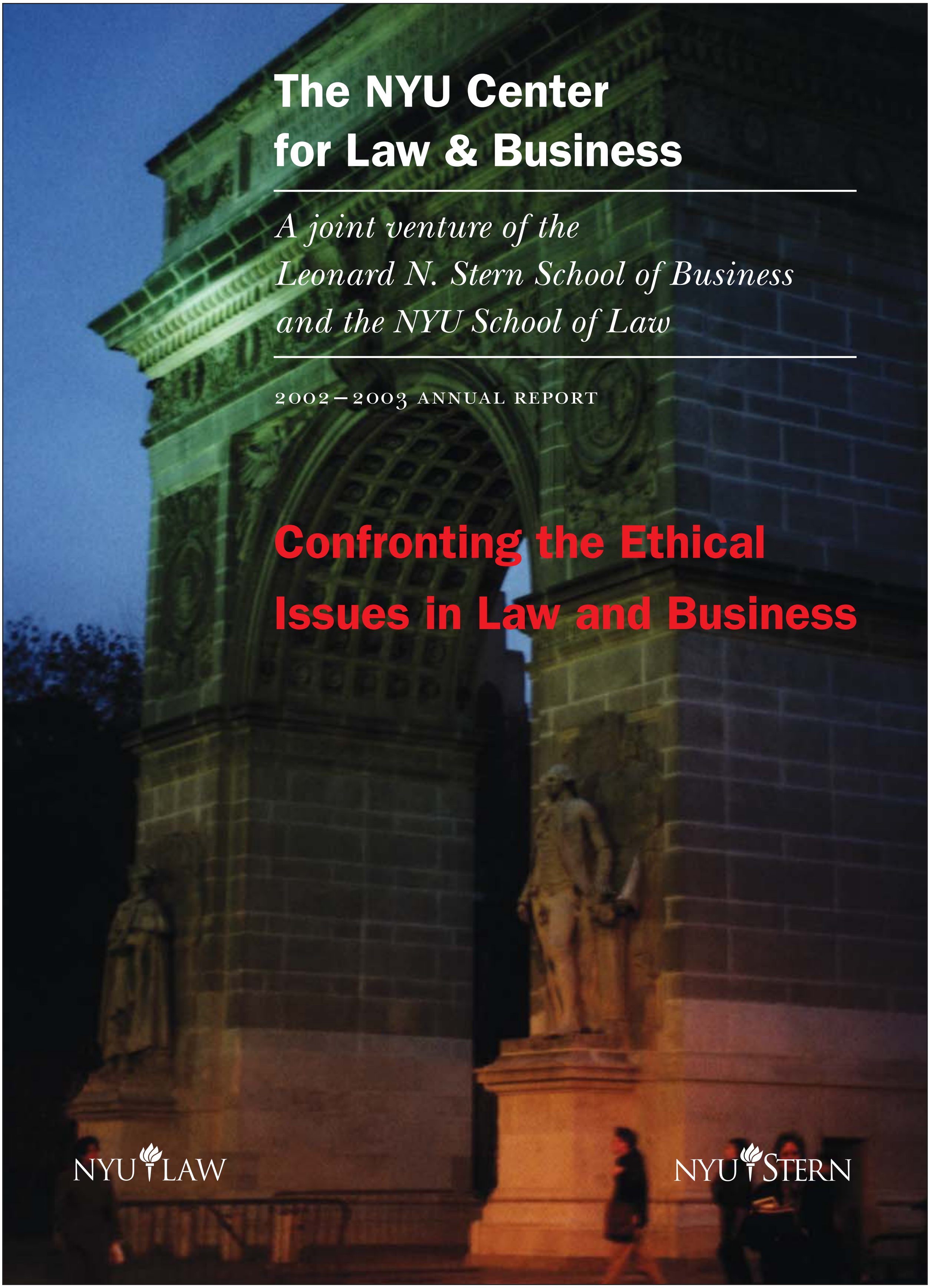


The NYU Center for Law & Business

A joint venture of the Leonard N. Stern School of Business and the NYU School of Law

2002–2003 ANNUAL REPORT

Confronting the Ethical Issues in Law and Business

NYU LAW

NYU STERN

Contents

A Letter From the Director

Riding High in April, Shot Down in May

THESE WORDS FROM A POPULAR TUNE may seem to some to reflect the worldview of the U.S. system for the organization, capitalization and accountability of large-scale business enterprise. In the late 1990s, our system of capital markets-centered corporate governance and accountability was increasingly acknowledged as the world standard. The debate was then largely over how fast, not whether, other world systems would be required by competitive forces to converge with the U.S. model. That was April. May began with the collapse of the Internet stocks and later the telecom stocks. Quickly those events were followed by a string of now-infamous cases of fraud, market deception and manipulation. These disappointments continue.

Responses have come from every corner of the regulatory system. Congressional and SEC actions have been the most far reaching, of course. Prosecutors have perhaps commandeered the most lines of newsprint. Other regulatory institutions from the New York Stock Exchange and the NASD to the Financial Standards Accounting Board have begun to address weaknesses that the bubble-induced excesses revealed.

"We cannot afford to train amoral technicians who, seeking only personal advantage, believe it is permissible to 'game' complex systems in a way that violates the principles upon which that system is based."

Professional schools in research universities have a role in the process of assessing system design, evaluating standards of conduct for responsible participants and overall system performance. While work of this type goes on throughout the Law School and the Stern School, with diverse faculty addressing aspects of these tasks in their research and teaching, the Center for Law & Business has a special responsibility to facilitate these teaching and research efforts. This report of the Center's activities over the period 2002-2003 will highlight some of those activities.

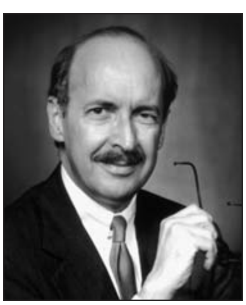
These activities have been in the classroom and outside of it at student-oriented events, such as our student luncheon series. They have been with scholars at Center-sponsored seminars on topics of corporate finance and governance. They have been at informal meetings of practicing professionals and academics sponsored by the Center and these activities have also occurred at more formal public meetings. The Center has, for example, provided the forum for public discussion of issues of governance among public officials and corporate directors at our NYU/NYSE Directors' Institute and also facilitated conversations among scholars and practitioners at the workshop we sponsored jointly with the American Academy of Arts & Sciences here at NYU. These and other efforts are noted in this Report.

A special emphasis of the Center's student-oriented activities has been on the problems related to ethics in law and business. Thus we report here on numerous sessions in which our students have been exposed to leading thinkers on the topical and difficult problems of professional ethics.

Important progress has been made on our system's efforts to correct excesses and weaknesses induced in part by the effects of the asset bubble of the late 1990s. Much remains to be done, of course, and the University has a vital two-part role to play. First, as teachers we acknowledge our profound responsibility to inculcate in young people not only the technical skills necessary to allow them to participate in the professional life of our complex economy, but also to reaffirm in them the importance of integrity in their personal and professional behavior. We cannot afford to train amoral technicians who, seeking only personal advantage, believe it is permissible to "game" complex systems in a way that violates the principles upon which that system is based. Our second mission as an academic institution is equally important. It is to strive, through research, scholarship and discourse, to understand in a deep way how the institutions of our economy function in fact. Thus, for example, a more complete academic understanding of the complexities of incentive contracting may be a first step in attempting to balance the incentive compensation schemes that appeared to have played a vital role in motivating certain of the excesses that exploded in 2001 and 2002. The Center has played its role in these efforts and in this Report, we mean to describe some of that work to our friends and supporters.

Finally and importantly, I am happy to announce that Caroline Mulroney Lapham, has joined the Center as its Associate Director. After graduating from Harvard College, Caroline worked as a financial analyst in the Investment Banking Division of Bear Stearns and Company. She then attended NYU School of Law graduating in 2001. Since then, Caroline has practiced business law at Shearman & Sterling in New York City. Caroline is intelligent, energetic and a joy as a co-worker. S&S's loss is the Center's gain and Dean Thomas Cooley of Stern and Dean Richard Revesz of the Law School join me in publicly welcoming Caroline to our Center.

We continue very much to appreciate the support that you have given to the work of the Center. Of course we welcome your comments on the job that we are doing.



