

Curriculum Vitae

Thomas D. Rowe, Jr.
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Education

Undergraduate:

B.A. summa cum laude, Yale University, 1964

Major in political science and economics; “honors with exceptional distinction” in major

Graduate:

M.Phil. in general and comparative literature, Oxford University, 1967

Legal:

J.D. magna cum laude, Harvard Law School, 1970

Harvard Law Review, 1968-70; Supreme Court and Note Editor, 1969-70

Employment

1970-1971: Law clerk to Associate Justice Potter Stewart, Supreme Court of the United States

1971-1973: Assistant Counsel, U.S. Senate Subcommittee on Administrative Practice and Procedure

1973-1975: Associate at Miller, Cassidy, Larroca & Lewin, Washington, D.C. (civil and criminal litigation)

1975-1979: Associate Professor, Duke University School of Law

1979-1996: Professor, Duke University School of Law

1996-2007: Elvin R. Latty Professor, Duke University School of Law; emeritus, since 2008

1979-1980: Visiting Professor, Georgetown University Law Center

1980-1981: Visiting Fellow, United States Department of Justice

1981-1984: Associate Dean for Research, Duke University School of Law

Fall 1985: Visiting Professor, University of Michigan Law School

Jan.-Aug. 1991: Attorney, Munger, Tolles & Olson, Los Angeles

Fall 1991: Visiting Professor, University of Virginia Law School

July 1995-Dec. 1996: Senior Associate Dean for Academic Affairs, Duke University School of Law

Spring 1998: Scholar in Residence, RAND Institute for Civil Justice, Santa Monica, CA

March 2001: Distinguished Visiting Professor in Advocacy and Dispute Resolution, University of Tennessee College of Law

Fall 2002 and Fall 2004: Visiting Professor, UCLA School of Law

2006: Straus Distinguished Visitor, Pepperdine University School of Law

Born: February 26, 1942, Richmond, VA

Marital Status: Married January 5, 2001 to Prof. Susan F. French, UCLA School of Law

Bar Admissions

District of Columbia, 1971 (resigned)

North Carolina, 1976 (resigned)

Honors and Awards

Phi Beta Kappa (junior year); graduated first in Yale undergraduate class

Rhodes Scholar, 1964-67

Duke [student] Bar Association Distinguished Teaching Award, 1985

AALS Federal Courts Section special award “for service to the Association, the courts, and the nation,” 2000

Duke Law School Dean’s Scholarship Award, 2003-04 (co-recipient with others)

Organizational Affiliations and Service

Member, American Law Institute, since 1977; life member since 2002

Member, Board of Advisers, Study of Complex Litigation, 1985-93

Project Director, Study on “Paths to a 'Better Way': Litigation, Alternatives, and Accommodation,” 1986-89

Contributor (on attorney fees, litigation expenses, and prejudgment interest), Project on Enterprise Responsibility for Personal Injury, 1989-91

Members’ Consultative Group, Restatement (Third) of Restitution and Unjust Enrichment, 1998-

Members’ Consultative Group, Recognition and Enforcement of Foreign Judgments, 1999-2005

Members’ Consultative Group, Principles and Rules of Transnational Civil Procedure, 1999-2004

Members’ Consultative Group, Principles of the Law of Aggregate Litigation, 2004-

Member, Board of Directors, Center for Computer-Assisted Legal Instruction, Minneapolis, MN, 1982-85; 1988-93; President, 1988-91

Chair, Association of American Law Schools Section on Civil Procedure, 1989

Chair, Association of American Law Schools Section on Federal Courts, 1999

Member, AALS Committee on Professional Development, 2003-06; chair, 2004-06

Planning Committee member, AALS Workshop on Remedies, 2006-07

Member, Journal of Legal Education Editorial Board, 2008-

Reporter, Workload Subcommittee, Federal Courts Study Committee, 1989-90

Advisory Committee on Rules of Civil Procedure, Judicial Conference of the United States
Member, 1993-99
Consultant, 2002-

Chair, Advisory Committee on Rules and Procedures, United States Court of Appeals for the
Fourth Circuit, 1994-99

