

A. DOUGLAS MELAMED

Employment

Stanford Law School: Professor of the Practice of Law (2015-2022); Herman Phleger Visiting Professor (2014-2015)

Yale Law School: Florence Rogatz Visiting Professor in the Practice of Law (Fall 2017)

Intel Corporation:

Senior Vice President and General Counsel (2009–2014)

Corporate Vice President and Senior Corporate Counselor (June 2014 – January 2015) (part-time).

Wilmer Cutler Pickering Hale and Dorr LLP, Washington, DC: Partner (2001 – 2009); Co-Chair of the Antitrust & Competition Department (2001-2007)

U.S. Department of Justice, Antitrust Division (1996 – January 2001):

Acting Assistant Attorney General, in charge of the Antitrust Division (September 2000 - January 20, 2001)

Principal Deputy Assistant Attorney General (1996 - September 2000)

Wilmer, Cutler & Pickering, Washington, DC: Partner (1978-1996); Chair, Antitrust and Consumer Protection Group (1995-1996); associate (1971-1977)

Georgetown University Law Center: Distinguished Visitor from Practice (Fall 1992); Adjunct Professor (Fall 1993)

Law clerk, Hon. Charles M. Merrill, U.S. Court of Appeals, Ninth Circuit (1970-1971).

Board Positions

NASDAQ Stock Market LLC, NASDAQ OMX PHLX and NASDAQ BX: member of the Boards of Directors (2010-2018)

Education

Harvard Law School, J.D., 1970 (editor, *Harvard Law Review*)

Yale College (political science and economics), B.A., 1967

Publications

Book

Antitrust Law and Trade Regulation (Seventh Edition, Foundation Press, 2018) (with Randal C. Picker, Philip J. Weiser, and Diane P. Wood, eds.) and 2019, 2021, and 2023 Updates

Articles

Property Rules, Liability Rules and Inalienability: One View of the Cathedral, 85 Harv. L. Rev. 1089 (1972) (with Guido Calabresi) (reprinted in various anthologies throughout the world)

An Antitrust Exemption for Workers: And Why Worker Bargaining Power Benefits Consumers, Too (forthcoming, Antitrust L. J. (2023)) (with Stephen C. Salop)

Mergers Involving Nascent Competition, in JUDGING BIG TECH: INSIGHTS ON APPLYING U.S. ANTITRUST LAW TO DIGITAL MARKETS 38 (Washington Center for Equitable Growth, December 2022), available at <https://equitablegrowth.org/wp-content/uploads/2022/12/Judging-Big-Tech-Insights-on-applying-U.S.-antitrust-laws-to-digital-markets.pdf>

Innovation under Section 2 of the Sherman Act, 84 Antitrust L. J. 1 (2021) (with Richard J. Gilbert) (Winner, 2022 Antitrust Writing Awards: Academic Articles, Unilateral Conduct)

Competition Law as Common Law: American Express and the Evolution of Antitrust, 168 U. Pennsylvania L. Rev 2061 (2020) (with Michael L. Katz) (winner of the Jerry S. Cohen Memorial Fund Writing Award for Best Article of 2020 on the Rule of Reason)

Antitrust Law and Its Critics, 83 Antitrust L. J. 269 (2020)

The Misguided Assault on the Consumer Welfare Standard in the Age of Platform Markets, 54 Rev. Indus. Org. 741 (2019) (with Nicolas Petit)

Breaking the Georgia Pacific Habit: A Practical Proposal To Bring Simplicity and Structure to Reasonable Royalty Damages Determinations, Tex. Intell. Prop. L. J. (2018) (with William F. Lee and Arthur J. Gajarsa)

How Antitrust Law Can Make FRAND Commitments More Effective, 127 Yale L. J. 2110 (2018) (with Carl Shapiro)

Breaking the Vicious Cycle of Patent Damages, 101 Cornell L. R. 385 (2016) (with William F. Lee) (Winner, 2016 Antitrust Writing Awards: Academic Articles, Intellectual Property)

Missing the Forest for the Trolls, 113 Columbia L. Rev. 2117 (2013) (with Mark A. Lemley) (Winner, 2014 Antitrust Writing Awards: Academic Articles, Intellectual Property)

A Solution in Search of a Problem, CPI Antitrust Chronicle (September 2013)

