

JUDICIAL EDUCATION PROGRAM

Fourteenth Meeting of the American College of Business Court Judges

Wednesday, October 30 – Friday, November 1, 2019 | Pittsburgh, PA

GEORGE MASON UNIVERSITY ANTONIN SCALIA LAW SCHOOL

LAW &
ECONOMICS
CENTER

WEDNESDAY, OCTOBER 30

3:00 – 6:00 pm

Registration, Main Lobby

THURSDAY, OCTOBER 31

All sessions held in the Bob & Delores Hope Room, Mezzanine Level

7:00 – 7:50 am

Breakfast & Registration, Lawrence Welk Room, Mezzanine Level

8:00 – 8:15 am

Call to Order

Christine Ward, Judge, Allegheny County Court of Common Pleas, Pennsylvania and President, American College of Business Court Judges

Henry N. Butler, Allison and Dorothy Rouse Dean and George Mason University Foundation Professor of Law, Executive Director, Law & Economics Center George Mason University Antonin Scalia Law School

Welcoming Remarks

Debra Todd, Justice, Supreme Court of Pennsylvania

8:15 – 9:30 am

Lecture 1: Evaluating Expert Testimony and Legal Analytics

Andrew W. Torrance, Paul E. Wilson Distinguished Professor of Law, University of Kansas School of Law

Reading Assignment:

Daniel Martin Katz. "Quantitative Legal Prediction – or – How I Learned to Stop Worrying and Start Preparing for the Data Driven Future of the Legal Services Industry." *Emory Law Journal*. Vol. 62 (December 2012).

Students for Fair Admissions v. Harvard, (sections I, V, and VIII) (D. Ma. 2019).

9:45 – 11:00 am

Lecture 2: The Economics and Law of Punitive Damages

Jonathan Klick, Professor, University of Pennsylvania School of Law

Reading Assignment:

Keith N. Hylton and Thomas J. Miceli, "Should Tort Damages be Multiplied?" *Journal of Law, Economics, and Organization*, Vol. 21, No. 2 (2005), 388–416.

11:15 am – 12:30 pm

Lecture 3: Shareholder Rights: Derivative Actions v. Class Actions

Kenneth Lehn, Samuel A. McCullough Professor of Finance, University of Pittsburgh Katz Graduate School of Business

Reading Assignment:

Daniel R. Fischel and Michael Bradley, "Role of Liability Rules and the Derivative

Suit in Corporate Law: A Theoretical and Empirical Analysis, *Cornell Law Review*, Vol. 71, No. 2 (1986), 261-297.

Anjan V. Thakor, Jeffrey S. Nielsen, and David A. Gulley, *The Economic Reality of Securities Class Action Litigation*, Navigant Consulting Research Paper (October 2005).

Stephen Bainbridge, "Is There a Case for Abolishing Derivative Litigation?" ProfessorBainbridge.com, October 3, 2017.

Joel F. Houston, Chen Lin, and Wensi Xie, "Shareholder Protection and the Cost of Capital," Harvard Law School Forum on Corporate Governance and Financial Regulation, July 2, 2019.

12:30 - 2:00 pm

Lunch and Keynote Address: The Evolution of Pittsburgh

Lawrence Welk Room - Mezzanine Level

Bill Peduto, Mayor of Pittsburgh, Pennsylvania

2:00 - 3:15 pm

Panel 1: The Law, Economics, and Ethics of Artificial Intelligence in Driverless Cars and Other Advanced Technologies

Stan Caldwell, Executive Director, Carnegie Mellon University Traffic21 Institute

Robin D. Hanson, Associate Professor of Economics, George Mason University

Andrew R. Kloster, Deputy Director, C. Boyden Gray Center for the Study of the Administrative State

Bryant Walker Smith, Assistant Professor, University of South Carolina School of Law

Moderator: Christine Ward

Reading Assignments:

H. Mark Lyon, Claudia M. Barrett, et al., *Artificial Intelligence and Autonomous Systems Legal Update* (3q18), Gibson, Dunn & Crutcher LLP Client Advisory, October 10, 2018.

3:30 - 4:45 pm

Lecture 4: Frackonomics—The Economics of Hydraulic Fracturing

Christopher A. Wright, Founder and CEO, Liberty Oilfield Services Inc.

Reading Assignment:

Chris Wright, "Save 7 Million Lives Per Year by Increasing Access to Hydrocarbon Fuels," *Washington Examiner*, August 16, 2019.

