

# RUSSELL M. GOLD

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## CURRENT APPOINTMENT

**University of Alabama School of Law, Tuscaloosa, AL**  
*Associate Professor of Law*

July 2020 – present

Tenure-track appointment with teaching and scholarly responsibilities. Teaching responsibilities include criminal law, criminal procedure, and a criminal procedure simulation course.

## PREVIOUS APPOINTMENTS

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

July 2016 – June 2020

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

**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

*Civilizing Indigent Defense Funding* (work in progress) (with Kay L. Levine): This article considers what we can learn from the civil litigation system to address the widely recognized crisis in criminal indigent defense funding. It examines the possibility of a bonus paid to successful defense lawyers—somewhat akin to fee shifting—and outside funding sources such as crowdfunding and third-party litigation finance.

*Power Over Procedure*, 57 *WAKE FOREST L. REV.* 51 (2022): This article argues that comparing civil and criminal pretrial procedure reveals systemic racism and classism underlying American law. Criminal defendants are disproportionately poor people of color, while wealthy corporations whose executives are largely white play an outsized role as civil defendants in shaping procedure. Instead of criminal law offering more protection for defendants' liberty than civil procedure

provides for defendants' property, disparities between the two systems track predictable differences in defendants' race and class.

*Volunteer Prosecutors*, 59 AM. CRIM. L. REV. 1483 (2022): This article provides the first scholarly treatment of what I call volunteer prosecutors—people who work as prosecutors without being paid. It considers the motivations that drive people to prosecute crime for free—sometimes as their full-time jobs—and conducts a content analysis of news sources to develop a taxonomy of the various forms of volunteer prosecution and document some places where they exist. It also takes up some normative concerns that this practice raises—primarily that providing free labor to prosecutors' offices widens the government's net in criminal law and evades the most meaningful constraint on prosecutors: a limited budget.

*Paying for Pretrial Detention*, 98 N.C. L. REV. 1255 (2020): This article 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 consenter 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., 2021) (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., 2021).

*Introduction: Understanding Prosecutors in All Their Contexts*, in [THE OXFORD HANDBOOK OF PROSECUTORS AND PROSECUTION](#) (Ronald F. Wright, Kay L. Levine & Russell M. Gold eds., 2021) (with Ronald F. Wright & Kay L. Levine).

*The Political Patterns of Bail Reform*, [55 WAKE FOREST L. REV. 743](#) (2020) (with Ronald F. Wright): This is the foreword to a symposium issue on bail reform. It focuses on the politics of criminal law reform, using bail as a particular lens to understand the different political processes

and coalitions that can facilitate reform. It also emphasizes the value of decentralization in American criminal law.

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

### **SELECTED PRESENTATIONS**

Procedure's Racism, CrimFest (July 19, 2021) (via Zoom)

Procedure's Racism, Civil Procedure Workshop (July 15, 2021) (via zoom)

Procedure's Racism, Wilson Center for Science and Justice, Duke Law School (Mar. 29, 2021) (via Zoom)

Volunteer Prosecutors, SEALS Conference, Panel on The Private Role in Criminal Justice (July 31, 2020) (via Zoom)

(Not) Paying Prosecutors, Faculty Workshop, University of Alabama School of Law, Tuscaloosa, AL (Feb. 25, 2020)

Paying Prosecutors, Faculty Workshop, University of Georgia School of Law, Athens, GA (Jan. 27, 2020)

Paying for Pretrial Detention, Faculty Workshop, Wayne Law School, Detroit, MI (Nov. 18, 2019)

Paying for Pretrial Detention, Faculty Workshop, University of Alabama School of Law, Tuscaloosa, AL (Sept. 23, 2019)

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)

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**

Criminal Law, Criminal Procedure, Experiential Courses, Complex Litigation, Civil Procedure

## **LEGAL AND PROFESSIONAL EXPERIENCE**

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

*Litigation Associate*

November 2009 – April 2012

*Summer Associate*

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*,

August 2008 – August 2009

United States Court of Appeals for the Tenth Circuit

**The Honorable Reggie B. Walton**, Washington, District of Columbia

*Intern*,

September 2006 – November 2006

United States District Court for the District of Columbia

**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**

*University of Alabama School of Law*

- Advisor, Alabama Civil Rights & Civil Liberties Law Review, 2020-present
- Member, Faculty Appointments Committee, 2021-present
- Chair, Legal Writing Hiring Committee, 2022

*Wake Forest University School of Law*

- Instructor, Upper-Level Writing Requirement Lecture Series, 2016-2018
- Advisor, Wake Forest Law Review, 2016-2020
- Member, Career and Professional Development Committee, 2016-2017
- Member, Student Wellbeing Committee, 2018-2019
- Member, Clerkship Committee, 2019-2020
- Member, Academic Life Committee, 2019-2020
- Member, Dean of Students Search Committee, 2019-2020

*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

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- 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