

BUSINESS LAW PROGRAM ANNUAL REPORT

2015–2016



AMERICAN UNIVERSITY
WASHINGTON
COLLEGE OF LAW

THE 2015–2016 ACADEMIC YEAR



Entrance to the Warren Building

At the beginning of the spring semester, the American University Washington College of Law transitioned into the newly constructed Tenley Campus. This move situates our school in the Tenleytown neighborhood with quick access to the Metro Red Line. Our new location has allowed our students to intern frequently and easily and to attend conferences in downtown DC. It has also enhanced our programming because of the quick trip from agencies, businesses, and firms in the metro area.

The Business Law Program was exceptionally busy during the 2015–2016 academic year. The program hosted events addressing the latest topics with prominent experts and leaders. In one particular highlight, the law school welcomed World Bank President Dr. Jim Yong Kim. Summaries and photographs of this and some of the other events appear here and in the following pages.



Ribbon Cutting Weekend for the Tenley Campus

Our programming also provides students with opportunities to engage in discussions with distinguished leaders, to network with alumni, and to receive career advice from our faculty. Through our Conversations Series, we arranged small-group lunches with Commodity Futures Trading Commission General Counsel Jonathan L. Marcus and former Solicitor General Gregory G. Garre. We also organized a "BigLaw" career panel at Nixon Peabody featuring WCL alumni, advised students on how to choose courses with jobs in mind, and set up sessions for resume review and to foster mentoring relationships. This annual report includes additional events hosted by the Business Law Program, as well as our faculty's and students' successes.

David V. Snyder
Professor of Law

Director of the Business Law Program

CONVERSATIONS SERIES

The Conversations Series affords students and faculty the opportunity to join an informal exchange with leaders and policymakers at the forefront of business law. The format is limited to ten people to allow easy interchange. During these conversations, students ask about the guests' daily work, their career paths, their specialized work projects, and their broader outlook. This year's speakers focused on issues of headline litigation, securities regulation, derivatives, and the financial crisis.

A Conversation with CFTC General Counsel Jonathan L. Marcus



In April, General Counsel for the Commodity Futures Trading Commission (CFTC) Jonathan L. Marcus joined students and faculty for lunch and a conversation about his work at the agency. Mr. Marcus discussed his day-to-day tasks as general counsel to the world's largest commodities regulator.

Specifically, Marcus highlighted some of the agency's activities, including ongoing market manipulation prevention and enforcement actions; the focus on transparency within the agency; the agency's role in the Financial Services Oversight Council; and its overlapping jurisdiction with regulators like the Commodity Futures Protection Corporation and the Securities and Exchange Commission.

A Conversation with Former U.S. Solicitor General Gregory G. Garre



Last November former Solicitor General Gregory Garre gathered with students at the Washington College of Law. Mr. Garre spoke to students about his role as the top litigator for the federal government and his later transition into the private sector where he represents businesses before the Supreme Court. Additionally, he discussed his pending arguments before the Court in *Fisher v. University of Texas*.

The United States Senate unanimously confirmed him as Solicitor General in 2008. During his tenure, Mr. Garre argued 41 cases before the Supreme Court, and he has briefed and served as counsel of record in hundreds of additional cases before the Court.

EVENTS

Securities and Exchange Commission Spotlight Event

As part of its new “Spotlight” series, the Business Law Program hosted a panel discussion on the Securities and Exchange Commission (SEC)—what it is, how it operates, and its main objectives. The panel discussed the rulemaking process under the Administrative Procedures Act, the relevance of compliance attorneys in the financial sector, and the SEC’s increased use of administrative courts to resolve its enforcement actions. The event featured Elizabeth Hogan (WCL ’05), Counsel at Wilmer Hale, and Kyle DeYoung, Senior Counsel to the Director of Enforcement at the SEC.



SJD Defense, “Follow the Money”

Xiaoqi (Claudia) Sun (left), a candidate for the degree of Doctor of Juridical Science, focused her dissertation on the intersection of finance and environmental protection. Her work examines the Green Credit Policy managed by Chinese financial institutions. The dissertation identifies issues with the program's features, such as a low credit risk related to environmental law violations, a lack of resources, problems of risk control, and a structure of local protectionism.

