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PROFESSIONALISM AND PROBLEM-SOLVING IN THE BUSINESS CONTEXT

by Professor Deborah Thompson Eisenberg

What does it take to lead a successful business? The banking crisis and recent corporate scandals teach us that it takes more than a myopic focus on profits. Every day, business leaders are faced with myriad issues that raise ethical or interpersonal dilemmas that cannot be resolved based solely on substantive knowledge or one particular skill. Should certain unfavorable information about the business be reported to shareholders? How can employee morale and productivity be improved? How should the business respond to a complaint from a disgruntled employee or customer? How should the business negotiate the terms of a deal with a major supplier or client?

Professor Deborah Thompson Eisenberg

While the teaching in most business and law schools focuses on hard skills and core substantive areas, today's business leaders, and the lawyers who counsel them, also need a solid grounding in the concepts of professionalism and problem-solving to work through the constant, and often unpredictable, stream of decisions that businesses must make. These concepts include, for example:

Strategic negotiation – Businesses often negotiate with entities and individuals with whom they will have on-going relationships. Business leaders need to understand the dynamics of negotiation and appreciate that a range of strategic negotiation tactics and techniques exist to accomplish the best results. Competitive negotiation tactics can be short-sighted and may backfire in certain contexts. Approaching negotiation as a zero-sum game can erode trust, harm future relationships and damage the reputation of individuals and businesses. Building trust, identifying needs and interests and understanding collaborative problem-solving and integrative bargaining opportunities are critical skills for effective business leaders.

Ethical judgment – Businesses operate within a larger social context. The decisions business leaders make are like rocks thrown into a pool of water: they will impact employees, consumers, shareholders and communities. Clearly defined values and professional identity assist business leaders in guiding their businesses and making decisions based on principles of ethical judgment.

Collaboration – Successful business leaders are typically self-motivated, driven and smart. The ability to take charge and make quick decisions is essential, but the best leaders also know how to collaborate with others and foster teamwork. Employees are more likely to be loyal and productive if they feel valued. Good ideas can become great ideas when subjected to group brainstorming and critique.

Effective Communication – Leaders in business and law need excellent written and oral communication skills. Effective communicators can both provide and receive accurate information. In this age of instantaneous, electronic modes of communicating, knowing the appropriate method to convey the message is

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essential. Whether speaking publically or privately, active listening helps ensure that the full message is heard and the intended information is received.

The Center for Dispute Resolution (C-DRUM) at the University of Maryland School of Law offers targeted training to organizations and businesses on the topics of mediation, conflict resolution, collaborative problem-solving, negotiation and effective communication. An integral part of the law school, C-DRUM is a comprehensive dispute resolution center for policy, scholarship and professional skills development relating to problem-solving in law and society. C-DRUM's mission is to collaborate with public and private institutions, groups, and individuals to study, enhance and teach conflict resolution; to research and develop conflict resolution systems; and to promote effective, ethical dispute resolution in legal education and practice and in society more broadly.

As we develop future professionalism and problem-solving offerings, we would appreciate hearing from our alumni and friends about the professional and problem-solving skills training that would be most helpful for you and your business or firm. If you have ideas, please contact me at deisenberg@law.umaryland.edu.

Deborah Thompson Eisenberg *is an Assistant Professor of Law and Director of the Center for Dispute Resolution at the University of Maryland Francis King Carey School of Law. Her teaching and writing interests include employment law, alternative dispute resolution, and civil procedure. She previously served as a visiting professor at the law school. Prior to academia, Professor Eisenberg practiced law in Baltimore for nearly fifteen years. She graduated from Yale Law School in 1994, where she was an editor of the Yale Law Journal, and as Valedictorian of her class at the University of Maryland Baltimore County in 1991.*

"QUASI-LEGAL" CONSIDERATIONS IN INTERNATIONAL BUSINESS

By Professor Michael Van Alstine

The expertise of lawyers—their "value added"—in facilitating business transactions lies, of course, in legal analysis. Even in routine domestic matters, legal advice may be essential to ensure an efficient, frictionless transaction. But in international transactions, the need for sophisticated analysis by competent lawyers can be acute. First and foremost, international transactions raise fundamental questions concerning what country's law will provide the governing legal rules. And it is hardly a secret that these legal rules may differ substantially from country to country.

