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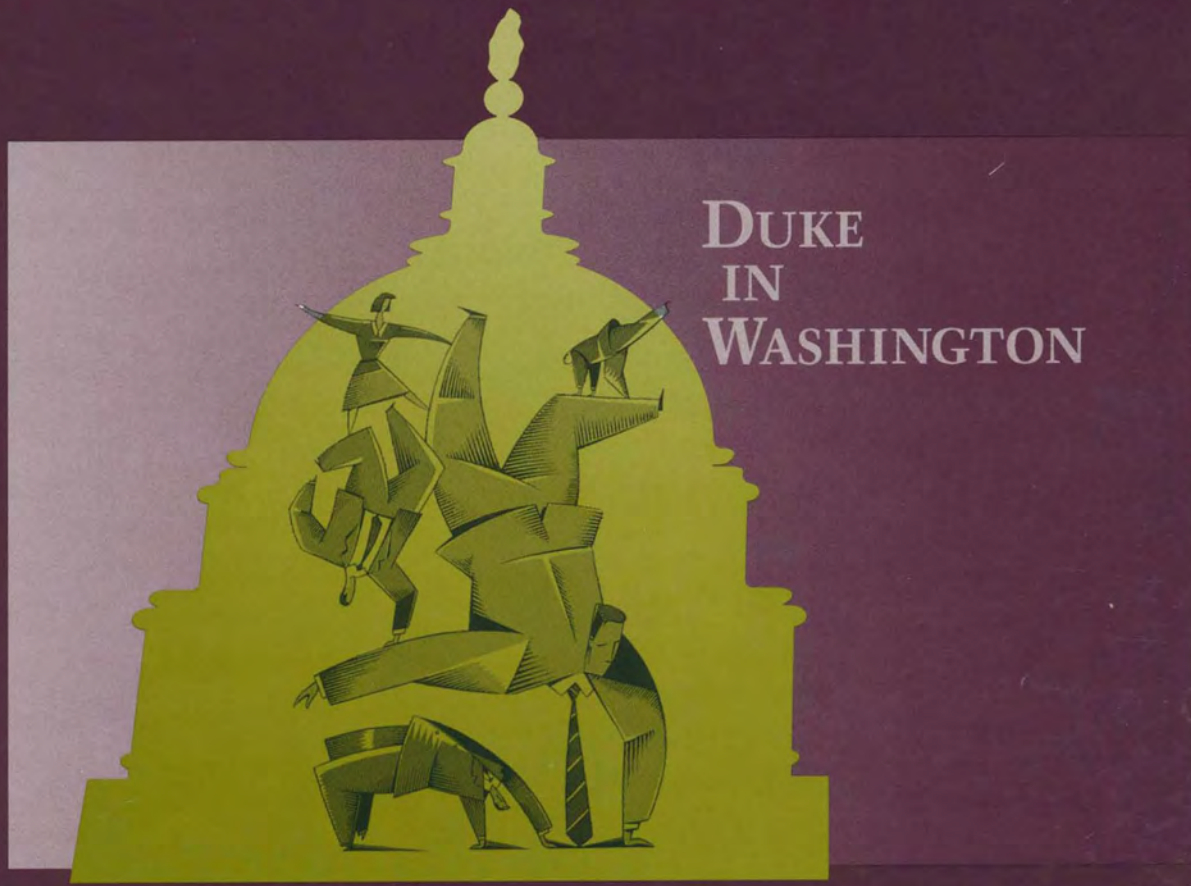
Duke Law Magazine

In this issue



DUKE IN WASHINGTON

SPRING 1997 | Volume 15, Number 1

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from the Dean

One of the distinguishing features of a professional school is having excellent research faculty who can be called upon to apply their knowledge to solving real-world problems. A top law school should be equally strong in teaching, research, application and public service. As you will see from some of the articles in the following pages, Duke Law School shines in all these areas.

The theme of this issue, "Duke in Washington," underscores the point that the Law School is not a cloistered academy with arm-chair experts; rather, our faculty and alumni are doing significant work at the top levels of government both at home and abroad. Students also benefit from this real-world connection. They are in a unique position to see the application of what otherwise would be only theory and classroom discussion. The law comes alive for them when they can watch faculty like Professor Walter Dellinger, currently serving as acting solicitor general, argue a case before the Supreme Court — as recently happened when 20 students traveled to Washington to hear arguments in the "right to die" case.

A journalist writing for *The National Law Journal* quipped that the best way to get to the Justice Department was to teach at Duke. He was only mildly exaggerating. This past year, the Law School had three faculty in top posts at Justice and a number of alumni working in the same area, including Frank Hunger '65, head of the Civil Division. Two of those faculty, Chris Schroeder and Jeff Powell, have returned to the Law School to teach full-time this semester, bringing a wealth of experience and fascinating stories with them. Professor Schroeder brought more than his Washington experience back to Duke; he recently established the Center for the Study of the Congress as a means to investigate Americans' low opinion of their elected officials on Capitol Hill and what can be done about it. His article in this issue explains some of the recent findings in studies looking at public attitudes toward the Congress and their troubling implications.

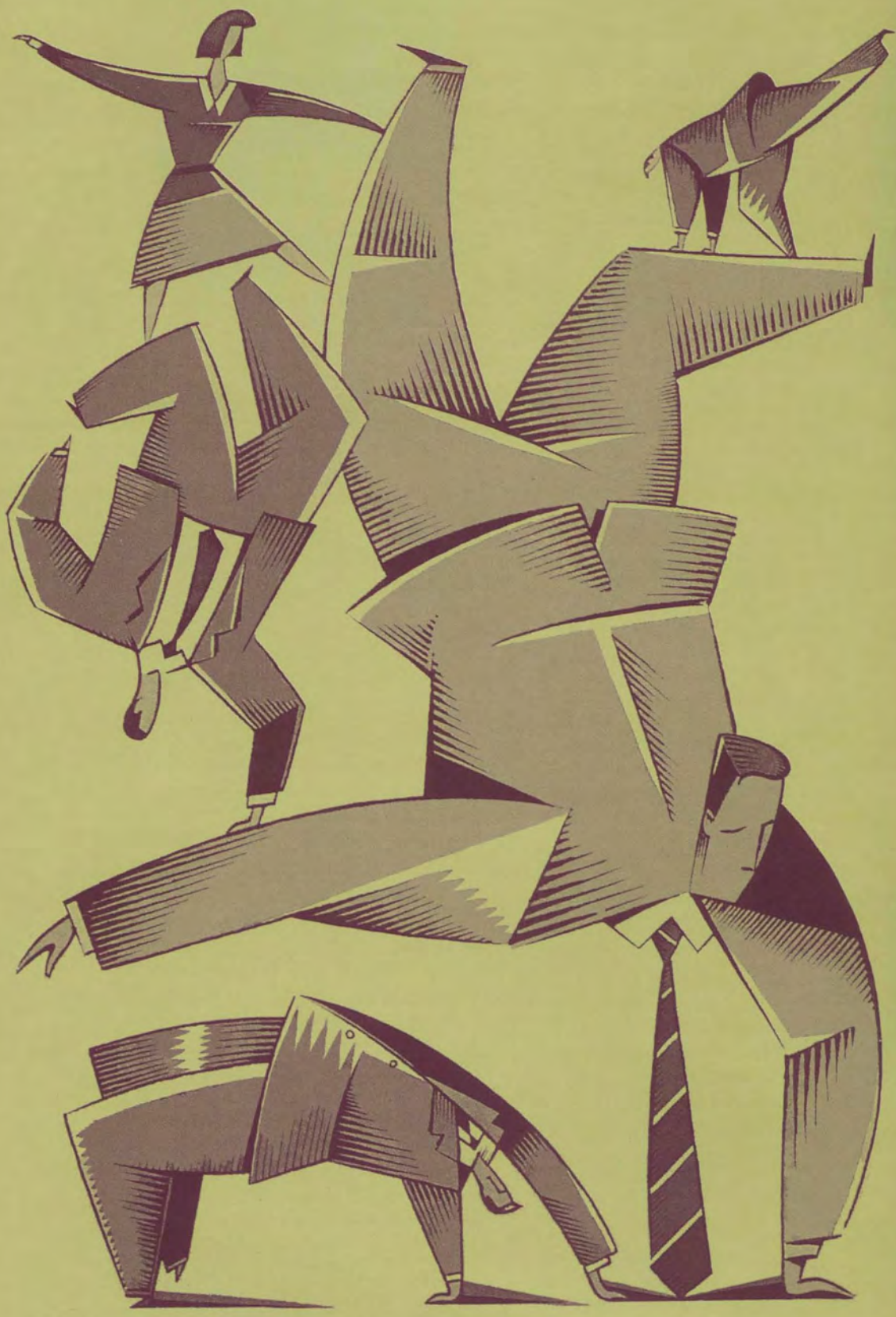
In the foreign arena, Professor Madeline Morris has made frequent trips to Rwanda to advise the president as the country grapples with the issue of prosecuting a staggering number of war criminals. To focus on the problem, Professor Morris organized a conference in Brussels last summer bringing together thinkers from 26 countries to evaluate the use of criminal prosecutions in handling crimes of mass violence. Professor Donald Horowitz has been assisting the government of Fiji in writing a new constitution encouraging conciliation between the island's Fijian and Indian populations; Professor James Cox has been working with the Vietnam Trade Council in designing a series of training programs in trade and investment; Professor Richard Schmalbeck has met with officials in the Russian Ministry of Finance in Moscow to advise the Russian government on a broad range of tax issues; and Lecturer Catherine Adcock has been working in South Africa to lay the groundwork for a Law School program that will pair students with ministries and courts (as well as the Constitutional Court) to assist the government with new legislation. This is by no means an exhaustive list of the important work our faculty have been doing abroad.

One of the missions of the Law School is to produce graduates prepared to do important work in the public and private sectors. As you read the profiles of some of our distinguished alumni working in Washington, you'll see that, over the years, we have been sending some impressive leaders and thinkers into the world.

Duke is only a short plane ride away from Washington, so we have access without the "inside the beltway" preoccupation with government that can sometimes be so myopic. Our faculty think that's a superb balance. I'm proud of the work our faculty have been doing and of the reach and influence of the Law School. Just as important, I'm proud that we're preparing a new generation of thinkers and doers to follow in their footsteps.

PAMELA B. GANN '73
DEAN

DUKE
IN
WASHINGTON



DELLINGER, POWELL AND SCHROEDER

Duke's Triumvirate in the Halls of Justice

BY TOM KUBICKI

YOU MIGHT THINK DUKE LAW SCHOOL HAS an extension campus on Capitol Hill or as journalist Chris Klein put it (as a take-off on the classic joke, how do you get to Carnegie Hall? — practice, practice, practice): "How do you get to the Justice Department? Teach at Duke, teach at Duke, teach at Duke." Three times Duke. Professors Walter Dellinger, Jefferson Powell and Christopher Schroeder have been on loan to the Clinton administration in top posts at the U.S. Department of Justice.

The double life recently ended for Powell and Schroeder who have returned to Duke to teach full-time in the spring '97 semester while Dellinger stays on in his role as acting solicitor general, at least until the current court session ends on July 1, 1997. Powell worked with Dellinger as deputy solicitor general — and before that as deputy assistant attorney general in the Office of Legal Counsel — and Schroeder headed the Office of Legal Counsel as acting assistant attorney general.

Both Powell and Schroeder are looking forward to bringing a new realism to the classroom. "Working in Washington has given me a chance to practice what I've been preaching all these years," Powell says. He sees his work at Justice as a distinct benefit to students, not only because of the firsthand information he brings to the table, but also because it adds a depth of understanding that can only be obtained from personal experience. According to Powell, "It's the stuff I've been teaching and writing about for years. Seeing the White House and Department of Justice interacting on a daily basis right before my eyes allowed me to understand fully how their relationship is key to the whole process. Laws can't get into court otherwise."

I can attest to the virtues of public lawyering. I'm anxious to give students an accurate picture of the exciting side of public work as opposed to the glamour of private practice.

CHRISTOPHER SCHROEDER

As for being able to enlarge his personal understanding of law and government, Powell says nothing could be more enriching than the time he spent in Washington. It taught him that perspective has much to do with how laws are interpreted. Before going to Washington, Powell wrote in a law review article that the Supreme Court's decision to limit Congress' power vis-a-vis the states was correct in the case of *New York v. The United States*. Then he went to the Office of Legal Counsel and began working out arguments as a member of the Brady Act defense team, and his views changed. He became convinced that his article had been in error and that *New York v. The United States* should be overruled.

Powell says there are few issues affected by political orientation and feels confident the upcoming agenda would have differed only slightly had Bob Dole won the presidential election. "The solicitor general must defend the Constitution. If you look over the years from administration to administration, both Democratic and Republican, there is a clear pattern of consistency in the approach to constitutional law." Powell said.

Schroeder agrees with Powell about the benefits of bringing his Washington experience to the classroom. He's also grateful for the ability to remain current and familiar with the Justice Department and expects to maintain ties with Washington even though he's returned to Duke full-time.

In addition to giving students the current scoop inside the Beltway, Schroeder says his experience allows him to provide in-depth information and advice about the best

Duke Law School alumni have reached critical mass in the solicitor general's office: among them are Michael Dreeben '81, a deputy, Ann Hubbard '92, assistant solicitor general, and Richard Seamon '86, also an assistant.

The April 22, 1996 issue of *Legal Times* reported an account of Michael Dreeben's argument in two consolidated cases on double jeopardy/civil forfeiture and raved about his performance, calling it "masterful" and remarking that it was "knowledgeable and clear" and that he "did not receive a single question that he wasn't able to answer effortlessly." The story states that this "was all the more remarkable because it was the longest uninterrupted argument by a single lawyer in recent memory."

public positions in Washington. "I can attest to the virtues of public lawyering. I'm anxious to give students an accurate picture of the exciting side of public work as opposed to the glamour of private practice," Schroeder says.

Returning to Duke after spending time as a visible public servant in Washington, Schroeder naturally draws curiosity from students. He welcomes their questions and sees their interest as an opportunity to provide career information. "If they know we've been working for the Justice Department, and they're interested in government positions, they'll naturally seek us out," Schroeder said. "I'm able to provide encouragement, and I'm encouraged by what I've seen in Washington."

Dellinger is Duke's gray eminence in Washington. Right now he's more likely to be quoted by National Public Radio legal correspondent Nina Totenberg than to lecture at the Law School.

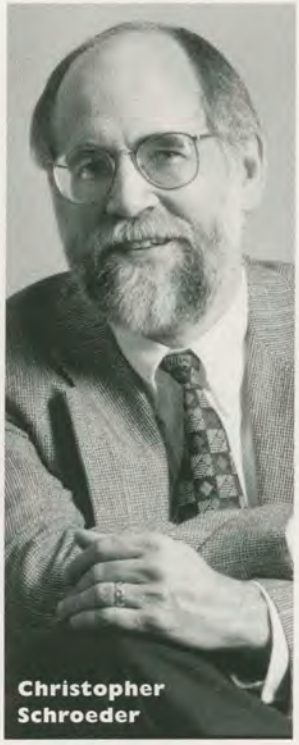
While his plans are set for the remainder of this year's Supreme Court session which ends July 1, Dellinger could be returning some time after that, and you can be sure students will be anxious to hear first-hand about the thrills and challenges of arguing before the highest court in the land.

Dellinger's name has surfaced a number of times when pundits debate President Clinton's choice to fill any future Supreme Court vacancies. An article published in *Legal Times* this past fall listed Dellinger along with Kenneth Starr '73, Mario Cuomo and Dick Thornburgh as possible nominees.

While Dellinger remains in the thick of Washington's legal beehive, Powell and Schroeder have mixed feelings about leaving the nation's capital. Both are inspired about what they can bring back to the classroom. But at the same time, they acknowledge a sense of loss by no longer being active participants in the day-to-day operations of the Department of Justice.


Walter Dellinger


Jefferson Powell


Christopher Schroeder

Bill Clinton's Man to See

A New Kind of Advocate at the Supreme Court

Walter Dellinger could be Bill Clinton's legal doppelganger. After losing fathers early, winning scholarship educations and going on to Yale Law School, each man returned to his roots in the South to teach constitutional law. Clinton used the academy as a springboard to politics. Dellinger embraced a life in the law.

Today, as the acting solicitor general, the Clinton administration's principal advocate before the Supreme Court, Dellinger occupies the country's most distinguished and embattled legal post, a job whose inhabitant is charged with winkling out issues of law from those of politics while serving at the pleasure of political masters. This term, the issues will be as divisive as ever — abortion, race and the powers of the government.

In a purely legal sense, Dellinger is one of the most qualified solicitors general ever. A much published and highly regarded professor of law at Duke University since 1969, Dellinger has seen the intersection of law and politics from three government vantage points: as a lawyer in the White House counsel's office, as head of the powerful Justice Department Office of Legal Counsel and, now, as SG, as the job is known in the legal fraternity.

Stuffy Old Men

Besides his legal ability, Dellinger brings other attributes to a job traditionally associated with stuffy old men. The North Carolinian talks easily and with charm, is a fanatic for rhythm and blues and, at a Justice Department party recently, he even got Attorney General Janet Reno to kick off her shoes and boogie to "Mustang Sally" — no mean feat. Among aides and higher-ups, Dellinger defuses tension with an all-points sense of humor.

Dellinger's passions are heartfelt, his philosophy disarmingly simple. Outside the legal academy, he is best known for his passionate advocacy of women's rights. Once, he offered senators a primer on American law that had just two tenets: Before the government can interfere with the liberty of a citizen, it must have a reason. And some liberties are so basic that the government's reason must be very, very good indeed.

Dellinger's personal history says much about his approach to the law. A Catholic reared by a working mother in the largely Protestant South of the 1940s and 1950s, he learned firsthand what it is like to be a minority. In the *Washington Post*, Dellinger wrote movingly about opting out of Bible class in public school at the behest of his parish priest. Aimed at the court's Catholic members, the piece ran the day before the justices heard arguments in a 1991 school-prayer case. It was one of the least orthodox and, by some lights, most influential amicus briefs in recent memory. The court ended up barring officially sponsored spoken prayer at public-school graduations.

That sense of exclusion helped Dellinger identify with blacks as he came of age during the civil rights movement. Among other things, he picketed a movie theater that barred blacks. To him, *Brown v. Board of Education*, in which the Supreme Court outlawed segregation, is a shining example of the law's awesome redemptive power.

Dellinger was a "new Democrat" before the term was coined. In North Carolina, the political figure to whom he

Walter Dellinger has seen the intersection of law and politics from three government vantage points: as a lawyer in the White House counsel's office, as head of the Justice Department Office of Legal Counsel and, now, as acting solicitor general.

By Ted Gest, Lincoln Caplan, Garrett Epps '91

remains closest is Terry Sanford, the former senator and onetime president of Duke. Sanford is the quintessential Southern moderate — conciliatory on race and economically pro-market — and Dellinger is a kind of son to him.

But he could also have been a son to Jesse Helms, the ultraconservative North Carolina senator sprung from the Lower Piedmont working class. Dellinger, instead, earned Helms' lasting hatred by opposing him politically over the years, as well as by helping to defeat the Supreme Court nomination of Robert Bork in 1987. If both Clinton and Helms are re-elected in November, the senator could stymie a Dellinger bid for a full term as solicitor general. *(Editors note: This article was written before the November elections.)*

> ***There's an honesty about Walter, that draws him toward what he regards as the truth in the law, regardless of the consequences.***
>
> JOHN HOPE FRANKLIN

But it is not through hardball politics that Dellinger is best understood. To John Hope Franklin, the black historian who taught with him at Duke, Dellinger is the opposite of the dodgy liberal vilified by Helms. "There's an honesty about Walter," Franklin says, "that draws him toward what he regards as the truth in the law, regardless of the consequences." A truth that Dellinger is drawn to is a proper definition of the solicitor general's role. A decade ago, the Reagan administration focused attention on the office when it tried, against heavy odds, to reverse the *Roe v. Wade* ruling on abortion rights. In the words of Rex Lee, President Reagan's first solicitor general, the administration threatened to make him the "pamphleteer general." Since then, court watchers have debated the solicitor general's need for "independence."

Law — and Politics

Dellinger eschews the notion of protecting his office by cloistering it. He proposes, rather, to maintain his independence through engagement. Although he clearly agrees with most of Clinton's positions on legal issues, his views do not always carry the day. He opposed, for instance, a Justice Department decision to switch sides in a New Jersey case and back a school board that had laid off a white teacher instead of an equally qualified black to preserve diversity. (A federal appeals court recently rejected the Justice view, seemingly vindicating Dellinger.) And Clinton backed a proposed constitutional amendment, over Dellinger's opposition, that would require states to give crime victims a voice in the court cases against their assailants.

> ***A Catholic reared by a working mother in the largely Protestant South of the 1940s and 1950s, he learned firsthand what it is like to be a minority.***

Dellinger's realism about the warp and weft of politics and law doesn't mean he equates the values of one with the other. In his office, underneath a portrait of Samuel Phillips, a onetime solicitor general from North Carolina who prosecuted the Ku Klux Klan, he related a primary American lesson. Quoting his favorite Founding Father, Gouverneur Morris, about his fear of "scenes of horror attending civil commotion," Dellinger recounts the near breakdown of the Constitutional Convention in 1787 over whether small and large states should have an equal voice in the Senate. "One of the things you learn," says Dellinger, "is the reason why there's an important independent role for law as a brake on politics."

Before the opening of the court term, Dellinger revived the practice of paying a courtesy call to Chief Justice William Rehnquist, whose ideology differs sharply from his own. In court, he is likely to aim his arguments at swing votes in the center: Justices Sandra Day O'Connor, Anthony Kennedy and David Souter. In the weeks to come, Dellinger will weigh in on controversies as varied as the president's vulnerability to civil suit while in office and the bounds on abortion-clinic protests. The court also will consider the right to die, which Dellinger may argue should be distinguished from the right to abortion. Admirers and adversaries can probably agree on one thing: The arguments of the new solicitor general are certain to be cogent, clear eyed and passionate — and awfully hard to ignore.

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AlumniSnapshots

By John Manuel

Barbara Arnwine '76

Barbara Arnwine '76, recalls a particular incident just after graduating from Duke Law that squelched any thoughts she had of returning to her native California. "I

was asked to participate in a moot court competition in a mostly white high school outside of Durham," Arnwine says. "There were a few blacks huddled in the back of the room watching me intently. After the program was over, they sent a representative up to ask me if I was a real lawyer. I told them I was, and they said they didn't know blacks were allowed to do that kind of work. I realized that there was a lot to be done right in North Carolina."

After graduating from Duke, Arnwine worked in the Durham Legal Assistance Program as a Reginald Huber Smith fellow — the only "Reggie" from Duke that year. She handled everything from housing to prisoners' rights issues and did so with a missionary zeal.

"I found Barbara to be a person of vision, commitment, tenacity and charisma," says Charles Bentley, former managing attorney at Durham Legal Aid and now in private practice. "I believed those talents would take her a long way, and it appears they have."

In 1979, Arnwine advanced to Legal Service's statewide office in Raleigh. There, she worked on affirmative action policies, reviewed contracts and helped open three new Legal Aid programs in Ahoskie, New Bern and Boone, N.C.

"I'm particularly proud of my efforts to enroll more minorities in Legal Services work," she says. "LSNC had only three percent African American attorneys when I arrived and had 33 percent when I left."

In the early 1980s, Arnwine became concerned with how conservative the North Carolina bar was becoming. Although loathe to leave the state, she accepted a job as executive director of the Boston Lawyers Committee for Civil Rights.

"To some extent, I jumped from the frying pan to the fire," Arnwine says of that move. "Race relations were horribly strained in Boston. I had some really hellacious cases. But ironically, the bar association there was much more progressive than in North Carolina. I felt I was in a position that I could do something about a major problem."

In 1989, Arnwine was hired as executive director of the national office of the Lawyers Committee for Civil Rights, based in Washington D.C. She now spends most of her time fundraising, doing public advocacy work and lobbying members of Congress.

The Washington job has given her an opportunity to affect civil rights policy on a national level. She wrote a series of eight papers criticizing the civil rights record of the Bush and Reagan administrations and helped write Clinton's 1995 policy speech on affirmative action. Arnwine pressured the Clinton administration to address the problem of toxic waste dumps and other environmentally offensive facilities being located near minority communities. Clinton subsequently issued an Executive Order on Environmental Justice which requires all federal agencies to make sure they are not operating in a way that produces negative effects on minority communities.

Arnwine was also involved in the passage of the Civil Rights Act of 1991 which overturned lower court decisions striking down government programs giving preference to minorities in hiring and contracting.

"Affirmative action has been one of the nation's most significant intervention tools for combating racial and gender discrimination and promoting equal opportunity," she says. "The need for it has by no means disappeared."

Arnwine has also been active in promoting civil rights issues overseas. She traveled to Guantanamo Bay in 1992 to investigate problems with the Haitian refugees confined there by the U.S. government and visited South Africa in 1994 to help monitor that country's first truly democratic elections. In 1995, she led a delegation of 47 people to the Fourth Women's Conference in Beijing, China. Also that year, Arnwine organized the National Conference on African-American Women and the Law in Washington D.C., attended by over 1,000 people.

Arnwine says there are more battles to be fought than she can possibly keep up with and many that she will likely lose. Yet that reality has not dimmed her enthusiasm in the least. "This is one of those jobs you can't believe you're being paid to do," she says.

Martina Bradford '75

To consumers benefiting from lower rates and a smorgasbord of services, the deregulation of the telephone industry has been a picnic. To telecommunications industry lobbyists and policy-makers, who for a decade have been haggling over regulations on Capitol Hill, it has been one long dogfight. And Martina Bradford '75 has been in the middle of it.

For five years beginning in 1990, Bradford served as corporate vice president in AT&T's Federal Government Affairs organization. In that capacity, she was responsible for leading AT&T's advocacy efforts on all domestic and international matters, including telecommunications and trade investment. Bradford was deeply involved in the formulation of the landmark

Telecommunications Reform Act of 1996, which sets forth the conditions that the local telephone companies must meet prior to being able to offer in-region long distance service or to engage in manufacturing of telecommunications equipment.

In common terms, Bradford is a lobbyist, but you won't catch her apologizing for that profession. "You've heard the saying that democracy is the worst form of government — except for all the rest," Bradford says. "Thankfully, in this country, we have the right to petition the government. In Washington, I'm told, there are over 20,000 business organizations, consumer groups, labor organizations and trade associations whose sole purpose is to seek harmony between public policies and their interest group needs. We are here to help inform the debate, to ensure that our views are heard and that the needs of our shareholders and employees are considered as public policy is formulated.

"Lobbying does have a somewhat negative connotation, which is why I think advocacy is a better word," she says. "That's what we were taught in law school — to be the best possible advocate for our client."

After graduating from Duke in 1975, Bradford headed to Washington, D.C., where she served as chief attorney in the Office of the Vice Chairman of the Interstate Commerce Commission and later as counsel on the Government Affairs Committee of the Senate Appropriations Committee.

In 1983, she joined AT&T as an attorney in the Corporate Legal Department, handling divestiture-related matters. She later moved to the Public Affairs Department where she worked on telecommunications policy and antitrust issues. In 1988, she became AT&T's state government affairs vice president for the New York/New England region.

Along with the larger issue of hashing out telecommunications reform, AT&T's court-ordered divestiture of its Regional Operating Companies (RBOC's) has been a major challenge for Bradford. The abrupt turnaround of these companies from cohorts to competitors sorely tried AT&T policy-makers' patience. "The ink was barely dry on the consent decree under which AT&T agreed to divest itself of the Bell Operating Companies before the RBOC's started their push to get into long distance, information services and manufacturing — the very things the decree forbade them from doing," Bradford says. "The long distance industry and the RBOC's fought this battle from 1984 until the passage of the 1996 Act, and it's far from over."

In 1995, AT&T made the decision to split itself into three separate companies. Lucent Technologies was created to handle the design, development and manufacture of both the hardware and software systems that run the company's global communications networks. Bradford was given the job of corporate vice president in charge of public affairs, responsible once again for leading all advocacy efforts for the corporation's domestic and international policy initiatives.

Bradford says there will be plenty of work for lawyers in the telecommunications area, but she warns that it is not for the faint of heart. "Those entering telecommunications law have a lot of history to learn, and they must be prepared for many more years of litigation, as well as possible regulatory and legislative battles," she emphasizes. "Implementing public policy changes for an industry that affects so many aspects of our lives and which has ever increasing importance is never easy. Only those who are prepared to fail can ever succeed."

Anthony Harrington '66

By Tom Kubicki

Anthony Harrington '66, former assistant dean of Duke Law School and lifetime Board of Visitors member, remembers the day last June when he got a phone call from a reporter asking about CIA abuses in Guatemala. President Clinton had asked Harrington to make a full disclosure about his investigation. The results of the 15-month study found the CIA innocent of torture allegations. It was the first time such information was made public by a chairman of the Intelligence Oversight Board. Harrington relishes his role and that memory.

