

GEORGE MASON UNIVERSITY ANTONIN SCALIA LAW SCHOOL

**LAW &
ECONOMICS
CENTER**

JUDICIAL EDUCATION PROGRAM

Advanced Law & Economics Institute for Judges

Saturday, August 7 - Friday, August 13, 2021

White Sulphur Springs, West Virginia



ABOUT US

Because laws are incentives for changing behavior and achieving policy objectives, it is vital that the policymakers who create and shape our laws understand economic concepts and methods.

Since its inception in 1974, the Law & Economics Center has played a critical role as a leader in law and economics research and education. The LEC recognizes both the importance of timely, relevant, and unassailable research on public policy issues as well as the necessity of communicating research findings to those who are directly shaping our country's public policy discussions. With research divisions devoted to top-quality legal policy analysis and educational arms reaching out to judges, attorneys general, and other policymakers, the LEC is uniquely equipped to positively affect national policy outcomes.

The generous support of individuals, foundations, and corporations makes all LEC activities possible. A current list of LEC donors may be found on our website at www.masonlec.org.

OUR PROGRAMS

THE JUDICIAL EDUCATION PROGRAM is the nation's preeminent provider of high-quality, balanced judicial education seminars and conferences that focus on economics, finance, accounting, statistics, and the scientific method. The LEC has been offering educational programs for judges since 1976.

THE HENRY G. MANNE PROGRAM IN LAW & ECONOMICS STUDIES promotes law and economics scholarship by funding faculty research and hosting policy-relevant research roundtables and academic conferences.

THE ATTORNEYS GENERAL EDUCATION PROGRAM offers courses that provide a broad-based understanding of economic and public policy issues to state attorneys general, solicitors general and their staff lawyers.

THE CONGRESSIONAL CIVIL JUSTICE ACADEMY provides balanced educational programs on a range of civil justice issues for the benefit of Members of the US Congress, their staffs, and their constituents.

THE PROGRAM ON ECONOMICS & PRIVACY produces timely and original economic analysis of the privacy, data security, competition, and consumer protection issues intrinsic to the modern, digital economy, and it injects this analysis into public discussions by holding educational programs and forums in which scholars, thought leaders, and policymakers share research and insights.

THE ECONOMICS FOR LAWYERS ONLINE PROGRAM develops and offers courses for law students and practicing attorneys to strengthen their understanding of economics, statistics, finance, and accounting concepts.

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THE GREENBRIER RESORT • 101 MAIN STREET WEST, WHITE SULPHUR SPRINGS, WV 24986

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SATURDAY, AUGUST 7

4:30 - 6:30 pm

Registration, *The Tea Garden*

6:30 pm

Welcome Reception and Dinner, *Champions Room & Terrace*
(Guests welcome)

Introductions and Update on the Law & Economics Center

Donald J. Kochan, Professor of Law and Deputy Executive Director, Law & Economics Center, George Mason University Antonin Scalia Law School

SUNDAY, AUGUST 8

All classes held in Taft Room

7:00 - 7:50 am

Breakfast, *Chesapeake Room*
(Guests welcome)

8:00 - 9:15 am

Session 1: Fundamentals of Capitalism and the Rule of Law | Kochan

Reading Assignment:

Friedman, Milton. "A Friedman doctrine-The Social Responsibility Of Business Is to Increase Its Profits." *The New York Times* (September 1970).

Friedman, Milton. "Friedman on Capitalism and Freedom." *New Individualist Review* 1, no. 1 (April 1981).

Hayek, Friedrich A. "The Use of Knowledge in Society." *American Economic Review* 35, no. 4 (September 1945): 519- 530.

9:30 - 10:45 am

Session 2: Property Rights vs. Regulation: Applications to the Environment

Terry L. Anderson, Director of Hoover Project on Renewing Indigenous Economies
John and Jean De Nault Senior Fellow, Hoover Institution, Stanford University

Reading Assignment:

Anderson, Terry L. "Environmental Markets vs. Environmental Socialism: Capturing Prosperity and Environmental Quality." *Hoover Institution* (2020).