WILLIAM T. ALLEN
DIRECTOR
JACK NUSBAUM PROFESSOR
OF LAW AND BUSINESS
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Caroline Mulroney Lapham

Associate Director Joins Center Staff

CAROLINE MULRONEY LAPHAM

INTERVIEW BY SUSANNAH ATKINS, PROGRAM COORDINATOR

SA: *Why did you accept the position as Associate Director for the Center for Law & Business?*

CML: When I learned about the search for an associate director for the Center, I thought this would be a unique chance for me to combine my background in finance and business law. What made this position so interesting to me though was the opportunity to work with Bill Allen, whose vision for the Center is so compelling, to develop ways to grow the Center both within and outside the NYU community.

SA: *What would you identify as the next agenda for the Center?*

CML: The first item on the Center's agenda is to continue the great things that the Center has been doing. The Center's programming for students and its initiatives for academics and practitioners is already very rich, so I think the most important priority is to support these existing programs. With respect to students, I would like to expand the number of courses available for cross-registration by M.B.A. and law students at the Stern School and the Law School. Students interested in business or business law can and do learn from each other when placed in the same classroom. Professors Roy Smith and Helen Scott jointly offer a popular course in Entrepreneurial Finance that can be a model. These courses are costly to create and sometimes time-consuming to deliver, but when well designed they are very valuable. There are also certain administrative hurdles to cross-registration, particularly for business school students, which we will need to work to overcome. The Center will use some of its resources to try to enrich the curriculum in this way. Also, I think we need to develop the Certificate Program to a greater extent. It is a fabulous opportunity for law students. On the other side, we should spend some time in further developing the new Stern specialization in Law and Business. I would like to work with both schools to help coordinate the growth of these programs. With respect to scholars, I would like to help the scholars affiliated with the Center by creating a database of information on corporate governance to support their empirical research, and also by exploring ways to offer more research grants. Finally, I think it is important that Bill and I work with the Stern School and the Law School to endow the Center. Success in this area would allow us to dedicate our efforts towards building the Center's programming and trying to develop the next generation of business leaders, lawyers and legal scholars in corporate and securities law at NYU.

SA: *What are the greatest challenges facing the Center for Law & Business?*

CML: I think there are two. The first challenge is to find additional ways to facilitate joint research and joint teaching by the tremendous body of academic talent interested in our area, the legal institutions of a market economy. The Stern Finance Department offers an incredible resource for Law School scholars interested in financial markets and financial instruments and the Law School offers a great resource for Finance scholars with these same interests. We have made a lot of progress in this area but there is a great opportunity remaining. The second challenge is, in order to offer both student-oriented and practitioner-oriented programming, to develop an endowment that will allow us to foster research, stimulate further public policy discussion and innovate new teaching experiences. I know that the development of the Center for Law & Business is a priority of the Deans of the Law School and the Stern School, who also view the Center as a bridge between the two schools that should become a permanent part of the academic structure of NYU.

SA: *What are the greatest opportunities that can be realized by the Center?*

CML: I feel strongly that our greatest challenges are our opportunities. What could be more important today than facilitating scholarship and teaching in the area of the legal infrastructure of business? We are reminded almost everyday of the important role our legal system plays to ensure fairness and efficiency in our markets and industries. We have a role—and perhaps not a miniscule role—in fashioning tomorrow's reality for business.

Our Teaching Mission

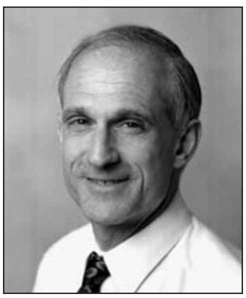
Finding Ways to Teach Law to MBA Students and Business to Law Students

Stern Summer Program for Business Law Students Continues to Exceed Expectations of Students

THE SUMMER OF 2003 SAW THE THIRD CLASS of international lawyers who have come to NYU School of Law to earn a Master's Degree in Law enroll in the Center's unique Certificate in Law and Business program. This time, however, the international students were joined by a few adventurous J.D. students who sought to get a jump on their colleagues by investing their summer in learning Corporate Finance, Microeconomics and Statistics from the graduate business school faculty.

Established in 2001, the graduate business school curriculum of the Certificate Program covers basic techniques and practices of business. Distinguished senior members of the Stern School faculty provide law students with the analytical tools necessary to understand the finance and economics that underlie the transactions and the business structures that business lawyers design, negotiate and implement. Completion of the summer program and some additional electives during the academic year entitles law students to graduate with an Advanced Professional Certificate in Law and Business.

Certificate Program students with faculty and staff of the Center for Law & Business



JARL G. KALLBERG *(above)*
GARY SIMON *(below)*

Professor **Jarl G. Kallberg**, who is well known as one of the most effective teachers in the Stern Department of Finance, is in charge of designing and teaching to the law students a course that combines elements of two courses: Foundations of Finance and Corporate Finance. Several students have been so excited by this introduction to corporate finance that, they report, they have modified their career ambitions. Kallberg received his Ph.D. from the University of British Columbia in business administration. His research interests include firm failure (macro effects), corporate finance, real estate and statistical modeling.

Professor **Gary Simon**, is the Deputy Chair of the IMOS-Statistics Department. He approaches the task of teaching math-phobic law students the basic principles and operations of statistical analysis from the vantage point of years of experience as one of the most effective teachers on the Stern faculty. Law students are frankly pleasantly surprised that their native intelligence coupled with Professor Simon's teaching skill renders the experience not only profitable but enjoyable. Simon received his Ph.D. degree from Stanford University in statistics. His most recent research is directed towards the statistical analysis of a body of mid-19th century life insurance policies issued on the lives of persons held as slaves in the southern United States.

The third course that is offered as part of the summer program is a basic Microeconomics class entitled "Understanding Firms and Markets" and is taught by Professor **Bruce Skoorka** who has served for some period as an adjunct professor in the Department of Economics. Professor Skoorka holds an M.B.A. and Ph.D. in Economics from NYU. His research interests include work on measuring production efficiency, international banking and financial markets, and he is currently analyzing the recent (1993-1995) financial reform and monetary policy in the People's Republic of China.

In addition to completing the summer session, in order to earn the Advanced Professional Certificate in Law and Business from the Stern School at graduation, law students must take an additional 6 credits from courses recognized as counting towards an M.B.A. degree.

Student reaction to the usefulness of these foundational finance and economics courses prior to taking corporations and other business law courses continues to be highly encouraging that this program, which is far less burdensome than the J.D./M.B.A., may provide an excellent way to give those interested in a career as a business lawyer some very helpful technical skills and insights.

The challenge that this program faces is one of timing. By the time the law school admission office is able to decide on and extend offers of admission to the LL.M. program for many students, most of whom live outside the United States, there is hardly sufficient time to get a visa to be in

New York for the early June starting date for the required courses. We are focused on overcoming this administrative obstacle to develop the Certificate Program further.

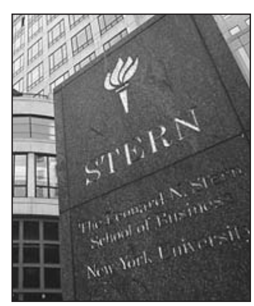
Student Reactions to the Certificate Program

Each year we check for student reactions. We have been gratified by the strong positive reactions to this program. A couple of examples from the summer 2003 class are typical.

"The summer program provided me with the foundational skills necessary to hit the ground running in the legal corporate world. During Early Interview Week, potential employers asked about and were impressed by the Certificate Program. Many commented that they wished they had had something like this program available to them in law school. It definitely gave me greater access to the job market. I cannot say enough about the professional benefits of the Certificate Program. These benefits aside, the small class size coupled with the diverse backgrounds (both professional and geographic) of my peers made for a unique learning environment. Of all of these benefits, I must say that the best thing to come out of it was the good friends I made." DAVID KING / UNITED STATES

"The ACPLB was an extraordinary experience for me. The classes at Stern were my first at NYU and made a great impression on me: the openness of the professors, the thoroughness of the materials and, of course, the novelty of the material I was dealing with (before this summer I had never before taken economics or finance basic courses). I think that this basic business training adds value to my graduate studies and gives me a new perspective; not only am I more comfortable with courses requiring some economic or financial knowledge but I'm also able to study and interpret the law understanding its underlying policies and reasons."
CARLOS CHAVEZ / MEXICO

New Specialization for Stern Students: Law and Business



FOR THOSE M.B.A. STUDENTS who foresee a business career that involves doing (or consulting on) large transactions, such as M&A transactions, some areas of substantive legal knowledge are particularly useful. The M&A banker who knows almost as much law of this field as the lawyer advising the client is not uncommon. The areas of most importance to transaction-oriented bankers or businesspeople are tax, securities regulation and corporations law. Of course the J.D./M.B.A. program can give a student all of these areas of expertise (or the foundation for them), but can we equip business students with the rudiments of an understanding of the legal constraints on transactions with lesser investment? At the least we think that M.B.A. students can be taught the foundations of corporate and securities law to make them alert to legal issues on their own and to render them intelligent interpreters of legal advice given by their professional advisors.

