BUSINESS LAW BULLETIN

SPRING 2013

UNIVERSITY of MARYLAND
FRANCIS KING CAREY
SCHOOL OF LAW

THE B-SCHOOL CASE STUDY APPROACH: WHAT LAW SCHOOLS HAVE TO GAIN BY TAKING A CHAPTER FROM BUSINESS SCHOOL EDUCATION

by Professors Robert J. Rhee, Phillip Phan, and Bennet A. Zelner

Although business schools originally adopted the case study method of teaching from law schools, over the past 100 years their respective methods have evolved into distinctly different pedagogical approaches. Some experts feel that law schools may benefit from studying and incorporating the business school case method into the law school method, which focuses on analyzing appellate case opinions. Appellate case decisions are tightly packed with the facts and legal analysis, which are then unpacked in the classroom, typically in a Socratic dialogue. The "cases" in business schools are real life business situations and problems, and typically a business school professor writes up the case as a detailed presentment of facts, data, and other information that can range in length from several pages to over 50 pages.

The cases used in each school have an important basic distinction: unlike appellate opinions, business school cases do not have a prepackaged analysis solving the specific problem or issue. The pedagogical implications are significant.

We asked Professor Robert J. Rhee of University of Maryland Carey Law, Professor Phillip Phan of Johns Hopkins Carey Business School, and Professor Bennet A. Zelner of the University of Maryland Robert H. Smith School of Business to comment on the business school case study method.

In a few sentences, how would you summarize the case study method approach?

Rhee: In the business school case method, there is no starting point analysis done by an expert – the lawyer or judge - to criticize, deconstruct, or evaluate. Instead, there are only facts and data, and often the problem or issue is not even explicitly stated. The cases place the students in the position of the manager or executive, and the teaching method asks students to identify the problem, propose a solution from many potential options, and defend the decision based on facts and data.

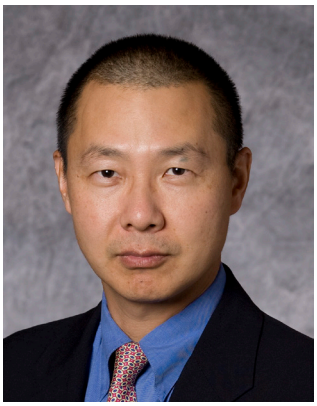
Phan: The method is designed to put a learner in the position of a decision maker, who has to understand the facts in a situation, the likely state of mind of the protagonist (given the history of the situation and her role in how the situation evolved). The student then has to employ the appropriate assessment tools to defend a recommendation on the course of action. The case study is not designed to convey the very latest in information of a company (we use newspapers for such things). Instead, the best written cases present learners with a set of problems within a well defined context and for which the information needed to make decisions or render judgment are embedded.

Zelner: I combine the case method with lectures. A typical class session, for example, consists of a 1.25 hour case discussion followed by a 60-minute lecture. I use this approach to teach students to (1) distinguish relevant facts from extraneous information and (2) apply concepts from prior class sessions to the current

IN THIS ISSUE:

fact set. I also attempt to (3) foster the development of new insights, which I use as a basis for teaching new conceptual material during the ensuing lecture. The case discussion consists of several distinct "pastures." Each pasture has a specific pedagogical objective (e.g., to assess the extent to which a given industry's structure hinders or facilitates competition). My role is to facilitate the discussion by posing questions, summarizing key comments on the board, redirecting the discussion flow when necessary, and encouraging students to respond to their fellow classmates' comments.

Based on your experiences in the classroom, what are the strengths of the approach?



Professor Robert Rhee

Rhee: A major weakness of the law school case method is that facts are highly sanitized for relevance, first by appellate judges and then by casebook authors. In this sense, appellate cases frequently seem like closed-form, logic problems where there are only a limited number of outcome determinative variables and decision points. In these presentations of information and problems, the emphasis is situating the decision in a framework of policy and theory, a type of thinking that lawyers must learn (of course). However, much of law practice is much more complex - developing facts and constructing of the case theories, dealing with uncertainties and calculating risk and reward, and decision-making and problem solving. The type of thinking required for these activities is just as intellectually challenging, perhaps more so. Business school case studies present contextualization that is frequently lost during the appellate litigation and casebook production processes. Problems are presented and analyzed from an *ex ante* framework. Frequently, business students are not told ahead of time the outcome of the case, and they are sensitized to the fact that uncertainty pervades the real world. As an example, I learned more about Enron from reading and analyzing a 70-page case study than the sum of the many law review articles I've read on the subject over the years.

Professor Philip Phan

Phan: The key strength is that it facilitates a learner to use formal tools to evaluate and recommend a decision. When used properly, it can make the concepts and tools 'real' to the learner. As well, a case conveys the important idea that there are many approaches to problem solving but that each solution must be defensible, either on the rigor of the approach or the evaluated merits of the facts. In short, it disciplines managerial thinking and fosters practice in making judgment.

Zelner: Students learn conceptual material in a more inductive fashion than they would with a traditional, lecture-based approach. As a result, the conceptual material seems less abstract and more "real," promoting comprehension and retention. An additional benefit is that students gain experience applying conceptual material to real world facts.

Based on your experiences, what are the weaknesses of the approach?

