



Northwestern Law

SEARLE CENTER

on Law, Regulation, and Economic Growth





Searle Center on Law, Regulation, and Economic Growth

The Searle Center on Law, Regulation, and Economic Growth studies the impact of laws and regulations on economic growth and communicates the results of that research to academic, public policy, and judicial leaders. It was founded in 2006 with a generous grant from Daniel C. Searle, longtime philanthropist and Northwestern trustee.

The Searle Center is committed to rigorous research that is conducted in accordance with the highest standards. The center draws on advanced analytic methods to produce academic papers and empirical studies that are of “real-world” utility to policy makers. Directing and participating in the Searle Center’s programs are faculty from the Northwestern University School of Law, J. L. Kellogg School of Management, Department of Economics in the Judd A. and Marjorie Weinberg College of Arts and Sciences, and Institute for Policy Research, as well as a broad array of prominent scholars from other universities.

The Searle Center lays a strong intellectual foundation for its research projects. By soliciting input from judges, practicing lawyers, government officials, legislators, corporate executives, consumer groups, and other stakeholders, the center ensures the quality and usefulness of its research. To stimulate and disseminate these inquiries, it convenes discussion groups, presents distinguished speakers, and hosts visiting fellows in an environment where existing research can be presented and new ideas can germinate. To maximize its outreach, the Searle Center takes full advantage of Northwestern’s capabilities in videotaping and webcasting by posting conferences, symposia, and lectures at www.law.northwestern.edu/searlecenter. (See “Activities” on page 10.)

The Searle Center’s activities are based in three divisions — the Legal and Regulatory Research Project, the Northwestern Law Judicial Education Program, and the Searle Civil Justice Institute — which are described in the following pages.

LEGAL AND REGULATORY RESEARCH PROJECT

The Searle Center's Legal and Regulatory Research Project ensures that policy makers have complete and objective information on the civil justice system and its impact on economic growth. The project builds on the empirical focus of the Northwestern faculty and explores such topics as the impact of laws and regulations on innovation, competition, and economic growth. In concert with the research conducted by the project, each area of study (see below) conducts its own roundtables, symposia, and conferences.

These activities serve as a foundation for other Searle Center programs, and many projects of the Legal and Regulatory Research Project may be pilot projects for larger programs of the Searle Civil Justice Institute. Current areas of study include the following:

EMPIRICAL STUDIES OF CIVIL LIABILITY

Tort reform is a highly contentious area where the objectives of various interest groups come into conflict. Fortunately, it is an area naturally well suited for study through rigorous application of empirical methods. Northwestern has a large concentration of scholars conducting research on issues related to civil liability, including tort reform, health insurance coverage, procedural rules, and scientific evidence. In contrast to the Searle Civil Justice Institute, where each task force focuses on a single subject and produces a final report, this project consists of a conglomeration of empirical studies and offers a forum for exploratory academic research. The project sponsors an annual research symposium featuring scholars from Northwestern and other leading universities.

*Research director: Max Schanzenbach, Benjamin Mazur
Professor of Law, Northwestern University School of Law*

INNOVATION, ENTREPRENEURSHIP, AND GROWTH

This project advances the understanding of how laws and regulations affect innovation, entrepreneurship, and economic growth. During the 2007–08 academic year the group hosted one research symposium and three roundtables that explored such topics as venture capital and the entrepreneur; innovation, contracts, and the entrepreneur; intellectual property and innovation; and the social context of entrepreneurship.

*Research director: Daniel F. Spulber, Elinor Hobbs
Distinguished Professor of International Business and professor
of management strategy, J. L. Kellogg School of Management,
Northwestern University*

COMPETITION, ANTITRUST, AND REGULATION

By applying cutting-edge developments in industrial organization economics, this project explores antitrust law and competition policy. This highly interdisciplinary group works closely with Northwestern's renowned Center for the Study of Industrial Organization. A September 2008 research symposium on antitrust economics and competition policy features scholars from Princeton University, New York University, the Massachusetts Institute of Technology, Stanford University, and the University of California, Berkeley.

