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### EDUCATION

- Ph.D. (Economics) Massachusetts Institute of Technology, 1988.  
Major Fields: Industrial Organization, Econometrics.  
Dissertation: Essays on Vertical Foreclosure, Cartel Stability and the  
Structural Determinants of Oligopolistic Behavior.
- J.D. Yale Law School, 1986.  
Articles Editor, Yale Law Journal.
- B.A. Yale University, 1981.  
Majors: Russian and East European Studies (Distinction).  
Economics (Distinction).  
Summa Cum Laude, 1981.  
Phi Beta Kappa, 1980.

### PROFESSIONAL APPOINTMENTS

- William K. Townsend Professor, Yale Law School, 1994 - present.
- Professor, Yale School of Management, 1994 - present.
- Anne Urowsky Professorial Fellow, 2009 – present.
- Research Associate, National Bureau of Economic Research, 2005 - present.
- Editor, JOURNAL OF LAW, ECONOMICS AND ORGANIZATION, 2002 - 2009.
- Adviser, The Center for Cost-Effective Consumerism, 2008 – present.
- Robert B. and Candice J. Haas Visiting Professor, Harvard Law School, Winter Term 2008.
- Visiting Professor, University of Illinois, School of Law, 1997-98.

Lecturer, University of Toronto, Faculty of Law, January 1995.

Professor, Stanford Law School, 1992 - 1994.

Lecturer, University of Illinois, School of Law, Summers 1994 and 1995.

Board of Editors, SUPREME COURT ECONOMIC REVIEW, 1993 - .

Lecturer, University of Iowa, School of Law, January Term 1993.

Lecturer, Moscow State Institute of International Relations (MGIMO) -- Cardozo Law Institute, Summer 1992.

Visiting Professor, Yale Law School, Fall 1991.

Visiting Professor, University of Virginia, School of Law,  
Fall 1990 - Spring 1991.

Guest Scholar, Brookings Institution, Summer 1990 - Spring 1991.

Associate Professor, Northwestern University, School of Law,  
1990 - 1991; (Assistant Professor, 1987-1990).

Research Fellow, American Bar Foundation, 1987 - 1991.

Scholar in Residence, Sonnenschein Nath and Rosenthal - Summer 1990.

Associate Editor, *Law and Social Inquiry*, 1990.

Clerk to the Honorable James K. Logan, Tenth Circuit Court of Appeals, 1986-1987.

Olin Summer Research Fellow, Yale Law School Program in Law, Economics, and Public Policy, May to August 1986.

### **COURSES TAUGHT**

Antitrust, Civil Rights, Commercial Law, Contracts, Corporations, Corporate Finance, Intellectual Property, Law and Economics, Empirical Law and Economics, LGBT Litigation Seminar, Property, Quantitative Methods.

### **PUBLIC INTEREST**

*Rothe Dev. Corp. v. United States*, SA-98-CA-1011-EP, U.S. District Court Western District of Texas, testifying expert concerning narrow tailoring of affirmative action in government procurement, 1999.

Advisor, Justice and Commerce Departments on post-Adarand review of Affirmative Action, 1998.

Member, Board of Directors, Yale Law School Early Learning Center, 1996 - 1997.

Member, Board of Directors, East Palo Alto Community Law Project, 1993 - 1994.

*In re Insurance Antitrust Litigation*, consulting expert; regarding antitrust claims of 17 state Attorneys General against major commercial insurers, 1988 - 1991.

Counsel in Illinois post-conviction petition, *People v. Titone*, 83-C-127, 1988 to 1992 (Death sentence vacated September 7, 1990; argued claims concerning underlying conviction to Illinois Supreme Court, March 14, 1992).

New Haven Battered Women's Temporary Restraining Order Project, September 1985 to April 1986.

Harvard Prison Legal Assistance Project, October 1983 to May 1984.

Legal Services of Western Missouri, June to August 1983.

Jerome Frank Legal Services Organization, January 1983 to October 1984.

## **PUBLICATIONS**

### ***Books***

STUDIES IN CONTRACT LAW (8<sup>th</sup> edition, Foundation Press, 2012) (with Greg Klass).

THE \$500 DIET: WEIGHT LOSS FOR PEOPLE WHO ARE COMMITTED TO CHANGE (Kindle Select, 2011).

CARROTS AND STICKS: UNLOCK THE POWER OF INCENTIVES TO GET THINGS DONE (Bantam Books, 2010).

LIFECYCLE INVESTING: A NEW, SAFE, AND AUDACIOUS WAY TO IMPROVE THE PERFORMANCE OF YOUR RETIREMENT PORTFOLIO (Basic Books, 2010) (with Barry Nalebuff).

STUDIES IN CONTRACT LAW (7<sup>th</sup> edition, Foundation Press, 2008) (with Richard E. Speidel).

SUPER CRUNCHERS: WHY THINKING-BY-NUMBERS IS THE NEW WAY TO BE SMART (BANTAM

BOOKS 2007).

Excerpt: How Computers Routed the Experts, Financial Times (August 31, 2007).

STRAIGHTFORWARD: HOW TO MOBILIZE HETEROSEXUAL SUPPORT FOR GAY RIGHTS (PRINCETON UNIVERSITY PRESS 2005) (with Jennifer Gerarda Brown).

