

University of Richmond
School of Law

Presents Our
1997 Visiting Scholars

The

**GEORGE E. ALLEN
CHAIR IN LAW**

THE ALLEN CHAIR 1997

The American Corporation in the Twenty-First Century

As the world is rapidly approaching the twenty-first century, the United States continues to live the future of the rest of the world. Zbigniew Brzezinski captured this fact well when he stated that "Europe and America are no longer in the same historical era. What makes America unique in our time is that it is the first society to experience the future. ...For better or for worse, the rest of the world learns what is in store for it by observing what happens in the U.S.A."

We, in the United States, are living in the midst of the most important technological revolution yet, that of information and technetronics. No one before us has lived in such an age, although many have dreamed of it. So, it falls upon our shoulders to reinvent our institutions, our business and social structures, in ways facilitated or even necessitated by this revolution.

We are also living in the midst of a New World Order which is barely recognizable at this point. Nevertheless, in the Age of Informatics, of instantaneous global communication and increasingly competitive global markets, moving forward slowly has become tantamount to falling behind. There is a small window of opportunity for American academicians, practitioners, politicians and strategists to develop and put into place yet another corporate/ business structure that will propel our competitive edge into the Twenty-first Century. We hope that the Allen Chair for this year will contribute toward achieving that goal.

The distinguished group of scholars invited to participate in the Allen Chair this year have all thought hard and long about these issues. They have traveled to other countries and studied and evaluated these countries' alternative structures. They have been part of private law firms and governmental organizations. They have looked at the issues they address from a variety of perspectives. Their answers are often daring and novel, pointing to a new reality which demands our attention. We have the opportunity at the Law School this year to listen to all these views in a single lecture series, discuss these views with their authors, and then reflect upon the accumulated body of knowledge in order to formulate our own answers to the millennial challenge facing our country.



Marleen A. O'Connor

Opportunistic Downsizing of Senior Workers:
Exploring the Fiduciary/Contract Distinction
to Enforce Implicit Employment Agreements

February 6, 1997

Professor of Law, Stetson College

Marleen O'Connor, who received her B.S. degree from DePaul University and J.D. degree from Duke University, is a leading voice in the national debate about corporate structure and governance. Her research concentrates on methods for enhancing workplace productivity by fostering labor-management cooperation. She argues that directors should owe a fiduciary duty to displaced workers to provide them adequate severance pay, job retraining and other forms of assistance. Professor O'Connor has devised a new model of corporate governance entitled the "neutral referee model." Under this model, directors would serve as neutral referees to balance the competing interests of employees and shareholders. The directors' fiduciary obligation to workers would include information and consultation rights about strategic decisions that affect job security and working conditions. In order to facilitate employee efforts to exercise these proposed rights, this neutral referee model includes a proposal for employee participation committees modeled upon the German system of works councils. Among Professor O'Connor's recent articles are: "The Human Capital Era: Reconceptualizing Corporate Law to Facilitate Labor-Management Cooperation," "Restructuring the Corporation's Nexus of Contracts: Recognizing a Fiduciary Duty to Protect Displaced Workers" and "How Should We Talk about Fiduciary Duty? Directors' Conflict-of-Interest Transactions and the ALI's Principles of Corporate Governance."



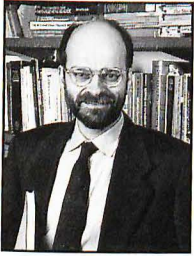
George G. Triantis

The Motivational Implications of Debt Financing

February 20, 1997

Professor of Law, University of Virginia

Professor Triantis is the Nicholas E. Chimicles Research Professor of Business Law and Regulation at the University of Virginia, and the Director of the John M. Olin Program in Law and Economics. His degrees include an L.L.B. from the University of Toronto, an L.L.M. from the University of Virginia, and a J.S.D. from Stanford University. Professor Triantis' teaching and research interests are in commercial law. His recent articles concerned the role of debt contracting and bankruptcy in corporate governance. Professor Triantis argues that stakeholder interests converge, rather than conflict, in the objective of controlling managerial slack. He also recognizes a substantial influence by nonequity constituents over firm decisions. His articles include such titles as: "The Interplay between Liquidation and Reorganization in Bankruptcy: The Role of Screens, Gatekeepers, and Guillotines," "The Role of Debt in Interactive Corporate Governance," and "Conversion Rights and the Design of Financial Contracts."



