

CHARLES SILVER

csilver@mail.law.utexas.edu (preferred contact method)

Papers on SSRN at: <http://ssrn.com/author=164490>

CONTACT INFORMATION

Co-Director, Center on Lawyers, Civil Justice and the Media
School of Law
University of Texas
727 East Dean Keeton Street
Austin, Texas 78705

(512) 232-1337 (voice)

ACADEMIC EMPLOYMENTS

School of Law, University of Texas at Austin, 1987-2015
Roy W. and Eugenia C. McDonald Endowed Chair in Civil Procedure
W. James Kronzer Chair in Trial & Appellate Advocacy
Cecil D. Redford Professor
Robert W. Calvert Faculty Fellow
Graves, Dougherty, Hearon & Moody Centennial Faculty Fellow
Assistant Professor

Harvard Law School, Fall 2011
Visiting Professor

Vanderbilt University Law School, Fall 2003
Visiting Professor

University of Michigan Law School, Fall 1994
Visiting Professor

University of Chicago, 1983-1984
Managing Editor, *Ethics: A Journal of Social, Political and Legal Philosophy*

EDUCATION

Yale Law School, JD (1987)
University of Chicago, MA (Political Science) (1981)
University of Florida BA (Political Science) 1979

PUBLICATIONS

SPECIAL PROJECTS

Associate Reporter, American Law Institute, *PRINCIPLES OF THE LAW OF AGGREGATE LITIGATION*, (2010) (with Samuel Issacharoff, Reporter, and Robert Klonoff and Richard Nagareda, Associate Reporters).

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Invited Academic Member, ABA/Tort Trial & Insurance Practice Section, Task Force on Contingent Fees, REPORT ON CONTINGENT FEES IN CLASS ACTION LITIGATION, 25 Rev. Litig. 459 (2006).

Invited Academic Member, ABA/Tort Trial & Insurance Practice Section, Task Force on Contingent Fees, REPORT ON CONTINGENT FEES IN MASS TORT LITIGATION, 42 Tort Trial & Insurance Practice Law Journal 105 (2006), available at <http://www.jstor.org/stable/25763828>

Invited Academic Member, ABA/Tort Trial & Insurance Practice Section, Task Force on Contingent Fees, REPORT ON CONTINGENT FEES IN MEDICAL MALPRACTICE LITIGATION (2004) available at <http://apps.americanbar.org/tips/contingent/MedMalReport092004DCW2.pdf>; published at 25 Rev. Litig. 459 (2006).

Co-Reporter, International Association of Defense Counsel PRACTICAL GUIDE FOR INSURANCE DEFENSE LAWYERS (2002) (with Ellen S. Pryor and Kent D. Syverud, Co-Reporters); published on the IADC website (2003); revised and distributed to all IADC members as a supplement to the Defense Counsel J. (2004).

BOOKS

HEALTH CARE GAMES (with David A. Hyman) (in progress)

TO SUE IS HUMAN: MEDICAL MALPRACTICE LITIGATION IN TEXAS 1988-2010 (with Bernard S. Black, David A. Hyman, Myungho Paik, and William M. Sage) (in progress).

HEALTH LAW AND ECONOMICS, Edward Elgar (coedited with Ronen Avraham and David A. Hyman) (available February 2016).

LAW OF CLASS ACTIONS AND OTHER AGGREGATE LITIGATION, 2nd Edition (2012) (with Richard Nagareda, Robert Bone, Elizabeth Burch and Patrick Woolley) (updated 2013 & 2014).

PROFESSIONAL RESPONSIBILITIES OF INSURANCE DEFENSE COUNSEL (2012) (with William T. Barker) (updated annually 2013-2015).

ARTICLES BY SUBJECT AREA (* INDICATES PEER REVIEWED)

Health Care Law & Policy

1. "It Was on Fire When I Lay Down on It: Defensive Medicine, Tort Reform, and Healthcare Spending," in I. Glenn Cohen, Allison Hoffman, and William M. Sage, eds., OXFORD HANDBOOK OF AMERICAN HEALTH LAW (forthcoming 2015) (with David A. Hyman).*
2. "Double, Double, Toil and Trouble: Justice-Talk and the Future of Medical Malpractice Litigation," 63 DePaul L. Rev. 574 (2014) (with David A. Hyman) (invited symposium).
3. "Five Myths of Medical Malpractice," 143:1 Chest 222-227 (2013) (with David A. Hyman).*