INSINCERE PROMISES: THE LAW OF MISREPRESENTED INTENT (YALE UNIVERSITY PRESS, 2005) (with Gregory Klass).

OPTIONAL LAW: THE STRUCTURE OF LEGAL ENTITLEMENTS (UNIVERSITY OF CHICAGO PRESS, 2005).

WHY NOT?: HOW TO USE EVERYDAY INGENUITY TO SOLVE PROBLEMS BIG AND SMALL (Harvard Business School Press, 2003) (with Barry Nalebuff) *also published in Portugese* as "Você Pode Tudo" (Negocio Editora), *in Spanish* as "¿Y por que NO" (Empresa Activa), *in Korean* (Sejong), *in Japanese* (Hankyu), *in Chinese* (The Commercial Press), *in Bulgarian* (Klasika and Still), *in Chinese* (China Times), *in Estonian* (Tanapaev), *in Italian* (Il Sole), *in Korean* (Sejong Books), *in Russian* (Williams Publishing), and *in Thai* (AR Business Press).

*Book Excerpt: Ideas Waiting to Happen*, FORBES 127 (Oct. 27 2003) (with Barry Nalebuff).

*Book Excerpt: A Role on the Board for the 'Loyal Opposition,'* DIRECTORS & BOARDS 32 (Fall 2003).

*Book Excerpt: Problem Solving: What Would Croesus Do?,* DARWIN (Nov. 2003).

STUDIES IN CONTRACT LAW (6<sup>th</sup> edition, Foundation Press, 2003) (with Edward J. Murphy & Richard E. Speidel).

VOTING WITH DOLLARS: A NEW PARADIGM FOR CAMPAIGN FINANCE (with Bruce Ackerman) (Yale University Press) (2002).

PERVASIVE PREJUDICE?: UNCONVENTIONAL EVIDENCE OF RACE AND GENDER DISCRIMINATION (University of Chicago Press, 2002).

STUDIES IN CONTRACT LAW (5<sup>th</sup> edition, Foundation Press, 1997) (with Edward J. Murphy & Richard E. Speidel).

RESPONSIVE REGULATION: TRANSCENDING THE DEREGULATION DEBATE (OXFORD UNIVERSITY PRESS 1992) (with John Braithwaite).

### *Scholarly Articles and Chapters*

*The Rule of Probabilities*, STANFORD LAW REVIEW (forthcoming 2015) (with Barry Nalebuff).

*Effect of Perineal Self-Acupressure on Constipation: The PSAC Randomized, Controlled Trial*, JOURNAL GENERAL INTERNAL MEDICINE (November 2014) (with Ryan Abbott, Ed Hui and Ka-Kit Hui)

*Innovation Sticks: The Limited Case for Penalizing Failures to Innovate*, U. CHI. L. REV. (forthcoming 2015) (with Amy Kapczynski).

Book Review of *The Behavior of Federal Judges: A Theoretical and Empirical Study of Rational Choice*. By Lee Epstein, William M. Landes, and Richard A. Posner. Harvard University Press, 2013. 52 (LII) JOURNAL OF ECONOMIC LITERATURE 866 (September 2014).

*Beyond Diversification: The Pervasive Problem of Excessive Fees and “Dominated Funds” in 401(k) Plans*, YALE LAW JOURNAL (forthcoming 2014) (with Quinn Curtis).

*Protecting Consumer Investors by Facilitating “Improved Performance” Competition*, UNIVERSITY OF ILLINOIS LAW REVIEW (forthcoming 2014) (with Quinn Curtis).

*Unhappy Meals: Sex Discrimination in Toy Choice at McDonald's*, WILLIAM & MARY JOURNAL OF WOMEN AND THE LAW (forthcoming 2014) (with Antonia Rose Ayres-Brown).

*Evidence and Extrapolation: Mechanisms for Regulating Off-Label Uses of Drugs and Devices*, 64 DUKE LAW JOURNAL 377 (2014) (with Ryan Abbott).

*Anti-Herding Regulation*, HARVARD BUSINESS LAW REVIEW (forthcoming 2014) (with Joshua Mitts).

*Three Proposals for Regulating the Distribution of Home Equity*, YALE JOURNAL ON REGULATION (forthcoming 2013) (with Joshua Mitts).

*A Randomized Experiment Assessing the Accuracy of Microsoft's “Bing It On” Challenge Claims*, 26 LOYOLA LAW REVIEW 1 (2014) (with Emad Atiq, Sheng Li, Michelle Lu, Christine Tsang, & Tom Maher).

*The Chastain Effect: Using Title IX to Measure the Causal Effect of Participating in High School Sports on Adult Women's Social Lives*, 48 JOURNAL OF SOCIO-ECONOMICS 62

(2014) (with Phoebe Clarke).

*Skeletons in the Database: An Early Analysis of the CFPB's Consumer Complaints* 19  
FORDHAM JOURNAL OF CORPORATE & FINANCIAL LAW 343 (2014) (with Jeff Lingwall, &  
Sonia Steinway).

*Measuring Fiduciary and Investor Losses in 401(k) Plans* (working paper 2013) (with  
Quinn Curtis).

