

## AAI INVITATIONAL SYMPOSIUM

# The Future of Private Antitrust Enforcement

### Speaker Biographies

**Richard Brunell** is Senior Fellow and Director, Legal Advocacy of the American Antitrust Institute. A former editor of the Harvard Law Review, he has been a visiting law professor at Boston College, Boston University and the Roger Williams School of Law. He was a litigator with the firm of Foley, Hoag from 1991-2003 and before that with the Massachusetts Office of the Attorney General and the U.S. Dept. of Justice Antitrust Division. He is a contributing editor of the Antitrust Law Journal. Mr. Brunell is a graduate of Harvard Law School and Swarthmore College.

**Eric L. Cramer** is a shareholder with the Philadelphia law firm of Berger & Montague, P.C., where he has practiced since 1995. Mr. Cramer has been repeatedly selected by Chambers USA *America's Leading Lawyers for Business* as one of Pennsylvania's top antitrust lawyers; has been deemed a "Super Lawyer" by Philadelphia Magazine; and was selected as a "Rising Star" by Lawdragon.com. Mr. Cramer has focused his practice on complex litigation in the antitrust arena, including prosecuting antitrust class actions in the pharmaceutical and medical device industries. In the last several years, Mr. Cramer and his colleagues have won substantial settlements for the clients and class members he has represented from pharmaceutical industry defendants for a combined total of more than \$700 million in cases involving the following drugs, among others: *Cardizem CD*, *Buspar*, *Platinol*, *Terazosin*, *Relafen*, and *Remeron*. Mr. Cramer, a member of the advisory board of the American Antitrust Institute, is a frequent speaker at conferences and symposia on issues involving antitrust, public policy, the pharmaceutical industry, and complex litigation more generally. Among other writings, Mr. Cramer co-authored an article entitled *The Superiority of Direct Proof of Monopoly Power and Anticompetitive Effects in Antitrust Cases Involving Delayed Entry of Generic Drugs*, 39 U.S.F. Law Rev. 81 (Fall 2004). He is a *summa cum laude* graduate of Princeton University (1989), where he was elected to Phi Beta Kappa. He graduated *cum laude* from Harvard Law School with a J.D. in 1993. He is a member of the American Antitrust Institute Advisory Board.

**Jonathan Cuneo** is a partner at Cuneo Gilbert & LaDuca and has been practicing law in Washington, D.C. for over 25 years. He received his undergraduate degree from Columbia University in 1974 and his J.D. from Cornell University in 1977. Cuneo was admitted to the District of Columbia Bar in 1977 and is admitted to practice before the local and federal courts in the District, the United States Court of Appeals for the Second Circuit, the United States District Court for the Northern District of New York as well as the U.S. Supreme Court. Following law school, he clerked for Judge Tamm on the U.S. Court of Appeals for the District of Columbia Circuit. After a three year stint in the General Counsel's office at the Federal Trade Commission, Cuneo went to Capitol Hill where he served from 1981 to 1986 as Counsel to the Subcommittee on Monopolies and Commercial Law of the House of Representatives' Committee on the Judiciary. In 1986 Cuneo left the Hill and went out on his own, founding The Cuneo Law Group, P.C. which became Cuneo Gilbert & LaDuca, L.L.P. in 2005. He has published numerous articles and other writings in legal

publications. In addition to managing the firm, Cuneo divides his time between lobbying on Capitol Hill for clients of the firm and litigating cases in Washington and around the country. He is a Director of the American Antitrust Institute.

**Joshua P. Davis** is Professor and Director, Center for Law and Ethics at the University of San Francisco School of Law. He teaches Civil Procedure, Legal Ethics, Remedies, Legal Theory, and Constitutional Theory. He writes, among other topics, about the intersection of antitrust law, remedies, and the rules of complex litigation. He graduated Order of the Coif from N.Y.U. School of Law, where he served as Articles Editor for the N.Y.U. Law Review, and then clerked for Patrick Higginbotham of the Fifth Circuit Court of Appeals. He became a partner at Lieff, Cabraser, Heimann & Bernstein LLP, specializing in the prosecution of antitrust class actions, before accepting his current academic position. He is a member of the American Antitrust Institute Advisory Board.

