S enator George Mitchell warned that the standing of the US in the world is lower than ever in his keynote address to delegates yesterday evening.

In the aftermath of September 11, sympathy for the US and identification with US values was widespread, he said. “Sadly that seems largely to have disappeared.”

This “rising tide of hostility” comes from a perception that the US has lost sight of the ideals on which it was founded. “Power and principle appear to be diverging,” he said.

Mitchell, who served in the US Senate from 1980 until 1995, chaired peace negotiations in Northern Ireland and was President Clinton’s Middle East envoy, was introduced to the audience by IBA President Francis Neate as uniquely qualified to address an international collection of lawyers.

Pointing to the achievements of post-war transatlantic cooperation through international bodies such as the World Trade Organization and United Nations, Mitchell called first for the reinvigoration of US relations with Europe.

Recently that alliance has become “badly frayed,” he told delegates “just as we face new threats”. Among these he identified the proliferation of weapons of mass destruction, the spread of terrorism and its increasingly decentralized nature, and the growing competition for energy resources, particularly in light of the rapid expansion in demand for energy from Asia.

But Mitchell’s strongest views concerned the ideals on which, in his view, American strength should be based, most important among them the rule of law. “There has been an age old tension between the preservation of order and the rights of the individual,” he said. “A balance has to be struck between collective security and individual liberty.”

Mitchell’s comments come against the backdrop of controversy over trials for detainees at Guantanamo Bay, secret CIA prisons and attempts by the US administration to reinterpret Article Three of the Geneva Convention, which outlaws torture.

Mitchell spoke of the duty of lawyers worldwide to help preserve and protect the rule of law, especially in the face of the threat of nuclear proliferation and the growth and dispersal of terrorism. He talked of the IBA as a “major force” in advancing these ideas and of the organization’s special role in protecting individual rights. “I commend you for your leadership in this effort,” he told delegates.

T he former president of Ireland and past United Nations high commissioner for human rights Mary Robinson delivered a passionate call for a renewed defence of the rule of law at a joint IBA/ABA symposium on Saturday.

In a speech to almost 400 lawyers in Chicago, Robinson asserted her belief that the rule of law is fundamental to supporting human development, human security and human rights.

Setting the tone for the weekend meeting, she warned that the policies of governments in many countries towards the threats posed by terrorism and other security problems are undermining the rule of law. “Our job as lawyers is to make the case that it is precisely these threats that make strengthening the rule of law so important,” she said.

Robinson described the terrorist attacks of September 11 2001 as “crimes against humanity”, but said that the response over the past five years had often been inconsistent with traditional adherence to the rule of law. Pointing to the US government in particular, Robinson criticized what she called an Orwellian use of language to disguise practices, such as kidnapping and torture, that had been traditionally avoided by democratic governments. Taking such actions, warned Robinson, has set an example that has made it easier for authoritarian regimes to stifle free expression and human rights in the name of security.

The themes raised in Robinson’s speech were echoed by a series of speakers and panellists, including senior judges, in-house counsel and private practice lawyers, at the two-day symposium. The meeting comes at a time when concern in the legal profession about threats to the rule of law is widespread.
UK attorney general criticizes plans to reinterpret Geneva Convention

There was almost universal agreement among delegates that the rule of law is under threat globally and that the legal profession has a crucial role in defending it. At the annual IBA meeting in Prague last year, the Association had passed a resolution calling on governments around the world to respect the principles that underpin the rule of law, such as transparency and equal access to justice.

Both the IBA and the ABA have also been active in supporting a range of practical efforts in various jurisdictions, notably the ABA’s Central European and Eurasian Law Initiative. Over the coming year each intends to set up further committees, and in the ABA’s case prepare a series of white papers, examining rule of law matters. The meeting also addressed the challenges of rule of law initiatives emerged from speakers at the symposium’s final session. Among these were the importance of education, the media and long-term commitment to rule of law projects.

