



LAW AND BUSINESS ENTERPRISE CENTER

2004-2005

ANNUAL REPORT

Christian C. Day
Professor of Law
Center Director

MEMORANDUM

TO: Deans and Faculty of the College of Law

FROM: Professor Christian C. Day, Director, The Center for Law and Business Enterprise

RE: The Center for Law and Business Enterprise Activities, 2004—2005

DATE: June 30, 2005

The Center has had a busy and productive year in both the Law & Market Economy Program, under the direction of Professor Robin Paul Malloy, and in the corporate law area, under my auspices.

INTRODUCTION: Business law is important to society, the further development of law, and free market economies. Nationally about ten percent of all lawyers work directly for corporations and nearly 50 percent of all law relates to corporations and businesses, ranging from “traditional” corporate law, to environmental problems, products liability, and zoning, to name a few. Syracuse graduates mirror the national experience. Thus, it is important to train professional business lawyers to meet our national and global needs. The Center for Law and Business Enterprise does just that.

Our primary emphasis has been to develop academic programs and support scholarly activities at the College of Law. The growth of the Certificate and Fellow programs has been strong—supporting student interest in business and economics, producing competent professionals, and building bridges to other academic units and the community-at-large. This year the Center awarded certificates to eighteen students.

Our scholarship and other professional activities are burgeoning, as seen below.

I. The Working Group on Property, Citizenship, and Social Entrepreneurism (PCSE)

In the spring of 2004, Ernest I. White Professor Robin Paul Malloy launched the Working Group for Property, Citizenship, and Social Entrepreneurism (PCSE), an association of scholars and others focused on the market economy, property rights and social entrepreneurship.

PCSE, pronounced peace, is sponsored by the Syracuse University College of Law and its Program in Law and Market Economy. The Program in Law and Market Economy is an interdisciplinary program focusing on the relationship among law, markets, and culture. Within this context the Working Group on PCSE brings together experts from a variety of institutions to discuss and explore issues related to property law, governance, and globalization. The Group will provide an ongoing forum for the publication of important new works by experts working in and with the Group.

PCSE held its inaugural conference in November at the Greenberg House, in Washington, D.C., with more than 20 scholars from North America and Europe in attendance.

Professor Malloy, in conjunction with CAMBRIDGE UNIVERSITY PRESS, established THE CAMBRIDGE COLLECTION ON PROPERTY, CITIZENSHIP, AND SOCIAL ENTREPRENEURISM. Last year the PCSE editors proposed the following books for the series:

Property in a Market Context, Robin Paul Malloy, Syracuse University College of Law;

Property Without Metes or Bounds, Ann Bartow, University of South Carolina School of Law;

Defending Open Access: The Need for Sustainable Infrastructure Commons, Brett Frischmann, Loyola University of Chicago;

Copyright and Privatization: Connecting Markets, Government, and Culture, Shubha Ghosh, University of Buffalo Law School;

The Information Semicommons, Robert A. Heverly, University of East Anglia, Norwich Law School;

Property Rights in Transition: The Development Context, Ivan Velez, The World Bank;

Private Property in a Public Market: Intellectual Property Rights with Chinese Characters, Peter Yu, Michigan State.

II. STUDENT PROGRAMS:

A major focus is on student learning and preparation for practice, with faculty research and development and community service strong secondary foci.

Certificate Programs: The *Law & Market Economy Program* granted four certificates this spring. Professor Malloy continues to educate many students at the College of Law and Maxwell who are interested in the law and market economies.

Fourteen *Corporate Counsel* certificates were earned in this program's sixth year of operation. We have offered General Counsel to ten classes to date.

The 2005 Certificate recipients are noted in Exhibit 1.

III. FACULTY ACHIEVEMENTS:

The Members were busy and productive. One book was published, many articles are published or forthcoming, a number of articles and manuscripts are under development, and numerous presentations have been made at conferences, both nationally and internationally. Representative activities are detailed below.

Members

Professor David Driesen:

Professor Driesen concluded a contract with Aspen Publishing for ENVIRONMENTAL LAW: A CONCEPTUAL AND PRAGMATIC APPROACH (ASPEN 2006) (with Robert Adler).

Publications this year include: *“What is Free Trade?: The Rorschach Test at the Heart of the Trade and Environment Debate,”* in HANDBOOK OF INTERNATIONAL TRADE VOLUME II: ECONOMIC AND LEGAL ANALYSIS OF TRADE POLICY AND INSTITUTIONS (E. Kwan Choi & James C. Hartigan, ed. Blackwell Press, 2005); *“The Functions of Transaction Costs: Rethinking Transaction Cost Minimization in a World of Friction,”* 47 ARIZONA L. REV. 61 (2005) (with Shubha Ghosh); *“Distributing the Costs of Environmental, Health and Safety Protection: The Feasibility Principle, Cost-Benefit Analysis, and Regulatory Reform,”* 32 B. C. ENVTL. AFF. L. REV. 1 (2005). Forthcoming is The University of Colorado Law Review has agreed to publish *“Is Cost-Benefit Analysis Neutral?”* forthcoming, 72 U. COLO. L. REV. __ (2006).

