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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

- Oscar M. Ruebhausen Professor, 2021- present.
- Deputy Dean, Yale Law School, 2020 – 2022.
- William K. Townsend Professor, Yale Law School, 1994 - 2021.
- Professor, Yale School of Management, 1994 - present.
- Anne Urowsky Professorial Fellow, 2009 – 2021.
- Research Associate, National Bureau of Economic Research, 2005 - present.
- Visiting Scholar, Columbia Law School, Fall 2019.
- President, American Law and Economics Association, 2016-17.
- Member, Academic Research Council, Consumer Financial Protection Bureau,

2016 – present.

Editor, JOURNAL OF LAW, ECONOMICS AND ORGANIZATION, 2002 - 2009.

Adviser, The Center for Cost-Effective Consumerism, 2008 – 2011.

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, Race and the Law, Law and Guns, Law and the Opioid Crisis, Law and COVID, Torts and Regulation. Coursera/YouTube Online Courses: [A Law Student's Toolkit](#) and [American Contract Law](#).

## **PUBLIC INTEREST**

Member, Board of Directors, Callisto, 2018 - 2023 .

Member, Academic Research Council, Consumer Financial Protection Bureau, 2016 - 2021.

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 (10<sup>th</sup> edition, Foundation Press, 2023) (with Greg Klass & Rebecca Stone).

THE POWER OF RESISTED TEMPTATION (Harvard University Press, forthcoming 2024)

(with Guiseppe Dari-Mattiacci).

RETIREMENT GUARDRAILS: HOW PROACTIVE FIDUCIARIES CAN IMPROVE PLAN OUTCOMES (Cambridge University Press, 2023) (with Quinn Curtis).

WEAPON OF CHOICE: FIGHTING GUN VIOLENCE WHILE RESPECTING GUN RIGHTS (Harvard University Press, 2020) (with Fredrick E. Vars).

STUDIES IN CONTRACT LAW (9<sup>th</sup> edition, Foundation Press, 2017) (with Greg Klass).

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***

*Legacy and Accountability*, IOWA LAW REVIEW, (November 21, 2022).

*Affirmative Action Still Hasn't Been Shown to Reduce the Number of Black Lawyers: A Response to Sander*, 69 INTERNATIONAL REVIEW OF LAW AND ECONOMICS (November 2021) (with Richard Brooks and Zach Shelley).

*Guns and Property Preference: Testing the Impact of Gilles and Cynicism Conjectures Using Survey Data*, 39 QUINNIPIAC LAW REVIEW (2021) (with Pranjal Drall, Spurthi Jonnalagadda and Fredrick Vars).

*Consumer Expropriation of Aesthetically Functional Trade Dress: Results from a Randomized Experiment*, 93 SOUTHERN CALIFORNIA LAW REVIEW (2021) (with Xiyin Tang).

*Introduction to Gun Violence in America*, 48 JOURNAL OF LAW, MEDICINE, AND ETHICS 9 (2020) (with Abbe R. Gluck, and Tracey L. Meares, and Caroline Nobo Sarnoff).

*The Walmart Effect: Testing Private Interventions to Reduce Gun Suicide*, 48 JOURNAL

OF LAW, MEDICINE, AND ETHICS 74 (2020) (with Zachary Shelley and Fredrick E. Vars).

*Your Liberty or Your Gun? A Survey of Psychiatrist Understanding of Mental Health Prohibitors*, 48 JOURNAL OF LAW, MEDICINE, AND ETHICS 155 (2020) (with Cara Newlon and Brian Barnett).

*Guests with Guns: Public Support for “No Carry” Defaults on Private Land*, 48 JOURNAL OF LAW, MEDICINE, AND ETHICS 183 (2020) (with Spurthi Jonnalagadda).

*How to Make COVID-19 Contact Tracing Apps Work: Insights From Behavioral Economics (Working Paper, September 2020)* (with Alessandro Romano and Chiara Sotis)

*A Theory of Mandatory Rules: Typology, Policy, and Design*, 99 Texas Law Review 283 (2020), (with Eyal Zamir).

*Gun Trust as Private Red Flag Law*, 34 PROBATE AND PROPERTY 23 (July 2020) (with Frederick Vars).

