

Fifteenth Annual Judicial Symposium on Civil Justice Issues

Judicial Education Program

Law & Economics Center

Antonin Scalia Law School

George Mason University

Sunday, November 14 to Wednesday, November 17, 2021

Charleston Place, 205 Meeting Street, Charleston, SC 29401

Agenda

(Updated November 12, 2021)

Sunday, November 14

4:00 – 6:00 pm **Registration, Second Floor West**

6:00 – 8:00 pm **Welcome Reception, Riviera Ballroom**
(Guests welcome)

Monday, November 15

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 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, Hawai'i Supreme Court

Reading Assignment:

“Civil Justice Review of the Supreme Court’s 2020-2021 Term.” *Law and Economic Center*, July 23, 2021. Vimeo video. <https://vimeo.com/578611815>.

“Civil Justice Preview of the Supreme Court’s 2021-2022 Term.” *Law and Economic 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, Hawai'i Supreme Court

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): 5-14.

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 of Public Health 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 – 8:00 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

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

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**

***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>. (Background statutory and regulatory material available here).

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).

Fitzpatrick, Brian T. “The Discovery Tax.” *Vanderbilt Law Research Paper No. 18-39* (August 24, 2018).

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

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