**Einer Elhauge** is the Petrie Professor of Law at Harvard Law School and faculty director of the Petrie-Flom Center for Health Law Policy, Biotechnology and Bioethics. He teaches a gamut of courses ranging from Antitrust, Contracts, Corporations, Health Care Law, and Statutory Interpretation. Before coming to Harvard, he was a Professor of Law at the University of California at Berkeley, and clerked for Judge Norris on the 9th Circuit and Justice Brennan on the Supreme Court. He received both his A.B. and his J.D. from Harvard, graduating first in his law school class. He is an author of numerous pieces on range of topics even broader than he teaches, including antitrust monopolization and tying doctrine, antitrust petitioning and state action immunity, statutory interpretation, legislative term limits, the 2000 Presidential election, the implications of interest group theory for judicial review, sacrificing corporate profits in the public interest, corporate sale of control doctrine, whether lawyers improve the legal system, medical technology assessment, and how to devise a morally just and cost effective medical system. His most recent books include "Statutory Default Rules" (Harvard University Press 2008), "U.S. Antitrust Law and Economics (Foundation Press 2008)", and "Global Competition Law and Economics" (Hart Publishing 2007). Currently he is Chairman of the Antitrust Advisory Committee to the Obama Campaign and working on books about Contract Theory, Health Law Policy, and Re-engineering Human Biology, as well as articles on sundry other topics. For his website and publications, see <http://www.law.harvard.edu/faculty/elhauge/>.

**Vincent Esades** is an equity member of Heins Mills & Olson P.L.C. located in Minneapolis, Minnesota. He has a national practice in the field of complex litigation, primarily in the areas of antitrust, consumer fraud and securities fraud. Mr. Esades was recently recognized as a top antitrust litigator in *The Legal 500 US* (2008) which ranked Heins Mills & Olson as one of the top six antitrust class actions firms nationally. Mr. Esades is a graduate of the University Of North Dakota School Of Law and is admitted to practice in Minnesota and North Dakota state and federal courts. He has worked on numerous major antitrust cases and was recently appointed as co-lead counsel in *Katz v. Fidelity National Title Insurance Co.* (N.D. Ohio) which involves antitrust claims against the largest title insurers in Ohio for fixing and controlling the price of title insurance in Ohio and *In re Puerto Rican Cabotage Antitrust Litigation* (MDL No. 1960 D.P.R) which involves pricing fixing by Jones Act shipping companies for ocean shipping services between the U.S. and Puerto Rico. He is also currently working as plaintiffs' lead or co-lead counsel on several other nationwide MDL antitrust class actions, including *In re Publication Paper Antitrust Litigation* (MDL No. 1631 D. Conn.) (price-fixing claims against paper manufacturers); *In re Universal Service Fund Telephone Billing Practices Litig.* (MDL 1468 D. Kan.) (consumer fraud and antitrust claims against AT&T, MCI and Sprint for USF

telephone charges); *In re Polyester Staple Antitrust Litigation* (MDL No. 1516 W.D.N.C.) (price fixing claims against polyester staple manufacturers on behalf of business purchasers); Most recently, Mr. Esades served as co-lead counsel and one of the trial counsel in the *In re High Pressure Laminates Antitrust Litigation* (MDL 1368 S.D.N.Y.) (price fixing claims against manufacturers of high pressure laminates on behalf of business purchasers). Mr. Esades has presented at the ABA Annual Convention and the Annual National Institute on Class Actions as part of panels on major antitrust issues, including the Class Action Fairness Act.

