

# DUKE LAW MAGAZINE

Spring 2006 | Volume 24 Number 1

AIDS Legal Project

Animal Law Clinic

Children's  
Education Law  
Clinic

Community  
Enterprise Clinic

Death Penalty  
Clinic

Environmental Law  
and Policy Clinic

Guantanamo  
Defense Clinic

Low-Income  
Taxpayer Clinic

**CLINIC**  
**OPPORTUNITIES**  
**DEEPEN**  
at Duke Law School

## From the Dean

Dear Alumni and Friends,

This issue of *Duke Law Magazine* focuses on one of the most exciting developments at the Law School in recent years—the explosion in legal clinics. Ten years ago, Duke’s only “in-house” legal clinic was the AIDS Legal Assistance Project. This clinic has become a well established legal resource in the community for individuals with HIV and AIDs, and a national model. Since then the Children’s Education Law Clinic has become a prominent community advocacy service for children with special needs who are seeking appropriate educational services. The Community Enterprise Clinic, now in its fourth year, handles complex transactional work for low-income businesses and community development corporations in North Carolina. In addition to these now-established clinics, three new clinics were launched this academic year: the Animal Law Clinic in which students engage in advocacy for animals; the Low-income Taxpayer Clinic, in which students help low-income individuals settle disputes with the IRS; and the Guantanamo Defense Clinic, in which students participate as members of the defense teams for detainees at Guantanamo Bay who have been charged by military commissions. The Death Penalty Clinic will return in the fall term, and planning—and fundraising—is underway to launch a clinic that will involve students in issues of environmental law and policy in the Southeast.

The opening of our new 30,000 square-foot wing in October provided a huge boost to the clinics, enabling most of the clinics to come together in one integrated—and absolutely gorgeous—“law firm” space. Faculty, students, and staff are also thrilled with the new seminar rooms, journal offices, and faculty offices in the new wing, as well as with the new and renovated classrooms throughout the building. The renovations and additions over the past few years have truly transformed the building; if you haven’t seen it yet in person, I hope you take the opportunity to come visit us.

Our faculty continues to grow with the addition of top scholars and teachers. Most recently, Duke Law School recruited Professor Mitu Gulati from the Georgetown law faculty. Professor Gulati is a prolific scholar best known for his pathbreaking work on sovereign debt and international investment, and for his work on negotiating race and gender identity in the workplace.



One way in which we hope to step up our contacts with alumni is with our new, high-end additional CLE programs. Early this year, we teamed up with West LegalEdcenter, to offer online access to many of our programs and special projects for CLE credit. Programs include documentaries from Tom Metzloff’s “Distinctive Aspects of American Law” series, which take a highly innovative approach to Supreme Court cases, as well as conferences and other academic programs that emanate from our interdisciplinary centers. I think you will find that CLE has never been so informative, easily accessible—linked from our homepage—and entertaining, not to mention a great way of keeping up with the intellectual life of this Law School.

The continued excellence and improvement of the Law School depends, of course, on the support of our alumni. If you have already donated to the Annual Fund, thank you. The unrestricted annual giving of our alumni and friends supports such essential initiatives as strategic faculty hires, merit-based scholarships, and student-run programs. Our recently launched Brick campaign honors leadership gifts of \$2,500 or more this year to the Annual Fund with engraved pavers to form an alumni courtyard or plaza area in the landscaping adjacent to a new atrium on the northeast corner of the Law School. You can find more information at [www.law.duke.edu/alumni/annualfund/brick-campaign/](http://www.law.duke.edu/alumni/annualfund/brick-campaign/). We hope to see your name along those of your classmates and friends.

Sincerely,

A handwritten signature in dark ink that reads "Katharine T. Bartlett". The signature is written in a cursive, flowing style.

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

*As this issue went to press, Duke Provost Peter Lange announced Katharine T. Bartlett’s decision to step down as dean of Duke Law School, effective June 30, 2007, at which point she plans to return full-time to the faculty.*

*Lange described Bartlett as “a superb dean.”*

*“Her quiet leadership has led to an extraordinary expansion of the Law School faculty built on recruitments of the highest quality and the establishment of true peaks of excellence in areas such as intellectual property and international law,” Lange said. “She has invigorated the intellectual culture of the Law School and attracted stronger students, including an outstanding body of international students, all the while serving as a wonderful university citizen.”*

*Bartlett’s decision to step down comes as the School completes a five-year strategic plan.*

*“Being dean has been an extraordinary privilege for me,” said Bartlett. “The last five years we have pushed hard to add a record number of exceptional new faculty, recruit an increasingly talented student body, dramatically improve facilities, and strengthen the School’s commitment to faculty-student collaboration. The Law School is beautifully positioned now to attract a strong leader who can build on what faculty, students, and alumni have achieved in the last several years.”*

*A search committee will be in place by early May. Meanwhile, Bartlett promises that the School’s momentum will continue in the 14 months remaining in her deanship. “We are on a roll,” she explains. “I expect the next year to be our most ambitious and most successful year ever.”*

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# News Briefs

## Great Lives in the Law

# Janet Reno: Using law to solve problems

### “She tried her best.”

**J**anet Reno was characteristically modest when she told a Duke Law audience how she would like to be remembered. Interviewed by Douglas B. Maggs Professor of Law Walter Dellinger as part of the Program in Public Law’s “Great Lives in the Law” series on September 26, the first female attorney general of the United States shared stories and lessons from a life and career marked by perseverance, preparation, and resolute action.

The daughter of two newspaper reporters in Dade County, Florida, Reno credited her parents with teaching her the importance of “using the tools of your profession to try to correct wrong, and [to] do it in a way that is permanent and lasting.” It was her mother’s practice when writing advocacy pieces criticizing the county’s juvenile detention system, and it was the lesson her father instilled in her when he brought her with him to cover criminal trials. “He taught me that the law gave you the opportunity to solve problems,” Reno said, adding that she settled on a law career after a local judge told her that while Dade County had many lawyers, it sorely lacked good ones.

Reno described how her mother—“an extraordinary influence”—single-handedly built the Miami home in which Reno resides today. “The house was always a symbol to me that you can do anything you really want to if you put your mind to it and it’s the right thing to do.” She recalled that her elderly and frail mother remained calm in the face of Hurricane Andrew, the 1992 storm that devastated South Florida, because she knew that “she built [the house] the right way, that she didn’t cut corners.” The house survived the hurricane

intact and became a symbol to Reno “that you must build your life the right way.”

### Gathering facts

Though Reno graduated near the top of her Harvard Law class in 1963, she found that firms were reluctant to hire women. She eventually joined a small Miami firm that specialized in condemnation work. There she learned the importance of preparing a

her handling of the case, and using their concerns and comments to tackle the social ills plaguing Dade County—issues such as housing and opportunities for young people. Such community involvement and interaction is central to a career in public service, she said.

“There are burdens that go with it, but it is so important to speak to the truth, to confront people, to talk out issues, to show peo-

**“There are burdens that go with [public service], but it is so important to speak to the truth, to confront people, to talk out issues, to show people that you care, and it is so important to do things in a lasting way that has an impact.” Janet Reno**

case, calling preparation one of the most important tools in her career.

“Get the facts,” she advised students in the audience. “The law is in a vacuum if you don’t apply the facts, carefully gathered and carefully analyzed, and understand where there are defects and flaws in the evidence.”

Reno was elected state attorney of Dade County in 1978—the first woman to hold the job. Racial and ethnic tensions ran high in the diverse county, she said; deadly riots erupted when she and her staff were unable to convict four white Miami police officers charged with beating to death an unarmed black motorcyclist.

Refusing to heed calls for her resignation, Reno instead made a point of attending community meetings with angry constituents, answering their questions about

ple that you care, and it is so important to do things in a lasting way that has an impact.”

### Life as attorney general

Appointed by President Clinton and unanimously confirmed by the U.S. Senate, Reno assumed the office of U.S. attorney general in March 1993. As attorney general, she enforced policies on child support, housing reform, education, race relations, immigration, and the death penalty, calling the latter “one of the real moral and ethical issues that I dealt with,” and stating her personal opposition to it.

Reno was frank in discussing two cases that proved enormously controversial during her tenure as attorney general—the siege of the Branch Davidian compound in Waco, Texas, and the case of Elian Gonzalez.

**“If lawyers use their skills to become problem solvers, as opposed to just litigators, we can make a difference.”**



WALTER DELLINGER AND JANET RENO

Anthony Cross / The Chronicle

In April 1993, federal agents laid siege to a compound in Waco, Texas, where members of the Branch Davidian religious group were believed to be holding children hostage and hoarding illegal weapons; four federal agents died in a firefight with the Davidians at the start of the siege, and more than 70 Davidians died when tear gas intended to force them out of the building caused it to ignite. Reno assumed full responsibility for the incident. “We couldn’t walk away, and we couldn’t stay forever,” she said. “The tragedy is that we will never know what the right thing to do was because that went to his grave with [Branch Davidian leader] David Koresh.”

Reno said she remains proud of her decision to return Elian Gonzalez to his father in Cuba in April 2000; the six-year-old boy had been in the custody of rela-

tives in Miami, after he was found at sea, his mother having drowned in an attempt to enter the United States. “The smile on Elian Gonzalez’s face as he looked at his father—that will be one of the moments I most remember,” she said. Reno added that she was not bothered by protests that followed her decision to send armed federal agents into the relatives’ home to seize the child after negotiations failed.

“I felt almost joyful about them because that’s the reason these people came to this country, so that they would have the right to stand on my street corner, call me names, and say whatever they wanted about the attorney general of the United States. That’s what America is all about.”

Asked by a student for her thoughts on the future of the Justice Department, Reno, the longest-serving attorney general

of the 20th century, responded that it can and will be found in “the strength of people who can stand up and say ‘no, this is the wrong thing to do, there is no basis for this.’” She offered particular praise for the work of Duke Professors Dellinger, Jeff Powell, and Christopher Schroeder, who served in the Clinton administration with her as acting solicitor general, deputy solicitor general, and head of the Office of Legal Counsel, respectively.

“If lawyers use their skills to become problem solvers, as opposed to just litigators, we can make a difference,” Reno said.

Previous “Great Lives in the Law” participants have included the late Chief Justice of the United States, William Rehnquist, Associate Supreme Court Justices Sandra Day O’Connor and Ruth Bader Ginsburg, and historian John Hope Franklin. ♡ — *Tricia Horatio*

### Fourth Annual Bernstein Lecture:

# Buxbaum calls “coordination” the right approach for economic law

**R**ichard Buxbaum delivered the fourth annual Herbert Bernstein Memorial Lecture in International and Comparative Law on September 27. The Jackson H. Ralston professor of international law at the University of California, Berkeley School of Law, Buxbaum began by recalling his close association with the late Professor Bernstein, who was on the Boalt Hall faculty before coming to Duke Law School. Their common roots in pre-war Germany, and their “somewhat similar backgrounds in terms of relationship to regimes of that period” influenced how both saw the contemporary world, he said.

Speaking on comparative law as a bridge between the nation state and the global economy, Buxbaum noted that the subject is primarily relevant to Europe, where private law harmonization is becoming an increasing area of focus. Economic law uniquely straddles private and public law, he observed. “Any state’s effort to legislate about cross-border economic matters in which other states also have a legislative interest needs to consider the legislation’s potential prescriptive reach across its borders; private international law is no longer private, but a public issue.”

Although a “heavily top-down harmonization” of government regulations may have been needed to establish a common market within Europe, “coordination” is a more appropriate approach in the area of economic law, he argued.

“Coordination implies a horizontal function—the adaptation of a state’s laws to another, formally equal state—a cooperation of equals within a system that is either somewhat hierarchical, as in the sense of federal state structures, or sim-

ply a network or a web of formally equal sovereigns, without a more or less authoritative center.” This is essentially the state of the European Union, Buxbaum argued, as its Parliament, the only body directly elected by citizens of member states, lacks true legislative power.



“The coordination of lawmaking among sovereign states of equal, formal status, with an identical need to adapt to the realities of an economic system that more and more transcends their particular boundaries, certainly offers this coordination effort a better chance of eliminating a politically volatile democratic deficit than does the top-down harmonization,” he said.

Coordinating laws within a structure like the European Union “seems to be a far sounder way to expend scholarly and policy-making energy than to move immediately towards imposed harmonization or unification,” Buxbaum continued. “Within the context of the world we live in, a multi-storied economy living in a number of one-storied state houses, a new look at the mission of comparative law is appropriate, and mine I hope is one such look that may open new approaches to others.”

A portrait of the late Professor Bernstein was unveiled as part of the program in his honor. A specialist in contract, comparative, and private international law, he was a beloved member of the Duke Law faculty for 17 years, said Dean Katharine Bartlett. “His students loved him for the quality of his teaching and the respect and warmth he showed them. Likewise, the faculty and staff of this School loved him for his kindness and support, his passion for history and the law, his commitment to tolerance and justice, and his humor.” ♡

### Practical Politics and the Law

# Series offers insight into political process

**A** new student-organized series offers Duke Law students insight into the workings of the political system from bipartisan perspectives. “I wanted to find [speakers] who could demystify the political process and provide guidance to Duke students on becoming directly involved in state and national politics,” Ryan Bates ’06 said in introducing the “Practical Politics and the Law” series at its first event on October 5. The series is sponsored by the Program in Public Law.

The inaugural speaker, Paul Hackett, is a Cincinnati-area lawyer and Iraq war veteran who won the Democratic nomination to run for Congress in a primarily Republican Ohio district. Hackett described his distress at returning from combat duty in Iraq last March to find Congress focusing on the Terry Schiavo case—“a private matter”—as opposed to dealing with issues such as the economy and the war. When a friend approached him about running for the newly open seat in his district, Hackett, a political novice, said, “I was presented with this opportunity to sort of put up or shut up in trying to make a difference.”

Hackett explained the challenges involved in raising money for a campaign and in getting key Democratic strategists to support his race. His status as a war veteran attracted attention first from a CNN reporter and then the national media after he publicly called the President a “chicken hawk;” financial and strategic support then poured in, he said. Hackett won 48 percent of the vote, an unprecedented showing for a Democrat in his district.

Hackett stressed the importance of candidates understanding voters in their communities—he had grown up in his district—and made a direct plea to the students in his audience to get involved in politics.

The series continued on October 18 when former Democratic National



RYAN BATES '06 AND PAUL HACKETT

Committee Chairman Joe Andrew shared his views on how technology is shaping the political process. With the emergence of technology that allows users to filter the information they receive to comport with their own world view, Andrew said that politics will follow suit; both political parties and commercial advertisers will increasingly use “the buildable, suggestive search function” to tailor messages to individual voters. He offered, by way of example, an individual who has identified himself as a “progressive” through a series of online choices.

“Once you have self-identified as a progressive, you will see a progressive world,” he said, adding that it will lessen the importance of party affiliation and effec-

tively erase the line between commercial and political speech.

“I am predicting that all the committees—MoveOn.org, or the Democratic congressional and senatorial campaign committees—all those non-profits that currently do politics, will become adjuncts of for-profit companies. Your political views will become part of commercial marketing strategies.”

Andrew also made a direct plea to his student audience to lead in what he called this “new world order”—to make sure that important issues aren’t “lost in the technology and commercialization of politics.”

The series continued February 1 with a talk by Republican lawyer and strategist Ben Ginsberg (coming in *DLM* Fall '06). ♪

### “The Information Ecology” Lecture Series

## Two systems protect the public domain

The public domain begins with authorship, but depends on a creator’s willingness to share his or her creation in the public sphere through some sort of license. Speaking at the Law School on October 24, Professor P. Bernt Hugenholtz examined how two systems approach the issue of creators’ rights and public dissemination of work: the regime of “authors’ rights” common in civil law countries for hundreds of years, and the open-source movement inspired Creative Commons licenses that are based in U.S. copyright and contract law. Hugenholtz, who suggested the two approaches might be combined to good effect, is a professor of intellectual property law and director of the Institute for Information Law at the



P. BERNT HUGENHOLTZ

University of Amsterdam. His talk was sponsored by Duke’s Center for the Study of the Public Domain.

Creative Commons, which was co-founded by William Neal Reynolds Professor of Law James Boyle, offers creators a platform of predefined, standard-form online licenses that give users broad freedoms to reproduce, adapt, or disseminate their works, while preserving some rights for the creators themselves. In their promotion of wide dissemination of work, they reclaim an original goal of the U.S. copyright system, Hugenholtz observed. A key feature of their growing popularity—over 50 million are currently in use, and an offshoot system for scientific work,

### Other Fall 2005 Program in Public Law events available at [www.law.duke.edu/webcast/](http://www.law.duke.edu/webcast/)

“**The Solomon Amendment:** Compelling Duke to allow anti-gay recruitment on its campus,” (Nov. 22, 2005)

“**Extraordinary Circumstances?** The nomination of Samuel Alito,” (Nov. 17, 2005)

“**Replacing the Justice in the Middle:** Selection, standards, superprecedents, and constitutional change,” (Nov. 16, 2005)

“**Storming the Court,**” (Oct. 31, 2005)

“**What’s the Matter with Democrats?**” (Oct. 17, 2005)

“**Update on the Global War on Terrorism at Home and Abroad,**” (Sept. 28, 2005)

“**A Discussion of the Legacy of Chief Justice William H. Rehnquist,**” (Sept. 8, 2005)

“**Reflections on ‘the O’Connor Court,’**” (Aug. 29, 2005)

Science Commons, is quickly gaining users—is the fact that the author remains “the master of the universe,” he said. “Creative Commons enables the author to license his work directly to a user.”

The authors’ rights regimes that prevail in many civil law countries share that feature, said Hugenholtz. Rooted in notions of natural justice, authors’ rights are not dependent on formalities “because the right is created upon creation.” They are long-term, with “life plus 70” the norm in the European Union, and “life plus 100” the rule in Mexico.

Authors’ rights provide protection for the creator not only against third parties that infringe their rights—the so-called “pirates”—but also against their contractual counterparts, the publishers or other exploiters of their works. Authors enjoy two types of protection against exploiters: moral rights and statutory limits to copyright transfers. Moral rights, “inalienable rights of true creators,” cannot be fully waived. Two moral rights are central to the authors’ rights regimes: the right of “paternity,” or attribution, and the right of “integrity,” which gives the creator the right to object to the mutilation or distortion of the work. These moral rights color the creator’s economic rights; assignments are never absolute. A creator cannot transfer “all rights” to a publisher as is common in the U.S. Creative Commons licenses mirror these moral rights in allowing a creator to insist on receiving attribution for and being able to restrict derivations of the original work, Hugenholtz observed.

Finding common ground between the “new world” Creative Commons and “old world” authors’ rights inspired Hugenholtz to suggest a synthesis that he called “author’s copyright”—moral rights for life, and economic rights for a limited term.

“The public domain starts here, with the author,” he concluded. “Keeping the copyright where it originates, with the authors, is the only way to safeguard the public domain.”

On September 22, MIT Professor Eric von Hippel delivered an “Information Ecology” lecture on “Democratizing Innovation and Norms-based Intellectual Property Rights.” A webcast is available at [www.law.duke.edu/cspd/](http://www.law.duke.edu/cspd/). ♪

## Dealing “diplomatically” with genocide

**D**elivering a keynote address during the Law School’s International Week on October 25, the former U.S. Ambassador to Rwanda, David Rawson, offered insight as to why diplomacy “failed miserably” to prevent genocide in that country in 1994, and how similar tragedies might be avoided in the future.



DAVID RAWSON

**“If atrocities are being committed by a state against its own people in a significant way, then we ought to begin to organize ourselves internationally, and very quickly.”**

David Rawson

Having assumed his three-year posting in 1993, Rawson was an observer at the U.N.-sponsored talks in Arusha, Tanzania, that sought to broker peace between the provisional Hutu-led Rwandan government, and the insurgent, Tutsi, Rwandan Patriotic Front. Carnage erupted after President Juvenal Habyarimana’s plane was shot down over the Kigali airport on April 6, 1994; over 800,000 people, mostly Tutsis, were killed within a three-month period, primarily at the hands of Hutus.

The international community was employing “standard diplomatic tools”—among them the withholding of economic aid, moral condemnations, human rights fact-finding missions, and commissions of inquiry—long after the extent of the butchery in Rwanda was known. Their failure, said Rawson, pointed out the essential problem with diplomacy: It puts state sovereignty ahead of human suffering.

“Our dominating diplomatic ethos is about negotiation, fair play, and power sharing. In the middle of genocide, that doesn’t

work. Sometimes we need political will, [which] comes from two places—one is the people and the other is the president. And that’s what we didn’t have in the case of Rwanda.” Rawson lamented the fact that after his evacuation from Rwanda in the first week of violence, he was never able to personally brief President Clinton on what

was going on. “What we really needed [was for] the president to take the leadership on this, and the rest of the bureaucracy would have followed.”

To prevent similar tragedies, Rawson suggested the development of an international “tripwire mechanism,” that would be triggered by something short of genocide, which

eludes clear definition, but involves killing on a very large scale.

“If atrocities are being committed by a state against its own people in a significant way, then we ought to begin to organize ourselves internationally, and very quickly. The thing is to have those communications already established.” He was quick to say that he was not necessarily talking about having American troops on the ground, but advocated having Americans push vigorously in the U.N. for some kind of U.N. or regional force “that will stop people from doing dastardly things to other people.” With at least 256 groups estimated to be at risk right now, he noted that the U.S. and the U.N. can’t do it all. “In situations like these we, the international community, we, the states of the world, and we, the people of the world, do have a responsibility to protect.”

Ambassador Rawson’s talk was sponsored by the International Law Society, the Black Law Students Association, and Duke’s Human Rights Initiative ♪.



## Panel addresses drug use in sports

Duke's Health Law Society and Sports and Entertainment Law Society joined forces to present a panel addressing the complex issue of regulating doping in sports on November 8. Moderated by Professor Paul Haagen, the panelists included Dr. Robert Esposito, an orthopedic surgeon and sports medicine expert at Duke, Dr. Mario Ciocca, the head team physician for UNC football, and Dr. Gary Wadler, a member of the World Anti-Doping Agency (WADA) committee charged with identifying substances and methods that, by international agreement, should be banned at all levels of sport.

Asked by moderator Haagen whether federal legislation is an appropriate response to the problem of doping in professional sports—five bills are currently before Congress—all panelists agreed that it was. The professional sports leagues simply have not demonstrated a commitment to independent, transparent, and accountable testing and sanctioning of players found to be doping, said Wadler. Still, noted Esposito, a true cultural shift among athletes is what is most needed.

“You can pass laws and try to enforce

them, but what it's going to take is for the athletes to truly understand [doping's] harms. Unless they want to stop doing this and make the competition fair, it will be hard to control every situation.”

Because professional athletes are viewed as role models, Wadler characterized their drug use—and the arguable indifference of their leagues—as a matter of public health and policy. As many as four percent of 12th graders and two-and-a-half percent of eighth

ground industry is devoted to “beating” the tests—the panelists stressed testing's value in identifying athletes with problems, including the severe depression that can accompany withdrawal from performance-enhancing drugs. Behavioral research into why athletes dope is also key to curbing the problem, said Wadler. As an effective way of limiting the practice among young people and “weekend warriors,” Esposito recommended routine screening for signs of doping during medical examinations.

Wadler questioned the commitment of those involved in professional baseball, in particular, to cleaning up their game. Outlining WADA's

intricate process of reviewing and compiling lists of substances that are banned from all sports pursuant to a world anti-doping code, he noted that “hundreds of bodies around the world weigh in on the list. By way of contrast, professional baseball has two union representatives and two league representatives who negotiate in the backroom as to what is banned and what isn't. I am an advocate for a process that really brings sunlight to this debate and not backroom politics.”

**“If athletes have aspirations to go into professional sports, they look to the pro sports leagues and say, ‘if the leagues don't think it's a serious problem it's okay for me to do it, too.’”** Mario Ciocca

graders are known to use anabolic steroids, he said. Even more obvious is the influence of professional sports on collegiate athletes, said Ciocca.

“If athletes have aspirations to go into professional sports, they look to the pro sports leagues and say, ‘if the leagues don't think it's a serious problem it's okay for me to do it, too.’”

While acknowledging that drug tests fail to expose the full extent of use—an under-



Raymond “Buck” Ferguson ’70

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### Journal News

## DELPF symposium focuses on ocean ecosystem management

On October 21, *Duke Environmental Law & Policy Forum (DELPF)* brought together a group of interdisciplinary experts in ocean and coastal law and policy to discuss the future of an ocean governance system in the U.S. Student organized and co-sponsored by the Law School and Duke's Nicholas Institute for Environmental Policy Solutions, Nicholas School of the Environment and Earth Sciences, and Terry Sanford Institute of Public Policy, the day-long symposium addressed the opportunities presented by the recent reports of the U.S. Commission on Ocean Policy and the Pew Ocean Commission, which both recommended ecosystem-based management of the marine environment with emphasis on regional ocean governance systems.

"The two commission reports have

made 2006 a year for oceans reform, but there has always been a disconnect between our academic understanding and people in decision-making positions," said Nicholas Institute Director Tim Profeta '97 in introducing the symposium's final roundtable, an attempt to tease out from the day's discussion concrete design principles for oceans policy reform.

There was general consensus among participants that institutional reform was essential. "Ocean and coastal policy in this country developed without a structure and a plan," observed participant Laura Cantral of the Meridian Institute, which coordinates the design and implementation of the Joint Ocean Commission Initiative, an effort that synthesizes the work of the two commissions. "There were good, valid, and valuable resources, but

there has never been an opportunity to see how they relate to each other, how they are not relating to each other, and perhaps how they should."

Participants engaged in a lively debate as to whether reform should be "evolutionary" and incremental or "revolutionary" and sweeping, and discussed, in practical terms, how regional strategies can be used to address national goals, in ways that can best avert transactional costs.

Sarah Doverspike '06, *DELPF* editor in chief, was pleased with this discussion. "I strongly believe we achieved our goal of significantly furthering the ongoing debate about the most effective way to implement an ecosystem-based approach to ocean management in the U.S." Articles by the speakers will be published in *DELPF's* Volume XVI, Issue 2. ♪

## Posner discusses political trials in *Duke Law Journal* fall lecture

Professor Eric A. Posner challenged the prevailing view of political trials when he delivered *Duke Law Journal's* fall lecture on November 11. Posner, the Kirkland and Ellis professor of law at the University of Chicago Law School, argued that political trials—prosecutions whose disposition depends on the defendants' political beliefs and activities—are unavoidable, but that they can be better designed and managed than they often are.

While political trials, particularly those in liberal democracies, are often seen as corrupting the judicial process, Posner argued that they actually reflect "an unsurprising balance" of security and liberty. Under normal circumstances, he pointed out, governments provide due process protections to assure the public that prosecutions target criminals and not political competitors, but this balance shifts during times of war or national emergencies, essentially to meet public demand for security. Through such means as selective

prosecution, retroactive lawmaking, or military trials, legal process requirements are reduced to allow the prosecution of people who are threats, without strong evidence that they have committed crimes. Posner acknowledged that relaxing legal process increases the risk that governments may target political opponents, but this relaxation is tolerated if the public believes there is a significant threat to security.

In Posner's view, political trials could be made more tolerable by substituting "political process" to balance diminished legal process. He suggested such possible reforms as selecting judges and jurors from across the political spectrum and allowing defendants to mount political defenses. Permitting defendants to argue that prosecution is based on partisan motives and a corrupt judicial system would allow the public to assess the credibility of government action, he argued, thereby discouraging prosecutions that do not enjoy public support. Allowing political process to make

up for the limited legal process would enable the government to pursue genuine threats to security, while preventing it from threatening legitimate political competition.

In response to audience questions, Posner addressed current events, including the prosecution of the war on terror and the detention of enemy combatants by the U.S. military at Guantanamo Bay.

Posner's talk was based on his article "Political Trials in Domestic and International Law," which appeared in the October 2005 issue of the *Duke Law Journal*. Under the *Journal's* open access policy, the full text is available at [www.law.duke.edu/journals/dlj](http://www.law.duke.edu/journals/dlj).

— Heather Johnson '07 ♪



ERIC A. POSNER

## 39th Annual Brainerd Currie Memorial Lecture

## Van Alstyne urges enforcement of “this Constitution”

Professor William Van Alstyne returned to Duke to deliver the Law School’s 39th annual Brainerd Currie Memorial Lecture on November 14. Currently the Lee professor of law at William and Mary’s Marshall-Wythe School of Law, Van Alstyne was introduced by Dean Katharine Bartlett as “one of the most distinguished scholars ever to have taught at Duke Law School,” where he remains the Perkins chair emeritus, having held that chair from 1974 through 2004.

“To innumerable past students ... he defined the excitement and intellectual challenge of a Duke Law School classroom,” said Dean Bartlett. “Reading his work, one cannot help be impressed that he approaches every question without prejudice or hidden agenda.”

Van Alstyne introduced his subject, “Clashing Visions of a Living Constitution,” by reviewing various approaches and agendas—“philosophical pretensions”—that scholars and judges bring to constitutional interpretation. Ultimately, he said, the field of all those in constitutional law could be divided into two groups: “the obligationists” and “the opportunists.”

For opportunists on the right and the left, “it’s as though you could take selective clauses and then by reading them with a great muscular vigor, if not violence, make [the Constitution] the kind of document that authorizes that which you think ought to be authorized and forbids that which ought to be forbidden,” said Van Alstyne, provoking laughter from his capacity audience of students, faculty, alumni, and friends of the Law School.

Obligationists, by contrast, are committed to interpreting “this Constitution,” he continued, emphasizing the phrase used in its preamble. They share a view that judges must “not misread it, overread it, [or] read into it their preferences or philosophical preferences. Not to make it ‘living’ by the superimposition of fashionable theory regardless of the intellectual belief that may be developing it, or to whom it may appeal, but to [bow] indeed to that other process, the amendment process.”

Amendments offer evidence of a living

Constitution, said Van Alstyne—“when they were made and by whom they were made. What do they register? What do they tell you about the change that’s taken place in society to such a fundamental extent, that it has become a part of fundamental law?” He lamented the difficulty in amending the U.S. Constitution, though, attributing it to “a fierce, inveterate, instinctive mistrust in amendments,” lest they give judges and others the opportunity to read into the new language meanings that may be “pleasing” to some, but totally out of step with the intent of the original proposal.

“This has produced, in my thinking, a deadening phenomenon, the ‘negative synergy’ of licentious development in American constitutional law. The moment the courts do not require amendments in order to transform basic principles in American

**“The moment the courts do not require amendments in order to transform basic principles in American constitutional law ... the less necessary they seem to become.” William Van Alstyne**

constitutional law ... the less necessary they seem to become.”

This point was well illustrated by the failure of the Equal Rights Amendment (ERA), he said. Proposed in 1972 as the 27th Amendment, the ERA received supermajorities in both houses of Congress, and was quickly ratified by 34 states, four short of the 38 needed to pass. It failed, he argued, because opponents were able to argue convincingly “that in similar circumstances, the Supreme Court had taken the language and understanding associated with earlier provisions of the Constitution, and just ignored the earlier understanding ... and gone right on its progressive way in order to fulfill what most people want from the Constitution. Therefore, amendments are no longer trustworthy.

“The 27th Amendment would have recorded a rite of passage in a mature country that had come to differently think about



WILLIAM VAN ALSTYNE

Anthony Cross / The Chronicle

gender equality and gender roles. It would have recorded on the face of this aging document a date recording consensus, a change in a principle. What we have instead are a series of brokered Supreme Court cases—

you can’t find anything in the Constitution that attests to equality of rights without regard to sex or gender.”

Alluding to recent transitions on the Supreme Court, Van Alstyne urged the members of his audience to appreciate judges and scholars who “take it as their obligation to enforce this Constitution, not something different. And that includes its warts, such as you may think them to be, until those warts have been carved away and replaced.”

Several times during his talk, Van Alstyne praised the scholarship of Professor David Currie of the University of Chicago Law School, who attended the lecture named for his father with his wife, Barbara, and sister, Carolyn Currie. Van Alstyne called Currie “the most distinguished scholar in American constitutional law now living, excepting none at all.” He also paid tribute to Brainerd Currie, on whose encouragement, said Van Alstyne, he originally came to Duke. ♪



**JOHN SIRICA, JR., T'76.  
HIS FATHER, JUDGE  
JOHN SIRICA, WAS *TIME'S*  
"MAN OF THE YEAR"  
IN 1973.**

Jon Gardner



# Law Library receives Nixon letter claiming executive privilege

**I**N THE SUMMER OF 1973, FACED WITH A GRAND JURY SUBPOENA demanding that he turn over tapes of Oval Office conversations thought to relate to the Watergate investigation, President Richard Nixon '37 responded with a personal letter to the presiding judge, John J. Sirica of the District of Columbia District Court.

“I must decline to obey the command of that subpoena. In so doing I follow the example of a long line of my predecessors who have consistently adhered to the position that the president is not subject to compulsory process from the courts,” the president wrote in his letter dated July 23, 1973. He claimed that all communications he had with his aides were privileged, and that executive privilege was absolute.

The president’s letter regarding the tapes that ultimately brought down his presidency was donated to his alma mater on November 21, a gift of Judge Sirica’s son, John “Jack” Sirica, Jr., T’76.

“I am honored to give this letter to Duke Law School,” Jack Sirica, a *Newsday* editor, said in making the presentation. “My dad was a great fan of the School and a close friend of [former] Dean Ken Pye. Duke did great things for me.”

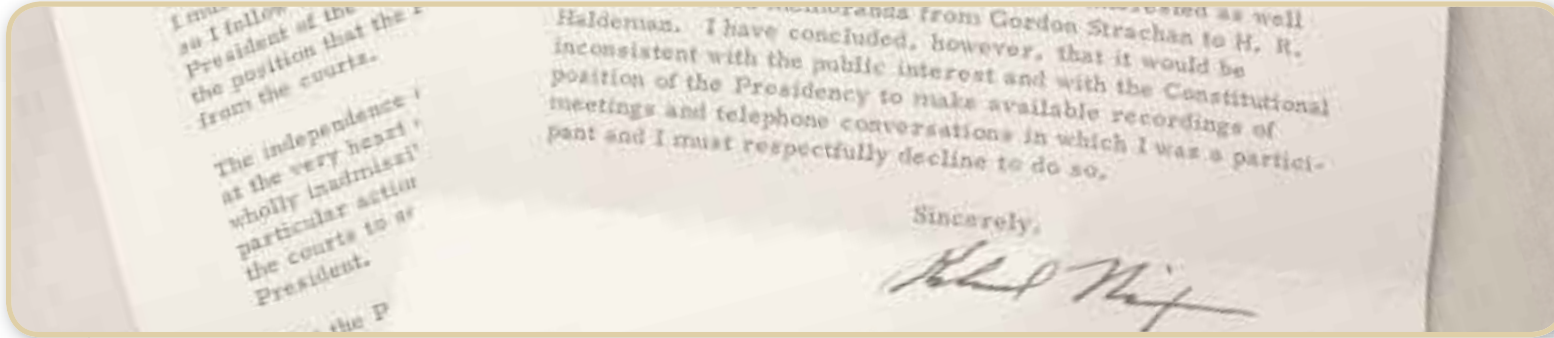
Before an audience of Duke Law students, faculty, and friends, Sirica shared his father's concerns over the subpoena, which for the first time compelled a sitting president to turn over evidence in a criminal investigation. While the judge knew the criminal courts "inside and out," constitutional law was less familiar, and he feared making a mistake, said Sirica,

and they're compelling the president to turn over evidence. What a great country it is."

Charles S. Murphy Professor of Law and Public Policy Studies Christopher Schroeder noted that for public lawyers, "the most riveting aspects of the Watergate investigation involved the constitutional confrontation between the president, the courts, and the Congress that had preceded it," making the

of seven relatively low-level operatives of the Committee to Reelect the President. When a White House employee, Alexander Butterfield, disclosed to a Senate committee on July 16, 1973, that the White House had a taping system, "the investigation really began honing in on what the president knew and when he knew it," said Schroeder.

At that point, the special prosecutor,



recalling how his father and his law clerk, Todd Christofferson '72, spent long hours researching constitutional issues. Sirica recalled his father's reaction to the fact that the grand jury was unanimous in its decision to enforce the subpoena. "He thinks, 'I'm sitting here with 12 people from various walks of life from Washington, D.C.,

letter, which effectively launched the landmark case of *U.S. v. Nixon*, a particularly significant gift.

By July 1973, Schroeder said, the investigation into the 1972 break-in at the Watergate Hotel headquarters of the Democratic National Committee had intensified, in spite of the burglary convictions

Archibald Cox, went to the grand jury and quickly obtained from Judge Sirica a subpoena asking the president to turn over tape recordings of particular conversations in the Oval Office.

Following the delivery of his letter to Judge Sirica, the president mounted a formal court challenge. The judge's refusal of

## Remembering a unique clerkship



D. TODD CHRISTOFFERSON '72

When D. Todd Christofferson '72 clerked for Judge John Sirica for two years after he graduated from Duke, he worked almost exclusively on Watergate-related matters. Although he did not know in advance of Jack Sirica's gift to the Law Library, he is delighted by it. With the triple Duke connection—President Nixon's, Sirica's, and his own—"I can't imagine a better place for it," he said.

Describing Judge Sirica, to whom he became very close, as "warm, open, and down-to-earth," Christofferson remains grateful to him for treating a clerk as a full member of

his legal team. "It was the ultimate experience it could have been—a wonderful practical education—just because of his personality and the way he approached it and included me.

"Judge Sirica said to me once, 'I hope you appreciate this. Not many law clerks get an experience like this.' And then he paused and said, 'I guess not many judges do either.'"

That became clear as the two searched for some historical guidance on the issue of whether the president could be compelled by subpoena to turn the Watergate tapes over to the grand jury. One potentially applicable case, dat-

a motion to quash the subpoena was upheld on appeal, and the U.S. Supreme Court convened a special summer session to hear the matter on an expedited basis—though not before the president had notoriously ordered the firing of Special Prosecutor Cox for refusing an offer to have a senator provide transcripts of the tape. That move, Schroeder said, was fully in keeping with

circumstances, the privilege gave way to the superior constitutional claim of the District Court and the criminal trial proceeding there. “The Court also left many other questions open, many of them being debated today, using the basic frameworks on the one hand that President Nixon laid out in his letter, and on the other hand, that the special prosecutor defended in his briefs

“The critical issues were being driven by actions taken in a single federal courtroom by John Sirica, a federal judge who reached conclusions that disagreed with the president, and had the courage to stick to those convictions,” said Schroeder.

President Nixon’s letter to Judge John Sirica will be part of the permanent collection of the Duke Law Library, and will

**Sirica recalled his father’s reaction to the fact that the grand jury was unanimous in its decision to enforce the subpoena. “He thinks, ‘I’m sitting here with 12 people from various walks of life from Washington, D.C., and they’re compelling the president to turn over evidence. What a great country it is.’”**

the president’s view that all the powers of the executive branch were held by the president alone; Cox was his subordinate who had to follow his orders or be terminated.

While the Supreme Court recognized the president’s claim of executive privilege in a unanimous decision, it did not find it absolute, Schroeder pointed out. In the

and arguments,” he said.