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4. "Health Care Quality, Patient Safety and the Culture of Medicine: 'Denial Ain't Just A River in Egypt,'" (coauthored with David A. Hyman), 46 New England L. Rev. 101 (2012) (invited symposium).
5. "Medical Malpractice and Compensation in Global Perspective: How Does the U.S. Do It?" in Ken Oliphant & Richard W. Wright, eds., MEDICAL MALPRACTICE AND COMPENSATION IN GLOBAL PERSPECTIVE (2013) (coauthored with David A. Hyman)*; originally published in 87 Chicago-Kent L. Rev. 163 (2012).
6. "Justice Has (Almost) Nothing to Do With It: Medical Malpractice and Tort Reform," in Rosamond Rhodes, Margaret P. Battin, and Anita Silvers, eds., MEDICINE AND SOCIAL JUSTICE, Oxford University Press 531-542 (2012) (with David A. Hyman).*
7. "Medical Malpractice Litigation and Tort Reform: It's the Incentives, Stupid," 59 Vanderbilt L. Rev. 1085 (2006) (with David A. Hyman) (invited symposium).
8. "Medical Malpractice Reform Redux: Déjà Vu All Over Again?" XII Widener L. J. 121 (2005) (with David A. Hyman) (invited symposium).
9. "Speak Not of Error, Regulation (Spring 2005) (with David A. Hyman).
10. "The Poor State of Health Care Quality in the U.S.: Is Malpractice Liability Part of the Problem or Part of the Solution?" 90 Cornell L. Rev. 893 (2005) (with David A. Hyman).
11. "Believing Six Improbable Things: Medical Malpractice and 'Legal Fear,'" 28 Harv. J. L. and Pub. Pol. 107 (2004) (with David A. Hyman) (invited symposium).
12. "You Get What You Pay For: Result-Based Compensation for Health Care," 58 Wash. & Lee L. Rev. 1427 (2001) (with David A. Hyman).
13. "The Case for Result-Based Compensation in Health Care," 29 J. L. Med. & Ethics 170 (2001) (with David A. Hyman).*

Empirical Studies of Medical Malpractice

14. "Insurance Crisis or Liability Crisis? Medical Malpractice Claiming in Illinois, 1980-2010," J. Empirical Legal Stud. (forthcoming 2016) (with Bernard S. Black, David A. Hyman, and Mohammad H. Rahmati).
15. "Policy Limits, Payouts, and Blood Money: Medical Malpractice Settlements in the Shadow of Insurance," 5 U.C. Irvine L. Rev. 559 (2015) (with Bernard S. Black, David A. Hyman, and Myungho Paik) (invited symposium).
16. "Does Tort Reform Affect Physician Supply? Evidence from Texas," Int'l Rev. of L. & Econ. (2015) (with Bernard S. Black, David A. Hyman, and Myungho Paik), available at <http://dx.doi.org/10.1016/j.irl.2015.02.002>.*

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17. “How do the Elderly Fare in Medical Malpractice Litigation, Before and After Tort Reform? Evidence From Texas” (with Bernard S. Black, David A. Hyman, Myungho Paik, and William M. Sage), Amer. L. & Econ. Rev. (2012), doi: 10.1093/aler/ahs017.*
18. “Will Tort Reform Bend the Cost Curve? Evidence from Texas” (with Bernard S. Black, David A. Hyman, Myungho Paik), 9 J. Empirical Legal Stud. 173-216 (2012).*
19. “O’Connell Early Settlement Offers: Toward Realistic Numbers and Two-Sided Offers,” 7 J. Empirical Legal Stud. 379 (2010) (with Bernard S. Black and David A. Hyman).*
20. “The Effects of ‘Early Offers’ on Settlement: Evidence From Texas Medical Malpractice Cases, 6 J. Empirical Legal Stud. 723 (2009) (with David A. Hyman and Bernard S. Black).*
21. “Estimating the Effect of Damage Caps in Medical Malpractice Cases: Evidence from Texas,” 1 J. Legal Analysis 355 (2009) (with David A. Hyman, Bernard S. Black, and William M. Sage) (inaugural issue).*
22. “The Impact of the 2003 Texas Medical Malpractice Damages Cap on Physician Supply and Insurer Payouts: Separating Facts from Rhetoric,” 44 The Advocate (Texas) 25 (2008) (with Bernard S. Black and David A. Hyman) (invited symposium).
23. “Malpractice Payouts and Malpractice Insurance: Evidence from Texas Closed Claims, 1990-2003,” 3 neva Papers on Risk and Insurance: Issues and Practice 177-192 (2008) (with Bernard S. Black, David A. Hyman, William M. Sage and Kathryn Zeiler).*
24. “Physicians’ Insurance Limits and Malpractice Payments: Evidence from Texas Closed Claims 1990-2003,” 36 J. Legal Stud. S9 (2007) (with Bernard S. Black, David A. Hyman, William M. Sage, and Kathryn Zeiler).*
25. “Do Defendants Pay What Juries Award? Post-Verdict Haircuts in Texas Medical Malpractice Cases, 1988-2003,” J. Empirical Legal Stud. 3-68 (2007) (with Bernard S. Black, David A. Hyman, William M. Sage, and Kathryn Zeiler).*
26. “Stability, Not Crisis: Medical Malpractice Claim Outcomes in Texas, 1988-2002,” 2 J. Empirical Legal Stud. 207-259 (July 2005) (with Bernard S. Black, David A. Hyman, and William S. Sage).*

