

# RUSSELL M. GOLD

ASSOCIATE PROFESSOR OF LEGAL WRITING  
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## CURRENT APPOINTMENT

**Wake Forest University School of Law**, Winston-Salem, NC  
*Associate Professor of Legal Writing*

July 2016 – present

Tenure-track appointment with teaching and scholarly responsibilities. Teaching responsibilities include criminal law, class-action simulation course, and first-year course addressing legal analysis, writing, and research.

## PREVIOUS APPOINTMENTS

**New York University School of Law**, New York, New York  
*Acting Assistant Professor*  
*Associate Director, Lawyering Program*

June 2012 – May 2016

June 2014 – May 2016

Full-time appointment teaching mandatory first-year course using simulation-based approach to legal reasoning, research, and writing; witness interviewing; client interviewing and counseling; negotiation; oral advocacy; and professional responsibility. Curriculum development responsibilities included creating due diligence component of negotiation exercise to incorporate business and financial literacy concepts and two new oral argument exercises.

Concurrent appointment as Associate Director included additional responsibilities mentoring Lawyering faculty, coordinating with doctrinal and clinical faculty, and assisting the Director with program management and development.

Honors: Podell Distinguished Teaching Award (2016)

## LAW REVIEW PUBLICATIONS

*Paying Prosecutors* (work in progress): This article explores prosecutor-pay structures that deviate from the norm of full-time public employees paid on salary from a government appropriation. It will first build out a taxonomy of those arrangements such as prosecutor outsourcing, adding various types of volunteer prosecutors to the literature. Next, it will consider how one would expect these various structures to affect prosecutors' professional identity and decisionmaking as well as consider how these models might contribute to two potential broader systemic concerns: net widening and wealth filtering in the prosecutor workforce.

*Paying for Pretrial Detention*, 98 N.C. L. REV. (forthcoming): This essay critiques the disparity between the way that criminal pretrial detention and civil preliminary injunctions employ financial incentives. The civil system uses financial incentives to limit relief before judgment by placing financial risk on the party seeking relief whereas the criminal system employs financial incentives to encourage incarceration before judgment by requiring many defendants to pay for their freedom.

*Jail as Injunction*, 107 GEO. L.J. 501 (2019): Pretrial detention is in a great state of flux across the country. This article considers the disparity in procedure and substantive standards between

pretrial detention and civil preliminary injunctions. It then re-envision the pretrial detention system by drawing insights from civil preliminary injunctions. Pretrial detention law should increase the showing the government must make to irreparable injury, add individualized consideration of defendants' interests to balance against the government's interests in detention, and account for the government's likelihood of success on the merits.

*Civilizing Criminal Settlements*, 97 B.U. L. REV. 1607 (2017) (with Carissa Byrne Hessick and F. Andrew Hessick): This article considers how criminal law could improve the plea bargaining system by which most cases are resolved by drawing on lessons from the civil system. It suggests relying more heavily on procedures like motions to dismiss, discovery, and summary judgment rather than relying so heavily on the government's leverage over defendants.

*"Clientless" Prosecutors*, 51 GA. L. REV. 693 (2017): This article continues the comparison between class counsel and prosecutors that I detail in *"Clientless" Lawyers* and considers what criminal law can learn from class action law about lawyer accountability. More specifically, it explores ways that judges can improve accountability in criminal law such as by reviewing plea agreements akin to class settlement review and by urging prosecutors to justify their decisions on the record when the judge has cause for concern.

*"Clientless" Lawyers*, 92 WASH. L. REV. 87 (2017): Class counsel and prosecutors share an unrecognized similarity: both are lawyers who must make decisions that are traditionally reserved to clients. Despite this similarity, class action law turns to judicial review to monitor the resulting agency costs while criminal law relies instead on elections and internal processes. The article contends that class actions should look within the plaintiff's bar to improve accountability much as criminal law scholars have suggested about prosecutors' offices.

*Compensation's Role in Deterrence*, 91 NOTRE DAME L. REV. 1997 (2016): I argue that, at least in damages class actions, compensating victims likely deters more wrongdoing than other forms of relief. Scholars have largely overlooked that firms anticipating harm to their reputations as a result of litigation provides a source of deterrence. Because the American public values victim compensation in civil litigation, compensation enhances the legitimacy of the class device and therefore bolsters this reputational deterrence.

*Beyond the Judicial Fourth Amendment: The Prosecutor's Role*, 47 U.C. DAVIS L. REV. 1591 (2014): I argue that regardless of admissibility, prosecutors have both an ethical and a constitutional duty to refrain from charging or prosecuting cases based on evidence that they conclude was obtained in an unconstitutional search or seizure.

