# PROFESSOR JOSHUA P. DAVIS UNIVERSITY OF SAN FRANCISCO SCHOOL OF LAW 2130 Fulton St., San Francisco, CA 94117

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#### LEGAL EXPERIENCE

#### University of San Francisco, School of Law

2000 to Present

San Francisco, CA

*Professor* – Civil Procedure, Remedies, Legal Ethics, Constitutional Theory, First Amendment, Law and Economics, and Legal Theory.

Dean's Circle Scholar (award for scholarly productivity).

Faculty Committees – Chair, Appointments; Member, Status Committee (elected by faculty); Co-Chair, Scholarship Task Force.

Director, Center for Law and Ethics.

# Lieff, Cabraser, Heimann, & Bernstein, LLP

1997 to 2000

San Francisco, CA

Partner, Associate – Represented plaintiffs in antitrust, consumer, employment discrimination and environmental class actions and complex litigation.

# Willamette University College of Law

1996 to 1997

Salem, OR

Visiting Assistant Professor of Law.

# **Georgetown University Law Center**

1994 to 1996

Washington, D.C.

Fellow, Center for Applied Legal Studies.

Adjunct Professor of Law, Legal Scholarship Workshop.

### Chambers of Judge Patrick E. Higginbotham

1993 to 1994

U.S. Court of Appeals for the Fifth Circuit

Dallas, TX

Law Clerk

#### LAW REFORM

# Testimony Before Congress on the "Open Access to Courts Act of 2009," H.R. 4115,

Witness, House of Representatives, Committee on the Judiciary, Subcommittee on Courts and Competition Policy (Washington, D.C., Dec. 16, 2009).

### American Antitrust Institute,

Member, Advisory Board

Member, Working Crown on Civil Remedies

2007 to Present

Member, Working Group on Civil Remedies

2006 to Present

Co-author of various letters submitted to Antitrust Modernization Commission regarding proposals to amend antitrust laws, arguing for the preservation of robust private enforcement.

# **Multijurisdictional Practice in California**

2001 to 2004

Reporter, California Supreme Court Implementation **Committee on Multijurisdictional Practice** 

Reporter, California Supreme Court Advisory Task Force on **Multijurisdictional Practice** 

The proposed rules on multijurisdictional practice became law effective November 2004, codified as California Supreme Court Rules 964 to 967.

# **EDUCATION**

# Georgetown University Law Center, LL.M.

1994 to 1996

Washington, D.C.

Honors: Two-Year Teaching Fellowship

# New York University School of Law, J.D.

1990 to 1993

New York, N.Y.

Honors:

Frank H. Sommer Memorial Award (selected by faculty as top student in class for scholarship and achievement) Senior Articles Editor, N.Y.U. Law Review Order of the Coif

# Brown University, A.B.

1985 to 1989

Providence, R.I.

#### ACADEMIC PUBLICATIONS

A New Class Certification Standard in Antitrust Cases?: Problems with Doctrine, Policy and the Constitution, 18 Geo. Mason L. Rev. (forthcoming 2010) (co-authored with Eric Cramer).

Applying Litigation Economics to Patent Settlements: Why Reverse Payments Should Be *Per Se* Illegal, 41 Rutg. L. J. (forthcoming 2010).

Of Vulnerable Monopolists?: Questionable Innovation in the Standard for Class Certification in Antitrust Cases, 41 Rutg. L. J. \_\_ (forthcoming 2010) (coauthored with Eric L. Cramer).

The Inherent Structure of Free Speech Law: Government as Patron or Regulator in the Student Speech Cases, 83 St. John's L. Rev. \_\_ (forthcoming 2010) (co-authored with Joshua Rosenberg).

Benefits From Private Antitrust Enforcement: An Analysis of Forty Cases, 42 U.S.F. L. Rev. 879 (2008) (co-authored with Robert Lande).

Some Scholarly Consensus: Modernization of the Antitrust Laws is Best Left to the Judiciary, 40 U.S.F. L. Rev. 561 (2006).

<u>Chimerical Class Conflicts in Federal Antitrust Litigation: The Fox Guarding the</u> Chicken House in *Valley Drug*, 39 U.S.F. L. Rev. 141 (2004) (with David Sorensen).

