

Business Law Program 2013–2014

The 2013-2014 academic year was again a busy period for the Business Law Program. In addition to reforming and rationalizing the curriculum in the law of banking, finance, financial institutions, and consumer finance—both at the domestic and international levels—the BLP increased its emphasis on forming careers and finding jobs. The Business Law Practice Group, led by faculty in fields ranging from real estate to tax to employee benefits and everything in between, began to work systematically with students interested in careers in business law. A number of existing events or programs were revamped to highlight career considerations, and these went on while numerous other events proceeded apace. Some highlights appear in the pages that follow.

AMERICAN UNIVERSITY BUSINESS LAW REVIEW Symposium: *Corporate Counterterrorism: The Role of Private Companies in National Security*

The symposium focused on the role of the private sector in U.S. counterterrorism programs, including surveillance, cybersecurity, and others. Assistant Attorney General for the Department of Justice National Security Division John P. Carlin delivered the keynote speech, and other participants included the general counsels and other senior lawyers for the Director of National Intelligence, the FBI, the National Security Agency, the Department of Homeland Security, Microsoft, Verizon, and Yahoo!



Marc Zwillinger, Michael J. Woods, Andrew Weissmann, Nate Jones, Merritt Baer, and Jennifer Daskal share government and private sector perspectives on private companies' involvement in counterterrorism policy.

IX Symposium on International Trade

Regional trade agreements and upcoming challenges for the World Trade Organization were the focal points for the symposium, which featured views from major trading partners, academic and international institutions, and the private sector, as well as representatives from the embassies of Brazil, France, South Africa, India, and China. Officials from the U.S. Trade Representative and the International Monetary Fund also took part in the wide-ranging discussions, which concentrated on currently proposed RTA's and other forward-looking issues.



Aluisio de Lima Campos outlines the Symposium's focus Regional Trade Agreements and the challenges ahead for the WTO and introduces keynote speaker Ambassador Mauro Vieira of Brazil.

Events

JD/MBA Program: “How to Use Your JD in Business” & Golf Outing

The JD/MBA Club hosted this panel discussion to explore how law students can use their JD degrees to pursue opportunities outside of traditional practice in corporate law firms. The panel featured speakers from the United States Attorney’s Office, the Department of Justice, and the Wall Street firm BlackRock, Inc. The JD/MBA Club also hosted a golf outing at East Potomac Golf Course, allowing students, practitioners, and alumni to network over food and fun.

The Law and Economics of Copyright Users’ Rights

This conference brought top scholars in economics and law to discuss the prospects for empirical research on copyright users’ rights to effect law reform around the world. Panelists reviewed scholarship on the relationship between copyright limitations and exceptions on the one hand and social and economic development on the other, and they discussed new avenues for research that would improve public understanding of the issue. A roundtable with copyright academics from around the region discussed the need for empirical evidence to promote balanced policymaking in areas where copyright reform initiatives are underway. The event concluded with a keynote address by Sunil Abraham from the Center for Internet and Society. He spoke on the relation between intellectual property flexibility and telecommunications innovation in India.

Public versus Private: Working in the Field of Labor and Employment Law

With an emphasis on opportunities for lawyers, this panel discussion explored many aspects of the field: labor and employment, public and private employees, and practice in the government and in private firms.

Discussion with Gaoxing Pan, Asia Environmental Counsel for GE

Gaoxiang Pan, Environmental Counsel for GE in Asia and responsible for advising the company’s business operations on regulatory initiatives and environmental compliance obligations in more than a dozen jurisdictions, provided an overview of Chinese environmental law and policy and described the challenges that face American companies that produce goods in China. Mr. Pan spoke about the changes to his practice over the last several years and about the opportunities available to young lawyers.

Practicing Business Law in the Public Sector

“Government Lawyers: Their Role and Obligations”

Amy S. Friend, Senior Deputy Comptroller and Chief Counsel at the Office of the Comptroller of the Currency, visited WCL to discuss how chief legal officers of government agencies balance legal and policy roles, how agency legal departments are organized, how ethical and free speech rights of government lawyers are restricted and what post-employment restrictions apply to government lawyers, and whether government lawyers should and do act in the public interest.