5:00 - 6:30 pm

Tenille Time Reception, Jones Day Offices, 500 Grant Street, Suite 4500, Pittsburgh, Pennsylvania 15219

FRIDAY, NOVEMBER 1

All sessions held in the Bob & Delores Hope Room, Mezzanine Level

7:00 - 7:50 am

Breakfast, Lawrence Welk Room, Mezzanine Level

8:00 - 9:15 am

Lecture 5: The Economics of NDAs, Non-Competes, and Other Employment Agreements

Keith N. Hylton, William Fairfield Warren Distinguished Professor of Law, Boston University School of Law

Reading Assignment:

Evan Starr, *The Use, Abuse, and Enforceability of Non-Compete and No-Poach Agreements: A Brief Review of the Theory, Evidence, and Recent Reform Efforts*, Economic Innovation Group Issue Brief, February 2019.

Ronald A. Cass and Keith N. Hylton, "Trade Secrets," in *Laws of Creation: Property Rights in the World of Ideas*, Harvard University Press (2013), 76-96.

9:15 - 9:30 am

Break, Check out of Hotel

9:30 - 10:45 am

Panel 2: The Evolving Law of Restrictive Covenants

Elihu Berle, Judge, Superior Court of California, Los Angeles County

Elizabeth H. Emerson, Justice, Supreme Court of New York, Suffolk County, Commercial Division

Edward Ewell, Jr., Judge, Third Judicial Circuit of Michigan

James L. Gale, Judge, North Carolina Business Court

Mary M. Johnston, Judge, New Castle County Superior Court, Delaware

Moderator: Christopher P. Yates, Judge, Kent County Circuit Court, Michigan

11:00 - 11:45 am

ACBCJ Business Meeting and Elections

11:45 am - 12:00 pm

Closing Remarks

12:00 pm

Program Adjourns



ELIHU BERLE

Superior Court of California, Los Angeles County

Judge Elihu M. Berle is the supervising judge of the civil departments of the Superior Court of California for the County of Los Angeles. From his appointment to the bench in 1996 through 1998, he presided over felony trials and from 1999 to 2008, he presided over an individual calendar fast track civil trial courtroom at the Stanley Mosk Central Civil Courthouse in downtown Los Angeles. Prior to his appointment to the bench, Judge Berle was in the private practice of law for over twenty-six years, specializing in business and commercial litigation. Among his other duties, Judge Berle has responsibility for overseeing the Los Angeles Superior Court's Asbestos Litigation General Orders for the management of asbestos cases. In July 2009, in an effort to expedite asbestos litigation settlements, Judge Berle initiated a special pilot project for the settlement of asbestos cases.



HENRY N. BUTLER

*Allison and Dorothy Rouse Dean and George Mason University
Foundation Professor of Law Executive Director, Law & Economics Center
George Mason University Antonin Scalia Law School*

Henry N. Butler is the Allison and Dorothy Rouse Dean and GMU Foundation Professor of Law at Antonin Scalia Law School, where he serves as executive director of the Law & Economics Center. For over 30 years, he has led education programs that teach the basics of economics, finance, accounting, statistics, and scientific methods to federal and state judges, and thousands of legal professionals and scholars. From 2007 to 2010, Henry served as the first executive director of the Searle Center on Law, Regulation, and Economic Growth at Northwestern University School of Law. He has held prior appointments at the Brookings Institution, Chapman University, the University of Kansas, the University of Chicago, and Texas A&M University. From 1986 to 1993, he was a law professor at George Mason and, during that period, also served as an associate dean and director of the Law & Economics Center. He received a BA in economics from the University of Richmond, and an MA and PhD in economics from Virginia Polytechnic Institute and State University (where he studied under George Mason University's first Nobel Laureate James M. Buchanan), and a JD from the University of Miami School of Law (where he was a John M. Olin Fellow in Law & Economics).



STAN CALDWELL

Executive Director, Carnegie Mellon University Traffic21 Institute

Stan Caldwell serves as executive director of both the Traffic21 Institute and the USDOT-designated Mobility21 National University Transportation Center at Carnegie Mellon University. These research centers support faculty and students across the university in technology-focused transportation education and research, with an emphasis on real-world deployment with public and private partners. Stan is the curator of the industry-recognized *Smart Transportation Dispatch* blog and newsletter. He is an adjunct associate professor of transportation and public policy in CMU's Heinz College, and teaches courses and conducts research in intelligent transportation systems policy.



EDWARD EWELL JR.