Efforts to Delay Competition from Generic Drugs: Litigation Along a Seismic Fault Between Antitrust and Intellectual Property Law, 39 U.S.F. L. Rev. 1 (2004) (with Steig Olson).

Expected Value Arbitration, 57 Okla. L. Rev. 47 (2004).

<u>Supreme Court Review of the Foreign Trade Antitrust Improvements Act: A Case of a Misleading Question?</u>, 38 U.S.F. L. Rev. 431 (2004).

Essay: Virginia v. Black: Toward Neutral Principles?, Casenote, 25 Dublin Univ. L. J. 217 (2003).

Essay: Arbitration: Trial by Other Means or Settlement by Other Means?, 37 U.S.F. L. Rev. 7 (2003).

<u>Taking Uncertainty Seriously: Revising Injunction Doctrine</u>, 34 Rutgers L. J. 363 (2003).

<u>How Democratic is the United States Supreme Court?</u>, 37 U.S.F.L. Rev. 1 (2002) (introduction to symposium on Christopher Eisgruber, <u>Constitutional Self-Government</u> (Harvard 2001)).

<u>Teaching Values—The Center for Applied Legal Ethics</u>, 36 U.S.F. L. Rev. 593 (2002) (introduction to symposium on teaching values in law school).

Toward a Jurisprudence of Trial and Settlement: Allocating Attorneys' Fees by Amending Federal Rule of Civil Procedure 68, 48 Ala. L. Rev. 65 (1996).

Note, Cardozo's Judicial Craft and What Cases Come to Mean, 68 N.Y.U. L. Rev. 777 (1993).

#### SCHOLARSHIP IN PROGRESS

<u>Comparative Deterrence from Private Enforcement and Criminal Enforcement of the U.S. Antitrust Laws</u> (co-authored with Robert Lande) (draft-in-progress available upon request).

<u>The Inherent Structure of Free Speech Law</u> (co-authored with Joshua Rosenberg) (draft available upon request).

The Real New Antitrust Paradox: Selective Formalism, One-Sided Reasoning and the Judicial Resolution of Contested Facts (draft-in-progress available upon request).

Social Facts and Value Judgments: Inconsistency at the Core of the Supreme Court's Approach to Judicial Restraint (draft-in-progress).

Of Gaps and Overlaps: *Gasoline Products*, the Seventh Amendment and Class Certification (draft-in-progress).

#### OTHER PUBLICATIONS

An Imbalance of Representation: A Critique of the Antitrust Modernization Commission Recommendations Regarding Civil Remedies in Antitrust Cases, Proceedings of the American Antitrust Institute's 1st Annual Invitational Symposium on the Future of Private Antitrust Enforcement (Washington, D.C., Dec. 10, 2007).

<u>Dagher:</u> An Admirable Exercise in Restraint, 15 Competition 27 (2006) (The Journal of the Antitrust and Unfair Competition Law Section of the State Bar of California) (with Joseph R. Saveri and Peter Leckman).

<u>An Evaluation of Private Antitrust Enforcement: 29 Case Studies</u> (2006) (report to members of the Antitrust Modernization Commission on successful private antitrust class actions) (with Professor Robert Lande).

Proposal: Expected Value Arbitration, in Dispute Resolution Alert (JAMS Spring 2005).

Report of the California Supreme Court Multijurisdictional Practice Implementation Committee: Final Report and Proposed Rule (March 2004) (adopted by the California Supreme Court – the proposed rules became law effective November 2004 as Cal. S. Ct. Rules 964-967).

Final Report and Recommendations, California Supreme Court Advisory Task Force on Multijurisdictional Practice (Reporter) (Jan. 7, 2002) (adopted by California Supreme Court 2002).

Employment Discrimination Law (4th ed. BNA) (Chapter 39, Statistical Proof) (2004) (contributor).

2 California Antitrust Law (2d ed. 2001), State Bar of California, Antitrust and Unfair Competition Law Section (Chapter 11 Indirect-Purchaser Actions) (with Joseph R. Saveri, Charles Kagay, and Francis O. Scarpulla).

