

DANIEL J. CAPRA
PHILIP REED PROFESSOR OF LAW
FORDHAM UNIVERSITY SCHOOL OF LAW
150 West 62nd Street
New York, New York 10023
(212) 636-6855
e-mail: dcapra@law.fordham.edu

EDUCATION AND HONORS

University of California, Berkeley, Boalt Hall School of Law. J.D. 1977. Graduated first in class of 280. Order of the Coif. Associate Editor, California Law Review.

Rockhurst College, Kansas City, Missouri. A.B. 1974. Graduated summa cum laude.

ACADEMIC POSITIONS

Fordham University School of Law, 1981-present. Tenure received in 1985. Promoted to Full Professor in 1986. Awarded Philip Reed Chair in 1996.

Subjects: Evidence, Constitutional Criminal Procedure, Professional Responsibility, Civil Procedure.

Teaching evaluated as excellent by faculty and students. Voted teacher of the year by the 2006 graduating class. Awarded Dean's Medal of Achievement, 2010.

Tulane University School of Law. Assistant Professor, 1979-81. Taught Summer sessions in 1980, 1981 at University of Grenoble.

Yale Law School, Visiting Professor of Law, Spring 2012.

Columbia Law School, Adjunct Professor, 2003-present.

NYU Law School, Adjunct Professor, 1999, 2000, 2007, 2012-present.

Seattle University School of Law. Visiting Professor, Summers, 1990-1993.

University of San Diego, School of Law. Visiting Professor, Summers, 1999 and 2000.

Daniel J. Capra

PUBLICATIONS (partial list)

ARTICLES

Poetry in Motion: The Federal Rules of Evidence and Forward Progress as an Imperative, 99 Boston University Law Review 1873 (2019).

Character Assassination: Amending Federal Rule of Evidence 404(b) to Protect Criminal Defendants, 118 Columbia Law Review 768 (2018) (with Richter).

Rulemaking Possibilities: Efforts of the United States Judicial Conference Advisory Committee on Evidence Rules to Address the Challenges to Forensic Expert Testimony, 13 Frontiers of Law in China 1 (2018).

Foreword, Symposium on Forensic Expert Testimony, Daubert, and Rule 702, 86 Fordham Law Review 1459 (2018).

Expanding (or Just Fixing) the Residual Exception to the Hearsay Rule, 85 Fordham Law Review 1577 (2017).

Authenticating Digital Evidence, 69 Baylor Law Review 1 (2017).

Prior Statements of Testifying Witnesses: Drafting Choices to Eliminate or Loosen the Strictures of the Hearsay Rule, 84 Fordham Law Review 1429 (2016).

The Ancient Documents Exception and Electronically Stored Information: Fix It Before Anyone Finds Out About It, 17 Yale Journal of Law and Technology 1 (2015)

Autopsy Reports and the Confrontation Clause: A Presumption of Admissibility, 2 Virginia Journal of Criminal Law 62 (2014) (with Tartakovsky). (Modified version published in 99 *Judicature* 61 (2016).

Hearsay Exception for Electronic Communications of Recent Perception, 83 Fordham L.Rev. 1337 (2014).

Symposium on the Challenges of Electronic Evidence, 83 Fordham L.Rev. 1163 (2014).

Why Strickland is the Wrong Test for Violations of the Right to Testify, 70 Washington and Lee L. Rev. 95 (2013) (with Tartakovsky).

Daniel J. Capra

Articles (continued)

Symposium on Reinvigorating Rule 502 of the Federal Rules of Evidence, 81 Fordham L. Rev. 1533 (2013).

Symposium on Restyled Rules of Evidence, 53 William and Mary L.Rev. 1435, 1528-43 (2012).

The Restyled Federal Rules of Evidence, 2011 LexisNexis Emerging Issues 5875.

Expert Testimony and Confrontation: Bullcoming v. New Mexico, 2011 LexisNexis Emerging Issues 5495 (with Saltzburg).

