



Agenda
The Alyeska Colloquium
Judge Douglas H. Ginsburg Judicial Colloquium Series
Sunday, June 11 through Saturday June 17, 2023

Sunday, June 11

Travel day; participant arrive at their leisure

5:30 – 6:30 pm **Registration**

6:30 – 7:15 pm **Cocktail Reception**
(Optional; registered guests welcome)

7:15 – 9:00 pm **Welcome Dinner**
(Optional; registered guests welcome)

Welcome Remarks

Todd J. Zywicki, George Mason University Foundation Professor of Law, George Mason University Antonin Scalia Law School

The Honorable Douglas H. Ginsburg, Judge, US Court of Appeals for the District of Columbia Circuit; Professor of Law, George Mason University Antonin Scalia Law School

Monday, June 12

- 7:00 – 7:50 am** **Breakfast and Registration**
(Registered guests welcome)
- 8:00 – 9:15 am** **Session 1: Textualism, Originalism, and Unoriginal Textualism**
- The Honorable Frank H. Easterbrook**, Judge, US Court of Appeals for the Seventh Circuit; Senior Lecturer in Law, University of Chicago Law School
- Reading Assignment**
Frederick Schauer, *Unoriginal Textualism*, 90 GEO. WASH. L. REV. 825 (2022).
- 9:30 – 10:45 am** **Session 2: Viewing the World through Coase-Colored Glasses**
- Terry L. Anderson**, John and Jean De Nault Senior Fellow, Hoover Institution
Stanford University
- Reading Assignment**
Terry L. Anderson, *Donning Coase-Colored Glasses: A Property Rights View of Natural Resource Economics*, AUSTL. J. OF AGRIC. AND RES. ECON. (2004).
- 11:00 am – 12:15 pm** **Session 3: What Makes a Supreme Court Decision Really Bad — and Why Should We Care**
- E. Donald Elliott**, Florence Rogatz Visiting Professor of Law, Yale Law School; Distinguished Adjunct Professor of Law, George Mason University Antonin Scalia Law School; former Assistant Administrator and General Counsel, US Environmental Protection Agency
- Reading Assignment**
Mark J. Franck & Mark David Hall, *Supreme Failures from the Court*, LAW & LIBERTY (Jan. 26, 2023).
- 12:15 pm – 1:45 pm** **Working Lunch – Session 4: How Courts Shape the Content of Insurance Policies**
- Michelle Boardman**, Associate Professor of Law, George Mason University
Antonin Scalia Law School
- Reading Assignment**
Michelle Boardman, *The Unpredictability of Insurance Interpretation*, 87 Law & Contemp. Probs. 27, 27-45 (2019).*
- Daniel Schwarcz, *The Role of Courts in the Evolution of Standard Form Contracts: An Insurance Case Study*, 46 B.Y.U. L. Rev. 471, 471-527 (2021).
*Also assigned as reading for Session 6.
- Optional Reading**
Full Article: *The Role of Courts in the Evolution of Standard Form Contracts: An Insurance Case Study*.
- 1:45 – 6:15 pm** **Afternoon Study Break**
- 6:15 pm** **Refreshments**
- 6:30 – 7:30 pm** **Session 5: Fireside Chat**
(Registered guests welcome)
- Interview of Judge Frank H. Easterbrook by Judge Douglas H. Ginsburg**

Tuesday, June 13

7:00 – 7:50 am

Breakfast
(Registered guests welcome)

8:00 – 9:15 am

Session 6: On What is Sued and What is Not Sued | Boardman

Reading Assignment

Excerpts from:

Daniel Schwarcz, *A Products Liability Theory for the Judicial Regulation of Policies*, 48 Wm. & Mary L. Rev. 1389, 1393 - 1401 (March, 2007).

Omri Ben-Shahar et al., *How To Interpret A Contract? Ask Those Who'd Sign It*, Law 360 (March 21, 2018).

Based on Omri Ben-Shahar and Lior Jacob Strahilevitz, *Interpreting Contracts via Surveys and Experiments*, 92 NYU L. Rev. 1753 (2017).

Michelle Boardman, *The Unpredictability of Insurance Interpretation*, 87 Law & Contemp. Probs. 27, 27-45 (2019).

