

# Zoe Niesel

Professor of Law

University of South Carolina Joseph F. Rice School of Law

## LEGAL EDUCATION EXPERIENCE

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### **University of South Carolina Joseph F. Rice School of Law, Professor of Law**

*Columbia, SC*

- Professor of Law (2025-present)
- Faculty Director of the AI Ethics and Law Initiative
- Courses: Civil Procedure, Legal and Equitable Remedies, Drafting with Generative AI
- Research and Scholarship Areas: Law and Technology, Civil Procedure, Federal Courts, Administrative Law, Legal Education
- Committee Service: Appointments Committee; Library and Technology Committee

### **St. Mary's University School of Law, Albert Herrman Professor of Law and Associate Dean for Academic Affairs**

*San Antonio, TX*

- Assistant Professor of Law (2016-2020); Associate Professor of Law (2020-21); Professor of Law (2021-2025)
- Courses: Artificial Intelligence Law and Policy, Civil Procedure, Administrative Law, Environmental Law, Writing Seminar
- Research and Scholarship Areas: Law and Technology, Civil Procedure, Federal Courts, Administrative Law, Legal Education
- Administrative Roles: Associate Dean for Academic Affairs (2021-2025)
  - Serve as the School of Law's chief academic officer, responsible for the curriculum and academic program, academic standards, academic integrity, and assessments. Also oversee the law school's support staff, IT, departmental programming, and data management.
- Committee Service: Dean's Executive Committee, Faculty Appointments Committee, Dean Search Committee, JD Standards Committee, Bar Passage Committee, Curricular Reform Committee, Advocacy Committee (Chair)

### **Wake Forest University School of Law, Visiting Assistant Professor of Law**

*Winston-Salem, NC*

- Courses Taught: Civil Procedure I, Civil Procedure II, Complex Civil Litigation, Transnational Civil Litigation, History of the English Common Law
- Research areas: Civil Procedure, Conflict of Laws
- Administrative Roles: Director and Resident Faculty Member for the Summer Study Abroad Program in London
- Coach of ABA National Appellate Advocacy Team
  - Regional Finalists in 2014
  - Regional Champions in 2015
- Committee Service: Order of Barristers Committee

## PUBLICATIONS AND PRESENTATIONS

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### Articles

- *Hertz and the Hard Cases: Fifteen Years of the Nerve Center Test*, 74 University of Kansas Law Review 49 (2025).
  - Fifteen years after *Hertz v. Friend* adopted the “nerve center” test for corporate citizenship in diversity cases, hard cases still arise when corporations have layered parent-subsidary structures or executives dispersed across locations or working remotely. Reviewing roughly fifty post-*Hertz* decisions, this Article examines how courts grapple with imputing a nerve center within complex corporate families and pinpointing decision-making power in decentralized management, identifying several ranked factors that courts examine in these scenarios to determine where real decision-making power is located.
- *The Collateral Order Doctrine's Administrative Odyssey: Ending the Question of Interlocutory Review for Administrative Agency Determinations*, 76 Alabama Law Review 647 (2025).
  - This Article tackles the unsettled question of when the collateral order doctrine, traditionally used to allow interlocutory appeals of certain non-final district court decisions, can be applied to provide immediate appellate review of administrative agency determinations. By analyzing the historical background, policy considerations, and practical implications, this article proposes that the collateral order doctrine should be generally applicable to administrative decisions, regardless of the specific language used in the agency’s organic statute. This pragmatic approach to the application of the collateral order doctrine focuses on the practical impact of agency actions and interests at stake, rather than relying solely on rigid textual analysis.
- *An Artificial Intelligence Report Card for Judicial Review*, 14 Michigan Journal of Environmental and Administrative Law 143 (2025).
  - This Article summarizes current agency uses of AI techniques like machine learning and proposes an “AI report card” to focus judicial review on key explainability factors that should be evaluated when courts review an agency’s use of AI models in relation to the arbitrary and capricious standard or the substantial evidence standard. These factors include an AI model’s training data, validation methods, performance metrics, and uses. By examining these issues, courts can meaningfully assess the reasonableness of agency reliance on AI for decisions. As agencies migrate more decisions to “black box” AI systems, this article’s AI report card is crucial for transparency.
- *Artificial Intelligence x Arbitrary and Capricious*, 25 Minnesota Journal of Law and Technology 1 (2024).
  - This Article examines the ability of current generative AI platforms, like ChatGPT, to organize and apply legal standards like the arbitrary and capricious standard of review. The Article examines the current view regarding AI’s ability to engage in judicial discretion and standard setting. The Article then explores if a generative AI platform like ChatGPT can clarify aspects of the arbitrary and capricious standard of review and concludes that while current generative AI may be helpful in several areas like determining procedural compliance, generating analytical checklists, or helping organize component pieces of various legal standards, it fails to conduct the deep scrutiny required of an arbitrary and capricious review.