Member, Board of Directors, North Central Legal Assistance Program, 1997-2001
President, Board of Directors, 1998-2001

Member, International Association of Procedural Law, 1997-
Co-Reporter for United States of America, IAPL XII World Congress, September 2003,
“Preliminary or Summary Proceedings: Scope and Importance” (accessible at
[http://www.yorku.ca/osgoode/iapl/reports/United%20States%20of%20America.p
df](http://www.yorku.ca/osgoode/iapl/reports/United%20States%20of%20America.pdf))

Member, Board of Editors, Federal Courts Law Review, 2000-

Languages

Proficient in French and Spanish

Subjects Taught

Civil Procedure
Federal Courts

Complex Civil Litigation
Remedies

Publications

Articles and Comments:

Abolishing Diversity Jurisdiction: Positive Side Effects and Potential for Further Reforms, 92
HARVARD LAW REVIEW 963-1012 (1979)

A Comment on the Federalism of the Federal Rules, 1979 DUKE LAW JOURNAL 843-57

Abolishing Diversity Jurisdiction: The Silver Lining, 66 AMERICAN BAR ASSOCIATION JOURNAL
177-80 (1980)

*The Emerging Threshold Approach to State Action Determinations: Trying to Make Sense of
Flagg Brothers, Inc. v. Brooks*, 69 GEORGETOWN LAW JOURNAL 745-71 (1981)

Expenses: The Roadblock to Justice, 20:3 JUDGES' JOURNAL 16-19, 46-47 (Summer 1981) (with
Rosenberg and Rient)

The Legal Theory of Attorney Fee Shifting: A Critical Overview, 1982 DUKE LAW JOURNAL
651-80

Predicting the Effects of Attorney Fee Shifting, 47:1 LAW AND CONTEMPORARY PROBLEMS 139-71 (Winter 1984)

Beyond Diversity: Federal Multiparty, Multiforum Jurisdiction, 135 UNIVERSITY OF PENNSYLVANIA LAW REVIEW 7-58 (1986) (with Sibley)

The Supreme Court on Attorney Fee Awards, 1985 and 1986 Terms: Economics, Ethics, and Ex Ante Analysis, 1 GEORGETOWN JOURNAL OF LEGAL ETHICS 621-39 (1988)

Empirical Research on Offers of Settlement: A Preliminary Report, 51:4 LAW AND CONTEMPORARY PROBLEMS 13-39 (Autumn 1988) (with Vidmar)

American Law Institute Study on Paths to a "Better Way": Litigation, Alternatives, and Accommodation--Background Paper, 1989 DUKE LAW JOURNAL 824-902

Congress Accepts Supreme Court's Invitation to Codify Supplemental Jurisdiction, 74 JUDICATURE 213-16 (1991) (with Mengler and Burbank)

Jurisdictional and Transfer Proposals for Complex Litigation, 10 REVIEW OF LITIGATION 325-400 (1991)

Compounding or Creating Confusion About Supplemental Jurisdiction? A Reply to Professor Freer, 40 EMORY LAW JOURNAL 943-61 (1991) (with Burbank and Mengler)

A Coda on Supplemental Jurisdiction, 40 EMORY LAW JOURNAL 993-1006 (1991) (with Burbank and Mengler)

Defining Finality and Appealability by Court Rule: A Comment on Martineau's "Right Problem, Wrong Solution", 54 UNIVERSITY OF PITTSBURGH LAW REVIEW 795-803 (1993)

No Final Victories: The Incompleteness of Equity's Triumph in Federal Public Law, 56:3 LAW AND CONTEMPORARY PROBLEMS 105-21 (Summer 1993)

Repealing the Law of Unintended Consequences? Comment on Walker (2), 24 JOURNAL OF LEGAL STUDIES 615-26 (1994)

Empirical Evidence on Settlement Devices: Does Rule 68 Encourage Settlement?, 71 CHICAGO-KENT LAW REVIEW 519-45 (1995) (with Anderson)

One-Way Fee Shifting Statutes and Offer of Judgment Rules: An Experiment, 36 JURIMETRICS JOURNAL 255-73 (1996) (with Anderson)

