

Thomas C. Folsom
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*Intellectual Property (tech law),
Contracts, Business Associations, Transactional and Commercial Law,
Legal Theory, the Western Legal Tradition, the Islamic Legal Tradition, Justice and the Rule of Law*

TEACHING

Regent University School of Law.

Associate Professor (2002-09) and *Professor* since 2009 in IP, Business, and Commercial law;
Member since 2005, *Vice-President* (2009-10) and *President* (2010-present), Faculty Senate
Member/Participant: University Strategic Planning Sessions; Budget Review Committee;
IP policy review; Promotion, Tenure & Workload policy review;
Member, (2006-07) University Curriculum and Instruction Review Committee;
Co-Director (2011 to present) and *Law School Liaison* (2008-11), Regent School of Govern-
ment's Oxford Study Abroad Program.

Gonzaga University Law School.

Visiting Summer Term Professor in Payment Systems, 2004.

University of Denver College of Law.

Visiting Professor in Contracts and Corporate Law, 2001-2002;
Lecturer and Adjunct Professor in Intellectual Property, 1993-1998.

University of Colorado School of Law.

Adjunct Professor in Patent Law, 1997-2000.

University of North Dakota School of Law.

Associate (1990) and *Assistant Professor* (1985-90) in Contracts, Business, and IP law;
Member, University Senate.

EDUCATION

Georgetown University Law Center, J.D., 1978.

Associate Editor, *American Criminal Law Review* (invitations extended to students in the top 15% of the class).

U.S. Air Force Academy, B.S., 1971.

(Concentration in Chinese and Far Eastern Area Studies).

St. John's College, Santa Fe, New Mexico.

Post-graduate work towards the MA degree in the liberal arts (27 semester hours completed).

FEDERAL JUDICIAL CLERKSHIPS

U.S. Court of Claims (one of the predecessor courts to the Court of Appeals for the Federal Circuit).
Associate Law Clerk to Judge Robert L. Kunzig.

U.S. District Court, Denver, Colorado.
Law Clerk to Judge (and later Chief Judge) Sherman G. Finesilver.

LAW FIRM EXPERIENCE

Substantial transactional law experience primarily involving issuer-side corporate finance; buyer-side mergers and acquisitions; and venture capital-funded and start-up oriented intellectual property rights protection—representing clients in various industries including oil and gas, ski resort, herbal tea, commercial real estate, telecommunications and online education, aircraft-airframe design, and other high tech.

Faegre & Benson (Minneapolis–Denver–Boulder).

Special Counsel with the Boulder branch office, concentrating in intellectual property, 2001–2002 (I became counsel to Faegre & Benson when my prior firm, Chrisman, Bynum & Johnson, merged into F&B while I was a visiting professor at the University of Denver).

Chrisman, Bynum & Johnson (Boulder, CO).

Partner (1999–2001) and *Counsel* (2001) concentrating in intellectual property and tech law (I became counsel upon accepting an invitation to become a full-time visiting professor at the University of Denver College of Law).

Member (2000–2001), Compensation Committee (points allocation committee).

Davis, Graham & Stubbs (Denver).

Partner, concentrating in intellectual property, 1996–99.

Private practice (Denver), concentrating in intellectual property, from 1990–96, with Beaton & Swanson (1990-94) and with Beaton & Folsom (1994-96).

Holme Roberts & Owen (Denver).

Associate, 1979–85, in corporate finance and securities law, mergers and acquisitions, oil & gas, and commercial real estate. Member, Hiring Committee. Member, Associates' Committee.

COMMUNITY AND PROFESSIONAL SERVICE

American Bar Association, IP Law Committee 254 (Special Committee on Trademarks and the Internet), *participant-contributor* on the response to the Internet Corporation for Assigned Names and Numbers (ICANN) Implementation Recommendation Team's May 29, 2009 Final Report on Trademark Protection in the newly proposed expanded global top level domains (gTLDs) (*ad hoc* committee work and collaborative drafting from June through September 2009).