***Business Law Review* Annual Symposium: Emerging Technology in an Uncharted Legal Landscape**

In February 2016 the *Business Law Review* hosted its annual symposium on the topic of emerging technologies in an uncharted legal landscape with a concentration on the recent development of unregulated technologies like Unmanned Aircraft Systems and “smart” vehicles. The event featured Brittany Heyd (left), the Managing Director and General Counsel at 1776, who addressed where the regulatory and economic environment currently stands on emerging technologies. She shared her recommendations on what needs to be done to ensure that the integration of these technologies does not compromise the safety of the American people.

The symposium also featured two panels of industry representatives and government officials. They aimed to answer the following questions: (1) Where does the regulatory ecosystem, as it pertains to emerging technologies, leave us today?; (2) What needs to be done to ensure a safe and smooth integration of these emerging technologies?; (3) What will the economic landscape look like as the popularity of these emerging technologies and the “Internet of Things” increases?



GUIDING STUDENTS



Professor Andrew Pike reviews a student's job application documents



WCL Externship Fair in Claudio Grossman Hall

Each year the Business Law Program develops programming to assist students with developing a career plan for post-graduate employment. Annual events include receptions at DC law firms, panels presenting the different areas of practice in business law, resume review sessions, networking events with WCL alumni, and externship career fairs.

Business Law Faculty Practice Group Resume Review

This year the Business Law Faculty Practice Group organized two resume review sessions. Faculty members met with students, provided them with in-depth resume reviews, and gave career advice specific to each student's goals. These meetings provide students with immediate feedback as they prepare for WCL career fairs, including the Business Law Program Career Fair. These meetings also afford students a starting point for building mentoring relationships with faculty members.

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

Each semester students choose from a nearly overwhelming curriculum of about 150 courses in business law and related fields, as well as the courses offered at the AU Kogod School of Business. The Business Law Program hosted two curricular advising sessions where faculty members offered advice on choosing courses that are tailored to meet each student's career interests. During the sessions, students asked questions about employers' expectations, individual course learning objectives, and bar exam requirements.

Business Law Program Career Fair

The Business Law Program and the Externship Office coordinated a fall externship fair focused specifically on upperclassmen interested in pursuing careers in business and finance. The fair included employers such as the Consumer Financial Protection Bureau, the Securities and Exchange Commission, the Government of the District of Columbia, and the Department of Justice - Tax Division, among others.

Business Law Program "BigLaw" Career Panel at Nixon Peabody

The Business Law Program organized a panel of WCL alumni at Nixon Peabody's DC office to discuss the recruitment cycle and the realities of government and private practice. The panelists also provided advice for students planning careers in business law. The event featured practitioners from Nixon Peabody and the Federal Reserve and also included a successful entrepreneur to add a client's perspective.

INTERNATIONAL BUSINESS



Ambassador of Brazil to the United States Luiz Alberto Figueiredo presents opening remarks

Legal Aspects of Agribusiness: Brazil, the US, and China

As part of the 2016 Founders Celebration, this event explored the legal complexities of agribusiness in Brazil, the US, and China. Topics included the legal considerations affecting production and the incentives for investing in production and distribution. The panelists remarked on the future of agribusiness between the three countries, especially as affected by international treaties and organizations. The event featured the Honorable Luiz Figueiredo, Ambassador of Brazil to the US; justices from Brazil's Superior Tribunal of Justice; Dr. Isaac Sydney, General Counsel of the Central Bank of Brazil; Professor Fernando Curi Peres of the Superior School of Agriculture of the University of São Paulo; and Jason Hafemeister, Trade Policy coordinator for the United States Department of Agriculture.