Melendez-Diaz and Admissibility of Records, 2009 LexisNexis Emerging Issues 4017.

The Unrecognized Right of Criminal Defendants to Admit Their Own Pretrial Statements, 49 William & Mary L.Rev. 1991 (2008) (with Saltzburg).

Getting Control of Waiver of Privilege in the Federal Courts: Proposed Federal Rule of Evidence 502, 58 So. Car. L.Rev. 211 (2006) (with Broun).

Evidence Rulemaking After Crawford, 105 Columbia L.Rev. 2409 (2005).

Third Circuit Task Force Report on Selection of Class Counsel, 74 Temple L. Rev. 685 (2002) (principal author).

Keeping the Reformist Spirit Alive in Evidence Law, 149 U. Pa. L. Rev. 1277 (2001) (with Saltzburg and Imwinkelreid).

A Recipe for Confusion: Congress and the Federal Rules of Evidence, 55 U. Miami L. Rev. 691 (2001).

Admissibility of Plea Agreements on Direct Examination: The Limits Vanish, 55 U. Miami L. Rev. 751 (2001).

Out-of-Court Accusations Offered for "Background": A Measured Response from the Federal Courts, 55 U. Miami L. Rev. 803 (2001).

Case Law Divergence from the Federal Rules of Evidence, 197 F.R.D. 531 (2001) (special appendix to all West Group statutory publications of the Federal Rules of Evidence).

Daniel J. Capra

Articles (continued)

“An Accident and a Dream”: *Problems With the Latest Attack on the Civil Justice System*, 20 Pace L.Rev. 339 (2000). (Winner of ABOTA award as the year’s best article on the civil justice system).

The Daubert Puzzle, 32 Georgia L. Rev. 699 (1998).

Advisory Committee Notes to the Federal Rules of Evidence That May Require Clarification, 182 F.R.D. 268 (1998) (also published by the Federal Judicial Center and in the Weinstein’s Evidence Treatise).

Attorney Fee-Shifting and the Settlement Process, 51 The Record of the Association of the Bar of the City of New York 391 (1996)

Proposed Changes to the Exclusionary Rule, 50 The Record of the Association of the Bar of the City of New York 385 (1995).

Judicial Disqualification and Judicial Discourse, 58 Brooklyn L. Rev. 1108 (1993).

Prisoners of Their Own Jurisprudence: The Supreme Court's Fourth and Fifth Amendment Cases, 36 Villanova L. Rev. 1267 (1992).

Attachment of Law Firm Assets by Federal Regulatory Agencies, 47 The Record of the Association of the Bar of the City of New York 116 (1992).

Discretion Must Be Controlled, Judicial Authority Circumscribed, Federalism Preserved, Plain Meaning Enforced, and Everything Must Be Simplified: Recent Supreme Court Contributions To Federal Civil Practice, 50 Maryland L. Rev. 632 (1991).

Deterring the Formation of the Attorney-Client Relationship: Client Identity, Payment of Fees, and Communications by Fiduciaries, 4 Georgetown J. Leg. Eth. 235 (1991).

The Attorney-Client Privilege in Common Representations: Information-Pooling and Problems of Professional Responsibility, 33 Trial Lawyer's Guide 20 (1989).

Proposed Amendments to the Lawyer's Code of Professional Responsibility, 42 Record of the Association of the Bar of the City of New York 323 (1987).

Daniel J. Capra

Articles (continued)

Selecting an Appropriate Federal Court in an International Antitrust Case: Personal Jurisdiction and Venue, 9 Fordham Int. L. J. 401 (1986).

Access to Exculpatory Evidence: Resolving the Agurs Problems of Prosecutorial Discretion and Retrospective Review, 53 Fordham L. Rev. 391-449 (1984).

BOOKS AND TREATISES

Federal Rules of Evidence Manual, 12th edition, Five Volumes (LexisNexis, 2019), and semi-annual Supplements (with Saltzburg and Martin).

