

THE ROLE OF THE JUDGE IN THE TWENTY-FIRST CENTURY SCHEDULE

Friday, April 21

2:00 - 2:30 p.m.

Barristers Hall

Introduction by Dean *ad interim* Maureen A. O'Rourke

2:30 – 4:00 p.m.

Barristers Hall

Panel 1

Changing Times, Changing Roles?

Moderator: Prof. Jack Beermann; Panelists: Hon. Michael Boudin; Hon. Guido Calabresi; Hon. Alex Kozinski; Prof. Judith Resnik

How, if at all, have changes in the legal world altered the role of the judge in the 21st century? To address this question, one must first have some baseline understanding about the pre-21st century world and the judicial role. What are the dominant conceptions of judicial role? What do judges do, and what do judges do well – descriptively, historically, or normatively? How contingent are those conceptions of judicial role on facts about the world? If those facts change, does that point towards a seismic re-thinking about the place of judges in the legal world?

If the answer is “yes,” one needs to ask whether any such factual changes have occurred. Are events outrunning traditional legal categories? For example, have advances in specialized knowledge made the “generalist judge” archaic and/or changed the appropriate allocation of authority between judge and jury? Is the sheer volume of litigation outstripping judicial capacities? Does the 21st century world call for a more active, or more passive, judicial stance than the one to which we have become accustomed?

4:00 – 4:30 p.m.

Lobby

Coffee & Snack Break

4:30 – 6:00 p.m.

Barristers Hall

Panel 2

The Independence of the Judiciary

Moderator: Prof. Ward Farnsworth; Panelists: Hon. Nancy Gertner; Prof. Erwin Chemerinsky; Prof. Michael J. Gerhardt; Prof. Reva Siegel

To what extent can legislatures or executives control the judicial decision-making process? Is the movement to drastically curtail judicial discretion in sentencing part of a larger shift in the balance of power? As we move into the 21st century, what is the appropriate conception of judicial independence, and what events threaten that conception? What is an activist judge? Is it possible or desirable to divorce politics from judging? To whom do, or should, judges answer? In many states, judges are elected officials, and in others the appointive mechanisms differ dramatically. How do methods of selection and removal affect the judicial role?

6:30 – 7:30 p.m.

One Sherborn St. 9th Fl. Ballroom

Reception

7:30 – 9:30 p.m.

One Sherborn St. 9th Fl. Ballroom

Dinner & Keynote Address

Keynote Speaker: Honorable Richard A. Posner

Saturday, April 22

8:30 – 9:30 a.m.

Lobby

Continental Breakfast

9:30 – 11:00 a.m.

Barristers Hall

Panel 3

The Judicial Role in National Security

Moderator: Prof. Pnina Lahav; Panelists: Hon. Stephen Reinhardt; Hon. Mark Wolf; Prof. Charles Fried; Prof. Geoffrey Stone

Recently the United States has been confronted with new challenges to its national security. Do they call for a revised view of the judicial role in mediating between the interests of security and liberty? Do threats of terrorism require a different analysis of the judicial role than ordinary wars do?

11:00 – 11:30 a.m.

Lobby

Coffee & Snack Break

11:30 a.m. – 1:00 p.m.

Barristers Hall

Panel 4

Contemporary Judicial Case Management

Moderator: Prof. and Dean ad interim Maureen A. O'Rourke; Panelists: Hon. Gladys Kessler; Prof. Robert Bone; Prof. Eric Green

Judges do not simply decide cases, they manage cases, including supervising the pre-trial, plea bargaining and civil settlement processes, which may have more impact on the rights of the parties than does the actual case-deciding process. How, if at all, has the march of events and changes in technology affected these functions? How has the proliferation of mass tort and other class action litigation affected the range of judicial case management tasks?

Do judges need to exercise more, or less, control over the conduct of trial and pre-trial proceedings? How involved should judges be in settlement negotiations? Do judges in newer specialized courts, such as domestic violence, gang, and drug courts, exercise more control and creativity because they are expected to act based on expertise in the particular area covered by the court? Has the incorporation of alternative dispute resolution methods into the pre-trial process altered the role of the judge? Is the case management aspect of the judicial role consistent with the judicial role?

1:00 – 2:00 p.m.
12th Floor Lounge

Lunch and Keynote Address:

What will Determine the Role of the Judiciary in the 21st Century?

Keynote Speaker: Honorable Juan R. Torruella

2:00 – 3:30 p.m.
Barristers Hall

Panel 5

Judges & Social Science

Moderator: Prof. David Rossman; Panelists: Hon. Frank H. Easterbrook; Prof. David Faigman; Prof. James Lindgren; Prof. Jeffrey J. Rachlinski

Increasingly judges are called upon to evaluate relevant scientific evidence (toxic torts, DNA identification, fingerprint analysis). The legal system is swamped with scientific – and sometimes pseudo-scientific – data presented as legal argument. How can and should judges respond to this influx of information? How has the law fared when it has tried to base decisions on social science data? Are there systematic problems with the legal system's capacity to absorb and utilize this information?

3:30 – 4:00 p.m.
Lobby

Coffee & Snack Break

4:00 – 5:30 p.m.
Barristers Hall

Panel 6

The Relevance of International Sources of Law

Moderator: Prof. Daniela Caruso; Panelists: Prof. Steven G. Calabresi; Prof. Sanford Levinson; Prof. David Seipp

To what extent, if any, should American judges consider international sources of law as helpful or persuasive authority? There are many contexts in which foreign legal sources are controlling authority, but there are other contexts, most notably constitutional law, in which the proper role of foreign law is less clear. Do state court and lower federal court judges, who routinely deal with foreign law as an authoritative source, have anything to contribute to this larger constitutional debate?

