

# DUKE LAW MAGAZINE

Fall 2005 | Volume 23 Number 2

## 在中国 法学院 杜克大学



DUKE  
LAW  
IN  
CHINA

Also:  
A DISTINCTIVE APPROACH TO SUPREME COURT CASES  
DUKE LAW'S INNOCENCE PROJECT



To the Duke Law School community,

This issue features a report on an ambitious June 2005 trip to China by a number of Duke law faculty, staff, and alumni and their families. The trip to Beijing, Xian, and Shanghai exceeded our expectations in terms of the development and continuation of relationships with Chinese alumni, universities, and law firms, and it gave the Board of Visitors some helpful perspectives as the Board considers future initiatives in Asia. A reunion of Duke graduates living in Asia celebrated the 20th anniversary of the first Chinese graduate from Duke Law School. A well-received academic conference at Tsinghua University furthered collaborations between the Duke Law business and intellectual property faculty and their Tsinghua counterparts. Receptions at White & Case in Beijing and Jun He Law Office in Shanghai gave Duke alumni the opportunity to network with their Chinese counterparts, and a presentation by the Duke University Management Asset Corporation in Shanghai helped the group to better understand the current foreign investment challenges in China. While touring many of China's historic and cultural treasures, and visiting Chinese courts, we also observed first-hand many of the legal, social, and environmental challenges now facing China, as well as the important role many Duke Law School graduates are playing in addressing those challenges. The pace was brutal, but we developed strong bonds, and have a much better sense of goals and strategies with respect to China. I appreciate the work of our many Chinese alumni who helped us to make this trip a great success.

Back at home in Durham, by the time this *Magazine* is distributed, we hope to be moving into our new addition. This is a long-awaited event, made necessary by

the explosion in growth of new faculty, clinics, journals, and interdisciplinary centers. This is not the end of our building initiatives, however. We still have a significant need for more high-quality public space, which we expect to address with renovations and redesign of the interior courtyard area. In addition, there are needs in the library for HVAC replacement and space renovation. Still, the additional 30,000 square feet for clinic, journal, and faculty offices and conference rooms goes a long way toward improving our facilities. Thank you to all who have helped to make this addition possible, and we hope that those of you who have not yet supported our ambitious building plans will soon be able to do so.

As the fall 2005 semester begins and we welcome our extraordinarily qualified new class, we face important transitions in several staff leadership positions. Dennis Shields, associate dean for admissions and financial aid since 1998, has left Duke to become the dean at Phoenix International Law School. This is an exciting opportunity for Dennis but, of course, a significant loss for Duke. Under Dean Shields' leadership the admissions profile of the student body improved on all quality measures, including diversity. Liz Gustafson '86, former dean of admissions (and also former dean of student affairs), is heading a search committee for a new admissions dean. Diana Nelson, director of communications, left Duke in the spring to return to the private sector. Her replacement, Kiersten Murnane, comes to Duke from the University of Michigan Law School, and brings extensive communications experience in both the public and private sectors.

The Office of Alumni Relations and Development is delighted to now have the services of an attorney with expertise in planned giving; Director of Development Katharine Buchanan picks up the reins left by Ann Sundberg, who left to take a position on central campus. In addition, Laura Eastwood has stepped in to replace Patti Meyer, who retired after six years at Duke, in the position of director of development services. I regret to say also that Melissa Richey, director of the Annual Fund and staff coordinator of the Future Forum, has left Duke to move to Montana; a search for her replacement is underway.

Duke Law School had an amazing showing at the ABA Annual Meeting in August. The student board of the Office of Public Interest and Pro Bono was one of three finalists for the Judy M. Weightman Memorial Public Interest Award; Matt Christensen '05 won one of the handful of awards for the best student law school-ABA liaisons; Vik Patel '05 won the award as the nation's most outstanding student bar association president; and the Law School won the ABA's Gambrell Award for Professionalism, based on the Duke Blueprint and other initiatives designed to promote professionalism at Duke. This may not count as a "sweep," but it's about as close as one gets, and shows that the efforts to take professionalism seriously at Duke are beginning to be noticed. Special thanks go to Associate Dean for Student Affairs Jill Miller, former Senior Associate Dean for Academic Affairs James Coleman, and Associate Dean for Pro Bono and Public Interest Carol Spruill, for the leadership they have shown in the initiatives leading to this recognition.

At press time, the country is in the throes of the loss and tragedy from Hurricane Katrina. Duke is one of many law schools around the country who opened its doors to students displaced by the storm. We accepted nine students for the fall semester from the law schools at Tulane and Loyola-New Orleans, including two LL.M. students. Our students are leading the campus in their initiatives to help Katrina victims, launching a number of fundraising efforts and arranging for a truck of supplies to be delivered to Louisiana. As a community, we will continue to do what we can to help. Our hearts go out to the many victims of this disaster.

Warm regards,

A handwritten signature in dark ink that reads "Katharine T. Bartlett".

Katharine T. Bartlett  
Dean and A. Kenneth Pye Professor of Law

DEAN

Katharine T. Bartlett

DIRECTOR OF COMMUNICATIONS

Kiersten Murnane

EDITOR

Frances Presma

ASSOCIATE EDITORS

Janse Haywood

Kathryn Bradley

CONTRIBUTING WRITERS

Frances Presma

Caroline Sykes

Gergely Kanyicska

Elizabeth Schroeder

Shanda King

Jennifer Jenkins

Brett Cornwright

Thomas Metzloff

FACULTY NOTES EDITOR

Melanie Dunshee

CLASS NOTES EDITOR

Terry Banfich

ART DIRECTION

Marc Harkness

PRODUCTION ARTIST

Kelly Murdoch-Kitt

PHOTOGRAPHY

Alex Maness

Thomas Metzloff

Shanda King

John Spencer

Hélène Ducros

Tom Mendel

Todd Shoemaker

Back cover photo: Susan Bolch

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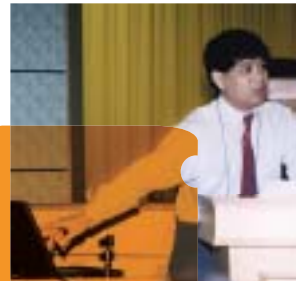


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杜克大学法学院在中国



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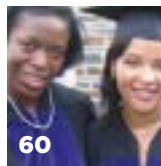
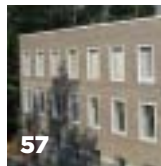
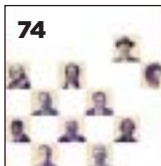
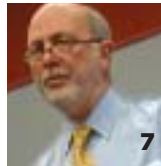
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Photo: Alex

FORMER DEPUTY U.S. ATTORNEY GENERAL JAMES COMEY

## Deputy Attorney General defends USA Patriot Act

LAMENTING A LACK OF INFORMED DEBATE on the USA Patriot Act (“the Patriot Act”), then-Deputy U.S. Attorney General James Comey defended it at Duke Law School on March 22.

“The discussion of this particular piece of legislation has been bumper-stickered by opponents and, to be fair, by proponents, who questioned the patriotism of people who question it.” But the details show that the Patriot Act involves no trade-off between liberty and security, nor does there need to be any such trade-off to keep the country safe, he said.

Comey addressed issues of common concern in the Act—and under debate in Congress at press time—beginning with section 215, which gives government investigators working on foreign counter-intelligence or counter-terrorism cases the ability to apply to a federal judge for a subpoena to obtain “books, records, and other tangible items.” This provision has been a lightning rod for criticism from advocates concerned about the privacy of library records.

To a prosecutor, “books and records” mean credit card, bank, and accounting records, Comey said. “The word ‘library’ does not appear in the USA Patriot Act, and I would bet my life that the people who drafted [it] never thought about libraries when they enacted section 215. Theoretically you could get books subpoenaed from a library by

virtue of this provision, [but] the Act specifically says that the request cannot be based solely upon First Amendment activities of the person whose records are at issue.”

Besides, he argued, in the course of criminal investigations federal prosecutors have long been able to issue subpoenas “for books, records, and tangible items including, theoretically, books

at a bookstore or at a library.” By way of example, Comey pointed out that the federal government subpoenaed the library records of Ted Kaczynski to corroborate his brother’s suspicions that he was the “Unabomber;” the published writings that

one about them, but concern over this level of secrecy reflects a misunderstanding of long-standing practice in criminal investigations, he argued. Not only do such “gag orders” offer protection against the guilty fleeing after they learn they are being investigated, they protect “against the innocent from being ruined” by rumors of an investigation, he said.

Comey called the delayed notification search warrants authorized by the Patriot Act—so-called “sneak and peek” warrants—just another “essential tool of law enforcement.” All the Patriot Act did, he argued, was to codify and standardize an investigative tool that had been created in a “patchwork” by federal judges across the country “who concluded that under the Fourth Amendment it was reasonable in certain circumstances to delay notice to the subject of a search that there has been a search.” Between 30 and 40 delayed notification search warrants are obtained each year, he said. “We are able to do it when it matters most.”

In short, said Comey, the Patriot Act took a number of tools that have long been used

**“The discussion of this particular piece of legislation has been bumper-stickered by opponents and, to be fair, by proponents, who questioned the patriotism of people who question it.”**

Former Deputy U.S. Attorney General James Comey

piqued David Kaczynski’s interest cited obscure and ancient texts that Ted had indeed checked out.

In the spring of 2004, Comey said, an admitted al-Qaeda facilitator was arrested after investigators noticed that he made repeated trips from his Queens home to various branches of the New York Public Library, apparently to send e-mail. Under questioning later, he said that he learned that the libraries were scrubbing their hard drives after each user, so he figured this would make it harder for authorities to track him down when he was e-mailing al-Qaeda associates around the world.

“I don’t think any of us ... want libraries to be a sanctuary for criminal behavior. You don’t want it to be a sanctuary for pedophiles, for people who are committing online crimes, you don’t want it to be a sanctuary for terrorists,” Comey said.

Recipients of subpoenas for records under section 215 are prohibited from telling any-

to investigate drug dealers, such as roving wiretaps, and applied them to counter-terrorism work. But he called “earth-shattering” the Patriot Act’s destruction of the “wall” between intelligence investigators pursuing terrorists and criminal investigators pursuing terrorists. Prior to passage of the Patriot Act, the FBI and CIA could not share information even when they were investigating the same people.

“There are still two worlds—intelligence and criminal law—but [the Patriot Act] allowed for the growth of a culture that allows them to talk to each other, so we have everybody who’s focused on that target able to know what the others are doing. Most people don’t think that was a bad idea no matter where on the political spectrum they are. *That* made us safer.”

Deputy Attorney General Comey’s visit was organized by Tyler Friedman ’06 and sponsored by the Program in Public Law. ♪

## Software patents v. open source a “hot topic” in intellectual property law

**T**HE LEGAL TENSION between software patents and the “open source” software movement was the subject of a spirited panel discussion at the Intellectual Property and Cyberlaw Society’s fourth annual “Hot Topics” symposium April 1.

Introducing the topic, Professor Arti Rai noted that software patents in the United States do not require disclosure of programming instructions, or “source code.” A growing number of software programmers, however, have opted to forgo patents in favor of licensing agreements that allow for open access to source code and permit licensees to develop new software based on the existing code. Rai observed that the inherent tension between software patents and the open source movement has escalated in recent years as companies have patented and marketed software developed from open source programs. “There’s the issue of whether open source infringes some of these software patents.”

Mark Webbink, deputy general counsel and



TIMOTHY O’SULLIVAN ’90, MARK WEBBINK, JOHN CONLEY ’77, DANIEL EGGER

secretary for Red Hat, which markets software derived from the prominent open source operating system Linux, took the position that patents are not essential for software innovation, but stifle development by unfairly limiting competition.

“The patents are hard to identify, they’re hard to associate with specific technologies, they’re costly to evaluate, and they’re extraordinarily expensive to litigate,” he said. Webbink suggested that slight modifications of the current patent system—such as limiting the term of software patents or requiring disclosure of source code—could lead to increased innovation in the industry.

By contrast, Timothy O’Sullivan ’90, a patent attorney with the Raleigh firm of Myers Bigel Sibley & Sajovec, argued that the exclusivity conferred by software patents is key to innovation in the field. The open source movement simply promotes development based on pre-existing technology, failing to stimulate the development of truly new ideas, he said, while the patent sys-

tem adequately balances these two objectives by limiting the duration of the patent holder’s right of exclusivity and requiring public disclosure of information related to the patented invention.

Citing increased corporate investment in and reliance upon open source software, Daniel Egger, founder and chairman of Open Source Risk Management, suggested that the software industry may be entering an era of aggressive patent enforcement. While many infringement claims would likely fail because the underlying patents are weak, Egger said, the harm to the open source movement could be profound.

“All you need is one non-practicing entity with one claim that gets settled to create a lot of havoc with the general public license, [the form which governs most open source licensing agreements], because you have the problem that whoever has entered into that license is no longer able to distribute.” One possible solution, suggested Egger, would be to shift the cost of patent compliance to end users, who confront fewer restrictions under open source licensing agreements.

Robert Bray, who advises the European Union (EU) Parliament on intellectual property issues, among other matters, addressed the status of software patents and the open source movement in Europe. He described the political controversy that has erupted regarding a proposal in the EU Parliament to increase the patentability of software; it has “raised fears in the open source community” because such patents are expensive to obtain and defend. Opposition from small- and medium-sized software developers

has halted the proposal for now, he said. John Conley ’77, William Rand Kenan, Jr. professor of law at the University of North Carolina School of Law, observed that the EU proposal would implement a fundamental change to the European patent system, which has historically limited the patentability of computer software.

The afternoon agenda included two break out sessions on a variety of current issues in intellectual property law, as well as a keynote address by George Gilder, editor-in-chief of *Gilder Technology Report* and a senior fellow at Discovery Institute, where he directs the Institute’s program on high technology and public policy.

The “Hot Topics” symposium is an entirely student-organized event. Sponsors included the law firms of Dow, Lohnes & Albertson, Myers Bigel Sibley & Sajovec, and Nelson Mullins Riley & Scarborough, and The Triangle Intellectual Property Law Association. ♡

—Caroline Sykes ’05



REED HUNDT, CENTER, WITH BRANCH FURTADO ’06 & TEDDY SCHWARZMAN ’06 OF SELS.

## FCC undermines First Amendment, says former chairman

**T**HE HALF-MILLION DOLLAR FINE levied by the Federal Communications Commission (FCC) against CBS for Janet Jackson’s infamous “wardrobe malfunction” during the Superbowl 2004 half-time show was only the first of a series of “bad government acts that have curtailed freedom of speech and certainly the freedom of the media to investigate.”

That charge was leveled by Reed Hundt, who chaired the FCC from 1993 to 1997, when he spoke at Duke Law School on April 6, at the invitation of the Sports and Entertainment Law Society (SELS). Hundt, who called the FCC “the biggest threat to the First Amendment that the electronic media has faced since the McCarthy era,” went on to list other developments he finds worrisome. These included: a reversal by former FCC Chairman Michael Powell of his own principle that network indecency standards should be relaxed to those of cable; current FCC Chairman Kevin Martin’s call for the cable industry to create a family tier of programming—which the Senate has threatened to legislate; the fact that the FOX network, “often astonishingly aligned with the administration politically” is fined rarely, whereas CBS came under considerable pressure to fire Dan Rather for running a “badly prepared” show reporting negatively about the president’s military service; and Education Secretary Margaret Spelling’s recent threat to withdraw education funds from PBS affiliates that broadcast an episode of a children’s show depicting a family headed by same-sex partners.

“The federal government, in many ways, is bent on limiting the independent role of the media in our democratic system,” Hundt said. “It wants to turn broadcasters and cable companies into allies of government’s effort to win public support for many different political purposes ranging from the war in Iraq, to the campaign against the defined benefit plans of Social Security. The electronic media are urged to support political causes, even if it means

that they don't tell the truth, or that they don't investigate to discover the truth."

Because the FCC does not rule on indecency in advance of a broadcast, the prospect of high fines can themselves have a "chilling" effect on broadcasters and reporters, Hundt continued, adding that its recent practice of taking months—as opposed to hours or days—to make rulings regarding indecency further restrains expression.

Observing that it took the FCC six months to rule that the feature film "Saving Private Ryan," with its theme of American heroism in World War II, was not rendered indecent by the inclusion of coarse language, Hundt asked his student audience to consider what would happen if a program involved documentary footage of American soldiers in Iraq criticizing their mission.

"What is inside that show is not just the salty language of the soldiers, but a critique of

**"The federal government, in many ways, is bent on limiting the independent role of the media in our democratic system."**

Reed Hundt

the war, and you can get fined by an FCC that is politically appointed for the language? [As the lawyer for the broadcast network] are you going to think about whether the political context or content is going to be taken into account by the FCC?

"It should *never* be a concern that a TV broadcaster or journalist or a producer or investigator would think that 'if I present the reality here and it has something that is arguably indecent, and I never know the rules, I'm much more likely to get fined if the administration doesn't like the political content.'

"In our country, our glory is that we live the way we want, precisely because we let others live the way we want," Hundt concluded. "This principle of tolerance is the core value of the First Amendment and is, therefore, the central reason why the government should not punish TV stations for content. It is absolutely the reason that if you all do not graduate from here and become fighters for the First Amendment then you won't be living in the country that you want to be living in."

"Mr. Hundt possesses strong beliefs and first-hand knowledge of the interplay between government, expression, and indecency, and isn't afraid to voice his opinion on controversial topics that affect each one of us as Americans," said Teddy Schwarzman '06, SELS vice president of speakers and events. "His speech seamlessly combined law, politics, ideology, and humor in an informative presentation that made us all think. It was an honor to have him at Duke." 🐘



ISRAELI AMBASSADOR DANIEL AYALON

Photo: Tom Mendel / The Chronicle

### Israeli ambassador discusses prospects for mid-East peace

**S**PEAKING AT DUKE LAW SCHOOL on March 7, Israel's ambassador to the United States, The Honorable Daniel Ayalon, said that Israel seeks peace with all its neighbors. He went on to describe peace as more than just a strategic option.

"For us as Jewish people, and for Israel as a country and a democracy, peace is ... a moral obligation. And we are willing to do a lot to make peace—to offer great concessions." Offering the lasting peace agreements Israel has made with Egypt and Jordan by way of example, Ayalon said Israel would be willing "to take the risks and [make] the peace when we know we have a partner whom we can trust—a partner which is trustworthy, committed to peace, and also willing to make concessions."

A participant in the Sharem El Sheik, Wye Plantation, and Camp David peace summits, Ayalon expressed cautious optimism that Israel has such a partner in Mahmoud Abbas, who had recently been elected president of the Palestinian Authority.

"[He] won a free and fair election ... and called for the end of violence. We hope that he will be

followed by his people, we hope that he will have enough power to restructure his own police forces, his own economy, [and] his own political structure, so we can move ahead." Israel's proposed disengagement would include the summer's withdrawal from the Gaza Strip and eventually from a substantial portion of the West Bank. Ayalon was clear, however, in pointing out that peace depends on an end to "Palestinian terror."

"What we ask from the Palestinians is to make a sustainable effort against terrorists. It isn't enough to deploy their troops. They have to be proactive in going after the terrorists, in casting a wide net of investigations, arrests, and interrogations."

Ayalon observed that 1,000 Israelis died in terrorist attacks in the past four years, the proportional equivalent for a country of 6.5 million to the loss of 50,000 American lives. He laid the blame for the bloodshed squarely on Abbas's predecessor, Yasser Arafat.

"It was a top-down campaign of terrorism which was initiated, instigated, planned, and carried out by Arafat, whose legacy of bloodshed, terrorism, and missed opportunities was un-matched."

Even if Abbas succeeds in quelling attacks from Palestinian territory, Ayalon pointed to ongoing threats from Iran and Syria, working through "their proxy," Hezbollah.

“Just as we are beginning to see some traction between us and the Palestinians, they are trying everything to derail the process and to derail the possibility of other progress.”

Ayalon called a nuclear Iran a danger to the entire region that must be stopped, ideally through the efforts of a unified international community, and UN-imposed monitoring and sanctions.

“With political isolation, and with the threat of economic sanctions, I think the Iranians will be much more careful,” said Ayalon. “Iranians are very sensitive and attuned to the international community.”

Returning to the prospects for peace with the Palestinians, Ayalon reiterated Israel’s willingness to release prisoners and retreat from Palestinian cities.

“The moment [the Palestinian Authority] can assume responsibility, we don’t want to be in their

**“The moment [the Palestinian Authority] can assume responsibility, we don’t want to be in their cities. We feel that ultimately they can do a much better job than us in fighting the terror.”**

Ambassador Daniel Ayalon

cities. We feel that ultimately they can do a much better job than us in fighting the terror, because it is their own people—people who live in their midst.

“I think [our] departure from Gaza also should lend itself in a positive way for the Palestinians to take control, and they can show us, and the entire world that they are responsible parties. They will be free and sovereign to do whatever they can. The international community can help with a massive inflow of cash, but basically, they will have to gain control, so there is one authority there, one roadblock, and ‘one gun’—one security force.”

Responding to a question from the audience, Ayalon cautioned against “rushing forward” with a comprehensive peace plan, as was done in the failed Oslo process.

“I don’t think that if we now frontload the core issues of the permanent status, the peace will properly be served. There is a win-win situation in moving forward whereby the Palestinians can gain sovereignty [and] gain a state for the first time in history. In the “Roadmap for Peace,” the overriding principle is performance. It is a win-win, where Palestinians can gain full sovereignty over their population with dignity, with economic benefits, and you still have some issues that will have to be [negotiated].”

Ambassador Ayalon’s visit to Duke Law School was sponsored by the Program in Public Law. ♣

## Conference examines strategies used in the war on terrorism

**T**HE PROGRESS OF THE WAR ON TERRORISM was analyzed in depth during a Duke Law conference on April 7 and 8. “Strategies for the War on Terrorism: Taking Stock” brought together experts from government, academia, the military and intelligence services, and the diplomatic corps to engage in a series of multi-faceted panel discussions on such issues as the roots of extremism in the Muslim world, acceptable parameters for interrogation of “enemy combatants,” the workings of military commissions authorized by the president to prosecute those detained at Guantanamo Bay, and the “sunset” provisions of the USA Patriot Act. Co-sponsored by the Center on Law, Ethics and National Security (LENS) and the Program in Public Law, the conference also featured three remarkable keynote speakers who offered unique insights into the future of the war on terrorism—but little reassurance of an end to the conflict.

“This nation, in my mind, is absolutely certain to be attacked again,” said James Pavitt, the former deputy director of operations at the CIA and, in that capacity, manager of America’s worldwide clandestine activities. He shared his concern that terrorists could detonate a radiological device in an American city, easily cobbling it together from radioactive medical waste and basic explosives.

“It’s not a device that would kill a lot of people, but it would absolutely send panic throughout our nation.”

Even following the recommendations of the 9/11 Commission and the Weapons of Mass Destruction Commission to the letter, however laudable and essential, would not reduce the present risk of attack, Pavitt said. “This is a generational issue. Great progress has been made [but] great amounts of work need to be done.”

In her keynote address, U.S. Rep. Jane Harman, D-Calif., the ranking Democrat on the Permanent Select Committee on Intelligence, echoed the sentiment that the country remains under threat.

“It’s not a ‘war on terrorism,’ a notion which connotes a finite adversary against whom we will win or lose. We live in an *era* of terror,” said Harman.

Good intelligence, diplomacy, and public diplo-

macy—“a broader public effort to win the hearts and minds of the Muslim world”—are all necessary to defeat the threat, Harman noted, before launching into a critique of the administration’s policies towards detention and interrogation of terror suspects, the result of its “one-dimensional view” that the United States is embroiled in “simply a ‘war.’”

“People can’t just disappear in America,” she said of the prisoners detained at the U.S. naval base in Guantanamo Bay, Cuba. “As the Supreme Court held in *Rasul v. Bush*, prisoners must have a legal status and the ability to challenge that status.” Holding prisoners like American Jose Padilla, arrested at Chicago’s O’Hare Airport on suspicion of planning the detonation of a “dirty bomb,” and detained without charges and access to counsel at a military facility in South Carolina, also is “inconsistent with our constitutional values,” she continued.

Turning to the now-infamous “torture memos” authored by the Office of Legal Counsel over the

past three years, Harman charged that the administration “clings to the view that our laws do not constrain the actions of the commander in chief in wartime. But in an era of terror, this position breaks down.

Should we suspend our laws forever? Is that really what America wants to stand for?”

Harman outlined draft legislation she is working on along with Harvard professors Philip Heymann and Juliette Kayyem that, she said, attempts to acknowledge both that interrogations are “vital tools” essential to intelligence-gathering, and that torture, and overly coercive interrogation techniques are wrong. She admitted the challenge of striking the right balance, suggesting that a diverse, bipartisan group, including administration officials and civil libertarians, convene to work on a consensus solution. Congress, she argued, must lead the effort.

“Article 1, Section 8 provides that Congress shall make laws concerning captures on land and water. This is our responsibility. This is not the role of the White House, or even the courts. This is the role of Congress.”

The Honorable Nabil Fahmy, Egypt’s ambassador to the United States, offered an international perspective on many of the issues explored during the conference. He cautioned against characterizing the war on terrorism as just “America’s war.”

“It is not [just] an American problem. America



U.S. REP. JANE HARMAN

JAMES PAVITT

has to understand it is a global power. American interests are global.”

While policing methods such as force and immigration reforms rein in the ideologues and masterminds of terrorism, equal weight must be given to the “footsoldiers” of terrorists, “those that they recruit, [and] the communities from which they recruit,” said Fahmy. He called the rise of anti-American sentiment a major problem, as it impedes the ability of governments to deal with terrorists if it causes them to appear to be supporting America.

“The only way to change that is to respond to the concerns of these communities,” he said.

**“People can’t just disappear in America. As the Supreme Court held in *Rasul v. Bush*, prisoners must have a legal status and the ability to challenge that status.”**

U.S. Rep. Jane Harman

“Whether we are talking about Kashmir, the Middle East peace process, poverty, liberalization and reform, Iraq—all of those issues will factor into the success or failure in the war against terrorism.” He called it a matter of American national interest to help resolve such issues fairly, even as each member of the international community must attend to its own domestic problems. He also called for American introspection, to better understand why it is becoming a target of terrorists.

“You’ll never convince Bin Ladin or [Abu Musab al-] Zarqawi, but you can definitely make a fundamental shift in the sentiments vis-a-vis America that will help create a strong center that would stand up and defend America, defend a western society, defend Egypt ... against terrorists who will come and [claim] that ‘they are not fair about Palestinians and Israelis.’”

Professor Scott Silliman, executive director of LENS and the chief organizer of the conference, was delighted with the level of discourse that went on during the two-day event.

“There is no question that the discussions during the conference informed and refined the public debate on whether the United States has chosen the right strategies and policies in the global war on terrorism,” he said. “All who attended agreed that it was a tremendously productive session. I think it ranks among the very best conferences we have put on over the last 10 years.”

“Strategies for the War on Terrorism: Taking Stock,” was co-sponsored by Duke University’s Sanford Institute for Public Policy and Kenan Institute for Ethics, as well as the Triangle Institute for Security Studies. ♡

## Conference focuses on Supreme Court reform

**T**HE UNITED STATES SUPREME COURT was called a “gerontocracy” at a Duke Law School conference April 9, likened to the leadership cadre of the Chinese Communist Party. But that party is a step up on the Court, said Northwestern University Law Professor James Lindgren in defending the charge: Its leaders are required to retire at 80, while justices serve for life.

“Reforming the Supreme Court?” brought together top constitutional law and Supreme Court scholars for a spirited discussion of the costs and benefits of life tenure for justices, and an exploration of possible alternatives. Organized by law professors Paul Carrington of Duke and Roger Cramton of Cornell, who have co-authored a statutory proposal to limit Supreme Court terms, the conference was sponsored by the Program in Public Law.

Lindgren opened the conference with a look at Court statistics: While the average age of justices at the time of their appointments has long been steady at 53, the average retirement age has risen to 79, up from 68 for those retiring before 1970. Since 1970, too, the average length of service for justices has jumped from 14.9 years (more or less a constant since 1789) to 25.6 years. Among the reasons offered by participants for justices’ working well into their 70s and 80s: improvements in health care resulting in increased longevity, and a workload in steady decline, partly due to the Court’s power to select the cases it takes—“the certiorari power”—and partly the result of delegation to clerks, whose numbers have quadrupled in the past 60 years.

“It is entirely possible for a justice in decay and decrepitude to grind out opinions with the help of clerks,” alleged Daniel Meador of the University of Virginia.

A return to the 1946 standard of one clerk per justice would heal whatever ails the Court, maintained David Garrow of Emory University Law School, a supporter of life tenure.

“Everyone knows that it would be a better Court if the role of the clerks was dramatically reduced.”

Others found much more to criticize, alleging that justices lose touch with the real world after decades in the Court, and noting that a long drought in vacancies increases the rancor of the confirmation process, and encourages the appointment of youthful, inexperienced ideologues, as well as “strategic retirements” by justices who hang on past their prime in order to give a certain president or party a chance at an appointment. The Supreme Court, it was noted, is unique among American institutions and world courts in placing individuals in office indefinitely.

A number of reform proposals called for justices

to serve 18-year terms on the Supreme Court, rotating on at two-year intervals. That would ensure that most one-term presidents would be able to fill two vacancies.

“Knowing that a vacancy was going to open up at regular intervals would lower the stakes for filling any one vacancy now,” said Steven Calabresi of Northwestern Law School. “Knowing that you were only confirming somebody for an 18-year term, not potentially for a 35-year term, would also lower the stakes greatly.”

On the other hand, countered Ward Farnsworth of Boston University Law School, term limits could embolden presidents to nominate more ideologically extreme nominees who would get waived through the approval process on the theory their extremism would be offset by a later nominee.

“Life tenure and keeping the stakes of the decision very high forces a lot of compromise, and

**“There’s nothing in the Constitution that says [justices] serve for life, it says ‘for good behavior.’ Congress can define that in ways that do provide encouragement, inducement and, indeed, even requirements for them to step down at some point.”**

Professor Paul Carrington

forces more moderate people. That’s exactly why Robert Bork wasn’t confirmed, and why Justice Kennedy was.”

Most of the term-limit proposals contemplated life appointments to the federal judiciary; on the expiration of their Supreme Court terms, justices would take seats on lower courts of appeals.

Whether change would best be accomplished by constitutional amendment or by statute also came up for debate.

“There’s nothing in the Constitution that says they serve for life, it says ‘for good behavior,’” said Carrington. “Congress can define that in ways that do provide encouragement, inducement and, indeed, even requirements for them to step down at some point. The one thing Congress can’t do without violating the good behavior notion is to employ some kind of system which is intended to influence the decision of particular cases.”

The bottom line, he argued, is that requiring a constitutional amendment renders the whole discussion moot. “One of the problems with our Constitution is that it’s very hard to amend.”



Quite apart from the deeply held belief by many reform proponents and opponents alike that life terms are constitutionally mandated, and thus require a formal amendment, a number of speakers expressed alarm at giving Congress an opening to tinker with the Court by statute. They repeatedly invoked the controversy over various judicial rulings in the recent *Schiavo* case.

“Once Congress starts tinkering by statute with the tenure of justices, they’ll be tempted to tinker with it again to change the outcome of cases that they might not like, that the Court would hand down. I don’t want to give Congress that power,” said Calabresi.

While the debate was both fierce and friendly throughout the conference, Cramton was clear that it was intended to produce practical, not theoretical, results.

“We’ve started talking with the Senate Judiciary Committee, and we’re going to have conversations with the staff and try to identify some senators on both sides who might want to support legislative hearings on the topic, so they could hear the kind of debate that’s going on here, as to whether there is a problem that needs attention, and, if so, what could be done about it.”

## Verrill helps Zimbabwe’s Dutch farmers in international arbitration

ON APRIL 4, Charles Verrill ’62 spoke to Duke Law students about his representation of 14 Dutch farmers, whose farms in Zimbabwe were expropriated by its government, in arbitration before the International Center for the Settlement of Investment Disputes (ICSID). Verrill, who heads the international trade practice group at Wiley Rein & Fielding in Washington, D.C., teaches a course in international business transactions at the Law School, and is a member of the Board of Visitors.

Verrill’s clients were among many European expatriates who invested in farms with the encouragement of the government of Zimbabwe, after that country achieved independence from the United Kingdom in 1980. These farmers were extremely successful, Verrill pointed out—by the late 1990s, Zimbabwe was known as “the bread basket of Africa.” At that point, the government of Robert Mugabe moved to take over the farms, with the stated goal of turning them over to indigenous people.

While Zimbabwe enacted legislation authorizing the expropriation and providing for legal process and compensation for the farmers, Mugabe loyalists circumvented the process. A group of veterans of the war for independence used coercive methods to evict the farmers who, in fact, received no compensation, Verrill explained.

“The ‘War Veterans,’ as they were known, would go to a farm and give the owners a 24- or 48-hour deadline to leave after which they said there would be violence.” He went on to describe his experience of spending the night prior to

eviction with a family of Dutch farmers.

“The War Veterans camped outside the farm gates. They built bonfires, and shouted threats over loudspeakers all night long, driving around in trucks and shooting off guns. It was a rather terrifying experience. The next morning we left.”

Only a small portion—at the most, five-acre plots—of the expropriated farms was ever given to indigenous people, he continued. The vast majority lies fallow, used simply as weekend retreats for government and military loyalists.

The Dutch farmers’ claim is subject to ICSID arbitration pursuant to a bilateral investment treaty between The Netherlands and Zimbabwe, Verrill said.

“This treaty provides that investors from the Netherlands in Zimbabwe are entitled to fair and equitable treatment, and to full security for their investments, both of which rights were violated by this whole episode.” Verrill anticipates the action will take at least another year. Verrill’s lunchtime talk was sponsored by the International Law Society.



CHUCK VERRILL '62



## UNIVERSITY COUNSEL

Duke University invites nominations and expressions of interest for the position of University Counsel, Duke’s chief legal officer. The University Counsel will lead an office of experienced legal and administrative personnel. The successful candidate will also be a senior counselor to the President and the Board of Trustees on the broad range of complex issues faced by an international research university with a major medical center and health care system. Screening of candidates will begin in mid-October and will continue until an appointment is made.

Inquiries, applications and recommendations may be directed in confidence to:

**John A. Koskinen, Chair**  
**University Counsel Search**  
**Committee**  
**Duke University**  
**Box 90030**  
**Durham, NC 27708-0300**  
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**counsel-search@duke.edu**

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## JOURNAL NEWS

### **Duke Journal of Constitutional Law & Public Policy launched**

**I**N MAY, the Law School approved a new student-led journal, its eighth. Sponsored by the Program in Public Law, *The Duke Journal of Constitutional Law & Public Policy* is intended to serve as a practical resource for lawyers, judges, and legislators to consult when confronting fresh constitutional issues or constitutional and policy dimensions of new court decisions and legislation.

"It will coordinate wonderfully with the Program in Public Law, which counts informing the legal and larger community on important matters of constitutional law among its primary missions," said Charles S. Murphy Professor of Law and Public Policy Christopher Schroeder, who directs that program. "The journal takes advantage of a growing interest among Duke Law students in the important public law issues of the day." Schroeder will serve as faculty advisor to the journal, along with Alston & Bird Professor of Law Erwin Chemerinsky.

"The journal should be an important addition to law reviews in that it will be the first to focus primarily on constitutional law from the perspective of lawyers and judges dealing with cutting edge issues in this field," said Chemerinsky. "Over time, it has the chance to become a pre-eminent venue for scholarship on constitutional law and litigation."

Founding Editor-in-Chief Scott Mikkelsen '06 added that the journal was a perfect fit for a law school with unique faculty strength and broad student interest in constitutional and public law.

"It seemed like we were missing a real opportunity to make our voice more prominent in the legal and academic community, and among our peer institutions. We hope to make an impact in the field immediately."

In addition to publishing online at regular intervals, the journal will publish a print edition each spring.

Other Law School journals are: *Duke Law Journal*, *Law and Contemporary Problems*, *Duke Journal of Comparative and International Law*, *Duke Journal of Gender Law and Policy*, *Duke Environmental Law and Policy Forum*, *Duke Law and Technology Review*, and *Alaska Law Review*. ♪

### **DLJ considers Internet in agency decision-making**

**D**UKE LAW JOURNAL (DLJ) held its 35th annual administrative law conference on February 25, focusing on the role of the Internet in agency decision-making. Professor Stuart Benjamin moderated the discussion among panelists Zephyr Teachout '99, a fellow at Harvard Law School's Berkman Center for Internet & Society, Cary Coglianese, an associate professor of public policy at Harvard's John F. Kennedy School of Government, John de Figueiredo, associate professor of strategic management at MIT's Sloan School of Management, and Michael Froomkin, a law professor at the University of Miami School of Law.

The panelists brought various perspectives to the question—empirical, legal, and practical, considering, among other issues, what challenges and opportunities the rise of the Internet poses to public agencies, and whether e-mail campaigns reflect true grassroots activism.

While citizens can now easily participate in the federal rule-making process through a Web site, [www.regulations.gov](http://www.regulations.gov), Coglianese cautioned against assuming that commentators are necessarily representative of the larger public.

"The comment process is, even in a digitized world, a reactive process. It's one in which people participate if they know about a rule, they know about the agency, they know when to comment, and

they care about it." Acknowledging that it "makes sense" for government to be accessible and reachable, and healthy for people to be somewhat involved, "we shouldn't change or modify administrative law doctrine about public participation," said Coglianese.

Taking an empirical view, de Figueiredo noted that data shows that interest groups are always involved at a moderate level in issues, and that does not change if electronic filing is an option. Individuals are more likely to participate, especially when they have a strong feeling about an issue, he said. Like Coglianese, he expressed some concern about putting too much stock in online or e-mailed comments, though.

"How do you know the comment submitted online is not just sent by a worker in China who is paid to generate e-mail through a U.S. host?"

Teachout, who directed online operations for Howard Dean's primary campaign, spoke about using the Internet as an organizational, as opposed to informational, tool. "Use of the Internet and e-mail does allow rule-makers to hear a story," she said. She also addressed how certain aspects of the Federal Elections Commission operations may have been affected by the Internet. The event was co-sponsored by Dewey Ballentine and the American Constitution Society. ♪

### **Law and Contemporary Problems: The Impact of Behavioral Genetics on Criminal Law**

**T**HE NASCENT SCIENCE of behavioral genetics and its implications in criminal cases was the subject of a conference organized by Duke's *Law and Contemporary Problems (L&CP)* on April 8 and 9. Nita Farahany '04, a key conference organizer and special editor, with Professor James Coleman, of the upcoming *L&CP* volume of conference papers, explained that its goal was to help inform the discussion of how behavioral genetics might be used in the criminal context, and debate whether it should be used at all.

Behavioral genetics is a population science, Farahany explained, looking at variance in expressed behavior in populations.

"If you see variance in violence in a population, for example, behavioral genetics studies to what degree the violence is attributable to differences in biology, as opposed to differences in environment." Behavioral genetics has been introduced in criminal cases for a variety of reasons, she said: to bolster an insanity defense, as a separate defense to excuse criminal conduct, to argue

that a violent act was involuntary because the defendant was predisposed to act violently or aggressively, or to argue that a defendant was unable to form the requisite *mens rea* to commit the offense charged.

"Behavioral genetics has been used in a variety of different ways, but there has not been a thoughtful discussion as to how it should be introduced, and what it can actually tell us."

Conference speakers and participants approached the topic from perspectives rooted in genetics science and policy, criminal law, criminal responsibility, and constitutional law, addressing behavioral genetics in the context of such issues as addiction, criminal responsibility, juvenile justice, and predictions of future dangerousness.

The conference was co-sponsored by the Institute of Genome Sciences and Policy's Center for Genome Ethics, Law, and Policy, and the American Bar Association's Science and Technology Section. Papers from the conference will be published in *Law and Contemporary Problems* later this fall. ♪

**WEBCASTS** of both "The Role of the Internet in Agency Decision-Making" and "The Impact of Behavioral Genetics on Criminal Law" are available at <http://www.law.duke.edu/webcast/>

## {Meredith and Kip Frey Lecture in Intellectual Property}

**Samuelson discusses  
“Enriching Discourse  
on the Public Domain”**

**T**HE FIFTH ANNUAL Meredith and Kip Frey Lecture in Intellectual Property featured internationally renowned scholar Pamela Samuelson. Among other accolades, Samuelson is a past recipient of the prestigious “genius grant” from the John D. and Catherine T. MacArthur Foundation, and has been named one of the *Wall Street Journal’s* 11 technology pioneers and one of the *National Law Journal’s* 100 most influential lawyers in the U.S. Samuelson is a professor at the University of California at Berkeley, with a joint appointment to the School of Information Management and Systems and the School of Law.

