

Eric Alden

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EDUCATION

Columbia University, J.D., 1994. Harlan Fiske Stone Scholar all three years. Managing Editor, Columbia Journal of Transnational Law. Chairman, Columbia University Senate Student Affairs Committee, 1992-1993. Law School Senate, 1991-1992.

Freie Universität Berlin, Magister Artium (M.A.) in Modern History, 1991. Completed degree with highest overall grade available in German university system (1.0). Studies in the Great Depression and the collapse of democracy in interwar Germany, and in post-war NATO military and political policy. Thesis on Henry Kissinger and the end of the Cold War, advised by Prof.-Dr. Arnulf Baring. Studies funded by two years of full scholarship, covering university, living and travel expenses, from the Deutscher Akademischer Austauschdienst (DAAD).

Harvard University, B.A. in Economics, magna cum laude, 1988. Extensive additional coursework in mathematics. Thesis on statistical evidence bearing on whether profit-sharing, as distinct from fixed, compensation mitigates employment variability, advised by Prof. Richard Freeman, Director of Labor Studies at the National Bureau of Economic Research. Thesis graded summa-/magna+. Departmental exams in Economics graded summa-/magna+. Conant Prize for undergraduate essay on the economics of renewable energy resources, 1988.

Institut d'Etudes Politiques de Paris (Sciences Po), Certificat d'Etudes Politiques, 1986, in 20th century European political history.

ACADEMIC POSITIONS AND EMPLOYMENT

Chase College of Law, Northern Kentucky University, Highland Heights, Kentucky, Aug. 2011-present. Associate Professor of Law (promoted from Assistant Professor to Associate Professor effective Aug. 2014). Academic focus on contract law theory, securities and financial market regulation, corporate governance, and white collar criminal law. Courses taught include Contracts, Corporations, Business Organizations, Securities Regulation, Mergers & Acquisitions, Startups and Venture Capital Law. Member of Curriculum Committee 2011-2014, Faculty Recruitment Committee 2014-2015, Faculty Self-Study Committee 2015-present.

University of California at Berkeley, Berkeley Law School (Boalt Hall), Berkeley, California, 2008-2010. Lecturer. Taught Corporate Governance course (advanced securities regulation and advanced corporation law), covering the Sarbanes-Oxley Act of 2002, NYSE corporate governance listing requirements, duties of "gatekeepers," proxy regulation and shareholder activism, the systemic credit crisis of 2008, the Dodd-Frank Wall Street Reform and Consumer Protection Act, DOJ criminal and SEC civil enforcement proceedings.

University of California Hastings College of the Law, San Francisco, California, 2011. Adjunct Professor. Taught main Securities Regulation course.

PRIOR EMPLOYMENT IN INDUSTRY AND GOVERNMENT

Mayer Brown LLP, Palo Alto, California, 2006-2011. Full equity partner. Practice in corporate and securities law, including the representation of hedge funds and banks with respect to securities law compliance matters, SEC reporting obligations of public companies, corporate governance, mergers and acquisitions, and the formation and subsequent representation of investment funds.

Securities and Exchange Commission, Washington, D.C., 2005-2006. Attorney Fellow, Division of Corporation Finance, Office of Chief Counsel. Detailed to work directly with Division Director John White. Multiple areas of involvement for the agency, including proxy solicitation and corporate governance, enforcement, appellate litigation, interpretive, legislative and rulemaking matters. Oversaw and administered the agency's Rule 14a-8 shareholder proposal program for the 2006 proxy season, during the course of which led a team of 16 other attorneys over several months and exercised decisional authority on behalf of the Division with respect to the issuance of hundreds of no-action letter responses. Work leading the shareholder proposal program included attention to major recent issues in corporate governance such as the majority voting standard for director elections, mandatory bylaw amendments, and shareholder proxy access.