American Criminal Procedure, 11th edition (WestAcademic 2018), and yearly Supplement and Teachers' Manual (with Saltzburg).

Best Practices for Authenticating Digital Evidence (WestAcademic 2016) (with Grimm and Joseph).

Principles of Evidence, 8th Edition (West 2018) (with Lilly and Saltzburg).

Evidence: The Objection Method, Casebook, 5th edition (Carolina Academic Press 2016) (with Prater, Saltzburg and Arguello).

West's Federal Rules of Evidence 2011 -2019 (Restyled Rules along with Reporter's Notes).

Professional Responsibility: An Interactive Approach, 2nd edition (West 2014) (with Pearce, et. al.).

Electronic Discovery and Digital Evidence, 3rd edition (West 2015) (first published casebook on this subject) (with Scheindlin and the Sedona Conference).

Daniel J. Capra

BOOKS AND TREATISES, continued

The Form of the Question (West 2014) (with Greenberg).

The Great Fourth Amendment Cases (2010) (Three volume treatise, published in Chinese).

Nutshell on Electronic Discovery and Digital Evidence (West 2009) (with Scheindlin).

Third Circuit Pattern Jury Instructions in Civil Cases, with Commentary (West 2007) (co-author).

New York Evidence: Theory and Practice, 3d edition (Wolters Kluwer, 2017), and yearly Supplement (with Martin).

Commentaries on Federal Rules of Evidence, United States Code Service (Two Volumes) (Lexis, 1999).

Experts (Aspen 2003) (with Stern and Saltzburg)

Hearsay and Confrontation (Aspen 2003) (with Stern and Saltzburg)

Criminal Procedure, 7th edition (WestAcademic 2017) (with Saltzburg and Davis).

SHORTER ARTICLES AND COLUMNS

New York Law Journal, Columnist on Evidence, 1989-2002.

Columnist on Evidence for *Fifth Circuit Judicial News*, 2002.

New Amendments to the Federal Rules of Evidence, Federal Discovery News (2000).

Secret Government Thoughts, 20 *Litigation* 36 (1994).

The Federal Law of Privileges, 16 *Litigation* 32 (1989).

Using Public Records in Civil Cases, 22 *Litigation* 44 (1995).

Daniel J. Capra

OTHER WRITINGS

Published two opinions as Special Master on privilege and work product claims in *In re New York Renu With Moistureloc Product Liability Litigation*: 2009 WL 2842745, and 2008 WL 2338552.

Published opinion as Special Master on *Daubert* issues in *Malletier v. Dooney & Bourke, Inc.*, 525 F.Supp.2d 558 (S.D.N.Y. 2007).

Published many opinions on dispositive motions as Special Master in *In re Refco*, including, 826 F.Supp.2d 478 (S.D.N.Y. 2011), 2010 WL 1375946 and 2010 WL 1375712 (S.D.N.Y.)

Published opinions on privilege as Special Master in *SEC v. Wyly*, including 2011 WL 3366491.

Published opinion on admissibility of settlement evidence as Special Master in *In re MI Windows and Doors Product Liability Litig.*, 2013 WL 7801732 (D.S.C.).

Author of Report on Use of Standing Orders, Issued by the Judicial Conference of the United States, September 2009.

Author of Advisory Committee Notes to Federal Rule of Evidence 502; to amendments to Federal Rules of Evidence 103, 404, 408, 606, 608, 609, 701, 702, 703, 801(d)(1)(B), 803(6)-(8) (10) (16), 804(b)(3), 807 and 902.

Drafted Restyled Federal Rules of Evidence and Committee Notes (rules effective December 1, 2011).

Drafted amendments to Federal Rules of Civil Procedure, Criminal Procedure, Appellate Procedure and Bankruptcy, on redacting private information in court filings, 2006-7.

Drafted Local Rules on Electronic Filing, adopted by the Judicial Conference in 2005.

