

# DUKE LAW

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## The Faces of IP at Duke

New Team Hopes to Help Shape Future of Global Commerce

**Katharine  
Bartlett  
Named  
New Dean**

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'The Closer' Took on an  
Industry—and Won

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Freeing the Innocent:  
Duke, UNC join forces  
in Search of Justice



## Katharine T. Bartlett Named 12th Dean of Duke Law School

In late December, Professor Katharine T. Bartlett was named the 12th dean of Duke Law School, succeeding Pamela B. Gann, who left Duke in July for the presidency of Claremont McKenna College in California. Dean Bartlett's appointment was approved by University trustees in January.

Duke University Provost Peter Lange praised Bartlett for her fine legal scholarship and administrative experience. "Kate will provide superb leadership in this important moment in the development of our Law School and University," Lange said.

Bartlett, the A. Kenneth Pye Professor of Law, brings long experience to her new role, having taught at Duke since 1979 and having served as senior associate dean from 1993 to 1995. Selected after a five-month national search, Bartlett is taking the helm at an important time for the Law School, according to Professor Clark C. Havighurst, who

served as interim dean from July until December. "There are few people as qualified as Kate Bartlett to lead the School through the crucially important faculty development process that lies immediately ahead, as several new faculty positions, as well as some upcoming retirement vacancies, must be filled," he said.

A prolific and nationally respected scholar, Bartlett has done groundbreaking work in two different fields. She has written and lectured extensively on topics in family law, including child custody, joint custody, surrogate parenting and the role of fault in divorce law. Her article on non-exclusive parenthood published in the *Virginia Law Review* in 1984 is widely considered to be the leading article relating to issues of parenthood when the law's premise of the nuclear family has failed.

She is also an expert in the field of gender and law, having published articles on gender theory, employment law, theories of social change and legal education. Her article on feminist legal methods, published in the *Harvard Law Review* in 1990, is one of the most often cited law review articles of the last decade. She also is co-author, with Angela Harris, of a leading casebook, *Gender and Law: Theory, Doctrine, Commentary* (1998), and co-editor of a book of edited readings in feminist legal theory.

In 1994, she won the University Scholar/Teacher of the Year Award at Duke.

Gann, who was visiting the Law School in December when news of Bartlett's appointment was announced, was delighted with the choice of her successor, noting that Bartlett "has succeeded in teaching, scholarship, collegiality and leadership."

"As far as I know, Kate's appointment marks the first time a top law school


has had two female deans back to back," Gann said. "That makes Duke Law stand out as a receptive place for female students, faculty and administrators."

Currently, Bartlett serves in the prestigious position of Co-Reporter for the American Law Institute's Principles of the Law of Family Dissolution, a model family law code, for which she is responsible for the provisions relating to child custody. In 1998, she was honored as the Justice R. Ammi Cutter Reporter for her work on this project.

University of Pennsylvania law professor Geoffrey Hazard, director emeritus of the American Law Institute, said Bartlett has a "very good analytic mind, is very well-informed ... and is a very good listener who is able to absorb criticisms and suggestions. She's very, very good, and I'm sure she'll be an excellent dean."

Bartlett was educated at Wheaton College, Harvard University and the University of California at Berkeley. Since coming to Duke in 1979, she has been active in the Durham community, serving on the boards of a number of civic organizations, including the Urban Ministries Center and, more recently, the Durham County Department of Social Services.

The School's new dean is married to Professor Christopher H. Schroeder, an outstanding legal scholar whose work spans environmental law, administrative law and other public law topics and who has served in high level government positions in the U.S. Senate and the Office of Legal Counsel at the U.S. Department of Justice. They have three children.

More details about Dean Bartlett and her plans for the future of the Law School will be forthcoming in the fall 2000 issue of *Duke Law*. 



### Letters to the Editor

If you want to respond to an article in *Duke Law*, you can e-mail the editor at [kossoff@law.duke.edu](mailto:kossoff@law.duke.edu) or write: Mirinda Kossoff, *Duke Law Magazine*,

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New Duke

# IP team

"We have a difficult time ahead in the sense that we have a lot of work to do, but the rewards will be very great."

—Professor David L. Lange



**James Boyle**



## From the Dean

*With the growth of global markets for entertainment, news and information and cultural products, intellectual property, once an academic backwater, has exploded in the past decade. And trade in information and entertainment brings the issues of copyright, trademark and unfair competition to the forefront of the law. Add to that the exponential growth of the World Wide Web, and the need for an expanded and cutting-edge IP curriculum at Duke Law School is apparent. Our students are demanding it, and we would be ill-equipped to educate them for the legal landscape of the 21st century without it.*

*One of the pleasures of my first months as dean of Duke Law School is being able to preside over the birth of what we expect to be one of the best IP programs in the country. We have known for some time that we needed to move in this direction. For*

*too many years, Professor David Lange and a few capable and knowledgeable adjunct faculty have carried the weight of our IP curriculum. But before we could put flesh on the bones of our vision for a truly comprehensive and innovative program, we first had to locate and attract the best academic talent. With a lot of behind-the-scenes labor, the appointments committee, guided by Professor Lange, laid the groundwork for a national search for top scholars in the IP field.*

*After a thorough review of a number of candidates, we identified Professors Jerome Reichman (international intellectual property) and Jamie Boyle (cyberlaw), both renowned scholars and leaders in their respective areas of IP. Fortunately for Duke, the attraction was mutual. In adding the expertise of Reichman and Boyle to the formidable talents of David Lange in copyright, telecommunications and entertainment law, we are well on our way to creat-*

*ing a comprehensive and groundbreaking IP curriculum. By virtue of their eminence in the IP field, these scholars also are involved in high-level negotiations between transnational corporations interested in doing business in emerging markets, and with public officials in the countries providing those markets that may some day have a real impact on global commerce. We are fortunate to be able to welcome such respected and innovative scholars, who are already working to create the curriculum that will be launched in the fall of 2000.*

*As a final note, I want to express appreciation on behalf of the Law School community for Professor Clark Havighurst's fine stewardship as interim dean. He did an outstanding job for the School, and we are indebted to him for his loyalty and leadership.*

*Katharine T. Bartlett  
Dean*

# Hopes to Help Shape Future of Global Commerce



**Jerome Reichman**



**David Lange**

**In the age of .coms, growing trade friction and struggle for control of intellectual property, Duke Law School seeks to go where none has gone before.**

by **Rick Smith**

## **Law is evolving.**

Commerce forever has been altered by Internet .coms, and Web sites about “cyberlaw” and intellectual property pop up daily to deal with a rapidly changing world economy driven more and more by intellectual property—from software to movies to Internet applications.

Along with this changing global economic landscape comes a need for more government and business lawyers who can address intellectual property concerns.

The ever-changing legal and economic landscape hasn’t escaped the attention of Professor David Lange, who has taught at Duke Law for 28 years.

For the past two years, Lange has been engaged with his colleagues in efforts to hire new faculty and to boost the curriculum—to help the Law School capitalize on the opportunities of a digital age where practically all businesses eventually will begin with an “e.”

“[I]n the estimation of IP Trekkies, Intellectual Property is to the Digital Epoch as the Pentateuch is to the Word,” Lange wrote to the Law School’s faculty appointments committee in November of 1998.

Until now, the Law School has relied on Lange and visiting professors to lead students into the evolving IP landscape. And incoming students increasingly have been demanding courses on the Internet e-world. “One person can’t do it all,” Lange said in a recent interview, “not even working full time. We needed others working side by side.”

If the Law School seized the moment, Lange had argued, Duke could establish itself at the forefront of e-law.

Lange’s argument was heard. This fall, Lange and two professors lured away from prestigious careers elsewhere, will strive to establish the Law School as the world’s preeminent institution for the study, the defining and the applications

of IP, copyright and cyberspace law.

“We have a difficult time ahead in the sense that we still have a lot of work to do,” Lange said, “but the rewards will be very great.”

The governing faculty, acting on Lange’s proposal, extended full professorships with tenure to Jerome Reichman of Vanderbilt University and James Boyle of American University last year. The two aren’t due on campus for several months, but they’re already working for Duke.

“We’ve had several meetings already; we’re talking about the curriculum, and we’ve begun planning seminars,” said Boyle in a telephone interview. “We can’t wait to get started.”

And the time to move was right, according to Reichman. “Most importantly, Duke has a very well established and well known international program. People come there from all over the world to study, and of primary interest

at the moment is international intellectual property law.”

In forming an intellectual property stronghold, Duke Law brings together a variety of strengths and expertise. Lange’s list of achievements as a copyright and intellectual property rights lawyer, businessman and teacher is extensive. Reichman’s forte is international intellectual property issues and trade. Boyle, meanwhile, is recognized as one of the rising stars in the study of cyberspace law. (For details on each professor’s background, please see the biographical sketches that accompany this article.)

“I believe that what we have achieved is a tremendous expansion of the curriculum and a great addition to the Law School faculty,” said Lange. “I think we have done the students a

### Professor Jeff Powell:

**“These are stunning appointments. Professors Reichman and Boyle are scholars of the very highest caliber and creativity. Put them together with David Lange, who is a truly original thinker, and our excellent adjuncts, and you have an intellectual property faculty second to none. From my knowledge of Jerry and Jamie, I expect them to be like David, the sort of colleagues who measurably increase the intellectual ferment in the building.”**

wonderful service, and I believe in time we are going to add still more value to the Law School’s already well-deserved reputation for excellence. I have an inner sense that we are going to receive a lot of recognition from other faculties and

the attention of many students around the country.”

### MEETING STUDENT DEMAND

Student demand was a major driving force in the expansion of the Law School’s IP curriculum, Lange stressed. And Boyle said they were right to seek additional resources.

When asked why students were so keen for such courses, Boyle’s answer was simple: “Because they aren’t blind. Look at the number of headlines or Internet controversies or business stories that deal significantly with intellectual property, and you will see what a pervasive issue it is. Students understand this very well.”

In Boyle’s view, academic interest in the subject goes far beyond the enormous part of the economy that will

## IN PROFILE

### “A spectacular young scholar”

#### JAMES D.A. BOYLE

In conducting a thorough national search for faculty candidates in the forefront of digital technology law, the faculty was drawn to Professor James Boyle who, in a short time, has firmly established himself as a cyberspace law expert.

“His range of interests makes Professor Boyle’s contributions to the field likely to be more creative and interdisciplinary than others we considered,” says Dean Katharine Bartlett, who chaired the faculty appointments committee reviewing candidates for the IP faculty positions.

Professor David Lange labeled him a “spectacular young scholar,” which triggers a laugh from Boyle. “I may have been young once,” he says. But now that he’s passed 40, he says he counts as an old-timer—at least in the world of the Net.

Boyle, a native of Scotland who came to the United States in 1980 to attend Harvard University as a Frank Knox

Fellow, says he was attracted to law because of its fusion of theory and practice. “I’ve always had an academic bent, and I became very interested in law and legal theory. Law seemed to be the applied branch of all the academic subjects I was interested in—politics, economic theory and moral philosophy. Law is where the theory had to connect with the practice.”

The use of cyberspace has become Boyle’s focus over the last decade. He has his own Web page ([www.james-boyle.com](http://www.james-boyle.com)) and has published a book and a number of articles and newspaper pieces about the information society. “It’s an area where everything is up for grabs,” he says. “It hasn’t yet settled into a pattern of knee-jerk responses. It’s one of the few areas where one can genuinely have a discussion about important issues, and people on both sides of the debate will change their views.”

In cyberspace, traditional political divisions often disappear, he adds. “The thing I find most appealing about the area is the incredible openness; there is a huge range of disagreement about the most fundamental issues. What metaphors should be used to



be based on intellectual property—both on the Internet and elsewhere.

“It’s quite clear to everyone that there are issues of access and control as well,” he added. “There is a real fear of a ‘digital divide.’ At the same time, the basic shape of the economy is at stake: The power of “network effects”—the economic clout given to someone who controls a basic technological standard—raises the potential for monopolies of unprecedented scope. I think the Microsoft trial drew everyone’s attention to that issue. There are issues of privacy, free speech and the protection of the public domain. The issues we cover really run the gamut. Duke has a tradition of concern with the public interest—broadly conceived—and with educating lawyers for roles in both the public and private sectors to address

that interest. For me, that is one of the key reasons why it is so appropriate for Duke to develop this particular specialty.”

The menu of courses will be varied and deep. Collectively, the three professors have taught:

- Intellectual Property
- Intellectual Property in International Trade
- The Constitution in Cyberspace
- Law and Literature
- Jurisprudence and Torts
- Contracts
- Copyright
- Patents
- Trademarks
- Entertainment Law
- Telecommunications Law and Policy
- Feature Film Development, Finance, Production and Distribution
- Legal Dynamics of the Start-Up Environment

“What you’ve got with David, Jerry and me is a series of intersecting circles of interest and knowledge,” said Boyle, who was a visiting professor at Duke in 1993-94. “I’ve been very interested in the larger, more theoretical issues of the move to an information society. What happens to our ideas about politics, property, economics and the law? What does an information society mean? How do ideas change? How does the political landscape change?”

Boyle drew a comparison to an earlier time that had its own complications. “If you were sitting in the United States in the 1880s, trying to understand your own society, thinking about worker-boss relationships, about the power of the state over the economy, the effect of all this new-fangled industrialization, the trans-continental railway, what would

describe it? What political possibilities does it open up? What changes does it make to traditional economic models? Even on these basic questions people don’t agree. This makes it an absolutely fascinating area to study.”

With the addition of two new faculty to its already strong resources in the area, Boyle believes that Duke will establish itself as one of the strongest intellectual property schools in the country.

“To come to Duke and have the opportunity to work with professors Lange and Reichman, and in the process to create one of the most exciting centers of intellectual inquiry on this subject, well that’s the kind of offer you simply can’t refuse,” Boyle says.

With his book, *Shamans, Software and Spleens*, Boyle was among the first to explore the issues involved in the construction of the information society. But his scholarship is wide-ranging, with work published in the areas of critical legal theory, postmodernism and political economy. His latest book-length project, *Net Total*, explores the Internet’s potential impact on property, economics and civil liberties.

Lange is effusive in his praise of Boyle: He is an outstanding scholar

“already well-known to us, with wide-ranging interests in IP and related issues; copyright-centered, but this includes cultural appropriation as well as all the Internet subjects. He also has been involved in the political debates over copyright reform and electronic civil liberties, which means he is a player in pending legislation on one side; widely known and quoted; well-published; widely read; much in play; among the brightest of the Internet crowd.”

## THE FACTS

**Age:** 41

**Current Position:** Professor of Law, American University

**Education:** Born and raised in Scotland; graduated Glasgow University with LL.B. (Hons.); double first in international law and politics; attended Harvard Law School as Frank Knox Fellow, 1980-81; remained at Harvard to pursue S.J.D. and work as a teaching fellow at Harvard College; received S.J.D. from Harvard in 1986.

**Law career:** Teaching fellow, Harvard, 1981-82; assistant professor of law, Washington College of Law, American University, 1982-84; associate professor, Washington College of Law, 1985-86; professor, Washington College of Law, 1986 to present; visiting professor: University of Pennsylvania Law School, Boston University Law School, Harvard Law School, Duke Law School, Yale Law School.

**Author:** *Critical Legal Studies* (Dartmouth/NYU 1994); *Shamans, Software and Spleens: Law and Construction of the Information Society* (Harvard University Press, 1996); completing *Net Total: Law, Politics and Property in Cyberspace*.

**Courses taught:** Intellectual property; the Constitution in cyberspace; law and literature; legal theory; and torts.

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For a complete biography and highlights of Professor Boyle’s career, please visit: [www.james-boyle.com](http://www.james-boyle.com) (his own Web page) and/or [www.wcl.american.edu/pub/faculty/boyle/boylebio.html](http://www.wcl.american.edu/pub/faculty/boyle/boylebio.html)

## IN PROFILE

### "Teacher, practitioner, entrepreneur"

#### DAVID L. LANGE

He writes poetry and occasional fiction, earned his first degree in communications, worked in radio, television and motion picture production, practiced law, and is co-owner of a successful family business. With that background, Professor David Lange also has established himself as one of the preeminent academic figures in copyright and intellectual property law today. His law classes are always in demand and have long waiting lists. And he's been innovative in his use of technology in the classroom.

"Professor Lange's efforts to incorporate video technologies in his classes have been creative in approach and visionary in their understanding of how law students process visual information," says Dick Danner, senior associate dean for library and computing services. "He regularly inspires his students to create course project videos that are not only technically sophisticated and

rich in content, but highly communicative. I doubt that anyone else in legal education supports and encourages these kinds of projects in the ways that Professor Lange does."

"I see myself as teacher, practitioner, entrepreneur," says Lange, who has been a member of the Duke faculty for 28 years. "I like business and the challenge of being involved in businesses." And most recently, he has been working with Duke graduate and Internet entrepreneur Kip Frey '85 (see Frey profile on page 16) to assist students who may want to immerse themselves in the business of small bio-tech and .com start-ups. Lange and Frey are co-teaching a new course titled "The Legal Dynamics of the Start-Up Environment."

Lange's marriage of interests outside the classroom and a distinguished law career have prepared him to capitalize on changes taking place in the legal profession. The "gentlemanly profession of law" is "getting edgier and harder," he says. "We lawyers thought of ourselves as counsellors and advisors 35 years ago. We didn't think of ourselves as much engaged in business," he adds. "The winds of the '80s

scoured the barnacles off the bottom lines of many law firms. Now, they are often, to me, indistinguishable from standard business corporations. They have to make a profit. That's what they do first."

Firms must operate as businesses today to recruit and retain legal talent, Lange explains. "I made \$7,850 a year in 1964, and that was at the top of the scale for young lawyers then. Today, I understand that a few Palo Alto firms are beginning to pay starting associates as much as \$145,000. Inflation doesn't account for all of that difference."

Lange has utilized his experience overseas, having served as an adviser to intellectual property officials of the government of Vietnam on copyright and other issues. Fascinated with Vietnamese history as a result of his travels there, Lange has begun research on what he intends eventually to take the form of a biography of Ho Chi Minh. He counts on the help of Vietnamese friends in pursuing this work.

you have fixed on? What issues would be most important? I'm trying to do similar things for the information society."

#### OVERLAPPING INTERESTS

While Boyle has focused on such issues as electronic civil liberties and intellectual property on the Internet, Lange and Reichman, who have known each other for years and collaborated recently on a paper regarding international trade, have developed other areas of expertise. Said Boyle: "David and Jerry share some of those interests, and when you put together Jerry's work on legal protection for computer software and David's work on the public domain and the entertainment industry, that makes a potent team."

**Professor Paul Carrington:**  
"Professors Reichman and Boyle are both knowledgeable about the interface between science and law; Jerry Reichman is a member of the National Academy of Sciences. I will be pleased to work with them in this area."

Lange and Reichman have been involved at the congressional level and in the international arena on a wide variety of fronts, from working to ensure fair use of copyright material to control over electronic databases.

"When you put all those things together," Boyle said, "you see a lot of overlapping interests. It's definitely a case where the whole exceeds the sum

of the parts, and I believe we will have a significant advantage over other universities in the field."

Duke's offerings will be a vast improvement over past years, according to Lange. "The fact is, when I came here in 1971, there was one course in intellectual property," he said.

Lange has been among the leaders in entertainment law, serving as one of the founders of the American Bar Association's Forum Committee on Entertainment and Sports Industries. But, Lange explained, even as he worked in that field in the 1980s, he found that the advent of digital technology and increasing globalization created more challenges. "Together,



## THE FACTS

**Age:** 61

**Current position:** Professor of Law, Duke University

**Education:** B.S. in communications, University of Illinois, 1960; J.D. (LL.B.), University of Illinois Law School, 1964; (also served as editor-in-chief, board of student editors, *University of Illinois Law Forum*)

**Law career:** Professor of Law, Duke University, 1971 to present; of counsel, Parker Poe Adams & Bernstein, Charlotte and Raleigh, 1987-94; visiting professor of law: Washington University, University of Michigan, Northwestern University; general counsel, Mass Media Task Force, National Commission on the Causes and Prevention of Violence, Washington, D.C., 1968-69; private law practice, 1964-71.

**Other positions:** Chair (elect) The Intellectual Property Committee of the Association of American Law Schools (AALS); member, board of trustees, The Copyright Society of the United States

(elected 1998); member, board of directors, The Lucy Daniels Foundation, 1993 to present; member, editorial board, *Entertainment Law Review*, 1990 to present; executive director, Center for Global Information Technologies, Duke Law School, 1996-98; consultant on intellectual property issues, National Office of Industrial Property and National Copyright Office of the Socialist Republic of Vietnam, 1994 to present; general partner, Mediamix, a motion picture film production company, 1970-71; production coordinator, WILL-TV, Television-Motion Pictures Unit, University of Illinois at Urbana-Champaign, 1959-61.

**Courses taught:** Intellectual property; copyright; trademarks and unfair competition; entertainment law; motion picture production, finance and distribution; telecommunications law and policy; legal dynamics of the start-up environment.

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For a more detailed biography of Professor Lange, please visit: [www.law.duke.edu/fac/lange](http://www.law.duke.edu/fac/lange)



they made the field of intellectual property suddenly more important. It developed almost faster than anyone could track."

The pace quickened in the 1990s with the arrival of the Internet and the e-business explosion. Now, said Lange, "You can't be a competent business lawyer" without expertise in intellectual property and related areas because "they play such a signal role in all kinds of transactions."

"This crept up on us as sweeping changes do, and I don't think any of us—including myself—knew how much law would change," Lange added. The expansion of the faculty is designed to help the School and students deal with

continued changes in the new millennium. "We are crowded by the pace of development," Lange said. "Fifteen or 20 years ago, I think none of us imagined that we would include intellectual property among the centerpieces of what we are doing in

### Professor Jim Cox:

**"In the many decades ahead, no area is more important to the U.S. economy than the development and protection of property rights that are commonly referred to as intellectual property. With these appointments Duke will enjoy a preeminent position worldwide in the study and research on the topic that will define our destiny."**

terms of the Law School curriculum and its core people.

"By the early '90s, though, we were scraping our fingernails to keep up with demand—we meaning 'me' and a small team of highly specialized practitioners who taught as adjuncts," he said. "This can be a very technical subject, and it isn't part of the arsenal of lawyers in general, so you can't easily ask someone else on the faculty to pick up the load without seriously dislocating their own research and teaching agendas. We needed full-time reinforcements in this field, and now I'm delighted to say we have the best there are."

Reichman, who has a strong international background and spent

years working for the United Nations in Geneva, pointed out that the three's concerns won't be simply about e-business and profit.

"David, James and I, although we come at this from very different positions, are all staunch defenders of the public interest," he said. "We want to make Duke an important outpost for maintaining the balance between the private and the public interest in intellectual property law. I think that bodes well for Duke.

