

# VITA: Bruce Harold Kobayashi

## PERSONAL DATA:

- BORN: May 24, 1959, Los Angeles, California.
- OFFICE ADDRESS:  
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## CURRENT POSITION:

- Professor of Law, George Mason University School of Law, Arlington, VA (September 2000 to present).

## PAST POSITIONS:

- Associate Dean for Academic Affairs and Professor of Law (September 2004 to May 2006).
- Associate Professor of Law with Tenure - George Mason University School of Law, Arlington, VA (September 1997 to September 2000).
- Associate Professor of Law - George Mason University School of Law, Arlington, VA (September 1995 to September 1997).
- Assistant Professor of Law - George Mason University School of Law, Arlington, VA (August 1992 to September 1995). Courses taught include Financial Economics, Litigation Theory and Dispute Resolution, The Legal and Economic Theory of Intellectual Property, Quantitative Forensics, Money and Capital Markets, and International Economics.
- Senior Economist - Federal Trade Commission, Bureau of Economics, Washington, D. C. (December 1989 to August 1992). Authored numerous FTC staff comments on proposed Federal Communications Commission and Federal Aviation Administration Rulemakings. Provided analysis of proposed revisions to the Department of Justice Merger Guidelines and of proposed European Community Antitrust Law policies.
- Senior Research Associate - United States Sentencing Commission, Washington, D. C. (January 1989 to December 1989). Conducted research on how changes to the U. S. Sentencing Guidelines would impact prison populations, and on plea bargaining and deterrence.
- Economist - United States Department of Justice-Antitrust Division, Washington, D. C. (September 1986 to January 1989). Provided economic analysis of and litigation support for numerous proposed merger transactions and provided testimony in a criminal price fixing trial.
- Economic Associate - Economic Analysis Corporation, Los Angeles, CA (April 1985 to August 1986). Provided economic analysis and litigation support for numerous private antitrust lawsuits.

## PROFESSIONAL ACTIVITIES:

- Referee, *American Economic Review*, *American Law & Economics Review*, *Economic Inquiry*, *Encyclopedia of Law & Economics*, *International Review of Law & Economics*, *Journal of Competition Law & Economics*, *Journal of Economic Behavior & Organization*, *Journal of Law & Economics*, *Journal of Law, Economics & Organization*, *Journal of Legal Studies*, *Journal of Policy*

*Analysis & Management, International Journal of Industrial Organization, RAND Journal of Economics, Research in Law & Economics, Supreme Court Economic Review.*

- Member, Executive Board of the American Association of Law Schools Section on Antitrust and Economic Regulation (2006 – present).
- Member, Advisory Board of the BNA's *Patent, Trademark & Copyright Journal*, (2005 – present).
- Member, Mason Investment Committee, (2004 – present).
- Consultant for the United States Telecommunications Association, (2005).
- Consultant for Goodwin Procter LLP, (In re Managed Care Litigation, MDL No. 1334, 2004-5).
- Consultant for the CapAnalysis Group (Competition in the Domain Name Registry Industry, 2004).
- Speaker, Law Seminars International Program on Calculating and Proving Patent Damages, (June 2003)
- Affiliate, Criterion Economics (2002- present).
- Consultant for the Brattle Group (Proposed Merger Transaction, 2000).
- Instructor, Law and Economics Center Antitrust Institute for Federal Judges, (April 1997).
- Instructor, Law and Economics Center Economics Institute for Law Professors, (July 1997).
- Consulting Editor - *Supreme Court Economic Review* (May 1995 – June 2001).
- Expert Witness for IDS Financial Services in *IDS Financial Services, Inc v. State of Florida*, Department of Business and Professional Regulation, Division of Public Accounting, et al., Circuit Court of the Second Judicial Circuit in and for Leon Count, Florida (1994).
- Expert Witness for American Express Tax and Business Services in *American Express Tax and Business Services v. George Stuart, et al.*, U.S. District Court for the Southern District of Florida, (1995).

#### **EDUCATION:**

- University of California, Los Angeles B. S., Economics-System Science, June 1981. Summa Cum Laude, Phi Beta Kappa.
- University of California, Los Angeles M. A., Economics, December 1982.
- University of California, Los Angeles Ph.D., Economics, December 1986.

#### **FIELDS OF INTEREST:**

- Law and Economics.
- Financial Economics.
- Economic Theory and Applications to Industrial Organization and Antitrust.
- The Economics of Uncertainty and Information.
- The Economics of the Legal System.
- The Economics of Intellectual Property.

