

# LAW & ECONOMICS CENTER

## JUDICIAL EDUCATION PROGRAM

# The Breakers Colloquium

Saturday, December 4 - Friday, December 10, 2021  
Palm Beach, Florida



## **ABOUT US**

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 LEC activities possible. A current list of LEC donors may be found on our website at [www.masonlec.org](http://www.masonlec.org).

## **OUR DIVISIONS**

**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 TRIBAL LAW & ECONOMICS PROGRAM** offers law and economics education to provide tribal leaders, judges, and academics with effective tools to aid them in their efforts toward self-governance, commission rigorous research to provide data needed in support of those efforts, and create a clinic staffed by law students and guided by law faculty to offer legal assistance to the tribes.

# AGENDA

## SATURDAY, DECEMBER 4

**3:00 - 5:00 pm**

**Registration**, *South Loggia West*

**5:00 - 6:00 pm**

**Opening Remarks**, *The Beach Club/Patio*

**Paige V. Butler**, *Deputy Executive Director and Director, Judicial Education Program, Law & Economics Center, George Mason University Antonin Scalia Law School*

**Judge to Judge: Bruce E. Reinhart Interviews Douglas H. Ginsburg**

**Brunce E. Reinhart**, *United States Magistrate Judge for the Southern District of Florida*

**Douglas H. Ginsburg**, *Senior Circuit Judge, United States Court of Appeals for the District of Columbia; Professor of Law, George Mason University Antonin Scalia Law School*

**6:00 - 9:00 pm**

**Welcome Reception and Dinner**, *The Beach Club/Patio*  
(*Guests Welcome*)

## SUNDAY, DECEMBER 5

*All classes will be held in Ponce de Leon 1*

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

**Breakfast**, *Ponce de Leon 2*  
(*Guests welcome*)

**8:00 - 9:15 am**

**Session 1: Legal Innovation**

**Andrew Morriss**, *Professor, Bush School of Government & Public Service and School of Law, Texas A&M Univeristy*

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

**Session 2: Regulation by Litigation | Morriss**

**11:00 am - 12:15 pm**

**Session 3: Higher Education Governance | Morriss**

**12:15 - 6:00 pm**

**Afternoon Study Break**

**6:00 - 7:00 pm**

**Session 4: Oceanside Chat**, *Ocean Lawn*

**S Jay. Plager**, *Senior Circuit Judge, United States Court of Appeals for the Federal Circuit*

## MONDAY, DECEMBER 6

*All classes will be held in Ponce de Leon 1*

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

**Breakfast, HMF**  
*(Guests Welcome)*

**8:00 - 9:15 am**

**Session 5: The Role of Government and the Legal System in Addressing Market Failures**

**Joanna M. Shepherd**, Vice Dean, Thomas Simmons Professor of Law,  
Emory University School of Law

**Reading Assignment:**

Butler, Henry N., Christopher R. Drahozal, and Joanna Shepherd, *Economic Analysis for Lawyers*. 3rd ed. Durham, NC: Carolina Academic Press, 2014: 125-129.

Butler, Drahozal, & Shepherd, *Economic Analysis for Lawyers* (3rd edition), 27-32.

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

**Session 6: Judicial Duty and the Supreme Court's Cult of Celebrity**

**Nelson Lund**, University Professor, George Mason University  
Antonin Scalia Law School

**Reading Assignment:**

Lerner, Craig and Nelson Lund. "The Supreme Court's Cult of Celebrity," *The Volokh Conspiracy*, January 19, 2010, (opinion series).

Lerner, Craig and Nelson Lund. "Judicial Duty and the Supreme Court's Cult of Celebrity," *George Washington Law Review* 78, no. 6 (September 2010): 1255-1299 (optional).

**11:00 am - 12:15 pm**

**Session 7: The Economic Analysis of Accident Law | Shepherd**

**Reading Assignment:**

Butler, Drahozal, & Shepherd, *Economic Analysis for Lawyers* (3rd edition), 327-339.

**12:15 pm**

**Program Adjourns for the Day**

# AGENDA

## TUESDAY, DECEMBER 7

*All classes will be held in Ponce de Leon 1*

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

**Breakfast, HMF**  
*(Guests Welcome)*

**8:00 - 9:15 am**

**Session 8: The Proper Role of History and Tradition in Second Amendment Jurisprudence | Lund**

**Reading Assignment:**

Lund, Nelson, "The Proper Role of History and Tradition in Second Amendment Jurisprudence," *University of Florida Journal of Law & Public Policy* 30 (2020).

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

**Session 9: Progressive Eras of Antitrust**

**Timothy J. Muris**, George Mason University Foundation Professor of Law, George Mason University Antonin Scalia Law School

**Reading Assignment:**

Muris, Timothy J. and Johnathan E. Nuechterlein. "Antitrust in the Internet Era: The Legacy of United States v. A&P," *Review of Industrial Organization* 54 (2019).