The Stern School faculty has taken some steps to enable this to happen by authorizing M.B.A. students to take one of their specialized areas in law and business. M.B.A. students who elect a Law and Business specialization will be required successfully to complete nine credit-hours of course work from selected courses in the Law School and Stern School. Center Director Allen is charged with advising M.B.A. students who choose this area of specialization.

Facilitating Cross-Overs: Cross-Registration Expands

THE CENTER HAS EXPANDED THE LIST of courses available for cross-registration by students of the Stern School and the NYU School of Law. This initiative is the most direct way to achieve the Center's primary goal of enriching the professional education of NYU students. Students of the Law School choose from a list of classes that included Bankruptcy and Reorganization, Entrepreneurial Leadership, Investment Banking, Mergers and Acquisitions, and Topics in Corporate Finance, among many others. Stern School students can register for classes in Corporations, Securities Regulation, Corporate Bonds, Developing Issues in Financial Reporting, International Economic Transactions, and Tax Policy.

Addressing Today's Issue: Professional Ethics

Prologue: Making It Clear That Ethics Matter

BY WILLIAM T. ALLEN

NO ISSUE HAS IMPACTED THE ENTERPRISE of graduate education in law and business more strikingly over the last two years than the need to attempt to ensure that students in law school and in business school understand and accept an ethical framework for their professional work. Moreover it is necessary that such ethical framework to be one that, in moments of normative ambiguity, will incline professionals towards actions that will tend to advance the social welfare. Of course, when we speak of ethics, eyes sometimes begin to glaze over or, worse, some of us simply stop being seriously engaged in the serious consideration. The discussion of ethical concepts inevitably introduces an opaque vocabulary. We step into a world in which sharp lines may be rare and shades of gray predominate. This is sometimes uncomfortable territory for some of us who seek clarity in our obligations and in our rights.

Yet recent experience demonstrates that all systems of legal control, whether it is FASB, the SEC regulations, the tax code, corporation law of fiduciary obligations or even criminal law, are systems that inescapably entail ambiguity. As we strive for greater particularization and specificity in order to achieve clarity we introduce complexity and density, but this complexity in the end can be no solution to the problem of ambiguity. Complexity itself coupled with an irreducible element of ambiguity that arises from the very nature of language, gives rise to further opportunities for those so inclined to "game" such systems. By gaming I mean to achieve a literal (or more often an arguable) compliance with the letter that violates the detectible spirit that animates the law.

> "[W]e must be concerned about the quality and character of the background against which professionals will exercise their professional functions."
>
> WILLIAM T. ALLEN

Thus if we are interested in fostering behavior that accords with the principles that animate our law—and those principles are customarily in accord with the deeper moral precepts held by the polity—we cannot restrict ourselves to teaching compliance with the letter of law. Rather we must be concerned about the quality and character of the background against which professionals will exercise their professional functions. I exclude from consideration, in this short discussion, acts of frank lawbreakers. Frauds and thieves there will always be. If they are not deterred by criminal sanctions, the weaker constraint of ethical precepts will not cause them pause. But most of us will try not breaking the law. Some do not want to risk detection and punishment and others simply have been socialized in such a way that it is undesirable for them to violate law. It is wrong and that means something to them. Certainly for the latter group and possibly for the former as well, a belief that the professional mores of the institutions that they respect—their University, their Church, even (or perhaps most importantly) their social friends—demand not compliance with literal law alone but with the detectible spirit that animates the written law, will tend to induce socially constructive behavior.

Thus for institutions of prestige, there is social utility in reaffirming the nature of shared ethical constraints and reaffirming as well that ethical constraints are important, are a serious matter, to be treated as a serious matter. This at any rate is the view that I take. Therefore the Center has engaged often in the process of inviting persons who, by virtue of their professional success students would be expected to respect, to come to school in order to give a lecture, or participate in a panel concerning aspects of the ethical constraints on professional action. In this section of this Report, we outline some of these activities.

Center Brings Business Leaders to Speak on Ethics

DR. HENRY KAUFMAN

AS PART OF A FOCUS ON ISSUES of ethics and governance, the Center invited a series of leading lawyers and business people to speak to Stern and Law School students on issues relating to ethics in business and law. Perhaps most notable of these speakers, both because of his eminence and because of the exceptional crowd that his visit attracted, was **Dr. Henry Kaufman**, an alumnus and benefactor of the Stern School and the University. Dr. Kaufman hit a theme that was developed for over a year: the changed scale of the securities markets and the professionals that work in them. These changes in scale that he observed over his notable career change the requirements for capital, the informal relations among members of a firm and the need to structure objective incentives to encourage performance.

MELVIN HEINEMAN, "COP OR CONSCIENCE: ETHICAL ISSUES IN INVESTMENT BANKING FROM A GENERAL COUNSEL'S PERSPECTIVE"

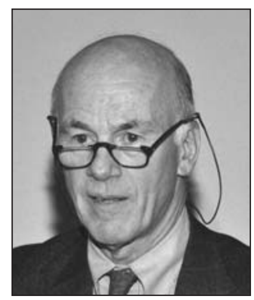
MELVIN HEINEMAN

Melvin Heineman, the former general counsel for Lazard Frères & Co. LLC, discussed the role of the general counsel in an investment bank and some of the ethical questions that a general counsel often faces. Mr. Heineman asserted that the general counsel of an investment bank must be more than "a skillful lawyer. To play this role to the benefit of the enterprise requires strength with personal character and organizational leverage."

IVAN BERKOWITZ, "PROCEDURE RATHER THAN RESPONSIBILITY IN THE BOARDROOM AND ON WALL STREET: DEMYSTIFYING CURRENT CRISES IN CONFIDENCE THROUGH HISTORICAL CONTEXT"

Ivan Berkowitz is the Senior Managing Partner of Avatar Associates, an institutional asset management firm. Dr. Berkowitz has been an investor and investment advisor for more than thirty-five years. In addressing a large group of law and business students, he spoke about emerging trends in corporate boardrooms following the well-publicized scandals of 2002. Tracing the history of directorial responsibility, Dr. Berkowitz pointed out that current problems have existed in similar form for the past century. The huge boom in the amount of funds under management in the past 25 years rendered the market particularly vulnerable to the scandals we have witnessed. Dr. Berkowitz addressed the role of attorneys, accountants, and directors in these scandals. He offered a number of solutions, key among which is a return to personal responsibility.

The Wagner Fund Program for 2002: How Can Professionalism Survive the Market?



ROBERT H. MUNDHEIM

THE LEONARD WAGNER FUND for Professionalism in Law and Business honors a man who spent a very long and productive life on Wall Street and who was said to reflect the highest levels of ethical behavior in his personal and business dealings. The Fund named in his honor supports activities designed to promote ethical conduct in business and law.

In the spring of 2002, the Center convened a special Leonard Wagner Fund Program on ethics in which four business leaders, under the direction of Professor Bruce Buchanan, the C.W. Nichols Professor of Business Ethics and the Director of the Stern School's Markets, Ethics and Law Program, assembled to discuss the market forces acting against business ethics. Participating were **Lawrence Zicklin**, former CEO of Neuberger Berman and an adjunct professor at the Stern School, **Melvin Heineman**, the former general counsel for Lazard Frères & Co. LLC, and **James S. Gerson** of PricewaterhouseCoopers.

The keynote address was given by **Robert H. Mundheim**, former Dean of the University of Pennsylvania Law School, former general counsel of Salomon Smith Barney and now of counsel to Shearman & Sterling LLP in New York. The discussion centered on the problem of trying to induce people in organizations to act ethically. In the final analysis, the tone at the top of the organization was thought to be the most important factor. If senior management wants ethical conduct in the corporation, then it will be more likely get it. But high-powered incentives must be seen as constructed temptations and so they must be offset with both the right tone at the top as well as well-designed monitoring and control systems. The role of the board of directors in demanding an ethical enterprise was also seen as important. Questions and answers among the students and the panelists followed the presentations.

