

# **BLAKE ANDREW WATSON**

## **LAW SCHOOL EMAIL AND WEBSITE:**

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## **EMPLOYMENT:**

Samuel A. McCray Chair in Law, University of Dayton School of Law (2019-present)

Professor of Law, University of Dayton School of Law (1992-present)

Research and teaching interests are in the areas of property law, oil and gas law, federal Indian law, environmental law, and water law.

Visiting Professor, Tulane Law School (Spring 1998)

Attorney, Appellate Section, Environment and Natural Resources Division, United States Department of Justice (1982-1992). Assisted in briefing two cases before the United States Supreme Court: *Hodel v. Irving*, 481 U.S. 704 (1987); and *South-Central Timber Development, Inc. v. Wunnicke*, 467 U.S. 82 (1984). Briefed and argued three cases before state supreme courts. Briefed and argued over fifty cases before federal appellate courts.

Judicial Law Clerk (1981-1982). The Honorable Bailey Brown, United States Court of Appeals for the Sixth Circuit, Memphis, Tennessee

## **EDUCATION:**

Duke University School of Law, Durham, North Carolina

J.D. (With Distinction), 1981

Duke Law Journal, 1979-1981

Vanderbilt University, Nashville, Tennessee

B.A. (Summa Cum Laude), Political Science and Business Administration, May 1978

Honors: Phi Beta Kappa

## **BOOKS:**

KANSAS AND KANSANS IN WORLD WAR I (University Press of Kansas 2024)

BUYING AMERICA FROM THE INDIANS: *JOHNSON V. MCINTOSH*, AND THE HISTORY OF NATIVE LAND RIGHTS (University of Oklahoma Press 2012)

### **PERIODICALLY UPDATED DOCUMENT:**

Blake Watson, *Hydraulic Fracturing Tort Litigation Summary*, available at [https://www.udayton.edu/directory/law/documents/watson/blake\\_watson\\_hydraulic\\_fracturing\\_primer.pdf](https://www.udayton.edu/directory/law/documents/watson/blake_watson_hydraulic_fracturing_primer.pdf). Document includes summaries of fracking contamination cases and a list of articles on fracking contamination.

### **ARTICLES AND BOOK REVIEWS:**

*The Future of the Discovery Doctrine: One View from Outside Indian Country*, 86 Montana Law Review ??? (forthcoming 2025)

*Book Review, Ian Saxine, Properties of Empire: Indians, Colonists, and Land Speculators on the New England Frontier*, 45 American Indian Culture and Research Journal 183 (No. 1, 2021)

*The Right To Limit or Prohibit Mineral Lease Transfers*, 34 Probate and Property Magazine, Issue 1 (ABA, Jan./Feb. 2020)

*Nullify, Postpone, Suspend, Stay, and Replace: The Trump Administration and the Methane Waste Prevention Rule*, 44 University of Dayton Law Review 363 (2019)

*Do I Have to be Reasonable?: The Right To Arbitrarily Restrict Transfer Of Occupancy And Mineral Leases*, 47 Capital University Law Review 27 (2019)

*Presidents and Property Law*, 32 Probate and Property Magazine, Issue 2 (ABA, Mar./Apr. 2018)

*Hydraulic Fracturing and Tort Litigation: A Survey of Landowner Lawsuits*, 31 Probate and Property Magazine, Issue 5 (ABA, Sept./Oct. 2017)

*Fracking and Cracking: Strict Liability for Earthquake Damage Due to Wastewater Injection and Hydraulic Fracturing*, 11 Texas Journal of Oil, Gas, and Energy Law 1 (2016)

*Is Fracking An Inflammatory Word?*, 30 Natural Resources & Environment Magazine (Summer 2015)

*Is an Oil and Gas Lease a Conveyance of Real Property or a Grant of a Use Right?*, National Association of Real Estate Lawyers Newsletter, Vol. 1, No. 1, p.2 (Feb. 2015)

*Buying West Florida from the Indians: The Forbes Purchase and Mitchel v. United States (1835)*, 9 Florida International University Law Review 361 (2014)

*Book Review, Jon Blackman, Oklahoma's Indian New Deal*, 80 Journal of Southern History 753 (August 2014)

*Ohio Oil and Gas Litigation in the New Fracking Era*, 74 Ohio State Law Journal Furthermore 47 (2013), available at <http://moritzlaw.osu.edu/students/groups/oslj/files/2013/05/Furthermore.Watson.pdf>

*Book Review, Robert J. Miller, Jacinta Ruru, Larissa Behrendt, and Tracey Lindberg, Discovering Indigenous Lands: The Doctrine of Discovery in the English Colonies*, 32 Great Plains Research 71 (2012)

*The Doctrine of Discovery and the Elusive Definition of Indian Title*, 15 Lewis & Clark Law Review 995 (2011)

*The Impact of the American Doctrine of Discovery on Native Land Rights in Australia, Canada, and New Zealand*, 34 Seattle University Law Review 507 (2011)

*Book Review, Steven T. Newcomb, Pagans in the Promised Land: Decoding the Doctrine of Christian Discovery*, 19 Great Plains Research 248 (2009)

