



# ACADEMIC AID

## Top law schools, professors help foundation gain respectability

By Mark Tapscott  
For The Examiner

Professors from 28 top law schools have participated since 1996 in programs hosted by the Institute for Law and Economic Policy, the tax-exempt foundation managed by attorneys from indicted securities class-action law firm Milberg Weiss and its former star litigator, William Lerach, an investigation by *The Examiner* found.

Also among ILEP conference participants have been 14 federal judges — five from the Southern District of New York bench that hears the most securities class-action cases — and three judges from Delaware's Chancery Court whose decisions are closely watched in the corporate world.

Top officials of the U.S. Securities and Exchange Commission, Federal Trade Commission and Justice Department have also participated in ILEP events.

Duke University Law School professor James Cox told *The Examiner* he "was around at the founding" of ILEP, attended its first annual conference in Tuscon, Ariz., and has participated every year since 1996.

He said ILEP was formed because "class-action lawyers needed

*ILEP was formed because "class action lawyers needed a voice" after Congress passed the Public Securities Law Reform Act of 1995 (PSLRA) that was explicitly aimed at Lerach and Milberg Weiss. The firm was frequently filing new suits only hours after a company's share price dipped.*



SEC Chairman Christopher Cox, then a California congressman, was the main proponent of the Public Securities Law Reform Act (PSLRA) in 1995. - AP

a voice" after Congress passed the Public Securities Law Reform Act of 1995 (PSLRA) that was explicitly aimed at Lerach and Milberg Weiss. The firm was frequently filing new suits only hours after a company's share price dipped.

Milberg Weiss specializes in representing class-action plaintiffs in suits against large companies, usually alleging management corruption. Companies often settle out of court to avoid lengthy and costly litigation as defendants. Plaintiffs firms make millions of dollars in legal fees if a case is settled or litigated to a successful verdict.

President Bill Clinton reportedly decided to veto PSLRA as a result of a conversation with Lerach during the latter's overnight stay at the White House. Congress then overrode the veto, ILEP was organized, and its first conference's title was Class Actions at the Crossroads.

Publicly available tax records show that ILEP was founded by former Milberg Weiss lawyer Sandra



President Bill Clinton vetoed the PSLRA after hearing an appeal from William Lerach. Shortly thereafter, Congress overrode the veto. - AP

Stein, the institute's longtime executive vice president. Her daughter, Laura Stein, also a former Milberg Weiss attorney, is special counsel to ILEP.

Both Steins joined Lerach's newly formed firm after he left Milberg Weiss in 2004. Lerach was ILEP's director from 2001 until at least 2005, according to the group's IRS Form 990 tax returns. Sandra Stein refused to be interviewed for this article, while Lerach and Laura Stein did not respond to repeated interview requests.

Programs at ILEP conferences have remained similar throughout its existence. Except for last year when a second program was held, the group hosts a one- or sometimes two-day event each year, always at



After PSLRA, professor James Cox said he and others suggested forming ILEP as an academic advocate for class action plaintiffs lawyers. - Courtesy

an exclusive resort and ending on Friday.

The program includes up to four panels with academic experts presenting papers advocating positions favoring aggressive actions by class-action lawyers, followed by a panel of commentators consisting of other academics, judges, regulatory officials or lawyers.

The benefits for law professors from ILEP conferences, according to Cox, include being asked to present or comment on papers discussed on panels and being able to network with influential government officials, judges, law firms involved in landmark cases and other academic authorities in the plaintiffs advocacy community.

"The people I have met there have provided valuable input or opened doors for my research," Cox said.

Because traveling and lodging expenses are covered, either by ILEP or the professor's school, staying at a posh resort is also an attraction, he said. "You go there, and it's a re-



### ABOUT THE SERIES

In the continuation of the "Lawyers Gone Wild" series, **The Examiner** shines a light on a revealing back story from the saga of the Milberg Weiss securities class-action lawsuit kick-back scheme.

**WED.:** Reaching for gavels  
**THURS.:** Conflicted appearance  
**TODAY:** Academic aid

ally nice five-star hotel," he said, citing the Ritz-Carlton in Naples, Fla. as an example.

