

MICHAEL D. GUTTENTAG

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Papers available at [SSRN](#)

PUBLICATIONS

What Inside Information Is Worth and Why It Matters, book chapter in *Research Handbook on Insider Trading* (Stephen Bainbridge ed., 2nd edition, forthcoming 2024, Edward Elgar Publishing Ltd.).

An Inframarginalist Argument for Mandating the Use of Pro-Consumer Boilerplate, book chapter in *The Inframarginal Revolution: Markets as Wealth Distributors* (ed. R. Woodcock; Cambridge Univ. Press) (forthcoming 2024).

Evolutionary Psychology and Resource-Sharing Laws, 44(3) *Evolution and Human Behavior* 264 (May 2023) (peer reviewed).

Law, Taxes, Inequality, and Surplus, 102 *Boston University Law Review* 1329 (2022).

Avoiding Wasteful Competition: The Real Reason to Prohibit Insider Trading, 86 *Brooklyn Law Review* 895 (2021); selected to be reprinted in *Securities Law Review* (2023).

Shorting Crypto Assets and Insider Trading, 105 *Iowa Law Review Online* 59 (2021).

“Huh?” Insider Trading: The Chris Collins Story, 15 *Tennessee Journal of Law and Policy* 95 (2020).

Law and Surplus: Opportunities Missed, 2019 *Utah Law Review* 607.

Selective Disclosure and Insider Trading, 69 *Florida Law Review* 519 (2017).

Evolutionary Analysis in Law: On Disclosure Regulation, 49 *Arizona State Law Journal* 963 (2016)

On Requiring Public Companies to Disclose Political Spending, 2014 *Columbia Business Law Review* 593 (2014).

Shareholder Primacy and the Misguided Call for Political Spending Disclosure by Public Companies, 62 *UCLA Law Review Discourse* 66 (2014).

Patching a Hole in the JOBS Act: How and Why to Rewrite the Rules that Require Firms to Make Periodic Public Disclosures, 88 *Indiana Law Journal* 151 (2013); reprinted in 46 *Securities Law Review* (2014).

Protection from What? Justifications for Investor Protection and the JOBS Act, 13 *U.C. Davis Business Law Journal* 207 (2013).

Teaching *Citizens United v. FEC* in the Introductory Business Associations Course, 7 *Journal of Business and Technology Law* 163 (2013).

Stumbling Into Crime: Stochastic Process Models of Accounting Fraud in *Research Handbook on the Economics of Criminal Law*, Alon Harel and Keith Hylton, editors (2012).

Is There a Law Instinct?, 87 *Washington University Law Review* 269 (2009).

Brandeis' Policeman: Results from a Laboratory Experiment on Corporate Fraud (with Christine Porath and Samuel Fraidin), 5 *The Journal of Empirical Legal Studies* 239 (2008) (peer reviewed).

Accuracy Enhancement, Agency Costs, and Disclosure Regulation, 3 *The Review of Law and Economics* 15 (2007) (peer reviewed).

An Argument for Imposing Disclosure Requirements on Public Companies, 32 *Florida State Law Review* 123 (2004) *reprinted* in 38 *Securities Law Review* (2006) *translated* into Chinese (2022).

ACADEMIC EMPLOYMENT

LOYOLA SCHOOL OF LAW, LOS ANGELES

John T. Gurash Fellow in Corporate Law & Business, 2014 - present

Professor of Law, 2010 - present

Associate Professor of Law, 2008 - 2010

UCLA SCHOOL OF LAW

Visiting Professor of Law, spring, 2011; fall, 2012

EMORY UNIVERSITY SCHOOL OF LAW

Visiting Professor of Law, fall, 2007

THE BOYD SCHOOL OF LAW (UNLV)

Associate Professor of Law, 2005 - 2008

UNIVERSITY OF SOUTHERN CALIFORNIA LAW SCHOOL

Olin Fellow and Fellow at the Center for Law, Economics, and Organization, 2002-2003

EDUCATION

YALE LAW SCHOOL, J.D.