*Research director: William Rogerson, professor of economics,
Judd A. and Marjorie Weinberg College of Arts and Sciences, and faculty
affiliate, Institute for Policy Research, Northwestern University*

REGULATION OF ENVIRONMENTAL RISKS FROM EMERGING TECHNOLOGIES

This group investigates the economic impact of regulatory treatment of possible environmental risks. Topics focus on emerging technologies such as nanotechnology, genetically modified organisms (both foods and plants for biofuel production), cloning for food production or other purposes, and chemicals used in industrial production and in consumer goods.

*Research director: David A. Dana, associate dean for faculty and
research and professor of law, Northwestern University School of Law*



David A. Dana specializes in environmental and property law. Prior to joining Northwestern in 1999 he taught environmental and natural resources law at the Boston University School of Law. From 1991 to 1993 Dana was an attorney in the Environmental and Natural Resources Division of the U.S. Department of Justice, where he worked on enforcement litigation of the Clean Water Act and handled regulatory challenges in circuit courts involving the Clean Water Act, the Toxic Substances Control Act, the Clean Air Act, the Resource Conservation and Recovery Act, and the Endangered Species Act. He served as a law clerk for Judge Betty Fletcher of the U.S. Court of Appeals for the Ninth Circuit and as a litigator for Wilmer, Cutler & Pickering in Washington, D.C. Dana is working on a series of papers about environmental regulatory policy that apply economic and political theory to legal issues.

William Rogerson's research interests are applied micro-economic theory, industrial organization, regulation, cost accounting, telecommunications, and defense procurement. In 1998–99 he served as chief economist at the Federal Communications Commission. He is codirector of the Center for the Study of Industrial Organization and director of the Program in Mathematical Methods in the Social Sciences at Northwestern. A fellow of the Econometric Society, he has worked as a consultant for a number of government agencies and think tanks, including the Federal Trade Commission, the Institute for Defense Analysis, the Logistics Management Institute, the Office of the Secretary of Defense, the RAND Corporation, and the U.S. Department of Justice.

Max Schanzenbach joined the Northwestern faculty in 2003. His primary areas of research interest are employment law, criminal sentencing, and trust law. He has published in such journals as the *American Law and Economics Review*, the *Yale Law Journal*, the *Journal of Legal Studies*, and the *Journal of Empirical Legal Studies*. Schanzenbach is working on two books: *Lawyers, Banks, and Money: The Revolution in Modern Trust Law* (with Robert Sitkoff, to be published by Yale University Press) and *The Impact of Tort Reform on Private Health Insurance Coverage* (with Ronen Avraham).

Daniel F. Spulber has taught at the J. L. Kellogg School of Management since 1990. He is the founding editor of the *Journal of Economics and Management Strategy* and founder of Kellogg's International Business and Markets Program. Spulber's research is in the areas of international economics, industrial organization, microeconomic theory, management strategy, and law. He has taught at Brown University, the University of Southern California, and the California Institute of Technology. Spulber has received eight grants from the National Science Foundation, three from the Searle Fund, and one from the Ewing Marion Kauffman Foundation for economic research. He has published numerous articles in economics journals and law reviews.

NORTHWESTERN LAW JUDICIAL EDUCATION PROGRAM

Although judges routinely hear cases involving complex issues of economics, finance, accounting, statistics, and science, many do not understand these disciplines well and cannot assess these cases properly. The Northwestern Law Judicial Education Program offers a timely, relevant, and intellectually stimulating range of educational programs that are carefully designed to improve relevant judicial knowledge.

The program received a 2006 Legal Reform Award for Outstanding Organization from the U.S. Chamber of Commerce's Institute for Legal Reform and boasts more than 3,000 state and federal judges as alumni. More than 600 federal and state judges from around the country are expected to attend its programs in 2008–09.

