

AALS Litigation Section 2016 Newsletter

Contents

Message from Chair	1
Member News	2
Annual Meeting Events	2
2017 Conferences	2

Message from 2016 Litigation Section Chair Morris Ratner

Dear Members of the Section on Litigation:

We have a terrific panel this year at the Conference, co-sponsored by the Section on Torts, called "MDL Problems," and taking place January 6, 2017 from 10:30 a.m. – 12:15 p.m.

The panel topic is:

MDLs comprise an increasingly significant portion of the federal docket and account for much of the growth in the civil side of the docket in the last few years. Trial court judges to whom the Judicial Panel on Multidistrict Litigation transfers cases, operating with little guidance from the MDL statute or the federal rules, have improvised ways to appoint counsel to leadership positions; control pleading, motion practice and discovery; and resolve mass torts via trial or aggregate settlements in a system expressly designed for pretrial purposes, only. Though creative, their solutions raise a number of concerns regarding litigant autonomy, agency costs, and the role of federal court judges in litigation. This program explores the MDL phenomenon and the problems it poses for our civil litigation system.

The all-star cast of panelists includes:

- Berkeley Law Assistant Professor Andrew Bradt (<https://www.law.berkeley.edu/our-faculty/faculty-profiles/andrew-bradt/>);
- Plaintiffs' attorney Elizabeth Cabraser (<http://www.lieffcabraser.com/attorneys/elizabeth-j-cabraser/>);
- University of Connecticut School of Law Professor Alexandra Lahav (<https://www.law.uconn.edu/faculty/profiles/alexandra-d-lahav/>);
- University of Texas School of Law Professor Linda Mullenix (<https://law.utexas.edu/faculty/lsmull52/>);
- Hon. Jon Tigar, United States District Court Judge (<http://www.cand.uscourts.gov/jst>); and
- Defense attorney Chilton Davis Varner (<http://www.kslaw.com/people/chiltondavis-varner>).

Our Board and Executive Committee this year was unusually active. We established a new Section website: <https://aalslitigationsection.com>. We reached out to the ABA Litigation Section, mainly through the efforts of Executive Committee member Christine Goodman. And, of course, our Chair-Elect Kate Schaffzin put together this newsletter, and our Board and Executive Committee organized the panel which we hope you'll enjoy.

I would like to thank the Section's Board Kate Traylor Schaffzin, University of Memphis Cecil H. Humphreys School of Law, Chair-Elect; Kenneth Kandaras, The John Marshall Law School, Treasurer; and Michael W. Martin, Fordham Law School, Secretary. I would also like to thank this year's Executive Committee: Paul Radvany, Fordham Law School; Ronald G. Aronovsky, Southwestern Law School; Bernadette Bollas Genetin, University of Akron School of Law; Christine Chambers Goodman, Pepperdine University School of Law; and Ettie Ward, St. John's University School of Law.

Finally, I would like to thank the Section for letting me be of service this year as your Chair.

Morris Ratner
Litigation Section Chair
Associate Professor & Associate Dean
UC Hastings College of the Law

AALS 2017 Annual Meeting Events of Interest

Federal Courts: Inter-Governmental Disputes and Justiciability (January 4, 2017, 1:30-3:15)

Civil Procedure: Breakfast (January 5, 2017, 7:00-8:30)

Civil Procedure: The Roberts Court and the Federal Rules of Civil Procedure (January 5, 2017, 8:30-10:15)

Conflict of Laws: New Voices in Conflict of Laws (January 5, 2017, 1:30-3:15)

Litigation, Co-Sponsored by Torts and

Compensation Systems: MDL Problems (January 6, 2017, 10:30-12:15)

Torts and Compensation Systems: Gun Regulation and Private Law (January 6, 2017, 1:30-3:15)

2017 Conferences of Interest

The Center for the Study of Dispute Resolution at the University of Missouri School of Law and the American Society of International Law (ASIL) Dispute Resolution and Midwest Interest Groups, in association with Young ICSID, are pleased to announce a works-in-progress conference focusing on international dispute resolution, broadly defined. More information on the event may be found on the event website (home page at <http://law.missouri.edu/faculty/wip-issues-in-international-dispute-resolution/>). The works-in-progress conference will take place on February 2 and 3, 2017, at the University of Missouri School of Law.

Litigation Section Member News

David R. Cleveland (Valparaiso) was awarded tenure and appointed as Associate Dean for Academic Affairs at Valparaiso University Law School. David is also the Interim Legal Writing Director at Valparaiso Law and serves on the Board of the Association of Legal Writing Directors. His most recent article on publication, citation, and precedent of court opinions was published this spring: *Appellate Court Rules Governing Publication, Citation, and Precedential Value of Opinions: An Update*, 16 J. App. Prac. & Process 101 (2016).

