ANTITRUST IN THE NEW MILLENIUM
Thursday April 4, 2019
1:15 – 5:30 pm

UC Hastings Law
200 McAllister Street, 2nd Floor
Alumni Reception Center

This event is co-sponsored by:

California Lawyers' Association Antitrust, Unfair Competition and Privacy Section
Antitrust is back in the news. Popular publications excoriate current antitrust law as one of the major causes of a new 21st Century Gilded Age. At the same time, leading industrial organization economists are finding that key assumptions undergirding existing antitrust jurisprudence are either incorrect or misunderstood.

What do we need to know about new thinking in industrial organization economics? How might these insights affect courts, litigators, and legislative bodies? These issues are pragmatically addressed in panels on healthcare and technology. We hope you enjoy this free symposium at UC Hastings in San Francisco and thoughtfully consider these questions and receive 3.75 hours of CLE credit.

Agenda

1:15 PM: Welcome by David Faigman, Chancellor & Dean, UC Hastings

1:30 – 2:30 PM: New Antitrust Economics

New economic thinking has challenged fundamental assumptions of current antitrust jurisprudence. This panel will discuss the most important differences between new economic thinking and current antitrust law.

Moderator: Thomas Greene, Adjunct Professor of Law, UC Hastings

Speakers: Jonathan Baker, Research Professor of Law, Washington College of Law, American University, Washington, D.C.

Diana L. Moss, President, American Antitrust Institute, Adjunct Professor of Economics, University of Colorado at Boulder, Washington, D.C.

Carl Shapiro, Transamerica Professor of Business Strategy, Haas School of Business, University of California, Berkeley

2:30 PM – 3:30 PM: New Antitrust and Healthcare

Virtually every sector of the nation’s healthcare system—hospitals, physicians, insurance companies, PBMs, and pharmaceuticals—have been subject to extensive antitrust scrutiny. The peculiar economics of health care markets together with pervasive state and federal regulation present special challenges for antitrust enforcement. This panel will focus on important cases addressing market dominance in payor, provider and pharmaceutical markets and explore cutting edge issues arising from vertical and cross market mergers and exclusionary conduct by manufacturers of branded drugs.

Moderator: Thomas Greaney, Professor of Law, UC Hastings, Distinguished Senior Fellow UCSF/UC Hastings Consortium on Law, Science and Health Policy
Speakers: Robin Feldman, Arthur J. Goldberg Distinguished Professor of Law and Director of the Institute for Innovation Law, UC Hastings, San Francisco

Kathleen Foote, Senior Assistant Attorney General, Chief, Antitrust Law Section, California Attorney General’s Office, Former Chair, NAAG Multistate Antitrust Task Force, San Francisco

3:30 PM – 3:45 PM: Break

3:45 PM – 4:45 PM: New Antitrust and Platform Competition

Large search and social media platforms increasingly dominate their portions of the U.S. economy. These entities present potential examples of two-sided industries as well as market power arising from network effects. All of these realities are a challenge to the traditional canons of antitrust law. This panel will unpack the unique characteristics of these platforms and suggest potential new approaches to the analysis of their competitive implications.

Moderator: Samuel Miller, Adjunct Professor of Law, UC Hastings

Speakers: Gary Reback, Carr & Ferrell LLP, Menlo Park, CA

Bruce L. Simon, Pearson Simon Warshaw LLP, San Francisco, CA

Lina Khan, Majority Counsel on the U.S House Subcommittee on Antitrust, Commercial, and Administrative Law

4:45 PM – 5:30 PM: Incorporating New Antitrust Economics into Antitrust Law

To the extent there is a gap between new economic research and antitrust law, how should lawyers and courts approach this divergence? This panel will focus on legislative and litigation strategies to appropriately incorporate new economic learning into antitrust law.

