

## **DAWN JOHNSEN**

Indiana University Maurer School of Law  
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Bloomington, IN 47405  
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### **PROFESSIONAL EXPERIENCE**

**Walter W. Foskett Professor of Law, Indiana University Maurer School of Law,**  
1998-present; focus on constitutional law

**Barack Obama's Presidential Transition Team,** Nov. 2008-Jan. 2009  
(Pres. Obama's 2009 nominee for Assistant Attorney General, Office of Legal Counsel,  
U.S. Department of Justice; nomination withdrawn due to a year of Senate inaction)

**Acting Assistant Attorney General, Office of Legal Counsel, U.S. Department of Justice,**  
Washington, D.C., 1997-1998; Deputy Assistant Attorney General, 1993-1996  
Edmund J. Randolph Award for Distinguished Service, 1998  
Headed Office of Legal Counsel which provides legal advice to the Executive Branch, on  
behalf of the Attorney General, including to the Counsel to the President and the General  
Counsels of the various executive departments and agencies

**Bill Clinton's Presidential Transition Team,** Nov. 1992-Jan. 1993

**Legal Director, National Abortion & Reproductive Rights Action League (NARAL)**  
**(currently NARAL Pro-Choice America),** Washington, D.C., 1988-1993  
Directed all legal and policy work of NARAL, NARAL-PAC, NARAL Foundation,  
and forty-plus NARAL state affiliates

**Staff Counsel Fellow, American Civil Liberties Union,** Reproductive Freedom Project,  
New York, 1987-1988

**Law Clerk, Richard D. Cudahy, U.S. Court of Appeals for the Seventh Circuit,** 1986-1987

**National Advisory Board & Board of Academic Advisors, American Constitution Society**  
**Formerly: Board of Directors, American Constitution Society & Guttmacher Institute**

### **EDUCATION**

**Yale Law School,** New Haven, Connecticut. J.D, 1986  
Article & Book Review Editor, Yale Law Journal

**Yale College,** New Haven, Connecticut. B.A., Economics and Political Science, 1983  
Summa Cum Laude, Phi Beta Kappa

**Carle Place High School,** Carle Place, New York, 1979

## PUBLICATIONS

- *The Supreme Court's Legitimacy Crisis and Constitutional Democracy's Future*, Chapter in DEMOCRACY UNCHAINED: HOW TO REBUILD GOVERNMENT FOR THE PEOPLE (The New Press, forthcoming March 2020)
- *Toward Restoring Rule-Of-Law Norms*, 97 TEXAS LAW REVIEW 1205 (2019)
- *The Constitutionality of a National Wealth Tax*, 93 INDIANA LAW JOURNAL 111 (2018) (coauthor Walter Dellinger)
- *Foreword, Symposium on The Future of the U.S. Constitution*, 93 INDIANA LAW JOURNAL (2018)
- *The Lawyers' War: Counterterrorism from Bush to Obama to Trump*, FOREIGN AFFAIRS (Jan./Feb. 2017)
- *When Responsibilities Collide: Humanitarian Intervention, Shared War Powers, and the Rule of Law*, 53 HOUSTON LAW REVIEW 1065 (2016)
- *State Court Protection of Reproductive Rights: The Past, The Perils, and The Promise*, 29 COLUMBIA JOURNAL OF GENDER AND LAW 41 (2015)
- *Respecting Intent and Dispelling Stereotypes by Reducing Unintended Pregnancy*, 43 JOURNAL OF LAW, MEDICINE AND ETHICS 341 (2015)
- *Windsor, Shelby County and the Demise of Originalism: A Personal Account*, 89 INDIANA LAW JOURNAL 3 (2014) (a version also published in ADVANCE, the journal of the American Constitution Society)
- *Justice Brennan: Legacy of a Champion (book review)*, 111 MICHIGAN LAW REVIEW 1151 (2013)
- *"The Essence of a Free Society": The Executive Powers Legacy of Justice Stevens and the Future of Foreign Affairs Deference*, 106 NORTHWESTERN UNIVERSITY LAW REVIEW 467 (2012)
- *The Obama Administration's Decision to Defend Constitutional Equality Rather Than the Defense of Marriage Act*, 81 FORDHAM LAW REVIEW 599 (2012)
- *"Trapping" Roe in Indiana and a Common-Ground Alternative*, 118 YALE LAW JOURNAL 1356 (2009)
- *A Progressive Reproductive Rights Agenda for 2020*, in THE CONSTITUTION IN 2020 (Balkin & Siegel, eds., Oxford University Press, 2009)