American Intellectual Property Law Association (AIPLA) Trademark Internet Committee, Module 3 subcommittee (Dispute Resolution Procedures), *participant-contributor* on the response to ICANN concerning the gTLD Draft Applicant Guidebook, version 3 (*ad hoc* committee work and collaborative drafting during November 2009).

Veritas Christian Academy, part-time senior high school teacher, *Introduction to Software Logic Design and Computer Programming*, Fall term, 2009 (teaching object-oriented programming).

Southeast Association of Law Schools (SEALS), Ad hoc, Program Committee, 2008-present.

Virginia State Bar Anti-Trust, Franchise and Trade Regulation Section, Board Member (*ex officio*), Board of Governors, 2002–2009.

James Kent American Inns of Court, Norfolk/Virginia Beach, Member, 2005–11.

Presidents' Seminar, Boulder/Denver, Colorado. Member (through 2002), forum for business, professional, and community leaders on ethics and politics, including topical and classical readings.

Adult Great Books. *Founder, Teacher and Member* of various adult great book discussion groups in Denver and Boulder, Colorado, and Grand Forks, N.D.

U.S. District Court for North Dakota, 1989–1997. Receiver, by Federal Court appointment in complex civil fraud litigation on behalf of U.S. Commodity Futures Trading Commission and the Attorney General of the State of North Dakota.

GOVERNMENT SERVICE

National Security Agency/U.S. Air Force. *Officer*, in computer assisted code-making and code-breaking, telecommunications monitoring, and support of manned intelligence-collecting platforms; and supervising 80 persons, including in the Far East and at Ft. Meade, MD.

INTERESTS

Bicycling, hiking, skiing, mountaineering, surfing, and languages including computer languages.

ADMITTED

Colorado (inactive), 10th Circuit, U.S. Patent & Trademark Office (registered patent attorney).

MEMBERSHIPS

American Intellectual Property Law Association (AIPLA); International Trademark Association (INTA); American Bar Association, Section of Intellectual Property (ABA-IP); Virginia State Bar Association, Section of Intellectual Property (VSB-IP).

(These are representative memberships; some are lapsed, and others have lapsed from time to time).

COURSES TAUGHT

Advanced Legal Reasoning, Analysis and Writing

Analytical Methods (decision and game theory, accounting, finance, microeconomics, and statistics)

Business Associations (survey course combining corporations, agency and partnership)

Contracts

Copyright

Corporations

Intellectual Property (survey course combining patent, copyright and trademark)

Jurisprudence (seminar)

Legal History (seminar)

Mergers & Acquisitions

Modern Corporate Finance Theory

Negotiable Instruments and Payment Systems

Patents

Qur'anic Law: Comparative Hermeneutics (assisting Dr. Kickasola at Oxford, Summer, 2008, cross-

listed with the graduate school of government)
Shari'a Law (co-teaching with Dr. Kickasola, cross-listed with the graduate school of government)
Securities Regulation
Torts
Trademarks and Unfair Competition
The Western Legal Tradition (at Strasbourg, Summer 2010; at Oradea, Romania, Summer 2010)

AWARDS AND RECOGNITION

2010 Regent University Faculty Award for Excellence in scholarship.

2009 First Place, Ladas Memorial Award Competition for writing excellence on the subject of trademarks, professional category, for “*Space Pirates, Hitchhikers, Guides, and the Public Interest: Transformational Trademark Law in Cyberspace*”—awarded by the International Trademark Association (INTA).

2007 Third Place, Ladas Memorial Award Competition, professional category, for “*Defining Cyberspace (Finding Real Virtue in the Place of Virtual Reality)*”—awarded by the International Trademark Association (INTA).

