

16th Annual
**BRIGHAM-KANNER
PROPERTY RIGHTS CONFERENCE**
*and Presentation of the
2019 BRIGHAM-KANNER PRIZE*

to
STEVEN J. EAGLE

*Professor Emeritus of Law
The Antonin Scalia School of Law at
George Mason University*

**October 3–4, 2019
Williamsburg, Virginia**



**Sponsored by
William & Mary Law School**

**Presented by the
William & Mary Property
Rights Project**



**WILLIAM & MARY
LAW SCHOOL**

OCTOBER 3-4, 2019
WILLIAM & MARY LAW SCHOOL

16th
ANNUAL

BRIGHAM-KANNER
PROPERTY RIGHTS
CONFERENCE

THE BRIGHAM-KANNER PROPERTY RIGHTS CONFERENCE

The Brigham-Kanner Property Rights Conference, Prize, and *Journal* are named in recognition of Toby Prince Brigham and Gideon Kanner for their lifetime contributions to private property rights and their efforts to advance constitutional protection of property. The Brigham-Kanner Property Rights Conference began in 2004 at William & Mary Law School. The Conference is designed to bring together members of the bench, bar, and academia to explore recent developments in the law that affect property rights. The Prize is awarded each year to an individual whose work affirms that property rights are fundamental to protecting individual liberty.

The *Brigham-Kanner Property Rights Journal* was established in 2012 to provide a forum for scholarly debate on property rights issues. The *Journal* publishes papers presented at the annual conference with the goal of extending the debate to a wider audience. Through the *Journal*, the Property Rights Project ensures that the proceedings of the Conference and any accompanying nonconference articles selected for publication are preserved and made available on its website for all interested parties. The *Journal* is available in print and electronic form through the Project's website, <http://law.wm.edu/academics/intellectuallife/researchcenters/property-rights-project/conference-journal/index.php>.

SCHEDULE

OF EVENTS

Thursday, October 3, 2019

- 6:30 pm** **RECEPTION**
 President's Gallery, Wren Building
(please note the Wren Building has limited accessibility for people with physical disabilities)
- 7:30 pm** **DINNER AND PRESENTATION OF THE 2019 BRIGHAM-KANNER PRIZE**
 Great Hall, Wren Building

Opening Remarks, Steven J. Eagle, Professor Emeritus of Law, Antonin Scalia Law School, George Mason University

Panelists

Thomas W. Merrill, Charles Evans Hughes Professor of Law, Columbia Law School

David L. Callies, FAICP, Benjamin A. Kudo Professor of Law, William S. Richardson School of Law, University of Hawaii at Manoa

James S. Burling, Director of Litigation, Pacific Legal Foundation, Sacramento, California

Friday, October 4, 2019

- 8:30 am** **REGISTRATION AND CONTINENTAL BREAKFAST**
 William & Mary Law School
- 9:00 am – 10:30 am** **Panel 1: *The State of Regulatory Takings Jurisprudence: A Tribute to Eagle***

Moderator

Lynda L. Butler, Chancellor Professor of Law and Director, Property Rights Project, William & Mary Law School

10:30 am – 10:45 am **Networking Break**

10:45 am – 12:00 noon **Panel 2: *Public Resources and Private Rights***

Since the regulatory takings doctrine first emerged almost 100 years ago, it has been analyzed, probed, and debated by many. Despite the years of debate, the Supreme Court still faces significant questions about the scope and meaning of the doctrine. From the issue of the choice of denominator, to the role of economic impact and investment-backed expectations, the wisdom of an ad hoc versus per se approach, and the doctrine's very constitutionality, the Court still has not clearly resolved fundamental questions about the doctrine. One of the nation's leading property rights scholars, Steven Eagle has devoted years to analyzing the complex field of regulatory takings. Using Eagle's work as a springboard, Panel 1 will discuss the current state of regulatory takings jurisprudence.

Because of the economic and individual rights focus of American property law, many view the institution of property primarily as a realm of private rights. Privatization of public or common resources is often viewed as preferable and has led to many actions questioning or eliminating public interests in tangible and intangible resources. Others view the institution of property as involving a continuum of arrangements varying from government-owned and inherently public property to open access, semi-commons, and private property. Panel 2 will consider these different views, discussing the approaches of legislatures, courts, and commentators to the balance between public and private interests in resources.

