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THE 16<sup>TH</sup> ANNUAL

CLIFFORD SYMPOSIUM ON TORT LAW AND SOCIAL POLICY

# The Limits of Predictability and the Value of Uncertainty

April 8 and 9, 2010



DePaul Center  
Room 8005  
One East Jackson Boulevard  
Chicago, Illinois

# The Limits of Predictability and the Value of Uncertainty

To all appearances, lawyers abhor uncertainty. They learn in law school to seek out the certain and object to its absence. As practitioners, they shun the unpredictable, counseling settlement rather than trial and avoidance of that allegedly least predictable of decision makers—the jury. As judges, they are inclined to condemn things that come without a fixed price tag, like punitive damages or awards for pain and suffering. All of this denigrates the value of uncertainty, something that may be critical to the deterrence of misconduct and is particularly in tune with a world more akin to that described by Einstein and Heisenberg than the clockwork reality envisioned by Newton. This year's Clifford Symposium will consider the impact of our attitudes about certainty and its absence in a wide array of settings, including its influence on the thinking and behavior of players within the justice system—the crafters of our tort law, the insurers of our risks and the triers of our most complex cases.



## THURSDAY, APRIL 8, 2010

- 9:30 Registration and Continental Breakfast
- 10:30 Opening Remarks  
**Stephan Landsman**, Robert A. Clifford Professor of Tort Law and Social Policy
- 10:45 **Session I: Certainty and the Conduct of Participants in the Legal System, Part 1**
- Presenters  
**Anita Bernstein**: Security, Freedom, Unpredictability, Predictability: A 2x2 Matrix of Tort Reform's Distributions
- Stephen Gilles**: Fair Notice Requirements in Civil and Criminal Law
- Stephen Daniels** and **Joanne Martin**: Plaintiffs Lawyers and Tolerance for Uncertainty
- Discussant  
**Marc Galanter**
- 12:15 Lunch (provided)
- 1:30 **Session II: Certainty and the Conduct of Participants in the Legal System, Part 2**
- Presenters  
**Valerie Hans**: Uncertainty and the Jury
- Elizabeth Mertz**: Undervaluing Indeterminacy: Legal Translations of Social Science
- Jeffrey Rachlinski**: Processing Pleadings and Psychology of Prejudgment
- Discussant  
**Neil Vidmar**
- 3:00 Break
- 3:15 **Session III: Predictability and Tort Doctrine**
- Presenters  
**Robert Rabin**: Rights and Remedies: The Pervasive Role of Uncertainty in Tort Law
- Anthony Sebok**: Betting on Tort Suits after the Event: From Insurance to Champerty
- Benjamin Zipursky**: Responsibility, Uncertainty and the Doctrine of Res Ipsa Loquitur
- Discussant  
**Catherine Sharkey**
- 4:45 Concluding Remarks

## FRIDAY, APRIL 9, 2010

- 8:30 Registration and Continental Breakfast
- 9:00 **Session IV: Predictability and Insurance**
- Presenters  
**Tom Baker**: The Shifting Terrain of Risk and Uncertainty on the Liability Insurance Field
- Mark Geistfeld**: Legal Uncertainty, Liability Insurance and Tort Reform
- Adam Scales**: Corporate Succession and Liability Insurance
- Discussant  
**TBA**
- 10:30 Break
- 10:45 **Session V: Predictability in Mass Litigation**
- Presenters  
**Margaret Berger**: Does Certainty Matter?
- Howard Erichson**: Uncertainty and the Advantage of Collective Settlement
- Richard Nagareda**: 1938 All Over Again? Regulating Variance and Cost Imposition in Complex Litigation
- Discussant  
**Stephen Yeazell**
- 12:15 Concluding Remarks

The 2011 Clifford Symposium: **Festschrift for Professor Robert Rabin**

Past conference topics have included:

- 2009** Rising Stars: A New Generation of Scholars Looks at Civil Justice
- 2008** The Challenge of 2020: Preparing a Civil Justice Reform Agenda for the Coming Decade
- 2007** Distortions in the Attorney/Client Relationship: Threats to Sound Advice?
- 2006** Is the Rule of Law Waning in America?
- 2005** Who Feels Their Pain? The Challenge of Non-Economic Damages in Civil Litigation
- 2004** Starting Over: Redesigning the Medical Malpractice System
- 2003** After Disaster: The September 11th Compensation Fund and the Future of Civil Justice
- 2002** Export/Import: American Civil Justice in a Global Context
- 2001** Smoke Signals: Civil Justice in the Wake of the Tobacco Wars
- 2000** Civil Litigation and Popular Culture
- 1999** Judges as Tort Lawmakers
- 1998** The American Civil Jury: Illusion and Reality
- 1997** Contingent Fee Financing of Litigation in America
- 1996** Tort Law and the Science of the Twenty-First Century
- 1995** ADR and Torts: Implications for Practice and Reform

## REGISTRATION

The Clifford Symposium is free and open to the public. Due to space limitations, however, those interested in attending are encouraged to register in advance. Registrants will be given preference with regard to attendance, luncheon and distribution of materials. Registration must be completed no later than **Tuesday, April 6, 2010**. Walk-ins are welcome, but space is not guaranteed.

**Reservations are accepted by phone at (312) 362-5292 or online at [law.depaul.edu/clifford](http://law.depaul.edu/clifford).**

DePaul University College of Law is an accredited Illinois MCLE provider. This program has been approved for up to 7.5 hours of CLE credit.

## The Clifford Symposium on Tort Law and Social Policy

In 1994, Robert A. Clifford ('76) endowed a faculty chair in tort law and social policy. The chair gives meaningful expression to his belief that the civil justice system serves a number of vital interests in American society. The Clifford Chair at DePaul provides a vehicle for exploration of the civil justice system in an intellectually rigorous fashion. Professor Stephan Landsman currently holds the chair.

In addition to providing support for faculty research and teaching, the endowment makes possible an annual symposium addressing a timely issue in the civil justice area. The purpose of the symposium is to bring the latest scholarship and advances in legal practice to lawyers and scholars who specialize in tort law, civil justice and related fields.

## SYMPOSIUM FACULTY

**Tom Baker**, University of Pennsylvania Law School  
**Margaret Berger**, Brooklyn Law School  
**Anita Bernstein**, Brooklyn Law School  
**Stephen Daniels**, American Bar Foundation  
**Howard Erichson**, Fordham University School of Law  
**Marc Galanter**, University of Wisconsin Law School  
**Mark Geistfeld**, New York University School of Law  
**Stephen Gilles**, Quinnipiac University School of Law  
**Stephan Landsman**, DePaul University College of Law  
**Valerie Hans**, Cornell Law School  
**Joanne Martin**, American Bar Foundation  
**Elizabeth Mertz**, University of Wisconsin Law School  
**Richard Nagareda**, Vanderbilt University Law School  
**Robert Rabin**, Stanford Law School  
**Jeffrey Rachlinski**, Cornell Law School  
**Adam Scales**, Washington and Lee University School of Law  
**Anthony Sebok**, Cardozo School of Law  
**Catherine Sharkey**, New York University School of Law  
**Neil Vidmar**, Duke University School of Law  
**Stephen Yeazell**, UCLA School of Law  
**Benjamin Zipursky**, Fordham University School of Law