The background image shows the interior of a courtroom. At the top, there is a large, ornate relief sculpture depicting various figures. Below this, three large, fluted columns support the ceiling. A red curtain with a gold border hangs behind the columns. A round clock is mounted on the wall between the columns. In the foreground, there is a wooden bench with several black chairs.

# **The Jurisprudence of Justice Anthony M. Kennedy: Four Decades of Influence**

Friday, February 1, 2019  
*Louis B. Mayer Lounge*  
UC Hastings College of the Law  
San Francisco, CA 94102

**Featuring a Conversation with  
Justice Kennedy**

**Hastings Law Journal  
Annual Symposium**

# Schedule

<b>8:20</b>	Registration & Coffee
<b>9:30</b>	Introduction: <b>Chancellor &amp; Dean David Faigman</b> , UC Hastings College of the Law
<b>9:40</b>	A Conversation with <b>Justice Anthony M. Kennedy</b> , Professor <b>Zachary Price</b> (Kennedy clerk OT '05), <b>Miles Ehrlich</b> (Kennedy clerk OT '93), and Professor <b>Leah Litman</b> (Kennedy clerk OT '11)
<b>10:40</b>	<b>Panel 1: Justice Kennedy and the First Amendment</b> <i>Moderator:</i> The Honorable Gary Feinerman, U.S. District Judge, Northern District of Illinois (Kennedy clerk OT '93) <i>Panelists:</i> <ol style="list-style-type: none"> <li>1. Dean Erwin Chemerinsky, UC Berkeley School of Law</li> <li>2. Professor Ashutosh Bhagwat, UC Davis School of Law (Kennedy clerk OT '91)</li> <li>3. Professor Nadine Strossen, New York Law School</li> </ol>
<b>12:00</b>	Lunch
<b>12:45</b>	<b>Keynote:</b> Professor <b>Orin Kerr</b> , USC Gould School of Law (Kennedy clerk OT '03), "Justice Kennedy and the Counter-Majoritarian Difficulty"
<b>1:20</b>	Break
<b>1:30</b>	<b>Panel 2: Justice Kennedy and Due Process</b> <i>Moderator:</i> Professor Matt Coles, UC Hastings College of the Law <i>Panelists:</i> <ol style="list-style-type: none"> <li>1. Professor Melissa Murray, NYU School of Law</li> <li>2. Professor Leah Litman, UC Irvine School of Law (Kennedy clerk OT '11)</li> <li>3. Professor Russell Robinson, UC Berkeley School of Law</li> </ol>
<b>2:50</b>	Break
<b>3:00</b>	<b>Panel 3: Justice Kennedy's Overall Impact</b> <i>Moderator:</i> Professor Rory Little, UC Hastings College of the Law <i>Panelists:</i> <ol style="list-style-type: none"> <li>1. The Honorable Marsha Berzon, U.S. Court of Appeals for the 9th Circuit</li> <li>2. Professor Dan Epps, Washington University School of Law (Kennedy clerk OT '09)</li> <li>3. Professor Zachary Price, UC Hastings College of the Law (Kennedy clerk OT '05)</li> </ol>
<b>4:20</b>	<b>Closing remarks:</b> Professor <b>Rory Little</b> , UC Hastings College of the Law
<b>5:00</b>	Reception in the UC Hastings Skyroom

# Presentations

## **A Conversation with Justice Anthony M. Kennedy** *co-sponsored by the Mathew O. Tobriner Memorial Fund*

*Justice Kennedy will discuss his tenure on the U.S. Supreme Court with several of his former clerks, Professor Zachary Price (Kennedy clerk OT '05), Miles Ehrlich (Kennedy clerk OT '93), and Professor Leah Litman (Kennedy clerk OT '11).*

## **Panel 1: Justice Kennedy and the First Amendment**

*Justice Kennedy played a key role in the Supreme Court's interpretations of the free speech, free exercise, and establishment clauses. Moderated by Judge Gary Feinerman, panelists Dean Erwin Chemerinsky, Professor Ashutosh Bhagwat, and Professor Nadine Strossen will discuss Justice Kennedy's jurisprudence regarding the First Amendment.*

