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**PETER LINZER**

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**EDUCATION**

A.B., Cornell, 1960 (major in English)

J.D., Columbia, 1963  
Columbia Law Review  
Stone Scholar  
National Scholar  
Moot Court Honors

**Additional Study**

Hague Academy of International Law, 1963  
The Hague, Netherlands  
(under a scholarship from the International Legal Studies Fund)

National Endowment for the Humanities Seminars for Law Professors, 1982 (philosophy)  
and 1986 (origins of the Constitution)

**PROFESSIONAL MATTERS**

“Distinguished Speaker” in the 14<sup>th</sup> Pacific–McGeorge Law School Distinguished  
Speakers Series, November 7, 2006, at the University of the Pacific, Sacramento, California.

Chair, 2002-03, Contracts Section, Association of American Law Schools

Elected Member, American Law Institute (since 1991); participant in Members’  
Consultative Groups on the Restatement Third of Restitution, the Principles of the Law of  
Software Contracts and Revisions to Articles 1 and 2 of the Uniform Commercial Code.

Board Certified Specialist in Civil Appellate Law, Texas Board of Legal Specialization

(since 1991)

Member, State Bar of Texas, Pattern Jury Charge Committee-- Business Torts, Consumer & Employment Contracts, 1986-94

Admitted to the Bars of Texas (1986); Ohio (1974); New York (1963); United States Supreme Court (1967) and other federal courts

### **PRINCIPAL ACADEMIC SUBJECTS**

Contracts  
Constitutional Law  
Equal Protection  
First Amendment  
International Contracting  
Transactional Clinic

Contract Negotiation and Drafting  
Introduction to American Law (for foreign LL. M. candidates)  
Torts

### **PUBLICATIONS**

#### **Books**

*A Contracts Anthology* (2d ed. 1995, Anderson Publishing Company) (edited with commentary) (3d edition planned for publication by Lexis-Nexis for the Fall, 2009 market)

#### **Works in Progress:**

Volume 6 of the Revised Edition of *Corbin On Contracts* (Interpretation: the Parol Evidence Rule, Implied Terms and Default Rules) (Lexis-Nexis – publication scheduled for 2008)

*The Color of the Constitution* (an examination of constitutional law and race from 1776 forward)

#### **Collective Projects**

“Dissents in the Supreme Court” in *Encyclopedia of the Supreme Court* (in press, June, 2008)

Editorial Reviser, Restatement Second of Contracts (1981)

State Bar of Texas, Pattern Jury Charges, Vol. IV (Contracts, Consumer Law and Business Torts) (1990, 1992, 1993)

## Articles

Billy Budd, Joseph Story, and Racial Liberals Frying Fish, A Polemical Essay (being submitted)

“Implied,” “Inferred,” and “Imposed”: Default Rules and Adhesion Contracts – the Need for Radical Surgery, 28 Pace Law Review 195 (2008).

From the Gutenberg Bible to Internet Neutrality – How Technology Makes Law and Why English Majors Need To Understand It, 39 McGeorge L. Rev. 1 (2008).

*E. Allen Farnsworth’s Theory (Non-theory? Anti-theory?) of Contracts*, in Theory and Anti-theory in the Work of Allen Farnsworth, 13 Tex. Wesleyan L. Rev. 1, 5-15 (2006) (based on paper given at the Second International Contracts Conference, held at the Texas Wesleyan University Law School, February, 2006). For comments and responses, see *id.* at 3-5, 15-30.

Hadley v. Baxendale and the Seamless Web of Law, 11 Tex. Wesleyan L. Rev. 225 (2005) (Foreword to Symposium, The Common Law of Contracts as a World Force in Two Ages of Revolution: A Conference Celebrating the 150<sup>th</sup> Anniversary of Hadley v. Baxendale.) This conference, held in Gloucester, England, in the summer of 2004, was the First International Contracts Conference.

Introduction to AALS Contracts Transcript, 14 Toledo L. Rev. 685 (2003) (Papers given at the Association of American Law Schools Contracts Section Symposium on “Teaching Contracts Transactionally,” January 2003)

The Comfort of Certainty: Plain Meaning and the Parol Evidence Rule, 71 Fordham L. Rev. 799 (2002) (in issue in honor of Joseph M. Perillo)

Rough Justice: A Theory of Restitution and Reliance, Contracts and Torts, 2001 Wis. L. Rev. 695 (in issue on papers from the 2000 Wisconsin Contracts Conference). For comments, see Caroline N. Brown, 2001 Wis. L. Rev. 777, and John Tidwell, 2001 Wis. L. Rev. 825, 828-29. (This article is also discussed in Hanoch Dagan, *The Law and Ethics of Restitution* 13-14, 169, 171, 206-09 (Cambridge Univ. Press 2004).)