Author of Report on Standing Committee's Local Rules Project, adopted by the Judicial Conference in 2005.

Principal author of Report of Judicial Conference Subcommittee on Privacy and Electronic Access to Court Files, adopted by the Standing Committee in 2011.

Drafted Rules of Procedure for FISA court, 2005.

Daniel J. Capra

ACTIVITIES (partial list)

Judicial Conference Positions

Reporter to the Judicial Conference Advisory Committee on the Federal Rules of Evidence. Appointed by Chief Justice Rehnquist, October, 1996-present. Drafted text of amendments and Advisory Committee Notes for new amendments to the Federal Rules of Evidence, effective December 1, 2000, 2002, 2006, 2010, 2011, 2014, and 2017. Principal author of Rule 502 and Committee Note, enacted by Congress in September 2008.

Reporter to the Judicial Conference Standing Committee on Rules of Practice and Procedure on matters of technology --- overseeing rules-related projects on electronic case filing, privacy issues, and discovery of electronic information. Drafted Model Rules on Electronic Case filing, adopted by Judicial Conference and issued to all Federal District Courts. Drafted National Rule on e-Government privacy, effective December 1, 2007.

Reporter to Judicial Conference Subcommittee on Protecting Private Information in Electronic Case Files. (Joint project of Committee on Rules and Committee on Court Administration and Case Management). Report issued in 2011.

Reporter to Judicial Conference Criminal Law Committee, preparing Judicial Conference Response to *United States v. Booker*.

Co-Reporter to the Judicial Conference Advisory Committee on Appellate Rules, 2014-16.

Reporter to Judicial Conference Subcommittee on Electronic Case Filing, 2013-present.

Special Master Positions

Appointed by Judge Scheindlin as Special Master on Privilege, Work Product and other Discovery Questions, *In re IPO Securities Litigation*, 2004-2008.

Appointed by Judge Scheindlin as Special Master in *Louis Vuitton v. Dooney & Bourke*, a trademark infringement litigation, to decide *Daubert* motions, 2007. Published 180 page opinion on *Daubert* issues, which was affirmed by Judge Scheindlin, 525 F.Supp.2d 558 (S.D.N.Y. 2007) (with Professor Barton Beebe).

Daniel J. Capra

ACTIVITIES (continued)

Special Master Positions, continued

Appointed by Judges Norton and Friedman as Discovery Special Master in *In re New York Renu With Moistureloc Product Liability Litigation*. Published two opinions, at 2009 WL 2842745, and 2008 WL 2338552.

Appointed by Judge Rakoff as Special Master in *In re Refco*, 2009-2014. Opinions on dispositive motions include, 826 F.Supp.2d 478 (S.D.N.Y. 2011), 2009 WL 7242548, 2010 WL 1375946, 2010 WL 5129076, and 2010 WL 1375712.

Appointed by Judge Scheindlin as Special Master for privilege review in *SEC v. Wyly*, 2011-12. Published opinions include 2011 WL 3366491.

Appointed by Judge Norton as Discovery Special Master in M.I. Windows Multidistrict Litigation, 2013-14.

Appointed by Judge Hochberg to resolve a fee dispute in *In re Neurontin Antitrust Litigation*, 2014.

Appointed by Justice Freedman as Discovery Referee in *Graham, Inc. v. Owens-Illinois*, a multi-million dollar commercial dispute in New York Supreme Court, 2008-2014.

Appointed by Justice Kornreich as Special Master for privilege review in *McMahon Securities v. Kleinberg, Kaplan, et. al.*, New York Supreme Court, 2011.

Appointed by Justice Kornreich as Special Master for privilege review in *Coventry v. DDR, Inc.*, New York Supreme Court, 2011-2014.