Wilson Sonsini Goodrich & Rosati, P.C., Palo Alto, California, 1994-2005. Full equity partner (elected as partner Nov. 2002, commencing as such Feb. 2003). Practice in corporate and securities law, including SEC reporting obligations of public companies, corporate governance, public equity offerings, debt offerings, mergers and acquisitions, venture financings, and the formation of venture capital funds. Co-Chair of the firm's Education Committee, in which capacity conducted the firm's training program for all incoming corporate attorneys with respect to high-tech startup formation and venture financing transactions. Admitted to California bar 1994. Prior summer positions with O'Melveny & Myers in San Francisco (half summer 1993), Wilson Sonsini Goodrich & Rosati (half summer 1993), and Jones, Day, Reavis & Pogue in New York (summer 1992).

Commission of the European Union, Brussels, 1991. Intern in Directorate-General for External Relations. Worked with senior staff economist on analyses of international trade flows and EU economic development policies.

CBS News, West Berlin, 1989-1990. German-language translator (as independent contractor) for CBS News for all major political events in Berlin and East Germany from opening of the Berlin Wall in Nov. 1989 through national reunification in Oct. 1990.

AmericanLIVES, Mountain View, California, 1988. Statistical analyst with market research firm. Conducted regression, cluster and factor analyses on real estate and financial market databases.

LAW REVIEW ARTICLES

Eric John Finseth,¹ *Shareholder Activism by Public Pension Funds and the Rights of Dissenting Employees Under the First Amendment*, 34 HARV. J.L. & PUB. POL'Y 289 (2010). This article advanced a novel argument, unaddressed by preexisting caselaw or scholarship, to the effect that where public employees are compelled through state action to make contributions to public pension funds, which contributions are then pooled and invested in voting stock of public corporations, and where such pension funds vote the stock in a manner designed to advance goals of a political or ideological nature, dissenting employees have a right under the First Amendment to request that their pro rata portion of the stock purchased with such pooled contributions not be voted.

Eric Alden, *Primum Non Nocere: The Impact of Dodd-Frank on Silicon Valley*, 8 BERKELEY BUS. L.J. 107 (2011). This article examines the potential impact of the Dodd-Frank Wall Street Reform and Consumer Protection Act, and of implementing regulations promulgated by the Securities and Exchange Commission pursuant thereto, on venture capital fund formation and venture financing activity in Silicon Valley. A related public comment letter principally drafted by the author and submitted to the SEC with respect to its proposed implementing regulations was cited multiple times by the SEC in its final implementing regulations.

Eric Alden, *Blocking the Ax: Shielding Corporate Counsel from Retaliation as an Alternative to White Collar Hypercriminalization*, 36 U. HAW. L. REV. 95 (2014). This article argues that there currently exists a significant shortcoming in corporate governance rules applicable to publicly traded companies. Two classes of professional gatekeepers are critical to the prevention of corporate fraud: (i) auditors; and (ii) corporate and securities attorneys. The former are currently protected from retaliation by a public company's senior business management; the latter are not. Extending protection against retaliatory termination to lead corporate and securities counsel for public corporations would shield those of integrity who recommend compliance with the law and thus reduce the tremendous real world pressures to collude or acquiesce in the commission of white collar crime.

Eric Alden, *Rethinking Promissory Estoppel*, 16 NEV. L.J. (forthcoming 2016). Samuel Williston, the official Reporter for the ALI's first Restatement of the Law of Contracts in 1932, claimed that promises had been enforced without reconsideration in sufficiently many cases across different factual situations that the only way to embrace them all was to create a provision, set forth in Section 90 and generally referred to as "promissory estoppel," that purports to suspend wholesale the normal rules governing contract formation. This Article challenges that assertion as a factual matter, and challenges the claim that only a provision as broad as Section 90 could accommodate certain limited exceptions to the consideration requirement that had been observed at the time. This Article further addresses the implications of this analysis for the future of contract law. In order to reduce the risk of contract

