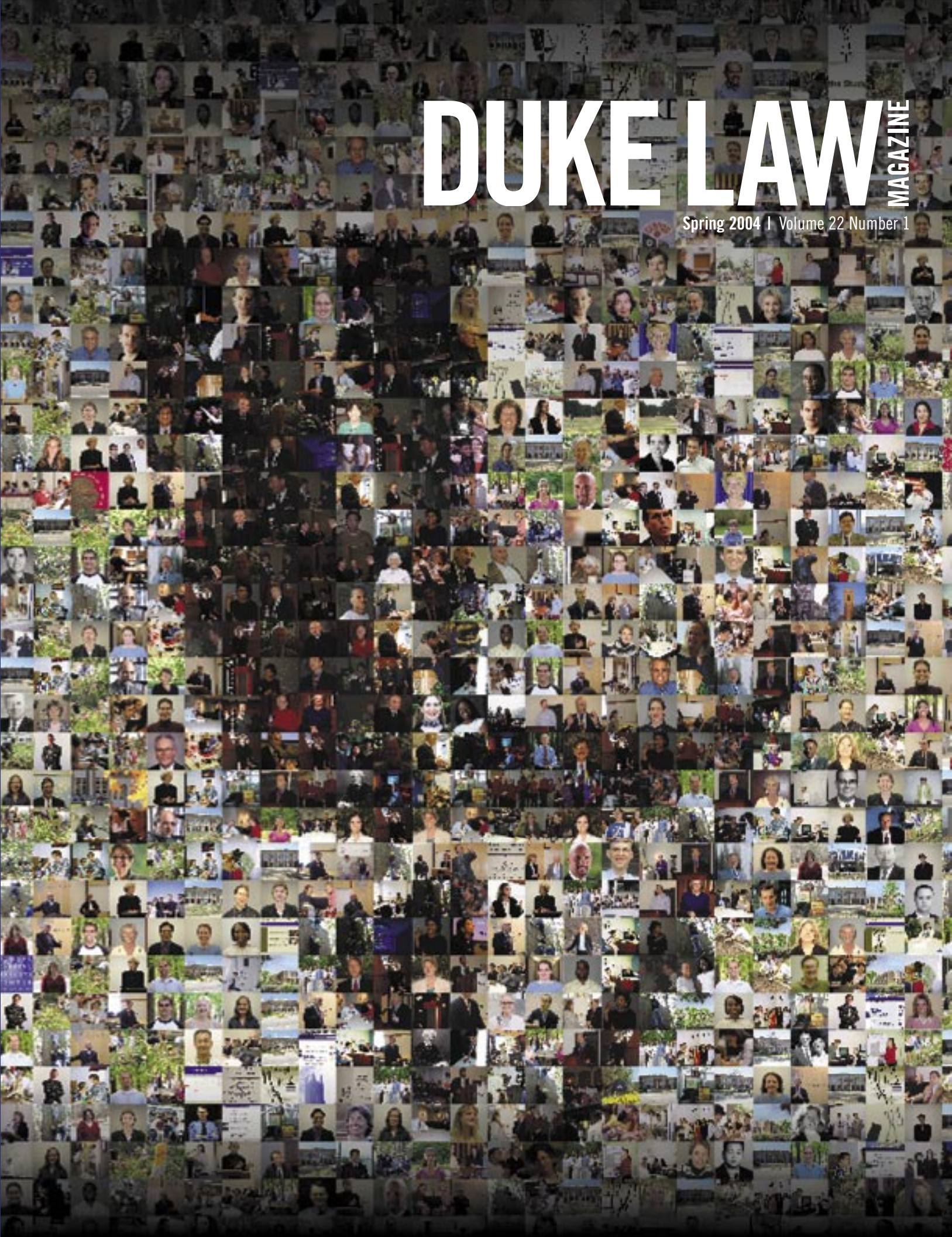


# DUKE LAW MAGAZINE

Spring 2004 | Volume 22 Number 1



## From the Dean

In this issue of the *Duke Law Magazine*, we celebrate the successful conclusion of a Campaign that set out in 1998 to raise \$50 million, and finished in December 2003 having raised \$67 million. What do we have to show for it?

- 12 new faculty, including new strength in constitutional law, intellectual property, telecommunications, biotechnology, tax, employment law, international law and comparative law;
- Commitments for eight new endowed distinguished professorships, three of which are fully paid, and four more of which have sufficient pledges and gifts for completed endowments by 2008 or earlier;
- Six new interdisciplinary centers, including the Global Capital Markets Center, the Program in Public Law, the Center for the Study of the Public Domain, the Center on Environmental Solutions, the Center on Law, Ethics and National Security, and the Center on Genome Ethics, Law & Policy;
- 44 new student scholarships, including 18 full-tuition scholarships under the Mordecai Scholarship Program supporting students who have not only the highest academic credentials, but also extraordinary promise as leaders;
- Two new legal clinics, the Children's Education Law Clinic, providing service to children with special needs and their families, and the Community Economic Development Clinic, providing business law and business planning services to low-income businesses and community development corporations promoting economic growth in low-wealth communities;
- through the new Duke Blueprint for Lawyer Education and Development, a renewed emphasis on community, leadership, teamwork, responsibility, and other professional values that can be especially well learned in Duke Law School's distinctively collaborative environment.

These are all important achievements that position Duke Law School to reach new heights. None of them would have been possible without the support and leadership of our alumni, students and friends, who gave so

generously throughout the duration of the Campaign. Record graduating class gifts, alumni participation levels, Reunion Weekend attendance – these are the great stories of the Campaign, signifying and strengthening the close-knit, supportive quality of the Duke Law community. So many of you played a critical role in the success of our Campaign. In this issue we highlight just a few of the many significant donors who gave time as well as money to help the Law School surpass its ambitious fundraising goal. In addition, you will hear from students and faculty who are benefiting directly from the scholarships, new courses and programs that have had impact on the Duke Law experience.

Of course, our work has only just begun. With tremendous momentum the School faces a number of new and ongoing challenges. Chief among these are our facilities which, in part because of the success of the Campaign, fall far short of what we need. You can read in this *Magazine* about our ambitious plans for facilities renovation and expansion. I trust that you will be as excited as I am about these plans, especially by the new addition, which will bring home our in-house clinics and provide much-needed space for student journals, faculty, and new interdisciplinary centers and programs, and the new atrium space, which promises to transform the look and feel of the building into a more dynamic community space more fitting of the vibrant community of students and scholars that makes Duke Law School so special.

I hope that you will be eager to help these necessary renovations and additions become a reality. We absolutely count on your contributions to maintain and enhance the School's quality. Even after the successful Campaign, Duke Law School remains under-endowed in relation to its peer schools; a number of other top law schools have endowment five and six times greater than Duke's on a per student basis. Until we close the endowment deficit, only generous alumni contributions can help us make up the difference.

To all those who are regular givers, I cannot thank you enough. To those of you who are not, I hope your sense of



school pride, and the ambitious strategies we have undertaken for new faculty, clinics, interdisciplinary programs and space to make your law school even better, will motivate you to add the Law School to your list of favorite causes. We cannot remain a great law school without your support.

I close with a personal note about the death in February of Professor Jerome Culp. This is a tremendous loss to our community of a teacher, scholar, colleague and friend. I appreciate all of the many letters I have received from alumni recounting the many ways he changed their lives. Over 300 former students and friends joined us for a two-and-a-half hour memorial service on February 14 in the Law School library, presided over by the Rev. Denise Thorpe '90, that I will never forget. Thank you to all those who were able to attend.

My very best wishes,

*Katharine T. Bartlett*

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



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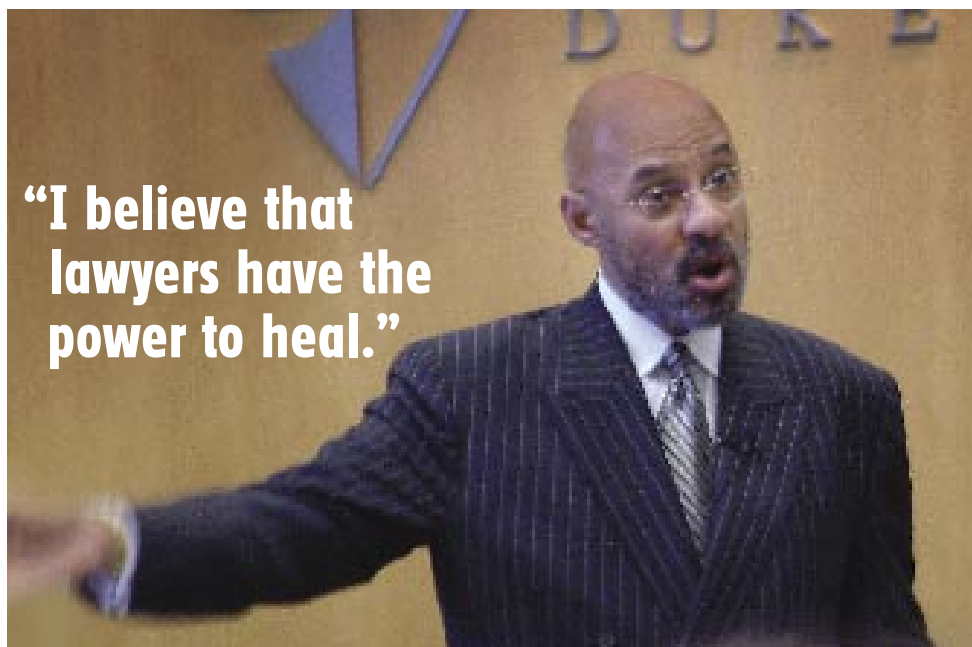
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# { News Briefs



**“I believe that lawyers have the power to heal.”**

AMERICAN BAR ASSOCIATION PRESIDENT DENNIS ARCHER

*Great Lives in the Law* Lecture Series

## ABA Leader Urges Students to Seek Higher Calling in the Law

**D**ennis Archer loves the law. That’s what the American Bar Association (ABA) president told Duke Law students when he spoke at the School Nov. 3 as part of its *Great Lives in the Law* series.

As he portrayed his life in the law and how he came to love it, Archer described his childhood, growing up in rural Cassopolis, Michigan, the son of a father with a third grade education and a mother with a high school education, both of whom believed firmly in the value of a good education.

“My parents made it very clear to me that education was absolutely imperative and that I was going to go to college,” Archer said.

As a student at Western Michigan University, he decided to pursue a career in teaching. In his graduate program, however, he became frustrated that his

courses used the same textbooks he had read as an undergraduate. Upon mentioning his frustration to the woman he was dating at the time, she suggested that he go to law school.

“She said, ‘Why don’t you go to law school?’ and I said, ‘I don’t know anything about law, there’s no one in my family who is a professional. I’ve never had to use a lawyer,’” Archer recounted. “And she said, ‘I think you’d be good.’ So I took the LSAT exam – the very first year it was offered – passed, and fell in love with the law. Also, I married the woman who made the suggestion.”

Archer has a very involved history with the law. During his career, he has been president of the Wolverine Bar, the National Bar Association, the State Bar of Michigan and now the American Bar Association. He was also appointed to

the Michigan Supreme Court, where he served two terms before giving up that job to become the mayor of Detroit.

People of color were not always welcome in the ABA, but in 1971 Archer was invited to become a member of the group. Fifteen years later, at the same time the ABA appointed him chair of the Commission for Minorities in the Profession in 1986, it also appointed Hillary Clinton chair of the Commission on Women in the Profession. “Hillary and I made quite a team,” Archer said. “As I opened doors for lawyers of color, she knocked down the glass ceiling for women.”

Archer may enjoy practicing law, but he loves using his skills and knowledge in public service.

“I believe that lawyers have the power to heal,” Archer said. He reflected on the oath all lawyers take that includes faithfully representing clients, undertaking representation of those in need, and upholding the law.

He told students to think of themselves as healers with the power to positively affect change in difficult situations. Archer cited Mohandas Gandhi, Franklin Roosevelt, Thurgood Marshall and Duke Law School’s own Senior Associate Dean James Coleman as lawyers who have used their healing powers to impact the greater good of the people they serve.

Archer left students with a strong message. “As lawyers, you will bring justice and resolution to issues that seem so incredibly unjust and so irresolute,” he said. “In connecting with your communities and the world, don’t forget to connect with yourself and your loved ones. It won’t be easy... I am here to tell you it can be done. You’re at a fabulous law school. You’re getting the best education in the world at Duke. — *Meredith Mazza* ♡

### For More Information:

**Great Lives In the Law Series:**  
[www.law.duke.edu/conference/namedlectures.html](http://www.law.duke.edu/conference/namedlectures.html)  
**View a Webcast:**  
[www.law.duke.edu/webcast/webcastsArchive.html](http://www.law.duke.edu/webcast/webcastsArchive.html)

Brainerd Currie Memorial Lecture

# Interest Assessment: Who Should Decide?

Robert Nagel, Ira C. Rothgerber Jr. Professor of Constitutional Law at the University of Colorado and a pioneering scholar in constitutional law and theory, spoke to Duke Law students on Nov. 13 as the School's 2003 Brainerd Currie Memorial Lecturer. His speech, entitled "Diversity and the Practice of Interest Assessment," examined the weighing of governmental interests in constitutional cases, and his primary target was the United States Supreme Court's recent decision in *Grutter v. Bollinger*, which upheld the use of racial preferences in the University of Michigan Law School's admissions programs.

Describing the practice of interest assessment more generally, Nagel said that courts typically prefer to treat the importance of a governmental interest as a factor in establishing the meaning of the Constitution, rather than as a reason for making exceptions to it. But in *Grutter*, he explained, the Court came very close to saying that the importance of a state's interest can justify an exception to correct constitutional meaning.

"Despite acknowledging that 'there are serious problems connected with the idea of racial preference' and that 'a core purpose of the Fourteenth Amendment was to do away with all governmentally imposed discrimination based on race,' the *Grutter* majority concluded that the racial discrimination practiced by the School is carefully aimed at achieving a compelling purpose called diversity and therefore found no constitutional violation," he said.

Nagel then undertook to understand



DEAN KATHARINE BARTLETT TALKS WITH ROBERT NAGEL

why diversity is a compelling state interest, an examination that he entered into with some reluctance, given the distance between the opposing sides on the issue.

"For most, the word 'diversity' self-evidently encompasses large and noble goals, a 'dream' as Justice Sandra Day O'Connor puts it," he said. "But for others, the whole idea is plainly hypocritical, empty and pernicious."

Nagel examined the various arguments for and against affirmative action and concluded that diversity can be considered a compelling state interest to the extent that it expresses shared social norms thought to be essential to a decent society.

"Diversity is compelling because it represents and defines an aspiration," he said. "It is defining in the sense that its pursuit is pivotal to a vast array of public

choices and, ultimately, to society's fundamental conception of its own morality."

Nagel moved on to what this means for the practice of interest assessment in constitutional cases more generally. "If an interest as diffuse, costly, uncertain and controversial as diversity is important enough to permit government to override an individual's liberty interest, there may be a very broad range of objectives that justifies restrictions on liberty."

Nagel turned to another of the Court's recent rulings, *Lawrence v. Texas*, which held that a criminal prohibition of private homosexual conduct "furthers no legitimate interest which can justify... intrusion into the personal life of an individual."

Nagel noted that the Court seemed to find a legitimate state interest in *Lawrence*, but did not find it compelling.

Which led to his next question: “If we grant that diversity in higher education is a compelling governmental interest, is there any basis for denying that status to the moral objectives that animate prohibitions against homosexual conduct?”

Nagel suggested that the two apparently conflicting decisions could be

**“If an interest as diffuse, costly, uncertain and controversial as diversity is important enough to permit government to override an individual’s liberty interest, there may be a very broad range of objectives that justifies restrictions on liberty.”**

reconciled because the *Grutter* ruling addressed a moral vision of public life, while *Lawrence* prohibited the imposition of a moral vision of private life. He then examined the circumstances – if any – under which restrictions on private conduct might be upheld, noting that the *Lawrence* majority clearly distinguished criminal prohibitions against homosexuality from the validity of laws regulating homosexual marriage.

“*Lawrence* might be thought to rest on the belief that the state’s interest in protecting the institution of marriage, while morally compelling, is only tenu-

ously connected to the prohibited conduct,” he said. “But this is at odds with the Court’s determination in *Grutter* that racial diversity in higher education is a compelling purpose, because it rests on the proposition that great dreams . . . can be worth pursuing despite uncertainties that attend social causation in a complex and subtle world.”

What does this mean for the practice of interest assessment in constitutional cases? Nagel concluded that great social purposes cannot be ranked by judges. He warned that courts should not rely on interest assessment in constitutional cases, stating that to do so makes room for an aspect of constitutional self-definition that is inherently political and cultural.

“It is realistic and accurate to describe the American Constitution both as a legal document and as a set of political understandings and arrangements,” he said. “It follows that insofar as the constitutionality of laws is thought to depend on the legitimacy and importance of public purposes, that aspect of constitutional decision-making is the task of the public-at-large. For the Court to understand this would not be an abdication.”

The Brainerd Currie Memorial Lecture is a lecture series that began over 25 years ago to honor Professor Brainerd Currie, a noted scholar who was best known for his introduction of the concept of governmental interest analysis to the field of conflict of laws. Recent lecturers in this series include Sanford Levinson, Robert Post, Robert Litan, Martha Minow, Bob Ellickson, Sir Kenneth Keith, Franklin Zimring, Jon Elster, Ernest Weinrib, Margaret Jane Radin and Janet Halley. ♡

**For More Information:**

**View a Webcast:**  
[www.law.duke.edu/webcast/webcastsArchive.html](http://www.law.duke.edu/webcast/webcastsArchive.html)

# Third Annual International Week brings the World to Duke Law

Duke Law School’s third annual International Week took place from Sept. 14 through Sept. 20, 2003, featuring a host of discussion panels, lectures, and cultural activities.

A particular highlight of the week was the second annual Professor Herbert Bernstein Memorial Lecture in International and Comparative Law, given by Dr. Christian Joerges, a professor at the European University Institute and a well known scholar in subjects including German and international private law and economic law, comparative law, and legal theory. JD/LLM students also met with

Professor Joerges for an informal session to discuss the interaction between European law and domestic law within the European



DR. CHRISTIAN JOERGES

Union’s individual member states. Duke Law Professors Michael Byers and Ralf Michaels, co-directors of the Duke JD/LLM program, facilitated this discussion.

In another featured event, Carol Stubblefield, JD/LLM ’92 and a partner at Coudert Brothers in New York specializing in securities law, returned to Duke to speak with students about “The Changing Face of International Legal Practice.” She discussed the international facets of her work and the subtle differences between domestic and international clients. She also answered students’ questions about what courses best prepared her for her work and the cultural intricacies of cross-continent legal practice.

Other highlights of the week included

the second annual International Cultural Presentation and Fashion Show, giving students, faculty, and administrators an opportunity to watch cultural performances of music, theatre, dance and other cultural practices from around the globe, including a Japanese tea ceremony, Argentinean salsa dancing, a Taiwanese puppet performance, a traditional Japanese Noh theatre song, and an Indian dance performance. Back by popular demand from last year's event were a Mexican guitar performance and a Japanese taiko drumming exhibition.

The fashion show, organized by the Asian Law Students Association and the Black Law Students Association, featured 19 students, spouses and children representing Cameroon, Cuba, India, Indonesia, Japan, and Korea as they strolled the "catwalk" of Room 3043 and strutted saris, yukata and a host of other ethnic attire. As well as bringing fun and fellowship to the School, the International Cultural Presentation and Fashion Show provided a venue for Duke Law to celebrate the diversity of its community, offering a chance to share culture and to showcase talents that otherwise could have remained hidden in the rigors of academic life.

Students, faculty and administrators contributed cuisine from their home countries to this year's International Food Fiesta, the culminating event of the week. The event has become an annual favorite at the Law School, bringing the community together to share dishes and traditions from around the world. This year's grand prize — a two-night stay in Wilmington, NC — went to Lindsay Pennington '05 for her outstanding Tiramisu. — *Lisa Wechsler* ♡



TOP TO BOTTOM,  
SHIN-HAENG LEE (L) AND JEONG-HAENG LEE,  
CHILDREN OF VISITING SCHOLAR JAE-GON LEE

MADHULIKA SARNA LLM '04 (L)  
AND RITA PANCHOLY JD '06

OMAR RASHID JD '05 DANCES  
WITH LORENA FELDMAN LLM '04



### For More Information:

**International Week:**  
[www.law.duke.edu/internat/intlweekcal.html](http://www.law.duke.edu/internat/intlweekcal.html)  
**International Programs at Duke Law:**  
[www.law.duke.edu/internat/](http://www.law.duke.edu/internat/)

Jean E. and Christine P. Mills Conversation Series

# Alumnus Amos Mills '72 Sponsors New Conversation Series On Race

**Journalist William Raspberry Inaugurates New Series**

The inaugural Jean E. and Christine P. Mills Conversation Series, *Talking Race*, brought a racially diverse crowd from the Triangle community to Duke Law School Nov. 4. The discussion, opened by Pulitzer Prize winning journalist and Duke University's Knight Professor of Communications and Journalism William Raspberry, centered on race as a topic of conversation itself and involved a spirited dialogue among attendees.

The first installment of the series, designed by Duke Law alumnus Amos Mills '72 and Duke Law Professor Trina Jones did what it was intended to do: engage faculty, students, community members, local and state governmental officials and others in a discussion of race.

"The series is meant for people of all races and backgrounds," said Professor Jones. "These are conversations that are intended to be interactive and inclusive of different viewpoints, and this session was just that."

Mills, who named the series for his late mother and sister, said Americans desperately need to talk about race and to overcome barriers of fear and mistrust. "I hope these conversations will contribute to improving relationships among people of different races and backgrounds."

Raspberry urged attendees to consider the relevancy of race and racism in American today and the myriad of ways people of color might respond. He acknowledged the continuing presence of racism, and said he was puzzled by the degree to which people are unwilling to acknowledge racial progress. He suggested that instead of focusing on race as a problem that is not going to change, people of color might be better served by devising responses that will get around it.

"Racism is the ocean we find ourselves in. It's up to us whether we gurgled and

drown, or swim. We need to swim as best we can."

The conversation that followed was wide-ranging and spirited. Many students in the audience pointed to the large statistical disparities between whites and people of color, suggesting that this difference indicates there is still reason for concern and causes pessimism. Again, Raspberry urged optimism.

"There is racism throughout America," he said. "It would be great if it would go



WILLIAM RASPBERRY

away by the end of the year. But what do you tell your children in the meantime? Wait? Or attempt to achieve what's achievable?"

The Mills series continued in January 2004 with two interactive events associated with Duke University's commemoration of the life of Dr. Martin Luther King, Jr.

## Ogletree Analyzes Race Progress

On Jan. 18, Charles Ogletree, Jesse Climenko Professor of Law at Harvard University, visited the Law School to lead a roundtable discussion entitled "Assessing the Dream: Where are we Now?" attended by faculty, students and

community members. Attendees spoke openly about the ongoing issues of race and racism in America, and Ogletree acknowledged that integration is a persistent challenge.

"We've come a long way and we have a long way to go," Ogletree said. "Whatever the situation, race has always been a divisive issue. Fifty years after *Brown v. Board of Education*, our schools are more segregated than they were then, and there is an ongoing sense that it is only whites coming to blacks, but not blacks coming to whites, that is not accurate and is making integration a real challenge."

Among other topics, Professor Ogletree discussed litigation he is undertaking to obtain redress for the victims of the Tulsa, Oklahoma race riots of 1921. One of the plaintiffs in that lawsuit is James B. Duke Professor Emeritus of History John Hope Franklin.

## Reparations Issue Discussed by Franklin, Joseph and Darity

On Jan. 19, a panel of distinguished scholars and practitioners discussed the movement to secure reparations for the descendants of slaves before a standing room only crowd at the Law School. The group explained that the reparations effort is an attempt to make a more perfect union in the United States, not a plea for a handout.

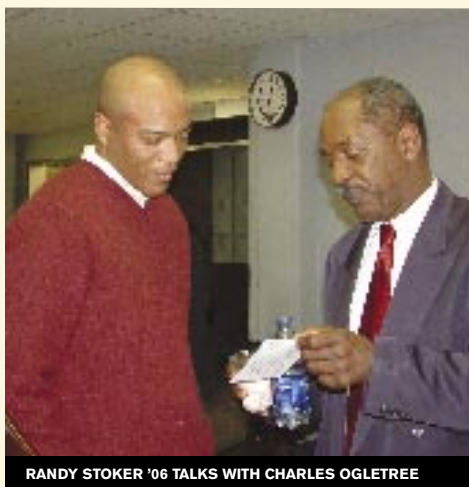
"What we're trying to do is make this nation work," said James Joseph, a professor in the Sanford Institute for Public Policy and former U.S. ambassador to South Africa. "What we're trying to do is change the image of this nation in the world community."

Many obstacles stand in the way of securing reparations through either the courts or Congress, acknowledged William A. "Sandy" Darity, Jr., a professor of public policy studies, African-American studies and economics who moderated the hour-long discussion. A



2001 survey conducted by Harvard professors showed that only four percent of white Americans supported paying compensation to the descendants of slaves.

Rather than coming in the form of large checks to individuals, reparations from government, corporations and private individuals could fund black-led development projects, Joseph said. The funds also could support a self-help fund built, in large part, by donations by African Americans, he said.



RANDY STOKER '06 TALKS WITH CHARLES OGLETREE

If the U.S. government and private corporations paid reparations, it would be a step toward acknowledging the subjugation and immoral treatment faced by African Americans under slavery, Jim Crow laws and ongoing racism, said Professor John Hope Franklin.

"I think of reparations as a token of justice, as a representation of what is right," said Franklin, who chaired President Clinton's Initiative on Race and is a recipient of the Presidential Medal of Freedom and the American Academy of Arts and Letters' Gold Medal in History.

Anyone who visits Washington, D.C. can see monuments, statues and plaques honoring past American heroes, Franklin said. But they would have to search for any plaques honoring the African-American slaves who were sold in the city's once-bustling slave markets and who built the Capitol, the White House and many other downtown buildings.

"This country, up to now, has lived a lie in respect to its role," Franklin said. "It is time for a change." ♡

## Richard H. Brodhead Named Ninth President of Duke University

**R**ichard H. Brodhead, dean of Yale College and the A. Bartlett Giamatti Professor of English at Yale University, has been chosen Duke University's ninth president, Peter M. Nicholas, chair of the University's trustees, announced Dec. 12.

The 56-year-old Brodhead was selected by Duke's Board of Trustees to succeed Nannerl O. Keohane on July 1, 2004. Keohane announced last February that she planned to step down after 11 years in the presidency to return to teaching and research.

Nicholas called Brodhead "the ideal person" to lead Duke into the next stage of its history.

"Dick is a scholar with a deep commitment to undergraduate and graduate education, a proven and effective administrator and fundraiser who understands how research universities work and an eloquent spokesman about the central role of higher education in American life," Nicholas said. "As one of his faculty colleagues at Yale put it, 'His performance is brilliant. Students love him, the faculty trust him, the alumni are in awe of him.' Duke's trustees are confident that the qualities that have led Dick Brodhead to be so revered in New Haven will also serve him well as our next president."

Brodhead noted that Duke is a "special place" whose brightest days lie ahead.

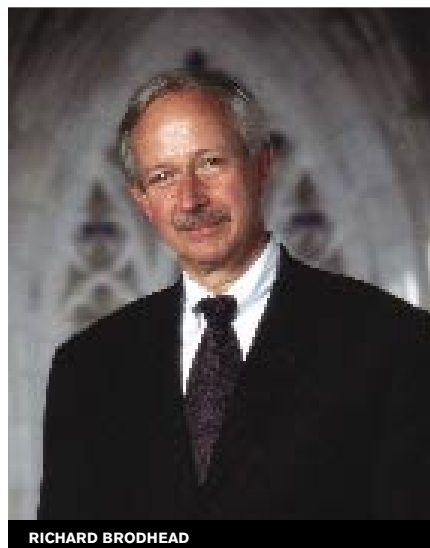
"I am tremendously excited to join a university that has already established itself in the top rank of institutions, yet is still so up-and-coming," Brodhead said. "Duke is a school with a taste for excel-

lence, the energy and optimism to aspire to it, the dynamism and lightness of foot to actually make required changes, and the ability to avoid complacency in the face of accomplishment.

"Duke's core values are quite close to my own and I will represent them with real dedication. I also feel the institution would welcome change in the places where I see room for growth. If I can be a part of making a very good university even better, it will be a great satisfaction,"

Brodhead said.

"We expect Dick to be an eloquent spokesman for research, scholarship and teaching not only at Duke, but on the national stage," said Sara Sun Beale, Charles L.B. Lowndes Professor of Law, who served as the search committee's vice chair. "He has won the respect of the faculty, students and staff at Yale, leading efforts to



RICHARD BRODHEAD

revitalize the curriculum, reach out to international students, enhance financial aid, strengthen the arts and much more. He is a truly gifted academic leader who is known for developing and nurturing a vibrant intellectual and social community, and supporting true excellence in every endeavor. He is also known for taking a keen interest in students, and being energized by them. These qualities combine to make him a superb leader for Duke."

Brodhead and his wife, Cynthia, an attorney, have been married for 33 years. Their son, Daniel Brodhead, a 2001 graduate of Yale, lives and works in New York. ♡

Supreme Court Online

# Program in Public Law Begins Online Supreme Court Coverage

Under the direction of Professor Chris Schroeder and Senior Lecturing Fellow Sarah Ludington '92, the website of the Program in Public Law has been revamped to provide a unique online window to the Supreme Court.

Supreme Court Online has its own front page on the web, and also can be accessed through the Program in Public Law's home page. Viewers can find summaries of cases that the Court has accepted for argument, with links provided to the relevant lower court decisions and to other sources of information about the case where available. When the Court renders a decision on a significant case, the site posts commentary on the implications of the decision, an edited version of the decision, and a link to the official text of the opinion on the Supreme Court's website.

"Public education about significant issues affecting public officials and the authority of government is one of the central missions of the Program in Public Law," said Schroeder, the Program's director. "While there are already a number of websites devoted to information concerning Supreme Court decisions, the innovative combination of features on Supreme Court Online makes this resource one of the best educational tools around."

"The commentary feature enables faculty from Duke as well as other institutions to convey useful information and analysis concerning the implications of important Supreme Court cases. It gives our faculty an immediate outlet for their opinions on cases within their area of expertise," he said.

