

## ROBERT D. BRAIN

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### LEGAL EMPLOYMENT

2006-present – Loyola Law School Los Angeles. Clinical Professor of Law (elevation from Associate Clinical Professor in 2012). Courses taught: Legal Research and Writing; Contracts; Ethical Lawyering; and Law of Sales, Domestic and International. In addition, provided assistance in the preparation of various moot court teams, and served as advisor to many law review students in preparation of their notes and comments.

1995- 2006 – Howarth & Smith. Partner (began as “of counsel;” elected Partner in 1997). Day to day and trial responsibility for a mixture of plaintiff and defense complex business litigation cases, including securities fraud, class action, defamation, promissory fraud, products liability, unfair competition, breach of contract, legal malpractice, CERCLA, breach of fiduciary duty, and indemnity cases. In charge of class action briefing and argument for nationwide consortium of law firms in 9/11 terrorist litigation, *Havlish v. Bin Ladin, et al.*, 03 MDL 1570 (RCC). In addition, responsible for training new associates in writing and advocacy.

1992-1993 – McGeorge School of Law. Visiting Professor of Law. Courses taught: Torts, First Amendment and Commercial Law (UCC Articles 3, 5, 7 and 9).

1984-1992 – Pepperdine University School of Law, Associate Professor of Law. Courses taught: Contracts; Torts; Commercial Law; Law of Sales; First Amendment Law; Evidence; Advanced Civil Procedure; Trial Practice; and Constitutional Law – Individual Rights. Additionally, served as coach of, and assisted, various national trial and moot court teams.

1987 & 1988 (Summer) – Special Trial Counsel for Los Angeles District Attorney's Office. Tried a number of criminal cases for the Los Angeles District Attorney's Pomona Branch Office.

1987-1994 – Arbitrator, Commercial Arbitration Panel, American Arbitration Association, Los Angeles Office. Served as arbitrator in approximately 25 cases, both as solo and in three-arbitrator panels, in matters dealing with securities law violations (including churning and other unauthorized trading); fraud; breach of contract, and unfair competition.

1986 (Summer) – Teaching Assistant to Chief Justice Rehnquist in the course entitled "The History of the Supreme Court of the United States" taught at Pepperdine University.

1980-1984 – Gibson, Dunn & Crutcher. Associate in the Business Litigation Department. Worked on securities, unfair competition, antitrust, business torts, and complex breach of contract cases at the trial and appellate level, and conducted arbitrations in those areas as well.

1993-1995 Transmedia, Inc. Co-owned company, which developed and produced programs on evidence and trial practice for MCLE credit throughout the country.

## **EDUCATION**

B.S. (Biology), Stanford University, 1976.  
M.S. (Biochemistry), Stanford University, 1977.  
J.D., Berkley Law, 1980.

## **HONORS AND ACTIVITIES DURING UNDERGRADUATE AND LAW SCHOOL EDUCATION**

Graduation with Honors, Stanford Biology Department.  
Graduation with Distinction, Stanford University.  
Intercollegiate Basketball.  
Recipient National Science Foundation Fellowship.  
Recipient Carnegie Institution of Washington Fellowship.  
Best First Year Moot Court Brief.  
Moot Court Board.

## **MAJOR LEGAL AND SCIENTIFIC PUBLICATIONS**

Robert D. Brain, *The Unnecessary Warranty of Fitness for a Particular Purpose*, 23 CHAPMAN L. REV. 163 (2020)

Robert D. Brain, *Judge Posner, a Modern Day Chancellor in Equity: An Explanation of Wisconsin Knife Works v. National Metal Crafters*, 50 UNIV. PAC. L. REV. 431 (2019).

Robert D. Brain, *Sum & Substance: CD Series, Contract Law* (June 2018).

Robert D. Brain, *Sum & Substance: Quick Review of Contracts* (9th ed.) (August 2018). (1st Edition published in 1992).

Bryan Hull, James Prendergast, and Robert D. Brain, *Secured Lending: Cases and Materials* (est. submission date, May, 2023).