Moderator: Thomas Greene, Adjunct Professor of Law, UC Hastings

Speakers: Kathleen Foote, Senior Assistant Attorney General, Chief, Antitrust Law Section, California Attorney General’s Office, Former Chair, NAAG Multistate Antitrust Task Force, San Francisco

Diana L. Moss, President, American Antitrust Institute, Adjunct Professor of Economics, University of Colorado at Boulder, Washington, D.C.

Carl Shapiro, Transamerica Professor of Business Strategy, Haas School of Business, University of California, Berkeley

Bruce L. Simon, Pearson Simon Warshaw LLP, San Francisco, CA

5:30 PM – 6:30 PM: Networking Reception
SPEAKERS

Jonathan B. Baker is Research Professor of Law at American University Washington College of Law. He specializes in the areas of antitrust and economic regulation. Professor Baker served as the Chief Economist of the Federal Communications Commission from 2009 to 2011, and as the Director of the Bureau of Economics at the Federal Trade Commission from 1995 to 1998. Previously, he worked as a Senior Economist at the President's Council of Economic Advisers, Special Assistant to the Deputy Assistant Attorney General for Economics in the Antitrust Division of the Department of Justice, an Assistant Professor at Dartmouth's Amos Tuck School of Business Administration, an Attorney Advisor to the Acting Chairman of the Federal Trade Commission, and an antitrust lawyer in private practice. Professor Baker is the author of *The Antitrust Paradigm* (forthcoming), the co-author of an antitrust casebook, a past Editorial Chair of *Antitrust Law Journal*, and a past member of the Council of the American Bar Association’s Section of Antitrust Law. He has published widely in the fields of antitrust law, policy, and economics. Professor Baker has received the Jerry S. Cohen Award for Antitrust Scholarship, American University's Faculty Award for Outstanding Scholarship, Research, and Other Professional Accomplishments, and the Federal Trade Commission’s Award for Distinguished Service. He has a J.D. from Harvard and a Ph.D. in economics from Stanford University.

Robin Feldman is the Arthur J. Goldberg Distinguished Professor of Law and Director of the Center for Innovation. She received a bachelor's degree from Stanford University and a J.D. from Stanford Law School, graduating the Order of the Coif and receiving the Urban A. Sontheimer Award for graduating second in the class. After graduation, she clerked for The Honorable Joseph Sneed of the U.S. Court of Appeals for the Ninth Circuit. She received the Rutter Award for Teaching Excellence, the Visionary Award from the UC Hastings Board of Directors, and the 1066 Foundation Award for Scholarship. Professor Feldman has published four books, *Drugs, Money, and Secret Handshakes: The Unstoppable Growth of Prescription Drug Prices* (Cambridge 2019), *Drug Wars: How Big Pharma Raises Prices & Keeps Generics Off the Market* (Cambridge 2017), *Rethinking Patent Law* (Harvard 2012) and *The Role of Science in Law* (Oxford 2009), as well as more than 50 articles in law journals including at Harvard, Yale, and Stanford, in the New England Journal of Medicine, and in the American Economic Review. Her work has been cited extensively by the White House, numerous federal and state agencies and members of Congress. Her IP/Antitrust work was cited by parties on both sides during a recent Supreme Court case. She has appeared frequently before committees of the US House & Senate, the California legislature, and federal agencies such as the FTC, DOJ, USPTO, and the National Academy of Sciences. Professor Feldman also directs the UC Hastings Institute for Innovation Law with its flagship program, the Startup Legal Garage. Startup Legal Garage has been named one of the most innovative law school programs in the country and recognized by the American Association of Law Schools as one of the nation's "Innovative & Other Outstanding Programs."
Kathleen Foote, Senior Assistant Attorney General, joined the California Department of Justice’s antitrust unit as a deputy attorney general in 1988, and has been its Antitrust Chief since 2001. Litigation brought on behalf of the Attorney General under her leadership includes successful state law challenges to tying arrangements and resale price maintenance schemes, and a ground-breaking federal challenge to asserted antitrust exemption of an employer profit-sharing agreement in *California v. Safeway*, for which she received California Lawyer magazine’s Lawyer of the Year award in 2011. Her team played a lead role in the Microsoft remedies case, and more recently in the TFT-LCD and DRAM Indirect Purchaser multistate cases. She has led the State’s merger enforcement efforts in numerous industries including gasoline, banking, publishing and healthcare. Her post-settlement work in Levi-Strauss established a research institute on healthcare markets, and in *Hartford Fire Ins. v. California* an institute on public sector risk management, and she has pioneered the development of best practices for cy pres distributions in other major consumer settlements.

