

## JAY TIDMARSH

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### PROFESSIONAL EXPERIENCE

- 2017-present.** Judge James J. Clynes, Jr., Professor of Law, Notre Dame Law School  
**1999-present.** Professor of Law, Notre Dame Law School  
**2011-14.** Diane and M.O. Miller, II Research Professor of Law, Notre Dame Law School  
**2003.** Visiting Professor of Law, Harvard Law School  
**2000.** Visiting Professor of Law, University of Michigan Law School  
**1989-99.** Associate Professor of Law, Notre Dame Law School (tenured 1995)

- Subjects: Complex Civil Litigation, Civil Procedure, Torts, Federal Courts, Remedies, Evidence, Conflict of Laws, Constitutional Law I, Constitutional Law II, Contracts, Civil Rights Actions, Modern Tort Liability, Products Liability, Comparative US/UK Products Liability Law, International Environmental Law
- Teacher of the Year, 1995, 2005, 2012
- Black Law Students' Association Teacher of the Year, 1997, 2003, 2005, 2012

**1982-89.** Trial Attorney, Torts Branch, United States Department of Justice

### EDUCATION

**1982.** J.D. *magna cum laude*, Harvard Law School

- Member, Board of Student Advisers (Chair, First Year Regular Ames Moot Court Competition, 1982)
- Teaching Assistant, Federal Litigation (David Rosenberg, 1981)

**1979.** A.B. *with highest honors*, University of Notre Dame

- Major in History

## **PUBLICATIONS**

### *Books:*

- JAY TIDMARSH & ROGER H. TRANGSRUD, *COMPLEX LITIGATION AND ITS ALTERNATIVES* (forthcoming Foundation Press 2017)
- Thomas D. Rowe, Jr., Suzanna Sherry & Jay Tidmarsh, *CIVIL PROCEDURE* (4th ed. Foundation Press 2016)
- Annual Developments and Rules Supplement (2016)
- Jay Tidmarsh, *CLASS ACTIONS: FIVE PRINCIPLES TO PROMOTE FAIRNESS AND EFFICIENCY* (LexisNexis 2013)
- Jay Tidmarsh, *STRATEGIES AND TECHNIQUES FOR TEACHING CIVIL PROCEDURE* (Aspen Publishers 2012)
- Thomas D. Rowe, Jr., Suzanna Sherry & Jay Tidmarsh, *CIVIL PROCEDURE* (3d ed. Foundation Press 2012)
- Annual Developments and Rules Supplement (2012)
  - Annual Developments and Rules Supplement (2013)
  - Annual Developments and Rules Supplement (2014)
  - Annual Developments and Rules Supplement (2015)
- Jay Tidmarsh & Roger H. Trangsrud, *MODERN COMPLEX LITIGATION* (2d ed. Foundation Press 2010)
- Thomas D. Rowe, Jr., Suzanna Sherry & Jay Tidmarsh, *CIVIL PROCEDURE* (2d ed. Foundation Press 2008)
- Annual Developments and Rules Supplement (2008)
  - Annual Developments and Rules Supplement (2009)
  - Annual Developments and Rules Supplement (2010)
  - Annual Developments and Rules Supplement (2011)
- Suzanna Sherry & Jay Tidmarsh, *CIVIL PROCEDURE: THE ESSENTIALS* (Aspen Publishers 2007)
- Thomas D. Rowe, Jr., Suzanna Sherry & Jay Tidmarsh, *CIVIL PROCEDURE* (Foundation Press 2004)
- Annual Developments and Rules Supplement (2005)
  - Annual Developments and Rules Supplement (2006)
  - Annual Developments and Rules Supplement (2007)
- Jay Tidmarsh & Roger H. Trangsrud, *COMPLEX LITIGATION: PROBLEMS IN ADVANCED CIVIL PROCEDURE* (Foundation Press 2002)
- Jay Tidmarsh & Roger H. Trangsrud, *COMPLEX LITIGATION AND THE ADVERSARY SYSTEM* (Foundation Press 1998)
- Teacher's Update (1999)
  - Supplement (2000)
- Jay Tidmarsh, *MASS TORT SETTLEMENT CLASS ACTIONS* (Federal Judicial Center 1998)

