

# The Moritz Briefing

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



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## SHARING OUR RESEARCH

**Amy Schmitz** dropped another [episode of her podcast](#), in which she interviewed Professor Tamar Meshel about the Federal Arbitration Act. This podcast is related to a blog, [arbitrate.com](#), which she helped create and still regularly contributes to, and which was recently ranked as [the #11 arbitration blog in the world](#). Amy also gave the keynote address at a training for the United Nations Commission on International Trade Law, and presented at three (!) panels at the Institute for Dispute Resolution at the University of Florida: *Responsible Use of AI and Data Analytics in Dispute Resolution*; *Expanding Access to Justice Through ODR*, and *Considerations in Arbitration Law and Practice*. She also presented at the Cardozo Journal of Conflict Resolution (CJCR) Melnick Symposium and the Tech Meets Law Series, at Radboud University in the Netherlands. Finally, the [Center for Judicial Cooperation interviewed her](#) on how online dispute resolution can improve access to justice.

It is always terrific to find something to celebrate, and Administrative Law professors apparently never miss that opportunity: a few weeks ago, they held an event in DC entitled "Celebrating the 30th Anniversary of Executive Order 12866 and 20th Anniversary of Circular A-4." Our own **Bridget Dooling** was present at this invitation-only fête honoring the Executive Order and Circular, and she contributed to the festivities by facilitating a session about the Office of Information and Regulatory Affairs (OIRA)'s fitness for purpose in light of all the changes the institution has been through over the last 40+ years.

Bridget had a busy month: she was a moderator and discussant this year's Food & Drug Law Journal symposium discussing the intersection of Chevron deference and FDA, and she co-chaired the ABA Administrative Law Conference, which brings together over 800 Administrative Law practitioners to talk about the year's developments in all different aspects of admin law. She also spoke at three panels there, including a panel of former heads of OIRA (where Bridget used to work), a panel on modernizing regulatory review, and a plenary session in which she reviewed the biggest rulemaking developments of the year. Finally, she served as the United States expert at the [World Trade Organization's Committee on Technical Barriers to Trade](#).

## TO BE SEEN AND HEARD

There is no doubt that Michigan's successful football season is due almost entirely to the fact that they stole signals from their opponents in violation of NCAA rules. But do those NCAA rules violate federal antitrust laws? They probably do, according to a law professor from Michigan – so Michigan is being unfairly punished under an unjust law! Not so fast, says visiting-and-soon-to-be permanent Ohio State Professor **Felix Chang**. In an [interview with the Wall Street Journal](#), Felix betrays his own Wolverine roots by pointing out that antitrust laws do not apply unless the challenged rule affects the welfare of consumers, and “when you look at the welfare of consumers, you look at: is price raised, is output limited, is there any other anticompetitive effect, like lack of innovation?” The NCAA's rule against signal-stealing has no such affect, and so the NCAA's punishment against Michigan should stand.

Felix was not the only Moritzer who contributed expertise on this critically important issue. When the news first broke that Coach Harbaugh might be facing sanctions, **Anne Ralph** [was interviewed by 10-TV](#) WBNS to explain the legal process he could use to fight his suspension (Anne's comments begin at 4:10).

Even more exciting than news about college football misdeeds: the National Labor Relations Board (NLRB) has a new rule that lowers the bar for multiple companies to be joint employers of the same workers. (This is significant because it is the test used to determine when a company is liable for labor law violations and when they have an obligation to bargain with unions). Congress is looking to overturn this rule, which would return the NLRB to a Trump-era rule that would make it harder to prove that a company had these liabilities and duties. President Biden could veto Congress' attempt to overturn the rule, but even if the proposal becomes law, the NLRB could respond by rescinding the Trump-era rule, thus retuning to an even older rule from the Obama administration. Administrative trickery! And all above board and perfectly legal, according to **Bridget Dooling**, in [this article in Bloomberg Law](#).