¹ In connection with my son's and my move from California to the Cincinnati area in order for me to take a position teaching at the law school at Northern Kentucky University, I anticipate adding the name from my mother's side of the family, which is Alden, to the end of our family name, which historically has been Finseth, hence resulting in Eric John Finseth Alden as the formal name, or simply Eric Alden for day-to-day purposes. My mother's whole side of the family comes from Ohio, including specifically Cincinnati, and the name on that side of the family is Alden. For professional purposes, including on the NKU website, the name is already Alden, though the NKU email system will still show the name as Finseth until the anticipated legal name change has been accomplished.

bleeding out doctrinally into tort, the Article argues that a markedly more modest approach than that reflected in Section 90 should be taken with respect to the enforcement of promises in the absence of consideration.

OTHER PUBLICATIONS

Eric John Finseth & James B. Carlson, *Storming the Ramparts: The Ongoing Shift in the Balance of Power Between Shareholders and Incumbent Boards of Directors*, BANKING & FIN. SERVS. POL'Y REP. (Aspen 2007).

STEVEN E. BOCHNER & ERIC JOHN FINSETH, GUIDE TO THE INITIAL PUBLIC OFFERING (Merrill Corp. 5th ed. 2004).

Eric John Finseth, *Resales of Securities*, in PRACTISING LAW INSTITUTE, UNDERSTANDING THE SECURITIES LAWS 389 (2004) (also published in the 2002 and 2003 editions).

Larry W. Sonsini, Jonathan Axelrad, Eric John Finseth & Kenneth W. Muller, *Venture Fund Private Placement Memorandum*, in VENTURE CAPITAL & PUBLIC OFFERING NEGOTIATION 3-1 (Michael J. Halloran et al. eds., 3d ed. Supp. 2003).

Steven E. Bochner & Eric John Finseth, *The Earnings Release and Disclosure Reform*, INSIGHTS, Dec. 2003, at 8.

SELECTED PUBLIC SPEAKING ENGAGEMENTS

Crowdfunding. Scheduled to speak at upcoming symposium on crowdfunding at Michigan State University, Mar. 2016. Will address recently promulgated SEC rules implementing the JOBS Act of 2012, along with related industry practices which have grown up in recent years in regard to private placements of securities.

18 U.S.C. 1519 and Anticipatory Obstruction of Justice. Speaker at meeting of the Harvard Law School Association of Cincinnati, June 26, 2015. Spoke as to new 20-year felony provision created by the Sarbanes-Oxley Act in 2002 which criminalizes inter alia the act of destroying or making a false entry in (e.g., backdating) any tangible record (incl., e.g., email) with the intent to impede the proper administration of any matter under the jurisdiction of any federal agency.

18 U.S.C. 1519 and Anticipatory Obstruction of Justice. Speaker at meeting of the Kentucky Bar Association, Apr. 16, 2015. Spoke as to new 20-year felony provision created by the Sarbanes-Oxley Act in 2002 which criminalizes inter alia the act of destroying or making a false entry in (e.g., backdating) any tangible record (incl., e.g., email) with the intent to impede the proper administration of any matter under the jurisdiction of any federal agency.

JOBS Act. Speaker on the JOBS Act, including the new "crowdfunding" registration exemption, general solicitations in private placements solely to accredited investors, a new Section 3(b)

exemption, and related matters, at symposium entitled “Repair or Replace: Lifting SEC Regulation from Patchwork to Permanence” sponsored by the Ohio State Entrepreneurial Business Law Journal at Ohio State University, Columbus, Mar. 8, 2012.

Dodd-Frank Act. Speaker on the potential impact of the Dodd-Frank Wall Street Reform and Consumer Protection Act, and SEC implementing regulations thereunder, on venture capital formation and financing activity in Silicon Valley, at symposium entitled “Financial Regulatory Reform: Dodd-Frank and Beyond” sponsored by the Berkeley Center for Law, Business and the Economy at Berkeley Law School at the University of California (Boalt Hall), Berkeley, Mar. 11, 2011.