Paradigm Shopping: Section 5, the FTC, and the Courts, in THE REGULATORY REVOLUTION AT THE FTC: A 30-YEAR PERSPECTIVE ON COMPETITION AND CONSUMER PROTECTION (James C. Coleman, ed.) (Oxford, 2013)

Antitrust as Law Enforcement, 27 *Antitrust* 76 (Fall 2012)

The Purposes of Antitrust Remedies, 76 *Antitrust L. J.* 359 (2009)

Thoughts About Exclusive Dealing, in *EUROPEAN COMPETITION LAW ANNUAL 2007: A REFORMED APPROACH TO ARTICLE 82 EC*, Claus-Dieter Ehlermann & Mel Marquis, eds., 433 (2008)

The Wisdom of Using the "Unfair Methods of Competition" Prong of Section 5, *Global Competition Policy* (November 2008)

Refusals to Deal in Patents and Patented Goods, in *III ISSUES IN COMPETITION LAW AND POLICY 2061* (Wayne D. Collins, et al., eds., 2008) (with Ali M. Stoesselwerth and Barbara Blank)

U.S. v. Microsoft: Lessons Learned and Issues Raised, in *ANTITRUST STORIES* (Eleanor M. Fox & Daniel A. Crane, eds., 287 (2007) (with Daniel L. Rubinfeld)

Uncertain Patents, Antitrust, and Patent Pools, in *EUROPEAN COMPETITION LAW ANNUAL 2005: THE INTERACTION BETWEEN COMPETITION LAW AND INTELLECTUAL PROPERTY LAW* (Claus Dieter Ehlermann & Isabela Atanasiu, eds.), 273 (2007) (with David Lerch)

Exclusive Dealing Agreements and Other Exclusionary Conduct -- Are There Unifying Principles? 73 *Antitrust L. J.* 375 (2006)

Exclusionary Conduct Under the Antitrust Laws: Balancing, Sacrifice, and Refusals to Deal, 20 *Berkeley Tech. L.J.* 1247 (2005)

The CSU Case: Facts, Formalism and the Intersection of Antitrust and Intellectual Property Law, 10 *George Mason L. Rev.* 407 (2002) (with Ali M. Stoesselwerth)

Network Industries and Antitrust, 23 *Harv. J. Law & Pub. Pol.* 147 (1999)

International Antitrust in an Age of International Deregulation, 6 *George Mason L. Rev.* 437 (1998)

Antitrust: The New Regulation, 10 *Antitrust* 13 (Fall 1995)

Antitrust in the Entertainment Industry, 3 *Gannett Center Journal* 138 (1989) (with Robert A. Hammond)

Reviews and Miscellaneous Publications

Maybe We Have All Been Wrong About Antitrust Law, 11 *J. Antitrust Enforcement* (June 2023), [Maybe we have all been wrong about antitrust law | Journal of Antitrust Enforcement | Oxford Academic \(oup.com\)](#)

Tying and Bundling, in *RESEARCH HANDBOOK ON ABUSE OF DOMINANCE AND MONOPOLIZATION* (2023) (Pinar Akman, Or Brook, and Konstantinos Stylianou, eds.)

Why I Think Congress Should Not Enact the American Innovation and Choice Online Act (June 19, 2022), *Why I Think Congress Should Not Enact the American Innovation and Choice Online Act* (competitionpolicyinternational.com)

Innovation: A Bridge to the New Brandeisians, Competition Policy International (February 21, 2022 (with Richard J. Gilbert), <https://www.competitionpolicyinternational.com/innovation-a-bridge-to-the-new-brandeisians/>

Roundtable: The Legacy of Microsoft, 35 *Antitrust* 13 (2021) (roundtable discussion with four other participants)

Antitrust Brainstorming, Competition Policy International, transcript of interview (August 2021), <https://www.competitionpolicyinternational.com/antitrust-brainstorming-board-with-douglas-melamed/>

Antitrust in a Digital World: Does It Work? (March 2021) (roundtable with Bill Baer, Mark Jamison, and Parag Shah), <https://www.competitionpolicyinternational.com/antitrust-in-a-digital-world-does-it-work-episode-2/>

Nascent Acquisitions Under Section 2 of the Sherman Act, Concurrentialiste (February 2021), available at <https://leconcurrentialiste.com/melamed-nascent-competitors/>