Professor Samuelson opened by celebrating the “exceptional contributions” of the Duke Law intellectual property faculty to public domain discourse through scholarship, major conferences, and new institutions that have catalyzed study of the public domain.

At Duke Law’s seminal Conference on the Public Domain in November 2001, Samuelson presented a “map” of the public domain that defined it as “information resources that were unencumbered by intellectual property rights.” Samuelson explained: “The map assumed there was one public domain, namely the one that I mapped.”

When she later reflected on this map, however, a “profound shift” occurred as she began to accept that “there isn’t one public domain, there are many public domains.” Just as “property” has different meanings – from Blackstone’s sole and despotic dominion to Hohfeld’s bundle of rights – so should the “public domain.”

Samuelson catalogued several different conceptions of the public domain. As she described, some scholars focus on the legal status of information resources when defining the public domain. Their public domain would include “IP-free” information resources such as facts and ideas, which do not qualify for intellectual property rights, or Mozart symphonies, in which these rights have expired. It would also include resources that are “not yet privatized,” such a therapeutic gene sequence that has not yet been patented, or “google” prior to the founding of the search engine firm.

Other scholars focus on whether resources are “broadly usable” or “publicly accessible” in a practical sense, rather than their legal status. Under their definitions, the public domain could include copyrighted material on the Internet that is made available for public use, but might not include a painting that is no longer copyrighted,



PROFESSOR PAMELA SAMUELSON

but is locked in an attic and therefore unavailable. It might also include resources that are in “contractually constructed commons,” such as open source software and material under Creative Commons licenses. These resources are protected by intellectual property rights, but those rights are used as grounds for contractual conditions that ensure availability.

Samuelson also explored other public domain definitions, and concluded that there are numerous benefits to the increasingly “rich and nuanced” conceptions from public domain scholars. Among these benefits, “multiple public domains” help to “articulate the positive values of the public domain,” Samuelson said. These values include: providing the building blocks (facts, ideas, information, scientific principles) for creation of new knowledge, enabling competitive imitation and follow-on innovation, enabling low cost access to information, ensuring access to cultural heritage, and promoting deliberative democracy.

The broad-ranging scholarship can also help to safeguard the public domain, or “public domains.” In Samuelson’s words: “By emphasizing these positive functions and values, public domain scholars have not only transformed discourse about public domains, but also offered an array of ideas about how and why to preserve and protect them.”

Professor Samuelson’s lecture, “Enriching Discourse on the Public Domain,” will be published in *Duke Law Journal* in February 2006. ♪

–Jennifer Jenkins ’96

**Business Law Society  
holds third annual  
career symposium**

**O**N FEBRUARY 11, over 145 students took advantage of the opportunity to tap into the knowledge and experience of 30 business lawyers and leaders, 22 of them Duke Law alumni, at “ESQ.,” the Business Law Society’s third annual Career Symposium. Structured as a series of seminars and small-group sessions, the event helped students interested in business law gain a better understanding of the field.

“There are a lot of questions that a student might not ask in an interview setting, or even at a firm,” observed Amy Yeung ’06, who chaired the organizing committee. “With ESQ. we tried to provide as many opportunities as possible for frank interaction between students and practitioners, so that students could learn about different practice areas.”

“ESQ. was one of the truly outstanding events of the school year,” said Bruce Elvin ’93, assistant dean of career services. “The excitement and scope of the event are a tribute to the culture of Duke Law School and the amazing abilities of our students when they take ownership of their passions. Organizers Amy Yeung and Brian Ward ’06 and their classmates are to be commended for their efforts, as are Samantha Ferris ’05 and Keri Richardson ’05 who set the event on its current trajectory [in 2004].”

The small group conversations continued over a lunch sponsored by the law firm Paul Hastings, and the whole event was free to students thanks to the support of the law firms Cadwalader, Wickersham & Taft, Gibson Dunn & Crutcher, and Moore & Van Allen, and the Duke Global Capital Markets Center. “ESQ. 2006” will take place on Friday, February 10, 2006. ♪

**Thanks to the alumni  
who attended ESQ.:**

Carolyn Zander Alford T’89  
Daniel S. Bowling III ’80  
Erik Belenky ’97  
Antonio Braz ’86  
Robert E. Harrington ’87  
James Hedrick, Jr. ’94  
Michael Hoffman ’89  
Winston Henderson ’96  
Katherine Kessler ’93  
Patricia Lehtola ’84  
Thomas Magill ’76  
Gray McCalley ’79  
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Steven Naclerio ’71  
John Nurkin ’94  
Therence Pickett ’91  
Shefali Shah ’96  
Alexander Simpson ’93  
Carol B. Stubblefield ’92  
Lovita Tandy ’96  
Glenn Tucker ’80  
Terry Tucker ’04

{Rabbi Seymour Siegel Memorial Lecture in Ethics}



PROFESSOR WILLIAM SIMON

**Simon discusses the crisis of the profession in the post-Enron era**

**P**ROFESSOR WILLIAM SIMON examined changes and challenges to the legal profession in the post-Enron era when he delivered the fourth annual Rabbi Seymour Siegel Memorial Lecture in Ethics at the Law School on March 3. Professor Simon is the Arthur Levitt professor of law at Columbia University and a noted scholar in the areas of professional responsibility and social policy.

Simon focused his attention on the profession's "rigid and befuddled" response to recent federal reforms, particularly regulations in the Sarbanes-Oxley Act that require lawyers to report

managerial wrongdoing up the corporate chain of command, and IRS tax shelter regulations that require lawyers who prepare tax shelters to disclose client lists to the IRS. Because these reforms focus on public responsibility, they conflict with the duties of client loyalty and confidentiality that are traditionally emphasized by state ethics codes as a means of encouraging clients to seek legal assistance, he said.

Formalism—"the doctrine that only the letter of the law and not its spirit is binding"—is a professional ideal for many lawyers, but a troubling ethical area, according to Simon.

"Formalism increases lawyers' room to maneuver and the range of things they can do for clients. Yet formalism undermines the bar's claim that lawyering for private clients serves the public interest. If the 'compliance' that lawyers induce means only conformity to the law's literal terms, we have no reason to consider it of social value."

The confusing treatment of organizational clients by rules of professional responsibility also creates problems, Simon contended.

"The bar's norms of practice have tended to speak of clients as if they were individuals. They have thus tended to ignore the internal conflicts of interest that differentiate organizational from individual clients. Lawyers have a strong tendency to identify their corporate clients with management. They know that in principle the corporation is not the same thing as its management. But they have no clear conception of what else it could be."

This ambiguity, along with rules instructing a lawyer to regard management as having the authority to speak for a corporation, often causes lawyers to conflate an organization and its management, Simon observed. In fact, he added, securities lawyers opposed the Sarbanes-Oxley Act on the ground that it would interfere with client loyalty.

Simon criticized the bar for failing to adjust quickly to new regulatory realities, and urged lawyers to embrace the era of "new governance."

"Until the profession comes to terms with these issues, it will not be able to respond plausibly to the changing circumstances of its business clients and the regimes that regulate them. The new circumstances present opportunities as well as risks for lawyers, but both opportunities and risks require reconsideration of longstanding positions and practices.

"The newer approach has the best promise of vindicating the bar's claim that its service to private clients furthers public interests. The high road [is] the most difficult in the short run but the one with the most promise for the profession and its role in society."

The annual Rabbi Seymour Siegel Memorial Lecture in Ethics is sponsored by labor lawyer and Senior Lecturing Fellow Allen Siegel '60, in honor of his brother, who died in 1988. Rabbi Siegel was a noted scholar in the areas of ethics, particularly medical ethics, and theology. ♡

—Caroline Sykes '05

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## Community Enterprise Clinic co-sponsors conference on social enterprise

**D**UKE LAW SCHOOL'S Community Enterprise Clinic (CEC) and the Center for the Advancement of Social Entrepreneurship (CASE) at Duke's Fuqua School of Business teamed up June 1 to help nonprofit organizations understand how they can use business strategies to help support their charitable endeavors, co-sponsoring a one-day "Conference on Social Enterprise." The conference attracted nonprofit managers, philanthropic leaders, and institutional money-managers from across the Carolinas, with interest largely fueled by the fact that more and more nonprofits are trying to find new ways to finance their operations.

"The reality is that a lot of government and foundation funding is being cut back," said Clinical Professor Andrew Foster, director of CEC, which provides pro-bono legal services to nonprofit organizations and low-wealth entrepreneurs. "Many nonprofits must decide on appropriate business plans for sustaining their charitable work, and these choices involve significant legal issues as well as business questions. The conference was intended to begin a conversation about how social enterprise can be used effectively as a tool, both to support organizational sustainability, but also social change."

Because business development is so hard—the numbers of business failures far outweigh successes—alignment between an organization's charitable mission and any business is key, CASE Faculty Director Gregory Dees told attendees in his keynote address. CASE is one of the leading academic research centers on social entrepreneurship.

"The businesses that are going to have a greater chance of success are those that build on your strengths, your assets, your resources, and your capabilities. And in the end, [a social enterprise] makes sense only if it helps you make greater mission impact. It's got to help you serve your mission, either by generating money that can be used for mission purposes, or by serving the mission directly." As an example of the latter situation, Dees pointed to a Durham-based residential substance abuse treatment program that runs a number of businesses staffed and managed by its residents; the businesses provide an income stream for the nonprofit, and also directly serve its rehabilitation mission by providing residents with job training and work experience.

Dees highlighted the importance of a business plan for any social enterprise, but pointed out that few ventures unfold exactly as anticipated.

"You have to adapt as you go, and perseverance is crucial. Think of it as a process of discovery. Set milestones to test this concept. In most cases you can move into the venture in a way that manages risks and tests the assumptions that you're making."

A series of breakout sessions focused on such issues as strategic planning, marketing strategies, and the legal implications of a nonprofit's involvement in a business venture. Participants also got to hear from a panel of nonprofit managers about their experiences with entrepreneurial endeavors.

Financial support for the conference was provided by The North Carolina Community Development Initiative, The Mary Reynolds Babcock Foundation, Wachovia Bank, and the Z. Smith Reynolds Foundation. The North Carolina Center for Non-Profits, North Carolina State University Institute for Nonprofits, and the Duke Certificate Program in Non-Profit Management also served as sponsors. ♫

## National security: The changing role of the courts

**O**N APRIL 13, JUDGE DAVID SENTELLE of the D.C. Circuit Court of Appeals shared his perspective on how the role of the courts has changed in the sphere of national security, giving a lunchtime talk sponsored by the Federalist Society. Sentelle is a member of Duke Law School's Board of Visitors.

The June 2004 U.S. Supreme Court decision in *Rasul v. Bush*, in particular, "represents a departure from the general understanding among judges of the law of habeas corpus as applied to enemy aliens in extra territorial con-

**"Even the government concedes that given [its] unconventional nature, the current conflict is unlikely to end with a formal cease-fire agreement. How will we know when the war on terror has ended?"** Judge David Sentelle

finement, at least since 1950," said Sentelle.

He reviewed in detail the Court's 1950 decision in *Johnson v. Eisentrager*, which held that federal courts lack the jurisdiction to grant habeas relief to detainees in wartime, finding instead that "the military had jurisdiction to confine, accuse, and condemn enemy aliens."

A clear majority of the Court distinguished on a number of counts the petitioners in *Rasul*—14 foreign nationals detained in Afghanistan and held at Guantanamo Naval Base in Cuba—from those in *Eisentrager* on a number of counts. Sentelle highlighted two findings of both the majority and Justice Kennedy in his concurring opinion: that Guantanamo Bay was under the clear sovereign control of the United States, whereas the *Eisentrager* aliens never entered U.S. jurisdiction; and that unlike the armed conflicts of the past, the war on terror may have no clear end, resulting in the indefinite detention of combatants.

"Even the government concedes that given [its] unconventional nature, the current conflict is unlikely to end with a formal cease-fire agreement. How will we know when the war on terror has ended?" asked Sentelle.

Whatever the distinction, said Sentelle, with *Rasul*—and to some extent with *Hamdi v. Rumsfeld*, which was decided at the same time—the Court stepped into an area previously seen as the purview of the political branches of government.

"The majority in *Rasul* may not state that much has changed in the balance of power between the judiciary and the political branches with respect to national security, but Justice Kennedy, in concurrence, and Justices Scalia, Rehnquist and Thomas in dissent establish that much has changed, for better or worse," said Sentelle. "Justice Kennedy thinks the circumstances warrant the change, but the dissenters find it so disturbing that they don't think it's worthy of change. [They] say that *Rasul* extends the habeas statute for the first time to aliens detained beyond the sovereign territory of the United States, and beyond the territorial jurisdiction of its courts.

"I don't suggest that the power of the president as commander in chief, or the joint role of the president and Congress in the conduct of military affairs has been wiped out by *Rasul*, or even by *Rasul* and *Hamdi* together, but I think Justice Kennedy and the dissent make it very plain that it has

been diminished. It has been invaded," said Sentelle, going on to discuss recent contrasting decisions in the D.C. Circuit which will come before the Supreme Court in the coming term. "Whether this is a good thing or a bad thing, will be a subject of long debate. But it's a real thing, and I think that's indisputable." ♫

# DUKE LAW IN

THE LAW SCHOOL CELEBRATES  
MORE THAN 20 YEARS OF  
EDUCATION AND ENGAGEMENT,  
AND LOOKS TO THE FUTURE

BY






LI XIAOMING

**LI XIAOMING '90** is the managing partner of the Beijing office of White & Case, with a practice focused on general corporate and structured finance, and mergers and acquisitions. His clients include international enterprises with business interests in China, as well as Chinese corporations operating in the global marketplace. Currently representing a Chinese bank in extending finance to the purchasers of Chinese telecom equipment, Li is wrapping up a series of transactions in Hong Kong, Vietnam, and Bangladesh, after which he will handle transactions in Poland, Russia, and France.

Li's thriving international practice is a testament to his legal skill as well as evidence of what China is today: a global economic powerhouse. Yet when he enrolled at Duke Law School in 1987—grabbing an “irresistible offer” of a full scholarship equivalent to 10 years worth of his salary as deputy secretary general for China's arbitration commission—Li's choice of study met with some condescension from Chinese students in other Duke schools, expressed during their Saturday morning soccer games.

“Their assumption was that only underachievers would study law, because all the smartest were in the sciences. They assumed that if I planned to go back to China, the law was useless,” Li explains. 

He admits to sharing their skepticism. More than a decade after the end of the Cultural Revolution, China was still making its first moves towards a socialist market economy, and its legal infrastructure was in its infancy. In 1982, when Li received his undergraduate degree, only about 80–90 lawyers graduated in all of China. There were no private law firms until 1984. And it would not have been the inclination of most Chinese to engage lawyers at that time in any event.

“If they had a problem, they would probably go to their boss, or to the government

authorities, and they would seek a political, as opposed to a legal, solution. A legal way of solving problems was not available. Courts were not equipped to solve civil disputes.”

Today, Li, says with a laugh, “the Chinese love going to court. They are more litigious than Americans.” There’s no shortage of representation either; Li estimates that there may be as many as 2,000 law schools in the People’s Republic of China (PRC). As for his own success, Li attributes it largely to that “irresistible” opportunity of a scholarship to attend Duke.

“Without Duke Law School, I would not be who and where I am today.”

Li, a life member of the Law School’s Board of Visitors, hosted a reception for fellow alumni, faculty, and their families at his new Beijing office on June 9 to kick off their 10-day tour of his country. Organized to mark 20 years since the first Chinese law student graduated from Duke, the tour celebrated the outreach, initiatives, and achievements of Law School alumni and faculty in China over that period. In addition to taking in such marvels of ancient China as the Great Wall and the Terra Cotta Warriors of Xian, the Duke Law contingent got a first-hand look at China’s current prosperity: construction cranes dotting the landscape, state-of-the-art office buildings and four-star hotels transforming the skylines of Beijing and Shanghai, new cars crowding the roads. With a conference at Tsinghua University exploring issues relating to intellectual property protection, corporate governance, and investing in China, the tour offered an in-depth look at where China is today, and the opportunities and challenges that exist in law and legal education.

“The trip was absolutely fascinating,” says Board of Visitors member Candace Carroll ’74. “We not only learned about China’s rich history, but a great deal about China as she is today.” Board of Visitors Chairman Peter Kahn ’76 agrees.

“For the Law School it was a wonderful way to strengthen our existing partnerships in China with law schools and law firms, and hopefully establish new ones, all with the goal of enhancing our academic scholarship, research, recruiting, and placement in the region. For the Board of Visitors it was an excellent opportunity to evaluate our international programming up close. And more generally for the alumni, faculty, and family members who participated, it was a once-in-a-lifetime opportunity to begin to understand a society we know little about, and do it with a group of spirited friends from Duke.”

Since 1985, dozens of lawyers have graduated from Duke Law School who now practice in China, or who have strong professional—and personal—ties to the PRC. They include partners with large international and domestic Chinese firms, such as Li, who have enjoyed extraordinary

### WINSTON (JIUSU) ZHAO '88

Managing partner, Jones Day, Shanghai

*Zhao is a specialist in cross-border transactions and international securities. After his graduation from Duke, he joined Coudert Brothers in New York, transferring to its Hong Kong office in 1991. Moving to Clifford Chance the following year, he relocated to its Shanghai office in 1995, and joined Jones Day in 1999.*

**MY GENERATION GREW UP** during the Cultural Revolution. Between 1966, when I was 12, and 1978, I had just one year of education. It was due to self-study that I was able to go to college.

At that time a JD was not available to Chinese students. This changed when I was 31, and I left for Duke in 1985 – it was my first trip overseas, and my first trip on an airplane. When I arrived in the United States, the culture shock was huge!

I found that on each page [of every textbook] I counted a hundred or so new words and expressions; when you then consider each course has at least 20 to 25 pages of reading assignments, and that each semester had four or five courses, I had to learn a lot of new words and expressions very fast! Many words and expressions have no direct translation to Chinese, as well – there is a huge difference in social, cultural, economic, and historical systems.

I still remember vividly my first course, torts, taught by Professor Robertson, a retired navy officer with a strong southern accent. The first week I thought I understood 60 percent [of his lecture], the second week 70 percent, the third week 80 percent, but then in the fourth week I couldn’t understand anything. I went to speak to Professor Robertson and asked, “What has gone wrong?” He said, “Congratulations, Winston.” I asked him, “Why?” Professor Robertson explained, “What you tried to do was put the words together and simply calculated them – so you thought

you understood but you didn’t. Now you have realized that you need to see beyond the words and then you can understand.”

This gave me some confidence.

The combination of all of these obstacles made my getting a law degree a formidable task – which makes me extremely proud to have made it to where I am today. My education at Duke fundamentally changed my perception, particularly with concepts such as “innocent until proven guilty.” It had a profound effect on the way I operate, in doing justice and in becoming a person who thinks rationally, instead of just looking at the facts. It also gave me the highest level of professionalism – the way I deal with clients and in the way I approach my work in every way.

During the baccalaureate ceremony at the Duke Chapel, I felt a tingle down my spine – I really felt like a professional. I still vividly remember it now.

In addition to my daily practice and administrative work, I also teach at various Chinese law schools. I use the Socratic method on real Chinese cases to help pass my knowledge, and experience on to the up-and-coming lawyers of the future. My Duke education has not only helped my professional development, but now my teaching is helping Chinese students and will, hopefully, impact China’s legal reform in the years to come.





XIANPING WANG REGULARLY LECTURES AT CHINESE UNIVERSITIES.

**"LAWYERS ARE PLAYING AN IMPORTANT ROLE, WHICH YOU COULD NOT HAVE PREDICTED YEARS AGO. THEY ARE IMPORTING NEW CONCEPTS—WESTERN LEGAL CONCEPTS—TO CHINA, AND ESTABLISHING COMMUNICATION BETWEEN THE PRC LOCAL BUSINESS COMMUNITY AND THE FOREIGNERS DOING BUSINESS THERE." XIANPING**

success. To name just a few who took part in Duke Law School's summer events: Ma Hongli '89, managing partner of Jun He Law Office in Shanghai, China's largest domestic firm (which also hosted a reception for the Duke Law group); Daniaan Zhang '89, the managing partner of Baker & McKenzie's Shanghai office; Winston Zhao '88, the managing partner of Jones Day in Shanghai; and Zhang Xuebing '98, the managing partner of Beijing's Zhonglun Jintong and one of China's leading real estate and property development lawyers. Alumni who practice internationally with strong connections to the PRC include Xianping Wang '91, whose Alexandria, Virginia based firm, Garfinkle & Wang Associates, is integrally involved with China's aviation and energy sectors, among others; Yan Xuan '87, vice president of corporate and business development for Oracle Corporation; and Kenji Kuroda '89, founding partner of Kuroda Law and Patent Offices in Tokyo, whose Shanghai office was recently opened by Sumiko Kayano '01.

Duke Law graduates with ties to the PRC also include academics and policy-makers. Professor Gao Xiqing '86, who

this year received the Law School's International Alumni Award, and who returns annually to lecture at Duke, has been a particularly influential reformer—a key figure in China's development as a capital market and now, as vice chairman of the National Council for Social Security Fund, in charge of managing his country's pension reserves. (See profile, page 22.)

"We are very proud of our Chinese graduates, who are leaders in the legal system in China, helping to shape the course of this ambitious country in a positive way," says Duke Law School Dean Katharine Bartlett.

### **BUILDING A PROGRAM**

Professor Jonathan Ocko has been teaching classes in Chinese law and society at the Law School since the early 1980s. A scholar of Chinese history, he started traveling

to China in 1982, shortly after Chairman Deng Xiaoping sanctioned the end of the country's extreme isolation. China, says Ocko, started rebuilding its legal system from scratch in the late 1970s, looking all over the world for sources of law.

"[T]hey borrowed from civil law countries like Taiwan and Japan, and for their property law, they borrowed from the German Civil Code. Laws relating to public and private international law often show a stronger Anglo-American influence.

"It is a process that is still ongoing. First the Chinese had to establish a legal framework, and then build a cohort of judges and lawyers trained in the legal framework."

It was against that backdrop that then-Dean Paul Carrington was contacted, in 1980, by the first Chinese student seeking admission. Shi Xi-min '85, a graduate of China's University of Foreign Economic

**"I WAS GENUINELY EXCITED ABOUT THE PROSPECT THAT WE WOULD BE REACHING OUT. THIS WAS A NEAT THING FOR DUKE TO DO—CONNECT ITSELF WITH A REAL ISSUE IN THE WORLD THAT WOULD HAVE A LONG AND LASTING IMPACT."**

### DANIAN ZHANG '89

Senior partner and chief representative, Baker & McKenzie, Shanghai

*Zhang practices in the areas of cross-border counseling, mergers and acquisitions, general commercial, WTO, and international trade regulations and customs.*



ALUMNI REFLECTIONS

**LOOKING AHEAD,** for international law firms such as Baker & McKenzie, mergers and acquisitions is one of the growth areas in China. Every year, many international companies come to invest in the PRC, some for taking advantage of its relatively cheap labor force, while others [seek to enter] the Chinese market. Instead of setting up a presence from scratch, more and more foreign investors are showing an interest in acquiring existing businesses with acceptable records. Intellectual property will be another growth area and outbound investment by large PRC companies such as Lenovo, Shanghai Automotive Industry Corporation, and Haier Group, is also on the rise. In summary, there has been increasing demand for international lawyers in China to advise on cross-border transactions. In addition to the above, dispute resolution, construction and securities are also attracting more attention.

To be honest, without receiving the fine legal education from Duke Law School, I cannot imagine that I could achieve what I have achieved today. I have always been very grateful for Duke's generous financial support provided to the Chinese students at that time and the high-quality legal education I received from Duke. At Baker & McKenzie's Hong Kong and Chinese offices, other than myself, we have also other lawyers who have graduated from Duke, and we are all very proud of being alumni. We highly appreciate the dean, the board members and other professors of Duke Law School's recent visit to Beijing and Shanghai and their meeting with Duke Law School alumni in both cities.



NEW CONSTRUCTION IN SHANGHAI

Relations and Trade, arrived in 1982, after a year-and-a-half of diplomatic wrangling with Chinese and dubious American authorities, and the eventual intervention of former President Richard Nixon '37. Carrington waived tuition, funding Shi as a Nixon Scholar with an endowment from the President's classmates. He then arranged for Shi's living accommodations, a modified first-year curriculum, and a summer job with Nixon's New York firm, Mudge Rose Guthrie Alexander & Ferdon. (See Carrington's essay, "Duke Law in China: A Remembrance," excerpt, page 24.)

In the fall of 1983, an undergraduate classmate of Shi's, Gao Xiqing, also was admitted with a full scholarship. Gao was already in the United States, working as an intern with Graham & James in its San Francisco, Washington, D.C., and Los Angeles offices. Although Gao is remembered for his initiative as a student at the Law School, he recalls his culture shock at encountering the American system.

"In China, you'd show up to school, and the professor would tell you exactly what you were going to do, then give you books, pens, notebooks—everything. It never occurred to me to go to the bulletin board to see what the professor wanted us to do in

advance of the class.

"My first class was property law, with [the late] Professor Bertel Sparks. I went to class empty-handed, and looked around. Everyone else had an enormous book with them. Immediately, Professor Sparks started talking about some case, speaking in legal jargon. So for the whole hour, I had no clue what was going on." Gao recalls struggling to keep up—and getting very little sleep—during his first several months of law school.

The Law School established more formal ties with China and Chinese legal institutions following a visit in 1983 by an official from the Ministry of Education and the dean of the People's University Law School (Ren Da) in Beijing, and Carrington's first recruiting trip to China—at their invitation—in the summer of 1984. With Ocko also conducting interviews during his regular trips, screening prospective students for their English language proficiency, the Law School found itself with an ever-increasing number of Chinese students entering the JD program through the 1980s. A high of 15 entered in 1987.

Although the PRC paid airfare for some of these students, none of them paid tuition. Carrington instead recruited

a law firm sponsor for each student; the students worked for their sponsors for two summers, with the Law School receiving sufficient funds in return to cover the students' living expenses through the year. Many firms had an alumni connection to the Law School, and viewed their sponsorships as a contribution to the public interest, Carrington explains.

"It was not hard to convince American lawyers that a country having almost no lawyers badly needed some."

Judy Horowitz, associate dean for international studies, recalls some of the practical challenges involved in providing comprehensive support to a relatively large number of students "far from home, many without their spouses and children, most with little or no previous legal training, some with limited English ability, and all new to the complexities of America and American education." She recalls, for instance, the challenge property law posed for students essentially unfamiliar with the concept; one bright student, she says, managed to defer taking it until his third year.

The faculty was, by and large, supportive of Carrington's establishment of a "China program." Brainerd Currie Professor of Law James Cox, whose classes in securities law have always been particularly popular with Chinese students, was a champion from the start.

"I was genuinely excited about the prospect that we would be reaching out. This was a neat thing for Duke to do—connect itself with a real issue in the world that would have a long and lasting impact. And I think everybody understood that a country that was going to be other than just a third-world country had to have economic development, so their students would have a keen interest in learning as much as they could about commercial and corporate transactions in particular."

## ESTABLISHING AN EXCHANGE

In the mid-'80s, People's University offered to host a group of Duke Law students for a year as part of its first exchange program. Dan Scheinman '87 recalls "begging" Carrington to send him as a 2L.

"I believed that we were entering the age of the rise of Asia. China was just begin-

ning to liberalize, and I wanted to witness it," says Scheinman. It had an enormous impact on his life—he met his wife in Beijing, and made a number of lifelong friends—and his career goals; while he had originally planned to become a litigator, he saw new possibilities in business law.

"When I got to China, I recognized that there were things that had a global impact. One of them was technology. The other was being versant in the 'global conversation.' I saw the power that technology had. At the time, Hewlett Packard was just opening in China and [employing] a lot of people, and I realized that sometimes business had more power to do positive things in the world than government. The role that technology and companies had the potential to play in China's awakening and liberation was really fascinating to me."

Now senior vice president for corporate development of Cisco, Scheinman's company has a large base of operations in China, which he describes as "the global market." He hopes that law students are paying attention.

"Today everybody needs to be aware of China, because it is going to impact every aspect of our economic life—everything from the rise in gas prices to what jobs people will be doing."

In fact, China is very much on the radar screens of American law students as they plan their careers. Sara Wickware '06, who worked for Jones Day in Shanghai in 2004, noted that almost all of the 15 students enrolled in Ocko's seminar on Chinese law and society last fall had spent time in the PRC; some planned to return.

Students are not the only ones who have benefited from the Law School's ties to China; various Duke Law faculty have taught in Chinese institutions over the years. As a member of the Council on Legal Education Exchange with China (CLEEC), formed in 1985 to connect major American law schools to suitable Chinese applicants for admission, Carrington first taught prospective students in a two-week program in Manchuria that year.

James B. Duke Professor of Law George Christie, who first went to China with a delegation from the American Bar Association in 1978, lectured on products liability law in Beijing and taught a four-week course in American tort law at Fudan University in Shanghai in 1985.

## KENJI KURODA '89

Founding Partner, Kuroda Law Offices, Tokyo and Shanghai

*Kuroda practices internationally, with a specialty in patents and mergers and acquisitions. He has been active in China throughout his career, and in December 2004, Kuroda's first partner, Sumiko Kayano '01, opened Kuroda Law Office in Shanghai.*



**WHEN I WAS** a first-year associate at a Tokyo firm 19 years ago, I strongly felt that China would become one of the largest markets for Japan as well as the United States. Mr. Deng Xiaoping had changed his national policy and, judging from the size of the country, I thought that China would be the most successful country for the next generation.

I studied Chinese language and law independently. At Duke I arranged to have a Chinese roommate, and sought out the Chinese law students to work on my language skills. There were many fine students that came from mainland China. I shared a wonderful time with them and became even more confident in the future of that country because those students were excellent.

After working as an intern in the summer of 1989 at Johnson, Stokes & Master, the largest Hong Kong firm, I studied Chinese investment law at Fudan University for a year.

I was at Duke at the time of the Tiananmen massacre. We all understood how terrible it was, but I also felt that the situation would improve.

I started my firm 10 years ago with one secretary and one Chinese paralegal, and found a good market for my expertise in Chinese law. Many of my clients are Japanese corporations and financial institutions doing joint-ventures and mergers and acquisitions in China. Today we have more than 80 staff in Tokyo and Shanghai, including eight Chinese attorneys and eight Chinese paralegals. We have probably handled the highest volume of Chinese work among all Japanese law firms.

Practicing in China is not without risk. Chinese laws and regulations are always changing. For instance, foreign companies cannot operate as business entities. Those firms have to restrict themselves to very limited activities and areas, and are expected to practice the laws of their home countries. There is a risk, too, if China changes its policies towards openness. But I don't think that will happen—even changes in leadership take place seamlessly. The younger generations put more emphasis on the economy, as opposed to political struggles or other factors.

# 杜克大学法学院在中国

## DUKE LAW IN CHINA

“One subject that aroused considerable interest was the awarding of damages for emotional distress, which sparked an extended discussion of how to value human life,” he recalls. Christie returned to China in 1995 for a series of lectures to university and bar association audiences in Beijing, Shanghai, and Chengdu.

In February 1999, Duke and Tsinghua Law Schools signed a memorandum of understanding to partner in an exchange of faculty, students, and scholarly projects. In the Fall 1999 term, Chunyan Fan '00 of Tsinghua

Columbia Law School.

While the faculty, headed by then-Dean Pamela Gann '75, still strongly supported the mission of the Law School to help develop the legal system and profession in China, it decided, to cut back the numbers of Chinese students admitted to and supported by the School. Through the 1990s, scholarships were extended to about three JD students and one LLM student annually. In the early 1990s, Gann also ended the policy of having law firms that employed Chinese students in summers make payments directly

granted extensions of all student visas, allowing the Chinese graduates to stay.

Wang, known as Ping to his friends and clients, arrived at Duke with two Chinese law degrees and the clear intention of returning to his Beijing law firm, the first private firm in China.

“My thought was that the country needed lawyers who understood both the Chinese and the U.S. legal systems, and were fluent in English,” says Wang. “Everything suddenly changed.”

Following his graduation, Wang joined the Washington, D.C. firm of Galland, Kharach, Mores & Garfinkle, and immersed himself in its specialty, aviation law, becoming a partner in 1994. Far from disconnecting from his homeland, though, Wang saw it “as an aviation market to be explored.” He has traveled to China almost monthly since

his graduation, establishing communications with airlines, airports, manufacturers, regulatory agencies, local governments, and diplomats, first on behalf of his law firm, and then as a principal of the strate-

gic consulting firm to the aviation, energy, and water resources sector that he and other firm partners established. Garfinkle & Wang Associates, which does business as GCW Consulting, represents a large number of U.S. aviation companies operating in China, and now has offices in Beijing, Shanghai, and Shenzhen, and has plans for a fourth. Today Wang's confidence is strong.

“The aviation industry is, in many ways, a barometer of China's openness and growth, as well as a barometer of the China-U.S. relationship,” says Wang who was appointed as one of 15 special advisers to the Civil Aviation Administration of China (CAAC) in March, the only one outside of the PRC. “China is of the same geographic size as the U.S., but with five times its population. It has fewer than 140 commercial airports, whereas the U.S. has 5,500. Last year in China, each citizen traveled by airplane 0.23 times; in the U.S., each person traveled four times. And in the last 20 years, China has had double-digit GDP growth annually, and the aviation growth has been double that. China plans to double

**“OUR ALUMNI HAVE GONE BACK, THEY'VE LECTURED, THEY'VE BROUGHT THEIR SKILLS BACK, AND THEY'VE BROUGHT THE MODELS OF HOW TO DO BUSINESS AND LAW BACK WITH THEM. IN THE LONG RUN, THEY HAVE MADE A DIFFERENCE.”**

NIU WENJIE '05

taught a Chinese law course at Duke, and the Global Capital Markets Center held a major international conference on corporate governance issues in China at Tsinghua. Professor Thomas Metzloff and David Warren '64, who had taught environmental law at Tsinghua in 1998 as a Fulbright Scholar and again in 1999 and 2001, coordinated an experiment in distance learning: Tsinghua students studied distinctive aspects of the American legal system, such as First Amendment protections, capital punishment, and affirmative action, which corresponded to emerging issues in China.

### TIANANMEN SQUARE BRINGS CHANGES

The student pro-democracy protests in Beijing in May 1989—and the central government's violent suppression of them—changed the way Duke Law's China program was administered, says Horowitz.

“From the spring of 1989 on, the scrutiny of Chinese students admitted to study in the U.S. became very severe, and obtaining a visa at the U.S. consulate meant overcoming a major hurdle.” Only one Chinese student joined the LLM class of 1990, although two more transferred into the JD program from the LLM program at

to the School; they instead paid the students directly, and Gann simply asked those students to make suitable contributions, at their own discretion, once they graduated and were in the work force. Most have done exactly that with some, like Li and Xianping Wang, who has served as a member of the board of directors of the Duke Law Alumni Association, also assuming leadership roles within the alumni community.

As China has become more prosperous, so have the Chinese applicants to the Law School, Horowitz observes. Starting in the late 1990s, an increasing number of applicants had sound legal training and solid work experience, and most could pay their own tuition; a member of the Board of Visitors helps support some worthy students who need assistance.

It had always been the hope of the Law School that most of its Chinese students would return home to China after graduation or a few years of work at an American firm, but Tiananmen Square had a chilling effect for some; they temporarily lost confidence in China's commitment to openness and reform. While it was somewhat difficult for them to find jobs with American firms due to the frosty state of U.S.-China relations at that time, the U.S. government



its airports in a decade and purchases more than half of its fleets from the U.S. The potential there is clear.”

### MAKING A DIFFERENCE

Has Duke Law School been effective in its contribution to the legal system and profession in China? Wang says it has, without question.

“I am personally grateful, but objectively speaking, Duke really did a fantastic job as one of the first to establish such a regular and consistent program. Duke’s alumni have played important roles in the changes in China—Gao Xiqing, in particular, will be in the history books.”

Professor Jonathan Ocko agrees. “Our alumni have gone back, they’ve lectured, they’ve brought their skills, and they’ve brought the models of how to do business and law back with them. In the long run, they have made a difference.” Alumni like Li, notes Ocko, while not practicing as Chinese attorneys—they suspend their licenses while employed by foreign firms—are consulted by legal officials for their expertise. “Ma Hongli ’89, the managing partner of a major Chinese firm, played a central role in drafting the canon of legal ethics for his firm, and has been active in the Bar Association in Shanghai. These people really have a chance to make an impact.

“A few years ago, I was talking to a Chinese businessman who had no connection to Duke. He said, ‘It seems you can’t be involved in a complicated or complex large-scale business transaction in China without running into one of Duke’s Chinese alumni.’ That in itself is a fairly significant contribution.”

He also recalls how students from Tsinghua and Peking University Law Schools thanked him for Duke’s commitment to the legal profession and the law in China when he spoke to them in 1999.

“One of them actually raised his hand in the middle of my talk and said I should tell Duke that they appreciated what it has done over the years.”

Niu Wenjie ’05 credits the Law School specifically for having a profound influence on the development of Chinese security law and regulations. She took leave from her position as director of the law division of the China Securities Depository

and Clearing Company (“China Clear”) to enroll in Duke Law’s LLM program, and was previously the deputy director of the law division of the Shenzhen Stock Exchange, China’s first. She has also been on the teams charged with drafting and revising Chinese securities and investment fund laws.

“Professor Gao is in many ways the father of Chinese securities markets, and for having taught him, Professor Cox has also had an important influence,” says Niu, who has a high enough profile in her own right to have been invited to address the international law section of the American Bar Association in Washington, D.C. on that subject last April.

Deflecting the compliment, Cox remembers his early discussions with Gao and his classmate, Shi Xi-min, about the role the law plays in developing countries, and the importance of getting savings “out of tin cans”—since the banking system was unreliable—and flowing into development projects.

“What the law does is provide some assurance that individuals who put effort in, or invest money, have every reason to expect that they can appreciate the risks of doing so, and that they can measure what the rewards are for embracing those risks. The more trustworthy that process is, the sharper the judgments will be that investors make, and that ultimately will lead to putting assets and resources to their highest and best use. It’s really important in a developing economy to get money flowing into the markets. That is what will develop the productive resources to improve the life of everybody in the society.”

Cox calls the early 1980s “truly the wild west” for capital markets in China. “They were developing informally and without regulation—there were no corporate or securities laws. As a result, they were largely ineffective and inefficient, and always under the threat that they could be snuffed out very quickly if the central government decided that this was not the way it wanted to go.”

While he takes no direct credit for influencing Gao, Cox is certain that Gao paid close attention to his message on the cornerstones of U.S. securities law: transparency, predictability, and enforcement, the right level of sanctions, and the right level of funding for the enforcement agencies.

### ROSS KATCHMAN '87

Senior counsel and co-manager worldwide mergers and acquisitions, Hewlett-Packard Corp, Palo Alto, CA.

*Katchman describes himself as “heading down the straight and conventional road” in his second year at Duke Law, when Dean Paul Carrington asked if any students would consider spending a year on exchange as “visiting scholars” at People’s University Law School (Ren Da) in Beijing. Five Duke Law students did just that in the 1985-86 academic year.*

**THAT I WENT TO CHINA** after my second year at Duke Law was so improbable that it had to be an accident—or *Yuan Fen*, roughly translated as the lot or luck by which people are brought together.

It was a great adventure. The Western students couldn’t speak Chinese and the Ren Da faculty couldn’t teach in English. The official plan was to study Chinese for the first semester and then study some Chinese law during the second semester. But it was more than optimistic to hope that our Chinese language skills would advance to a level that would enable any of us to study under the Ren Da law faculty during the second semester, and we quickly (and correctly) concluded that our most constructive study program would be to focus on developing our language skills and to be out-and-about in Beijing and China as much as possible. We lived in a small dormitory reserved for foreign students, teachers, business people, and even what appeared to be Eastern-bloc espionage operatives. [There were] 60 or so of us from places as diverse as the U.K, Holland, Germany, Sweden, Finland, Japan, Tanzania, Ethiopia, U.S.S.R., Equatorial Guinea, Mexico, Benin and Durham (England and North Carolina).

