


NYU CENTER FOR LAW & BUSINESS

NYU SCHOOL OF LAW AND LEONARD N. STERN SCHOOL OF BUSINESS

Annual Report 2003–2004

Board of Advisors

Academic Board

A Letter from the Director

To Our Alumni and Friends,

We are happy to report to you some of the activities and accomplishments of the NYU Center for Law & Business during the 2003-04 academic year.

This past year, we continued our program of organizing faculty/student seminars on cutting-edge academic issues in the areas in which corporate law and corporate finance both claim an interest. In the NYU School of Law, Professor Rob Daines and I organized a seminar series dedicated to papers dealing with the emerging field of "behavior finance." Seminar participants heard presentations from leading academic thinkers in the field of behavioral economics. These scholars are incorporating the more realistic assumptions from experimental psychology into their explanations of economic and financial phenomena. Academically controversial, the field provided an ideal subject for the seminar series. Approximately 20 law students were enrolled and the sessions were attended by a handful of finance Ph.D. students as well as faculty. The schedule of papers presented is set forth later in this report.

The Center continued its program of seminars investigating the legal infrastructure of financial markets in its Spring Law and Finance Seminar at the Stern School of Business. The schedule of these well attended meetings is also set forth below.

The Center's innovative program for the Certificate in Law and Business continues to grow in its attractiveness to both foreign students beginning and completing their studies for the LL.M. degree and for J.D. students who have finished their first year of law school. Some of the student comments collected in this report reflect the value that business school experience brings to law students. This year, due to the generosity of Mr. John L. Vogelstein, the Center was able to offer financial aid to four highly qualified students to attend the Certificate Program.

The Second NYU Directors' Institute was held in late May 2004. It brought together a great faculty and attracted a large audience of more than 150 corporate directors and officers to a one day discussion of issues of governance.

M.B.A. students and law students alike were informed, encouraged and excited by a great series of speakers at the Center's Student Lecture Series. From prosecutors of famous business crime cases to entrepreneurial CEOs, from the Enron whistleblower to experts on various aspects of law and financial markets, these speakers enlivened and enriched the classroom experience. Also this year, the Center, quite happily, helped midwife the birth of a new student edited scholarly and practice journal this year, The NYU JOURNAL OF LAW & BUSINESS. As I write, dozens of students are selecting topics, researching and writing drafts, editing submitted manuscripts and doing all of the assorted activities that meeting their December 2004 publication deadline requires.

The Center also initiated this year a new Fellowship designed to offer a further period of study to a young person of special talent who seeks an academic career in law and whose research interests involve social control of business institutions and the social responsibility of business. The Wagner Fellowship was made possible by the generosity of the Leonard Wagner Trust and its recipient will take a special interest in issues of professional control and ethics.

In addition to amplifying on these activities in this report, we also touch upon some of the Center's forthcoming activities, such as the international academic practice corporate governance conference that we are now organizing, in partnership with the London School of Economics to be held in London in late 2004. This year we are also working on our first of a planned annual Law and Finance academic conference that the Center will host jointly with the University of Pennsylvania's Wharton School and Law School. The initial meeting is scheduled for Washington Square in February 2005.

We are pleased with the progress that has been made in building the NYU Center for Law & Business—the Stern School and the School of Law, acting cooperatively—into an important part of national academic and policy conversations concerning the legal institutions that control and structure business activity. As always we welcome your ideas and your support.

Sincerely yours,

William T. Allen

Center Brings Rich Array of Leaders to NYU in 2003-04

The Center's Student Lecture Series brought five leaders from business and law to campus. Students attended these events in greater numbers than ever this year.

ERNEST PATRIKIS, ESQ.
General Counsel, American International Group

"Comparing the Experiences and Pressures of the Public and Private Sectors: An Attorney's Perspective on the Federal Reserve Bank of NY and AIG"

Ernest Patrikis talked candidly about his career in the public sector, as the general counsel of the Federal Reserve Bank of New York, and in the private sector where he is now the general counsel of AIG. He explained many of the "ins and outs" of the Fed operation. Problems in dealing with regulation, with the press, and the operation of the Fed's enforcement arm were explored. Mr. Patrikis compared and contrasted his professional experiences at the Fed with those at AIG, a large multinational insurance company, where his responsibilities required different skills and expertise. The geographic and operational size and diversity of AIG have led Mr. Patrikis to broaden his knowledge base and become more of a generalist in his practice. Today, for instance, he deals with regulators worldwide. Students had many "how-to" related questions for Mr. Patrikis, such as how should they prepare themselves for careers in the two sectors and the different requirements for and responsibilities of entry level positions in the two sectors.

JOHN MOSCOW, ESQ.
Assistant District Attorney, Deputy Chief of Investigation Division, Manhattan

"Business Crimes: Observations of a Prosecutor"

John Moscow gave students an inside look into how the government built its case against the defendants in the Tyco trial, ongoing at the time of his address. He described the salient facts of certain real estate transactions and the purchase of art that provided the basis for the government's case. He also provided his experienced perspective on the issues generally involved in prosecuting business crimes. Interested students inquired into issues related to sentencing individuals convicted of white-collar offenses, jurisdictional and political matters between local, state and federal prosecutors, and the impact of recent state prosecutions on future SEC enforcement action. Mr. Moscow has been an Assistant District Attorney in the Manhattan D.A.'s office for over thirty years. He has worked specifically on the prosecution of economic crimes since 1989 and was involved in the lead prosecution of the individuals involved with BCCI.

WILLIAM R. BERKLEY
Chairman and CEO, W.R. Berkley Corporation

"The Real Cost of Sarbanes-Oxley"

Bill Berkley, a distinguished Stern alumnus and Chairman of the Stern School Board, gave a frank and engaging talk to a capacity crowd of students assembled in the living room of the Stern School, The Commons. His topic was the practical realities of the business environment post-Sarbanes-Oxley. Mr. Berkley explained that, in his view, the August 2002 law attempts to regulate morality in the markets, which he believes is a difficult and costly task. Addressing the role of regulation in market efficiency in the US marketplace, he stressed the importance of considering the impact of rules that protect markets against small problems and the price/benefit trade-off. Of specific concern was the effect of costly regulation on the ability to undertake entrepreneurial activity. During the questions and answer session following his address, Mr. Berkley discussed the positive impact of more disclosure, of encouraging a culture of risk-takers, and of ensuring that CEOs have valuable and trusted advisors around them with whom they can discuss business issues.

Mr. Berkley is the Chairman and CEO of W. R. Berkley Corporation, a Fortune 500 property-casualty insurance holding company he founded in 1967 with assets of over $10 billion and annual revenues of over $4 billion. In addition, he is Chairman of many of the Company's subsidiaries, including Berkley Dean & Company, an investment management company.

ILENE KNABLE GOTTS, ESQ.
Partner, Wachtell, Lipton, Rosen & Katz

"Recent Developments in Antitrust and M&A"

Ilene Gotts returned to the Center this year to address the interesting and complex topic of anti-trust issues in recent mergers and acquisition transactions. She explained for the large audience of students and faculty assembled in Lipton Hall, the various costs of anti-trust risk in these transactions. Ms. Gotts reviewed relevant theories of harm, and explained that the unilateral effects theory is currently the one relied upon most frequently. She discussed the anti-trust issues involved in the Northrop/TRW transaction, and selected noteworthy no-actions and Department of Justice challenges to certain consummated transactions. She answered questions about enforcement and competition in innovation.