Beyond the Class Action Rule: An Inventory of Statutory Possibilities to Improve the Federal Class Action, 71 NEW YORK UNIVERSITY LAW REVIEW 186-209 (1996)

A Distant Mirror: The Bill of Peace in Early American Mass Torts and Its Implications for Modern Class Actions, 39 ARIZONA LAW REVIEW 711-18 (1997)

Indemnity or Compensation? The Contract with America, Loser-Pays Attorney Fee Shifting, and a One-Way Alternative, 37 WASHBURN LAW JOURNAL 317-44 (1998)

Not Bad for Government Work: Does Anyone Else Think the Supreme Court is Doing a Halfway Decent Job in Its Erie-Hanna Jurisprudence?, 73 NOTRE DAME LAW REVIEW 963-1016 (1998)

1367 and All That: Recodifying Federal Supplemental Jurisdiction, 74 INDIANA LAW JOURNAL 53-73 (1998)

Foreword--Rooker-Feldman: Worth Only the Powder to Blow It Up?, 74 NOTRE DAME LAW REVIEW 1081-84 (1999)

Beyond "It Just Ain't Worth It": Alternative Strategies for Damage Class Action Reform, 64:2-3 LAW & CONTEMPORARY PROBLEMS 137-161 (Spring/Summer 2001) (with Hensler)

Foreword--Debates over Group Litigation in Comparative Perspective: What Can We Learn from Each Other?, 11 DUKE JOURNAL OF COMPARATIVE & INTERNATIONAL LAW 157-62 (2001)

Who Should Pay for Attorneys' Fees? Considerations in Choosing Among Approaches to Recovery of Attorney Fees in Civil Litigation, NBL [Japanese business law journal], Nos. 720 and 723 (pts. 1 and 2), pp. 16-26, 54-64 (Sep. 1 and Oct. 15, 2001) (in Japanese; translated by Prof. Koichi Miki); republished in AMERIKA MINJISOSYOHO NO RIRON (THEORIES OF AMERICAN CIVIL PROCEDURE) 61-87 (M. Omura & K. Miki eds. 2006)

A Square Peg in a Round Hole? The 2000 Limitation on the Scope of Federal Civil Discovery, 69 TENNESSEE LAW REVIEW 13-33 (2001)

Protection of Personal Privacy and Trade Secrets in American Civil Litigation, NBL [Japanese business law journal], Nos. 729 and 730 (pts. 1 and 2), pp. 60-66, 57-65 (Jan. 15 and Feb 1, 2002) (in Japanese; translated by Prof. Masahiko Omura); republished in AMERIKA MINJISOSYOHO NO RIRON (THEORIES OF AMERICAN CIVIL PROCEDURE 257-94) (M. Omura & K. Miki eds. 2006)

Shift Happens: Pressure on Foreign Attorney-Fee Paradigms from Class Actions, 13 DUKE JOURNAL OF COMPARATIVE & INTERNATIONAL LAW 125-49 (2003)

Civil Rules Advisory Committee Alumni Panel: The Process of Amending the Civil Rules, 73 FORDHAM LAW REVIEW 135, 146-49 (2004) (transcription of panel discussion)

"Inextricably Intertwined" Explicable at Last? Rooker-Feldman Analysis After the Supreme Court's Exxon Mobil Decision, 1 FEDERAL COURTS LAW REVIEW 367-92 (2006) (with Edward L. Baskauskas) (also accessible at <http://www.fclr.org/docs/2006fedctslrev1.pdf>)

Authorized Managerialism Under the Federal Rules--and the Extent of Convergence with Civil-Law Judging, 36 SOUTHWESTERN UNIVERSITY LAW REVIEW 191-213 (2007)

State and Foreign Class-Action Rules and Statutes: Differences from--and Lessons for?--Federal Rule 23, 35 WESTERN STATE UNIVERSITY LAW REVIEW 147-71 (2007)

Books and Book Chapters:

CIVIL PROCEDURE (with Sherry and Tidmarsh) (Foundation Press 2d ed. 2008 & 2008 Supp.)