Commercial Dispute Resolution in China: Current & Future Trends

The Center on International Commercial Arbitration hosted a panel discussion on current and future trends in Chinese commercial dispute resolution this Spring. The discussion focused on the country's political and economic climate, which is currently transitioning away from a manufacturing intensive economy and towards a more finance based model. The panelists also discussed the effects of such a development on alternative dispute proceedings. Wilson Wei Huo (left), a partner of Zhong Lun Law Firm in Beijing, led the discussion.



From left to right: Judge Peter Messitte, Dean Grossman, Ambassador Figueiredo, President of Insituto Justiça e Cidadania Tiago Salles

INTERNATIONAL BUSINESS



Lionel Galliez, Partner at SCP Depondt, Delesalle, Arseguel-Meunier, Gazagne, Rabeyroux and Galliez

Anti-Money Laundering in the EU & the US

In November 2015, the European Law Society hosted a panel on the prevention of money laundering and the financing of terrorism. The panelists discussed the EU's Anti-Money Laundering Directive for financial institutions, such as the notaires' obligations of due diligence and the reporting of beneficial owners.

The event featured Lionel Galliez, Partner at SCP Depondt, Delesalle, Arseguel-Meunier, Gazagne, Rabeyroux and Galliez; and Jonathan J. Rusch, Senior Vice President, Head of Corruption and Financial Crimes, Wells Fargo. Mr. Rusch, a former US Treasury and Justice Department official with current compliance obligations, provided the comparative US perspective.



Small group discussions during the Founder's Day events

Recent Trends in Global Mergers and Acquisitions

In February 2016 the law school hosted a panel of three distinguished alumni on the recent trends in global mergers and acquisitions. Geoff Willard (WCL '96), a partner at Cooley LLP, presented an overview of the rapidly changing business environment for large international mergers and acquisitions. Scott Levine (WCL '97), a partner at Jones Day, provided insight into the tax aspects of recent mergers, including a discussion of so-called inversions. Sara Razi (WCL '00), a partner at Simpson Thacher & Bartlett and a former Deputy Assistant Director at the Federal Trade Commission, discussed the antitrust issues. Professor Benjamin Leff moderated the spirited discussion before an audience of students and alumni.



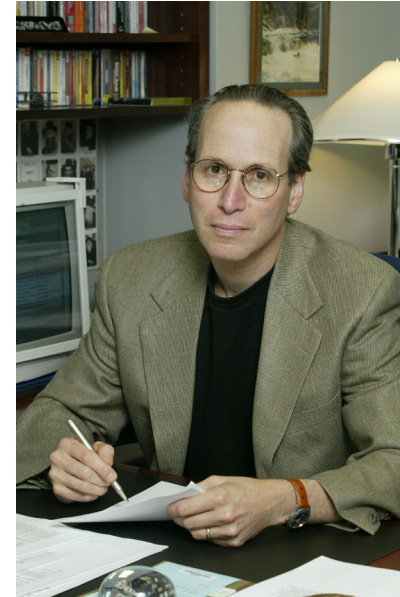
From left to right: Sara Razi, Professor Benjamin Leff, and Geoff Willard

FACULTY WORKSHOP SERIES

Steven L. Schwarcz, Stanley A. Star Professor of Law and Business, Duke University

“CIGI Policy Brief: Towards a Public Governance Duty”

Corporate risk-taking is economically desirable, increasing profitability and generating jobs and purchasing power. But “excessive” corporate risk-taking can be harmful; indeed, it was one of the primary causes of the 2008–09 global financial crisis. In response, governments worldwide have issued an array of regulation to attempt to curb excessive risk-taking and prevent another crisis. There is, nonetheless, a consensus that these existing regulatory measures are inadequate. Many of these measures are designed to control excessive risk-taking by aligning managerial and investor interests, implicitly assuming the investors themselves would oppose excessively risky business ventures. The assumption is flawed because what constitutes “excessive” risk-taking depends on the observer. Risk-taking is excessive from a given observer’s standpoint if it has a negative expected value to that observer—i.e., the expected costs to that observer exceed the expected benefits. Thus, it is reasonable to assume that investors would oppose risky business ventures with a negative expected value to them. The flaw, however, is that systemically important firms—the primary focus of post-financial crisis regulation—can engage in risk-taking ventures that have a positive expected value to their investors but a negative expected value to the public. That is because much of the systemic harm from such a firm’s failure would be externalized onto the public, including ordinary citizens impacted by an economic collapse. Corporate governance law creates this misalignment by requiring managers of a firm to view the consequences of their firm’s actions, and thus the expected value of corporate risk-taking, only from the standpoint of the firm and its investors. That perspective ignores externalities caused by the risk-taking. Ordinarily this is sensible; managers could not feasibly govern if they had to consider the myriad small externalities that result from corporate risk-taking. But risk-taking that causes the failure of a systemically important firm could trigger a domino-like collapse of other firms or markets, causing systemic externalities that severely damage the economy. Corporate governance law should, and feasibly could take into account risk-taking that causes systemic externalities.