It’s impossible for me to adequately describe the fun and excitement of being in China at that time as the country was just transitioning from 35 years of Maoist isolation. We traveled extensively, made great friends (some of whom I have been in almost daily contact with for the past 20 years) and experienced the beginning stages of an economic transformation of historic proportions. For five somewhat wayward Duke Law students, it was both a year of “intoxicating expectations” and, because China is an experience that transforms your view of the world, one from which we could never completely recover.

“When you talk to Gao, he has a strong sense about what business people want to do, and then tries to figure out how regulations compliment those interests, and still serve the public interest. I don’t know how much credit we can take

for that, but it's not inconsistent with the message that was drilled into him while he was at Duke."

Cox has not limited his message on openness to his classes. A few years ago, he participated in a program in China for the Organization for Economic Cooperation and Development, the whole purpose of which was to try to encourage the government to commit more to strengthening the enforcement of the securities rules. "The belief was that development would be stimulated if they had strong securities laws."

### THE GLOBAL MARKETPLACE

For the past 14 years, Ping Wang has traveled to China almost monthly from his home in Virginia. Still, he says he is constantly surprised by the changes he sees in Beijing, where he grew up, trained, and

practiced law before coming to Duke.

"There are many places I don't recognize—new construction, entirely new neighborhoods. It's all very, very different. Culturally that is true, too. The younger generation thinks very differently from the way we did a long time ago." The environment for doing business and the legal environment have also markedly changed, he adds.

"Lawyers are playing an important role, which you could not have predicted years ago. They are importing new concepts—western legal concepts—to China, and establishing communication between the PRC local business community and the foreigners doing business there. All of that is changing very quickly."

That it has changed is clear. China is not only open for business, it is looking to extend its reach and resources, as evidenced by the China National Offshore Oil Company's (CNOOC) June bid (later with-

drawn) for American oil giant Unocal, and other recent attempts by Chinese firms to acquire such brands as Maytag, as well as their distribution networks.

The realities of doing business in China—and comparisons to its main Asian competitor, India—were the subject of a morning panel at the Law School's conference at Tsinghua University on June 11. (See story, page 26.)

Professor Stephen Wallenstein, director of Duke's Global Capital Markets Center (GCMC) which co-sponsored the conference, takes a clear-eyed look. While he calls China "the engine of world growth at the moment," that growth is a bit out of control, in terms of the extent to which the Chinese are building over-capacity in sectors such as commercial real estate.

"On one hand, there is a nine percent growth rate in the country, and a 15–20 percent increase in investment every year. China has recently dismantled its fixed exchange rate and has huge reserves. However, the economy is still cushioned by a significant level of non-tradable government stakes in large enterprises. China's plan to unwind the high level of government ownership is crowding out new listings of more productive private enterprises. Managers don't own stock, so they don't have the incentive to maximize profits and shareholder value."

Wallenstein points out that China's securities markets are trading at an eight-year low. "Investors are very leery. Corporate governance, transparency, accounting rules—all have a very long way to go." At the same time, he adds, China represents a substantial opportunity for the GCMC, because of its expertise and focus on corporate governance.

The GCMC presented a training program in China in 2000 at the Shanghai Futures Exchange, which was co-sponsored by the China Securities Regulatory Commission and Morgan Stanley, and it is currently evaluating the possibility of presenting a Directors' Education Institute in China in the fall of 2006.

Significantly, there are opportunities for lawyers in every sector.

"For Chinese students, the current opportunities in China are extraordinary," says Ocko. "It makes sense for them to stay and get some practical experience in the United States, but their futures—and

### DAVID WARREN '64

Professor Emeritus, Occupational and Environmental Medicine, Duke University

*Warren is an expert in public health and environmental law. He first went to China in 1998 as a Fulbright Academic Scholar, teaching environmental law at Tsinghua University Law School, and returned there in 1999 to help set up Duke Law School's reciprocal arrangement with Tsinghua. Warren returned again in 2001 to facilitate an experiment in distance learning with Tsinghua's law school.*



**WHEN I WAS AT TSINGHUA** my main job was teaching environmental law and being a promoter of other activities at the law school. I became involved with moot court, and edited the inaugural issue of the law journal.

Tsinghua was primarily an engineering and science university, and just reopened its law school with a graduate-level law degree in 1995. The first class of seven students graduated when I was there. I was teaching the second-year students, a class of 14.

While their English was quite good, the Socratic method of teaching came as quite a jolt to my students. While the students were accustomed to recitation and memorization, I was trying to teach them to process, to analyze, and to think on their feet. They had not been exposed to any western-style teaching up to that point. I introduced the idea of standing, coming to the board, role-playing, taking one position and switching sides, and taking the other side and making the same argument. Some of my students complained about it early on, but by the end of the semester, the head of the "anti-Socratic camp" became a real proponent. In fact, she became my assistant when I returned in 1999.

By 2001, things had changed had changed drastically. The student body numbered 600 – up from a total of 20 in 1998. They had a new building, a much larger faculty, and a steady stream of foreign professors, Fulbright scholars and others. Tsinghua had made remarkable progress, far beyond what an American law school could achieve over just three years.

I got a sense that a certain portion of the students wanted to use their law degrees for the idealistic purposes of being part of the "rule of law" movement, and others were interested in being involved with business and making a lot of money.

In my areas of expertise, environmental law and public health, I see considerable progress. There are more academic environmental studies, an increasing public interest and awareness, and more government money being put toward environmental protection. And while routine, public health maintenance surveillance remains under-funded and under-manned, there is a public health infrastructure in place now. China's reponse to SARS showed that it can mount a massive public health response to contain a serious epidemic.

ALUMNI REFLECTIONS

**"WHAT WE LEARN THROUGH THESE INTERACTIONS (WITH CHINESE STUDENTS, ALUMNI, AND INSTITUTIONS) IS AS SIGNIFICANT AS WHAT WE**

DRAGON BOAT AT THE SUMMER PALACE IN BEIJING



their fortunes—are going to be made in China. If you are doing high-end securities litigation, or large-scale project finance for a Chinese firm or for a U.S. firm operating in China, you're doing as well as you could in the United States, and there you can make a contribution."

Notorious for its lack of intellectual property protections—another subject of Duke's Tsinghua conference—that area is a hotbed of legal activity. China's entry into the World Trade Organization (WTO) also presents significant opportunities; the banking sector is one that has to open by the end of 2006.

Issues emerging in China also present opportunities for Duke Law School, its faculty, students, and graduates. Poverty is on the rise, as is poverty law. Clinical Professor of Law Carolyn McAllaster traveled to China as a guest of the clinical programs at Peking University Law School in June, finding great interest in Duke's clinical programs and opportunities for students. It is fascinating, she says, to see that at least two of that university's four clinics focus on research; students research the legal needs in specific low-income communities and report directly to government officials, as well as to their instructors.

"That's very different from what we do. Our laws are set, in a way, and in most cases we are trying to get the law interpreted in our clients' favor."

McAllaster anticipates greater contact between Duke Law's clinical programs and those at Peking University, possibly leading to a student exchange.

"There's great pedagogical value in learning to work across cultures, bringing any expertise that students might have gained in a clinic here to their work in China, and in bringing back an understanding of the tremendous need internationally for legal services for poor people."

Charles S. Murphy Professor of Law and Public Policy Studies Christopher

Schroeder immersed himself in environmental issues in China during his June trip.

"Economic growth is putting heavy demands on all aspects of the energy sector," Schroeder points out. "China's energy mainstay has always been coal, which it possesses in abundant amounts second only to the United States. At one time, China thought that bringing on line the hydroelectric power from the Three Gorges Dam would mean that it could retire some of its oldest coal fired plants, but the explosion of economic activity thwarted those plans. Instead, China now anticipates another 200 gigawatts of new coal-fired electrical generation will be built in just the next 15 years."

While car ownership has boomed as a sign of prosperity—increasing about 100 percent over the past three years—it is another source of pressure on worldwide petroleum production, adds Schroeder, and has had a discernible effect on world oil prices.

"These two fossil fuels—coal and gas—are clearly the engines driving China's economic boom. Unfortunately, they are also the engines of increasing environmental problems. China is on schedule to eclipse the United States as the world's leading generator of global warming gases in about 20 years. Fossil fuels used in

electrical generation and in autos are the two principal sources of local air pollution throughout China, but especially in the cities. The skies of Beijing, Shanghai, and Xian were dull and gray with pollution during most of our visit.

"In short, the environmental and energy issues facing China, like many of its social and economic issues, are large in their scope and large in their potential impact on both the Chinese and the rest of the globe."

Looking ahead, Dean Bartlett says there are many ways to contribute to law and policy in China.

"We can find the best students from China and give them a first-rate education. We can keep in touch with these students when they graduate and learn about the issues of importance to them. We can multiply and deepen our contacts with law faculty in China and share expertise on a wide variety of topics in law and legal education, including intellectual property, business law, environmental law, constitutional law, and legal clinics. What we learn through these interactions, of course, is as significant as what we teach. Duke's approach will continue to be one of partnerships and mutual exchange." ♣



GAO XIQING '86 WAS A KEY ARCHITECT OF CHINESE SECURITIES LAWS AND IS NOW VICE CHAIRMAN OF A FUND SET UP TO MANAGE SOCIAL SECURITY RESERVES FOR 750 MILLION CHINESE CITIZENS.

Illustration: Kelly Murdoch-Kitt

## GAO XIQING '86: REFORMER AND OPTIMIST

**GAO XIQING** says that he has never had a job he did not instantly enjoy, or come quickly to like, and has tried to excel in every position. That was true, he says, when he was assigned to do manual labor on a railroad in his early teens, and during the year-and-a-half he spent as a bench worker in a Chinese artillery factory.

“I call myself a *Lei Feng* type—a small cog in a huge Party machine, and wherever they put me I’m happily there.” He has brought the same optimistic attitude to such daunting professional chal-

lenges as establishing rules for China’s nascent capital markets, and managing its social security fund.

It was always Gao’s intention to return to China and participate in reforms there. While working as an associate at the Wall Street firm Mudge Rose Guthrie Alexander & Ferdon following his graduation from Duke Law, he and other Chinese expatriates engaged in on-going discussions about establishing stock exchanges in China.

“Even Marx praised stock exchanges and banking systems. He regarded them

as tools, rather than goals, and tools can be used by anyone—they can be used to serve the purposes of the poor people and the working class. So in my mind, in order for China to change for the better and compete, we needed a better financing system. Stock exchanges were an inevitable part of that.

“From 1985 on, capital markets were on the reform agenda, but very little was actually being done. After a lot of deliberation, a group of us decided that it was time to put up the proposal. In 1987-88,



things were very, very active in the ideological world in China, and in the political arena, and we thought that if we put forth these ideas, there was a chance that they would be accepted.”

Having gained critical experience in the operations of the New York Stock Exchange and the Securities and Exchange Commission (SEC) while at Mudge Rose, Gao returned to China in 1988, touring various European stock exchanges en route, including a new one in still-socialist Hungary. He subsequently took a leadership role in drafting the securities rules during “three sleepless weeks” in the spring of 1989; the rules were released at the end of April.

“But by then the students were already out in the streets and in Tiananmen Square, and it was tabled.

Nobody could bring themselves to think of it for awhile,” he recalls. By the end of

the year, things were back on track, with the Chinese leadership committed to moving forward with reforms as opposed to returning to a planned economy.

While ideally, says Gao, securities law would be passed nationally, the Shanghai and Shenzhen city governments were given limited authorization to draft their own regulations; Gao and his colleagues were involved in drafting the corporate laws and securities regulations for both cities’ stock exchanges, the first in China. Drafting itself posed a particular challenge because the Chinese language lacked the requisite vocabulary.

“When necessary we either used English translations or made up the words,” recalls Gao. “Today, many people say things like ‘market makers’ with ease, but in those days, people laughed because it sounded so strange—in Chinese, ‘market maker’ sounded very much like ‘love maker.’ Now we have the words we need, and nobody thinks about where they came from.”

The fact that China is not a capitalist country—private ownership is still a new concept—forced quite a number of compromises, acknowledges Gao, who served as vice chairman of the China Securities Regulatory Commission (CSRC) from 1999 to 2003.

“The American [securities] system is still regarded as the best in the world. While we

tried to copy it in many ways, we also borrowed rules from the British, Taiwanese, Japanese, and German systems, because the American rules of *laissez faire* sometimes just wouldn’t work in China. People wouldn’t agree to it. Even after all these years, we have a system that looks on the surface like others, but when you talk about the enforcement level, and the actual details of the laws, it’s very different.

Gao has been a consistent advocate of a mandatory disclosure system, similar to that of the U.S. “Basically that means that as long as you disclose what you are selling, you can sell almost anything—the government won’t stop you from selling bad

**“PARTY POLITICS ARE STILL CLOSED, BUT EVERYTHING ELSE IN CHINA—ECONOMIC REFORM, FINANCE, SPORTS, DAILY LIFE, SEX—ARE MORE FREELY DISCUSSED THAN IN MOST COUNTRIES IN**

things, as long as you disclose that they are ‘bad things.’” He has been openly critical of the Chinese government’s insistence on approving all listed stocks, feeling that it automatically signals to the investor that the investment is a good one.

“Since 1990, the number of listed companies has grown to 1,400 from the eight originally listed. Probably only 100 are worth investing in. To me, that shows the failure of our approval system. No matter how good the intention, the state can’t possibly do the job. Business is a complicated thing. And the government can’t make up all these numbers and decide which is good and which is bad. Nobody is able to do that.”

The fact that he can state his criticisms publicly is a testament to how far China has come towards freedom and democracy in 20 years, Gao says.

“Party politics are still closed, but everything else in China—economic reform, finance, sports, daily life, sex—are more freely discussed than in most countries in the world.”

In 2003 Gao became vice chairman of the National Council for Social Security Fund, charged with managing the social security reserves. Set up in 1997 to handle the retirement needs of urban residents only—a population currently in excess of 750 million—the

fund has only about \$20 billion dollars.

“We’re trying to grow it, and we’re trying to persuade the government to open other resources for the fund,” says Gao. Whereas current rules allow the fund to be invested in both the fixed economy and the equity market in China in a very limited way, the government recently gave the go-ahead in principle for some of the money to be invested abroad. “We are still waiting for the state council to come up with some rules, after which we will assign a small amount of our money to international investment.”

The job particularly suits the idealist in him, Gao says.

“When I was at the CSRC, very often I would be accused of not having enough sympathy for the small investors in the market. I would say, ‘Our small investors may look poor compared to the big capitalists,

but they have some money to play with.’ I felt like I was serving the rich people there. Finally I can tell my conscience that I’m doing the right thing, because I am serving the truly poor people. I am helping people who have absolutely no means to help themselves.”

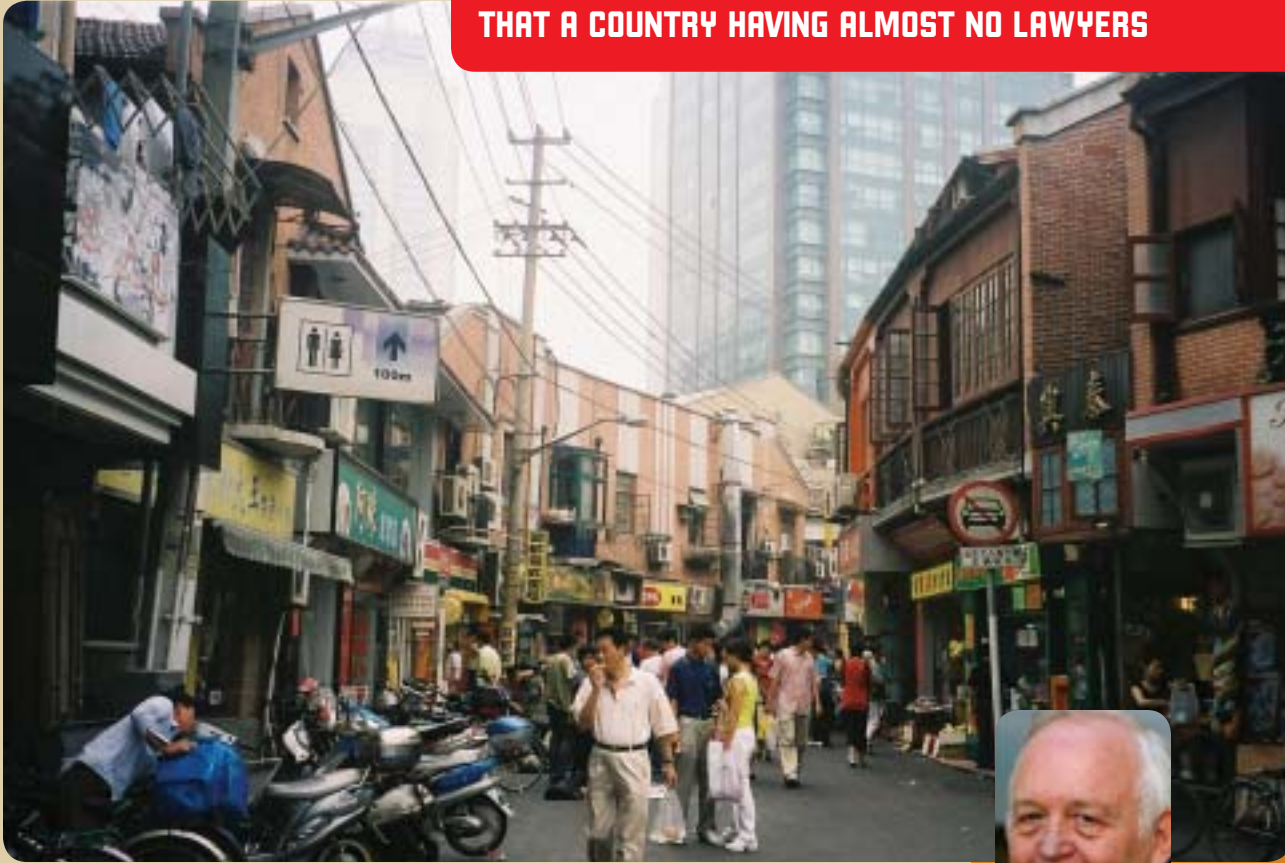
In that spirit, Gao recently started a charitable fund, with the support of some of his former students, to directly help children in the poorest areas of Tibet and Mongolia stay in school. While nine years of education are government supported, many families in poor areas take their children—most commonly their daughters—out of school in order for them to earn income. The fund provides families enough income to make it worth their while to let them stay in school. It also assists some high-achieving high school students meet expenses. Last winter, Gao took a 5,000 mile train trip with his six-year-old son last year to visit families of scholarship recipients.

“It was a good experience for my son. He gave a report to his teacher, and I talked to his class about how lucky they are, and how sympathetic they should be to poor families.”

Asked of which of his achievements he is particularly proud, Gao demurs.

“I’m not done yet—there are many worthwhile things still to do.” ♣

"IT WAS NOT HARD TO CONVINCE AMERICAN LAWYERS THAT A COUNTRY HAVING ALMOST NO LAWYERS



## DUKE LAW IN CHINA: A REMEM-



PAUL CARRINGTON, DEAN FROM 1978 TO 1988, OVERSAW THE START OF DUKE LAW SCHOOL'S INVOLVEMENT WITH CHINA.

**CAME FROM** Michigan to Duke in 1978 to serve as dean of the Law School. I had in mind the opportunity to help improve legal education in the United States. Not considered was the possible internationalization of the Duke Law School, or that Duke might play a role in legal education in China.

It was perhaps in December [1980] that I received a stunning letter from Shi Xi-min, then in China. To get a letter from China was itself an astounding event. No one born after 1960 can today imagine the degree of isolation of China, especially in its disconnection from America. Xi-min wanted to study law in the United States. The quality of his English was such that I was confident some American had written his letter, and he did acknowledge the help

of a graduate of Wellesley College. He identified himself as a worker with the Ministry of Foreign Economic Relations and Trade, and a recent graduate of the University of International Business and Economics. But he also described his life as the son of an air force general who had himself served in the military as a helicopter pilot. And he had also been in prison twice during the Cultural Revolution—once as his father's son, and once on his own account. He was married to a woman who was on military duty in Tibet. All this was interesting, but what blew my mind was his claim to have translated into Mandarin two novels by William Faulkner, one of which (*Absalom, Absalom*) I had read and found to be absolutely incomprehensible. I much desired to meet such a person.

It was not until the early spring of 1982 that Xi-min actually arrived in Durham. Getting him out of China was not easy. There was the U.S. Department of State to deal with. And then its Chinese counterpart. A call to our alumnus, former President Richard Nixon '37, did get the attention of the Chinese bureaucracy. Another alumnus, Al Philipp '50, general counsel to Pan-American Airways, then the largest international airline, arranged for Xi-min to get a free ride from Beijing to New York. The Law School bought him a ticket to RDU. Because we had a small endowment fund contributed by President Nixon's classmates, I designated Xi-min as the Nixon Scholar and used the bit of income from that fund to cover some of his costs.

Because Xi-min had never studied law in China, it was from the first planned that he would stay three years and do the JD program, with a lighter load in the first year. I was able in effect to waive tuition. Given the rate of international exchange at that time (the annual income of a Chinese worker might then exchange for perhaps \$200), it was unimaginable that tuition would ever be paid by a student from China. Less easily solved was the problem of living expenses. I arranged for Xi-min to live [in a rooming house owned by my son]. He was a strong personality and an adequate student of American law. He found employment for himself for the summer of 1983 (with some help from Professor George Christie) at Mudge Rose Guthrie Alexander & Ferdon in New York, the firm in which Richard Nixon had practiced in the 1960s.

From the first, Xi-min was ambitious to bring other students from China. He most urgently recommended his friend Gao Xiqing, who had been his fellow student at the University of International Business and Economics. Somehow, Xiqing had landed a tour as a paralegal at Graham & James in Los Angeles. The most striking fact about him was that his father had been on the Long March of 1933, when the Communist force led by Mao Tse-tung escaped the trap set by the Kuomintang army led by Chiang Kai-shek. His English was very good, and he struck me as rather a Chinese patriot. So I admitted him as a second student from China, but wondering how we would cover his living expenses.

Also that summer, Xi-min was recruited by the Chinese Embassy in Washington to study New York law firms as possible counsel to the Embassy. The Embassy badly needed help, and the foreign exchange rates disabled them from contemplating the help they needed – the price of legal services was to them simply prohibitive. For example, sometime in 1982 someone had moved to reopen an ancient judgment against the Kingdom of China that had been entered by an Alabama court many decades earlier. The Embassy's way of dealing with it was to insist that the United States Department of State should fix the matter. The result was a default leading to prolonged difficulty. On behalf of the Embassy, Xi-min talked to a lot of New

York lawyers and recommended to the Embassy the names of three, for which they expressed gratitude.

But in the fall of 1983, Xi-min received an urgent call from the Embassy. Someone had initiated a proceeding in the United States Department of Commerce to impose a countervailing duty on Chinese textiles. Billions were at stake. But no one on Xi-min's list would do. The list being useless, Xi-min and Xiqing would have to take care of the matter! No one in our law school knew much about countervailing duties, but we knew a few lawyers in Washington who did. So they got some pro bono help in writing a memo to be filed by the Embassy. It was not likely a hard case to win, given the international political scene at the moment. But China won, and the Embassy was grateful to the Duke Law School for its cost-free victory.

A few weeks later, I received a visit from Wang Fusun of the Ministry of Education and Dean Gao of the People's University Law School (Ren Da). They invited me to come to China in the summer of 1984 as a guest of the People's Republic to recruit more students who might be able to win such cases after a few months at Duke.

I was in China for over two weeks, accompanied by [my wife] Bessie and our younger son, Will. We ... were taken to the universities to meet Anglophonic faculty and the students whom they recommended for places at Duke.

At Ren Da, I met 10 law teachers and five law students who wanted to come to Duke. I provided the students with a copy of the opinion of the [Supreme] Court in *Hickman v. Taylor*, and then later got them to discuss it with me. I was satisfied that all were competent in English.

An interpreter was needed for my visit with the faculty. The faculty did not have offices, but carrels in a library that had been thoroughly cleansed of capitalist dogma during the Cultural Revolution. Their university was established in a cave in 1934 and its historic role was to train party leaders, and for that reason it had survived the Cultural Revolution. But in 1984 it was an arm of the Education Ministry and its students were selected by a national examination. They proposed to employ Shi Xi-min as a member of their faculty. It seemed to be supposed that I could arrange that.

Ren Da had never had foreign students, and one aim of our discussion was to consider what they might do with Duke Law students. They would provide room, board, and instruction to Duke students in exchange for our working with their students. I agreed to take two in 1984, and perhaps the other three in 1985. In exchange, three of our alumni did later spend an academic year there. For Ross Katchman '87 and Dan Scheinman '87, that experience proved to be very important to their future careers.

In 1985, the Council on Legal Education Exchange with China was organized and funded by the Luce Foundation. My presence as a member of the five-member Council was an acknowledgment that Duke was for the moment ahead in building a relationship with China. Other law schools were also, like Duke, beginning to see the prospect of becoming international institutions and it was the role of CLEEC to connect them to Chinese applicants.

I succeeded in recruiting a law firm sponsor for each of the JD students Duke enrolled. The students worked for two summers in those firms and were paid enough to cover modest living expenses.

In varying degrees, these law firms may have hoped to secure future business, but in large measure, these were law firm contributions to the public interest. It was not hard to convince American lawyers that a country having almost no lawyers badly needed some. More than a few lawyers with whom I spoke thought perhaps China might be offered some of our excess legal manpower. I also got a little financial support from foundations and corporations.

Sometime in the late 1980s, I noticed that we had five Koreans among our international students. I took them to lunch one day to find out how we were enjoying such success in attracting Koreans. The answer I was given was that it was not easy for a Korean to establish contact with anyone from the People's Republic. The best place in the world to do that, they thought, was Durham, North Carolina. ♡

PROFESSOR CARRINGTON'S FULL ESSAY, "DUKE LAW IN CHINA: A REMEMBRANCE," CAN BE FOUND AT <http://paulcarrington.com/Duke%20Law%20in%20China.htm>.



PARTICIPANTS IN DUKE LAW'S CONFERENCE AT TSINGHUA UNIVERSITY. FAR RIGHT: STEPHEN WALLENSTEIN, DIRECTOR OF DUKE'S GLOBAL CAPITAL MARKETS CENTER

## DUKE LAW'S TSINGHUA CONFERENCE: A LOOK AT INTELLECTUAL PROPERTY AND BUSINESS LAW IN

**TWENTY YEARS AGO**, it was not uncommon for people from Korea, Hong Kong, and Taiwan—including panelist Ken Yun '88—to have never stepped foot in China. Today, China is running a \$30 to \$40 billion trade surplus and has become a magnet for foreign investment and for foreign lawyers, with over 157 foreign law offices having been opened in recent years across China.

Exploring emerging themes in this transformation, Panel 1 of the Duke Law School conference at Tsinghua University in Beijing on June 11, took on the topic, "Corporate Governance and Investing in China." This panel was moderated by Duke Professors James Cox and Stephen Wallenstein. Panelists included Professor He Meihuan (Betty Ho) of the Tsinghua law faculty, and Duke graduates Li Xiaoming '90, currently a partner in White

& Case in Beijing; Dan Scheinman '87, senior vice president for corporate development of Cisco and one of the first Duke Law students to study in China; and Yun Young-Gak (Ken Yun) '88, president of Samjong KPMG in Seoul, Korea.

Panelists discussed how China continues to try to attract foreign investment, while also attempting to build economic independence. They also explored the emergence of a strong competitor to China—India—and some of India's advantages in terms of technological superiority and a more reliable legal system.

Restrictions on law practice by foreign law firms (they may not employ Chinese lawyers, nor practice Chinese law), and changes in the concept of lawyering in China—from the lawyer's role to strengthen the motherland, to the

lawyer's obligation to represent a client's interests—were also discussed.

**AMONG THE CHALLENGES** in doing business highlighted by the panelists were the high level of state ownership of Chinese enterprise, the lack of a tradition of shareholder's interests apart from the party or the state, growing disparities in wealth in China, lack of stability in the law, a staggering \$170 billion of non performing loans, a declining stock market, poor accounting practices, and various cultural attitudes and practices which make it difficult for Western models of corporate governance regulation to take hold in China.

A second panel, "Intellectual Property in China," continued some of the same themes, specifically focusing on intellec-

ANDREA BAKER '90

Consul, U.S. Consulate General, Shanghai

*Baker first went to Shanghai in 1985, as an undergraduate enrolled in the "Duke in China" program. She has been posted to the U.S. Consulate in Shanghai for the past two years.*



ALUMNI REFLECTIONS

**WHEN I WENT TO CHINA** as a Duke undergraduate in 1985, I attracted a lot of attention—many people had never seen a Caucasian. The tallest building in Shanghai at that time was probably seven stories high. In the past 10 years, it has gone from a dirty, crowded city with poor infrastructure, to an incredibly modern one. About 4,000 American companies currently operate in Shanghai. I can get French, Thai, Mexican, or American food delivered to my home, and there's a Starbucks on every corner. And I'm no longer an oddity—at least 8,000 Americans live in Shanghai full time.

Westerners doing business here should be aware of fundamental differences between western and Chinese approaches to negotiations. Whereas Americans are used to sitting down and getting straight to the point, the Chinese employ a more patient style. Far more listening is involved. In terms of business etiquette, treat business cards with reverence. Offer yours with two hands and a slight bow, and accept another in the same way, giving it

speaking frankly about their government and economic system without fear of reprisal," said Board of Visitors member Candace Carroll '74. "While business conditions in China are certainly not perfect, it appears that the climate for business and investment has greatly improved over the past few years, and will likely continue to improve."

Added Bob Montgomery '64, "The experience of interacting on a personal level with many Chinese executives and scholars was so extraordinary that in retrospect, it seems almost unreal. Never in my wildest imagination could I have expected to be in a situation where I would be lectured by Chinese (albeit, in good humor) that our U.S. government should have more confidence in the free market system and discontinue its paternalistic interference through tariffs and restrictive regulations." ♪

tual property protection. Professor James Boyle kicked off the session by drawing a parallel between the much-criticized lack of intellectual property protections in China today, and similar resistance to such protections 200 years ago in the U.S., when intellectual property interests from abroad were disregarded, and joint ventures were used to lure foreign investments and then to obtain technology secrets for domestic companies. He discussed whether, in the context of this past, U.S. objections to Chinese disregard of U.S. intellectual property law was a matter of (1) hypocrisy, (2) different circumstances calling for different laws, or (3) moot, concluding that each of these explanations had some force. He focused on the dilemma that both too little IP protection, and too much, can be problematic for a developing economy, drawing a comparison between Route 128 in Massachusetts and Silicon Valley in California to show how an intellectual property regime that looks great on paper (the Route 128 example, with greater IP protections, more vertical economic integration, and more restrictions on job hopping) might not actually operate to achieve the desired ends as well as a "softer" regime with greater mobility of ideas and workers. He also addressed the apparent advantages, and the hidden disadvantages of harmonization, which deprives society of the kind of natural experiments (like Silicon Valley) that can inform us about where to draw the right property protection lines.

Bharat Dube '86, head of IP Enforcement at Richemont International SA in Geneva, gave a powerful presentation about the huge subsidies to Chinese business that occur through runaway counterfeiting operations, and discussed various issues relating to this problem from the perspective of the business interests whose property is being stolen. Speaking in strong language, he charged that no one seemed to be willing to take on China, even though its disregard for intellectual property protections was devastating to other countries.

Kenji Kuroda '89, founding partner of Kuroda Law and Patent Offices (Tokyo and Shanghai) provided a comprehensive analysis of a series of "China risk" factors that he has identified in the course of his practice with firms doing business in China. These

risks include China's relatively low respect for law, persistent protectionism, the low level of judicial independence in China, and poor interpretation of Japanese patents in China. He discussed the huge losses to Japanese business interests of Chinese counterfeiting, and agreed with Dube that it was critical for the world to control the misuse of the intellectual property of others by business in China.

Professor Wang Bing of Tsinghua built on Professor Boyle's analysis, to conclude that finding the right balance both between an inventor's owner and the public, and between developed and developing countries, required China to do more to tighten up and enforce intellectual property protections. He noted that, even from China's standpoint, the legal regime needed to stimulate the people in China to be creative innovators, not just copiers.

**THE PANELS CULMINATED** in a lunchtime talk by Professor Gao Xiqing, '86, vice chairman of the National Council for Social Security Fund. Professor Gao outlined the challenges of establishing a social security fund in China, identifying various demographic factors associated with China's aging population, and featuring data on the tremendous disparities in China of standard of living and life expectancy that, in some respects, create parallel challenges in the U.S. One advantage in China, he noted, is that the state still owns potentially productive enterprises which, if sold, would produce the funds necessary to make solvent the Social Security Fund in China (and be more productive, in private hands). The sale of licenses for third generation mobile telephone technology might also produce funds that could be used to support the Social Security Fund, although there are other claims on these funds as well.

The conference and lunch talk were sponsored by Duke's Global Capital Markets Center, The Center for the Study of the Public Domain, Tsinghua University Law Faculty, Duke Law School, and Richemont. It was attended by faculty and students of Tsinghua, and several members of the Board of Visitors of Duke Law School.

"I was very impressed by the willingness of the conference's Chinese participants to

# DUKE LAW ON TOUR

### FROM JUNE 9 TO JUNE 19, 2005,

members of the Law School's Board of Visitors, and a number of faculty, alumni, friends, and their families, toured the People's Republic of China. Thanks to the terrific planning of Jennifer Maher '83, assistant dean for international studies, the group enjoyed tours of historic and cultural sites in Beijing, Xian, and Shanghai, many of which—such as a close-up tour of the Terra Cotta Warriors of Xian—are not generally available to travelers. With incredible sites, exquisitely-presented food, and warm and spirited friends, the trip was truly a memorable experience for all.

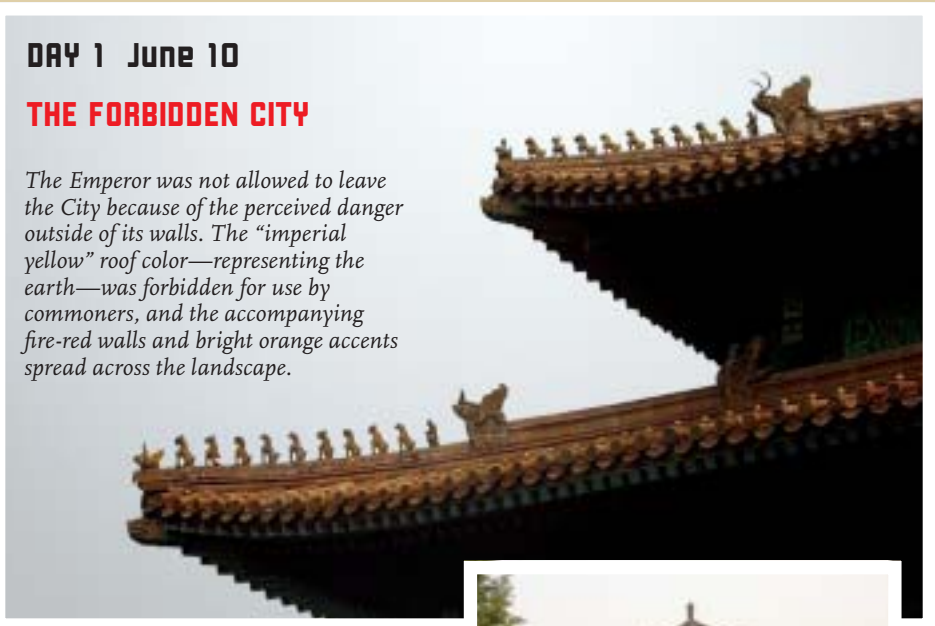
TEXT BY ELIZABETH SCHROEDER

PHOTOS BY SUSAN BOLCH, CARL BOLCH JEAN ADAMS '79, TOM ADAMS, SARAH ADAMS '73, AL ADAMS '74, CHRISTOPHER SCHROEDER, BRENT CLINKSCALE '86, LEN SIMON '73, CANDACE CARROLL '74, AND FRANK MAU '67.

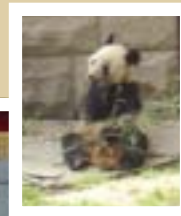
### DAY 1 June 10

#### THE FORBIDDEN CITY

*The Emperor was not allowed to leave the City because of the perceived danger outside of its walls. The “imperial yellow” roof color—representing the earth—was forbidden for use by commoners, and the accompanying fire-red walls and bright orange accents spread across the landscape.*



JEAN ADAMS '79



SUSAN BOLCH AND CARL BOLCH '67

BOB MONTGOMERY '64, ANNA HO, AND BRENT CLINKSCALE '86



**DAY 4 June 13**

**THE GREAT**

Everyone found the great wonder to be more than they ever could have imagined, even those who had already been to the Great Wall at a different point. Many hiked all the way to the end of the allowed section of the wall. The day was gorgeous and clear, the skies no longer covered with the heavy smog of the city of Beijing.



"Neither Al [Adams] nor I really knew what to expect in China. While we knew that it is fast becoming a major power, if not soon THE major power, we still thought of it as "Red China," which of course it still is, politically. However, the extent to which capitalism and westernization has occurred amazed us, as did the sites we toured—the Great Wall, Terra Cotta Soldiers, and the Forbidden City, among so many others. After returning home though, perhaps the enormous size of the country and its incomprehensibly large population, with its corresponding needs for food, fuel and other resources, and obvious thirst for the fruits of capitalism, is the thought which remains most indelibly in my mind.

"We were tremendously impressed by the friendliness and openness of the Chinese we encountered, but most especially by our Asian alumni and their devotion to and affection for Duke Law School."  
—Sarah Adams '73



BOB BREISBLATT '72, MARJORIE BREISBLATT, JIM FRENZEL '70, SUSAN FRENZEL, CANDACE CARROLL '74



SARAH ADAMS '73 AND AL ADAMS



**DAY 6 June 15**

**THE TERRA COTTA WARRIORS, XIAN**

The warriors were an entire army of clay soldiers, buried underground along with the important people they were charged to protect in the afterlife. The members of the cavalry were life size, each modeled after an individual soldier in the community, and made of local clay. The chariots were half-size, but made of bronze. Real weapons were found at the soldiers' feet. In all there were over 600 tombs, including Emperor Qing's mausoleum, which has not been unearthed, out of respect for him.



ELIZABETH SCHROEDER, CHRISTOPHER SCHROEDER, AND KATHARINE BARTLETT



BRENT CLINKSCALE, PETER KAHN '76,  
JEAN ADAMS, AND DARA DeHAVEN '80

LEN SIMON '73, JENNIFER MAHER '83,  
AND JONATHAN OCKO



SONJA STEPTOE '85, SUSAN WEAVER '88,  
AND ERIC ISAACSON '85

### DAY 9 June 18

### SHANGHAI

Board of Visitors Chairman Peter Kahn '76 opened a farewell dinner at the American Club with his "chairman of the party" speech, donning the hat—part of a full "Chairman Mao" ensemble—he had been given as a birthday present, courtesy of Buck Ferguson '70. He proclaimed the end of "a long march together," one that enhanced the relationship between Duke Law and its alumni and counterparts in China, re-kindling old friendships, and forming new ones. Susan Weaver '88 took the podium to talk about differences in China between now and when she studied there as a Duke Law exchange student. She recalled getting a coupon for a bike, a valued possession, as bicycles were rationed then in China. She also noted that given the current road situations, she would think twice about getting on a bicycle in the city.



BACK ROW: ANNA HO, CAITLIN HO  
WHALEN, PAUL INGUI, ELIZABETH  
SCHROEDER.  
FRONT ROW: STERLING INGUI, KEVIN HO  
WHALEN, ROBERT WHALEN, DARA



**"IF VIETNAM IS GOING TO REALIZE ITS ECONOMIC POTENTIAL, FOREIGN AND DOMESTIC INVESTORS MUST HAVE CONFIDENCE THAT LEGAL POLICY IS TRANSPARENT, CONSISTENT, AND PREDICTABLE." ELI**



AMONG THE DUKE FACULTY AND ALUMNI PARTICIPATING IN THE FULBRIGHT SCHOOL'S INAUGURAL CLASS IN LAW AND ECONOMICS WERE (SECOND ROW, MIDDLE, L-R): DAVID HARRISON '99, PROFESSOR JAMES COX, ELI P. MAZUR '02, AND PHAM XUAN HOANG AN '02.