*The No Reading Problem in Consumer Contract Law*, 66 STANFORD LAW REVIEW 545  
(2014) (with Alan Schwartz).

*Tops, Bottoms, and Versatiles: What Straight Views of Penetrative Preferences Could  
Mean for Sexuality Claims Under Price Waterhouse*, 123 YALE LAW JOURNAL 714 (2013)  
(with Richard Luedeman).

*Diversification Across Time*, 39 JOURNAL OF PORTFOLIO MANAGEMENT 73 (Winter 2013)  
(with Barry Nalebuff).

*Information Escrows*, 111 MICHIGAN LAW REVIEW 145 (2012) (with Cait Unkovic).

*Anti-Incentives: The Power of Resisted Temptation*, EUROPEAN FINANCIAL REVIEW 40  
(February-March 2012).

*Regulating Opt Out: An Economic Theory of Altering Rules*, 121 YALE LAW JOURNAL 2032  
(2012).

*Race Effects on eBay*, working paper (2011) (with Mahzarin Banaji and Christine Jolls).

*Randomizing Law*, 159 UNIVERSITY OF PENNSYLVANIA LAW REVIEW 929 (2011) (with  
Michael Abramowicz & Yair Listokin).

*Testing for Discrimination and the Problem of "Included Variable Bias,"* working paper  
(2010).

*Meador Lecture: Using Commitment Contracts to Further Ex Ante Freedoms: The Twin  
Problems of Substitution and Ego Depletion*, 62 ALABAMA LAW REVIEW 811 (2011).

*Commitment Bonds*, 100 GEORGETOWN LAW JOURNAL 605 (2012) (with Michael  
Abramowicz).

*The Erasure of the Affirmative Action Debate in the Age of Obama*, in THE OBAMAS AND A  
(POST) RACIAL AMERICA (Gregory Parks & Matthew Hughey, eds. Oxford University Press)

(2011).

*Theodicy and the Law*, 78 UMKC Law Review 1023 (2010).

*Optimal Voting Rules for Two-member Tenure Committees*, 36 SOCIAL CHOICE & WELFARE 323 (2011) (with Colin Rowat and Nasser Zakariya).

*Schwartz Lecture, Never Say No: The Law, Economics and Psychology of Counteroffers*, 25 OHIO STATE JOURNAL ON DISPUTE RESOLUTION 603 (2010).

*Yet Another Refutation of the More Guns, Less Crime Hypothesis – With Some Help From Moody and Marvell*, 6 ECON. J. WATCH 35 (2009) (with John Donohue).

*More Guns, Less Crime Fails Again: The Latest Evidence from 1977 – 2006*, 6 ECON. J. WATCH 218 (2009) (with John Donohue).

*Evidence from Two Large Field Experiments that Peer Comparison Feedback Can Reduce Residential Energy Usage*, 29 JOURNAL OF LAW, ECONOMICS AND ORGANIZATION 992 (2013) (with Sophie Raseman & Alice Shih).

*Yet Another Refutation of the More Guns, Less Crime Hypothesis – With Some Help From Moody and Marvell*, 6 ECON. JOURNAL WATCH 35-59 (January 2009) (with John J. Donohue, III).

*A Study of Racially Disparate Outcomes in the Los Angeles Police Department*, prepared for the ACLU of Southern California, available at [www.aclu-sc.org](http://www.aclu-sc.org) (October 2008) (with Jonathan Borowsky).

*Options and Epidemics*, DAEDALUS 118 (Spring 2008).

*Tradable Patent Rights*, 60 STANFORD LAW REVIEW 863 (2007) (with Gideon Parchomovsky).

*Privatizing Employment Protection*, 49 ARIZONA LAW REVIEW 587 (2007) (with Jennifer Gerarda Brown).

*Market Power and Inequality: A Competitive Conduct Standard for Assessing When Disparate Impacts are Justified*, 95 CALIFORNIA LAW REVIEW 669 (2007).

*Comment on Jolls's Behavioral Law and Economics*, in BEHAVIORAL ECONOMICS AND ITS APPLICATIONS (Peter Diamond & Hannu Vartiainen, eds., 2007).

*Seeing Significance: Is the 95% Probability Range Easier to Perceive?*, 20 CHANCE 11 (Winter 2007) (with Antonia Ayres-Brown & Henry Ayres-Brown).

*Written Statement, Disparity Studies as Evidence of Discrimination in Federal Contracting*, U.S. COMMISSION ON CIVIL RIGHTS (May 2006).

*The Secret Refund Booth*, 73 UNIVERSITY OF CHICAGO LAW REVIEW 1107 (2006) (with Bruce Ackerman), published in Spanish in MAS ALLA DEL ACCESO A LA INFORMACION 282 (John M. Ackerman ed. 2008).

*New Rules for Promissory Fraud*, 48 ARIZONA LAW REVIEW 957 (2006) (with Gregory Klass).

*Don't Tell, Don't Ask: Narrow Tailoring After Grutter and Gratz*, 85 TEXAS LAW REVIEW 517 (2006) (with Sydney Foster).

*Ya-HUH: There Are and Should Be Penalty Defaults*, 33 FLORIDA STATE UNIVERSITY LAW REVIEW 589 (2006).