President Clinton appointed Harrington chairman of the Intelligence Oversight Board in 1994. First established by President Gerald Ford, the board oversees possible illegality and impropriety within the intelligence community and has become more active as President Clinton increased its responsibilities. According to Harrington, intelligence needs are actually greater since the end of the Cold War, with increasing instances of terrorism, drug trafficking and widespread unrest.

As the press has covered the board's investigations, Harrington's activities have become more visible.

Harrington describes his Oversight Board position as ideal since it allows him to hold a substantial position in the intelligence field and work on extremely interesting investigations, all on a part-time basis. The rest of his time in Washington is spent as senior partner with Hogan & Hartson, attending to a sizable group of corporate clients.

While he has plenty of work and interests in Washington to keep him busy, Harrington continues to be active in his

charitable interests and business pursuits. He founded the cable network Ovation, which devotes its programming to the promotion of the arts, and currently serves as its director. Another recent business interest, which he hopes will keep his connection with North Carolina alive and active, is an investment in a software firm headquartered in North Carolina.

Born in Taylorsville, North Carolina, Harrington speaks fondly of his home state and says he definitely plans to return to the Old North State for good. At a recent speech he made to the graduating class of his high school in Taylorsville, Harrington stressed the virtue of being raised in a small town. He told the graduates to value the sense of belonging, the importance of accountability and the benefit of having roots.

As a way of preserving those values for his sons, Harrington recently purchased a home in Easton, Maryland, a quaint historic town where as Harrington puts it, "I'm able to provide a similar sense of what it's like to be raised in a small town."

Frank Hunger '65

So you think you're busy? Backlog of cases got you down? Whatever you're facing, Frank Hunger '65 has got you beat. Hunger is head of the Civil Division of the U.S. Department of Justice, responsible for handling all cases brought against the U.S. government or by the U.S. against foreign governments. Currently, the division has about 21,000 cases and claims on the docket. And Hunger loves his job.

At the invitation of the Clinton administration, Hunger accepted his post at Justice in 1993. Prior to that, he was senior partner and managing partner with the firm of Lake, Tindall, Hunger & Thackston located in Greenville, Mississippi. He has served as chairman of the Mississippi state judicial selection committee and is a fellow of the American College of Trial Lawyers. Hunger has long been active in the Democratic Party in Mississippi and Tennessee and is close to brother-in-law Al Gore.

Since being named the head of the Civil Division, Hunger has been deluged with litigation. "I am a hands-on person," Hunger says. "I like to get personally involved in a number of cases."

His gallery of prominent cases includes the so-called Windstar cases, which are actually 323 different cases that grew out of the savings and loan debacle. The Supreme Court handed these cases down to the U.S. Court of Federal Claims to determine the level of damages in each.

McDonnell Douglas and General Dynamics' suit against the government for cancellation of the A-12 Stealth fighter has also commanded much of Hunger's time. "This has been a fascinating case," Hunger says. "It concerns a good many complex issues dealing with confidential information. It's now in its final phases, and I believe the U.S. will promptly appeal the decision."

Most recently, Hunger was involved in a case that made headlines in the Triangle area. LabCorp, Inc., a medical testing firm based in Burlington, N.C., was sued by the federal government for fraudulent Medicare claims. In November, the government won a record $182 million settlement in that case.

While running for president, Bob Dole sought to portray federal agencies that aggressively pursue lawbreakers, namely the IRS and EPA, as enemies of the people. Hunger, on the other hand, sees every reason to boast of his agency's doggedness. "I'm very proud of the fact that the Civil Division generates considerable savings for the taxpayer," he says. "Every year that I've been here has been a record for civil recoveries. In 1994, we collected a record $1.1 billion for the government."

Hunger began his career right out of law school, clerking for the U.S. Court of Appeals. He then spent the next 28 years in private practice as a litigator, rising to partner in the firm of Lake, Tindall, Hunger & Thackston. While he enjoyed his private practice, he recommends government work to all law graduates at some point in their careers. "I found private practice very satisfying, but my time with the U.S. Department of Justice has been the most rewarding," Hunger says. "I look at it as a public service — you are representing the people of the United States. It leaves you with a great feeling at the end of the day."

Hunger is also proud of his Duke connection. He's a member of the Law School's Board of Visitors and returns to campus whenever he can. Says Hunger, "I look back on my years at Duke as some of the most enjoyable of my life."

Bryan Sharratt '71

When Bryan Sharratt '71 was offered the job as deputy assistant secretary of the Air Force in 1994, his friends warned him that there was no job security and that he might well end up back in Wyoming if Bill Clinton was defeated. "That didn't bother me at all," Sharratt says. "I look forward to change."

Born into a military family, Sharratt is used to being on the move. He went to 13 different schools before graduating from high school. Since earning his JD from Duke Law School, he has worked as a trial lawyer, county prosecuting attorney and a real estate agent and headed a variety of political campaigns at the local and state level. The one constant in his adult life has been his participation in the military — three years in the Navy as a legal officer and 19 years in the Air Force Reserve. His military experience, combined with his leadership of the Clinton re-election campaign in Wyoming, led the president to appoint him deputy assistant secretary of the Air Force.

Sharratt is responsible for the development, implementation and supervision of all plans and programs of the Air National Guard, the Air Force Reserve and the Civil Air Patrol. The enormity of that responsibility is reflected in the size and mission of these organizations.

"The Air National Guard and the Air Force Reserve represent 35-40 percent of the U.S. military's mission capability — 1,700 aircraft, more than 200,000 people and an annual budget of nearly $6 billion," Sharratt says. "The Civil Air Patrol is another 55,000 people and an invaluable auxiliary to the Air Force. They are all volunteers, providing search and rescue missions, aerospace education and training."

Sharratt says his biggest challenge has been reorienting the Air National Guard and Air Force Reserve's missions from a Cold War footing to humanitarian efforts. With active forces continuing to downsize, the reserve components are being called on to contribute more toward peacetime missions, as well as maintain their wartime capabilities. About 25 percent of all Air Mobility Command missions are being flown by reservists, including missions to Bosnia, Haiti and Rwanda. Added to that is the challenge of helping these part-time soldiers carry on their civilian lives. This involves meeting employers' concerns, dealing with quality of life issues and providing compensation that will keep them motivated and prepared.

Along with his job responsibilities and duties as a father of two, Sharratt has been active in Democratic Party politics. After leaving the Navy in 1974, he moved with his family to Wheatland, Wyoming where he became involved in a variety of activities at the precinct level. He was elected county prosecuting attorney in 1978 and was a delegate from Wyoming during the Carter campaign. In 1988, he ran unsuccessfully for Congress against Dick Cheney, who later became Secretary of Defense under President Bush. Later, he ran Mike Sullivan's successful campaign for governor of Wyoming.

Sharratt first met Bill Clinton in the 1980s after Clinton had lost his reelection campaign for governor of Arkansas. Sharratt and Sullivan worked with Clinton in forming the Democratic Leadership Council, the centrist organization that was to steer the party toward a more middle-of-the-road position on political issues. In 1991, Sharratt ran the state campaign for Clinton, and after Clinton's election, he was asked to come to D.C.

How does he enjoy the move from the Cowboy State to the nation's capital? "Coming to the Washington area is, in a sense, coming home for me," he says. "I was born in Bethesda Naval Hospital. I feel comfortable in the military culture of the Pentagon. To me, it's just another adventure."

David Taylor '49

David Taylor '49 likes to tell his students at Georgetown University's School of Foreign Service that he hasn't yet decided what he wants to do when he grows up. In fact, Taylor has just about done it all when it comes to leading a varied and successful professional life. Since graduating from Duke Law at the age of 20, Taylor has been a lawyer, a businessman and now a professor. He has lived and worked in nearly a dozen countries and thinks the future belongs to those who have both an intellectual and a gut-level understanding of world cultures and events.

A native of tiny Oxford, N.C., Taylor first went abroad care of the U.S. Army. He was drafted in 1950, and "after they found out I was a lawyer," commissioned as a first lieutenant in the Judge Advocate General Corps based in Heidelberg, Germany. From there, Taylor traveled to all the capitals of Europe, serving as the Army's principal legal advisor in negotiations to set up NATO bases.

"It was an incredible experience for a kid just out of law school," Taylor says. "And it really gave me the travel bug."

Taylor left the Army in 1954 and headed for New York City where he spent a year with the law firm of Milbank, Tweed, Hadley & Clay. Eager to get back in the global arena, he took a job with Mobil Oil Company as an international negotiator. Mobil first sent Taylor to Portugal in 1959 "to help straighten out some complicated negotiations we'd gotten into." He proved adept at management and in the coming years was sent to head Mobil's start-up operations in Tunisia and later, Nigeria.

Following the 1966 military takeover in Nigeria, Taylor moved back to New York City where he served as assistant to the president of Mobil Oil. In 1969, he was placed in charge of Mobil's International Concessions and Acquisitions Department. Finding that he spent most of his time on airplanes flying to foreign capitals, Taylor asked to be sent back overseas. Mobil obliged him by naming Taylor president of Mobil's Portuguese operations in 1970. He weathered five years and a revolution there and was ready for another assignment.

"I've always believed in the three-to-five rule," Taylor says. "It takes at least three years to really get to know a job, but after five years you start to get stale."

Mobil asked Taylor to be general manager of a consortium of oil companies based in Iran, which at the time (1975) was still under the rule of the Shah. This portended to be one place that Taylor could not stomach.

"I went down to Tehran for a visit and was absolutely appalled by the atmosphere of corruption," Taylor says. "I can't say that I predicted the revolution, but I certainly wasn't surprised when it happened. My instincts told me not to take the job, and that proved to be the right move."

Mobil subsequently sent Taylor to Washington D.C. to serve as manager of international government relations. Five years later, he was on the road again, first to Paris, then to Indonesia, and back to Paris again to run several of Mobil's African operations.

In 1986, after 32 years of service, Taylor retired from Mobil. He returned with his wife and children to Washington D.C., deciding it was as good a place as any to call home. In 1992, Taylor signed on with the School of Foreign Service at Georgetown. Currently, he holds the position of research professor of international affairs and senior fellow in international diplomacy.

Drawing on his extensive experience as a global business manager and negotiator, Taylor sees his most important task as teaching students how to think about the future. His course on analysis and forecasting requires students to choose a hypothetical client and write a paper relevant to that client's business on what the future might be like in 10 years. The exercise requires students to pull together a wide variety of information but also to rely on their instincts.

"This is the kind of decision-making that goes on all the time in business and politics," Taylor says. "You cannot predict the future, but you can analyze what's going on and trace the possible outcomes. You try to minimize the risk by figuring out what could go wrong.

"Ultimately, you've got to rely on your gut instincts," he says. "I've had two major successes in life and two major failures. In the successes, I listened to my gut, and in the failures I didn't."

Naturally, Taylor feels it is crucial that Duke Law School, where he is a member of the Board of Visitors, develop a strong international focus. He commends Dean Pamela Gann for making significant strides in that direction. And he urges students to seek out international experience both for their personal and professional development.

"I absolutely encourage people to live abroad to the extent possible," he says. "Spread your arms. Fly! We are becoming an international community and the more closely you experience it, the more fully-developed you'll be."

Charles Verrill '62

Charles Verrill '62, a partner in the Washington D.C. firm of Wiley, Rein and Fielding, has reason to celebrate. Since 1990, his firm has won 83 percent of all the cases they have brought before the Department of Commerce and the International Trade Commission. And these are no small cases.

Verrill is in charge of international practice for the firm. His principal clients are domestic industries, such as Kodak, Rockwell International and Inland Steel, that have serious problems with imports. These companies have been busy filing suit against various exporters for alleged violations of two statutes: the Antidumping Act of 1921 and the Countervailing Duty Law. The cases typically involve tens of millions of dollars and are central to the ability of U.S. manufacturers to remain competitive at home and abroad.

"While economists occasionally challenge these laws as anti-consumer," Verrill says, "I am convinced that the trade laws are essential in a world where national markets are often closed, and governments subsidize industry."

Verrill says the most fascinating cases have involved application of countervailing duty in the context of privatization of state-owned industries. The Countervailing Duty Law allows duties to be imposed on products imported into the U.S. that are manufactured by companies receiving subsidies from their governments. In recent years, a number of these foreign companies have been privatized, and the question has arisen as to whether the new owners remain liable for countervailing duties imposed on products shipped to the United States. Representing the U.S. steel manufacturers, Verrill maintained that privatization did *not* extinguish the liability for countervailing duties based on subsidies granted prior to privatization. The Court of International Trade decided against the U.S. manufacturers, but on appeal to the U.S. Court of Appeals, the decision was reversed.

"With respect to international trade, we operate at two different levels," Verrill says. "There are the U.S. laws that regulate goods and services going in and out of the country, and then there are the international agreements administered by the World Trade Organization. All 120 WTO members, including the United States, must conform their trade laws to those international agreements. As a lawyer, an exciting development in the trade regulation practice is the fact that this organization now has real dispute authority, which means that all the laws we work with are reviewed both by the courts and international tribunals."

In addition to his private practice, Verrill has taught international trade law at Georgetown University Law School for the past 20 years. His course is reputed to be one of the most popular, and in 1993-94, he won the school's Charles Fahy Distinguished Adjunct Professor award. Asked what motivates him to teach, as well as practice law, Verrill explains, "Teaching requires me to constantly think and rethink positions I've taken on trade issues. There's nothing like having a group of highly intelligent students who question you without hesitation to lead you to continually reevaluate your positions.

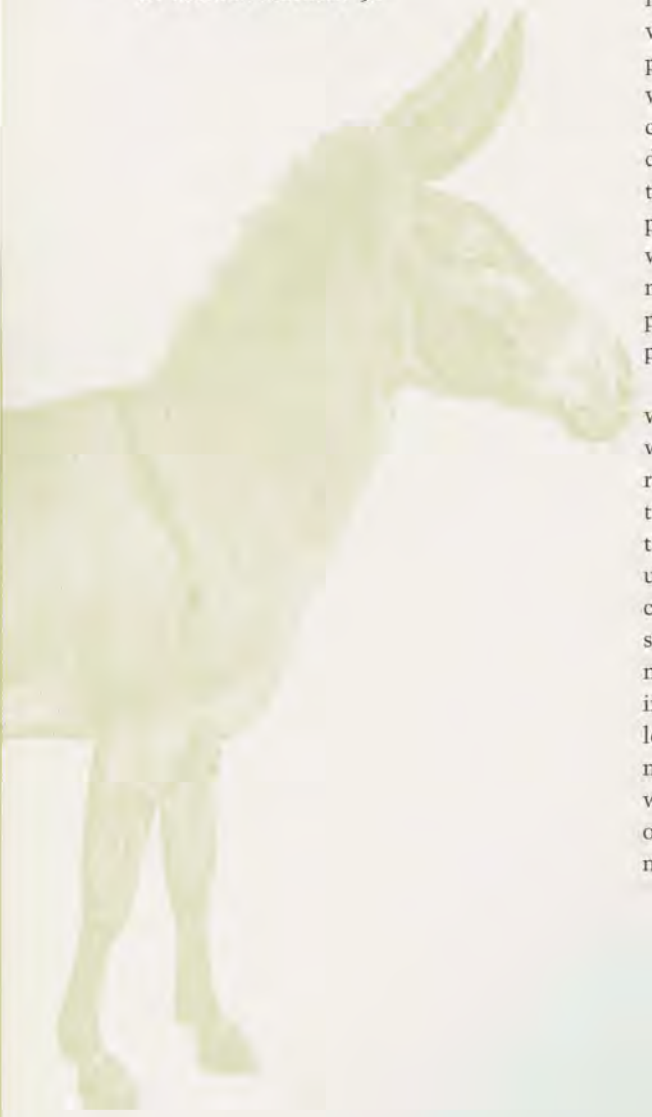
"Teaching also helps me keep abreast of current developments in the law," he says. "And, of course, I get a great deal of satisfaction in providing knowledge to those who are eager to receive it."

Verrill traces his interest in teaching to former Duke Law School dean, Jack Latty, the man he cites as his greatest influence. Verrill says it was Latty who urged him to come to Duke in 1959 and who motivated him to do his best once he got there.

"Dean Latty was a gifted teacher, and I had the sense that he believed I could get somewhere if I pushed myself," Verrill says. "His confidence in me was a great motivator and one of the main reasons I teach today."

MANAGING THE CHICAGO CONVENTION *while keeping an eye peeled for Michael Jordan*

By Monica Metzler '91



In my most recent position as deputy convention manager for the 1996 Democratic Convention in Chicago, I learned things I'll probably never use again, things like — how you make hundreds of miles of audio, video and electrical cable look aesthetically pleasing; how 100,000 balloons will affect hundreds of high-intensity lights; how many portable toilets are needed to accommodate a media village; and, which is Michael Jordan's locker.

Officially, the Convention Hall Department was responsible for all aspects of turning the United Center — a beautiful new sports and concert facility just west of downtown Chicago — into a full-service, state-of-the-art political convention facility. From a technical standpoint, the job entailed substantial contact with architects, mechanical and electrical engineers, construction companies, designers, and telephone and computer technicians. From a managerial standpoint, it required constant negotiations with secret service, fire and police departments, labor unions, network television producers, print and radio media, facility personnel and scores of volunteers.

I had to learn the difference between work done by steelworkers and iron workers, between stagehands and light riggers, and at the same time, make sure the jurisdiction of one didn't conflict with that of any of two dozen other labor unions. There were long, complicated discussions about whether the Teamsters or some other union were responsible for moving some box of materials — depending on whether it was being loaded or offloaded, technical equipment or building materials, on the loading dock or elsewhere in the building. As a result, I developed a great respect for people who negotiate with labor unions.

I was also responsible for managing a relatively young staff that had never before worked together and coordinating the efforts of scores of volunteers aged 16-60. I had to explain to volunteers that they would not be making national policy but that the most important work involved moving boxes, hanging signs and rearranging furniture.

A project like a national political convention requires the involvement and input of a vast number of different groups and individuals, so there were countless meetings that ranged in size from four to 40 people and from 15 minutes to four hours. In such meetings, it was important to know how to focus and not be distracted — e.g., conducting a meeting on renovation of skyboxes with Blackhawk hockey practice going on behind you, or even more difficult, trying to keep people focused on the tasks at hand while word spreads that Michael Jordan is in the building.

Good communication skills were critical to the whole operation; once, with a line of people waiting to talk to me and E-mail beeping, I had simultaneous conversations going on two phone lines, a cell phone and a walkie-talkie. During the Convention itself, I was "well-connected" — I carried two walkie-talkies (with a security ear piece and access to two additional radio systems), a pager and a cell phone.

Like complex litigation or a large corporate deal, the Convention was a big project needing lots of time and preparation before coming to fruition. Law school and legal practice fortunately teach the importance of being well-organized and well-prepared in such situations. Advance preparation helps prevent being easily intimidated; I once had to lead a meeting where I was the only woman in a room of 25 labor union business agents, some of whom made a practice of loudly and forcefully threatening pickets and lawsuits.

Thinking ahead and planning for the future was a constant in every decision. We had two and a half months to transform the United Center for the Convention but just 10 days to return it to its original condition (including making ice for the hockey floor). Thus, how something could be un-done was often more important than how it was done. Also, with 218 skyboxes plus about 30 temporary offices in use, changing the occupants of one space created a dramatic domino effect requiring careful monitoring.

Other useful traits could have been added to the job description: accounting skill — handy in keeping track of hundreds of televisions and VCRs brought in for use in dozens of makeshift offices; math ability — beneficial when we had to recount the chairs on the floor every night because delegations were stealing chairs from each other; comfortable shoes — eight floors and 960,000 square feet of building to monitor; and, no fear of heights — issues of confetti, lights and banners demanded frequent trips to the cat walk and roof of the United Center.

But perhaps the most important job requirement was stamina. Preparing for the Convention was like finals week, the bar exam or the eve of a big trial — only it lasted three full months. Getting ready to accommodate 25,000 people for four days meant extremely long hours under lots of stress, all meals taken on the run and sacrificing any semblance of a personal life all summer. It was exhausting but a tremendous experience.

Thanks to my experience at Duke (producing "Flaw Day" and every finals week comes to mind) and my legal practice, both at a large firm and in state government, I was as prepared as anyone could be to tackle this unique job. Nothing about the experience was terribly glamorous, but it was a big and exciting event and by most accounts a big success for my hometown and the Democratic Party. Please note, however — the Macarena was not my idea.

A Lawyer's Eye-View of the San Diego Convention

By Duncan Getchell '74

Duncan Getchell '74 is a commercial litigator with experience in election and voting rights cases. He argued a voting rights case in the Supreme Court last term and represented the RBC in convention related litigation.

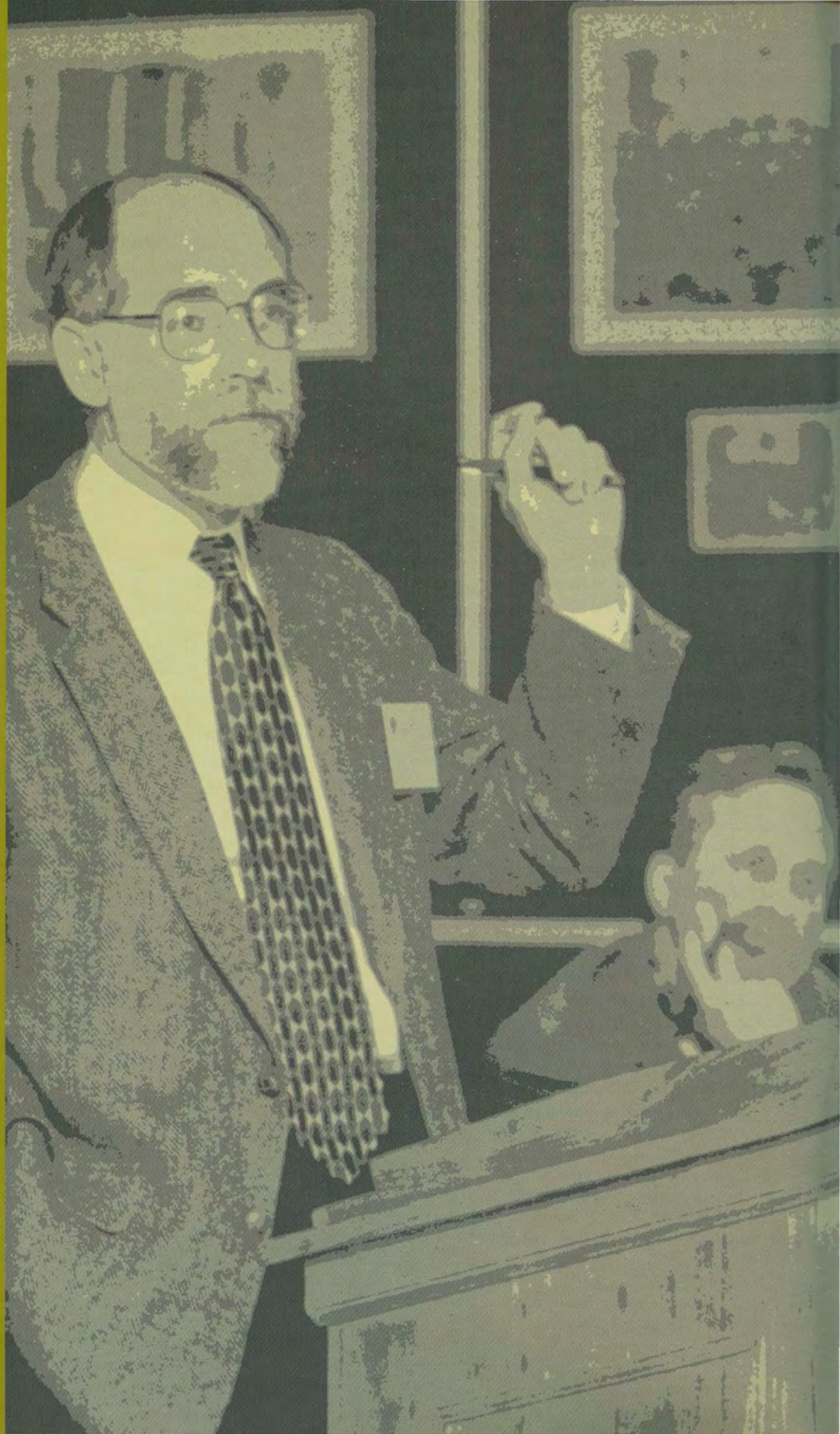
When the Republican Party of Virginia was sued under the Voting Rights Act of 1965 for charging a delegate fee, Judge Widener thought the Party needed no delay to retain counsel, because political parties are full of lawyers. Well, yes and no. Traditionally, lawyers have been drawn to politics, but increasingly the parties are in need of lawyers qua lawyers.

The parties need lawyers to mount a national convention. Thirty thousand people are coming, and preparations must be made: evaluate the proposals of potential site cities; negotiate a site city agreement; contract to modify the convention center; contract with the hotels; lock up the parking lots; negotiate a transportation plan; contract with consultants; hire staff; accommodate the press trailers; allot credentials; comply with Americans with Disabilities Act; advise the committees; and litigate with the ACLU which wants the closest parking lot as a protest site. To handle the legal side of these tasks, the Committee on Arrangements had its own counsel's office on site working with the Republican National Committee's General Counsel's office, campaign legal staff, outside litigation counsel and legal volunteers.

When I visited San Diego six weeks before the convention, it was not obvious how all the pieces would fit together. Would the security lines clog? Could the trollies and buses move enough people? Could the convention actually use the nearest lot for disabled parking?

Ultimately, it all came together so well that the press complained it was too flawless. Mencken thought national conventions are grand and gaudy affairs not to be missed by choice. He was right. This was my second, after Miami in 1968. I wouldn't have missed them for the world.

FACULTY PERSPECTIVES



New Center for the Study of the Congress Looks at American Cynicism Toward the Institution

By Christopher H. Schroeder
Professor of Law

The recently established Center for the Study of the Congress at Duke Law School is investigating the current cynicism that infects the relationship between the American people and the Congress.

In the very first of the Federalist Papers, Publius argued that it has been "reserved to the people of this country, by their conduct and example, to decide the important question, whether societies of [persons] are really capable or not of establishing good government from reflection and choice, or whether they are forever destined to depend for their political constitution on accident and force." Of the three branches of the federal government, the drafters of our Constitution devoted by far the most attention to the details of the Congress, which was to be the critical forum for representation and republican deliberation.

In significant respects, history demonstrates that the Founders chose wisely. Even today, Americans express a high degree of commitment to our form of government. After an extensive 1992 survey, John Hibbing and Elizabeth Theiss-Morse have reported approval ratings of 88-96% for the three branches of federal government.[1] It seems quite possible that this high degree of allegiance to our democratic institutions plays a central role in maintaining our sense of community, performing a function that bonds of national origins, common heritages or shared customs might play in more homogeneous societies. If so, it is fair to say that the governmental institutions that we have created have become constitutive of us as a community and not merely choices made by that community. As our society becomes increasingly diverse, it is a bond that we would do well to nurture.

The strong approval ratings just reported only emerge, however, as responses to survey questions that focus sharply on our institutions as ideal types, as contrasted to the specific manifestations of those institutions operated by their current officeholders. While each of our three "actual institutions" suffer in comparison to their ideals, the Congress fares the worst: in the 1992 Hibbing and Theiss-Morse survey, approval for the current members of Congress stood at 24%.[2]

This approval figure for the actual Congress has bounced around since 1992, reaching an all-time low immediately prior to the 1994 elections, which swept the Democrats out of the House majority; improving while the new Republican majority worked on the Contract with America's legislative agenda; falling again when the budget impasse between the Congress and the President resulted in two major shutdowns of government services in late 1995 and early 1996; and improving again immediately prior to and after the 1996 election.

These movements, however, have not shaken among close observers of the Congress the widely shared belief that the American people remain deeply distrustful, even cynical, of the members of Congress. Theories abound about why the Congress is distrusted, as well as about ways to improve the Congress' standing. The Congress Center will be seeking to develop a broad understanding of attitudes toward the Congress and the nature of the relationship between the Congress and the American people in order to provide a common starting point to debate the problem and its solutions. What follows represents both a brief sketch of what elements such a shared understanding should contain, as well as some preliminary hypotheses about some of those elements.

What we know of people's attitudes toward the Congress suggests they take it to be a highly unfair and biased institution.

First, we ought to improve our understanding

of what people find objectionable about the Congress. While some recent research has advanced our understanding here, especially that of Hibbing and Theiss-Morse, it is remarkable how little research has been done beyond general approval and thermometer polling data. As a working hypothesis, however, we can borrow from very rich research by cognitive psychologists on participants' reactions to resource-allocation systems, especially the judicial system and alternative dispute resolution systems, to construct a picture that is encouragingly consistent with the surveys that have been taken of attitudes toward the Congress. That research has found that participants react both to outcomes — depending upon whether they are favorable or not — and to the procedures employed in reaching those outcomes — depending on whether they are perceived as fair and impartial or not. All participants who lose react negatively to the system, but those who participate in a system perceived to be unfair react much more negatively than those who perceive the process as fair. This general result is illustrated in Figure 1.

Studies suggest that media portrayals of the activities of the Congress are systematically skewed toward certain kinds of stories, emphasizing conflict, winners-and-losers, scandal and greedy behavior by members, rather than stories emphasizing consensus, institutional process and the public-minded behavior of members.

