



76TH JUDICIAL CONFERENCE OF THE SIXTH CIRCUIT

AUGUST 31 - SEPTEMBER 2, 2022

Louisville, KY



NOTE: All programming takes place in Eastern Daylight Time.

AGENDA

TUESDAY, AUGUST 30, 2022 – JUDGES/COMMITTEE MEMBERS ONLY

- | | |
|----------------------------|---|
| 9:00 am – 10:00 am | Sixth Circuit Library Committee Meeting |
| 10:00 am – 11:00 am | Chief District Judges' Meeting |
| 11:15 am – 12:15 pm | Judicial Council Meeting |
| 12:30 pm – 1:45 pm | Luncheon and Executive Session |
| | <u>Remarks</u> The Honorable Roslynn R. Mauskopf, Director Administrative Office of the United States Courts |
| 2:00 pm – 3:30 pm | Circuit, District, Bankruptcy, and Magistrate Judges' Meetings |
| 3:45 pm – 4:45 pm | Advisory Committee on Rules Meeting |

TUESDAY, AUGUST 30, 2022 – ALL ATTENDEES

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| 5:00 pm – 7:00 pm | Welcome Reception Omni Louisville Hotel |
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WEDNESDAY, AUGUST 31, 2022

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|---------------------------|---|
| 8:30 am – 8:45 am | Welcome and Opening Remarks <u>Remarks</u> The Honorable Jeffrey S. Sutton United States Chief Circuit Judge Sixth Circuit Court of Appeals |
| 8:45 am – 10:00 am | Supreme Court Review <u>Moderator</u> The Honorable Karen Nelson Moore United States Circuit Judge Sixth Circuit Court of Appeals <u>Speakers</u> Jeffrey Fisher Professor of Law and Co-Director, Supreme Court Litigation Clinic Stanford Law School |

Speakers, cont.

Kannon K. Shanmugam
Paul, Weiss, Rifkind, Wharton & Garrison LLP
Washington, D.C.

Four years have passed since our last Supreme Court Review during the 2018 Judicial Conference in Nashville. During that time, the Court's calendar has been filled with decisions on topics including separation of power, criminal and civil procedure, the free exercise clause, the Second and Fourth Amendments, and more. Our panelists are Professor Jeffrey Fisher, Co-Director of the Supreme Court Litigation Clinic at Stanford Law School, and Mr. Kannon Shanmugam, Chair of the Supreme Court and Appellate Practice Group at Paul, Weiss. Both have taught Supreme Court advocacy courses for law students and between them, have argued over 75 cases before the Court. They will review past decisions and discuss what is on the docket in the future terms.

10:10 am – 11:10 am Agency Deference in Administrative Law

In 1984, the Supreme Court decided *Chevron v. National Resources Defense Council*, which created the doctrine that courts normally must defer to government agencies' reasonable interpretations when a law's language is ambiguous. Since then, *Chevron* has continued to be the topic of discussion and one of the most cited Supreme Court precedents. This term, the Supreme Court considers whether, through the Clean Air Act, Congress constitutionally authorized the EPA to issue significant rules with virtually no limits on what the agency can require. The Supreme Court's ruling has potential to impact, limit, or even remove the scope of authority Congress can give to the EPA and other federal agencies.

Moderator

The Honorable Joan L. Larsen
United States Circuit Judge
Sixth Circuit Court of Appeals

Speaker

Eugene Scalia
Gibson Dunn
Washington, D.C.

