

ALLIANCE OF CALIFORNIA JUDGES &
LAW & ECONOMICS CENTER, JUDICIAL EDUCATION PROGRAM

Symposium on the Law & Economics of Consumer Protection

Friday, November 8 – Sunday, November 10, 2019 | Dana Point, CA



GEORGE MASON UNIVERSITY ANTONIN SCALIA LAW SCHOOL

**LAW &
ECONOMICS
CENTER**

FRIDAY, NOVEMBER 8

6:00 - 7:00 pm

Registration & Reception, *Lantern Bay Foyer 2 Vue Lawn*

7:00 - 9:00 pm

Dinner, *Vue Lawn*

Welcome

John S. Adams, Judge, Superior Court of Orange County; Director and Coordinator of Judicial Education, Alliance of California Judges

Todd Zywicki, George Mason University Foundation Professor of Law, George Mason University Antonin Scalia Law School

Keynote Address: Justice for All - Social Justice Is Not Legal Justice

Antonio F. (Tony) Dias, Partner, Jones Day

SATURDAY, NOVEMBER 9

All sessions held in Dana VI - VIII

7:00 - 7:50 am

Breakfast, *Dana V*

8:00 - 9:15 am

Lecture 1: Balancing the Three Legs of the Consumer Protection Stool: Competitive Markets, Common Law Litigation, and Regulation
Todd J. Zywicki

Reading Assignment:

J. Howard Beales III and Timothy J. Muris, "FTC Consumer Protection at 100: 1970s Redux or Protecting Markets to Protect Consumers?" *George Washington Law Review*, Vol. 83, No. 6 (2015).

Todd J. Zywicki, "Market-Reinforcing versus Market-Replacing Consumer Finance Regulation," Ch. 12 in *Reframing Financial Regulation: Enhancing Stability and Protecting Consumers*, Hester Peirce and Benjamin Klutsey, eds., Mercatus Center at George Mason University, 2016.

9:30 - 10:45 am

Lecture 2: The Law & Economics of Advertising, Promotion, and Commercial Speech

James C. Cooper, Associate Professor of Law, George Mason University Antonin Scalia Law School

Reading Assignment:

Howard Beales, Richard Craswell, and Steven C. Salop, "The Efficient Regulation of Consumer Information," *Journal of Law & Economics*, Vol. 24, No. 3 (1981).

11:00 am - 12:15 pm

Panel 1: Retroactive Liability, Due Process, and the First Amendment: Promotion of Lawful Products in the Wake of Sherwin-Williams and ConAgra

Mary E. Alexander, President, Mary Alexander & Associates, PC
Mark Ankcorn, Deputy City Attorney for San Diego, State of California
 Department of Justice

Fred J. Hiestand, General Counsel, Civil Justice Association of California
Donald Kochan, Parker S. Kennedy Professor in Law, Chapman University Dale E. Fowler School of Law

Moderator: Todd Zywicki

Reading Assignment:

Petition for a Writ of Certiorari, *ConAgra Grocery Products Company v. California*, cert. denied, cert. denied (U.S. Oct. 15, 2018) (No. 18-84).

Brief in Opposition, *ConAgra Grocery Products Company v. California*, cert. denied, cert. denied (U.S. Oct. 15, 2018) (No. 18-84). (Read pp. 6-37)

12:15 - 2:00 pm

Lunch and Luncheon Debate: The Evolution of California's Lemon Law

Spencer P. Hugret, Gordon & Rees
Hallen D. Rosner, Partner, Rosner, Barry & Babbitt LLP

Reading Assignment:

George A. Akerlof, "The Market for 'Lemons': Quality Uncertainty and the Market Mechanism," *Quarterly Journal of Economics*, Vol. 84, No. 3. (1970).

Daniel B. Klein, "Trust for Hire: Voluntary Remedies for Quality and Safety," in *Reputation: Studies in the Voluntary Elicitation of Good Conduct*, Daniel B. Klein ed., University of Michigan Press (1997).