Despite this, a number of common approaches to the challenges of rule of law initiatives emerged from speakers at the symposium’s final session. Among these were the importance of education, the media and long-term commitment to rule of law projects.

In his opening remarks, IBA president Francis Neste said urgent delegates to be patient when trying to foster a culture of respect for the rule of law, pointing out that it had taken almost 300 years to develop universal democracy in the United Kingdom from the time such values were first expressed. Similarly, Christian Ahlund, executive director of the International Legal Assistance Consortium, pointed to the dangers that can arise when the international community loses its patience with fragile emerging states, as he argues has occurred in East Timor.

Finding the funds to pursue such long-term projects continues to be a struggle, but Mark Ellis, executive director of the IBA, warned that cost should not be used as an excuse for failure, pointing out that the amounts of money spent on rule of law projects are far outweighed by military and other spending commitments. “We try to support the rule of law on the cheap, and we need to step back and see that this is not sustainable,” said Ellis, arguing that those who provide funding to such initiatives also need to take a longer-term perspective on seeing progress.

Speakers at the session also put forward practical steps that have worked in fostering a rule of law culture. Among these were legal clinics, the education of judges, lawyers and legislators and increasingly the use of public service announcements and pamphlets to inform the public about the rule of law and practice of the rule of law. A number of speakers argued that lawyers must find ways to encourage the mainstream media, particularly in the US, to devote greater coverage to rule of law issues.

In summing up the symposium, professor Stefan Landsman argued that, as was the case at the end of the major wars of the 20th century, the world is now at a “moral crossroads”. As earlier generations had created the United Nations and other measures to reassert the rule of law, he said, so someone must now step forward. “That someone, said Landsman, “should and indeed must be lawyers”.

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Rule of law under threat, say lawyers

Ben Maiden reports on the results of a poll of IBA members

Two-thirds of lawyers fear that the rule of law is under threat either in their own or another jurisdiction, according to a poll of IBA members. The survey, conducted by the IBA Daily News ahead of this year’s conference, shows that lawyers from a variety of jurisdictions believe that free and fair legal systems continue to face serious challenges.

Respondents to the survey identified executive pressure on courts and corruption as significant threats both in developing nations such as Nigeria and more established democracies, particularly the US. A number of lawyers pointed to some of the Bush administration’s anti-terrorism policies, such as secret CIA prisons, as undermining the rule of law, and suggested that the constitutionally designed system of checks and balances between the three branches of the US government is coming under strain.

At last year’s conference in Prague the IBA passed a resolution urging governments around the world to support courts in upholding the rule of law. Last weekend the Association, in cooperation with the American Bar Association, held a two-day symposium at which leading jurists and international figures discussed the challenges to the rule of law and ways it can be protected.

The IBA Daily News poll also found that 58% of respondents fear that some of the legal profession’s core values are coming under threat. Although they praised the efforts of the courts in looking to protect the profession’s values, lawyers from around the world expressed concern that attorney-client privilege in particular is being threatened.

Another important question facing the legal profession is whether in-house counsel should be given the same treatment as their colleagues in private practice, specifically whether they should be covered by the same privilege rights. Almost 70% of respondents to the survey, who were predominantly private practice lawyers, agreed that they should.

Some in the profession continue to argue that in-house counsel cannot be considered as independent because they represent a single “client”, ie their company. Most respondents to the survey, however, argued that privilege is essential for in-house counsel to be able to do their jobs properly. If company employees fear that anything they tell their in-house counsel will be subject to discovery they will be reluctant to come forward with information that can help the company avoid regulatory problems or mismanagement, say supporters.

In such a climate it is perhaps not surprising that 98% of respondents also supported the idea of compulsory ethics training for would-be lawyers.

The Legal Media Group of Euromoney Institutional Investor Plc conducted this poll of IBA members through a questionnaire on the IBA website and an email to IBA members.

