

JUDICIAL EDUCATION PROGRAM

Judicial Symposium on Scientific Methodology and the Admissibility of Expert Testimony

Sunday, March 7 – Wednesday, March 10, 2021 | DESTIN, FL

GEORGE MASON UNIVERSITY ANTONIN SCALIA LAW SCHOOL

LAW &
ECONOMICS
CENTER

SUNDAY, MARCH 7

1:00 - 6:00 pm

Registration, *Living Room*

5:30 - 7:00 pm

Welcome Reception, *Grand Lawn, Sunset Terrace, and Pool Deck*
(*Guests welcome*)

MONDAY, MARCH 8

All classes held in the Crystal Ballroom and on the Grand Lawn

6:30 - 7:50 am

Green Breakfast, *Primrose Restaurant*

6:30 - 7:50 am

Gold Breakfast, *Grand Lawn*

8:00 - 9:10 am

Welcoming Remarks

Donald J. Kochan, Professor of Law
Deputy Executive Director, Law & Economics Center
George Mason University Antonin Scalia Law School

Lecture I: An Introduction to the Scientific Method

D. Bruce Johnsen, Professor of Law
George Mason University Antonin Scalia Law School

Reading Assignment:

Saks, Michael J., et. al. "Scientific Method: The Logic of Drawing Inferences From Empirical Evidence." in *Medicine, Toxicology & Epidemiology*. ed. David L. Faigman, 313-353. Vol. 3 of *Modern Scientific Evidence*. Eagan, MN: West Publishing Group, 2002.

9:30 - 10:40 am

Lecture II: The Nature of Expert Evidence and the Incomplete Nature of Science

Gary E. Marchant, Regents Professor of Law
Director of the Center for Law, Science and Innovation
Arizona State University Sandra Day O'Connor College of Law

Reading Assignment:

Faigman, David L. "A Preliminary Exploration of the Problem of Reasoning from General Scientific Data to Individualized Legal Decision-Making." *Brooklyn Law Review* 75, 1115 (2010): 1-14.

Faigman, David L. and Jennifer Mnookin. "The Curious Case of *Wendell v. GlaxoSmithKline LLC*." *Seton Hall Law Review* 48, rev. 607 (2018): 1-18.

11:00 am - 12:15 pm

Panel I: The Challenge of Recognizing Good Science in the Courtroom

David E. Bernstein, University Professor and Executive Director, Liberty and Law Center, George Mason University Antonin Scalia Law School

Jeffrey S. Parker, Former Professor of Law

George Mason University Antonin Scalia Law School

Thomas J. Sheehan, Partner, Shook, Hardy & Bacon LLP

Moderator: Erin O'Hara O'Connor, Dean and McKenzie Professor of Law
Florida State University College of Law

Reading Assignment:

Diamond, Shari Seidman and Richard O. Lempert. "Introduction: Science and the Legal System." *Daedalus, the Journal of the American Academy of Arts & Sciences* (September 24, 2018): 5-14.

Additional Resources:

Baker, Monya. "Is There a Reproducibility Crisis?" *Nature* 533 (2016): 452-454.

Whitney, Melissa. "How to Improve Technical Expertise for Judges in AI-related Litigation." *Brookings Report*, November 7, 2019.

Saks, Michael J. and Barbara A. Spellman. *The Psychological Foundations of Evidence Law*, 202-211. New York: New York University Press, 2016.

12:15 - 2:00 pm

Luncheon and Panel II: The Judge As Gatekeeper: The Proper Role of Judges in Evaluating Expert Testimony

Cecilia M. Bidwell, Of Counsel, Shook, Hardy & Bacon LLP

D. Bruce Johnsen

Justin T. Sevier, Charles W. Ehrhardt Professor of Litigation
Florida State University College of Law

Moderator: Jeffrey S. Parker

Reading Assignment:

Faigman, David L. "Is Science Different for Lawyers?" *Science*, vol. 297 (July 19, 2002): 339-340.

Faigman, David L. "Bringing Scientific Peer Review to Scientific Evidence." *Toxics Law Reporter* 30, 205 (2015): 1-7.

Buckholtz, Joshua W. and David L. Faigman. "Promises, Promises for Neuroscience and Law." *Current Biology* 24, no. 18: R861-867.

Diamond, Shari Seidman. "How Jurors Deal with Expert Testimony and How Judges Can Help." *Journal of Law and Policy* 16, 47 (2007): 47-67.