2:15 - 3:30 pm

Lecture 3: From the Common Law to No-Harm Class Actions Under State Consumer Protection Acts

Eric A. Helland, William F. Podlich Professor of Economics, Claremont McKenna College

Reading Assignment:

Henry N. Butler and Joshua D. Wright, "Are State Consumer Protection Acts Really Little-FTC Acts?," *Florida Law Review*, Vol. 63, No. 1 (2011).

James C. Cooper and Joanna Shepherd, "State Unfair and Deceptive Trade Practices Laws: An Economic and Empirical Analysis," *Antitrust Law Journal*, Vol. 81, No. 3 (2018).

Carolyn L. Carter, (*Consumer Protection in the States: A 50-State Report on Unfair and Deceptive Acts and Practices Statutes*) National Consumer Law Center, Inc. (Feb. 2018).

3:45 - 5:00 pm

Panel 2: Federalism and the Preemption of State Public Nuisance Actions

Ashley Parrish, Partner, King & Spalding LLP

Robert Gasaway, James L. Buckley Distinguished Fellow, Chapman University
Smith Center for Political Economy and Philosophy

Daniel P Mensher, Attorney, Keller Rohrback LLP

David Muraskin, Senior Attorney, Public Justice

Moderator: Donald Kochan

Reading Assignment:

Michael S. Greve, Jonathan Klick, Michael Petrino, and J.P. Sevilla, "Preemption in the Rehnquist and Roberts Courts: An Empirical Analysis," *Supreme Court Economic Review*, Vol. 23, No. 1 (2015).

Keith N. Hylton, "The Economics of Public Nuisance Law and the New Enforcement Actions," *Supreme Court Economic Review* Vol.18, No. 1 (2010).

5:00 pm

Adjourn

5:30 - 8:00 pm

Reception & Dinner, *Laguna Terrace & Laguna Brick*

After Dinner Address:

Edward R. Royce, Member, US House of Representatives (1993 to 2019)

SUNDAY, NOVEMBER 10

All sessions held in Dana VI - VIII

7:00 - 7:50 am

Breakfast, Dana VI

8:00 - 12:00 pm

Alliance of California Judges Annual Meeting

12:00 pm

Adjourn



JOHN S. ADAMS

Orange County Superior Court

Director and Coordinator of Judicial Education, Alliance of California Judges

Judge John Adams grew up in Rochester, Minnesota, graduating from Mayo High School in 1970. He attended Macalester College in St. Paul, Minnesota. He was elected to Phi Beta Kappa in 1973 and received a BA in Political Science in 1974. Following graduation from college, he attended Stanford Law School in Palo Alto, California. After graduation from law school in 1977, he moved to Orange County, California, where he specialized in environmental law, representing high tech firms focused on emissions testing. During his legal career, he worked extensively with the California Air Resources Board and the South Coast Air Quality Management District to improve air quality in Southern California. In 2002, he won election to the Orange County bench. Now in his 17th year, he presides over a trial calendar in Newport Beach. Judge Adams is married to Susan and has a grown daughter, Brooke, a clinical psychologist who lives and works in San Francisco.



MARY E. ALEXANDER

President, Mary Alexander & Associates, PC

Mary E. Alexander is the founder of Mary Alexander & Associates, PC. Ms. Alexander focuses on plaintiff's personal injury litigation from the firm's office in San Francisco, California. Representative cases include motor vehicle accidents, construction injuries, maritime claims, premises liability, medical malpractice, defective products, and nursing home neglect. Ms. Alexander received a BA from the University of Iowa, a MPH from the University of California, Berkeley, and a JD from the Santa Clara University School of Law. Ms. Alexander is actively involved in a number of different professional organizations. She is the former president of the American Association for Justice. Additionally, she is a long-time member of the Bar Association of San Francisco and has served on that group's board of directors. Ms. Alexander is also a past president of Consumer Attorneys of California and has been a member of its board of governors. She continues to sit on the board of governors of the Western Trial Lawyers Association.



