

Mark Fenster
Levin College of Law, University of Florida
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Degrees

J.D. Yale Law School, June 1998.

Ph.D. University of Illinois, Institute of Communications Research, May 1992. Dissertation: *The Construction of Community and Identity in Alternative Popular Musical Practices*.

M.A. University of Texas at Austin, Radio-Television-Film, May 1988. Master's Thesis: *Genre, Artist, Popular Music*.

B.A. University of Virginia, English; and Rhetoric and Communications Studies (double major), May 1985.

Legal Academic Employment

Levin College of Law, University of Florida, 2001-present
University of Florida Research Foundation Professor, 2008-present
Professor, 2007-present
Associate Professor, 2004-2007
Assistant Professor, 2001-04.

Visiting Professor, University of Colorado School of Law, Spring 2008.

Courses Taught

First-Year Courses: Property (8x); Torts (2x).

Upper-Division Courses: Administrative Law (4x); Land Use (3x); Intellectual Property Survey (1x).

Seminars: Public Access to Government Information (2x).

Books

Conspiracy Theories: Secrecy and Power in American Culture (revised 2nd ed.) (Minneapolis: University of Minnesota Press, forthcoming August 2008).

Conspiracy Theories: Secrecy and Power in American Culture (Minneapolis: University of Minnesota Press, 1999).

The Symbols of Governance: Thurman Arnold and Post-Realist Legal Theory [in progress].

Transparency and Its Discontents [in progress].

Law-Related Articles and Essays

“Designing Transparency: The 9/11 Commission and Institutional Form.” 65 WASHINGTON & LEE LAW REVIEW ____ (forthcoming, January 2009).

“Regulating Land Use in a Constitutional Shadow: The Institutional Contexts of Exactions.” 58 HASTINGS LAW JOURNAL 729-776 (2007), reprinted in ZONING AND PLANNING HANDBOOK (2008).

“The Folklore of Legal Biography.” 105 MICHIGAN LAW REVIEW 1265-1282 (2007) (review essay).

“Takings, Version 2005: The Legal Process of Constitutional Property Rights.” 9 UNIVERSITY OF PENNSYLVANIA JOURNAL OF CONSTITUTIONAL LAW 667-744 (2007).

“Coolhunting the Law.” 12 HARVARD NEGOTIATION LAW REVIEW 157-173 (2007) (symposium essay).

“On Idiocratic Theory: A Reply.” 19 CRITICAL REVIEW 147-55 (2007).

“The Opacity of Transparency.” 91 IOWA LAW REVIEW 885-949 (2006).

“Murray Edelman: Polemicist of Public Ignorance.” 17 CRITICAL REVIEW 367-391 (2005).

“The Birth of a Logical System: Thurman Arnold and the Making of Modern Administrative Law.” 83 OREGON LAW REVIEW 69-146 (2005).

“Takings Formalism, Regulatory Formulas: Exactions and the Consequences of Clarity.” 92 CALIFORNIA LAW REVIEW 609-681 (2004), reprinted in ZONING AND PLANNING HANDBOOK (2005) and LAND USE & ENVIRONMENTAL LAW REVIEW (A. Dan Tarlock & David Callies, eds., 2005) (collecting “best land use and environmental law articles” published in 2004).

“The Symbols of Governance: Thurman Arnold and Post-Realist Legal Theory.” 51 BUFFALO LAW REVIEW 1053-1118 (2003).

“Community by Covenant, Process, and Design: Cohousing and the Contemporary Common Interest Community,” 15 JOURNAL OF LAND USE & ENVIRONMENTAL LAW 3-54 (1999).

Note, “‘A Remedy on Paper’: The Role of Law in the Failure of City Planning in New Haven, 1907-1912,” 107 YALE LAW JOURNAL 1093-1123 (1998).

“New Directions in Law and Humanities: An Introduction,” 10 YALE JOURNAL OF LAW & THE HUMANITIES 383 (1998) (co-authored with Wendie Schneider and Mark Weiner).

Articles and Essays in Progress

“The Dilemmas of Local Transparency.”

“Seeing through the State: The Spatial Dilemmas of Transparency.”

“The Symbols of the Criminal Trial: Thurman Arnold and the Study of Criminal Procedure.”

