



AALS Evidence Section 2019 Newsletter

WINTER 2019

In This Issue

- Message from the Chair
- 2020 John Henry Wigmore Lifetime Achievement Award
- 2020 AALS Annual Meeting: Washington, D.C.
- Member News
- Upcoming Conferences/Symposia
- Teaching Resources & Evidence Exam Bank

2019 Section Officers

Chair: Chris Chambers Goodman, Pepperdine University, Rick J. Caruso School of Law

Chair-Elect: Christian Brook Sundquist, Albany Law School

Secretary: Jasmine E. Harris, University of California, Davis, School of Law

Treasurer: Jose Felipe Anderson, University of Baltimore School of Law

Executive Committee:

Jeffrey Bellin, William & Mary Law School

Teneille Brown, University of Utah, S. J. Quinney College of Law

Message from the Chair, Professor Christine Chambers Goodman



Thank you all for your participation this year. We have been able to do more outreach and increased our section membership and look forward to continuing the momentum under the leadership of Christian Sundquist, our incoming Chair.

We are excited to see many of you at our three section events (details in the AALS Meeting Information Section): First, the Joint Luncheon at Lebanese Taverna where we will honor David Kaye with the 2020 Wigmore award. Second, the luncheon will be immediately followed by our panel at 1:30 pm - 3 pm: Algorithmic Knowledge: Law, Science and Democracy. The panel will end with a business meeting to elect officers, make appointments to the Executive Committee, and plan for 2020 at 3 pm. Finally, on Sunday, from 8:30 am - 10:15 am: The Opioid Epidemic and its Evidentiary Challenges, Co-Sponsored by Law, Medicine & Health Care.

Please join us for as many events as you can. Thank you for your support of the AALS Evidence Section.

It has been a pleasure to serve you all this year.

Chris Chambers Goodman,
AALS 2019 Evidence Section Chair

2020 Wigmore Lifetime Achievement Award Winner: Professor David H. Kaye



Congratulations to Professor David H. Kaye, this year's recipient of the coveted John Henry Wigmore Lifetime Achievement Award! We will honor Professor Kaye at this year's Joint Section Luncheon (with the Section on Criminal Justice) on January 3, 2020 at Lebanese Taverna (across the street from the Marriott Wardman Hotel).

Professor Kaye is the Regents' Professor Emeritus of Law and of Life Sciences at Arizona State University and Distinguished Professor

David S. Caudill, Villanova University Charles Widger School of Law

Tamara F. Lawson, St. Thomas University School of Law

Thomas G. Lininger, University of Oregon School of Law

Colin Miller, University of South Carolina School of Law

Ann M. Murphy, Gonzaga University School of Law

G. Alexander Nunn, University of Arkansas, Fayetteville, Robert A. Leflar Law Center

Liesa Lynne Richter, University of Oklahoma College of Law

Kaelyn J. Romey, Golden Gate University School of Law

Julia Simon-Kerr, University of Connecticut School of Law

Maggie Wittlin, University of Nebraska College of Law

Emeritus at Penn State Law. He has held visiting teaching or research appointments at Cornell University, Duke University, the University of Chicago, and the University of Virginia. Internationally, he has taught in England and China.

Professor Kaye worked as an Assistant Special Prosecutor on the Watergate Special Prosecution Force, an associate in a private law firm in Portland, Oregon, and a law clerk to Judge Alfred T. Goodwin of the U.S. Court of Appeals for the Ninth Circuit. He holds degrees in law (Yale University), astronomy (Harvard University), and physics (MIT).

Professor Kaye's research focuses on evidence, criminal procedure, the use of science and statistics in litigation, and on genetics and the law. He has served on committees or advisory panels of the American Statistical Association, the National Academy of Sciences, the National Commission on Forensic Science, the National Commission on the Future of DNA Evidence, the National Institutes of Health, the National Institute of Justice, the National Institute of Standards and Technology, the Organization of Scientific Area Committees in Forensic Science, and the International Conferences on Forensic Inference and Statistics. He has been on the editorial boards of four academic journals and has repeatedly served as editor of the American Bar Association publication, *Jurimetrics: The Journal of Law, Science, and Technology*. His publications include 11 books, 15 book chapters, and over 180 articles and letters in journals of law, philosophy, psychology, medicine, genetics, and statistics.

Our Section award is named after renown jurist and evidence scholar, Professor John Henry Wigmore. The AALS Section on Evidence presents the John Henry Wigmore Award each year "to honor those who have reached what in former years might have been considered retirement age (whether or not they have in fact retired) and who have made leading contributions to the understanding of the proof process, or to the administration and reform of the rules of evidence and the process of proof or both." AALS Evidence Section By-Laws.

