

GEORGE MASON UNIVERSITY ANTONIN SCALIA LAW SCHOOL

**LAW &
ECONOMICS
CENTER**

**JUDICIAL EDUCATION PROGRAM &
ATTORNEYS GENERAL EDUCATION PROGRAM**

Symposium on Novel Liability Theories and the Incentives Driving Them

Sunday, October 24 - Tuesday, October 26, 2021
Nashville, TN



SUNDAY, OCTOBER 24

4:00 - 6:00 pm **Registration**, *Symphony Ballroom Foyer*

6:00 - 8:00 pm **Welcome Reception**, *Starstruck*
(*Guests welcome*)

MONDAY, OCTOBER 25

All sessions held in Symphony II/III

7:00 - 7:50 am **Breakfast**, *Symphony I*
(*Guests welcome*)

8:00 - 8:05 am **Welcome**
Donald J. Kochan, Professor of Law and Deputy Executive Director
Law & Economics Center, George Mason University Antonin Scalia Law School

8:05 - 9:20 am **Panel 1: The Scope and Limits of Public Nuisance: Exploring History
Precedents, and Attempts at Expansion**

Ellie M. Bublick, Dan B. Dobbs Professor of Law, University of Arizona James
E. Rogers College of Law

Shelley Ross Saxer, Laure Sudreau Endowed Professor of Law, Pepperdine Caruso
School of Law

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

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

Moderator: Sarah Keeton Campbell, Associate Solicitor General, Tennessee
Attorney General's Office

Reading Assignment:

Merrill, Thomas W. "Is Public Nuisance a Tort?" *Journal of Tort Law*, Vol. 4, Iss. 2,
Art. 4, 2011.

Schwartz, Victor E., Goldberg, Phil, and Schaecher, Corey. "Game Over? Why
Recent State Supreme Court Decisions Should End the Attempted Expansion of
Public Nuisance Law." *Oklahoma Law Review*, Vol. 62, Num. 4, 2010.

9:30 - 10:45 am **Panel 2: Locality Litigation and Public Entity Incentives to File Lawsuits:
Public Interest, Politics, Public Finance or Financial Gain?**

John S. Baker, Professor Emeritus of Law, Louisiana State University Law School

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

Julia D. Mahoney, John S. Battle Professor of Law, University of Virginia School of Law

Paul Nolette, Associate Professor and Chair, Department of Political Science
Marquette University Klingler College of Arts & Sciences

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

Reading Assignment:

Nolette, Paul. "Litigating the Public Interest in the Gilded Age: Common Law Business Regulation by Nineteenth-Century State Attorneys General." *Polity* 44(3): 373-399, 2012

Ausness, Richard C. "Public Tort Litigation: Public Benefit or Public Nuisance?" *Temple Law Review*, Vol. 77, No. 4, pp. 373-399, 2004.

11:00 am - 12:15 pm

Panel 3: Public Entity Partnerships with Private Plaintiffs' Attorneys - Who and What are Motivating Novel Liability Claims by Public Entities

Robert B. Carey, Partner, Executive Committee, Hagens Berman Sobol Shapiro LLP.

Trevor S. Cox, Counsel, Hunton Andrews Kurth LLP

Jim Hood, Attorney, Weisbrod Matteis & Copley PLLC; Former Attorney General of Mississippi

Luther J. Strange III, Founder & Principal, Luther Strange & Associates, LLC

Moderator: Harris L Hartz, Circuit Judge, United States Court of Appeals for the Tenth Circuit

Reading Assignment:

Evans, Ingrid, M. and Shaw, Stephen P. "Not Just Defendants Anymore: Public Entities Are Plaintiffs, Too." *Plaintiff Magazine*, 2008.

12:15 - 1:45 pm

Luncheon Interview and Panel 4: How, When, and Why Advance Novel Liability Theories? State and Federal AG Perspectives

Alberto R. Gonzales, Dean, Belmont University College of Law; Former Attorney General of the United States

Herbert H. Slatery III, Attorney General, State of Tennessee

Moderator: Lawrence VanDyke, Circuit Judge, United States Court of Appeals for the Ninth Circuit

Reading Assignment:

ABA Young Lawyers Division Conference, Alberto Gonzales. *C-SPAN Video*, 2019.

Tennessee Voices: A Conversation with Herbert Slatery. *Nashville Tennessean*, 2020.

2:00 - 3:15 pm

Panel 5: Public Nuisance - Opioids, COVID-19, and Other Applications

John Culhane, Professor of Law and H. Albert Young Fellow in Constitutional Law and Co-Director, Family Health Law & Policy Institute, Widener University Delaware Law School

Meghan R. McMeel, Partner, Riley Safer Holmes & Cancila LLP

Timothy Sandefur, Vice President for Litigation and Duncan Chair in Constitutional Government, Goldwater Institute's Scharf-Norton Center for Constitutional Litigation; Adjunct Scholar, Cato Institute

Jennifer Scullion, Partner, Seeger Weiss LLP

Moderator: Sean D. Wallace, Associate Judge, Circuit Court for Prince George's County, Maryland

Reading Assignment:

Epstein, Richard A. "When Courts Play Public Nuisance." *Hoover Institution*, 2018.

