

Forced Arbitration In The Workplace: A Symposium

University of California, Berkeley School of Law • Thursday, February 27, 2014

BIOGRAPHIES OF MODERATORS & SPEAKERS

Sarah Belton is the Cartwright-Baron Attorney at the Oakland, California office of Public Justice. She was an Equal Justice Works fellow and a staff attorney at Legal Services for Children in San Francisco, California, where she managed an active caseload representing minors in a variety of civil legal proceedings. Ms. Belton also served as a law clerk to the Honorable Algenon L. Marbley of the U.S. District Court of the Southern District of Ohio. She received her B.A. in International Relations from Stanford University and her J.D. from Harvard Law School, where she was the recipient of the James N. Snitzler Scholarship, Assistant Managing Editor of the Harvard Civil Rights-Civil Liberties Law Review, and a research assistant to Professor Lani Guinier.

F. Paul Bland, Jr., is a Senior Attorney for Public Justice and Of Counsel at Chavez & Gertler. He has argued or co-argued and won more than 25 reported decisions from federal and state courts across the nation, including cases in six of the federal Circuit Courts of Appeal and at least one victory in nine different state high courts. He has been counsel in cases which have obtained injunctive or cash relief of more than \$1 billion for consumers, and was named the “Vern Countryman” Award winner in 2006 by the National Consumer Law Center, which “honors the accomplishments of an exceptional consumer attorney who, through the practice of consumer law, has contributed significantly to the well-being of vulnerable consumers.” Mr. Bland is a co-author of a book entitled *Consumer Arbitration Agreements: Enforceability and Other Issues*, and numerous articles. In 2013, he received the Maryland Consumer Rights Coalition’s “Legal Champion” award. In 2010, he received the Maryland Legal Aid Bureau’s “Champion of Justice” Award. In the late 1980s, he was Chief Nominations Counsel to the U.S. Senate Judiciary Committee. He graduated from Harvard Law School in 1986, and Georgetown University in 1983.

Stephen McG. Bundy has been a Professor of Law at the University of California, Berkeley School of Law (Boalt Hall) since 1984 and is an attorney at Taylor & Company Law Offices, LLP. Professor Bundy’s areas of academic expertise include civil procedure, complex litigation, and legal ethics. He graduated from Harvard University in 1973 and received his law degree in 1978 from the University of California, Berkeley School of Law (Boalt Hall). After graduation from law school, Professor Bundy clerked for the Honorable John J. Gibbons of the U.S. Court of Appeals for the Third Circuit and was associated with the New York law firm of Cravath Swaine & Moore, where he specialized in litigation.

Terisa E. Chaw is the Executive Director of the National Employment Lawyers Association (NELA), and the founding Executive Director of The Employee Rights Advocacy Institute For Law & Policy, NELA’s related charitable and educational public interest organization. Prior to joining NELA in 1991, Ms. Chaw worked as an attorney with a number of public interest law organizations including the Pension Rights Center, the NAACP Legal Defense and Educational Fund, Inc., and Equal Rights Advocates. In addition, she was a trial attorney for the Civil Rights Division of the U.S. Department of Justice, where she litigated cases under the Civil Rights of Institutionalized Persons Act. She has served on the board of directors of several non-profit organizations, including the Asian Law Caucus, Child Care Law Center, National Committee on Pay Equity, and the Organization of Pan Asian Women. She is a graduate of the University of California, Berkeley and the University of San Francisco School of Law.

Alexander J.S. Colvin is a Professor of Labor Relations and Conflict Resolution at the Cornell University School of Industrial and Labor Relations (ILR School). He is also the Associate Director of the Scheinman Institute on Conflict Resolution. His research and teaching focuses on employment dispute resolution, with a particular emphasis on procedures in nonunion workplaces and the impact of the legal environment on organizations. His current research projects include an empirical investigation of the outcomes of employment arbitration. He has published articles in journals such as *Industrial & Labor Relations Review*, *Industrial Relations*, *British Journal of Industrial Relations*, *Academy of Management Journal*, *Personnel Psychology*, *Relations Industrielles*, the *Journal of Empirical Legal Studies*, the *Ohio State Journal on Dispute Resolution*, and the *Cornell Journal of Law & Public Policy*. Professor Colvin is co-author of the textbook *An Introduction to Collective Bargaining and Industrial Relations*, 4th ed. (Irwin-McGraw-Hill). He received his J.D. in 1992 from the University of Toronto and his Ph.D. in 1999 from Cornell University. Before joining the faculty of the ILR School in 2008, he taught at Penn State University from 1999 to 2008.