What we know of people's attitudes toward the Congress suggests they take it to be a highly unfair and biased institution. Although variously described, the attributes that contribute materially to a person's reactions to procedure can be captured by the concepts of voice, ethicality and honesty.[3] The Congress scores poorly on all counts.

Voice signifies an individual's belief that his or her point of view has been given due consideration in the decision-making process. The public overwhelmingly believes that once elected members become enthralled to the monied interests in Washington, they stop paying attention to the problems of average Americans.

Ethicality signifies the judgment that a decision maker has shown respect for the individual and his or her rights in the process and embodies the same moral and ethical standards as the individual. The public overwhelmingly believes that members of Congress constitute an insulated, privileged elite more concerned about feathering their own nests and engaging in partisan political warfare.

As for honesty, Americans believe that members of Congress are less honest than the rest of us (although they are willing to blame the corruption on the "system," rather than the individual). All told, these findings indicate that the public reacts to the Congress along the steeper line in Figure 1. Agreeable actions by the Congress elicit favorable reactions; this seems consistent with the recent upward movements in approval noted earlier, all of which corresponded to periods in which people sensed that Congress was getting things done. However, when the institu-

tion is not producing good results, people react in a strongly negative manner toward it, because they perceive the basic way that the Congress operates to be fundamentally unfair and biased. The result is an institution that lacks any margin for error in the public's eye, a severe handicap for an institution that must face hard and contentious policy issues.

Characterizing citizen reaction to the Congress deserves much more investigation, but even a highly detailed picture only provides part of the information necessary to understand and then to improve the relationship between the Congress and the public. We also need a better understanding of what produces public attitudes. We do know that they emerge from a highly complex and dynamic interaction between the Congress and the public, with numerous media filters in between. Studies suggest that media portrayals of the activities of the Congress are systematically skewed toward certain kinds of stories, emphasizing conflict, winners-and-losers, scandal and greedy behavior by members, rather than stories emphasizing consensus, institutional process and the public-minded behavior of members.[4] This selection process results in amplifying the negative aspects of the institution and in dampening appreciation for its more positive aspects. As for the origins of the selections themselves, both market forces and a prevalent cynical attitude among the working press appear to play a role.[5]

Campaigning also provides an important source of information about the institution and its members. The attack-ad-oriented campaigns run in many districts today distress voters and lower their esteem for members (despite this fact, they continue to be a dominant form of campaigning, because they are effective in moving voters[6]), as do the type of media stories that cover the horse race and the strategic aspects of campaigns.

The interaction between the Congress and voters does not take place in one direction, of course; members are increasingly sophisticated in informing themselves of voter opinion while legislative battles are underway, an activity that reinforces the images of them as either shifty manipulators of voter opinion or feckless operators more interested in ensuring their re-election than acting on principle or in the public interest.

This highly interactive, changing relationship does not exist in a vacuum either. To the extent the Congress is forced to address contentious, perhaps even intractable, public problems, it ends up displaying the kind of fractious behavior that seems to alienate voters and yet also reflects the preference for inaction and stalemate in the face of significant disagreement that the Founders intentionally built into our governmental structure. Likewise, to the extent that citizens today possess a distrust toward all institutions of authority or power generally, the Congress will be swept up in the same set of negative attitudes.

This is but the crudest sketch of some of the more evident features of public attitude formation. Even after developing a much more fully articulated positive model of how public reactions to the Congress are formed, normative questions will remain to be addressed before one can recommend policies intended to alter those reactions. Appropriately open, representative democratic institutions may inevitably produce a degree of debate and discord when dealing with significant public issues that will strike a large portion of the public as worthy of reproval, and yet it would be unwise to try to address that issue by creating practices that smoothed over or hid from view that debate. The media may systematically amplify the negative aspects of the Congress, and yet the First Amendment and the ideals it embodies may appropriately counsel against efforts to control media coverage of public officials. Any reform of campaigning that is not voluntary similarly implicates core First Amendment values. Such issues as these must be a part of any conscientious effort to assess the current situation and of actions taken to effect changes in it.

These are large and complicated questions entirely worthy of study, given the importance of the issues raised by cynicism toward our central democratic institution.

1 John Hibbing and Elizabeth Theiss-Morse, *Congress as Public Enemy* (1995), p. 45.

2 Id., at 44. The 24% figure includes both "strongly approve" and "approve" responses.

3 See, E. Allan Lind and Tom Tyler, *Social Psychology of Procedural Justice* (1988), pp. 108, 170.

4 E.g., Kathleen Hall Jamieson, *Dirty Politics* (1992).

5 See, Paul Starobin, "A Generation of Vipers," *Columbia Journalism Review* (March/April 1995) pp. 25-32.

6 E.g., Stephen Ansolabehere and Shanto Iyengar, *Going Negative* (1995).

CHANGES IN HABEAS LAWS SHIFT BURDEN TO STATE COURTS

BY JAMES E. COLEMAN, JR.
PROFESSOR OF LAW

On November 1, 1983, I became counsel to Stephen Todd Booker, an inmate on Florida's Death Row who was convicted of murder and sentenced to death in 1979. When I became his lawyer, he had just lost his first attempt to obtain federal habeas corpus relief and was scheduled to be executed 16 days later on November 17. Within the next two weeks, two young associates in my Washington, D. C. law firm and I filed a second application in Florida state court seeking post-conviction relief; presented evidence at a state trial court hearing that Mr. Booker's trial lawyer had been constitutionally incompetent; briefed and argued an appeal before the Florida Supreme Court; filed a second habeas corpus petition in federal district court in Tallahassee; and lodged applications for a stay of execution in the United States Court of Appeals in Atlanta and in the United States Supreme Court. On the night of November 16, 1983, only hours before the scheduled execution, the federal district court granted a stay.[1]

After two more years of less frenzied litigation, we lost Mr. Booker's second habeas case on procedural grounds. But two habeas petitions and three death warrants later, we finally succeeded in convincing both the Florida Supreme Court and the federal courts that Florida had sentenced Mr. Booker to death in violation of the Constitution. That litigation ended in 1991. Although the district court permitted Florida to re-sentence Mr. Booker, the state so far has taken no action to do so. Instead, in 1993, the state initiated collateral proceedings in federal district court seeking to re-litigate whether the constitutional violation that court had found was harmless error. The state abandoned that effort only last year, after losing in the district court and the court of appeals.[2] Meanwhile, Mr. Booker remains on Death Row awaiting a constitutional re-sentencing trial, and I continue to represent him.

The Antiterrorism and Effective Death Penalty Act of 1996 (the "AEDPA" or the "Act"), Pub. L. No. 104-132, tit. I (1996), which President Clinton signed into law on April 24, 1996, is intended to make protracted and last minute proceedings like those in the Booker case a thing of the past.[3] Beyond that clear intent, however, virtually nothing else about the Act is certain, including whether ultimately it will lead to less delay and more executions. Meanwhile, the Act undoubtedly will generate much litigation over the meaning and constitutionality of its terms.

Arguably, the most radical change made by the Act is its restriction on the scope of lower federal court review of state court constitutional decisions.

Key Provisions of The Antiterrorism and Effective Death Penalty Act

Title I of the AEDPA makes far-reaching changes in federal habeas corpus procedures. Unlike early proposals for habeas reform, many of the AEDPA's most far reaching provisions apply generally to habeas cases and not just capital cases.[4] And for the first time, Congress has established a statute of limitations for the filing of habeas claims, one year from the latest of several dates.[5]

The principal thrust of the Act is to force state prisoners to litigate fully their constitutional claims in state court and to narrow the scope of federal court review of state courts' interpretations of the federal Constitution. The Act also makes it exceedingly difficult for prisoners to file more than a single habeas petition.[6]

SHIFT OF POST-CONVICTION LITIGATION TO STATE COURTS The Act shifts the litigation of post-conviction federal constitutional claims to state court in two principal ways:

First, the Act makes it imperative that prisoners develop the factual predicate for their claims in state court. It strengthens the pre-Act presumption that factual findings by state courts are correct by requiring prisoners to rebut that presumption by clear and convincing evidence. This alters the previous requirement that prisoners rebut the presumption by a preponderance of evidence. The Act also severely limits the circumstances in which a federal court may hold an evidentiary hearing. If the prisoner fails to develop the factual basis for a claim in state court, the federal court can hold an evidentiary hearing only if: (1) the claim relies upon a previously unavailable new rule of constitutional law made retroactive by the Supreme Court or a newly discovered factual predicate; and (2) the facts underlying the claim are sufficient to establish by clear and convincing evidence that the prisoner is innocent of the underlying criminal offense. These hurdles will be virtually impossible to clear, insuring that prisoners will make every effort to develop the facts underlying their constitutional claims in state court.

Second, the Act in other important ways changes the role of lower federal courts in habeas review. Arguably, the most radical change made by the Act is its restriction on the scope of lower federal court review of federal constitutional decisions made by state courts. The Act provides that a federal court may not grant habeas relief with respect to any claim that was "adjudicated on the merits in state court proceedings unless adjudication of the claim (1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or (2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the state court proceeding."[7] Although this provision might be read to interfere with the exercise of independent judgment by lower federal courts in violation of Article III of the Constitution, several courts already have held that the provision affects only the scope of federal review and not the power of federal courts to say what the Constitution means.[8] In any event, this provision is likely to generate continuing disputes as federal courts define their roles in this new regime.

LIMITS ON THE FILING OF SUCCESSIVE AND SUCCESSOR CLAIMS The other area in which the Act makes a radical change in procedure concerns successive and successor claims. The Act simply prohibits the filing of successive claims — claims that previously were presented to and decided by federal courts.[9] And although the Act does not prohibit the filing of successor claims — second and subsequent petitions raising *new claims* — it severely limits the circumstances in which such claims may be litigated.

The Act establishes two virtually insurmountable conditions for litigating the merits of a new claim in a successor petition:

First, the Act requires that before such a petition is filed, the prisoner must obtain an order from a panel of the court of appeals auhorizing the district court to consider the petition. Before entering such an order, a three-judge panel of the court of appeals must find that the new claim either relies upon a new rule of constitutional law that the Supreme Court has made retroactive to cases on collateral review,[10] or that the factual predicate for the new claim could not previously have been discovered by the prisoner through dillegent effort *and* that those facts if proven and viewed in light of the evidence as a whole "would be sufficient to establish by clear and convincing evidence that, but for constitutional error, no reasonable factfinder would have found the applicant guilty of the underlying offense."[11] The decision of the court of appeals panel on the prisoner's application to file a new claim is not reviewable by the Supreme Court and not subject to rehearing by the en banc court of appeals.[12]

Second, even if the court of appeals authorizes the district court to entertain the successor petition, the prisoner still must prove by clear and convincing evidence in district court that he is innocent of the underlying offense *before* the district court can consider the merits of his new constitutional claim.The chance is remote that a prisoner ever will be able to litigate a new claim under these circumstances.[13]

Conclusion

In theory, the new Act will speed up post-conviction litigation and consequently result in more executions. If the Act had been in effect in 1983, the state of Florida would have executed Stephen Todd Booker on November 17, 1983: the court of appeals would have rejected the successor petition we filed on his behalf, because we would not have been able to show by clear and convincing evidence that Mr. Booker was innocent of the murder for which he was convicted and sentenced to death. But the state also would have executed a man it unconstitutionally sentenced to death.

I am not convinced that state judges — when they become the firewall that protects the constitutional rights of condemned prisoners — will move quickly to expedite executions. The reason federal judges took so much time to rule on the constitutional claims of condemned prisoners was not to frustrate the state's interest in finality, but because they were acutely aware of the awesome consequences of their decisions. Shifting primary responsibility for protecting the constitutional rights of capital prisoners to state courts likely will result in the same deliberate approach by state judges.

1 I have called the experience of representing clients under a death warrant "litigating at the speed of light." Coleman, "Litigating at the Speed of Light," ABA, *Litigation*, Summer 1990.

2 *Booker v. Singletary*, 90 F. 3d 440 (11th Cir. 1996).

3 The AEDPA is the mutant offspring of a proposal made in 1989 by a committee chaired by former Justice Lewis Powell. Chief Justice Rehnquist formed the committee in June 1988 to inquire into "the necessity and desirability of legislation directed toward avoiding delay and lack of finality" in capital cases in which the prisoner had or had been offered counsel. The committee made three principal findings: first, that the existing system was characterized by unnecessary delay and repetition, due in part to a lack of coordination between the federal and state systems; second, that there was a pressing need for qualified counsel to represent inmates in collateral review; and third, that litigation of constitutional claims on behalf of prisoners often came only when prompted by an execution date, leading to last minute proceedings and multiple petitions. To address these deficiencies, the Powell Committee proposed new statutory procedures for habeas corpus review of death sentences in *cases where the state has agreed to provide counsel in post-conviction proceedings*. Making the procedures conditional in this way was necessary because states are not constitutionally required to provide counsel in such proceedings. *Murray v. Giarratano*, 492 U. S. 1 (1989).

Following the Powell Committee's report, several legislative efforts were made to reform federal habeas procedures, based loosely on the committee's proposal. None of these efforts succeeded until last year when, in the wake of the Oklahoma City bombing, the Clinton administration agreed to accept habeas reform as the price for passage of antiterrorism legislation.

4 These general provisions are not conditioned on states providing counsel in post-conviction proceedings, as the Powell Committee proposed. *See* note 1. There is such a requirement in the new opt-in chapter of the Act that establishes special procedures that apply only to capital cases; but so far, no state has succeeded in complying with the counsel standards required for opting-in. Moreover, because the general provisions of the Act so greatly favor the state, I question whether the opt-in procedures provide sufficient incentive for states to incur the added cost of providing competent and experienced counsel in post-conviction proceedings.

5 These dates include the date on which the conviction and sentence became final, the date that a new constitutional rule is made retroactive by the Supreme Court, and the date on which the factual predicate reasonably could have been discovered. The statute is tolled while a "properly filed" action for post-conviction relief is being litigated in state court. The statute is not tolled if the prisoner lacks counsel. And because counsel is not constitutionally required in post-conviction proceedings, *Murray v. Giarratano*, 492 U.S. 1 (1989), this may result in many non-capital prisoners losing meritorious constitutional claims for lack of legal representation.

6 The Act establishes separate procedures for capital cases in states that voluntarily provide post-conviction counsel and establish written standards for the competency of such lawyers. These special procedures are loosely modeled on the Powell Committee proposal. See note 1. They include an automatic stay of execution while a first habeas petition is being litigated and strict time limits within which lower federal courts must complete review of habeas petitions. This new chapter of the habeas statute also establishes a shorter 180-day statute of limitations for filing habeas claims.

7 AEDPA, section 104; 28 U.S.C. Sec. 2254(d).

8 *See, Lindh v. Murphy, 96 F. 3d 856 (7th Cir. 1996) (en banc); Cert. granted, 1997 U.S. App. Lexis 1596 (1997); Ayala v. Speckard*, 103 F. 3d 649 (2d Cir. 1996).

9 Under pre-Act law, such claims could be entertained by federal courts in certain limited circumstances to prevent a miscarriage of justice. Whether the Constitution now requires such a safety net is a question that likely will be presented to the Supreme Court in some future challenge to the Act. In *Felker v. Turpin*, 116 S. Ct. 2322, (1996), *see* note 12, infra., Chief Justice Rhenquist writing for the Court said, "we assume, for purposes of decision here, that the Suspension Clause of the Constitution refers to the writ as it exists today, rather than as it existed in 1789." That may suggest that the equitable principles that the Court had read into the writ of habeas corpus prior to enactment of the Act are now constitutionally rooted and beyond the power of Congress to abolish.

10 In light of the narrow circumstances in which a new rule of constitutional law will apply retroactively in collateral proceedings, it is unlikely that many new claims will be considered on this basis. *Teague v. Lane*, 489 U.S. 288 (1989).

11 AEDPA, sec. 106; 28 U.S.C. Secs. 2244(a), (b).

12 This provision of the Act was challenged immediately. After expedited proceedings, the Supreme Court held that this gatekeeping feature was not an unconstitutional suspension of the writ of habeas corpus and did not prohibit the Supreme Court from considering a habeas petition filed as an original matter in that Court. *Felker v. Turpin*, 116 S. Ct. 2333 (1996). However, in a concurring opinion joined by Justices Stevens and Breyer, Justice Souter added that "if it should later turn out that the statutory avenues other than certiorari for reviewing a gatekeeping determination were closed, the question whether the statute exceeded Congress's Exceptions Clause power would be open. The question would arise if the Courts of Appeals adopted divergent interpretations of the gatekeeping standard." 116 S. Ct. at 2342.

13 Any defendant who is able to make the showing of innocence required by the Act to litigate a constitutional claim likely would satisfy the standard established to obtained habeas relief based solely on the fact of innocence. *Herrera v. Collins*, 506 U.S. 390 (1993) ("Extraordinarily high" showing of innocence required to make an execution "constitutionally intolerable").

Crimes of Mass Violence:

How Should Nations Respond?

On July 20, 1996 more than 200 leading thinkers from 26 countries convened in Brussels, Belgium for a conference to consider ways to respond to crimes of mass violence in countries such as the former Yugoslavia and Rwanda. Titled "Justice in Cataclysm: Criminal Tribunals in the Wake of Mass Violence," the two-day conference was sponsored by Duke Law School in conjunction with the Office of the Prosecutor, International Criminal Tribunals for the former Yugoslavia and Rwanda (ICTY/R). The aim of the conference was to comprehensively evaluate the use of criminal prosecutions as an approach to handling crimes of mass violence, such as genocide, war crimes and crimes against humanity, with particular emphasis on the relationship between national and international prosecutorial efforts.

The timing of the conference was central to the importance of the proceedings. The 1990s has marked a resurgence in prosecution for crimes of mass violence. Efforts to prosecute mass crimes have not been undertaken on such a scale since World War II. At the time of the conference, the first trial before the International Criminal Tribunal for the former Yugoslavia (ICTY) had already been under way for several months, and the International Criminal Tribunal for Rwanda (ICTR) had confirmed its first set of indictments. Ethiopia had begun trying members of the Mengistu regime, for genocide and crimes against humanity, three months earlier. Legislation was pending before the Rwandan National Assembly to facilitate national prosecutions for the 1994 genocide in that country. As a result, conferees arrived with insights from several months of experience and prepared to evaluate their problems and successes.

One of the themes that emerged from the conference concerned the need to tailor legal responses to the specific circumstances of the mass crimes in question. Whether to prosecute, how many defendants to target, how to select defendants, whether to prosecute at national or international levels, or both, and whether to plea bargain, among a host of other issues, were identified as questions that must be considered within the context of the legal, political and social circumstances of the country where justice is sought.

The question of whether to prosecute at the national or international level is always a difficult one. National justice systems are rarely equipped to handle crimes of mass violence. Such prosecutions require enormous prosecutorial and judicial resources at a time when national resources typically are already overburdened. There is often a lack of qualified judicial personnel. Frequently, some continuing military threat constrains the national prosecution process. In addition, national prosecutions can appear biased, because they are frequently conducted under transitional governments that seized power from the regime under which the crimes occured, as in the cases of Rwanda, Ethiopia and Argentina. The potential for bias or the appearance of bias can undermine reinforcement of the rule of law and restoration of dignity to the victims. Because of the recurring problems associated with national

By Madeline Morris
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prosecutions, some conference participants questioned whether such prosecutions generally should be considered a realistic option.

One approach to reducing the burdens posed by conducting national-level prosecutions is adoption of a system of plea agreements. Rwanda has passed legislation instituting such a system. That legislation provides that suspects will be classified into four categories according to degrees of culpability in the Rwandan genocide. The most culpable category would include leaders and organizers of the genocide and perpetrators of particularly heinous murders or sexual torture. All non-Category One perpetrators would be entitled to receive reduced sentences as part of a guilty-plea agreement. That sentence reduction is made available to the defendant in return for an accurate and complete confession, a guilty plea and an apology to the victims. Perpetrators who confess and plead guilty prior to prosecution are offered a greater penalty reduction than those who come forward only after prosecution has begun.

The plea agreement approach expedites the handling of an enormous volume of cases. In addition, requiring a full confession and apology to the victims may help national healing and reconciliation. At the same time, there is reason for concern about the potential for miscarriage of justice under such a system. Innocent suspects may choose to plead guilty for fear of a worse outcome at trial or to avoid extensive delays before trial. In addition, no provision has been made for defense counsel for the thousands of indigent defendants in Rwanda (although a program for training lay defense counsel is currently under consideration). On the other side of the equation, survivors can rightly ask why perpetrators of these horrific crimes should receive leniency (especially since an "ordinary" criminal committing a murder in Rwanda tomorrow would not receive the same leniency).

Efforts to prosecute mass crimes have not been undertaken on such a scale since World War II.

The right question to ask in the complex situations surrounding crimes of mass violence is what action will do the most good and the least harm. By the fall of 1994, tens of thousands of suspects had been jailed in Rwandan prisons designed to house far fewer. The number of prisoners has since grown to over 90,000. Full trial of 90,000 defendants (more than 1% of the population) would be infeasible in even the wealthiest nation and is emphatically not an option in Rwanda. On the other hand, releasing prisoners en masse under an explicit or implicit grant of amnesty would perpetuate a culture of impunity, would be unacceptable to the survivor population and would constitute a heightened security risk.

An alternative to national-level prosecutions is trial before an international tribunal such as the ad hoc ICTY/R. One important factor in the success of international tribunals is their relationship with the national governments with which they share jurisdiction.

Shared jurisdiction between national and international tribunals raises a number of tough issues such as the distribution of defendants between the jurisdictions. One widely accepted approach is to have the international tribunal prosecute leadership-level defendants and leave the rest of the defendants to national governments. This "stratified-concurrent jurisdiction" approach, however, tends to result in certain anomalies and injustices — in practice.

Trial before an international tribunal will tend, systematically, to be more favorable for defendants than would trial before national courts, for a number of reasons. First, an international court will not have a death penalty, while many national courts do. Second, the prisons used for sentences imposed by an international court will often afford better conditions than those of national courts. Third, an international tribunal would be expected to guarantee defendants the utmost in due process, while national courts (especially national courts struggling with post-holocaust resources and an overwhelming caseload) may not. And, finally, defendants in national courts may have more reason to fear bias in the form of victors' justice or personal partiality.

In sum, there are substantial advantages, possibly making the difference between life and death, to being prosecuted in the international rather than the national forum. Anomalously, under the stratified-concurrent jurisdiction model, all of those advantages go to the leaders. This surely is an unintended and unjust outcome. Yet these "anomalies of inversion," in which the most responsible defendants get the least harsh treatment, are not coincidental; they are a predictable, structural problem that will recur under the stratified-concurrent jurisdiction model.

There are other problems with the stratified-concurrent jurisdiction model. The model tends to undermine the use of plea agreements, which may be a particularly important tool in the prosecution of mass-scale crimes, as exemplified in Rwanda. The sentencing leniency that goes with plea agreements can easily create a perception that justice has not been served unless at least the leaders are fully prosecuted and punished. If the leaders are away receiving "international justice" (under conditions that are

comparatively favorable because of anomalies of inversion) and the followers are at home getting "bargains" in the national justice system, then no one is paying the full price, relative to national standards, for the horrors that were committed. The survivor population, among others, may perceive that the plea agreement program is really a program of impunity.

Because of the problems associated with stratified-concurrent jurisdiction, it may be useful to consider adaptations and alternatives to the model. An international tribunal that prosecutes leaders may need to operate in conjunction with a program of substantial international assistance to the national justice system to ensure due process and improve prison conditions. It also should be possible, where appropriate, to have an international tribunal share defendants with national jurisdictions so that some leaders could be tried in national courts, if that were important for coherence within the national justice program. One might also imagine, in such cases, a reciprocal mechanism whereby national courts could grant leniency to lower-level perpetrators in return for their cooperation with the international tribunal. In that way, the international tribunal could benefit from the use of plea agreements without, itself, adjudicating lower level cases.

In cases where the fact or appearance of bias in the national justice system poses a problem, we might consider an international tribunal pursuing a broader scope of prosecutions; fulfilling its central function of trying the leaders and an adjunctive function as a stand-in for national courts. (Though we cannot always presume that even an international tribunal will be popularly perceived as impartial.)

Adjustments may also be needed for sentencing. Stratified-concurrent jurisdiction creates glaring anomalies of inversion where the national justice system employs capital punishment. To minimize this problem, the national government could choose to exclude lower-level perpetrators from the death penalty, as provided in Rwanda's specialized legislation. And international assistance to the national justice system could enhance the due process safeguards afforded to capital defendants. Nevertheless, the problems with stratified-concurrent jurisdiction may ultimately militate in favor of exclusively national or exclusively international proceedings, in some contexts.

In addition to exploring issues arising in criminal prosecutions, conference participants also considered alternatives and adjuncts to criminal prosecution. One alternative to criminal prosecutions is the use of an impartial commission of inquiry or "truth commission" to ascertain, record and make public an accurate history of the crimes committed. Within the past two decades, 16 countries have established truth commissions. Such commissions may be particularly valuable where crimes were committed covertly and remain shrouded in silence and denial.

Professor Michael Scharf, Duke J.D. '88, in his conference presentation proposed the creation of a permanent international truth commission. While creation of a permanent international criminal court (ICC) is currently under consideration by the UN, the idea of a permanent truth commission has not previously been explored. Professor Scharf suggests there would be four distinct benefits to establishing such a commission: 1) it would respond to the reality that individual states recovering from an international conflict or civil war normally lack the resources to carry out a comprehensive investigation; 2) it would provide a greater guarantee of neutrality; 3) it is likely to operate in a more secure environment and to have access to greater security measures than would a national commission; and 4) the existence of a permanent body with a flexible mandate would ensure a relatively rapid investigation.

The fundamental question to be asked regarding establishment of a permanent international truth commission (ITC) is whether an ICC and an ITC can and should co-exist; that is whether the international community should establish a permanent body to treat, in a non-criminal manner, offenses that constitute international crimes.

There is every indication that we are entering a new era in the legal handling of crimes of mass violence. The establishment of the ICTY/R and the prospect of the establishment of an ICC make the regular utilization of an international criminal tribunal a more realistic possibility. The current preponderance of internal over international conflicts is likely to continue into the foreseeable future, making it more pressing to resolve issues of the extent of international jurisdiction over internal conflicts. More extensive exercise of concurrent national and international jurisdiction can be expected in coming years, creating the need to delineate workable and coherent policies governing the interaction of such bodies. This requires a dual perspective: identifying and articulating guiding principles to be applied across cases while at the same time remaining cognizant of the political, military and social factors specific to each case in order to design mechanisms that will achieve the greatest possible degree of peace and of justice.

The right question to ask in the complex situations surrounding crimes of mass violence is what action will do the most good and the least harm.

IMMIGRANT CRIME AND THE CULTURAL DEFENSE

BY DORIANE LAMBELET COLEMAN
LECTURING FELLOW

In 1989 in New York City, a Chinese immigrant named Dong Lu Chen bludgeoned his Chinese wife to death with a hammer two weeks after learning that she had been unfaithful. At his trial for second degree murder, the defense introduced an alleged expert in Chinese culture who testified that in Chen's community of origin, it was culturally-

appropriate (as a means to dissipate shame) for a husband who learns of his wife's infidelity to assert publicly that he will kill her. According to this expert, the custom then requires the community to act to save the wife from the husband who has set out to kill her, at once sparing her life and restoring the husband's dignity, because he can say that he would have killed her, but for the community's intervention. Unfortunately, in New York City, the traditional community that the expert described did not intervene, and Jian Wan Chen was not saved. Although there was substantial evidence — some from the defense itself — that Chen had carefully planned his wife's death and had executed his plan according to this cultural practice, the expert's testimony was proffered to show that Chen suffered from diminished capacity at the time of the criminal act and thus had not been capable of forming the *mens rea* required for murder. (The more traditional provocation defense was not available because Chen had killed his wife too long after learning of her adultery.)

Because the prosecutor thought Chen's cultural evidence was both inadmissible and irrelevant, he did not call a rebuttal expert. The judge took a different view of that evidence and ultimately rested both his guilt and sentencing determinations on the defendant's cultural claims: "Were this crime committed by the defendant as someone who was born and raised in America, or born elsewhere but primarily raised in America, even in the Chinese American community, the Court would have been constrained to find the defendant guilty of manslaughter in the first degree," wrote the judge. Instead, taking into consideration Chen's cultural claims, the judge found Chen guilty only of manslaughter in the second

degree and sentenced him to five years probation. The judge's decision to place Chen on probation was based on unrelated cultural evidence about the dismal marriage prospects of Chen's daughters if he were sent to prison. In this regard, the judge noted, "Now there's a stigma of shame on the whole family. They have young, unmarried daughters. To make them marriageable prospects, they must make sure he succeeds so they succeed."

The Chen case is paradigmatic of an emerging doctrine broadly called the "cultural defense." While no jurisdiction has recognized the "defense" formally, there are a growing number of cases across the country where defendants have introduced, and/or prosecutors and judges have been receptive to, cultural evidence proffered as a means either to reduce or to avoid criminal sanction.

