

## **David W. [Jake] Barnes**

Seton Hall University Law School  
One Newark Center Newark, NJ 07102  
OFFICE/CELL/HOME (201) 709-8829  
barnesda@shu.edu

### **EDUCATION:**

**University of Pennsylvania Law School J.D.**

**Virginia Polytechnic Institute and State University**

M.A. Ph.D. Economics

Public Choice Center Fellow, Earhart Fellow

**Dartmouth College**

A.B. High Distinction in Economics

Magna cum Laude, Phi Beta Kappa

### **BAR MEMBERSHIPS:**

Supreme Court of the United States, Commonwealth of Pennsylvania

### **FACULTY POSITIONS:**

Seton Hall University Law School, Distinguished Research Professor of Law.

University of Denver College of Law, Charles W. Delaney Jr. Professor of Law, University Distinguished Scholar.

George Washington University National Law Center, Visiting Professor of Law

Syracuse University College of Law and Department of Economics, Professor of Law and Professor of Economics, Acting Director Center for Interdisciplinary Legal Studies

University of New Mexico School of Law, Visiting Professor of Law

### **COURSES TAUGHT:**

Antitrust (with Seminars), Contracts (with Seminars), Intellectual Property (with Seminars), Torts (with Seminars), Law and Economics (with Seminars), Product Liability, Quantitative Evidence, Remedies, Unfair Competition, various courses in Industrial Organization Theory, Regulatory and Antitrust Economics, and Microeconomic Theory.

### **PUBLICATIONS**

#### **BOOKS:**

THE LAW OF INTELLECTUAL PROPERTY, Aspen Publishers, Inc. (with C. Nard and M. Madison) (2006).

BASIC TORT LAW: CASES, STATUTES, PROBLEMS, AND MATERIALS, Aspen Publishers, Inc. (with A. Best) (2003 and subsequent editions).

CASES AND MATERIALS ON LAW AND ECONOMICS, West Publishing Co. (with L. Stout) (1992) with Teacher's Manual. The following adaptations have been published as separate books:

ECONOMIC FOUNDATIONS OF REGULATION AND ANTITRUST LAW, West Publishing Co. (with L. Stout) (1992) with TEACHER'S MANUAL.

THE ECONOMICS OF PROPERTY RIGHTS AND NUISANCE LAW, West Publishing Co. (with L. Stout) (1992) with TEACHER'S MANUAL.

THE ECONOMIC ANALYSIS OF TORT LAW, West Publishing Co. (with L. Stout) (1992) with TEACHER'S MANUAL.

THE ECONOMICS OF CONTRACT LAW, West Publishing Co. (with L. Stout) (1992) with TEACHER'S MANUAL.

THE ECONOMICS OF CONSTITUTIONAL LAW AND PUBLIC CHOICE, West Publishing Co. (with L. Stout) (1992) with TEACHER'S MANUAL.

STATISTICAL EVIDENCE IN LITIGATION: METHODOLOGY, PROCEDURE, AND PRACTICE, Little, Brown and Co. (with J. Conley) (1986 and updated supplements).

STATISTICS AS PROOF: FUNDAMENTALS OF QUANTITATIVE EVIDENCE, Little, Brown and Co. (1983).

### **ARTICLES:**

*Misappropriation of Trademark*, 9 NORTH CAROLINA J. LAW AND TECHNOLOGY \_\_\_\_ (forthcoming 2008).

*Trademark Externalities*, 10 YALE J. LAW AND TECHNOLOGY \_\_\_\_ (forthcoming 2007).

*A New Economics of Trademarks*, 5 NORTHWESTERN J. TECHNOLOGY AND INTELLECTUAL PROPERTY 22 (2006).

*An Alternative Torts Model of Secondary Copyright Liability*, 55 CASE WESTERN RESERVE L. REV. 867 (2005).

