

GEORGE MASON UNIVERSITY ANTONIN SCALIA LAW SCHOOL

**LAW &
ECONOMICS
CENTER**

JUDICIAL EDUCATION PROGRAM

Fifteenth Annual Judicial Symposium on Civil Justice Issues

Sunday, November 14 - Wednesday, November 17, 2021
Charleston, South Carolina



AGENDA

SUNDAY, NOVEMBER 14

4:00 - 6:00 pm

Registration, *Second Floor West*

6:30 pm

Welcome Reception & Dinner, *Riviera Ballroom*
(*Guests Welcome*)

MONDAY, NOVEMBER 15

All classes to be held in Ballroom: Magnolia/Willow

7:00 - 7:50 am

Breakfast, *Ballroom: Cypress/Dogwood/Live Oak*
(*Guests welcome*)

8:00 - 9:15 am

Panel 1: Emerging Issues in Civil Justice

Mark A. Behrens, Co-Chair, Public Policy Practice Group, Shook, Hardy & Bacon L.L.P.

Nate D. Finch, Member, Motley Rice LLC

Moderator: Sabrina S. McKenna, Justice, Hawaii Supreme Court

Reading Assignment:

"Civil Justice Review of the Supreme Court's 2020-2021 Term." *Law & Economics Center*, July 23, 2021. Vimeo video. <https://vimeo.com/578611815>.

"Civil Justice Preview of the Supreme Court's 2021-2022 Term." *Law & Economics Center*, September 24, 2021. Vimeo video. <https://vimeo.com/613945533>.

9:30 - 10:45 am

Panel 2: Scientific Methodology and the Admissibility of Expert Testimony

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

Nate D. Finch

Carla Burke Pickrel, Shareholder, Attorney at Law, Baron & Budd, P.C.

Thomas J. Sheehan, Partner, Shook, Hardy & Bacon L.L.P.

Moderator: Todd W. Eddins, Justice, Supreme Court of Hawaii

Reading Assignment:

Bernstein, David E. "Expert Witnesses, Adversarial Bias, and the (Partial) Failure of the Daubert Revolution." *Iowa Law Review* (Forthcoming).

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):

11:00 am - 12:15 pm

Panel 3: Updates on Amendments to Rule 702: Admissibility of Expert Testimony

Eric G. Lasker, Partner, Hollingsworth LLP

Lee Mickus, Partner, Evans Fears & Schuttert LLP

Michael J. Warshauer, Attorney, Warshauer Law Group

David J. Wool, Partner, Andrus Wagstaff, PC

Moderator: Howard C. Nielson Jr., Judge, US District Court for the District of Utah

Reading Assignment:

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

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

Jackson, Kateland R. and Andrew J. Trask. "Federal Rule of Evidence 702: A One-Year Review and Study of Decisions in 2020." *Lawyers for Civil Justice* (September 30, 2021).

Committee on Rules of Practice and Procedure. *Preliminary Draft: Proposed Amendments to the Federal Rules of Appellate, Bankruptcy, Civil, and Criminal Procedure, and the Federal Rules of Evidence*, (August 2021): 1-4, 293-312.

Bernstein, David E. and Eric G. Lasker. "Defending Daubert: It's Time to Amend Federal Rule of Evidence 702." *William & Mary Law Review* 57, 1 (2015).

12:15 - 2:00 pm

Luncheon Panel: COVID Vaccines, Operation Warp Speed, and the Marvels of the Free Market, Ballroom: Cypress/Dogwood/Live Oak

Kenneth I. Kaitin, Professor and Senior Fellow, Tufts Center for the Study of Drug Development, Tufts University School of Medicine

John A. Murphy III, Chief Policy Officer and Deputy Counsel, Healthcare, Biotechnology Innovation Organization

Reading Assignment:

Herman, Arthur. "Why Operation Warp Speed Worked." *Wall Street Journal*, February 5, 2021.