John M. Olin Scholar of Law and Economics

HARVARD BUSINESS SCHOOL, M.B.A.

With Distinction, First and Second Year Academic Honors

HARVARD COLLEGE, A.B. (Economics)

Harvard Club Scholar, John Harvard Scholar

SELECTED GRANTS AND AWARDS

Chair, AALS Section on Securities Regulation (2024).

Recipient of a Progress of Ideas Grant, 2021-2, from the Robert Schalkenbach Foundation to support research into creating a more just and equitable society.

Society for Evolutionary Analysis in Law, awarded 2011 Junior Faculty Writing Prize for *The Law Instinct*.

SELECTED INVITED PRESENTATIONS

Business Scholarship Podcast, discussed *What Inside Information Is Worth and Why It Matters*, January, 2024, available at: <https://www.youtube.com/watch?v=jIbUGQyIIu4>.

AALS 2024 Annual Meeting, moderator and organizer, *New Voices in Business Law Session*, January, 2024.

AALS 2024 Annual Meeting, moderator, organizer, and host, *Gary Gensler's SEC at Year Three*, January, 2024. Invited speakers include Hester Peirce, SEC Commissioner, and Robert Jackson, former SEC Commissioner.

Law and Entrepreneurship Association Retreat, presented comments on Andrew Schwartz book, *Investment Crowdfunding*, September, 2023.

Human Behavior and Evolution Society, posted *What's Law Got To Do With It?*, June, 2023, available at: <https://www.hbes.com/whats-law-got-to-do-with-it/>.

Faces of ILS, April, 2023

<https://www.ils.edu/thellsdifference/facesoflls/lawprofessoranunexpectedfoiltinsidertrading/lawprofessoranunexpectedfoiltinsidertrading.html>

AALS 2023 Annual Meeting, invited commentator, *New Voices in Business Law* (commented on "High End Security Regulation" by Will Clayton), January, 2023.

Annual Law and Entrepreneurship Conference, Invited commentary on *Family Business Me&A* by Benjamin Means, October, 2022.

RSF Progress of Ideas Symposium Presentation, presented *Law, Surplus, Market Regulation, and Inequality*, pursuant to a Grant from RSF to fund research, April, 28, 2022, available at: <https://youtu.be/KoqRkUCMe7Q>.

Columbia Law School, The CLS Blue Sky Blog on Corporations and the Capital Markets, posted *Should All Trading While in Possession of Inside Information Be Illegal?*, April, 2022, available at:

<https://clsbluesky.law.columbia.edu/2022/04/04/should-all-trading-while-in-possession-of-inside-information-be-illegal/>

Business Law Prof Blog, posted *Response to John Anderson Post on My Article on Insider Trading as Wasteful Competition*, March, 2022, available at:

https://lawprofessors.typepad.com/business_law/2022/03/guttentags-response-to-my-post-concerning-his-article-on-insider-trading-as-wasteful-competition.html.

AALS Annual Meeting, invited panelist, *A Very Online Economy: Meme Trading, Bitcoin, and the Crisis of Trust and Value(s) – How Should the Law Respond?*, January, 2022.

AALS Annual Meeting, invited commentator, *New Voices in Business Law (commented on “Beyond ‘Market Transparency’: Investor Disclosure and Corporate Governance” by Alexander Platt)*, January, 2022.

University of Michigan Law School, invited presenter at seminar on “Changing Paradigms of Corporate Law and Regulation,” October, 2021.

National Business Law Conference, presented *The Insider Trading Industry*, June, 2021.

Michigan State University College of Law Federalist Society, invited commentator for panel on Insider Trading Policy, March 2021.

Inframarginalism & Internet: A Conference on Markets as Wealth Distributors, and the Implications for TechPolicy, invited keynote speaker and also presented *Hidden Markups, Inframarginal Transfers, and the Case Against Enforcing Consumer Boilerplate*, February, 2021.

American Law and Economics Association Annual Meeting, *Avoiding Wasteful Competition: The Real Reason to Prohibit Insider Trading*, August 2020.