SEC Proxy Disclosure Rules. Speaker on changes to SEC proxy statement disclosure rules, Mayer Brown teleconference presentation, Feb. 2, 2010.

Impact of Technology on the Boardroom: Speaker on the impact of new communications technologies on boardroom communications in light of applicable legal standards, at panel presentation by the Silicon Valley Chapter of the National Association of Corporate Directors, Palo Alto, Nov. 19, 2009.

SEC Short Sale Rules. Speaker on SEC short sale rules, in teleconference presentation by the Practising Law Institute, Oct. 27, 2009.

Public Company Corporate Governance. Speaker on shift in balance of power between incumbent public company boards of directors and institutional shareholders as a result of recent changes in proxy and voting rules, Mayer Brown teleconference presentation, Aug. 13, 2009.

SEC Short Sale Rules. Speaker on existing and proposed SEC short sale rules and restrictions, Mayer Brown Investment Management University conference, Chicago, May 14, 2009.

SEC Disclosure Requirements re Environmental Matters. Speaker on application of SEC disclosure requirements to environmental matters, Mayer Brown teleconference presentation, Apr. 2, 2009.

Cross-Border Internal Investigations. Speaker on cross-border internal investigations at conference of the Deutsches Aktieninstitut (speech conducted in German), Frankfurt, Nov. 24, 2008.

SEC Short Sale Rules: Speaker on new SEC short sale disclosure requirements, in teleconference presentation by the Practising Law Institute, Oct. 20, 2008.

Application of U.S. Securities Laws to European Hedge Funds. Conducted U.S. securities law compliance training for European hedge fund members of the Alternative Investment Management Association (AIMA) (Hedge Fund Manager Training Program), London, Oct. 16, 2008.

SEC Short Sale Rules: Speaker on new SEC short sale disclosure requirements, in Mayer Brown global teleconference presentation, Sept. 26, 2008.

SEC Rules re IFRS and Foreign Private Issuers: Speaker on recent SEC regulatory developments with respect to XBRL, restatements, International Financial Reporting Standards, and reporting obligations of foreign private issuers, Mayer Brown Corporate University conference, Chicago, May 30, 2008.

Changes to Proxy and Voting System: Speaker on recent and proposed changes to proxy and voting mechanics, including majority voting standard, shareholder proxy access, elimination of broker

discretionary voting in director elections, and mandatory shareholder bylaw amendments, at panel presentation by the Silicon Valley Chapter of the National Association of Corporate Directors, Palo Alto, Nov. 13, 2007.

Option Backdating: Guest speaker at Boalt Hall School of Law, University of California at Berkeley, course entitled “Securities and Class Action Litigation: Enron and Beyond,” on option backdating and related accounting, governance and enforcement matters, Berkeley, Nov. 2, 2007.

Changes to Proxy and Voting System: Speaker on recent and proposed changes to proxy and voting mechanics, including majority voting standard, shareholder proxy access, elimination of broker discretionary voting in director elections, and mandatory shareholder bylaw amendments, at Mayer Brown Investment Management University conference, Chicago, May 8, 2007.

Changes to Proxy and Voting System: Speaker on recent and proposed changes to proxy and voting mechanics, including majority voting standard, shareholder proxy access, elimination of broker discretionary voting in director elections, and mandatory shareholder bylaw amendments, at Mayer Brown Investment Management University conference, New York, May 3, 2007.

Changes to Proxy and Voting System: Speaker on recent and proposed changes to proxy and voting mechanics, including majority voting standard, shareholder proxy access, elimination of broker discretionary voting in director elections, and mandatory shareholder bylaw amendments, at Mayer Brown Investment Management University conference, London, Apr. 19, 2007.

