

JUDGE DOUGLAS H. GINSBURG

02/10/2016

EMPLOYMENT

1986 – Present Judge, U.S. Court of Appeals for the
District of Columbia Circuit
United States Courthouse
333 Constitution Ave., N.W.
Washington, DC 20001
Tel: 202-216-7190

2001 – 2008 Chief Judge, U.S. Court of Appeals for the District of Columbia
Circuit

1985 - 1986 Assistant Attorney General
Antitrust Division
U.S. Department of Justice, Washington, DC

1984 - 1985 Administrator for Information and Regulatory Affairs
Office of Management and Budget,
Executive Office of the President, Washington, DC

1983 - 1984 Deputy Assistant Attorney General for
Regulatory Affairs, Antitrust Division
U.S. Department of Justice, Washington, DC

1975 - 1985 Professor of Law
Harvard University, Cambridge, MA
Teaching Responsibilities:
Antitrust, Economic Regulation of Business,

Banking Law, Regulation of Broadcasting, Labor Law, Theories of Corporations. (Asst. Prof. 1975-81; on leave 1983-85)

1974 - 1975 Law Clerk to Justice Thurgood Marshall
U.S. Supreme Court, Washington, DC

1973 - 1974 Law Clerk to Judge Carl McGowan
U.S. Court of Appeals, Washington, DC

1965 - 1968 Vice President, Marketing
“Operation Match” computer dating service,
Compatibility Research, Inc., Cambridge, MA

PART-TIME TEACHING

2013- George Mason University School of Law
Distinguished Professor of Law

2011-2013 New York University School of Law
Distinguished Professor of Law

2009-2011 Columbia University
Lecturer in Law

1990-2001 University of Chicago Law School
Visiting Senior Lecturer

1988-2010 George Mason University School of Law
Distinguished Adjunct Professor of Law

2006-2009 New York University Law School

Distinguished Visiting Scholar

1988-1989 Harvard University
Lecturer on Law

1987-1988 Columbia University
Visiting Professor of Law

EDUCATION

1973 J.D., UNIVERSITY OF CHICAGO LAW SCHOOL
Articles Editor, The University of Chicago Law Review; Order of the
Coif; Russell Floyd Mecham Prize Scholarship; Casper Platt Award,
1973

1970 B.S., CORNELL UNIVERSITY, N.Y. School of Industrial and Labor
Relations; Irving M. Ives Award, 1970

1992 Basic Science and Public Health, Advanced Course for Federal
Judges, Law and Economics Center, George Mason University
School of Law

1976 Economics Institute for Law Professors
Law & Economics Center
University of Miami Law School

BOARDS OF DIRECTORS

Foundation for Research in Economics and the Environment, 1991-2005

Rappahannock County Conservation Alliance, 1998-2004

Rappahannock Association for Arts and the Community, 1997-1999

ADVISORY BOARDS

Non-Governmental Advisor to the International Competition Network

Jevons Institute for Competition Law and Economics, and [CLES]
University College London, Faculty of Laws

Law and Economics Center, George Mason University School of Law

Competition Policy International

Journal of Competition Law and Economics

Journal of Law, Economics & Policy

Supreme Court Economic Review

University of Chicago Law Review

Harvard Journal of Law & Public Policy

COMMITTEES

Judicial Conference of the United States, 2001-2008

Budget Committee, 1997-2001

Committee on Judicial Resources, 1987-1996

American Bar Association, Antitrust Section, Council, 1985-1986 (ex officio),
2000-2003 and 2009-2012 (judicial liaison).

