

Theodore Alan Gebhard

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Professional Career:

- **Consultant in Law & Economics, 2013-present.**

Consulting practice focused on assisting attorneys in the effective presentation and rebuttal of economic, econometric, and statistical evidence in litigation and public policy advocacy. Includes advising on expert witness strategy and *Daubert* challenges. – Adjunct Assoc. Prof. of Economics, D.S. Lancaster Com. Col. (2019).

- **Senior Antitrust Policy Advisor, Federal Trade Commission, Office of Policy & Coordination, 2001-2012.**

As a senior attorney and economist in the Office of Policy and Coordination, conducted complex antitrust policy analysis in furtherance of the Commission's policy goals. Held leadership roles in major policy initiatives, including being a principal drafter of the Commission's Noerr Report, the Commentary on the Horizontal Merger Guidelines, and the Commission's Petroleum Market Manipulation Rule. Provided regular training courses for antitrust litigators in statistics, econometrics, and microeconomics. Manager and participant in several FTC public workshops addressing such policy topics as developments in merger analysis, P2P networks, and competition issues in petroleum markets. On-site advisor to several foreign competition authorities in best antitrust practices. Regularly worked with antitrust litigation teams to shape expert economic testimony and prepare challenges to opposing economic experts.

- **Attorney, Antitrust Practice Group, Morgan, Lewis & Bockius LLP, 1996-2001.**

Counseled major corporate clients on antitrust matters in a variety of contexts, including mergers, monopolization, pricing behavior, and antitrust compliance, with substantial focus on regulated industries, including electricity, natural gas, and electronic banking. Law practice also included substantial antitrust litigation and advocacy before federal antitrust enforcement agencies and state utility commissions, with lead role in shaping expert economic witness testimony and challenging opposing economic experts.

- **Senior Antitrust Economist and Director of Economic Research for Export Trading Company Affairs, U.S. Department of Commerce, 1983-1985 and 1989-1995.**

Directed staff of business analysts and economists performing research regarding the effects on domestic competition from the operation of U.S.-based export joint ventures. Performed antitrust analysis of applications for Export Trade Certificates of Review, providing antitrust immunity to U.S. exporters. Advised the Department's legal staff on antitrust/competition issues arising from international transactions involving U.S. companies. Counseled businesses on ways to form and structure export joint ventures consistent with U.S. antitrust law. Served as one of the Department's principal spokespersons on U.S. antitrust policy toward export industries.

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- **Associate Professor of Economics, Eastern New Mexico University, 1986-1989.**

Teaching subjects included: Industrial Organization and Antitrust Policy, Microeconomic Theory, Mathematical Modeling, Probability and Statistics, and Econometrics.

- **Co-Owner and Manager, Elgin Computer Center, Inc., 1986-1987.**

With a partner, started and managed a retail computer equipment store.

- **Visiting Assistant Professor, Department of Economics and Graduate School of Business, DePaul University, 1981-1982.**

Subjects taught included: Industrial Organization and Antitrust Policy, Microeconomic Theory, Mathematical Modeling, and Managerial Economics (MBA program).

Consultant to the Antitrust Division, U.S. Department of Justice.

- **Economist, Antitrust Division, U.S. Department of Justice, 1974-1981.**

Performed economic research and analysis of competitive conditions in U.S. industries to assess whether antitrust enforcement action would be recommended. As part of antitrust litigation teams, developed economic evidence for trial and framed economic arguments in support of the Division's legal theories. Prepared expert testimony for presentation before federal regulatory agencies.

- **Teaching Fellow, University of Illinois, 1971-1974.**

Education:

J.D., 1995, George Mason University (with Distinction)
Ph.D., 1975, Economics (Industrial Organization/Econometrics) University of Illinois
M.S., 1973, Economics (Mathematical Methods), University of Illinois
B.S., 1970, Economics, Purdue University (with Distinction)

Bar Admittance:

District of Columbia
Illinois (inactive status)
United States Supreme Court

Memberships:

Federalist Society
American Economic Association

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Publications, Papers, and Presentations:

Law & Economics Scholars' Amicus Brief in the Supreme Court of the United States in the matter of Tennessee Wine and Spirits Retailers Assn. v. Blair, co-author with four other law & economics scholars, filed Dec. 20, 2018, available at https://www.supremecourt.gov/DocketPDF/18/18-96/77005/20181220091952957_18-96%20Amicus%20Brief%20of%20Law%20and%20Economics%20Scholars.pdf (lays out public choice principles and law and economics of rent-seeking as impediments to competition in Tennessee retail alcoholic beverage markets)

The Enduring Legacy of Henry Manne: A Review of the 2016 Law & Economics Center Conference, Vienna Woods Law & Economics, January 26, 2016, available at <https://viennawoods100.com/2016/01/26/208/>.

