. 1369 (2015) (symposium).

23. *Employment Discrimination Class Actions After Wal-Mart v. Dukes*, 48 AKRON L. REV. 803 (2015) (with Sylvia Tsakos) (symposium).
24. *Can All Women be Pharmacists? A Critique of Hannah Rosin's the End of Men*, 93 BOSTON UNIV. LAW REV. 851 (2013) (symposium) (with Sonia Weil).
25. *Hostess and the Search for Workplace Dignity*, 52 WASHBURN LAW REV. 517 (2013) (symposium).
26. *The Restatement's Supersized Duty of Loyalty Provision*, 16 EMPLOYEE RTS. & EMPLOY. POL'Y J. 395 (2012) (symposium)
27. *Theorizing Systemic Disparate Treatment Law: After Wal-Mart v. Dukes*, 32 BERKELEY J. EMP. & LAB. LAW 477 (2011)
28. *The Supreme Court's Surprising and Strategic Response to the Civil Rights Act of 1991*, 46 WAKE FOREST LAW REVIEW 281 (2011).
29. *Understanding Discrimination in a "Post-Racial" World*, 32 CARDOZO LAW REV. 101 (2011).
30. *Unions, Education, and the Future of Low-Wage Workers*, UNIV. OF CHICAGO LEGAL FORUM 147 (2009) (symposium).
31. *The 2007-2008 Term: The Government Changes Its Tune and the Supreme Court Takes a Pragmatic Turn*, 12 EMPL. RTS. & EMPLOY. POL'Y J. 161 (2008).
32. *The Work Family Debate: An Essay on Men, Employers and Responsibility*, 4 ST. THOMAS L. REV. 573 (2007) (symposium).
33. *The Supreme Court's 2006-07 Term Employment Law Cases: A Quiet But Revealing Term*, 11 EMPL. RTS. & EMPLOY. POL'Y J. 219 (2007).
34. *The Many Faces of Darlene Jespersen*, 14 DUKE J. OF GENDER & LAW 467 (2007) (symposium).
35. *Privacy for the Working Class: Public Work and Private Lives*, 66 LA L. REV. 1035 (2006) (symposium).
36. *Race in the City: The Triumph of Diversity and the Loss of Integration*, 22 J. LAW & POLITICS 49 (2006) (symposium).
37. *Women in the Workplace: Which Women, Which Agenda?* 13 DUKE J. OF GENDER & LAW 7 (2006) (symposium) (with Naomi Cahn) (reprinted in WOMEN AND THE LAW, J. Moriarty, ed., West, 2009).

38. *The Class Ceiling*, 65 U. MD. L. REV. 435 (2006) (symposium) (with Naomi Cahn).
39. *Is Something Better than Nothing? Critical Reflections on Ten Years of the FMLA*, 15 WASHINGTON UNIV. J. OF LAW & POL'Y 65 (2004) (symposium).
40. *Subtle Discrimination: A Matter of Perspective Rather than Intent*, 34 COLUMBIA HUMAN RTS. L.REV.657 (2003) (symposium).
41. *Caretaking and Contemporary Social Policy*, 55 MAINE L. REV. 290 (2002) (with Naomi Cahn) (symposium).
42. *Getting Beyond Affirmative Action: Thinking About Racial Inequality in the Twenty-First Century*, 55 STAN. L. REV. 1013 (2002) (book review).
43. *Why Are Employment Discrimination Cases So Hard to Prove?*, 61 LOUISIANA LAW REV. 555 (2001) (symposium).
44. *Care, Work and the Road to Equality: A Comment on Fineman and Williams*, 76 CHICAGO-KENT LAW RVW. 1557 (2001) (symposium).
45. *The Facts of Affirmative Action*, REVIEWING THE SHAPE OF THE RIVER, by William G.Bowen and Derek Bok, 85 VIRGINIA. L RVW. 697 (1999) (book review).
46. *The Limited Vision of the Family & Medical Leave Act*, 44 VILLANOVA L. REV. 395 (1999) (symposium).
47. *Response to Professor Wax – Discrimination as Accident: Old Whine, New Bottle*, 74 INDIANA LAW J. 1233 (1999) (invited commenatary).