Consider Consideration, 44 St. Louis L.J. 1317 (2000) (in “Teaching Contracts” symposium)

Non- [“Un-”?]American Law and the Core Curriculum, 72 Tulane L. Rev. 2031 (1998)

The UNIDROIT Principles of International Commercial Contracts: Should American Lawyers Pull Their Hair Out Over Them?, 13 Texas Transnational L.Q. 2 (1997)

Law's Unity -- An Essay For the Master Contortionist, 90 Nw. U. L. Rev. 183 (1995) (in Symposium: Reconsidering Grant Gilmore's *The Death of Contract*)

The *Carolene Products* Footnote and the Preferred Position of Individual Rights: Louis Lusky and John Hart Ely vs. Harlan Fiske Stone, 12 Const. Comm. 277 (1995)

Who Owns the Company?: Rethinking Capitalism for the Twenty-First Century, 3 Research in Law and Policy Studies 217 (1995)

White Liberal Looks at Racist Speech, 65 St. John's L. Rev. 187 (1991) (in symposium on the bicentennial of the Bill of Rights) (reprinted in part as Chapter 1 of *Speaking Freely* (H. M. Holzer, ed. 1994))

The Flesh Colored Band-Aid: Contracts, Feminism, Dialogue and Norms, 28 Houston L. Rev. 791 (1991) (with Patricia A. Tidwell)

Letter to David Dow -- Friendly Critic and Critical Friend, 28 Houston L. Rev. 861 (1991) (with Tidwell)

Is the First Amendment a Middle-Class Luxury?, 29 Houston Lawyer 18 (Nov.-Dec. 1991)

Why Bother With State Bills of Rights?, 68 Tex. L. Rev. 1573 (1990) (in symposium on the Texas Constitution)

Uncontracts: Contorts, Context and the Relational Approach, 1988 Ann. Survey of Amer. L. 139 (in N.Y.U. symposium on Contract Theory and Practice) (discussed at length in Julio César Cueto Rúa, El contrato como consentimiento y el contrato como relación in *Contratos: Homenaje a Marco Aurelio Risolía* 143 (Buenos Aires 1997))

Is Consent the Essence of Contract? -- Replying to Four Critics, 1988 Ann. Survey of Amer. L. 213

Precise Meaning and Open Texture in Legal Writing and Reading, in Walter, ed., Computing Power and Legal Language (1988)

The Decline of Assent: At-Will Employment As A Case Study of the Breakdown of Private Law Theory, 20 Ga. L. Rev. 323 (1986) (excerpted in Knapp & Crystal, Problems in Contract Law 551-53 (3d ed. 1993))

On the Amorality of Contract Remedies: Efficiency, Equity, and the Second Restatement, 81 Colum. L. Rev. 111 (1981) (in symposium on the Restatement (Second) of Contracts) (reprinted in *International Library of Essays in Law & Legal Theory*, Contracts Vol. II (L. Alexander, ed. 1991))

The Meaning of Certiorari Denials, 79 Colum. L. Rev. 1227 (1979) (excerpted in Hart & Wechsler, *The Federal Courts and the Federal System* 1860-63 (3d ed. 1988))

Law for Them and Medicine for Us: A "Counterdisciplinary" Approach to Learning, 55 J. Urban Law 113 (1977)

### **Book Reviews**

of David Ibbetson, *A Historical Introduction to the Law of Obligations* (Oxford Univ. Press 1999) and Elizabeth Cooke, *The Modern Law of Estoppel* (Oxford Univ. Press 2000), Jurist (on-line law review/law professors' list serve), <http://jurist.law.pitt.edu/lawbooks/revapr01.htm#Linzer> .

of W. O. Douglas, *The Court Years*, 58 J. Urban Law 561 (1981)

of Walter Berns, *The Supreme Court and the Future of American Democracy*, 55 J. Urban Law 225 (1977)

### **Chapter in Book**

Validity Under Chapter 3 of the UNIDROIT Principles of International Commercial Contracts *in Contratación Internacional — Comentarios a los Principios sobre los Contratos Comerciales Internacionales del UNIDROIT* (Universidad Nacional Autónoma de México and Universidad Panamericana 1998)

### **“Cyber-Essay”**

Corbin, Crosskey & Erie v. Tompkins, Jurist (on-line legal web site/law review), <http://jurist.law.pitt.edu/lawbooks/past.htm#Linzer>

### **AWARDS**

University of Houston Law Foundation Scholar, 1992-93

Co-winner of the 1992 Houston Law Review Alumni Association Professional Writing Award (for The Flesh Colored Band-Aid)

First recipient (1979-80) of the University of Detroit School of Law's James T. Barnes, Sr., Memorial Faculty Scholar Award ("for excellence in teaching, scholarship and public service")

Nominated for the 1982-83 U. of D. President's Award for Excellence in Teaching and Research

### **OTHER PROFESSIONAL ACTIVITIES**

Speaker at the 1808 Conference (“Commemorating 1808: Fighting for the Right to Dream -- 200<sup>th</sup> Anniversary of the Federal Prohibition on Importing Slaves”), University of Toledo College of Law, Toledo, Ohio, October 25, 2008.

Faculty Senator, University of Houston, 1999-2000, 2001-04, 2005-present.

Delivered paper on implied terms in Wood v. Lucy, Lady Duff-Gordon at conference on 90<sup>th</sup> anniversary of that case held at Pace University School of Law, November 2007.