Scott Dodson (UC Hastings) published the following works in 2016: *An Opt-In Option for Class Actions*, 115 *Michigan Law Review* (forthcoming 2016), *The Gravitational Force of Federal Law*, 164 *University of Pennsylvania Law Review* 703 (2016), *Joint and Several Jurisdiction*, 65 *Duke Law Journal* 1323 (2016) (with Phil Pucillo), and *Jurisdiction*, 3 *Encyclopedia of American Governance* 153 (Stephen L. Schechter ed. 2016). Two more of Professor Dodson's works were accepted for publication in 2016 and will appear in print in 2017: *A Negative Retrospective of Rule 23*, 92 *New York University Law Review* (forthcoming 2017), and *Jurisdiction and Its Effects*, 105 *Georgetown Law Journal* (forthcoming 2017). Three courts cited his articles in 2016: *Washington v. Ryan*, -- F.3d --, -- (9th Cir. 2016) (Watford, J., dissenting), *e.Digital Corp. v. iBaby Labs., Inc.*, 2016 WL 4427209, at *4 n.2 (N.D. Cal. 2016), and *Duguid v. Facebook, Inc.*, 2016 WL 1169365, at *4 (N.D. Cal. 2016).

Christine Goodman (Pepperdine) published the second edition of her book, *California Evidence in the Examples and Explanations series*, as well as her article "Confrontation's Convolutions" in the *Loyola University Chicago Law Review* at volume 47, page 817.

Kenneth S. Klein (California Western) published *Comparative Jury Procedures: What A Small Island Nation Teaches The United States About Jury Reform*, 76 LA. L. REV. 447 (2015), and also placed *Truth and Legitimacy (in Courts)*, as the lead article in 48 LOY. U. CHI. L.J. (forthcoming). Additionally, he gave two lectures – one on Evidence Law and the other on Structure of Courts to law students at the University of Maribor (Slovenia). He also presented on the Enforcement of Foreign Judgments in United States Courts at an international conference on enforcement of judgments in Potoroz, Slovenia, and researching Maltese Jury Law (as a case study of how to learn the law of young, small nations) at the Global Legal Skills Conference in Verona, Italy. Moreover, the students at California Western School of Law selected me as the Professor of the Year.

Michael Martin (Fordham) was named Director of Clinical Programs at Fordham Law School, as well as Executive Director of the Law School's non-profit legal service firm, Lincoln Square Legal Services, Inc., through which Fordham Law students perform their live-client clinical case work.

James R. Maxeiner (Baltimore) is publishing *Failures of American Lawmaking in Historical and Comparative Perspectives* with Cambridge University Press in 2017, as well as *J.L. Tellkamp: German Legal Scientist in the U.S. (1838-1847) in an Age of Reform*, 50 Yearbook for German-American Studies in 2016.

Litigation Section Member News (cont.)

3

Section Blog

If you have not yet visited the Litigation Section blog, please do so at aalslitigationsection.com. The Litigation Section is eager to post relevant conference announcements and member news. To share your news, please email Kate Schaffzin at k.schaffzin@memphis.edu.

Michael D. Murray (Kentucky, visiting) is publishing the first volume of the newly revised *Art Law Deskbook: Artists' Rights in Intellectual Property, Moral Rights, and Freedom of Expression* (Lexis Nexis, forthcoming 2016), along with co-authors Leonard DuBoff, Christy King, and James Nafziger. He will also publish the second edition of *Art Law: Cases and Materials* (Aspen-Wolters Kluwer), in late 2016 or early 2017 (with co-authors DuBoff and Burr). His latest articles are: *The Ethics of Visual Legal Rhetoric*, 13 Legal Comm. & Rhetoric: JALWD ____ (forthcoming 2016); and *Visual Rhetoric: Topics of Invention and Arrangement and Tropes of Style*, 21 Leg. Writing ____ (forthcoming 2016).

Jeffrey A. Parness (Northern Illinois) published the 2016-2017 edition of Illinois Civil Procedure with LexisNexis.

Morris Ratner (UC Hastings) published *Judicial Ethical Integrity, Challenges and Solutions*, 29 Hastings Int'l & Comp L. Rev. 149 (2016), and was the co-winner of the sixth annual Fred. C. Zacharias Memorial Prize for Scholarship in Professional Responsibility in 2015 for *Class Counsel as Litigation Funders*, 28 Geo. J. Legal Ethics (2015). He has two additional articles forthcoming: *Class Action Conflicts*, 92 Wash. L. Rev. ____ (forthcoming 2017), and *Rationing Lawyers: From Cases to Tasks*, ____ Fordham L. Rev. ____ (forthcoming 2017). Morris also served as Chair of the Litigation Section in the 2016 calendar year.