The edited cases on Supreme Court Online are geared to assist classroom instructors who wish to assign recent deci-

sions. "This feature should be useful for law students and law professors around the country," Schroeder said. "I'm also particularly excited about making edited cases quickly available to instructors outside of law schools, such as political science professors teaching civil rights or constitutional law classes to undergraduates, or instructors teaching courses on American government

to high school juniors and seniors. There is a real need outside of the law curriculum for an up-to-date source of edited cases."

Schroeder and Ludington have more content features planned for the public law website.

"Maintaining

Supreme Court Online is a major commitment of the Program now," Schroeder said. "We also are committed to expanding the site into coverage of other prominent issues, such as civil liberties and the war on terrorism. Within the Law School, we and other organizations sponsor many extracurricular activities on important public law topics. We are going to be developing means to translate what happens inside the Law School into an informative web site."

Schroeder also hopes that the new features will provide a means for Duke alumni to gain information about important cases and public law issues of interest to them, as well as to keep current on activities at Duke Law. "These new features provide another point of access to the Law School for our alumni," Schroeder concluded. "We are very much open to suggestions from them about how to make the site more useful from their perspective." ♡



# Environmental Policy Leaders Flock to Duke

On Friday, Nov. 14, Duke Law School hosted a symposium addressing key issues in the George W. Bush administration's environmental policy. Featured speakers included notable scholars and practitioners from across the United States: Assistant Secretary of the Department of the Interior **Lynn Scarlett**; **John Leshy**, former Clinton solicitor of the Department of the Interior; Florida State University law professor **J.B. Ruhl**, an expert on the Endangered Species Act; **Donald Murphy**, deputy director of the National Park Service; Duke Professor of Conservation Biology **Norman Christensen**; **Lois Schiffer**, assistant attorney general for the Justice Department's Environment and Natural Resources Division; and **Perry Pendley**, president and chief legal officer for Mountain States Legal Foundation and former deputy assistant secretary for energy and minerals in the Department of the Interior.

Sessions included a spirited debate on the Bush Administration's natural resource policies and a discussion of conservation strategies and biological resources. Other topics examined were forest and wilderness management and statutory developments in national and international environmental law. The symposium concluded with an open-ended discussion moderated by Duke Law Professors Chris Schroeder and Jonathan Wiener on topics such as controlling emissions from power plants and fuel efficiency in vehicles.

The symposium was co-sponsored by the *Duke Environmental Law and Policy Forum*, the Environmental Law Society, the Nicholas School of the Environment and Earth Sciences, the Center for Environmental Solutions, the Program in Public Law, Hogan & Hartson LLP, Duke Law Democrats, Duke Law Federalist Society, the Duke Graduate and Professional Student Council and the Duke Law School Office of Student Affairs. — *J.P. Davis '05 ♡*

### For More Information:

**Supreme Court Online:**  
<http://law.duke.edu/publiclaw/supremecourtonline>  
**The Program in Public Law:**  
<http://law.duke.edu/publiclaw>

# CED Clinic Receives \$100,000 in New Grants

The Duke Law Community Economic Development (CED) Clinic recently received \$100,000 in new grant awards to support its work in 2004. The Clinic was awarded \$50,000 by the Z. Smith Reynolds Foundation and \$50,000 by the Duke Endowment. The grant from the Duke Endowment was made through that group's recent grant to Duke University's Office of Community Affairs in support of the Duke-Durham Neighborhood Partnership Initiative. These grants are in addition to the \$145,000 raised for the Clinic since its inception in 2002.

"We are extremely pleased that these two leading foundations chose to support the CED Clinic this year," said Andrew Foster, the Clinic's director. "Now more than ever, funding allocations are extremely competitive and the fact that the Clinic was selected by both the Z. Smith Reynolds Foundation and the

Duke Endowment speaks to the impact this Clinic has both in Durham and throughout the state. The fact that these organizations recognized this impact is deeply gratifying."

The Duke CED Law Clinic, established in July 2002, operates like a small, public interest law firm and is staffed by Duke Law students and faculty. Through this unique hands-on educational experience students provide sophisticated, high-quality legal services to low-wealth and minority entrepreneurs, and to non-profit corporations working on a wide range of community revitalization projects.

Since its inception, the CED Clinic has provided more than 3,550 hours of legal services to more than 34 clients, many of whom were involved in multiple matters requiring the Clinic's services. This represents at least \$445,000 worth of legal services offered at no cost to the CED Clinic's clients. The Clinic's clients



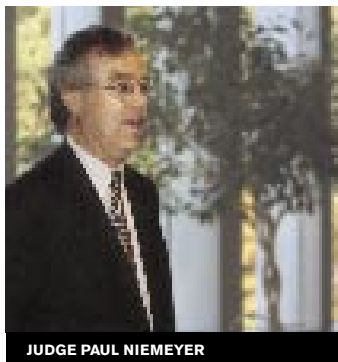
CED CLINIC DIRECTOR ANDREW FOSTER

have been able to leverage their access to these resources to increase the supply of affordable housing, develop commercial real estate projects and create jobs in their communities. ♣

# Fourth Circuit Convenes at Duke

For the second time in three years, the United States Court of Appeals for the Fourth Circuit heard oral argument at Duke Law School on Oct. 31.

With an audience of students and a closed-circuit television broadcast throughout the Law School, the three-judge panel heard three cases: *Peter Farrell Supercars, Inc. v. Monsen; Ballanger v. Owens*; and *State of South Carolina and U.S. v. Walters and Davis*. A question and answer session followed in the courtroom before the judges adjourned for lunch with faculty and



JUDGE PAUL NIEMEYER

students in the Burdman Lounge.

The circuit courts annually ask law schools in their respective regions to host oral argument of pending cases, providing an opportunity for students to see the process of real-world lawyering and to informally interact with judges.

"It's a wonderful opportunity for students to witness the formality of an appellate hearing, and then interact with the judges less formally" said Professor Thomas Metzloff, who organized the judges' visit to Duke Law.

As the chief judge of the Fourth Circuit was not in attendance, the Honorable Paul

Niemeyer assumed the role of presiding judge for the session at Duke Law, serving with Judges Karen Williams and Allyson Duncan '75. Duncan had been sworn in to her new position as a Fourth Circuit judge just one week prior to the arguments.

Ryan Bates '06 found the hearings intriguing. "The opportunity to see oral arguments before the Fourth Circuit judges was truly exceptional, particularly as it was Judge Duncan's first session following her investiture. It was very inspiring."

The last time judges from the Fourth Circuit sat at Duke Law School was in April 2001, with Chief Judge J. Harvie Wilkinson, III, Judge Niemeyer and Judge M. Blane Michael. ♣

Information Ecology Lecture Series

# Center for the Study of the Public Domain Launches Lecture Series

**W**hat does information have to do with ecology? Ecology is the study of the relationship between organisms and their environment; in contemporary America, the term typically refers to the study of the natural environment. At Duke Law School, however, the term is being applied to the study of information, and specifically its regulation and ownership, in a new series of interdisciplinary lectures called “The Information Ecology.”

The series, sponsored by the Center for the Study of the Public Domain, features lectures by nationally known scholars on a diverse range of subjects ranging from copyright law and privacy policies on the Internet to innovation economics, telecommunications policy and genomics.

“These lectures highlight current work in diverse yet increasingly interrelated fields,” said Jennifer Jenkins ’97, director of the Center. “Through both the context of the lectures themselves, and the wide variety of audience members that they bring together, we hope to offer the discussion of ‘information ecology’ the breadth and richness that it deserves.”

“The Center is particularly interested in using these events to build connections across areas of expertise and among universities,” added William Neal Reynolds Professor of Law James Boyle, faculty co-director of the Center. “Duke and its neighboring universities have an extraordinary collection of scholars working in the fields of innovation economics, intellectual property, Internet policy and so on – but all too often they don’t know of each other’s existence.”

During the Fall 2003 semester, the series featured lectures on the economic irrationality of Internet copyright rules, alternative compensation systems for digital entertainment, the future of

privacy in the digital age, the choice between private and public control of electromagnetic spectrum, and empirical research on the effects of patents on innovation.

“We have received an extraordinary response to the lecture series,” Jenkins said. “The fall semester alone drew hundreds of participants from departments all around Duke and from other local universities. We were not only able to present a range of fascinating work, but were also able – as we had hoped – to connect people from different areas of expertise. The quality of the lectures and enthusiasm of the participants indicate the timeliness and importance of these discussions.”

Fall lecturers included Boyle, who discussed Creative Commons, a digital non-profit organization he helped to found that provides online licenses enabling copyright owners to specify their intentions with regard to uses of their works; Harvard Law Professor and Director of the Berkman Center for Internet and Society William W. Fisher III, who outlined an intriguing proposal that would overhaul copyright on the Internet by replacing its system of exclusive private rights with a taxation system that would allow unlimited downloading and free trading of music and film, in return for flat fees levied on the devices and equipment used to access them (such as ISP access and CD burners); and Marc Rotenberg, executive director of the Electronic Privacy Information Center and one of the best-known privacy advocates in the world, who spoke about



information privacy and the particular threats posed by technological methods of control.

Other lectures were given by the telecommunications specialist and Duke Law Professor Stuart Benjamin, who addressed the heated debate over regulation of the electromagnetic spectrum, and Fuqua School of Business Professor Wesley Cohen, who spoke about the efficacy and role of patents in innovation economics.

The Information Ecology series continues this spring with experts on the interface of intellectual property and antitrust law, the possibility of using “distributed networks” for genomic and other scientific research, information economics and consequences for media policy, and a “compensatory liability regime” that would compensate innovators without allowing them to impede subsequent innovation. — *Jennifer Jenkins* ♪

## For More Information:

Information Ecology Lecture Series:  
[www.law.duke.edu/cspd/events.html](http://www.law.duke.edu/cspd/events.html)  
Center for the Study of the Public Domain:  
[www.law.duke.edu/cspd](http://www.law.duke.edu/cspd)

**A**n enthusiastic group of Duke Law students carved time out of their busy schedules to attend the second annual Community Roundtable Leadership Retreat for current and aspiring student leaders from Oct. 24-25. The retreat emphasized the values set forth in the Duke Blueprint for Lawyer Education and Development, a group of seven principles designed to help students build a secure foundation for a successful life in the legal profession.

The retreat began with an opportunity for students to meet and connect with one another by tackling a ropes course led by Duke's Project WILD. The course challenged students to work together and build trust by overcoming obstacles like a 16-foot vertical wall, a giant "spider web," and a "toxic Nitro-river." The students, divided into three groups, all approached each challenge differently and relied on each member's strengths. One team-member provided her group with an added boost; as a former ACC high jump champion, she ultimately scaled the wall in one leap!

The trust and camaraderie built during the afternoon continued into the evening as students ate dinner at their off-campus retreat location. As they relived events of the day, they were asked to question the difference between a good leader and a great leader. Speaker Joe Diab JD/LLM '92, a practicing attorney, mediator, negotiator and executive coach, started the conversation with the poem, "The Invitation" by Oriah Mountaindreafter.

In the poem Mountaindreafter says, "It doesn't interest me what you do for a living. I want to know what you ache for and if you dare to dream of meeting your heart's longing." By asking students to identify qualities

## STUDENT RETREAT Focuses on Personal Leadership



they had observed in great leaders, Diab taught students that great leaders connect with and respect others, have empathy, courage, fortitude and strength of character. But, in order to make full use of these qualities while being busy, stressed and overworked, Diab said great leaders draw energy from their "wellspring," the thing that gives back to them.

Diab asked the students, "[Because you are at Duke Law School], all of you have the capacity to be truly good but, can you in fact be superior and inspiring? What do you need internally to do that?" He also reminded students that leadership is not your title or position because that is secondary to what and who you are.

Saturday morning's session was led by Dr. Lori Todd. A professor at UNC and the founding partner of the North Carolina Legacy Center, Dr. Todd prompted students to learn about their own leadership styles and taught the students in attendance how to communicate effectively with different types of leaders. Through role playing and brainstorming, students learned how others "hear" their

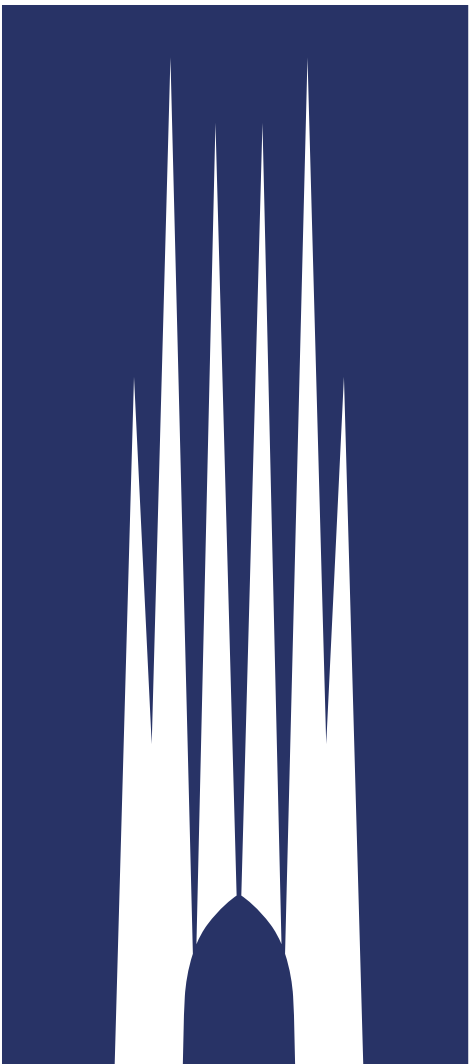
messages and how they could, in turn, be more responsive to different types of messaging.

John Spencer, director of student activities, said, "At the close of the retreat on Saturday, many students came up to me to express their appreciation for the opportunity to learn about their own leadership styles and how they can carry that message to their clubs' constituents."

Mordecai scholar Matt Leerburg '06 reflected Spencer's thoughts, "The most rewarding aspect of the retreat for me was learning about the passions of my fellow students. I don't think I appreciated the intensity of dedication that my peers bring to their organizations." ♡



# MAINTAINING THE MOMENTUM



IN 1998, WHEN THE CAMPAIGN FOR DUKE WAS LAUNCHED, the Law School announced a fundraising goal of \$50 million “[t]o continue training extraordinary men and women who are broadly educated in the law, technologically savvy, ethical and committed to the highest ideals of professionalism and leadership.”

That original goal of \$50 million was raised to \$55 million in 2000, and the Duke Law community gave even more than that. As of December 31, 2003, the Law School had raised over \$67 million, an achievement that has enriched the life of the Law School, its programs and its community. Dean Katharine T. Bartlett recently spoke with *Duke Law Magazine* about the tremendous positive impact of the Campaign, as well as the ongoing challenges that face the School.

**Duke Law Magazine: What has the Campaign meant for Duke Law School?**

Dean Katharine Bartlett: The success of the Campaign produced key faculty hires, new scholarships for students, new interdisciplinary centers and programs that support faculty research and teaching and encourage student-faculty collaboration, new clinical programs that provide students with hands-on professional legal training, and a renewed emphasis on those values that transform great lawyers into great leaders. The result is a dynamic, intellectually charged atmosphere and a close-knit community that is as strong as it has ever been, and is getting stronger. We are so grateful to all of our alumni and friends for their contributions to the Campaign and for helping us to achieve so many of our ambitious goals for the Law School. Their support has given Duke Law School tremendous momentum for the future.

**DLM: What were the priorities of the Campaign?**

Dean Bartlett: To recruit and retain top faculty, increase our competitiveness for the most qualified students, develop a superior interdisciplinary climate for teaching and learning, and ensure that the Law School would enjoy annual long-term unrestricted support.



**DLM: How has the Campaign impacted faculty hiring and development?**

Dean Bartlett: To focus its efforts in faculty recruitment and research support, the Law School identified four substantive areas of law where developing special excellence would be most important to our faculty and students, and have the greatest strategic value to the School more generally: **1. fields related to science and technology, including intellectual property, telecommunications, environmental law, and biotechnology; 2. international and comparative law; 3. constitutional law; and 4. business and finance.**

One important strategy to support new faculty hires in these areas was the creation of at least six new, distinguished professorships. Progress toward this plan has exceeded our expectations, but there is still work to do.

Since 2000, eleven new faculty have been appointed, all of them related to our priority fields. Five of these appointments support the School's priority relating to science and technology: James Boyle (intellectual property; cyberspace law); Jerome Reichman (international intellectual property); Arti Rai (biotechnology; patent law); Stuart Benjamin (telecommunications); and Barak Richman (health law). Four are scholars in the international and comparative law field: Francesca Bignami (comparative public law); Joost Pauwelyn (international trade law); Ralf Michaels (comparative private law); and Jerome Reichman (noted above, international intellectual property). Erwin Chemerinsky, a noted scholar in constitutional law, joins the faculty in fall 2004. Two other key appointments are Lawrence Zelenak, a top tax scholar, and Catherine Fisk, a first-rate employment law scholar.

With the generous help of a \$3 million challenge grant from The Duke Endowment, the Law School has created eight new professorships since 2000, with another likely in early 2004 supported by the Nicholas family challenge. Of these professorships, three are already fully funded, and the School has pledged sufficient to fund four of the others at the \$1.5 million level within the next three to four years. This success has given the Law School a much stronger

**FRANCES FULK RUFTY '45**

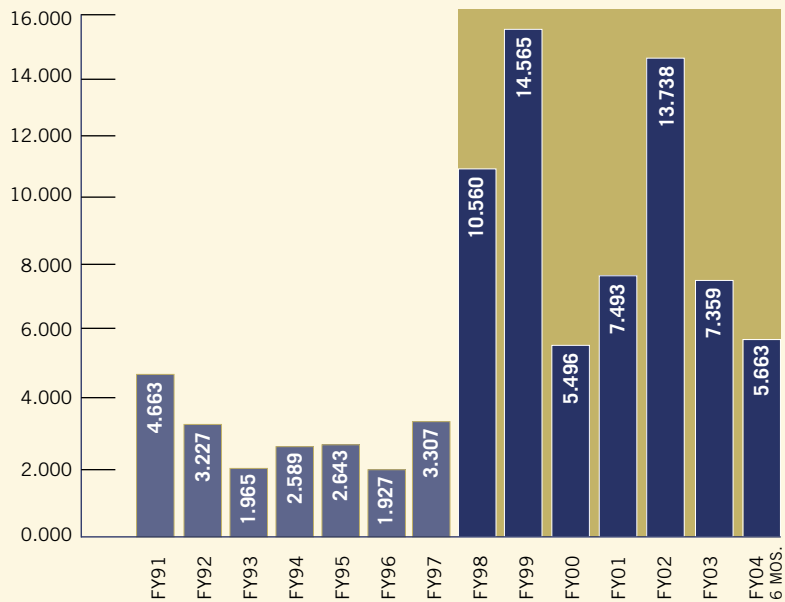
Frances Ruffy was the person who put Duke Law School's campaign officially over the top in the summer of 2002. Her gift of \$1.4 million established an endowed professorship in the Law Library that supports teaching and research. Senior Associate Dean for Information Services Richard A. Danner was named the Archibald C. and Frances Fulk Ruffy Law Library and



Information Technology Research Professor Chair in 2003.

Frances and her late husband Archibald were prominent North Carolina attorneys prior to relocating to Nevada in the 1980's. Frances Ruffy worked in the Law Library as a student and again upon returning from her first job in Washington following graduation from the Law School.

**TOTAL DUKE LAW SCHOOL GIFTS AND PLEDGES**  
(in millions)



**LEN SIMON '73 AND CANDACE CARROLL '74**

Although both Len Simon and Candy Carroll practice at major San Diego law firms – he with Millberg Weiss Bershad Hynes & Lerach, and she with Sullivan, Hill, Lewin, Rez & Engle – they are at the same time deeply committed to public interest law. Both are involved in local and national public service organizations, such as Equal Justice Works and the American Civil Liberties Union. So when former Dean Pamela Gann suggested that they designate their Campaign gift for public interest programs, they readily agreed. As Simon

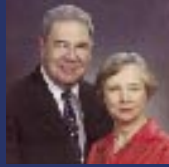


says, "It fit our approach to the world." The Simon/Carroll Endowment provides support for students who are interested in public service careers. The funds can be used for loan repayment assistance, summer fellowships, or any other public interest project sponsored by the Law School. Simon and Carroll also have been generous donors to the Law School Annual Fund throughout the Campaign, and they also helped launch the funding for the Pamela Gann Professorship.



## L. NEIL WILLIAMS '61 AND SUE WILLIAMS

As the former chair of Duke University's Board of Trustees, a former member of the Law School's Board of Visitors, and current member of the Board of The Duke Endowment, Neil Williams knows the meaning of leadership. So when The Duke Endowment made a \$3 million challenge grant to Duke Law School to provide matching funds for six new distinguished professorships, Williams and his wife, Sue, were the first to step up. Their gift of \$1 million, matched with \$500,000 from The Duke Endowment, established the Alston & Bird Professorship in Business Law.



Williams named the professorship in honor of the Atlanta-based law firm where he spent the vast majority of his professional legal career and which, in his words, "allowed me to use the education that I received at Duke Law School. There is a sense of symmetry in this gift that reflects my deep gratitude to both Duke and to Alston & Bird."

Throughout the Campaign, Williams made it a point to give when asked. He generously gave to the Melvin G. Shimm Endowed Scholarship, the Pamela Gann Professorship, and the Law School Annual Fund.

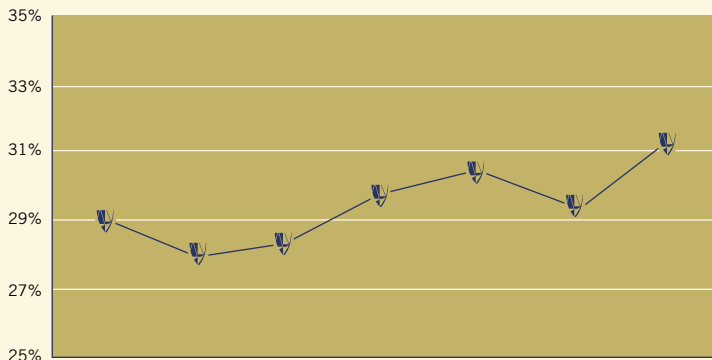
position in its faculty recruitment efforts. But effective recruitment will require that the remaining professorships be funded.

### DLM: What challenges in faculty hiring remain?

Dean Bartlett: While faculty attrition is very low at the Law School – since 2000, the Law School has lost only one faculty member to another law school (Amy Chua, who left to join her spouse at Yale Law School) – this year the School's distinguished constitutional law professor, William Van Alstyne, announced that he will leave Duke to join his spouse at William and Mary School of Law, and Professor Michael Byers decided to return to his native Canada to accept a prestigious Tier 1 Canada Research Chair in Global Politics and International Law, based at the University of British Columbia in Vancouver. The Law School has identified some excellent junior and

## ALUMNI DONOR PARTICIPATION RATES

Gifts and Pledge Payments to All Funds



Fiscal Year	1997	1998	1999	2000	2001	2002	2003
Living Alumni	6,636	6,595	7,129	7,343	7,611	7,835	8,090
Alumni Donors	1,892	1,998	2,018	2,175	2,294	2,260	2,487
Percent	29%	28%	28%	30%	30%	29%	31%

"MANY OF THESE GOALS HAVE BEEN MET, WHILE OTHERS REQUIRE CONTINUING ATTENTION."

mid-range prospects in constitutional law and environmental law, and expects to make from three to four additional first-rate appointments as early as this year. Still, recruitment at the senior level in constitutional law, and business/finance is highly competitive and requires significant effort. We could never fully replace Bill Van Alstyne.

### DLM: What impact have the new centers and programs had on the Law School experience?

Dean Bartlett: In each of the four areas of excellence, the Law School has created new programs and centers that sponsor academic conferences and provide new opportunities for students. For example, in the area of intellectual property, the Center for the Study of the Public Domain is a highly innovative interdis-

## FLEXIBLE FUNDS

Among the most valuable contributions within the Campaign have been those which were given without restriction. The Law School Annual Fund and the Dean's Discretionary Fund are examples – flexible dollars which enable the School, at the Dean's discretion, to respond to the most "up-to-the-minute" opportunities.

More than \$13 million has been raised in the Annual Fund over the course of the Campaign, and an additional \$1.2 million has been given to the Dean's Discretionary Fund. Several members of the Law School's Campaign Committee, including Campaign Chair Jeff Hughes '65, George Krouse '70 and Carl Bolch '67, have each made significant pledges to this fund.

ciplinary center that supports research and teaching on cutting-edge issues concerning the appropriate line between private property and the public domain, and the effect of this line on creativity, innovation, and the economy. High-profile conferences sponsored by the Center have explored a wide range of issues, from art, movies, music and literature, to drugs needed by third-world countries, and ownership of university-centered scientific and medical discoveries generated by government funding. New courses in intellectual property have been established, some with opportunities for students to work directly with public inter-

**ESTABLISHED  
SINCE 1998:**

**12  
NEW FACULTY**

**58  
ENDOWMENTS**

**5  
CLINICS**

**5  
INTERDISCIPLINARY  
CENTERS**

est organizations advocating particular legal reforms. Students have also had the opportunity to work closely with faculty on joint research projects.

The Global Capital Markets Center is another important example. A joint project between Fuqua and Law, this Center supports faculty research and teaching on subjects relating to corporate governance, asset securitization in the international context, and global finance. Students are brought into the Center's work through innovative new courses, and as research assistants for faculty.

## THE HON. DANIEL T. BLUE '73

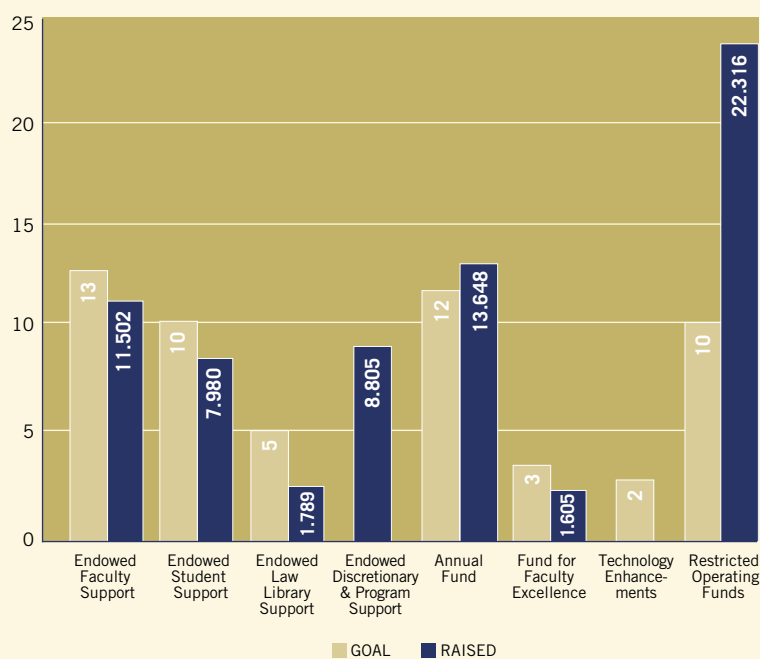
Dan Blue has been a force in North Carolina politics and government for more than 20 years, and for more years than that, he's been a trailblazer. He was a leader in Durham's civil rights movement in the 1960's and went on to become the first African-American to work at a major law firm in the state, leading the way for others to follow. He was elected to the North Carolina House of Representatives in 1980 and served until 2002, including two terms as Speaker of the House. He practices law in Raleigh at his own firm, Thigpen, Blue, Stephens & Fellers.



When asked why he made his commitment to Duke Law School's Campaign, Blue expressed his sense of obligation to the School which gave him his grounding in the law. He described Duke as "a great experience...a place where I made life-long friends and learned life-long skills. I feel a tremendous commitment to Duke, and I hope that I have instilled that commitment in my three children as well." All three of Blue's children have undergraduate degrees from Duke, and his two sons, Dan III and Dhamian, are graduates of the Law School as well.

## THE CAMPAIGN FOR DUKE LAW SCHOOL

Total Commitments (in millions) \$67.645 million  
December 2003



## STANLEY STAR '61

Stanley Star and his family – including wife Elizabeth and three children – also answered The Duke Endowment Challenge. In 2001, the Star Family Foundation endowed a professorship at the Law School to help continue Duke's excellence in business and finance law. Explaining their decision to give back, Star says "I spent a short time at



Duke, and I really enjoyed the experience." In recent years, Star, a member of the Law School's Board of Visitors, says he has renewed old friendships and built new ones with fellow alumni, deans, professors and administrators. "It's just been a wonderful association with a great, great group of people with mutual interests," he says.

## GEORGE KROUSE '70

The Law School's need for faculty enhancement inspired George Krouse '70 to gather together his fellow Duke alumni in practice at Simpson, Thacher & Bartlett to make a significant collective gift that would honor the partnership between Duke Law School and the New York law firm. Krouse, a former chair of the Law School's Board of Visitors and member of the Law School's Campaign Committee, worked closely with David Ichel '78 and others at the firm to endow the Simpson, Thacher &



Bartlett Professorship in Business Law, marking the first time that lawyers at any firm combined resources to establish a named professorship at the Law School.

"This gift is a natural outgrowth of the connection between the lawyers at Simpson Thacher & Bartlett and the Law School," said Krouse. "It's a way for us to memorialize our relationship to Duke in a way that will enhance one of its most critical components: its faculty. We hope that other lawyers and law firms in our position will be similarly motivated."



## JEFFREY HUGHES '65 AND BETTYSUE HUGHES

When Duke Law School needed an alumni leader for its Campaign effort, Jeffrey Hughes was ready to take on the challenge. As a result of his leadership and that of the entire Campaign Committee, the Campaign achieved success far beyond its goal. Hughes, an honorary life member of the Law School's Board of Visitors and a member of the Board of Advisors of the Global Capital Markets Center, and his wife, Bettysue, have made significant contributions to the Dean's Discretionary Fund, as well as the Pamela Gann Professorship and the Law School's Annual Fund. In



December, they completed a major gift that will go toward the new building renovations and addition.

"Duke Law School will always hold a special place in my heart," said Hughes. "The Campaign was an opportunity to give back to the School, and alumni and friends responded in a way fitting of the character of the Duke Law community. It was a true group effort and it was a pleasure for me to work with so many administrators, fellow alumni and friends for these past few years on such a collaborative and meaningful project for the School."