Ms. Friend oversees all of the agency’s legal activities, including legal advisory services to banks and examiners, enforcement and compliance activities, litigation, legislative initiatives, and regulation of securities and national banks.



Pension & Employment Benefit Law Panel

Current Issues, Trends, and Career Opportunities

The symposium addressed challenges facing regulators regarding retirement savings; looked to the current legal issues facing practitioners in plan design, operation, and representation; and highlighted careers and legal opportunities in the employee benefits field. The symposium featured Assistant Secretary of Labor Phyllis Borzi, as well as representatives from the Pension Benefit Guaranty Corporation, the Senate HELP Committee, the National Business Group on Health, and numerous firms.

Sustainable Development Law & Policy

Putting People First: Regulating Big Industry to Promote Environmental Health

The symposium explored the tension and balance between the demands of growing economies and populations, particularly in the areas of fracking, industrial farming, and chemical regulation, and the promotion of sustainable and environmentally compatible measures to protect the health of future generations.

Guiding Students

Business Law Program Orientation

Business law faculty, program staff, student leaders, and journal editors provide students with an overview of the courses, organizations, externships, publications, and other resources available to students interested in business law and related areas.

Business Law Curriculum Advising Sessions: Choosing Courses with Jobs in Mind

The Business Law Program hosts sessions where faculty and students offer wisdom on tailoring course selections to meet career interests as students choose from the 150-plus classes that WCL offers in business law and allied fields. Students ask questions about job requirements, employers' expectations, professors' styles, course content, and even offerings at the AU Kogod School of Business as well as other schools on main campus. This academic year has witnessed a revamping of the advice sessions to emphasize the strong relationship between student curricular choices in law school and their future job opportunities.

Business Law Program Career Fair

The Business Law Program and Externship Office coordinated a career fair specific to business law, focused on upperclassmen interested in pursuing careers related to law practice in business and finance. The fair included employers such as the Consumer Financial Protection Bureau, the Financial Industry Regulatory Authority, the Government of the District of Columbia, and the North American Securities Administrators Association, among many others.

Business Law Program Career Panel

The Business Law Program organized a panel of practitioners to discuss the realities of practice and to help students plan careers in business law. The event featured practitioners from the Consumer Financial Protection Bureau, the Federal Deposit Insurance Corporation, and Ernst & Young LLP.

Business Law Practice Group Resume Review

The Business Law Practice Group organized a resume review session where faculty and alumni met with students to provide specific and in-depth resume and career advice for those interested in business law.

Doctoral Research

The Doctor of Juridical Science (S.J.D.) is the most advanced degree at American University Washington College of Law and is designed for highly qualified lawyers seeking to pursue scholarly research and who are prepared to make original contributions to the legal literature. The following S.J.D. candidates defended their dissertations relating to business law in the 2013-2014 academic year.

Juan Antonio Gaviria Gil: "The Hold-Up Problem in Colombian Contract Law"

Eduardo Lycurgo Leite: "The Fair Use Doctrine as a Limitation/Exception to Copyright and the Three-Step Test in a Comparative Perspective of the Brazilian and American Copyright Systems"

Sana Onayeva: "Globalization or Sovereignty, Cooperation or Conflict: Adoption of the UNCITRAL Model Law on Cross-Border Insolvency in Kazakhstan"



The Business Law Program and the Externship Office organized a career fair with numerous employers, including the Credit Union National Association (pictured).

International Business

Rethinking International Anti-Money Laundering Regime

Roberto Durrieu, a professor at Universidad de Buenos Aires, discussed proposals for altering the international architecture of international anti-money laundering (IAML) from his new book, *Rethinking Money Laundering & Financing of Terrorism in International Law: Towards a New Global Order*. Additional panelists commented on the use of money laundering prosecution (MLP) and asset recovery (AR) to deal with transnational environmental crimes. The Obama Administration's recent initiative to use MLP and AR to combat wildlife trafficking received special notice. The program also considered recent developments in the interaction of money laundering enforcement with international tax and with stolen asset recovery regimes as well as this year's G8 initiative to prevent the misuse of corporations and other legal entity arrangements. Particular attention was given to the World Trade Organization, the Trans-Pacific Partnership, and the EU-US Transatlantic Trade and Investment Partnership.

