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ALI-ABA Course of Study

Trial Evidence in the Federal Courts: Problems and Solutions
Cosponsored by the Philip D. Reed Chair, Fordham Law School, with the cooperation of the ABA Section of Litigation

March 22-23, 2007
New York, New York

PROGRAM

Thursday, March 22, 2007
8:00 a.m.  Registration and Continental Breakfast
9:00 a.m.  Introductory Remarks and Course Overview
Morning Panel I: Professor Saltzburg, Chair; Judges Shadur and Smith; Professor Capra; Messrs. Joseph and Kobayashi
9:05 a.m.  Ten Common Hearsay Mistakes — Professor Saltzburg
10:00 a.m. Expert and Opinion Testimony — Professor Capra
11:00 a.m. Networking Break
Morning Panel II: Professor Saltzburg, Chair; Judges Real and Smith; Professor Carter; Ms. Schofield; Messrs. Joseph and Willis
11:15 a.m. Demonstration: Expert Hypothetical
Presiding: Judge Real
Plaintiffs' Counsel: Mr. Willis
Defense Counsel: Ms. Schofield
12:00 noon Spoliation and Preclusion Problems — Mr. Joseph
12:30 p.m. Lunch Break
Afternoon Panel I: Mr. Joseph, Chair; Judge Real; Professors Carter and Saltzburg; Messrs. Brosnahan, Solomon, and Willis
2:00 p.m. Demonstrative Evidence — Mr. Brosnahan
3:00 p.m. Networking Break
Afternoon Panel II: Mr. Fox, Chair; Judge Shadur; Professor Saltzburg; Messrs. Brosnahan, Joseph, Kobayashi, and Willis
3:15 p.m. Practical Problems in Litigation Ethics — Mr. Fox and Panel
5:00 p.m. Adjournment for the Day

Friday, March 23, 2007
8:00 a.m. Continental Breakfast
Morning Panel I: Professor Saltzburg, Chair; Judges Shadur and Smith; Professors Capra and Carter; Messrs. Joseph and Kobayashi
8:30 a.m. Privilege and Work Product — Professor Capra
9:30 a.m. Other Privileges — Professor Saltzburg
10:15 a.m. Networking Break
Morning Panel II: Professor Saltzburg, Chair; Judge Scheindlin; Professors Carter and Epps; Ms. Cendali; Messrs. Joseph and Solomon

10:30 a.m. **Electronic Discovery: New Rules and Related Evidence Issues** — Ms. Cendali

11:30 a.m. **Computer, Internet, and Email Evidence** — Mr. Joseph

12:00 noon **Recent Supreme Court Evidence Law: *Crawford*, Etc.** — Professor Saltzburg

12:30 p.m. Lunch Break

Afternoon Panel I: Mr. Joseph, Chair; Judge Real; Professors Epps, Martin, and Saltzburg; Messrs. Joseph and Kobayashi

2:00 p.m. **Impeaching Witnesses** — Professor Epps

2:45 p.m. Networking Break

3:00 p.m. **Unraveling Character Evidence in Civil Cases** — Professor Martin

Afternoon Panel II: Professor Saltzburg, Chair; Professors Epps and Martin; Messrs. Joseph and Kobayashi

3:55 p.m. **Hot Issues in Trial Evidence** — Professor Saltzburg and Panel

4:30 p.m. Adjournment
ALI-ABA Course of Study
Trial Evidence in the Federal Courts: Problems and Solutions

Cosponsored by the Philip D. Reed Chair, Fordham Law School, with the cooperation of the ABA Section of Litigation

March 22 - 23, 2007
New York, New York

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Memberships: American Law Institute; American Bar Association (Chair, Section of Litigation (1997-98); ABA advisor to the Uniform Rules of Evidence Committee of the National Conference of Commissioners on Uniform State Laws); New York State Bar Association (Chair, Trial Evidence Committee, 1989-94); Association of the Bar of the City of New York (Executive Committee, 1999-2003; Chair, Professional Responsibility Committee, 1993-96); Stein Center of Law and Ethics, Fordham Law School (Advisory Board)

