

Mutual Fund Fraud



Price Associates and Legg Mason provided financial support.

“The conference was a unique opportunity for diverse groups in the legal community to exchange ideas about policy issues raised by the dominance of mutual funds and other institutional investors in the U.S. economy,” says Booth.

Panels focused on topics such as the causes of trading abuses and their effects

on consumer confidence, the regulatory response to such incidents, including reforms in fund governance, and the role of institutional investors in corporate governance.

John C. Bogle, president of Bogle Financial Markets Research Center and founder and former chair of the Vanguard Group, Inc., presented the luncheon keynote address.

The events that inspired the conference involved market timing, late trading, and the use

of material non-public information about fund holdings in connection with hedging. Those activities led New York State Attorney General Eliot G. Spitzer to take action against numerous fund groups.

“As it turns out, it was common among hedge funds and other sophisticated investors to engage in such practices with the acquiescence and, indeed, cooperation of mutual-fund advisers,” explains Booth. Eventually, 175 private civil actions against 16 fund families were consolidated for trial as MDL 1586 to be heard by four judges in Baltimore’s U.S. District Court. Another 170 related cases remain pending around the country.

—Ruth E. Thaler-Carter

The fall 2005 issue of the law school’s new Journal of Business and Technology Law will feature the conference proceedings and related papers.

A huge settlement between a misbehaving hedge fund and the New York attorney general’s office—followed by the filing of more than 345 mutual fund fraud lawsuits by attorneys general nationwide—provided the catalyst for last fall’s annual business law conference. “The \$7 Trillion Question: Mutual Funds and Investor Welfare” created an opportunity for academics, practicing lawyers, and securities professionals to address the issues facing the mutual-funds industry.

Held last November, the conference “brought together leading thinkers from the practicing bar, the SEC, the mutual-fund industry, trade groups, and academe to discuss the role of such funds in the financial system and their relationships to investors and issuers,” says Richard Booth, professor of law, who organized the conference with Professor Lisa Fairfax and James J. Hanks, Jr., Esq., of Venable, LLP. The conference was presented in cooperation with the student staff of *The Business Lawyer* and the Subcommittee on Investment Companies & Investment Advisers of the American Bar Association’s Section of Business Law Committee on Federal Regulation of Securities. T. Rowe

The Supreme Swing Vote: Sandra Day O'Connor

Half of American students entering law school are women, and increasing numbers of females are coming to occupy leadership roles in the legal field. As the first woman justice to the U.S. Supreme Court, Sandra Day O'Connor has been a pioneer in the legal profession and the subject of much debate—her retirement makes it even more so.

On October 28, 2004, the Women, Leadership & Equality (WLE) program and the *Maryland Law Journal of Race, Religion, Gender and Class* co-sponsored an interdisciplinary symposium entitled "The Sway of the Swing Vote: Justice Sandra Day O'Connor and Her Influence on Issues of Race, Religion, Gender, and Class."

"Since her appointment to the court, there has been a lot of discussion about the nature of O'Connor's role and her impact on American jurisprudence," says associate professor and conference organizer, Paula Monopoli. "Her approach has been characterized as incrementalist and as reflective of her personal history and experiences. The nature of her legacy remains to be seen but her position

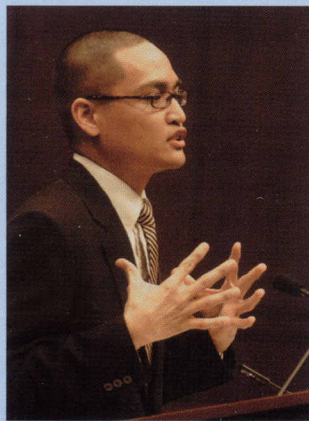
as the 'swing vote' on the current court has clearly drawn enormous attention to her decision-making."



Panelists included political scientists Barbara Palmer and Diane Lowenthal of American University, Professor Stephen Gottlieb of Albany Law School, and Maryland law professor Marley Weiss. Maryland professor Jana Singer moderated. Students and faculty from the University of Maryland School of Law and other area law schools were in attendance.