**Albert A. Foer** is President of the American Antitrust Institute. A graduate of the University of Chicago Law School, where he was an Associate Editor of the Law Review, he also holds a masters degree in political science from Washington University and an A.B. from Brandeis University (magna cum laude). Before founding the AAI, Mr. Foer practiced law with Hogan & Hartson and Jackson & Campbell, both in Washington, DC; was a senior executive of the FTC Bureau of Competition for six years, rising to Acting Deputy Director; and was CEO of a mid-sized chain of retail stores for twelve years. He has played leadership roles in a variety of trade and non-profit associations, has published numerous articles about regulatory and competition policy issues, and has taught antitrust on an adjunct basis at Johns Hopkins and George Washington universities.

**Kathleen Foote** has been a deputy in the Antitrust Section in the California Attorney's General San Francisco office since 1988, and is currently the Antitrust Chief. The cases she has handled include *In re Insurance Antitrust*, the Wells Fargo-First Interstate bank merger, and the Thomson-West law book publishing merger. Before joining the State Kathleen was Associate Dean at University of San Francisco School of Law, where she taught Land Use and Environmental Law for seven years. Prior to teaching, she spent three years as an associate attorney with the San Francisco law firm of McCutchen, Doyle, Brown & Enersen. She earned her undergraduate degree from Harvard in 1967, and her law degree from USF School of Law in 1975. Kathleen has been active in community affairs, serving as mayor of Mill Valley, CA twice during the 1980's, and as a San Francisco Bay Commissioner from 1988 to '92. She is past chair of the Board of Trustees of the Marin Community Foundation, among the ten largest community foundations in the US. She is a member of the American Antitrust Institute Advisory Board.

**Michael Hausfeld**, one of the country's top civil litigators, is the Senior Partner of Hausfeld LLP. Mr. Hausfeld's career has included some of the largest and most successful class actions in the fields of human rights, discrimination and antitrust law. Mr. Hausfeld has a long record of successful litigation in the antitrust field, on behalf of both individuals and classes, in cases involving monopolization, tie-ins, exclusive dealings and price fixing. He is or has been co-lead counsel in antitrust cases against manufacturers of genetically engineered foods, managed healthcare companies, bulk vitamin manufacturers, technology companies and international industrial cartels. He is actively involved in ongoing investigations into antitrust cases abroad, and was the only private lawyer permitted to attend and represent the interests of consumers worldwide in the 2003 closed hearings by the EU Commission in the Microsoft case.

**Katherine Kinsella** is the president of Kinsella/Novak Communications. She is a leading, nationally-recognized expert in the design, preparation, and dissemination of legal notice in class actions and bankruptcies. She has developed and directed some of the country's largest and most complex national notification programs in cases involving asbestos, home siding products, infant formula, polybutylene plumbing, pharmaceuticals, securities, and tobacco. Ms. Kinsella brings to her firm and to the Courts more than 30 years of experience in high-level communications strategy in

the fields of advertising, marketing, and public relations. She has held creative and management oversight responsibilities for a variety of clients - ranging from political candidates and advocacy groups to national associations and corporations. Prior to establishing her own business, Ms. Kinsella was Senior Vice President and Director of Marketing and Advertising for The Kamber Group, helping the firm become, during her tenure, the largest independently-owned communications company in Washington, D.C. In that capacity, she handled national advertising, direct mail and marketing clients. During her 12 years at that firm, she also served as Director of the Public Affairs Division, which included all public relations, marketing, corporate communications and advertising operations.

**Robert H. Lande**, the Venable Professor of Law at the University of Baltimore, is a Director, co-founder, and Senior Fellow of the American Antitrust Institute. Mr. Lande has worked on many projects of concern to the AAI, including Illinois Brick reform, the merger incipiency doctrine, the Microsoft case, the BP/Arco case and many other mergers, international antitrust issues, and a wide variety of consumer choice issues and collusion issues. A graduate of Harvard University (J.D., M.P.P.) and Northwestern University (B.A.), he has served in the FTC's Bureau of Competition and was associated with Jones, Day, Reavis & Pogue in Washington.