*Promissory Fraud*, 78 NEW YORK STATE BAR ASSOCIATION JOURNAL 26 (May 2006) (with Gregory Klass).

*Menus Matter*, 73 UNIVERSITY OF CHICAGO LAW REVIEW 3 (2006).

*First Amendment Bargains*, 18 YALE J. L & HUMANITIES 178 (2006).

*Mark(et)ing Nondiscrimination: Privatizing ENDA with a Certification Mark*, 104 MICHIGAN LAW REVIEW 1639 (2006) (with Jennifer Gerarda Brown).

*Institutional and Evolutionary Failure and Economic Development in the Middle East*, 30 YALE JOURNAL OF INTERNATIONAL LAW 397 (2005) (with Jonathan Macey).

*Does Affirmative Action Reduce the Number of Black Lawyers?*, 57 STANFORD LAW REVIEW 1807 (2005) (with Richard Brooks).

*A Separate Crime of Reckless Sex*, 72 UNIVERSITY OF CHICAGO LAW REVIEW 599 (2005) (with Katharine Baker).

*To Insure Prejudice: Racial Disparities in Taxicab Tipping*, 114 YALE LAW JOURNAL 1613 (2005) (with Fred Vars and Nasser Zakariya).

*Discrimination in Consummated Car Purchases*, in HANDBOOK ON EMPLOYMENT DISCRIMINATION RESEARCH: RIGHTS AND REALITIES 137 (Springer 2005).

*The Inclusive Command: Voluntary Integration of Sexual Minorities into the U.S. Military*, 103 MICHIGAN LAW REVIEW 150 (2004) (with Jennifer Gerarda Brown).

*Should Heterosexuals Boycott Marriage?*, ISSUES IN LEGAL SCHOLARSHIP, Single-Sex Marriage (2004): Article 2, <http://www.bepress.com/ils/iss5/art2> (with Jennifer Gerarda Brown).

*Promissory Fraud Without Breach*, 2004 WISCONSIN LAW REVIEW 507 (2004) (with Gregory Klass).

*Three Tests for Measuring Unjustified Disparate Impacts in Organ Transplantation: The Problem of "Included Variable" Bias*, 48 PERSPECTIVES IN BIOLOGY AND MEDICINE S68 (2005).

*The Brennan Center Jorde Symposium Issue on Bruce Ackerman & Ian Ayres, Voting With Dollars: A New Paradigm for Campaign Finance Reform*, 91 CALIFORNIA LAW REVIEW 641 (2003) and *The New Paradigm Revisited*, 91 CALIFORNIA LAW REVIEW 743 (2003) (with Bruce Ackerman).

*Symposium Issue on Ian Ayres, Pervasive Prejudice?: Unconventional Evidence of Race and Gender Discrimination* (2002), 55 STANFORD LAW REVIEW 2267 (2003) and *Is Discrimination Elusive?*, 55 STANFORD LAW REVIEW 2419 (2003)

*Symposium Issue Commentaries on Bruce Ackerman & Ian Ayres, Voting With Dollars: A New Paradigm for Campaign Finance Reform*, 37 UNIVERSITY OF RICHMOND LAW REVIEW 935 (2003) and *Why a New Paradigm?*, 37 UNIVERSITY OF RICHMOND LAW REVIEW 1147 (2003) (with Bruce Ackerman).

*Shooting Down the More Guns, Less Crime Hypothesis*, 55 STANFORD LAW REVIEW 1193 (2003) (with John J. Donohue III).

*The Latest Misfires in Support of the More Guns, Less Crime Hypothesis*, 55 STANFORD LAW REVIEW 1371 (2003) (with John J. Donohue III).

*Marketing Privacy*, 20 YALE JOURNAL ON REGULATION 77 (2003) (with Matthew Funk).

*Correlated Values in the Theory of Property and Liability Rules*, 32 JOURNAL OF LEGAL STUDIES 121 (2003) (with Paul Goldbart).

*Valuing Modern Contract Scholarship*, 112 YALE LAW JOURNAL 881 (2003).

*Outcome Tests of Racial Disparities in Police Practices*, 4 JOURNAL OF THE JUSTICE

RESEARCH & STATISTICS ASSOCIATION 131 (2002).

*Internalizing Outsider Trading*, 101 MICHIGAN LAW REVIEW 313 (2002) (with Stephen Choi).

*Optimal Delegation and Decoupling in the Design of Liability Rules*, 100 MICHIGAN LAW REVIEW 1 (2001) (with Paul Goldbart).

*Using Public Affirmative Action to Remedy Private Discrimination* (with Frederick E. Vars) Chapter 2 in NYU WORKING PAPERS ON LABOR AND EMPLOYMENT LAW: 1998-1999 35 (2001).

*A Dilution Mechanism for Valuing Corporations in Bankruptcy*, 111 YALE LAW JOURNAL 83 (2001) (with Barry E. Adler).

*Substitutes for Insider Trading*, 54 STANFORD LAW REVIEW 235 (2001) (with Joe Bankman).

2000 MONSANTO LECTURE IN TORT REFORM AND JURISPRUDENCE: *Using Tort Settlement To Cartelize*, 34 VALPARAISO UNIVERSITY LAW REVIEW 595 (2000).