11:20 am – 12:20 pm A Mission Overview from the Department of Justice, Criminal Division

Speaker

Kenneth A. Polite, Jr.
United States Assistant Attorney General
Criminal Division
Department of Justice

Moderator

The Honorable Edmund A. Sargus, Jr.
United States District Judge
Southern District of Ohio

The U.S. Department of Justice's Criminal Division, in partnership with the 93 U.S. Attorneys' Offices, is responsible for developing, enforcing, and supervising the application of nearly all federal criminal laws. In addition to its direct litigation responsibilities, the Criminal Division formulates and implements criminal enforcement policy and provides advice and assistance on criminal matters. The Criminal Division is currently handling matters ranging from advancing accountability for war crimes committed in Ukraine, the January 6 attack on the Capitol, and combatting the opioid crisis – to kleptocracy asset recovery, corporate compliance, and sensitive areas of law enforcement, such as participation in the Witness Security Program and the use of electronic surveillance. Assistant Attorney General Kenneth A. Polite, Jr., who leads the Criminal Division, will discuss these topics and provide an overview of the Division's priorities, policies, and programs.

12:30 pm – 1:30 pm

Luncheon

Remarks

Sam Quinones

Journalist and Author

The Least of Us: True Tales of America and Hope in the Time of Fentanyl and Meth

Moderator

The Honorable Amul R. Thapar

United States Circuit Judge

Sixth Circuit Court of Appeals

Author Sam Quinones traveled from Mexico to main streets across the U.S. to create his award-winning *Dreamland*, a groundbreaking portrait of the opioid epidemic that awakened the nation in 2015. As the nation struggled to put back the pieces, new dangers that lay ahead: synthetic drugs and a new generation of kingpins whose product could be made in Magic Bullet blenders. In fentanyl, traffickers landed a painkiller a hundred times more powerful than morphine. They laced it into cocaine, meth, and counterfeit pills to cause tens of thousands of deaths—at the same time as Mexican traffickers made methamphetamine cheaper and more potent than ever. Quinones will discuss his investigation into how addiction is exacerbated by consumer-product corporations. Amid a landscape of despair, Quinones found hope in those embracing the forgotten and ignored, illuminating the striking truth that we are only as strong as our most vulnerable. Weaving analysis of the drug trade into stories of humble communities, his newest book *The Least of Us* delivers an unexpected and awe-inspiring response to the call that shocked the nation in *Dreamland*.

1:45 pm – 2:45 pm

BREAKOUT SESSIONS

1. Meet the State Supreme Court Chief Justices

Meet the Chief Justices of each State Supreme Court in the Sixth Circuit’s geographical area. Topics of discussion may include the relationship between state and federal court systems and how they differ, judicial preference and procedure, and the Chief Justices’ experience serving in their leadership roles.

Moderator

The Honorable Richard Allen Griffin

United States Circuit Judge

Sixth Circuit Court of Appeals

Speakers

Chief Justice John D. Minton, Jr.

Supreme Court of Kentucky

Frankfort, Kentucky

Chief Justice Maureen O’Connor

Supreme Court of Ohio

Columbus, Ohio

Chief Justice Roger A. Page Tennessee

Supreme Court

Jackson, Tennessee

Justice Brian K. Zahra

Michigan Supreme Court

Lansing, Michigan

2. Extraterritorial Law and Global Regulation of Data

Data's intangibility poses significant difficulties for determining jurisdiction. Panelists offer insight into how the nature of data poses interesting questions for interpretation and applicability of laws. This panel of three legal scholars examines the constantly evolving landscape and the implications for the future of discovery practice and litigation.

Moderator

The Honorable John M. Rogers
United States Circuit Judge
Sixth Circuit Court of Appeals

Speakers

Daniel C. K. Chow
Frank E. and Virginia H. Bazler Chair in Business Law
The Ohio State University Moritz College of Law

Milena Sterio
Director, Domestic and International LL.M. Program
Charles R. Emrick Jr.-Calfee Halter & Griswold Professor of Law
Cleveland-Marshall College of Law

Ingrid Brunk Wuerth
Associate Dean for Research
Helen Strong Curry Chair in International Law and
Director, Cecil D. Branstetter Litigation & Dispute Resolution Program
Vanderbilt Law School

3:00 pm – 4:00 pm

BREAKOUT SESSIONS

1. Meet the Appellate Judges

Meet and learn more about these Court of Appeals judges and their experiences in practice and on the bench. The session will feature judges who have been confirmed since the last Judicial Conference of the Sixth Circuit gathering in 2018. In this discussion-style session, judges on the panel will field questions from their colleagues which may include their judicial preferences and procedures and their experience with hybrid and remote proceedings over the past few years.