11:00 am - 12:15 pm Session 3: Frontiers of Property Rights: The Not So Wild West | Anderson

Reading Assignment:

Anderson, Terry L. and P.J. Hill. "The Evolution of Property Rights: A Study of the American West." *The Journal of Law & Economics* 18, no. 1 (April 1975):163-179.

Anderson, Terry L. and Fred S. McChesney. "Raid or Trade? An Economic Model of Indian-White Relations." *The Journal of Law and Economics* 37, no. 1 (April 1994): 39-74.

12:15 pm Adjourn for Day: Afternoon Study Session

MONDAY, AUGUST 9

All classes held in Taft Room

7:00 - 7:50 am Breakfast, Chesapeake Room
(Guests welcome)

8:00 - 9:15 am Session 4: Sovereignty, Culture, and The Rule of Law | Anderson

Reading Assignment:

Anderson, Terry L. and Dominic P. Parker. "Lessons in Fiscal Federalism from American Indian Nations," in *The Law & Economics Federalism* (2017).

9:30 - 10:45 am Session 5: Economics of Information

James C. Cooper, Associate Professor of Law and Director Program on Economics & Privacy, Law and Economics Center, George Mason University Antonin Scalia Law School

Reading Assignment:

Beales, Howard, Richard Craswell, and Steven C. Salop. "The Efficient Regulation of Consumer Information." *The Journal of Law & Economics* 24, no. 3 (Dec. 1981): 491-539.

11:00 am - 12:15 pm Session 6: Economics of Privacy | Cooper

Reading Assignment:

Acquisti, Alessandro, Curtis Taylor, and Liad Wagman. "The Economics of Privacy." *Journal of Economic Literature* 54 no. 2 (June 2016): 442-492.

12:15 pm Adjourn for Day: Afternoon Study Session

TUESDAY, AUGUST 10

All classes held in Taft Room

7:00 - 7:50 am

Breakfast, Chesapeake Room
(Guests welcome)

8:00 - 9:15 am

Session 7: Economics of Data Security | Cooper

Reading Assignment:

Cooper, James C. and Bruce H. Kobayashi. "Unreasonable: A Strict Liability Solution to the FTC's Data Security Problem." *Michigan Technology Law Review* (forthcoming).

9:30 - 10:45 am

Session 8: The History of American Corporate Law: Jurisdictional Competition | Kochan

Reading Assignment:

Butler, Henry N. "Nineteenth Century Jurisdictional Competition and the Market for Corporate Privileges." *The Journal of Legal Studies* 14, no. 1 (Jan. 1985): 129-166.

Butler, Henry N. "The Contractual Theory of the Corporation." *George Mason University Law Review* 11, no. 4 (1989): 99-123.

11:00 am - 12:15 pm

Session 9: Rule of Law and The Corporate Purpose

Sanjai Bhagat, Provost Professor of Finance, Leeds School of Business
University of Colorado, Boulder

Reading Assignment:

Bhagat, Sanjai. "Economic Growth, Income Inequality, and the Rule of Law," *Harvard Business Law Review* (November 2020).

Bhagat, Sanjai and R. Glenn Hubbard. "Should the Modern Corporation Maximize Shareholder Value?" *AEI Economic Perspectives* (September 2020).

12:15 pm

Adjourn for Day: Afternoon Study Session

WEDNESDAY, AUGUST 11

All classes held in Taft Room

7:00 - 7:50 am

Breakfast, Chesapeake Room
(Guests welcome)

8:00 - 9:15 am

Session 10: Corporate Governance and Company Performance | Bhagat

Reading Assignment:

Bhagat, Sanjai, Brian Bolton, and Roberta Romano. "The Promise and Perils of Corporate Governance Indices." *Columbia Law Review* 108, no. 8 (December 2008): 1803-1882.

Bhagat, Sanjai and Brian Bolton. "Corporate Governance and Firm Performance: The Sequel." *Journal of Corporate Finance* 58, no 4. (April 2019):142-168.

Bhagat, Sanjai and Brian J. Bolton. "Bank Governance, Bank Risk, and Optimal Executive Compensation." *Harvard Law School Forum on Corporate Governance* (2019).