Panelists

Henry E. Smith, Professor of Law, Harvard Law School

Michael A. Heller, Lawrence A. Wien Professor of Real Estate Law, Columbia Law School

The Honorable Ken Bell, Shareholder and Former Florida Supreme Court Justice, Gunster Law Firm, Tallahassee, Florida

Robert H. Thomas, Director, Damon Key Leong Kupchak Hastert, Honolulu, Hawaii

Moderator

Katherine Mims Crocker, Assistant Professor of Law, William & Mary Law School

12:15 pm – 1:15 pm Lunch Roundtable: *Emerging Issues in Takings Litigation*

Panelists

The Honorable Virginia Norton, Judge of Fourth Circuit Court in Florida

Mark F. (Thor) Hearne II, Esq., Partner, Arent Fox LLP Law Firm, St. Louis, Missouri

Shelley Saxer, Laure Sudreau-Rippe Chair in Law, Pepperdine University School of Law School

Moderator

Joseph T. Waldo, Partner & President, Waldo & Lyle, P.C., Norfolk, Virginia

1:30 pm – 2:45 pm

Panel 3: *Natural Gas and Other Energy Takings: Protecting Private Property Rights When the Public Interest Is Promoted by a Non-Governmental Entity*

Although the power of eminent domain is an attribute of sovereignty, a number of federal statutes authorize the use of eminent domain by utilities and private, for-profit companies to acquire easements and other property interests for approved projects. Landowners often find themselves overwhelmed when private companies and utilities condemn their property rights. In addition to public use issues, landowners increasingly face the prospect of federal courts granting the companies injunctive relief for immediate possession – before any compensation issues are resolved or quick take has occurred. These condemnations raise fundamental questions of federalism and choice of law relating to the measure of compensation, the valuation process, and the type of evidence admissible in court. How should property rights be protected when property is taken by non-governmental entities? Panel 3 will address these and other issues.

Panelists

James W. Ely Jr., Milton R. Underwood Professor of Law, Emeritus, and Professor of History, Emeritus, Vanderbilt University

Stewart E. Sterk, H. Bert and Ruth Mack Professor of Real Estate Law; Director, Center for Real Estate Law & Policy

Alexandra Klass, Distinguished McKnight University Professor, University of Minnesota Law School

Andrew Prince Brigham, Attorney and Managing Owner, Brigham Property Rights Law Firm, Jacksonville, Florida

Moderator

Stephen J. Clarke, Partner, Waldo & Lyle, P.C.,
Norfolk, Virginia

2:45 pm – Networking Break
3:00 pm

3:00 pm – Panel 4: *Property and Poverty*
4:15 pm

4:15 pm – RECEPTION
4:45 pm

**Additional abstracts and materials for panelists' presentations can be found at <https://law.wm.edu/academics/intellectuallife/conferencesandlectures/propertyrights/abstracts/index.php>*

As the problem of income inequality worsens and housing shortages for middle and low-income classes grow, more attention is being drawn to property's impact on these social problems. What is property's role in addressing or contributing to the widening gap in income or the housing shortage in a growing number of urban areas? How, if at all, does a stable system of property rights help the poor to improve their lives in a free market economy? Do other types of property systems and economies more effectively serve the poor while contributing to social and political cohesion? Panel 4 will address these and other questions about the relationship between property and poverty.

Panelists

Laura Underkuffler, J. DuPratt White Professor
of Law, Cornell Law School

Rashmi Dyal-Chand, Professor of Law,
Northeastern University School of Law

Dana Berliner, Senior Vice President and
Litigation Director, Institute for Justice,
Arlington, Virginia

Larry Salzman, Director of Litigation, Pacific
Legal Foundation, Sacramento, California

Moderator

Myrisha S. Lewis, Assistant Professor, William
& Mary Law School

THE BRIGHAM-KANNER PROPERTY RIGHTS PRIZE

Every year during the Brigham-Kanner Property Rights Conference, the Property Rights Project presents the Brigham-Kanner Prize to an outstanding figure in the field. The Prize is named in recognition of Toby Prince Brigham and Gideon Kanner for their lifetime contributions to private property rights, their efforts to advance constitutional protections of property, and their accomplishments in preserving the important role that private property plays in protecting individual and civil rights. Toby Prince Brigham is a founding partner of Brigham Moore, LLP, in Florida and, prior to his retirement, practiced eminent domain and property rights law for more than fifty years. Gideon Kanner is Professor of Law, Emeritus, at Loyola Law School in Los Angeles, California.

