

2014 Report of Activities

Director's Report

During this year, the Institute consolidated its position in the City and elsewhere as the leading organisation aimed at closing the gap between academia and legal practice in shipping and trade law. In particular, it organised three successful events in London, targeting lawyers, insurers, brokers, underwriters and other market participants.

In May, in collaboration with leading commercial law firm Holman Fenwick Willian LLP, there was a seminar on "Offshore Contracts", held at HFW's London offices and allowing two stalwart Institute members, Professor Richard Williams and Simon Rainey QC, to showcase their expertise to enormous advantage. In September, the Association of British Insurers in Gresham St provided the venue for another impressive seminar where Institute member Peter Macdonald-Eggers QC and Graham Eklund QC of 4 New Square delivered thought-provoking talks on the post-contractual duty of good faith and on fraudulent claims in insurance law. This event was immediately followed by a drinks reception sponsored by Informa Routledge to celebrate the launch of the Director's book on insurance fraud, which had appeared a month earlier to considerable acclaim. In October, it was another international law firm, Ince & Co, which acted as our partner in organising an afternoon seminar to discuss the potential impact of the Law Commissions' proposed reforms of commercial insurance law. David Hertzell (the Law Commissioner responsible), two partners of Ince & Co (Simon Cooper and Joe O'Keeffe), and the Director himself presented papers discussing for the first time various provisions of the draft Insurance Bill since its first reading at the House of Lords in July.

More generally, the Institute has been closely involved with the Bill since its inception, playing a pivotal role in fuelling debate on the subject with a view to ensuring that matters are got right. Partnering with the English Law Commission, we organised another very successful one-day symposium in April 2013 on the reform project, with contributions appearing in the August 2013 issue of Lloyd's Maritime and Commercial Law Quarterly. Nor was this the first engagement of the Institute with the Law Commissions' general project on insurance law. In July 2008, we organised a very successful event in collaboration with the English Law Commission which has since been rightly seen as a turning-point in the reform process. Papers presented at that event, later published by Informa in a book entitled *Reforming Marine and Commercial Insurance Law*, were cited extensively in subsequent Issues Papers and the eventual Report, and undoubtedly has considerable influence on the latter.

As regards research, the Institute continued its steady process with the tenth Swansea Annual International Colloquium on 3-4 September. This time the focus was on shipbuilding and ship sale contracts, and also on the legal issues of ship finance. It attracted a large number of delegates from London and overseas in addition to Lord Clarke, of the Supreme Court, who very kindly chaired a session on ship sale contracts. Today, some ten years after the first very tentative and fairly modestly-attended Colloquium on marine insurance, this event has firmly established itself in the calendar of maritime lawyers and attracts an enviable number of lawyers, industry experts and academics to Swansea each year. The books that bring together the proceedings of annual colloquia are generally published by Informa Routledge and end up much in demand.

Of course, any research Institute is only as good as its members. Our members are exceptional. They enjoy an enviable reputation in the field of shipping and trade law, publish regularly in the most respectable journals, and are often the authors of leading practitioner texts and monographs. They are also sought after internationally: a careful perusal of the IISTL reports will show that most spend a considerable amount of time overseas delivering lectures, conference papers and training courses. Their enthusiasm in their subject and productivity give me every reason to feel very hopeful for the future of the Institute. In short, I am sure the IISTL's upward trajectory will continue unabated in 2015.

Professor B. Soyer

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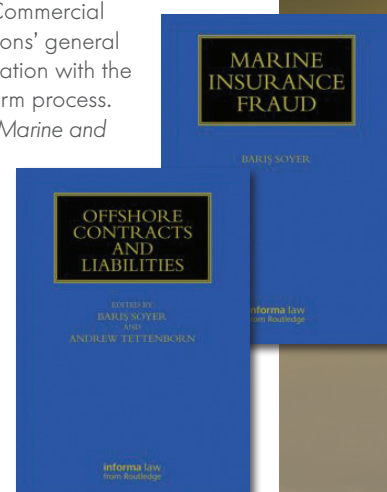
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Extramural Activities

