

Our motto: When the facts come out, the truth will be known.

THE RED HERRING

Newsletter of the AALS Section on Business Associations (SOBA)

Volume XXXVII – Fall 2017

2018 ANNUAL MEETING – SAN DIEGO

INSTITUTIONAL INVESTORS AND CORPORATE GOVERNANCE

Friday, January 5, 2018, 10:30 a.m. to 12:15 p.m.

San Diego Marriott Hotel & Marina, Pacific Ballroom 16, North Tower / Level 1.

When reached at his St. Louis office, Matt Bodie, SOBA chair-elect, described the section program for the upcoming meeting as follows:

In thinking through the problems posed by agency costs within the public corporation, corporate law academics have turned repeatedly to institutional investors as a potential solution. The agglomeration of shares within a large investing firm, together with ongoing cooperation among a large set of such investors, could overcome the rational apathy the average shareholder has towards participation in corporate governance. Alternatively, activist investors could exert specific pressure on isolated companies that have been singled out—like the weakest animals in the herd—for extended scrutiny and pressure. In these examples, the institutionalization of investing offers a counterbalance to the power of management and arguably provides a systematized way of reorienting corporate governance. These institutional-investor archetypes have, in fact, come to life since the 1970s and have disrupted the stereotype of the passive investor. But have we achieved a new and stable corporate governance equilibrium? Or have we instead ended up with an additional set of agency costs – the separation of ownership from ownership as well as ownership from control? This program seeks to explore these questions and assess the developments in the field since the beginning of the new century.

Note that the program is co-sponsored by the Section on Securities Regulation.

MORE →

People familiar with the matter report that as a result of a call for anonymous submission of papers, the program will feature two presentations, one by Jessica Erickson (Richmond) entitled *The Market for Corporate Procedure* and the other by Robert Anderson IV (Pepperdine) and George Dent, Jr. (Case Western Reserve) entitled *Institutions, Investment Horizon, and Corporate Governance*.

The panel of commentators includes:

- Heather Slavkin Corzo, AFL-CIO
- Anita Krug, University of Washington (Washington)
- Sabastian Niles, Wachtell, Lipton, Rosen & Katz
- Frank Partnoy, San Diego
- Matthew Bodie, St. Louis (moderator)

Abstracts of the papers follow below at pages 3 to 4.

As for the much anticipated and always exciting business meeting, you should have received a message from our fearless leader naming the nominees who will be deemed elected unless someone has been so bold as to object.

The nominee for chair-elect is: Anne Tucker of Georgia State.

The nominees for the Executive Committee (whose terms will expire as of the 2021 annual meeting) are:

Tamara Belinfanti (NYLS)
Tom Lin (Temple)
Benjamin Means (South Carolina)
Megan Shaner (Oklahoma)

Vote early and vote often. Or not.

Information relating to other programs and panels of interest follows beginning at page 9.

MORE →

ABSTRACTS FOR SOBA PAPER PRESENTATIONS

The Market for Corporate Procedure

Jessica Erickson

Shareholder litigation has failed. Merger litigation is ubiquitous, but rarely ends with meaningful relief for shareholders. Derivative suits have been criticized on nearly identical grounds for over seventy years. And securities class actions are rife with ethical challenges and low-value settlements. These problems result from the fact that shareholder litigation suffers from greater agency costs and cost asymmetries than other forms of litigation, as scholars and courts have long noted. The legal system has tried various reforms to solve these problems, including legislative reform, corporate self-help, and greater judicial oversight, yet none have worked.

This Article argues that procedural reform can help solve the problems in shareholder litigation. More specifically, institutional investors should work with corporate boards and plaintiffs' attorneys to develop new procedural rules to govern these cases. New standing requirements, non-waivable forum selection clauses, and bans on non-monetary settlements can reduce the agency costs in these cases. Similarly, heightened pleading standards, limitations on discovery, and cost shifting can reduce the cost asymmetries in these cases. Institutional investors should take the lead in adopting these new procedures. Although institutional investors have long served as plaintiffs in these cases, they can have a greater impact by re-writing the procedural rules that govern this area of law. These investors have the right financial incentives to adopt new procedural rules given their investments in the target corporations. They also have the right organizational structure to oversee these changes because many institutions have long been involved in activism efforts and should understand the value of litigation in controlling managerial behavior. In the end, the time has come for institutional investors to develop a market in corporate procedure.