Moderators

The Honorable R. Guy Cole, Jr.
United States Circuit Judge
Sixth Circuit Court of Appeals

The Honorable Jane B. Stranch
United States Circuit Judge
Sixth Circuit Court of Appeals

Speakers

The Honorable Chad A. Readler
United States Circuit Judge
Sixth Circuit Court of Appeals

The Honorable Eric E. Murphy
United States Circuit Judge
Sixth Circuit Court of Appeals

The Honorable Stephanie D. Davis
United States Circuit Judge
Sixth Circuit Court of Appeals

2. Policing and Qualified Immunity

This panel of legal scholars will discuss the hotly debated doctrine of qualified immunity including its origins, evolution, and arguments in support of and in opposition to the doctrine. Panelists will also review recent caselaw and the doctrine's federalism implications as well as attempts at reform.

Moderator

The Honorable John B. Nalbandian
United States Circuit Judge
Sixth Circuit Court of Appeals

Speakers

Clark Neily
Senior Vice President for Legal Studies
CATO Institute

Chris Slobogin
Milton R. Underwood Chair in Law and Director, Criminal Justice Program
Vanderbilt Law School

Chris Walker
Professor of Law
University of Michigan Law School

3. Third-Party Releases in Chapter 11 Bankruptcy

Panelists will discuss the nuances and types of third-party releases in Chapter 11 bankruptcy proceedings and the potential landscape based on recent litigation and rulings. Their analysis will explore the standards courts have used to determine whether to approve a third-party release with respect to contract law, due process, and consent.

Moderator

Jim Irving
Dentons
Louisville, Kentucky

Speakers

Paul Hage
Jaffe Raitt Heuer & Weiss
Southfield, Michigan

Kim Martin Lewis
Frost Brown Todd LLC
Cincinnati, Ohio

Elliot Smith
Benesch Friedlander Law
Cleveland, Ohio

4:15 pm – 5:15 pm

District and Circuit Breakout Sessions

Court of Appeals

Eastern and Western District of Kentucky

Eastern District of Michigan

Western District of Michigan

Northern District of Ohio

Southern District of Ohio

Eastern District of Tennessee

Middle District of Tennessee

Western District of Tennessee

6:00 pm – 9:00 pm

Life Member Reception
Frazier History Museum

THURSDAY, SEPTEMBER 1, 2022

9:00 am – 10:00 am

BREAKOUT SESSIONS

1. In-House Counsel Perspectives on the Impact of COVID

COVID-19 has had a dramatic and long-term impact on work practices across sectors. From leading crisis management responses to developing new models of operation, panelists discuss how the pandemic shaped their organization and approach. Our panelists will discuss common legal issues that have arisen during the pandemic, the challenges they encountered in responding to those issues, and the hidden opportunities the pandemic presented to examine current practices.

Moderator

The Honorable John K. Bush
United States Circuit Judge
Sixth Circuit Court of Appeals

Speakers

Matt Hamel
Executive Vice President and General Counsel
Brown-Forman

Caroline Miller Oyler
Chief Legal and Risk Officer
Papa John's International, Inc.

Speakers, cont.

Steven Reed
Chief Legal Officer
BrightSpring Health Services

Bobby Simpson
Executive Senior Counsel, Compliance, Litigation, and Labor & Employment
GE Current

2. The Fourth and Fifth Amendments and New Technology

Courts often apply the Fourth and Fifth Amendments to new technology. Today they are grappling with the implications of cell phones, laptops, and social media. Tomorrow they may confront the implications of artificial intelligence, biometrics, and autonomous vehicles. This session will explore how lower courts are addressing these questions and the role of recent Supreme Court decisions.

