

Scott A. Moss

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EDUCATION

Harvard Law School, J.D., *magna cum laude*, 1998.

- Harvard Civil Rights-Civil Liberties Law Review (Senior Editor).

Stanford University, B.A. & M.A., 1995.

- M.A., Media Studies. Masters' Project: The Framing Effect on Closed-Ended Policy Questions.
- B.A., Economics, with honors. Honors Thesis: Economic Analysis of Free Exercise of Religion.

EXPERIENCE

University of Colorado Law School, Boulder, CO.

2007-present

Schaden Chair in Experiential Learning (2018-); *Professor* (2014-); *Associate Professor* (2007-13).

Courses – current: Federal Pretrial Litigation; Employment Law; Wage Law; Constitutional Law.

– **past:** Law & Economics; Employment Discrimination; Fourteenth Amendment Seminar.

Service & Leadership Roles:

- *Schaden Chair in Experiential Learning: 2018-present.* Support experiential curriculum by guiding relevant adjuncts, supervising experiential Program Director, and helping students navigate experiential offerings.
- *Admissions Committee: Chair, 2009-present.* Conduct statistical analyses on recruiting, admission, and budget strategy. Collaboratively set admission and budget policy. Monitor committee reviews of thousands of files.
- *Faculty Peer Review Committee: Co-Chair, 2017-18.* Annually evaluated all law faculty as to research, teaching, and service, assigning ratings and writing reports to the Dean.
- *Search Committees: Chair, various years.* Chaired two ad hoc committees, to hire law school Communications Director and law school Experiential Program Director; also served on two other search committees.
- *Policy, Management, & Budget Committee: 2009-16.* Advised Dean on policy proposals and budget matters.
- *Tenure & Dissertation Committees:* For Political Science Ph.D. (2 times) and external faculty tenure (6 times).
- *Student Activity Support:* Society for Work, Employment, & Labor Law at CU (founder & faculty advisor); University of Colorado Law Review (past faculty advisor); Federalist Society (debate planning/participation).
- *Legal Organization Roles:*
 - ABA Section of Labor & Employment Law: Secretary-Elect (2014-15); Secretary (2015-16).
 - Faculty of Federal Advocates (D. Colorado): Board of Directors (2016-18); Chair, CLE Cmte. (2017-18).
 - American Constitution Society, Colorado Chapter: Board of Directors (2009-12); Advisory Board (2012-).
 - American Association of Law Schools: Section on Litigation – Secretary & Executive Committee (2009-12); Section on Employment Discrimination – Chair, Chair-Elect, & Secretary (2007-09).

Awards:

- Innovation in Teaching Award, (2014) (awarded by Law School for *Federal Litigation* simulations course).
- Excellence in Teaching Award (2012) (voted by Colorado Law students).
- Student Affairs Faculty Member of the Year (2013) (awarded by University-wide committee).
- Scholarship Award, Byron White Constitutional Law Center (2011) (awarded for constitutional scholarship).

Marquette University Law School, Milwaukee, WI.

2004-2007

Assistant Professor.

Courses: Class Actions; Constitutional Law; Law & Economics; Employment Law; Employment Discrimination.

Service & Leadership Roles:

- *Diversity Committee: Chair, 2006-07.* Drafted, negotiated content of, and shepherded to enactment a new religious accommodation policy. Helped redraft school diversity plan.
- *Student Activity Support:* LGBT-Straight Legal Society (faculty advisor); Jewish Law Student Ass'n (faculty advisor); Public Interest Law Society (public interest auction emcee/auctioneer).

Awards: Ghiardi Award for Outstanding Teaching & Student Support (2007) (voted by Marquette Law students).

EXPERIENCE (cont'd)**Moss Law Practice, Denver, CO.**

2008-present

Represent a mix of plaintiffs and defendants in litigation, appeals, mediations, and negotiations of varied commercial and employment claims. Advise and consult for several businesses on employment policies and decisions.

Adjudication: Served as Hearing Officer for an administrative appeal of a Boulder County employee termination, presiding over a full-day evidentiary hearing and issuing a binding written decision. Appointed Hearing Officer for a second Boulder County case that resolved without reaching a final hearing.