## DUKE LAW IN ESTABLISHING A FOOTPRINT IN THE NEXT

**I**N JANUARY 2005, at the Fulbright Economics Teaching Program in Ho Chi Minh City, Vietnam, Brainerd Currie Professor of Law James D. Cox, Eli Paul Mazur '02, and other Duke Law alumni took a major step towards securing what could be a significant new educational initiative for Duke Law School in Asia's next economic tiger.

Recent economic reforms have transformed Vietnam, the world's 13th most populous nation, into Asia's second fastest growing economy, explained Mazur, but as one of the largest economies in the world that has yet to join the World Trade Organization, it is in the process of altering the foundations of its legal framework. Mazur was hired in February 2004 by the Fulbright Economics Teaching Program to design a course in law and economics for Vietnam's public policy makers.

"The legal education initiative is essential because an unpredictable legal framework is Vietnam's major barrier to long-term investment and growth," Mazur said. "When investors realize that 80 percent of a bankrupt firm's assets will disappear, or that 30 percent of the value of every contract dispute will be lost in unofficial fees, they are unwilling to take otherwise socially beneficial risks. In Vietnam, everyone knows

there is a problem. The challenge is how to design, build, and implement legal institutions with the social currency—the ability to resolve these problems."

In January, Professor Cox taught a week-long module exploring the theory of the firm, securities regulation, and competition policy to a class composed of Vietnam's leading policy-makers, including members of Vietnam's Supreme Court, National Assembly, State Bank, Tax Department, Department of Justice, and every major law faculty.

Cox also helped Mazur develop a course with five essential elements. First, policy-makers constructed a basic economic model for legal analysis. Second, an international team of mediation experts from Singapore guided them as they deployed their new economic models in exercises implicating imperfect legal rules and corruption. Third, Cox expanded the economic analysis to corporate organization and regulation. Fourth, Mazur led the participants in analyzing a major case study, based on original research in Vietnam, exploring the range of formal and informal barriers to private sector expansion. Finally, the policy-makers were given the rare opportunity to question a panel of Vietnam's primary legal drafters in an open forum.

"The response to the course was incredible," said Mazur. "On the final day, many

participants approached me to say they were shocked that a course of this caliber, on an issue so potentially sensitive, could exist in Vietnam. Although these comments made the long hours worthwhile, they also provided a sense of urgency, a need to build on this momentum."

In the next three years, Mazur will work to turn the legal initiative into a one year LLM program in Law and Economics, possibly to be offered by The National University of Singapore Faculty of Law.

"If Vietnam is going to realize its economic potential, foreign and domestic investors must have confidence that legal policy is transparent, consistent, and predictable. Before this transparency becomes a reality, however, policy makers need to deeply understand the elements and benefits of this formula."

Other Duke Law alumni who took part in the program were: Pham Xuan Hoang An '02 and Nguyen Trang Thu '01, both officials with Vietnam's Ministry of Foreign Affairs; David Harrison '00, currently a political officer at the U.S. Consulate in Ho Chi Minh City; Dang Xuan Hop '99, a visiting fellow at the National University of Singapore Faculty of Law; and Lam Quynh Anh '01, a lawyer for Freshfields office in Hanoi. ♣

# A **DISTINCTIVE APPROACH** TO TEACHING

➤ **PROFESSOR THOMAS METZLOFF'S DOCUMENTARIES TAKE STUDENTS DEEP INTO SUPREME COURT CASES** by **FRANCES PRESMA**



Photos by TODD SHOEMAKER and THOMAS METZLOFF

**“WE LIGHT IT  
NOT TO DESECRATE IT;  
we light it to signify to  
everyone that Christ is alive,  
and Christ is well, even if it’s  
just in our hearts and not in  
yours. We do not burn the  
cross. We light the cross.**

**“Once the cross is completely  
lit, I’d say ‘Klansmen, salute.’  
And that’s when they’d open  
their arms out in the sign of  
the cross. You’d hear music in  
the background playing  
‘Amazing Grace.’ And you’d  
hear somebody say,  
‘BEHOLD THE FIERY CROSS,  
STILL ILLUMINATING THE  
SKY BRILLIANTLY.’”**



**B**ARRY BLACK, neatly dressed in a gray suit jacket, crisp white dress shirt, and tie, sounds positively reverent as he describes the pageantry and symbolism involved in wrapping a 30-foot cross in rags, soaking it with kerosene, and setting it on fire. An imperial wizard of the Invisible Empire of the Knights of the Ku Klux Klan, Black presided over such a ceremony in Carroll County, Virginia, one August night in 1998.

Black’s explanation of the ritual—and his clear passion for it—has 65 Duke Law alumni and their guests riveted in silence in a darkened classroom, apparently oblivious to the sunshine outside on a brilliant April morning. They pay rapt attention as two Carroll County law enforcement officers describe their reaction to seeing the cross set alight, and their rationale for arresting Black under a 40-year-old state law that prohibited cross burning. In the course of a 20-minute documentary, Black articulates his reasons for challenging his arrest, as opposed to just paying a fine—“I’d be letting my race down. I have to make people know that the Constitution of the United States of America still means something.” His attorneys, including Rod Smolla ’78, share their reasons for taking his case and outline their legal strategy, as do the attorneys who represented the Commonwealth of Virginia in the case that came to be known in the United States Supreme Court as *Virginia v. Black*.

BARRY BLACK, IMPERIAL WIZARD OF THE KU KLUX KLAN. OPPOSITE PAGE: SCENE OF THE CROSS-BURNING FROM THE *VIRGINIA V. BLACK* DOCUMENTARY.



The documentary ends with a review of the Supreme Court arguments, but without any summation of the Court's April 2003 ruling. Instead, Professor Stuart Benjamin opens a lively discussion, asking for reaction and then sharing the Court's decision—eight justices found the statute, which presumed an intent to intimidate others in the very act of cross burning, to be unconstitutional as a regulation of speech. One member of the audience questioned the decision, based on facts that had come out in the documentary—a speaker at the Klan rally had advocated shooting minorities right before the cross was lit, why didn't the justices find the statute constitutional in that context? Another posed hypothetical questions about how other forms of speech, such as calls for *jihād*, or holy war, might be controlled.

Premiered during Duke Law School's 2005 reunion weekend, *Virginia v. Black* is one of seven recent Supreme Court cases given unique treatment in the ongoing "Distinctive Aspects of American Law" documentary series produced by Professor Thomas Metzloff.

Innovative teaching tools, the documentaries enhance the traditional case method by allowing law students and other viewers—even attorneys steeped in practice—to explore precedent-setting cases with a depth and rigor unavailable by a simple reading of the decision.

"Most people learn better when they have multiple sources of information," says Sarah Wood '03, a producer on the series. "You read the case, and you get something out of that. You see the case, and you get something out of that. Because of the way that people learn, you get something visually that you don't get from reading."

"Video is a powerful medium," adds Metzloff, who is known for his creative and engaging approaches to his civil procedure and ethics classes. "Law school is based on the case method—the facts matter. But sometimes there are small details that really make a difference. Video lets you pull those details out."

Having secured funding from The Atlantic Philanthropies, Metzloff spent the

summer of 2003 conducting interviews for his first documentary about the case of *BMW v. Gore*. The leading precedent on punitive damages and how judges should control them, the case arose from an Alabama doctor's dissatisfaction with the paint job on his new BMW sedan. In addition to interviewing Dr. Gore, his lawyers, and the attorney for BMW, Metzloff gathered footage and a detailed explanation of BMW's different painting processes—total immersion in a paint bath, contrasted with touch-ups by hand.

"By learning exactly what was wrong with the car, I came to understand BMW's policy in a better context. I came to understand the legal arguments and how they fit together, and what was actually at stake in the case. I figured that if I'm learning something having taught the case 20 times, there's something to it."

When he taught *BMW v. Gore* in his civil

**"IT BRINGS THINGS ALIVE IN A WAY THAT IS HARD TO DO FROM JUST HAVING READ THE CASE. IT MAKES IT REAL—SUDDENLY IT INVOLVES REAL PEOPLE, AND REAL EVENTS, AND NOT JUST ABSTRACTIONS." — DONALD GARDNER '65**

procedure class last fall, Metzloff made the documentary available to half the class, and then gave his students a pop quiz that included both factual and legal questions. He describes the educational impact of the documentary as surprisingly profound.

"The students who had seen the video scored significantly higher on the factual questions. You can't see the car being repainted and not understand what's wrong. If you just read it, you might miss that. But the students who saw the video scored significantly higher—10 to 20 percent higher—on every single question, including those about the legal significance of the case. That shows they got interested, they read it, and they understood it better in all respects."

On the more subjective questions, Metzloff continues, the students showed a greater willingness to question the Court's decision. "There is a tendency, among all students, to read an opinion, and say, 'that's right.' The courts are writing in ways that are meant to be persuasive.

What this questionnaire showed us is that people were much more willing to say 'Hey, the Court didn't address this,' or, 'on this part, I have a different view.' It gave them an independent basis to assess the Court's logic and rationale, which is one of our goals. We're trying to create analytical, legal thinkers."

## Exposing Legal Strategy

Duke Law School also aims to produce top legal strategists, and the documentaries expose students to the ways different cases come before the nation's highest court. While many cases in the series involve matters of constitutional law, they also showcase other areas—civil and criminal procedure, property rights, and intellectual property, to name a few. (For a complete list of cases, see box, page 36.)

"We see how lawyers pick plaintiffs, we see how they put cases together, and we see how legal issues emerge from real cases. That's a very valuable component for training lawyers," says Metzloff. "Watching how lawyers work from the very begin-

nings of a case all the way to the Supreme Court—you see how the case changes and the arguments change," observes Wood, who previously approached many of the cases as a student and then as an instructor in Metzloff's introductory course for international LLM students.

A number of cases in the series feature the participation of legal interest groups, offering insight into how policy is made or changed through litigation, says Wood. These include *Grutter v. Bollinger*, the challenge to affirmative action policies in the University of Michigan Law School's admissions process, an effort spearheaded by the Center for Individual Rights, and *Board of Education v. Earls*, involving an unsuccessful ACLU effort to stop drug testing in high schools.

"These organizations might have an issue that they are interested in, so they go looking for plaintiffs. They collect a bunch of letters and pick the right plaintiff in the right circuit—it's very strategic," she notes.

Other cases such as *Black's*, may involve a legal interest group—there, the ACLU—



## INSIDE VIRGINIA v. BLACK

The documentary allows major players in the case to speak candidly about what is at stake, and provides in-depth analysis and context.



**BARRY BLACK:**  
Klansman

“I don’t want to sound like I’m a bigot. I do want to sound like I’m a racist, because I am a racist. I believe that my pigmentation is my suit of armor. That’s my skin. That’s my people.”



**DAVID BAUGH:**  
Black’s attorney

“A lot of people said, ‘Well, how could you defend a Klansman?’ It’s a no-brainer. I understand that the Constitution is a set of principles and if you’re going to protect my right to say what I want to say, I have to defend that guy.”



**ROD SMOLLA '78:**  
Protecting speech

“Do you want governments browsing the universe of symbols and starting to pick out those symbols that most scare it? And if you can ban a symbol it is but a short step to banning a word, or a set of words, or a particular message. And I think that a large part of the strength of our free speech tradition is that we’ve said that we don’t want to do that.”



**WILLIAM HURD:** Defending Virginia’s cross-burning ban

“The burning cross doesn’t simply say that I hate you because you’re black. It says instead something far more dangerous. It says that if you are black, or if you are Mexican, or if you are Jewish, and you try to live your life as a free American, that we are not going to let you. That if you don’t succumb to what we want you to do, there’s going to be violence. That is the message of a burning cross.”

but begin as most litigation does, with an individual seeking representation.

Casey Dwyer '06, who worked on the documentary project after her first year of law school, recalls participating in the interview with David Baugh, the African American lawyer who volunteered to represent Black, enlightening.

“I was incredibly struck by his passion for the First Amendment, and how much he cared about protecting rights. He was willing to represent a guy who was basically arrested for his racism—he believes so strongly in the Constitution that he can put aside any personal feelings to represent him. It amazes me to see that the law is so much bigger than anyone’s personal beliefs—just

how important it is to defend the Constitution, no matter what. From an ethics standpoint, it really teaches you about how you have to represent clients, and what should be the main goal.”

That’s exactly the reaction Metzloff wants. “I believe law school is about lawyering, and having always taught ethics, I’m focused on how lawyers and clients interact. I think that comes through on the videos.”

### Personalizing the Precedents

Giving face and voice to the people behind the precedents powerfully increases the documentaries’ efficacy as teaching tools, Dwyer says. “You see there are two sides to every story. You care more about the case when you know the people. And you learn

the law more because you want to know what happens to them.”

Metzloff agrees, adding that it is important for students to appreciate the impact of being involved in a Supreme Court case.

“The parties get put into the national limelight, and not everyone wants to do that—Dr. Gore did not want to give any interviews, and feels that to some extent he was pilloried in the press as just being out to make a lot of money. His view going in was that his car was defective, and he wasn’t told about it. When you hear his story, you can really ask the question, ‘How would you feel if you had bought this car, and this had happened to you? What would you do about it?’

“I don’t know if [the litigants] are all



THOMAS METZLOFF, TODD SHOEMAKER, SARAH WOOD '03



FROM THE *GORE V. BMW* FILM: THE CAR IN QUESTION

transformed, but they are all affected by it. It's a life experience, and it's something that's special. For some, it's kind of a curiosity, for some it's a burden, and for some it's transformative."

Marla Zimmerman '06, who spent a summer working on the project, says that she'll never forget the way their involvement in the cases affected the participants she met, such as Lindsay Earls, the young Oklahoma woman at the center of the high school drug testing case.

"It was clear that the case took up a lot of time and energy. [They] start believing in the cause, and losing can be crushing. When you are reading a case, it's really easy to forget that it involves real people experiencing real things that could happen to anybody. Now I read the facts of a case, I wonder why they brought the suit—what made them so upset to do it? A lot of the time the facts that are in the opinion don't tell you the whole story."

Metzloff calls it a privilege to have traveled the country meeting with the principal players in recent major cases.

"I do think they are sort of special—they have a courage, or a stubbornness that is something that I don't have. I can't think of a single case where I've said, 'I'm going to get a lawyer, I'm going to fight.' Each of these people has a sense of what's right—whether you agree with it or not—that they hold with a passion and a commitment that is so strong. That's really impressive. Because each of them has paid in their own way for heading up the cause they've led."

Metzloff says that he and his crew—Wood, videographer Todd Shoemaker, and a number of student researchers—take seriously their responsibility to be fair to the litigants and all attorneys, giving equal voice to each side of every case. Most cru-

cial is staying true to the facts.

"We are constantly editing with the record in mind. We've read the opinion, we know what the Supreme Court focused on, and know where the story has to end up. The Court considers and discusses the arguments that the lawyers have made, so we read the briefs, we read the lower court opinions, and we keep in mind what the case is legally about."

*Virginia v. Black* won high praise from the alumni who attended its reunion premiere.

"I thought it was fascinating. It brings things alive in a way that is hard to do from just having read the case," said Donald Gardner '65. "It makes it real—suddenly it involves real people, and real events, and not just abstractions."

"Fantastic," was the assessment of Eric Isaacson '85. "It's so easy to come to a case with your perceptions and attitudes—this helps get you to see it fully."

Metzloff—and everyone involved with the project—is excited about the versatility of the documentaries, which so far have won a number of awards; apart from their obvious relevance for law students in a wide range of classes, they are easily accessible to undergraduates, practitioners through continuing education programs, even high school students.

"Every high school kid in the country learns about the Supreme Court, and this is a wonderful way for teachers to engage students about important topics. We try very hard not to make them technical, because the legal issues in these cases don't have to be overwhelming. Law is about how the Constitution should apply to real world problems. These documentaries should be available to anybody who wants to think seriously about issues such as the First Amendment or the separation of church and state." ♫

## Case Documentaries

### AVAILABLE FALL 2005:

***BMW of North America v. Gore***, 517 U.S. 559 (1996)  
Issue: Constitutional limits on punitive damages.

***Board of Education v. Earls***, 536 U.S. 822 (2002)  
Issue: Whether drug testing of students in extracurricular activities violates the Fourth Amendment.

***Lucas v. South Carolina Coastal Council***, 505 U.S. 1003 (1992)  
Issue: Whether environmental regulation of beachfront property violates the Takings Clause.

***Republican Party of Minnesota v. White***, 536 U.S. 765 (2002)  
Issue: First Amendment rights of judicial candidates to express opinions on disputed legal or political issues.

***Virginia v. Black***, 538 U.S. 343 (2003)  
Issue: Whether Virginia's cross-burning statute violates the First Amendment.

***Locke v. Davey***, 540 U.S. 712 (2004)  
Issue: Whether denial of a state scholarship to a theology student violates the First Amendment.

***Marsh v. Chambers***, 463 U.S. 783 (1983)  
Issue: Constitutionality of opening Nebraska legislature sessions with a prayer.

### AVAILABLE SPRING 2006:

***Van Orden v. Perry***, 125 S. Ct. 2854 (2005)  
Issue: Constitutionality of Ten Commandments display on the Texas Capitol grounds.

***Moseley v. V Secret***, 537 U.S. 418 (2003)  
Issue: Interpretation of Federal Trademark Dilution Act.

***Grutter v. Bollinger***, 539 U.S. 982 (2003)  
Issue: Constitutionality of University of Michigan's affirmative action policy.

***Boy Scouts v. Dale***, 530 U.S. 640 (2000)  
Issue: Constitutionality of Boy Scouts' policy excluding homosexuals.

***Stenberg v. Carhart***, 530 U.S. 914 (2000)  
Issue: Constitutionality of Nebraska's partial-birth abortion ban.

***Green Tree Fin. v. Randolph***, 531 U.S. 79 (2000)  
Issue: Constitutionality of a mandatory arbitration clause in a consumer contract.

***Granholm v. Heald***, 125 S. Ct. 1885 (2005)  
Issue: Constitutionality of state bans on importation of out-of-state wine.

**For more information, or to order videos as they become available:**

Professor Thomas B. Metzloff  
Duke University School of Law  
Box 90360 • Durham, North Carolina 27708-0360  
919-613-7055 • metzloff@law.duke.edu  
(cost: \$35 per individual case)

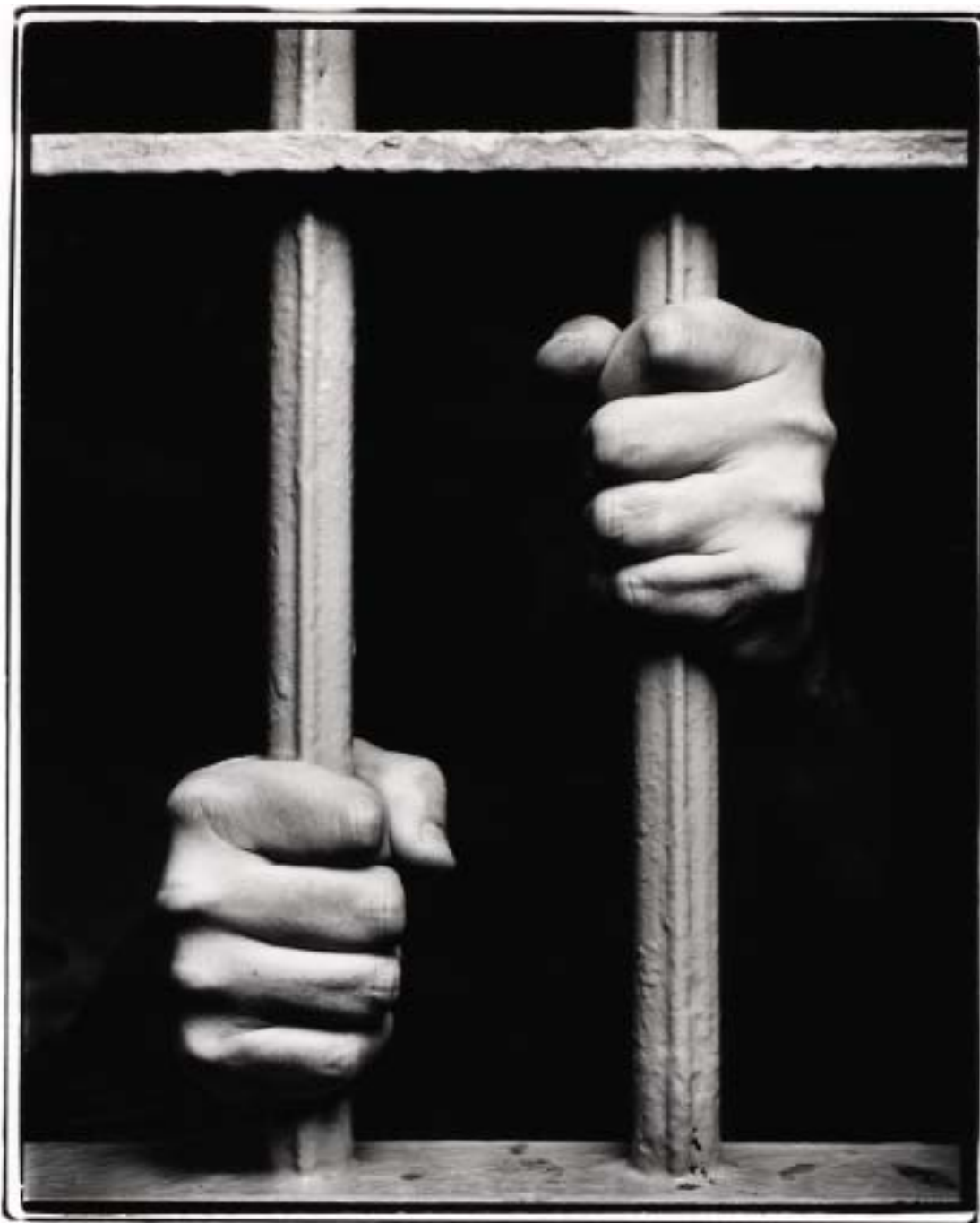


Photo: Chris Hildreth

# THE INNOCENCE PROJECT

**STUDENTS INVESTIGATE PLAUSIBLE CLAIMS OF WRONGFUL CONVICTION** By Gergely Kanyicska '05

**O**N THE NIGHT of December 9, 1995, 33-year-old Jill Marker was found brutally beaten behind the artificial Christmas trees at her workplace in the Silk Plant Forest, a store in Winston-Salem, North Carolina, specializing in decorative knick-knacks and imitation plants. The assault was vicious; had Marker not been discovered by a registered nurse, she likely would have died at the store. She suffered permanent brain damage in

the attack, and cannot live independently or care for her young son. Visually impaired since the attack, Marker had by 1999 completely lost her sight as the result of her injuries.

Almost two years after it occurred, Calvin Michael Smith was convicted of assault with intent to kill in the attack on Marker, who identified him at trial as her assailant. Now serving a 28-year sentence at the Alexander Correctional Institution in Taylorsville,

NC, Smith has steadfastly proclaimed his innocence. After a two-year investigation, Duke Law student volunteers handling his case for the Innocence Project believe he is telling the truth.

“Almost all the factors that contribute to wrongful convictions were present in Smith’s case,” says Emily Coward ’06, currently the lead investigative manager. “That includes misinformation convincing police that Smith was guilty, the questionable testimony of informants, a dogged focus by the investigation on one theory of the case to the exclusion of other likely scenarios, intense and coercive interrogation resulting in a dubious confession that he later recanted, unreliable eye-witness identification at trial, and the lack of an adequate case put forth by the defense.”

The Innocence Project gives students the opportunity to pursue claims by incarcerated felons who have plausible claims of actual innocence. It is a student organization under the auspices of the North Carolina Center on Actual Innocence, which oversees Duke’s Innocence Project, as well as those at the law schools of the University of North Carolina, North Carolina Central University, and Campbell University, and UNC-Chapel Hill’s School of Journalism and Mass Communication.

Professor James Coleman and Associate Dean Theresa Newman ’88 are Duke’s faculty advisers to the Innocence Project. They also teach a class on how wrongful convictions occur, and how they can be investigated and challenged. Both are leaders in law reform efforts surrounding the issue, and serve on the North Carolina Actual Innocence Commission established by North Carolina Supreme Court Chief Justice I. Beverly Lake.

“The Innocence Project was founded with the belief that no matter what people’s views on crime may be, no one wants to see the innocent imprisoned,” says Newman, who is also president of the Center on Actual Innocence. “Additionally, the Innocence Project provides students with a unique opportunity to do something they might not otherwise do, but the skills learned—fact investigation, analytical thinking, organization of materials—are transferable to every area of legal practice.”

“It has been the highlight of my law school career,” says David Bernstein ’06,



**“THE INNOCENCE PROJECT WAS FOUNDED WITH THE BELIEF THAT NO MATTER WHAT PEOPLE’S VIEWS ON CRIME MAY BE, NO ONE WANTS TO SEE THE INNOCENT IMPRISONED.”**

**—ASSOCIATE DEAN THERESA NEWMAN ’88**

NEWMAN AND PROFESSOR JIM COLEMAN ARE FACULTY ADVISORS FOR THE PROJECT

one of the students who has worked on Smith’s case. “Investigating a case with the Innocence Project tends to utilize skills seldom used in law school, working a real case and interacting with people impacted by the law. It is much less ‘ivory tower,’ much more action than the typical day-to-day of highlighters and books.

“We are trying to collect as much information as we can about what really happened,” says Bernstein of the Smith investigation. “Although it appears clear that he is innocent, we are trying to figure out how to best persuade a court to take a second look at his conviction.”

“We are still in the investigative stage and we hope to file a Motion for Appropriate Relief before long,” adds Coward.

### **Building a case**

Kalvin Smith was not a suspect early in the police investigation, according to the Innocence Project investigation. Another man, Shane Fletcher, had made a detailed telephone confession from a mental institution in Butner, NC in April 1996, but medical records later cleared him by showing that he was confined to psychiatric care at Forsyth Medical Center during the attack.

A reporter investigating the case for a series in *The Winston-Salem Journal*, Phoebe Zerwick, learned that an acquaintance of Marker’s, Kenneth Lamoureux, was admitted to the same ward as Fletcher just a few days after the Silk Plant Forest attack, and before Fletcher made his confession. Two witnesses reported seeing Lamoureux talking with Marker an hour before the attack. Coward and other students working on

Smith’s case share Zerwick’s belief that Fletcher could have learned about the attack from Lamoureux, which would explain his knowledge of the details.

Police dropped Lamoureux as a suspect when Marker, semi-conscious after 10 months in a coma, identified her assailant only as a black man.

According to the students’ investigation, the police focus first turned on Smith in June 1996 when he was named in an anonymous tip to Crime Stoppers. The tipster turned out to be a jilted girlfriend bent on revenge. Although Smith was cleared by a polygraph test, he was named by another girlfriend seven months later; she later claimed she had simply wanted to punish him for his philandering, and had based her tip on the details he gave her about the earlier one.

Smith admitted to being under the influence of beer and marijuana when he met with the lead investigator, Don Williams, “to straighten things out” after he was called in for an interview regarding the second tip. Although this interview was not recorded, Coward notes that the police report indicates that 24-year-old Smith reacted emotionally to Williams’s accusations and intense questioning, eventually succumbing to the detective’s assertion that confessing to involvement would be in his best interest.

False confessions can be coerced even from unimpaired suspects through ordinary interrogation techniques, Newman points out.

“Well-trained interrogators limit suspects’ perceived options until the suspect sees no alternative but to agree to one of the scenarios presented just to end the questioning. At





times 'proper' interrogation can even cause suspects to doubt their own memories."

Smith recanted his confession before trial, and it was not introduced, having been totally inconsistent with the evidence of the crime, Coward notes. But testimony against him was gathered in a similarly coercive fashion; for example, investigators apparently offered one prosecution witness the option between freedom for cooperation and a lengthy prison sentence.

"The evidence was flimsy and inconsistent," Coward says. "The testimony of the prosecution's witnesses did not so much fit the evidence as it fit the prosecution's theory about what happened. There were more likely suspects, but the defense did not effectively point out the glaring problems with the prosecution's case."

Although Marker identified Smith as her assailant at trial, she made the identification by pointing and nodding from her wheelchair. "Defense lawyers did not cross-examine her because she was unable to speak, only gesture," Coward continues. "It was impossible for her to answer complex questions, and defense counsel did not want to appear to be attacking the victim."

"Looking back, Marker's identification was wholly unreliable," Coleman says.

"But it was a show for the jury, and it was very effective," adds Newman.

Coward, along with Joe Davis '07, flew to Ohio last fall to interview Marker and her family. "Her parents told us that she continues to be sure that she accurately identified her assailant," Coward says. "She has trouble communicating these days, so we were mostly just able to greet her—we weren't able to ask her any questions."

Eyewitnesses find it emotionally difficult to entertain the possibility that they may have made a mistake, observes Coward. "For the Marker family, Calvin's conviction gave them closure, and it's very painful to revisit the subject of the attack."

The identification alone may not have secured the conviction. Post-trial interviews indicated that some jurors based their decision on the lack of a defense; convinced that the prosecution had failed to make a case against Smith, his lawyers did not present a case in rebuttal.

"[The conviction] did not have to happen," Coward says. "Had Calvin been better educated about his rights, had the people

who testified against him been less easy to manipulate, or his defense attorney more effective, Calvin never would have been convicted.

"I am committed to working on this case because I am increasingly convinced that Calvin did not commit this crime," Coward goes on. "I am as certain as anyone can be that he is innocent. I'm very hopeful that all the parties involved will come to the same conclusion, and that Calvin will ultimately be released."

Coward credits Zerwick's 2004 investigative series in *The Winston-Salem Journal* as having been enormously helpful in raising the profile of the case and putting pressure on the district attorney and Winston-Salem police to cooperate.

"The district attorney signed a voluntary consent order granting us access to all their files largely due to Zerwick's articles. We have been in regular contact with the DA's office and the police since, and that access has been extremely useful in getting a sense of what went wrong."

In spite of a community-wide outcry over the mishandling of the case, public opinion alone is not enough to win Smith his freedom, notes Coward. She hopes that the publicity surrounding the 2003 exoneration of Darryl Hunt, who served 18 years in prison for a Forsyth County rape that he did not commit, will help gain some legal traction for Smith's claim of innocence.

"Many of the people I've interviewed for the case have said that Darryl Hunt has made them more aware that sometimes even innocent people are convicted of crimes."

Reflecting on what she has learned from her Innocence Project work, Coward says it has made her cognizant of the fallibility of the system.

"Even with the burden of proof and the unanimity requirement, juries aren't always going to 'get it right.' And if something goes wrong, and an innocent person is convicted, it's extremely difficult to undo that conviction, especially if, as in this case, there is no DNA evidence."



EMILY COWARD '06 IS THE INNOCENCE PROJECT'S LEAD INVESTIGATIVE MANAGER ON THE SMITH CASE

The student volunteers have made progress, though. The State Bureau of Investigation is currently investigating possible police misconduct in withholding evidence in the Smith case; the outcome of that investigation might give Smith grounds for an appeal. And based on recommendations from the North Carolina Actual Innocence Commission, the Winston-Salem police have begun videotaping all interrogations in felony investigations.

Newman and Coleman hope the Innocence Project will eventually be able to employ a full-time investigator and post-graduate fellows to work case files. They also would like to recruit practitioners to assist students with the legal work involved in innocence cases, in order to maximize the learning experience and make progress in more cases.

"With more help from experienced practitioners, students will learn—at least in some cases—that justice can be done, even if it takes a very long time," says Coleman.

According to Coward, her Innocence Project work has already been rewarding.

"It has made me aware that there are problems in our criminal justice system. There is room for reform. The system can be much better." ♡

# {Faculty Focus

## Neil Vidmar: Searching for truth in tort reform

Having studied medical malpractice cases and settlements around the country for 15 years, professor Neil Vidmar says he can't emphasize one point too strongly. "I'm very sympathetic to doctors—they are caught in a financial squeeze. In the last few years, their insurance rates have shot up enormously, while Medicare and Medicaid rates have gone down. So they're being squeezed at two ends—in terms of their income and in terms of their liability insurance."

But through a series of empirical studies Vidmar, Russell M. Robinson, II professor of law and professor of social sciences, has found that the conventional wisdom blaming the squeeze on sky-high jury awards and greedy trial lawyers is simply wrong.

### Exposing the myths

In recent months, Vidmar has released two studies. One involved closed malpractice claims in Florida, co-authored by Dr. Paul Lee of Duke University Medical Center and law students Kara MacKillop '06 and Keiran McCarthy '06. The other examined medical malpractice jury awards in Illinois.

"Out of the million dollar cases we've looked at, very few are settled by juries, and more often than not, juries side with the doctor," says Vidmar. He found no evidence that juries are befuddled by expert testimony or target doctors' "deep pockets." In the cases where jury awards have been high, he notes, the award is usually settled after judgment, usually for the upper limit of the physician's insurance policy. He cites one example in his data set from Illinois, in which a \$30 million award against two physicians settled for a payout of \$2 million, the amount of their malpractice coverage.

"Of course only the \$30 million ver-

dict was reported in the newspapers, and that's what's reported in the statistics." Plaintiffs' lawyers often contribute to the myth, adds Vidmar, by publicizing their jury successes—not the amounts their clients actually recover.

Further discounting the impact of jury awards on malpractice premiums is the prevalence of "high-low agreements;" before trial, or even during trial, the parties agree to

### WHITE COATS AND WHITE KNIGHTS: THE TUSSELE OVER TORT REFORM

Tort reform was also the topic of a unique interdisciplinary collaboration on April 19th, when Don Beskind '77 director of the Law School's Trial Practice Program debated Dr. Rich Bruch, an orthopaedist and past-president of the North Carolina Medical Society at Duke University Medical Center on the topic. The debate was sponsored by the Law School, Duke School of Medicine, and Duke Divinity School.

maximum and minimum payouts regardless of the jury's verdict.

"This is another invisible factor that we never see or read about in the litigation process," says Vidmar, citing an Illinois case where the plaintiff recovered \$3 million as the previously agreed minimum, even though the jury sided with the defendant.

Vidmar has seen little in his research to support the image of greedy, grasping trial lawyers terrorizing doctors with frivolous suits.

"[Medical malpractice] is a specialized field, and a very difficult one. The costs of lit-

igation are so high, that filing frivolous cases makes no economic sense. Insurers do not settle frivolous cases because that practice would invite more lawsuits. Plaintiff lawyers working on a contingency basis don't invest in cases they are likely to lose."

### What the settlements show

Since the vast majority of malpractice claims and suits are settled, more accurate reasons underlying doctors' escalating premiums are buried in settlement records, Vidmar says. He has found a gold mine of data in Florida, where closed malpractice insurance claims must be filed with the Department of Health. In their study released in March, Vidmar and his co-authors examined claims filed between 1990 and 2003, including cases in which the plaintiff got nothing and ones in which lawsuits were never filed.

"After every claim, the liability insurer gets a doctor or a team of doctors to assess the negligence. It's non-discoverable. They make an assessment as to whether or not there is negligence. In many cases, I think the insurer looks at the claim and says, 'Negligence here is unquestionable. Why should we try to fight this case when it's going to cause a lot of publicity and will run up costs—why spend the money when we're going to lose anyway?'"

"And all the evidence we've got seems very consistent with that—they make their decisions independently based on liability, but otherwise they fight tooth and nail."

From the empirical data he has seen, which includes detailed records of awards and settlements relating to minor plaintiffs, Vidmar derives another insight: Even if incidents of medical malpractice have not risen—and the numbers of claims filed have remained remarkably stable—the costs asso-



NEIL VIDMAR

**“Out of the million dollar cases we’ve looked at, very few are settled by juries, and more often than not, juries side with the doctor.”**

Neil Vidmar, Russell M. Robinson, II  
professor of law and professor of psychology

ciated with them have increased.

“Babies injured at birth might have died at one time, but now we can keep them alive. They might need intensive and expensive care for many years. It is a moral, societal obligation to provide that care, but it does strain the medical system.”

### Deflecting blame

Some of the difficulties in the liability insurance industry are part of a natural business cycle, although sometimes the insurance industry has contributed to the problem, by underpricing premiums and investing poorly, Vidmar argues. He cites an incident when a doctor-owned “bed-pan mutual” in Mississippi invested a substantial part of its reserves—the funds reserved to settle claims—in the stock market, as

opposed to the bond market.

“When the stock market tanked, [the mutual] blamed it on the tort system. They told the doctors they’d have to raise their rates. It’s a deflection of blame, and it isn’t right.”

Vidmar goes so far as to accuse the business lobby—the U.S. and state chambers of commerce—of placing all of the blame for the insurance crisis on the tort system. “They have manipulated the doctors and misled them.”

Doctors, legislators, and the public have also been misguided in thinking that statutory caps on awards for pain and suffering will relieve the financial squeeze facing doctors, according to Vidmar. Insurers themselves have admitted that caps will not reduce insurance rates. Moreover, the relatively low caps of about \$250,000 proposed in most tort reform packages would disproportionately affect those plaintiffs who can’t claim large economic losses—often women and minorities—but whose emotional harm in losing the ability to function normally is great.

“The Wisconsin Supreme Court just overturned a cap on pain and suffering on the equal protection ground that it disadvantages the most seriously injured

person because patients with relatively minor injuries receive full compensation for their pain and suffering, while those with far more serious injuries receive proportionately far less.”

Reports of doctors fleeing certain areas are also misleading, he says. Using directories published by the American Medical Association, Vidmar determined that the numbers of doctors had actually increased in certain Illinois counties—alleged “judicial hellholes”—widely thought to be facing a shortfall of crisis proportions

### Next steps

Vidmar is continuing his research of settlement and litigation records around the country, in collaboration with Lee—“he keeps me honest from a doctor’s perspective”—and with the “wonderful help” of assistants MacKillop and McCarthy.

He is now starting to explore the extent to which subrogation liens to which insurers are entitled might be having an effect on the tort system.

“Federal law requires Medicare and Medicaid to recover any expenses they incur as the result of the negligence of a third party. So if a doctor is negligent, and Medicare has to pay for it, Medicare has an obligation under the law to recover those monies. And it does. As taxpayers, we are sort of silent plaintiffs.” While technically these public insurers are entitled to recover the totality of their expenses, they also settle their liens with plaintiffs undertaking litigation—“still another invisible process.”

As an empiricist, Vidmar says he has, indeed, found a treasure trove in issues relating to medical malpractice, all of which have broader import.

“My ultimate goal is to develop a profile of the litigation process. I hope to someday write that book, using medical malpractice as the example.” ♣

### Neil Vidmar: Recent scholarship relating to medical malpractice

*Medical Malpractice Lawsuits: An Essay on Patient Interests, the Contingency Fee System, Juries, and Social Policy*, 38 *Loyola of Los Angeles Law Review* 1221 (2005)

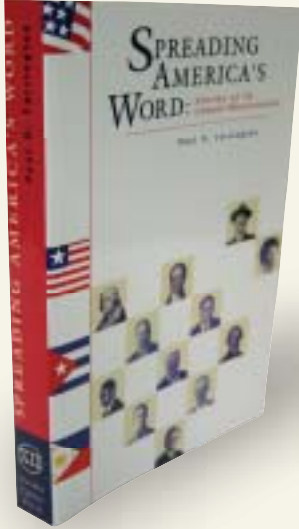
Vidmar et al., *Uncovering the “Invisible” Profile of Medical Malpractice Litigation*, 54 *DePaul Law Review* 315 (2005)

Vidmar, *Medical Malpractice and the Tort System in Illinois*, May 2005  
Available at: <http://www.isba.org>

Vidmar, *Medical Malpractice and the American Jury: Confronting the Myths about Jury Incompetence, Deep Pockets, and Outrageous Damage Awards* (University of Michigan, 1995)

# Admired but unwelcome American lawyers

Book Review by Kichimoto Asaka '87



## Paul D. Carrington's *Spreading America's Word: Stories of Its Lawyer-Missionaries*

(Twelve Tables Press, 2005)

American lawyers, in the aggregate, are admired because they are widespread in American society and play a variety of roles, not limited to the traditional functions of lawyers. They are admired because they are a role model for foreign countries as the champions of freedom and democracy. But American lawyers are unwelcome on foreign soils because they are considered to be arrogant, self-confident, and self-aggrandizing. Even when the lawyers proclaim the causes of the rule of law or freedom and democracy, American economic interests are often intertwined with those causes. Some recent news from the United States, including fumbles in Iraq after the victory in battlefields and the passive stance of the current Bush administration on the measures against global warming by expressly citing domestic business interests, were nothing new to foreign people. And they knew that even the precious rule of law had sometimes been conveniently set aside by American lawyers.

