

## CURRICULUM VITAE

ROBERT GORDON BONE

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### **Employment:**

- January 2010 – Present  
Professor of Law and G. Rollie White Excellence in Teaching Chair in Law, The University of Texas School of Law
- May 2009 – December 2009  
Professor of Law and Robert Kent Chair in Civil Procedure, Boston University School of Law
- January 2009 – May 2009  
Visiting Professor of Law, University of Texas School of Law
- June 2005 – May 2009  
Professor of Law and Richard L. Godfrey Faculty Research Scholar, Boston University School of Law
- September, 2001 – December, 2001  
Visiting Professor of Law, Harvard Law School
- October, 2000 – June 2005  
Professor of Law and Harry Elwood Warren Faculty Research Scholar, Boston University School of Law
- September, 1998 – December, 1998  
Visiting Professor of Law, Columbia University School of Law
- September, 1992 – August, 1994  
Associate Dean, Boston University School of Law
- September, 1989 – October, 2000  
Professor of Law, Boston University School of Law
- September, 1987 – August 1989  
Associate Professor, Boston University School of Law

September, 1986 – August, 1987

Visiting Professor of Law, Boston University School of Law

August, 1985 – August, 1986

Associate Professor of Law, University of Southern California Law Center

August, 1983 – August, 1985

Assistant Professor of Law, University of Southern California Law Center

October, 1979 – June, 1983

Associate, Hill & Barlow, Boston, MA.

August, 1978 – August, 1979

Law Clerk to United States District Court Judge W. Arthur Garrity, Jr., Boston, MA.

### **Education:**

Harvard Law School, Cambridge, MA - 1975-1978.

J.D. Magna Cum Laude.

Stanford University, Stanford, CA - 1969-1973

B.A. with Distinction. Anthropology Major with extensive coursework in Mathematics.

Honors: Phi Beta Kappa

### **Honors and Awards:**

2013: Professor of the Year Award for 2012-2013 (voted by UT law students)

2008: Received the Robert Kent Chair in Civil Procedure

2005: Appointed as the Richard L. Godfrey Faculty Research Scholar

2005: Received the Silver Shingle Award for distinguished service to Boston University School of Law

2002: Spent three-and-a-half weeks in residence at Chuo University and Keio University and delivered two published lectures, all as part of a special program to invite leading American civil procedure scholars to Japan.

2000: Selected to deliver the 2000-2001 University Lecture at Boston University – The University Lecture is an annual lecture delivered to the university

community and general public by a member of the faculty selected to honor scholarly achievement.

- 2000: Appointed as the Harry Elwood Warren Faculty Research Scholar
- 1999: Elected to membership in the American Law Institute
- 1999–2000: Appointed as Maurice Poch Faculty Research Scholar.
- 1995-1996: Appointed as Michaels Faculty Research Scholar.
- 1991: Received the Boston University Metcalf Award for Excellence in Teaching – Boston University’s highest university-wide teaching award.

### **Publications – Books:**

THE ECONOMICS OF CIVIL PROCEDURE (Foundation Press 2003) – Also translated into Japanese as *MINJI SOSHOHO NO HO TO KEIZAIGAKU (THE ECONOMICS OF CIVIL PROCEDURE)* (Atsushi Hosono, trans., 2004).

THE LAW OF CLASS ACTIONS AND OTHER AGGREGATE LITIGATION (Foundation Press, 3<sup>rd</sup> ed. 2020) (with Elizabeth Burch & Patrick Woolley).

2021 UPDATE to THE LAW OF CLASS ACTIONS AND OTHER AGGREGATE LITIGATION (Foundation Press, 3<sup>rd</sup> ed. 2020) (with Elizabeth Burch & Patrick Woolley).

THE LAW OF CLASS ACTIONS AND OTHER AGGREGATE LITIGATION (Foundation Press, 2<sup>nd</sup> ed. 2013), *with* TEACHER’S MANUAL (2<sup>nd</sup> ed. 2013) and 2013 UPDATE (with Elizabeth Burch, Charles Silver & Patrick Woolley).

2014, 2015, 2016, 2017, 2018 and 2019 UPDATES to THE LAW OF CLASS ACTIONS AND OTHER AGGREGATE LITIGATION (Foundation Press, 2<sup>nd</sup> ed. 2013) (with Elizabeth Burch, Charles Silver & Patrick Woolley).

2011 Supplement to Richard A. Nagareda, THE LAW OF CLASS ACTIONS AND OTHER AGGREGATE LITIGATION (1<sup>st</sup> ed. 2009) (with Elizabeth Burch, Charles Silver & Patrick Woolley).

### **Publications – Articles, Chapters, and Essays:**

*The U.S. Class Action From a Utilitarian Perspective: Balancing Social Benefits and Social Costs*, in THE CAMBRIDGE HANDBOOK OF CLASS ACTIONS: AN INTERNATIONAL SURVEY 3 (B. Fitzpatrick & R. Thomas eds., Cambridge 2021).

*Likelihood of Confusion and Trademark Infringement: A Constructively Critical Analysis* in RESEARCH HANDBOOK ON TRADEMARK LAW REFORM 278 (G. Dinwoodie & M. D. Janis, eds., Elgar 2021)

*Rights and Remedies in Trademark Law: The Curious Distinction Between Trademark Infringement and Unfair Competition*, 98 TEXAS L. REV. 1187 (2020) (invited symposium contribution).

*In Defense of the Cy-Pres-Only Class Action*, 24 LEWIS & CLARK L. REV. 571 (2020) (invited contribution to conference).

*Settlement and the “Good” Judge*, 38 REVIEW OF LITIGATION 212 (2019) (symposium contribution).

*Of Trolls, Orphans, and Abandoned Marks: What’s Wrong With Not Using Intellectual Property?*, 42 COLUMBIA JOURNAL OF LAW & THE ARTS 1 (2018).