Institutional Investors, Investment Horizons, and Corporate Governance

Robert Anderson IV
George W. Dent, Jr.

One of the most prominent corporate law debates in recent years centers on the influence of short-term investment horizons on corporate policy. Business leaders, commentators, and influential jurists increasingly decry the perceived short-term investment horizons of institutional investors and the pressures that such investors place on corporate managers. To combat perceived short-termism, many have proposed modulating investors' participation in corporate governance by their past holding periods. Proposals from various quarters would vary voting rights, board nomination rights, or other levers of governance by the length of time investors have continuously held securities in the past.

The use of governance cutoffs based on investors' past holding periods—what we call “lookback” approaches—entail a significant unstated assumption. The relevant inquiry for an investor's governance incentives is not how long the investor has held in the past, but how long the investor will hold in the future. Thus, the lookback approach assumes that longer past holding periods predict longer future holding periods. Yet the existing literature has not documented the extent to which past holding period predicts future holding period.

In this paper, we investigate the connection between past holding period and future investment horizon among institutional investors. Using a newly created database of thousands of institutional investors and hundreds of thousands of individual investments, we find two major results. First, we find that future investment horizon does indeed lengthen as past holding period increases. Second, we find that most institutions have relatively long holding periods. The combination of these two findings means that although past holding period predicts future holding period, lookback cutoffs have relatively modest effects on lengthening the future holding period of investors.

We argue that boards and policymakers concerned about future investment horizon should secure longer future holding periods directly instead of using the lookback approach as a poor proxy for future holding period. We explain how a forward-looking approach to lengthening investment horizon could directly commit investors to long-term horizons. These forward-looking approaches would allow companies to ensure a secure base of investors with a long-term orientation while not having the antitakeover effects of lookback approaches.

ICYMI

On Halloween, we received the following message from Joan Heminway (Tennessee):

“I am putting together a panel or discussion group (depending on how many folks respond positively) for the SEALS conference for next summer, which is scheduled to be held August 6-12, 2018 t the Marriott Harbor Beach Resort & Spa in Fort Lauderdale, Florida. Here is the proposed title and a brief draft description (which may have to be shortened for the submission):

“Alternative Ways of “Going Public”

“For many years, the standard definition of a “public offering” included (most typically) an offer and sale of securities registered under the Securities Act of 1933, as amended (the “1933 Act”). Some also would have traditionally included in the definition of a public offering, in certain contexts, intrastate offerings exempt from registration under the 1933 Act (and its companion safe harbor under the 1933 Act) or exempt securities offerings conducted in accordance with the requirements of Regulation A under the 1933 Act. Today, however, the term “public offering” arguably takes on a broader meaning. For one thing, Regulation A has expanded, widening its potential use in affording firms access to public securities markets. In addition, general solicitations of the public now can be made in private placements executed under Rule 506 of Regulation D under the 1933 Act, and securities crowdfunding—Internet securities offerings to the general public—can be conducted under an exemption from registration under the 1933 Act. Add to all this the advent of initial coin offerings (some of which, under current SEC guidance, may also constitute public offerings), and one realizes that the concept of a public offering has become significantly more complex and nuanced. In short, the term “public offering” has a less well defined meaning and may signify different things to different people. This [panel] [discussion group] features [paper presentations] [a dialogue] on the various means and effects of conducting a public offering in the current environment, together with related analysis and observations.

“Let me know if you would like to participate in this program. Also, let me know if you know of anyone else who may want to participate—or just pass this on to others. I must file the proposal soon in order to ensure its consideration.”

We also received the following note from Anita Krug (Washington (Washington)) relating to the Section on Securities Regulation:

“I hope many of you will be attending our Section’s programs at the 2018 AALS Annual Meeting in San Diego. Our main program is “Offering, Selling, and Trading Securities: New Perspectives” and will take place on **Friday, January 5, from 1:30 to 3:15 pm**. This session will feature the work of Hilary Allen, Nicole Iannarone, and Summer Kim. Michele Layne, Regional Director at the SEC’s Los Angeles office will also speak.