Appointed by Judge Humphreys as Discovery Special Master in *Bennett v. Sprint* (D.Kan.) C overseeing use of predictive coding in document review. 2011-2014

Daniel J. Capra

ACTIVITIES (continued)

Federal Circuit Court Positions

Appointed by Chief Judge Becker as Reporter to Third Circuit Task Force on Selection of Counsel in Class Actions --- final report published in 2002.

Appointed by Chief Judge Scirica as Co-Reporter to Third Circuit Committee preparing pattern jury instructions in civil cases. 2004-2009.

Appointed by Chief Judge Jacobs to Local Rules Committee for the Second Circuit, 2009-present.

Other Positions and Appointments

Consultant to Yale Law School's China Law Project, on matters of Evidence law reform in China. Conferred with more than 100 Chinese judges and scholars in Shanghai, to assist them in drafting a code of evidence for the People's Republic (September, 2000). Assisted members of National People's Congress in drafting rules on evidence and criminal procedure (Yale Law School, January, 2001).

Visiting Scholar, College of Political Science and Law, Beijing, 2009.

Chair, Multistate Bar Examination Drafting Committee on Evidence Questions. 2004-present.

Consultant to District Court of the Virgin Islands on implementation of electronic case filing.

Chair, Committee on Professional Responsibility, Association of the Bar of the City of New York, 1990-93. Wrote five amicus briefs for New York Courts, and served as expert on ethics for the Southern District of New York.

Chair, Committee on Federal Legislation, ABCNY, 1993-96.

Member of the Executive Committee ABCNY 1997-2001.

Appointed Philip Reed Professor of Law, 1996-present.

Daniel J. Capra

Other Positions and Appointments, continued

Elected to the American Law Institute, 2008.

Consultant to the Drafting Committee for the Uniform Rules of Evidence.

Consultant to the New York Law Revision Commission on matters of Evidence.

Member, Academy of Court-Appointed Special Masters, since 2011.

Reporter for Ad Hoc Committee on amendments to the New York Code of Professional Responsibility, Association of the Bar of the City of New York, 1986-87.

Daniel J. Capra

PRESENTATIONS (partial list)

Keynote Speaker, Sixth Annual Conference on Evidence Law and Forensic Science, sponsored by China University of Political Science and Law, August, 2017.

Invited Speaker on Evidence Rule 502: Third Circuit Judicial Conference (2008); Sedona Conference (2008 and 2009); ALI-ABA (2008); Fifth Circuit Judicial Conference (2009); Delaware Inns of Court (2009); National Association of Bankruptcy Judges (2009).

Talks on Law hour-long interview on Fourth Amendment rights, and three shorter interviews, available at talksonlaw.com.

Invited Speaker on Reform of the Chinese Criminal Justice System, Chinese University of Politics and Law (Book-signing and day-long conference) (2009)

Invited Speaker on *Booker* at the meeting of the United States Judicial Conference, January 2005.

Invited Speaker, University of Seattle Law School “Influential Voices in Law” April 2015.

Video Presentation on New Rules of Evidence, Federal Judicial Center (posted on FJC Website, January 2015).

Panelist, Federal Bar Council, presentation on amendments to Federal Rules of Evidence (yearly presentations, 2000-2017), and on expert testimony (October 1999 and November 2005).

Panelist, Brooklyn Law Symposiums on *Crawford v. Washington*, February, 2005 and October, 2006.

Presentation to Pennsylvania Corporate Roundtable (invitation by Chief Justice Cappy), March, 2007.

Invited Speaker on Evidence at Fifth Circuit Judicial Conference, 2002, 2003, 2005, 2008.

Invited Speaker at First Circuit Judicial Conference, 2005, on *Booker*.

Panelist at Ninth Circuit Judicial Conference, on expert testimony, August, 1995.

Invited presentation on Developments in Evidence, Fourth Circuit Judicial Conference, 2003.

Daniel J. Capra

PRESENTATIONS (continued)

Presentation on Rule 502, Corporate Counsel Summit, 2011.