Professor Driesen has also been very active speaking at home and abroad. His talks include: *“Trading and its Limits”*, Fifth Goddard Forum on Putting the Market to Work for Conservation: An In-Depth Examination of Traditional and Non-Traditional Market-Based Mechanisms for Achieving Environmental Improvement, Penn State University, Harrisburg, Pennsylvania, April 5, 2005; *“Is Cost-Benefit Analysis Neutral?”*, University of Kansas Law School, Lawrence, Kansas, May 3, 2005; *“Cost-Benefit Analysis as a Neutral Principle,”* Florida State University College of Law, Tallahassee, Florida, November 23, 2004; *“Is Cost-Benefit Analysis Neutral?: An Empirical Examination of the Record of the Bush Administration,”* Florida State University College of Law, Tallahassee, Florida, November 22, 2004; *“Emissions Trading and Property Discourse,”* Working Group on Property, Citizenship, and Social Entrepreneurism, Washington, D.C., November 13, 2004; ~~Forthcoming talks include:~~ *“Empirical Data on Cost-Benefit Analysis’ Neutrality,”* Annual Meeting of Law and Society, Las Vegas, June 2, 2005; *“The Means and Ends of Environmental Protection,”* Annual Meeting of Law and Society, Las Vegas, June 2, 2005; and *“Industrial Ecology and Emissions Trading,”* Industrial Ecology for a Sustainable Future, Stockholm, Sweden, June 12, 2005.

Professor Robin Paul Malloy:

Professor Malloy was named the Ernest I. White Professor in May 2004. He also was appointed Senior Associate Dean for Academic Affairs and is now Senior Associate Dean. Professor Malloy has published a book, a number of articles, and presented a number of papers.

Malloy published: *LAW IN A MARKET CONTEXT: AN INTRODUCTION TO MARKET CONCEPTS IN LEGAL REASONING* (Cambridge University Press, May 2004). His other scholarly works include: *Real Estate Transactions: Policy Considerations for Law, Technology and Globalization*, 27 *LAW & POLICY* 81-99 (Jan. 2005) and *Book Review of Peter Singer, One World* vol. XLII *JOURNAL OF ECONOMIC LITERATURE* (March, 2004).

He has a contract for translation of *LAW AND MARKET ECONOMY* (Cambridge University 2000) into Spanish and Chinese and a Chinese edition of *REAL ESTATE TRANSACTIONS* (with Smith, 2nd edition, Aspen 2002).

Some of his other scholarly activities included speaking at the spring 2005 Association for the Study of Law, Culture and Humanities Meeting at the University of Texas, Austin, Texas. He has been instrumental in bringing the 2006 meeting to the Syracuse University campus. That meeting will be sponsored by the College of Law (lead sponsor), the College of Arts & Sciences and the Maxwell School for Citizenship. He presented a talk to the College of Law faculty in the spring of 2005 entitled "*Property as a System of Signs.*" In February 2005 Professor Malloy also gave a one half-day lecture sponsored by the Mercatus Center at George Mason Law School. It was held at the Ritz in Philadelphia and was a conference for the Chiefs of Staff from the various Committees on Congressional Hill. He spoke on using market concepts in formulating legislative policy. Professor Malloy presented two papers at the June 2005 Meeting of the Law & Society Association, Las Vegas, Nevada. They were: "*Property Doesn't Matter*" and "*Law and Truth: The Limits of Economic Analysis in Legal Reasoning.*" He also organized the session entitled "*Property, Citizenship, and Social Entrepreneurism: Property and Society in a World of Chance,*" which showcased members of PCSE.

Finally, Professor Malloy is the Chair of the 450 Member AALS Section on Law and Humanities (2004-05), the Chair-Elect of the AALS Section on Real Estate Transactions (2005-06), was elected to membership of the American College of Mortgage Attorneys (an honorific for recognition of outstanding knowledge and contribution to mortgage law.), and Book Review Editor for the *INTERNATIONAL JOURNAL OF LAW AND SEMIOTICS*.

Professor Margaret Harding:

Professor Harding co-directs the Securities Arbitration Clinic. She is presently at work on an article regarding arbitration practice and procedure.

Professor Gregory Germain:

Professor Germain is at work on an article about discharging liabilities in bankruptcy. He presented a version of that article to Broome County Bar Association in March 2005. He, along with Professor Steven Wechsler, presented ethical issues in bankruptcy to the Onondaga Bar Association and presented to a group of business people information about the treatment of secured claims under the new bankruptcy code amendments.