SHERRON WATKINS
Enron Whistleblower, and Time magazine Co-Person of the Year (2002)

Our luncheon event featuring Sherron Watkins was our most highly attended student event ever. Ms. Watkins is the former Vice President of Enron Corporation who alerted then-CEO Ken Lay in August 2001 to accounting irregularities within the company, warning him that Enron "might implode in a wave of accounting scandals." She testified before Congressional Committees from the House and Senate investigating Enron's demise. TIME magazine named Ms. Watkins and two other whistleblowers (along with Coleen Rowley of the FBI and Cynthia Cooper of WorldCom) as their 2002 Persons of the Year, for being "people who did right just by doing their jobs rightly." Over 165 students and faculty packed into our luncheon to hear her personal reflections on the Enron scandal. Students heard her fascinating story and learned first hand about her involvement and experiences during the unraveling of the energy giant. Students and faculty inquired about her decision and timing to blow-the-whistle as well as the risks involved and many of her experiences related to her testimony before Congress.

The Student Lecture Series alternates locations between the Stern School and the NYU School of Law. For a listing of upcoming student lectures, please visit our website at http://w4.stern.nyu.edu/clb and click on "What's New".

SHERRON WATKINS

BILL BERKLEY

JOHN MOSCOW

Certificate Program in Law & Business

Program Continues to Grow

The Center's innovative program to allow law students to access graduate business education, without the additional time required for the M.B.A. degree—called the Certificate in Law and Business Program—continues to receive gratifying feedback and larger enrollments. The program requires students to take nine credits of business school courses (Micro-economics, Corporate Finance and Statistics) in the summer and an additional six credits of Stern elective credits in the fall and spring terms. It is expected that these students will take accounting in the law school. Upon completing this program, the student will receive, at graduation, in addition to his or her law degree, an Advanced Professional Certificate in Law and Business from the Stern School.

Once again, this year, we enrolled the largest class of law students ever in our Certificate Program. In the summer of 2004, 16 J.D. students and LL.M. students from all over the world attended.

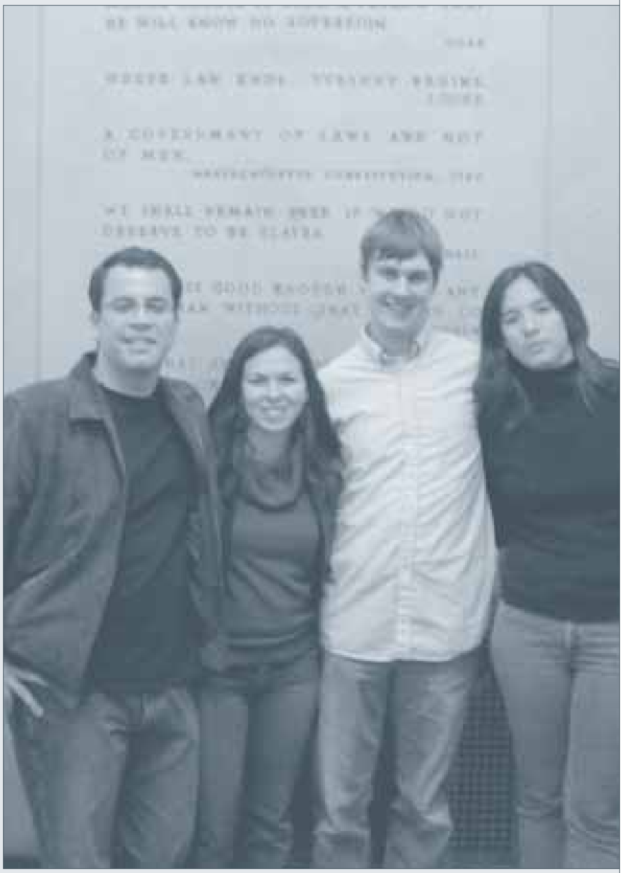
This program, which was originally designed to allow foreign LL.M. students to get a sound foundation in economics and finance before starting their one year graduate program, has been expanded to be open to students finishing their first year of law school. Students who have enrolled in the program have been highly enthusiastic about the experience.

For more information on this academic program, please visit our website at http://w4.stern.nyu.edu/clb.

John L. Vogelstein Endows Scholarship Program for Certificate Students

A generous gift by John L. Vogelstein, Vice Chairman of Warburg Pincus, LLC and a member of the Stern School Board of Overseers, has made possible the establishment of the Vogelstein Scholars Program to offer financial support to selected students attending the Center's summer Certificate Program in Law & Business at the Stern School. This scholarship program takes into consideration a student's financial need as well as record of achievement.

The first class of Vogelstein Scholars was comprised of four students: Juliana Obregon, LL.M. student, Colombia; Sandra Leon Salcedo, LL.M. student, Peru; Hernán Velarde, LL.M. student, Peru; and Jacob Kreutzer, J.D. student, USA.



HERNÁN VELARDE (PERU), JULIANA OBREGON (COLOMBIA), JACK KREUTZER (USA), AND SANDRA LEON-SALCEDO (PERU)

"Being part of the select group of student pursuing the APCLB has been a real adventure which required from me dedication, organization and, honestly, resistance! Since the first day of classes I realized that it was the beginning of a difficult, but surely satisfactory journey. The APCLB was one of the main factors in considering the venue of my LL.M. studies and now I know that I made the right decision for the curriculum is complete, well structured, and a challenge for every student regardless of his/her background.

When it comes to assessing an academic course of study, I mostly take into consideration the extent to which the program changes, affirms, or improves my ideas as to a certain issue... Well, the APCLB has broadened my career's horizon by providing me with the tools necessary to decipher the fundamental concepts of finance and economics."

Alberto Garofalo
Venezuela

Certificate Students Paper on Financial Markets in the Dominican Republic Has Them Sit Up and Take Notice Back Home

Carlos Chavez from Mexico and Andres Marranzini from the Dominican Republic have some things in common. Both are recent LL.M. graduates of NYU in the corporate law program. Both enrolled in the Center's Certificate Program to get a better grounding in economics and finance to supplement their legal studies. And both developed an interest in the legal infrastructure of financial markets at NYU and want to make an impact on life in their home countries. They are doing so more immediately than either expected.

In 2003, the students co-operated in writing a paper on the importance of bond rating agencies for the pricing of debt issued by the Dominican Republic. Their paper made the point that costs of capital to the nation could be reduced if rating agencies were supplied with better (more complete) information about the Dominican economy. What may seem an intuitive point to those who have knowledge of the operation of capital markets was a vital point for the Dominican Republic. The paper became something of an issue in the recent contested Presidential election in the Dominican Republic and after the victory of the challenger, Andres was approached about serving in the new government. According to Andres: "The Center was crucial in the knowledge that served as a base to interpret most of the difficulties that affect my country and the newly elected authorities, for whom I now serve as aid in the transition period to power."

Carlos has begun practicing corporate law at Franck, Galicia y Robles, S.C., a major firm in Mexico, specializing in corporate law and finance, and he enjoys the challenges of the law firm clients. Carlos reports, "I am finding this process very exciting because I'm having real-life contact with issues that I had formerly seen only in theory (projects, corporate governance, etc.). Moreover, I have the pleasure of working with three NYU alumni and several alumni from other U.S. law schools." Carlos plans to return to New York City in the near term to work for an American law firm before settling into teaching career in Mexico City.

Law Students Launch NYU Journal of Law & Business

With the assistance and support of the NYU Center for Law & Business, students in the NYU Law & Business Association, have undertaken a new and exciting venture at the NYU School of Law—the publication of a new journal of corporate and business law. The objective of the Journal staff is to bridge the divide between high level academic scholarship in corporate and business law and important practice-oriented pieces. The target market for the publication will be practicing lawyers who seek to keep in touch with the intellectual issues in their area of practice as well as academics who seek access to high level practitioner insights.