- *Department of Justice: Restoring Integrity and the Rule of Law*, in CHANGE FOR AMERICA: A PROGRESSIVE BLUEPRINT FOR THE 44TH PRESIDENT (Green & Jolin, eds., Basic Books, 2009)
- Hamdan v. Rumsfeld: *Trying Enemy Combatants by Military Commission*, in PRESIDENTIAL POWER STORIES (Schroeder & Bradley, eds., Foundation Press, 2009)
- *What's a President to Do? Interpreting the Constitution in the Wake of the Bush Administration's Abuses*, 88 BOSTON UNIVERSITY LAW REVIEW 395 (2008)
- *The Progressive Political Power of Balkin's "Original Meaning,"* 24 CONSTITUTIONAL COMMENTARY 417 (2008)
- *A Progressive Agenda for Women's Reproductive Health and Liberty on Roe v. Wade's Thirty-Fifth Anniversary*, issue brief for American Constitution Society (2008)
- *Faithfully Executing the Laws: Internal Legal Constraints on Executive Power*, 54 UCLA LAW REVIEW 1559 (2007)
- *All The President's Lawyers: How to Avoid Another "Torture Opinion" Debacle*, issue brief for American Constitution Society (2007)
- *Lessons from the Right: Progressive Constitutionalism for the Twenty-First Century*, 1 HARVARD LAW & POLICY REVIEW 239 (2007)
- *Foreword, War, Terrorism and Torture: Limits on Presidential Power for the 21<sup>st</sup> Century*, 81 INDIANA LAW JOURNAL 1139 (2006)
- *Guidelines for the President's Legal Advisors*, an introduction to *Principles to Guide the Office of Legal Counsel*, 81 INDIANA LAW JOURNAL 1345 (2006)
- *Abortion: A Mixed and Uncertain Legacy*, in THE REHNQUIST LEGACY (Bradley, ed., Cambridge University Press, 2006)
- Book Review, H. JEFFERSON POWELL, A COMMUNITY BUILT ON WORDS: THE CONSTITUTION IN HISTORY AND POLITICS (2002), 101 INDIANA MAGAZINE OF HISTORY (September 2005)
- *Should Ideology Matter in Selecting Federal Judges? Ground Rules for the Debate*, 26 CARDOZO LAW REVIEW 463 (2005)
- *Functional Departmentalism and Nonjudicial Interpretation: Who Determines Constitutional Meaning?*, 67 LAW & CONTEMPORARY PROBLEMS 105 (2004)
- *Judicial Supremacy Two Centuries After Marbury: The President and Congress and the Determination of Constitutional Meaning*, essay in MARBURY V. MADISON:

1803-2003: DEUX SIECLES DE CENSURE JUDICIAIRE SUR LES LOIS (2003)

- *Ronald Reagan and the Rehnquist Court on Congressional Power: Presidential Influences on Constitutional Change*, 78 INDIANA LAW JOURNAL 363 (2003)
- *Presidential Non-Enforcement of Constitutionally Objectionable Statutes*, 63 LAW & CONTEMPORARY PROBLEMS 7 (2000)
- *Executive Privilege Since United States v. Nixon: Issues of Motivation and Accommodation*, 83 MINNESOTA LAW REVIEW 1127 (1999)
- *Shared Interests: Promoting Healthy Births Without Sacrificing Women's Liberty*, 43 HASTINGS LAW JOURNAL 569 (1992), & chapter in ABORTION, MEDICINE AND THE LAW (Butler, ed., 4th ed. 1992)
- *From Driving to Drugs: Governmental Regulation of Pregnant Women's Lives after Webster*, 138 UNIVERSITY OF PENNSYLVANIA LAW REVIEW 179 (1989)
- *A New Threat to Pregnant Women's Autonomy*, THE HASTINGS CENTER REPORT 33 (August 1987)
- *The Creation of Fetal Rights: Conflicts with Women's Constitutional Rights to Liberty, Privacy and Equal Protection*, 95 YALE LAW JOURNAL 599 (1986)
- Numerous op-eds and online posts, e.g., WASHINGTON POST, SLATE, SCOTUSBLOG

### **CONFERENCES AND OTHER SPEAKING EVENTS (partial list)**

- *Reimagining Checks and Balances*, panelist, Federal and State Judges Roundtable, organized by American Constitution Society, William S. Boyd School of Law at UNLV, Las Vegas, Nevada, November 15, 2019
- *The Supreme Court's Assault on Civil Rights: The Most Dangerous Branch?*, lecture, Monroe County NAACP Annual Banquet, October 5, 2019
- *Making Sense of the Current Crisis in Reproductive Rights*, Constitution Day Lecture, Evansville University, September 12, 2019
- *Abortion: Safe, Legal and Accessible*, panelist, Indiana University chapter of Omega Phi Beta Sorority, October 2, 2019
- *The Legacy of Roe v. Wade*, lecture, Indiana University College Democrats, February 20, 2019

