

RUTGERS

Center for Corporate Law and Governance

NEWSLETTER

MESSAGE FROM OUR CO-DIRECTORS

The third year of operation of the Rutgers Center for Corporate Law and Governance was marked by achievements on multiple fronts. Some eighteen students participated in our Entrepreneurship Clinic, now located in both Newark and Camden, providing legal services to a wide variety of for-profit and nonprofit start-ups. The Center sponsored the Third Annual Corporate Compliance Institute, the Second Annual Hon. Rosemary Gambardella Bankruptcy Scholarship Competition, a keynote address by Delaware Vice Chancellor J. Travis Laster, and a presentation by PWC Partner Catherine Bromilow – as well as hosting or co-hosting five panel discussions and a workshop on consumer financial protection. Thirty members of the Class of 2017 graduated with Certificates in Corporate and Business Law. The Center also entered into a two-year research project with The Conference Board Governance Center on board-shareholder engagement practices and proxy voting trends. And we were joined this year by Hui Chen, an internationally recognized expert in compliance, who is a Distinguished Research Fellow affiliated with the Center for the 2018-19 academic year. The Center also received a grant from the Association of Corporate Counsel – NJ to provide annual scholarships to two rising 3L students demonstrating an interest in and aptitude for corporate and business law. These achievements were due in large part to our dedicated Advisory Board, active Alumni Steering Committee, dynamic Affiliated Faculty, committed students, and superb Manager of Administration, Rebecca Enright Siroky, who left us at mid-point in the academic year, and her two wonderful successor Program Coordinators, Tania Bentley and Habibah Johnson.

The Center has become a recognized forum for research, analysis and discussion of current issues in corporate law and governance, and a valued resource for faculty, alumni, students and the business and non-profit communities. We remain committed to providing our students with a strong foundation for practice in the business law area and to building bridges between and among Rutgers Law School, the business and nonprofit communities, government officials, and other Rutgers University units, as we seek to promote best corporate and governance practices and to stimulate potential law reform.

Yours truly,
Douglas S. Eakeley and Arthur B. Laby
Co-Directors, Rutgers Center for Corporate Law and Governance
January 14, 2019

ENTREPRENEURSHIP CLINIC

The Center-sponsored Entrepreneurship Clinic completed its second year of operation and now has a presence in both Newark and Camden. The Clinic includes a weekly two-hour doctrinal seminar, covering a wide range of substantive topics relevant to representing early-stage enterprises. In addition, the Clinic operates akin to a small law firm, with 8-10 second and third-year students in each location working each semester directly with for-profit and nonprofit entrepreneurial clients, assessing the clients' suitability for the Clinic, determining their legal needs, and then addressing those needs under the supervision of the Clinic's faculty. Services offered and rendered include counseling and representation on such matters as founders' agreements; pre-venture activities; entity selection and formation; nondisclosure agreements; employment agreements; intellectual property; capital structure, valuation and finance.

INSIDE THIS ISSUE:

MESSAGE FROM CO-DIRECTORS	1
ENTREPRENEURSHIP CLINIC	1
3RD ANNUAL CORPORATE COMPLIANCE INST.	2
GAMBARDELLA BANKRUPTCY SCHOLARSHIP COMPETITION	2
PANEL DISCUSSIONS	3-5
FACULTY PUBLICATIONS	5-7

THIRD ANNUAL CORPORATE COMPLIANCE INSTITUTE

The Center's Third Annual Corporate Compliance Institute took place on April 23, 2018 at the Law School's Camden location. It featured practitioners, current and former government officials, and business and legal scholars – all with broad and deep background and experience in corporate compliance. The program included expert panels on sexual harassment in the workplace, the intersection of compliance and risk management,



and the use of data analytics to improve the compliance function. The day provided for a valuable exchange among compliance officers, lawyers, academics, and other professionals. Our featured speaker was Jesse Eisinger, an award winning journalist at ProPublica. Other speakers included Lee Dobkin from Penn Medicine, Patrick Kelley, formerly of the Office of Integrity and Compliance at the FBI, Patrick McGowan, from United Technolo-

gies Group, and George Stamboulidis from Baker-Hostetler. Government officials included Assunta Vivolo from the SEC's Cyber Unit and Karen McDonough from the EEOC's Philadelphia District Office. Some of the academics who joined the discussion were Eric Orts from the Wharton School, Sunita Sah from the Cornell Graduate School of Management, and Jennifer Pacella from the Baruch College Zicklin School of Business.