How many Americans remember that a United States Marine jet flew unusually low and cut an Alpine sky gondola cable in Italy, causing the death of 20 passengers in 1998? Or that a United States submarine demonstrating a surfacing maneuver for its civilian guests off Hawaii slammed into a Japanese fishery school vessel, causing the death of nine students and teachers in 2001? The pilot was court-martialed but acquitted, and the skipper was reprimanded but not court-martialed. Yes, families of victims were compensated, but is it a consolation that the justice not done by the American military “justice” system was much better than the “justice” by the standard of Saddam Hussein’s regime? Even if many Americans forgot those incidents, disillusioned foreign people would remember and be convinced that the rule

of law in the United States cannot be accepted at face value, or that it contains a double standard.

Professor Paul Carrington’s new book, *Spreading America’s Word*, is full of examples of failed attempts by American “lawyer-missionaries” to share their democratic vision with diverse people around the world. The roots of this evangelism could be seen in the “unalienable rights” in the Declaration of Independence written by Thomas Jefferson. Among those lawyer-missionaries were famous politicians such as “War Hawk” Henry Clay, pacifist William Jennings Bryan, imperialist Theodore Roosevelt, and prophet Woodrow Wilson, notorious figures such as J. Edgar

Hoover and Joseph R. McCarthy, and not-so-well-known figures like William Walker, who tried to build his empire by bringing thugs into Nicaragua, but was eventually executed. Their activities reached around the world to Liberia, the Middle East, the Pacific, and Central America. However, what those lawyer-missionaries were

propagating—collective self-government and a multi-faceted concept of “individual rights”—was not actually consistent, because those who claim property rights or other individual rights in foreign countries have not infrequently subverted self-government and its legal institutions. In addition, lawyer-missionaries have tended to have been blind to the reality of the relationship between legal institutions and the culture in the host societies, which tends to be divided along racial, tribal, ethnic, religious, and class lines.

These lawyer-missionaries were guilty of several examples of unprincipled conduct. International law was blatantly violated in Panama in 1903. Such rebels as Emilio Aguinaldo y Famy—George Washington for Filipinos—and Nicaragua’s Augusto Calderon Sandino were dismissed by American lawyer-missionaries as traitors. The United



CARRINGTON

States expanded its territory by “liberating” those countries from imperial powers or just by keeping them from enemies. On the other hand, American ideas and values, which lawyer-missionaries tried to transplant in other lands, were not so deeply rooted even in the United States as most Americans would like to suppose. In addition to the mishandling of granting democracy and freedom to Native Americans and African Americans, epidemics of “moral influenza” or hysteria were repeated in the hostility against German-Americans, the Red Scare, the internment of Japanese-Americans, and the McCarthy Committee.

Even the post-World War II success stories in Germany and Japan cannot be easily replicated in other situations, because those countries were in exceptionally favorable circumstances, Carrington claims. He has never been a naive cheerleader of American causes in his previous works including *Stewards of Democracy: Law as a Public Profession* (1999). But he is not a Draconian accuser either, and tries to be cautious not to second-guess the past. And at the individual level, he acknowledges, some lawyer-missionaries made wise judgments on some occasions and mistakes in others. Still, he

emphasizes the virtue of diffidence—self-knowledge and local knowledge—for the lawyer-missionaries who have been trained to practice this diffidence in their professional work. One lawyer-missionary with diffidence was Jens I. Westengard, who treated the culture of the Siamese with respect, won their confidence, and contributed to their development of legal institutions.

Japan has been one of the few beneficiaries, rather than a victim, of American lawyer-missionaries during the last one and a half centuries, which have included the periods of swift Westernization in the late 19th century and the post-World War II occupation. Carrington gives credits to the preparedness and the relative homogeneity on the side of Japanese society.

A recent development regarding the Constitution of Japan of 1946 provides circumstantial evidence of Carrington’s thesis. Nationalist politicians in Japan had been contemptuous of the Constitution as an “imposed Constitution” drafted by the occupation force of Douglas MacArthur. However, when the possible constitutional amendments began to be discussed openly and the research commission of each

house of the Diet (Parliament) reviewed the document thoroughly in April 2005, it seems to have been found to be difficult to reach a consensus on what was wrong with particular constitutional provisions. One of the hotly debated issues is whether the bicameral parliament should be maintained or the upper house should be abolished or stripped of substantial powers. Ironically, the first draft of the Constitution by the staff of MacArthur provided for a unicameral parliament, but the Japanese cabinet successfully insisted on the bicameral parliament in 1946. Based on the experience of the following 60 years, belatedly Japan seems to appreciate the wisdom of the first proposal by diffident American lawyer-missionaries.

Yes, American lawyers can be admired, so long as the lessons from the past generations of lawyer-missionaries, which have been long forgotten by collective amnesia but are fully recited in this Carrington’s book, are heeded by successive generations. ♪

*Kichimoto Asaka '87 is a professor of law at the University of Tokyo. He is a visiting scholar at Duke Law School through the Fall 2005 term.*

## Bradley honored with Richard and Marcy Horvitz chair

Curtis A. Bradley, a renowned scholar in the areas of public international and foreign relations law, joined the Duke Law faculty on July 1, 2005, as the first Richard and Marcy Horvitz professor of law and associate director of the Program in Public Law.

“Through their support of the Program in Public Law, Richard Horvitz [’78] and his late wife, Marcy, have supported a rich intellectual menu of conferences, speakers, seminars, and other special events on public law topics at the Law School.

With the addition of Curtis Bradley to the constitutional law faculty, Duke’s expertise at the intersection of executive powers, foreign affairs and national security is absolutely unparalleled,” said Dean Katharine Bartlett.

“It is appropriate that Professor Bradley will hold the Horvitz professorship, given both the importance in recruiting Curt of Duke’s presence in public law, which the Horvitz gifts have helped make possible, and the added strength Curt in turn brings to Duke’s public law program.” ♪



CURTIS A. BRADLEY

# {Faculty Notes

## **Katharine Bartlett**

Member, Presidential Transition Team, and Planning Committee, Inauguration of Richard H. Brodhead as Ninth President of Duke University, 2004

Represented Duke at the Inauguration of Kenneth W. Starr '73 as the Dean of Pepperdine University School of Law, September 2004

Member, 2004-2005 Law School Development Committee, American Bar Association Section on Legal Education & Admissions to the Bar

Presentation, "Update on the Law School's Strategic Plan," Duke University Board of Trustees, October 2004

Panel Member, "The Role of the Dean in the Fund-raising Process," Section on Institutional Advancement, Association of American Law Schools Annual Meeting, San Francisco, January 2005

Appointed, North Carolina Chief Justice's Commission on Professionalism, January 2005

Appointed, Board of the American Law Deans Association, February 2005

Member, Duke University President's Senior Leadership Group, 2004-2005

Moderator, Plenary Session, "Law Schools--Que Vadis," Jackson Hole VIII, Conference on Law School Development for Deans and Administrators, Jackson Hole, WY, June 2005

## **Sara Beale**

*The Many Faces of Overcriminalization: From Morals and Mattress Tags to Overfederalization*, 54 *American University Law Review* 747-782 (2005) (Symposium)

*What Developments in Western Europe Tell Us About American Critiques of Corporate Criminal Liability*, 8 *Buffalo Criminal Law Review* 89-163 (2004) (with Adam G. Safwat)

Speaker, "Federal Sentencing Guidelines After Booker," ABA National Institute on White Collar Crime, Las Vegas, March 2005; Federal Sentencing Guidelines Seminar sponsored by the Federal Bar Association, the ABA, the United States Sentencing Commission, San Francisco, May 2005

Presenter, "The Trial of Terrorism Cases in the Article III Federal Courts," Federal Judicial Center training session, Duke Law School, March 2005

Speaker, "Criminal Law: Whose Frontal Cortex Anyway? The Supreme Court's Two Sentencing Cases This Term: *Roper v. Simmons* (juvenile death penalty) and *Booker v. United States* (sentencing guidelines)," conference on Law, Behavior, and the Brain, Gruter Institute, Squaw Valley, CA, May 2005

Attendee as incoming Reporter, Meetings of Criminal Rules Committee, Charleston, SC, April 2005; Judicial Conference Standing Committee on Criminal Rules, San Francisco, January 2005 and Boston, June 2005

Member, Advisory Committee, AALS Journal of Legal Education

Member, ABA Criminal Justice Standards Committee

Member, Board of the International Society for the Reform of Criminal Law

## **Stuart Benjamin**

*Evaluating the FCC's National Television Ownership Cap: What's Bad for Broadcasting Is Good for the Country*, 46 *William & Mary Law Review* 439-511 (2004)

2005 Supplement to TELECOMMUNICATIONS LAW AND POLICY (2001) (with Douglas Gary Lichtman & Howard A. Shelanski)

Appointed, associate dean for research, Duke Law School, January 2005

## **Francesca Bignami**

*The Challenge of Cooperative Regulatory Relations after Enlargement*, in *Law and Governance in an Enlarged Europe* 97-140 (George Bermann & Katharina Pistor eds., 2004)

Presenter, "Creating Rights in the Age of Global Governance," Conference on Administrative Law and Process in the U.S. and Abroad: Cross-Disciplinary Perspectives, University of San Diego School of Law and University of California, San Diego Department of Political Science, January 2005

Presenter, "Civil Society and Global Governance," Faculty Workshop, University of Illinois College of Law, Champaign, February 2005

Panelist, "The EU's New Ambitions," American Society of International Law Annual Meeting, April 2005

*Foreword*, 68 *Law & Contemporary Problems* 1-20 (Winter 2004) originally published as, *Introduzione*, in *Il procedimento amministrativo nel diritto europeo*, *Rivista trimestrale di diritto pubblico*, Quaderno n. 1, 1-30 (Francesca Bignami & Sabino Cassese eds., 2004)

*Mixed Administration in the European Data Protection Directive: The Regulation of International Data Transfers*, 54 *Rivista Trimestrale di Diritto Pubblico* 31-58 (2004)

*Three Generations of Participation Rights Before the European Commission*, 68 *Law & Contemporary Problems* 61-107 (Winter 2004), originally published as, *Tre generazioni di diritti di partecipazione nei procedimenti amministrativi europei*, in *Il procedimento amministrativo nel diritto europeo*, *Rivista trimestrale di diritto pubblico*, Quaderno n. 1, 87-124 (Francesca Bignami & Sabino Cassese eds., 2004)

Special Editor, *The Administrative Law of the European Union*, 68 *Law & Contemporary Problems* (Winter 2004), originally published as, *Il Procedimento amministrativo nel diritto europeo*, *Rivista trimestrale di diritto pubblico*, Quaderno n. 1 (2004) (with Sabino Cassese)

*Transgovernmental Networks vs. Democracy: The Case of the European Information Privacy Network*, 26 *Michigan Journal of International Law* 807-868 (2005)

## **Curtis Bradley**

*Congressional Authorization and the War on Terrorism*, 118 *Harvard Law Review* 2047-2133 (2005) (with Jack L. Goldsmith)

*Rejoinder: The War on Terrorism: International Law, Clear Statement Requirements, and Constitutional Design*, 188 *Harvard Law Review* 2683-2697 (2005) (with Jack L. Goldsmith)

Participant, debate on *Medellin v. Dretke*, Columbia Law School, February 2005

Faculty, Fourth Circuit Judicial workshop on Alien Tort Statute, Williamsburg, March 2005

Presenter, "Issues relating to national security, detention, and legal aspects of the war on terror," Federal Judicial Center training session, Duke Law School, March 2005

Presenter, "Congressional Authorization and the War on Terrorism," symposium, Harvard Law School, April 2005

Moderator, "The President and International Law in the War on Terrorism," at "Strategies for the War on Terror: Taking Stock," Duke University, April 2005

Presenter, "Unratified Treaties and the Constitution," University of Chicago Law School, May 2005

Awarded Richard and Marcy Horvitz chair, July 2005

### Paul Carrington

*Asbestos Litigation in the United States: Delay in Court and Premature Adjudication*, in *The Law's Delay: Essays on Undue Delay in Civil Litigation 69-82* (C.H. van Rhee ed., Intersentia 2004)

Clients I Remember: Part Five, 15 Experience 31-33 (Spring 2005)

Preface to George W. Liebmann, *THE COMMON LAW TRADITION: A COLLECTIVE PORTRAIT OF FIVE LEGAL SCHOLARS IX-XVIII* (2005)

Speaker, "St. George Tucker," College of William and Mary, Marshall-Wythe Law School, January 2005

Speaker, "Renewing the Supreme Court," The Federalist Society, Washington D.C., February 2005; Harvard Law School Reunion Weekend, March 2005; American Academy of Appellate Lawyers, Denver, March 2005; Federalist Society, Washington, D.C., April 2005; Max Planck Institute of Private International Law, Hamburg, June 2005; Humbolt University, Berlin, June 2005; Albert Ludwigs Universitat, Freiburg en Breisgau, June, 2005; Universitat Meunster, June 2005

Gastprofessor, Bucerius Law School, Hamburg, May and June 2005

Speaker, "Spreading America's Word," Free University of Brussels, June 2005

### Erwin Chemerinsky

CONSTITUTIONAL LAW (Aspen Law & Business, 2d ed. 2005) (casebook)

*Attack on Court Threatens Crucial Checks and Balances*, Daily Journal, April 12, 2005

*Catch the High Court's Eye With a Compelling Petition*, 41 Trial 70-71 (April 2005) (with Doriane Lambelet Coleman)

*Citing Foreign Law Sparks Unnecessary Bruhaha*, Daily Journal, March 15, 2005  
*A Civil Rights Victory for Prisoners*, 41 Trial 76-77 (May 2005)

*Court Adds Class Actions, Religion to Docket*, 41 Trial 66-68 (January 2005)

*Court Moves to Weed Out Race Issue in Jury Selection*, Daily Journal, June 15, 2005

*Deep Throat's Message*, Raleigh News & Observer, June 3, 2005, at A15

*Filibustering Judicial Nominations*, 26 Cardozo Law Review 331-352 (2005) (with Catherine Fisk)

*GOP Court Bashing Undermines System*, Philadelphia Inquirer, April 10, 2005, at <http://www.philly.com/mlid/philly/11354578.htm>

*Ignoring Constitution for Political Gain; Efforts Violate Separation of Powers and Federalism*, Fort Lauderdale Sun Sentinel, March 23, 2005 at 25A

*Justices Create Confusion in Sentencing by Declaring Guidelines Advisory*, Daily Journal, January 18, 2005 (with Neil S. Siegel & Laurie Levenson)

*Oregon's Right to Decide*, Raleigh News & Observer, March 4, 2005, at A17

*Patients Need Range of Choice in the Face of Pain and Suffering*, Daily News of Los Angeles, April 8, 2005, at N19 (with Judith Daar)

*Qualified Immunity Ruling Raises Hurdles for Plaintiffs*, 41 Trial 66-67 (March 2005)

*The Segregation and Resegregation of American Public Education: The Court's Role*, 38 Clearinghouse Review 633-650 (2005)

*Statute Undercuts Right to Mount First Amendment Defense*, Daily Journal, February 16, 2005

*Surprising High-Court Rulings Shift Civil Rights Outlook*, Daily Journal, May 19, 2005

*3rd Circuit Award, Law Schools Victory Against Military*, Daily Journal, December 22, 2004

Argued, in United States Supreme Court, *Tory v. Cochran* and *Van Orden v. Perry*; in California Supreme Court, *Johnson v. Ford*

Honored, "One of the 20 Top Legal Thinkers in America," *Legal Affairs*, April 2005

Speaker, "Federalism," "Free Speech and the Military," and "The Rehnquist Court," AALS Annual Meeting, San Francisco, January 2005

Speaker, "Privacy and the War on Terrorism," North Carolina Bar Association, January 2005  
Speaker, "The War on Terrorism and Recent Supreme Court Cases," New York State Bar Association, New York, January 2005

Speaker, "Recent Developments in Civil Rights and Civil Liberties Law," National Conference of ACLU Lawyers, Santa Fe, January 2005

Keynote speaker, "Same-Sex Marriage," Southwestern Law School, Los Angeles, February 2005

Speaker, "Civil Liberties and the War on Terrorism," Valparaiso Law School, February 2005; Whitman College, April 2005; California State University, Fullerton, May 2005

Speaker, "Civil Liberties and the War on Terrorism," Folsom Lecture, Washburn Law School, Topeka, KS, March 2005

Speaker, "Federalism and the Supreme Court," Willamette Law School, Salem, OR, March 2005

Speaker, "Recent Supreme Court Cases," conference of Federal Bankruptcy Judges, Redondo Beach, CA, March 2005; Northwest Bankruptcy Institute, Seattle, April 2005; Nevada Judicial Conference, Mesquite, NV, April 2005; conference of Federal Magistrate Judges, Santa Fe, April 2005; Fifth Circuit Judicial Conference, New Orleans, May 2005; conference of Eighth and Tenth Circuit judges, Santa Fe, June 2005; Sixth Circuit Judicial Conference, Mackinac Island, MI, June 2005; Federal Judicial Conference, Kansas City, MO, June 2005

Presenter, "USA Patriot Act," Federal Judicial Center training session, Duke Law School, March 2005

Speaker, "Recent Developments in Civil Rights Law," Georgetown University, April 2005

Speaker, "Preemption and Federalism," Pepperdine Law School, Malibu, CA, April 2005

Speaker, "Recent Developments in Civil Rights Law," Chicago-Kent Law School, April 2005

Speaker, "Recent Developments in United States and Alaska Constitutional Law," Alaska Bench/Bar conference in Juneau, May 2005

Speaker, "Recent Developments in Criminal Procedure," National Conference of Federal Defenders, San Antonio, June 2005

### George Christie

*L'auditoire universel dans l'argumentation juridique* [The Notion of an Ideal

## Faculty Notes

Audience in Legal Argument, French edition] (Guy Haarscher trans., Bruylant 2005)

Honoree, Perelman Foundation, University Libre de Bruxelles, on the occasion of the publication of the French translation of "The Notion of an Ideal Audience in Legal Argument," Brussels, February 2005

Lecturer, "Developments in American Product Liability Law," "The Adjudication in American Courts of Cases Involving Conflicts between Competing Human Rights," "The Development of the Notion of Natural Justice in the Common Law," Doshisha University, Kyoto, Japan, May 2005

### Charles Clotfelter

*Who Teaches Whom? Race and the Distribution of Novice Teachers*, 24 *Economics of Education Review* 377-392 (2005) (with Helen F. Ladd & Jacob Vigdor)

Awarded, 2005 Gladys M. Kammerer prize for best political science publication in the field of U.S. national policy for AFTER BROWN: THE RISE AND RETREAT OF SCHOOL SEGREGATION, American Political Science Association, June 2005

### Doriane Lambelet Coleman

*Catch the High Court's Eye With a Compelling Petition*, 41 *Trial* 70-71 (April 2005) (with Erwin Chemerinsky)

*Arming Teachers is Not the Answer*, Durham Herald-Sun, April 10, 2005

### James Cox

*Public and Private Enforcement of the Securities Laws: Have Things Changed Since Enron?*, 80 *Notre Dame Law Review* 893-907 (2005) (with Randall S. Thomas)

Lecturer, Kennedy School of Government Law and Economic Development Training Forum, Fulbright Learning Center, Ho Chi Minh City, Vietnam, January 2005

Speech, "The Historical Forces that Have Shaped the U.S. Securities Laws," Ho Chi Minh City University Law School, January 2005

Panelist, "15 Years After the N.C. Business Corporation Law," N.C. Bar Foundation, Pinehurst, NC, February 2005

Panelist, Executive Compensation, Directors' Education Institute, Duke University, March 2005

Commentator, Law and Business Program, Vanderbilt University, March 2005

Presenter, "Mutual Fund Expense Disclosure: A Behavioral Perspective," Institute for Law and Economic Policy and Washington University Conference on Reforming the Mutual Fund Industry,

Lake Las Vegas, April 2005

Participant, "The Law and the Professions," Columbia University School of Law, April 2005

Participant, "The Competitive Structure of the Accounting Profession," The American Assembly, Columbia University, May 2005

Panelist, "Securities Litigation before the Supreme Court," Reunion Program, Princeton University, May 2005

### Richard Danner

Participant, meetings of the Executive Committee of the Association of American Law Schools, San Francisco, January 2005

Member, American Bar Association site evaluation team for Harvard Law School, Cambridge, April 2005

Faculty, American Bar Association, New Deans' Seminar, Jackson Hole, WY, June 2005

Participant, Strategic Planning sessions as first vice-president of the International Association of Law Libraries, London, June 2005

### Deborah DeMott

Restatement (Third) of Agency (Tentative Draft No. 6, 2005) (Reporter)

Speaker, "Agents, Organizations, and Restatement Third," AALS Section on Agency, Partnership, LLC's and Unincorporated Associations, AALS Annual Meeting, January 2005

Keynote speaker, "Why Agency Matters: Reflections on the Gravitational Pull of Common Law Doctrine," 23rd Annual American Law Institute-State Bar of Georgia Breakfast, February 2005

Presenter, "Anachronism and Influence: Reflections on the Restatements of Agency," faculty workshop, Washington & Lee School of Law, April 2005

Successfully defended Tentative Draft No. 6 of Restatement (Third) of Agency at annual meeting of American Law Institute, culminating in ALI's approval of project in its entirety, May 2005

Recipient, Dean's award for faculty scholarship for work on Restatement (Third)

Elected, Chair-Elect, AALS Section on Business Associations

Commenced service, Adviser to ALI project, Restatement (Third) of Employment Law

### Robinson Everett

*Lawyer Family: Lessons Learned for the Practice of Law*, in *Lawyer to*

*Lawyer: North Carolina Reflections on the Practice of Law 15-16* (Theresa A. Newman ed., 2005)

Presenter, Annual Meeting of the Code Committee of the U.S. Court of Appeals for the Armed Forces, Washington, D.C., May 2005

Chairman, North Carolina State Bar LAMP (Legal Assistance for Military Personnel) Committee

### Catherine Fisk

*Knowledge Work: New Metaphors for the New Economy*, 80 *Chicago-Kent Law Review* 839-872 (2005)

LABOR LAW STORIES (Foundation Press, 2005) (editor with Laura A. Cooper)

*Filibustering Judicial Nominations*, 26 *Cardozo Law Review* 331-352 (2005) (with Erwin Chemerinsky)

*The Story of Hoffman Plastic Compounds, Inc. v. NLRB: The Rules of the Workplace for Undocumented Immigrants*, in *Immigration Stories* (David A. Martin & Peter Schuck eds., 2005) (with Michael J. Wishnie)

*The Story of Hoffman Plastic Compounds, Inc. v. NLRB: Labor Rights Without Remedies for Undocumented Immigrants*, in *Labor Law Stories* 399-438 (Laura A. Cooper & Catherine L. Fisk eds., 2005) (with Michael J. Wishnie)

Speaker, "Same-Sex Marriage as a Civil Rights Issue," Randolph Thrower Symposium, *Emory Law Journal* and Emory University School of Law, Atlanta, February 2005

Commentator, "Copyright in the Nineteenth Century," Conference on the Law, History, and Culture of Intellectual Property, University of Southern California, Los Angeles, April 2005

Speaker, "Working Knowledge: Employee Innovation and the Rise of Corporate Intellectual Property," Information Ecology Lecture, Duke University, April 2005

Speaker, "Labor Law and the Four Obstacles to Union Organizing," Third Reconstruction Institute Conference on Labor and Community Organizing, John Hope Franklin Center, Duke University, April 2005

Speaker, "Labor Law for the Non-Unionized Workplace: What Employment Lawyers Should Know About Labor Law," Pacific Coast Labor and Employment Law Conference, Seattle, May 2005

### Joel Fleishman

Co-chair, Expert Advisory Group (formed



to advise the Panel on the Nonprofit Sector, which in turn was formed at the request of the U.S. Senate Finance Committee), Independent Sector, 2005

Speaker, Bertelsmann Foundation Symposium Speech, Berlin, Germany, March 2005

Speaker, "How Much is Enough?: Foundation Grantmaking for International Benefit," Princeton Conference on Ethics and International Grantmaking, Princeton University, May 2005

Member, Building Strong and Ethical Foundations Advisory Committee, Council on Foundations, 2005-

#### Andrew Foster

*Final New Markets Tax Credit Regulations Released*, 14 *Journal of Affordable Housing & Community Development Law* 85-89 (Winter 2005)

*Joint Ventures Between Nonprofits and For-Profits: Will Revenue Ruling 2004-51 Provide Any Comfort?*, 14 *Journal of Affordable Housing & Community Development Law* 95-105 (Winter 2005)

Presenter, "New Markets Tax Credit 101," North Carolina Main Streets Conference, New Bern, NC, January 2005

Speaker, "Microenterprise: An Effective Anti-Poverty Strategy?" Conference on Race, Gender and Poverty, University of North Carolina School of Law, Chapel Hill, February 2005

Presenter, "Joint Ventures Between Nonprofits and For-Profits," Mid-Year Conference, American Bar Association Forum on Affordable Housing and Community Development Law, San Francisco, February 2005

Presenter, "Strategies for Financing Community Development with the New Markets Tax Credit," Community Development Academy, University of North Carolina Institute of Government, March 2005

Presenter, "Developing a Successful Pro Bono Business Law Program," Equal Justice Conference, Austin, TX, May 2005

Co-Organizer, Conference on Social Enterprise, Duke University, June 2005

#### Martin Golding

THE BLACKWELL GUIDE TO THE PHILOSOPHY OF LAW AND LEGAL THEORY (2005) (editor with William Edmundson)

*Responsibility*, in *The Blackwell Guide to the Philosophy of Law and Legal Theory* 221-235 (Martin P. Golding & William A. Edmundson, eds., 2005)

*Rights, Performatives, and Promises in Karl Olivecrona's Legal Theory*, 18 *Ratio*

Juris 16-29 (2005)

#### Paul Haagen

Elected Chair, Duke University Academic Council, February 2005

Panel Moderator, "Hot Topics in Sports Law," Duke Law Reunion Weekend, April 2005

Lecturer, "Regulation of Sport," East Carolina University, May 2005

Speaker, "Supporting Our Truths: Academic Freedom in Higher Education," Phi Beta Kappa Lecture, Haverford College, May 2005

#### Donald Horowitz

MIZHETNICHNI KONFLIKTI [Ethnic Groups in Conflict, Ukrainian edition] (Karavella, 2004)

*The Alternative Vote and Interethnic Moderation: A Reply to Fraenkel and Grofman*, 121 *Public Choice* 507-521 (2004)

Team leader, quality assessment of the Government Unit, University of the West Indies, St. Augustine, Trinidad, March 2005

#### Ted Kaufman

*Do Right by Those Who Have the Least in the Era of Deficit*, *Wilmington News Journal*, January 9, 2005, at 15A

#### David Lange

*Comment: Traditional Knowledge, Folklore and the Case for Benign Neglect*, in *INTERNATIONAL PUBLIC GOODS AND TRANSFER OF TECHNOLOGY UNDER A GLOBALIZED INTELLECTUAL PROPERTY REGIME* 595-598 (Keith E. Maskus & Jerome H. Reichman eds., 2005)

#### Sarah Ludington

Presenter, "Effective Teaching Techniques: Using Student Writing Samples for Assignment Feedback," Fourth Annual Carolinas Legal Research and Writing Colloquium, Campbell University School of Law, Buie's Creek, NC, May 2005

#### Martin Lybecker

Speaker, "Mutual Fund Scandals," 2004 Annual Meeting, Florida Office of Financial Regulation, Division of Financial Institutions, Tallahassee, January 2005

Speaker, "SEC Rule 38a-1," Fiduciary Audit and Risk Management Seminar, Richmond, March 2005

Speaker, "Online Program on Bank Entry Into the Mutual Fund Business," SEC Historical Society, Herndon, VA, March 2005

Speaker, "Online Program on Money Market Funds," SEC Historical Society, Herndon, VA, March 2005

Moderator, "Banking Law 101," Institute for the New Business Lawyer; Speaker, "The New Era of Enforcement & Compliance — Bank Secrecy Act, Anti-Money Laundering and More," "Committee on Banking Law, Regulation B: SEC's Broker-Dealer Rules for Banks," Committee on Banking Law, Spring Meeting, ABA Business Law Section Spring Meeting, Nashville, April 2005

Speaker, "Mutual Fund Procedures: Views of Practitioners," American Bankers Association Operations Conference, Memphis, April 2005

Presenter, "Enhanced Corporate Governance for Mutual Funds: A Concept that Needs Serious Reconsideration," A Symposium on Mutual Funds, Hedge Funds & Pension Funds, Washington University School of Law and The Institute for Law and Economic Policy, Lake Las Vegas, NV, April 2005

Speaker, "Mutual Fund Scandals," 19th Annual National Training Conference, Fiduciary Audit and Risk Management Association, San Diego, April 2005

Moderator, "Enforcement," 2005 Lawyers Council Spring Meeting, Financial Services Roundtable, Washington, D.C., May 2005

Elected, Member of the Council of the Business Law Section of the American Bar Association, beginning August 2005

Selected, Member of the Advisory Council of the SEC Historical Society, beginning June 2005

#### Jennifer Maher

Speaker, "Student Exchanges," Chinese & American Law School Deans' Conference, Beijing, China, April 2005

Speaker, "Graduate Programs for Foreign Lawyers" Section panel, AALS Annual Meeting, January 2005

Elected Vice-Chair, International Law & Practice Section, NC Bar Association

#### Carolyn McAllaster

*Legal Issues for HIV-Infected Children*, in *TEXTBOOK OF PEDIATRIC HIV CARE*, ch. 48 (Cambridge University Press, 2005)

#### Ralf Michaels

*Re-placements. Jurisdiction for Contracts and Torts Under the Brussels I Regulation when Arts. 5(1) and 5(3) Do Not Designate a Place in a Member State*, in *International Litigation in Europe and Relations With Third States* 129-156 (Arnaud Nuyts & Nadine Watté eds., 2005)

#### Madeline Morris

*Terrorism: The Politics of Prosecution*,

## Faculty Notes

5 Chicago Journal of International Law 405-421 (2005)

Participant, Working Group on International Law, Politics, and Organization, Boalt Hall Law School, January 2005

Speaker, "Judgment, Justice and Jurisdiction," Human Rights Lecture Series of the Law School of the College of William and Mary, March 2005

Speaker, "The Added Value of Mixed Tribunals," conference on International Criminal Justice: A Transatlantic Dialogue, convened by the Katholieke Universiteit Leuven Faculty of Law, Brussels, Belgium, May 2004

Member, Advisory Board of the Project on U.S. Attitudes and Practices Towards International Courts and Tribunals

### Robert Mosteller

*The Confrontation Clause Radically Redefined by 'Crawford v. Washington'*, 9 North Carolina State Bar Journal 6-10, 23 (Winter 2004)

*Encouraging and Ensuring the Confrontation of Witnesses*, 39 U. Richmond L. Rev. 511 (2005)

Commentator, "Crawford and Beyond," Brooklyn Law School, February 2005

### Theresa Newman

Lawyer to Lawyer: North Carolina Reflections on the Practice of Law (2005) (editor)

### Joost Pauwelyn

*The Appellate Body's GSP Decision*, 3 World Trade Review 239-266 (2004) (with others)

*The Application of Non-WTO Rules of International Law in WTO Dispute Settlement*, in World Trade Organization Legal, Economic and Political Analysis (Patrick F. J. Macrory, Arthur E. Appleton, & Michael G. Plummer eds., 2005)

*Book Review*, 37 George Washington International Law Review 559-571 (2005) (reviewing, Frank J. Garcia, TRADE, INEQUALITY AND JUSTICE: TOWARD A LIBERAL THEORY OF JUST TRADE (2003))

*An Insider's Guide to the WTO's Problems*, 9 Bridges (ICTSD) 7 (January 2005) (with Andrew Guzman)

*WTO Dispute Settlement: Of Sovereign Interests, Private Rights, and Public Goods*, in International Public Goods and Transfer of Technology Under a Globalized Intellectual Property Regime 817-830 (Keith E. Maskus & Jerome H. Reichman eds., 2005)

WTO Softens Earlier Condemnation of U.S. Ban on Internet Gambling, but

Confirms Broad Reach into Sensitive Domestic Regulation, ASIL Insight (April 2005) at: <http://www.asil.org/insights/2005/04/insights050412.html>

Faculty adviser, Duke Law Team, IEL-Sidley WTO Moot Court Competition, (winners), Washington, D. C., February 2005

Organized speakers event at Duke Law with current and former Duke students on job opportunities with US government agencies in the field of international trade, March 2005

Presenter, "The Transformation of World Trade," International Law Workshop, Boalt Hall Law School, University of California at Berkeley, March 2005

Presenter, "The Sutherland Report: A Missed Opportunity for Genuine Debate on Trade, Globalization and Reforming the WTO," Fifth Annual WTO Conference, British Institute for Comparative and International Law, Gray's Inn, London, May 2005

Presenter, "L'influence des Sources sur l'Unité et la Fragmentation du Droit International," International Law Workshop, Palma de Mallorca, Spain, May 2005

Presenter, "Dispute Settlement in Regional Trade Agreements and Overlaps with the WTO," Conference on Regional Trade Agreements and the WTO Legal System, Edinburgh, Scotland, May 2005

Visiting Professor, University of London, King's College, June 2005

Lecturer, World Trade Institute, in the framework of the Institute's Masters in International Law and Economics (MILE) Program, focusing on conflict of norms in international law and the effect of WTO law before EU and U.S. courts, Berne, Switzerland, June 2005

Appellate Litigation, World Trade Organization, July 2005

### Jeff Powell

A COMMUNITY BUILT ON WORDS: THE CONSTITUTION IN HISTORY AND POLITICS (University of Chicago Press, rev. ed. 2005)

### Jedediah Purdy

Panelist, "Why We Get the Politics We Get," New America Foundation/Atlantic Monthly forum on "The Real State of the Union," Washington, D.C., February 2005

Panelist, "What the Election Meant," Sarah Lawrence College, February 2005

Introducer and moderator, premiere of Gore Vidal's "On the March to the Sea," Duke University, February 2005

Guest, "The Post-Modern Ironic Wink," National Public Radio's "To the Best of Our Knowledge," June 2005

Panelist, "Where Is the Moral Center in America Today?" New America Foundation Annual Retreat, Berkeley, CA, June 2005

Speaker, "People as Resources, People as Ends," Freedom-Oriented Political Economy Seminar, United Nations Development Program, New York, June 2005

### Arti Rai

*The Increasingly Proprietary Nature of Publicly Funded Biomedical Research: Benefits and Threats*, in *Buying In or Selling Out?: The Commercialization of the American University* 117-126 (Donald G. Stein ed., 2004)

*Open and Collaborative Research: A New Model for Biomedicine*, in *Intellectual Property Rights in Frontier Industries* 131-158 (Robert W. Hahn ed., AEI-Brookings Press 2005)

*Patenting Organisms and Basic Research, and Private Ownership of Inventions*, entries in *4 Encyclopedia of Bioethics 1980-1983, 2130-2132* (3rd ed., 2004)

*Proprietary Rights and Collective Action: The Case of Biotechnology Research With Low Commercial Value*, in *INTERNATIONAL PUBLIC GOODS AND TECHNOLOGY TRANSFER IN A GLOBALIZED INTELLECTUAL PROPERTY REGIME* 288-306 (Keith E. Maskus & Jerome H. Reichman eds., 2005)

### Jerome Reichman

*INTERNATIONAL PUBLIC GOODS AND TRANSFER OF TECHNOLOGY UNDER A GLOBALIZED INTELLECTUAL PROPERTY REGIME* (Cambridge University Press, 2005) (editor with Keith E. Maskus)

*The Globalization of Private Knowledge Goods and the Privatization of Global Public Goods*, in *INTERNATIONAL PUBLIC GOODS AND TRANSFER OF TECHNOLOGY UNDER A GLOBALIZED INTELLECTUAL PROPERTY REGIME* 3-45 (Keith E. Maskus & Jerome H. Reichman eds., 2005)

*Using Liability Rules to Stimulate Local Innovation in Developing Countries: Application to Traditional Knowledge*, in *INTERNATIONAL PUBLIC GOODS AND TRANSFER OF TECHNOLOGY UNDER A GLOBALIZED INTELLECTUAL PROPERTY REGIME* 337-366 (Keith E. Maskus & Jerome H. Reichman eds., 2005) (with Tracy Lewis)

Consultant, "Economic & Trade Challenges of the 21st Century," International Visitors, World Affairs Council, Duke Law School, January 2005

Distinguished Lecturer, "Using Liability Rules to Stimulate Local Innovation in Developing Countries: Applications to Traditional Knowledge," McCarthy Institute, University of San Francisco School, March 2005

Consultant, Andean Free Trade Agreement Negotiations, Washington, D.C., March 2005

Presenter, "Intellectual Property Protection of Databases and Alternative Regimes to Reconcile Public Science with the Commercialization of Research Results," Duke Institute for Genome Sciences & Policy, Center for Genome Ethics, Law & Policy, March 2005

Presenter, "A Contractually Reconstructed Research Commons for Science and Innovation," Conference on "The Global Flow of Information," Yale University, New Haven, April 2005

Presenter, "Compulsory Licensing in United States Intellectual Property Law," Center for Intellectual Property Law and Information Technology (CIPLIT) Symposium on "Intellectual Property Licensing by the Dominant Firm: Issues and Problems," DePaul University, Chicago, April 2005

Presenter, "Global Trends to Restrict Access to Data from Government-funded Research," Swiss Academy of Humanities and Social Sciences Conference on "Copyright and Digitalization," Berne, Switzerland, April 2005

Presenter, "The Globalization of Private Knowledge Goods and the Privatization of Global Public Goods," TransAtlantic Consumer Dialogue (TACD) Conference on "Access to Knowledge," Queen Mary Intellectual Property Research Institute, London, May 2005

Panelist, Initiative for Policy Dialogue and TransAtlantic Consumer Dialogue Conference on "New Approaches to Intellectual Property," Columbia University, New York, June 2005

Presenter, "University-Industry Collaboration: The United States Experience," World Intellectual Property Organization (WIPO) International Symposium on Intellectual Property Education and Research, Geneva, June 2005

### William Reppy

Judge, National Animal Law Center's Second Annual Animal Law Moot Court competition, Harvard Law School, Cambridge, February 2005

### Barak Richman

*Behavioral Economics and Health Policy: Understanding Medicaid's Failure*, 90 *Cornell Law Review* 705-768 (2005)

Speaker, "Community Institutions," American Law and Economics Association Annual Meeting, New York University Law School, May 2005

Speaker, "Courts and Communities: A Comparative Institutional Analysis (Plus Policy Implications)," Tulane University Law School Faculty Workshop, January 2005

Awarded, Duke Law School Blueprint Award, May 2005

Grant, National Institute of Environmental Health Sciences, May 2005

### Denise Riebe

Panelist, "Bar Passage Programs," Law Schools Admission Council, Academic Assistance Training Workshop, Las Vegas, June 2005

Presenter, Bar Success Workshop, University of North Carolina School of Law, Chapel Hill, March 2005

Presenter, "A Mediator's Introduction to Civil Litigation," University of North Carolina - Greensboro, Mediation Training Workshop, April 2005

### Thomas Rowe

*Supreme Court Limits Scope of Rooker-Feldman Doctrine—Commentary*, 2005 *Moore's Federal Practice Update* 73-74, May 2005

Speaker, "Trying to Make the Best of the Civil-Justice Market," Faculty Workshop, Pepperdine Law School, Malibu, March 2005

Member, American Law Institute Members' Consultative Groups for the Restatement (Third) of Restitution, project on "Recognition and Enforcement of Foreign Judgments, project on "Principles of the Law of Aggregate Litigation"

Chair, AALS Committee on Professional Development

Consultant, Advisory Committee on Civil Rules' style revision of the Federal Rules of Civil Procedure

### James Salzman

*Science in the Public Process of Ecosystem Management: Lessons from Hawaii, Southeast Asia, Africa and the US Mainland*, 76 *Journal of Environmental Management* 197-209 (2005) (with John Gutrich et al.)