*Justifying Class Action Limits: Parsing the Debates over Ascertainability and Cy Pres*, 65 U. KANSAS LAW REVIEW 913 (2017) (symposium article).

*Forum Shopping and Patent Law – A Comment on TC Heartland*, 96 TEXAS LAW REVIEW 141 (2017) (invited contribution).

*Economics of Civil Procedure*, in the OXFORD HANDBOOK OF LAW AND ECONOMICS (Francesco Parisi, ed. 2017).

*Tyson Foods and the Future of Statistical Adjudication*, 95 NORTH CAROLINA LAW REVIEW 607 (2017).

*Notice Failure and Defenses in Trademark Law*, 96 BOSTON UNIVERSITY LAW REVIEW 1245 (2016).

*Judging as Judgment: Tying Judicial Education to Adjudication Theory*, 2015 JOURNAL OF DISPUTE RESOLUTION 129 (2015).

*Trademark Functionality Reexamined*, 7 JOURNAL OF LEGAL ANALYSIS 183 (2015).

*The (Still) Shaky Foundations of Trade Secret Law*, 92 TEXAS LAW REVIEW 1803 (2014).

*Decentralizing the Lawmaking Function: Private Lawmaking Markets and Intellectual Property Rights in Law*, 38 INTERNATIONAL REVIEW OF LAW AND ECONOMICS 132 (2014).

*The Misguided Search for Class Unity*, 82 THE GEORGE WASHINGTON LAW REVIEW 651 (2014).

*Replacing Class Actions With Private ADR: A Comment on “Settlement, ADR, and Class Action Superiority,”* 5 JOURNAL OF TORT LAW 127 (April, 2014).

*Walking the Class Action Maze: Toward a More Functional Rule 23*, 46 UNIVERSITY OF MICHIGAN JOURNAL OF LAW REFORM 1097 (2013).

*Party Rulemaking: Making Procedure Rules Through Party Choice*, 90 TEXAS LAW REVIEW 1329 (2012).

*Taking the Confusion Out of “Likelihood of Confusion”*: Toward a More Sensible Approach to Trademark Infringement, 106 NORTHWESTERN UNIVERSITY LAW REVIEW 1307 (2012).

*Discovery, Preclusion, and Class Actions*, in PROCEDURAL LAW AND ECONOMICS 67, 188, 350 (C.W. Sanchirico ed., 2012) (three separate chapters). – Also, the Discovery and Preclusion chapters have been translated by Chilean law professors and published in Spanish.

*Trade Secrecy, Innovation, and the Requirement of Reasonable Secrecy Precautions*, in THE LAW AND THEORY OF TRADE SECRECY: A HANDBOOK OF CONTEMPORARY RESEARCH 46 (Rochelle C. Dreyfuss and Katherine J. Strandburg, eds. 2011) (invited contribution).

*A Normative Evaluation of Actuarial Litigation*, 18 CONNECTICUT INSURANCE LAW JOURNAL 227 (2011) (conference contribution).

*The Puzzling Idea of Adjudicative Representation: Lessons for Aggregate Litigation and Class Actions*, 79 THE GEORGE WASHINGTON LAW REVIEW 577 (2011).

*Sorting Through the Certification Muddle*, 63 VANDERBILT LAW REVIEW EN BANC 105 (2010) (invited contribution on *Dukes v. Wal-Mart*).

*Procedure, Participation, Rights*, 90 BOSTON UNIVERSITY LAW REVIEW 1011 (2010).

*Improving Rule 1: A Master Rule for the Federal Rules*, 87 DENVER UNIVERSITY LAW REVIEW 287 (2010) (invited contribution).

*Plausibility Pleading Revisited and Revised: A Comment on Ashcroft v. Iqbal*, 85 NOTRE DAME L. REV. 849 (2010).

*A Proceduralist's Perspective on Court Access After Twombly*, in GCP: THE ONLINE MAGAZINE FOR GLOBAL COMPETITION POLICY, at <https://www.competitionpolicyinternational.com/a-proceduralists-perspective-on-court-access-after-emptwombly-em/> (2009) (invited contribution).

Twombly, *Pleading Rules, and the Regulation of Court Access*, 94 IOWA LAW REVIEW 873 (2009).

*"To Encourage Settlement": Rule 68, Offers of Judgment, and the History of the Federal Rules of Civil Procedure*, 102 NORTHWESTERN UNIVERSITY LAW REVIEW 1561 (2008). Reprinted in 58 DEFENSE LAW JOURNAL 55 (2008).

*Schechter's Ideas in Historical Context and Dilution's Rocky Road*, 24 SANTA CLARA COMPUTER & HIGH TECHNOLOGY LAW JOURNAL 469 (2008) (invited contribution).

*Making Effective Rules: The Need for Procedure Theory*, 61 OKLAHOMA LAW REVIEW 319 (2008) (paper selected for presentation to the Civil Procedure Section at the 2008 AALS Annual Meeting and published together with the other papers).

*Who Decides?: A Critical Look at Procedural Discretion*, 28 CARDOZO LAW REVIEW 1961 (2007).

*A Skeptical View of the Trademark Dilution Revision Act*, 11 INTELLECTUAL PROPERTY LAW BULLETIN 187 (2007) (invited contribution).

*Secondary Liability for Trade Secret Misappropriation: A Comment*, 22 SANTA CLARA COMPUTER & HIGH TECHNOLOGY LAW JOURNAL 529 (2006) (invited conference contribution).

*Economic Analysis of Civil Court Procedures* in ENCYCLOPEDIA OF LAW AND SOCIETY, vol. 1, page 185 (Sage 2007) (invited contribution).

*Hunting Goodwill: A History of the Concept of Goodwill in Trademark Law*, 86 BOSTON UNIVERSITY LAW REVIEW 547 (2006).

*Securing the Normative Foundations of Litigation Reform*, 86 BOSTON UNIVERSITY LAW REVIEW 1155 (2006) (invited conference contribution).