*A Lottery Test of the Effect Of Dispensaries On Emergency Room Visits In Arizona*, 29 Health Economics 854 (June 2020) (with Gregory Conyers)

*Languages and Future-Oriented Economic Behavior—Experimental Evidence for Causal Effects*, 120 PNAS (2022) (with Tamar Kricheli-Katz and Tali Regev).

*Sunsets Are for Suckers: An Experimental Test of Sunset Clauses*, 59 HARVARD JOURNAL ON LEGISLATION 1 (2022) (with Kristen Underhill).

*The Impact of Law Student Assistance on the Granting and Service of Temporary Restraining Orders*, 53 CONNECTICUT LAW REVIEW 235 (2021) (with Brendan Costello and Elizabeth Villarreal).

*Alpha Duties: The Search For Excess Returns and Appropriate Fiduciary Duties*, 97 TEXAS LAW REVIEW 445 (2019) (with Edward G. Fox).

*Libertarian Gun Control*, 167 UNIVERSITY OF PENNSYLVANIA LAW REVIEW 921 (2019) (with Fredrick E. Vars).

*Social Security Plus*, 26 ELDER LAW JOURNAL 261 (2019) (with Jacob Hacker).

*The Impact of Prescription Drug Monitoring Programs on U.S. Opioid Prescriptions*, 46 JOURNAL OF LAW, MEDICINE & ETHICS 387 (2018). (with Amen Jalal).

*Targeting Repeat Offender NDAs*, 71 STANFORD LAW REVIEW ONLINE (2018).

*Time for a Truce with Gun Makers*, MILKEN INSTITUTE REVIEW (March 22, 2018).

*Gun Control Solution Manufacturers Can Get Behind*, BROOKINGS SERIES ON MARKET AND GOVERNMENT FAILURES (March 14, 2018) (with Abraham L. Wickelgren).

*The Rise and (Potential) Fall of Disparate Impact Lending Litigation*, in EVIDENCE AND INNOVATION IN HOUSING LAW AND POLICY 231 (CAMBRIDGE UNIVERSITY PRESS, 2017) (with Gary Klein & Jeffrey West).

*How A “No Guns” Registry Could Help Prevent Firearm-Related Suicides*, BROOKINGS SERIES ON MARKET AND GOVERNMENT FAILURES (June 20, 2017) (with Frederick Vars).

*A Market Test for Bayh–Dole Patents*, 102 CORNELL L. REV. 271 (2017) (with Lisa Larrimore Ouellette).

*Using the False Claims Act to Remedy Tax Expenditure Fraud*, 66 DUKE L. J. 535 (2016) (with Robert McGuire).

*Contracting for Privacy Precaution (and a Laffer Curve for Crime)*, 45 J. LEGAL STUD. 123 (2016).

*Voluntary Taxation and Beyond: The Promise of Social-Contracting Voting Mechanisms*, 19 AM. L. & ECON. REV. 1 (2016).

*Innovation Sticks: The Limited Case for Penalizing Failures to Innovate*, 82 U. CHI. L. REV. 1781 (2015) (with Amy Kapczynski).

*Race Effects on eBay*, 46 RAND JOURNAL OF ECONOMICS 891 (2015) (with Mahzarin Banaji and Christine Jolls).

*The Rule of Probabilities*, 67 STANFORD LAW REVIEW 1447 (2015) (with Barry Nalebuff).

*Beyond Diversification: The Pervasive Problem of Excessive Fees and “Dominated Funds” in 401(k) Plans*, 124 YALE LAW JOURNAL 1346 (2015) (with Quinn Curtis).

*Protecting Consumer Investors by Facilitating “Improved Performance” Competition*, 2015 UNIVERSITY OF ILLINOIS LAW REVIEW 1 (2015) (with Quinn Curtis).

*Unhappy Meals: Sex Discrimination in Toy Choice at McDonald's*, 21 WILLIAM & MARY JOURNAL OF WOMEN AND THE LAW 237 (2015) (with Antonia Rose Ayres-Brown).