**11:00 am -12:15 pm**

**Session 10: Taking the Neo-Brandeisians Literally?--Merger Policy Before the 40 Year "Failed Experiment" | Muris**

**Reading Assignment:**

Muris, Timothy J. and Johnathan E. Nuechterlein. "Chicago and Its Discontents," *University of Chicago Law Review* 87, no. 495, (2020).

**12:15 pm - 6:00 pm**

**Afternoon Study Break**

**6:00 - 7:00 pm**

**Session 11: Fireside Chat, Gold Room**  
**Constitutions in Crisis: A Report from the Front | Munger**

**7:00 pm**

**Dinner, Gold Room**  
*(Guests Welcome)*

## WEDNESDAY, DECEMBER 8

*All classes will be held in Ponce de Leon 1*

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

**Breakfast, HMF**  
*(Guests welcome)*

**8:00 - 9:15 am**

**Session 12: Milestones in the Evolution of the Administrative State**

**Susan Dudley**, Director, George Washington University Regulatory Studies Center; Distinguished Professor of Practice, Trachtenberg School of Public Policy and Public Administration, George Washington University

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

**Session 13: Challenge to Antitrust**

**Michael C. Munger**, Professor of Political Science, Duke University

**11:00 am - 12:15 pm**

**Session 14: Guide to Reviewing Regulatory Impact Analysis | Dudley**

**12:15 pm**

**Program Adjourns for Day**

## **THURSDAY, DECEMBER 9**

*All classes will be held in Gulfstream 1, 2*

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

**Breakfast, HMF**  
*(Guests Welcome)*

**8:00 - 9:15 am**

**Session 15: Rent-Seeking and Corruption: There is a "Political Coase Theorem" | Munger**

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

**Session 16: Introduction to Statistics**

**Orley C. Ashenfelter**, Joseph Douglas Green 1895 Professor of Economics, Princeton University

**11:00 am - 12:15 pm**

**Session 17: Introduction to Econometrics | Ashenfelter**

**Reading Assignment:**

Marginal Revolution University. "The Economics of Wine (Orley Ashenfelter, Princeton)." YouTube, 4:46, September 30, 2020, <https://www.youtube.com/watch?app=desktop&v=8WMRj9mTQtl>.

**12:15 - 6:00 pm**

**Afternoon Study Break**

**6:00 - 7:00 pm**

**Session 18: Fireside Wine Tasting and Chat | Ashenfelter, The Beach Club**

**7:00 pm**

**Closing Dinner, The Beach Club**  
*(Guests Welcome)*

## **FRIDAY, DECEMBER 10**

*Travel Day; Depart at your own leisure*



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## **ORLEY C. ASHENFELTER**

*Joseph Douglas Green 1895 Professor of Economics  
Princeton University*

Professor Orley C. Ashenfelter's areas of specialization include labor economics, econometrics, and law and economics. His current research includes the cross-country measurement of wage rates, and many other issues related to the economics of labor markets. Professor Ashenfelter has been the director of the Industrial Relations Section at Princeton University, director of the Office of Evaluation of the US Department of Labor, a Guggenheim Fellow, and the Benjamin Meeker Visiting Professor at the University of Bristol. He is a recipient of the IZA Prize in Labor Economics, the Mincer Award for Lifetime Achievement of the Society of Labor Economists, and the Karel Englis Medal awarded by the Academy of Sciences of the Czech Republic. He is a Fellow of the Econometric Society, the American Academy of Arts and Sciences, the Society of Labor Economics, and a Corresponding Fellow of the Royal Society of Edinburgh. He edited the Handbook of Labor Economics, was editor of the American Economic Review, and the co-editor of the American Law and Economics Review. He is a past president of the American Economic Association, the American Law and Economic Association, and the Society of Labor Economists.



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## **SUSAN E. DUDLEY**

*Director, George Washington University Regulatory Studies Center  
Distinguished Professor of Practice, Trachtenberg School of Public Policy and  
Public Administration, George Washington University*

Susan Dudley is Director of the George Washington University Regulatory Studies Center, which she established in 2009 to improve regulatory policy through research, education, and outreach. She is also a distinguished professor of practice in the Trachtenberg School of Public Policy and Public Administration. She is a past president of the Society for Benefit Cost Analysis, a senior fellow with the Administrative Conference of the United States, a National Academy of Public Administration fellow, on the board of Economists Incorporated, and chair of the Regulatory Transparency Project's Regulatory Process working group. She is the author of *Regulation: A Primer*, with Jerry Brito. From April 2007 through January 2009, Professor Dudley served as the Presidentially-appointed Administrator of the Office of Information and Regulatory Affairs in the US Office of Management and Budget. Prior to OIRA, she directed the Regulatory Studies Program at the Mercatus Center at George Mason University, and taught courses on regulation at the George Mason University School of Law. Earlier in her career, Professor Dudley served as an economist at OIRA, as well as the Environmental Protection Agency and the Commodity Futures Trading Commission. She was also a consultant to government and private clients at Economists Incorporated. She holds a Master of Science degree from the Sloan School of Management at MIT and a Bachelor of Science degree (summa cum laude) in Resource Economics from the University of Massachusetts, Amherst.