For example, a California court permitted a Japanese woman who killed her two young children to plead guilty to involuntary manslaughter, reducing the first degree murder charges initially brought by the prosecution. In that case, the defense made an insanity plea based in part on the argument that the defendant, Susan Kimura, had followed a time-honored Japanese custom called "parent-child suicide," which allegedly calls for a mother or father (but usually a mother) who is shamed — as Kimura was by her husband's adultery — to kill her children and then herself. Evidence was introduced that Mrs. Kimura had planned the homicide-suicide in the days before she killed her children by drowning and was thwarted in her suicide attempt when passers-by pulled her from the ocean. The court sentenced Kimura to the one year in jail she had served awaiting trial and five years probation, a sentence influenced partially by the alleged typical practice of Japanese courts in such cases.

Most recently, in Nebraska, two Arab refugees charged with first-degree sexual assault are mounting a "cultural defense" that their tradition and religion required them to consummate their allegedly forced and illegal (under Nebraska law) but traditional marriages to two young girls.

Most recently, in Nebraska, two Arab refugees charged with first-degree sexual assault are mounting a "cultural defense." They argue that their tradition and religion required them to consummate their allegedly forced and illegal (under Nebraska law) but traditional marriages to two young girls. In that case, the Iraqi father of the two girls, aged 13 and 14, allegedly forced his daughters to marry two men twice their age in a traditional ceremony. Nebraska law does not permit marriage of persons under the age of 17. After the ceremony, the "husbands" are alleged to have forced the girls to have intercourse. The police were alerted when one of the girls ran away from her "husband" to the home of her adult boyfriend, who subsequently was arrested for statutory rape.

The vast number of non-European immigrants who have come to the United States in the last 30 years (since the reformation of immigration laws in 1965) leave no doubt that there will continue to be culture clashes of the sort exemplified by these illustrations. Affording the defendants in these cases an opportunity to argue that they should not be punished at all or to the same extent as non-immigrants, because their conduct was influenced by a culture that requires, permits or does not severely sanction their acts, finds support in liberal notions of individualizing justice for criminal defendants. It also is consistent with liberal admonitions that, as we become an increasingly pluralistic society, we must be sensitive to and respectful of the cultures of those whom we welcome to our shores.

On the other hand, allowing the "cultural defense" also begs two important questions, one doctrinal and the other normative: First, short of formalizing the exonerating effect of cultural evidence, how is it appropriately used under existing doctrine? And second, should the "defense" be formalized as a means to incorporate into the law the progressive notion that the majority culture should become sensitive to our new pluralism? I have called this latter question the "liberals' dilemma," because the cases pit progressive ideals of individualized justice for immigrant criminal defendants against the personal security interests of the usually female and child victims of their crimes, crimes that often are driven by patriarchal values extant in their cultures of origin.

On the first doctrinal point, I believe that both the defense and the state have used cultural evidence in contexts that distort traditional analysis. It is both a distortion of doctrine and disingenuous, for example, to use evidence that in another country it is culturally appropriate to kill your wife if she is unfaithful to prove that a defendant did not act sanely or have the requisite *mens rea* for the crime. The lucid, planned practice of a custom which one believes is valuable is neither evidence of insanity nor of a lack of intent, and it is difficult to imagine that defense attorneys, prosecutors and judges do not know or understand this. For example, in the Chen case, the defendant originally was charged with second degree murder. In New York, "[a] person is guilty of murder in the second degree when... [with intent to cause the death of another person, he causes the

death of such person..." Manslaughter in the second degree, of which Chen was ultimately convicted, occurs when a person "recklessly causes the death of another person." There was ample evidence in Chen's case — including especially the defense's own cultural evidence — that Chen unequivocally had "intended the death of [his wife]." There was a dearth of evidence, on the other hand, that he had acted only recklessly in killing his wife, as the judge found. Chen's defense was that his culture demanded or at least permitted him to kill his wife, and that was his intent.

While it would be appropriate to use cultural evidence of the sort Chen and Kimura introduced for some defensive purposes, for example to show provocation (e.g., "in my culture, it is a particular shame when a wife is unfaithful") or mistake of fact (e.g., "in my culture, we believe in witches, and I thought she was a witch coming to kill me"), or in mitigation of sentence (e.g., "because it is permissible and moral in my culture, I did not have an evil mind when I committed the offense; I am not so morally blameworthy as another who does not have the cultural explanation"), I believe such evidence has been inappropriately used to reduce or eliminate the immigrant defendant's *mens rea*.

Entirely separate from the question whether cultural evidence has been used in doctrinally appropriate contexts is the normative question whether a "cultural defense" should be formalized (or the state should be permitted to continue informally to use cultural evidence as an effective "defense" to immigrant crime). I believe this could be both unnecessary and dangerous.

Affording immigrants dignity and respect does not require that we formalize a "cultural defense" that negates for the immigrant victim community the protection of the criminal law.

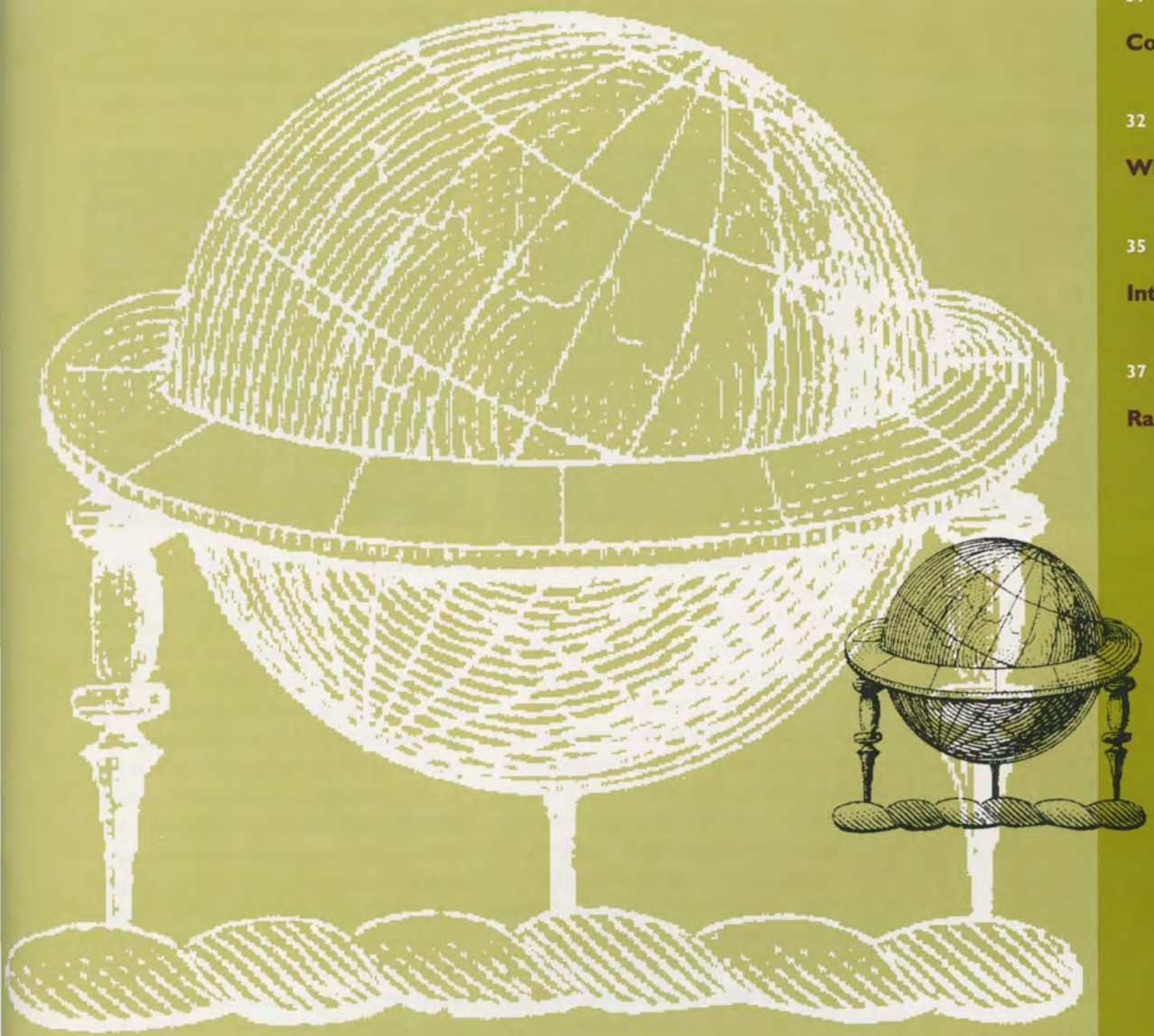
It certainly behooves us as a society to do all we can to ensure that immigrants and their cultural practices are treated with dignity and respect. To do otherwise would be to destroy both the valuable contributions newcomers make to our evolving culture and the chance that our nation's rather unique experiment with pluralism ultimately will succeed. However, affording immigrants dignity and respect does not require that we formalize a "cultural defense" that negates for the immigrant victim community the protection of the criminal law. There are appropriate opportunities for immigrant defendants to introduce cultural evidence in ways that already are doctrinally orthodox and consistent with the general purposes of the criminal law; that is, along with the availability in some factual contexts of provocation and mistake of fact, for example, the system already provides for a good measure of individualized sentencing and thus a good measure of sensitivity to immigrants and their cultures.

Of equal significance in this analysis is the fact that formalization of a "cultural defense" would deny victims of culturally-instigated immigrant crime the equal protection of the laws in much the same way that African-Americans were deprived of the protection of the laws under antebellum slave and and post-Civil War black codes. Permitting our culture, both in its social and legal incarnations, to treat differently the women and children of immigrants, particularly in light of the progress we recently have made as a society toward greater protections for these groups, would be an anachronism of vastly destructive proportions. Jian Wan Chen, Kimura's children, the daughters of the Iraqi refugees and all other immigrant victims of immigrant crime need to know that our laws — as enforced by our police, prosecutors and courts — will value their lives and their bodily integrity to the same degree that they value those of non-immigrants. In my view, this latter point is of ultimate weight in the difficult balancing act necessary to resolve the "liberal dilemma."

... a California court permitted a Japanese woman who killed her two young children to plead guilty to involuntary manslaughter, reducing the first degree murder charges initially brought by the prosecution.

This essay was based on Doriane Lambelet Coleman's most recent article, Individualizing Justice Through Multiculturalism: The Liberals' Dilemma, *96 Columbia Law Review 1093 (June 1996).*

THE DOCKET



WHOSE VIEWS?

THE PUBLIC'S VIEW OF RISK

OR THE EXPERTS'?

By Tom Kubicki

Hazardous waste sites, nuclear power, genetic engineering — the public ranks these as high risks. Yet risk analysis experts consider them lower on the priority scale than indoor air pollution, global warming and the loss of species and habitat. The public's priorities and those of regulators are often at odds. So, whose views should prevail? How does the public form its perception of risk and how should government respond to these divergent views? Duke Law School and the Nicholas School of the Environment, in cooperation with the Society for Risk Analysis, convened a November colloquium to examine these issues. Titled "Risk in The Republic: Comparative Risk Analysis and Public Policy," the two day colloquium brought together a dozen of the nation's leading experts on environmental and public health risks to debate the complex issues of assessing and managing risk.

November's conference was the second in a series of annual Cummings Colloquia on Environmental Law, named in honor of Jasper L. Cummings, Jr., a partner in the Raleigh, North Carolina law firm of Womble, Carlyle, Sandridge & Rice.

"The goal of the Cummings Colloquium is to bring together multiple disciplines to discuss the most challenging problems facing environmental law and policy," said Jonathan B. Wiener, associate professor at both the Law School and the Nicholas School and the Cummings Colloquium director. "Making sense of risk is the most difficult and promising task for the future of environmental law."

On the first day of the conference, attendees and presenters engaged in a risk ranking exercise designed to help illuminate why experts and the public disagree about risk. Attendees debated how a society's knowledge and values affect ranking and comparing risks. The second day, participants tackled the question of how government should respond to the experts' and public's attitudes toward risk in a democratic society.

Panelists presented several possible explanations for the divergence of opinion between the public and the experts: the public does not have all the facts; the public has a different and more complex value system; the public reacts out of prejudice and bias. Featured speaker Frank Cross, a professor at the University of Texas' Center for Legal and Regulatory Studies and critic of the public's method of ranking risk, suggested that the public differs from experts because by nature people are selfish and xenophobic, attitudes a progressive democracy should reject.

An opposing view in support of the public's approach to ranking risk was offered by Cass Sunstein, professor at the law school and political science department at the University of Chicago. According to Sunstein, government policy should be a mix of expert and public rankings. He emphasized that the public's dread of certain risks is based on both their perceived physical and psychological effects.

Because the conference brought together a diverse group of national authorities on the subject of risk analysis and public

policy, attendees were given the extraordinary opportunity to hear virtually all sides of the national debate. In addition to Cross and Sunstein, other featured speakers included the Honorable Thomas Grumbly, Under Secretary of the United States Department of Energy, who delivered the keynote address; John Graham, a professor at Harvard University, current president of the Society for Risk Analysis and co-author with Jonathan Wiener of *Risk vs. Risk;* Lester Lave, professor at Carnegie Mellon University and former president of the Society for Risk Analysis; and Gail Charnley, executive director of the U.S. Commission on Risk Assessment and Management.

The First Annual Cummings Colloquium, held last April, gathered experts to debate how environmental law should be rethought now that scientists have abandoned the popular idea that nature enjoys a "balance" absent human intervention. The April conference confronted the dilemma of how to manage human interactions with the rest of nature when nature itself is in a state of disequilibrium.

Featured speakers included the Honorable George Frampton, Assistant Secretary of the U.S. Department of the Interior, and Dr. Daniel Botkin, renowned exponent of the "new ecology."

"Most of our environmental laws are based on notions of how the earth worked that prevailed from the 1800s to the late 1960s, an understanding based largely on the premise that nature remains in balance until humans disturb it," said Wiener. "But today, experts see humans and their interaction with the environment as part of the ecosystem, a system perpetually in disequilibrium." Instead of guarding the environment with rigid laws, Wiener said the group of experts saw a need to develop laws that are as flexible as the changing environment.

In addition to the annual Cummings Colloquium, the Cummings gift supports environmental law students obtaining joint degrees at the Duke Law School and the Nicholas School of the Environment.

Information Warfare and Other National Security Threats

By Tom Kubicki

Using computer technology to infiltrate and sabotage the computerized infrastructure of another country was one of the more captivating and thorny threats discussed at a December conference on national security issues sponsored by the Law School's Center on Law, Ethics and National Security (LENS). Titled "National Security Law In A Changing World: The Sixth Annual Review Of The Field," the conference was held December 9-10, 1996 in Washington, D.C.

The two-day conference was co-sponsored by the Standing Committee on Law and National Security of the American Bar Association and has enjoyed a reputation for gathering key decision makers to engage in lively debates concerning some of the most formidable issues affecting national security today and in the future.

The conference began with a round table discussion of the latest developments in national security law as seen by the top legal counsel for the executive branch — senior attorneys from the departments of State, Defense, and CIA and the Honorable Alan J. Kreczko, special assistant to President Clinton and legal advisor to the National Security Council.

In the interest of balancing the issues from both sides of the aisle, counsel from Capitol Hill were also invited for an additional round table discussion. Senior

attorneys for various House and Senate committees provided an overview of the issues they face in the upcoming session.

As in previous meetings, this year's conference covered a range of national security topics: controlling weapons of mass destruction; controlling terrorism; information warfare; and the ethical question of identifying who is the government attorney's client.

Information warfare in particular captured the attention and imagination of conference participants, possibly because of its timely connection with the Internet or its similarity to a Tom Clancy spy novel. Moderated by Scott Silliman, who is also executive director of the LENS Center, the discussion of information warfare brought emerging computer technology issues to the forefront, posing some interesting and difficult questions regarding computer technology and its role in warfare.

The discussion started by defining exactly what information warfare is and how it could affect the United States' defensive and offensive strategies in future skirmishes. Daniel T. Kuchl, a professor at the School of Information Warfare & Strategy at the National Defense University, discussed information warfare in contrast to our more traditional forms of warfare used during World War II, the Korean War and Vietnam.

Information warfare involves the use of our advanced technology to infiltrate the computerized infrastructure of another country, sabotaging it and effectively bringing that country to its knees without soldiers or traditional weapons. "You don't need to be physically present in a country to wage war against it and, of course, that's good, because you minimize risk to life," Silliman said. "But there are many unanswered questions that need to be resolved. For example, when you interfere with a computerized electrical grid system that provides power to a belligerent's army but in so doing you also deprive a large segment of the civilian populace of power, possibly putting life and health at risk, have you violated the law of war which requires you to refrain from targeting non-combatants?"

According to Silliman, even the technology warfare used in the Persian Gulf War (using computer viruses against the Iraqis) would be considered "kindergarten" level technology based on our current capabilities.

The Center on Law, Ethics and National Security was founded by Professor Robinson O. Everett in 1993. As an integral part of the Law School, the Center encourages and sponsors teaching, research and publications concerning national security law topics and also conducts conferences and seminars in the national security field.

The Center for Global Information Technologies
The Duke University School of Law

&

His Excellency Duan Ruichun, Director-general
Office of IPR Executive Conference of State Council
of the People's Republic of China

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Inquiries may be directed to
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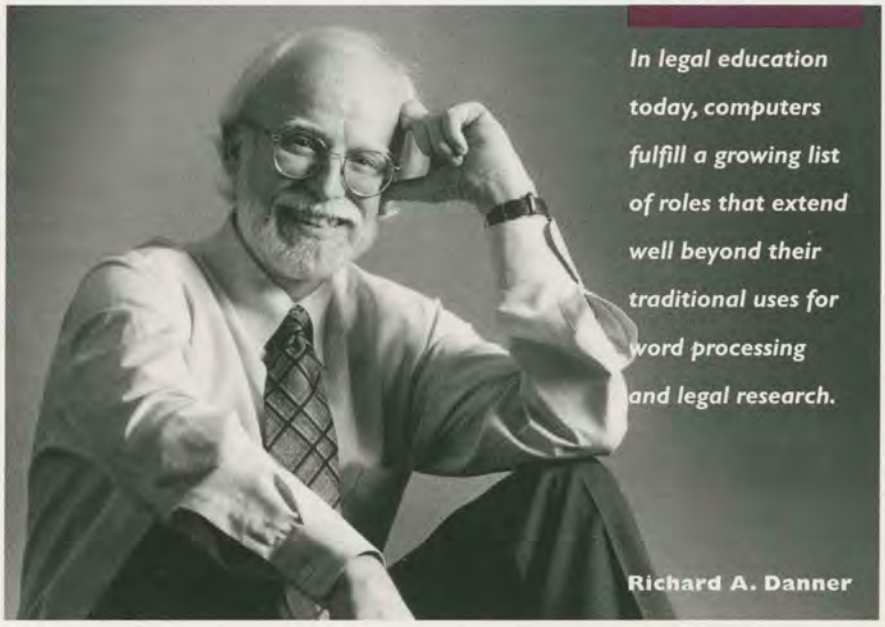
WHY THE WEB?

By Richard A. Danner

In October 1995, Duke Law School unveiled its World Wide Web site — www.law.duke.edu — with great fanfare. Since then, the site has appeared in a program at the spring 1996 alumni weekend and was announced in the *Duke Law Magazine.* Its primary Internet address is highlighted in the Law School letterhead and print publications.

Why do we think the Law School's presence on the Web is important? Why should Duke or any other law school invest its resources in developing a space on the Internet? How will the Web site benefit alumni, prospective students, friends of the School and others interested in Duke's programs, conferences and publications? How will this and other technologies help us improve our educational programs and enhance the sense of community among current Duke law students, faculty and staff? For the Law School, as for other educational institutions, the World Wide Web poses a variety of questions, because it creates so many possibilities and opportunities.



In legal education today, computers fulfill a growing list of roles that extend well beyond their traditional uses for word processing and legal research. But, if you had to capture in one word what we do with computers at Duke in 1997, the word would be — *communicate.* We rely on computers for correspondence between faculty colleagues, announcements to students, transmission of scholarly information to a co-author at another school, answers to questions of prospective students, information regarding on-site interviewing procedures for visiting law firms, announcements of upcoming conferences at the Law School and contacts with alumni of the Law School.

Each Law School course now has its own e-mail discussion group, which students can use to ask questions of their professors and which the faculty can use to raise topics for out-of-class discussion, make announcements and distribute materials to their students. Most administrative communications and announcements for faculty, students and staff are made using e-mail or postings on the Web site. Not everyone on the faculty uses word processing for writing; nor does everyone use Lexis or Westlaw for research; but nearly everyone uses e-mail on a regular basis for communications within the building, with others on campus and with colleagues at other law schools both within the U.S. and abroad. The student network has so much e-mail

traffic that the Duke Bar Association recently announced guidelines to improve the efficiency of the system. Our Law School community newsletter, *The Herald*, is now primarily an e-mail publication, with older issues archived on the Web site. Many faculty and staff dial-in to the Law School networks from home or while traveling.

Increasingly, communications of all of these kinds and more, both within the Law School and beyond, will be accomplished not only with e-mail but through the Law School Web site. Why the Web? We believe that most members of the Law School community — prospective students, current students, faculty and staff, and both recent and older graduates — are likely to become Web users (if they are not already) and will appreciate the improvements in communications that creative development of our Web site will bring. We are already a community highly skilled in using computers and computer networks professionally and increasingly for other purposes as well. Those of us who are current or prospective law students have worked with computers throughout our earlier educations; those now at Duke use them on a daily basis; graduates of the Law School use computers in firms or other professional settings. All of us who have children are pulled into using technology at home, whether we wish to or not. And if we use computers, we will be using the Web because it is everywhere; it is easy to use; and it allows us to communicate with each other in new and better ways.

We look to the Law School Web site to serve a wide range of purposes for the School and its community. In addition to internal communications, we see major roles for the Web in facilitating communications with the Law School's external constituencies; providing a medium for electronic publishing of scholarship; supporting the curriculum and other educational programs; and aiding research. Some of the more exciting immediate benefits of Web development will be in communicating with a range of outside constituencies and in facilitating the publication of scholarship.

External Communications

The Web site allows us to offer both a comprehensive picture of the School to anyone wishing to learn more about us, help in finding specific information quickly and a way to follow up and contact us about their interest. The information on the Web site should always be more up-to-date than in our printed brochures and the Law School bulletin, and the workings of the Web should allow visitors to the site easily to find what they need without wading through information they are not interested in.

Thus, a college senior linked to the Internet through a connection in a dorm room across the country can visit our admissions page to find current information about the Law School's programs, admissions procedures and financial aid. She can learn about the backgrounds of current students, find out how to contact current students to ask questions about Duke, send e-mail to the admissions office and move beyond the admissions page to get a picture of student life at the School, information about the faculty, special programs, library and resources, and information about the University, Durham and the region. International applicants can obtain the same information from throughout the world and communicate, through the site, with our international admissions officers. The site already provides pictures of the School and in the future will no doubt provide sound and video as well.

Similarly, an alumnus can enter the site through the alumni connections page and immediately find out the latest news about fellow classmates, read articles about prominent alumni in the news, learn about upcoming events for alumni and conferences at the Law School and read the articles and features published in the Duke Law Magazine.

Similarly, an alumnus can enter the site through the alumni connections page and immediately find out the latest news about fellow classmates, read articles about prominent alumni in the news, learn about upcoming events for alumni and conferences at the Law School and read the articles and features published in the *Duke Law Magazine*. The alumnus can also use the site to communicate directly with external relations staff via e-mail through the site and to find out addresses and other information about fellow classmates and other alumni through the online alumni directory. Like the prospective student, if he is interested, our alumnus can move on to explore the rest of the Law School site.

Electronic Publishing

A large part of the Law School's mission is to foster research and scholarship and to publish and distribute the work of our own faculty and students and that of scholars from other institutions. Traditionally, our publishing activities have focused on the print editions of the *Duke Law Journal*, *Law & Contemporary Problems* and the several specialized student-edited journals that have begun publication in recent years.

Increasingly, however, as access to the World Wide Web becomes more widespread, the Web can be seen as a publication and distribution medium with benefits and efficiencies that make Web publication attractive as an alternative or a substitute for the print law journal. Web versions of articles will go through the same selection and editorial processes as print articles but once approved for publication can be quickly mounted on the

We've Remodeled

More and better information in our alumni, admissions and career services sites

Now you can get up-to-the-minute information on your classmates. Visit our bright, new alumni pages at

http://alumni.law.duke.edu or by going through the Law School's main page at www.law.duke.edu. We are now putting class notes on the web as soon as we receive them, and you can search for fellow alumni (by name, geographic location or practice area) through our new on-line alumni directory. You can fill out a pledge form on-line, too. No muss, no fuss. Let us know what you think.

http://www.law.duke.edu

Web site and made available without printers' delays. Once on the Web, articles can be easily downloaded or printed in formats similar in appearance to the traditional journal article, and they can be prepared to take advantage of Web technology, using hypertext capabilities to organize the text and to create direct links to the texts of sources cited in footnotes.

Presently at Duke, abstracts of articles in the *Duke Law Journal* can be found on the Law School Web site as can the full text of articles from the *Duke Journal of Gender Law and Policy*, both the result of student initiatives. Professor John Weistart chairs a faculty-student committee charged with facilitating a more comprehensive Web presence for the journals and with developing new forms of scholarly publication that take advantage of Web technology and links to information stored around the world.

Mark Stefik, the author of the new book, *Internet Dreams*, argues that how we begin thinking about new phenomena such as the Internet and the Web when their role in society is undefined and evolving has a major effect on what they actually become. He explores several metaphors frequently seen in current thinking about the Internet: Should we think of it as a library and a place for publication and distribution of information? Is it a place for commerce and a vehicle for marketing and promotion of goods and services? Is it a place to explore digital worlds and virtual realities? Or is it primarily a communications medium? With the development and accessibility of local and global computer networks, it's hard to argue that communication is not at the heart of everything we do with computers, the Internet and the World Wide Web. Communication is certainly at the heart of what we do at the Law School, and creative use of these new tools will improve our abilities to communicate. Watch our Web site and see what happens.

Interactive Technology Brings Attorneys Into The Classroom

By Kay McClain

Law students studying the case of a leukemia cluster in Woburn, Mass., took their questions directly to the lawyers in the case through an innovative Internet application being pioneered at Duke Law School.

Law professors Jonathan Wiener and Thomas Metzloff recruited Charles Nesson and William Cheeseman, lawyers for, respectively, the plaintiff and the defendant in the leukemia case, to be guest speakers in the seminar on "Mass Torts in Manifold Perspective" last semester. The attorneys agreed to participate but never set foot on the campus. Instead, they "came to class" every week via a site on the World Wide Web where they conversed directly with the students about the complex issues of water pollution, leukemia and litigation strategy.

The Woburn leukemia case was of one of several famous "mass tort" cases that Wiener and Metzloff used in the seminar to bring lawsuits to life. The two law professors decided to teach the seminar after they read Jonathan Harr's *A Civil Action*, a nonfiction account of the drama, tactics and anguish of the Woburn families' quest for compensation from two huge corporations whose activities in the 1960s might have caused the families' leukemia.

"We wanted to teach complete cases, not just a snippet from one lawsuit and an issue plucked from another," Metzloff said. "And on the Web, we were able to get the defense and plaintiff lawyers involved in the case and other experts around the country to discuss and debate directly with our students. We discussed the choices made by the lawyers, how the case was financed, the science in dispute and whether the judge in the case had been fair to both sides."

"For example," Wiener added, "Harr's book suggested that the judge became too pro-defendant. Our 'virtual guest speakers' were able to share their own views on this question and to offer insights not available in the book or in the library."

The Woburn case was one of six mass tort cases examined in the seminar. For each case, the class studied not just the legal doctrines involved but looked at the people involved — the plaintiffs, the defendants, the lawyers and the judges — and how their choices and constraints shaped the way the legal system dealt with the problem of mass injuries.

"This way, we studied rich stories and used them to discuss the players as well as the issues in the cases," Wiener said. Having access to some of those players via the Web was one way in which Wiener and Metzloff used technology to forge a more immediate connection among the Law School, law students and the real world of law.

"Law schools are always seeking ways to connect students directly to the lawyers and experts who litigate cases and to the real problems they face in our modern but often flawed legal system," Wiener said. "So we used the Web to bring these 'virtual guest speakers' — leading experts and the actual plaintiffs' and defendants' lawyers in complex mass tort cases — into our on-line class discussion every week."

Wiener recruited several of the lawyers in the cases being studied and invited them to join class discussion via a forum on The West Educational Network (TWEN). TWEN is a website maintained by West Publishing that is accessed by a password available to lawyers and law students. Duke is one of the first law schools in the country to use TWEN to bring in outside participants, the professors said.

"Access is easy, and we can invite anyone to participate," Metzloff said. "The electronic discussion is 'threaded,' meaning that TWEN keeps a copy of every comment in a running outline. It makes for a rich experience for students if we can engage these outside experts and make them a regular part of the class."