Professor Bennet A. Zalner

Rhee: I don't think that the business school case method has a weakness if it is supplemented with sound training in legal doctrine, theory, and analysis. I don't think that the business school case method can supplant the study of appellate cases, but the two methods can be quite complementary. The case method is the best method to teach contextualized problem solving absent actual immersion in the real world. The application in law schools is limited by exogenous factors. The most important limitation is that law schools lack the teaching materials. While the number of casebooks is voluminous, the legal academy does not have a repository of case studies and case files. Business schools have access to the Harvard Business School's enormous library of case studies, each costing about $5.00. Law schools don't have this luxury, and writing case studies is enormously time consuming. Who will write them? When will we have a critical mass of case studies to influence pedagogical method more broadly?

Phan: When the instructor is not prepared or if students have not read and interacted with the case, this method can devolve to opinion making and argumentation. Argumentation, in and of itself, is not a bad thing but it can lead to an unsatisfying class experience if students are not disciplined by being prepared (i.e., having read the case, analyzed the data given the questions, and exercised judgment).

Zelner: The main risks of using the case study method revolve around loss of control. More so than lectures, the case method requires adequate student preparation and participation to be successful. Additional risks are that students might be unclear about the intended take-aways, possibly due to herd behavior (i.e., the entire class walks down the garden path together). A case teacher who is comfortable on her feet and does not get flustered easily can address these issues, which could be either a strength or a weakness, depending on your perspective.

How do you assess students' performance in the context of a case study exercise?

Rhee: Typically there are two methods of assessment: (1) student participation in the analysis and discussion of the case, (frequently students are a part of an assigned group), and (2) presentation by individual students or assigned groups in formal presentation of the case. To do a case study well, students or groups must be prepared as it's hard to muddle one's way through a muddled situation. I know this from experience as a business student.

Phan: Students are assessed on a rubric based on Bloom's Taxonomy of learning. At the lowest level are contributions that demonstrate understanding of the facts, while the highest level demonstrates the ability to draw meaningful conclusions and make judgment from the analyses. The focus on assessment should be on the quality of contributions rather than the quantity of contributions. It takes practice by the instructor to make such an assessment because there is a tendency to 'look for the right answer' rather than to listen for the appropriate arguments.

Zelner: I weight in-class performance heavily (~25%) in the final grade calculation to encourage students to prepare and participate adequately. It is therefore critical that I record individual performance for every class session, which can be a challenge because the typical section size for the classes I teach is 50-75 students. I require the students to display name cards in class. Immediately after class, I spend a few minutes going through the roster and awarding participation points to students who contributed significantly that day. When possible, I also try to make brief notes about especially notable student comments.

Any words of wisdom for law professors wanting to integrate approach in their classrooms?

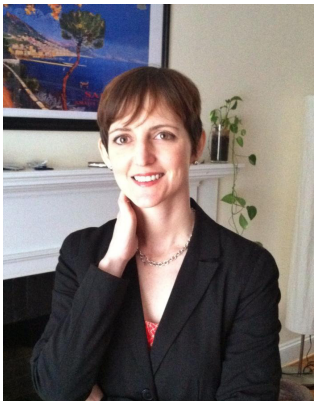
Rhee: One has to find or create a case study. This takes faculty initiative. A school should support this form of writing through direct incentives. Wouldn't it be neat to teach the Texaco-Pennzoil litigation through a case study? It offers so many issues and problems to delve into. How about teaching the importance of drafting governance documents for business entities through a litigation file of a case arising from poorly thought out governance framework? I think that a really good case study that is scalable (distributable to the broader academy for educational use) is just as worthwhile as writing a really good piece of scholarship. My own sense is that if a professor takes the time to write a good case study, others will use it. One can envision a worthwhile academic project that compiles a group of case studies that can be used as a backbone of a course. For example, it's conceivable to teach Torts through six-to-eight case studies supplemented by appropriate case readings incorporated into the case studies. The basic problem, however, is the time consuming nature of the endeavor.

Phan: Practice, practice, practice. I suggest forming a study group of faculty teaching the same class or similar classes. The study group can then take the time to actually prepare some cases and lead the discussion. This could be set up like a seminar series but with the obligation for attendees to have prepared prior to coming. Start small. That is, rather than do a case a week, do a case every three weeks. As you become familiar with the cases and the technique, increase the number of cases covered in a semester until you are covering the requisite number. Also, Harvard Business School has an excellent case teaching course for faculty. It is usually conducted twice a year, is not expensive, and takes place over a weekend.

Zelner: Successful case method teaching requires you to make a large up-front investment and amortize it over time. You should choose cases based not only on content and style, but also on the availability of teaching notes or similar materials. You might also try to choose relatively recent or "sexy" cases, all else being equal. Expend significant effort on preparation the first time you teach a case; by the third time, all the preparation you will likely need is a quick review of your notes.

UM CAREY BUSINESS LAW PROFESSORS' SCHOLARSHIP DISPLAYS RANGE OF EXPERTISE

by Jennifer Ivey-Crickenberger '12



Jennifer Ivey-Crickenberger '12

Students interested in business law at the University of Maryland Francis King Carey School of Law have the opportunity to learn from world-class professors who stay at the leading edge of their fields by pursuing a wide variety of research interests. Recent scholarship by our faculty includes pieces on international business law, corporate governance, securities, corporate reorganization, tax, and legal education.

In the area of international business law, Professors Michael Van Alstine and Shruti Rana explore both theory and practice in a number of publications that have been published in the past year or are forthcoming. Professor Rana's recent article discusses China's transition to a free market system and its growth as a global financial and political power. Professor Van Alstine has authored or co-authored several course books that focus on such topics as international trade and economic relations, international business transactions, and foreign investment.