Kathleen is currently chair of the multistate Antitrust Task Force of the National Association of Attorneys General, which coordinates joint multistate and state-federal investigations and litigation. She was the 2013 recipient of AAI’s Alred E. Kahn Award for Antitrust Achievement, and was named 2013 Antitrust Attorney of the Year by California State Bar’s Antitrust and Unfair Competition Law Section.

Thomas (Tim) Greaney, JD, is a Visiting Professor of Law at UC Hastings College of Law in San Francisco and Distinguished Senior Fellow with the UC Hastings/UCSF Consortium on Law, Science & Health Policy. He is also Chester A. Myers Emeritus Professor of Law at Saint Louis University School of Law where he served as Director of the Center for Health Law Studies. His research focuses on the application of antitrust law to the health care sector, health care financing, and health care law and policy. He has written over 50 scholarly articles and chapters and is co-author of the nation’s leading health law casebook, *Health Law: Cases, Materials and Problems*, West, 8th edition (2018) and a treatise on health law, *Health Law*, West 3rd Ed. (2014). He has testified on antitrust issues before the Judiciary Committee of the House of Representatives and has spoken at workshops of the Federal Trade Commission. He has commented on health policy and law issues in the New York Times, Wall Street Journal and many other publications. Before entering academia, he served as an Assistant Chief in the Department of Justice Antitrust Division, supervising health care antitrust litigation. Professor Greaney has been named Health Law Professor of the Year by the American Society of Law and Medicine. He has also been a Fulbright Fellow studying European Community competition law in Brussels, Belgium. He received his B.A. from Wesleyan University and his J.D. from Harvard Law School.
Thomas Greene is an Adjunct Professor of antitrust law at UC Hastings. He is concurrently a trial attorney with the Antitrust Division of the U.S. Department of Justice where he investigates and prosecutes criminal and civil antitrust actions. He was previously special trial counsel for the Federal Trade Commission’s Bureau of Competition where he led successful challenges against major health care mergers in Idaho and Illinois. He served in the California Attorney General’s Office where he was chief of antitrust. Among other cases, he successfully argued an appeal to the United States Supreme Court vindicating indirect purchaser remedies under state antitrust law, *California v. ARC America Corp.*, 490 U.S. 93 (1989), and served as national class counsel in *California v. Hartford Fire Insurance Co.* He was chair of the Multistate Antitrust Task Force of the National Association of Attorneys General. He led special task forces litigating cases against major tobacco manufacturers and energy companies, and subsequently served as Chief Assistant Attorney General for the Public Rights Division, the affirmative litigation arm of the Attorney General’s Office. He has received a number of honors, including Antitrust Lawyer of the Year Award from the California Lawyer Association’s Antitrust, Privacy and Unfair Competition Law Section, Marvin Award from the National Association of Attorneys General for national leadership, Janet D. Steiger Award from the Federal Trade Commission for leading a trial team in a major merger trial to verdict, and Antitrust Division Awards for bid rigging and international cartel cases.