The panelists discussed whether Justice O'Connor's gender and life experiences—including her role as wife and mother—have influenced her decision-making, as well as what her impact has been on the Supreme Court. Talking points included O'Connor's opinions and ideas about discrimination and equality jurisprudence and her opinions in the areas of labor employment and federalism.—*Karen Baxter*
The panelists' papers on O'Connor appear in an upcoming Maryland Law Journal of Race, Religion, Gender and Class.

It's a Win in Moot Court



Competitor Paolo Pasicolon made a strong showing in the competition.

The case may have been fictional, but the drama was real as the 36th Annual Morris B. Meyerowitz Moot Court Competition unfolded this past March 26 in the Ceremonial Courtroom.

This year's problem, *Cato v. New Paris*, was based on *Kelso v. City of New London*, a controversial case argued this year in the United States Supreme Court. At issue in the fictional case was whether a city's decision to use its eminent domain powers to condemn a citizen's home and transfer the land to a pharmaceutical company—to build an office complex—violated the citizen's Fifth

Amendment rights. The student attorneys argued the issues of public use and necessity of judicial intervention.

This was the fourth and final round of oral arguments in the competition, which had spanned the course of a semester. Sitting on the bench were the Honorable Thomas L. Ambro of the United States Court of Appeals for the Third Circuit, the Honorable Glenn T. Harrell, Jr. ('70) of the Maryland Court of Appeals, and the Honorable Inez Smith Reid of the D.C. Court of Appeals.

Students Megan Nichols ('06) and Jennifer DeRose ('06) tied for the prize as top oralist for the 2005 competition, one of the most prestigious honors given at the School of Law. The judges had favorable comments for all of the students in the 2005 competition, including finalists Edward Parent ('06) and Paolo Pasicolon ('06).

"It is a privilege to have such good people appear before us," Ambro said. He described the students as composed, comfortable, animated, responsive, and articulate.

Nichols, DeRose, and Parent will represent the School of Law this fall at the National Moot Court Competition, sponsored by the Young Lawyers Association Committee of the Bar of the City of New York.

The Meyerowitz family attended the competition. They created the Morris B. Meyerowitz Moot Court Competition Fund to honor Morris, their nephew and son.—*Karen Baxter*



Competition faculty advisor professor Susan Hankin (left), with student winners Megan Nichols (center) and Jennifer DeRose, who are heading to the national competition this fall.

Health Care in Equal Doses



Director of the Law & Health Care Program and Associate Dean Diane Hoffmann shares in an energetic debate with fellow professor Tom Pérez (left) and speaker Dr. Neil Calman. Bottom, speaker Dr. Claudia Baquet (left) greets fellow participants.

The air was electric on the law school campus in March when the Law & Health Care Program presented two timely events, an all-day conference, “Bridging the Racial Divide in Health Care: Eliminating Racial and Ethnic Disparities in Health Status,” and the Stuart Rome lecture.

Energetic presenters fueled by a common commitment to forge new paths for the underserved sparked stimulating solutions to problems embedded not just in our history, but also in our psyche.

While the overall health of the U.S. population is improving, inequalities in health status remain a critical issue. Millions of racial and ethnic minorities still experience a lower grade of health care, resulting from a host of causes, from socioeconomic differences and environmental degradation to outright discrimination.

Conference organizer and law school assistant professor Tom Pérez says that, unlike other discussions addressing *whether* a problem exists, this conference explored the

Going Digital

What are the best practices in a digital law firm? What is consumer-based access to justice? Will lawyers now try their cases in “virtual courtrooms”? These and other questions were addressed in January when the Clinical Law Program hosted a free conference at the law school on “Technology and Access to Justice.”

Speaking to a gathering of forty-five, keynoter Ronald Staudt highlighted current projects of Chicago-Kent’s Justice Web Collaboratory—a law school center using Internet resources to improve access to justice—emphasizing a consumer-based approach in putting together any technology-based program. When utilizing new technologies, Staudt says, the court system can be made more efficient and service can be improved.

“The ability of courts to establish a digital infrastructure is burdened by limited funds. Websites,” Staudt continues, “built by legal services coalitions can jumpstart the delivery of these innovations while courts slowly automate.”

Richard Granat, who is involved in the E-lawyering Task Force of the Law Practice Management Section of the ABA, responded with his presentation, “The Latent Market for Legal Services,” noting that *pro se* litigants comprise nearly 50 percent of all filings in state court. Granat also presented ideas for a digital law firm, where the lawyers’ office is a home page on the Web, offering access to digital tools and research, and a communications center for consumer interaction.

