

MICHAEL S. JACOBS

Work Address

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PROFESSIONAL EDUCATION

1. School: Yale Law School
Attended: September 1968 - June 1971
Degree: Juris Doctor with Highest Honors
Honors: Harlan Fiske Stone Award
2. School: Johns Hopkins School of Hygiene and Public Health
Attended: July 1986 - May 1987
Degree: Master of Public Health
Honors: Delta Omega Honor Society

UNDERGRADUATE EDUCATION

School: Dartmouth College
Attended: September 1964 - June 1968
Degree: B.A. with High Honors
Honors: Magna Cum Laude, Phi Beta Kappa

PROFESSIONAL EMPLOYMENT AND VISITORSHIPS

Distinguished Research Professor of Law, DePaul University College of Law

The Fulbright Distinguished Chair for Italy -- in Competition Law, University of Naples, 1999-2000 academic year. At the University of Naples and before a variety of audiences in Italy, I lectured on the structure and policy underlying U.S. antitrust law, comparing the U.S. regime to its European counterpart, and conferred with fellow academics about curriculum development in the area of competition law. At the Italian Antitrust Authority, I met with competition regulators to discuss current policies and plans for enforcement, and offered a series of seminars to staff and

members.

Honorary Senior Fellow, University of Melbourne School of Law, 2010 and 2011.

Key Note Speaker and Principal Lecturer, "Antitrust Seminar" for Chinese Judges, East China University of Law and Politics, September 3 and 4, 2009. This seminar was organized for and attended by 50 Chinese judges currently hearing cases arising under Intellectual Property law, who will be charged with deciding antitrust cases under China's newly enacted Anti-Monopoly Law.

Epstein Scholar, University of Illinois College of Law, (February 2009).

Director, Australia Study Abroad Program.

Honorary Professor of Law, Shandong University College of Law, Jinan, China (conferred June 2006).

Distinguished Visiting Professor, University of the Aegean, Chios, Greece, May 2000.

Distinguished Visiting Professor, University of New South Wales School of Law, February-March 2005, teaching and lecturing on international competition law and economics.

Distinguished Visiting Professor, Beijing Foreign Studies University, Beijing, China, Summer 2004, teaching and lecturing on Issues in International Competition and Trade Law.

Visiting Scholar, Australian Competition and Consumer Commission, Canberra, Australia, 1998-99. I worked closely with the Commission members and staff investigating complaints, assisting in the development of policy (such as the Revised Merger Guidelines), lecturing on U.S. antitrust law, providing various forms of in-service training, and testifying before Parliament on certain aspects of U.S. competition law and policy.

Visiting Professor of Economics, Adelaide University, Adelaide, Australia, April 1999. I delivered a series of lectures and tutorials dealing with the relationship between and the application of microeconomic principles and U.S. and Australian competition law and policy.

Visiting Professor of Law, Tasmania University, Hobart, Australia, December 1998. I lectured on some differences and similarities between U.S. and Australian competition law, policy, and enforcement practices.

Merck Visiting Scholar, Seton Hall Law School, Spring 1996. According to its directors, the Merck Visiting Scholar program is designed to expose Seton Hall

students to "an expert in an area of health law" that complements Seton Hall's own areas of expertise and "to offer the state health bar and health care professionals a nationally prominent resource on legal issues of the day". During my visit, I spoke to student, faculty and professional groups about the unique characteristics of health care markets, the tension between health care antitrust law and some of the public values traditionally associated with the provision of healthcare, and health care reform.

Visiting Professor, Washington College of Law, American University, Fall 1995. Courses taught: Antitrust, and Health Care Policy.

Director, Aviation Law Institute, DePaul University College of Law, as of July 1, 2003.

Professor, DePaul University College of Law, as of July 1, 1995, and Associate Director of the Health Law Institute, through 1999. Courses taught: Antitrust, Advanced Antitrust, Contracts, Health Policy and Law, Health Care Antitrust.

PUBLICATIONS

BOOKS

"Research Methods for Competition Law" (co-editor, with Deborah Healey) (Elgar & Co., forthcoming 2016).

TEXTBOOKS

"The Law and American Health Care", (with Kenneth Wing and Patricia Kuszler), Little, Brown and Company (Aspen-Kluwer) (1998).

"The Law and American Health Care" (2000 Supplement).

"The Law and American Health Care", (2001-2006, and electronic editions).

BOOK CHAPTERS

"The IP/Competition Law Intersection under China's Anti-Monopoly Law" (with Xinzhu Zhang), in **ASEAN Competition Law**, (Hart; LexisNexis, 2011);

"The Next Generation of Oligopoly Problems", **Post-Chicago Developments in**

Antitrust Law (Edward Elgar, 2002).

“An Outsider's Perspective on 25 Years of Australian Competition Law”, in **Twenty Five Years of Australian Competition Law**, (Butterworths, Reed International) (1999).

SYMPOSIA

General Editor and Contributor, Symposium on the 20th Anniversary of the *Aspen Ski Co. Decision*, 73 *Antitrust Law Journal* 59 et seq. (2005).