Speaker for Federal Judicial Center: on the work of the Evidence Rules Committee, Eastern District of Pennsylvania, 2015; on Developments in Evidence, for 5th Circuit Judges, October 2007 and 2012; on Developments in Civil Procedure, for 11th Circuit Judges, October, 1990; on Developments in Criminal Procedure, for Fifth Circuit Judicial Conference, November, 1990, and for Fifth and Seventh Circuit Joint Judicial Conference, November, 1991; on Developments in Evidence, for United States District Judges, 1993; on Expert Testimony, for United States District Judges, 1994, and for Magistrate Judges, 1995; on developments in Evidence, for Fifth Circuit Judges, 1996; on *Daubert*, to all Federal District Judges, 1997; on Digital Evidence, for Magistrate Judges, 2015.

Presentation on Rule 502, Houston, 2010, Fordham Roundtable Series (with Judge Rosenthal).

Conducted training session on lay and expert witness testimony, United States Attorney=s Office, Southern District of Texas, 2002.

Invited presentation to all inside counsel of General Motors, on Attorney-Client Privilege, 2002.

Regular panelist at ALI/ABA seminars on Evidence and Advocacy, 1992-present.

Visiting Scholar, Marquette Law School, April, 2006.

Invited Presentation to Columbia Law Review, on the Rulemaking Process, November 2005.

Invited Presentation on Technological Developments Affecting the Courts, New York Appellate Judges Judicial Conference, October 2005.

Presentation to Federal Judges on Electronic Evidence, Federal Judicial Center, 2014.

Speech to ABA Litigation Section Leadership Conference, on *Daubert*, 1997, and on Proposed Amendments to the Federal Rules of Evidence, 2004.

Presentation to AALS Section on Evidence, concerning the work of the Advisory Committee on Evidence Rules, AALS Annual Convention, 1997.

Appearances on various television programs, including “Nightline” and “Good Morning America.

Daniel J. Capra

LAW SCHOOL RESPONSIBILITIES (partial list)

1. Director, Fordham Center for Judicial Events and Clerkships.
2. Director of Adjunct Faculty (2003-8).
3. Former Chair, Faculty Recruitment Committee.
4. Former Chair, Distinguished Visiting Professor Committee.
5. Prepared Fordham Law School's application (ultimately approved) for a Chapter of The Order of the Coif; Secretary of Fordham Coif Chapter.

AWARDS AND RECOGNITION

Teacher of the Year at Fordham Law School, 2006

Dean's Medal of Achievement, Fordham Law School, 2010

Elected to Membership in the American Law Institute, 2008.

PRIVATE PRACTICE

Lord, Day & Lord, New York City. 1977-79. Member, New York Bar. Admitted 1977.

Daniel J. Capra

REFERENCES

1. Professor Stephen Saltzburg, George Washington University National Law Center, 2000 H Street, N.W. Washington, D.C. 20052.
2. Gregory Joseph, Esq. (Former Chair of the ABA Section of Litigation), Joseph, Hage & Aronson, New York, N.Y. 10022.
3. Hon. Lee H. Rosenthal, United States District Judge for the Southern District of Texas, Houston, Texas.
4. Hon. Anthony Scirica, United States Court of Appeals for the Third Circuit, Philadelphia, PA.
5. Professor Daniel Coquillette, Boston College Law School, 885 Centre Street, Newton Centre, MA 02159.
6. Hon. Jerry E. Smith, United States Court of Appeals for the Fifth Circuit, Houston, Texas.
7. Hon. Robert L. Hinkle, United States District Judge for the Northern District of Florida, Tallahassee, FL.
8. Hon. Reena A. Raggi, United States Court of Appeals for the Second Circuit, Brooklyn, New York.
9. Hon. Jed S. Rakoff, United States District Judge for the Southern District of New York, New York, N.Y.
10. Hon. Marilyn Huff, United States District Judge for the Southern District of California, San Diego, CA.
11. William Treanor, Dean, Georgetown Law School, Washington, D.C.