On January 6, 2021, the country had to turn to Vice-President Pence to save our democracy. Aware of this close call, Congress passed the Electoral Count Reform Act (ECRA), to bar members of Congress from objecting to a state's electoral votes if their validity has already been confirmed by a federal court. Problem solved! Not so fast, says **Ned Foley** in a [Florida Phoenix article](#)—this provision of ECRA could result in a “massive glut” of post-election litigation, and “the American judiciary is not built for thousands and thousands of hours of attention to election matters.” Thus, the courts may not be able to resolve all of the election challenges in time for the December 11<sup>th</sup> “safe harbor” deadline that ECRA sets out.

Ned also [spoke with ABC News](#) about the impact that Speaker Mike Johnson might have on the 2024 election (assuming he is still speaker in January of 2025). Ned confirmed that Speaker Johnson played a key role in attempting to overturn the 2020 election, but he noted that the ECRA reforms will make it harder for Johnson to make similar mischief next time around. Ned was also interviewed on the [Lawfare podcast](#) on “What Disqualifying Trump From the 2024 Ballot Would Mean for Election Law.”

### Sharing Our Research Continued...

Last year, **Efthimi Parasidis** co-wrote [an article in the New England Journal of Medicine](#) arguing that the United States needs to develop a “universal public health ethics framework” by integrating ethics committees into public health departments. The article caught the notice of the office of Senator Brian Schatz (D-HI), whose staff invited Efthimi to meet with them to discuss how federal policy could improve public health ethics. Meanwhile, Efthimi wrote two more peer-reviewed articles that are no doubt also destined to become click-bait for federal legislators: one in the American Journal of Bioethics which [argues for a federal Data Protection Agency](#), and one in the journal Neurosurgery, in which he sets out ways to [improve informed consent for intraoperative brain research](#).

**Sarah Cole** spoke at the Center for Negotiation and Dispute Resolution conference in San Francisco, speaking on *DEI and Dispute Resolution: Reimagining the Field*. She also had her book *Discussions in Dispute Resolution: The Coming of Age 2000-2009* accepted for publication by Oxford University Press.

**Dan Chow** participated in the Georgetown Law Trade Secrets Symposium at Georgetown Law School, which explored how the laws and policy surrounding the protection of trade secrets are changing as technology evolves.

**Katrina Lee** presented a work-in-progress at the AALS Dispute Resolution Works-in-Progress Conference in New Haven hosted by Yale Law and Quinnipiac Law.



## CONGRATULATIONS AND KUDOS

Are you one of those traditionalists who believes that the best way to determine whether a law school graduate is qualified to practice law is to administer a multi-day, closed book exam that tests how well they have memorized obscure points of law? Then you will be sad to hear that beginning next May, law school graduates in Oregon can qualify for bar admission by compiling a work product portfolio (including assessments of client encounters and negotiations). And even bigger news: the Board of Trustees of the California State Bar has recommended that their Supreme Court adopt a similar system. All of this commotion is in large part due to our own muckraker **Debby Merritt**, who will receive for these efforts the inaugural Judith Welch Wegner Award from the AALS Section on Empirical Study of Legal Education and the Legal Profession at the annual meeting in January. Well done Debby—keep up the revolutionary work!

Moritz professors have probably written more casebooks than the faculty of any other law school. We have now padded our numbers even further, as **Paul Rose** published a casebook, [An Introduction to the Law of Business Organizations](#), along with his co-author Stephen Presser. Congratulations Paul! Paul also published an essay, [Chinese State Capitalism and the Holding Foreign Companies Accountable Act](#), in the Southern California Law Review Postscript.

The **Divided Community Project** was awarded a \$1.3 million grant from the U.S. Department of Justice Office of Community Oriented Policing Services to support their work with community-police relations. Congratulations to **Bill Froelich** and **Carl Smallwood** and the entire DCP team!

**Dennis Hirsch** led an interdisciplinary team of scholars who spent two years interviewing and surveying companies on how they govern the risks that their own use of AI can create. The result is the open-access book [Business Data Ethics: Emerging Models for Governing AI and Advanced Analytics](#). One of the book's key findings is that companies need to invest in data ethics management, which is the management structures, processes, training and substantive benchmarks that companies use to operationalize their high-level ethical principles and to guide and hold accountable their developers. Congratulations to Dennis on publishing such a critically important book.