Legal and Economic Issues Arising from the Marriage of Personally Identifiable Information and Technology. Presenter and Discussion Leader at a workshop sponsored by The George Washington University School of Engineering and Applied Sciences entitled *New Strategies to Manage Knowledge and Innovation*. Sept. 26, 2015.

What Does King v. Burwell Have to Do with the Antitrust Rule of Reason? A Lot. Vienna Woods Law & Economics, July 14, 2015, available at <http://viennawoods100.com/2015/07/15/204/>

Forecasting Trends in Highly Complex Systems: A Case for Humility. Vienna Woods Law & Economics, June 20, 2015, available at <http://viennawoods100.com/2015/06/20/203/>

Is Economics a Science? Vienna Woods Law & Economics, May 15, 2015, available at <http://viennawoods100.com/2015/05/15/202/>

Economics and Transparency in Antitrust Policy, Vienna Woods Law & Economics, April 28, 2015, available at <http://viennawoods100.com/2015/04/28/201/>

The FTC's Supreme Court Victory: A Rare Win for Both Libertarians and Regulators, originally appearing at *Gayton Law Blog*, April 1, 2015, also available at <https://viennawoods100.com/2015/04/28/102/> (discusses "state action" doctrine issue in *North Carolina State Board v. FTC*)

Amazon: Bully or Not? Originally appearing at *Gayton Law Blog*, Aug. 26, 2014, also available at <https://viennawoods100.com/2015/04/28/101/> (discusses Amazon/Hachette dispute and antitrust law).

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Prohibiting Fraud in Wholesale Petroleum Markets: The New Federal Trade Commission Market Manipulation Rule. 31 Energy Law Journal 125 (2010) (with James Mongoven) (also available at <http://www.felj.org/sites/default/files/docs/elj311/19-125-GebhardMongoven-FTCMarketManipulationRule-030510.pdf>.)

Econometrics and Statistics for Lawyers. Created and taught FTC in-house training course for antitrust litigators. Ten week course given in Winter 2009-2010 and Fall 2010. Course focused on providing lawyers with a basic understanding of regression analysis and statistical testing with a view toward enhancing advocacy skills in the use and rebuttal of expert econometric and statistical testimony.

Microeconomics for Lawyers. Created and taught FTC in-house training course for antitrust litigators. Ten week course given in Fall 2006, Spring 2008, and Fall 2010. Course focused on providing lawyers with a basic understanding of microeconomic theory with a view toward enhancing advocacy skills in the use and rebuttal of expert economic testimony.

The Use of Economic Modeling in Antitrust Cases. Developed and conducted a four day intensive course for Balkan-area competition authorities in the use of economic analysis and modeling in antitrust litigation. Discussions included an examination of various economic modeling techniques appropriate to analyzing antitrust issues, practical problems in data gathering, effective presentation of econometric evidence at trial, and the need to fit the economic evidence within the overall “story” of the case. Attendees included lawyers and economists from the competition authorities of Bulgaria, Hungary, Turkey, and Serbia. Sofia, Bulgaria (September 2009).

Effective Competition Advocacy Toward Regulated Sectors. Faculty member for three day intensive course instructing Central American competition authorities on best practices for competitive advocacy with respect to sector regulators in their home countries. Attendees included representatives from Guatemala, Nicaragua, Honduras, Mexico, El Salvador, and Costa Rica. Guatemala City, Guatemala (May 2008).

Topics in Competition Policy. Faculty member for five day intensive course in antitrust law and economics given to representatives of 23 nations. Course was organized by the Organization for Cooperation and Economic Development (OECD). Audience consisted of officials of newly formed government competition authorities in Eastern European nations and former Soviet Republics in transition to market oriented economies. Budapest, Hungary (April 2007).

The Interplay Between Competition and Regulatory Policy: The Case of the U.S. Electricity Industry. Lecture given to delegation of the Korean Fair Trade Commission. Washington, DC (December 2006).

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Effective Competitive Advocacy: The Importance of Reputation and Empirical Analysis. Lecture given to delegation from the Superintendent of Competition, El Salvador. Washington, DC (May 2006).

Policy Approaches to Natural Monopolies. Developed and conducted five day intensive course given to staff of the Azerbaijan Department of Anti-Monopoly. Course included discussion of issues and problems associated with comprehensive regulatory schemes and discussion of factors pertinent to identifying emerging opportunities to replace regulation with market competition. Baku, Azerbaijan (April 2006) (with John Hilke).