SECOND ANNUAL HON. ROSEMARY GAMBARDELLA BANKRUPTCY SCHOLARSHIP COMPETITION



On November 17, 2017, the Center and The New Jersey Turnaround Management Association co-hosted the 2nd Annual Honorable Rosemary Gambardella Scholarship Competition. The Competition is named in honor of Judge Rosemary Gambardella, U.S. Bankruptcy Judge for the District of New Jersey and a longtime NJTMA member (and Law School alumnae).

The first round of competition was by written submission, with the final (oral) round held at the Baker

Trial Courtroom at the Law School's Newark location and judged by Judge Gambardella, along with United States Bankruptcy Judges Michael B. Kaplan and Judge Vincent F. Papalia.

The fact pattern for the competition involved a fictional couple, whose husband starts his own company, which fails, and through which he subsequently defrauds investors. After he and his wife agree to a divorce and division of marital assets, he declares personal bankruptcy and files a Chapter 7 bankruptcy for his company. Law students had to evaluate all the potential bankruptcy issues from the perspective of the debtor, creditors, and trustee. Six students, divided into groups of two, competed in the final round. The presenters of the three winning arguments were awarded \$1,500 each in scholarship money; one of the remaining three was declared a runner-up and received a \$500 prize.

PANEL DISCUSSIONS, PRESENTATIONS AND WORKSHOPS

SEPTEMBER 12, 2017—“GOVERNANCE OF PRIVATELY HELD CORPS AND LLCs,” IN NEWARK

While it seems the bulk of law and legal commentary focuses on the issues faced by stakeholders of publicly held corporations, most businesses in America are privately-held. This panel (comprised of an attorney who has extensive experience in areas of governance of privately held entities in private practice, an in-house general counsel of closely held companies, a Rutgers Associate Dean for Professional Education and Practice, a business attorney who was involved in the drafting of the Revised Uniform Limited Liability Company Act (“RULLCA”) as adopted in New Jersey, and a Delaware attorney with extensive experience in these areas under Delaware law) examined privately-held corporations and limited liability companies, their governance and the



Photo: L to R: Professor Douglas Eakeley, Jeffrey M. Shapiro, Catherine G. Dearlove, Mark R. Decker, and Andrew L. Rossner

rights and responsibilities of shareholders, members, directors and managers in those entities.

The panel explored the duties majority and minority shareholders owe to their companies and to one another, and addressed questions such as: How does a member or manager’s fiduciary duty of care under the relatively new New Jersey Revised Uniform Limited Liability Company Act compare to the duty under the Delaware Limited Liability Company Act and under corporate law? How do this duty, the duty of loyalty, and the contractual obligation of good faith and fair dealing under New Jersey’s RULLCA and Delaware’s Lim-

ited Liability Company Act compare with the fiduciary duties owed by shareholders in the closely held corporation context? How do they compare with the duties under New Jersey’s former LLC law? What are the rights and remedies of oppressed minority shareholders of closely held corporations? Of oppressed minority members of LLCs? What are some of the key ethical issues faced by counsel of closely held corporations and LLCs?

The panel discussion was moderated by Jeffrey Shapiro, Partner, Lowenstein Sandler LLP; the panelists were Mark Decker, Senior Vice President & General Counsel, The Connell Company; Catherine Dearlove, Director, Richards, Layton & Finger, P.A.; and Professor Andrew L. Rossner, Rutgers Law School Associate Dean for Professional Education & Practice.

