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21st Annual National Institute on Class Actions

Come join Colorado Attorney General Cynthia H. Coffman, Hon. Jeffrey Sutton, Representative Jamie Raskin, Professor John Coffee and Professor Judith Resnik.

Trust us, this program’s going to be HUGE!

October 26–27, 2017
Kimpton Hotel Palomar DC
Washington, DC
Program Description

This year's Institute is especially important, considering the attacks on our practice. Whether you litigate and try class-action lawsuits, want to learn how to best help your clients, or want to learn about current class-action cases and recent Supreme Court decisions, you won't want to miss this program.

Celebrate class actions in our nation’s capital with these distinguished speakers and others.

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Cynthia Coffman

Hon. Jeffrey Sutton

Rep. Jamie Raskin

Prof. John Coffee

Prof. Judith Resnik

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Douglas Besman
Nestle, USA, Inc.
Solon, OH

F. Paul Bland
Public Justice
Washington, DC

Fred B. Burnside
Davis Wright Tremaine LLP
Seattle, WA

Honorable Allison D. Burroughs
United States District Court for the District of Massachusetts
Boston, MA

Elizabeth J. Cabraser
Lieff Cabraser Heimann & Bernstein, LLP
San Francisco, CA

Charles B. Casper
Montgomery McCracken Walker & Rhoads LLP
Philadelphia, PA

Professor John C. Coffee, Jr.
Columbia Law School
New York, NY

Cynthia H. Coffman
Colorado Attorney General
Denver, CO

Honorable Robert M. Dow Jr.
United States District Court for the Northern District of Illinois
Chicago, IL

E. Michelle Drake
Berger & Montague, P.C.
Minneapolis, MN

Deborah A. Elman
Grant & Eisenhofer P.A.
New York, NY

Vincent J. Esades
Heins Mills & Olson, P.L.C.
Minneapolis, MN

Professor Brian T. Fitzpatrick
Vanderbilt Law School
Nashville, TN

Ted Frank
Competitive Enterprise Institute & Center for Class Action Fairness
Washington DC

Karla Gilbride
Public Justice
Washington, DC

Barbara J. Hart
Lowey Dannenberg, P.C.
White Plains, NY

Joseph D. Heyd
The Procter & Gamble Co.
Cincinnati, OH

Jason S. Hartley
Stueve Siegel Hanson LLP
San Diego, CA

Daniel R. Karon
Institute Chair
Karon LLC
Cleveland, OH

Harold H. Kim
U.S. Chamber of Commerce Institute for Legal Reform
Washington, DC

Professor Alexandra D. Lahav
University of Connecticut Law School
Hartford, CT

Melissa H. Maxman
Cohen & Gresser LLP
Washington, DC

Andrew J. McGuinness
Andrew J. McGuinness, Esq.
Ann Arbor, MI

Joseph Milcoff
FedEx Ground
Moon Township, PA

Courtney Ozer
Unilever United States, Inc.
Englewood Cliffs, NJ

Professor Chris Peterson
University of Utah College of Law
Salt Lake City, UT

Andrew J. Pincus
Mayer Brown
Washington, DC

Karen Caraher Quirk
Blue Cross Blue Shield of Illinois, Montana, New Mexico, Oklahoma, and Texas
Chicago, IL

Representative Jamie Raskin
Washington, DC

Professor Judith Resnik
Yale Law School
New Haven, CT

Kimberly Strawbridge Robinson
Bloomberg BNA
Washington, DC

Joseph G. Schmitt
Nilan Johnson Lewis PA
Minneapolis, MN

Sabrina H. Strong
O’Melveny & Myers, LLP
Los Angeles, CA

Honorable Jeffrey Sutton
United States Court of Appeals for the Sixth Circuit
Cincinnati, OH

Andrew J. Trask
McGuire Woods LLP
Los Angeles, CA

Jason A. Zweig
Hagens Berman Sobol Shapiro LLP
Chicago, IL

Planning Committee

Faculty subject to change without notice.
## Wednesday, October 25

### 5:30 p.m.–6:30 p.m.  
**Capital Bliss**  
If the present state of class-action law has you not so present, breathe and join us for evening yoga taught by our Institute's congressional yogi. It's the perfect way to recess before two days of capital class-action action. (If you don’t have a mat, don’t filibuster. We’ll have handouts.)  
**Instructor:** Jennifer Hauge (Room TBD)

## Thursday, October 26

### 7:30 a.m.–8:30 a.m.  
**DC-Facing Dog**  
If you’re up for a little something more to prepare you for our class-action debate, join us for sunrise yoga. Jennifer will help prepare you for the next two days.

