

THOMAS R. LEE

Supreme Court of Utah
450 South State Street
Salt Lake City, UT 84114

EDUCATION

University of Chicago Law School: J.D. with High Honors, 1991
Order of the Coif
University of Chicago Law Review
Managing Editorial Board, Topics & Comments Editor, 1990-91
John M. Olin Prize to the outstanding graduate in law & economics
Joseph Henry Beale Prize for outstanding work in first-year legal
research and writing program
John M. Olin Fellowship in law & economics

Brigham Young University: B.A., Economics, Summa Cum Laude, 1988
Edwin S. Hinckley Scholar, 1987-88
Trustee's Scholar, 1983-84, 1986-87

EMPLOYMENT

2010 – present: **Utah Supreme Court**
Justice

Fall 2018-2019: **Harvard Law School**
Visiting Lecturer

1997 – present: **Brigham Young University, J. Reuben Clark Law School**
2010 – present: Distinguished Lecturer
2009 - 2010: Rex & Maureen Rawlinson Professor of Law
2008 – 2009: Associate Dean for Faculty & Curriculum
1997 – 2003: Associate Professor of Law
2003 – 2008: Professor of Law

2009 – 2010: **Co-Counsel for Kane County & Utah Association of Counties**
in *The Wilderness Society v. Kane County* (10th Cir. No. 08-4090)

2009 – 2010: **Lead Counsel for Workers Compensation Fund** in *Merrill*
v. Utah Labor Comm'n (Utah S.Ct. No. 20070584)

2004-2005: **Deputy Assistant Attorney General, Civil Division, U.S.**
Department of Justice

- As head of Federal Programs Branch, responsible for all civil litigation against federal government involving challenges to constitutionality of federal legislation and legality of executive action

- Supervised and oversaw brief writing and appellate advocacy by branch of approximately 85 attorneys
- Presented oral arguments in *Guantanamo Bay Detainee* cases (D. D.C.) and *Waxman v. Thompson* (C.D. Cal.)

2002-2004:

Lead Counsel for the State of Utah in *Skull Valley Band of Goshute Indians v. Leavitt*

- Presented oral argument in 10th Circuit in case involving constitutional challenge to Utah statutes regulating storage of spent nuclear fuel on Goshute lands

Lead Counsel for the State of Utah in *Bullcreek v. Nuclear Regulatory Commission*

- Presented oral argument in D.C. Circuit in case challenging NRC's authority to license away-from-reactor facility for storage of spent nuclear fuel

2001-2002:

Lead Counsel for the State of Utah in *Utah v. Evans*

- Presented oral arguments in three-judge district court in cases challenging method of statistical imputation and of overseas population count in 2000 census
- Presented oral argument in U.S. Supreme Court in statutory and constitutional challenge to statistical imputation

1999 - 2010:

Of Counsel, Howard, Phillips, & Andersen

- Trademark, copyright, & trade secret litigation in Tenth Circuit, Fourth Circuit, Sixth Circuit, District of Utah, Eastern District of Virginia, Eastern District of Michigan, Northern District of New York, Southern District of Florida, Southern District of Texas, Northern District of Illinois
- Representative cases where I presented oral argument and/or was principal draftsman of briefs:
 - *General Motors v. Urban Gorilla* (10th Cir. & D. Utah) (2007 – present) (trade dress infringement action against manufacturer of knockoff Hummer body kit)
 - *National Business Forms v. Ford Motor Co.* (S.D. Tex 2009) (trademark infringement suit for sale of decals and stickers incorporating Ford marks)
 - *Audi v. Shokan Coachworks* (N.D. N.Y. 2008) (trademark infringement action against retail seller of recycled parts for Audi automobiles)
 - *General Motors v. Phat Cat Carts, Inc.* (S.D. Fla. 2006) (trademark and trade dress infringement action against manufacturer of Hummer look-alike golf carts)