Christopher R. Drahozal is the John M. Rounds Professor of Law and Associate Dean for Research and Faculty Development at the University of Kansas School of Law. He is an Associate Reporter for the Restatement (Third) of the U.S. Law on International Commercial Arbitration, and was the Chair of the Arbitration Task Force of the Searle Civil Justice Institute. He is serving as a Special Advisor to the Consumer Financial Protection Bureau, assisting with its statutorily-mandated study of arbitration clauses in consumer financial services contracts. Professor Drahozal has written extensively on the law and economics of arbitration. He has authored a casebook on commercial arbitration published by Lexis Publishing (now in its third edition) and a co-edited a book on empirical research on international commercial arbitration published by Kluwer Law International. His articles have appeared in *Journal of Legal Studies*, *Journal of Empirical Legal Studies*, *Law and Contemporary Problems*, *Vanderbilt Law Review*, *Illinois Law Review*, and *International Review of Law and Economics*, among others. He has made presentations on arbitration law and practice throughout the United States, Canada, Europe, and Asia. Prior to teaching, Professor Drahozal was in private law practice in Washington, D.C., and served as a law clerk for the Iran-U.S. Claims Tribunal, the United States Supreme Court, and the United States Court of Appeals for the Fifth Circuit.

Catherine Fisk is the Chancellor's Professor of Law at the University of California, Irvine School of Law. Professor Fisk teaches and writes on the law of the workplace, legal history, civil rights and the legal profession and is the author of dozens of articles and four books, including the prize-winning *Working Knowledge: Employee Innovation and the Rise of the Corporate Intellectual Property, 1800-1930*, and *Labor Law in the Contemporary Workplace*. She is on the Service Employees International Union Ethics Review Board, the Board of Directors of the Wage Justice Center, and committees of the Law & Society Association. Prior to joining the founding faculty of the University of California, Irvine School of Law, Professor Fisk was a chaired professor at Duke Law School, and was on the faculty of the University of Southern California Gould School of Law and Loyola Law School in Los Angeles. She practiced law at a boutique Washington, D.C. firm and at the U.S. Department of Justice. She received her J.D. at the University of California, Berkeley School of Law (Boalt Hall), and an A.B., *summa cum laude*, from Princeton University.

Joseph D. Garrison, managing shareholder of Garrison, Levin-Epstein, Chimes, Richardson & Fitzgerald, P.C., New Haven, Connecticut, focuses his practice on employee rights. He graduated from Wesleyan University in 1965 and Cornell Law School in 1968. He served as President of the National Employment Lawyers Association (NELA) and as a member of the Executive Board for 15 years. He was appointed to the American Arbitration Association Board of Directors in 2009. He was a founding Governor, Charter Fellow and President of the College of Labor and Employment Lawyers. Mr. Garrison has been a speaker at numerous national employment law seminars sponsored by the American Bar Association, BNA Books and NELA. He presently serves on the Council for the Labor and Employment Section of the American Bar Association, and is its liaison for the Equal Employment Opportunity Committee. In Connecticut, he served as President of the Connecticut Bar Association Labor and Employment Law Section, as Chairman of the Federal Court Grievance Committee, as the founding Chairman of the Connecticut Employment Lawyers Association, and on the Board of Governors of the Connecticut Trial Lawyers Association. He recently became a member of the American Board of Trial Advocates and The American College of Trial Lawyers. Mr. Garrison is increasingly active as a mediator and arbitrator, particularly in employment cases, and is listed as a mediator and arbitrator on the AAA's employment panels.

Michael Z. Green, professor of law, has been a member of the faculty of Texas A&M Law School since 2003 and a full professor with tenure since 2005. He became the inaugural Associate Dean for Faculty Research & Development in June 2008 and held that position through May 2012. A *cum laude* graduate of Loyola Chicago Law School where he also obtained a Master's in Industrial and Labor Relations, Professor Green specializes in labor and employment law, discrimination, and dispute resolution matters. He worked as manager for a Fortune 500 company before law school and for a union law firm during law school. After law school, Professor Green represented employers for several years including being chief negotiator for a collective bargaining agreement. He entered academia as a Hastie Teaching Fellow at the University of Wisconsin Law School where he received his LL.M. in 1999. An experienced mediator and arbitrator, he serves on the Dallas Area Rapid Transit Trial Board, the American Arbitration Association's National Labor Panel, and the Federal Mediation & Conciliation Services Roster of Labor Arbitrators. He was elected to the American Law Institute (ALI) in 2006 and serves on the ALI Consultative Group for the Restatement Third of Employment Law. He has authored numerous law journal articles and other publications that focus on labor and employment law.