For more information and debate on the rule of law around the world, see the report on pages two and 11 of this issue of the IBA Daily News on the Rule of Law Symposium. This symposium, conducted by the IBA in conjunction with the American Bar Association, discussed prominent issues threatening the role of the law in a variety of different jurisdictions.

Plus don’t miss the showcase session today entitled Judicial reform: economic development and the rule of law. Presented by the Public and Professional Interest Division of the IBA, the session will look at how a stable legal regime leads to greater growth and development, and is a high priority for the world’s leading development institutions such as the World Bank, Asia Development Bank, USAID, InterAmerican Development Bank, CIDA and others.

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IBA Daily News - Monday, September 18 2006

IBA POLL

In your opinion, is the rule of law under threat in your jurisdiction and/or other jurisdictions?

Yes: 67%
No: 33%

Do you feel that the core values of the profession such as independence and attorney-client privilege are under threat?

Yes: 58%
No: 42%

Should attorney-client privilege be extended to in-house counsel who have the same qualifications to practice law as independent lawyers in your jurisdiction?

Yes: 68%
No: 32%

Should training in legal ethics be a requirement to become a lawyer?

Yes: 98%
No: 2%
Being sued is something of an occupational hazard for US companies. The country’s legal framework, litigious culture and powerful plaintiffs bar help ensure that lawsuits are a very real and constant threat for corporations on a vast array of topics, from medical malpractice and environmental damage to antitrust law violations.

Until now, the same could not generally be said for companies operating in the EU, particularly in its civil law member jurisdictions where punitive damages cannot be awarded. But that could be about to change. Late last year the European Commission (EC) released a green paper proposing a range of options that, if adopted, could make life much easier for plaintiffs who wish to bring private litigation against companies they allege are abusing competition laws.

The proposals will be at the heart of a discussion this Thursday afternoon between a panel of in-house counsel, private practice lawyers and judges. Greg McCurdy, a senior attorney at Microsoft in Seattle and vice-chair of the IBA’s antitrust committee, will co-chair the session, which is being held in cooperation with the litigation committee. Like many observers, McCurdy is concerned that the EC’s proposals could be the first step in a shift for Europe towards what many see as the US’s overly litigious environment.

“The green paper is essentially a Chinese menu of options to make things easier for plaintiffs,” says McCurdy. While he agrees that there is room for more lawsuits against anti-competitive corporate behaviour in Europe, he urges the EC to be cautious. “It’s ironic that, while in the US you are seeing moves to curb litigation, in Europe you have proposals to increase it.”

The EC has for some time been advocating greater private enforcement of antitrust laws, which it believes is more efficient and has a greater deterrent and compensatory effect than public enforcement. While it is estimated that in the US up to 90% of all antitrust enforcement actions are brought privately, in Europe the opposite is true. A 2004 study commissioned by the EC indicated that, although private litigation is possible in EU member states, less than 30 cases had progressed as far as a court awarding damages.

The study identified a number of barriers and disincentives to private enforcement at a national level, such as a lack of access to evidence, difficulties in quantifying damages, the costs of bringing private actions and a lack of experience and expertise among European judges in antitrust matters.

Having examined the study’s findings, the EC released its green paper in December 2005. The document describes competition law enforcement as a key part of the EU’s Lisbon strategy aimed at increasing employment across the region. The paper takes the position that making it easier for damages claims to be brought will help consumers and companies retrieve losses they have suffered as a result of anti-competitive behaviour, and notes that the European Court of Justice, in a 2001 ruling, underlined the right of individuals to claim damages. The paper points out, however, that there are “significant obstacles” in individual member states to the “effective operation of damages actions”.

The paper sets out some of the obstacles to private claims, including discovery standards, the burden of proof, the scope and size of damage awards, the passing-on defence, the burden of legal costs and the coordination of


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The American Lawyer’s “Litigation Department of the Year” edition recognized Jenner & Block as having one of the top five litigation departments in the country.
Greg McCurdy is a senior attorney for Microsoft, based in Seattle, Washington. He started life with the software company in 2000, joining the Microsoft's Europe, Middle East and Africa headquarters in Paris, where he oversaw competition law and commercial litigation matters across the region.