Student Oriented Lecture Series

Luncheon Lecture Series Draws Large Crowds

THE CENTER TEAMED WITH THE WALL STREET BARRISTERS group of NYU School of Law to organize the Stern and Law School student luncheon lecture series. The luncheon series alternates locations between the Stern School and the NYU School of Law and provides interested students with direct exposure to a number of distinguished practitioners in corporate law and in business who discuss topics of particular relevance to students of business and corporate law.

This year's program included presentations by **Joseph Flom**, Senior Partner of Skadden, Arps, Slate, Meagher & Flom, who spoke about the uses of M&A reorganizations and the prospects for this market. Also presenting remarks to the students was **Michael Fricklas**, executive vice president, general counsel and secretary of Viacom, Inc., who recounted the tale of the Paramount/QVC merger from the inside.

Ilene Knable Gotts, head of the Wachtell, Lipton, Rosen & Katz antitrust department, addressed students on the topic "M&A Antitrust Developments: Fiscal Year 2002." To a full house she reviewed developments at the U.S. Department of Justice (DOJ) and the Federal Trade Commission (FTC). Ms. Gotts spoke from an article that was forthcoming in the Winter 2002 edition of the Antitrust Report on a wide range of topics related to antitrust enforcement and M&A activity. She discussed several noteworthy litigated matters, flexibility trends in consents to mergers, certain noteworthy mergers that were abandoned following antitrust action, important acquisitions that were allowed to proceed as set forth in no-action letters, consummated transactions that were later challenged by the FTC, cooperation issues between the FTC and the DOJ as well as between the European Union (E.U.) and the U.S., and antitrust enforcement in the E.U. itself.

"The speaker luncheons co-hosted by the Wall Street Barristers and the Center for Law & Business provide a unique opportunity to hear from guest speakers who are industry leaders in today's financial and economic communities and to interact with motivated remarkable people from the Stern School of Business and NYU School of Law who share an interest in business trends and issues."

AARON MENZI / STUDENT / NYU SCHOOL OF LAW

Students at Lipton Hall

Joseph Flom addresses student luncheon

Our Scholarship Mission

IN ORDER TO ENRICH the intellectual environment and to facilitate a conversation between finance scholars and legal scholars, the Center organizes two seminar series each year. In the fall semester, we sponsor the Corporate Law Colloquium in the Law School and in the spring, we organize the Law & Finance Seminar Series in the Finance Department of the Stern School. With a different emphasis, each of these seminars focus on issues arising out of the legal institutions that structure the economy. Thus market regulation, corporate governance and finance and issues of transaction contracting all fall within the purview of these seminars. These cross-discipline seminars have been a source of faculty interest in the work of the Center and have attracted attention to the innovative character of the Center from other institutions. Copies of the papers presented may be downloaded from the Center's website: www.stern.nyu.edu/clb

Fall 2002 Colloquium on Corporate Law

IN 2002, THE CENTER ORGANIZED its Colloquium on Corporate Law jointly with the Columbia Law School Workshop on Law and Economics. This bi-monthly seminar alternated locations between NYU and Columbia, and drew high attendance from both students and faculty in law and business at both institutions. The following papers were presented.

The Myth of State Competition in Corporate Law
Professor Marcel Kahan, NYU School of Law

Does Confidential Proxy Voting Matter?
Professor Roberta Romano, Yale Law School

The Role of Founders in Large Companies:
Entrenchment or Valuable Human Capital?
Professor Darius Palia, Department of Finance, Rutgers University
(Co-Author: S. Abraham Ravid)

The Effect of Takeover Defenses on Bid Outcomes
Professor Lucian Bebchuk, Harvard Law School

Law Shareprice Accuracy and Economic Performance: The New Evidence
Professor Merritt Fox, University of Michigan School of Law
(Co-author: Bernard Yeung, Stern School)

The Incorporation Choices of IPO Firms
Professor Robert Daines, NYU School of Law

Shareholder Litigation: Reexamining in the Balance Between Litigation Agency Costs and Management Agency Costs
Professors Robert B. Thomson and Randall S. Thomas, Vanderbilt University School of Law

Spring 2003 Law & Finance Seminar Series

OUR LAW AND FINANCE SEMINARS assemble a prestigious group of scholars at Tisch Hall in the Stern School who discuss their recent academic works relating to our field of interest. The seminars attract business school and law school students and faculty. In 2003, work by the following scholars was presented.

Enforcing the Rule of Law: The British Empire and Globalization
Professor Niall Ferguson, Stern School of Business
John E. Herzog Family Chair in Financial History and Professor of Economics

The Origination and Evolution of Ownership and Control of the Corporation
Professor Colin Mayer, Oxford University
Peter Moores Professor of Management Studies, Wadham College, Saïd Business School

Understanding MACs and MAEs
Professor Alan Schwarz, Yale Law School
(with Professor Ronald Gilson, Stanford Law School)

A Theory of Firm Scope
Professor Bengt Holmstrom, MIT Sloan School of Management
(with Oliver Hart, Harvard University)

Unregulable Defenses and the Perils of Shareholder Choice
Professor Jennifer Arlen, NYU School of Law
(with Professor Eric Talley, UCLA School of Law)

Where Are They Now? Center Graduate Fellows 2002-03

Center Graduate Fellows Now Teach and Oversee Privatization in Israel

AS PART OF ITS MISSION TO SUPPORT research in law and business, the Center has annually awarded research support (alone not quite enough to actually prevent starvation) to students in finance or corporation law. After their period with us they typically go on to academic or practice careers. Our first fellow, **Michal Gal** from Israel, wrote much of her book on competition law in small economies while a Fellow at the Center. Her book has recently been published by Harvard University Press. Michal is now Assistant Professor of Law teaching corporation law and antitrust at the University of Haifa in Israel. Professor **Charu G. Raheja**, who wrote on the importance of inside directors in corporate governance while a Fellow of the Center, is now Assistant Professor of Finance at Vanderbilt University. Professor **Yiming Qian**, who while at the Center worked with Law Professor Robert Daines, now serves as Assistant Professor of Finance, teaching corporate finance at the University of Iowa. **Umut Kolcuoglu** who studied the importance of venture capital at the NYU School of Law is practicing business law at a leading law firm in his native Istanbul and has began doctoral studies at the Istanbul University School of Law.

This year, we report on graduate fellow Galya Levy (2002-2003) from the NYU School of Law and Vinay Nair (2003-2004) and from the Department of Finance at Stern. As you will see below, Galya has just returned to her home country and now works as a senior advisor to the Minister of Infrastructure of Israel. Vinay, who studies corporate governance from a finance perspective, is "on the job market" this year, so we expect to report that next year that he has just accepted a position at a leading university. In both cases, to those to whom much is given, much is expected.

VINAY B. NAIR

Vinay Nair is originally from India. He joined New York University in 1999 for his doctoral studies in finance after completing his undergraduate degree in engineering at one of India's premier educational institutions, the Indian Institute of Technology, where he received the Governor's Gold Medal and the Vice-President of India endowment award. He is currently a recipient of the Bogen Fellowship and a Graduate Fellow of the Center.

As a Fellow of the Center, Vinay's research deals with issues relating corporate governance and corporate finance to firm valuation and firm organization. In particular, he has conducted research for an academic article entitled "Governance Mechanisms and Equity Prices" (co-author: K.J. Martijn Cremers, of the International Center for Finance at the Yale School of Management). Vinay and Cremers are investigating whether the market for corporate control (external governance) and shareholder monitoring (internal governance) are substitutes for effective corporate. This research was included in an August 12, 2003 article in SmartMoney magazine about corporate governance and ways shareholders can choose a profitable and ethical company. Vinay has taught undergraduate courses on corporate finance and is expected to receive his doctoral degree in 2004.

GALYA LEVY

Galya Levy received her LL.M. from NYU School of Law in May 2003. She has an LL.B. from Haifa University in Israel, and an M.B.A. from the Hebrew University in Jerusalem. She is currently residing in Jerusalem.