Mark Gough is a Ph.D. candidate at Cornell University School of Industrial and Labor Relations. Mr. Gough's areas of expertise include alternative dispute resolution, employment law, conflict management, and negotiations. His dissertation research explores the case selection practices of plaintiffs' attorneys and how the institutional environment of claims, including employer personnel policies and mandatory arbitration clauses, affect access to justices for employment discrimination claimants. Mr. Gough's research is supervised by Professor and Dean of Cornell Law School Stewart Schwab; Professor and Dean of Cornell School of Industrial and Labor Relations Harry Katz; and Professor Alexander Colvin of the Cornell School of Industrial and Labor Relations.

Gillian Lester is the Acting Dean and Alexander F. and May T. Morrison Professor of Law at the University of California, Berkeley School of Law (Boalt Hall). Dean Lester's principal subject areas include employment law and policy, and contracts. Her research has explored topics including distributive justice and the welfare state, workplace intellectual property, and paid family leave. She holds a J.S.D. from Stanford Law School and LL.B. from the University of Toronto Faculty of Law, where she served as Editor-in-Chief of the *University of Toronto Faculty of Law Review*. Dean Lester began her teaching career in 1994 at the University of California, Los Angeles School of Law. She joined the Berkeley Law faculty in 2006. She has also held appointments as Sidley Austin Visiting Professor at Harvard Law School (2008-09) and Sloan Fellow and Visiting Professor at Georgetown University Law Center (2000). Her books include, *Employment Law Cases And Materials*, 5th Ed. (Lexis-Nexis, 2012), *Family Security Insurance: A New Foundation for Economic Security* (Workplace Flexibility, 2010, and Berkeley Center for Health, Economic and Family Security, 2010), and *Jumping The Queue: An Inquiry Into The Legal Treatment Of Students With Disabilities* (Harvard Press, 1997).

David Lipsky is the Anne Evans Estabrook Professor of Dispute Resolution in the Cornell University School of Industrial and Labor Relations (ILR School) and Director of the Scheinman Institute on Conflict Resolution. He served as the national president of the Labor and Employment Relations Association in 2006. Professor Lipsky served as Dean of the ILR School from 1988 until 1997 and has been a member of the ILR School faculty since 1969. He received his B.S. in 1961 from the ILR School and his Ph.D. in Economics from Massachusetts Institute of Technology in 1967. He was a member of the inaugural class of Fellows of the National Academy of Human Resources and has served on its Board of Directors. Professor Lipsky is the author of over seventy articles and chapters in books, and the author or editor of fifteen books and monographs. He is the co-author of *Emerging Systems for Managing Workplace Conflict* (Jossey-Bass, 2003) and *Negotiations and Change: From the Workplace to Society* (Cornell University Press, 2003).

The Honorable P. David Lopez was sworn in on April 8, 2010 as General Counsel of the U.S. Equal Employment Opportunity Commission (EEOC). He was nominated by President Barack Obama and was confirmed by the Senate on December 22, 2010. Mr. Lopez is the first field trial attorney to be appointed as General Counsel. He has served in the Commission on various capacities for the past 17 years, including as Supervisory Trial Attorney and Special Assistant to then-Chairman Gilbert F. Casellas. As General Counsel, Mr. Lopez oversees the Commission's federal court litigation of the 15 EEOC district offices. During his tenure, Mr. Lopez has devoted significant time to develop a formidable systemic program nationwide as well as build a strong trial program. Mr. Lopez has extensive experience in this area, having developed large, high-impact cases and successfully trying several cases on behalf of the EEOC. He has won significant jury verdicts against *Alamo Rent-a-Car* (the first post-9/11 backlash religious accommodation case brought by the EEOC), *Go Daddy* (a national origin (Moroccan), religion (Muslim), and retaliation case), and *AutoZone* (an egregious sexual harassment case). In addition, Mr. Lopez is the Co-Chair of the committee charged with developing the Commission's Strategic Enforcement Plan. He is also the Chair of the Commission's Immigrant Worker Team, a team tasked with identifying ways to strengthen EEOC's enforcement and outreach on the cross-cutting issues affecting workers of foreign national origin or perceived to be of foreign national origin. Under his leadership, the Commission has been at the forefront of combating discrimination affecting immigrants and underserved communities, including victims of human trafficking. Mr. Lopez graduated from Harvard Law School in 1988 and graduated *magna cum laude* from Arizona State University in 1985, with a B.S. in Political Science. In 2011, *Hispanic Business* named Mr. Lopez to its list of 100 influentials in the Hispanic community.