*John Marshall and Indian Land Rights: A Historical Rejoinder to the Claim of 'Universal Recognition' of the Doctrine of Discovery*, 36 Seton Hall Law Review 481 (2006)

*Indian Gambling in Ohio: What are the Odds?*, 32 Capital University Law Review 237 (2003)

*Book Review, David E. Wilkins and K. Tsianinia Lomawaima, Uneven Ground: American Indian Sovereignty and Federal Law*, 13 Great Plains Research 339 (Fall 2003)

*"Understanding Challenges to Land Use Regulations And Impact Fees –A Primer on the Major Cases; Types of Challenges; and Supreme Court Tests,"* Appendix in Douglas T. Kendall, Timothy J. Dowling, and Andrew W. Schwartz, TAKINGS LITIGATION HANDBOOK: DEFENDING TAKINGS CHALLENGES TO LAND USE REGULATIONS (2000)

*The Thrust and Parry of Federal Indian Law*, 23 University of Dayton Law Review 437 (1998)

*The Curious Case of Disappearing Federal Jurisdiction Over Federal Enforcement of Federal Law: A Vehicle For Reassessment Of The Tribal Exhaustion/Abstention Doctrine*, 80 Marquette Law Review 103 (1997)

*Liberal Construction of CERCLA Under the Remedial Purpose Canon: Have the Lower Courts Taken A Good Thing Too Far?*, 20 Harvard Environmental Law Review 199 (1996)

*State Acquisition of Interests in Indian Land: An Overview*, 10 American Indian Law Review 219 (1982)

## **SELECTED PRESENTATIONS:**

*Kansas and World War I*, podcast interview, McArthur Museum and Memorial, available at <https://www.macarthurmemorial.org/491/World-War-I-Podcast> (January 14, 2025)

*Buying America from the Indians*, podcast interview: (South Dakota) History 605, available at <https://www.sdpb.org/podcast/history-605/2024-06-17/history-605-s4-ep-8-buying-america-from-the-indians> (June 17, 2024)

*The Doctrine of Discovery and Subordination of Indigenous Peoples*, Porter Wright Symposium on Law, Religion and Ethics: Property and Subordination. University of Dayton School of Law, Dayton, Ohio (March 24, 2017)

*Fracking: Recent Judicial, Legislative, and Regulatory Developments*, Professors' Corner: Legal Education and Uniform Laws Group Call (January 10, 2017) (teleconference sponsored by the ABA Real Property, Trust and Estate Law Section's Legal Education and Uniform Laws Group) (with Hannah Wiseman, Florida State University College of Law)

*Fracking Bans and State Preemption*, 14<sup>th</sup> Annual Great Lakes Water Conference, University of Toledo College of Law (November 7, 2014)

*Overview of Recent Fracking Litigation Based on Claims of Negligence, Nuisance, Trespass, and Strict Liability*, Ohio Environmental Council Webinar: Emerging Legal Issues: Local Control over Fracking Impacts (June 26, 2014)

*The Forbes Purchase and Mitchel v. United States (1835)*, Florida International University Law Review Symposium: From War and Removal to Resurgence: The Legal and Political History of Florida Tribal Governments. Florida International University Law School, Coral Gables, Florida (February 28, 2014)

*Speakers Series*, Indigenous Law Program, Michigan State University College of Law (panel discussion of my book, *Buying America From the Indians*) (February 26, 2013)

*Shale Gas and Tight Oil: A 'Fracking' Primer for Real Property Lawyers*, Professors' Corner: Legal Education and Uniform Laws Group Call (teleconference sponsored by the ABA Real Property, Trust and Estate Law Section's Legal Education and Uniform Laws Group) (with Hannah Wiseman, Florida State University College of Law, and Keith Hall, Louisiana State University Law School) (January 9, 2013)

*Fracking and Contamination Litigation*, Utica Shale: Issues in Law, Practice and Policy, Cleveland-Marshall College of Law, Cleveland, Ohio (September 14, 2012)

*Fracking Regulation and Litigation*, Ohio Statehouse Day, League of Women Voters of Ohio, Columbus, Ohio (April 10, 2012)

*The Doctrine of Discovery in New Zealand and Australia*, Lewis and Clark Law Review Symposium: The Future of International Law in Indigenous Affairs -- The Doctrine of Discovery, the United Nations, and the Organization of American States. Lewis and Clark Law School, Portland, Oregon (April 15, 2011)

*Indian Gaming in Ohio*, Gaming Law in Ohio, Ohio Legislative Service Commission (October 25, 2010)

*Understanding Challenges to Land Use Regulations and Impact Fees -- A Primer on Major Cases; Types of Challenges; and Supreme Court Tests*, Great Lakes Region Workshop for State and Local Government Attorneys, Cincinnati, Ohio (February 26, 1999)

### **SELECTED CASE CITATIONS:**

*Do I Have to be Reasonable?: The Right To Arbitrarily Restrict Transfer Of Occupancy And Mineral Leases*, 47 Capital University Law Review 27 (2019), cited in