- *Crypto Contacts: Jurisdiction and the Blockchain*, 98 Tulane Law Review 917 (2024).
  - This Article determines that the Supreme Court’s 1977 decision in *Shaffer v. Heitner* requires the application of a minimum contacts analysis to in rem and quasi in rem jurisdiction, meaning that the location of property in a forum on its own can no longer serve as the sole basis for jurisdictional power. This Article then determines that cryptocurrency is best categorized as intangible property for purposes of a *Shaffer* analysis. This conclusion dovetails with *Shaffer*’s requirement of a minimum contacts analysis – the Article’s proposed rules tell us in which forums the cryptocurrency is “located,” but due process will always mandate a finding that there is a connection between the cryptocurrency, the forum, and the claims at issue.
  
- *Seismic Shifts: Post-COVID Legal Education and the Profession*, 15 Elon Law Review 81 (2023) (special symposium edition to discuss COVID-19 and the legal profession).
  - This article examines the history of shifts in legal education, including the adoption of the case recitation method of learning, the adoption of clinical and practical training, and finally the shift towards increased online education. The Article examines these earlier shifts and the crises that created them, their impact on curricular practices, and how they compare to the impact of COVID-19 on the approach to legal education. Specifically, the Article determines that like earlier shifts, the shift in legal education because of COVID-19 is the result of both pressure inside law schools, but also changing forces externally that mandate a new approach, including the use of remote work and remote court proceedings.
  
- *The AOC in the Age of COVID – Pandemic Preparedness Planning in the Federal Courts*, 53 St. Mary’s Law Journal 157 (2022).
  - This Article examines the Administrative Office of the Courts’ pandemic response planning in light of COVID-19 and finds support in the Federal Rules of Civil Procedure, specifically Rules 1, 4, and 16, for more aggressive use of remote hearings, electronic service, and text updates to increase the speed of justice in the post-pandemic world. The Article begins by examining pandemic planning efforts by the federal courts starting in the early 1900s and traces pandemic response measures in the courts with regard to the Spanish flu, H1N1, and Ebola. The Article then examines the measures taken during COVID-19 to keep the courthouse doors open, including a statistical analysis of district court and circuit court approaches. Finally, the Article examines the Administrative Office of the Courts’ current pandemic preparedness plan and finds support in several federal rules to unify response planning through text and social media service of process, remote appearance, and consolidation of related matters.
  
- *Machine Intelligence and the New Civil Procedure*, 73 SMU Law Review 493 (2020).
  - This Article assesses the impact that technological developments have had on civil procedure, from transportation, to computers and the internet, to the newest era of Web 2.0. The paper then explores machine learning, discovering that many of these applications involve increased commerce conducted by intelligent programs that has the potential to result in contract and tort causes of action. The paper argues that the procedural doctrines of notice and personal jurisdiction will need to be adjusted to recognize that jurisdiction might be possible in all fora in which an intelligent program is operating, even if it goes beyond the program creator’s initial intent. As such, the paper proposes a more flexible view of personal jurisdiction to recognize directed technological contacts with specific fora as the basis for a court’s power.

