



## 2009 Forum for State Appellate Court Judges

### *Preemption: Will Traditional State Authority Survive?*

## FACULTY BIOGRAPHIES

### Paper Presenters

**Mary J. Davis** is Associate Dean for Administration and Faculty Development and the Stites & Harbison Professor of Law at the University of Kentucky College of Law, where she teaches Torts, Advanced Torts/Products Liability, Conflict of Laws, Comparative Law, and Complex Litigation. She previously taught at the University of Texas School of Law, Boston College School of Law, Wake Forest University School of Law, and the College of William and Mary Marshall-Wythe School of Law. She received her undergraduate degree from the University of Virginia and her law degree from Wake Forest University School of Law. Dean Davis is the author of *The Battle Over Implied Preemption: Products Liability and the FDA*, 48 B.C. L. REV. 1089 (2007), and *On Preemption, Congressional Intent, and Conflict of Laws*, 66 U. PITT. L. REV. 181 (2004), as well as other articles and books on products liability law.

**Thomas O. McGarity** is the Joe R. and Teresa Lozano Long Professor of Administrative Law at the University of Texas School of Law. He has taught Environmental Law, Administrative Law, and Torts at the law school since 1980. Prior to that he taught at the University of Kansas School of Law and was an attorney-advisor in the Office of General Counsel of the Environmental Protection Agency in Washington, D.C. He has written widely in the areas of environmental and administrative law. Two of his recent books are *THE PREEMPTION WAR: WHEN FEDERAL BUREAUCRACIES TRUMP LOCAL JURIES* (Yale University Press 2008) and, co-authored with University of Texas colleague Wendy Wagner, *BENDING SCIENCE: HOW SPECIAL INTERESTS CORRUPT PUBLIC HEALTH RESEARCH* (Harvard University Press 2008). He is the immediate past president and a member of the board of directors of the Center for Progressive Reform, a nonprofit organization of scholars who are committed to developing and sharing knowledge and information, with the ultimate aim of preserving the fundamental value of the life and health of human beings and the natural environment.

## Panelists

**Louis Bograd** is a Senior Litigation Counsel with the Center for Constitutional Litigation (CCL), Washington, D.C., specializing on issues of preemption, the intimidation of physicians who testify as expert witnesses, and the application of government medical liens on plaintiffs' tort judgments. He is the lead counsel in a number of challenges to the constitutionality of Missouri's 2005 tort reform statute. Mr. Bograd also currently is an adjunct professor at the University of Kentucky College of Law. Before joining CCL, he was the legal director of the Alliance for Justice, a senior counsel in the national legal department of the American Civil Liberties Union, and an associate at the Washington, D.C., law firm of Arnold & Porter. He is a graduate of Princeton University and Yale Law School.

**Honorable James O. Browning** has been a United States District Judge for the District of New Mexico since 2003. He received his undergraduate degree from Yale University and his law degree from the University of Virginia. He then held judicial clerkships with Judge Collins J. Seitz of the Third Circuit and Justice Lewis F. Powell of the U.S. Supreme Court, after which he entered private practice in New Mexico. He served as a deputy attorney general with the New Mexico Department of Justice from 1987 to 1988, after which he returned to private practice, subsequently forming his own law firm, Browning & Peifer, P.A., where he practiced until his appointment to the federal bench.

**Richard Dean** is a partner in the law firm of Tucker Ellis & West, in Cleveland, Ohio. He has represented clients in complex litigation, including business and commercial disputes, and in the defense of products liability cases. He also has been active in litigating preemption issues on behalf of defendants and has participated in oral argument in several leading cases on preemption in the pharmaceutical industry. After receiving his undergraduate degree from DePauw University and his law degree from Indiana University, Mr. Dean was a law clerk at the Sixth Circuit. He is a member of the Defense Research Institute and the International Association of Defense Counsel.