International Arbitration Roundtable Discussion Series

The discussion series examined the influence of U.S. arbitration case law in international arbitration, current arbitration issues facing Brazil, and good and bad practices of arbitrators and lawyers. The roundtable served as a welcome for participants in the LL.M. and Investment Moot Competitions.

Managing the Global Environment Through Trade: WTO, TPP, and TTIP Negotiations

This conference facilitated a dialogue about how international trade rules and agreements relate to the enhancement of environmental protections and sustainable development while encouraging trade. Over the course of three panel discussions, the conference addressed past and current challenges to environmental protection that arise in the negotiation, drafting, compliance, and implementation of trade agreements.



Richard "Dick" Thornburgh, former U.S. Attorney General, Governor of Pennsylvania, and Undersecretary General of the United Nations, discusses efforts to curb white collar crime and official corruption.

U.S. & International Anti-Corruption Summer Law Program

The U.S. and International Anti-Corruption Law Program offers an intensive, five-day schedule taught by prominent experts. Courses focus on the Foreign Corrupt Practices Act and the evolving international legal regime governing transnational bribery; how multilateral development institutions identify, investigate, and mitigate corruption risk; the U.S. anticorruption legal and institutional framework; and corruption and human rights. A special track on the United Nations Convention Against Corruption, now in force in over 170 countries, analyzes the treaty provisions and their implementation; participation in the peer review mechanism; asset recovery and the impact of transnational law enforcement; and enhanced legal assistance.

The EU-US Transatlantic Trade and Investment Partnership

This Distinguished Speaker Series event featured João Vale de Almeida, Ambassador of the European Union to the United States and former Director General for External Relations at the European Commission. He spoke on the importance of the Transatlantic Trade and Investment Partnership as a reflection of the relationship across the northern Atlantic. He also addressed related regulatory obstacles.

Moot Court

Vis International Commercial Arbitration Moot

Students continue to participate in the annual Willem C. Vis International Commercial Arbitration Moot, traveling to its venues in both Vienna and Hong Kong. The moot is designed to introduce students to the law governing international sales of goods and to practice in the leading forums for international commercial arbitration. The students are given a problem that raises substantive commercial issues and procedural arbitral questions. They prepare for months under the tutelage of coaches experienced in the practice of international commercial arbitration and eventually compete abroad before highly regarded arbitrators.

Transactional Law Society

National IP Law Meet WCL TAKES FIRST PRIZE

The WCL Transactional Law Society team of Eric Gleysteen and Liz Dukette won the 2013 National IP LawMeet, besting law schools from around the country. This transactional lawyering competition challenges competitors to draft a term sheet for a deal involving intellectual property, to draft a markup of the opposing party's term sheet, and to negotiate with other teams. More than 20 teams competed.

Alternative Dispute Resolution

International Chamber of Commerce Mediation

Competitors tackle intricate international business problems applying ICC commercial mediation rules to mock cases. Held in Paris, this prestigious international competition pits WCL students against teams from around the globe.

Securities Dispute Resolution Triathlon

Student teams negotiate, mediate, and arbitrate a realistic securities dispute at this competition held annually in New York. Experienced neutrals from the Financial Industry Regulatory Authority serve as mediators, arbitrators, and judges.

Frankfurt Investment Arbitration Competition

The Investment Arbitration Moot is a moot court-style competition in which students respond to questions from a panel of experts about a complex foreign investment dispute.



WCL students Elliott Ponte, Angela Urbano, Jordan Stivers, Natalie Littlefield (coach), and Sean Griffin competed in the St. John's Securities Arbitration Competition. The team placed second in negotiation.

Faculty Workshop Series

The Business Law Faculty holds a monthly scholarly workshop where faculty present drafts of papers they are preparing for publication. The workshop functions as a faculty seminar in which the author introduces the discussion and the gathered scholars provide comments and questions based on their reading of the paper and on their knowledge of the law, business, and academic research. In addition, the WCL Distinguished Speaker Series features workshops each year in business law.