OCTOBER 4, 2017 – “BANKRUPTCY 2017,” IN NEWARK

The Center, along with the American College of Bankruptcy Third Circuit Fellows and the Rutgers Institute for Professional Education proudly presented a panel discussion of the most important bankruptcy decisions in 2017, from the United States Supreme Court all the way down to the bankruptcy courts.

Emphasis was on cases that move, change, develop, or significantly affect existing law. The panelists covered a multitude of circuit splits that should make their way to the Supreme Court in the next several years. The panels also analyzed emerging areas of controversy in bankruptcy law, involving issues of significance in consumer law and with respect to corporate reorganization.

The panel discussion was moderated by Bill Rochelle, Editor-at-Large, American Bankruptcy Institute; the panelists were United States Bankruptcy Judges Kevin Carey, Jean FitzSimon and Rosemary Gambardella.

EMPHASIS WAS ON CASES THAT MOVE, CHANGE, DEVELOP, OR SIGNIFICANTLY AFFECT EXISTING LAW

NOVEMBER 6, 2017 – “BUILDING YOUR PERSONAL BRAND,” IN CAMDEN

Catherine Bromilow, a partner in PWC’s Governance Insight Center, is convinced that every interaction students have with employers, colleagues or clients impacts their brand.

Being able to clearly convey one’s message without appearing scripted is a valuable skill – which one can learn with practice.

In this interactive session, Ms. Bromilow shared key insights to help students build the necessary credibility and trust to be successful in their communications.

The students left the program with no shortage of practical tips to enhance their credibility and presence. Professor Arthur Laby moderated.

FEBRUARY 2-3, 2018 – CONSUMER FINANCIAL PROTECTION WORKSHOP, IN CAMDEN

The Center hosted a two-day academic workshop on consumer financial protection for scholars from the United States and abroad writing in this area. Professors Jacob Russell and Arthur Laby hosted 24 participants at the workshop and 15 consumer financial protection scholars presented papers to the group. The workshop was quite rigorous and very successful, and several participants asked if Rutgers would make it an annual event. Although we do not have immediate plans for an annual workshop, we are in discussions regarding whether we should hold it on a bi-annual basis.

APRIL 5, 2018 – “LAWYER AS LEGAL RISK MANAGER,” IN NEWARK

The Center and Rutgers Institute for Professional Education presented a panel discussion on the role of in-house counsel as a proactive legal risk manager. Lawyers need to do more than simply react when the client has a question to be answered, a contract to be drafted or a dispute to be defended. They need to fully understand not just the legal risks facing their clients, but all other risks such as reputational risks, strategic risks, and operational risks.



Photo: L to R: Professor Douglas Eakeley, Professor Miriam Baer, Stuart Alderoty, Matthew L. Biben

This program explored how today’s general counsel identifies, manages, and mitigates those different risks on behalf of a multitude of stakeholders such as the CEO, the Board of Directors, the employees, the shareholders, the regulators, the media, and the communities in which the company operates. The program also explored how the in-

house lawyer can proactively uncover misconduct that may be ongoing within a company and more importantly how to work to eliminate the root causes that may be inciting that misconduct.

The panelists were Stuart Alderoty, Executive Vice President, General Counsel and Corporate Secretary, CIT Group Inc.; Professor Miriam Baer, Brooklyn Law School; and Matthew L. Biben, Partner, Debevoise & Plimpton LLP.

APRIL 17, 2018 – “CAREER CHOICES IN BUSINESS LAW,” IN CAMDEN

Not every student opts to work at a law firm – and students are hungry for information on alternative legal careers, such as working in-house. In this session, we invited three

of our alumni, who graduated in the past five years and who are not working in a traditional law firm setting, to return to the law school to share their experiences. The three alumni, Patrick Kilcullen, RLAW '12 (MUFJ Union Bank, N.A.), Jeremy Reich, RLAW '14 (Professional Security Broadband, Inc.), and Aimee Smith, RLAW'13

(Independence Blue Cross) were a perfect panel and spoke openly about their successes and their challenges. Professor Arthur Laby moderated the discussion.