*Book Chapters:*

- Jay Tidmarsh, *Chapter 71.1 (Condemning Real or Personal Property)*, in MOORE'S FEDERAL PRACTICE (periodic updates)
- Jay Tidmarsh, *The Story of Hansberry: The Rise of Modern Class Actions*, in CIVIL PROCEDURE STORIES 233 (Kevin Clermont ed., 2d ed., Foundation Press 2008)
- Jay Tidmarsh, *The Story of Hansberry: The Foundation for Modern Class Actions*, in CIVIL PROCEDURE STORIES 217 (Kevin Clermont ed., Foundation Press 2004)

*Articles and Book Reviews:*

- Jay Tidmarsh, *The English Fire Courts and the Seventh Amendment's Right to Jury Trial*, 83 U. CHI. L. REV. 1893 (2016)
- Jay Tidmarsh, *The Future of Oral Argument*, 48 LOY. U. CHI. L.J. 475 (2016) (Symposium on Judicial Decisionmaking)
- Jay Tidmarsh, *Diagnosis and Treatment of the "Superiority Problem,"* 69 VAND. L. REV. EN BANC 267 (2016)
- Jay Tidmarsh, *Realising the Promise of Costs Budgets: An Economic Analysis*, 35 CIVIL JUSTICE Q. 219 (2016)
- Jay Tidmarsh, *The Litigation Budget*, 68 VAND. L. REV. 855 (2015)
- Jay Tidmarsh, *Resurrecting Trial by Statistics*, 99 MINN. L. REV. 1459 (2015)
- Jay Tidmarsh, *Auctioning Class Settlements*, 56 WM. & MARY L. REV. 227 (2014)
- Jay Tidmarsh, *Cy Pres and the Optimal Class Action*, 82 GEO. WASH. L. REV. 767 (2014) (Symposium on Class Actions)
- Jay Tidmarsh, *Living in CAFA's World*, 33 REV. LITIG. 691 (2013) (Class Action Symposium)
- Jay Tidmarsh, *Superiority as Unity*, 107 NW. U. L. REV. 565 (2013) (Festschrift for Martin Redish)
- Linda Sandstrom Simard & Jay Tidmarsh, *Foreign Citizens in Transnational Class Actions*, 97 CORNELL L. REV. 87 (2011)
- Jay Tidmarsh, *Procedure, Substance, and Erie*, 64 VAND. L. REV. 877 (2011)
- Jay Tidmarsh, *Foreword: Erie's Gift*, 44 AKRON L. REV. 897 (2011) (Symposium on *Shady Grove*)
- David Betson & Jay Tidmarsh, *Optimal Class Size, Opt-Out Rights, and "Indivisible" Remedies*, 79 GEO. WASH. L. REV. 542 (2011) (Symposium on the ALI Aggregate Litigation Project)
- Jay Tidmarsh, *Resolving Cases "On the Merits,"* 87 DENV. U. L. REV. 407 (2010) (Symposium on Procedural Reform)
- Jay Tidmarsh, *Exiting Litigation*, 41 LOY. U. CHI. L.J. 263 (2010) (Symposium on the Judiciary in the Twenty-First Century))
- Jay Tidmarsh, *Rethinking Adequacy of Representation*, 87 TEX. L. REV. 1137 (2009)
- Paul F. Figley & Jay Tidmarsh, *The Appropriations Power and Sovereign Immunity*, 107 MICH. L. REV. 1207 (2009)
- Jay Tidmarsh, *Foreword*, 22 NOTRE DAME. J.L. ETHICS & PUB. POL'Y 225 (2008) (Symposium on the Judiciary)

- Jay Tidmarsh, *Finding Room for State Class Actions in a Post-CAFA World: The Case of the Counterclaim Class Action*, 35 W. ST. U. L. REV. 193 (2007) (Symposium on State Civil Procedure)
- Jay Tidmarsh, “*The Dean of Chicago’s Black Lawyers*”: *Earl Dickerson and Civil Rights Lawyering in the Years Before Brown*, 93 VA. L. REV. 1355 (2007) (book review)
- Jay Tidmarsh & Brian J. Murray, *A Theory of Federal Common Law*, 100 NW. L. REV. 585 (2006)
- Jay Tidmarsh, *Pound’s Century, and Ours*, 81 NOTRE DAME L. REV. 513 (2006)
- Jay Tidmarsh, *Looking Forward*, in 1 SEDONA CONF. J. 1 (2000)
- Jay Tidmarsh, Book Review, 80 J. RELIG. 702 (2000)
- Jay Tidmarsh, *A Dialogic Defense of Alden*, 75 NOTRE DAME L. REV. 1161 (2000)
- Jay Tidmarsh, *Whitehead’s Metaphysics and the Law: A Dialogue*, 62 ALB. L. REV. 1 (1998)
- Jay Tidmarsh, *Civil Procedure: The Last Ten Years*, 46 J. LEGAL EDUC. 503 (1996)
- Jay Tidmarsh, *A Process Theory of Torts*, 51 WASH. & LEE L. REV. 1313 (1994)
- Jay Tidmarsh, *Unattainable Justice: The Form of Complex Litigation and the Limits of Judicial Power*, 60 GEO. WASH. L. REV. 1683 (1992)
- Jay Tidmarsh, *Tort Law: The Languages of Duty*, 25 IND. L. REV. 1419 (1992)