“In addition, we are hosting a works-in-progress program titled “Emerging Voices in Securities Regulation” on **Thursday, January 4, from 3:30 to 4:45 pm**. Our junior scholar presenters will be Gina-Gail Fletcher, Yuliya Guseva, Summer Kim, Jeremy McClane, and Josephine Sandler Nelson, and our senior scholar commenters will be Miriam Baer, Jordan Barry, Eric Chaffee, Wendy Couture, Joan Heminway, Arthur Laby, Michael Malloy, Elizabeth Pollman, Hillary Sale, and Jeff Schwartz.

“In order that we can use our session time to focus on the programs, we would like to hold a “virtual meeting” to take care of the business of electing a new Chair-Elect and one new member of the Executive Committee. We recommend **Eric Chaffee** (Toledo) to become Chair-Elect. We also recommend **Andrew Tuch** (Washington University) to join the Executive Committee for a 3-year term. **Wulf Kaal** (University of St. Thomas) automatically rises from Chair-Elect to Chair, and **Wendy Couture** (Idaho), **Arthur Laby**(Rutgers), and **Yesha Yadav** (Vanderbilt) are continuing members of the Committee. We will assume this slate is acceptable to a majority of the Section’s members, unless we hear otherwise.”

BETTER THAN TWITTER

The SOBA discussion list – BIZLAW – is alive and well, but there have been a couple of minor changes in procedure. If you are member of the list you can post a message by sending it to: bizlaw@vls-list.law.villanova.edu

If you are not already a member of BIZLAW, you can subscribe by sending a blank email message to: join-bizlaw@vls-list.law.villanova.edu

You will receive a confirmation message explaining how the list works. Thereafter you may post messages to your heart's content. And it's absolutely free. Note that neither the list address nor the join message is case-sensitive.

THE RED HERRING is a different list and you cannot post messages to it. (Our subscribers get very cranky about unsolicited email.) But you can *subscribe* on your own. So if for some reason you are a non-subscriber who is reading this, you can subscribe by sending a blank email message to: join-redherring@vls-list.law.villanova.edu

Then just sit back and enjoy.

NOTE: The address of the SOBA listserv – BIZLAW – as well as the address for the house organ – THE RED HERRING – changed in 2007 when your fearless editor moved from Maryland to Villanova. The old address continued to work for many purposes in the meantime but has now been shut down once and for all. If you receive this issue of THE RED HERRING, presumably you are subscribed to the current Villanova address. But you should be careful to post BIZLAW messages to the Villanova address. Messages posted to the Maryland address will be rejected.

OUR MISSION (SHOULD WE DECIDE TO ACCEPT IT)

For the record, the AALS website includes the following statement of purpose:

The Section on Business Associations promotes the communication of ideas, interests, and activities among members and makes recommendations on matters of interest in the teaching and improvement of the law relating to business associations.

The website address is: <https://connect.aals.org/businessassociations>

AALS SECTION ON BUSINESS ASSOCIATIONS

EXECUTIVE COMMITTEE & OFFICERS

Term Expiring at the 2018 Annual Meeting:

Paul Rose, Ohio State
Anne Tucker, Georgia State
Kelli Williams, Florida State

Term Expiring at the 2019 Annual Meeting:

Anita Krug, University of Washington
Elizabeth Pollman, Loyola Los Angeles
Jennifer Taub, Vermont
Andrew Tuch, Washington (St. Louis)

Term Expiring at the 2020 Annual Meeting:

Afra Afsharipour, UC Davis
Eric Chafee, Toledo
Jessica Erickson, Richmond
Mohsen Manesh, Oregon

Fearless Leaders:

Usha Rodrigues, Georgia – Chair
Matthew Bodie, Saint Louis – Chair-Elect
Michelle Harner, Maryland – Immediate Past Chair †
Jayne Barnard, William & Mary – Penultimate Immediate Past Chair

Fearless Editor:

Richard Booth, Villanova

Formerly Fearless Editors:

John Coffee, Columbia 1981-1982
Robert Thompson, Georgetown 1982-1984

† For the record, Michelle Harner served briefly as section chair before she was appointed by the Fourth Circuit on February 16, 2017 to serve as a Bankruptcy Judge for the District of Maryland whereupon Usha Rodrigues was restored to the throne for the remainder of the term expiring at the 2018 annual meeting.