APRIL 23, 2018—“IN-HOUSE LEGAL CAREERS,” IN NEWARK

The Center presented a panel discussion for students on legal careers in house. The topics included the types and nature of the work performed, the strategy for leaving private practice and going in house, opportunities for advancement, the role of in-house counsel, and more.

The panel discussion was moderated by Professor Douglas Eakeley; the panelists were Alan B. Cardenas, Siemens Corporation; Katherine C. Lee, Verizon Enterprises Solutions; Patricia Nachtigal, former GC, Ingersoll-Rand PLC; and Jody Riger, Sun Chemical Corporation.

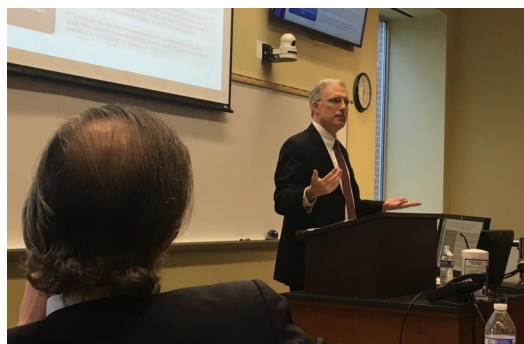
APRIL 28, 2018—“BLOCKCHAIN TECHNOLOGY AND ITS IMPLICATIONS FOR CORPORATE GOVERNANCE AND THE LAW,” IN NEWARK

The Center for Corporate Law and Governance organized the panel entitled *Blockchain Technology and Its Implications for Corporate Governance and the Law*. The distinguished panelists were Grainne McNamara, PwC; Jeffrey D. Neuberger, Proskauer Rose LLP; and Susan Ramonat, Spiritus Patners Inc.

Blockchain is a digital decentralized ledger that keeps records of all transactions that take place across peer-to-peer networks. While it may have many benefits, it also has multiple risks and will impact corporate governance and financial regulation. The panelists discussed blockchain technology and its implications for corporate governance and the business world.

MAY 10, 2018 – KEYNOTE ADDRESS BY THE HONORABLE J. TRAVIS LASTER FOLLOWING JOINT MEETING OF THE ADVISORY BOARD AND THE ALUMNI STEERING COMMITTEE, CAMDEN.

Delaware Vice Chancellor J. Travis was the keynote speaker on May 10 in Camden at an open session following a joint meeting of the Center's Advisory Board and Alumni Steering Committee. Judge Laster's talk was entitled *The Recalibrated Risk Profile of M&A Litigation: It's Not The '80s*.



The Honorable J. Travis Laster

It's Not Even The Aughts. Judge Laster also joined us for a reception after his talk, and for a small dinner with both faculty and students. We are pleased to report that, stemming from this event, Judge Laster will be teaching as an Adjunct Instructor at Rutgers Law School in Camden in the spring of 2019.

SELECT FACULTY PUBLICATIONS

Sarah Dadush

Why You Should Be Unsettled by the Biggest Automotive Settlement in History, 89 U. Colo. L. Rev. F. 1 (2018), Identity Harm, 89 U. Colo. L. Rev. 863 (2018)

A New Blueprint for Regulating Social Enterprises, Cambridge Handbook of Social Enterprise Law, (Benjamin Means & Joseph Yockey eds., Cambridge University Press) (forthcoming 2019)

Katie Eyer

The New Jim Crow is the Old Jim Crow, 128 Yale L. J. ___ (2019)

Statutory Originalism and LGBT Rights, ___ Wake Forest L. Rev. ___ (2019)

Animus Trouble, 49 Stetson L. Rev. ___ (2019)

The Canon of Rational Basis Review, 93 Notre Dame L. Rev. 1317 (2018).

A Casebook Section Companion to The Canon of Rational Basis Review, <https://ssrn.com/abstract=3086830> (2018).

Incarceration as a Health Determinant for Sexual and Gender Minority Persons, 108 Am. J. Pub. Health 994 (2018)

Yuliya Guseva

The SEC and Foreign Private Issuers: A Path to Optimal Public Enforcement, 59 B.C.L. Rev. 2055 (2018)

Guseva (contd.)