MARK ANKCORN

Deputy City Attorney for San Diego, State of California Department of Justice

Mark Ankcorn is the Chief Deputy City Attorney for the City of San Diego, and leads the Affirmative Civil Enforcement Unit, which pursues litigation on behalf of the People of the State of California, including consumer privacy, predatory lending, environmental harm, and unsafe and dangerous products. He graduated from the University of Redlands with honors, and from McGeorge Law School, where he won the school's moot court competition and was managing editor of the law review. Before joining the City Attorney's office in early 2018, Mark specialized in complex litigation, including class actions involving violations of federal and state consumer protection laws. He has served as first chair trial attorney in over 75 bench and jury trials, and has been the attorney of record on more than 40 appeals and writes in state and federal courts across the country. He is admitted to practice in California and Florida, as well as nine federal district courts and two federal courts of appeal.



JAMES C. COOPER, JD, PHD

*Associate Professor of Law and Director, Program on Economics & Privacy
George Mason University Antonin Scalia Law School*

Associate Professor of Law James C. Cooper brings over a decade of public and private sector experience to his research and teaching. He served as Deputy and Acting Director of the Federal Trade Commission's Office of Policy Planning, Advisor to Federal Trade Commissioner William Kovacic, and an associate in the antitrust group of Crowell and Moring, LLP. His research on vertical restraints, price discrimination, behavioral economics and antitrust, and privacy policy have appeared in top journals and are widely cited. Professor Cooper has a BA from the University of South Carolina, received his PhD in economics from Emory University, and his law degree, *magna cum laude*, from the Antonin Scalia Law School, George Mason University, where he was a Levy Fellow and a member of the *George Mason Law Review*.



ANTONIO (TONY) F. DIAS

Partner, Jones Day

Tony Dias creates and implements strategic legal responses to high-profile and novel legal matters involving financial institutions, manufacturing, energy, telecommunications, consumer products and services, corporate conduct, and educational institutions. He defends companies facing federal government and state attorney general investigations, federal and state legislative investigations and hearings, regulatory challenges, and complex litigation. Among the numerous federal and state attorney general multistate investigations and actions Tony has handled, he served as lead counsel in responding to concurrent investigations by the Department of Justice, United States Senate, and a multi-state group of attorneys general concerning consumer facing conduct and internal corporate compliance with federal and state regulations. Tony holds leadership positions in national and local organizations promoting better public policy and improving children's health and education. He is a member of the Board of Directors of the National Organization of African Americans in Housing, and a member of the US Conference of Mayors Business Council.



ROBERT GASAWAY

James L. Buckley Distinguished Fellow

Chapman University Smith Center for Political Economy and Philosophy

Robert Gasaway is the James L. Buckley Distinguished Fellow at the Chapman University Smith Center for Political Economy and Philosophy. Gasaway is also a lecturer in law at the University of Chicago Law School. He was formerly a Partner at Kirkland & Ellis LLP in their Washington office. He has represented and advised corporate clients on a wide variety of matters before federal courts, state courts, federal administrative agencies, and federal and state legislative bodies. Mr. Gasaway focuses his practice on appellate litigation, representing clients in the preparation of integrated, multiforum trial and appellate strategies in high-risk sets of related cases. Mr. Gasaway received his JD at the University of Chicago and his BA at Northwestern University.



FRED J. HIESTAND

General Counsel, Civil Justice Association of California

Mr. Hiestand is a consultant and advocate for those seeking to change the law or its interpretation and application. He has represented clients in the legal, legislative and regulatory arenas on issues concerning health care, unfair competition, personal injury, professional liability and product liability. Mr. Hiestand heads his own law firm and has consulted and advised private sector and government representatives, including former Governor Jerry Brown, Congressman Henry Waxman and Sacramento Mayor Kevin Johnson. As CJAC's General Counsel, Mr. Hiestand manages the Appellate Program. He participates in oral arguments before the state Supreme Court in cases where CJAC has filed an amicus brief and is consulted by appellate attorneys preparing cases for argument. Mr. Hiestand is a graduate of the University of California Law School, Berkeley. He has written briefs as counsel in hundreds of reported federal and state appellate cases, including oral argument many times before the California Supreme Court.