Southeastern Association of Law Schools, presented *Is It All About the Money? Distinctive Features of the Crime of Insider Trading*, August, 2020.

Tennessee Journal of Law and Policy Symposium on Insider Trading Stories, presented “Hub?” *Insider Trading: The Chris Collins Story*, November, 2019.

Southeastern Association of Law Schools, presented “Hub?” *Insider Trading: The Chris Collins Story*, August, 2019.

Oxford Law, Oxford Business Law Blog, posted *Law and Surplus: Opportunities Missed*, January, 2019, available at: <https://www.law.ox.ac.uk/business-law-blog/blog/2019/01/law-and-surplus-opportunities-missed>.

AALS 2019 Annual Meeting, presented *Shorting Cryptoassets and Insider Trading*, January, 2019.

Canadian Law and Economics Association Annual Meeting, presented *Law and Surplus: Opportunities Missed*, September 2018.

Southeastern Association of Law Schools, presented *Making Sense of the Revised Martoma Decision*, August, 2018.

National Business Law Conference, presented *Fraud Propensity and Firm Size*, June, 2018.

AALS Annual Meeting Hot Topics Panel, commented on *What is Fraud Anyway?*, January, 2018.

Midwestern Law and Economics Association Annual Meeting, presented *Law of Surplus Sharing*, November 2017.

National Business Law Conference, presented *On the Optimal Distribution of Transaction Surplus*, June, 2016.

AALS Annual Meeting Hot Topics Panel, presented *Why Salman Represents a Hollow Victory for Federal Prosecutors*, January, 2017.

National Business Law Conference, presented *Selective Disclosure and Insider Trading*, June, 2016.

American Bar Association White Collar Crime Committee, panel discussion (with SEC regional director Michele Wein Layne) on *Newman, Salman, Parigian and the Evolving Contours of Insider Trading Law*, June, 2016.

Loyola Journalism Law School (LJS), *Hot Topics in Corporate Law: Insider Trading and Corporate Political Spending*, June, 2016.

The Society for Evolutionary Analysis in Law Annual Meeting, presented *Evolutionary Analysis in Law: On Disclosure Regulation*, April, 2016.

2015 Securities and Exchange Commission Forum on Small Business Capital Formation, invited panelist, presented *The Unexpected Benefits of Mandatory Disclosure*, November, 2015.

UCLA Law Review Fall 2015 Conference on Defining the Boundaries of Insider Trading Law, presented *Selective Disclosure and Insider Trading*, October, 2015.

Boston University Law School Third Annual Workshop for Corporate and Securities Litigation, presented *Harmonizing the Insider Trading Prohibition and Disclosure Regulation: Putting Dirks, Newman and Reg FD in Context*, October, 2015.

Southeastern Association of Law Schools, organized and hosted a panel titled *Recent Developments in Securities Regulation*, August, 2015 (with Joan Heminway).

Southeastern Association of Law Schools, organized and hosted a panel titled *Business Ethics and the Law*, August, 2015 (with John Anderson).

National Business Law Conference, presented *Harmonizing the Insider Trading Prohibition and Disclosure Regulation*, June, 2015.

Southeastern Association of Law Schools, organized and hosted a panel titled *Does the Public/Private Divide in Federal Securities Regulation Make Sense?*, August, 2014.

National Business Law Conference, presented *On Requiring Public Companies to Disclose Political Spending*, June, 2014.

Conference and Micro-Symposium on Competing Theories of Corporate Governance, presented *Shareholder Primacy and the Misguided Call for Political Spending Disclosure by Public Companies*, April, 2014, UCLA Law School.

Seventh Annual Law and Entrepreneurship Conference, Invited commentary on *Supermandatory Disclosure's Past and Future* by Usha Rodrigues, February 2014.

Southeastern Association of Law Schools, presented *Protection from What? Investor Protection and the JOBS Act*, August, 2013.

National Bureau of Economic Research (NBER) Summer Institute, invited commentator on *How Pervasive is Corporate Fraud?* by Alex Dyck, Adair Morse, and Luigi Zingales, July, 2013.