## EUGENE T. BOST RESEARCH PROFESSORSHIP

The Eugene T. Bost Research Professorship is critically important to faculty research at Duke Law School. Bost Professorships provide funds that support faculty during their research leaves. At least two faculty members have been granted "Bost leaves" each year since 1998, the most recent being Professors Francesca Bignami, James Boyle and Deborah DeMott during the 2002-03 academic year. (See Faculty Focus for a listing of their most recent publications.)

The Charles A. Cannon Charitable Trust No. Three established the Bost Professorship in 1980 in memory of Eugene T. Bost '33, who served in the North Carolina

House of Representatives for nearly 20 years. When Mr. Bost left political life in 1959, he joined the Cannon Mills Company, where he served as general counsel, vice president and director of the Cannon Foundation, trustee of the Charles A. Cannon Charitable Trusts, and president of Cannon of the West Coast, Inc.

"We are deeply grateful to the Cannon Trust for so generously supporting the research efforts of our faculty," said Dean Katharine T. Bartlett. "Without this support Duke would not be able to recruit top faculty, or to give them the time they need to grow as productive scholars."

Two other centers – the Program in Public Law and the Center on Law, Ethics and National Security – have stimulated similar intellectual activity in the fields of constitutional law and national security law, respectively. Both programs have been involved in the formal education of judges and also provide affiliated faculty frequent access to the media and other public forums for discussion and debate. The Program in Public Law recently launched a website with same-day summary of and commentary about important United States Supreme Court cases.

### DLM: How else has the Campaign impacted students?

Dean Bartlett: During the period of the Campaign, over \$5 million was raised for scholarships, including our new special Mordecai scholarships that recognize leadership as well as academic success. We are very pleased with the success of our fundraising efforts in this area of the Campaign, and we hope that we will be able to build upon that momentum and continue to increase our ability to recruit the best and brightest students to Duke.

In addition to the other ways I have already mentioned, students benefit immeasurably from new in-house clinics in business law, children's education law and international human rights law. These clinics join the AIDS Legal Project and the Death Penalty Clinic to combine course work with extensive client interaction under the direction of Duke Law faculty. In the Community Economic Development Clinic, for example, students spend at least 100 hours a semester working on various client matters involving corporate law, tax law and business planning in low-wealth communities. These types of experiential learning opportunities reinforce the values of leadership and professionalism that are emphasized throughout the Duke Law educational experience.

## DLM: Coming out of the Campaign, what critical challenges lie ahead?

Dean Bartlett: As the Campaign ends, the Law School is turning its attention to a set of needs that have been intensified by its success in faculty and student recruitment: the Law School's physical facilities. The Law School is out of space for new faculty, having already converted closets and conference rooms to office space. Important interdisciplinary programs do not have identifiable space or room for staff, conference support and other activities. The new legal clinics have had to be housed in downtown Durham because of the absence of space in the Law School. Law journal space is inadequate, and common, public space is lacking — a severe issue for our community. Of less functional import, but a serious concern for some, are the two incompatible exterior façades of the Law School building.

The Law School has major plans to address these facilities issues, and success with these plans will require significant contributions from alumni and friends. The project will begin in the summer of 2004 and, assuming fundraising success, will be completed by the end of 2005. Project costs, which include a heavy dose of deferred maintenance, are now estimated at approximately \$32 million. The overall project is critically important to the Law School, which has fallen substantially behind its peer schools with respect to the quality of its facilities.

Our renovation and expansion will match the excellence of the education we offer and will enhance the Duke Law experience. We are excited for the April groundbreaking, which will occur during Reunion Weekend. ♡

## RICHARD HORVITZ '78 AND MARCY HORVITZ

Rick Horvitz is quick to brush aside any implication that he made his gifts to the Law School on his own initiative. He credits his wife Marcy with urging him onward at every step.

The Horvitz's initial campaign gift of \$1.6 million to support the Law School's Program in Public Law grew from Rick's conviction that a top-rated law school ought to have an outstanding constitutional law program. Although his career has not been in the legal profession, Horvitz credits Professor William Van Alstyne with challenging him intellectually in the constitutional law classes that he took at Duke. The Program in Public Law holds an annual conference examining constitutional issues, sponsors the *Great Lives in the Law* lecture series, organizes brown bag lunches throughout the academic year, and recently launched Supreme Court Online, a website that includes up-to-the-minute commentary about significant cases before



the United States Supreme Court.

As the Law School's needs for faculty development became more focused, Rick conceived of a Fund for Faculty Excellence, which enhances support for faculty beyond the income that endowed professorships can produce. Horvitz jump-started the fund with a pledge of \$1 million, and committed an additional \$1 million in funds for an endowed professorship in constitutional law. The Law School's Annual Fund has also figured prominently in his giving.

"Duke Law School is a very warm and special place," Horvitz explained. "It's unusual to find a school which combines outstanding scholarship with such a sense of community. The faculty and administration always felt like family to Marcy and to me."

Marcy Horvitz died unexpectedly on November 17, 2003. The upcoming Public Law conference will be dedicated to her memory (see story p. 37).

## THE BARRISTER DONOR SOCIETY

Founded in 1975 to stimulate loyalty among alumni and to set a standard of commitment that encourages support from others, The Barrister Donor Society recognizes alumni and friends whose generous support enables Duke maintain its status as one of the top law schools in the country. More than 1000 members of The Barrister Donor Society contribute nearly 95% of the dollars donated annually to the Law School.

In anticipation of the thirtieth anniversary of The Barrister Donor Society, the Law School's Board of Visitors voted to upgrade the status of this distinguished group of donors through the establishment of new giving levels. Beginning in July 2004 (FY05), membership into The Barristers will be granted to Duke Law alumni and friends who donate \$2,500 or more annually to the Law School. Recent graduates of

1-5 years, judges, educators, and those who work for the government or within the non-profit sector will be members at a gift level of \$1,000 annually. Graduates who make a multi-year Barrister pledge this fiscal year (July 1, 2003 – June 30, 2004), or who are paying on Barrister pledges made in previous years, will continue to be members, at current levels, for the remainder of the duration of their pledges.

Members of The Barrister Donor Society will continue to be recognized in the fall Duke Law Magazine, on a plaque in the Law School, at the annual Barrister reception during Reunion Weekend, and at special Barrister events throughout the country. More details on recognition vehicles and incentives will be announced in the fall, along with other new giving levels.

## CHILDREN'S EDUCATION LAW CLINIC

When I signed up for the Children's Education Law Clinic last semester, it was my first venture away from the standard, large, law school class. Like many who sign up for clinics, I was seeking an opportunity to gain some "real world" experience, to transition from an academic study of the law toward a more hands-on learning environment. My clinic experience not only lived up to these expectations, but it surpassed them in ways that I could not have imagined. By the end of the semester, I had not only taken away practical, legal lessons that I will carry with me for the rest of my professional career, but I had also experienced first-hand the thrill and personal fulfillment that comes from using one's legal knowledge to help someone less fortunate.

In the Children's Education Law Clinic, law students either represent children with learning disabilities who are not receiving legally required accommodations from their schools, or students who have been suspended long-term and are appealing that suspension. As an aspiring trial attorney, I quickly developed a bias for the school discipline cases, as they provided the more adversarial, litigation-oriented opportunities. Each case I worked on taught me a different, important, practical lesson that will remain with me for the rest of my career. Most importantly, I came to understand the weighty burden and responsibility that comes with



representing a client — a responsibility that was at times both daunting and inspiring. I also learned that oftentimes, the most difficult challenge is not learning the black-letter law; rather, it is actively connecting with, listening to, and communicating with your clients.

I could go on for pages about the additional practical lessons I took away from my clinic experience, such as the necessity of demanding from yourself the utmost in error-free preparation, and the challenge of zealously representing a client whom you truly believe is guilty of the charges of which he is accused. I could also rave about the level of responsibility and litigation practice I was exposed to. But the most important lesson I took away from my clinic experience was the enormous personal satisfaction that comes from using your legal skills to help those less fortunate than you. Over the course of the semester, I was able to help two students overturn their long-term suspension and return to school. The feeling that came from helping these students was extremely gratifying. It was more than winning a case, it was helping a person. This was a lesson I did not join the clinic expecting to find — to be honest, I signed up at first solely for the practical experience. But moving forward, I hope to find more opportunities throughout my career to use my legal education for such positive ends.

— Jesse Smallwood '04

# SCHOLARSHIPS MAKE ALL THE DIFFERENCE FOR SOME STUDENTS

**A**n alumnus can directly influence an admitted student's decision to attend Duke Law School. This is because scholarships are critical to recruiting the best students to Duke and scholarships at Duke would not be possible without alumni support.

"Even though scholarships are financed through the Law School's operating budget, we wouldn't be able to provide nearly enough assistance without alumni support," said Dennis Shields, Associate Dean for Admissions and Financial Aid. "Alumni who have generously donated are a top reason the Law School is able to remain competitive with other schools."

Since the start of the Campaign, alumni gifts have enabled the School to award 44 new scholarships, including 18 full-tuition Mordecai Scholarships. The total number of endowed scholarships at the Law School is currently 60.

Presently, more than 50% of the Law School's student body receives scholarship assistance, while about 75% of students are financing their education in part through student loans.

"Sometimes students come back to us and say they can attend Duke only if we can increase their scholarship," explained Shields. "Because alumni have been so generous, in fall 2002 we were able to increase scholarship awards to some students requesting it and ultimately swayed about 13% of those students to choose Duke over other institutions," Shields explained.

"I would not have been able to attend Duke without the scholarship I received," said Dorrian Horsey '06. "Now I don't have the worry of financing my entire education through loans, and it became possible for me to consider a career in public service without having enormous debt." ♣

## VANN PEARCE '06

Vann Pearce '06 was interested in the Mordecai Scholars program at Duke Law School from the moment he first heard of it. Of course, the opportunity to earn a full scholarship to law school was attractive, but he was most intrigued because the Mordecai Scholarship requires that its recipients commit to giving back to the School and the Duke Law community.



These interactions have made a lasting impression on Pearce.

"I was so impressed by how interested all of the alumni I met were in meeting me and by their offers of career advice and counseling," he recalled. "Mr. Smith was willing to help us in any way, and as he spoke with me I realized he has the priorities of life in order

— serving his community, putting family first, performing at the top level in his career — all with energy. It was an inspiration to meet him," Pearce said.

Duke wasn't the only top school courting Pearce but none made as favorable of an impression.

"I was recruited by Harvard and NYU, but it was the positive academic and social experiences I enjoyed when I visited Duke that really convinced me that Duke would be the best place for me to attend law school," he said. "Six months later, I know I made the right decision. I love it here!"

"What appealed to me about the program was that it wasn't a no-strings attached gift like scholarships at many other schools; there were expectations that you would give back through service and leadership as a student and after graduation," Pearce explained.

Although Pearce has just begun his Law School career, he has had the opportunity to meet with alumni from each of the leadership boards, and last fall was invited to dinner at the home of Lanty Smith '67, whose early support started the Mordecai Scholars program.

**"WHAT APPEALED TO ME ABOUT THE PROGRAM WAS THAT IT WASN'T A NO-STRINGS ATTACHED GIFT LIKE SCHOLARSHIPS AT MANY OTHER SCHOOLS; THERE WERE EXPECTATIONS THAT YOU WOULD GIVE BACK THROUGH SERVICE AND LEADERSHIP AS A STUDENT AND AFTER GRADUATION." — VANN PEARCE '06, MORDECAI SCHOLAR**

## LANTY SMITH '67 AND MARGARET SMITH

Scholarships and financial aid were at the heart of Duke Law School's Campaign. This area received a boost like no other when Lanty Smith and his wife, Margaret, committed \$1 million to spearhead a new scholarship program to provide full scholarships for students with both superior academic credentials and leadership abilities. Named for Samuel Fox Mordecai, the founding Dean of Trinity Law School (the predecessor to Duke Law School), the Mordecai Scholarships currently provide significant assistance to 18 students. Another 17 scholarship recipients have graduated since the program's inception in 1997.



Smith embodies the qualities of a Mordecai Scholar.

Since graduating from Duke Law School with honors in 1967, he has been an active and committed alumnus, giving significant amounts of his time, talents and resources as former chair of the Law School's Board of Visitors, a member of its Campaign Committee, and as a Duke University

Trustee. He is most proud of his involvement in the launching the Mordecai Scholarship.

"The Mordecai Scholarship program is one of the best things I've ever been involved with," he says. "It was very much based on personal motivation, since I received a scholarship to attend Duke, and I know what a difference these types of opportunities can make. I'm living proof."

# Remaking Duke Law

by **Thomas B. Metzloff**  
Professor and Chair, Building Committee





**T**here is much that is good about the Duke Law School building. It has a great location in the middle of an exciting campus. It has several terrific classrooms. The library is high-tech, spacious and comfortable. Faculty offices are well designed for work and meetings with students.

But it has problems as well.

Originally built in the 1960's for a student body of only a few hundred, by the early 1980's the building was too small. A significant addition in the early 1990's provided much needed space, but created a new problem in that the building was now an odd meld of a red brick façade and a modern granite finish. By 2000, the lack of space was again an issue as the Law School continued to recruit new faculty, add new clinics, and expand its innovative interdisciplinary programs. Student space concerns – lockers, journal space and room for other student activities — were not addressed with the prior addition and have become even more critical.

Following a two-year period of active planning that has involved faculty, students and alumni, we are now ready to begin a major construction project to expand, renovate, and, indeed, recreate the Duke Law building.

### **The Plan**

In 2001, the Law School retained the Philadelphia-based architectural firm of Dagit Saylor to develop a conceptual plan for expansion and renovation of the building. Peter Saylor, the lead architect, visited the Law School frequently to talk with faculty, students, and administrators to develop insights about improving the building's functionality.

Saylor presented his study to the faculty and the Law School's Board of Visitors in April 2002. He made two key recommendations. First, he recommended building a new wing along Science Drive in the direction towards the Fuqua School of Business. Second, he urged that the current outdoor courtyard space be converted into an indoor atrium. The existing outdoor courtyard frequently is not usable; it is too cold in the winter, too hot in the summer, and of course, not functional when it is raining. Many find its hard surfaces and long narrow design unappealing. By connecting it to the rest of the building and making it warm and inviting, the new atrium could become the heart of our community.

Turning the general concept into a specific design required extensive additional planning, which is largely coordinated by the Law School's Long-Range Planning Committee composed of faculty, students and staff. That group has been meeting



regularly to refine plans and work with the architects to address a host of specific issues and concerns.

A key focus of the renovations are two of the School's large classrooms. With poor acoustics, uncomfortable chairs, and inadequate technology, they are no longer appealing places to teach or to learn. The Law School has retained Clymer Cease, a Raleigh architect responsible for the redesign of several of the School's successfully renovated classrooms, to undertake the design work on the two remaining renovation projects.

The most exciting part of the classroom renovations involves the expansion of the middle classroom, which will result in the addition of several rows of theatre-style seats in the back for a total capacity of 165 occupants. This new showcase classroom will now be able to host new student orientation in the fall and will generally operate as a much improved venue for major lectures by major speakers (which now often require overflow into other rooms).

The new plan also seeks to develop a new look to the front exterior of the building. The Law School's interest is in developing a façade that will be in harmony with the beautiful Duke campus surrounding us. The architects and University officials are excited about using the same palette of bricks that has been used recently in the new dorms on Towerview Road and in many of the new buildings along Science Drive. The Law School plan calls for the replacement of all the existing front windows with larger and more elegant windows to define a very attractive new window wall in the front. Landscaping and new outdoor seating areas in front of the Law School will also

enhance the look and function of the building.

Another important part of the architectural plan is a new entrance that is marked by a tower element, also linking the Law School more closely with surrounding campus buildings. The current Law School building is a long and flat structure, somewhat lacking in character. The new tower will be both an aesthetic and functional element, providing something that is sorely lacking in the current Law School building: a well-defined entrance. On the advice of our Board of Visitors, the plan includes an easily located reception area where visitors will be greeted with information about the Law School.

The conversion of the courtyard into an atrium presents an amazing opportunity to further energize the Law School community. The large staircase that overlooks the courtyard will be removed and the floor of the courtyard space extended. The café, now located in a basement corner of the building in an inadequate space, will be rebuilt at the end of the new atrium with a balcony overlook that is usable on nice days. Students will be able to sit comfortably in the atrium to study, work in groups, and interact with one another

and with faculty. The space will also be used for a wide variety of special events such as alumni receptions and dinners.

The construction schedule for the project is aggressive and will be staged to minimize negative impact on the Law School during the academic year. In summer 2004, we will demolish and completely rebuild the two large classrooms to ensure that they are

## The Architects

Philadelphia-based **Dagit Saylor Architects** has extensive experience working with universities across the country. Founding partner **Peter Saylor** and his associate, **David Searles**, are leading the Duke Law School building project.

Saylor has orchestrated some of the firm's most significant collegiate projects including the Lang Performing Arts Center at Swarthmore College and the Logan Museum at Beloit College. During his 13 years with the firm, Searles has worked on building projects at Princeton University, the University of Pennsylvania, Drake University, Rutgers University and Valparaiso University.

Since its inception in 1970, Dagit Saylor has been honored with numerous national, state and local design awards, including gold and silver medals from the Philadelphia chapter of the American Institute of Architects. To see examples of Dagit Saylor's work, visit [www.dagitsaylor.com](http://www.dagitsaylor.com).





## Students Welcome New Building Plans

The Law School's building project is designed to directly benefit students as well as functionally improve the building. Once the project is complete, students will enjoy better clinical space, new journal offices, larger and more technologically advanced classrooms, expanded community areas and eating facilities and more study options. The students, of course, have an opinion about it all.

Students point to the new atrium space as a key highlight of the project.

Seagramm Smith '04 speaks for many students when she says, "The ability to utilize what is now the courtyard space, irrespective of weather conditions, makes it a particularly attractive and good improvement."

Smith also likes that the atrium will provide a bright, new place for students to study, or share a cup of coffee with a professor. "Lots of times, it feels like there is not enough study space around, and having that area for social use as well will be a great asset for students," Smith adds. "And since many of us are here most of the day, it will be nice to have such a great space to hang out."

Students also are excited that the new classrooms will be done in time for the fall 2004 semester, and that Room 3041 will be made large enough to house many Law School events. New student orientation, the Public Interest Law Foundation Auction and popular guest speakers will no longer need to go elsewhere on campus.

Matt Droz '05 thinks the classroom improvements will make students feel better about their learning experience and will also help the Law School recruit new students. "The renovation will improve our experience and also make recruiting easier for the School." Smith adds to Droz's comment, "Duke is so tech savvy, and that's apparent in the newer classrooms. But you'd never know it from the way the large older classrooms look now. The new classrooms make the technology believable."

With the addition of three new clinics, the Law School needed more space. Smith thinks that giving clinics their own space will help students serve in their professional roles. "It shows the School takes clinical programs seriously."

Some students have concerns – especially first-year students who will bear the brunt of the construction. But, with the majority of work occurring during the summer while students are away, the inconveniences should be minimal.

"My first thought was that life might turn rather unpleasant during the project for us as a student body," said Brian Knox '06. "But it will be awesome to return to new classrooms in the fall. And during my third year, I'll be able to enjoy vastly superior facilities."

We are all eager for the project to begin!

– Matthew Christensen '05

ready in time for classes in August. Also this summer, the entire front façade of the Law School on Science Drive will be stripped of the old red brick, and the new brick will be installed along with the new windows. Thankfully, the "temporary" emergency external staircase that has obscured the old front entrance will be removed.

Later in the summer 2004, construction on the new wing will begin. That project will continue throughout the year with an anticipated completion date of August 2005. We are planning extensive coverage on the Law School's website so that everyone can keep track of the progress. Development of the new atrium will begin in summer 2005.

When all the phases are complete, which we expect will be sometime in 2006, the Law School building will rival any in the country and will be a source of pride to our students, faculty, staff, and alumni. ♡

## Clinical Programs to Benefit from Renovations

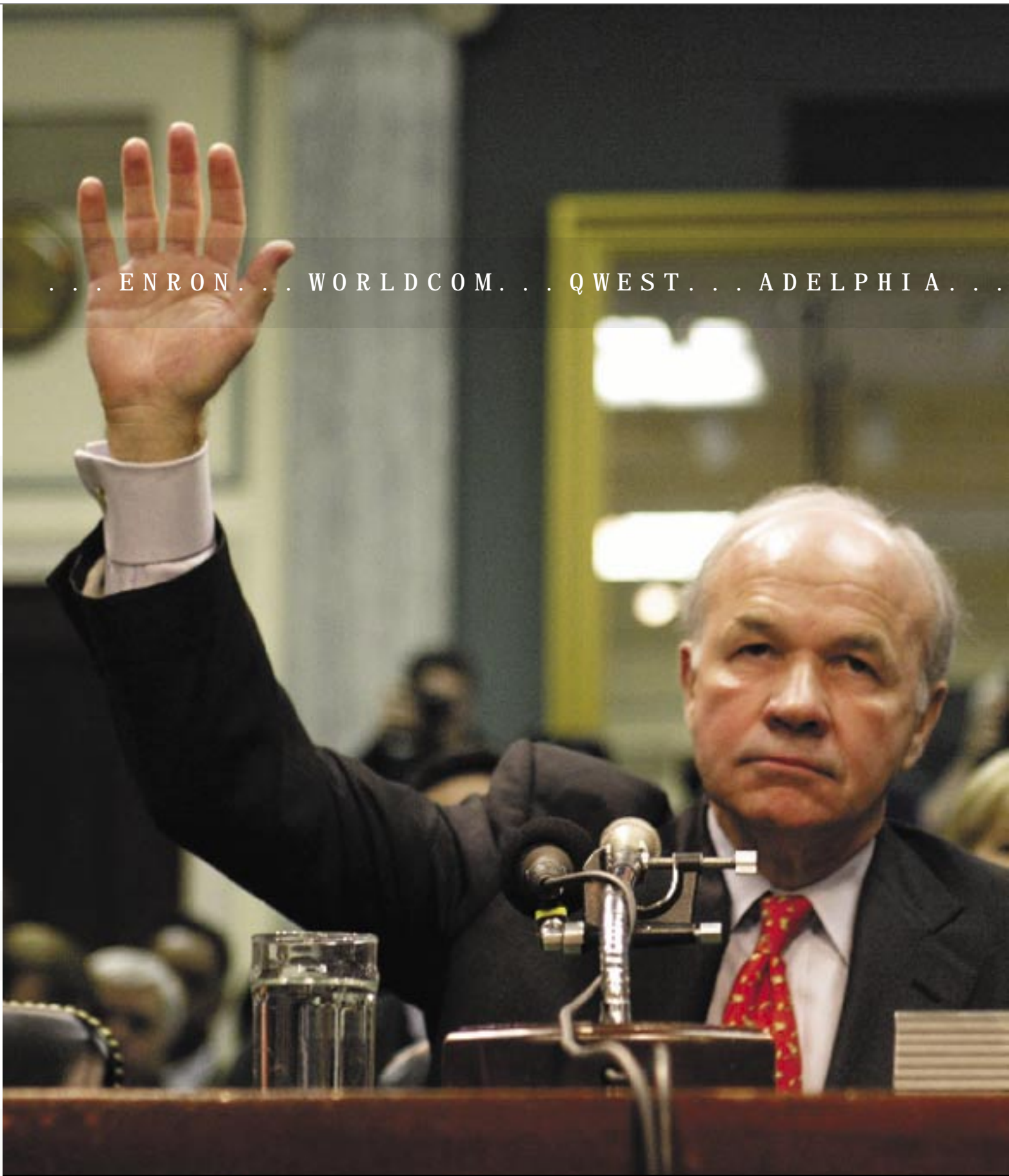
One of the most exciting aspects of the building project is that an entire floor of the new wing will be dedicated to legal clinics. Until a few years ago, a couple of new offices would have sufficed. But under Dean Bartlett's leadership, Duke Law School now boasts five in-house legal clinics in business law, AIDS law, international law, children's education law and the death penalty. The explosive growth in clinical programs at Duke has required rental space in downtown Durham to house our clinics.

The new addition will bring the clinical faculty

together. The office suite dedicated to the clinics will have eight offices for clinical faculty. It will also feature modular student work areas, designed to permit groups of students to collaborate. The space was designed as a separate group of offices to replicate a law firm, and to ensure confidentiality as students work on clients' cases.

Carolyn McAllaster, head of the AIDS Clinic and long-time Duke Law faculty member, is thrilled by the plans. "The new clinic wing is terrific. The architects have done a great job listening to our interests and have developed space that will be, we think, the best clinic space in the country."

. . . ENRON . . . WORLD COM . . . QWEST . . . ADELPHIA . . .



FORMER ENRON CHAIRMAN KENNETH LAY RAISES HIS RIGHT HAND AS HE IS SWORN IN BEFORE THE SENATE COMMITTEE ON COMMERCE SCIENCE AND TRANSPORTATION FEBRUARY 12, 2002.

Mark Wilson/Getty Images

RITE AID . . . TYCO

# *Policing* Corporate America

**D**uring a tumultuous few years in which a series of corporate America's best-known names admitted to wrongdoing of one sort or another – the roll-call includes Enron, WorldCom, Qwest, Adelphia, Rite Aid, Tyco and Xerox – legislators, regulators, scholars, practitioners and others spent countless hours seeking reform of regulations and practices to ensure that this difficult period is not repeated. Among the reforms is the sweeping Sarbanes-Oxley Act of 2002, the most radical legislation addressing corporate governance since the Great Depression of the 1930's, which has imposed tough new rules on companies and harsh penalties on wrongdoers.

But will these reforms work? In the following discussion, three of the country's leading experts on corporate governance issues, Duke Law Professors **James D. Cox**, **Deborah DeMott** and **Stephen Wallenstein** (l-r), talk about this evolving area of law and policy and give their perspectives on just who is – and who should be – policing corporate America.



**Duke Law Magazine: On an almost daily basis we are reading press reports of extensive abusive practices within the mutual fund industry. What are the causes and remedies for the problems that have come to light as a result of the investigations of mutual funds by the SEC and various state attorneys general?**

**Cox:** The regulatory core of the Investment Company Act of 1940, which is the primary regulatory act of mutual funds, is a mandate that at least 40 percent of each mutual fund's directors must be independent. But are the directors really independent? Consider the complaint made in *Migdal v. Rowe Price-Fleming Int'l Inc.*, 248 F.3d 321 (4th

ties as a director by serving on so many boards? I read one account that fund directors spent an average of 90 seconds reviewing each management contract at a single meeting at which they reviewed the management contract for scores of funds that were on the same agenda. This is not governance, certainly not of the type envisioned by the Investment Company Act.

**Wallenstein:** Jim focuses on an important point in questioning the independence of many fund directors who serve on multiple boards, are former employees of the fund company, and receive a large proportion of their income in their role

as directors. The average director of a public company now spends as much as 250 to 300 hours per year to carry out his or her duties. Mutual fund board members serving on as many as 100 boards of investment companies in the same fund family might spend half that time in total.

I believe one consequence of the mutual fund scandal will be sharp rise in exchange traded funds (ETFs), which

are priced continuously, have extremely low management fees, and provide market exposure and sector diversification. ETFs are in many ways more attractive than closed end funds because they are always redeemable and tradable at net asset value. ETFs can also provide international exposure since there are a growing number of such funds that focus on specific country stock markets.

**DLM: How is the relationship between a company's shareholders and its board of directors evolving?**

**DeMott:** Today, as large institutions hold much larger percentages of shares in publicly-traded U.S. corporations, simply

selling the stock of a poor performer may be infeasible. Large shareholders may find it worthwhile to try to improve a corporation's performance by changing the composition of its board of directors or threatening to do so. More institutions are now interested in supporting proposals for action by their fellow shareholders, such as requiring that all of a corporation's directors stand for re-election each year. Many institutions, moreover, hold stock in corporations as fiduciaries on behalf of beneficiaries, which requires the institution to vote the stock with their beneficiaries' interests foremost in mind.

The Securities and Exchange Commission's (SEC's) recent proposals to change the proxy rules may accelerate these trends. In particular, the SEC's proposed rules would permit large shareholders to place their nominees for election to a board on a corporation's own proxy statement. The proposed rule is pretty complicated, and requires a "trigger event" such as a shareholder vote in favor of a nominating process, or rejection by directors of a proposal supported by a majority vote of shareholders. And shareholder nominations would be for only a minority of seats on the board. Overall, though, it would become much less expensive to challenge incumbent directors than under the present rules, which require a dissident shareholder to bear all the costs of mounting an independent proxy solicitation, such as printing and mailing proxy solicitation materials to shareholders.

**Cox:** I am a great fan of increasing shareholders' access to the nominating process. I do worry a bit that those nominated need to understand the businesses in which the corporation engages. I doubt that those with large holdings in the firm will shoot themselves in the foot by nominating unsuitable candidates for the board. I actually believe that a shareholder nominating process would ultimately lead to healthy conversations between the members of an independent nominating committee and large holders. At the same time, I fully suspect that most institutional investors will continue to



ARTIST'S SKETCH FROM THE SECURITIES FRAUD TRIAL OF MARTHA STEWART.

Cir. 2001), where it was alleged that a fund's directors were falsely represented to be "independent" without disclosing that they each served on 22 to 38 boards of other funds managed by the same advisor and garnered between \$65,000 and \$81,000 from such service.

*Migdal* is the tip of the iceberg with respect to problems endemic to today's fund industry – namely, that a few directors serve on too many boards of the same advisory group. To the skeptical eye, this raises questions of whether the outside directors are financially dependent upon the advisor who nominated them to the board. More profoundly, can anyone discharge his or her responsibili-

be passive so that we will continue to see for most firms activism by a very limited number of institutional investors.

**Wallenstein:** As Deborah points out, the SEC has recently proposed a change to the proxy rules that would facilitate shareholders nominating board members directly, and provide access to the nominating process. Jim is correct, however; institutional investors and mutual funds have generally been passive investors and not overly concerned with corporate governance. However, recent studies show that poor corporate governance leads to below average shareholder returns (there is less correlation between good corporate governance and positive shareholder returns), and this may lead certain institutional investors to increase their corporate governance oversight.