**Mark Herrmann** is a partner in the Chicago office of Jones Day. He currently is national coordinating counsel for a major pharmaceutical company in all product liability litigation arising out of the use of a prescription antidepressant. He is the lead author of *STATEWIDE COORDINATED PROCEEDINGS: STATE COURT ANALOGUES TO THE FEDERAL MDL PROCESS* (Thomson West 2004) and the author of *THE CURMUDGEON'S GUIDE TO PRACTICING LAW* (ABA 2006). He is a graduate of Princeton University and the University of Michigan Law School, and served as law clerk to Judge Dorothy W. Nelson of the Ninth Circuit. Mr. Herrmann taught Complex Litigation at Case Western Reserve University School of Law from 1997 to 2007. He is an elected member of the American Law Institute, where he serves on the Members Consultative Group for the Institute's project on Principles of the Law of Aggregate Litigation. He also co-hosts the widely read *Drug and Device Law Blog* (<http://druganddevicelaw.blogspot.com>).

**Honorable Denise Johnson** was appointed a justice of the Vermont Supreme Court in 1990. She received her undergraduate degree from Wayne State University and law degrees from the University of Connecticut School of Law and the University of Virginia School of Law. Prior to her judicial appointment, she was an attorney with New Haven Legal Assistance Association, a

legal writing instructor at Vermont Law School, and a Vermont Assistant Attorney General. Justice Johnson is a member of the American Law Institute, the American Bar Association, and the American Bar Foundation. She has served as Chair of the ABA's Appellate Judges Conference and currently serves as a member of the ABA's Commission on Interest on Lawyers' Trust Accounts. Justice Johnson has been active in appellate judicial education nationally and has lectured on criminal procedure, employment law, and property at law schools in Trento and Udine, Italy. As a member of the Vermont Supreme Court, she has chaired the Gender-Bias Study Implementation Committee and the Equal Access to Justice Committee. She also is a member of the Access to Justice Coalition, a statewide planning agency for the delivery of legal services to the poor.

**Karen Barth Menzies** joined Robinson, Calcagnie & Robinson in 2007 as a partner, focusing primarily on mass tort pharmaceutical litigation. She serves as co-liaison/lead counsel in the Paxil birth defect and persistent pulmonary hypertension of the newborn (PPHN) cases pending in Philadelphia, and is an appointed member of the plaintiffs' steering committee in the Avandia MDL litigation. She has testified twice before FDA advisory boards as well as the California State Legislature on safety concerns regarding selective serotonin reuptake inhibitor (SSRI) antidepressants. She has authored numerous publications and has been a frequent speaker on the FDA, drug safety, and federal preemption. Ms. Menzies received her undergraduate degree from Colorado State University and her law degree from the University of California at Davis. She currently serves as co-chair of the Avandia Litigation Group of the American Association for Justice (formerly ATLA®).

**Collyn Peddie** is an appellate/trial attorney with Williams Kherkher Hart Boundas LLP in Houston, Texas. Her experience in preemption practice includes both defense- and plaintiff-side work. As a partner in a defense firm she has counseled pharmaceutical industry clients on preemption strategy, and, on the plaintiff side, she serves as counsel in preemption appeals in the Texas Vioxx MDL and national vaccine litigation. She has authored amicus briefs for the Texas Trial Lawyers Association on preemption issues, represented the California Medical Association in filing its amicus brief in support of Diana Levine in *Wyeth v. Levine*, and testified before the U.S. Senate Judiciary Committee at one of its first hearings on preemption in pharmaceutical litigation. She lobbies on preemption issues, is the author of articles on preemption, and is a frequent speaker at CLE events. She also chairs the Appellate Practice Group and the Amicus Curiae Committee of the American Association for Justice (AAJ, formerly ATLA®), and is an active member of AAJ's Preemption Law Litigation Group and its Legal Affairs Committee.

**Earl Landers (Lanny) Vickery** is a sole practitioner in Austin, Texas, specializing in civil trial and appellate work, with the majority of his practice currently devoted to pharmaceutical litigation. He received his undergraduate degree from Dartmouth College and his law degree from the University of Texas at Austin. He has been board certified in civil appellate law by the Texas Board of Legal Specialization since 1995. He has written more than 25 briefs on federal preemption of pharmaceutical cases and has spoken at several continuing legal education seminars on topics including preemption and the effective use of amicus briefs on appeal. Mr. Vickery wrote an amicus brief on behalf of consumer advocates in *Wyeth v. Levine*, and prepared the successful petition for certiorari to the Supreme Court in *Colacicco v. Apotex, Inc.* He

currently co-chairs the Preemption Law Litigation Group of the American Association for Justice (AAJ, formerly ATLA®), as well as AAJ's Amicus Curiae Committee.