Sleeping Treaty: The Pan-American Trademark Convention **by Professor Christine Farley**

Professor Farley examines the 1929 General Inter-American Convention for Trade Mark and Commercial Protection, or the “Pan-American Convention,” one of the few multilateral trademark treaties in force. While the treaty is often overlooked—evident from Harvard

College’s recent litigation against Bogotá, Colombia’s “Colegio Harvard”—foreign case law suggests that the Convention has not been forgotten in other member states. As holders of globalized trademarks pursue increased protection, the sleeping rights this treaty offers may soon awaken. Professor Farley examines the treaty, which provides novel priority rights, a detailed set of protections against unfair competition, and strong protections for geographical indications. In particular, the priority provisions could be an effective strategy to protect well-known marks since the treaty precludes the registration and use of a mark by anyone who has knowledge of the existence of that mark in any contracting state. Professor Farley explores why so few U.S. cases invoke this Convention, especially given the weight of its substantive provisions.



Tranche Warfare: Regulating Charitable Investment in For-Profit Social Enterprises **by Professor Benjamin Leff**

Social enterprises are organizations that are operated for the dual purpose of engaging in profitmaking and promoting a social good. Because of their hybrid nature, social enterprises are perceived to be stymied by a legal system that is overly devoted to defining organizations as

either businesses or nonprofits. Legal academics and legislatures have initiated a reform movement devoted to making it easier for social enterprises to receive funding from both for-profit investors and charitable nonprofits. The prevailing theory is that social enterprises will not flourish until charitable nonprofits are permitted to make below-market investments in social enterprises for the purpose of subsidizing the return expected by for-profit investors, generally called a “tranching investment structure.” Professor Leff addresses the specific legal issues raised by a tranching investment structure and notes that, surprisingly, commentators have largely ignored the laws that apply to tranching investment structures involving a 501(c)(3) organization. Professor Leff proposes several measures by which the IRS could strengthen the laws that restrict tranching investments between related tranches while relaxing the laws that restrict such investments when the different tranches are independent.



Metamorphoses in the Law of Contract: Mythological Lectures **by Professor David Snyder**

Professor Snyder explores the power of myth in contract law. “Myth” refers to the conventional understanding of how the law has developed and progressed—what is often thought of as legal history. Professor Snyder explains that the myth’s power is not related to its accuracy but derives from the understanding of judges, jurists, and legislators, who understand the law to be a product of this development and who make decisions about current cases and issues—i.e., make law—in light of this conventional account. The project is not about debunking myth. It is about the power of myth, which is here understood as a story related to evidence (as history is). A large part of the project is to give the conventional account, or in other

words, to write the myth. This part of the project is modeled not only on Homer but on Ovid, since the theme is metamorphosis: that a body, including a body of law, can maintain identity even through transformative change. The story includes memorable characters, like the officious intermeddler, the mere volunteer, and above all, the reasonable man, who are here contrasted with characters like the good father of the family and the prudent administrator from civil law systems, and the more modern and gender-neutral reasonable person. Law is here understood not only in a Holmesian sense but also as a humanistic discipline and as a rhetorical practice.



Automated and Robotic Systems as Competitive Strategic Agents: Self-Driving Vehicles and Regulating the Competition for Road Resources

by Professor Kenneth Anderson

Automated and robotic systems continue to advance in their technological capabilities, and many in the business world see opportunities now or in a future rapidly getting closer for the wider use of these systems in everyday life—not just in the highly specialized and controlled environments of the factory floor of an automotive plant or as a surgeon's tool in the operating room, but as part of ordinary business and consumer life. Professor Anderson examines self-driving vehicles, which will soon become a market reality for commerce and consumers. Professor Anderson addresses the regulatory question: what level of care must self-driving cars employ to operate effectively on roadways? A basic problem is that a self-driving car programmed to defer to human beings on the roads may have limited success in delivering its human passenger to a destination; human drivers might ignore or take advantage of a general programming preference for deference in yield situations, four-way stops, or even in high speed lane changes. In order to be successful as an agent in these situations, the car has to drive not as a deferential machine, but at least partly as a human driver must. Professor Anderson discusses how these issues might affect regulation of self-driving cars or vehicles generally and applies the implications of this analysis to other kinds of robotic or highly automated systems.