Boston University School of Law, Visiting Committee, 1994-1997

University of Chicago Law School, Visiting Committee, 1985-1988

MEMBERSHIPS

American Bar Association

American Economic Association

American Law and Economics Association

Honor Society of Phi Kappa Phi

Mont Pelerin Society

BAR ADMISSIONS

U.S. Court of Appeals for the Ninth Circuit

Supreme Court of Illinois

Supreme Judicial Court of Massachusetts

AWARDS

2014 Global Competition Review, Article of the Year
Lifetime Achievement Award

2011 Lifetime Service Award, Federalist Society, Georgetown University Law Center

2001 Thomas Jefferson Award
Association for Private Enterprise Education

1986 Edmund J. Randolph Award
U.S. Department of Justice

PUBLICATIONS

BOOKS AND MONOGRAPHS

REGULATION OF THE ELECTRONIC MASS MEDIA: LAW AND POLICY FOR RADIO, TELEVISION, CABLE AND THE NEW VIDEO TECHNOLOGIES, SECOND EDITION (with M. Botein and M. Director; West, 1991).

1983 SUPPLEMENT TO REGULATION OF BROADCASTING: LAW AND POLICY TOWARDS RADIO, TELEVISION AND CABLE COMMUNICATIONS (with M. Director; West, 1983).

Interstate Banking, 9 HOFSTRA L. REV. 1133-1371 (Special Issue 1981).

REGULATION OF BROADCASTING: LAW AND POLICY TOWARDS RADIO, TELEVISION AND GOVERNMENT, TECHNOLOGY, AND THE FUTURE OF THE AUTOMOBILE (editor, with W. Abernathy; McGraw-Hill, 1980).

Antitrust, Uncertainty, and Technological Innovation (National Academy of Engineering/National Research Council, 1980), reprinted at 24 ANTITRUST BULL 635 (1980).

CABLE COMMUNICATIONS (West, 1979).

ARTICLES AND BOOK CHAPTERS

Actavis and Multiple ANDA Entrants: Beyond the Temporary Duopoly, 29, ANTITRUST 89 (2015), No. 2, SPRING 2015 (with Bruce Kobayashi, Joshua D. Wright and Joanna Tsai)

Bork's "Legislative Intent" and the Courts, 79 ANTITRUST L. J. 3 (2015);

Since Bork, 10 J. L. ECON. & POL'Y 599 (2014) (with Taylor M. Owings);

Enjoining Injunctions: The Case Against Antitrust Liability for Standard Essential Patent Holders Who Seek Injunctions, ANTITRUST SOURCE, Oct. 2014, at 1 (with Taylor M. Owings & Joshua D. Wright);

Patent Assertion Entities and Antitrust: A Competition Cure for a Litigation Disease, 79 ANTITRUST L. J. 501 (2014) (with Joshua D. Wright);

Resolving Conflicts Between Competition and Other Values: The Roles of Courts and Other Institutions in the U.S. and the E.U., in EUROPEAN COMPETITION LAW ANNUAL 2012: PUBLIC POLICIES, REGULATION AND ECONOMIC DISTRESS (Philip Lowe & Mel Marquis eds., 2014) (with Daniel E. Haar);

Bork's "Legislative Intent" and the Courts, 79 ANTITRUST L.J. 941 (2014);

Whither Symmetry? Antitrust Analysis of Intellectual Property Rights at the FTC and DOJ, 9 COMP. POL'Y INT'L., No. 2, at 41 (2013) (with Joshua D. Wright);

Antitrust Settlements: The Culture of Consent, CONCURRENCES, No. 2–2013, at 56 (with Joshua D. Wright);

Antitrust Courts: Specialists versus Generalists, 36 FORDHAM INT'L., L.J. 788 (2013) (with Joshua D. Wright);

Dynamic Economics in Antitrust Analysis, 78 ANTITRUST L.J. 1 (2012) (with Joshua D. Wright);

Behavioral Law and Economics: Its Origins, Fatal Flaws, and Implications for Liberty, 106 NW. U. L. REV. 1033 (2012) (with Joshua D. Wright); *reprinted in* LAW AND ECONOMICS: PHILOSOPHICAL ISSUES AND FUNDAMENTAL QUESTIONS. (Aristides N. Hatzis and Nicholas Mercurio ed., 2015)