#### **PROFESSIONAL AFFILIATIONS:**

- Member, American Economic Association.
- Member, Econometric Society.
- Member, Western Economic Association.
- Member, American Law and Economics Association.
- Member, Public Choice Society.
- Member, Society of Labor Economists.

#### **DISSERTATION:**

"Patent Licenses and the Incentive to Innovate: An Alternative Viewpoint," Professor John G. Riley, Chair, University of California, Los Angeles, November 1986.

## WORKING PAPERS:

Recent Working Papers available on SSRN at: <http://ssrn.com/author=16451>.

## PUBLICATIONS:

### A. BOOKS

1. *The Economics of Federalism*, (with L. Ribstein), Edward Elgar Publishing, Ltd., (forthcoming 2006).

### B. BOOK CHAPTERS

2. *Two Tales of Bundling: Implications for the Applications of Antitrust Law to Bundled Discounts*, in, ANTITRUST POLICY AND VERTICAL RESTRAINTS, R. Hahn, ed., AEI/Brookings Joint Center Monograph (forthcoming 2006). Working paper version available on SSRN at: [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=796432](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=796432).
3. *Private Versus Social Incentives in Cybersecurity, Law, and Economics*, in THE LAW & ECONOMICS OF CYBERSECURITY, M. Grady and F. Parisi, eds., Cambridge University Press (2005), pp. 13-28.
4. *Multijurisdictional Regulation of the Internet*, (with L. Ribstein) in WHO RULES THE NET? INTERNET GOVERNANCE AND JURISDICTION, A. Thierer and C. W. Crews Jr., eds. Cato Institute (2003), pp. 159-215.
5. *Intellectual Property and Antitrust Limitations on Contract*, (with M. Burtis) in DYNAMIC COMPETITION AND PUBLIC POLICY: TECHNOLOGY, INNOVATION AND ANTITRUST ISSUES, J. Ellig, ed. Cambridge University Press (2001), pp.229-263.
6. *Civil Procedure*, (with J. Parker) in THE ENCYCLOPEDIA OF LAW AND ECONOMICS, VOL. V, Boudewijn Bouckaert and Garrit DeGeest, eds. Edward Elgar, (2000), pp. 1-26, published version available online at <http://allserv.rug.ac.be/~gdegeest/7000book.pdf>.
7. *Evidence*, (with J. Parker) in THE ENCYCLOPEDIA OF LAW AND ECONOMICS, VOL. V, Boudewijn Bouckaert and Garrit DeGeest, eds. Edward Elgar, (2000), pp. 290-306, published version available online at <http://allserv.rug.ac.be/~gdegeest/7900book.pdf>.
8. *Contract and Jurisdictional Competition*, (with L. Ribstein) in THE RISE AND FALL OF THE FREEDOM OF CONTRACT, F. H. Buckley, ed. Duke University Press, (1999).
9. *Performance Rights*, THE NEW PALGRAVE DICTIONARY OF LAW AND ECONOMICS, Peter Newman, ed., (1998).
10. *Joint Ventures*, (with L. Ribstein) THE NEW PALGRAVE DICTIONARY OF LAW AND ECONOMICS, Peter Newman, ed., (1998).
11. *Gun Control, Strict Liability, and Excise Taxes*, in TAXING CHOICE: THE PREDATORY POLITICS OF FISCAL DISCRIMINATION, William Shughart, II, ed., Transaction Publishers (1997), pp. 309-346.

### C. PUBLICATIONS IN PEER-REVIEWED JOURNALS

12. *Does Economics Provide a Reliable Guide to Regulating Commodity Bundling by Firms? A Survey of the Economic Literature*, JOURNAL OF COMPETITION LAW & ECONOMICS, Vol. 1 (2005), pp. 707-46. Published version available at: <http://jcle.oxfordjournals.org/cgi/reprint/1/4/707?ijkey=7PAxdPovbfmj4Uo&keytype=ref>.
13. *The Economics of Loyalty Discounts and Antitrust Law in the United States*, COMPETITION POLICY INTERNATIONAL, Vol. 1 (Autumn 2005), pp. 115-148. Published version available at: [http://www.esapience.org/render\\_cms\\_image.aspx?itemID=614&detailID=151](http://www.esapience.org/render_cms_image.aspx?itemID=614&detailID=151).
14. *An Economic Analysis of the Private and Social Costs of the Provision of Cybersecurity and other*