Introduction, Symposium Issue: “Intellectual Property Licensing by the Dominant Firm: Issues and Problems”, 55 *De Paul Law Review* 1177 (2006).

ARTICLES

“The Incoherence of Bargaining Power in Contract Law” (with Max Helveston), 49 *Wake Forest Law Review* 1017 (2014);

“The Empty Promise of Behavioral Antitrust” (with Alan Devlin), 37 *Harvard Journal of Law and Public Policy* (2014) (shortlisted by the Awards Editorial Committee of the Institute of Competition Law for an Antitrust Writing Award for the year 2013, in the “Economics” category);

“Anti-competitive Innovation and the Quality of Invention” (with Alan Devlin), 27 *Berkeley Technology Law Journal* 1 (2012);

“Joint Venture Analysis After *American Needle*” (with Alan Devlin), *Journal of Competition Law and Economics* (Spring 2011);

“Antitrust Error” (with Alan Devlin), 52 *William and Mary Law Review* 75 (2010);

“The Riddle Behind Refusals to Deal” (with Alan Devlin), 105 *Northwestern University Law Review* (on-line) (2010);

“China's Approach to Compulsory Licensing of Intellectual Property under its Anti-Monopoly Law”, (with Xinzhu Zhang), *Journal of International Competition Policy* (Fall 2010);

“Antitrust Divergence and the Limits of Economics”, (with Alan Devlin), 104 *Northwestern University Law Review* 253 (2010);

“Some Lessons from the Freight-Forwarding Cartel”, *Issues in Aviation Law and Policy* (Autumn 2008);

"A Short Essay About the Long Term: The Limits of Antitrust Analysis as Applied to IP Licensing by the Dominant Firm" (2008, proceedings of the Annual Conference of the Asian Competition Forum);

"Microsoft's Five Fatal Flaws", 2009 Columbia Business Law Review 67 (with Alan Devlin, 2009);

"Success, Dominance, and Interoperability", 84 Indiana Law Journal 1157 (with Alan Devlin and Bruno Peixoto, 2009);

"Merger Policy and Enforcement Under China's New Anti-Monopoly Law", ISBA Antitrust Journal (Spring 2009);

"The U.S. Perspective on Abuse of Dominance" (paper delivered at the 3d Annual Asian Competition Forum and published as part of conference proceedings), (December 2007);

"Bundled Discounting by the Dominant Firm: The View from the United States", 15 Competition and Consumer Law Journal 135 (Australia) (October 2007);

"Reviewing the Antitrust Enterprise", Book Review Essay on "The Antitrust Enterprise" by Herbert Hovenkamp, **The Antitrust Source** (December 2006);

"Hail or Farewell: The Aspen Decision After 25 Years", 73 Antitrust Law Journal 59 (Fall 2005);

"The Dawson Review and section 46: The good, the bad and the ugly", University of New South Wales Law Forum, Vol. 9 No. 1 (2003);

The Mythology Behind Recent Regulatory Efforts Aimed at Predatory Pricing in the Airline Sector [paper delivered at IATA Legal Counsel Conference, February 2003].

Mergers and Acquisitions in a Global Economy: Perspectives from Law, Politics, and Business, 13 DePaul Business Law Journal 1(Foreword to Symposium Issue, Spring 2001).

Second Order Oligopoly Problems with International Dimensions: Sequential Mergers, Maverick Firms and Buyer Power, The Antitrust Bulletin 537 (Fall 2001).

"Three Small Problems in Merger and Oligopoly Enforcement", prepared for the Annual Meeting of the European Association of Law and Economics (October, 2000).

"Presumptions, Damn Presumptions, and Economic Theory: The Curious Role of

Empirical Evidence in Hospital Merger Analysis", 31 Indiana Law Review 115 (1998),(solicited for law review symposium on the role of empirical research in shaping health law and policy).

"Lessons From the Pharmaceutical Antitrust Litigation: Indirect Purchasers, Antitrust Standing, and Antitrust Federalism", 42 St. Louis University Law Journal 59 (1998), (solicited for law review symposium on recent developments in the pharmaceutical industry).

"When Antitrust Fails: Public Health, Public Hospitals, and Public Values", 71 Washington Law Review 899 (1996) (solicited for law review symposium on Public Health and the New Tuberculosis).

"Rural Health Care Markets and State Antitrust Reform", 47 Mercer Law Review 1045 (1996)(solicited for law review symposium on Rural Health Care and the Law).

"An Essay on the Normative Foundations of Antitrust Economics", 74 North Carolina Law Review 219 (1995).

"The New Sophistication in Antitrust", 79 Minnesota Law Review 1 (1994).

"Recent Developments in Antitrust law and their Implications for the Clinton Health Care Plan", 21:2 The Journal of Law, Medicine & Ethics 33 (Fall 1993).

"Exploring the Assumptions Beneath the Debate About Scientific Evidence: Juror 'Incompetence' and Scientific 'Objectivity' Re-examined", 25 Connecticut Law Review 1083 (1993), (solicited for law review symposium on Scientific Evidence and the Law).