Law-Related Invited Presentations and Conference Papers

“After *Lingle*.” 11th Annual Litigating Georgetown Environmental Law & Policy Institute Takings Conference, Stanford Law School, November 2008.

“The Dilemmas of Local Transparency.” Law & Society Association Annual Meeting. Montreal, May 2008.

“The Dependency of Independence: 9/11 and the Independent Commission Form.” University of Colorado School of Law, Boulder. February 2008.

“The Dilemmas of Local Transparency.” Governing in the Sunshine Conference, The Municipal Law Institute and the Center for State and Local Government Law. Hastings College of the Law, San Francisco, October 2007.

“Thurman Arnold and Legal Theory.” American Studies Association Annual Meeting. Philadelphia, October 2007.

“A Transparent Narrative: The Lives of *The 9/11 Commission Report*.” Law & Society Association Annual Meeting. Berlin, July 2007.

“A Transparent Narrative: The Lives of *The 9/11 Commission Report*.” Association for the Study of Law, Culture and Humanities Annual Meeting. Washington, March 2007.

“The Dependency of Independence: 9/11 and the Independent Commission Form.” Brooklyn Law School Faculty Workshop, January 2007.

“Takings, Version 2005: The Legal Process of Constitutional Property Rights.” Florida State University Law School Faculty Workshop, September 2006.

“Regulating Land Use in a Constitutional Shadow: The Institutional Contexts of Exactions.” Law & Society Association Annual Meeting. Baltimore, July 2006.

- “The ‘Naked’ Brand: Transparency and the Branded IPO.” *Harvard Negotiation Law Review* Symposium: The MasterCard IPO: Protecting the Priceless Brand. Cambridge, April 2006.
- “Data Security and Intellectual Property” (panel moderator and respondent). *Data Devolution: Corporate Information Security, Consumers and the Future of Regulation*, Center for Information Research, University of Florida, February 2006.
- “When Does Dicta Become Law? Land Use Bargaining in Law and Practice under the Court’s Functional Equivalence Approach to Takings.” Richard E. Nelson Symposium, Levin College of Law, University of Florida. November 2005.
- “Making Sense of Federal Constitutional Takings After the 2004-05 U.S. Supreme Court Term.” Ninth Annual Conference of Florida Eminent Domain Attorneys, Tampa. October 2005.
- “The Spaces of Government Secrecy.” Concordia University. Montreal, September 2005.
- “Murray Edelman and the Study of Political and Legal Symbols.” Law & Society Association Annual Meeting. Las Vegas, June 2005.
- “The Spaces of Government Secrecy.” International Roundtable for the Semiotics of Law. McGill University, Montreal, Canada, April 2005.
- “The Opacity of Transparency.” Stetson Law School, St. Petersburg, Florida, January 2005.
- “The Opacity of Transparency.” Association for the Study of Law, Culture and the Humanities Annual Meeting, Hartford, Connecticut, March 2004.
- “Takings Formalism, Regulatory Formulas: Exactions and the Consequences of Clarity.” Southern Methodist University, Dallas, December 2003.
- “The Opacity of Transparency.” Levin College of Law, University of Florida, August 2003.
- “Takings Formalism, Regulatory Formulas: Exactions and the Consequences of Clarity.” Southeastern Association of Law Schools, Amelia Island, Florida, July 2003.
- “Disclosure’s Promise and Secrecy’s Peril: Government Information Policy in American Political and Popular Culture.” America Institute, Ludwig Maximilians University and the Bavarian America Academy, Munich, Germany, June 2003.
- “Information Does Not Wish to Be Free: Secrecy and the Desire for Transparent Governance.” Law & Society Association Annual Conference: Pittsburgh, PA, June 2003.
- “The Glorious Symbols of Administration: Thurman Arnold, Legal Realism, and an Alternative History of Administrative Law.” Law & Society Association Annual Conference: Pittsburgh, PA, June 2003.