**James Langenfeld** is a director at LECG, and an adjunct professor at Loyola University School of Law, Chicago. Dr. Langenfeld's professional experience includes ten years of service at the Federal Trade Commission, the last six of which he served as director for antitrust in the Bureau of Economics. He was awarded the Federal Trade Commission Distinguished Service Award, SES Meritorious Service Award, and is an honoree of the Twentieth Anniversary of the Department of Justice 1982 Guidelines. He was also senior economist at General Motors Corporation, where his responsibilities included economic analyses of mergers, production processes, supplier management, and competition issues. In the past, he taught economics at two other universities. He frequently serves as an economic expert in litigation matters relating to antitrust, intellectual property, class certification, government regulation, general conspiracy issues, and contracts. Dr. Langenfeld has testified in court for private parties and government agencies in federal, state, and European litigation. He also frequently makes presentations to government agencies on a variety of matters, including mergers. He publishes in numerous journals and books on a variety of economics topics, including antitrust, intellectual property, regulations, and damages issues. Dr. Langenfeld holds a PhD in economics from Washington University and an AB in economics and English literature from Georgetown University. He is a member of the American Antitrust Institute Advisory Board.

**Richard A. Lockridge** is a partner in Lockridge Grindal Nauen P.L.L.P. He is a graduate of the University of Iowa Law School (J.D., with high distinction, 1974) where he served as Managing Editor of the Iowa Law Review. Thereafter, from 1974 to 1976, he served as a law clerk to the Honorable Myron H. Bright of the United States Court of Appeals for the Eighth Circuit. From 1976 to 1978 he handled civil litigation as a Minnesota Special Assistant Attorney General. For the last 30 years, Mr. Lockridge has concentrated his practice in antitrust litigation, representing businesses in class actions involving price fixing, industry cartels, predatory pricing, price discrimination, and other antitrust and trade regulation issues in courts across the United States. In the last ten years alone, Lockridge Grindal Nauen P.L.L.P. and its co-counsel have recovered more than \$2 billion for their clients and class members in antitrust cases involving national and global price-fixing schemes. The American Research Corporation and the *Minnesota Journal of Law and*

*Politics* have recognized Mr. Lockridge as a leading antitrust lawyer. Early in his career, Mr. Lockridge spent one year in Houston, Texas working on the trial of the *Corrugated Container Antitrust Litigation*, MDL No. 310 (S.D. Tex.), a case which resulted in one of the largest verdicts (in excess of \$1 billion) ever awarded by a jury in antitrust litigation. More recently, he was part of the plaintiffs' trial team for *In re High Pressure Laminates Antitrust Litigation*, MDL No. 1368 (S.D.N.Y.), which was tried in the Southern District of New York and resolved by settlements totaling over \$40 million.

**Daniel J. Mogin** is the Managing Shareholder of The Mogin Law Firm, P.C. He received his B.A. in economics from Indiana University in 1976 and his J.D. from the University of San Diego in 1980. Mr. Mogin was admitted to the State Bar of California in 1980. He is also admitted in Supreme Court of the United States, the United States Court of Appeals for the Ninth Circuit and the United States District Courts for the Central, Southern and Northern Districts of California. Mr. Mogin has been referred to in the national media and legal journals including *The Wall Street Journal*, *The New York Times*, *The Los Angeles Times*, CNN, CBS, NBC, *Forbes*, *Barron's*, *FTC Watch*, *The O'Reilly Factor* and *Stein, A License to Steal: The Untold Story of Michael Milken and the Conspiracy to Bilk the Nation* (Simon & Schuster 1992). In 2005, in a poll of lawyers conducted by the *Daily Transcript* to determine San Diego's "Top Attorneys", Mr. Mogin was a semi-finalist for the Corporate and Business litigation category. Mr. Mogin is an Adjunct Professor of Law at the University of San Diego where he teaches Antitrust Law. He has appeared as a panelist and lecturer for numerous organizations on complex litigation, antitrust, unfair competition, and mergers and acquisitions. Mr. Mogin was Editor-in-Chief of *California Antitrust & Unfair Competition Law (Third)* and author of *California Unfair Competition Law, Business & Professions Code Section 17200*, published by the Antitrust and Unfair Competition Law Section of the California State Bar. He has contributed to a number of other legal treatises. He has contributed to a number of other legal treatises, including *Cohelan, California Class Actions*, and is also the author of several articles on litigation and antitrust issues. Mr. Mogin's litigation practice concentrates on antitrust, unfair competition and complex business litigation. Mr. Mogin chaired the Antitrust and Unfair Competition Law Section of the California State Bar. Mr. Mogin is a member of the Advisory Board of the American Antitrust Institute and numerous professional organizations, including the ABA and the ATLA.