BLOGS:

“The SEC and Foreign Corporations: A Path to Optimal Public Enforcement,” The Harvard Law School Forum on Corporate Governance and Financial Regulation, September 30, 2018.

“Securities Litigation Against Foreign Private Issuers,” Oxford Business Law Blog, September 21, 2018.

"Destructive Collectivism: Dodd-Frank Coordination and Clearinghouses," The Harvard Law School Forum on Corporate Governance and Financial Regulation, January 31, 2018.

John Kettle

Conceptual Expression in A Copyright World: Protecting Ideas From The Shadow Of Preemption A Call For Legislative Action, 17 J. Marshall Rev. Intell. Prop. L. 1 (2017). The above article selected and published in the 2018 edition of the Thomson Reuters (West) publication: 2018 Intellectual Property Law Review 423 (Thomson Reuters)

Arthur Laby

The Regulation of Money Managers: Mutual Funds and Advisers (4 Volumes). New York, New York: Wolters Kluwer (3d ed. 2017) (with Tamar Frankel)

Fiduciary Principles in Investment Advice, in Evan J. Criddle, Paul B. Miller, & Robert H. Sitkoff, eds., Oxford Handbook of Fiduciary Law, Oxford, UK: Oxford University Press (forthcoming)

The Fiduciary Structure of Investment Management Regulation, in John D. Morley & William Birdthistle, eds.

FACULTY PUBLICATIONS (CONTD.)

Laby (contd.)

Research Handbook on Mutual Funds. Northampton, MA: Edward Elgar Publishing (2018)

Competing Accounts of the Fiduciary Relationship, in D. Gordon Smith & Andrew S. Gold, eds., Research Handbook on Fiduciary Law. Northampton, MA: Edward Elgar Publishing (2018)

The Extraterritorial Application of U.S. Financial Services Regulation, *Schweizerische Zeitschrift für Wirtschafts- und Finanzmarktrecht (Swiss Review of Business and Financial Market Law)* 2017/2

Ji Li

"The Clash of Capitalisms?: Chinese Companies in the United States" (Cambridge University Press)

Matteo Gatti

Upsetting Deals and Reform Loop: Can Companies and M&A Law in Europe Adapt to the Market for Corporate Control? (2018)

Reconsidering the Merger Process: Approval Patterns, Timeline, and Shareholders' Role, 69 *Hastings L.J.* 101-89 (2018)

David Noll

Arbitration Conflicts, 103 *MINN. L. REV.* (forthcoming 2018), and Public Litigation, Private Arbitration?, 18 *NEV. L.J.* 477 (2018)

Fadi Shaheen

The BEAT and the Treaties (with H. David Rosenbloom), 92 *Tax Notes Int'l* 53 (Oct. 2018)

Income Tax Treaty Aspects of Nonincome Taxes: The Importance of Residence, 71 *Tax L. Rev.* 583 (2018)

Shaneen (contd.)

Tax Treaty Aspects of the McDonald's State Aid Investigation, 86 *Tax Notes Int'l* 331 (April 2017)

Reid Weisbord

Books:

Wills, Trusts & Estates: The Essentials (with David Horton and Stephen K. Urice) (Aspen Casebook Series / Wolters Kluwer 2018)

Wills, Trusts & Estates: The Essentials—Teacher's Manual (with David Horton and Stephen K. Urice) (Aspen Casebook Series / Wolters Kluwer 2018)

Law Review Articles:

Postmortem Defamation in a Society without Truth for the Living, *Rutgers University Law Review* (forthcoming 2018)

The Governmental Stake in Private Wealth Transfer, 98 *Boston University Law Review* 1229 (2018)

Postmortem Austerity and Entitlement Reform, 71 *Stanford Law Review Online* 132 (2018)

Boilerplate and Default Rules in Wills Law: An Empirical Analysis, 103 *Iowa Law Review* 663 (2018) (with David Horton)

RUTGERS

Center for Corporate Law
and Governance