On 16 October, **Professor Simon Baughen** delivered a paper at a conference at the University of Marmara on *Marine Pollution Liabilities in EU Waters- New Developments* which considered the impact on oil rig operators of art. 38 of the 2013 Offshore Oil and Gas Operations Directive, art 38, extends the geographical limits of water pollution to the EEZ of Member States. The paper also considered the extent to which the CLC system of civil liability for oil pollution from ships has been undermined by civil claims attached to criminal proceedings arising out of the 'Erika' spill, in France, and the 'Prestige' spill, in Spain. In November, Professor Baughen co-organised a conference at the University of Bristol on *Corporate Accountability and Access to Remedies for Corporate Wrongs*, the third in a series of conferences organised by the University of Sheffield with an ESRC grant. The series will conclude in 2017 with a submission to the UN Human Rights Council based on findings from the conference series. At the Conference, Professor Baughen delivered a paper: "Life after *Kiobel*. The Future for Human Rights Litigations against MNCs in the US." on the future of human rights litigation in the US District Courts under the Alien Tort Statute following the Supreme Court's decision on the territorial reach of the statute in April 2013 in *Kiobel*.

Dr Richard Caddell in February 2014 delivered a paper at the, *Second Lord Kingsland Memorial Conference* (held in London) entitled "Strategic Environmental Assessment in UK Offshore Waters". The paper provided the first legal analysis of compliance with environmental assessment requirements in UK waters and will be published in Gregory Jones QC and Eloise Scottford, *The Strategic Environmental Assessment Directive: A Plan for Success?* in early 2015. In September 2014 he presented a paper entitled "Environmental Protest, Maritime Security and the Arctic Energy Industries: Emerging Questions for the International Framework" at a conference on Legal Aspects of Arctic Energy Resources, convened at the K. G. Jebsen Centre for the Law of the Sea, Tromsø University, Norway. Throughout the year, he continued providing legal advice to a series of NGOs on vessel collisions with marine mammals.

Dr Theodora Nikaki delivered a keynote address at the InterTran Research Project Closing Conference in Helsinki entitled *European Intermodal Sustainable Transport - Quo Vadis?* The InterTran project is an interdisciplinary research project focusing on the expanding new, European transport policy from a legal and logistical point of view. It is a research project financed by the Finnish Academy and The Scandinavian



Professor Baughen on the left and Dr Nikaki on the right during Panel discussions at an international event

Institute of Maritime Law jointly. Dr Nikaki's paper, titled "The Future of Multimodal Transport: Is the Uniform Liability System the Way Forward?", tested the feasibility of the uniform liability system as basis of a new multimodal regime.

Simon Rainey Q.C. delivered a paper "Certificates Final: Do they stick or are you stuck?" at the annual Holman Fenwick Willan *London Calling - Getting Energised - Energy Commodities Workshop* in September 2014; on "The Union Power and 'As Is'- As You Were?" at the Quadrant Chambers Piraeus Seminar *From Vessel Acquisition to Owners' Insolvency: New Solutions to Old Problems* in November 2014 and a wide range of guest lectures and workshop sessions to leading law firms on shipping, international trade and offshore and oil and gas topics including dangerous cargoes in containership trades; CIF and DES hybrids; knock-for-knock regimes in offshore oil and gas contracts; safe port warranties after the *Ocean Victory*; Force Majeure and the question of 'control' and international commodity arbitration in London, Aberdeen, Geneva, Hong, Kong and Singapore.

Professor Soyer was invited by the Italian School of Judiciary (Scuola Superiore Della Magistratura) in May 2014 to speak at their Conference held at Genoa on international maritime law. This event, which was organised in collaboration with the Association of Bar of Genoa, attracted a great number of delegates from the Italian judiciary

and legal practice. Professor Soyer in his paper evaluated the position of standard cargo insurance on offer in international insurance markets highlighting their limitations especially in the

context of multimodal transport. Professor's Soyer paper was thought provoking and generated lively debates on the topical issue of multimodal transport and insurance.

In November, he attended the International Conference on *Hong Kong Maritime Law Forum* organised by the Hong Kong Centre for Maritime and Transportation Law (City University



of Hong Kong) and delivered a paper discussing why the Athens Convention 2002 will be a good model for Asian countries to follow to regulate compensation claims for passengers carried by sea. Professor Soyer has written on this subject extensively and is currently working on a piece with Dr Leloudas, another IISTL member, evaluating how air law conventions can be utilised to fill the gaps that arise in the context of the Athens Convention. Professor Soyer was offered a visiting professorship by Lorraine University in France and delivered a number of lectures to their LLM students in April.