"I am seeing a resurgence in interest in the preserving of the public good. There has to be a balance between the public and the private," he added. "We also see the strength of technological development as depending on a strong public domain so that products and applications developed in the public domain can be transformed by the private sector."

### A DEBACLE IN SEATTLE

Reichman also hopes the Law School will become a force for change in global trade. What happened in Seattle in December is an example of what can happen when trade talks go awry, and that view of a future economy wasn't pretty.

Rather than playing host to a convention where the World Trade Organization could chart the course for future trade in everything from software to peaches, the city was rent by the "Battle of Seattle." A gathering of delegates and diplomats saw a witches' brew of rioting, smashed windows, a police force run amok, clouds of tear gas, tourists accosted and hundreds of protesters hauled forcibly off to jail.

### Professor Deborah DeMott:

"I am delighted that both have chosen to join our faculty. They are creative and perceptive scholars whose work is prominent in a dynamic field."

At the same time, however, an even costlier battle took place. The fighting around negotiating tables was as intense, if not violent, as the riot. And it ended in a draw—a decision that could prove costly to countries around the globe. The WTO made little, if any, progress addressing issues such as tariffs and copyright protection.

"Seattle was a debacle," Reichman said candidly. "Some countries were going to ask for new and higher levels of protection for intellectual property even before the WTO had implemented the older requirements. David and I felt that was a bad idea."

They were proved right. The slow pace of progress, arduously made letter by letter, sentence by sentence, over two decades of GATT (General Agreement of Tariffs and Trade) talks, which led to the formation of the WTO, came to a screeching halt. The representatives of developing countries and the world's economic powers remain divided by bits and bytes, wheat and meat.



### IN PROFILE

**"Youngest entrant,  
oldest graduate"**

### JEROME H. REICHMAN

Professor Reichman laughs heartily when asked about the 24 years spanning the beginning and end of his quest for a law degree at Yale. "Youngest entrant, oldest graduate," he quips.

Reichman, who grew up in Denver, gained admission to the University of Chicago at age 16. "It was the last class that permitted early entrants," he recalls. Upon graduation in 1955 at 19 years old, he entered Yale Law School. But Reichman fell ill, and after recovering, received a prestigious Fulbright Fellowship in 1959. He had what he called a "difficult" decision to make—accept the fellowship and leave law school or stay in law school and reapply for the fellowship later. He chose the

former, being told by Yale that he could come back any time. "I did," he says. "But it was 20 years later. They let me back in after much consideration."

After the Fulbright, Reichman lived mostly in Italy, produced music and worked for the Agnelli Foundation. He then began cutting his teeth on international trade in a number of positions with the United Nations in Geneva. Over time, he became fluent in both French and Italian. While taking a break from his UN duties, Reichman decided to finish his law degree, which he did in 1979—at age 43.

"I had taken a leave from the UN with the expectation of returning at a higher position of authority," he adds. "I did not intend to teach." But he decided to join the faculty at Ohio State where a "dear friend" (Howard Fink) was a member of the faculty. "It was a difficult decision at the time," Reichman recalls, yet he certainly has no regrets about

"You can't consider Seattle a reaction against intellectual property concerns, because most protesters were talking about the environment and labor," Reichman said. "But in the forums themselves, delegates were making it very clear they were unhappy to be hearing about new demands on intellectual property rights.

"I predicted that if the developed countries pushed too far, too fast that things would blow up," said Reichman. "We have to find some way to make the process work."

Dating back to the 1940s, GATT talks have provided the foundation for international commerce negotiations. Both Lange and Reichman have been deeply involved in recent GATT developments as well as the so-called TRIPS agreement (Trade-Related Aspects of Intellectual Property Rights), which helped lead to the creation of the WTO. The organization now includes 135 countries and someday could include China. Reichman is determined

that the progress in global trade diplomacy not be squandered.

"We now for the first time have an international court that deals with international intellectual property law, and this court is already handing down opinions. That is something absolutely unprecedented. There is nothing like it in the world," Reichman said, pointing out the World Court at the Hague is voluntary. "Before 1994, the only way to enforce intellectual property law was if some court in some other country chose to apply that law. It was a very iffy proposition."

Reichman said he hopes Duke will become a center for the study of intellectual property in international trade, in order to help foster global trade.

In an article written in advance of the WTO conference, Reichman and Lange collaborated to propose negotiation rather than lawsuits to help developing countries deal with intellectual property rights issues. But the developed countries ran out of time under a six-

### Professor Tom Rowe:

"Not only are Reichman and Boyle highly distinguished appointments; with David Lange already here, the three of them together are likely to bring Duke distinctiveness as well as distinction in the intellectual property field. In varying ways, all of them often question highly protective approaches to intellectual property rights that are usually favored by major interests and the United States government, among others. These three scholars share a concern for the "public domain," a concept developed by Lange in a leading article many years ago. Of course the Law School does its hiring on the basis of academic distinction without regard to one's leanings, but these three colleagues may go beyond the individual and collective strength they bring in the IP area to forming an influential Duke 'school of thought' in the field."

going to the classroom: He is widely published on a number of crucial international trade issues and is one of the most highly respected scholars in the areas of intellectual property and copyright "As I look back on it now," he says, "it was an easy decision."

In recommending Reichman to the appointments committee, Professor David Lange praised Reichman's career and standing: "Extremely well-published, particularly in the international arena; highly regarded; copyright centered, but very broad-gauged; elegant education; multi-lingual; excellent colleague ..."

In order to help foster global trade, Reichman hopes to make Duke a center for the study of international intellectual property law as reformed by the WTO agreement of 1994.

## THE FACTS

**Age:** 64

**Current position:** Professor of Law, School of Law, Vanderbilt University

**Education:** B.A. (cum laude) in liberal arts, University of Chicago, 1955; attended Yale Law School, 1955-57; Fulbright Fellow, 1958-59; entered private sector; returned to Yale and received J.D. in 1979.

**Law career:** Professor of law at Vanderbilt, fall 1986 to present; visiting professor of law: University of Michigan, University of Rome, Italy, University of Florida; professor of law, 1985-86, The Ohio State University; associate professor of law, 1983-85, The Ohio State University; assistant professor of law, 1979-83, The Ohio State University.

**Pre-law career:** Senior editor, director of operations, International Trade Center, UNCTAD/GATT (United Nations), 1976-79; consulting editor, International Trade Center, UNCTAD/GATT, 1975-76; other positions as UN functionary; comment editor, *Yale Law Journal*, 1956-57; law clerk, Simpson, Thacher & Bartlett, New York, summer 1957; law clerk, Tippet, Haskell & Welborn, Denver, summer 1956.

**Courses taught:** Contracts; copyright; intellectual property in international trade; patents, trademarks and unfair competition law.

**E-mail address:**  
jerome.reichman@law.vanderbilt.edu

For a complete biography and highlights of Professor Reichman's career, please visit: [www.vanderbilt.edu/law/faculty/reichman.html](http://www.vanderbilt.edu/law/faculty/reichman.html)

## Lange's Innovative Thinking Helped Recruit Boyle, Reichman

One of the principal reasons James Boyle chose to come to Duke University's fledgling intellectual property team was the man who recruited him—David Lange. "The main reason for me is that with Professor Lange already there and with the hiring of Professor (Jerome) Reichman, Duke will have one of the top intellectual property and cyberspace faculties in the country," Boyle says.

He also looks forward to the open academic environment, which he experienced as a visiting professor in 1993-94. "It is the kind of place that is very open to whatever projects or ideas we come up with," Boyle adds. "For me to do something I like in an environment such as Duke's is extremely attractive and something I couldn't turn down."

Lange, Boyle stresses, symbolizes a faculty and school open to ideas and change.

"Academics are supposed to be iconoclasts, but very few of them are," he says. "David is the genuine deal, from the tip of his toes to the top of his head. I think that's the main attraction."

"The whole premise of academic life is that you are given an incredible amount of

year transitional period for implementation of the TRIPS agreement and many were not in full compliance, Reichman explained.

"The TRIPS agreement set up a whole set of rules dealing with enforcement so countries can sue if necessary," he said. "In our article, we said that if countries don't comply with the rules, they can be sued, but the rules leave a lot of gray areas. Compared to what we had before, this was an advance for intellectual property and copyright law."

Reichman and Lange argued for negotiations and bargaining to move countries toward better enforcement of intellectual property law to cut down on copying and pirating of everything from Windows to "Shakespeare in Love." For example, "In exchange for something a developed country would give, such as increased investment, the other country would agree to give you strong enforcement," Reichman said. "That country feels like it's a win-win, not a win-lose where you are only sending out more money to U.S. intellectual property owners."

### A BRIGHT FUTURE

In his memo to the faculty appointments committee, Lange cited changes within the U.S. legal system as another significant reason for the expansion of IP doctrines. He wrote that "American legal realists" have chosen "to ignore traditional boundaries among settled doctrines... In intellectual property, at any rate, doctrinal boundaries (among copyright, trademarks and unfair competition, for example), once reasonably secure, no longer seem secure or clear or even susceptible to an approximate location."

Demands in the marketplace have increased accordingly for sophisticated intellectual property lawyers, he continued, and the willingness at Duke and elsewhere to respond by training more of them have "come about not a moment too soon." Today, he sees nothing but a bright future ahead. "Within a couple of years at the outside, we here at Duke will have one of the best intellectual property programs in the country." ♪

## Duke Law IP Lecturing

### Biotech and Chemical Patent Law

**Karen A. Magri '96** is an associate with Myers Bigel Sibley & Sajovec in Cary, N.C. She specializes in preparing and prosecuting patent applications for inventions in the biotechnology arts; prosecuting re-examination proceedings; conducting patentability, validity and infringement investigations; and performing legal research for litigation matters and counseling clients regarding protection of intellectual property. Her publications include topics ranging from articles in textbooks on intellectual property to publications in scientific journals on cell biology, medical biology and endocrinology.

freedom, and with that freedom comes responsibility," he continues. "You have to challenge the ideas that everyone else takes for granted, to challenge what everyone sees as common sense, to try ideas that others see as unacceptable or ideas that are not favored by major institutions or make people uncomfortable.

"You need critical intelligence and also a particular kind of personality. David

personifies that personality."

Reichman says he chose to leave Vanderbilt late in his career due in part to his long-time friendship with, and respect for, Lange.

"He is a very distinguished copyright and entertainment law advocate," Reichman says. "He's a very independent and original thinker. He looks at problems in a fresh way. He always makes you think

about solutions in a fresh way. He takes a very strong economic approach but not a dogmatic approach.

"Many members of the law, and economists, are committed to one ideology or another," he says. "That's not David's point of view."

## Fellows Teach Traditional and New Courses

### Patent Law and Trade Secrets

**Kenneth D. Sibley '85** has 12 years of experience in intellectual property law and focuses his practice at Myers Bigel Sibley & Sajovec in Cary, N.C., in biotechnology and chemical areas. Sibley is an author and editor of *The Law and Strategy of Biotechnology Patents* (Butterworth Heineman, 1994), and has authored numerous articles relating to patent law, including "Pursuing Protection in the European Market," *SIM News* (1992) and "Practical Utility: Evolution Suspended?" *IDEA* (1992).

### Advanced Copyright Law

Currently a sole practitioner in Bethesda, Md., **Terri A. Southwick '85** consults for the Walt Disney Company on domestic and international intellectual property legislation and policy issues, with particular emphasis on copyright and new technologies. She was a member of the U.S. delegation to the World Intellectual Property Organization (WIPO) Diplomatic Conference on Certain Copyright and Neighboring Rights Questions in Geneva and a member of the White House Information Infrastructure Task Force, where she prepared comments and testimony on proposed copyright legislation and international agreements.

### Legal Dynamics of the Start-Up Environment

**Kip A. Frey '85** (see alumni profile page 16).





# The insider

A Tale of Tobacco:  
How 'The Insider' and  
'The Closer' Took On  
an Industry—and Won

BY KARI J. CROOP

If you call them by their nicknames, Jeffrey Wigand and Joe Rice might sound a lot like superheroes.

Wigand is now known to millions as "The Insider," as a result of a 1999 Touchstone pictures release and multiple Oscar nominee, touting him as the highest-ranking former executive to ever blow the whistle on Big Tobacco. And Rice, the South Carolina lawyer who represented 29 states in their suit against the tobacco industry in 1997, has been known for years as "The Closer," with a fierce reputation for bringing in staggering settlement amounts for damages in mass-claim tort cases.

Likening the pair to a dynamic duo isn't a bad comparison, considering the weight of what they've helped to accomplish. Both Wigand and Rice played pivotal roles in the historic \$368 billion settlement with the tobacco industry—the biggest public health reform issue in U.S. history. And along with scores of attorneys and other anti-tobacco activists, they hit the nation's largest tobacco companies where it hurts the most—directly in the wallet.

A recent event sponsored by the Law School's new Program on Complex Dispute Resolution brought Wigand and Rice together to discuss "The Insider" movie and their experiences with the tobacco deal. The two fielded questions from a packed auditorium of faculty and students captivated by the story's unmistakable Hollywood quality.

Wigand recounted his days at Brown & Williamson Tobacco, where as vice president for research and development from 1998 to 1993, he had an insider's view of a corporate culture that he says was full of deceit and outright lies about the addictiveness of nicotine and the harmful effects of tobacco. Louisville, Ky.-based Brown & Williamson, the nation's No. 3 tobacco powerhouse, is owned by BAT Industries, the world's second largest tobacco concern.

"Inside the company, the mantra was 'hook 'em young, hook 'em for life,'" says Wigand. "It was so flagrant, so overt. It was sickening." Sickening, especially, for a man who says the tobacco company originally hired him to help develop a safer cigarette. "I had spent 25 years using science to search for truth," says Wigand, "and I truly believed they would make the product safer. But that just never happened. I found out, at B&W, there was no such thing as an 'unsafe' cigarette."

Wigand says his disillusionment really began when Brown & Williamson brought in a lawyer to rewrite the language of a scientific report detailing the possibility of a non-addictive version of nicotine and a non-flammable cigarette to prevent accidental fires. "Just like that, it became two-and-a-half pages of vanilla," says Wigand, snapping his fingers. "They made it

company policy that the words 'safer' and 'addictive' would never be part of a permanent record.

"At that point, I knew I had made a mistake (by taking the job), but I didn't do anything about it," he says. "I had a wife, a family, and at the time I was being paid \$300,000 a year. And I knew full well how the tobacco industry treated defectors."

But it was a 1993 incident that finally pushed Wigand over the edge. From a toxicology report, Wigand says he discovered that Brown & Williamson was using coumarin, a toxin shown to be a carcinogen, in its pipe tobacco to enhance the flavor. When Wigand insisted that it be removed, he says he was told it would negatively affect sales and, when he continued to press the issue, that he should mind his own business. Wigand says he wasn't surprised when, a few months later, he received a notice that he was being fired for, as he puts it, having "poor communication skills."

"They thought they owned my mind—just because I had spent time in tobacco," says Wigand. "But at that point, it didn't matter. All I wanted to do was get away."

#### MAKING THE BREAK

Wigand did get away—with a comprehensive severance package and the

promise that under a strict confidentiality agreement he would never disclose information about Brown & Williamson's business practices. But he soon learned that leaving Big Tobacco behind wouldn't be quite so easy.

The plot thickened in early 1994 when the conscience-stricken Wigand agreed to provide a sworn deposition in Mississippi to the FDA, which was investigating the tobacco industry. "I realized that if we didn't go forward then, I would never be given the opportunity to do it," he says.

Wigand secured the services of Mississippi attorney Dick Scruggs, who agreed to represent him after Kentucky lawyers had turned him away repeatedly. Once Wigand gave the deposition, it was immediately sealed, but his testimony was later leaked to *The Washington Post*. Overnight, Wigand was outed to the public, began facing a swarm of media attention and personal attacks, and was promptly sued by Brown & Williamson for violating his confidentiality agreement.

Brown & Williamson also dug up embarrassing personal information on Wigand and accused him of having a sordid past of "deception and recklessness," says Wigand. The company claims the background check was a defense against Wigand's charges; Wigand says

South Carolina lawyer Joe Rice (bottom left) and his firm joined 40 U.S. attorneys general in suing the tobacco industry in the early 1990s, a move unprecedented for a private law firm.







When he decided to blow the whistle on Big Tobacco, former top tobacco executive Jeffrey Wigand (left and center) had no idea how his action would shake up the industry and dramatically alter the course of his life and career.

it was a deliberate tactic to discredit his reputation and his testimony.

For months after his testimony, Wigand says he received threats to his children's lives and even found a bullet in his mailbox. Though "The Insider" movie suggests otherwise, there has never been any evidence linking Brown & Williamson or the tobacco industry to any of the threats. But regardless of who was responsible, says Wigand, he didn't doubt that his life was in danger.

#### MAKING THE CASE

Just a few states away, Joe Rice had been fighting Big Tobacco for years from his home-base firm of Ness, Motley, Loadbolt, Richardson and Poole in Charleston, S.C. He credits his firm's involvement in the tobacco litigation to named partner Ron Motley, whose mother had died of emphysema after years of smoking. "He made a promise to himself that some day he would deal with that," says Rice. "He knew there had to be a way to make the tobacco companies take responsibility."

In an unprecedented move in the early 1990s, Motley's firm joined the 40 attorneys general of the United States in suing the tobacco industry. In the past, Big Tobacco had proven to be a formidable foe with a heavy arsenal of red tape, expensive lawyers and clever spin doctors. But Wigand's willingness to provide insider information gave the states the clout they needed to win.

"Through all this, we would hit our heads against the wall, and then something would happen," says Rice, recall-

ing the frustration of the process. "First, it was documents going public. And then, it was the whistle blowers—like Jeff. That really kept us going."

The fact that the lawyers also had the attorneys general on their side was essential, says Rice.

"The attorney general in a state is perceived as being the chief legal enforcement officer of the state, and the most credible," he says. "He's probably also the most non-partisan figure at the state level. Because we had them, there was a new air of attack."

Through months that lapsed into years, Rice served as counsel, working alongside the attorneys general and remaining an active participant until the negotiations that resulted in the multi-billion dollar settlement.

"In theory, it was a simple recovery, but it was on behalf of the public. We had to look at the law and develop theories to make it work on a much broader basis," says Rice. "I guess it worked."

These days, Rice is trying his hand at something new—teaching. In 1998, once the dust of the tobacco deal had settled, he accepted an offer from former Dean Pamela Gann to extend his expertise to the Law School. "After tobacco," says Rice, "I was interested in doing something a little different."

He appeared first as a guest lecturer and then this past fall taught a joint seminar on products liability with Professor Francis McGovern, faculty director of the Center on Complex Dispute Resolution. Mc Govern, whose

name is synonymous with mass claim litigation, is well known for his work with the DDT toxic exposure litigation in Alabama, the Dalkon Shield controversy and his current work involving the silicone gel breast implant litigation.

In the seminar, Duke students not only had endless opportunities to grill Rice about his involvement with the historic settlement, but they also got to question Wigand when he visited the class in November. "I'm not a lawyer," Wigand told students. "Although probably, by osmosis, I am a little bit." Many, fresh from seeing the Jeffrey Wigand of "The Insider" movie, were eager to determine how much of the film was fiction and how much was fact.

According to Wigand, most of the movie is grounded in reality. "I didn't give any input to the movie," Wigand says. "But it does reflect a tremendous degree of fidelity to actual events—psychologically and especially philosophically.

"They manage to capture more than three years of events in less than three hours," he says. "And that's not bad." ▽

For more information on Jeffrey Wigand and his nonprofit foundation, Smoke Free Kids Inc., visit [www.jeffreywigand.com](http://www.jeffreywigand.com). Brown & Williamson's site can be accessed at [www.brownandwilliamson.com](http://www.brownandwilliamson.com).

# alumni snapshots

“ Take the first few years after law school and learn your craft. Be a lawyer.”  
-Kip Frey '85

## High-Tech Entrepreneur Kip Frey '85 Creates Latest Success Story

by Debbie Selinsky

For Kip Frey '85, 1999 was a big year.

First, he was named the Southeast's top CEO in *Digital South Magazine*. Then in November, the North Carolina Electronics and Information Technology Association named the company he currently heads, OpenSite Technologies Inc., the Software Company of the Year.

Judging from his recent honors, you might think Frey was a high-tech

wizard. But the OpenSite president and CEO matter-of-factly claims he's far from it. "I'm not by any stretch of the imagination technologically astute," he said.

For the attorney-turned-entrepreneur, making a career in the technology field actually happened in a more round-about way.

A Phi Beta Kappa film school graduate from the University of Southern California before coming to law school, Frey was practicing entertainment law in the Triangle in the early 1990s. He was representing most of the independent record labels and movie studios in the state, as well as some more high-profile performers like the canine star of the movie "Turner and Hooch," when he got a call from the Turner Broadcasting System in Atlanta.

Frey accepted the post as associate general counsel for Ted Turner's operation, but things quickly changed. "Six months after I got there, they fired the president of their professional wrestling company and asked me to

come in and run World Championship Wrestling," Frey chuckled. "So I did, until they found somebody who knew what they were doing. I knew nothing about wrestling, of course, but it was an interesting experience—oddball, but interesting." Frey's brief stint in wrestling led to his first "business" job at the company, as vice president of new business development for Turner Home Entertainment.

Two years later, he became a partner and chief legal officer at Oz Resorts & Entertainment Inc., an entertainment/multimedia start-up in Los Angeles. In 1994, Frey came back to the Triangle to help an ex-client sell his company, Ventana Communications Group, a technology publishing company with several Internet projects. As part of the closing, Frey was asked to run it.

During the three years he served as executive vice president, general counsel and then acting president at Ventana, Frey negotiated and closed the exclusive distribution relationship for the retail



Now CEO and president of OpenSite Technologies Inc., Kip Frey '85 leveraged his law career into a big-business opportunity.

channel launch of Netscape Navigator, one of the most successful software introductions ever. He also negotiated and closed a co-development agreement with America Online for production of Official AOL Tour Guides and Membership Kits and handled Ventana's sale to The Thomson Corporation, a large Canadian media conglomerate. When Thomson decided to consolidate its technology publishing operations in Arizona at the end of 1997, Frey chose to stay in the Triangle.

Bitten by the technology bug, Frey soon became president of Accipiter Inc., a software company funded by several local venture capital groups. When Accipiter was sold to CMGI Inc. in April 1998 for \$45 million, it was the largest private sale of a software company in the history of the Triangle. Accipiter's management and investors were required to hold the CMGI shares for a period of time. During that time CMGI shares skyrocketed, making the

ultimate value of the deal nearly a billion dollars.

