

mortenson@millercanfield.com

## Services

Litigation and Dispute Resolution

Arbitration and Alternative  
Dispute Resolution

International Disputes

## Education

Stanford Law School, J.D., 2002

Harvard College, B.A., 1997

## Bar Admissions

New York

## Languages

English

French

Russian



Julian D. Mortenson

Of Counsel

Julian Mortenson brings to the firm extensive experience in both academia and private practice.

Named by the University of Michigan Law School as the 2015 recipient of the L. Hart Wright Award for Teaching Excellence, Mortenson is active in both international arbitration and domestic constitutional litigation. He has served as arbitrator, counsel, and expert witness in commercial and investor-state disputes under the ICC, ICSID, UNCITRAL, and VIAC rules, and has litigated complex transnational matters in the U.S. courts, including actions involving the enforcement of foreign law and foreign judgments.

Other representative matters include his work as one of the principal drafters of the merits briefs in the landmark case *Boumediene v. Bush*, which secured the right of Guantanamo detainees to challenge their incarceration, and his role as lead counsel in *Caspar v. Snyder*, which required Michigan to recognize the marriages of more than 300 same-sex couples.

Prior to joining the Michigan Law School faculty, Professor Mortenson was an associate at *Wilmer Cutler Pickering Hale and Dorr LLP* in Washington, D.C., and New York, NY. He also served as a law clerk to Justice David Souter on the U.S. Supreme Court. Mortenson received his J.D., *Order of the Coif*, from Stanford Law School after earning a Bachelor of Arts, *summa cum laude*, at Harvard College. He lives in Ann Arbor.

Julian D. Mortenson

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## Professional Activities

Co-Editor, "Contemporary Practice of the United States Relating to International Law," American Journal of International Law

Executive Council, Institute for Transnational Arbitration

Topic Moderator, OGEMID Listserv

External Reviewer, AMERICAN JOURNAL OF COMPARATIVE LAW

External Reviewer, ACCOUNTING, ECONOMICS AND LAW: A CONVIVIAM

External Reviewer, AUSTRALIAN JOURNAL OF POLITICS AND HISTORY

External Reviewer, JOURNAL OF INTERNATIONAL DISPUTE SETTLEMENT

External Reviewer, LAW & SOCIAL INQUIRY

External Reviewer, OXFORD UNIVERSITY PRESS

External Reviewer, TRANSNATIONAL DISPUTE MANAGEMENT

## Speeches

### SELECTED PRESENTATIONS

"Zivotovsky: Round Two on Presidential Power" Fawley Workshop, Michigan Law School (June 2015) (presenter)

"Enforcing Hong Kong Arbitral Awards in Mainland China," Japan Arbitration Association (June 2015) (presenter)

"Snowflakes in a Blizzard: International Investment Law as a Treaty Regime," University of Tokyo Law School (June 2015) (presenter)

"EU Accession to the European Convention on Human Rights," Michigan Law School (April 2015) (commentator)

"The Rationality of Rational Basis Review," Federalist Society Forum, Michigan Law School (February 2015) (commentator)

"Same Sex Marriage in the Courts," American Constitution Society Forum, Michigan Law School (November 2014) (panelist)

"Article II Vests Executive Power, Not the Royal Prerogative," Yale-Duke Constitutional Law Forum, Yale Law School (September 2014) (presenter)

"*United States v. Bond*: The Molehill that Remained a Molehill," Fawley Workshop, Michigan Law School (June 2014) (presenter)

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"Judicial Intervention in the Electoral Process," International Judicial Forum, Malta (May 2013) (commentator)

"Emergency Power Theory in Historical Perspective," McGill Law School (May 2013) (commentator)

"*Kiobel* and the Future of Domestic Human Rights Litigation," Michigan International Law Review Forum (April 2013) (presenter)

"The Destabilizing Legal Architecture of Counterterrorism," Michigan Law Review Forum (March 2013) (commentator)

"LGBT Rights and the Marriage Equality Cases," Outlaws Forum, Michigan Law School (March 2013) (presenter)

"A History of Treaty Interpretation," Faculty Workshop, SMU Law School (January 2013) (presenter)

"Dismantling the One Voice Doctrine," International Law in Domestic Courts Workshop, American Society of International Law, (December 2013) (discussant)

"A History of Treaty Interpretation," International Law Lecture Series, Wayne State Law School (November 2012) (presenter)