Professor Tettenborn in February 2014 delivered a CLP lecture at UCL on the subject of codification of contract. In September, he addressed the *Eighth European Colloquium on Maritime Law Research*, hosted by the Rotterdam Institute for Shipping & Transport Law (RISTL). The European Maritime Colloquia are a series of biannual conferences organized by leading maritime law centers in Europe, in collaboration with the Scandinavian Institute of Maritime Law (University of Oslo, Norway). The Eighth Colloquium's theme was "Common core, PECL and DCFR: Could they change shipping law?" and Professor Tettenborn delivered a paper on "How far the imposition of a serious good faith obligation (an important part of both PECL and DCFR) might impact on the black-and-white world of shipping contracts." His thought-provocative paper has sparked a debate over the concept of good faith in various jurisdictions and its impact on shipping law. In addition, he was an active member of the committee under Prof Andrew Burrows QC charged with preparing the Restatement of the English Law of Contract.

Dr Shuangge Wen was invited to deliver guest lectures at Changchun University of Science and Technology and the University of Sussex on issues of company law and legal education.

Professor **D Rhidian Thomas** in January gave a lecture titled "International and European Dimensions on Resolving the Crisis relating to Establishing Liability for Ship-source Pollution" at the Graduate School, Universta Ca'Foscari, Venice. Also in the course of January, he delivered a series of lectures on Marine Insurance to graduate students at Gothenburg University, Sweden. On 7 March he led a course on Hull & Machinery Insurance for legal and industry practitioners at Erasmus University, Rotterdam; and on 11th April led a course on Issues of Law and Practice relating to P & I Insurance for similar participants at the same venue. On 10 April he delivered The Kurt Gronfors Memorial Lecture, titled "A Critical Analysis of Mandatory Insurance Provisions in International Maritime Convention", at Gothenburg University, Sweden. On 8 July he chaired the session and contributed to the discussion on *How Practices Become Norms in the Development of Shipping Law* at the Maritime Arbitration Roundtable organised by the Centre for Commercial Law Studies, Queen Mary, University of London. In September, he gave a paper titled "Charterparties and Agreed Damages Clauses under English Law and the PECL / DCFR", at the 8th European Colloquium on Maritime Research, held at Erasmus University, Rotterdam. He acted as a moderator at the 3rd International Maritime and Admiralty Law Symposium held at Istanbul on 16 & 17 October, organised by the School of Law, Marmara University. He also acted as a moderator and gave a paper titled "Words, Language and the Law" at a conference organised by the Department of Maritime and Transport Law, University Zagreb, and titled *Transport Law de lege ferenda: Vision on Tomorrow's Transport Law*. Throughout the year he continued to participate as a member of the CMI Working Group on mandatory insurance for maritime liabilities.

Another Successful year for the IISTL in terms of Organising Events for Practice and Academia

In 2014, the Institute organised four major events presenting a great opportunity to its members and other shipping and trade lawyers to share the findings of their research with other practitioners, academics, market participants and other stakeholders. In more detail, these were:

Seminar on Offshore Contracts - May 2014

The Institute opened its 2014 season with an afternoon seminar held in partnership with Holman Fenwick Willan LLP. The event focused on fundamental aspects of offshore contracts and was delivered at the London offices of Holman Fenwick Willan LLP on 8 May. It attracted 90 delegates (which was as many as the venue could hold). Apart from Professor Richard Williams and Simon Rainey QC from the IISTL, Emilie Brokor-Ingram and Rory Butler from HFW addressed the audience. Themes ranged from the operation and construction of knock-for-knock clauses in offshore contracts to the complexities of the Windtime, Heavycon and Heavylift forms. The presentations were followed by lively debate and livelier questions from the audience. The evening ended with a reception generously hosted by HFW. The discussions and networking continued until late, as the hosts showed particular generosity by allowing food and drink service to continue till 9.00 pm!