This, however, is only the first of many legal challenges that arise with special, and sometimes unexpected, significance for clients with cross-border business interests. Taxation issues commonly are both weightier and more complicated. As well, lawyers may need to analyze the necessity of, and as appropriate structure, special payment mechanisms. Transactions that span national borders also may raise significant concerns over governmental trade rules such as import and export restrictions, license requirements, customs clearance and tariffs. American businesses may have heightened concerns about legal protections against the loss of intellectual property rights, especially in some developing countries. In addition, host countries may have different requirements for and limitations on inbound foreign investment. Labor laws are a prominent example. Immigration visas, employment visas, contributions to government pension schemes, participation in health care systems—to mention just a few cognate issues—all require detailed study.

But a recent opportunity to teach international commercial law in China reminded me of the "quasi-legal" issues that may be of even more fundamental importance for the success of international business transactions. This year, the School of Law marked the five-year anniversary of an exchange program with the law school of the Central University of Finance and Economics in Beijing, China. As the name of this partner school implies, the focus of this exchange program is international business, economic and commercial law. Perhaps the only active program by a U.S. law that spans an entire semester in China, the Maryland Law-CUFE Law cooperative exchange program permits both students and professors to research and study at the foreign partner school. As noted, my experience teaching a short course at CUFE Law late last semester brought home again the significance of considerations that, though not legal in a narrow sense, have a pervasive

influence on the advice lawyers provide for their internationally active clients.

The most important of these considerations is also the one that is most easily forgotten in our increasingly interconnected world: differences in culture. One might begin here with very broad notions about expected degrees of formality, the time a businessperson must devote to developing relationships, and required levels of trust. (Americans, for example, are notorious for their habit of immediately using first names even with new business acquaintances.) But even in a legal frame, different cultures can have strikingly different expectations about the place of lawyers, and even the prominence of law, in business transactions. A common story relates how a proposed transaction between a Western and a Far Eastern business went awry because of differing expectations about the timing and prominence of lawyers in negotiations. Knowledge of these differences is essential if lawyers are to provide competent and valuable legal advice to their clients. Unfortunately, the ease of modern communication can create an illusion of similarity and mask the fundamental cultural differences that remain (and certainly will remain for quite some time).

Professor Michael Van Alstine

A similar, though more obvious, issue relates to governmental policy. Different legal systems may have different understandings about the proper role of government in private transactions. For example, foreign systems may impose requirements for licenses, approvals, fees, or simple courtesies owed to government officials that could come as a shock to the untutored American lawyer. Likewise, unexpected formalities may exist for what we might view as entirely routine transactions. (On the other hand, our own system may benefit from consideration of some of these formalities. One might well wonder whether the damage from the recent collapse of the sub-prime mortgage market might have been mitigated by the civil law requirement of an individualized review by a disinterested legal notary.) Competent lawyers must have a nuanced understanding of these broader issues of governmental involvement, however much they may be contrary to our own approach to such matters.

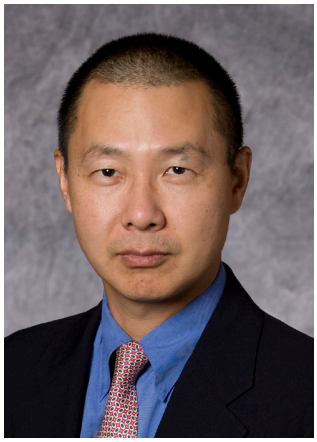
Other "quasi-legal" issues, of varying degrees of subtlety, may abound in international business transactions. Language is prominent among them. A common conceit is that knowledge of English is all one needs for international business today. To choose just one aspect of this issue, many risks attend reliance on unknown translators or borrowed translations where the original language of the governing law is a foreign one. Currency fluctuations likewise may have a direct impact, even if a contract is denominated in U.S. dollars. A more immediate concern is the potential collision between U.S. law and a foreign culture on gift-giving. The line between a bribe and an expected—if not culturally required—courtesy in the form of a gift can be foggy, as a fair number of U.S. companies have confronted in recent Foreign Corrupt Practices Act proceedings. Simple geographic distance also creates challenges, including through the need to engage third parties for transportation issues. Even time differences can cause problems. For example, U.S. multi-national enterprises are increasingly considering the value of locating in-house lawyers in Europe to permit simultaneous communication with the Americas and Asia in the course of a reasonable workday.

The brief message here is one law students hear as an abstract matter in the first year of law school, but whose significance lawyers may require years of practical experience to appreciate: The work of lawyers may begin with an analysis of the force and substance of legal rules. But those rules exist within a complex web of norms and relationships that may have a substantial effect on how the law "hits the ground' in actual transactions. And this necessary perspective for the work of competent lawyers is especially important for transactions that cross international, and in particular cultural, borders.

