



19th Annual Forum for State Appellate Court Judges

***The Jury Trial Implosion: The Decline of Trial by Jury
and Its Significance for Appellate Courts***

**Saturday, July 9, 2011
Sheraton New York Hotel and Towers**

FACULTY BIOGRAPHIES

Paper-Presenters and Moderator

Professor Marc Galanter's research on the declining rate and number of trials in the United States has commanded widespread attention and has inspired concern about the future of the American legal system. Galanter is John and Rylla Bosshard Professor Emeritus of Law and South Asian Studies at the University of Wisconsin-Madison and LSE Centennial Professor at the London School of Economics. He studies lawyers, litigation and legal culture, and is the author of a number of highly regarded and seminal studies of litigation and disputing in the United States. These include pioneering studies on the impact of disputant capabilities in adjudication, the relation of public legal institutions to informal regulation, and patterns of litigation in the United States. His book *TOURNAMENT OF LAWYERS: THE TRANSFORMATION OF THE BIG LAW FIRM* (with Thomas Palay, 1991) attempts to explain the growth and transformation of large law firms. His *LOWERING THE BAR: LAWYER JOKES AND LEGAL CULTURE* (2005) addresses the causes of contemporary anti-lawyerism. He is also the author of a number of highly regarded and seminal studies of litigation and disputing in the United States, including Marc Galanter, *Why the "Haves" Come Out Ahead: Speculations on the Limits of Legal Change*, 9 *LAW & SOC'Y REV.* 95 (1974), one of the most-cited articles in the legal literature, which explains the litigation advantages enjoyed by wealthy, professional, and culturally dominant "repeat players." He is an outspoken critic of misrepresentations of the American civil justice system and of the inadequate knowledge base that makes the system so vulnerable to misguided attacks.

Professor Galanter is also recognized as a leading American student of the Indian legal system. He is an Honorary Professor of the National Law School of India, served as advisor to the Ford Foundation on legal services and human rights programs in India, and was retained as an expert by the government of India in the litigation arising from the 1984 Bhopal industrial disaster.

A major figure in the empirical study of the legal system, Professor Galanter has been editor of the *LAW & SOCIETY REVIEW*, President of the Law and Society Association, Chair of the International Commission on Folk Law and Legal Pluralism, a member of the Council on the

Role of Courts, a Guggenheim Fellow, and a Fellow of the Center for Advanced Study in the Behavioral Sciences. He is a member of the American Law Institute and a Fellow of the American Academy of Arts and Sciences.

Professor Galanter received degrees in philosophy and in law from the University of Chicago. In addition to the University of Wisconsin and the London School of Economics, he has taught at Chicago, Buffalo, Columbia, Stanford, New York Law School, DePaul, and Hawai'i.

Angela Frozena (co-author with Marc Galanter) received her Bachelor of Science degree with honors in Applied Mathematical Economics from Marquette University in 2001, and her J.D. degree from the University of Wisconsin—Madison in 2004. She also holds an MBA degree from the University of Wisconsin—Whitewater with emphases in Finance, Management and International Business. Formerly an attorney in private practice, she currently works in the financial services industry. She began researching trial statistics in 2002 as an assistant to Professor Marc Galanter.

Professor Stephan Landsman is a graduate of Kenyon College and Harvard Law School. Since 1996 he has been the Robert A. Clifford Professor of Tort Law and Social Policy at DePaul University College of Law. He has worked as a trial lawyer as well as a legal academic, serving as counsel of record and successful oral advocate before the U.S. Supreme Court in *City of Akron v. Akron Center for Reproductive Health*, 462 U.S. 416 (1983). He has written half a dozen books, including: *A MODERN APPROACH TO EVIDENCE* (4th Ed. 2011, West) (with Lempert, et al.); *CRIMES OF THE HOLOCAUST: THE LAW CONFRONTS HARD CASES* (2005, U. Penn Press); and *READINGS ON ADVERSARIAL JUSTICE: THE AMERICAN APPROACH TO ADJUDICATION* (1988, West). He has published more than 70 scholarly articles including pieces in the *Stanford*, *Wisconsin*, *Michigan*, *Hastings*, *Minnesota* and *Cornell* law reviews. His work has also appeared in such peer-reviewed journals as *LAW AND HISTORY REVIEW*, *JOURNAL OF EMPIRICAL LEGAL STUDIES*, *AMERICAN HISTORICAL REVIEW*, and *BEHAVIORAL SCIENCES AND THE LAW*. His historical work has been cited in the U.S. Supreme Court's seminal hearsay decision, *Crawford v. Washington*, 541 U.S. 36 (2004). He presently serves as a member of the American Bar Association's Standing Committee on the Federal Judiciary, which is responsible for advising the White House on all federal judicial appointments. He has been honored by DePaul University, Suffolk University Law School, Cleveland State University, and the ABA.