Mark Roe

Political Backlash and the Corporation

March 3, 1997

Professor of Law, Columbia University

Professor Mark Roe is the director of Columbia Law School's Sloan Project on Corporate Governance. He received his B.A. degree from Columbia and his J.D. degree from Harvard. He has written numerous articles in the areas of corporate finance, bankruptcy and corporate reorganization. His recent research, however, has focussed on the influence of American politics on corporate law. His book, *Strong Managers, Weak Owners: The Political Roots of American Corporate Finance* was reviewed by the *Economist* of London and was widely praised. His work questions established assumptions about corporate law and reveals them to be the result of historical political compromises. Professor Roe's recent articles include: "Some Differences in Corporate Structure in Germany, Japan, and the United States," and "A Political Theory of American Corporate Finance." Professor Roe served at the Federal Reserve in the seventies and has spent some time in private practice on Wall Street with a major New York law firm.



Ronald J. Gilson

Venture Capital and the Structure of Capital Markets: Banks versus Stock Markets

March 21, 1997

Professor of Law, Columbia University and
Stanford University

Professor Gilson (A.B., Washington University (St. Louis); J.D., Yale University) is the Charles J. Meyers Professor of Law and Business at Stanford University and the Marc and Eva Stern Professor of Law and Business at Columbia University. He was a Reporter of the American Law Institute's Corporate Governance Project (with special responsibility for standards governing transactions in control), and currently serves as a member of the California Senate Commission on Corporate Governance, Shareholder Rights and Securities Transactions. Professor Gilson is a member of the academic advisory board of the Center for Research on Contracts and the Structure of Enterprise at the University of Pittsburgh Graduate School of Business, and is an Associate Editor of the *Journal of Corporate Finance*.

Professor Gilson is the author of *The Law and Finance of Corporate Acquisitions*. His recent articles include: "Corporate Governance and Economic Efficiency: When Do Institutions Matter," and "Disputing Through Agents: Cooperation and Conflict Between Lawyers in Litigation." Prior to joining the Stanford Law School faculty in 1979, Professor Gilson was a partner in a San Francisco corporate law firm.



Jeffrey N. Gordon

The Shaping Force of Corporate Law in the
New Economic Order

April 11, 1997

Professor of Law, Columbia University

A graduate of Yale (B.A.) and Harvard (J.D.), Professor Gordon is co-director of the Center for Law and Economic Studies at Columbia University. His general areas of interest are corporate governance, the regulation of capital markets and financial fiduciaries, and socio-economic approaches to corporate law. Currently, Professor Gordon is focussing on transition costs of economic change and whether different organizational structures, as shaped by legal rules, can better address cost-sharing problems. He is also teaching, among other courses, a seminar on the transition problems of capitalism.

Professor Gordon was senior articles' editor of Harvard Civil Rights - Civil Liberties Law Review. He later clerked for the Honorable William E. Doyle, U.S. Court of Appeals for the Tenth Circuit, and then moved into private practice with a major Wall Street law firm where he specialized in corporate law and securities litigation and transactions. Professor Gordon was also attorney at U.S. Department of the Treasury advising on such issues as loan guarantees for Chrysler, the synfuels corporation, and New York City; deregulation of financial institutions; and regulation of financial futures trading. His articles include: "Institutions as Relational Investors: A New Look at Cumulative Voting," and "Contractual freedom in Corporate law: Articles and Comments; The Mandatory Structure of Corporate law."



"THE ALLEN CHAIR IS A

**ONCE IN A LIFETIME EXPERIENCE. GETTING TO MEET AND LISTEN TO THE MOST
EMINENT SCHOLARS IN THEIR FIELD—ACTUALLY GETTING TO ASK THEM QUESTIONS
ON AN INDIVIDUAL BASIS—IS EVERY LAW STUDENT'S DREAM. THANK YOU, UNIVER-
SITY OF RICHMOND LAW SCHOOL."**

— OLIVIA GUILLAUME, CLASS OF 1997

Comments from our faculty

Azizah Y. al-Hibri

Associate Professor of Law



Corporations are an American invention which has become a global phenomenon. Globalization, however, brought with it new markets, new competitors and new challenges. Therefore, in preparing our students for practice in the area of corporate law, we have to provide them not with a static understanding of that law, but with a dynamic one which will serve them well into the next century. The Allen Chair this year provides an excellent opportunity for bringing to the fore all the forces of change pressuring this old American invention. Our distinguished guests will expound their own vision and proposed solutions. With their help, I would like to open the door widely in our community for the timely discussion of our contributions to the shaping of this emerging structure.