Michael P. Van Alstine *specializes in international and domestic private law. He has published widely in both English and German in the areas of contracts, commercial law, and international commercial transactions. His particular area of scholarly interest is the domestic law application of international law through the vehicle of treaties. Professor Van Alstine has earned law degrees in both the United States and Germany. He received both his Doctor of Laws and Masters of Comparative Law degrees summa cum laude from the University of Bonn, Germany. He obtained his law degree from the George Washington University. Before becoming a law professor, he also practiced domestic and international commercial and business law at law firms in the United States and Germany.*

ROBERT RHEE NAMED MARBURY RESEARCH PROFESSOR OF LAW

In 2011, Program Co-Director Robert Rhee was named a Marbury Research Professor, a three-year appointment that will allow him to further his business law scholarship. He has been working on several projects, spanning academic papers, an educational textbook and a multivolume professional practice guide



Professor Robert Rhee

His recent article, "The Law School Firm," (63 South Carolina Law Review 1 (2011)) posits that legal education can do a better job of providing practical training, but that providing such training via classroom and clinical teaching has limits. Law schools should own and operate affiliated law firms, which would be economically independent. This model would provide law students, having finished traditional classroom studies, training as provisional lawyers. The main focus would be an educational mission. The firm would be led by senior attorneys charged with operating the firm, training provisional lawyers in best practices, and serving as model professionals. The prepublication draft of this article received significant attention among law schools, law students, the media, the professional bar, and blogs.

Professor Rhee is currently working on three papers. In "A Financial Economic Analysis of Punitive Damages" (111 Michigan Law Review (forthcoming 2012)), he applies financial economic analysis of the Supreme Court's recent transformation of punitive damages jurisprudence. He concludes that based on law and economic and tort theories of deterrence, the due process cap on punitive damages is unwarranted, except that the defendant's wealth should provide a limit to punitive damages. He reasons that from a deterrence perspective, financial distress imposes economic costs on firms and their constituents that are greater than the failure to fully internalize the costs of undetected, escaped liability. This paper was presented at Indiana University and the University of Toronto, and at the Italian Society of Law & Economics. In another paper, "A Theory of Duty of Care and Business Judgment," he corrects a commonly advanced assertion that the tort analogy fails when applied to the liability of directors—that is, negligent doctors are held liable for their errors, but negligent directors are not. He argues that tort principles of duty, customs, and economic loss, if correctly applied, would result in no liability to directors who err in their actions. This article corrects a long-standing misunderstanding of the application of tort principles to corporate law. Lastly, Professor Rhee is currently writing "Fixing the Structure Bias in Credit Ratings," an article providing a proposal for better aligning the incentives of credit rating agencies with performance.

Professor Rhee is also engaged in several book projects. He has written *Essential Concepts of Business for Lawyers* (forthcoming 2012, Aspen Publishers and Wolters Kluwer Law & Business), which fills a need for a law school textbook that teaches basic business concepts. Most law students come to law school without any background in accounting, finance, capital markets, and business transactions. Recognizing that most students are not autodidacts in core business subjects, Professor Rhee has written a user-friendly, yet sophisticated textbook that teaches students the basics of securities instruments, capital structure, asset valuation, and corporate transactions, among other things. In conjunction with the book, the Business Law Program has instituted a new course called "Business 101," taught by Professor Rhee, and this course uses the book as the basic course framework. He is also the co-author of a 10-volume professional practice guide series, *Limited Liability Entities: LLCs and Partnerships* (volume 1 forthcoming 2012, Aspen Publishers and Wolters Kluwer Law & Business). This series is the only legal publication providing up-to-date, state-by-state coverage of hybrid limited liability entities, including limited liability companies, limited liability partnerships and limited partnerships. Lastly, Professor Rhee is under contract to write Corporate Finance, a casebook on corporate finance which covers the legal aspects of debt and equity securities instruments as well as derivatives.