Among the tapes released to the special prosecutor following the Supreme Court decision was the “smoking gun,” a recording of the president and aide Bob Haldeman, talking of ways to subvert the break-in investigations and stage a cover-up. In August 1974, President Nixon resigned.

be housed at Duke’s Special Collections Library, said Archibald C. and Frances Fulk Ruffy Research Professor of Law Richard A. Danner. “The letter is important not just for its historical and legal significance, but also because of President Nixon’s connections to the Law School.” ♣

ing back to the Jefferson administration, was settled without going to adjudication. Judge Sirica was “keenly aware that he was treading in an area that lacked road signs or precedents to show the way,” noted Christofferson.

“In the end, he decided that in a criminal proceeding, under the Constitution, the court is entitled to every man’s evidence, whether it is the president or ‘Jones’ on the street.”

As Watergate unfolded, Christofferson recalled feeling both “chagrined and proud” to have chosen law as a profession.

“On one hand, you had the president and some of the people assisting him who had legal backgrounds who were not doing the profession proud at that point in their careers. On the other hand, you had some of the giants of the profession, such as [Special Prosecutor] Archibald Cox and Professor

Charles Alan Wright of the University of Texas at Austin School of Law, who argued the tapes subpoena matter for the White House. It was an interesting juxtaposition to see some representing the profession so well and others representing it not so well.”

Christofferson went on to have a 21-year legal career, many of them spent as general counsel for Commerce Union Bank, before joining The Presidency of the Seventy, one of the highest posts within The Church of Jesus Christ of the Latter-day Saints.

On balance, Christofferson said he left his clerkship with a renewed faith in government.

“So many people were involved and doing the right thing for the right reasons. The end result was that it worked as it should because there are a lot of good people in government.”



Like many organizations seeking to revitalize inner-city communities, Goler-Depot Street Renaissance Community Development Corporation (Goler CDC) started out with a straightforward mission: to provide housing for low-income families and help small, minority-owned businesses get started in a largely derelict urban neighborhood.

# CLINIC OPPORTUNITIES DEEPEN AT DUKE LAW

by Frances Presma/Photos: Don Hamerman

Once a vibrant African-American residential and commercial district in east Winston-Salem, North Carolina, the Goler district fell victim to suburban flight after segregation ended and it was bisected by an interstate highway. One of the few institutions to remain was the 125-year-old Goler Memorial A.M.E. Zion Church, whose members spearheaded the formation of Goler CDC in the late 1990s.





Goler CDC's plans became considerably more ambitious after urban planners solicited church and public input on revitalization plans. "People didn't want to create a community of all low-wealth citizens, but one that would be diverse in age, ethnicity, and financial make-up. In that way it would be sustainable," said Evon Smith, Goler CDC's executive director. Plans that once focused on small, single-family residences for low-income families now include duplexes, an independent living residence for seniors, and the renovation of an old Hanes textile factory, owned by the church, into market-rate loft condominiums, intended to attract middle-class professionals. "The Gallery Lofts" would be developed as a joint venture between a Goler CDC subsidiary and a private Maryland developer.

In late summer, Smith asked Duke Law School's Community Enterprise Clinic to review the draft operating agreement Goler CDC had negotiated with the developer. After doing so, Clinic student Virginia Frasure '06 offered her opinion: The terms too heavily favored the developer.

"Tax law requires non-profits to have a certain amount of control in order to retain their exempt status. This agreement was unsafe for our client," said Frasure. Her advice, backed by Clinic Director and Clinical Professor Andrew Foster, was that it had to be renegotiated.

Goler CDC balked at doing so, as did the developer. But after several weeks of heated conference calls, both parties agreed to "serious changes," said Frasure. "We finally got to the point where we were comfortable with the agreement." Frasure also worked with Smith to rewrite Goler CDC's articles of incorporation to give it proper authority to enter into the contract. "Goler was going to be a co-developer, but didn't have corporate authority up to that point to be a developer," she said.

On a November evening in Goler CDC's boardroom in the soon-to-be renovated factory, Frasure is helping members of its board and staff understand these developments, briefing them generally on tax laws pertaining to non-profits, and explaining how to distinguish activities that are related to the charitable purposes outlined in their articles from those that are not, and when and why they might consider setting up subsidiary corporations to accomplish their changing, and increasingly ambitious, community development goals. Both her presentation and the quality of Duke's

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legal representation get high marks from her audience.

"The kind of expertise the Community Enterprise Clinic brings to our project is the kind that we wouldn't be able to afford," said Goler CDC chair Michael Suggs. "They're on the cutting-edge in terms of these types of collaborations. It's important that we have someone on our side who can interpret the law and advise us what the implications are for us as we forge ahead."

## EXPANDING OPPORTUNITIES TO SOLVE REAL WORLD PROBLEMS

Frasure is quick to point out that she got something lasting from her work with Goler CDC: experience. "Drafting the articles of incorporation helped me to understand what corporations are about. Thinking about whether a corporation has authority to engage in certain activities, or how best to negotiate a joint venture that would be fair to the client are not issues of relevance only to non-profits."

Having also worked in Duke's AIDS Legal Project as a 2L, Frasure is emphatic in her endorsement of the Law School's clinical programs.

"The range of skills you develop in clinics—interacting with clients, defining the legal issues, asking questions, and developing good, trusting relationships so that clients are forthcoming—are skills that are invaluable no matter what practice you go into."

Clinical options form an integral part of a well-rounded legal education, says Dean Katharine Bartlett.

"Any great law school has to have a terrific blend of conventional academic curriculum that teaches students to think critically, and courses that offer them hands-on opportunities to apply what they have learned academically in a supervised setting, so that when they leave here they can both think critically and have some facility with handling real world problems. Experiential learning is all about piecing the two together—offering students an essential opportunity to develop skills they can bring into any future practice."

Duke Law students have more opportunities than ever to build that experiential bridge between law school and practice. The current academic year has seen the launch of three new clinics that join the established AIDS Legal Project, Children's Education Law Clinic and Community Enterprise Clinic. The Low-income Taxpayer Clinic, in which





**Clustered work stations in an office exclusive to clinic students promotes collaboration and preserves client confidentiality**

students handle disputes with the Internal Revenue Service, welcomed its first class and clients in January, as did the Animal Law Clinic, which allows students to work on a diverse range of legal issues relating to animal welfare and control on a field placement basis. Students in the Guantanamo Defense Clinic, which began in October, are directly assisting the military lawyers charged with defending detainees in the war on terror before military commissions at Guantanamo Bay.

Still more clinical options will be available in the coming academic year when the Death Penalty Clinic returns to the curriculum. An environmental clinic, a partnership with Duke's Nicholas School for the Environment and Earth Sciences, which would immerse students in cases involving environmental law and policy, has received faculty approval and could open in early 2007.

#### **A UNIFIED PROGRAM**

The clinic suite that occupies one floor of the Law School's new wing is symbolic of the commitment to and growing depth of its clinical program. Housing the AIDS Legal Project and Children's Education Law, Community Enterprise, and Low-income Taxpayer Clinics—bringing the four “live client” clinics together for the first time—the space has well-appointed meeting and reception areas, offices for clinical faculty, client interview rooms, and a spacious work area with computer stations exclusively for clinic students. The clinics operate as a unified program, essentially as a public interest practice.

“You walk through that glass door and it's truly like a firm,” says Lauren Donner Chait '06, who was enrolled in the AIDS Legal Project in the fall semester. “Now that all the student work stations are together, it's a whole sphere of confidentiality,” she

adds, explaining that it facilitates collaboration and support among students without compromising the confidentiality that is essential to all lawyer-client interactions. Donner Chait likens the relationship of clinic students and their supervising attorneys to that of associates to partners.


Adds AIDS Legal Project Director and Clinical Professor Carolyn McAllaster, the new space conveys a sense of professionalism to clients as well as students. “Our clients have an enormous sense of pride, coming to a real law office.”

“When we were designing the new wing, the decision was made that if our clinics were brought together, there would be some synergies between them—the clinical faculty could work together and ensure that the whole of what we were offering in terms of the clinics would be greater than the sum of its parts, and that any one clinic would be better as a result of having other models close by,” says Bartlett. In fact, coming together has reenergized the clinical faculty, says McAllaster, whose clinic is now in its eleventh year.

“It's really stimulating to be working with a whole group of people who have similar goals.”

One of those common goals is to become a national leader in teaching clinical skills. Equipped with state-of-the-art technology, the clinic wing boasts cameras in the conference and interview rooms, and video monitors in all faculty offices. Thanks to a technology fellowship grant from Duke's Center for Instructional Technology, clinical faculty are in the midst of year-long training that will put them at the forefront of using video technology in teaching clinical skills, such as interviewing, in an efficient and effective way.

“The technology allows us to observe students as they learn and practice skills in different ways than do our traditional role-



play exercises,” says Clinical Professor Jane Wettach, director of the Children’s Education Law Clinic. She and her colleagues are concentrating on breaking down the interview process into subskills, such as building rapport and trust, asking the right opening question, following up effectively to elicit important details, reflecting the client’s feelings, and engaging the client in the resolution of the problem. “With the subskills identified, the process of critiquing can become more specific and deliberate,” says Wettach.

“As a faculty, we are reconsidering the way we teach interviewing and the skills we want to impart to students. It is forcing us, as teachers, to overcome any complacency we may have in our teaching, and help students avoid complacency about their own skills.”

“Our goal is to help students develop as far as they can in a semester, and also lay the groundwork for an internal mechanism of self-teaching and self-learning,” adds Foster. “We hope that when students get out in practice they don’t get to a place of basic competence and stop, but keep trying to do better—by finding mentors, or challenging themselves to improve their skills as a lawyer by learning substantive law, or becoming a better listener, drafts person, counselor, or whatever is appropriate to their practice.”

### SERVING SOCIETY, SHAPING PROFESSIONALS

While they deal with distinct substantive issues, all of Duke’s legal clinics offer the same opportunity to upper-year students: a chance to sharpen practical skills in a way that profoundly helps underserved communities. Duke Law clinics don’t need to look far for clients; each fills a regional void for affordable legal services in its area of specialization, as scores of appreciative clients and community service providers will attest.

“I’ve found the AIDS Legal Project to be an invaluable service for people who need expert advice and advocacy,” says Dr. John Bartlett, who directed Duke Hospital’s Infectious Diseases Clinic for 17 years. “Many of our patients are impoverished, and they may have a history of difficult relationships with authority. The sensitive, caring, and expert support that they receive from the Project has been tremendously helpful.”

“The Children’s Education Law Clinic really serves as a voice for parents and students, who generally don’t understand the educational or disciplinary process at play when a kid violates a rule at school, and don’t know what educational services are available to them,” says Sandra Jenkins\*, who has been represented by a law student in disputes involving her son’s special education services and school suspension.

Brenda Berlin, supervising attorney with the Children’s Education Law Clinic, hopes clinical work instills a sense of professionalism in students that encompasses a commitment to ongoing public interest work.

“I want students to think a lot about what it means to be a

lawyer and what kind of lawyer they want to be, and I want them to develop the professional skills that will enable them to be that kind of lawyer. I also want their eyes and minds to open up to the need for lawyers at all levels of our society. We don’t expect our students to all go out and become public interest lawyers, but I hope they will always be open to serving those people in society who don’t have advocates and can’t afford to have advocates.”

That’s the primary lesson Lei Mei ’05 says he derived from his semester in the AIDS Legal Project. Although he appreciates the solid legal skills he gained in interviewing and developing cases, which he finds highly useful in his current work as an intellectual property lawyer, it is the importance of pro bono work that has stayed with him.

“WHEN WE WERE DESIGNING THE NEW WING, THE DECISION WAS MADE THAT IF OUR CLINICS WERE BROUGHT TOGETHER, THERE WOULD BE SOME SYNERGIES BETWEEN THEM.”

Dean Katharine Bartlett

“I’m pretty sure that most clinical alumni will make a long-term commitment to doing pro bono work in the future. The practical skills are great, but the Law School has an obligation to train future lawyers to be ‘citizen lawyers,’ as well.” Concerned about the growing AIDS epidemic and lack of legal services for people facing the disease in his native China, Mei was instrumental in

arranging McAllaster’s 2005 trip to meet with clinical faculty and students at Peking University’s law school.

Jesse Smallwood ’04 admits that he signed up for the Children’s Education Law Clinic solely for skill-building purposes; with plans to become a litigator following a federal clerkship—he started practice with Williams and Connolly in Washington, D.C. in January—he wanted to gain some solid experience representing people and trying cases.

“From the legal experience, I gained a great respect for and enjoyment of pro bono work,” he says. “I learned a lot about the responsibility of practicing law and the importance of paying attention to the smallest details in handling a case and representing a client. But it was incredibly gratifying to see theories learned in class translate into practice and reality—to see what good these theories can come to when applied correctly in a real life case.”

Last year Heather Holloway ’05 won a national award for her representation, through the Children’s Education Law Clinic, of a high school senior who faced permanent expulsion from school for an incident that occurred off school property. Having taken the case through an evidentiary hearing, and appeals to the Board of Education and state Superior Court, Holloway, now clerking for the New York Supreme Court, Appellate Division, Fourth Department, says the experience changed her career plans. Having been headed for a transactional practice, she now hopes to pursue a career in civil rights, perhaps as a prosecutor.

“In the end, I really got to see what I could do, and had the benefit of great supervision,” says Holloway who promotes a clinic experience to any law student who will listen. “Why not take the time and opportunity to think about what you really want to do with your law degree—focus in and focus your life before you leave law school and don’t have anyone there to support and mold you?” ♣

\* Client’s name has been changed to protect confidentiality.

**M**errill Hoopengardner '04 practices community development law with Nixon Peabody in Washington, D.C., working in a practice group that specializes in tax credit syndication. Many of her clients are investors in federal tax credit programs intended to spark development of low-income housing, rehabilitate historic areas and structures, or raise capital to make investments in low-income communities. She also assists clients in applying for allocations of tax credit authority from those programs, with a particular focus on the New Markets Tax Credits (NMTC) program.

Hoopengardner credits the experience she got as a student in Duke's Community Enterprise Clinic with allowing her to hit the ground running in practice. Having first studied community development law as a 2L in Clinical Professor Andrew Foster's class on the subject, she spent her entire third year in the Clinic working with clients, under Foster's supervision, many of whom

between the Clinic and the firm was a win-win situation for everyone concerned, she says.

"The client got the benefit of big firm representation, and the student involved, Lauren DeSantis ['06], got exposure to the bigger policy issues and things we were coming across working on 20 or 30 applications at the same time. She did the ground level work, got a lot of client contact, and helped them gather the information they needed to put in the application. We were able to address broader questions of strategy and offer advice on how the information should be presented in the application."

DeSantis was thrilled with the experience, which included drafting numerous spreadsheets relating to Initiative Capital's performance and prospects, resolutions, operating agreements, and tables, as well as analysis of census tract data. "It was extremely challenging," she says, noting that her Clinic experience helped her secure a position at Polsinelli, Shalton,

Welte & Suelthaus in Washington, D.C., where she will be working on commercial and real estate transactions for non-profit corporations. "I had a chance to experience what lawyers active in community development finance do on a daily basis."

#### **ENTREPRENEURIAL CLIENTS, EVOLVING PRACTICE**

Having a clinical focus on transactional community development work is itself quite unique among elite law schools, says

Hoopengardner. She commends Foster for attracting a particularly complex range of work to the Clinic; many clients are undertaking ambitious initiatives that allow students to build skills that they can take into any corporate practice, well beyond the standard fare that other transactional law school clinics offer, such as tax filings and drafting of articles of incorporation.

"The legal services we provide are a reflection of what our clients are doing, and many non-profits have diversified," says Foster. "Non-profits are becoming more entrepreneurial, in part because sources of funding are drying up, and in other respects in an attempt to make their work more effective. As they start to do business differently, new legal challenges arise." Students are being called on to analyze whether new social enterprises are outside the specific and defined charitable purposes that might threaten an organization's 501(c)3 tax exemption, set up subsidiary companies, or spot potential conflicts of interest within the organizational structure. On an ongoing basis, notes Foster, the clinic takes on the role of outside general counsel to its clients' complex and evolving projects.

This has been very much the role the Clinic has assumed with a Winston-Salem community development corporation, Goler CDC, in its attempt to revitalize an inner city neighborhood into a diverse, multi-age, multi-ethnic community. With various real estate projects, multiple investors, and joint ventures involving various subsidiaries, Goler CDC found itself using a number of North Carolina attorneys and firms on its projects, says Executive Director Evon Smith.

"Attorneys in firms usually specialize in specific areas.

## **COMMUNITY ENTERPRISE CLINIC INVOLVES STUDENTS IN CUTTING-EDGE TRANSACTIONS**

were non-profits involved as end users of the tax credit programs in which she now specializes.

"It gave me the opportunity to develop extremely relevant skills and a leg up that I couldn't have gotten anywhere else," Hoopengardner says, noting that at her firm she has been given significant amounts of responsibility and client contact, and has had the opportunity to speak on NMTC issues at several national conferences.

Her specialty has also given her a sense of the true value of students' work to clients. A non-profit seeking an allocation of funds through the NMTC program, she explains, must assemble a detailed application—often in excess of 100 pages—that includes development of a business plan for the use of the funds, an analysis of the community impact of the allocation, and a lengthy discussion of the management capacity of the organization, and the capacity of the organization to raise private capital.

"It's an intricate application process, involving a lot of time on the part of a lot of people, not to mention a highly competitive one," notes Hoopengardner, adding that consultants and law firms typically charge between \$50,000 and \$100,000 for related work, a price many organizations simply can't afford.

That's why Hoopengardner was delighted to partner with the Community Enterprise Clinic in helping one of its clients, the North Carolina Community Development Initiative Capital, Inc. ("Initiative Capital"), a non-profit lender, apply for a \$40 million allocation from the NMTC program with a view to investing in poor communities throughout the South. Dividing the work

Sometimes our work requires a broad range of knowledge—it's not just a real estate deal or an issue of organizational development that we're dealing with. We may need contracts to forge partnerships and relationships that are separate from just a straight real estate deal. We can end up paying for little pockets of legal services from attorneys who may never talk to one another or understand how everything needs to be integrated for the benefit of our organization.

"The Community Enterprise Clinic understands the integration. They make sure the legal advice is not given in a vacuum without somebody there to analyze the overall impact of the information. The Clinic brings everyone to the table to talk about how this is going to benefit the organization overall. That minimizes our fees significantly."

#### NEW OPPORTUNITIES IN ADVOCACY INITIATIVES

The Clinic is also increasing its involvement in economic justice advocacy work, says Foster, helping non-profits do shareholder proposals for financial services companies, both to help eliminate predatory lending and promote diversity in mainstream lending. This work is supported in part by a two-year grant from the Racial Justice Collaborative, shared between the Clinic and a client, the Community Reinvestment Association of North Carolina (CRANC).

"This is a sophisticated advocacy strategy for facilitating social change that is possible in part due to the legal assistance we get from the Community Enterprise Clinic," says CRANC Executive Director Peter Skillern.

"Nationally there are just a handful of lawyers who work with non-profits on shareholder resolutions, and their fees are prohibitive," notes Skillern, who uses the Clinic on an ongoing basis on corporate governance matters, legislative advocacy initiatives, and some legal issues related to its novel "telenovela" initiative, production of a Spanish-language soap opera that weaves consumer education into entertainment. "One of the great strengths of the Community Enterprise Clinic is that it enables community groups to access lawyers without the barriers of economics and politics. And the students are smart, always thinking outside the box on business."

John Wroldsen '06 worked with Skillern during the fall semester on a shareholder initiative allowing CRANC to object to the merger of one bank with another that engaged in predatory lending. Wroldsen also did the securities work for a start-up Raleigh investment fund seeking to buy and rehabilitate undervalued properties in underserved communities for rental to mainstream retailers. He feels certain the experience will serve him well when he enters a transactional practice at Rothberger, Johnson and Lyons in Denver following graduation.

"THE LEGAL SERVICES WE PROVIDE ARE A REFLECTION OF WHAT OUR CLIENTS ARE DOING. NON-PROFITS ARE BECOMING MORE ENTREPRENEURIAL. AS THEY START TO DO BUSINESS DIFFERENTLY, NEW LEGAL CHALLENGES ARISE." Andrew Foster

"In addition to learning how to write the documents required to facilitate transactions, I was able to learn the process by which corporate decisions are made and had a chance to take charge of a project from beginning to end—working through all the details, communicating with the client on a personal level, and dealing with varied legal issues."

The Clinic was recently awarded a \$100,000, two-year grant from the Z. Smith Reynolds Foundation to provide a variety of legal services to innovative non-profit organizations working to stimulate economic activity in low-wealth communities in

North Carolina. This project may diversify its work further, specifically allowing it to identify and address the structural barriers in federal or state tax law that hinder the efforts of enterprising non-profits to address critical community issues, says Foster.

"We hope to identify a series of organizations, like CRANC, that are really at the forefront of the movement of social enterprise in community economic development, to help them



Virginia Frasure '06 confers with Community Enterprise Clinic Director Andrew Foster

understand the current rules of the game, and ensure that they are complying with those rules. At the same time, we will also work with them to identify where the rules create barriers that make it harder to effectively do the work they need to do, and from that, develop and advocate for public policy solutions," says Foster, offering by way of example the possible need for specific guidance from the Internal Revenue Service for community development organizations that are doing economic development work, including, potentially, the creation of a new class of exempt organizations.

"At the end of this process, I hope there is a lot more clarity, and that it is much easier for community development organizations to be entrepreneurial and understand how the legal rules create opportunities to be successful, as opposed to limiting their potential." ♡

“Invaluable,” is how Gordon Lipscomb describes the AIDS Legal Project. A clinical social worker in Duke Hospital’s Infectious Diseases Clinic, Lipscomb has been referring patients with legal issues relating to HIV and AIDS to the Project since it was established at the Law School in January 1996.

Without the Project, says Lipscomb, many of his patients would have nowhere to go for end-of-life planning, such as wills, health care powers of attorney, and standby guardianships that allow HIV-infected parents to make permanent plans for their children, all matters routinely handled by law students. Nor would they find a greater source of expertise on issues relating to HIV and AIDS, he adds.

“There are few people who have the expertise to appeal a

McAllaster to start the AIDS Legal Project 10 years ago. Doing so has proven highly educational for students, in terms of teaching superb research, advocacy, and drafting skills, as well as those pertaining to relationship-building, legal ethics, and compassion that mark truly great lawyers.

“We win disability cases with exceptional legal work. It is the ‘value added’ that we put into the case that is the key to success,” says Rice. In the process of reviewing a doctor’s affidavit, drafted by a student to support a benefits appeal, she points out that it has to precisely address myriad issues before an individual with HIV will be considered disabled by the Social Security Administration.

“It’s extremely challenging to acquire expertise and understanding of a particular client’s medical condition and situation, have an intelligent conversation with a doctor, and then draft an affidavit for the doctor to sign off on.” Doing so involves skills that are “totally relevant” to practice, adds Rice. “Students learn evidence—what can a witness, lay or expert, say, how to lay a foundation for the evidence, and how to provide concrete detail to support conclusions that the witness is making.”

Julie Riewe ’99 says that in her work as an investigator in the enforcement division of the Securities and Exchange Commission she puts to daily use skills she first learned during a semester in the AIDS Legal Project, handling disability appeals, among other matters.

“It was there I learned how to conduct an investigation—how to be persistent, track down the client, the doctors, and whoever else we needed to help build a record, and then take that information and translate it into a persuasive piece for a court. That’s exactly what I do now in conducting investigations and making recommendations to the Commission as to whether or not it should bring an action, based on the facts.” Riewe further credits her clinical semester with teaching her the importance of taking ownership of her cases. “I learned quickly that you have to be proactive. You can’t be waiting for someone to tell you what to do.”

#### MEETING NEW LEGAL NEEDS

When she started the AIDS Legal Project in 1996, “people were dying more quickly of AIDS,” recalls McAllaster. End of life matters, including helping clients sell their life insurance policies, made up a large portion of the Project’s caseload. The legal needs of people with HIV and AIDS have changed considerably as new antiretroviral drugs have shifted HIV from a death sentence to a chronic, though certainly life-threatening, condition says McAllaster.

“While standby guardianships, health care powers of attorney, wills, and living wills are still central to what we do, we now handle many more cases in the benefits arena for people who are returning to work and need to figure out how to do that without losing Medicaid and Social Security benefits. We’ve become experts on the return to work rules.”



## THE AIDS LEGAL PROJECT TURNS 10

disability case where HIV is the issue, that [Clinic Director] Carolyn McAllaster and [Supervising Attorney] Allison Rice do. As important is the determination with which they and their students fight for those claims.”

Lipscomb recalls their work in pursuing a \$50 monthly disability stipend from a patient’s former employer, a large corporation. “I don’t think any private attorney would spend the time and effort it took to recover that \$50. Yet for the patient, it meant the difference between living on \$650 per month, which he got from Social Security, and \$700 per month—a huge difference. The company probably assumed it could get away with denying the claim, thinking an individual of such modest means would never have the resources to take it on.”

Clinical Professor McAllaster recalls that case, which two students handled over the course of a year, filing a claim in federal court. Pursuing disability and other benefits claims, primarily through Medicare, Medicaid, and the Social Security Administration, is a staple of the Project’s caseload, says McAllaster, work that has enormous impact on clients’ lives, sometimes making the difference between homelessness and a modicum of stability. She notes that even with the promise of a fee at some point, many private lawyers would be reluctant to represent the clients the clinic does.

“Our clients are difficult. They often have mental illness, substance abuse problems, or a combination of the two, and hanging in there with them can be challenging.”

#### A TERRIFIC TRAINING GROUND

It was serving the unmet legal needs of a highly stigmatized, largely indigent segment of the population that motivated

The Project has taken up two new issues in recent months, the first of which McAllaster calls “the fleeing felon” issue. As of January 1, 2005, individuals with outstanding felony warrants or who have not fully satisfied probation requirements can be cut off from receiving Social Security Disability benefits, as well as veterans’ benefits, including medical treatment. “That’s an enormous hardship,” says McAllaster.

The other issue involves how people with HIV and AIDS will obtain their medications under the new federal program known as Medicare Part D; in the early months of 2006 the program has garnered headlines for literally causing havoc in pharmaceutical access across the country. For some clients of the AIDS Legal Project, the implementation of Medicare Part D will mean having pharmaceutical coverage shifted from a single program, such as the AIDS Drug Assistance Program (ADAP) to one of 39 drug plans available in North Carolina, each of which involves a different co-pay and premium.

As a service to individual clients of the Project and as an outreach mission for the health care professionals that rely on it for advice, advanced clinic student Kara MacKillop ’06 is comparing the ADAP formulary to each of the plans available under Medicare Part D, and will produce guidelines for clients

and caseworkers as to which plans seem to be better. “Nobody else is doing it,” notes McAllaster.

MacKillop is also addressing the fleeing felon issue in her advanced clinic work, trying to identify the parameters of the relevant federal regulation—an amendment to the Social Security Act—and working with case- and health care workers at Durham’s VA Hospital to identify which HIV patients could

be affected, so that Project students can work to clear warrants on a proactive basis to prevent interruption in health care services.

“IT WAS THERE I LEARNED HOW TO CONDUCT AN INVESTIGATION—HOW TO BE PERSISTENT, TRACK DOWN THE CLIENT, THE DOCTORS, AND WHOEVER ELSE WE NEEDED TO HELP BUILD A RECORD, AND THEN TAKE THAT INFORMATION AND TRANSLATE IT INTO A PERSUASIVE PIECE FOR A COURT.”

Julie Riewe ’99

the focus they bring to their cases, and the amount of work they put in—far more than in a regular four-credit course. I’m so proud that they see the value in doing this work, because I am more and more convinced that without a program like this many of our clients, at least, would not have gotten help. They really are on the margins.”

### THE CHANGING FACE OF AIDS

McAllaster is justifiably proud of the high quality legal service the AIDS Legal Project has provided to more than 1,000 indigent clients with HIV and AIDS over the past 10 years. She is quick to pass credit on to the students.

“I am always amazed at



AIDS Legal Project Director Carolyn McAllaster, right, reviews documents with Rebecca Rich ’06

More women are seeking help from the clinic, she notes, many of them African-American, which reflects the current national demographic of HIV and AIDS transmission; 30 percent of newly diagnosed HIV and AIDS patients in the United States are women, 64 percent of them African-American.

“The women tend to be younger and poorer than the men that come to us, and in poorer health—they seem to be sicker and infected earlier.”

The stigma of HIV and AIDS is undiminished, adds McAllaster, and discrimination cases

continue to make up a significant portion of her students’ caseload. “Some people find it permissible to discriminate against someone with HIV or AIDS, through a denial of services, when they would never think it permissible to discriminate based on the color of their skin. Yet we see it every day.”

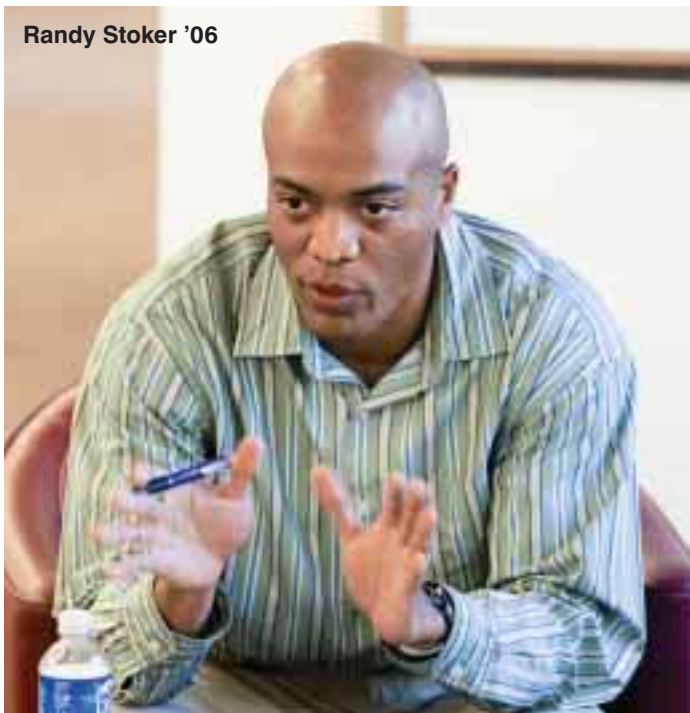
While there are fewer people dying from AIDS, that fact reflects the people who have financial and health care resources, and “have it together” to take their medications. “Many of our clients have so many other problems—poverty, addiction, mental illness—that AIDS is way down on the list for them.”

Many AIDS Legal Project students and alumnae report finding as much lasting value in their experience of engaging with marginalized, stigmatized, and often unreliable and difficult clients, as in the solid legal skills of drafting, counseling, and advocacy.

“Carolyn and Alison did an excellent job of teaching us people skills as well as technical skills,” says Lauren Donner Chait ’06. “We had workshops on interviewing, asking proper questions, and finding ways to connect and communicate with clients, skills I think will stay with me forever.” She also learned to be resourceful in contacting clients who were often homeless. “You figured out how to get in touch with your client as quickly as possible through any means.”

Eli Mazur ’02 recalls meeting with clients in their doctors’ offices—a common occurrence for students in the Project. “Most people with HIV and AIDS don’t have the means or the energy to go to 10 different offices for meetings. And it takes a tremendous amount of work to navigate the administrative law system in order to get disability,” he says. “In assisting them, you can see how you are adding value to that person’s life.” Mazur says that it brought home to him the relationship between law and public policy, now the focus of his teaching and writing at the Fulbright Economics Teaching Program in Vietnam.

Randy Stoker ’06



## THE “POWER OF PAPERWORK”

“The disability, guardianship, and custody cases I worked on often involved huge emotional battles between family members, or between the government and the client,” recalls Mazur. “The wills were a very personal thing. By the time someone dies of AIDS they literally have nothing, but even so it always struck me how calming it was for clients to decide who should get the residual of their estate.”

Writing in her clinic journal about some of the lessons she derived from her semester with the AIDS Legal Project, Angie Heywood Bible ’06 also noted what she called “the power of paperwork”—the honor that

certain clients obviously felt at having someone ask them about their end of life wishes regarding their health and possessions.

“Some of our clients have already reached the point where they don’t think their lives are worth anything. But something about sitting down with an attorney (or student) who stresses to them that they need to think about their end-of-life planning makes them feel worthwhile, like someone out there suddenly believes they’re valuable. I noticed this most in working with Georgia S.\* You would have thought I’d given her money by the way she handled her documents. When I told her she needed to think about talking to her health care agent, she seemed startled to think that anyone should want to know about her desires. I really don’t think she’d thought about it before.”

That sort of reaction is reported by many AIDS caseworkers and clinicians who send clients to the Project, or who host Duke Law students on their regular “field trips” to meet with clients outside the Triangle in need of end-of-life documents. Stephanie Bouis, a Duke clinical social worker whose patients often suffer from mental illness, addiction, and HIV—an “isolated and estranged population”—says the honor her clients feel is a tribute to the students’ training, candor, and commitment. “My clients don’t warm up to people they don’t respect. The students really learn to ‘listen between the lines’ to my clients, and have proven to be highly tenacious when they need to be.”

Compassion is key to the whole AIDS Legal Project experience, says McAllaster. “It’s hard to forget people who are down and out when you’ve been through this clinic.” ♡





**W**hen her 10th grader received a year long suspension for kicking a student in a school brawl last September, Sandra Jenkins\* decided to challenge it.

“If the objective is to help kids develop better behavior, long term suspensions don’t work. They don’t help kids with their decision-making,” says Jenkins, a mother of six. “As a mother, I feel stability is key to children’s success. They shouldn’t be removed from a regular and familiar school setting unless they are truly dangerous.” Jenkins is quick to add that she would support anger management and decision-making classes for her

services to address a diagnosed impairment. Although he had benefited from special education throughout elementary and middle school, his “Individualized Education Plan” (IEP) was found to have been improperly discontinued when he entered high school. With the Clinic’s assistance, the school district agreed to provide Donald with a package of individualized education services that will compensate him for those he should have received.

### SOLVING PROBLEMS WITH KIDS IN MIND

All North Carolina children with learning-related disabilities have a right to an appropriate public education, says Wettach.

That right is violated if those disabilities are not properly addressed or if students are improperly barred from their classrooms and schools. A substantial body of social science research, she says, indicates that frequent and long-term suspensions are more likely to encourage than curb anti-social behavior, and should only be used for those students who truly endanger their classmates.

In every case, Wettach makes sure her students understand the urgency of problem solving when something as fundamental as a child’s education is at stake. “Kids need help quickly. This Clinic is about achieving resolutions efficiently, compassionately, and competently.”

The Children’s Education Law Clinic has taken that approach to more than 240 cases on behalf of low-income families since it opened four year ago, its caseload dominated by special education and school discipline disputes or, like Donald’s, a combination of the two. In many cases, family, social, and economic issues compound the academic or behavioral problems children may be having in school. For this reason, says Wettach, Clinic students have to be especially vigilant to “drill down” into their clients’ stories through effective interviews, conduct thorough reviews of records, solicit school administrators’ versions of events, and filter information obtained through a deep, substantive understanding of the law.

One client told Philip Mirrer-Singer ’06 that middle school administrators were using her son’s learning disability as a justification for repeatedly suspending him. The boy had very poor grades and was labeled as “behaviorally and emotionally disabled.” Mirrer-Singer recalls questioning his client carefully to clarify what her precise objectives were in the case: to help her

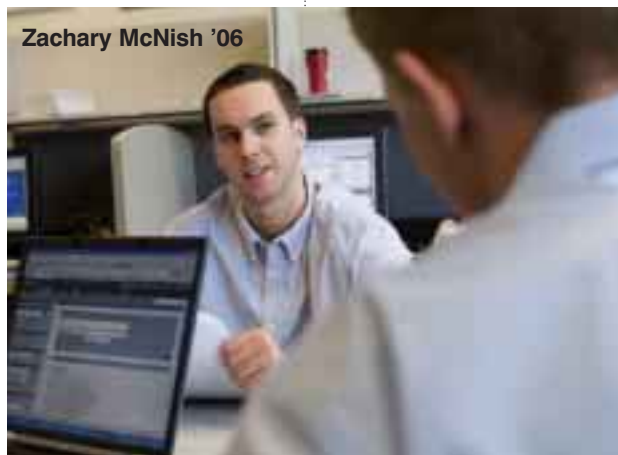
## CHILDREN’S EDUCATION LAW CLINIC TEACHES EFFICIENT, COMPASSIONATE PROBLEM SOLVING

son who, she says, admitted his part in the fight and apologized for it.

Jenkins called Duke’s Children’s Education Law Clinic for assistance. “I don’t have words to describe what a great resource it is,” she says of the Clinic. “We have been able to utilize all of the options available to us. Most parents don’t know they can do anything to challenge suspensions.”

Clinic Director and Clinical Professor Jane Wettach assigned Jenkins’ case to a third year law student, Jeremy Smith, who managed to get her son, Donald\*, into an alternative school while the appeal was pending; by that time he had missed 20 days of school—in Jenkins’ view sufficient punishment for his act. Smith warned Jenkins that her chances of success were slim; the public school system’s rules regarding “multiple-on-one” fights strictly impose a year-long suspension. Jenkins says she appreciated his candor. “Jeremy has had Donald’s best interests at heart from the beginning. His letter to the school board was focused on Donald’s needs, his future, and the impact the suspension would have on him.”

In fact, the school board refused to lift the suspension at the last stage of administrative appeal, and Donald remains at the alternative school. Jenkins admits her disappointment. But she also found “a blessing in disguise” in the proceedings; Smith and Supervising Attorney Brenda Berlin were able to initiate an investigation into Donald’s poor academic performance, which showed he needed—and was entitled to—special education



\* Client’s name has been changed to protect confidentiality.

son do better in school or challenge the suspensions.

"I learned how to approach an interview so that you get the information you really need from the client. You often have to say, 'leaving aside all your personal feelings about how the school handled the situation, what do you think is truly in the best interests of your child?' You have to refocus the client, yet maintain rapport."

When improving the boy's academic performance proved the overriding goal, Mirrer-Singer initiated a series of meetings with his clients and school officials to work out an effective IEP and monitor follow-through. He was able to brainstorm strategies with Wettach and fellow students, as well as graduate students in education from nearby North Carolina Central University who had expertise with behaviorally and emotionally disabled children. Mirrer-Singer also worked to "diplomatically" address the underlying feeling of mother and son that they weren't being treated with respect by school administrators and teachers. "We encouraged them to interact with the child in a way that wasn't simply directive, but that helped him understand why the school wanted him to act in a certain way. It was a highly collaborative approach." It worked, says Mirrer-Singer; though "problems remained," the boy received fewer short term suspensions over the course of the semester.

Elizabeth Avore '06 similarly had to "refocus" a client who was understandably frustrated by his 13-year-old daughter's first-grade reading and math skills; although early testing had uncovered substantial cognitive and learning impairments, they went largely unaddressed for years by the state-run school she attended. Frustrated by the school's lack of response to his repeated complaints and appeals, the father contacted the Clinic, wanting to sue the school and go public with his complaints.