Third Judicial Circuit of Michigan

Judge Ewell earned his BA from the University of Michigan and his JD from Wayne State University. Early in his career, Judge Ewell worked as a law clerk for Judge Damon Keith of the US Court of Appeals for the Sixth Circuit Court. He also worked as an assistant US attorney in Detroit. There he served in the civil and criminal divisions before becoming interim deputy corporation counsel for Wayne County. He worked in that position until he was appointed to the circuit court in 2003.



ELIZABETH H. EMERSON

Supreme Court of New York, Suffolk County, Commercial Division

Justice Emerson graduated *magna cum laude* from Boston College and *magna cum laude* from Syracuse University College of Law. She has served as a Supreme Court Justice since 1996. After spending several years in a general civil part, Justice Emerson was asked to help establish a commercial division in Suffolk County. Consequently, the Suffolk County Commercial Division was established in October 2002. At that time Justice Emerson became the first commercial division justice in Suffolk County and has served in that capacity ever since. Before coming to the bench, Justice Emerson was a partner of Shearman & Sterling. Her practice included the representation of domestic and foreign commercial banks, investment banks, and corporations in the structuring, negotiating, and documentation of complex financing transactions. A representative sample of these transactions included acquisition financings, leveraged buyouts, restructurings, project finance, and public offerings. She recently served as a member of the chief judge's task force on commercial litigation in the twenty-first century.



JAMES L. GALE

North Carolina Business Court

The Honorable James ("Jim") L. Gale is presently senior judge of the North Carolina Business Court with chambers in Greensboro. He was appointed a special superior court judge for complex business cases in March 2011, and served as chief judge of the business court from October 2014 through June 2018. Following a clerkship for the Honorable Franklin T. Dupree, Jr., of the US District Court for the Eastern District of North Carolina, Judge Gale joined the predecessor firm of Smith Moore Leatherwood, which later joined Fox Rothschild, where he maintained a commercial litigation practice for thirty-five years, handling complex cases in numerous federal and state courts around the country. He served as managing partner of the firm's Raleigh, North Carolina and Tampa, Florida offices. Judge Gale received his BA from Florida Presbyterian College (now Eckerd College) in 1969 and his JD, *magna cum laude*, from the University of Georgia in 1974.

**ROBIN D. HANSON**

Associate Director of Economics, George Mason University

Robin Hanson is an associate professor of economics, and received his PhD in 1997 in social sciences from the California Institute of Technology. He joined George Mason's economics faculty in 1999 after completing a two-year post-doctoral fellowship at the University of California, Berkeley. His major fields of interest include health policy, regulation, and formal political theory. Professor Hanson has published numerous works, and appeared multiple times in other publications.

**KEITH N. HYLTON**

William Fairfield Warren Distinguished Professor of Law, Boston University School of Law

Keith Hylton, a William Fairfield Warren Distinguished Professor of Boston University and professor of law at Boston University School of Law, joined the BU Law faculty in 1995 after teaching for six years and receiving tenure at Northwestern University School of Law. He is a prolific scholar who is widely recognized for his work across a broad spectrum of topics in law and economics, including tort law, antitrust, labor law, intellectual property, civil procedure, and empirical legal analysis. He has published five books and more than 100 articles in numerous law and economics journals, and serves as an associate editor of the *International Review of Law and Economics*, a contributing editor of the *Antitrust Law Journal*, co-editor of *Competition Policy International*, and editor of the Social Science Research Network's *Torts & Products Liability Law eJournal*. He is currently president of the American Law and Economics Association (2017 to 2018 term).

**MARY M. JOHNSTON**

New Castle County Superior Court

The Honorable Mary Miller Johnston was appointed to the Superior Court of Delaware on September 25, 2003. Judge Johnston received her JD *cum laude* from Washington & Lee University School of Law where she served as lead articles editor of the law review. She also has a BA *magna cum laude* in music from Wittenberg University, and an MA in music from Northwestern University. Before coming to the bench, Judge Johnston served as Chief Counsel of the Delaware Supreme Court's Office of Disciplinary Counsel, prosecuting attorney discipline cases and unauthorized practice of law matters. She formerly was a partner with Morris James, LLP practicing primarily in the areas of corporate and commercial litigation. She currently is assigned as a member of the Court's Complex Commercial Litigation Division. Judge Johnston is past chair of the Delaware State Bar Association's Women and the Law Section, a recipient of the Bar Association's Women's Leadership Award, and was a member of the Pro Se Litigation Assistance Committee.