*Professor **Robert Rhee's** legal experience includes positions as a law clerk on the U.S. Court of Appeals for the Third Circuit,and a trial attorney in the Honors Program of the U.S. Department of Justice. He also has significant investment banking experience. He was a vice president in financial institutions investment banking at Fox-Pitt, Kelton (a unit of Swiss Re) in New York, and an M&A investment banker at UBS Warburg in London. He has worked on public and private M&A assignments, private equity funding, and debt and equity issuances. His scholarly interests include risk focused economic analyses of legal and social problems. The subjects of study have included torts, insurance, corporations, bargaining and procedure.*

SPECIAL LITIGATION COMMITTEES AFTER *BOLAND*

By Julie A. Hopkins

Julie A. Hopkins

On October 25, 2011, the Maryland Court of Appeals decided *Boland v. Boland*, outlining the standard of review to be applied in derivative actions, when analyzing Special Litigation Committee ("SLC") decisions. The decision addressed two lawsuits involving a family business--a derivative suit, and a direct action. In the shareholder derivative suit, two non-director siblings, acting as shareholders, alleged self-dealing and breach of fiduciary duty in a stock transaction by their three brothers who ran the company. The company appointed an SLC to provide an opinion on whether the lawsuit should proceed. The SLC found the stock purchase was valid and concluded the derivative action should not proceed. In consideration of the report, the brothers moved for summary judgment. The Montgomery County Circuit Court deferred to the judgment of the SLC and granted summary judgment in favor of the corporations in the derivative lawsuit based on the SLC's conclusion that the brothers had not engaged in improper self-dealing in buying stock from the companies. The court held the SLC's conclusion could only be trumped by evidence of bad faith on the SLC's part. The non-director brothers appealed.

When challenged by a shareholder derivative suit, a board of directors may appoint what is known as a "Special Litigation Committee" to determine if the corporation's best interest is to pursue or to terminate the derivative action against the directors. The board grants power to a committee of independent directors to make this determination. At issue in this case is how rigorously a court should review the recommendation of the SLC.

Courts often choose one of two common approaches when reviewing the recommendation of an SLC and making the determination whether the SLC was independent, acted in good faith, and followed reasonable procedures: The Auerbach approach followed by New York or the Zapata approach followed by Delaware. The Auerbach approach, after the case, *Auerbach v. Bennett*, 393 N.E.2d 994 (N.Y. 1979), treats the SLC's decision like other corporate decisions and engages in limited review under the business judgment rule. The Zapata approach, after the case *Zapata Corp. v. Maldonado*, 430 A.2d 779 (Del. 1980), provides additional scrutiny and requires the SLC process to be examined independently, on the merits, by the courts in order to adequately protect shareholders. Under *Zapata*, the court should apply its own independent business judgment. Before *Boland*, Maryland had yet to decide definitively whether courts should follow *Zapata* or *Auerbach*. In *Boland*, the Court adopted the business judgment rule as applied in *Auerbach* and rejected the Zapata approach used by the Maryland Court of Special Appeals in its decision in *Boland v. Boland*, 194 Md. App. 477 (2010).

Although *Auerbach* held SLC substantive decisions are presumed reasonable, it did not presume the SLC itself was independent, acted in good faith, or followed reasonable procedures. The Court in *Boland* concluded there should be no presumption on these issues. Rather, the court should not grant summary judgment on the basis of an SLC's decision unless, "the directors stated how they chose the SLC members and come forward with evidence the SLC followed reasonable procedures and that no substantial business or personal relationship impugned the SLC's independence and good faith." Once the corporate directors satisfy this standard, the burden shifts to the derivative plaintiffs to come forward with evidence regarding these issues sufficient to survive summary judgment. If the plaintiff survives summary judgment, at trial, the burden is on the directors to prove that the SLC was independent, acted in good faith, and made a reasonable investigation and principled, factually supported conclusions. Regarding the first prong of the inquiry, the judiciary can involve an investigation of the SLC's composition and its members' relation to the director-defendants. Regarding the second prong, the reviewing court can inquire into the procedural aspects of the SLC's investigation. For both prongs, judicial review should be engaged and thorough, the Court stated.

The Court recognized that procedural review under the business judgment rule is a more deferential standard than the rule under *Zapata*, but still provides a thorough review of an SLC's independence, good faith, and methodology. The inquiry gives trial courts the ability to scrutinize SLC decisions and protect shareholders against deceitful practices or inadequate

investigations. The process requires transparency from the directors and increases their accountability for their decisions. Further, this approach, the Court stated, protects against the danger of judicial overreach and avoids judges exercising their own business judgment--concerns with the Zapata test.