"I impressed on him that the ultimate goal was to get his daughter the services she needed. Negotiating with the school was time consuming, but was going to yield the results she needed much faster than a lawsuit would," says Avore, who will be joining the litigation department of Greenberg Traurig in New York. "I think 'client management' is a big thing I'm taking forward into practice." The power of negotiation is another. "It's easy to assume that litigation is the answer to a lot of problems, but in this case, negotiation worked best. In many ways we were demanding the same things as the parents had, but we knew the law, which strengthened our bargaining position."

### FOCUSING ON NEGOTIATION AND MEDIATION

"We never go into a case assuming that we will sue a school district. We always try to solve problems through negotiation and mediation," says Berlin.

"When an IEP process breaks down it's usually because a

relationship has broken down—oftentimes the relationship between the parent and the school. We try to figure out what the root of the problem is and help mend that relationship, so that when we step out the parent can continue to advocate on the child's behalf. Sometimes we're just acting as a translator, articulating the parent's position in a way the school can understand, and then negotiating a suitable solution."

Nancy Spencer, director of legal compliance for the Wake County Public School System's special education services, often

finds herself across the table from Clinic students and supervisors, yet commends their work, noting that students come to meetings well prepared and clearly committed to their cases.

"For the most part, we work very well together. We service 18,000 exceptional children and 140 schools, and it's hard for us to know [everything]. They have brought cases to our attention that I'm very grateful they did." There are times, she adds, "when we have to agree to disagree."

Those sentiments are

echoed by Ann Majestic '82, who heads the education law practice at Tharrington Smith in Raleigh, representing many of North Carolina's largest school boards and districts, including Wake County's. Majestic says she appreciates and shares the Clinic's approach of "striving for solutions."

"We have been able to come up with constructive solutions to the disagreements between schools and parents," says Majestic, adding that she never welcomes litigation and disputes against the school system. Still, she commends the Clinic's "great service" in representing families of lesser means.

"In my practice over the years, most of the parents of special education students who have brought complaints were middle- or upper-middle class. Poor students make up a good portion of special education students, so I think it's wonderful that there's a place for them to turn."

As an alumna, Majestic appreciates the training the Clinic offers students in negotiation and advocacy.

"Every opportunity a student has to open their mouths and advocate something is an important training moment. I fear students heading to big firms after graduation may spend a long time before they step up, stand up, and advocate something in an adversarial setting. Having that experience in a supervised setting is wonderful."

### TRAINING EFFECTIVE ADVOCATES

That is exactly what Heather Holloway '05 got with a case she handled throughout her third year of law school. Her client, a high school senior, was found to have homemade firecrackers in his car during a routine traffic stop; first charged by Raleigh

"EVERY OPPORTUNITY A STUDENT HAS TO OPEN THEIR MOUTHS AND ADVOCATE SOMETHING IS AN IMPORTANT TRAINING MOMENT. HAVING THAT EXPERIENCE IN A SUPERVISED SETTING IS WONDERFUL."

Ann Majestic '82

Elizabeth Avore '06 and Children's Education Law Clinic Director Jane Wettach meet with clients



CHRIS HILDRETH

police with possessing weapons of mass destruction, the charges were eventually reduced to possession of pyrotechnics.

Although the events occurred off campus and during the summer while school was not in session, the young man, an honor student, faced permanent expulsion from school. Holloway handled his family's challenge of the expulsion through the school system's administrative hearings and appeals, eventually filing an appellate brief to North Carolina Superior Court, at which point the case settled on terms that would allow the boy to complete his high school education.

"I handled every phase of the litigation process as a student, which was an amazing experience," says Holloway, who won a national award from the Clinical Legal Education Association for her representation. She quickly ticks off the skills she gained from the experience: how to "command the room" and take control in a hearing; how to build a case and preserve a record for appeal; how to examine and cross-examine witnesses; how to structure oral arguments; how to craft a persuasive appellate memorandum; and how to negotiate a settlement in her client's best interests. Of enormous value, she says, was learning to establish rapport with her clients.

"I was nervous going into our initial meeting. I wasn't sure if they were going to be able to relate to me and trust me, and I wanted to make sure I could relate to them and trust them. Unless they told me every relevant detail, I wasn't going to be able to effectively litigate on his behalf."

After strategizing an approach with Wettach and Berlin, Holloway eased into the interview by making conversation, "showing them that I really cared about them, and wasn't just treating them as a 'case'. After that we got into anything and everything—his case, his background, and family life. As the case progressed, that strong bond of trust really served us well," Holloway observes. "If your clients don't trust you, they won't tell you everything, and if they don't, you can't effectively represent them."

Her Clinic experience gave her a head start in her current clerkship for the New York Supreme Court, Appellate Division, Fourth Department, says Holloway.

"Among other things, I came into this job knowing how to write a 40-page document on law and fact for a judge's review, which is what I do every day in writing reports and recommendations."

Holloway has the highest praise for the supervision she got from Wettach and Berlin, and a lasting appreciation for the Clinic's service to the community.

"Parents come into the clinic afraid to navigate the school system, afraid to advocate on their children's behalf. They don't know the proper services they can legally demand to just get the basic education they are entitled to. Jane, Brenda, and the Clinic students give them a voice, providing them with knowledge and information to help them navigate. It's an amazing service that the Clinic provides to the area, and amazing experience for Duke Law students as well." ♡

# LOW-INCOME TAXPAYER CLINIC HANDLES DISPUTES WITH IRS

**“Y**ou want the tax system to be fair, but it isn’t to many low-income taxpayers without legal representation,” says Lecturing Fellow Alan Weinberg, director of Duke Law School’s new Low-income Taxpayer Clinic. “There are many horror stories out there, which means there are many situations where we can assist those who need help but cannot afford it.”

The Low-income Taxpayer Clinic opened in January, with an initial staff of four law students who are representing clients in tax disputes pending before the Internal Revenue Service (IRS), under Weinberg’s supervision. Weinberg has almost 40 years experience in tax law, 29 of them as counsel for the IRS, and another 10 with Ernst & Young.

“There are many ways to present a client’s case to the Service,” says Weinberg. “Students are learning to negotiate with the IRS, which will provide them valuable skills to bring to a practice.”

The Clinic offers an essential, free service to a group of taxpayers who would not ordinarily be able to afford representation—single individuals with incomes of up to \$25,000 and couples with children and incomes slightly more than \$38,000. Common disputes handled by the Clinic include collection actions and IRS examination of filed returns.

“Nobody should go to an IRS audit without representation,” says Weinberg. “Effective representation before the Service starts with a thorough client interview, gathering all the facts and documentation, and performing thorough legal research.” If a client further challenges adjustments made by the IRS following an audit, students will handle appeals, first to the Appeals Office of the IRS where a negotiated settlement is possible and, if necessary, to the United States Tax Court.

Low-income taxpayers are often at a disadvantage when facing an audit, says Weinberg. “Many will have had their returns prepared by storefront preparers, who will have disappeared by the time the taxpayer receives notice of an audit. If, as is often the

case, a client hasn’t retained receipts and documentation to support the numbers on the return, it will be up to the students to work with them to develop secondary evidence to the greatest extent possible. The students will then negotiate with the IRS agent to resolve the case quickly.”

Weinberg anticipates that collection cases involving “innocent spouses” will be a significant source of work handled by the Clinic. “The IRS looks to spouses with assets such as houses and bank accounts to satisfy tax levies—in most cases it is a joint and several liability. When a client comes in with a collection issue, the question is whether that individual is truly liable for the tax. First, students have to assure themselves that the IRS processed the case correctly. If they determine the tax is due, they will have to ferret out whether or not the individual who comes in with a collection problem qualifies for an ‘innocent spouse defense.’”

Weinberg anticipates that another significant part of the Clinic’s caseload will involve IRS challenges to payouts under the Earned Income Tax Credit (EITC), for which \$34 billion was claimed in the 2003 tax year. “The IRS challenges the payouts under the EITC because there has been a history of fraud associated with these claims,” he says. “Our students are going to have to understand the complex law which determines whether a taxpayer meets the qualifications for claiming the EITC, understand what documentation is required to prove a claim, and be able to recognize situations where the client could have made a claim but didn’t.”

Douglas Britt ’06 was starting his first assignments with the Clinic at press time. Headed for a litigation practice at Dechert LLP in Washington, D.C. following graduation, Britt is enjoying client contact. “I enrolled in the Clinic because it provides a great opportunity to develop real world lawyering skills while also helping people in the community.”

A grant from the IRS helped launch the Clinic. ♡

“STUDENTS ARE LEARNING TO NEGOTIATE WITH THE IRS, WHICH WILL PROVIDE THEM VALUABLE SKILLS TO BRING TO A PRACTICE.”

Alan Weinberg



Low-Income Taxpayer Clinic Director  
Alan Weinberg



Interviewing at Raleigh's Smith, Anderson, Blount, Dorsett, Mitchell & Jernigan, the firm she will be joining this summer, Kelli Ovies '06 was delighted to find that the associate she was meeting shared her interest in animals and animal law. Ovies hopes to build a pro bono practice around animal law cases in her future career and says she chose Duke Law School in part because it offered a class in the subject, taught by Charles L. B. Lowndes Emeritus Professor of Law Bill Reppy. Having taken Reppy's class as a 2L, Ovies is now getting a taste for the field as a member of the inaugural class of Duke's Animal Law Clinic.

Funded through the \$1 million Bob Barker Endowment for the Study of Animal Law and directed by Jeff Welty '99, the Clinic functions on an outplacement model, matching students with lawyers and organizations handling animal matters.

The students' field placements reflect the enormous range of issues involved in animal law, says Welty, who points out that it cross-cuts a number of substantive legal fields.

Students are currently involved in drafting a new animal control ordinance for Lee County, North Carolina, aiding the prosecution of a high-profile animal cruelty case there, handling the transactional work needed to establish a non-profit foundation for the North Carolina Veterinary Medical Association relating to animal welfare, and working on "impact litigation" with the National Humane Society of the United States.

Welty handles veterinary malpractice cases in his own Durham practice that focuses primarily on criminal defense work in capital and serious federal felony cases. His interest in animal law was nurtured by Reppy during law school and in the years following. "Bill gets a lot of calls on these issues, and has encouraged me to take cases on and to come back and work at the Law School." For his part, Reppy calls Welty "one of our most outstanding graduates." The two are co-organizers of an April 7 symposium on animal law sponsored by *Law & Contemporary Problems (L&CP)*; Welty's article on the federal Humane Slaughter Act will be published in the resulting *L&CP* symposium issue.

An advocate of clinical education, Welty took part in the AIDS Legal Project and Criminal Litigation Clinic



**Animal Law Clinic Director  
Jeff Welty '99**

as a 3L. "It was great to have actual clients and begin to assume the lawyer's role," he says. "Since my practice is mostly criminal defense, from day one I had client interactions. Having already had some experience working with clients and organizing and building up an actual case was critical for me." The Animal Law Clinic will offer similar opportunities to students, he says, adding that some ethical issues they confront may be unique to animal law.

"Your client is a person, but your driving interest in the field is your interest in animals. There is an ethical issue to address regarding what happens when the interests of those two parties conflict. From there, the skills that students build will depend on their placements, and their placements depend on their interests."

Welty makes a clear distinction, often overlooked, between animal rights, which in its most expansive meaning implies a special legal standing for animals apart from the traditional notion of property, and animal welfare,

which deals with the well-being of and prohibition against cruelty to animals. Clinic students are being exposed to a wide range of perspectives through guest speakers, including animal rights activists and the veterinarian who monitors Duke University's

compliance with laws governing the use of animals in research.

"Most of the clinical placements have nothing to do with animal rights but are efforts to protect animals through conventional means," says Welty, using the Lee County placement to illustrate his point. "A good, modern animal control ordinance is an important tool for public safety and animal welfare and has nothing to do with animal rights."

Although television personality Bob Barker made endowments to five law schools nationwide to be used in some aspect of animal law, Duke is the only one to establish a clinic. That was a prime attraction of the Clinic to Ben Stark '06 who will be heading for a job as a trial attorney with the Department of Labor's Honor Program in Atlanta following graduation.

"It's like getting into intellectual property law just as the internet was starting up—new and dynamic." ♡

## ANIMAL LAW CLINIC LAUNCHED



# DEATH PENALTY CLINIC AIDS UNDERSTANDING OF CAPITAL PUNISHMENT

**O**n a late January afternoon, Professor James Coleman has some good news to share about the death penalty. Not only did a newly released American Bar Association report recommend that Georgia halt executions based on what it called a flawed administration of the death penalty—accepting all recommendations of a steering committee that he chairs—but a North Carolina death row inmate was granted a new trial.

In 2004, Duke Law students enrolled in Coleman's Death Penalty Clinic had worked on the case of Charles Walker, who was then scheduled for imminent execution for a 1992 murder. Walker had been convicted on the testimony of co-defendants without any body or physical evidence linking him to the murder, Coleman explains. Clinic students researched and briefed the issue of whether, in Walker's case, the judge should have instructed the jury to consider the death penalty independently for each co-defendant.



Professor James Coleman, Jr.

"CLINICS GIVE YOU AN APPRECIATION OF HOW THE LEGAL SYSTEM WORKS. STUDENTS WHO HAVE GONE THROUGH ONE INEVITABLY BECOME BETTER CITIZENS, NO MATTER WHAT KIND OF LAW THEY PRACTICE."

Professor James Coleman, Jr.

Walker received an 11th hour stay of execution in 2004, and on January 30, 2006, won the right to a new trial, based on evidence found to have been withheld from his defense lawyers, a claim separate from the one the Clinic addressed. "But the sort of claim we were making is one that can be raised at the new trial," says Coleman, clearly elated.

Coleman is one of the foremost experts on the death penalty in the United States and his Death Penalty Clinic, which helped to revive clinical education at the Law School in 1995, is well known for leaving a lasting impact on its alumni. It will return in the Fall 2006 semester after a year's absence from the curriculum. Students will again have the opportunity to work on clemency petitions as well as other issues relating to how the death penalty is implemented.

"My goal has always been to educate students about how the death penalty is actually administered. I want them to work on challenging litigation and investigations that provide insight as to how the system works," says Coleman. "The best thing anybody can do is get educated as to how it works, and engage in honest discussion. People can then make up their own minds."

Mental retardation issues are likely to come before students in the revived Clinic, says Coleman. While the Supreme Court declared it unconstitutional to execute mentally retarded inmates in its 2002 decision in *Atkins v. Virginia*, "there are a lot of unresolved issues as to how that decision is implemented."

Coleman notes that the Clinic is open to—and always attracts—students on both sides of the capital punishment debate. "Students who oppose the death penalty develop an appreciation of the other side, the victims' side." Leslie Cooley '05 says her Death Penalty Clinic experience continually informs her work as an assistant district attorney in Mecklenburg County, North Carolina.

"Not only did it teach me the importance of compassion, but also about the balance of power in the criminal justice system and how important it is to have quality people working to make sure that justice is done. I use what I learned representing individuals who have been mistreated by the system when I make decisions as a prosecutor, knowing that some day they may affect the life of an individual like they did my death penalty clients."

"Clinics give you an appreciation of how the legal system works," says Coleman. "Students who have gone through one inevitably become better citizens, no matter what kind of law they practice." ♡

# ON THE HORIZON: AN INTERDISCIPLINARY ENVIRONMENTAL CLINIC AT DUKE

**D**uke Law faculty have approved the establishment of the Environmental Law and Policy Clinic, a joint undertaking of the Law School and the Nicholas School for the Environment and Earth Sciences. With fundraising in progress, the Clinic could open as early as January 2007.

“It is no exaggeration to say that Duke is developing into the leading academic institution in the world for environmental studies. Establishing an environmental clinic is a fundamental piece in this development,” says Professor James Salzman. “We have top flight faculty in all areas of environmental health, law, and policy, and we are starting to attract more and more students to Duke because of our environmental strengths. The joint degree program between the Law School and the Nicholas School probably has more students than any other top law school.”

The \$70 million gift to the Nicholas School from Duke Board of Trustees Chairman Pete (T’64) and Ginny Nicholas has made possible the hiring of additional environmental faculty across the University—including Salzman, who holds a joint appointment at the Nicholas School. The gift also launched the Nicholas Institute for Environmental Policy Solutions, headed by Tim Profeta ’97, the only environmental policy institute of its kind in a university.

“Experiential learning is critically important for training the next generation of environmental leaders. It’s one thing to write a paper for a class and talk about hypothetical issues that arise in environmental conflicts, but it isn’t the same as solving real problems for real clients,” says Salzman.

“A hallmark of environmental work is that it is interdisciplinary,” he continues. “Environmental scientists and lawyers do things differently, view the world differently, and ask different questions. Yet their separate expertise in law, science, and policy has to come together to meaningfully address environmental issues.”

There is no shortage of those in the Southeast, says Salzman. With the highest rate of population growth in the country, the region’s natural environment is suffering loss of open space, watershed pollution, air pollution, biodiversity loss, and myriad environmental health risks, translating to an abundance of opportunities to do hands-on work that teaches while strengthening environmental protection.

The Clinic will have litigation capability and Salzman anticipates a focus on alternative methods of resolving disputes as well.

“Much of the creative problem solving in environmental matters takes place prior to litigation,” he says. Mediation,

negotiation, conflict resolution, and participatory processes could all be employed. In addition to being transaction designers and litigators, law students could contribute entrepreneurial solutions to environmental dilemmas.

“For instance, if the Clinic was brought into a green-space initiative intended at curbing development at an early stage, we would want to explore a solution in tradable development rights,” says Salzman. “You essentially give up the right to develop in a certain area in exchange for the right to develop elsewhere.”

Brettmy Hardy ’07, a joint degree student, looks forward to having a

clinical option on the curriculum. “Taking part in the problem-solving process helps you to understand all the factors that go into decision-making. I think it would be enormously helpful.”

“Today’s environmental challenges are multifaceted and require multi-disciplinary problem solving,” says John Adams ’62, co-founder of the Natural Resources Defense Council, who will chair the Clinic’s advisory board. “The Environmental Law and Policy Clinic will play an invaluable role in giving students hands-on experience and training in finding common ground among experts and various stakeholders, particularly here in the Southeast which is experiencing such rapid growth.” ♻

“EXPERIENTIAL LEARNING IS  
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Professor James Salzman



Professor James Salzman

ALEX MANESS

# GUANTANAMO DEFENSE CLINIC OFFERS UNIQUE OPPORTUNITY FOR DUKE LAW STUDENTS

**A**t Guantanamo Naval Base in Cuba, ten detainees have cases pending before military commissions. The charges levied against them vary, but include conspiracy to commit attacks on civilians, murder, and terrorism. The small team of military lawyers charged with defending these detainees is being assisted by a platoon of Duke Law students, supervised by Professor Madeline Morris who directs the School's new Guantanamo Defense Clinic.

"There is no case law pertaining to these particular military commissions and very little U.S. case law on military commissions at all," says Morris, who also teaches the Clinic's classroom component. "They have unclear procedures, based on orders and instructions that can't possibly cover all of the complex legal issues involved, and the military commissions will utilize a very porous mix of federal, military, and international law. For all those reasons, assisting the military defense team represents a spectacular research opportunity for our students. They are learning the substance and methodology of these bodies of law, as well as learning the indispensable skill of utilizing diverse bodies of law in the litigation of one case."

The Law School established the Guantanamo Defense Clinic in October 2005, by special arrangement between the chief defense counsel for the detainees, Col. Dwight Sullivan, USMCR, Office of Military Commissions, Department of Defense, and Morris, an expert in international and humanitarian law, who also serves as a legal adviser to Sullivan in her personal capacity. She previously directed the Law School's clinical programs in support of the Special Court for Sierra Leone.

"Our students also have tremendous scope for original legal thought," Morris says. "Those who began work last semester have already devised novel theories which have been aggressively adopted by the chief defense counsel and incorporated into briefs. Given the nature of this enterprise, a critical part of what the students are doing is providing original legal analysis and argumentation based on the diverse yet scant sources of applicable law."

The Clinic grew from six students in the fall to its current enrollment of 24, both to meet client need and accommodate student demand. Students are divided into five teams, with each assigned to a specific case. Team members, under Morris' supervision, review and comment on each other's work on assignments from the chief defense counsel and from the lead counsel in their particular case, and collaborate on briefs and memos.

Major Tom Fleener, a member of the defense team whose client is alleged al Qaeda propagandist Ali Hamza Ahmed Sulayman Al Bahlul, calls Duke Law students "the perfect resource" for the defense.

"This system of justice is really being made up as it goes, and it is hard to be an established practitioner, trying to practice when the rules aren't set," says Fleener, an Army reservist,

former judge advocate, and a federal public defender in civilian life. "As a lawyer, you learn what the rules are and work within the system. Because they aren't lawyers yet — they aren't indoctrinated into the system — the students can be creative, free thinkers coming up with truly novel ideas."

Fleener also calls the students' work "a saving grace" for the military defense team which is sorely in need of resources.

"At least 17 prosecutors, and numerous analysts and paralegals are assigned to the prosecution for the cases currently before the commissions. On the defense side we have four defense attorneys permanently assigned to the Office of the Chief Defense Counsel and a couple of military paralegals.

"We desperately need assistance analyzing some of the incredibly complex issues that exist in the commission cases," Fleener says, adding that while the administration's reasons for establishing "GTMO" as a detention facility and authorizing



"OUR STUDENTS...HAVE TREMENDOUS SCOPE FOR ORIGINAL LEGAL THOUGHT. GIVEN THE NATURE OF THIS ENTERPRISE, A CRITICAL PART OF WHAT THE STUDENTS ARE DOING IS PROVIDING ORIGINAL LEGAL ANALYSIS AND ARGUMENTATION BASED ON THE DIVERSE YET SCANT SOURCES OF APPLICABLE LAW."

Professor Madeline Morris

the commissions may have been sound — "protecting America and gathering intelligence" — the justice system was "an afterthought. The system that is in place is wholly inconsistent with every traditional justice system we've ever seen. It's all new, and it's very, very difficult to navigate when you have such limited resources."





Professor Madeline Morris, center, with Col. Dwight Sullivan, chief defense counsel for the Guantanamo Bay detainees, and Lt. Col. Sharon Shaffer, a member of the military defense team

Fleener’s own client, Al Bahlul, refuses to cooperate with him, but has had his request to self-represent denied by the commission.

“One of the foundations of our justice system, the Sixth Amendment, is the right to serve as your own voice,” says Fleener. “When it’s modified, it’s done so narrowly, on a case by case basis — usually because the defendant is mentally incompetent, disruptive, or too sick to carry out his own defense. Here it’s just a blanket rule. So the issue is whether you can be forced to represent somebody in a system where not only have they fired you and requested that you not represent them, but where the individual has no right to refuse representation at all.” Fleener met with the full Clinic group as well as members of the team assigned to him on January 18 and 19 at the Law School. Chief Defense Counsel Sullivan, as well as lead counsel for other detainees have also met with the Clinic students at Duke.

“We are expecting to intensify the amount of time that counsel spend here at Duke working directly with their teams,” says Morris. “As the proceedings go forward, students may be asked to travel to ‘GTMO’ in the course of their work.”

Coalter Lathrop ’06 worked with Fleener during the fall semester and is continuing to do so through the spring. He says he “jumped” at the chance to be involved with the Clinic as soon as it was launched in October.

“It’s been both educational and challenging to tackle this unique intersection between legal systems—federal, international, law of war—and the intersection of different court systems, and great to work on real briefs and real memoranda that have real consequences at the end of them.

“But my motivations go beyond that,” adds Lathrop. “We’re a country that stands for a number of things, not the least of which are justice in our legal system, control of the absolute

power of our State, and due process. I want to do what I can to make sure that those things are in fact true for [the detainees], whether they are good or bad people, and have that apparent to the world. It’s a real tragedy if this military commission process isn’t carried out in a way that we can defend.”

Those sentiments are echoed by other Clinic students who have been asked by members of the media why they would put time and effort into defending alleged terrorists.

“We are not defending any acts the detainees are alleged to have done, but their rights. The system must be fair, and should be one that will be admirable both now and throughout history. The precedential importance of the commissions is enormous; therefore, the importance of getting the system right cannot be overstated,” says Audry Casusol ’06, who was enrolled in the Clinic in the fall and is now is coordinating student research as its teaching assistant.

“I believe the international and domestic questions that emanate out of the United States’ decision to detain suspected terrorists in Guantanamo Bay are incredibly important,” adds David Thompson, another of the original six Clinic students. “Not only do these issues have bearing on American and global security, but they also have tremendous bearing on the character of American jurisprudence.”

Dean Katharine Bartlett calls the Guantanamo Defense Clinic a great opportunity for students and a good fit with one of the School’s strengths. “We are without doubt one of the strongest law schools in the country in the area of national security law, and we are on our way to being one of the strongest clinical schools as well. This is a unique opportunity for Duke, and I am thrilled that Madeline Morris, with her expertise in both criminal law and human rights, was positioned to be able to take advantage of it.” ♡

# Faculty Focus

## Clark Havighurst: Pioneer scholar in health care law retires

**W**illiam Neal Reynolds Emeritus Professor of Law Clark Havighurst retired last fall after 41 years on the Duke Law faculty. A true pioneer in the emergent field of health care law and policy, he was also one of the first to explore the implications of applying the antitrust laws in health care. His scholarship also includes works on regulation in the health services industry, the role of competition in the financing and delivery of health care, the potential of private contracts to solve problems in the industry, and medical malpractice. But Havighurst notes that it was never his intent to follow his father into legal academia. That he did so was due entirely, he says, to some problems in his lower spine and some U.S. Army fine print.

Havighurst was drafted into the Army (and out of New York law practice) almost immediately after his 1958 graduation from Northwestern University School of Law. A year into his service at Fort Meade, Maryland, he agreed to accept a commission as an Army lawyer, the alternative being a tour of duty in Korea. But he failed the physical for the Judge Advocate Corps due to x-rays of his back—the same reason he had been discharged years earlier from the Air Force ROTC at Princeton. Although he had avoided the Korea duty, the Army refused to discharge him, apparently believing that, as he says, “they had invested too much in me to discharge me at that point. I was fit enough to be a soldier, but not an Army lawyer.”

A friend (whom he describes as “a kind of jailhouse lawyer”) tipped Havighurst off to a Pentagon provision permitting early discharge if justified in “the national interest.” Havighurst found just such urgent business at Duke Law School in the form of a research program in small business studies conducted by then-Professor Hodge O’Neal, with funds from the Small Business



CLARK HAVIGHURST

Administration. Havighurst thus spent the 1960-61 academic year at Duke doing research that resulted in his first book, *Deferred Compensation for Key Employees*, before returning to his New York job at the firm now known as Debevoise & Plimpton.

Havighurst says he was happy practicing financial and securities law when he was asked to return to Duke by then-Dean Elvin “Jack” Latty. While academia hadn’t been in his career plan, he had been impressed during his year at Duke. “I had gotten to know the faculty, and could sense that the Law School was on an upward trajectory,” he says. “Duke was a good university getting better.” He signed on to teach antitrust and regulated industries.

The chance to edit *Law and Contemporary Problems* was a major attraction of the position, says Havighurst, because, unlike today’s young entrants into law teaching, he had not yet established an agenda of scholarly projects. Not only was he drawn

to *L&CP*’s mission, but its founder, the late Professor David Cavers, was “a good friend of my dad’s from Harvard Law School. Moreover, Cavers came to Duke from West Virginia University, where he had succeeded my father on the law faculty.” In addition to serving as editor of *L&CP* from 1965-70, Havighurst has been a frequent contributor, publishing more pages in the journal than any other author since its founding in 1933. In a fitting mutual tribute, *L&CP* will publish later this year a symposium of papers focused on distributive justice issues in American health care. Havighurst is a coauthor of the lead article in the symposium with Assistant Professor Barak Richman.

In a 2004 autobiographical essay he wrote for *Health Matrix*, Havighurst credits *L&CP* with launching his career as a health care scholar. A 1967 *L&CP* symposium he organized in conjunction with Duke Medical School came to the attention of

officials at the Department of Health, Education and Welfare, who then retained him to “start some balls rolling in health law scholarship.” It quickly became clear to him that “the field was one that would reward study from a perspective other than the old law-and-medicine perspective,” Havighurst says.

Among his earliest work was an *L&CP* article on the newly minted concept of health maintenance organizations and an amicus brief in *Goldfarb v. Virginia State Bar*, the Supreme Court’s first application of the Sherman Act to the “learned professions.”

Havighurst also took on tort reform in the early 1970s, proposing an innovative “no fault” system, akin to a strict liability system. “The idea was that there were certain injuries that providers should compensate automatically, taking them out of the tort system altogether,” says Havighurst. “This would create incentives for the system to do whatever is appropriate to minimize such injuries.” Compensating injuries in this way, he says, would cut trial lawyers out of the process, freeing up money to compensate more injuries. He has also argued for allowing private parties to change inefficient tort rules by contract.

It is for his early and enduring advocacy of competition and consumer choice in health care that Havighurst is best known. He has been steadfast in his reasoning: Lack of consumer choice leads to a fundamental unfairness for the majority of lower- and middle-income premium payers. “The expensive coverage they are forced to buy isn’t what they would choose to buy if lower-cost options were available.”

In October 2004, *Wall Street Journal* columnist Holman Jenkins called Havighurst “one of the true sages of the health care debate” for his long-standing challenge to “the systematic hiding of health care costs from those who pay them.” According to Glenn Hackbarth ’77, chairman of the Medicare Payment Advisory Commission, the praise is well justified.

“When Clark first began arguing the case for ‘competition’—as opposed to government ‘regulation’—as the principal tool for allocating resources, it was a novel concept; the prevailing wisdom of the day, in the 1970s, was that health care was so ‘different’ from other goods and services that

government necessarily had to play the lead role.” According to Hackbarth, Havighurst was joined in arguing the case for markets by Stanford economist Alain Enthoven, a speaker at Havighurst’s retirement dinner in November, and physician Paul Ellwood, founder of a think-tank called InterStudy.

“Because of their differing perspectives—an antitrust expert, an economist, and an MD—the trio had slightly different but complementary approaches to the issue. Their impact on the health-care debate was profound. Policymakers in Washington, D.C., and state capitals adopted many of their ideas, although their implementation was often flawed. Many of us engaged in health policy still consider ourselves disciples of this intrepid and innovative trio.”

For his part, Havighurst admits to some frustration that his more radical ideas have not gained traction. “I used to take it for granted that people would see the appropriateness of giving consumers economizing options. I’ve lately come to understand that the whole industry is organized to deny them such choices—to ensure that the money keeps flowing.”

Havighurst, who served as interim dean of the Law School in 1999, is proud of the many collaborations he has undertaken over the years, as well as the careers he has helped launch. “When I had a colleague on hand, I was always most effective,” he says. He is remembered fondly by these colleagues, some of them former students.

“When I think of Clark in the context of my time at Duke, it is with respect to his generosity with his time, the thing a scholar has in shortest supply. I spent many hours in his office, and he tolerated me cheerfully,” says Professor William Brewbaker III LLM ’93, who specializes in health care law and policy at the University of Alabama Law School.

“Clark literally changed my life,” says Hackbarth. “I came to Duke Law without a clear sense of direction. He introduced me to health policy, taught me about health-care markets, and instilled in me a sense of mission, as well as the confidence to challenge the conventional wisdom. After graduation, Clark helped me get my first job in Washington, D.C., then invited me back to Duke to work with him on the Program on Legal Issues in Health Care.

“I have fond memories of those two

years in Durham, working side-by-side with Clark. I will never forget Clark sitting in his office on a Saturday morning, smoking a cigar, eyes twinkling as he carefully crafted language for an article. Clark draws great joy from the process of thinking through an idea, then selecting the proper words to express it. The end result was invariably a finely cut jewel...and a smile from ear-to-ear on the professor’s face.”

“Clark Havighurst gave me my first job in health policy, opening my eyes to previously unglimped interactions of law and health,” says Randy Bovbjerg, principal research associate at The Urban Institute in Washington, D.C., who also worked with Havighurst in the Program on Legal Issues in Health Care. “His support influenced the course of my career, not to mention national policy on healthcare competition and regulation. Over the three years we worked together, I learned to seek out his keen insights... and to avoid his pungent cigars.”

When he presented his former professor with the Law School’s A. Kenneth Pye Award at Reunion 2005, Board of Visitors Chairman Peter Kahn ’76 affectionately recalled Havighurst’s 2000 donation to the Law School, for auction, of his beloved white 1964 Porsche 356C—acquired the same year he joined the faculty. He also especially recalled the friendliness toward students of Havighurst’s wife, Karen. The Pye Award honors a member of the Duke Law community whose work in education reflects the life and ideals of former Dean A. Kenneth Pye—personal integrity, vigorous intellect, and compassion for students.

David F. Cavers Professor of Law Deborah DeMott claims a 30-year friendship with Havighurst based on shared interests in literary fiction, music, and art. “He is someone to whom life and the world have meaning at many levels, and can be both enjoyed and understood at many levels,” says DeMott. “Clark has very strong powers of discernment—he’s a very discerning reader, and listener, and viewer. But he also has an enormous capacity for infectious enthusiasm for things he thinks well of or is excited by.”

Havighurst continues to teach Health Care Law and Policy at the Law School, and to write about injustices in the health care system. In his “retirement” he is also rumored to be tackling Proust. ♡

# Schroeder leads Law School's initiatives in environmental health

**“W**e know from a long history of environmental regulation that it's one thing to have a law on the books, but if you have a poorly designed implementation plan, all the science in the world isn't going to translate into helping people.” Christopher Schroeder, Charles S. Murphy professor of law and public policy studies, is explaining how he and others at the Law School add value to environmental health research at Duke.

“It's fine for a scientist to be doing some pulmonary biological research at Duke's medical center, but how does that translate into a program that the Center for Disease Control or the Environmental Protection Agency or a county public health department might run—a functioning, responsible, reliable, efficient program that delivers the goods?”

Funded by a \$5 million five-year grant from the National Institute for Environmental Health Sciences, Duke University is a designated Environmental Health Sciences Research Center (EHSRC), sponsoring a variety of interdisciplinary investigations designed to improve the environmental health of vulnerable

populations, such as children, seniors, low-income, and minority citizens. Duke's EHSRC is the only one of 33 in the country to include a law and policy component, the “Environmental Policy Research Core,” which Schroeder directs.

originally crafted Duke's successful EHSRC proposal and who now leads the National Institute for Environmental Health Sciences, it only made sense to tap into a unique strength at the Law School in developing a truly cutting-edge program.

“Chris Schroeder has tremendous experience and expertise in environmental health policy, as does [law professor] Jonathan Wiener. It's a very unique area of expertise.

“As scientists, we don't always understand the full implications of our scientific findings in the private sector and in other areas of government. This was a way of creating a more intimate interaction



CHRISTOPHER SCHROEDER

just the basic knowledge and advances in scientific knowledge.”

Schroeder, who also heads the Law School's Program in Public Law and has cross appointments to the Terry Sanford Institute of Public Policy and the Nicholas School of the Environment and Earth Sciences, has a number of research projects ongoing relating to environmental health, in addition to his institutional role as director of the Environmental Policy Research Core. One is an analysis of the federal government's treatment of children's health, in collaboration with a colleague at the Nicholas School. He is also pursuing scholarship relating to his work on a National Academies of Sciences committee considering ethical and legal issues arising from pesticide testing on humans. His work with the Medical Center has stimulated a new project examining the way that science and politics influence each other.

William R. and Thomas L. Perkins Professor of Law, Environmental Policy and Public Policy Jonathan Wiener is working with colleagues at the Nicholas School on an EHSRC project, evaluating the health, environmental, and socioeconomic impacts of alternative strategies to combat malaria.

The disease, to which women and chil-

**“As scientists, we don't always understand the full implications of our scientific findings in the private sector and in other areas of government. This was a way of creating a more intimate interaction between people who understood policy and people who understood health sciences as it related to issues of environmental health.” David Schwartz**

According to Dr. David Schwartz, who

between people who understood policy and people who understood health sciences as it related to issues of environmental health. My view is that policy is one of several ways in which one could apply a research finding to a more applied and relevant area to have a greater impact beyond

dren are particularly vulnerable, causes more than a million deaths per year, 90 percent of which are in Africa.

“Malaria is one of the world’s greatest public health tragedies, if not number one. But strategies to combat malaria, such as spraying DDT on household walls or draining wetlands, may themselves cause adverse health and environmental effects. This is a serious ‘risk-risk tradeoff,’” says Wiener, whose book, *Risk vs. Risk* (Harvard Univ. Press 1995, with John D. Graham), is the classic work on this type of problem. “The international treaty on Persistent Organic Pollutants (POPs) phases out many such chemicals, but allows continued use of DDT to combat malaria until safe, affordable, and effective alternatives are found. Our project aims to help developing countries make good choices amidst these difficult tradeoffs.”

Together with a Duke social psychologist and pulmonary specialist, Assistant Professor of Law Barak Richman launched an EHSRC-funded project in the fall which tests whether adherence to asthma prevention regimens can be improved among minority youth if they and their caregivers receive instructions from minority physicians. The team is producing videos shot with identical scripts and two different actors delivering medical and environmental instructions relating to preventing asthma



JONATHAN WIENER

attacks. Large disparities in respiratory performance across class and race have been attributed both to differences in environmental conditions, with poor and minority children being exposed to larger amounts of dust, mold, and other asthma triggers.

The Policy Research Core offered a

welcome opportunity, said Richman, an emerging scholar in health law and policy, to build on his interests in reforming Medicaid policy. He feels strongly that effective health care policies, especially towards the poor, demand a behavioral paradigm in addition to a medical paradigm.

“Part of my larger argument is that there are a lot of low-cost interventions—many of which are interventions targeted at health behaviors—that can improve health outcomes significantly more effectively than current policies. Some behavioral interventions address the doctor-patient relationship and the role played by trust and support networks. Once we start understanding how pervasive the role of race is, we might be in a better position to harness these relationships to devise creative and effective interventions.

That’s exactly the kind of approach Schroeder is hoping to foster between those he refers to as hard scientists and institution designers.

“It’s easy enough for us to come along after the medical people have made some finding and do a kind of hand-off—take that information and try to design institutions that can effectively ameliorate the adverse health effect that’s just been identified by the researchers. We are hoping instead to establish creative, collaborative



BARAK RICHMAN

relationships so that the integration of that research would lead to even better improvements, and might have a feedback effect on the kinds of research that the hard science people were doing after they came to appreciate the needs of institutional systems. That’s the ambition.” ♡

## Having their say on a changing Court

On campus, in Congress, and in the media, members of the Duke Law faculty were active as the Senate confirmed two new justices to the Supreme Court. Two faculty scholars had a chance to address the Senate Judiciary Committee directly. Senior Lecturing Fellow Kathryn W. Bradley, a former partner and now of counsel at Hogan & Hartson in Washington, D.C., testified in support of the nomination of Chief Justice John Roberts, Jr., on September 15, 2005. On January 13, 2006, Alston & Bird Professor of Law and Political Science Erwin Chemerinsky testified against the nomination of Justice Samuel Alito to fill the seat vacated by retired Justice Sandra Day O’Connor. Excerpts of their testimony follow.