ROBERT D. BRAIN, VIDEOGAME LAW: CASES, STATUTES, FORMS, PROBLEMS AND MATERIALS, Carolina Academic Press, (2d ed., 2016) (with ASHLEY SAUNDERS LIPSON)

ROBERT D. BRAIN, *TEACHER'S MANUAL FOR VIDEOGAME LAW: CASES, STATUTES, FORMS, PROBLEMS AND MATERIALS*, Carolina Academic Press (2d ed. 2017) (with ASHLEY SAUNDERS LIPSON)

ROBERT D. BRAIN, "Multijurisdictional Practice: A Need for Care," 2015 CAL. BAR J., JUNE ED., [HTTP://APPS.CALBAR.CA.GOV/MCLESELFSTUDY/MCLE\\_HOME.ASPX?TESTID=98](http://apps.calbar.ca.gov/mcleselfstudy/mcle_home.aspx?testid=98)

ROBERT D. BRAIN, *BRAIN ON CONTRACTS, SUM & SUBSTANCE, EXAM PRO SERIES: ESSAY* (West Academic Publishing 2014)

ROBERT D. BRAIN, *BRAIN ON CONTRACTS, SUM & SUBSTANCE, EXAM PRO SERIES: OBJECTIVE* (West Academic Publishing 2014)

Robert D. Brain and Daniel J. Broderick, *The Secondary Relevance of Demonstrative Evidence: Charting its Proper Evidentiary Status*, 25 U.C.D. L. REV. 957 (1992).

Robert D. Brain and Daniel J. Broderick, *Demonstrative Evidence, Clarifying Its Role at Trial*, 1994 TRIAL 73 (September).

Robert D. Brain and Daniel J. Broderick, *Demonstrative Evidence*, in CALIFORNIA CRIMINAL TRIALBOOK, (H. Caldwell, S. Stending, and G. Nichols eds. 1st ed. 1989; now in 6th ed. 2004).

Robert D. Brain and Daniel J. Broderick, *Demonstrative Evidence in the Twenty-First Century*, in WINNING WITH COMPUTERS: TRIAL PRACTICE IN THE TWENTY-FIRST CENTURY (J. Tredennick ed. 1991).

Robert D. Brain and Daniel J. Broderick, *Demonstrative Evidence: The Next Generation*, 17 LITIGATION 21 (Summer, 1991); re-printed in 1992 SYMPOSIUM OF THE CALIFORNIA STATE BAR LITIGATION SECTION, distributed at the 1992 State Bar Convention.

Robert D. Brain and Winslow R. Briggs, *Blue Light-Induced Absorbance Changes in Membrane Fractions from Neurospora Crassa*, 75 CARNEGIE INSTITUTION OF WASHINGTON YEAR BOOK 373 (1975).

Robert D. Brain, Jack Freeberg, Van Weiss, and Winslow R. Briggs, *Blue Light-Induced Absorbance Changes in Membrane Fractions from Corn and Neurospora*, 59 PLANT PHYSIOLOGY 948 (1977).

Robert D. Brain and Winslow R. Briggs, *Light-Induced Cytochrome Reduction in Neurospora Crassa Membrane Fractions*, in RESEARCH IN PHOTOBIOLOGY (A. Castellani ed. 1977).

## LEGAL-RELATED NEWSPAPER COMMENTARY

Robert D. Brain, *Human Touch*, LOS ANGELES DAILY JOURNAL, August 6, 2009, p. 6. (story revealing some behind-the-scene details of the “My Space Mom” case.)

Robert D. Brain, *A Comedy of Teachable Errors*, LOS ANGELES DAILY JOURNAL, April 4, 2009, p. 6 (article about a vignette that took place in one of my Trial Practice classes.)

Robert D. Brain, *The Court’s Fumble*, LOS ANGELES DAILY JOURNAL January 21, 2009, p. 6, (article about the influence of the Supreme Court’s opinion in *Board of Regents of Oklahoma v. NCAA* 468 U.S. 85 (1984) on college football’s BCS.)