When turning to the facts of *Boland*, the Court applied the standard of review outlined above and concluded the Circuit Court did not have sufficient grounds for summary judgment. Because the Circuit Court incorrectly afforded the SLC's methodology a presumption of reasonableness, its analysis was inappropriate. The Court vacated the Circuit Court's judgment and remanded for the court to determine if the SLC was independent and acted in good faith under the Auerbach standard. Additionally, the Court was instructed to examine the methodologies and procedures of the SLC's investigation, and to determine whether there was a reasonable basis for its conclusions.

Julie Hopkins *is working part-time with UM Carey Law's Intellectual Property and Business Law Programs. In addition to her work at UM Carey Law, Julie is an intellectual property law attorney with Palmer|Cooper|Hopkins, LLC in Baltimore. Ms. Hopkins graduated from Smith College in 1998 with a degree in Biology, and received her JD with honors from UM Carey Law in 2004. She is a member of the bars of Maryland, the District of Columbia, and the United States Patent and Trademark Office, and is admitted to practice before the U.S. District Court for the District of Maryland and the U.S. Court of Appeals for the Third Circuit.*

PROGRAM NEWS

JOURNAL OF BUSINESS & TECHNOLOGY LAW AND THE ENTERTAINMENT, ARTS AND SPORTS LAW ASSOCIATION HOST FALL SYMPOSIUM ON SPORTS AND BUSINESS LAW

By Brian Hoffman 3L

On October 3, 2011, the University of Maryland Francis King Carey School of Law hosted "The Intersection of Sports and Business in Today's Legal Arena," a day-long symposium presented through a collaborative effort by the Journal of Business & Technology Law (JBTL), the Entertainment Arts and Sports Law Association (EASL), and the Business Law Program.

The symposium featured legal advocates in the sports and business law fields, scholars, and media personalities. Distinguished speakers included Ed Durso, Executive Vice President at ESPN, and Jay Bilas, ESPN commentator and analyst.

Visiting Professor N. Jeremi Duru delivered the opening lecture, speaking about equal opportunity in sports. Professor Duru highlighted the historical obstacles African-American coaches faced in their attempts at NFL employment and gave an overview of the 2003 Rooney Rule. Professor Duru is on the faculty of Temple University Beasley School of Law, where he teaches sports and employment law.

Three panel sessions followed the opening lecture. The first panel, moderated by Jay Bilas, addressed stadium development. Mr. Bilas began the discussion with remarks on the status of sports law with regards to college athletics and led an enlightening question and answer session with members of the audience. Mr. Bilas responded to questions concerning academic standards for student athletes and commented on the role of universities in setting and enforcing those standards. Mr. Bilas also answered questions on the compensation of student athletes, and addressed conference realignment, before moving the discussion towards stadium development.

The panel on stadium development included:

- Stan Kasten, Former President of the Washington Nationals, Atlanta Braves and Atlanta Hawks;
- Irwin Kishner, a Partner at Herrick Feinstein, who served as lead counsel in the transaction and development of the recent New York Yankees stadium project;

- Irwin Raij, a Partner at Foley & Lardner and vice-chair of the Sports Industry Team, working closely with professional sports leagues and teams;
- Paul Tiburzi, a Partner at DLA Piper and member of their Sports, Media and Entertainment practice group. Mr. Tiburzi also served as the chairman of the Camden Yards Sports and Entertainment Commission.

Keynote speaker, Ed Durso, with Dean Phoebe Haddon, Professor Michelle Harner and Paul Tiburzi

After the first panel, Dean Phoebe Haddon introduced the keynote speaker, Edwin Durso, Executive Vice President of Administration for ESPN, who spoke about his own career path, the sports entertainment industry, and provided an outlook for the future of sports business and law. Part of that outlook, Mr. Durso stated, is that there are new challenges that must be faced in the sports entertainment industry created through the emergence of Google and YouTube, which Mr. Durso called "disaggregators." These challenges will present new legal issues in the industry that will be faced by next generations of sports and entertainment lawyers. In addressing that next generation, Mr. Durso encouraged students interested in sports law to distinguish themselves from others when competing in a difficult job market and offered his perspective on how he assesses potential candidates, emphasizing his interest in creative, big-picture thinking and his desire for a colleague who would freely express new ideas, even if they differed from his own.

Dionne Koller, Associate Professor of Law at the University of Baltimore School of Law, moderated the two panel sessions that followed. The first of the afternoon panels focused on the Bowl Championship Series (BCS) and its relationship with business and law. This panel encompassed a variety of different viewpoints about the BCS, which fueled a lively debate on this topic.