CONSTITUTIONAL THEORY: ARGUMENTS AND PERSPECTIVES (with Gerhardt and Griffin) (LexisNexis 3d ed. 2007)

FEDERAL COURTS IN THE 21ST CENTURY: CASES AND MATERIALS (with Fink, Mullenix, and Tushnet) (LexisNexis 3d ed. 2007)

Chapter 51--Instructions to Jury: Objections, in 9 MOORE'S FEDERAL PRACTICE (3d ed. 2008)

Chapter 68--Offer of Judgment, in 13 MOORE'S FEDERAL PRACTICE (3d ed. 2008)

Empirical Research on the Success of Settlement Devices, in DISPUTE RESOLUTION: BRIDGING THE SETTLEMENT GAP 131-44 (D. Anderson ed. 1996) (with Anderson)

Book Reviews:

Consent and the Roots of Judicial Authority: The Constitutional Writings of Archibald Cox (reviewing ARCHIBALD COX, *THE ROLE OF THE SUPREME COURT IN AMERICAN GOVERNMENT* (1976)), 55 *TEXAS LAW REVIEW* 163-84 (1976)

Teaching Federal Courts from a Little Red Book (reviewing HOWARD FINK & MARK V. TUSHNET, *FEDERAL JURISDICTION: POLICY AND PRACTICE* (1984)), 1985 *DUKE LAW JOURNAL* 833-42

Review of SAMUEL ESTREICHER & JOHN SEXTON, *REDEFINING THE SUPREME COURT'S ROLE: A THEORY OF MANAGING THE FEDERAL JUDICIAL PROCESS* (1986), 4 *CONSTITUTIONAL COMMENTARY* 417-22 (1987)

Monograph:

Significant Nonobvious Effects of the Abolition of the General Diversity Jurisdiction (Federal Justice Research Program, Office for Improvements in the Administration of Justice, U.S. Department of Justice, 1978)

Working Paper:

Attorney Fee Arrangements and Dispute Resolution, issued as Harvard Law School Program on Negotiation Working Paper 90-14 and in Duke University School of Law, Olin Working Papers Series on Law, Economics, and Philosophy, No. 3 (April 1990)

Study Aid:

Gilbert Law Summaries: Civil Procedure (17th ed. 2008) (with Marcus); Civil Procedure (16th ed. 2002) (with Marcus); Civil Procedure (15th ed. 1995) (with Marcus); Civil Procedure (14th ed. 1989) (with Carrington and Marcus); Civil Procedure (13th ed. 1985) (with Hazard and Carrington)

Journalism:

Leave the Abortion Compromise Alone, Op-Ed page, *Christian Science Monitor*, May 18, 1982
The Debate over the 14th Amendment (review of M. Curtis, *NO STATE SHALL ABRIDGE: THE FOURTEENTH AMENDMENT AND THE BILL OF RIGHTS* (1986)), *Raleigh News and Observer*, September 7, 1986

Ferdinand and the Lobster Trap *and the Coney Island Discovery Game: A One-Two Combination to Supplement Classroom Teaching on Discovery*, 6:3 *CALI Report* 1-2, 15 (Fall 1989)

New Rules for Multistate Mass Torts, *Legal Times*, June 11, 1990

Federal Courts Study Committee Recommends Broadened ADR Authority for Federal Judiciary, 3:2 *Newsletter of American Bar Association Section of Litigation*, Committee on Alternative Dispute Resolution/Arbitration, Summer 1990

Recent Federal Court Legislation Made Some Noteworthy Changes, National Law Journal, December 31, 1990 (with Mengler and Burbank)
Computer Programs to Aid in Teaching Legal Research and Writing, 3:1-2 Integrated Legal Research 18-20 (Winter 1990-91), reprinted in 7:3 CALI Report 10-12 (Fall 1990)
Empirical Research on Offer of Settlement Devices, 14:1 Duke Law Magazine 13-15 (Spring 1996) (with Anderson)
Supreme Court Limits Scope of Rooker-Feldman Doctrine--Commentary, 2005 Moore's Federal Practice Update 73-74 (May 2005)