Parker, Jeffrey S. "Daubert's Debut: The Supreme Court, the Economics of Scientific Evidence, and the Adversarial System." *Supreme Court Economic Review* 4, 1 (1995): 1-56.

2:00 pm

Program Adjourns for Day

TUESDAY, MARCH 9

All classes held in the Crystal Ballroom and on the Grand Lawn

6:30 - 7:50 am

Green Breakfast, Primrose Restaurant

6:30 - 7:50 am

Gold Breakfast, Grand Lawn

8:00 - 9:10 am

Lecture III: An Introduction to Statistics... Or, How Not to Lie with Numbers

Jonathan Klick, Professor of Law
University of Pennsylvania Carey Law School

Reading Assignment:

Kaye, David H. and David A. Freedman. "Reference Guide on Statistics." *Reference Manual on Scientific Evidence*, 3rd ed. Federal Judicial Center, 211-302. Washington, DC: National Academies Press, 2011.

9:30 - 10:40 am

Lecture IV: Correlation versus Causation

Jonathan Klick

Reading Assignment:

Rubinfeld, Daniel L. "Reference Guide on Multiple Regression." *Reference Manual on Scientific Evidence*, 3rd ed. Federal Judicial Center, 303-357. Washington, DC: National Academies Press, 2011.

11:00 am - 12:15 pm

Lecture V: Understanding Toxicology and Epidemiology

Charles R. Santerre, Professor of Food Toxicology and Interim Head, School of Health Sciences, Purdue University

12:15 - 2:00 pm

Luncheon and Panel III: Regulation of Emerging Risks - Precautionary Principle or Risk v. Risk

Elissa Philip Gentry, Assistant Professor of Law
Florida State University College of Law

Gary E. Marchant
Charles R. Santerre

Moderator: Ryan T. Holte, Judge, US Court of Federal Claims

Reading Assignment:

Marchant, Gary E. "From General Policy to Legal Rule: Aspirations and Limitations of the Precautionary Principle." *Environmental Health Perspectives* 111, no. 14 (2003): 1799-1803.

Dudley, Susan E., et. al. "Dynamic Benefit-Cost Analysis for Uncertain Futures." *Journal of Benefit Cost Analysis* 10, 2 (2019): 206-225.

Viscusi, W. Kip and Richard J. Zeckhauser. "Regulating Ambiguous Risks: The Less than Rational Regulation of Pharmaceuticals." *Journal of Legal Studies* 44 (2015): S387-422.

2:00 pm

Program Adjourns for Day

WEDNESDAY, MARCH 10

All classes held in the Crystal Ballroom and on the Grand Lawn

6:30 - 7:50 am

Green Breakfast, *Primrose Restaurant*

6:30 - 7:50 am

Gold Breakfast, *Grand Lawn*

8:00 - 9:10 am

Panel IV: Case Studies I: Science in the Baby Powder and PFAS Cases

Leslie Mitchell Kroeger, Partner, Cohen Milstein Sellers & Toll PLLC

Timothy M. O'Brien, Shareholder, Levin, Papantonio Rafferty

James Stengel, Partner, Orrick, Herrington & Sutcliffe LLP

Moderator: Joseph Sanders, A.A. White Professor of Law
University of Houston Law Center

9:30 - 10:40 am

Panel V: Case Studies II: Science in the Accutane and Roundup Cases

Brandon L. Bogle, Shareholder, Levin, Papantonio Rafferty

Adrienne Franco Busby, Partner, Faegre Drinker Biddle & Reath LLP

Cynthia L. Garber, Pharmaceutical and Medical Products Litigation Attorney,
OnderLaw, LLC

James Stengel

Craig A. Woods, Partner, Mayer Brown

Moderator: Joseph Sanders

11:00 am - 12:15 pm

Panel VI: The Politicization of Science and the Scientization of Policy

James R. Copland, Senior Fellow and Director of Legal Policy, Manhattan Institute

Blake Hudson, Samuel T. Dell Professor and Co-Director, Environmental and Land
Use Law Program, University of Florida Levin College of Law

Gary E. Marchant

AGENDA

Moderator: J. Michelle Childs, District Judge, US District Court for the District of South Carolina

Reading Assignment:

Dudley, Susan E. and Marcus Peacock. "Improving Regulatory Science: A Case Study of the National Ambient Air Quality Standards." *Supreme Court Economic Review* 24, 49 (2016): 49-99.

12:30 pm

Program Adjourns