Robert D. Brain, *Virtual Insanity* 12/3/08, LOS ANGELES DAILY JOURNAL December 3, 2008. P. 6 (article about the virtual on-line world, *Second Life*, and a proposal for resolution of customer/developer and customer/customer disputes in that world.)

Robert D. Brain, *Winning Over the Jury: An Exact Science?*, LOS ANGELES DAILY JOURNAL, October 1, 2008, p. 6 (article about current developments in cognitive science research into the attitudes and values of the Baby Boomer, Gen X, and Gen. Y populations, and how these attributes affect trial strategy and jury selection.)

Robert D. Brain, *You've Got Distractions*, LOS ANGELES DAILY JOURNAL July 16, 2008, p. 4 (article positing that the distraction of e-mail can cause distracted legal writing by practitioners.)

## SELECTED PRESENTATIONS

“*A Possible Explanation for Judge Easterbrook’s Approach in ProCD v. Zeidenberg: Under Section 45 of the Restatement*,” XIV International Contracts Conference, Tulane Law School, March 8, 2019.

“*Rights of Publicity in Videogames*,” a presentation to the LMU community at “Pub Night” on December 7, 2018.

“*E-Mail Memos: What do Firms Want and How do we Teach Them?*,” at 2018 Western Regional Writing Conference at U.C. Irvine, September 28, 2018.

“*Connecting to the Future: What’s Ahead for Writing and Law?*,” at Southeastern Association of Law Schools, Annual Meeting in Fort Lauderdale, Florida, August 9, 2018 (with several other panelists).

“*Where do we Go from Here? An Interactive Discussion Enhanced by Real-Time Polling about out Professional Status*” July 13, 2018, Legal Writing Institute’s 2018 Biennial Conference in Milwaukee, Wisconsin (with Dean Cindy Archer and Professor Anne Wells)

“*Selected Issues in U.S. Gaming Law*,” Third US-China Intellectual Property Conference, Shanghai Jiaotong University School of Law, Shanghai, China June 19, 2018.

“*Correcting Drafting ‘Errors’ or Rewriting the Law?: The Jurisprudence of Judge Posner*.” Invited speaker at a symposium panel examining the commercial law jurisprudence of Judge Posner at the XIII International Contracts Convention in Orlando, Florida in February 2018. Co-panelists included Professors Deborah Gerhardt (UNC), Victor Goldberg (Columbia), and Jeff Harrison (Florida).

“*Selected Issues in Videogame Law*,” Second Annual US-China Intellectual Property Conference, Loyola Law School, Los Angeles, October 13, 2017.

“*Connecting With Your Friends And Colleagues: Volunteer Service in Legal Writing Organizations*,” Seventh Annual Western Regional Legal Writing Conference, Seattle University School of Law, August 26, 2017.

“*Character and the Classroom*,” (with Professors Lindsey Gustafson, Wendy Humphrey, Suzanne Rowe, Elizabeth Usman, and Olympia Duhart), at Southeastern Association of Law Schools, Annual Meeting in Boca Raton, Florida, August 3, 2017.

“*Everyone into the Pool: Increasing the Diversity of Law School Faculty*” (with Professor Aimee Dudovitz), ALWD Biennial Conference, University of Minnesota Law School, July 19, 2017.

“*Try to See it My Way: Persuasion Techniques and Tactics for Lawyers*,” Presentation for The Rutter Group with Justice Ming W. Chin of the California Supreme Court, and William E. Wegner and Perlette M. Jura of Gibson Dunn & Crutcher. Presentations were made in San Francisco and Los Angeles in July 2017.

“*What You Don’t Know, but Should, About the New Proposed Rules*,” 21st Annual Statewide Ethics Symposium, at Loyola Law School, April 21, 2017.

“*A Proposal to Eliminate UCC § 2-315*,” 12th Annual International Contracts Conference, Southwestern Law School, February 25, 2017.

“*An Approach to Teaching the Parol Evidence Rule*,” 12th Annual International Contracts Conference, Southwestern Law School, February 24, 2017.