Students agree that TWEN enlivened the course. "The ability to exchange ideas on mass torts cases with the attorney who

> ***...on the Web, we were able to get the defense and plaintiff lawyers involved in the case and other experts around the country to discuss and debate directly with our students...***
>
> Thomas B. Metzloff

actually participated in the cases gave invaluable context to our discussion," said Tim Profeta, one of the students in the class.

Fellow classmate Caryn Becker added, "when the book which we read on the topic was written from the perspective of the plaintiffs' attorneys, it was helpful to have the perspective of the defense attorney who had worked on the case."

What Wiener and Metzloff did in the mass torts seminar is part of a larger initiative in the Law School that seeks to use technology in the classroom, they said. Richard Danner, associate dean for library and computing services, is leading the Law School's aggressive efforts to develop its Educational Technology Initiatives. The initiatives provide programming, staff support and funding to enable faculty to make use of technology in teaching.

"We are pursuing a wide range of technologies to complement and amplify our classroom teaching," Danner said. "It might be developing legal writing exercises that students do on personal computers, or using on-line services like TWEN or using electronic texts. For example, the big advantage of electronic text books is that faculty can customize the text, adding updated materials, posing new questions and rearranging the chapters to fit the course."

The Law School works with two outside companies — West Publishing Co., St. Paul, Minnesota, and Lexis-Nexis — to promote technology in the classroom and began last fall to require that all entering students own personal computers and be able to dial into the network to use e-mail and access Web sites.

"For every course taught at Duke Law School, there's an e-mail discussion group to foster out-of-class discussion," Danner said. "And we use Web sites to host class discussions, to make announcements and to distribute course materials. The advantage is that the electronic version is always there, 24 hours a day, and information exchange is instantaneous."

Duke Law's Educational Technology Initiatives also foster individual faculty projects, such as the collaboration between law professor David Lange and third-year law student Michael Weisberg to create a video on the use of technology in legal instruction. The video was presented at a conference in Brussels in early November and was the basis for a program Danner and Weisberg presented at the Association of American Law Schools annual meeting in Washington, D.C. in January.

Duke Law School, which has been 'networked' for 10 years, is considered quite advanced technologically, Danner said. Students and faculty use computers for writing, research and e-mail communication, and in the last year, there has been a concentration on instructional and educational technologies.

"It's an increasing trend nationwide, and most of the top law schools are doing these things," Danner said. "But we're farther along in networking and with our emphasis on computers. Although the technology is still fairly new and constantly changing, we're well aware that when students are out (of school) and in practice, they'll be using electronic communication in their work. So we're trying to create an environment where students feel comfortable using the technology."

Wiener and Metzloff said their students, who were not all technologically proficient, saw electronic communication via TWEN as a good place to begin to develop a useful skill.

"And the students really relished the chance to put questions to the characters in their readings," Metzloff said.

In addition to the Woburn case, participants in the mass torts seminar discussed the Buffalo Creek disaster, in which the flood from a burst dam killed hundreds of people; the Agent Orange case, in which millions of Vietnam veterans sued the manufacturers of herbicides used in the war; the litigation arising from injuries women suffered after using the Dalkon Shield IUD; and the Bendectin cases, in which birth defects were blamed on the popular morning-sickness remedy.

Duke Law School, which has been 'networked' for 10 years, is considered quite advanced technologically.

RICHARD DANNER

For each case, Wiener recruited practicing attorneys to join the discussion. In addition to Nesson and Cheeseman, participants included Kenneth Feinberg, a Washington, D.C. attorney who was appointed by federal judges to help manage both the Agent Orange and Dalkon Shield cases, and Jonathan Massey, a litigator involved in the Bendectin cases.

"Instead of having a guest speaker once, we had guest speakers every week throughout the semester," Wiener said. "This continuing conversation worked very well. Sometimes the key questions crystallize best through repeated exchanges."

Danner said the Law School is in the process of hiring an educational technology specialist whose primary role will be to collaborate with faculty to develop productive uses of technology in their teaching. And, he added, the fear that technological advances in the classroom will mean less contact between students and faculty is, so far, unfounded.

"If technology is deployed intelligently and appropriately, contact time between a faculty member and a student can be made more valuable and more productive,' he said.

Wiener and Metzloff agreed.

"Our on-line discussion on TWEN didn't take a minute away from classroom discussion. On the contrary, it expanded our classroom's horizons," Wiener said.

Law Library's Rare Book Collection Goes Back to 14th Century

By Janet Sinder

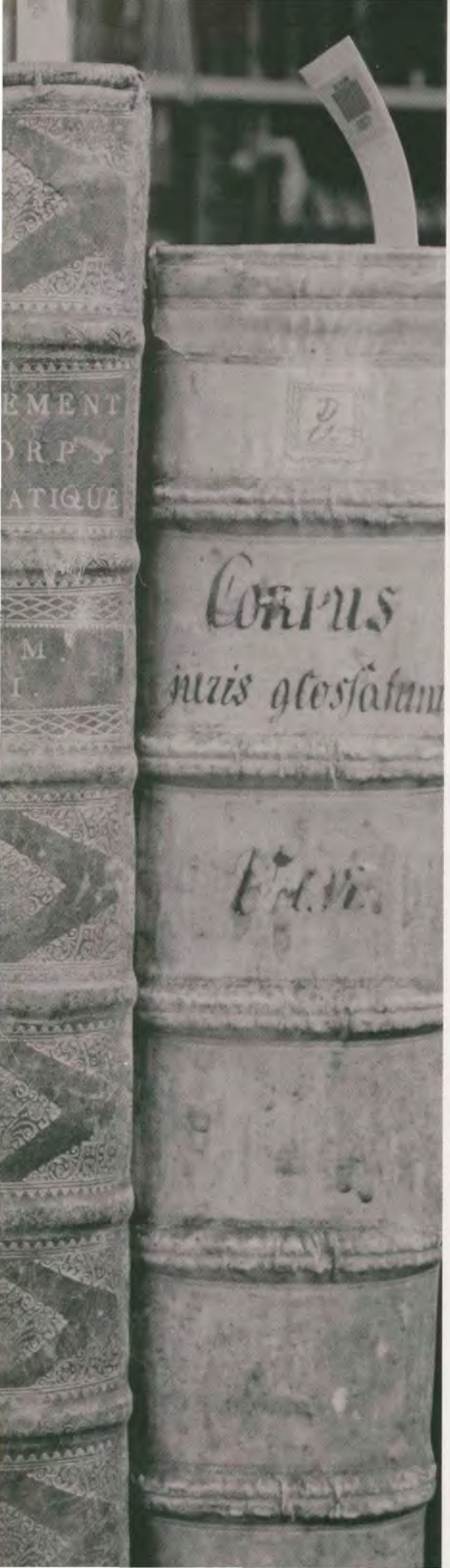
The Rare Book Collection contains many of the most interesting items in the Law Library's collection — those that are very old, rare, or contain interesting inscriptions. This collection is now housed in the Marguerite F. and Floyd M. Riddick Rare Book and Special Collections Room on the second level of the library. When the final phase of the building project is completed, there will be a climate controlled room for this and the library's other special collections.

Many rare materials need extra protection, for security reasons or to minimize the amount of handling they receive. Books in the collection are available for use only in the library and cannot be photocopied. They are retrieved and reshelved by library staff. The room is, however, equipped with a desk and a computer for those doing extensive work with the collection.

For many years the Rare Book Collection sat almost untouched. The only volumes added were those pulled from the library's general collection. During the past two years we have added a small number of volumes and housed the collection in more spacious quarters. The technical services staff recently completed a project of cataloging and assigning call numbers to all of the books, giving us a better idea of what is in the collection and making the materials easier to locate. While the material in the collection is secured, it is heavily used by law students, faculty and other scholars who see what we own by using the online catalog.

The Collection

Though any type of material can be placed in the collection, it consists mostly of books published before 1800 and American imprints published before 1870. One of the most important early American law books in the library is a four-volume set of the first edition of James Kent's *Commentaries* (1826-30). Kent was the first law professor at Columbia and chancellor of the Court of Chancery in New York, as well as the chief justice of the New York Supreme



Court. The *Commentaries* are published versions of his lectures on American law to the students at Columbia. At that time, each school had only one or two professors, each of whom lectured on the whole of the law. One of the most famous sets of English law books, *Blackstone's Commentaries*, was used as a required text in American law schools well into the 20th century.

The first edition of *Kent's Commentaries* was donated to the Duke Law Library in 1930 by William H. Sawyer of Concord, New Hampshire. Our set was rebound by Sawyer and has an interesting note by him, as well as other information about the history of this particular set that provides a good example of the life of many older law books. Sawyer's note indicates that he purchased the set from the library of the late Justice William M. Chase, who was an associate justice on the Supreme Court of New Hampshire from 1891-1907. The books also contain a bookplate from Harvard College, in which there is a note, "sold April 8, 1842," signed by the librarian, James A. Abbott. Onto this bookplate, William M. Chase pasted his name. The library owns many other editions of *Kent's Commentaries*, including a copy of the 12th edition, which was edited by Oliver Wendell Holmes, Jr. and is considered the most important of the later editions.

The oldest work in the library's collection is not a published book but a manuscript from the 14th century — a papal decree of Pope Gregory IX that has been heavily annotated or "glossed," probably by one or more law students at the University in Bologna, Italy.

The oldest work in the library's collection is not a published book but a manuscript from the 14th century — a papal decree of Pope Gregory IX that has been heavily annotated or "glossed," probably by one or more law students at the University in Bologna, Italy. Each page has the text in the center, surrounded by an even longer gloss, and there are other marginal notes written near both the text and the gloss.

The collection also contains materials of particular importance to Duke and North Carolina. For example, we have an interesting set of early *North Carolina Reports*. These reports, from the beginning of the 18th century, are still in their original paper covers as they were issued to subscribers. Normally, the owners would have them bound together rather than receiving bound volumes to replace the advance sheets as is done with court reports today. It is unusual for a set of books to survive in this unbound form, and although they are not in very good condition, they make a valuable addition to the library's collection. We hope eventually to send them to a conservator.

A book of particular interest to Duke students is *Lex Scripta*, by Samuel Fox Mordecai. "Intended as a pocket manual for the law students of Trinity College," it contains the statutes thought to be necessary for law students to know and was published in its second edition in 1905. Mordecai headed the school of law that Trinity College established in 1904. One of the library's copies of this work is

inscribed to Professor [Robert L.] Flowers who was instrumental in launching Duke's law school in the 1920s. A copy of the second part of this book (although actually published earlier) is inscribed to Bunyan Snipes Womble, a student at the time: "Forewarned is forearmed. All 1st & 2nd year law students will be rigidly examined on the contents thereof, in addition to other things." B.S. Womble, who was a student in the first class of law students at Duke (attending from 1904-1906) was later a Duke University trustee and is remembered at the Law School with the B.S. Womble Scholarship founded by his family. An article about these scholarships appeared in the Winter 1990 issue of the *Duke Law Magazine*.

There is also a copy of a privately published work entitled *Mordecai's Miscellanies* (1927), a collection of letters to and from Mordecai, as well as poems he wrote and stories he liked. Reading this collection makes one realize that Mordecai must have been quite an interesting character! Former law professor Bryan Bolich remembered a wonderful story involving Mordecai. Apparently, in 1921 he had a dispute with the librarian, J.P. Breedlove, and vowed never to enter the library again. "Thereafter, any library business was conducted with the assistant librarian, through a ground floor window which was opened when the dean gently tapped on it with his cane."

Special Collections

In addition to the Rare Book Collection, the Riddick Room houses several other special collections. The most interesting is the collection of autographed senatorial materials donated by Dr. Riddick. It consists of about 70 volumes written by members of the United States Senate and inscribed to Dr. Riddick during and after his service as parliamentarian of the Senate. The collection includes signed copies of volumes written by Lyndon B. Johnson, Sam Ervin and Robert F. Kennedy, as well as autographed copies of most of the works of former president and Duke Law alumnus, Richard M. Nixon '37.

The room also contains the Faculty Collection, with copies of books written by Duke Law faculty and an unofficial collection of materials about the Law School. A much more extensive archival collection is housed in the Duke Archives located in Perkins Library.

Collection Development

Two of the library's other special collections have been the basis for some recent purchases for the Rare Book Collection. One is the Christie Collection in Jurisprudence, named for James B. Duke Professor of Law George C. Christie. The second is another of the collections founded and endowed by Dr. and Mrs. Riddick: the collection of materials on parliamentary and legislative procedure. Because of the strengths of these collections, the library has purchased some rare books on these subjects.

To enhance the Christie Collection, the library purchased a copy of Roscoe Pound's *The Formative Era of American Law*, published in 1938 and signed by Pound himself. We also acquired a copy of *Der Zweck im Recht* by Rudolf von Jhering, a two-volume work published in 1883 by a leading German legal philosopher and a strong influence on Anglo-American jurisprudence in the 20th century. The library owns copies of the English translation of this work, entitled *The Struggle for Law*.

To add to our collection of books on parliamentary procedure, we purchased *The Manner of Holding Parliaments in England* by Henry Elsynge (1768). Elsynge lived from 1577-1635, and the first edition of this work was published in 1660. Our edition includes corrections and additions from the original author's manuscript. We also acquired a second edition of Luther Cushing's *Rules of Proceedings and Debate in Deliberative Assemblies* (1845). Cushing's manual went through numerous editions and was considered the standard manual for American parliamentary procedure in the 19th century.

In the future, we would like to continue developing the collection to complement our other special collections. One idea is to develop a collection of rare and first editions of books on jurisprudence, including books published in the first half of the 20th century. We would also like to be able to restore some of our more important materials, such as the *North Carolina Reports*.

This year the Law Library will be adding the 500,000th volume to its collection. We plan to mark the occasion by purchasing a special book for the Rare Book Collection and celebrating with a lecture and reception.

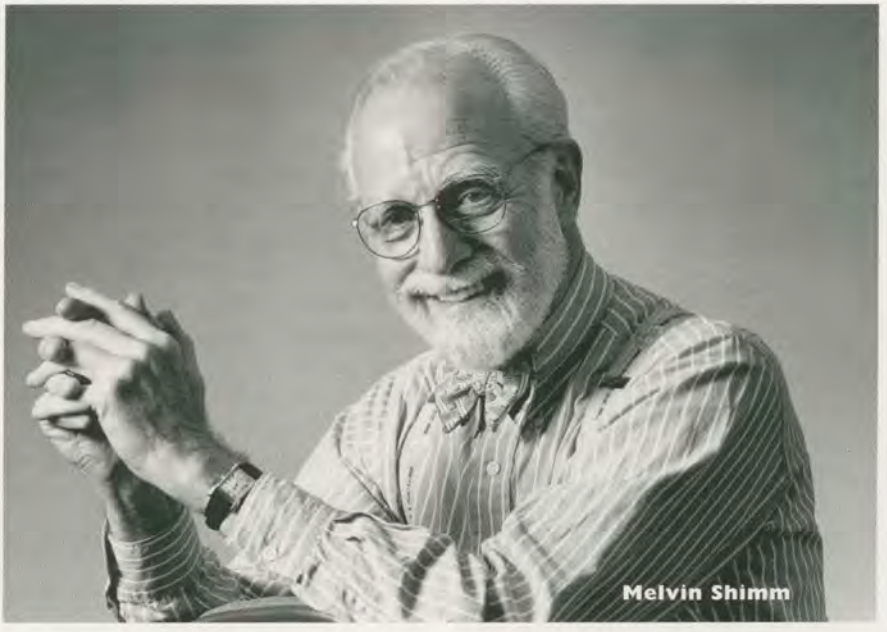
Special gifts in support of the Law Library, like the fund established by the Riddicks as well as annual donations by other individuals, have allowed us to enhance facilities and improve both our special and general collections and are welcomed and appreciated. If you are visiting the Law School and are interested in seeing the Rare Book Collection, or any of our special collections, you can request tours from the reference librarians.

This year the Law Library will be adding the 500,000th volume to its collection.

AROUND THE LAW SCHOOL

Gentleman/Scholar Melvin Shimm Retires After 43 Years of Teaching

By Debbie Selinsky


Melvin Shimm

To hear Melvin Shimm tell the story, his successful life and career have been shaped by one "happy accident" after another. Those who know the punctual, deliberate, courteous, organized and hard-working Law School professor find the image of Shimm as a modern-day Don Quixote a little incongruous.

But when Shimm, a popular professor known as a gentleman, scholar and unofficial historian of Duke Law School, spoke to the colleagues, students and former students attending his retirement dinner last April, that's the story he told.

His decision to go to law school? Accidental.

The New York native, on entering college, intended to pursue the study of linguistics, but while in the army, he "underwent a maturation process" and came back with plans to study economic history and go for an academic career. The GI Bill gave Shimm a shot at three years of graduate school, after he'd completed his undergraduate degree, but a professor pointed out that it would take longer than three years to complete a Ph.D.

"And I wasn't sure I would be able to come up with the necessary additional resources to tide me over. He suggested law school instead as a more prudent career to follow. So I thought, 'well I'll give law school a try' and ended up at Yale law school," Shimm recalled in an interview for a videotaped tribute to his Duke career.

"I wasn't a kid who read *Inherit the Wind* or *To Kill a Mockingbird* and vowed to become a lawyer. In fact, I never really planned to practice law, because I didn't believe I was suited to it; but I knew I liked teaching, and I got into teaching law by another sort of happy accident."

Serendipitous accident number two: Shimm bumped into a former Yale law professor — the one who'd given him the lowest grade he received — at the library at the University of Chicago Law School where Shimm was doing some teaching. The professor asked, "What are you doing next year? Do you plan to stay in teaching?" When Shimm told him he had no firm plans but would like to stay in teaching, the professor hooked him up with a former student, Joe McClain, then dean of a young law school at Duke. The Duke dean flew up the next day to talk to Shimm — a flashy but impressive recruitment effort for the 1950s — and invited him to Durham where he offered him the job. Shimm accepted the post, which included an irresistible opportunity to edit a journal called *Law and Contemporary Problems*, took a deep breath and went home to face his wife Cynia.

"I knew she'd cry," he recalled with a grin at the wife he's known since they

Eric C. Michaux '66

"Professor Shimm's support of me did not stop at my admission, but continued when I made application to the North Carolina State Bar Association. He, along with the Duke Law family, withdrew [his] affiliation from that association until such time as it would admit lawyers regardless of race. Professor Shimm taught for a number of years at North Carolina Central University... He was well liked and revered at Central as a great teacher and humanitarian."

Former Students on Shimm's Retirement

were small children in the same neighborhood in New York, "because we'd been to Durham to visit my twin brother, who was a resident at Duke hospital a few years earlier, and she knew what the town was like. There just wasn't anything much here in 1953. I remember that she wailed, 'You expect me to live — and be tied down with a new baby — in that godforsaken place!' But in the end, of course, she supported me. And we made wonderful friends and learned to love Durham."

What Shimm found when he arrived at Duke was about what he expected, he said: "When I came here in 1953, the School was located in what is now the Romance Languages Building on the West Quad. The student body totaled 113 and the faculty, less than a dozen. The student-teacher ratio was quite good — I had only eight students in my first class — and so our relationships with students were close. And since all students took required courses apart from a few electives in their final year, most students had the same teachers in several courses for three years straight."

He was impressed with the faculty, too, especially Charlie Lowndes, who was his mentor and guide, and Jack Latty, whom he describes as perhaps the single most important figure in the history of the Law School.

The young Shimm family had no trouble making a new life in Durham, which had begun to grow. In those early days, the couple's family, who thought they'd moved to the "ends of the earth," made sure to bring "care packages" of bagels, smoked fish, pastrami and rye bread when visiting — "perhaps not great for the cholesterol level but wonderful for the soul," Shimm said.

"We spent a lot of time socializing with students, some of whom were just a little younger than we were. We all had small children, and we'd get together and let them play. It was lovely," he added.

Dr. Cynia Shimm worked part-time as physician to the women in the Duke Nursing School and to residents at the Methodist Retirement Home, then a small facility on Erwin Road. From 1959 to 1965, she pursued a residency in psychiatry at Duke medical center and went into private practice in 1968 — until her retirement in 1994.

Happy accident number three: Shimm became a versatile teacher because he made a point of offering to teach "whatever was needed at the time." "If the teacher for criminal law left, I'd teach criminal law. When they needed someone to teach insurance law, I volunteered for that. I found one area as interesting as another — what I really enjoyed was teaching and the students," Shimm said. He has taught bankruptcy every year since he arrived in 1953, and for the past 25 years, he, divinity school professor Harmon Smith and a medical school professor (most recently, Dr. Dan Gianturco) have taught a seminar in medical, legal and ethical issues — a popular interdisciplinary seminar that Shimm plans to continue teaching post retirement.

Shimm said "without apology" that his career has focused on teaching. "I've worked hard. I was in the office by six every morning, looking over my notes and preparing for class even if it was a course I'd taught for many years. I enjoyed it." His wife hinted strongly that she hoped he would stay in bed a little longer in the mornings after retirement — "at least until six or seven" — and will take a cooking class, she said with a smile.

One of the highlights of Shimm's career has been his work as editor of the cross-disciplinary journal *Law and Contemporary Problems*. "The journal is a very highly regarded and influential one that has made valuable contributions to legal thought. I am proud of the work I've done with it, and editing it has also allowed me to become familiar with many academic areas other than law, which I enjoy very much," he said.

Shimm, who colleagues say probably has the most extensive vocabulary at the Law School, also takes pride in the fact that he was the faculty member who established the *Duke Law Journal*, a "more conventional" journal than *Law*

and Contemporary Problems, but a most "reputable" one as well, he said.

Over the years, Shimm has remained active in the life of the Law School. For example, he chaired the committee that planned the dedication weekend activities for the new Law School addition. In retirement, he plans to mix a little travel and play with the grandchildren while writing a history of the Duke Law School. He'll also pursue other deferred academic interests.

Shimm's greatest career satisfaction, he said, has come from the relationships he has developed and continued with students after graduation. "I never even took the bar in North Carolina," he said, "because I knew that my particular personality and gifts made teaching at Duke a perfect fit for me. There's nothing I would rather have spent my life doing."

Janice Griffin '96, who took Shimm's bankruptcy law class, attributes his popularity with students to the sensitivity and respect he shows them. "Some law professors are eager to show off what they know — sometimes at the expense of what we don't know. But Professor Shimm is not at all like that. He's such a gentle man and seems genuinely to enjoy his interaction with students," she said.

As Shimm takes up what seems, at different times, both a new adventure and a "big void," he has nothing but praise for the current Law School leadership. "I can say this with some credibility now, because I've retired: of the eight or nine deans I've worked with, Pam Gann is probably the best in terms of vision, energy, a dedicated application and all the other traits you would want in a dean," he said.

Gann, who presided over Shimm's retirement dinner, returned the compliment. "Mel Shimm joined our faculty over 40 years ago, and he has taught almost all of the Law School's graduates — many more than any other professor. He is the most important link between the faculty and our alumni," she said. "I believe Mel's most lasting legacy to the academy will be his life-long editorship of *Law and Contemporary Problems*. Started by Professor David Cavers, the journal is now one of the most widely read and cited law journals throughout the world, and it is largely due to the loving care and attention Mel has paid to the publication for so many years."

Editor's note: In honor of Professor Shimm's distinguished career at Duke Law School, former students and friends established in 1996 the Melvin Shimm Endowed Scholarship. Income from the scholarship fund will provide financial support to deserving students.

Gary S. Stein '56

"Not only were you a superb and inspiring law professor when we were students in your classes... you have [also] been the enduring link... with an institution that we revered..."

Fritz L. Duda, Jr. '93

"While many law school classes are challenging, few professors actually challenge their students to excel in the classroom [as Professor Shimm does] — relying instead on the innate competitiveness of the typical law student."

Law Student Writes Compellingly About Roots and Routes

From South Carolina to Harvard and Beyond

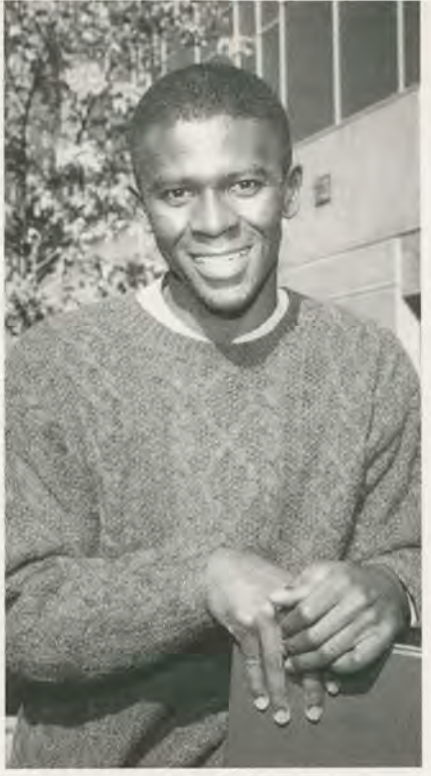
By Mirinda J. Kossoff

John Simpkins '99 has discovered the power of his pen. His first essay (see the box at right) appeared in the July 1, 1996 issue of *The New Republic* and prompted an Atlanta doctor to write a check to Duke Law School to set up a scholarship. "What struck me was that something I could write would have a very personal impact on someone," Simpkins says.

It all started at Harvard where Simpkins was an undergrad majoring in political science. As a young African-American who had grown up in the South in the middle of a big extended family, he felt the shock of his cultural difference when his feet first hit the brick paths of Harvard Yard. He quotes a popular saying about the school: "Mother Harvard doesn't coddle her young." And she didn't coddle Simpkins, but he thinks that was a good thing, because it forced him to define himself and the groups he felt connected to. As he describes it in his essay, titled "All in the family," the African-American community at Harvard sorted itself into three strata referred to as the "inner-circle, periphery, and Third World." Simpkins places himself "somewhere between the periphery and Third World," largely because of his Southern roots and a definition of family that is distinctly not white middle-class.

Despite the social sorting process, Simpkins found a group of students he could feel comfortable with, and he has positive memories of his undergraduate years.

Simpkins came to Harvard knowing that he would go to law school, but he wanted a real-world experience in between. The summer after his junior year, he got a counseling job working with underprivileged kids in Boston's South End and saved money to support his dream of working in South Africa. He made the dream a reality after graduating. "I've had an abiding interest in South Africa from the moment I learned who Nelson Mandela was," Simpkins notes.



John Simpkins '99 wrote an essay for *The New Republic*, prompted by his undergraduate experience as a Southerner at Harvard.

By November of his senior year, he had landed a job teaching comparative history and English at a multi-racial school just outside Johannesburg. Simpkins arrived in South Africa just before the elections that put Nelson Mandela in office, an exciting time for the country and particularly for Simpkins, who realized another dream by getting the chance to meet Mandela before he won the presidency of the country.

Through a journalist friend, Simpkins got on Mandela's schedule and found himself at the headquarters of the African National Congress checking in with the guard. Within seconds, he was

As a young African-American who had grown up in the South in the middle of a big extended family, he felt the shock of his cultural difference when his feet first hit the brick paths of Harvard Yard.

face to face with the man he'd revered since childhood, and he was speechless. Mandela soon put him at ease. "He was disarming and humble," Simpkins says. "I've never met anyone so powerful who was at the same time so humble. He asked me what I was doing in South Africa and what I thought was going to happen to the country."

Simpkins spent two years in South Africa and a year in Washington, D.C. working for freshman Democrat Lloyd Doggett, representative from Austin, Texas, on health care issues and international relations. After that, it was Duke Law School, chosen in part because of its proximity to his family in South Carolina and because of the School's reputation for international law.

Simpkins' *New Republic* essay grew out of a series of long conversations with a friend who is managing editor of the magazine. "The piece speaks to the immigrant experience," Simpkins explains, "even when that experience means moving from one social class to another." Simpkins feels strongly that upward mobility should not include abandoning responsibility for extended family, even when the financial burdens of that responsibility may hinder the climb. The South Carolinian has strong ties not only to his parents and his two sisters, but to his nephews, cousins, aunts and uncles, a connection that he says is typical of Southern African-Americans. "My generation has our first doctor," he says, "and she and her husband have incurred a lot of financial responsibility for all of us."

The sense of community and responsibility that Simpkins expressed in his essay had a tangible impact and whetted Simpkins' appetite for writing. He's now working on a piece for *Harper's*, at the magazine's request. As he looks beyond law school, Simpkins says, "I want to go back to South Africa to use my legal skills; I want to continue writing and possibly, to teach."

All in the family

My family tree does not branch. It never has. As with many black families in the rural South, the distinction between nuclear and extended faded long ago. Today, as it has been for centuries, cousins are siblings, aunts are mothers, uncles are fathers. While I recognized that some of my relatives had different fathers, the concept of "illegitimacy," often presented as the crux of America's moral decline, was foreign to me. Southern black families don't see the need to make social pariahs of children who have no control over the circumstances of their birth. It's not just that we were unable to replicate the Ozzie and Harriet model; we subconsciously rejected it as undesirable, alienating in its quest for invented separation of blood from blood.

The moralists of the radical right would have me believe I grew up in the midst of immorality. Granted, my family had its share of alcoholics and failed marriages and domestic abuse. But, far from being the cause of these sufferings, our unconventional, multi-layered family structure protected against them and against what caused them: the deep poverty, hopelessness, and occasional terror, of black life in the South. From the same patch of the South Carolina Midlands, generations in my family weathered the departures and celebrated the homecomings this culture brought about. What sustained us was a reliance upon each other.