- Awarded Fred C. Zacharias Memorial Prize for Professional Responsibility scholarship by AALS

*Promoting Democracy in Prosecution*, 86 WASH. L. REV. 69 (2011): This article argues that the political check on elected prosecutors has become largely ineffectual because voters lack the information they would need for meaningful monitoring. It therefore proposes requiring prosecutors to disclose the costs of their cases and cases that they decline despite probable cause (including defense, incarceration, and appellate costs) to reinvigorate the political check by providing voters and electoral challengers with meaningful data.

Note, *Is This Your Bedroom?: Reconsidering Third-Party Consent Searches Under Modern Living Arrangements*, 76 *GEO. WASH. L. REV.* 375 (2008): This note considers third-party consent doctrine in shared, non-spousal living arrangements. It urges courts to narrowly analyze the scope of actual third-party consent and require police to ask clarifying questions to the consentor regarding the scope of her authority over the search areas before finding apparent authority to consent.

## **BOOKS**

THE OXFORD HANDBOOK OF PROSECUTORS AND PROSECUTION (Ronald F. Wright, Kay L. Levine & Russell M. Gold eds., forthcoming 2020) (co-editor).

## **SHORTER WORKS**

*Prosecutors and Their Legislatures, Legislatures and Their Prosecutors*, in THE OXFORD HANDBOOK OF PROSECUTORS AND PROSECUTION (Ronald F. Wright, Kay L. Levine & Russell M. Gold eds., forthcoming 2020).

*Prosecutors' Fourth Amendment*, 42 *SEARCH & SEIZURE L. REP.* 71 (2015).

## **SELECTED PRESENTATIONS**

Paying Prosecutors, CrimFest, Brooklyn Law School, Brooklyn, NY (July 15, 2019)

Volunteer Prosecutors, Junior Faculty Forum, University of Richmond School of Law, Richmond, VA (May 21, 2019)

Paying for Pretrial Detention, Fourth Annual Civil Procedure Workshop, Stanford Law School, Stanford, CA (Nov. 9, 2018)

Paying for Pretrial Detention, Southeastern Junior/Senior Workshop, University of Georgia School of Law, Athens, GA (Oct. 26, 2018)

Paying for Pretrial Detention, CrimFest, Cardozo Law School, New York, NY (July 17, 2018)

Paying for Pretrial Detention, Criminal Justice Ethics Schmooze, Brooklyn Law School, Brooklyn, NY (June 12, 2018)

Inverting Bail, Mid-Atlantic Junior Faculty Forum, University of Richmond School of Law, Richmond, VA (May 16, 2018)

Integrating LRW and Doctrinal Courses, Rocky Mountain Regional Legal Writing Conference, University of Denver Sturm College of Law, Denver, CO (Mar. 23, 2018)

Jail as Injunction, Faculty Workshop, Washington & Lee University School of Law, Lexington, VA (Jan. 22, 2018)

Coordinating Writing Assignments with Other 1L Courses, Legal Writing Institute One-Day Workshop, Elon University School of Law, Greensboro, NC (Dec. 8, 2017) (with Christine Coughlin & Elizabeth Johnson)

Jail as Injunction, Faculty Workshop, William & Mary Law School, Williamsburg, VA (Oct. 26, 2017)

Jail as Injunction, Third Annual Civil Procedure Workshop, James E. Rogers College of Law, University of Arizona, Tucson, AZ (Oct. 6, 2017)

Jail as Interim Relief, Mid-Atlantic Junior Faculty Forum, University of Richmond School of Law, Richmond, VA (May 11, 2017)

Developing a Simulation-Based Upper-Level Legal Writing Course, Legal Writing Institute One-Day Workshop, Wake Forest University School of Law, Winston-Salem, NC (Dec. 9, 2016)

Designing a Simulation-Based Upper-Level Legal Writing Course, Legal Writing Institute One-Day Workshop, Tulane Law School, New Orleans, LA (Dec. 2, 2016)

“Clientless” Prosecutors, Southeastern Junior/Senior Faculty Workshop, University of North Carolina School of Law, Chapel Hill, NC (Oct. 28-29, 2016)

“Clientless” Prosecutors, Faculty Workshop, University of Richmond School of Law, Richmond, VA (Sept. 16, 2016)

Civilizing Criminal Settlements, Faculty Workshop, University of North Carolina School of Law, Chapel Hill, NC (Aug. 18, 2016) (with Carissa Byrne Hessick and F. Andrew Hessick)

“Clientless” Prosecutors, SEALS Conference, New Scholars Workshop on Litigation and Professional Responsibility, Amelia Island, FL (Aug. 4, 2016)