The Market for Patent Litigation
by Professor Jonas Anderson

The U.S. Court of Appeals for the Federal Circuit was created, in part, to eliminate forum shopping in patent law. Despite the court's creation of a nationally uniform substantive patent law, forum shopping remains alive and well. Scholars have been puzzled over this seemingly intractable problem. Professor Anderson argues that patent forum shopping is driven in large part by the judiciary; some district courts "litigant shop" by adopting case management practices which appeal to certain patent litigants. Conceptualizing patent forum shopping as a market in which district courts compete for litigation reveals that Congress' most recent statutory solutions to patent forum shopping are likely to exacerbate the problem. Professor Anderson examines the parallels between litigant shopping in patent law and similar judge-initiated measures meant to attract litigants in other specialized fields, particularly bankruptcy and corporate law.



The Private Role in Fracking Governance
by Professor Amanda Leiter

The United States is in the midst of a natural gas boom, made possible by advances in drilling and extraction technologies. Professor Leiter acknowledges the considerable disagreement about the relative benefits and costs of the boom, but argues that at least one thing is certain: it has caught governments flat-footed. The federal government has done little more than commission a study of (some) associated public health and environmental risks. States have moved faster to address natural gas risks but with little consistency or transparency. Private governance organizations are beginning to fill the resulting regulatory gaps with information-gathering and standards-setting efforts. Professor Leiter documents and critiques these efforts and uses the example of tradable "sustainable shale certificates," akin to renewable energy certificates, to argue that private governance entities play an important and underappreciated role in promoting state policy experimentation and facilitating the horizontal and vertical diffusion of innovative public governance strategies.

Student Organizations

BUSINESS LAW SOCIETY

The Business Law Society's mission is to provide a forum for law students interested in all aspects of business law. The 2013-2014 academic year marked the inaugural year for the Business Law Society's Weekly Newsletter. In addition to announcing up-to-date conferences and events, networking opportunities, job openings, and hiring notices, the newsletter featured news bulletins highlighting business law issues.

INTERNATIONAL TRADE AND INVESTMENT LAW SOCIETY

The International Trade and Investment Law Society (ITILS) promotes discussion of international trade law issues and helps students explore careers in international trade law. ITILS strives to provide a balance of views on trade issues all over the world and in all types of trade agreements. In 2013-2014, ITILS sponsored discussion forums on topics such as transparency, anti-corruption, and the World Trade Organization, among others.



The 2013-2014 golf outing sponsored by the JD/MBA Club.

JD/MBA CLUB

The JD/MBA program at WCL provides an excellent opportunity for students who want to develop expertise in both law and business. The JD/MBA Club offers a social outlet for networking, such as this year's golf outing (pictured), and a forum for students pursuing the JD/MBA. It hosts instructive events that cater particularly to business and law students, such as this year's "How to Use Your JD in Business" panel.

TRANSACTIONAL LAW SOCIETY

The Transactional Law Society is dedicated to fostering transactional law excellence in the WCL community. In 2013-2014, the Transactional Law Society built on last year's achievements by hosting and competing in transactional competitions. Resounding success came when the WCL TLS team was named National Champions of the 3rd Annual National IP LawMeet Competition.

Clinical Program

THE COMMUNITY AND ECONOMIC DEVELOPMENT LAW CLINIC

During 2013-2014, students in the Community and Economic Development Law Clinic (CEDLC) assisted community-based organizations in D.C. and the suburban counties in matters ranging across transactional practice. Clients included benefit corporations and newly recognized benefit LLCs, limited equity housing, cooperatives, food-based enterprises such as urban farms and farmer's markets, and a church-based federal credit union. CEDLC also extended its reach to assist in legislative drafting at the Maryland state level to address the foreclosure crisis affecting Baltimore and Prince George's Counties.

JANET R. SPRAGENS FEDERAL TAX CLINIC

In 2013-2014 tax clinic students assisted clients by establishing entitlement to family status benefits and helped other taxpayers contest asserted tax liabilities due to cancellation of mortgage debt, characterization of litigation settlements, and other reasons. Students helped small business owners determine deductible expenses and successfully obtained innocent spouse relief for other taxpayers.

THE GENERAL PRACTICE CLINIC

The General Practice Clinic represents clients in such areas as consumer protection, employment, and bankruptcy, among others. Student attorneys use a range of legal skills on behalf of clients in settings that include administrative tribunals and trial and appellate courts in the District of Columbia and Maryland. The clinic covers topics such as client-centered representation, interviewing, theory of the client, fact investigation, counseling, and negotiation.