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2014 CONFERENCE:
THE FUTURE OF CLASS ACTION LITIGATION:
A VIEW FROM THE CONSUMER CLASS
NEW YORK UNIVERSITY SCHOOL OF LAW
NOVEMBER 7, 2014

SPEAKERS: *Peter L. Zimroth, Dean Trevor W. Morrison*

PROFESSOR PETER L. ZIMROTH: Good morning to all of you. I'm Peter Zimroth, the Director of the Center on Civil Justice here at the NYU Law School. I want to welcome you all to the first major conference that the Center is sponsoring in conjunction with the NYU Law School *Journal of Law & Business*. I'm sure you can appreciate that it takes a great deal of support to launch a Center like ours, and we have had a lot of terrific support.

We have a very engaged Advisory Board led by Sheila Birnbaum. Sheila is sitting back there. You're going to be seeing Sheila and other members of the Advisory Board on the panels later in the day. There's no way that this Center could have gotten off the ground and come this far without the steadfast support of our Dean Trevor Morrison. And so I'd like to ask Trevor to say a few words, and then I'll come back and say something about the Conference itself.

DEAN TREVOR W. MORRISON: Thanks, Peter. Good morning, everyone. It's great to be with you this morning for this first Conference of this new Center, which has really been launched in the last year. I'm only too glad to take credit for without my support this thing wouldn't have launched. I'm absolutely certain that's not true, but I'm sure there'll be a time

when I get blamed for something that wasn't my fault, so I'll take the credit now.

This is a terrific new venture of the School. I think the choice of this topic is a reflection that the Center is poised to choose topics that are current, important and challenging. And then to take them up in ways that reflect the commitment of the Center, which is not to come at these issues from perspective that seems slanted in one direction or another, but to take full measure of the difficult issue, and to try and plumb its depths really from all sides.

We can do that because of the terrific people involved in this Center: Peter, as its Director, Linda Tvrdy who is somewhere also, a critical member of the team. The Advisory Board as Peter mentioned, chaired by our Trustee, Sheila Birnbaum, is truly an awesome board. I mean that not in [the] Valley sense of the word, but the original sense of the word.

When I go to those meetings and I imagine the billing that is not happening because these people are in the room, I feel powerfully the urge to make sure that the work that's being done by the Board is important, and indeed it is. It's really a terrific entity and a great partner—is the way I think of that Advisory Board—with the School to be moving this forward.

Then of course there are the faculty directors of the Center: Sam Issacharoff, Arthur Miller, who will be here with us later today, and Troy McKenzie—who are spectacular scholars in their own right, of course, and by giving their time and commitment to the Center, I think are ensuring its success as well.

I do want to thank the *Journal of Law & Business* for publishing today's proceedings. That too is a great partnership. I hope to see more partnerships between student journals and various of our centers here, and I think this is a model of the kind of synergies that can be accomplished.

I also want to thank in advance, because I won't be able to see him when he's here, but please tell Chief Judge Kozinski that I said thank you for his being here. He'll be introduced by Arthur Miller later in the day.

Without further ado, I want to say thank you again to Peter in particular for his leadership of this Center. He deserves all of our thanks. This Center has come up and running to full speed as quickly as it has because of the wisdom and

energy that Peter's brought to the effort. So thank you very much, Peter.

PROFESSOR ZIMROTH: Thanks, Trevor, and I assure you we will be back to you for support.

Just an additional thank you or two. The *Journal of Law & Business* is not just a publication; there are people behind it. I wanted to thank especially the Editor-in-Chief, Monica Ramirez de Arellano. Is she in the room? And Steven Levick, who is the Managing Editor. Trevor has already mentioned Linda Tvrdy, our Research Director, who I would say is an indispensable part of our effort. I also wanted to thank Cassie Rodriguez who is an all-around star.

A word about the Center and about this first effort of ours. Our mission is really simple and easy to state, but not so easy to do, which is that we want to be a place for people who care very deeply about our civil justice system—the most engaged and thoughtful academics and practitioners, and judges, and others—to think about and write about, and to discuss the very serious problems that confront the civil justice system in the United States.

We have no agenda except the health of the civil justice system. That's it. We want to generate thoughtful conversation about the problems and ideas for practical solutions, including empirical research aimed at those concrete solutions.

The topic of today's Conference is a very good one to start our effort because arguments about consumer class actions are very important in and of themselves. However, they've also become proxies for debates about class actions in general, and also about the civil justice system more broadly.

Are these devices, class actions, important means of providing access to justice for people who don't otherwise have that access? Or are they just a cumbersome, expensive mechanism that benefits only the lawyers? Two sides of a very fierce argument.

Do they encourage over-legalization in our society? Or are they necessary to provide private citizens a way of enforcing public norms? Is it a bad thing that so few of these cases go to trial? And if so, what would be the right number of case to go to trial? And if not class actions, then what? Arbitrations? And what problems does that privatization of our process bring?

Today you're going to be hearing about these and other important questions, and I hope and expect that you will also

hear thoughts about what more we have to learn about how this very important part of our civil justice system actually operates in practice.

I think there's a great deal that we don't know because there is some—and you will hear some of it today—but there's not a lot of good, solid, empirical research. I wonder why should that be.

I think that at least one very important reason is that information about crucial parts of this process, for example, the distribution of funds after the end of the case—after settlement—is either not publicly available or if it is publicly available, it is just too expensive and time consuming to access and to aggregate.

So I hope that at least one thing that comes out of this Conference is some flow of ideas about how to make information more accessible, and also how our Center can foster the collection, documentation, and dissemination of this information.

That's an overview of the Conference. Now I'll turn it over to Sam for the first panel.

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Editor's Note: This Conference transcript has been edited for clarity.