Frey stayed around long enough to manage the integration of the companies and started at OpenSite in August 1998. "After I finished at Accipiter, I checked with venture capitalists to gauge their interests, and it seemed that dynamic pricing—where the price fluctuates based on customer demand—held the most potential of all the companies around at the time," he said. "It has turned out to be a very significant area of the Internet and part of the vast majority of electronic commerce sites."

In addition to his work and spending time with his family, Frey said he enjoys extracurricular activities like teaching and serving on the Raleigh Chamber of Commerce's Board of Directors. This year, he also became a new member of the Law School's Board of Visitors.

"I love it here, and I enjoy teaching both at Duke's Sanford Institute of Public Policy and off and on at Duke Law School," he said. "David Lange

and I (he was my mentor in law school and my great and best friend there) are teaching a course on the legal dynamics of the start-up environment. We're placing law students in local start-up companies with company general counsels as their mentors. This way, they'll get real, live company-building experience in an academic setting."

Although Frey's career path has taken him into the corporate/business world, he values his legal education and experience. "Students are always asking me how to leverage their legal education into doing something else," he said. "I tell them to take the first few years after law school and learn your craft. Be a lawyer. The investment of three years of your life in law school doesn't pay off until you've become an able technician. There are plenty of years to do other things once you've mastered your craft." ♣

# alumni snapshots



## Tony Harrington '66 Trades Law for Foreign Diplomacy

by Debbie Selinsky

Brazil has a new ambassador.

After sailing through congressional confirmation hearings last fall, Anthony S. Harrington '66 and his wife, Hope Reynolds Harrington, moved their household to Brasilia early this year to represent the United States in South America's largest and most populous country. Harrington, a native North Carolinian, has impressive credentials for an ambassadorship, having served as chairman of the President's Foreign Intelligence Advisory Board in Washington, D.C.

In a November interview from his office at Hogan & Hartson in Washington, Harrington was in the process of wrapping up his affairs as a senior partner at the firm and in various

business ventures before he took up his ambassadorial duties at the beginning of this year.

A longtime Democrat who served as President Clinton's general counsel during his 1992 presidential campaign and headed up the Center for Democracy, the soft-spoken Harrington, a member of the Law School Board of Visitors and a former assistant dean from 1966 to 1968, has become increasingly involved in foreign affairs over the past seven years.

"I had thought I'd probably take a full-time role in the [Clinton] administration when it came into being seven years ago," he said. "At the time, I had kids at home [in Easton, Md.] and didn't want to disappear into the bowels of Washington entirely." He was also disinclined in more recent years to take on a full-time position because of the "less than civil" environment in the nation's capital, he added.

In 1993, Harrington had the opportunity to serve on the President's Intelligence Oversight Board on a part-time basis. "I found it unique and substantive and interesting, and it did not require me to totally disappear, except for occasional stretches," said Harrington, who would later become chairman of the group. "This work

When Tony Harrington '66 and his wife, Hope, were choosing an ambassadorship, Brazil came to the top of the list. "We started with the usual Western European countries, but then we said, 'we've been there and done that.'"

added a great deal more to my understanding of national security and to the foreign relations landscape, as I conducted inspections of embassies in other installations abroad."

Harrington said that a few months ago, the idea of an ambassadorship was raised in conversation with National Security Adviser Sandy Berger. "The initial discussion was abstract, but I began to realize there were plenty of interesting jobs outside Washington," Harrington said. He and his wife sat down and began to make a list of places they'd be interested in going. "We started with the usual Western European countries, but then we said, 'We've been there and done that, so let's get beyond our usual narrow horizon.' Americans have something of a blind spot toward the South. And Brazil soon came to the top of the list."

For example, he added, few of us realize that Brazil is the world's fifth largest country with the ninth largest economy, an economy that promises to grow even larger in the future. "The United States has put more investment into Brazil than in any other emerging market—\$40 billion last year," Harrington said. "Brazil has been an important ally of the United States in the Western Hemisphere and the world.

“Everyone likes  
the Brazilians.”  
-Tony Harrington '66

They have supplied, for example, military forces in multilateral efforts in Iraq, Kosovo and now in East Timor.”

Culturally, Brazil is a fascinating mix, with its Portuguese base, a large Hispanic population and the largest Japanese community outside Japan. In addition, the country is host to populations of Germans, Italians and Native Americans. “My limited experience with Brazil is that I like the people very much,” Harrington said. “Everyone likes the Brazilians.”

There’s also a strong relationship between President Clinton and Brazilian President Fernando Henrique Cardoso. According to Harrington, the only two foreign government officials who have been invited to Camp David are the Cardosos and the Blairs (of the United Kingdom).

Harrington said he sees his legal training and experience as well as his work in the corporate arena as important tools in his new challenge.

“The judicial system needs improvement, and I hope to be able to help with that,” said Harrington, who also served as vice chairman of the President’s Foreign Intelligence Advisory Board and as a member of the congressionally-created Commission on the Roles and

Capabilities of the U.S. Intelligence Community.

“Brazil became a democracy earlier than some of the other Latin American countries, and we have in the Cardoso administration, working with Congress and the president, very substantial progress in strengthening democratic institutions and in fiscal reform, progress which has allowed them to flourish economically,” he said. “They had a downturn this year, but where people expected a recession, things turned out flat and are headed back up. We’ve tried to support them as we can in that reform process.”

U.S. business has a big presence in Brazil, including 400 members of the Fortune 500. “We will, of course, try to assist U.S. business interests in Brazil,” said Harrington, whose own business ventures include founding Telecom\*USA, which became the fourth largest long distance telephone company prior to its merger with MCI, and Ovation, Inc., an arts television network based in the Triangle area.

Harrington is a Taylorsville, N.C., native who did his undergraduate work as a Morehead Scholar at the University of North Carolina-Chapel Hill. His wife, Hope, has served as president of the Talbot County (Md.)

Board of Education and chair of the Maryland Service Learning Board. Their older son, Adam, a 1997 UNC-CH graduate, is new media manager for Ovation, Inc.; son Michael, a member of the UNC-CH Class of 2001, is expected to visit the 10-acre ambassador’s residence during the summer.

Of course, May the Labrador retriever (the aunt of the Clintons’ chocolate lab, Buddy) and Josie the Jack Russell terrier, will accompany the Harringtons to what will be their home for the next 18 months to two years. (Ambassadors serve at the pleasure of the president, the new ambassador said.)

The Harringtons were amused when the daily newspaper in Easton reported on the ambassador’s confirmation and ended the story by saying that Harrington said he would be taking the dogs to Brazil but “wasn’t sure about his wife.”

“I meant I wasn’t sure whether she would go with me at the beginning or come out later,” he chuckled. “My wife left me a funny voice mail about the article. And then there was ANOTHER front page story with the big headline, ‘She’s Going, Too.’” 🐕

# alumni snapshots

“It was a matter of being in the right place at the right time.”  
-Alicia Marti '97

## Alicia Marti '97 Helps Make History on Clinton Case

by Debbie Selinsky

In 1998, President Clinton's attorney David Kendall was a regular on network news reports. Cameras usually captured him as he departed federal courts with an entourage of attorneys at his side.

Among those attorneys was Alicia Marti '97 who, in her first year of practice, found herself involved in the trial of the century. But ask the articulate young attorney about her plum assignment to President Clinton's defense team, and she'll modestly tell you that it was simply a matter of "being in the right place at the right time."

"When the Monica Lewinsky phase of the independent counsel's investigation became public (in January 1998), David Kendall was looking for a junior person who had a lot of time to spend on the case, and he gave me a call," Marti said in an interview from her Washington, D.C., office. "Obviously, there was a great deal of media reporting on the investigation and what Ken Starr's office was doing, so we were constantly dealing with a deluge of information."

Only three months before, in September 1997, Marti had accepted an associate's position at Williams & Connolly in Washington, because of the firm's excellent reputation for general litigation. "I wanted to do litigation work and to work on a lot of different cases, especially things that wouldn't keep me sitting in the office writing motions and briefs," she said. "I wanted hands-on experience, and Williams & Connolly had a reputation for offering that kind of opportunity." Marti credits Duke Professor Sara Sun Beale with helping her select the right match for her interests and strengths.

Once she began work on the Clinton case, Marti's responsibilities changed as the team's activities changed. "We spent several months in the grand jury investigation, a few months in Judiciary Committee and six weeks in the Senate," she said. "I did so many different things—I learned a lot in a short amount of time. The case was unique in so many ways for me, because I hadn't had a lot of experience trying court cases or criminal investigations. I had three months of practicing law, so everything was new to me. But there were a lot of new issues for everybody since there had been only one other presidential impeachment trial."

Marti, who said she met fellow alum Ken Starr '73 when he was on campus recruiting, remembers the months on the case as "incredibly busy." And even when she had time off, she said she was "fairly obsessed with the whole thing."

"When I wasn't working, I'd go home and watch all the political talk shows and voraciously read papers and news magazines," she said.

When asked about working on the president's case, Marti is articulate but



After just three months as an associate, Alicia Marti '97 found herself at the center of President Clinton's impeachment trial, as a member of the defense team.

circumspect. "I can't say too much about the case—we don't give interviews on the subject," she said. "Obviously, I was pleased and relieved with the outcome. I was fortunate—especially during my first year, but at any time in my career—to have the honor of having the president as a client and to be part of history. To be part of hard work that was so important gave me a great sense of fulfillment and was challenging in a positive way," she said, adding that, of course, she hopes there will never be another impeachment trial for any U.S. president.

And while the impeachment trial was difficult for everyone involved, Marti said she believes there was a positive aspect to the situation. "I think that on the whole, our constitutional processes work—the system works," she said.

Now, the 26-year-old New York City native is back to learning everything she can about litigation, especially pertaining to the government cases that comprise a large part of W&C's client list. "I'm still not ready to specialize," she said.

While a sociology major at Dartmouth College, Marti copped a junior year internship in the Manhattan District Attorney's office and became intrigued by the law as she sat in on an attempted murder trial. It was then that she decided to go to law school, she said.

"I'd had some sociology classes on domestic violence and battered women and the legal issues that face them in the courts, and the exposure and experience I gained in the D.A.'s office all contributed to my interest in law," she said.

"The field was very new and foreign to me—my father was a doctor and my mother was a nurse—and I began to realize how, in ways that I didn't understand at 18, the law touches the lives of everyone," she added. "We're all affected when laws are passed or not passed or upheld. We have rights when we buy a house, make a contract with someone. So many times, friends ask me about unsealing adoption records, fighting with landlords or about their grandmother's estate—things that

affect various aspects of all our lives, whether or not we're lawyers."

Drawn to Duke Law School by its reputation, its intimate size and the relatively small size of Durham, Marti recalls the highlight of her law school experience as the time she spent working in the pro bono domestic violence program. She worked in the program, headquartered at the Durham District Attorney's office, all three years of law school and served as co-director in her second year, but the summer she spent as an intern there was most special.

"Being there every day—something we couldn't do during the school year—gave me a lot of contact with clients," she said. "It made a difference in the relationships I was able to establish. I would be the person there when a woman first came in to file a protective order, when she came back three days or a week later, and I was still there when she filed a motion because her batterer had violated the protective order. I developed strong relationships with some of the women, and it was a wonderful experience." ♡



**THE DOCKET**

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## Remembering Jack Latty

by John D. Johnston Jr. '56

### *Everyone who was at Duke Law School in the 1960s*

remembers Dean Latty's administrative assistant, Louise Umstead. A model of efficiency, she knew everything worth knowing within her realm. Periodically, she would knock softly and tiptoe into the assistant dean's office, carefully shutting the door behind her, indicating that sensitive intelligence was about to be conveyed. "Honey," she'd say, "let me tell you what that little man is up to now!"

Miss Umstead used pseudonyms for certain people, and the dean was always "that little man" when he was out of earshot.

And, of course, that little man was always up to something. Years later, Erwin Griswold, the magisterial dean emeritus of Harvard Law School, visited Duke and said: "Oh, yes, your Dean Latty—we remember seeing him at professional meetings. He was always in a hurry, scurrying hither and yon. We wondered what he was up to." Griswold paused, then stated emphatically, "And now we know!"

We do know a great deal, but the full story of Jack Latty's emergence as student recruiter and law school dean par excellence has never been told. Nor is this account definitive. For the period 1957-62, it is based mainly on information supplied by Latty himself. From 1962 until his retirement as dean in 1966, I

rely upon my personal observations as his colleague.

In the spring of 1957, Duke Law School had a much better than average faculty but enjoyed no particular distinction in the law school world. The physical plant was inadequate, and the school that in the 1930s had wooed Richard Nixon with a full scholarship was not aggressively recruiting students. The deanship was vacant; a senior faculty member, Dale Stansbury, was serving as acting dean while the school searched for a new leader.

Professor Elvin R. Latty, then in his mid-50s, was an excellent teacher and world-class scholar who recently had undergone treatment for serious health problems. Latty's status within academia was secure and he was enjoying a full family and social life in Durham with his wife Ruth and their daughter Joan. There was no reason for him to contemplate an administrative career.

Then Dale Stansbury came into Latty's office with a startling revelation: The School had only 15 applicants for the next entering class. Unless something could be done, and soon, Duke Law School appeared to be on the path to extinction.

At that moment, Latty must have been aware that his personal situation was secure. Prestigious law schools would vie for his services, and he could withdraw gracefully from Duke's

sinking ship. But he never seriously considered that option. Instead, Latty volunteered for the thankless task of leading the rescue effort and assuming personal responsibility for recruiting a quality entering class in 1957.

When I asked him later why he had committed himself to such a strenuous effort with an uncertain outcome, he replied that he and his family had put down their roots in Durham, and he didn't wish to start over somewhere else. It was as simple as that.

How successful a student recruiter did he become? When I joined the faculty five years after his first effort, the law school was struggling to process more than 1,000 applications for 100 places in the entering class.

How had he done it? First, he identified and contacted pre-law advisors at colleges and universities around the country, by mail and in person, with the good news that Duke Law School had much to offer their brightest graduating seniors. Then he made himself available for personal interviews with potential students. A typical recruiting week would have him driving to Philadelphia, meeting with students and pre-law advisors at three local colleges, moving on to Princeton or upstate New York, then over to Yale, Wesleyan and Harvard. The trip might end on Friday in Williamstown or Hanover. Then he would drive back to Durham in time for his Monday schedule.



*"Sometimes, we may have to be a bit*

Later, he extended his recruiting radius to include the fine liberal-arts colleges of the Midwest. Eventually, he traveled as far west as Brigham Young, attracting students who have become some of the School's most distinguished graduates. Given a few more years, he would undoubtedly have prospected successfully among the elite colleges of the West Coast.

Latty understood the value of institutional advertising. He wrote a booklet entitled *Studying Law at Duke*, which was mass-produced and shipped to dozens of colleges and universities. It contained sound, practical advice for college students contemplating a legal career with emphasis, of course, on Duke's strong points.

Latty also observed that several top-notch northern and midwestern schools were scheduling southern tours for their tennis and golf teams during spring vacation. He noticed that some would be coming to play Duke and hit upon the idea of inviting visiting team members to join him for a complimentary dinner at the Oak Room. From his own involvement in athletics at Bowdoin and Vermont, he knew that meal money for college athletes on the road was usually inadequate, especially in the "minor" sports. He didn't limit the invitation to pre-law students, because his objective was to generate a cadre of Duke boosters at these fine colleges. The ploy worked; acceptances poured in.

Latty's modus operandi was as effective as it was simple: At dinner, he encouraged his guests to order anything they wished from the menu; he ordered a bowl of soup. When he had finished his soup, and his guests were well into their entrees, he pushed the bowl aside and conducted a seminar for his captive audience on the merits of Duke and its Law School. On learning of this tactic, one pre-law advisor chided Latty for using unethical methods to attract students. Latty's reply: "Surely, George, you don't mean to suggest that the souls of Williams men are exchangeable for roast beef medium rare!"

His approach to student recruiting was innovative, imaginative and energetic. Moreover, he added a personal touch to every aspect of the process. Top prospects were certain to receive a cordial personal follow-up note from him, which contrasted sharply (and favorably) with the impersonal, anonymous form letters these students received from other law schools.

When Duke's trustees established a policy barring admission to black applicants, a few faculty members—not a majority—urged Latty to oppose the policy.

He did that, and more: He personally implemented a strategy now described by proponents of affirmative action as "casting a wider net." He extended his recruiting efforts to predominantly black institutions and emphasized Duke's interest in attracting outstanding minority students.

As usual, he succeeded. I'll never forget the twinkle in his eye when, during my visit to Durham in 1961, he handed me a sheet containing individual photographs of the entering class and said, "Notice anything different?" There they were: two African-American faces. (A year later, I was privileged to become personally acquainted with Walter Johnson '64 and David Robinson '64). Encouraging minority applicants was the right thing to do, and Latty did it right. Messrs. Johnson and Robinson were not merely pioneers at the Law School; they may also have been the first African-Americans ever admitted to Duke University.

It is fair to say that every entering class from 1957 to 1966 was hand-picked by Jack Latty. When I arrived in 1962 to be his assistant, he made it clear that as a small school with high ambitions, Duke needed to attract "marketable" students, i.e., those who not only would become partners at the nation's prestigious law firms, but also would later achieve distinction as senior partners or "rainmakers" in today's parlance—judges, government officials or corporate executives. The subsequent careers of 1960s Duke graduates eloquently attest to his success in achieving that objective.

Latty understood that to recruit the best talent, the Law School needed a vigorous placement program to introduce top law firms to Duke's highly marketable students. He broadened

*Delphic. We might have to write, 'Dear Sir, if you can get this young person to work for you, you'll be fortunate indeed!'*”

*-Former Dean Jack Latty*

distribution of the brochure that showcased members of each graduating class and made personal contacts with hiring partners to persuade them to send interviewers to campus. These efforts paid off, and word of Duke's quality student body spread quickly. Prospective employers came, saw and hired. Latty proudly inserted an ever-growing list of prestigious hiring firms in each new release of *Studying Law at Duke*.

When I joined the faculty in 1962, I became the titular director of placement. Of course, Latty orchestrated every move. We held an orientation session each fall to acquaint the students with our procedures. He usually opened these sessions by assuring them of his willingness to write letters of recommendation. One year, he added this caveat: "Sometimes, we may have to be a bit Delphic. We might have to write, 'Dear Sir, if you can get this young person to work for you, you'll be fortunate indeed!'" The students loved it, because they understood that he was totally committed to them.

Latty's timely response to the student application emergency in 1957 led to his succeeding Stansbury as acting dean a year later. In this role, he quickly demonstrated that student recruitment was not his only strong suit. The word "acting" was quietly dropped from his title.

As dean, his leadership in faculty recruiting was an outstanding success. Arthur Larson, Hodge O'Neal and Brainerd Currie were the star

acquisitions, each one an established authority in his field. A number of able junior colleagues also joined the faculty during Latty's tenure, including William Van Alstyne, one of the most outstanding.

Latty also addressed the need to replace the School's inadequate physical plant. His success in improving the faculty and student body had caught the attention of Bunyan S. Womble, chairman of the University's Board of Trustees, who became his ally in convincing the University to construct a new law building. They were an improbable team, the tall, patrician lead partner of the prestigious Winston-Salem law firm and the diminutive son of an immigrant Italian stonecutter from Deer Island, Maine. But they were successful in getting the University to finance the project. It is characteristic of Latty and Womble that each would later give all the credit to the other.

The new Duke Law building was dedicated in the spring of 1963, with due pomp and circumstance. Chief Justice Earl Warren gave the principal address, but Latty's short speech was the hit of the ceremony. He accepted the building on behalf of its "feoffees to uses," and managed to insert references to Dante's *Inferno* as well as Horatius at the bridge and Cincinnatus at the plow. It was a virtuoso performance.

On the evening following the dedication ceremony, a banquet was held at the Civic Center downtown.

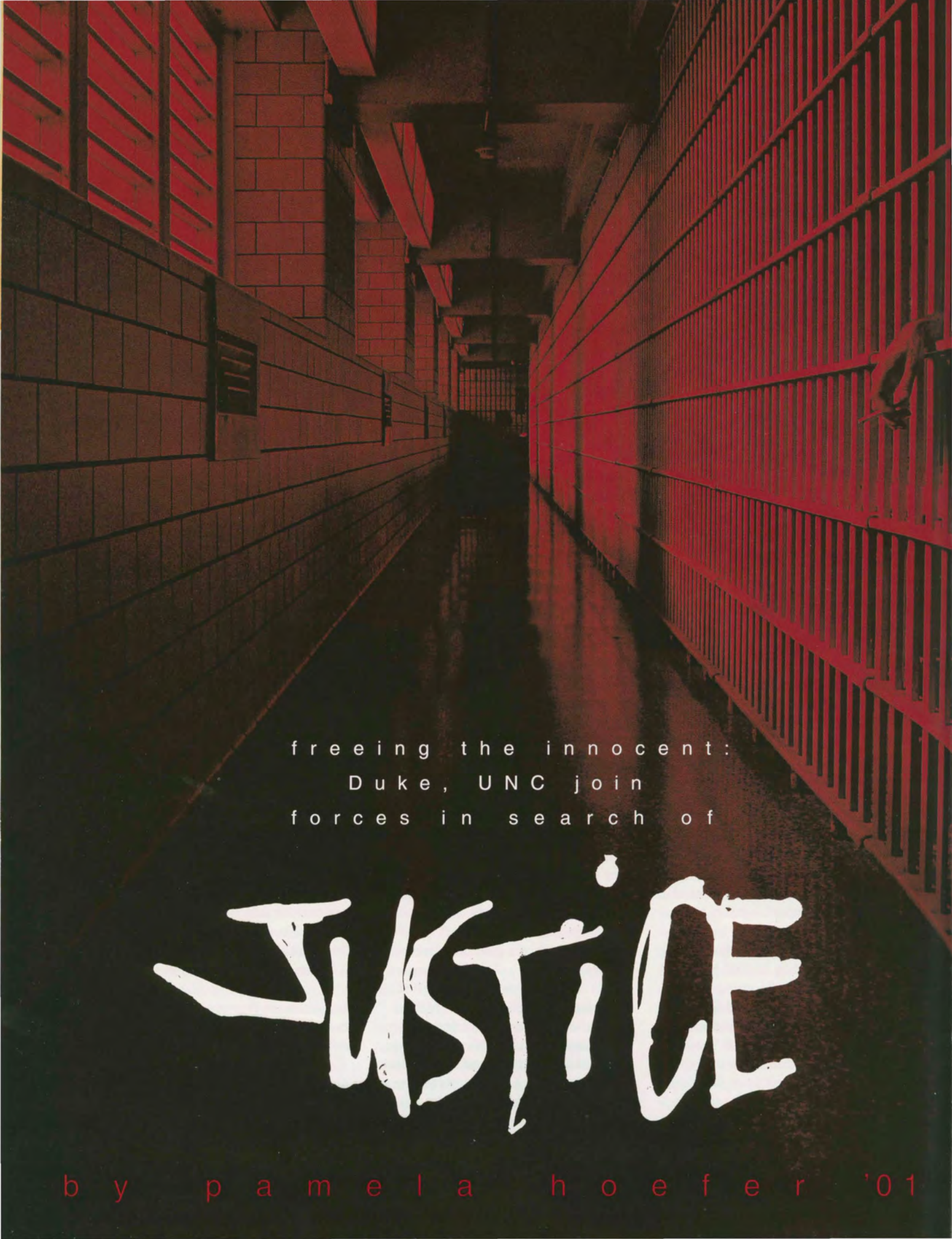
The hall was packed with students, faculty, alumni, delegates from other law schools and distinguished guests including Solicitor General Archibald Cox, the principal speaker. The most dramatic moment of the evening occurred as the toastmaster, Professor Charles Livengood, was introducing those at the head table. When he came to Latty, a spontaneous standing ovation burst forth, with great applause and loud cheering. Latty was clearly embarrassed. After futilely gesturing for everyone to sit down, he turned to Ruth in frustration and exclaimed "I was just doing my job."