While embracing the future and all its technology, Maryland professor Michael Millemann asked, “Where is the role for human and professional judgment?” While noting different levels of capacity for technology in the pursuit of access to justice, Millemann cautions that the human influence should not be removed completely. He noted that interaction with a lawyer should not be supplanted by impersonal but readily available electronic or paper do-it-yourself forms: “We must have professional human judgment...”

— Patricia Young



Maryland Congressman Elijah Cummings (with conference participant) brought a personal as well as a political perspective to the conference in his luncheon address.

next step. “We know there is a problem—let’s look at what people are doing to move the ball forward.”

They did just that. A gathering of sixteen academics, policymakers, foundation, and community leaders (who, Pérez notes, reflected an all-star cast armed with amazing presentations) covered a broad canvas of topics for the two hundred interested parties assembled at Westminster Hall. They included tactics for addressing disparities in care:

- promising practices in eliminating differences;
- the role of the legislative branch in combating the problem;
- increasing workforce diversity as a strategy in elimination of disparity;
- foundations and government funders as catalysts for change.

The conference was kicked off the night before with the law school’s annual Stuart Rome Lecture, the latest in a series of lectures that honors the memory of the Baltimore activist, humanitarian, and health law attorney. The lectures focus on cutting-edge health law topics with an interdisciplinary approach; this year the topic was Medicaid, the health care “safety net” on which the nation’s poorest depend. Even this bedrock of health care services is not immune from those same disparities.

George Washington University professor Sarah Rosenbaum examined the challenges Medicaid faces for survival as it marks its fortieth anniversary. Those challenges include financing adequate health

care for low income and minority populations while state Medicaid expenditures rise and Congress calls for major program budget cuts. Rosenbaum noted that the highly political issue of the program’s fate is often overlooked in national debates on health care. She warned that its resolution will likely shape our health care system for decades to come.

Pérez spoke on the “Legal Framework Behind Workforce Diversity,” and said: “Eliminating racial and ethnic disparities in health status is a moral imperative. We have studied the issue long enough. It’s time to roll up our sleeves and get to work, and that is precisely what we did. We compared notes, examined promising practices, and mapped out strategies that will work to close the health care divide in America.”

Congressman Elijah E. Cummings (D-Md.), the lunch plenary speaker, tackled the objective of the conference from not just a political perspective, but also a

personal one. Drawing on his family’s experience with racial inequalities in health care, he believes that we are “confronting the soft bigotry of low expectations.” Therefore, Cummings continues, the public health mission is to raise the bar on expectations so that all can receive the health care that “we need and deserve as human beings.” Cummings expects this goal to be achieved by 2010, following President Clinton’s 1998 commitment to the nation to eliminate racial and ethnic health disparities in little more than a decade.

With just under five years to hit the target, “Some fundamental changes in the way that health care is delivered in America will be required,” Cummings asserts.

Clearly, there is more work to be done.

—Patricia Young

Papers written by several of the speakers will be included in a fall symposium issue of the Journal of Health Care Law and Policy.

Ward Kershaw Addresses Gaps In Toxics Data

Regulatory efforts rely on up-to-date information on toxic chemicals in the environment. Addressing the public impact if that knowledge base is flawed, this year's Ward Kershaw Environmental Law Symposium focused on how to close gaps in scientific evidence and its effect on policy development. This year's symposium, held in May in Washington, D.C., brought together a wide range of experts from the arenas of law, public health, and government to discuss "The Data Gaps Dilemma: Why Toxics Ignorance Threatens Public Health." Participants looked at how to improve the quality and availability of information about toxic chemicals and pollutants.

The symposium was established by a gift to the law school's Environmental Law Program from Ward Kershaw LLP, one of Baltimore's oldest "boutique" litigation firms, specializing in complex civil-liberties and class-action cases.

"One of the most pressing problems is that we don't know whether many chemicals in the environment are harmful or not," says Professor Rena Steinzor, director of the Environmental Law Clinic, and

a founder and board member of the Center for Progressive Regulation (CPR), which co-sponsored the symposium.

