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**EDUCATION:**

HARVARD LAW SCHOOL, Cambridge, MA; J.D. *magna cum laude*, 1988 HARVARD UNIVERSITY, Cambridge, MA; B.A. (Social Studies) *summa cum laude*, 1985

**PROFESSIONAL EXPERIENCE:**

NORTHWESTERN UNIVERSITY SCHOOL OF LAW, Chicago, IL

Kirkland & Ellis Professor of Law

Director, Energy and Environmental Research Program, Searle Center on Regulation, Northwestern University

Faculty Associate, Institute for Policy Research

Co-Director and Founder, Northwestern Institute for Sustainable Practices

Affiliated Faculty, Kellogg School of Management

HARVARD LAW SCHOOL, Cambridge, MA Fall 2003

Visiting Professor of Law

TEL-AVIV UNIVERSITY, Tel-Aviv, Israel Summer 1999

Visiting Professor of Law

BOSTON UNIVERSITY SCHOOL OF LAW, Boston, MA 1993-1999

Associate Professor of Law, then Professor of Law

UNIVERSITY OF VIRGINIA SCHOOL OF LAW, Charlottesville, VA September 1997- December 1997

Visiting Associate Professor of Law

U.S. DEPT. OF JUSTICE, ENVIRONMENTAL & NATURAL RESOURCES DIV., Washington, D.C. August 1991-June 1993

Trial Attorney, Environmental Defense Section

WILMER, CUTLER & PICKERING, Washington, D.C. October 1989-July 1991

Associate, Securities Litigation and General Litigation Practice Areas

UNITED STATE COURT OF APPEALS FOR THE NINTH CIRCUIT, Chambers of  
Hon. Betty Fletcher, Seattle WA August 1988-August 1989

Judicial Law Clerk

## **PUBLICATIONS:**

*Insurance, Assurance Bonds, and Taxes: A Market Approach To Regulating Hydraulic Fracturing* (w H. Wiseman), IOWA L REV (forthcoming 2014)

*A Climate Change Lens On The Dormant Commerce Clause*, SAN DIEGO J. CLIMATE & ENERGY (forthcoming 2014)

*The Case For An Information-Forcing Definition of "Nanomaterials,"* 30 PACE ENVTL REV 441 (2013)

*One Green America?: Continuities And Discontinuities In Environmental Federalism In The United States*, 34 FORDHAM ENVTL REV 103 (2013)

*Why Mortgage "Formalities Matter,"* 24 LOYOLA CONS L REV 505 (2012)

David A. Dana, ed., THE NANOTECHNOLOGY CHALLENGE: Creating Legal Institutions for Uncertain Risks (Cambridge University Press, 2011)

*Reconceptualizing NEPA To Avoid The Next Preventable Disaster*, 38 BOSTON COLLEGE ENVTL AFFAIRS L REV 219 (2011) (with M. Barsa)

*Where The Extraction Frontier Meets The Safety Frontier: Deepwater Horizon, Safety Cases, and NEPA-as-Contract*, U HOUSTON ENV & ENERGY L & POL J (2011) (with M. Barsa)

*A Simple Approach To Preventing The Next Housing Crisis*, 38 FORDHAM URB L J 271 (2011)

*Three Obstacles to the Promotion of Corporate Social Responsibility by Means of the Alien Tort Claims Act: The "Purposive" Action Requirement for Aiding and Abetting, the State Action Requirement for Primary Liability, and the Sosa Court's Incoherent Conception of the Law of Nations*, 21 FORDHAM ENVTL L REV 79 (2010) (with M. Barsa)

*Reforming Section 10 of the Endangered Species Act and Habitat Conservation Plans*, in

Jonathan Adler, ed., *RESTORING THE ARK* (AEI Press, forthcoming 2010)

*The Foreclosure Crisis and the Anti-Fragmentation Principle in State Property Law*, 77 U CHICAGO L REV 97 (2010)

*Valuing Foreign Lives and Settlements: The Case of the United States and Climate Change*, J. BENEFIT-COST ANALYSIS, VOL 1, ISSUE 1 (2010)

*When Less Liability May Mean More Precaution: The Case of Nanotechnology*, 28 UCLA ENVT L REV 153 (2010)

*The Mismatch Between Public Nuisance and Global Warming*, 18 SUPREME CRT ECON REV 9 (2010)

*Exclusionary Eminent Domain*, 17 SUPREME CRT ECON REV 7 (2009)

*The Contextual Rationality of the Precautionary Principle*, 35 Queens L J 67 (2009)

*Democratizing Preemption*, 102 NORTHWESTERN L REV 507 (2008)

*Re-framing Eminent Domain*, 32 VERMONT L REV 129 (2007)

*The Law and Expressive Meaning of Condemning the Poor after Kelo*, 101 NORTHWESTERN L REV 365 (2007)

*Adequacy of Representation after Stephenson*, 55 EMORY LAW JOURNAL 279 (2006)

WTO, Trade and the Environment, Report of the Environmental Law and Policy Center (Chicago, IL), September 2005

*State Brownfields Programs as Laboratories of Democracy?*, 14 NYU ENVTL. L. Rev. 86 (2005)

*Existence Value and Federal Preservation Regulation*, 28 HARV. ENVTL. L. REV. 343 (2004)

*A Behavioral Economic Defense of the Precautionary Principle*, 97 NW. U. L. REV. 1315 (2003)

*Secret Settlements and Practice Restrictions Aid Lawyer Cartels and Cause Other Harms*, 2003 U. OF ILL. L. REV. 1217 (with S. Koniak)