Some job; some little man. By concentrating phenomenal gifts of intelligence, imagination and energy in the fulfillment of a heartfelt institutional commitment, he achieved spectacular results. When Latty turned over the reins to Hodge O'Neal in 1966, Duke had risen from its 1957 nadir to universal recognition as a first-rate national law school.

It was a magnificent achievement, for which there may be no parallel in American legal education. ♣

*John D. Johnston Jr. received his law degree from Duke in 1956 and was a member of the faculty from 1962-69.*

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freeing the innocent:  
Duke, UNC join  
forces in search of

# JUSTICE

by p a m e l a h o e f e r '01

**"My greatest fear in life is to be accused of a crime I didn't commit. Conviction and sentencing, possibly to death, are nearly incomprehensible—the verdict, the shackles, the loud clanging of the door closing behind me, separating me from freedom, family and friends. This basest of reasons compelled me to become involved with the Law School's Innocence Project when Cindy Adcock began organizing the effort at Duke last spring. The project also presented an opportunity for me to serve the community of North Carolina, creating the balance between private and public service for which I strive."**

**-Duke Law student and Innocence Project volunteer Pamela Hoefler '01**

The Innocence Project was born in early 1992 at Yeshiva University's Benjamin N. Cardozo School of Law in New York, through the efforts of faculty member Barry Scheck and civil rights attorney Peter Neufeld. Scheck, who has represented such high-profile defendants as O.J. Simpson and Louise Woodward, is well known for his work in setting standards for forensic applications of DNA technology. Since 1988, his and Peter Neufeld's work in this area has shaped the course of case law, leading to a National Academy of Sciences study on forensic DNA testing, as well as important state and federal legislation.

The project focused specifically on the use of biological evidence—primarily DNA—to free innocent prisoners. After achieving the successful exoneration of several prisoners, the project was soon overwhelmed with calls for help. To date, the project has represented or assisted in more than 33 of the 54 cases in the United States in which wrongful convictions have been reversed or overturned. Currently, the project is handling more than 200 cases, and more than 1,000 are pending.

After years of operating on its own, Cardozo put out a call for help last year, seeking to create an Innocence Project network at other law schools nationwide. After a conference on the death penalty and innocence last spring at Northwestern University's Law School in Chicago, attendees Rich Rosen of the University of North Carolina at Chapel Hill Law School and Duke's Cindy Adcock heeded Cardozo's call for help and decided the

two law schools should collaborate. Rosen said he recognized "the significant role law schools should and must play in dealing with the problem of the conviction of the innocent."

Duke had additional reasons for participating: The Law School's Prisoners Rights Project (PRP) had recently shut down due to, as Adcock told the *Duke Law Reporter* last March, the demise of student interest in simply finding prisoner cases without having further contact with the prisoners. Joining forces with the national Innocence Project would resurrect Duke's project. Now students could investigate claims of innocence for prisoners who had been convicted of serious crimes and, in many cases, they would be making a real difference.

This past summer, Rosen and Duke faculty advisers Professor James Coleman and Associate Dean Theresa Newman, as well as Sandra Alley '01 and Pamela Hoefler, attended a conference sponsored by Cardozo to bring together law schools and other organizations interested in freeing innocent prisoners. Duke and UNC law schools decided to pool their resources with Cardozo. "A collaborative effort was attractive on several levels," Rosen said. "It allowed us to pool resources to provide more thorough and comprehensive investigation of claims of innocence, and it also demonstrated a recognition that in dealing with such a fundamental area of justice, folks should work together to provide the services that are so badly needed."

The Duke and UNC Innocence Projects are confined to seeking exoneration for prisoners who claim to be innocent of felonies for which they were convicted in North Carolina and which are not on direct appeal. This includes all assertions of factual innocence, regardless of whether exoneration would involve the use of biological evidence. The effort does not involve exoneration for prisoners claiming legal innocence: For instance, the project would not accept a case in which a prisoner admitted to stabbing his girlfriend but claimed she died because she refused medical care due to religious beliefs. Neither would the project accept a case in which a prisoner was convicted of a crime and only complained about his sentence or that others equally guilty did not receive the same punishment.

Together, Duke and UNC have more than 60 volunteers responding to letters from prisoners and investigating claims of innocence. Prisoners claiming innocence must answer a questionnaire and provide supplementary information to the volunteer teams, who then read the material, summarize the cases and present the summaries to the faculty adviser assigned to the cases. Where warranted, volunteers conduct further investigation, short of contacting the prisoner.

If the case falls within the parameters of the project, it is presented to a panel of student leaders and faculty advisers at Duke and UNC, who determine whether the case is viable or requires further investigation. If the case is viable, it proceeds either with the faculty adviser or with a local attorney sought out by the Innocence Project.

While some law schools work to free innocent prisoners in a clinical classroom setting, the Innocence Project currently is a volunteer effort at both Duke and UNC. But the faculty advisers expect that will change. "I hope we will be able to use the current volunteer project as a springboard to develop courses (at both law schools) that examine the problems of miscarriages of justice, both historically and currently, as well as clinics where students receive credit for their work in this area," Rosen said.

As a fledgling effort, the Innocence Project has a promising future: The project hopes to increase the breadth and depth of its service as well as raise money to support a dedicated director, attorney, investigator and paid staff. The project also envisions an inter-disciplinary effort in resolving claims, involving other disciplines—such as science and journalism—at both universities. Coleman hopes this collaboration will serve as a model for similar efforts. "This is a unique opportunity for all our students to work together on important and real-world legal problems," Coleman said. "Ideally, it also will instill in our students a sense of professional responsibility that will endure throughout their careers." ¶

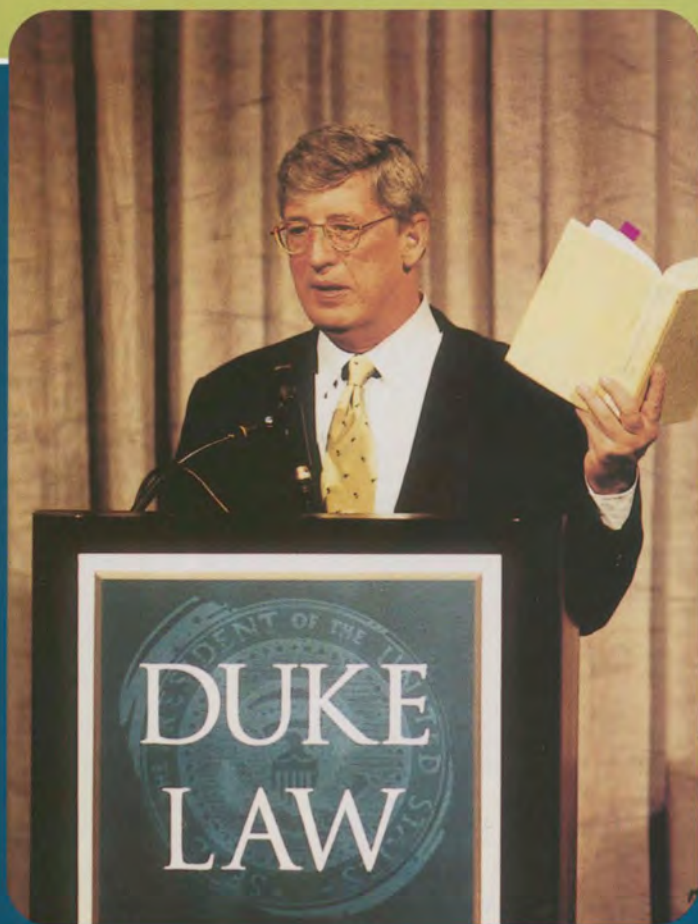
*Kari J. Croop contributed to this article.*

*For more information on the Innocence Project at the Cardozo School of Law, visit the law school's Web site at [www.cardozo.yu.edu](http://www.cardozo.yu.edu).*

# Conference Takes Critical Look at Constitution Under Clinton

Professor Walter Dellinger Frames  
Issues in Keynote Address

by Keith Lawrence



*In his keynote address at the conference on the Constitution Under Clinton, Professor Walter Dellinger said the Clinton administration has had a significant impact on the Constitution, and as a result, presidential authority may be on shaky ground in the future.*

Calling the U.S. Constitution “the central covenant of America’s civil religion,” Professor Walter Dellinger says “every president has the solemn obligation to pass on the office to his successors with its essential attributes unimpaired by adverse precedent.”

Dellinger gave the keynote address at the Law School’s September conference titled “The Constitution Under Clinton: A Critical Assessment.” Sponsored by the new Program in Public Law, the three-day conference included former U.S. attorneys general, White House counsels, Justice Department officials, legal scholars and members of the media, who gathered to assess the Clinton administration’s impact on areas of constitutional law—executive authority, impeachment, individual rights, religion, race and affirmative action, and the media.

In a speech that traced the bitter, divisive fight that led to the adoption of the U.S. Constitution in 1787, Dellinger noted that just weeks before the framers of the Constitution wrapped up their work, the proposed document was fundamentally different and placed almost all of the power in the Senate.

“With 11 days to go, the penultimate plan of the Constitution had a president who was chosen by the legislature, and they were free to choose someone as supine and vacillating and weak as they wished.” Under this plan, the Senate could easily remove the president from office, could name ambassadors and judges, including justices of the Supreme Court, and could negotiate treaties.

“Remember, we had fought a war against distant rule by an autocratic executive,” Dellinger said. “So they were not quick in that first decade to think of executive authority as being the model they would set up.”

But during those last 11 days, an extraordinary “double switch” occurred, Dellinger said. “The framers found a way to select a president that did not make the president dependent upon the legislature. And having done that, they realized they could now have the two branches together create the third branch.”

The final document represented a triumph for those who had a nationalistic vision for our country, Dellinger said. Two-hundred and twelve years later, it is

From left: Bernard Nussbaum, Clinton White House counsel; Griffin Bell, attorney general during the Carter administration; and Lloyd Cutler, White House counsel for Carter. Along with other attorneys general and White House counsels, the trio discussed the viability of the White House counsel's office.



“hard to imagine that any multi-membered body could have given us what Washington, Lincoln, Roosevelt and others have provided.”

“We don't know what the next great challenges will be,” he added, “but we do know looking backwards that this national government, whose executive branch was created in the last 11 days, has the following record: We settled this vast continent from the Atlantic to the Pacific; we mobilized millions and suffered hundreds of thousands of deaths to bring an end to slavery and put down the rebellion; we marshaled the resources to combat a devastating economic depression; we summoned the will to help turn back the tide of fascism in Europe; and we won the Cold War. That is no small list of achievements, and I will remain convinced that a strong and vibrant presidency has helped us achieve what one framer (of the Constitution) imagined that is the grandeur and importance of America until time shall be no more.”

Dellinger said the Clinton administration has had a significant impact on constitutional law in America “some good, some bad.” But, “at the end of the day, (Clinton) understood the importance of being very careful and cautious about opening up the Constitution to casual amendment” and he rejected every proposed constitutional amendment, with the exception of a victims' rights amendment.

“I do think that a number of precedents, whether they're the fault of those who served in or those who assailed from the outside this administration, have left the presidency in a somewhat shaky condition,” Dellinger added. “I'm concerned about what the future portends for presidential authority. At present, we're a happy country. We have problems, but we think we don't. The world has problems, but we don't perceive them as easily. But some day those problems will be more apparent to us, and we may find it difficult to meet the challenges that await without the kind of presidential leadership that we've had over the previous 212 years.”



Richard '78 and Marci Horvitz (with their son, Matthew, left), shown here with NPR legal correspondent Nina Totenberg (right), provided the gift that established the Program in Public Law. The program sponsored the conference on the Constitution Under Clinton, which was held in September.

## Missed the conference? Here's how to see it

Videotapes of the conference—“The Constitution Under Clinton: A Critical Assessment”—are now available in a series of eight tapes. You can order the series or any combination of the following tapes:

**Tape 1:** Walter Dellinger's Keynote Address

**Tape 2:** Special Panel: “Should the White House Counsel's Office Be Abolished?”

**Tape 3:** Executive Authority

**Tape 4:** Impeachment

**Tape 5:** Individual Rights

**Tape 6:** Religion

**Tape 7:** Race and Affirmative Action

**Tape 8:** Media (with Nina Totenberg of NPR, Robert Kaiser, *The Washington Post*, and Stuart Taylor, *The National Journal*)

### Cost:

Single tapes- \$10 each

More than three tapes- \$9 each

Set of eight tapes- \$65

### How to order:

Order tapes online at

[www.law.duke.edu/publiclaw/conference/](http://www.law.duke.edu/publiclaw/conference/)

or call 1-888-LAW-ALUM.

Visa, Mastercard, American Express and Discover accepted.

# happy masondo '00

## Prizes Memories of Mandela • by Debbie Selinsky

As a young woman struggling to find work and get an education in apartheid-era South Africa, Happy Masondo was far from the halls of power. But the end of apartheid and a law degree opened doors that previously would have been closed to a black South African. By dint of her legal work for the rights of the dispossessed in her country, Masondo eventually landed in the office of former president Nelson Mandela as assistant legal adviser in Capetown.

The gregarious Masondo, who said she has to “live up to” her given name of Happy, paused when asked about the experience of working with Mandela. “I’m asked that question all the time, but it’s still hard to describe what it was like working for him,” she said. “He is completely humble. The first day I met him, I was like a girl swept off her feet. He had that much presence and was that awe-inspiring. Despite all that happened to him, he shows such humanity.

“Working with him was exciting because this man has ultimate respect for the law,” Masondo said. “When it came to legal issues, we gave him advice and he’d ask questions. But at the bottom line, he always came down on the side of the law, which can be difficult and not the popular thing to do when you’re a politician.”

Before joining Mandela’s staff, Masondo had been working in Johannesburg for the Legal Resources Center, a free legal aid organization, and striving to become one of the new breed of “constitutional lawyers.” One day she got a phone call from Fink Haysom, legal adviser to President Mandela, who invited her to join his staff. She thanked him for the honor but told him she was needed in her present position at the LRC. “It’s difficult for the LRC to get people who are committed to their kind of work, so I felt it would be leaving them in the lurch if I accepted the offer,” she said.

After talking with friends and colleagues who all said, “Are you crazy?” Masondo feared she’d made a mistake not

joining the president’s staff. Fortunately, she got another chance when Haysom called again a few months later.

Her duties included advising the president (and sometimes his cabinet) on constitutional obligations and ensuring that future actions and legislation complied with constitutional provisions. She also advised Mandela on governmental appointments and pardons.

During her year in the president’s office, she saw Mandela in social situations and was in awe of his ability to be so accessible. “Coming from my background, I was amazed to see that someone who is president of a country could also be down-to-earth,” she said.

When Mandela’s term ended last June, Masondo, exhausted and ready for a change, left her career in public law and made her way to Duke.

She had applied for scholarships to support a period of “reflection” outside her home country and was awarded both the British Council’s Chevening Scholarship and the Constitutional Court’s Franklin Thomas Scholarship. “I wanted to reflect, and I didn’t want to do it in a country as cold as England, so I chose Duke,” she said with a grin.

“Everyone asks me, ‘What are you doing here?’ And I say, I’m taking a break,” she related. “People look at me strangely because they don’t usually think of law school as a break from anything. More and more I’m realizing that it’s not so much of a break as a lot of work, but it’s providing me with a refreshing change after being in very senior and demanding positions for the past five years.”

While she already holds South Africa’s equivalent of an LL.M. degree, Masondo is using her Duke studies as an entry to corporate law. “To that extent, it enhances me as a person and exposes me to a different type of law than what I have been doing,” she said. “I have been thinking about practicing in the corporate law field, either opening a private practice or joining a big firm.” After graduating from Duke,

Masondo said she’d like to have the experience of practicing briefly in a U.S. firm. “One of the firms I’m looking at has a branch in South Africa, so that would offer great opportunities,” she said.

Masondo’s path to Mandela’s inner circle began when she learned that there were university scholarships for which black South African students could apply. With scholarship aid and a part-time job, she was able to attend the University of Witwatersrand in Johannesburg, where she majored in politics and English. The Legal Resources Center then awarded her a scholarship for her last year of law school, provided she would work for the LRC for two years after graduation in 1991.

While at the LRC, Masondo passed her law board exam and served her required supervised apprenticeship there so she could practice law. After two years at the LRC, she worked a clerkship for the judge president of the constitutional court, Arthur Chaskalson, one of the LRC’s founders. “Working for him was a humbling experience,” she recalled. “Here I was working for a man who is considered one of the brightest legal minds in South Africa, and at our first meeting, he told me that he would be asking me to read and give my opinion on legal briefs. I remember rolling my eyes and thinking, ‘What does he mean he’s going to ask for my opinion?’ In fact, I learned, that’s the kind of person he is. He’s a modest soul, and when he said he wanted my opinions, he was not being condescending.”

After clerking for Chaskalson, Masondo went back to work as a practicing attorney at the LRC, where she was the regional coordinator of the gender unit in the Johannesburg branch, focusing on the rights of women, children and immigrants. “I did any general litigation that had significant impact on the advancement of human rights of these people,” Masondo explained. She also worked in the land and development program, helping black South Africans who had been removed





*As assistant legal adviser to former South African President Nelson Mandela, LL.M. student Happy Masondo '00 helped guide a country in transition.*

from their homes during apartheid to regain their land.

Masondo said she felt a bond with her colleagues at the LRC. "The original founders of the LRC (including Chaskalson) left lucrative practices and came to the center to provide services to indigent people, to fight the system of apartheid through the mechanism of the law. That has been the LRC's history," she recalled. "Once we had the new government in 1994, the focus changed some, but not a lot, because the issues still exist. The government continues to protect human rights—a government that has known the suffering of blacks will automatically do so. But we had to learn a lot of new things, including full constitutional law, which, until 1994, didn't cover the rights of black people in South Africa."

Though she's looking ahead to new challenges, Masondo says she will eventually return to South Africa. Her involvement with the country and its people runs deep.

"I was highly privileged to be closely involved in the process of building a new government. I came from a poor background, and when I went to work at the Legal Resource Center, I could identify

with my clients and often got emotional with the baggage of my clients," she said. "Even if it was for one person, an old man who wanted his 1,000 rands back—what I was doing was significant because I was fighting for the rights of a client who otherwise wouldn't have had representation."

Her memories of the path to democracy are among her most prized possessions. "In '94, I was presiding officer at one of the voting stations for the first democratic election of my country. At some point, I could feel my eyes welling with tears as I looked at the faces of the people, especially the elderly, who had never voted. Now, near the end of their lives, they could finally vote for who they wanted to lead them.

"I was part of that history, and it was a unique opportunity to implement what was promised by the Constitution, to demand and protect those rights, to advance human rights," she said. "What I did was a drop in the ocean if you look at it in the big picture, but for my purposes, I can never forget."

Masondo said she is proud of the strides South Africa has made. But she wishes for more.

"Legally and politically, we've achieved a lot," she said. "The transformation that

occurred was a complete miracle. In terms of the political, we've achieved democracy. But I still have to be reticent about describing it as a fully formed democracy. We're not quite there yet. We have a lot of human rights programs to firm up before we can describe it that way. And economically and socially, we're lagging behind in a discomfiting way. I have the feeling that poor people's lives haven't changed significantly. I'm not saying the government hasn't done anything. I'm not keen on assigning blame, but it hasn't done enough. I believe a little more could have been done at a more accelerated pace to improve the lives of poor people.

"Regrettably," she added, "South African society has become even more polarized. You can't change people by legislating relationships—attitudes remain the same. But I have great hope for my country. It took more than 50 years for the national party apartheid government to put us in this state and, before that, years of colonization that polarized and divided the nation along racial lines. We can't expect that to be undone in five or 10 or even 20 years. It's a sad part of our history—one we have to carry with us." ♪



## Stewards of Democracy: Law as a Public Profession by Paul Carrington

Westview Press, 1999 • 368 pages; \$32 • reviewed by Professor Jeff Powell

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In 1933, Justice Benjamin Cardozo published an essay in the *Harvard Law Review*, praising the man whom he replaced on the United States Supreme Court. Justice Oliver Wendell Holmes Jr., Cardozo wrote, was “the great overlord of the law and its philosophy.”<sup>1</sup>

For Cardozo, as for many American lawyers then and later, Holmes was the prime exemplar of the lawyer as genius, proof that, as Holmes himself had said many years before, “a man may live greatly in the law ... that there ... he may wreak himself upon life, may drink the bitter cup of heroism, may wear his heart out after the unattainable.”<sup>2</sup>

Whatever the ebbs and flows of Holmes’s personal reputation, his vision of law as the arena for heroic struggle and accomplishment has shaped much of the subsequent history of American law. Generations of law teachers have communicated that history to their students in terms of landmark decisions, great opinions, outstanding justices and, at least implicitly, of those professors renowned for their intellectual brilliance.

Paul Carrington’s new book, *Stewards of Democracy: Law as a Public Profession*, poses a fundamental challenge to this heroic account of American law.<sup>3</sup> According to Professor Carrington, the heroic account is bad history, bad law and bad politics, and he wants to set the legal profession straight on all three scores. In place of seeing law as an opportunity for the exercise of individual genius, Carrington offers us law as service to democratic self-government; in the place of homage to (or revolt against) Holmes the overlord, Carrington outlines the life and thought of Thomas McIntyre Cooley.

Cooley (1824-1898) was one of the best known American lawyers of the second half of the nineteenth century. Cooley was a justice of the Michigan Supreme Court for over 20 years and a member of the Michigan Law School faculty for even longer; author of the most influential constitutional treatise of the period; the first chairman of the first important federal regulatory agency, the Interstate Commerce Commission; and in that capacity one of the creators of modern administrative law, elected president of the American Bar Association in 1893. He was a “great” lawyer by any reasonable standard. Unlike Holmes, however, Cooley has faded from view in the 20th century and for good reason: Professor Carrington persuasively argues that Cooley’s true greatness lay in his basic commitment to democratic self-rule and his personal willingness as a judge, scholar or regulator to subordinate his own passions and preferences to the will of the community. Cooley, in short, rejected the heroic model of lawyering that has come to dominate our profession.