2020 AALS Annual Meeting: Washington, D.C.

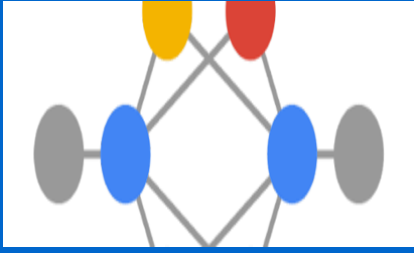


With so much activity at the Marriott Wardman D.C., we wanted to provide you with an overview of Section-sponsored events.

January 3rd, Noon-1:30pm:

Section on Evidence and Section on Criminal Justice: Joint Section Luncheon at Lebanese Taverna located across from the Marriott

Wardman Hotel (2641 Connecticut Avenue Northwest). Tickets are still available and can be purchased through EventBrite (Link: <https://www.eventbrite.com/e/aals-joint-evidence-and-criminal-justice-sections-luncheon-tickets-81628397735>). In addition to presenting Professor David H. Kaye with the Wigmore Award, we will join the Criminal Justice Section in honoring their awardees.



Friday, January 3rd, 1:30-3:15pm (immediately following our luncheon):

Algorithmic Knowledge: Law, Science and Democracy, Evidence and Biolaw Joint Program, Co-Sponsored by Law & the Social Sciences and Litigation Sections

Location: Virginia Suite A, Lobby Level

This program will explore the manner in which machine-learning technologies contribute to the formation of algorithmic knowledge in a variety of legal fields, including criminal justice, evidence, and litigation. The data assumptions underlying such predictive analytics are often problematic—whether for encoding human bias, or for being shielded from review by intellectual property protections. The failure of artificial intelligence technologies to account for informational asymmetries thus poses unique threats to our democratic institutions and justice system. However, artificial intelligence technologies have also shown great promise to promote equality, efficiency, and access to justice in law. This program will thus examine possible responses by lawyers and legal institutions to the challenges posed by machine-learning.

Panelists:

David F. Engstrom, Stanford Law School; Nicholson Price, University of Michigan Law School; Arti K. Rai, Duke University School of Law; Andrea Roth, University of California, Berkeley School of Law and moderated by Professor Chris Chambers Goodman, Pepperdine Caruso School of Law

Evidence Section Business meeting at program conclusion to elect officers, make appointments to the Executive Committee, & discuss 2020 Section programming.



Sunday, January 5th, 8:30 am - 10:15 am (nice & early on the last day):

The Opioid Epidemic and its Evidentiary Challenges, Co-Sponsored by Law, Medicine and Health Care.

Location: Maryland Suite B, Lobby Level

This panel will discuss the key evidentiary issues associated with the opioid crisis. The CDC estimates that over 130 people die each day from opioid-related drug overdoses. The ripple effects can be felt in the uptick of criminal and civil cases related to this epidemic. As the opioid crisis makes its way into courts, evidence scholars and practitioners must consider the problems of proof that arise in this context, including the use of character evidence and prior bad acts, the use of causation, and the use of experts. Medical experts, in particular, create a unique dilemma. Pharmaceutical companies in the 1990s assured the medical community that opioid pain relievers were not addictive. Therefore, medical experts are caught in between. Health law and evidence scholars will engage with practitioners and offer legal and policy reforms that can begin to address the impact of the opioid epidemic on the legal system.

Panelists:

Leo Beletsky, Northeastern University School of Law; Teneille Brown, University of Utah, S. J. Quinney College of Law; Jennifer D. Oliva, Seton Hall University School of Law; The Honorable Alexander Williams, Jr.,

United States District Court for the District of Maryland; and moderated by Jose Felipe Anderson, University of Baltimore School of Law

Papers from this program will be published in The Journal of Health Law & Policy.



Section Member News

Time to celebrate our section members! The following news items includes evidence-related work and other projects our members are working on or have recently completed. What an impressive, prolific group of academics, objectively speaking, of course. Need more convincing? Here's the relevant evidence:

LAW REVIEW ARTICLES/BOOKS (BY AUTHOR W/AFFILIATION)