OTHER PROGRAMS OF INTEREST

Wednesday, January 3

1:30 pm – 3:15 pm

AALS DISCUSSION GROUP

Pacific Ballroom Salon 26, North Tower/Ground Level, Marriott

What is Fraud Anyway?

Discussion Group Moderators:

John P. Anderson, Mississippi College School of Law

David Y. Kwok, University of Houston Law Center

Discussion Group Participants:

Miriam H. Baer, Brooklyn Law School

Mihailis Diamantis, University of Iowa College of Law

Jill E. Fisch, University of Pennsylvania Law School

Michael D. Guttentag, Loyola Law School, Los Angeles

John Hasnas, Georgetown University Law Center

Joan M. Heminway, University of Tennessee College of Law

M. Todd Henderson, The University of Chicago, The Law School

Thomas W. Joo, University of California, Davis, School of Law

Craig S. Lerner, Antonin Scalia Law School at George Mason University

Ellen S. Podgor, Stetson University College of Law

Veronica S. Root, Notre Dame Law School

Andrew Verstein, Wake Forest University School of Law

Discussion Groups provide an in-depth discussion of a topic by a small group of invited discussants selected in advance by the Annual Meeting Program Committee. In addition to the invited discussants, additional discussants were selected through a Call for Participation. There will be limited seating for audience members to observe the discussion groups on a first-come, first-served basis.

Federal white collar fraud statutes in the United States (e.g., securities, mail and wire, and bank fraud) have increasingly come under attack as exceedingly vague and subject to prosecutorial abuse. Such vagueness may be a necessary evil given the demonstrated creativity of white collar criminals, but the legal uncertainty raises notice concerns and may also have a chilling effect on legitimate market activity. This Discussion Group will consider these and other concerns regarding federal fraud statutes and evaluate reforms.

Wednesday, January 3

1:30 pm – 3:15 pm

SECTION ON TRANSACTIONAL LAW & SKILLS

Pacific Ballroom Salon 21, North Tower/Ground Level, Marriott

Access to Justice and Transactional Law

Moderator: Virginia Harper Ho, University of Kansas School of Law

Speakers: Jennifer Fan, University of Washington School of Law
Praveen Kosuri, University of Pennsylvania Law School
Jay Mitchell, Stanford Law School

Speakers from a Call for Papers:

Cathy Hwang, University of Utah, S. J. Quinney College of Law
David Rosenfeld, Northern Illinois University College of Law

Panelists will discuss the framing of their transactional courses and the pedagogies they use to engage their students and make connections between teaching transactional lawyering and closing the access to justice gaps. From small business disputes, to mandatory consumer arbitration, to restrictions on shareholder lawsuits, it is no longer obvious that access to the courts in the event of a dispute. Papers presented here respond to the question of access to the courts in the transactional context.

Business meeting at program conclusion.

2 pm – 5 pm

SECTION ON LAW & ECONOMICS

Pacific Ballroom Salon 22, North Tower/Ground Level, Marriott

Law and Economics

Moderators: Jonah Gelbach, University of Pennsylvania Law School
Eric Helland, Ph.D., William F. Podlich Professor of Economics and George R. Roberts Fellow, Claremont McKenna College

Speakers: Stephen F. Diamond, Santa Clara University School of Law
Daniel M. Klerman, University of Southern California Gould School of Law
Theodore P. Seto, Loyola Law School, Los Angeles
James C. Spindler, The University of Texas School of Law
Joshua C. Teitelbaum, Georgetown University Law Center

The Section on Law and Economics meeting will have several papers presented.

Business meeting held at program conclusion.

Wednesday, January 3

5:30 pm – 6:30 pm

**SECTION ON AGENCY, PARTNERSHIP, LLC'S & UNINCORPORATED ASSOCIATIONS
BUSINESS MEETING**

Temecula Room 3, North Tower/Ground Level, Marriott

We received the following email clarifying the details for this session:

Dear Section Members,

We are preparing for our program on ***The Challenges and Opportunities of Exotic Hybrids—Series LLCs, Up-C's & Master Limited Partnerships*** at the annual meeting on **January 5th from 8:30-10:15 am** in the San Diego Marriott Hotel & Marina, Pacific Ballroom 16, North Tower/Level 1. We hope you will start your day early with us. Our program will feature an overview on exotic hybrids, a discussion of new uniform rules on series LLCs, and 2 paper presentations.

