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With the innovation of "real-time CLE"—continuing legal education certificates available the same day—UB Law's 28th annual Convocation took on the issues of cross-border trade and the plight of the City of Buffalo. The Nov. 15 event, titled "BUFFALO: CITY ON THE EDGE," addressed legal and ethical issues facing business in the Niagara Frontier, as well as the state control board that currently oversees Buffalo's finances.

Sponsored by the UB Law Alumni Association and the Law School, the program was followed by a luncheon at which SUNY Distinguished Teaching Professor Kenneth A. Joyce was presented the school's highest honor, the Edwin F. Jaeckle Award.

Adjunct Associate Professor Amy Deen Westbrook began the first segment with a discussion of issues involved in doing business across international borders, with particular focus on the North American Free Trade Agreement, the world's largest free-trade pact.

She noted that in the 10 years since NAFTA was implemented, cross-border investment has continued to grow. Annual U.S. investment in Canada is $140 billion, and Canadian investment in the United States is $90 billion.

Westbrook also described the treaty's mechanism for resolving disputes among trading partners, citing as one example complaints by U.S. companies against Canada as the result of Canadian environmental regulations. "Companies can take the government to arbitration, alleging the environmental regulations were discriminatory and expropriated the U.S. company's investment," she said.

Such requests for arbitration, she said, mean "NAFTA countries are pretty cautious right now about putting in place a regulation, even an environmental one, that is going to affect foreign investors."

Discussing employment and human resources issues for cross-border hiring was Rosanna Berardi '97, an immigration lawyer at Hodgson Russ, LLP.

"In this specific climate, it is not a good time to mess around," Berardi said. "It is really critical and important for attorneys and employers to make sure any foreign national who is coming to the U.S., whether it is one time only for a business meeting or to come here permanently, is properly documented. The government is under tremendous pressure to enforce the immigration laws."

Berardi detailed the mechanisms by which Canadian citizens are approved for working in the United States. For example, "intercompany transferees" are employees of a Canadian business seeking to expand into the States. "You need to show that your businesses are
affiliated, that you have rented sufficient office space and that you are a manager," she listed.

As for the fabled "green card" — which, Berardi said, now is actually a tint of pink — the easiest way to get one is to marry a U.S. citizen. Or, she said, "it requires an employer to sponsor you, and in many cases to prove that there are no U.S. citizens who can do your job, which is incredibly difficult in this economic climate." There is also a "green card lottery"; and finally, a foreign national can get a green card by investing at least $1 million in the United States and promising to create at least 10 jobs.

Attorney Rodney O. Personius '76 next discussed criminal statutes governing cross-border business activities. "This is a growing area of attention by the government," he said. "There is an aura of suspicion that attaches to anything that happens at the border."

After 9/11, he said, "the use of old statutes has been increased, and new statutes have been created." For example, under the International Emergency Economic Powers Act the president has the authority to control exports to and imports from a designated country as well as financial transactions with that country. Additionally, "transhipment rules" restrict certain exports so that manufacturers cannot "get around a prohibition of an export to Iran, for example, by sending the product through Canada first."

Personius reminded the audience of U.S. laws related to money laundering. It is not illegal to bring more than $10,000 in currency into or out of the United States, he said, "but it is illegal to fail to report it, it is illegal to structure a transaction to get around it, it is also illegal to try to conceal the fact that you are transporting more than $10,000 in currency."

In conclusion, he listed countries of concern for future dealings: "If you have a client that hints to you that he or she is dealing with these countries, it raises a red flag," he said: Afghanistan, Belarus, Burma, China, Cuba, Congo, Haiti, Iran, Iraq, Liberia, Libya, North Korea, Rwanda, Somalia, Sudan, Syria and Vietnam.

Concluding the part of the program dealing with cross-border issues, Joyce Cavanagh-Wood, immigration program manager for Citizenship and Immigration Canada's Regional Programme Centre (RPC) in Buffalo, discussed issues related to sending employees to Canada. She said her office processes about 20,000 such cases annually for permanent residents and 16,000 for temporary admission.

Every year, she said, there are about 90 million crossings at the Canada-U.S. border, and every traveler is subject to examination. "The border represents a unique opportunity on both sides to confirm the identity and intentions of travelers and to determine whether there are elements in a person's past that might have a bearing on public safety and security," she said.

Tourists and visitors can enter Canada with a minimum of formality and documentation, she said. But "those with criminal records are being asked questions they were never before asked. When the discovery is made that they are inadmissible for a crime committed long ago and which they consider minor, they tend to be surprised, vexed and sometimes belligerent. Under Canadian immigration legislation, foreigners who have been convicted of a criminal offense at home or abroad, or who have committed a criminal act outside Canada, may be denied entry." That includes impaired driving, which, she said, in Canada is "considered a serious criminal offense."

People who are denied entry into Canada, she said, can apply for a tem-
The second part of the Convocation program dealt with the Buffalo Fiscal Stability Authority and the city's economic future.