## **Keynote: Professor Orin Kerr, "Justice Kennedy and the Counter-Majoritarian Difficulty"**

*Professor Orin Kerr will discuss Justice Kennedy's view of the Supreme Court's role, focusing on the Justice's views of how to square judicial review with democracy.*

## **Panel 2: Justice Kennedy and Due Process**

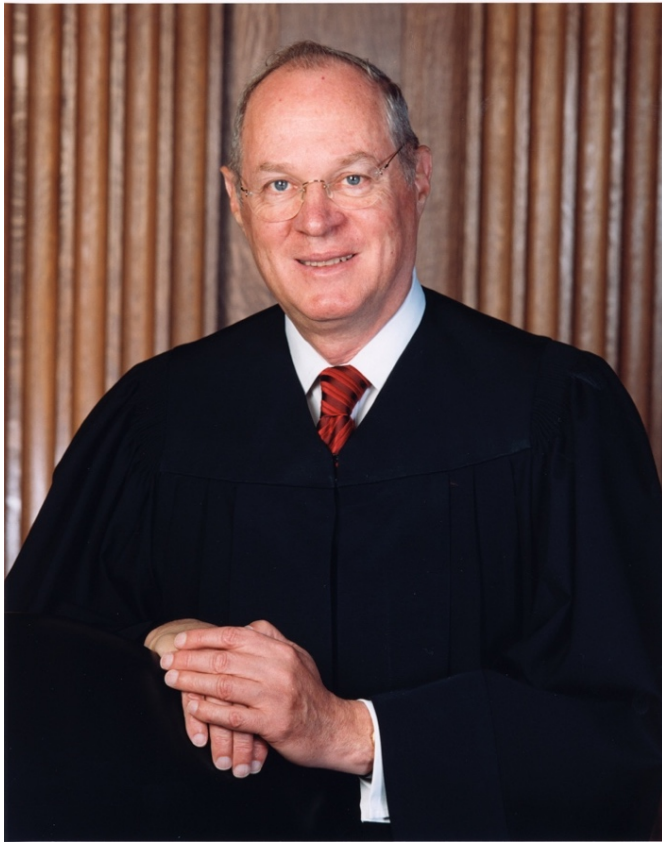
*Moderated by Professor Matt Coles, panelists Professor Melissa Murray, Professor Leah Litman, and Professor Russell Robinson will discuss Justice Kennedy's approach to Substantive Due Process as it relates to equal protection, LGBT rights, and privacy claims.*

## **Panel 3: Justice Kennedy's Overall Impact**

*Moderated by Professor Rory Little, panelists Judge Marsha Berzon, Professor Dan Epps, and Professor Zachary Price will discuss the overall impact of Justice Kennedy's judicial work on the U.S. Supreme Court as well as the U.S. Court of Appeals for the Ninth Circuit and on American law generally.*



# Speakers



## **Justice Anthony M. Kennedy**

Anthony M. Kennedy (Retired), Associate Justice, was born in Sacramento, California, July 23, 1936. He married Mary Davis and has three children. He received his B.A. from Stanford University and the London School of Economics, and his LL.B. from Harvard Law School. He was in private practice in San Francisco, California from 1961–1963, as well as in Sacramento, California from 1963–1975. From 1965 to 1988, he was a Professor of Constitutional Law at the McGeorge School of Law, University of the Pacific. He has served in numerous positions during his career, including a member of the California Army National Guard in 1961, the board of the Federal Judicial Center from 1987–1988, and two committees of the Judicial Conference of the United States: the Advisory Panel on Financial Disclosure Reports and Judicial Activities, subsequently renamed the Advisory Committee on Codes of Conduct, from 1979–1987, and the Committee on Pacific Territories from 1979–1990, which he chaired from 1982–1990.

He was appointed to the United States Court of Appeals for the Ninth Circuit in 1975. President Reagan nominated him as an Associate Justice of the Supreme Court, and he took his seat February 18, 1988. Justice Kennedy retired from the Supreme Court on July 31, 2018.

*Photo credit: Collection of the Supreme Court of the United States.*

## **Judge Marsha S. Berzon**

Judge Marsha S. Berzon is a graduate of Radcliffe College and the law school at the University of California at Berkeley. She served as a law clerk to Justice William J. Brennan, Jr., of the United States Supreme Court and for Judge James R. Browning of the United States Court of Appeals for the Ninth Circuit. Judge Berzon was confirmed as a judge of the Ninth Circuit on March 9, 2000.