This year, the Brigham-Kanner Prize will be awarded to Professor Steven J. Eagle for his important role in the ongoing dialogue among American legal scholars, lawyers, and judges on the proper interpretation of property rights.

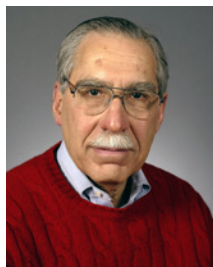
Steven J. Eagle



Steven J. Eagle is Professor Emeritus of Law at the Antonin Scalia Law School, George Mason University. His teaching focused on property, land use planning, and constitutional law. He is the author of *Regulatory Takings*, the leading treatise on the subject, and *The Four-Factor Penn Central Regulatory Takings Test*, which was cited by the Supreme Court of the United States in *Murr v. Wisconsin*. Professor Eagle also is the author of numerous other scholarly and popular works on the nature of property rights and land use regulation, and lectures extensively on these topics.

PAST RECIPIENTS

OF THE BRIGHAM-KANNER PRIZE



2004 Frank I. Michelman

Frank I. Michelman is Robert Walmsley University Professor, *Emeritus*, at Harvard University, where he taught from 1963 to 2012. He is the author of *Brennan and Democracy* (1999), and has published widely in the fields of property law and theory, constitutional law and theory, comparative constitutionalism, South African constitutionalism, local government law, and general legal theory. Professor Michelman is a fellow of the American Academy of Arts and Sciences and a past president (1994–1995) of the American Society for Political and Legal Philosophy. He has served on the Committee of Directors for the annual Prague Conference on Philosophy and the Social Sciences, the Board of Directors of the United States Association of Constitutional Law, and the National Advisory Board of the American Constitution Society. In 2005, Professor Michelman was awarded the American Philosophical Society's Phillips Prize in Jurisprudence and, in 2004, the Brigham-Kanner Property Rights Prize.

In January 1995 and again in January 1996, Professor Michelman served as a co-organizer and co-leader of Judges' Conferences sponsored by the Centre on Applied Legal Studies of the University of the Witwatersrand, devoted to matters of constitutional law in South Africa. In December 2011, Professor Michelman delivered the keynote address for a multiday conference on "The 20th Anniversary of Israel's Human Rights Revolution," at a session held at the Knesset, Jerusalem.



2005 Richard A. Epstein

Professor Richard A. Epstein is the inaugural Laurence A. Tisch Professor of Law at the New York University School of Law. He is also the Peter and Kirsten Bedford Senior Fellow at the Hoover Institution, and the James Parker Hall Distinguished Service Professor of Law, *Emeritus*, and Senior Lecturer at the University of Chicago Law School. He is an Adjunct Scholar at the Cato Institute and a Visiting Scholar at the Manhattan Institute. He has served as editor of the *Journal of Legal Studies* and the *Journal of Law and Economics*. He has written on a wide range of legal and interdisciplinary topics and is the author of numerous works including *The Classical Liberal Constitution: The Uncertain Quest for Limited Government* (Harvard University Press 2014), *Design for Liberty: Private Property, Public Administration, and the Rule of Law* (Harvard University Press 2011), *Skepticism and Freedom: A Modern Case for Classical Liberalism* (University of Chicago Press 2003), *Simple Rules for a Complex World* (Harvard University Press 1995), *Bargaining with the State* (Princeton University Press 1993) and *Takings: Private Property and the Power of Eminent Domain* (Harvard University Press 1985). He was inducted into the American Academy of Arts and Sciences in 1985 and was awarded the Bradley Prize in 2011.



2006 James W. Ely Jr.

Professor James W. Ely Jr., is Milton R. Underwood Professor of law, *Emeritus*, and Professor of History, *Emeritus*, at Vanderbilt University. He has written about a wide range of topics in legal history and is the author of numerous works including *The Guardian of Every Other Right*:

A Constitutional History of Property Rights (Oxford University Press 3rd ed. 2008), *American Legal History: Cases and Materials* (Oxford University Press 4th ed. 2011) (with Kermit L. Hall and Paul Finkelman), *The Fuller Court: Justices, Rulings, and Legacy* (ABC-CLIO 2003), *Railroads and American Law* (University Press of Kansas 2001), and *The Chief Justiceship of Melville W. Fuller, 1888–1910* (1995) (paperback ed. 2012). His most recent book is *The Contract Clause: A Constitutional History* (2016). Ely served as assistant editor of the *American Journal of Legal History* from 1987 to 1999.