Optional Reading

Full Article: *A Products Liability Theory for the Judicial Regulation of Policies*

Full Article: *Interpreting Contracts via Surveys and Experiments*

9:30 – 10:45 am

Session 7: The Fundamental Disconnect of the ESG Movement | Zywicki

Reading Assignment

Sanjai Bhagat & Glenn Hubbard, *Two views: Shareholders vs. Stakeholders: The Role of Corporate Directors*, *DIRECTORS & BOARDS* (2020).

Samuel Gregg, *A Stake Through the Heart of Stakeholder Capitalism*, LAW & LIBERTY (Mar. 14, 2023) (reviewing STEPHEN M. BAINBRIDGE, *THE PROFIT MOTIVE: DEFENDING SHAREHOLDER VALUE MAXIMIZATION* (2023)).

The Editorial Board, Opinion Review and Outlook, *The ESG Proxy Vote Ranking*, WALL ST. J. (May 15, 2023).

Steve Forbes & Stephen Moore, Opinion, *Hey, Wall Street: Stop Putting Politics Over My Retirement Savings*, N.Y. POST (May 16, 2023).

Sanjai Bhagat & Todd J. Zywicki, *Does the market care about ethical investment? It depends*, THE HILL (Sept. 13, 2021).

Optional Reading

Antony J. Casey et al., *Foreword (The Economic Structure of Corporate Law at Thirty: A Retrospective on the Work of Easterbrook & Fischel)*, THE UNIVERSITY OF CHICAGO BUSINESS LAW REVIEW. (2022).

10:45 am

Program Adjourns for Day

Wednesday, June 14

- 7:00 – 7:50 am** **Breakfast**
(Registered guests welcome)
- 8:00 – 9:15 am** **Session 8: Beyond Ambiguity: Dealing with Divergence in Meaning Between Contracting Parties | Boardman**
- Reading Assignment**
Michelle Boardman,
RESTATEMENT (FIRST) OF LAW OF LIABILITY INSURANCE § 2-4 (Edited) (2019).
- Optional Reading**
Full Version: RESTATEMENT (FIRST) OF LAW OF LIABILITY INSURANCE § 2-4 (2019).
- 9:30 – 10:45 am** **Session 9: Are *INS v. Chadha*, *U.S. v. Butler*, *Bowsher v. Synar*, and *Clinton v. City of New York* Among the Worst SCOTUS Cases Ever? | Elliott**
- Reading Assignment**
E. Donald Elliott, *INS v. Chadha: The Administrative Constitution, the Constitution and the Legislative Veto*, 1983 SUP. CT. REV. 125 (1984).
- E. Donald Elliott, *Another Contender for the Worst Supreme Court Decision in History How judges helped create the federal leviathan that reigns today*, THE AMERICAN SPECTATOR (Jan. 19, 2023).
- E. Donald Elliott, *The Worst Supreme Court Decision in History*, THE AMERICAN SPECTATOR (Dec. 30, 2022).
- 11:00 am – 12:15 pm** **Session 10: Case Study: Examining Regulatory and Enforcement Reforms, Some Reversals and Some Ratifications**
- Stephen Cox**, Senior Vice President, General Counsel and Chief Strategy Officer Bristol Bay Industrial, LLC; former Deputy Associate Attorney General and Chief of Staff, Office of the Associate Attorney General, US Department of Justice
- Reading Assignment**
CLYDE WAYNE CREWS, *Bookending the Trump Era: Seven Efforts to Reduce and Streamline Regulatory Flows*, TEN THOUSAND COMMANDMENTS (2021).
- Deputy Attorney General Jeffrey A. Rosen, Keynote Remarks at Department of Justice Summit on Modernizing the Administrative Procedure Act (Dec. 6, 2019).
- 12:30 pm – 1:45 pm** **Working Lunch – Session 11: The Regulation of Bank Charges: Junk Fees or Junk Policy? | Zywicki**
- Reading Assignment**
Howard Beales & Todd J. Zywicki, *Junk fees or junk policy?*, THE HILL (Mar. 21, 2022).
- Howard Beales & Todd J. Zywicki, *Junkyard Dogs: The Law and Economics of “Junk” Fees*, CPI ANTITRUST CHRONICLE (April 2023).
- 1:45 – 6:15 pm** **Afternoon Study Break**
- 6:15 pm** **Refreshments**
- 6:30 – 7:30 pm** **Session 12: Fireside Chat**
(Registered guests welcome)
- Interview of Judge Douglas H. Ginsburg by Todd J. Zywicki**

Reading Assignment

Thomas H. Lee, Opinion, *What's Keeping David McCullough From Sleeping*, Wall St. J., Mar. 25, 2018, PROQUEST CENTRAL, 2017682709.