Before joining the United States Ninth Circuit Court of Appeals, Judge Berzon was an appellate and Supreme Court advocate at Altshuler, Berzon, Nussbaum, Berzon & Rubin, a San Francisco law firm. She filed briefs in dozens of cases in the United States Supreme Court, appearing four times as an oral advocate before the Court. She participated in many cases setting important precedents in the fields of labor and employment, environmental, women's rights, and free speech law.

Judge Berzon received the Faye Stender Award from the California Women Lawyers' Association for her contribution to establishing the legal rights of women; the Alumna of the Year award from the California Law Review; the American Jewish Committee's Learned Hand Award; and the American Bar Association's Margaret Brent Award. Judge Berzon gave the Madison Lecture at New York University Law School in 2008, and the David Feller lecture at Berkeley Law in 2003.





# Speakers



## **Judge Gary Feinerman**

Gary Feinerman has served since September 2010 as a district judge on the U.S. District Court for the Northern District of Illinois. He currently serves on the Judicial Conference Advisory Committee on Criminal Rules and the Executive Committee for the U.S. District Court for the Northern District of Illinois, and previously served on the Committee on Equal Employment Opportunity Plan and Employment Dispute Resolution Plan for the Seventh Circuit and the Devitt Award Selection Committee. He teaches at University of Chicago Law School, sits on the Stanford Law School Board of Visitors, as serves as Chair of the Rhodes Scholarship Selection Committee, District XI.

Prior to joining the bench, Feinerman was a partner in the Chicago office of Sidley Austin LLP in the firm's general litigation and appellate groups. From 2003-2007, Feinerman served as Solicitor General of Illinois in the Office of Illinois Attorney General Lisa Madigan. Feinerman was a litigation associate and then a partner from 1996-2003 in the Chicago office of the firm now known as Mayer Brown LLP. Earlier in his career, Feinerman served as a law clerk to Justice Anthony

Kennedy of the United States Supreme Court and to Judge Joel Flaum of the U.S. Court of Appeals for the Seventh Circuit, and also worked for the U.S. Department of Justice as Counsel in the Office of Policy Development and on detail to the Office of the Counsel of the President. A graduate of Stanford Law School and Yale College, Feinerman resides with his spouse and three daughters north of Chicago.

## **Erwin Chemerinsky**

Erwin Chemerinsky became the thirteenth Dean of Berkeley Law when he joined the faculty as the Jesse H. Choper Distinguished Professor of Law.

From 2008 to 2017, he was the founding Dean and Distinguished Professor of Law, and Raymond Pryke Professor of First Amendment Law, at U.C. Irvine School of Law, with a joint appointment in Political Science. Before that, he was the Alston and Bird Professor of Law and Political Science at Duke University from 2004-2008, and from 1983-2004 was a professor at the University of Southern California Gould School of Law, including as the Sydney M. Irmas Professor of Public Interest Law, Legal Ethics, and Political Science. He also has taught at DePaul University College of Law and UCLA Law School.

He is the author of twelve books, including leading casebooks and treatises about constitutional law, criminal procedure, and federal jurisdiction. He also is the author of more than 200 law review articles. He frequently argues appellate cases, including in the United States Supreme Court.

In 2016, he was named a fellow of the American Academy of Arts and Sciences. In 2017, National Jurist magazine again named Dean Chemerinsky as the most influential person in legal education in the United States.



# Speakers

## Ashutosh Bhagwat

Ash Bhagwat is Martin Luther King, Jr. Professor of Law at the University of California, Davis School of Law, where he teaches Administrative Law, Constitutional Law, and Economic Regulation. Prior to joining the Davis faculty in 2011, Professor Bhagwat was a member of the faculty at UC Hastings College of the Law for seventeen years. He clerked for Judge Richard Posner of the U.S. Court of Appeals for the Seventh Circuit, and Justice Anthony Kennedy of the United States Supreme Court. Professor Bhagwat is the author of *The Myth of Rights*, published by the Oxford University Press as well as numerous articles on a wide variety of legal subjects, with a particular focus on the First Amendment. Professor Bhagwat is a member of the American Law Institute. In May of 2011, Governor Jerry Brown appointed Professor Bhagwat to serve as a member of the Board of Governors of the California Independent System Operator.



