

GEORGE MASON UNIVERSITY ANTONIN SCALIA LAW SCHOOL

# LAW & ECONOMICS CENTER

## JUDICIAL EDUCATION PROGRAM

# Advanced Law & Economics Institute for Judges

Sunday, December 12 - Saturday, December 18, 2021  
Naples, Florida





## SUNDAY, DECEMBER 12

**4:30 - 6:00 pm**

**Registration**, Vanderbilt Terrace

**6:30 pm**

**Welcome Reception and Dinner**, Gulf Lawn / South Beach  
(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

## MONDAY, DECEMBER 13

All classes will be held in Bayview Ballroom

**7:00 - 7:50 am**

**Breakfast**, Vanderbilt Terrace  
(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* (Sep., 1970).

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

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

**9:30 - 10:45 am**

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

**Terry L. Anderson**, 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*, Vol. 18, No. 1 (Apr., 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*, Vol. 37, No. 1 (Apr., 1994): 39-74.

**12:15 pm** **Adjourn for Day: Afternoon Study Session**

## **TUESDAY, DECEMBER 14**

*All classes will be held in Bayview Ballroom*

**7:00 - 7:50 am** **Breakfast, Vanderbilt Terrace**  
*(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." *The Law & Economics of 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, 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*, Vol. 24, No. 3, Consumer Protection Regulation: A Conference Sponsored by the Center for the Study of Economy and the State (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 (2016): 442-492.

**12:15 pm** **Adjourn for Day: Afternoon Study Session**

## **WEDNESDAY, DECEMBER 15**

*All classes will be held in Bayview Ballroom*

**7:00 - 7:50 am** **Breakfast, Vanderbilt Terrace**  
*(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." *Michigan Technology Law Review* (July 2020).

# AGENDA

**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.

**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:**

"Economic Growth, Income Inequality, and the Rule of Law." *Harvard Business Law Review*, Nov., 2020.

Bhagat, Sanjai and Robert Glenn Hubbard. "Should the Modern Corporation Maximize Shareholder Value?".

**12:15 pm**      **Adjourn for Day: Afternoon Study Session**

## THURSDAY, DECEMBER 16

*All classes will be held in Bayview Ballroom*

**7:00 - 7:50 am**      **Breakfast**, Vanderbilt Terrace  
(Guests Welcome)

**8:00 - 9:15 am**      **Session 10: Corporate Governance and Company Performance | Bhagat**

**Reading Assignment:**

"The Promise and Perils of Corporate Governance Indices." *Columbia Law Review*, v 108 (2008): 1803-1882.

"Corporate Governance and Firm Performance: The Sequel." *Journal of Corporate Finance* 58 (2019): 142-168.

**9:30 - 10:45 am**      **Session 11: Corporate ESG (Environment/ Social Justice/ Governance) Policies and Controversies | Bhagat**

**Reading Assignment:**

"Empirical Studies of Corporate Law," in *Handbook of Law & Economics*, edited by Mitch Polinsky and Steven Shavell (Harvard Law School), North Holland, 2007.

Fried, Jesse M., "Will Nasdaq's Diversity Rules Harm Investors?" (March 31, 2021). *European Corporate Governance Institute - Law Working Paper No. 579/2021*.

Demers, Elizabeth, et al, "ESG Didn't Immunize Stocks During the COVID-19 Crisis, But Investments in Intangible Assets Did" (August 17, 2020). *Journal of Business Finance & Accounting (JBFA)*, Forthcoming.

**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, Chapter 10, pp. 201-228, F. Parisi, ed. (2017).

**12:15 pm                      Adjourn for Day: Afternoon Study Session**

## **FRIDAY, DECEMBER 17**

*All classes will be held in Bayview Ballroom*

**7:00 - 7:50 am              Breakfast, Vanderbilt Terrace**  
*(Guests Welcome)*

**8:00 - 9:15 am              Session 13: Error Cost Analysis and Pleading Standards | Kobayashi**

**Reading Assignment:**

Choi, et al, "The Screening Effect of the Private Securities Litigation Reform Act," 6 *Journal of Empirical Legal Studies* 35 (Issue 1, Mar., 2014).

*Bell Atlantic Corp. v. Twombly* (Edited).

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," 2014 *University of Illinois Law Review* 1473 (2014).

Gelbach and Kobayashi. "The Law and Economics of Proportionality in Discovery," 50 *Georgia Law Review* 1093 (2016).

# AGENDA

**11:00 am - 12:15 pm**      **Session 15: Network Effects and Digital Platforms**

**John M. Yun**, Associate Professor of Law, George Mason University  
Antonin Scalia Law School

**Reading Assignment:**

John M. Yun, "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 Session**

**6:30 pm**      **Closing Reception & Dinner, North Beach**  
*(Guests Welcome)*

## SATURDAY, DECEMBER 18

*All classes will be held in Bayview Ballroom*

**7:00 - 7:50 am**      **Breakfast, Vanderbilt Terrace**  
*(Guests Welcome)*

**8:00 - 9:15 am**      **Session 16: Predatory Innovation as an Antitrust Violation? | Yun**

**Reading Assignment:**

California Computer Products v. IDM (Edited).

**9:30 - 10:45 am**      **Session 17: Potential Competition, Nascent Competitors, and Killer Acquisitions | Yun**

**Reading Assignment:**

John M. Yun, "Are We Dropping the Crystal Ball? Understanding Nascent & Potential Competition in Antitrust," 104 MARQ. L. REV. (2021).

FTC v. Steris Corp. (Edited).

U.S. v. Visa & Plaid Inc., Complaint (Edited).

**10:45 - 11:00 am**      **Closing Remarks**

**11:00 am**      **Program Adjourns**  
*Depart at your own leisure*