*The Story of Connecticut v. Doehr: Balancing Costs and Benefits in Defining Procedural Rights*, in CIVIL PROCEDURE STORIES 153 (2004). A revised version was published in CIVIL PROCEDURE STORIES (2d ed. 2008).

*Enforcement Costs and Trademark Puzzles*, 90 VIRGINIA LAW REVIEW 2099 (2004).

*Agreeing to Fair Process: The Problem With Contractarian Theories of Procedural Fairness*, 83 BOSTON UNIVERSITY LAW REVIEW 485 (2003).

*The American Law of Preclusion: Legal Doctrine Under Policy Pressure*, 765 NEW BUSINESS LAW 43-49 (pt. 1), 766 *id.* 73-85 (pt. 2), 768 *id.* 50-58 (pt. 3) (2003) (invited article for Japanese publication and published in Japanese). *Republished* in updated form in AMERIKA MINJISHOYO NO RIRON (THEORIES OF AMERICAN CIVIL PROCEDURE) (Omura, M. & Miki, K., eds. 2006).

*Settlement in American Civil Adjudication: The Role of Procedural Law and the Courts* 36 COMPARATIVE LAW REVIEW 1 (2003) (invited article). Also published (in Japanese) in three parts, at 759 NEW BUSINESS LAW 28-35 (pt. 1), 761 *id.* 51-59 (pt. 2), 762 *id.* 55-65 (pt. 3) (2003). *Republished* in updated form in AMERIKA MINJISHOYO NO RIRON (THEORIES OF AMERICAN CIVIL PROCEDURE) (Omura, M. & Miki, K., eds. 2006).

*Class Certification and the Substantive Merits*, 51 DUKE LAW JOURNAL 1251 (2002) (with David S. Evans).

*Linking, Aggregating, and Innovating: The Role of Property, Contract, and Tort in Regulating Access to Web Sites and Content*, in INTERNATIONAL INTERNET SYMPOSIUM CONFERENCE PROCEEDINGS, 3-30 (English), 31-63 (Turkish) (Dokuz Eylul University 2002) (invited conference article)

*Exploring the Boundaries of Competitive Secrecy: An Essay on the Limits of Trade Secret Law* in LAW, INFORMATION AND INFORMATION TECHNOLOGY 99 (E. Lederman & R. Shapira eds., Kluwer Law International, 2001) (invited conference article).

*From Judgment to Settlement: The Changing Character of American Courts*, BOSTON UNIVERSITY LECTURE: 2000-2001 (Boston University, 2000).

*From Property to Contract: The Eleventh Amendment and University-Private Sector Intellectual Property Relationships*, 33 LOYOLA OF L.A. LAW REVIEW 1467 (2000) (invited symposium article).

*Copyright*, in ENCYCLOPEDIA OF LAW AND ECONOMICS, vol. 2, 189-223 (B. Bouckaert & G. De Geest, eds. Edward Elgar 2000) (with Wendy J. Gordon). *Reprinted* in THE ECONOMICS OF INTELLECTUAL PROPERTY: THE INTERNATIONAL LIBRARY OF CRITICAL WRITINGS IN ECONOMICS, vol. 1, 181-207 (R. Towse & R.W. Holzhauser eds., Edward Elgar Publishing, 2002).

*The Process of Making Process: Court Rulemaking, Democratic Legitimacy, and Procedural Efficacy*, 87 GEORGETOWN LAW JOURNAL 887 (1999).

*A New Look at Trade Secret Law: Doctrine in Search of Justification*, 86 CALIFORNIA LAW REVIEW 241 (1998).

*Revisiting the Policy Case for Supplemental Jurisdiction*, 74 INDIANA LAW JOURNAL 139 (1998).

*Foreword, "Path of the Law Today" Conference Papers*, 78 BOSTON UNIVERSITY LAW REVIEW 691(1998) (conference contribution).

*Modeling Frivolous Suits*, 145 UNIVERSITY OF PENNSYLVANIA LAW REVIEW 519 (1997).

*Lon Fuller's Theory of Adjudication and the False Dichotomy Between Dispute Resolution and Public Law Models of Litigation*, 75 BOSTON UNIVERSITY LAW REVIEW 1273 (1995).

*Complex Litigation and Prior Rulings Issues: A Commentary*, 29 NEW ENGLAND LAW REVIEW 711 (1995) (invited conference contribution discussing choice of law for mass tort aggregations).

*The Empirical Turn in Procedural Rule Making: Comment on Walker*, 23 JOURNAL OF LEGAL STUDIES 595 (1994).

*Rule 23 Redux: Empowering the Federal Class Action*, 14 THE REVIEW OF LITIGATION 79 (1994) (invited contribution).

*Statistical Adjudication: Rights, Justice and Utility in a World of Process Scarcity*, 46 VANDERBILT LAW REVIEW 561 (1993).

*Procedural Reform in a Local Context: The Massachusetts Supreme Judicial Court and the Federal Rule Model*, in THE HISTORY OF THE LAW IN MASSACHUSETTS: THE SUPREME JUDICIAL COURT 1692-1992, at 393 (1992).

*Rethinking the "Day in Court" Ideal and Nonparty Preclusion*, 67 NEW YORK UNIVERSITY LAW REVIEW 193 (1992). Also translated by Chilean law professors and published in Spanish.

*Personal and Impersonal Litigative Forms: Reconceiving the History of Adjudicative Representation (Review Essay)*, 70 BOSTON UNIVERSITY LAW REVIEW 213 (1990).

*Mapping the Boundaries of a Dispute: Conceptions of Ideal Lawsuit Structure from the Field Code to the Federal Rules*, 89 COLUMBIA LAW REVIEW 1 (1989).

*Normative Theory and Legal Doctrine in American Nuisance Law: 1850-1920*, 59 SOUTHERN CALIFORNIA LAW REVIEW 1101 (1986).