- *Volkswagen v. Dorling Kindersley Publishing* (E.D. Mich. 2005) (trademark infringement action against publisher of children’s book shaped like VW Beetle)
- *General Motors v. Chevy Duty, Inc.* (E.D. Mich. 2005) (trademark infringement action against auto parts distributor)
- *Keystone v. Ford Motor Co.* (C.D. Cal. 2005) (trademark infringement action between automobile manufacture and automobile parts distributor)
- *Au-Tomotive Gold v. Volkswagen of America* (9th Cir. 2004) (trademark infringement action against manufacturer of license plate frames and key chains incorporating Volkswagen and Audi trademarks)
- *General Motors v. Avanti Motor* (E.D. Mich. 2003) (trade dress infringement action against concept vehicle incorporating the look and feel of the Hummer H2)
- *Porsche Cars v. Porsch.com* (4th Cir. 2002) (in rem trademark cybersquatting action concerning hundreds of domain names incorporating variations on Porsche’s trademarks)
- *Ford v. Lloyd* (6th Cir. 2002) (trademark infringement action against manufacturer of floor mats bearing counterfeits of Ford’s trademarks)
- *Virtual Works v. Volkswagen* (4th Cir. 2000) (trademark cybersquatting action concerning VW.NET)
- *Ford v. 2600 Enterprises* (E.D. Mich. 2002) (trademark cybersquatting action)
- *Ford v. Czech* (N.D. Ohio 2000) (trademark cybersquatting action concerning FORD-QUALITY.COM and other domain names)
- *Ford v. GreatDomains.com* (E.D. Mich. 2001) (trademark cybersquatting action concerning numerous domain names incorporating variations on Ford’s trademarks)
- *Porsche Cars v. Manny’s Porshop*, 972 F. Supp. 1128 (N.D. Ill. 1997) (trademark infringement and dilution action)
- Lobbied on behalf of Porsche Cars in support of Anticybersquatting Consumer Protection Act (1999)

**1992-94,
1995-97:**

Associate (‘92-‘94), Shareholder (‘95-‘97), Kimball, Parr, Waddoups, Brown & Gee: Intellectual Property and Employment Litigation

1994-1995:

Law Clerk to the Honorable Clarence Thomas, Associate Justice of the United States Supreme Court

1991-1992: Law Clerk to the Honorable J. Harvie Wilkinson, III, United States Court of Appeals for the Fourth Circuit

PUBLICATIONS

LAW & CORPUS LINGUISTICS (Oxford Univ. Press 2020) (forthcoming; co-authored with Stephen Mouritsen)

Data-Driven Originalism, 167 Penn. L. Rev. 261 (2019) (co-authored with James Phillips)

Judging Ordinary Meaning, 127 Yale L. J. 788 (2018) (co-authored with Stephen Mouritsen)

Corpus Linguistics & Original Public Meaning: A New Tool To Make Originalism More Empirical, 126 Yale L.J. F. 21 (2016) (co-authored with James Phillips & Daniel Ortner)

An Empirical and Consumer Psychology Analysis of Trademark Distinctiveness, 41 Ariz. St. L. J. 1033-1109 (2009) (co-authored with Glenn Christensen and Eric DeRosia)

Sophistication, Bridging the Gap, and the Likelihood of Confusion: An Empirical and Theoretical Analysis, 98 Trademark Reporter 913 – 949 (2008) (co-authored with Glenn Christensen and Eric DeRosia)

Trademarks, Consumer Psychology, and the Sophisticated Consumer, 57 Emory L. J. 575-650 (2008) (co-authored with Glenn Christensen and Eric DeRosia)

Overrulings, Chapter in Encyclopedia of the Supreme Court (Macmillan USA 2008) (David S. Tanenhaus, ed.)

Demystifying Dilution, 84 Boston Univ. L. Rev. 859-944 (2004)

Eldred v. Ashcroft and the (Hypothetical) Copyright Term Extension Act of 2020, 12 Tex. Int. Prop. L.J. 1-23 (2003)

Utah's Census Battles: The Inside Story, 16 Chance 21-29 (2003) (co-authored with Lara J. Wolfson)

The Census and the Overseas Population, 2 Elec. L. J. 343-66 (2003) (co-authored with Lara J. Wolfson)

“To Promote the Progress of Science”: The Copyright Clause and Congress's Power to Extend Copyrights, 16 Harv. J. Law & Techn. 1-23 (2002) (co-authored with Senator Orrin G. Hatch)

The Original Understanding of the Census Clause, 77 Wash. L. Rev. 1-64 (2002)

Tribute to Rex E. Lee, 3 J. App. Pract. & Process 560-563 (2001)

The *Anastasoff* Case and the Judicial Power to “Unpublish” Opinions, 77 Notre Dame L. Rev. 135-173 (2001) (co-authored with Lance Lehnhof)

Preliminary Injunctions and the Status Quo, 58 Wash. & Lee L. Rev. 109-166 (2001)

In Rem Jurisdiction in Cyberspace, 75 Wash. L. Rev. 97-145 (2000)

Stare Decisis in Economic Perspective: An Economic Analysis of the Supreme Court’s Doctrine of Precedent, 78 N.C. L. Rev. 643-706 (2000)