- *Toward Restoring Rule-Of-Law Norms*, panelist, Texas Law Review symposium on Constitutional Norms, February 8, 2019
- *2018: Year of the Woman?*, Lecture, Middleway House Annual Luncheon, October 19, 2018
- Convening on Judicial Nominations, panelist, organized by Leadership Conference for Civil Rights & Alliance for Justice Indiana University Maurer School of Law (April 10, 2018)
- *60 Years After US v. 31 Photographs*, panelist, Kinsey Institute, Indiana University, October 17, 2017
- *Constitution Day: Charlottesville*, panelist, Indiana University Maurer School of Law, September 19, 2017
- Indiana University Baccalaureate Keynote Address, Indiana University, May 5, 2017
- *President Trump and the Supreme Court*, panelist, U.S. Court of Appeals for the Seventh Circuit Judicial Conference, Indianapolis, May 1, 2017
- *The Future of the US Constitution: The Hot-Button Constitution*, panelist and principal organizer of symposium cosponsored by Indiana Law Journal and American Constitution Society, Indiana University Maurer School of Law, April 14, 2017
- *Rethinking Abortion: Toward a New Consensus*, commentator, Federalist Society, Indiana University Maurer School of Law, March 6, 2017
- *International Women's Day*, panelist, Indiana University Maurer School of Law, February 27, 2017
- *Trapped* (documentary), panelist, Indiana University, April 20, 2016
- *Charlie Savage on Power Wars* (introduction to book talk), Indiana University, March 30, 2016
- *Reflections on U.S. Supreme Court Justice Antonin Scalia*, panel, Indiana University Maurer School of Law, March 22, 2016
- *Issue Forum on Abortion and Reproductive Rights*, panelist, Indiana University Political and Civic Engagement, February 27, 2016
- *Humanitarian Interventions*, commentator on Frankel Lecture by Harold Koh, University of Houston Law Center, November 6, 2015

- Yale Law School/Duke Law School National Security Roundtable, participant, Durham, NC, October 2, 2015
- Reproductive Rights National Funders Conference, Washington, DC, May 14, 2015
- Women in the Law Day, panel, Indiana University Maurer School of Law, March 27, 2015
- *Implications of Hobby Lobby*, U.S. Court of Appeals for the Seventh Circuit Judicial Conference, Indiana University Maurer School of Law, October 7, 2014
- *Judicial Activism: Then and Now*, panelist, American Constitution Society National Convention, Washington, DC, June 20, 2014
- *Role of Religion in Public Life*, Roundtable Discussion, Center for American Progress, Washington, DC, May 8, 2014
- *Intersections in Reproduction*, Commentator, Yale Law School, April 17, 2014
- *Current Threats to Reproductive Liberty and Access to Reproductive Health Care*, speaker, Columbia Law School, March 4, 2014
- *Status of Reproductive Rights on Roe's 41<sup>st</sup> Anniversary*, panelist, National Press Club, Washington DC, January 2014
- *Government Lawyering*, keynote, Annual Conference of Government Lawyers, McMaster University, Toronto, Canada, June 19, 2013
- *Perspectives on National Security and the War on Terror*, moderator, American Constitution Society National Convention, Washington, DC, June 15, 2013
- *Reproductive Rights Today*, speaker, ACLU of Indiana's Sixtieth Anniversary Commemoration, Indianapolis, IN, April 10, 2013
- *Liberty/Equality: The View from Roe's 40<sup>th</sup> and Lawrence's 50<sup>th</sup> Anniversaries*, panelist, UCLA Law School, Jan. 19, 2013
- *The Defense of Marriage Act*, panelist, Fordham Law School, March 30, 2012
- *Intra-Progressive Debate on Executive Power, War and Terrorism*, moderator, Brennan Center, NYU Law School, New York, April 25, 2012
- *Political Crises and Constitutionalism: Money*, panelist, AALS Annual Convention, Washington, DC, Jan. 7, 2012