Whether you can join us in sunny San Diego or not, please take a few minutes to participate in our virtual business meeting. Follow this [link](#) (or if problems copy and paste: https://gsu.qualtrics.com/jfe/form/SV_88Hvz8pMRafaVFP) and complete your voting by January 3rd, 2018. Results will be announced via the list-serve and at the section meeting.

Looking forward,
AT

Anne M. Tucker
Associate Professor of Law
Georgia State University College of Law
amtucker@gsu.edu
404.413.9179
[GSU Profile](#)
[SSRN Author Page](#)
[Business Organization Casebook](#)

Thursday, January 4

1:30 pm – 3:15 pm

SECTION ON ANTITRUST & ECONOMIC REGULATION

Pacific Ballroom Salon 16, North Tower/Ground Level, Marriott

Politics in Antitrust

Moderator: Scott Hemphill, New York University School of Law

Speakers: Daniel A. Crane, The University of Michigan Law School
Lina Khan, Director of Legal Policy, Open Market Institute
K. Sabeel Rahman, Brooklyn Law School
Luigi Zingales, Professor of Entrepreneurship and Finance, University of Chicago Booth School of Business

Modern antitrust law is economically oriented in its approach. But many people regard the singular focus on economic welfare as a recent development. The framers of the Sherman Act also hoped to reduce the political power wielded by Standard Oil and other large firms. Today, there is renewed interest in an approach to antitrust enforcement that incorporates political concerns, such as the concentration of political power in private hands. Politics has also entered the largely technocratic realm of antitrust in a second way: President Trump has indicated that antitrust enforcement might be wielded as a political tool against disfavored firms, such as Amazon or Time Warner. Our panel will discuss to what extent politics does—and should—play a role in antitrust enforcement.

Business meeting at program conclusion.

Thursday, January 4

3:30 pm - 4:45 pm

SECTION ON SECURITIES REGULATION

Leucadia, South Tower/Ground Level, Marriott

Emerging Voices in Securities Regulation

Moderator: Anita K. Krug, University of Washington School of Law

Commentators: Miriam H. Baer, Brooklyn Law School
Jordan M. Barry, University of San Diego School of Law
Eric C. Chaffee, University of Toledo College of Law
Wendy G. Couture, University of Idaho College of Law
Joan M. Heminway, University of Tennessee College of Law
Arthur B. Laby, Rutgers Law School
Michael P. Malloy, University of the Pacific, McGeorge School of Law
Elizabeth Pollman, Loyola Law School, Los Angeles
Hillary A. Sale, Washington University in St. Louis School of Law
Jeff Schwartz, University of Utah, S. J. Quinney College of Law

Works-in-Progress Presenters:

Gina-Gail S. Fletcher, Indiana University Maurer School of Law
Yuliya Guseva, Rutgers Law School
Sung Eun (Summer) Kim, University of California, Irvine School of Law
Jeremy McClane, University of Connecticut School of Law
Josephine Sandler Nelson, Villanova University Charles Widger
School of Law

This program will bring together junior and senior securities regulation scholars for the purpose of giving junior scholars feedback on their scholarship and helping them ready their work for submission for publication. Junior scholars' presentations of their drafts will be followed by comments from senior scholars and further discussion, as time permits. The Section welcomes anyone interested in securities regulation topics to attend and participate in the discussions.

Friday, January 5

8:30 am – 10:15 am

SECTION ON AGENCY, PARTNERSHIP, LLC'S, & UNINCORPORATED ASSOCIATIONS, CO-SPONSORED BY SECURITIES REGULATION AND TAXATION

Pacific Ballroom Salon 16, North Tower/Ground Level, Marriott

The Challenges and Opportunities of Exotic Hybrids: Series LLC's, Up-C's, and Master Limited Partnerships

Moderator: Anne M. Tucker, Georgia State University College of Law

Speakers: Jonathan G. Rohr, University of Tennessee College of Law
Gladriel D. Shobe, Brigham Young University, J. Reuben Clark Law School

Speaker from a Call for Papers:

Joseph A. Franco, Suffolk University Law School
Christine Hurt, Brigham Young University, J. Reuben Clark Law School