Panel Moderator at the Third International Contracts Conference, held at South Texas School of Law, February 23-24, 2007.

Speaker at the Second International Contracts Conference, held at Texas Wesleyan University Law School, February, 2006.

Speaker and panelist on civil liberties after 9/11, Federal Bar Assn. presentation at the Texas State Bar Annual Meeting, June 2003.

Speaker and panelist on third world labor problems at Conference on Commodities and Communities, American University, Washington, D.C., March 2003

Speaker and panelist on restitution suit against several business entities that used slaves before the Civil War, before the Remedies Section of the Association of American Law Schools, 2003 Annual Meeting, January 2003, Washington, D.C.

Panelist at Association of American Law Schools Conference On Access to Justice, University of Texas School of Law, February 23, 2001

Featured speaker (delivered paper) at the University of Wisconsin Law School's Contracts Conference, October 14, 2000

Speaker and panelist at Conference on Transatlantic Labor Problems, cosponsored by University College Dublin, the Labor Section of the New York State Bar Association and St. John's University Law School, Dublin, Ireland, July 22, 2000

Member of a panel debating the choice of law provision of the proposed revision of Article One of the Uniform Commercial Code, American Bar Association Convention, New York, July 9, 2000

Speaker at *Seminario sobre Contratos Internacionales. Reglas de UNIDROIT para contratación comercial en América del Norte*, sponsored by the Universidad Panamericana and the Banco de Comercio Exterior of México, México City, November 12-15, 1996

Speaker at Symposium on Relational Contracting at the Academy of Management's Annual Meeting, Vancouver, B.C., August, 1995

Lecturer at the 1993 Texas State Bar Advanced Appellate Practice Course

Group Leader: Association of American Law Schools Mini-workshop on Professors in the Profession, 1995 Annual Meeting; AALS Week-long Contracts Conference, Cornell Law School, June, 1989; and AALS Workshop on Teaching Contract Law, University of Wisconsin Law School, Madison, Wisconsin, 1981

Speaker at symposia held at University of Wisconsin (contracts); New York University (contracts in theory and practice); the University of Texas (Texas Constitution); St. John's University (bicentennial of

the Bill of Rights); and the University of Houston Institute for Business, Ethics, and Public Issues (privacy and rights in the work place)

Member of Executive Committee and Board of Directors of the Greater Houston Chapter of the American Civil Liberties Union (1987-92) and the Clark Read Foundation for Civil Liberties (1987-95)

Contributor on legal topics to radio and television programs in Houston and Detroit; consultant to the [Salem, Oregon] Statesman Journal, reviewing a major municipal development contract.

Expert witness and consultant in contract and related cases.

Appellate litigator for the American Civil Liberties Union and other organizations and for private parties in constitutional and employment cases. *Representative cases include:*

Texas v. Johnson, 491 U.S. 397 (1989) (flagburning -- First Amendment) (attorney for National ACLU as amicus curiae)

Meadowbriar Home for Children, Inc. v. Gunn, 81 F.3d 521 (5th Cir. 1996) (attorney for provider of housing for emotionally disturbed women in Fair Housing Act case)

Texas v. Morales, 869 S.W.2d 941 (Tex. 1994) (attorney for amici curiae arguing the unconstitutionality of the Texas anti-sodomy law under the Texas Constitution)

Edgewood Indep. School Dist. v. Kirby, 777 S.W.2d 391 (Tex. 1989) (school funding -- State Constitution) (attorney for several Hispanic organizations and the Texas Civil Liberties Union as amici curiae)

Jones v. Memorial Hospital, 746 S.W.2d 891 (Tex. Ct. App.--Houston [1st Dept.] 1988, no writ); id., 677 S.W.2d 221 (Tex. Ct. App.--Houston [1st Dept.] 1985, no writ) (at-will employment and speech rights under the State Constitution) (attorney for nurse discharged for criticizing hospital)

Sabine Pilot Serv. v. Hauck, 687 S.W.2d 733 (Tex. 1985) (at-will employment) (amicus brief in favor of employee successfully arguing against at-will rule)

Woodland v. Michigan Citizens Lobby, 423 Mich. 188, 378 N.W.2d 337 (1985) (citizen access to shopping malls under State Constitution) (attorney for Michigan Citizens Lobby)

## **PROFESSIONAL BACKGROUND**

1983-Present: Professor of Law (Visiting Professor, 1983-84), University of Houston Law Center

2004-05: Visiting Professor of Law, Washburn University School of Law, Topeka, Kansas

1976-84: Associate Professor, then Professor of Law, University of Detroit School of Law

1973-76: Associate Professor of Law (Adjunct Associate Professor of Medical Jurisprudence, 1976), University of Cincinnati

1969-73: Associate, Marshall, Bratter, Greene, Allison & Tucker, New York, New York

1968-69: Executive Assistant to the Finance Administrator of the City of New York

1966-68: Assistant Corporation Counsel, Law Department, City of New York

1963-66: Associate, Cahill, Gordon, Reindel & Ohl (now Cahill, Gordon), New York, New York