Heather Hughes, Professor of Law, WCL

“Property and the True-Sale Doctrine”

The laws governing secured transactions are highly uniform, thanks to UCC Article 9. However, the laws that determine the extent to which certain market-dominant transactions are governed by UCC 9 are unsettled and subject to differing approaches from state to state. This article assesses the “true-sale” doctrine – the common law doctrine that distinguishes assignments that secure obligations from assignments that constitute sales of assets. This doctrine is at the heart of securitization transactions (which involve hundreds of billions of dollars each year). The true-sale doctrine determines whether, when a company enters bankruptcy, its securitized, “off-balance-sheet” assets constitute part of the bankruptcy estate, or, conversely, were sold to a special-purpose entity such that they belong exclusively to investors. Recently, commentators have argued that states should adopt a standard for identifying true sales of securitized receivables that is firmly grounded in property law. Rather than consider factors such as recourse or price to classify a receivables conveyance, these scholars argue, we should ask only whether the originator retains a property interest in the receivables. This article intervenes in this scholarly discussion. A true-sale doctrine rooted in property theory would be better than alternatives currently in force in various jurisdictions. But a property rationale for understanding true sales of receivables does not compel – and should not lead to – dismissal of the policy considerations that drive common law tests focused on recourse or price.



STUDENT ORGANIZATIONS



Willem C. Vis International Commercial Arbitration Competition in Hong Kong. From left to right: Sempian Sooriakumar, Naomi Ahsan, Coach Katie Skaggs, Ashley Nickel, Tiffany Sommadossi.

Moot Court Honor Society

The Moot Court Honor Society sponsors a wide-range of activities and competes in fourteen competitions nationally and internationally. The competitions help develop skills for business lawyers, and often include issues relating to business law. Their teams consistently win brief and oralist awards in addition to regional and national championships. This year, WCL teams competed in two competitions with problems on international commercial arbitration: the Willem C. Vis International Commercial Arbitration Moot in Vienna, Austria, and the Willem C. Vis East International Commercial Arbitration Moot in Hong Kong, China.

Business Law Society

The Business Law Society's mission is to serve as a resource for law students interested in the varied areas of business law. With an emphasis on cultivating relationships between students, practitioners, and business-law organizations in the DC area, the society also seeks to promote the law school within the business community. This year, the society co-sponsored many of the Business Law Program events at WCL, including the "Conversations" series, the resume review sessions, and the course advising sessions.

Alternative Dispute Resolution

Several competition teams comprise the Alternative Dispute Resolution Honor Society. The teams are open to a select number of WCL students, as the students serve as ambassadors for the law school in national and international competitions. All competing members must first be selected during the Spring Qualifying Tournament, and then placed into teams according to the students' backgrounds and interests. International competition team members must be selected through an additional screening process. On October 24–25, 2015, the ADR team of Jacqueline Youm and Courtney Taylor (left) competed against fifteen other law schools at William & Mary School of Law. The team represented a corporation against a sovereign nation in an international negotiation and won second place. Many, if not most, of the competitions focus on issues in business law, and all of them seek to nurture negotiation and advocacy skills of value to transactional lawyers as well as litigators.