After previously operating under the auspices of the Brookings Institution (and known as the Brookings Judicial Education Program), the program relocated to Northwestern University School of Law in July 2008. The program is administered by the Searle Center, directed by Paige Butler, and overseen by the Judicial Advisory Board (see insert). By combining the high-quality offerings of the Northwestern Law Judicial Education Program with the research activities of its other divisions, the Searle Center significantly strengthens its ability to fulfill its mission.

All Northwestern Law Judicial Education Programs are rigorous and demanding. Judges participating in the economics institutes, for example, receive several hundred pages of readings, including specially developed materials on statistical analysis and scientific methodology. Readings are assigned for all sessions. While introductory methodologies are covered, the programs are not designed to teach accounting or financial analysis. Rather, they are designed to ensure that judges understand the concepts of microeconomics and some of the unique language of the business world so that they are better prepared to hear and judge the cases before them.

The Searle Center offers the following programs as a public service. There is no tuition, and expenses for transportation, lodging, and meals are covered by the Searle Center.

ECONOMICS INSTITUTES FOR JUDGES

These weeklong programs give judges a solid grounding in economics, statistics, and scientific method — fundamental issues often at the heart of legal disputes. Outstanding professors from Northwestern and other major universities teach the courses and offer analysis of numerous court cases that emphasize the practical relevance of these disciplines. Four institutes will be offered in 2008–09.

ADVANCED LAW AND ECONOMICS INSTITUTES

These institutes build on judges' basic knowledge through a series of courses that focus on specific areas of the intersection of law and economics. These institutes allow judges to explore relevant topics while increasing the depth of their analysis. The following are the 2008–09 institutes:

Advanced Institute on Corporate Finance and Corporate Governance

This institute provides an introduction to valuation, discounting, interest, financial instruments, stock markets, bond markets, efficient capital markets theory, business valuation, and the economics of the corporation. Various issues in corporate governance are examined, including the separation of ownership and control, shareholders versus stakeholders, corporate democracy, corporate social responsibility, the market for corporate control, jurisdictional competition and Delaware's dominance, and Sarbanes-Oxley and the international competitiveness of capital markets.

Advanced Institute on Environmental Economics

This institute considers the economic foundations of state and federal environmental regulations. After introducing property rights economics and the tragedy of the commons, the institute

37 ALABAMA	118 FLORIDA	23 MAINE	18 NEVADA	23 OREGON	14 VERMONT
8 ALASKA	35 GEORGIA	29 MARYLAND	2 NEW HAMPSHIRE	75 PENNSYLVANIA	31 VIRGINIA
65 ARIZONA	4 HAWAII	65 MASSACHUSETTS	19 NEW JERSEY	5 PUERTO RICO	18 WASHINGTON
26 ARKANSAS	3 IDAHO	64 MICHIGAN	23 NEW MEXICO	5 RHODE ISLAND	12 WEST VIRGINIA
281 CALIFORNIA	147 ILLINOIS	47 MINNESOTA	71 NEW YORK	16 SOUTH CAROLINA	32 WISCONSIN
36 COLORADO	79 INDIANA	47 MISSISSIPPI	23 NORTH CAROLINA	4 SOUTH DAKOTA	3 WYOMING
21 CONNECTICUT	44 KANSAS	85 MISSOURI	11 NORTH DAKOTA	24 TENNESSEE	
7 WASHINGTON, D.C.	30 KENTUCKY	9 MONTANA	93 OHIO	136 TEXAS	
14 DELAWARE	55 LOUISIANA	18 NEBRASKA	33 OKLAHOMA	15 UTAH	

explores the economics of various approaches to environmental regulation through an analysis of common law cases and regulatory programs.

Advanced Institute on Quantitative Methods — Statistics and Econometrics

This institute provides an introduction to statistics and standard econometric techniques such as multiple regression analysis. Emphasis is placed on the importance of following standard methodology in developing and presenting expert evidence. Numerous case studies illustrate the importance of understanding the uses and abuses of these methods.