### 9:30 a.m.–9:45 a.m.  
**Welcome to Washington!**

### 9:45 a.m.–10:30 a.m.  
**Debating the Language: Class Actions 101**  
The Advisory Committee on Civil Rules poured countless hours into crafting Rule 23, so understanding it begins with examining the text. That’s what Class Actions 101 is all about. After Drew and Dan have used their time, they’ll yield to . . .  
**Instructors:** Andrew J. McGuinness, Daniel R. Karon

### 10:30 a.m.–11:15 a.m.  
**Let's Take It to a Vote: Class Actions 201**  
Having just discussed Rule 23, it’s time for us to apply it. First, we’ll hear testimony about real-life cases. We’ll then channel these cases’ facts through Rule 23 and debate whether the courts should have or shouldn’t have certified them. Finally, like Congress, we’ll vote on how these cases turned out. We neither know how our debate will go nor who will ally with whom. All we know is that *House of Cards* has nothing on us.  
**Instructors:** Andrew J. McGuinness, Daniel R. Karon

### 11:15 a.m.–11:30 a.m.  
**Lobbying Break**

### 11:30 a.m.–12:15 p.m.  
**Join the Writing Revolution: Class Actions 301**  
Justice Scalia noted that he revised his own work “over and over again.” Justice Thomas argues that “simplicity and clarity” requires “a lot of rounds” of “fairly intense” editing. Justices Kennedy and Ginsburg believe that lawyers are professional writers, with Justice Ginsberg adding that “that law should be a literary profession.” But who really pays attention to the technical aspects of writing? Truth is, not enough of us. Class Actions 301 will center on underappreciated writing fundamentals, like grammar, usage, syntax, punctuation, pace, theme, typography, structure, and more. If you want to be your constituents’ best writer, don’t miss it.  
**Instructor:** Daniel R. Karon

### 12:15 p.m.–12:45 p.m.  
**Buffet Lunch**

### 12:45 p.m.–1:45 p.m.  
**Washington, Jefferson, and Hamilton: Reviewing the Past Year’s Most Influential Class-Action Cases**  
Like the congressional debate over health care, the past year offered complicated and uncertain class-action intensity. So back by popular demand, Professors Coffee and Lahav will showcase this year’s important class-action developments—developments that everyone must heed if they want to properly lobby the court and win their cases.  
**Instructors:** Professor John C. Coffee, Professor Alexandra D. Lahav

Agenda subject to change without notice.
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| 1:45 p.m.–    | **Build That Wall . . . or Maybe Not:** H.R. 985 and the End of Class Actions?  
H.R. 985, which the House or Representatives recently passed, includes reforms that would dramatically affect the future of class actions. Are this bill’s changes necessary and appropriate? Or does the bill trump the Rules Enabling Act, which requires participation of and review by the bench, bar, academy, and public instead of yielding the rule-making process to a partisan Congress? Our talk show will examine these themes and more in a way that Anderson Cooper would envy.  
**Host:** Daniel R. Karon  
**Guests:** Honorable Robert M. Dow Jr., Elizabeth J. Cabraser, Harold H. Kim, Joseph D. Heyd |
| 2:45 p.m.–    | Fundraising Break                                                     |
| 3:00 p.m.–    | **Tapping the Collective Consciousness:** How Americans Feel About Class Actions and Why  
The way we perceive the policies, purposes, and politics behind class actions plays a huge role in how we perceive H.R. 985, the CFPB’s fate, or whichever class-action case next lands in the Supreme Court for a 5–4 decision. For instance, is H.R. 985 a laudable effort to correct class-action lawyers’ alleged abuse of an inefficient legal system? Or will the bill trump worthwhile claims where victims deserve a remedy? And if the bill isn’t the right fix, what approach will more suitably balance consumer protection with corporate rights? Our program will do its best to enlighten you as some of the country’s best political minds examine how we can survive and politick the next three years as a class-action community.  
**Host:** Melissa H. Maxman  
**Guests:** Colorado Attorney General Cynthia H. Coffman, Andrew J. Pincus, Representative Jamie Raskin, Kimberly Strawbridge Robinson |
| 4:00 p.m.–    | **The Conservative Case for Class Actions—A Monumental Debate**  
We know how the liberals feel about class actions, but does a case exist for conservatives embracing them? As we learned during the election, it’s awfully tough to convince people that they’re wrong. But what about suggesting that conservatives’ existing beliefs embrace a pro-class-action viewpoint? After all, class actions offer concepts that conservatives tend to embrace, like market solutions, private-sector enforcement, and judicial efficiency. . . . or do they? Our examination of whether conservatives can make a case for class actions will make the presidential debates look like a walk in President’s Park.  
**Host:** Fred Burnside  
**Guests:** Honorable Jeffrey Sutton, Professor Brian Fitzpatrick, Ted Frank |
| 5:00 p.m.–    | **Libation Without Representation at Urbana**  
After a long day politicking class actions, rechannel your attention and join us for a cocktail party at the Palomar’s stylish Urbana. In a casual atmosphere, you can network, meet other Institute guests and friends, and get to know our faculty. This relaxed event in the heart of the capital is one that even members of Congress will want to attend. |