**Works-in-Progress:**

RESEARCH HANDBOOK ON THE HISTORY OF TRADEMARK LAW (Elgar)— I am a co-editor (the other editor is Lionel Bently at Cambridge (UK)). Our current target date for completion is 2022.

*The Puzzles of Civil Process: Justifying Litigation Reform* – Ongoing book project on procedural reform in the United States and the core questions that need to be resolved to make meaningful progress.

**Papers Presented, Talks, and Panels:**

April 13, 2021 – Presented “Likelihood of Confusion and Trademark Infringement: A Constructively Critical Analysis” to the Boston University Intellectual Property Workshop, Boston University School of Law, Boston, MA.

March 1, 2021 – Interview about frivolous litigation for Scott Dodson’s podcast on litigation.

February 13, 2021 – Chaired a panel on interdisciplinary civil procedure for a conference entitled “Civil Procedure, Judicial Administration, and the Future of the Field: A Festschrift in Honor of Professor Stephen Burbank,” University of Pennsylvania School of Law, PA (by zoom).

February 28-29, 2020 – Participated in the Twelfth Annual Trademark Scholars’ Roundtable held at Stanford Law School, Palo Alto, CA.

January 31, 2020 – Presented “Rights and Remedies in Trademark Law: The Curious Distinction Between Trademark Infringement and Unfair Competition” to the Remedies in Complex Litigation Symposium of the Texas Law Review at UT Law School.

November 1, 2019 – Presented “The Cy Pres-Only Class Action and Adjudicative Legitimacy” to “Class Actions, Mass Torts, and MDLs: The Next Fifty Years” conference at Lewis & Clark Law School, Portland, Oregon.

October 25-26, 2019 – Helped organize and hosted the Fifth Annual Civil Procedure Workshop at UT Law School.

June 15, 2019 – Commentator at Conference on Professor Wendy Gordon’s Scholarship,

Boston University School of Law, Boston MA.

April 12-13, 2019 – Participated in the Eleventh Annual Trademark Scholars’ Roundtable held at Harvard Law School, Cambridge, MA.

April 21, 2018 – Presented “A Good Judge: How Should Settlement Count in Evaluating Trial Judge Efficiency and Performance” to the Texas Review of Litigation’s Spring Symposium, University of Texas Law School, Austin.

April 13, 2018 – Participated in the Tenth Annual Trademark Scholars’ Roundtable held at Notre Dame Law School’s campus in Chicago, ILL.

November 9, 2017 – Presented “Trademark Functionality Reexamined” to the IP Colloquium, Maurer School of Law, Indiana University (Bloomington).

October 6-7, 2017 – Delivered Keynote Lecture at 2017 Civil Procedure Workshop, University of Arizona, Tucson, Arizona.

September 28, 2017 – Presented “Intellectual Property Rights and Use: What’s Wrong With Not Using IP?” to University of Michigan School of Law Intellectual Property Workshop, Ann Arbor, MI.

June 1-2, 2017 – Commented on a paper for a conference, The Future of Law and Economics and the Contributions of Guido Calabresi, Boston University School of Law, Boston, MA.

April 27-28, 2017 – Participated in the Multidistrict Litigation Roundtable at George Washington University School of Law, Washington DC.

March 23-24, 2017 – Participated in the Ninth Annual Trademark Scholars’ Roundtable held at Chicago-Kent School of Law, Chicago, ILL.

February 17-18, 2017 Commented on a paper for the Patent Damages Conference, University of Texas Law School, Austin.

February 14, 2017 – Presented “Justifying Class Action Limits: Parsing the Debates over Ascertainability and Cy Pres” to UC Hastings School of Law Faculty Colloquium, San Francisco, CA.

November 16-17, 2016 – Panelist for “Contemporary Issues in Complex Litigation” conference at Northwestern University School of Law, Chicago, ILL.

November 11-12, 2016 – Panelist for “1966 and All That: Class Actions and their Alternatives after Fifty Years,” University of Pennsylvania Law School, Philadelphia, PA.

October 14, 2016 – Presented “Justifying Class Action Limits: Parsing the Debates over Ascertainability and Cy Pres” at the “50<sup>th</sup> Anniversary Perspectives on the Class Action” symposium at University of Kansas Law School, Lawrence, Kansas.

September 29, 2016 – Presented “Tyson Foods and the Future of Statistical Adjudication” to the UT Law School Faculty Colloquium, Austin, TX.

July 14-15, 2016 – Panelist at 2016 Civil Procedure Workshop, University of Washington School of Law, Seattle, Washington.

June 9-10, 2016 – Participated in the Eighth Annual Trademark Scholars’ Roundtable held at Boston University School of Law, Boston, MA.

April 12, 2016 – Invited panelist and presenter on the topic “Individuals Within the Aggregate” at an ALI conference, “The Future of Aggregate Litigation,” New York University Law School, New York City, NY.

November 20, 2015 – Participated in a *Conversazione* exploring the normative foundations of trademark law held at Boston University School of Law, Boston, MA.

October 23, 2015 – Invited panelist on the topic of “Rule 23(f) and Class Action Appeals” at the ABA Institute on Class Actions, New Orleans, LA.

September 26, 2015 – Presented “Notice Failure and Defenses in Trademark Law” to Notice and Notice Failure in Intellectual Property Law Conference at Boston University School of Law, Boston, MA.

March 27, 2015 – Participated in discussion of trademark law reform at a meeting of the American Trademark Law Society, NYU Law School, New York, NY.

March 7, 2015 – Presented “Harms from Non-Use: What Exactly is Wrong with Not Using Intellectual Property” to the “Use It or Lose It?” conference at the University of Cambridge, Cambridge, England.

January 29-31, 2015 – Lectured in the “LEC Workshop for Law Professors on the Economics of Litigation and Civil Procedure,” George Mason Law and Economics Center, held in Duck Key, Florida.

November 14, 2014 – Presented “American Class Actions Under Siege: Does the Therapy Fit the Pathology?” to a conference on the class action, entitled “Class Action: Physiology, Pathology, and Therapy” at the University of Roma Tres, Rome, Italy.