Participant, focus groups on how U.S. Forest Service can or should incorporate an ecosystem services perspective into its operations, Minneapolis, MN, April 2005

Speaker, "A New Currency for Conservation: Markets and Payments for Ecosystem Services from Our Nation's Forests and Farms," Washington, D.C., May 2005

## Faculty Notes

Presenter, "The Nuts and Bolts of Creating Ecosystem Service Markets," conference co-sponsored by the U.S. Forest Service and the Southern Environmental Law Center, May 2005

Presenter, "Conservation Incentives that Work for People on the Land," workshop sponsored by Stanford University, The Nature Conservancy and World Wildlife Fund, Stanford, CA, May 2005

Speaker, "Markets for Ecosystem Services," Rocky Mountain Mineral Law Foundation's Institute for Natural Resource Law, Santa Fe, NM, June 2005

### Richard Schmalbeck

*Reconsidering Private Foundation Investment Limitations*, 58 *Tax Law Review* 59-110 (2004)

Panel chair, "Timing Issues in Taxation," Critical Tax Theory Conference, University of Seattle, April 2005

Presenter, "Is the Death Tax Really Dead?," Faculty Seminar, William & Mary School of Law, April 2005

Presenter, "What is the Optimal Spending Rate for Private Foundations?," University of Michigan Tax Policy Workshop, April 2005

Presenter, "Unrelated Business Income Tax Constraints on Earned Income," Conference on Social Enterprise: Developing Earned Income Strategies to Enhance Social and Community Impact, Duke University, June 2005

Lecturer, "American and Canadian Taxation," International Tax Certificate Program, Instituto Tecnico Autonimo de Mexico ("ITAM"), Mexico City, May 2005

Presenter, "Strategies in Application for Exempt Status," conference on Formation of Charitable Organizations, Greensboro, NC, June 2005

Member, Association of American Law Schools Membership Committee (AALS accreditation committee)

### Christopher Schroeder

Special Editor, *Case Studies in Conservative and Progressive Legal Orders*, 67 *Law & Contemporary Problems* (Autumn 2004)

Speaker, "History and Prospects for the Environmental Justice Movement," forum in honor Martin Luther King, Jr.'s birthday, January 2005

Presenter, "Legal Issues in the Implementation of the USA PATRIOT Act, Federal Judicial Center training session, Duke Law School, March 2005

Panelist, Forum relating to Terri Schiavo case, Duke Institute on Care at the End of Life, Duke University, April 2005

Panel Chair, PATRIOT Act Issues, conference on Strategies in the War on Terror, Duke University, April 2005

Session leader, American Constitution Society for Law & Policy conference on the Constitution in 2020, Yale Law School, New Haven, April 2005

Speaker, USA PATRIOT Act, meeting of North Carolina First Responders, April 2005

Presenter, "The Hydrogen Economy," Berkeley Environmental Law Workshop, University of California, Berkeley Law School, April 2005

### Steven Schwarcz

*Temporal Perspectives: Resolving the Conflict Between Current and Future Investors*, 89 *Minnesota Law Review* 1044-1090 (2005)

*The Confused U.S. Framework for Foreign-Bank Insolvency: An Open Research Agenda*, 1 *Review of Law & Economics*, article 6 (April 2005) at: [www.bepress.com/rle/vol1/iss1/art6/](http://www.bepress.com/rle/vol1/iss1/art6/)

Presenter, "Temporal Perspectives and the Conflict Between Current and Future Investors," AALS Annual Meeting, January 2005

Included in Social Sciences Research Network (SSRN) list of "Top 50 Law Authors" in the world, measured by article downloads, March 2005

Honored, mini-symposium on forthcoming article, "The Limits of Lawyering: Legal Opinions in Structured Finance," Columbia Law School Center on Corporate Governance, March 2005

Speaker, "Legal Opinions in Structured Finance," University of North Carolina Law School, faculty workshop, February 2005; Columbia Law School, March 2005; Global Capital Markets Center's Advisory Board, New York City, May 2005

Panelist, Chaired Bankruptcy Panel, annual meeting of American Law & Economics Association, New York University Law School, May 2005

Elected, Founding Member, International Insolvency Institute

Visiting Professor, University of Geneva, May-June 2005

### Neil Siegel

*Justices Create Confusion in Sentencing by Declaring Guidelines Advisory*, *Daily*

*Journal*, January 18, 2005 (with Erwin Chemerinsky & Laurie Levenson)

*Medical Marijuana: Read Between the Lines*, *Raleigh News & Observer*, June 14, 2005, at A11

*The Rhetoric Behind "Strict Constructionism"*, *Durham Herald-Sun*, June 19, 2005, at A11 (with Aziz Huq)

*Why President Bush Should Not Take the 5th*, *Houston Chronicle*, June 17, 2005, at B11

Judge and Keynote Speaker, North Carolina State Finals of the 2004-2005 We the People: The Citizen and the Constitution Competition, Raleigh, January 2005

Lecturer, We the People: The Citizen and the Constitution Weekend Workshop, Salter Path, NC, March 2005

Participant, Liberty Fund Conference on The Political Economy of a Federal Constitution, Alexandria, VA, April 2005

Judge and Alumni Speaker, National Finals of the 2004-2005 We the People: The Citizen and the Constitution Competition, Washington, D.C., April 2005

Seminar Instructor, Durham Public Schools' History Connect(!) Summer Institute, Duke University, June 2005

Panelist, American Enterprise Institute for Public Policy Research, Fifth Annual Supreme Court Review, Washington, D.C., June 2005

### Scott Silliman

*On Military Commissions*, 36 *Case Western Reserve Journal of International Law* 529-540 (2004)

*Teaching National Security Law*, 1 *Journal of National Security Law & Policy* 161-168 (2005)

Guest Speaker, "Legal Issues in the War on Terrorism," Durham Kiwanis Club, January 2005

Guest Lecturer, Duke ROTC programs on the Uniform Code of Military Justice and Operational Law, January 2005

Guest Lecturer, UNC Law School's 15th Annual Festival of Legal Learning, a CLE program, February 2005

Organizer and Presenter, "Law and National Security in the War on Terrorism," Federal Judicial Center training program, Duke Law School, March 2005

Sponsor and Panel Chair, "Strategies for the War on Terrorism: Taking Stock," conference sponsored by the Center on Law, Ethics and National Security and the

Program in Public Law, April 2005

Panel Speaker, "Meeting the Challenges of Terrorism While Preserving Civil Liberties," First Judicial Circuit's annual conference, Newport, RI, June 2005

Chair, Faculty Advisory Committee to the Duke Journal of Comparative and International Law

Member, ABA Standing Committee on Law and National Security

Numerous media interviews in national/local television, radio and newspapers/news magazines on issues of international law involving the use of force, national security, the war on terrorism and military law

### Carol Spruill

Presenter, "Law School Pro Bono Today," Opening Plenary Session, American Bar Association/NLADA Equal Justice Conference on Celebrating the Pro Bono and Legal Services Partnership, Pre-Conference "Celebrating Law School Pro Bono -- Insights from the Journey and Visions for the Future," Austin, TX, May 2005

Presenter, "Hiring and Keeping Great Attorneys without an HR Department," American Bar Association/NLADA Equal Justice Conference on Celebrating the Pro Bono and Legal Services Partnership, Austin, TX, May 2005

Presenter, Equal Access to Justice Roundtable inaugural meeting, North Carolina Bar Association Annual Convention, Asheville, NC, June 2005

Member, Equal Justice Works National Advisory Committee

Member, North Carolina Bar Association Law School Liaison Committee

Member, North Carolina Bar Association Public Service Advisory Committee

### Laura Underkuffler

'Davey' and the Limits of Equality, in Symposium: The Funding of Religious Institutions in the Light of *Locke v. Davey*, 40 *Tulsa Law Review* 267-277 (2004)

Thoughts on 'Smith' and Religious Group Autonomy, in Symposium: Church Autonomy, 5 *Brigham Young University Law Review* 1773-1788 (2004)

### Neil Vidmar

*Juries Around the Globe*, 5 *Insights on Law & Society* 7-10 (Winter 2005)

Uncovering the 'Invisible' Profile of Medical Malpractice Litigation: Insights from Florida, 54 *DePaul Law Review* 315-354 (2005) (with others)

"Research on Medical Malpractice Litigation in the United States and Tort Reform," Testimony before the Committee on the Judiciary of the Connecticut General Assembly, Hartford CT, April 2005

Co-drafter, amicus brief, *Spirko v. Bradshaw*, U.S. Supreme Court No. 03-8043 On Petition For a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

Declaration, United States District Court, Middle District of Florida, Tampa Division, *United States of America v. Sami Amin Al-Arian, et al.*, Case No. 8:03-CR-77-T-30TBM (In support of Change of Venue Application) April 2005

Presenter, "Medical Malpractice and the Tort System in Illinois," Annual Law & Society Meetings, Las Vegas, NV, June 2005

Report, "Medical Malpractice and the Tort System in Illinois: A Report to the Illinois State Bar Association," May 2005

### Stephen Wallenstein

Cost & Revenue Survey 2003 (World Federation of Exchanges, December 2004)

*Indexing and Corporate Governance and Index Investing in Brazil*, in *Active Index Investing* 238-241, 270-274 (Steven Schoenfeld ed., 2004)

Co-sponsor and participant, The Second Annual Art of Indexing Conference, Washington D.C., October 2004

Panelist, 5th Annual Meeting, Brazilian Corporation Governance Network, Sao Paulo, Brazil, November 2004

Co-sponsor, Business Law Society Career Symposium, Duke Law School, February 2005

Organizer and Presenter, Fourth Annual Directors' Education Institute, Duke University, March 2005

Panelist, "Management Succession," Corporate Board Member Academic Council Roundtable, New York, May 2005

Panelist, "Corporate Governance," Foreign Issuers & the U.S. Securities Laws 2005, PLI, New York, May 2005

Presenter, "Doing Business in Asia," Duke Law Board of Visitors Meeting, Tsinghua University, Beijing, June 2005

### Jane Wettach

Lecturer, "Education as a Civil Right," Undergraduate Education Class, Duke University, February 2005

Presenter, "Handling School Suspension Appeals to Superintendents, School Boards and Court," Legal Aid of North Carolina Education Law Task Force, Cary, NC, March 2005

Participant, "School Suspension Hearings," North Carolina Bar Association, Cary, NC, March 2005

Presenter, "The Legal Rights of Disabled Children in School," The International Dyslexia Association, N.C. Chapter Annual Meeting, Charlotte, NC, March 2005

Presenter, "Education Rights of Children with Disabilities," National Lawyer's Guild Southeastern Conference, University of North Carolina School of Law, Chapel Hill, May 2005

### Jonathan Wiener

Speaker, "Appraising the New UK Strategy for Risk Management," remarks to the Plenary Session, Annual Meeting of the Society for Risk Analysis, Palm Springs, CA, December 2004

Speaker, "Precaution in the US and Europe," conference on "Better Regulation: The EU and the Transatlantic Dialogue," co-sponsored by the European Policy Centre, the European Commission, and the U.S. Mission to the EU, Brussels, March 2005

Speaker, "Beyond Kyoto: Moving Climate Change Policy Forward," Yale Center for Environmental Law & Policy and School of Forestry and Environmental Studies, Yale University, New Haven, April 2005

Speaker, "Precaution in Single-Risk versus Multi-Risk Models," Risk Assessment Forum, Yale University, New Haven, April 2005

Discussant, "The Making of Environmental Law," commentary on book and talk by Richard Lazarus, Resources for the Future, Washington D.C., May 2005

Discussant, "Global Administrative Law," discussant on papers on environmental and labor law developments, New York University Law School, April 2005

Speaker, "Hormesis and Regulation," Keynote address, Fourth Annual International Conference on Hormesis, University of Massachusetts - Amherst, June 2005

Chair, Search Committee for the Director of the Nicholas Institute for Environmental Policy Solutions (NIEPS), Duke University

### Lawrence Zelenak

*The Story of Seagram: The Step Transaction Doctrine on the Rocks*, in

## David Gibbs III '93: Answering a call

David Gibbs III says his mandate from his clients, Robert and Mary Schindler, was clear: “To do anything that we could think of that was legal and proper to save their daughter’s life.”

Their daughter was Terri Schiavo. In the last months leading up to the removal of her feeding tube and subsequent death by dehydration on March 31 at a Florida hospice, Gibbs did his best to satisfy her parents’ request, tirelessly filing and arguing motions and appeals, lobbying statehouse and Congress, granting endless interviews, and distributing a video of Schiavo to the world media.

Gibbs was first approached by the Schindlers in 2003 when, he said, the case seemed to be “pretty much over.”

“I was under the impression, frankly, that the case involved a brain-dead patient, and the parents were having trouble letting go. But while I listened to them, I started to feel it involved something more than that. And the first time I saw Terri, I was surprised to see how animated and engaging she was—she

laughed and demonstrated life, love, and affection to her parents. I truly believed she wanted to live.” The essential facts, according to Gibbs—which he maintains were unchallenged by the autopsy report of the Pinellas County Medical Examiner that was released in June—were that Schiavo’s heart was strong, she was not “terminal,” and she was brain-injured, not brain-dead.

On taking the case, he and the other nine attorneys at Gibbs Law Firm, just a few miles from Schiavo’s Pinellas Park hospice, cancelled all appointments and worked around the clock for two days,

reviewing a legal record that spanned a decade. After a direct appeal to Governor Jeb Bush to get involved, they worked with Florida legislators on what came to be known as “Terri’s Law.” Florida’s Supreme Court struck down Terri’s Law late last year.

Gibbs says the case had an eerie resemblance to a clemency petition at that point.

“We were tracking between courts within hours,” recalled Gibbs, who had become lead counsel in September 2004. “But even death penalty cases move on a calendar, and there are clear rights of appeal. We were truly up against a life and death clock.”

He started by bringing a petition before Florida’s trial level probate court, arguing that the Roman Catholic Church—of which Schiavo was a member—had a new position on what constituted “natural”

media was, by and large, an ally in his clients’ legal fight.

“In terms of the public policy debate, the media was a powerful force in raising this voiceless, disabled woman to the forefront of the debate. Otherwise, she could have died nameless and unknown.”

Gibbs finds some satisfaction in the fact that the case opened a public discussion on end-of-life issues, but perceives differences between American and international attitudes.

“People here put these issues into a personal perspective. They said, ‘it’s time to make a living will or appoint a health care surrogate.’ People have approached me and said ‘I now appreciate the time I spend with my children more.’ It’s caused a lot of people to think about what life means and what a disabled life means.

“But the international community saw a

### ALUMNI PROFILE

**“The Terri Schiavo case will have a legacy impact that remains to be seen.”** David Gibbs III

means of prolonging life.

“In 2000, when the original order [to remove Schiavo’s feeding tube] was made, the Church did not officially object to the withholding of food and water. But in 2004, Pope John Paul II made a very long statement that distinguished food and water as unique, natural—as opposed to unnatural—methods of prolonging life.” Once that gambit failed, the case moved through a series of emergency filings, hearings, and appeals.

Although he maintains that at the outset he had no idea the Schiavo case would become the biggest news story of the moment, Gibbs acknowledges that the

disabled woman being starved to death in a way that had the blessing of the courts. They wanted to understand the moral authority behind the decision. Here the U.S. is in Iraq, fighting for human rights, and for decades holding itself out as a moral authority. [Europeans, for example,] could not figure out how, in the United States, Terri could be allowed to die in such a barbaric manner. Even countries that allow euthanasia oppose death by starvation and dehydration—death has to be quick, and administered in a humane manner.”

While acknowledging that had Schiavo’s wishes regarding her death been in writing they would have prevailed, he is adamant



DAVID GIBBS III

that the courts should not allow oral declarations to be honored.

“The Terri Schiavo case will have a legacy impact that remains to be seen. Courts and legislators have to ask if this is the beginning of euthanasia and mercy killing in America. Will we, at some point, say it’s kinder to end someone’s life, or will we say this is wrong? Will we, as a nation, return to show our historic compassion?”

“When courts decide who should live and who should die, it can create a legal quagmire. We need to go back to basic presumptions: Non-terminal patients are entitled to

food and water. We will protect and preserve their lives. The people of America have to ask themselves whether they want to be a compassionate nation or a colder nation.”

Already having been approached by legislators and groups around the country, Gibbs will undoubtedly be part of the ongoing public debate. He has a high profile as a religious liberties lawyer, and is general counsel for the Christian Law Association (CLA), founded by his father in 1969. Described on its Web site as a “ministry of legal helps,” the CLA provides pro-bono legal assistance to “Bible-believing churches

and Christians who are experiencing legal difficulty in practicing their religious faith because of governmental regulation, intrusion, or prohibition of one form or another.” Gibbs says he arrived at Duke Law School intending to follow his father in this arena.

“For me, law was a bit of a calling, wanting to help people, and I have had the privilege of being able to serve.” The Schiavo case represented “an unbelievable opportunity to make a difference” for Gibbs and his colleagues, he says.

“We do rest at night with the confidence in our hearts that we did what we could.” ♡

## Christine Richards '79: Content at the top

Christine Richards joined an elite group June 1 when she took over as executive vice president, general counsel, and secretary of FedEx Corporation. Richards is one of just 73 women currently serving as corporate counsel for Fortune 500 companies, according to *Corporate Counsel* magazine. She is the first woman to serve on the executive committee of FedEx.

ALUMNI PROFILE

Richards joined FedEx in 1984, when it was a single company, Federal Express Corporation, which revolutionized the courier industry by delivering packages overnight, routing all U.S. freight through its Memphis, TN, hub. Having joined a legal department that had fewer than a dozen lawyers, Richards now oversees 137 lawyers serving eight diverse subsidiaries operating in 220 countries and territories, as well as the parent company's government affairs group in Washington, D.C., and its security operations world wide.

"The fact that FedEx has changed and grown so much is one reason that I've been able to stay with one company for more than 20 years and have such a wonderful series of opportunities," said Richards, who was involved, among other acquisitions, in the company's 2004 acquisition of the Kinko's chain for \$2.4 billion. "I was able to take advantage of some of the things that the company did to grow."

In her first position as a regulatory attorney with Federal Express, Richards worked on the company's European expansion. She was also instrumental in crafting a legal strategy that resulted in the de-regulation of interstate trucking.

It worked like this: After Federal Express opened a regional hub in Oakland, CA, packages going from San Francisco to Los Angeles were routed through that hub,

instead of going through Memphis. Federal Express was successful on appeal to the U.S. Court of Appeals for the Ninth Circuit in challenging the California Public Utilities Commission's imposition of trucking tariffs on the freight, asserting that the Federal

Aviation Act preempted the states from economically regulating the rate for services of a certified air carrier. After the Supreme Court declined to hear the regulator's appeal, the trucking industry joined Federal Express in a successful push to pass federal legislation prohibiting the

**"The fact that FedEx has changed and grown so much is one reason that I've been able to stay with one company for more than 20 years."** Christine Richards

states from economically regulating the operations of interstate carriers.

This was a collective effort of which Richards is particularly proud. "The U.S. economy benefited from greater efficiency in our collective trucking opportunities, and costs were lower than they would have been as a result of that litigation."



CHRISTINE RICHARDS

Richards says she's relished all of the opportunities she's had to take creative approaches to problems that are significant.

"FedEx really encourages you to use all of your abilities and skills, to be curious, to grow and expand your knowledge.

[The legal team] gives advice and counsel not only on the legal issues, but also on the running of the various operations," said Richards. "It's a good place to work if you like complexity, change, and challenges."

And the unusual. Having long been in charge of protecting the company's intellectual property and brand, Richards gets to read movie scripts when the

company is approached to allow its logo to be used in a production—such films as "The Addams Family" and "Runaway Bride" got the go-ahead. A more unusual request came, said Richards, when FedEx was offered what amounted to a co-starring role in the 2000 Tom Hanks vehicle, "Cast Away." The plot involves the crash of a FedEx cargo jet en route to an Asian hub; the sole survivor, Hanks' character, a corporate executive, spends a period of years marooned on a remote island, his only company a volleyball—removed from a sodden FedEx package—and an unopened

box with its shipping label intact.

"Up until that time, no operating air carrier had ever allowed

an aircraft accident to be portrayed in a movie using its name, and what would appear to be its airplane. We had a discussion about that. The filmmakers had to convince us that this was a good thing for the storyline and the script, and once we looked at it, and talked it over, we thought it was. The story is about the people involved, the reliability of the service, and the fact that folks go above and beyond to deliver and meet our customers' needs. We had just a wonderful reaction to it."

For fun, Richards raises horses and competes, as an accomplished adult amateur, in show-jumping competitions; she keeps six horses on the property she shares with her husband, Dan Richards MBA '80. Richards travels widely in her work but says that while it may be for business, it's always a pleasure.

"The neat thing is that when you work with FedEx, it's like family. So when you go to foreign locations, and you go to the operations there, you talk to the people and we have a common culture and common bond." ♡



## Claude Allen '90: Privileged to serve the president

Claude Allen grew up with lofty aspirations, and an attitude that the sky was the limit. The purview of his current job as domestic policy adviser to President George W. Bush extends further—into space.

“The job really covers everything from health care to education, to housing, to space and everything in between,” said Allen, laughing. “It’s very exciting. You get to impact and advise the president on policy issues across the board.”

While emphasizing that his role is not to set but to oversee implementation of the president’s vision through all government agencies, Allen is quick to list higher education, immigration, and litigation—medical liability, class action, and asbestos—as priority areas for reform.

“Action in all these areas will have lasting results to benefit American society,” he said.

What’s the chief skill required to get the job done?

“Juggling—being able to manage the myriad of issues that come before us, distill them down, and weigh them against the president’s vision. There’s a great deal of diplomacy and mediation involved.

“My Duke training helped me understand that you don’t have to know every ‘factoid.’ It helped me come to this job with a sense of confidence that I have the skills necessary to do the job, even though the issues change every single day.”

Allen speaks fondly of his years at Duke, where he combined a JD with an LLM in international and comparative law. He says he was particularly affected by the death penalty course he took with Professor James Coleman.

“I believe that the state has the right to impose the death penalty, but I have trouble with how it is applied. Jim Coleman came to Duke off the heels of the Ted Bundy case, and convincingly argued that Bundy was wrongly executed—not because he didn’t commit the crimes, but on the underlying conviction, and the evidence that was introduced to support that conviction. He caught my attention with that analysis. I appreci-

ated his logic and pursuit of the truth.”

Allen subsequently worked on a death penalty case in which the issue was not the guilt of the condemned individual, but whether the penalty was imposed in a just manner. His current position allows him to remain involved; the domestic policy agenda includes a proposal to train lawyers and judges to properly conduct and rule on capital defenses, as well as funds to allow death row inmates to have access to DNA testing for the purposes of exoneration.

Although his position highlights domestic issues, Allen says that his LLM in international and comparative law comes in handy.

“A lot of domestic policy is closely tied with foreign policy. For example, with respect to HIV/AIDS policy, I make sure that our domestic policy is consistent with our foreign policy—in each case we have to focus on provision of health care and pharmaceuticals, and target trafficking in people for exploitation, including sex trafficking. We have to make sure that America continues to be innovative in research and development.”

Having served since March 2001 as deputy secretary/chief operating officer of

1980s, as well as Justice Clarence Thomas—he sees himself as both flexible and reasonable in the pursuit of policy and the pursuit of excellence in policy development, and not easy to pigeonhole.

In 2003, the president honored Allen with a nomination to the Fourth Circuit, but it was blocked in the Senate. Democrats contended that Allen, then 42, was inexperienced and overly conservative, challenging his records as HHS deputy secretary and as Virginia’s Secretary of Health and Human Resources on such issues as reproductive rights, sex education, and welfare. Some critics also accused Allen of homophobia, citing remarks he made two decades earlier when he worked as an aide to Helms. While Allen believes strongly that the president’s judicial nominees deserve straight up or



CLAUDE ALLEN

### ALUMNI PROFILE

**“My Duke training...helped me come to this job with a sense of confidence that I have the skills necessary to do the job, even though the issues change every single day.”** Claude Allen

the U.S. Department of Health and Human Services, Allen expresses “amazement and tremendous humility” in the trust the president has placed in him.

“He’s given me a very high privilege and honor.”

While some have labeled Allen a far-right conservative—he has long been a champion of abstinence-only sex education, and counts among his mentors conservative icons, former Senator Jesse Helms, to whom he was an aide in the

down votes in the Senate, he expresses no regret about having subjected himself to the confirmation process.

“I am now where I am supposed to be. I enjoy public service, and serve where I am asked to. It was a privilege to be nominated.

“One of the things I have learned is to keep a blind eye and a deaf ear. I don’t take compliments too seriously, lest they make me prideful, and don’t take criticisms too harshly, lest they cause me to become discouraged.” ♡

## Amy Yeung '06: Committed to community



AMY YEUNG

In the course of a 30-minute conversation with Amy Yeung, the theme of giving back to the community comes up repeatedly.

“Whether it’s creating a garden or developing a cure, to give back to the community is to have succeeded,” says Yeung, paraphrasing Ralph Waldo Emerson. “That is something I truly, deeply believe in. If you take, you have a responsibility to give back.”

Yeung contributes to the Duke Law community in many ways, having assumed a number of key leadership roles: organizer of ESQ., the Business Law Society’s annual career symposium; vice-president of the Federalist Society; managing editor of the *Duke Journal of Comparative and International Law*, and president of the Duke Bar Association (DBA), to name a few. The question of compulsory legal pro bono for Duke Law students is one she wants DBA to consider under her leadership, she says.

“So many Duke Law students are already involved in the community, however they define it—through Guardian Ad Litem, the Public Refugee Program, Street Law, or

volunteering to teach children at church camp. But there is always a need for more people to get involved.”

It’s a philosophy and practice that Yeung says she learned from her parents while growing up in Centerville, Ohio. As a newly immigrated citizen, her mother was involved as a volunteer in shaping policy within the public school system, and in coordinating efforts of Japanese-Americans in Ohio regarding reparations for intern-

ment during World War II, in addition to teaching Japanese at Wittenberg University and in her own school.

“I saw the tangible results that came out of her volunteer work, and the special effort she made as a teacher to keep her students motivated and engaged,” says Yeung. “That’s why I like getting involved.”

Following her graduation from the University of Chicago, Yeung worked as a paralegal with Williams and Connolly in Washington, D.C. for two years, in order to get a sense of what was actually involved in a legal career. While there, she joined the Young Republicans, and promptly persuaded

**“Whether it’s a garden or developing a cure, to give back to the community is to have succeeded.”** Amy Yeung

its membership to help with the ongoing maintenance of a local school and participate in Habitat for Humanity following the campaign season.

Both organizer and organized, Yeung spent a year before entering Duke Law School as a small business consultant, taking on the reorganization of a satellite contracting business. Although she had no formal experience in business, she says the challenge didn’t phase her.

“When there’s something in front of me, I may not know how to do it, but I’m not above asking, and asking a lot of questions to try to understand the context.”

That’s the underlying philosophy with which she approached ESQ. 2005, hoping that it would be a forum where students, particularly 1Ls, could ask questions of experienced practitioners in an informal setting, and thus make a connection between their classes and their careers.

“A law school education should be about exploring a range of interests, so that after graduation, individuals can tailor it—they can best mesh their work with their personal goals. And I think ESQ. accomplished that this year,” says Yeung. It was an unqualified success; almost 150 students took advantage of a chance to meet and question 30 business lawyers and leaders.

For her part, while she likes the entrepreneurial side of business—she even auditioned for the reality television show “The Apprentice” last spring—Yeung doesn’t think she has a taste for the risk involved. Having spent the summer working for Cadwalader, Wickersham & Taft LLP in Washington, D.C., she plans to approach business from a different angle, through bankruptcy and white-collar criminal work. Its appeal has a familiar theme.

STUDENT PROFILE

“I like the policy element—structuring the larger system so that people are motivated to act in the best manner for themselves and for society.” ♡

# {Around the Law School



## Renovation update: New wing set for fall opening

by Tom Metzloff

Anyone who has ever been through a major construction or renovation project in their house knows that the price of progress is the occasional inconvenience and frustration. For the past year, the Law School has been in the midst of a major project—the construction of a new \$17 million wing and entrance. Adjoining the Law School near Science Drive and heading towards Fuqua, the new wing will truly offer something for everybody—the first floor will house most of the journals; the second floor will provide space for all of Duke Law's clinics; with the third and fourth floor being offices for faculty. In addition, the space includes two new seminar rooms.

Construction began last fall, right after the completion of the major classroom and facade renovations that were done in the summer of 2004. The early-going was slow as the site was excavated and the infrastructure developed, but the shell was completed by mid-February.

An important part of the project was the replacement of all the heating and air conditioning systems in most of the old building. These antiquated systems were cramped in a small penthouse on the roof that has now been replaced by a much larger penthouse that houses the



HVAC systems for the old building as well as the new wing. Unfortunately, all the roof work led to a series of small leaks that made life miserable for a couple of days during the spring. But with the new penthouse now complete, the memories of buckets in the halls will fade away.

By early summer, the focus was on the interior walls and electrical systems, and installing the outside brick masonry and window walls. While we had initially hoped for completion of the new wing by the time school started in the fall, we encountered a number of minor issues and delays that pushed back the opening of the new wing until early October. The rest of the building was fully operational, however.

While construction projects are often met with grumbling by students, faculty, and staff,

the mood among the Duke Law community has been almost universally upbeat. In large part, this is a result of the fact that all students last year had the benefits of last summer's renovation—new classrooms, restrooms, and various other amenities. So even though there were some disruptions, everyone received some immediate benefit.

As if the new wing weren't enough, we also undertook another classroom project this summer. There was a small area on the fourth floor near the moot courtroom that had about five offices and a small interior conference room. Given our compelling need for a new mid-sized classroom, we demolished these spaces and combined them to create a new classroom that will double as a meeting space for the faculty. Also included in the project were a new conference room and an office for the student Moot Court Board. As with our other summer project, this \$1.1 million renovation was completed on time and on budget in time for the new school year. ♡

For more information on the renovation project or to contribute to the building fund, contact:

TOM HADZOR, ASSOCIATE DEAN  
FOR ALUMNI & DEVELOPMENT  
919.613.7175  
hadzor@law.duke.edu

# Around the Law School



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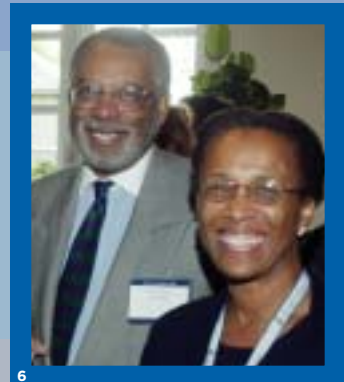
1. THE CLASS OF 1995
2. J. CARLTON FLEMING '49 AND ROBERT LLOYD '50, TWO OF THE ORIGINAL MEMBERS OF THE BARRISTER DONOR SOCIETY.
3. SOFTBALL WITH THE CLASS OF 2000
4. GLENN TUCKER ACCEPTS THE REUNION CHALLENGE AWARD ON BEHALF OF THE CLASS OF 1980 FROM DEAN BARTLETT
5. JOHN MURRIN '75, DAVID NAFTZINGER '73, AND JAMES LUEBCHOW '73
6. PROFESSOR JAMES COLEMAN AND ANNE AKWARI '95
7. ASSOCIATE DEAN JUDY HOROWITZ WITH RETURNING INTERNATIONAL ALUMNI
8. THE HONORABLE ALLYSON DUNCAN '75 AND THOMAS EDMONDS, EXECUTIVE DIRECTOR OF THE VIRGINIA STATE BAR
9. ANNE MARIE TOWLE '90, CAROLINE GOTTSCHALK '90, AND DEANNA OKUN '90
10. MARCIA AND JUDGE GERALD TJOFLAT '57 AND DEAN BARTLETT



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## Reunion 2005

Over 500 alumni, family, and friends came together in Durham April 15-17 to reconnect, reminisce, and celebrate Duke Law School at Reunion 2005. The highlights included the Barrister Society donor reception and the Law Alumni gala reception, as well as a picnic on a gorgeous Saturday afternoon. Panel discussions on hot topics in sports law and retirement issues, and the premiere of Professor Thomas Metzloff's "Distinctive Aspects of American Law" documentary series, offered for CLE credit, rounded out the weekend program.

William Neal Reynolds Emeritus Professor of Law Clark Havighurst, who retired in May, was presented with the A. Kenneth Pye Award for his contributions to legal education at Duke; Professor Havighurst, a renowned scholar of antitrust and health care law and policy, has been on the faculty since 1964. The award honors the life, work, and character of former Duke Law Dean and Duke University Chancellor Pye.

The Honorable Allyson Duncan '75 of the United States Court of Appeals for the Fourth Circuit received the Charles S. Murphy Award, presented annually to an alum whose career has been devoted to public service and education. The award honors Charles Murphy '34, who held positions in the Truman, Kennedy, and Johnson administrations.

Judge Duncan has been devoted to public service throughout her remarkable career, both within the legal profession and the wider community. Among her many initiatives as president of the North Carolina Bar Association, she worked to secure adequate funding for programs within the state's judicial system, such as the Guardian Ad Litem Program and Dispute Resolution Centers. She has also served on the executive committees of the North Carolina Center for Public Policy Research and the North Carolina Leadership Institute. Judge Duncan joined the Law School's Board of Visitors in July.

The Charles S. Rhyne Award, honoring an alumnus in private practice who has made significant contributions to public service, was presented to Frank Hunger '65. Hunger, who is now of counsel to Covington & Burling in Washington, D.C., spent almost 30 years as a trial lawyer in Mississippi, specializing in product liability, toxic tort, and commercial issues. In 1993, he became the assistant

attorney general over the civil division of the U.S. Department of Justice; in that position he earned the Edmond Randolph Award, the highest award given by the attorney general. He has also received commendations for outstanding service to the Navy, the Army Judge Advocate General, and the Federal Bureau of Investigation. Among many other positions of service, Hunger is a life member of the Law School's Board of Visitors.

Carolyn Gottschalk '90, a partner at Simpson Thacher & Bartlett in New York and a new member of the Law Alumni Association board, won the Young Alumni Award for 2005. The award recognizes an

alumna or alumnus who graduated with the last 15 years, who has made

significant contributions and leadership and service to the Law School. Gottschalk, who served on her reunion committee, is unfailingly generous with her time to Duke Law students and graduates. She has made numerous trips to Durham to speak to students, has organized events for admitted students at her firm, and served as a member of the Future Forum from 2001-2005.

Winners of the first annual Reunion Challenge Awards were the Class of 1960, for the highest participation in the class gift, and the Class of 1980, both for the highest reunion weekend attendance and the largest reunion class gift. The 2005 reunion classes contributed \$833,106 to the Annual Fund in gifts and pledges. ♣



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Mark your calendars for the next Reunion Weekend:

**APRIL 21-23, 2006**

For more information, please visit [www.law.duke.edu/alumni/reunions.htm](http://www.law.duke.edu/alumni/reunions.htm)

### 2005 AWARD WINNERS

A number of individual students from the 2005 graduating class were recognized during graduation weekend for special achievement.

The Justin Miller Graduation Awards were chosen by a committee that reviewed student nominations. Those recognized included **Leslie Cooley** (citizenship), **David Prestwood** (integrity), **Scott Edson** (intellectual curiosity), and **Vikram Patel** (leadership).

The faculty also singled out a number of students for their accomplishments in various legal specialty and community achievement categories. Legal specialty honorees included **Chris Baird** (Administrative Practice and Government Regulation), **Amy Mason** and **Katy Soby** (Business Organization and Finance), **Stephen Kessing** (Commercial Transactions and Bankruptcy), **Mark Sigmon** (Constitutional Law and Civil Rights), **Scott Edson** (Criminal Law and Procedure), **Kara Moorcroft** (Dispute Resolution), **Johanna Stein** and **Molly Donovan** (Family Law), **Andrew Hecht** (Interdisciplinary Studies), **Angela Rafoth** (International, Transnational and Comparative Law), **Matt Block** and **Caleb Groos** (Intellectual Property and Technology), **Chris Hart** (Legal Theory), **Clayton Jernigan** (Property Law), and **Ashley Grier** (Tax and Estate Planning).

The following students were also recognized by faculty for their special leadership achievements: **Stacy Hauf** (Advocacy Award), **Vikram Patel** and **Brett Stohs** (Community Award), **Nobuki Sanagawa** (LLM Award for Leadership & Community Participation), **Leslie Cooley** (Pro Bono Service Award), and **Janey Rountree** and **Janna Lewis** (Public Service Award). ♡

## Duke Law celebrates the Class of 2005

**T**he Honorable J. Harvie Wilkinson III, former chief judge of the United States Court of Appeals for the Fourth Circuit, shared his views on judicial activism and his vision for the federal courts when he addressed Duke Law graduates and their guests at the Law School's hooding ceremony May 14 at Cameron Indoor Stadium. The 210 successful JD candidates in the class of 2005 included 19 who also earned the LLM degree in international and comparative law, and 28 who earned other joint-degrees. Seventy-one graduates earned the LLM in American law, and the Law School awarded one Master of Legal Studies degree.

While observing that certain instances of judicial intervention—such as that in *Brown v. Board of Education*—can be well justified, Judge Wilkinson called for greater judicial deference to the democratic branches of the federal government in setting policy, particularly on matters of national security and the expansion of science and technology. Elected representatives, as opposed to appointed judges, should be the voice of the people on those controversial and potentially divisive issues in the next 20 years, he said.

“I hope you will remember that a public decision with which one disagrees is often more acceptable if it is made through the political process, in which the losers had their chance to participate, than if it is made wholly through the courts. In this sense, a restoration of restraint assists the restoration of good will, because democratic governance gives everyone their say.”

Though Judge Wilkinson said that it would be a mistake for the courts to retreat from their obligation to protect the freedoms and rights of citizens, he warned against celebrating courtroom

victories. “The often-pleasing results of rulings are not to be confused with defensible principles.”

He left the graduates with some words of caution regarding the use of power.

“The measure of greatness is sometimes not in the possession of power, but in restraint in its exercise.”

In her remarks to the graduates, Dean Katharine T. Bartlett praised their remarkable record of student engagement at the Law School; their many accomplishments included establishing more than seven new clubs, raising record amounts of money to support public interest fellowships, contributing to the Duke Bar Association's 2004 American Bar Association National Achievement Award as the best law student government in the country, and achieving record participation in their class gift. Dean Bartlett expressed the hope that they had been transformed by Duke Law, just as the School had benefited from their presence.

“I hope you have a greater and more mature sense of commitment – to a chosen profession, perhaps to a significant other you brought here or have found while you have been here, and to friends. I hope you have become tougher—mentally and emotionally—and also more respectful of others, especially those unlike yourselves.”

Mangyo Kinoshita of Japan also spoke of transcending differences in his address to his fellow LL.M.s, who hailed from 33 countries.

“Some of our countries still have battles, conflicts, and political problems, as well as important legal issues, which are things that we, as mere law students, could not solve by ourselves. Yet we all discussed those issues and exchanged our ideas and opinions seriously in the past nine

months. Through those discussions, we understood each other better, though probably not perfectly, and we certainly felt that we created intimate and eventually irreplaceable friendships. And we do strongly hope that someday we can actually change those things together.”

Speaking on behalf of the graduating JDs, Thomas McCudden urged his classmates to revel in the endeavors and options that lie ahead.

“Hard work is indeed ahead, but when you find work you care about and that excites you, you’ll actually enjoy the work. The bar exam is just another challenge, one we’re all more than capable of meeting. Bills—those are real, but so are the significant accomplishments in law, government, and a host of other fields that lie ahead for us. With the talent and energy I have seen over the last three years among my fellow students, I have no doubt about that.

“Perhaps even better, we can look forward to the luxury of choice. We can do anything we want to do—from big firm to small, government to public interest. Not to mention all of the possibilities outside the law itself. Really, with so many opportunities, there is no excuse for not being happy.”