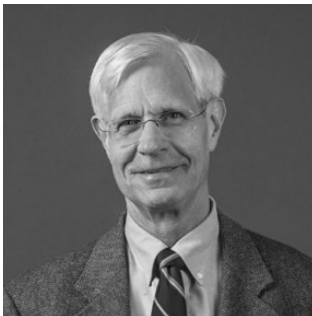


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## **DOUGLAS H. GINSBURG**

*Senior Circuit Judge, United States Court of Appeals for the District of Columbia  
Professor of Law, George Mason University Antonin Scalia Law School*

Senior Circuit Judge Douglas Ginsburg was appointed to the United States Court of Appeals for the District of Columbia in 1986; he served as Chief Judge from 2001 to 2008. After receiving his BS from Cornell University in 1970, and his JD from the University of Chicago Law School in 1973, he clerked for Judge Carl McGowan on the DC Circuit and Justice Thurgood Marshall on the United States Supreme Court. Thereafter, Judge Ginsburg was a professor at the Harvard Law School, the Deputy Assistant and then Assistant Attorney General for the Antitrust Division of the Department of Justice, as well as the Administrator of the Office of Information and Regulatory Affairs in the Office of Management and Budget. Concurrent with his service on the federal bench, Judge Ginsburg has taught at the University of Chicago Law School and the New York University School of Law. Judge Ginsburg is currently a Professor of Law at the Antonin Scalia Law School, George Mason University, and a visiting professor at the University College London, Faculty of Laws



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## **NELSON LUND**

*University Professor  
George Mason University Antonin Scalia Law School*

Professor Nelson Lund is the author of *Rousseau's Rejuvenation of Political Philosophy: A New Introduction*. He has also written widely in the field of constitutional law, including articles on constitutional interpretation, federalism, separation of powers, the Second Amendment, the Commerce Clause, the Speech or Debate Clause, the Equal Protection Clause, and the Uniformity Clause. In addition, he has published articles in the fields of employment discrimination and civil rights, the legal regulation of medical ethics, and the application of economic analysis to legal institutions and legal ethics. Professor Lund graduated from St. John's College in Annapolis, Maryland, after which he received an MA in philosophy from the Catholic University of America and a PhD in political science from Harvard University. He left the faculty of the University of Chicago to attend its law school, where he served as executive editor of the *University of Chicago Law Review* and chapter chairman of the Federalist Society for Law and Public Policy Studies. After law school, he held positions at the US Department of Justice in the Office of the Solicitor General and the Office of Legal Counsel. He also served as a law clerk to the Honorable Patrick E. Higginbotham of the US Court of Appeals for the Fifth Circuit and to the Honorable Sandra Day O'Connor of the United States Supreme Court. Following his clerkship with Justice O'Connor, Professor Lund served in the White House as associate counsel to the president from 1989 to 1992.





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## **ANDREW MORRISS**

*Professor, Bush School of Government & Public Service and School of Law  
Texas A&M University*

Professor Morriss received his AB from Princeton University, his JD and Master of Public Affairs from the University of Texas at Austin, his PhD in economics from the Massachusetts Institute of Technology, and his Master of Educational Psychology from Texas A&M University. His primary research areas are international financial centers, regulation of business and the environment, and empirical legal studies. Professor Morriss has taught in the Cayman Islands, China, Guatemala, Guernsey, Greece, Hong Kong, Jersey, and Venezuela and lectured in Cambodia, Italy, Nepal, and the United Kingdom. Additionally, he is affiliated with the Regulatory Studies Center at George Washington University and the Property and Environment Research Center in Bozeman, Montana. He previously served as Dean of the Texas A&M School of Law, the D. Paul & Charlene A. Jones Chair in Law at the University of Alabama, the H. Ross & Helen Workman Professor of Law at the University of Illinois at Urbana-Champaign, and the Galen J. Roush Professor of Business Law and Regulation at Case Western Reserve University. Professor Morriss is the author or co-author of more than sixty book chapters and scholarly articles, as well as the co-author of *Regulation by Litigation* (Yale University Press) and *The False Promise of Green Energy* (Cato Institute).