Enforcement and Corporate Governance Matters: Speaker on SEC and DOJ enforcement matters, and on recent developments in proxy and voting mechanics affecting corporate governance, at the 2007 Annual Spring Conference of the Silicon Valley chapter of the National Investor Relations Institute (NIRI), Palo Alto, Mar. 23, 2007.

FASB Interpretation No. 48: Speaker on interrelation between securities and tax laws at “International Tax Issues and FIN 48,” sponsored by the Tax Executives Institute (TEI), Santa Clara, Jan. 30, 2007.

2007 Proxy Season and Corporate Governance: Speaker on the SEC’s recently promulgated e-proxy rules and developments in the corporate governance and proxy arena at “28th Annual Institute on Proxy Statements, Annual Meetings and Critical Corporate Disclosures and Governance Practices,” sponsored by West Legalworks (Thomson), San Francisco, Dec. 12, 2006.

Option Backdating: Speaker on securities law and accounting matters in connection with option backdating investigations at conference sponsored by the National Association of Stock Plan Professionals (NASPP), San Francisco, Sept. 15, 2006.

Securities Offering Reform: Speaker on the SEC’s securities offering reform under the ’33 Act at “SEC Disclosure, Accounting and Enforcement Conference,” sponsored by Glasser LegalWorks, San Francisco, June 14, 2005.

SOX 404: Moderator of panel discussion on Sarbanes-Oxley Section 404, PCAOB Auditing Standard No. 2 and internal control over financial reporting at “Sarbanes-Oxley: More Lessons from the Trenches,” sponsored by Venture Navigation, Redwood City, Nov. 18, 2004.

Form 8-K: Speaker on the SEC's new Form 8-K rules for roundtable audio presentation "Everything You Need to Know About the SEC's New 8-K Rules," sponsored by The Recorder, San Francisco, Oct. 19, 2004.

Form 8-K: Speaker on the SEC's new Form 8-K rules at "Evolving Best Practices: The New Form 8-K Rules," sponsored by Wilson Sonsini Goodrich & Rosati, Santa Clara, Oct. 11, 2004.

Resales of Securities: Speaker on resales of securities at "Understanding the Securities Laws 2004," sponsored by the Practising Law Institute, San Francisco, Sept. 9, 2004.

SOX 404: Moderator of panel discussion on Sarbanes-Oxley Section 404, PCAOB Auditing Standard No. 2 and internal control over financial reporting at "Sarbanes-Oxley: Lessons from the Trenches," sponsored by Venture Navigation, Santa Clara, June 23, 2004.

International Impact of SOX: Moderator for video replay presentation on the impact of Sarbanes-Oxley and SEC rules thereunder on foreign private issuers and investment funds at "International Securities Markets 2004," sponsored by the Practising Law Institute, San Francisco, May 17-18, 2004.

Form 8-K: Speaker on the SEC's new Form 8-K rules at "Understanding the New 8-K Disclosure Requirements," sponsored by the Practising Law Institute, New York, Apr. 23, 2004.

Venture Financings: Guest lecture on standard venture financing terms and conditions at "Advising the Emerging Growth Company," course at the University of California at Berkeley Boalt Hall School of Law (Course 255, Business Law Seminar), Berkeley, Feb. 18, 2004.

Venture Financings: Speaker on standard venture financing terms and conditions at "Deal Terms Report and Valuations: Recent Insights," sponsored by Ernst & Young, Palo Alto, Dec. 9, 2003.

Resales of Securities: Speaker on resales of securities at "Understanding the Securities Laws 2003," sponsored by the Practising Law Institute, San Francisco, Sept. 11, 2003.

California Corporate Disclosure Law: Presenter on California's corporate disclosure law to the Subcommittee on Disclosure and Continuous Reporting at the ABA National Meeting, San Francisco, Aug. 12, 2003.

Resales of Securities: Speaker on resales of securities at "Understanding the Securities Laws 2002," sponsored by the Practising Law Institute, San Francisco, Sept. 30, 2002.