

Fifth Annual Judicial Symposium

MAPPING THE LEGAL FRONTIER:

The Uncertain Boundary Between Federal and State Law

Presented by

NATIONAL FOUNDATION
FOR JUDICIAL EXCELLENCE

July 10–11, 2009
The Drake Hotel
Chicago, Illinois



PROMOTING EXCELLENCE AFFIRMING JUSTICE

A strong, independent, responsive judiciary adhering to the rule of law is one of the hallmarks of a democratic society. Although every citizen has an interest in the maintenance of an effective judicial system, as an officer of the court, the lawyer's obligation in this regard is of paramount importance.

It was with this in mind that DRI created the National Foundation for Judicial Excellence (NFJE) on October 7, 2004. NFJE is an independent, 501(c)(3) charitable foundation that provides judges with educational programs and other tools to enhance the rule of law and administration of justice.

For four years, the NFJE has successfully produced a first-rate annual symposium attracting 10 percent of state appellate court judges.

Judges' responses to the programs have been universally enthusiastic, and many have expressed appreciation for the high caliber and balanced nature of the program. Comments include:

- This was a fantastic program—intellectually stimulating and thorough.
- The speakers were excellent and the topics were timely. I anticipate next year's symposium.
- Thanks to everyone for a great program. I already look forward to next year's program.
- This is one of the best organized and informative seminars that I have ever attended. Keep up the good work.
- The program and the entire experience were excellent. I encourage the Foundation to continue this long into the future.
- The program was well planned and of high intellectual caliber.
- Bravo! Keep up the good tradition for which you have laid a sound foundation.
- Thank you for providing us with an opportunity to get together and compare notes with judges from other states.




This Year's Program

The boundary between federal and state law often seems uncertain and yet is critical. Every day, the judges of this country must navigate this sometimes uncharted and often shifting territory. Among those tracking this border, state appellate courts are the best positioned to have a significant impact on the mapping of the legal frontier.

The confusing boundary between state and federal law is especially uncertain with regard to preemption, arbitration and punitive damages. State courts must wrestle with determining which issues are preempted by federal law and what relief a state forum can even offer. Federal arbitration law also has a significant impact on whether a state forum and state remedies are even available. Finally, federal appellate rulings affect how state courts rule on punitive damages.

Where the boundary between federal and state law is eventually drawn will have an enormous impact on justice and fairness in every court in this country. Discuss where the boundaries are now and where they are likely to be as the law evolves. Join NFJE as we explore the breadth and depth of the complex questions inherent in Mapping the Legal Frontier.



MAPPING THE LEGAL FRONTIER:

The Uncertain Boundary Between Federal and State Law

Schedule of Events

Friday, July 10

6:00 p.m. Registration and Reception

7:30 p.m. Dinner on Your Own

Saturday, July 11

8:00 a.m. Registration and Continental Breakfast

8:30 a.m. Welcome and Introduction to the Program

8:45 a.m. Developments in Federal Preemption Law in the Federal and State Courts
Professor David A. Dana

9:45 a.m. Break

10:00 a.m. The Role of State and Federal Courts in Federal Preemption Cases—
A Spirited Discussion Between Adversaries at the Bar
Lawrence S. Ebner
Brian Wolfman

11:15 a.m. Questions from the Floor to Msrs. Ebner and Wolfman

11:30 a.m. Preemption Wrap-up

12:00 p.m. Luncheon and Keynote Address
The Honorable Alan C. Page

The Drake Hotel Chicago, Illinois

1:45 p.m. The Federal Arbitration Act and Its Impact on State Arbitration Laws
Professor Christopher R. Drahozal

2:45 p.m. The Historical Rationale for Punitive Damages, Its Evolution and
Current Application
Christy D. Jones

3:45 p.m. Break

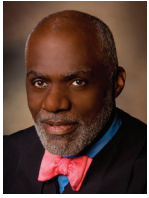
4:00 p.m. Speaker Panel with Questions from the Floor

5:00 p.m. Reception

7:00 p.m. Dinner on Your Own



Keynote Speaker



The Honorable Alan C. Page is Minnesota's first African-American Supreme Court Justice. An ardent defender of equal education for all children, he has established a foundation to motivate and assist young men and women of color to pursue education beyond high school, and has also co-sponsored a national essay-writing contest to promote literacy. Known for his staunch defense as a member of the famed "Purple People Eaters," the Minnesota Vikings' fierce defensive unit of the 1970s, he has been elected to the Pro Football Hall of Fame.

Justice Page's law career actually began during his NFL playing days when he had the foresight to attend law school at the University of Minnesota at the height of his football career, so that he could be prepared for life after football. When he retired from the game in 1981, he went to work for a Minnesota law firm before being appointed a special assistant attorney general in Minnesota. In 1987, he became an assistant attorney general, and in 1993, he became an associate justice on the Minnesota Supreme Court.