In 2002 McCurdy moved back to the US with Microsoft and now manages the company's international antitrust proceedings before the EC, the European Court of First Instance, the Korean Fair Trade Commission and various US courts.

Prior to joining the company McCurdy practiced in New York with Milbank Tweed Hadley & McCloy and Proskauer Rose. Usually for a lawyer making the move in-house, McCurdy did not work with Microsoft while in private practice. "As a lawyer your job is as interesting as your client, and Microsoft is a very interesting client," he says.

Microsoft's legal and corporate affairs group includes more than 300 lawyers, who are spread among the company's US and international offices. The group is divided into 11 functional divisions including antitrust, litigation, intellectual property and licensing and the office of the general counsel. The company's antitrust team includes 10 lawyers while its litigation team, of which McCurdy is also a member, comprises 15 lawyers.

It was during his time in Paris that McCurdy joined the IBA and as an active member he is now halfway through a two-year term as vice chair of the antitrust committee.

The discussion on the EC's antitrust damages proposals holds a particular interest for McCurdy. Microsoft's headquarters in the US Pacific northwest may be a 14-hour flight from Brussels, but as a multinational company it is one of hundreds whose operations in Europe are subject to scrutiny by competition authorities there. In particular, McCurdy notes that, with many of the options suggested, the potential for misuse, which must be considered equally deterrent. "Experience in the USA shows a significant arbitrariness and danger. It also notes that, with many of the options suggested, the green paper "takes up ideas from the Anglo-American legal system that are applied there under completely different conditions". It points out that in Europe state authorities are entrusted with protecting the public against abuses of antitrust laws and that damages are awarded to compensate for losses, not to act as a punishment or deterrent. "Experience in the USA shows a significant potential for misuse, which must be considered equally along with the benefits of some of the Anglo-American instruments," it says.

The Irish Competition Authority raises another area of concern expressed by several commentators — that enforcing commonality between member states in antitrust law is arbitrary and dangerous. "To harmonize procedural requirements across the EU in one field of law alone seems to have great potential for confusion," it says. The Authority instead urges the Commission to take a "minimalist approach" by which it only adopts rules that guarantee that all member states have laws that make claiming antitrust damages "viable".

Other critics worry that, if plaintiffs are encouraged to take action in antitrust cases, there will be inexorable pressure to change the rules in other fields of law, creating a rush of lawsuits in medical malpractice and other areas seen as symptomatic of the US litigious culture.

European courts do not have jurisdiction to hear such cases, and it will therefore be dependant on member states to adopt new laws if lawsuits are to be encouraged. At this week's session the panel will discuss whether it is possible, or desirable, to have a unified procedural approach to antitrust cases where some member states, such as the UK and Ireland, have common law systems while others are based on civil law principles. Microsoft's McCurdy echoes many of the concerns expressed by commentators to the green paper, including those based on reconciling different legal models. Neither civil nor common law approaches are right or wrong, he says, and law makers should be sensitive to the differences.

"Law is a cultural thing, it's not like medicine that should be the same everywhere," he says. "It may be possible to find a compromise between the civil law and common law approaches, but do you want to?"

The IBA has also been involved in discussions over the EC's policy. The Association's private litigation working group, which comprises roughly 35 lawyers, held meetings with the Commission while it was drafting the green paper, and submitted a detailed response earlier this summer. According to Ingo Brinker, head of the capital markets group at German firm Gleiss Lutz and co-chair of the IBA's working group on EU private litigation, the group decided not to oppose the basic premise of the proposals. Instead, it has examined the class action track records of common law countries such as the US, the UK, Australia, Ireland and Canada and formulated a series of points for the Commission to consider. On the panel this week alongside Brinker will be Jan Eljábbouts, general counsel of Akzo Nobel. Des Williams of South African firm Werksmans, senior vice-chair of the IBA's litigation committee, will lead the session in collaboration with McCurdy. Also joining the panel will be judge Lee R Areshoff of the Southern District of Texas, judge Frédéric Jenny of the Cour de Cassation in Paris, Paul Hitchings of Spanish firm Cuatrecasas and Teft Smith of Kirkland & Ellis in Washington, D.C.