*Excerpt from oral testimony of Senior Lecturing Fellow Kathryn W. Bradley:*

I have been a Democrat since I became old enough to vote. But while the President has not personally won my support, his nominee has my full and enthusiastic support today.

I have known John Roberts since 1990, when I was privileged to serve as law clerk to Justice Byron White. As a law clerk, I watched then-Deputy Solicitor General Roberts argue several cases before the Court. While I was fortunate to see a number of highly skilled advocates that Term, John Roberts stood out in my mind as simply the best.

What made him so effective was his gift for being able to take extraordinarily complex concepts and then explain them in a way that seemed straightforward, even simple, yet never simplistic. His command of the facts and law of each case was impressive, not just because of the level of preparation it revealed, but because it enabled him to anticipate and respond to the concerns of the Court about whatever position he was advocating. ... I believe that in each case his

advocacy aided the Court in its decision-making process, which is precisely what good advocacy should do.

My admiration for John's advocacy skills deepened into a profound respect for his intellect and his integrity during the time we were colleagues at Hogan & Hartson, where I worked with John on a number of appellate and administrative matters. What I remember most clearly, though, are not the details of the cases in which I assisted John, but about times when John's guidance proved invaluable to me, [as it did on a case that involved the defense of a state institution in a suit brought under the Fair Labor Standards Act]. ... At no point during the years I worked with John on this issue did I ever hear him voice anything other than his understanding of the governing precedent and his thoughtful and considered views about what arguments appropriately could be made within the existing legal framework. I certainly never saw any signs that he viewed the case as an opportunity to promote a personal conservative ideology or advance a particular political agenda.

I believe that the qualities I have admired in John Roberts for the last 15 years are precisely those that qualify him to become the next Chief Justice. The mastery of the law he exhibited in oral arguments leaves little doubt that he will be able to find a principled way through the murkiest of constitutional waters. His focus on the facts of the cases and the circumstances of his clients suggests that as Chief Justice he will approach each case on its individual merits. His respect for precedent, with his cautious approach to moving beyond its established bounds, offers reassurance that he will respect the role of *stare decisis*. And his collegiality and congeniality will enable him to lead the Court as Chief Justice with grace and style.

[I]t is fundamentally important to me that the individual liberties of every citi-

zen—including those relating to the right to privacy and the right to be free from discrimination—be fully protected. I could not be here today if I did not feel confident entrusting my own rights and those of my children and their generation to John Roberts for safekeeping.

**“I believe that the qualities I have admired in John Roberts for the last 15 years are precisely those that qualify him to become the next Chief Justice.”**

**Kathryn Bradley**

*Excerpt from written testimony of Professor Erwin Chemerinsky:*

No area of constitutional law is likely to be more important in the years ahead than constitutional challenges to claims of broad executive authority. In recent years, the Bush administration has claimed unprecedented executive power,

including the authority to detain American citizens apprehended in the United States as enemy combatants; the power to engage in warrantless eavesdropping of conversations and electronic communications by American citizens with those in foreign countries; the ability to detain enemy combatants indefinitely in Guantanamo, Cuba, without due process; and the power to authorize torture of individuals.

Thus, a crucial issue before this Committee must be whether Samuel Alito is likely to examine the claims of executive power critically or whether he is likely to be a virtual rubber-stamp approving executive actions. What is striking about Judge Alito's record is that every available indication of his views—from his memos as a Justice Department lawyer, his speeches, and his judicial opinions—points in one direction: Judge Alito is likely to be extremely deferential to claims of executive power and very unlikely to enforce needed checks and balances.

At the risk of saying the obvious, checking executive power was a central goal of the American Constitution.

In this, like every area, the contrast to Justice O'Connor is crucial in assessing the impact of confirming Judge Alito. Justice O'Connor, for example, in rejecting the Bush administration's position that it could detain enemy combatants without due pro-

cess declared that even “a state of war is not a blank check for the President when it comes to the rights of the Nation's citizens.” Similarly, Justice O'Connor voted with the majority in holding that federal courts had jurisdiction to hear the habeas corpus petitions brought by detainees held in Guantanamo, Cuba.

But there is nothing in Judge Alito's record to suggest recognition of the need for limits on executive power. Prior to becoming a judge, Alito worked exclusively in the executive branch of government, in the United States Department of Justice: as an Assistant United States Attorney, as Assistant Solicitor General, as Deputy Assistant Attorney General in the Office of Legal Counsel, and as a United States Attorney. In these capacities, he repeatedly expressed the need for expansive, unchecked executive power.

Since becoming a judge, Alito has given a number of speeches in which he has advocated expansive executive powers...

In a speech to the Federalist Society, in 2001, Judge Alito expressed his view that “the theory of the unitary executive...best captures the meaning of the Constitution's text and structure.” He explained that under this theory, “all federal executive power is vested in the President” and “a vigorous executive is needed.” This theory would significantly increase presidential power and greatly limit the ability of Congress to impose checks on it. This theory requires all executive tasks to be under presidential control and rejects most limits on presidential power. The fact that Judge Alito champions the unitary executive theory is strong indication that as a Justice he would be a consistent vote for executive power.

At this point in American history, replacing Justice O'Connor with Judge Alito likely will mean a significant shift on the Supreme Court in favor of executive authority and against checks and balances. For this reason, and so many others where Judge Alito is likely to bring about a dramatic change in the law, he is the wrong nominee at the wrong time to go on the Supreme Court. ♪

# Faculty Notes

## Sara Sun Beale

FEDERAL CRIMINAL LAW AND ITS ENFORCEMENT (4th ed. 2005) (with Norman Abrams)

2005 Supplement to FEDERAL CRIMINAL LAW AND ITS ENFORCEMENT (3rd ed.) (with Norman Abrams)

2005 Supplement to GRAND JURY LAW AND PRACTICE (2d ed. 1997) (with Bryson, Felman & Elston)

Speaker, "American Academic Perspective on Pending Philippine Anti-Terrorism Legislation," U.S. Department of State Speaker and Specialist Program, Manila, September-October 2005

Consultant, Organized discussion on the prospect of a bipartisan reform of the federal criminal code, Constitution Project, October 2005

Attendee as Reporter, Judicial Conference Criminal Rules Advisory Committee, Santa Rosa, CA, October 2005

Speaker, "Efforts to Rationalize the Federal Criminal Code," Goldstock Criminal Law lunch seminar, New York University, November 2005

Attendee and Moderator, Meetings of the Constitution Project's criminal code reform project, November 2005

Participant, *Scheidler v. National Organization for Women* moot court, Duke Law School, November 2005

Visitor, Duke Law SJD alumni, Taipei, Taiwan, October 2005

## Donald Beskind

Presenter, "Focus Groups and Mock Trials: Research Tools Lawyers Should Embrace," Association of Trial Lawyers of America, Toronto, Canada, July 2005

Presenter, "Focus Groups—How Can They Help Your Practice?" Association of Trial Lawyers of America, Teleseminar, August 2005

Presenter, "New Approaches to Damages," Association of Trial Lawyers of America, Chicago, October 2005

## Francesca E. Bignami

*Creating European Rights: National Values and Supranational Interests*, 11 Columbia Journal of European Law 241-353 (2005)

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

Participant, Civil Society and International Organizations, New Scholarship in International Law Workshop, Harvard Law School, September 2005; International Legal Theory Roundtable, Vanderbilt University Law School, September 2005

Speaker, "The Comparative Law of Civil Society: Interest Groups, Intermediate Associations, or Citizens Groups?" Minda de Gunzburg Center for European Studies, Harvard University, September 2005

Speaker, "Executive Federalism: Effectiveness and Legitimacy," American Society of Comparative Law 2005 Annual Meeting, Honolulu, October 2005

Panelist, "Participation in Rulemaking in the Information Age: Lessons from Europe for the United States," 2005 Administrative Law Conference of the ABA Section of Administrative Law and Regulatory Practice, Washington, D.C., November 2005

Commentator, Rick Lawson's "The Role of the European Court of Human Rights in Preserving Human Rights in a Single Area," Reflexive Governance Seminar, Columbia Law School, November 2005

## Daniel S. Bowling, III

Assisted Living Executive (July/August 2005)

Delivering Tangible Results, in *INSIDE THE MINDS: HUMAN CAPITAL MANAGEMENT* (Aspatore Books, 2005)

Speaker, "Nurturing Talent Wherever It Is," Assisted Living National Convention, Atlanta, GA, October 2005

Speaker, "Excellence in Litigation Management," Network of Trial Law Firms Seminar, Kiawah Island, SC, November 2005

## Curtis A. Bradley

*FOREIGN RELATIONS LAW: CASES AND MATERIALS* (Aspen, 2d ed. 2006) (with Jack L. Goldsmith)

Panelist, "The Legacy of Justice O'Connor," Duke Law School, August 2005

Panelist, "The Global War on Terrorism: Taking Stock," Duke Law School, September 2005

Presenter, "Sosa, Customary International Law, and Federal Common Law," Federalist Society, University of Chicago Law School, October 2005; Federalist Society, Wake Forest University School of Law, November 2005

Organizer and Moderator, Annual Duke-Harvard Foreign Relations Law Workshop, Harvard Law School, October 2005

Organizer and Commentator, Annual International Law in Domestic Courts Workshop, Vanderbilt University Law School, December 2005

## Kathryn W. Bradley

Witness in support of the nomination of John G. Roberts, Jr., confirmation hearings before the Senate Judiciary Committee, September 2005

Presenter, "Current Issues in Ethics: The Fourth Edition of the ACTC Commentaries on the Model Rules of Professional Conduct," 27<sup>th</sup> annual Duke University Estate Planning Conference, October 2005

## Paul D. Carrington

A Mother's Day Salute to Mary Hamilton Houston, 8 Green Bag 2d 235-238 (2005) (with Kenny Ching)

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

*REFORMING THE COURT: TERM LIMITS FOR SUPREME COURT JUSTICES* (editor with Roger C. Cramton, Carolina Academic Press 2006)

Renewing the Supreme Court (with Roger C. Cramton) and Congress and the Court, in *REFORMING THE COURT: TERM LIMITS FOR SUPREME COURT JUSTICES* (Roger C. Cramton & Paul D. Carrington eds., 2006)

Speaker, "An American College of Cardinals? Term Limits for Justices," National Conference on Appellate Justice, Washington, D.C., November 2005

# Faculty Notes

## Erwin Chemerinsky

*Age Discrimination Claims Get a Boost From the Court*, 41 Trial 76-77 (July 2005)

*Constitutional Issues Posed in the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005*, 79 American Bankruptcy Law Journal 571-602 (2005)

*Empowering States: The Need to Limit Federal Preemption*, 33 Pepperdine Law Review 69-75 (2005)

*Empowering States: A Rebuttal to Dr. Greve*, 33 Pepperdine Law Review 91-94 (2005)

*The End of an Era: The October Term 2004*, 8 Green Bag 2d 345-354 (2005)

*Enemy Combatants and Separation of Powers*, 1 Journal of National Security Law & Policy 73-87 (2005)

*Keynote Address: Rehnquist Court's Federalism Revolution*, 41 Willamette Law Review 827-846 (2005)

*The Lower Federal Courts and the War on Terrorism*, 39 Valparaiso University Law Review 607-623 (2005)

*An Abuse of Executive Privilege*, Durham Herald-Sun, October 17, 2005, at A7

*Again, Bush Ignores the Constitution*, Durham Herald-Sun, December 22, 2005, at A7, reprinted in *The San Diego Union-Tribune and Sun-Sentinel* (Fort Lauderdale, Florida)

*Consider Court Nominees Together*, Durham Herald-Sun, September 11, 2005, at A11 (with James E. Coleman, Jr.)

*In Wake of Deep Throat Saga, Need for Federal Shield Law Clear*, Rocky Mountain News, June 4, 2005, at 13C

*Judges Do Make Law — It's Their Job*, USA Today, August 24, 2005, at 11A (with Catherine Fisk)

*Justices' Opinions Make Future of Establishment Clause Unclear*, Daily Journal, July 18, 2005

*A Key to Escaping Capital Punishment*, Raleigh News & Observer, December 15, 2005, at A21

*Let the Grilling Begin*, Los Angeles Times, July 13, 2005, at B13

*Memos, Briefs Give Democrats Reason to Oppose Nomination*, Daily Journal, September 15, 2005

*Mothball Gitmo, Not Detainees*, Raleigh News & Observer, July 24, 2005, at 23A (with Stephen Yagman)

*Myths About Judicial Selections*, The Record (Bergen County, NJ), July 15, 2005, at L09

*The O'Connor Legacy*, 41 Trial 68-69 (September 2005)

*Once Again, Just Too Conservative*, Los Angeles Times, August 31, 2005, at B13

*Reality Takes Precedence in Naming Justice*, The Times Union (Albany, New York), July 16, 2005, at A7

*Rehnquist's Steady Conservatism Reshaped the Law*, 41 Trial 70-72 (November 2005)

*Roberts Tap-Dances Away*, Raleigh News & Observer, September 22, 2005, at A15

*Senators Must Insist on Answers*, Raleigh News & Observer, July 21, 2005, at A17

*Senators Must Tell Miers: No Answers, No Confirmation*, The Baltimore Sun, October 6, 2005, at 17A

*Splitting 9th Circuit Is Costly, Conservative Ploy*, Daily Journal, November 15, 2005

*Thomas, Unbridled, Would Gut 200 Years of Precedent*, Daily Journal, August 5, 2005

*Two Scholars View the Hearing: Testimony Misleads Judiciary Panel, People*, Daily Journal, September 14, 2005

*White House, Miers Must Reveal Her Hidden Record*, Daily Journal, October 19, 2005

Speaker, "Recent Supreme Court Decisions," conference of Federal Magistrate Judges, Orlando, July 2005; conference of the Council of Appellate Staff Attorneys, Dallas, July 2005; conference of Utah Judges, Park City, September 2005; conference of Judges of the North West, Sun Valley, September 2005; conference of Federal Bankruptcy Judges, San Francisco, September, 2005; conference of Federal Judges from First and Seventh Circuits, Chicago, September 2005; conference of Federal Judges from Fifth Circuit, Houston, October 2005; Federal Bar Association, Los Angeles, October 2005; conference, Touro Law School, New York, October 2005; annual conference of New York Appellate Judges, Cooperstown, October 2005; conference of Nebraska Judges, Lincoln, November 2005; annual conference of Florida Judges, December 2005

Participant, "Recent Supreme Court Decisions," Video Conference, Federal Judicial Center, July 2005

Speaker, "Litigating Punitive Damage Awards," conference of American Trial Lawyers, Toronto, Canada, July 2005

Keynote Speaker, "Future of Public Interest Litigation," conference of Trial Lawyers for Public Justice, Toronto, Canada, July 2005

Participant, debate on *McCreary County v. ACLU* and *Van Orden v. Perry*, Dallas, July 2005

Speaker, "Recent Developments in Civil Rights Law," conference of Federal Judges, Suffolk University Law School, Boston, July 2005

Co-chair and Speaker, "Recent Supreme Court Decisions," Practicing Law Institute, New York, August 2005

Speaker, "Recent Developments in Constitutional Law," CLE Programs sponsored by Guam Bar Association, Saipan Bar Association of Commonwealth of the Northern Marianas, August 2005

Speaker, "Recent Developments in Criminal Law and Procedure," Federal Bar Association, Del Rio, TX, August 2005

Keynote Speaker, "Challenges Facing Urban Courts in the 21<sup>st</sup> Century," conference on urban courts, Philadelphia, September 2005

Speaker, "Constitutional Issues in the New Bankruptcy Law," conference of Federal Bankruptcy Judges, San Francisco, September 2005

Presenter, "Civil Liberties and the War on Terrorism," conference honoring Nadine Strossen, The University of Tulsa College of Law, September 2005

Speaker, "Recent Supreme Court Decisions Concerning Criminal Law and Procedure," conference of Criminal Defense Lawyers, Milwaukee, September 2005

Participant, "Coming Supreme Court Term," conference, William and Mary Marshall-Wythe School of Law, September 2005

Speaker, "Future of Constitutional Law," ABA Litigation Section, Chicago; University of Florida Law School, Gainesville; Capital Law School, Columbus, Ohio; October 2005

Speaker, "Recent Developments in Criminal Law and Procedure," conference of North Carolina Federal Defenders, Wilmington, October 2005

Participant, "How Should U.S. Supreme Court Justices Interpret the Constitution?" debate with Professor Ronald Rotunda, Duke Forum, Duke Law School, October 2005



Speaker, "Recent Developments in Civil Rights Law," Civil Rights Law Conference, Practising Law Institute, New York, October 2005

Speaker, "Ethical Issues in Bankruptcy Law," National Conference of Bankruptcy Judges, San Antonio, November 2005

Keynote Speaker, "The Threat to Civil Liberties," Tennessee ACLU Annual Dinner, Nashville, November 2005

Keynote Speaker, "Legacy of the Rehnquist Court," Conference, University of Pennsylvania Law School, November 2005

Speaker, "Future of Constitutional Law and the Alito Nomination," Battisti Lecture, Case Western Reserve University School of Law, Cleveland, November 2005; American Constitution Society Event, Philadelphia, December 2005

Participant, Debate on Judicial Jurisprudence, Annual Conference of Florida Judges, December 2005

Argued, in United States Supreme Court, *Scheidler v. National Organization for Women*, December 2005

### George Christie

*The Adjudication of Human Rights*, 13 *Jahrbuch für recht und ethik* [Annual Review of Law and Ethics] 417 (2005)

### Charles Clotfelter

Visiting Scholar, Russell Sage Foundation, New York, September 2005-June 2006

Recipient, Spencer Foundation Grant for study of how state policies affect the quality of teachers and achievement by students

### Doriane Lambelet Coleman

*The Alchemy of a Moral Discourse About the Biology of Gender: Historical Sensitivity, Genetic Literacy, and the Will to Imagine a Different Equality*, 11 *Cardozo Women's Law Journal* 543-555 (2005)

*Storming the Castle to Save the Children: The Ironic Costs of a Child Welfare Exception to the Fourth Amendment*, 47 *William & Mary Law Review* 413-540 (2005)

### James E. Coleman, Jr.

*Consider Court Nominees Together*, *Durham Herald-Sun*, September 11, 2005, at A11 (with Erwin Chemerinsky)

### James D. Cox

*Reforming the Regulation of Public Offerings of Securities in the United*

*States*, 79 *Australian Law Journal* 413-416 (2005)

*Letting Billions Slip Through Your Fingers: Empirical Evidence and Legal Implications of the Failure of Financial Institutions to Participate in Securities Class Action Settlements*, 58 *Stanford Law Review* 411-454 (2005) (with Randall S. Thomas)

Speaker, "The Public and Private Enforcement of the U.S. Securities Law," University of Sydney, Sydney, Australia, July 2005

Speaker, "Corporate Governance Since Enron: Lessons Learned and Opportunities Missed," National Association of Corporate Directors Triangle Chapter, Research Triangle Park, October 2005

Speaker, "Empirical Evidence on Securities Class Action Settlements," ADP Annual Client Conference, Reston, VA, November 2005

Participant, "Improving the Board," Duke Global Capital Markets Roundtable Discussion, New York, December 2005

Presenter, "Empirically Assessing the Lead Plaintiff Provision: Does the Type of Plaintiff Matter?" Vanderbilt University School of Law, October 2005; Fordham University School of Law, November 2005 (with Randall S. Thomas)

Presenter, "How Delaware Fails to Reinforce Improvements In Corporate Governance," Washington University, St. Louis, September 2005

Representative, Academic Council, Duke University

Chair, University Commencement Committee, Duke University

Member, University Strategic Planning Committee; Central Campus Planning Committee; Master Plan Oversight Committee; Business and Finance Committee, Duke University Board of Trustees, Duke University

### Richard Danner

Participant, Board of Directors meeting and Annual Conference of the International Association of Law Libraries, Fiesole, Italy, September 2005

### Deborah A. DeMott

*The Discrete Roles of General Counsel*, 74 *Fordham Law Review* 955-981 (2005)

*The Texture of Loyalty*, in *CORPORATE GOVERNANCE POST-ENRON: COMPARATIVE*

*PERSPECTIVES* (British Institute of International & Comparative Law, 2006)

Presenter, "Disloyal Agents," Eugene P. & Delia S. Murphy Conference on Corporate Law, Fordham Law School, November 2005

Instructor, "Making Markets Work," Asian-American institute in Transnational Law, Hong Kong, July 2005

Appointed, Chair of Section on Business Associations, Association of American Law Schools

### Diane Dimond

Program Chair, "Teaching Lawyers of and for the 21<sup>st</sup> Century," Association of Legal Writing Directors' Biennial Conference, Northwestern University School of Law, July 2005

### Robinson O. Everett

Organizer, "Veterans' Rights: The Battle After the Battle," CLE Conference, North Carolina Bar Association, Cary, NC, October 2005

Attendee, ABA Standing Committee on Armed Forces Law Meeting, Chicago, August 2005; School of Naval Justice, Newport, RI, October 2005

Organizer and Presenter, CLE Conference, Raleigh, November 2005 (with ABA LAMP Committee)

Attendee, ABA Standing Committee on National Security Law, Arlington, VA, November 2005

Interviewed by Citizens Global Solutions for ICC Communications Guide

Member of judicial panel, appeal of accused female Army NCO convicted of murdering her husband

### Catherine Fisk

*Book Review*, 79 *Business History Review* 367-370 (2005) (reviewing Doron S. Ben-Atar, *TRADE SECRETS: INTELLECTUAL PIRACY AND THE ORIGINS OF AMERICAN INDUSTRIAL POWER* (2004))

*Reflections on the Birth of the Journal: A Founders' Roundtable Discussion*, 20 *Berkeley Journal of Gender, Law & Justice* 18 (2005)

*Judges Do Make Law — It's Their Job*, *USA Today*, August 24, 2005, at 11A (with Erwin Chemerinsky)

Speaker, "Employment Law for Supervisors," Annual Conference of the Council of Appellate Staff Attorneys, Dallas, July 2005

# Faculty Notes

Speaker, "Recent Developments in the Law of Employment Discrimination," CLE Programs sponsored by Guam Bar Association, Saipan Bar Association of Commonwealth of the Northern Marianas, August 2005

Speaker, "No-Compete and Trade Secret Law," Institute of Judicial Administration and the Center for Employment Law, New York University School of Law, November 2005

Presenter, "Credit Where It's Due," IP@ Work Conference, Interdisciplinary Center Herzilya, Radzyner School of Law, Israel, December 2005

Elected, Executive Committee of the Labor Law Group

Participant, Program Committee, 2005 Labor Law Group Conference

Co-counsel, petition for certiorari, *Williams v. Missouri Dept. of Mental Health*, No. 05-515, U.S. Supreme Court (pro bono)

On merits brief, *Scheidler v. National Organization for Women*, Nos. 04-1244, 04-1352, U.S. Supreme Court (pro bono)

## Joel Fleishman

Speaker, "International Grant-making—Accountability to WHOM, For What and How?" International Committee of the Council on Foundations, Washington, D.C., September 2005

## Andrew Foster

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

Principal Co-organizer, Community Activities, Conference on Social Enterprise, Duke University, June 2005

Presenter, "Franchising: An Economic Development Tool for CDCs," Annual Conference of North Carolina Association of Community Development Corporations, Winston-Salem, August 2005

Presenter, "Legal Issues for Nonprofit Organizations Engaged in Community Economic Development," BB&T Faith-Based Community Development Training Symposium, St. Petersburg, FL, October 2005

Board Member, Southern Rural Development Initiative, Inc.

Board Member, Community Affordable Housing Equity Corporation

## Martin P. Golding

Faux Pas, 13 *Jahrbuch für recht und ethik* [Annual Review of Law and Ethics] 103-122 (2005)

## Paul Haagen

Address, Annual Faculty Address to the Board of Trustees, Duke University, September 2005

Address, Annual Address to the Faculty, Duke University, October 2005

Presenter, "The Players Have Lost that Argument: Drug Testing, Due Process, and Collective Bargaining," Annual Law Journal Symposium, New England School of Law, Boston, October 2005

Speaker, "Is Drug Testing Effective?" Duke Law School, November 2005

Counsel to Olympic athlete regarding allegation concerning drug testing, July-September 2005

Chair, Academic Council, Duke University

Chair, Professional Sports Counseling Committee, Duke University

Chair, Subcommittee to Review, Provost's Planning Steering Committee, Duke University

Member, President's Search Committee for the University Counsel; University Priorities Committee; Academic Programs Committee; Trustee Selection Committee; Planning Steering Committee, Duke University

## Donald L. Horowitz

*The Sunni Moment*, *Wall Street Journal*, December 14, 2005, at A20

Lecturer, "The Sociology of the Riot," Institute of Defense and Strategic Studies, Nanyang Technical University, Singapore, August 2005

Keynote Speaker, "Ethnic Groups and Constitutions," international conference on "Ethnicity, Equity, and the Nation," Kuala Lumpur, Malaysia, August 2005

Keynote Speaker, "Engineering Constitutional Reform," conference, Academia Sinica, Taipei, Taiwan, September 2005

Lecturer, "Three Ways to Make a Constitution," McDonald Lecture in Constitutional Studies, University of Alberta Faculty of Law Centre for Constitutional Studies, Edmonton, October 2005

Panelist, "Riots and Pogroms: New Directions in Comparative Research," Annual Meeting of the Social Science History Association, Portland, OR, November 2005

Speaker, Meeting on "Proportional Representation: Path to Democracy?" American Enterprise Institute, Washington, D.C., December 2005

## Trina Jones

*The Diversity Rationale: A Problematic Solution*, 1 *Stanford Journal of Civil Rights & Civil Liberties* 171 (2005)

## David L. Lange

2005 Supplement to *INTELLECTUAL PROPERTY: CASES AND MATERIALS* (2d ed. 2003) (with Mary LaFrance & Gary Myers)

Presenter, short video and discussion of limits on creativity posed by intellectual property, University of Oregon, October 2005

Lecturer, "Emerging Issues in Global Intellectual Property Law," University of Hanoi, Vietnam, December 2005

Instructor, Entertainment Law, Latrobe University, Melbourne, Australia, December 2005

## Martin Lybecker

*Enhanced Corporate Governance for Mutual Funds: A Flawed Concept that Deserves Serious Reconsideration*, 83 *Washington University Law Quarterly* (November 2005)

Speaker, ABA National Institute on Banking Law II, Chicago, September 2005

Presenter, "Comparative Regulation of Common Trust Funds versus Mutual Funds: Is There a Better Way to Regulate Mutual Funds?" American Enterprise Institute for Public Policy Research, Washington, D.C., October 2005

Speaker, "SEC Rule 39a-1," Fiduciary and Investment Risk Management Association Seminar, Cleveland, October 2005

Moderator and Speaker, "Securities Developments, Committee on Banking Law, Business Law Section, ABA, Fall Meeting, Richmond, VA, November 2005

## Jennifer Maher

Elected, vice-chair, North Carolina Bar Association Section on International Law & Practice

## Carolyn McAllister

Participant, Panel of AIDs Service Providers, The Black Church Week of Prayer for the Healing of AIDs, Ecclesia

House of Prayer Holy Church, Durham, March 2005

Presenter, "HIV/AIDS and Its Impact on the Community," First Presbyterian Church Faith and Community Class, Durham, March 2005

Participant, "Legal Needs of HIV-Infected Clients," workshop for HIV peer mediators, Duke Infectious Diseases Clinic, Durham, April, September, November 2005

Presenter, "Legalese Issues Facing HIV-Infected Clients," Duke University Global Health Class, Duke University School of Medicine, November 2005

Appointed, chair, North Carolina AIDS Advisory Council for 2005

### Francis McGovern

*Compensation Schemes and Dispute Resolution Mechanisms: Beyond the Obvious*, 21 *Negotiation Journal* 231-244 (April 2005) (with others)

*The Future of Judicial Masters*, in 2004 SPECIAL MASTERS CONFERENCE: TRANSCRIPT OF PROCEEDINGS, 31 *William Mitchell Law Review* 1252-1258 (2005)

*The What and Why of Claims Resolution Facilities*, 57 *Stanford Law Review* 1361-1389 (2005)

*Judicial Ethics Meet Political Reality*, The Benchers, *The Magazine of the American Inns of Court*, November-December 2004, at 28

*Strategic Mediation in Large Lawsuits*, in Conference Proceedings, *TRANSBOUNDARY WATERS: CROSSING CULTURAL BOUNDARIES*, The Utton Center, University of New Mexico Law School, Albuquerque, April 2005

Speaker, "Designing Claims Resolution Facilities," Symposium on the Vanishing Trial, Stanford Law School, Palo Alto, February 2005

Speaker, "A New Endgame for Mass Torts," Mississippi College of Law, Jackson, February 2005

Speaker, "Alternative Dispute Resolution as an Antidote to Pharmaceutical Litigation," British Institute of International & Comparative Law, London, UK, March 2005

Speaker, "Claims Resolution Facilities," University of Houston Law School, Houston, March 2005

Speaker, "Strategic Mediation," Stanford Law School, Palo Alto, March 2005

Speaker, "Class Action Fairness Act," Glasser Symposium, New York, March 2005

Speaker, "Odysseus, the Strategic Mediator," Bohemian Club, San Francisco, April 2005

Speaker, "Ethical Issues in Mass Torts," University of California-San Francisco School of Law, April 2005

Speaker, "Proposed Plan of Distribution: Global Research Analyst Settlement," Institute for Law & Economic Policy (ILEP), Las Vegas, April 2005

Speaker, "Mass Tort Bankruptcy," University of Virginia Law School, Charlottesville, April 2005

Speaker, "Assessing the Merits of Reallocation under Joint and Several Liability in Asbestos Litigation," American Enterprise Institute, Washington, D.C., April 2005

Speaker, "Resolving Complex Litigation," Consensus Building Institute, Cambridge, MA, May 2005

Speaker, "Odysseus, the Strategic Mediator," Mediation Society, San Francisco, May 2005

Speaker, "Class-Action Cases in the United States," Cour de Cassation, Paris, June 2005

Speaker, "Resolving Mass Torts," National Center for State Courts, Philadelphia, July 2005

Speaker, "Mediating the Snake River Basin Adjudication" University of Idaho Law School, Moscow, September 2005

Speaker, "Strategic Mediation," Stanford Law School, Palo Alto, September 2005

Speaker, "How to Be An Effective Special Master," ALI-ABA Conference, The Art & Science of Serving as a Special Master, Chicago, November 2005

Speaker, "Masters in Consumer Actions," ALI-ABA Conference, The Art & Science of Serving as a Special Master, Chicago, November 2005

Speaker, "Masters in Mass Tort Litigation," ALI-ABA Conference, The Art & Science of Serving as a Special Master, Chicago, November 2005

Speaker, "Procedures & Innovations in the Evaluation of Asbestos Damages in Personal Injury," Symposium on Asbestos Litigation, University of Kyoto, Kyoto, Japan, November 2005

Speaker, "Establishing Values," Commencement Address, Averett University, Danville, VA, December 2005

Recipient, Doctor of Laws, Averett University, Danville, VA, December 2005

### Thomas B. Metzloff

*Who Are Those Guys? An Empirical Examination of Medical Malpractice Plaintiffs' Attorneys*, 58 *S.M.U. Law Review* 225-250 (2005) (with Catherine T. Harris & Ralph Peeples)

### Ralf Michaels

*Book Review* (reviewing MISTAKE, FRAUD AND DUTIES TO INFORM IN EUROPEAN CONTRACT LAW (Ruth Sefton-Green ed., 2005)) at: [www.europeanlawbooks.org](http://www.europeanlawbooks.org), November 29, 2005

*George W. Schröder* (Op-ed), *DER TAGESSPIEGEL*, September 22, 2005

*Profile: Arthur Taylor von Mehren*, 7 *International Law FORUM du droit international* 213-218 (2005)

*Welche Globalisierung für das Recht? Welches Recht für die Globalisierung?* [Which Globalization for the Law? Which Law for Globalization?], 69 *Rabels Zeitschrift für ausländisches und internationales Privatrecht*, 525-544 (2005) (review essay)

### Robert P. Mosteller

*'Crawford v. Washington': Encouraging and Ensuring the Confrontation of Witnesses*, 39 *University of Richmond Law Review* 511-626 (2005)

*Crawford's Impact on Hearsay Statements in Domestic Violence and Child Sexual Abuse Cases*, 71 *Brooklyn Law Review* 411-427 (2005)

*"Testimonial" and the Formalistic Definition—the Case for an "Accusatorial" Fix*, 20 *Criminal Justice* 14-22 (Summer 2005)

Keynote Speaker, "Future of Evidence Law and Crawford," Ohio Judicial Conference, Columbus, September 2005

### Joost Pauwelyn

*CONFLICT OF NORMS IN PUBLIC INTERNATIONAL LAW—HOW WTO LAW RELATES TO OTHER RULES OF INTERNATIONAL LAW* (Chinese translation, Law Press China, 2005)

*HUMAN RIGHTS AND INTERNATIONAL TRADE* (Co-edited with Thomas Cottier & Elisabeth Bürgi, Oxford University Press, 2005)

# Faculty Notes

*Adding Sweeteners to Softwood Lumber: The WTO-NAFTA 'Spaghetti Bowl' Is Cooking*, 9 *Journal of International Economic Law* 1-10 (2006)

*Human Rights in WTO Dispute Settlement*, in *HUMAN RIGHTS AND INTERNATIONAL TRADE* 205-231 (Thomas Cottier, Joost Pauwelyn & Elisabeth Bürgi eds., 2005)

*Is the Vienna Convention Outdated?*, in *WTO LAW AND PROCESS* 494-500 (Mads Andenas & Federico Ortino eds., British Institute of International & Comparative Law, 2005)

Remedies in the WTO: 'First Set the Goal, Then Fix the Instruments to Get There', in *WTO LAW AND PROCESS* 185-199 (Mads Andenas & Federico Ortino eds., British Institute of International & Comparative Law, 2005)

Rien ne Va Plus? Distinguishing Domestic Regulation From Market Access in GATT and GATS, 4 *World Trade Review* 131-179 (2005)

The Sutherland Report: A Missed Opportunity For Genuine Debate on Trade, Globalization and Reforming the WTO, 8 *Journal of International Economic Law* 329-346 (2005)

The Transformation of World Trade, 104 *Michigan Law Review* 1-66 (2005)

The UNESCO Convention on Cultural Diversity, and the WTO: Diversity in International Law-Making?, ASIL Insight (November 15, 2005) at: <http://www.asil.org/insights/2005/11/insights051115.html>

The U.S.-Canada Softwood Lumber Dispute Reaches a Climax, ASIL Insight (November 30, 2005) at: <http://www.asil.org/insights/2005/11/insights051129.html>

Presenter, "U.S. - Internet Gambling Dispute," United Nations Conference on Trade and Development, Trade Negotiations and Commercial Diplomacy Branch, Geneva, July 2005

Presenter, "Europe, America and the 'Unity of International Law,'" Europeanisation of Public International Law, University of Amsterdam, September 2005

Presenter, "The Transformation of World Trade," International Trade Workshop, Vanderbilt University School of Law, October 2005

Presenter, "Treaty Interpretation and the Fragmentation of International Law," Annual Meeting of the Canadian Society of International Law, Ottawa, Canada, October 2005

Presenter, "The Relationship Between the Rules of the WTO and International Law," National Autonomous University of Mexico, November 2005

Elected, member, International Trade Law Committee of the International Law Association

Appointed, member, Organizing Committee of the Centennial Meeting of the American Society of International Law

## Jedediah Purdy

Respondent, Carol Rose's "Privatization - The Road to Democracy?" St. Louis University Law School, September 2005

Presenter, "People as Property: On Being a Resource and a Person," faculty workshop, University of Georgia School of Law, November 2005

## William A. Reppy Jr.

*Citizen Standing to Enforce Anti-Cruelty Laws by Obtaining Injunctions: The North Carolina Experience*, 11 *Animal Law* 39-68 (2005)

*The Framework of Full Faith and Credit and Interstate Recognition of Same-Sex Marriage*, 3 *Ave Maria Law Review* 393-481 (2005)

Speaker, "Animal Hoarders: The Legal Response and Remedies," NC Veterinary Conference, Research Triangle Park, November 2005

## Barak Richman

Speaker, "A Bridge, a Tax Revolt, and the Struggle to Industrialize: The Story and Legacy of *Rockingham County v. Luten Bridge Co.*," Southeastern Association of Law Schools Annual Meeting, Hilton Head, July 2005

Participant, discussion of "Markets, Norms, and Law: Transaction Costs and Institutions," Western Economic Association Annual Meeting, San Francisco, July 2005

Speaker, "The Story and Legacy of *Rockingham County v. Luten Bridge Co.*," The University of North Carolina School of Law Faculty Workshop, Chapel Hill, November 2005

Co-organizer and presenter, *Law & Contemporary Problems* symposium on Distributional Issues in American Health Care, Duke Law School, November 2005

Appointed, Faculty Fellow, Duke University Social Science Research Institute, 2005-06

## Denise Riebe

PASS THE BAR! (Carolina Academic Press, 2006) (with Michael Hunter Schwartz)

*The Bar Exam Go/No-Go Decision*, The Learning Curve (Fall 2005)

Presenter, "Law School Bar Preparation Programs," Pace University School of Law, White Plains, NY, December 2005

## Thomas D. Rowe, Jr.

2005 Supplement to *CIVIL PROCEDURE* (2004) (with Suzanna Sherry & Jay H. Tidmarsh)

Member, board of editors, Federal Courts Law Review, Federal Magistrate Judges' Association

## James Salzman

*Creating Markets for Ecosystem Services: Notes From the Field*, 80 *NYU Law Review* 870-961 (2005)

*Decentralized Administrative Law in the Organization for Economic Cooperation and Development*, 68 *Law & Contemporary Problems* 189-224 (Summer/Autumn 2005)

*Labor Rights, Globalization and Institutions: The Role and Influence of the Organization for Economic Cooperation and Development*, in *SOCIAL ISSUES, GLOBALIZATION AND INTERNATIONAL INSTITUTIONS: LABOUR RIGHTS AND THE EU, ILO, OECD AND WTO* 311-402 (Virginia Leary & Daniel Warner eds., 2006) (with Julio Bacio Terraciano)

*'No Net Loss:' Instrument Choice in Wetland Protection*, in *MOVING TO MARKETS IN ENVIRONMENTAL REGULATION: TWENTY YEARS OF EXPERIENCE* (Jody Freeman & Charles D. Kolstad eds., 2006) (with J.B. Ruhl); reprinted in *The Institute of Chartered Financial Analysts of India Journal for Environmental Law*

*Science in the Public Process of Ecosystem Management: Lessons from Hawaii, Southeast Asia, Africa and the US Mainland*, 76 *Journal of Environmental Management* 197-209 (2005) (with John Gutrich et al.)