Cliff Palefsky is a civil rights and employment lawyer. He is a partner in the San Francisco law firm of McGuinn, Hillsman and Palefsky. Mr. Palefsky was a co-founder of the National Employment Lawyers Association and is the Co-Chair of its Forced Arbitration Task Force and ADR Practice Group. Mr. Palefsky has been involved in many of the leading forced arbitration cases as either counsel or *amicus*, including *Gentry v. Circuit City*, *Duffield v. Robertson Stephens*, *Armendariz v. Foundation Health Psychcare*, *Little v. Auto Stiegler*, *Circuit City v. Adams*, and *EEOC v. Luce Forward*, in addition to many other cases across the country. He has also been deeply involved in both state and federal legislative efforts dealing with forced arbitration. Mr. Palefsky has written and spoken extensively on the subject of forced arbitration. He received his J.D. from the Georgetown University Law Center in 1977.

Lindbergh Porter is a Shareholder at Littler Mendelson, P.C. and represents employers in all types of employment litigation. He has represented employers in more than 50 state and federal court, jury, and regulatory agency trials including before the National Labor Relations Board, the Department of Labor, and the Department of Fair Employment and Housing. In addition to representing clients in collective bargaining and other phases of traditional labor matters, he has handled approximately 100 arbitrations. Mr. Porter serves as a neutral evaluator for the United States District Court and has served as a lawyer representative to the United States Court of Appeals. He is a member of Littler Mendelson's Diversity and Inclusion Committee and has served on the Board of Directors and the Hiring Committee. In law school, he was a National Moot Court finalist. He has taught Moot Court at the University of California, Berkeley School of Law (Boalt Hall). Mr. Porter holds an A.B. from the University of Illinois and a J.D. from the University of San Francisco School of Law.

Robert B. Reich is the Chancellor's Professor of Public Policy at the University of California, Berkeley's Goldman School of Public Policy. Professor Reich has served in three presidential administrations, most recently under President Bill Clinton as Secretary of Labor. He was also a member of President Barack Obama's Transition Economic Advisory Board and is a co-founding editor of *The American Prospect* magazine. He received his B.A. from Dartmouth College, his M.A. from Oxford University where he was a Rhodes Scholar, and his J.D. from Yale Law School. Professor Reich's most recent work includes the documentary *Inequality For All* (2013), an exposé on America's widening income gap. His commentaries can be heard weekly

on National Public Radio's *Marketplace*. In 2003, Professor Reich was awarded the prestigious Vaclav Havel Vision Foundation Prize, by the former Czech president, for his pioneering work in economic and social thought. In 2008, *Time* Magazine named him one of the ten most successful cabinet secretaries of the century. He received his B.A. from Dartmouth College, his M.A. from Oxford University where he was a Rhodes Scholar, and his J.D. from Yale Law School.

Michael Rubin is a partner in the San Francisco law firm of Altshuler Berzon LLP, where he specializes in labor and employment law, class actions, and appellate litigation. A graduate of Brandeis University and the Georgetown University Law Center, Mr. Rubin served as a law clerk to Justice William J. Brennan, Jr. of the U.S. Supreme Court during the 1980 Supreme Court Term, and previously clerked for Chief Judge James R. Browning of the U.S. Court of Appeals for the Ninth Circuit and Judge Charles B. Renfrew of the U.S. District Court for the Northern District of California. He is a fellow of The College of Labor and Employment Lawyers and is a member of the Board of Directors of the AFL-CIO's Lawyers' Coordinating Committee. Mr. Rubin has won an four "California Lawyer of the Year" (CLAY) awards from *California Lawyer* Magazine, winning twice in the Employment Law Category and once each for False Claims Act Litigation and Criminal Law. He was also a 2003 recipient of a "Trial Lawyer of the Year" Award from the Trial Lawyers for Public Justice was *American Lawyer* Magazine's "Litigator of the Week" in May 2013. Mr. Rubin has argued cases challenging the enforceability of mandatory arbitration clauses in the U.S. Supreme Court (*Circuit City v. Adams*, 532 U.S. 105 (2001)), the California Supreme Court (*Gentry v. Superior Court*, 42 Cal. 4th 443 (Cal. 2007), and *Pearson Dental Supplies, Inc. v. Superior Court*, 48 Cal. 4th 665 (Cal. 2010)), and the Ninth Circuit (*Duffield v. Robertson Stephens*, 144 F.3d 1182 (9th Cir. 1998)), among other courts. He also represents *amici* Service Employees International Union and Change to Win in *D.R. Horton, Inc.* (NLRB 2012), *enforcement denied*, 5th Cir. No. 12-60031 (5th Cir. 2013), and *24 Hour Fitness USA, Inc.* (NLRB ALJ 2012), *cross-exceptions pending*, NLRB Case 20-CA-035419.