The New York University Journal of Law & Business will be a student-edited journal that provides a forum for dialogue among scholars, students and practitioners relating to all aspects of the legal regulation of business and of the markets within which business operate. The Journal will focus on recent developments and innovative successes in the law and business community, and is committed to publishing authoritative writings on the interrelationship of the two professions.

This student endeavor represents an important step for the corporate and business law program of the NYU School of Law. The already wide array of options available to students at NYU interested in a career in corporate or business law will be supplemented with a specialized extra-curricular writing and editing experience that will afford these students an opportunity to pursue research to a new depth.

Professor William T. Allen and Professor Helen Scott act as faculty advisors to the editorial board of the new Journal. The first edition of the Journal is expected in December 2004. Please visit the Journal website for more information, or if you wish to subscribe or submit an article for consideration, at http://www.law.nyu.edu/journals/lawbusiness.

"We are extremely grateful for all of the assistance the Center for Law & Business provided in our efforts to create a unique journal at NYU. The members of the CLB were by our side every step of the way, enthusiastically providing helpful pointers and great advice on how to build a journal, and encouraging us to work together to accomplish our goal. With their help, we were able to gather a great deal of support from the student body as well as the faculty at NYU.

Most importantly, the Center's far reach and great reputation gave us immediate recognition with professors at other schools—as well as business law practitioners. We were able to build a strong staff, develop close ties with the legal community in New York (and in many other cities), and get high quality articles from academics and practitioners alike. The success of the Journal of Law & Business is surely a product of the hard work of many members of the founding staff; but it could not have been done without the guidance and leadership of each member of the Center for Law & Business." — David Chubak, Editor-in-Chief

"The Center for Law & Business was the primary academic resource for us in getting the Journal approved. Professor Allen and the staff at the Center helped us refine our vision, put us in touch with resources in the academic and professional communities, helped us navigate the administrative approval process, and stepped in to fulfill requirements that couldn't be met by students alone."
— Nathan Pierce, Developments Editor

Students Attending Center Events and Courses

Law Students Hard at Work to Launch the New Journal

Law & Business Curriculum at NYU

Stern Specialization in Law & Business Grows

Becoming an effective business leader may require an understanding of the many rules and regulations that constrain business activity. For this reason, in association with the Center, Stern offers a Specialization in Law & Business within its general M.B.A. program, which enables interested students to gain an education in the legal foundations of the transactions and industries they study at Stern.

This year 44 Stern M.B.A. students elected the Specialization in Law & Business, up from 15 students who graduated last year. Students who elect this specialization are required to take at least nine credits, and may take as many as 18 in law related subjects.

In offering this specialization, Stern cooperates with the NYU School of Law, which opens the classrooms of more than a dozen fundamental and important corporate law courses to M.B.A. students. Among the law school curriculum offered as part of this specialization are Corporations, Banking Law and Regulation, Bankruptcy, Securities Regulation, Venture Capital, and many more. A full list of the courses open to Stern students can be found at www.stern.nyu.edu/mba/advising/specialization/lawbus.html.

Students Take Advantage of Cross-Registration Opportunities

As in years past, the Center continues to manage the cross-registration of Stern students at the NYU School of Law and of law students at Stern. More and more students are taking advantage of the educational opportunities offered to them at a sister NYU graduate school. Facilitating this initiative is one of the core tasks of the Center and we are always looking for new ways to integrate interested students of one school more easily into the classrooms of the other school.

NYU's Leading Corporate LL.M. Program Continues to Grow

While NYU is nationally known for its Program in Graduate Tax, these days it attracts just as many highly qualified international students for its LL.M. in Corporation Law. According to Kenneth Kleinrock, Assistant Dean for Law School Admissions: "Our graduate program in corporate law is enormously attractive internationally. It has grown as a proportion of our total graduate enrollment because of the quality of our program. The Corporate Program now accounts for 24% of all of our graduate students. These students are highly qualified and make a huge contribution to the school." In 2004, 432 LL.M. students were registered in the Law School. Of these, 103 were seeking an LL.M. in Corporate Law. This program has grown more than 120% over the period 1998-2003, while standards for admission have increased notably.

According to Professor William T. Allen, who acts as Director of the Corporate LL.M. Program in the Law School, "The close relationship between the Stern School and the Law School accounts for part of the growing attraction of the NYU School of Law to these international students. Most of our Corporate LL.M. students come to NYU wanting to take a Stern class in investment banking, or M&A, or another Finance Department offering as part of their law program. Of course, we must give some of the credit for the appeal of this program to our being in the greatest city in the world."

"Our large cohort of highly qualified international graduate lawyers gives our School a special flavor and advantage in this global economy" according to Professor Allen.

The NYU Law & Business Association

In the past year, the L&BA has come out of obscurity to establish itself as one of the core student organizations at the NYU School of Law. The L&BA membership is among the largest of all student organizations on campus, and has grown its student budget by 240%+ in the past year alone. The L&BA now provides several valuable services to members and the student body generally, including a Mentorship Program, Business Plan Competition, Brown Bag Luncheon series, social and networking events, and other valuable resources. The Center works closely with the LB&A in many of its endeavors.

The Governance Committee and the Board's Role in Crisis

The Second NYU Directors' Institute

More than 150 corporate directors and officers were drawn to the Stern School in May 2004 to participate in the Center's Second Annual NYU Directors' Institute. The Center's program is unique among the high level, University-based offerings for director education in that it is a one-day program, designed to allow very busy senior people to attend, and it attempts both to be interactive and to minimize the participation of service providers as faculty. Because of its location in New York City, the Institute has been able to attract an outstanding faculty. This year's Institute focused especially on two topics: the role of the governance committee in today's environment and the role of the board in a corporate crisis. The faculty included business people who have major roles in the rehabilitation of the some of the most notable corporate frauds and failures of the last few years, as well as experts with a broader range of relevant experience.

This year's faculty included:

William R. Berkley, Founder and CEO and Chairman of W.R. Berkley Corporation

Lewis B. Kaden, Esq., Partner, Davis, Polk & Wardwell and corporate director

Dr. Henry Kaufman, noted author, historian of 20th century financial institutions, economist President of Henry Kaufman & Co.

Jack Krol, former CEO, and Chair of the DuPont Company and currently the lead director in the Tyco rehabilitation

Honorable Stephen P. Lamb, Vice Chancellor of the Delaware Court of Chancery

Martin Lipton, Esq., Senior Partner, Wachtell, Lipton, Rosen & Katz, noted governance expert and principal draftsman of the new NYSE listing standards

Carolyn Rosenberg, Esq., Partner, Sachnoff & Weaver and one of the nation's experts on directors and officers insurance

Dr. Gerald Rosenfeld, CEO of Rothschild North America and adjunct professor of finance at the Stern School

Paul Rowe, Esq., Partner, Wachtell Lipton, Rosen & Katz

Linda Thomsen, Esq., Deputy Director of Enforcement at the SEC

Raymond S. Troubh, Chairman of the Board of Enron

A keynote address was made by the Honorable Richard C. Breeden, formerly Chairman of the SEC, court-appointed monitor of the WorldCom reorganization and Chairman of Richard C. Breeden & Co. In his address, Mr. Breeden shared his conclusions on corporate governance from his experiences in rebuilding the board of directors of MCI after the MCI/Worldcom settlement with the Securities and Exchange Commission. In describing the new MCI board, he provided insights into the importance of education and training programs, review of internal controls and of governance failures. Mr. Breeden listed what he considers to be the nine essential functions of a board of directors, from recruiting high quality members to focusing on disclosure programs.

The third annual NYU Directors' Institute is planned for June 2005 again in New York City. Please contact the Center for more information or visit our website later in the academic year.