The panel on the Bowl Championship Series included:

- Alan Fishel, a Partner at Arent Fox, who represents several entities that have significant legal and business concerns regarding the BCS;
- Philip Hochberg, founder of the Law Offices of Philip R. Hochberg. Mr. Hochberg represents professional and collegiate sports leagues, conferences and teams;
- Josephine (Jo) Potuto, is a Professor at the University of Nebraska College of Law and the faculty athletics representative at the University of Nebraska, dealing with important NCAA legal issues involving the collegiate athletic programs at Nebraska;
- Robert Wierenga, a Principal and litigator at Miller Canfield. Mr. Wierenga has represented the NCAA in several cases.

The role of the BCS in college football is a polarizing topic throughout the industry and among fans of college football. Mr. Hochberg and Ms. Potuto represented one end of the spectrum--those who strongly support the existence of the BCS system. Mr. Fishel represented the opposite end of the spectrum, and stated that he represents about 90 percent of people in the general population who are critical of the BCS system. Mr. Fishel emphasized that the antitrust laws are meant to protect against competitors acting in concert with each other to maximize revenue and that the BCS is violating these antitrust laws. Students felt that having both sides of the argument represented added to the value of the debate. Ashley Sharif, a second year law student who attended the symposium, stated that the dialogue "…was very engaging, and it was clear that both sides felt very passionately. This put a new spin on an issue that I myself had not considered very much before."

The second afternoon panel focused on the use of athlete images and the rights of the media, individuals, and for-profit industries in the business of sports. Panelists discussed and gave examples of current legal issues, specifically addressing the recent popularity of video games and the sophistication of computer graphics, making it possible for video game designers to create fictional characters that closely resemble real people.

The panel on athlete images and media rights included:

- Ronald Katz, a Partner at Manatt, Phelps, and Phillips, who is the Chairman of the Sports Law Practice. Mr. Katz has represented numerous former professional athletes in various litigation matters;
- Stuart Paynter, founder and Principal at The Paynter Law Firm, where he focuses on plaintiffs side commercial litigation, including intellectual property disputes;
- Michael McCann, Director of the Sports Law Institute and Professor of Law at Vermont Law School and recognized expert in sports law and economics.

The Fall Symposium provided a full and successful day of discussion on topics of critical importance to sports and business.

Jay Bilas moderates morning panel on stadium development

Notable Program Events

- **Regional Rounds of the Transactional Lawyering Meet at the Earle Mack School of Law, Drexel University, on February 17, 2012**
- **Bankruptcy Judges Luncheon**
- ***March 30, 2012 - Journal of Business & Technology Law's* Spring Symposium on Cybersecurity**
- **Business Law Mentoring Initiative—March 2012 is a "Month of Mentoring" at UM Carey Law, allowing students to shadow lawyers and business professionals in the work place for one day. A reception for all participants will be held in April 2012. If you are interested in being a mentor, please contact Meena Agarwal at meenaagarwal@gmail.com**
- **"Fortnightly IP" Speaker Series on February 21, March 6 and 20, and April 3 and 17, featuring Brian Tollefson '98, Member at Rothwell, Figg, Ernst & Manbeck, P.C.; Suzanne Michel, Senior Patent Counsel at Google, Inc.; Megan LaBelle, Assistant Professor of Law at Catholic University Columbus School of Law; and Kathryn Miller Goldman '87, Chair of the MSBA IP Section and attorney at Goldman & Minton, P.C.**

ALUMNI SPOTLIGHT

TERESA CARNELL '92: THE ACCIDENTAL BUSINESS LAWYER

"Not having a plan is sometimes the best plan."

Teresa "Tea" Carnell '92 is Assistant Attorney General (Advice Counsel) to the Commissioner of Financial Regulation of Maryland. In this position, she advises the Division of Financial Regulation on the laws of governing mortgage foreclosure and the licensing and regulation of various organizations such as mortgage loan originators, mortgage lenders, check cashers, collection agencies, consumer lenders, credit reporting agencies, credit services businesses, debt management service providers and debt settlement providers. Because executive agencies carry out quasi-judicial and quasi-legislative functions, she draws on her background as a judicial law clerk and a legislative lawyer. The Division regulates businesses and business activities and Ms. Carnell draws on her experience as a business lawyer in this regard.