The Role of Economic Analysis in Competition Law, in GETTING THE BALANCE RIGHT: INTELLECTUAL PROPERTY, COMPETITION LAW, AND ECONOMICS IN ASIA (Ian McEwin ed., 2011) (with Eric M. Fraser);

Antitrust Sanctions, 6 COMP. POL'Y INT'L, No. 2, at 3 (2010) (with Joshua D. Wright);

The Future of Behavioral Economics in Antitrust Jurisprudence, 6 COMP. POL'Y INT'L, No. 1, at 89 (2010) (with Derek W. Moore);

The Costs and Benefits of Private and Public Antitrust Enforcement: An American Perspective, in COMPETITION LAW AND ECONOMICS: ADVANCES IN COMPETITION POLICY AND ANTITRUST ENFORCEMENT (Abel M. Mateus & Teresa Moreira, eds., 2010);

Rethinking Cartel Sanctions, 6 COMP. POL. INT'L (2010) (with Joshua Wright);

The Role of Economic Analysis in Competition Law, in GETTING THE BALANCE RIGHT: INTELLECTUAL PROPERTY, COMPETITION LAW, AND ECONOMICS IN ASIA (Ian McWein ed., 2010) (with Eric M. Fraser);

Appellate Courts and Independent Experts, 60 CASE WESTERN L. REV. 303 (2010);

The Prosecutor and Post-Conviction Claims of Innocence: DNA and Beyond?, 7 OHIO STATE J. OF CRIM. L. 771 (2010) (with Hyland Hunt);

The Future of Behavioral Economics in Antitrust Jurisprudence, 6 COMP. POL'Y. INT'L. 89 (2010) (with Derek W. Moore);

Originalism and Economic Analysis: Two Case Studies of Consistency and Coherence in Supreme Court Decision Making, 33 HARV. J. OF L. & PUB. POL. 217 (2010);

Nondelegation and the Unitary Executive, 12 UNIV. PA. J. CONST. L. 251 (2010) (with Steven Menashi);

The Costs and Benefits of Private and Public Antitrust Enforcement - An American Perspective, in COMPETITION LAW AND ECONOMICS: ADVANCES IN COMPETITION POLICY AND ANTITRUST ENFORCEMENT (Kluwer, 2010);

Antitrust Decisions of the Supreme Court, 1967-2007, COMP. POL. INT'L, No. 2 (2007) (with L. Brannon);

Antitrust Decisions of the Supreme Court, 1967-2007, 3 COMP. POL'Y INT'L., No. 2, at 3 (2007) (with Leah Brannon);

Synthetic Competition, 16 MEDIA LAW & POL'Y 1 (2006);

ARTICLE I, SECTION 1, LEGISLATIVE VESTING CLAUSE, in THE HERITAGE GUIDE TO THE CONSTITUTION (Edwin Meese, III ed.) (2005);

Comparing Antitrust Enforcement in the United States and Europe, 1 J. COMP. LAW & ECON. 427 (2005);

Determinants of Private Antitrust Enforcement in the United States, Vol. 1, No. 2 COMP. POL. INT'L 29 (2005) (with L. Brannon);

On Constitutionalism, CATO SUPREME COURT REV. 7 (2003);

The Court En Banc: 1991-2002, 70 GEO. WASH. L. REV. 259 (2002) (with B. Boynton);

International Antitrust: 2000 and Beyond, 68 ANTITRUST L.J. 571 (2000);

Multinational Merger Review: Lessons From Our Federalism, 68 ANTITRUST L.J. 219 (2000) (with S. Angstreich);

Foreword: "An Open Letter to Vice President Gore in ENVIRONMENTAL GORE (1995), J.A. Baden, ed., PACIFIC RESEARCH INSTITUTE.