November 7, 2014 – Presented “Trademark Functionality Revisited and Revised” to a Faculty Workshop at the University of Kansas, Lawrence, KS.

October 16, 2014 – Presented “Trademark Functionality Revisited and Revised” to the Stanford Law and Economics Seminar at Stanford University Law School, Stanford, CA.

October 10, 2014 – Presented “Judging as Judgment: Tying Judicial Education to Adjudication Theory” to a conference on judicial education entitled “Judicial Education and the Art of Judging: From Myth to Methodology” at the University of Missouri School of Law, Columbia, MO.

September 23, 2014 -- Presented “Trademark Functionality Revisited and Revised” to the Harvard Law and Economics Seminar at Harvard Law School, Cambridge, MA.

June 23, 2014 – Presented “Still Searching for Foundations: Observations from a Trade Secret Skeptic,” Munich Conference on Innovation and Competition, Munich, Germany.

March 6, 2014 – Presented “Trademark Functionality Revisited and Revised” to the Faculty Colloquium, University of Texas School of Law, Austin, TX.

February 28–March 1, 2014 – Hosted and participated in the Sixth Annual Trademark Scholars’ Roundtable held at University of Texas School of Law, Austin, TX.

January 24, 2014 – Presented “The (Still) Shaky Foundations of Trade Secret Law” to the “Steps Toward Evidence-Based IP” Symposium at the University of Texas School of Law, Austin, TX.

November 16, 2013 – Commentator on one panel and presenter on another at “The Federal Rules at 75” Symposium, University of Pennsylvania Law School, Philadelphia, PA.

October 12, 2013 – Presented “Court-Annexed Mediation and Consumer Arbitration: Developments in United States Law” to the International Conference on Access to Justice, Bari, Italy.

October 5, 2013 – Commentator at Sixth Annual Junior Faculty Federal Courts Workshop, Brooklyn School of Law, New York, NY.

September 27, 2013 – Commentator at The Public Life of the Private Law Symposium, Vanderbilt University School of Law, Nashville, TN.

April 12-13, 2013 – Invited participant in the Fifth Annual Trademark Scholars’ Roundtable held at University of Indiana-Bloomington, Bloomington, Indiana.

March 16, 2013 – Presented “Walking the Class Action Maze: Toward a More Functional Rule 23” to Symposium on Class Action Reform, University of Michigan School of Law,

Ann Arbor, Michigan.

March 7, 2013 – Panelist discussing “Common Questions: The Proper Relationship of 23(a)(2), 23(b)(3), and 23(c)(4)” at Class Action Conference, The George Washington Law School, Washington, DC.

Nov. 26, 2012 – Presented “An Investigation Model of Frivolous Suits” to the Law and Economics Colloquium, University of Texas School of Law, Austin, TX.

Nov. 9, 2012 – Presented “Decentralizing the Lawmaking Function: Should There Be Intellectual Property Rights in Law” to the Unlocking the Law *Conference*, George Mason School of Law, Arlington, VA.

October 8, 2012 – Invited participant in Federal Rules of Civil Procedure Mini-Conference, Dallas, TX.

Sept. 21, 2012 – Presented “Decentralizing the Lawmaking Function: Should There Be Intellectual Property Rights in Law” to the Unlocking the Law *Roundtable*, George Mason School of Law, Arlington, VA.

May 8, 2012 – Commentator at New Voices in Civil Justice Workshop at Vanderbilt University, Nashville, Tenn.

April 20-21, 2012 – Invited participant in the Fourth Trademark Scholars’ Roundtable held at DePaul University School of Law, Chicago, Ill.

February 24, 2012 – Delivered lecture on trade secret law to the “International Conference on Frontier Issues and Challenges in Adjudication of Intellectual Property Cases” sponsored by the Supreme People’s Court of China, Shanghai, China.

January 26, 2012 – Presented “Party Rulemaking: Making Procedural Rules Through Party Choice” to the Faculty Colloquium, University of Texas School of Law, Austin, TX.

January 7, 2012 – Moderated Section on Scholarship panel at the AALS Annual Meeting on the topic: “Legal Scholarship’s Balance of Trade: We Import from Other Fields But What do We Export?” Washington, D.C.

October 8, 2011 – Presented a lecture, entitled *A Normative Evaluation of Actuarial Litigation: Adjudicating Large-Scale Case Aggregations By Sampling*, to a conference in Valparaiso, Chile.

September 9, 2011 – Invited participant in the Manne Faculty Forum, Law & Economics Center, George Mason School of Law, Arlington, VA.

July 13, 2011 – Presented “Some Notes on *Wal-Mart Stores, Inc. v. Dukes*” and participated in a panel discussion for an ALI-ABA telephone seminar and audio webcast: “*Wal-Mart v. Dukes*: Death of Complex Class Actions?”. I also prepared an analysis of the Supreme Court’s *Wal-Mart Stores, Inc. v. Dukes* opinion, which was published as part of the study materials for the seminar.

April 22-23, 2011 -- Invited participant in the Third Trademark Scholars’ Roundtable held at University of Indiana-Bloomington, Bloomington, Indiana.

April 22, 2011 – Presented “Party Rulemaking: Making Procedure Rules Through Party Choice” to a faculty colloquium at University of Illinois College of Law, Urbana-Champaign, ILL.

April 15, 2011 – Presented “Toward A Normative Evaluation of Actuarial Litigation” to conference on Actuarial Litigation at University of Connecticut School of Law, Hartford, Connecticut.

February 18, 2011 – Moderator for panel, “Enforcing Patent Judgments in light of *TiVo v. EchoStar*,” Texas Intellectual Property Law Journal symposium, Austin, TX.

January 7, 2011 – Presented “*Dukes v. Wal-Mart* and the Standard of Proof for Certification” on a hot topics panel at the 2011 AALS annual meeting, San Francisco, CA.

