

## JOHN B. KIRKWOOD

### Office

Associate Professor  
Associate Dean for Faculty Development  
Seattle University School of Law  
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### Home

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### Education

J.D. 1974 (cum laude), Harvard Law School

Civil Rights - Civil Liberties Law Review (appointed Projects Editor).

Research assistant to Phillip Areeda, 1972-74 (principal task: revising and expanding economics section of his casebook).

Research assistant to E. Allan Farnsworth, 1970-71 (included writing note for his casebook on economics of contract breach).

M.P.P. 1974 (cum laude), John F. Kennedy School of Government, Harvard University

Full tuition fellowship.

Master's thesis published by School as model for future classes and by Harvard Task Force on Massachusetts Higher Education.

Principal author of Task Force report.

A.B. 1970 (magna cum laude), Yale University

Phi Beta Kappa; Honors of Exceptional Distinction in Economics.

Editor, Alternative magazine; Varsity Debate Team.

Executive Committee of Yale College.

Andrew D. White Prize (third place) (for history essay in freshman honors program).

Charles H. Dickerman Prize (for best senior thesis in economics); later published in the Journal of Money, Credit and Banking, whose referee commented:

Mr. Kirkwood's prize essay (from Yale) is, without exception, the best undergraduate paper in economics that I have yet seen. It would rank in the upper decile of the graduate M.A. and Ph.D. theses I have read.

## **Employment**

### Seattle University School of Law

Associate Dean for Faculty Development, 2009-present.

Associate Professor, 2006-present.

Award: Dean's Medal (May 2007).

Courses: Antitrust Law; Business Entities; Administrative Law; Law and Economics.

Committees: Ad Hoc Committee on Legal Writing Status (Chair); Strategic Planning; Planning & Advisory; Professional Review; Faculty Appointments.

Assistant Professor, 2002-2006.

Award: Outstanding Faculty Award (May 2006).

Courses: Antitrust Law; Business Entities; Administrative Law; Law and Economics (with Holdych).

Committees: Faculty Appointments (2 years); Legal Writing Hiring (2 years); Legal Writing Review; Budget (2 years); and others.

Adjunct Professor, 1998-2001.

Courses: Antitrust Law; Law and Economics (with Holdych).

### University of Washington School of Law

Part-Time Lecturer, 1992-2002 (taught five quarters during this period).

Courses: Antitrust Law; Law and Economics.

Federal Trade Commission (Seattle, WA)

Senior Attorney, 1987-2002.

Lead counsel on Commission litigation against major book publishers for discriminating against independent bookstores.

Managed team of up to ten professionals (including accountant and two economic experts) prosecuting litigation and negotiating proposed settlements.

Senior counsel on precedent-setting hospital merger case.

Senior attorney on numerous merger investigations.

Nominated for Paul Rand Dixon Award for outstanding performance.

Federal Trade Commission (Washington, D.C.)

Assistant Director for Evaluation, 1982-87, Assistant Director for Planning, 1977-82, Bureau of Competition. Senior Executive Service.

Commission official principally responsible for antitrust policy planning.

Prepared or supervised preparation of major analyses of enforcement policy issues (virtually all published; see "Publications" and "Publications Supervised" below).

As Assistant Director for Evaluation, managed large office with numerous responsibilities, including the government's premerger notification program.

Bergson, Borkland, Margolis & Adler (Washington, D.C.)

Associate in antitrust firm, 1974-77.

Represented corporate defendants in government and private antitrust litigation.

Helped oversee preparation of ABA Antitrust Section monographs on enforcement policy issues.

**Editorial and Policy Positions**

Editor, Research in Law and Economics: A Journal of Policy (with Richard O. Zerbe).

Special Editor, Volume 21, Antitrust Law and Economics.

Senior Fellow, American Antitrust Institute, and member of its Board of Advisers.

Author, Comments of the American Antitrust Institute on the European Commission's Proposed Block Exemption Regulation and Guidelines on Vertical Restraints, Sept. 27, 2009.

Author, "The Robinson-Patman Should be Reformed, Not Repealed,"

Comments of the AAI Working Group on the Robinson-Patman Act to the Antitrust Modernization Commission, July 1, 2005.

## **Publications**

### *Books Edited*

Antitrust Law and Economics, 21 Res. L. & Econ. (2004).

Impact Evaluations of Federal Trade Commission Vertical Restraints Cases (1984) (with Ronald N. Lafferty & Robert H. Lande).