Co-directors of the Business Law Program, Professors Robert Rhee and Michelle Harner have each recently published pieces on corporate governance, including an examination of the regulatory framework for the financial services industry (Rhee) and an in-depth, empirical study regarding the governance provisions included in LLC operating agreements, with a discussion of the potential for a new approach to LLC governance (Harner). Additionally, Professor Harner has produced articles on corporate bankruptcy and restructuring during the past three years.

Another particular focus of scholarship for the Business Law Program faculty is in the area of legal education. A recent piece by Professor Bill Reynolds defends the Socratic Method and then addresses contemporary concerns about legal education, including the devaluation of courses in the private law curriculum. Professor Harner discusses potential implications for educators in the context of the current state of the legal profession in one of her articles, and her new course book, *Developing Professional Skills: Business Associations*, will be published this year. Professor Rhee's book *Essential Concepts of Business for Lawyers* came out in 2012, and he is now working on a new casebook, *Corporate Finance*. Several of Professor Rhee's recent or forthcoming articles are related to legal education, including topics on the teaching of business ethics and leadership.

Professor Michael Greenberger continues to be a prolific contributor to scholarship in the area of securities law. Professor Greenberger has published an article and contributed two book chapters regarding the regulation of derivatives and swaps during the past three years, and he will publish an additional piece regarding commodity and swaps in the crude oil context in early 2013. As featured in the last edition of the *Business Law Bulletin*, Professor Urska Velikonja earned a prestigious Junior Faculty Scholarship Prize for her article that assesses the relative damages suffered by shareholders and non-shareholders in cases of securities fraud, and this piece will be published by the William & Mary Law Review in the coming year.

The Business Law Program's resident expert in the field of tax law is Professor Daniel Goldberg, who recently completed a book due to be released in April, *The Death of the Income Tax: A Progressive Consumption Tax and the Path to Fiscal Reform,* which discusses the many structural flaws in the current U.S. income tax system and proposes an alternative method of taxation to replace the income tax. In addition, Professor Goldberg is currently working on a story-focused book designed to help junior tax associates and business lawyers analyze and advise on partnership and LLC transactions.

For more detailed information on Business Law Program scholarship, please see the "Faculty Notes" section and also visit the Digital Commons @ UM Carey Law, where many publications are available to read and to download.

WHAT'S THE BUZZ? URBAN AGRICULTURE IN THE COMMUNITY ECONOMIC DEVELOPMENT CLINIC

by Professor Barbara Bezdek

The Community Economic Development clinic provides transactional legal services for neighborhood-based groups who aim to develop resources and enhance the quality of life in distressed and underserved urban communities.

Professor Barbara Bezdek

This past fall, students in the Community Economic Development Legal Theory and Practice workgroup worked to identify the legal needs of start-up and small businesses in Baltimore who are part of the swelling farm-to-table urban agriculture phenomenon. One student team helped local backyard beekeepers by drafting a model city ordinance, striking a balance between the technical requirements of bee-keeping for joy and profit, on the one hand, and the nuisance concerns of beekeepers' neighbors, on the other. Another duo ably advised a local city farmer in determining the most advantageous business structure for his related enterprises, ultimately resolving to form a Benefit Limited Liability Company under Maryland's pioneering statute enacted in 2012. The urban agriculture work was a new addition to the usual transactional work of community economic development (CED) students, who provide legal counsel to a variety of both not-for-profit and for-profit entities and also initiatives seeking to promote and preserve economic opportunities across greater Baltimore.

Urban agriculture is one grassroots response to the complex dilemma of abandoned land in low-wealth communities in many cities of the United States. A surprising number of Baltimore's once-vacant lots are being transformed into community gardens and even working farms—where city residents grow food (either in the soil, or in raised planting beds or in "hoop houses") then market their produce at farmer's markets, to local restaurants, or to city and suburban residents eager for fresh, locally-grown food. Baltimore City has joined the growing cadre of American cities seeking to enhance its policy infrastructure to encourage urban agriculture. Participants and proponents of urban agriculture cite complementary interests: sustainable production, equitable access to healthy food, and positive re-use of negative urban realty.

CED Clinic students Claire Rollor 3L and Zach Ostro 3L

Urban agriculture activities do not fit any single model. They are initiated and managed by several types of organizations, including community gardeners, neighborhood organizations, school- and university-based groups, non-profit organizations with a community development purpose, and individuals with farm backgrounds who become committed to growing and marketing food in the inner city. We learned of some gardeners who grow vegetables with no profit purpose and share with their neighbors; and of other projects that are hybrid for-profit/not-for-profit operations, growing some food for consumption then selling the surplus. Some farming groups elect to form as non-profits recognized by the Internal Revenue Service as 501(c)(3) non-profits, while others are for-profit businesses of differing scale and formality. Others are only starting to realize the array of issues that can arise in undertaking an urban agriculture project—issues that lawyers can assist in resolving.

CED students had ample opportunity to develop and deploy core lawyering skills of client interviewing and counseling, as they learned to identify the objectives of their organizational clients in a particular transaction. Then, CED students structured and delivered appropriate documents to accomplish their clients' enterprise objectives and solve their law-related problems.