*Disclosure versus Anonymity In Campaign Finance*, in DESIGNING DEMOCRATIC INSTITUTIONS, XLII NOMOS 19 (Ian Shapiro & Stephen Macedo, eds. 2000).

*Economics of Affirmative Action*, in 2 ENCYCLOPEDIA OF THE AMERICAN CONSTITUTION 848 (Leonard W. Levy & Kenneth L. Karst, eds., 2d ed. 2000)

*Empire or Residue: Competing Visions of the Contractual Canon*, in LEGAL CANONS 47 (J.M. Balkin and S. Levinson, eds.) (2000).

*Threatening Inefficient Performance*, 44 EUROPEAN ECONOMIC REVIEW 818 (2000) (with Kristin Madison).

*Determinants of Citations to Articles in Elite Law Review*, 29 JOURNAL OF LEGAL STUDIES 427 (2000) (with Fredrick E. Vars).

*Taking Issue With Issue Advocacy*, 85 VIRGINIA LAW REVIEW 1793 (1999).

*Nondiscretionary Concealed Weapons Laws: A Case Study of Statistics, Standards of Proof and Public Policy*, 1 AMERICAN LAW AND ECONOMICS REVIEW 436 (1999) (with John J. Donohue III).

*Threatening Inefficient Performance of Injunctions and Contracts*, 148 UNIVERSITY OF PENNSYLVANIA LAW REVIEW 45 (1999) (with Kristin Madison).

*The Employment Contract*, 8 KANSAS JOURNAL OF LAW AND PUBLIC POLICY 71 (1999) (with Stewart Schwab).

*Comment [on "The Tobacco Deal" by Jeremy Bulow & Paul Klemperer]*, in BROOKINGS PAPERS ON ECONOMIC ACTIVITY: MICROECONOMICS 395 (1998).

*Eroding Entitlements as Litigation Commitment*, 66 UNIVERSITY OF CHICAGO LAW REVIEW 836 (1999).

*Majoritarian v. Minoritarian Defaults*, 51 STANFORD LAW REVIEW 1591 (1999) (with Robert Gertner).

1998 LADD LECTURE: *Empire or Residue: Competing Visions of the Contractual Canon*, 26 FLORIDA STATE LAW REVIEW 897 (1999).

*Discrediting the Free Market*, 66 UNIVERSITY OF CHICAGO LAW REVIEW 273 (1999).

*Limiting Patentees' Market Power Without Reducing Innovation Incentives: The Perverse Benefits of Uncertainty and Non-Injunctive Remedies*, 97 MICHIGAN LAW REVIEW 985 (1999) (with Paul Klemperer).

*When Does Private Discrimination Justify Public Affirmative Action?* 1998 COLUMBIA LAW REVIEW 1577 (1998) (with Fredrick E. Vars).

1998 MONSANTO LECTURE IN TORT REFORM AND JURISPRUDENCE: *Protecting Property With Puts*, 32 VALPARAISO UNIVERSITY LAW REVIEW 793 (1998).

*"Pro-competitive Executive Compensation" as a Condition for Approval of Mergers that Simultaneously Exploit Consumers and Enhance Efficiency*, 19 CANADIAN COMPETITION RECORD 18 (Spring 1998) (with Stephen F. Ross).

*The Donation Booth: Mandating Donor Anonymity to Disrupt the Market for Political Influence*, 50 STANFORD LAW REVIEW 837 (1998) (with Jeremy Bulow) republished as *La Donacion Secreta: Evitar que los candidatos sepan quienes son sus donantes permite desaticular el trafico de influencias*, 83 ESTUDIOS PUBLICOS 67 (2001).

*Measuring the Positive Externalities from Unobservable Victim Precaution: An Empirical Analysis of Lojack*, 113 QUARTERLY JOURNAL OF ECONOMICS 43 (1998) (with Steven D. Levitt).

*Default Rules for Incomplete Contracts*, THE NEW PALGRAVE DICTIONARY OF ECONOMICS AND THE LAW, Vol. A-D 585 (Peter Newman, ed., 1998).

*Three Proposals To Harness Private Information in Contract*, 21 HARVARD JOURNAL OF LAW AND PUBLIC POLICY 135 (1997).

*The Twin Faces of Judicial Corruption: Extortion and Bribery*, 74 DENVER UNIVERSITY LAW REVIEW 1231 (1997).

*Never Confuse Efficiency With A Liver Complaint*, 1997 WISCONSIN LAW REVIEW 503 (1997).

*Common Knowledge As A Barrier to Negotiation*, 44 UCLA LAW REVIEW 1631 (1997) (with Barry Nalebuff).

*Legal Entitlements as Auctions: Property Rules, Liability Rules, and Beyond*, 106 YALE LAW JOURNAL 703 (1997) (with Jack Balkin).

*Narrow Tailoring*, 43 UCLA LAW REVIEW 1781 (1996).

*Pushing the Envelope: Antitrust Implications of the Envelope Theorem*, 17 MISSISSIPPI COLLEGE LAW REVIEW 21 (1996). *See also* ELECTRONIC DISCUSSION, 17 MISSISSIPPI COLLEGE LAW REVIEW 91, 93, 102 (1996).

