

Conference Agenda:

Monday, May 10, 2010:

8:30-8:45 **Welcome and Introduction:** Judge Kravitz (D. CT), Judge Koeltl (S.D. NY), Dean Levi (Duke)

8:45-10:15 **The Empirical Research: Overview of Satisfaction or Dissatisfaction with the Current System, and Suggestions for Change Raised by the Data**

Moderator: Judge Rothstein (FJC/W.D. WA)

- A. The FJC Data: Judge Rothstein, Emery Lee (FJC), and Tom Willging (FJC)
- B. The Litigation Section Data: Lorna Schofield (ABA Litigation Section), Emery Lee, and Tom Willging
- C. The NELA Data: Rebecca Hamburg (NELA)
- D. Follow Up Lawyer Interviews: Emery Lee, Tom Willging

10:15-10:30 **BREAK**

10:30-11:45 **The Empirical Research: Continued**

Moderator: Justice Kourlis (IAALS)

- E. Vanishing Jury Trial Data: Prof. Marc Galanter (Wisconsin)
- F. The ACTL/IAALS Data: Justice Kourlis, Paul Saunders (Cravath, New York)
- G. Litigation Cost Data, Searle Institute: Alex Dimitrief (General Electric)
- H. RAND Data: Nick Pace (RAND)

- I. Commentary on the Presented Research: Prof. Marc Galanter (Wisconsin), Prof. Ted Eisenberg (Cornell), Jordan Singer (IAALS), Emery Lee (FJC), Tom Willging (FJC)

11:45-1:00 **Pleadings and Dispositive Motions: Fact Based Pleading, *Twombly*, *Iqbal*, Efforts to Decide Cases on the Papers Either at the Beginning of the Process or at the End of the Process**

Moderator: Prof. Arthur Miller (NYU)

Participants: Judge Jon Newman (2nd Circuit), Prof. Adam Pritchard (Michigan), Prof. Geoffrey Hazard (Hastings), Dan Girard (Girard, California), Sheila Birnbaum (Skadden, New York), Jocelyn Larkin (Impact Fund, California)

1:00-2:00 **LUNCH**

2:00-2:30 Speaker: Former Deputy Attorney General David W. Ogden

2:30-3:45 **Issues With the Current State of Discovery: Is There Really Excessive Discovery, and if so, What are the Possible Solutions?**

Moderator: Elizabeth Cabraser (Lief, California)

Participants: Judge David Campbell (D. AZ), Magistrate Judge Paul Grimm (D. MD), Jason R. Baron (Nat'l Archives), Patrick Stueve (Stueve, Missouri), Steve Susman (Susman, New York/Houston), Prof. Cathy Struve (Pennsylvania)

3:45-5:00 **Judicial Management of the Litigation Process: Is the Solution to Excessive Cost and Delay Greater Judicial Involvement?**

Moderator: Judge Patrick Higginbotham (5th Circuit)

Participants: Judge Michael Baylson (E.D. PA), Magistrate Judge David Waxse (D. KS), Jeff Greenbaum (Sills, New Jersey), Prof. Judith Resnik (Yale), William Butterfield (Hausfeld, DC), Paul Bland (Public Justice)

6:30-9:30 **Reception and Dinner**

Tuesday, May 11, 2010:

8:30-9:45 **E-Discovery: Discussion of the Cost Benefit Analysis of E-Discovery and the Degree to Which the New Rules**

are Working or Not

Moderator: Greg Joseph (Joseph, New York)

Participants: Judge Shira Scheindlin (S.D. NY), Magistrate Judge John Facciola (D. D.C.), John Barkett (Shook Hardy, Florida), Thomas Allman (retired GC of BASF), Joseph Garrison (Garrison, Connecticut), Dan Willoughby, Jr. (King & Spalding, Georgia)

9:45-10:30

Settlement: Is the Litigation Process Structured for Settlement Rather than Trial and Should it Be? Should the Answers Depend on the Complexity of the Case Including Whether the Action is a Class Action?

Moderator: Judge Brock Hornby (D. ME)

Participants: Judge Paul Friedman (D. DC), Prof. Richard Nagareda (Vanderbilt), Prof. Robert Bone (Texas), James Batson (Liddle, New York), Loren Kieve (Kieve, California), Peter Keisler (Sidley Austin)

10:30-10:45

BREAK

10:45-11:45

Perspectives from the Users of the System: Corporate General Counsel, Outside Lawyers, Public and Governmental Lawyers

Moderator: Judge Koeltl

Participants: Alan Morrison (AU), Amy Schulman (Pfizer), Thomas Gottschalk (Kirkland & Ellis, DC), Ariana Tadler (Milberg, New York), Anthony West (DOJ, Civil Division), Joseph Sellers (Cohen, DC)

11:45-1:00

Perspectives from the States: Different Solutions for Common Problems and their Relative Effectiveness - This Panel Should Also Consider the Results of Any Pilot Programs by the IAALS

Moderator: Justice Andrew Hurwitz (Arizona)

Participants: Judge Kourlis, Paula Hannaford-Agor (National Conf. for State Courts), Prof. Seymour Moskowitz (Valparaiso), William Maledon (Osborn, Arizona), Judge Henry Kantor (Oregon)

1:00-1:30

LUNCH

1:30-2:00

Speaker: Chief Judge Holderman (N.D. IL)

2:00-3:15

The Bar Association Proposals: ACTL, ABA Litigation Section, NYCBA, AAJ, LCJ, DRI

Moderator: Lorna Schofield

Participants: Lorna Schofield, David Beck (ACTL), Wendy Schwartz (NYCBA), Bruce Parker (DRI, LCJ), John Vail (AAJ)

3:15-4:30

Observations from Those Involved in the Rule Making Process Over the Years

Moderator: Dean Levi (Duke)

Participants: Judge Scirica (3rd Circuit), Judge Higginbotham, Prof. Paul Carrington (Duke), Prof. Dan Coquillette (Harvard/Boston College), Prof. Arthur Miller (NYU)

4:30-5:00

Summary and Conclusions: Judge Rosenthal, Judge Kravitz, Prof. Edward Cooper (Michigan), and Prof. Rick Marcus (Hastings)