Daniel T. Murphy

Acting Dean and Professor of Law



Now in its eighth year, the Allen Chair Visitorship has become extraordinarily important to the intellectual life of the law school. During the spring 1997 term, Professor al-Hibri and the Allen Visitors will consider some profoundly significant issues of corporate structure and governance. The issues under consideration are not provisions of corporate or securities laws, important though they may be. Instead the focus will be on some broader issues, the basic structure of the entity and the relationships of various "Stakeholders," workers, creditors and shareholders, with it. We on the faculty have come to look forward to the spring term, to the excitement and intellectual stimulation the Allen Visitors bring to the law school, and to the opportunity to spend time with some truly world class scholars. This spring is no exception. We are grateful to the Allen Visitors for agreeing to share their time and talents with us and to the Allen firm for the generosity which supports this program.

Previous Allen Chair Scholars

1990 Selected Topics in Tort Law

Sheila L. Birnbaum
The Honorable Robert Keeton
Richard Delgado
Deborah R. Hensler
Faculty Leader: Okianer Christian Dark

1991 Special Problems in Civil Litigations—Complex Litigation

Francis H. Hare, Jr.
Gerald A. Connell
The Honorable Robert M. Parker
Mark Kay Kane
Faculty Leader: W. Clark Williams, Jr.

1992 Special Issues of Toxic Waste in Indian Country

W. Richard West
Robert A. Williams, Jr.
David Harrison
Paula Gunn Allen
Faculty Leader: Nancy B. Collins

1993 Religion, Morality and the Law

Henry Abraham
Sanford Levinson
Michael Perry
Faculty Leader: Gary C. Leedes
Symposium published in University of Richmond Law Review, Volume 27, Number 5 (1993)

1994 International Human Rights

Anne-Marie Slaughter Burley
Thomas M. Franck
Harold Hongju Koh
Seyyed Hossein Nasr
Diego Garcia-Sayan
Faculty Leader: Daniel T. Murphy
Symposium published in University of Richmond Law Review, Volume 29, Number 1 (1994)

1995 Special Issues in Bioethics and Law

Alexander Morgan Capron
Elizabeth Loftus
David Orentlicher
Daniel Callahan
Faculty Leader: Paul J. Zwier
Symposium published in University of Richmond Law Review, Volume 30, Number 1 (1995)

1996 The Twilight of Environmental and Land-Use Regulation

Loren A. Smith
Charles M. Haar
James E. Krier
William A. McDonough
Faculty Leader: Michael Allan Wolf
Symposium published in University of Richmond Law Review, Volume 31, Number 1 (1996)

The George E. Allen Chair in Law

Its History and Founding Spirit

The George E. Allen Chair in Law was endowed by the family and other friends to honor the late, distinguished Virginia trial lawyer and founder of the highly-regarded Richmond civil litigation firm of Allen, Allen, Allen & Allen. Among the many citations Mr. Allen receive during his sixty years of practice was the first Award for Courageous Advocacy made by the American College of Trial Lawyers in 1965. The award was presented for Mr. Allen's representation of an African-American law student from Harvard who, while serving as a summer intern with a firm in the commonwealth, was charged with felonious assault with intent to kill a police officer at a local courthouse where the young interim had gone to file legal documents. Serving without fee and at the special request of Harvard Law School Dean Erwin Griswold and the Lawyers' committee for Civil Rights Under Law, Mr. Allen jeopardized his reputation in the community by successfully representing a most unpopular client at the height of massive resistance. Having a Chair named for this acclaimed attorney is a source of institutional pride, and a constant reminder to all in our school of the role lawyers plan in the preservation of liberty.

The George E. Allen Chair in Law was established with the initial gifts of his sons, the late George E. Allen, Jr. L'36, Ashby B. Allen R'43, and Wilbur Allen. Their continuing support, along with the support of others, accounted for the Chair becoming fully endowed in 1988. The Allen Chair allows the School of Law to invite distinguished legal scholars to spend time in residence and interact with the students and faculty of the University of Richmond School of Law. Moreover, publication of a special Allen Chair Symposium issue in the University of Richmond Law Review allows the School of Law to share the wisdom and insights of our distinguished visitors with a wider audience.



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