## Matthew A. Coles

Matthew A. Coles is a member of the faculty at the UC Hastings College of the Law where he teaches Constitutional Law, Civil Procedure, Sexuality, Gender and Law, and Election Law. He has been involved in the LGBT civil rights movement since before he graduated from law school, when he wrote San Francisco's law against LGBT discrimination for Harvey Milk. From 2010 to 2016, Coles was Deputy National Legal Director at the American Civil Liberties Union and Director of the ACLU's Equality Center. From 1995 to 2010, Coles was the Director of the ACLU LGBT and AIDS Project. In 1987, he joined the ACLU of Northern California.

Coles was one of the three lead lawyers on the successful challenge that culminated in the landmark U.S. Supreme Court decision in *Romer v. Evans*. He was also one of the two lead attorneys in a comprehensive challenge to "Don't Ask, Don't Tell," and to Florida's law banning adoption by gay people. He graduated cum laude from Yale University in 1973 and from UC Hastings in 1977.



## Miles Ehrlich

Miles Ehrlich is a founding partner of Ramsey & Ehrlich, a criminal and civil defense boutique law firm in Berkeley, California. A former Assistant U.S. Attorney and Chief of the White Collar Crime Section in the Northern District of California, Mr. Ehrlich has nearly 25 years of experience as a trial advocate in complex and high-profile federal criminal cases across the country. His practice is focused on parallel criminal and civil proceedings, grand jury investigations, internal corporate investigations, regulatory enforcement actions, shareholder derivative actions, and complex commercial litigation.

Mr. Ehrlich graduated from Stanford Law School in 1992 and served as a law clerk to Judge William A. Norris of the U.S. Court of Appeals for the Ninth Circuit and Justice Anthony M. Kennedy of the United States Supreme Court during the 1993-94 Term.





# Speakers



## Daniel Epps

Daniel Epps is an Associate Professor of Law at Washington University in St. Louis, where he teaches criminal law and criminal procedure. A nationally recognized expert on the Supreme Court, he is the co-host of *First Mondays*, a popular podcast that covers the Supreme Court on a weekly basis and that is a partner of SCOTUSblog. He is a graduate of Harvard Law School and a former law clerk for Justice Anthony Kennedy on the Supreme Court. After clerking, he spent several years as an appellate and Supreme Court litigator in Washington, D.C. Among other significant cases in which he has been involved, he worked on the successful petition for certiorari and merits briefing in *Walden v. Fiore*. His legal scholarship has appeared in the *Harvard Law Review*, *Michigan Law Review*, and the *NYU Law Review*, and his writing for popular audiences has appeared in *The Washington Post*, *The New York Times Magazine*, and *The Atlantic*. He has also appeared as a Supreme Court expert on CNN, MSNBC, and NPR.

## Orin Kerr

Orin S. Kerr is the Frances R. and John J. Duggan Distinguished Professor at the USC Gould School of Law. He served as a law clerk to Justice Kennedy for the October Term 2003. Kerr has written more than sixty law review articles, over forty of which have been cited in judicial opinions (including seven articles that have been cited in U.S. Supreme Court opinions).

Kerr also has authored popular casebooks, co-authored the leading criminal procedure treatise, and published countless blog posts at popular blogs such as the Volokh Conspiracy and Lawfare. Kerr has argued one Supreme Court case, *Davis v. United States*, 564 U.S. 229 (2011), although he lost 7-2 – and he did not get Justice Kennedy’s vote.



## Rory K. Little



Professor Little came to UC Hastings College of the Law in 1994 after a distinguished 12-year career as a practicing litigator, criminal defense and prosecution lawyer, and appellate lawyer. He is a nationally recognized authority on criminal and constitutional law and issues, appellate litigation, and legal ethics. He has thrice been chosen “Best Professor” by UC Hastings students.

A Yale Law School graduate, Little served as law clerk to U.S. District Judge Louis F. Oberdorfer. After a year at Miller Cassidy Larocca & Lewin, Little clerked for Justice Potter Stewart (ret.) and Justices William J. Brennan, Jr. and John Paul Stevens. In that same year Little also worked for Justice Lewis F. Powell and Chief Justice Warren Burger—a unique one-year (OT ‘84) experience.