*Stewards of Democracy* traces Cooley’s faith in democracy to his cultural and political roots in upstate New York, where Cooley absorbed the egalitarian and populist views of the Jacksonian Barnburners. (The Barnburners, we learn, were so-called because “it was said they were willing to burn their barns to kill the rats residing in them” (p. 18). One of the pleasures of Professor Carrington’s book is his eye for the telling or [as in this case] simply intriguing fact.) The Barnburners’ fundamental political postulate was the doctrine of Equal Rights, “free labor,

1. Cardozo, Mr. Justice Holmes, 44 Harv. L. Rev. 682, 691 (1933).

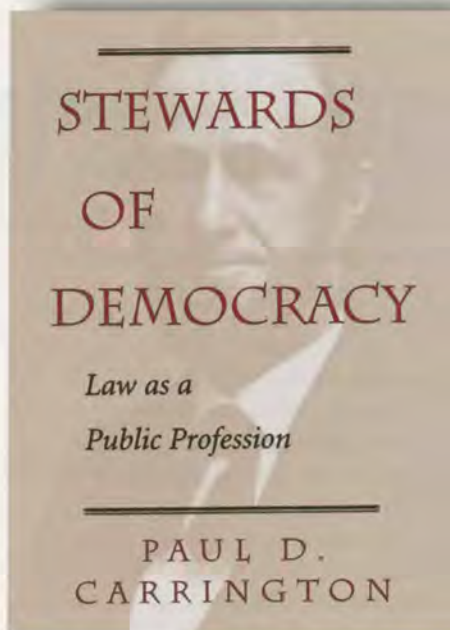
2. Holmes, “The Profession of the Law (Feb. 17, 1886),” reprinted in *The Essential Holmes* 219 (Richard A. Posner ed. 1992).

3. See Paul D. Carrington, *Stewards of Democracy: Law as a Public Profession* (Westview Press 1999). Page references to Professor Carrington’s book will be in the text.

free schools, free trade, and free speech": They advocated the expansion of democratic control over governmental institutions and officials and were suspicious of the claims of would-be elites to power and privilege based on special knowledge or wisdom. As Carrington shows, Cooley's work as a law teacher, writer and judge was informed at the deepest levels by his Jacksonian convictions. Sometimes mistaken by modern lawyers for a devotee of judicial activism in the service of laissez-faire ideology, Cooley adhered with respectable consistency to an understanding of judicial review characterized by deference to democratic decision-making: "The lawmaking power is not responsible to the judiciary for the wisdom of its acts [and it] is not less important that a court keep carefully within its proper jurisdiction than that the Legislature should observe the limits set by the Constitution to its powers" (p. 66, quoting *State v. Iron Cliffs Co.*).

Justice Holmes, of course, is remembered for the deferential approach to judicial review he generally employed, with an exception for the area of free speech after 1919. Professor Carrington, however, draws an important distinction between Holmes and Cooley. Holmes, he writes, "deployed his own genius to strip democratic law of its moral content" (p. 37). Cooley, on the other hand, saw "law at its best as an 'educating force' that, prudently conceived and administered, can help the citizenry elevate their behavior better to reflect their own republican values of social equality, political self-restraint, tolerance, and mutual respect. ... Cooley, in contrast [to Holmes], believed that there is a common good measured by common values" (p. 41).

Once divested of Holmes's peculiar reasons for adopting a modest stance as a judge, Holmes's idealization of "the secret isolated joy of the thinker" moving "men who never heard of him ... to the measure of his thought"<sup>4</sup> glorifies



the assertion of power by heroic judges unmindful of the claims of the democratic process or the views of the people as a whole.

Professor Carrington describes Cooley and other lawyers in the democratic tradition such as Louis Brandeis, Ernst Freund and Learned Hand as characterized by a very different set of moral traits.

*All were admired for their capacity to separate their private self-interest or idiosyncratic morality from their acknowledged public responsibility [and] the subordination of one's own personal interests, preferences, and tastes to those shared by the public. ... Th[eir] independence and disinterest enabled them better to reckon with reality in public affairs; their realism enabled or forced them to change their minds about public issues (pp. 118-19).*

Legal education in the 19th century often aimed self-consciously at encouraging the development of these habits of mind and character, and thus at training lawyers who would see themselves as "stewards of democracy." In Carrington's

vigorously asserted opinion, many aspects of contemporary legal education either do not serve this goal or are directly at odds with it (see especially pp. 205-18). He is as interested in reforming the contemporary law school as he is in "turn[ing] some of the judiciary away from their anti-democratic habits" (p. 224), and for the same reason: Despite all the changes in American society since Cooley's day, "the American legal profession has its traditional service to perform," "not to rule the Republic, but to mediate among the forces seeking to do so" (pp. 220, 224). The purpose of Carrington's book is to recall the profession to that service.

*Stewards of Democracy* is a call for sweeping changes in how we educate, motivate and evaluate lawyers and judges. In the course of issuing that call, Professor Carrington touches on many other issues which space will not permit me to examine in detail.<sup>5</sup> He writes with verve and without concealing his own views, many of which are highly controversial.<sup>6</sup> Indeed, it is safe to say that few readers will agree entirely with everything in this rich book,<sup>7</sup> and many of Carrington's fellow lawyers will be inclined to disagree with him at the most fundamental level. It is a mark of the book's success, however, that one comes away from it knowing that the author will welcome disagreements, great and small. Central to the democratic faith he attributes to Thomas Cooley, and that he himself so ably represents in *Stewards of Democracy*, is the recognition that disagreement and debate are crucial to the health of a free society. In advancing debate over the role of law in this Republic, Paul Carrington has modeled for us what it means to act as a steward of democracy, to see the law as a public profession.

Whatever its virtues—and Carrington is doubtful that it has many—what he nicely calls kryotocracy, "rule by judges," is not democracy. ▽

4. Holmes, "The Profession of the Law," in *The Essential Holmes*.

5. One chapter that I found especially appealing was Carrington's vindication of "Byron White, Outcast Justice." See pages 193-203. Carrington effectively argues that the strong tendency of academics and the media to view Justice White as lackluster actually stemmed from their own inability to appreciate his refusal to engage in "judicial heroics," a refusal grounded in White's allegiance to the democratic tradition in American law.

6. Carrington's criticisms of the Supreme Court's decisions on state criminal procedure, capital punishment, legislative districting, the right to a civil jury in federal court and abortion as "failed heroics," for example, clearly are debatable. See pp. 153-62 ("all of these heroic initiatives at social reform backfired").

7. To give a personal example, I think that Carrington's criticisms of Holmes are too harsh. Holmes was no populist, to be sure, but I think Carrington overstates the differences between Holmes and Cooley (or Holmes and himself, for that matter), perhaps because he gives more weight than I would to the rhetorical excess Holmes often indulged in. One of the most succinct expressions of the sort of commitment to democracy and individual freedom that Carrington espouses comes from Holmes's pen, in a private letter where he had no reason to be adopting a pose: "[t]here is enough community for us to talk, not enough for anyone to command." Holmes, "Letter to Alice Stopford Green" (Aug. 20, 1909), in *The Essential Holmes*.



# and the winners are...

In the tradition of the Modern Library rankings of great novels, McWhirter's *Legal 100* prompts endless debate.  
by Walter Dellinger

With the assistance of "professors at prominent American law schools" (who, mercifully, go unnamed) Darian McWhirter has undertaken to determine the 100 individuals who have most influenced Western law, and then to rank them in order of their overall importance. It is an extraordinarily ill-conceived project.

It is, however, fun. Circulating the list among academics or practicing lawyers produces a flurry of debate about who is overrated, who is underrated, who is left off, what are the appropriate standards of assessment. Arguing about the list is hard to resist: One cannot help, for example, protesting the decision to rank the vastly overrated William O. Douglas (29) and Felix Frankfurter (30) significantly higher in influence than William Brennan (56). Or to wonder what led professors to place Alexander Hamilton (2) ahead of John Marshall (3)?

The *Legal 100* list establishes some initial credibility by getting number one right. In 1785, as 13 chaotic and independent states stumbled along in fractious alliance, James Madison spent the winter studying "the histories of confederacies ancient and modern" and developing a plan for a Constitution for an American nation. More than any other delegate, he shaped the outcome of the Philadelphia Convention in the summer of 1787. (He would deserve a high ranking just for the importance of his *Notes of the Convention* and for his contributions to the *Federalist Papers*, our principal guides to the intent of the Framers.) Nor was his work complete at ratification. Defeated in the convention when he sought to make creation of lower federal courts constitutionally mandatory, Madison rallied by using his position in the first Congress to secure the passage of the federal Judiciary Act of 1789. Although at the time of the convention he saw no need for a federal bill of rights, the educable Madison

yielded to the persuasive power of Thomas Jefferson (and to the political necessities of gaining ratification) by promising that the first Congress would propose amendments. In Congress, he made the drafting of the Bill of Rights his first priority. Without Madison it is difficult to envision America as we know it.

It is also difficult to quarrel with the inclusion of John Marshall as one of the three most influential persons in Western law. As chief justice he dominated the Supreme Court like no other chief before or since. By force of intellect and power of rhetoric, he impressed upon the scattered phrases of constitutional text an overarching vision of nationhood. He boldly put forth his most powerful nationalist conception in *McCulloch* in 1835 at a time when the American project seemed doomed to separatism and its weak national government destined to failure. As Charles Black Jr. once wrote, "John Marshall became the archetype of success because all along, against all seeming, in spite even of his own despair, he had correctly read the deepest impulses of the nation, and the destiny toward which those impulses were to lead it."

A number of other members of the founding generation make the list, and rightly so, for as McWhirter notes in his introduction, there was a moment at the end of the 18th century when American law took perhaps its greatest leap forward. It is hard to imagine, however, why McWhirter and his consulting professors found Patrick Henry (62) more influential than Thomas Jefferson (64). Henry was a truly great orator, but on his greatest cause—his states' rights opposition to ratification of the Constitution—he was soundly defeated. Jefferson, on the other

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hand, not only did the critical job of educating Madison on the need for a Bill of Rights, but drafted the influential bill for establishing religious freedom in Virginia and, of course, the Declaration of Independence whose dedication to the proposition of equality would, in time, become a dominant principle of American constitutionalism.

"Influence," to be fair to McWhirter, is extremely difficult to measure. Does one give more credit to the teacher (Charles Hamilton Houston, 53) or to his prize pupil who goes on to public greatness (Thurgood Marshall, 54); to the judge who decides the cases (John Marshall, 3) or to the advocate who may have helped persuade that justice (Daniel Webster, overrated at 5)? Comparisons across categories are particularly difficult—a president like Franklin D. Roosevelt (41) is difficult to compare with, say, a justice like Louis Brandeis (19). And there is no common standard—like profits per partner!—to use in comparing an advocate like John Davis (55) with, say, Hammurabi (31). (Speaking of Hammurabi, I, for one, was completely baffled by most of the non-Americans on the list, some of whom, like Samuel Romilly (85) and Ferdinand Lasalle (77), were news to me.)

It is somewhat easier to critique the comparative choices among similar persons, such as American presidents. One can argue with some confidence that it is an error to judge FDR (41) as less important to law than his presidential cousin Theodore (39). The argument against the omission of Ronald Reagan is similarly strong. In addition to his successful nomination of Justices Sandra Day O'Connor, Antonin Scalia and Anthony Kennedy, President Ronald Reagan showed consistent focus in selecting relatively young, relatively conservative persons of outstanding ability for the federal courts. It may well be that no president has named to the lower courts a more intellectually influential group of lawyers and scholars than Reagan.

McWhirter correctly extends the concept of who has influenced the course of American law to include dissidents. The influence on American law of Martin Luther King Jr., for example, was substantial, as Professor Randall Kennedy's

important *Yale Law Journal* article, "Martin Luther King's Constitution," demonstrates. King was directly involved as a party in numerous decisions of the U.S. Supreme Court. His efforts led not only to the transformation of the law of race but to new law on a wide array of important First Amendment issues. King's use of the law, and his efforts to transform constitutionalism itself were, moreover, conscious and deliberate. When King, at the age of 26, gave his first civil rights speech to initiate the Montgomery Bus boycott, he drew upon higher notions of the law to defend resistance to the local political majority as embodied in local law. To thousands inside and outside the Holt Street Baptist Church in November 1955 he preached,

*We are not wrong.*

*If we are wrong, the Supreme Court of this nation is wrong.*

*If we are wrong, the Constitution of the United States is wrong.*

*If we are wrong, God Almighty is wrong.*

Although McWhirter is right to include the dissidents, one can still quibble with his comparative choices. King may be underrated at 52; Susan B. Anthony seems about right at 50, but the list should also have included the more theoretically influential Elizabeth Cady Stanton. Thurgood Marshall's greatest impact may have come not from his time on the Supreme Court or as solicitor general but from his days leading the NAACP Legal Defense Fund. His extraordinary sense of litigation strategy in developing the assault on segregation, coupled with his charismatic courage (besieged Southern black communities could be electrified by the words that "Thurgood is coming!") played a pivotal role in the legal transformation of the nation. What he had accomplished by the end of 1955 alone could justify a ranking greater than 54.

But of all the doubtful calls made in compiling this list, one is so fundamentally wrong that it almost reduces to shambles an already questionable enterprise. That is the ranking of 79 people ahead of Abraham Lincoln. If there is a rival to Madison as the single person who most influenced American law, it is surely

Lincoln. His comparative disparagement is especially dismaying since his greatness is the greatness of a lawyer: As a candidate and as a president he put forth and defended with all of his lawyering skills the most important legal propositions in American history.

Lincoln began his national public career with a sustained attack on the holdings and premises of *Dred Scott v. Sandford*. He challenged the Supreme Court's view that the Constitution "distinctly and expressly affirmed" the property right of the slaveowner. He destroyed the case for a middle ground on slavery. He made the case for the inclusion of persons of African descent within the people of the United States by the extraordinary feat of redefining the foundational legal instrument as the Declaration of Independence, a document imperfectly realized, in Lincoln's view, by the 1787 Constitution. And with 272 words at the battlefield at Gettysburg, Lincoln, in Gary Wills' phrase, "revolutionized the Revolution, giving people a new past to live with that would change their future indefinitely." As a war president, Lincoln argued that states had no legal right to secede from the Union and that a president, acting under the power as commander in chief, and without the assent of Congress, could unilaterally declare slaves in states in rebellion to be free. On all of these great propositions he prevailed, having persuaded 675,000 Americans to give their lives in support of his rendering of the essential elements of American constitutionalism.

Of course no "ranking" list will ever be very satisfactory. But McWhirter's *Legal 100* is not without its uses. In addition to a brisk introductory overview of all known law, the book contains somewhat pedestrian, but nonetheless handy, biographical sketches of its 100 honorees. The discussions it will provoke may have value in themselves. If nothing else, in a time of great cynicism about law and lawyers, this book provides a timely reminder of the important, at times inspirational, role that lawyers have played in bringing liberty, equality and prosperity to the American nation. ♣



## LAW SCHOOL TO SEND FIRST AMERICAN MOOT COURT TEAM TO INTERNATIONAL COMPETITION

When a team of four Duke Law students gathers in Germany this May to compete in the Rousseau International Law Moot Court Competition, they'll be making history.

The Law School's participation marks the United States' first foray into uncharted territory: Never in the prestigious international competition's 25-year history has an American team been represented. The Duke students will argue against teams from around the world, including those from France, Belgium and Romania, to name a few. And they'll be doing it all in French.

"Our participation indicates that we're a leader in this field, and other U.S. law schools will undoubtedly follow our lead," said Professor Michael Byers, the team's faculty adviser. "Most U.S. law schools have not yet responded to the many ways in which globalization affects law and legal practice. Knowledge about international law and foreign language abilities are becoming essential skills that a few forward-looking law schools—such as Duke—are increasingly seeking to foster."

At Duke, competition for places on the team was "intense," said Byers, a Canadian by birth whose own resume

includes a bilingual law education in both English and French. To make the team, students not only had to have excellent French advocacy skills but also had to display a high level of ability in the French language.

The resulting team meets—and exceeds—both qualifications. Members include Katheryn Lloyd '02, a dual French and English major while at Ohio State University who has studied in Besancon, France; Mike Perry LL.M. '00, a Canadian who has lived in Quebec and has studied French since the fourth grade; Tom Vanderbloemen '01, a double major in French and chemistry while at Davidson College, who has spent time in both Tours, France, and Senegal; and Jean-David Larson '01, who is partially of French descent and finished his international baccalaureate degree in southern France, completing his studies in both French and English.

Law lecturing fellow Agnes Mirandes '01, LL.M. '97, who holds a Ph.D. in law from the University of Paris II-Panthéon in France, will travel with Byers and the team as coach. In addition, Lecturing Fellow and Research Associate Catherine Admay and Professor Tom Rowe also are helping the team during the months before the competition.

The first round of competition begins May 1 in Kiel, Germany, and winners of that round will travel on to Hamburg for the finals, which conclude May 7. As for Duke's odds, Byers predicts the team will perform well, positively representing both the Law School and the United States. But he's also keeping things in perspective.

"Universities from other countries have competed for many years," he said. "Regardless of what happens, Duke is blazing a trail just by participating." ♪

## IN BOOK, DUKE EARNS PRAISE AS TOP LAW SCHOOL FOR WOMEN

In a new guidebook for women would-be lawyers, Duke ranks as the most female-friendly law school environment among peer institutions such as Harvard, Yale and NYU.

*A Woman's Guide to Law School* (Linda R. Hirshman, 1999) gives Duke top points for, among other things, a high percentage of female faculty and female students and the high success rate of its female students.

Although the Law School's classes have had near equal numbers of male and female students in recent years, this year was the first in which the entering class had more women than men, said Dennis Shields, associate dean for admissions.

"Women now are applying for admission to law schools in significant numbers nationally, so it was going to happen sooner or later here," Shields said. "Duke's smaller setting and more accessible faculty also probably have some influence with female students."

Members of this year's entering class ranked in the 96th percentile in LSAT scores and had a median GPA of 3.5. ♪

## GENERATION X DOCUMENT GARNERING ATTENTION

Since the last issue of *Duke Law* appeared, Gregg Behr '00 has been busy.

He has taken his pet project and run with it—or rather it has run off with him. “The Content of Our Character: Voices of Generation X,” the 32-page mission statement for ethical leadership authored by Behr and 50 other twenty-somethings from around the nation, in some circles is becoming a certifiable household name—and it’s keeping the 27-year-old law and public policy student on his toes.

“I’m consistently surprised by what’s happening,” said Behr, who is trying to balance the project’s “buzz” with normal semester stresses. “With all the recent media coverage, we sort of trickled into organizations we didn’t even target—so it’s interesting to find the crevices we’ve seeped into.”

Educators and youth organizers are seeing merit in the document, which is being included among educational and promotional materials all over the country. “Professors are already using

the documents in their syllabi,” Behr said. “Students are reading it, writing it, thinking about it.” And Youth Vote 2000, a coalition of organizations that encourages political debate and voting participation for young people, plans to include the document in their distribution of materials this year, he said.

Critics accuse the group, among other things, of not taking action. But that critique seems inaccurate considering the group’s activities in only the past six months. Public meetings were held last year in Boston, Indianapolis, Washington and Northern California, and there are prospects for similar meetings in Atlanta, Chicago, New York and the Carolinas. “Our goal, through spheres of influence, is to encourage discussion,” Behr said. “These meetings organize public sessions in which young people who don’t know each other can get together. Most young people don’t typically participate in those types of things.”

The project also is forming alliances with other organizations in hopes that the document’s message will reach a wider audience. “We’re seeking

like-minded organizations to help us, and hopefully, they can take it out to other groups,” Behr said. Currently, the group is working closely with Public Allies, a national service organization that recruits young people, ages 18 to 30, to volunteer with nonprofit organizations.

An ongoing challenge for the project is maintaining adequate funding, Behr said. With the original supply of 5,000 copies already exhausted, the group needs more money just to keep up with increasing demand for the document. But in the long term, Behr said, more money also would allow the group to hold more events and might even help to publish a series of case studies on document-related issues.

“So much of this has been very organic and volunteer-based, but now it seems like everyone can find something in the document either to complement or to criticize,” he said with a smile. “Clearly, I think we’ve hit a nerve.”

*For more information on “The Content of Our Character” or to read the document online, visit [www.contentofourcharacter.org](http://www.contentofourcharacter.org).*

## GOVERNMENT SUIT LABELS LSAT ‘BIASED’

The Justice Department filed a lawsuit in December alleging that the Law School Admission Test (LSAT) is unfair to the physically disabled because they are denied extra time to take the exam. The suit, filed by the department’s civil rights division in U.S. District Court in Philadelphia, is against the Law School Admission Council, which administers the test to 104,000 law school applicants a year.

The suit was brought under Title III of the Americans with Disabilities Act, alleging that several students with cerebral palsy or rheumatoid arthritis who presented medical documentation along with their requests for extra time were rejected by LSAC even though their requests were never reviewed by anyone with appropriate medical expertise.

The LSAT is required by 196 law schools across the country.

The council denies any wrongdoing, according to reports.

Sources: *The Washington Post*, 12/7/99, *The Chronicle of Higher Education*, 12/8/99, Law News Network, 12/9/99, <http://www.lawnewsnetwork.com>.



## PRO BONO PROGRAM PROVIDES LEGAL AID TO FLOOD VICTIMS

As part of the Law School's pro bono project, nine students provided volunteer legal counseling during their fall break to victims of flooding in Tarboro and Rocky Mount, N.C., two towns among those hardest hit by Hurricane Floyd. Out of this first initiative has come the Hurricane Floyd Legal Assistance Project, recently established at the Law School to provide more long-term support for those coping with the aftermath of the devastating storm.

"For three years after Hurricane Fran, Duke was inundated with calls for legal assistance," said Brenda Berlin, pro bono project coordinator. "Calls will be coming in for years to come—it's important for Duke to have a project such as this in effect."

Berlin said the Law School initially decided to get involved with hurricane relief efforts after the North Carolina Bar Association called an emergency meeting involving all the law schools and legal service providers in the area.

"I, personally, felt passionate to get involved, and the students really sprang to action," said Berlin. "I was very impressed with the response."

Associate Dean Carol Spruill, who has been at the Law School since 1991, also commended the students' efforts, noting that the statewide mobilization to provide disaster relief was one of the first of its kind in recent years. The fact that Duke students were involved



with that effort was particularly unprecedented, she said.