This program will explore the evolution of exotic hybrid business entity structures starting as legal innovations and those maturing into recognized business association forms. Hybrid entities are created to achieve a variety of outcomes from tax advantages, IPOs, to business planning objectives. For example, variants on LLC and limited partnership forms can be used to maximize asset protection, leverage tax advantages, access capital markets, and achieve other business objectives. The program will introduce attendees to several "exotic" hybrid structures and discuss the challenges and opportunities associated with each. The program will be informative, inviting subject matter experts

to educate audience members, and exploratory, critically examining the tax, governance, private ordering, securities, and policy implications of new entity structuring tools. The program will also explore attempts to standardize exotic hybrids through uniform rules.

Business meeting held on Wednesday, January 3 at 5:30 pm.

Friday, January 5

10:30 am – 12:15 pm

SECTION ON TAXATION

Pacific Ballroom Salon 14, North Tower/Ground Level, Marriott

Tax Legislation in the 116th Congress

Moderator: Lawrence A. Zelenak, Duke University School of Law

Speakers: Lily L. Batchelder, New York University School of Law
Victor Fleischer, University of San Diego School of Law
Susan Morse, The University of Texas School of Law
George K. Yin, University of Virginia School of Law

The panelists will address federal tax legislation enacted in 2017 (if any), and the prospects for federal tax legislation in 2018. The discussion will consider the whole range of federal tax policy issues (including individual and corporate income taxes, cross-border taxation, transfer taxes, and the tax provisions of the Affordable Care Act), with respect to both substance and the legislative process.

Business meeting at program conclusion.

1:30 pm – 3:15 pm

SECTION ON SECURITIES REGULATION, CO-SPONSORED BY AGENCY, PARTNERSHIP, LLC'S & UNINCORPORATED ASSOCIATIONS AND BUSINESS ASSOCIATIONS

Pacific Ballroom Salon 16, North Tower/Ground Level, Marriott

Offering, Selling, and Trading Securities: New Perspectives

Moderator: Anita K. Krug, University of Washington School of Law

Speaker: Michele Layne, Regional Director, U.S. Securities and Exchange Commission

Speakers from a Call for Papers:

Hilary J. Allen, Suffolk University Law School
Nicole Iannarone, Georgia State University College of Law
Sung Eun (Summer) Kim, University of California, Irvine School of Law

New modes of buying and selling securities and the challenges and potential they pose for effective regulation is the subject of this panel. The program includes such topics as the evolution of private placements, the role of blockchain technology, investor protection in complex transactions, stock exchange consolidation, the risks and benefits of dark pools, the growth of foreign stock exchanges, entrepreneurship financing, and the future of the brokerage industry.

The Section held a virtual business meeting prior to the Annual Meeting.

Saturday, January 6

8:30 am – 10:15 am

AALS DISCUSSION GROUP

Point Loma, South Tower/Ground Level, Marriott

A New Era for Business Regulation?

Discussion Group Moderators:

Joan M. Heminway, University of Tennessee College of Law
Anne M. Tucker, Georgia State University College of Law

Discussion Group Participants:

Hilary J. Allen, Suffolk University Law School
Jordan M. Barry, University of San Diego School of Law
Eric C. Chaffee, University of Toledo College of Law
Benjamin Edwards, University of Nevada, Las Vegas, William S. Boyd
School of Law
Christine Hurt, Brigham Young University, J. Reuben Clark Law School
Jeremy Kidd, Mercer University School of Law
Christopher K. Odinet, Southern University Law Center
Tracie Porter, Western State College of Law at Argosy University
David J. Reiss, Brooklyn Law School
Michael R. Siebecker, University of Denver Sturm College of Law
David Zaring, Assistant Professor of Legal Studies, The Wharton School
University of Pennsylvania Legal Studies and Business Ethics
Department
Evan C. Zoldan, University of Toledo College of Law

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A January 2017 federal executive order uses budgeting powers to constrict agencies and the regulatory process by requiring the elimination of two existing regulations for each new regulation adopted. The order also mandates that “the total incremental cost of all new regulations, including repealed regulations, to be finalized this year shall be no greater than zero.” In the wake of this executive order and related federal guidance restructuring federal regulatory processes, a discussion about changes in the business regulatory environment—including an assessment of the

consequences, good and bad, of regulatory reform affecting businesses—seems both timely and important. This Discussion Group answers that call for dialogue by focusing in on issues relating to federal rule making and regulatory reform. The session is organized and designed to encourage the exchange of diverse viewpoints, identify possible common ground, foster new perspectives, and articulate emerging issues for exploration in future scholarly works.