Cox said he was unaware of the Steins' link to Milberg Weiss and he "never paid attention to Lerach as director." He also confirmed news reports that Lerach's former firm paid costs associated with a Supreme Court brief he researched last year with two other professors.

Mark Tapscott is the editorial page editor of *The Washington Examiner*.



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### PLAINTIFF PROFESSORS

Law professors from across America gathered at the Institute for Law and Economic Policy annual conferences since 1997 to defend ...

### COUPONS FOR PLAINTIFFS ...

“Coupon settlements provide a potentially efficient means for marketing goods and services to consumers that conserves on costs such as inventory, advertising and distribution ...” - Professor Geoffrey P. Miller, New York University School of Law

### CONTINGENCY FEES FOR LAWYERS ...

“Most contingency fee practitioners realize that a significant portion of their cases lose money.” - Professor Herbert Kritzer, University of Wisconsin

### PRIVATE LAWYERS ENFORCING LAW ...

“This paper demonstrates there is an important relationship between private and public enforcement of the federal securities laws.” - Professor James Cox, Duke, and Prof. Randall Thomas, Vanderbilt

### JUDGES IGNORING LAW ...

“... [C]ourts generally should follow the lead of the few judges that have been willing, in the right circumstances, to excuse the 'professional plaintiff' restrictions of the PSLRA.” - Professor James Cox, Duke, and Prof. Randall Thomas, Vanderbilt



# Are politics behind prosecution of

## JUST THE FACTS

- » Federal prosecutors indicted Milberg Weiss, a New York-based plaintiffs law firm, and four of its named partners in 2006 on multiples charges in connection with what the government described as a criminal racketeering enterprise.
- » The firm specializes in bringing class-action lawsuits on behalf of plaintiffs alleging wrongdoing, usually against large corporations and one or more of their executives.
- » Prosecutors charge that since 1979, Milberg Weiss has paid more than \$11 million in kickbacks to individuals who agreed to act as lead plaintiffs in at least 150 cases that netted the firm more than \$200 million in legal fees. Many defendants in the cases were Fortune 500 companies that paid huge settlements to avoid more costly court battles.
- » The government's investigation of Milberg Weiss was first reported in January 2002. Milberg Weiss' indictment was the first ever of a law firm under federal anti-racketeering laws that were designed to prosecute organized crime syndicates.
- » Three of the firm's four partners named in the indictment, David Bershad, Steven Schulman and William Lerach, have entered guilty pleas to various felonies related to the kickback scheme. The firm and its fourth named partner, Mel Weiss, have pleaded not guilty and are scheduled for trials later this year.

Some critics of the Justice Department's prosecution of the New York-based Milberg Weiss law firm and its former star litigator, William Lerach, claim the government's actions are a politically motivated reprisal against aggressive securities class-action lawsuits.

One such critic is Duke University law professor James Cox, who has been associated with planning and producing the annual conferences of the Institute for Law and Economic Policy (ILEP) since its founding in 1996.

Cox doubts the Justice Department would have acted except for Lerach's flamboyance. "He had a reputation of being very arrogant and outspoken about what was happening for most of the 1990s," Cox told *The Examiner*.

The Duke law professor speculated that because "Milberg Weiss is the premier class-action law firm in the nation, that added some heat, some eagerness to go after them. Milberg Weiss was a victim of its own success."

He also noted that both Lerach and Mel Weiss, one of the firm's founders, "were contributors to Democrats."

But the government's charges against Milberg Weiss are serious, Cox acknowledged. "This wasn't something somebody stumbled onto, but if it was some obscure New Jersey law firm, none of us would pay attention."

Sherman Joyce, president of the American Tort Reform Association, which is critical of plaintiffs firms like Milberg Weiss, rejected the assertion of political reasons behind the government's indictment.

"The notion that the Justice Department under this administration has gone after only Democrats is absurd," Joyce said. "These are career prosecutors bringing these cases. If Lerach wasn't guilty, I am puzzled why he would plead guilty."

