



Facultad de Derecho
Universidad de Buenos Aires

**FASHIONING AND MONITORING COMPLIANCE WITH
REMEDIES IN STRUCTURAL REFORM LITIGATION:
CHALLENGES IN THE LIGHT OF EXPERIENCES IN THE US, INDIA, SOUTH AFRICA AND ARGENTINA**

UNIVERSITY OF BUENOS AIRES LAW SCHOOL
NOVEMBER 4th AND 5th, 2010

PROGRAM AGENDA

November 4th

- 15.30 / 16.00 Registration
- 16.00 / 16.10 Welcome
Mónica Pinto
- 16.10 / 16.20 Introduction to the Seminar
Álvaro Herrero
Elizabeth W. Millard
Adrián Ventura
- 16.20 / 16.35 Initial Thoughts
Carmen Argibay
- 16.35 / 18.05 **Panel 1. Structural Reform Litigation in the U.S. and the Role of the Court in Such Litigation**
- **Robin Dahlberg**
Structural Reform Litigation in the U.S. from the Litigant's Perspective
 - **Helen E. Freedman**
Social Rights Cases in the U.S.
 - **Myron H. Thompson**
Institutional Reform Cases in the U.S.

Moderator: **Fernando Basch**

18.05 / 18.25 Coffee Break

18.25 / 19.55 **Panel 2. Structural Reform Litigation in South Africa, India and Argentina and the Role of the Court in Such Litigation**

- **Moray Hathorn**
Structural Reform Litigation in South Africa
- **Jayna Kothari**
Structural Reform Litigation in India
- **Gustavo Moreno**
Structural Reform Litigation in Argentina from the Public Ministry's Perspective

Moderator: **José Miguel Onaindia**

November 5th

15.30 / 17.30 **Roundtable Discussion 1. Designing Remedies in Structural Reform Cases**

- **Luis F. Arias**
Designing Remedies in Social Rights Cases in the Province of Buenos Aires
- **Paula Litvachky**
Designing Remedies in Prison Reform Cases in Argentina
- **Gustavo Maurino**
Collective Actions and Remedies Design in Argentina

Comments:

- **Helen E. Freedman**
- **Moray Hathorn**
- **Myron H. Thompson**

Moderator: **Paola Bergallo**

17.30 / 17.50 Coffee Break

17.50 / 19.50 **Roundtable Discussion 2. Post-Judgment Implementation and Monitoring of Remedies in Structural Reform Cases**

- **Andrea Danas**
Obstacles to Compliance with Remedial Orders and Difficulties in Monitoring Compliance in Argentina
- **Andrés Napoli**
The *Riachuelo* Case
- **John Feerick** (taped)

The Use of Special Masters in the U.S.

- **Helen E. Freedman**
Post-Judgment Implementation of Remedial Orders in Social Rights Cases in the U.S.: Lessons Learned

Comments:

- **Robin Dahlberg**
- **Jayna Kothari**

Moderator: **Mariela Belski**

19.50

Closing

This seminar is sponsored by *Asociación Argentina de Derecho Constitucional, Asociación de Magistrados y Funcionarios de la Justicia Nacional, Asociación de Mujeres Jueces de Argentina* and *Thomson Reuters*.

This seminar is possible thanks to the support of the Estate of Edward Baker, the Spingold Foundation, the Diamondston Foundation and Open Society Foundations.

Speakers

ARGENTINA

Carmen Argibay – National Supreme Court Justice

Luis F. Arias – Judge of the Province of Buenos Aires

Fernando Basch – Director, Justice Reform Program, Asociación por los Derechos Civiles (ADC)

Mariela Belski – Institutional Coordinator and Director of the Education and Discrimination Program, Asociación por los Derechos Civiles (ADC)

Paola Bergallo – Law Professor at the University of San Andrés

Andrea Danas – Judge of the City of Buenos Aires

Álvaro Herrero – Executive Director, Asociación por los Derechos Civiles (ADC)

Paula Litvachky – Director, Democratic Justice Program, Centro de Estudios Legales y Sociales (CELS)

Gustavo Maurino – Co-Director, Asociación Civil por la Igualdad y la Justicia (ACIJ)