**Stephaie Ziegler** assumed the office of President of the [Ohio Regional Association of Law Libraries \(ORALL\)](#), which is the chapter of the American Association of Law Libraries for Ohio, Indiana, and Kentucky. (Stephanie also chaired the committee that coordinated the educational programming for the ORALL conference where **Sara Sampson** presented on *Just Say No: Learning How and When to Say No at Work*). Congrats to Stephanie on taking on this new role.

Ohio State's Provost and Chief Information Officer are forming a working group to "begin thoughtful discussions about effectively and ethically embracing generative artificial intelligence," and unsurprisingly they invited our own expert **Dennis Hirsch** to serve on the committee. The committee will meet once a month and deliver a report to the Provost in late spring. Congratulations to Dennis—your expertise will be invaluable to the group.

Speaking of the Provost—it turns out that just as soon as Ohio State selected a new President, its Provost announced that she was also leaving. So the University needs another high-level search committee, and they tapped **Micah Berman** to serve on the committee. Kudos to Micah and thank you for serving in this important role.

This is news everyone knows already, but it is important enough that it cannot go unacknowledged: **Patti Zettler** has taken a leave of absence to serve in the Biden-Harris Administration as Deputy General Counsel to the U.S. Department of Health and Human Services. This is obviously an incredible honor for Patti and for Moritz. We know she will do amazing work at HHS, and we look forward to seeing her back when she is done.

This semester **Joshua Dressler** taught his last class after forty-three years of teaching, which included twenty-three years at Moritz. Joshua has of course remained active as a scholar; he just published an essay entitled *Seeking a Deeper Understanding of Ourselves and Our Conception of the World* in a [book commemorating the great legal philosopher Herbert Morris](#). Given who Joshua is, it is no surprise that he is still publishing up until the month that he retires. Joshua will be sorely missed by his students and his colleagues, and we wish him all the best in his retirement. One final congratulations for an incredible career that contributed so much to the legal academy on so many levels.

## SPOTLIGHT: Drug Enforcement Policy Center

Last month, Ohio voters decided to legalize recreational marijuana in the Buckeye State. That election—and the extensive campaigning that preceded the election—meant that Ohio’s drug policy was constantly in the news. One of the organizations that reporters and policymakers turned to was the Drug Enforcement and Policy Center (DEPC), which recently [celebrated five years of accomplishments. DEPC seeks to help shape and enrich public conversations about the intersecting fields of criminal justice and drug policy and enforcement.](#) Its activities include a [podcast](#), dozens of [policy papers](#), [events and symposia](#), [service engagement activities](#), media interviews, [public resource pages](#), and scholarly work on drug policy issues. The center also publishes dozens of papers to SSRN every year, including papers written by its [research associates](#) and [Moritz students](#), and [awards grants](#) for research projects and policy analyses. In just this past month, DEPC has had its research cited in the [Statehouse News Bureau](#), [Politico](#), [The Hill](#), [The Columbus Dispatch](#), [News Nation](#), [People](#), [Marijuana Moment](#), [National Law Review](#), [ABC9](#), [NBC4](#), [Cannabis Business Times](#), [Toledo Blade](#), [WOUB Public Media](#), the [Ohio Capital Journal](#) and more; its Administrative Director **Jana Hrdinová** was quoted by [NBC21](#) and [10TV](#); and Director **Doug Berman** was quoted by [10TV](#), [Lima News](#), [CNN Business](#), [Cleveland.com](#), [Crain’s Cleveland Business](#), and [Reason](#), among other outlets. As Ohio—and the nation—move into the next stages of marijuana legalization and drug policy reform generally, DEPC is poised to have an even greater impact in both the political and scholarly realms.

*We are thrilled to highlight the impressive accomplishments of our colleagues, but we know there are other impressive accomplishments that we have not yet heard about. So if we missed a newsworthy item or achievement of yours, please send an e-mail to Ric Simmons and Anne Flanery. And moving forward, please make sure you keep us in the loop for any future conferences, events, media appearances, awards, or any other success that you experience.*