Jim Copeland of the Manhattan Institute, a conservative think tank, said

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of the American Tort Reform Association

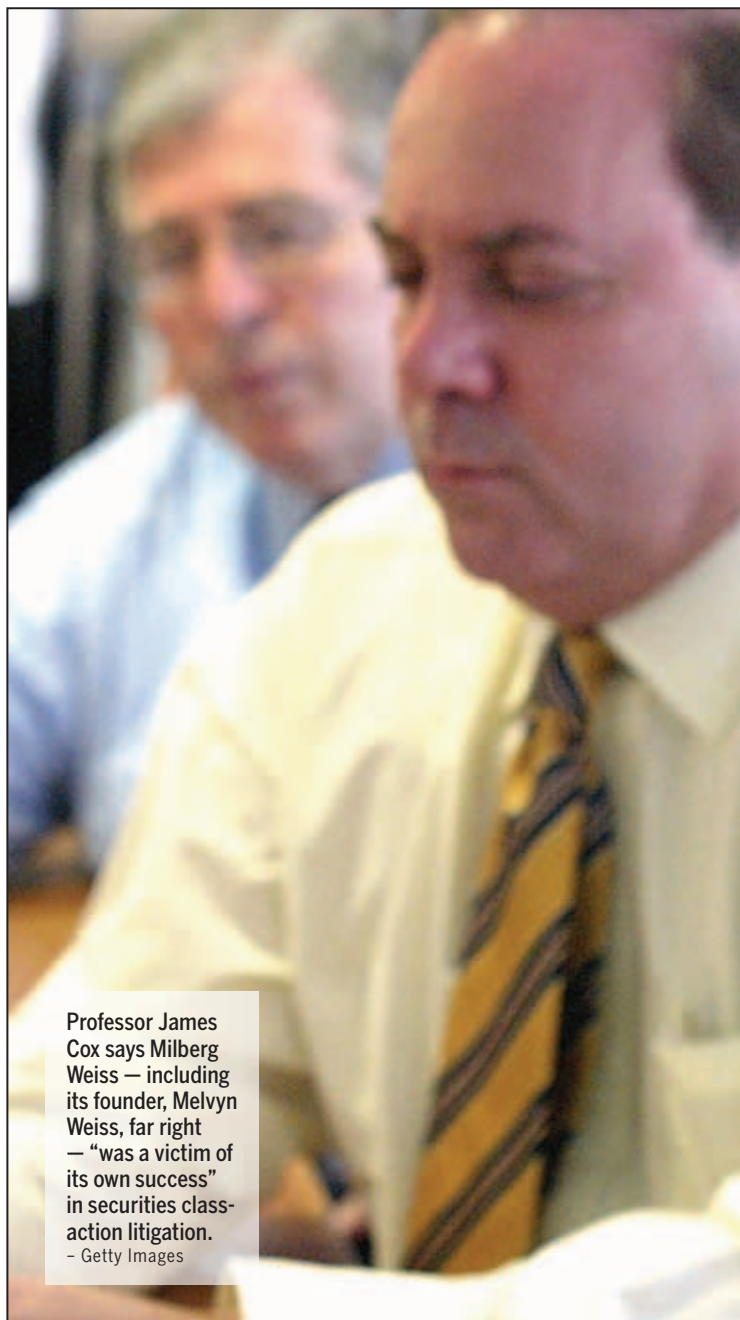
the Milberg Weiss case is not an isolated one:

"As the leaders of the litigation industry continue to be indicted — including tobacco kingpin Dickie Scruggs of Mississippi as well as the name partners in what was the world's largest securities class-action firm — the trial bar's apologists and collaborators in the academy predictably scream 'politics.' But politics would hardly seem to be behind stuffing cash in safes and envelopes to pay off plaintiffs or judges."

Milberg Weiss lawyers are regular political contributors, according to FEC data. Since 1979, they have contributed almost \$6 million, more than 90 percent of which went to Democrats.

Recipients include many Democratic presidential and congressional candidates, Democratic campaign committees, and projects such as the Democratic National Committee's building fund. Sen. Arlen Specter of Pennsylvania is the leading GOP recipient of Milberg Weiss contributions.