*Other Publications:*

- Jay Tidmarsh, *Discovery Costs and Default Rules*, JOTWELL (Courts Law) available at <http://courtslaw.jotwell.com/discovery-costs-and-default-rules/> (Dec. 19, 2016)
- Jay Tidmarsh, *The Great Fire that consumed London*, available at <http://www.cnn.com/2016/09/02/opinions/the-great-fire-that-consumed-london/index.html> (Sept. 2, 2016)
- Jay Tidmarsh, *Can We Talk Money?*, JOTWELL (Courts Law) available at <http://courtslaw.jotwell.com/can-we-talk-money/> (Jan. 19, 2016)
- Jay Tidmarsh, *Out of Court, Out of Luck*, U.S. News, available at <http://www.usnews.com/opinion/economic-intelligence/2015/03/19/consumer-protection-bureau-arbitration-report-provides-much-needed-data?int=a39d09&int=a55a09> (March 19, 2015)
- Jay Tidmarsh, *The Settler-in-Chief*, JOTWELL (Courts Law) available at <http://courtslaw.jotwell.com/the-settler-in-chief/> (March 17, 2015).
- Jay Tidmarsh, *Jackson*, JOTWELL (Courts Law), available at <http://courtslaw.jotwell.com> (Feb. 17, 2014)
- Jay Tidmarsh, *Adequacy and the Attorney General*, JOTWELL (Courts Law), available at <http://courtslaw.jotwell.com/adequacy-and-the-attorney-general/> (May 1, 2013)
- Jay Tidmarsh, *Cost in Translation?*, 39 PREVIEW OF UNITED STATES SUPREME COURT CASES 194 (Feb. 20, 2012)
- Jay Tidmarsh, *Access to Courts and the Democratic Order*, JOTWELL (Courts Law), available at <http://courtslaw.jotwell.com/access-to-courts-and-the-democratic-order/> (January 30, 2012)

Linda Sandstrom Simard & Jay Tidmarsh, *Foreign Citizens in Transnational Class Actions*, THE LEGAL WORKSHOP, available at <http://legalworkshop.org/2011/10/17/foreign-citizens-in-transnational-class-actions> (October 17, 2011)

Jay Tidmarsh, *Can a Defendant Who Prevails on a Civil Rights Claim Recover Attorneys' Fees When the Plaintiff's Related State-Law Claims Survive?*, 38 PREVIEW OF UNITED STATES SUPREME COURT CASES 239 (March 21, 2011)

Brief of *Amici Curiae* Law Professors in Support of Petitioner Goss International Corp., No. 07-618 (U.S. Sup. Ct., filed Dec. 10, 2007), with Salil Mehra

Jay Tidmarsh, *Monroe v. Pape*, in ENCYCLOPEDIA OF AMERICAN CIVIL LIBERTIES (Routledge 2006)

Jay Tidmarsh, *Younger v. Harris*, in ENCYCLOPEDIA OF AMERICAN CIVIL LIBERTIES (Routledge 2006)

Jay Tidmarsh, *Honoring David Shapiro*, 79 NOTRE DAME L. REV. preceding p. 1677 (2004)

Jay Tidmarsh, "Agent Orange Heads to the Supreme Court," *Jurist*, <http://jurist.law.pitt.edu/forum/forumnew81.php> (December 18, 2002)

Jay Tidmarsh, "Democracy, Globalization, and Law: Some Cautionary Reflections," prepared for "Democracy, Globalization, and Law" Conference (2002)

Jay Tidmarsh, *Mass Tort Settlement Class Actions: Five Case Studies and Their Implications for the Reform of Rule 23* (Federal Judicial Center 1998)

Jay Tidmarsh, *In Memoriam: Father Bill Lewers*, 24 J. LEGIS. 1 (1997)