Lina Khan serves as Majority Counsel on the U.S House Subcommittee on Antitrust, Commercial, and Administrative Law. She previously was an Academic Fellow at Columbia Law School, a Legal Fellow in the office of Commissioner Rohit Chopra at the Federal Trade Commission, and Director of Legal Policy at the Open Markets Institute. Khan’s scholarship has been published by or is forthcoming in the Columbia Law Review, the Harvard Law Review, the Chicago Law Review, and the Yale Law Journal. Her piece *Amazon’s Antitrust Paradox* was awarded the 2018 Antitrust Writing Award for “Best Academic Unilateral Conduct Article,” the Yale Law School’s Israel H. Peres Prize, and the Yale Law Journal’s Michael Egger Prize. The New York Times has described her work as having “reframed decades of monopoly law” and Politico has called her “a leader of a new school of antitrust thought.” Her scholarship has also been discussed in the Atlantic, Bloomberg, the Economist, Financial Times, the Wall Street Journal, and the Washington Post. She was recently named to the Politico 50, a list of thinkers whose ideas are driving politics, and to Foreign Policy Magazine’s “Global Thinkers.” From 2015-2017 Khan litigated on behalf of homeowners through Yale’s Mortgage Foreclosure Litigation Clinic. She received a B.A. magna cum laude with highest honors from Williams College and a J.D. from Yale Law School.

Samuel R. Miller is an adjunct professor at UC Hastings and retired from the San Francisco office of Sidley Austin LLP. Mr. Miller focuses his litigation practice in areas of antitrust, intellectual property, and complex civil litigation. In 1994, he was recruited by the Antitrust Division to serve as lead counsel in the first Section 2 monopolization case brought by the Department of Justice against Microsoft Corporation. He has represented major national and international companies in price-fixing
government investigations and private class actions in both Federal and State courts. He has also represented a number of companies in matters relating to the conduct of a dominant firm. He was involved in the creation of a standard-setting organization involving major semiconductor and consumer electronics companies. He was invited to testify before the Federal Trade Commission in hearings related to the antitrust issues involving standard-setting. He has been recognized in Chambers USA, the Legal 500, Northern California Super Lawyers, the Best Lawyers in America, Who’s Who Legal and Global Competition Review 100 for his antitrust work.

**Diana Moss** became the President of the American Antitrust Institute in January 2015. An economist, Dr. Moss has developed and expanded AAI’s advocacy channels and strategies, and strengthened communications with enforcers, Congress, other advocacy groups, and the media. Her work spans both antitrust and regulation, with industry expertise in electricity, petroleum, agriculture, airlines, telecommunications, and healthcare. Before joining AAI in 2001, Dr. Moss was at the Federal Energy Regulatory Commission, where she coordinated the agency’s competition analysis for electricity mergers. From 1989 to 1994, she consulted in private practice in the areas of regulation and antitrust. Dr. Moss has spoken widely on various topics involving competition policy and enforcement, testified before Congress, appeared before state and federal regulatory commissions, and made numerous radio and television appearances. She has published articles in a number of economic and legal academic journals, including: American Economic Review, Journal of Industrial Organization, the Energy Law Journal, and the Antitrust Bulletin. She is editor of Network Access, Regulation and Antitrust (2005). Dr. Moss is Adjunct Faculty in the Department of Economics at the University of Colorado at Boulder. She holds a M.A. degree from the University of Denver and a Ph.D. from the Colorado School of Mines.