TAKINGS (Foundation Press, 2002) (with T. Merrill)

*Public Interest and Private Lawyers: Toward a Normative Evaluation of Parens Patriae Litigation by Contingency Fee*, 51 DEPAUL L. REV. 315 (2001)

*Rethinking the Puzzle of Escalating Penalties for Repeat Offenders*, 101 YALE L. J. 1 (2001)

*The New “Contractarian” Paradigm in Environmental Law*, 2000 U. ILL. L. REV. 35

*Bargaining in the Shadow of Democracy*, 148 U. PA. L. REV. 473 (1999) (with S. Koniak)

*The Uncertain Merits of Environmental Enforcement Reform: The Case of Supplemental Environmental Projects*, 1998 WISC. L. R. 1181

*Overcoming the Political Tragedy of the Commons: Lessons Learned from the Reauthorization of the Magnuson Act*, 24 ECOLOGY LQ 833 (1997)

*Land Use Regulation in an Age of Heightened Scrutiny*, 75 N. C. L. REV. 1243 (1997)

*The Perverse Incentives of Environmental Audit Immunity*, 81 IOWA L. REV. 969 (1996)

*The Case for Unfunded Environmental Mandates*, 69 S. CAL. L. REV. 1 (1995)

*Natural Preservation And The Race To Develop*, 143 U. PA. L. REV. 655 (1995)

*Environmental Lawyers and the Public Service Model of Lawyering*, 74 OR. L. REV. 57 (1995)

## **WORKING PAPERS AND PAPERS UNDER SUBMISSION**

*Evidence of Adaption-Mitigation Effects On Perceptions Of Climate Change Mitigation Initiatives (co-authored, multiple authors), under submission*, J. ENVIRONMENTAL PSYCHOLOGY

*The Incentives Effects Of Alternative Litigation Finance*

*Extraterritoriality, State Sovereignty and Federalism: From Foie Gras To Low-Carbon Fuel*

*Public, By Necessity* (with Shoked)

*Returning To The Traditional Limits Of Criminal Trespass: A Critique Of Ag-Gag Laws* (with Stilt)

## **OPINION PIECES:**

*After the Fracking Is Done*, CHICAGO TRIBUNE, June 12, 2012

*A Simple Approach to Preventing the Next Housing Crisis?*, Huffington Post, December 31, 2010

*How Washington Abetted the Bank Job*, New York Times, April 13, 2010

*The Feudal Mistake*, Huffington Post, Dec. 8, 2010

*Getting Green Light: Global Emissions Data Can Make Consumers a Force*, Chicago Tribune, June 10, 2007

*Clean Water is symbol of the power of the people*, San Francisco Chronicle, July 23, 2006

#### **SELECTED PRESENTATIONS/WORKSHOPS:**

*Climate Change and the Dormant Commerce Clause*, San Diego (November 2013)

*A Market Approach To Regulating The Energy Revolution*, U. of Illinois (October 2013), Minnesota (November 2013)

*Mortgage Formalities Matter*, Notre Dame (October 2013, scheduled), Loyola (March 2012)

*Climate Change Adaptation*, UCLA (October 2012)

*Regulating Nanotechnology*, University of Arizona (December 2010); University of Minnesota Faculty Workshop (Sept 2008); UCLA Frankel Center Law and Public Health Workshop (April 2009)

*Overcoming Excessive Fragmentation of Property in Mortgages*, University of Chicago Conference on Urban Redevelopment (June 2010); University of Colorado Workshop on Institutional Economics (June 2010)

*Valuing Foreign Lives and Civilizations*, and the Costs of Climate Change to the United States, University of Chicago Olin Center Law & Economics Workshop (January 2009); Midwest Law& Economics Assn Meeting (Oct 2008)

*Exclusionary Eminent Domain*, Law and Society Annual Meeting (May 2010), UCLA Law Faculty Workshop (February 2009), Federalist Society Conference, NYC (Jan. 2008)

*Brownfields, Community Participation, and the Laboratories of Democracy Ideal*, NYU LAW School Faculty Workshop (March 2005)

*Emissions Trading, Innovation, and Allowance Banking*, Boalt Hall/UC-Berkeley Environmental Law Workshop (March 2005)

*Public Use After Kelo*, University of Colorado Law School (June 2007), Duke Law School (March 2007), American Association of Law Schools Annual Meeting (January 2005), Debate with Richard Epstein, University of Chicago Law School Forum (November 2004)

*Adequacy of Representation After Stephenson*, Cardozo/Brooklyn Mass Tort Seminar (March 2005), University of Michigan Faculty Workshop (February 2005), Georgetown Law School Faculty Workshop (December 2004); Boston University School of Law Faculty Workshop (November 2004)

*Where Were the Lawyers in Enron?*, Chicago Bar Association CLE Program (March 2007), Endowed Ethics Lecture, Notre Dame Law School (Sept. 2004)

*Non-Use Values in Environmental Law and Regulation*, Harvard Law School Faculty Workshop (November 2003)

#### **PROFESSIONAL AFFILIATIONS:**

Consultant (Pro Bono), Environmental Defense

Consultant (Pro Bono), Environmental Law & Policy Center, Chicago, IL

Member, American Association of Law and Economics and Law and Society Association; American Bar Association; Property and Environmental Law Sections, American Association of Law Schools; New York Bar (inactive); District of Columbia Bar (active)

Reviewer, Submissions to CELS

Reviewer, Oxford U Press and Cambridge U Press