The Moritz Briefing

An occasional newsletter highlighting recent activities and achievements of the Moritz Faculty.

INSIDE

TO BE SEEN AND HEARD

Apple has paired with OpenAI to integrate ChatGPT into its operating system for all of its devices. Unfortunately, that decision, combined with Apple's dominant position in the cell phone market, has created antitrust accusations in the cutthroat competition among AI systems. Elon Musk's company xAI, which boasts its own AI system called Grok, is suing Apple for "billions of dollars" based on Apple's alleged decision to not "prominently feature the X app and the Grok App in its App store." **Amy Schmitz** told Reuters that she has doubts about Musk's claims: "The fact remains that Grok is in the app store and it has ranked highly in some months. In fact, one report I looked at had it ranked at, I think, number one on the App Store in February of 2025, which shows that there is competition, right?"

Also, Amy's JusticeTech Practicum, which "brings together law students and computer science students to design, build, test, and refine technologies aimed at addressing access to justice issues," got a mention in a *Thomson Reuters* article on law schools' use of technology to enhance access to justice. She also gave a long interview to *ColumbusCEO* on how attorneys are using AI; while acknowledging the risks of AI, she notes that "It's important that lawyers do try these tools, to be more efficient and have fewer billable hours."

Peter Shane wrote a letter to the *Washington Post* after a *Post* editorial stated that "President George Washington created the War

TO BE SEEN AND HEARD continued

Department as a Cabinet-level agency in 1789 to oversee the Army." Peter corrected the *Post*, noting that Congress, not the President, created the Cabinet Department. Peter also wrote an essay as part of the National Constitution Center's "Interactive Constitution" regarding the Treaty and Appointments Clause of Article II in which he critiques the Roberts' Court interpretation of the clause.

In 2022, at the height of the #MeToo movement, Congress passed the Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act, which was meant to give victims of workplace sexual misconduct the option to sue their alleged harassers rather than pursuing arbitration. And yet, according to a *Bloomberg News* story, many victims are still choosing arbitration. There are a number of reasons for this, including one explained by arbitration expert **Sarah Cole**: ""The rate of loss in employment discrimination cases on summary judgment in federal courts is generally high," and some plaintiffs' attorneys have reported becoming less intimidated by the arbitration process as a result."

Nadine Menendez is the wife of disgraced former Senator and convicted felon Robert Menendez, who took multiple bribes in exchange for political favors. Prosecutors claim that Nadine played a "central role" in facilitating these bribes, and a jury agreed–she herself was convicted of several felonies in April of this year. Now prosecutors are seeking a seven-year prison sentence for her. Does she deserve such a long prison term? Sentencing expert **Doug Berman** isn't so sure. "The government is trying to ensure there's no perception that crime pays. Especially in a case like this – involving gold bars, stashed cash, and a sitting U.S. senator – a light sentence could send the wrong message to the public," he told Law360. But "[t]here's no evidence that giving her six years instead of four would create any additional public deterrence." And yet the seven years prosecutors are seeking are less than what the federal sentencing guidelines call for–evidence, according to Doug, that "the fraud guidelines don't serve the system well."

Immigration Control and Enforcement ("ICE") has been holding Rodney Taylor, a double amputee Liberia-born man, in a detention center for the past eight months. He is now filing a habeas petition, and his case is seen as a harbinger of thousands of cases to come. Now that the Board of Immigration Appeals ("BIA") has curtailed immigrants' rights to challenge detentions under the immigration system, detainees are turning to habeas applications

Sharing Our Research

Patti Zettler presented her paper *The Next Generation of Tobacco Control Policies* at the Cancer Center's Conference, 75 Years Later: The Impact of the 1950 Papers on Smoking and Lung Cancer. Patti also spoke at the Practicing Law Institute's Life Sciences 2025: Navigating Legal Challenges in Drug and Device Industries on a panel entitled *FDA Update: Priorities, Compliance, and Enforcement.*

Kim Jordan conducted two domestic violence trainings for the ABA Commission on Domestic & Sexual Violence. She and **Emily Brown** also co-presented at the Ohio Judicial Conference on what state court judges should know about the current state of the federal immigration system.

Amy Schmitz presented *Ethical Use of AI in Dispute Resolution* at an Ohio Supreme Court CLE, and presented *The Future of GenAI in Arbitration* at the ABA Senior Lawyers Division.

Bridget Dooling's paper *The Paperwork Reduction Act is Green Tape* was accepted at the Big Ten Early Career Law Scholars Workshop. She also joined 44 other law professors issuing a challenge to the U.S. Department of Energy's (DOE) recent decision to employ direct final rules aimed at rescinding or amending key nondiscrimination regulations in federally assisted programs, asserting that the DOE's approach not only circumvents required procedures but may breach the Administrative Procedure Act.

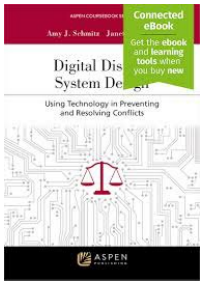
Art Greenbaum presented a CLE at the Chief Justice Thomas J. Moyer American Inn of Court entitled *Ethics 2025 Update and Unsolicited Advice (but not*

like this one. The case is meaningful because it is "a direct challenge to this administration's . . . recent attempt to expand detention authority," **César Cuauhtémoc García Hernández** told *The Guardian* newspaper. Among other media hits, César also told the *Christian Science Monitor* about the "historic infusion of money" into ICE detention centers across the country, discussed on National Public Radio the cost of deporting Ábrego García, and talked to CGTN about the Trump Administration's resurrection of Travel Bonds, which charge up to $15,000 in order to get a visa to enter the country.