*What Paying for Ecosystem Services Means*, PERC REPORTS (July 2005)

Speaker, "Creating Markets for Ecosystem Services," Rocky Mountain Mineral Law Foundation's Biennial Institute for Natural Resource Law Professors, Santa Fe, June 2005

Panelist, "The Big Questions: 125 Years of *Science*," 125<sup>th</sup> anniversary of *Science*, Washington, D.C., June 2005

Presenter, "Creating Markets for Ecosystem Services," University of North Carolina Environmental Series, Chapel Hill, September 2005

Presenter, "Next Steps for Ecosystem Service Markets," Fall 2005 Distinguished Speaker, Florida State Law School's Journal of Land Use and Environmental Law, Tallahassee, October 2005

Panelist, "Thirst: A Short History of Drinking Water," "The Properties of Carol Rose: A Celebration," Yale Law School, New Haven, November 2005

Appointed, Editorial Board, Journal of Industrial Ecology

Appointed, Editorial Board, International Journal of Innovation and Sustainable Development

### Richard Schmalbeck

Instructor, International Tax, Duke Summer Institute in Geneva, July 2005

Discussant, "Grasping the Nettle: Respecting Donor Intent and Avoiding the Dead Hand," National Center for Philanthropy and the Law Program, New York University, October 2005

Presenter, "The Role of Tax Exemption in Health Care Financing," *Law & Contemporary Problems* symposium on Distributional Issues in American Health Care, Duke Law School, November 2005

Appointed, Committee on Test Design, Law School Admissions Council

Member, Duke University Ad Hoc Committee to Review the Dean of the School of Medicine, June-September 2005

### Christopher H. Schroeder

*Federalism's Values*, in PROGRAMS TO PROTECT THE ENVIRONMENT, STRATEGIES FOR ENVIRONMENTAL SUCCESS 247 (Michael Allan Wolf ed., 2005)

A NEW PROGRESSIVE AGENDA FOR PUBLIC HEALTH AND THE ENVIRONMENT (Carolina Academic Press, 2005) (with Rena Steinzor)

*The Story of American Trucking: The Blockbuster that Misfired*, in ENVIRONMENTAL LAW STORIES 321 (Richard J. Lazarus & Oliver A. Houck eds., 2005)

### Steven L. Schwarcz

*The Limits of Lawyering: Legal Opinions in Structured Finance*, 84 Texas Law Review 1-58 (2005)

*Looking Forward: 2005-2010 A Sovereign Debt Restructuring Reverie*, 6 Chicago

Journal of International Law 381-390 (2005)

*We Are All Saying Much the Same Thing: A Rejoinder to the Comments of Professors Coffee, Macy, and Simon*, 84 Texas Law Review 93-104 (2005)

"Temporal Perspectives: Resolving the Conflict Between Current and Future Investors," selected for translation and republication in China, by Dean of the School of Civil, Commercial and Economic Law of China University of Politics and Law; selected for reprinting in the ICFAI Journal of Corporate Securities Law by India's ICFAI Law School

"The Limits of Lawyering: Legal Opinions in Structured Finance," reviewed by the ABA's Securitization & Derivatives Committee

Speaker, Faculty Lecture, The University of Tokyo Law Faculty, July 2005

Speaker, "Financial Information Failure: Redrawing the Boundary Between Failure: Redrawing the Boundary Between Lawyer and Accountant Responsibility," Faculty Workshop, Washington and Lee School of Law, October 2005

Visiting Scholar, The University of Tokyo Law Faculty, July 2005

Mediator, *FDIC v. Bank of NY*, D.C. Federal District Court

Expert Witness for Bank of New Zealand in litigation with New Zealand Inland Revenue Department

Testified, Committee on Financial Services of the U.S. House of Representatives on H.R. 2990

### Neil S. Siegel

*A Prescription for Perilous Times*, 93 Georgetown Law Journal 1645-1679 (2005) (reviewing Geoffrey R. Stone, *PERILOUS TIMES: FREE SPEECH IN WARTIME FROM THE SEDITION ACT OF 1798 TO THE WAR ON TERRORISM* (2004))

*A Theory In Search of a Court, and Itself: Judicial Minimalism at the Supreme Court Bar*, 103 Michigan Law Review 1951-2019 (2005)

*The Conservative Choice is a Moderate*, Raleigh News & Observer, July 6, 2005, at A13

*Remembering Chief Justice Rehnquist*, Washington Post, Sept. 5, 2005, at A30

*Rigorous Questions Would Be Only Fair*, Philadelphia Inquirer, July 21, 2005, at A19

*Taking Issue: Americans Deserve Answers*,

National Public Radio Online, October 20, 2005, at: [www.npr.org/templates/story/story.php?storyId=4965299](http://www.npr.org/templates/story/story.php?storyId=4965299)

Speaker, "U.S. Supreme Court Update," Simpson Thatcher & Bartlett LLP, New York, July 2005

Co-Organizer and Presenter, Conference on Constitutional Law and Economics, University of California at Berkeley, August 2005

Moderator, "Reflections on the 'O'Connor Court' and the Prospects for Change in Constitutional Doctrine After Her Retirement," Panel discussion, Program in Public Law, Duke Law School, August 2005

Panelist, "A Discussion of the Legacy of Chief Justice William H. Rehnquist," Program in Public Law, Duke Law School, September 2005

Panelist, "Supreme Court Changes and the Confirmation Process," Constitution Day Celebration Panel, Cone Center, University of North Carolina, Charlotte, September 2005

Panelist, "Cronyism and the Future of the Supreme Court: The Nomination of Harriet Miers," American Constitution Society, October 2005

Panelist, "Judgment of the Times," Terry Sanford Institute of Public Policy and the Duke Political Union, Duke University, November 2005

Instructor, "U.S. Supreme Court Update," New Jersey Judicial College, Teaneck, November 2005

Special Counsel, U.S. Senator Joseph Biden, Senate Judiciary Committee, July-October 2005

### Scott L. Silliman

*Film Review*, 22 Political Communication 420-421 (2005) (reviewing *THE PRESIDENT VERSUS DAVID HICKS*, an Olsen Levy production through the Australian Film Finance Corporation)

*Posse Comitatus Act Can Survive a Storm* Raleigh News & Observer, September 30, 2005, at A13

*Just What Do We Mean by Torture?; Statements on Cruel, Inhuman, Degrading Treatment Ambiguous*, Durham Herald-Sun and other newspapers, December 11, 2005, at A11

Speaker and Panelist, "Meeting the Challenges of Terrorism While Preserving Civil Liberties," First Judicial Circuit Conference, Newport, RI, June 2005

## Faculty Notes

Speaker, "Interrogation, Detention, and Extraordinary Rendition," to senior intelligence officials from the CIA, NSA, DOD and other federal agencies, Wye Conference Center, MD, August 2005

Panelist, "Conservative Christianity and the Military," a special program sponsored by Judea Reform Congregation, Durham, September 2005

Speaker, "Current Legal Issues in the War on Terrorism," Duke Law Leadership Weekend, Duke Law School, October 2005

Speaker and Panelist, "Exploring Forums for Prosecuting Terrorists," Conference on National Security Issues sponsored by the University of the Pacific McGeorge School of Law, Berkeley, October 2005

Sponsor and Panel Chair, "Giving Legal Advice in the War on Terrorism," ABA conference on "National Security Law in a Changed World: The Fifteenth Annual Review of the Field," Arlington, VA, November 2005

Speaker and Panelist, "Force, Diplomacy, and American Foreign Policy," dedication of Terry Sanford Institute of Public Policy's Rubenstein Hall, Duke University, November 2005

Speaker, "Current Legal and Policy Issues in the Global War on Terrorism," Duke Club of South Florida, Coral Gables, December 2005

### Carol Spruill

Presenter, "The Sally Jesse Oprah Carol Show: Two Generations of Female Attorneys Tell Their Stories," North Carolina Association of Women Attorneys Conference, Wrightsville Beach, September 2005

Member, Equal Justice Works National Advisory Committee

Member, North Carolina Bar Association Law School Liaison Committee

Member, North Carolina Bar Association Public Service Advisory Committee

### Katherine Topulos

*English Legal History Research: A Guide to Core Academic Law Library Materials*, 24 Legal Reference Services Quarterly 73-101 (2005)

### Laura S. Underkuffler

*Tahoe's Requiem: The Death of the Scalian View of Property and Justice*, 21 Constitutional Commentary 727 (2004)

*Teaching Property Stories*, 55 Journal of Legal Education 152-162 (2005) (reviewing PROPERTY STORIES (Gerald Korngold & Andrew P. Morris eds., 2004))

Visiting Professor, Harvard Law School, Spring 2005

Presenter, "The Scalian View of Takings and Property," Faculty Workshop, University of Connecticut Law School, February 2005

Presenter, "Captured by Evil: The Idea of Corruption in Law," Faculty Workshop, Harvard Law School, May 2005; Faculty Workshop, University of California, Davis School of Law, October 2005; Legal Studies Workshop, University of Virginia School of Law, November 2005

Speaker, "*Van Orden v. Perry* and *McCreary v. ACLU*: Ten Commandments and Government," Program in Law and Public Affairs, Princeton University, May 2005

Presenter, "The Idea of Corruption," Conference on Corruption, Hebrew University, Jerusalem, Israel, June 2005

Featured Speaker, online debate, "*Brown v. Board of Education* and the Question of School Vouchers," Legal Affairs Magazine, June 2005

Presenter, "The Concept of Corruption and Its Consequences for Law," Fifth Annual Conference of the European Society of Criminology, Cracow, Poland, September 2005

Presenter, "The Just and the Wild," conference, "The Properties of Carol Rose: A Celebration," Yale Law School, November 2005

### Neil Vidmar

*Expert Evidence, The Adversary System, and the Jury*, 95 American Journal of Public Health S137-S143 (Suppl. 1, July 2005)

*Medical Malpractice Lawsuits: An Essay on Patient Interests, the Contingency Fee System and Social Policy*, 38 Loyola of Los Angeles Law Review 1221-1271 (2005)

*When Jurors Talk About Their Verdict*, in JURY ETHICS: JUROR CONDUCT AND JURY DYNAMICS 237-245 (John Kleinig & James P. Levine eds., 2005)

*Juries Around the Globe*, 5 ABA Insights on Law & Society 7 (2005)

*Medical Malpractice and the Tort System* 93 Illinois Bar Journal 340 (2005).

*Medical Malpractice Litigation and Tort Reform in Pennsylvania*, Report to the Pennsylvania Bar Association, September 2005

Presenter, "Jury Reforms and Jury Performance," Annual Conference of the American Judges Association, Anchorage, September 2005.

"Million Dollar Medical Malpractice Cases in Florida: Post-Verdict Adjustments and Pre-Suit Settlements," Conference on Medical Malpractice, Vanderbilt University School of Law, October 2005

### Stephen Wallenstein

*The History of Corporate Governance in the United States*, in THE ACCOUNTABLE CORPORATION (Mark J. Epstein & Kirk O. Hanson eds., Greenwood Publishing Group, 2005)

Co-sponsor, "The Law and Your Business," Seminar Series for Duke Law and Fuqua students, August-November 2005

Panelist, "A Governance Think Tank Analyzes Future Boardroom Issues," Annual Boardroom Summit, New York, September 2005

Co-sponsor, "In Pursuit of the Ideal Corporate Board: Bridging the Gap Between the Optimal and the Achievable," conference with the New York Stock Exchange and The Hon. Leo E. Strine, Jr. of the Delaware Court of Chancery, New York, December 2005

Sponsor, Global Capital Markets Center/ Duke Law Seminar Series, September-December 2005

Sponsor, Global Capital Markets Center/ Business Law Society Speaker Series, September-November 2005

### Alan Weinberg

Speaker, CLE course on benefits of Duke Law's Low Income Taxpayer Clinic, Legal Aid of North Carolina, November and December 2005

Participant, LITC meeting for directors of low income taxpayer clinics, Internal Revenue Service, Philadelphia, December 2005

### Jonathan B. Wiener

*'Adverse Effects' and Similar Terms in U.S. Law*, Report for the Dose Response Specialty Group of the Society for Risk Analysis (with Mark Marvelli & Kelsey Stansell) at: [http://www.sra.org/drsg/docs/Adverse\\_Effects\\_Report.pdf](http://www.sra.org/drsg/docs/Adverse_Effects_Report.pdf) (July 2005)

*Book Review*, 24 *Journal of Policy Analysis & Management* 885-889 (2005) (reviewing, Richard Posner, *CATASTROPHE RISK AND RESPONSE* (2004), and Jared Diamond, *COLLAPSE: HOW SOCIETIES CHOOSE TO FAIL OR SUCCEED* (2005))

*Foreword*, *Global Governance as Administration - National and Transnational Approaches to Global Administrative Law*, 68 *Law & Contemporary Problems* 1-13 (Summer/Autumn 2005) (with Benedict Kingsbury, Nico Krisch & Richard Stewart)

Issue Editor, *Emergence of Global Administrative Law*, 68 *Law & Contemporary Problems* (Summer/Autumn 2005) (with Benedict Kingsbury, Nico Krisch & Richard Stewart)

*Precaution*, in *THE OXFORD HANDBOOK OF INTERNATIONAL ENVIRONMENTAL LAW* (Jutta Brunée, Daniel Bodansky & Ellen Hey eds., 2005)

*Precautionary Regulation in Europe and the United States: A Quantitative Comparison*, 25 *Risk Analysis* 1215-1228 (October 2005) (with others)

Keynote Speaker, "Hormesis and Regulation," Fourth Annual International Conference on Hormesis, University of Massachusetts, Amherst, June 2005

Speaker, "Climate Change Policy," Environmental Summit, Nicholas Institute for Environmental Policy Solutions, Duke University, September 2005

Speaker, "Precaution Against Terrorism," conference on Managing Strategic Surprise, National Intelligence Council and Eurasia Group, Yale Club, New York, September 2005; workshop in the Law & Economics Workshop & Lecture Series, University of Zurich & ETH Zurich, Zurich, Switzerland, November 2005

Speaker, "Comparing Risk Regulation in the U.S. and Europe," Lecture in the Law & Economics Workshop & Lecture Series, University of Zurich & ETH Zurich, Zurich, Switzerland, November 2005

Speaker, "L'Economie Politique du Changement Climatique et les Relations Transatlantiques," Centre Internationale de Recherche sur l'Environnement et le Développement (CIRED), Paris, France, December 2005

Visiting Professor, l'Ecole des Hautes Etudes en Sciences Sociales (EHESS) and le Centre International de Recherche sur l'Environnement et le Développement (CIRED), Paris, France, 2005-06

### **Lawrence A. Zelenak**

2005 Semi-annual Supplement to *FEDERAL INCOME TAXATION OF INDIVIDUALS* (3d ed. 2002)

*Of Prius Buyers, Blue States, Consumer Energy Credits, and the Alternative Minimum Tax*, 109 *Tax Notes* 657-662 (2005)

*Tax Shelters and the Search for the Silver Bullet*, 105 *Columbia Law Review* 1939-1966 (2005) (with Marvin Chirelstein)

Presenter, "A Legislation Solution to the Tax Shelter Problem," workshop at Columbia Law School, October 2005 (with Marvin Chirelstein)

Participant, *Law & Contemporary Problems* symposium on Distributional Issues in American Health Care, Duke Law School, November 2005

# A LEGACY *for* DUKE LAW

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Your bequest to Duke Law School will help ensure its continued strength and academic excellence. Please consider joining other alumni and friends as a member of the Heritage Society, an honorary group of people who have planned an estate or life income gift to Duke Law School. Many gift options provide life income opportunities and can benefit you and your family. For more information contact Katharine B. Buchanan, J.D. (T'92) at (919) 613-7217 or [buchanan@law.duke.edu](mailto:buchanan@law.duke.edu) about your membership in the Heritage Society, or if you would like to learn more about deferred giving opportunities at Duke.



# Around the Law School



AS CHAIR OF THE LAW SCHOOL'S PLANNING COMMITTEE, PROFESSOR THOMAS METZLOFF OVERSAW CONSTRUCTION OF THE NEW WING





PROFESSOR JAMES BOYLE LECTURES IN ROOM 4042

## The New Wing

The Law School's new wing opened in October—30,000 square feet of new offices, classrooms, seminar rooms, and a new front entrance. This completes Phase II of our renovation. Take a look!  
*See our clinics offices on pages 14-31.*



# Bill Hoyer: New dean of Admissions helps build Duke Law community

**B**ill Hoyer, the Law School's new associate dean for Admissions and Financial Aid, arrived at Duke in late November, just as winter came to Durham and admissions season was ramping up. Hoyer, a lifelong Californian, took it all in stride – beefing up his winter wardrobe and embarking on an ambitious admissions plan that includes helping the School “be the very best it can be.”

A graduate of the University of California at Santa Cruz, Hoyer comes to the Law School with more than 21 years experience in admissions, having spent

communication with colleagues and students helped him build a successful class each year.

“One reason for my success at USC was the opportunity to be very connected to the day-to-day happenings of the law school. I was able to understand what kinds of students worked really well there and what sorts of situations created issues for our community.”

Duke's size and location are particular strengths from an admissions perspective, says Hoyer.



BILL HOYER

**“We learn better in environments where we are working with people who have viewpoints and experiences different from our own.”** Bill Hoyer

a decade in undergraduate admissions at the University of California before becoming dean of admissions at the University of Southern California Law School. Hoyer says he particularly enjoyed getting to know the students he recruited to USC, and looks forward to continuing that involvement at Duke.

“You lose track of undergraduates when they become students—it’s hard to maintain any kind of a relationship. The law school is much smaller, so you are able to watch students progress over time and develop and grow, and do really extraordinary things both in terms of service and scholarship. It becomes very rewarding as an admissions officer to not only have brought them in, but also to have remained connected to the students while they are here, to be of service and able to support them in reaching their goals.”

Hoyer's responsibilities at USC included oversight of financial aid, registration, and records; as a result he was very involved in the delivery of student services. He says that integration of duties and constant

“Here we have the advantage of being a smaller community where both faculty and students tend to see the school as the center of their personal and professional lives. That sense of community happens less, perhaps, in a very busy urban environment, so it’s an important aspect of the experience to highlight to prospective students.” He wants to make sure that admitted students visit the campus, sit in on classes, and personally connect with students and faculty, to ensure they get a full sense of the “Duke Law experience.”

Hoyer says he looks forward to bringing together an ever more “diverse community of scholars” at Duke.

“We learn better in environments where we are working with people who have viewpoints and experiences different from our own. It’s easy to become complacent or to feel like you have achieved your goal because some number tells you that. Diversity goes well beyond numbers and checkboxes. It needs to be a constant theme if it’s going to be successful. There’s always room to grow, while preserving what

we have that has been so successful for so long.” He also stresses the importance of maintaining integrity in the review process for prospective students.

“In our country now, we tend to define merit based on a number, or a three-digit standardized test score, or a ranking,” Hoyer says. “While I don’t underestimate the value of those things, they don’t tell the whole story. It is really important to evaluate the whole person in the admissions process. And that means taking the time to read thoroughly and carefully every application more than once and getting different viewpoints from different readers in order to come to some decisions that make sense for us as a community.”

Hoyer says he simply loves his work. “Over the years, I have found continual satisfaction in finding candidates with extraordinary academic records, but also from time-to-time, individuals who may not have had the most promising record on paper, but who had other very compelling aspects of their background that convinced me that they had unusual potential, and after admitting them seeing those students thrive in law school, and as lawyers. It’s just an extraordinary opportunity to bring top students to this kind of institution and for us to really benefit from their contributions.” ♡

— Tricia Horatio

## International Week



THE WINNERS OF THE "FOOD FIESTA"

Members of the Duke Law community shared their diverse cultures during the School's Fifth Annual International Week October 24-28. Combining celebration and substance, the week's highlights included:

- A keynote address by former U.S. Ambassador to Rwanda David Rawson on the failure of diplomacy to stop Rwanda's 1994 descent into genocide (see page 6)
- An Israeli-Palestinian student dialogue
- The international "Food Fiesta," where more than 80 Duke Law chefs showcased their culinary talents
- "Siesta & Salsa," which combined two definite crowd pleasers, food and dancing
- An international film festival
- The cultural extravaganza featuring belly dancing, a noodle-eating competition, a fashion show, and a display of Japanese Ninibori—two people acting as one. ♪



CHINA AND KHAZAKSTAN



ST. LUCIA AND AUSTRIA



JAPAN

## Duke Law programs now available online for CLE credit

Duke Law School has teamed up with West LegalEdcenter to offer alumni and other legal professionals online access to continuing legal education (CLE) programming that is informative, enlightening, and even entertaining.

"We believe that our programs are truly unique and are excited to offer them to a broader audience in an online format," said Dean Katharine T. Bartlett. "This partnership provides us with another opportunity to reach our alumni nationwide, and also will allow other attorneys to take these courses."

The online CLE offerings feature other key areas of Duke's faculty expertise including intellectual property, national security, corporate and securities, science and technology, and international and comparative law. They give alumni a wonderful opportunity to remain connected to the Law School, said Bartlett.

"These programs will give alumni the chance to re-engage with the intellectual life of the School, reconnect with familiar professors, and get acquainted with new ones, and earn CLE credit in the most convenient way possible."

For a full list of Duke Law online CLE offerings, visit [www.law.duke.edu/cle](http://www.law.duke.edu/cle)

The "Distinctive Aspects of American Law" documentary series is a centerpiece of the new online CLE program. Produced by Professor Thomas Metzloff, the series allows viewers to explore recent Supreme Court cases with unprecedented depth and rigor through interviews with the parties, attorneys, and judges involved in the various stages of litigation, coverage of the communities in which the cases arose, and in-depth analysis from Duke Law faculty.

First screened during the Law School's 2005 reunion weekend, *Virginia v. Black* examines a Ku Klux Klan leader's successful challenge to a Virginia law that prohibited cross burnings. It drew an enthusiastic response. "Fantastic," said Eric Isaacson '85. "It's so easy to come to a case with your perceptions and attitudes – this helps get you to see it fully." The case is currently in the online roster, with seven others to be added in coming months.

"By partnering with Duke Law School, we are ensuring that our customers have access to the highest quality and most comprehensive CLE programs available in one convenient location," said Steve Daitch, general manager of West LegalEdcenter and vice president of West Education Group.

The CLE programs can be accessed through the Duke Law Web site, [www.law.duke.edu/cle](http://www.law.duke.edu/cle). Alumni who register with West LegalEdcenter will receive "member" discounts on all Duke Law programs when they add Duke to their selected memberships at registration. West will track compliance with applicable state CLE requirements and report hours earned to the appropriate state for all members, but will contact only those alumni who choose to register for CLE information.

West LegalEdcenter is a division of Thompson West and the largest provider of online CLE courses in the world. ♪ — Tricia Horatio

### CIVIL LIBERTIES ONLINE

## CIVIL LIBERTIES ONLINE EXAMINES PATRIOT ACT'S IMPACT

In early February several key senators reached a compromise with the White House over a number of controversial provisions of the USA PATRIOT Act (the Patriot Act) that helped facilitate its renewal. While the compromise broke the congressional impasse over the Patriot Act's renewal, they have not silenced critics—in Congress and among the public—who remain concerned that we are not striking the correct balance between national security and civil liberties in the post 9/11 environment.

One measure of the impact that the new anti-terrorism provisions have on civil liberties is how they are being interpreted and applied in court, but comprehensive information about civil liberties court decisions can be hard to find. A new online service of the Program in Public Law – Civil Liberties Online – plans to make this easier by providing a summary and analysis of the relevant case law.

Charles S. Murphy Professor of Law and Public Policy Christopher Schroeder, director of the Program in Public Law, initiated the project. “There is so much discussion of the balance between national security and civil liberties in the post 9/11 era, we thought this project would be of use to people participating in that discussion, whether they be policy makers on Capitol Hill or elsewhere, academics, students, or others with an interest in these questions.”

Jessica Areen '07, Aleksandra Kopec '07, and Audry Casusol '06 worked under Schroeder's supervision to create the Web site.

“We tried to illustrate the effects of the Patriot Act using actual data,” says Kopec. “We quantified how many times such things as library records searches and specialized warrants have in fact been used.”

“It's important to see what challenges are actually being brought to the Patriot Act and how the courts are applying the Act's provision in response,” adds Areen. “It gives us a sense of the actual, working implications of this Act and clues on how it may evolve in the courts over the next five to ten years.”

In crafting Civil Liberties Online their goal was to be objective in tone and content, says Kopec. While one section discusses how the Patriot Act enhances the responsibilities of financial institutions to proactively report certain transactions to law enforcement officials, another explores the portions of the Act that seek to protect American citizens against infringements of their civil liberties, as in cases of discrimination based on religion or natural origin.



A section headed “Beyond the Patriot Act” discusses cases and laws that may violate civil liberties, but for which the Patriot Act cannot be held responsible. Schroeder says the team quickly realized that the project ought not to be limited to Patriot Act provisions. “The broader debate is really about how 9/11 has changed our overall approach to civil liberties and national security and that can be reflected in legal developments that have nothing directly to do with the Act itself. Since 9/11, for example, U.S. attorneys are making expanded use of material witness warrants to detain suspected terrorists, and so the material witness statute has generated new case law. So as the project goes forward, we will con-

tinue to expand its scope, which may extend beyond case law in some instances. Right now we are working on material covering the dispute over NSA surveillance of telephone calls, even though there are not reported decisions on legal challenges to those activities.”

The entire Web site is written and organized to be accessible to a wide range of users.

“I think people have a lot of ideas about what the Patriot Act is and does that aren't necessarily valid,” says Casusol. “Civil liberties are at the heart of America's core interests—these are things that affect people every day. This is not something that should be relegated to a marginalized or discreet debate, or ponderings between the intelligentsia and ivory tower. Discussion needs to be widespread. There need to be people who understand what the legislation is and are then able to say whether it is a good idea.” ♡

Civil Liberties Online can be found at [www.law.duke.edu/publiclaw/civil/](http://www.law.duke.edu/publiclaw/civil/)

## Three faculty portraits unveiled

The Law School's fourth-floor portrait gallery received three new additions in recent months, as portraits paying tribute to recently retired William Neal Reynolds Emeritus Professor of Law Clark Havighurst, and the late Professors Herbert L. Bernstein, and Jerome M. Culp, Jr., were dedicated.

Professor Bernstein's portrait was unveiled prior to the Fourth Annual Herbert Bernstein Memorial Lecture in International and Comparative Law on September 27, with Dean Katharine Bartlett, and Professors Paul Haagen and Neil Vidmar offering tributes to their late friend and colleague who died in 2001.

"He was a true mentor to students," recalled Vidmar, Russell M. Robinson II professor of law and professor of psychology. "His door was always open, and he spent many, many hours every week with students—many more hours than most of us do—talking, mentoring, sometimes helping with personal problems. I was able to observe this, and this is the kind of image I have of the man. This portrait reminds me that he was a man of deep learning, of humor and compassion, and a teacher at all times."

"Herbert was an uncommonly erudite man," said Haagen. "His interests and knowledge extended to an astonishing range of subjects. That a German scholar would be erudite, is perhaps not surprising. That such a scholar would wear that mantle of erudition with such a lightness and playfulness that Herbert did, is all the more remarkable. He made this a happier and richer place for it."

Professor Culp's portrait was unveiled on February 13, following a panel discussion on "Reflections on Racial Justice" held in his honor. Professor Trina Jones, who moderated the discussion, remembered Culp as an individual of powerful intellect and passion, "a person who graced the



CLARK HAVIGHURST



HERBERT BERNSTEIN



JEROME CULP

halls of white privilege, but never denied or tried to mask that he was a black man."

Panelist Frank Rudy Cooper '95, a professor at Suffolk University School of Law, recalled Culp's mentorship and encouragement. "Jerome told me when I was in law school that 'you can be a law professor.' It was important that there was somebody here who would say those things." Noting that Culp is the first African American whose image will hang in the Law School's portrait gallery, Cooper said, "There are complications with the idea of representation, but that doesn't mean that representation doesn't matter."

Dean Bartlett, Charles L. B. Lowndes Professor of Law Sara Beale and Professors John Weistart and James Coleman also recalled Culp for his towering intellect and loyal friendship, his passion for Duke basketball, and the special relationships he cultivated with colleagues and students.

"Jerome convened or joined groups for everything, and in so doing habitually and gracefully crossed all of the invisible boundaries that so often divide different groups within the Law School, such as faculty, student, or staff, or spouse or child of the above," said Beale. "He was there for us and with us, in a hundred different ways."

"There is a special quality I see in those whom Jerome has mentored," said Weistart. "They are fiercely, fiercely loyal to him, and now to his memory. He has gently, but deeply etched their souls with the truth about life and with truth about the world. They know that, and they want to make sure that you and I know that as well."

The portrait of Professor Havighurst, dedicated during his retirement dinner on November 12, shows him with the Porsche he auctioned off to benefit the Law School. For more on Professor Havighurst's career and scholarship, see page 32 ♡.

## Duke team wins National Moot Court title

The Duke Law team of 3Ls Audry Casusol, Sara Wickware, and April Nelson won the National Moot Court Competition in New York City on February 2. More than 250 teams entered the competition, which is sponsored by the American College of Trial Lawyers and the New York City Bar. This Duke team also won first place in the Regional finals in the fall. Among other honors, their brief was recognized as the best in the competition, and April Nelson was named second best oralist. This is the first time Duke Law School has won this competition.

"On behalf of the entire Law School community, I want to congratulate our winning team and tell them how proud we are of them," said Dean Katharine Bartlett. "This is a fantastic achievement, requiring enormous talent, hard work, and commitment." Dean Bartlett also offered special thanks to team coach Jim Maxwell '66 and Associate Dean for Student Affairs Jill Miller for "their special devotion and support to this team."

After competing in preliminary rounds against Drake University and Mercer University, the Duke Law team eliminated Brooklyn Law School in the octafinal round, and the University of Washington in the quarterfinals. In the semifinal round, they avenged a preliminary round loss, eliminating Drake, and achieved victory over Memphis Law School in the finals.

"There is no competition more prestigious than this," said Moot Court Co-chair Amy Kalman '06. "Duke has become a nationally known name in Moot Court and oral advocacy." ♡



L-R: AUDRY CASUSOL, SARA WICKWARE, APRIL NELSON

Chris Hildreth

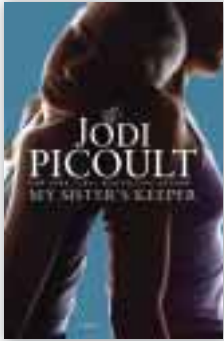
# Great reads on ethics

A popular component of the Law School's ethics curriculum is a selection of substantively diverse discussion courses that involve readings connecting the practice of law, its substance, and ethics, the last broadly defined to include professional responsibility and moral commitment and action.

### *My Sister's Keeper*

by Jodi Picoult  
(Atria Books, 2004)

In this contemporary novel, from Senior Lecturing Fellow Kathryn Bradley's section on "Ethics and the Parent-Child Relationship," a family faces difficult emotional and ethical issues when a 13-year-old girl sues her parents



for medical emancipation in order to stop being a tissue donor for her older sister, who is dying from leukemia. The author tells the story through the separate voices of each of the characters, a device that Bradley stresses

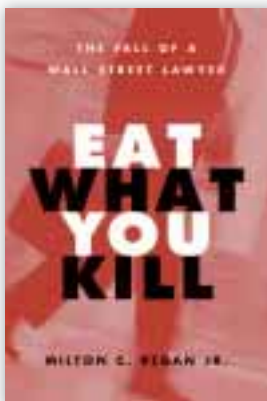
"helps bring a cutting-edge legal issue to life."

### *Eat What You Kill: The Fall of a Wall Street Lawyer*

by Milton Regan, Jr.  
(University of Michigan Press, 2004)

*Eat What You Kill* is the true account of former Millbank Tweed partner John Gellene, who was convicted of a federal crime and served 15 months in prison for failing to disclose—and lying about—his conflict of

interest in a bankruptcy case. "The book has a detailed description and thoughtful assessment of the nature of a Wall Street



practice that may have contributed to the lawyer's decision to conceal the conflict," says Professor Catherine Fisk, whose section title is "The Limits of Zealous Advocacy." "It helps the students sort out what combination of law firm pressure, hubris, and personal failings prompted the lawyer to make the choices that led to him committing a crime."



### *Torture: A Collection*

by Sanford Levinson,  
editor  
(Oxford University Press, 2004)

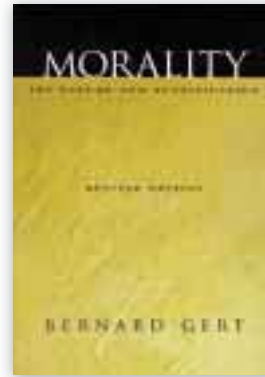
Senior Lecturing Fellow Sarah Ludington, who leads a

section on "Torture, Law, and Lawyers" with Professor Christopher Schroeder, calls *Torture* a "must read. Levinson's book collects several 'classics' on the history, legality, and ethical dilemma of torture, and also publishes contemporary essays that specifically address the wars on terror and in Iraq."

### *Morality: Its Nature and Justification*

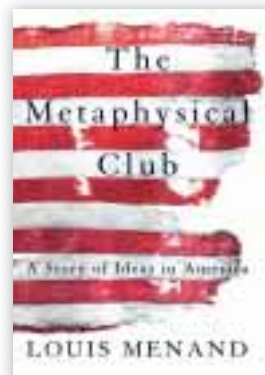
by Bernard Gert  
(Oxford University Press, 2005)

James B. Duke Professor of Law George Christie's section is called "Morality and the Law," a relationship brought into renewed focus, he notes, by the increased concern with human rights, "a notion inextricably tied to our visions of morality. Following [philosopher Thomas] Hobbes, Gert contends that the core of our shared



concept of morality is not a set of directives as to what we must do but a set of propositions as to what one is forbidden to do, such as not to harm oth-

ers, unless one can show some extremely important justification," says Christie. "These are the only sort of mandatory propositions as which we can hope to get the universal agreement of reasonable people. How we try to act virtuously...depends, in the last analysis, on prudential considerations. We shall close the course by looking at a few recent cases—assisted suicide, same-sex marriage—where courts have been openly asked to consider moral issues in deciding the cases before them."



### *Metaphysical Club*

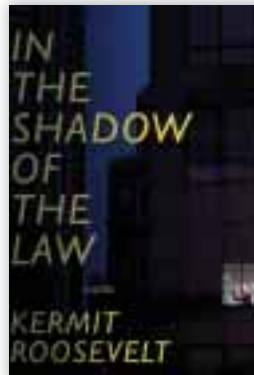
by Louis Menand  
(Farrar, Straus and Giroux, 2001)

Assistant Professor Jedediah Purdy, whose section is

called "Worlds without Law," recommends this non-fiction account of Oliver Wendell Holmes' journey from the Abolitionist idealism of his youth to the extreme skepticism toward idealists and system-builders that Purdy says marked his adulthood as a scholar and judge. "The path led through Antietam and the other bloody conflicts of the Civil War, where Holmes bled and

*Students and faculty alike find the readings and small group discussions, which change in subject matter every year, provocative, pleasurable, and highly enlightening, Duke Law Magazine asked current "Readings in Ethics" faculty which selections they would particularly recommend.*

saw beloved friends die for political principles." Menand, a New Yorker writer and Harvard professor, "writes elegantly and has a rare gift for understanding ideas and temperaments with equal acuity," says Purdy.



*In the Shadow of the Law* by Kermit Roosevelt (Farrar, Straus and Giroux, 2005)

This debut novel by a former clerk for Associate Justice David Souter, follows partners and associates in a powerful Washington, D.C., law firm as they tackle a pro

bono death penalty case and a class action arising from a chemical factory explosion. Visiting Professor Mitu Gulati, whose section considers "The Ethics and Economics of Large Law Firm Practice," calls the novel "delightfully funny and cynical, but also, unfortunately, insightful about contemporary firm practice." ♣

## 10th annual *PILF* auction sets record

The 10th annual Public Interest Law Foundation (PILF) Auction & Gala February 25 grossed a record \$64,000 in support of summer public interest fellowships. Held at Duke's Nasher Museum of Art, the event was both spectacular and successful, attended by more than 500 people who enjoyed art, cocktails, and a performance by student singers "Speak of the Devil" during the silent auction. The evening concluded with a 35-item live auction, amusingly emceed by Garrett Levin '06 and auctioneer Joe Pope, which featured items ranging from vacations in Maui and

Southwestern France to tickets to "Oprah" and the World Series.

PILF co-chair Teresa Sakash '06 was quick to praise Auction Chairs Julia Kohen and Leah Nicholls and Auction Manager Melissa Oliver, all 2Ls. "Through their individual and collective creativity and dedication, these three redefined what a successful PILF Auction & Gala entails, elevating the event to previously unimagined heights," said Sakash. She also offered special thanks to the many alumni who donated items to the auction and its sponsor, Lowndes, Drosdick, Doster, Kantor & Reed, P.A., as well as the platinum (\$3000+), gold (\$1500) and Silver (\$750) sponsors listed at [www.law.duke.edu/student/act/pilf/Auction2006/Auction\\_Sponsors.html](http://www.law.duke.edu/student/act/pilf/Auction2006/Auction_Sponsors.html).

"Every year, the students learn how to make the gala bigger and better," said Associate Dean of Public Interest and Pro Bono Carol Spruill. "It is not only the best social event of the year, but it



TERESA SAKASH '06 (R) WITH MOM, MARY SACKSTEDER

produces money that funds students to work with lawyers in underfunded legal aid, public defender, and other community and government organizations. The students serve the public and in the process have what is often a transformative experience affecting the rest of their legal careers."

The PILF Auction & Gala capped the Law School's first Parents' Weekend, a student-organized event overseen by PILF Co-chair Zach McNish '06, and likely the start of a new Law School tradition. More than 115 parents attended classes, toured the School and Duke campus, and took in the finals of the Dean's Cup Moot Court Competition. ♣



PROFESSOR JAMES COLEMAN PLACES A BID

# Profiles

## Bruce Rogers '87: Donations honor kindness of mentor and friend

A scholarship in his second year enabled Bruce Rogers to complete his education at Duke Law. The enduring friendship he forged with Professor Jerome Culp, and the generosity and wise counsel Culp offered to him through law school and beyond, helped Rogers to pursue his professional dreams. Rogers says that it is his pleasure to now give back by generously supporting a scholarship in memory of Culp who died in February 2004.

“It was important to me to continue Jerome’s legacy of giving in this way,” says Rogers who returned to Duke to attend an event in Culp’s honor on February 13. “I have been fortunate and blessed to have success in business and to be able to make a meaningful contribution to honor Jerome.”

Rogers, whose Denver-based private equity investment firm, KRG Capital Partners (KRG), has \$2 billion under management, helped launch the Culp scholarship in 2004 with a \$50,000 donation. He and his wife, Sally, contributed a further \$100,000 in December 2005, which was matched with challenge funds from a new University-wide Financial Aid Initiative. (See box.) The first Culp scholar, Reginald Harris, entered Duke with the class of 2008.

Rogers turned down a full scholarship to the University of North Carolina Law School in 1984 in favor of attending Duke, even though it meant he had “to borrow everything I could” to do so, due to his family’s financial situation. “I thought it worthwhile to my professional career to go to one of the top national law schools,” he says. He hoped that doing well in his first year would land him a scholarship in his second, but wasn’t given one immediately, in spite of placing high in the 1L class.