CPR, a "virtual think tank" of scholars from universities across the United States, is committed to "developing and sharing knowledge and information, with the ultimate aim of preserving the fundamental value of the life and health of human beings and the natural environment." It is a nonprofit research and educational organization of university-affiliated academics in law, economics, and science who support regulatory action to protect health, safety, and the environment.

"This program convenes scientists, policymakers, and lawyers at a national level—some came from as far away as California," says Professor Steinzor. "We had people from, and critics of, the EPA at the symposium."

This year's discussion centered on flaws in EPA's Integrated Risk Information Systems (IRIS). "We compared testing requirements at the state, national, and international levels to understand options for generating information," says coordinator Katherine Baer ('04), now at CPR. The



impact of such gaps is scary: CPR says more than a fifth of the hazardous air pollutants of the Clean Air Act are missing from IRIS and assessments of those in the system are at least ten years old. CPR is expanding its scope of inquiry to address this lack of information about toxic chemicals.

Participants looked at what creates and exacerbates such data gaps, and ways to close the gaps to make regulatory efforts stronger and safer. Declining federal research dollars and a "labyrinthine" process for setting priorities, lack of coordination within and between federal agencies, poor planning, legislative structure/legal incentives, and industry capture all contribute to this trend. Solutions ranged from using emerging testing protocols to reassessing how chemicals should be prioritized, and included shining a light on undue industry influence. All agreed that a campaign should be created to narrow the gaps in data.

Steinzor says the findings will be published at both the law school and CPR websites this fall.—*Ruth E. Thaler-Carter*

ABA Environmental Conference at School of Law for Third Year

Earth Day is thirty-five years old, and the American Bar Association's National Spring Conference on the Environment started up just two years later. On June 10, this important one-day conference, the thirty-third annual, came to the University of Maryland School of Law once again, thanks to the outstanding environmental work being done there. The conference is fast becoming a law school tradition.

This year's topic was a timely one: "Financial Institutions, Corporate Stewardship, and Sustainable Development: Drivers for the Evolution of U.S. Environmental Laws and Practice." Several keynote addresses and case studies centered on the tension between a regulatory framework and urgently needed economic development, and the drivers for change surrounding compliance and what some think are outmoded statutes. It's an issue that is in the headlines regularly: Do laws and regulations inhibit innovation or spur it, and how are social objectives achieved during market-based change? How can corporations operating globally work within the U.S. environmental framework and that of emerging nations and global economic systems?

Many still think of the conference as the Airlie, after its longtime home in Virginia. But, recalls Elissa Lichtenstein of the ABA, "We started experimenting with different locations closer to Washington, D.C. We partnered with the School of Law about three years ago through committee members who knew of Professor Robert V. Percival, director of the law school's strong Environmental Law Program located there."



Speakers included (from left) Susan Ponce of Halliburton; Brad Raffle, Baker, Botts LLP; EPA's Alan Hecht; with moderator Andrew Mangan, from the U.S. Business Council for Sustainable Development

All have been "delighted," she says. "UM School of Law is as easy to reach as Washington, and the facility is second to none—it is not only beautiful but technologically advanced, and can offer our speakers whatever they need. The staff is a pleasure to work with. For the school, hosting such events stimulates debate and dialogue on emerging issues. Meeting at the law school benefits all parties."

For more information on speakers, visit the ABA website at abanet.org/publicserv/environmental/home.html.