“*Developing Professional Identity through Volunteer Service & Leadership in Legal Writing Organizations*,” August 6, 2016, at Sixth Annual Western Regional Legal Writing Conference, McGeorge School of Law (Presentation on the professional advantages in becoming involved in national writing organizations).

“*Formative Assessment and Learning Outcomes: Implementing Upcoming ABA Standards Easily and Effectively*,” August 3, 2016, at Southeastern Association of Law Schools

Annual Meeting in Amelia Island, Florida. (Panelist as part of a half-day presentation with 14 other professors).

*“Different Styles Make the Best Fights: How Three Different Directors Comment on the Same Student Memo,”* July 15, 2016, Legal Writing Institute’s 2016 Biennial Conference (Presentation on how different writing professors comment on the same student memo (with Professors Thomas Holm from UCLA, Leslie Saffouri from Berkeley Law, and Aimee Dudovitz, from Loyola Law School, Los Angeles).

*“Let’s Make a Deal: The Ethics of Negotiation,”* June 17, 2016, State Bar of California Solo and Small Firm Summit, Newport Beach Ca. (Discussion of ethical concerns in negotiation under the California Rules of Professional Conduct and the ABA Model Rules of Professional Conduct, with David Majchrzak and Joel Osman).

*“Programmatic Synergy among American Association of Law Schools Leaders,”* May 25, 2016 at Global Legal Skills Conference, Verona Italy - (Discussion among AALS Section Chairs and other AALS leaders on potential synergy among various sections, with Prof. Gerardo Puertas, Facultad Libre de Derecho de Monterrey, Mexico; Prof. John B. Thornton, Northwestern University Pritzker School of Law; and Prof. Mark E. Wojcik, The John Marshall School of Law).

One of several Keynote Addresses, *“Legal Writing in the United States”* May 24, 2016, Global Legal Skills Conference, Verona Italy (Presented an overview of American-style legal research and writing programs).

*“Roundtable on Teaching International Law, Comparative Law, and Lawyering Skills,”* May 24, 2016, at Global Legal Skills Conference, Verona, Italy – (Presented regarding American approaches to Legal Writing, on a panel with Prof. Juli Campagna, Maurice A. Dean School of Law at Hofstra University, New York; Prof. Leonardo Ciano, Kansai Gaidai University, Japan; Prof. William B.T. Mock The John Marshall Law School, Chicago; and Dr. Luis-Maria Pedriza Osaka University Faculty of Law, Japan).

*“Innovations in Teaching and Mentoring,”* February 26, 2016, (presentation at “KCON XI” – the 11<sup>th</sup> Annual AALS Conference on Contract Law – in San Antonio, Texas.(Presentation on innovative teaching techniques in Contract Law courses; presentation made with Professors Deborah Post, Touro School of Law; Keith Rowley, UNLV Boyd School of Law; Ben Templin, Cal Western School of Law; and Frank Snyder, Texas A&M School of Law).

*“Dealing with Difficult Clients in Your Law Practice,”* October 9, 2015, presentation at 2015 California Bar Association Annual Meeting in Anaheim, California); (Presentation on ethical issues arising with clients who prove difficult due to anger, mental or physical infirmities, or other internal issues; presentation made with Jennifer Becker, Dr. Robert Simon, and Michele Tausch).

*“Effective Methods for Teaching Structure to First Year Legal Writing Students,”* August 8, 2015, (presentation as part of Teaching Methods Roundtable at 2015 Western Regional Legal

Writing Conference at Loyola Law School, Los Angeles). (Presentation showing materials used to help teach the proper structure for a first year memo in Legal Writing).

*“Dealing with Difficult Clients,”* June 19, 2015, (presentation at “Solo and Small Firm Summit,” sponsored by the California State Bar in Newport Beach, California). (Presentation on practical and ethical issues that arise when dealing with difficult clients; presentation made with David Majchrzak, Dr. Robert Simon, and Michele Trausch).

*“Making Students Comfortable with the Uncertainty of the Law,”* June 13, 2015, (presentation at Biennial meeting of the Association of Legal Writing Directors in Memphis Tennessee). (Presentation describing the process of acclimating first year law students to the idea that success in law school depends more on the strength of their argument rather than the accuracy of their conclusions; presentation made with Professor Aimee Dudovitz).