Tenth IISTL International Colloquium - September 2014

This year's Colloquium's focus was on contemporary developments in shipbuilding, ship sale and vessel finance, areas of law that have changed an enormous amount and taken on an entirely new relevance since the commencement of the global economic downturn in 2008. Examples of fast-moving areas of law covered in the proceedings this year included the cancellation of shipbuilding contracts, refund guarantees, changed practices in ship sales and developments in ship mortgage enforcement, whether by judicial sale or otherwise.

Present this year was the usual impeccable cast of legal practitioners, brokers and academics from the UK, Europe and elsewhere. It was a particularly great honour to welcome a member of the Supreme Court, Lord Clarke of Stone-cum-Ebony, who chaired a session. As ever, the speakers were carefully-selected, providing a balance between disciplines but nevertheless ensuring that all were professionals at the cutting edge of their disciplines. Outside speakers included, Matt Hannaford (Partner, Curtis Davies Gerrard LLP, London); Simon Rainey QC (Quadrant Chambers, London); William Maclachlan (Holman Fenwick Willan LLP, London); Chris Kidd (Partner, Ince and Co LLP, London); Simon Curtis (Partner, Curtis Davies Gerrard LLP, London); Simon Kverndal QC (Quadrant Chambers, London); John Forrester (Partner, Holman Fenwick Willan LLP, London); Charles Buss (Partner, Watson Farley & Williams LLP, London); Peter Macdonald-Eggers QC (7 Kings Bench Walk, London); David Osborne (Partner, Watson Farley & Williams, LLP, London); Professor Olivier Cachard (University of Lorraine, France) and Associate Professor Lia Athanassiou (The National and Kapodistrian University of Athens, Greece).

Institute's in-house contribution included presentations by Professors Baris Soyer, Andrew Tettenborn, Simon Baughen, and also an excellent paper from Dr Theodora Nikaki. Delegates and speakers, as ever, enjoyed a vivacious Colloquium dinner at Sketty Hall, very generously sponsored by top-class commercial law publishes Informa/Routledge which agreed to publish the book featuring the conference papers in mid- 2015.

London Seminar on Insurance Fraud and Post-contractual Duty of Good Faith

On 9 September, Institute hosted a seminar at the London headquarters of the Association of British Insurers on 9 September. Two eminent practitioners, namely Peter Macdonald-Eggers QC of 7 King's Bench Walk and Graham Eklund QC of 4 New Square, delivered lectures at the seminar evaluating the relationship between various types of fraudulent claims, remedies applicable in case of submitting a fraudulent claim and the reform proposals in this area put forward by the Law Commissions. The Seminar which attracted around 100 delegates, was followed by a Reception generously hosted by Informa Law from Routledge to mark the publication of Professor Soyer's most recent book on the subject. The reception provided a great opportunity to the delegates to network and also talk to Professor Soyer and other members of the Institute.

Seminar on the Draft Insurance Contracts Bill

On 15 October, the IISTL in corporation with Ince and Co LLP held an afternoon seminar. The focus of the seminar, which was held at the offices next to Tower Bridge of leading commercial and shipping law firm Ince & Co, was the draft Insurance Bill, introduced in the House of Lords earlier this year after having been drafted by the English and Scottish Law Commissions following extensive preliminary work (in which the IISTL had incidentally also been involved). This proposal aims to reform the law on fraud and misrepresentation in commercial insurance law, including the relevant provisions of the Marine Insurance Act 1906. Professor Soyer together with two leading partners in Ince & Co, Simon Cooper and Joe O'Keefe, offered a penetrating analysis on the impact of the suggested changes on the law relating to pre-contractual information duties of the assured, insurance warranties and fraudulent insurance claims. These presentations were followed by a rigorous debate which allowed two panellists, David Hertzell from the Law Commission and Paul Jaffe from the Catlin Group, to respond to the points raised by the presenters and the audience. The event attracted 95 delegates (the full capacity of the venue), and ended with a reception generously hosted by Ince & Co. Delegates finally left the building around 8 pm having obtained a vastly better understanding of the implications of this potential law reform.



Lord Clarke of Stone-cum-Ebony (in the middle) during the IISTL's 10th International Colloquium



Audience at one of the IISTL events

Professional Training

Members of the Institute continue to serve the training needs of international shipping organisations and companies, and City international law firms in various ways. Members of the Institute participated in the following professional training courses in 2014:

BIMCO Courses

Professors Barış Soyer and Richard Williams provided specialist masterclasses for BIMCO (the world's largest shipowners' organisation) in Limassol, Rotterdam, Istanbul, Genoa and Antwerp on charter party issues, bills of lading and trading and carrying issues. Professor Williams also provided classes at the BIMCO Summer School in Denmark and at an in-house course organised by BIMCO for an international shipping company in Greece.