"A Theory of Republican Prerogative," Fawley Workshop, Michigan Law School (October 2012) (presenter)

"Lincoln, Madison, and Hamilton: The Complicated Relationship Between Power and Liberty," Proclaiming Emancipation Conference, University of Michigan (October 2012) (presenter)

"Free Exercise and the Obligation to Respect LGBT Rights," Federalist Society Forum, Michigan Law School (October 2012) (presenter)

"A History of Treaty Interpretation," ASIL-ESIL Workshop on Transatlantic Debates in Legal Theory, University of Cambridge (September 2012) (presenter)

"A Theory of Republican Prerogative," Governance Workshop, Michigan Law School (July 2012) (presenter)

"*MBZ v. Zivotovsky*: Opening Shot of a Coming War" Fawley Workshop, Michigan Law School (July 2012) (presenter)

"The Dilemma of Emergency Powers," National Security Law Workshop, Columbia Law School (July 2012) (presenter)

"Legal History and the Article II Override," Fawley Workshop, Michigan Law School (April 2012) (presenter)

"A Concept of Justice in Investment Treaty Arbitration," International Law Roundtable, New York Law School (April 2012) (discussant)

"Targeting Non-State Actors," Michigan Law Review Panel on Faculty Scholarship, Michigan Law School (April 2012) (discussant)

"The National Defense Authorization Act of 2012," American Constitution Society, Michigan Law School (April 2012) (presenter)

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- "Re-assessing the United Nations' Millennium Development Goals," Ross School of Business, University of Michigan (March 2012) (moderator)
- "A History of Treaty Interpretation," Fawley Workshop, Michigan Law School (March 2012) (presenter)
- "Drones and the War Powers Debate," Federalist Society Faculty Panel, Michigan Law School (February 2012) (presenter)
- "State Secrets after *Jeppesen*," Fawley Workshop, Michigan Law School (July 2011) (presenter)
- "Executive Power and the Discipline of History," Governance Workshop, Michigan Law School (June 2011) (presenter)
- "Thomas Jefferson and Executive Power," LeFrak Forum, Michigan State University (March 2011) (discussant)
- "Habeas Corpus in Afghanistan," National Lawyers Guild panel, Michigan Law School (March 2011) (presenter)
- "The Supreme Court Term," American Constitution Society and Federalist Society panel presentation, Michigan Law School (April 2010) (presenter)
- "Detention and the Law of War," National Security Law Workshop, Texas Law School (March 2010) (discussant)
- "*Travaux of Travaux: The Puzzle of Drafting History under the Vienna Convention*," Junior International Law Scholars Association Conference, Hastings Law School (February 2010) (presenter)
- "Human Rights, Emergencies, and the Rule of Law," Junior International Law Scholars Association Conference, Hastings Law School (February 2010) (discussant)
- "The Meaning of 'Investment': ICSID's *Travaux* and the Domain of International Investment Law," Conference on International Investment Law and Treaty Arbitration, Sydney Law School (February 2010) (presenter)
- "National Security Law: The Coherence Question," Michigan Law School (Fall 2009) (presenter)
- "A Role for Human Rights in International Investment Law," Michigan Law School (Fall 2009) (discussant)
- "The Future of Public Rights Litigation: Strategies and Approaches for the Future," Fordham Law School (Spring 2009) (moderator)
- "Deference and Autonomy in International Investment Law," American Society of International Law, International Economic Law Interest Group, UCLA Law School (February 2009) (presenter)
- "Deference and Autonomy in International Investment Law," Conference Celebrating 50th Anniversary of New York Convention, Georgia Law School (January 2009) (presenter)
- "Deference and Autonomy in International Investment Law," (New York City Junior Scholars Colloquium, Fall 2008) (presenter)
- "Preventive Detention and Military Commissions after *Boumediene*" (Duke Law School, Fall 2008) (presenter)

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- "The Appellate Function in International Law," (Fordham Law School, Summer 2008) (presenter)
- "Cruelty to People? Different Perspectives on Lethal Injection," (Fordham Law School, Spring 2008) (panel moderator)
- "Guantanamo: Recovering American Justice," (University of New England, Spring 2008) (presenter)
- "Habeas Jurisdiction at Guantanamo: From *Rasul* to *Boumediene* and Beyond," (Duke Law School, Spring 2008) (presenter)
- "Military Commissions and Appellate Review," (Duke Law School, Spring 2008) (presenter)
- "Habeas Corpus: Historical Practice and the War on Terror," (Fordham Law School, Fall 2007) (presenter)
- "Don't Ask, Don't Tell' in the Federal Courts," (University of Vermont Law School, Fall 2007) (moot court and panel discussion)