*“The Principles of the Ethical Lawyering Program at Loyola Law School,”* December 13, 2014. (Presentation at Legal Writing Institute Workshop at Southern Illinois University, in Carbondale, Illinois). (Presentation describing the characteristics of the Ethical Lawyering class and program at Loyola Law School, Los Angeles).

*“Teach Them and They Will Come,”* (presentation at Legal Writing Institute Biennial Convention in Philadelphia, Pennsylvania, June 2014). (Presentation detailing a “boot camp” experience for admitted students at Loyola Law School, Los Angeles, taught by Legal Research and Writing professors; presentation made with Professors Cindy Archer, Chris Hawthorne, and Gary Craig).

*“Characters: Intellectual Property and Other Protection Issues,”* September 13, 2014, (presentation at California State Bar Meeting in San Diego, California). (Presentation on the copyright and trademark protections afforded characters; presentation made with Cydney Tune, Esq., Pillsbury, Winston)

*“Current Issues in Video Game Law,”* (presentation at Video Game Symposium at Loyola Law School, Los Angeles, on June 9, 2014).

Keynote Speaker, Video Game Symposium at Loyola Law School, Los Angeles, on June 9, 2014.

*“Learning by Flipping: How Flipping Can Help Keep Skills Training from Flopping,”* May 24, 2014, Global Legal Skills Conference in Verona, Italy. (Presentation concerning the didactic technique of “flipping” the classroom whereby lecture on skills training is by prerecorded video which students watch before class, and class time is used applying those skills; presentation to be made with Professor Eugene Kim, University of San Francisco Law School).

*“Value of Interviewing and Counseling Instruction while Teaching Ethics,”* June 23, 2013 Annual Convention of Association of Legal Writing Directors in Milwaukee, Wisconsin. (Presentation detailing the synergy when skills training and ethics instruction are combined; presentation with Professor Aimee Dudovitz, Loyola Law School Los Angeles).

*“Lights, Camera, Action: Use of Actors in Skills-Related Classes,”* June 23, 2013, Annual Convention of Association of Legal Writing Directors in Milwaukee, Wisconsin. (Presentation detailing use of Los Angeles-based actors to play clients, witnesses, etc. in skills-related classes; presentation with Professors Cindy Archer and Aimee Dudovitz, Loyola Law School Los Angeles).

*“Fully Integrated/Fully Engaged,”* January 6, 2013, poster presentation at Association of American Law Schools Conference in New Orleans. Poster dealing with the integration of skills training in upper division required doctrinal classes. (Presentation developed with Professors Cindy Archer and Aimee Dudovitz of Loyola Law School Los Angeles).

*“Enhancing Oral Training and Skills in Upper Division Courses,”* March 12, 2012, at the Global Legal Skills Conference in San Jose, Costa Rica. (Co-presented with Professor Arnold Siegel from Loyola Law School Los Angeles.)

*“The State of, and Roles for Lawyers in, the Video Game Industry,”* February 13, 2012, to the Entertainment Law Society of Loyola Law School.

Moderator, Legal Writing Institute’s Regional Program, Loyola Law School, Dec. 3, 2011.

*“Is there a Role for Teaching by Using Games?,”* February 11, 2011, presented to Faculty Workshop, Loyola Law School. (Discussion of the educational pedagogy associated with learning while playing “games” such as “*Contracts Jeopardy*” or “*Legal Citation Family Feud*”).

*“Cooperative Learning in Legal Writing Classes,”* December 2, 2010 at the Legal Writing Institute’s Regional Program at Pepperdine University School of Law. (Co-presented with Professor Kathryn Fehrman from Southwestern Law School.)

*“From Tedium to Terrific: Practical, Effective, and Entertaining Ways to Teach Legal Citation,”* June 29, 2010, at 14th Biennial Conference of the Legal Writing Institute in Marco, Island, Florida. (co-presented with Professor Selina Farrell from Pepperdine University School of Law).