Advanced Institute on Risk, Injury, Liability, and Insurance

This institute offers an introduction to risk and risk allocation by individuals, businesses, and society and explores mechanisms for dealing with risk: contracts and markets, risk regulation, tort law, and insurance. Numerous cases and public policy issues are discussed.

JUDICIAL SYMPOSIA

Judicial symposia provide an analysis of current legal and public policy issues in a dynamic format combining lectures and debates. These programs alert judges to emerging challenges in substantive legal matters and offer a balanced view of legal issues through presentations by diverse leading scholars and a series of debates. Two symposia are planned for 2008–09:

Symposium on Civil Justice Issues

The civil justice system in the United States is in a constant state of flux. Changes occur at both the state and federal levels, through legislative and judicial actions. At the same time judges face a constant barrage of new and innovative legal theories and procedural maneuvers. The goal of this annual symposium is to provide judges with a systematic annual review and critique of the most important civil justice issues of the day. Previous symposia have covered punitive damages, corporate misconduct, and toxic tort litigation.

Symposium on the Pharmaceutical Industry: Economics, Regulation, and Legal Issues (tentative)

The pharmaceutical industry, with its complexity, regulations, and controversies, is a mystery to most judges. This symposium aims to provide judges with a thorough review of the field, emphasizing the impact of judicial decisions and regulatory policy. Topics include the process and structure of the pharmaceutical industry, economics of research and development, health care reform, and intellectual property.



American College of Business Court Judges

The Northwestern Law Judicial Education Program provides operational and financial support for the American College of Business Court Judges (ACBCJ). This organization is dedicated to promoting the development of specialized business courts through educational programs and outreach to judges in states that are considering the creation of such courts.

These specialized courts — which go by a variety of names (e.g., business courts, commercial courts, or complex civil dockets) — are based on the idea that judges who specialize in particular areas of business law develop expertise that results in quicker, better-reasoned opinions. However, many of the judges who are selected for these courts lack the requisite experience and formal training needed to address sophisticated financial and commercial problems. The ACBCJ fills this need. It provides sophisticated training for judges hearing the most complex cases, establishes a support network for judges to share their knowledge and experiences, and encourages the formation of similar courts in additional states by providing training for judges who would serve on the new courts.

The ACBCJ presents two conferences each year: the Annual Meeting of the American College of Business Court Judges and an Advanced Law and Economics Institute, in which participants receive advanced training on procedural and substantive topics selected by the ACBCJ.

Above: Henry Butler (right), Searle Center executive director, with ACBCJ president Steven Platt (left) of the Maryland Business and Technology Court and immediate past president Ben Tennille of the North Carolina Business Court

The Searle Civil Justice Institute, founded in 2008, is dedicated to giving policy makers complete and objective information about the forces shaping the civil justice system and their consequences for economic growth. Taking an empirical approach to how the civil justice system operates and could be improved, the institute produces rigorous independent research and analysis that is useful to policy makers, judges, and practitioners.

Going beyond analyzing available data, the institute invests time and resources in building new datasets. While this work is generally too costly or time consuming for individual academics or independent researchers, the Searle Center is able to provide the framework and institutional support for significant data collection efforts. Through its connections with academics and a wide range of potential data sources, the Searle Civil Justice Institute builds teams of researchers and data professionals to accomplish major data-intensive projects.

A board of overseers (see insert) assists the Searle Civil Justice Institute by suggesting areas of research, commenting on research designs and drafts, and providing access to data sources.