3:30 - 4:45 pm

Panel 6: Public Nuisance - Climate Change Applications

Jonathan H. Adler, Johan Verheij Memorial Professor of Law and Director, Coleman P. Burke Center for Environmental Law, Case Western Reserve University School of Law

Mark W. DeLaquil, Partner, BakerHostetler LLP

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

Matthew F. Pawa, Partner, Seeger Weiss LLP

J.B. Ruhl, David Daniels Allen Distinguished Chair in Law, Director, Program on Law and Innovation, and Co-director, Energy, Environment and Land Use Program, Vanderbilt University Law School

Moderator: Anne K. McKeig, Justice, Supreme Court of Minnesota

Reading Assignment:

Dana, D. A. "The Mismatch Between Public Nuisance and Global Warming." *Supreme Court Economic Review*, 18, 2010.

City of New York v. Chevron Corp., No. 18-2188 (2d Cir. 2021).

Lungren, Dan. "Opening Response: Dan Lungren, Against Nuisance Cases." Originally Speaking: Climate Change and Common Law Public Nuisance (blog). The Federalist Society, December 7, 2018.

Kochan, Donald. "First Response: Donald Kochan, Against Nuisance Cases." Originally Speaking: Climate Change and Common Law Public Nuisance (blog). *The Federalist Society*. December 7, 2018.

Parenteau, Pat. "Second Response: Pat Parenteau, For Nuisance Cases." Originally Speaking: Climate Change and Common Law Public Nuisance (blog). *The Federalist Society*. December 7, 2018.

Faulk, Rick. "Third Response: Rick Faulk, Against Nuisance Cases." Originally Speaking: Climate Change and Common Law Public Nuisance (blog). *The Federalist Society*. December 7, 2018.

Bookbinder, David. "Fourth Response: David Bookbinder, For Nuisance Cases." Originally Speaking: Climate Change and Common Law Public Nuisance (blog). *The Federalist Society*, December 7, 2018.

Baker, John. "Closing Response, Part 1: John Baker, Against Nuisance Cases," "Closing Response, Part 2: John Baker, Against Nuisance Cases," and "Closing Response, Part 3: John Baker, Against Nuisance Cases." Originally Speaking: Climate Change and Common Law Public Nuisance (blog). *The Federalist Society*, December 7, 2018.

4:45 pm

Adjourn for the Day

TUESDAY, OCTOBER 26

All sessions held in Symphony II/III

7:00 - 7:50 am

Breakfast, *Symphony I*
(Guests Welcome)

8:00 - 9:15 am

Panel 7: The Scope of State Authority to Control Litigation: State Sovereignty, Parens Patriae, Class Certification and Related Matter

Charles M. Miller, Counsel to the Attorney General, Office of Ohio Attorney General Dave Yost

Eli Savit, Prosecuting Attorney, Washtenaw County Prosecutor's Office

Margaret S. Thomas, Liskow & Lewis Professor of Law and Ben R. Miller Professor of Law, Louisiana State University Law Center

Vaishali S. Rao, Partner, Hinshaw & Culbertson LLP

Moderator: Brock A. Swartzle, Judge, Michigan Court of Appeals

Reading Assignment:

Lemos, Margaret H. and Young, Ernest A. "State Public-Law Litigation in an Age of Polarization" *Texas Law Review*, Vol. 97, Iss. 1, 2018.

Thomas, Margaret S. "Parens Patriae and The States' Historic Police Power." *SMU Law Review*, Vol. 69, Iss. 4, 2016.

Cordova, Nick. "Parens Patriae and State Attorneys General: A Solution to Our Nation's Opioid Litigation?" *Harvard Journal of Law and Public Policy*, Vol. 44, 2021.

9:30 - 10:45 am

Panel 8: Strategic Litigation and the Power of Developing Precedent

Dana Berliner, Senior Vice President and Litigation Director, Institute for Justice

Thomas M. Fisher, Solicitor General, State of Indiana

Jesse Panuccio, Partner, Boies Schiller Flexner LLP.

Moderator: Eli Richardson, Judge, U.S. District Court for the Middle District of Tennessee

Reading Assignment:

Berliner, Dana. "Turning a Loss Into VICTORY: IJ's Strategy for Long-Term Success." *Institute for Justice*, Vol. 28, Iss. 4, 2019.

Berliner, Dana. "Persistence: A Required Virtue at IJ." *Institute for Justice*, Vol. 21, Iss. 5, 2012.

Kochan, Donald J. "Corporate Social Responsibility in a Remedy-Seeking Society: A Public Choice Perspective." *Chapman Law Review*, Vol. 17, Iss. 2, pp. 447-475, 2014.

11:00 am - 12:15 pm

Panel 9: The Mechanics and Motivations of Settlements, Especially with Public Entities

Paul Nolette, Associate Professor and Chair, Department of Political Science, Marquette University Klingler College of Arts & Sciences

Annie Donaldson Talley, Partner, Luther Strange & Associates, LLC

Christopher A. Seeger, Partner, Seeger Weiss LLP

Moderator: Mark Brnovich, Attorney General, State of Arizona

Reading Assignment:

Eisenberg, Theodore and Lanvers, Charlotte. "What is the Settlement Rate and Why Should We Care?" *Journal of Empirical Legal Studies*, Vol. 6, Iss. 1, 2009.

Butler, Henry N. and Harris, Nathaniel. "Sue, Settle, and Shut Out the States: Destroying the Environmental Benefits of Cooperative Federalism." *Harvard Journal of Law and Public Policy*, Vol. 37, No. 2, pp. 579-628, 2014.

12:15 pm

Closing Remarks and Adjourn