2007 Margaret Jane Radin

Professor Margaret Jane Radin is the Henry King Ransom Professor of Law at the University of Michigan Law School and Faculty of Law Distinguished Research Scholar at the University of Toronto. Prior to joining the Michigan faculty in fall 2007, she was the William Benjamin Scott and Luna M. Scott Professor of Law at Stanford University, and director of Stanford Law School's Program in Law, Science, and Technology. She also has been on the faculty of the University of Southern California Law Center and has been a visiting professor at UCLA, NYU, Berkeley, and Harvard. Radin has published prolifically on property rights theory and institutions, commodification, intellectual property, and cyberlaw, as well as on contracts and legal theory. Highlights of her property scholarship include *Contested Commodities* (Harvard University Press 1996) and *Reinterpreting Property* (University of Chicago Press 1993). Radin is a Fellow of the American Academy of Arts and Sciences.



2008 Robert C. Ellickson

Professor Robert C. Ellickson is the Walter E. Meyer Professor of Property and Urban Law and Professorial Lecturer in Law at Yale Law School. Prior to joining the Yale faculty in 1988, he was a member of the law faculties at the University

of Southern California and Stanford University. Professor Ellickson's books include *The Household: Informal Order Around the Hearth* (Princeton University Press 2008), *Order Without Law: How Neighbors Settle Disputes* (Harvard University Press 1991), *Land Use Controls* (Aspen Law and Business 4th ed. 2013) (with Vicki L. Been, Roderick M. Hills, Jr., and Christopher Serkin), and *Perspectives on Property Law* (Aspen Law and Business 4th ed. 2014) (with Carol M. Rose and Henry E. Smith). He is a fellow of the American Academy of Arts and Sciences and was President of the American Law and Economics Association in 2001.



2009 Richard E. Pipes

Richard E. Pipes was the Frank B. Baird, Jr., Professor of History, *Emeritus*, at Harvard University. Among his appointments, he served as director of Harvard University's Russian Research Center from 1968–1973, as chairman of the CIA's "Team B" to review Strategic Intelligence Estimates in 1976, and as director of East European and Soviet Affairs in President Ronald Reagan's National Security Council from 1981–1982. Professor Pipes's books included *Formation of the Soviet Union: Communism and Nationalism, 1917–1923* (Russian Research Center Studies 1954, 1964, 1998), *Struve: Liberal on the Left, 1870–1905* (Russian Research Center Studies 1970) (v. 1), *Russia under the Old Regime* (Penguin History 1974), *Struve: Liberal on the Right, 1905–1944* (Russian Research Center Studies 1980) (v. 2), *The Russian Revolution* (Vintage 1990), *Russia Under the Bolshevik Regime* (Vintage 1994), *Property and Freedom* (Vintage 1999), *Communism: A History* (Modern Library 2001), and *Vixi: The Memoirs Property and the Power of Eminent Domain* (Harvard University Press 1985). Professor Pipes was the 2007 recipient of the National Humanities Medal.



2010 Carol M. Rose

Carol M. Rose is the Gordon Bradford Tweedy Professor of Law and Organization, *Emerita*, at Yale Law School and the Ashby Lohse Professor of Water and Natural Resource

Law, *Emerita*, at the University of Arizona Law College. Her research focuses on the history and theory of property, and on the relationships between property and environmental law. Her writings include four books—*Saving the Neighborhood: Racially Restrictive Covenants, Law, and Social Norms* (2013) (with R. R. W. Brooks); *El Derecho de Propiedad en Clave Interdisciplinaria [The Right to Property in an Interdisciplinary Key]* (2010); *Property and Persuasion* (1994); and *Perspectives on Property Law* (4th ed. 2014) (with R.C. Ellickson and H. E. Smith)—as well as numerous articles on traditional and modern property regimes, environmental law, natural resource law, and intellectual property. Her work has appeared in journals and anthologies in other countries and has been translated into other languages, particularly Italian, Spanish, and Chinese. She has degrees from Antioch College (B.A. Philosophy), the University of Chicago (M.A. Political Science, J.D. Law), and Cornell University (Ph.D. History), and an Honorary Degree from the Chicago Kent College of Law. She is a member of the American Academy of Arts and Sciences.