Litigation & Dispute Resolution: Tried wage, defamation, securities fraud, fiduciary breach, racketeering, legal and industrial malpractice, and defamation cases; litigated appeals after several trials and in accounting fraud, race and sexual orientation discrimination, and whistleblower cases. Litigated business interference, contract, *qui tam*, and discrimination cases through emergency injunctions or pretrial. Settled many cases privately or in mediation.

Employer Advising & Consulting: Advised several businesses on employee termination or discipline decisions, as well as on contractual documents such as hiring, severance, or non-competition agreements. Reviewed, edited, and co-drafted employment manuals, as well as trainings for managers and for employees. Advised employers defending themselves in unemployment insurance hearings, NLRB hearings, and severance negotiations.

Expert Witness/Consulting: Analyzed income, assets, or labor markets as economics/statistics expert for parties in litigation. Analyzed attorneys and human resources actions as professional standards expert.

Outten & Golden LLP, New York, NY.

1999-2004

At plaintiff-side employment law firm, represented employees in individual and class action litigation, arbitration, mediation, and negotiation of discrimination, harassment, wage, contract, and other cases.

Litigation, Mediation, & Negotiation Experience: Tried contract breach case to arbitration verdict; co-tried disability discrimination case to jury verdict. Mediated dozens of cases, and privately negotiated dozens more, to settlement. Examined trial and deposition witnesses. Briefed and argued appeals and motions, including class certification, summary judgment, dismissal, and discovery.

Law Firm Management Experience: Served in the following leadership roles at the law firm, which grew from a startup firm to the largest employee-side labor and employment law firm in the country:

- *Hiring Attorney* (2000-2004). Ran committee decision-making and firm-wide meetings on attorney and paralegal hiring. Administered interviews and recruitment. Managed 14 hirings over five years.
- *Supervisor, Paralegals & Part-Time Students* (2002-2004). Supervised all paralegals and law student workers. Supervised junior attorneys, reviewing their work and advising managing partner on their progress.
- *Ethics Czar*. Assigned the role of researching ethical issues arising firm-wide in our cases or billing.

Pro Bono & Bar Volunteering:

- Represented previously *pro se* litigants in federal court *pro bono* mediations.
- Advised low-income lower Manhattan workers in MFY Legal Services post-9/11 legal services clinic.
- Aided nonprofit firms with research on First Amendment and Due Process claims.

Honorable Constance Baker Motley, U.S. District Judge, S.D.N.Y., New York, NY.
Law clerk.

1998-1999

SELECTED CASES – TRIALS, APPEALS, & REPORTED DECISIONS

- *Mack v. Town of Pinetop Lakeside*, No. 17-17105 (9th Cir.) (no decision yet) (lead appellate counsel for Plaintiff) (litigating appeal of racially hostile work environment, retaliation, and intentional infliction of emotional distress claims arising from racial epithets and retaliatory use of a snake that caused Plaintiff's heart attack).
- *Baca & Nemanich v. Hickenlooper et al.*, No. 16-1482 (10th Cir. Dec. 16, 2016) (co-counsel assisting appellate counsel for parties who were plaintiffs in one proceeding, defendants in another) (drafted part of appeal brief for Presidential Electors unsuccessfully claiming constitutional right to vote for candidate of their choice).
- *People v. Beauvais*, 393 P.3d 509, 2017 CO 34 (Colo. Sup. Ct. Apr. 24, 2017) (co-lead appellate defense counsel for *amicus curiae* Colorado Criminal Defense Bar) (main author of brief supporting criminal defendant alleging conviction after insufficient fact-finding and legal inquiry into claims of sex discrimination in jury selection).