- “Disclosure’s Promise and Secrecy’s Peril: Government Information Policy in American Political and Popular Culture.” Institute of English and American Studies, Friedrich Alexander University, Nuremberg, Germany, January 2003.
- “Balancing Takings and Givings: Rethinking Land Use Bargaining under Heightened Scrutiny.” Faculty Workshop, Levin College of Law, University of Florida: November 2002.
- “Constructing the Shape and Image of the Local.” American Studies Association: Houston, November 2002.
- “The Symbols of Governance: Thurman Arnold and Cultural (Legal) Realism.” American Bar Foundation Seminar Series: Chicago, October 2002.
- “The Symbols of Governance: Thurman Arnold and the Cultural Study of Law.” Columbia, USC & Georgetown Law & Humanities Interdisciplinary Junior Scholar Workshop: Los Angeles, June 2002.
- “The Folklore of Populist Symbols: Thurman Arnold Meets Cultural Studies.” Law & Society Association Annual Conference: Chicago, June 1999.
- “Community by Contract and Design: Cohousing, Community Associations, and Property Relations.” Law & Society Association Annual Conference: Aspen, Colorado, June 1998.

Other Articles

- “Commercial (and/or?) Folk: The Bluegrass Industry and Bluegrass Tradition,” *South Atlantic Quarterly* 94 (1995): 81-108. Reprinted in *Reading Country Music*, edited by Cecilia Ticchi (Durham: Duke University Press, 1998) [refereed journal].
- “Interpreting and Incorporating Rap: The Articulation of Alternative Popular Musical Practices within Dominant Practices and Institutions,” *Howard Journal of Communications* 5 (1995): 223-244 [refereed journal].
- “Boxing In, Opening Out: The Boxed Set and the Politics of Musical Production and Consumption,” *Stanford Humanities Review* 3 (1993): 145-152 [non-refereed journal].
- “Queer Punk Fanzines: Identity, Community, and the Articulation of Homosexuality and Hardcore Music,” *Journal of Communication Inquiry* 17 (1993): 73-94 [refereed journal]. Reprinted in *Deviance and Deviants*, edited by Richard Tewkesbury & Patricia Gagne (Los Angeles: Roxbury Publishing, 2000).
- “Containment, Excess, Ambivalence: The Adaptation of *Less Than Zero*,” *Velvet Light Trap*, No. 27 (1991): 51-65 [non-refereed journal].

- “The Problem of Taste Within the Problematic of Culture,” *Communication Theory* 1 (1991): 87-105 [refereed journal].
- “Popular Music and the Struggle for Discursive Control: Buck Owens and Country Music,” *Popular Music* 9 (1990): 275-289 [refereed journal].
- “The (Ab)uses of Pop Music History,” *ONETWOTHREEFOUR: A Popular Music Journal*, No. 8 (1990): 7-22 [non-refereed journal].
- “Preparing the Audience, Informing the Performers: John A. Lomax and Cowboy Songs and Other Frontier Ballads,” *American Music* 7 (1989): 260-277 [refereed journal].
- “Constructing the Image of Authorial Presence: David O. Selznick and the Marketing of *Since You Went Away*,” *Journal of Film and Video* 41 (1989): 1-15 [refereed journal].
- “Under His Spell: How Buck Owens Took Care of Business,” *Journal of Country Music* 12 (1989): 18-27 [non-refereed journal].
- “Country Music Video,” *Popular Music* 7 (1988): 285-302 [refereed journal].

Book Chapters

- “Consumers’ Guides: The Political Economy of the Music Press and the Democracy of Critical Discourse,” in *Pop Music and the Press*, edited by Steve Jones (Philadelphia: Temple University Press, 2002), 81-92.
- “Where Exactly is ‘The Local’?” in *Popular Music—Style and Identity*, edited by Will Straw, Stacey Johnson, Rebecca Sullivan, and Paul Friedlander (Montreal: The Centre for Research on Canadian Industries and Institutions, 1995), 83-88.
- “Genre and Form: The Development of the Country Music Video,” in *Sound and Vision: a Music Video Reader*, edited by Simon Frith, Andrew Goodwin and Lawrence Grossberg (New York: Routledge, 1993).
- “Two Highways? Alison Krauss and the Contemporary-Traditional Conflict in Bluegrass,” in *All That Glitters: Country Music in America*, edited by George H. Lewis (Bowling Green, OH: Bowling Green University Popular Press, 1992), 323-334.

Short Reviews and Encyclopedia Entries

“Alternative Country” and “New Country,” in *The Continuum Encyclopedia of Popular Musics of the World, Part III: Genres*, John Shepherd, David Horn, and Dave Laing, eds. (Continuum, forthcoming 2007).

“Buck Owens” and various other entries, in *The Encyclopedia of Country Music*, Paul Kingsbury ed. (Oxford University Press, 1998).