**DLM: Describe the relationship between a company's board of directors and its CEO. Who works for whom?**

**DeMott:** A corporation's board of directors and its CEO both work for the corporation and owe duties of loyalty, good faith, and care to the corporation and its shareholders. One of the board's crucial responsibilities is selecting the CEO and then assessing the CEO's subsequent performance. The texture of the ongoing relationship between a CEO and a board shapes how effective the board is likely to be in assessing the CEO and in discharging many of its other responsibilities. It is therefore essential that directors – in particular directors who are not members of senior management – have sufficient distance from the CEO. Sadly, this has not been the case in a number of corporations in which, for whatever reason, directors either allowed themselves to be “managed” by the CEO or simply acquiesced to senior management's agenda without asking questions. These practices may have been aggravated by corporate cultures in which CEO's assumed a range of imperial traits.

I think a board that resists management by the CEO can enhance its capacity to fulfill its responsibilities. As old-fashioned as it may sound, it is often helpful to insist on the formal meet-

ings, because a CEO may undermine a board's cohesiveness by vetting important decisions in one-on-one interactions, beginning with an inner circle and then moving outward. This can reduce a board's meetings to empty rituals and deny directors the ability to view others' reactions when shaping their views. It also makes it less likely that effective opposition to the CEO's wishes will emerge. Sharing information one-on-one with directors also undermines a board's ability to be equally informed.

**Cox:** Deborah has stated the challenges and their solutions quite well. One course chosen by many corporations that

(A)s Dirty Harry tells us, “A man needs to know his own limitations.” If the CEO claims to have time to serve on more than two corporate boards, I believe that CEO is either not a very good CEO or outside director (and, most likely, both are true).

— James Cox

could well become the norm over the next decade is the separation of the chairman's position from that of the CEO. Whether this is appropriate for every corporation is uncertain, but it is a highly visible reminder to the CEO and the board of the need for independence of judgment and oversight that the board is expected to maintain. A board choosing not to separate the chair and CEO functions must find other ways to establish, maintain and nurture the independence of the outside directors.

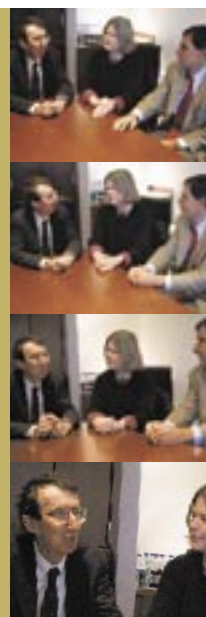
**Wallenstein:** One of the main challenges for the board of directors in the new corporate environment is to continue to act

as a strategic resource for management while increasing its oversight role. The board has the power to select and fire the CEO, set management compensation, hire and fire the outside auditors, and approve major acquisitions and divestitures. The board now must perform these duties with a substantial majority of independent directors, many of whom may not have intimate knowledge of the corporation's business. Some fear that boards will become preoccupied with process and form in light of the regulations implementing Sarbanes-Oxley. The challenge is for boards and senior management to work together to build a company's business and craft strategic goals and objectives.

**DLM: Should a company's board of directors rely only on senior management briefings to make decisions about the business of the company?**

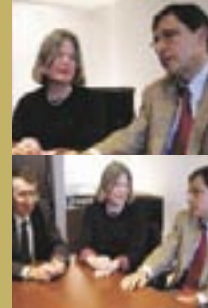
**DeMott:** As recent scandals unravel, we learn again that serious wrongdoing in a major corporation often involves more than one person. Enron, HealthSouth, and WorldCom are all good illustrations of accounting-related misconduct involving multiple actors on multiple levels within a corporation's hierarchy. It

is in any corporation's long-term interest not to stifle the revelation of improper conduct, sooner rather than later, to those within the corporation who are able to take effective action to investigate and to take appropriate corrective measures. In contrast, corporate cultures that punish questioners and dissenters may provide easy cover for illegal conduct. So, directors may rely on briefings from senior management, but directors also should be concerned about the possibility that senior management's story may not fully coincide with what's known by those lower in the corporate hierarchy. I think directors should also consider how the corporation deals with dissent and “bad news” from



In a setting where knowledge is leverage, broadening the board's sources informations empowers it to increase its oversight of management.

— Stephen Wallenstein



central part of counsel's engagement is with senior management more so than the corporation's board of directors. In the vast majority of situations, this arrangement works well. However, tensions naturally are most acute in transactions where the

internal sources, and especially, of course, with information about possible legal and regulatory violations.

**Cox:** Reliance on the officers' presentations is fairly standard practice within American

Deborah's reference to dissent within the corporation raises an interesting perspective regarding the necessity of the board to monitor various compliance systems. Board obligations today extend to maintaining internal procedures

for whistle blowers. Boards that do not provide for trustworthiness and independent procedures for corporate personnel to vent their concerns for illegal or harmful misconduct by officers are not protecting their corporation's interests.

**Wallenstein:** A board needs to diversify its sources of information about the company. Some companies, like General Electric and Home Depot, require board members to

visit a certain number of plants or stores per year, where board members have a chance to interact with middle management and to receive a different perspective on the company's business. With outside auditors now reporting directly to the board, the board has an additional source of expertise to help diversify its information about corporate activities.

### **DLM: How can outside lawyers improve the performance of a company's board of directors?**

**Cox:** Counsel, whether inside or outside, interacts regularly with senior management and must possess the confidence of senior management. Although the client is the corporate entity, in reality the most

senior management's interests may conflict with those of the corporation. The classic difficult situation arises when the client company faces a change of control or is about to engage in a transaction in which a senior officer has a direct or indirect financial interest. The outside lawyers may well face social and economic ties to senior management that compromise their independence when advising the board on such a transaction. To be sure, this is not always the case and I suspect that many lawyers say this is never the case. But consider that in several areas of corporate law, a precondition to a court concluding that the directors have acted in "good faith" or were "independent" is whether the board has been advised by counsel that has no prior relationship with the senior management or the firm. We find this focus where the board is asked to approve a takeover defense, is recommending to the derivative suit that the action be dismissed, or is a mutual fund seeking to invoke certain safe harbors for related party transactions.

An outside board's ability to monitor and manage related party transactions would be greatly improved if the outside directors were advised by independent counsel (i.e., counsel with no prior or on-going representation of the firm) whenever the board is engaging in *significant* transactions involving a member of senior management. Thus, the role of the company's counsel is to advise the board when it should seek guidance from another law firm. This may strike many as impractical, but it is exactly the advice that courts regularly expect in other conflict-of-interest transactions. My sense is that this in fact is a small step, but a significant one toward improving the board's oversight responsibilities.



FORMER WORLDKOM CHIEF EXECUTIVE BERNARD EBBERS AND WIFE CHRISTY AFTER A COURT APPEARANCE IN OKLAHOMA CITY, OKLAHOMA. EBBERS ENTERED A PLEA OF NOT GUILTY TO CHARGES INCLUDING SECURITIES FRAUD.

boardrooms and to do otherwise would introduce terrific costs and inefficiencies. The board, however, must do so carefully. It should be satisfied that the report is in an area of the presenting officer's competence and is not compromised by self-interest. Certainly when a transaction involves material conflicts of interests involving senior management, the board must be extra cautious in basing its review only upon the involved officers or their subordinates. And, when the transaction is particularly significant in that it carries substantial financial exposure for the firm, the board needs to be assured that it has received the most reliable briefing possible under the circumstances. This frequently calls for retaining advisors.

**DeMott:** Another factor that's relevant to the role of outside counsel is counsel's relationship with a corporation's general counsel when general counsel is a corporate officer. If the decision whether to retain outside counsel is solely for the general counsel to make, general counsel's situational allegiances to other senior officers may impede decision-making. Thus, it can be appropriate for the independent members of a board of directors themselves to seek outside legal advice.

**DLM: Should CEOs sit on the boards of other companies?**

**Wallenstein:** Part of the problem with corporate governance in the 1990's was the interlocking nature of many corporate boards with CEOs sitting on several boards. Part of the explosion in CEO compensation resulted from too many CEOs on corporate boards, reciprocating favorable treatment to their colleagues. The NYSE's new mandate for a majority of independent directors, together with the substantial increase in time required of board members (board members of large public companies are generally expected to spend at least 250 hours per year on their board duties), has already resulted in many CEOs resigning from other boards. I think that this trend will be very positive for corporate governance of U.S. public corporations.

**Cox:** My own preference here would be to limit it to one and at most two other boards. I continue to believe in the outside director and that a critical mass of successful CEO's should be on the board of any public company. I also believe such service makes the person a better CEO of his or her own company. Nevertheless, as Dirty Harry tells us, "A man needs to know his own limitations." I therefore would bar service on more than two boards. If the CEO claims to have time to serve on more than two corporate boards, I believe that CEO is either not a very good CEO or outside director (and, most likely, both are true).

**Has executive compensation gotten out of control? How can it be reined in?**

**Wallenstein:** Executive compensation is clearly out of control. Studies

have tracked the ratio of CEO pay in America's largest companies to the pay of the lowest paid employees. This ratio has risen tenfold from 40:1 in 1990 to currently over 400:1; it peaked in 2000 at the height of the bubble at 570. In 1990, stock options represented about 25% of total CEO compensation. Ten years later the value of option grants in the 200 largest companies was over 55% of total CEO compensation. CEO compensation continues to receive great attention, as evidenced by the disclosure of Richard Grasso's \$188 million pay package. As president and CEO of the NYSE, Mr. Grasso's compensation exceeded \$25 mil-

Some recipients of stock options appear to have "made their numbers" by cooking the company's books, that is, indulging in fraudulent misrepresentations of the company's financial results.

— Deborah DeMott

lion over his last three years. John Thane, the new CEO, will receive \$4 million per year in salary and bonus.

I believe that in the coming year attention will increasingly focus on the role of the compensation committee. The new NYSE listing standards have provided great assistance in this area by requiring that the compensation committee be composed only of independent directors. Boards needs to be more discerning in terms of assessing executive performance. Also, the expensing of stock options should greatly diminish this form of compensation for CEOs, and help address the growing disparity between the CEO's compensation and the compensation of corporate employees. And I think the new NYSE requirement

that directors meet in executive session without management present will lead to greater transparency in establishing and adhering to performance metrics.

**Cox:** In addition to Steve's excellent approaches, the courts need to reassess why they have been completely ineffective in braking the runaway train that executive compensation has come to be. I believe it is premature to find much reassurance in the recent Delaware decision, *In re The Walt Disney Co. Derivative Litigation*, 825 A.2d 275, in which the court refused to dismiss a challenge to Michael Ovitz's \$140 million com-

penetration package on allegations of complete abdication of the board's oversight role in connection with Ovitz's selection, the design of his compensation package and his termination. Courts need to be more willing to entertain challenges to executive compensation arrangements so that the evolving doctrine regarding what is "reasonable" will be more textured than glib inquiries into the whether the approving directors appeared free of any compromising financial or family relationships.

**DeMott:** An additional mechanism for increasing directors' accountability on this score is the continued focus in the media. Of course, Jim is correct that it's too soon to tell how effective litigation may be as a brake on compensation decisions. However, litigation that results in close scrutiny of how directors make or acquiesce in compensation decisions can shape the advice lawyers give to corporate boards in the future. And it can provide a strong caution to executives who may be tempted to overindulge with shareholders' money. I wonder how many people have seen the video of [former Tyco CEO] Dennis Kozlowski's now-infamous birthday/toga party in Sardinia? It's widely available on the Internet!



## **DLM: Should stock options be eliminated?**

**Cox:** Unfortunately, in the popular press “options” and “CEO” have become pejorative expressions and thereby have clouded debate on the real problem. Options, appropriately designed and awarded, are a powerful incentive. What occurred in the last decade is that we lost sight of how to best design options to reward managers and avoid their providing perverse incentives. Too frequently the options were focused on metrics measured at a discrete point in time, and all too often the reward for “making your numbers” were disproportionate vis-a-vis a comparative value of your services. Bad governance practices abounded, and continue to abound, that include boards not being independent of the officers and the reliance upon harmful benchmarking by compensation consultants retained by the managers whose compensation was to be established.

Options should reward performance that extends over a long period of time and that is sustained. Anything short of this is likely to lead to perverse incentives that do not maximize the long-term prospects of the firms. Related to this is the need for total transparency in the cost of management. Not only should there be regular reporting of the expected costs of options, but firms should identify at the beginning of each year the performance benchmarks against which senior management is to be assessed for the upcoming period and, at the close of each fiscal period, provide a full analysis and explanation of how the executive's performance compared to the earlier identified benchmarks, resulting in action of the board that is responsive to that performance.

**DeMott:** Jim's assessment of the problematic features of option-based compensation may be unduly charitable. Some recipients of stock options appear to have “made their numbers” by cooking the company's books, that is, indulging in fraudulent misrepresentations of the company's financial results. I agree that the reforms Jim outlines are warranted, but I also see a continuing role for public and private enforcement of prohibitions against fraud.

**Wallenstein:** Stock options clearly have been abused and this is one of the principal reasons FASB is moving to require companies to expense stock options. Since options are a form of compensation, expensing is undoubtedly the correct treatment. The problem is how to value options. The traditional

## Global Capital Markets Center Launches Educational Program for Corporate Leaders

One of the great challenges in the rapidly-evolving world of corporate governance is increased education for directors. In response, the **Duke Global Capital Markets Center** recently launched an innovative two-day program developed by the GCMC with

## DIRECTORS' EDUCATION INSTITUTE at Duke University

the support of the NYSE and the SEC to address the continuing developments in corporate governance. This program is designed for board chairs, corporate directors and senior executive officers of publicly traded companies. Through the examination of topical issues and emerging best practices, participants will receive substantive instruction on the latest corporate governance matters impacting publicly listed companies and board members. The third Directors' Education Institute is being held in March 2004. The first two conferences attracted more than 100 participants.

Black-Scholes method of valuing options does not fit neatly with employee stock options that vest over a long period of time, are not transferable, and where the underlying volatility of the stock is often difficult to determine. Awarding restricted stock to employees and senior

managers will undoubtedly gain favor as stock options are required to be expensed. Restricted stock more closely aligns the interests of managers and shareholders than stock options, since with restricted stock managers participate in the downside as well as the upside.

With respect to the compensation for board members, I believe that stock options will become increasingly rare and be substituted by direct compensation and restricted stock. For those companies that continue to grant stock options to board or management, consideration should be given to requiring employees to hold stock acquired upon conversion for a specified period of time to diminish the possibility of benefiting from short-term earnings management.

## **DLM: What are the consequences of Sarbanes-Oxley?**

**Wallenstein:** Sarbanes-Oxley was passed in great haste in the summer of 2002 in response to the perfect storm of corporate scandals culminating with the accounting fraud and bankruptcy of WorldCom. It represents a substantial encroachment by the federal government on state corporate law and corporate governance, and the costs of compliance are astronomical. One of the unintended consequences of Sarbanes-Oxley may be that the cost of equity capital in the U.S. has increased to such a degree that we will see fewer IPOs. Companies and venture capitalists may give greater consideration to the sale to a strategic partner or trade buyer rather than an IPO as an exit process. In addition, there has been an increase in the number of companies going private since the passage of Sarbanes-Oxley, and many companies have cited the costs of Sarbanes-Oxley in their SEC filings as one of the principal reasons for going private. There were 105 going-private transactions in the year immediately following the passage of Sarbanes-Oxley, 50% more than was recorded in each of the prior three years. Another unintended consequence is boards becoming much more risk adverse and focusing more on process rather than substantive and strategic issues. At a time of increasing business complexity and global competition, we need board members who understand a company's strategy



and mission critical systems. Requiring that boards be composed of a substantial majority of independent directors is not completely consistent with the goal of greater board oversight of management decisions.

**Cox:** Steve has provided some very acute responses to this question. On a very different track, I would offer for speculation that some of the success New York Attorney General Eliot Spitzer has enjoyed is attributable to the demands of Sarbanes-Oxley which mandated that the SEC promulgate complex regulations in a score of areas within very tight deadlines. As a result, numerous members of the SEC's Division of Enforcement, not to mention other key players in the SEC, were consumed for six months in responding to these deadlines. Thus, part of the enforcement void that the various attorney generals have stepped into can

be attributed to Sarbanes-Oxley.

**DeMott:** Another consequence of Sarbanes-Oxley is that it brings the content of corporate law in the United States closer to that of other countries, at least for public companies. For example, in response to an earlier wave of scandals in the 1980's, corporate legislation in the United Kingdom outlawed loans to directors and imposed more exacting requirements for shareholder approval for certain related party or self-dealing transactions. Steve's right that Sarbanes-Oxley federalizes portions of corporate law, but like UK corporate law, it also imposes mandatory requirements and prohibitions. This represents a departure from the conventional emphasis on the "enabling" quality of much of U.S. corporate law and the disclosure emphasis in federal securities litigation. ♣



## ARE YOU IN A GOVERNMENT CAREER?

Want to serve as a contact for current Duke Law students interested in following in your footsteps?

Duke Law School's Office of Career Services has experienced a surge of interest in government careers from our students.

Not only are students asking more questions about DOJ and environmental law, two of the traditional interests, they also are expressing interest in work with government agencies, on the Hill, in AUSA positions and others. Would you like to be a contact for students or for the Office of Career Services? Please contact Anne Akwari at (919) 613-7284 or [akwari@law.duke.edu](mailto:akwari@law.duke.edu) for more information on how you can help.

# Intellectual Property, Art and Culture

a Conference at Duke Law School

Culture on the Legal Cutting Room Floor  
April 2, 2004

<http://www.law.duke.edu/cspd>

To register for the conference, please email Eileen Wojciechowski at [WOJCIECH@law.duke.edu](mailto:WOJCIECH@law.duke.edu)

# { Faculty Focus

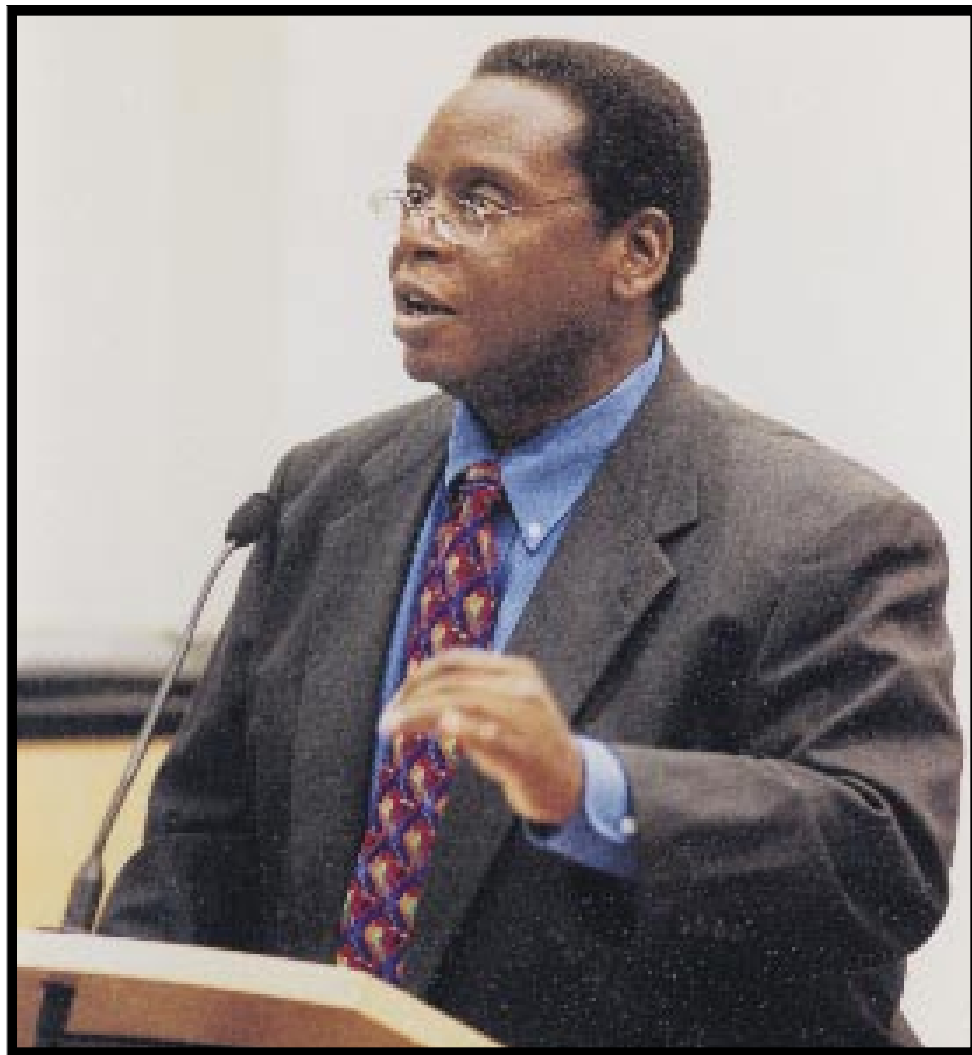
## Jerome McCristal Culp, Jr. October 24, 1950 – February 5, 2004

The Duke Law School community was deeply saddened by the death of long-time faculty member Jerome M. Culp, Jr. on Feb. 5, 2004. Culp, 53, suffered from kidney disease, and despite a kidney transplant in July 2003, his condition seriously deteriorated in the weeks just prior to his death.

“We are all profoundly saddened by this great loss,” said Dean Katharine Bartlett. “Jerome was an extraordinarily generous teacher, mentor and scholar. He leaves behind students who adored him and colleagues who will deeply miss his friendship and intellectual stimulation.”

Over 300 people attended a Memorial Service in Professor Culp’s honor on Feb. 14 in the Library Reading Room at the Law School presided over by the Reverend Denise Thorpe ’90. Among the many colleagues, family members, friends and former students who spoke at the service was Bruce L. Rogers ’87, a former student and close friend of Professor Culp. “Jerome’s generosity and friendship overwhelmed me over the years,” Rogers said. “He made it possible for me to continue my education at Duke. He had an incredible impact on my life and family, my wife Sally and three children. He became a life-long friend and confidant.”

Professor Culp joined the faculty of Duke Law School in 1985. He was internationally known for his work in race and the law. He was a prolific scholar, authoring numerous books and articles on the subjects of critical race theory, justice and equality, law and economics, and labor economics. He also taught in the fields of torts, employment discrimination, and sexuality and the law. He placed great value on his relationship with students, never missing an opportunity to teach and to mentor. Professor Culp was an avid enthusiast of history,



literary theory, economics, science fiction, ethics, and especially Duke basketball.

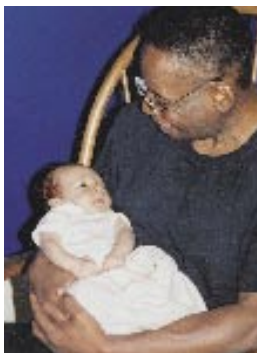
Professor Culp was born in 1950 in Clarksville, Pennsylvania, a small coal-mining town near West Virginia. He earned his undergraduate degree in 1972 from the University of Chicago, where he played varsity football. He earned a masters degree in economics from Harvard University in 1974 and a law degree from Harvard Law School in 1978.

Professor Culp began his career with the Rockefeller Foundation in New York, working on youth employment and affirmative action. In 1980, he clerked for Judge Nathaniel R. Jones of the Sixth Circuit Court of Appeals, who also spoke eloquently at the memorial service. In 1981 Professor Culp worked as an economist in the Carter Administration. Later in 1981, he became an assistant professor of law at Rutgers Law School. While at Duke Law,

Professor Culp was a sought-after visiting professor at such schools as the University of Michigan, New York University, the University of California at Berkeley, and the University of Miami. He was also the MacArthur Distinguished Visiting Scholar at the Joint Center for Political Studies in Washington, D.C., and directed the John M. Olin Program in Law and Economics at Duke from 1989-1993. In 1999, he held the Charles Hamilton Houston Chair at North Carolina Central University. Throughout his career, Professor Culp was actively involved in civil rights issues and testified for civil rights plaintiffs in cases of national importance.

Other speakers at the service included James Culp, Jerome's brother; William Darity, professor at the Sanford Institute; the Honorable Nathaniel Jones; Aden Darity; John Payton, Scott Lee; Brent Clinkscale

'86; Robert Chang '92; Professors David Lange and Walter Dellinger of Duke Law School; Professor Adrienne Davis of UNC School of Law, and Professor David



Wilkins of Harvard Law School. Duke Law student Samuel Forehand '05 closed the service with a moving performance of "Amazing Grace."

The family has asked that those wishing to make donations in Professor Culp's honor direct these donations to the Jerome M. Culp, Jr. Scholarship Endowment at Duke Law School, Box 90389, Duke Law School, Durham NC 27708. 🐾

## Remarks of Dean Katharine Bartlett Memorial Service, Feb. 14, 2004

I welcome you to today's service in honor of the life of Jerome Culp. We are family, current students, former students at Duke and other schools, faculty colleagues and friends from Duke and elsewhere, Jerome's "kids" — surrogate children who so often turned to him for advice and support — and those scholars who mentored him and those he mentored — in many ways a who's who of legal academia, quite a number of whom have come from some distance to be here.

In my role as dean, it is my privilege to acknowledge the importance of Jerome to this institution — as teacher, scholar, colleague, critical race theorist, advocate, and, of course, friend. This service is in the library because, although Jerome is a man of many homes who loved many places — Duke Law School was for the past two decades his center of gravity. He loved this school, its students, its faculty, he loved books; and he loved his friends here.

And besides, although we tried, we couldn't get Cameron.

What Jerome brought to the institution, and to his students and friends here, is irreplaceable.

- He brought the absolute best, most full-bodied laugh I've ever enjoyed — shared easily and spontaneously on just about any occasion.
- He brought to Duke an incredibly generous spirit. He did not guard any of its assets, but shared them with his colleagues, his friends, his family, and the children he adopted as if they were his own.
- He brought steadfast loyalty. As the eclectic group gathered here today reflects, Jerome kept every friend he ever had — early friends, college and law school friends, colleagues from the many schools at which he has taught, students over decades of teaching.
- He brought to this place a pure enjoyment and detailed knowledge of Duke men's basketball. Who knew more about it, back at least to the 1986 team that lost in the finals of the NCAA championship to Louisville; and who loved more to follow the team to Alaska, or Hawaii, or to the Final Four.
- He brought a passion for justice and equality. He

loved justice, and the politics that he hoped would produce it, no matter how many times politics disappointed him.

- He also brought to this institution a certain incorrigibility, including an absolute inability to meet grading deadlines, and an office cluttered with food wrappings and Fanta orange soda cans.
- And he brought a love of life. Jerome appreciated what he had been given, and tried so hard in his last months and weeks to keep it going. He didn't last as long as either he, or we, would have liked. He missed, by 10 hours or so, seeing Duke beat Carolina in last Thursday's thrilling overtime win at the Dean Dome.

He will not know, at least in human form, whether anyone was able to defeat George Bush — actually he would have said re-defeat George Bush. He won't go to Crook's Corner again, or Hawaii, or a late night showing of the "Matrix." He won't see any of his "kids" — Rachel Harris, Peter Williams, Aden and William Darity, Matthew and Stephen Beale, Alexander and Nicolas Coleman, the Rogers children, and others — graduate from college or pass other important milestones. He was so proud of his kids.

He also won't go to another faculty meeting, where he could be counted upon to speak his mind. He won't have another student waiting outside his office to get from him that special kind of intellectual stimulation and moral support that Jerome offered to those he mentored and that so many of his former students have written us about in the last week. He won't again challenge any of his colleagues — to consider the extent to which injustice is systematic and intentional, or to acknowledge how profound a role race plays in this society. And he won't again favor us with his famous political and sports predictions, always followed by "I'm holding it up high for everyone to see."

This Law School as an institution, as well as we as friends and family, will miss Jerome Culp profoundly. He was one of a kind. Duke Law School will not be the same without Jerome. Neither will we.



## Haagen Chairs Counseling Panel for Duke's Student-Athletes

By Lauren Carpenter

**O**f the thousands who are familiar with names like Grant Hill, Cherokee Parks, and Shane Battier, relatively few actually know them beyond their performance on the basketball court. Paul Haagen, professor at Duke Law School, knows them and many others as the chair of Duke University's Student-Athlete Counseling Committee.

Having received degrees from Haverford College, Oxford University, Princeton University and Yale Law School, Haagen's achievements distinguish him in the world of academia. However, it was his lack of experience in the sports world that made him such an appealing addition to the committee in 1990.

"I was teaching contracts and had no connection to the Athletic Department," said Haagen. "This is probably why I was good for the job."

The Committee is Duke's system for advising students transitioning from collegiate to professional athletics. It provides athletes the tools they need to select an agent, and teaches techniques that allow the athlete more control, input and a greater ability to make decisions to best advance their careers.

"These people (athletes) have the potential to both mess up and to also make very positive advancements for themselves," said Haagen. "I try to get them to think about what they are trying to accomplish and how to get there."

Lon Babby, practice leader of law firm Williams & Connolly's athletics division in Washington D.C., first met Haagen while representing Grant Hill. He has since represented Duke athletes Shane Battier, Christian Laettner and Cherokee



PROFESSOR PAUL HAAGEN

Parks, and attests to the value of Haagen's guidance for athletes.

Through his work, Babby is able to compare Duke's transitional program to that of other universities. He says, "It is the best in the country and is the most sophisticated and helpful process in the country. "It gives them (athletes) a good process for getting representation."

When it comes to transitioning athletes from college to professional sports, Duke distinguishes itself by an expansive advising system. Haagen said no other ACC school actively uses resources beyond the Athletic Department. At Duke, Haagen said, the athlete's ability to shape his/her own career is what makes the program stand out from all the rest.

"I've been told there are a number of schools that have professional sports counseling committees, but that these committees are 'procedural' rather than 'substantive,'" Haagen said. "My understanding of the distinction... is that most committees merely attempt to get agents to meet certain minimal registration requirements, but do not attempt any serious counseling of athletes."

Haagen's work with Student-Athlete Counseling Committee is largely responsible for one of the most common praises of Duke's agent-selection process. Athletes are pleased they can retain control over the procedure and like that they may include family, friends, coaches and others in the selection process.

Janet Hill, mother of basketball icon Grant Hill, said her son's transition between Duke and the NBA was a smooth one because of Haagen's influence and the unique opportunity Duke offers its athletes to be in command of their futures. Hill said that when her son was 21, he had a romanticized view of the professional life, but Haagen's advice and Duke's polished agent-selection method forced him to become more mature about his future.