Legal Responses to Bounded Rationality in German Administration: Comment, 150 JOURNAL OF INSTITUTIONAL AND THEORETICAL ECONOMICS 163 (1994).

Blackmail: An Economic Analysis of the Law, 141 U. PA. L. REV. 1849 (1993) (with P. Shechtman);

Nonprice Competition, 38 ANTITRUST BULL. 83 (1993);

A Property Rights Analysis of the Inefficiency of Investment Decisions by Labor-Managed Firms: Comment, 148 JOURNAL OF INSTITUTIONAL AND THEORETICAL ECONOMICS 45 (1992).

Antitrust as Antimonopoly, REGULATION (Summer 1991);

Vertical Restraints: De Facto Legality Under the Rule of Reason, 60 ANTITRUST L.J. 67 (1991);

The Court En Banc: 1981-1990, 59 GEO. WASH. L. REV. 1008 (1991) (with D. Falk);

Rationalizing Antitrust: A Rejoinder to Professor Armentano 35 ANTITRUST BULL. 329 (1990), *reprinted in* 2 THE ANTITRUST IMPULSE 933 (Theodore P. Kovaleff, ed., 1994);

The Appropriate Role of the Antitrust Enforcement Agencies, 9 CARDOZO L. REV. 1277 (1988);

White House Review of Agency Rulemaking, 99 HARV. L. REV. 1075 (1986)
(with C. DeMuth);

The Case Against Federal Intervention in the Market for Corporate Control, 4
BROOKINGS REV. 15 (Winter/Spring 1986), *reprinted at* 32 UNIVERSITY OF
CHICAGO LAW SCHOOL RECORD 14 (1986) (with J. Robinson);

The Future of Interstate Banking, 9 J. CORP. L. 655 (1984), *reprinted at* 26
CORP. PRAC. COMMENTATOR 469 (1985);

Rights of Excess: Cable and the First Amendment, 6 COMMUNICATIONS AND THE
LAW 71 (1984);

Regulating Television Violence, (1983) (NAE workshop mimeo);

Interstate Banking: A Preview of the Issues, ABA BANKING J. (Feb., 1983);

The New Illinois Bank Holding Company Act, 99 BANK L. J. 598 (August 1982);

Making Automobile Regulation Work: Policy Options and a Proposal, in D.
Ginsburg and W. Abernathy, *supra* Books, above *reprinted in* 2 HARV. J. L. &
PUB. POL. 73 (1979);

Ernst Freund and the First Amendment Tradition: Afterword, 40 U. CHICAGO L. REV.
235 (1973).

BOOK REVIEWS

The Behavior of Federal Judges: A view from the D.C. Circuit, review by Lee
Epstein, William Landes & Richard Posner, *The Behavioral of Federal Judges*,
97 JUDICATURE (No.2, 2013)

Rationalism in Regulation, review of Richard Revesz & Michael Livermore, *Retaking Rationality: How Cost Benefit Analysis Can Better Protect the Environment and Our Health*, 110 MICH. L. REV. 877 (2010) (with Christopher C. DeMuth).

Competition Rules for the 21st Century: Principles from America's Experience, by Ky P. Ewing, 103 MICH. L. REV. (2004).

Money for Nothing: Politicians, Rent Extraction, and Political Extortion, by Fred S. McChesney, 97 MICH. L. REV. 6 (1999).

Power Without Responsibility: How Congress Abuses the People Through Delegation, by David Schoenbrod, REGULATION MAGAZINE (1995 No. 1).

Enterprise and American Law, by Herbert Hovenkamp, 75 PUBLIC CHOICE 396 (1993).

The Litigation Explosion, by Walter Olsen, 90 MICH. L. REV. 1609 (1992).

Regulation and Its Reform, Stephen Breyer, 20 HARV. J. LEGIS. 647 (1983).

Reluctant Regulators: The FCC and the Broadcast Audience, Barry Cole and Mal Oettinger, 30 FED. COMMUNICATIONS L. J. 173 (1978).