Reviews of *Performing Rites: On the Value of Popular Music*, by Simon Frith, and *Rhythm and Noise: An Aesthetics of Rock*, by Theodore Gracyk, *Journal of Communication*, 46 (1997): 152-55.

Review of *Dissonant Identities: The Rock 'n' Roll Scene in Austin, Texas*, by Barry Shank, *American Studies* Vol. 36 (1995): 177-79.

Reviews of *Singing Cowboys and Musical Mountaineers; The Stonemans: An Appalachian Family and the Music That Shaped Their Lives*; and *Travelling the High Way Home: Ralph Stanley and the World of Traditional Bluegrass Music*, *Popular Music* Vol. 14 (1994): 265-71.

“Authorizing Memory, Remembering Authority: A Review of Michael Schudson’s *Watergate in American Memory: How We Remember, Forget, and Reconstruct the Past*, and Barbie Zelizer’s *Covering the Body: The Kennedy Assassination, the Media, and the Shaping of Collective Memory*,” *Postmodern Culture* 4, no.1, n.p, 1993.

“Writing the Suburb: Review of *The Written Suburb*, by John Dorst,” *Journal of Communication* 40 (1990): 142-44.

Other Invited Presentations and Conference Papers

“Why There Isn’t a Crisis in Intellectual Property (But Should Be).” International Communication Association: Montreal, Quebec, May 1997.

“Pathology, Seduction, Populism: Conceptualizing Conspiracy Theory as a Popular Political Practice.” Discerning the Right Conference: University of Wisconsin-Milwaukee, March 1996.

“A Hi Sound: The Political Economy of Sound and the Crisis of Intellectual Property.” International Association for the Study of Popular Music: Glasgow, Scotland, June 1995.

“Class, Culture, and the Problem of Country Music.” American Studies Association: Nashville, TN, October 1994.

“Space and Identity in the Transnational Cultural Economy of Popular Music.” International Association for the Study of Popular Music Conference: Stockton, California, June 1993.

- “Sensing the End: Popular Christian Eschatology, Historiography, and the Struggle Over History.” International Communication Association: Washington, D.C., May 1993.
- “‘The Paranoid Style’: Historical Counter-Narrative and the Cinematic Representation of Conspiracy.” Society for Cinema Studies: New Orleans, February 1993.
- “The Problem of the Local in the International Music Industry.” Department of Telecommunications Research Colloquium: Bloomington, IN, October 1992.
- “Incorporating Rap: The Mainstream Media’s Response to an Emergent Form of Popular Music.” Union for Democratic Communications: Peterborough, Ontario, May 1992
- “Breaking Traditions: Cultural Studies and Philosophy Meet Country Music.” American Philosophical Association, Middle States Division: Louisville, April 1992.
- “Consumers’ Guides: Pop Music Criticism and Pop Music Practice.” Popular Culture Association: Louisville, March 1992.
- “Boxing In, Opening Out: The Boxed Set and the Politics of Musical Production and Consumption.” International Association for the Study of Popular Music: Chicago, October 1991.
- “Flow and Devour: Post-Fordism as a Landscape for the Economic and Institutional Restructuring of the International Popular Music Industry.” International Communication Association: Chicago, May 1991.
- “Homocore and Homopunks: The Articulation of Homosexuality and Punk Rock.” International Communication Association: Chicago, May 1991.
- “Excess, Containment, Ambivalence: *Less Than Zero* as a Teen Film.” Society for Cinema Studies, Washington, D.C.: May 1990.
- “Whose Flow, Flowing Where?: Television Studies in Search of a Text.” Ohio University/ Wide Angle Film Conference, Athens, Ohio: November 1989.
- “The Problem of Taste, The Problematic of Culture: A Re-evaluation of Taste Cultures.” International Communication Association, San Francisco: May 1989 (Top Four Paper, Philosophy of Communication Division).
- “Elvis: The Popular Figure in a Consumptive Society.” International Communication Association, New Orleans: June 1988.
- “Country Music Videos: Development, Maturity, Crossover.” International Association for the Study of Popular Music, Pittsburgh: April 1987.

Manuscript Reviewer

Critical Studies in Mass Communications
Cultural Studies
Law & Society Review
Oxford University Press
University of Alabama Press

Media Appearances

TELEVISION: The News with Brian Williams (CNBC/ MSNBC); History Channel; ZDF German Television.