Empirical Studies of the Law Firms and Legal Services

27. “The Economics of Plaintiff-Side Personal Injury Practice,” U. Ill. L. Rev. 1563 (2015) (with Bernard S. Black and David A. Hyman).
28. “Access to Justice in a World without Lawyers: Evidence from Texas Bodily Injury Claims,” 37 Fordham Urb. L. J. 357 (2010) (with David A. Hyman) (invited symposium).

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29. “Defense Costs and Insurer Reserves in Medical Malpractice and Other Personal Injury Cases: Evidence from Texas, 1988-2004,” 10 Amer. Law & Econ. Rev. 185 (2008) (with Bernard S. Black, David A. Hyman, and William M. Sage).*

Attorneys’ Fees—Empirical Studies and Policy Analyses

30. “Is the Price Right? An Empirical Study of Fee-Setting in Securities Class Actions,” Columbia L. Rev. (forthcoming 2015) (with Lynn A. Baker and Michael A. Perino).
31. “Regulation of Fee Awards in the Fifth Circuit,” 67 The Advocate (Texas) 36 (2014) (invited submission).
32. “Setting Attorneys’ Fees In Securities Class Actions: An Empirical Assessment,” 66 Vanderbilt L. Rev. 1677 (2013) (with Lynn A. Baker and Michael A. Perino).
33. “The Quasi-Class Action Method of Managing Multi-District Litigations: Problems and a Proposal,” 63 Vanderbilt L. Rev. 107 (2010) (with Geoffrey P. Miller).
34. “Incentivizing Institutional Investors to Serve as Lead Plaintiffs in Securities Fraud Class Actions,” 57 DePaul L. Rev. 471 (2008) (with Sam Dinkin) (invited symposium), reprinted in L. Padmavathi, ed., SECURITIES FRAUD: REGULATORY DIMENSIONS (2009).
35. “Reasonable Attorneys’ Fees in Securities Class Actions: A Reply to Mr. Schneider,” 20 The NAPPA Report 7 (Aug. 2006).
36. “Dissent from Recommendation to Set Fees Ex Post,” 25 Rev. of Litig. 497 (2006).
37. “Due Process and the Lodestar Method: You Can’t Get There From Here,” 74 Tul. L. Rev. 1809 (2000) (invited symposium).
38. “Incoherence and Irrationality in the Law of Attorneys’ Fees,” 12 Tex. Rev. of Litig. 301 (1993).
39. “Unloading the Lodestar: Toward a New Fee Award Procedure,” 70 Tex. L. Rev. 865 (1992).
40. “A Restitutionary Theory of Attorneys’ Fees in Class Actions,” 76 Cornell L. Rev. 656 (1991).

Liability Insurance and Insurance Defense Ethics

41. “The Treatment of Insurers’ Defense-Related Responsibilities in the Principles of the Law of Liability Insurance: A Critique,” 68 Rutgers U. L. Rev. (forthcoming 2015) (with William T. Barker) (symposium issue).
42. “The Basic Economics of the Duty to Defend,” in D. Schwarcz and P. Siegelman, eds., RESEARCH HANDBOOK IN THE LAW & ECONOMICS OF INSURANCE 438-460 (2015).*