The Searle Civil Justice Institute operates through task forces, each led by one or more chairs. The task forces produce reports, executive summaries, news releases, press briefings, testimony, and conferences. The institute is exploring the creation of task forces on the management of judicial capital and employment litigation trends in the state courts to join its existing task forces in the following areas:

STATE CONSUMER PROTECTION LITIGATION

This task force studies the nature and magnitude of litigation under state consumer protection acts and its impact on consumers and economic welfare. This data collection effort entails screening more than 30,000 cases from state appellate courts and federal district courts. Case-specific variables are coded and subjected to econometric analysis. A sample of cases is subjected to review by a panel of experts to determine if so-called “Little FTC Acts” are advancing or hindering the consumer protection mission of the Federal Trade Commission.

Chairs: Henry N. Butler, senior lecturer and executive director, Searle Center on Law, Regulation, and Economic Growth, Northwestern University School of Law; Jason S. Johnston, Robert G. Fuller Jr. Professor of Law, University of Pennsylvania Law School; Joshua D. Wright, assistant professor, George Mason University School of Law

ARBITRATION

This task force analyzes arbitrations resulting from predispute arbitration clauses in consumer contracts to create a better understanding of the impact of these clauses. It has obtained exclusive access to more than 3,000 cases from the American Arbitration Association. These data have never been analyzed and will be used to consider the effect of arbitration on consumers.

Chair: Christopher Drahozal, John M. Rounds Professor of Law, University of Kansas School of Law

BUSINESS OF PATENT LITIGATION

The U.S. patent system has become controversial in recent years, and attention has been focused on the impact of patent-granting standards. This area is crucial to the evaluation of the impact of the patent system on economic growth. This task force explores the impact of jurisdictional variety among the federal district courts, the role of various types of experts in litigation, and the strategic use of experts, with the goal of providing insights into the appropriateness of various patent reform proposals.

Chair: Emerson Tiller, associate dean for academic affairs—strategic academic initiatives and J. Landis Martin Professor of Law and Business, Northwestern University School of Law

ADMISSIBILITY OF SCIENTIFIC EVIDENCE

When the U.S. Supreme Court handed down *Daubert v. Merrell Dow Pharmaceuticals* in 1993, it raised hopes that the quality of the scientific evidence reaching juries would improve. Following *Daubert*, the frequency with which expert testimony was excluded rose, as did the percentage of summary judgments granted against plaintiffs. *Daubert* remains controversial, and this task force studies a unique database covering more than 40,000 cases, including information on experts and challenge dispositions, to gain an understanding of cases in which there was a *Daubert* challenge.

Chair: Ronald Allen, John Henry Wigmore Professor of Law, Northwestern University School of Law

CY PRES AWARDS

A recent *New York Times* article focused on cy pres awards, class-action awards not distributed to a plaintiff but given by the judge to an organization. It quoted a prominent law professor who finds the practice to be “an invitation to wild corruption of the judicial process.” This task force develops new data on cy pres awards in class-action lawsuits to determine when they are used and what their legal process implications are.

Chair: Martin Redish, Louis and Harriett Ancel Professor of Law and Public Policy, Northwestern University School of Law



Ronald Allen did his undergraduate work in mathematics at Marshall University and studied law at the University of Michigan. He is an expert in the fields of evidence, procedure, and constitutional law and has published five books and 80 articles in major law reviews. The *New York Times* referred to Allen as one of nation's leading experts on evidence and procedure. He has been widely quoted in national news outlets and appears regularly on national broadcast media on matters ranging from complex litigation to constitutional law to criminal justice. For the last 10 years, his research has focused on the nature of juridical proof. He has been involved as a consultant on numerous cases involving complex litigation in the United States and abroad.

Martin Redish is an authority on federal jurisdiction, civil procedure, freedom of expression, and constitutional law. He is the author or coauthor of more than 70 articles and 15 books, including *Federal Jurisdiction: Tensions in the Allocation of Judicial Power*, *The Constitution as Political Structure*, and *Money Talks: Speech, Economic Power, and the Values of Democracy*. Redish has appeared as an expert witness before numerous congressional committees, has served as special consultant to the U.S. Judicial Conference Subcommittee on Judicial Independence, and is frequently a speaker at symposia and conferences held for members of the federal judiciary. In addition, he is special counsel to the law firm of Mayer Brown.