- **Ramona Albin (Samford)**, *Appropriating Women's Thoughts: The Admissibility of Sexual Fantasies and Dreams Under the Consent Exception to Rape Shield Laws*, 68 KAN. L. REV. ____ (forthcoming March 2020).
- **George Bach (UNM)**, *Moderating the Use of Lay Opinion Identification Testimony Related to Surveillance Video* __ FLA. ST. U. L. REV. __ (forthcoming) [available on SSRN]
- **Blanche Cook (UK)**, *Stop Traffic: Using Expert Witnesses to Disrupt Intersectional Vulnerability in Sex Trafficking Prosecutions*, 24 BERKELEY J. CRIM. L. 147 (2019). [available on SSRN]
- **James Duane (Regent University)**, *The Abraham Lincoln Exception to the Hearsay Rule*, 42 AM. J. TRIAL ADVOCACY 143 (Fall 2018). [available on SSRN]
- **Mary Fan (UW)**, *CAMERA POWER: POLICING, PROOF, PRIVACY, AND AUDIOVISUAL BIG DATA* (Cambridge University Press, 2019), available [here](#) (link).
- **Michael Z. Green (Texas A&M)**, *Union Commitment to Racial Diversity*, in *THE CAMBRIDGE HANDBOOK OF U.S. LABOR LAW FOR THE TWENTY-FIRST CENTURY* (eds. Richard Bales & Charlotte Garden, Cambridge University Press, 2019).
- **Michael Z. Green (Texas A&M)**, *A New #MeToo Result: Rejecting Notions of Romantic Consent with Executives*, 23 EMP. RTS. & EMP. POL'Y J. 115 (2019).
- **Michael Z. Green (Texas A&M)**, *Negotiating Race in the Workplace after Trump*, 35 NEGOT. J. 195 (2019).
- **Jasmine E. Harris (UC Davis)**, *The Aesthetics of Disability*, 119 COLUM. L. REV. 895 (2019).
- **Jennifer Olivia (Seton Hall)**, *Opioid Multidistrict Litigation Secrecy*, 80 OHIO ST. L. J. ____ (forthcoming 2019).
- **Jennifer Olivia (Seton Hall) and Valena Elizabeth Beety (ASU)**, *Regulating Bite Mark Evidence: Lesbian Vampires and Other Myths of Forensic Odontology*, 94 WASH. L. REV. ____ (forthcoming 2019).

- **Jennifer Olivia (Seton Hall) and Valena Elizabeth Beety (ASU)**, *Evidence on Fire*, 97 N.C. L. REV. 483 (2019) (with Valena Elizabeth Beety) (lead article).
- **Jeffrey A. Parness (NIU) and Jessica Theodoratos**, *Expanding Pre-Suit Discovery Production and Preservation Orders*, ___ Michigan St. L. Rev. ___ (forthcoming 2019). [available on SSRN]
- **Aníbal Rosario-Lebrón (Howard)**, *Evidence's #MeToo Moment*, 74 U. MIAMI L. REV. 1 (2019).
- **Paul Rothstein (Georgetown) and R.J. Coleman (Georgetown)**, *A Game of Katso and Mouse: Current Theories for Getting Forensic Analysis Evidence Past the Confrontation Clause*, 57 AMER. CRIM. L. REV. 27 (2019).

CASEBOOKS/TREATISES/TEACHING MATERIALS

- **Michael Z. Green (Texas A&M)**, *Reflecting on Negotiating While Black*, in NEGOTIATION ESSENTIALS FOR LAWYERS (Andrea Kupfer Schneider & Christopher Honeyman eds., 2019).
- **Paul Rothstein (Georgetown)**, FEDERAL RULES OF EVIDENCE (2019 Ed., Thomson-Reuters).
- **Paul Rothstein (Georgetown)**, FEDERAL TESTIMONIAL PRIVILEGES (2019-2020 Ed, Thomson-Reuters).
- **Rothstein (Georgetown), David Crump (Houston), & Tamara Lawson (St. Thomas)**, EVIDENCE: CASES, MATERIALS, AND PROBLEMS (5th Ed. 2019 Carolina Academic Press).
- **Jennifer Zedalis (University of Florida)**, TRYING CASES: PROMISE, PROVE, AND PERSUADE: A MANUAL FOR LAW STUDENTS AND YOUNG LAWYERS (Vandeplas Publishing 2018).

A Note from **David Sklansky (Stanford)** re: Casebook: "The fifth edition of my casebook--Evidence: Cases, Commentary, and Problems--is now at the printer; it should be available by **February 2020**. I'm delighted that Andrea Roth (UC Berkeley) has joined me as a co-author. Drawing on Andrea's expertise, the fifth edition has new sections on machine-generated evidence, digital forensics, and authenticating digital evidence. We have also updated and substantially revised the materials on DNA evidence, on social science evidence, and on character evidence in sexual assault cases, and we have added new material on hearsay, competence, privileges, and judicial notice, among other topics. All told, we have added excerpts from more than 50 new cases and nearly 20 new articles, along with new problems and new editorial material, while still keeping the overall length of the book manageable. It's a much fresher, much improved book. We are revising the teacher's manual to take account of the new material; those revisions will be completed by February as well. In the meantime, if you have questions about the book, don't hesitate to reach out to me (sklansky@stanford.edu) or to Andrea (aroth@law.berkeley.edu)."