*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)

*Anti-Herding Regulation*, 5 HARVARD BUSINESS LAW REVIEW 1 (2015) (with Joshua Mitts).

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).

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

*Three Proposals for Regulating the Distribution of Home Equity*, 31 YALE JOURNAL ON REGULATION 77 (2014) (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). Winner of Bernstein Fabozzi/Jacobs Levy Outstanding Article Award.



*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).

*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), republished in BEYOND ONE L (Nancy Levit & Allen Rostron, eds., Carolina Academic Press) (2019).

*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).

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## ***Popular Press***

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*Patrons Packing Heat: Businesses Should Be Required to Tell Customers Whether Guns Are Allowed*, THE HILL, December 20, 2023 (with Frederick Vars).

*How Retirement Plans Should Protect Employees from Themselves*, WALL STREET JOURNAL (August 6, 2023) (with Quinn Curtis).

*We Are Taking An Ostrich Approach To Enforcing Gun Laws - With Deadly Results*, THE HILL, November 22, 2022 (with Fredrick Vars).

*A Secret Weapon To Defeat Putin: A Path To U.S. Citizenship For Russian Deserters*, NEW YORK DAILY NEWS, October 15, 2022.

*Here's A Different Way to Think About Stock Diversification*, WALL STREET JOURNAL, October 5, 2022 (with Barry Nalebuff).

*What Can Cities Do When Bad Gun Laws Are Hurting the Economy?*, LOS ANGELES TIMES, August 11, 2022 (with Fredrick Vars).

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*Is Your Dishwasher Repairman Packing Heat? The Case For 'No Carry' Gun Defaults on Private Property*, THE HILL, July 1, 2022 (with Spurthi Jonnalagadda).

*The Case for Mandatory Gun-Liability Insurance*, THE WASHINGTON POST, June 17, 2022 (with Jason Abaluck).

*New York's Red-Flag Law Failed in Buffalo. Here's How To Fix It*, THE WASHINGTON POST, May 24, 2022 (with Fredrick Vars).

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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).



*Cellphone Sleuth* (Aug. 20, 2004) (public radio commentary with Barry Nalebuff).

*Throwaway Tickets*, FORBES 52 (August 18, 2004) (with Barry Nalebuff).

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*Say Goodbye to TIVO* (June 9, 2004) (public radio commentary with Barry Nalebuff).

*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).

*Don't Sell Us Short*, FORBES 57 (Feb. 2, 2004) (with Barry Nalebuff).

*Principled Problem Solving: Letting Constraints Filter and Guide Your Thinking Can Often Be the Best Way to Reach Truly Creative Solutions*, 14 SCIENTIFIC AMERICAN MIND 96 (2004) (with Barry Nalebuff).

*System Down: McCain-Feingold Helped Doom the Current Model of Public Financing for Campaigns. Fixing it will Take Some Imagination*, THE AMERICAN PROSPECT ON LINE (Dec. 12, 2003) (with Bruce Ackerman) available at [www.prospect.org](http://www.prospect.org).

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*Who's Right?* (Nov. 10, 2003) (public radio commentary with Barry Nalebuff).

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*Making Ideas Take Flight*, BUSINESS 2.0 133 (Oct. 2003) (with Barry Nalebuff).

*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).

*Virtual Strikes* (Oct. 4, 2002) (public radio commentary with Barry Nalebuff).

*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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*Should Campaign Donors Be Identified?*, 24 REGULATION 12 (Summer 2001), *excerpted as A Real Solution: Make Donors Anonymous*, NATIONAL REVIEW ONLINE (July 12, 2001) <http://www.nationalreview.com/comment/comment-ayres071201.shtml>.

*Why Telemarketers Should Pay Us*, HARTFORD COURANT, p. A15, col. 3 (May 10, 2001) (with Matthew Funk).

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*Why Prosecute Linda Tripp?*, NEW YORK TIMES P. A17, col. 1 (August 10, 1999).

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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 Ann F. Baum Memorial Elder Law Lecture, “Social Security Plus,” University of Illinois, College of Law, March 6<sup>th</sup>, 2017.

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**

CrossFit Level 1 Trainer, 2021.

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.

CURRENT AS OF JANUARY 5, 2024