Hill said Haagen helped her son understand the professional world, including the financial realities that follow the NBA draft. The immediate influx of money that occurs once a contract has been signed with a professional team can easily shock many 20-something athletes, and can cause some to forget that continual work and training is required to maintain professional status.

"The challenge for Paul Haagen is how to get this message across to a young 20-year-old," said Hill. "You still have to work hard to keep earning the paycheck."

One of the most critical steps for Grant Hill when he was entering the professional world was realizing where the control lay in the athlete-agent relationship. "Grant has never forgotten that his lawyers and agents work for him," said Hill. "Paul tries to enforce that with the athletes."

Since the committee's inception students have sought varying levels of assistance from Haagen. Some students seek little help from the committee, while others rely very heavily on its support and advice.

Haagen said that with the Student-Athlete Counseling Committee, there is no single path to a smooth transition to professional athletics. Rather than forcing athletes to fully employ the advising system, the committee can be tailored to fit an athlete's strengths and weaknesses. Thus, many of Duke's top athletes have successfully used the committee's assistance in different ways.

"They are often uncertain about how much they can and should trust us," Haagen said. "But, once we instill that trust, I think we have made a significant difference for them." ♣

*Lauren Carpenter is a junior at Duke University.*

## Wiener Receives Risk Analysis Award

The Society for Risk Analysis (SRA) has awarded Duke Law Professor Jonathan Wiener the prestigious 2003 Chauncey Starr Award, which each year honors the individual aged 40 or under who has made the most exceptional contributions to the field of risk analysis. Wiener, who is also a professor of environmental policy at the Nicholas School of the Environment & Earth Sciences, professor of public policy studies at the Sanford Institute, and the faculty director of the Duke Center for Environmental Solutions, specializes in the use of risk analysis in environmental law and policy. His groundbreaking work has focused on how the inescapable interconnectedness of risks challenges and shapes regulatory policy, including the development of the concept, analysis of and remedies for "risk-risk tradeoffs"; analysis of the "precautionary principle" in U.S., European and international law; and the development of risk-based regulatory approaches for global climate change and more generally for better environmental protection at lower cost.

"I am honored to receive this award from the SRA, a group I respect and admire for bringing top experts in diverse disciplines together to help solve truly pressing problems," said Wiener.

Among his many scholarly achievements, Wiener's book, *Risk vs. Risk* (Harvard University Press 1995; with John Graham of Harvard), is the leading work in the field of risk-risk tradeoffs, or the phenomenon that a decision to reduce one risk may increase other risks or shift risk to another population.

Additional work of note by Wiener in the field of risk analysis includes the development of a risk-based regulatory regime for global climate change



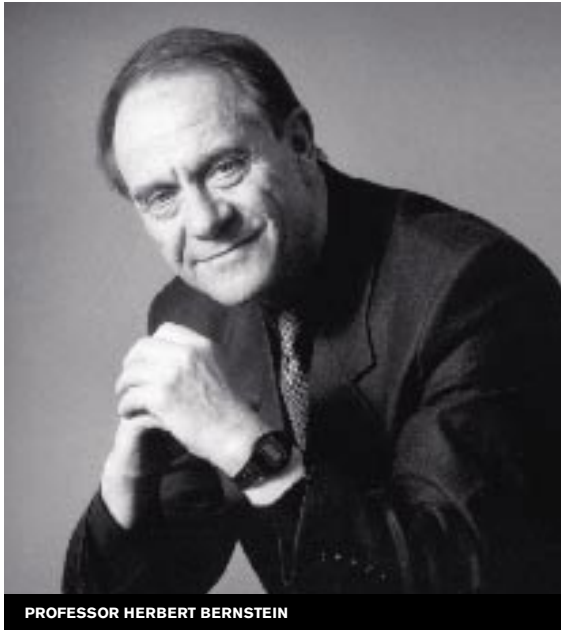
PROFESSOR JONATHAN WIENER

policy, as set forth in his recent book, *Reconstructing Climate Policy* (2003) (with Richard Stewart), and other articles. Wiener has also worked more generally in the area of regulatory reform to orient regulation toward better protection against more serious risks and at lower cost.

Wiener served as president of the SRA's Research Triangle Chapter (SRA-RTC) for 1998, was elected a Councilor of the national SRA in 2001, and is a member of the Editorial Board of *Risk Analysis: An International Journal* (1998-present). He is also a university fellow of resources for the Future (RFF), the environmental think tank in Washington D.C.

The SRA is an international organization that brings together experts in science, engineering, economics, psychology, law and policy to study the assessment, communication and management of risks to health, safety, environment, and security. ♣

# Journal Volume Commemorates Professor Bernstein's Life and Work



PROFESSOR HERBERT BERNSTEIN

Bernstein previously taught at the University of California at Berkeley, the University of Hamburg in Germany and the University of Southampton in the United Kingdom. He began his work at Duke Law in 1984.

The special volume includes the text of the inaugural Herbert Bernstein Memorial Lecture in International and Comparative Law, which was given on Sept. 10, 2002 by Dr. Hein Kötz, Dean of Bucerius Law School, at Duke Law School. In this lecture, entitled *Civil Justice Systems in Europe and the United States*, Professor Kötz addressed essential differences between the European and American civil justice systems and their relevance to reform.

Complementing Professor Kötz's contribution, the volume includes three scholarly articles on aspects of civil justice systems. Companion articles by Paul Carrington, Harry R. Chadwick Professor Emeritus of Law, and Neil Vidmar, Russell M. Robinson II Professor of Law, assess the American civil jury, first placing it in its political context (Carrington) and then examining empirical issues relating to juries' actual performance and constraints the American system has developed to correct occasional errant decisions by lay adjudicators. Thomas D. Rowe, Jr., Elvin R. Latty Professor of Law, explores the interplay between class action litigation and compensation of lawyers as the distinctively American institution of class action litigation migrates to other jurisdictions.

Some of the contributions to the volume pay tribute to Bernstein's nuanced approach to comparative legal analysis. In *Whose Precaution After All? A Comment on the Comparison and Evolution of Risk Regulatory Systems*, Professor Jonathan Wiener analyzes the precautionary principle as a basis for regulation, comparing the degree of precautionary regulation, its causes and its consequences, across the

United States and European countries. Wiener demonstrates that the United States and Europe both follow precautionary strategies against environmental risks, but differ in the degree to which specific risks are addressed. DeMott's article examines imputation of an agent's knowledge to a principal in the larger context of agency doctrine, contrasting American with English cases. Professor Steven Schwarcz explores why commercial trusts may be more significant in the United States than in other systems. Professor Joseph Lookofsky, Bernstein's co-author and collaborator, focuses on judicial interpretation of the Convention on Contracts for the International Sales of Goods (CISG), showing that although CISG was drafted as a uniform law, interpretations of it often reflect parochial concerns.

Two articles in the volume focus on legislative history and statutory interpretation. Richard Danner, Archibald C. and Frances Fulk Ruffy Law Library and Information Technology Research professor of law at Duke, traces the availability of legislative histories in the United States. Claire M. Germain, professor of law and Edward Cornell Law Librarian at Cornell University, develops the contrasting French tradition.

For many readers, the most memorable contribution may be the essay by Duke Law professor Paul Haagen entitled *A Hamburg Childhood: The Early Life of Herbert Bernstein*. Haagen chronicles the early life of Herbert Bernstein, describing in detail how his experiences growing up in war-torn Germany shaped his later years, both personally and professionally. The commemorative Bernstein volume was made possible by funds from the Global Capital Markets Center.

## For More Information:

Text is Available Online. Read a Copy:  
[www.law.duke.edu/journals/djci](http://www.law.duke.edu/journals/djci)

**O**n September 2003, the *Duke Journal of Comparative and International Law* published a special volume commemorating the life and scholarship of Duke Law Professor Herbert Bernstein, a 17-year veteran of the Law School faculty who died unexpectedly in 2001. Nine Duke Law faculty members contributed articles to the summer 2003 volume, which examines a number of areas of law – environmental law, civil procedure, corporate law and legislative history, among others – from a comparative perspective.

"This volume is unusual in the fact that the overwhelming number of its articles are written by members of the Duke Law faculty," said Deborah DeMott, David F. Cavers Professor of Law at Duke and special editor of the volume. "The opportunity to collaborate in this way in memory of Professor Bernstein enabled us to remember someone who contributed much to our work. Herbert Bernstein played a special role within our faculty, as evidenced by the high quality and wide range of the articles in the volume."

A specialist in contract, comparative and private international law,

# Public Law Conference to Recognize Achievements of Professor William Van Alstyne

The Fifth Annual Conference of the Program in Public Law will celebrate the scholarship and professional contributions of constitutional law scholar William Van Alstyne. On April 16-17, 2004, the Public Law Program will bring together a group of scholars, lawyers and alumni to reflect on the contributions that he has made to the profession during a distinguished teaching career that began in 1961 at Ohio State University. Among those scheduled to participate are David Currie, Dan Farber, Garrett Epps '90, Jesse Choper, Walter Dellinger, Rod Smolla '78, Jim Chen and Susan Low Bloch.

Van Alstyne, who is the William R. and Thomas C. Perkins Professor of Law, joined the Duke faculty in 1965. He will be leaving Duke this summer to join his wife, Professor Lan Cao, on the faculty of the William & Mary School of Law. In explaining his decision, he wrote, "As a place to live, to teach, to be known as being of its faculty, it has been an honor and joy to have been a part of this institution. ... The balance – of manageable size, of excellent teaching and research facilities, of program diversity and strengths (certainly including the LL.M. program which has added real international vitality over the years), and of students as able and conscientious as any I have seen in visiting elsewhere – is truly outstanding. The good will of its alumni, the friendship of its staff in every department, the memorable generations of former and of present students, and the consolations of colleagues I value very greatly... I shall dearly miss them all."

"It is a monumental understatement to say that the Duke Law com-

munity will greatly miss Professor Van Alstyne," Dean Katharine Bartlett wrote in a message to students, faculty and alumni announcing his departure. "He will always be a part of us, even as he is embraced by a new law school that I must assume fully appreciates his incredible talents and accomplishments."

Van Alstyne's work in many different areas of constitutional law has been nationally and internationally recognized. "There are remarkably few scholars working today – and none of Bill's stature – who can truly be called students of the entire Constitution as a legal document," said Chris Schroeder, director of the Program in Public Law and Charles S. Murphy Professor of Law and Public Policy Studies. "Many constitutional law scholars enjoy writing in the area of constitutional theory, which deals with the constitution at a very high level of abstraction, and many have made a specialty of one aspect of constitutional law, such as freedom of religion or free speech," he continued. "Bill, on the other hand, has brought an incredibly sharp and discerning mind to many, many different constitutional questions, always showing an enormous respect for the Constitution as written law."

A look at Van Alstyne's curriculum vitae will confirm that there is scarcely a major constitutional issue to which he has not made a substantial contribution. In addition to his scholarship on constitutional issues, he has provided public testimony as well as private advice to many congressional committees and members of the House and Senate, where his insights and judgments on many issues, including proposed constitutional

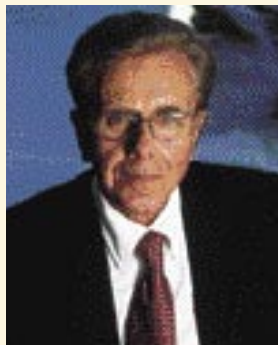
amendments, legislation impinging on free speech, on the standards for impeachment, and on the scope of the president's war powers, have been widely influential.

Perhaps the field with which Van Alstyne is most closely identified is the First Amendment. His classes on the subject are always oversubscribed, despite the heavy workload required, and his First Amendment casebook is the leader in its field. He has written widely on the subject for law review publication and has been active in litigation on First Amendment issues, generously providing advice to attorneys involved in litigation involving free speech. In addition, he has been a longstanding leader in Committee A of the American Association of University Professors, filing briefs and otherwise defending academic freedom throughout the country.

"The Public Law Program is delighted to bring a group of distinguished scholars, lawyers and alumni together to reflect on Bill's work," Schroeder said. "We got the idea for this event at this time from the fact that 2003 marked the 200th anniversary of *Marbury v. Madison*. Bill's *A Critical Guide to Marbury v. Madison*, written 35 years ago, has remained the gold standard analysis of the legal issues raised by the *Marbury* litigation – as well as the refuge of many years of law students confused about the case in their constitutional law classes."

The Program in Public Law is generously underwritten by Marcy and Rick Horvitz '78. Marcy Horvitz died unexpectedly on November 17, 2003. The Conference honoring Professor Van Alstyne is dedicated to her memory and her tremendous generosity.

Further information about the conference may be found on the Public Law Program's website, <http://law.duke.edu/publiclaw/>. ♡



## Cindy Adcock

- Moderator, "Can Legal Education Enhance Post-Graduate *Pro Bono* Services?" Section on Pro Bono and Public Service Opportunities, Annual Meeting of the Association of American Law Schools, January 2004
- Chair-Elect, Section on Pro Bono and Public Service Opportunities, Association of American Law Schools, January 2004

## Katharine Bartlett

- *Preference, Presumption, Predisposition and Common Sense: From Traditional Custody Doctrines to the American Law Institute's Family Dissolution Project*, 36 *Family Law Quarterly* 11-25 (2002)
- Presenter, "What We Have Here Is A Failure To Communicate," Section for the Law School Dean, Annual Meeting of the Association of American Law Schools, January 2004
- Panelist, Symposium on Abortion: Research, Ethics and Activism, Sallie Bingham Center for Women's History and Culture, Duke University, November 2003
- Speaker, "More on Lazy Rules: Remarks at the Investiture of Ira Mark Ellman," College of Law, Arizona State University, March 2003

## Sara Beale

- *Governmental and Academic Integrity at Home and Abroad*, 72 *Fordham Law Review* 405-14 (2003)
- *Still Tough on Crime? Prospects for Restorative Justice in the United States*, 2003 *Utah Law Review* 413-437
- *The Unintended Consequences of Enhancing Gun Penalties*, in *GUNS, CRIME, AND PUNISHMENT IN AMERICA* 343-59 (Bernard E. Harcourt ed., 2003)
- 2003 Supplement to *GRAND JURY LAW AND PRACTICE* (with William C. Bryson, James E. Felman and Michael J. Elston)
- Presenter, "Unreviewable Discretion in Criminal Law: Is It Desirable That Police, Prosecutors, Juries and Governors Can Nullify Legislative Decisions To Punish?" Section on Criminal Justice, Annual Meeting of the Association of American Law Schools, January 2004
- Vice-Chair, Duke University Presidential Search Committee

## Stuart Benjamin

- 2003 Supplement to *TELECOMMUNICATIONS LAW AND POLICY* (with Douglas Lichtman & Howard Shelanski)

## Donald Beskind

- Co-Chairperson, National College of Advocacy, Association of Trial Lawyers of America, Appointed 2003

## Francesca Bignami

- *THREE GENERATIONS OF PARTICIPATION RIGHTS IN EUROPEAN ADMINISTRATIVE PROCEEDINGS*, Jean Monnet Working Paper No. 11/03 (2003)
- Member, Advisory Board of the Electronic Privacy Information Center

## Michael Bradley

- Award, "All Star Papers," *Journal of Financial Economics* based on the number of citations garnered since publication, "The Rational Behind Interfirm Tender Offers: Information or Synergy?" with Anant Desai and E. Han Kim, *Journal of Financial Economics*, March 1983, Volume 11, No. 1, pp. 183-206, 125 Citations
- Award, "All Star Papers," *Journal of Financial Economics* based on the number of citations garnered since publication, "Synergistic Gains from Corporate Acquisitions and their Division between the Stockholders of Target and Acquiring Firms," with Anant Desai and E. Han Kim, *Journal of Financial Economics*, May 1988, Volume 21, No. 1, pp. 3-40, 167 citations

## Michael Byers

- *International Law and the Angry Superpower*, 3 *Anuario Mexicano de Derecho Internacional* 93-106 (2003)
- *Gunboat Diplomacy*, 59 *The World Today* (Royal Institute of International Affairs) 14-15 (October 2003)
- Book Review, 97 *American Journal of International Law* 721-24 2003 (reviewing Thomas M. Franck, *RECOURSE TO FORCE: STATE ACTION AGAINST THREATS AND ARMED ATTACKS* (Cambridge University Press, 2002))
- "Preemptive Self-defense: Hegemony, Equality and Strategies of Legal Change," Osgoode Hall Law School, York University, Toronto, Canada; Washington and Lee Law School, Lexington, VA; UCLA Law School, Los Angeles, CA; January 2004; and William & Mary School of Law, Williamsburg, VA, October 2003
- "Agreeing to Disagree: Security Council Resolution 1441 and International Ambiguity," *British International Studies Association Annual*

Conference, Birmingham, England, December 2003, International Law Association Speaker Series, New College, Oxford University, November 2003

- "US Hegemony and the Foundations of International Law," Department of International Relations, University of Bremen, Germany, December 2003; Department of Foreign Affairs and International Trade / Canadian Council of International Law Speakers Series, Ottawa, October 2003
- "Using Military Force: The Legal Framework," Workshop on Using Military Force, Carnegie Council on Ethics and International Affairs, New York City, November 2003
- "The State of the Trans-Atlantic Relationship with respect to International Law," Workshop on the Deep Structure of the Current Transatlantic Conflicts, Free University of Berlin, October 2003

## Paul Carrington

- *Asbestos and Court Delay in the United States*, in *HISTORY OF DELAY IN COURT* (von Rhee ed., Ius Commune 2003)
- *The Civil Jury and American Democracy*, 13 *Duke Journal of Comparative & International Law* 79-94 (2003)
- *Exporting Democracy to Iraq*, Perspectives 1 (March 2003) (in English and Chinese)
- *Incorrect Speech, Incorrect Hearing: A Problem of Postmodern Legal Education*, 53 *Journal of Legal Education* 404-12 (2003)
- Transnational Dispute Resolution (electronic course book designed for use with Blackboard course software) (Temp. ed. 2003)
- *Unconscionable Lawyers*, 19 *Georgia State University Law Review* 361-93 (Winter 2002)
- Co-Reporter (with Prof. Thomas Rowe) for United States of America, International Association of Procedural Law XII World Congress, "Preliminary or Summary Proceedings: Scope and Importance," September 2003
- Speaker, American Academy at Berlin, October 2003
- Speaker, Faculty of Law, University of Goettingen, Goettingen, Germany, October 2003
- Member, Legislative Committee, North Carolina AAUP, 2003-
- Member, Committee on Independence of the Judiciary of North Carolina Bar Association, 2003-
- Member, Council on the Future of the Judiciary and American Democracy (Annenberg Foundation) 2003-
- Secretary, North Carolina Committee on Judicial Election Campaigns, 2000-2003



- Legislative Committee, North Carolina Academy of Trial Lawyers

## George Christie

- *The Importance of Recognizing the Underlying Assumptions of Legal and Moral Arguments: Of Law and Rawls*, 28 Australian Journal of Legal Philosophy 39-52 (2003)
- Lecturer, "The Rational and the Reasonable in Legal and Moral Argument," University of Athens, Greece, October 2003
- Member, Members Advisory Committee for the Restatement (Third), General Principles

## James Cox

- COX & HAZEN ON CORPORATIONS: INCLUDING UNINCORPORATED FORMS OF DOING BUSINESS (Aspen Publishers, 2d ed. 2003) (with Thomas Lee Hazen)
- Reforming the Culture of Financial Reporting: The PCAOB and the Metrics for Accounting Measurements, 81 Washington University Law Quarterly 301-27 (2003)
- Speaker, 5th Annual Caribbean Commercial Law Conference, Miami, FL, August 2003
- Visiting Professor, "Comparative Corporate and Securities Law," University of Copenhagen, September 2003
- Presenter, "Extraterritorial aspects of the recently Enacted Sarbanes-Oxley Law of 2002," four leading law firms in Denmark, Copenhagen, September 2003

## Jerome Culp

- *Seventh Aspect of Self-Hatred: Race, LatCrit, and Fighting the Status Quo*, 55 Florida Law Review 425-439 (2003)

## Richard Danner

- *Thirty Year Cumulative Index to the International Journal of Legal Information*, 31 Special Issue International Journal of Legal Information (2003)
- *Contemporary and Future Directions in American Legal Research: Responding to the Threat of the Available*, 31 International Journal of Legal Information 179-204 (2003)
- *Justice Jackson's Lament: Historical and Comparative Perspectives on the Availability of Legislative History*, 13 Duke Journal of Comparative & International Law 151-94 (2003)
- "Writing for Fame and Fortune," Annual Meeting of the American Association of Law Libraries, Seattle, July 2003
- "Issues in the Preservation of Born-Digital Scholarly Information," University of Cape Town, Cape Town, South Africa, September 2003

- Participant, Meetings of the Executive Committee of the Association of American Law Schools, Sonoma, CA, August 2003 and Washington, D.C., November 2003
- Participant, Meeting of the Board of Directors of the International Association of Law Libraries, Cape Town, South Africa, September 2003

## Walter Dellinger

- *Why Me?*, 5 Journal of Appellate Practice and Process 95-105 (2003)

## Deborah DeMott

- *Acquisition Agreement: Material Adverse Change Clauses*, 76 Australian Law Journal 414 (2002)
- *Corporate Litigation in the U.S. and U.K.*, 51 American Journal of Comparative Law 229-35 (2003) (reviewing A.J. Boyle, *Minority Shareholders' Remedies* (2002))
- *When is a Principal Charged with an Agent's Knowledge?*, 13 Duke Journal of Comparative & International Law 291-320 (2003)
- Presented paper, "Fiduciary Obligation in the High Court of Australia," at the Court's Centenary Celebration, Canberra, October 2003
- Presented Preliminary Draft No. 7, Restatement (Third) of Agency, to meetings of the Advisers and the Members' Consultative Group, October 2003
- Presented Council Draft No. 5, Restatement (Third) of Agency, to the Council of the American Law Institute, December 2003

## Diane Dimond

- Presenter, "Advanced Writing Skills for Attorneys," U.S. Dep't of Justice, Office of Legal Education, National Advocacy Center, Columbia, SC, August 2003
- Discussion leader, "Colloquium on Prospective and Aspiring Law Teachers: Clinical Legal Education," Duke University School of Law, Durham, NC, October 2003

## Robinson Everett

- Chair, North Carolina State Bar Legal Assistance for Military Personnel (LAMP) Committee
- Member, American Bar Association Standing Committee on Armed Forces Law
- Counselor, American Bar Association Committee on National Security Law
- Guest lecturer, 2004 Central Circuit Trial and Defense Counsel Workshop Conference, Randolph AFB, San Antonio, TX, January 2004

## Peter Fish

- Participant, Commission on Colleges of the Southern Association of Colleges and Schools Meeting, accreditation of institutions of higher learning in the Southeast region from Texas to and including Virginia, Nashville, TN, December 2003
- Member, Commission on Colleges of the Southern Association of Colleges and Accreditation Team
- *A 'Freshman' Takes Charge: Judge John J. Parker of the United States Court of Appeals, 1925-1930* in 10 Journal of Southern Legal History (2002), 59-113

## Martin Golding

- *The Legal Analog of the Principle of Bivalence*, 16 Ratio Juris 450-68 (2003)
- *Towards a Theory of Human Rights*, reprinted in 4 Rights & Duties 61-89 (C. Wellman ed., Routledge 2002)
- *The Primacy of Welfare Rights*, reprinted in 6 Rights & Duties 27-44 (C. Wellman ed., Routledge 2002)
- Invited participant, Conference on Genesis and Law, Harvard Law School, May 2003
- Presenter, "Rights, Performatives, and Promises in Karl Olivecrona's Legal Theory," International Society for Legal and Social Philosophy (IVR), Lund, Sweden, August 2003

## Paul Haagen

- *A Hamburg Boyhood: The Early Life of Herbert Bernstein*, 13 Duke Journal of Comparative & International Law 7-60 (2003)

## Clark Havighurst

- Member, National Advisory Committee of the Robert Wood Johnson Foundation's Investigator Awards in Health Policy Research, 2003
- 2002-03 Supplement for C. Havighurst et al., HEALTH CARE LAW AND POLICY: READINGS, NOTES, AND QUESTIONS (Foundation Press 1998) (with Blumstein and Brennan)
- *An Apology for Professionalist Regimes*, 28 Journal of Health Politics, Policy and Law 159-64 (2003) (Book Review of Eliot Freidson, PROFESSIONALISM: THE THIRD LOGIC)

## Cynthia Herrup

- *Re-reading Politics*, 31 Shakespeare Studies 288-95 (2003)
- Book Review, XL(3) Comparative Literature Studies, 337-40 (2003) (reviewing RHETORIC AND LAW IN EARLY MODERN EUROPE (Victoria Kahn & Lorna Hutson eds., 2001))

## Donald Horowitz

- *Constitutional Courts: Opportunities and Pitfalls*, in TOWARDS A NEW CONSTITUTION IN AFGHANISTAN (Barnett Rubin ed., Maiwand, 2003) (in English, Pushto and Persian)
- *Electoral Systems and Their Goals: A Primer for Decision-Makers*, 14 Journal of Democracy 115-27 (2003)
- *A Right to Secede?*, in Secession and Self-Determination, 45 NOMOS 50-76 (2003)
- Speaker, "Constitutional Design for Severely Divided Societies," University of Texas (Austin) Department of Political Science Comparative Politics Workshop, October 2003
- Speaker, "A Right to Secede in International Law?" University of Texas Law School Secession Seminar, October 2003
- Lecturer, "Constitutional Design for Severely Divided Societies," Central European University, Budapest, October 2003
- Lecturer, "Obstacles to Constitutional Design," Central European University, Budapest, October 2003
- Lecturer, "Constitutional Design for Severely Divided Societies," Diplomatic Academy of Austria, Vienna, October 2003
- Speaker, "Why Ethnic Conflicts Occur (or Do Not Occur)," Conference sponsored by Commission on Radio and Television Policy for Central, East, and Southeast Europe on "Media Dilemmas: Covering Ethnic and Other Conflicts," October 2003
- Speaker, "State-Building in Iraq and Afghanistan: What Is the Proper U.S. Role?," Wake Forest University series on "Nation-Building and National Identity," November 2003

## Judith Horowitz

- Re-appointment to the Graduate Legal Education Committee, Section of Legal Education and Admissions to the Bar, American Bar Association, 2003-04
- Member, Selection and Placement Panels Edmund S. Muskie Fellowship Program in Law for students from the former Soviet Union, Open Society Institute Scholarship Program, Soros Foundation, 2003-04
- Arranged and spoke at international alumni events in Brussels and Vienna, October 2003

## Ted Kaufman

- *Freedom of the Press*, Washington Times, December 2003, OpEd at A23
- *A Broadcasting Strategy to Win Media Wars*, in THE BATTLE FOR HEARTS AND MINDS 299-316 (Alexander Lennon ed., MIT Press 2003)

## Robert Keohane

- Tobias Simon Distinguished Lecture, "Preventive War: A Cosmopolitan Institutional Proposal." Florida State University, January 2004

## David Lange

- *A Comment on New York Times v. Tasini*, 53 Case Western Reserve Law Review 653-57 (2003)
- *Students, Music and the Net: A Comment on Peer-To-Peer File Sharing*, 2003 Duke Law & Technology Review 0021

## Martin Lybecker

- *Bank Securities, Mutual Fund, and Common Trust Fund Provisions of the Gramm-Leach-Bliley Act*, 27 ALI-ABA Business Law Course Materials Journal 5 (June 2003)
- Discussion Leader, Regional Seminar, Mutual Fund Directors Forum, Washington, D.C., May 2003
- Co-Panelist, Regulation and Compliance, U.S. Institute COO/CFO "Best Practices" Workshop, Institutional Investor, New York, October 2003
- Speaker, Transparency of Broker-Dealer Compensation, Investment Management Regulation, ALI-ABA Course of Study, Washington, D.C., October 2003
- Moderator, The Mutual Fund Mess, ABA Banking Law Committee Fall Meeting, Washington, D.C., November 2003

## Jennifer Maher

- Chairperson, Section on Graduate Programs for Foreign Lawyers of the Association of American Law Schools

## Carolyn McAllaster

- Presentation to HIV Peer mediators, "Legal Needs of HIV-Infected Clients," Duke Infectious Diseases Clinic, Avila Retreat Center, May 2003
- Participant, AIDS Legal Workshop, Pitt Community College, Greenville, NC, October 2003
- Trainer, *Legal Needs of HIV-Infected Clients*, Duke Infectious Diseases Clinic, Avila Retreat Center, October and November 2003

## Francis McGovern

- DECEPTIVE TRADE PRACTICES LITIGATION: CONTEXT AND PROCEDURAL STANDARDS, Manhattan Institute Conference Series, October 2003
- *Mass Torts: Lessons in Competing Strategies and Unintended Consequences*, 2 Civil Action 2003
- Speaker, "Asbestos Litigation," Science, Technology and Law Program, National Academy of Sciences, Washington, D.C., September 2003
- Speaker, "Strategic Mediation," Boston University School of Law, Boston, MA, October 2003
- Speaker, "Mediating Asbestos Bankruptcies," Third Circuit Court of Appeals Judicial Conference, Philadelphia, PA, November 2003
- Speaker, "Asbestos Legislation," Free Conference, Product Liability Advisory Council, Orlando, FL, November 2003
- Speaker, "Fairness in Asbestos Inquiry Act of 2003," Annual Winter Leadership Conference, American Bankruptcy Institute, Palm Springs, CA, December 2003
- Author, "Deceptive Trade Practices Litigation: Context and Procedural Standards," Manhattan Institute Conference Series, October 2003
- *Mass Torts: Lessons in Competing Strategies and Unintended Consequences*, 2 Civil Action, 2003

## Ralf Michaels

- *Same-Sex Marriage: Canada, Europe and the United States*, ASIL Insights (June 2003)
- Hamburg Group for Private International Law, *Comments on the European Commission's Draft Proposal for a Council Regulation on the Law Applicable to Non-Contractual Obligations*, 67 *Rabels Zeitschrift für ausländisches und internationales Privatrecht* 1-56 (2003) (with others)
- *Conference Report: Epistemology and Methodology of Comparative Law in the Light of European Integration*, Brüssel, 26-28 October 2002, 11 *Zeitschrift für Europäisches Privatrecht* 453-55 (2003)
- *Conference Report, 11th Tagung der International Academy of Commercial and Consumer Law (IACCL) in Hamburg*, 67 *Rabels Zeitschrift für ausländisches und internationales Privatrecht* 353 (2003) (with Giesela Rühl)
- Territorial Jurisdiction after Territoriality, Max Planck Institute for Foreign and International Private Law, Hamburg, Germany, November 2003
- Globalization and Jurisdiction – New Problems and Techniques Workshop "Judicial Cooperation between the United States and Europe, New York City Bar Association, May 2003