Arthur R. Miller (Forum Moderator) is University Professor at New York University School of Law, and was formerly Bruce Bromley Professor of Law at Harvard Law School. He received his undergraduate degree from the University of Rochester and his law degree from Harvard Law School. He is the author or co-author of more than forty books, including Wright and Miller's *FEDERAL PRACTICE AND PROCEDURE* treatise and a civil procedure casebook with Professors Jack H. Friedenthal, Mary Kay Kane, and Helen Hershkoff. He has also written numerous articles on other subjects, including copyright and privacy issues. He maintains an active law practice, particularly in the federal appellate courts, and has served as a member and reporter for the Advisory Committee on Civil Rules of the Judicial Conference of the United States, as the Reporter for the American Law Institute's Project on Complex Litigation, and as a Commissioner on the United States Commission on New Technological Uses of Copyrighted Works. Outside of the classroom, Professor Miller has had a parallel career as a media

commentator on legal matters. He hosted the “Miller’s Court” television series for eight years, served as legal editor of ABC’s “Good Morning America” program, hosted Court TV’s weekly “Miller’s Law” series, and moderated several programs in the PBS Socratic dialogue series, “The Constitution: That Delicate Balance.” Professor Miller currently hosts a series of legal help videos through the rocketlawyer.com Web site, and, in his role as University Professor, is developing an interdisciplinary seminar titled “Dialogues on Law, Society, and the Future” with NYU’s School of Continuing and Professional Studies. Among his more recent articles is *From Conley to Twombly to Iqbal: A Double Play on the Federal Rules of Civil Procedure*, 60 DUKE L.J. 1 (2010).

Panelists

Linda Miller Atkinson is a partner in the firm of Atkinson, Petruska, Kozma & Hart, with offices in Gaylord and Channing, Michigan. She is licensed in Georgia, Indiana, Michigan and Wisconsin. A 1963 graduate of Oberlin College, Oberlin, Ohio, and a 1973 graduate of Wayne State University Law School in Detroit, Michigan, she is an author and editor of TORTS: MICHIGAN LAW AND PRACTICE, published by the Institute of Continuing Education since 1994, and of LAWYERS DESK REFERENCE (8th edition, Thomson-West), and is author of the “Depositions” chapter of LITIGATING TORT CASES (AAJ Press, published by Thomson-West). She was the recipient of AAJ’S Champion of Justice Award in 2007, the Trial Lawyer of the Year Award in 1995, and the Women Trial Lawyer’s Caucus Marie Lambert Award in 2000. She is a Fellow and trustee of the Pound Civil Justice Institute. In her life outside the courtroom she is in her 17th year of providing outdoor emergency care with the National Ski Patrol.

Elizabeth J. Cabraser is a founding partner of Lief Cabraser Heimann & Bernstein. She has 33 years’ experience representing plaintiffs in securities, product liability, consumer fraud, mass tort, civil rights, and employment discrimination litigation in federal and state courts. She has served as court-appointed lead or co-lead counsel in over 85 federal multidistrict and state coordinated proceedings, and has participated in the design, structure and conduct of eight nationwide class action trials in securities fraud, product liability, mass accident and consumer cases in state and federal courts. She currently serves in leadership roles in the Toyota, Chase Bank, and B.P. Oil Spill litigations. Ms. Cabraser’s litigation, trial, and settlement experience includes the FPI/Agretech, Breast Implants, Holocaust, Fen-Phen, Bextra/Celebrex, Guidant and Vioxx litigations.

Ms. Cabraser has lectured and conducted seminars for the Federal Judicial Center, ALI-ABA, the National Center for State Courts, Vanderbilt University Law School, and the Practising Law Institute (PLI). She teaches complex litigation/mass torts at Columbia and Berkeley Law Schools, and is Editor-in-Chief of CALIFORNIA CLASS ACTION PRACTICE AND PROCEDURE. Her recent complex litigation/civil procedure articles include “Apportioning Due Process: Preserving the Right to Affordable Justice,” 87 DENVER U. L. REV. 437 (2010), and “When Worlds Collide: The Supreme Court Confronts Federal Agencies with Federalism in *Wyeth v. Levine*,” 84 TULANE L. REV. 1275 (2010).