In the U.S. Department of Justice, Little served as a trial attorney for the Organized Crime & Racketeering Strike Force, Appellate Chief for the U.S. Attorney’s Office in the Northern District of California, and Associate Deputy Attorney General for Janet Reno and Jamie Gorelick in 1996-97. He has argued over 60 federal and state appeals. He has been writing about criminal cases heard in the U.S. Supreme Court for SCOTUSblog since 2010.



# Speakers

## Leah Litman

Leah Litman is a professor of law at University of California, Irvine School of Law where she teaches and writes on constitutional law, federal courts, and criminal procedure. Litman researches and writes on constitutional law with a particular focus on federalism, federal courts, and federal post-conviction review.

After graduating from the University of Michigan Law School, she clerked for Judge Jeffrey S. Sutton on the U.S. Court of Appeals for the Sixth Circuit and Justice Anthony M. Kennedy on the U.S. Supreme Court. Litman was on the merits briefs in *Whole Woman's Health v. Hellerstedt* and an amicus brief in *Welch v. United States*. She also assisted arguing counsel in *DeBoer v. Snyder* and assisted with drafting the opening brief in *Obergefell v. Hodges*.

She is also an active blogger at *Take Care* and a part-time host on *First Mondays*. She also visited in fall 2018 in the Supreme Court Litigation Clinic at Stanford.



## Melissa Murray



Melissa Murray is a Professor of Law at NYU School of Law, where she teaches constitutional law, family law, criminal law, and reproductive rights and justice. Murray's research interests focus on the legal regulation of sex and sexuality. Her writing has appeared in a range of legal and lay publications, including the Harvard Law Review, the Yale Law Journal, the New York Times, and the Nation. Prior to joining the NYU Law faculty, Murray was the Alexander F. and May T. Morrison Professor of Law at the University of California, Berkeley, where she received the law school's Rutter Award for Teaching Distinction, the Association of American Law School's Derrick A. Bell Award, and, from March 2016 to June 2017, served as interim dean.

Murray is a graduate of the University of Virginia, where she was a Jefferson Scholar and an Echols Scholar, and Yale Law School, where she was notes development editor of the Yale Law Journal. Murray clerked for Sonia

Sotomayor, then a judge of the U.S. Court of Appeals for the Second Circuit, and Stefan Underhill of the U.S. District Court for the District of Connecticut.

## Russell Robinson

Prior to joining UC Berkeley, Russell Robinson was Professor of Law at UCLA. Robinson graduated with honors from Harvard Law School (1998), after receiving his B.A. summa cum laude from Hampton University (1995). Robinson clerked for Judge Dorothy Nelson of the Ninth Circuit Court of Appeals (1998-99) and for Justice Stephen Breyer of the U.S. Supreme Court (2000-01). He has also worked for the U.S. Department of Justice, Office of Legal Counsel (1999-2000) and the firm of Akin, Gump, Strauss, Hauer and Feld in Los Angeles, practicing entertainment law (2001-02). Robinson's scholarly and teaching interests include antidiscrimination law, race and sexuality, law and psychology, constitutional law, and media and entertainment law.



# Speakers



## Zachary Price

A graduate of Stanford University and Harvard Law School, Professor Price teaches constitutional law and civil procedure at the University of California Hastings College of the Law in San Francisco. His scholarly articles include: *Funding Restrictions and Separation of Powers*, 71 Vand. L. Rev. 357 (2018); *Reliance on Nonenforcement*, 58 William & Mary L. Rev. 937 (2017), which was selected for the 2016 Harvard-Yale-Stanford Junior Faculty Forum; *Enforcement Discretion and Executive Duty*, 67 Vand. L. Rev. 671 (2014); NAMUDNO's *Non-Existent Principle of State Equality*, 88 N.Y.U. L. Rev. Online 24 (2013); and *Dividing Sovereignty in Tribal and Territorial Criminal Jurisdiction*, 113 Colum. L. Rev. 657 (2013). Before entering academics, Professor Price served for three years as an attorney in the Office of Legal Counsel of the U.S. Justice Department. He also clerked for three judges, including Justice Anthony M. Kennedy of the U.S. Supreme Court.