1 California Antitrust & Unfair Competition Law (3d ed. 2003), State Bar of California, Antitrust and Unfair Competition Law Section (Chapter 6 Indirect-Purchaser Actions) (with Joseph R. Saveri and Francis O. Scarpulla) and (4th ed. 2005) (Chapter 6 Indirect-Purchaser Actions) (with Joseph R. Saveri).

California Class Action Practice and Procedure (Lexis 2003) (ed. Elizabeth J. Cabraser) (contributing author).

"Decisions Interpreting California's Rules of Class Action Procedure," in *Survey of State Class Action Law* (ABA 2000, ABA 2000), republished in *Newberg on Class Actions*, State Supplement Section (California) (with Elizabeth J. Cabraser, William B. Hirsch, Fabrice Vincent, Barry R. Himmelstein and Stephen H. Cassidy) (2001-02, 2003).

"Thoughts on Finding the 'Truth," The Lawyer 26 (2001).

2000 Cummulative Supplement to <u>Employment Discrimination Law</u> (3d ed. BNA) (Chapter 39, Statistical Proof) (contributor).

<u>Allison v. Citgo Petroleum Corp.:</u> A Noble Retreat, 9 Class Actions and Derivative Suits 24 (Winter 1999) (with James M. Finberg).

Semiannual Advanced ALI-ABA Course of Study, Civil Practice and Litigation Techniques in Federal and State Courts: <u>Current Issues Involving Rule 12(b)(6) and Rule 9(b)</u> (published in 1998 and 1999) (with Elizabeth J. Cabraser).

The View from Half-Court, 17 Nova L. Rev. 799 (1993) (with Adam Winkler).

#### **AMICUS BRIEFS**

<u>Balintulo v. Daimler AG</u>, 09-2778-CV (2d Cir. Nov. 30 2009) (co-signatory along with other civil procedure scholars on brief addressing, inter alia, collateral order doctrine).

<u>Ketchum v. Moses</u>, 24 Cal.4th 1122 (Cal. 2001) (with Charles B. Renfrew, Robert J. Nelson, and Caryn Becker) (represented The Bar Association of San Francisco).

Kolstad v. American Dental Association, 527 U.S.526 (1999) (with James M. Finberg, Jonathan D. Selbin, and Paulina do Amaral) (represented the Lawyers' Committee for Civil Rights Under Law, the National Association for the Advancement of Colored People, the Mexican American Legal Defense and Education Fund, the National Partnership for Women & Families, the National Women's Law Center, the National Organization for Women Legal Defense and Education Fund, and the American Civil Liberties Union).

<u>Carter v. West Publishing Co.</u>, No. 99-11959-E (11th Cir. 1999) (with James M. Finberg) (represented the National Employment Lawyers Association, the National Association for the Advancement of Colored People, the Florida State Conference of NAACP Branches, the National Women's Law Center, the American Jewish Congress, and the Rainbow/PUSH Coalition, Inc.).

<u>Allison v. Citgo Petroleum Corp.</u>, 151 F.3d 402 (5th Cir. 1998) (request for rehearing *en banc*) (with James M. Finberg) (represented the National Employment Lawyers Association).

#### **SYMPOSIA ORGANIZED**

Symposium: Lawyers, Drugs, and Money: A Prescription for Antitrust Enforcement in the Pharmaceutical Industry (event held in fall 2009) (participants included Professors Michael Carrier, Feldman, and C. Scott Hemphill).

Symposium: The Uncertain Future of Antitrust: Responding to the Antitrust Modernization Commission, 40 U.S.F. L. Rev. 561 (2006) (event held in fall 2005) (participants included Commissioner W. Stephen Cannon, Professors Stephen Calkins, Herbert Hovenkamp, and Robert Lande, and assistant attorneys general Kathleen Foote (California) and J. Thomas Prud'homme (Texas)).

<u>Symposium: Soaring Prices for Prescription Drugs – Incentive for Innovations or Antitrust Violations?</u>, 39 U.S.F. L. Rev. 1 (2004) (event held in fall 2004) (participants included Professors Herbert Hovenkamp, Mark Lemley, James Langenfeld, and Cris Leffler).

<u>Symposium: Mandatory Arbitration Clauses</u>, 38 U.S.F. L. Rev. 1 (2003) (event held in fall 2003) (participants included Professors Jay Folberg, Jean Sternlight, Stephen Ware, and David Schwartz).