#### ADDITIONAL WRITINGS

“Discrimination,” entry in Encyclopedia of Clinical Psychology (2015).

*A Lame Civil Rights Record*, Politico Magazine, Sept. 2, 2014.

#### PRESENTATIONS & CONFERENCE PARTICIPATION

Commentator, Culp Colloquium for Emerging Scholars, Duke Law School, May 2023.

Presentation, From Disparate Impact to Protecting White Men and Their Interests,” Annual Colloquium on Labor and Employment, Vanderbilt Law School, Nov. 2022

Presentation, “Discounting Discrimination,” Annual Conference of Law And Society Association, Lisbon, Portugal, July 2022.

Presentation, “Title VII’s Damage Caps,” Symposium on Enhancing Anti-Discrimination Laws in Education & Employment, American University, Nov. 2021.

Presentation, “Bending Towards Justice,” Symposium in Honor of Charles Sullivan, Seton Hall Law School, Nov. 2020.

Presentation, “Some Preliminary Thoughts on Algorithms, Discrimination & Disparate Impact,” Faculty Workshop, University of Pittsburgh Law School, Mar. 2019. Also presented at Annual Colloquium on Labor & Employment Law, UNLV Law School, Sept. 2019.

Presentation, “Gender Race & Competition in the New Economy, AALS,” Annual Conference, Jan. 2019.

Presentation, “The Paradox of Implicit Bias,” Annual Colloquium on Labor & Employment Law, Texas A&M Law School, Sept. 2017.

Presentation, “Statistical Inequality and Intentional (Not Implicit) Discrimination,” Conference on the Present and Future of Civil Rights Movements, Duke Law School, Nov. 2015.

Presentation, “The Return of the Employee,” Annual Colloquium on Labor and Employment Law, Indiana University Law School, Sept. 2015.

Presentation, “The Evolving Nature of Employment Discrimination Law,” Colorado Bar Association, Oct. 2014; Labor Law Group Meeting, Cornell Law School, June 2014.

Presentation, “The Obama Administration’s Record on Civil Rights,” Indiana University Law School Symposium, April 2013.

Presentation, “Employment Discrimination for the Next Generation,” Duquesne Law School, Jan. 2013.

Presentation, “Can All Women Be Pharmacists? A Critique of Hannah Rosin’s The End of Men,” Boston University Law School Symposium, Oct. 2012.

Presentation, “Supersize Me: The Third Restatement and the Duty of Loyalty,” Conference on the Restatement of Employment Law, Northwestern University Law School, Nov. 2011.

Presentation, “Social Media and the Workplace,” Temple Political and Civil Rights Law Review symposium on Emerging Trends in Cyberspace, Feb. 2011.

Presentation, "Twenty Years of the Civil Rights Act of 1991," symposium on Twenty Years After the 1991 Civil Rights Act: What Does the Future Hold?, Wake Forest Law School, Nov. 2010.

Presentation, "Understanding Discrimination in a 'Post-Racial' World, Acknowledging Race in a "Post-Racial" Era, Cardozo Law School, April 2010.

Presentation, "The Human Capital Approach for Low-Wage Workers," Annual Northeast People of Color Conference, Univ. of Buffalo, Oct. 2009.

"Privacy, Speech and the Modern Workplace," Faculty Workshops, Marquette Law School and Wayne State Law School, Fall 2008.

"Stereotypes and the ADA: Has the Statute Been Effective?" Law and Psychology Symposium, University of Nebraska Law School, Nov. 2008.

"What do Unions Offer for Low-Wage Workers," Faculty Workshop, Wake Forest Law School, Nov. 2008.

Plenary Speaker, Session on Low-Income Women, Amer. Ass'n Law Schools Annual Mtg., N.Y., Jan. 2008.

Presentation, "Workplace Justice and the Next Frontier," Third Annual Labor and Employment Law Scholars, Denver, Co., Sept. 2008.

Presentation, "The Future of Unions and the Low-Wage Worker," Conference at University of North Carolina Poverty Center, Nov. 2007.