- *Harlos v. Williams*, No. 16-cv-02649 (U.S. Dist. Ct., D. Colorado) (Nov. 4, 2016) (co-lead litigation counsel for Plaintiffs) (won preliminary injunction, under the First Amendment free speech clause, barring enforcement of Colorado statute making it a crime for any voter to show another person his or her ballot).
- *Williams v. Dep't of Public Safety*, 369 P.3d 760, 2015 COA 180 (Colo. Ct. App. Dec. 31, 2015) (lead appellate counsel for Complainant) (affirming sexual orientation discrimination verdict and back pay award, but reversing front pay award and remanding to consider reinstatement; parties then stipulated to reinstatement).
- *National Steel Supply, Inc., et al. v. Ideal Steel Supply Corp., et al.*, N.Y. Sup. Ct., Kings Cty., #501154/2011 (Jan. 21, 2015) (co-lead litigation counsel for Defendants) (dismissing contract breach and tort claims).
- *Reyes v. Snowcap Creamery, et al.*, 898 F. Supp. 2d 1233 (D. Colo. 2012) (lead trial counsel for Plaintiff) (first reported decision in Colorado holding immigration status irrelevant and non-discoverable on unpaid wage claims), 2014 WL 1101446 (judgment for restaurant cook on unpaid wages, for employer on overtime exemption).
- *Neumann v. Daniel & Bayko*, Arapahoe Dist. Ct. #10cv2233 (May 27, 2014) (lead trial counsel for Defendants) (on ex-husband's claims that ex-wife wrongly procured protective order, verdict for Defendants on Plaintiff's claims (defamation, tortious interference, and abuse of process) as well as on abuse of process counterclaim).
- *East Williston School District, et al. v. Marini et al.*, No. 10-19977 (N.Y. Sup. Ct., Nassau Cty., Dec. 12, 2011) (lead litigation counsel for Defendants) (dismissing *qui tam* False Claims Act claims as to both Defendants).
- *Marini et al. v. Adamo et al.*, 812 F. Supp. 2d 243 (E.D.N.Y. 2011), *later op.*, 995 F. Supp. 2d 155 (2014) (co-lead trial and appellate counsel for Plaintiffs winning over \$20 million verdict on securities and common-law fraud, and fiduciary breach claims as to rare coin investments), *aff'd*, 644 Fed. Appx. 33 (2d Cir. Mar. 23, 2016).
- *Martin v. Canon Business Solutions*, 2013 WL 4838913 (D. Colo. 2013) (lead litigation counsel for Plaintiff) (denying summary judgment on FMLA and Title VII claims of harassment, constructive discharge, and pay disparity).
- *Ideal Steel Supply Corp. v. Anza, et al.*, 652 F.3d 310 (2d Cir. 2011) (lead trial and appellate counsel for Plaintiff) (holding on remand from Supreme Court's dismissal of RICO participation claim that RICO investment claim remained for steel business's claim of injury from competitor's tax fraud), *cert. den.*, 565 U.S. 1241 (2012).
- *Ideal Steel Supply Corp. v. Jan Trucking & Rigging, Inc.*, No. 04 cv 1196 (E.D.N.Y. March 2011) (co-lead trial counsel for Plaintiffs) (jury verdict against both Plaintiff's claims and Defendant's counterclaims).
- *Ideal Steel Supply Corp. v. McGuire Woods LLP*, No. 20519/06 (Queens Sup. Ct., Nov. 18, 2010) (lead trial counsel for Plaintiffs) (denying summary judgment on most legal malpractice claims, followed by mid-trial settlement).
- *Ideal Steel Supply Corp. v. Anza & Berdon LLP*, 63 A.D.3d 884 (App. Div., 2d Dep't, 2009) (lead appellate counsel for Plaintiffs) (affirming dismissal of professional negligence and fraud claims against accounting firm).
- *Sarmiento v. Queens College CUNY*, 153 Fed. Appx. 21 (2d Cir. 2005) (lead appellate counsel for Plaintiffs) (affirming summary judgment against race and national origin discrimination, and retaliation, claims).
- *E.E.O.C. & Schieffelin v. Morgan Stanley & Co.*, 324 F.Supp.2d 451 (S.D.N.Y. 2004) (associate assisting litigation counsel for Plaintiffs) (class sex discrimination case; granting Plaintiffs' *Daubert* motion, denying Defendants').
- *Digestive Liver Disease P.C. v. Patel & Chin*, 18 A.D.3d 423 (App. Div., 2d Dep't, 2005) (co-lead litigation counsel for Defendants, then assisting appellate counsel) (after hearing, denying non-compete preliminary injunction).
- *DeGraffenreid v. DebtTraders Inc.*, No. 01-03149 (lead arbitration counsel for Claimant) (NASD Dispute Resol'n, Dec. 10, 2002) (awarding wages and penalties on contract, implied covenant, and wage claims against brokerage).
- *Liu v. Donna Karan Int'l, Inc.*, 207 F. Supp. 2d 191 (S.D.N.Y. 2002) (associate assisting litigation counsel for Plaintiffs; authored motion that won first reported decision in country precluding discovery of wage plaintiffs' immigration status after *Hoffman Plastic Compounds v. NLRB* declared immigration status relevant to relief).
- *Ansoumana v. Gristede's*, 201 F.R.D. 81 (S.D.N.Y. 2001) (associate assisting litigation counsel for Plaintiffs; authored motion that won class certification for deliverymen seeking unpaid minimum/overtime pay), *aff'd*, #01-8021 (2d Cir. 2001), *later op.*, 255 F. Supp. 2d 184 (S.D.N.Y. 2003) (partial summary judgment for Plaintiffs).