Shipping Foundation Courses for City Consortium of Law Firms

Members of the Institute provided Foundation Courses on marine insurance, bills of lading, charter parties and shipbuilding contracts for a consortium of six City international law firms. The lectures were delivered by Professors Simon Baughen, Barış Soyer, Andrew Tettenborn, D. Rhidian Thomas and Richard Williams.

Lloyds Maritime Academy (LMA, Informa London)

Professor Richard Williams chaired and gave lectures on a range of topics at a number of Masterclasses in London relating to bills of lading and charter parties.

IBC (Asia)

Professor Richard Williams conducted his annual series of courses on charter party and laytime and demurrage issues for IBC (Asia) in Singapore and Indonesia.



Professors Soyer and Williams with Mr Peter Grube (BIMCO) at a training event in Rotterdam

Guest Lectures

In the course of 2014, the Institute organised the following guest lectures for its members, PhD and LLM students:

Mr Ian Derrick, Bank of England: "An Economic Update".

Mr Robert Gay, Legal Director, Hill Dickinson: "General Indemnities under Time Charters; is the Athanasia Comninos / George C Lemos still good law?"

Mr Peter Grube, Chief PR Officer, BIMCO: "The Role of BIMCO in Shipping and Producing Documents".

Mr Måns Jacobsson, former Director of the International Oil Pollution Compensation Funds: "The Erika - The Civil Law Aspects; A Case Study".

Mr Fabien Lerede, Off-shore Syndicate Claims Director, Charles Taylor, London: "P&I Clubs' Time Charters; is the Athanasia Comninos / George C Lemos still good law?"

Mr Richard Neylon, Partner, Holman Fenwick Willan LLP: "Hijacked By Pirates: A Maritime Lawyer's Role in Crisis Management".

Mr Hugh Shaw, SOSREP: "Dealing with Maritime Emergencies in the UK".

Staff News

Dr Caddell has taken up a position as a Senior Research Associate and Nereus Foundation Senior Research Fellow at the Netherlands Institute for the Law of the Sea, Utrecht University, in November 2014. We are delighted that Richard has decided to remain affiliated with the IISTL and retain a fractional appointment.

We are also delighted to announce that the applications of **Dr Leloudas** and **Dr Wen** to be promoted to senior lectureship have been successful. Both are very valuable members of the IISTL and their academic progress the last few years has been impressive.

Our excellent administrator, **Ms April Adanah**, will be away from the IISTL during her maternity leave. She is now a proud mother of her second child, Tyler, who is a lovely boy! We are looking forward to her return to work but also delighted to have on board **Ms Sam Duffy** who will provide cover in her absence.



Publications



Dr Richard Caddell published an article examining the decision of the International Court of Justice in the *Case Concerning Whaling in the Atlantic*, entitled "Science Friction: Antarctic Research Whaling and the International Court of Justice" (2014) 26 *Journal of Environmental Law* 331-340 and also provided commentary on the UK's policy towards the Arctic region in "Pursuing the Northern Rights: The Emergent Arctic Policy of the UK" (2014) 16 *Environmental Law Review* 122-128. He was appointed Associate Editor of the *Review of European, Comparative and International Environmental Law*, one of the most widely-read environmental law journals worldwide. He is currently preparing a monograph on the international regulation of cetaceans (whales, dolphins and porpoises).

Dr. George Leloudas authored a chapter together with Professor Soyer on "Standard Contracts Used in Offshore Insurance Sector: Clear and Unambiguous?" published in *Offshore Contracts and Liabilities* (Informa Law from Routledge, 2014) 209-249. Dr Leloudas is in the process of completing a chapter on "Security Regulations: Domestic Requirements" to be published in Profs Paul Dempsey and Ram Jakhu (eds) *Routledge Handbook of Public Aviation Law* (Routledge 2015). He is also working on a monograph on air cargo insurance.