2011 Justice Sandra Day O'Connor

Justice Sandra Day O'Connor received the 2011 prize at the eighth annual conference, which was held in Beijing. The 2011 conference was co-sponsored

by Tsinghua University School of Law and was a featured event during the university's celebration of the hundredth anniversary of its founding.

Justice O'Connor served as an Associate Justice of the Supreme Court from 1981 to 2006 and as Chancellor of the College of William & Mary

from 2005 until 2011. In May 2010, the William & Mary Law School faculty awarded her its highest honor, the Marshall-Wythe Medallion, in recognition of her exceptional accomplishments and leadership. Justice O'Connor served as an Arizona assistant attorney general from 1965 to 1969, when she was appointed to a vacancy in the Arizona Senate. In 1974, she ran successfully for trial judge, a position she held until she was appointed to the Arizona Court of Appeals in 1979. Eighteen months later, on July 7, 1981, President Ronald Reagan nominated her to the Supreme Court.



2012 James E. Krier

Professor James E. Krier, Earl Warren DeLano Professor of Law Emeritus at University of Michigan Law School, was awarded the 2012 Brigham-Kanner Property Rights Prize

at the ninth annual conference. His teaching has included courses on property, trusts and estates, behavioral law and economics, and pollution policy. His research interests are primarily in the fields of property and law and economics, and he is the author or co-author of several books, including *Environmental Law and Policy* (Bobbs-Merrill Co. 1978) (with R.B. Stewart), *Pollution and Policy* (University of California Press 1977) (with E. Ursin), and *Property* (Aspen Publishing 9th ed. 2018). His most recent articles have been published in *Harvard Law Review*, *Supreme Court Economic Review*, *UCLA Law Review*, *Cornell Law Review*, and *William & Mary Law Review*. A professor of law at UCLA and Stanford before joining the Michigan Law faculty in 1983, he has been a visiting professor at Harvard University Law School, Cardozo School of Law, and the University of Alabama School of Law.



2013 Thomas W. Merrill

Thomas Merrill is the Charles Evans Hughes Professor of Law at Columbia Law School. He is a preeminent property law scholar. Merrill served as the deputy solicitor general for the Department

of Justice in the late 1980s. For several years, he worked for the firm Sidley, Austin, Brown & Wood in Chicago. He has also worked as an investment analyst for the National Bank of Detroit from 1973 to 1974.

Merrill has previously taught at Northwestern Law School from 1981 to 2003 and at Yale Law School from 2008 to 2010. He is a member of the American Academy of Arts & Sciences. He clerked for the Honorable David L. Bazelon, U.S. Circuit Court of Appeals for the District of Columbia, and for the Honorable Harry A. Blackmun on the Supreme Court. Merrill writes widely in the fields of property and administrative law. His writings in the field of property law focus primarily on constitutional property. In administrative law, he has written a number of pieces about the history of administrative law and about judicial review of agency interpretations of law.



2014 Michael M. Berger

Michael M. Berger is one of the top eminent domain and land use lawyers in the United States. His appellate practice at Manatt, Phelps & Phillips has involved condemnation, due process, and

equal protection. He is the first practicing lawyer to receive the Brigham-Kanner Property Rights Prize and is considered by his peers to be among the best takings lawyers in the nation.

Mr. Berger has argued four cases before the U.S. Supreme Court, as well as cases before appellate courts throughout California, numerous federal courts of appeal, and several state supreme courts. He is also a frequent author of amicus curiae briefs in various appellate courts, particularly the U.S. Supreme Court, pressing client interests in important pending cases. His energetic defense of property owners

contributed major decisions to Fifth Amendment jurisprudence, including *Tahoe-Sierra* (where Mr. Berger's opposing counsel was John Roberts, who is now Chief Justice of the United States), *Del Monte Dunes*, *Preseault*, and *First English*.

After attending Brandeis University, Mr. Berger received his J.D. from Washington University School of Law and his LL.M. (in real property) from the University of Southern California.



2015 Joseph William Singer

Singer has long been recognized as one of the nation's foremost theorists in property law. In addition to a casebook and treatise on property law, he is the

author of *Entitlement: The Paradoxes of Property* (Yale University Press 2000), *The Edges of the Field: Lessons on the Obligations of Ownership* (Beacon Press 2000), and *No Freedom Without Regulation: The Hidden Lesson of the Subprime Crisis* (Yale University Press 2015).