Students each took shifts at centers set up by the Federal Emergency Management Agency (FEMA), answering questions on anything from bankruptcy and insurance claims to landlord-tenant issues.

"The questions we got typically arose from concern that insurance companies were not treating the victims fairly—for example, that the companies were not giving them the full value of their damaged automobiles or property," said Erin Bradham '02, who volunteered at the Tarboro center. "Several people who didn't have flood insurance brought in their insurance papers to make certain that the insurance companies were correct in telling them that they were not covered for the damage."

Victims' needs continue to change in the months after a flood, Berlin said, and that means a long-term effort for the Law School and other organizations

providing relief for Hurricane Floyd victims. "It's really taking a while for all the legal issues to percolate to the top," she said.

In the meantime, the Law School is standing by for anticipated relief calls and is actively promoting the availability of its students to assist in pro bono cases. Fliers were distributed to more than 100 pro bono attorneys at a training session in November, which was sponsored by the North Carolina Bar Association, the University of North Carolina at Chapel Hill Law School and the Institute of Government and Legal Services of North Carolina.

Beyond providing valuable assistance to flood victims, Berlin said the project will provide a very tangible—and positive—way for the Law School to meet its responsibility to those areas of the state that lie outside the academic community. "At Duke, we all come from very diverse geographic areas," she said. "But we have to remember that we're still living in North Carolina." ♪



### SOVIET SCHOLARS SWAP IDEAS, EXPERIENCES AT CONFERENCE

At a workshop in March, Duke hosted 26 law fellows—all citizens of the former Soviet Union—as part of the Edmund S. Muskie and Freedom Support Act Graduate Fellowship Program.

The workshop, titled “Legal Systems in Transition,” brought the Muskie scholars together after months of study in the United States to share their experiences and reflect upon what they had learned at their respective host institutions. Workshop topics spanned the areas of public law, commercial and financial transactions, reform of economic law and criminal justice reform.

In addition to legal studies, the Muskie program provides one- and two-year awards for study in other areas, including education administration, journalism/mass communications, public administration and public health. The program is operated cooperatively by the Open Society Institute and the American Council of Teachers of Russian/American Council for Collaboration in Education and Language Study on behalf of the United States Information Agency, which provides most of the funding. ♪

### GENEVA CONFERENCE TO COMPARE NATIONAL RESPONSES TO MASS TORTS

Academics, practitioners and government officials will convene in Geneva, Switzerland, this summer to examine countries’ varying responses to collective and mass litigation such as mass torts, consumer-protection violations, product liability and securities fraud.

Claims for widespread damages are increasingly common, and nations are responding to them in a variety of different ways, said Professor Tom Rowe, the conference’s organizer. Currently the United States, more than any other country, is emphasizing the private class-action suit. The conference will aim to discuss the adequacy—or excessiveness—of the responses currently being used by some countries.

The conference, titled “Developments in Collective and Mass Litigation: Comparative Perspectives,” will be held July 21-22, at the midpoint of the Duke/Geneva Institute in Transnational Law. The institute is an annual instructional program co-sponsored by the Law School and the Faculté de Droit of the University of Geneva. ♪



### PENTAGON SURVEY AFFIRMS LENS CONFERENCE FINDINGS

A scientific report on Gulf War Syndrome underwritten by the Pentagon supports previously published research by Duke pharmacologist Mohammed Abou-Donia, whose work was cited at a Center on Law, Ethics and National Security (LENS) conference examining the subject nearly two years ago.

Abou-Donia’s research, reviewed at a LENS conference in Washington, D.C., in September 1997, indicated that medications administered to protect soldiers from nerve gas during the war may be responsible for symptoms related to Gulf War Syndrome, a condition that currently affects thousands of veterans. The Pentagon report, released this past October, names the experimental drug pyridostigmine bromide, or P.B., which was given to soldiers during the war, as the possible cause of the chronic illnesses associated with the syndrome.

Officials accepted the report’s findings but maintain that more studies are needed to establish a direct scientific link. ♪

## Sara Beale

### Lectures and Addresses

- “Prosecutorial Ethics and Accountability,” at a panel on “The Ethics of Grand Jury Practice” co-sponsored by American University and the Criminal Justice Section of the American Bar Association in Washington, D.C.

- “Federalizing Bias Crime Law,” a joint session of the American Association of Law Schools’ Sections on Civil Rights and Criminal Justice during the AALS Annual Meeting in Washington, D.C.

### Appointments/Elections

- Elected to membership in the American Law Institute.

### Publications

- 1999 Supplement to *Federal Criminal Law and Its Enforcement* (2nd Ed.) (with Norman Abrams).

- 1999 Annual Supplement to *Grand Jury Law and Practice* (2nd ed.).

- 1999 Annual Supplement to *Federal Criminal Law and Related Actions*.

- “The Conflict Between Federalizing Crime and Sentencing Reform,” *The Defender’s Advocate*, Winter 2000, at 1.

### Other

- Continuing member of the University’s Academic Priorities Committee, which advises the provost and president on core issues of academic performance and resource allocation.

## Herbert Bernstein

### Lectures and Addresses

- “Comparative Aspects of Compensation for Pure Economic Loss,” symposium at Erasmus University Law School, Rotterdam, the Netherlands.

- “International Activities at Duke Law School: Recent Developments,” Duke Law international alumni.

### Appointments/Elections

- Co-editor of a book by a group of eminent comparatists on the Rotterdam symposium’s “Pure Economic Loss Project,” to be published in 2000.

## Michael Byers

### Lectures and Addresses

- “Custom, Power and the Power of Rules: Strategy and the Making of International Law,” British International Studies Association Annual Conference, Manchester, United Kingdom.

- “The Law and Politics of the Pinochet Case,” International Law Weekend, International Law Association (American Branch), New York City.

- “Pinochet, Kosovo and East Timor: The Law and Politics of Individual Accountability,” International Jurisprudence Colloquium, New York University Law School.

- “Kosovo: An Illegal Intervention,” annual conference of the Australia/New Zealand Society of International Law, Wellington, New Zealand.

### Publications

- Editor, *The Role of Law in International Politics: Essays on International Relations and International Law* (Oxford: Oxford University Press, 1999).

- Wilhelm G. Grewe, *The Epochs of International Law* (Translated and revised by Michael Byers) (Berlin: Walter De Gruyter, 1999).

## George Christie

### Lectures and Addresses

- “Some Key Jurisprudential Issues for the 21st Century,” Eason-Weinmann Lecture, Tulane Law School.

## James Cox

### Lectures and Addresses

- “Perspectives on Market Structure and the Regulation of Markets,” PricewaterhouseCoopers Symposium, San Diego.

- Moderator and co-convener, Washington, D.C., conference to “Reassess the Regulation of U.S. Debt Markets.”

### Publications

- “Regulatory Duopoly in U.S. Securities Markets,” 99 *Columbia Law Review* 1200 (1999).

- “The Social Meaning of Shareholder Suits,” 65 *Brooklyn Law Review* 1 (1999).

- Supplement to *Securities Regulations Cases and Materials* (with Hillman and Langevoort).

- Supplement to *Corporations* (with Hazen).

### Other

- Completed the final draft of *Capital Market Law* for the Kingdom of Saudi Arabia.

- Continues to serve as a member of the NASD’s Legal Advisory Committee.

## Richard Danner

### Lectures and Addresses

- “Electronic Publications and Legal Scholarship,” American Association of Law Libraries Annual Meeting, Washington, D.C.

### Publications

- “Law Libraries and Technology,” *Syllabus* (ABA), Winter 1999, at 4.

- Book Review of Per Wahlgren, *The Quest for Law: Law Libraries and Legal Information Management of the Future*, *International Journal of Legal Information*, 27:3 (Winter 1999).

- “Redefining a Profession 1999,” in *Proceedings of the Fifty Third Annual Conference of the American Theological Library Association* 189-205 (1999).

### Other

- Offered two-day seminar on “Strategic Planning for Your Law Library” at the annual meeting of the Caribbean Association of Law Libraries, Rodney Bay, St. Lucia.

- Participated in meetings of the Association of American Law Schools’ membership review committee and task force on electronic publications.

## Deborah DeMott

### Lectures and Addresses

- “Self-Dealing Transactions in Comparative Perspective,” Annual

Public Lecture on Corporate Law, University of Cincinnati College of Law.

- "Instructions and the Law of Agency," presented to Legal Theory Workshop, Columbia University School of Law.

#### Appointments/Elections

- Appointed Centennial Visiting Professor through 2002 in the law department of the London School of Economics.

#### Publications

- Restatement Third, Agency, Council Draft No. 1 (Nov. 18, 1999).
- *Shareholder Derivative Actions*, Revised Chapter 2 and 1999 Supplement (West Pub. Co.).

#### Other

- Continues to serve as Reporter for Restatement Third of Agency.
- Presented draft to Council of American Law Institute, Dec. 8, 1999.

## Robinson Everett

#### Lectures and Addresses

- Presented, with Scott Silliman, a national security law update as part of the University of North Carolina Law School's 10th Annual Festival of Legal Learning CLE series.

#### Legal Consultation or Testimony

- Testified to the Subcommittee on the Constitution of the Committee on the Judiciary, U.S. House of Representatives, against passage of H.R. 1173, which would provide that states may use redistricting systems for congressional districts other than single-member districts.
- Appeared for the plaintiffs in the North Carolina congressional redistricting trial in Raleigh from November 29 to December 1. (The General Assembly was ordered to draw a new congressional map after the U.S. Supreme Court ruled that the design of the oddly shaped, predominantly black 12th District in the 1991 plan was unconstitutional.)

#### Publications

- *Racial Gerrymandering: The Last*

*Decade and the Next Millennium*, to be published in the forthcoming American Bar Association publication of conference papers from the Showcase Program at the ABA Annual Meeting.

#### Other

- Moderated a panel on "Fifty Years of Military Justice: Does The Uniform Code of Military Justice Need To Be Changed?", at the ABA's Annual National Security Conference in Washington, D.C.
- Continues to sit occasionally as senior judge for the Court of Appeals of the Armed Forces and is chair of a sub-committee to commemorate 50 years of the Uniform Code of Military Justice.

## Peter Fish

#### Appointments/Elections

- Elected to serve a three-year term on the 88-member Commission on Colleges of the Southern Association of Colleges and Schools, the regional accreditation body for institutions of higher education in 11 southern states.
- Participated in the Commission's summer proceedings at Asheville and winter meetings in Atlanta.

## Donald Horowitz

#### Lectures and Addresses

- "The Deadly Ethnic Riot," Yale Legal Theory Workshop
- "Internal Political Design," Carnegie Corporation meeting in Washington, D.C.
- "Constitutional Design in the Third Wave," opening lecture at the conference on Constitutional Design 2000, University of Notre Dame.

#### Appointments/Elections

- Appointed to the International Advisory Board of the Center for Development Research at the University of Bonn, Germany.

#### Awards and Recognitions

- Awarded a grant from the Harry Frank Guggenheim Foundation to

continue his research on constitutional design for divided societies.

## Carolyn McAllaster

#### Lectures and Addresses

- "HIV Legal Issues Update" sponsored by N.C. Department of Health and Human Services Division of Public Health, HIV/STD Prevention and Care Branch Statewide Teleconference.
- "Renewing Hope for Communities: North Carolina's Response to the HIV/STD Epidemic," at workshop on "Legal Issues in the Millennium," sponsored by N.C. Department of Health and Human Services Division of Public Health, HIV/STD Prevention and Care Branch and AIDS Service Agency of North Carolina.

## Madeline Morris

#### Lectures and Addresses

- "Post-Conflict Resolution: Building Peace and Redressing Historical Justice," conference convened by the Stanley Foundation, Warrenton, Va.
- "States, Amnesties and International Criminal Jurisdiction," International Law Weekend, sponsored by the American Branch of the International Law Association, New York City.
- "High Crimes and Misconceptions: The ICC and Non-party States," Duke Law School Meeting on ICC Jurisdiction Over Non-party Nationals.
- New York University Law School, session chair at the meeting of the Independent International Commission on Kosovo.
- "Building a Mechanism for Post-Conflict Justice: Creating the International Legal Assistance Consortium (ILAC)," conference convened by the Stanley Foundation, Warrenton, Va.

#### Publications

- "High Crimes and Misconceptions: The ICC and Non-party States," 63

*Law and Contemporary Problems*, forthcoming (2000). To be reprinted in *The International Criminal Court: Problems and Prospects* (Dinah Shelton, ed. 2000) (Transnational Press).

- Foreword, symposium issue on the International Criminal Court, 63 *Law and Contemporary Problems*; forthcoming (2000).
- "Jurisdiction of the ICC Over Nationals of Non-party States," *ILSA Journal of International and Comparative Law* (Spring 2000).
- "Complementarity and Conflict: States, Victims and the International Criminal Court," forthcoming in a book to be published by the American Academy of Arts and Sciences.
- "Complementarity and Its Discontents: States, Victims and the International Criminal Court," in *The International Criminal Court: Problems and Prospects* (Dinah Shelton, ed. 2000) (Transnational Press).

## Michael Newcity

### Legal Consultation or Testimony

- Testified as an expert on Soviet law in a patent lawsuit: *Phillips Petroleum Co. v. Exxon Corporation*, Civ. No. 98-638-JJF (D.C. Del.)
- Testified as an expert on Soviet and Turkmen law in two cases before the Texas state courts: *Bridas Corporation v. Unocal Corporation et al.*, No. 94144 (268th Jud. Dist., Texas) and *EA Oil Service, Inc. v. Mobil Exploration and Producing Turkmenistan, Inc.*, No. 98-14778 (113th Jud. Dist., Texas). Both of these cases turned on the question of whether the law of the former Soviet republic of Turkmenistan recognizes the tort of interference with contractual obligations. They are both currently on appeal to the Texas Court of Appeals.

### Publications

- "Setbacks for Foreign Investors in Russia," 11 *Survey of East European Law* 1 (No. 10, December 1999)
- "The New Russia-Cyprus Tax Treaty," 10 *Survey of East European Law* 1 (No. 8, October 1999)

- "Legal Risk for Russian Investors," chapter in second revised edition of *Navigating New Markets Abroad*, D. Raddock (ed.) (forthcoming, Rowman & Littlefield Publishers, Inc.)

## Jeff Powell

### Awards and Recognitions

- *The Constitution and the Attorneys General* (Carolina Academic Press 1999) was selected as one of *Choice* magazine's "Outstanding Academic Titles."

## William Reppy

### Appointments/Elections

- Named to the Animal Treatment Procedures Committee of the North Carolina Legislative Research Commission.

## Thomas Rowe

### Publications

- Co-author, 1999 supplement *Federal Courts in the 21st Century*

### Other

- Chair, AALS Section on Federal Courts.
- Member (through September 1999), U.S. Judicial Conference Advisory Committee on Civil Rules.
- Chair (through December 1999), Fourth Circuit Advisory Committee on Rules and Procedures.
- President, Board of Directors, North Central Legal Assistance Program

## Steven Schwarcz

### Lectures and Addresses

- Conducted faculty workshops at Georgetown University Law Center, the University of North Carolina at Chapel Hill, Wake Forest University (School of Law and Babcock School of Management) and William & Mary.
- Led joint session of the National Conference of Bankruptcy Judges and the American Bar Association's Committee on Chapter 11, on judgment

proofing structures.

- "Capital Market Financing of Sovereign Debt Restructuring," Duke Law International Alumni Weekend.

### Legal Consultation or Testimony

- Currently advising the United Nations Commission on International Trade Law (UNCITRAL) on proposals for a model international law to facilitate restructurings of insolvent multinational debtors.

### Publications

- "The Inherent Irrationality of Judgment Proofing," 52 *Stanford Law Review*, was the focal point for responses by Professors Lynn LoPucki and Charles Mooney; Professor Schwarcz published a rejoinder to those responses at 52 *Stanford Law Review* 77 (1999).

### Other

- As faculty director of Duke's interdisciplinary Global Capital Markets Center, helped organize two conferences: "Re-examining the Regulation of Capital Markets for Debt Securities," Washington, D.C., and "Research, Risk and Regulation in the Hedge Fund Industry," at Duke University. Moderated a panel on rating agencies and a panel on disclosure and regulation, respectively.

## Scott Silliman

### Lectures and Addresses

- "Reviving Citizenship and Patriotism," to the Mt. Sylvan Seniors.
- Spoke on the International Criminal Court to the Triangle World Affairs Council and the United Nations' Association of Wake County and to the Military Law Section of the Texas Bar Association in Corpus Christi, Texas.
- Guest-lectured at a University of North Carolina undergraduate course in the Peace, War and Defense curriculum.
- Guest instructor on "Ethics, Law & Military Operations," for the United States Army John F. Kennedy Special Warfare Center and School at Fort Bragg, N.C.
- Lectured on war crimes and international tribunals at the U.S. Naval

Academy Center for the Study of Professional Military Ethics.

- Presented, with Robinson Everett, a national security law update as part of the University of North Carolina Law School's 10th Annual Festival of Legal Learning CLE series.

#### Appointments and Elections

- Appointed to the board of directors of the Triangle World Affairs Council.
- Continues to sit on the advisory committee of the American Bar Association's Standing Committee on Law & National Security.

#### Awards & Recognitions

- Distinguished Speaker Series, Triangle World Affairs Council.

#### Publications

- Book review of *Essays on the Modern Law of War* by Leslie C. Green in *International Journal of Legal Information*.

#### Other

- Gave a number of media interviews relating to the culture gap between the military and civilian society and the legality of certain war-time orders issued, such as the order to execute civilians at No Gun Ri in South Korea in late July 1950.
- Consultant to a producer for CBS' "20th Century" on the History Channel, which is still in the early stages of a project on civilian/military issues.

## Laura Underkuffler

#### Lectures and Addresses

- "Property: A Special Right?" Edward S. Godfrey Fund Lecture Series, University of Maine School of Law.

#### Publications

- "Vouchers and Beyond: The Individual as Causative Agent in Establishment Clause Jurisprudence," *75 Indiana Law Journal* 155 (2000).

#### Other

- Edward S. Godfrey Endowed Visiting Professor, University of Maine School of Law, fall semester, 1999.

## Neil Vidmar

#### Lectures and Addresses

- "Witnesses in Adversary Versus Inquisitorial Modes of Criminal Procedure," International Conference on Psychology and Law, Dublin, Ireland.
- "Designating Evidence as Science, Technical or Specialized Knowledge," panel chair, International Conference on Psychology and Law, Dublin, Ireland.
- "Civil Jury Verdicts v. Judgments and Other Post-Verdict Adjustments," International Conference on Psychology and Law, Dublin, Ireland.
- "Evaluating Scientific Expert Evidence," Supreme Court of British Columbia Education Seminar, Vancouver, B.C., Canada.
- "The Performance and Functioning of Juries in Medical Malpractice Cases," ALI and ABA Course: Litigating Medical Malpractice Claims, San Francisco.
- "Retribution in Law and Life," University of California Law School, Los Angeles.

#### Publications

- "The Common Law Jury," *62 Law and Contemporary Problems* (1988).
- "Juries Don't Make Legal Decisions! And Other Problems: A Critique of Hastie et al. on Punitive Damages," *23 Law & Human Behavior* 705 (1999).

## Stephen Wallenstein

#### Lectures and Addresses

- Conference organizer and panelist at "Research, Risk and Regulation in the Hedge Fund Industry," sponsored by the Duke Global Capital Markets Center.
- Organized "Reexamining the Regulation of Capital Markets for Debt Securities," a conference sponsored by the Duke Global Capital Markets Center and the Bond Market Association, and was a commentator for the panel on "The Impact of Technology on Market/Regulatory

Structure for Debt Securities."

- Participant at the World Bank's "Global Corporate Governance Forum" in Washington, D.C.
- Organized and spoke at two workshops for Duke law and business students interested in pursuing careers in investment banking and structured finance.

#### Other

- Traveled to China and Thailand to organize a Global Capital Markets Center training workshop, sponsored by Morgan Stanley Dean Witter, for securities regulators.

## Jonathan Wiener

#### Lectures and Addresses

- Remarks on *American Trucking Association v. EPA* (discussant on paper by Cass R. Sunstein, "Is the Clean Air Act Constitutional?"), AEI-Brookings Joint Center on Regulatory Studies, Washington, D.C.
- "International Emissions Trading," workshop of government, industry and environmental organizations, sponsored by the Electric Power Research Institute (EPRI), Washington, D.C.
- "Making Markets for Global Forests Conservation," conference on "Painting the White House Green," University of Wyoming.

#### Appointments/Elections

- Social Sciences Planning Group, Duke University, 1999-present.
- Advisory Committee, Economics Initiative, Duke University, 1999-present.

#### Publications

- "Regulatory Improvement Legislation: Judicial Review of Provisions Regarding Risk Assessment and Cost-Benefit Analysis," Harvard Center for Risk Analysis (co-author of report of 12-member expert panel).

# faculty in the news

"I love grandparents. They should be involved with their grandchildren's lives. But if the parents object, someone has to decide what's best for the children. And much of society has decided it should be the parents."

**Dean Katharine Bartlett in  
*USA Weekend*,  
on grandparents' right to child visitation.**

"So J. Crew offers so much money to a school if you allow them to be an exclusive advertiser. Even if the money is used for a good purpose, going along with this means you're willingly promoting the idea that consumption is a good value."

**- Professor John Weistart in  
*The News & Observer* (Raleigh, N.C.),  
on a new computer network  
that offers schools free computer labs  
in exchange for corporate advertising**

"People assume these players are just being bad boys who can't control themselves. In fact, they can't control themselves—because they're addicted."

**- Professor Jim Coleman in  
*The Washington Times*,  
on athletes' violation of the  
NFL's substance abuse policy**

"To talk about details like numbers of tests is irrelevant now. So long as testing continues to be conducted by the International Olympic Committee or member entities ... then nothing's being done."

**- Lecturing fellow Doriane Coleman in  
*USA Today*,  
on the IOC's creation of a world  
agency to prevent doping in sport**

"For the most part, the Supreme Court has taken the view that you can't have race-identity cards, to be classified and allocated, to be forced to stand in racial queues. The old way was, stand in a racial line at the movie theater. Now, it has been, stand in racial lines at the magnet schools."

**- Professor William Van Alstyne in  
*The Washington Post*,  
on declared desegregation of the  
Charlotte-Mecklenburg school system**

"The use of race as a means to create election districts is against the goal of a color-blind society. It sends a message that people are supposed to be elected in terms of race rather than by qualifications. The thought that there's one group of councilmen to represent whites and another to represent blacks—that's unhealthy."

**- Professor Robinson Everett in  
*The News & Record* (Greensboro, N.C.),  
on Durham's voting districts**

"It's insulting to the public. If anything, we attorneys are not above the law—we are a part of the legal system, and that kind of accommodation is antithetical to the rule of law."