Recently the Commissioner of the FDA claimed that he had evidence that COVID-19 vaccines were linked to the death of children. According to every expert, no such evidence exists. The Commissioner may be relying on reports submitted to the Vaccine Adverse Event Reporting System ("VAERS"), but those reports cannot provide evidence of a causal link between vaccines and adverse effects. Public health experts worry that the FDA might make policy decisions based on this misinformation, which would then be challenged in court. **Patti Zettler** told *Pink Sheet* that "[m]aking a decision based on shoddy information, particularly about products for which there is a massive amount of other, more reliable data available, could quite easily be considered arbitrary and capricious."

CONGRATULATIONS AND KUDOS

Rebecca Fordon is a finalist for the 2025 American Legal Technology Education Award, which is given to "an individual or institution that displays outstanding use of innovation in legal education." Congratulations to Rebecca on this well-deserved recognition.



Aspen has just published **Amy Schmitz**'s new book *Digital Dispute System Design: Using Technology in Preventing and Resolving Conflicts*. Kudos to Amy on the new book!

John Quigley's book *Soviet Legal Innovation and the Law of the Western World* (2007 Cambridge University Press) has been translated into Spanish and published in Ecuador. Congrats to John on extending the reach of his book.

The American Antitrust Institute ("AAI") announced that one of our newest faculty members, **Laura Alexander**, will be joining their Advisory Board. Congratulations to Laura on this appointment!

Sharing Our Research, continued...

enough to create a client-lawyer relationship). Art also filed comments on a proposed amendment to the Ohio Rules of Professional Conduct 8.4, which reads: "It is not professional misconduct to engage in speech or conduct protected by [the free speech and speech and debate clauses of the U.S. and Ohio constitutions]."

Doug Berman will participate in the White Collar Conference 2025, a gathering of thought leaders who will consider new initiatives for state pardons and expungement (*Forbes* had a nice write-up of the conference in this article).

Sarah Cole, as part of her role as the International Academy of Mediators Scholar-in-Residence, conducted a Webinar entitled "AI In Mediation." She also wrote an essay on the same topic that was posted on the IAM website.

Ned Foley was a guest on the Lawyer 2 Lawyer podcast on the Legal Talk Network, where he discussed the Texas redistricting controversy.

Bill Froehlich delivered a CLE focused on challenges and opportunities at the intersection of AI and mediation to the Ohio State Bar Association Dispute Resolution Committee. Bill was also a featured panelist at an online event hosted by Mediators Beyond Borders and the Trust Network titled *National Perspective: Current Realities and Latest Evidence*" and he participated on a panel hosted by Princeton's Bridging Divides Initiative titled *Community Safety and De-Escalation Approaches to Mitigating Political Violence.*

Special Report: Moritzers on SCOTUSblog

Most of us are familiar with SCOTUSblog, the go-to source of information and analysis on the United States Supreme Court. **Ned Foley** writes a series entitled "Justice, Democracy, and Law. " His most recent essay reviews *Louisiana v. Callais*, the gerrymandering case that the Court heard in March of this year and then ordered for re-argument in the 2025-26 term. As Ned argues:

> Many fear that the court's reargument order signals an intent to rule Section 2 of the Voting Rights Act – which bars racial discrimination in voting – unconstitutional….But it is crucial to disentangle two separate constitutional questions that are potentially at stake in *Callais*. One is whether Congress has the power to require states to avoid drawing legislative districts that 'result[]' in racial minorities having 'less opportunity than other members of the electorate … to elect representatives of their choice,' as Section 2 of the VRA provides. The other issue is whether a state violates the Constitution when (as occurred in Louisiana), to avoid violating Section 2, it draws a legislative district specifically with the intent to enhance the electoral power of a racial group…. The court's reargument order in *Callais* doesn't even specifically call into question the power of Congress to adopt Section 2's 'results' test…. [Thus,] it is essential to keep clearly in mind what is – and is not – at stake. The ultimate outcome can be a still vigorous 'results' test under Section 2 of the VRA combined with race-neutral means of complying with it.

Meanwhile, **César Cuauhtémoc García Hernández** has a recurring column at SCOTUSblog entitled "Immigration Matters." In one of two columns last month, César reviewed the effect of April's decision in the Ábrego García case, in which the Court sided with García, affirming an order that the government had to facilitate his return. As César notes, García is "currently waging three legal fights" — he is defending himself in a criminal case in Tennessee; he is opposing his removal to Uganda in Maryland; and his asylum case is still ongoing. César approvingly cited the Court's majority opinion, which stated that courts "should continue to ensure that the Government lives up to its obligations to follow the law." Unsurprisingly, César was somewhat less complimentary in his other post, in which he critiqued the *Noem v. Vasquez Perdomo* case. In *Vasquez Perdomo*, the Court allowed immigration agents to use physical appearance and language use as factors that could lead to reasonable suspicion to stop and question regarding immigration violations. The Court did not explain the reasoning in its brief order, but Justice Kavanaugh wrote a concurrence citing *Brignoni-Ponce*, in which the Court gave law enforcement officers the flexibility to consider "any number of factors" in making immigration stops. César noted that it would be difficult (and usually not very useful) to determine "country of origin," "English-language ability," or "ethnic appearance"—all factors which the Court now allows immigration agents to use in determining whether to engage in a stop. Regardless, "Kavanaugh . . . made clear that, in his view, immigration agents can use multiple proxies for race without fear of judicial interference."