Katharine Traylor Schaffzin (Memphis) was elected to serve a Trustee on the University of Memphis's inaugural Board of Trustees.

Bradley Scott Shannon (Florida Coastal) published *Where Have You Gone, Judicial Process?*, 84 FORDHAM L. REV. RES GESTAE 24 (2016).

Donna Shestowsky (UC Davis) received the 2016 Mangano Dispute Resolution Advancement Award from St. John's Hugh L. Carey Center for Dispute Resolution in recognition of her empirical research set forth in *The Psychology of Procedural Preference: How Litigants Evaluate Legal Procedure Ex Ante*, published in the Iowa Law Review.

Gregory C. Sisk (St. Thomas) published the following Litigation With the Federal Government (West Academic Press, Hornbook Series, 2016).

Stacie I. Strong (Missouri) published the following books: *Arbitration of Trust Disputes: Issues in National and International Law*, Oxford University Press (lead editor, with A. Molloy as consulting editor) (2016); *Comparative Law for Spanish-English Speaking Lawyers: Legal Cultures, Legal Terms and Legal Practices / Derecho comparado para abogados anglo- e hispanoparlantes: Culturas jurídicas, términos jurídicos y prácticas jurídicas*, Edward Elgar Publishing Ltd. (lead author, with K. Fach Gómez & L. Carballo Piñeiro) (2016); and *How to Write Law Exams: IRAC Perfected*, West Academic Publishing (lead author, with B. Desnoyer) (2016). She also published the following articles: "Congress and Commercial Trusts: Dealing With Diversity Jurisdiction Post-Americold," 69 *Florida Law Review* ____ (forthcoming 2017); "Realizing Rationality: An Empirical Assessment of International Commercial Mediation," 73 *Washington and Lee Law Review* ____ (forthcoming 2016); "Clash of Cultures: Epistemic Communities, Negotiation Theory and International Lawmaking," 50 *Akron Law Review* ____ (forthcoming 2016); "Judicial Education, Dispute Resolution and the Life of a Judge: A Conversation with Judge Jeremy Fogel, Director of the Federal Judicial Center," 2017 *Journal of Dispute Resolution* ____ (forthcoming 2017) (with Judge J. Fogel) (invited submission); "International Implications of the Will As An Implied Unilateral Arbitration Contract," 68 *Florida Law Review Forum* ____ (forthcoming 2016) (invited submission); "Large-Scale Dispute Resolution in Jurisdictions Without Judicial Class Actions: Learning From the Irish Experience," 22 *ILSA Journal of International & Comparative Law* 341 (2016) (invited submission); "The Reasons Behind Reasoned Arbitration Awards," 34 *Alternatives to the High Cost of Litigation* 81 (June 2016) (invited submission); and "International Insurance and Reinsurance Arbitration: A World of Difference," *Corporate Disputes* 47 (January-March 2016) (invited submission). Moreover, she published two book reviews: "How Legal Academics Can Participate in Judicial Education: A How-To Guide by Richard Posner," 66 *Journal of Legal Education* ____ (forthcoming 2016); and "Challenges and Recusals of Judges and Arbitrators in International Courts and Tribunals," 22 *ABA Dispute Resolution Magazine* 18 (Summer 2016) (invited submission). Additionally, she made the following presentations: "Legitimacy and International Arbitration: Sticky Defaults, Status Quo Bias and the Sovereign Prerogative," American Society of International Research Forum, Seattle, WA (November 2017); "Domestic Implementation of Treaties Involving Private International Law: Special Challenges," American Society of International Law Annual Meeting, Washington, D.C. (April 2016); "Reasoning in Litigation and International Commercial Arbitration: What Differences Exist and Why?" Inaugural Speaker, Marvin Anderson International Law Colloquium, University of California Hastings College of Law, San Francisco, CA (January 2016); "Modes, Devices and Techniques of Legal Reasoning in Commercial Arbitration," Conference on Arbitration and Legal Reasoning, School of Law, Queen Mary University of London, United Kingdom (November 2016); "Discretion and Restraint: Striking the Right Balance in Arbitral Decision-Making," International Chamber of Commerce (ICC) Canada, Annual International Arbitration Conference, Toronto, Canada (October 2016); and "Large-Scale Arbitration Around the World: Current Practices, Future Developments," Tenth Annual Conference, Arbitration Center of the Portuguese Chamber of Commerce and Industry, Lisbon, Portugal (July 2016).