A Missed Opportunity, CPI Antitrust Chronicle (January 2021), available at Antitrust Chronicle - U.S. House Report on Digital Markets - Competition Policy International

Report of the Working Group on Platform Scale (November 2020), Program on Democracy and the Internet, Stanford University (with Francis Fukuyama (chair), Barak Richman, Ashish Goel, Roberta R. Katz, and Marietje Schaake), available at https://fsi-live.s3.us-west-1.amazonaws.com/s3fs-public/platform_scale_whitepaper_-cpc-pacs.pdf

This Is a Political Report, Global Competition Review (October 2020), available at <https://globalcompetitionreview.com/gcr-usa/departement-of-justice/slaughter-and-other-experts-react-house-report>

It's All About What We Don't Know, Truth on the Market (October 13, 2020), available at <https://truthonthemarket.com/2020/10/12/its-all-about-what-we-dont-know/>

Joint Response to the House Judiciary Committee on the State of Antitrust Law and Implications for Protecting Competition in Digital Markets (April 30, 2020) (with 12 other authors), <https://ssrn.com/abstract=3632532>

The American Express Case: Back to the Future, 18 *Colo. Tech. L. J.* 1 (2020)

Antitrust for VCs, delivered at the Public Workshop on Venture Capital and Antitrust, U.S. Department of Justice and Graduate School of Business at Stanford University (February 12, 2020), [Antitrust for VCs: A Discussion with Stanford Law Professor Doug Melamed | ATR | Department of Justice](#)

Final Report and Policy Brief of the Stigler Committee on Digital Platforms, Stigler Center for the Study of the Economy and the State, U. of Chi., Booth Sch. of Bus. (2019) (with Fiona Scott Morton (chair), Pascal Bouvier, Ariel Ezrachi, Bruno Jullien, Roberta Katz,

Gene Kimmelman, and Jamie Morgenstern), available at <https://research.chicagobooth.edu/-/media/research/stigler/pdfs/market-structure---report-as-of-24-june-2019.pdf?la=en&hash=872E4CA6B09BAC699EEF7D259BD69AEA717DDCF9>

Before “After Consumer Welfare” -- a Response to Professor Wu, CPI Antitrust Chronicle, July 2018 (with Nicolas Petit), available at https://www.competitionpolicyinternational.com/before-after-consumer-welfare-a-response-to-professor-wu/?utm_source=CPI+Subscribers&utm_campaign=2a18a8b785-EMAIL_CAMPAIGN_2018_07_02_09_18&utm_medium=email&utm_term=0_0ea61134a5-2a18a8b785234820409

Antitrust Law Is Not That Complicated, 130 Harv. L. Rev. F. 163 (2017), available at <http://harvardlawreview.org/2017/03/antitrust-law-is-not-that-complicated/>

Economics, Not Politics, Should Guide Antitrust Law, 16 Antitrust Source (February 2017), available at http://www.americanbar.org/content/dam/aba/publishing/antitrust_source/f eb17_full_source.authcheckdam.pdf

Missing the Forest for the Trolls (with Mark A. Lemley), shortened version of the article of the same title listed above, in *PATENT ASSERTION ENTITIES AND COMPETITION POLICY* (Cambridge U. Press 2017) (D. Daniel Sokol, ed.)

What Thinking About Antitrust Law Can Tell Us About Net Neutrality, 15 Colo. Tech. L. J. 93 (2016) (with Andrew W. Chang)

Over-Rewarding Patenting: You Get What You Pay For, 39 Harv. J. Law & Pub. Pol. 59 (2016)

Good Competition Law Enforcement Requires Good Process, 11 Competition Law International 51 (April 2015)

Foreword, Washington Legal Foundation Working Paper: W. Kolasky, “Unfair Methods of Competition”: The Legislative Intent Underlying Section 5 of the FTC Act” (December 2014)

Perspectives from Silicon Valley, Concurrences (No. 3, 2011) (interview)

Section 2 Roundtable, Global Competition Review, Vol. 12, Issue No.6 (July 2009) (roundtable discussion with four other participants)

Required Reading for the New Antitrust Administration, Antitrust Source (one of several contributors) (August 2008)

Antitrust Advice for the New Administration, 22 Antitrust 8 (edited transcript of Chair's Showcase Program at ABA Antitrust Section Spring Meeting, March 2008)