Vaccinations and the Economic Recovery in 2021. Before Joint Economic Committee, 117th Congress, (2021) (Alex Tabarrok, Bartley J. Madden Chair in Economics at the Mercatus Center and Professor of Economics at George Mason University).

Lincicome, Scott. "Correcting the Record on Operation Warp Speed and Industrial Policy." *National Review* (July 6, 2021).

DiMasi, Joseph A., Henry G. Grabowski, and Ronald W. Hansen. "Innovation in the pharmaceutical industry: New Estimates of R&D costs." *Journal of Health Economics* 47 (2016): 20-33.

Kaitin, Kenneth and Christopher-Paul Milne. "Are Regulation and Innovation Priorities Serving Public Health Needs?" *Frontiers in Pharmacology* 10, Article 144 (March 8, 2019).

"Operation Warp Speed Contracts for COVID-19 Vaccines and Ancillary Vaccination Materials." *Congressional Research Service* (March 1, 2021).

2:00 pm

Adjourn for Day

TUESDAY, NOVEMBER 16

All classes to be held in Ballroom: Magnolia/Willow

7:00 - 7:50 am

Breakfast, Ballroom: Cypress/Dogwood/Live Oak
(Guests welcome)

8:00 - 9:15 am

Panel 4: Locality Litigation and Public Nuisance

Trevor S. Cox, Counsel, Hunton Andrews Kurth

Jennifer Scullion, Partner, Seeger Weiss LLP

Catherine M. Sharkey, Segal Family Professor of Regulatory Law and Policy, New York University School of Law

Luther J. Strange III, Founder & Principal, Luther Stranger & Associates, LLP

Moderator: Ingrid L. Moll, Judge, Connecticut Appellate Court

Reading Assignment:

Sharkey, Catherine M. "Public Nuisance as Modern Business Tort: A New Unified Framework for Liability for Economic Harms." *DePaul Law Review* 70, no. 201 (2021): 202-234.

Merrill, Thomas W. "Is Public Nuisance a Tort?" *Columbia Law School Scholarship Archive* (2011).

Epstein, Richard A. "When Courts Play Public Nuisance." *Defining Ideas: A Hoover Institution Journal* (July 30, 2018).

City of New York v. Chevron Corp (Edited).

9:30 - 10:45 am

Panel 5: Medical Devices and 510(k)

Philip S. Goldberg, Managing Partner and Co-Chair, Public Policy Practice Group, Shook, Hardy & Bacon L.L.P.

Erika L. Maley, Partner, Sidley Austin LLP

Jonathan D. Orent, Member, Motley Rice LLC

Moderator: Bernice B. Donald, Judge, US Court of Appeals for the Sixth Circuit

Reading Assignment:

"Overview 510(k) Clearances," US Food & Drug Administration, last modified August 31, 2021, <https://www.fda.gov/medical-devices/device-approvals-denials-and-clearances/510k-clearances>.

11:00 am - 12:15 pm

Panel 6: Developments in Discovery Reform

Christopher E. Appel, Of Counsel, Shook, Hardy & Bacon L.L.P.

David R. Buchannan, Senior Partner, Seeger Weiss LLP

Brian T. Fitzpatrick, Milton R. Underwood Chair in Free Enterprise and Professor of Law, Vanderbilt Law School

Moderator: Lynne A. Battaglia, Judge, Maryland Court of Appeals

Reading Assignment:

Committee on Rules of Practice and Procedure. *Invitation for Comment on Privilege Log Practice*, (August 2020).

Dahl, Alex and John Vail. "Discovery Cost Shifting: Has Its Time Come?" *Point Counterpoint* 99, 2.

Kobayashi, Bruce. "Law's Information Revolution as Procedural Reform: Predictive Search as a Solution to the In Terrorem Effect of Externalized Discovery Costs." *University of Illinois Law Review* (2014).

Gelbach, Jonah B. and Bruce Kobayashi, "The Law and Economics of Proportionality in Discovery." *Georgia Law Review* 50, 1 (2016).