A Note from **Ed Imwinkelried (UC Davis) and Bob Mosteller (Duke)** re: Treatise: Thomson Reuters will **soon** release the eighth edition of the McCormick treatise, with Bob Mosteller (Duke) as its general editor. The

contributing authors are Ken Broun (UNC), George Dix (Texas), Ed Imwinkelried (UC Davis), David Kaye (Penn State), and Eleanor Swift (UC Berkeley). Revisions are made throughout the treatise, but the chapters concerning expert and scientific evidence have seen the most significant additions and reorganizations. In addition, this edition includes treatment of the new amendments to the Federal Rule of Evidence.

OTHER NEWS ITEMS

- **BLANCHE COOK (UK):** Professor Cook has joined the University of Kentucky College of Law as a tenured Associate Professor. Please add her new e-mail address (blanche.cook@uky.edu) to your contacts.
- **MARY FAN (UW):** U.S. Supreme Court Justice Sonia Sotomayor cited Professor Fan's article on body cameras, *Justice Visualized* (published in the UC Davis Law Review in 2016), in her dissent in *Nieves v. Bartlett*, No. 17-1174.
- **MICHAEL GREEN (Texas A&M):** Professor Green became a member of the National Academy of Arbitrators on September 21, 2019.
- **JENNIFER OLIVIA (SETON HALL) & VALENA ELIZABETH BEETY (ASU):** Their co-authored law review article, Evidence on Fire, 97 N.C. L. REV. 483 (2019), was cited and discussed in EXPERT EVIDENCE (Carolina Academic Press 2019) and was featured on the popular podcast, *Excited Utterance: The Evidence and Proof Podcast*, Episode 56 (Sept. 3, 2018).
- **JENNIFER ZEDALIS:** Professor Zedalis is the 2019/2020 Chair of the Criminal Law Section of the Florida Bar. Professor Zedalis also presented during a concurrent session—"The Time Traveling Lawyer"—at the AALS Clinical Legal Conference in San Francisco in May.

Upcoming Conferences/Symposia

- **Progressive Prosecutors Symposium**
University of California, Hastings College of the Law
February 7, 2020
- **2020 Health Law Symposium**
Seton Hall University School of Law, Newark, NJ
February 14, 2020
This year's Symposium topic is Neuroscience and the Law, broadly-defined, and the Law School is pleased to announced that the event will feature two Neurolaw legends as keynote speakers: Retired United States District Court Judge Nancy Gertner, who will provide the morning keynote remarks, and Professor and McKnight Presidential Fellow Francis X. Shen, who will serve as the lunch hour keynote speaker. For more details, contact Jennifer.Oliva@shu.edu.
- **Brooklyn Law Review Symposium: Data-Driven Legal Interpretation**
Brooklyn Law School
March 6, 2020

- **Texas A&M School of Law's Workplace Law Program Conference: Administrative Law & the Workplace**
Texas A&M School of Law (Fort Worth, Texas)
April 3, 2020
Some of the confirmed speakers include Stephanie Bornstein (Florida), Charlotte Garden (Seattle), Wendy Greene (Drexel), Hiba Hafiz (Boston College), and Jeff Hirsch (North Carolina). Professor Michael Green (Texas A&M) and Professor Angela Morrison (Texas A&M) are co-organizers. Contact Professor Green (mzgreen@law.tamu.edu) or Professor Morrison(angela.morrison@law.tamu.edu) with any questions.
- **Annual Health Law Conference – Public Health Litigation: Possibilities and Pitfalls**
Seattle University School of Law
April 17, 2020
- **Workshop on Artificial Justice (Singapore):**
<http://www.legalscholarshipblog.com/2019/10/31/cfp-workshop-on-artificial-justice-singapore/>



Teaching Resources & Evidence Exam Bank

The Evidence Section is creating a depository for evidence teaching resources including exams to assist our members, particularly junior members, by providing examples of well-developed (and tested) questions (multiple choice, essays, short answers, etc.). Please consider contributing teaching resources as well, including syllabi and PowerPoints if you feel comfortable doing so. Section members using any of these materials should kindly credit the author where applicable. We hope to have this databank up and running in the coming year. If you would like to participate in creating this teaching resource, please contact Professor Anna Roberts (St. John's) via e-mail roberta1@stjohns.edu.



Happy Holidays!

On behalf of the Section Board and Executive Committee, I wish you, your families, and friends happy holidays! We look forward to seeing you in Washington, D.C. in a few weeks and welcoming new and existing section members! If you have any questions, concerns, or ideas about the Section's current and future activities, please do not hesitate to reach out directly via e-mail: jeharris@ucdavis.edu.

Jasmine E. Harris (UC Davis)
Secretary, AALS Evidence Section (2019-2020)