Emerson Tiller joined the Northwestern Law faculty in 2003, with a courtesy appointment in the J. L. Kellogg School of Management as professor of business law. Previously Tiller was a professor at the University of Texas Graduate School of Business, where he also directed the Center for Business, Technology, and Law. His research has primarily focused on empirical and theoretical analyses of political forces in regulatory and judicial decision making. Tiller has also examined the legal and strategic management of intellectual property. He has published numerous papers in law and economic journals as well as law reviews and has won research grants and fellowships for his work, including awards from the National Academies of Science, the John M. Olin Program in Law and Economics, and the Bradley Foundation.





ACTIVITIES

In addition to the programs noted in discussions of its three divisions, the Searle Center on Law, Regulation, and Economic Growth sponsors and presents the following activities:

Distinguished Guest Lectures

Distinguished guest lectures give the Searle Center an opportunity to bring in an expert or scholar of interest to the greater Northwestern University School of Law community.

Research Symposia

Many Searle Center research projects culminate in a research symposium. Here, scholars present their research for critical review by leading scholars. Research symposia ensure that Searle Center projects adhere to the most rigorous research standards.

Public Policy Conferences

The Searle Center hosts numerous conferences focusing on timely public policy issues. These conferences are designed to improve public policies by communicating the results of the highest-quality academic research to relevant policy makers, judges, and practicing attorneys.

Research Roundtables

The Searle Center brings together scholars from Northwestern and other leading universities to discuss promising new areas for research. The goal of these roundtables is to generate ideas for new research projects that will lead to funding, papers, and symposia.

Colloquia on Law and Economics and on Political Economy

The Searle Center offers weekly colloquia throughout the academic year in political economy and in law and economics. Fifteen students enroll each semester in a seminar that is taught in conjunction with the colloquium. Colloquium attendance is open to any interested Northwestern Law student or faculty member. Outside academics are regularly invited to attend and participate in the discussions. The papers presented at each colloquium are published as part of the working paper series.

Visiting Fellows

This program brings leading scholars from major universities to Northwestern for one- or two-week visits during which they collaborate with Northwestern faculty and present their research.



Executive Director Henry N. Butler is a law and economics specialist who has devoted much of his career to improving the country's civil justice system through legal education programs. More than 3,000 judges have attended programs organized by Butler. In addition to serving as the Searle Center's first executive director, he is a senior lecturer at Northwestern University School of Law. Butler has published five books and more than 30 journal articles in the areas of corporations, antitrust, financial services, and federalism. He has held academic positions at Texas A&M University School of Business, University of Chicago Law School, and George Mason University School of Law and was the Fred C. and Mary R. Koch Distinguished Professor of Law and Economics at the University of Kansas.



Founding Benefactor Daniel C. Searle (1926–2007) served in the U.S. Naval Reserve and was a graduate of Yale University and Harvard Business School. His business career was spent with G. D. Searle and Co., though his interests and involvements did not end there. A director of 10 companies, a board member of 20 nonprofits, a licensed pilot, and an avid sportsman, Dan Searle sought to get the most from his life. When he wasn't fishing, flying, shooting, or traveling the world, he was learning and trying to make an impact through his philanthropic activities.

The Searle Center on Law, Regulation, and Economic Growth grew out of Searle's dedication to Northwestern University, where he served as a trustee, and his interest in legal and economic reforms. The work of the Searle Center mindfully reflects Dan Searle's curiosity, tenacity, resolve, and boldness. The center strives to be worthy of carrying the Searle name.

SUPPORT THE SEARLE CENTER

The Searle Center on Law, Regulation, and Economic Growth relies on the support and generosity of foundations and corporations to produce high-quality research and put that research into the hands of decision makers. Your organization's contribution will greatly contribute to the breadth and depth of the center's work.

Checks should be made payable to
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