2005 Professor of the Year (3L), Awarded by the Regent University School of Law, Student Bar Association.

SCHOLARLY INTERESTS

My interests concern *obligations* (duties: whence they come, how they compel obedience and how they generate rights) and *the rule of law* (in a special sense: whether there are general conditions under which anyone ought in conscience to obey the law; and how any given law can be improved more nearly to approximate those conditions). I am concerned with the question: is there a common basis for designing a rule of law in a global and tech era?

My current fields of interest are cyberspace and the code world, intellectual property, and normative jurisprudence in accordance with a specified statement of principles (the restatement of the obvious). *See the attached list of Articles, Lectures, and Presentations.*

REFERENCES

References provided on request

ARTICLES (PUBLISHED AND ACCEPTED FOR PUBLICATION)

(Many are available on the Social Science Research Network at: <http://ssrn.com/author=519369>)

Racing the Genie: Implementing the Solution to Focal Point Abuses and Trademark Conflicts in Cyberspace—New Law for Coded Technology, forthcoming, 43 MCGEORGE L.REV. Vol. 4 (anticipated, Spring-Summer 2012).

Minority Report: Real Patent Reform Maybe Later—the America Invents Act and the Recodification Solution, forthcoming, 5 AKRON INTELL. PROP. J. Vol. 1 (anticipated, Mar. 2012) (symposium issue).

Poisoned Flowers (Finding Superman in Cyberspace): Resolving Focal Point Offenses and Trademark Conflicts on the Internet and Beyond by Rewriting Code, forthcoming, 43 MCGEORGE L.REV. Vol. 2 (anticipated, Fall-Winter 2011-12).

Toward Non-Neutral First Principles of Private Law: Designing Secondary Liability Rules for New Technological Uses, 3 AKRON INTELL. PROP. J. 43 (2009) (symposium issue).

Evaluating Supernatural Law: An Inquiry into the Health of Nations (The Restatement of the Obvious, Part II), 21 REGENT LAW REV. 105 (2009) (solicited article).

Space Pirates, Hitchhikers, Guides, and the Public Interest: Transformational Trademark Law in Cyberspace, 60 RUTGERS LAW REV. 825 (2008).

Reprinted in 99 TRADEMARK REPORTER 1166 (2009).

Awarded first place in the 2009 International Trademark Association/Ladas Memorial Award Competition for writing excellence on the subject of trademarks.

Truth in Intellectual Property Revisited: Embracing eBay at the Edge, 2 AKRON INTELL. PROP. J. 69 (2008) (symposium issue).

Missing the Mark in Cyberspace: Misapplying Trademark Law to Invisible and Attenuated Uses, 33 RUTGERS COMPUTER & TECH. L. J. 137 (2007).

Defining Cyberspace (Finding Real Virtue in the Place of Virtual Reality), 9 TULANE TECH. & IP LAW JOURNAL 75 (2007).

Awarded third place in the 2006–2007 International Trademark Association/Ladas Memorial Award Competition for writing excellence on the subject of trademarks.

The Restatement of the Obvious: What's Right Got to Do with It, 16 REGENT LAW REV. 301 (2004) (solicited article).

Reconsidering the Reliance Rules: The Restatement of Contracts and Promissory Estoppel, 66 N.D. LAW REV. 317 (1990).

WORKS IN PROGRESS & CONFIRMED SPEAKING ENGAGEMENTS

Can't Stop the Signal: the Google Library in Space and what it Might Teach for IP in a Coded World. (manuscript in progress).

Reconceptualizing IP in 4D: Four Degrees of Uncertainty and the Transformational Solution for New Technological Uses. (manuscript in progress).

The Law of the Horse, 16 Years After—remarks scheduled to be presented at the 2012 Intellectual Property Scholars Roundtable at Drake University Law School, March 30-31, 2012.

Quasi-Property Remedies for Quasi-Property Offenses in Cyberspace—remarks scheduled to be presented at the first joint meeting of the Property Discussion Forum & Remedies Discussion Forum at Aix-en-Provence, France, co-sponsored by Aix-Marseille III University, Emory University School of Law, and the University of Louisville's Louis D. Brandeis School of Law, June 20-21, 2012.