ERIC A. HELLAND

William F. Podlich Professor of Economics, Claremont McKenna College

Eric Helland is the William F. Podlich Professor of Economics at Claremont McKenna College and is associate director for research and senior economist at the RAND Institute for Civil Justice at the RAND Corporation. Professor Helland received his PhD in economics from Washington University and is the recipient of the Robert H. Durr Award from the Midwest Political Science Association and the Dean's Teaching Award from Ball State University. He has been senior economist at the President's Council of Economic Advisors and a visiting professor of economics at the Stigler Center for the Study of the Economy and the State at The University of Chicago. His articles have appeared in such scholarly journals as the Journal of Environmental Economics and Management, Journal of Regulatory Economics, Journal of Legal Studies, American Law and Economics Review, Land Economics, Journal of Law, Economics and Organization, Contemporary Economic Policy, and Journal of Law and Economics.



SPENCER P. HUGRET

Partner, Gordon & Rees

Spencer P. Hugret is a partner in Gordon & Rees' San Francisco and Los Angeles offices. Mr. Hugret is chair of the firm's Automotive Litigation & Autonomous Vehicles practice group and is the co-chair of the San Francisco Tort and Product Liability practice group. He is also a member of the firm's Aviation, Commercial Litigation, Securities Litigation, and Business Transactions Practice Groups. His multifaceted practice focuses on complex litigation involving products liability in a number of industries, including the automotive industry, aviation accidents, commercial litigation, securities litigation, antitrust litigation, consumer warranty and consumer fraud-based litigation. In such litigation matters, Mr. Hugret is also regional trial counsel for two of the "Big Three" automotive manufacturers. Mr. Hugret's clients include numerous Fortune 100 companies in industries such as automotive, consumer products and aviation, as well as in the financial sector.



DONALD KOCHAN

Parker S. Kennedy Professor in Law, Chapman University Dale E. Fowler School of Law

Professor Kochan's scholarship focuses on areas of property law, constitutional law, administrative law, natural resources and environmental law, law and economics, and jurisprudence, among others. His scholarship has been cited in dozens of books and more than 400 published law review articles, and his articles have been downloaded more than 15,000 times from SSRN and BePress. He has published more than 40 scholarly articles and essays in well-respected law journals, including in the *Cardozo Law Review*, *BYU Law Review*, *Florida State University Law Review*, *University of Richmond Law Review*, *Georgetown Journal of Legal Ethics*, *Michigan Journal of Environmental & Administrative Law*, *Berkeley Journal of International Law*, and *Virginia Journal of Social Policy & Law*, to name a few. Professor Kochan has testified before the US Senate Committee on Agriculture, Nutrition and Forestry and before a special federal lands committee of the State of Idaho Legislature.



DANIEL MENSHER

Attorney, Keller Rohrback LLP

Daniel Mensher practices in Keller Rohrback's nationally recognized Complex Litigation Group with a focus on complex environmental and consumer protection litigation. He enjoys collaborating with his colleagues and clients to identify problems and find creative, convincing solutions. Dan has litigated important environmental and consumer cases across the country in federal and state court. He's part of the Keller Rohrback team representing more than 50 counties, cities, tribes, and insurance pools in the fight to hold drug manufacturers and other entities accountable for the opioid crisis. Before joining the firm, Dan was an environmental law professor at Lewis & Clark Law School in Portland, Oregon, where he also litigated cases involving toxic waste, water pollution, and natural resource management. Dan uses his passion and experience to protect our environment, and the communities that rely on clean air, water, and products.



DAVID MURASKIN

Senior Attorney, Public Justice

David S. Muraskin is a Food Project Senior Attorney with Public Justice in Washington, DC. He focuses on impact litigation to promote sustainable alternatives to the industrial animal agriculture system. His docket consists of constitutional, consumer, worker, and environmental cases. Mr. Muraskin is lead counsel in two of the "Ag-gag" cases—a series of challenges to state laws that penalize investigations of factory farming. In that role, he secured the first appellate court decision holding that those investigations are protected by the First Amendment, and obtained a judgment striking down portions of the Wyoming Ag-Gag statutes. Mr. Muraskin also represents ranchers, farmers, and consumers who are being exploited by corporate consolidation in the food industry. Mr. Muraskin graduated from Stanford Law School, has a master's in Forced Migration from Oxford University, St. Antony's College, and received a BA from the University of Chicago.