Participant, "The Impact of Employment Discrimination Class Actions on Gender Equality in the Workplace," Institute for Women's Policy Research Advisory Group, Boston, Ma, Nov. 2006.

Presentation, "Interpreting the Americans With Disabilities Act: A Case Study in Pragmatic Judicial Interpretation," Faculty Workshop, Boston University School of Law, Nov. 2006.

Presentation, "The Many Faces of Darlene *Jespersen*," Symposium on Identity and Makeup in the Workplace, Duke Law School, Oct. 2006.

Presentation, "Sexual Stereotyping and the *Jespersen* Case," Labor Law Group, Conference, Saratoga Springs, N.Y., June 2006.

Presentation, "Trends in Class Action Employment Discrimination Litigation," Littler Mendelson Annual Conference, Chicago, IL, June 2006.



Participant, "Annual Roundtable on EEO Law," Cornell University Hotel & Restaurant Mgt. School, May 2006.

Presentation, "Current Issues in Employment Discrimination Law," Annual Conference for Association of Attorney Generals, Washington, D.C., April 2006.

Presentation, "Interpreting the ADA: Pragmatic Judicial Theory," Conference on Empirical Studies and the ADA, New York University Law School, April 2006.

Presentation, "Workplace Justice: Identifying What is Important to Workers," Faculty Workshop, University of Connecticut Law School, Mar. 2006.

Invited Lecture, "Women in the Workplace: Which Women, Whose Agenda?" Duke Law School, Mar. 2006.

Presentation, "Privacy for the Working Class," Annual Law Review Symposium, Louisiana State University Law School, Feb. 2006.

Presentation, "Contemporary Privacy Issues in the Workplace," New York University Center on Judicial Administration, Nov. 2005.

Presentation, "Whatever Happened to Hopwood?" Annual Law & Society Conference, Las Vegas, Nevada, June 3, 2005.

Presentation, "Why the FMLA? Reflecting on the First Ten Years," Distinguished Visiting Professor Presentation, Suffolk Law School, November 12, 2005.

Presentation, "Current Issues in Employment Discrimination Law," NAACP Annual Lawyer Training Conference, July 14, 2004, Philadelphia, PA.

Presentation, "Was the Disparate Impact Theory A Mistake?" Annual Law & Society Conference, Chicago Illinois, May 29, 2004; Faculty Workshop Boston University Law School, November 8, 2003.

Presentation, "The Aftermath of the University of Michigan Affirmative Action Cases," NAACP Annual Lawyer Training Conference, July 13, 2003, Miami, Fla.

Presentation, "The Difficulty With Proving Employment Discrimination Claims," NAACP Annual Lawyer Training Conference, July 13, 2003, Miami, Fla.

Presentation, "Sex Discrimination in the 90s, Seventies Style," paper presented at Annual Law and Society Conference, June 6, 2003, Pittsburgh, PA.

Lecture, "Contemporary Employment Discrimination Class Actions," NYU Labor and Employment Annual CLE Conference, May 8, 2003.

Lecture, "Workplace Justice in the Twenty-First Century," Distinguished Visiting Professor Lecture, Suffolk Law School, Boston, April 2, 2003.

Presentation, "Caretaking and Contemporary Social Policy," Conference on Labor and Gender, Maine Law School, September 14, 2002.

Presentation, "The Price of Discrimination: The Nature and Effect of Large Class Action Discrimination Lawsuits," Annual Law & Society Conference, May 31, 2002, Vancouver, British Columbia. Also presented to law faculties at New York University Law School (April 2003), Northeastern Law School (March 2003), William and Mary Law School (February 2002).

Presentation, "Statistical Discrimination, Stereotypes, Stigma and the Vicious Circle of Discrimination," Conference on Behavioral Analyses of Law, New York University Law School, April 19, 2002.

Presentation, "What Workers Deserve," Conference on International Corporate Governance and Accountability, June 1, 2001, Washington, D.C.

Presentation, "Why Are Employment Discrimination Cases So Hard to Prove?" Symposium on Proof Problems in Employment Discrimination Cases, Louisiana State University Law School, Jan. 26, 2001.