Islamic Law, Politics, and Religious Liberty—lectures scheduled to be delivered at Hertford College, Oxford, England, to U.S. law and government students attending the Regent University School of Government's Study Abroad Program June 24-July 6, 2012.

LECTURES OUTSIDE THE UNITED STATES

Origins of the Western Legal Tradition — lectures (10 hours) delivered to students from four law schools attending the Regent University School of Law's Study Abroad Program at Strasbourg University, Strasbourg, France, July 3-17, 2010 (International Human Rights Program).

Foundations of the Common Law—lectures (10 hours) delivered to students at Emanuel University, School of Management, in Oradea, Romania, May 21–25, 2010.

Survey of US Business & Transactional Law in a Market Economy— lectures (10 hours) delivered to students at Emanuel University, School of Management, in Oradea, Romania, Dec. 8-12, 2008.

Reflections on the Hermeneutics of Supernatural Law—lectures (8 hours) delivered to U.S. law and government students attending the Regent University School of Government's Study Abroad Program as part of Dr. Joseph Kickasola's course on *Biblical and Qur'anic Hermeneutics* at Hertford College, Oxford, England, July 7-18, 2008.

SELECTED REMARKS, SHORT PAPERS, PRESENTATIONS AND CONFERENCES

The Dark Side of Patent Law—lecture presented at the Biomedical Engineering Seminar at the Old Dominion University, Norfolk, VA, Nov. 22, 2011.

Finding Superman in Cyberspace—work in progress presentation made at the Intellectual Property Roundtable at The Catholic University of America School of Law, Washington, D.C., Nov. 18, 2011.

Minority Report: Real Patent Reform, Maybe Later (the Recodification Solution)—remarks and paper presented as an invited round-table participant at the Fifth Annual IP Scholars Forum: "Patent Law Reform" at the University of Akron School of Law, October 28, 2011

The Magician's Horse: Designing Code and Other Laws Beyond Cyberspace—remarks presented at the 2011 Intellectual Property Scholars Conference at DePaul University Law School, Aug. 12, 2011.

Privacy and Property in the Code World: Second Level Concerns—remarks presented at the 64th Annual Meeting of the Southeastern Association of Law Schools, Hilton Head, SC, July 29, 2011.

Islam and Religious Freedom—invited seminar participant (not a presenter) at the Witherspoon Institute Seminar on Islam and Religious Freedom at Princeton, NJ, July 5-9, 2011.

Recoding IP Law for New Technological Uses in a Coded World— remarks presented at the 2011 Intellectual Property Scholars Roundtable at Drake University Law School, April 1, 2011.

From the Google Library to a Unified Theory of Copyright, Property, and Other Laws for Cyberspace—work in progress presented at the Second Conference of the Association for Law, Property and Society at Georgetown Law Center, March 5, 2011.

IP in 4D: Four Dimensions of Uncertainty in Intellectual Property— remarks and paper delivered as an invited round-table participant at the Fourth Annual Akron Intellectual Property Scholars Forum: “IP and the Supreme Court” at the University of Akron School of Law, November 10, 2010.

Racing the Genie: Regulating Mark-Type Conflicts in Cyberspace after ICANN Unleashes the Domains (Resolving Focal Point Abuses by Rewriting Code)—remarks presented at the 132nd Annual Meeting of the International Trademark Association, Boston, May 24, 2010.

Disintegrating Norms in Cyberspace: Future Law and Ancient Texts (Is There a Common Morality for a Global and Tech Era?)—remarks presented at the 2010 Conference of Religiously Affiliated Law Schools at the Brigham Young University School of Law, March 19, 2010.

Space Pirates and Poisoned Flowers in Cyberspace: Disaggregating Intellectual Property—paper presented at the Annual Meeting of the Association for Law, Property, and Society at the Georgetown University Law Center, Washington, D.C., March 5, 2010.