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## **MICHAEL C. MUNGER**

*Professor of Political Science, Director of Undergraduate Studies of the  
Department of Political Science, Professor in the Sanford School of Public Policy,  
Professor of Economics, and Brass Fellow  
Duke University*

Professor Munger received his PhD in Economics at Washington University in St. Louis in 1984. Following his graduate training, he worked as a staff economist at the Federal Trade Commission. His first teaching job was in the Economics Department at Dartmouth College, followed by appointments in the Political Science Department at the University of Texas at Austin (1986-1990) and the University of North Carolina at Chapel Hill (1990-1997). At UNC he directed the MPA Program, which trains public service professionals, especially city and county management. Professor Munger's recent books include *Choosing in Groups* (coauthored with his son, Kevin Munger) and *The Thing Itself*, both in 2015. His research interests include the study of the morality of exchange and the working of the new "Middleman Economy." Much of his recent work has been in philosophy, examining the concept of truly voluntary exchange, a concept for which he coined the term "euvoluntary." His newest book addresses the sharing economy, and is entitled *Tomorrow 3.0*.



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## TIMOTHY J. MURIS

*George Mason University Foundation Professor of Law  
George Mason University Antonin Scalia Law School*

Professor Timothy J. Muris served from 2000 to 2004 as Chairman of the Federal Trade Commission. During his tenure at the FTC, he created the highly popular National Do Not Call Registry that has allowed millions of consumers to block unwanted telemarketing calls. In addition to his current position at the Antonin Scalia Law School, Professor Muris is Senior Counsel at Sidley Austin LLP. Professor Muris has held three previous positions at the Commission: Assistant Director of the Planning Office (1974-1976), Director of the Bureau of Consumer Protection (1981-1983), and Director of the Bureau of Competition (1983-1985). After leaving the FTC in 1985, Professor Muris served with the Executive Office of the President, Office of Management and Budget for three years. He was also Of Counsel with the law firm of Collier, Shannon, Rill & Scott (1992-2000), Howrey Simon Arnold & White (2000-2001), O'Melveny & Myers (2004-2011), Kirkland & Ellis LLP (2011-2017), and Senior Counsel, Sidley Austin LLP (2017- present). Professor Muris joined the Antonin Scalia Law School, George Mason University as a Foundation Professor in 1988 and was interim dean of the law school from 1996 to 1997. Professor Muris graduated with high honors from San Diego State University in 1971 and received his JD from UCLA in 1974. He was awarded Order of the Coif and was associate editor of the UCLA Law Review.



## S. JAY PLAGER

*Senior Circuit Judge  
United States Court of Appeals for the Federal Circuit*

S. Jay Plager was appointed by President George H. W. Bush in 1989. Prior to his appointment Judge Plager served in the Executive Office of Presidents Reagan and Bush: under President Reagan he was Associate Director of the Office of Management and Budget, and under both Presidents Reagan and Bush he was Administrator of the Office of Information and Regulatory Affairs. He earlier served as Counselor to the Under Secretary of the United States Department of Health and Human Services. Before coming to Washington, Judge Plager was Dean and Professor at the Indiana University School of Law; Professor, Faculty of Law, at the University of Illinois; and Professor, Faculty of Law, at the University of Florida, as well as visiting professor at Stanford University, University of Wisconsin, and Cambridge University, England. Judge Plager was commissioned in the United States Navy and served on active duty during the Korean Conflict. After his active duty, Judge Plager entered the Naval Reserve and held a number of posts until leaving the Navy as a Commander. He received his AB degree from the University of North Carolina; a JD from the University of Florida, with high honors, and an LLM from Columbia University. Judge Plager continues to be active in organizations in the environmental, land use, and natural resources area, fields in which he taught. He is the author of numerous academic publications, including recent studies about the judicial system.



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## **JOANNA M. SHEPHERD**

*Vice Dean*

*Professor of Law*

*Emory University School of Law*

Joanna Shepherd teaches Analytical Methods for Lawyers, Law and Economics, torts, judicial behavior, and legal and economic issues in health policy. Before joining Emory, Dean Shepherd was an assistant professor of Economics at Clemson University and worked at the Federal Reserve Bank of Atlanta. In addition to her position at the law school, she currently serves as an adjunct professor in the Emory Department of Economics. Much of Dean Shepherd's research focuses on topics in law and economics, especially on empirical analyses of legal changes and legal institutions. Her recent research has empirically examined issues related to the healthcare industry, tort reform, employment law, litigation practice, and judicial behavior. Dean Shepherd's research has been cited by numerous courts, including the Supreme Court of the US in *Glossip v. Gross* (2015) and *Williams-Yulee v. Florida Bar* (2015).



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