**Peter B. Nordberg** is a shareholder at Berger & Montague, P.C. He is a graduate of Harvard College (A.B. 1980) and the University of Pennsylvania Law School (J.D. 1985), where he received the Fred G. Leebron Award in Constitutional Law and the John H. Maurer Memorial Prize in Criminal Procedure, and where he served as an Executive Editor of the *University of Pennsylvania Law Review*, authoring "The Petition Clause and Unauthorized Practice Rules," 132 U. Pa. L. Rev. 1515 (1984). Since joining Berger & Montague in 1990, Mr. Nordberg has practiced in state and federal courts across the nation, in diverse areas of complex civil litigation including mass tort and environmental litigation, qui tam actions, antitrust matters, securities cases, and ERISA litigation. He recently served as co-counsel for plaintiffs in the four-month trial of *Cook v. Rockwell Int'l Corp.*, where claims for trespass and nuisance against two former operators of the Rocky Flats Nuclear Weapons Plant were tried to verdict on behalf of a class of Colorado property owners, resulting in a half-billion dollar jury award. In 2005, he served as a member of the plaintiffs' trial team in Washington State for the inaugural bellwether trial in the *Hanford Nuclear Reservation Litigation*, helping to win what is believed to be the first verdict in history in favor of personal injury plaintiffs suffering

from cancer caused by offsite exposures to radiation released by operators of a nuclear weapons facility. In 2003, he was appellate counsel in *Ileto v. Glock*, in which the Ninth Circuit approved a public nuisance action against gun manufacturers for injuries inflicted by the unlawful use of their products. Mr. Nordberg is also founder and author of the web site “Daubert on the Web,” a nationally recognized resource on the law of expert evidence. He is admitted to practice in Pennsylvania, and he is also a member of the bar of the United States Supreme Court and numerous U.S. Courts of Appeals.

**J. Thomas Rosch** was sworn in as a Commissioner of the Federal Trade Commission January 5, 2006, to a term that expires in September 2012. Rosch joined the FTC from the San Francisco office of Latham & Watkins, where he was the former managing partner and most recently a partner, working in the firm’s antitrust and trade practices group. Rosch served as chair of the American Bar Association’s Antitrust Section in 1990, and he has chaired the California Bar Association’s Antitrust Section. He served as the FTC’s Bureau of Consumer Protection director from 1973 to 1975, and in 1989 was a member of the Special Committee to Study the Role of the FTC. Nationally regarded for his antitrust and trade regulation law expertise, he has been lead counsel in more than 100 federal and state court antitrust cases and has more than 40 years experience before the Bar. In 2003, Rosch was honored as Antitrust Lawyer of the Year by the California State Bar Antitrust Section. He obtained his LLB from Harvard University in 1965 and was a Knox Fellow at Cambridge in 1962.