Gustavo Moreno – Public Ministry Member of the City of Buenos Aires

Andrés Nápoli – Director, Citizen Participation Program, Fundación Ambiente y Recursos Naturales (FARN)

José Miguel Onaindia – Law Professor, University of Buenos Aires

Adrian Ventura - Subdirector, Master Program in Magistracy, University of Buenos Aires Law School

INDIA

Jayna Kothari – Partner, Ashira Law

SOUTH AFRICA

Moray Hathorn – Partner and Head of the Pro Bono Practice Group, Webber Wentzel

UNITED STATES

Robin Dahlberg – Senior Staff Attorney - Racial Justice Program, American Civil Liberties Union (ACLU)

John D. Feerick – Founder and Director, Feerick Center for Social Justice and Dispute Resolution, Fordham Law School

Helen E. Freedman – Associate Justice of the Appellate Division First Department of the New York State Supreme Court

Elizabeth W. Millard – Director of the Africa Program, Cyrus R. Vance Center for International Justice of the New York City Bar

Myron H. Thompson – Federal Judge for the United States District Court for the Middle District of Alabama

Biographical Information

Luis F. Arias obtained his law degree – specializing in administrative law – from the Universidad Nacional de La Plata, where he also completed his doctoral studies. He served as a consultant in various areas of the national, provincial and municipal administration. Today he is a judge in the Judicial Department of La Plata in the Province of Buenos Aires and Vice President of Asociación Bonaerense de Derecho Administrativo (Association of Administrative Law of Buenos Aires). He teaches constitutional law and sociology in graduate courses at the University of La Plata Law School. He is the author of several publications and has given several lectures in Argentina and abroad.

Fernando Basch has worked with Asociación por los Derechos Civiles since 2006 and is currently ADC's Director of the Justice Reform Program. He received his law degree from the University of Buenos Aires, a post-graduate degree in criminal law from the University of Palermo and, through a Chevening Fellowship from the Foreign and Commonwealth Office of the United Kingdom, a master's in political and legal theory from the University College, London in England. Through a Fulbright Fellowship, he has also been a visiting scholar at Southwestern University School of Law in the United States. Mr. Basch has worked as an advisor in the House of Representatives of the National Parliament of Argentina and as an attorney in cases relating to public interest, criminal defense and the right to freedom of expression. Furthermore, he is a professor for the masters program on human rights at the University of Buenos Aires and for constitutional law and state theory at the University of Palermo. He has published articles on constitutional law, criminal law and human rights.

Mariela Belski is currently the Institutional Coordinator and Director of the Right to Education Program for ADC. She holds a law degree from the University of Buenos Aires Law School, a masters in public law from the University of Palermo, a master's in human rights from the University of Essex in England and a master's in human rights and democratic processes from the University of Chile. She has worked as a consultant for the United Nations Development Program and as a legal advisor to the Under-Secretary of State Reform of the Secretary of Finance and to the legal department of the Ministry of Education of the Government of the City of Buenos Aires. Ms. Belski has been on staff with ADC since March 2004.

Paola Bergallo obtained her law degree with honors from the University of Buenos Aires, an LL.M. from Columbia University and a J.S.M. from Stanford University. She is currently professor of law at the University of San Andrés. She has taught at the Universities of Buenos Aires and Palermo, and abroad at the University Pompeu Fabra, the University of Puerto Rico and the ITAM in Mexico. She worked as a researcher and consultant at the Centro de Derechos Reproductivos (Center for Reproductive Rights), the United Nations Population Fund, the Pan-American Health Organization and the Centro de Estudios de Estado y Sociedad (CEDES) (Center for Studies of State and Society). She was a fellow of the Hewlett Foundation and Stanford University.

Robin Dahlberg is a senior staff attorney with the American Civil Liberties Union's Racial Justice Program and a national expert on public defender issues. She is recognized for having developed a model for use by civil liberties lawyers in cases challenging state public defender systems and sits on the board of directors of the Michigan Campaign for Justice, a group of organizations and individuals fighting for a fair and effective public defense system in Michigan.