JD/MBA Club

JD/MBA students are enrolled in both WCL and the Kogod School of Business at American University, and the JD/MBA Club at WCL provides an opportunity for students to develop expertise through an interdisciplinary approach to law and business. The JD/MBA Club offers a social outlet and forum for students pursuing the dual degree and hosts instructive events that cater particularly to business and law students.



Second place winners at an Alternative Dispute Resolution competition at William & Mary School of Law. From left to right: Courtney Taylor, Coach David Clark ('97), and Jacqueline Youm

STUDENT ORGANIZATIONS



Members of the ITILS Executive Board with WTO ELSA Moot team members

International Trade and Investment Law Society

The International Trade and Investment Law Society (ITILS) is an organization of students at WCL interested in the field of trade and international investment. The society has been active in helping sponsor talks and seminars on trade and cross-border investments for several years. Moreover, ITILS helps sponsor a team in a WTO Moot held annually in Geneva.

Transactional Law Society

The mission of the Transactional Law Society (TLS) is to promote the practice of transactional law at WCL and to support students pursuing a transactional law career. TLS hosts events discussing trends and popular issues in transactional law. The organization also assembles and prepares teams to compete in mock negotiations, arbitrations, mediations, and moot competitions. A team of students, including Laura daRosa, Jung Kim, and Colleen Wellington-Caban (center right) won “The Negotiation Challenge,” an international negotiation competition for graduate students. The team won the title of The Great Negotiators 2016.



The Negotiation Challenge Champions. From left to right: Laura daRosa, Jung Kim, and Colleen Wellington-Caban



Third place winning team at the Warsaw Negotiation Round. From left to right: Charlotte Boylan, Maevis Rhey C. Duque, and Chafi Agha

PROGRAMS AND CLINICS



Student attorneys from the Community and Economic Development Clinic speaking during a Community Day



Speakers at the Annual Lecture on International Commercial Arbitration
From left to right: Professor Horacio Grigera Naón, Pierre Tercier, Paolo DiRosa

Janet R. Spragens Tax Clinic

In 2015-2016, the Tax Clinic's student attorneys counseled clients on a range of tax issues. Students aided clients by assisting them in establishing entitlement to family status benefits, contesting asserted tax liabilities due to the cancellation of mortgage and other debt, providing guidance during litigation settlements, and obtaining innocent spouse relief for taxpayers and their families. Students also supported small business owners in determining deductible business expenses.

The Community and Economic Development Clinic

During the 2015-2016 academic year, students in the Community and Economic Development Law Clinic assisted community-based organizations in the DC metro area and the suburban counties in matters ranging across the spectrum of transactional practice. The clinic's clients included benefit corporations, newly recognized benefit LLCs; limited equity housing cooperatives; food-based enterprises, such as urban farms and farmer's markets; a church-based federal credit union; and businesses in the childcare industry. In previous years, the clinic participated in policymaking by drafting legislation at the Maryland state level to address the foreclosure crisis affecting Baltimore County and Prince George's County.

Civil Advocacy Clinic

The Civil Advocacy Clinic (formerly the General Practice Clinic) represents clients in areas such as consumer protection, employment, and bankruptcy. Student attorneys use a range of litigation and transaction skills on behalf of clients in administrative tribunals and in the trial and appellate courts in the District of Columbia and Maryland. The clinic seminar classes cover topics regarding client-centered representation, interviewing, the theory of the client, fact investigation, counseling, and negotiation.

Center on International Commercial Arbitration

The Center on International Commercial Arbitration provides a high-level academic forum for exchanging ideas on salient issues and current developments in the field of arbitration. The Center's mission is to enhance the tradition and experiential offerings at the law school for JD, SJD, LLM, and Summer Program students. The Center also focuses on formalizing research and publication endeavors in the field of international arbitration. All program participants are trained in the field's latest challenges through courses, seminars, and workshops taught by leading academics and practitioners.



BUSINESS LAW PROGRAM
Director: David V. Snyder, Professor of Law

(202) 274-4181
wclbusinesslawprogram@gmail.com
www.wcl.american.edu/business/