Jay Tidmarsh, "Mandatory Pre-discovery Disclosure in the Northern District of Indiana," App. 8, pp. 1-12, in Melinda B. Thaler & Ettie Ward, ed., *MANDATORY PREDISCOVERY DISCLOSURE: A FIRST LOOK* (American Bar Ass'n 1994)

Jay Tidmarsh, *The Civil Justice Reform Act in the Northern District of Indiana*, published in *Federal Civil Practice* (Ind. Continuing Legal Educ. Forum, 1994) Advisory Committee Notes, *Local Rules for the Northern District of Indiana* (1993)

Report of the Advisory Group on the Reduction of Cost and Delay in Civil Cases (with Hon. Robert L. Miller, Jr.) (1991)

Jay Tidmarsh, *Indemnity and Contribution* (Torts Branch Monograph, 1987)

Jay Tidmarsh, *Actionable Duty* (Torts Branch Monograph, 1987)

## **EDITORIAL POSITIONS**

Legal Editor, Twelve Tables Press (2003-present)

## **PEER REVIEWER**

Conducted peer reviews for *Harvard Law Review*; *Yale Law Journal*; *Stanford Law Review*; *Law & Society Review*; Cambridge University Press; Springer; Israel Science Foundation

## SELECTED TESTIMONY, PRESENTATIONS, AND CONFERENCES

- “The MDL as *De Facto* Opt-In Class Action,” MDL Roundtable, George Washington University Law School, April, 2017 (paper presented on my behalf; unable to attend conference)
- “Certifying, Managing, and Closing Class Actions,” Seventh Circuit Annual Conference, Notre Dame Law School, October 2016
- Participant, Subrogation Conference, George Washington University Law School, April 2016
- “Strategies to Enhance the Role of the Individual in the Aggregate,” ALI Young Scholars Conference, New York University Law School, April 2016
- “The Future of Oral Arguments in the District Courts,” Loyola University Chicago Law School, April 2016
- “Realizing the Promise of Costs Budgets: An Economic Analysis,” Society of Legal Scholars Conference, York, United Kingdom, September 2015
- “‘A Choice and Tender Business’: The Fire Courts and Seventeenth Century Legal Reform,” Society of Legal Scholars Conference, York, United Kingdom, September 2015
- “The Parameters of a Rule for Settlement Class Actions,” Class Action Roundtable, George Washington University Law School, April 2015
- “The English Fire Courts and the American Right to Civil Jury Trial,” University of Nevada Law Vegas, William S. Boyd School of Law, March 2015
- Panelist, Panel on Data-Breach and Privacy Class Actions, American Bar Association 18th Annual National Class Action Institute, October 2014
- “Auctioning Class Settlements,” Loyola Law School, February 2014
- “Recent Developments in American Civil Practice,” City University London, November 2013
- “*Cy Pres* and the Optimal Class Action,” George Washington University Law School, March 2013
- “Living in CAFA’s World,” Sections on Litigation and Federal Courts Program, AALS Annual Meeting, New Orleans, January 2013
- “Superiority as Unity,” Northwestern University Law School, March 2012
- “The Superiority Principle,” Vanderbilt Law School, October 2011
- “The Superiority Principle,” Cornell Law School, October 2011
- Commentator, “New Voices in Civil Justice” Workshop, Vanderbilt University Law School, April 2011
- “Importing Due Process Protections in Arbitral Class Actions,” George Washington University Law School, March 2011
- Commentator, “Judges and Judging” Workshop for Junior Faculty, American University (Washington College of Law), September 2010
- “Optimal Class Size, Opt-Out Rights, and ‘Indivisible’ Remedies,” George Washington University Law School, March 2010
- “Exiting Litigation,” Loyola University Chicago School of Law, April 2009
- “Change as a Jurisprudential Concept,” Claremont School of Theology, February 2009
- “Rethinking Class Actions,” Loyola University Chicago School of Law, January 2009
- “Rethinking Adequacy of Representation,” University of Cincinnati Law School, February 2008