It worked on its own terms, and, after all, we had nowhere else to go. But now, for the first generations of black Southerners with a chance at the middle class, the disjunction between white and black family life is causing tremendous problems. While barely visible outside this small group of young black strivers, it represents a formidable obstacle to upward mobility and a tremendous emotional strain.

Walk around the mainly white campus of an elite college today, and you will meet young, gifted black men and women from such little-noticed locales as Cadiz, Kentucky and Eufala, Alabama. Before them lie tremendous financial opportunities. The day after graduation, they can earn many times what their parents do. And if they save a good portion of their high-flying salary, and use it to create a small household of their own, their children will grow up with all the chances white kids have.

Simple enough, right? Actually, wrenchingly difficult. The deep logic of black and rural family life means that resources — medical care, tuition, whatever — are spread to whomever needs them most. Denying them to cousins, aunts, uncles, because they are "only" cousins, aunts, uncles is not merely alien, but offensive. For people with decent salaries but no inherited wealth, this endless succession of family obligations can make it impossible to accumulate wealth. Everyone survives, but people with the ability and opportunity are prevented from moving ahead.

Except, of course, for those who turn inward, providing only for self, spouse and their issue. But this choice, too, has its costs. Sharing those elite campuses with the strivers from Eufala are black kids from Scarsdale and Greenwich: the offspring of the last generation of black success stories — success stories partly because they adopted white patterns of family life.

In my college experience (at Harvard), it was more often than not these students — Cosby kids run amok — who spoke most stridently for black

solidarity and a return to the tranquil collectivity of Mother Africa. All the while, they stratified the African American community on campus into what one friend described as the "inner-circle, periphery, and Third World."

Relegated to a place somewhere between periphery and Third Word, I found it ironic that I was ostracized by this radical bourgeoisie when it seemed clear to me that the kind of connectedness they craved was precisely what I had grown up with in my sleepy Southland. Most of Harvard's self-anointed grade-A Negroes viewed the South (with the possible exception of Atlanta) as a garden patch of backwards, dull-witted, steppin' fetchits. The in-crowd did not have, nor did they want to have, all manner of aunts, uncles and cousins living under their roofs. They had grown up with just parents and children — "normal" nuclear families.

The parents of these kids had faced the same choices I now have to make: to cut the family ties and create financial stability for themselves or attempt to help any and all relatives. They chose the former. Their kids, having grown up in middle-class, integrated environments, assumed the ideals of their white counterparts. Each group underwent a startling transformation during the "self-discovery" of their college years. Preppy, well-scrubbed black kids from suburbia transmogrified into saggy jeans-wearing, ghetto rhetoricians, reflecting the images of blacks adapted from the prevailing urban aesthetic. They scorned the family-centered principles of the rural South and the spiritual attraction of the black church in favor of the craven, secular, egocentric braggadocio of rap culture.

My fellow students came from black families who had bought completely into the American dream. Little wonder that they had unknowingly become yet another generation of Gunnar Myrdal's "exaggerated Americans." Only this time, they weren't zealous Negroes eager to prove their patriotism by dying on foreign soil. Now it was their allegiance to the liberal middle class they were proving, taking on all its values — including its penchant for cultural experimentation and comfortable rebellion. In short, the boojie insurgents at Harvard were really no different from the crunchy-feely white granola kids from the North. College was their four-year playground, to be forgotten at graduation as they took respectable jobs in the private sector.

Many of the Southern kids from small towns adopted a bemused attitude toward our brethren and toward the campus dialogue they helped create. But beneath the bemusement lay the anxiety of looking into a generational crystal ball and seeing the emptiness that material success can bring. The irony is that the highly individualistic, radical-chic silliness of the angry black pre-yuppies, while glorified as African, was deeply American. Perhaps too deeply American. I came away from the first rung on my ladder to upward mobility strangely radicalized: finding the mindset undergirding white America's family structure unappetizing, and its militant African American parallel equally so.

I can't really abide a narrow conception of family that cherishes each relation to its appropriate degree. Grandma and Grandpa receive the requisite hug and kiss. Cousins elicit a modicum of detached fond regard. I'm still close enough to an alternative to see the price of that model. Maybe I'll reject it after all, upward mobility be damned.

JOHN SIMPKINS

Reprinted from the July 1, 1996 issue of The New Republic.

JENNIFER BEARDSLEY '97 GETS AN EDUCATION IN LIFE THROUGH AIDS WORK

BY JOHN L. S. SIMPKINS '99

Jennifer Beardsley '97

Jennifer Beardsley '97 helps dispel the self-absorbed image of attorneys-in-training. She demonstrates that an education in the law reaches far beyond a casebook or well-worn study guide. It has been, for her, an education in life.

Beardsley, a gregarious JD/MA (environmental studies) student participating in the AIDS Legal Assistance Project, is among those who have logged the clinic's required 100 hours of meeting with clients, drafting documents and appearing in court. With all of the other demands on a typical law student's time, 100 hours represents an enormous commitment of time and energy. However, it accounts for only a fraction of the time that Beardsley, a perpetual motion machine, has spent at Duke, and beyond, helping to provide legal services for HIV-positive individuals. She has been involved with the clinic since the beginning of her second year.

"I got involved with the clinic before it was a clinic," she explains, referring to her participation in the AIDS Wills Project, the clinic's forerunner, in the fall of her second year. An all-volunteer, noncredit, pro-bono program, the Wills Project was started by clinic director Carolyn McAllaster.

In January 1996, the Wills Project became the AIDS Legal Assistance Project, a formal in-house clinic which, along with an accompanying course in AIDS law, can now be taken for credit. Though staffed by only 10 students per semester and two supervising attorneys, Senior Lecturing Fellows McAllaster and Jane Wettach, the clinic has represented over 100 indigent HIV-positive North Carolina residents in just two semesters of operation.

Beardsley's involvement as a 2L stretched into the following summer when the native Iowan returned to the Midwest to work for AIDS Legal Counsel of Chicago. There she assisted in employment discrimination cases involving persons with HIV, lesbians and gays. Beardsley credits McAllaster with sparking her interest in AIDS-related legal issues. "Once you've worked with Carolyn McAllaster, you can't stop helping," says Beardsley. "There wouldn't be a clinic without her. She works so hard and is so dedicated. It's kind of inspiring. I'm volunteering again in the spring because I don't want to stop the work."

While she has found her work with the clinic rewarding, one of the biggest frustrations Beardsley has faced is getting clients to start planning for those whom they will leave behind. She explains, "You have a group of people who are young who weren't thinking about death. They don't want to deal with the issues of HIV and AIDS. They don't want to think about what's going to happen to their kids when they die."

One of the biggest frustrations Beardsley has faced is getting clients to start planning for those whom they will leave behind.

The recently enacted Standby Guardianship Law has made it easier for the clinic to assist HIV-positive individuals in making custodial arrangements while they are still alive. Under the new law, persons diagnosed with a terminal illness can have a hearing to designate their preference for guardianship of their children. The hearings are conducted by a clerk of court, who rules based on the proposed guardian's abilities as well as what is in the best interest of the children. Thus far, the AIDS clinic has participated in the first standby guardianship hearings in six North Carolina counties.

After graduation, Beardsley hopes to remain involved with the clinic. She has applied for a fellowship which would allow her to work for the clinic for the next two years. Her duties would include developing a referral network of attorneys willing to handle clinic cases on a pro-bono basis in response to the clinic's growing caseload. She would also assist in raising funds for the clinic. According to McAllaster, raising the $130,000 necessary for the clinic's annual budget now occupies nearly one-quarter of her time as director.

Though Beardsley has spent many hours providing legal services to persons infected with HIV, she feels that she has received much in return. "It can be emotionally draining, but it gives back, too," she says. "People appreciate what you're doing for them because others wouldn't do it or they don't have access to legal care. To know that I can help someone by doing so little is very rewarding."

As her participation indicates, Beardsley strongly endorses the clinical opportunities available at Duke. She sees them as a way of overcoming law students' detachment from the outside world. "In law school, you have such a barrier between you and the rest of the world," she explains. "It's not a hands-on learning experience. You don't see how what you're learning can affect people. This is one of the only outlets where I'm actually helping real individuals who, without the clinic, wouldn't have access to legal care."

It is this more altruistic goal which Beardsley feels all law students should seek. She adds, "We have so many advantages here. I think people often lose sight of that. Lawyers should give back to people who aren't as fortunate. That should involve more than doing your mandatory firm hours of pro bono work. Working in big firms is great, but it should be tied to the idea that you need to serve other populations, too."

StaffNews

New Staff

The Law School's Office of External Relations has some new, and newer, faces: clockwise from bottom left: Brad Bodager, director of alumni relations and special programs; Ellen Hathaway, administrative assistant; Julie Covach, coordinator for alumni relations; Beth Wilkinson '88, assistant director of development; Rhonda Martin, administrative secretary for alumni relations; Mirinda Kossoff, director of communications; Deborah Desjardins, campaign coordinator; and seated, Trish Richardson, director of development.

Anita Brown

Anita Brown has been named director of the annual fund in the Office of External Relations. She has been with the Law School for 11 years.

Catherine Peshkin

Catherine Peshkin joins Duke Law School as assistant director of admissions. A Duke alumna, she was formerly director of new business development at the Interactive Television Association in Washington, D.C.

Stacy Rusak

Stacy Rusak is a new admissions officer at Duke Law School. Previously she was assistant director of undergraduate admissions and director of pre-college programs at Carnegie Mellon University.

By Julie Covach

Adcock Launches International Development Clinic

Catherine Adcock has been appointed to the faculty as lecturing fellow, effective fall 1996. During her first semester, she spent much of her time in South Africa laying the groundwork for the Law School's International Development Clinic, to be launched in the spring of 1997.

At the invitation of the government, Adcock participated in the national consultative meeting on water law reform in East London, South Africa in October. She returned for an additional month to meet with government officials to determine areas of specific need which could be addressed by the International Development Clinic. Her visit coincided with President Nelson Mandela's signing of the country's new constitution, and she was present at its final certification by the Constitutional Court at Braamfontein.


Catherine Adcock

Students participating in the new clinic will be paired with ministries, courts and other law centers in South Africa, assisting with legal research related to the design and implementation of framework legislation and regulation necessary for development. Under Adcock's supervision and in collaboration with other members of the faculty, Duke students will assist the Constitutional Court in its founding period by collecting and analyzing comparative jurisprudence, especially with regard to horizontal application of equality law, affirmative action, social and economic rights and environmental protection. Additionally, students will work with the Water Ministry as it prepares the new water legislation to be tabled in Parliament before the end of the year, and the Environmental Affairs Ministry in its efforts to develop a regulatory framework for coastal management and sea fisheries. Duke students have been asked to look for real world examples of collaboration between local citizens, government and commercial entrepreneurs in conservation efforts.

The clinic is part of a larger curricular addition at Duke Law School focusing on international development within the traditional disciplines of comparative and international law. Accordingly, students participating in Adcock's clinic also elect her course, Introduction to International Development.

A native of Johannesburg, South Africa, Adcock earned her undergraduate and JD degrees from Yale and was one of the first Americans to graduate from the Public International Law degree program at the University of Strasbourg. She previously clerked for the Ninth Circuit Court of Appeals, practiced with a large West Coast law firm and worked in the U.S. State Department's Office of the Legal Advisor. Prior to her appointment at Duke, she served on the faculty at New York University, where she co-founded the first international development clinic in a law school.

Adcock also holds the title of visiting fellow in the University's Research Program in Comparative Studies; her other research and teaching interests include the public international law of the oceans and natural resources management. She is fluent in French as well as several African languages.

Beale Named Senior Associate Dean

Professor Sara Sun Beale has been appointed senior associate dean for academic affairs, effective Jan. 1, 1997. Now in her 18th year as a faculty member, Beale replaces outgoing Dean Tom Rowe.

In her new position, Beale is responsible for curriculum development, supervision of the faculty and their research agendas; special programs such as the Center for Law, Ethics, and National Security, the Center for Global Information Technologies and the Center for the Study of Congress; and the various journals. She will be supported in her efforts by Carol Spruill, assistant dean for academic affairs.


Sara Sun Beale

Beale sees her job as nurturing the many facets of the School's intellectual mission, including the curriculum, extracurricular student activities, faculty research and speakers for students and faculty. One of Beale's primary goals, besides "keeping the trains running," is to develop more connections between the Law School's increasingly wide variety of journals, centers, and conferences, and between these activities and the curriculum. Beale notes: "The associate dean has

a bird's eye view of the entire institution, and is in a position to develop synergies to benefit the institution as a whole."

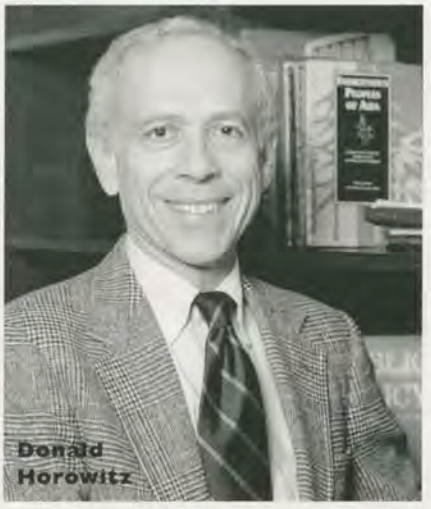
Although this is Beale's first time in a dean's role, she is no stranger to administrative responsibility, having recently completed a two-year term as chair of the Durham County Hospital Board of Trustees. "I enjoyed the opportunity to work with an entirely different sector of the community," Beale says, "particularly at a time when health care is in such a state of upheaval. It's important to remember that even though Duke is a national university, we do live in the Durham community, and we have an obligation to be involved."

Beale's new position is a half-time appointment, and she plans to continue both her teaching and research. This spring she will teach a course in federal criminal law, and she is scheduled to complete two books, one on federal criminal law and the other on the grand jury.

Professor **James D. Cox** visited law schools in Chile and Argentina during a recent 11-day trip to South America. At the invitation of Universidad Austral in Buenos Aires, where he was visiting professor of law, he gave a series of five lectures on the international reaches of U.S. securities law. During his stay he met with the president of the Argentinean Stock Exchange and with Argentinean Supreme Court Justice Eduardo Moline O'Connor, in addition to members of the Buenos Aires Bar Association and various Duke law alumni.

While in Santiago, Cox addressed students at the Catholic University of Chile in a class led by Duke law alumnus Julio Gandarillas '93, and later gave a talk about U.S. capital markets to a general audience.

Cox is also managing Duke Law School's involvement in a USIA-sponsored project in Vietnam, assisting in the country's preparations for entering the global economy and securing membership in the World Trade Organization. Cox will coordinate with the Vietnam Trade Council in recruiting faculty and supervising curriculum design for a series of training programs in trade and investment, that began in Hanoi in February 1997.


Donald Horowitz

Professor **Donald Horowitz** was a visiting scholar at the University of Canterbury, New Zealand from December 1995 to March 1996, gathering materials for a forthcoming comparative study of statutory interpretation. During his stay, he also gave a series of lectures on the principle of self-determination, as well as Islamic law reform, at the University of Auckland and the Universities of Melbourne and Sydney in Australia.

While in New Zealand, Horowitz served as consultant to the Fiji Constitution Review Commission, assisting in that country's efforts to develop an entirely new document which will encourage interethnic conciliation between the islands' Fijian and Indian populations. The Commission has largely adopted Professor Horowitz's recommendations regarding the Fijian electoral system.

Professor Horowitz returned to Australia in January 1997 to continue his meetings with members of the Commission and its legal counsel.

Professor **Benedict Kingsbury** was invited by Seoul National University, Korea and the Carnegie Council on Ethics and International Affairs to give a paper at an interdisciplinary conference in Seoul on economic growth in East Asia and its implications for human rights. Kingsbury's paper addresses an ongoing debate over human rights: whether the concept ought to be defined in the same way in every society, or whether it is limited to Western political tradition which fostered the philosophy and legal institutions of human rights.

Kingsbury considered whether the international law concept of 'indigenous peoples,' which is used by global institutions such as the United Nations and the World Bank but has its origins in European settler societies, is also applicable in Asian states not subject to European settlement. He responded to objections by countries such as China and India that the concept of 'indigenous peoples' is inextricably bound up with European colonialism and would promote disastrous ethnic chauvinism if applied in other societies.

Kingsbury's paper "The International Legal Concept of 'Indigenous Peoples' in Asia," will be published in an interdisciplinary book and will shortly appear in Korean translation in a leading Korean academic journal.

Professor **Madeline Morris** has been named a consultant to the Secretary of the Army. Based on a study she did on rape rates in the military, she was widely interviewed and quoted after the first news broke about problems of sexual harassment in the armed services.

Morris has also been serving as an advisor to the president of Rwanda on issues relating to the prosecution of war crimes in that country. She organized a conference in Brussels this past summer bringing together thinkers from 26 countries to evaluate the use of criminal prosecutions in handling crimes of mass violence, as in the cases of Rwanda and the former Yugoslavia.

In October 1996, Professor **Richard Schmalbeck** began a series of meetings with officials in the Russian Ministry of Finance in Moscow, as one of a group of Americans providing advice on a broad range of tax issues.

The Russian government has sought the advice of American tax law experts as it develops an income tax system to address emerging business and entrepreneurial classes and the consequent rise in personal income. Schmalbeck's October trip involved potential legislative changes concerning employer-employee loans.

The discussions are supported by the U.S. Agency for International Development and the Soros Foundation and will continue bimonthly through 1997.

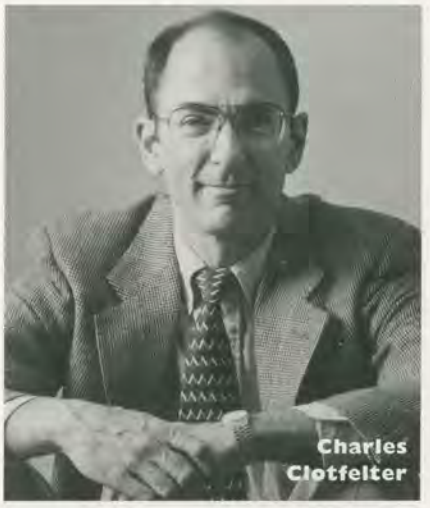
Professor **Laura Underkuffler** traveled to Pretoria and Cape Town in October-November 1996 to give a series of lectures and seminars on the new South African constitution, approved by the legislature last spring. Underkuffler was invited by representatives of several academic communities in South Africa, based on a directive specifying that foreign law may be consulted in determining the meaning of the new constitutional guarantees. In particular, she addressed provisions for freedom of religion, belief and opinion, and protection of property.

With Professor Carol Rose of Yale Law School, she spoke to professors, lawyers, government officials and representatives of non-governmental organizations. In addition to providing examples of cases in which the United States has interpreted similar guarantees, she described various problems that have resulted and outlined suggestions for change.

Professor **John Weistart** was chosen by the Duke Bar Association last April as the 1995-96 winner of the Distinguished Teacher Award, the second time he has received this honor in his 25 year teaching career. The student organization presents the award annually to recognize outstanding classroom contributions from a member of the Law School faculty.

Weistart's courses include commercial transactions, contracts, and an advanced seminar in athletics and antitrust. "Teaching in a law school, at its best, is the most invigorating and challenging teaching there is," he says. "When you present open-ended questions to a group of bright, enthusiastic and well-prepared students, such as the students at Duke, you can begin the discussion at an extremely high level. Last spring's athletics and antitrust seminar was particularly rewarding, and the contracts course has remained engaging over the years as the teaching focus has changed three or four times. It is especially reassuring to see how effortlessly our students move from the preliminary material in contracts to the more detailed and demanding subjects that we cover in commercial transactions."


John Weistart


Charles Clotfelter

Weistart donated the funds from his award to the Law School's AIDS clinic, a project he feels greatly broadens the professional training the Law School provides.

Charles T. Clotfelter, Z. Smith Reynolds Professor of Public Policy Studies at Duke, now holds a joint appointment as Professor of Law. He holds a PhD in economics from Harvard; his fields of specialization include public finance, tax policy and the economics of education.

Clotfelter's books include *Federal Tax Policy and Charitable Giving, Economic Challenges in Higher Education,* and most recently, *Buying the Best: Cost Escalation in Elite Higher Education* (Princeton University Press, 1996).

Clotfelter and Richard Schmalbeck have co-taught a number of seminars in the Law School on tax policy, not-for-profit organizations, and charitable giving.

Doriane Lambelet Coleman joined the Duke law faculty in the fall of 1996 as lecturing fellow, following a distinguished career as a litigation associate in Washington D.C. and more recently as a faculty member at the Howard University School of Law.

A native of Lausanne, Switzerland, Coleman earned her undergraduate


Doriane Lambelet Coleman

degree at Cornell University and her JD at the Georgetown University Law Center, where she was an associate editor of the *Georgetown Law Journal.* During this time she also competed as a member of the U.S. and Swiss national track teams, winning the 1982 U.S. national collegiate championship in the 800 meters. She was twice a winner of the Swiss national championship.

Coleman is a specialist in the field of multiculturalism and the law; she has been frequently quoted in the national press, including a December 2, 1996 article in *The New York Times;* the quotes were subsequently picked up by the *International Herald Tribune.* Her recent article in the *Columbia Law Review,* "Individualizing Justice Through Multiculturalism: The Liberals' Dilemma," addresses the controversy over immigrant culture as it conflicts with American law, particularly with regard to customs that tend to victimize women and children.

Coleman is currently teaching courses in torts, children and the law and U.S. law and legal process.

James E. Coleman, Jr. returned to Duke Law School in the fall of 1996 as professor of law, having left his partnership with a large Washington D.C. law firm where he performed a significant amount of *pro bono publico* services, particularly in the area of capital proceedings.

Coleman is a graduate of Harvard University and Columbia University Law School, where he was a contributing editor of the *Columbia Human Rights Law Review.* His extensive professional experience includes a judicial clerkship and service with a congressional committee, the Legal Services Corporation and the Office of Legal Counsel for the U.S.


James E. Coleman, Jr.


Steven L. Schwarcz

Department of Education. He was on the Duke faculty from 1991-93 and received the 1993 Duke Bar Association's Distinguished Teacher Award before returning to private practice.

Coleman is currently teaching criminal law and, with Robert Mosteller, will teach a seminar on the death penalty and an associated clinic. During the fall of 1996, he participated in a satellite teleconference, sponsored by the Federal Judicial Center, discussing new developments in the federal law of habeas corpus.

Steven L. Schwarcz joined the faculty in the fall of 1996, culminating a two-year search for an outstanding appointment in the fields of commercial law and transactions, bankruptcy and corporate restructuring and structured finance.

Schwarcz earned a BS from New York University School of Engineering and a JD from Columbia. He was a partner and practice group chair at a large New York law firm where he represented many of the world's leading financial institutions

in structuring innovative capital market financing transactions, both domestic and international. While practicing law, he taught at Yale, Columbia and Cardozo (Yeshiva University) Law Schools.

Schwarcz has written numerous scholarly works; his monograph *Structured Finance: A Guide to the Principles of Asset Securitization* is the most widely used book in the field of inventive commercial finance.

At Duke, he teaches courses in commercial law and transactions, bankruptcy and corporate restructuring and capital markets. In addition to achieving a worldwide reputation for his scholarship, Schwarcz brings the experience of someone at the top of his professional field in an area of law where practical experience is extremely valuable to both teaching and scholarship.

Francis E. McGovern, a recognized leader in the field of alternative dispute resolution, joined Duke in January 1997 as professor of law.

McGovern was a visiting professor at Duke in 1989 and has been an active member of the Law School's Private Adjudication Center (PAC) board of directors for more than a decade. His presence will make the PAC a major international force in the field of alternative dispute resolution services. He frequently speaks on dispute resolution, especially on mass torts, and is a productive scholar. He is coauthor of *The Preparation of a Product Liability Case* and *Successful Litigation Techniques*, as well as the author of many articles. Pending books include *Alternative Dispute Resolution*, with Duke law professor Thomas Metzloff and Deborah R. Hensler, and *Toxic Substances Litigation*.

McGovern has been a counselor and consultant to the federal judiciary, state courts and institutions engaged in dispute resolution, including the U.N. and the House of Lords. "His special gifts, combining extraordinary imagination with tact and patience, have enabled him to contrive solutions to a score of intractable problems of gigantic proportions, from


Francis E. McGovern

the A.H. Robins bankruptcy to the silicon gel breast implant dispute," says Dean Pamela Gann.

McGovern comes to Duke from the University of Alabama School of Law where he was Francis H. Hare Professor of Torts. A 1967 Yale graduate, he served in the U.S. Marine Corps from 1968-71. After earning his JD from the University of Virginia in 1973, he worked as an attorney with Vinson & Elkins in Houston until 1977. That year he began his academic career at the Cumberland School of Law in Birmingham, where he rose through the ranks until he became professor in 1980. In addition to Duke, he has been a visiting professor at Boston University, MIT and the University of Fribourg in Switzerland, as well as a senior associate and research fellow at the Harvard Law School.

"The sheer bulk of his writing would be extraordinary for a person starting an academic career only 18 years ago, but it is truly amazing for a person who has been so fully engaged in mediating and structuring the settlements of many of the most complex cases brought to American courts in the last dozen years," says Gann.

McGovern is comfortable lecturing in French as well as English and has been instrumental in helping Duke Law School establish European contacts.

International Alumni Reunite In Brussels

By Tom Kubicki

Before last November's Law School alumni event in Brussels, it had been six years since Natalie Ulburghs '91 had a chance to socialize with classmates from her graduating class. When your fellow classmates must literally travel from all corners of the globe, a reunion is a rare and special event. That might be one reason why Ulburghs was so anxious to head up the preparation details in Brussels. As president of the Duke University Law Alumni Association of the Benelux, she had a personal interest in seeing the first international alumni conference be a hit for Duke Law School.

Alumni from as far away as Japan, Canada, Argentina, the Middle East and countries throughout Europe traveled to Brussels for the weekend's festivities. Just over 100 attendees gathered, including a Law School contingent led by Dean Pamela B. Gann; Bradley Bodager, director of alumni relations and special programs, Professor David L. Lange, Professor William W. Van Alstyne, Associate Dean Judith A. Horowitz, Associate Dean Linda G. Steckley and Assistant Dean Cynthia L. Rold. Richard Salem '72, president of the Law Alumni Association, also made the trip.

Weeks after the event, the Law School is still basking in the afterglow. Bodager, who co-organized the weekend with Ulburghs, ran into Dean David Van Zandt of Northwestern University at the American Association of Law Schools meeting in Washington, D.C. in January. Van Zandt, who had recently been in Brussels himself, told Bodager everyone in Europe seems to be talking about Duke Law School and its growing influence in the global legal issues arena.

With over 500 alumni living overseas in nearly 40 different countries, Duke Law School alumni are the most dispersed alumni of any university. That reputation, and the growing interest in studying international and corporate law, puts Duke Law School in an enviable position as a major player in global legal studies, attracting the most distinguished international lawyers to enroll in its program.

When the international law studies program began 15 years ago, a handful of students were admitted each year. But in the past few years, that number has increased to 50 openings available to the more than 600 who applied last year.

Bodager says he expects the demand for international legal programs will only increase as the world begins to think globally. International lawyers are coming to Duke to learn the ins and outs of U.S. corporate law. Attracting international students means Duke Law students also have the chance to establish an international network as the Law School brings the world to its Durham campus.

In addition to an impressive keynote speech on Duke's role in the global community, delivered by Dean Gann, Professor Lange and Michael D. Weisberg '97 presented a film, produced solely for the conference, that creatively explored how technology is providing a virtual classroom where students around the world can use internet tools, such as web pages, to obtain course information and

From left, Natalie Ulburghs '91 and Arlette Ducoq, assistant to Thomas Irving '77 of the firm Finnegan, Henderson, Farabow, Garrett & Dunner in Brussels, helped Alumni Relations Director Brad Bodager in planning the November reunion.

participate in class work. An alumni panel, moderated by Professor Lange, discussed the film afterward.

Professor William Van Alstyne, during a luncheon speech, talked about the differences in constitutional law paradigms from the various countries represented by alumni. LAA President Salem, who impressed everyone by making the long trip, also addressed the group. Other presentations included an interactive discussion led by Assistant Dean of Admissions Cynthia L. Rold entitled "Positioning Duke University School of Law for the 21st Century: Competitiveness in Recruitment and Placement of International Law Students."

Besides being able to see classmates face-to-face for the first time in years, the alumni reveled in the weekend's slate of exquisite events staged amid breath-taking Brussels landmarks. Saturday's conference concluded with a gala reception, dinner and dancing at the spectacular castle "Chateau de la Hulpe." Earlier that day, attendees were invited to tour the Belgian Senate and the Flemish House of Parliament, and the weekend's social agenda ended with a farewell champagne brunch.

Ulburghs says she'd like to see this event become a regular gathering for alumni. Although she's quick to admit the expense is prohibitive, she's confident those who attended left with plenty of wonderful experiences to help sway them when the next alumni weekend is held, hopefully in two years.