PUBLICATIONS

Casebook & Treatise

RICHARD CARLSON & SCOTT A. MOSS, EMPLOYMENT LAW (Aspen / Wolters Kluwer).

- Co-author of law school casebook, 3rd edition (2013) & 4th edition (2018).

LINDEMANN, GROSSMAN, & WEYRICH, EMPLOYMENT DISCRIMINATION LAW (ABA / Bloomberg BNA)

- Co-Executive Editor of 2016-2017 cumulative supplement to practice treatise.

Academic Articles

No Longer a Second-Class Class Action? Finding Common Ground in the Debate over Wage Collective Actions with Best Practices for Litigation and Adjudication, __ FED. CTS. L. REV. __ (forthcoming, 2019).

The Value of the Restatement of Employment Law, Based on 50-State Empirical Analyses and the Importance of Clarifying Disputed Issues –But with Caveats about the Restatement’s Imperfect Work Product, 21 EMPLOYEE RTS. & EMPLOYMT. POL. J. 1-51 (2017) (invited symposium contribution).

Judges’ Varied Views on Textualism: The Roberts-Alito Schism and the Similar District Judge Divergence That Undercuts the Widely Assumed Textualism-Ideology Correlation, 88 U. COLO. L. REV. 1-31 (2017).

Employment and Labor Law at the 2014-2015 Supreme Court: The Court Devotes 10% of Its Docket to Statutory Interpretation in Employment Cases, But Rejects the Argument that What Employment Law Really Needs is More Administrative Law, 31 ABA J. LABOR & EMP. L. 171-230 (2016).

What Makes a Law Student Succeed or Fail? A Longitudinal Study Correlating Law Student Applicant Data and Law School Outcomes, 13 J. OF EMPIRICAL LEG. STUDIES 205-265 (2016) (with Alexia Brunet Marks).

Bad Briefs, Bad Law, Bad Markets: Documenting the Poor Quality of Plaintiffs’ Briefs, Its Impact on the Law, and the Market Failure It Reflects, 63 EMORY L.J. 59-125 (2013).

(In)Competence In Appellate And District Court Brief Writing On Rule 12 And 56 Motions, 57 N.Y. L. SCH. L. REV. 842-862 (2013) (invited symposium contribution).

The Second-Class Class Action: How Courts Thwart Wage Rights by Misapplying Class Action Rules, 61 AMERICAN U. L. REV. 523-583 (2012) (with Nantiya Ruan).

The Story of Tinker v. Des Moines to Morse v. Frederick: Similar Stories of Very Different Results for Very Different Student Speech, chapter 14 in GARNETT & KOPPELMAN, FIRST AMENDMENT STORIES (2011), adapted for republication, 64 FLORIDA L. REV. 1407-1457 (2011).

Yes, Labor Markets Are Flawed – But So Is the Economic Case for Mandating Employee Voice in Corporate Governance, 94 MARQ. L. REV. 959-981 (2011) (invited symposium contribution).

How the New Economics Can Improve Employment Discrimination Law, and How Economics Can Survive the Demise of the “Rational Actor,” 51 WILLIAM & MARY L. REV. 183-259 (2009) (with Peter H. Huang).

Litigation Discovery Cannot Be Optimal But Could Be Better: The Economics of Improving Discovery Timing in a Digital Age, 58 DUKE L. J. 889-954 (2009), reprinted as 59 DEFENSE L.J. 189 (2010).