Professor Christian C. Day:

Professor Day published: "*Partner to Plutocrat: The Separation of Ownership from Management in Emerging Capital Markets—19th Century Industrial America*," 58 U. MIAMI L. REV. 210 (2004) and "*Law Schools Can Solve Our Bar Pass Problem—'Do The Work!'*", 40 CAL. WEST. L. REV. 321 (2004) and excerpted in 73 THE BAR EXAMINER 11(No. 4, Nov. 2004). "*Is There a Tulip in Your Future?: Ruminations on Tulip Mania and the Innovative Dutch Futures Markets*," JOURNAL DES ECONOMISTES ET DES ETUDES HUMAINES (BILINGUAL JOURNAL OF INTERDISCIPLINARY STUDIES). The volume is entitled "*The Meaning and Role of the Market*" (forthcoming 2005).

Financial History Magazine solicited a 2500 word version of "*Chaos in the Markets--Moral, Legal & Economic Signals in Three Fantastic Bubbles*." Professor Day has submitted two manuscripts to journals: "*The Case for Professionally-Edited Law Reviews*" and "*Bits & Pieces & Moral Authority: The Paradox of Success in the 'Unregulated' 19th Century New York Capital Markets*."

Professor Day presented at a number of conferences: "*Bits & Pieces & Moral Authority: The Paradox of Success in the 'Unregulated' 19th Century New York Capital Markets*," presented at the Conference on Early Securities Markets, Humboldt University, Berlin, Germany, October 15-16, 2004; "*Law Schools and the 'Bar Problem': What We Can Do About It*," keynote speaker the faculty retreat of Saint Louis University School of Law, Saint Louis, Missouri, October 30, 2004; "*Property to Market: The Transformation of Business Investments in Emerging Markets*," presented at the Inaugural Meeting of the Working Group on Property, Citizenship, and Social Entrepreneurism (PCSE), Greenberg House, Washington, D.C., November 12-13, 2004; and "*Bits & Pieces & Moral Authority: The Paradox of Success in the 'Unregulated' 19th Century New York Capital Markets*," presented at the 12th Conference on the Theories and Practices of Securities and Financial Markets, National Sun Yat-sen University, Kaohsiung, Taiwan, December 17-18, 2004. He chaired a Corporate Governance Panel (1) and was a discussant for "*Are Dividends and Legal Protection Substitutes in Solving Agency Problems*" in International Financial Markets Panel (1). He also presented "*Is There a Tulip in Your Future?: Ruminations on Tulip Mania and the Innovative Dutch Futures Markets*" at the Annual Conference of the Scottish Economic Society, Perth Scotland, March 29-31, 2005; "*Bits & Pieces & Moral Authority: The Paradox of Success in the 'Unregulated' 19th Century New York Capital*

Markets,” at the 41st Annual Meeting of the Eastern Finance Association, Norfolk, Virginia, April 20-23, 2005. He discussed two papers: “*Takeovers and Agency Problems: A Reexamination of the Pre-Acquisition Operating Performance of Bidders and Targets*” and “*Corporate Governance Mechanisms in Action: The Case of Air Canada.*” He also chaired a session “*Corporate Finance Issues in Emerging Markets.*” Finally he presented “*Gambling with the Future?: Tulips, the National Debt, and World Empire*” and “*Property to Market: The Transformation of Business Investments in Emerging Markets*” at the 2005 Law & Society Annual Meeting, Las Vegas, Nevada, June 4-5, 2005.

Professor Day served as the Advisor to the Corporate Law Society of the College of Law and The Federalist Society and assisted the student groups with their programs. Professor Day is a member of a working group of entrepreneurial and small business law teachers.

IV. CONCLUSION

The Center has provided strong, professional education for students interested in business and law and economics. Center faculty has been engaged in an astounding amount of creative research and publication. It is poised to undertake new links with other academic units and has exciting plans for the future.

Respectfully Submitted,

Christian C. Day
Professor of Law
Director, The Center for Law & Business Enterprise

CENTER FOR LAW & BUSINESS ENTERPRISE
Certificate Recipients 2005

CORPORATE COUNSEL CERTIFICATE

Janet M. Audunson
Arचना Bhalla
Brian L. Brown
Jeremy B. Davis
Todd J. Desimone
Amy Gee
Michael S. Horn
Abby H. Landau
Gemma de Lemos Mondala
Emilio Benjamin Nicolas
Dobromira M. Paslieva
Pilu D. Patel
J. Lee Smith
Angelo D. Vasilescu

LAW & MARKET ECONOMY CERTIFICATE

Eduardo Campos
YaeJean Lee
Erica R. Levin
Kofi O. Mensah