In addition to it presence in Brussels this past November, the Law School will offer the Duke-Geneva Summer Institute in Transnational Law in conjunction with the University of Geneva Faculty of Law as well as its Hong Kong Institute. A broad selection of fully accredited courses will be offered to students interested in adding international law courses to their curriculum schedule during the summer.

Widow of Clyfford Goodman Scott '32 Honors His Memory with an Endowment to the Law School

Mrs. Lois Scott, wife of Clyfford Goodman Scott '32 who passed away in December of 1995, established an endowed scholarship at Duke Law School in honor of her late husband. Mr. Scott had a long and distinguished career with the U.S. Department of Agriculture. The couple were married for 70 years and maintained affectionate ties with the Law School.

Mrs. Scott attended the fall Barristers' weekend festivities and related that she had a connection with Frank Hunger '65, because she taught his late wife, Nancy (the sister of Vice President Al Gore) in grammar school.

Associate Dean Linda Steckley said Mrs. Scott was a pleasure to work with in arranging the endowment. "She took such obvious joy in giving to the Law School," Steckley says. "The process of giving was important to her after the loss of her husband. She views her gift to the Law School as a continuation of the accomplishments of Scott's life."

Mrs. Lois Scott remembers when Vice President Al Gore was born. She taught his sister, Nancy, in the 5th grade. Here, she's with Dean Gann at the Barristers' weekend dinner.

For David DeMar, the race is not always to the swift

By Mirinda J. Kossoff

MELANIE DEMAR

David J. DeMar '87, center, credits his volunteers, Mark and Rick, with getting him across the finish line of the New York City Marathon. DeMar wore his bronze medal to bed the night after the race.

When David J. DeMar '87 achieved his life-long dream of running the New York City marathon this past November, he had one goal: to finish alive. For some, this goal might seem humorous, but for David it was serious. Diagnosed with multiple sclerosis in August of 1993, DeMar has had days when his legs would barely move, let alone allow him to run.

Early in 1993, DeMar first reported to his doctor that two fingers on his left hand were numb. The doctor didn't seem overly alarmed and diagnosed carpal tunnel syndrome, prescribing a wrist brace and anti-inflammatory drugs. DeMar thought he'd only temporarily have to give up practicing his beloved guitar. A few weeks later, he was standing on the subway platform waiting for his train when his legs buckled, and he slid to the floor. He attributed the episode to the heat and didn't think any more about it. It was shortly thereafter that, as DeMar puts it, "all hell broke loose." He was diagnosed with relapsing, remitting MS and hospitalized, a very sick man.

After a second hospitalization in July of 1994, DeMar began the long process of improving his strength and coordination. He fought crushing fatigue but forced himself to work as much as possible at his job as a court attorney for an acting justice of the Supreme Court of New York. "I've been very happy in my work," says DeMar. "In many ways, my colleagues have saved my life. Everyone has been supportive." DeMar's boss, Judge Efrain Alvarado, told him he would never have to worry about his job. "And he's lived up to that every minute since then," DeMar says.

When DeMar decided in 1995 that he wanted to run the marathon, his family and doctors were split about the idea. He had tried Beta Seron, one of the new MS "miracle drugs" that are supposed to dramatically alleviate symptoms, but he

had an adverse reaction. Ultimately, DeMar himself decided he felt good enough to make a go at the marathon.

His motivation to run the marathon went beyond personal fulfillment. He was on a mission to raise awareness of the crippling disease that strikes thousands of young adults every year and to raise money for MS research.

I can't imagine any experience, except maybe marriage and childbirth, that could ever top it.

DAVID DEMAR

From a "tiny, semi-delusional idea" that struck DeMar on a day off work, Marathon Strides Against MS was born. In 1993, DeMar heard about another marathoner, Paul Weiss, who ran to raise money for his brother, stricken with MS, so DeMar decided he would organize a more ambitious fund-raiser and enlist the backing of the Office of the National Multiple Sclerosis Society. He teamed up with Zoe Koplowitz, who has garnered national publicity for completing eight New York City Marathons despite her debilitating MS — finishing last year's run in 29 hours. Together, they generated publicity and excitement for the 1996 Marathon Strides Against MS. "I ran it because I still could, and I ran it for those who couldn't," DeMar says of the race. He accomplished his mission — helping raise nearly $100,000 for the cause and getting a full-page ad for the fund-raiser in *People Magazine*. Duke Law alumni from the classes of '86, '87, and '88 also chipped in as did friends, family and colleagues.

"One of the nicest things about the experience," DeMar says, "was hooking up with the Achilles Track Club for the Disabled." Achilles runners and walkers start the marathon at 8 a.m., a full two hours and 47 minutes before their fellow, able-bodied runners. The club also matches Achilles marathoners with volunteers who run with them to make sure they pace themselves and stay healthy during the run. DeMar was paired with two experienced runners who hadn't been able to get into the race through the lottery. The frosty morning of the race, DeMar's two volunteers weren't on the first Achilles bus. "Being the cynical New Yorker that I am, I figured they'd dumped me," DeMar admits, laughing. But they arrived on the second bus, their faces emblazoned with DeMar's name and wearing shirts that said "Go David."

After an uneventful beginning, DeMar hit the wall at the 59th Street Bridge 14 mile mark. "Whoever designed the course (which winds through all five of the city's boroughs) must have been a sadist," DeMar stresses. "The bridge is all up hill, so I walked it." In training, DeMar had only run 14 miles, and he still had 12 more to go. But after the agony of the 59th Street Bridge came the best part of the race: running onto First Avenue and the Upper East Side where enthusiastic crowds lined the course 10 rows deep. Because of his head start with the Achilles club, DeMar made First Avenue at about the same time as the leaders of the race, and thousands were there to cheer them on. "I got cheered by name for 40 blocks," DeMar says, his voice filled with wonder. "I can't imagine any experience, except maybe marriage and childbirth, that could ever top it. It was like being in the Olympics. My companions had to hold me back."

By mile 18, DeMar's earlier enthusiasm had flagged, along with his body. "I walked from the Bronx to Manhattan, he admits. "The last three to four miles of the run are in Central Park, and everyone is exhausted. The crowds bring you to the finish line, near Tavern on the Green. When I saw the finish line, I started screaming and raised my hands."

At the finish line, DeMar was handed a rose, a silver Mylar blanket and a bronze medal with the logo of the New York City Marathon. "I wore it to bed that night," DeMar says, sheepishly.

DeMar, Koplowitz and the team did a national TV program a few days before the marathon, and Koplowitz went on to appear on the Rosie O'Donnell Show after the race.

DeMar credits his volunteers, Mark and Rick, with getting him across the finish line. "I couldn't have done the race without them. I was dying the last three miles, but they got me through it. They spent all seven hours, two minutes and 40 seconds with me."

Now, DeMar wants to organize Marathon Strides fundraisers at all the major races. He gives much of the credit for the success of Marathon Strides to Richard Mauch, director of event marketing for the New York City office of the National MS Society. "He didn't run the marathon," DeMar says of Mauch, "but he certainly put in the organizational effort worthy of a marathon."

For follow-up, DeMar says he's already planning how to shave an hour off his time next year. He says he's feeling pretty good right now, though losing the ability to play his guitar has been one heartbreak among many. He's starting a new drug treatment, and he's hopeful.

Supporting the Democratization of Africa

Julius Nyang'oro '90

By Laura Ertel

"I don't buy the idea that elections, by themselves, are enough to make a system democratic," states Julius Nyang'oro '90, professor and chairman of African and African-American Studies at the University of North Carolina at Chapel Hill (UNC-CH). "Elections can always be rigged, even if you have multi-party politics. In the 1992 Kenyan elections, for example, there were at least five parties vying for leadership, and yet the ruling party — led by the president — rigged the election. Even then, he still claimed that the process was democratic."

Nyang'oro, a native of Tanzania and an expert on African politics and economics, has been studying the process of democratization in African countries as they transition from one-party states and military regimes to multi-party political systems. In October, Tanzania held multi-party elections for the first time in over 30 years. As part of his research, Nyang'oro attended and monitored these elections — as well as recent elections in Kenya. "I go on my own, or under the auspices of an international organization," he explains, "to ensure that people don't rig the elections."

What are the critical ingredients for creating a true democracy? "Free choice — which doesn't exist in many of these African countries — is one factor," says Nyang'oro. "Opposing parties must have equal opportunity to contest. If the ruling party has control of the state's resources and can intimidate everyone else, that's not equal access. And if people are afraid to join the opposition because their jobs will be in danger — particularly because they are not quite sure how they will feed their families tomorrow — this is not free choice."

He also cites the need for "a strong civil society: groups in society that are able to resist government pressure and allow for a much more open and democratic system to operate, including electing local officials." The fact that these groups do not exist in many countries, he explains, "undermines the whole idea of elections being an avenue for democratic change." Finally, Nyang'oro believes that democracy cannot work when people are starving. "When people are too busy trying to survive, they can't be responsive to particular government policies."

"In the final analysis," he summarizes, "political liberalism — opening up the political system for participation by many more people than before — must be accompanied by economic reform that allows for the participation of more people in the formal sector of the economy. Economic liberalism and political liberalism are two sides of the same coin."

After earning an undergraduate degree at the University of Dar Es Salaam in Tanzania, Nyang'oro came to the United States in 1978 to earn his master's and doctoral degrees in political science at Miami University of Ohio. Following a two year research fellowship at UNC-CH he decided to go to law school, "more for the academic interest, since I wasn't

interested in actually practicing law." He chose Duke for its national reputation and the international programs available.

"My first summer of law school, I went to Denmark on Duke's international law program. Part of my fond memories of Duke were the international faculty and students there — from Japan, Denmark, the United States, England. It was very rewarding and gratifying. I'll always love Duke for giving me the opportunity to spend time with all those diverse people doing wonderful things."

Nyang'oro credits his studies at Duke Law School for broadening his interests. "Earlier on my interests were narrowly focused on political development in Africa, but after Duke I became more interested, for example, in issues concerning the environment. Since then I've conducted some research at the UN Environmental Program out in Nairobi, Kenya, which I would not have done if not for Duke." In January 1995, Nyang'oro was invited to Eritrea, a new country that just gained independence from Ethiopia after three decades of fighting, as part of an international delegation enlisted to help draft a constitution. He cites his Duke Law education as one of the reasons he was given the opportunity.

After earning his J.D. in 1990, Nyang'oro immediately returned to UNC-CH as director of the African-American Research Institute, and in 1992 he was appointed chairman of African and African-American Studies. He believes that staying in the United States offers more professional opportunities than moving back to Tanzania. "It's easier to do research in the U.S. When I was graduating from Duke, the political and economic situation in many parts of Africa was very uncertain. UNC provided an opportunity for me to excel personally and professionally." Plus, says Nyang'oro, who feels safe and comfortable living in Durham, "I can go back and forth to Africa without having to worry that someone will break into my house!"

As chairman, Nyang'oro manages a curriculum that offers undergraduate degrees in both African studies and African-American studies and is planning a graduate program, either independently or in collaboration with other departments. In addition to the administrative duties of running a program with at least 10 tenured or tenure-track faculty and several visiting graduate students, he teaches a general survey course on Africa, regional courses on Southern and East Africa and a course on contemporary African policy problems. He has also written books on capitalist development in Africa and a collection of essays that looked at the nature of the state and political organization as the basis for social mobilization.

Nyang'oro acknowledges that these are dramatic times for African politics and economics. "Right now, for the first time, there's not one African country that denies the need to have many parties as the basis for organizing elections and politics. This is a dramatic change from Africa in the 1960s, 70s and 80s when the basic mode of change of government was either military coup or one party carrying out a plebiscite of sorts." With his expertise, Nyang'oro is in a position not only to aid in the democratization process but also to help his students understand the magnitude of the events as they unfold.

Paul A. Brathwaite Given University Service Award

Paul A. Brathwaite '96 was presented the 1996 William J. Griffith University Service Award at ceremonies during graduation weekend in May. Brathwaite earned a masters degree in public policy at Duke's Sanford Institute in 1993 before attending the Law School. He was actively involved with the Graduate and Professional Student Council and served on the Duke University Union Board as well as several committees. He was also a resident advisor in an upperclass dormitory and member of the Provost Search Committee during the 1993-94 school year.

At the Law School, he was a member of the Deans' Advisory Council and managed the budget of the Black Law Students Association as treasurer as well as being elected treasurer of the student body, managing a budget exceeding $40,000. During his last year of Law School, he was chosen for membership in the Braxton Craven Inn of Court Society, a group of students and alumni interested in promoting ethics and professionalism in the practice of law.

In her nomination letter, Dean Susan Sockwell said of Brathwaite, "I think it's rare to find a professional school student who has offered such sustained and varied service to the central university, and I am quite proud to count Mr. Brathwaite among the law student population. He is a person of excellent character, generous spirit, surprising modesty and quiet intellect."

Most recently, Brathwaite was working in Washington, D.C. in the general counsel's office of the Department of Transportation. He's in an honors program that requires him to rotate every four months to work in a different division.

Barristers' Weekend Festivities

Three Washington powerhouses share a light moment at the fall Barristers' weekend festivities. From left, Frank Hunger '65, Walter Dellinger and Ken Starr '73.

Barrister Colleagues

1995-1996

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Ken Starr '73 is the first chair of the Barrister Colleagues, alumni who have contributed $5,000 or more to the Law School. Starr spoke at the October Barristers' Weekend and attended a formal dinner honoring the Barrister Colleagues at historic Ayr Mount Plantation.

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Michael L. Miller '66
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Jon Carl Yergler '79

Gerald B. Tjoflat '57 Awarded Fordham-Stein Prize in Ceremonies in New York

Judge Gerald B. Tjoflat '57 (11th Cir.) was awarded the 21st annual Fordham-Stein Prize at ceremonies in New York last October. The prize, a Tiffany sculpture, was presented by Justice Byron R. White. The Fordham University Law School annually gives the prize to a member of the legal profession whose work exemplifies the highest standards of professional conduct, promotes the advancement of justice and brings credit to the profession by emphasizing in the public mind the contribution of lawyers to society and to the democratic system.

Retired Supreme Court Justice Byron White, left, presented the Fordham-Stein prize to Judge Gerald Tjoflat '57 at a dinner on October 31, 1996 in New York. William P. Frank, Esq., president of the Fordham Law Alumni Association, is on the right.

A number of Duke Law alumni attended the ceremony to honor Tjoflat: William H. Adams, III, Robert Beber, B. Richard Burdman, Louis T. Gallo, Kenneth A. Janello, Eugene C. O'Leary, Herbert S. Savitt, Gary S. Stein, Anita L. Terry, and Lamar Winegeart, III. Professor Melvin G. Shimm also attended.

In supporting his nomination for the award, Tjoflat's fellow judges on the 11th Circuit wrote, "his energy and devotion to the realization of the rule of law through the administration of justice and through leadership in his community are demonstrated in his work as a lawyer, judge and judicial administrator...When Judge Tjoflat became Chief Judge of the 11th Circuit, [he] proved to be one of the rare individuals who could lead a federal circuit through sheer force of untiring energy, engaging personality and powerful intellect...Even in a group as diverse (and independently-minded) as the 11th Circuit, [he] is universally revered as an outstanding example of all that a chief judge should be."

Past recipients of the prize include U.S. Supreme Court Justice Sandra Day O'Connor, former Chief Justice Warren Burger, Secretary of State Warren Christopher, former U.S. Attorney General Edward Levi, former U.S. Solicitor General Archibald Cox and former presidential counsel, Lloyd Cutler.

1950

W. Warren Cole, Jr. has retired from the active practice of law effective December 31, 1996. He will assume "of counsel" status at his firm, Cobb, Cole & Bell, Daytona Beach, Florida where he was partner.

1954

Paul Hardin III, former chancellor of the University of North Carolina at Chapel Hill, is the interim successor to J. Claude Bennett, president of the University of Alabama at Birmingham. Hardin has also served as president of Drew University, Southern Methodist University and Wofford College. He is a trustee of Duke University.

James F. Young, a partner with Fox, Rothschild, O'Brien & Frankel, of Radnor, Pennsylvania, recently received one of two 1996 Scout Mariner Awards from the Sea Explorers. Young, whose practice includes maritime law, is active with Delaware Bay and River maritime associations, is a member of the Permanent Advisory Board of Tulane Admiralty Law Institute and advisory editor of the *Tulane Maritime Law Journal.*

1955

Robert M. Frisch, a partner with Seiffert & Frisch in North Brunswick, New Jersey, and past chairman of the Real Property, Probate and Tax Law Section of the New Jersey State Bar Association, spoke at a seminar offered by the New Jersey Bar Foundation on the subject of wills and estate planning. Frisch specializes in wills, trusts and estate, probate and real estate law.

1958

William H. Grigg, chairman and chief executive officer of Duke Power Co., has been named as a director of Coltec Industries and will serve on the compensation and audit committee. Coltec Industries is a diversified manufacturing company serving primarily aerospace and general industrial markets.

1960

Maynard F. Swanson, Jr. was unopposed and won automatic re-election as Pasco-Pinellas Circuit Judge. He has been a judge in Pinellas and Pasco counties for over 20 years and has never faced opposition in an election. He currently handles civil and probate cases at the Pasco County Courthouse and criminal and juvenile cases in St. Petersburg, Clearwater and New Port Richey, Florida. He was a lawyer for 12 years before running for county court judge in 1972.

1962

Reunion Chair: Charles Verrill

William K. West, Jr. is in an administrative position with the title of managing partner in the new Washington, D. C. firm formed by the merger of Cushman, Darby & Cushman and Pillsbury, Madison & Sutro, L.L.P. West has concentrated on patent litigation for 35 years.

1963

Roger Decker retired from the practice of law on September 30, 1996. He was with the firm of Helsell Fetterman in Bellevue, Washington.

Allen G. Siegel '60 Honored by Jewish Social Service Agency

Allen G. Siegel '60, a senior partner in the Washington, D.C. firm of Arent, Fox, Kintner, Plotkin & Kahn, received the Jewish Social Service Agency's (JSSA) Jac J. Lehrman-George M. Pikser Award in November. The award is presented each year to a professional or volunteer in recognition of outstanding contributions to the betterment of the community. Siegel has been JSSA's pro bono legal counsel for many years and established the Jeanette Siegel Memorial Scholarship Fund at JSSA in memory of his mother.

1964

Kenneth G. Biehn's professional career was profiled in a May edition of *The Legal Intelligencer.* He has been president judge in Bucks County since 1993, appointed common pleas judge in 1979.

Charles A. Powell, III has been named a founding fellow and governor of the College of Labor and Employment Lawyers. The College, headquartered in Washington, D.C., was established to promote excellence in the practice. Powell is a partner in the Birmingham, Alabama firm of Johnston, Barton, Proctor and Powell. He specializes in labor and employment law, coal law and civil litigation.

1966

James B. Maxwell was selected as the Sporting Goods Manufacturers Association's Hero from North Carolina. Maxwell was named North Carolina's winner for his "unique commitment and humanitarian spirit" and the contribution he has made to his community. Maxwell, a partner in Maxwell, Freeman & Bowman, P.A. in Durham, has been Jordan High School's swimming coach for 20 years and has been involved in coaching swimming in Durham for 30 years.

1967

Robert G. M. Keating, who served as administrative judge in the Criminal Court of the City of New York and the 2nd Judicial Supreme Court for the State of New York, announced in March that he will resign to join Complete Management, Inc. as senior executive vice president in charge of the Medical/Legal Practice Management Business. Complete Management offers management and support services to medical practice groups and hospitals in the New York metropolitan area, with a particular specialty in injury related cases.

Christine M. Durham '71 Recognized with Murphy Award

Christine M. Durham '71 received the Duke Law School 1996 Charles S. Murphy award, established to recognize alumni who exemplify public service and/or dedication to education. Durham has served since 1981 as justice of the Utah Supreme Court and was a founding member and president of the National Association of Women Judges. She was co-organizer of Women Lawyers of Utah in 1980 and was that group's Woman of the Year in 1986. She is also a Duke Trustee.

1968

Donald B. Brooks, Atlanta real estate veteran, has been named chief executive of Beacon Properties Southeast, one of the nation's leading office real estate investment trusts. Brooks will manage portfolios, search out acquisitions and spearhead the development of new projects.

Donald H. Messinger has been elected to the seven-member Management Committee of Thompson, Hine & Flory in Cleveland, Ohio. Messinger focuses his practice on matters of public and closely held businesses, mergers and acquisitions, tax-exempt finance, nonprofit corporations, public finance and leveraged buyouts.

Marlin M. Volz, Jr. was promoted to senior vice president in the Investment Management and Trust division of Norwest Bank Iowa, N.A. A specialist in estate planning and retirement law, he is also the general author for the 3rd revision of the first three volumes of *Iowa Practice,* published this year by West Publishing.

1971

John R. Ball has been named president and chief executive officer of Pennsylvania Hospital. He has served as acting chief executive since December 1995. In his role, he will oversee the hospital's three operating divisions and will direct the organization's other corporate entities.

David L. Sigler, a director of The Gray Law Firm, Lake Charles, Louisiana, was elected chair of the Trusts, Estates, Probate & Immovable Property Law Section of the Louisiana State Bar Association at its annual meeting in June 1996. In addition to his work in estate planning, trusts and probate, Sigler practices in the areas of taxation, business planning, and commercial law.

1972

Reunion Chair: Michael Tanchum

Cary A. Moomjian, Jr., vice president and general counsel for Santa Fe International Corp., Dallas, Texas, was named the 1996 Contractor of the Year by the International Association of Drilling Contractors (IADC) and Reed Tool Company. Throughout his 20-year career with Santa Fe International, he has served in various IADC positions and is well respected as an expert in industry legal issues. On behalf of Moomjian, Reed will provide a $2,500 scholarship, split between Occidental College in Los Angeles and Duke University School of Law.

1973

Carl H. Fridy, partner and head of the commercial bank transactional practice at Ballard, Spahr, Andrews & Ingersoll in Philadelphia, has been elected as a fellow of the American College of Commercial Finance Lawyers, an honorary organization of attorneys nationally recognized as outstanding experts in the field.

S. Ward Greene, partner and president of Greene & Markley, in Portland, Oregon, is the newly elected treasurer of the Multnomah Bar Association. Greene's practice areas include business reorganization, bankruptcy, commercial litigation, employment law and real estate.

1974

Rory Robert Olsen has announced that he is a candidate for the Republican nomination for Judge of Probate Court Number Three of Harris County, Texas. The primary will be in March 1998.

Ira Sandron, U. S. immigration judge, spoke on a panel on illegal immigration and political asylum at the 21st Annual Convention of the Hispanic National Bar Association, co-sponsored by the Cuban American Bar Association, in Miami Beach, Florida, on October 4, 1996.

Thomas C. Stevens, former managing partner with Thompson, Hine & Flory, joined KeyCorp in Cleveland, Ohio, as executive vice president, general counsel and secretary. In the position, he will be a member of the Management Committee and will help lead one of the nation's largest bank holding companies.

Rhyne Award Acknowledges Neil Williams, Jr. '61

Neil Williams, Jr. '61 was honored as the 1996 recipient of the Charles S. Rhyne Award, established by Duke Law School to recognize alumni who have made signficant contributions to public service and community activities. Williams is managing partner of Alston & Bird in Atlanta and has served on the boards of National Data Corp., Printpack Inc., the Carter Center and two major symphonies. He has served on the Law School Board of Visitors and as president of the Law Alumni Association and was chairman of the Duke Trustees.

1975

Albert A. Skwiertz, Jr., has been elected senior vice president of Alexander & Alexander in New York, a company that provides professional risk management consulting, insurance brokerage and human resource consulting services from offices in more than 80 countries. Skwiertz practices in the areas of insurance, litigation, general corporate law and management.

1976

Yvonne Mims Evans, district court judge, Mecklenburg District Court, Charlotte, North Carolina was honored for her accomplishments by The North Carolina Association of Black Lawyers, Charlotte Chapter.

1977

Reunion Chair: Steven Rhudy

Lauren E. Jones was recently elected vice president of the Rhode Island Bar Association. The principal of the Providence law firm Jones Associates, where his practice is concentrated in appellate law, Jones has been active in the Bar Association's House of Delegates and Executive Committee. He has served as editor in chief of the *Rhode Island Bar Journal* for six years.

George C. Leef, president of Patrick Henry Associates in East Lansing, Michigan, recently advocated the repeal of the Unauthorized Practice of Law statute. He was working with a Michigan state senator and, while working on the bill, debated the president of the State Bar of Michigan and the Ingham County Bar Association and drafted an essay on the subject which appeared in *Regulation*, and in an abbreviated version, in *Administrative Law Quarterly.*

Roberto M. Pineiro has been appointed circuit court judge in Dade County, Florida. Previously, he was associate administrative judge of the County Court's traffic division.

Richard W. Scott has been elected vice chairman for investments and legal operations at Western National Corporation in Houston, Texas. He was previously executive vice president, general counsel and chief investment officer at Western National, the parent of Western National Life Insurance.

1978

William B. Bunn, III, director of health, workers' compensation, disability and safety at Navistar International Transportation Corporation, Chicago, is the new secretary of the American College of Occupational and Environmental Medicine (ACOEM), an international organization of 7,000 occupational medicine physicians. Before joining Navistar, he was director of international medical services for Mobile Corporation, Princeton, New Jersey. He is also clinical professor of environmental and occupational health at the University of Cincinnati and University of Colorado schools of medicine.

David C. Kohler was promoted to senior vice president and general counsel for the CNN news group at Turner Broadcasting in Atlanta. He will be responsible for oversight of the legal work relating to the CNN News Group, including CNN, CNN Headline News, CNN International, CNNfn (the financial network), the new networks — CNN/SI (the sports news network) and CNN en Español (the Spanish network), CNN Interactive and the many new CNN businesses. Kohler most recently served as assistant vice president and deputy general counsel in the TBS corporate legal department.

Samuel Mason of Bryn Mawr, Pennsylvania, has been named chair of the business and personal counseling department of the Philadelphia law firm of Montgomery, McCracken, Walker & Rhoads. The department has been consolidated to include 45 attorneys practicing in the areas of bankruptcy and reorganization, business advice and transactions, estates and trusts, health care and nonprofit, real estate, taxation and employee benefits. Mason's practice emphasizes mergers and acquisitions and financing transactions.

Christopher G. Sawyer has been named chairman of the Trust for Public Land (TPL), a national nonprofit land conservation organization. Sawyer, a partner with Alston & Bird in Atlanta, is TPL's first chairman from outside the San Francisco area and has served on its national board since 1993. He is founder of TPL's Georgia Advisory Board and has been active in several advisory boards and associations in Georgia and North Carolina. In addition to his national responsibilities as chairman, he works closely with TPL's Southeast Region promoting such projects as the expansion of recreation areas and historic sites in an effort to protect watershed and recreational lands. TPL's mission is to create community assets such as scenic and recreational areas, historic landmarks, green ways, community gardens and playgrounds.

Rodney Smolla, a member of the faculty at William & Mary's Marshall-Wythe School of Law, has received the Silver Gavel Award for his work as editor of the book, *A Year in the Life of the Supreme Court.* These awards are bestowed by the American Bar Association in recognition of excellence by diverse communications media, in arts and letters as well as journalism, for increasing public understanding of the law and the American legal system.

1979

Denise L. Majette, judge of the Dekalb State Court in Decatur, Georgia, has completed the *Conducting the Trial* course held in February, 1996 at the National Judicial College in Reno, Nevada. The one-week course is designed to help judges move cases more efficiently through the court system. Judge Majette has served on the Dekalb State Court since June 1993.

HEIMERICK G. JANSEN

November 21, 1962 to August 28, 1996

BY JUDITH A. HOROWITZ

Rick Jansen, LLM '88, died in Moscow in August. He was with Baker & McKenzie's Moscow office, primarily handling legal work for Dutch companies doing business in Russia. He touched profoundly the lives of everyone who knew and loved him, and he will be greatly missed.

Rick was born in the small village of Bathman in the Netherlands and studied law at the University of Amsterdam before coming to Duke. He also practiced with a Dutch law firm in Rotterdam and after that in the Brussels office of McGuire Woods.

Rick's many friends around the world would most likely agree that the highlight of his life was his two-year United Nations assignment in Mongolia where he directed and assisted United Nations development projects in Mongolia and neighboring countries. During that time, he had a broad range of responsibilities: he served as a legal consultant to the government of Uzbekistan in the implementation of its first privatization program, organized a training course for forty Mongolian judges in the Netherlands and supplied a needs assessment for the legal sector that resulted in an increase in the number of Mongolian lawyers sent to study abroad.

Before he left Ulaanbaatar, Rick performed another feat, this time for Duke. He had identified three outstanding Mongolians to send to the new Duke summer law program in Hong Kong but received negative responses from many aid-granting foundations with offices in Ulaanbatar. Still, he persisted. Shortly before the Hong Kong program was due to begin, he convinced Asian Development Bank officials in Ulaanbaatar to help sponsor the three Mongolian participants.