Moderator

Doris Randle-Holt
Federal Public Defender

Speakers

Ronald Hedges
Dentons
New York, New York

Orin Kerr
William G. Simon Professor of Law
University of California, Berkeley Law

10:10 am – 11:10 am

BREAKOUT SESSIONS

1. Innocence Projects, Wrongful Conviction, and Criminal Justice

According to The National Registry of Exonerations, there have been at least 3,169 exonerations across the nation since 1989 totaling 27,200 years lost to wrongful convictions. This panel will discuss their work to combat and remedy miscarriages of justice from the beginning stages of an investigation to post-conviction relief in criminal proceedings. From mistaken identification to false confessions and “junk science,” the causes of wrongful convictions and the legal hurdles to achieving justice may surprise you.

Moderator

The Honorable Chad A. Readler
United States Circuit Judge
Sixth Circuit Court of Appeals

Speakers

Suzanne Hopf
Directing Attorney
Kentucky Innocence Project

Shon Hopwood
Associate Professor of Law
Georgetown University

David A. Singleton
Ohio Justice & Policy Center
Cincinnati, Ohio

2. The History and Law of Bourbon

Attorney and author Brian Haara shares the history of Kentucky’s most famous spirit including historic lawsuits between early distillers exposing long-lost facts and the maverick mentality of bourbon’s rich heritage. Approaching the history of bourbon from a legal standpoint, Haara tells the history of America through the development of commercial laws that guided our nation from an often-reckless laissez-faire mentality, through the growing pains of industrialization, and past the overcorrection of Prohibition.

Moderator

The Honorable Gregory F. Van Tatenhove
United States District Judge
Eastern District of Kentucky

Speakers

Mary Barrazotto
Senior Vice President and General Counsel
Brown-Forman

Speakers, cont.

Brian Haara

Attorney and Author

Bourbon Justice: How Whiskey Law Shaped America

3. Legal Education in the Pandemic and After

The Deans of four laws schools, one representing each state in the Sixth Circuit, discuss how the pandemic challenged them to rethink legal education including shifts to remote and hybrid instruction, altered approaches to bar exam preparation, and career development amidst unknown factors. Panelists will discuss how the adaptation of the past two years led to new opportunity and which of the changes are here to stay.

Moderator

The Honorable Waverly D. Crenshaw, Jr.

Chief District Judge

Middle District of Tennessee

Speakers

Lincoln Davies

Dean and Frank R. Strong Chair in Law

The Ohio State University Moritz College of Law

Mary Davis

Dean and Ashland-Spears Distinguished Research Professor of Law

University of Kentucky Rosenberg College of Law

Chris Guthrie

Dean and John Wade, Kent Syverud Professor of Law

Vanderbilt Law School

Mark West

David A. Breach Dean and Nippon Life Professor of Law

University of Michigan Law School

11:20 am – 12:20 pm

BREAKOUT SESSIONS

1. The Ed Johnson Project: Remembrance. Reconciliation. Healing.

This panel will discuss the story of Ed Johnson and his attorneys, Noah Parden and Styles Hutchens, which changed the course of justice in America forever with a series of historic precedents and legal firsts including a United States Supreme Court case that established federal oversight of state level civil rights issues. Judge Collier and Mr. Canellos will also discuss The Ed Johnson Project, which sought to promote racial healing and reconciliation in Chattanooga by creating a permanent memorial acknowledging the brutal attack of Ed Johnson and the work of the attorneys who stood up for equal justice.

Moderator

James C. Duff

Director, Supreme Court Historical Society

Washington, D.C.

Speakers

The Honorable Curtis L. Collier

United States District Judge

Eastern District of Tennessee

Speakers, cont.

Peter Canellos

Author

The Great Dissenter: The Story of John Marshall Harlan

2. Appellate Advocacy: Tips from the Pros

This panel will discuss concrete strategies for effective advocacy in appellate litigation.