*Mayo Foundation for Medical Education and Research v. BP America Production Co.*, 2020 WL 1326314 (N.D. Texas, Mar. 20, 2020)

*The Curious Case of Disappearing Federal Jurisdiction Over Federal Enforcement of Federal Law: A Vehicle For Reassessment Of The Tribal Exhaustion/Abstention Doctrine*, 80 Marquette Law Review 103 (1997), cited in

*Ortego v. Tunica Biloxi Indians of LA.*, 865 So.2d 985, 995 (2004) (Court of Appeal of Louisiana, Third Circuit, 2004)

*Garcia v. Akwesasne Housing Authority*, 268 F.3d 76, 82 (2<sup>nd</sup> Cir. 2001)

*Ningret Development Corp. v. Narragansett Indian Wetuomuck Housing Authority*, 207 F.3d 21, 34 (1<sup>st</sup> Cir. 2000)

*Drumm v. Brown*, 716 A.2d 50, 60 (Conn. 1998)

*Louis v. United States*, 967 F.Supp. 456, 459 (D. N.M. 1997)

*Bank One, N.A. v. Shumake*, Petition for Writ of Certiorari, No. 01-11732 (May 22, 2002)

*El Paso Nat. Gas Co. v. Neztosie*, 1998 WL 851308 (Appellate Brief) (U.S. Dec. 08, 1998), Brief of Amicus Curiae National Mining Association (No. 98-6)

*El Paso Natural Gas Co. v. Neztosie*, 1998 WL 848070 (Appellate Brief) (U.S. Dec. 07, 1998), Brief of Amicus Curiae Interstate Natural Gas Association America (No. 98-6)

*Liberal Construction of CERCLA Under the Remedial Purpose Canon: Have the Lower Courts Taken A Good Thing Too Far?*, 20 Harvard Environmental Law Review 199 (1996), cited in

*CTS Corporation v. Waldburger*, 2014 WL 768313 (U.S. Supreme Court, Feb. 24, 2014), Brief of Petitioners) (No. 13-339)

*Waldburger v. CTS Corp.*, 723 F.3d 434, 443, 452 (4<sup>th</sup> Cir. 2013)

*Niagara Mohawk Power Corp. v. Chevron U.S.A., Inc.*, 596 F.3d 112, 132 (2<sup>nd</sup> Cir. 2010)

*Ernsting v. Ava Maria College*, 742 N.W.2d 112, 113 n.1 and 4 (Mich. 2007)

*United States v. E.I. Dupont de Nemours*, 432 F.3d 161, 189 (3<sup>rd</sup> Cir. 2005)

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*Blankfeld v. Richmond Health Care, Inc.*, 902 So.2d 296, 305 n.10 (Fla. App. 4 Dist. 2005)

*Johnson Controls, Inc. v. Employers Ins. of Wausau*, 665 N.W.2d 257, 274 n.22 (Wis. 2003)

*Canadyne-Georgia Corp. v. Cleveland*, 72 F.Supp.2d 1373, 1383 (M.D. Ga. 1999)

*Atlantic Richfield Co. v. American Airlines, Inc.*, 98 F.3d 564, 570 (10<sup>th</sup> Cir. 1996)

*United States v. Poly-Carb, Inc.*, 951 F. Supp. 1518, 1528 (D. Nev. 1996)

*CTS Corporation v. Waldburger*, 2014 WL 768313 (U.S. Supreme Court, Feb. 24, 2014), Brief of Petitioners) (No. 13-339)

*Shell Oil Co. v. United States of America*, No. 07-1607, 2008 WL 2961328 (U.S. Supreme Court, July 25, 2008), Brief of Amicus Curiae International Association of Defense Counsel

*U.S. v. CPC International*, No. 97-454, 1998 WL 28317 (Appellate Brief) (U.S. Supreme Court, January 23, 1998), Brief of Amici Curiae (29 States)

## **AWARDS:**

2014 University of Dayton Faculty Award in Teaching  
List of recipients at <https://udayton.edu/ltc/grants/index.php>

*Superior Achievement Award, Scholarly Publication*, given by the Illinois State Historical Society on April 27, 2013, for BUYING AMERICA FROM THE INDIANS: *JOHNSON V. MCINTOSH*, AND THE HISTORY OF NATIVE LAND RIGHTS

*Special Achievement Award*, United States Department of Justice (1988)

*Professor of the Year, University of Dayton School of Law*, as voted by the First Year Class (1992-1993, 1993-1994, 1994-1995, 1995-1996, 1998-1999, 2000-2001, 2001-2002, 2009-2010, 2010-2011); as voted by the Second Year Class (1993-1994, 1994-1995, 1995-1996, 1996-1997, 1998-1999); as voted by the Third Year Class (1993-1994, 1995-1996); and as voted by the entire law school (2008-2009, 2014-2015, 2015-2016). [The Law School discontinued the practice of awarding this honor between 2003-2008 and permanently in 2016.]

## **BAR MEMBERSHIPS:**

United States Supreme Court  
Courts of Appeals: District of Columbia, Fourth, Sixth, Eighth, Ninth, and Tenth Circuits  
State of Tennessee (inactive)

## **OTHER INFORMATION:**

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