**- Professor Thomas Metzloff in  
*The News & Observer* (Raleigh, N.C.),  
on lawyers claiming special privilege**

## Faculty on Clinton Looking Back at the Impeachment

"It's like Nixon used to say: Perjury is a tough rap to prove."

**- Professor Sara Sun Beale in  
*Time*,  
on the charge that Clinton perjured himself**

"We all suffer from a certain schizophrenia in that, in one respect, we do blame Starr for having brought these sidebar matters to our attention. But in the president's manner of handling them he has probably spent almost fatal capital and seriously compromised his ability to maintain credibility on any matter."

**- Professor William Van Alstyne in  
*The Washington Post*,  
on Starr and the Clinton investigation**

"The purpose of [the independent-counsel law passed by Congress in 1978] was to remove all sense of politics and thereby restore confidence in government. People thought the independent counsel would descend from heaven on the wings of angels."

**- Professor Walter Dellinger in  
*The Wall Street Journal*,  
on the role of the independent counsel**

"The Court assumed that because there were so few civil suits against the president in the past, that there would not be many such suits in the future. But the future is a different world, because no litigant will ever have to go to the Supreme Court again to commence a lawsuit against the president of the United States. All a litigant has to do is to file suit in any federal or state court."

**- Professor Walter Dellinger in  
*The New York Times*,  
on how Clinton's defense of his  
private conduct will impact the future**

# class notes

## 1962

**Thomas M. Davidson** is president and managing director of Davidson Capital Group whose headquarters was recently expanded and relocated to McLean, Va.

## 1967

**W. Christopher Barrier** married Nan Selz in Little Rock, Ark., on Oct. 3. He practices with the Mitchell Williams law firm, where he chairs the business practice group. He also chairs the executive council of the Arkansas Bar Association and is on the executive committee of the Arkansas Symphony Orchestra Society.

**John T. Berteau** has co-authored the "BNA Tax Management Portfolio on the Federal Estate and Gift Tax Returns and Audits." His book, *Estate Planning in Florida*, has gone into its second edition.

## 1969

**Charles Leo Becton** was elected a fellow of the American Bar Foundation in October. He is at the firm of Fuller, Becton, Slifkin & Bell in Raleigh, N.C.

**David G. Klaber** was elected a fellow of the American Bar Foundation in October. He is with the firm of Kirkpatrick & Lockhart in Pittsburgh.

**Jeffrey E. Lewis** was named dean of the St. Louis University School of Law in July 1999. He teaches evidence and remedies at the law school. Lewis's appointment follows a 27-year career at the University of Florida College of Law in Gainesville, Fla., where he served as dean for eight years.

## 1971

**Randolph J. May** has joined The Progress & Freedom Foundation as senior fellow and director of communications policy studies. PFF is a nonprofit ideas center focusing on the public policy implications of the digital revolution. He also writes a monthly column called "Fourth Branch" for *Legal Times* about administrative law and regulatory affairs.

**Gail Richmond** was elected secretary of the Southeast Conference Association of American Law Schools last July.

## 1973

**John P. Hancock** was inducted as a fellow at the College of Labor and Employment Lawyers Inc. in Atlanta in August.

**Eleanor D. Kinney** is co-director of the Indiana University School of Law's Center for Law and Health and is one of two Samuel R. Rosen professors of law at Indiana. She joined the faculty in 1984 and teaches administrative law, health care financing and regulation and insurance law.



### ALUMNI NEWS

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DON'T FORGET you can send us your class notes at:  
alumni\_office@law.duke.edu,  
or visit us online at:  
[www.law.duke.edu/alumni/classnotes](http://www.law.duke.edu/alumni/classnotes).

# class notes

**Philip A. Pfaffly** was named a leading American attorney among practicing Minnesota attorneys by the American Research Corporation. He practices currently at Robins, Miller & Ciresi, where his practice consists of mass torts, consumer fraud and alternative dispute resolution. In June 1992, he was lead counsel in *Erickson v. Abbott Northwestern Hospital*, in which he obtained the largest compensatory award (\$7.2 million) in a personal injury case in state history at that time.

**Kenneth Starr** spoke at a luncheon for the Council of Canadian Administrative Tribunals, "Best Practices in Administrative Justice," on Oct. 10-12 in Vancouver, Canada.

## 1974

**Edna Ball Axelrod** has written a chapter titled "Appellate Review" in the book *New Jersey Federal Civil Procedure*, published by New Jersey Law Journal Books.

**Heinz J. Briske**, along with Kevin J. Huck, announced the formation of the law firm of Huck & Briske in Wheaton, Ill., for the practice of estate planning and administration.

**John Moffat** was elected chairperson of the Washington State Bar Association Environmental and Land Use Law Section for the 1999-2000 year.

## 1975

**Robert A. Baxter** was elected vice president for the southern region of the New Jersey Defense Association. He currently focuses his practice in the representation of carriers, self-insureds and joint insurance funds in defense of tort and coverage claims; representation of public employees and entities in defense of civil rights claims; and representation of public entities in construction contract matters.

## 1977

**Donald M. Etheridge Jr.** is a partner in the estate planning practice group at Alston & Bird in Atlanta. He focuses his practice on sophisticated state and income tax planning for individuals and the representation of non-profit organizations.



## 1978

**Wendy Collins Perdue** was named associate dean of research at the Georgetown

University Law Center, where she has been a faculty member since 1982.

## 1979

**Gray McCalley** was named vice president and general counsel in Europe for Coca-Cola Enterprises, the world's largest Coca-Cola bottler, with responsibility for Great Britain, France and the Benelux countries.



## 1980

**Harold D. Pope III** was sworn in as president of the National Bar Association, the nation's oldest and largest national bar organization of African-American attorneys, judges, legal scholars and law students.

**Judge Lisa Smith** and her husband, Bill Bowen, announce the adoption of a daughter, Kinsey Rose Bowensmith. Kinsey was born Oct. 6, 1999, and was united with the family, including her new older brother, J.T., on Nov. 30, 1999. The family lives in Lewisboro, N.Y., and Lisa

continues her duties as a United States magistrate judge in White Plains, N.Y.

## 1981

**I. Trotter Hardy** is a visiting faculty member at the University of Houston Law Center Institute for Intellectual Property & Information Law for 1999-2000.

**John C. Yates** was recently honored with the first-annual Leader of Influence Award, presented at the 14th Georgia Technology Forum, where Yates has served as chairman for the past two years. He is founder of the Southeastern Software Association and co-founder of the Technology Tax and Finance Forum and a member of the Governor's Science and Technology Advisory Council.

## 1982

**Scott Sokol** has been named executive director of the Juvenile Diabetes Foundation International and The Diabetes Research Foundation, Central Florida chapter.

## 1983

**Mark Calvert** is an attorney in the Office of the General Counsel of the Tennessee Valley Authority. He and his wife, Rosemary, live in Knoxville, Tenn., with their four children: Benjamin, Danielle, Emily Ruth and Samuel.



## 1985

**Michael Hemmerich** has been named president of The Dilweg Companies, a commercial real estate development and investment firm in Durham, N.C. He also is serving as alumni chair of the Annual Fund for The Fuqua School of Business.

**Jeffrey Lane** has been chief of staff for Sen. Tom Daschle, D-S.D., since 1997.

## 1986

**Brent O.E. Clinkscale** joined the firm of Womble Carlyle Sandridge & Rice as a member in the Greenville, S.C., office. He focuses on litigation and contract disputes. In the organizational structure of the firm, the term "member" is equivalent to "partner."

**James Cohen** has been in Tokyo for the last 11 years, where he is principal of his own firm and is a specialist in legal document translation and drafting from the Japanese language. His clients are primarily major Japanese and foreign law firms.

**Francis J. Mootz III** is teaching contracts and sales at the Dickinson School of Law in the Spring 2000 term. He is a full-time member of the faculty at Western New England College School of Law, where he has taught since 1990.

## 1987

**Frank W. Cureton** and his wife, Leadley Cureton, announced the birth of their second child, a son named Frank William Cureton Jr., on July 22.

**Robert Harrington** has moved to Charlotte, N.C., where he has become a shareholder of Robinson, Bradshaw & Hinson.



David L. Heinemann

**David L. Heinemann** joined the Kansas City, Mo., law firm of Shank, Laue and Hamilton. He will continue his practice in the areas of commercial litigation, employment and discrimination litigation and appellate practice.



Francis J. Mootz III

## 1989

**Kenneth A. Murphy** was nominated to the board of Northwest Victims Services, a grassroots nonprofit agency dedicated to serving victims and witnesses to crimes in northwest New Jersey. He also is director of the Alumni Society of the William Penn Charter School and is a member of the American, Pennsylvania, New Jersey and Philadelphia bar associations. At the Philadelphia Bar Association, he is a member of the Professional Guidance Committee and a former chair of the Young Lawyers Division's Lawyer-in-the-Classroom program.

## 1990

**Miriam Arichea** has joined the Office of the District Attorney in Ventura County, Calif., in the writs and appeals unit. She also appears as a concert pianist, having recently performed Grieg's Piano Concerto with the local community orchestra, with additional concerto performances scheduled for March (Rachmaninoff) and December (Saint Seans). She lives in Ventura with her husband, Jeff Brackett T'85, MD'89, and children, Joshua and Arielle.

**Karen R. Cashion** married Richard E. Burton on September 2, 1998, in Antigua, West Indies. The couple resides in Atlanta.



Bradley A. Krouse

**Bradley A. Krouse** has been named co-chairman of the Real Estate & Finance Department of Klehr, Harrison, Harvey, Branzburg & Ellers in Philadelphia, where he concentrates his practice in the areas of real estate sales & acquisitions, development, real estate finance and commercial financing.

**Victoria J. Franklin-Sisson** was named to the Harvard Alumni Association Board of Directors and serves as regional director for the southeastern region of the United States. She also has been elected as treasurer of the women's section of the Alabama State Bar Association.

**Michael French** and his wife, Lisa, announce the birth of their second child, Grant Michael French, on June 11. Grant's older sister, Madison, turned four years old on January 1.

**Daniel Kent** joined the Atlanta firm of Altman, Kritzer & Levick as partner, where he will continue to focus his practice on intellectual property, technology, the media and the First Amendment.

# class notes

**Sally J. McDonald**, and her husband, Rich Levin, announced the birth of their second son, Kyle Van Kirk Levin, on Oct. 22. McDonald practices labor and employment law and serves as hiring partner at the Chicago office of Piper Marbury Rudnick & Wolfe.

**Deanna Tanner Okun** was sworn in as the 76th commissioner of the United States International Trade Commission. The U.S. Senate confirmed her nomination on Nov. 19 and President Clinton signed her position of appointment on Dec. 1. Commissioner Okun, a Republican from Idaho, was nominated by the president for the statutory term that will expire on June 16, 2008.

**Patrick Sutton** is the founder and principal designer of Suttondesign, an interior design firm in Alexandria, Va., whose projects are regularly featured in print and broadcast media. He recently became engaged to Kathryn Terry, and the couple is planning a May wedding in Seattle. Sutton also engages in pro bono representations.

## 1991

**Anne E. Connolly** and **Colm F. Connolly** announced the birth of their daughter, Margaret Elizabeth (Maggie), in September.

**Melissa Engelberth** was promoted to assistant general counsel, Chicago Board of Trade, last June. She also traveled in June to Brussels, Prague and Berlin as a participant in the Chicago Council on Foreign Relations Young Leaders Program, co-sponsored by the Drager Foundation in Lubeck, Germany.

**Susan Heilbronner** has launched an e-commerce venture selling infant apparel for "y2tots" and "millennium moms" on her Web site, [www.y2wear.com](http://www.y2wear.com).

**Ronald J. Krotoszynski Jr.** was named the Paul E. Beam Fellow at the Indiana University School of Law, where he teaches administrative law, constitutional law and telecommunications law. He also was named best new professor by students at the school.

**Michael Popok** was elected to partnership at Ruden McClosky Smith Schuster & Russel in the firm's West Palm Beach, Fla., office. He is a member of the firm's litigation, white collar and employment law practice groups and also was named to the board of directors of the Palm Beach County Legal Aid Society.

**Andrew Rosenberg** was elected partner at Paul, Weiss, Rifkind, Wharton & Garrison in New York. He was formerly a senior associate in the firm's bankruptcy department.

## 1992

**Mary Lynne Grigg** is an associate with Kilpatrick Stockton in Raleigh, N.C., where she focuses on regulatory and utilities issues in the firm's government and regulated industries practice group.



**Douglas Jackson** and his wife, Lynn, announce the birth of their daughter, Katherine Nicole.

**Noriyuki Kosuge** became a citizen of the United States in December and changed his name to Albert Luminarie Bloomsbury. Earlier in 1999, he relocated to Philadelphia to work as an international tax manager at Deloitte & Touche, where he deals with global tax issues for American- and European-based multinationals.

**Pamela Kurland** is working for the American Medical Association as Washington counsel. She married David Marchick, who is deputy assistant secretary in the State Department, in January.

**Bradford Tribble** has been appointed president of Sara Lee Thailand. He was previously responsible for Corporate Business Development/M&A for Sara Lee, Asia Region, in Singapore. His wife, **Jolene Sinke '92**, will transfer within her firm, Allen & Overy, from Singapore to Bangkok. The couple and their son, Julian, moved to Bangkok in January.

**Jean-Francois Willame** is senior legal counsel in the carrier customers division at Balgacom S.A. in Brussels, Belgium. His second child, Madeleine, was born September 3, 1998.

## 1993

**Alan M. Gallatin** married Sharyn F. Jacob on Nov. 21. Jacob, a recent graduate of Fordham Law School, is judicial law clerk to Judge Peter Boggia in Hackensack, N.J. Gallatin has been promoted to manager of tax and legal services at PricewaterhouseCoopers.

**Katie Kessler** moved to Latham & Watkins in New York. Her husband, **Gordon**, also of the class of '93, is at Frommer, Lawrence & Haug, an intellectual property firm in New York. The couple lives in Westchester with their 16-month-old son, Noah.

**Leslie A. Leatherwood** married David E. Nelson, a special agent with the FBI, last June.

**John Lopes** is a founding partner in Lopes, Willingham & Associates, a Dallas-based investment advisory firm. He also serves as general manager for TeamXtreme Racing in the Indy Racing League.

**James Mennell** is a member of the environmental practice at Oppenheimer Wolff & Donnelly in Minneapolis.

**Jim Stuckey** has been appointed chief legal counsel for South Carolina Gov. Jim Hodges.

**Jay Volk** and his wife, Anne, announce the birth of their first child, Camille Anne, on September 4. He is working as a tax attorney for the law firm of Calfee Halter & Griswold in Cleveland.

## 1994

**Ruth Tappan Dowling** joined the firm of Palmer & Dodge in Boston. She and her husband, Scott, are expecting a second child in March. Their son, Kenneth Oakes West, will be three in July.

**Michael J. Elston** has been appointed assistant U.S. attorney in the northern district of Illinois. He will represent the United States in both civil and criminal matters that arise in the western division of the district.

**Randall Grayson** married Patricia Speice on April 17 in Atlanta. Randall is an associate with the law firm of Alston & Bird in their employee benefits &

executive compensation practice group.

**Joelle Cooperman Sharman** and her husband, Paul Sharman, announce the birth of their first child, Gabrielle, on July 13 in Boca Raton, Fla.

**Stacie I. Strong** won a place on the Cambridge University Women's Boat Club development squad and competed for the university at the Great Britain National Rowing Championships in Nottingham, U.K., in July, where the Cambridge squad beat the Oxford University squad in head-to-head competition. Stacie was invited to join the CUWBC squad this fall but declined in order to devote more time to her research. In addition to continuing to work on her Ph.D. in law, Stacie will be supervising first-year students in torts, and rowing for her college first-boat.

**Thomas von Ballmoos** has accepted a position as general counsel of Swissca Holding, Switzerland's third-largest investment funds provider. He and his wife, Bettina, announce the birth of their third child, Claudia Regina, on August 12.

## 1995

**Douglas Chalmers Jr.** joined the corporate/technology group of Morris, Manning & Martin in Atlanta.

**Ana C. Davis** is an associate in intellectual property with Womble, Carlyle, Sandridge & Rice in Atlanta.

**Duane A. Draper** and his wife, Julie, announce the arrival of twins—Emily Jane and Charles “Charlie” Beckett—on May 4.

**Marc Eumann** is hearing cases on general civil law and apartment leases as part of a temporary assignment to the Amtsgericht Euskirchen (small-claims court) in Bonn, Germany.

**Erika King** is currently a fifth-year associate at Covington & Burling, specializing in food and drug law. She continues to write in the constitutional law area and has just published an article on tax exemptions and the establishment clause in the *Syracuse Law Review*. She is serving as co-chair (along with Gates Grainger) for the Class of 1995 reunion this spring.

**Rachel E. Kosmal** left Silicon Graphics Inc. to join Intel Corporation in Santa Clara, Calif., as a senior attorney in the corporate/securities group.

**James Petrie** announces the birth of his second daughter, Naomi Lauren Petrie, on June 17 in Fredricton, New Brunswick, Canada.

**Karsten Tietz** served one term in the Hamburg State Legislature until the end of 1997. Currently, he is working for the corporate legal department of Allianz AG. Since he has passed the German Foreign Service exam, he will begin working for the service in May.

**Jacinda Townsend** attends the University of Iowa Writers' Workshop after spending two years as a journalist at both Court TV and CNBC. She has published fiction in *African Voices*, *The Maryland Review*, *Obsidian*, *Passages North*, *Phoebe*, *Xavier Review* and *Zero Hour*. She recently penned a novel, *Moon in the Seventh House*, a chapter of which was published in *Struggle*.

## 1996

**Juan Alvarado** returned to Argentina in January 1999 to practice law at Hope, Duggan & Silva. His second daughter, Milagros, was born on Sept. 28.

**Jennifer Harrod** is an associate with Brooks, Pierce, McLendon, Humphrey & Leonard in Greensboro, N.C.

# class notes



Reed J. Hollander

**Reed J. Hollander** joined the Raleigh office of Moore & Van Allen as an associate.

**Catherine Malinin Dunn** practices environmental law as attorney-advisor in the Office of Enforcement and Compliance Assurance at the U.S. Environmental Protection Agency.

**Loren Montgomery** will be a presenter at the ABA conference, "The Second National Summit for Women in Law Firms: The Evolution and Revolution Continues." Loren will participate in a panel discussion titled "Bridging the Gap Between Generations."

**Pierre Tourres** left Gide Loyrette Nouel Polska in Warsaw, Poland, for the Paris office of the English firm Linklaters.

## 1997

**Diana Allen**, of the Raleigh office of Smith Helms Mulliss & Moore, will travel to Japan this fall to focus on business development. The trip is part of a firm-sponsored program designed to boost development of junior

attorneys in foreign legal customs.

**Jessica Carey** left Kirkland & Ellis in Washington, D.C., and moved to Alaska, where she joined the 12-person Anchorage office of Perkins Coie.

**Daniela Kracht** started as an associate at Clifford Chance Puender in Frankfurt, Germany.



Jason D. Scott

**Jason D. Scott** has joined the firm of Hawley Troxell Ennis & Hawley in the firm's Pocatello, Idaho, office. He will focus his practice on commercial litigation, business law and intellectual property.

**Michael Weisberg** and Jillian Stern Weisberg have moved to Silicon Valley, Calif. Michael has accepted a job at Wilson Sonsini, and Jillian has taken a business development position with Auctionwatch.com, an Internet company.

## 1998

**Taylor Mead Albright** and **Victor Bongard III** estab-

lished the law offices of Albright & Bongard in Blacksburg, Va., in December.

**Jin-Gyeong Cheong** made a presentation titled "Modification of Employment at Will Doctrine and Remedies in the U.S. Related to the Dispute on the Labor Market Flexibility Issue in Korea" at the LAWASIA Conference in Seoul, South Korea, in September.

**Jaime Pereyra Iraola**, after a year at Arnold & Porter in Washington, D.C., returned to Buenos Aires to rejoin the partnership in Estudio Fiorito - Abogados.

## 1999

**Carl R. Boehm** is a real estate associate at the firm of Robinson, Bradshaw & Hinson in Charlotte, N.C.

**Thomas Castleton** joined the firm of Manatt, Phelps & Phillips as an associate in the litigation department, where he anticipates a concentration in the areas of white collar criminal law, securities regulation and general commercial litiga-



Shelley Myott

tion. His wife, Lisa Vance Castleton (Yale Law '99), was a visiting student at Duke Law School in 1998-99 and is completing a summer position at Munger, Tolles & Olson. She is clerking for Judge Kim McLane Wardlaw on the U.S. Court of Appeals for the Ninth Circuit.

**David A. Dixon** has joined the Milwaukee office of Michael Best & Friedrich as an associate. His practice focuses on all aspects of labor and employment law.

**Erika A. Fedge** is a first-year associate in litigation and labor at Holland & Hart in Denver.

**Gabe Feldman** is clerking for Judge Susan Black of the 11th Circuit of the United States Court of Appeals in Jacksonville, Fla.

**Amyn Hassanally** joined the corporate department of Dewey Ballantine in New York as a first-year associate.

**Masaki Kanehyo** is at the New York law firm of Schulte Roth & Zabel.

**Amy DeBoer Kolczak** married **Mike Kolczak '99** on Aug. 14. Mike is an associate at Jones, Day, Reavis & Pogue in Atlanta, and Amy is an associate at Harman, Owen, Saunders & Sweeney in Atlanta.

**Felipe Lecaros** returned to Chile in August to work at Cruz & Leighton.

**Shelley Myott** is an associate working with the health-

care department at Barnes & Thornburg in Indianapolis.

**Abe Noriaki** enrolled in the Fletcher School of Law and Diplomacy at Tufts University in August as part of an educational leave program with the Embassy of Japan.

**Cynthia O'Neal** is a law clerk for Justice Sarah Parker on the North Carolina Supreme Court for the 1999-2000 session. She will work as an attorney for Smith Helms Mulliss & Moore in Raleigh, N.C.

**Varun Sahay** is an international advocate at Gleiss Lutz Hootz Hirsch in Stuttgart, Germany, where he works frequently with mergers and acquisitions matters.

**Mohamed Sarhan** joined the New York office of White & Case as a first-year associate. He is rotating in the intellectual property and corporate departments.

**John Shepherd** is a law clerk to Judge A. Raymond Randolph, United States Court of Appeals for the District of Columbia Circuit.

**Dmitry Shokhin** is working in the New York office of Coudert Brothers through July with subsequent relocation to the firm's Moscow office.

**Brian Szymczak** is currently an associate at Baker & Botts in Austin, Texas.

# david Steinberg '93



With the recent success of teen movies like "Scream," "American Pie" and "I Know What You Did Last Summer," it's not surprising that the brainchild of lawyer-turned-screenwriter David Steinberg '93 has gone Hollywood.