Singer, who joined the Harvard Law School faculty in 1992, was appointed Harvard's Bussey Professor of Law in 2006. Prior to that, he taught at Boston University School of Law, practiced law in Boston, and served as a law clerk to Justice Morris Pashman of the Supreme Court of New Jersey. In addition to books on property law and federal Indian law, he has published more than eighty law review articles. He received his law degree and master's degree (Political Science) from Harvard and is a graduate of Williams College.



2016 Hernando de Soto

Hernando de Soto is the author of *The Mystery of Capital: Why Capitalism Triumphs in the West and Fails Everywhere Else* (Basic Books 2000); *The Other Path: The Economic*

Answer to Terrorism (Basic Books 2002), which includes a new updated preface, "The Other Path after

Ten Years”; and *Swiss Human Rights Book Volume I: Realizing Property Rights* (2006), co-authored with Francis Cheneval. He has received numerous international recognitions and honors including, for example, the Adam Smith Award (Association of Private Enterprise Education), BearingPoint, Inc.-Forbes Magazine Compass Award for Strategic Direction, the CARE Canada Award for Outstanding Development Thinking, *The Economist* magazine’s Innovation Award, the Freedom Prize (Max Schmidheiny Foundation), and the Milton Friedman Prize for Advancing Liberty (Cato Institute).

and on land use, and he also edits the *New York Real Estate Law Reporter*, a monthly newsletter published with the assistance of Cardozo students.

The winner of a number of teaching awards at Cardozo, Sterk has taught as a visiting professor at Columbia and at the University of Pennsylvania, and has also taught at N.Y.U.



2017 David L. Callies

David Callies, (J.D., University of Michigan; LL.M., Nottingham University; Life Member, Clare Hall, Cambridge), holds the Kudo chair in Law, William S. Richardson Law School,

and is an elected member of the College of Fellows, American Institute of Certified Planners; American College of Real Estate Lawyers; and the American Law Institute. He is past chair of the ABA and AALS State and Local Gov. Law and the HSBA Section of Real Property and Financial Services.



2018 Stewart E. Sterk

Professor Stewart E. Sterk is the H. Bert and Ruth Mack Professor of Real Estate Law and Director of the Center for Real Estate Law & Policy at the Benjamin Cardozo School of

Law of Yeshiva University in New York City. His publications include a number of articles on takings law and the law of servitudes, but he has written in a wide variety of areas, ranging from property and land use regulation to trusts and estates, copyright, and the conflict of laws. A member of the American Law Institute, Sterk served as an advisor in the preparation of the *Restatement (Third) of Property (Servitudes)*. He has co-authored casebooks on trusts and estates

PANELISTS AND MODERATORS

BIOGRAPHIES



The Honorable Ken Bell

Ken Bell is a shareholder of Gunster, a Florida-only, state-wide business law firm. He co-chairs the firm's appellate practice. While appeals constitute the bulk of his practice,

Ken also serves as an arbitrator, civil mediator, and expert witness in legal malpractice cases. Ken is a former Florida Supreme Court Justice, serving from 2002–2008. Prior to serving on Florida's highest court, Ken was a circuit judge from 1991–2002. During his twelve years on the circuit court bench, Ken handled more than 27,500 cases as a general jurisdiction judge, and was actively involved in seeking to improve the judicial system.



Dana Berliner

Dana Berliner serves as Senior Vice President and Litigation Director at the Institute for Justice, where she has worked as a lawyer since 1994. The focus of Dana's litigation at the Institute for Justice has been

property rights. She successfully represented a boxing gym and mentoring program for at-risk youth in 2013; home and business owners in Norwood, Ohio in 2006; and, along with co-counsel Scott Bullock, the homeowners in *Kelo v. New London*. Since 2008, Dana has been recognized every year as a "Best Lawyer" in eminent domain and condemnation law by the publication *Best Lawyers in America*. In 2016, Dana began her role as the Institute for Justice's Senior Vice President.



Andrew Prince Brigham

Andrew Prince Brigham is a third-generation trial lawyer with experience in complex, high-profile cases. He is best known for work throughout Florida representing property

owners in eminent domain proceedings. His energetic style of practice reflects his view that it is a privilege to protect the civil right of private ownership, and that law practice is a high, professional calling. See <http://www.propertyrights.com>.