*Comment on Painter*, 65 FORDHAM LAW REVIEW 201 (1996).

*The Q-Word As Red Herring: Why Disparate Impact Liability Does Not Induce Hiring Quotas*, 74 TEXAS LAW REVIEW 1485 (1996) (with Peter Siegelman).

Review, *Overcoming Law*, by Richard A. Posner, 40 AMERICAN JOURNAL OF LEGAL HISTORY 371 (1996).

*Pursuing Deficit Reduction Through Diversity: How Affirmative Action at the FCC Increased Auction Competition*, 48 STANFORD LAW REVIEW 761 (1996) (with Peter Cramton).

*Supply Side Inefficiencies and Competitive Federalism*, in INTERNATIONAL REGULATORY COMPETITION AND COORDINATION: PERSPECTIVES ON ECONOMIC REGULATION IN EUROPE AND THE UNITED STATES (Oxford University Press, 1996) (McCahery, Barattton et al. eds.)

*Distinguishing Between Consensual and Nonconsensual Advantages of Liability Rules*, 105 YALE LAW JOURNAL 235 (1995) (with Eric Talley).

*Further Evidence of Discrimination in New Car Negotiations and Estimates of Its Cause*, 94 MICHIGAN LAW REVIEW 109 (1995).

Review, *The Limits of Freedom of Contract*, by Michael J. Trebilcock, 33 JOURNAL OF ECONOMIC LITERATURE. 865 (1995).

*HLA Matching in Renal Transplantation*, 332 THE NEW ENGLAND JOURNAL OF MEDICINE 752 (1995) (with Robert Gaston and Mark Deierhoi).

*Solomonic Bargaining: Dividing A Legal Entitlement To Facilitate Coasean Trade*, 104 YALE LAW JOURNAL 1027 (1995) (with Eric Talley).

*Supply-Side Inefficiencies in Corporate Charter Competition: Lessons from Patents, Yachting and Bluebooks*, 43 KANSAS LAW REVIEW 541 (1995).

*Race and Gender Discrimination in Negotiation For the Purchase of a New Car*, 84 AMERICAN ECONOMIC REVIEW 304 (1995) (with Peter Siegelman).

*Alternative Grounds: Epstein's Discrimination Analysis in Other Market Settings*, 31 UNIVERSITY OF SAN DIEGO LAW REVIEW 67 (1994).

*A Market Test for Race Discrimination in Bail Setting*, 46 STANFORD LAW REVIEW 987 (1994) (with Joel Waldfogel).

*Preliminary Thoughts on Optimal Tailoring of Contractual Rules*, 3 SOUTHERN CALIFORNIA INTERDISCIPLINARY LAW JOURNAL 1 (1993).

*Relational Investing And Agency Theory*, 15 CARDOZO LAW REVIEW 1033 (1994) (with Peter Cramton).

*Economic Rationales For Mediation*. 80 VIRGINIA LAW REVIEW 323 (1994) (with Jennifer Gerarda Brown).

*Mutual and Unilateral Mistake in Contract Law*, 22 JOURNAL OF LEGAL STUDIES 309 (1993) (with Eric Rasmusen).

*Racial Equity in Renal Transplantation: The Disparate Impact of HLA-Based Allocation*, 270 JOURNAL OF AMERICAN MEDICAL ASSOCIATION 1352 (1993) (with Robert Gaston, Laura Dooley and Arnold Diethelm). *Response to letters-to-the-editors*, 271 JOURNAL OF AMERICAN MEDICAL ASSOCIATION 269 (1994).

*Unequal Racial Access to Kidney Transplantation*, 46 VANDERBILT LAW REVIEW 805 (1993) (with Laura Dooley and Robert Gaston).

*Making a Difference: The Contractual Contributions of Easterbrook and Fischel*, 59

UNIVERSITY OF CHICAGO LAW REVIEW 1391 (1992), reprinted in 35 *Corporate Practice Commentator* 65 (1993).

*Designing Responsive Regulatory Institutions*, 2 THE RESPONSIVE COMMUNITY 41 (1992) (with John Braithwaite).

*Judging Close Corporations in the Age of Statutes*, 70 WASHINGTON UNIVERSITY LAW QUARTERLY 365 (1992).

*Partial Industry Regulation: A Monopsony Standard for Consumer Protection*, 80 CALIFORNIA LAW REVIEW 13 (1992) (with John Braithwaite).

*Strategic Contractual Inefficiency and the Optimal Choice of Legal Rules*, 101 YALE LAW JOURNAL 729 (1992) (with Rob Gertner).

*The Possibility of Inefficient Corporate Contracts*, 60 CINCINNATI LAW REVIEW 387 (1991).

*Three Approaches to Modelling Corporate Games: Some Observations*, 60 CINCINNATI LAW REVIEW 419 (1991).

*Tripartism: Regulatory Capture and Empowerment*, 16 LAW AND SOCIAL INQUIRY 435 (1991) (with John Braithwaite).

*Pregnant With Embarrassments: An Incomplete Theory of the Seventh Amendment*, 26 VALPARAISO UNIVERSITY LAW REVIEW 385 (1991).