In addition to lecturing on a wide range of legal and judicial issues, Justice Page is a compelling speaker on creating educational opportunities and mentoring for underprivileged children. The recipient of numerous athletic and humanitarian awards, he likes to think of football as a past chapter in his life. "If I could choose a way to be remembered, it wouldn't be my association with football," says Justice Page. "Football is the past—a good past, but I'd want to be remembered with children—my children and other children."

Beginning with 10 grants awarded in its first year, the Page Education Foundation now awards nearly 600 Page Grants annually. In addition to helping provide college tuition, the foundation requires each of its Page Scholars to spend a minimum of 50 hours per school year tutoring and mentoring younger students in the area of education. In total, the foundation has awarded more than \$5 million in scholarships to more than 2,600 students.

Justice Page earned a BA degree in political science from the University of Notre Dame, and a JD degree from the University of Minnesota. He has also received eight honorary degrees.

Speakers



David A. Dana is a Professor of Law and Associate Dean for Research at Northwestern University School of Law. He previously taught at Boston University, and has been a visiting professor at Harvard University and the University of Virginia. Prior to entering teaching, Professor Dana was a litigator for a large Washington, D.C., law firm (Wilmer, Cutler & Pickering) and then for the Environment & Natural Resources Division of the United States Department of Justice. He is a graduate of Harvard College and Harvard Law School, and clerked for the Honorable Betty Fletcher of the U.S. Court of Appeals for the Ninth Circuit.

Professor Dana has taught and written in the areas of environmental law, property law, ethics, constitutional law and complex litigation/class actions. His work has appeared in a range of law reviews, including the *Yale*

Law Journal, the *University of Chicago Law Review*, the *Southern California Law Review* and the *Supreme Court Economic Review*. He organized a symposium on issues of federal preemption last year, and as part of that symposium published *Democratizing Federal Preemption* in the *Northwestern University Law Review*. Some of his current research focuses on issues of tort liability and federal preemption as they relate to emerging technologies such as nanotechnology.



Christopher R. Drahozal is the John M. Rounds Professor of Law at the University of Kansas School of Law. He is an Associate Reporter for the Restatement (Third) of the U.S. Law on International Commercial Arbitration, and Chair of the Arbitration Task Force of Northwestern University's Searle Civil Justice Institute.

Professor Drahozal has written extensively on the law and economics of arbitration, including authoring a casebook on commercial arbitration published by Lexis Publishing (now in its second edition) and co-editing a book on empirical research on international commercial arbitration published by Kluwer Law International. His articles have appeared in the *Journal of Legal Studies*, *Law and Contemporary Problems*, the *Vanderbilt Law Review*, the *University of Illinois Law Review*, the *Notre Dame Law Review* and the *International Review of Law and Economics*, among others. He has made presentations on arbitration law and practice throughout the United States, Canada and Europe.

Prior to teaching, Professor Drahozal was in private law practice in Washington, D.C., and served as a law clerk for the Iran-U.S. Claims Tribunal, the United States Supreme Court, and the United States Court of Appeals for the Fifth Circuit.



Lawrence S. Ebner heads the Appellate Practice Group of McKenna Long & Aldridge LLP, a national firm with more than 450 attorneys and public policy advisors. A graduate of Dartmouth College and Harvard Law School, Mr. Ebner began his legal career in 1972 at the U.S. Department of Justice's Civil Division. He joined his firm's Washington, D.C., office in 1974 as an associate, and has been a partner there for the past 30 years.

Mr. Ebner's clients are primarily companies that manufacture products or provide services that are regulated or procured by the federal government. They range from pesticide and drug manufacturers to railroads to battlefield contractors. Although Mr. Ebner has handled federal and state court appeals on a great variety of subjects, for more than two decades he has devoted a significant part of his practice to federal preemption of product liability claims and other tort-based causes of action. This has included oral arguments before the California, Texas and Wisconsin supreme courts, as well as before several federal and state courts of appeals, and preparation of amicus curiae briefs to the U.S. Supreme Court in key federal preemption cases.



Christy D. Jones is Chair of the Healthcare Industry Department at Butler Snow and has tried product liability cases, including pharmaceutical and medical device cases, in multiple jurisdictions around the country. She has extensive experience in litigation involving prescription and over-the-counter medications, medical devices, vaccines and other biologicals, contraceptives, herbicides, pesticides, asbestos and plastics.