James S. Burling

James Burling is Pacific Legal Foundation's Vice President for Legal Affairs in Sacramento, California, and litigates property rights cases nationwide. In 2001, he argued *Palazzolo v. Rhode Island* before the

Supreme Court. He received a master's degree in geological sciences from Brown University, an undergraduate degree from Hamilton College, and his Juris Doctor from the University of Arizona College of Law in 1983.



Lynda L. Butler

Lynda Butler specializes in property rights and property law, land and water use, and environmental policy. She received her J.D. from the University of Virginia and her B.S. from the College of William & Mary.

Prior to joining the faculty at William & Mary Law School, she practiced at Wilmer, Cutler & Pickering in Washington, D.C.



Stephen J. Clarke

Believing that property rights are fundamental to liberty, Steve limits his practice to representing property owners in eminent domain and property rights litigation. Steve has appeared in courts around Virginia and in

West Virginia, representing homeowners, farmers, small business owners, and Fortune 500 companies. He regularly speaks and writes about the importance of private property ownership.



Katherine Mims Crocker

Professor Crocker joined the faculty of William & Mary Law School in 2019. Her fields of interest include federal courts, constitutional law, state and local government law, and prop-

erty law. She has published articles in the *Michigan Law Review* and the *Georgia Law Review*, and essays in the *Notre Dame Law Review* and the *Michigan Law Review Online*.



Rashmi Dyal-Chand

Rashmi Dyal-Chand teaches and writes about property, poverty, local economic development, and consumer law. She is the author of *Collaborative Capitalism in American Cities: Reforming Urban Market Reg-*

ulations (Cambridge, 2018) and a coeditor of *Legal Scholarship for the Urban Core: From the Ground Up* (Cambridge, 2019). Her law practice included serving as associate general counsel for The Community Builders, a nonprofit affordable housing developer.



Mark F. (Thor) Hearne II

Thor Hearne, a partner with Larson O'Brien LLP, has earned a national reputation for his work in complex federal litigation and appeals, especially matters involving property rights

and election law. Thor was named one of the nation's top fifty "Litigation Trailblazers and Pioneers" by the *National Law Journal* and serves as the Owners' Counsel of America member for the District of Columbia.



Michael A. Heller

Michael Heller is the Lawrence A. Wien Professor of Real Estate Law at Columbia Law School and has served as the school's vice dean for intellectual life. He writes and teaches on private law theory, with a focus on property, contracts, and land use. Heller has

authored dozens of articles and several books, including, most recently, *The Choice Theory of Contracts* (Cambridge University Press, 2017) (with Hanoch Dagan).



Alexandra B. Klass

Alexandra B. Klass is a Distinguished McKnight University Professor at the University of Minnesota Law School. Her recent scholarly work addresses regulatory challenges to U.S. energy transitions, siting and

eminent domain for energy transport projects, and applications of the public trust doctrine to modern environmental law challenges. Prior to her teaching career, she was a partner at Dorsey & Whitney LLP in Minneapolis.



Myrisha S. Lewis

Myrisha S. Lewis is an Assistant Professor of Law at the William & Mary Law School where she teaches Health Law, Bioethics, and Property. Professor Lewis earned a law degree from Columbia Law School and an A.B.

in Government from Harvard College.



The Honorable Virginia Baker Norton

The Honorable Virginia Baker Norton was elected as a Circuit Court Judge for the Fourth Judicial Circuit in August of 2008. Judge Norton has

served as an Associate Judge with the First District Court of Appeal, assigned to Division FM-G of the Family Division, and assigned to Division CR-H of the Felony Division. In 2014, Judge Norton began to preside over Division CV-D of the Civil Division, and in 2015, she was selected to serve as the Administrative Judge of the Civil Division. Judge Norton has presided over approximately one hundred twenty jury trials, including death penalty trials. In 2016, Judge Norton received her LLM in Judicial Studies from Duke University School of Law. While there, she was editor-in-chief of the autumn edition of *Judicature Magazine*. In 2017, Judge Norton was named as the recipient of the Florida Supreme Court Chief Justice's Distinguished Judicial Service Award and was named Jurist of the Year by the American Board of Trial Advocates, Jacksonville Chapter.