Some of the critical dimensions affecting the variant legal representation needs of urban farmers include:

- the form of urban agriculture practiced (food grown directly for market, food products such as honey, ornamental horticulture, and animal husbandry such as beekeeping, chickens, goats);
- the scale of operation (as indicated by acreage in production, size of staff, or by the amount of revenue generated or financial support needed);
- funding capacity (generating start-up, working and expansion capital);
- sources of funding (revenues, grants from local foundations or local government agencies, discounted utilities or favorable terms for leasing city-owned land);
- market outlets (selling at farmers markets, to neighborhood residents, to restaurants, to health food stores, or through community-supported agriculture or box scheme programs).

Going forward, it is clear that there is significant demand for the transactional legal services that the Community Economic Development clinic can provide to Baltimore's urban agriculture network. Many operations begin informally, potentially with insufficient certainty as to rights in the land being farmed, or in water service to that land. This may present issues of title, trespass, and liability to these small enterprises with which CED student attorneys can assist. Similarly, businesses and non-profits both require assistance with entity selection and formation, corporate governance, and board training. Most farmers will at some point need to consult counsel concerning contracts, taxation or tax-exemption, permits and licenses, and zoning compliance.

THE BUSINESS OF DOING GOOD: A GROWING FIELD OF STUDY

by Hilary Hansen & Jennifer Ivey-Crickenberger '12

At a time when technology brings us instant global news of people facing poverty, injustice, violence, barriers to education, obstacles to health care, and natural resource shortages, the number of innovative and driven people who want to alleviate social problems has been steadily growing. Some will endeavor to make a business out of "doing good while doing well," and their practice of social entrepreneurship (SE) has become of particular interest to researchers and to educators. While scholars may employ varying definitions of what constitutes SE activity, at its core is a creative, entrepreneurial approach to leading change by launching an initiative that aims to serve a social cause.

Educating Students about SE

Institutions of higher education in the U.S. first developed programs focused on social enterprise two decades ago with the establishment of the Social Enterprise Initiative at Harvard Business School in 1993. Since then, the role of social enterprise in higher education has continued to grow, with programs focused on social enterprise and social entrepreneurship appearing at many top MBA programs, including Stanford, Northwestern, Duke, Yale, and UC Berkeley. (See John A. Byrne, Social Entrepreneurship: The Best Schools & Programs, http://poetsandquants.com/2010/08/13/social-entrepreneurship-the-best-schools-programs/ (last visited Dec. 4, 2012)).

Here in the greater Baltimore-Washington metropolitan area, business schools have also adopted social enterprise into their MBA programming. Our University of Maryland's Robert H. Smith School of Business will host its 5th Annual Symposium on Social Enterprise this spring, and all students in the Johns Hopkins Carey Business School's Global MBA Program have a hands-on learning experience in social enterprise by participating in the "Innovation for Humanity Project."

Following the business school example, law schools are now starting to recognize how the study of social enterprise is a natural fit with their public service missions, access to justice initiatives, and business law programs. Some law schools' clinical programs have recently begun working with Ashoka, a well-known supporter of social entrepreneurship all across the globe, in a mutually beneficial arrangement that provides Ashoka access to research and legal support while giving clinical law students practical experience and exposure to the business of social innovation. (Tiffany Morris, Ashoka, How Law Schools and Entrepreneurs Collaborate to Serve Both Students and Innovators, FORBES, Dec. 7, 2012, http://www.forbes.com/sites/ashoka/2012/12/07/how-law-schools-and-entrepreneurs-collaborate-to-serve-both-students-and-innovators/).

SE and Business Law

With SE ventures becoming a greater part of the total number of business entities, both business law students and business lawyers benefit by learning about the landscape of social enterprise and the entrepreneurs who may be future clients. As with any business, the lawyer who provides services to an organization or individual who is launching a social enterprise should know how to assess various law-implicated areas of the business, including credit facilities, leases and other commercial contracts, and employment agreements. There could also be potential intellectual property issues, including registration, patent applications, licensing agreements, branding, copyrights, and fair use, etc., as well as several industry-specific legal issues that could include regulatory compliance and tax law issues, among others.

Although the business lawyer may provide many of the same services to the social entrepreneur that he or she would provide to the strictly profit-driven business person, it is the lawyer's job to understand the client's primary objectives. Social entrepreneurs are not necessarily disinterested in profits, but their top priority of addressing a particular social need may sometimes require a different approach from "business-as-usual." Now that educators are starting to offer students more

exposure to the practice of SE – whether with case studies, through symposia, or by experiential learning -- business law students will be able to explore the intricacies of a social enterprise and consider social ventures from different perspectives (e.g., entrepreneur, attorney, investor), which will ultimately prepare them to be better business lawyers.

In Closing
Law schools have long been at intersection of law, public service, and business. Social entrepreneurship underscores the false dichotomy between "business law" and "public interest law." The incorporation of social enterprise and social entrepreneurship concepts into law school coursework corresponds well with the educational mission of many schools, and it will benefit both the social entrepreneurs and the law students themselves. Tiffany Morris said it well in Forbes: "Through these innovative collaborations with social entrepreneurs, the law students will have the opportunity to learn first-hand that it is possible to do good by doing deals…"

JESSICA WOODS SELECTED AS DISTINGUISHED BANKRUPTCY LAW STUDENT

The American College of Bankruptcy has named 3L Jessica Woods this year's Distinguished Bankruptcy Law Student from the Fourth Circuit. Jessica, whose sponsor in the nomination process was Dean Michelle Harner, is the first UM Carey Law student to receive this honor, which recognizes only a handful of students across the nation who have demonstrated interest and outstanding achievement in bankruptcy law. As a recipient of this prestigious award, Jessica has the opportunity to meet some of the most distinguished bankruptcy practitioners and judges at the 2013 Induction Ceremony in Washington, D.C. that will take place March 14-16 at the Renaissance Hotel and the Donald W. Reynolds Center for American Art & Portraiture. More information about The American College of Bankruptcy and previous years' classes of Distinguished Bankruptcy Law Students is available at http://www.amercol.org/about.