Reprinted in 19 J. Reprints Antitrust L. & Econ. (1989).

### *Articles and Book Chapters*

“Rethinking Antitrust Policy Toward RPM,” Antitrust Bull. (forthcoming 2010).

“The Path to Profitability: Reinvigorating the Neglected Phase of Merger Analysis,” 17 George Mason L. Rev. 39 (2009) (with Richard O. Zerbe, Jr.).

Originally presented at the 7th Annual Loyola Antitrust Colloquium, Loyola University Chicago School of Law, Apr. 13, 2007.

“The Fundamental Goal of Antitrust: Protecting Consumers, not Increasing Efficiency,” 84 Notre Dame L. Rev. 191 (2008) (with Robert H. Lande).

Ranked in SSRN’s Top Ten list of downloaded papers in Antitrust & Regulated Industries in the spring of 2008.

“Controlling Above-Cost Predation: An Alternative to *Weyerhaeuser* and *Brooke Group*,” 53 Antitrust Bull. 369 (2008).

Originally presented at the Department of Justice/Federal Trade Commission Hearings on Predatory Pricing, June 22, 2006. Revised version presented at the AAI Invitational Symposium on Buyer Power, June 20, 2007.

“Chicago’s Foundation is Flawed: Antitrust Protects Consumers, Not Efficiency,” in Where the Chicago School Overshot the Mark: Effect of Conservative Economic Analysis on U.S. Antitrust (Oxford Univ. Press, Robert Pitofsky ed. 2008) (with Robert H. Lande).

“The New Kid on the Block: Buyer Power,” in The Next Antitrust Agenda: The American Antitrust Institute’s Transition Report on Competition Policy to the 44th President (Albert A. Foer, ed. 2008) (principal author and editor of this chapter).

Originally presented at the Tenth Annual AAI Conference (June 2008).

“The Robinson-Patman Act and Consumer Welfare: Has *Volvo* Reconciled Them?” 30 Seattle U. L. Rev. 349 (2007).

Originally presented at the 2006 Spring Meeting of the ABA Antitrust Section.

“Buyer Power and Exclusionary Conduct: Should *Brooke Group* Set the Standards for Buyer-Induced Price Discrimination and Predatory Bidding?” 72 Antitrust L.J. 625 (2005).

Quoted and cited in *Weyerhaeuser Co. v. Ross-Simmons Hardwood Lumber Co., Inc.*, 127 S. Ct. 1069 (2007). Also quoted and cited in *Confederated Tribes of Siletz Indians v. Weyerhaeuser Co.*, 411 F.3d 1030 (9<sup>th</sup> Cir. 2005).

Finalist for the 2006 Jerry S. Cohen Award for Outstanding Scholarship (given at the AAI conference in June 2006).

Originally presented at the AAI Conference on Buyer Power and Antitrust (June 2004). Also presented at the University of California, Berkeley Conference on Socio-Economics (Jan. 2005).

“Network Industries,” in Market Power Handbook: Competition Law and Economic Foundations (ABA Section of Antitrust Law) (2005) (part of chapter).

“Consumers, Economics, and Antitrust,” in 21 Res. L. & Econ., Antitrust Law and Economics, 1 (John B. Kirkwood ed., 2004).

"Robinson-Patman Enforcement at the FTC: Promoting a Level Playing Field While Protecting Consumers," 7 Trade Reg. Rep. (CCH) ¶ 50,151 (1995) (with K. Shane Woods).

Originally presented at the 1995 Spring Meeting of the ABA Antitrust Section.

"Resale Price Maintenance and Antitrust Policy," 3 Contemp. Policy Issues 9 (1985) (with William S. Comanor).

"Antitrust Implications of the Recent Experimental Literature on Collusion," in Strategic, Antitrust and Predation Analysis (Steven C. Salop, ed., 1981).

Originally presented at a Federal Trade Commission conference.

"Monopolization Reform Proposals: Their Potential for Expediting Litigation," 49 Antitrust L.J. 1233 (1981).

Originally presented at an ABA Antitrust Section conference.

"Comments on Emerging Antitrust Issues Affecting the Conduct of Dominant Firms," 49 Antitrust L.J. 953 (1981).

Originally presented at an ABA Antitrust Section conference, on a panel with Phillip Areeda.

"Elimination of the Conduct Requirement in Government Monopolization Cases," 37 Wash. & Lee L. Rev. 83 (1980) (with Alfred F. Dougherty & James D. Hurwitz).