—*Ruth E. Thaler-Carter*

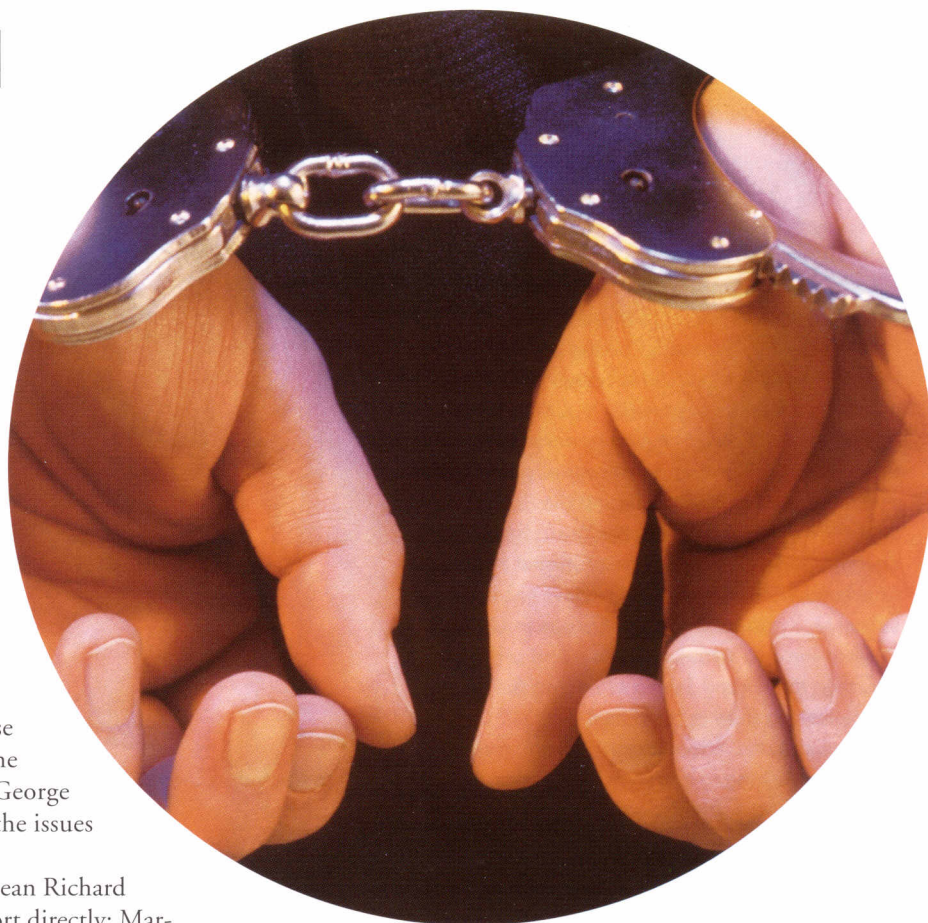
Looking Beyond Jail for Justice

In 2004, the Justice Kennedy Commission, formed by the American Bar Association to evaluate America's prison system (in response to a speech by the Supreme Court Justice), handed down its report: The criminal justice system relies too heavily on incarceration, and punishment alternatives must be found.

On April 14, 2005, the School of Law responded with a symposium to evaluate the findings in the report. Sponsored by the Clinical Law Program, the University Student Government Association, and the *Maryland Law Journal of Race, Religion, Gender, and Class*, the three-panel discussion looked at the national applications, with an emphasis on those within Maryland. Stephen Saltzburg, chair of the Justice Kennedy Commission and professor at George Washington University School of Law, framed the issues in his opening.

The opening panel, moderated by associate dean Richard Boldt, discussed the Kennedy Commission Report directly; Margaret Love, reporter for the Kennedy Commission and former pardons attorney at the Department of Justice, raised the question of whether the public interest is best served by "a policy of showing no mercy." Renee Hutchins, assistant professor, brought the discussion close to home by citing a recent Policy Institute report on Maryland's over-reliance on incarceration. One "profound statistic" she noted was that the expected correlation between a high rate of arrests and crime was turned upside down: the more arrests, the more crime. The assumption is that removing adult influences destabilizes the informal system of control and leads to lawlessness. The report, she said, calls into question the reliance on incarceration as a response to social problems.

The second panel, on community justice program models, was moderated by Michael Pinard, assistant professor of law. Several practical examples were offered up. George Kelling, professor at the Rutgers-Newark School of Criminal Justice, told of a New Jersey consortium of community, academic, and religious groups that manage—and offer options to—the fifty most dangerous people in Newark. The Red Hook Community Justice Center offers numerous services as court alternatives, including immediate evaluation by a social worker after arrest. Adam Mansky, director of operations for the Center for Court Innovation in New York, explained that in this way the public defender and the prosecutor can address not just the infraction but the root of the problem. M. Aurora Vazquez, staff attorney for the Advancement Project in the District of Columbia, said her project is working "at the intersection of race and incarceration,"



and dealing with the fact that schools are beginning to treat behavioral problems as criminal. Over-reliance on incarceration only intensifies problems, she said.