*Imwinkleried's Argument for Normative Ethical Testimony*, 33 J. LAW, MEDICINE & ETHICS 234 (2005).

*A Unifying Theory of Contract Damages*, 55 SYRACUSE L. REV. 495 (2005) (w/ D. Zalesne).

*Classic Fair Use in Trademark: Confusion about Defenses*, 20 SANTA CLARA COMPUTER AND HIGH TECH L. J. 833 (2004) (w/ T. Laky).

*The Shadow Code*, 56 SOUTH CAROLINA L. REV. 93 (2004) (w/ D. Zalesne).

*General Acceptance versus Scientific Soundness: Mad Scientists in the Courtroom*, 31 FLORIDA STATE L. REV. 303 (2004).

*Comment on the Age Discrimination Example*, 42 JURIMETRICS J.301 (2002).

*Too Many Probabilities: Statistical Evidence of Tort Causation*, 64 LAW AND CONTEMPORARY PROBLEMS 191 (2001).

*Remedies for Imperfect Transactions in Contracts and Torts*, 38 SAN DIEGO L. REV. 193 (2001).

*The Net Expectation Interest in Contract Damages*, 49 EMORY L.J. 1137 (1999).

*Antitrust, The Rule of Reason, and Democracy: A Letter from Justice William O. Douglas*, 14 REV. OF INDUSTRIAL ORGANIZATION 115 (1999).

*Gender, Risk Preferences, and Negotiation Performance*, 5 MICHIGAN J. ON GENDER AND LAW 299 (1999)(with C. Craver).

*The Anatomy of Contract Damages and Efficient Breach Theory*, 6 SO. CALIF. INTERDISCIPLINARY L. J. 397 (1998).

*An Economic and Empirical Analysis of Certain Linguistic Practices Concerning Admission of Evidence*, 91 NORTHWESTERN UNIV. L. REV. 637 (1997)(sub nom Jake Barnes).

*The Meaning of Value in Contract Damages and Contract Theory*, 46 AMERICAN UNIV. L. REV. 1 (1996).

*Reasonable Care in Tort Law: The Duty to Take Corrective Precautions*, 36 ARIZONA L. REV. 357 (1994)(with R. McCool).

*The Litigation Crisis: Competitiveness and Other Measures of Quality of Life*, 71 DENVER L. REV. 71 (1993).

*Economics 2001: A Carpenter's Odyssey*, 42 SYRACUSE L. REV. 197 (1991).

*Book Review: 'The Social and Economic Consequences of Deregulation' and 'Flying Blind: The Failure of Airline Deregulation' by Paul Stephen Dempsey*, 19 TRANSPORTATION L. J. 495 (1991) (with E. Dauer).

*Nonefficiency Goals in the Antitrust Law of Mergers*, 30 WILLIAM AND MARY L. REV. 787 (1989).

*Revolutionary Antitrust: Efficiency, Ideology, and Democracy*, 58 UNIV. OF CINCINNATI L. REV. 59 (1989).

*Revolution and Counterrevolution in Antitrust Law*, 34 ANTITRUST BULLETIN 655 (1989).

*Antitrust Dialogue on Social Science, Cultural Values, and Merger Law*, 34 ANTITRUST BULLETIN 623 (1989) (Panel Discussion, moderator).

*Federal and State Philosophies in the Antitrust Law of Mergers*, 56 GEORGE WASHINGTON UNIVERSITY L. REV. 263 (1988), excerpted as *Contrasting Philosophies of the Federal and State Horizontal Merger Guidelines*, ANTITRUST AND CONSUMER LAW REPORTS (1989).

*The Protean Legal Significance of Statistical Significance*, 1985 PROCEEDINGS OF THE BUSINESS AND ECONOMIC STATISTICS SECTION OF THE AMERICAN STATISTICAL ASSOCIATION 1 (1986).

*A Commonsense Approach to Understanding Statistical Evidence*, 21 SAN DIEGO L. REV. 809 (1984).