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43. “Insurer Rights to Limit Costs of Independent Counsel,” ABA/TIPS Insurance Coverage Litigation Section Newsletter 1 (Aug. 2014) (with William T. Barker).
44. “Litigation Funding Versus Liability Insurance: What’s the Difference?,” 63 DePaul L. Rev. 617 (2014) (invited symposium).
45. “Ethical Obligations of Independent Defense Counsel,” 22:4 Insurance Coverage (July-August 2012) (with William T. Barker), available at <http://apps.americanbar.org/litigation/committees/insurance/articles/julyaug2012-ethical-obligations-defense-counsel2.html>.
46. “The Impact of the Duty to Settle on Settlement: Evidence From Texas,” 8 J. Empirical Leg. Stud. 48-84 (2011) (with Bernard S. Black and David A. Hyman).*
47. “When Should Government Regulate Lawyer-Client Relationships? The Campaign to Prevent Insurers from Managing Defense Costs,” 44 Ariz. L. Rev. 787 (2002) (invited symposium).
48. “Defense Lawyers’ Professional Responsibilities: Part II—Contested Coverage Cases,” 15 G’town J. Legal Ethics 29 (2001) (with Ellen S. Pryor).
49. “Defense Lawyers’ Professional Responsibilities: Part I—Excess Exposure Cases,” 78 Tex. L. Rev. 599 (2000) (with Ellen S. Pryor).
50. “Flat Fees and Staff Attorneys: Unnecessary Casualties in the Battle over the Law Governing Insurance Defense Lawyers,” 4 Conn. Ins. L. J. 205 (1998) (invited symposium).
51. “The Lost World: Of Politics and Getting the Law Right,” 26 Hofstra L. Rev. 773 (1998) (invited symposium).
52. “Professional Liability Insurance as Insurance and as Lawyer Regulation: A Comment on Davis, Institutional Choices in the Regulation of Lawyers,” 65 Fordham L. Rev. 233 (1996) (invited symposium).
53. “All Clients are Equal, But Some are More Equal than Others: A Reply to Morgan and Wolfram,” 6 Coverage 47 (1996) (with Michael Sean Quinn).
54. “Are Liability Carriers Second-Class Clients? No, But They May Be Soon—A Call to Arms against the Restatement of the Law Governing Lawyers,” 6 Coverage 21 (1996) (with Michael Sean Quinn).
55. “The Professional Responsibilities of Insurance Defense Lawyers,” 45 Duke L. J. 255 (1995) (with Kent D. Syverud); reprinted in IX INS. L. ANTHOL. (1996) and 64 Def. L. J. 1 (Spring 1997).

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56. “Wrong Turns on the Three Way Street: Dispelling Nonsense about Insurance Defense Lawyers,” 5-6 Coverage 1 (Nov./Dec.1995) (with Michael Sean Quinn).
57. “Introduction to the Symposium on Bad Faith in the Law of Contract and Insurance,” 72 Tex. L. Rev. 1203 (1994) (with Ellen Smith Pryor).
58. “Does Insurance Defense Counsel Represent the Company or the Insured?” 72 Tex. L. Rev. 1583 (1994); reprinted in Practising Law Institute, *INSURANCE LAW: WHAT EVERY LAWYER AND BUSINESSPERSON NEEDS TO KNOW* (1998).
59. “A Missed Misalignment of Interests: A Comment on *Syverud, The Duty to Settle*,” 77 Va. L. Rev. 1585 (1991); reprinted in VI *INS. L. ANTHOL.* 857 (1992).

Class Actions, Mass Actions, and Multi-District Litigations

60. “What Can We Learn by Studying Lawyers’ Involvement in Multidistrict Litigation? A Comment on *Williams, Lee, and Borden, Repeat Players in Federal Multidistrict Litigation*,” 5 J. of Tort L. 181 (2014), DOI: 10.1515/jtl-2014-0010 (invited symposium).
61. “The Responsibilities of Lead Lawyers and Judges in Multi-District Litigations,” 79 Fordham L. Rev. 1985 (2011) (invited symposium).
62. “The Allocation Problem in Multiple-Claimant Representations,” 14 S. Ct. Econ. Rev. 95 (2006) (with Paul Edelman and Richard Nagareda).*
63. “A Rejoinder to *Lester Brickman, On the Theory Class’s Theories of Asbestos Litigation*,” 32 Pepperdine L. Rev. 765 (2005).
64. “Merging Roles: Mass Tort Lawyers as Agents and Trustees,” 31 Pepp. L. Rev. 301 (2004) (invited symposium).
65. “We’re Scared To Death: Class Certification and Blackmail,” 78 N.Y.U. L. Rev. 1357 (2003).
66. “The Aggregate Settlement Rule and Ideals of Client Service,” 41 S. Tex. L. Rev. 227 (1999) (with Lynn A. Baker) (invited symposium).
67. “Representative Lawsuits & Class Actions,” in B. Bouckaert & G. De Geest, eds., *INT’L ENCY. OF L. & ECON.* (1999).*
68. “I Cut, You Choose: The Role of Plaintiffs’ Counsel in Allocating Settlement Proceeds,” 84 Va. L. Rev. 1465 (1998) (with Lynn A. Baker) (invited symposium).
69. “Mass Lawsuits and the Aggregate Settlement Rule,” 32 Wake Forest L. Rev. 733 (1997) (with Lynn A. Baker) (invited symposium).
70. “Comparing Class Actions and Consolidations,” 10 Tex. Rev. of Litig. 496 (1991).