Has the TARP Really Covered Us?—Moderator and discussant at the debate on the effectiveness of the Troubled Asset Relief Program sponsored by the Federalist Society, at Regent University, Virginia Beach, Virginia, December 1, 2009.

Studies in Justice: the Public Good of Supernatural Law—remarks presented at the “Religious Legal Theory: State of the Field” conference at Seton Hall Law School, Newark, NJ, Nov. 13, 2009.

Transforming the Federal Anti-Plagiarism Propensity into Rule-Specific Form by Administrative Agency Action— remarks and paper delivered as an invited round-table participant at the Third Annual Akron Intellectual Property Scholars Forum: “IP and Administrative Law” at the University of Akron School of Law, October 30, 2009.

Impact of the Technology Education and Copyright Harmonization Act (TEACH) on Fair Use in the Classroom—lecture and materials presented at the National Business Institute’s CLE seminar on E-Technology in Schools, Norfolk, Virginia, October 16, 2009.

Nearly 95 Theses: Qualifying Competing Supernatural Legal Systems against a Common Standard—presentation at the Third Annual Symposium on Faith and Culture, “Secularization and Revival: The Fate of Religion in Modern Intellectual History” at Baylor University, Texas, October 9, 2009.

Poisoned Flowers: Designing Law for Cyberspace—work-in-progress presentation made at the 9th Intellectual Property Scholars’ Roundtable at Cardozo Law School, NY, NY, August 7, 2009.

Remedies without Wrongs: Disintegrating Harm-Based Rules from Property-Based Rules in Intellectual Activity—remarks delivered at the 62nd Annual Meeting of the Southeastern Association of Law

Schools, Palm Beach, Florida, August 4, 2009.

Unilateral Cooperation in Cyberspace: Preserving a Hitchhikers' Guide to Cyberspace, Resolving the Focal Point-Trademark Dilemma—remarks delivered at the 131st Annual Meeting of the International Trademark Association, Seattle, Washington, May 18, 2009.

The Google Library Project, work-in-progress presentation made at the Intellectual Property Roundtable at The Catholic University of America School of Law, Washington, D.C., Jan. 30, 2009.

From Refah Partisi v. Turkey ("shar'ia law is incompatible with fundamental principles of democracy") to Regensburg ("not to act reasonably is contrary to the nature of God") and Beyond—the Role of Supernatural Law in the Global Polity, lecture delivered to faculty and students of New St. Andrews College, Moscow, ID, November 21, 2008.

Secondary Liability for IP Infringement: Theory, Practice and Prediction, remarks and paper delivered as an invited round-table participant at the Second Annual IP Scholars Forum at the University of Akron School of Law (November 13–14, 2008)

Factors of the Financial Crisis: a Foundational Approach, remarks delivered at a panel discussion co-sponsored by the Federalist Society and the Business Transaction Law Society at Regent University, Virginia Beach, Virginia, October 7, 2008.

Internet Law (Trademarks, Contracts, and the Future of Internet Law), remarks and written materials presented at the Norfolk & Portsmouth Bar Association Continuing Legal Education Seminar, Norfolk, VA (September, 2008).

Review of Craig Boyd's "A Shared Morality: a Narrative Defense of Natural Law Ethics," 34 Religious Studies Review No. 3, 182 (September 2008) (book note).

The Law of the Horse (12 Years After): A Law for Cyberspace, the Metaverse and the New Machines, remarks delivered at the 61st Annual Meeting of the Southeastern Association of Law Schools, Palm Beach, Florida (SEALS Conference, August 2008).

Lying about Fraud, remarks delivered at the Christian Pre-Law Conference, Virginia Beach, Virginia, March 13–15, 2008.

Making Sense of Cyberspace, abstract delivered as invited participant at the IP Scholars Roundtable at Drake University Law School (February 22–23, 2008).