General Approaches to Defining Abusive/Monopolistic Practices, 2006 Competition Law Institute, International Antitrust Law & Policy 541 (2007) (roundtable discussion with 5 other participants)

Patents and Standards: The Unimportance of Being Essential, distributed at Law Seminars International, Mastering Complex International Property Licensing (May 22-23, 2006)

Efficient Integration or Illegal Monopolization? Package Licensing, Economic Bundling, and the Antitrust Principles Applicable to Common Business Strategies of Leading Firms, NYSBA, 2006 Antitrust Law Section Symposium (edited transcript of conference proceedings, January 26, 2006)

The EC Decision Against Microsoft: Windows on the World, Glass Houses or Through the Looking Glass, Antitrust Source (September 2004) (roundtable with Joseph Winterscheid, Charles F. Rule and Stephen Houck), <http://www.abanet.org/antitrust/source/sept04/Sep04MSBB.pdf>

Roundtable on Trinko, Global Competition Review, Vol. 7, Issue NO.2 at 16 (March 2004) (roundtable discussion of *Verizon v. Trinko* with twelve others)

Roundtable: Recent Developments in Section 2, 18 Antitrust 15 (Fall 2003) (with Aaron Edlin, Joseph P. Kalt, and Gary L. Roberts)

American Airlines: Post-Chicago Meets Predatory Pricing in the Courtroom, Global Competition Review, Vol. 6, Issue 8 (2003) (with R. Bell and L. Greenfield)

A Casebook for Our Time, review of A. Gavil, W. Kovacic and J. Baker, *Antitrust Law in Perspective: Cases, Concepts and Problems in Competition Policy*, Antitrust Source, Vol. 2, Issue 4 (March 2003), <http://www.abanet.org/antitrust/source/march03.html>

Merger Control and the Importance of Judicious Review, International Merger Control 233-243 (IBA, 2002) (with Charles Stark)

Time to Reflect – on the Future, VI Global Counsel 21 (2001) (with C. Stark) in *PROMOTING SOUND ANTITRUST ENFORCEMENT IN THE GLOBAL ECONOMY*, 2000 Fordham Corp. L. Inst., Int'l Antitrust L. & Policy 1 (2001)

Dealing with Uncertainty: Merger Policy under U.S. Antitrust Law, delivered at the 13th Tulane Corporate Law Institute (2001)

International Cooperation in Competition Law and Policy, 1999 J. Int'l Econ. Law 423 (1999)

Antitrust Enforcement in a Global Economy, 1998 Fordham Corp. L. Inst., Int'l Antitrust L. & Policy 1 (1999)

Exclusionary Vertical Agreements, <http://www.usdoj.gov/atr/public/speeches/1623.htm> (1998)

Remarks: A Public Law Perspective, 106 Yale Law Journal 2209 (1997) (edited transcript of remarks at a symposium sponsored by the AALS commemorating the twenty-fifth anniversary of the publication of the first article listed above)

Damages, Deterrence and Antitrust -- A Comment on Cooter, 60 Law and Contemporary Problems 93 (1997)

Anti Intellectual History, review of E. White, *Tort Law in America: An Intellectual History*, 90 Yale Law Journal 1497 (1981) (with David Westin)

Nonprice Predation Under Section 2 of the Sherman Act, ABA Antitrust Section Monograph 18 (1991) (member of drafting committee)

Price Information Exchanges By Competing Manufacturers, included in THE SUPREME COURT, 1968 TERM, 83 Harvard Law Review 7, 227 (1969)

Developments in the Law - Habeas Corpus, 83 Harvard Law Review 1038 (1970) (parts II and III)

Testimony

Testimony as an expert witness in a competition law investigation by The Administrative Council for Economic Defense (CADE) of the government of Brazil (2019). The testimony consisted of a written affidavit.

Testimony as an expert witness in *Samsung Electronics Co. v Nokia Corporation*, ICC Case No 19602/AGF/RD (c.19638/AGF) (2015). The testimony consisted of a written report and live testimony in the arbitration hearing.

Testimony as an expert witness in *KN TransColorado, Inc. v. Questar Corporation, et al.*, Case No. 00CV129, District Court, County of Garfield, State of Colorado (2002). The testimony included a written report, a pretrial deposition, and live testimony at trial.