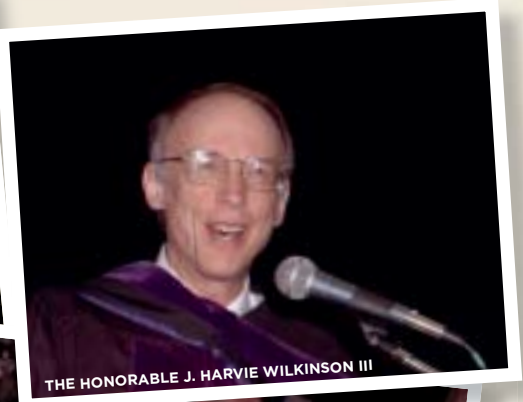
Board of Visitors Chair Peter Kahn ’76 closed the ceremony by welcoming the newly-hooded class into the family of Duke alumni. He reminded them of the values of the Duke Blueprint to LEAD (Lawyer Education And Development) and specifically of the Blueprint panel he sat on during the JD students’ orientation, the first time he spoke to them. He urged them to utilize the networking and mentoring relationships available to them through Duke alumni.

“Take advantage of the opportunity—become active in your local Duke Law alumni organizations, meet with leading alumni in your community, let them help you get established in your careers, seek out their advice, and then join them and other alumni in ensuring that future law students at Duke have the same opportunity for a first rate education that you have had.” ♡

—Shanda King



THOMAS McCUDDEN



THE HONORABLE J. HARVIE WILKINSON III



ADAM SHULMAN, ELIZABETH SHAW, AND HAYLEY WEIMER



ALYCIA CARTER, JOY GANES, STEPHANIE BRADFORD, AND CARMEN McCUTCHEON



MANGYO KINOSHITA



CW FROM TOP LEFT: DAVID PRESTWOOD, MICHAEL LEVIN, SCOTT MESELSON, AND JASON GELMAN

**“DUKE LAW STUDENTS WILL HAVE THE OPPORTUNITY TO DO ADVANCED COURT WORK UNDER THE SUPERVISION OF THE GAL ATTORNEY IN THE COMING YEAR.”**  
ASSOC. DEAN CAROL SPRUILL

## DUKE BLUEPRINT WINS ABA'S GAMBRELL PROFESSIONALISM AWARD

The Duke Blueprint to LEAD (Lawyer Education and Development) has been awarded the prestigious E. Smythe Gambrell Professionalism Award by the American Bar Association Standing Committee on Professionalism. The annual Gambrell Professionalism Award recognizes projects contributing to the understanding of professionalism among lawyers. Duke Law School was one of only two recipients this year.

In announcing the award, the chair of the Gambrell selection committee said he was “particularly impressed with the depth and excellence of [Duke Law’s] program and [its] obvious commitment to professionalism.”

The award was presented to the Office of Student Affairs at the annual ABA meeting in August.

Also at the August meeting, Vikram Patel '05, 2004-05 president of the Duke Bar Association, was recognized with the Law Student Division’s award for the top student bar association president, and Matthew Christensen '05 was named one of the best law school-ABA liaisons. ♣

## DUKE LAW'S GUARDIAN AD LITEM PROGRAM WINS N.C. BAR AWARD

Duke Law’s Guardian ad Litem (GAL) Program has won the North Carolina Bar Association’s Outstanding Law Student Pro Bono Project Award for 2005. Outgoing GAL leader Matt Leerberg '06 and his successor, Chris Richardson '07, accepted the award at the NCBA convention in Asheville on June 24.

In the 2004-05 academic year, 22 Duke Law students volunteered as Guardians ad Litem, making long-term commitments to be the court-appointed representatives for allegedly abused and neglected children in Durham. Following 25 hours of training by the Durham County GAL program, the students were each assigned to represent children whose parents had been charged with abuse and neglect by the Department of Social Services, committing to two- and three-year terms so that the children, whose lives are frequently disrupted, could establish consistent and trusting relationships. The students spent time



MATT LEERBERG '06 AND CHRIS RICHARDSON '07

with their young clients and interviewed parents and various authorities in order to inform the court about the case and assist the judges in making their decisions.

Associate Dean of Public Interest and Pro Bono Carol Spruill applauds Leerberg’s leadership in recruiting students to the program as well as securing training slots for them with the Durham County GAL program. Last spring, he began adding another dimension to the program: periodic meetings of the Duke Law GAL students to hear about one another’s cases, offer support and advice, and listen to speakers talk on subjects of common interest.

“I am thrilled that Matt stepped forward to build up this program and look forward to it continuing to thrive,” said Spruill. “Thanks to the efforts of another student GAL leader, 3L Wyley Proctor, Duke Law students will have the opportunity to do advanced court work under the supervision of the GAL attorney in the coming year.”

While the GAL program represents a significant time commitment, Leerberg said that he and his fellow student volunteers benefit as much as the children they serve.

“The children I represent are constantly on my mind, and attending custody and review hearings sometimes pulls me out of class more than I’d like. Nevertheless, the union of analytical training in the classroom with advocacy training in the field provides a richer educational experience than I could achieve with books alone.” ♣

## HEATHER HOLLOWAY '05 WINS AWARD FOR OUTSTANDING CLINIC WORK

In June, Heather Holloway '05 was awarded an Outstanding Student Award from the Clinical Legal Education Association (CLEA), a national association of clinical professors of law and others involved in clinical legal education. The CLEA award recognizes law students who have excelled in a clinical course in law school. Holloway was nominated for the award by the Duke Law clinical faculty.

Holloway received the award for her work in the Children’s Education Law Clinic, particularly for the work she did representing a high school senior who was facing permanent expulsion from school

for an incident off school property; after being found with explosives in his car during a routine traffic stop, he was charged with possession of weapons of mass destruction. As a result of Holloway’s efforts—she handled his case through an evidentiary hearing, in an appeal before the Board of Education, and then in state Superior Court—the student is expected to obtain his diploma with the rest of his classmates.

Holloway is currently clerking for the New York Superior Appellate Court, Fourth Division, in Rochester. ♣



# { Alumni Notes

**1941**



**Guillermo Moscoso** is active as a political analyst and columnist in San Juan, Puerto Rico. A retired lawyer and executive, his career focused on the oil industry and banking. Mr. Moscoso is married to Kitty Kerrigan and has four daughters, Sandra, Brenda, Bettina, and Mariela.

**1957**

**Gerald B. Tjoflat**, circuit judge on the United States Court of Appeals for the Eleventh Circuit, received an honorary degree during Stetson University College of Law's spring commencement in Gulfport, FL on May 14, 2005. Judge Tjoflat is a past recipient of Duke Law School's Charles S. Murphy Award.

**1960**

**Rufus Hill**, a retired Washington, D.C. attorney, has published a collection of writings, *Thad Duval from Robertson*. The title novel is a love story set in 1961, against a southern backdrop. It can be ordered from Authorhouse.com.

**1961**

**Edgar B. Fisher, Jr.**, of Brooks, Pierce, McLendon, Humphrey and Leonard of Greensboro, NC has been voted by his peers as a leading attorney in real estate law in Business North Carolina's annual "Legal Elite."

**1962**

**John H. Adams**, president and founder of the Natural Resources Defense Council, was awarded an honorary degree from Duke University during commencement exercises on May 15, 2005. Prior to his work at NRDC, he served as an assistant U.S. Attorney for the Southern District of New York. He has also taught clinical environmental law at New York University's School of Law for 26 years.

**1965**

**Frank W. Hunger**, of counsel at Covington & Burling in Washington, D.C. was awarded the Law Alumni Association's Charles S. Murphy Award during Reunion 2005. (See story, page 59.)

**1966**

**E.D. Gaskins, Jr.** received the Wake County Bar Association's Joseph Branch Professionalism Award. This award is given annually to a Wake County attorney whose ethics, integrity, and service to clients, the community, and the legal profession mirror the standards set by its namesake, a former chief justice of the North Carolina Supreme Court. E.D. is managing partner of Everett, Gaskins, Hancock & Stevens in Raleigh.

**Carolyn McCue Osteen**, LLM '70, a partner with Ropes and Gray in Boston, has been selected by her peers for inclusion in *The Best Lawyers in America* 2005-2006.

**1968**

**Jacob A. Bouknight** has been elected as the executive vice president and general counsel of Edison International. Bouknight was previously a partner in the Washington, D.C. office of Steptoe & Johnson. He has chaired the antitrust and electricity committees of the American Bar Association section of public utility, communications, and transportation law.

**William L. Patton**, a partner with Ropes and Gray in Boston, has been selected by his peers for inclusion in *The Best Lawyers in America* 2005-2006.

**1969**

**Norman Donoghue, II** retired from 33 years of law practice at Dechert in Philadelphia and is now planned giving director of The Philadelphia Orchestra.

**Richard A. Horning**, a partner in the Silicon Valley law firm Tomlinson Zisko, was selected by his peers for the second consecutive year as a "*Northern California Super Lawyer*," in the area of intellectual property. Horning and his wife, Joanne, were also recently honored by the Susan G. Komen Breast Cancer Foundation in San Francisco.

**Alexander Newton** was sworn in as mission director for Mali at the United States Agency for International Development (USAID). He directs one of the largest U.S. aid programs in Africa, totaling approximately \$40 million. The program's aim is to strengthen Mali's democratic institutions, promote accelerated economic growth, and improve education and health services.

**1972**

**Walter Manley II** recently completed his fifth book, *History of the Supreme Court of Florida, Volume Two*, to be published by the University Press of Florida. The first volume was nominated for the Littleton-Griswold Prize in American Law and Society. Appointed to the Great Floridians Nominating Committee, Manley also recently accepted an appointment by Governor Jeb Bush to be director of Workforce Florida.



**John Wester**, a partner with Robinson, Bradshaw & Hinson in Charlotte, NC has been elected as a fellow of the American Bar Association by the ABA board. Fellows are attorneys, judges and law professors who have demonstrated outstanding dedication to their communities and the highest principles of the legal profession.

**1974**

**Lawrence Gostin** has been appointed associate dean for research and academic programs at Georgetown University Law Center. He will be responsible for matters related to faculty research and scholarship and for major issues of curriculum design and innovation. Gostin, a professor at the Law Center, also taught at Johns Hopkins University and directed the Center for Law and the Public's Health at Johns Hopkins and Georgetown Universities.

**Donna C. Gregg** has been named chief of the Federal Communications Commission Media Bureau, the office charged with handling most of the agency's oversight of the television business. Since 2002, Gregg had been general counsel for the Corporation for Public Broadcasting in Washington, D. C. She taught telecommunications law and policy at Duke Law School in 2002 and 2003.

**Ronald Janke** has been appointed chairman of the Ohio Water Resources Council Advisory Group. The organization's key responsibilities are for water resources management and to act as a representative for the governor's office.

# Alumni Notes

## 1975

**Frederick Brown** has been appointed partner in charge of the San Francisco office of Gibson, Dunn & Crutcher. He is a member of the intellectual property and litigation practice group and focuses his practice on patent infringement and complex commercial cases and arbitrations. He also teaches trial skills for the National Institute of Trial Advocacy and for the Intensive Advocacy Program at the University of San Francisco School of Law.

**Allyson K. Duncan**, who serves on the U.S. Court of Appeals for the Fourth Circuit, was awarded the Charles S. Rhyne Award during Reunion 2005 by the Law Alumni Association. (See story, page 59.)

**James L. Fogle**, a partner with Thompson Coburn in St. Louis, MO was recently elected vice president of Life Skills Foundation's Board of Directors. Life Skills Foundation helps people with developmental and other disabilities to work and live with dignity.

**John A. Howell** joined McKenna Long & Aldridge's government contracts department in Washington, D.C. as a partner in March 2005. He previously practiced with Dorsey and Whitney.

**Bill Trull** has joined with Roger Cumbie to open the Cumbie and Trull School of Real Estate in Asheville, NC. The school offers pre-licensing and continuing education courses for real estate professionals. He is also a principal in Course Doctors, Inc., headquartered in Flat Rock, NC which builds and renovates golf courses nationwide.

## 1976

**Russell M. Frandsen** has joined Reed Smith's corporate and securities group in its Los Angeles office. Formerly with Squire, Sanders & Dempsey, he has extensive experience with mergers and acquisitions, as well as with general corporate and securities matters for predominantly middle-market clients.

**John B. Gontrum** has been elected partner in the real estate and land use law group of Whiteford, Taylor & Preston. He is also active in the Baltimore community, serving as president of the Baltimore County Bar Association, vice chairman of the Franklin Square Hospital Board, and board member of the YMCA of Central Maryland.

## 1977

**Michael A. Ellis**, formerly of the law firm of Kahn Kleinman, has joined the firm of Porter, Wright, Morris & Arthur in its Cleveland, OH office.

**Edward Hinson**, a partner in the law firm of James, McElroy & Diehl in Charlotte, NC has received the 2005 James Gray Cannon Award from the Mecklenburg Medical Alliance. The award is presented annually to an individual who has demonstrated exceptional volunteer leadership toward the advancement of medical care and good health in the Charlotte-Mecklenburg community. Hinson also serves as a NC State Bar counselor and chair of the ethics committee.

**George C. Leef** is the executive director of the John William Pope Center for Higher Education Policy in Raleigh, NC. His book, *Free Choice for Workers: A History of the Right to Work Movement*, was published in April by Jameson Books.

**Heloise Merrill**, a partner with Parker Poe Adams & Bernstein in Charlotte, NC has been named to the board of directors of Women Executives, an organization founded 29 years ago to provide career-oriented women a forum for professional and personal interaction.

## 1978

**Richard Niess** was elected to a six-year term as Dane County (WI) Circuit Court judge in April 2005. He was appointed to that bench in November, 2004, by Wisconsin Governor Jim Doyle, after 26 years in private practice as a civil trial lawyer.

**Michael Dockterman**, a partner with Wildman Harrold Allen & Dixon in Chicago, has been named one of the top 100 Illinois "Super Lawyers" for 2005 in a *Law and Politics* survey. He was also recognized as a Super Lawyer in the area of business litigation.

**Wendy C. Perdue** has been appointed associate dean for graduate programs at Georgetown University Law Center. She is responsible for the law center's graduate programs, including its LLM programs in international legal studies, taxation, securities and financial regulation, and national securities studies. She was most recently the associate dean for research and the associate dean for the JD program.

**Pamela Peters** has been named president of the Florida Philanthropic Network, Inc., a coalition of Florida's most influential private foundations, community foundations, and corporate funders of nonprofit enterprise.

**Chris Sawyer**, a partner with Alston & Bird in Atlanta, GA has received the 2005 Lifetime Achievement Award from the Chattahoochee Nature Center for his efforts to protect the river's banks. Chris oversaw the creation of the Chattahoochee River Greenway project, which raised more

than \$160 million and encouraged property owners to donate land for open space. He served for seven years as chairman of the National Trust for Public Land.

**Steven J. Shimberg** has joined DLA Piper Rudnick Gray Cary in the government affairs practice group as of counsel. He was formerly a member of the senior management team at the U.S. Environmental Protection Agency. He has also served as vice president for federal and international affairs at the National Wildlife Federation and as Republican staff director and chief counsel for the U.S. Senate.

**Karen Jackson Vaughn** has joined Saul Ewing in Philadelphia, PA, as its diversity program manager. She comes to the firm from Temple University's Beasley School of Law, where she was assistant dean for career planning.

## 1979

**Valerie Broadie** joined the senior staff of the National SAFE KIDS Campaign in January 2005 as chief development officer, responsible for development strategy for National SAFE KIDS and SAFE KIDS Worldwide. She has been an institutional development executive for 20 years, most recently for the University of Maryland, where she served as assistant vice president for development. Previously, she spent four years at Children's National Medical Center, the parent organization of SAFE KIDS, as director of planned giving.

**Gary Jackson** has formed a new Charlotte, NC law firm called The Jackson Law Group, which represents consumers injured by defective products or corporate misconduct, defrauded investors, and property owners who have suffered losses because of construction defects.

**Christine P. Richards** has been appointed executive vice president, general counsel, and secretary of FedEx Corporation. (See story, page 54.)

**Jon Yergler**, a partner at Lowndes, Drosdick, Doster, Kantor and Reed in Orlando, has been selected by his peers for inclusion in *The Best Lawyers in America* in real estate for 2005-06.



## 1980

**James O. Brown** has joined Warner Norcross & Judd as partner in the Holland, MI office. He concentrates his practice on advising business owners and real estate developers in a wide range of transactional matters, including business formation, acquisitions, succession planning, and condominium development. Prior to joining Warner Norcross, he was a partner with Scholten Fant.

**James Crouse** and his wife, Edna, announce the birth of their son, Joshua Teague Crouse, on April 30, 2005. Joshua joins his sisters, Sarah and Caroline. Jim opened his own law firm in Raleigh, NC in 2000.

**Anne Katherine Ford** has been named national chair of the trademark, copyright, and media group of the law firm DLA Piper Rudnick Gray Cary, where she is a member of its policy committee. She is based in its Washington, D.C. office.

**Alan M. Mitchel** has been appointed senior vice president of business and legal affairs, and chief legal officer at SCOLR Pharma, Inc. a biopharmaceutical company in Bellevue, WA.

## 1981

**Mark H. Mirkin** has joined Moore & Van Allen in the Research Triangle, NC office. His practice will focus on corporate and securities law with an emphasis on

entrepreneurship and emerging growth companies.

**Irene Keyse-Walker**, a partner with Tucker Ellis & West and chair of the firm's appellate group, was recently designated as one of "Ohio's Super Lawyers" by *Cincinnati Magazine* and also ranked in the top 50 among female Ohio lawyers. "Super Lawyers" are the top five percent of attorneys in Ohio, as chosen by their peers and through independent research performed by the publishers of *Law & Politics Magazine*.

## 1982

**Karen K. Blose** has been named a principal and general counsel at Hillier Architecture in Princeton, NJ.

**Peter Cotorceanu** is an attorney in the international tax group of Baker & McKenzie in Zurich, Switzerland. Previously he was an associate professor of law at Washburn University School of Law in Topeka, KS and an adjunct professor of law at William and Mary Law School in Virginia.



**Brooks Eason** has joined McGlinchey Stafford as partner in the commercial litigation section of the Jackson, MS office. His practice focuses on commercial disputes and the defense of employment discrimination claims.

**James F. Wyatt, III** has been voted by his peers as a leading attorney in criminal defense law in *Business North Carolina's* annual "Legal Elite."

## 1983

**Linda Markus Daniels** has received the *Business Leader Magazine's* 2004 "Woman Extraordinaire" award, the North Carolina Electronics and Information Technologies Association 2004 award for "outstanding service in the area of IT Support Services," and the *Triangle Business Journal's* 2004 "Women in Business" award given to top business leaders in the Research Triangle Park area.

**Bruce Ruzinsky**, a partner in the bankruptcy and litigation sections of the Houston office of Jackson Walker, was recently designated as a "Super Lawyer" by *Texas Monthly* magazine for 2004. "Super Lawyers" are the top five percent of attorneys in Texas, as chosen by their peers and through independent research performed by the publishers of *Law & Politics Magazine*.

**Michael L. Spafford** has joined the Washington, D.C. office of McKee Nelson as a partner to help establish the firm's white-collar investigations and enforcement practice.

## 1984

**James Grier Hoyt** has joined Linowes and Blocher as a partner in the real estate transactions group in the Bethesda, MD office. He was previously a partner at Venable.

**Steven Lepper** has assumed command of the Air Force Legal Services Agency, the Air Force organization responsible for providing criminal and civil litigation support to commanders worldwide.

**William Mackie**, an assistant U.S. attorney in Knoxville, TN has been assigned to the counter-terrorism task force. He will also continue as lead attorney in the special prosecutions unit that targets public corruption and fraud.



## CLASS OF 1987

# James Dever sworn in as a United States district judge

**James C. Dever III** was sworn in as a United States district judge on May 3, 2005, having been appointed by President George W. Bush and unanimously confirmed by the United States Senate.

Originally nominated as a U.S. District Judge in 2002, Dever became a U.S. magistrate judge for the Eastern District of North Carolina in February 2004. Until he became a judge he practiced civil litigation at Maupin Taylor in Raleigh, specializing in employment and commercial litigation.

Dever received his BBA from the University of Notre Dame, with high honors, in 1984, having attended on a four-year ROTC scholarship. While at Duke Law School, Dever served as editor-in-chief of the *Duke Law Journal* and graduated with high honors. He was a member of the Order of the Coif.

Following his graduation, Dever served for one year as a law clerk for Judge J. Clifford Wallace of the U.S. Court of Appeals for the Ninth Circuit, after which he fulfilled his military commitment arising from his ROTC scholarship. Dever was the sole attorney entering active duty in the Air Force in 1988 selected to serve in the Air Force General Counsel's Honors Program at the Pentagon. He served on active duty in the Air Force at the Pentagon from 1988 until 1992.

Dever left active duty as a captain in September 1992, returned to North Carolina, and joined Maupin Taylor. He also has taught employment law as an adjunct law professor at Campbell University's Norman Adrian Wiggins School of Law since 1997.

The Eastern District of North Carolina encompasses 44 of North Carolina's 100 counties, running from Wake County to the coast. Judge Dever's chambers are in Raleigh, where he lives with his wife, Amy, and their three children. ♡





**1985**

**Lynn Stansel**, vice president and counsel at Montefiore Medical Center in the Bronx, NY has been elected chair of the New York State Bar Association's 1275-member health law section. She oversees compliance activities as well as government audits and investigations at the medical center. Prior to Montefiore, she served as an attorney for Sloan-Kettering Cancer Center. Stansel holds a master's degree in hospital administration.

**Mark O. Costley** is an attorney with Walker & Lambe in Durham, specializing in tax and estate planning. He and his wife, Margaret T'83, live in Chapel Hill with their daughters, Eleanor and Audrey.

**1986**

**Alan Fishel**, a partner at the Arent Fox law firm in Washington, D.C., has developed an educational card game called GeoPlunge. It was recently awarded the "Smart Play/Smart Toy, Product of Excellence" by Dr. Toy.

**Richard Seamon**, associate professor of law at the University of Idaho College of Law was presented with the 2005 Peter E. Heiser Award for Excellence in Teaching by the student body.

**James Smith** has joined Nokia Corporation as global director of intellectual property rights for licensing. He will split his time between Dallas, Helsinki, and London. He was previously managing partner in Dewey Ballantine's Austin, TX office.

**Lisa D. Taylor**, a partner with St. John & Wayne, was named one of the "Top 100 New Jersey Superlawyers" by *New Jersey Monthly Magazine* in May 2005. She was also appointed to a fourth term as vice chair of the American Health Lawyers Association Physician Organization Practice Group.

**Gao Xiqing** was awarded The International Alumni Achievement Award by the Law Alumni Association. (See profile, page 22.)

**1987**

**Roger Bilodeau** has joined the Ottawa, Ontario office of Heenan Blaikie.



**Frank E. Derby** has been named partner at Fox Rothschild in the Princeton, NJ office.

**James A. Thomas** has joined Parker Poe Adams & Bernstein as a partner in its Raleigh, NC office. His practice focuses on intellectual property matters,



**CLASS OF 1987**

## Bjorgvinsson takes seat on European Court of Human Rights

**David Thor Bjorgvinsson** LLM '87 began his position as a judge of the European Court of Human Rights in Strasbourg, France, in November 2004, having been nominated for the post by the government of Iceland, and approved by a vote of the Parliamentary assembly of the Council of Europe.

Bjorgvinsson came to the Court with extensive experience in academia and international judicial matters. A member of the law faculty at the University of Iceland from 1988 to 2003, he took leave to work for the European Free Trade Association Court, located in Geneva, from 1993 to 1996, and again from 1999 until 2003. He joined the faculty of the Reykjavik University School of Law in 2003. Much of Bjorgvinsson's scholarly work focused on legal theory and European law, including the European Convention of Human Rights, alleged violations of which are dealt with by the European Court of Human Rights.

Bjorgvinsson explains that judges rule on admissibility of cases sitting as three-judge panels, and hear many cases in panels of seven. The most important cases are heard by a Grand Chamber of 17 judges.

"I hope that I can, together with my colleagues here at the Court, contribute to the improved protection of fundamental rights on a European level," said Bjorgvinsson, noting that among the member states to the Convention are the former communist regimes of eastern Europe, some of the former Soviet republics, and Turkey. "The overall aim of the Council of Europe and the European Convention on Human Rights is the advancement of democracy, rule of law, and fundamental human rights. In some of the member states, there is still a long way to go."

The biggest challenge for the Court is its extremely heavy case-load, he said; there are currently around 80,000 cases pending before it. "It has been said that the Court is, in this sense, a victim of its own success." The Court was originally established in 1959 and has sat as a full-time Court since 1998.

Bjorgvinsson, who is married to Svala Ólafsdóttir and has four children, has remained close to Duke. In particular, he said, "My deepest respect goes to my supervisor, Professor Martin Golding, whose sharp mind and insights have inspired me ever since." ♣

including trademark and copyright law. He also regularly advises clients in the areas of Internet and domain name law, licensing and business transactions, and life sciences and biotechnology law. He also serves as president of the Triangle chapter of the British American Business Council.

**Yan Xuan** has joined Oracle Corporation as vice president of government and business development, based in Beijing. He was previously with Microsoft Corporation.

**1988**

**Jonathan M. Crotty**, a partner with Parker Poe Adams and Bernstein in Charlotte, NC has been voted by his peers as a leading attorney in employment law for 2005, in *Business North Carolina's* annual "Legal Elite."

**Elisabeth Dominkovits** is a lawyer for the Belgian Ministry of Foreign Affairs in Brussels.

**David E. Friedman** has been promoted at Citigroup Global Markets, Inc. to director, equity finance.

**Kelley S. Grady** has joined Ballard Spahr Andrews & Ingersoll's litigation department and product liability and mass tort group, as partner in the Philadelphia, PA office.

**1989**

**Kenji Kuroda** has opened an office of the Kuroda Law Firm in Shanghai; the firm also has an office in Tokyo. The firm specializes in patent law, intellectual property rights, investment, finance, commerce, and trade issues.

**Brian McCoy** and **Mark Hurt** argued *Graham County Soil & Water Conservation District, et al., v. United States Ex. Rel. Karen T. Wilson* in the U.S. Supreme Court in April 2005. They prepared with a moot at Duke Law School.

**Kenneth A. Murphy** joined Saul Ewing's Philadelphia office as partner in July 2004. He is a member of the litigation department and the co-chair of the firm's diversity committee. Prior to joining Saul Ewing, He was a partner at Miller, Alfano & Raspanti, also in Philadelphia.

**Marsha Sajer**, an associate at the Harrisburg, PA office of Kirkpatrick & Lockhart Nicholson Graham has been appointed by Secretary of Defense Donald H. Rumsfeld to serve on the Defense Department's independent review panel to study the relationships between military department general counsels and judge advocates general.

**David Starr** has been promoted to deputy general counsel of Belo Corporation in Dallas, one of the nation's largest media companies. He has been with the company since 2000.

**Binxue Sang** has moved to the Jun He Law Offices in Shanghai, where he is a partner. Sang specializes in foreign investment in China, cross-border financing, mergers and acquisition, real estate/construction, and international arbitration.

## 1990

**Michael Scott French** has co-founded the law firm Wargo & French in Atlanta, GA. **Michael Kabat** serves as managing partner of the firm. The firm has 17 attorneys who practice in the areas of complex commercial and class action litigation, intellectual property litigation, corporate and securities law, labor and employment law, and alternative dispute resolution.

**Caroline B. Gottschalk**, a partner at Simpson Thacher & Bartlett was awarded the Young Alumni Award at Reunion 2005 by the Law Alumni Association. (See story, page 59.)

**Xiaoming Li** has joined White & Case as partner and heads up the firm's Beijing office. He was previously with King and Wood in Beijing.



**Jeffrey Lichtman** and his wife, Nance Dickinson, announce the birth of their sons, Jackson and Grant. The identical twins were born on August 16, 2004.

**Kip I. Plankinton** married Maria Martineau in Dallas, TX on February 19, 2005. Previously in Houston, he has moved to the Dallas office of Fulbright & Jaworski.

**Lawrence Silverman** has been named to head up the 75-lawyer litigation department of the Miami office of Akerman

Senterfitt. He has also been ranked in "America's Leading Business Lawyers" by Chambers & Partners USA for Florida antitrust.

**Elizabeth Zirkle Waetzig** and her husband, Chad, announce the birth of their daughter Julia Frances, on November 30, 2004. She joins sisters Erin and Grace.

## 1991

**Amy Chin** was appointed commissioner of the new Taiwan Financial Supervisory Commission, an independent regulating authority, at the cabinet level. The Commission was established in July 2004, and is made up of nine commissioners, nominated by the premier and appointed by the president of Taiwan.

**Myrto Labrou** is an attorney with the Industrial Property Organization in Athens, Greece.

**Therence Pickett** has been named vice president, general counsel, and secretary of Volvo Trucks North America, Inc., headquartered in Greensboro, NC, and its affiliate Mack Trucks, Inc., headquartered in Allentown, PA. Both companies are within the Global Volvo Group of Companies.

**Devy Patterson Russell** is an assistant attorney general in the criminal appeals division at the Office of the Attorney General in Maryland. She and her husband, George Russell III, an assistant United States attorney, have two children, Madison



## CLASS OF 1988

# Michael Scharf nominated for Nobel Peace Prize

**Michael Scharf**, a professor at Case Western Reserve University Law School, has been nominated for the 2005 Nobel Peace Prize, along with the Public International Law & Policy Group (PILPG), which he helped to found in 1995. PILPG co-founder Paul Williams, of the American University Washington College of Law, also received a nomination.

PILPG, a UN-designated non-governmental organization, offers pro bono legal advice to states and international institutions on the legal aspects of peace negotiations and constitution drafting, as well as human rights protection, self-determination, and the prosecution of war crimes. The nomination letter to the Nobel committee, supported by many of PILPG's governmental clients, lauded the organization for "significantly contributing to the promotion of peace throughout the globe by providing crucial pro bono legal assistance to state and non-state entities involved in peace negotiations and in bringing war criminals to justice."

Scharf, who directs Case Western's Frederick K. Cox International Law Center and its War Crimes Research Office, also directs PILPG's War Crimes Practice Group, while Williams directs its Peace Building Practice Group. Like many of PILPG's 60 affiliated lawyers around the world, they are veterans of the U.S. State Department.



"In matters of public international law, most countries depend on experienced foreign ministry attorneys or high-priced foreign legal consultants, but developing countries and countries emerging from civil war or transitioning to democracy often can't afford such specialized public international legal expertise," notes Scharf. "Paul and I founded PILPG to fill that gap, essentially transforming the State Department's Office of the Legal Adviser alumni association into the world's premier pro bono public international law firm."

Affiliated with Case Western and American University, PILPG has operations in London, Paris, Rome, Stockholm, and The Hague. Among others, it has provided research assistance to

the International Criminal Tribunal for the former Yugoslavia, the International Criminal Tribunal for Rwanda, the Special Court for Sierra Leone, the Iraqi Special Tribunal, and the International Criminal Court.

"PILPG is committed to the notion that if you wish for peace, you must work for justice," says Scharf. The winner of the 2005 Nobel Peace Prize will be announced in November. More information about PILPG can be found at [www.publicinternationallaw.org](http://www.publicinternationallaw.org).

# Alumni Notes

and George IV.

**Jim Toscano**, partner at Lowndes, Drosdick, Doster, Kantor & Reed in Orlando, was at Duke Law School on April 1, 2005 to speak to prospective students attending Admitted Students Weekend.

**Xianping Wang** was appointed as one of 15 special advisors to the Civil Aviation Administration of China in March. He has been advising the agency and Chinese airlines on regulatory reform and enterprise management for the past 14 years. He is a founding partner of Garfinkle and Wang Associates in Alexandria, VA.

## 1992

**Hans Brasseler** has recently moved to Hong Kong where he is legal director for Asia-Pacific and Japan for Symantec Corporation. Previously he was located at Symantec's world headquarters in Cupertino, CA.

**John Folmar** is the pastor of the United Christian Church of Dubai in the United Arab Emirates. Previously he was on staff at Capitol Hill Baptist Church in Washington, D.C. He received his master of divinity from Southern Baptist Theological Seminary in Louisville, KY after practicing law in Washington, D.C. and North Carolina.

**Lars Halgreen** has published *European Sports Law—A Comparative Analysis of the European and American Models of Sport*. The publisher is Forlaget Thomson.

**Kris Van Hove**, a partner at Van Bael & Bellis, in Brussels, Belgium, is a member of the firm's antitrust team that represents Microsoft in Europe and antitrust proceedings before the European Court. He is a contributor to the firm's 4th Edition of its 1,700-page treatise on European competition law.

**Ann Hubbard** recently became a professor of law at the University of Cincinnati Law School. She was previously on the faculty at the University of North Carolina at Chapel Hill. She and her partner, Louis D. Billionis, announce the adoption of their daughter, Graciela Hubbard Billionis, who is now two years old.

**Nathan Wayne Simms** and his wife, Melissa, announce the birth of their first child, Leah Elizabeth, born in Montgomery, AL on January 13, 2005.

**Heather M. Stone** has joined the Boston office of Edwards & Angell as partner. Formerly a partner in the business practice group at Testa, Hurwitz & Thibault, she is a private equity and transactional attorney.

**Tom Telfer**, associate professor at the University of Western Ontario, has published articles in the *International Insolvency Review* and the *Annual Review of Insolvency Law*, delivered papers at conferences at the University of Toronto and British Columbia, and is co-author of a new casebook on Canadian bankruptcy and insolvency law.

**Bryan West** joined Tew Cardenas as partner in the Miami office. His practice focuses on general and complex commercial litigation and arbitration.

## 1993

**Gregory W. Brown** has joined the partnership at Ragsdale Liggett in Raleigh, NC.

**Gregory Casas** has joined Baker & Hostetler as a partner in the firm's Houston office. He was formerly a partner with Locke Liddell & Sapp. Greg's practice will continue to focus on antitrust and international dispute resolution.

**Adam Cohen**, a partner in the litigation department of Weil, Gotshal & Manges, offered his thoughts on the proposed Federal Rules of Civil Procedure Amendment changes as a guest presenter on a Fios webcast ([www.fiosinc.com/webcasts](http://www.fiosinc.com/webcasts)) in April. His presentation was entitled, "Understanding the Proposed FRCP Amendments."

**Kelly Capen Douglas** has been named general counsel at the University of San Diego. She, her husband and two children, Courtney and Collin, live in Coronado, CA.

**Colin Jones** is an associate professor of law at Doshisha University in Kyoto, Japan.

**Alan Gallatin** and his wife Sharyn announce the birth of their second child, Rose Kaitlyn, on December 15, 2004.

**Alexander Simpson** has opened Alex Simpson PLLC, a securities and corporate law practice based in New York City. The practice focuses on small- to medium-sized companies with legal needs in connection with private and public financings, mergers and acquisitions, general securities, and corporate law advice.

**David H. Steinberg** has been hired by DreamWorks Animation to write "Puss in Boots," a feature spin-off of "Shrek 2."

**Philip Strauss** received his MBA from the Haas School of Business at The University of California - Berkeley and has joined the adjunct faculty, teaching contract law to MBA students. Phil is also vice president of corporate development and general counsel of Actuate Corporation in South San Francisco.

## 1994

**Madra Alvis Belmont** and her husband, Philip J. Belmont, announce the birth of their second daughter, Ava Catherine, on June 14, 2004. Philip, an orthopaedic surgeon with the U.S. Army, is currently serving with the 228th Combat Support Hospital in Tikrit, Iraq.

**Richard "Tad" Ferris** has joined Holland & Knight in Washington, D.C. as partner. Most recently with Beveridge & Diamond, he will continue to focus on assisting multinational corporations and other entities develop and implement successful investment strategies that minimize legal and other risks in the China market.

**Carl-Fedrik Hedenstrom** of Magnusson Wahlin Qvist Stanbrook Advokatbyrå in Stockholm is lecturing at Stockholm University.

**Rachel McCart** has opened Equine Legal Solutions, Inc., a practice in San Jose, CA dedicated to horse-related issues. She was formerly a senior attorney at Intel Corporation.

**Russell Miller**, who teaches constitutional law, criminal procedure, and public international law at the University of Idaho College of Law, has won the 2005 Outstanding Faculty Service Award presented by the student body.

**James W. Smith III** was named "Teacher of the Year" at Florida A & M University College of Law.

**Christopher J. Vaughn**, a partner at Caruthers & Roth of Greensboro, NC has been appointed to chair the real property section of the North Carolina Bar Association. His law practice is focused on commercial real estate transactions.

**Brad Wendell**, an associate professor at Cornell Law School, mentors other aspiring academics with an online article, "The Big Rock Candy Mountain: How to Get a Job in Law Teaching."

## 1995

**Eric Alexander** has joined Reed Smith as partner in the products liability practice group in Washington, D.C. Previously he was an associate at Arnold & Porter.

**Gregory B. Brown** has been promoted to partner at Akin Gump Strauss Hauer & Feld. He is a member of the firm's litigation practice in the Houston, TX office.

**Kenneth Bullock** was recently selected by the Air Force for a fully-funded scholarship

to attend an LLM program in labor law in the Washington, D.C. area.

**Tim Dodd**, vice president of technology policy for Time Warner Cable is working on digital policy issues with the consumer electronics industry and the Federal Communications Commission in Washington, D.C.

**Andres Halvorssen**, has been designated by *Latin Lawyer Magazine* as one of Venezuela's top lawyers under age 40.

**Kirsten Harbers** and her husband, **Josh Kreinberg '96**, announce the birth of their son, Timothy Michael, on October 30, 2004. Timothy joins big brother Jason.

**Carl Koller** has recently left the Universidad Iberoamericana, in Mexico City, where he has been teaching for two years. He is now a partner in the Despacho Parás law firm in Mexico City.

**Eugene Lao** is the legal director for Yahoo in Asia, based in Hong Kong.

**Maurine Murtagh** has been promoted to director at Howard, Rice, Nemerovski, Canady, Falk & Rabkin, in San Francisco, CA. She is in the firm's business department.

**Pedro Oller** and his wife, Renee, announce the birth of their son Enrique on May 20, 2005. Oller was recently designated by *Latin Lawyer Magazine* as one of Central America and Panama's top lawyers under the age of 40. He practices in San Jose, Costa Rica.

**Tatsubumi Sato** is now an appeals court judge of the Tokyo High Court, Intellectual Property 4th Division.

**José Manuel Ortega-Sosa** of Caracas, Venezuela, has been designated by *Latin Lawyer Magazine* as one of Venezuela's top lawyers under age 40.

**Kotaro Tamura** was re-elected to the House of Councillors in the Japanese Diet in July 2004 for a term of six years.

**Brian Wyatt** has joined the Hospital for Special Surgery in New York City, as associate general counsel.

## 1996

**Robert C. Bowers** has been promoted to partner at Moore & Van Allen in Charlotte, NC. His practice includes litigating construction and commercial contract disputes and fiduciary litigation.

**Christopher Bowley** recently joined LA/Ventura, a division of Centex Homes in Valencia, CA after four years as strategic management consultant with McKinsey &

Company.

**Adriana De Florio** is a member of a new 15-person Buenos Aires firm, Estudio Garrido Abogados, along with **Gustavo Garrido '96** and **Guillermo Plate '03**.

**Marc Fitoussi** has started a new company, TME Group, which is headquartered near Zurich and specializes in business intelligence, development, and sales strategy, and focuses on broadband technologies between Israel and Europe.

**Nate Garhart** has been elevated to partner at Coblenz, Patch, Duffy & Bass in San Francisco, CA. He is a member of the firm's corporate practice.



**Plate '03.**

**Gustavo Garrido** is a member of a new 15-person Buenos Aires firm, Estudio Garrido Abogados, along with **Gustavo Garrido '96** and **Guillermo**

**Janice Griffin** recently joined the Boca Raton, FL office of Hodgson Russ. She specializes in real estate and finance.

**Omar Hourri**, a partner at Hourri and Ghalayini in Beirut, Lebanon, has been appointed to the faculty at Beirut Arab University, where he will teach constitutional law and introduction to commercial law.

**Josh Kreinberg**, and his wife, **Kirsten Harbers '95**, announce the birth of their son, Timothy Michael, on October 30, 2004. Timothy joins his big brother Jason.

**James R. Levey** has been named partner at the international law firm of Bryan Cave. He is a member of the corporate finance and securities, transactions, and entrepreneurial, technology and commercial practice client service groups.

**Steven D. Moore** has been named partner in the Atlanta office of Kilpatrick Stockton. His practice focuses on commercial litigation.

**Gregory Mose** and his wife, Sophia von Woensel, are moving to southwestern France and will run a holiday cottage business.