- *Putting Poverty Law into Context: Using the First Year Experience to Educate New Lawyers for Social Change*, 76 NYU Annual Survey of American Law 97 (2020) (special symposium edition to honor Marion Wright Edelman).
  - This Article addresses two problems in legal education – the problem of initiating more social justice and service-based learning, and the problem of placing legal skills problems in their social context – into a harmonious solution. Specifically, the paper proposes integrated learning experiences that identify issues surrounding poverty in the local community and encourage students to use legal analysis, communication, cultural competency, and writing skills to serve clients living in poverty.
- *Terrible Touhy: Navigating Judicial Review of an Agency’s Response to Third-Party Subpoenas*, 41 Cardozo Law Review 1499 (2020) – cited by *Russell v. Jones*, 49 F.4th 507 (5th Cir. 2022) and *Jacob v. Witty*, No. 8:22CV135, 2022 WL 4324962 (D. Neb. Sept. 19, 2022).
  - This Article establishes that the circuit courts’ approaches to judicial review of an agency’s noncompliance with a subpoena are largely divided over the academic question of sovereign immunity. For the Fourth and Eleventh Circuits, only the Administrative Procedure Act (APA) provides the necessary waiver of sovereign immunity that allows a court to review agency action; accordingly, review of an agency’s failure to comply with a subpoena is analyzed under the APA’s “arbitrary and capricious” standard. For the Ninth and D.C. Circuits, the federal courts have broad, implicit power over discovery, and Federal Rule of Civil Procedure 45 is applied as it would be in all other cases. This Article seeks to reconcile these competing lines of authority by proposing that the APA’s waiver of sovereign immunity still applies when an agency runs afoul of discovery standards contained in Federal Rule 45.
- *#PersonalJurisdiction: A New Age of Internet Contacts*, 94 Indiana Law Journal 103 (2019) – cited by *Fidrych v. Marriott Int’l, Inc.*, 952 F.3d 124 (4th Cir. 2020) and *Shippitsa Ltd. v. Slack*, No. 3:18-CV-1036-D, 2019 WL 2372687 (N.D. Tex. June 5, 2019).
  - This Article establishes that current approaches used when personal jurisdiction and the internet collide are straining under technological developments. The premiere approach to internet jurisdiction is the so-called “*Zippo* test,” which bases personal jurisdiction on whether a website is “interactive.” The *Zippo* approach has left the case law inconsistent and does not account for recent innovations, such as social media, targeted advertising, artificial intelligence, and bots. This Article proposes a shift in the way courts should think about personal jurisdiction and website interactivity. Specifically, this Article proposes that the time has come to embrace a revised analysis that incorporates traditional fairness factors with the defendant’s implicit acknowledgement that the internet is targeting a national forum.
- *The Knottiest Problem: Unraveling Arising Under Jurisdiction in Copyright Cases*, 23 George Mason Law Review 697 (2016) (with Bethany Corbin) – cited by *Pagidas v. Buster*, No. CV 16-390S, 2016 WL 11545018 (D.R.I. Nov. 16, 2016).
  - This Article tackles the difficult issues that have arisen due to the unsettled nature of copyright jurisdiction under 28 U.S.C. § 1338. Specifically, the Article tracks three different analytical frameworks currently employed by courts to determine whether federal jurisdiction is appropriate in a case implicating copyright issues or concerns. The Article asserts that all three of these approaches leave open the possibility of jurisdictional gamesmanship and instead proposes an alternative two-step approach that requires courts to wait for an answer before determining whether the lawsuit as a whole requires construction of the Copyright

Act, an analysis of an underlying copyright, or is seeking an exclusive remedy provided by the Copyright Act.

- *Daimler and the Jurisdictional Triskelion*, 82 Tennessee Law Review 833 (2015).
  - This Article challenges the current three basis test for general jurisdiction articulated by the Supreme Court in *Daimler AG v. Bauman*. Specifically, this Article addresses the lack of a theoretical foundation that has plagued general jurisdiction and determines that the best candidate for such is state sovereignty. Accordingly, this Article asserts that corporate activities that have traditionally been considered indicative of corporate citizenship in a forum should provide the best markers for determining where dispute-blind jurisdiction is appropriate, including where a corporation maintains offices, employees, and strategic corporate decision-makers.

## Books

- *Legal Research Guide: Patterns and Practice* (Carolina Academic Press, 9th ed. 2026) (with Linda Schlueter)
  - This practical book provides guidance for students and lawyers as they research complex legal problems. The purpose of this book is to provide a simple step-by-step guide to the basic hard copy research processes. In the ninth edition, significant focus is devoted to using artificial intelligence within the legal research process.