Brinker acknowledges that EC officials would like to push the antitrust reforms as far as possible, but predicts that ultimately they will accept it is impractical from a political point of view to introduce a US-style discovery regime across the EU. Instead, he expects a compromise to be reached, perhaps by adopting an approach closer to the UK model. The EC is currently working its way through the comments it has received and is expected to release a final set of proposals by the end of the year. Whether it finds a compromise solution that please all sides remains to be seen.
Following substantial growth in client activity, predominantly in the private equity sector, Oostvogels Pfister Roemers has appointed Frédéric Feyten as additional Tax Partner. This new appointment puts the firm in an unrivalled position in international taxation and further strengthens its international M&A capabilities. Feyten has specialised in Luxembourg and international taxation for over 14 years and has broad advisory experience of structuring cross border transactions through Luxembourg. After practising tax law in Brussels, New York and Rotterdam, he has headed Nauta Dutilh’s Luxembourg tax practice as Equity Partner. Based in Luxembourg since 1999, Feyten is admitted to both the Luxembourg and Brussels Bars.

Oostvogels Pfister Roemers, which is a completely independent firm, specialises in corporate and tax law, banking and finance as well as contract law. It is particularly focused on structuring investments and LBOs in the field of private equity and venture capital. The firm counts 7 partners for a total of 64 fee earners. Stel Oostvogels has been appointed Managing Partner, and the other Partners are François Pfister, Charles Roemers, Stéphane Hubert, Delphine Tempel, Martine Gisbert and Frédéric Feyten.

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“The regulatory situation means that institutional investors must pursue corporate governance reforms” Darren Check, Schiffin & Barroway

settlement with plaintiffs, arguing that reforms can increase share price and credit ratings. Others say that cash settlement always comes first and that plaintiffs’ lawyers will only discuss reforms once damages have been agreed.

When challenged on the appropriateness of litigation as an instrument of regulation proponents of shareholder litigation argue that there is little shareholder democracy in the US. Lawyers point to a range of imbalances in the power relationship between directors and shareholders. Their list includes the inability of shareholders to nominate their own director candidates or vote against those proposed by the board, poison pill provisions, staggered board elections, and the non-binding nature of shareholder resolutions on the board of directors. Counsel say that the regulatory situation means that institutional investors must pursue corporate governance reforms as part of securities class and derivative actions.

A new trend in shareholder litigation is to require directors to pay part of the agreed settlement. In January 2005, 18 former non-executive directors of Enron agreed to settle a case brought by investors. Ten of those directors agreed to contribute $13 million of their own funds to the $168 million settlement. In addition, ten former non-executive directors of WorldCom agreed to pay $20 million of their own money to settle a $54 million class action case.

The class action process
The trend towards shareholder litigation began in the US in 1995 with the passage of the Private Securities Litigation Reform Act (PSLRA). The act allows action to be brought against companies traded on US stock exchanges, but neither the company nor the investors need to be incorporated in the US. The PSLRA also included a lead plaintiff provision. Under the terms of the lead plaintiff provision the investor with the biggest financial interest leads the litigation on behalf of everyone involved (ending the race to court that had determined lead status in the past).

There are three avenues through which shareholder litigants can take action against their companies. The first is standard securities class action. Here investors sue on behalf of themselves and all other similar investors through the lead plaintiff. The second route is known as a derivative action. In a derivative action shareholders attempt to recover from directors on behalf of the company with the settlement money staying with the company. The final method is the recent trend towards taking direct action. Here a group of investors take action over a particular issue with the aim of securing governance reforms.