*Back to Basics: Regulating How Corporations Speak to the Market*, 77 VIRGINIA LAW REVIEW 945 (1991).

*Fair Driving: Gender and Race Discrimination in Retail Car Negotiations*, 104 HARVARD LAW REVIEW 817 (1991).

*Optimal Pooling in Claims Resolution Facilities*, 53 LAW AND CONTEMPORARY PROBLEMS 159 (1990).

*"I'll Sell It To You at Cost:" Legal Methods to Promote Retail Markup Disclosure*, 84 NORTHWESTERN LAW REVIEW 1047 (1990) (with F. Clayton Miller).

*Analyzing Stock Lockups: Do Target Treasury Sales Foreclose or Facilitate Takeover Auctions?*, 90 COLUMBIA LAW REVIEW 682 (1990).

*Playing Games with the Law*, 42 STANFORD LAW REVIEW 1291 (1990).

*Unlocking the Stock Lockup in Mobil v. Marathon Oil*, 1 JOURNAL OF MERGER AND ACQUISITION ANALYSIS 37 (1990).

*Filling Gaps in Incomplete Contracts: An Economic Theory of Default Rules*, 99 YALE LAW JOURNAL 87 (1989) (with Robert Gertner), *reprinted* 7 PEKING UNIVERSITY LAW REVIEW 17 (2005).

*A Private Revolution: Markovits and Markets*, 64 CHICAGO-KENT LAW REVIEW 861 (1989).

*The Economics of the Insurance Antitrust Suits: Toward an Exclusionary Theory*, 63 TULANE LAW REVIEW 971 (1989) (with Peter Siegelman) *reprinted* 4 NATIONAL INSURANCE LAW REVIEW 1 (1990) and 4 INSURANCE LAW ANTHOLOGY 501 (1989-1990).

*Determinants of Airline Carrier Conduct*, 8 INTERNATIONAL REVIEW OF LAW & ECONOMICS, 187 (1988).

*A Theoretical Fox Meets Empirical Hedgehogs: Competing Approaches to Accident Economics*, 82 NORTHWESTERN LAW REVIEW 837 (1988).

*Halfway Home*, 13 LAW AND SOCIAL INQUIRY 413 (1988).

*How Cartels Punish: A Structural Theory of Self-Enforcing Collusion*, 87 COLUMBIA LAW REVIEW 295 (1987).

*Posner's Symphony No. 3: Thinking About the Unthinkable*, 39 STANFORD LAW REVIEW 791 (1987) (with John Donohue).

*Rationalizing Antitrust Cluster Markets*, 95 YALE LAW JOURNAL 109 (1985).

### ***Popular Press***

Blog Contributor: [Freakonomics](#) and [Balinization](#).

*Ending Excessive Police Force Starts With New Rules Of Engagement*, WASHINGTON POST A25 (December 25, 2014) (Daniel Markovits) .

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*Where Money Is No Object*, THE GUARDIAN (Jan. 26, 2008) (with Bruce Ackerman).

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*Peer Pressure*, FORBES 135 (April 11, 2005) (with Barry Nalebuff).

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*Cable Bundling* (Nov. 19, 2004) (public radio commentary with Barry Nalebuff).

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*Microsoft I: A Remedy Worthy of Solomon*, INTERNATIONAL HERALD TRIBUNE (Oct. 11, 2004) (with Barry Nalebuff).

*Going, Going, Google*, THE WALL STREET JOURNAL A12 (August 20, 2004) (with Barry Nalebuff).

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*Dialing for Thieves*, FORBES 76 (April 19, 2004) (with Barry Nalebuff).

*Getting Iraq to Undermine OPEC* (April 6, 2004) (public radio commentary with Barry Nalebuff).

*The Wrong Ticket to Ride*, NEW YORK TIMES A29 (March 24, 2004) (with Barry Nalebuff).

*Benefits of Non-Transparency* (Feb. 23, 2004) (public radio commentary with Barry Nalebuff).

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*Dialing for Dollars*, NEW YORK TIMES A29 (Sept. 30, 2003).

*Blackboxes For Cars* (Sept. 16, 2003) (public radio commentary with Barry Nalebuff).

*Exactly Who's in the Right in this Labor Dispute?* YALE DAILY NEWS 2 (Sept. 4, 2003) (with Barry Nalebuff).

*Sarbanes/Oxley's First Birthday* (July 30, 2003) (public radio commentary with Barry Nalebuff).

*Blackbox for Cars*, FORBES 83 (August 11, 2003) (with Barry Nalebuff).

*Patriot Dollars Put Money Where the Voters Are*, L.A. TIMES at 15 (July 17, 2003) (with Bruce Ackerman).

*An Educated Consumer*. FORBES 95 (June 09, 2003) (with Barry Nalebuff).

*Charity Begins At Schedule A*, NEW YORK TIMES, p. A21, col. 1 (April 15, 2003) (with Barry Nalebuff).

*Make Car Insurance Fairer*, FORBES 154 (March 17, 2003) (with Barry Nalebuff).

*Pay Per Mile Auto Insurance* (Feb. 25, 2003) (public radio commentary with Barry Nalebuff).