Symposium: Christopher Eisgruber's *Constitutional Self-Government*, 37 U.S.F. L. Rev. 1 (2002) (event held in fall 2001) (participants included Professors Rebecca Brown, John Denvir, Roderick Hills, Mark Tushnet, Jeremy Waldron, and Christopher Eisgruber).

<u>Symposium: Teaching Values in Law School</u>, 36 U.S.F. L. Rev. 591 (2002) (participants included Professors Christopher Eisgruber, Joshua Rosenberg, Paul Tremblay, and W. Bradley Wendel).

#### REPRESENTATIVE PRESENTATIONS

<u>Testimony Regarding the "Open Access to Courts Act of 2009," H.R. 4115</u>, Witness, House of Representatives, Committee on the Judiciary, Subcommittee on Courts and Competition Policy (Washington, D.C., Dec. 16, 2009).

<u>The Legality of Reverse Payments</u>, Presenter, American Antitrust Institute's 3d Annual Invitational Symposium on the Future of Private Antitrust Enforcement (Washington, D.C., Dec. 8, 2009).

<u>Ethics in Litigation: Witness Preparation</u>, Presenter, Intensive Advocacy Program, USF School of Law (San Francisco, CA, May 29, 2007; May 27, 2008; June 2, 2009).

<u>Judicial Activism and Judicial Resolution of Contested Facts</u>, Presenter, Loyola University of Chicago School of Law's 9<sup>th</sup> Annual Loyola Antitrust Colloquium, Institute for Consumer Antitrust Studies (Chicago, IL, May 1, 2009).

<u>Free Speech in Three Easy Steps</u>, Presenter, USF School of Law Scholarship Series (San Francisco, CA, Feb. 24, 2009).

<u>Proposed Revisions to the California Rules of Professional Conduct</u>, Moderator, Center for Law and Ethics, USF School of Law (San Francisco, CA, Jan. 30, 2009).

<u>Civility in Legal Practice</u>, Moderator, USF Center for Law and Ethics and the American Board of Trial Advocates, (San Francisco, CA, Jan. 27, 2009).

<u>Judicial Resolution of Contested Facts in Antitrust Cases</u>, Presenter, American Antitrust Institute's 2d Annual Invitational Symposium on the Future of Private Antitrust Enforcement (Washington, D.C., Dec. 11, 2008).

<u>Use of Expected Value Analysis in Dispute Resolution</u>, Presenter, Intensive Advocacy Program, USF School of Law (San Francisco, May 19-June 1, 2008).

[In]advertent Disclosure: For Whose Eyes Only?, Presenter, The Twelfth Annual Statewide Ethics Symposium, State Bar of California, Committee on Professional Responsibility and Conduct (San Francisco, CA, May 3, 2008).

Expected Value Arbitration, Presenter, The 2008 CPR Annual Meeting, Integrated Conflict Management Systems (New York, N.Y. Jan. 17-18, 2008).

The Future of Treble Damages, Joint and Several Liability, Contribution, Claims Reduction, and Prejudgment Interest, Presenter, American Antitrust Institute's 1st Annual Invitational Symposium on the Future of Private Antitrust Enforcement (Washington, D.C., Dec. 10, 2007).

<u>The Benefits of Private Enforcement</u>, Presenter, American Antitrust Institute's 1st Annual Invitational Symposium on the Future of Private Antitrust Enforcement (Washington, D.C., Dec. 10, 2007).

Inadvertent Disclosure: An Attorney's Ethical Obligations, Moderator, 80th Annual Meeting of the State Bar of California (Anaheim, CA, Sept. 30 2007).

<u>The ABCs of a Successful Plaintiffs' Antitrust Practice</u>, Richardson, Patrick, Westbrook & Brickman Symposium on Private Litigation (Charleston, SC, Saturday, April 28, 2007).

Expected Value Arbitration, Presenter, JAMS Institute (November 9, 2004).

No Chance at the Prized Hen: The U.S. Supreme Court Bars Foreign Antitrust Plaintiffs from Bringing Claim Under the Sherman Act and the FTAIA for Independent Adverse Foreign Effects, Panelist, Barristers International Practice Section of The Bar Association of San Francisco (San Francisco, CA, September 22, 2004).