Earlier version presented to the National Commission for the Review of Antitrust Laws and Procedures.

Earlier version published in 48 Antitrust L.J. 869 (1980), 10 Antitrust L. & Econ. Rev. 37 (1978), and Legal Times of Washington, Oct. 23, 1978, at 24.

"Market Power: The Central Concern of the Bureau of Competition," Legal Times of Washington, Oct. 8, 1979, at 23.

"Media Concentration," ABA Antitrust Section Newsletter, Spring 1978.

"The Role of Tax Policy in Federal Support for Higher Education," 39 L. & Contemp. Prob. 117 (1975) (with David Mundel).

Policies for the Near Future, Report of the Harvard Task Force on Massachusetts Higher Education (1974) (principal author).

Tax Incentives for Higher Education, Teaching and Research Materials No. 20T, Public Policy Program, Kennedy School of Government, Harvard University (1974).

Reprinted as a staff report of the Harvard Task Force on Massachusetts Higher Education (1974).

"The Role of Competition: Analytic Model and Useful Tendency," in Antitrust Analysis (Phillip E. Areeda, 2d ed. 1974) (drafted much of this subchapter).

"The Great Depression: A Structural Analysis," 4 J. Money, Credit & Banking 811 (1973).

Abstracted in 3 C.F.A. Digest 25 (1973).

"Cash Deposits - Burdens and Barriers in Access to Utility Services," 7 Harv. Civil Rights-Civil Liberties L. Rev. 630 (1972).

"The Economics of Breach," in Contracts (E. Allan Farnsworth, William F. Young, and Harry W. Jones, 2d ed. 1972) (drafted this note).

### **Publications Supervised**

R. Marks, "Labor and Antitrust: Striking a Balance Without Balancing," 35 Am. Univ. L. Rev. 699 (1986).

R. Marks, "Can Conspiracy Theory Solve the 'Oligopoly Problem'?" 45 Maryland L. Rev. 387 (1986).

J. Hurwitz, "Abuse of Governmental Processes, the First Amendment, and the Boundaries of Noerr," 74 Georgetown L.J. 65 (1985).

A. Fisher & R. Lande, "Efficiency Considerations in Merger Enforcement," 71 Calif. L. Rev. 1580 (1983).

D. Clark, "Price-Fixing without Collusion: An Antitrust Analysis of Facilitating Practices After Ethyl Corp.," 1983 Wis. L. Rev. 887.

W. Kovacic, "The Federal Trade Commission and Congressional Oversight of Antitrust Enforcement," 17 Tulsa L. J. 587 (1982).

R. Lande, "Wealth Transfers as the Original and Primary Concern of Antitrust: The Efficiency Interpretation Challenged," 34 Hastings L.J. 65 (1982).

J. Hurwitz & W. Kovacic, "Judicial Analysis of Predation: The Emerging Trends," 35 Vand. L. Rev. 63 (1982).

N. Averitt, "The Meaning of 'Unfair Acts or Practices' in Section 5 of the Federal Trade Commission Act," 70 Georgetown L.J. 225 (1981).

A. Dougherty & K. Davidson, "Limitation Without Regulation: The FTC's Bureau of Competition Approach to Conglomerate Mergers," 1980 Utah L. Rev. 95.

N. Averitt, "The Meaning of 'Unfair Methods of Competition' in Section 5 of the Federal Trade Commission Act," 21 Bos. Col. L. Rev. 227 (1980).

M. Pertschuk & K. Davidson, "What's Wrong with Conglomerate Mergers?" 48 Fordham L. Rev. 1 (1979).

N. Averitt, "Structural Remedies in Competition Cases Under the Federal Trade Commission Act," 40 Ohio St. L.J. 781 (1979).

### **Additional Presentations**

"*American Needle v. NFL*," part of the "Private Law and Procedure Panel" of "What to Watch for at the Supreme Court with Professor Siegel," Seattle University School of Law, Oct. 2, 2009.

"Antitrust and Sports: When Does Collusion Benefit Sports Fans?" 2009 Sports Law CLE, sponsored by Foster Pepper to benefit the Leukemia & Lymphoma Society, Apr. 30, 2009.

"The Macroeconomic Response to the Financial Crisis," 2009 Distinguished Speaker Series, Seattle University School of Law, Apr. 25, 2009.

"The Future of Private Antitrust Actions," The 25th Annual Antitrust and Consumer Protection Seminar, Washington State Bar Association, Nov. 6, 2008.