## Nadine Strossen

Nadine Strossen, a chaired professor at New York Law School, is a widely recognized expert on constitutional law and civil liberties. The immediate past President of the American Civil Liberties Union (1991-2008), she now serves on the ACLU's National Advisory Council, as well as the Advisory Boards of the Electronic Privacy Information Center, Foundation for Individual Rights in Education, and Heterodox Academy.

The *National Law Journal* has named Strossen one of America's "100 Most Influential Lawyers," and several other national publications have named her as one of the country's most influential women.

Strossen's book, *Defending Pornography: Free Speech, Sex, and the Fight for Women's Rights* (Scribner) was named a *New York Times* "notable book" of 1995. Her 2018 book, *HATE: Why We Should Resist It with Free Speech, Not Censorship* (Oxford University Press), has earned praise from ideologically diverse readers, including Harvard Professor Cornel West and Princeton Professor Robert George.

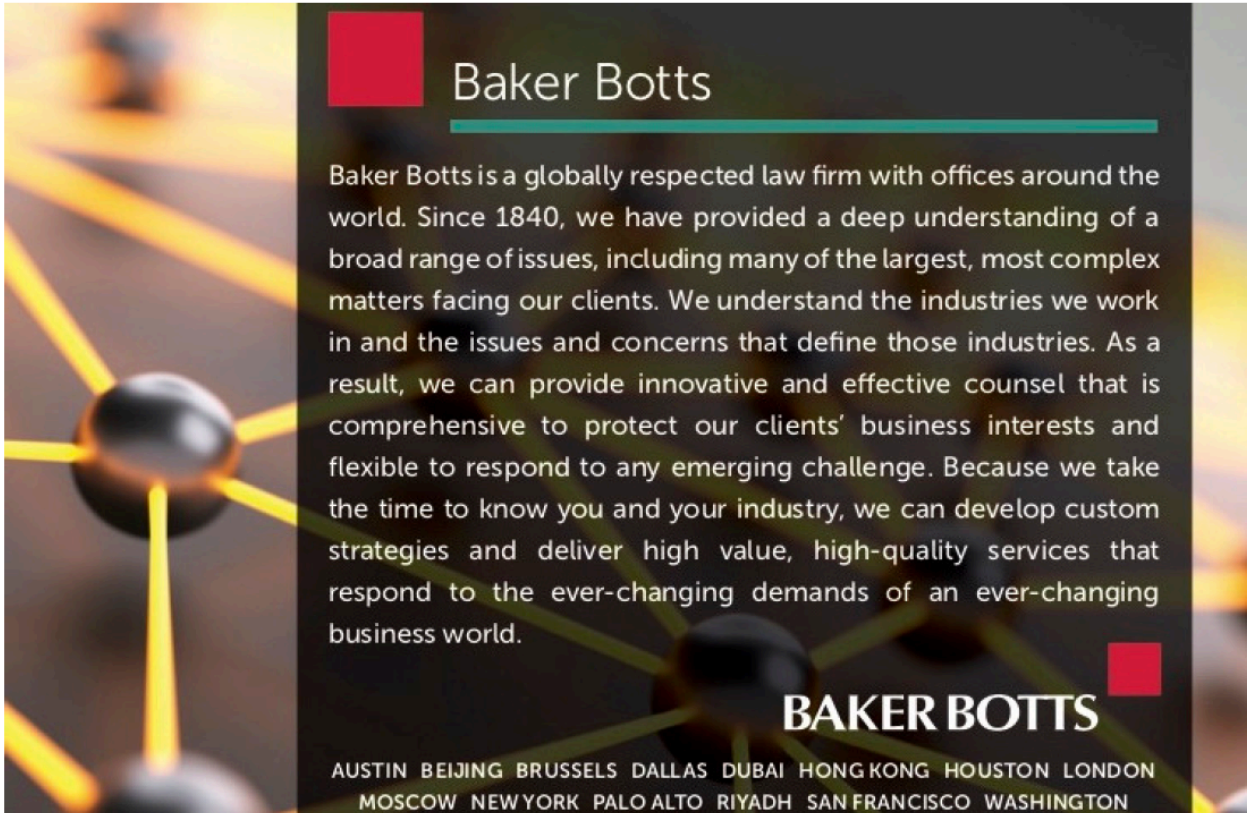


## Notes



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