STUDENTS EARN BEST DRAFT AGREEMENT AWARD IN TRANSACTIONAL LAWMEET

On February 15 3L Nathan Bondar and 2Ls Eldon Hong and Peter Kleinberg represented the University of Maryland Francis King Carey School of Law in the Mid-Atlantic Regional round of the 2013 Transactional LawMeet, where they placed first in drafting an agreement to facilitate a business deal. Nathan, Eldon, and Peter also earned third place honors in the negotiation portion of the competition.

Eldon Hong 2L, Nathan Bondar 3L, and Peter Kleinberg 2L

The Maryland Carey Law team was one of 78 teams nationwide to take part in the LawMeet—a moot court-like experience for business law students—which is a unique competition that allows students to engage in mock negotiations after having drafted a transactional agreement. Drexel University Earle Mack School of Law hosted the Mid-Atlantic Regional meet and is a co-sponsor of the competition.

The LawMeet requires students to draw on their research, problem-solving skills, drafting ability, business sense, understanding of contracts, and negotiation savvy. Each year competition organizers present student teams with a unique and complex business transaction simulation that challenges them to get the best possible outcome for a fictional client.

For this year's competition Nathan, Eldon, and Peter worked on a deal to facilitate a $1.5 billion stock sale, starting with the drafting of a purchase agreement amendment and ending at the negotiation table, where they faced three different opposing teams while panels of expert practitioners observed. Joe Ward (Miles & Stockbridge) provided invaluable guidance throughout as a coach; the team also had the chance to draw on expertise from Bill McComas (Shapiro Sher Guinot & Sandler) and Chuck Morton (Venable).

THE JOURNAL OF BUSINESS & TECHNOLOGY LAW, C-DRUM, AND THE BUSINESS LAW PROGRAM EXPLORE TOPICS IN BUSINESS ARBITRATION

By Claire Rollor 3L

The Business Law Program at University of Maryland, Francis King Carey School of Law hosted two important commercial arbitration related events in the month of November. On November 2, 2012, the Journal of Business & Technology Law and the Center for Dispute Resolution at the University of Maryland School of Law (C-DRUM) co-sponsored a Symposium, titled "Business Arbitration: Redefining the Landscape of Efficient Business Practices." The next week, the discussion continued when the Business Law Program hosted a November 7 roundtable event, "Great Conversations: The Role of Arbitration in Consumer Lending."

from l to r: Paul Bland, Nicole Frush Munro, the Hon. Randall J. Newsome and William Wade-Gery

Business Arbitration: Redefining the Landscape of Efficient Business Practices
By Paul Farmer 2L & Phil Sarid 2L

The Fall Business Arbitration Symposium brought together students, professors, practitioners, and industry leaders to examine the effectiveness of commercial arbitration, as well as to discuss some ways in which the arbitration process could be improved. The event began with opening remarks from Dean Phoebe A. Haddon, who expressed support for the Business Law Program and the necessary exploration of alternatives to litigation.

Judge Curtis von Kann of the College of Commercial Arbitrators provided an introduction to the morning panel with a discussion on the College's Guide to Best Practices in Commercial Arbitration (the "Guide"). Judge von Kann described how the Guide's principles can help to improve the cost-effectiveness and timeliness of business arbitration. He further highlighted that business arbitration often does not meet the expectations of participants and discussed how the Guide endeavors to improve the arbitration process.

Following Judge von Kann's overview of the current state of commercial arbitration, Professor Eisenberg moderated a discussion with the other morning panelists, Brian S. Harvey and David McI. Williams, who each provided suggestions drawn from personal arbitration experiences. Mr. Harvey, a commercial arbitrator, outlined best practices that arbitrators can use in order to improve the arbitration experience. He stressed the importance of running an expeditious arbitration and recommended following a pre-planned and efficient schedule. Mr. Williams, an attorney and arbitrator in the Baltimore area, focused on international aspects of commercial arbitration. The driving force of international commercial arbitration, Mr. Williams noted, is to avoid "home field advantage," or a panel that is particularly nationalized.

After breaking for lunch, the Symposium continued with its afternoon panel moderated by Professor Thomas Stipanowich, from Pepperdine University School of Law and the Academic Director of the Straus Institute for Dispute Resolution. Professor Stipanowich's opening remarks echoed some of Judge von Kann's comments on the failures of business arbitration, particularly the excessive discovery-related costs. Professor Stipanowich then proceeded to analyze the results of a 2011 study which showed that, while businesses still prefer arbitration over litigation, they are nonetheless becoming less enthusiastic about its purported benefits of saving time and money.

The afternoon panel consisted of Professor Stephen Ware, University of Kansas School of Law; Daniel Winslow, senior counsel at Proskauer Rose LLP; and Professor Mark Weidmaier, University of North Carolina School of Law. Professor Ware's presentation dove into the economics of litigation versus arbitration, arguing that demand for litigation outstrips

demand for arbitration because of the government-subsidized judicial system. In a more "level playing field" between litigation and arbitration, Mr. Ware noted, the competition might be greater between the two.