Panel One – The Larger Context

The first panel of the day broached many large-scale economic and financial issues of direct relevance to corporate directors. Professor Roy C. Smith, the Langone Professor of Finance at the Stern School, led a lively and interactive session between the panelists and the audience, during which participants expressed their opinions through audience polls and direct conversation with the panelists and each other.

Dr. Henry Kaufman, noted economist and Stern alumnus, placed today's corporate governance crisis in historical context, explaining that governance problems have existed in financial institutions for decades. He stated that academic institutions have an important role in preparing business people for the ethical challenges of the marketplace. Dr. Gerald Rosenfeld, CEO of Rothschild NA, and long an Adjunct Professor of Finance at Stern, posed the question: "What potential scandals have not been uncovered because of the rising river covering up the jagged rocks?" Scandals are inextricably linked with economic times, he explained, as well as the existing complex interlinkages of financial institutions. The panelists discussed the degree to which the market controls business behavior, whether the markets today better reflect the values of good corporate governance, whether governance has influenced corporate risk management, corporate insider status and the expensing of stock options.

Panel Two – Corporate Governance Committee: Leadership, Information Flows, Recruitment, Peer Review and Director Compensation

During the second panel of the day, panel chair and Center Director Professor Allen led the discussion by a large group of distinguished experts on the important questions faced by the Governance and Nominations Committee.

Jack Krol, the former CEO and Chair of DuPont Company and now lead director at Tyco, Inc. and Bill Berkley, Chairman and CEO of W.R. Berkley Corporation, discussed aspects of corporate governance such as the important question of board leadership. Martin Lipton, Senior Partner of Wachtell, Lipton, Rosen & Katz, and Lewis Kaden, Partner at Davis, Polk & Wardwell joined Mr. Berkley and Mr. Krol on this panel. Bill Berkley stated that the goal of the corporation is to maximize profits. Corporate governance, he explained, is a means of assurance that the various corporate constituencies fulfill their missions. He stressed that, at the moment, transparency of financial statements, independence of directors and the role of directors as monitors are very important. Jack Krol added that the job of the corporation is to grow shareholder value and described the experience and great advantage of starting out with a clean slate at Tyco.

Mr. Lipton addressed the primary functions of a director. He stated that that the board has three major functions: coaching, monitoring, and reflecting the Corporation. Mr. Kaden talked about the role of management vis-à-vis the directors, and specifically, that of the CEO, as leader of the business enterprise, in selecting board members.

The panelists further discussed how governance is driven by SEC disclosure and not by the need of directors to manage corporate risk and they also addressed questions from the audience regarding diversity on boards, shareholder access proposals and separating the role of chairman and CEO.

Panel Three – Corporate Crisis Management

The chair of the event's third panel, Andrew N. Vollmer, partner at Wilmer Cutler Pickering LLP, began this session by distributing a description of a hypothetical corporate crisis situation to the audience, which panelists and participants discussed together. Raymond Troubh, interim Chairman at Enron, provided insights based on his thirty-five years of personal experience in business and as a corporate director, which included the importance of convening relevant committees immediately to deal with the crisis, and hiring outside counsel and outside experts with no prior relationship to the corporation. Gershon Kekst, founder and president of Kekst and Company, had participants consider the public posture of the hypothetical corporation and discussed the importance of timing public statements. Linda Thomsen, deputy director of the Division of Enforcement of the SEC, discussed the regulator's view of the role of the board during times of crisis, including the appropriate process for addressing whistleblower complaints. All panelists addressed audience questions concerning shareholder notification.

Panel Four – Director Liability Concerns

During the fourth and final panel of the day, the Honorable Stephen P. Lamb, Vice Chancellor of the Delaware Court of Chancery, described the legal framework for the responsibility and liability of corporate directors, the duties of loyalty, care and candor. Paul Rowe, partner at Wachtell Lipton provided a transaction-oriented approach to the topic. Carolyn Rosenberg, partner at Sachnoff & Weaver, described protections available to corporate directors and some of the important issues that directors and companies must consider in purchasing directors and officers liability insurance.

The NYU Center for Law & Business provides a continuing education program for current and newly elected directors, as well as general counsels and corporate secretaries. The purpose of our program is to strengthen the corporate governance practices of boards of directors. The NYU Directors' Institute 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.

THE CLASSROOM

DR. HENRY KAUFMAN

INSTITUTE FACULTY MEMBERS JACK KROL, BILL BERKLEY AND MARTIN LIPTON

PANEL TWO: MESSRS KADEN, BERKLEY, KROL, LIPTON, AND ALLEN

INSTITUTE PARTICIPANTS

KEYNOTE SPEAKER RICHARD BREEDEN

The Center Goes to London

This November, the NYU Center for Law & Business, in partnership with the London School of Economics, will host an extraordinary meeting of academic and policy experts to assess cross boarder issues in corporate governance. “We have assembled an astonishing array of the best academic minds in corporate finance, accounting and law from both sides of the Atlantic,” said co-organizer Kose John, the Charles William Gerstenberg Professor of Banking and Finance at Stern. “They will be joined by some of the most thoughtful policy makers, in our effort to bridge academic research and real world problem solving.”

Among the U.S. academics participating in the conference will be Professors Andrei Shleifer and Krishna Palepu of Harvard University, Professors Luigi Zingales and Steven Kaplan of the University of Chicago, Roberta Romano of Yale Law School, Professors John, Allen and Joshua Ronen of NYU. Michael Jensen, formerly of Harvard University, now with Monitor, Inc. will give the keynote address. Policy makers planning on attending will include Alan L. Beller, Esq., Director of the Division of Corporate Finance at the SEC; Hon. Myron Steele, Chief Justice of the Delaware Supreme Court; Martin Lipton, Esq., Senior Partner of Wachtell, Lipton, Rosen & Katz and a drafter of the new NYSE listing standards; and Michael Crooch, the member of the Financial Accounting Standards Board with principal responsibility for international harmonization.

Sir Geoffrey Owen and Professor Tim Beasely, both of the LSE, are organizing the European Union side of the event. A record of the discussions will be made and it is the hope of the organizers that a monograph drawn from the proceedings will be produced by the two sponsoring academic institutions.

The Center has also begun preparation on a second academic conference. In the spring of 2005, the Center will co-sponsor a joint conference between Stern and the NYU School of Law & Business and the Wharton Business School and University of Pennsylvania Law School to be held at NYU.

Corporate Law and Finance Scholarships

One of the primary ways the Center furthers its scholarship mission is by convening seminar series in each of the Law School and the Stern School. These meetings are open to faculty, graduate students and law and M.B.A. students.

Daines and Allen Lead Fall 2003 Law School Colloquium on Behavioral Finance

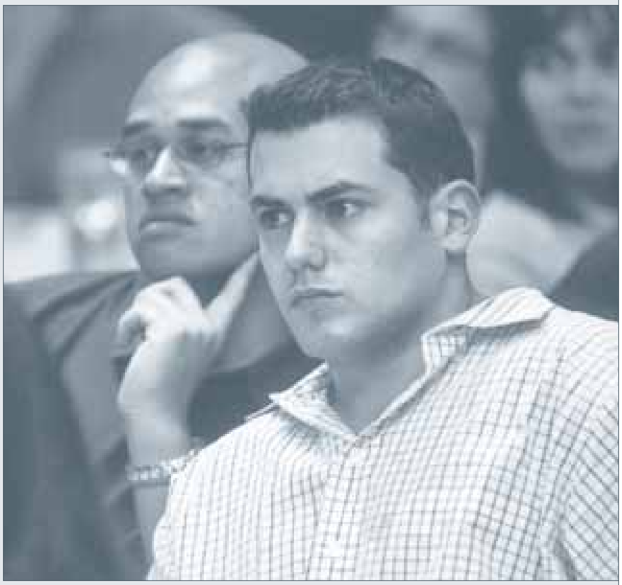
No academic field has had a greater impact on academic study of corporation law than economics, but when we say economics in this context, we really mean a particular version of neo-classical economics. The assumption and suppositions of this view of economic man and the markets he creates include: 1) human rationality, 2) markets that have all available information relevant to asset prices, 3) complete set of markets, and 4) low or no transactions costs. These suppositions, while obviously not fully true, have been quite useful in academic writing. Yet it is inevitable that any program aimed at understanding some aspect of human action will, as it develops, grow more realistic. A recent wave of scholarship in both finance, and economics more broadly, relaxes the strong rational assumption of neo-classical economics and encourages scholars to consider the implications for asset prices of limited or bounded rationality. This field is generally called Behavioral Finance.