## Selected Presentations

### Civil Procedure and Administrative Law Presentations

- *Hertz and Corporate Citizenship* – Southeastern Association of Law Schools, Summer 2025
- *Supreme Court Update – Civil Procedure*, St. Mary’s University School of Law Faculty Presentation Series, Fall 2024
- *The Collateral Order Doctrine's Administrative Odyssey*, Ninth Annual Civil Procedure Workshop, May 2024
- *Artificial Intelligence x Arbitrary and Capricious*, University of Minnesota, Spring 2024
- *U.S. Administrative Law – An Overview*, Administrative Justice Tribunal of the State of Mexico, November 2023
- *Supreme Court Update – Civil Procedure*, St. Mary’s University School of Law Faculty Presentation Series, Fall 2023
- *Practical Administrative Law for 2022*, Enforcement Training Series for Board of Accountancy Executive Directors, Fall 2022
- *The Long Road of Personal Jurisdiction*, Stetson Law School Law Review Symposium, Spring 2021
- *Personal Jurisdiction and the Roberts Court*, Southeastern Association of Law Schools, August 2020
- *Machine Learning and the New Civil Procedure*, Chicagoland Junior Scholars Conference, September 2019
- *Machine Learning and Class Actions*, Southeastern Association of Law Schools, August 2019
- *Updates in the World of Administrative Law – Due Process*, National Conference for the Association of State Boards of Accountancy, March 2019

- *#PersonalJurisdiction: A New Age of Internet Contacts*, University of Arkansas School of Law, March 2018
- *Reclaiming General Jurisdiction*, Southeastern Association of Law Schools Annual Conference, July 2015
- *The Mythos of Jurisdictional Retaliation*, Younger Comparativists Committee of the American Society of Comparative Law Annual Conference, April 2015
- *A Jurisdictional Triskelion*, Wake Forest University Faculty Presentation, April 2014

### Legal Education Presentations

- *Using a Clinical Judgement Model for Law Students*, Legal Education's Next Generation: Embracing Online, ChatGPT, and Technology in Pedagogy and Practice, September 2023 (conference organizer)
- *Supporting the ABA's First Fully Online J.D. Program*, American Association of Academic Support Educators Conference, May 2023
- *Innovations in Legal Education – Online Learning*, National Conference of Bar Examiners Annual Conference, Spring 2022
- *Panelist on Legal Education, The Law of COVID-19: Courts, Education, and Civil Rights*, Elon Law Review Symposium, September 2022
- *Using Academic Support Techniques in the Doctrinal Classroom: One Civil Procedure Professor's Experience*, Southwestern Consortium of Academic Support Professionals Conference, March 2020
- *Developing Conscious Lawyers: Using the 1L Skills Curriculum to Increase Student Awareness and Sensitivity to Poverty and Homelessness*, American Association of Academic Support Educators Bi-Annual Diversity Conference, October 2019
- *Using Data to Drive Bar Exam Outcomes – Thoughts and Messaging*, Southeastern Association of Law Schools Annual Conference, August 2019.
- *Next-generation Data Analytics and Individualized Interventions for Bar Takers*, American Association of Academic Support Educators Conference, May 2019 (with Michael Barry).
- *A More Perfect Union: Merging Academic Skills and Legal Writing into a Coherent 1L Curriculum*, Southwestern Consortium of Academic Support Professionals Conference (March 2019)
- *Scaling Academic Support: Using Formative Assessments to Drive Data-driven, Effective, and Inexpensive Remediation Programs Tailored to Each Student's Individual Needs*, American Association of Academic Support Educators Conference, May 2018 (with Michael Barry)
- *Preparing Students for Summer Employment: Incorporating Partner Meetings*, University of Houston School of Law, December 2017
- *Critical Thinking in the New Generation of Students*, Delta Kappa Gamma International Education Society's Annual Founder's Day, May 2017

## **EDUCATION**

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**Wake Forest University School of Law**, Winston-Salem, NC  
J.D., *summa cum laude*

**Southern Methodist University**, Dallas, TX  
B.A. in Anthropology, *magna cum laude*

## **BAR ADMISSIONS**

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State of Texas

State of North Carolina (inactive)