A MORE OR LESS PERFECT UNION,

https://www.freetochoosenetwork.org/programs/perfect_union/.

CIVICS FUNDAMENTALS WITH JUDGE DOUGLAS GINSBURG,

https://m.izzit.org/courses/civics_fundamentals/.

Video Assignment

“Tim Goeglein, Toward a More Perfect Union”, BOOK TV (Mar. 19, 2023). Video here.

Thursday, June 15**7:00 – 7:50 am****Breakfast**

(Registered guests welcome)

8:00 – 9:15 am**Session 13: Thinking Clearly about Markets vs. Mandates | Anderson****Reading Assignment**

Terry L. Anderson, *Environmental Markets vs. Environmental Mandates: Capturing Prosperity and Environmental Quality*, THE FRASER INSTITUTE (2023).

9:30 – 10:45 am**Session 14: The Fuss About Non-Competes | Zywicki****Reading Assignment:**

Bruce H. Kobayashi, *Antitrust, Non-Competition, and No-Poach Agreements in Digital Industries*, 20 THE GLOBAL ANTITRUST INSTITUTE REPORT ON THE DIGITAL ECONOMY (2020).

John M. McAdams, *Non-Compete Agreements: A Review of the Literature*, FEDERAL TRADE COMMISSION (2019).

Dirk Auer et. al, Introduction and Executive Summary, *Comments of Scholars of Law & Economics and ICLE in the Matter of Non-Compete Clause Rulemaking*, INTERNATIONAL CENTER FOR LAW & ECONOMICS (2023).

Alexander McDonald, *The FTC's Ahistorical Attack on Noncompetes*, FEDSOC BLOG (Jan. 23, 2023).

10:45 am**Program Adjourns for Day**

Friday, June 16

- 7:00 – 7:50 am** **Breakfast**
(Registered guests welcome)
- 8:00 – 9:15 am** **Session 15: Adapt and be Adept: Market Responses to Climate Change | Anderson**
- Video Assignment**
“Using Markets to Adapt to Climate Change.” *Intellections*, POLICYED (Aug. 3, 2021). Video here.
- Reading Assignment**
Terry L. Anderson, *Adapt and be Adept*, HOOVER DIGEST (2021).
- 9:30 – 10:45 am** **Session 16: How the Court Failed to Adapt to the Administrative State and What It Should Do Now | Elliott**
- Reading Assignment**
E. Donald Elliott, *How the Supreme Court Blocked Congress’s Effort to Redeem the Administrative State Over and over the Court vetoed reform*, THE AMERICAN SPECTATOR (Aug. 21, 2022).
- Axon v. FTC*, 598 U.S. (2023) (Gorsuch, N. and Thomas, C., concurring).
- E. Donald Elliott, *Regulating the Deficit After Bowers v. Synar*, 4 YALE J. REG. 317, 336-347 (1987).
- 11:00 am – 12:15 pm** **Session 17: The Future of Antitrust Enforcement | Ginsburg**
- Reading Assignment**
Aurelien Portuese, *Biden Antitrust: The Paradox of the New Antitrust Populism*, 29 GEO. MASON. L. REV. 1091, 1091-1128 (2022).
- 12:15 – 5:45 pm** **Afternoon Study Break**
- 5:45 pm** **Refreshments**
- 6:00 – 7:00 pm** **Session 18: Fireside Chat – Media Attacks on Judges and the Campaign to Delegitimize the Judiciary**
(Registered guests welcome)
- Kimberley A. Strassel**, Member of the Editorial Board and Opinion Columnist,
The Wall Street Journal
- 7:00 – 9:30 pm** **Closing Dinner**
(Registered guests welcome)

Saturday, June 17

Travel Day; participants depart at their leisure