12:30 - 2:00 pm

Luncheon Address and Interview– The State of Civil Justice: Past, Present & Future, Ballroom: Cypress/Dogwood/Live Oak

Victor E. Schwartz, Co-Chair, Public Policy Practice Group, Shook, Hardy & Bacon L.L.P.

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

Reading Assignment:

Schwartz, Victor E. and Cary Silverman. "The Case in Favor of Civil Justice Reform." *Emory Law Journal Online* (2016).

Schwartz, Victor E. "Rendering Justice in Key Areas of Tort Law in the Next Decade." *Southwestern Law Review* 278 (2021).

2:00 pm

Adjourn for Day

WEDNESDAY, NOVEMBER 17

All classes to be held in Ballroom: Magnolia/Willow

7:00 - 8:00 am

Breakfast, Ballroom: Cypress/Dogwood/Live Oak
(Guests welcome)

8:00 - 9:15 am

Panel 7: Lawyer Advertising: Legislation, Free Speech, and Consumer Protection

David L. Hudson Jr., Assistant Professor of Law, Belmont University College

Renee Knake Jefferson, Professor of Law and the Joanne and Larry Doherty Chair in Legal Ethics, the University of Houston Law Center

Cary Silverman, Partner, Shook, Hardy & Bacon L.L.P.

Moderator: David N. Wecht, Justice, Supreme Court of Pennsylvania

Reading Assignment:

Byl, Jacob P. and W. Kip Viscusi. "Experimental Study of Consumer Responses to Different Sources of Information about Prescription Drugs." *Vanderbilt University Law School Legal Studies Research Paper Series 20* (October 19, 2020).

"Bad for Your Health: Lawsuit Advertising Implications and Solutions." *US Chamber Institute for Legal Reform* (October 2017).

"Lawyer Advertising and Solicitation Chapter from Lawyer Advertising at the Crossroads: Chapter II. The Constitutional Dimensions of Lawyer Advertising." *American Bar Association*.

9:30 - 10:45 am

Panel 8: The Role of Third-Party Financing in the Litigation Ecosystem

Mark A. Behrens, Co-Chair, Public Policy Practice Group, Shook, Hardy & Bacon L.L.P.

Jeremy Kidd, Associate Professor of Law, Drake University Law School

Maya Steinitz, Professor and Bouma Family Fellow in Law, Iowa College of Law

Moderator: Phil E. Berger Jr., Justice, North Carolina Supreme Court

Reading Assignment:

Steinitz, Maya. "Follow the Money? A Proposed Approach for Disclosure of Litigation Finance Agreements." *University of California, Davis Law Review* 53, no. 1073 (2019): 1073-1116.

Steinitz, Maya. "Whose Claim Is This Anyway? Third-Party Litigation Funding." *University of Iowa Legal Studies Research Paper* 11 (August 2011).

Kidd, Jeremy. "Probate Funding and the Litigation Funding Debate." *Washington and Lee Law Review* Volume 76, 1 (May 24, 2019).

"Selling More Lawsuits, Buying More Trouble." *US Chamber Institute for Legal Reform* (January 2020.).

11:00 am - 12:15 pm

Panel 9: Perspectives on the Economics and Law of Arbitration

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

Mary Donovan, Principal, ndp | analytics

Brian Farkas, Associate, Arent Fox LLP; Adjunct Professor of Law, Benjamin N. Cardozo School of Law

Alan S. Kaplinsky, Senior Counsel, Ballard Spahr LLP

Peter Bowman "Bo" Rutledge, Dean & Herman E. Talmadge Chair of Law, University of Georgia School of Law

Moderator: James T. Worthen, Judge, Twelfth Court of Appeals of Texas

Reading Assignment:

Drahozal, Christopher R. "Arbitration and Rule Production." *Case Western Reserve Law Review* (Forthcoming).

Drahozal, Christopher R. and Peter B. Rutledge. "'Sticky' Arbitration Clauses?: The Use of Arbitration Clauses after *Concepcion* and *Amex*." *Vanderbilt Law Review* 67 (2014).

12:15 pm

Program Adjourns