The Changing Landscape of IP Remedies After eBay, remarks and paper delivered as an invited round-table participant at the IP Scholars Forum at the University of Akron School of Law (November 8–9, 2007).

Conflicts in Cyberspace, remarks delivered at the 60th Annual Meeting of the Southeastern Association of Law Schools, Amelia Island, Florida (SEALS Conference, August 2007).

Studies in Justice: the End of Christian Integration, remarks delivered at the Christian Pre-Law Conference, Virginia Beach, Virginia, March 2007.

Downstream Consequences to Businesses and Individuals from the USA Patriot Act and Related Legislation, co-author and co-presenter (remarks, materials and dramatization) at the James Kent American

Inn of Court (CLE accredited), Feb. 2007.

Seeing Justice in Our Time: The Idea of Justice through the Lens of Faith, in 4 Minutes or Less, brief prepared remarks delivered at the Conference of Religiously Affiliated Law Schools, Baylor University School of Law, Waco, Texas, April 1, 2006.

Nomophobia: or, Does it Take a Cosmos to Raise a Genuinely Autonomous Self?, remarks delivered at the Christian Pre-Law Conference, March 3, 2006.

Missing the Mark in Cyberspace, remarks delivered at the 58th Annual Meeting of the Southeastern Association of Law Schools, Hilton Head, South Carolina (SEALS Conference, July 2005).

The Weightier Matters of the Law, remarks delivered at the Christian Pre-Law Conference, Virginia Beach, VA (Feb 2005).

The Foundation of the Law: Solid Rock or Sinking Sand, remarks delivered at the American Bar Association-Law Students' Division, 4th Circuit Conference, Virginia Beach, VA (Feb 2005).

Music in the Classroom? remarks delivered at the 57th Annual Meeting of the Southeastern Association of Law Schools, Panel on Technology, Kiawah Island SC (SEALS Conference, July 2004).

The Impotence (and Importance) of Legal Theory, remarks delivered at the Christian Pre-Law Conference, Virginia Beach, VA (February 2004).

Current Trends in Corporate Law (Enron and the Modern Option Pricing Models — Who Do You Trust? A Refresher on Fraud, Agency, Accounting and Corporate Finance), paper presented at the Chesapeake Bar Association's Continuing Legal Education Conference, Chesapeake, VA (October, 2003).

Bases of Artists' Rights, paper presented at the Third Visual Arts & the Law Conference, Taos, NM (CLE International, August 2001).

Electronic Dissemination of Fine Art (Contractual and Digital Self Help Strategies for the New Millennium), paper presented at the Third Visual Arts & the Law Conference, Taos, NM (CLE International, August 2001).

E-Agreements for E-Commerce, paper presented at the E-Commerce Conference, Denver, CO (CLE International, May, 2000).

UCC Article 2B or Not 2B: Shrink Wrap and Click Wrap Licenses, paper presented at the Computer Law Conference, Denver CO (CLE Providers, October, 1999).

Controlling Derivative Uses: Copyright and Other Issues, paper presented at the Second Visual Arts & the Law Conference, Santa Fe, NM (CLE International, August, 1999).

Fine Art Reproductions and Merchandising Rights, paper presented at the Visual Arts & the Law Conference, Santa Fe, NM (CLE International, August, 1998).

Software Copyright: Structure and Sequence, Look and Feel, unpublished paper prepared for the Law, Science and Technology Conference on Computer Software at Arizona State University College of Law (1989).

Judge Bork: Qualified for the Supreme Court?—participant in the public debate at the University of North Dakota, Grand Forks, ND, sponsored by United States Senator, Fall, 1987.

Has the Scope of the Senate's Advice and Consent in Respect of Supreme Court Nominees Traditionally been Limited to Questions of Competence, Not Philosophy?—participant in the public debate at the University of North Dakota, Grand Forks, ND, sponsored by United States Senator, Summer, 1987.