Just how “correct”—or how close to “intrinsic value”—are security prices in large markets? The answer has enormous importance for myriad issues in corporate finance, as well as having great significance for the law of securities regulation and corporate mergers and acquisitions. How close to reality are the rationality and low transaction costs assumptions that underlie neo-classical microeconomics and its offspring the Efficient Capital Market Hypothesis?

The Center’s faculty-student seminar series in Behavioral Finance enrolled about twenty students who for the first half of the semester read and discussed foundations. For the last seven weeks, visiting scholars presented academic works in progress for discussion. The following papers were presented:

“Probability by Enumeration, Conditional Probability and the Use of Bayes’ Theorem”
Gary Simon, Stern School of Business, IOMS/Statistics Group

“Executive Compensation and Short Termist Behavior in Speculative Markets”
Patrick Bolton, Princeton University Department of Economics



"The Illusion of Law: The Deeply Captured Schemas of Corporate Law"
Jon Hanson & Ron Chen, Harvard Law School

"Managing with Style: The Effect of Managers on Firm Policies"
Antoinette Schoar, MIT, Department of Economics

"Does Investor Misvaluation Drive the Takeover Market?"
David Hirshleifer, College of Business, Ohio State University, Finance Department

"A Conditional Characteristics Model of Stock Returns"
Jeff Wurgler, Stern School of Business, Finance Department

"What Makes Managers Happy? Testing the Prospect Theory of IPO Underpricing"
Alexander Ljungqvist, Stern School of Business, Finance Department

Spring 2004 Law and Finance Seminar Series

The Spring Law and Finance Seminars assembled a prestigious group of scholars to the Stern School of Business who discussed their recent academic works relating to the fields of law and business. During these interactive and very lively sessions, academics had the chance to discuss their research, their data sources and their arguments with other experts in their field, and this discussion provided an invaluable opportunity to test their findings as they prepare to publish their work. These sessions were held at the Stern School of Business. The following papers were presented:

"The Political Economy of Fraud: A Theory and Empirical Tests"
Alastair Smith and Bruce Bueno deMesquita, New York University Department of Politics (co-author: Randolph Siverson)

"Who Appoints Them, What Do They Do? Evidence on Outside Directors from Japan"
Mark Ramseyer, Mitsubishi Professor of Japanese Legal Studies, Harvard Law School (co-author: Yoshiro Miwa)

"How Do Legal Differences and Learning Affect Financial Contracts?"
Per Stromberg, University of Chicago Graduate School of Business, Associate Professor of Finance (co-authors: Steven N. Kaplan and Frederic Martel)

"A Normative Theory of Business Bankruptcy"
Alan Schwartz, Sterling Professor of Law, Yale Law School

"Flights of Fancy: Corporate Jets, CEO Perquisites, and Inferior Shareholder Returns"
David Yermack, Stern School of Business

"Governance and CEO Turnover: Do Something or Do the Right Thing?"
Ray Fisman, B&M Feldberg Associate Professor Columbia University Graduate School of Business (co-authors: Rakesh Khurana and Matthew Rhodes-Kropf)

"Investor Protection and the Coasian View"
Nittai Bergman, Professor of Finance MIT Sloan School of Management

New Research Database on Corporate Directors

This summer, the Center undertook its largest research endeavor to date. Together with the Salomon Center for the Study of Financial Institutions, the Center began to construct a new online research database of corporate directors. The database will contain various data on boards of directors and corporate directors of companies listed in the S&P 500 index, for a defined time period.

The purpose of this database is to assist faculty and student researchers in corporate governance at NYU to collecting primary data available for empirical research.

Center Research in the News

Center Graduate Fellow and Colleague Report that Absence of Takeover Protections May Cost Shareholders

Can the absence of takeover protections cost corporate shareholders money? In newly reported research, Center Graduate Research Fellow Vinay Nair (in work with Yale's Martijn Cremers) gives the somewhat surprising answer, yes.

Why surprising? Advocates of institutional shareholders have tended to take strong positions against both staggered corporate boards and poison pills (a device to force any hostile bidder to negotiate with the target board of directors). They obviously believe that the absence of takeover protections is helpful to shareholders. On the other hand, advocates of pills as sound corporate governance have long asserted that this protective device is value enhancing. It is claimed that it will very rarely prevent a hostile takeover, but will enable boards to protect shareholders from abusive offers that are structurally coercive or at an inadequate price. Some studies have supported this view by finding that firms that have adopted pills are no less likely to be subject to uninvited offers, no less likely to experience a change in control after such offers and will on average receive a statistically significant higher price. These studies have not convinced everyone, however, and many institutions remain opposed to pills adopted by management.

The study by Nair and Cremers starts with the observation that an important component of capital is typically provided (at a cost) to corporations by long term creditors (bondholders). Since bondholders do not participate in any premium realized on the sale of the firm and may indeed suffer losses if their debt remains outstanding in a firm that is now more highly leveraged or otherwise perceived to be more risky, they may be sensitive to the risk of takeover. Indeed they may demand a higher rate of interest from issuers that they perceive have a higher probability of a takeover event. Ever since the late 1980s when insurance companies were surprised by the RJR Nabisco LBO, there has been an acknowledged technique for protecting against this risk. A change in corporate control may be made a default requiring repayment of principle and interest.

With these insights as background, Nair and Cremers have completed an empirical investigation of the effect of takeover protections on costs of debt. The bottom line appears to be that bondholders extract a price from the corporation when its governance arrangements are such that a takeover is more likely. While the size of this added cost will vary, with firms that raise a significant part of their capital from bonds, it will not be beneficial to shareholders (as owners of the residual interest in the firm) to allow the corporation to freely expose itself to the takeover market.

More specifically, the paper finds that stronger shareholder control can have contrasting effects on bond yields depending on the firm's takeover vulnerability. Using the presence of a 5% institutional block-holder as a proxy for the stronger shareholder control and using firm-level anti-takeover provisions as a proxy for a firm's vulnerability to takeovers, the authors find that **shareholder control is associated with lower yields on bonds if the firm is protected from takeovers**. They also find that **shareholder control is associated with more expensive debt (higher yields) if the firm is exposed to takeovers**.

These contrasting effects of shareholder control on yields are the strongest for firms that are small and have low leverage. In the presence of such shareholder control, the difference in bond yields due to differences in takeover vulnerability can be as high as 93 basis points. Consistent with this finding, the results are insignificant for a sub-sample of firms where the bondholders are protected from takeovers through the poison put covenant. Bond ratings also appear to incorporate a similar effect of shareholder control on bondholders.

Finally, the authors find that a bond pricing model that does not account for shareholder control generates an annualized abnormal return of 1% to 1.4% for portfolios that long firms with both strong shareholder control and high takeover vulnerability and short firms without either shareholder control or takeover vulnerability.

These results suggest that economic effects of the use of different governance mechanisms, such as shareholder monitoring and takeover vulnerability, depends on a firm's capital structure and that bond-pricing models should account for shareholder control. The paper may be downloaded at: http://w4.stern.nyu.edu/emplibrary/Nair04.pdf.