In 2010, Ms. Cabraser was awarded the “Margaret Brent Women Lawyers of Achievement Award,” by the ABA Commission on Women in the Profession, and was appointed to serve on the Federal Courts’ Advisory Committee on Civil Rules.

John A. Day has practiced civil litigation in Nashville, Tennessee for 30 years. He is a Fellow of the Pound Civil Justice Institute and has served as President of the Tennessee Trial Lawyers Association and Chair of the Council of State Presidents of the American Association for Justice (formerly the Association of Trial Lawyers of America (ATLA®)). He was inducted into the American College of Trial Lawyers at the age of 45. Mr. Day is co-author of TENNESSEE LAW OF COMPARATIVE FAULT and is the Founder and Editor of the TENNESSEE TRIAL LAW REPORT, a monthly newsletter about recent developments in Tennessee tort law. He is also the author of DAY ON TORTS: LEADING CASES ON TENNESSEE TORT LAW (3d ed., 2010), and maintains a weblog (www.dayontorts.com) on recent developments in tort law. He has authored approximately 50 articles in peer-reviewed publications and has lectured at over 300 seminar programs in 17 different states. Mr. Day recently served as Chairman of the Judicial Performance Evaluation Commission as an appointee of the Speaker of the Tennessee House of Representatives, on the inaugural Alternative Dispute Resolution Commission by appointment of the Tennessee Supreme Court, and has served as Chair of the Tennessee Continuing Legal Education Commission. He currently serves as a member of the Tennessee Supreme Court's Advisory Commission on the Rules of Practice and Procedure.

Honorable Gerald T. Elliott has been a judge since 1972. He currently sits on the Johnson County District Court in Olathe, Kansas, and has chaired several judicial district committees and activities. He received his AB and LLB from the University of Kansas and practiced law in Kansas City from 1965 to 1990. Judge Elliott is a member of the American Bar Association and the American Judges Foundation and the American Judicature Society and has served on the executive committee of the Kansas State Bar. He was a Member of the Board of Directors of the National Center for State Courts from 2001 to 2007, and has held numerous offices in the American Judges Association, including the presidency (1999–2000).

Zoe Littlepage is a partner in the law firm of Littlepage Booth, headquartered in Houston, Texas. Her practice focuses on medical products and drugs, including Hormone Therapy drugs, Rezulin, Fen-Phen, and Zithromax. In 2003, she was appointed Lead Counsel of the Plaintiff's Steering Committee for the MDL Hormone Replacement Therapy Litigation. She has focused her efforts on hormone therapy cases since that time, and has tried multiple Prempro, Rezulin and Fen-Phen cases to verdict throughout the country.

Ms. Littlepage received her bachelor's degree from Rice University in Houston, Texas, with a triple major. She attended law school at Emory University and the University of Houston. While at the University of Houston, she served as an editor of the Houston Law Review. She lectures extensively on drug litigation and the use of demonstrative at legal conferences.

Harold Lee Schwab Is a partner in the firm of Lester Schwab Katz & Dwyer in New York City. He has tried more than one hundred twenty-five product liability and major damage cases to verdict in New York State and other jurisdictions, and has obtained defense verdicts for clients in cases involving claims of defective automobiles, motorcycles, recreational vehicles, childseats, industrial machinery and equipment, cranes, electrical equipment, home products, nuclear plant design and vessel design. He has acted as national coordinating counsel on various product lines for leading manufacturers. He has presented more than 150 lectures on trial techniques, including jury selection, cross examination, expert evidence, and summations, as well as product liability, and has authored more than 25 articles on these and related subjects. He is a Fellow of the International Academy of Trial Lawyers, a Past Chair of the Trial Lawyers

Section of the New York State Bar Association, and a Past President of the New York Chapter of the American Board of Trial Advocates. He has been an active Member of the Character and Fitness Committee of the Supreme Court, Appellate Division, First Judicial Department since 2005.

Paul K. Sun, Jr. focuses primarily on business litigation and appeals. He has experience in the areas of trade secrets and unfair competition, business and health care fraud (civil and criminal), employment, consumer claims, premises and product liability, and contract disputes. He has tried cases in areas as varied as health care fraud, product liability/wrongful death, and the First Amendment. Mr. Sun also regularly handles civil and criminal appeals in the North Carolina and federal appellate courts. He has served as the Rules Editor for the American Bar Association's APPELLATE PRACTICE JOURNAL. Mr. Sun graduated *magna cum laude* from Wittenberg University in 1979, and received a master's degree in 1981 from Vanderbilt University, where he was the Founder's Medalist. He received his J.D. degree from Duke University, with Highest Honors, in 1989 and served as Articles Editor for the DUKE LAW JOURNAL. From 1989-90, Mr. Sun served as law clerk to the Honorable J. Dickson Phillips, Jr., of the United States Court of Appeals for the Fourth Circuit.