ASHLEY PARRISH

Partner, King & Spalding, LLP

Ashley C. Parrish is a partner in the Washington, DC office of King & Spalding LLP, and one of three partners that lead the firm's national appellate practice group. He focuses his practice on appellate, administrative, and constitutional law; on the preparation of high-risk cases for eventual appeal; and on strategic, complex litigation. In 2014, he was identified by Reuters as one of "the top handful of lawyers in America" who have had remarkable success before the US Supreme Court. His group was recognized by Legal 500 as the Supreme Court and Appellate Practice group of the year for 2015, and by Law 360 as the appellate practice of the year in 2014. Mr. Parrish is the co-author of several articles, including "Administrative Law Without Congress," in the *George Mason Law Review* (Spring 2015); "In Praise of Erie—And Its Eventual Demise," in the *Journal of Law, Economics & Policy* (Fall 2013); and "Structural Constitutional Principles and Rights Reconciliation," in *Citizenship in America and Europe: Beyond the Nation-State?* (AEI Press, 2009).



HALLEN D. ROSNER

Partner, Rosner, Barry & Babbitt LLP

Hallen D. Rosner received dual bachelor's degrees from the University of California at Berkeley and obtained his JD from the University of San Diego Law School in 1983. After law school, Mr. Rosner continued to handle auto fraud and California Lemon Law matters, and even started his own consumer protection firm. Since then Mr. Rosner has handled over one thousand California Lemon Law and auto fraud cases resulting in many prominent published opinions. In addition, Mr. Rosner has litigated to trial and resolved numerous California consumer class actions. Mr. Rosner has taught Consumer Law at the University of San Diego, School of Law, served as a California Lemon Law conference moderator, given numerous presentations regarding consumer rights and warranty law, appeared as an expert before a California State Senate subcommittee, and has been interviewed by *Time Magazine* on vehicle issues. In 2008, Mr. Rosner testified before Congress on behalf of the National Association of Consumer Attorneys.



EDWARD R. ROYCE

Brownstein Hyatt Farber Schreck

Former US Representative from California's 39th Congressional District

Ed Royce served in the House of Representatives for 26 years, representing California's 39th district and serving as chair of the House Foreign Affairs Committee from 2013 to 2019. He now uses his foreign affairs acumen and legislative insight to advise international companies doing business domestically and guide multinational corporations looking to expand overseas. Ed's leadership as chair of the House Foreign Affairs Committee advanced human rights, free and fair elections, economic development, women's empowerment, and security around the globe. Ed championed a number of critical bills over the span of his career. He authored the END Wildlife Trafficking Act, which combats the illegal poaching and trafficking of imperiled species. He co-authored the Electrify Africa Act, which provides access to power for life-saving medical treatments and modern technologies. During his last year in office, Ed shepherded the BUILD Act through Congress, which enhances US programs that support expansion and job creation in developing economies in Africa and around the world.



TODD J. ZYWICKI

George Mason University Foundation Professor of Law

George Mason University Antonin Scalia Law School

Professor Todd J. Zywicki is a George Mason University Foundation Professor of Law at George Mason University School of Law. In 2009, Professor Zywicki was honored as the recipient of the Institute for Humane Studies 2009 Charles G. Koch Outstanding IHS Alum Award. Since 2006 he has served as co-editor of the Supreme Court Economic Review. From 2003-2004, Professor Zywicki served as the director of the Office of Policy Planning at the Federal Trade Commission. He teaches in the area of bankruptcy, contracts, commercial law, business associations, law and economics, and public choice and the law. He has also taught at Vanderbilt University Law School, Georgetown University Law Center, Boston College Law School, and Mississippi College School of Law.