- *Executive Power, Judicial Deference, and National Security Post-9/11*, Cornell Law School, faculty workshop, Oct. 17, 2011
- *National Power to Address the Nation's Problems: The Constitutionality of the Affordable Care Act*, plenary panelist, American Constitution Society National Convention, Washington, DC, June 18, 2011
- *Justice Stevens and Executive Power*, panelist at symposium honoring Justice John Paul Stevens, Northwestern Law School, May 12, 2011
- *Leadership Through Advocacy*, keynote speaker, Bloomington Commission on the Status of Women, March 31, 2011
- *Reproductive Liberty, The Rule of Law, and the Curious Case of Don't Ask, Don't Tell*, Yale Law School, Dec. 1, 2010, and George Washington U. School of Law, Dec. 2, 2010
- *Reflections on Promoting Liberty and the Rule of Law*, Washington U. School of Law, Nov. 4, 2010, University of Chicago School of Law, Nov. 5, 2010, and Indiana University Maurer School of Law, Nov. 19, 2010
- *Open Hearts, Open Minds, and Fair-Minded Words*, closing plenary panelist on *Abortion in America: Should It Be A Constitutional Question?*, Princeton University, Oct. 15-16, 2010
- *Reflections on My Nomination and the Confirmation Process*, plenary speaker, American Constitution Society National Convention, Washington, D.C., June 17, 2010
- Center for American Progress, panelist, Release of *Change for America: A Progressive Blueprint for the 44th President*, Washington D.C., Nov. 12, 2008
- Planned Parenthood Central Region Conference, *Meet at the Crossroads: Where Ideas Intersect*, workshop, Indianapolis, Indiana, Nov. 8, 2008
- *The Future of Sexual and Reproductive Rights*, panel on *Roe's Future*, Yale Law School, Oct. 10-12, 2008
- *Advancing the Health of Women and Families*, Planned Parenthood Federation of America, Policy Summit, Washington, DC, July 17, 2008
- *Restoring Justice: The Politicization of the Department of Justice and How to Revive It*, panelist, American Constitution Society, Lawyer's Chapter for the Bay Area, Palo Alto, July 15, 2008
- *Reproductive Rights Legal Scholars Convening*, Center for Reproductive Rights, New York, June 16, 2008

- *Roundtable on Reproductive Justice*, Teaching and Scholarship Initiative, Stanford Law School, May 9, 2008
- *Preparing a Reproductive Rights Agenda for the Next Administration*, National Partnership for Women and Families & National Women's Law Center, panelist, March 20, 2008
- *The New Separation of Powers: Parties, Politics, and the Presidency*, panelist, Yale Law School, Oct. 12, 2007
- *The Presidency in the Twenty-First Century*, panelist on *Sources of Presidential Power*, Boston University, Oct. 11, 2007
- *Principles to Guide the Department of Justice under the Next Attorney General*, panelist, National Press Club, Washington, DC, Oct. 10, 2007
- *Presidential Law Stories*, Duke Law School, Sept. 14-16, 2007
- National Constitution Center Summer Teachers' Workshop, *Changing the Constitution: Politics and Law in American Constitutional Development*, lecture on *Presidential Constitutional Construction*, Philadelphia, Penn., Aug. 2, 2007
- *Presidential Power in an Age of Terror*, panelist, Indiana University Center on Law and Society and Culture, Apr. 5, 2007
- Norman Amaker Public Interest Law & Social Justice Retreat, speaker, Bradford Woods, Indiana, Feb. 24, 2007
- *Constitutional Niches*, panelist on Executive Power, UCLA School of Law, Feb. 2, 2007
- American Association of Law Schools, Annual Convention, *Emerging Issues in Reproductive Rights*, panelist, Washington, D.C., Jan. 4, 2007
- *Quiet Revolution*, panelist on release of film, Alliance for Justice/Center for American Progress, Washington, DC, Oct. 10, 2006 (film inspired in part by my scholarship)
- *Separation of Powers: Restoring the Balance Among the Branches*, plenary panelist, American Constitution Society National Convention, Washington, D.C., June 16, 2006
- *Equality and Reproductive Rights*, moderator, Columbia Law School, Mar. 3-4, 2006