The JOBS Act: Challenges and Opportunities: A Symposium Presented by the U.C. Davis Business Law Journal, presented *Discerning the Meaning of Investor Protection*, February, 2013.

Sixth Annual Law and Entrepreneurship Conference, reviewed *Legal Definition of Entrepreneurship by Proclivity* by Mirit Eyal-Cohen, February, 2013.

Conference on Empirical Legal Studies, invited commentator on *Effect of Disclosure Laws on Pharmaceutical Company Payments to Physicians* by S. Eric Reinhart, Glen B. Taskler, and Daniel L. Chen, November 2012.

Southeastern Association of Law Schools, invited participant in roundtable discussion on the future of corporate law, July, 2012.

National Business Law Conference, invited participant for a webcast roundtable on *Good, Bad, or Stupid? Debating the STOCK and JOBS Acts*; also, presented *Patching a Hole in the JOBS Act: How and Why to Rewrite the Rules that Require Firms to Make Periodic Public Disclosures*, June, 2012.

The Society for Evolutionary Analysis in Law Annual Meeting, presented *The Evolutionary Foundations of Disclosure Regulation*, April, 2012.

Fifth Annual Law and Entrepreneurship Conference, presented *Which Firms Should be Required to Comply with '34 Exchange Act Reporting Requirements?*, February, 2012.

AALS Annual Section Meeting on Securities Regulation, *Which Firms Should be Required to Comply with '34 Exchange Act Reporting Requirements?*, January, 2012 (competitive selection from a call for papers).

Southeastern Association of Law Schools, invited participant in roundtable discussion on the impact of the Dodd-Frank legislation, July, 2011.

Fourth Annual Law and Entrepreneurship Conference, invited commentary on *Law and Entrepreneurship: A Literature Review* by Gordon Smith and Danny Sokol, February, 2011.

The Society for Evolutionary Analysis in Law Annual Meeting, conference host, February 2011.

Law Without Walls, invited Thought Leader Presentation on *Constructing a Business Plan*, February 2011.

Loyola Tax Policy Colloquium, Commentary on *Tax Advice*, by David Weisbach and Brian Gale, November, 2010.

Commentary on "Leverage, Sanctions and Deterrence of Accounting Fraud," by Urska Velikonja, August 30, 2010 at www.theconglomerate.org.

Conglomerate Masters Forum on the Dodd-Frank Wall Street Reform and Consumer Protection Act, What Would Brandeis Think? July, 2010.

Loyola Law School Faculty Colloquium, *Stumbling into Crime: The Physics of Corporate Fraud*, June, 2010.

Third Annual Law and Entrepreneurship Conference, Invited commentary on *Distinctions between Governance of For-Profit and Non-Profit Entities* by Usha Rodrigues, March 2010.

AALS Annual Section Meeting on Securities Regulation, *New Ways Securities Regulation Can Help Prevent a Market Crash*, January, 2010 (competitive selection from a call for papers).

Chapman Law School Fresh Ideas for Rising Scholars Lecture Series, *New Ways Securities Regulation Can Help Prevent a Market Crash*, January, 2010.

National Public Radio (NPR) Economic Training Program, *The Regulation, Deregulation, and ReRegulation of Capital Markets*, October, 2009 and January, 2010.

AALS Mid-Year Meeting: Conference on Business Associations, *Introducing the Businessman's Perspective when Teaching Business Associations*, June, 2009 (competitive selection from a call for papers).

Loyola Journalism Law School, *The Regulation, Deregulation, and ReRegulation of Capital Markets*, June, 2009.

New Institutional Economics Conference at the University of Colorado Law School, *Why Markets Crash and Implications for Financial Regulation*, June, 2009.

Law and Society Association Annual Meeting, *Why Markets Crash and Implications for Financial Regulation*, May, 2009.

The Society for Evolutionary Analysis in Law Annual Meeting, *The Neural Correlates of Participation in a Legal System*, April, 2009.

Darwin's Reach: A Celebration of Darwin's Legacy across Disciplines at Hofstra, *Is There a Law Instinct?*, March, 2009.