**Gary L. Reback** is Of Counsel at Carr & Ferrell LLP. The National Law Journal has called Silicon Valley antitrust lawyer Gary Reback the “protector of the marketplace” and the “antitrust champion” for his representation of Silicon Valley’s best known companies in the most important antitrust battles of the last three decades. Gary has won many technology cases in the Federal trial and appellate courts around the country, including *Lotus v. Borland* in the United States Supreme Court. Over the years, Gary has been named to the “100 Most Influential Lawyers in America” list by the National Law Journal, The “Elite 100” by Upside Magazine, the “Top 100” by Micro Times, and “Lawyers of the Year” by California Lawyer Magazine. He has been profiled in The New Yorker, The New York Times, The Wall Street Journal, Wired Magazine, The Financial Times, and Business Week, among other publications. Gary is perhaps best known for his work against Microsoft’s monopoly in the 1990s, including his opposition to Microsoft’s acquisition of Intuit and to the Justice Department’s first settlement with Microsoft. He is generally credited with spearheading the efforts that led to the U.S. Government’s successful lawsuit against Microsoft. Gary’s book, *Free The Market! Why Only Government Can Keep the Marketplace Competitive*, was published by Penguin Group in 2009. Later the same year, Gary co-founded the Open Book Alliance, a coalition of library associations, writers’ groups, small publisher associations and tech companies engaged in book scanning to successfully oppose the Google Book Settlement. Gary’s recent antitrust work against Google has been featured on 60 Minutes, and in
Europe on German television (ARD), Swiss Public Radio (SRF), and in the British and French press. He received his undergraduate degree from Yale University and his law degree from Stanford University.

**Carl Shapiro** is a Professor at the University of California at Berkeley. Shapiro had the honor of serving as a Senate-confirmed Member of the President’s Council of Economic Advisers during 2011-12. For the two years immediately prior to that, he was the Deputy Assistant Attorney General for Economics at the Antitrust Division of the U.S. Department of Justice; he also held that position during 1995-96. Shapiro has published extensively in the areas of industrial organization, competition policy, patents, the economics of innovation, and competitive strategy.

**Bruce L. Simon** has led Pearson, Simon & Warshaw, LLP to national prominence. Mr. Simon specializes in complex cases involving antitrust, consumer fraud, and securities laws. He has served as lead counsel in many business cases with national and global impact. In 2013, Mr. Simon was chosen by the Daily Journal as one of the Top 100 attorneys in California. He received the California Lawyer of the Year award from California Lawyer Magazine and was selected as one of seven finalists for Consumer Attorney of the Year by Consumer Attorneys of California for his work in *In Re: TFT-LCD (Flat Panel) Antitrust Litigation*, (MDL No. 1827) (N.D. Cal.). That year, Mr. Simon was included in the Top 100 of California’s “Super Lawyers” and has been named a “Super Lawyer” every year since 2003. He has attained Martindale-Hubbell's highest rating (AV) for legal ability and ethical standards.

Mr. Simon has just been appointed co-lead counsel in *In Re: German Automotive Manufacturers Antitrust Litigation*, (MDL No. 2796) (N.D. Cal.). He represents indirect purchasers who allege collusion among the largest German car companies to stifle innovation, restrict supply and fix prices for their vehicles. Mr. Simon was co-lead class counsel in *In Re: Credit Default Swaps Antitrust Litigation*, (MDL No. 2476) (S.D.N.Y.), a case alleging a conspiracy among the world’s largest banks to maintain opacity of the credit default swaps market as a means of maintaining supra-competitive prices of bid/ask spreads. After three years of litigation and many months of intensive settlement negotiations, the parties in CDS reached a landmark settlement amounting to $1.86 billion. It is one of the largest civil antitrust settlements in history.

Mr. Simon was also co-lead class counsel in *In Re: TFT-LCD (Flat Panel) Antitrust Litigation*, a case that lasted over five years and resulted in $473 million recovered for direct purchaser plaintiffs. Mr. Simon served as co-lead trial counsel and was instrumental in obtaining an $87 million jury verdict (before trebling). He presented the opening argument and marshalled numerous witnesses during the six-week trial. In addition, Mr. Simon was co-lead class counsel in *In Re: Potash Antitrust Litigation (II)*, (MDL No. 1996) (N.D. Ill.), where he successfully argued an appeal of the district court’s order denying the defendants’ motions to dismiss to the United States Court of Appeals for the Seventh Circuit. Mr. Simon presented oral argument during an en banc hearing before the Court and achieved a unanimous 8-0 decision in his favor. The case resulted in $90 million in settlements for the direct purchaser plaintiffs, and the Court’s opinion is one of the most significant regarding the scope of international antitrust conspiracies.