June 18-19, 2010 – Invited participant in IP conference at Boston University, Boston, MA.

June 11, 2010 – Presented “Content Before Form” to AALS Civil Procedure Workshop, NY., N.Y.

May 10-11, 2010 – Invited participant in 2010 Civil Litigation Conference and presented remarks on the role of settlement in civil adjudication, Duke University School of Law, Durham, NC.

April 21-22, 2010 – Invited participant in the Federal Rules Roundtable at the Searle Center, Northwestern University School of Law, Chicago, Illinois.

April 16-17, 2010 – Invited participant in the Second Trademark Scholars’ Roundtable held at DePaul University School of Law, Chicago, Illinois.

March 12, 2010 – Presented “Rethinking Adequacy of Representation: Lessons for Aggregate Litigation and Class Actions” to conference on “Aggregate Litigation: Critical Perspectives” held at George Washington University School of Law, Washington, D.C.

January 7, 2010 – Presented the main ideas in “Plausibility Pleading Revisited and Revised: A Comment on *Ashcroft v. Iqbal*” to a meeting of the Standing Committee on Rules of Practice and Procedure, Phoenix, Arizona.

September 26, 2009 – Presented “Procedure, Participation, Rights” to the Conference on Ronald Dworkin’s book “Justice for Hedgehogs,” Boston University School of Law, Boston, Massachusetts.

April 17, 2009 – Presented lecture for Robert Kent Chair in Civil Procedure, “Which Way is Up?: Thirty Years of Procedural Reform”, Boston University School of Law, Boston, Massachusetts.

March 27-28, 2009 – Commented on two papers by junior scholars and participated in roundtable workshop at the Junior Scholars in IP Workshop, Michigan State University Law School, East Lansing, Michigan.

March 2-3, 2009 – Participated in a summit/roundtable on civil procedure reform organized by the Institute for the Advancement of the American Legal System, Denver, Colorado.

February 20-21, 2009 – Participated in and presented “Trade Secrecy, Innovation, and the Requirement of Reasonable Secrecy Precautions” to the Workshop on Trade Secrecy held at New York University School of Law, New York.

February 12, 2009 – Presented "*Twombly*, Pleading Rules, and the Regulation of Court Access" to a colloquium at the University of Houston Law Center, Houston, Texas.

October 14, 2008 – Presented "*Twombly*, Pleading Rules, and the Regulation of Court Access" to a faculty workshop, University of Texas School of Law, Austin, Texas.

September 25, 2008 – Presented “*Twombly* and Court Access” to Boston University Law School Faculty Workshop, Boston, MA.

May 9, 2008 – Presented “A View of the American Class Action with Some Comparisons to the Italian Damage Collective Action” to Conference (Congress) on the Consumer Damage Collective Action, University of Salento, Lecce, Italy.

April 11-12, 2008 – Participated as an invited panel member discussing the trademark use doctrine at the Iowa Trademark Scholars’ Roundtable, University of Iowa School of Law, Iowa.

March 24, 2008 – Presented “Is There Such a Thing as a Procedural Right?” as an informal faculty workshop at Boston University School of Law, Boston, MA.

January 4, 2008 – Presented “Making Effective Rules: The Need for Procedure Theory”

to the Civil Procedure Section of the 2008 AALS Annual Meeting, New York City.

October 26, 2007 – Presented a comment on principal paper proposing digital copyright reforms at “New Media and the Marketplace of Ideas” conference held at Boston University, Boston, MA.

October 5, 2007 – Presented “Schechter’s Ideas in Historical Context and Dilution’s Rocky Road” to “Trademark Dilution: Theoretical and Empirical Inquiries” conference at Santa Clara University Law School, Santa Clara, California.

September 13, 2007 – Presented “‘To Encourage Settlement’: Rule 68, Offers of Judgment, and the History of the Federal Rules of Civil Procedure” to Boston University Law School Faculty Workshop, Boston, MA.

December 8, 2006 – Presented “A Skeptical View of U.S. Anti-Dilution Law” to a conference entitled “Anti-Dilution: The Theory and the Reality of Extended Trade Mark Protection in the US and EU” held at New York University School of Law, New York.

September 14, 2006 – Presented “Who Decides?: A Critical Look at Procedural Discretion” to the Boston University Law School Faculty Workshop, Boston, MA.

April 22, 2006 – Presented “Normative Foundations of Litigation Reform” to “The Role of the Judge in the Twenty-First Century” conference at Boston University Law School, Boston, MA.

April 13, 2006 – Presented “Procedural Discretion Revisited: A Critical Look” to the Civil Justice Workshop, UC Berkeley School of Law, Berkeley, California.

October 7, 2005 – Presented “Secondary Liability for Trade Secret Misappropriation” to the Santa Clara Law School Conference on Third Party Liability in Intellectual Property Law, Santa Clara, California.

October 6, 2005 – Presented “Hunting Goodwill: A History of the Concept of Goodwill in Trademark Law” to the University of San Francisco Law School faculty workshop, San Francisco, California

April 8, 2005 – Presented “Sir James Fitzjames Stephen and the Royal Copyright Commission” to a conference on the work of Sir James Fitzjames Stephen, Boston University Editorial Institute, Boston, MA.

March 21, 2005 – Presented a talk on the Class Action Fairness Act to an informal Boston University Faculty Workshop, Boston, MA.

December 2, 2004 – Presented “Hunting Goodwill: A History of the Concept of Goodwill in Trademark Law” to the Boston University Faculty Workshop, Boston, MA.

September 28, 2004 – Presented “Enforcement Costs and Trademark Puzzles” to the Law and Economics Seminar at Harvard Law School, Cambridge, MA.

September 11, 2004 – Presented “Hunting Goodwill: A History of the Concept of Goodwill in Trademark Law” to the Intellectual Property Working Papers Colloquium at Boston University School of Law, Boston, MA.

June 19, 2003 – Presented “Teaching Theory Through the Rules and Cases: Law-and-Economics and Rights-Based Approaches” to the AALS Civil Procedure Conference in New York City, New York.