The Clinton Impeachment and the Constitution, 1999 BYU L. Rev. 1079-97

Stare Decisis in Historical Perspective: From the Founding Era to the Rehnquist Court, 52 Vand. L.Rev. 647-735 (1999)

Pleading and Proof: The Economics of Legal Burdens, 1997 BYU L.Rev. 1-34

Comment, The Standing of Qui Tam Relators Under the False Claims Act, 57 U. Chi. L. Rev. 543-71 (1990)

APPEARANCES & PRESENTATIONS

Georgetown University Law Center, Originalism Summer Seminar, *Data-Driven Originalism* (May 23, 2019)

Heritage Foundation, Judicial Law Clerk Training Academy (February 21, 2019)

Heritage Foundation, Edwin Meese III Center for Legal and Judicial Studies, 2018 Spring Legal Strategy Forum (June 5-6, 2018)

Georgetown University Law Center, Originalism Summer Seminar, *Data-Driven Originalism* (May 24, 2018)

Ninth Annual Hugh & Hazel Darling Foundation Originalism Works-in-Progress Conference, University of San Diego, *Data-Driven Originalism* (February 17, 2018)

University of Pennsylvania Law School, Public Law Scholarship Workshop, *Judging Ordinary Meaning* (October 4, 2017)

University of Pennsylvania Law School, Federalist Society Presentation, *Data-Driven Originalism* (October 4, 2017)

Georgetown University Law Center, Originalism Boot Camp, *Data-Driven Originalism* (May 25, 2017)

Yale Law School, Federalist Society Presentation, *Judging Ordinary Meaning* (February 20, 2017)

Federalist Society Faculty Conference, San Francisco, CA, *Law and Corpus Linguistics Panel* (January 5, 2017)

Harvard Law School, Federalist Society Annual Dinner, Keynote Speaker (April 15, 2016)

Stanford Law School, CodeX, Presentation on Corpus Linguistics (October 22, 2015)

J. Reuben Clark Society Annual Conference, Dallas, Texas, February 2011, *Civility and Effective Appellate Advocacy*

Intellectual Property Scholars Conference, New York, New York, August 2009, *An Empirical and Consumer Psychology Analysis of Trademark Distinctiveness*

Federalist Society, Annual Faculty Conference, San Diego, California, January 9, 2009, Work-In-Progress Presentation, *Trademark Meaning*

J. Reuben Clark Society, Faculty Chapter, Mini-Conference, San Diego, California, January 6, 2009, Commentator for David Pimentel, *Judicial Misconduct and Reporting Pitfalls*

Stetson University School of Law, November 14, 2008, Work In Progress Presentation, *Just Semantics? Descriptive Trademarks in Commercial Context*

International Trademark Association, Trademark Reporter Committee Annual Meeting, Boca Raton, Florida, November 13, 2008

Utah Public Radio, “Access Utah,” October 6, 2008 (Radio Call-In program on “First Monday” opening of Supreme Court term, with Professors Amy Wildermuth, University of Utah, and RonNell Andersen Jones, BYU Law School)

Utah Defense Lawyers Association Annual Meeting, Salt Lake City, UT (“Physical and Mental Examinations Under Utah Rule of Civil Procedure 35”)

International Trademark Association, Learned Professor Symposium, New York, New York, January 3, 2008 (“Trademarks and the Reasonably Prudent Buyer: A Theoretical and Empirical Analysis of Consumer Sophistication”)

National Public Radio, *All Things Considered*, January 20, 2006 (discussion of subpoena issued to Google in *ACLU v. Gonzalez*, which involves a First Amendment challenge to the Child Online Protection Act)

National Public Radio, *Talk of the Nation*, January 23, 2006 (discussion of subpoena

issued to Google in *ACLU v. Gonzalez*, which involves a First Amendment challenge to the Child Online Protection Act)

AWARDS & PROFESSIONAL AFFILIATIONS

Advisory Committee, Federal Rules of Civil Procedure, 2018-present

Utah Judicial Council, 2015-present

Teacher of the Year, BYU Law School, 1999-2000 and 2002-2003

Utah Supreme Court, Advisory Committee on Rules of Civil Procedure, 1999-2009

International Trademark Association, *The Trademark Reporter*, Committee Member

Utah State Bar, United States Supreme Court Bar, Bars of the United States Courts of Appeals for the Fourth Circuit, Tenth Circuit, and District of Columbia Circuit

Utah Supreme Court Advisory Committee on Rules of Civil Procedure