Galya's graduate studies at NYU focused on corporate law, securities regulation, mergers and acquisitions and international trade. In addition, she conducted research on the risks involved in financial derivatives' trading. During her year of fellowship at the Center, she wrote an article on the uses of ambiguity in commercial contracts to be published in a forthcoming book on contract law by the London School of Economics.

Today, Galya serves as a senior advisor to the Israeli Minister of National Infrastructure. The Ministry is in charge of energy and water in Israel, including the oil, fuel, gas and electricity sectors. The Minister of National Infrastructure, Joseph Paritzky, is a member of the Shinui Party, which is committed to the separation of church and state, the privatization of companies managed by the state, and the promotion of a liberal economy in Israel. Galya's work focuses on privatization, restructuring and market regulation. She is involved in the process of the establishment of a new natural gas system in Israel. She coordinates the Ministry's interaction with the Government and Parliament, and she oversees the restructuring of the Monopoly of the Israeli Refineries Company.

Center Fellow Galya Levy meets former President Bill Clinton

Faculty Update

Professors Arlen, Hansmann Join Law Faculty and Center

JENNIFER ARLEN *(above)*
HENRY HANSMANN *(below)*

OVER THE PAST 18 MONTHS, the corporate law group of the NYU School of Law faculty has been impressively strengthened with the addition of two leading law and economics scholars, Professor Jennifer Arlen, who comes to the Law School from the University of Southern California Law School, and Professor Henry Hansmann, who formerly was the Harris Professor of Law at Yale Law School. Dean Richard Revesz of the Law School confirmed that "our corporate law group has been regarded as among the strongest in the nation. With the addition of these outstanding scholars and teachers, NYU's corporate law faculty is certainly second to none in the nation."

Professor Hansmann who holds both a Ph.D. and an LL.B. from Yale University is known as the nation's intellectual leader in the study of the law and economics of worker coops, business trusts, non-profits and other forms of legal organization less studied by the mainstream of corporate law academics.

Professor Arlen, whose Ph.D. and Law degrees were earned at NYU, is a leading scholar in the area of corporate liability. The issues she has explored include securities fraud, corporate crime, and malpractice liability of managed care organizations. She also writes about behavioral law and economics.

Both Professor Arlen and Professor Hansmann are teaching the basic Corporation Law course in the fall 2003 semester, as well as smaller groups in more advanced topics, and they have joined the Academic Board of the Center.

Marcel Kahan Writes Two of the 10 Best Corporate Law Articles of the Last Year

MARCEL KAHAN

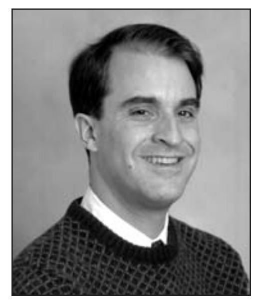
IN A NATION-WIDE POLL OF SCHOLARS conducted by the Corporate Practice Commentator, NYU School of Law faculty accounted for three of "The Top 10 Corporate and Securities Articles of 2002." Professor Marcel Kahan, a leading expert in Delaware corporation law, was cited for two articles, "How I Learned to Stop Worrying and Love the Pill: Adaptive Responses to Takeover Law" (with Edward Rock), which appeared in 69 University of Chicago Law Review 871 (2002) and "Rethinking Corporate Bonds: The Tradeoff Between Individual and Collective Rights," which was published in 77 NYU Law Review 1040 (2002). Professor Kahan, in addition to teaching courses in Corporations and Securities Litigation, is the nation's leading academic expert on law of bonds and presents a course on this subject.

Professor Kahan's most recent article, "The Foundations of Freezeout Laws in Takeovers," forthcoming Journal of Finance, was a joint work with Stern Finance Professor Yakov Amihud, the Ira Rennert Professor of Finance, and Professor Rangarajan Sundaram, also of the Stern Department of Finance. Both Professor Amihud and Kahan serve on the Center's Academic Board.

In addition to the two articles by Professor Kahan, the list of best articles included one co-authored by Center Director William T. Allen, Justice Jack Jacobs of the Delaware Supreme Court and Vice Chancellor Leo Strine of the Delaware Court of Chancery, entitled "Function over Form: A Reassessment of Standards of Review in Delaware Corporation Law," 26 Del. J. Corp. L. 859-95 (2001) and 56 Business Lawyer 1287 (2001).

David Yermack Corporate Governance Research Wins Award

PROFESSOR DAVID YERMACK, Associate Professor of Finance in the Stern School and Adjunct Professor of Law, has been named winner of the Glucksman Institute Research Prize for 2003 for his article, "Remuneration, Retention, and Reputation Incentives for Outside Directors." This paper is the latest example of Professor Yermack's ongoing research into corporate governance and firm performance. Professor Yermack's earlier research was the first to establish a positive link between small board size and firm value. Professor Yermack holds B.A., M.A., M.B.A., J.D. and Ph.D. degrees from Harvard University and has been a member of the Stern faculty since 1994. His course on Restructuring Firms and Industries, which is offered to both law and business students, is among the most popular in either school. Professor Yermack is a member of the Academic Board of the Center.



DAVID YERMACK

Our Broader Mission

PUBLIC POLICY AND PROFESSIONALISM

Controlling the Modern Corporation

Center Hosts American Academy of Arts & Sciences Workshop on Corporate Responsibility

LEADING SCHOLARS, REGULATORS AND SENIOR PRACTITIONERS from investment banking, law, journalism and business gathered at New York University School of Law in May 2003 at a workshop hosted by the Center for Law and Business. The workshop was intended as the first leg in a major new project of the American Academy of Arts & Sciences. The new project is on corporate responsibility and is sponsored by the **Leonard Wagner Fund for Professionalism in Law & Business**. Its special focus is on the various "roles" or professions that are accorded a place in the network of social and legal controls and are intended to protect the integrity of our financial markets and corporate governance. The workshop, which extended over two days, was an open discussion structured around six such roles or professions: auditors, business journalists, government regulators, lawyers, bankers and corporate directors.

Discussion of the evolution, the economic incentives and pressures and the ethics or ideology of each profession was lead by a panel comprised of scholars and expert practitioners. The workshop aimed to produce broad interaction, by limiting the lead panel to a few introductory comments on a short paper produced by each panel to stimulate exchange. A record of the proceedings is being used to formulate a report that will lead to a second stage of the project.

THE ROLE OF REGULATORS

Donald C. Langevoort, Professor of Law and Director of the Sloan Project, Georgetown University Law Center, initiated the first of the workshop panels by presenting his paper on the role of regulators. Other panelists included **James L. Cochrane**, Senior Vice President, Strategy and Planning, New York Stock Exchange, Inc., and **Leo E. Strine**, Vice Chancellor of the Delaware Court of Chancery. This panel led discussions about the effectiveness of the legal regulatory bodies, especially the Securities and Exchange Commission and courts.

THE ROLE OF AUDITORS: THE AUDITOR AS GATEKEEPER

William Kinney, Charles & Elizabeth Prothro Regents Chair in Business at the McCombs School of Business, University of Texas at Austin, chaired the second panel on the role of auditors as gatekeepers. **John H. Biggs**, former Chairman and Chief Executive Officer, TIAA-CREF, **J. Michael Cook**, former Chairman and Chief Executive Officer, Deloitte & Touche LLP, and **Damon A. Silvers**, Associate General Counsel AFL-CIO, joined Mr. Kinney to debate various questions relating to the auditing profession's obligations to the public interest and its past performance in restraining corporate misconduct and presented alternatives for reform.

(left to right)
RICHARD W. PAINTER
JOHN H. BIGGS
WILLIAM KINNEY
DAMON A. SILVERS

THE ROLE OF JOURNALISTS: WHAT HAPPENED TO THE WATCHDOG?

The important role of the media in encouraging and criticizing business behavior was addressed in the third and last panel of the first day of the conference. **Geneva Overholser**, Curtis B. Hurley Chair in Public Affairs Reporting, University of Missouri School of Journalism, chaired this panel, which included **Steven Lipin**, Senior Partner of The Brunswick Group. The discussion addresses such questions as the challenges journalists encounter in business reporting, some of the shortcomings in fulfilling the watchdog function and suggestions for addressing these issues.