Presentation, "Remedying Societal Discrimination Through the Government's Spending Power," Law & Society Conference, May 27, 2000, Miami, Fla.

Presentation, "Rethinking Equality and Family Leave," Annual Ass'n American Law Schools Conference, Washington, D.C., Jan. 5, 2000.

Presentation, "Courts vs. Legislatures: The Case of Sexual Minorities," Conference on Representation & Identity, University of Chicago, Nov. 17-19, 1999.

Presentation, "The Future of Civil Rights Enforcement," United States Dept. of Justice, Civil Rights Division, Annual Retreat, Potomac, MD., July 15, 1999.

Presentation, "Forcing Equality," Law and Society Conference, May 30, 1999, Chicago, Illinois.

Presentation, "The Limited Vision of the Family and Medical Leave Act," Symposium in Honor of Mary Jo Frug, held at Villanova Law School, Nov. 7, 1998.

Presentation, "Indirect Discrimination: A U.S. Perspective," International Conference on Comparative Non-Discrimination Law, University of Utrecht, Netherlands, June 1998.

Presentation, "The Future Implications of the Court's Decision in *Wildman Bros. v. Glickman*," 1998 AALS Conference, San Francisco, Jan. 8, 1998.

Participant, "Rethinking Global Equality Conference," Washington University Law School, Nov. 8-10, 1997.

Chair & Commentator, "The Colorblind Principle & Multiracial Democracy," Plessy v. Ferguson Revisited Conference, Nov. 15, 1996, Howard University.

Presentation, "Public v. Private Enforcement of Civil Rights," Law & Society Conference, July 12, 1996, Glasgow, Scotland.

Presentation, "Postmodern Unions," Law and Society Conference, June 1995, Toronto, Canada (with Molly McUsic).

Panelist, "Labor Market, Business, and Racial Response," Conference on the Future of Civil Rights, Univ. of Minnesota, October 1994.

Presentation, "Second-Generation Workplace Discrimination," United States Department of Agriculture, July 1994.

## FACULTY SERVICE

Chair, Colloquium Committee, 2023-24

Chair, University Dispute Resolution Committee, 2000-02, Member 2010-14, 16-18

Chair, Tenure and Promotions Committee, 2001-02, 2005-06, 13-15, 15-16  
11-12, 18-19 (member)

Chair, Academic Integrity Committee, 2000-01

Chair, Curriculum Committee, Spring 1998

Served on Appointments, Admissions, Public Interest

Member, Ad Hoc Committee on Sexual Harassment, University Committee  
on Status of Women

## SIGNIFICANT CASE PARTICIPATION

*Grutter v. Bollinger*, 123 S.Ct. 2325 (2003), Amicus brief filed for Society of American Law Teachers

*Oubre v. Entergy Operations*, 522 U.S. 422 (1998), assisted petitioner

*Farmer v. Brennan*, 522 U.S. 825 (1994), assisted petitioner ACLU

*Landgraf v. USI Film*, U.S. S. Ct. (1994), amicus participation for Lawyers' Committee for Civil Rights Under Law

*St. Mary's Honor Center v. Hicks*, 509 U.S. 502 (1993), amicus participation for Lawyers' Committee for Civil Rights Under Law

*Officers for Justice v. Civil Serv. Comm'n*, 979 F.2d 721 (9<sup>th</sup> Cir. 1992)

## MEDIA APPEARANCES

Quoted in New York Times, Washington Post, Los Angeles Times, Houston Chronicle, Philadelphia Inquirer, Financial Times, Christian Science Monitor, Wall Street Journal, Arizona Republic, USA Today, National Law Journal among others. Appeared on MSNBC, Fox, News, NPR Talk of the Nation, Marketplace, NPR Evening Edition, Bloomberg Radio, KJZZ Arizona, among others.

## MEMBERSHIPS

Labor Law Group (West), Editorial Board, Employee Rights & Emp. Pol'y J., ABA, Ca Bar., Supreme Court Bar, Board Member (former), Humane Farm Animal Care.