Loyola Tax Policy Colloquium, Commentary on *Distributive Aspects of Legal Standards*, by Jacob Nussim, November 2008.

The Conglomerate (www.theconglomerate.org), Series of over twenty posts on the ongoing financial crisis, October – November, 2008.

Neuroscience, Law and Government Symposium (The University of Akron School of Law), Moderator of *Applied Neuroscience Panel*, September 2008.

Stanford University School of Law Faculty Workshop, *Brandeis' Policeman: Results from a Laboratory Experiment on Corporate Fraud*, August 2008.

Commentary on "Assessing Materiality of Financial Misstatements," by James Park, August 6, 2008 at www.theconglomerate.org.

Second Annual Law and Entrepreneurship Conference, Commentary on *Race Specific Patents, Commercialization, and Intellectual Property Policy* by Shubha Ghosh, March 2008.

Boston University School of Law Faculty Workshop, *The Law Instinct*, January 2008.

University of Illinois Law School Faculty Workshop, *Brandeis' Policeman: Results from a Laboratory Experiment on Corporate Fraud*, October 2007.

The Society for Evolutionary Analysis in Law Annual Meeting, *The Law Instinct*, October 2007.

Emory School of Law Faculty Workshop, *Brandeis' Policeman: Results from a Laboratory Experiment on Corporate Fraud*, September 2007.

Law and Society Association Annual Meeting, *The Law Instinct*, July 2007.

Commentary on "Insuring Corporate Crime," by Miriam Hechler Baer, June 27, 2007 at www.theconglomerate.org.

Sloan Corporate Governance Colloquium, *Sarbanes Oxley in the Laboratory: Findings from an Experiment on Corporate Fraud*, January 2007, University of California at Los Angeles.

Canadian Law and Economics Association Annual Meeting, *Law, Norms and Corporate Fraud: Results from a Laboratory Experiment*, September 2006, University of Toronto.

Commentary on "The How and Why of the New Public Corporation Tax Compliance Norm," by Susan Morse, June 26, 2006 at www.theconglomerate.org.

American Law and Economics Association Annual Meeting, *Sarbanes Oxley in the Laboratory: Findings from an Experiment on Corporate Fraud*, May 2006, University of California at Berkeley.

Junior Scholars Workshop Presentation, at www.theconglomerate.org, *Accuracy Enhancement, Agency Costs, and Efficient Disclosure Regulation*, August 2005.

Academy of Management Annual Meeting, *Why Do They Do It? The Role of Cohesion, Moral Disengagement & Leadership in Fraudulent Behavior*, August 2005 (with Christine Porath and Michelle Duffy).

USC Law School Faculty Workshop, *Pulling Back the Curtain: A New Approach to Public Company Disclosure Requirements*, November 2002.

SELECTED PRESS

RSF Progress of Ideas Symposium, *Law, Surplus, Market Regulation, and Inequality*, April, 28, 2022, available at: <https://youtu.be/KoqRkUCMe7Q>.

CLS Blue Sky Blog, *Should All Trading While in Possession of Inside Information Be Illegal?*, April, 4, 2022, available at: <https://clsbluesky.law.columbia.edu/2022/04/04/should-all-trading-while-in-possession-of-inside-information-be-illegal/>.

KPCC AirTalk, *Legal Experts Debate Whether Releasing CEO-to-Median Pay Ratios Causes Confusion or Keeps Companies Accountable*, May 7, 2019.

CLS Blue Sky Blog, *Salman Insider-Trading Case a Hollow Win for Prosecutors*, December 14, 2016.

Wall Street Journal, *Corporate Political Gifts: Count 'em if You Can*, September 8, 2014.

New York Times: DealBook, *Why Facebook is Paying the Tax Tab on Employee Compensation*, September 20, 2012.

Politico, *Facebook not Partying Like 1999*, May 18, 2012.

Bloomberg News, *Apple Should Disclose Liver Transplant, Experts Say*, June 22, 2009.