Prior to joining the Office of the Attorney General, Ms. Carnell was a corporate and securities lawyer, but she did not start out as one. She was, in her own words, "an accidental business lawyer." Ms. Carnell majored in political philosophy in college and went to law school as a default to knowing what she wanted to do. She attended law school at UM Carey Law without a clear view of the type of law she wanted to practice. Ms. Carnell spent her first year out of law school in a judicial clerkship for The Honorable Thomas Ward of the Baltimore City Circuit Court and then, accepted a position as bill drafter with the Department of Legislative Services in the Maryland General Assembly in Annapolis because "it sounded interesting." Ms. Carnell served as Counsel to the House Economic Matters Committee, the House Commerce and Government Matters Committee and Counsel to the Joint Committee on State Economic Development Initiatives. During her five years in Annapolis, she advised legislators on proposed legislation, drafted bills and amendments, and reviewed proposed regulations. She loved the work but wanted new challenges.

In the process of requesting a recommendation from a lawyer with whom she had worked on legislation, she received a job offer. Ms. Carnell took a leap, not knowing much about corporate law, and accepted a position as an Associate with the corporate practice group at Ballard Spahr Andrews and Ingersoll LLP in Baltimore. Ms. Carnell mostly advised Maryland-incorporated public companies on corporate and securities law, corporate governance issues, contested director elections, stockholder proposals and corporate transactions. During that time, she also chaired both the Committee on Corporate Laws and the Business Law Section of the Maryland State Bar Association, and served on the Association's Laws Committee. When her practice group went to Venable LLP in 2003, she joined them and remained there for eight years.

To Tea Carnell, over the years, doing interesting legal work and balancing work with her family have become the most important factors when making decisions about her career. Over the last 20 years, large firms have become more flexible in work arrangements for lawyers with competing responsibilities. During her firm tenure, she gauged her billable commitments to her family and practice needs. In 2011, she was again ready for new challenges and became Assistant Attorney General; the position she holds today.

For students interested in practicing business law, Ms. Carnell recommends being open to all opportunities. Especially in this economy, she advises students not to get discouraged. By keeping an open mind and not having an inflexible plan, she availed herself to unexpected experiences that helped develop her into the lawyer she is today.

FACULTY NOTES

Brenda Blom presented, "Presentation of Community Economic Development Law: A Text for Engaged Learning," at the New York Clinical Theory Workshop in New York on April 8, 2011, "Beyond a Cost/Benefit Analysis: Mustering the Arguments for a Value-Based Program Decision," with Jeffrey J. Pokorak at the Concurrent session at the Annual Meeting of the AALS Section on Clinical Education in Seattle in June 2011, and "JustAdvice: Studying Law in Snapshots," a paper written with Leigh Maddox, at the Clinical Law Review Writer's Workshop at New York University School of Law on October 1, 2011. Prof. Blom co-authored with Phillip Robinson, "Legal Resource Networks," in the ABA Book, *Reinventing the Practice of Law: Innovations for Lawyers Representing People* (Luz Herrerra, Ed.) (forthcoming, 2012). She also co-authored with Dorcas Gilmore, "Mentoring and Professional Responsibility," and co-authored with Lydia Nussbaum and Bonnie Allen, "Charting a New Course: New Methods for Teaching Professional Responsibility to Law Students in a Post-*Carnegie* World," chapters in *Reflections on Law and Leadership: Integrating Leadership into the Law School Curriculum*, (Monopoli and Sorenson, Ed.) (forthcoming 2012).

Martha Ertman will speak at the University of Chicago Workshop on Regulating Family, Sex and Gender, presenting two chapters of her book, *Love & Contracts: The HEART of the Deal* on February 8, 2012. On February 24, 2012, Prof. Ertman will present the chapter, "The Business of Baby-Making" from her book *Love & Contracts* at the Thomas Jefferson University Law School 12th Annual Women and the Law Conference, addressing reproductive justice. On March 3, 2012, Prof. Ertman will present her paper at the University of Portland conference, "Don Quixote: A Study of a Modern Hero," about relevance of Cervantes' great novel across disciplines. Her paper maps the love-contracts portrayed in several scenes in the novel.