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| 10:00 a.m. – 11:00 a.m. | **Yea! or Nay! Opting Out—Whether and When?**<br>Members of Congress tax themselves over whether to support a piece of legislation. If they should, why? If they shouldn’t, why not? The same is true of class members when considering whether to stay in a class-action case or to opt out. What considerations control this choice? Does timing matter? Does the defendant’s name matter? In addition to optics and politics, what substantive or emotional concerns drive this choice? Depending on the case, opting out can be a monumental decision. Learn all about it from people who have lobbied for and against it.  
**Host:** Vincent J. Esades  
**Guests:** Jason A. Zweig, Deborah A. Elman, Barbara J. Hart, Jason S. Hartley |
| 11:00 a.m. – 12:15 p.m. | **You’ve Red an Arbitration Clause and Class-Action Waiver, but Need You Feel Blue? The State of the Union Between Arbitration and Litigation**<br>Arbitration clauses with class-action bans defeat class actions, right? Not so fast. Turns out Concepcion may not have been the final word. Consumer advocates, academics, and courts have differed on Concepcion’s directive. We will examine the newest legal and policy bases surrounding arbitration clauses and class-action bans, from D. R. Horton’s enforceability issue to the CFPB’s new regulations. Maybe our debate will spark undecided lawyers to file that nasty case that they rejected earlier. Or maybe we will offer methods for making that arbitration clause and class-action ban tremendous. Grab a ringside seat to find out.  
**Host:** Andrew J. McGuinness  
**Guests:** Honorable Allison D. Burroughs, Professor Judith Resnik, Karla Gilbride, Charles B. Casper |
| 12:15 p.m. – 1:45 p.m. | **Lunch at Urbana**                                                   |
| 1:45 p.m. – 1:50 p.m. | **Declarations and Preview of Next Year**                            |
| 1:50 p.m. – 2:50 p.m. | **Inside the Beltway: Class-Action Insights from In-House Counsel**<br>Looking for a Deep Throat? There’s nothing better than getting a briefing from someone on the inside. Lawyers from both sides of the aisle will want to hear our in-house experts’ remarks on how they approach and manage class actions in today’s partisan litigation climate. Our program’s members will discuss such topics as how they select their litigation strategies, how recent legislative developments have affected their decision making, and how the increase in class-action trials has influenced their defense strategies. Never mind your party affiliation, this is one hearing you won’t want to see held in private.  
**Host:** Sabrina H. Strong  
**Guests:** Courtney Ozer, Karen Caraher Quirk, Douglas Besman, Joseph Milcoff |
### 2:50 p.m.–3:50 p.m.

**The Times They Are a-Changin’: The Role of Administrative Agencies and Private Counsel in the Trump Era**

Bob Dylan’s words could hardly ring truer. Since President Trump’s election, the CFPB has come under increasing fire, and new leadership has worked its way into multiple regulatory agencies with the goal of minimizing restrictions on business. So what do these changes mean for these agencies and for us? Will administrative curtailment create opportunities for private lawyers, spawn an ungoverned void, or produce something in between? And which election is best for the American people?

**Host:** E. Michelle Drake  
**Guests:** Professor Chris Peterson, F. Paul Bland, Jr., Joseph G. Schmitt, Andrew J. Trask

### 3:50 p.m.

**Recess**

The Institute will conclude with some inspiring closing remarks and the opportunity to connect with each other and our Institute faculty. Then, we’re in recess till next year!

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- Enroll me in the Section of Litigation - **$60** Enter your $60 fee on line 4C.

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