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Honors: Honorary Faculty Member, Judge Advocate General School, Charlottesville, Virginia;
William J. Brennan, Jr. Award (Univ. of Virginia Trial Advocacy Institute); Member,
Fellow of the American Bar Foundation (1993–Present); Francis Rawle Award for
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Government and Public Service: Co-Chair, Third Circuit Task Force on Selection of Class
Counsel (2001-present); Advisory Committee on Federal Rules of Evidence (Liaison
Member, 1993-95); Project Director, Tax Refund Fraud Task Force, U.S. Treasury
Department (1994-95); U.S. Sentencing Commission (ex officio); United States Court of
Appeals for the District of Columbia Appellate Mediation Program (1992-Present); U.S.
District Court for the District of Columbia Civil Justice Reform Act Advisory Group
(Chair, 1994-99; Reporter, 1991-93); Advisory Committee on Federal Rules of Criminal
Procedure (Member, 1990-95; Reporter, 1984-89); U.S. Department of Defense Code
Committee (1989-92); Deputy Assistant Attorney General, Criminal Division, U.S.
Department of Justice (1988-89); Associate Independent Counsel, Iran-Contra
Investigation (1987-88); Advisory Committee on the Federal Rules of Criminal
Procedure (Member and Reporter, 1984-85); Special Master: Hammon v. Barry (D.D.C.,
Memberships: American Law Institute; American Bar Association (House of Delegates, 2001-
Present)(Section of Criminal Justice: Council, 1999-2001; Standards Committee, 1996-
99; Section of Litigation: Council, 2001-Present; Co-Chair, Task Force on Civil Trial
Standards, 1997-98; Chair, Task Force on the Independent Counsel Statute, 1997-99;
Special Committee on the Prosecution Function, 1991-93; Special Committee on Enemy
Combatants; Chair, ABA Justice Kennedy Commission, 2003-04; Committee on Trial
Evidence, 1991-95; Task Force on Gatekeepers and the Profession; Task Force on
Terrorism and the Law, 2001-02); American Trial Lawyers Association (Reporter, Task
Force on Litigation Issues, 1986-88); National Institute of Justice Less than Lethal
Liability Panel (1993-2004); National Committee to Prevent Wrongful Executions
(Reporter, 2000-02)
Publications Include: AMERICAN CRIMINAL PROCEDURE (Co-Author) (7th Ed., West 2004);
BASIC CRIMINAL PROCEDURE (Co-Author) (West, 4th Ed., 2005); CRIMINAL LAW: CASES
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Honors Include: “Best Lawyers in America” (2005-07); “Top 100 Most Influential Lawyers in America” (THE NATIONAL LAW JOURNAL, 2006); Leading Litigators in America (THE LAWDRAGON 500, 2006); “Top 10” Northern California’s SuperLawyers (SAN FRANCISCO MAGAZINE, 2004-06); Inducted into The State Bar of California's "Trial Lawyers Hall of Fame" (April 1996); Champion of Justice Award (Civil Justice Program at the Loyola Law School, 2005); "Nation's Top 10 Criminal Defense Lawyers" (U.S. Lawyer Rankings 2006); William J. Brennan Jr. Award (Univ. of Virginia Trial Advocacy Program, Jan. 2003); "Legend of the Law" (Lawyer's Club of San Francisco, Nov. 2002); "Trial Lawyer of the Year" (American Board of Trial Advocates, Oct. 2001); Samuel E. Gates Award (American College of Trial Lawyers, Oct. 2000); National Institute for Trial Advocacy Faculty Award (1991); William O. Douglas Award (1988); American Bar Association Pro Bono Publico Award (1987)

Government and Public Service: Office of Independent Counsel (Iran-Contra Prosecution of Caspar Weinberger)(1992-93); Special Counsel to California Legislature Joint
Subcommittee on Crude Oil Pricing; Assistant U.S. Attorney (District of Arizona, 1961-63; Northern District of California, 1963-66); Ninth Circuit Judicial Conference (Lawyers' Representative and Delegation Chair)

Memberships: American Law Institute; American Board of Trial Advocates; American College of Trial Lawyers; International Academy of Trial Lawyers; International Society of Barristers; American Board of Criminal Lawyers Association; American Judicature Society (Director, 1988-90); Bar Association of San Francisco (President, 1977; Chair, Subcommittee on Minorities, 1988-; Judiciary Committee, 1991-); Irish-American Bar Association of San Francisco (President, 1997-99); National Institute for Trial Advocacy (Master Advocate and Board of Trustees); Equal Justice Society (Executive Board)

Publications Include: TRIAL HANDBOOK FOR CALIFORNIA LAWYERS (Bancroft-Whitney 1974 & 1981 Supp.); Corporate Criminal Liability (Co-Author), in WHITE COLLAR CRIMES (ALI-ABA 1980); INSIDE LITIGATION (Editorial Advisory Board); Trial Practice: Winning with In Limines, 19 CEB CIVIL LITIG. REP. (Feb. 1997)

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Memberships: Association of the Bar of the City of New York (Executive Committee, 1997-2001; Chair, Committee on Federal Legislation, 1993-96; Chair, Committee on Professional Responsibility, 1990-93); Drafting Committee for Evidence Questions, Multistate Bar Examiners; Yale Law School's China Law Project (consultant, 2000-01)