The class action process begins when the judge appoints a lead plaintiff and its law firm. The law firm for the lead, or co-lead, plaintiff drafts the grounds for the case. The typical response from the defence is to file a motion to dismiss the case. The judge’s decision on dismissal is pivotal and is often not taken for some time. If the complaint is upheld the process continues with document discovery. Once all discovery is complete the parties engage experts to provide opinion on facts in issue and the measure of damages. The parties then prepare for trial. However, due to the potentially enormous sums and risks for both parties, most securities actions settle before or during discovery. Courts in the US encourage early settlement and parties often find themselves in some sort of negotiation while the motion to dismiss is pending. Courts often direct parties to engage in alternative dispute resolution, and can refer parties to settlement conferences whether or not the parties themselves agree on mediation.

Dispute resolution can take many months as parties choose a mediator, schedule a timetable, consult with damage experts, prepare statements and negotiate the contractual terms of the settlement. After conclusion of the settlement the court must approve the documentation and class members must be served with notice of the agreement and given the option of opting out and objecting to either the terms of the settlement or the attorney’s fees. Settlement is then returned to the court for final approval where the judge will issue a final order setting out the terms of the settlement. A court-approved claims administrator then determines the per person recovery of the class members and distributes the settlement proceeds to the class members.

Settlements soar
The number of shareholder actions filed per year in the US has risen from 110 in 1996 to 217 in 2004. Although fillings dropped in 2005 and the first half of this year, lawyers say this is a reflection of the market recovery. In 2004, 29 non-US companies were subject to shareholder litigation in the US, the highest number of cases ever.

PricewaterhouseCoopers’ 2005 securities litigation study shows that while the number of cases filed was down last year they are down from a record high and average settlement values have risen to $71.1 million (excluding the settlements in the Enron and WorldCom matters). The settlement value represents a 156% increase on the $27.8 million 2004 average.

In June 2006 there was an excess of $15 billion in settlement funds awaiting distribution to claimants. Investors only share if they file timely claims and institutions are not taking up their entitlement. A study published in the Stanford Law Review in December 2005, titled

Backdating stock options
Stock options are financial instruments that give the holder the right, but not the obligation, to buy or sell shares at a set price.

Option backdating refers to the manipulation of the right conferred by an option so that it can be exercised below the securities’ fair market value. Instead of granting the option in reference to the share price on the day the option is created prices are set against a date in the past where the share price is favourably low. Directors and companies that are party to backdating risk action from shareholders on a number of grounds including false disclosure, tax evasion and under-representation of compensation expenses (which equates to over-statement of earnings).

Lawyers argue that shareholder activism is the most effective way of redressing the problem of active deception by fiduciaries. In June this year the Financial Times reported that more than 20 companies were being investigated by the SEC or were the subject of potential criminal investigation, or both.
“Letting billions slip though your fingers”, revealed that, in 2004, securities fraud class action settlements produced $5.45 billion to be distributed to investors. The report discovered that less than 30% of institutional investors with provable losses pursue their claims in these settlements. The report also noted that in 2003-2004 more than $2.4 billion that had been awarded to European investors in US companies (95% of the total) went unclaimed. The authors of the report included in their explanation of the unclaimed amounts social as well as commercial factors. Their findings pointed to distrust among European investors for this form of litigation.

Lawyers are now urging European fund managers to rethink their reticence or face the possibility of becoming the subject of litigation themselves. “The shifting boundaries of fiduciary duties means non-engagement could bring its own costs to institutional investors,” says Check at Schiffin & Barroway.

Lawyers say that non-US investors are unaware of how effective they can be in US shareholder litigation. In fact, argue plaintiff lawyers, there is a risk in not pursuing actions since fiduciary relationships mean institutions have a duty to recover monetary settlements on behalf of investors. The message is that any institution with large holdings of US securities should establish a mechanism for reviewing shareholder litigation that affects them. Institutions ignoring this advice run the risk of becoming subject to litigation themselves as they miss out on millions of dollars of unclaimed settlement proceeds.