Andrea Danas is a judge of the City of Buenos Aires. She entered into that position by concurrence in the year of its creation (2000). Since 2008, she serves as a judge, a position she also reached by concurrence. She is a professor of general theory and philosophy of University of Buenos Aires Law School. She is Master of Administrative Law for the Universidad Austral and a specialist in legal argumentation for the University of Alicante. Ms. Danas is a member of the Asociación de Derecho Administrativo of the City of Buenos Aires, of the Colegio de Magistrados, Integrantes del Ministerio Público y Funcionarios del Poder Judicial of the City of Buenos Aires and of the Sociedad Argentina de Filosofía del Derecho.

John D. Feerick is a law professor at Fordham University School of Law in New York City and Director of the newly created, in 2006, Feerick Center for Social Justice and Dispute Resolution at Fordham Law School. He served as the school's eighth dean from 1982-2002. Before entering academia in 1982, Mr. Feerick was a labor and employment attorney in the law firm of Skadden, Arps, Slate, Meagher & Flom. He joined the firm in 1961 and became a partner in 1968. Mr. Feerick has served in numerous appointed public positions. From 1987-1990, he was chair of the New York State Commission on Government Integrity. In 2003, he served on the referee panel in the *Campaign for Fiscal Equity v. State of New York* school funding case. He also chaired the New York State Commission to Promote Public Confidence in Judicial Elections. From 2003-2005, Mr. Feerick served on the special master panel in the *McCain v. Bloomberg* homeless rights litigation. He has also been a member of the New York State Law Revision Commission, the New York State Judicial Salary Commission, the New York State Committee to Promote Public Trust and Confidence in the Legal System, the New York State Mandatory Continuing Legal Education Committee and the Chief Judge's Corporate Advisory Group, and he served as head of the New York State Commission on Public Integrity. From 1992-1994, he was president of the New York City Bar Association. Mr. Feerick graduated from Fordham University and obtained his law degree from Fordham Law School.

Helen E. Freedman is an Associate Justice of the Appellate Division First Department of the New York State Supreme Court. She began serving on the New York State Supreme Court in 1984. Prior to her appointment to the Appellate Division First Department by Governor David Paterson in July 2008, she was in the Commercial Division of the New York County Supreme Court. She presided over a 25 year old lawsuit brought by the Legal Aid Society that resulted in more than 40 court orders regulating the provision of emergency shelter to families with children in New York City. She is also known for her management of mass torts cases while sitting on the bench. Justice Freedman serves on the Pattern Jury Instructions Committee of the

Association of Justices of the Supreme Court of the State of New York and is a member of the New York State and Federal Judicial Council. She has published law review articles and a widely read book called *New York Objections*, and has been an adjunct professor. She is a graduate of Smith College and of the New York University School of Law.

Moray Hathorn is a partner and head of the Pro Bono Practice Group at Webber Wentzel in Johannesburg. He obtained his BA.LLB from Natal University and is an admitted attorney, notary public and conveyancer. He completed his articles at Webber Wentzel and was admitted as an attorney in 1982, specializing in mining and mineral law. He then went on to be an attorney at the Legal Resources Centre from 1988-2003. During his time at LRC, Mr. Hathorn had extensive experience in human rights law, in particular land reform practice, involving litigation in the Magistrate's Courts, the Industrial Court and Land Claims Court and negotiations with government at municipal, provincial and central, including ministerial, levels. This work included participation in the formulation and drafting of aspects of the new land reform legislation. In 2003, Mr. Hathorn joined Webber Wentzel again as a partner and head of Pro Bono Group.

Jayna Kothari is a partner at Ashira Law in Bangalore, India. She is a practicing advocate and a qualified solicitor in England and Wales. She has published widely in national and international journals in the areas of constitutional and administrative law, as well as in the areas of property law and intellectual property rights. Ms. Kothari has taught as guest faculty at the National Law School of India University, Bangalore. She holds a BA.LLB from University Law College, Bangalore, and a master's degree in law from the University of Oxford.

Paula Litvachky is director of the Democratic Justice Program, Centro de Estudios Legales y Sociales (CELS). She is a lawyer and graduated from the University of Buenos Aires. From 2001-2004, she was an official of the Office of Criminal Policy and Human Rights of the Attorney General's Office of Argentina. She coordinated and participated in several investigations into the functioning of criminal justice in Argentina and the public prosecutor in particular. She is the author of several articles on criminal justice and human rights, and is a professor at Universities of Buenos Aires and Palermo Law Schools.