April 25, 2003 – Presented “Enforcement Costs and Trademark Puzzles” to the Faculty Workshop at the University of Texas School of Law, Austin, Texas.

March 27, 2003 – Presented “A Journey to the Limits of Trademark Law” to the Faculty Workshop at Boston University School of Law, Boston, MA.

July 27, 2002 – Presented lecture entitled “The American Law of Preclusion: Legal Doctrine Under Policy Pressure” at Keio University, Tokyo, Japan.

July 13, 2002 – Presented lecture entitled “Settlement in American Civil Adjudication: The Role of Procedural Law and the Courts” at Chuo University, Japan.

April 3, 2002 – Moderated a panel for the Boston University School of Law Spring Intellectual Property Forum.

February 8, 2002 – Presented “Class Certification and the Substantive Merits” at the NERA Market Insights Session, Washington, D.C.

December 6, 2001 – Presented “Procedural Fairness By Agreement” to the Boston University School of Law Faculty Workshop.

November 27, 2001 – Presented “Changing Ideas, Values, and Law: Reflections on the History of American Legal Thought and Litigation Reform,” to Food For Thought Lecture series, Boston University, Boston, MA.

May 21-22, 2001 – Presented “Linking, Aggregating, and Innovating: The Role of Property, Contract, and Tort in Regulating Access to Web Sites and Content” at the International Internet Symposium, Dokuz Eylul University, Izmir, Turkey.

October 16, 2000 – Presented “The Future of Civil Adjudication: A Critical Look at Litigation Reform” as the Boston University Lecturer for 2000-2001, Boston University, Boston, MA.

June 15, 2000 – Presented “Of Dot-Coms, Clickwraps, and Spiders on the Web: State Law and Technological Innovation” to the Massachusetts Appellate Judges Conference, Cambridge, MA.

February 3, 2000 – Presented “From Property to Contract: The Eleventh Amendment and University-Private Sector Intellectual Property Relationships” at a Symposium on the Eleventh Amendment and Federalism held at Loyola Law School, Los Angeles, California.

May 13-19, 1999 – Presented "Exploring the Boundaries of Competitive Secrecy: An Essay on the Limits of Trade Secret Law" to International Conference on Law, Information and Information Technology at Tel Aviv University, Tel Aviv, Israel.

October 23, 1998 – Commentator on a Panel entitled “Histories of Federal Courts: An Emerging Genre” at the Annual Meeting of the American Society for Legal History, Seattle, Washington.

October 15, 1998 – Presented “The Process of Making Process: Court Rulemaking, Democratic Legitimacy, and Procedural Efficacy” to the Faculty Workshop at Columbia University School of Law, New York, N.Y.

March 30, 1998 – Presented "The Process of Making Process: A Critical Look at Procedural Rulemaking" as a Clason Lecture at Western New England College of Law, Springfield, MA.

March 3, 1998 – Presented "Another Look at Trade Secret Law: Doctrine in Search of Justification" to the Harvard Law School Law and Economics Seminar, Cambridge, MA.

September 29, 1997 – Presented remarks on mandatory discovery and civil discovery reform as part of a panel at the First Circuit Judicial Conference, Providence, R.I.

September 2, 1997 – Presented "Another Look at Trade Secret Law: Doctrine in Search of Justification" to the Georgetown Law School Law and Economics Seminar, Washington, D.C.

November 7, 1996 – Presented "Modeling Frivolous Suits" to the Faculty Workshop at Rutgers-Camden School of Law, Camden, N.J.

October 4, 1996 – Presented "Exploring the Boundaries of Trademark and Copyright" to a Federal Judicial Center First Circuit Workshop, Hyannisport, MA.

February 7, 1996 – Presented "Lon Fuller's Theory of Adjudication" to the New York University Law School Faculty Workshop, New York, New York.

November 10, 1995 – Presented "Lon Fuller's Theory of Adjudication" to the Cornell

Law School Faculty Workshop, Ithaca, New York.

September 18, 1995 – Presented "The False Dichotomy Between Dispute Resolution and Public Law Models of Litigation: Lon Fuller's Theory of Adjudication" to the Northwestern Law Faculty Workshop, Chicago, Illinois.

April 1-2, 1995 – Commentator at Conference entitled "The Intersection of Crime and Tort" held at Boston University School of Law in Boston, MA.

January, 1995 – Delivered Remarks on a rights-based analysis of proposed Rule 26(c)(3) allowing disclosure of sensitive discovery material to third parties, and participated in a Panel on this topic for the Section of Civil Procedure program at the Association of American Law Schools in New Orleans, Louisiana.

October 28, 1994 – Participated on Panel at Conference entitled "Jurisdiction, Justice and Choice of Law" held at New England School of Law in Boston, MA.

March, 1993 – Commentator at Olin Conference entitled "Economic Analysis of Civil Procedure," held at the University of Virginia School of Law in Charlottesville, Virginia.

December, 1991 – Commentator for a panel entitled "Property and American Constitutional Culture" at the Annual Meeting of the American Historical Association in Chicago, Illinois.

October, 1990 – Presented "Procedural Reform in a Local Context: The Massachusetts Supreme Judicial Court and the Federal Rule Model" at the Scholarly Colloquium for the Massachusetts Supreme Judicial Court's Tricentennial Celebration in Boston, MA.

October, 1988 – Presented "Ideas of Right, Remedy and Procedure: The Power of Legal Ideology in Shaping the Field Code and Federal Rule Reforms" at the Annual Meeting of the American Society for Legal History in Charleston, South Carolina.

October, 1986 – Presented "Normative Theory and Legal Doctrine in American Nuisance Law: 1850-1920" at the Annual Meeting of the American Society for Legal History in Toronto, Ontario.

[And other faculty workshops at Boston University Law School and USC Law Center.]