9:30 - 10:45 am

Session 11: Corporate ESG (Environmental/Social Justice/Governance) Policies and Controversies | Bhagat

Reading Assignment:

Bhagat, Sanji and Roberta Romano. "Empirical Studies of Corporate Law," in *Handbook of Law & Economics* 2 (2007).

Fried, Jesse M. "Will Nasdaq's Diversity Rules Harm Investors?" *European Corporate Governance Institute* (March 2021).

Demers, Elizabeth, Jurian Hendrikse, Philip Joos and Baruch Lev. "ESG Didn't Immunize Stocks During the COVID-19 Crisis, But Investments in Intangible Assets Did." *Journal of Business Finance & Accounting (JBFA)* (March 2021).

11:00 am - 12:15 pm

Session 12: The Economics of Litigation

Bruce Kobayashi, Professor of Law, George Mason University Antonin Scalia Law School

Reading Assignment:

Kobayashi, Bruce. "The Economics of Litigation." *The Oxford Handbook of Law and Economics Vol. III: Public Law & Legal Institutions* Ch. 10 (2017): 201-228, F. Parisi, ed.

12:15 pm

Adjourn for Day: Afternoon Study Session

THURSDAY, AUGUST 12

All classes held in Taft Room

7:00 - 7:50 am

Breakfast, Chesapeake Room
(Guests welcome)

8:00 - 9:15 am

Session 13: Error Cost Analysis and Pleading Standards | Kobayashi

Reading Assignment:

Choi, Stephen J, Karen K. Nelson, and Adam C. Pritchard. "The Screening Effect of the Private Securities Litigation Reform Act." *Journal of Empirical Legal Studies* 6, no. 1 (2009).

Bell Atlantic Corp. v. Twombly, 550 US 544 (2007).

Gelbach, Jonah B. "Can the Dark Arts of the Dismal Science Shed Light on the Empirical Reality of Civil Procedure?," 2 *Stanford Journal of Complex Litigation* 223 (2014).

9:30 - 10:45 am

Session 14: The Economics of Discovery | Kobayashi

Reading Assignment:

Kobayashi, Bruce. "Law's Information Revolution as Procedural Reform: Predictive Search as a Solution to the In Terrorem Effect of Externalized Discovery Costs." *University of Illinois Law Review* 1473 (2014).

Gelbach, Jonah B. and Bruce H. Kobayashi. "The Law and Economics of Proportionality in Discovery." *Georgia Law Review* 1093 (2016).

11:00 am - 12:15 pm

Session 15: Network Effects and Digital Platforms

John M. Yun, Associate Professor of Law and Director of Economic Education
Global Antitrust Institute, George Mason University Antonin Scalia Law School

Reading Assignment:

Yun, John M. "Overview of Network Effects & Platforms in Digital Markets", in *Global Antitrust Institute Report on the Digital Economy* (2020): 1-32.

12:15 - 6:30 pm

Afternoon Study Break

6:30 pm

Closing Reception and Dinner, Crystal Room & Cameo Ballroom

FRIDAY, AUGUST 13

All classes held in Taft Room

7:00 - 7:50 am

Breakfast, Chesapeake Room
(Guests welcome)

8:00 - 9:15 am

Session 16: Predatory Innovation as an Antitrust Violation? | Yun

Reading Assignment:

California Computer Products v. IBM, 613 F.2d 727 (1979).

9:15 - 9:30 am**Break**

(Check out of the hotel and check bags)

9:30 - 10:45 am

Session 17: Potential Competition, Nascent Competitors, and Killer Acquisitions | Yun

Reading Assignment:

Yun John M. "Are We Dropping the Crystal Ball? Understanding Nascent & Potential Competition in Antitrust." *Marquette Law Review* 104, no. 3 (Spring 2021).

FTC v. Steris Corp., 133 F.Supp.3d 962 (N.D. Ohio 2015).

US v. Visa & Plaid Inc., Complaint (2020).

10:45 - 11:00 am**Closing Remarks | Kochan****11:00 am****Program Adjourns**