Culp was Rogers’ small section and torts professor in his first year, and the two got to know each other in the classroom



**“It makes sense for me to give back to the Law School in a way that recognizes all the things Jerome did for me.”** Bruce Rogers '87



and on the basketball court, during the pick-up games of which Culp was famously fond. Rogers shared with Culp his difficult decision to withdraw from Duke after his first year, and his ongoing financial concerns after he received a tuition-only scholarship beginning in the 1986 spring semester.

“Jerome had just purchased a house right next to East Campus, and offered to rent me an upstairs room free of charge as long as I would help him with renovations,” recalls Rogers, who lived there through his graduation from Law School with another classmate while Culp was a visiting professor at another university. “Through Jerome’s generosity and genuine interest in my success, we really forged a strong and long lasting friendship. He came out to Colorado when I got married, he was there after my first child was born, and he was a mentor to me throughout my career, first as a lawyer, then as a businessman. He always gave me great counsel and wisdom.”

Following graduation, Rogers went into mergers, acquisitions, and corporate law, achieving partnership in the Denver offices of Kirkland & Ellis and then Hogan & Hartson. When he was contemplating leaving his partnership to launch KRG with his brother-in-law in 1996, he sought Culp’s advice.

“He told me that where I was going and what I was doing with my legal background was a natural progression, reminding me that, in addition to my legal skills, I had worked just as hard to develop my business skills,” says Rogers, who majored in business and finance at Stetson University. “He encouraged me to pursue my dreams. He always asked the tough questions, and helped me frame things so I made the right decision.”

It was a move that paid off. Rogers speaks with pride of the excellent track record KRG now has in the leveraged buyout marketplace, and the fact that the State of North Carolina and Duke University Management Company are among its largest investors. He is certain that he made the right decision in coming to Duke.

“I couldn’t have done it without the legal training I received at Duke and the background it enabled me to develop. The Duke Law credential opened the

### Duke Financial Aid Initiative

DUKE LAUNCHED A University-wide Financial Aid Initiative in December, with a goal of raising \$300 million in new endowment funds over the next three years in order to strengthen its financial aid programs for deserving students. In announcing the Initiative, Duke President Richard H. Brodhead called it “crucial to Duke’s long-term ability to attract the very best students and to make quality education affordable for all families.”

Duke Law School has a fundraising goal of \$10 million as part of this effort, says Katharine Buchanan, interim associate dean for Alumni & Development. “Endowment income currently provides less than 17% of the \$4.5 million in aid that Duke Law School awards. The rest comes from annual gifts and tuition — sources the School relies on to meet other

pressing needs such as recruiting and retaining faculty, maintaining and improving technology, improving classroom resources, and enriching student life.”

As part of the Financial Aid Initiative, a group of generous donors, including the Duke Endowment, have made a remarkable commitment. They have provided \$100 million in challenge funds, a portion of which will be available to the Law School to match, dollar for dollar, new scholarship endowments of \$100,000 or more, as well as additions to existing scholarships of \$100,000 or more. “Bruce and Sally Rogers’ recent \$100,000 gift to the Culp Scholarship,” Buchanan points out, “was leveraged into \$200,000 as a result of the availability of those challenge funds.” For more information contact Katharine Buchanan, JD (T’92) at (919) 613-7217 or buchanan@law.duke.edu.

door to Kirkland & Ellis and then Hogan & Hartson, both national firms. It opened up a lot of doors for me professionally that otherwise probably would not have been open. And I would say that just the overall education I received here at Duke was invaluable to me as I progressed as a lawyer and then into private equity.”

Culp taught him what it “really means to give,” says Rogers, who put that lesson into practice as soon as he graduated in 1987. He spent part of that summer cycling from San Francisco to Washington, D.C., raising money for children with disabilities through “Push America,” a charity supported by his college fraternity, Pi Kappa Phi. That ride inspired Pi Kappa Phi’s “Journey of Hope,” which annually involves about 70 young men cycling across the country along three different routes, with stops for “friendship visits” with disabled children along the way. To date the ride has raised more than \$5 million which has

been used to finance recreational facilities and events that allow disabled children to enjoy outdoor activities.

Rogers was pleased to honor Culp at the 2002 Journey of Hope wrap-up banquet in Washington, D.C., sharing with the ride’s participants and their families the story of how Culp helped him. “The ride is a life-changing event for the participants,” explains Rogers. “When I see them in Washington, D.C., their perspective on life is changed—they realize how fortunate they are. I introduced Jerome to them and told the audience about what he did for me, and reminded the team members of the need to always give back.” That’s exactly what Rogers continues to do with his support of the Culp scholarship.

“My scholarship from Duke, and Jerome’s kindness and support, enabled me to complete my education. It makes sense for me to give back to the Law School in a way that recognizes all the things Jerome did for me.” ♣

## David W. Hardee '72: A career fueled by wine and a passion for reinvention

Growing up in Greenville, North Carolina, David Hardee had two clear ambitions: to become a lawyer, and to explore the West Coast. His mother encouraged the former much more so than the latter.

"She was a legal secretary, and at that time lawyers were the pillars of their communities, selfless professionals dedicated to improving the lives of those around them," he explains. But having been widowed when Hardee was 11, his mother made him promise to stay in the Southeast for college.

Hardee says he made the right choice in coming to Duke, calling himself fortunate to have experienced "out-of-the box" analytical training in courses taught by then new faculty members Walter Dellinger and Bill Reppy, who remains a good friend.

Success through his first 10 years of private practice in Charlotte allowed Hardee to pursue a developing interest in food and wine. "With increased resources for travel, I was able to experience the very best wine in some of the world's most beautiful areas for production," he says.

Hardee began what he calls "a pattern of reinventing myself" in 1982, when he moved to Washington, D.C., to become Democratic tax counsel for the Senate Finance Committee under Senator Russell B. Long.

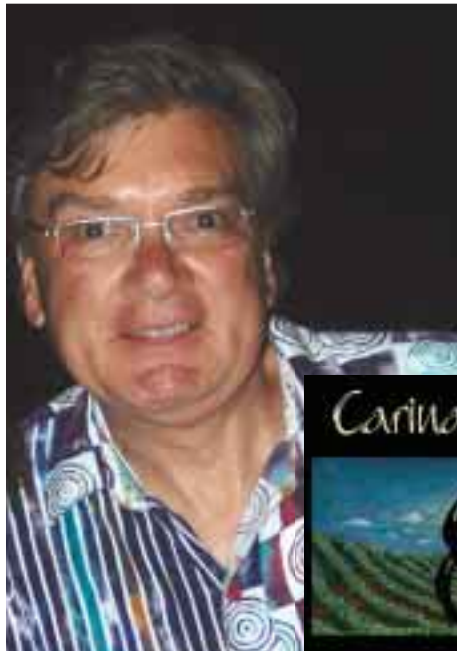
"That experience was the professional highlight of my legal career," he says. "It was a unique opportunity to give back and to experience the law in a very different way than I had previously." Hardee stayed on the Hill for three years, after which he left to become head of the tax department at Akin, Gump, Strauss, Hauer & Feld, also in the capital.

His interest in wine continued to deepen, influenced by fellow attorney and wine enthusiast Robert Parker, who started *The Wine Advocate* in the early 1980s and is now widely recognized as the world's most powerful wine critic. "Parker was among the first to consider wine in terms of futures," says Hardee. "He had as much an influence over me as he's been on the wine industry over the years."

Finding himself ready for another change, Hardee finally headed west in 1992. "I had always loved California, not only because of the climate and the innate 'coolness' of it, but also because of its entrepreneurial spirit,"

he says. "It's an area where anything goes, reflecting a 'why not' attitude that I've always tried to put forth myself."

He founded Hardee Capital Partners in Los Angeles, making investments in various public and private securities. In 1997, Hardee became founding chief financial officer of New Energy Ventures (NEV), developing its



DAVID HARDEE '72

finance, accounting, and information technology departments. NEV quickly became the largest energy service provider in the deregulating U.S. energy market, and was sold, in 1999, to AES Corporation for over \$90 million, plus stock options for senior managers.

After serving as CEO of Energy Software Inc, a Florida-based information technology company, Hardee founded Electricity Capital, LLC, in 2001, an energy investing and consulting firm serving power generation, transmission, and consumption entities, primarily in the Western U.S. He remains a managing director.

In 2002, Hardee's passion for wine fueled yet another reinvention, as vintner, with the establishment of Carina Cellars in Santa Barbara County. Unlike other area wineries that focus heavily on Pinot

Noir, Hardee and winemaking partner, Joey Tensley, set out to produce top-quality Rhône wines.

"In a start-up operation, you try to eliminate as many potential obstacles as you can," Hardee says. "The Rhône varietals offer a lot less difficulty in the production cycle [than Pinot Noir]. I've always loved them, in part because of Robert Parker's influence.

"Our winemaking approach is traditionalist and minimalist," he continues. "We partner with growers who share our philosophies on farming—a dedication to canopy management, low yields, and fruit balance. We think that creates the best wines, rich in traditional varietal flavors and *terroir* of the vineyard."

Carina Cellars' wines are receiving critical praise. *The San Francisco Chronicle* recently named its 2004 Santa Barbara

County Viognier as one of the "top picks" for white wines from Santa Barbara County. *The Wine Advocate's* Parker also praised the 2004 Viognier and awarded Carina Cellars' 2003 Syrah Westerly Vineyard 90 points, commenting that "its beautiful perfume of blueberries, cassis, spring flowers, licorice, and lead pencil is followed by a medium-bodied Syrah with excellent fruit and texture."

Now immersed in business with the winery and Electricity Capital, Hardee notes that he remains engaged with law.

"The trick is to figure out a way to use your training in the law to enhance your ability to pursue your dreams, your passions. Whether negotiating leases, contracting for grapes, ensuring state compliance, or advancing retail sales, I use it every day.

"I also get to make, drink, and share with friends and with the world, a wonderful wine." ♣ — Diana Nelson

For more information on Carina Cellars' wines, please visit [www.carinacellars.com](http://www.carinacellars.com).



## Steve Pepe '68: After the law, the land

Although he had a long and highly successful career as a California labor lawyer, Steve Pepe admits that if he had to do it all over again, he probably would have been a farmer. He is indulging that passion now, and combining it with another, wine, as founder of Clos Pepe Vineyard in the Santa Rita Hills of Northern Santa Barbara County.

Pepe was a child growing up in Patterson, New Jersey, when he tasted his first glass of wine. In fact, he helped his grandparents create it.

"In the Northeast it was fairly common for families to make their own wine. It was a practice that started with Prohibition," he explains. "The grapes would arrive from California, we'd load up our cars, take them home and make a barrel of wine. In the spring, we would go from house to house, cellar to cellar, and taste the wine."

Pepe worked in restaurants throughout high school, then became the first member of his family to attend college when he entered Montclair State University, where he studied history and business. A favorite professor there suggested that he study law.

"I didn't know any lawyers, but many of the most admired figures in history were lawyers, so I gravitated toward the study of law," he says.

Pepe remembers well the close relationships that formed among his Duke Law classmates; all 100 students shared the same course schedule throughout the year.

"Duke was just beginning its transformation from an excellent regional school into an elite national law school," he says. "Everybody knew each other very well."

Pepe estimates that 60 to 70 percent of his classmates pursued careers on the East Coast following graduation, with only a handful traveling west. He was one of them, joining O'Melveny & Myers in Los Angeles,

where he stayed for 35 years.

"At that time, O'Melveny offered one second-year student the opportunity to spend the summer with the firm," he says. "[Current Duke Law Professor] John Wiestart declined an offer from O'Melveny in Los Angeles and I took his spot."

Pepe developed a significant regional labor law practice that went national as changes in technology, travel, and communications influenced an increase in interaction among lawyers state-to-state. His career culminated with his election as president of the College of Labor and Employment Lawyers for 2002.

His transition from labor lawyer to farmer and vintner arose from his firm's mandatory retirement rule and the passion for travel, food, and wine he shares with his wife, Catherine, also an O'Melveny partner. "We wanted a post-law lifestyle that would allow us to pursue those passions, and remain close to family, our number one priority," says Pepe.



CATHERINE AND STEVE PEPE '68



It produces 800 cases of Estate Pinot Noir each year, and about 150 cases of Chablis-style Chardonnay.

"The practice of law and the farming of grapes are both the same and very different," Pepe observes. "Each requires

meticulous attention to detail, but particularly at a large firm practice, there is not the kind of independence that you experience as a farmer. At a firm you are part of a team, a small cog in a big wheel. Farming is much more reliant on individual skill, patience, and taking what Mother Nature gives you to rise and fall on your own abilities."

Clos Pepe's wines win accolades, drawing raves from *The Los Angeles Times* in

a February 15 feature article, and an outstanding 92 points awarded to the 2003 Estate Pinot Noir by *Wine Spectator*. The vineyard also sells its grapes to other wineries and produces an olive oil that was awarded the gold medal at the Los Angeles County Fair.

Clos Pepe is truly a family business, with Catherine's son from a previous marriage, Wes Hagen, in the role of vineyard manager and winemaker and his wife, Chanda, as assistant winemaker. Wes's brother, Rob lives nearby with his wife, Stacy, who is the winery's chief financial officer. Their two children, frequent visitors to the vineyard, are being introduced to wine making and tasting in much the same way as their grandfather was years before in New Jersey.

"I hope that [our grandchildren] will develop a passion for wine out of the experience of family, as I did," says Pepe. "But whether it's family, law, farming, travel—whatever your passion, pursue it with everything you have. And don't wait. That's what's most important." ♡ — Diana Nelson

For more information on Clos Pepe wines and olive oil, please visit [www.clospepe.com](http://www.clospepe.com).

## Lynn Wardle '74: Searching for middle ground

Lynn Wardle recalls arguing *Roe v. Wade* in moot court as a 1L, before the historic decision came down from the Supreme Court.

“My assigned partner, Larry Gostin, was avidly pro-choice, and I am avidly pro-life, which made us a pretty good team. We could each learn from the other.” Wardle points out that both have “remained affiliated” with *Roe* in their careers; Gostin now



LYNN WARDLE '74

specializes in health law and policy and biomedical ethics as a professor at Georgetown University Law Center, while Wardle focuses on family and constitutional law, as well as biomedical ethics at Brigham Young University's J. Reuben Clark Law School.

Wardle remains avidly pro-life and avidly anti-*Roe*. In a lunchtime talk on January 25 sponsored by Duke Law's Federalist Society, Wardle called *Roe* “the second worst Supreme Court decision in history, after *Dredd Scott v. Sanford*.”

In addition to setting out “the most radical legal rule regarding abortion of any country in the world,” Wardle called *Roe* a “coup d'etat” by the judicial branch, which seized absolute control of one area of power to decide legal policy.

Visiting Duke just a few days after the completion of Senate Judiciary Committee hearings on the nomination of Justice Samuel Alito to the Supreme Court, Wardle lamented abortion's dominance of the judicial confirmation process. Other important issues are getting lost, he later said in an interview.

“Less ‘sexy’ issues relating to separation

of powers and federalism are getting overlooked. I also think that ‘professionalism’—the infrastructure issues—get overlooked because of these all consuming, politically divisive issues.”

Wardle maintains that there is a middle ground to be found on abortion, though it would take a constitutional amendment or a decision reinterpreting or modifying *Roe*—a fresh possibility with Justice Alito on the Court.

“The way to get this ‘monkey’ off the Court's back is to step back and say, ‘There is room for legitimate regulation. We aren't going to closely monitor and supervise state regulation of abortion, but there are some boundaries.’” Those boundaries could either limit *Roe*'s absolute choice to the first trimester, a compromise Wardle called “practically sensible,” even though it is one he is not conceptually comfortable with, or by making distinctions between “hard” and “soft” cases.

“*Roe* would protect the decision of a woman at any stage of pregnancy in the ‘hard’ cases—those of danger to the woman's life and health, fetal deformity, or pregnancy resulting from rape or incest—but not in ‘soft’ cases such as financial inconvenience, relationship, or interruption of schooling.”

Congress should adopt a definition of life parallel to that doctors use to define death, Wardle said. “Doctors can only harvest organs at a specifically defined level of

traction. “People on both sides seem afraid to compromise.”

His inability to have “real impact” in the abortion debate is a matter of some frustration, Wardle admits. He has had considerable impact in others, having helped draft Utah's child support guidelines, as well as its Defense of Marriage Act (DOMA). Utah's DOMA influenced Congress to draft its own, which led to similar laws in 40 states.

A prominent national opponent of gay marriage, Wardle instead favors benefits that are “carefully tailored” to each relationship. “Economic fairness for two people who have become financially interdependent can be dealt with without impairing marriage,” he said, noting his public support of what became the Hawaiian Reciprocal Beneficiary law. “It didn't create a status and a union comparable to marriage, it didn't compete with marriage, and it wasn't a gay relationship promotion, because it was open to people who were not gay and lesbian—brothers and sisters, roommates, people who couldn't marry.”

Wardle counts among his professional influences Judge John Sirica of the District of Columbia District Court. He began his clerkship with the judge the day following his graduation from law school, overlapping with another Duke alum, D. Todd Christofferson '72 (see page 12). Wardle admired the way the

judge handled the Watergate cover-up trials, which consumed his clerkship.

“The defense tried time and again to manipulate him, but he had practiced law for a long time. He knew what

was going on. It was fun to work for a judge who could see what was happening, and I couldn't,” said Wardle. “He tried very hard to be fair. He knew he would be remembered for this case alone, and he wanted to make sure to get it right. He was a man of great integrity. He also was very thoughtful of his clerks.”

Wardle and his wife, Marion, an art historian and curator at the Museum of Art in Provo, have two sons, both of whom are lawyers. ♡

**“[Doctors] have a clear and workable definition of death. We could apply the same definition to the beginning of life.”**

Lynn Wardle

heart and brain activity. They have a clear and workable definition of death. We could apply the same definition to the beginning of life.” His proposal: Life begins when a fetus has brain waves and unassisted heart activity, at around eight to 10 weeks. “That implies a period of time in which women can make their own decisions free from state regulation.” He added that he would support the “hard case” exceptions throughout pregnancy. He acknowledged that his proposal is unlikely to gain much

## Linda Malone '77: Of Hussein and human rights

Nothing in the spectacle that is the trial of Saddam Hussein has particularly surprised Linda Malone. Even before it began last October, there were clear indications that the former dictator would try to challenge the authority of the Iraqi Higher Criminal Court and disrupt proceedings, she said.

Malone, Marshall-Wythe Foundation professor of law and director of the Human Rights and National Security Law Program at the College of William and Mary School of Law, is not simply an academic observer of the trial. In her role as consultant to the Regimes Crimes Liason Office (RCLO) of the Department of Justice, which advises the Iraqi tribunal, Malone and her students prepare legal memos for use by the prosecutors and judges trying Hussein.

The Iraqi Higher Criminal Court is highly controversial within the international community and among international law scholars, Malone acknowledged, first to members of Duke's International Law Students' Association on October 8, and later in an interview. Initially lacking support within Iraq, it has acquired greater legitimacy through ratification at each stage of Iraq's democratic process, she said. But the international community views the tribunal's procedures, which mix Iraqi law and international law norms, as seriously flawed, particularly due to the Iraqi insistence on capital punishment.

"The United Nations, and most of the international community, was of the opinion that they could not support a tribunal that offered the death penalty, whatever the crimes might be," said Malone. "I ultimately concluded that the atrocities that were committed by Hussein mandated that there be some kind of court established that would hold him responsible, and do so as fairly as possible, and as much in keeping as possible with international norms. So in trying to decide whether it was best to do absolutely nothing to support the court that was trying to try Saddam Hussein or provide

support and hope to provide whatever assistance I could to make it as good a process as possible, I decided to go the latter course."

Malone, a life member of the Law School's Board of Visitors, is no stranger to war crimes trials. In the early 1990s, when allegations of systematic rape and other atrocities were first surfacing in the Bosnian war, she became involved as co-counsel in the case brought by Bosnia against the former Republic of Yugoslavia before the International Court of Justice (ICJ) over its assistance to the commission of human rights atrocities in Bosnia. "The merits of that case are still pending before the ICJ, which is obviously one of the problems in this area of the law," she said.

While individual, isolated acts of rape have always been a war crime, Malone continued, the ICJ case seeks, in part, to establish the sys-

**"Basic human rights norms are the fundamental basis of living in a civilized society. Until there is very general recognition of that, and every effort put to accomplishing that, we will be struggling with many problems that can't otherwise be eradicated."** Linda Malone

tematic use of rape as a tool of war as a more serious international law offense, one that can be considered torture as well as a crime against humanity and part of a genocidal campaign. Her work on that case led Malone to a more intensive study of women's and children's rights in Eastern Europe.

"In looking into the systematic rape targeting women that occurred in Bosnia, it was clear that many of the atrocities occurred against children as well," she observed. "When you see what human rights violations are on a person to person level, and what this does to women, to children, to men, to societies, to cultures, to politics—to every aspect of a civil society—I, at least, have reached the conclusion that basic human rights norms are the fundamental basis of living in a civilized society. Until there is very general recognition of that, and every effort put to accomplishing that, we will be strug-

gling with many problems that can't otherwise be eradicated."

Malone continues to be involved with a program in Mostar, Bosnia, that brings together teenagers from different backgrounds, primarily Bosnian, Croatian, and Serbian, "so that the divisions that had existed from the war do not stand as barriers to a new generation that essentially was born in that war interacting with others that are different from themselves." Stateside, she is part of the American Bar Association's initiative to have the U.N. Convention on the Rights of the Child ratified by the United States, the only country, other than Somalia, that has not done so.

Malone makes a clear link between her international human rights work and her international environmental scholarship which has been a focus throughout her career.

"If you don't have the environment you need in order to live, function, and thrive, you cannot say the individual is fully benefiting and able to exercise basic human rights. I have only found that linkage is more and more closely tied—in places where we see that basic human rights are denied, very frequently

part and parcel of that is a total disregard for the environment in which those citizens live." Malone's most recent book, *Defending the Environment: Civil Society Strategies to Enforce International Environmental Law*, discusses how civil society and non-state actors can try to enforce interna-

tional environmental law, not just through the courts, but through lobbying, discourse, and other methods.

Long fascinated with the ways in which different cultures and societies address problems, and with the differences and commonalities of the problems themselves, Malone said she has always been inclined to a global approach to solutions. She finds inspiration for her work, too, in her two daughters, 16-year-old Erin and 11-year-old Corey.

"They are going to live with the decisions we're making today." ♡



LINDA MALONE '77

## Pammela Quinn '00 and Matthew Stowe '01 DLJ colleagues team-teach sexual orientation seminar



PAMMELA QUINN '00 AND MATTHEW STOWE '01

Although Matthew Stowe '01 is a securities litigator, much of his active pro bono practice is devoted to cases affecting gays and lesbians. At the moment, he and colleagues in the Boston office of Wilmer, Cutler, Pickering, Hale and Dorr are representing 12 former members of the military who were discharged under the federal statute known as “Don’t Ask, Don’t Tell,” after serving in Iraq, Afghanistan, Kuwait, and elsewhere. The case challenges the constitutionality of the statute and seeks reinstatement of the plaintiffs to the military.

“Never before has Don’t Ask, Don’t Tell seemed more susceptible to a successful constitutional challenge than it is right now,” says Stowe. “The 2003 Supreme Court decision in *Lawrence v. Texas* overturned *Bowers v. Hardwick* and held that states can’t criminalize homosexual conduct, undermining the legal analysis of prior decisions upholding the statute.”

Taking part in such cases was a key reason behind his decision to become a lawyer, Stowe says. “I’m gay, and I had grown up accustomed to the idea that there wasn’t really a place in the world for openly gay peo-

ple. After I came out, and started to educate myself on the law and everything else, I was bothered by what I discovered, such as it being perfectly legal to state on a pink slip that you are firing someone because they’re gay. As I started thinking about law school, too, more cases relating to gays and lesbians were reaching the front page. The world was changing, and I thought I wanted to be a part of it.”

Stowe has returned to Duke Law School to share his expertise, currently co-teaching a seminar entitled “Sexual Orientation and the Law” with former *Duke Law Journal* colleague Pammela Quinn '00; both also clerked for Fourth Circuit Judge Paul Niemeyer following law school. Quinn, who spent a year at the Justice Department

as a Bristow Fellow in the Solicitor General’s Office and another three in the appellate division of O’Melveny & Myers’ Washington, D.C., office, has extensive experience with issues of gender theory and sex discrimination which, she points out, figure integrally in case law related to sexual orientation.

Quinn and Stowe agree that there’s a growing demand for attorneys who can knowledgeably take on sexual orientation cases.

“There are a lot of legislative and legal battles going on,” says Quinn. “People graduating from law school with an interest in the subject can easily become involved in pro bono cases, especially military and marriage cases.”

Both Stowe and Quinn emphasize that the legal demand exists on both sides of the gay-rights debate, and all perspectives are welcome and addressed in class. “The Family Research Council needs attorneys who can argue that state constitutional restrictions pass federal muster, and the government needs lawyers who can argue in support of Don’t Ask, Don’t Tell,” says Stowe.

“Honesty, rigorous judicial thinking, and meritorious arguments are the most important things. When I see people fighting for my cause throwing out passion before legal argument, I feel like that’s sort of short-changing the kind of advocacy we are entitled to.” Whatever a student’s viewpoint, Stowe promises the discussion will have practical currency.

“A lot of the cases you study in law school relate to issues that are long-decided and are not going to be re-litigated. The average case does not involve these kinds of exciting issues.” ♣

**“When I see people fighting for my cause throwing out passion before legal argument, I feel like that’s sort of short-changing the kind of advocacy we are entitled to.”**

**Matthew Stowe**

## John Coburn '95: Returns to the Triangle, reconnects with Duke

John Coburn moved back to the Triangle last fall, using its proximity to Washington, D.C., where he lobbies and advocates on behalf of disabled Americans, as an excuse for escaping “the horrendous Chicago winters.” Returning to the area gave Coburn, a staff attorney with Chicago-based Health & Disability Advocates (HDA), the idea to enlist Duke Law students in one of his current endeavors, public education regarding the new federal drug benefit plan known as Medicare Part D.

Working with the Office of Pro Bono and Public Interest, Coburn recruited and trained a contingent of student volunteers to conduct public information sessions for area seniors and others affected by the program as it was rolled out—to considerable confusion—in the early months of the year. He has also shared his expertise with students and faculty in the AIDS Legal Project, whose clients’ AIDS drug coverage may be affected by the program, and assisted the Project with a March town hall meeting at the Law School on drug coverage for people with HIV and AIDS, their caregivers, and service providers.

Coburn demurs at the suggestion that he is one of a small handful of people nationally who understand Medicare Part D. He and his colleagues at HDA liken the program to “chasing shadows,” he says with a laugh.

“It’s kept us up at night. Normally a law is passed, followed by proposed and finalized regulations, and then the law goes into effect. There were very few regulations promulgated for implementing Medicare Part D. Instead, new rules have come out in guidance papers issued on the Internet, and e-mail pronouncements. It’s been a hard environment to work in, changing every day.”

Still, Coburn knows more about the entitlement than most. As coordinator of HDA’s initiatives in support of people with disabilities who want to work, he trains benefits planners nationwide on what happens to individuals’ public benefits



JOHN COBURN '95

when they find employment. Medicare Part D is part of that puzzle.

Coburn notes that HDA’s public education initiatives put its personnel in direct contact with people affected by Medicare Part D. That allows them to identify loopholes and problems with implementation which, in turn, informs their public policy work.

“Our first initiative was commenting on the legislation’s assumption that individuals covered by Medicare Part D aren’t working. That flies in the face of all the work that the Social Security Administration has done to help its beneficiaries work. This new plan is a disincentive to work,” he says, adding that the effect of automatic enrollment on retirees who have health coverage through their retirement plans is another large area of concern for seniors and policy advocates. “You have to make an educated decision about picking a plan, something that is very hard to do.”

It was always his goal to be a public interest attorney, says Coburn. Starting practice at the Legal Aid Society of Cincinnati and Legal Assistance Foundation of Metropolitan Chicago, he specialized in the legal needs of people with HIV and AIDS, before developing the “Protection and Advocacy Program for Beneficiaries of Social Security” at Equip for Equality, Inc. “It was a perfect fit, because you had to be a specialist in the Americans with Disabilities Act and public benefits, which is exactly what an HIV/AIDS attorney does.” His work with HDA continues his focus on the return-to-work issues encountered by disabled Americans.

“I found my niche in this area,” he says. “The organization I work for gives me tremendous flexibility. We work on the issues we want to work on and find a way to raise the money to fund them. That recipe works.” ♡

## Student profile:

# Chris Richardson '07: A healthy perspective

**F**or Chris Richardson '07, being diagnosed at 15 with bone and lung cancer was a life-changing experience.

Cancer free for the last 10 years, he describes cancer as “looking at my obituary and saying ‘how do I get as much out of life as possible?’ To me that’s [by] giving back.”

Since high school, Richardson has been doing just that: as a patient-turned-volunteer at Camp Happy Days in his home town of Charleston, South Carolina, where he helps children with cancer; as president of Emory University’s Student Government Association where he advocated for the release of a Chinese labor camp detainee; and now as the leader of the Law School’s Guardian ad Litem (GAL) program and a spokesperson for the American Cancer Society.

“Having cancer made me willing not to be as cautious a person in terms of being involved,” Richardson says. “When you’ve been told that your life is coming to an end, and you become so sick that you’re in a wheelchair, and every bit of what you find to be dignity has been stripped away, and yet you still find a way to smile and be happy and still find joy in life—you come

away from something like that with an entirely different perspective on the world. It just makes you want to be involved.”

Richardson attributes his proactive approach to his mother and stepfather, whom he describes as “hardworking people who don’t take crap. They taught me that life isn’t going to be fair, and that you might have to work twice as hard because of where you were born and what you have been through, but you can do it.”

sisters he never had, Richardson says he hopes that by working as Guardians ad Litem, his fellow volunteers will realize that “a lot of what we do in law school is in a bubble, that we are sometimes divorced from what is going on in the rest of the world, and that these kids can be general reminders that many people have it worse than we do. In a small way we can make a difference in their lives and also improve upon ourselves.”

**“Part of being an attorney ... is being able to represent your firm. Part of representing your firm is being involved.” Chris Richardson**

He recalls his mother feeding his appetite for reading with books that recounted stories of American and world history. These stories taught him how much people have sacrificed to make a difference, Richardson says. “I think the least I can do is just the little bit I can contribute in comparison to the great people who have gone out there and trail blazed before me.”

After graduating from Emory in 2003, Richardson went to work with the Atlanta

Legal Aid Society, where he developed an outreach program aimed at helping cancer patients obtain legal services and assistance. While there, he helped clients obtain Social Security benefits, Medicaid, Medicare, and housing assistance. He doubled the number of cancer patients served by the Legal Aid Society that year. “Working there drove home to me the difference attorneys can make in the lives of people who are sick, who are poor, who need assistance,” he says.

That is the philosophy Richardson brings to his leadership of the GAL program. Calling the five children he represents the brother and

Richardson hopes to eventually apply his legal training to community action, continuing to help people with cancer.

“Part of being an attorney is not only getting the brief right and getting the law right, but also it is being able to represent your firm. And part of representing your firm is being involved. You should be out there. You should be a face and be visible in the community,” says Richardson. “My goal is to take not only the academic lessons I have learned here at Duke, but also the social lessons and apply them in my life and say ‘I am not just going to write a brief, I am going to represent you in a holistic fashion.’”

Until then, Richardson plans to continue “giving back” through his volunteer work and other activities. He is involved with Moot Court and the *Duke Journal of Gender Law & Policy*, is among a group of students working with Professor Erwin Chemerinsky on a Fourth Circuit appellate case involving a defendant who may have received ineffective counsel, and recently organized an event honoring Law School staff. Other than that, he plans to “take each day as it is.”

“Having cancer was the best thing that ever happened to me ... it helps you keep everything after that in perspective.” ♡

— Tricia Horatio



CHRIS RICHARDSON '07



## Student profile:

## Joe Davis '07: History lesson

Joe Davis learned of Justice Sandra Day O'Connor's retirement from the Supreme Court while standing in the press office of his boss, Delaware Senator Joe Biden.

"I was [in the Russell building] picking up some stuff, and one of the secretaries said, 'I can't believe she's retiring,'" Davis recalls, "I swung around and there's CNN reporting that O'Connor is retiring. I remember running back to the office. I don't know why I ran, but I felt like it was really exciting, like, 'Oh, my God, there's something we have to do.'"

Davis says he has always been interested in politics; as an undergraduate at Brown University, he spent a summer working for Rep. Patrick Kennedy (D-Rhode Island) and worked on local campaigns. He applied for the job with Biden at the suggestion of the senator's former chief of staff, Visiting Lecturer Ted Kaufman, hoping it would offer a good blend of public policy and law, his focus as a joint-degree student at Duke.

Beginning in May, Davis' work primarily involved pending legislation, assisting in the reauthorization of the Violence Against Women Act and helping to prepare the minority view of an asbestos litigation reform bill. He spent only a small amount of time writing memos on the legal scholars and judges seen as possible nominees for the Supreme Court. That changed when Justice O'Connor announced her retirement on July 1, opening up the first seat on the Supreme Court in 11 years.

This was new terrain for the members of Biden's staff, says Davis; none of them

O'Connor's retirement. But Davis says it was preparing for the hearings regarding the nomination of Judge John Roberts and the work that accompanied it that really linked his summer job to his legal studies.

"We had to figure out who this guy was. We got 70,000 pages of documents; we had to read all of his opinions, all of his briefs – everything he had written. From these documents we had to try to figure out where he might stand on certain issues. So everything I did in the first year – reading cases and trying to figure out what they meant – went into reading his briefs and his cases and trying to figure out what they meant and where Roberts 'fit.'"

Not only did Davis have a hand in the Committee's preparation for the confirmation hearings for Supreme Court nominee Roberts, but he also sat in, an experience he describes as surreal.

"The first time I was in the hearing room was the day before the hearings started. I

Davis says his involvement brought home to him the importance of the process, summed up in a quote used by Sen. Biden. "These hearings, the advice and consent of the Senate, are the singular



JOE DAVIS '07

**"This is the only chance we get to say yes or no to these men and women who will sit on the Court ... I understand that the decision is huge." Joe Davis**

had previous experience with the nomination process. They set to work augmenting the memos on possible replacements and helping to prepare statements on

went in with one other staffer and it was empty. I remember pictures, watching the Clarence Thomas hearings on TV, and then I was in the room. It was very humbling."

moment of democracy before a lifetime of independence.' This is the only chance we get to say yes or no to these men and women who will sit on the Court, and after spending two months trying to figure out the impact of putting Roberts, or putting Alito on the Court, I understand that the decision is huge. These two justices really get to decide where [the Court] will go in the next 20 or 40 years."

This summer, Davis will work in the government relations practice of DLA Piper Rudnick Gray Cary in Washington, D.C. ♪

# Class Notes

Tell us what you are doing:  
[www.law.duke.edu/alumni/](http://www.law.duke.edu/alumni/)

## Class of '56

**Paul Kortepeter** has joined Sommer Barnard's trusts and estates practice group in Indianapolis, IN, as of counsel.

**Carlyle C. Ring, Jr.**, of counsel with Ober Kaler in Washington, D.C., has been selected by his peers for the second consecutive year for inclusion in *The Best Lawyers in America 2005-2006* in information technology law.



## Class of '58

**John F. Lowndes**, founding partner at Lowndes, Drosdick, Doster, Kantor & Reed in Orlando, FL, has been selected by his peers for inclusion in *The Best Lawyers in America 2005-2006* in real estate law. On November 30 he was inducted into the Mid-Florida Business Hall of Fame as a laureate for 2005 by Junior Achievement of Central Florida.



## Class of '61

**Phillip Hubbart** has published *Making Sense of Search and Seizure Law: A Fourth Amendment Handbook*, which offers a historical and principled basis for relevant U.S. Supreme Court decisions. The book is available through the publisher at [www.cap-press.com](http://www.cap-press.com), or through [amazon.com](http://amazon.com).



## Class of '63

**Mark B. Edwards** of Poyner & Spruill in Charlotte, NC, has been selected by his peers for inclusion in *Best Lawyers in America 2005-2006* in trusts and estates.

**Julian Juergensmeyer**, professor and Ben F. Johnson, Jr., chair in law, has been appointed co-director of the Center for the Comparative Study of Metropolitan Growth at Georgia State University.

## Class of '64

**Stephen G. Crawford**, a partner with Hand Arendall in Mobile, AL, has been selected by his peers for inclusion in *The Best Lawyers in America 2005-2006*, in corporate and banking law.



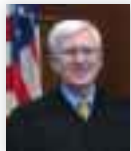
**J. Robert Elster**, a partner with Kilpatrick Stockton in Winston-Salem, NC, has been selected by his peers for inclusion in *The Best Lawyers in America 2005-2006*, in commercial litigation and personal injury litigation. He has also recently been named one of the "Legal Elite" in *Business North Carolina*.



**W. Erwin Fuller, Jr.**, a partner at Brooks, Pierce, McLendon, Humphrey & Leonard, has been recognized by the North Carolina Bar Association in appreciation for his service on the North Carolina General Statutes Commission. Erwin was appointed in 2001 to a four-year term of service on the 12-member commission which monitors and updates the state's civil laws and makes recommendations on possible improvements to North Carolina statutes.

## Class of '65

**R. Allan Edgar** stepped down as chief judge of the United States District Court



for the Eastern District of Tennessee and assumed senior status on October 7, 2005, in Chattanooga, TN. His portrait was unveiled during a special program on that day. He was succeeded by **Judge Curtis Collier '74**.

## Class of '66

**T. William Porter, III**, chairman of Porter & Hedges in Houston, has been selected by his peers for inclusion in *The Best Lawyers in America 2005-2006*. He has been listed in every issue since the initial publication in 1983. He has also been selected by his peers as a "Texas Super Lawyer" each year since its inception.

## Class of '67

**Carl E. Bolch, Jr.** has been named to *Georgia Trend Magazine's* "Platinum List," a biographical listing of the CEOs of the top 50 public and private companies in Georgia. Carl is CEO of RaceTrac Petroleum, Inc., based in Atlanta.

**Thomas A. Jorgensen**, a partner at Calfee, Halter & Griswold in Cleveland, has been selected by his peers for inclusion in *The Best Lawyers in America 2005-2006* for employee benefits law.

## Class of '68

**Carl Bianchi** has retired from the Legislative Services Office of the Idaho Legislature. Prior to his 12 years with the Legislature, he served for 20 years as administrative director of the courts for Idaho's judicial branch, where he led state and national efforts to reduce unnecessary court delays.

**James H. Kelly, Jr.**, a partner with Kilpatrick Stockton in Winston-Salem, NC, has been selected by his peers for inclusion in *The Best Lawyers in America 2005-2006* for personal injury litigation. He has also recently been named one of the "Legal Elite" in *Business North Carolina*.



**Robert W. Maxwell II**, a partner with Keating Muething & Klekamp in Cincinnati, has been selected by his peers for the 10th consecutive year for inclusion in *The Best Lawyers in America 2005-2006*. Robert has also been named a 2005 "Ohio Super Lawyer" in the area of labor and employment, and one of the top 50 lawyers in practice in any field in the Cincinnati/Dayton metropolitan area. "Super Lawyers" are the top five percent of attorneys in Ohio, as chosen by their peers and through independent research performed by the publishers of *Law & Politics Magazine*.