Mr. Winslow introduced an innovative replacement to the ADR clause titled the "Economical Litigation Agreement" ("ELA"). The ELA allows parties to stipulate modified discovery rules, which would be enforced by a mutually selected party acting as an arbitrator. Mr. Winslow, author of the ELA, has found support among domestic businesses, such as GE Capital and DuPont. Mr. Weidmaier concluded the afternoon panel by discussing how arbitrators use and create legal precedent. He presented comprehensive research that analyzed the frequency and type of legal citations in arbitrators' decisions.

"The Symposium was a great success. The day's presentations provided the Baltimore legal and business communities with resources to better understand litigation alternatives," said Journal Executive Symposium Editor, Claire Rollor, 3L. "I would like to thank Dean Michelle Harner, Ms. Hilary Hansen, Professor Deborah Eisenberg, and Ms. Toby Guerin for all of their assistance with preparing for the event, and the Symposium could not have sparked such a vibrant discussion if not for the participation of its incredible panelists."

Great Conversations: The Role of Arbitration in Consumer Lending
By Anna Johnston 3L

"Great Conversations" began with a welcome and introduction by Profesor Deborah Eisenberg, Director of the Center for Dispute Resolution (C-DRUM) at UM Carey Law. Christine Edwards '83, Partner in Winston & Strawn's Corporate Practice Group and the moderator for the event, provided some opening remarks about her background and experience in the field of arbitration in consumer lending which set the stage for the panelist discussion.

Alan S. Kaplinsky, a Senior Partner and Chair of the Consumer Financial Services Group at Ballard Spahr LLP, began the panelist presentations with a historical overview and introduction to consumer litigation and the development of class action waivers in arbitration agreements. His overview recounted the circuit split regarding the enforceability of such waivers, the impact of the 2011 Supreme Court decision in *AT&T Mobility v. Concepcion*, the Dodd-Frank Act, and the resulting April 2012 Consumer Financial Protection Bureau (CFPB) report. In light of the plethora of information available to consumers online and the comparative benefits of individual arbitration, individual litigation, and class action litigation, Mr. Kaplinsky questioned the necessity of class actions to protect consumer interests in the future.

F. Paul Bland, Jr., a staff attorney with Public Justice, PC, countered Mr. Kaplinsky's remarks by highlighting the negative impact of class action waivers on plaintiffs' rights. Drawing on his experience advocating for consumers, Mr. Bland discussed real life cases in which consumer interests were impaired by class action waivers. Mr. Bland expressed concern over the potential for arbitration to eliminate plaintiffs' claims, and he maintained that the loss of the class action vehicle could decrease potential plaintiffs' means of discovering that they have a viable claim against a defendant.

From l to r: Brian Harvey, Judge Curtis von Kann, Prof. Deborah Eisenberg, & David McI. Williams

Professor Christopher Drahozal, the John M. Rounds Professor of Law and Associate Dean for Research and Faculty Development at the University of Kansas School of Law, gave an academic perspective and presented three key findings from his personal research regarding the use of arbitration provisions in credit card agreements. His first finding was bolstered by a study done at the end of 2009, which revealed that arbitration clauses were ubiquitous in credit card agreements —especially those contracts with major credit card issuers. However, pursuant to an antitrust settlement, four major credit card issuers then agreed to stop including mandatory arbitration clauses in contracts for a three and a half year period. As a result, slightly less than half of

credit card agreements currently have arbitration clauses. Second, Mr. Drahozal noted that the vast majority of arbitration clauses include class arbitration waivers. On a third and final note, many of the clauses that previously had included potentially problematic provisions, such as waivers of punitive damages, shortened statutes of limitations, and so on, were largely eliminated by the end of 2010. Mr. Drahozal opined that issuers are eliminating these provisions because they are concerned about enforceability and do not want to compromise the class action waiver.

Nicole Frush Munro '00, Partner in the Maryland office of Hudson Cook, LLP, then discussed the importance of compliance in class action waivers and opined that such a waiver is an essential part of a sound credit contract. Ms. Munro noted several best practices for drafting contracts with arbitration clauses, including prominently displaying the clause and ensuring that it is clear and well written. Consumers must also be given a chance to read the clause. Ms. Munro went on to discuss substantive considerations in drafting such a clause, emphasizing that special efforts must be made to ensure equality in retention of rights, since the parties do not have equal bargaining power. To do this, Ms. Munro suggested establishing a convenient venue for the consumer, requiring the creditor to advance the costs of the arbitration, possibly including a bump-up provision, or otherwise trying to make the agreement "fair," which is an illusory goal given the current, constantly changing environment of consumer lending.

Next, the Honorable Randall J. Newsome, retired bankruptcy judge and current JAMS neutral, addressed general structural recommendations in consumer lending issues. Judge Newsome has presided over thousands of various consumer disputes, and he is familiar with the challenges that plaintiffs and pro se litigants face. Judge Newsome discussed the JAMS Consumer Minimum Standards, remarking that he believed the standards provide a fair and sensible framework for consumer arbitration. The ten minimum standards are posted on the JAMS website. In addition to JAMS minimum standards, Judge Newsome further stated that he generally limits the time frame of the arbitration and the term for discovery appropriately. In concluding his presentation, Judge Newsome asked the audience at large--to general murmurs of acceptance--why are we writing such complicated and confusing agreements, when no one is reading them? He questioned the value of the modern day consumer agreements, especially given that most consumers do not fully understand the terms.