Highlight on Center's Academic Board

Professor Jennifer Arlen: Researching the Regulation of the Delivery of Health Care

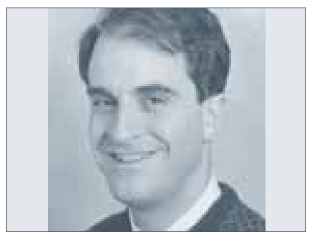
Last year, Professor Jennifer Arlen was named the Law School's inaugural Norma Z. Paige Professor of Law. During the year, she published (or had accepted) three articles and three books chapters. Although her writing covers a wide range of topics (e.g., corporate crime, medical malpractice and takeover defenses), all of her writing explores the ability of courts to regulate the behavior of organizations and people operating within organizations. In her work, Professor Arlen uses her training as an economist to develop economic models to enable her to explore behavior when people are imperfectly informed and cannot completely and fully regulate each other's behavior through contract.

For much of the past year, Professor Arlen has focused on a long-term project on whether Managed Care Organizations should be held liable for injuries to patients resulting from either their own negligence in making utilization review decisions or the negligence of their affiliated physicians. To analyze this issue, she and her co-author Bentley MacLeod developed an economic model of malpractice that captured both the uncertainty and complexity of medical treatment decisions and the central organizational structure of MCO-physician relationships (specifically, MCOs use of utilization review to regulate treatment decisions). This project resulted in an article in the RAND Journal of Economics and the NYU Law Review and book chapters in two books published by Cambridge University Press. These pieces demonstrate why the health of the medical care markets depends on holding MCOs liable for both their own negligence and for that of their affiliated physicians. Professor Arlen's work also discusses why it is inefficient to leave the issue of MCO liability to contract instead of tort liability.

In the field of corporate law, Professor Arlen published an article in a symposium issue of the University of Pennsylvania Law Review on the effect of managers' ability to use substitute takeover defenses (such as in third party contracts) on the merits of attempting to regulate managers' use of takeover defenses such as the poison pill.

Since coming to NYU, Professor Arlen also has been active in the life of the Law School. Along with Professors Allen and Kahan, she was instrumental in organizing the annual conference on Law and Finance that NYU's Law School and Stern school will organize each year along with the University of Pennsylvania's Law School and Wharton School. The first Law and Finance Conference will be held in February 2005 on the NYU campus. She also is co-editor, along with Professor Allen, of NYU's Law and Economics Research Paper series. Finally, she has started an internal Law and Economics faculty workshop that is designed to bring together faculty from the Law School, Stern and the economics department.

The "Plane Penalty": Professor Yermack's Corporate Governance Research



Scholars interested in the effects of corporate governance structures or practices on economic measures of firm performance search for interesting and reliable ways to measure the effects of observed patterns. Professor David Yermack of the Stern School, who serves on the Center's Academic Board, is a leader in this area of research. David's most recent research explored the relationship if any between CEO use of company airplanes and firm performance. His results found surprisingly strong and negative correlation between CEO use of a company plane and measures of firm performance. This research can be downloaded from the Center's website at http://w4.stern.nyu.edu/emplibrary/Yermack04.pdf. Here, Caroline Mulroney Lapham, the Associate Director of the Center, questions Professor Yermack on this new research result.

David, in April you published your new research paper, "Flights of Fancy," which analyzed the relation between CEO perk consumption, primarily personal use of company planes, and company performance and CEO compensation. Why did you decide to look at this question?

"There's a footnote in companies' proxy statements that describes fringe benefits for the CEO and other top managers. I saw the aircraft footnote enough times that it began to bug me. I became curious about how well these firms performed."

What correlation did you find between the disclosure in the proxy statement of aircraft use by a CEO and the company's performance?

"Very negative. When the CEO has personal use of a company plane, the company's stock underperforms the market by a considerable margin, about four full percentage points per year."

What do you conclude is the reason for this underperformance? Is it the cost of the aircraft and providing the perk to the CEO?

"It's well beyond the cost of the planes. There are many possible explanations, and they are all probably a little bit correct. If the CEO doesn't recognize boundaries between the company's assets and his own, he may be less likely to keep costs under control; you may see a lot of inefficient or over-staffed companies. Morale among the workforce may suffer if the CEO consumes too many perks. A CEO who has high use of the corporate jet may also be taking a lot of vacation time and not minding the store."

Is there any relation between CEO compensation and use of perquisites?

"Very little. There are certain free-market theories of executive compensation that predict that managers may be able to trade off a dollar of extra perks for a dollar less of regular compensation, leaving the shareholders no worse off. I do find a negative relation of this type, but it's very weak: about 10 cents less compensation for every $1,000 in additional aircraft use."

Your study also considered certain personal characteristics of CEOs, such as education and political affiliation, and whether they have an impact on their perk consumption. What did you find?

"These sorts of variables, which measure CEOs' tastes and preferences, turn out to be pretty significant. Older CEOs and Founder-CEOs have a lot more personal aircraft use than others. CEOs with a lot of education, such as Ph.D.'s, tend to fly the least, while those who haven't gone to college at all fly the most. Democrat and Republican CEOs—measured by donations to candidates—fly about the same, but those who don't donate to either party have significantly more aircraft use than others. I also have some new data about CEO golf habits that I haven't yet analyzed, but I'm almost certain will turn out to have significant correlations with plane use."

What do you think accounts for the recent rise in the use of corporate jets? Have recent governance reforms had any impact on limiting company perquisites such as aircraft use?

"All types of executive pay have been rising since the early 1990s, and my sample covered the 1993-2002 period, so it's not surprising to see perks rising just like salaries, bonuses, stock options, and so forth. It's really too soon to tell if the governance reforms of the past several years will have any effect on any of these things. There are two other special forces affecting corporate jet use. First, there has been a great increase in the time-share or fractional ownership segment of the industry, so today it's a lot easier for many companies to afford to have access to their own aircraft. Second, the terrorism attacks of September 2001 seem to have provided a rationale for at least some companies to "require" their CEOs to use the company plane even for personal travel, in the interest of security. The raw data about plane crashes over time don't necessarily support this type of decision, however."

Does the governance structure or monitoring of a corporation have any relation to perk consumption?

"Surprisingly little. Everyone expects that things such as board of directors composition or institutional investor ownership should affect executive pay and perks, but there isn't much evidence for this in my analysis."

What lessons do you think can be drawn from your research?

"Perks seem to be a useful diagnostic tool for investors. If you see the CEO loading up on a lot of perquisites, the data indicate that the company is likely to perform badly. You certainly wouldn't want to ban the corporate jets and other perks—the signal that perk use gives off about the CEO's management style seems to be extremely valuable, notwithstanding the cost of the planes."

Thank you, Professor Yermack.

Professor Geoffrey Miller's Study on Class Action Lawsuit Settlements and Attorney Fees is Front Page Business News

Professor Geoffrey Miller, the William T. and Stuyvesant P. Comfort Professor of Law at the Law School, and Theodore Eisenberg, professor of law at Cornell, recent work published in 2003 in the Journal of Empirical Legal Studies made the front page of the New York Times Business Section in January 2004. Their new study, "Attorneys Fees in Class Action Settlements: An Empirical Study," concludes that "contrary to popular belief" there is "no robust evidence" that either recoveries for plaintiffs in class-action lawsuits or fees for their attorneys have increased over time. This result contradicts arguments made by many businesses that assert that class-action lawsuits have increased their cost of doing business and by organizations and individuals in Washington, D.C. who urge Congress to pass legislative tort reform to curb these increasing costs. The conclusions and empirical data set forth in the Miller and Eisenberg study provide a significant contribution to the on-going and divisive debate on tort reform.