OCCASIONAL PAPERS

Comment on the Japan Fair Trade Commission's Draft Partial Amendment to the Guidelines for the Use of Intellectual Property Under the Antimonopoly Act (George Mason Legal Studies, Research Paper No. LS 15-13, 2015) (with Joshua D. Wright)

Comment on the Canadian Competition Bureau's Draft Updated Intellectual Property Enforcement Guidelines (George Mason Legal Studies, Research Paper No. LS 15-14, 2015) (with Joshua D. Wright)

Introduction to *R.H. Bork, "Legislative Intent and the Policy of the Sherman Act,"* 2 COMPETITION POL'Y INT'L 225 (2006); excerpted at *Judge Bork, Consumer Welfare, and Antitrust Law*, 31 HARV. J. L. & PUB. POL'Y 449 (2008)

Reflections of the Twenty-Fifth Anniversary of the Harvard Journal of Law & Public Policy, 25 HARV. J. L. & PUB. POL'Y 835 (2002).

Preface, First Amendment Law Handbook, 1997-98 Ed. (1997).

Introduction: Competitive Enterprise Institute, ANTITRUST READER (1997).

The Goals of Antitrust Revisited: Comment, 147 JOURNAL OF INSTITUTIONAL AND THEORETICAL ECONOMICS 24 (1991).

Introduction, Federal Spending and the Deficit: Is a Constitutional Remedy Necessary? 11 GEO. MASON U. L. REV. 115 (1989).

In Memoriam: Judge Carl McGowan, 56 GEO. WASH U. L. REV. (1988).

The Reagan Administration's Legislative Initiative in Antitrust, 31 ANTITRUST BULL. 851 (1986).

WORKS IN PROGRESS

Internet Arbitration: A Private Solution to Public Corruption, (with Adrienne Binnall, Michael C. Chu, and Stephen J. Cowen) (work-in-progress)

Recent Presentations

Antitrust Section, Am. Bar Assn., Carlsbad, CA, August 14, 2010, On "Teaching Competition Law and Economics to Judges in China and Russia."

Federal Antimonopoly Service, Moscow, Competition Development in Russia, July 8-9, 2010: presentations on the "Legal Framework of U.S. Antitrust Law" and "Abuse of Monopoly Power (or Dominant Position)"; moot court argument of STC Petroleum.

University College London, Jevons Institute Advanced Training for Judges in Competition Law and Economics, February 2010: presentations on "Cartel Sanctions and the Balance of Optimal Enforcement," "Antitrust and Intellectual Property: Key Economic Principles," "chaired roundtables on "Assessing Economic Evidence in Court," and " Evaluating Proportionality of Remedial Action in Antitrust Cases."

Antitrust Section, Am. Bar Assn., Miami, FL, January 18, 2010, and University College London, February 4, 2010: presentations on "Antitrust Sanctions" (with Joshua Wright).

FTC/DOJ Merger Guidelines Review, Workshop 1, December 3, 2009: "Direct Evidence of Competitive Effects."

ABA Section of Antitrust Law, Fall Forum, November 12, 2009: "Shaping Antitrust Policies: The Role of the Courts."

China Intellectual Property Training Centre, Beijing, Private Enforcement of Antimonopoly Law in China and the US, October 26-30, 2009: presentations on

"Private Enforcement" and "Market Dominance"; panels on *Conwood v. U.S. Tobacco* and *3M v. LaPage's*.

National University of Singapore, Getting the Balance Right: Intellectual Property, Competition Law & Economics in Asia, September 7, 2009: "The Role of Economic Analysis in a Rule of Law Regime, with Special Reference to Competition law."

"Original Public Meaning of the Constitution: Out of Exile?", the Gauer Distinguished Lecture in Law and Public Policy, American Enterprise Institute Legal Center for the Public Interest (2008), available at <http://www.aei.org/speech/100006>.