### **Special Lectures and Teaching:**

May 3, 2017 – Delivered lecture on “Incentivizing Innovation Through Law: Balancing the Benefits and Costs of Intellectual Property Rights” for World IP Day, Austin, TX.

July 19, 2004 – August 6, 2004 – Taught American Intellectual Property to international students in Boston University’s overseas London study program, London, UK.

November 2008, September 2007, October 2006, September 2004, September 2003, September 2002, September 2001, November 1999 – Gave lectures on copyright law each year to Professor Christopher Ricks’s “The Theory and Practice of Literary Editing” class, Boston University. Also, in Jan. 2006 and Feb. 2008, I gave the same lecture to Professor Frances Whistler’s “Editing and Publishing” class.

March 19, 2002 – Presented “Who Owns Intellectual Property” to the Boston University Academy, Boston, MA.

July 12-23, 1999 – Taught a two-week class in American Trademark Law at the University of Victoria Law Faculty, British Columbia, Canada, as component of a course on American Intellectual Property Law.

March 24, 1988 – "Resolving Ownership Conflicts and Other Competing Interests: Employment Contracts and Government Contracts," given for lecture series sponsored by the Center for Law and Technology of the Boston University School of Law.

### **Special Professional Activities:**

1999-Present: Member, American Law Institute

1997-Present: Member of Advisory Committee for the Litigation and Procedure e-Journal.

2015 – Chair of the Committee to Review Scholarly Papers, Association of American Law Schools.

2014 – Member of Committee to Review Scholarly Papers, Association of American Law Schools – served on the committee choosing the winner of the scholarly paper competition for 2014.

Jan. 2011- Jan. 2012: Chair of AALS Section on Scholarship.

Jan. 2007 - Jan. 2011: Member of Executive Committee of AALS Section on Scholarship; Chair for 2010.

2009 – Member of Committee to Review Scholarly Papers, Association of American Law Schools – served on the committee choosing the winner of the scholarly paper competition for 2010.

September 2007 – January 2009: B.U. Law School representative to AALS House of Representatives.

2000 – 2006: Member of Board of Overseers of the Supreme Judicial Court Historical Society and member of the Editorial Board.

2001 – Member of Committee to Review Scholarly Papers, Association of American Law Schools – served on the committee choosing the winner of the scholarly paper competition for 2002.

2000-2003 – Served on advisory committee to the Supreme Judicial Court on technology implementation issues.

January 1994-January 1995: Member of Executive Committee of the AALS Civil Procedure Section.

**Public Testimony and Commentary:**

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|-----------|---|
| May, 2002 | Filed amicus brief in <i>Cadence v. Avant!</i> , a trade secret case before the California Supreme Court.   |
| Feb. 1997 | Written Comments submitted to Advisory Committee on Civil Rules regarding proposed amendments to Fed. R. Civ. P. 23.                                  |
| June 1985 | Written Testimony submitted to Subcommittee on Criminal Justice regarding proposed amendments to Rule 83 of the Federal Rules of Civil Procedure.     |
| Feb. 1984 | Oral Testimony before the Advisory Committee on Civil Rules regarding Fed. R. Civ. P. 83.   |
| Jan. 1984 | Written Testimony (with others) submitted to Advisory Committee on Civil Rules regarding proposed amendments to the Federal Rules of Civil Procedure. |

**Major Administrative Responsibilities:**

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| November, 2011 –<br>May, 2012: | Member of UT School of Law Dean Search Committee                           |
| August, 2011 –<br>May 2012:    | Chair, Faculty Appointments Committee, University of Texas School of Law.  |
| 2006 – Dec. 2009:              | Member of Boston University Board of Trustees’ Academic Affairs Committee. |
| Sept –Dec. 2008:               | Member of Boston University Task Force on Undergraduate Education.         |

2007-08: 2005-06	Chair, Boston University School of Law Long Range Planning Committee
Aug. 2006 – March 2007:	Member of Boston University Strategic Planning Task Force
Jan. – June 2006:	Member of Boston University School of Law Dean Search Committee
2004 – June 2005:	Member of (second) Boston University Presidential Search Committee
2002 – 2003:	Member of (first) Boston University Presidential Search Committee
2001 – 2003:	Boston University Intellectual Property Rights Committee – committee to review existing and propose new IP rights policies.
1997-1998:	Boston University Promotion and Tenure Committee
1992-1994:	Associate Dean of the Boston University School of Law
1991-1992:	Member of the Boston University Metcalf Award Selection Committee
1989-1991:	Chair of the Boston University School of Law Appointments Committee during a particularly busy two-year period.
1987-Present:	Except when I took sabbaticals or leaves, I served on the Faculty Appointments Committee for most of the years I spent at BU Law School, and from Fall 2010 to Spring 2013 at UT Law School.
1983-1986:	I served on the Faculty Appointments Committee at USC Law Center for 1983-1984, 1984-1985, and 1985-1986.

I helped organize the 2019 Civil Procedure Workshop and the 2014 Trademark Scholars Roundtable, both held at UT. I also helped organize the *New Media and the Marketplace of Ideas* conference, which took place on October 26, 2007. I organized the *Holmes Devise Lecture and Conference* commemorating the 100th anniversary of *The Path of the Law* address at Boston University School of Law, and I helped organize *The Crime and Tort Conference*.

**Association Memberships:**

American Law Institute

Association of American Law Schools – Member of the Section on Civil Procedure (served on Executive Committee), Section on Intellectual Property, Section on Legal History, and Section on Scholarship (served on Executive Committee).

**Courses Taught:**

Civil Procedure, Complex Litigation (Advanced Civil Procedure), Intellectual Property (overview course), Trademark and Unfair Competition Law, Topics in the Theory and Practice of Arbitration, Seminar on Rawls and Dworkin (co-taught in Spring, 1994), Advanced Procedure Seminar on Game-Theoretic Modeling of Litigation (Spring, 1995 and Spring, 1996), American Legal History Seminar (co-taught), and other advanced procedure seminars.