INTERVIEW WITH PROFESSOR MILLER
BY ASSOCIATE DIRECTOR CAROLINE MULRONEY LAPHAM

How did your interest in class action litigation come about?

"In the 1980s I participated as counsel in a number of corporate and securities class actions, often involving major takeover battles of the times. It seemed to be a very strange area of the law that presented interesting intellectual questions."

So often legal conversations are on the level of either doctrine or pure policy preferences informed by intuitions about how law affects social life. Have you done any empirical investigation of effects of the class action mechanism?

"Yes, I have been extensively engaged in empirical analysis of class action. Theodore Eisenberg and I wrote a paper together on class action attorneys fees, which appeared in the first issue of the new Journal of Empirical Legal Studies. We used two significant data bases — more than 1,000 class action cases reported by the journal Class Action Reports, and our own study of every published case over a ten year period in which the fees and the amount of the class recovery could be determined. We have also done an empirical study on objectors and opt-outs in class action litigation, which is due to appear in the Vanderbilt Law Review."

What are the policy implications of this work?

"To my amazement, the attorneys' fees paper became a bit of a political football. It was quoted on the floor of the Senate during debate on pending class action legislation and received an extensive write-up on the first business page of the New York Times. But we had no intention to play any role in politics. Our principal goal was intellectual — we wanted to discover the determinants of attorneys fees in class actions. We also hoped we could be helpful to courts which have to carry out the difficult task of determining an appropriate counsel's fee in these cases."

You write in many areas of law. Do you have follow-up projects in the area of class action litigation?

"We have some follow ups in class action work on the drawing board. Our current work includes a study of judicial influence, using citations in state court decisions, and also a study of the determinants of dissent in the state supreme courts. Overall, my recent work has been focused on empirical questions at the intersection of law and economics."

Thank you, Professor Miller.

Commentary on Corporate Governance: Inside Directors

An Outside-the-Box Idea: Go Inside for Directors

WILLIAM T. ALLEN

For more than 50 years, the standard criticism of corporate boards has been that they are pawns of the CEO. The popular remedy for this condition—which has appealed to the courts, Congress, and institutional investors alike—is to place heavier reliance on directors who are independent of the company and its management. That penchant reached full bloom in the reforms that followed the shock of the Enron-WorldCom scandals. The Sarbanes-Oxley Act, as well as the proposed new-listing standards of the New York Stock Exchange, rely heavily on safeguards that rest on the independence of corporate directors. When those reforms become fully operative, each company traded on the NYSE will have to have all of its audit, governance, and compensation committees staffed wholly by outside directors who meet enhanced standards for independence.

This is a good thing. But what has not been very much noticed is that there are already very few inside directors on public-company boards. Indeed, for some time now it has been the style for boards to shuck their senior management members in favor of outsiders. At many, if not most, public companies today, the only insider is the CEO.

Of course, independence of judgment is an essential characteristic of an effective director, but it's equally clear that independence alone is not sufficient to produce effective governance. To protect investors' long-term financial interests, directors must exercise informed judgment. This requires information about the current condition of the company, its markets, and its technology, as well as information concerning challenges that are on the horizon. And in most cases directors get plenty of information, maybe too much. The skill, or the luck, may lie in focusing on the right information at the right time.

The 20-year trend of removing inside directors from corporate boards has deprived modern boards of a subtle source of important information. Provided we maintain a majority of outside directors on our boards, I suggest that it may often be possible to improve the quality of a board's performance by increasing the number of senior managers who serve on it. First, such a step would improve the quality of the information that independent directors consider in their deliberations. Second, it would act as a constraint on the imperial-CEO phenomenon, but would do so with less risk than is entailed in

PROFESSOR AND DIRECTOR WILLIAM T. ALLEN

"Provided we maintain a majority of outside directors, I suggest that it may often be possible to improve the quality of a board's performance by increasing the number of senior managers who serve on it."

stripping the CEO of the chairmanship role, which some propose. Third, and most important, it would improve the quality of the board's judgment with respect to the vital job of succession planning. Here is a closer look at each of those benefits:

IMPROVING THE QUALITY OF INFORMATION AND DELIBERATIONS

Legally, board members have full access to any information in the company's custody, but as a practical matter even conscientious board members have control over only certain summary information. Moreover, the Sarbanes-Oxley reforms have skewed the information that directors are apt to be focusing on more toward issues relating to legal-compliance needs, disclosure, and the integrity of financial statements. Obviously those are important topics, but this emphasis may incline boards to skimp on other vital aspects of their mandate: strategic planning and management development and succession. That tendency heightens the board's need for members who are deeply informed (as an insider is) about issues concerning the organizational function of the company as a business.

One may suppose that this change is unnecessary; senior managers will be in the boardroom if they are wanted. Since they are fully available, it may be argued, there is no need for them to sit at the table or have a vote. But this view underestimates the psychological and legal effect of formal board membership. The formal and informal relations between senior management and members of the board will inevitably be different when the senior managers are also directors.

BALANCING THE POWER OF THE BOARD AND CEO

I would suggest that sharply reducing the number of senior managers on the board reduces the likelihood that the board meeting will be a valuable forum. Without other senior management people feeling the legal responsibility of a director, the CEO will, in effect, be the only deeply informed member of the board on issues of strategy and performance. By modifying the nature of the relationship between outside directors and members of senior management, board membership for top managers will tend to increase the opportunities for outside directors to learn material information and to hear views that might not otherwise be considered. This may occur at formal board meetings and, just as important, in other ways once the relationship is altered.

IMPROVING SUCCESSION PLANNING

Every well-run enterprise strives to manage succession internally, and great companies have a record of succeeding. When the process works right, the board comes to know a cadre of officers that the CEO has selected. That means exposure over a significant period and under varying circumstances. While periodic presentations to the board, formal review of performance, and even social contacts will be helpful, actual service on a board is the best way for directors to make an assessment of the strengths and weaknesses of the next generation of leadership. Effective corporate governance is not a simple thing, and no one set of standards or practices will fit all companies. But governance arrangements can only function with effect if they are operating on good information. We have answered the perceived problem of CEO domination with enhanced board independence, but in doing so we may have deprived the outside majority of the best source of information and judgment by which they may accomplish their important task.

Corporate Board Member Magazine (March/April 2004)

Center Graduate Fellows 2003-2004

New Research Fellowship in Law & Business Honors Leonard Wagner; Barak Orbach Selected as First Wagner Fellow

Thanks to a generous grant from the Leonard Wagner Testamentary Trust, the Center has initiated a new graduate fellowship aimed to help develop future law academics with a special interest in the social control of business institutions and the social responsibility of business. A special interest of the Wagner Program will be in issues of "gate-keeper" ethics and professionalism. By gate-keepers we mean the various professions (law, accounting, banking, etc) whose members are used to facilitating business transactions. The Wagner Fund for Professionalism is a fund given to honor the memory of Leonard Wagner, a Wall Street professional of high integrity. The Fund has supported Center programming in issues of Business and Professional Ethics in the past.

Dr. Barak Y. Orbach is the first scholar to receive the Wagner Fellowship. Originally from Israel, Barak's teaching and research interests include antitrust, behavioral law and economics, corporate finance and social welfare, among many. He received his doctorate in law from Harvard Law School in 2002, where he wrote his dissertation entitled, "Essays in Legal Aspects of Competitiveness." Barak received his B.A. in Economics and his LL.B. from Tel Aviv University and his LL.M. from Harvard Law School.