PUBLIC RADIO: Australian Broadcasting Company Radio; Canadian Broadcasting Company Radio; German Radio (Cologne); *On the Media* (NPR syndicated show); *Todd Mundt Show* (syndicated to NPR stations); WBEZ-FM, Chicago (Odyssey) (also syndicated to NPR stations); WNYC-FM, New York (*Brian Lehrer Show*); KCRW-FM, Santa Monica (*Marc Cooper Show*); WANC-FM, Albany, NY; Minnesota Public Radio (state-wide morning talk show); Wisconsin Public Radio (state-wide morning talk show).

COMMERCIAL RADIO: WGN-AM, Chicago (Milt Rosenberg Show); 570-AM News, Toronto; “Fieger Time” (Detroit-based syndicated radio talk show); WSJS-AM, Winston-Salem, NC; KCOL-AM, Loveland, CO; WBAL-AM, Baltimore, MD.

NATIONAL MAGAZINES: *Chronicle of Higher Education*; *U.S. News & World Report*; *The Week News Magazine*.

INTERNATIONAL MAGAZINES: *Galileu* (Brazil); *Maclean’s* (Canada); *New Internationalist* (England).

INTERNATIONAL NEWSPAPERS: *The Australian*; *Financial Times*; *Libération* (France); *National Post* (Toronto); *Público* (Spain); *Toronto Star*.

NATIONAL NEWSPAPERS: *New York Times*; *Wall Street Journal*.

DAILY NEWSPAPERS: *Arizona Republic*; *Atlanta Journal-Constitution*; *Baltimore Sun*; *Boston Globe*; *Gainesville Sun*; *Hartford Courant*; *Kansas City Star*; *Miami Herald*; *New York Newsday*; Newhouse News Service (wire story picked up by numerous newspapers); *Newark (NJ) Star-Ledger*; *Orlando Sentinel*; *Richmond Times-Dispatch*; *Rocky Mountain News*; *Sacramento News & Review*; Scripps-Howard News Service (two wire stories picked up dozens of newspapers); *South Florida Sun-Sentinel*; *St. Petersburg (FL) Times*; *San Francisco Chronicle*.

LOCAL MAGAZINES: *Boulder (CO) Weekly*; *Jacksonville Business Journal*; *Minneapolis/ St. Paul City Pages*; *Village Voice*.

Professional Organizations

Admitted, Bars of New York (active status) and California (inactive status)
American Association of Law Schools
American Bar Association

American Studies Association
Law & Society Association

Law School Service

Law School Appointments Committee, 2006-07
Joint Appointments Committee, Law School and Department of Urban and Regional Planning,
2006-07
Law School Curriculum Committee, 2005-06
Dean's Ad Hoc Committee on Technology, 2005
Law School Representative, University of Florida Community Campaign, 2005-06
Academic Standards Committee, 2003-05
Adviser, Intellectual Property and Technology Law Association, 2005-06
Adjunct Faculty Committee, 2001-03
Environmental and Land Use Law Program Committee member, 2001-07
External Tenure Review (Capital University Law School, 2007)

Professional Legal Employment

Land Use and Environmental Law Fellow, Shute, Mihaly & Weinberger, San Francisco, California, 1999-2001. Represented environmental groups and local governments in Northern California in litigation and legislative efforts to control development and to conserve natural resources and open space.

Law Clerk, Judge Carlos F. Lucero, U.S. Court of Appeals of the Tenth Circuit, Denver, Colorado, 1998-99.

Member, Committee for Democratic Communications, 1996-2001. Assisted in efforts to defend illegal microradio broadcasters and to establish legal low power radio broadcasting.

Other Academic Employment

Teaching Assistant, Civil Procedure (Professor Judith Resnik), Yale Law School, Fall 1997. Led weekly class discussion; developed and reviewed student assignments; researched updates to casebook supplement.

Conference Coordinator, Yale Law School, 1997. Assisted Professors Angela Harris and Harlon Dalton in planning and coordinating national Critical Race Theory conference held at Yale in November 1997.

Assistant Professor, Mass Communications, Shenandoah University, 1993-95.

Visiting Assistant Professor, Telecommunications Department, Indiana University (Bloomington), 1991-93.