Saturday, January 6

8:30 am – 10:15 am

SECTION ON CREDITORS' & DEBTORS' RIGHTS

Pacific Ballroom Salon 25, North Tower/Ground Level, Marriott

The ABI Commission on Consumer Bankruptcy: How Can Academic Research Inform the Commission's Deliberations?

Moderator: Robert M. Lawless, University of Illinois College of Law

Speakers: Sara Greene, Duke University School of Law
Lois R. Lupica, University of Maine School of Law
Edward R. Morrison, Columbia Law School
Paige Skiba, Vanderbilt University Law School
Lauren E. Willis, Loyola Law School, Los Angeles

The American Bankruptcy Institute (ABI) recently assembled the Commission on Consumer Bankruptcy, which is exploring innovations that can be implemented within the existing structure of the Bankruptcy Code. As it works toward publishing a report in December 2018, the Commission welcomes the input of practitioners and academics. The January 2018 meeting of the Debtors' and Creditors' Rights Section is therefore a well-timed opportunity to assess what the academic literature can contribute to the Commission's deliberations. Members of the Commission will join the Section meeting.

Business meeting at program conclusion.

Saturday, January 6

8:30 am – 10:15 am

SECTION ON CREDITORS' & DEBTORS' RIGHTS

Pacific Ballroom Salon 25, North Tower/Ground Level, Marriott

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Business meeting at program conclusion.

12:15 pm – 1:30 pm

SECTION ON FINANCIAL INSTITUTIONS & CONSUMER FINANCIAL SERVICES LUNCHEON

Temecula Rooms 3 & 4, North Tower/Ground Level, Marriott

There is an additional fee to attend this meal event and tickets are limited. Tickets are available for purchase up until the close of Registration on the evening prior to the meal event. We will not be selling tickets at the door.

Saturday, January 6

10:30 am - 12:15 pm

SECTION ON EVIDENCE

Pacific Ballroom Salon 17, North Tower/Ground Level, Marriott

Daubert After 25 Years: A Prospective Look at the Next Great Challenges in Expert Reliability

Moderator: Andrew W. Jurs, Drake University Law School

Speakers: David L. Faigman, University of California, Hastings College of the Law
Sandra G. Thompson, University of Houston Law Center
William Thompson, University of California, Irvine School of Law

Speaker from a Call for Papers:

Joseph Sanders, University of Houston Law Center

In *Daubert v. Merrell Dow Pharmaceuticals*, the U.S. Supreme Court instructed federal judges to screen expert testimony for reliability prior to admission. The court intended this gatekeeping to enhance the reliability of scientific testimony and ensure a consistent level of rigor between the courtroom and the laboratory. As *Daubert* approaches its silver anniversary, this panel will consider some of the next great issues in scientific reliability in both civil and criminal trials. By highlighting cutting-edge reliability concerns of our time, the panel will reflect on whether the great promise of *Daubert*—to deliver reliable science in the courtroom—has been met, and if not, what changes to the current legal approach to scientific gatekeeping may be in order.

Business meeting at program conclusion.

10:30 am - 12:15 pm

SECTION ON FINANCIAL INSTITUTIONS & CONSUMER FINANCIAL SERVICES

Pacific Ballroom Salon 25, North Tower/Ground Level, Marriott

The Future of Money: Exploring Innovative Technology and Design in Banking

Moderator: Mehrsa Baradaran, University of Georgia School of Law

Speakers: Karyen Chu, Chief of Consumer Research and Examination Analytics,
Federal Deposit Insurance Corporation
Daniel Gordon, Head of Trust and Safety, GoFundMe
Frank A. Pasquale, University of Maryland Francis King Carey
School of Law

This panel will assemble a range of academics, industry experts, and policymakers to explore financial technology and new approaches to the problems of debt, liquidity, and capital. Topics will include the bank regulatory framework, financial inclusion, monetary theory, systemic risk, consumer financial protection, and the legal implications of innovations in finance.

Business meeting at program conclusion.