- Pubic Security Goods*, SUPREME COURT ECONOMIC REVIEW, Vol. 14 (2005) pp. 261-280.
15. *When an Original is Better than a Copy: Intellectual Property, the Antitrust Refusal to Deal, and ISO Antitrust Litigation*, (with M. Burtis) SUPREME COURT ECONOMIC REVIEW, Vol. 9 (2001), pp. 143-170.
  16. *Evidence Production in Adversarial vs. Inquisitorial Regimes*, (with L. Froeb) ECONOMICS LETTERS, Vol. 70 (February 2001), pp. 267-272.
  17. *Market Failure or Market Efficiency? Evidence on Airport Slot Usage* (with A. Kleit) RESEARCH IN TRANSPORTATION ECONOMICS, Vol. 4 (1996), pp. 1-32.
  18. *In Defense of Criminal Defense Expenditures and Plea Bargaining*, (with J. Lott) INTERNATIONAL REVIEW OF LAW & ECONOMICS, Vol. 16 (December 1996), pp. 397-416.
  19. *Case Selection, External Effects, and the Trial/Settlement Decision*, in DISPUTE RESOLUTION: BRIDGING THE SETTLEMENT GAP, David A. Anderson, ed., JAI Press (1996), pp. 17-49.
  20. *Evolution and Spontaneous Uniformity: Evidence from the Evolution of the Limited Liability Company*, (with L. Ribstein) ECONOMIC INQUIRY, Vol. 34 (July 1996), pp. 464-483.
  21. *Naive, Biased, Yet Bayesian: Can Juries Interpret Selectively Produced Evidence?* (with L. Froeb) JOURNAL OF LAW, ECONOMICS & ORGANIZATION, Vol. 12 (Spring 1996), pp. 257-276.
  22. *An Economic Analysis of Uniform State Laws*, (with L. Ribstein) JOURNAL OF LEGAL STUDIES, Vol. 25 (January 1996), pp. 131-199.
  23. *An Economic Analysis of Performance Rights: Some Implications of the Copyright Act of 1976*, (with B. Yu) RESEARCH IN LAW & ECONOMICS, Vol. 17 (1995), pp. 219-251.
  24. *No Armistice at 11: A Comment on the Amendments to Rule 11 of the Federal Rules of Civil Procedure*, (with J. Parker) SUPREME COURT ECONOMIC REVIEW, Vol. 3 (December 1993), pp. 93-152.
  25. *Indexing Individual Inventors: The Sources of Invention Revisited*, (with B. Yu) JOURNAL OF ECONOMIC BEHAVIOR & ORGANIZATION, Vol. 21 (July 1993), pp. 205-222.
  26. *Deterrence with Multiple Defendants*, RAND JOURNAL OF ECONOMICS, Vol. 23:4 (Winter 1992), pp. 507-517.
  27. *Low Probability-High Penalty Enforcement Strategies and the Efficient Operation of the Plea Bargaining System*, (with J. Lott) INTERNATIONAL REVIEW OF LAW & ECONOMICS, Vol. 12:1 (March 1992), pp. 69-78.
  28. *An Efficiency Rationale for Horizontal Price Fixing: A Market Tournament of Innovation*, (with B. Yu) ASIAN ECONOMIC JOURNAL, (September 1990), pp. 96-113.

#### **D. PUBLICATIONS IN LAW REVIEWS**

29. *Outsider Trading as an Incentive Device*, (with L. Ribstein), U. C. DAVIS LAW REVIEW (forthcoming 2006).
30. *Class Action Lawyers as Lawmakers*, (with L. Ribstein), ARIZONA LAW REVIEW, VOL. 46 (Winter 2004), pp. 733-780.
31. *Privacy and Firms*, (with L. Ribstein), DENVER UNIVERSITY LAW REVIEW, VOL. 79 (Summer 2002), p. 526.
32. *State Regulation of Electronic Commerce*, (with L. Ribstein) EMORY LAW JOURNAL, VOL. 51 (Winter 2002), pp. 1-82.
33. *Agency, Amnesty, & Antitrust: An Economic Analysis of the Criminal Enforcement of the Antitrust Laws Against Corporations*, GEORGE WASHINGTON LAW REVIEW, VOL. 69 (October/December 2001), pp. 715-744.
34. *Choice of Form and Network Externalities*, (with L. Ribstein) WILLIAM & MARY LAW REVIEW, VOL. 43 (2001), pp. 79-140.
35. *A Recipe for Cookies: State Regulation of Consumer Marketing Information*, (with L. Ribstein), AMERICAN ENTERPRISE INSTITUTE FEDERALISM PROJECT ROUNDTABLE PAPER SERIES (2001), available online at <http://www.federalismproject.org/>.