THE ROLE OF LAWYERS:
PROFESSIONAL INDEPENDENCE AND THE ROLE OF BUSINESS LAWYERS

The role of lawyers opened the second day of the workshop. **William T. Allen**, Nusbaum Professor of Law and Business and Director of the Center, and **Geoffrey Miller**, William T. and Stuyvesant P. Comfort Professor of Law at NYU School of Law, chaired the first panel held on the second day of the workshop. They were joined on the panel by **Conrad Harper** of Simpson, Thacher & Bartlett, and **Richard W. Painter**, the Guy Raymond and Mildred Van Voorhis Jones Professor of Law at the University of Illinois College of Law. The discussion raised and considered questions about the legal profession and whether there may have been failures to constrain client behavior appropriately in the series of corporate scandals. In particular, the workshop discussed challenging questions related to the role of the business lawyer, such as whether and to what extent business lawyers should act as independent advisors, costs associated with independence, and steps that can be taken to improve the professional independence of business lawyers.

THE ROLE OF INVESTMENT BANKERS

The role of investment bankers and its evolution was the subject of the fifth panel. **Felix Rohatyn**, former ambassador to the Republic of France, former senior partner of Lazard Frères and presently of Rohatyn Associates LLC, chaired the panel on the corporate responsibility of investment bankers. He was joined by **Samuel L. Hayes**, Emeritus Professor at the Harvard Business School and by **Dr. Gerald Rosenfeld**, CEO of Rothschild North America, and a member of the Center's Board of Advisors. (The noted economist and benefactor of the Stern School, Dr. Henry Kaufman, was prevented by ill health from participating on this panel). The discussion involved the historic and economic forces at work in the delivery of investment banking services. It was noted that the role of investment bankers has evolved from largely being in the nature of professional advice to that of significant market participants.

(front to back)
DR. GERALD ROSENFELD
FELIX ROHATYN
SAMUEL HAYES

THE ROLE OF CORPORATE DIRECTORS:
THE PROFESSIONALIZATION OF CORPORATE DIRECTORS

Martin Lipton, Senior Partner, Wachtell, Lipton, Rosen & Katz and chair of the NYU Board of Trustees and **Jay Lorsch**, Louis E. Kirstein Professor of Human Relations at the Harvard Business School, led a lively debate on the topic of whether the position of the corporate director should be "professionalized." They were joined on the panel by **Margaret Blair**, Research Director of the Sloan Project, Georgetown University Law Center, **Kenneth Roman**, former Chairman and CEO, The Ogilvy Group, and **Walter V. Shipley**, former Chairman and CEO, Chase Manhattan Corporation.

In addition to these panelists, a number of members of the University's faculty were in attendance, from the NYU School of Law, the Stern School, and the College of Arts & Sciences, as well as Academy members from New York and Boston.

A planning committee meeting has been scheduled for October in New York to determine the next step in the project. Messrs. Lipton and Allen are members of the Academy's planning group for this project.

What is the American Academy of Arts & Sciences?

Founded in 1780 in Cambridge, Massachusetts, the American Academy of Arts & Sciences is an international learned society composed of the world's leading scientists, scholars, artists, business people, and public leaders. Currently, the Academy has 4,000 American Fellows and 600 Foreign Honorary Members. The major objectives of the Academy are to promote service and study through analysis of critical social and intellectual issues and the development of practical policy alternatives; foster public engagement and the exchange of ideas with meetings, conferences and symposia bringing diverse perspectives to the examination of issues of common concern; mentoring a new generation of scholars and thinkers through the newly established Visiting Scholars Program; and, honor excellence by electing to membership men and women in a broad range of disciplines and professions.

AMERICAN ACADEMY
OF ARTS & SCIENCES

Center Initiates National NYSE Directors' Institute with Leading Program

FORMER FEDERAL RESERVE BOARD chairman, **Paul Volcker**, Lehman Brothers CEO **Richard S. Fuld Jr.** and SEC Commissioner **Harvey J. Goldschmid** were among the "stars" of the world of business and government who participated in the Center's first annual Directors' Institute. The Institute, which was held on May 29th, 2003 in the Kaufman Management Center of the Stern School of Business, was kicked off the night before with a dinner in the boardroom of the New York Stock Exchange hosted by **Dick Grasso**, then CEO of the Exchange and NYU Trustee.

(left to right)
PAUL VOLCKER
FELIX ROHATYN
RICHARD S. FULD JR.

Nearly 100 business leaders representing corporations across the country attended the program designed to be relatively small in order to permit interaction. The kickoff dinner was followed by guest lectures, breakout sessions and panel discussions held at the Stern School the next day. **Jeffrey Immelt**, Chairman and CEO of General Electric Company (GE) was the Directors' Institute luncheon speaker and provided insight into corporate governance at GE and the steps GE has taken to institutionalize its response to the Sarbanes-Oxley Act. (See page 29 for an excerpt of Mr. Immelt's remarks.)

The Directors' Institute offers continuing-education forums for current and newly-elected directors and is designed to strengthen the corporate governance practices of companies listed on the NYSE. This directors' education project helps directors stay up-to-date on their legal, fiduciary and ethical responsibilities by fostering interaction among peers and with experts and practitioners in the fields of law, business and regulation. Given the increasing regulatory, legal and financial complexities confronting directors, the Directors' Institute is a helpful tool to ensure good corporate governance practices.

"The NYSE is proud to further its longstanding partnership with New York University through the Directors' Institute," said then NYSE Chairman and CEO Dick Grasso. "By providing a forum where directors can discuss today's governance issues, we hope to provide the tools necessary to better serve America's 85 million shareholders."

"As an educational institution, we have a responsibility to debate and shape, in partnership with the business community, the thinking that will further inform corporate governance reforms and help restore investor confidence in the corporation."

WILLIAM T. ALLEN / NUSBAUM PROFESSOR OF LAW AND DIRECTOR OF THE CENTER

The first panel, "The Public Importance of Governance in Private Enterprise," chaired by **Thomas F. Cooley**, Dean of NYU Stern School of Business, featured **Richard S. Fuld Jr.**, chairman and CEO of Lehman Brothers, Inc.; **Felix Rohatyn**, president of Rohatyn Associates LLC and former ambassador to France; and **Paul A. Volcker**, former chairman of the Federal Reserve Board. These panelists collectively provided domestic and global perspectives on governance as it relates to the public and private sectors. In particular, they underscored the fundamental importance of conducting ethical business, restoring investor confidence and determining the appropriate role of the regulator.

Roy Smith, Langone Professor of Finance at the Stern School, chaired the second panel, "Evolving Standards for Corporate Directors." The panelists included **Harvey J. Goldschmid**, commissioner of the Securities and Exchange Commission; **Martin Lipton**, Senior Partner, Wachtell, Lipton, Rosen & Katz, chair of the NYSE Legal Advisory Committee, and chair of the NYU Board of Trustees; and **James J. Mulva**, president and CEO of ConocoPhillips, Inc. This panel led a discussion of the changing role of the board member, best practices and the implications of the Sarbanes-Oxley Act.

Panel three, "Service on the New, More Demanding Audit Committee," chaired by **William T. Allen**, Nusbaum Professor of Law and Business and Director of the Center, featured heads of leading audit firms. **J. Michael Cook**, former chairman and CEO of Deloitte & Touche, LLP, and chairman of the audit committees of Comcast, Inc., Rockwell Automation, Inc., and International Flavors and Fragrances, Inc.; and **Philip Laskawy**, former chairman and CEO of Ernst & Young LLP, and audit committee member of General Motors, Inc., led a discussion of the impact of the new SEC rules respecting audit committees and the relationship between management, the audit committee and the audit firm.

The concluding panel, entitled "Director Liability Concerns," was chaired by **Jennifer Arlen**, Norma Z. Paige Professor of Law at NYU School of Law. The panelists, **Steven M. Cutler**, director of the Division of Enforcement, U.S. Securities and Exchange Commission; **Jack B. Jacobs**, Vice Chancellor, Delaware Chancery Court; and **Jack H. Nusbaum**, managing partner, Willkie Farr & Gallagher, addressed standards of director conduct under both state and federal securities law.

The Directors' Institute is an outgrowth of the NYSE Corporate Accountability and Listing Standards (CALS) committee report, which was submitted to the Securities and Exchange Commission in August 2002. Among its recommendations aimed at strengthening governance practices of listed companies, the CALS report recommended that the NYSE offer continuing-education forums around the U.S. in partnership with leading academic institutions. The NYU Center for Law & Business will serve as the Exchange's partner for the northeastern part of the United States.