**Michael S. Scofield** has retired from the practice of law and is chairman of the board of both Evergreen Mutual Funds and Branded Media Corporation, a member of the board of the Mutual Fund Directors Forum, and was recently elected to the Independent Directors Council of the Investment Company Institute. Michael is also a member of the Board IQ trustee advisory board.

## Class of '69

**Ronald H. Neill**, a partner at Calfee, Halter & Griswold in Cleveland, has been selected by his peers for inclusion in *The Best Lawyers in America 2005-2006* for tax law.

**Peter A. White** has been appointed vice chairman of U.S. Trust, a wealth management company headquartered in New York City. Peter was formerly with Citigroup's Private Bank as managing director of the family advisory practice.

His book, *Ecology of Being*, on the nature of human relationships, is being published by All in All Books and is available through [ecologyofbeing.com](http://ecologyofbeing.com).

## Class of '71

**Paul Caldwell** has merged his law firm with Morgan & Morgan of Florida, where he is of counsel. He is presently a Ph.D. candidate in theology at Marquette University in Milwaukee, WI.

**Christine Witcover Dean** is an assistant U.S. attorney in the U.S. Attorney's office of the Eastern District of North Carolina in Raleigh.

**Thomas Zachman**, who serves on the Brown County Municipal Court in Georgetown, OH, has been awarded the William R. McMahon Award by the American Bar Association Judicial Division National Conference of Specialized Court Judges. He is president of the Municipal/County Judges of Ohio, Inc. as well as president-elect of the Ohio State Bar Foundation, and was recently selected to become a charter member of the first fellows class of the Advanced Science and Technology Adjudication Resource Project.

## Class of '72

**Robert T. Brousseau**, a partner at Btutzman, Bromberg, Esserman & Plifka in Dallas, has been named among the top lawyers in bankruptcy law by *Texas Monthly*.

**Jeffrey S. Portnoy** has been elected vice president/president elect of the Hawaii State Bar Association. His term as president will commence on January 1, 2007.

**James W. Ummer**, a partner at the Pittsburgh law firm of Rothman Gordon,



has been selected by his peers for inclusion in *The Best Lawyers in America 2005-2006* for trusts and estates law.

**Durwood Zaelke**, president of the Institute for Governance & Sustainable Development, has published his fifth book, *Making Law Work: Environmental Compliance and Sustainable Development*, (Cameron May, London), a two-volume set compiling and analyzing the best of the multidisciplinary literature on compliance and enforcement. For more information, see [www.inece.org](http://www.inece.org).

## Class of '74

**Curtis Collier**, of the United States District Court for the Eastern District of Tennessee, has been appointed to the position of chief judge. He succeeds **Judge Allan Edgar '65**, who has taken senior status. Curtis was appointed to the federal bench in 1995 by President Clinton.

**Steven D. Pierce** has been appointed chief justice of the Housing Court Department of the Massachusetts Trial Court for a five-year term.

**Larry Wayne Shelton**, former assistant public defender for the Eastern District of Virginia, has been named the first federal public defender for the Western District of Virginia by the Fourth Circuit Court of Appeals.

## Class of '75

**Nathan C. Goldman** has been invited to join the history committee of the American Astronautical Society. He is also completing the third edition of his book, *American Space Law: Domestic and International*, due out in 2007, published by Univelt, Inc.

**Gary G. Lynch** has joined Morgan Stanley as chief legal officer, reporting directly to Chairman John Mack. He was formerly executive vice chairman and global general counsel of Credit Suisse First Boston.

**Linton L. Moyer** of Thomson, Rhodes & Cowie in Pittsburgh, PA, focuses his practice on the defense of medical malpractice cases in Western Pennsylvania.

## Class of '76

**Constantine H. Kutteh**, a partner with Pope, McMillan, Kutteh, Simon & Privette, began a four-year term as mayor of Statesville, NC, in December 2005. He has been a member of the Statesville City Council since 1989, and lives there with his wife, Teresa, and their three daughters.

**Celia Roady**, a partner at Morgan, Lewis & Bockius in Washington, D.C., has been named by *Legal Times* as one of the leading experts on the tax issues of nonprofit organizations.

**Robert Weber** is IBM Corporation's first senior vice president for legal and regulatory affairs, based in Armonk, NY. At Jones Day for 30 years, Robert has been twice named one of America's top 10 trial lawyers by the *National Law Journal*.

**Mike Wilson** and **Mary Margaret (Mo) Ogburn '93** were married in 2003 and reside in Charlotte, NC. Mike has a solo practice. Mo is an attorney with Blanco Tackabery Combs & Matamoros, working in the area of business transactions.

## Class of '77

**Joaquin R. Carbonell, III**, executive vice president and general counsel of Cingular Wireless, has been appointed chair of the board of directors of the National Chamber Litigation Center. He has been a member of the board since 2003.

**Dana Levitt** has joined McDermott Will & Emery as partner in the Los Angeles office. Dana, a member of the business litigation department, focuses his practice on complex commercial disputes.

**Dennis Wiczorek**, partner with DLA Piper Rudnick Gray Cary in Chicago, has been named a 2005 "Illinois Super Lawyer" in the area of franchise and dealership. "Super Lawyers" are the top five percent of attorneys in Illinois, as chosen by their peers and through independent research performed by the publishers of *Law & Politics Magazine*.

## Class of '78

**Robert D. Stets** has been named associate vice president and chief financial officer for university advancement at California Polytechnic State University.

## Class of '79

**Sara S. Beezley** has been appointed by the Kansas Bar Association Board of Governors to serve as a delegate to the ABA House of Delegates. Sara, a solo practitioner in Girard, KS, served as the Kansas Bar Association president in 2002-03. She also serves as a trustee and is a fellow of the Kansas Bar Foundation.

**Anne W. Cottingham** has joined the Nuclear Energy Institute in Washington, D.C., as assistant general counsel. Prior to joining the NEI, Anne was a senior attorney with Winston & Strawn, where her practice focused on nuclear-related regulatory issues and litigation.

**Gray McCalley** has been named vice president and general counsel of Printpack, Inc., a manufacturer of flexible packaging based in Atlanta. Gray and **Dan Bowling '80** taught a course on labor and employment law during the Fall 2005 semester at the Law School.

**James A. Sheriff**, a partner with Godfrey & Kahn in Milwaukee, WI, has been selected by his peers for inclusion in *The Best Lawyers in America 2005-2006*. Jim leads the firm's financial institutions practice group.

Class of '79



## Still a Team: Softball Pals and Classmates Rally to Help a Friend

**S**teve Spolar '79 and Bill Giarla '79 became friends as 1Ls, and cemented their friendship over softball. Their Duke Law team, "The Panama Reds," was Law School League champion for the three years they were in Durham, and even took the University's intramural trophy in their final year.

The Reds' chief rival in the Law School League was the "Bullock's Puppies," a team named for the hushpuppies served at the legendary Durham barbeque restaurant. It was a friendly rivalry, says Spolar, and the members of both teams have stayed in touch over the years, even holding a couple of reunions.

Giarla and Spolar became very close after they both settled in Pittsburgh, the latter's hometown. "His two kids call me Uncle Steve, and mine call him Uncle Bill," said Spolar. Currently Spolar is the head of human resources for the *Pittsburgh Post-Gazette*, while Giarla is senior counsel for Three Rivers Management, Inc.

Spolar was stunned when Giarla was diagnosed, in 2004, with Amyotrophic Lateral Sclerosis (ALS)—commonly known as Lou Gehrig's disease—which causes nerve degeneration and which typically is fatal in 18 months to five years from diagnosis. The ALS quickly affected Giarla's lower body.

"He was quite an athlete. It's a terrible thing to see a guy that vital now go through this," said Spolar, noting that, while Giarla now uses a walker, his upper body is still strong.

Giarla found a clinical study of the drug pramipexole that could start at the University of Pittsburgh if funding—\$30,000—could be secured. The drug has showed promise in improving nerve and muscle function in the subjects in an earlier, limited, human safety study.

That gave Spolar the chance he was looking for "to do something, other than just be there for Bill." In mid-September, with Giarla's permission, he put the word about the opportunity to contribute out to members of the Reds and the Puppies. Other members of the Duke Law community offered to help as well, said Spolar, such as **Bob Harper '79** and **Cliff Levine '80**, who circulated it to members of his Law School softball team.

"It was almost instantaneous," said Spolar, of the response to the informal campaign, which raised over \$20,000 in just six weeks. More than 20 Duke Law grads volunteered to contribute. With an additional \$8,000 donated by other friends of Giarla, the Pittsburgh study had the funds to go forward, and Giarla became the first subject enrolled.

In his message of thanks to his friends and classmates, Giarla praised Spolar's leadership, and noted that they had given hope, not just to him, but to nine other people in Western Pennsylvania who are also enrolled in the trial. "The fact is that this study would not be going forward at this time for any of the 10 subjects if not for your donations," he wrote. "Eventually maybe the money would have been raised, but not now. And time is so precious to those of us with ALS."

Spolar shares his friend's gratitude. "I can't say enough about all of the people who stepped up to the plate—I've never been prouder. We spend so much time as lawyers and professionals, and in the alumni magazine, writing and focusing on people's achievements. I think we have to understand that we are a family, too, as the Duke Law grads who helped here showed so beautifully." ♡

**V. L. Woolston**, partner with Perkins Coie in Seattle, has been named a 2005 "Washington Super Lawyer." "Super Lawyers" are the top five percent of attorneys in the state of Washington, as chosen by their peers and through independent research performed by the publishers of *Law & Politics Magazine*.

### Class of '80

**Daniel Bowling**, senior vice president, human resources at Coca-Cola Enterprises, and **Gray McCalley '79** taught a course on labor and employment law during the Fall 2005 semester at the Law School.

**Richard Van Nostrand** completed his term as president of the New England Bar Association at its annual conference in October 2005. He was also recently appointed to a three-year term as a member of the ABA's Standing Committee on Bar Activities and Services.

**H. Glenn Tucker**, a partner with Greenberg Dauber Epstein & Tucker in Newark, NJ, has been selected by his peers for inclusion in *The Best Lawyers in America 2005-2006* and *New York Magazine's Directory of the New York Area's Best Lawyers*.

### Class of '81

**David Fine**, a partner at Ropes & Gray in Boston, is a member of the firm's corporate department and co-head of the firm's federal securities and public company practice. He specializes in counseling technology, telecommunications, utility, and general corporate clients in securities, public, private, venture, and other financing transactions, mergers and acquisitions, executive compensation, and other general corporate issues. He and his wife, Leslie, have two teenage children, Daniel and Lauren.

### Class of '82

**Mark D. Shepard**, a lawyer with Babst, Calland, Clements and Zomnir in Pittsburgh, has been selected by his peers for inclusion in *The Best Lawyers in America 2005-2006* in the commercial litigation section.

### Class of '84

**Kurt Florian** was recently named the chief operating officer and counsel of the structured finance group of Vanderbilt Capital Advisors in Chicago.

**William Frost** has closed his law practice and is back in full-time military service with his National Guard unit, which is being mobilized for up to 18 months

service in southwest Asia. He is serving with a security force for a "forward operating base" on a main supply route into Iraq.

**John F. "Sandy" Smith**, senior partner with Morris, Manning & Martin in Atlanta, is chair of Odyssey, an independent nonprofit educational organization promoting academic achievement and love of lifelong learning for public school children. Through a comprehensive program focusing on core academic curriculum, the arts, and critical thinking skills, this model offers enhanced educational opportunities to students not often afforded them.

**William E. Wright**, partner at Kilpatrick Stockton in Winston-Salem, NC, has been selected by his peers for inclusion in *The Best Lawyers in America 2005-2006* for employees benefit law.



### Class of '85

**Jana O. Fleming**, executive director of Child Development Studies at City Colleges of Chicago, has been retained as consultant to direct the Joyce Foundation's grant making in the area of early childhood education.

**D'Anne Hurd** has joined Worcester Polytechnic Institute in Worcester, MA, as vice president for business development at Gateway Park and general counsel.

**John J. Michels, Jr.**, partner with McGuireWoods in Chicago, has been named a 2005 "Illinois Super Lawyer" in the area of labor and employment.

### Class of '86

**Anthony D. Bartirome** has joined the law firm of Blalock, Walters, Held & Johnson in Bradenton, FL, as a principal. He will continue to counsel clients in matters relating to estate planning, probate and trust administration, and the protection and preservation of wealth.



**Jeffrey Lawyer**, partner with Kilpatrick Stockton in Winston-Salem, NC, has been selected by his peers for inclusion in *The Best Lawyers in America 2005-2006* in tax law.

**Karen Manos** has joined Gibson, Dunn & Crutcher as partner in the Washington, D.C., office. Karen is a nationally recognized authority in the areas of government contract costs, pricing, and cost accounting controversies.

**Jonathan Spencer**, general counsel and secretary for Shenandoah Telecommunications, has been named

## David Addington '81: Chief of Staff

Class of '81



**D**avid S. Addington was appointed to the post of chief of staff to the vice president on October 31, 2005. Addington had served as counsel to Vice President Cheney since January 20, 2001.

Addington, who has a B.S. in foreign service from Georgetown University, has spent most of his career in public service. He served as assistant general counsel for the Central Intelligence Agency from 1981 to 1984, and as counsel to the House committee on intelligence and foreign affairs from 1984 to 1987, at which point he became special assistant, and then deputy assistant, to President Ronald Reagan.

From 1984 to 1992, Addington



served as special assistant to then Secretary of Defense Cheney. He served as general counsel for the Department of Defense from 1992 to 1993 before entering the private sector. ♣

chair of the Information Technology Law and E-commerce Committee of the Association of Corporate Counsel.

**Gwynn T. Swinson** has joined Duke University Medical Center as vice president of government and community affairs and external relations. Gwynn has been serving as North Carolina's chief administrative officer under Governor Mike Easley.

### Class of '87

**Kichimoto Asaka**, a professor of law at the University of Tokyo, is currently a visiting scholar at Duke Law School.

**Carl D. Birman** has opened his own firm in Harrison, NY (Westchester County), specializing in private foundations and public charities. He has spent over 20 years working in the non-profit sector with a variety of human service, advocacy, and international relief organizations.

**Marc Israel** has joined American Land Services, a New York-based title abstract and real estate services firm, as vice president and special counsel. Previously in private practice, Marc will also head up the sales effort for the New York City office.

**Teresa Buchheit Klinkner** and her husband, Eric, announce the birth of their daughter, Meriel Skye Klinkner, born June 5, 2005, in Redondo Beach, CA.

**Thomas M. Rohe** has released *Rebel*, a collection of poems, published by Goblin Fern Press. Some of the poems were written during his time at Duke Law School.

**Susan Somach** spoke to Duke Law students on December 1, 2005, about her experiences working in democracy and governance, humanitarian affairs, gender, and with women in development abroad. Susan is a US AID consultant based in Atlanta.

### Class of '88

**Winston Zhao** has been recognized in *Asian Legal Business* magazine for his work. Winston has more than 15 years experience representing multinational corporate clients and other foreign companies in their investment and trade activities in China.

### Class of '89

**Allen W. Nelson** has joined Crawford & Company in Atlanta as senior vice president, general counsel, and corporate secretary. Previously with BellSouth Corporation as chief compliance counsel, Allen will handle legal matters for

# Class Notes

Crawford, oversee the company's legal department, and perform the duties of corporate secretary. He also serves on the boards of the Georgia Trust for Historic Preservation and the Atlanta Ballet.

**Michael A. Ross**, associate professor of history at Loyola University New Orleans, has received the 2005 Alpha Sigma Nu Jesuit Book Award in the discipline of history for his book, *Justice of Shattered Dreams: Samuel Freeman Miller and the Supreme Court During the Civil War Era* (LSU Press 2003). The book, a 2004 New Jersey Council for the Humanities Honor Book, also won the Peter Seaborg Award for Civil War Scholarship, sponsored by the George Tyler Moore Center for the Study of the Civil War at Shepherd College, in Shepherdstown, WV.

## Class of '90

**Thomas Hanusik** has joined Crowell & Moring as partner in the firm's white collar & securities litigation group in Washington, D.C. Thomas has most recently been an assistant chief of the Department of Justice's criminal division, fraud section.

**Junichi Kubo** joined the legal department of the Deutsche Bank Group in Tokyo as director and senior counsel in February 2005. He also teaches the basics of securitization and trust at the Rikkyo Law School in Tokyo on a part-time basis.

**Sally J. McDonald**, a partner with DLA Piper Rudnick Gray Cary in Chicago, has been named a 2005 "Illinois Super Lawyer" in the area of labor and employment.

**Donald M. Nielsen**, an attorney with Bell, Davis & Pitt in Winston-Salem, NC, has been appointed by the Forsyth County Commissioners to its Environmental Affairs Board.

**Brett Schouest** of Cox Smith Matthews Inc. in San Antonio, TX has been selected by his peers for inclusion in *The Best Lawyers in America 2005-2006*.

**Lawrence Silverman** has been selected by his peers for inclusion in *The Best Lawyers in America for 2005-2006* for antitrust. He manages the litigation department of the Miami office of Akerman Senterfitt. He has also been ranked in "America's Leading Business Lawyers" by Chambers & Partners USA for Florida antitrust.

## Class of '91

**Spruell Driver**, an attorney with Miller and Martin in Nashville, TN, has been appointed by Governor Phil Bredesen to the University of Tennessee board of trustees. His term began in October 2005

and will run through May 30, 2011. Spruell has served as president of the UT National Alumni Association and is currently chair of the Association's National Annual Giving Program.

**Melissa Engelberth** married John McIlwain on October 2, 2004, in Milwaukee, WI. The couple lives in San Francisco. Melissa has joined the law department of Wells Fargo Bank where she serves as primary counsel to Wells Fargo Securities.

**Shawn Flatt** is the petroleum attache and deputy in the economic section at the U.S. Embassy in Caracas, Venezuela.

**Henning Krauss** has started a new law firm, Arqis Rechtsanwälte, with several other attorneys. The firm will have offices in Düsseldorf, Munich, and Tokyo. Henning is based in the Munich office.

**Thomas Wallinder** married Sigrid Lexmark on September 17, 2005, in Stockholm, Sweden. Thomas also published *Guide to Public Takeovers* in Sweden. He is a partner in the Stockholm firm Mannheimer Swartling.

## Class of '92

**Denise Gregg** and her husband, Keith, announce the birth of identical twin daughters, Sydney Elise and Sarah Catherine, on August 20, 2005.

**Tony Jeffries** and **Mike Smith** successfully completed a two-day climb of Mt. Rainier in Washington. Tony is a corporate and securities partner at Wilson Sonsoni Goodrich & Rosati's Palo Alto, CA, office. He and his wife, Carrie, have two children, Will and Ellie.

**Samantha Evans Ross** and her husband, **David J. Ross '93**, announce the birth of their first child, a daughter, Annalise Evans Ross, born in Washington, D.C., on August 15, 2005.

**Michelle Kirk** and her husband, Chris McWilliams, announce the birth of their first child, a daughter, Catherine Kirk McWilliams, on September 26, 2005, in New York City.

**Don Willett** was appointed to the Supreme Court of Texas by Governor Rick Perry in August 2005. He was also recently named "Outstanding Young Alumnus" of Baylor University. Don, his wife, Tiffany, and their son, Jacob Noble, live in Austin.

## Class of '93

**Fritz Duda** and his wife, Elise, announce the birth of their daughter, Elizabeth Grace, on October 18, 2005, in Dallas.

**Sara Emley** has joined Buckley Kolar as a partner in Washington, D.C. Formerly counsel at Wilmer Cutler Pickering Hale and Dorr, Sara specializes in advising financial services firms on investment adviser, investment company, and broker-dealer regulatory issues.

**Robin Green Harris** and her husband, Max Harris, announce the birth of their twin daughters, Alexandra Michelle and Vanessa Emily, on July 2, 2005.

**Jacquelynn B. Huges** has joined Cozen O'Connor in Cherry Hill, NJ, as a member of the insurance department. Prior to joining the firm she was senior counsel at PJM Interconnection, LLC in Norristown, PA. Jacquelynn focuses her practice in the areas of insurance, real estate, general corporate, and public utility law.

**Colin Jones** is an associate professor of law at Doshisha University in Kyoto, Japan.

**Mary Margaret (Mo) Ogburn** and **Mike Wilson '76** were married in 2003 and reside in Charlotte, NC. Mo is an attorney with Blanco Tackabery Combs & Matamoros, working in the area of business transactions. Mike has a solo practice.

**David J. Ross** and his wife, **Samantha Evans Ross '92**, announce the birth of their first child, a daughter, Annalise Evans Ross, born in Washington, D.C., on August 15, 2005.

**Richard D. Smith** has joined Barclays Capital as director, head of IBD Legal. He was previously with Goldman Sachs & Company.

**Philip Stein** has become a partner at Snyder Slutkin & Snyder in Baltimore. Prior to moving to Baltimore, he was honored as one of the 2005 "Georgia Super Lawyers Rising Stars" by *Law & Politics Magazine*.

**Jim O. Stuckey** has joined Littler Mendelson as managing shareholder in the firm's new office in Columbia, SC.

## Class of '94

**Scott S. Balber** has been named partner at Chadbourne & Parke in New York City. A member of the litigation group, his practice focuses on securities, white collar criminal defense, bankruptcy, general commercial, and labor and employment litigation.

**Junko Funahashi** and **Richard "Tad" Ferris** announce the birth of their daughter, Elisabeth Kazuko Ferris, on July 13, 2005, in Alexandria, VA.

**Markus Kotzur** has been appointed to faculty chair at the University of Leipzig in Germany. He also teaches at the Universities of Cologne, Dresden, Würzburg, and Münster, as well as at Kaliningrad State University in Russia. His major fields of research are comparative constitutional law, public international law, European community and European constitutional law, including the historical and philosophical dimension of European integration.

**Sean Timmons** has joined Smith, Anderson, Blount, Dorsett, Mitchell & Jernigan as partner in Raleigh, NC. Sean specializes in Medicare and Medicaid fraud and abuse, certificate of need, and transactions involving health care provider entities.

**Sophia van Woensel** and **Gregory Mose '96**, along with their son, Sebastian, have moved to Montcabrier, France, to run a holiday cottage business.

### Class of '95

**Laurent Campo** has joined VoxTec International, Inc. in Annapolis, MD, as vice president and general counsel.

**Frank R. Cooper** has been appointed associate professor of law at Suffolk University Law School in Boston, where he teaches and researches in the areas of constitutional criminal procedure, criminal law, critical race theory, and law and culture.

**John A. Earles** has been named partner at Morris, Manning & Martin in Atlanta, where he practices in the firm's corporate and real estate capital markets groups, focusing on securities and corporate governance issues for companies in both the public and private markets.

**Manuel Frick** has opened his own firm, Frick Anwälte, in Berne, Switzerland.

**Gates E. Grainger** and his wife, Allyson, announce the birth of their son, William Gates, on April 20, 2005. William joins sister Cameron Rose.

**Sonja Henning**, an employment lawyer at Tonkon Torp, was elected in May 2005 to the Portland, OR, School Board.

**Rachel Kosmal McCart** has an equine law practice, Equine Legal Solutions, Inc., based in San Jose, CA, offering a full range of legal services for the horse industry. Rachel was formerly a senior attorney in the Corporate Affairs Group at Intel Corporation. She continues to show her American Paint Horse in state and national competitions.

**Songwuth Nakaranuruck** has joined Chavalit & Associated Limited in Bangkok as partner in charge of intellectual property and technology.

### Class of '96

**Barry Auskern** has opened his own firm in Greenfield, MA, specializing in criminal defense and sports law. He was recently appointed as a special assistant district attorney for Hampden County to prosecute sexually dangerous persons.

**Deidre J. Call** is of counsel with Peel Brimley in Henderson, NV.

**Randall D. Lehner** and his wife, Renanah, announce the birth of their daughter, Hannah Madeline, on May 21, 2005.

**Linda H. Martin** has been named partner in the New York office of Simpson Thacher & Bartlett, where she focuses on insurance and reinsurance law.

**Gregory Mose** and **Sophia van Woensel '94**, along with their son, Sebastian, have moved to Montcabrier, France, to run a holiday cottage business.

**Erik Moses** is chief operating officer of Legacy Holdings, a private investment firm in New York City, focusing on real estate and leveraged buyouts of small to mid-sized private companies.

**Jennifer Sloan** married Anthony Tobin in March 2005. Jennifer is a partner with Shutts & Bowen in Orlando, FL.

### Class of '97

**David A. Buchsbaum** has been named partner at Fisher & Phillips in Fort Lauderdale, FL. He practices in the areas of wage and hour compliance and litigation, and is also a trainer in effective human resource policies and practices.

**John Donald** and his wife, Elaine Hammond, announce the birth of their second child, a daughter, Margaret Bobbie, on September 27, 2005.

**Denise Gough** has joined Scripps Networks, Inc., as director, legal affairs, in Knoxville, TN. She supports Home & Garden Television, DIY Network, Great American Country, and online, broadband, and international initiatives of the company.

**Peter Ocko** and his wife, Kate Axelrod, announce the birth of their son, Madden Fenway Ocko, on May 14, 2005. Peter is a managing director in the Los Angeles office of Major, Lindsey and Africa, where he handles career consulting for and placement of attorneys in firms and corporations in Southern California and throughout the U.S.

**Etienne Patrocle** has joined Eaton Industries Manufacturing GmbH in Morges Vaud, Switzerland, as senior attorney.



**Scott Thomas Ryan** has joined the Raleigh, NC, law firm, Hutchison+Mason. He was previously a senior associate at Cadwalader, Wickersham & Taft in Charlotte, NC.

### Class of '98

**Douglas Blews** has accepted a position as an adjunct professor of law at the John Marshall Law School in Atlanta. He continues full time as a staff attorney at the Supreme Court of Georgia.



**Todd A. Dawson**, a member of the employment and labor group of Baker and Hostetler in Cleveland, has been named partner. Todd focuses his practice in the areas of labor relations and employment and labor litigation.

**Bob Ekstrand** and his wife, **Samantha J. Ekstrand '01**, announce the birth of triplets, William Henning, Samuel Michael, and Eliza Rose, on September 27, 2005.

**Lee Robinson** and his wife, Christiane Kipphan-Robinson, announce the birth of their son, Sean Connor, on November 7, 2005, in Louisville, CO. Sean joins a brother, Julian, and a sister, Adriana. Lee is currently employed as an attorney at the U.S. Securities and Exchange Commission, Division of Enforcement, in Denver.

**Bobby Sharma** has been promoted to vice president and general counsel of the NBA Development League, the minor league of the National Basketball Association.



**Jeffrey Morgan Smith** and **Robin Whitlock Smith** announce the birth of their daughter, Elizabeth Morgan Whitlock Smith, on July 26, 2005.

**Jill Steinberg** married John Da Grose Smith on October 2, 2004. The couple resides in Atlanta.

**Feng Xue** has joined Bell Boyd & Lloyd as partner in the Chicago office. He leads the firm's China practice.

### Class of '99

**David Bowsher** has joined the Bush administration as senior counsel in the Office of the General Counsel at the Department of Commerce. He was previously at Wilmer Cutler Pickering Hale and Dorr.

# Class Notes

**Christian Broadbent** has been selected as counsel to Commissioner Annette L. Nazareth of the United States Securities & Exchange Commission in Washington, D.C.

**M. Vanina Caniza** has been named partner at Baker & McKenzie in Buenos Aires, Argentina.

**Theresa Claffey Carnegie**, of Mintz, Levin, Cohn Ferris, Glovksy and Popeo in Washington, D.C., has been selected as one of the 2005 "Outstanding Young Healthcare Lawyers" in the country by *Nightingale's Healthcare News*.

**Michael Chiaravalloti** married Ariana del Busto on October 1, 2005. Michael is an associate in the corporate department at Proskauer Rose in New York City.

**Barb Goffman's** short story, "Murder at Sleuthfest," has been nominated for an Agatha Award for best mystery short story published in 2005. The story appears in *Chesapeake Crimes II*, an anthology of mystery short stories written by authors living in the Chesapeake Bay area. The book is published by Quiet Storm Publishing. This is Barb's first published work of fiction.

**David Harrison** married Man Thanh Luu on September 17, 2005, in Ho Chi Minh City, Vietnam. David served as deputy press and cultural attache at the U.S. Consulate General office in Ho Chi Minh City. After a brief stop in Washington, D.C., he assumed a new post in Caracas, Venezuela, in March.

**Michael E. Hurelbrink** has joined GCO Education Loan Funding Corporation as general counsel. He advises senior management on corporate governance, student loan securitizations, secondary market issues, risk management, and general business matters.

**Wendy Kamenshine** has joined the Office of Citizenship and Immigration Services Ombudsman at the Department of Homeland Security in Washington, D.C.

**Tom Loeser** has joined the cyber and intellectual property crimes section of the U.S. Attorney's office in Los Angeles. He prosecutes federal computer hacking and intellectual property crimes. Tom lives in Claremont, CA, with his wife, April, and their son, Oliver.

**Joseph Lombardo** has received the Chapman & Cutler Pro Bono Award for his work with the Cabrini Green Legal Aid Clinic in Chicago.

**Kali Murray** is an assistant professor at the University of Mississippi School of Law, teaching patent law, property, intellectual property, and environmental law.

**Varun Sahay** has completed an MBA and is executive assistant to the chief executive officer of Mittal Steel Poland in Katowice, Poland.



**Dara Steele-Belkin** and her husband, Jeff, announce the birth of their second child, Vivian Paige Belkin, on July 12, 2005. Vivian joins her sister, Sabrina.

**Chris Stidvent** and his wife, Veronica, announce the birth of their first child, Charlotte Marie, on September 4, 2005, in Alexandria, VA. Chris currently works as senior counsel at the Division of Enforcement of the U.S. Securities and Exchange Commission in Washington, D.C.

**Jonathan M. Vanden Bosch** and his wife, Wren, announce the birth of their daughter, Clara Albright, on September 19, 2005. Clara Albright joins her sister, Anna Wren.

## Class of '00

**Scott W. Dodson** and **Ami Dodson '02** announce the birth of their son, Asher Zev, on September 24, 2005.

**Jason W. Goode** married Annie Richardson on October 30, 2004. The couple resides in Atlanta.

**Brian Harris** has joined Morris, Manning & Martin in Atlanta. His practice focuses on employment law counseling and litigation.

**Kelly Karapetyan** has rejoined the antitrust group of Shearman & Sterling in New York City.

**Kellie Durham Lewis** has joined the Duke University Alumni Affairs office as coordinator of regional programs.

**Eric Liang** married Tiffany Hall on November 6, 2005, in Sierra Madre, CA. Eric has joined Nickelodeon & Viacom Consumer Products as counsel, business and legal affairs. He handles licensing and intellectual property work for Paramount Pictures.

**Jennifer Locke** married Matt Davitt on July 16, 2005. Jennifer is a faculty services librarian at the Georgetown University Law Library in Washington, D.C.

**Arturo Banegas Masia** and his wife, Marianne, announce the birth of their second son, Arturo Humberto, on August 15, 2005, in Miami. Arturo, Jr. joins his sister, Mariana Nathalia.

**John T. McBroom** and his wife, Christy, announce the birth of their son, Trajan, on January 24, 2005.

**Alison K. Morello** and her husband, Gianluca, announce the birth of their daughter, Eva Isabella, on March 21, 2005, in New York City.



**Jeremy M. Veit** and **Julie Ottoboni Veit** announce the birth of their son, Michael Robbins, on February 6, 2005.

## Class of '01

**Kelly Black-Holmes** and her husband, Thomas Holmes, announce the birth of their daughter, Leah Marie, on November 21, 2005, in Atlanta.

**Samantha J. Ekstrand** and her husband, **Bob Ekstrand '98**, announce the birth of triplets, William Henning, Samuel Michael, and Eliza Rose, on September 27, 2005.

**Fernando Fresco** has joined Pan American Energy in Buenos Aires, Argentina. Previously with Pluspetrol, also in Buenos Aires, Fernando will continue to work on the legal aspects of financing and other issues related to oil and gas.

**Jamila Hoard** has joined the criminal division of the U.S. Attorney's office in Washington, D.C., as an assistant U.S. attorney. She was recently elected as a delegate to the ABA's House of Delegates for the D.C. Bar Association.

**Sarah E. Isabel** and her husband, Robert, announce the birth of their daughters, Taylor Adina and Laurin Reese, on August 23, 2005, in Smyrna, GA.

**Quynh-Anh Lam** is practicing law at Freshfields Bruckhaus Deringer's office in Hanoi, Vietnam. Her practice includes general investment and corporate finance. Prior to returning to Vietnam she was in the firm's London office.

**Jay Moffitt** joined Morris Nichols Arsht & Tunnell in Wilmington, DE, in May 2005 as a member of the corporate litigation group.

**Gideon C. Moore** and his wife, Anne, announce the birth of their daughter, Abigail Grace on May 14, 2005. Gideon has joined Morris, Manning & Martin, in Charlotte, NC, in the corporate department.

**Masato Sasaki** is the deputy director of the Northeast Asia division of the Trade Policy Bureau of Japan's Ministry of Economy, Trade and Industry in Tokyo. He was previously an attorney at the Japanese Embassy in Tehran, Iran.

**Demetria Titus** has joined the Maryland attorney general's office in Baltimore as assistant attorney general for education. Demetria was previously with King and Spalding in Washington, D.C.



**Class of '02**

**Ami Dodson and Scott W. Dodson '00** announce the birth of their son, Asher Zev, on September 24, 2005.

**Jaime Hammer** and her husband, Toby, announce the birth of their daughter, Evelyn "Ellie" Beth, on February 2, 2005. Jaime, an associate with Fish & Richardson, recently relocated to the San Diego office from Dallas.

**Ashley Johnson** married J. Ashton Good on September 3, 2005, in Laguna Beach, CA. Ashley is a corporate associate at the Orange County office of Latham & Watkins.

**Eli Mazur** is the legal program coordinator at the Fulbright Economics Teaching Program in Ho Chi Minh City, Vietnam.

**Jessica Richman** has joined the staff of the Career Development office of George Washington University School of Law as the career counselor/LLM liaison.

**Andrea Treece** has joined Earthjustice as an associate attorney in the Oakland, CA, regional office. Andrea previously served as assistant regional counsel at the U.S. Environmental Protection Agency in Boston for nearly three years.

**Stacey Walker** has been appointed an ambassador for the ABA section of business law. The ABA's Ambassador Program is intended to develop potential leadership within the organization and Walker is one of five business attorneys selected to participate. She was also recently named to the ABA's Africa Law Initiative Council, a public service project to provide legal expertise, advice and training to judges, lawyers and government officials throughout Africa.

**Class of '03**

**Erin Abood** has joined Ropes and Gray in the health care group of the San Francisco office.

**Molley Clarkson** has joined Sutherland Asbill & Brennan as an associate in Atlanta. Prior to joining the firm, Molley was clerk to the Honorable J. Owen Forrester of the U.S. District Court, Northern District of Georgia.

**John T. Guild** has joined Gibson, Dunn & Crutcher as an associate in the Dallas office.

**Nicolas Lustig** has joined Grupo Nueva, an international holding company in the forest and construction materials industry, in Santiago, Chile, as regional counsel.

**Karla McKanders**, a clerk for the Honorable Damon Keith of the U.S. Sixth Circuit Court of Appeals in Detroit, has been elected to the board of directors of the Rosa Parks Scholarship Foundation. (See "First Person, this page")

*First Person*

Class of '03



**Karla McKanders '03  
Finds Inspiration in the Life  
of Rosa Parks**

Rosa Parks passed away on October 24, 2005. Her death had a significant impact on me as the Rosa Parks Scholarship Foundation funded, in part, my undergraduate education at Spelman College. To me, her life stands for the principle that ordinary acts can have an extraordinary impact. In December of 1955, through her refusal to comply with an unjust law and give up her seat to a white passenger on a bus in Montgomery, Alabama, she ignited the Civil Rights Movement and forced this country to afford all citizens the rights guaranteed in our Constitution. In her life, I have continually found both inspiration and a call to action.



KARLA MCKANDERS

Admiration for Ms. Parks and her legacy has inspired many of my choices. While I was a student at Spelman, I interned in Washington with Rep. John Conyers, Jr., D-Mich. During the 1960s, Ms. Parks served as a legislative aid for Rep. Conyers after her activism forced her to leave the South and relocate to Detroit. As an intern, I worked with attorneys from the House Judiciary Committee on legislation to prohibit police racial profiling and with lobbyists to lessen the effect of sanctions on women and children in Iraq. Later, as a foreign exchange student in France, I worked in a refugee center with political refugees from Afghanistan, Mauritania, Kashmiri, and the Democratic Republic of Congo where I was able to see how an unstable political environment affected the refugees' lives. These life-changing experiences, initially supported by my scholarship, influenced my decision to attend Duke Law School and to devote myself to serving others.

At Duke, I found many legal avenues

for community service. The experience that influenced me the most was participating in the Death Penalty Clinic with Professor James Coleman. In the clinic, I served on the legal defense team for an inmate who did not have adequate resources to pay for her own legal defense. This clinic took me to rural areas of North Carolina to interview jurors and acquaintances of the death row inmate to ensure that she received a fair post-conviction hearing. Looking back on this experience, I was able to devote myself to ensuring that my client received "equal justice under the law," a principle that Ms. Parks embodied throughout her life.

In August of 2005, I began a one-year clerkship with the Honorable Damon J. Keith of the United States Sixth Circuit Court of Appeals. Judge Keith, a friend of Ms. Parks, assisted her in her last years. At her funeral, which Judge Keith was instrumental in arranging, the words of former President Bill Clinton stood out among the many eloquent eulogies: "The world knows of Rosa Parks because of a single simple act of dignity and courage that struck a lethal blow to the foundations of legal bigotry." Attending the historical memorial service affirmed my duty as a Rosa Parks Scholar to continue to serve others.

In November of 2005, I was honored by being elected to the Board of the Rosa Parks Scholarship Foundation. With this appointment, I can continue the work she wholeheartedly supported. Further, I can encourage future leaders, who have demonstrated academic excellence and a commitment to the goals of the Civil Rights Movement, to help preserve her truly inspiring legacy. ♣

Santa Fabio

# Class Notes

**Lucas M. McKeon** has joined Schell Bray Aycock Abel & Livingston as an associate in the firm's Greensboro, NC, office. Lucas will focus his practice in the areas of corporate and tax law.

**Kimberley Mackinnon** and **Marko Mackinnon-Violic** were married in Vienna, Austria, on September 9, 2005. Kimberley is working in the department of law at the Wirtschaftsuniversitat. Marko, previously with Freshfields Bruckhaus Deringer, is working on his Ph.D. in Laws at Vienna Law School.

**Nicole Rittenhouse**, an associate with Thompson and Knight in Dallas, has been elected to the board of directors for the Dallas Association of Young Lawyers.

**Miki Shapira** joined McKee Nelson in New York City in September 2005. He specializes in structured finance.

**Olga V. Vinokourova** married Mark W. Borghesani at Alwyngton Manor in Warrenton, VA, on September 4, 2005. The couple is living in Moscow, where Olga is counsel with the U.S. telecommunications company, Golden Telecom, Inc.