Jean R. Sternlight is the Michael and Sonja Saltman Professor of Law and the Director of the Saltman Center for Conflict Resolution at the University of Nevada - Las Vegas Boyd School of Law. She teaches courses on dispute resolution, including both litigation and alternatives thereto. Frequently cited by courts and the media, Professor Sternlight is co-author of *Psychology for Lawyers: Understanding the Human Factors in Negotiation, Litigation, and Decision* (ABA 2012), *Dispute Resolution: Beyond the Adversarial Model*, 2d ed. (Aspen 2011), *Mediation Theory and Practice*, 2d ed. (Lexis 2006), and *Arbitration Law in America: A Critical Assessment* (Cambridge Univ. Press 2006). She has published articles in numerous well-respected journals including *Stanford Law Review*, *University of Pennsylvania Law Review*, *Journal of Law & Contemporary Problems*, *William & Mary Law Review*, and *The Ohio State Journal of Dispute Resolution*. Professor Sternlight received her B.A. (High Honors) from Swarthmore College, and her J.D. (*cum laude*) from Harvard Law School. She then worked as a law clerk for the Honorable Marilyn Hall Patel (N.D. Cal.). After practicing law in Philadelphia at a plaintiff-side employment firm for eight years, she taught at Florida State University College of Law and the University of Missouri-Columbia before moving to the University of Nevada - Las Vegas in 2003.

Imre Szalai is a professor at Loyola University New Orleans College of Law. He graduated from Yale University, and he received his law degree from Columbia Law School, where he was named a Harlan Fiske Stone Scholar. Professor Szalai focuses his scholarship on arbitration law, and he has written several articles appearing in top ADR journals. He recently wrote a book setting forth a comprehensive legal history regarding the enactment of the Federal Arbitration Act, *Outsourcing Justice: The Rise of Modern Arbitration Laws in America* (Carolina Academic Press, 2013). His book, which is based on previously-untapped archival materials from the drafters of the Federal Arbitration Act, explores why America's arbitration laws radically changed during the 1920s. By examining this history, his book demonstrates how the Supreme Court has grossly misconstrued the Federal Arbitration Act and unjustifiably created an expansive, informal, private system of justice touching almost every aspect of American society. He also maintains a blog about arbitration law developments at www.outsourcingjustice.com.

Barry Winograd has maintained a full-time dispute resolution practice since 1988 as an arbitrator and mediator of labor and employment cases, as well as business and other civil disputes. He is a member and former Vice President of the National Academy of Arbitrators. Mr. Winograd has written articles on arbitration and mediation in legal journals; has taught labor law, arbitration, and mediation courses at the University of California, Berkeley, School of Law and at the University of Michigan Law School; and, is listed on dispute resolution rosters of neutral provider organizations and federal and state courts. He also serves as a permanent arbitrator on various labor-management contract arbitration panels in the private and public sectors. Before service as an arbitrator and mediator, Mr. Winograd was as an administrative law judge for the California Public Employment Relations Board and an attorney for the United Farm Workers of America. Mr. Winograd received his B.A. at the University of California, Santa Barbara, and his J.D. and LL.M. from the University of California, Berkeley, School of Law.

The Honorable Jenny R. Yang was unanimously confirmed as Commissioner of the U.S. Equal Employment Opportunity Commission by the Senate on April 25, 2013 to serve a term expiring July 1, 2017. She was a partner of Cohen, Milstein, Sellers & Toll PLLC. She joined the firm in 2003, and has represented thousands of employees across the country in numerous complex civil rights and employment actions. As chair of the firm's hiring and diversity committee, Commissioner Yang has experience with the myriad issues employers confront in making hiring and other personnel decisions. Prior to that, she served as a Senior Trial Attorney with the U.S. Department of Justice, Civil Rights Division, Employment Litigation Section, where she enforced federal laws prohibiting discrimination in employment by state and local government employers from 1998 to 2003. Before that, she worked at the National Employment Law Project to enforce the workplace rights of garment workers. Commissioner Yang clerked for the Honorable Edmund Ludwig on the United States District Court for the Eastern District of Pennsylvania. She received her B.A. from Cornell University in Government and her J.D. from New York University School of Law, where she was a Note and Comment Editor of the *Law Review* and a Root-Tilden Public Interest Scholar.