SELECTED CONFERENCE ATTENDANCE

American Law and Economics Association Annual Meeting (2003, 2004, 2005, 2006, 2007, 2008, 2016, 2018, 2019, 2020, 2021, 2022)

AALS Annual Meeting (2006, 2007, 2008, 2009, 2010, 2012, 2015, 2017, 2018, 2019, 2021, 2022)

AALS New Professors Workshop (2006)

Behavioral Decision Research in Management Conference (2006)

Law and Emotion Inaugural Conference (2007)

Law and Entrepreneurship Conference (2007, 2008, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017)

Law and Society Association Annual Meeting (2007, 2009, 2012)

The Panic of 2008: Causes, Consequences, and Proposals for Reform, George Washington University Law School (2009)

Society for Empirical Legal Studies Annual Conference (2007, 2008, 2009, 2012, 2013, 2014, 2016)

The Society for Evolutionary Analysis in Law (2007, 2009, 2010, 2011, 2012, 2013, 2014, 2016)

Southeastern Association of Law Schools Annual Meeting (2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020)

UCLA Corporate Governance Colloquium (2006, 2007)

UCLA Law, Economics and Organization Seminars (2007)

UCLA Financial Accounting Workshops (2004 - present)

USC Law, Economics and Organization Workshops (2003, 2004)

RELATED WORK EXPERIENCE

SELECTED INDUSTRY EXPERIENCE

Senior Vice President, Strategy, eCompanies, Santa Monica, California

Oversaw the formation and initial development of sixteen internet companies.

Vice President, CitySearch/Ticketmaster-CitySearch/IAC, Pasadena, California

Responsible for business development before and after the firm's initial public offering.

Oversaw mergers and acquisitions transactions, including the purchase of Match.com.

Consultant, MGM Interactive, Santa Monica, California

Supervised development of interactive projects based on the James Bond character and managed business and legal negotiations.

Vice President, Time Warner Interactive, Burbank, California

Supervised business and creative affairs for a division of Time Warner focused on creating interactive entertainment content.

Associate, Warburg Pincus, Los Angeles, California

Evaluated potential investment opportunities and monitored current investments.

Analyst, Morgan Stanley, New York, New York

Prepared financial analysis for mergers and acquisitions transactions.

SELECTED PUBLIC SERVICE EXPERIENCE

Director, Hill and Dale Family Learning Center, Santa Monica, California

Former member of the Board of Directors of this non-profit preschool serving infants and toddlers in the Santa Monica area. Member of the finance and governance committees.

President, Digital Coast Roundtable, Los Angeles, California

Led a group of business and civic leaders, formed with the mayor of Los Angeles, to promote the growth of the technology industry in Southern California.

AWARDS/PROFESSIONAL AFFILIATIONS

Incoming Chair – AALS Section on Securities Regulation
Advisor, 2016, 2017, 2018, & 2019 Securities and Exchange Commission Forums on Small Business Capital Formation
Committee Chairman, Ad-Hoc Committee on International LLM Programs (Loyola Law School)
Committee Chairman, Strategic Planning Committee (Loyola Law School)
Committee Chairman, Research and Sabbaticals Committee (Loyola Law School)
Chair-Elect, AALS Section on Securities Regulation (2022-2023)
Faculty Member, Dean’s Advisory Committee (Loyola Law School)
Faculty Member, Entry-Level Appointments Committee (Loyola Law School)
Faculty Member, Faculty Workshop Committee (Loyola Law School)
Faculty Advisor, Business Law Association (Boyd School of Law)
Faculty Member, U.S. News Rankings Task Force (Boyd School of Law)
Faculty Member, Bar Passage Task Force (Boyd School of Law)
Member, American Law and Economics Association
Member, Society for Empirical Analysis of the Law
Member, Society for Evolutionary Analysis in Law
Member of the Bar of the State of California
Referee, The Review of Law and Economics
Referee, The International Review of Law and Economics
Runner-up, Professor of the Year 2006-07 (Boyd School of Law)
Secretary and Vice President, Society for Evolutionary Analysis in Law (2013 – 2016)