Supply-Side Substitution in Merger Analysis: How Should Uncommitted Entry Be Treated?, Panel Chair and Moderator, Joint FTC and DOJ Workshop on the Horizontal Merger Guidelines (Feb. 2004).

A Proposed Antitrust Policy Approach for the Treatment of Bundling and Package Discounts, Federal Trade Commission Working Paper (2003-2004).

Antitrust Immunity Under U.S. Law: Export Trade Associations, presentation made to Russian Delegation on behalf of the WTO Accession and Russia's Services Sector (April 2003).

Antitrust and Economic Analysis of Regulated Industries: The Case of Electricity, Two-day intensive course given separately before the staffs of the Macedonian Antimonopoly Authority (Skopje, Macedonia), the Bulgarian Commission for the Protection of Competition (Sofia, Bulgaria), and the Romanian Competition Council and Competition Office (Bucharest, Romania). (October 2002) (with John Hilke).

Standard-Setting Disclosure Policies: Evaluating Antitrust Concerns in Light of Rambus, 16 Antitrust Magazine 29 (Summer 2002) (with Alden F. Abbott).

Potential Antitrust Issues for Industry-Sponsored Electronic Exchanges: Counseling B2Bs in an Uncertain Environment, Private Antitrust Litigation News, (Spring 2001).

Preclosing Cooperation in Energy Mergers: Antitrust Issues and Practical Concerns, 13 (No.9) The Electricity Journal 68 (November 2000) (with Stephen Paul Mahinka).

Antitrust Issues in Electricity Mergers and Acquisitions: Utility Perspective, paper prepared for the Edison Electric Institute, Spring Legal Conference, Colorado Springs, CO (April 7, 2000) (with Stephen Paul Mahinka).

Principles for Developing Competition-Enhancing Transition Rules for a Restructured Electricity Industry, 13 (No.1) The Electricity Journal 51 (Jan./Feb. 2000).

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Antitrust Issues in Electronic Banking: The Search for Market Power, paper presented at the Joint conference of the District of Columbia Bar and the Antitrust Section of the American Bar Association on Market Power in Electronic Banking, Washington, D.C. (November 10, 1999) (with Stephen Paul Mahinka).

Federal and State Antitrust Review of Electric Utility Mergers, presentation at Infocast Conference on electric utility mergers, Washington, D.C. (September 17, 1999).

Antitrust Issues In Electric Utility Mergers and Alliances, 12 Antitrust Magazine 38 (Summer 1998) (with Stephen Paul Mahinka).

State Marketing Restrictions on Electric Utilities; Analysis of the Adverse Effects on Competition from Competitive Handicapping, monograph published by the Edison Electric Institute (September 1997) (with Caswell O. Hobbs III and Stephen Paul Mahinka).

The Law of Damages for Enhanced Risk in Toxic Tort Cases, 14 Midwest L. Rev. 65 (1996).

The Capper-Volstead Act and Competition Policy for Agricultural Cooperatives, presentation before the Executive Council of the National Milk Producers Federation, Arlington, VA (September 6, 1996).

Managing Cooperative Antitrust Risk in Agriculture, presentation before the annual convention of the American Feed Industry Association, Indianapolis, Indiana (April 25, 1995).

Antitrust Issues Confronting Trade Associations, presentation to the Equipment Leasing Association of America, Arlington, VA (June 10, 1992).

Obtaining Antitrust Immunity for Export Joint Ventures, presentation before the International Business Council of Tampa, Tampa, Fla. (September 19, 1991).

Export Joint Ventures as a Tool for Small Business, 12 Business Forum 26 (1987).

An Economic Analysis of the Export Trading Company Act, Invited Lecture presented at Eastern New Mexico University, Graduate School of Business, Portales, N.M. (November, 1986).

Federal Antitrust Law and Trade Associations, presentation before National Conference of Trade Association Executives, Washington, D.C. (March 1, 1985).

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The Statutory Framework of the Export Trading Company Act, presentation at Export Operations Conference sponsored by Price Waterhouse, Cleveland, Ohio (June 7, 1985).

Optimal Competition Policy Toward Export Industries, Invited Lecture presented at Dartmouth College, Dept. of Economics, Hanover, N.H. (October, 1984).

Avoiding Antitrust Liability in International Operations, presentation at the annual meeting of the Industrial Special Chemical Association, Chicago, IL (October, 1984).

Avoiding Antitrust Liability in International Operations, presentation at the annual meetings of the Western States Textiles and Apparel Association, Los Angeles, CA (August 22, 1984).

Federal Antitrust Liability in International Operations, presentation before the Export Club of Baltimore, Baltimore, Md. (June 18, 1984).