Ms. Jones served on the national trial team in the silicone breast implant litigation for Baxter Healthcare Corporation; as nationwide coordinator of certain litigation for Champion International, Inc., prior to its acquisition by International Paper; as regional counsel in DTP vaccine litigation for American Cyanamid Co. (now Wyeth); and as product liability counsel for Edwards Lifesciences, Johnson & Johnson and its various entities, Merck & Co., Inc., GlaxoSmithKline and other pharmaceutical companies.

Notably, Ms. Jones was lead trial and appellate counsel in *Janssen Pharmaceutica, Inc. v. Bailey*, 878 So. 2d 31 (Miss. 2004) and *Janssen Pharmaceutica, Inc. v. Armond*, 866 So. 2d 1092 (Miss. 2004), two cases that markedly changed not only the law, but the litigation landscape in Mississippi. Most recently, she served as lead counsel in the first two product liability cases against Johnson & Johnson and McNeil Consumer Healthcare in connection with Children's Motrin and Stevens-Johnson Syndrome (*Sabrina Brierton Johnson v. Johnson & Johnson, et al.* and *Kimberly Zundel, et al., v. Johnson & Johnson, et al.*) Both trials resulted in verdicts for the defense.



Brian Wolfman is the Director of Public Citizen Litigation Group, where he has worked since 1990. Mr. Wolfman's litigation experience includes cases involving consumer health and safety regulation, freedom of information, expanding access to the courts, opposing federal preemption of state products liability law, consumer law and class actions. In the preemption area, he has been lead counsel in a range of cases involving injuries from radiation exposure, prescription drugs, federally regulated hazardous substances, pesticides and medical devices, including *Medtronic, Inc., v. Lohr*, 518 U.S. 470 (1996). Mr. Wolfman has argued five cases before the Supreme Court (winning four), been lead counsel in about a dozen others and, as co-counsel to his Litigation Group colleagues and others, had substantial involvement in several dozen more. He co-directs the Litigation Group's Alan Morrison Supreme Court Assistance Project with the Project's Fellow. He has been lead counsel in many federal court and state court appeals. Mr. Wolfman currently teaches a course on appellate courts at Harvard Law School and has previously taught at Stanford Law School, American University's Washington College of Law, and Georgetown University Law Center.

Before joining the Litigation Group in 1990, Mr. Wolfman was a staff attorney at Legal Services of Arkansas, where he did trial and appellate litigation involving housing law, welfare law, family law, employment rights and consumer protection. He is a graduate of the University of Pennsylvania and Harvard Law School.

The Drake Hotel: It's Happening in Chicago

There is no place more captivating than Chicago in the summer. The weather is ideal, the city's beautiful lakefront is a flurry of activity and there is an abundance of cultural, sporting, entertainment and dining offerings.

Located at the base of the Magnificent Mile and the edge of Chicago's prestigious Gold Coast neighborhood, The Drake Hotel has become a unique historical landmark. Head north on the "L" to Wrigley Field, home of the Cubs, or south on the "L" to Millennium Park to see "the bean." Other nearby attractions include Michigan Avenue and Oak Street shopping, Navy Pier, the Art Institute of Chicago, the Theatre District and the Museum Campus featuring the Field Museum of Natural History, the John G. Shedd Aquarium, and the Adler Planetarium.

Registration

To register:

Phone 312.698.6280

Fax 312.795.0748

Online www.nfje.net

Contact Information

First Name _____ Middle Initial _____ Last Name _____

Preferred Name _____ Title _____

Court _____

Street _____ Suite _____

City _____ State _____ Zip Code _____

Business Telephone _____ Fax _____ E-mail _____

Will a spouse or guest be traveling with you? Yes No

If yes, please indicate his/her name.

If yes, will your guest attend the keynote luncheon? Yes No

Hotel and Travel Arrangements

This program has limited attendance. Registration is on a first-come, first-served basis. Once NFJE receives your completed registration form, you will be sent an e-mail confirmation with instructions about making your hotel and travel reservations. Please be advised that you will need to secure your hotel reservations on or before June 15, 2009.

NFJE will pay for the cost of a deluxe room for the nights of Friday, July 10 and Saturday, July 11, 2009, as well as transportation (air, rail, ground) costs not to exceed \$500. When making your travel arrangements, please plan to arrive by 5:00 p.m., Friday, July 10th. *If you would like to extend your stay at the hotel, you are welcome to do so at your own expense.*

The Drake Hotel
140 East Walton Place
Chicago, IL 60611
Phone: 312.787.2200
Fax: 312.787.1431
www.thedrakehotel.com

Cancellations

If you must cancel your attendance, please try to do so at least three weeks prior to the event so a judge on the waiting list may attend. All cancellations must be received in writing via fax (312.795.0748) or email (sford@nfje.net).

**The Annual Judicial Symposium is a tuition-free program for state appellate court judges.
Transportation and hotel accommodations are provided at NFJE's expense.**



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