Honorable William G. Young has been an active trial judge for more than 25 years, serving on both the Massachusetts Superior Court (1977-85) and the United States District Court for the District of Massachusetts (1985-present). After receiving his A.B., *magna cum laude*, from Harvard University in 1962, he served two years as an officer in the United States Army. His legal career began in 1967 when he was admitted to the Massachusetts bar upon graduating from the Harvard Law School. He served as a law clerk to the Honorable Raymond S. Wilkins, Chief Justice of the Supreme Judicial Court. Following his clerkship, he practiced law as an associate and then partner at the Boston law firm of Bingham, Dana & Gould. His legal career has also included stints as a Special Assistant Attorney General and as Chief Counsel for former Massachusetts Governor Francis W. Sargent.

A longtime teacher of evidence and trial advocacy, he has taught at several law schools, including Harvard, Boston College, and Boston University. Commonly referred to as "the Education Judge," he is active in judicial education at the Federal Judicial Center and the Flaschner Judicial Institute. Moreover, he volunteers much of his time to educating the bar and has been a staple at continuing legal education programs and institutions including Virginia Continuing Legal Education and the Practising Law Institute (PLI). He has won national acclaim for his work on the Massachusetts Continuing Legal Education's annual lecture series, *On Trial with Judge Young*, which offers each fall an intensive 15-week study of trial techniques and trial evidence.

In addition to teaching in the classroom, Judge Young has written extensively. He is the principal author of *Massachusetts Evidentiary Standards* (1992 through 2005 eds.) and Vols. 19 and 19A, *Evidence* (Mass. Practice Series 1998), and co-author of "Daubert's Gatekeeper: The Role of the District Judge in Admitting Expert Testimony," 68 TULANE L. REV. 1457 (1994), and "An Open Letter to U.S. District Judges," 50 THE FEDERAL LAWYER 30 (July 2003), available at <http://web2.westlaw.com/find/default.wl?rs=WLW11.04&rp=%2ffind%2fdefault.wl&vr=2.0&fn=top&mt=Westlaw&cite=50-JUL+FEDRLAW+30&sv=Split> (discussing the declining number of trials in federal courts).

Discussion Group Moderators

Sharon J. Arkin is a certified appellate specialist specializing in plaintiffs' appeals and law and motion. She received her law degree from Western State University School of Law, and she has been certified by the California State Bar's Board of Legal Specialization as an appellate specialist since 2001. She has been selected by the Consumer Attorneys Association of Los Angeles as its current Appellate Attorney of the Year. Ms. Arkin is a former President of the Consumer Attorneys of California. In 2007, she received the American Bar Association's "Pursuit of Justice" award. She is a Fellow of the American Bar Foundation and a trustee of the Pound Civil Justice Institute.

Donald H. Beskind is Professor of the Practice of Law at Duke Law School and Of Counsel to the Raleigh, North Carolina firm of Twigg, Beskind, Strickland & Rabenau. At Duke, Professor Beskind teaches Evidence, Torts and runs the Trial Skills program. His practice is limited to plaintiff's tort litigation including business torts, professional negligence and products liability, and post-conviction death penalty representation. He is a Fellow of the International Society of Barristers and the American College of Trial Lawyers, and is a Fellow and Vice-President of the Pound Civil Justice Institute. Professor Beskind is co-author of NORTH CAROLINA EVIDENTIARY FOUNDATIONS (Lexis/Nexis 2008); PROBLEMS IN TRIAL ADVOCACY (NITA 2007); and numerous cases files used for professional training, including *BMI v. Minicom* (Advanced, Pretrial and Basic Skills editions , NITA) and *State v. Burns* (NITA).

Kathryn H. Clarke is an appellate lawyer and complex litigation consultant in Portland, Oregon. She specializes in medical negligence, products liability, punitive damages, and constitutional litigation in both state and federal courts. She received her undergraduate degree from Whitman College, and her law degree from the Northwestern School of Law of Lewis and Clark College. She has served as president of the Oregon Trial Lawyers Association, is a governor of the American Association for Justice (AAJ, formerly ATLA®), and is a Fellow and Secretary of the Pound Civil Justice Institute.