**Poison pills**

The term poison pill refers not to a specific provision but to any strategy or agreement that attempts to avoid an outcome by increasing the cost of that outcome. Examples include mechanisms that make corporate takeovers more expensive to the prospective buyer. There are several types of poison pill that a company can use including a shareholder rights plan.

In a rights plan a company issues a special class of security to existing investors allowing them to buy more shares. The entitlement is triggered by a buyer acquiring a large amount of company shares. The effect of the rights plan is therefore to make any takeover more expensive. A rights plan is just one example of a poison pill. The term applies to other provisions that involve the target taking some action that harms both the other party and itself (poison pill is a reference to the cyanide capsules carried by spies to prevent their interrogation). Other types of poison pill include granting existing shareholders put options, allowing them to sell to a bidder for an inflated price, and a voting plan, which dilutes a buyer's controlling power by giving a specified investor voting rights that exceed their ordinary entitlement.

The poison pill was developed by M&A lawyer Martin Lipton of Wachtell Lipton Rosen & Katz, as a response to hostile takeover offers. The provisions quickly became popular and their legal status was confirmed in 1985 by the Delaware Supreme Court in Morán v Household International.

A more recent application of the poison pill has seen the clauses appearing in employee contracts, making the hiring of vital personnel prohibitively expensive for rivals. Defendants of the technique argue that corporations are representative democracies where control rests firmly with the board of directors and that shareholders who dislike the provisions can vote out responsible directors. Others say the provisions represent a fetter on the transferability of ownership and question whether they are in the best interests of shareholders.

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## TODAY’S SCHEDULE

### 09:30 – 17:00

<table>
<thead>
<tr>
<th>Time</th>
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</thead>
<tbody>
<tr>
<td>09:30 – 17:00</td>
<td>The globetrotting employee – legal and practical challenges for multi-national companies</td>
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<td>Product recall</td>
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<td>Hedge funds</td>
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<td>LNG from A to Z</td>
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<td>Procedures for the prosecution of traffickers in humans for sexual and labour exploitation</td>
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<td>09:30 – 12:30</td>
<td><em>Judicial reform: economic development and the rule of law</em></td>
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<td>Merger remedies: an examination of the type, scope and effectiveness of remedies in merger cases</td>
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<td>Mock company acquisition</td>
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<td>How can the legal profession improve international private equity?</td>
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<td>The state of dispute resolution in today’s world</td>
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<td>Banking and the environment: lender liability matters</td>
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<td>Natural catastrophes – part I</td>
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<td>Small is beautiful – maybe?</td>
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<td>Impact of the 2005 amendments to US Bankruptcy Code – one year on</td>
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<td>Up to speed</td>
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<td>Investing in the arts – institutional investors, museums and private collectors in the art market</td>
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<td>A review of franchise disclosure laws: part I</td>
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<td>Multi-jurisdictional proceedings arising out of a ship collision in the open sea and non-territorial waters</td>
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<td>The practice of tax law as a ‘regulated industry’: revisiting Sarbanes-Oxley and its progeny</td>
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<td>The interplay of civil and criminal liability for sporting injuries</td>
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<td>Doing business in Africa – Africa in search of meaningful global economic partnership</td>
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<td>Real Estate in Latin America</td>
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<td>12:30 – 14:00</td>
<td>Asia Pacific Forum Lunch</td>
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<td>North American Forum Lunch</td>
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<td>Senior Lawyers’ Lunch</td>
<td>Chicago Yacht Club, 400 East Monroe Street</td>
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<td>Women Lawyers’ Lunch</td>
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<td>14:00 – 17:00</td>
<td>The law and economics of tying: does (and should) the Chicago School rule?</td>
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<td>Chemicals regulation and the EU REACH</td>
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<td>Enforceability of pre-arbitral procedures in international construction contracts</td>
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<td>Mediation in the court process</td>
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<td>Anti-money laundering legislation: the impact of the Third EU Money Laundering Directive and other international initiatives</td>
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<td>International securities offerings: the roles of various gatekeepers and recent developments and trends</td>
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<td>Nationality of airlines – the Chicago Convention Regime</td>
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<td>PPP privatization and healthcare – will it cure the sick?</td>
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<td>Privilege and discovery in multi-jurisdictional litigation</td>
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<td>Free speech: Article 10 v the First Amendment</td>
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<td>Money, sex and power</td>
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<td>Europe and the United States – common legal culture?</td>
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<td>The Chicago Seven reloaded</td>
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<td>Abandonment of democratic issues to the court</td>
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<td>Taking the corruption out of giving</td>
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<td>Privilege – doctors, lawyers, journalists and priests</td>
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<td>The mega-law firm and globalised legal practice – is Africa ready?</td>
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<td>Women lawyers marketing to women clients</td>
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<td>Cultural Issues Programme – The Power of Jazz</td>
<td>American Bar Association, 321 North Street</td>
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<td>You can run, but you cannot hide forever: reporting requirements and voluntary disclosure</td>
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<td>17:15</td>
<td>Newcomer’s reception</td>
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### 18:15 – 19:15