Testimony before various Congressional committees and subcommittees

Oral Presentations

Speeches and participation in panels at conferences sponsored by numerous entities including, among others, ABA Antitrust Law and Economics Institute for Federal Judges, ABA Antitrust Section, American Antitrust Institute, Aspen Institute, Association of American Law Schools, Association of General Counsel, Boston University, British Institute of International and Comparative Law, Concurrences, Conference Board, Corporate Executive Board, Duke University, European Commission, European University Institute, Federalist Society, Federal Trade Commission, Fordham Competition Law Institute, George Mason University, George Washington University, Georgetown University, Harvard University, Hastings Law School, Historical Society of the District of Columbia Circuit, Hoover Institution, Institute for Law and Economic Policy, Intellectual Property Owners' Association, International Bar Association, International Competition Network, Japan Fair Trade Institute, Lisbon Council, Mentor Group, National Academy of Sciences, National Bureau of Economic Research, New York University, Northwestern University, Organization for Economic Cooperation and Development (OECD), Pacific Economic Cooperation Council, Peking University, Practising Law Institute, Precursor Group, Santa Clara University, Stanford University, Technology Policy Institute, Tulane University, UCLA, University of Minnesota, University College of London, US Chamber of Commerce, University of California (Berkeley), University of California (Irvine), University of Chicago, University of Colorado, University of Texas, University of Virginia, Washington Legal Foundation, and Yale University.

Awards and Recognition

Lifetime Achievement Award, Bay Area Corporate Counsel Awards (2015)

2013-14 Lockhart Lecturer, University of Minnesota Law School

Corporate Counsel of the Year (Global Competition Review, 2011)

Directorship 100, the 100 most influential people in corporate governance (2010, 2011)

10 Most Admired Competition Lawyers (Law 360, 2010)

The Chambers USA Award for Excellence (2009)

Edmund J. Randolph Award for outstanding service (US Department of Justice, 2001)

Listed in *Best Lawyers in America*; Chambers Global, *The World's Leading Lawyers*; Chambers USA, *America's Leading Business Lawyers*; Euromoney Legal Media Group, *Guide to the World's Leading Competition and Antitrust Lawyers*; Global Competition Review, *The International Who's Who of Competition Lawyers and Economists*; Legal Media Group, *The Best of the Best 2009*; Legal Times, *Leading Lawyers*; PLC Cross-Border Handbook, *Leading Competition Law Lawyers Worldwide*; Washingtonian, *Top Lawyers*; *Who's Who in America*; *Who's Who in the World*; *Who's Who Legal*, *The International Who's Who of Business Lawyers*; *Who's Who of Competition Lawyers and Economists*; and other biographical compilations. (Some listings did not continue after I moved to Intel.)

Professional and Educational Organizations

Member of the Bars of the United States Supreme Court; the United States Courts of Appeal for the Second, Fourth, Eighth, Ninth, Tenth, District of Columbia and Federal Circuits; the Court of International Trade; and the District of Columbia

American Bar Association, Antitrust Section: Co-Chair, Presidential Transition Task Force (2012); Dominance Divergence Task Force (2017-18); Presidential Transition Task Force (2016); Remedies Task Force (2003-04))

American Law Institute (1988–present; Life Member, 2013-present)

Antitrust Law Journal: Contributing Editor (2001-2012, 2015-present)

Antitrust Writing Awards: Academic Steering Committee (2023)

Association of General Counsel (2010-2014; emeritus, 2014-present)

California Law Review Commission: Study of Antitrust Law (2023-present)

Journal of Competition Law and Economics, (Advisory Board (2012-present)

Journal of Law, Economics, and Policy, George Mason University School of Law: Board of Academic Advisors (2003-2009)

National Child Research Center, Washington, DC: Board of Trustees (1990-93; Treasurer, 1992-93)

Sidwell Friends School, Washington, DC: Board of Trustees (2000-2008); Counsel to the Board (2001-2006)

Stanford Law School: Scholar in Residence (2022 – 2023); Visiting Fellow (2023 - present)

The Thurman Arnold Project, Yale University (Fellow, 2019-present)

Uniform Law Commission: Observer, Study Committee on Antitrust (2022-present)

U.S. Chamber of Commerce, International Competition Policy Expert Group (2016-17)

USC Gould School of Law: Scholar in Residence (2023 - present)

Yale University: University Council (2006–2015); Council Committee on the Social Sciences (1989–1994) – visiting committee responsible for reviewing departments of economics, political science, and statistics

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