## **Discussion Group Moderators**

**Sharon J. Arkin** is the principal of The Arkin Law Firm. 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 is a former president of the Consumer Attorneys of California (California's trial lawyer association), and is a Fellow of the American Bar Foundation and of the Pound Civil Justice Institute. In 2007, she received the ABA's "Pursuit of Justice" award.

**David Wm. Boone** is a partner in the firm of Boone and Stone in Atlanta, specializing in personal injury and business tort litigation. He has served as a trustee and president of the Civil Justice Foundation, which in 2008 honored him for his efforts. He has also served as president and a director of the Georgia Civil Justice Foundation, chairman of the Academy of Trial Advocacy, president of the Georgia Trial Lawyers Association, and director of the Brain Injury Association of Georgia. Mr. Boone is a life member of both the American Association for Justice (AAJ, formerly ATLA®) and the Georgia Trial Lawyers Association, and is a sustaining member of the Florida Academy of Trial Lawyers and a Fellow of the Pound Civil Justice Institute. He presently serves on AAJ's Board of Governors and was recently elected to its Executive Committee. Mr. Boone, who graduated from the University of Central Florida and the Cumberland School of Law, also has held faculty positions and lectured around the country for various lawyers' organizations.

**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 secretary of the Pound Civil Justice Institute.

**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 governor of the American Association for Justice (AAJ, formerly ATLA®), a member of AAJ's Amicus and Legal Affairs committees, and a member of the board of the Public Justice Foundation.

**Ellen Relkin** is of counsel to Weitz & Luxenberg, P.C. in New York City and South Orange, 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 has been a speaker on scientific evidence issues and has published articles on the subject in the *CARDOZO LAW REVIEW* and the *DICKINSON JOURNAL OF ENVIRONMENTAL LAW AND POLICY*. In addition, she serves on the board of advisors for the *BNA PRODUCT SAFETY AND LIABILITY REPORTER*, the *TOXICS LAW REPORTER*, and the *MDEX DAUBERT REPORTER*. Ms. Relkin is a Fellow of the Pound Civil Justice Institute and a 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 chairs AAJ's Section on Toxic, Environmental, and Pharmaceutical Torts.

**Larry A. Tawwater** practices law in Oklahoma City, specializing in products liability, insurance bad faith, medical negligence, and major vehicle accidents. He received both his undergraduate and law degrees from the University of Oklahoma. He has served as president of the Oklahoma Association for Justice and as a governor of the American Association for Justice (AAJ, formerly ATLA®). He has been a member of state committees created to oversee liability insurance rates, worker compensation, and court rules, and he served on the Oklahoma Temporary Court of Appeals. Mr. Tawwater is a Fellow of the Pound Civil Justice Institute, the American College of Trial Lawyers, the International Academy of Trial Lawyers, and the International Society of Barristers.

**John Vail** is a founding member of the Center for Constitutional Litigation, where he is Vice President and Senior Litigation Counsel. He litigates issues dealing with the right to jury trial and the right of access to courts, appearing in state and federal courts throughout the United States, including the United States Supreme Court, and is a lecturer at the George Washington University Law School. Previously, Mr. Vail worked with legal aid organizations in Tennessee, New Mexico, and North Carolina, as well as with human rights advocates in Eastern Europe. He has been recognized by the legal services community for "inspired vision and outstanding leadership," and has received the Public Justice Achievement Award from Public Justice for his "outstanding work and success" in preserving the right of access to justice. He is a graduate of the College of the University of Chicago and of Vanderbilt Law School.

**Morgan "Chip" Welch** is a partner in the law firm of Welch and Kitchens in North Little Rock, Arkansas. He represents clients in personal injury, medical malpractice, employment discrimination, constitutional law, products liability, and commercial litigation. He received his undergraduate degree from Westminster College and his law degree from the University of Arkansas. He has received the Outstanding Trial Lawyer Award from the Arkansas Trial Lawyers Association and the Roxanne Wilson Trial Advocacy Award. He served as president of the Arkansas Trial Lawyers' Association and is a member of the Board of Governors of the American Association for Justice (AAJ, formerly ATLA®). He is also a member of the American Inns of Court Foundation (Master of the Bench) and a Fellow of the Pound Civil Justice Institute.