JONATHAN KLICK

Professor, University of Pennsylvania School of Law

Jonathan Klick's work focuses on identifying the causal effects of laws and regulations on individual behavior using cutting-edge econometric tools. Specific topics addressed by Klick's work include the relationship between abortion access and risky sex, the health behaviors of diabetics, the effect of police on crime, addiction as rational choice, how liability exposure affects the labor market for physicians, as well as a host of other issues. His scholarship has been published in numerous peer-reviewed economics journals, including *The Journal of Economic Perspectives*, *The Journal of Law and Economics*, *The Journal of Law, Economics, and Organization*, and *The Journal of Legal Studies*. He has also published papers in *The Stanford Law Review*, *The Columbia Law Review*, and *The University of Chicago Law Review*. His four sons think he is the funniest person in the world, while his wife will only commit to him being in the top five.



ANDREW R. KLOSTER

Deputy Director, C. Boyden Gray Center for the Study of the Administrative State

Andrew Kloster is deputy director of the C. Boyden Gray Center for the Study of the Administrative State at Antonin Scalia Law School. Prior to joining the Gray Center, Andrew was the legal adviser to the general counsel at the US Department of Transportation. In that capacity he helped oversee the regulatory reform efforts and day-to-day legal operations of a major federal agency with hundreds of attorneys. Earlier in his career he was a law clerk to the Honorable Daniel A. Manion on the US Court of Appeals for the Seventh Circuit, and a legal fellow at the Heritage Foundation, where he focused on constitutional and administrative law issues.



KENNETH LEHN

Samuel A. McCullough Professor of Finance, University of Pittsburgh Katz Graduate School of Business

Kenneth Lehn is the Samuel A. McCullough Professor of Finance in the Katz Graduate School of Business, where his teaching focuses on the topic of business valuation. Professor Lehn also is an adjunct professor of law in the School of Law at the University of Pittsburgh. He joined the faculty at the University of Pittsburgh in 1991 after serving as chief economist of the US Securities and Exchange Commission for four years. Professor Lehn also has taught at Washington University, UCLA, Miami University, and the Georgetown University Law Center. Professor Lehn has published papers in leading academic journals, including the *Journal of Financial Economics*, *Journal of Finance*, *Journal of Political Economy*, *American Economic Review*, and *The Journal of Law and Economics*. Professor Lehn is a Senior Consultant at Compass Lexecon. He has been retained as an expert witness by counsel for numerous parties, including the SEC, Department of Justice, Marriott, Procter & Gamble, Walt Disney, and Apple, to opine on various issues.



BILL PEDUTO

Mayor of Pittsburgh, Pennsylvania

William Peduto was elected to the office of Mayor of the City of Pittsburgh in the General Election on November 5, 2013, and took office as Pittsburgh's 60th Mayor in January of 2014. Prior to taking office, he worked for nineteen years on the Pittsburgh City Council; seven years as a staffer then twelve years as a member of council. As a councilman, Bill Peduto wrote the most comprehensive package of government reform legislation in Pittsburgh's history. He strengthened the ethics code, created the city's first campaign finance limits, established lobbyist disclosure and lobbyist registration, and ended no-bid contracts. Mayor Peduto continues to champion the protection and enhancement of Pittsburgh's new reputation; maintaining fiscal responsibility, establishing community based development plans, embracing innovative solutions, and becoming a leader in green initiatives.



BRYANT WALKER SMITH

Assistant Professor, University of South Carolina School of Law

Bryant Walker Smith is an associate professor in the School of Law and (by courtesy) the School of Engineering at the University of South Carolina. He is also an affiliate scholar at the Center for Internet and Society at Stanford Law School and co-director of the University of Michigan Project on Law and Mobility. He previously led the Emerging Technology Law Committee of the Transportation Research Board of the National Academies and served on the US Department of Transportation's Advisory Committee on Automation in Transportation. Trained as a lawyer and an engineer, Bryant advises cities, states, countries, and the United Nations on emerging transport technologies. He coauthored the globally-influential levels of driving automation, drafted the leading model law for automated driving in the US, and taught the first legal courses dedicated to automated driving, hyperloops, and flying taxis. His students have developed best practices for regulating scooters, and he is writing on what it means to be a trustworthy company.