The third panel, which discussed community justice programs in Maryland, consisted of Mary Ann Saar, secretary of the Maryland Department of Public Safety and Correctional Services; Jennifer Etheridge, community prosecution chief; and Anthony Savage, prosecutor, State's Attorney's Office for Baltimore City; and The Hon. Charlotte Cooksey, judge, Baltimore City District Court. The Redirect Project, following a Massachusetts model, has two sites to assist those coming out of prison with finding jobs, lodging, and support in other forms. Drawing on her experience in Mental Health Court, Judge Cooksey discussed diverting people who simply "cannot cope" into treatment rather than jail, not the ideal atmosphere for dealing with their issues. Mr. Savage explained the Community Prosecution Project in Washington, which employs job training via community service as an incarceration option.

All agreed that it was an "information-intensive" day, notes Brenda Bratton Blom, director and associate professor in the Clinical Law Program. The participants, she said, acknowledged the consequences of over-reliance on incarceration, but brought ample knowledge of what might be effective alternatives.

—Anne R. Grant

A full report of the symposium will be published in the University of Maryland Journal of Race, Religion, Gender, and Class in the fall.

Schmooze Tackles "Juristocracy"

Its name may suggest more fun than serious research, but the annual Constitutional Law Schmooze at the School of Law is anything but frivolous. It's a leading national interdisciplinary gathering of law professors and political scientists on topics of mutual professional interest.

This year's event, held March 3 and 4, focused on "Juristocracy," using participant Ran Hirschl's book *Toward Juristocracy* as a starting point. "A dramatic expansion in judicial power has taken place over the past generation," says organizer Mark Graber, professor of government and law at UM College Park and the School of Law. "The American Supreme Court has declared federal laws unconstitutional at an unprecedented rate; judicial review has been successfully imported to the European Union, Eastern Europe, Israel, and Asia; and ordinary courts in the United States are doing far more policymaking than in the past."

Explanations ranged from weakening electoral coalitions wishing to entrench themselves in the judiciary to elected officials in media-driven democracies increasingly trying to avoid responsibility for policymaking. "Many attendees observed that courts globally have a neo-liberal bias, tending to expand the private sphere at the expense of the public; protecting property rights and gender rights, but not redistributing property," adds Graber. "Others believed that courts in such countries as Hungary and South Africa could be vehicles for realizing more positive rights."

Topics and invitations for the now-annual conference, which began at UM in 2003, originate primarily with Graber, in consultation with "several stalwarts who have been at every session."

"The criteria are very informal," says Graber. "I look at what forms of scholarship might be the most interesting and those that a



broad range of people might enjoy discussing."

The twenty-five participants in this year's Schmooze included professors Kim Scheppele (University of Pennsylvania School of Law), Thomas Ginsburg (University of Illinois College of Law), James Fleming (Fordham University School of Law), Neal Devins (William and Mary School of Law), Gordon Silverstein (University of California, Berkeley, Political Science), Lisa Hilbink (University of Minnesota, Political Science), Ran Hirschl (University of Toronto, Political Science) and Keith Whitting-

ton (Princeton University, Political Science).

"The Schmooze is a terrific intellectual boon to our faculty and a catalyst for lots of good work," says associate dean and Schmooze participant Richard Boldt. "It's an exciting event with accomplished people, who all go home raving about our law school."

For the 2006 Schmooze, Graber is considering a focus on "famous books of the 1950s by Hartz—on liberalism as a national philosophy of the U.S.—and McCloskey—author of the most important political history of the U.S. Supreme Court, and whether their views on contemporary politics are still accurate."

—Ruth E. Thaler-Carter

Several of the short essays from this year's Schmooze will be published in the *Maryland Law Review*.



Women Take the Lead

In their first collaborative event, the Business Law Program and the Women, Leadership and Equality (WLE) program co-sponsored the April conference "Women and the 'New' Corporate Governance," with support from Legg Mason, the Marjorie Cook Foundation, and T. Rowe Price. One of the first academic gatherings to address the critical role of women in the post-Enron corporate environment, it was attended by more than 200 interested parties. NYSE president Catherine Kinney gave the keynote address; Sheila Wellington of the NYU/Stern School of Business also spoke. (See full story on pg. 36.) Business law associate professor Lisa Fairfax (second from right) welcomed key business leaders and colleagues from academia, including (from left) Prof. Lisa Nicholson, Janet Kelly (a former K-Mart exec), and Prof. Margaret Sachs.