Center Fellow Lise Pedersen

Lise Pedersen received her LL.M. from the NYU School of Law in May 2004 and holds law degrees from Stockholm University and the University of Copenhagen. She was an associate at Plesner Svane Groenberg, a large Danish firm, for three years working with corporate law, corporate finance, securities law issues, as well as contract drafting and negotiation, related litigation and settlement negotiations. Also, Ms. Pedersen has worked as an intern for the International Trade Centre (UNCTAD/WTO) in Geneva, Switzerland and for two ministries in Denmark.

Center Fellow Florencia Marotta Wurgler

Florencia received her J.D. from the NYU School of Law in 2001 and a B.A. in Economics from the University of Pennsylvania in 1996. Her research and teaching interests include corporate law, contracts, commercial law, economics analysis of law and bankruptcy. Her most recent research project, entitled "Minding the Gap in Liquidated Damage Clauses: Why Courts Should Stop Insisting on the Penalty Doctrine," questions the ability of contract law's penalty doctrine to efficiently deal with the complexities created by unforeseen contingencies. Currently, she is pursuing empirical research on standard terms in Internet contracts.

In 2003-04, Florencia was the Corporate Fellow at the Center for Corporate, Securities, and Financial Law at Fordham Law School, where she taught Corporations. From 2001-03, she was an associate in the Corporate group at Davis Polk & Wardwell.

Other Center Activities

NYU Law & Finance Scholars Regularly Meet on Corporate Governance

Under the leadership of Professor David Yermack, the Center has sponsored a regular series of informal luncheon meetings among faculty members of the law school and the Stern Finance Department to read and comment on working papers dealing with issues of corporate governance. The Finance Department of the Stern School houses one of the nation's top groups of finance scholars working in areas of corporate finance that bear upon issues of corporate governance. Professor Yermack, who holds both the J.D. degree and the Ph.D. degree from Harvard University, and teaches both at Stern and in the Law School, is a leader in this field. Among his interesting recent papers bearing on corporate governance was a study linking CEO use of company aircraft to underperformance of a company's stock. (See pages 16-17 of this report)

The Center Website: a "Go-To" Source for Internet Research Resources on Business and Law

As part of our website improvement effort, the Center has added a new research feature entitled "Research Links." Research Links is a list of websites, organized by topic, dealing with various matters of interest to the Center, such as Accounting, Corporate Governance, Financial Institutions and Securities Law. We created this feature as a service to students, faculty and friends of the Center who search the web on a regular basis for work or as a matter of general interest. Research Links is designed to be a helpful research tool that we hope people will bookmark on their computers and visit it often. This site is located at http://w4.stern.nyu.edu/clb/research.cfm?doc_id=1151.

Katherine Schipper of FASB Delivers Olincy Lecture

The wave of frauds and failure that our economy has suffered make clear to everyone the absolute importance accounting as the discipline through which financial information is produced to financial markets in standardized ways. The Center has periodically brought leaders of the accounting world to campus to give a lecture on cutting edge issues of law and accounting. This year Dr. Katherine Schipper, member of the Financial Accounting Standards Board and former professor of law and accounting at the University of Chicago and Duke University, delivered the annual Olincy Accounting Lecture. Katherine Schipper is known as one of the nation's leading thinkers in theory and empirical research of accounting. Now a member of the FASB, Dr. Schipper addressed what she identified as three fundamental and pervasive issues in financial reporting today. First, she discussed the accounting definition of "control." That is, what does it mean to control an asset and what is the proper timing for one entity to consolidate another? Second, she considered the defining elements of capital and what distinguishes liabilities from equity. Finally, she talked about various methods for obtaining reliable fair value measures. The audience, which included members of the accounting profession in practice, was engaged and interactive. Following the lecture there was a reception for Dr. Schipper.

LAW STUDENT NATE PIERCE AND DR. KATHERINE SCHIPPER

Working Papers 2003-2004

For the most current list of working papers and abstracts please visit our site at http://w4.stern.nyu.edu/clb. Please also note that some of the papers may be downloaded from our site.

"The Law Merchant in the Modern Age: Institutional Design and International Usages under the CISG"
Clayton P. Gillette, January 2004.

"Governance Mechanisms and Equity Prices"
K.J. Martijn Cremers and Vinay B. Nair, May 2003.

"Telecommunications Regulation: An Introduction"
Nicholas Economides, September 2003.

"Corporate Governance and Internal Organization"
Vinay Nair, November 2003.

"Market Definition and the Identification of Market Power in Monopolization Cases: A Critique and a Proposal"
Philip B. Nelson and Lawrence J. White, November 2003.

"Competition Policy in Network Industries: An Introduction"
Nicholas Economides, June 2003.

"Dilution in Light of Victoria's Secret: The Psychology, Variety and Measurement of Trademark Dilution©"
Jacob Jacoby, November 2003.

"The Role of the Japanese Courts in Hostile Takeovers"
Minoru Tokumoto, October 2003.

"Managed Liability For Physicians and Managed Care Organizations"
Jennifer Arlen and Bentley MacLeod, October 2003.

"Attorneys Fees In Class Action Settlements: An Empirical Study"
Geoffrey Miller, September 2003.

"Rethinking Tax Expenditures and Fiscal Language"
Daniel N. Shaviro, September 2003.

"Reckless Disregard: The Bush Administration's Policy of Cutting Taxes in the Face of an Enormous Fiscal Gap"
Daniel N. Shaviro, September 2003.

"Globalization, the X-Tax, and the GATT"
Daniel N. Shaviro, September 2003.

"The Bush Administration's Huge Tax Cuts: Steps Toward Bigger Government?"
Daniel N. Shaviro, September 2003.

"Monopoly Pricing as an Antitrust Offense in the U.S. and the E.C.: Two Systems of Belief About Monopoly"
Michal S. Gal, September 2003.

"Conflicts of Interest in Class Action Litigation: An Inquiry into the Appropriate Standard"
Geoffrey P. Miller, September 2003.

"Direct Democracy and Debt"
Clayton P. Gillette, September 2003.

"Bad Judges"
Geoffrey Miller, August 2003.

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

"Corporate Constitutionalism: Antitakeover Charter Provision as Pre-Commitment"
Marcel Kahan and Edward Rock, June 2003.

"Aggregate Concentration in the Global Economy — Issues and Evidence"
Lawrence J. White, June 2003.

"Unregulable Defenses and the Perils of Shareholder Choice"
Jennifer Arlen and Eric L. Talley, June 2003.

"Coming in from the 'Cold': The Case for ESD Codification"
Samuel C. Thompson, Jr. and Robert Allen Clary II, May 2003.

"The Mechanisms of Market Efficiency: An Introduction to the New Finance"
Lynn Stout, April 2003.

"Conflicts of Interest and Efficient Contracting in IPOs"
Alexander Ljungqvist, April 2003.

"The New Federalism of the American Corporate Governance System: Preliminary Reflections of Two Residents of One Small State"
William B. Chandler III and Leo E. Strine Jr., January 2003.

What to Expect in 2004-2005

The Center Goes to London

In conjunction with the London School of Economics, the Center will host a Conference on Cross-Border Corporate Governance in London in November 2004. For more information, please see page 12 of this report.

Joint NYU/Penn Law and Finance Conference to be Held in New York

The Center, in the name of the NYU School of Law and the Stern School of Business, is hosting an academic conference on Law and Finance with the University of Pennsylvania Law School and Wharton School of Business. This event will be held in New York in February 2005 and in Philadelphia the following year.

2005 NYU Directors' Institute

Due to the great success of this year's Institute, we have begun to make arrangements for the third annual NYU Directors' Institute, which will be held in June 2005.

Center Staff

William T. Allen
Director

Caroline Mulroney Lapham
Associate Director

Susannah Atkins
Program Coordinator

To contact the Center, please call 212.998.0565
or visit our website at http://w4.stern.nyu.edu/clb

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