Michael Greenberger contributed the chapter, "Legal Issues in Mass Fatality Events," in *Death In Large Numbers: The Science, Policy, and Management of Mass Fatality Events* (Elin A. Gursky and Marcella F. Fierro eds., 2011) (with Trudy Henson, Sean Kates, and Amy Major), published a book review in 27 Journal of Contemporary Health Law & Policy 314 (2011) (reviewing George J. Annas, *Worst Case Bioethics: Death, Disaster, and Public Health* (2010)). He also testified at the "Implementing Dodd-Frank: A Review of the CFTC's Rulemaking Process," Hearing before U.S. House Subcommittee on General Farm Commodities and Risk Management (April 13, 2011), available at http://www.michaelgreenberger.com/files/IMG__041311_House_AG_Testimony_Final.pdf, and at the "Implementation of the Title VII of the Wall Street Reform and Consumer Protection Act," Hearing Before the U.S. Senate Committee on Agriculture, Nutrition and Forestry, Washington, DC (March 3, 2011), available at http://www.michaelgreenberger.com/files/110303-Greenberger_Senate_Ag_Testimony2.pdf.

Michelle Harner published "Activist Distressed Debtholders: The New Barbarians at the Gate?" 89 Wash. U. L. Rev. 155 (2011); "Mitigating Financial Risk for Small Business Entrepreneurs," 6 Ohio St. Entrepreneurial Bus. L.J. 471 (2011) (symposium issue); and will publish "Gender and Securities Law in the Supreme Court," in the Women's Rights Law Reporter (forthcoming 2012) (with Lyman Johnson and Jason Cantone). In addition, Prof. Harner is presenting her article, "The Naked Fiduciary," at the 2012 Law & Entrepreneurship Retreat, hosted by the Mauer School of Law, Indiana University.

Shruti Rana presented "Legal Systems in the U.S. and China: Introduction to Laws, Procedures, and Courts from a Comparative Perspective" to Chinese Judges at the Jiangsu Executive Development Program on High Court Administration, Maryland China Initiative at the University of Maryland College Park on September 6, 2011, and "Philanthropic Innovation," at the CAPALF Conference at Hofstra Law School on November 3, 2011. She was a panelist speaking on "Contemporary Perspectives on International Private Law," at the University of Maryland Francis King Carey 2011 International Law Symposium on October 6, 2011, "Rubber Hits the Road: Implemented Dodd-Frank Amid Reform Fatigue," at AALS on January 8, 2012, and "Anticipating Dissension: When Legal Frameworks, US Commerce, and Foreign Markets Intersect," at the North Carolina Journal of International Law and Commercial Regulation Annual Symposium on January 27, 2012. Prof. Rana was appointed to the AALS Financial Institutions Section Executive Committee (2011-2012) and the AALS Comparative Law Section Executive Committee (2011-2012). Prof. Rana will publish "Chevron without the Courts?" Georgetown Journal Of Immigration Law (forthcoming Winter 2012) and "The Development of the New Chinese Banking System: Domestic Modernization or Global Financial Manipulation?" Maryland Journal of International Law (forthcoming Spring 2012).

Bill Reynolds presented with Julient Moringiello their work-in-progress, "The Past, Present, and Future of Electronic Contracting," at a Faculty Workshop at Widener University School of Law on November 1, 2011.

Robert Rhee will publish two books, *Essential Concepts of Business for Lawyers* (Aspen Publishers) and Volume 1 of *Limited Liability Entities: LLCs and Partnerships* (Aspen Publishers) in Spring 2012, and the article, "A Financial Economic Analysis of Punitive Damages," 111 Michigan Law Review (forthcoming 2012). Prof. Rhee presented "Preliminary Thoughts on Causation and Risk Classification," at the Annual AALS Conference, Section on Insurance Law, on January 7, 2012 and "Risk Arbitrage in Punitive Damages, Italian Society of Law & Economics," in Turin, Italy on December 16, 2011.

Michael Van Alstine taught "Select Topics in International Commercial Law" at the Central University of Finance and Economics in Beijing, China, an exchange program with the University of Maryland Carey School of Law focusing on international business and economic law, in December 2011, and will publish the article "Stare Decisis and Foreign Affairs," 61 Duke Law Journal (forthcoming, 2012) as well as the casebook *International Business Transactions: A Problem Oriented Coursebook* (West, 11th ed., forthcoming 2012) (with Folsom, Gordon, Spanogle and Fitzgerald).

Urska Velikonja recently published "Leverage, Sanctions, and Deterrence of Accounting Fraud," 44 University of California Davis Law Review 1281 (2011). Prof. Velikonja presented "The Social Cost of Financial Misrepresentations," at the Junior Faculty Workshop at Villanova University School of Law on October 19, 2011. She will present the same talk at the Junior Faculty Business and Financial Law Workshop at George Washington University Law School on February 10-11, 2012 and at the Faculty Workshop at Loyola Law School on March 15, 2012.

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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