Prepared Addresses

Research on Attorney Fee Shifting, Remedies Section, Association of American Law Schools, January, 1983
Current Problems in Federal Court Awards of Attorney Fees, United States Court of Appeals for the Fourth Circuit Judicial Conference, June, 1983
Federal Court Awards of Attorney Fees, Federal Judicial Center Seminar for United States Magistrates of the Sixth, Seventh, and Eighth Circuits, July, 1986
Recent Supreme Court Decisions on Attorney Fee Awards, Georgetown University Law Center, April, 1987
Computer-Assisted Instruction in Civil Procedure, Association of American Law Schools Conference on Civil Procedure, June 1988
The Future of Civil Procedure Scholarship, Association of American Law Schools Conference on Civil Procedure, June 1988
The Politics of Civil Procedure (panel), Conference on Frontiers of Legal Thought, Duke Law School, January 1990
Computer Programs to Aid in Teaching Legal Writing, National Legal Writing Conference, July 1990
Jurisdictional Proposals for Complex Litigation, Civil Procedure Section, Association of American Law Schools, January, 1991
The Judicial Improvements Act of 1990 (panel), United States Court of Appeals for the Fifth Circuit Judicial Conference, May, 1991
ALI Enterprise Liability Project Proposals on Attorney Fees and Prejudgment Interest, Loyola (Los Angeles) Law School, May, 1991; University of Virginia School of Law, November, 1991
The ALI Enterprise Liability Project and the Future of Tort Reform (panel), National Association of Independent Insurers Annual Meeting, New Orleans, November, 1991
Attorney Fee Shifting Alternatives, American Tort Reform Association Symposium on the "English Rule," Washington, D.C., February 1993
Current Issues in Aggregation of Related Litigation, State-Federal Jurisdiction Panel, Federal Appellate Judges' National Workshop, Washington, D.C., February 1993
Recent Developments in Extraterritorial Application of United States Regulatory Regimes, Law Department, Instituto Tecnológico Autónomo de México, September 1994

Can and Should the Law of Remedies Be Restated? (panel), Remedies Section, Association of American Law Schools, January, 1995

What Can Courts Learn from ADR About Cost Reduction? (videotape presentation), Ohio State University College of Law Conference on Court Reform Implications of Dispute Resolution, March, 1995

What Hath Newt Wrought? Loser-Pays Attorney Fee Shifting and the Contract with America, Washburn Law School Symposium on Tort Reform, March, 1996

Empirical Research on Offer of Settlement Devices, Research Division, Federal Judicial Center, April, 1996

Empiricism and Civil Justice Reform (panel), ABA Conference on Civil Justice Reform Act Implementation, University of Alabama School of Law, March, 1997

A Reappraisal of the Supplemental Jurisdiction Statute, Civil Procedure Section, Association of American Law Schools, January, 1998

Comments on Discovery Reform and Sanctions for Litigation Misconduct, International Association of Procedural Law International Colloquium, Tulane Law School, October 1998

Alternative Strategies for Class Action Reform (with Hensler), Duke/ILEP Conference on Complex Litigation, Naples, FL, April 2000

Managing Discovery Under the New Rules (panel), Third Circuit Judicial Conference, Hershey, PA, October 2000

Discovery and Disclosure Under the 2000 Amendments: Policy and Practice, University of Tennessee College of Law Symposium on The New Federal Rules, March 2001

Protection of Privacy and Trade Secrets in American Civil Litigation, Chuo University Faculty of Law, Tokyo, Japan, July 2001

Who Should Pay for Attorneys' Fees? Considerations in Choosing Among Approaches to Recovery of Attorney Fees in Civil Litigation, Keio University Faculty of Law, Tokyo, Japan, July 2001

Federal-State Issues in Class-Action Reform (panel), University of Chicago Law School/Civil Rules Advisory Committee Conference on Class Actions, October 2001

The "Big Idea" in Civil Procedure Scholarship and Teaching (panel), Civil Procedure Section, Association of American Law Schools, New Orleans, January, 2002

American Class Action Experience and Its Relevance for Indonesia, International Conference on Class Action Procedures and Their Implementation in the Indonesian Judicial System, Jakarta, February 2002

Shift Happens: Pressure on Cost Paradigms from Group Proceedings, University of Sydney Faculty of Law, Sydney, and Flinders University Faculty of Law, Adelaide, February and March, 2002

