

LAW & ECONOMICS CENTER, GEORGE MASON UNIVERSITY SCHOOL OF LAW

Judicial Symposium on Scientific Evidence in the Courts

Sunday, April 22 to Tuesday, April 24, 2012

The Mason Inn Conference Center and Hotel
Campus of George Mason University, Fairfax, Virginia

Agenda

Sunday, April 22

Registration; No program

6:00 – 8:00 pm

Registration, Ballroom Foyer
Optional Meet & Greet Reception, Ballroom

Monday, April 23

The Mason Inn Ballroom (all program sessions)

7:00 – 7:45 am

Registration, Ballroom Foyer
Breakfast, Junior Ballroom

8:00 am – 12:00 pm

Welcome
Henry N. Butler, George Mason University Foundation Professor of Law, and Executive Director, Law & Economics Center

Daniel D. Polsby, Professor and Dean, George Mason University School of Law

D. Bruce Johnsen, Professor of Law, and Director, Mason Judicial Education Program

Opening Lectures on Scientific Methodology

James S. Trefil, Robinson Professor of Physics, George Mason University, Fairfax, Virginia

8:10 - 9:15 am **The Scientific Method**
9:30 - 10:45 am **Elements of Scientific Decision Making**
11:00 - 12:00 pm **The History of the Use of Expert Witnesses**

Reading Assignment: [James S. Trefil, *What is Science?*, Science in World History, 1:1-13 \(Routledge 2012\)](#)

12:00 – 1:45 pm

Lunch, Junior Ballroom
Luncheon Panel Discussion: Perspectives on Daubert
Richard O. Faulk, Gardere Wynne Sewell LLP, Houston, Texas
Carla Burke, Baron and Budd, Dallas, Texas

Moderator: **David E. Bernstein**, George Mason University Foundation Professor of Law, George Mason School of Law, Arlington, Virginia

Reading Assignment: [Richard O. Faulk and Robert M. Hoffman, *Perspectives on Daubert, Avoiding and Exploiting "Analytical Gaps" in Expert Testimony*, State Bar of Texas Litigation Section Report, *The Advocate*, 33:71-77 \(2005\)](#)

[Analytical Gaps Presentation](#)

[Eric Lasker, *Manning the Daubert Gate: A Defense Primer in Response to Milward v Acuity Specialty Products*, *Defense Counsel Journal* \(April 2012\)](#)

Video: [Perspectives on Daubert \(1 of 2\)](#)

[Perspectives on Daubert \(2 of 2\)](#)

2:00 – 3:30 pm

Low-Dose Exposure and Causation

Benzene

R. Dean Hartley, Hartley & O'Brien, Wheeling, West Virginia

Mark Fitzsimmons, Steptoe & Johnson, Washington, DC

Asbestos

Mark A. Behrens, Shook, Hardy & Bacon, Washington, DC

Bryan O. Blevins, Provost Umphrey, Beaumont, Texas

Moderator: David E. Bernstein, George Mason University Foundation Professor of Law, George Mason School of Law, Arlington, Virginia

Reading Assignments: [*Borg-Warner Corp. v. Flores*, 232 S.W.3d 765-774 \(Tex. 2007\)](#)

[*Merrell Dow Pharmaceuticals Inc. v. Havener*, 953 S.W.2d 706 \(Tex. 1997\)](#)

[*Georgia-Pacific Corp. v. Bostic*, 320 S.W. 3rd 588 \(Tex. Ct. App. 2010\)](#)

[*In re: Asbestos Products Liability Litigation \(No. VI\)*, No. MDL-875, slip op. \(E.D. Pa. Feb. 17, 2012\)](#)

[*Mark A. Behrens and William L. Anderson, The "Any Exposure" Theory: An Unsound Basis for Asbestos Causation and Expert Testimony*, SW. U. L. Rev. 37:479-510 \(2008\)](#)

[*Glenna M. Kyle, Demonstrating Harm: Biological Sciences Provide Evidence of Thresholds*, For Def. pp. 72-77 \(Jan. 2012\)](#)

[*Brent Finley, David Galbrith and Dennis Paustenbach, Asbestos Litigation Today: The Top Five Fallacies Perpetuated by Experts*, For Def. pp. 24-27, 82 \(Mar. 2011\)](#)

[*Stefanie Beetle, et al., Paradigm Change in the Assessment of Myeloid and Lymphoid Neoplasms Associated with Occupational Benzene Exposure*, Assessment of Benzene-Caused Myeloid and Lymphoid Neoplasms, MedKlin 104, No. 3, pp. 197-203 \(2009\)](#)

[*Martyn T. Smith, Advances in Understanding Benzene Health Effects and Susceptibility*, Annu. Rev. Public Health 31:133-48 \(2010\)](#)

[*Jelle Vlaanderen, et al., Occupational Benzene Exposure and the Risk of Lymphoma Subtypes: A Meta-analysis of Cohort Studies Incorporating Three Study Quality Dimensions*, Env. Health Perspectives, 119, Vol. 2, pp. 133-148 \(2011\)](#)

