

## **DAVID A. DANA**

357 East Chicago Avenue Chicago, Illinois 60611 (312) 503-0240 [d-dana@law.northwestern.edu](mailto:d-dana@law.northwestern.edu)

### **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  
1999-Present

Associate Dean for Faculty Research, 2011-2012 and 2016-2017

Kirkland & Ellis Professor of Law, 2013-present (previously Professor of Law)

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

Co-Director, Climate Change Governance Working Group, Buffett Institute

Faculty Associate, Institute for Policy Research; Affiliated Faculty, Kellogg School of Management

Courses Taught: Property, Environmental Law, Professional Responsibility, Energy and Climate Change, Intellectual Property (Survey), Water Law, Class Actions

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:**

*Invisible Crises in Plain Sight: The Eviction Cycle, Causes, and Reform in Legal Regulation and Education*, MICH L REV (forthcoming 2017) (reviewing M. Desmond, EVICTED)

*The Law of Unaffordable Housing*, FORDHAM URBAN L J (forthcoming 2017)

*Rethinking Cooperative Federalism After Flint*, FORDHAM ENVT J (forthcoming 2017)

*After Flint: Environmental Justice as Equal Protection*, 111 NU L Rev online 93 (2017) (with D. Turkheimer)

*A “Switching Costs” Approach: EPA’s Clean Power Plan As A Model for Allocating the Burden of Carbon Emissions Reductions Among Nations*, 7 SAN DIEGO J CLIMATE & ENERGY LAW 1 (2016) (w. M. Barsa)

*Incentivizing Municipalities to Adapt to Climate Change*, 43 B C Envt. AFF L REV 281 (2016)

*Why Do We Have The Parcel As A Whole Rule?*, 39 VERMONT L REV 617 (2015)

*Public, By Necessity*, 13 SEATTLE J SOC J (2015) (w N. Shoked)

“Does Learning about Climate Change Adaptation Change Support for Mitigation?” 41 JOURNAL OF ENVT PSYCHOLOGY 19-29 (2015) (with three co-authors)

*A Market Approach To Regulating The Energy Revolution: Assurance Bonds, Insurance, And The Certain and Uncertain Risks Of Hydraulic Fracturing*, 99 IOWA L REV 1523 (2014)

*A Climate Change Lens On The Dormant Commerce Clause, Lifecycle GHG Taxes, And In-State RPSS Requirements*, 5 SAN DIEGO J

CLIMATE & ENERGY LAW (2014) (w M. Barsa)

Sole Editor and Contributor (three chapters), THE NANOTECHNOLOGY CHALLENGE (Cambridge Press, 2014)

*The Case For An Information-Forcing Definition of “Nanomaterials,”* 30 PACE ENVT L REV 441 (2013)

*One Green America?: Continuities And Discontinuities In Environmental Federalism In The United States,* 34 FORDHAM ENVT L 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 BC ENVTL AFF 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,* Jonathan Adler, ed., RESTORING THE ARK (AEI

Press 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 ENVT L Rev. 86 (2005)

*Existence Value and Federal Preservation Regulation*, 28 HARV ENVT L REV 343 (2004) *A Behavioral Economic Defense of the*

*Precautionary Principle*, 97 NORTHWESTERN U L REV 1315 (2003)

*Secret Settlements and Practice Restrictions Aid Lawyer Cartels and Cause Other Harms*, 2003 U ILLINOIS 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 ILLINOIS 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 NORTH CAROLINA 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 OREGON L REV 57 (1995)

## **WORKING PAPERS/PAPERS UNDER SUBMISSION:**

*Geoengineering as a Moral Hazard* (under submission, in peer-review)  
(with three co-authors)

*Horizontal Equity As Just Compensation*

*The Uneasy Case For Alternative Litigation Finance in Traditional Torts, Multi-District Litigation and Class Actions*

## **ADVOCACY AND OPINION PIECES:**

Author and Counsel of Record, Brief for Property Law Professors, *Murr v. Wisconsin*, No. 15-214 (2016-1017 Supreme Court Term)

*The Hidden Costs of Cutting Regulatory Costs*, CHICAGO TRIBUNE, Feb. 24, 2017 (w. M. Barsa)

*The Mess in Illinois and the Public Trust Case for Pension Reform*, Huffington Post, April 25, 2016

*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 (with three co-authors)

*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 in Three Frames*, Arizona State (May 2017)

*The Law of Unaffordable Housing*, Fordham (April 2017)

*Cooperative Federalism After Flint*, Fordham (February 2017)

*A Property Law for a Changing Climate*, Suffolk (March 2016)

*Takings, Municipalities, Adaptation*, Boston University (June 2015) and Boston College (November 2015)

*Almost Equal Costs and the Clean Power Plan*, San Diego (November 2015)

*Understanding The Parcel As A Whole Rule*, Vermont (October 2014), Georgia (April 2015)

*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), Vanderbilt/ELI (April 2015) *Mortgage Formalities Matter*, Notre Dame (October 2013), 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, Environmental Law, and Professional Responsibility Sections, American Association of Law Schools

Reviewer, Submissions to CELS; Oxford U Press; Cambridge U Press; Energy Policy

Environmental and Property Law Area Organizer, ALEA Annual Meeting