Statutory and Judicial Antitrust Law Applied to Foreign Commerce, presentation before the International Business Council of MidAmerica and the Chicago Association of Commerce and Industry, Chicago, IL (June 5, 1984).

Antitrust Economics: A Training Manual for Research Assistants, monograph written for the U.S. Commerce Dept. (1983, rev. 1989).

Competition in the U.S. Automobile Industry: Is Antitrust Action Needed?, Invited Lecture presented at DePaul University, Department of Economics (June 1981).

The U.S. Automobile Industry: Market Structure, Conduct, and Performance, U.S. Department of Justice, Antitrust Division Research Monograph (1978) (with Ira Horowitz)

A Profit Maximization Model for a Professional Team Sports League, paper presented at the Annual Meetings of the Atlantic Economic Association (October 1976).

A Note on Optimal Pricing-Output Strategy in Professional Team Sports, paper presented at Economics of Sports Session, Western Economic Association Annual Meetings, San Francisco, CA (June, 1976).

A Pricing-Output Model for a Professional Team Sports League, Ph.D. Dissertation, University of Illinois at Champaign, Urbana (1975).

Optimal Pricing-Output Strategy in Professional Team Sports, Invited Lecture presented at Clarkson College, Department of Economics (January, 1974).

Published Law & Economics Opinion/Commentary

Capital Accumulation and the Reconciliation Package, American Institute for Economic Research, Oct. 13, 2021, available at <https://www.aier.org/article/capital-accumulation-and-the-reconciliation-package/>

China's Export Subsidies Are a Gift, American Institute for Economic Research, Sept. 16, 2021, available at <https://www.aier.org/article/chinas-export-subsidies-are-a-gift/>

What Is Tax Fairness, American Institute for Economic Research, Sept. 7, 2021, available at <https://www.aier.org/article/what-is-tax-fairness/>

GOP Must Articulate and Sell a Better Vision, Wall Street Journal (letters), June 11, 2021, available at <https://www.wsj.com/articles/gop-must-articulate-and-sell-a-better-vision-11623440586?page=1>

You Can't Insure Illness that's Already There, Wall Street Journal (Letters), Sept. 5, 2017 (argues that sloppy language clouds public policy debate about healthcare reform), also available at: <https://www.wsj.com/articles/you-cant-insure-illness-thats-already-there-1504546889>

Too Few Jobs: Trade Is Not the Problem, Slow Growth Is, American Thinker, May 27, 2016 available at http://www.americanthinker.com/articles/2016/05/too_few_jobs_trade_is_not_the_problem_slow_growth_is.html.

Demagoguery and the Minimum Wage, American Thinker, April 2, 2016, available at http://www.americanthinker.com/articles/2016/03/demagoguery_and_the_minimum_wage.html.

Donald Trump v. Adam Smith, American Thinker, March 1, 2016, available at http://www.americanthinker.com/articles/2016/03/trump_vs_adam_smith.html.

Economic Libertarians Will Have a Friend in Ted Cruz, American Thinker, Feb. 11, 2016, available at http://www.americanthinker.com/articles/2016/02/economic_libertarians_will_have_a_friend_in_ted_cruz.html.

The Federal Reserve and the Inflation Tax, American Thinker, Feb. 6, 2016, available at https://www.americanthinker.com/articles/2016/02/the_federal_reserve_and_the_inflation_tax.html.

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Capital Accumulation: The Missing Variable in Economic Policy Debates, American Thinker, Feb. 3, 2016, available at http://www.americanthinker.com/articles/2016/02/capital_accumulation_the_missing_variable_in_economic_policy_debates.html

The Real Ted Cruz, American Thinker, January 25, 2016, available at http://www.americanthinker.com/articles/2016/01/the_real_ted_cruz.html.

DOJ Is Right About Apple e-Books, Wall Street Journal (Letters), Feb. 25, 2015 (supports DOJ antitrust case against Apple as a matter of both law and economics) (also available at <http://www.wsj.com/articles/doj-is-right-about-apple-e-books-letters-to-the-editor-1424802074>.)

Judge, Jury, and Executioner: Is that What We Want? Wall Street Journal (Letters), Aug. 12, 2014 (questions due process adequacy in FTC's antitrust enforcement) (also available at <http://www.wsj.com/articles/judge-jury-and-executioner-is-that-what-we-want-letters-to-the-editor-1407781011>.)

Economics Is Useful, But Is Not Nearly Physics, Wall Street Journal (Letters), Mar. 4, 2010 (questions the use of econometric evidence in litigation and policy formation) (also at <http://www.wsj.com/articles/SB10001424052748704548604575097812301207050>.)

Blog Posts

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