*“New Ethics Rules for IPT Professionals: Hidden Pitfalls and Potential Conflicts with ABA Model Rules,”* March 9, 2009, presented at the joint American Bar Association/Institute for Professionals in Taxation annual convention in New Orleans, Louisiana..



“*History of the Civil Justice System*,” January 31, 2009, presented at the Consumer Attorneys of Los Angeles annual conference to journalists who cover civil trials in Southern California courts at the Los Angeles Press Club.

Moderator, “*Mastering Trial Techniques*,” October 17, 2008, a program presented at Loyola Law School’s Civil Justice Institute.

“*Post-Enron Changes to Ethical Rules on Confidentiality*,” July 22, 2008, presented to Sonnenschein, Nath & Rosenthal, Los Angeles, California.

Moderator, “Cutting Edge Persuasion,” presented at Loyola Law School Los Angeles in conjunction with the Civil Justice Institute on October 13, 2007.

“*Learning it Right by Doing it Wrong: How to Avoid Testimonial Objections*,” and “*The Structure of Demonstrative Evidence*,” and “*Practical Techniques for Cross-Examination*,” presented at the 1998, 1999, 2001, 2002 and 2004 Las Vegas Legal Annual Trial Lawyer seminar in Las Vegas, Nevada.

“*How the Landscape is Changing: Demonstrative Evidence for a New Millennium*,” March 23, 2001, presentation to Graham & James (Los Angeles office), and Davis, Graham & Stubbs (Denver office) (both co-presented with Daniel Broderick).

“*Article 2 Remedies for the Practitioner*,” July 1, 1999, presented at annual Commercial Law conference put on by PLI; presented at Pepperdine University School of Law.

## **SELECTED PROFESSIONAL HONORS AND ACTIVITIES**

Board of Directors, Association of Legal Writing Directors (elected 2021)

Board of Directors Member, Legal Writing Institute (elected 2016), and member of several subcommittees of the Legal Writing Institute. Including the Professional Development Committee

Co-Chair, Site Committee for 2020 Legal Writing Institute Biennial Conference.

Co-Chair, Site Committee for 2020 Legal Writing Institute Biennial Conference.

Member, Finance Committee

Chair, *LWI Lives* Committee, Legal Writing Institute.

Elected Member Video Game Bar Association. I also serve on the Scholarship Committee of the VGBA.

Elected Member, E-sports Bar Association.

Past Chair, Chair, Secretary, and Executive Committee Member, Legal Writing, Reasoning and Research Section of the American Association of Law Schools.

Executive Committee Member, North American Cooperation Section of the American Association of Law Schools

Series Executive Editor of “What You Should Know . . . But Don’t” series of seminars, Rutter Group.

Member, California State Bar Committee on Professional Responsibility and Conduct, “COPRAC,” September 2015-2018, and Co-Chair and member of several COPRAC subcommittees.

Member, Program Committee and Site Committee for 2016 Legal Writing Institute Biennial Conference in Portland, Oregon.

Advisory Committee, Civil Justice Program, Loyola Law School Los Angeles.

Organizer (including selecting and obtaining the speakers) for the programs presented by Loyola Law School’s Civil Justice Program in 2007 and 2008, entitled “Cutting Edge Persuasion” and “Mastering Trial Techniques from the Masters,” respectively.

Eight-time Recipient of Loyola Law School Los Angeles Research Grant, and five-time recipient Pepperdine University School of Law Research Grant.

Executive Committee Member, Teaching Methods Section of the American Association of Law Schools.

Vice Chair, Litigation Interest Group of the American Bar Association's Law Practice Management Section.

Co-Recipient, *pro bono publico* Certificate of Merit, Public Counsel of Los Angeles.

Member, Subcommittee on Scope of the Uniform Commercial Code, which is part of the American Bar Association's Section of Corporation, Banking and Business Law's Committee on the Uniform Commercial Code.

Member, Committee on Criminal Laws (a committee principally looking into RICO reform), part of the American Bar Association's Section of Corporation, Business, and Banking Law.