36. *Introduction: Microsoft Remedies*, GEORGE MASON LAW REVIEW, Vol. 9, (Spring 2001), pp. 631-632.
37. *Uniformity, Choice of Law, and Software Sales*, (with L. Ribstein) GEORGE MASON LAW REVIEW, Vol. 8 (Winter 1999), pp. 261-306.
38. *Game Theory and Antitrust: A Post Mortem*, GEORGE MASON LAW REVIEW, Vol. 5 (Spring 1997), pp. 411-421.
39. *In re 101 California Street: A Legal and Economic Analysis of Strict Liability for the Manufacture and Sale of Firearms Defined as 'Assault Weapons'* (with J. Olson) STANFORD LAW AND POLICY REVIEW, Vol. 8, (1997), pp.41-62.
40. *Uniform Laws, Model Laws and Limited Liability Companies*, (with L. Ribstein) UNIVERSITY OF COLORADO LAW REVIEW, Vol. 66 (July 1995), pp. 947-999.

### **SELECTED CONFERENCES AND PRESENTATIONS:**

- Panelist, Defining Security Issues: Their Nature and Magnitude, The Progress & Freedom Foundation Conference on Securing the Internet: The Role of Consumers, Industry and Government, Washington, DC, May 2006.
- Presented "Outsider Trading as an Incentive Device" at the George Mason University Interdisciplinary Center for Economic Studies, Arlington, VA, February 2006.
- Speaker, "Overview: Antitrust Meets Patent Law," 2005 Advanced Patent Law Institute, Alexandria VA, November 2005.
- Presented "Outsider Trading" at the Midwestern Law and Economics Association Annual Meetings, Chicago, IL, October 2005.
- Panelist, Single Firm Conduct, George Mason Law Review Symposium, Washington, DC, September 2005.
- Participant and author of the principal paper, George Mason University School of Law Roundtable on The Theoretical and Empirical Analysis of Bundling, Arlington, VA, May 2005.
- Panelist, Criminal Antitrust Sentencing, American Bar Association Spring Meetings, Washington, DC, April 2005.
- Panelist, The New European Antitrust Regime: Implications for Multinationals, George Mason Law Review Symposium, Washington, DC, October 2004.
- Presented "An Economic Analysis of the Private and Social Costs of the Provision of Cybersecurity and other Public Security Goods" at the George Mason University Law School / Critical Infrastructure Project on the Law and Economics of Cybersecurity, June 2004.
- Panelist, The Cato Institute's Seventh Annual Technology & Society Conference on Who Rules the Net? Debating Internet Jurisdiction and Governance, Washington, DC, October 2003.
- Panelist, The Progress & Freedom Foundation / George Mason University Conference on Promoting Markets in Creativity: Copyright in the Internet Age, Washington, DC June 2003.
- Presented "Agency, Amnesty and Antitrust" at the George Washington University Law Review Antitrust Symposium, March 2001.
- Presented "State Regulation of Consumer Marketing Information" at the American Enterprise Institute Federalism Project Roundtable, Washington DC, January 2001.
- Moderator, Microsoft Remedies Panel, George Mason Law Review Symposium, Washington, DC, October 2000.
- Panelist, Warranty Protection for High-Tech Products and Services, Federal Trade Commission, Washington, DC, October 2000.
- Presented "Factors Determining the Success of Business Forms: The Case of LLCs and LLPs" at the Law & Entrepreneurship Conference, Portland, OR, October 2000.
- Presented "The Fable of the B.A.'s: Network Externalities and the Choice of Business Form" at the

George Mason University Department of Economics, March 2000.