- The Globalization of US Jurisdiction Workshop "Internationalisation of Law," Munich, German Scholarship Foundation, May 2003
- "Judicial Cooperation between European and Third States," Globalization and the Brussels Regulation Workshop, Barcelona University, October 2003
- Double Sales, Single Doctrines – Towards a Reconceptation of the Relation Between Property and Obligations, Universitat Pompeu Fabre, Barcelona, October 2003

## Robert Mosteller

- *New Dimensions in Sentencing Reform in the Twenty-First Century*, 81 Oregon Law Review 1-32 (2003)

## Jonathan Ocko

- CONTRACT AND PROPERTY IN EARLY MODERN CHINA (Stanford University Press, 2004) (Co-ed. with Madeleine Zelin & Robert Gardella)
- Introduction, in CONTRACT AND PROPERTY IN EARLY MODERN CHINA (2004) (with Madeleine Zelin & Robert Gardella)
- *The Missing Metaphor: Applying Western Legal Scholarship to the Study of Contract and Property in Early Modern China*, in CONTRACT AND PROPERTY IN EARLY MODERN CHINA ch 6 178-207 (2004)
- Paper presented, "Interpretive Communities," Conference on Writing and Law in Late Imperial China," Washington University, October 2003
- Paper presented, "Issues in Late Imperial Chinese Law," Southwest Conference on Asian Studies," Houston, October 2003

## Joost Pauwelyn

- *Conflict of Norms in Public International Law: How WTO Law Relates to Other Rules of International Law* (Cambridge University Press, 2003)
- *The Limits of Litigation: "Americanization" and Negotiation in the Settlement of WTO Disputes*, 19 Ohio State Journal on Dispute Resolution 121-40 (2003)
- *WTO Compassion or Superiority Complex?: What to Make of the WTO Waiver for "Conflict Diamonds"*, 24 Michigan Journal of International Law 1177-1207 (2003)
- Member, Board of Editors, JOURNAL OF INTERNATIONAL ECONOMIC LAW
- Co-Director, Project on International Trade and Human Rights, American Society of International Law
- Rapporteur, Session on the Right to Food and Trade in Agriculture, Conference on International Trade and Human Rights, World Trade Institute, Berne, Switzerland, June 2003

- "Risk Assessment in the Context of Trade Disputes: How Well are Scientific Principles Incorporated into the Resolution of Science-Based Trade Disputes," First World Congress on Risk, Brussels, June 2003
- Presenter, "WTO Safeguards," Working Group on Contemporary Aspects of Safeguards, Research Institute of Economy, Trade and Industry (RIETI), Tokyo, July 2003
- "US Increased Engagement in Bilateral and Regional Trade Deals," Fair Trade Center, Tokyo, July 2003
- Book presentation, "Conflict of Norms in Public International Law," Fair Trade Center, Tokyo, July 2003
- Book lecture tour, "Conflict of Norms in Public International Law," presentations in German cities of Cologne, Heidelberg and Berlin, October 2003
- Presenter, "Social Labeling," Ecologic Institute for International European Environmental Policy, Conference on "Moving forward from Cancun," Berlin, October 2003
- Paper presentation, "The Puzzle of WTO Safeguards and Regional Trade Agreements," World Trade Organization Symposium on Regional Trade Agreements and the WTO, Geneva, November 2003
- Speaker and Presenter, "The WTO System in the International Legal Order," The Future of the World Trading System after Cancun, Vienna, Austria, November 2003
- Workshop, "NAFTA at 10 years: Is it still in Canada's Interest," University of British Columbia, Vancouver, Canada, January 2004

## Jo Ann Ragazzo

- Panel participant as attorney for parents, Termination of Parental Rights Training sponsored by the North Carolina Guardian Ad Litem Program and Office of Indigent Services, Chapel Hill, North Carolina, August 2003

## William Reppy

- Gilbert's Law Summaries: Community Property (18th ed. 2003)
- Keynote speaker, "An Overview of Problems Affecting Animal Law in North Carolina," NC House Interim Committee on the Prevention and Disposition of Unwanted and Abandoned Companion Animals, October 2003
- Member, NC General Statutes Commission

## Allison Rice

- Lecture: "Legal and Ethical Issues Facing the HIV Community," Eastern Regional HIV/AIDS Conference, October 2003

## Barak Richman

- *Modeling Supreme Court Strategic Decision Making: The Congressional Constraint*, XXVIII Legislative Studies Quarterly 247-280 (May 2003) (with Mario Bergara & Pablo T. Spiller)

## Thomas Rowe

- *Shift Happens: Pressure on Foreign Attorney-Fee Paradigms from Class Actions*, 13 Duke Journal of Comparative & International Law 125-50 (2003)
- *Instructions to Jury; Objections; Preserving a Claim of Error*, in MOORE'S FEDERAL PRACTICE, Chapters 51 (3d ed. 2003)
- *Offers of Judgment*, in MOORE'S FEDERAL PRACTICE, Chapter 68 (3d ed. 2003)
- Co-Reporter (with Prof. Paul Carrington) for United States of America, International Association of Procedural Law XII World Congress, "Preliminary or Summary Proceedings: Scope and Importance," September 2003
- Selected Current Issues in Federal Statutory Jurisdiction, Fourth Circuit Institute for Judicial Law Clerks, University of Richmond School of Law, September 2003
- Consultant for style revision of Federal Rules of Civil Procedure, Advisory Committee on Civil Rules, Judicial Conference of the United States
- Association of American Law Schools Committee on Professional Development – member, 2003– ; chair, 2004–

## Richard Schmalbeck

- RECONSIDERING PRIVATE FOUNDATION INVESTMENT LIMITATIONS (NYU working paper)
- *Nader 2004?, Thanks, but...*, Raleigh News & Observer, December 2003, op-ed at A28
- Northwestern University Law School ABA/AALS Reaccreditation Inspection, October 2003
- Presented paper on private foundation investment regulations at a conference on "Managing Charitable Assets," sponsored by the NYU Law School's National Center on Philanthropy and the Law, November 2003

## Christopher Schroeder

- ENVIRONMENTAL REGULATION: LAW, SCIENCE AND POLICY (4th ed. 2003) (with R. Percival, A. Miller and J. Leape)
- *Environmental Law, Congress and the Court's New Federalism*, 78 Indiana Law Journal 413-57 (2003)

## Steven Schwarcz

- *Commercial Trusts as Business Organization: An Invitation to Comparatists*, 13 *Duke Journal of Comparative & International Law* 321-36 (2003)
- Foreword to Paul Ali & Jan Job de Vries Robbe, *SYNTHETIC, INSURANCE AND HEDGE FUND SECURITISATIONS* (2004)
- *STRUCTURED FINANCE: A GUIDE TO THE PRINCIPLES OF ASSET SECURITIZATION* (Tsinghua University Press, Chinese edition 2003)
- Rethinking the Disclosure Paradigm in a World of Complexity, Faculty workshops, the University of Chicago Law School, the University of Illinois College of Law, and William & Mary Law School, 2003
- Collapsing Corporate Structures: Resolving the Tension Between Form and Substance, Faculty workshop, Vanderbilt University Law School, January 2004
- Lecturer, "Structural Foundations of Securitization and Current Controversies," American Securitization Forum, January 2004
- Honorary visiting fellow, The University of Melbourne Faculty of Law, Spring 2004

## Kenneth Sibley

- Award, "Patents/Intellectual Property" category, *Business North Carolina* Legal Elite Edition, January 2004

## Scott Silliman

- "Responsibilities of Commanders under the Law of Armed Conflict," Guest Lecture, JFK Special Warfare Center, Fort Bragg, NC, August 2003
- Speaker, "Dealing with the National Media," Duke University's Media Training Conference, August 2003
- Dinner Speaker, "Prosecuting Terrorists in the War on Terrorism," Greensboro Bar Association, Greensboro, NC, September 2003
- Guest Lecture, Peace, War and Defense class, "War and the Law of Armed Conflict," University of North Carolina (undergraduate), October 2003
- Guest Lecture, "Legal Issues in the Friendly Fire Case," Duke Club of Canada, Toronto, Canada, October 2003
- Guest Lecture, National Security Issues class, "Issues of Law and Policy in National Security," Terry Sanford Institute for Public Policy, Duke University, October 2003
- Speaker, "Legal Issues in the War on Terrorism," Duke Club of Jacksonville, FL, November 2003
- Participant, Harvard University's Carr Center for Human Rights Policy Conference on Operation Iraqi Freedom: Refining Humanitarian Analysis of War, Washington, D.C., September 2003

- Speaker/Panel Moderator, "Loyalty in Theory, Loyalty in Practice," UNC Law, Loyalty and Treason Symposium, Chapel Hill, NC, October 2003
- Speaker, "International Legal Perspectives on Strategic Deception," Triangle Institute for Security Studies' Conference on Strategic Deception, Chapel Hill, NC, October 2003
- Co-Sponsor and Panel Moderator, Symposium on Using Military Force: Duties and Restraints, New York, NY, November 2003
- Co-sponsor and speaker, "National Security Law in a Changed World: The Thirteenth Annual Review of the Field," American Bar Association Standing Committee on Law and National Security Conference Arlington, VA, November 2003
- Member, ABA Standing Committee on Law and National Security
- Faculty Sponsor, Duke Law's Christian Legal Society
- Media interviews in national/local television (especially CNN), national/local radio and national/local print regarding the war on terrorism, the recently concluded war with Iraq, and other military/law of war issues

## Carol Spruill

- Presenter, "The Poverty IQ Test: A Study of Poverty and Government Programs in the United States," annual conference of the NC Association of Women Attorneys, Wrightsville Beach, NC, October 2003
- Panelist, *NALP Legends Share Their Best Ideas*, joint meeting of PSLawNet and the National Association of Law Placement's Public Service Committee, Washington, D.C., October 2003

## Laura Underkuffler

- *THE IDEA OF PROPERTY: ITS MEANING AND POWER* (Clarendon / Oxford University Press, 2003)
- "Point/Counterpoint on Takings and Property," with Prof. Carol Rose (Yale), University of Maine School of Law, September 2003
- Presenter, "The Post-Zellman Landscape: State Funding of Religious Schools," University of Maine School of Law, September 2003

## William Van Alstyne

- Participant, "Supreme Court Preview" annual program, Marshall-Wythe College of Law (the law school at William & Mary)
- Stranahan lecturer, "Federalism," University of Toledo Law School
- Panelist, assessing the Supreme Court's recent decisions on Church and State, General Session of the annual Virginia Bar Association meeting

- Address, "Will the Real 'Establishment Clause' Please Stand Up?" North Carolina Conference of University and School Attorneys (Institute of Government), February 2004
- Address, "An Assessment of The Warren Court and the First Amendment," University of California (Berkeley), February 2004

## Neil Vidmar

- *The American Civil Jury for Ausländer (Foreigners)*, 13 *Duke Journal of Comparative & International Law* 95-120 (2003)
- *Inside the Jury Room: Evaluating Juror Discussions During Trial*, 87 *Judicature* 54- 58 (Sept-Oct, 2003) (with others)
- Panelist, "Sources of Variability in the Relations between Pre-trial Publicity and Pre-trial Bias," International Interdisciplinary Conference on Psychology and Law, Edinburgh, Scotland, July 2003
- Panelist, "Application of Jury Research: A Debate on the Selection of Research Questions and Methods," International Interdisciplinary Conference on Psychology and Law, Edinburgh, Scotland, July 2003
- Participant/Commentator, Conference on Jury Ethics: Juror Conduct and Jury Dynamics, John Jay College of Criminal Justice, New York, September 2003
- Participant, Research meeting on Implications of Daubert in Practice, sponsored by Tellus Institute, Washington, D.C., November 2003

## Stephen Wallenstein

- "Overview of Sarbanes-Oxley and its Impact on M&A and Private Equity Transactions," North Carolina Electronics and Information Technology Association (NCEITA) Leadership Conference, Pinehurst, NC, December 2003
- "Effective Boards, Effective Directors," Keynote Address at the First Duke-Seoul National University Corporate Governance Symposium, Seoul, Korea, November 2003
- "Impact of Regulatory Developments on M&A and Capital Market Transactions," Wachovia 2003 Pinehurst M&A Conference, Pinehurst, North Carolina, October 2003
- "Regulatory Initiatives and Rules Impacting Audit Committees," PricewaterhouseCoopers Financial Services 2003 Audit Committee Forum, New York, September 2003
- Program Director and Speaker, Presentation to Board of Directors of Albemarle Corporation, Richmond, VA, June 2003

- Co-sponsor and Speaker, "Corporate Governance and Cleaning Up Corporate Abuses," Columbia Business School and The Fuqua School of Business Alumni Event, New York, June 2003
- Arranged and participated in academic seminars with Duke Law Board of Visitors in Geneva, Switzerland, July 2003
- Quoted in "Southern Exposure," a *Financial Times* special edition on "The New South," September 2003
- Moderated presentation by Elizabeth Boros, "Virtual Meetings of Shareholders," with commentary from James Cochrane (NYSE), Duke Law School, September 2003
- Organized, sponsored and presented at market microstructure conference on institutional equity trading (with NYSE), December 2003

### **Douglas Wheeler**

- Chair, Advisory Board of the Donald Bren School of Environmental Science and Management at the University of California, Santa Barbara

### **Jonathan Wiener**

- *Whose Precaution After All? A Comment on the Comparison and Evolution of Risk Regulatory Systems*, 13 *Duke Journal of International & Comparative Law* 207-62 (2003)
- Award, Young Risk Analyst / Chauncey Starr Award, Society for Risk Analysis (SRA) for the most exceptional contributions to the field of risk analysis by a scholar age 40 or under, December 2003
- Lecturer, "Precaution in the US and Europe," annual meeting of the Society for Risk Analysis, Baltimore, MD, December 2003
- Lecturer, "Reconstructing Climate Policy," International Development Law, Duke Law School, November 2003
- Lecturer, "Precaution, Risk and Multiplicity," Conference on Environmental Law, Harvard Law School, Cambridge, MA, November 2003
- Lecturer, "The Future of the Climate Change Negotiations," MIT Global Change Forum Cambridge, MA, October 2003

### **Lawrence Zelenak**

- Moderator, "Doing Tax History: The Uses of the Past," Annual Meeting of the Association of American Law Schools, January 2004
- Presenter, "Redesigning the Earned Income Tax Credit," Harvard, Santa Clara, and Arizona State law schools

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# {Profiles

## David Noble: A Commitment to Excellence

By Jonathan Goldstein

David Noble '66 easily can tick off the reasons he is so fond of his years at Duke Law School: the superb professors who devoted themselves in and out of class to teaching him about the law; the collegial atmosphere among students; the dean at the time, Elvin R. Latty, taking Noble under his wing, helping him find a place to live early on and later pointing him toward his first job.

He was ecstatic when his daughter, Elizabeth '05, decided to pursue her own education at Duke Law. "You hear about cutthroat competition at other schools, but Duke Law had a very different atmosphere," said Noble, a member of the Law School's Board of Visitors. "Everyone treated you like a person and let you know that they were there to help. Elizabeth reports that the School is still like that."

To show his appreciation for his Duke Law School education, and to help the School carry on its tradition of excellence, Noble and his wife, Gayle, recently made a \$1 million unrestricted gift to Duke Law through the philanthropic Noble Foundation.

"I just had a wonderful experience at Duke, and it prepared me for everything else" said Noble, who practiced law for more than three decades before becoming president of the Noble Foundation last year. "I hope this gift can make it easier for the dean to maintain the quality and standards as well as the collegial atmosphere of the Law School that I enjoyed so much and Elizabeth is enjoying now."

Linda Steckley, former associate dean for external relations, said Noble's gift will lead to lasting improvements to the School. "It was clear to me from the first time I met David and Gayle that they

wanted to do something for Duke Law that would make a difference," she said. "That is exactly what they have done. This will make a difference long into the future, and I couldn't be happier to have been a small part of enabling this to happen."

Dean Katharine Bartlett provided a preview of how the money most likely will be used. "David and Gayle Noble's gift is the best kind – unrestricted. At the same time, the difference this gift can make at this moment in the Law School's

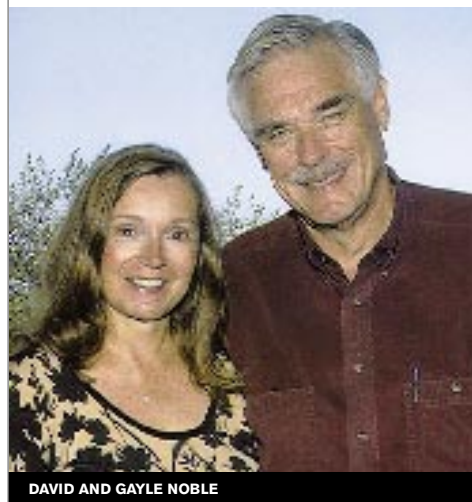
**"When the guy at the next table thinks running electricity through your client is a great idea, it tends to focus the mind."**

history meshes beautifully with the motivation for the gift: providing support for the unique kind of community that is the hallmark of Duke Law School," she said. "I intend to use this gift to support the transformation of the current outdoor courtyard into an indoor atrium, into which all other parts of the building will feed, and where students and faculty can, and will want to, interact with each other over coffee or lunch, to reinforce and strengthen the community which our faculty and students – past, present, and future – have so strongly valued."

It was the Law School community that helped Noble find his first job.

Immediately after graduating from Duke Law, Noble, with the help of then-Dean Latty, began work for the Washington, D.C. firm of Arnold & Porter. But before he had any time to settle in, Noble was sent to Chicago to work with a team of lawyers on a huge railroad merger case. That work would consume him for the next two years.

Noble was so busy working on the case that he never had time to study for the Washington D.C. bar. He merely



DAVID AND GAYLE NOBLE

headed for the airport one July afternoon with plans to take the exam the next morning. Because of an airline strike, though, one leg of his flight was canceled. After some makeshift standby arrangements were made, he arrived in Washington at about midnight, eight hours before the exam.

"At 8 a.m. I walked into the bar exam," Noble said, chuckling. "Everybody else was uptight, but me, I was relaxed. Nobody could blame me if I flunked." But Noble passed, without studying or even a good night's sleep before the exam. He attributes his success

to the strength of his Duke Law education. "That was all I needed," he said.

Two years later, Noble returned to his native Ohio and joined the Critchfield Law Firm in Wooster, his home town. He handled many types of cases there, including criminal defense work. He enjoyed the job, especially the high-stakes criminal cases he took on, which he credits with helping him further develop his skills. "When the guy at the next table thinks running electricity through your client is a great idea, it tends to focus the mind," he said.

Noble opened his own firm in Millersburg, OH, which he ran sometimes with and sometimes without partners for 13 years. Then, after years of general practice, Noble began to specialize in legal work related to the oil and gas industry that had developed in Ohio. He moved into what he describes as the "arcane specialty" of federal condemnation of underground natural gas easements. For 20 years, his most important client was Columbia Gas Transmission Corp. He worked to protect their underground gas storage and pipeline facilities.

In 1985 he moved to Cleveland, where he continued specialty in the oil and gas industry. He joined the firm of Walter & Haverfield in Cleveland in 1996, where he stayed until retiring in 2002 and taking over the foundation his father, a longtime CEO of the Rubbermaid company, had begun. Noble, who has four adult children, said running the foundation has proven challenging work. "It keeps me busier than you'd believe," he said. The donation to Duke Law is the foundation's largest gift to date.

"I just have a very special spot in my heart for Duke Law School," Noble said. "I found a lot of success there, and that led to other successes in my life. Gayle and I talked about it at great length, and we decided that this was something we really wanted to do for the School." ♡

## Camille Cooper: WNBA Star Shoots for Law Degree



CAMILLE COOPER

### By Jason Sykes

For 10 years, basketball was Camille Cooper's '06 passport. Her on-court talent, off-court determination and god-given intelligence took her from her hometown of Georgetown, Kentucky to Purdue University and a national championship in 1999, followed by a spot on Team USA, tours of duty in France's and Spain's professional leagues and what some might call the ultimate summer position: playing for the WNBA's New York Liberty and Chicago Blaze.

So, why would anyone trade in sneakers, a ball and a paycheck for lectures, case outlines and finals?

"During exams I asked myself that question a few times," Cooper admits. But she has dreamed about attending Duke since she was eight — and not as a basketball player. Still, choosing law school was a hard decision for Cooper. She deferred her acceptance to Duke for two years as she weighed her long-term

goals against the many opportunities she had been afforded as an athlete. But a debilitating injury while playing in France shifted her perspective. "I was told I may never play basketball again, but I worked hard in therapy and got back on the court." Despite her success in rehabilitating, the injury focused Cooper on investing time in her non-athletic future. "Basketball is a total life commitment that I obviously don't have since I have other life goals."

Enter Associate Dean for Admissions and Financial Aid Dennis Shields, who kept in contact with and counseled Cooper as she weighed her options. "I thought she was an excellent candidate for law school. That was clear from the beginning. One of the most remarkable qualities about Camille is that she is committed to being excellent in both basketball and law. That's impressive, in part because you don't control your destiny in either endeavor. She showed remarkable patience in figuring out how to do both and working through the

details to do it,” Shields says. “I appreciated Camille’s positive attitude and that she was always thoughtful in our discussions. I knew she was going to be a fine law student and fine lawyer and member of the Duke Law community.”

### “After Professor Richman, I feel like I can write my next contract.”

In fact, Cooper already sounds almost nostalgic when speaking about the School. “I finally got to come here after waiting for two years. It always was a priority, but was just a matter of timing. I always say I like being here.”

Living in Durham has been an adjustment after living in New York City, Chicago and Europe. “I basically only know how to get to school and Wal-Mart,” she jokes. “But I have my own place and am settled for at least three years. I was living out of my suitcase while playing basketball. I’m normal now. I don’t know how normal you can be in law school, but it’s a good try.”

And “normal” is very important to Cooper as she adjusts to being a student again. At first, she didn’t really believe the idea of Duke Law’s vaunted noncompetitive environment would hold water in reality, but she has found it is mostly accurate. “It goes against the law school norm. These are nice people with goals,” she says.

Cooper’s first year, and Professor Barak Richman’s contracts class in particular, have opened her eyes to the business and legal side of basketball. “I had an unpleasant experience with an agent and signing contracts to play overseas, so I feel like I had a unique perspective in contracts class. After Professor Richman, I feel like I can write my next contract.”

Richman agrees, “Camille clearly had a unique perspective in class, and the class – and I – benefited tremendously when she shared that perspective. She is too humble to share specifics of her

experience, but it was impressed on all of us that she is a person with important and uncommon encounters with legal issues. When she spoke about the difficulties of making people keep their word, and correspondingly about the importance of getting good legal representation in contract matters, the class listened intently. I think her experiences have given her a lot of wisdom.”

Cooper also has a long line of WNBA players waiting to benefit from her wisdom (and that of Richman), which ties in nicely with Cooper’s dream job: in-house counsel for a professional sports league. “It’s hard to say where I want to focus, but I really think I need to use my connections and strengths in professional sports.” She also has a strong pro bono and public interest background. “I look at my degree as an opportunity to become involved in my community,” she says.

In the short term, Cooper has the opportunity to play basketball again and her law school classmates keep asking her what she is going to do. “I’m deciding whether to play this summer given the challenges of the WNBA schedule and training requirements. I’m excited to pursue my legal career, but I have an underlying motivation to return and play one more summer. I have personal goals and things to accomplish professionally, and I felt like my career was interrupted by my injury. I want to prove myself at the next level.”

### “I look at my degree as an opportunity to become involved in my community.”

Whichever way she decides, her professor thinks she’ll come out a winner.

“It’s incredible to have the summer options she has – to play professional basketball or to look for work as a summer associate. Who wouldn’t love that choice. But I can see she’s facing her decisions with admirable responsibility and farsightedness,” says Richman. ♡

## Trever Asam: A Dedication to Teaching

By Meredith Mazza

**T**rever Asam ’04 was teaching U.S. History to eighth grade students in Washington, D.C. when he decided to apply to law school. Three years later when asked why he decided to leave teaching behind, he admits to mixed feelings.

“I was ready for a change and thought that my strongest skills matched well with the legal profession,” he says. “But there are definitely times when I still miss my kids.”

The offer of a Mordecai Scholarship to Duke Law School also played a key role in his decision.

“The Mordecai Scholars program enabled me to come to law school with the idea that if I wanted to go back into teaching, I would be able to afford to do so,” he says. “But as it’s worked out, I’ve decided to pursue a career in law, so I am grateful that the scholarship encouraged me to give law school a try.”

Asam, who earned an undergraduate degree in American Studies from Yale University, became interested in Duke because of its small size, which he knew would positively impact the ways in which students interact with their professors.

“I’ve been very pleased that it’s played out the way that I hoped,” he says. “I feel really fortunate to have gotten to know many of my professors as people and as mentors as well as teachers.”

Asam cites his experience writing a paper for his Race in the Law course, taught by Professor Trina Jones, as an example. The paper, titled *Bob Jones goes to Hawaii: Charitable Organizations, the Mancari Doctrine, and Hawaiians-Only Education at the Kamehameha Schools*, examines the constitutionality of the tax-exempt status of a private school system in Honolulu that only accepts Native Hawaiian children.

“When I was initially writing the paper for Professor Jones’ class, she



recommended that I speak with [tax] Professor Richard Schmalbeck about any tax questions I had,” Asam recounted, “I spent several hours with Professor Schmalbeck, who was really helpful to me. I don’t think that kind of informal discourse happens frequently, if at all, at larger schools.”

After reading the paper, Professor Schmalbeck encouraged Asam to enter it in a national essay contest, the highly prestigious and competitive Tannenwald Foundation for Tax Scholarship contest, sponsored by the Tax Section of the American Bar Association. The paper won second prize.

“Trevor’s paper was truly outstanding – technically air-tight, but also very interesting to read and far-ranging in its social implications,” said Professor Schmalbeck. “As a member of the Tannenwald Advisory Board, I’ve been a judge in this competition in previous years, so I am well aware that it is very demanding. It takes a great paper to rise to the upper reaches of this competition, and Trevor wrote just such a paper.”

“It’s really exciting to win second place in this contest,” Asam said. “It makes

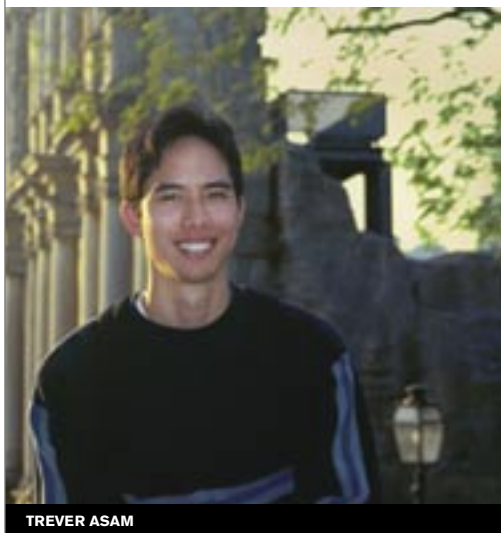
**“I feel really fortunate to have gotten to know many of my professors as people and as mentors as well as teachers.”**

such a difference to be at a law school where the faculty show so much interest in their students.”

As a teacher, Asam himself showed a commitment and dedication to his students and his school. At the end of his initial two-year term as a young teacher with Teach for America in Washington D.C., he decided to stay on at the junior high school where he taught to help it become the first public school to become a charter school in the District.

“After my second year, we had just

received permission from the District to convert the school to a charter school,” he said. “We were in the middle of a thousand exciting things related to this, and I didn’t want to leave before they came to fruition. In addition, I was becoming a better teacher with every year, and had reached the point where I really felt able to take my classroom in



TREVER ASAM

new directions.”

Asam’s interest in his students went well beyond the classroom.

“During my last year of teaching, I had a student in my homeroom class with the worst attendance imaginable. She was missing school three or four times a week, and sometimes for more than a week,” Asam said. “A counselor at the school looked into the student’s family situation and learned that she was living with a sick grandmother, and was telling her grandmother that she was going to school when actually she was sneaking back into the house every day to watch television for hours.”

Asam worked closely with the counselor and other teachers at the school to encourage the student to re-engage in class.

“We wanted to get her back in school, and we wanted to send the message that we were going to be following up on her, especially since she wasn’t getting that kind of discipline or structure from her home life,” he said. “So every morning at 7:45 a.m., I would arrive at her doorstep and drive her to school. It didn’t take much effort on my part, but it got her to school every single day.”

Asam has exhibited the same dedication he showed as a junior high school teacher to his law school career. During the summer following his first year of law school, he split his summer between two prestigious jobs, first serving as a law clerk to the Honorable Denise R. Johnson of the Vermont Supreme Court, and then as an associate with the U.S. Department of Justice’s Civil Division.

“I met Justice Johnson at an American Bar Association event I attended and asked if she would be willing to take me for part of the summer,” Asam said. “She was enthusiastic and said ‘sure, come on up!’ It was a unique experience and I really enjoyed it. Her staff was a small and intimate office – a big contrast to Justice.”

Asam next decided that he wanted to explore the contrasting experiences offered by large and small D.C.-area law firms, so he split his time working as a summer associate between Arnold & Porter and Shea & Gardner.

“There were aspects of both places that I found interesting,” he said. “Big firms like Arnold & Porter have a lot to offer in terms of having a greater diversity of practice, more resources and more work, while boutique firms allow for more personal professional relationships and training.”

Asam has another year to decide which type of firm he will join. Upon graduating this May, he and his fiancée, Susan, a dual-masters degree candidate at Duke whom he met at Yale, will be moving to his hometown of Honolulu where he will clerk for Judge Susan Oki Mollway of the Federal District Court of Hawaii. Following his clerkship, the two plan to return to the Nation’s capitol where Trevor will work for a law firm, probably in the area of tax.

And what about teaching? Just last semester, Asam enjoyed a return to the classroom when he served as a teaching assistant to Duke Law Professor Tom Metzloff.