Video: [Low-Dose Exposure and Causation: Benzene and Asbestos \(1 of 2\)](#)

[Low-Dose Exposure and Causation: Benzene and Asbestos \(2 of 2\)](#)

4:00 – 5:30 pm

Medical Monitoring

Robert J. Nelson, Lieff Cabraser Heimann & Bernstein, LLP, San Francisco, California

Jessica Davidson Miller, Skadden, Arps, Slate, Meagher & Flom, Washington, DC

Neighborhood Environmental Exposure Cases

Dennis C. Reich, Reich & Binstock, Houston, Texas

Katherine L. Rhyne, King & Spalding, Washington, DC

Moderator: David E. Bernstein, George Mason University Foundation Professor of Law, George Mason School of Law, Arlington, Virginia

Reading Assignments: [*Metro-North Commuter R.R. Co. v. Buckley*, 521 U.S. 424 \(1997\)](#)

[*Bower v. Westinghouse Elec. Corp.*, 522 S.E.2d 424 \(W. Va. 1999\)](#)

Video: [Medical Monitoring and Environmental Exposure Cases \(1 of 2\)](#)

[Medical Monitoring and Environmental Exposure Cases \(2 of 2\)](#)

6:00 – 6:30 pm

Reception, Ballroom Foyer

6:30 – 8:30 pm

Dinner, Junior Ballroom

Keynote Dinner Address: Post-Mortem on Scientific Evidence in the Vioxx Cases
W. Mark Lanier, The Lanier Law Firm, Houston, Texas

Commentary: **Joe G. Hollingsworth**, Hollingsworth LLP, Washington, DC

Moderator: **D. Bruce Johnsen**, Director, Mason Judicial Education Program

Video: [Post-Mortem on Scientific Evidence in the Vioxx Cases](#)

Tuesday, April 24

7:30 – 8:15 am

Breakfast, Junior Ballroom

8:30 – 9:30 am

Case Study: Scientific Evidence in Hydraulic Fracturing Litigation

Marc Jay Bern, Napoli Bern Ripka Shkolink LLP, New York, New York

Jennifer Quinn-Barabanov, Steptoe & Johnson LLP, Washington, DC

Moderator: **Richard O. Faulk**, Gardere Wynne Sewell LLP, Houston, Texas

Reading Assignments: [Lore v Lone Pine Corporation, 1986 WL 637507 \(N.J. 1986\)](#)

[Modified Case Management Order](#)

[In re World Trade Center Disaster Site Litigation \(S.D. N.Y., 2010\)](#)

Video: [Case Study: Scientific Evidence in Hydraulic Fracturing Litigation](#)

9:45 – 10:45 am

Case Study: Bisphenol A (BPA)

Lawrence G. Cetrulo, Cetrulo & Capone, LLP, Boston, Massachusetts

James L. Stengel, Orrick, New York, New York

Moderator: **Richard O. Faulk**, Gardere Wynne Sewell LLP, Houston, Texas

Reading Assignment: [David H. Dorsey, Acting Associate Commissioner for Policy and Planning, Department of Health & Human Services, to Sarah Janssen, Natural Resources Defense Council, et al. \(Mar. 30, 2012\)](#)

Video: [Case Study: Bisphenol A \(BPA\)](#)

10:45 – 11:15 am

Break, Check Out of Hotel – Check Bags

11:15 am – 12:30 pm

*Panel Organized by the
Regulatory Studies Center,
George Washington University*

Regulatory Science: Politicization of Science or Scientization of Policy?

Alan B. Morrison, Lerner Family Associate Dean for Public Interest and Public Service Law
Professorial Lecturer in Law, George Washington University School of Law, Washington, DC

Dr. Richard B. Belzer, President, Regulatory Checkbook, Mt. Vernon, Virginia

David Goldston, Director, Government Affairs, Natural Resources Defense Council,
Washington, DC

Moderator: **Susan E. Dudley**, Director, Regulatory Studies Center, and Research Professor,
Trachtenberg School of Public Policy & Public Administration, George Washington University,
Washington, DC

Reading Assignments: [Recommendations for Science in the Administrative Process \(Draft\) \(Feb. 2012\)](#)

[Recommendations for on the Use of Science in the Administrative Process \(Draft\) \(Feb. 2012\)](#)

[Wendy Wagner, Science in the Administrative Process: A Study of Agency Decisionmaking Approaches \(Draft\) \(Feb. 2012\)](#)

[Susan E. Dudley, *Fostering Quality Science at EPA: Perspectives on Common Sense Reforms*, Prepared Statement for Hearing before Subcommittee on Energy and the Environment, Committee on Science, Space, and Technology, U.S. House of Representatives \(November 2011\)](#)

[*Improving the Use of Science in Regulatory Policy*, Science for Policy Project Final Report \(August 2009\)](#)

12:30 pm

Adjourn

12:40 pm

Buses Depart for Reagan National and Dulles