"Market Power Through Imperfect Information: The Staggering Implications of Eastman Kodak Corp. v. Image Technical Services, Inc. and a Modest Proposal for Limiting Them", 52 Maryland Law Review 336 (1993);

"Towards a Process-Based Approach to Failure-To-Warn Law", 70 North Carolina Law Review 121 (1992);

"Churchillian Democracy and the Law School Examination Process: A Reply to Professors Redlich and Friedland", 41 DePaul Law Review 159 (1991);

"Professional Sports Leagues, Antitrust, and the Single Entity Theory: A Defense of the Status Quo", 67 Indiana Law Journal 25 (1991);

"The Alcohol Beverage Labeling Act of 1988: A Critical Analysis", 40 Syracuse University Law Review 1223 (1989);

"Prevention and Torts: The Role of Litigation in Injury Control" (with Stephen Teret), *Law, Medicine and Health Care*, Volume 17:17 (Spring 1989);

"Anti-Trust Principles and Collective Bargaining by Athletes: Of Superstars in Peonage" (with Ralph K. Winter), *81 Yale Law Journal* 1 (1972);

BOOK REVIEWS AND OTHER

"Antitrust" (2d ed.) by Richard Posner, *European Journal of Competition Law* (Spring 2003).

An Appetite for Competition, reviewing Chicago restaurants, in *Antitrust Magazine*, Summer 2001.

Interview with Professor Michael S. Jacobs, *Quality Management in Health Care Quarterly* (Vol. 9, Number 2, Winter 2001).

Guest Column, *Microsoft Case Reveals Peril of Public Disagreement*, *The American Lawyer*, and *law.com*, (October 6, 2000).

"The Findings of Fact in the Microsoft Case and Their Implications for Global Antitrust Enforcement" (February 2000), (white paper written for the Australian Competition and Consumer Commission).

Why Should Microsoft Share? There's A Good Reason, in Theory", *Chicago Daily Law Bulletin*, May 22, 1998, at 5.

Chicago Council of Lawyers, "Evaluation of the United States Court of Appeals for the Seventh Circuit", *43 DePaul Law Review* 673 (1994) (one of three reviewers of the opinions of Judge Richard Posner);

"Euthanasia Considered: Professional Paternalism or Individual Freedom?" *40 DePaul Law Review* 925 (1991).

"Book Review: Health Care Law and Policy by Clark Havighurst", *The International Digest of Health Legislation* (Summer 1989);

"Book Review: The Law of Hospital and Health Care Administration (2d edition), by A.F. Southwick", *The International Digest of Health Legislation* (Spring 1990).

AWARDS, OTHER HONORS, U.S. GOVERNMENT TESTIMONY, SERVICE

Distinguished Research Professor of Law, De Paul University College of Law, as of September 2009.

Merck Visiting Scholar, Seton Hall University Law School, Spring 1996.

Recipient of the University Excellence in Teaching Award, DePaul University, June 1998.

Fulbright Distinguished Chair for Italy, in Competition Law, 1999-2000.

Certificate of Recognition, from the Australian Foreign-Trained Doctors Association, for pro bono assistance in competition law matters, June 1999.

DePaul University College of Law Student Bar Association, Excellence in Teaching Award, 2001, 2002, 2003.

Distinguished Speaker, St. Louis University School of Law Distinguished Speaker Series, Spring 2002.

Excellence in Scholarship Award, DePaul University College of Law, 2002.

Excellence in Scholarship Award, DePaul University College of Law, 2009.

Excellence in Scholarship Award, DePaul University College of Law, 2014.

Selection Committee, Fulbright Distinguished Chair, 2003, 2004.

Excellence in Teaching Award, DePaul University College of Law, 1990, 2005.

TALKS, LECTURES, TESTIMONY, APPEARANCES

I speak regularly about competition law issues at Law schools and to professional, judicial and government groups in the United States and overseas. I have participated as a speaker in a large number of conferences dealing with antitrust issues of current interest. I speak to academic and professional groups in the United States, Australia, Europe and China on such issues as the globalization of antitrust law and enforcement, the role of economics in antitrust analysis and developments in the law and economics of competition policy; developing and fostering a culture of competition; recent developments in US antitrust law generally, competition law and intellectual property, and the competition law issues pertinent to the aviation industry.

I have provided training sessions in the basics of health care antitrust and economics to the staff and Commission of the Australian Competition and Consumer Commission, and to the Italian Competition Commission. In March 2005, I was one of five speakers at a conference of the Australian and New Zealand federal judiciary devoted to the topic of the Law and Economics of Competition Law. In September 2009, I participated in a two-day seminar in Shanghai to train Chinese judges in US Antitrust law and procedure, particularly issues pertaining to abuse of dominance.

I have provided and continue to provide regular antitrust consulting to the Australian Competition and Consumer Commission, and periodic consulting to other antitrust regulatory agencies in Asia and the US, as well as to private law firms and companies in the US, Australia and elsewhere.