**David Rosenberg** is the Lee S. Kreindler Professor of Law at Harvard Law School. Mr. Rosenberg’s work focuses primarily on the design and use of civil liability systems and rules to promote the overall social objective for the law of effectively managing risk through optimal deterrence and insurance. His special emphasis has been on improving the provision of safe, effective, and equitably as well as efficiently priced and insured medical services, health care, and pharmaceuticals. In a career spanning more than 40 years of practice, teaching and writing, Mr. Rosenberg has been among the pioneers of the legal fields relating to complex civil litigation, mass torts, securities and consumer fraud, antitrust, employment discrimination, environment derogation, and other types of mass injury cases. In the early 1970s, at Harvard, he established the first course on complex litigation and mass torts. Mr. Rosenberg introduced the functionalist, social welfare approach to analyzing and redesigning the mass tort system. His contributions include extensions and innovative applications of standard theories of law enforcement, deterrence, and insurance, leading, for example, to his identification of the systemic bias resulting from litigants’ asymmetric incentives to invest in litigation. In formulating a corrective, he developed general arguments for restructuring the tort system from a “public law” perspective. Mr. Rosenberg also elaborated a theoretical foundation and practical blueprint for integrating the substantive and procedural rules that govern civil liability, using statistical and scientific evidence and probabilistically proportioned liability, deterring nuisance-value litigation, sampling claims to reduce litigation cost, and collectivizing adjudication by immediately and automatically convening mandatory class actions that enforce risk-based liability, decouple deterrence and compensation functions, and issue insurance-fund judgments. His most recent work grapples with the basic problems of effectively coordinating judicial enforcement of civil liability with the supply of insurance provided by first-party governmental and commercial insurers and with the regulation of risk by other government agencies as well as by market forces.

**Joseph R. Saveri** is a partner at Lief Cabraser Heimann & Bernstein, LLP. Mr. Saveri has substantial experience in the areas of antitrust and intellectual property law, as well as complex and class action litigation in the areas of securities, employment and consumer protection. Mr. Saveri has prosecuted antitrust cases in numerous industries, including commercial explosives, computer hardware, computer software, energy and energy markets, carpets, debit and credit card industries, liquid crystal displays, x-ray film, baby food, the travel and transportation industry, dairy, retailing, entertainment, glass, corn products, packaging, paper products, cosmetics, vitamins, and agricultural products. Mr. Saveri currently serves as Lead Counsel in a number of class action antitrust cases pending in federal court. He has substantial jury trial experience in the antitrust field, including cases involving price-fixing of brand name prescription drugs, carpets and commissions paid to travel agents. Mr. Saveri is a frequent speaker on civil practice and procedure, and has been active in The Sedona Conference and other panels regarding proposed amendments to the Federal Rules of Civil Procedure, including the 2006 amendments regarding electronic discovery. Mr. Saveri is one of the authors of California Antitrust Law published by the State Bar of California Antitrust and Unfair Competition Section, a contributor to the California Class Action treatise, and author of a number of articles and other written pieces in these areas.

**Daniel A. Small** is a partner in the Antitrust Practice Group of Cohen Milstein Sellers & Toll. He joined the firm in 1988 after serving as a law clerk to the Honorable Roger Vinson, U.S. District Judge for the Northern District of Florida. Mr. Small has been appointed or served as lead counsel for the plaintiffs in several antitrust class actions, including Paper Systems, Inc. v. Appleton Papers, Inc. (E.D. Wis.) (price fixing) (settled on behalf of class of direct purchasers of jumbo rolls of thermal facsimile paper for more than plaintiffs' estimate of single damages); Meijer, Inc. v. 3M Co. (E.D. Pa.) (monopolization) (settled for class of direct purchasers of clear and transparent tape for \$28.9 million); In re Buspirone Antitrust Litigation (S.D.N.Y.) (monopolization and market allocation) (settled for class of indirect purchasers of Buspar for \$90 million). Mr. Small was also lead counsel for the plaintiffs in Pease v. Jasper Wyman & Son (Super. Ct., Knox Cty., Me.), a price-fixing class action on behalf of Maine wild blueberry growers. The case was tried to a jury which returned an \$18.68 million verdict for the class before trebling. Mr. Small's substantial appellate experience includes arguing Free v. Abbott Laboratories in the United States Supreme Court and arguing the appeal in Mack v. Bristol-Myers Squibb (Fla. 1st DCA 1996), the first case to construe the Florida Deceptive and Unfair Trade Practices Act to permit indirect purchasers to sue for damages for antitrust violations. Mr. Small has been a speaker at events organized by the American Antitrust Institute, the Conference Board, the American Bar Association and the District of Columbia Bar, among others.