“Rethinking Adequacy of Representation,” George Washington University Law School, January 2008  
 “Conditions and Reasons in Rule 23,” DePaul University Law School, October 2007  
 “Conditions and Reasons in Rule 23,” Loyola University Chicago School of Law, October 2007  
 “Choice-of-Law Concerns in the Selection of a Class-Action Rule,” Symposium on State Civil Procedure, Western State University School of Law, April 2007  
 “The Dean of Chicago’s Black Lawyers,” Marquette University Law School Faculty Colloquium, March 2007  
 Panelist, “The Class Action Fairness Act of 2005,” Federal Judicial Television Network, March 2005  
 “Initiatives for the James Humphrey Complex Litigation Center,” George Washington University Law School, October 2004  
 “A Positive Theory of Federal Common Law,” Faculty Workshop, Harvard Law School, November 2003  
 “Law, Democracy, and Human Rights,” Conference on Democracy, Globalization, and Law, Minneapolis. Minnesota, September, 2002  
 Moderator, “The Big Idea in Procedural Scholarship and Teaching,” Section on Civil Procedure Program, AALS Annual Meeting, New Orleans, January 2002  
 Moderator, Panel on the Settlement of Class Actions, Class Action Conference, University of Chicago Law School, October 2001  
 “The Sad State of Procedural Theory,” University of Michigan Law School, October 2000  
 “Evolving Duty Issues,” Department of Justice Federal Tort Claims Act Seminar, July, 2000  
 “Determining the Quantum of Compensation in American Constitutional Litigation,” Conference on Human Rights Remedies, London, England, March 2000  
 “Maintaining the Tradition of Scholarship,” Federal Judicial Center Conference on the Craft of Judging, October, 1999  
 “The Future of Complex Litigation,” Sedona Conference, April, 1999  
 “The Future of Civil Law in the Twenty-First Century,” American Law Institute Annual Meeting, May 1998, *reprinted in* ALI, Remarks and Addresses at the 75<sup>th</sup> Annual Meeting 85 (1998)  
 Testimony before Subcommittee on Immigration and Claims, House Committee on the Judiciary, *reprinted in* Hearing before the Subcommittee on Immigration and Claims, House Committee on the Judiciary on the Judiciary on H.R. 1023 (104th Cong.), (September 19, 1996), at 158-72  
 “Civil Procedure: The Last Ten Years,” AALS Meeting, San Antonio, January 1996

## **PROFESSIONAL ACTIVITIES AND MEMBERSHIPS**

Member, American Law Institute (elected 1998)  
 Member, International Association of Procedural Law, 2013-present  
 Member, Planning Committee, AALS Mid-Year Conference on Constitutional Law (2006-08)  
 Member, AALS Professional Development Committee (2005-08)

Chair, AALS Section on Civil Procedure (2001-02)  
Member, Executive Committee, AALS Section on Civil Procedure (1999-2003)  
Member, Seventh Circuit Appellate Rules Advisory Committee (2000-06)  
Member, Indiana Commercial Court Working Group (2015-16)  
Member, Indianapolis Bar Association Committee on Bar Examinations (2015-16)  
Reporter, Civil Justice Reform Act Advisory Group, Northern District of Indiana (1991-93)  
Reporter, Local Rules Advisory Committee, Northern District of Indiana (1990-92)  
Member, Local Rules Advisory Committee, Northern District of Indiana (1999-present)  
Member, ABA Section of Litigation, Subcommittee on Mandatory Pre-discovery Disclosure Rules (1993)  
Member, State Bar of Wisconsin; United States Supreme Court; United States Courts of Appeal for the Fifth, Seventh, Ninth, and Eleventh Circuits; United States Claims Court

## **LAW SCHOOL AND UNIVERSITY SERVICE**

Provost Advisory Committee, 2001-05  
University Strategic Planning Coordinating Committee, 2001-03  
University Academic Affirmative Action Committee, 2001-02  
Academic Council, 2000-03  
Faculty Senate, 1992-93  
University Committee on the Protection of Human Subjects, 1993-96  
Faculty Development Committee, 2004-06, 2007-08  
Dean Search Committee, 1998-99  
Dean Review Committee, 2013  
Appointments Committee, 1995-99 (Chair 1996-97), 2008  
Promotions Committee, 2012-14  
Clinical Programs Committee, 1995-99 (Chair 1995-99)  
Admissions Committee, 1997-98, 2014-17 (Chair 2014-17)  
Colloquium Committee, 1999-2000, 2007-08, 2015-16  
Upper-Level Writing Requirement Committee, 2006-08 (Chair 2006-08, 2011-12)  
Loan Forgiveness Committee, 2008-09  
Curriculum Committee, 2009-12  
Ad Hoc Committee on Professional Formation, 2012-13  
Ad Hoc Committee on Learning Outcomes, 2015-16 (Chair)  
Graduation Committee, 2014  
Faculty Advisor, *Notre Dame Law Review*, 1999-2007  
Faculty Advisor, *Journal of Legislation*, 1990-99  
Faculty Advisor, American Constitution Society, 2001-present  
Faculty Advisor, LGBT Law Forum, 2016-present