**Michael Samway** is deputy general counsel for Yahoo and is responsible for the international division's legal work, based in Coral Gables, FL.

**Brad L. Schoenfeld** has joined the law firm of Kendall, Koenig & Oelsner as partner in Denver, CO. Also at the firm are **David J. Kendal '94**, **Cathleen D. Kendall '97**, and **Jonathon Taylor '98**.

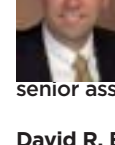
**Laura Sizemore** has been named partner at White & Case in New York.

**Ned and Claire Kresse White** announce the birth of their first child, daughter Avery, born November 2, 2004.

## 1997

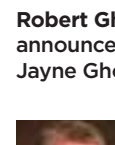
**Alan J. Chadd** has been promoted to partner at Moore & Van Allen in Charlotte, NC. He practices in the area of financial services.

**Andrew Cordner** and his wife, Gretchen, announce the birth of their second child, Tessa Juliet, on December 7, 2004.

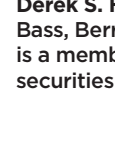


**Kerrie Dunstan** has joined Morgan Lewis & Bockius as senior associate in the Los Angeles office.

**David R. Esquivel**, has been named a member of the firm of Bass, Berry & Sims in Nashville, TN. His practice focuses on antitrust and other competition-related matters. He also maintains a strong commitment to pro bono representation.



**Robert Ghoorah** and wife, **Sarah Solum '98**, announce the birth of their daughter, Grace Jayne Ghoorah, on May 5, 2005.



**Hollie H. Hart** has been promoted to partner at Moore & Van Allen in Charlotte, NC. She practices in the firm's commercial real estate group.

**Derek S. Hughey** recently joined the firm Bass, Berry & Sims in Nashville, TN. He is a member in the firm's corporate and securities practice area.

**Geoffrey Krouse** and his wife, **Anne Emmert Krouse** have moved to Raleigh, NC with their twin daughters, Grace and Caroline. Geoff has joined Smith, Anderson, Blount, Dorsett, Mitchell & Jernigan as a senior associate in the corporate and securities group.

**Joe Martinez** and his wife, Katie Abbott, announce the birth of their second child, Matías Thomas, on January 12, 2005.

**David Morgenstern** serves as the legislative director for United States Senator Lamar Alexander in Washington, D.C.

**Steve Sonne** has been admitted to O'Melveny & Myers as partner. He is a member of the transactions department in the firm's Silicon Valley office.

**Juventino Villarreal** is the legal manager for Fomento Económico Mexicano, S.A. de

# Alumni Notes

C.V. (FEMSA) in Monterrey, Mexico. FEMSA is the largest beverage company of Mexico and Latin America.

Rashad Wareh and Peggy Wang '98 were married on May 2, 2005 in Ann Arbor, MI. They currently reside in New York City.

Michael and Jillion Stern Weisberg announce the birth of their first child, Alana Jolie, on December 14, 2004.

## 1998

Noriaki Abe is deputy director of the policy coordination division of the Foreign Policy Bureau of Japan's Ministry of Foreign Affairs. He is in charge of coordinating policies with the U.S., China, and the Korean Peninsula.

Geoffrey W. Adams, an attorney with Smith, Anderson, Blount, Dorsett, Mitchell & Jernigan in Raleigh, NC, has been appointed to the board of directors of Hospice of Wake County, Inc.

Ainagul Alimanova has joined the European Bank for Reconstruction and Development in London, England.

Alexander Bruns is a professor at Georg-August University of Göttingen in Germany, where he teaches civil law, commercial law, insurance law, and comparative law.

Karel D'Hulst has joined GE Advanced Materials as a commercial counsel at its European headquarters in Brussels, Belgium.

Jennifer Adams Draffen has joined Intel Corporation in Santa Clara, CA as a trademark attorney. She lives in San Mateo with husband Mark and son Oliver Charles.

Nora Gierke and her husband, Jonathan Fitzsimmons, announce the birth of their second son, Stacey James Gierke Fitzsimmons on July 9, 2004. He joins older brother Eli Patrick. Nora continues to practice litigation at Reinhart Boerner Van Deuren in Milwaukee, WI.

Lisa Glover and husband, Stephen Keith, announce the birth of their daughter, Sarah Lucille Keith, on February 18, 2005.

Andrew S. Gold joined the faculty at DePaul University College of Law in 2004 as assistant professor of law. His areas of expertise are corporate and federal securities law, as well as the law respecting regulatory takings of property. His scholarship includes articles on the scope of securities fraud liability under Section 10(b) of the Securities Exchange Act, the original understanding of the Fifth Amendment Takings Clause, and the Supreme Court's Tenth Amendment



## CLASS OF 1997

# Timothy Profeta takes helm of Duke's Nicholas Institute

In June, **Timothy Profeta**, former counsel for the environment to U.S. Sen. Joseph Lieberman, became the first director of the new Nicholas Institute for Environmental Policy Solutions at Duke University.

"Tim Profeta represents the environmental leaders of the future," said Duke University President Richard Brodhead in announcing Profeta's appointment in February. "He is experienced, enthusiastic, and savvy about science policy and the political arena, and strategic in thinking about how Duke can best work with others to forge a positive environmental agenda for our nation. He will be a strong leader for this important new institute." Duke officials envision that the Nicholas Institute will have a global reach and will marshal the broad resources of the University to assist in setting a national environmental agenda.

As Lieberman's counsel, Profeta was a principal architect of the Lieberman-McCain Climate Stewardship Act in 2003. He is credited with helping to build the coalition of support and coordinating a political and media campaign to promote the act's passage. Profeta oversaw all activities of the Senate Subcommittee on Clean Air, Wetlands and Climate Change during Lieberman's term as chair in the 107th Congress. He represented Lieberman in legislative negotiations pertaining to environmental and energy issues, and coordinated the senator's energy and environmental portfolio during his runs for national office.



"I am supremely confident that Tim has the abilities, the energy, and the commitment to turn the Nicholas Institute's exciting vision for environmental leadership into a reality," said Lieberman. "Tim has shown an innate and uncanny ability to translate a rough concept into a mature and sophisticated policy proposal. There is no better example of that than his consistent and creative leadership over the years

in championing the Climate Stewardship Act—a massive intellectual, legislative and political undertaking to address the most critical, overarching environmental challenge of our times."

"By the end of the decade, I want the Nicholas Institute to be on the 'first-call-made list' by a wide range of groups interested in environmental issues," Profeta said. "It should be a resource for businesses seeking to craft strategies to address environmental problems, policymakers seeking to draft effective solutions, advocates seeking credible insight into environmental challenges, and reporters and the public seeking objective analysis."

Profeta received a BA in political science from Yale University in 1992, and earned a master of environmental management degree at Duke's Nicholas School of the Environment and Earth Sciences concurrently with his JD in 1997. He was editor-in-chief of the *Duke Environmental Law & Policy Forum* and the recipient of both the Cummings Fellowship in Environmental Law and the 1996 Nicholas School Alumni Fellowship.

Profeta taught a weekly seminar at the Law School in 2002 and 2003 on the evolution of environmental law and on the Endangered Species Act. Before joining Lieberman's staff, he was a law clerk for Judge Paul L. Friedman, U.S. District Court for the District of Columbia.

A three-day environmental summit on the Duke campus Sept. 20-22 will launch the Nicholas Institute, introduce Profeta to the campus community and others, and provide an opportunity for participants to focus on current environmental issues. The summit will showcase how the Institute will work with partners from business, government, and nonprofits to develop results-driven environmental plans.

The Institute is made possible through a gift from Duke Board of Trustees Chairman Pete (T'64) and Ginny Nicholas of Boston, who gave the Nicholas School of the Environment and Earth Sciences \$70 million in December 2003 to push ahead with the new Institute and other activities for Duke to assume environmental leadership and achieve worldwide impact. ♣



jurisprudence.

**Arnaldo Gorziglia** is a partner at the Santiago, Chile firm Morales, Noguera, Valdivieso & Besca and is teaching commercial law at the Catholic University/Santiago.

**Courtney Holohan** has been named partner at Kirkland & Ellis in Chicago. Her practice focuses on intellectual property matters, including patent, trademark, and copyright litigation and counseling.

**Jaime Pereyra Iraola** is an in-house lawyer with Philip Morris International in Buenos Aires, Argentina.

**Seth Jaffe** has started a new job as an attorney-advisor at the U.S. Commission on Civil Rights, Office of the General Counsel, in Washington, D.C.

**Deena Jenab** has joined Blackwell Sanders Peper Martin in Kansas City, MO as counsel in the labor and employment department. She previously practiced with Polsinelli Shalton Welte Suelthaus in Overland Park, KS.

**LeeAnn Wheelis Lockridge** has joined the faculty of Louisiana State University in Baton Rouge, where she will teach intellectual property law. She was previously a visiting professor at the University of Cincinnati Law School.

**Diana Chiampi Ohly** is a professor of law in Darmstadt, Germany at the Darmstadt University of Applied Sciences, where she teaches software and Anglo-American law.

**Avi Ortal** LL.M. '96 S.J.D. '98, a partner with Zellemyer, Pelosof & Company in Tel Aviv, Israel, has been named one of the ten most outstanding Israeli lawyers by *TheMarker*. Dr. Ortal also teaches a course on mergers and acquisitions at Tel Aviv University Law School.

**Murphy Pepper** and his wife, Soo, announce the birth of their son Macsen Ashby, on February 28, 2005. He joins siblings Katherine, Judah, and Elizabeth. Murphy will shortly celebrate five years of independent practice in Richmond, VA, concentrating on real estate and general corporate law.



**Ting Ting Shi** has joined Kaye Scholer in the Shanghai office.

**Sarah Solum** and husband, **Robert Ghoorah** '97 announce the birth of their daughter, Grace Jayne Ghoorah, on May 5, 2005.

**Darren Wallis** and **Alison Wallis** announce the birth of their daughter, Lyla Lane Wallis, on February 7, 2005.



**Peggy Wang** and **Rashad Wareh** '97 were married on May 2, 2005 in Ann Arbor, MI. They currently reside in New York City.

**Kevin** and **Miranda Zolot** announce the birth of their daughter, Ella Simi Zolot, on March 4, 2005. The Zolots live in Charlotte, NC.

## 1999

**Christian Broadbent**, of the Securities & Exchange Commission in Washington, D.C. has been confirmed as the vice-chair of the District of Columbia Bar's Investment Management Committee. He is also the recipient of the SEC's Manuel F. Cohen honorary award. On June 17, he spoke at Duke Law School as part of the "Summer Passport Series" for summer starter joint-degree candidates.

**Olivier Catusse** has moved to Frankfurt, Germany where he is director of portfolio management and acquisitions at KanAm Grund, a leading syndicator of open-ended real estate funds. He oversees the activities in the U.S. Catusse was previously with Gide Loyrette Nouel in Paris.

**Gabriel Feldman** joined the faculty of Tulane University Law School in August 2005. He teaches contracts and sports law.

**James K. Goldfarb** has joined the business litigation practice group in King & Spalding's New York office. He recently co-authored "Ruling on a Trio of Securities Fraud Cases" published in *The National Law Journal* on May 16, 2005. He previously worked at Weil, Gotshal & Manges as a litigation associate.

**Kathleen Gutman** is working on her PhD in European Union law at Leuven University in Belgium.

**Holger Haenecke** does management consulting for McKinsey & Company as engagement manager and public sector practice manager. His band, Moxly, celebrated its 10th anniversary and has produced a new album, "Procrastinate," produced by Holger.

**Maya Horton** of the New Jersey Schools Construction Corporation was at Duke Law School on April 1, 2005 to speak to prospective students attending Admitted Students Weekend.

**Amy Kolczak** has been appointed to the board of the Georgia Association for Women Lawyers as a representative-at-large. She continues to practice in the area of medical malpractice defense with

the firm of Owen, Gleaton, Egan, Jones & Sweeney in Atlanta.

**Dominique Maes** is an associate at Baker McKenzie and is a member of the board of the Young Bar Association in Brussels. He is also a teaching assistant at Leuven University in Belgium.

**Robert Milbourne** has recently joined Companhia Vale do Rio Doce (CVRD) as chief counsel for international projects. CVRD is an international mining company headquartered in Rio de Janeiro, Brazil.

**Eloise Obadia** returned to Washington, D.C. to the Centre for Settlement of Investment Disputes, a branch of the World Bank that focuses on arbitration and conciliation for disputes between states and foreign investors.

**Cynthia O'Neal** has been elected to the board of directors of the local chapter of the National Association of Women in Construction and has been certified as a construction industry technician.

**Lisa Levin Reichmann**, of Jones Day in Washington D.C., was at Duke Law School on April 1, 2005 to speak to prospective students attending Admitted Students Weekend.

**Varun Sahay** has his own consulting practice in Stuttgart, Germany, where he specializes in business and legal strategy for Indian and European companies.

**John Simpkins** and his wife, Carolyn, announce the birth of their first child, Jonah, on May 16, 2005. Simpkins, an adviser to several African nations on constitutional law, has joined the faculty of the Charleston School of Law. John has taught political science at Furman University, where he served as assistant director of the Richard W. Riley Institute of Government, Politics and Public Leadership.

**Gordon Walker SJD** is head of the law school at LaTrobe University's School of Law in Melbourne, Australia, and is general editor of *International Securities Regulation - Pacific Rim*, Vol. 1-IV, an expansive commentary by experts in securities law that is updated six times annually.

**Ido Warshavski** has returned to Voqneam, Israel and is general counsel and corporate secretary for Given Imaging LTD.

**Seth Watkins** has joined Steptoe & Johnson in Washington, D.C. as special counsel in the intellectual property and litigation groups. Previously, he was an associate at Collier Shannon Scott.

**Jason Webber**, an associate with White & Case in New York, spoke at Duke Law School on June 20th as part of the

# Alumni Notes

"Summer Passport Series" for summer starter joint-degree candidates.

**Jeff Welty** will direct the Animal Law Clinic at Duke Law School beginning spring 2006. He currently has a law practice in Durham.

**Veronica Zarate** handles cross-border transactions for the firm, Bonelli, Erede, Pappalardo in Milano, Italy.

## 2000

**Zhanat Alimanov** has opened his own firm, providing seminars on finance to Kazak companies and also teaches transnational law at a university in Almaty, Kazakhstan.

**Yi Lin Chua** is with the firm De Brauw Blackstone Westbrook in Amsterdam.

**Ori Demb** is director & head of sales operation for Converse, Inc. in Europe. He is based in Tel Aviv, Israel.

**Alaina K. Harrington**, a litigation attorney in the Dallas office of Weil, Gotshal & Manges, has been named to a second, three-year term on the board of directors of Planned Parenthood of North Texas.

**Jeremy Hillsman** spoke by video conference from his Paris office on April 1 to the prospective students attending the Admitted Students Weekend at Duke Law School.

**Hugh M. Hollman** has joined the law firm of Jones Day in Washington, D.C.

**Mariana Simoes** has been admitted to practice law in Peru and is now working in the corporate arena in Lima.

**Louise C. Stoupe** has been elected to the partnership of Morrison & Foerster. She is a member of the litigation department in the firm's Tokyo office. Her emphasis is on intellectual property and international dispute resolution, including arbitration and mediation.

**Stephan Strnad** has joined Hilfe zur Selbsthilfe e.V., (HELP), an international humanitarian aid organization taking responsibility for all operations in Bosnia and Herzegovina. The organization's projects focus on integrating the return of refugees and displaced persons with reconstruction of war-damaged buildings and income generation activities for the returnees.

**Vincent Tortorella** and his wife, Angela, announce the birth of their daughter Jane, on November 29, 2004.

**Mariya Treisman** has joined the office of the New York State Attorney General as assistant solicitor general in the appeals and opinions bureau while husband, Michael Treisman, has moved to Citigroup Investments, Inc. where he is associate general counsel.

**Georg Zehetner** is working at the Austrian Embassy in Paris, where he is the secretary for legal affairs and also covers some European Union affairs.

## 2001

**Rodney Bullard** has been selected as a White House Fellow for the 2005-2006 class. He and his wife, Silvette, are moving to Washington, D.C. where he will work as a special assistant to the president.

**Randy Katz** is an assistant U.S. attorney in the criminal division of the U.S. Attorney's office in Miami, FL.

**Pamela Hoefer Lialias** and husband, Joakim, announce the birth of their daughter, Sofia Loella, on February 28, 2005.

**Rawn James** has accepted a new position with the Office of the Attorney General for the District of Columbia. He has been working for three years in the Washington, D.C. office of Sutherland Asbill & Brennan. His wife, **Maureen B. Kelley '02**, is an attorney for the National Legal Aid and Defender Association.

**Stephen Pedersen** has negotiated a recording deal for his band, Criteria. As a result, he has left the law firm of Kutak Rock in Omaha, NE and will go on a world tour in support of Criteria's new release "When we Break," released by Saddle-Creek in August 2005.

**J. Evans Rice** has accepted a position as a trial attorney with the U.S. Department of Justice, civil rights division, criminal section. He will be prosecuting human trafficking, official misconduct, and hate crimes.

**Faye Rodman** has recently moved from Houston, TX to join Ogletree, Deakins, Nash, Smoak & Stewart in Atlanta, GA. She will continue to practice labor and employment law.

**Matthew Jarboe Rupp** and his wife, **Sarah Hill Rupp**, announce the birth of their son, Oliver Jarboe Rupp, on May 26, 2005. They live and work in Washington, D.C.

**Amy Scarton** continues her work in transportation law and policy as the new chief of staff to the Honorable Francis P. Mulvey of the Surface Transportation Board. She had previously worked in the

U.S. House of Representatives as a senior advisor to Congressman Earl Blumenauer.

**Jana Scharf** and **Seth Safra** announce the birth of their daughter, Lauren Hayley, on January 21, 2005.

**Carmen Sfeir** has been teaching a capital markets course at the University of Chile Law School in Santiago, and is the research coordinator for the School's commercial law area.

## 2002

**Glen Caplan** has accepted a new position with the Raleigh, NC firm of Hutchinson + Mason. He was previously with Wilson Sonsini Goodrich and Rosati in Palo Alto, CA.



**Jessica Carter** was appointed senior vice president and associate general counsel in the Global Private Client Group at Citigroup Global Markets, Inc. in New York City.

**Catherine Duval** has joined Williams & Connolly in the Washington, D.C. office.

**Sarah Gage** has been living and working in South Korea since August 2002, as a military intelligence officer for the U.S. Army.

**Clevonne Gaillard** has joined Nashville, TN law firm, Bass, Berry & Sims, as an associate. She focuses in the healthcare industry practice area.

**Myriam Gross** and her husband, Marcus Mall, announce the birth of their second child, Tristan Marcus Mall, on June 14, 2005, in Heidelberg, Germany. Tristan joins his sister Mara Miriam.

**Gitanjali Lakhotia** is working as a senior counsel at the Supreme Court of India in New Delhi.

**Marjorie Menza** and her husband, Richard Murphy, announce the birth of their first child, Liam Maurice, on February 14, 2005.

**Pedro Castro Nevares** has joined Estudio Beccar Varela in Buenos Aires. He was formerly with Simpson Thacher & Bartlett's international associate program in New York.

**Mark** and **Sarah Pryor** announce the birth of their twins, Henry Vincent and Natalie Marie, on November 12, 2004.



**Santiago Sturla** returned to Buenos Aires from his position as legal consultant to the Multilateral Investment Guarantee Agency in Washington, D.C. He has rejoined the Allende & Brea Law Firm.

**Stacey Walker** was elected to the board of directors for XCEL Federal Credit Union, a provider of financial, banking, loan, and investments services for members in New York and New Jersey.

## 2003

**Tia Hall Barnes** has joined Duke Law School as director of public interest and JD advising. She previously served as a clerk for the Honorable Patricia Timmons-Goodson of the North Carolina Court of Appeals.

**Nichelle Johnson Billups**, an associate with Hogan & Hartson in Washington, D.C., spoke at Duke Law School on June 20th as part of the "Summer Passport Series" for summer starter joint-degree candidates.

**Goncalo Godinho** has joined the New York office of Simpson Thacher & Bartlett.

**Bernhard Krebs** is now with the Upstream Gas Marketing Group of ExxonMobil central European law department.

**Emiko Nakaami** is a visiting lecturer and program coordinator for the office for advanced legal studies at Waseda University in Tokyo, Japan.

**Sean O'Neil** and his wife, Erin, announce the birth of their fourth child, Olivia Grace, on May 21, 2004.

**Guillermo Plate** is a member of new 15-person Buenos Aires firm, Estudio Garrido Abogados, along with **Adriana De Florio '96** and **Gustavo Garrido '96**.

**Alejandro Posadas** was appointed director of the political studies division of Centro de Investigación y Docencia Económicas A.C. (CIDE), in Mexico City.

**Eran Sarig** returned to Israel after a two-month holiday in Peru and Costa Rica, where he visited with LLM classmates. Sarig is an associate with Teva Pharmaceutical Industries Ltd.

## 2004

**Kristine Andreassen** has joined Bryan Cave in Washington, D.C. as an associate, concentrating on financial services.

**Randall Cook** has recently accepted a position with Covington & Burling in Washington, D.C.

**Catherine Duval** is an associate with Williams & Connolly in Washington, D.C.

**Mohammed A. Diwan** has joined the Chicago-based firm of Wildman Harrold Allen & Dixon as an associate.

**Nita Farahany** has accepted a one-year position as a Vanderbilt Fellow and

Instructor in Law at Vanderbilt University Law School. She will teach criminal law. She has previously clerked for Judge Judith Rogers of the U.S. Court of Appeals for the D.C. Circuit and is completing a PhD in philosophy.

**Sean M. Kammer** has joined Baker & Hostetler, as an associate in the Cleveland, OH office.

**Steffi Kandzia** and husband, Professor Ralf Michaels, announce the birth of their daughter, Roberta Emilia Michaels on May 12, 2005. Roberta joins big sister, Phillipa. **Sebastian Kielmanovich** and **Susannah Cox '05** were married on March 27, 2005 in Baltimore, MD. Sebastian is an assistant district attorney in Wilmington, NC.

**David Koysza** is working as a Bristow Fellow in the Office of the U.S. Solicitor General in Washington, D.C.

**Tim Kuhner** has accepted a tenure-track position at Roger Williams University School of Law in Bristol, RI. He previously clerked for Judge Roger L. Wollman of the United States Court of Appeals for the Eighth Circuit.

**Emily Marroquin** was at Duke Law School on April 1, 2005 to speak to prospective students attending the Admitted Students Weekend.

**Yoav Oestriecher** is teaching intellectual property law at Bar-Ilan University in Ramat-Gan, Israel.

**Allyson W. Pafas** has joined the Chicago-based firm of Wildman Harrold Allen & Dixon as an associate.

**Urmaz Peiker**, is a law associate in London at the European Bank for Reconstruction and Development.



**Juliana Cleland Richards** and husband, Charles, announce the birth of their son, Charles, on August 20, 2004.

**Stuart Hale Russell** married Kathryn Marley Finch on June 18, 2005 at Duke University Chapel. Stuart is an associate with Parker Poe Adams and Bernstein in Charlotte, NC.

**Bengoshi Yoshihito Shibata** has joined Sakai & Mimura in Tokyo. He was previously in New York City with Bingham McCutchen.

**Michelle A Valteau** has joined Stites & Harbison in Atlanta, GA as an associate.

**Willem Verschur** is an associate at De Brauw Blackstone Westbroek in Amsterdam. His focus is intellectual property law.

**Vorayanee Vudthithornnatirak** is teaching at Bangkok University and Rajabhat Thonburi University. In addition he is working in the public prosecutor's office as a legal officer and doing research for the Thai Securities and Exchange Commission.

**Elizabeth Wade** has been appointed a magistrate judge in Durham County, NC. She has also recently opened a mediation practice, Carolina Dispute Resolution, which will handle all types of disputes.

**Gregory C. Walsh** has joined the law firm of Baker & Hostetler as an associate in the Denver, CO office.

**John** took a law fellowship at the University of South California in Los Angeles.

# THANK YOU!

The Duke Law Annual Fund had its most successful year ever in fiscal year 2005, raising more than

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# In Memoriam

## 1939

**John C. Oakes**, 89, died on May 26, 2005 in Santa Rosa, CA. Mr. Oakes graduated from Science Hill High School in Johnson City, TN in 1932 and received a BSc degree in 1936 from East Tennessee State University before attending Duke Law School. He was a member of Tennessee State University's Hall of Fame. Mr. Oakes was a special agent with the FBI for 23 years and saw duty in seven domestic offices within the U.S. as well as two foreign countries. He served in the United States military during World War II, obtaining the rank of captain, and served as the chief investigations officer for the Counter Intelligence Corps. Mr. Oakes was a past president of North Lake Tahoe Rotary Club. He is survived by his wife of 52 years, Louise Renyer Oakes of Santa Rosa.

## 1940

**H. Ross Arnold, Jr.**, 87, died July 20, 2005, at his home on St. Simons Island, GA. Born in Lafayette, AL January 19, 1918, he lived his life with great enthusiasm and endless curiosity, and was involved with wide variety of causes and subjects. He was an accomplished musician who enjoyed playing both piano and organ. He cherished his family. He was preceded in death by his first wife, Carolyn Wallace, of Daugherty County, GA, whom he married in 1943 and with whom he raised six children. Mr. Arnold had a diverse litigation and business practice for more than 50 years. He represented Colonial Pipeline Company in acquiring and protecting oil pipeline easements across the Southeastern United States for almost forty years. As the lead lawyer for the Atlanta Jaycees, Mr. Arnold was instrumental in carrying out the anti-masking campaign against the Ku Klux Klan in 1949 and 1950, which curtailed violent activities of secret societies. He served as a federal magistrate and was U.S. Commissioner for the Northern District of Georgia for a number of years. Graduating from Greenville (AL) High School at the age of 15, Mr. Arnold finished Furman University in 1937. He remains the youngest agent ever to enter the FBI, and was the last surviving member of his 1940 FBI class, having served in Ohio, Tennessee, and New York until 1946. Mr. Arnold was a strong advocate of education, supporting many schools including Furman, Duke, Shorter College, Samford University, and Judson College, and was an organizing founder of the Galloway School in Atlanta. Over the years Mr. Arnold was a member of many civic organizations. He was a trustee

of the Patterson Barclay Foundation, president of the Atlanta Humane Society, and led both Furman and Duke Alumni Associations. Mr. Arnold is survived by his wife, Alice Lamont Arnold, of Atlanta; a sister, Margaret Arnold Griffith, of Winston Salem, NC; three sons, **H. Ross Arnold, III '76** (Claire), Richard Mark Arnold (Judy), and John Wyatt Arnold, II (Kathy), all of Atlanta; three daughters, Margaret Arnold Wong (Abe), of Atlanta, Sally Curb Arnold II (Tom Bloore), of Geneva, IL, and Debora Anne Arnold, of Pine, CO; and eight grandchildren, Mary Wallace Arnold, Elizabeth Fielding Arnold, William Ross Arnold, Susan Lindsey Wong, Carolyn Hayes Wong, Abby Lauren Wong, Victoria Joy Arnold, and Wallace Kelley Arnold.

## 1942

**A. Henry Ralston**, 85, died February 1, 2005 in Middlesboro, KY. He was born June 18, 1919 in Middlesboro, and received his bachelor's degree from Duke University before attending Duke Law School. Mr. Ralston served in the Army during World War II as a control tower operator on Iwo Jima. Upon his return home he worked in his family's coal business, farmed, and operated an automobile dealership. He later practiced law with Denham, Ralston and Nagle before taking over the family business, retiring in the mid 1980's. Mr. Ralston was a ham radio operator, and had been licensed since 1934. He was known around the world to ham operators by his call sign, W4PPM, and remained an active ham enthusiast until his death. He was preceded in death by his beloved first wife, Lillian Anderson Ralston, and a brother, Craig Ralston, Jr. Survivors include his second wife, Drucilla Creech Ralston; children, Ingrid R. Moore, of Middleboro, Dr. Craig L. Ralston, and his wife Andrea of Tazewell, TN and Patricia R. Hollingsworth and her husband Berkeley of Lexington, KY; and six grandchildren.

## 1950

**Thomas O. Lawton**, 80, died March 8, 2005 in Summerville, SC. He was born November 10, 1924 in Allendale, SC, and attended Wofford College before enlisting in the U.S. Armed Services at the age of 18. He was a combat infantryman in the 36th Division and served in the European and Mediterranean theaters, winning a Purple Heart, a Bronze Star, and the Combat Infantryman's Badge, among other decorations. After his service Mr. Lawton received his bachelor's degree from Duke University before attending Duke Law School. He was a member of the hearing panel for grievances and discipline appointed by the South

Carolina Supreme Court, vice president of the South Carolina Bar for the 14th Judicial Circuit and president of the Allendale County Bar Association, and was the attorney for both the town and county of Allendale for a number of years. He also served as president of the Huguenot Society and the South Carolina Historical Society, and was chairman of the South Carolina Tricentennial Commission. Mr. Lawton was a member of the Society of the Cincinnati, Colonial Wars, St. Andrew's Society and First Families of South Carolina. He is survived by his wife, Bess Macaulay Lawton; children Thomas O. Lawton, Margaret M. Lawton and Angus M. Lawton; and six grandchildren.

## 1953

**Lee Creecy Smith**, 78, died April 23, 2005 in Raleigh, NC. He was born July 15, 1926 in Biltmore, NC, the second of four children of Anna Lee Smith and Willis Smith, a prominent Raleigh attorney who served in the United States Senate. After graduation from high school, Mr. Smith joined the war effort, serving in the U.S. Navy during World War II. He was discharged in 1946, after which he received his bachelor's degree from Duke University before attending Duke Law School. Mr. Smith began his career as an attorney in Jacksonville, FL in the office of the chief counsel, U.S. Treasury Department. Returning to Raleigh, he joined the firm now known as Smith, Anderson, Blount, Dorsett, Mitchell and Jernigan, which was founded by his father. He was a member of the Wake County, North Carolina and American Bar Associations and the American Judicature Society, and was director/treasurer of the Badger-Iredell Law Office Foundation. He served as chairman of the North Carolina State Board of Elections. Mr. Smith was a delegate to the 1968 National Democratic Convention. He also served as a trustee for both the W.W. Holding Technical Institute and the Wake County Blood Procurement Plan, and was very active in Duke University alumni affairs. Mr. Smith was predeceased by his wife of 40 years, Adele Hardison Smith. He is survived by his son, Lee Jr. and his wife, Nan Potter Smith, of Raleigh, and their three children; son Willis and his wife, Ann Majors Smith, and their two children, also of Raleigh; sister, Anna Lee Dorsett; and two sisters-in-law, Vernon Fountain Smith and Matilda Woodard Smith, both of Raleigh; and by many nieces and nephews.

1955

**Mr. William L. Woolard**, 73, died April 26, 2005 in Charlotte, NC. He was born August 26, 1931 in Bath, NC, and received his bachelor's degree from Duke University before attending Duke Law School. Mr. Woolard was an Angier B. Duke scholar and recipient of a Carnegie Endowment Fellowship grant for research in world peace. Upon graduation from law school, Mr. Woolard worked for the Chrysler Corporation, and in 1960 joined the Charlotte law firm of Jones, Hewson & Woolard. He served as partner in that firm until 1986 when he became "of counsel" in order to devote more of his time and energies to community service. Mr. Woolard served on the boards of directors of the Charlotte Rescue Mission, the North Carolina Eye and Human Tissue Bank, the North Carolina Lions Association for the Blind, the Mecklenburg Association for the Blind, the Charlotte Workshop for the Blind, Inc., Lions Services, Inc., Lawyers Title Company, Inc., and Lawyers Educational Foundation, Inc. He served for 15 years as president of the Charlotte Central Lions Educational Foundation, Inc., and at the club, district, state and international levels of The International Association of Lions Clubs. In 1981, Mr. Woolard was elected to the board of directors of Lions Clubs International and held various offices before becoming that organization's international president for the 1989-1990 term. He received the Lion's Ambassador of Goodwill Award, which is the organization's highest honor. In 1990-1991, Mr. Woolard served as chairman of the board of trustees of Lions Clubs International Foundation, which provides financial assistance for humanitarian projects throughout the world. The foundation's major international service project, SIGHTFIRST, was launched during his year as international president, with the goal of eliminating all preventable and reversible blindness throughout the world. Mr. Woolard was a member of the American Bar Association, the North Carolina Bar Association, the North Carolina State Bar, and the Mecklenburg County Bar Association. He was also a member of the American Judicature Society and was listed in *Who's Who in America*. North Carolina Governor Jim Hunt honored him with The Order of the Long Leaf Pine, North Carolina's highest honor for civic service. Since 1970, Mr. Woolard served as president of Armature Winding Company, Inc., a family-owned business. He is survived by his wife, Virginia Stratton Woolard; son William L. Woolard, Jr. and wife, Peggy; daughter Margaret Anne Woolard; grandsons Nathan A. Woolard and Daniel

A. Woolard, all of Charlotte, NC; brothers

Cedric E. Woolard of Washington, NC and Leo B. Woolard of Richmond, VA; sisters Louise W. Broughton of Virginia Beach, VA, Linda W. Blake of Bath, NC and Judy W. Arthur of Washington, NC. Two brothers, John C. Woolard and Elton M. Woolard, predeceased him.

1959

**Harrison Kirk Chauncey, Jr.**, 71, died December 24, 2004 in West Palm Beach, FL. Born March 16, 1933 in Brooklyn, NY, he graduated from Rollins College before attending Duke Law School. He served on the board of governors of the Duke Bar Association, editorial board of the *Duke Law Journal*, and as *DLJ* managing editor. His alumni activities included service as a class agent and on the Duke Law Annual Fund Council. In 1961, Mr. Chauncey moved with his family from New York City to West Palm Beach, and practiced law until his death. He was a member of the Florida Bar Association, the American Bar Association, American College of Real Estate Lawyers, and the American College of Trust and Estate Counsel. He was a former president of the Sailfish Club of Florida, a *grand officier honoraire* of the *Confre'rie des Chevaliers du Tastevin*, an active member in the Fraternal Order of Police Associates and a member of the Navy League. He is survived by his wife of 49 years, Constance Shields; his son Harrison III and his wife Kristen of Indianapolis, IN; son Wayne and his wife Katherine of Springfield, VA; his daughter Carolyn and her fiancé Raymond Shea of New York City; and five grandchildren.

1960

**Donald K. Easterly**, 69, died December 21, 2004 in Penfield, NY. He was born February 14, 1935. Mr. Easterly received his bachelor's degree from Bucknell University before attending Duke Law School. While at Duke Law, he was assistant to Professor Jack Latty and helped teach the "Accounting in the Corporation" law course. He received the Edward P. Friedberg Award in the 1959-60 academic year for best work in federal taxation. Mr. Easterly was a member of Delta Theta Phi legal fraternity and the Duke Bar Association. He retired as vice president of JP Morgan Chase Trust Department. He is survived by his wife of 36 years, Ute; sons, Michael and Andrew; brother, E. Phillip and his wife Nancy; uncle, Harold Easterly and his wife Joan; three nephews; and several cousins.

1972

**Alan Henry Otte**, 58, died April 9, 2005 in Tampa, FL. Mr. Otte received his bachelor's degree from Duke University before attending Duke Law School. He was a partner at Rudnick & Wolfe before opening his own firm. His practice included corporate and real estate law. He is survived by his wife, Candace (Nursing '72) and five sons, Edward, Andrew, Thomas, Bryan and Jonathan; and his mother, Elsie Otte.

1980

**Deborah Greenblatt**, 58, died June 13, 2005 in Raleigh, NC. Ms. Greenblatt received her JD from North Carolina Central University's School of Law in 1972, and her LLM from Duke. She then became the litigation director of Carolina Legal Assistance, a non-profit that represents individuals with mental disabilities, and in 1982 became executive director of that organization. Ms. Greenblatt's work in the courts, as well as her advocacy through legislative channels, resulted in major disability law reforms. She has been recognized with a number of awards including: ARC of North Carolina's Distinguished Service Award; the Jack B. Hefner Award from the North Carolina Council on Developmental Disabilities; the Julian T. Pierce Award for Outstanding Advocacy to All; the W.W. Finlator Civil Liberties Award; and the Mental Health Association's Distinguished Service Award. Just days before her death, the juvenile justice and children's rights branch of the North Carolina Bar Association presented Ms. Greenblatt with the Bertha Holt Juvenile Justice Award, recognizing her many contributions to juvenile justice and children's rights throughout the state. Ms. Greenblatt was predeceased by her mother, Anne Shpall Greenblatt and her father, Carl Greenblatt. She is survived by her husband, Chuck Eppinette and her daughter, Hannah; her brother, Fred Greenblatt; her sisters, Syma Gerard, Rodeane Widom, and Shirley Widom; and several nieces and nephews.

1991

**Adam A. Milani**, 39, died on May 11, 2005 in Macon, GA. He was born December 15, 1965, in Peoria, IL. He was a 1988 Phi Beta Kappa graduate of the University of Notre Dame, earning his bachelor's degree in English before attending Duke Law School. Professor Milani was associate professor of law at Mercer University, where he taught disability law and legal writing. Before joining the Mercer faculty, he practiced law in Indiana, clerked for the United States District Court for the Northern District of

## In Memoriam

Indiana, and was a member of the faculty at the University of Illinois College of Law. A quadriplegic and a renowned scholar on disability law, Professor Milani wrote four books and numerous articles on the law of disability discrimination, and served as a consultant to many attorneys around the country on those issues. In 2003, Professor Milani was elected to the American Law Institute. In 2004, he was honored by the University of Notre Dame Alumni Association for his public service on behalf of the disabled. Mr. Milani was a devoted Notre Dame football and Duke basketball fan. He is survived by his parents, Joan and Ken Milani of South Bend, IN; his brother, Michael Milani of Hinsdale, IL; sister, Maria Moon of Leesburg, SC; three nephews, David Rogers, Michael Rogers and Jim Milani; and two nieces, Hannah Dokey and Katie Milani.

**Mary Elizabeth Spear**, 40, died February 26, 2005 in Santa Barbara, CA. She was born December 30, 1964 in Hays, KS, to Guy and Laura Johnson Spear. She grew up in Winston-Salem, NC, attending Summit School until ninth grade, and graduating from Forsyth Country Day School in Lewisville in 1983. Ms. Spear was an accomplished runner at an early age, ranking number one in high school in the one-mile for three years. She won state championships and participated in U.S. Olympic trials. After graduating as her high school's valedictorian, she attended the University of North Carolina at Chapel Hill on a Morehead Scholarship. There she majored in political science, spent her junior year in France, and graduated Phi Beta Kappa. Ms. Spear spent some time doing volunteer work in West Africa. Ms. Spear studied law in Liege, Belgium for a year on a Rotary scholarship, prior to entering Duke Law School. Upon graduation, she clerked for North Carolina Supreme Court Justice Willis P. Whichard. Ms. Spear married C. Edson Armi in 1991, and lived in France until her husband's appointment to the University of California took the family to Santa Barbara. She was admitted to the California Bar in 1994, and was hired by the Santa Barbara County Public Defender, realizing a long held ambition. She worked for eight years as a criminal defense attorney before illness forced her to take a leave of absence. She leaves behind her two daughters, Jemma, 9 and Rovenna, 3; and her husband. Other survivors include her three brothers; Christopher of Norfolk, VA, Michael of New York City, and Matthew, of Charlotte, NC.

# Duke Law School

## Selected Events

### Fall 2005

#### SEPTEMBER

## 26

*Great Lives in the Law*

**Janet Reno**

Sponsored by the Program in Public Law

## 27

*Fourth Annual Herbert L. Bernstein Memorial Lecture*

**Richard Buxbaum**

Jackson H. Ralston Professor of International Law,  
Boalt Hall, University of California, Berkeley

#### OCTOBER

## 7-8

*Leadership Weekend*

Meetings of the Board of Visitors, Law Alumni Association  
Board, and Future Forum

## 21

*Duke Environmental Law and Policy Forum*  
2005 Fall Symposium

#### NOVEMBER

## 11

*Distributive Justice Issues in American Health Care Symposium*  
Sponsored by *Law and Contemporary Problems*

## 14

*Brainerd Currie Memorial Lecture*

**William Van Alstyne**

Lee Professor, William and Mary Law School

**Duke Law Magazine**

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