Commenter, Panel on "Buyer Power," AAI Conference on the Future of Monopoly and Monopolization, June 21, 2007.

Participant, Conference on Conservative Economic Influence on U.S. Antitrust Policy, Georgetown University Law Center, Apr. 16-17, 2007.

Moderator and participant, Panel on "The U.S. Supreme Court: An Update and Predictions," The 23rd Annual Antitrust and Consumer Protection Seminar, Washington State Bar Association, Nov. 17, 2006.

"Should the Robinson-Patman Act be Repealed or Modified?" Conference on the Antitrust Modernization Commission sponsored by the ABA Antitrust Section, Georgetown University Law Center, Jun. 8, 2006.

Moderator, Panel on "Patent Settlements: How Should Courts Evaluate Settlements in Which the Patent Holder Pays the Challenger to Exit?" Conference on Antitrust and Intellectual Property Law sponsored by the Seattle University Law Review and the Northwest Regional Office of the Federal Trade Commission, Apr. 7, 2006.

"Refining the Rules for Dominant Firms: Implications of *Dentsply*, *LePage's* and *Weyerhaeuser*," The 22nd Annual Antitrust and Consumer Protection Seminar, Washington State Bar Association, Dec. 2, 2005.

Moderator, Panel on Prescription Drug Access, Conference on Corporate Ethics and Health Care, Seattle University Law School, Feb. 28, 2004.

"Internet Mergers: Same Old Analysis or Something New?" Conference and Teleconference sponsored by the ABA Antitrust Section and the Washington State Bar Association, Dec. 5, 2002.

"Antitrust: Issues and Answers," Quarterly Educational Meeting of the Northwest Medical Directors & Pharmacy Benefit Managers, Sept. 20, 2002.

"Antitrust and Innovation," Intellectual Property and Innovation Seminar sponsored by the Shidler Center for Law, Commerce and Technology and the Center for Advanced Study and Research on Intellectual Property, University of Washington Law School, Mar. 14, 2002.

"Trends in FTC Antitrust Enforcement," Conference on the Internet sponsored by the Shidler Center for Law, Commerce and Technology, University of Washington Law School, and the Washington Software Alliance, April 21, 2001.

"Disgorgement in Competition Cases," Conference on Premerger Notification and Remedies sponsored by the Washington Attorney General's Office and the Washington State Bar Association, Sept. 22, 2000.

"Preparing Economic Experts," Common Ground Conference, Western States/Federal Trade Commission/Department of Justice, May 21, 1999.

"Econometric Evidence in Hospital Merger Cases," Conference on Antitrust in the Healthcare Field, National Health Lawyers Association, Feb. 19-20, 1998.

"The Search for Solutions," panel discussion on relationships with competitors, Thirteenth Annual Antitrust, Consumer Protection & Unfair Business Practices Conference, Washington State Bar Association, Nov. 8, 1996.

"What Every Association Industry Member Should Know About the Antitrust Laws,"  
Washington Aggregates and Concrete Association, Nov. 30, 1989.

"Antitrust During the Reagan Years," panel discussion, Tenth Annual Research  
Conference of the Association for Public Policy Analysis and Management, Oct. 29,  
1988.

"The Per Se Rule Against Resale Price Maintenance: A Time for Change?" Sherman Act  
Committee, ABA Antitrust Section, Aug. 11, 1981.

"FTC Antitrust Enforcement in the 1970's: A Response to the Clarkson-Muris Critique,"  
University of Miami Conference on the FTC, Apr. 25, 1981.

"Structural Monopoly Actions and Section 5 of the Federal Trade Commission Act,"  
seminars at the FTC, George Washington University Law School, and an AALS  
conference, 1979-80.

"No Conduct Monopoly and Aggressive Competition," Federal Bar Association  
Conference on Antitrust and Trade Regulation Law, Oct. 12, 1979.

"Trademarks and Competition," Association of the Bar of the City of New York, June 6,  
1979.

"Dominant Firms," Allegheny County Bar Association, May 25, 1978.

Presentations on antitrust topics to faculty or students at the University of Washington  
Law School, the University of Utah Law School, George Washington University  
Economics Department, Rice University Business School, the University of North  
Carolina Business School, South Seattle Community College, and Franklin High School.

## **Family**

Married to Heather Kirkwood (Harvard Law School, 1973).  
Three children.

February 24, 2010