“I led a discussion section of Professor Metzloff’s Distinctive Aspects of U.S. Law course, which was a nice opportunity to be a teacher again,” he said. “It was certainly a very different experience from teaching eighth graders.” ♡

# Zephyr Teachout: Falling in Love with an Idea

by Chris Fregiato '05

**A**s Zephyr Teachout '99 discovered soon after her graduation from Duke Law, great ideas often can arise from the unlikeliest of circumstances. For her, the brainstorm came while she was shopping for a bicycle in suburban Philadelphia. Three years later, Teachout's idea became reality in the form of the Fair Trial Initiative, a Durham-based organization focused on improving the quality of trial-level capital defense work.

At the time her idea for the Fair Trial Initiative was born, death penalty work in North Carolina was barely on Teachout's radar screen. In the summer of 2000, while clerking for Chief Judge Edward Becker of the Third Circuit Court of Appeals in Philadelphia, Teachout was debating post-clerkship options – either working for a New York law firm or returning to her home state of Vermont.

Then she met Matt Stiegler and David Neal, two students at the University of North Carolina Law School who were spending their summers in Philadelphia. In the course of an outing to buy a bicycle for Teachout's impending cross-country bike trip, the trio dreamed up an organization that would place recent law school graduates in fellowships to work with experienced attorneys on capital defense trials.

Teachout and her colleagues were concerned that “most capital defense resources were going to post-conviction work, but the tightening of death penalty appeals means a fair first trial is even more important. Our questions at the beginning were whether we could raise the money, whether we would be providing a useful service, and whether we could generate sufficient student interest.”

Building from initial donations from family members, the Fair Trial Initiative now provides salaries and benefits for six two-year fellowships, with funding from the North Carolina Office of Indigent Defense and such private foundations as Winston-Salem's Z. Smith Reynolds Foundation. This year, the organization will open a second office and fund two additional fellows in Richmond, VA.

Teachout had told the New York law firm she had committed to that she would come to work after her cross-country trip, “unless I fell in love with someone in California and got married. Then I called back and told them it wasn't with a person, but I had fallen in love with an idea.”

Teachout's commitment to public service stretches back before her Law School days. Immediately upon her graduation from Yale, she worked for the Vermont gubernatorial campaign of Howard Dean as a campaign operations director. She later enrolled in a joint degree program at Duke Law, receiving her master's degree in political science as well as her law degree. “Going to Duke Law was the best thing that ever happened to me,” Teachout said. “I came out so much more interested, proactive and confident. I absolutely adored it for the professors and the academic experience. I really loved and took advantage of being able stop by professors' offices all the time and bug them with questions.”

In her time at Duke Law, Teachout continued to explore public service, spending a summer at a public defenders' office in Barry, VT with the assistance of a grant from the Public Interest Law Foundation. She also worked in the Law School's criminal trial advocacy clinic. “What was stunning to me was how casual and quick a criminal punishment seemed. You meet with an incredibly young and inexperienced law student, and then you talk to an attorney for about half an hour, and then you have your sentence.”

Teachout said those and other public interest activities fueled her commitment to using the law for social change. “There's just something about working for the underdog,” she said. “I have to be the gadfly.” During her time at the Fair Trial Initiative, Teachout also carried her own load of capital appeal cases through the Center for Death Penalty Litigation, another Durham-based organization that has provided support for the Fair Trial Initiative.

**“There's just something about working for the underdog.”**

In January 2003, Teachout left the Fair Trial Initiative in the hands of her collaborators to return to her roots. She moved



ZEPHYR TEACHOUT

back to Vermont to join former-Governor Dean's 2004 presidential campaign. Less than one year later, Teachout emerged as a rising star in campaign politics. As director of Internet organizing for Dean, Teachout led the

Dean Internet revolution, which is generally agreed to be the most successful use of the Web to date in a national political campaign. So successful, in fact, that CNN political analyst Margaret Carlson selected Teachout as her pick for “Political Rookie of the Year” in 2003.

Teachout points to the organization she helped start as an ongoing inspiration for her work in public service.

“One of the big things you do when you represent clients on death row is go around and meet their families and learn everything about them. In all these impoverished communities, you find so many people who are in chronic pain of all kinds. After doing death penalty work, it would be hard to stop doing public interest work, because you see so much of what is wrong in society.” ♡



*Chris Fregiato JD/MA '05 plans to pursue a career in public interest law after graduation, most likely in the area of civil rights.*

# 8 Questions for Letty Tanchum W '71, L '73

Vice President and General Counsel, HARPO Productions

## How did you get your start in the entertainment industry?

One day while walking on New York City's Upper West Side, I walked into the reception area of the ABC television studios, and ran into an old friend of mine from summer camp. I spoke with her about in-house counsel opportunities and that afternoon I had my first interview at the station. Three weeks later I had a job as staff attorney for ABC.

## What were your responsibilities at ABC?

I worked primarily with the owned and operated television and radio stations and the radio networks, drafting license renewals and engineering applications, and advising the stations on all the Federal Communications Commission regulations. It was a fantastic job because of the variety of legal issues I faced every day.

## How did you come to work for Oprah Winfrey?

I first met Oprah when she joined *AM Chicago* as host, and almost instantly the program shot up in popularity. Soon it became known as *The Oprah Winfrey Show* and within a few years Oprah decided to build her own studio, Harpo Productions, and produce the show herself. She asked me to head up the legal department at Harpo, and although I didn't want to relocate to Chicago, she suggested that we give it a try with me headquartered in New York City. Fifteen years later I am still based in New York, and the other 12 members of my department are in Chicago.

## Describe your job at Harpo.

During the course of a day I talk with many people about the content of Oprah's shows as they are being developed. I try to find ways to achieve the producers' goals without running into legal

problems. I might also work on an agreement for new theme music or a new production set, or to get the rights for the next *Oprah Book Club* selection or *O, The Oprah Magazine* issue.

## Do you also work with Oprah's foundations?

I am an officer and director of The Oprah Winfrey Foundation and Oprah's Angel Network, Oprah's private and public charities, respectively. These charities work toward the protection and education of women and children, work that is both challenging and rewarding.

## You served as lead counsel in Oprah's much publicized libel lawsuit in Texas. Describe your experience working on that trial.

My primary responsibility was to manage the litigation, which included hiring Texas counsel, working with our insurance company and acting as liaison with the press. I also reviewed back-

ground material for the shows each day. Our days were long, but at the end of the trial the First Amendment was victorious and we were found not guilty on all charges.

## Have you hired any Duke Law students at Harpo?

Last fall I was looking for a lawyer to work at The Oprah Winfrey Foundation, so I contacted Dean Kate Bartlett, who recommended Emily Friedman '98 for the job. Emily has since joined us in Chicago, and she's terrific, a great asset to the Foundation.

## How did your Duke Law School experience help you get where you are today?

I got a first class education at Duke and learned how to approach, dissect and analyze issues in a concrete and meaningful way. ♣



LETTY TANCHUM CELEBRATES OPRAH WINFREY'S VICTORY AFTER HER "VEGGIE LIBEL" CASE IN TEXAS.

# Leadership Weekend 2003

## Alumni and Volunteer Leaders Come Back to Durham

More than 150 of Duke Law School's alumni volunteer leaders convened at the School on the weekend of Oct. 10-11 for Leadership Weekend, which included meetings of the Board of Visitors, the Law Alumni Association Board and the Future Forum, as well as a dinner honoring the Law School's Campaign Committee for its leadership throughout the Campaign for Duke.

The two-day event included including a presentation by Dean Katharine T. Bartlett on the state of the School, a look at current efforts in Law School career services, student affairs and admissions, and discussion of architectural plans for renovations to the Law School building.

The weekend also provided opportunities for alumni leaders, faculty and staff to mingle and renew friendships at a dinner at the Millennium Hotel, which included a student panel presentation and a performance by the Law School student a cappella group, Public Hearing, with a special guest performance by Dean Bartlett.



# Volunteers Give a Hand With Tax Preparation

Over 30 Duke Law students, staff and faculty members are sharing their tax preparation expertise with low-income taxpayers on campus and across Durham during the 2004 tax season. Janna Lewis '05 is spearheading the revitalization of the Law School's Volunteer Income Tax Assistance program (VITA), a long-standing community service project that had languished in recent years. Thanks to her efforts, hundreds of low-income workers at Duke and in the neighborhoods surrounding campus are receiving free tax-preparation assistance, maximizing their tax credits and refunds, and avoiding paying fees and interest charges to for-profit tax preparation companies. Students also are providing information sessions so that the community can learn about tax laws and credits.

"Janna has thrown her extraordinary energy and passion into this project, and is working hard to be sure that not only are many students participating, but also that the services get out into the community where they are needed the most," said Associate Dean for Public Interest and Pro Bono Carol Spruill. "Janna's efforts are a prime example of the leadership being shown by Duke Law students in initiatives to provide law-related services to the community."

Working with Chris McLaughlin, a 1996 graduate of Duke Law who currently serves as the School's Director of Academic Advising, Janna has joined forces with the Durham Chamber of Commerce to recruit volunteers from across the city and to provide Law School students the opportunity to assist other Durham VITA programs. Lewis has recruited more than eleven law students from North Carolina Central University

who will join in the training and the tax preparation sessions, plus local volunteer organizations such as the Triangle Residential Options for Substance Abusers (TROSA). McLaughlin and Lewis have also worked closely with Duke University Human Resources and with the Duke University Federal Credit Union to attract clients and schedule tax-preparation sessions at convenient times and locations for the University's housekeeping and food services staffs. The Duke Law VITA volunteers plan to reach out beyond the University's walls to the surrounding neighborhoods by offering free tax-return preparation sessions at local elementary schools and community centers.

"Our VITA program is truly a community-wide effort," observed McLaughlin. "Students, staff and faculty from Duke Law are spearheading the program, but we've attracted volunteers from a number of schools and organizations so that we can provide valuable services to our neighbors throughout the city of Durham. This is town-and-gown cooperation at its best." ♡

# Reunion 2004

## Learning, Food, and Family Fun

Duke Law is happy to welcome back members of the classes of 1954, 1959, 1964, 1969, 1974, 1979, 1984, 1989, 1994 and 1999 along with family, friends and faculty for Reunion 2004, which runs from April 16-18. Events include receptions, seminars and two conferences, one sponsored by the Center for Law Ethics and National Security examining U.S. Canadian relations across the broad spectrum of national security issues, and the other hosted by the Program in Public Law honoring legendary constitutional law scholar William Van Alstyne.

Participants also will have an opportunity to attend the Duke University Gala on April 17, which will include fireworks, dancing and live music for more than 1,000 Duke alumni.

For more reunion details, please visit:

**[reunion2004.law.duke.edu](http://reunion2004.law.duke.edu)  
or call 1 888 LAW ALUM**

## Duke Law School Hosts Seminar for Federal Judges

Duke Law School welcomes federal judges to campus March 11-12 for a conference focusing on law and national security issues raised by the war on terrorism, an area where Duke boasts a number of nationally-known experts. The two-day event includes a panel discussion of terrorism's impact on U.S. national policy, its national interests and citizenry.

Since 1990, the Federal Judicial Center has offered judicial education programs for federal and state judges across the country. Courts, judicial councils and other judicial organizations, bar associations, and law schools sponsor these programs.

Dean Katharine Bartlett identified national security law as one where Duke has a particularly significant contribution to make to judicial education. "This is a wonderful opportunity to showcase our faculty's unique expertise in national security law, and to provide an opportunity for judges to think critically about some of the most difficult legal issues of our time."

The seminar kicks off with a discussion of issues surrounding the Patriot Act, led by Professors Christopher

Schroeder, Sara Sun Beale, Stuart Benjamin and James Boyle. During lunch attendees will hear from the Honorable James E. Baker of the U.S. Court of Appeals for the Armed Forces, who was previously the legal adviser at the National Security Council. His talk will be followed by a discussion of immigration and detention issues.

On Friday, Professor Beale will speak to attendees about the prosecution of terrorists in federal courts, followed by Professor Scott Silliman's discussion on enemy combatants and military commissions. Public policy experts from Duke and the University of North Carolina lead the closing panel on terrorism and its impact on policy in the United States.

The Duke program reached capacity almost as soon as it was announced. The 45 federal judges in attendance will represent a cross-section of the United States' federal judiciary nation-wide. The seminar is intended to help promote discussion and peer education among federal judges about this constantly changing area of law and the current cases before their courts. The sensitive nature of these talks precludes attendance by the public and the Duke community. ♣

## U.S. Solicitor General to Address Law Graduates

United States Solicitor General Theodore B. Olson will deliver the keynote speech during law commencement exercises for the Class of 2004. Mr. Olson will be the featured speaker at the Law School's hooding ceremony,



which will take place on May 8, 2004 at 6:00 p.m. in Cameron Indoor Stadium on the Duke University campus.

"The Law School is fortunate that the Solicitor General has agreed to help us honor our Class of 2004," said Katharine T. Bartlett, Duke Law School's Dean and A. Kenneth Pye Professor of Law. "As the highest ranking advocate for the United States government, Mr. Olson is uniquely positioned to speak to our graduates about the importance of law, and lawyers, as we face the future."

Mr. Olson was a partner in the Los Angeles and Washington D.C. law offices of Gibson, Dunn & Crutcher, where he practiced constitutional, media, commercial and appellate litigation. He briefly left Gibson, Dunn to serve as Assistant Attorney General for the Office of Legal Counsel under President Reagan.

Mr. Olson has argued 34 cases before the U.S. Supreme Court, 14 while in private practice and 20 while serving in government, on a wide range of constitutional and federal statutory issues including, most recently, the constitutionality of the McCain-Feingold campaign finance reform law. Before rejoining the Justice Department in 2001, he successfully represented George W. Bush and Dick Cheney in the Supreme Court *Bush v. Gore* cases involving the 2000 presidential election.

Born in Chicago, Mr. Olson attended public schools in California. He earned his bachelor's degree *cum laude* from the University of the Pacific in Stockton, California, with honors in both journalism and forensics. He received his law degree from the University of California at Berkeley (Boalt Hall), where he was a member of the *California Law Review* and *Order of the Coif*. ♣

### Law, Ethics and National Security Conference April 15-16

This year attendees will focus on United States-Canadian relations across the broad spectrum of national security issues by addressing, among other topics, joint counter-terrorism efforts, military cooperation and the interoperability of weapons systems, border issues, ballistic missile defense, and each country's perspective on the International Criminal Court.

**For more information,** contact either Professor Scott Silliman, executive director, at 919-613-7138, silliman@law.duke.edu or Eileen Wojciechowski at 919-613-7137, wojciech@law.duke.edu.



**Center on  
Law,  
Ethics and  
National  
Security**

# { Alumni Notes

## 1950

**Robert Cooper** practiced law for 40 years, preceded by employment with Crown Zellerbach and TRW in labor relations. He recently opened his own practice, Robert I. Cooper.org where he specializes in employment law.

## 1964

**Charles A. (Butch) Powell III** has been elected to the American Bar Association Board of Governors. As a member of the governing body, he will represent the Section of Labor and Employment Law.

## 1967

**W. Christopher Barrier** is listed as one of the 36 leading lawyers in Arkansas in Chambers USA America's Leading Business Lawyers 2003-2004, in recognition of his real estate practice. He practices law in Little Rock with the Mitchell Williams law firm.

**Thomas Jorgensen**, a partner with Calfee, Halter & Griswold in Cleveland, OH, has been elected to the American Bar Association's Tax Section Council. He was also named to the steering committee of the International Pension and Employee Benefits Lawyers Association for 2003-2005.

## 1968

**Lynn E. Wagner**, president of Litigation Alternatives, Inc. in Winter Park, FL, has been appointed to the arbitration and mediation panel of the American Health Lawyers Association.

## 1969

**David Foscue** has been named "Judge of the Year" for Washington state by the Washington State Chapter of the American Board of Trial Advocates. He has been a superior court judge in coastal Washington for 17 years and is a member of the American Law Institute.

## 1972

**James W. Ummer** has joined Rothman Gordon in Pittsburgh, PA, practicing in the areas of trusts and estates.

**Durwood Zaelke** recently published *Industry Genius: Inventions and People Protecting the Climate and Fragile Ozone Layer* (with Dr. Steven O. Andersen), which presents the inventive genius behind breakthroughs by ten global companies.

## 1973

**Eleanor Kinney** has been elected vice chair of the American Bar Association's Section on Administrative Law and Regulatory Practice. She will be section chair in 2005-2006.

She has also been named the Hall Render Professor of Law at Indiana University School of Law – Indianapolis.



## 1974

**Candace M. Carroll** has become the president of California Women Lawyers, a statewide women's bar association. She is a partner with Sullivan, Hill Lewin, Rez & Engel in San Diego.

**David Poe** is serving as chair of the American Bar Association's Section of Public Utility, Communications and Transportation Law for 2003-2004.

**Ira Sandron** was elected to the executive committee of the American Bar Association's National Conference of Administrative Law Judges.

## 1976

**Peter Kahn** was married to Deborah Kirk on November 22, 2003 in New York City. Peter is a partner at Williams & Connelly in Washington, D.C. and chair of the Law School's Board of Visitors.

## 1977

**William Campbell** has joined the Florida-based law firm of Gary, Williams, Parenti, Finney, Lewis, McManus, Watson & Sperando as a partner.



**Luis A. de Armas** has been elected chairman of the board of Dade Marine Institute, a non-profit rehabilitation program for youthful offenders. He is a partner in the Miami, FL office of Shutts & Bowen.



**Susan Freya Olive** has been elected chair of the North Carolina Board of Law Examiners – the first woman to hold that position in its 70-year history. She is also the first lawyer in the specialized intellectual property field to hold such an appointment.

**Mary Ellen Coster Williams** was confirmed as a judge for the U.S. Court of Federal Claims by the United States Senate.

## 1978

**Jan Adler** was sworn in as United States magistrate judge for the Southern District of California in July 2003.

**Charlie Condon** has announced his candidacy as a Republican for a South Carolina U.S. Senate seat. He served as South Carolina's attorney general from 1995-2003.

**Andrew O'Malley** has been elected president of The Florida Bar Foundation's board of directors for 2003-2004. He has served on the board since 1994.

## 1979

**Joel H. Feldman** has been named to the Advisory Board of Directors of *Divorce Magazine* and elected to the Board of Directors of EuroBank, a privately-owned Florida banking institution. He continues to practice matrimonial law and civil litigation in Boca Raton.



**Timothy W. Mountz**, a partner in the Dallas, TX office of Baker Botts, will serve as president-elect of the Dallas Bar Association in 2004. He will serve as its president in 2005.

## 1980



**John H. (Jack) Hickey** has been sworn in as the 86th president of the Dade County Bar Association. Jack has also been named a fellow and life member of The Florida Bar Foundation.

**Richard Van Nostrand** took office as president of the Massachusetts Bar Association on September 1, 2003. He also serves on the Joint Bar Committee on Judicial Appointments, which evaluates Massachusetts state court judicial nominees.



**Mark J. Prak** has been selected to serve as chair of the Constitutional Rights and Responsibilities Section of the North Carolina Bar Association.

## 1981

**David Gustafson** co-authored *Mary: A Catholic-Evangelical Debate*, with Dwight Longenecker. David continues to work in the Tax Division of the U.S. Department of Justice, where he is an assistant chief in the Court of Federal Claims Section. He and his wife, Sharon, reside in Arlington, VA with their eight children.

**James V. Maniace** has been named a partner in the Columbus, OH law firm of Chester, Willcox & Saxbe.

## 1982

**Reginald Whitt** has been appointed president of the Pontifical Faculty of the Immaculate Conception in Washington, D.C.

## 1984

**Gary Biehn** has been elected chairman of the business department of White & Williams, in Philadelphia. A partner with the firm since 1992, his practice focuses on corporate matters relating to mergers and acquisitions, global transactions and general business representation.

**Donna LeGrand** joined Interactive Intelligence Inc. as its general counsel. Interactive Intelligence Inc. is a global developer of software for IP telephony, contact center automation and unified communications.

**Mark Mirkin** has joined the Raleigh, NC office of Smith Moore.

## 1985

**J. Porter Durham, Jr.** has been appointed to the new positions of associate director of the Education Division and staff counsel of The Duke Endowment in Charlotte, NC.

**Marshall Orson** and his wife, Margaret, announce the birth of their second child, and first son, James Marshall Orson, on April 16, 2002.

**Kenneth Sibley** was selected as the top lawyer in North Carolina in the patents/ intellectual property law category in *Business North Carolina's* January 2004 issue on North Carolina's "Legal Elite."

**Peter G. Weinstock** was named in the Texas Lawyer Go-To Guide list of Texas' "Top-Notch Lawyers." He is a shareholder in the Dallas office of Jenkins & Gilchrist.

## 1987

**David Jones** has joined Intervet Inc. in Millsboro, DE as general counsel. Intervet Inc. is the U.S. operating division of Netherlands-based Intervet International, an animal health company.

**Jane E. Rindsberg** is a professor of legal methods at the Roger Williams University Ralph R. Papitto School of Law.

**James Thomas** recently returned to the U.S. after seven years working in England for GlaxoSmithKline, serving most recently as vice president and trademark counsel in London. James is now a partner in the firm of Nelson Mullins Riley & Scarborough in its Raleigh, NC office.

## 1988

**Richard Byrne**, chief of staff for the Executive Office for U.S. Attorneys, served as temporary top federal prosecutor for Southern Illinois beginning in July 2003.

## 1989

**Gary Ansel** has joined the Phoenix, AZ office of Shughart Thomson & Kilroy as special counsel.

**Kenneth A. Murphy**, a shareholder in Miller, Alfano & Raspanti, was a panelist at the recent "Current Issues in Retaining and Using Experts Seminar" co-sponsored by the Philadelphia Bar Institute and the Pennsylvania Bar Association Civil Litigation Section. He spoke on document and privilege issues between the attorney and experts.

**Michael Ross** is an associate professor of history at Loyola University of New Orleans where he teaches courses on legal history and the American Civil War. He has just published his first book, *Justice of Shattered Dreams: Samuel Freeman Miller and the Supreme Court During the Civil War Era*.

**John Reed Stark** serves as chief of the Office of Internet Enforcement at the U.S. Securities and Exchange Commission in Washington, D.C. He is also in his eighth year as an adjunct professor of law at the Georgetown University Law Center, teaching a course entitled "Securities Law and the Internet."

**James Tatum** has left the U.S. Attorney's Office for the Eastern District of New York and returned to the Washington, D.C. area. He now works for Amtrak's Office of Inspector General, Office of Investigations as associate legal counsel.

## 1990

**John DeGroot** and his wife, Hillary, announce the birth of their son, Jack Sabine DeGroot, on December 10, 2003.

**Michele A. Mobley**, has joined the Austin, TX firm of DuBouis, Bryant, Campbell & Schwartz, as a partner.

## 1992

**John Hoffman** was married to Mary Jude Cox in Fair Haven, NJ, on December 6, 2003.



**C. Michele Kirk** has joined Honeywell International as assistant general counsel, labor and employment in New York City.

**Jay Must** and **Leisl Must** announce the birth of their first child, Lucie Ruth, on June 21, 2003.

**Samantha E. Ross** has been named chief of staff for the Public Company Accounting Oversight Board. Prior to joining the PCAOB staff, Samantha was with the U.S. Securities and Exchange Commission, where she coordinated accounting-fraud investigations as special counsel to the chief accountant of the SEC enforcement division.

## 1993



**Teresa DeLoatch Bryant** has become a partner in the Greensboro, NC office of Brooks, Pierce, McLendon, Humphrey & Leonard.

**Brian Kelly** has joined the Los Angeles, CA office of Manatt, Phelps & Phillips as a partner. His practice focuses on intellectual property, technology, Internet and electronic commerce law.

**Peter John Roth** has been appointed an adjunct professor at Loyola Law School – Los Angeles, where he teaches “Commercial Real Property Transactions.” Pete continues to practice commercial real estate law as a partner in the Century City office of Allen Matkins Leck Gamble & Mallory.

## 1994

**Matthew Dyckman** was elected to partnership with Thacher Proffitt & Wood, effective July 1, 2003. He joined Thacher Proffitt in 1997 and practices in the areas of corporate finance and securities, banking and financial services, and mergers and acquisitions.

**Eileen (King) Gillis**, and her husband, Mark, announce the birth of their son, Joshua King Gillis, on June 25, 2003. Joshua joins two older sisters, Madeline and Samantha, both two years old. Eileen is a part-time intellectual property attorney with Smith Moore in Greensboro, NC, where the family resides.

# PHILLIP ALLEN '97

## Alumnus Publishes First Novel

Everyone knows someone who knows someone who's talking about publishing a novel someday, but now the classmates of Phillip Allen '97 can claim a connection to a man who has actually done the deed – and gotten good reviews to boot.

The former senior editor of the *Alaska Law Review* is now a published fiction writer. Allen's first novel, *Play Money*, hit bookshelves in fall 2003, less than four years after he typed its first words. It follows the story of Tim Fletcher, a freshly minted lawyer from the South, as he takes a position with a Wall Street firm and gets caught up in the IPO-madness during the dot.com days of the late 1990s.

Allen says writing the novel was not his greatest challenge – publishing was. “I had virtually no connections to the world of publishers and literary agents, so I just had to send dozens of query letters and hope that someone would take mercy on me,” says Allen, who left his job as a Wall Street lawyer to concentrate full time on the novel. “Eventually, Soho Press did. But it wasn't before a lot of others had turned me down. If you don't handle rejection well, don't start writing fiction.”

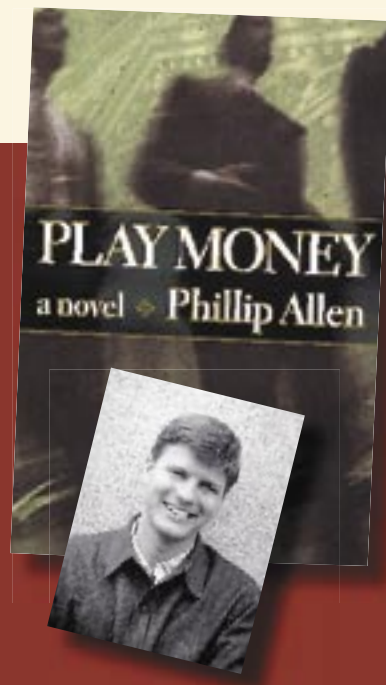
Thankfully, Allen has rarely had to deal with rejection since. *Play Money* has drawn almost universal acclaim, with reviewers praising Allen's commanding knowledge of the amazing machinations, legal nuances and primetime ego clashes of corporate law during dot.com mania. Some have even compared him favorably to one of his favorite writers, Tom Wolfe.

“I think any writer who says he is totally unconcerned with reviews is either lying, or wildly successful commercially,” Allen says. “I'm a huge fan of Tom Wolfe, who has such a great eye for social observation and satire. I consider it a great compliment when *Play Money* is compared with his work.”

Although Allen himself is a self-described “southern boy turned New York corporate lawyer,” *Play Money* draws on his experiences up to a point – past which he calls it “a slight exaggeration of reality.”

As for any notion that Allen himself is now living a fantasy life, he jokes that people should call him after *Play Money's* movie option gets picked up. “It feels very satisfying, but I'd be lying if I said my life has changed very much.” He's gone back to practicing law but has also kept writing, and is just now “turning in earnest” toward his next novel. There's no word yet on what the subject matter might be.

“I think it's fair to say that I'm a dreamer, although I tend to keep my dreams to myself until they are nearly realized,” Allen says. “So stay tuned!” In the meantime you can purchase *Play Money* at [www.amazon.com](http://www.amazon.com) or any major bookstore. – Jason Sykes ¶



# KEN SIBLEY '85

## Patent Writing in a Cutting-Edge Industry

**B**right and early one morning, as you pull away from the drive-through window and take a big bite out of that steak-and-egg biscuit, think of Ken Sibley '85. He helped make your breakfast possible.

Sibley wrote the patents on the process used to pasteurize the egg. The fast-food fry cook in the back wasn't breaking any eggs to cook your meal. The eggs arrive precracked and pasteurized, which extends their shelf life. But pasteurization is tricky. Heat the eggs too much, they scramble; not enough, germs remain. It wasn't until the mid-80s that food scientists at N.C. State University perfected the process. The patents Sibley wrote for State have been challenged many times, but they've held up.

The egg breakthrough is among a long list of Sibley's patents, mostly for biotechnology and chemical innovations. "To say he's at the cutting edge is an understatement," says Mark Cromwell, director of the Office of Technology Development at UNC Chapel Hill. Working with faculty at UNC, State, East Carolina and other universities, Sibley has written patents for everything from human gene therapy to drug-screening systems.

"Our faculty relate to him beautifully," Cromwell says. "They consider him almost a scientific colleague. It's not, 'Oh God, I have to work with the lawyers.' Some of them get a kick

out of sitting down with him, because he's very conversant in their science."

If not for a dinner at a Japanese steakhouse, he might actually have been one of their colleagues. Sibley graduated with a bachelor's in biology and psychology and went to the University of Rochester to do brain research, aiming for a career in pharmaceutical development or teaching. One night out with his wife, Barbara, he struck up a conversation with a Kodak patent lawyer, whose job sounded intriguing. "I was at a crossroads. My immediate research project wasn't panning out. I needed to start a new one or make a career change." He chose the latter and headed to Duke Law School.

He's still at Duke, taking time out from his private practice to teach a patent-law course and a patent-writing seminar every semester. "Sometimes around here we call him 'the professor,'" partner Mitch Bigel says.

But Sibley's combination of academic and pragmatist works, Bigel adds. "He's really into the legal, theoretical part of intellectual property law, and there are a lot of people like that whose heads are in the clouds."

The two met at Charlotte-based Bell, Seltzer, Park & Gibson, which Sibley joined in 1985 after getting his law degree. Three years later, he moved to its Raleigh office, and in 1997 Sibley, Bigel and 14 other lawyers left to start a new firm. MyersBigelSibley&Sajovec wrote 476 patents last year, more than any other North Carolina-based firm, Bigel says.

When it comes to patent law, Sibley says, you can't delegate much. "Understanding a client's technology is a fairly personal service." He has developed relationships with inventors such as Joseph DeSimone, the wunderkind chemistry and chemical engineering professor at UNC and State, who holds more than 70 patents.

Sibley has been DeSimone's legal counsel since he began his research 10 years ago. He is practically a collaborator, DeSimone says: "When you are trying to flesh out your ideas and you've got an attorney there that is not just taking notes but contributing and teaching you patent strategy and thinking through the details, he really becomes one of the team during the process. I find that invaluable."