Moderator

The Honorable Stephanie D. Davis

United States Circuit Judge

Sixth Circuit Court of Appeals

Speakers

Benjamin C. Glassman

Squire Patton Boggs

Cincinnati, Ohio

Matt Kuhn

Solicitor General of Kentucky

Louisville, Kentucky

Kevin M. Schad

Assistant Federal Public Defender

Cincinnati, Ohio

Jeffrey B. Wall

Sullivan & Cromwell LLP

Washington, D.C.

3. Wellness for Legal Practitioners

This panel will discuss the multiple dimensions of wellness with specific focus on mindfulness, work-life balance, and resources available to legal practitioners and judges.

Moderator

The Honorable Amul R. Thapar

United States Circuit Judge

Sixth Circuit Court of Appeals

Speakers

Beverly Endslow

Clinical Assistant

Ohio Lawyers Assistance Program

Yvette Hourigan

Director, Kentucky Lawyer Assistance Program

Kentucky Bar Association

Terry Maroney

Robert S. and Theresa L. Reder Chair in Law and Professor of Medicine, Health and Society

Vanderbilt Law School

12:30 pm – 5:00 pm

Lunch on Your Own and Social Activities

6:00 pm – 9:00 pm

Reception & Banquet

Omni Louisville Hotel

Remarks

Peter Canellos

Author, *The Great Dissenter: The Story of John Marshall Harlan*

James C. Duff

Director, Supreme Court Historical Society

Washington, D.C.

FRIDAY, SEPTEMBER 2, 2022

9:00 am– 10:30 am

Rule of Law

The Rule of Law as an ideal of our society refers to the ascendancy of law and of the institutions of the legal system within our system of governance. The panelists will discuss how the principles of this ideal are illustrated through landmark cases and how the ideal is valued and challenged in modern society.

Moderator

The Honorable Jeffrey S. Sutton

United States Chief Circuit Judge

Sixth Circuit Court of Appeals

Speakers

Paul Clement

Kirkland & Ellis LLP

Washington, D.C.

Paul Smith

Senior Vice President for Litigation and Strategy

Campaign Legal Center

10:45 am – 12:00 pm

BREAKOUT SESSIONS

1. Multidistrict Litigation

This panel will discuss the nuances of multidistrict litigation with examples of complex cases.

Moderator

The Honorable Karen Caldwell

United States District Judge

Eastern District of Kentucky

Speakers

The Honorable Edmund A. Sargus, Jr.

United States District Judge

Southern District of Ohio

Andrew Bradt

Faculty Director, Civil Justice Reform and Professor of Law

UC Berkeley School of Law

The Honorable David M. Lawson

United States District Judge

Eastern District of Michigan

2. What's New in Federal Sentencing?

This panel will discuss recent developments in federal sentencing, including recent Sentencing Commission products and publications, case law, and topics of special interest.

Moderator

Brenda Baldwin-White
Senior Judicial Education Attorney
Federal Judicial Center

Speakers

Douglas Berman
Newton D. Baker-Baker & Hostetler Chair in Law and
Executive Director of the Drug Enforcement and Policy Center
The Ohio State University Moritz College of Law

Raquel Wilson
Director, Office of Education and Sentencing Practice
United States Sentencing Commission

3. The Free Exercise Clause and the Supreme Court

This panel will discuss the proper understanding of the First Amendment's protection of the "free exercise" of religion, the Supreme Court's recent case law on the clause, and predictions on where the Court may be heading in its interpretation of it.

Moderator

The Honorable Eric E. Murphy
United States Circuit Judge
Sixth Circuit Court of Appeals

Speakers

Chris Lund
Associate Dean for Research and Faculty Development and Professor of Law
Wayne State University Law School

Phillip Muñoz
Tocqueville Associate Professor of Political Science and
Concurrent Associate Professor of Law
University of Notre Dame Law School

12:00 pm

Adjourn