(left to right)
J. MICHAEL COOK
PHILIP LASKAWY
WILLIAM ALLEN
JACK NUSBAUM

(left to right)
JACK NUSBAUM
STEPHEN CUTLER
JENNIFER ARLEN

Restoring Trust

JEFFREY IMMELT
CHAIRMAN AND CEO,
GENERAL ELECTRIC CO.

Adapted from Mr. Immelt's keynote speech given at the NYU/NYSE Directors' Institute in May 2003

WHEN YOU LOSE CONFIDENCE, like investors seem to have today, in a system built on trust, perception and reality are both important. Good business leaders and directors are going to work on both. They are going to do everything they can, as quickly as they can, to make sure that trust is restored in the system. That means regulation and leadership.

In June 2002, GE decided that we weren't going to just check the box when it came to governance. I asked our board to review the Sarbanes-Oxley Act and the New York Stock Exchange proposed governance guidelines, and then within the next 60 days to make changes to the GE board that we collectively think we want. We did not come up with the perfect answer, but we came up with a board structure and a set of practices that our board endorsed and that we felt reflected the best-practice understanding of the day.

Five general points came out of governance discussions about how we wanted to run GE.

The first is perform with integrity. You're not going to restore investor trust unless companies are still aiming high, committed to hitting results, and making sure that the management team is totally focused on delivering on its commitments. This must always be done within the context of having good accounting procedures and a strong financial process led by the audit committee.

The second principle we focused on is a strong and independent board. The board has to understand and make sure a long-term strategy is being implemented that generates good returns for investors, and it must ensure that a team of leaders is in place that can execute that strategy.

GE set a target that two-thirds of our board members should be independent, and that all new non-employee directors would always be independent. We're always going to strive to have directors who have clear oversight and can make clean judgments on the strategy and the people of the company. Only independent directors can sit on the comp committee, the governance committee and the audit committee.

GE defined an oversight process by adding a presiding director whose role is to manage three board meetings a year without GE management present. We changed director pay to a little in cash and a lot in deferred stock units that vest a year after the director leaves the board. We ended stock options for the board and went to deferred stock units.

Our third principle is alignment of senior leaders and investors in terms of compensation. GE's top 24 executives have to hold a multiple of our salary in stock for as long as we do the job. If we exercise stock options we have to hold the stock for a year before we can cash it.

"These issues are extremely important, so that's why I say fix them fast so that you can spend time talking about strategies that are going to create long-term shareholder value."

JEFFERY IMMELT

I think more debate needs to take place on how you pay me, the CEO. You should pay me for performance and you should pay me for alignment, making sure I'm delivering for the board and for investors. You shouldn't have compensation plans to retain me.

The fourth principle is increased transparency. The ability to talk about your company externally the way you run it internally is something boards ought to make sure they're kicking the tires on all the time.

The fifth principle is that none of this works without a culture. Good companies have great people who play by team rules. If I were on a board it would be one thing I would always look for. One currency, one way people get paid, one set of rules and a sense that each and every day nobody gets treated differently, nobody is allowed to operate outside the system.

These issues are extremely important, so that's why I say fix them fast so that you can spend time talking about strategies that are going to create long-term shareholder value. My advice to boards is: Be demanding, protect yourself, but know that ultimately the value you create is in how well you can grow the company and how well you can accomplish those two goals of executing long-term growth strategy and selecting good people and good leaders.

Justice Steele of Delaware Supreme Court Addresses Students and Alumni

JUSTICE MYRON T. STEELE

THE HONORABLE MYRON T. STEELE, Associate Justice of the Delaware Supreme Court, addressed fundamental questions of corporate law and governance at a dinner held in his honor on November 7, 2002 in the Cantor Board Room of the Stern School of Business. Justice Steele, who has served on each of the three most important courts of his state over a 15 year judicial career, has developed substantial expertise in Delaware Corporation Law during his tenures on the Delaware Court of Chancery, the Delaware Supreme Court and the Delaware Superior Court. His judicial experience coupled with his intelligence, character and work ethic have made him a leading candidate for the position of Chief Justice of the Delaware Supreme Court, which is expected to become vacant in the Spring of 2004.

In his remarks to the NYU audience, Justice Steele emphasized the need for corporation law to be sufficiently clear and predictable to permit businessmen and women to plan and execute transactions with low cost and high reliability. He acknowledged the great importance of fiduciary duties in corporate law and governance but warned that courts need to exercise careful discretion in its use lest corporation law degenerate into ad hoc terminations of whether one court or another finds a transaction fair in retrospect.

Herbert M. Wachtell, a senior partner of Wachtell, Lipton, Rosen & Katz in New York and an NYU Law School graduate, said after the speech: “I have litigated large cases in many courts. When I appeared before Myron Steele in Chancery in important business cases I knew I would get the judgment of a superb mind, moored in good common sense. That is so important. He never loses his view of the larger picture. Win or lose, you always get sound judgments from Judge Steele.”

Commentary on Corporate Governance

Berkley and Allen Oppose Splitting Board Chair and CEO Positions

WOULD IT BE WISE POLICY for us to adopt, as the English have done, the standard practice of splitting corporate leadership by formally separating the roles of board chair from that of chief executive officer? A majority of the members of the Conference Board's Commission on Public Trust and Private Enterprise think so. It was one of the central recommendations of that high-level group in its 2002 Report, but whether investor interests across the board would be advanced by widespread adoption of this innovation remains controversial.

Fearing that such a separation may drift into a "best practice" standard without sufficient public discussion of its potential risks to organizational effectiveness, William Berkley, chair of the NYU Stern School of Business Board of Overseers and William T. Allen, Jack Nusbaum Professor of Law and Business and Director of the Center, recently published a short essay opposing the idea as a standard practice in the Harvard Business Review. See "In Defense of the CEO Chair," 81 Harv. Bus. Rev 24 (September 2003).

The authors acknowledge that in some firms the separation would be a useful strategy (noting especially its obvious attractions in leadership transitions) but assert that to adopt it widely as a "best practice" would entail costs to firms in which special controls seemed unnecessary. They point out that while boards may reduce risks, they are rarely if ever a source of innovation and new profit creation. Senior management teams are. Thus restricting leadership of the management team in inappropriate situations may, they say, lead to greater losses than gains in three respects. First, the innovation will inevitably reduce CEO authority and place power in a person who will be less informed about the company, its markets and its technology than is the fulltime chief officer. Second, split leadership roles will introduce additional instability into relationships among senior managers. And third, it inevitably would reduce the governance roles of other directors. The piece concludes with a warning that these costs, which would be borne by all well-managed firms where separation is adopted as a standard best practice, would be largely invisible. The structure of a board, like most elements of corporate governance, should be custom-tailored to the needs of each company, according to Berkley and Allen.

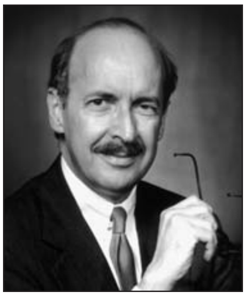
Senator Joseph Lieberman Addresses Business Ethics to Packed Vanderbilt Hall Audience

UNDER THE NAMEPLATE of the Center for Law & Business, Senator Joseph Lieberman addressed a large audience of students and faculty at NYU School of Law on corporate responsibility and business ethics. The April 2002 event was stimulated by the collapse of Enron and the resulting search for what went wrong. Senator Lieberman, who chairs the Senate Governmental Affairs Committee that is investigating Enron, stated that "Enron has become a grand metaphor for the real human problems that profit pressure can produce when it goes to gross extremes because it is unchecked by personal principles or business ethics." He outlined the steps he believes government should take to improve public policy and that corporations should implement to foster improved corporate governance practices within their ranks. He called for a "new corporate social contract" to address the prevalent business ethics problems that the Enron scandal brought to light. While additional government regulation is necessary, Senator Lieberman cautioned that "we cannot put the business ethics police on every corner that might be cut." He explained that "government will never be able to legislate or regulate morals into every part of our markets. Businesspeople and businesses must do that themselves."