“Clientless” Lawyers, Second Annual Civil Procedure Workshop, University of Washington School of Law, Seattle, WA (July 14, 2016)

A Criminal Settlement System, CrimFest, Cardozo Law School, New York, NY (July 11, 2016)

“Clientless” Lawyers, Faculty Workshop, Wake Forest University School of Law, Winston-Salem, NC (Nov. 23, 2015)

“Clientless” Lawyers, Junior Faculty Federal Courts Workshop, UC Irvine School of Law, Irvine, CA (Sept. 12, 2015)

“Clientless” Lawyers, CrimFest, Cardozo Law School, New York, NY (July 20, 2015)

“Clientless” Lawyers, Criminal Justice Ethics Schmooze, Fordham University School of Law, New York, NY (June 8, 2015)

Class Action Remedies, Lawyering Scholarship Colloquium, New York University School of Law, New York, NY (Apr. 16, 2015)

Compensation’s Role in Deterrence, Junior Faculty Federal Courts Workshop, University of Georgia School of Law, Athens, GA (Oct. 11, 2014)

Beyond the Judicial Fourth Amendment, Faculty Enrichment Series, James E. Rogers College of Law, University of Arizona, Tucson, AZ (Apr. 24, 2013)

Prosecutors’ Duty of Administrative Suppression, Lawyering Scholarship Colloquium, New York University School of Law, New York, NY (Aug. 14, 2012)

## **EDUCATION**

**George Washington University Law School**, Washington, District of Columbia

*Juris Doctor*, Highest Honors, May 2008

- Class Rank: 2 of 501; GPA: 4.119
- Senior Notes Editor, *The George Washington Law Review*
- Willard Waddington Gatchell Award for one of the three highest cumulative averages
- John Ordronaux Award for the highest cumulative average in first year
- Imogen Williford Constitutional Law Award
- Presidential Merit Scholar
- Research Assistant to Professors Roger Fairfax, Amanda Tyler, and Jerome Barron

**Arizona State University, Barrett Honors College**, Tempe, Arizona

*Bachelor of Science, summa cum laude*, Economics, May 2004

*Bachelor of Arts, summa cum laude*, Political Science, May 2004

- Minor: Mathematics; Certificate: Ethics
- Honors Thesis: *Leaving the Gifted Child Behind*
- Provost Scholar; Bank One Economics Scholar

## **TEACHING AND RESEARCH INTERESTS**

Legal Research and Writing, Civil Procedure, Criminal Procedure, Complex Litigation, Torts

## **LEGAL AND PROFESSIONAL EXPERIENCE**

**Gibson, Dunn & Crutcher LLP**, San Francisco, California

*Litigation Associate*

*Summer Associate*

November 2009 – April 2012

May 2007 – August 2007

Practice focused on complex litigation and appellate matters. Worked on cases including: federal constitutional challenge to California's Proposition 8 banning same-sex marriage; United States Supreme Court employment discrimination class action; nationwide privacy class action regarding social media; civil antitrust; immigration appeal; attorney malpractice defense; guardianship of a minor; dissolution of marriage; and product liability.

**The Honorable Carlos F. Lucero**, Denver, Colorado  
*Law Clerk*,  
United States Court of Appeals for the Tenth Circuit

August 2008 – August 2009

**The Honorable Reggie B. Walton**, Washington, District of Columbia  
*Intern*,  
United States District Court for the District of Columbia

September 2006 – November 2006

**Prince George's County Office of the Public Defender**, Upper Marlboro, Maryland  
*Intern*, Felony Trials Division

June 2006 – August 2006

Conducted legal research and wrote suppression motions. Observed trials and drug-court proceedings.

## **SERVICE**

*Wake Forest University School of Law*

Instructor, Upper-Level Writing Requirement Lecture Series, 2016-2018

Advisor, Wake Forest Law Review, 2016-present

Member, Career and Professional Development Committee, 2016-2017

Member, Student Wellbeing Committee, 2018-present

*New York University School of Law*

Member, Selection Committee for New York City Bar Diversity Fellowship (by invitation), 2015-2016

Member, Diversity Working Group (by invitation), 2015-2016

Associate Director, Lawyering Program, 2014-2016

Interim Chair, Lawyering Oral Argument Committee, 2015

Member, Lawyering Oral Argument Committee, 2014-2016

Co-Chair, Lawyering Negotiation Committee, 2013-2014

Member, Lawyering Negotiation Committee, 2012-2013

*Other*

Member, Selection Committee for Fred C. Zacharias Memorial Prize awarded by AALS Professional Responsibility Section (by invitation), 2015-present

Peer Reviewer, NEW CRIMINAL LAW REVIEW, 2018-present