Lastly, William Wade-Gery, Senior Counselor in the Research, Markets, and Regulations Division of the CFPB, concluded the program by reflecting on the Dodd-Frank Act, and the progress of the study mandated by Section 1028(a) . Section 1028(a) requires the CFPB to conduct a study that focuses on the use of pre-dispute arbitration agreements involving consumer financial services products or services, and to ultimately report its findings to Congress. The scope of the word "use" in the mandate, Mr. Wade-Gery said, was initially unclear, though it has now been construed to mean "impact" through the use of a "request for information" (RFI). Mr. Wade-Gery explained that Section 1028(b) provides the discretionary authority to regulate such pre-dispute agreements for the protection of consumers, if the study results indicate such action is necessary. Mr. Wade-Gery went on to discuss other issues addressed in the RFI and some of the interesting comments. The event concluded with a general discussion prompted by questions from the moderator, Ms. Edwards, and the audience.

The Norman P. Ramsey Lecture

An Evening of Entrepreneurship with JJ Ramberg

Tuesday, April 9

4:30 p.m. - Book Signing
5:30 p.m. - Lecture
University of Maryland Francis King Carey School of Law
500 W. Baltimore Street
Baltimore, MD 21201

Admission is free and open to the public but registration is required. Visit *www.law.umaryland.edu* for more information.

JJ RAMBERG is the host of one of the longest running shows on MSNBC, "Your Business," which has profiled thousands of small business owners and offered advice from countless small business experts and investors. The show's guests have included Senate and House Small Business Committee members, the head of the Small Business Administration, and members of the Cabinet. She has received several awards including Self Magazine's "Women Doing Good" and Jewish Women International's "Women to Watch." In October 2012, Ramberg released her first book, *It's Your Business: 183 Essential Tips that Will Transform Your Small Business*, a collection of hard-earned practical advice culled from the thousands of successful small business owners and entrepreneurs who have appeared on her show.

THE NORMAN P. RAMSEY BUSINESS LAW FUND was established in May 1993 through the generosity of Tucky P. Ramsey in honor of her husband. A distinguished graduate of the School of Law's Class of 1947, Judge Ramsey represented the highest tradition of dedication to the legal profession. His career spanned both public and private practice as well as the judiciary, and included service such as a United States District Court Judge; Managing Partner in the law firm of Semmes, Bowen & Semmes; Deputy Attorney General of Maryland; and Assistant U.S. Attorney. The Ramsey Fund provides support for business law programs at the School of Law.

ALUMNI SPOTLIGHT

In this edition, we feature three of our distinguished UM Carey Law alums who contributed to the success of "Great Conversations: The Role of Arbitration in Consumer Lending," which was made possible by the generous support of The Pittler Fund for excellence in Business Law.

Christine A. Edwards '83 is a partner in Winston & Strawn's corporate practice group where she represents Boards of Directors; special committees; chief legal officers; and financial services companies. Ms. Edwards focuses on the regulation of the financial services industry – particularly the securities and banking industries – as well as corporate governance and public and regulatory policy issues.

Christine A. Edwards '83

Ms. Edwards provides proactive counsel to clients on corporate governance, public company boards of director issues, banking and securities industry regulation, risk management, consumer banking and securities transactions, and privacy and identity theft matters. She also has extensive experience supervising complex internal investigations and regulatory defense matters.

Prior to joining the firm in 2003, Ms. Edwards was executive vice president and chief legal officer at Bank One Corporation, a predecessor to JPMorgan Chase, one of the nation's largest bank holding companies. She was in charge of Bank One's 500-person legal, compliance, government relations, and regulatory management department, with responsibility for the bank's worldwide legal and compliance needs. Previously, Ms. Edwards served as chief legal officer for large, international financial services firms, including Morgan Stanley and ABN AMRO, North America. She currently serves as chair of the UM Carey Law School's Board of Visitors.

Nicole Frush Munro '00

Nicole ("Nikki") Frush Munro '00 is a partner in the Maryland office of Hudson Cook, LLP, a nationwide provider of legal compliance services for the financial services industry. Ms. Munro's practice at Hudson Cook focuses on assisting federal and state chartered financial institutions, other licensed lenders, sales finance companies, and motor vehicle dealers in the development of nationwide consumer automobile finance programs. In 2012, Ms. Munro was appointed as Chair to the American Bar Association Business Law Section's Consumer Financial Services Committee to serve a three year term. From 2009 until her recent appointment, Ms. Munro served as Vice Chair for the committee. The Consumer Financial Services Committee has over 1,100 members who practice in the area of consumer financial services law. Committee membership represents both industry interests and consumers, with practitioners from private practice, government, the non-profit sector, and educational institutions. Prior to earning her JD and joining Hudson Cook, Ms. Munro received a Bachelor of Arts in psychology from the University of Maryland College Park.

William J. Pittler '59

William J. Pittler '59 entered private practice in the Baltimore area after graduating from the University of Michigan and then earning his JD from UM Carey Law. He practiced law, specializing in business law and particularly transactional issues, for more than two decades before deciding that he wanted a change, so he bought a business that had belonged to one of his former clients, Friendly Finance Corporation, a company that purchases and services automobile retail installment sales contracts throughout the Mid-Atlantic, Midwest, and Southeast.

As CEO and house counsel to Friendly Finance Corporation, Mr. Pittler continues to negotiate and draft contracts, and the corporation's multistate span has made familiarity with and under-

standing of federal and state laws essential. Life in the commercial world gave Mr. Pittler a new concern for the rights of creditors. A member of the American Financial Services Association for the past decade, in previous years Mr. Pittler also served as president of the Maryland Financial Services Association and participated on the inquiry committee for the Attorney Grievance Commission of Maryland.