Brian P. Galligan is a partner in the firm of Galligan and Reid, PC, in Des Moines, Iowa, specializing in medical negligence, products liability, and other personal injury litigation and appeals. He is a graduate of Colorado College and the University of Iowa College of Law, where he was a member of the Order of the Coif and graduated with high distinction. He is a trustee of the Pound Civil Justice Institute, a governor of the Iowa Association for Justice, a governor and 2010-2011 chair of New Lawyers Division of the American Association for Justice (formerly the Association of Trial Lawyers of America (ATLA®)), and a board member of the Iowa Legal Aid Foundation. He is also a member of the Iowa State Bar Association (chair of the Independence of the Judiciary Committee), the American Bar Association (Tort and Insurance Practice Section), and Public Justice.

William A. Gaylord is President of the Pound Civil Justice Institute and a shareholder in the Portland, Oregon, law firm of Gaylord Eyerman Bradley, PC. He has represented plaintiffs in products liability and medical negligence litigation for 36 years and was the lead trial counsel in *Williams v. Philip Morris*, the punitive damages case decided by the U.S. Supreme Court in 2009. He received his undergraduate degree from Oregon State University and his law degree

from the Northwestern School of Law of Lewis and Clark College. Mr. Gaylord has chaired the Oregon Uniform Trial Court Rules Committee and the Oregon Council on Court Procedures. He is a past president and current governor of the Oregon Trial Lawyers Association, a former governor of the American Association for Justice (AAJ, formerly ATLA®), a member of AAJ's Amicus and Legal Affairs committees, and a board member the Public Justice Foundation.

Christopher T. Nace is an attorney with the firm of Paulson & Nace in Washington, DC. Prior to that, he practiced in the Intellectual Property Litigation Group of Robins, Kaplan, Miller & Ciresi LLP in Atlanta, representing plaintiffs in complex patent infringement matters, and handling general business and employment liability matters. He holds a B.A. degree from Georgetown University (1998), an MBA from Emory University (2003) and a J.D. from Emory University School of Law (2003), where he served as Editor-in-Chief of the EMORY LAW JOURNAL. While enrolled in Emory's JD/MBA Program, Mr. Nace was recognized as the Rothfeder Family Scholar and was awarded the Emory School of Law Dean's Public Service Award. He is a trustee of the Pound Civil Justice Institute.

Ellen Relkin is of counsel to Weitz & Luxenberg, P.C. in New York City and Cherry Hill, New Jersey, where she represents plaintiffs in pharmaceutical product liability and toxic tort cases. She holds a law degree from Rutgers School of Law and an undergraduate degree from Cornell University, and is certified by the New Jersey Supreme Court as a Civil Trial Attorney. She was law clerk to the Honorable Sylvia Pressler, former Presiding Judge of the New Jersey Superior Court, Appellate Division. She has been a speaker on scientific evidence and mass tort issues and has published articles on the subject in the HOFSTRA LAW REVIEW, CARDOZO LAW REVIEW and the DICKINSON JOURNAL OF ENVIRONMENTAL LAW AND POLICY. Ms. Relkin is a Fellow of the Pound Civil Justice Institute and an elected member of the American Law Institute, the American Association for Justice (AAJ, formerly ATLA®), the New York State and New Jersey Trial Lawyers Associations, and the New Jersey, New York and American Bar Associations. She is a former chair of AAJ's Section on Toxic, Environmental, and Pharmaceutical Torts and sits on the Board of Governors of the New Jersey Association for Justice. She is a Member of the Sedona Conference Working Group on Mass Torts and Punitive Damages, and was co-lead counsel in the DePuy MDL litigation.

John Vail represents clients in litigation challenging restrictions on the constitutional rights of access to justice and of trial by jury, appearing nationwide in state and federal courts, including the U. S. Supreme Court. Mr. Vail represents the American Association for Justice (AAJ) on constitutional matters and advises legislative advocates regarding pending legislation. He regularly appears before Civil Rules Advisory Committee of the federal judiciary. His writings, such as "Blame it on the Bee Gees: The Attack on Trial Lawyers and Civil Justice," 51 N.Y.L. Sch. L. Rev. 323 (2006) (with Robert Peck) and "Big Money v. The Framers," Yale L.J. (The Pocket Part), Dec. 2005, have illuminated issues affecting the civil justice system and have amused readers. The legal services community recognized Mr. Vail's "inspired vision and outstanding leadership" with the Denison Ray Award, and for his "outstanding work" defending the right of access to justice he received the Public Justice Achievement Award. Mr. Vail is Professorial Lecturer in Law at the George Washington University School of Law. He is a 1976 graduate of the College of the University of Chicago and a 1979 graduate of Vanderbilt Law School.