Gustavo Maurino is co-founder and co-director of the Asociación por la Igualdad y la Justicia (ACIJ), a nongovernmental organization that defends disadvantaged groups and implements institutional control. He obtained his law degree at the National University of Cordoba, and his tort law specialist degree at the University of Belgrano. He is a professor at the University of Palermo, the University of Buenos Aires and the University of San Andrés. He is co-author of the book *Las Acciones Colectivas, Análisis Conceptual, Constitucional, Procesal, Jurisprudencial y Comparado* (Collective Actions, Conceptual, Constitutional, Case Law, and Comparative Analysis) and several articles on constitutional law and social rights.

Gustavo Moreno is a Public Ministry Member of the City of Buenos Aires. He obtained his law degree from the University of Buenos Aires and is a specialist in family law. Between 1986 and 2000, he served in various positions in the judiciary, the Attorney General's office and the Public Ministry of the City of Buenos Aires. He is an elected member of the Jury of the City of Buenos Aires. On several occasions he was invited by the Judicial Council of the Province of Chubut for concourses for judicial positions in different cities of the province and was jury appointed by the Judicial Council of the City of Buenos Aires. He was a professor at the University of Buenos Aires, the Universidad Popular Madres de Plaza de Mayo and the Bar Association of Lomas de Zamora, and he is also a professor in graduate courses. He has written several articles referring mostly to issues relating to family law, the economic, social and cultural rights of the child, and the mental health and public ministry.

Andrés Nápoli is the director of the Citizen Participation Program, Fundación Ambiente y Recursos Naturales (FARN). He represented the NGOs that were admitted by the Supreme Court as third parties in the case *Mendoza, Beatriz v. National Government et al. Collective environmental damage (pollution of Rio Matanza – Riachuelo)* and is currently part of the monitoring panel of the Sanitation Plan of the *Riachuelo* case, ordered by the Supreme Court. He is a professor at the University of Buenos Aires, the Torcuato Di Tella University, the Instituto Tecnológico of Buenos Aires, the Universidad Nacional del Litoral and the School of Magistrates of the National Judiciary Council. He graduated from the University of Buenos Aires and the University of the Basque Country, Spain.

José Miguel Onaindia is a lawyer and a professor of constitutional law, labor law and social security at the the University of Buenos Aires Schools of Law and Economics and Universidad de Ciencias Empresariales y Sociales. He is director of the Program of Specialization in Art and Cultural Law in the post-graduate department of the University of Buenos Aires Law School, professor of policy and legislation for communication at the Universidad del Cine and visiting professor in post-graduate courses at the University of Buenos Aires Schools of Law and Philosophy, Universidad del Litoral, National University of Cordoba, Argentine Notarial University, Universidad Católica Argentina, the Universities of Zaragoza and San Pablo CEU in Spain and University of Tours in France. He is the author of several books, including *La Constitución Argentina* (The Argentine Constitution) and *La Constitución de los Porteños* (the Constitution of the City of Buenos Aires), both of which were co-authored with Daniel A. Sabsay. Among other positions, he has served as director of the National Institute of Cinema and Audiovisual Arts, advisor to the president of the Culture Committee of the Chamber of Deputies and the Constitutional Affairs Committee of the Legislature of the City of Buenos Aires, general coordinator of culture of UBA and director of the Cultural Center “Ricardo Rojas.” In the exercise of the legal profession, he has been involved in numerous cases relating to the defense of the cultural activity and is an advisor to cultural organizations. He was secretary of the Executive Committee of the Institution Richard Wagner and contributing member of the Foundation Teatro Colon.

Myron H. Thompson is an Article III federal judge for the United States District Court for the Middle District of Alabama, having been appointed to the court by President Jimmy Carter in 1980. He has presided over cases dealing with the separation of church and state, prison conditions, racial diversity in the Alabama post-secondary education system, and redistricting in the city of Montgomery. From 1972-1974, Judge Thompson was an Assistant Attorney General with the Alabama Attorney General's Office and from 1974-1980 he was an attorney in private practice in Alabama. He served as the Chief Judge of the United States District Court for the Middle District of Alabama from 1991-1998. Judge Thompson holds a B.A. and a J.D. from Yale University.