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Memberships: American Bar Association (Section of Litigation: Co-Chair, Intellectual Property Committee, 1997-2000; Task Force on Electronic Discovery; Task Force on Training the Trial Lawyer; Co-Chair, ABA Women in IP Initiative, 2000-; Co-Director, Division VII) New York State Bar Association (Intellectual Properties Committee: Co-Chair, Subcommittee on the Work for Hire Doctrine, 1989-91; Media Law Committee; Cyberlaw Committee); Association of the Bar of the City of New York (Chair, Trademarks and Unfair Competition Committee; Communications and Media Law Committee; Copyright and Literary Property Committee); INTA (Dilution and Well-Known Marks Committee; Select Committee on the Federal Dilution Act); ALI-ABA Program Committee (Advisor); PriceWaterhouseCoopers IP Leadership Forum (Advisory Committee)

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Memberships: American Law Institute; ALI-ABA (Board Member, 1997-2003; Litigation Advisory Panel, 2006-present); American Bar Association (Section of Litigation Delegate to ABA House of Delegates (2003-present); Standing Committee on Continuing Legal Education, 2004-present; Nominating Committee and Steering Committee, 2005-present); Pennsylvania Bar Association Gender Task Force (Vice Chair); Philadelphia Bar Association (Committee to Promote Fairness in the Judiciary); Womens Way (Board of Directors, 2002-05)

Publications Include: 100 Vignettes for Improving Trial Evidence Skills (Co-Author)(NITA 2005); The Winning Argument (Co-Author)(2001); LSATs Provide Narrow Gate into Legal Profession, 23 NAT’L L.J. (August 28, 2000); Ethos and the Art of Argument, 26 LITIGATION 31 (Co-Author)(Fall 1999); Clarifying the Meaning of Federal Rule of Evidence 703, 36 B.C. L. REV. 53 (1994); TRIAL EVIDENCE: MAKING AND MEETING OBJECTIONS (Co-Author) (NITA 2d Ed., 1990); Passing the Confrontation Clause Stop Sign: Is All Hearsay Constitutionally Admissible?, 77 KY. L.J. 7 (1988); The Bail Reform Act of 1984, Chapter in CRIMINAL DEFENSE TECHNIQUES (Matthew Bender 1986); LITIGATION ETHICS (Editorial Board) (ABA)

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Publications Include: Your Lawyer, a User’s Guide (Co-Author)(Lexis Nexis/Bender Publications, 2006); To MDP or Not To MDP…The American Perspective, MANAGING FOR SUCCESS (June 1, 2006); RED FLAGS: A LAWYER’S HANDBOOK ON LEGAL ETHICS (ALI-ABA, 2005); The Law Governing Lawyers: National Rules, Standards, Statutes, and State Lawyer Codes, 2006-2007 Statutory Supplement (Co-Author) (Aspen Publishers); TRAVERSING
THE ETHICAL MINEFIELD: PROBLEMS, LAW, AND PROFESSIONAL RESPONSIBILITY (Co-Author)(Aspen Publishers, 2004); The Special Litigation Committee Investigation: No Undertaking for the Faint of Heart, INTERNAL CORPORATE INVESTIGATIONS (Oct. 10, 2002); LEGAL TENDER: A GUIDE TO PROFESSIONAL DILEMMAS (June 1, 1995)

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Publications Include: Some Thoughts About Courtroom Technology, PRAC. LITIGATOR (Nov. 2001); Circuit Splits on Factual Disputes in Class Actions (Co-Author), N.Y. L.J. (Oct. 2001); Tips for Technology in the Courtroom, PRAC. LITIGATOR (Nov. 2000); Wired to Win in the Courtroom, N.Y. L.J. (Sept. 1999); Class Action Analysis After Amchem Products (Co-Author), REV. OF SEC. & COMMODITIES REG. (April 1998); Amchem: The Supreme Court Speaks on Certification for Settlement, CLASS ACTIONS & DERIVATIVE SUITS NEWSL. (Fall 1997); The Impact of Amchem on Certification of Settlement Classes, CONSUMER FIN. SVCS. L. RPT. (July 1997); Least Controversial of Proposed Rule 23 Changes Move Forward, CONSUMER FIN. SVCS. L. RPT. (June 1997); Issues for Women at Depositions (Co-Author), Chapter in EFFECTIVE DEPOSITIONS (1997); Proposed Amendments Offer an Efficient Next Step in Class Action Management, LITIG. NEWS (Nov. 1996); Co-Chairs’ Corner, CLASS ACTIONS & DERIVATIVE SUITS NEWSL. (quarterly, 1994-97); The Gorilla Adversary, CALIF. LITIG. (Winter 1996); Depositions and the Gorilla Adversary (Co-Author), in THE WOMAN ADVOCATE: EXCELLING IN THE ‘90S (Prentice Hall Law & Business, 1995); Class Actions: Efficiency or Exploitation, INT’L COMM’L LITIG. (Sept. 1995); United States Client-Attorney Confidentiality (Co-Author), INT’L FIN. L. REV. (Feb. 1994)