Larry Salzman

Larry Salzman is Pacific Legal Foundation's Litigation Director. His practice has focused on property rights and economic liberty, including cases involving eminent domain, civil forfeiture, regulatory takings and

exactions, the Commerce Clause, federalism, and

challenges to occupational licensing and "certificate of need" laws that infringe on the constitutional right to earn a living.



Shelley Ross Saxer

A graduate of Pepperdine University and UCLA School of Law, Professor Saxer teaches and writes about property, land use, environmental, water, and ecological resilience and sustainability. Saxer is a co-author

of *Contemporary Property*, West (5th ed. Medill, Nelson, & Whitman 2019). She is also a co-author of *Socio-Ecological Resilience and Sustainability*, Wolters Kluwer (1st ed. Rosenbloom 2018) and *Land Use*, West (7th ed. Callies & Freilich 2017).



Henry E. Smith

Henry E. Smith is the Fessenden Professor of Law at Harvard Law School, where he directs the Project on the Foundations of Private Law. He is also the Reporter for the American Law Institute's *Restatement Fourth*

of *Property*. Smith has written and taught primarily in the areas of property, intellectual property, natural resources, remedies, and law and economics.



Robert H. Thomas

Robert H. Thomas (LL.M., Columbia Law; J.D., University of Hawaii Law School), a Director with Damon Key Leong Kupchak Hastert, focuses on appellate law, regulatory takings, and eminent domain. He is

a member of Owners' Counsel of America and is the Managing Attorney for the Pacific Legal Foundation Hawaii Center. Previously, he taught law at the University of Santa Clara. For the fall 2019 semester, he is the Joseph T. Waldo Visiting Chair in Property Rights Law at William & Mary Law School.



Laura S. Underkuffler

Laura S. Underkuffler is the J. DuPratt White Professor of Law, Cornell Law School. She has published widely in the United States and abroad in the fields of property law, property theory, constitutional law, regime change, and the role of moral decision-making in law. She is the author of the book *The Idea of Property: Its Meaning and Power*.



Joseph T. Waldo

The founder of the Brigham-Kanner Property Rights Conference, Joe Waldo has practiced law since graduating from William & Mary Law School. He obtained his B.A. from the University of North Carolina at Chapel Hill. In 1998, he founded Waldo & Lyle, P.C., the only law firm in Virginia exclusively dedicated to representing property owners in eminent domain proceedings. He has tried over one hundred cases on behalf of property owners facing the exercise of the power of eminent domain. He is an elected member of the American Law Institute where he is an adviser on the *Restatement (Fourth) of Property*. He lectures, writes, and frequently makes appearances to advocate for the defense of individual property rights, drawing the connection to individual liberty and human dignity.

WILLIAM & MARY

LAW SCHOOL

Legal education began at William & Mary in 1779 at the urging of Thomas Jefferson. He was governor of Virginia at the time and a member of the College's Board of Visitors. Jefferson believed that aspiring members of the profession should be trained to be citizen lawyers—passionate legal advocates and honorable human beings. The College's Board created the first Chair of Law in the United States in that year, naming George Wythe as its first occupant. Students of Wythe included Thomas Jefferson, John Marshall, James Monroe, and Henry Clay. The growth of the law school was halted by the beginning of the Civil War in 1861. Sixty years later, the study of law was revived in a modern program that attracts students from all regions of the nation.

William & Mary Law School has hosted the Brigham-Kanner Property Rights Conference since 2004. In 2011 William & Mary co-sponsored the Conference with Tsinghua Law School in Beijing, China, and then in 2016 with the Grotius Center of International Legal Studies in The Hague, the Netherlands.

WILLIAM & MARY

Chartered in 1693 by Queen Mary II and King William III of England, William & Mary is the second oldest institution of higher learning in the country. William & Mary's student body has just over 8,740 full-time (graduate and undergraduate) students with an eleven to one student/faculty ratio. U.S. News and World Report: Best Colleges 2020 ranks William & Mary twelfth among top public schools in the country. Known as "the alma mater of a nation," William & Mary has educated three American presidents—Thomas Jefferson, James Monroe, and John Tyler—and George Washington served as its first chancellor.

Katherine A. Rowe was sworn in as the twenty-eight president of William & Mary on July 1, 2018, becoming the first female president of William & Mary in its 325-year history. Before assuming her current post, she served as provost and dean of faculty at Smith College in Massachusetts.