*The Problem of Multiple Components or Divisions in Title VII Litigation: A Comment*, 46 LAW AND CONTEMPORARY PROBLEMS 185 (1983).

*The Significance of Quantitative Evidence in FTC Deceptive Advertising Cases*, 46 LAW AND CONTEMPORARY PROBLEMS 25 (1983). Reprinted in IX ADVERTISING LAW ANTHOLOGY (1986).

*Back Door Cost-Benefit Analysis under a Safety-First Clean Air Act*, 23 NATURAL RESOURCES J. 827 (1983).

*Enforcing Property Rights: Extending Property Rights Theory to Environmental and Congestible Goods*, 10 BOSTON COLLEGE ENVIRONMENTAL AFFAIRS L. REV. 583 (1983).

*Social Choices and Comparative Negligence: Resurrecting Galena*, 31 DEPAUL L. REV. 273 (1982) (with M. Baeverstad).

*Intertemporal Changes in Tax Rates*, in STUDIES IN INCOME DISTRIBUTION, No. 11, U.S. Dept. of Health, Education, and Welfare, Pub. No. (SSA) 79-11776 (with B. Bridges) (1979).

## SELECTED CONFERENCES AND SEMINARS:

"A New Economics of Trademarks," Workshop on Law and Economics of Intellectual Property and Information Technology, University of Manchester Law School, Manchester, United Kingdom, July 27, 2006.

"Trademarks as Congestible Public Goods," Intellectual Property Scholars Conference, Cardozo Law School, NY, NY August 11, 2005.

"Tort Doctrine and Secondary Copyright Liability," Symposium on Copyright and Personal Copying: Sony vs. Universal City Studios Twenty-One Years Later, Case Western Reserve University School of Law, February 25, 2005.

"Cultivating Sophisticated Critics of the Torts System: Teaching Torts with Statutes, AALS Mid-Year Torts Meeting, New York, NY June 2003.

"Evaluating Scientific Expertise, Kentucky Bar Association Annual Meeting, Louisville, KY June 2003.

"Consuming Regression Analysis, Faculty Seminar Series, University of Virginia Law School, Charlottesville, VA June 2003.

"Reliability of Expertise after Ramirez, Florida Circuit Court Judges Annual Meeting, Naples, FL June 2002.

"Seminar on the Scientific Method, Alaska Bar Association Annual Meeting, Anchorage AK May 2002.

"Seminar on Statistical Methodology for Litigation, Alaska Bar Association Annual Meeting, Anchorage, AK July 2002.

"How to Tell Good Science from Bad Science, National Center for State Courts, Williamsburg, VA April 6, 2001.

"Statistical and Scientific Evidence of Causation in Torts, Private Adj. Center, Duke University, Durham, NC October 27, 2000.

"An Economic Theory of Clans and Cooperative Human Activity, Gruter Institute, Squaw Valley, CA June 12, 2000.

"Catcher in the Fry: Statistical and Scientific Evidence in Criminal Law, Advanced Judicial Studies College, Orlando, FL May 6, 2000.

"The Expectation and Reliance Interests in Contract Law, Joint Session of Contract and Remedies Sections, AALS Annual Meetings, Washington, D.C. January 7, 2000.

"Science in the Courtroom, Advanced Judicial Studies College, West Palm Beach, FL October 29, 1999

"Reconsidering Unconscionability, Legal Theory Workshop, Seton Hall University Law School, Newark, NJ October 26, 1999.

"Contracts for Dispute Resolution: When Do Markets Work Best, Conference on Market Forces in the Selection of Dispute Resolution Procedures, Gruter Institute, Georgetown University Law Center, Washington, D.C. Nov. 7, 1998.

"Science in the Courtroom, Faculty, National Judicial College, Reno, Nevada 1998.

"Judging Science" Scientific Evidence Seminar for Judges--Faculty, Duke University School of Law, Private Adjudication Center, Durham, N.C. 1994-2002.