*Spoiling Spam* (Dec.24, 2002) (public radio commentary with Barry Nalebuff).

*The Virtues of a Virtual Strike*, FORBES 128 (Oct. 25, 2002) (with Barry Nalebuff).

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*Price-Protect Your Home*, FORBES 101 (Sept 16, 2002) (with Barry Nalebuff).

*Disclosing Hidden Fees to Consumers* (Aug. 28, 2002) (public radio commentary with Barry Nalebuff).

*An Alternative to Expensing Stock Options* (July 24, 2002) (public radio commentary with Barry Nalebuff).

*Campaign Reform's Worst Enemy*, NEW YORK TIMES, p. A19, col. 2 (July 6, 2002) (with Bruce Ackerman).

*Opt-Out Advertising*, FORBES 164 (June 20, 2002) (with Barry Nalebuff).

*A Community of Ideas*, FORBES 173 (May 9, 2002) (with Barry Nalebuff).

*If Telemarketers Paid For Your Time*, FORBES 225 (April 15, 2002) (with Barry Nalebuff).

*A Viable Alternative to Breaking up Microsoft: Compulsory Licensing That Would Make Microsoft Compete With Its Past Self*, WRIT FINDLAW'S LEGAL COMMENTARY (April 10, 2002) (with Aaron Edlin) [http://writ.news.findlaw.com/commentary/20020410\\_edlin.html](http://writ.news.findlaw.com/commentary/20020410_edlin.html)

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*Breaking Windows: Why the Justice Department Should Go After the Microsoft Monopoly*, THE NEW REPUBLIC 18 (Nov. 17, 1997).

*Car Buying, Made Simpler*, NEW YORK TIMES F12 (April 13, 1997) (with Peter Schuck).

*Aid Diversity, and the Treasury*, NEW YORK TIMES F13 (May 21, 1995) (with Peter Cramton).

*Price and Prejudice*, THE NEW REPUBLIC 30 (July 6, 1992).

*Colleges in Collusion*, THE NEW REPUBLIC 19 (October 16, 1989).

### **NAMED LECTURES**

The W. D. Carpenter Lecture, "Diversifying Time: Why Buying Stock With Borrowed Money Can Reduce Risk?," Middlebury College, Department of Economics, April 26, 2010.

The Meador Lecture, "Freedom and Commitment," University of Alabama, School of Law, April 19, 2010.

The 46<sup>th</sup> Henry J. Miller Lecture, "Barriers to Diversification," Georgia State University, School of Law, March 18, 2010.

The Schwartz Lecture on Dispute Resolution, "Never Say No: The Law, Economics and Psychology of Counteroffers," Ohio State University, Moritz College of Law, April 2, 2009.

The Biddle Lecture, "A New Test for Race Discrimination," Harvard Law School, November 12, 2008.

The Hart Lecture, "The Secret Refund Booth," Georgetown University Law Center, March 22, 2006.

The Henry Schneider Lecture, "Mark(et)ing Nondiscrimination," Columbia Law School, March 8, 2005.

The Hazard Lecture, "Can Creativity be Taught?: Why Not!," Pembroke Hill High School, September 17, 2004.

The John M. Olin Lecture in Law and Economics, "Why Not?: Can Legal Creativity Be Taught?," Michigan Law School, September 11, 2003.

The Monsanto Lecture in Tort Reform and Jurisprudence, "Using Tort Settlement To Cartelize," Valparaiso University, School of Law, March 26, 2000.

The John M. Olin Public Lecture in Law and Economics, "Coveting Thy Neighbor's Stock: Substitute Trading as Evasion and as Policy Tool," University of Toronto, September 24, 1999.

The Ladd Lecture, "Empire or Residue: Competing Visions of the Contractual Canon," Florida State College of Law, October 22, 1998.

The Monsanto Lecture in Tort Reform and Jurisprudence, "Protecting Property with Puts," Valparaiso University, School of Law, March 26, 1998.

Inaugural Lecture for William K. Townsend Chair, "Solomonic Bargaining," Yale Law School, November 15, 1994.

The Mirikitani Lecture in Law and Economics, "Back to Basics," University of Hawaii, March 9, 1990.

### **PROFESSIONAL MEMBERSHIP**

James W. Cooper Fellow, Connecticut Bar Foundation, 2009 – present.

Fellow, American Academy of Arts & Sciences, 2006 - present.

Member, American Law Institute, 1997 - present.

Board of Directors, American Law and Economic Association, 1995-1999.

Admitted, Illinois Bar, 1987.

## AWARDS

Bernstein Fabozzi/Jacobs Levy Outstanding Article Award for *Diversification Across Time* (with Barry Nalebuff), 2013.

Scribes Book Award (INSINCERE PROMISES) – "for the best work of legal scholarship published during the previous year," 2006

Research in the Public Interest, The Center for Public Representation, 1991.

## ACTIVITIES

1st Place, Law and Society Association -- 5 kilometer fun run, 1989, 2002 and 2003.

Completed 1984 Boston marathon in 3 hours, 12 minutes.

Whiffenpoofs, 1980-81.

Yale Russian Chorus, 1977-80.

Semester in Soviet Union, Moscow's Pushkin Institute, Spring 1979.

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