Reluctant Judicial Factfinding: When Minimalism and Judicial Modesty Go Too Far, 32 SEATTLE U. L. REV. 549-567 (2009) (invited symposium contribution).

The Courts under President Obama, 86 DENVER U. L. REV. 727-742 (2009) (invited symposium contribution).

The Intriguing Federalist Future of Reproductive Rights, 88 BOSTON U. L. REV. 175-225 (2008) (with Doug Raines).

Illuminating Secrecy: A New Economic Analysis of Confidential Settlements, 105 MICH. L. REV. 867-912 (2007), reprinted as 57 DEFENSE L.J. 57 (2008).

Students and Workers and Prisoners – Oh My! A Cautionary Note about Excessive Institutional Tailoring of First Amendment Doctrine, 54 U.C.L.A. L. REV. 1635-1679 (2007) (invited symposium contribution).

Fighting Discrimination while Fighting Litigation: A Tale of Two Courts, 76 FORDHAM L. REV. 981-1013 (2007).

Against “Academic Deference”: Keeping Title VII Alive to Redress Academic Discrimination, 27 BERKELEY J. EMP. & LAB. L. 1-22 (2006).

Where There’s At-Will, There Are Many Ways: Redressing the Increasing Incoherence of Employment at Will, 67 U. PITTSBURGH L. REV. 295-364 (2005).

Women Choosing Diverse Workplaces: A Rational Preference with Disturbing Implications for Both Occupational Segregation and Economic Analysis of Law, 27 HARV. WOMEN’S L. J. 1-88 (2004).

Public Funding for Disability Accommodations: A Rational Solution to Rational Discrimination and the Disabilities of the ADA, 33 HARV. C.R.-C.L. L. REV. 197-236 (1998) (with Daniel A. Malin).

An Appeal by Any Other Name: Congress’s Empty Victory over Habeas Rights – Felker v. Turpin, 32 HARV. C.R.-C.L. L. REV. 249-263 (1997).

Law Practice Publications

“Where Are They Now?” How the District and Appellate Caselaw Are Evolving after Recent Supreme Court Employment Cases, Several Bar Ass’n CLE Events (2016-2017).

Defenses Against EEO Claims: Ways That Law Firms May Differ from Typical Employers, American Bar Ass’n, Section on Labor & Employment Law (Nov. 2014).

Discovery of Comparator Evidence, National Employment Lawyers Ass’n Annual Convention (June 2014).

Judicial Hostility to Litigation and How It Impairs Legal Accountability for Corporations and Other Defendants, American Constitution Society Issue Brief (May 2010).

Fighting Discrimination While Fighting Litigation: A Tale of Two Supreme Courts, 36 LABOR & EMPLOYMENT LAW (ABA) 5 (Fall 2007).

Fair Labor Standards Act Litigation (book chapter), in GOODMAN, ED., EMPLOYEE RIGHTS LITIGATION (2005).

Overview of Disparate Impact Litigation, Annual Civil Rights Training Institute of NAACP Legal Defense and Education Fund, Inc. (2004) (with Adam T. Klein).

Clark County School District v. Breedon: An Unreasonable View of the Reasonable Employee?, THE NEW YORK EMPLOYEE ADVOCATE, July/Aug. 2001, at 3.

When Your Employer Thinks You Acted Disloyally: The Guarantees and Uncertainties of Retaliation Law, EMPLOYMENT LAW COUNSELOR, June 15, 2001, at 2 (co-authored with W. Outten).

Marshaling the Evidence in Employment Discrimination Cases: A Perspective from the Plaintiff’s Bar, 657 P.L.I./LITIG. 101 (2001) (co-authored with W. Outten, P. Filippatos, & N. Ruan).

Practice Pointers on Opposing the Affirmative Defense that the Employer Took Reasonable Steps to Prevent Sexual Harassment: Perspective of a Plaintiff’s Attorney, 656 P.L.I./LITIG. 187 (2001) (co-authored with N. Ruan).

Overview of Workplace Claims in New York: Perspective of Employees’ Counsel, 627 P.L.I./LITIG. 807 (2000) (co-authored with W. Outten, A. Golden, P. Filippatos, & J. Raisner).