Selected Current Issues in Federal Statutory Jurisdiction, Fourth Circuit Institute for Judicial Law Clerks, University of Richmond School of Law, September, 2003

Civil Rules Advisory Committee Alumni Panel on the Process of Amending the Civil Rules, Conference on Electronic Discovery, Fordham University School of Law, February, 2004

Trying To Make the Best of the Civil-Justice Market, Pepperdine University School of Law, March, 2005

Federal Jurisdiction: Recent and Current Developments, Judicial Clerkship Institute, Pepperdine University School of Law, March, 2006 and March, 2007
Authorized Managerialism Under the Federal Rules--and the Extent of Convergence with Civil-Law Judging, Southwestern Law School, October, 2006
Overview of Mass Litigation, RAND Institute for Civil Justice Liability-Catastrophe Project, Santa Monica, CA, March, 2007
State and Foreign Class-Action Rules and Statutes: Differences from--and Lessons for?--Federal Rule 23, Western State University College of Law, April, 2007
If We Don't Get Civil *Gideon*: Trying To Make the Best of the Civil-Justice Market, ABA Litigation Section Conference on Access to Civil Justice, Atlanta, GA, December, 2008

Legislative Testimony and Submissions

Abolition of Diversity of Citizenship Jurisdiction, testimony before U.S. House Judiciary Subcommittee on Courts, Civil Liberties, and the Administration of Justice, March, 1979
Nomination of Judge Cornelia Kennedy, testimony before U.S. Senate Committee on the Judiciary, September, 1979
Constitutionality of Proposed Fair Housing Legislation, testimony before U.S. Senate Judiciary Subcommittee on the Constitution, June, 1987
Multiparty, Multiforum Federal Jurisdiction, testimony before U.S. House Judiciary Subcommittee on Courts, Civil Liberties, and the Administration of Justice, October, 1987
Constitutional Issues in Asbestos Litigation Reform, testimony before U.S. House Judiciary Subcommittee on Intellectual Property and Judicial Administration, February, 1992
Loser-Pays Attorney Fee Liability in Diversity Cases, testimony before U.S. House Judiciary Subcommittee on Courts and Intellectual Property, February, 1995
Incapacitated Persons Legal Protection Act, submission to U.S. House Judiciary Subcommittee on the Constitution, March 2005
“*Holmes Group Fix*” Proposals, submission to U.S. House Judiciary Subcommittee on Courts, the Internet, and Intellectual Property, April, 2005

International Teaching

American Constitutional Structure, Duke/Geneva Summer Institute in Transnational Law
--Copenhagen, July 1988
--Brussels, July 1992
--Hong Kong, July 1998
--Geneva, July 2005
Workshop on the Teaching of American Constitutional Law, Academia Sinica and Soochow University School of Law, Taipei, July 1993
Introduction to United States Law, Escuela Libre de Derecho, Mexico City, September 1994 and September 1995

Access to Civil Justice in Anglo-American and Continental Legal Systems, Duke/Geneva
Summer Institute in Transnational Law, Geneva, July 1999

Conferences and Symposia Organized

Attorney Fee Shifting and Litigation Cost Arrangements, Duke University School of Law,
Durham, North Carolina, November 1982 (conference papers appeared in symposium
issue, *Attorney Fee Shifting*, 47:1 LAW AND CONTEMPORARY PROBLEMS (Winter 1984))

Debates over Group Litigation in Comparative Perspective: What Can We Learn from Each
Other?, Duke University School of Law and University of Geneva Faculté de Droit,
Geneva, Switzerland, July 2000 (conference papers appeared under same title in
symposium issue, 11:2 DUKE JOURNAL OF COMPARATIVE & INTERNATIONAL LAW
(Spring/Summer 2001))

Grants Received

Federal Justice Research Program, Office for Improvements in the Administration of Justice,
U.S. Department of Justice, for work on nonobvious effects of abolishing general
diversity jurisdiction, 1977-78

National Institute for Dispute Resolution, for empirical research on offer of settlement devices,
1987-88

Duke University Research Council, for empirical research on offer of settlement devices, 1991-
92