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71. “Justice in Settlements,” 4 Soc. Phil. & Pol. 102 (1986) (with Jules L. Coleman).*

General Legal Ethics and Civil Litigation

72. “The DOMA Sideshow” (in progress), available at <http://ssrn.com/abstract=2584709>.
73. “Philosophers and Fiduciaries” (in progress) (presented at several law schools and conferences).
74. “Fiduciaries and Fees,” 79 Fordham L. Rev. 1833 (2011) (with Lynn A. Baker) (invited symposium).
75. “Ethics and Innovation,” 79 George Washington L. Rev. 754 (2011) (invited symposium).
76. “In Texas, Life is Cheap,” 59 Vanderbilt L. Rev. 1875 (2006) (with Frank Cross) (invited symposium).
77. “Introduction: Civil Justice Fact and Fiction,” 80 Tex. L. Rev. 1537 (2002) (with Lynn A. Baker).
78. “Does Civil Justice Cost Too Much?” 80 Tex. L. Rev. 2073 (2002).
79. “A Critique of *Burrow v. Arce*,” 26 Wm. & Mary Envir. L. & Policy Rev. 323 (2001) (invited symposium).
80. “What’s Not To Like About Being A Lawyer?” 109 Yale L. J. 1443 (2000) (with Frank B. Cross) (review essay).
81. “Preliminary Thoughts on the Economics of Witness Preparation,” 30 Tex. Tech L. Rev. 1383 (1999) (invited symposium).
82. “And Such Small Portions: Limited Performance Agreements and the Cost-Quality/Access Trade-Off,” 11 G’town J. Legal Ethics 959 (1998) (with David A. Hyman) (invited symposium).
83. “Bargaining Impediments and Settlement Behavior,” in D.A. Anderson, ed., *DISPUTE RESOLUTION: BRIDGING THE SETTLEMENT GAP* (1996) (with Samuel Issacharoff and Kent D. Syverud).
84. “The Legal Establishment Meets the Republican Revolution,” 37 S. Tex. L. Rev. 1247 (1996) (invited symposium).
85. “Do We Know Enough about Legal Norms?” in D. Braybrooke, ed., *SOCIAL RULES: ORIGIN; CHARACTER; LOGIC: CHANGE* (1996) (invited contribution).

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86. "Integrating Theory and Practice into the Professional Responsibility Curriculum at the University of Texas," 58 Law and Contemporary Problems 213 (1995) (with Amon Burton, John S. Dzienkowski, and Sanford Levinson,).
87. "Thoughts on Procedural Issues in Insurance Litigation," VII INS. L. ANTHOL. (1994).

Legal and Moral Philosophy

88. "Elmer's Case: A Legal Positivist Replies to Dworkin," 6 L. & Phil. 381 (1987).*
89. "Negative Positivism and the Hard Facts of Life," 68 The Monist 347 (1985).*
90. "Utilitarian Participation," 23 Soc. Sci. Info. 701 (1984).*

Practice-Oriented Publications

91. "Your Role in a Law Firm: Responsibilities of Senior, Junior, and Supervisory Attorneys," in F.W. Newton, ed., A GUIDE TO THE BASICS OF LAW PRACTICE (3D) (Texas Center for Legal Ethics and Professionalism 1996).
92. "Getting and Keeping Clients," in F.W. Newton, ed., A GUIDE TO THE BASICS OF LAW PRACTICE (3D) (Texas Center for Legal Ethics and Professionalism 1996) (with James M. McCormack and Mitchel L. Winick).
93. "Advertising and Marketing Legal Services," in F.W. Newton, ed., A GUIDE TO THE BASICS OF LAW PRACTICE (Texas Center for Legal Ethics and Professionalism 1994).
94. "Responsibilities of Senior and Junior Attorneys," in F.W. Newton, ed., A GUIDE TO THE BASICS OF LAW PRACTICE (Texas Center for Legal Ethics and Professionalism 1994).
95. "A Model Retainer Agreement for Legal Services Programs: Mandatory Attorney's Fees Provisions," 28 Clearinghouse Rev. 114 (June 1994) (with Stephen Yelenosky).

Miscellaneous

96. "Public Opinion and the Federal Judiciary: Crime, Punishment, and Demographic Constraints," 3 Pop. Res. & Pol. Rev. 255 (1984) (with Robert Y. Shapiro).*

PERSONAL

Married to Cynthia Eppolito, PA; Daughter, Katherine; Step-son, Mabon.

Consults with attorneys and serves as an expert witness on subjects in his areas of expertise.

First generation of family to attend college.