- *The Nomination of Samuel A. Alito, Jr.*, panelist, Center for American Progress/American Constitution Society, Washington, D.C., Jan. 4, 2006
- *Replacing the Justice in the Middle: Selection Standards, Superprecedents and Constitutional Change*, University of North Carolina School of Law, November 17, 2005, and Duke Law School, Nov. 16, 2005
- *War, Terrorism and Torture: Limits on Presidential Power for the 21<sup>st</sup> Century*, opening speaker, Indiana University School of Law—Bloomington, Oct. 7, 2005 (conference organizer)
- *The Constitution in the 21<sup>st</sup> Century*, panelist on *Reproductive Rights in the 21<sup>st</sup> Century*, American Constitution Society national convention, July 28-31, 2005
- *The Constitution in 2020*, opening speaker, Yale Law School, Apr. 8-10, 2005 (conference inspired in part by my scholarship)
- *The Rehnquist Legacy*, panelist on *Abortion: A Mixed and Uncertain Legacy*, Indiana University School of Law—Bloomington, Apr. 1-2, 2005
- *Terrorism and the Rule of Law*, panelist on *Does a Different Kind of War Demand a Different Constitutional Understanding?* University of Chicago Law School, Oct. 22-23, 2004
- *Advising the Executive: Torture and the Office of Legal Counsel*, University of Virginia School of Law, Nov. 2004
- *Interrogation, Detention, and the Powers of the Executive*, panelist on *The Role of Lawyers in the War against Terrorism*, Duke Law School, Sept. 16-18, 2004
- *Reproductive Rights: Framing the Agenda*, panelist, first national convention of the American Constitution Society Washington, D.C., Aug. 1-3, 2003
- *Marbury v. Madison: 1803-2003: Deux Siecles de Censure Judiciare sur les Lois*, panelist on *Judicial Supremacy Two Centuries After Marbury: The President and Congress and the Determination of Constitutional Meaning*, Centre de Droit Americain of Paris II, Feb. 28-29, 2003
- *The Constitution and Other Legal Systems: Are There Progressive and Conservative Versions?* panelist on *Functional Departmentalism and Reproductive Rights*, Duke Law School, Dec. 13-15, 2002
- *National Strategy Conference on the Rehnquist Court Rollback of Civil Rights*, panelist on *Congressional Power and Federalism*, Columbia Law School, Oct. 3-5, 2002

- *Congress and the Court*, panelist, U.S. Court of Appeals for the Fifth Circuit Judicial Conference, Dallas, Texas, May 1-3, 2002
- *The Assault of Federalism on Civil Rights: Developing New Strategies to Protect Civil Rights in a Conservative Era*, panelist, inaugural conference of the Equal Justice Society, Harvard Law School, Apr. 5-6, 2002
- *Non-Consensual Testing of Pregnant Women: The Implications for Women's Equality of Ferguson v. City of Charleston*, Duke Law School, Feb. 2001
- *Congressional Power in the Shadow of the Rehnquist Court*, conference organizer and panelist on *Implications for the Separation of Powers*, Indiana University School of Law–Bloomington, Feb. 1-2, 2002
- *Executive Power after the Clinton Administration*, panelist, ABA Administrative Law Section Annual Meeting, Washington, D.C., Oct. 12, 2000
- *The Constitution Under Clinton: A Critical Assessment*, conference, presented lead paper on *Executive Authority*, Duke Law School, Sept. 23-25, 1999
- *Nixon Now: Presidential Power and Executive Privilege Twenty-Five Years Later*, conference commentator on panel on *The Scope of the Doctrine(s) of Executive Privilege*, University of Minnesota Law School, Oct. 24, 1998
- Numerous other events sponsored by law schools and universities, bar associations, public interest and community organizations
- Numerous television and radio appearances, including The Jim Lehrer Newshour, Nightline, MSNBC's The Ed Show, Crossfire, CBS This Morning, and The Today Show

## **CONGRESSIONAL TESTIMONY**

*Executive Nominations: Confirmation Hearing for Dawn E. Johnsen to be Assistant Attorney General for the Office of Legal Counsel, U.S. Department of Justice*, U.S. Senate Committee on the Judiciary, Feb. 25, 2009

*Restoring the Rule of Law*, Subcommittee on the Constitution, U.S. Senate Committee on the Judiciary, Sept. 16, 2008 (joint written testimony)

*Secret Law and the Threat to Democratic and Accountable Government*, Subcommittee on the Constitution, U.S. Senate Committee on the Judiciary, Apr. 30, 2008

*Confirmation Hearings of Michael Mukasey to be Attorney General*, Panel on the Department of Justice, U.S. Senate Committee on the Judiciary, Oct. 18, 2007

*Proposed Legislation to Deny Citizenship at Birth to Certain Children Born in the United States*, Subcommittee on Immigration and Claims, U.S. House of Representatives  
Committee on the Judiciary, June 25, 1997

*Improper Granting of U.S. Citizenship to Individuals with Criminal Records*,  
Subcommittee on National Security, International Affairs and Criminal Justice,  
Committee on Government Reform and Oversight, and Subcommittee on Immigration  
and Claims, U.S. House of Representatives Committee on the Judiciary, Mar. 5, 1997

*The Balanced Budget Amendment*, U.S. Senate Committee on the Judiciary, Jan. 22, 1997