- Newcomer’s reception
  - McCormick Place Convention Center

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**UNLOCKING THE VALUE OF INTELLECTUAL PROPERTY RIGHTS**

**Wednesday, September 20, 2006 at 9:30 a.m.-12:30 p.m., CT**

Kirkland & Ellis LLP invites you to a joint session of Committees L & R on Unlocking The Value Of Intellectual Property Rights. This should be of broad interest not only to intellectual property and technology lawyers but also to those interested by cutting edge corporate finance techniques using intellectual property and to those interested by how the very high values attributed to intangible rights today are being realized in a business setting and more controversially in litigation. The large panel faculty includes industry leaders as well as IBA members with experience in the field. Organizations represented include:
Speakers at a session during Saturday’s Symposium shared views on the most effective ways to fight corruption.

In a session led by Linda Hayman of Skadden Arps Slate Meagher & Flom, chair of the Section of Business Law at the American Bar Association (ABA), speakers also talked of the disproportionately negative effects that corrupt practices have on developing countries.

Panellist Homer Moyer, partner at Miller & Chevalier in Washington, DC said that earlier sessions, in which corruption was a hot topic, showed a willingness among lawyers to discuss the issue. Just five years ago the subject was essentially taboo, he said.

Moyer pointed to recent cases in which heads of state, customs officials, political candidates, diplomats and family members of public figures have been caught engaging in corrupt practices. Ways to combat corruption include judicial reform, he said, a topic that was further addressed by panellist Judge John Walker, who serves as chief judge of the United States Court of Appeals for the Second Circuit.

“The judiciary has a limited but important role in fairly administering the law and maintaining the trust of the people,” said Judge Walker, who noted that judges often feel pressure from executive branches, senior judges, prominent citizens and even family and friends to decide cases unfairly.

In one example provided during the question and answer portion, a delegate offered his experience as an attorney in Latin America. In his experience a firm or attorney willing “to make the judges dance” through bribes often wins clients over lawyers who are unwilling to jeopardize their reputations, he said.

According to Judge Walker, such problems cannot be cured by the judiciary alone, but require the creation of an overall “culture of integrity”, which includes “a vigorous press, a culture of zero tolerance and committed political leadership”, “that public trust is lost, the loss is great indeed,” remarked Walker.

Director of the Office of Democracy and Governance of the US Agency for International Development (USAID), Gerald Hyman, attempted to offer concrete solutions to the problem, identifying four main areas of focus for dealing with corruption across the public and private sectors. Through a marked emphasis on enforcement, prevention, institutional reform and the creation of a culture and value system conducive to integrity, Hyman argued that corruption might be curbed.
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