Production is slated to begin this summer on Steinberg's tentatively titled "Slackers," a quirky teen comedy with a touch of Cyrano de Bergerac. The film follows three Yale University seniors who are blackmailed by a fellow classmate and forced to help him win the heart of the most popular girl on campus. Steinberg sold "Slackers" in 1998 to Destination Films, most noted for producing the comedies "Dumb and Dumber" and "Kingpin."

In the wake of the "Slackers" deal, Universal Pictures also tapped Steinberg to pen the sequel to "American Pie," last year's breakaway teen comedy that grossed \$100 million. The sequel, which is currently being referred to as "American Pie II," will begin production sometime this year.

After working as an entertainment lawyer for three years, Steinberg left the firm of Paul Hastings, Janofsky and Walker in New York and enrolled in the University of Southern California's School of Cinema-Television to study film production and writing. A short time later, he sold "Slackers," which opened the first door for him in Hollywood.

Although he opted for an alternative profession, Steinberg says that his years of legal education and practice weren't for naught.

"You come into the industry a lot more mature and more saavy about the business," he says. "A writer usually tends to be labeled as 'the stupid guy' who just writes the script. But when you've also been a lawyer, you can discuss things with industry people at a much higher level.

"Plus," he says, "when you're used to drafting 20 page briefs in a day, a script isn't all that daunting."

-Kari J. Croop

# obituaries

## 1934

**Dr. Paul Hampton Sanders**, retired Vanderbilt University professor of law, died of complications of pneumonia on Nov. 17. He was 90. After receiving his law degree at Duke, Sanders was named assistant professor of law at Duke University in 1936 and an associate professor in 1940. He was a visiting professor at the University of California Law School at Berkeley in 1947, and in 1948 was named professor of law at Vanderbilt University, where he specialized in teaching labor relations law and conflict resolution. Sanders was appointed by President Eisenhower to the board of inquiry for labor disputes for the U.S. Atomic Energy Commission in the 1950s, and served on several presidential emergency boards that worked to resolve labor disputes during the 1950s and 1960s. He taught at Vanderbilt for more than 30 years, retiring in 1974 but continuing to teach summer law courses at the school well into the 1980s.

## 1936

**Edward Rubin**, an authority on entertainment law for six decades whose celebrity clients ranged from Howard Hughes to Warren Beatty, died Sept. 14, of natural causes. He was 87. Rubin graduated from the University of California at Los Angeles and earned his law degree at Duke, where he became a lifelong friend of fellow student Richard Nixon '37. Rubin began his legal career with the New York City firm of Proskauer, Rose, Goetz & Mendelsohn in 1936 and returned to Los Angeles to join Mitchell, Silberberg & Knupp four years later. He worked there for more than half a century with a brief hiatus during World War II to serve in the Army Signal Corps and to work in Washington, D.C., as an attorney with the Office of Price Administration. Rubin co-wrote the book *Preventive Law* and taught entertainment law at the University of Southern California, California State University at Los Angeles and the University of California at Berkeley. Rubin also was sought out as an arbitrator of entertainment industry disputes that came before the American Film Market and the Los Angeles County Superior Court. He served as president of the State Bar of California in 1977 and was a trustee of the Los Angeles County Bar

Association and a president of the Beverly Hills Bar Association. He was named entertainment lawyer of the year in 1987. Rubin also served as a trustee of the City of Hope, the Constitutional Rights Foundation and the UCLA Foundation and as a governor of the Los Angeles International Film Festival. He won UCLA's Professional Achievement Award in 1978. Rubin is survived by his wife of 56 years, Nancy; a son, Judge Laurence D. Rubin of Santa Monica, Calif.; a daughter, Peggy Ueda; and four grandchildren.

## 1939

**W. Furman Betts Jr.**, 85, of Palm Harbor, Fla., formerly of St. Petersburg, Fla., died Dec. 18, at St. Anthony's Hospital in St. Petersburg. Born in Raleigh, N.C., he came to St. Petersburg in 1948 and moved to Palm Harbor in 1986. A lawyer, he retired in 1989 after practicing for more than 35 years in St. Petersburg and on the gulf beaches. He was a former city attorney for Madeira Beach, Fla., and Kenneth City, Fla., and town attorney for Redington Beach, Fla. For 17 years he was a partner in the firm of Holland & Betts before opening his own offices. He also was a former president of Goodwill Industries

Suncoast. A graduate of the University of North Carolina and Duke Law School, he was a member of Sigma Nu fraternity. He was a former president of the Pinellas County Duke University Alumni Association and was a member of the Gulf Beaches Rotary Club, Holiday Isles Elks Lodge 1912, Bath Club, St. Petersburg Chamber of Commerce and the Committee of 100. He was a trustee of Memorial Park Perpetual Care Fund and was a charter member of the Dolphin Club. He also was an Army veteran of World War II. Survivors include his companion, Viola E. Blackburn of St. Petersburg.

## 1940

**Judge Harold M. Missal**, 87, of Lauderhill, Fla., died Sept. 7. He graduated from Dickinson College in 1933 and received his law degree at Duke seven years later. He was a WWII veteran, serving in the Army Corps of Engineers, and was awarded the Croix de Guerre Medaille de la France Liberee and five battle stars. After WWII, he practiced law with the Bristol, Conn., firm of Missal, Hanrahan, and Grabowski. His judicial career began in 1955, when he was appointed a judge of the Bristol City Court. He was appointed to the State Common Pleas Court in 1969 and was elevated to the

Connecticut Superior Court in 1975. In 1978, he became a senior judge of the Superior Court until his retirement in June 1999. He is survived by his wife, Rose; a daughter, Susan Lenner of Miami; two sons, Michael of Chevy Chase, Md., and Robert of Fort Lauderdale, Fla.; three grandchildren; and a sister, Adeline Greenberg.

## 1941

**William Frank Malone**, 83, a retired Army colonel who left active duty in 1973 as military planning chief with the National Security Agency at Fort Meade, died of pulmonary fibrosis on Aug. 28, in Salisbury, Md. After receiving his law degree, Malone was a battalion commander with the 13th Armored Division in Europe during World War II. During the Korean conflict, he was inspector general of the 25th Infantry Division in Korea. Later posts included tours as a military attache in Paris, as commander of an Army Security Agency base in Ethiopia and as chief of staff of the Army Security Agency.

## 1944

**Anthony J. Monterosso** of Farmington, Conn., a longtime lawyer, died Oct. 9. He was 80. He attended Ohio State University, received his bachelor's degree from the University of Chicago in 1943 and his law degree from Duke the following year. Admitted to the Connecticut bar in 1944, he practiced at his law offices for 55 years. He was a member of the state and American bar associations and was a former president of the New Britain Bar Association. He is survived by his wife, Margarite Aharonian; three sons, Richard of West Hartford, Ronald of Edgartown, Mass., and James of Naples, Fla.; three daughters, Sharon Crip of Burlington, Angela of Newington and Meg Fitzsimonds of West Hartford; a sister; and eight grandchildren.

## 1947

**Bertram J. Dube**, 82, died Sept. 23, at his home in Durham, N.C., following a brief illness. A double-Duke graduate, Dube was commissioned as an aerial navigator during World War II and flew combat missions from bases in North Africa. He left the military service with the rank of captain and was awarded the Air Medal with four Oak Leaf Clusters and

a Presidential Unit Citation. Dube was admitted to the New York Bar in 1947 and practiced law in Glens Falls and Hudson Falls, N.Y., with the firms of Clark, Imrie and Dube and starting in 1962, with the firm of Clark, Bartlett, Caffry and Dube. He also was a sole practitioner for a number of years before becoming a part of Bartlett, Pontiff, Stewart and Rhodes, from which he retired in 1993. During his 46-year law career, he also served as Hudson Falls' village attorney from 1953 to 1977, district clerk and as attorney for the Hudson Falls school system for a number of years. Survivors include his wife of 57 years, Elizabeth F. Dube of Durham; a nephew, Edward A. Dube of Hudson Falls; and three sisters-in-law, Beverly G. Dube of Hudson Falls, Lois C. Freeland of Greensboro, N.C., and Mildred F. Schnerk and her husband, Paul, of La Mirada, Calif.

**Judge Harry R. Teel**, 80, died Nov. 15. He was first employed as an accountant by the DuPont Company at Alabama Ordinance Works in Childersburg, Ala., from 1941 to 1945. After earning his law degree two years later, Teel became an attorney in Talledega, Ala., in 1947 and became solicitor of Talladega County in 1948. He served as circuit judge, 29th Judicial Circuit, from 1951 until 1958. He

was a partner in the law firm of Bradley, Arant, Rose and White, in Birmingham, Ala., from 1958 until his retirement in 1983. Teel is survived by his wife, Joyce Embry of Vestavia Hills, Ala.; two sons, John Richard of Mountain Brook, Ala.; and Henry Addison of Roswell, Ga.; five grandchildren; and a sister, Marion Jones of Mountain Brook.

**Edmund H. Worrill** died June 23, 1998. An undergraduate at Duke, he received his B.A. from Trinity College in 1941. After graduating from law school, Worrill began a successful career with Standard Oil/BP Amoco in Cleveland, where he worked for more than 30 years. After retirement, he moved to Athens, Greece, where he lived for four years before his death. His sister, Jane W. Truscott, recently made a gift to the Law School in Worrill's memory, fulfilling a bequest in his will.

## 1948

**J. Couper Lord** died Nov. 17, after a brief illness. He was 81. A New York native, Lord graduated from the Buckley School, Groton School and Harvard University. During World War II, he was a captain in the Army Air Forces before returning to Duke to earn his law degree. Lord was a partner at Miles, Cochran,

# obituaries

Grosse and Rosetti in Buffalo, N.Y., and also was a past director of the Albright-Knox Art Gallery. In 1976, he was named special counsel to the state Atomic Energy Council. He is survived by his wife, Barbara Hartley Lord; a son, J. Couper Lord Jr. of Southampton, N.Y.; and two daughters, Lisa Lord Gillespie of Southampton and Barbara Lord Edwards of Greenwich, Conn.

**Hendry Kenneth "Hank" Mackenzie** died Sept. 5, in Jamestown, N.D. He formerly engaged in general practice with James R. Jungroth from 1949 to 1976. In 1976, William A. Mackenzie and James A. Reissour joined the firm, which eventually evolved into Mackenzie, Jungroth, Mackenzie & Reissour. Mackenzie took partial retirement in 1984 and continued to be of counsel with the law firm until poor health forced him to fully retire from practice.

## 1950

**Sue Vick McCown** (Annie Sue Vick) died Nov. 14 in a Chesapeake, Va., hospital. She was 73. McCown was the 26th woman to graduate from the Law School and was the first female attorney to practice in Dare County, N.C. She and her husband, Wally, who died in 1998, formed the county's first husband-and-wife law firm together in the 1950s. She is survived by two daughters, S. Cameron McCown of Kill Devil Hills, N.C., and **Linda H. McCown '88** of Manteo, N.C.; a son, Wallace H. McCown Jr. of Kill Devil Hills; a sister, Margaret Bost of Salisbury, N.C.; and a brother, **Joseph P. Vick '48** of Danville, Ky.

## 1953

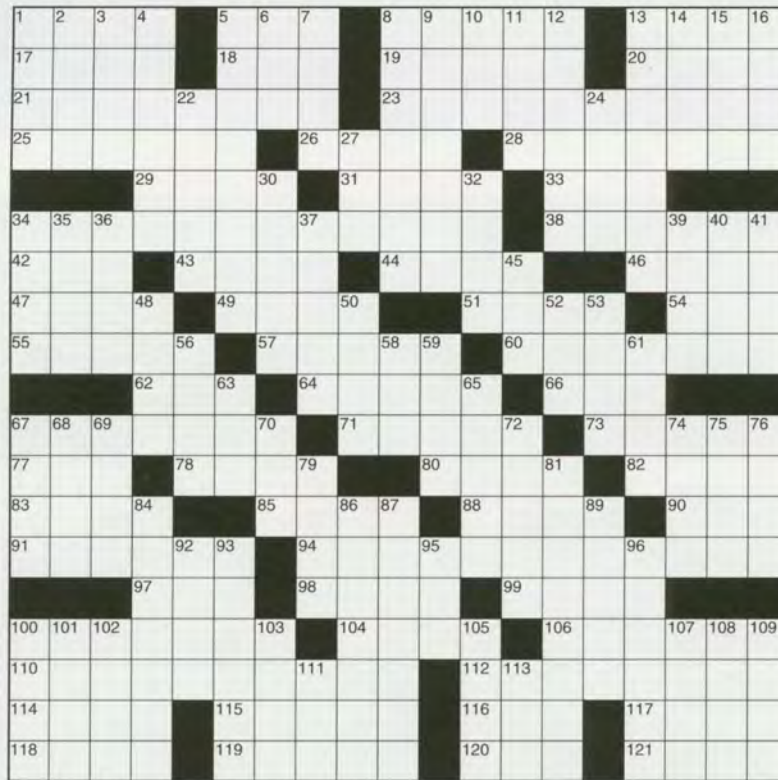
**Floyd E. Kellam Jr.**, 70, died Nov. 14. He was a commissioned lieutenant in the U.S. Navy and served on the judge advocate's staff for four years before going into private practice in 1957. He retired in 1999. Kellam was a member of the Virginia Beach, Norfolk-Portsmouth and Virginia bar associations, the Duke University Alumni Association and the "Iron Duke" club. He also served on the board of the First Coastal Bank as vice chairman and then chairman until his death. Kellam is survived by his mother, Annie Bateman Kellam, and two sisters, Anne Goffigan Kellam Robertson of Virginia Beach and Rebecca Kellam Chalmers of Richmond.

## 1974

**James W. Harris** died Sept. 25, after a long battle with cancer. He was 49. Harris, an Atlanta native, was a senior real estate finance partner at Morris, Manning & Martin in Atlanta. A magna cum laude graduate of Princeton University, Harris joined Smith, Cohen, Ringel, Kohler & Martin, where he worked closely on commercial real estate finance matters, shortly after graduating from the Law School in 1974. He later joined Morris, Manning in 1985. Harris handled the financing work for the Ibis Hotel and represented the lender in the financing to rehabilitate the old Imperial Hotel in Atlanta. He also represented the lender on liens made to the State Board of Regents for rehabilitating housing areas for the 1996 Olympics. Harris was involved in the Mortgage Bankers Association of Georgia and the Mortgage Bankers Association of America. He is survived by his wife, Kathy; a daughter, Jennifer E. Harris; a son, Matthew T. Harris; his parents, Dr. Thomas A. Harris and Marinel Harris of Stone Mountain, Ga.; a brother, Bob Harris of Raleigh, N.C.; and two sisters, Carole Mitchell and Sue Ellen Brannan, both of Lilburn, Ga.



# CROSSWORD exam



(Hint: All clues in bold are taken from articles in this issue of Duke Law.)

**Across**

- 1 "Woe is me!"
- 5 Not too brainy
- 8 Mother: Prefix
- 13 Fisherman's canful
- 17 \_\_\_ Hashanah (Jewish New Year)
- 18 Gardner of film
- 19 German industrial city
- 20 Partner of red beans
- 21 **Duke pharmacologist Abou-Donia**
- 23 **1999 L.A. Film Critics choice**
- 25 Audiophile's rig
- 26 Try to slim down
- 28 "\_\_\_ Falls! Slowly I turned ..."
- 29 Campaign funders, for short
- 31 Ripped apart
- 33 Hoops group: Abbr.
- 34 **Lange, Reichman and Boyle's property**
- 38 **2000 tort conference site**
- 42 \_\_\_ culpa
- 43 Nintendo competitor
- 44 Young 'un
- 46 Speaker's spot
- 47 Go separate ways
- 49 \_\_\_ souci (carefree)
- 51 Ticklish doll
- 54 Parked oneself
- 55 Squirrel away
- 57 **Law School legend "Jack" Former South African leader**
- 60 "\_\_\_ pig's eye!"
- 64 Magic Johnson was one
- 66 "No kidding!"
- 67 **Trial duds?**

- 71 Participated in crew
- 73 **Contradict**
- 77 Suffix with schnozz or pay
- 78 **Destructive 1996 hurricane**
- 80 Tom Jones's "\_\_\_ a Lady"
- 82 The Flintstones' pet
- 83 Slugger Sammy
- 85 Critters in litters
- 88 Genesis brother
- 90 N, S, E, or W
- 91 **The "E" in Law School's LENS center**
- 94 **New Law School dean, Professor \_\_\_**
- 97 Across the pool and back
- 98 Olympian's sword
- 99 Go berserk
- 100 Property receiver, in law
- 104 Pitcher Hershiser
- 106 Two-\_\_\_ (sports car, often)
- 110 **"Stewards of Democracy" author**
- 112 **Alum Frey's .com**
- 114 Shells, cannonballs et al.
- 115 Bring about
- 116 Ireland's \_\_\_ Lingus
- 117 Greek love god
- 118 Campus VIP
- 119 Lawn neatener
- 120 **Pharmaceutical-approving org.**
- 121 E-mailed

**Down**

- 1 Venus de Milo's lack
- 2 Plunderer's take
- 3 Tennis great Arthur
- 4 Shannon of the N.F.L.
- 5 Sword of \_\_\_ (constant threat)
- 6 "\_\_\_ been had!"
- 7 Anti-D.W.I. group
- 8 Distribute
- 9 No-smoking area rarity
- 10 Taoism founder Lao-\_\_\_
- 11 Equestrian's brake
- 12 Scoreboard division
- 13 Highwayman
- 14 Verdi opera of 1871
- 15 Cupcake topper
- 16 Trillion: Prefix
- 22 Three squares
- 24 Kemo \_\_\_
- 27 Addams Family cousin
- 30 "Love Story" author Erich
- 32 Sommer of film
- 34 Little devils
- 35 In apple-pie order
- 36 Poi source
- 37 Kiel or Erie
- 39 The life of Riley
- 40 Perfume holder
- 41 "The Thin Man" terrier
- 45 Stately tree
- 48 Speaker of Cooperstown
- 50 Top banana
- 52 Time or Life, briefly
- 53 Somebody special
- 56 Sufficient, slangily
- 58 Bout stopper, for short

- 59 Trees for archers' bows
- 61 Ownership card, in Monopoly
- 63 BB propellant
- 65 Recovery clinic, for short
- 67 Give the slip to
- 68 Oodles
- 69 Hamper contents
- 70 Dance like Gregory Hines
- 72 Legally prohibit
- 74 \_\_\_ one's time (wait)
- 75 Curriculum segment
- 76 Wrongful act
- 79 Microwave, slangily
- 81 Words after "que," in a Doris Day song
- 84 Airplane wing feature
- 86 Brave's babe
- 87 Less forgiving
- 89 Three-star army off.
- 92 "Who \_\_\_ Turn To?"
- 93 Superlawyer Gerry
- 95 Extra-wide, at the shoe store
- 96 Some auto agreements
- 100 Mil. college
- 101 Poor, as excuses go
- 102 "\_\_\_ La Douce"
- 103 "Zounds!"
- 105 Goof off
- 107 Get bushed
- 108 School on the Thames
- 109 Take five
- 111 Harbor workhorse
- 113 \_\_\_ XING (road sign)

by Fred Piscop and Kari J. Croop  
(for solutions see p. 56)

# GROSS exam answers

A	L	A	S		D	I	M		M	A	T	R	I		B	A	I	T
R	O	S	H		A	V	A		E	S	S	E	N		R	I	C	E
M	O	H	A	M	M	E	D		T	H	E	I	N	S	I	D	E	R
S	T	E	R	E	O		D	I	E	T		N	I	A	G	A	R	A
					P	A	C	S		T	O	R	E		N	B	A	
I	N	T	E	L	L	E	C	T	U	A	L		G	E	N	E	V	A
M	E	A		S	E	G	A		T	Y	K	E			D	A	I	S
P	A	R	T		S	A	N	S			E	L	M	O		S	A	T
S	T	O	R	E		L	A	T	T	Y		M	A	N	D	E	L	A
					I	N	A		L	A	K	E	R		G	E	E	
L	A	W	S	U	I	T		R	O	W	E	D		R	E	B	U	T
O	L	A		F	R	A	N			S	H	E	S		D	I	N	O
S	O	S	A			P	U	P	S		A	B	E	L		D	I	R
E	T	H	I	C	S			K	A	T	E	B	A	R	T	L	E	T
					L	A	P		E	P	E	E		R	A	G	E	
A	L	I	E	N	E			O	R	E	L		S	E	A	T	E	R
C	A	R	R	I	N	G	T	O	N			O	P	E	N	S	I	T
A	M	M	O			C	A	U	S	E		A	E	R		E	R	O
D	E	A	N			E	D	G	E	R		F	D	A		S	E	N

# Law Alumni Weekend • April 14-16, 2000 • Schedule of Events

## Friday, April 14, 2000

8:00am-5:00pm Board of Visitors Meeting Duke Law School	12:00pm-5:00pm Registration 3rd Floor Loggia, Duke Law School	12:30pm-4:00pm Law Alumni Council Meeting Norfolk Room (3032), Duke Law School	Afternoon Campus Activities	5:00pm-7:00pm Reception for Members of the Barrister Society Greystone	6:00pm All-Alumni Reception and Banquet Washington Duke Inn Ballroom
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## Saturday, April 15, 2000

8:00am- noon Registration 3rd Floor Loggia, Duke Law School	8:00am-9:00am Continental Breakfast 3rd Floor Loggia, Duke Law School	8:30am-9:30am Effective Estate Planning Presented by Kathleen McNally, Assoc. Director of Planned Giving, Duke University Room 3037, Duke Law School	9:30am-10:30am HMO Reform Panel Moderated by Clark Havighurst, Wm. Neal Reynolds Professor of Law Room 3037, Duke Law School	11:00am-12:30pm A Conversation with President Nan Keohane Page Auditorium, Duke University, West Campus Join Duke's 8th President in a discussion on where Duke is headed in the 21st Century- followed by a question and answer session.	12:30pm-2:00pm Alumni Picnic The Lawn, Duke Law School
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## Saturday, April 15, 2000 continued

12:30pm-1:30pm Tee Times Duke University Golf Club	Afternoon Campus Activities	6:30pm-9:30pm Class Receptions and Dinners Honoring the Classes of '95, '90, '85, '80, '75, '70, '65, '60, '55, '50 (See registration form for class locations)	10:00pm-1:00am University Gala Sheffield Tennis Center. Fireworks Display, Music, Entertainment, and Dancing
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## Sunday, April 16, 2000

9:00am Special Palm Sunday Service for Alumni Duke Chapel	10:00am-noon Champagne Breakfast in Sarah P. Duke Gardens Boxed continental breakfast with Duke Wind Symphony performing
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For further details and to register online, see <http://reunion2000.law.duke.edu>

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