- Presented “The Fable of the B.A.’s: Network Externalities and the Choice of Business Form” at the Canadian Law and Economics Association Annual Meetings, Toronto, Canada, September 1999.
- Presented “Intellectual Property and Limitations on Contract: Antitrust, Preemption, and the First Sale Doctrine” at the Mercatus Institute Conference on Antitrust and Dynamic Competition, Washington, D.C., December 1998
- Presented “Contract and Jurisdictional Competition” at the Donner Conference on Conflict of Laws, Alexandria, VA, November 1997.
- Presented “Federalism, Efficiency, and Competition” at the Center for the Study of Public Choice, George Mason University, October 1997.
- Presented “The Process of Procedural Reform: Centralized Uniformity and Local Experimentation” at the University of Virginia Law School, June 1997.
- Panelist, Antitrust in the Information Revolution: New Economic Approaches for Analyzing Antitrust Issues, George Mason University Law Review Symposium, Arlington, Virginia, October 1996.
- Panelist, Gun Rights Policy Conference, Arlington Virginia, September 1996.
- Presented “The Process of Procedural Reform: Centralized Uniformity and Local Experimentation” at the Department of Economics, Clemson University, October 1995.
- Presented “The Process of Procedural Reform: Centralized Uniformity and Local Experimentation” at the Department of Economics, American University, October 1995.
- Panelist for Cato Institute Policy Forum, “Is Microsoft a Danger to Competition?” Washington, DC, August 1995.
- Presented “The Process of Procedural Reform: Centralized Uniformity and Local Experimentation” at the Western Economic Association Meetings, San Diego, CA, July 1995.
- Presented “Strict Liability, Gun Control and Sin Taxes” at the Independent Institute's Conference on De-Taxing America: Alternatives to Predatory Politics, Washington DC, July 1995.
- Presented “The Process of Procedural Reform: Centralized Uniformity and Local Experimentation” at the Center for Study of Public Choice, George Mason University, April 1995.
- Presented “Judicial Reputation and the Efficiency of the Common Law” at the Public Choice Meetings, Long Beach, CA, March 1995.
- Presented “Strict Liability, Gun Control and Sin Taxes” at the Public Choice Meetings, Long Beach, CA, March 1995.
- Presented “Evolution and Spontaneous Uniformity: Evidence from the Evolution of the Limited Liability Company” at the Department of Economics, North Carolina State University, March 1995.
- Presented “Uniform Laws, Model Laws and Limited Liability Companies” at the University of Colorado Law School Symposium on LLCs, LLPs, and the Evolving Corporate Form, February 1995.
- Presented “Evolution and Spontaneous Uniformity: Evidence from the Evolution of the Limited Liability Company” at the Department of Economics, Tulane University, December 1994.
- Presented “An Economic Analysis of Uniform State Laws” at the University of Chicago Law School, November 1994.
- Presented “The Process of Procedural Reform: Centralized Uniformity and Local Experimentation” at the John M. Olin Conference on the Law and Economics of Litigation Reform, Georgetown University Law School, October 1994.
- Presented “Evolution and Spontaneous Uniformity: Evidence from the Evolution of the Limited Liability Company” at the Western Economic Association Meetings, Sessions in Honor of Armen A. Alchian, Vancouver, B.C., Canada, July 1994.
- Presented “Competition Between Expert Witnesses” at the American Law and Economic Association Meetings, Stanford University Law School, May 1994.
- Presented “Judicial Reputation and the Efficiency of the Common Law” at the American Economic Association Meetings, Boston, MA, January 1994.
- Presented “Judicial Reputation and the Efficiency of the Common Law” at the Center for Study of Public Choice Seminar, George Mason University, Fairfax, VA, December 1993.

- Presented “A Theory of Uniform Laws” at the American Law and Economics Association Meetings, at Northwestern University Law School, May 1, 1993.
- Presented “Judicial Reputation and the Efficiency of the Common Law” at the American Law and Economics Association Meetings, at Northwestern University Law School, April 30, 1993.
- Panelist for Session on the Efficiency of the Common Law, Conference in Honor of Richard A. Posner's Fourth Edition of the Economic Analysis of Law, at George Mason School of Law, Arlington, VA, April 1992.
- Presented “Market Failure or Market Efficiency? Evidence on Airport Slot Usage” at the Southern Economic Association Meetings, Washington, D.C., November 1992.
- Presented “In Defense of Criminal Defense Expenditures and Plea Bargaining” at the American Economic Association Meetings, Washington, D.C., December 1990.
- Presented “In Defense of Criminal Defense Expenditures and Plea Bargaining” at the Western Economic Association Meetings, South Lake Tahoe, NV, June 1989.

#### **WRITTEN COMMENTS:**

- Comment (with L. Ribstein) on Warranty Protection for High-Tech Products and Services, Federal Trade Commission, P994413, September 11, 2000.
- Comment of the Staff of the Bureau of Economics, Before the Federal Communications Commission, In the Matter of Evaluation of the Syndication and Financial Interest Rules, MM Docket No. 90-162, September 5, 1990.
- Further Comment of the Staff of the Bureau of Economics, Before the Federal Communications Commission, In the Matter of Evaluation of the Syndication and Financial Interest Rules, MM Docket No. 90-162, December 21, 1990.
- Comment of the Staff of the Bureau of Economics, Before the Federal Communications Commission, In the Matter of Bundling of Cellular Customer Premises Equipment and Cellular Service, CC Docket No. 91-34, July 31, 1991.
- Comment of the Staff of the Bureau of Economics, Before the Federal Aviation Administration, In the Matter of High Density Traffic Airports: Slot Allocation and Transfer Methods, Docket No. 25758, November 15, 1991.