Mr. Pittler recently joined the UM Carey Law Board of Visitors, and with his wife Helene, contributed a major gift to the school to support their interest in creditor's rights. The Pittler Fund for Excellence in Business Law allows our Business Law Program to organize an annual symposium, lecture, or roundtable discussion at the University of Maryland Francis King Carey School of Law focusing on topics related to creditor's rights. These programs support faculty research and scholarship and also bring together academics, practitioners, business leaders, alumni, and current students.

Notable Program Events Spring 2013

- **Business Law Mentoring Initiative – March 2013 is a "Month of Mentoring" at UM Carey Law. Organized by the Business Law Society, this program allows students to shadow lawyers and business professionals in the work place for one day. If you are interested in being a mentor, please contact Saidah Grimes at sgrimes@umaryland.edu.**
- **The *Journal of Business & Technology Law* will host its Spring Symposium about the legal challenges of social media on April 5**
- **The Norman P. Ramsey Lecture: "An Evening of Entrepreneurship with MNSBC's JJ Ramberg" on April 9, including a pre-lecture book signing**
- **UM Carey Law Anniversary Celebration, April 13, 2013 - join us in celebrating some very important milestones, class reunions, and program open houses!**

FACULTY NOTES

Michelle Harner recently published a book titled, *Developing Professional Skills: Business Associations* (West 2012). In addition, she has or will be publishing the following articles: "The Naked Fiduciary," 54 Ariz. L. Rev. 879 (2012) (with Jamie Marincic); "Teaching Business Law Through an Entrepreneurial Lens," 8 J. Bus. Tech. L. (forthcoming 2013); and "Series LLCs: What Happens When One Series Fails? Key Considerations and Issues," Business Law Today (2013) (with Jennifer Ivey-Crickenberger and Tae Kim). Professor Harner also spoke at the 2012 Annual Meeting of the National Conference of Bankruptcy Judges and the American Bar Association's 2012 LLCs, Partnerships, and Unincorporated Entities Institute.

Shruti Rana recently published the articles, "Teaching Amidst Transformation," 8 J. Bus. & Tech. L. 101 (2012), and "The Emergence of the New Chinese Banking System: Implications for Global Politics and the Future of Financial Reform," 27 Md. J. Int'l L. 215 (2012), and contributed a chapter entitled, "Taxation and Incentives in the Business Enterprise," for the book *Enterprise Law: Contracts, Markets, And Laws In The U.S. And Japan* (Zenichi Shishido ed., forthcoming 2013) (with David Gamage). Professor Rana will be publishing two additional articles: "Philanthropic Innovation and Creative Capitalism," 64 Ala. L. Rev. (forthcoming 2013); and "China's Copyright Reforms: A Comparative Perspective," 53 Santa Clara L. Rev. (forthcoming 2013) (with Garland Rowland). In addition, Professor Rana made several presentations, including: "The Development of the New Chinese Banking System: Domestic Modernization or Global Financial Manipulation?" at a Festschrift in honor of Prof. John Haley, at University of Washington Law School in Seattle, Washington on October 19, 2012; "Philanthropic Innovation and Creative Capitalism," at University of Indiana Robert F. Kinney School of Law Colloquium Speaker Series in Indianapolis, Indiana on Oct. 2, 2012; and "Legal Systems in the U.S. and China: A Comparative Perspective on U.S. and Chinese Commercial Law Systems" for the Jiangsu Executive Development Program on High Court Administration, Maryland China Initiative, which was held at the University of Maryland Francis King Carey School of Law on Jun. 25, 2012. Professor Rana was also a panelist for an International Law Colloquium entitled "U.S. Participation in Human Rights Treaties: Inexcusable Exceptionalism or Much Ado About Nothing?" at the University of Maryland Francis King Carey Law School on Oct. 3, 2012.

Robert J. Rhee published the article, "The Tort Foundation of Duty of Care and Business Judgment," 88 Notre Dame L. Rev. 101 (2013), and also contributed the chapter "Reflections on Team Production in Professional Schools and the Workplace," in the book *Law And Leadership: Integrating Leadership Studies Into The Law School Curriculum* (Paula Monopoli & Susan McCarty, eds., Ashgate Press 2013).

William Reynolds recently published the book, *Injustice On Appeal* (Oxford Univ Press 2012) (with William Richman). He will be publishing two articles, "The Past, Present, and Future of Electronic Contracting," Md. J. Int'l L. (forthcoming 2013) (with Juliet Moringiello), "A Case Study in the Superiority of the Purposive Approach to Statutory Interpretation: *Bruesewitz v. Wyeth*," 64 S.C. L. Rev. ___ (2012) (with Donald Gifford and Andrew Murad). In addition, Professor Reynolds made a presentation entitled, "Teaching Letters of Credit Through Role-Playing," at the AALS Annual Meeting in New Orleans, on Jan. 5, 2013, and he presented "*Kiobel* and Forum Non Conveniens," on October 25, 2012, in Baltimore.

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Francis King Carey School of Law

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WANT TO GET INVOLVED?

Host a "brown bag" on a topic of Business Law that interests you. Mentor a Business Law Society student. Sponsor a Business Law symposium. We're always looking for ideas and suggestions to enrich our experiences at UM Carey Law. Contact Hilary Hansen at 410-706-3146 or *hhansen@law.umaryland.edu*.

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