When the Motives Are Mixed and the Actions Are Ultimate: Unresolved Issues in Retaliation Law, VPB0919 ALI-ABA 151 (American Law Institute - American Bar Ass’n, Sept. 19, 2000) (co-authored with W. Outten).

Reeves and Dale: Pretext and Puritanism, THE NEW YORK EMPLOYEE ADVOCATE, July/Aug. 2000, at 1.

SELECTED PRESENTATIONS

- No Longer a Second-Class Class Action? Finding Common Ground in the Debate over Wage Collective Actions with Best Practices for Litigation and Adjudication
- 44th Annual Austin Scott Lecture, University of Colorado Law School Nov. 27, 2018
- Where Are They Now? How District & Appellate Caselaw Are Evolving after Supreme Court Employment Cases
- National Employment Lawyers Ass'n Annual Convention June 23, 2017
 - Association of Corporate Counsel CLE Jan. 26, 2017
- Supreme Court Update, ABA Section of Labor & Employment Law, Annual Conference Nov. 6, 2015
- Trial Preparation & Trial Techniques, Colorado Defense Lawyers Association Feb. 11, 2015
- Law Firm Employment Law & Policies, ABA Section of Labor & Employment Law, Annual Conf. Nov. 6, 2014
- Whither the Jury? Jury Trials in the Modern Age, 2014 Colorado Bench/Bar Conference Oct. 2, 2014
- Ethics of Legal Fees & Retainer Agreements, Nat'l Employment Lawyers Ass'n Annual Convention June 29, 2013
- Who Goes to Law School, and Who Should? A Two-School Longitudinal Study Correlating Applicant & Student Data with Academic Performance and Employment Outcomes
- Presented at six law school conferences and invited colloquia, 2012-2014
- Supreme Court Year in Review, Int'l Ass'n of Official Human Rights Agencies, Annual Meeting Aug. 26, 2013
- "Bad Briefs, Bad Law, Bad Markets: Documenting the Poor Quality of Plaintiffs' Briefs, Its Impact on the Law, and the Market Failure It Reflects"
- 31st Annual Carl A. Warns Labor & Employment Law Institute, Louisville KY June 12, 2014
 - National Employment Lawyers Ass'n, Annual Meeting July 1, 2011
 - Presented at four law school conferences and invited colloquia, 2012-2013
- The Constitutionality of the Individual Health Insurance Mandate: A Debate
- Federalist Soc'y & American Constitution Soc'y, co-sponsored at three law schools Jan.-Apr. 2011
- The Second-Class Class Action: How Courts Thwart Wage Rights by Misapplying Class Action Rules
- Presented at three law school conferences and invited colloquia, 2010-11
- Depositions in Employment Litigation
- Colorado Plaintiff Employment Lawyers Association Annual Meeting Aug. 28, 2009
 - National Employment Lawyers Ass'n, Conference on Depositions in Employment Litigation Mar. 21, 2009
- Replacing Too-Narrow "Rationality" Premises in Employment Law: How Behavioral and Happiness Research Actually Can Be Useful
- American Law & Economics Ass'n Annual Meeting, Univ. of San Diego Law School May 15, 2009
 - Presented at three other law school conferences and invited colloquia, 2008-2009
- Litigation Discovery Cannot Be Optimal But Could Be Better: The Economics of Improving Discovery Timing
- Workshop on Judges & Judging, American Univ. Washington Coll. of Law Sept. 12, 2008
 - Presented at three other law school conferences and invited colloquia, 2007-2008
- Curious Institutional Variations in Free Speech Rights: An Economic Explanation and Criticism
- Symposium, Constitutional Niches: Institutional Context in Constitutional Law, UCLA Law Sch. Feb. 2, 2007
- Illuminating Secrecy: A New Economic Analysis of Confidential Settlements
- American Law & Economics Ass'n Annual Meeting, Harvard Law School May 6, 2007
 - Presented at four other law school conferences and invited colloquia, 2006-2007

BAR MEMBERSHIPS

States: Colorado; New York

U.S. District Courts: District of Colorado; Southern and Eastern Districts of New York

U.S. Courts of Appeal: Second Circuit; Ninth Circuit; Tenth Circuit

U.S. Supreme Court