Sandra Stein, ILEP's founding president and longtime executive vice president, was formerly a Specter staff member and received the National Republican Women's Federation "Best of America" award, according to her firm's Web site. – Mark Tapscott



Professor James Cox says Milberg Weiss — including its founder, Melvyn Weiss, far right — "was a victim of its own success" in securities class-action litigation. – Getty Images

## TROUBLING TIMELINE OF ILEP

When Congress passed legislation to stem the flood of securities class-action lawsuits being filed by high-profile plaintiffs lawyers like those at the Milberg Weiss firm, the attorneys responded in an uncharacteristically low-profile fashion. They recruited federal securities officials and law school professors for a tax-exempt foundation to lend credibility to their cause and influence the legal system. Thus was born the Institute for Law and Economic Policy. But federal prosecutors say something else was going on at the same time, a criminal racketeering enterprise involving Milberg Weiss lawyers.

■ Period of criminal activity

1979	1993	1995	1996	1997	1998	1999
Justice Department indictment of Milberg Weiss and William Lerach in 2005 says criminal racketeering kickback scheme started here.	Lerach's flood of class-action suits — one every week for three years - against Silicon Valley and Fortune 500 firms makes him the nation's most famous and feared plaintiffs lawyer.		Congress passes the Public Securities Law Reform Act to put the brakes on out-of-control class-action lawsuits, singles out Milberg Weiss and Lerach in bill report as worst abusers.	Tax-exempt Institute for Law and Economic Policy (ILEP) formed to defend class-action litigation, Sandra Stein of Milberg Weiss is executive vice president.	Chief judge for Northern District of Texas refuses to appoint Milberg Weiss in Cellstar case.	Lerach and Milberg Weiss ordered to pay \$45 million in damages after losing case charging them with abusing the legal process.

### First annual ILEP conference

Tucson, Ariz.  
Judge Paul Niemeyer of 4th District Appeals Court and ILEP founder Harvey Goldschmid of SEC among participants. Goldschmid attends every ILEP annual conference.

### Second annual ILEP conference

Naples, Fla.  
Federal judges, including Southern District of New York's Michael Mukasey, and numerous senior SEC, FTC officials participate.

### Third annual ILEP conference

Tucson, Ariz.

### Fourth annual ILEP conference

Palm Beach, Fla.  
Participants include Judge Alvin Hellerstein of SDNY and Susan Illston of Southern District of California.



**WEB EXTRA:** Take an interactive tour of this timeline online ... [examiner.com/lawyers/ILEP](http://examiner.com/lawyers/ILEP)

# Milberg Weiss?



## No honorariums, but professors get other perks

Professors doing research and presenting papers at the annual conferences of the Institute for Law and Economic Policy aren't paid, but there are definitely financial benefits for individuals and institutions participating in the group's meetings.

Duke University law professor James Cox has helped plan and participated in virtually every ILEP event since its founding and has presented numerous papers at the group's meetings.

Cox said he has never been paid for his papers but he acknowledged in an interview that he has received multiple benefits as a result of his work with ILEP, including stays at resorts and networking opportunities.

"If you are writing a paper, why

not spend a couple of days at the Ritz and we can assure you we will get really good commentators," Cox said. "The other thing is the imputed income from other people you know or would like to know being there, so it provides lots of networking options."

Cox said ILEP also provides academic credit for attending its conferences.

An examination of papers presented at ILEP conferences since 1997, however, revealed references to ILEP's financial support. Cox, for example, wrote in a paper presented in 1997 that "none of this would have been possible without the financial support of" ILEP.

The unnamed "special editor" and other editors of a collection of papers presented at the 1997

*Professor James Cox said ILEP provides stays at resorts and networking opportunities.*

conference also thanked ILEP "for their generous support of the preparation of the papers in this symposium."

Professor Frank Partnoy of the University of San Diego also thanked ILEP for "their generous support" in his paper for the 2001 conference, and the Columbia Law Review, which published a collection of papers presented at ILEP's 2006 conference, noted that the group "provided the driving vision and resources for this issue."

- Mark Tapscott

## Vanderbilt tight-lipped about foundation's conference

Vanderbilt University School of Law co-sponsored the Institute for Law and Economic Policy's 2007 annual conference at the Los Cabos Resort in Mexico, but in response to *The Examiner's* questions, officials at the Tennessee institution declined to provide specific information about its participation.