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Memberships: Ravinia Festival (Life Trusteeship, 1994-present; Board of Trustees, 1976-84, 1985-93; Executive Committee, 1983-84, 1985-93; Vice Chair, 1989-92); Chicago Bar Foundation (Life Fellow; Director, 1978-83); Federal Judges Association; Seventh Circuit Bar Association; Federal Bar Association; University of Chicago Law School (Visiting Committee: member, 1966-77, 1989-92, 1999-2002; chair, 1971-76)
Publications Include: traps for the Unwary in Removal and Remand, LITIG. (2006); An Old Judge’s Thoughts, 18 CHI. BAR ASS’N REC. 27 (2004); Private Securities Law Reform Act: Is It Working?, 71 FORDHAM L. REV. 2363 (2003); Trials or Tribulations
(Rule 56 Style?), 29 Litig. 5 (2003); Task Force Report: Against the Manifest Weight of the Evidence, 74 TEMP. L. REV. 799 (2001); Are Federal Courts Necessary?, 18 LOY. U. CHI. L.J. 1 (1986); The Unclassy Class Action, 23 LITIG. 3 (Winter 1997); Chapter 12 of MOORE'S FEDERAL PRACTICE (3d Ed., 1997); A New Judge's Thoughts, 7 LITIG. (Summer 1981)

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Other Government and Public Service: Special Master in In re: Bextra and Celebrex Marketing Sales Practices and Product Liability Litigation (N.D. Cal. 2006); Director, Federal Judicial Center (1999-2003); Judge, Superior Court of California, San Francisco County (1986-88); Judicial Conference Committee on International Judicial Relations (Chair, 2003-05); Judicial Conference Advisory Committee on the Federal Rules of Evidence (1993-99; Chair, 1996-99); Executive Committee of the Ninth Circuit Judicial Conference (1999-95); Ninth Circuit State-Federal Judicial Council (1990-93); California Judicial Council's Advisory Task Force on Gender Bias (1988-90); California Judicial Council (1987-88)
Memberships: American Bar Association Central European and Eurasian Law Initiative (Advisory Board); American Society of International Law (Advisory Board); American Judicature Society (National Jury Center Advisory Committee); Association of Business Trial Lawyers (Board of Governors); The National Academies (Science, Technology, and Law Program); Stanford Law School (Board of Visitors); San Francisco Legal Aid Society – Employment Law Center (Board of Directors, 2006)
Publications Include: MANUAL ON COMPLEX LITIGATION 4TH (Editor); FEDERAL PRETRIAL CIVIL PROCEDURE IN CALIFORNIA (Co-Editor); REFERENCE MANUAL ON SCIENTIFIC EVIDENCE (Editor); USE OF VISITING JUDGES IN THE FEDERAL DISTRICT COURTS: A GUIDE FOR JUDGES AND COURT PERSONNEL (Diane Publishing Co., Feb. 2004)

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Memberships: Minority Corporate Counsel Association's Lloyd M. Johnson, Jr. Scholarship Program (Scholarship Selection Committee); Nachal Novea Tsfat Fund (Board of Directors); Safed Foundation (Board of Directors); Yeshiva College (Board of Directors); American Friends of the Hebrew University (Board of Directors)
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Honors: Listed in THE BEST LAWYERS IN AMERICA (2001-07); Distinguished Service Award
(Judicial Council of the Ninth Circuit, 2001)
Government and Public Service: Ninth Circuit Judicial Conference (Executive Committee, 1998-
2001; District of Arizona Representative, 1996-2001 and Chair, 1997-98);
Memberships: Federal Bar Association (President, Tucson Chapter, 1996-97; Committee on
Local Rules for the District of Arizona, 1993-99); State Bar of Arizona (Civil Practice
and Procedure Committee, 1984-92 and 1998-present; Board of Governors, 2002-
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Annual ABA Meeting; Committee on Corporate Counsel; Co-Chair, Trial Practice
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Publications Include: Substantive Law of Lender Liability, 26 TORT & INS. L. J. 42 (1991); 
Debtor/Creditor, ARIZONA LEGAL FORMS (vol. 3)(West 1998)