— Lisa Davis. Reprinted with permission from the January 2004 issue of Business North Carolina. © 2004 by Red Hand Media LLC.

**Hara Jacobs** was named partner at Ballard Spahr Andrews & Ingersoll in Philadelphia, PA. She is a member of the litigation department and the intellectual property group.

**Jennifer McCracken New** and Jason Griffin New announce the birth of their second daughter, Clare Kathleen New, on July 18, 2003.

**Joelle Cooperman Sharman** recently left Proskauer Rose to become a partner with Adorno & Yoss, the largest certified minority-owned law firm in the country. She telecommutes to Florida from her home in Alpharetta, GA, where she lives with her husband, Paul, who is a law student, and daughters Gabrielle, 4, and Lindsay, 2.

### 1995

**Steven Blum** and his wife, Robyn, announce the birth of their daughter, Gillian Hope Blum, on May 27, 2003.

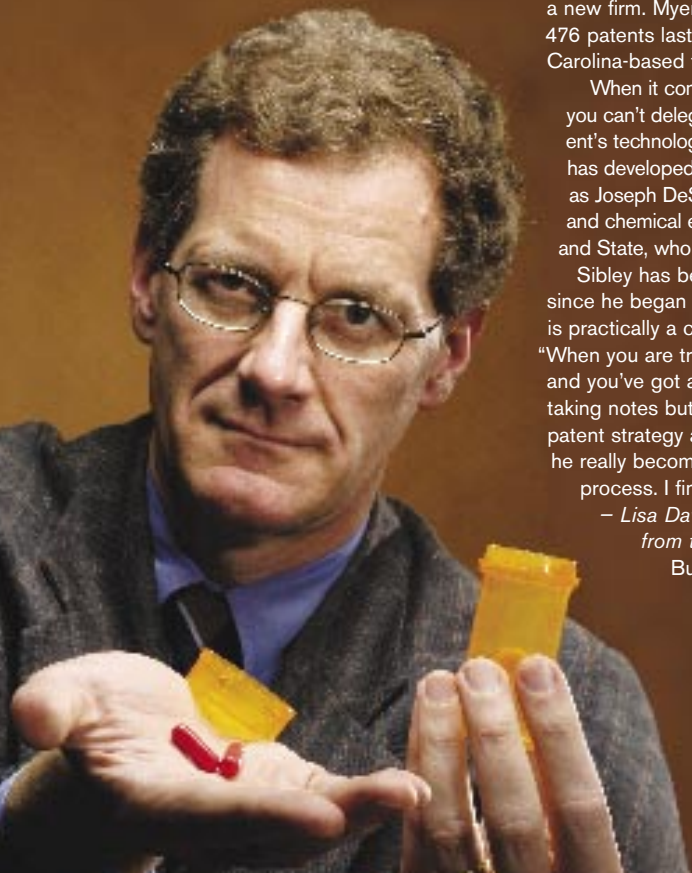
**Marc Eumann** and his wife, Gabriela Stukenborg, announce the birth of their first child, Felix Viktor Eumann, on August 25, 2003. Marc continues his two-year assignment to the State Justice Department of Northrhine-Westphalia in Duesseldorf, and will return to the bench at Bonn District Court on September 1, 2004.

**Robert J. Frances** has been elected to partnership in the San Diego, CA office of Latham & Watkins.

**Pierre-Emmanuel Noel** and his wife, Sophie, announce the birth of their daughter, Alicia, on September 15, 2003.

### 1996

**Ward Connolly** was recently elected to partnership with Fenwick & West, effective January 2004. Ward joined the firm in March 1997, and is a member of the tax practice group. His practice focuses on tax issues affecting multinational corporations, with an emphasis on transfer pricing and tax issues associated with intellectual property.





**Darren Jackson** has been named to the First Citizen Bank's board of directors in Eastern Wake County, NC. As a member of the local board, he will assist bank management with business development and policy matters and will serve as a liaison between First Citizens and the community.

**Scott Schiefelbein** and his wife, Rebecca, announce the birth of their first child, Nina Ellene Schiefelbein, on May 30, 2003.

## 1997

**Amanda (Eller) Choi** and her husband, Charles Choi, announce the birth of their first child, Andrew Ross Choi, on September 11, 2003.

**John Donald** and his wife, Elaine Hammond, announce the birth of their son, Henry Hammond Donald, on December 4, 2003. John is intellectual property counsel at Apple Computer, Inc. in Cupertino, CA.

**Jessica Graham** left the Anchorage, AK office of Perkins Coie to accept a position as general counsel of Alutiiq, an Alaska-native corporation.

**Jeremy Ambler Hushon** was married to Jennifer Mathews Biggs on July 13, 2002. The couple resides in Arlington, VA.

**Jacqueline Kelley** was married to Shamoil Shipchandler on August 31, 2003, in Dallas, TX. The couple resides in Washington, D.C., where Jacqueline is a trial attorney with the Antitrust Division of the U.S. Department of Justice, and Shamoil is an associate at Covington & Burling.

**Matthew Kirsch** and his wife, **Kerri Stroupe '98**, announce the birth of their second child, Kai Thor Kirsch, on March 3, 2003. Matthew is working as an assistant U.S. attorney in Denver, CO, in the Economic Crimes Division. Kerri is working part-time at a local law firm.

**Rachel Levitt** and her husband, John Robertson, announce the birth of their second child, Zane Whitacre Robertson. Rachel has returned to the Alaska Public Defender Agency as a trial attorney.

**Joe Martinez** and his wife, Katie Abbot, announce the birth of their first child, Ana Kristine, on October 15, 2003.

**Pamela F. Roper** joined Cousins Properties International in Atlanta, GA, as vice president and associate general counsel – retail. She and her husband, Craig Roper, also announce the birth of their first child, Ross, in October 2002.

**Michelle Appelrouth Seltzer** completed a two-year clerkship with the Honorable John F. Nangle in Savannah, GA. She and her husband, Yosefi, relocated to Washington, D.C., where she joined the litigation department of Cadwalader, Wickersham & Taft.

## 1998

**Heather Bell Adams** and Geoffrey William Adams announce the birth of their son, Davis Jackson Adams, on August 19, 2003.

**Melissa Igdaloff Attar** and her husband, Ron, announce the birth of their son, David Igdaloff Attar, on March 15, 2003. He joins older sister, Rachel, 3.



**Lauralyn Beattie** and **Peter Lee** were married on May 22, 2003 at Washington National Cathedral. Duke Law alumni in attendance were **Paul Carberry '97, Ellen Dunham Bryant '98, Shawn Bryant '98, Rachael Kent '98, Anne Hickey '98, Amy Kiesel '98, Ryan Wirtz '98, Kevin Bailey '98, Megan Carlyle '98, Tim Dadson '99, Julie Riewe '99, Darcy Van Kirk '98, Mark Daly '98, Patty Dolan '98, Doug Blews '98, Kevin Zolot '98, Miranda Mitchell Zolot '98, Carol Von Urff Kelley '98, Dean Davidov '99, Laura Davidov '99, Steve Rosenwasser '98, Ben Waller '98, Aaron Tehan '98, Mark Filipini '98, Molly Daily '98, Scott Carroll '98, Gary Eichelberger '99, and LeeAnn Wheelis Lockridge '98.**

**Robert and Samantha Ekstrand '01** announce the formation of a partnership for the general practice of law under the firm name of Ekstrand & Ekstrand in Durham, NC.

**Laura Ford** was married to Steven Brust on October 25, 2003. The couple continues to reside in Germantown, MD.

**Richard B. Rogers** has been elected to the partnership at McDermott, Will & Emery, effective January 1, 2004. He continues his complex litigation and insurance coverage practice at McDermott's Washington, D.C. office.

**Patricia Tilley Song** and her husband, Eric, announce the births of twins, Caroline Josephine Song and Nathaniel Thomas Song, on September 24, 2003.

**Kerri Stroupe** and her husband, **Matthew Kirsch '97**, announce the birth of their second child, Kai Thor Kirsch, on March 3, 2003. Kerri is working part-time at a local law firm. Matthew is working as an assistant U.S. attorney in Denver, CO, in the Economic Crimes Division.

## 1999

**Santiago Cornu-Labat** has joined Lisdero Abogados, a law firm in Buenos Aires, Argentina, specializing in business, commercial and corporate law.

**Pascal Duclos** has relocated to Buenos Aires, Argentina, where he works with the law firm of Beretta Kahale Goody. He represents Fortune 500 corporations in disputes against the Argentine government, particularly in arbitration proceedings under the auspices of the International Center for Settlement of Investment Disputes of the World Bank in Washington, D.C.

**James Goldfarb** was married to Alyson Gail Yashar on August 31, 2003 in Providence, RI. The couple resides in New York City, where James is an associate at Weil, Gotshal & Manges and Alyson is an ophthalmologist in private practice in Bergen County, NJ. **Kenichi Inagawa '98** was a groomsman. **Masahiro Ouchi '99, Noriaki Abe '99** and **Trey Wichmann '99** were also in attendance.

**David Harrison** left Freshfields Bruckhaus Deringer's New York office to accept a position as a foreign service officer with the U.S. State Department. After completing training, he left in November for his first two-year assignment in Ho Chi Minh City, Vietnam.

**Amy (Buckley) Monahan** recently joined the University of Notre Dame as a visiting scholar at the Notre Dame Center for Ethics & Culture, and as an adjunct professor at the Notre Dame Law School.

**Shelley Myott** and her husband, Steve Butts, announce the birth of their second daughter, Emerson Faith Myott, on June 28, 2003. They reside in Zionsville, IN.

**Eric Ritvo** has been named general counsel to The Endurance International Group, Inc., a company specializing in shared website hosting. The company is headquartered in Burlington, MA.

## 2000

**Arturo Banegas Masia** and his wife, Marianne Banegas, announce the birth of their first child, Mariana Nathalia, on October 5, 2003.

**Nicole R. Clement** has joined the Providence, RI office of Holland & Knight as an associate.

**M. Farley Collins** was married to Matthew Lucke in Darien, CT on October 4, 2003.

**Brian King** is an adjunct professor in the MBA program at Lakeland College in Sheboygan, WI. He teaches courses related to employment issues and human resources management and works part-time for Littler Mendelson, doing affirmative action compliance work.

**Wolfgang Lehning** has joined Insolvenzverwaltung Dirk Pfeil, a leading trustee in bankruptcy in Frankfurt am Main, Germany.

**Shannon McDonald** joined the staff of the Montana School Boards Association in Helena, MT.

**Luis Palacios** and Mariana Simoes were married on August 23, 2003, in Lima, Peru. Wedding guests included **Deborah Burkhart Carlson '00, Simone Schmueser '00, Ignacio Pallares '00, Juan F. Mackenna '00, Felipe Guzman '00** and **Sebastian Yunge '00**.

**Nathan Saunders** and his wife, Pamm, announce the birth of their daughter, Milla Clare Saunders, on August 16, 2003.

**Sarah Schott** began working in May 2003 as assistant general counsel at the Ziegler Companies, Inc., located in Milwaukee, WI.

**Tara Seidel** and her husband, Peter, announce the birth of their first child, Julia Grace, on May 8, 2003. Tara has taken a break from practicing law and is staying at home to be a full-time mother.

**Jeremy Steele** has accepted a position with Jenner & Block in Chicago, IL.

**Barry Uhrman**, an attorney with Mariano & Allen in Phoenix, AZ, won the WNBA's Virtual General Manager competition. He came from behind on the final day of the 13-week competition to win the sports fantasy game.

## 2001

**Brian Aeschlimann** has joined the law firm IP&T Rentsch and Partners in Zurich, Switzerland. His practice focuses on corporate and contract law, with concentrations in intellectual and industrial property, copyright, patent and trademark, as well as competition and advertising law.

**Ayumu Iijima** has left the Japan Patent Office where he drafted the bill for 2003 Japanese Patent Law reform, which became national law in May. After completing the project, he resumed working for his former firm, Kitahama Partners, and is now a private practitioner handling intellectual property cases.

**Mary Richardson** has accepted a position as the new director of Maine's Volunteer Lawyers Program, based in Portland. The program provides legal services to approximately 10,000 low income clients a year, many served by a volunteer-staffed hotline, with some cases handled by volunteer attorneys.

## 2002

**Charles Davant IV** has joined the Washington, D.C. office of Williams & Connolly as an associate after completing a clerkship with the Honorable Ronald M. Gould on the U.S. Court of Appeals for the Ninth Circuit.



**Replay photos**  
The Tradition Lives On. On January 24, Replay Photos officially unlocked Duke University's photo archive. Through a unique licensing agreement, the company provides students, alumni, family and friends access to some of the images that define the Duke University name. Decorate your home or office with these once in a life time images, visit [www.replayphotos.com](http://www.replayphotos.com)

smile

**Ken Harris** and his wife, Cathy, announce the birth of their daughter, Mary Lillian Duke Harris, on June 17, 2003. Ken has joined the Charlotte, NC office of Parker, Poe, Adams & Bernstein, as an associate.

**Katharine Schkloven** was married to Christopher H. Henkels on May 3, 2003 in Loyola Memorial Alumni Chapel in Baltimore, MD. After a honeymoon in Hawaii, the couple resides in Richmond, VA.

## 2003



**Nicole A. Crawford** has joined the Greensboro, NC office of Brooks, McLendon, Humphrey & Leonard as an associate.

**Christina Greene** and Josh Anzel were married at the Duke Gardens on August 17, 2003. After a honeymoon in Brazil, the couple resides in New York City. Josh is working at Coudert Brothers and Christina is with Milbank, Tweed, Hadley & McCloy.

**Kelly McBrayer** married Brent Townsend on May 24, 2003 at the Duke Chapel. They reside in Greensboro, NC, where Kelly is a federal district court clerk.



**Erin Nicholson Maloney** has joined the Syracuse, NY law firm of Bond, Schoeneck & King.

**Christine Soares** was married to Don Cox in Roswell, GA on August 16, 2003. The couple resides in Atlanta, where Christine is an associate with King & Spalding.

## Let us know what you've been doing!

Send us your news by June 1, 2004 for the Fall 2004 issue of *Duke Law Magazine*. Notes are also available online at [www.law.duke.edu/alumni/classnotes.html](http://www.law.duke.edu/alumni/classnotes.html)

Submissions should be sent to Jean Brooks, alumni notes editor, Box 90389, Durham, NC 27708 (fax 919-613-7170)

Submissions may also be made online at [www.law.duke.edu/alumni/alumdir/update.html](http://www.law.duke.edu/alumni/alumdir/update.html)

# ADAM COHEN '93 DAVID LENDER '93

## Blazing New Trails In Electronic Discovery

A pair of Duke Law classmates are blazing ground in one of the legal landscape's hottest frontiers. In fact, Adam Cohen '93 and David Lender '93, are so far ahead of the curve that their book, *Electronic Discovery: Law and Practice*, was cited before it was even published.



The two are litigation partners at Weil, Gotshal & Manges in New York, and their 500-page tome was cited in Judge Shira Scheindlin's (United States District Court for the Southern District of New York) leading decisions on electronic discovery just prior to its publication last fall. (The citations can be found in *Zubulake v. UBS Warburg, LLC*, et al. 2003 WL 22410619 (SDNY) and 216 FRD 280.)

"We were ecstatic, it was incredible! The opinion is viewed as groundbreaking and the judge is considered the leading jurist in electronic discovery. Anyone interested in this topic would wonder what the book was that was cited," Cohen says.

Duke Law Professor Thomas Rowe explained that Judge Scheindlin's opinion created non-binding electronic discovery guidelines for other courts. Cohen and Lender's book was helpful because, as Lender puts it: "No one had written a book about electronic discovery that contained in-depth analysis of the caselaw. Our book is a very traditional legal treatise with case discussions but it also includes practical 'how to' materials in the appendix."

Judge Scheindlin also recently gave Cohen and Lender a glowing book review in January 9th's *New York Law Journal*. "Electronic discovery is ubiquitous in modern litigation, and I am sure that judges and lawyers will welcome the arrival of this excellent resource for dealing with e-discovery issues," Scheindlin wrote.

The genesis of the book was a primer requested by Cohen and Lender's boss for

their firm's litigation department. The two are considered experts in electronic discovery, focusing primarily on intellectual property and computer and Internet-related issues. The Duke Law alumni's efforts so impressed their fellow litigators that the work was distributed widely among the firm's clients.

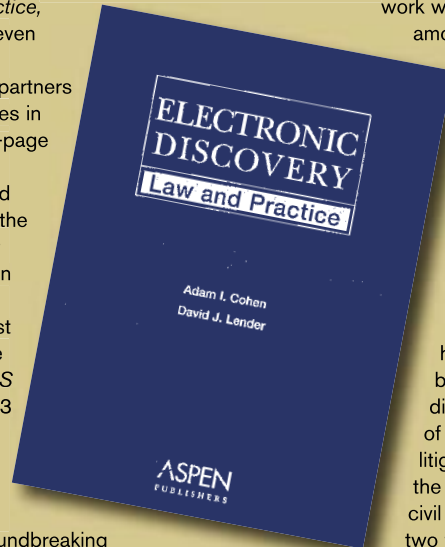
Shortly thereafter, the paper was published in various professional publications where a business developer from Aspen Publishers came across it and asked to have a book written.

The timing couldn't have been better because electronic discovery is currently one of the hottest topics in litigation and is changing the landscape of modern civil discovery. These two factors have led to an avalanche of speaking

engagements for Cohen and Lender. Not only are their clients and the American Bar Association interested in hearing them speak, but so is the Federal Rules Advisory Committee, which is considering whether changes to the Federal Rules of Civil Procedure are warranted in light of electronic discovery.

Cohen and Lender have Duke Law School to thank for their friendship. "One of the great aspects of this story is that David and I were classmates, active in Journal and Moot Court, and we randomly became partners at the same firm," Cohen says. "David and I kept in touch after graduation through a mutual friend and one of the main reasons I came to Weil, Gotshal from another firm was David's recommendation of me to the firm (and the firm to me)."

To read more about *Electronic Discovery: Law and Practice*, visit [www.applieddiscovery.com](http://www.applieddiscovery.com). The book is also available for purchase on [amazon.com](http://amazon.com).  
—Jason Sykes



## 1937

**William Lawrence Mosenson, 90**, died July 7, 2003 in Verona, PA. Born July 15, 1912 in South Hills, PA, Mr. Mosenson was orphaned at a young age when his parents died in the 1918 influenza epidemic. He attended Duke University, where he graduated Phi Beta Kappa before completing a year of study at Duke Law School. During the Depression, he left the Law School and took a job with Ford Motor Co. He later founded Forbes Motor Company, which refurbished trucking equipment. Mr. Mosenson also founded Pennsylvania Growth Investment Company, which evolved into Pennsylvania Financial Development Corporation. Mr. Mosenson retired in 1981. Mr. Mosenson is survived by two daughters, Nancy Vincent of Bedford Hills, NY and Judith McCord of Tiburon, CA; five grandchildren; and two great-grandchildren.

**Charles S. Rhyne, 91**, died July 27, 2003 in McLean, VA. Born June 23, 1912, Mr. Rhyne grew up on a cotton farm in Mecklenburg, NC. He attended Duke University during the Depression, graduating in 1934, and continued his studies at Duke Law School. Before completing his legal education, Mr. Rhyne relocated to Washington, D.C., graduating from the George Washington University School of Law in 1937. Mr. Rhyne practiced law in Washington, D.C. and was elected president of the Bar Association of the District of Columbia in 1955 on a pledge to racially integrate the Association. Two years later, he was elected president of the American Bar Association. He used that platform to urge lawyers to develop the field of international law as a method to support world peace. Mr. Rhyne also served as special U.S. ambassador to the United Nations High Commissioner for Refugees during the Nixon Administration. He was general counsel and executive director of what is now the International Municipal Lawyers Association for more than 50 years, until his retirement in 1988. Mr. Rhyne is survived by his wife, Sarah

Rhyne of McLean; two children from his first marriage, Peggy Fuqua of Bethesda, MD and William S. Rhyne of McLean; two daughters from his second marriage, Sarah Rhyne of Arlington, VA and Elizabeth Rhyne of McLean; two grandchildren; and three great-grandchildren. He was preceded in death by his first wife, Sue Rhyne, in 1974.

## 1940

**Edward C. Vandenburg III, 87**, died August 9, 2003 in Dubuque, IA. Born September 27, 1915, Mr. Vandenburg attended Iowa State University, graduating with a degree in engineering. After earning a bachelor of laws at Duke Law School, he went on to obtain a masters degree in patent law at John Marshall Law School, where he was also a professor. A former head of the American Bar Association's Section of Intellectual Property Law, Mr. Vandenburg practiced patent and trademark law in Chicago until his retirement in 1981. Mr. Vandenburg is survived by his children, Edward Vandenburg IV, Lael Vandenburg, Jean Tufty, Anne Vandenburg, Lynn Vandenburg and Derek Vandenburg; and a brother, Garret Vandenburg.

## 1944

**Lee E. Whitmire Jr., 84**, died August 12, 2003 in Beaver, PA. Born August 15, 1918 in Ellwood City, PA, he attended Geneva College in Beaver, where he earned a BA in accounting. Mr. Whitmire practiced with Whitmire and Mannix, then Whitmire and Verlihay Law Offices. He was a member of the Bar Association for over 50 years and was offered a position as Beaver County Judge. Mr. Whitmire was active in the Beaver community, as a member of the Calvary Presbyterian Church, the Beaver Falls Lions Club, and the Beaver Valley Ham Radio Club. He also built and founded the Ham Radio Station of Geneva College. Mr. Whitmire is survived by his wife of 20 years, Mildred "Midge" Zindren Whitmire of Cheppewa Township; a stepson, Barry Zindren of Latrobe, PA; and a stepdaughter and son-in-law, Michelle and Dennis Kretzler of

New Brighton, PA. He was preceded in death by his first wife, Dorothy Toogood Whitmire, and an infant daughter, Gaye.

## 1956

**Lloyd Cameron Caudle, 73**, died November 24, 2003 in Charlotte, NC. Born November 16, 1930, in Davie County, NC, he grew up in Lewisville, NC, graduating from Lewisville High School, where he participated in numerous sports, including six-man football. Lloyd attended Duke University on a football scholarship, lettered in track and was an outstanding running back. After graduating in 1953, he continued to play football during his first year at Duke Law School. During his senior year, Lloyd was selected MVP of the Oyster Bowl, scored three touchdowns against North Carolina, was selected to play in the annual senior Blue Grey Game and was drafted by the Cleveland Browns. He was honored at "Lloyd Caudle Day" in Lewisville and was later elected to the Forsyth County Sports Hall of Fame. In 1956, he graduated from Duke Law School and moved to Charlotte where he practiced law for 47 years, including the last 19 with Caudle and Spears, with partner **Hal Spears '79**. Mr. Caudle was active in the Charlotte community. He coached Pop Warner football, YMCA basketball and Little League baseball from 1964 to 1978. He was named Sportsman of the Year in 1983 by the Sportsman's Club of Charlotte in recognition of his many contributions to Charlotte youth athletics. Lloyd also remained loyal to Duke through years of service on the Board of Trustees, the Law School's Board of Visitors and the Duke Athletic Council. Mr. Caudle is survived by his wife of 49 years, Doty; sons, Grainger Caudle and wife, Grace Campbell of Mars Hill, NC, Cameron Caudle and wife, Cindy Caudle of Charlotte, and Gordon Caudle and wife, Jenny Wainwright-Caudle of Durham; sister, Sarah Pegram and husband, Hester Pegram of Clemmons, NC; and five grandchildren.

## 1957

**Stephen Drake Walsh**, 73, died August 24, 2003. Born July 17, 1930, in Cleveland, OH, Mr. Walsh attended Lafayette College, graduating in 1952. He moved to Tallahassee, FL in 1972, where he practiced law and was an active member of the community as a member of the First Presbyterian Church, Tiger Bay Club, Toastmasters and Camelia Club. He was also an Army veteran. Mr. Walsh is survived by his wife of 49 years, Helen Walsh; two sons, Douglas Walsh of Tallahassee and Samuel L. Walsh of Ochlocknee, GA; and two grandchildren.

## 1963

**Darrell D. Bratton**, 65, died November 15, 2003 in San Diego, CA. Born July 10, 1938, in Gary, IN, Professor Bratton received his BA in history and political science from Butler before attending Duke Law School, where he was an editor of the *Duke Law Journal*. After three years in private practice in Indianapolis, he served as research associate with Indiana University while transitioning to teaching law. He taught as a visiting professor at Indiana University-Indianapolis Law School and Indiana University School of Law in Bloomington. He joined the University of San Diego law faculty in 1967 where, except for one sabbatical year, he taught civil procedure each year. In addition to his teaching duties, Professor Bratton served at the University of San Diego as director of the Law Graduate Program, as well as director of the School's study abroad programs. He was active in prison ministry and was an active member of the Hope United Methodist Church where he sang in the men's quartet. In 2000, he was named "University Professor" for his outstanding, balanced cumulative career contributions supporting the mission and goals of the University of San Diego and, in 2003, the School of Law dedicated a classroom in his honor. Professor Bratton is survived by his wife, Sue; daughter Amy Kathleen Sutton and her husband, Kane Sutton of Columbus, OH; daughter Holly Beth Lustig and her husband, Eric Lustig, of San Diego; and a brother, Lyle Bratton, of Crown Point, IN.

## 1967

**William R. Norfolk**, 62, died December 18, 2003 in Tucson, AZ. Born March 15, 1941 in Huron, SD, Mr. Norfolk received his B.A. in political science from Miami University (Ohio) in 1963. He then studied at Kings College at the University of London for a year before attending Duke Law School, where he served on the *Duke Law Journal*. After graduation, Mr. Norfolk joined the New York office of Sullivan & Cromwell as an associate. He was named a partner in 1973 and spend the rest of his career with the firm. Mr. Norfolk was actively involved in the New York City community, serving a term on the Board of Trustees of the New York Methodist Hospital. Mr. Norfolk is survived by his wife, **Marilyn '68** and daughters, Stephanie, Allison and Meredith.

## 1990

**James Matthew Weisbard**, 36, died from brain cancer on September 15, 2003. Jim was diagnosed with a brain tumor in 1999, but he never stopped fighting his illness and never lost hope for a healthier, happier future. Jim lived a life filled with many notable accomplishments, but he was proudest of being a doting father to Christopher Matthew, age 6, and Kelly Elizabeth, age 5. Jim called Christopher his "little buddy." One of their special activities was playing one-on-one basketball games between "Duke" and "UNC" with a small, blue, Blue Devils basketball. Jim called Kelly his "little princess," and the two enjoyed playing dolls, having tea parties, and coloring pictures together. Jim was born in New York City and raised in Eastchester, NY. An Eagle Scout, he graduated near the top of his high school class and then attended Amherst College. Jim practiced law in Stamford, CT for several years until he changed careers and joined the FBI. As a special agent, Jim was assigned to the downtown New York City office. He assisted on the scene on September 11, 2001 and, despite his illness, devoted long hours to investigations in the months that followed. In addition to his children, Jim is survived by his parents, Mort and Mari Weisbard, and his sisters, Kathy and Sally Weisbard.



## For My Teacher

And then he appeared...in front of his Labor Law Class  
in his straw hat...just back from his kidney dialysis.  
Behind his smile he wore the kind of pain I saw  
in my pappy's eyes after the war.

At last, here was a Professor I could relate to...  
from the backwoods of PA,  
Culp was a man from my side of the tracks...  
Though I was myself 20 years removed from 4 generations  
of mill workers up and down the Allegheny...  
in Culp I saw the dust, soot and steel that made the men of  
the Ohio Valley something more than men.

Sitting in his office, Culp told me many things of his life...  
many things I had somehow already known about him  
in the slowness of his stride  
in the restrained power of his voice  
here was a great soldier fighting to survive.

And like I saw in my father, who fought for 30 years  
after two bullets and a hand grenade in Ia Drang,  
I saw a certain patience in Culp, a patience that comes  
only through knowing  
that flesh is flesh,  
and bone is bone,  
but the soul...that lives forever.

Thank you Jerome, for reminding me  
of the power of the soul of the soldier,  
long after my father had left me.

Thank you Jerome, for teaching me...  
about law...and about men.

— *Justin Popp '01*



# Selected Spring 2004 Events

## February 19

*Meredith and Kip Frey Lecture in Intellectual Property*  
Dr. Lewis Branscomb, Aetna Professor of Public Policy and Corporate Management Emeritus at Harvard University

## February 27

*Public Interest Law Foundation Auction and Gala*  
Sponsored by the Duke Public Interest Law Foundation

## March 1

*Great Lives in the Law Lecture Series*  
The Honorable Richard Goldstone  
Former Justice, Constitutional Court of South Africa, in a dialogue with Douglas B. Maggs Professor of Law Walter Dellinger

## March 10-12

*Director's Education Institute*  
Keynotes include: Harvey Goldschmid, Commissioner, Securities & Exchange Commission  
Sponsored by the Duke Global Capital Markets Center and the New York Stock Exchange

## March 11-12

*Law and Terrorism Program for Federal Judges*  
Sponsored by Duke Law School and the federal Judicial Center

## March 19-20

*Admitted Students Weekend*  
Sponsored by the Office of Admissions and the Office of Student Affairs

## March 26

*Dedicated to Durham Community Service Event*  
Sponsored by the Duke Bar Association and King & Spalding

## March 31

*Rabbi Seymour Siegel Memorial Lecture in Ethics*  
Deborah Rhode, Ernest W. McFarland Professor of Law at Stanford University School of Law

## April 2

*Intellectual Property, Art and Culture*  
Sponsored by the Center for the Study of the Public Domain, in association with the Full Frame Film Festival

## April 8

*Faculty Author Reception*  
Sponsored by the Duke Law Library

## April 15-16

*Conference on United States-Canadian Relations and National Security Issues*  
Sponsored by the Center for Law, Ethics and National Security

## April 16-17

*Conference Recognizing the Scholarship of William Van Alstyne, William R. and Thomas C. Perkins Professor of Law at Duke*  
Sponsored by the Program in Public Law

## April 16-18

*Reunion Weekend*  
Duke Law School welcomes alumni and friends back to campus

## May 8

*Law School Hooding Ceremony*  
Keynote: Theodore Olson, Solicitor General of the United States

## May 9

*Duke University Commencement Exercises*  
Keynote: Madeleine Albright, former United States Secretary of State

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