DEBRA TODD

Supreme Court of Pennsylvania

Justice Todd earned her BA with honors from Chatham College, her JD from the University of Pittsburgh School of Law, and her LLM from the University of Virginia School of Law. She was elected to the Supreme Court of Pennsylvania in 2007. Previously, Justice Todd served as a litigation attorney for US Steel Corporation from 1982 to 1987, and was in private practice from 1987 to 1999. Justice Todd also served as a Pennsylvania superior court judge from 1999 to 2007. Justice Todd is a member of numerous associations and organizations, and has been awarded numerous honors including the Women's Bar Association of Western Pennsylvania's Susan B. Anthony Award for promoting equality in the legal profession, and the Pitt Law Women's Association Marjorie Matson Woman of the Year Award.



ANDREW W. TORRANCE

Paul E. Wilson Distinguished Professor of Law, University of Kansas School of Law

Andrew W. Torrance is the Paul E. Wilson Distinguished Professor of Law at the University of Kansas School of Law, and a winner of a 2015 University Scholarly Achievement Award at the University of Kansas. He received his PhD in Biology from Harvard University in 1997, JD from Harvard Law School in 2000, and bachelor of science from Queen's University (Canada) in 1991. Prior to his arrival at KU, Torrance taught at Harvard University as Eliot House Resident Tutor in Biology and Law from 1993 to 2000, Tutor in Biology from 1999 to 2005, and Hrdy Visiting Professor of Conservation Biology in 2003. In 2008, Torrance served as a policy advisor to presidential candidate Barack H. Obama on his Technology, Media, and Telecommunications Committee. Torrance teaches and conducts research in patent law, intellectual property, innovation, food and drug regulation, biotechnology law, biodiversity law, biolaw, and empirical, experimental, and big data approaches to the law. Specific research foci include open, user, and collaborative innovation, design, and legal issues surrounding genes, biotechnology, genetically-modified organisms, synthetic biology, conservation biology, and de-extinction.



CHRISTINE WARD

Allegheny County Court of Common Pleas, Pennsylvania

The Honorable Christine A. Ward was elected to a ten-year term on the Court of Common Pleas of Allegheny County in November of 2003 following an appointment to a vacancy by Governor Ed Rendell. She served in the Family Division of the court for four years until June of 2007. Currently, Judge Ward is one of two judges sitting in the court's Center for Commerce and Complex Litigation. She is the president of the American College of Business Court Judges and was selected to be a business court representative to the ABA Business Law Section. Judge Ward is a member of the Business Law Section's M&A Litigation Joint Task Force as well as the Business and Corporation Litigation Committee and the Judges' Initiative Committee. She serves on the statewide Judicial Ethics Committee for the Pennsylvania Conference of State Trial Court Judges and is the current chair of the civil judges' section.



CHRISTOPHER A. WRIGHT

Founder and CEO, Liberty Oilfield Services Inc.

Chris Wright, chief executive officer and chairman of the board of Liberty Oilfield Services, is an industry veteran with more than thirty years of experience. Chris also serves as executive chairman of Liberty Resources, a privately-held E&P company, and was the chief executive officer from its formation in September 2010 until March 2017. From 2000 to 2006, Chris served as chairman of Stroud Energy, an unconventional natural gas producer. In 1992, Chris founded Pinnacle Technologies, a company that revolutionized unconventional resources plays with the development and commercialization of tiltmeter and micro-seismic fracture mapping technology. Chris served as CEO of Pinnacle Technologies from 1992 to 2006. Chris is also a director of TAS Energy Inc., Liberty Resources, and Kerogen Exploration, Inc. Chris Wright has a BS in Mechanical Engineering from the Massachusetts Institute of Technology and conducted graduate work in electrical engineering at both the University of California, Berkeley and MIT.

**CHRISTOPHER P. YATES***Kent County Circuit Court*

Judge Christopher P. Yates was appointed to the Kent County Circuit Court on April 22, 2008. He has served in both the Criminal/Civil Division and the Family Division of that court. On March 1, 2012, he was assigned to run the specialized business docket for the court. Judge Yates received a BA from Kalamazoo College in 1983 and a JD and MBA from the University of Illinois in 1987. As an attorney, Judge Yates served as a law clerk to Chief Judge James P. Churchill of the US District Court for the Eastern District of Michigan and to Judge Ralph B. Guy, Jr., of the US Court of Appeals for the Sixth Circuit. Judge Yates also has worked as a federal prosecutor in Detroit, as an attorney-advisor in the Office of Legal Counsel at the US Department of Justice in Washington, DC, as Chief Federal Public Defender for the Western District of Michigan, and as a partner in two private law firms.