Dr Theodora Nikaki published an article entitled "International Recent Developments: United Kingdom" (2014) 38 *Tulane Maritime Law Journal*, 639-647. She is currently working on a book chapter titled "Financing Newbuilding Vessels and BARECON 2001: A Fair Deal" to be published in *Ship Building, Sales and Finance* which will be released in 2015.

Simon Rainey Q.C. contributed articles and case notes to the shipping and offshore industry press such as *Tradewinds* and *Lloyd's List* covering a wide range of topics including limitation of liability and the *Baltic Ace* and mutual indemnity clauses and *Kudos Catering* on continued to provide editorial support for the *Journal of International Maritime Law*. He is currently the editor in chief for the new edition of *Chalmers' Marine Insurance Act 1906* (11th edition in preparation).

Professor Barış Soyer published a monograph, *Marine Insurance Fraud*, with Informa Routledge in August 2014. He also edited together with Professor Andrew Tettenborn a book, *Offshore Contracts and Liabilities*, again published by Informa Publishing in September 2014. He also wrote a chapter for this book together with Dr George Leloudas "Standard Contracts Used in Offshore Insurance Sector: Clear and Unambiguous?" 209-249. He continued to provide editorial support for the *Journal of International Maritime Law* and is currently working on the third edition of his award winning monograph, *Warranties in Marine Insurance*, which is due to be published in 2015.

Professor Tettenborn prepared five chapters of the new (21st) edition of *Clerk & Lindsell on Torts*, edited (and wrote a chapter in) B.Soyer & A.Tettenborn eds, *Offshore Contracts and Liabilities* (Informa 2014) entitled "Offshore Injury- Whose Jurisdiction, What Law?" 289-302 and published "Codifying Contracts -- An Idea Whose Time Has Come?" [2014] *Contemporary Legal Problems* 273.

Professor Rhidian D Thomas published an article titled "Laytime and Demurrage -- Contractual Concepts in A State of Flux" (2014) 20 *Journal of International Maritime Law* 183-192. He continued to act as editor-in-chief of the *Journal of International Maritime Law*, contributing editorials, the digest, case analyses and book reviews.

Dr Shuangge Wen has published an article, "The Ideals and Reality of a Legal Transplant: The Veil-Piercing Doctrine in China" (2014) 50(2) *Stanford Journal of International Law* 319-358.

Professor Richard Williams wrote Chapter "Knock-for-knock Clauses in Offshore Contracts" in *Offshore Contracts and Liabilities* (Informa Routledge, 2014) 53-67 and case studies in that journal and in *Gard News*. He has also continues work on the 5th edition book *Limitation of Liability for Maritime Claims* (Informa Routledge) which he co-authors and on the 2nd edition of the *Gard Guidance to the Statutes and Rules*.

Members of the Institute of International Shipping and Trade Law

Professor Barış Soyer - Director

Admiralty law, marine and non-marine insurance and carriage of goods by sea

Mr Andrew Beale OBE

IP, asset management and trade

Professor Simon Baughen

Shipping law, carriage of goods by sea and trade law

Dr Richard Caddell

Law of the sea, marine environmental conservation, fisheries, EU maritime law

Professor Iwan Davies

(Pro-Vice-Chancellor (Internationalisation and External Affairs)) Finance and security

Dr George Leloudas

Multimodal transport and air law

Dr Theodora Nikaki

Carriage of goods by sea, multimodal transport, international trade law and conflict of laws

Professor Dennis Patterson

International trade and world trade law

Ms Tabetha Kurtz-Shefford

Admiralty law, trade law and law relating to oil and gas

Professor Andrew Tettenborn

International trade law, payments and finance, commercial law

Professor D. Rhidian Thomas

International trade and payments, carriage of goods, marine insurance, reinsurance, admiralty and arbitration

Dr Shuangge Wen

Corporate law and conflict of laws

Professor Richard Williams

Carriage of goods and maritime liabilities

Research Assistant

Mr Zhongyue Hu

VISITING FELLOWS

Mr Peter Macdonald-Eggers QC

Insurance and reinsurance law, commercial law

Mr Simon Rainey QC

Admiralty law, maritime law, arbitration

Administration

Ms April Adanah - Administrator (on maternity leave)

Ms Samantha Duffy- Administrator

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The IISTL is a Research Centre within the College of Law.