"Contract Unconscionability and Duress: A Humanist Economist's Approach," Society for the Advancement of Socioeconomics, Montreal, Canada July 5, 1997.

"The Rules of Engagement in Increasingly Competitive Industries," CEO Roundtable, American Assoc. of Blood Banks Annual Meeting, Orlando, Fl., October 1996.

"Antitrust and Competition in the Blood Products Industry," Public Policy Forum, American Assoc. of Blood Banks Annual Meeting, New Orleans, La., October 1995.

"An Economic Analysis of Abortion," AALS Annual Meeting, New Orleans, LA, January 6, 1995.

"The Law and Economics of Paternity and Juvenile Homicide," AALS Workshop on Family and Juvenile Law, Washington, D.C., February 24-27, 1994.

"Hidden Dangers in the Aggregation of Mass Tort Claims: The *Cimino v. Raymark* Example," AALS Annual Meeting, San Antonio, TX, January 5, 1992.

"'Efficient' Reasonableness in Torts: Inhuman, Masculinist, and Inefficient," Law and Society Association/Research Committee on Sociology of Law Annual Meetings, Amsterdam, Netherlands June 26, 1991 and International Association for Research in Economic Psychology and Society for Advancement of Socioeconomics Joint Conference Stockholm, Sweden June 16, 1991.

Strategies and Science in Civil Litigation, American Statistical Association Annual Meetings, Anaheim, CA August 8, 1990.

"Economic Implications of German Reunification: Protecting Competition in the European Economic Community," Université de Syracuse à Strasbourg, Strasbourg, France March 20, 1990.

"Experimental Economics and Legal Policy: A Discussion of Methodology," Law and Society Association, Madison, WI June 9, 1989.

"Causation, Impact, and Intent in Supreme Court Jurisprudence," Amer. Stat. Assoc. Regional Seminar, Syracuse, N.Y. April 11, 1988.

"The Role of Socio-Legal Studies in Antitrust Policy Formation," Law and Society Association, Washington, D.C. June 12, 1987.

"Interpreting Antitrust Enforcement Practices," Graduate Institute for Policy Education and Research, George Washington University, Washington, D.C., March 3, 1987.

"The Protean Legal Significance of Statistical Significance," Amer. Stat. Ass'n, Las Vegas, NV Aug. 5, 1985.

"Statistics and Expert Testimony in the Federal Courts," Fed'l Judicial Center, Madison, WI June 10-14, 1985.

Federal Judicial Center Faculty, "Problems Judges Confront in the Litigation of Economic Issues," Madison, WI July 8-13, 1984.

"Statistics as Proof," Center for Policy Studies, Florida State University, Tallahassee, FL February 22, 1984.

"Uses and Abuses of Statistics in FTC Proceedings with an Emphasis on Consumer Protection," Seminar on the Use of Statistics in Business Litigation, Duke University, Durham, N.C., May 2-6, 1983.

"Tort Law: Legal Ramifications of Feeding the People," Nat'l Assoc. of College and Univ. Food Serv., Syracuse, N.Y. March 29, 1983.

#### **ACADEMIC AND PUBLIC SERVICE CONSULTING:**

American Association of Law Schools Remedies Section -- Member of Executive Committee

Duke University -- Private Adjudication Center Faculty

National Judicial College -- Faculty

Journal of Legal Education -- Peer Reviewer

Colorado Health Care Cooperative Agreements Board--Gubernatorial Appointee

University of Nevada Reno--Cite Evaluator, Master of Judicial Studies Program

Federal Judicial Center--Consultant, Scientific Evidence Manual

United States Office of Personnel Management -- Executive Seminar Center Faculty

State of Colorado Department of Regulatory Agencies -- Statistical Consultant

National Science Foundation --Project Evaluator

Law and Human Behavior --Editorial Consultant.

Public Finance Review -- Peer Reviewer