**Jim White**, an associate with Moore and Van Allen in the Research Triangle Park office, has been named Pro Bono Attorney of the Year for Durham County, NC, by Legal Aid of North Carolina.

## Class of '04

**A. Xavier Baker** and **Emily K. Su** were married on September 4, 2005, at Falkner Winery in Temecula, CA. **Sarah J. North '04** officiated at the ceremony. Xavier and Emily are attorneys at Zelle Hofmann in Minneapolis, MN.

**Chris Beatty** married **Fiona O'Donnell** in August 2005, in Sydney, Australia. Chris, an associate with Cleary, Gottlieb, Steen & Hamilton, and Fiona, an associate with Weil, Gotshal & Manges, live in New York City.

**Trey Childress** married Lisa Wechsler, the former director of special international projects at Duke Law School, on August 7, 2005, in Charlottesville, VA. They reside in Baltimore. Trey recently joined the issues and appeals practice at Jones Day in Washington, D.C., after completing a clerkship with The Honorable Paul V. Niemeyer of the U.S. Court of Appeals for the Fourth Circuit.

**Jeremy Entwisle** joined Davis Polk and Wardwell as an associate in the Tokyo office in June 2005.

**Kristi Jacques** has joined the firm of Drew, Eckl and Farnham as an associate in the Atlanta office.

**Leif-Eric Langguth** has joined PricewaterhouseCoopers in Munich, Germany, in the transfer pricing group. Langguth is also working on his Ph.D in Laws at the University of Passau School of Law in Passau, Germany.

**Andres Onetto** has been named partner at Onetto Abogados in Buenos Aires, Argentina. He founded the investment banking group at the firm and has negotiated an alliance with J.H. Chapman Group, an investment bank with offices in Chicago and Paris.

**Courtney Schafer** married Frank Law on June 5, 2005, in Grosse Pointe Farms, MI. Courtney is an associate at Dickinson Wright in Detroit.

**Jesse Smallwood** has joined Williams & Connolly in Washington, D.C., following a clerkship with The Honorable David F. Levi in Sacramento, CA. Jesse and his wife, Danielle, live in Washington.

**James D. Thayer** has joined McKenna Long & Aldridge as an associate in the Washington, D.C., office.

**Mark Unger** is working at Baker & McKenzie in Sydney, Australia.

**Lisa Vatch** is an associate at Gowling Lafleur Henderson in Ottawa, Canada, in the intellectual property department.

**Michael I. White** and **Erinn A. White** announce the birth of their son, Michael Ian, on October 15, 2005.

**Florian B. Willi**, and his wife, Aline, announce the birth of their first child, Matthias Léo, born September 5, 2005, in Lucerne, Switzerland.

**C. Bryan Wilson** has completed his clerkship with The Honorable Edith H. Jones and is currently clerking for The Honorable Lee A. Rosenthal of the U.S. District Court for the Southern District of Texas in Houston.

## Class of '05

**Ignacio Aramburu** has joined Fox Horan & Camerini in New York City.

**Demarron A. Berkley** and his wife, Juakita, announce the birth of their daughter, Dhiara Amani, on September 6, 2005, in Tampa, FL.

**Matt Block** and his wife, Kivlina, announce the birth of their daughter, Mariah Stonestreet, on November 30, 2005. Matt has recently joined Patton Boggs in the Anchorage, AK, office. His practice includes litigation, transactions, counseling, and public policy work.

**Luis M. Borrell** has joined the law firm Patton, Moreno & Asvat in Panama City, Panama.

**Axel Clerens** has joined the law firm of Nauta Dutilh in Brussels, Belgium.

**Sarah Eurek** has joined Calfee, Halter & Griswold as an associate in the Cleveland office's intellectual property group.



**Ashley Grier** married Joshua White on August 13, 2005, in Cullman, AL. Ashley is an associate in the litigation practice group of Bradley Arant Rose & White in Huntsville, AL.

**Nathan B. Hagerman** has joined Simpson Thacher & Bartlett in the London office.

**Mangyo Kinoshita** has joined O'Melveny & Meyers in the New York City office's transaction department.

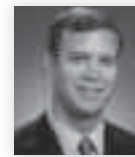
**Kevin Liles** is working as a candidate attorney in the patents department of Bowman Gilfillian in Sandton, South Africa.

**Edward J. O'Connor** has joined Blank Rome in Philadelphia. He practices in the area of general business.

**Jennifer Louise Plappert** married Robert Weston Learoyd III on September 17, 2005, in Raleigh, NC. Jennifer is an associate in the litigation practice group at Kilpatrick Stockton in Raleigh.

**Keri Richardson** has joined Simpson Thacher & Bartlett in New York City. Her focus areas are capital global markets, corporate law, and mergers and acquisitions.

**Angela J. Rafoth** was awarded the 2005 James William Moore Federal Practice Award from LexisNexis for her paper, "Congress and the Multiparty, Multiforum Trial Jurisdiction Act of 2002: Meaningful Reform or a Comedy of Errors?"



**Trey Rayburn** has joined Moore & Van Allen in the Charlotte, NC, office. He focuses his practice on bankruptcy and restructuring.

**Janey O. Rountree** has joined Sachnoff & Weaver in Chicago as an associate in the litigation group.

**Mauricio Sanders** has joined the law firm Galicia y Robles, S.C. in Mexico City.

**Alicia Swinglet** married Craig Andrew Rineer on April 30, 2005, in the Duke University Chapel. Alicia is an associate in the corporate department of McLane, Graff, Raulerson & Middleton in Manchester, NH. ♣

# duke law school reunion

## april 21-23, 2006

reunion weekend highlights...

'56

'61

'66

'71

'76

'81

'86

'91

'96

'01

### friday, april 21

#### Law School Building Celebration & Open House

7:00 pm - 11:00 pm

*Tour the Law School's new wing during this progressive cocktail party. Various drink and food stations await around every corner as you explore the new classrooms, clinic space, journal offices, and conference rooms. Cap off the night with dancing under the stars.*

### Saturday, april 22

#### Law School Update & Remarks by Dean Bartlett

8:45 am - 9:30 am

#### Alumni Family Picnic and BBQ

12:00 pm - 2:00 pm

#### Afternoon Activities:

- Golf at the Washington Duke Inn  
1:30 - 2:00 pm
- Bus Tour of Campus  
2:30 - 3:30 pm
- Primate Center Tours  
3:00 - 4:00 pm

#### Class Receptions and Dinners

6:00 pm - 9:30 pm  
(Washington Duke Inn)

Join the Duke Law School community for a weekend of friends, family, and fun!

register online at:

[www.law.duke.edu/alumni/reunion](http://www.law.duke.edu/alumni/reunion)



# In Memoriam

## 1937

**Harland Francis Leathers**, 94, died September 11, 2005 of a heart attack at his home in Arlington, VA. Born August 4, 1911, at Leathers Corner in Hermon, ME, he graduated from the University of Maine at Orono in 1932. He taught and served as principal of Hermon High School before attending Duke Law School. After graduating, Mr. Leathers practiced law with the New York law firm of Milbank, Tweed, Hope and Webb from 1937 until 1942. After the attack on Pearl Harbor, he joined the war effort by working in Washington as an attorney for the U.S. Army Office of Price Administration. During his service in the Army (1942-1946), he rose to the rank of captain in the Special Branch of the Military Intelligence Service. He was assigned to a joint intelligence group at Pearl Harbor.

In early 1945, all War Department Ultra publications for Admiral Chester W. Nimitz, including the diplomatic summary, Far East summary and shipping and economic notes, were sent directly from Washington to then-Capt. Leathers, who assisted in the preparation of all Ultra intelligence for presentation to Admiral Nimitz.

Mr. Leathers joined the U.S. Department of Justice after World War II, working as chief of the tax court unit of the renegotiation section of the civil division and later heading that division's general litigation section. He was responsible for supervision of cases nationwide, including the right of the Navy to discharge homosexuals, the right of Vietnam war protesters to camp on the Mall, the circumstances under which members of the armed services could assert conscientious objector status, and the extent to which the government could limit access to evidence from the assassination of President John F. Kennedy. He retired in 1980.

He is survived by his wife of 56 years, Jean Dopp Leathers of Arlington, VA; four children, Francis D. Leathers of Winchester, MA, Howard D. Leathers of College Park, MD, Nancy Leathers Borglin of Richmond, VA, and Walter D. Leathers of Arlington, VA; and nine grandchildren.

**H. Hale McCown**, 91, died September 1, 2005. The oldest of five children, he was born in Kansas, IL, on January 19, 1914, to Ross McCown, a Presbyterian minister, and Pauline (Collins), a school principal.

He was educated at Hastings College (AB, 1935) before attending Duke Law School, where he met classmate Helen Lanier, whom he married in 1938.

They made their home in Beatrice, NE, and raised three children, Bob, Bill, and Lynn. World War II intervened in 1942, when Mr. McCown joined the U.S. Naval Reserves as a lieutenant and served in the Pacific as a fighter director - intercept officer on a CVE escort carrier. He earned six battle stars, a Philippine Liberation Medal, a Navy Unit Citation, and individual citation ribbons. After the war, he returned to private practice in the law firm of McCown, Baumfalk and Dalke, and served as general counsel for Dempster Mill Manufacturing and Vice Grip Tool Company.

He was active in the Nebraska Bar Association, serving as chair of the House of Delegates from 1955-56 and president from 1960-61. He was also active at the national level, serving as a fellow of the American College of Trial Lawyers since 1960 and on the Legal Ethics Committee of the American Bar Association from 1957-62. He was highly respected for his work with the American Law Institute, to which he was elected in 1957 and served on its governing Council from 1969 until 2000, when he became an emeritus member.

He was appointed to the Supreme Court of Nebraska in 1965, the first appointee under the Merit Plan of Judicial Selection. When he retired in 1983, he had written over 750 legal opinions, over 100 of which were dissents.

Judge McCown has been listed in *Who's Who of America* since 1961. Hastings College recognized him in 1981 with an Outstanding Alumni Award and Duke Law School honored him in 1986 with the Charles S. Murphy Award for outstanding public service. In 1996, the Nebraska State Bar Association Foundation recognized him with a Legal Pioneer Award, which honors the lifetime achievements of a lawyer who makes innovative contributions to the improvement of justice.

He is survived by his beloved wife of 67 years, Helen; his children, Bill McCown (Pauline) and Lynn McCown (Saul Young); his daughter-in-law, Ranna Christenson; his grandchildren, Jocelyn Hardman (Jim), Hadley Messner (Kevin), Hillary McCown (Rick Donner), Andrew McCown (Margot Roth), and Alex McCown; and his great-grandchildren, Zeke and Jacob Hardman, Jules and Katharine Harris, Isabelle Messner, and Ruby Donner. He was predeceased by his son, Bob McCown, and by two granddaughters, Heather Young and Cecily Kenton.

## 1941

**Woodrow Pershing Lipscomb**, 89, died August 4, 2005, at his residence in Boydton, VA. Mr. Lipscomb was a native of Hinton, WV, and a 1938 graduate of Duke University, staying on for law school. He was a member of Kappa Sigma Social Fraternity, Omicron Delta Kappa Society, the Order of Red Friars, and the Tombs. Mr. Lipscomb excelled in sports at Duke, serving as captain of the 1937 football team, and was named All-American and served as coach of the freshman football team while attending law school. Mr. Lipscomb was employed by the Federal Bureau of Investigation from 1941 through 1966, at which time he retired and moved to Boydton. He practiced law in the town of Boydton from 1966 until his death. In 1974, he was appointed substitute judge in the General District Courts and the Juvenile and Domestic Relations District Courts of the Tenth Judicial Circuit, where he served until January 1, 2004. He was predeceased by his wife, Susan Smoot Thomson Lipscomb.

He is survived by his children, Thomson and Jane S. Lipscomb of Boydton; grandchildren, Thomson Lipscomb II and wife, Amy, of Khon Kaen, Thailand, Geoffrey L. Lipscomb of Raleigh, NC; two great-grandchildren, Book and Bank Lipscomb, also of Khon Kaen, Thailand; brother, James W. Lipscomb of Miami; and sister, Olga L. Nye of Mountain View, CA.

## 1948

**George Leonard Burke, Jr.**, 97, died December 22, 2005, at Rowan Regional Medical Center in Salisbury, NC. Born November 11, 1908, in Evington, VA, Mr. Burke was the son of the late George Leonard Burke and Lois Hudson Burke. He was a member of Central Methodist Church for many years, and later, a charter member of Milford Hills United Methodist Church.

After graduating from Spencer High School and North Carolina College of Agriculture and Engineering, now North Carolina State University, he entered the labor world at the onset of the Great Depression. Among his first short jobs was one with Stone & Webster Engineering Corporation on a job in and around Pottstown, PA, where he became acquainted with the hard life of a coal miner. This period was followed by a tour of duty as a lieutenant colonel. He was a life-long member of The Military Officers Association of America and a charter member of the Carolina chapter.

After Army duty through World War II, he entered Duke Law School, where he earned an LLB in 1948 and an LLM in 1950. He was admitted to the North Carolina Bar in 1948 and practiced law with his brother in Roxboro for four years, whereupon he made the decision to return to Rowan County and make it his home for the remainder of his life. His greatest moment of personal satisfaction in his years of the practice of law was an oral commendation from the North Carolina Supreme Court expressing the court's approval of the excellence of his appellate brief in that certain case of *Rabon v. Hospital* in which case the Court abolished the "Rule of Charitable Immunity" in North Carolina.

After returning to Rowan County, Mr. Burke enrolled in Catawba College, earning a BA in 1980. He may be the oldest student to ever graduate from Catawba and certainly was one

of the proudest. He followed this with a second LLB degree from LaSalle Extension University. He is survived by his wife of many years, Beatrice Ward Burke, and daughter Pamela Burke.

**Joe Pitts Vick**, 85, died August 7, 2005, in Danville, KY. Mr. Vick received his bachelor of arts in business administration from Duke University in 1942. Mr. Vick began his legal career in 1949 in the Chief Counsel's Office of the Internal Revenue Service. He transferred to Louisville, KY, and in 1953 to the Cincinnati regional office. His title until retirement was assistant regional counsel, Collection Litigation. Mr. Vick was active in the Elks and Kiwanis Clubs serving as president of the Wyoming-Lockland, OH, Kiwanis Club in 1980. He served as president of the Cincinnati Chapter of the Federal Bar Association 1972-1976. After retirement, Mr. Vick was active in real estate management and operated a farm in Burlington, KY.

He is survived by his wife, Judy, and daughter, Irene Elsea. He is predeceased by his first wife of 51 years, Edna Dicke Vick, a son, Josiah P. Vick, a sister, **Sue Vick McCown L'50**, and a brother, **Marvin W. Vick T'47**.

**Charles Ward White**, 86, died at his home in Durham on January 15, 2006. He was born March 23, 1919, in Wake Forest, NC. His father was R.B. White, a professor of law at Wake Forest University, and his mother was Grace Martin Ward. He graduated from Wake Forest College in 1940, and worked for DuPont from 1940 to 1944. From 1944 to 1946 he was a lieutenant (junior grade) in the U.S. Navy and served on the USS Lee Fox.

Mr. White practiced law for 50 years in Durham, initially with Basil M. Watkins, as an associate. From 1952 to 1962 he practiced in partnership with his brother, R. Bruce White, Jr., after which he formed a partnership with Hance Hofler and Lillard Mount, under the firm name of Hofler, Mount & White. He remained with that firm until September 1994. From 1994 until his retirement in 1997 he worked as of counsel for King, Walker, Lambe & Crabtree.

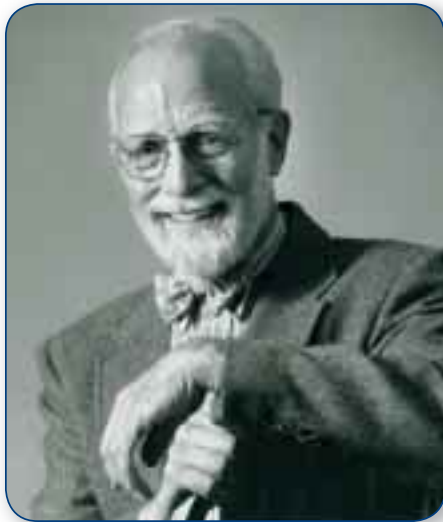
Mr. White was active in bar matters during his entire career. He served on the North Carolina Bar Association Board of Governors from 1956 to 1959, and was in the NCBA's real estate and fiduciary law sections. He was elected to the North Carolina State Bar Council twice, serving from 1970 to 1973, and again from 1980 to 1983.

Mr. White was an active member of Trinity United Methodist Church and Hope Valley Country Club.

He is survived by his wife of 56 years, Mary Pierce Johnson White; by his two sons, James Bruce White of Cary and Lee Johnson White and wife Julie Hogue of Durham; two grandsons, David Pierce White and Charles Ryland White; and niece Mary Lou White Mintz of Wilmington.



## Professor Emeritus Melvin Shimm



**P**rofessor Emeritus Melvin Shimm died peacefully at his Durham home on Saturday, September 17, 2005, at the age of 79, after a long struggle with prostate cancer.

Professor Shimm was born in New York City on January 30, 1926, to Joseph and Sadie Shimm. His college education was interrupted by World War II, in which he served for three years. After he was honorably discharged from the Army as a second lieutenant in the field artillery, he resumed his college education in 1946 at Columbia University, where he was elected to Phi Beta Kappa and graduated with honors in 1947. He graduated with honors from Yale Law School in 1950, where he was an editor of the *Yale Law Journal* and was elected to the Order of the Coif honorary society.

Professor Shimm had a long, multi-faceted career in law, law teaching, and civic affairs. He practiced law in New York City, and he worked as an attorney for the Wage Stabilization Board in Washington, D.C., during the Korean War. Following a year as a Bigelow Fellow at the University of Chicago Law School, he joined the Duke Law faculty, where he taught from 1953 until he retired in 1996. He also taught at New York University and the Universities of

Southern California, North Carolina, Michigan, and Texas.

In addition to teaching, Professor Shimm served as editor in chief of *Law & Contemporary Problems* and the *Journal of Legal Education*, and as faculty editor of the *Duke Law Journal*. He also served as American editor of the *Journal of Business Law* and the *Business Law Review*, as the director of the Association of American Law Schools Orientation Program in American Law 1968-70, and as director of the Duke Summer Institute in Transnational Law 1986-92.

He was a member of both the board of directors of Duke's Private Adjudication Center and the board of advisors to the Center on Law, Ethics and National Security, and served as senior legal consultant for the Brookings Institution in Washington, D.C.

Professor Shimm's awards include the Law School's A. Kenneth Pye Award in 1999 and Mordecai Society Award in 1960, and the Duke University Award for Merit in 1996. An endowed scholarship was named in his honor at Duke Law School in 1996, and a professorship in 2000.

Active in the community, Professor Shimm served as a member of the Durham Board of Adjustment 1958-70, as its chairman 1966-70, and as a member of the North Carolina General Statutes Commission 1984-88. He was a member of Beth El Congregation and served as its president 1967-70 and 1975-78. He served as chairman of the Durham Jewish Federation 1973-75, and as a member of the Board of Directors of the Durham-Chapel Hill Jewish Community Foundation 1999-2004. He was a member of the Board of Directors of the Lucy Daniels Foundation, Cary, NC, 1989-2004, and served as its vice-chairman 1991-2004.

Survivors include his wife of 57 years, Cynia B. Shimm, MD; sons, David Stuart Shimm, MD, and wife,

Carmen, of Charleston, WV, and Jonathan Evan Shimm and wife, Judith, of Pittsburgh; and grandsons, Abe Willingham Shimm and Alex Willingham Shimm, of Pittsburgh. His twin brother, Robert A. Shimm, MD, also survives him along with nieces and nephews and their progeny.

Along with a loving family, Professor Shimm's legacy includes many honorable and honored Duke Law School alumni and colleagues from his 43 years teaching.

A graveside service was held in Westchester County, NY. At a memorial service held on October 23 at Beth El Synagogue in Durham, Professor Shimm was warmly remembered by family, friends, colleagues, and former students.

Professor Robinson O. Everett recalled a friendship with Professor Shimm that began when Everett returned to Duke to teach in 1957. "I know of no one for whom I have had higher esteem, and I give great thanks that for almost five decades I had the privilege of being a close friend and colleague of Mel Shimm," Everett said. He had the honor, he noted, of moving his friend's admission to the bar of the Supreme Court when Everett argued a successful redistricting challenge in which Shimm was a plaintiff.

"I took every class that Professor Shimm taught and sought every occasion to be mentored and influenced by him," said Senior Lecturing Fellow Allen Siegel '60, a partner at Arent Fox in Washington, D.C. "I attribute my success in the practice of law and in my teaching work at the Law School to Professor Shimm's influence and training. He taught me, and many others who preceded me and followed me, to think like lawyers and to behave as ethical members of the profession that he graced." Recalling their close personal relationship, Siegel noted that "Mel Shimm became my brother in every significant way." ♣

## 1950

**Elliott Moore**, 78, died October 19, 2005, in Oriental, NC. He was born in Sarasota, FL, the only child of Elliott L. Moore and Arlene Kuck Moore. During the Korean War, he served in the U.S. Air Force for four years, in California and in Japan, leaving service as a technical sergeant.

He received an AB from Duke University and an LLB from the University of Florida before coming to Duke Law School. After three years of private practice in Atlanta, he joined the National Labor Relations Board (NLRB) there, later transferring to the Appellate Court Branch in Washington as a briefing attorney, and eventually heading it for 13 years. He was admitted in all 12 U.S. Courts of Appeal in which the Branch represented the NLRB. During his tenure as chief, the Branch reached its peak in personnel and in briefs filed. He obtained two amendments to the Federal Rules of Appellate Procedure, one of which substantially altered NLRB practice to this day.

Mr. Moore is survived by his wife, Suzanne Stocking; three sons, Cason Moore and his wife, Sondra Renee Elmore, and their children, Gregory, Caitlin and Cassidy, all of Ocala, FL; Cary Moore and his wife, Sarah, and their sons, Charlie and Peter of Arlington, VA; and Jonathan (Jay) Moore and his wife, Ellen, and their daughter, Kira Ann, also of Arlington.

**Fred Charles Pace**, 85, died December 11, 2005. He was born December 28, 1919, to Charles and Angelina Piacentino of Philadelphia. He was a decorated veteran of World War II. In England, he suffered disabling injuries while serving as a first lieutenant in the Army Corps of Engineers. Following law school, he was admitted to the Pennsylvania Bar and was a member of the Schuylkill County Bar Association for more than 50 years. For the last 20 years of his career, he served as the administrative judge and chairman of the Board of Claims for Harrisburg, PA. In addition, he received honors from the Pennsylvania Bar Association.

Judge Pace was a fourth degree Knight of Columbus. He retired to join his children in Virginia Beach 12 years ago. He is survived by his wife of 60 years, Peggy; daughter, Adele and Greg Rekas; daughter, Paula and Dr. Warren Pechan; granddaughter, Jennifer Poole; great-granddaughters, Sarah and Emma Poole; brother-in-law Daniel and Helene Leach; and numerous nephews and nieces. He was predeceased by his daughter, Pamela.

## 1951

**Alfred Martin Oppenheim**, 81, died July 4, 2005. He was born March 13, 1924, in New York City to Walter and Rachel Oppenheim, and was raised in Westfield, NJ, where he attended Westfield High School, graduating in June 1942. He started studying at the Wharton School of Finance, University of Pennsylvania, later the same month, but enlisted in the Army Air Corps in September. He was called to active duty in January 1943, and graduated from Bombardier School on December 24, 1943. Mr. Oppenheim arrived in England on June 6, 1944, and flew 13 missions over Germany in a B-24 Liberator before being shot down on September 11, 1944.

He was a prisoner of war in Stalag Luft 1 until May 1945, when the camp was liberated by the Russians. He remained in the U.S. Air Force Reserves, eventually retiring as a lieutenant colonel. Much of his reserve duty was at Hamilton Air Field.

Mr. Oppenheim entered Duke University in September 1945, graduating with a BA in 1949 and staying on for law school, after which he joined the U.S. Department of Commerce in Washington, D.C. In 1952, he joined Anglo-California National Bank in San Francisco, remaining with that bank and its successors until his 1988 retirement from Wells Fargo Bank.

A resident of Marin County, CA, since 1960, Mr. Oppenheim was a founding member of the Rotary Club of Marin, Evening Chapter, and was an active member of the Marin County Chamber of Commerce and Visitors Bureau; president, Air Force Associate, San Francisco Chapter; Executives Association of San Francisco; and other civic and professional organizations. He is survived by his wife, Patricia; his sister, Gloria R. Wheat of San Mateo; his daughters, Kathryn Jean Oppenheim of Ann Arbor, MI, and Elise Margaret Thompson; and son-in-law, James Thompson, of Portland, OR.

**David Zwanetz**, 81, died November 11, 2005. He was born February 28, 1924, and received his BS from Temple University in 1948, before coming to Duke. Mr. Zwanetz was a life-long Philadelphian and was in private practice there for over 50 years. He was a member of the Board of Revision of Taxes, serving as vice chairman. The Philadelphia Bar Association honored him as a member of the 50-Year Club in 2001. He is survived by his children, David Zwanetz, Jr., Sonia Zwanetz, and Nathan Jesse Zwanetz, and two grandchildren.

## 1953

**Hugh G. Isley, Jr.**, 76, died November 14, 2005. He was born on September 26, 1929, in Raleigh, NC, and graduated from Hugh Morson High School in 1947. He graduated Phi Beta Kappa from Duke University with a BA in 1951, and graduated from the Law School at the top of his class. He was a member of the Order of the Coif and Delta Theta Phi, and was associate editor of the *Duke Bar Journal* and editor of the *Duke Law Journal*.

Mr. Isley was admitted to the North Carolina Bar in 1953 and the Florida Bar in 1955, which honored him as a 50-year member in 2005. From 1953 through 1960, he served as special attorney and senior trial attorney at the Office of Chief Counsel, Internal Revenue Service in Jacksonville, FL. In 1960, he entered private practice in Ft. Lauderdale, and was the first tax attorney in Broward County. In 1967, he was joined by Louis J. DeReuil in the practice of federal taxation and tax litigation under the firm name of Isley and DeReuil, P.A. Mr. Isley kept active in the practice until recent times, and was of counsel with the law firm of Jack R. Loving, P.A. He was a member of the Broward County Bar, the Florida Bar, the North Carolina State Bar, and the American Bar Association. He is survived by his beloved wife, Helen; daughter Connie Ericsson and her husband Carl Ericsson of Atlanta; son Hugh G. Isley III, of Ft. Lauderdale; sister Jane I. Lisk and nephew Reynolds T. Lisk of Asheboro, NC; and two grandchildren, C. Ryan Ericsson of Ocala, FL, and Christen Ericsson of Atlanta.

## 1954

**Sidney "Sid" Barkley Brooks**, 75, of Wilson, NC, died August 28, 2005, in Raleigh, after a series of strokes. He was born in Wilson, NC, November 19, 1929, the ninth of 12 children born to Earl and Ruby Dyer Brooks.

He was educated in Wilson Public Schools and attended Duke University, receiving his AB in 1951. He received his law degree with honors. Mr. Brooks was elected a member of Phi Beta Kappa. Upon graduation Mr. Brooks was drafted and served two years in the U.S. Army during the Korean War. After his discharge in 1956, he worked as an attorney first in the former Interstate Commerce Commission and then with the U.S. Securities and Exchange Commission in Washington, D.C. In 1969, he returned to North Carolina and went into private practice.

He is survived by three sisters, Charlotte Goddin and her husband, Pete, of Raleigh, NC; Sue Ferrell and her husband, Gilbert, of Wilson; and Carol Willis and her husband, Jerry, of Sanford, NC; a brother, Val Brooks of Nashville, TN; and a sister-in-law, Jacqueline Brooks, of Wilson.

## 1958

**Paul Webb Markwood Jr.**, 74, died July 12, 2005, in Marietta, GA, from complications from pneumonia. He was born February 7, 1931, the son of the late Paul and Weltha "Midge" Markwood, in Cumberland, MD. He grew up in Enka, NC, attended Lee Edwards High School, and graduated from Duke University in 1955 prior to enrolling in the Law School. He married his wife, Johanna, on December 8, 1956. Mr. Markwood practiced corporate law until 1993 with such companies as Wolverine II, Abex, and W.R. Grace, after which he and Johanna moved to Asheville, NC. He is survived by his four children, Paul W. Markwood III of Fort Wayne, IN; Sally Payne, her husband, Weston, and their two children, Lindsey and Sydney, of Kennesaw, NC; Cathy Miller, her husband, Billy, and their three children, Shannon, Blake, and Zachary; and Daniel Markwood, his wife, Colleen, and their two children, Sam and Maggie; and by his brother-in-law, Fred E. Gorter and wife, Lisa, of Pensacola, FL.

## 1961

**Robert Charles Lanquist**, 68, died August 22, 2005, at his residence in Floral City, FL. He was born in Newark, NJ, on April 22, 1937, to the late Edward and Elizabeth (Dick) Lanquist. Mr. Lanquist came to Floral City in 2000 from Jacksonville, FL, after retiring from private practice as a labor relations attorney. He attended Lafayette College in Easton, PA, receiving a BA in 1958 before coming to Duke.

Mr. Lanquist's memberships include the Florida National Guard in St. Augustine, Delta Theta Phi Law Fraternity, Florida Bar Association, and American Bar Association. He enjoyed hiking, bicycling, and all forms of nature. He was of the Lutheran faith. Survivors include his wife, Saralyn Lanquist; brother, Edward D. Lanquist of Crossville, TN; sister, Annette E. Jurgelski of Hillsborough, NC; and several nieces and nephews.

## 1963

**Paul Lee Coulter**, 68, died November 27, 2005, at his residence in Lexington, KY. He was born in Langdale, AL, on July 31, 1937, and was the only child of Marvin and Sara Lee Coulter. He was a graduate of Texas Christian University. Mr. Coulter was a corporate attorney for Bell South in Birmingham, AL. He retired to Hilton Head Island, SC, where he was a member of the fishing club. He later lived in Sequim, WA, where he continued to be an avid fisherman. He later moved to Lexington, where he was a member of St. Michael's Episcopal Church. He is survived by his wife of 42 years, Anne De Hart Coulter; two daughters, Carol Coulter Ramsey and husband Jim of Lexington, and Jane De Hart Coulter of Atlanta; and four grandsons, Galen Coulter-Ledbetter of Birmingham, AL, Jacob Mack Ramsey, Jordan Hunt Ramsey, and Neil Coulter Solis, all of Lexington.

**Henry C. "Hank" Lauerman**, 88, died December 25, 2005, of complications from melanoma. Born in Chicago, April 22, 1917, he graduated from the U.S. Naval Academy in 1938. He served in the U.S. Navy during World War II commanding submarines in the Pacific, and received three Silver Stars. He retired from the Navy in 1962 and began teaching law at Wake Forest University. He received an LLM from Georgetown and an LLM from Duke. Lauerman served on the Winston-Salem/Forsyth County School Board from 1973 to 1976, filling the seat of his first wife, Mary Lauerman, after her death. He was a lifelong Republican, running for mayor of Winston-Salem in 1977. He is survived by his wife, Josephine Shipley Lauerman; and a son, Thomas Lauerman, a lawyer in Washington. He is predeceased by his first wife, Mary, and a daughter, Nora Lauerman, the first female law professor at the University of Cincinnati to achieve tenure at that law school.

## 1965

**Mark D. Prather**, 63, died July 2, 2005, in Pittsburgh, following a long struggle with cancer.

Born September 5, 1941, he received his BA in economics in 1963 from Duke University before attending Duke Law School. He served as president of the Crawford County Bar Association, chairman of the Meadville Civil Service commission, and chairman of the Pennsylvania Bar Institute of Continuing Legal Education. He is survived by his wife, Carol, and his children, **John D. Prather T'84 L'88**, Ross C. Prather, and **Kathryn P. O'Connor T'95**.



## 1968

**John R. Brownell**, 62, of Grand Island, NE, died October 26, 2005, in Lincoln, NE, at the home of his son. He was born November 14, 1942, in Orange, NJ, to George R. and Claire D. (Dannefelser) Brownell. Mr. Brownell grew up in Westfield, NJ, graduating from Westfield Senior High School in 1960. He graduated from Catawba College in Salisbury, NC, in 1965.

He married Diane Powell on August 14, 1969. He entered Officer's Candidate School and was commissioned as a first lieutenant in the U.S. Army, serving in Vietnam from 1970 to 1971. He came to Grand Island after his discharge from the service, and was a member of the community for more than 30 years.

Mr. Brownell was a partner in the Grand Island law firm of Lauritsen, Brownell, Brostrom, Stehlik, Myers and Daugherty. Brownell had been suffering from amyotrophic lateral sclerosis (ALS), often called Lou Gehrig's disease, for several years. Though his activity had declined due to his illness, Mr. Brownell was most recently in the news when a hike-and-bike trail, which he was instrumental in organizing, was named in his honor.

He was a member of the First Presbyterian Church. Mr. Brownell had been a member of the Community Redevelopment Authority and the boards of St. Francis Medical Center, the Fonner Park Exposition Center, American Red Cross, Chamber of Commerce, city library, YMCA, Hall County Independent Business Association, and many others.

Survivors include his wife, Diane Brownell; a daughter, Sara Brownell of San Francisco; a son and daughter-in-law, Doug and Vanessa Brownell of Lincoln; and two sisters, Susan and her husband, Michael Dailey, of Clyde Park, MT, and Joan Brownell and her husband, Burton Williams, of Fishtail, MT. He also is survived by a sister-in-law, Barbara Sahling of Lincoln, and nieces and nephews.

## 1969

**James J. Seeley III**, 59, died July 13, 2005, at his home in Greenwich, NJ, after several months of declining health. Born July 17, 1945, in Camden, NJ, he graduated from high school in Delaware Township (now Cherry Hill). His undergraduate education occurred at the University of Georgia and at Rutgers University. At Duke Law School he served as editor in chief of the *Duke Law Journal* and graduated as the top-ranked student in his class. He was admitted to the bar in New Jersey in 1969, Pennsylvania in 1972, and Delaware in 1974.

Mr. Seeley practiced law in Bridgeton, and was widely regarded as one of New Jersey's foremost experts on zoning and planning laws and environmental law. He practiced in his early years with Judge George H. "Skip" Stanger and later with his son, Thomas. From 1969 until 1979, he was a professor at Rutgers University in the areas of environmental, constitutional, evidence, trial practice, federal civil procedure, land use and zoning, and municipal board member law. From 1980 until his death he had been a co-adjunct professor on zoning and planning at Rutgers and an adjunct professor on land use and zoning at Widener University Law School.

Mr. Seeley represented zoning and/or planning boards and was the municipal solicitor in Greenwich, Hopewell, Stow Creek, Shiloh, Bridgeton, Deerfield, Upper Deerfield, Maurice River, and Bass

River Townships. In addition, he was the first general counsel to the United States Environmental Protection Agency. He also was a special counsel to the NJ Assembly Judiciary Committee and held memberships in the Cumberland County, New Jersey, and American Bar Associations.

His expertise with the law was surpassed only by his love for his family and the environment. Mr. Seeley was a dedicated supporter and coach for over 20 years in the Cohansey Soccer League. He was involved for a number of years with West Cumberland Little League, primarily as a manager for girls softball.

Mr. Seeley, who was always sensitive to the environment, was a true outdoorsman who enjoyed hunting and fishing. He and his wife, Alexis, raised their family in Greenwich and were supporters of the arts. Mr. Seeley is survived by his wife of 37 years, Alexis Mary Seeley; sons, James J. Seeley IV (Kristin) of Centerville, MD, and Thomas E. Seeley, Esq. of Hopewell Township, NJ; daughters Elizabeth M. Seeley of Philadelphia and Alexis K. Seeley of New York; and granddaughter, Samantha Ryan Seeley.

## 1988

**James Calvin Lee**, 42, died October 28, 2005, at Moses Cone Hospital in Greensboro, NC. Born July 10, 1963, he received his BSc from Limestone College in 1985. Mr. Lee worked for many years in the Greensboro office of Legal Aid. He served as an appeals referee for the Employment Security Commission and had been an instructor at Davidson County Community College. He is survived by his uncle Archie Brown of Greensboro, NC. ♣



**“The creation of the Duke Law Bowling League has been one of the great non-law things ever to happen at the Law School.”** Tom Metzloff

**A**fter years of taking his small section classes bowling, Professor Tom Metzloff was delighted when a “great group” of third-year students organized a league in the last academic year. More than 240 students, faculty, and staff regularly bowl on Wednesday nights at AMF Durham Lanes, on teams such as “Motion to Strike,” “Undecided,” and “Pro Bowlo,” making it the largest league in the Carolinas. “The creation of the Duke Law Bowling League has been one of the great non-law things ever to happen at the Law School,” says Metzloff.

“The game is fun, especially when you’re bowling against your friends and fellow law students,” says Regina Lennox ’06, the league’s co-commissioner. “We’re a competitive breed, but we’re not too competitive at bowling—our teams are formed with friendship, not talent in mind.”

“It’s a great way to break up the monotony of the week,” says Admissions Officer Jamie Kronman, a member of “The Dukes of Hazzard,” Fall 2005 league champions and winners of the BarBri Cup. ♡



3Ls ERIKA RANDALL, MIGUEL EATON-MENDEZ, WYLIE PROCTOR



PROFESSORS JIM COX, TOM METZLOFF, RICHARD SCHMALBECK



2Ls MEREDITH TANCHUM, JENNIFER DUDANOWICZ

# Spring 2006 Selected events

## JANUARY

19

**Fifth Annual Rabbi  
Seymour Siegel  
Lecture in  
Medical-Legal Ethics**

Alexander Capron  
Director of Ethics, Trade, and  
Human Rights,  
World Health Organization

23

**International Law  
Society and the  
Human Rights  
Initiative**

Private Military Contractors  
and the Law of War

## FEBRUARY

10

**ESQ.: Fourth Annual  
Business Law  
Symposium**

13

**Great Lives  
in the Law**

Linda Greenhouse  
Supreme Court correspondent,  
The New York Times

17

**Fifth Annual "Hot  
Topics in Intellectual  
Property Law"  
Symposium**

Patent Reform and the  
Future of Digital Media

## MARCH

3-4

**Seventh Annual  
Conference of the  
Program in  
Public Law**

"Delegating Power to  
International Institutions:  
Constitutional and Political  
Perspectives"

15-17

**Global Capital  
Markets Center  
5th Annual Directors'  
Education Institute**

## APRIL

20-21

**Center on Law,  
Ethics and  
National Security  
and the Program in  
Public Law**

"U.S. National Security Strategy  
Finding the Right Balance"

21-23

**Reunion 2006**

## MAY

13

**Duke Law School  
Hooding Ceremony**

**David Gergen**

Professor of Public Service and  
Director, Center on  
Public Leadership  
John F. Kennedy School  
of Government  
Harvard University

**Duke Law Magazine**

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