> "Better ethics ultimately make better economics."
>
> SENATOR JOSEPH LIEBERMAN

Senator Lieberman addresses Vanderbilt Hall audience

Academic Board



William T. Allen is the Jack Nusbaum Professor of Law and Business and Director of the NYU Center for Law & Business. Professor Allen teaches courses in Corporation Law and Mergers and Acquisitions in the School of Law and Corporate Governance and Mergers and Acquisitions, among others, in the Stern School of Business. His research interest is in corporate governance, a topic on which he writes and speaks often. In 2003 he published (with Reinier Kraakman) Commentaries and Cases on the Law of Business Organization (Aspen Press). Before joining NYU in 1997, Professor Allen served as Chancellor of the Delaware Court of Chancery from 1985 to 1997. In addition to his academic work and work as Director of the Center, Professor Allen has served as Chair of the Independence Standards Board (1997-2000), as a member of the Legal Affairs Committee of the New York Stock Exchange (2001–to date), and he is on the Board of Trustees of the University of Delaware (1997–to date). He is an elected member of the American Law Institute and the American Academy of Arts & Sciences. Professor Allen holds a B.S. degree from the NYU School of Commerce (1969), a J.D. from the University of Texas School of Law (1972) and an honorary doctorate from Dickinson Law School of the Pennsylvania State University (1989).

Yakov Amihud is the Ira Rennert Professor of Entrepreneurial Finance at the Stern School of Business. He has published more than eighty research articles in professional journals and in books. Professor Amihud's research includes the evaluation of corporate financial policies, mergers and acquisitions, initial public offerings, corporate managers objectives, dividend policy, and law and finance. The focus of his research is the effects of assets liquidity on their returns and values, and the design of securities markets' trading methods. On these topics, he has done consulting work for the NYSE, AMEX, CBOE, CBOT and other securities markets. He has edited and co-edited five books on topics such as LBOs, bank M&As, international finance and securities market design.

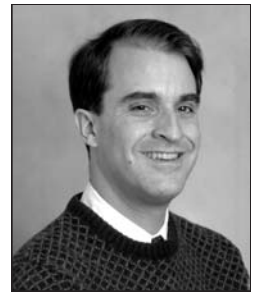
Jennifer Arlen is the Norma Z. Paige Professor of Law at NYU School of Law. Professor Arlen received her B.A. from Harvard University (magna cum laude) and her law degree and a Ph.D. in economics from NYU. She joined the Law School faculty last year and teaches corporations, securities fraud litigation, and a seminar on business crime. She has written more than twenty articles in peer-reviewed journals and law reviews. Her main research focus is on the use of legal rules to deter corporate wrongdoing. The issues she has explored include securities fraud, corporate crime, and malpractice liability of managed care organizations. She also writes about behavioral law and economics. Two of her articles were selected as among the best corporate and securities articles by the Corporate Practice Commentator; she has received three National Science Foundation grants to support her research. Professor Arlen came to NYU from the University of Southern California Law School, where she was the Ivadelle and Theodore Johnson Professor of Law and Business and a founding director of the USC Center in Law, Economics and Organization. She has been a Visiting Professor of Law at Yale Law School and at the California Institute of Technology, and was an Olin Fellow at Berkeley Law School. Professor Arlen has served on the Board of Directors of the American Law and Economics Association, and has chaired the Remedies, Torts and Law and Economics sections of the Association of American Law Schools. Professor Arlen clerked for the Honorable Phyllis Kravitch of the U.S. Court of Appeals for the Eleventh Circuit. She started law teaching at Emory Law School.

Kose John is the Charles William Gerstenberg Professor of Banking and Finance at the Stern School of Business. John teaches graduate courses in corporate finance theory and financial institutions and an undergraduate course in corporate finance topics. Professor John holds a Ph.D. from the University of Florida. He has taught at the University of Chicago, Columbia University, and Institut D'Etudes Politiques de Paris (Sciences Po). He has won several awards for teaching and research including the Batterymarch Fellowship in 1983 and the Jensen Prize for the Best Paper published in 2000 in the Journal of Financial Economics. He is the author of two books and over forty articles in corporate finance and banking appearing in the Journal of Finance, the Review of Financial Studies, the Journal of Financial Economics, the American Economics Review, the Journal of Business, Financial Management and the Journal of Financial and Quantitative Analysis. His recent research focuses on banking, corporate governance, top-management compensation, and comparative bankruptcy systems. He has served as an Editor of Financial Management from 1999 to 2002 and currently serves as an Advisory Editor of the Journal and the associate editor of a dozen other academic journals in finance and economics.

Henry Hansmann is the George T. Lowy Professor of Law at NYU School of Law. Professor Hansmann received both a J.D. and a Ph.D. in economics from Yale University. He began his teaching career at the University of Pennsylvania, and subsequently taught for twenty years at the Yale Law School, where he was the Sam Harris Professor of Law. He joined the NYU faculty in 2003. His scholarship has focused principally on the law and economics of organizational ownership and structure, and has dealt not just with business corporations but also with nonprofits, mutuals, cooperatives, condominiums, trusts, and partnerships. He has written, as well, on other aspects of basic legal relationships, with particular attention to property rights. His book, The Ownership of Enterprise, was published by Harvard University Press in 1996. He is a coauthor of The Anatomy of Corporate Law: A Comparative and Functional Approach, to be published by Oxford University Press in 2004. He is currently President-Elect of the American Law and Economics Association.

Marcel Kahan is the Crystal Eastman Professor of Law at the NYU School of Law. His main areas of teaching and research are corporate governance, securities fraud, and bondholder rights. Professor Kahan has written over 30 articles for law reviews, finance journals, and professional publications. One of his articles, "Do Bondholders Lose From Junk Bond Covenant Changes" (with Bruce Tuckman) was awarded the Merton Miller Prize for the best paper submitted to the Journal of Business, and three others have been selected as among the best corporate and securities articles by the Corporate Practice Commentator. Professor Kahan has been a Visiting Professor at Harvard Law School, Columbia Law School, and the Hebrew University. He is a member of the Board of Directors of the American Law and Economics Association (2000–present).

Geoffrey P. Miller is the Stuyvesant P. and William T. Comfort Professor of Law at NYU School of Law and Director of the NYU School of Law's Center for the Study of Central Banks. Professor Miller attended Columbia University Law School, where he was Editor-in-Chief of the Law Review. He served as a judicial clerk to Judge Carl McGowan of the U.S. Court of Appeals for the District of Columbia Circuit and to Justice Byron White of the United States Supreme Court. He also worked as an attorney in the United States Department of Justice Office of Legal Counsel and at a private law firm before entering law teaching. Prior to joining NYU in 1995, Professor Miller was the Kirkland & Ellis Professor at the University of Chicago Law School, where he served as Associate Dean, Director of the Program in Law and Economics, and Editor of the Journal of Legal Studies. Professor Miller has been a visiting scholar at the Bank of Japan and the Federal Reserve Bank of Chicago, and has organized conferences in cooperation with several national central banks. He is the author of five books and more than a hundred scholarly articles in the fields of banking law, corporate law, legal ethics, separation of powers, civil procedure, and law and economics, and has published Banking Law and Regulation (3rd ed., Aspen Law and Business 2001) (with Jonathan R. Macey and Richard Scott Carnell).



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Working Papers

Many new working papers on issues related to corporate governance were developed during the past year. Many of the Center's working papers have been published in leading journals of law, corporate governance, corporate finance and economics. For the most current list of working papers and abstracts and for working papers developed prior to 2002, please visit our site at www.stern.nyu.edu/clb. Please also note that many of the papers may be downloaded from our site.

CLB-03-011
Conflicts of Interest in Class Action Litigation: An Inquiry into the Appropriate Standard. Geoffrey P. Miller. September 2003.

CLB-03-010
Direct Democracy and Debt. Clayton P. Gillette. September 2003.

CLB-03-009
Bad Judges. Geoffrey Miller, August 2003.

CLB-03-008
Torts, Expertise and Authority: Liability of Physicians and Managed Care Organizations. Jennifer Arlen and William Bentley MacLeod. June 2003.

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The Myth of State Competition in Corporate Law. Marcel Kahan and Ehud Kamar. October 2002.

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The Efficiency and Welfare Foundations of Freezeout Laws in Takeovers.
Yakov Amihud, Marcel Kahan, Rangarajan K. Sundaram. Februrary 2002.

CLB-02-001
An Analysis of Shareholder Agreements. Gilles Chemla, Michel A. Habib, Alexander P. Ljungqvist. January 2002.

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