*The Examiner* asked a spokesman for the school how the sponsorship came about, how many Vanderbilt administrators, professors or students participated in the Los Cabos conference, how were their travel, lodging and meal expenses paid for, what benefits did the school receive from the sponsorship and whether the school would sponsor another ILEP event in the future.

In response, Vanderbilt's John Goldberg, associate dean for research and a professor of law, provided the following statement:

"It is quite common for Vanderbilt Law School, like other law schools, to

co-sponsor conferences with other entities, public and private. Decisions to co-sponsor conferences are made by law faculty and administrators based on faculty members' research interests, and with the general aim of creating events that will, among other things, enable Vanderbilt faculty to contribute to serious debates about important questions of law and policy, further faculty research and apprise new audiences of that research, and promote scholarly collaboration with persons outside Vanderbilt.

"The conference about which you have inquired is one of dozens of scholarly events on a vast array of subjects — some sponsored or co-sponsored by Vanderbilt Law School, some not — in which Vanderbilt law faculty participated last year. My understanding is that, in this instance, Vanderbilt's participation consisted of a commitment by the Vanderbilt Law Review, secured

with the cooperation of its editors, to publish some of the papers presented at the conference. This commitment in turn permitted the Law Review to publish the works of a number of top-flight legal scholars."

Another Vanderbilt law professor, Randall Thomas, was a Los Cabos program participant, but he did not respond to a request for comment. Thomas also participated in ILEP's annual conferences in 2006, 2005 and 2004.

Other law schools represented by professors participating in ILEP conferences have come from Columbia University, Georgetown, UCLA, Duke, Washington & Lee, Boston College, Northwestern, Cornell, Harvard, New York University, University of Pennsylvania, University of Texas, University of North Carolina, University of Michigan and Stanford.

- Mark Tapscott

### Fifth annual ILEP conference

Naples, Fla.  
Judges James Rosenbaum of the Minnesota District and Sidney Stein of SDNY among participants.

### Sixth annual ILEP conference

Scottsdale, Ariz.  
Judge Rosenbaum returns, joined by Stanley Sporkin of SDNY. Lerach becomes ILEP's director.

### Seventh annual ILEP conference

Hollywood, Calif.  
With Judge Hellenstein of SDNY returning, joined by Judges Harry Edwards of the D.C. Appeals Court and Patrick Higginbotham of the Fifth Circuit Appeals Court.

### Eighth annual ILEP conference

San Diego  
With Judge Mary Schroeder of 9th Circuit Appeals Court and Judge Leo Strine of Delaware Chancery Court attend.

### Ninth annual ILEP conference

Miami  
Judge Rosenbaum returns, joined by Judge William Young of the Massachusetts District and Judge Shira Scheindlin of SDNY.

### Tenth annual ILEP conference

Las Vegas  
Senate Minority Leader Harry Reid attends, along with Judge Gerard Lynch of SDNY. Also attending are Steven Cutler and Paul Royce of SEC.

### Eleventh annual ILEP conference

Paradise Island, Bahamas  
SEC's Arthur Levitt leads tribute to Goldschmid, Judge Stein of SDNY and Judge Jack Jacobs of Delaware Supreme Court attend.

### Twelfth annual ILEP conference

Los Cabos, Mexico  
With Judges Scheindlin, Sporkin (now retired) and Jacobs attending. ILEP holds special meeting at Duke Law School.

**2000      2001      2002      2003      2004      2005      2006      2007      2008**

Legal community abuzz with talk of federal investigation of Milberg Weiss.

Federal grand jury investigation of Milberg Weiss for kickbacks to favored plaintiffs reported in January by The New York Times, The Wall Street Journal, USA Today, The Los Angeles Times and San Francisco Chronicle.

Lerach feuds with Milberg Weiss's Mel Weiss, forms new San Diego-based Lerach Coughlin.

First indictments issued of Milberg Weiss-linked recipients of kickbacks.

Milberg Weiss indicted as a firm, partners David Bershada and Steven Schulman also indicted. Lerach, Weiss said to be the indicted "Partner A" and "Partner B."

Lerach, Weiss confirmed as unnamed partners, Lerach, Bershada and Schulman plead guilty. Weiss and the firm claim innocence.

Lerach sentenced to two years in federal prison, two years probation and a \$250,000 fine.