**Publications**

**SCHOLARLY WRITING**

- Contemporary Practice of the United States Relating to International Law*, Am. J. Int'l L. (with Kristina Daugirdas) (quarterly publication, 2013 - present)
- Snowflakes in a Blizzard: Structural Treaty Issues in International Investment Law*, in *Modern Treaty Law* (Cambridge University Press, forthcoming 2015) (book chapter)
- Executive Power and National Security*, in *The Cambridge Companion to the United States Constitution* (Cambridge University Press, forthcoming 2015) (book chapter)
- A Theory of Republican Prerogative*, 87 S. Cal. L. Rev. \_\_ (2015)
- Apotex v. United States: Narrowing NAFTA's Definition of "Investment"*, 15 J. World. Inv. & Trade \_\_ (2014)
- Law Matters, Even to the Executive*, 111 Mich. L. Rev. 1015 (2014) (review essay)
- The Travaux of Travaux: Is the VCLT Hostile to Drafting History?*, 107 Am. J. Int'l L. 780 (2013)
- Reciprocity and the Regulatory Function of International Investment Law*, 54 Harv. J. Int'l L. Online 124 (2013)
- Quiborax v. Bolivia: The Uneasy Role of Precedent in Defining Investment*, 2013 ICSID Rev. 1
- Executive Power and the Discipline of History*, 78 U. Chi. L. Rev. 377 (2011)
- The Meaning of Investment: ICSID's Travaux and the Domain of International Investment Law*, 51 Harv. Int'l L. J. 257 (2010)

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*This Very Human Institution: A Biography of the Yugoslavia Tribunal*, 13 Colum. J. Eur. L. 471 (2007) (book review)

*Earning the Right to Be Retributive: Execution Methods and the Prohibition on Cruel and Unusual Punishment*, 88 Iowa L. Rev. 1099 (2003)

**OTHER WRITING**

*Zivotofsky v. Kerry: The Supreme Court Should Avoid the Vesting Clause Like the Plague* (Oct. 29, 2014)

OGEMID Rapporteur, Investment Treaty Arbitration Conference, Dallas, TX (2014)

*The Travaux of Travaux*, Opinio Juris (February 5, 2013; February 8, 2013), at <http://opiniojuris.org/2014/02/05/ajil-symposium-travaux-travaux/> and at <http://opiniojuris.org/2014/02/08/ajil-symposium-reply-comments-travaux-travaux/> (symposium on *The Travaux of Travaux: Is the Vienna Convention Hostile to Drafting History?*)

*The Domain of Investment Law: What is an Investment?*, Kluwer Arbitration Blog (Oct. 13, 2011; Oct 18, 2011; Oct 19, 2011)

*Intellectual Property Rights under International Investment Treaties*, Transnational Dispute Management (2009)

*Spain's Most Wanted: Gonzales in the Dock*, Slate.com (April 6, 2009)

*Introductory Note to Boumediene v. Bush*, Am. Soc. Int'l L. Int'l Legal Materials (2008)

*Boumediene v. Bush: The Path Forward*, 30 ABA Nat'l Security L. Rep. 11 (2008)

*Deference Reconsidered*, Opinio Juris (June 13, 2008), available at <http://opiniojuris.org/2008/06/17/deference-reconsidered/> (symposium on *Boumediene v. Bush*)

*What Comes Next?*, Opinio Juris (June 17, 2008), available at <http://opiniojuris.org/2008/06/13/what-comes-next/> (symposium on *Boumediene v. Bush*)

*Effective Use of Provisional Measures in Investor-State Arbitration*, 2007 Global Arbitration Rev. - European Arbitration Rev. 15 (with Ethan G. Shenkman and Steven Finizio)

*Seeking Provisional Measures in ICSID Arbitration*, ABA Int'l L. Section, Series 101 Project (2006)

*Inside the United Nations Detention Unit*, Slate.com (Jan. 9 - Jan. 10, 2006)

*War Crimes in Northern Africa: Lessons from the ICTY and ICTR*, 2 Tingis 24 (2005)

*A Week in the Trial of Slobodan Milosevic*, Slate.com (Sept. 13 - Sept. 16, 2005)