James L Magavern '59, a partner in Magavern, Magavern and Grimm, LLP, discussing the nature and origins of Buffalo's fiscal crisis, argued that “the nature of the problem has been misrepresented by the assumptions of the legislation creating the board and the predominant public rhetoric.”

Those assumptions, he said, include “a weakened economy, population decline and job losses compounded by a nationwide recession.” Those factors are inarguable. But he took issue with the idea that structural imbalance in the city's finances, and the city's increasing reliance on annual increases in state aid, are significant causes of its problems.

“This formulation of the problem deflects attention from the real sources of the problem and the place we should be looking to to achieve real remedies, and that is state law and state policy,” he said. “It deflects attention from the need to look at what state government is doing and not doing right.”

In 1972, he said, the city (excluding its school district) had a population of 440,000 people and 6,665 employees. Today, with a population of 293,000, it has fewer than 3,000 employees. “So the argument that the municipal government has not shrunk along with the population is simply not true.”

Magavern pointed to the state's imposition of Medicaid costs on local municipalities; what he called the “relatively low level of state assistance to education” except in Buffalo; growing pension and fringe benefit costs that are largely determined by state law; and “collective bargaining rules the state has imposed which make it very difficult for the localities to bargain effectively with their unions.”

And he argued that increases in state aid to Buffalo have been in line with those granted to other New York cities. “This has been a progressive change and a proper one,” he said. “The property tax cannot support the cost of government anymore.”

Richard M. Tobe '74, a member of the fiscal control board, noted the severe hit the city's tax base has taken: “Buffalo's tax base, particularly its industrially driven tax base, has almost disappeared. The manufacturing sector, which pays far more in taxes than it uses in services, has been particularly hard-hit.”

In 1998-99, he said, the combined value of all property in the city—residential, commercial and industrial—was $8.12 billion. In 2002-03 it had fallen to $5.28 billion, “a decline of just epic proportions.” Also, he noted, more than two-thirds of the city's residential properties pay less than $1,000 a year in taxes.

To be, who worked in Albany for 13 years as chief aide to the late Assemblyman Bill Hoyt, said that on the state level, “One of the things that has happened is that the reserves of good will that used to exist for Buffalo have been consumed. It used to be pretty easy to get a little more aid for Buffalo. It just ended, in a way that seems so harsh. The rhetoric from Albany and even here in our business community has turned from sympathetic to cold and callous.

“There has been an accumulation of peeves that has grown to a very great level. It is compounded by this public perception locally that Buffalo has done nothing to help itself. It just is not true.”

Michael B. Risman '79, City of Buffalo corporation counsel, noted the difficulties of the much-touted push toward streamlining services through consolidation between governments.

“You have many, many layers of government: highways, superintendents, villages, towns, school districts, sewer districts,” he said. “There are seven school districts in Cheektowaga; there are five in various parts of Amherst.” All of these entities, he said, have their own bodies of law to be worked through.

As for privatization — turning over some municipal functions to private companies — Risman called it “a very difficult thing. I think some in the community think we should sell off the garbage collection duties,” he said. “If we didn’t have a Taylor Law (governing municipal employees) and didn’t have the Public Employment Relations Board, that would not be a problem.”

He also cited the Triborough law, which says that when a union contract expires, all the benefits stay the same until a new contract is in place. “It means that you do not have the leverage; in fact, the unions have the leverage,” he said. “The police and fire departments have no interest in negotiating with us because they know they can get a better deal through arbitration.”

Risman concluded: “I am extremely concerned about the future of the city. With the wage freeze, I think you are going to see a lot of good career employees of the city leave because they cannot live with no wage increases for
A standing-room-only crowd came to hear experts discuss the Buffalo control board.

four years. We are seeing a lot of people leave city government because of the uncertainty of our financial situation."

The final speaker, Jaeckle, Fleischmann partner Sean P. Beiter ’91, has represented the city in arbitration under the Taylor Law and was part of the negotiations that produced the groundbreaking current city police contract.

"Taking over the representation of public employers is kind of akin to being given command of the Titanic after it hit the iceberg," he said. "There is a lot of significant damage that has already been done, but you can screw things up very dramatically quickly. There are a lot of critical issues that need to be addressed, and no matter what you do it looks like there might not be enough lifeboats to save everybody."

He echoed Risman's concerns about the Triborough law and how it hamstrings union negotiations: "The employer cannot impose a contract that takes away benefits. There are actually unions across the state that are looking at health insurance and saying the increases in health insurance are outpacing the raises that unions are getting. We are better off taking a zero increase in pay and keeping our health insurance."

A bout the police contract, Beiter noted that some critics wondered why the city needed to bargain for the right to downsize the force.

"The union has a right to request impact negotiations over such reductions," he said. "They can argue that layoffs increase the hazards to officers on the street, so they can go back to interest arbitration and ask for more money. In Jamesstown, an interest arbitrator agreed with the union and gave them another raise on top of their current contract."

Similarly, Buffalo has announced it will close some fire companies, and it has received a request to enter interest arbitrations on the hazard issue.