Rick clearly felt great attachment to Mongolia and its people. Before taking up his new position in Moscow, he stopped for a few days at the Duke summer program in Hong Kong to see Duke friends and look in on his Mongolian students. Although he was not shy about describing the physical hardships of living in Mongolia, his zest for new experiences and his fondness for the country were always apparent. His descriptions of his life and work in Moscow were vivid but not as engaging as those that came from his stay in Mongolia. At one point, Rick wrote that he hoped one day to merge his interests and become "a development lawyer specialized in legal systems in transition." Only days before his death, he was under consideration for an appointment to participate in a legal reform project in Central Asia.

Eight years ago, in the personal statement accompanying his application to the LLM program at Duke, Rick wrote: "Always look at the bright side of life. This slogan fits like no other with my philosophy of life. I'm a positive thinking human being 'to the backbone.' Thinking positively is one of the biggest sources of inspiration to me. Belief in one's self and the things one stands for can be derived directly from this attitude to life.... To me, it's a challenge to find out how far one can go, till one reaches the limits of one's potential."

Rick did not live long enough to experience life as completely as he, his family and many friends would have wished. Nevertheless he lived his three decades with grace, joy, zest and optimism.

*"We cannot direct the wind... but we can adjust the sails."**

Rick Jansen '88 didn't mind the hardships of his two years in Mongolia. This photo was taken in Moscow in January 1996, a few months before his death.

**From a caption over an electronic message Rick distributed to friends and family around the world a few days before his death*

1980

Shirley L. Fulton, superior court judge, Mecklenburg County, Charlotte, North Carolina, was honored for her accomplishments by The North Carolina Association of Black Lawyers, Charlotte Chapter.

1981

Ben Burke Howell, a partner in the business & finance department of Reed, Smith, Shaw & McClay's Philadelphia office, has been elected a member of the Board of Trustees of Thomas Jefferson University, an academic health center which includes one of the largest private medical schools in the United States and one of the largest hospitals in the Philadelphia area.

1982

Reunion Chair: Patricia Casey

Richard F. Hofstetter took eight months off from his full-time law practice in Indianapolis to travel, work and finish a book that had been 15 years in the making. *Möbius* is a unique perspective on environmental, anthropological and socio-biological thinking. Hofstetter said it deals with "the peculiar process we call 'life,' of the world's environment, and of the role we humans play as the Earth's dominant species." The book is being published by Vantage Press and will be released in the spring of 1997.

Julian E. Whitehurst, a partner at Lowndes, Drosdick, Doster, Kantor & Reed, P. A., recently was appointed to the City of Orlando Community and Youth Services Board. A member of the ABA Committee on Commercial Leasing and Subcommittee on Environmental Issues, Whitehurst is also a member of the Downtown Orlando Partnership. He practices in the areas of real estate and contract law.

1983

Ruth Cohen Hammer is co-chair of the membership committee for the Durham County Bar Association. Hammer is with the firm of Roberti, Wittenberg, Holtkamp & Lauffer in Durham, North Carolina.

1984

Arthur Coleman has been named senior policy advisor to the Assistant Secretary for Civil Rights in the U.S. Department of Education. He also teaches education law as an adjunct professor at American University's Washington College of Law.

Helen Nelson Grant has been elected chair of the board of trustees of Columbia College of South Carolina for 1996-1998. Grant is the youngest person and the first African-American to serve as chair of the board of the 142-year-old liberal arts college for women. Grant received a B.A. degree in history and public affairs from Columbia College before entering Duke Law School. She is a partner in the law firm of Gergel, Burnette, Nickles, Grant and Leclair, P.A., and her practice focuses primarily on employment law.

Steven P. Natko, is senior counsel to the Public Finance Group of Financial Guaranty Insurance Company, a wholly-owned subsidiary of General Electric Capital Corporation, located in New York City. FGIC is a leading insurer of debt securities, including municipal bonds and securities backed by mortgages and other financial assets. Previously, Natko was a partner with the Trenton, New Jersey law firm of McManimon & Scotland.

Peter G. Verniero, former chief counsel for the governor of New Jersey in Trenton, has become the state's attorney general. In this position, he is responsible for the day-to-day operations of the Department of Law and Public Safety, including the Division of Motor Vehicles and the New Jersey State Police.

1985

Janet Ward Black was named chair of the North Carolina Bar Association's Litigation Section. She was also elected president of the Presbyterian Counseling Center in Greensboro, N.C., an organization sponsored by 14 Guilford County Presbyterian churches. A partner with Donaldson & Horsley, P.A. in Greensboro, she specializes in personal injury law and product liability.

Grant B. Osborne, a partner in the McGuire, Wood & Bissette firm of Asheville, North Carolina is one of several community leaders who has completed a year-long program called Leadership Asheville. Begun in 1982, the program is a source of new ideas and new leaders for the area.

Bellanne M. Toren has been elected vice president, legal, of Triton Energy Limited in Dallas, Texas. She is responsible for international oil and gas contracts and negotiations. Triton is an international oil and gas exploration company primarily focused on high-potential prospects around the world.

1986

Brent S. Franzel, former staff director, Subcommittee on International Finance, Senate Committee on Banking, Housing and Urban Affairs, and legislative counsel to Senator Christopher S. Bond, has joined the firm of Tighe, Patton, Tabackman & Babbin, L.L.P., in Washington, D. C. as a partner. He will practice in the areas of international trade and government relations.

Jeffrey T. Lawyer, a partner at Petree Stockton, L.L.P. in Raleigh, North Carolina, has been elected to the Tax Section Council of the North Carolina Bar Association. He practices law in the areas of tax and general business and is a frequent lecturer and writer on taxation law.

Richard H. Seamon, now with the Office of the Solicitor General, Department of Justice, Washington, D. C. has accepted a position on the law faculty at the University of South Carolina, where he will teach constitutional law, criminal procedure and administrative law.

Lisa D. Taylor has joined the Roseland, New Jersey firm of Hannoch Weisman as a director. She concentrates her practice in the area of health care law.

1987

Reunion Chair: Tom Vitt

Timothy R. Johnson, regional employee relations manager for Telecommunications, Inc. (TCI) in San Jose, California has been selected as a Walter Kritz Foundation Fellow for 1997. The purpose of the Kritz Foundation is to increase the presence of minority managers in the telecommunications industry.

Stephanie A. Lucie has been elected president of the Houston Young Lawyers Association and has been named group counsel, technology and corporate development, at Compaq Computer Corporation. Lucie specializes in securities compliance and corporate law.

Jonathan Shapiro has become a director in the firm of Moon, Moss, McGill & Bachelder, P. A. in Portland, Maine. Shapiro's specialties include public and private labor law, employment law and litigation.

Alan D. Wingfield was named a partner in the litigation department of Mays & Valentine, L.L.P. in Richmond, Virginia. Wingfield specializes in business and commercial law.

Dean Gann Doubles Duke Law Scholarship Endowment

Dean Pamela B. Gann '73 has doubled her endowed scholarship fund at Duke Law School. Joining her in establishing new scholarships were:

Patricia Eastwood Robbins and family members —
the H. Haywood Robbins Scholarship in memory of H. Haywood Robbins '32

Stanley A. Star '61 —
the Star Law Scholarship Endowment

friends and colleagues of Brian Stone '63, in his memory —
the Brian Stone Endowed Scholarship Fund

former students and friends of Professor Melvin Shimm who retired in 1996 —
the Melvin Shimm Endowed Scholarship.

1988

Kodwo P. Ghartey-Tagoe has joined the adjunct faculty of the University of Richmond, T.C. Williams School of Law in Richmond, Virginia where he teaches a seminar entitled "Regulated Industries." Ghartey-Tagoe is co-chair of the ABA's Subcommittee on African Trade and Investment and serves on the African Law Committee.

Marc E. Golden won $16,284 on the game show "Debt" during college week last July, beating out competitors from Yale and Pepperdine. The show recently aired on the "Lifetime" channel.

John H. Kongable has been reassigned as deputy staff judge advocate, Second Air Force, at Keesler Air Force Base, Mississippi. Major Kongable has been stationed at various bases throughout the United States and in Washington, D. C.

Michael P. Scharf, an associate professor at the New England School of Law and director of the Center for International Law & Policy, has a forthcoming book to be published by Carolina Academic Press: *Balkan Justice: The Story Behind the First International War Crimes Trial Since Nuremberg.* Scharf recently appeared on "Court TV" as the expert commentator for the coverage of the war crimes trials at the Hague.

Robert Zipp joined Venture Law Group in February 1996. He does corporate work for private and public companies, financing, mergers and acquisitions. Zipp was formerly a corporate associate with the Houston firm of Porter & Hedges, then joined the Palo Alto office of Brobeck, Phleger & Harrison before moving to the Venture Law Group.

1989

Carla L. Brown of the firm of Honigman, Miller, Schwartz & Cohn in West Palm Beach, Florida, has received the 1995 Consumer Law Award presented by the Legal Aid Society of Palm Beach County and the Palm Beach County and South Palm Beach County Bar Associations — in recognition of her continuing pro bono service to the citizens of Palm Beach County.

Sean Callinicos has been appointed general counsel to U.S. Senator Lauch Faircloth (R-NC). Previously, Callinicos served as chief counsel for the U.S. Senate Subcommittee on Clean Air, Wetlands, Private Property and Nuclear Safety, chaired by Senator Faircloth.

Richard N. Cook has been hired by Kimley-Horn and Associates, Inc., an engineering, planning, and environmental consulting firm, as corporate counsel in the Raleigh, North Carolina, office. Cook was previously with the firm of Maupin, Taylor, Ellis & Adams.

Robert M. Howard has been named a partner at Latham & Watkins, the nation's fifth largest law firm. Howard is in the firm's Los Angeles office and specializes in environmental law.

Wendy Sartory Link has joined five other attorneys to form the firm of Ackerman, Link & Sartory, P. A. in West Palm Beach, Florida. Link is the managing partner of the new firm, which concentrates its practice in the areas of securities litigation, commercial litigation and banking and commercial real estate transactions.

Debra M. Parrish has become a member of the firm of Titus & McConomy in Pittsburgh, Pennsylvania. She concentrates in the areas of health care and intellectual property, with a particular interest in science law.

Gary S. Qualls has been named a partner in the firm of Petree Stockton, LLP, one of North Carolina's oldest and largest law firms with offices in Charlotte, Raleigh and Winston-Salem. Qualls practices in the Raleigh office and specializes in health care law, trial and appellate litigation and administrative law.

Matthew W. Sawchak has been named a partner in the firm of Smith, Helms, Mulliss & Moore in Raleigh, North Carolina.

Paul K. Sun, Jr. has been named a partner in the firm of Smith, Helms, Mulliss & Moore in Raleigh, North Carolina.

1990

Sally J. McDonald has been elected the new chair of the Young Lawyers Section of the Chicago Bar Association. A Rudnick & Wolfe associate specializing in labor and employment law, McDonald hopes to unite the YLS membership in reaching common goals, while serving both the profession and the community.

Anthony D. Taibi is now with the firm of Twiggs, Abrams, Strickland and Trehy in Raleigh, North Carolina. Taibi was most recently a professor at the University of Illinois at Urbana-Champaign and an attorney with Kutak Rock in Atlanta, Georgia, specializing in banking law and finance.

Robert A. Van Kirk, a trial attorney with the U.S. Department of Justice, won a U.S. Supreme Court case concerning the First Amendment rights of independent government contractors. The case clarified that private contractors who do work for government officials have the right to criticize them publicly without fear of retribution.

1991

Spruell Driver, Jr. has joined the Nashville office of Baker, Donelson, Bearman & Caldwell, concentrating his practice in the areas of corporate, banking and real estate law. Prior to joining the firm, he was an attorney with Eastman Chemical Company in Kingsport, Tennessee.

E. Gary Spitko has joined the faculty (and Duke classmate Ron Krotoszynski) at the Indiana University School of Law at Indianapolis where he will be teaching trusts and estates, property and ADR. He was formerly an employment law associate with Paul, Hastings, Janofsky & Walker in Atlanta, Georgia.

1992

Reunion Chair: Jay Bilas

Lisa C. Evans has recently opened her own law practice in Philadelphia, Pennsylvania and southern New Jersey with a concentration in criminal law and real estate. Evans also teaches property transactions at Gloucester County College and is president-elect of the National Bar Association, Women Lawyer's Division, Philadelphia Chapter.

John D. Gardiner is senior counsel with America Online, Inc. working on AOL's international transactions and legal issues.

David J. Harter is now a partner in the law firm of Smith, Smith & Harter. The business opened on September 9, 1996 in Santa Ana, California. The firm's areas of practice include personal injury, estate planning, corporate transactional work, defense work, landlord/tenant issues, malpractice and commercial and business litigation.

Jonathan G. Lasley has become an associate with the firm of Stewart, Plant & Blumenthal, L.L.C. in Baltimore, Maryland. He was formerly legislative analyst with the Maryland General Assembly's Department of Fiscal Services and specializes in estate planning, trust law, estate and trust administration, federal income, estate and gift taxation and inheritance taxation.

Don R. Willett has left his employment law practice with Haynes and Boone in Austin, Texas and his position as senior fellow with the Texas Public Policy Foundation to join the policy office of Governor George W. Bush as director of research and special projects.

1993

Fritz L. Duda, Jr. has been hired as vice president of Hiffman Shaffer Associates, Inc. in Chicago. Hiffman Shaffer is a commercial real estate developer, broker and manager. Duda was formerly associated with the firm of Rudnick & Wolfe.

Bruce A. Elvin is practicing at Baker & McKenzie in New York. A specialist in taxation, he just returned from two years in Germany where he was a staff assistant in the University of Munich Law School's international tax department. He is a member of the International Fiscal Association and, in 1995-96, was editor of the *Tax Law Review*.

Jacqulynn Broughton Hugee is a law clerk for Chief Judge David A. Scholl of the United States Bankruptcy Court for the Eastern District of Pennsylvania.

Jennifer Ann Downs O'Shaughnessy is an associate at the law firm of Spencer, Fane, Britt and Brown in Kansas City, Missouri. O'Shaughnessy specializes in litigation and environmental law. She has been a law clerk for The Honorable Pasco M. Bowman, II, circuit judge, U. S. Court of Appeals, 8th Circuit.

1994

Joelle Cooperman is now working with the law firm of Schwartz, Gold, Cohen, Zakarin & Kotlier, P.A. in Boca Raton, Florida.

Allison Goldberg is now assistant attorney general, Department of Law, Atlanta, Georgia.

Mark W. Pugsley recently became an associate with the law firm of Morgan, Lewis & Bockius in Los Angeles, California. He was formerly with Jones, Bell, Simpson, Abbott, Fleming & Taylor, a securities litigation firm in Los Angeles.

1995

Carol N. Brown has become an associate with the Richmond firm of McGuire, Woods, Battle & Boothe, L.L.P.

Sonja L. Henning a labor law and employment associate at the Los Angeles office of Littler, Mendelson, Fastiff, Tichy & Mathiason, left the firm for one month to return to basketball. She plays on the San Jose team for the American Basketball League.

Paul A. Levinsohn finished his first year of a two-year clerkship with Chief Judge Anne E. Thompson, District Court, District of New Jersey.

Joel D. Taubenblatt is now working with the Federal Communications Commission, Common Carrier Bureau, Competitive Pricing Division, in Washington, D. C.

1996

Mathew L. Bahl has become an associate at the Orlando, Florida firm of Maguire, Voorhis & Wells, P.A. Bahl will represent clients in matters involving construction litigation and eminent domain and condemnation proceedings.

William M. Bryner has joined the law firm of Petree Stockton, L.L.P. in Winston-Salem, North Carolina, as an associate. Bryner practices in the areas of real estate, corporate and intellectual property law.

Katherine B. Lublin has become an associate with the Richmond firm of McGuire, Woods, Battle & Boothe, L.L.P.

Benjamin D. Nelson has joined the international law firm of Fulbright & Jaworski L.L.P. in the firm's Dallas office, as an associate. He will concentrate on corporate matters.

Joel T. Pond has become an associate with the international law firm of Fulbright & Jaworski L.L.P. in the firm's Dallas office. He will focus on litigation.

Births

1977

Gary E. Meringer and his wife, Patty, announce the birth of a daughter, Grace, on September 23, 1995.

1979

Steven D. Wasserman and **Sharon Kronish Wasserman '81** announce the birth of Joshua Daniel on August 6, 1996. Joshua has a four year old sister, Allison.

1983

Michael Spafford and his wife, Catherine Botticelli, announce the birth of their first child, a daughter, Monica Golden, on August 17, 1995.

1985

C. Forbes Sargent, III and his wife Maura announce the birth of a son, Charles Forbes Sargent IV, on January 22, 1996. Charles Forbes IV joins his sister, Katherine.

1987

Eve Noonberg Howard and **Jasper Howard** are parents of a son, Jacob Daniel, born June 21, 1996.

Diane White and her husband, Jack Laveson, announce the birth of their first child, a daughter named Rachel Emily, on November 11, 1995.

Emily Oates Wingfield and **Alan D. Wingfield** announce the birth of Henry Alan on March 11, 1996. He joins a sister, Julia.

1988

Martha Schauer Klinker and her husband Michael welcomed their third daughter on December 27, 1995. Her name is Genevieve Ruth, and she joins her sisters, Caroline and Meredith.

Kodwo P. Ghartey-Tagoe and his wife, Phyllis, announce the birth of a third daughter, Adoma, in April 1996.

1989

Kathleen Barge and **J. Stephen Barge** announce the birth of their second son, Cameron, on April 13, 1996.

Maria Benecki and Charles Sowders welcomed their second set of twins, Mark Grayson and Phillip Austin, born September 4, 1996. Twin brothers are Thomas and Lee.

1990

Daniel A. Kent and wife, Lisa, are the proud parents of Marshall Allen, born May 11, 1996. He joins sister, Madison Grace, born November 19, 1994.

1991

Kristen Scheffel Crisp and husband, **Timothy Crisp '90,** announce the birth of a daughter, Britta Elizabeth, on July 15, 1996.

1992

Norbert B. Knapke and wife, Molly, have a son, Samuel McGinnis Knapke, born July 29, 1995.

Five Law Alumni Now Serving As Duke Trustees

Two Law School alumni have been named to the Duke University Board of Trustees, bringing to five the number of Law alumni currently serving on the board. The most recently elected board member is Lanty L. Smith '67, chairman and CEO of Precision Fabrics Group, Inc. in Greensboro, North Carolina. Robert T. Harper '79, a partner in the Pittsburgh, Pennsylvania firm of Klett Lieber Rooney & Schorling, was elected last year, joining Paul Hardin III '54, Daniel T. Blue Jr. '73 and Christine M. Durham '71.

Weddings

1974

Ira Sandron married Zully Shuman on February 24, 1996 in Coral Gables, Florida. The bride and groom were honored by the presence of Professor Robinson O. Everett and his wife, Lynn. Judge Everett signed as one of the witnesses to the ceremony. The Sandrons live in Miami.

1990

Kristyn Diane Elliott and **Donald Paul Dietrich, II,** both of Orlando, Florida were married May 4, 1996. The bride is an attorney for Litchford & Christopher. Her husband is an attorney with Stump, Storey & Callahan.

1991

Eric Neil Lieberman and Lauren Beth Shapiro were married in Washington, D.C. on June 15, 1996. Lieberman is an associate at Williams & Connolly.

1993

Jennifer Ann Downs and Daniel I. O'Shaughnessy were married on July 27, 1996. The couple will live in Evanston, Illinois.

Jacqulynn M. Broughton was married to Byron K. Hugee on May 4, 1996 in Middletown, Connecticut. They live in Pennsauken, New Jersey.

1994

Bradley Scott Albert and Stacey Jill Stern were married in Short Hills, New Jersey on September 28, 1996. Both are attorneys. Albert is an associate with Crowell & Moring.

Joelle Cooperman and Paul Sharman were married on May 26, 1996. The couple will live in Boca Raton, Florida.

Douglas Bancroft Neu was married to Christine Kelley Ahern on August 17, 1996 in Newport, Rhode Island. Neu is an associate at Powers, Kinder & Keeney in Providence.

Elizabeth Katharine Hitchins and **Leonard Matthew Quigley** were married on September 28, 1996 in Charlotte, North Carolina. Until recently, the bride was an associate with Seward & Kissel in New York City. Quigley is an associate with Steptoe & Johnson in Washington, D. C.

Esther Abigail Sosland was married to Alexander Mark Goodman in Washington, D.C. on September 8, 1996.

Jennifer Lynn Vogdes and **John Robert Lange** were married on November 2, 1996 in Poolesville, Maryland.

1995

Thomas Francis Carey was married to Lara Kristi Schweiker (Duke '91, Fuqua School of Business '95) in Washington, D.C. on November 30, 1996. Carey is an associate at the law firm of Dickenson, Peatman and Fogarty in Napa, California.

James Benjamin Trachtman and Karen Lee Lane were married in Raleigh, North Carolina on August 17, 1996. Trachtman is an attorney with Petree Stockton, L.L.P. in Raleigh.

Robert Clarence Vincent III and Elisa Allen Miller were married on July 27, 1996 in Bedford, New York. Vincent is an associate at Cravath, Swaine & Moore in New York.

1996

Anne Hunter Harrison and Moises Oswaldo De la Cruz Moreno of Lima, Peru were married on December 13, 1996. Harrison is an associate with Baker & McKenzie in Washington, D. C.

1997

Alan Joseph Chadd and Laura Merriman Wootton were married on December 28, 1996 in Durham, North Carolina.

1928

James Braxton Dula, 94, of Lenoir, North Carolina, died on September 9, 1996. Dula was a retired teacher, U. S. Army veteran and member of the First Baptist Church of Lenoir and Hibriten Masonic Lodge. A graduate of Appalachian Teachers College and Duke Law School, he was admitted to the N. C. Bar Association in 1930. He was past president of the Hudson Lions Club and, as a noted local and state historian, was past president of the Caldwell County Historical Society. Dula was a member of NEA/NCEA and the Caldwell County Retired Teachers Association. He is survived by his wife, Blanche Flythe Dula; children James Braxton, Jr. and Eva Dula Downs; four grandchildren and a sister.

1934

Charles H. Miller, 91, a pioneer of legal clinical education, died July 20, 1996. A native of North Carolina, he graduated from Duke University in 1928. After working with a children's legal rights program, he decided to enter Duke Law School. In 1931, he helped establish at Duke the first in-house clinical program in the nation. Miller was a lecturer at Wake Forest and Duke University and, after a year as director of the North Carolina State Department of Institutions, moved to Knoxville in 1947. While teaching at the University of Tennessee College of Law, Miller served as the first director of a second law school teaching clinic from 1947 until 1975. By the time Miller retired, the Legal Clinic had become the functional equivalent of a large law firm with 24 employees, approximately 75 students per quarter and a caseload of over 6,000 per year. Handling all indigent legal services in the county, the clinic was a model for others that Miller opened around the nation. Miller retired in 1976 and received the second annual Society of American Law Teachers (SALT) award. The author of several scholarly publica-

tions, he was also a leader in civic organizations such as the Rotary Club, the Council of Community Agencies, the Mental Health Association, the Salvation Army and Family Services Association. In 1994, the Rotary Club honored Miller by donating $18,000 to the National Park Service. In 1989 Miller received the Charles S. Murphy Award at Duke Law School in recognition of his outstanding career and dedication to legal education and public service. Survivors include sons Charles H. Miller III and John M. Miller; five grandchildren; and four great-grandchildren.

1935

Thomas Edgar Carpenter, 85, died February 1, 1996, in Miami. A Durham native, he graduated from Duke University in 1933 and continued his education at Duke Law School. During World War II, he was an officer in the Navy. Carpenter was an agent for the Small Business Administration, I.R.S., and the Post Office. Surviving are his wife, Elena Marguerite; two sons, General Thomas E. Carpenter, III, and Major John E. Carpenter; five grandchildren; and one great-grandson.

William P. Farthing, 83, of Delray Beach, Florida died June 24, 1994.

1937

John S. Evans, 83, of Atlanta, died January 14, 1996. He was a retired senior vice president and head of the national accounts department for the Trust Company Bank of Georgia. A native of Montgomery, Alabama, Evans was a 1934 graduate of Princeton University and served in the Army during World War II, receiving the Bronze Star. After the war, he returned to Georgia and co-founded a metal sign company. In 1952, Evans began working at the Trust Company Bank of Georgia, where he held various administrative positions until his retirement in 1973. Surviving are two daughters, Betty Pearson of Wellesley, Massachusetts and Ethel Wildman of Atlanta; a sister, Florence Simpson of Birmingham; three grandchildren; and a great-grandchild.

1939

Erma Griffith Greenwood, 79, a longtime Knoxville lawyer and community activist, died August 31, 1996. Greenwood graduated from Duke University in 1937 and continued her education at Duke Law School. She began her practice in Knoxville in 1943 and was one of only two women lawyers with the Knoxville Bar. She joined the firm now known as Kramer, Rayson, Leake, Rodgers and Morgan and remained there until her retirement in 1991. She was a member of the Tennessee Bar Association, Knoxville Volunteer Rescue Squad and the Church Street United Methodist Church. She was also active in Girl Scouts, Girl's Club and United Way. Greenwood was the first woman to receive the Governor's Award, the Knoxville Bar Association's highest award. She is survived by a sister, Mildred Griffith Yorke, a brother and sister-in-law, nieces and nephews and one great niece.

1941

Archibald G. Marshall, 80, retired judge, died February 21, 1996. He received his bachelor's and law degrees from Duke University. In Connecticut, he served as justice of the peace, town counsel and judge for Branford; legislative research commissioner for the state; and prosecutor, 8th Circuit Court. He served in positions of leadership in the Order of Masons, the Branford Council of Churches and Men's Club, was a Sunday School teacher and deacon at his church and clerk of the Ecclesiastical Society of Branford. In 1971, he became a member of the South Carolina Bar and a broker with Sloan Realty World and Management, Ltd. He taught at Coastal Carolina College and Golden Gate College. While living at Myrtle Beach, Marshall continued his service to the community as a member of the Alston Wilkes Society, American Legion, trustee of the First United Methodist Church, and member of the board of the American Cancer Society. He was chairman of the Republican Party, president of Helping Hand, and worked with the Chicora Rotary Club and Salvation Army. Survivors include two daughters, Barbara Allen and Jean Johnson; and two grandchildren.

1943

Jane Parker Harris, 75, an attorney for more than 50 years, died February 11, 1996. A North Carolina native, she was married to Lawrence Harris who preceded her in death. Harris was a summa cum laude graduate of Women's College in Greensboro, now UNC-G, and was a member of the Phi Beta Kappa honor fraternity. Upon graduation from Duke Law School, she joined the law firm of Tillett and Campbell in Charlotte and later clerked for Judge Meekins in Elizabeth City. Appointed to a position in the Department of Justice in Washington, D. C., she worked there through World War II, then joined her father's law practice in North Carolina. Harris served with the U. S. Attorney's office in Raleigh, then began her own practice in Wake Forest, serving the legal profession and the community for over 35 years. She was a member of the North Carolina Bar and active in the Republican party. An accomplished musician, she also served as organist for her church. Harris is survived by her daughter, Jane Harris Pate; two sons, Richard C. and Lawrence, Jr.; one sister and two grandchildren.

Jackson M. Sigmon, 79, the founding partner of the law firm, Sigmon & Sigmon, Bethlehem, Pennsylvania, died April 29, 1996. A 1938 graduate of the University of Pittsburgh, he obtained a fellowship to the Fletcher School of International Law and Diplomacy at Tufts University, receiving his master's there in 1939, then came to Duke Law School. During World War II, he organized the civil and criminal courts in Offenbach, Germany, serving as a judge and prosecutor. He served in the army in North Africa and Europe and received a battlefield commission. A lawyer for 53 years, during his career he served in various civic capacities, including Republican state committeeman, and held positions in city and state government in Pennsylvania. He was also president of the Northampton County Bar Association in 1963 and of Bethlehem Optimist Club in 1955. For more than 50 years, Sigmon was an active participant and officer of the Pennsylvania Bar Association and was awarded a certificate of service to the association's board of governors in 1974. He was also special counsel for Bethlehem Steel Corp. Sigmon is survived by his wife, Ruth Friedman Sigmon; sons, Mark S. and William Sigmon; daughters, Hillary, Jill, Jan and Erica; and six grandchildren.

1948

Edward J. Gurney, 82, former Florida senator, died in Winter Park on May 14, 1996. Born in Portland, Maine, he received his B.S. from Colby College in 1935, his LL.B. from Harvard in 1938 and an LL.M. from Duke in 1948. He practiced law from 1938 to 1941, then served in the U. S. Army during World War II, rising to the rank of Lt. Colonel. Severely wounded in combat as a tank commander, he spent two years in hospitals following the war and was awarded the Silver Star and Purple Heart. After moving to Florida, he opened a law office in Winter Park in 1948. He served as city commissioner and mayor and then won the first of three terms in the House in 1962. In 1968, Gurney entered the U. S. Senate race and became Florida's first Republican senator since Reconstruction, serving in that capacity from 1969 through 1975. Gurney is survived by his wife, Leeds; and two daughters, Jill and Sarah.

Edward J. McCardell, Jr., 79, died on October 14, 1996, in Boca Raton, Florida. Born in Trenton, New Jersey, McCardell received his bachelor's degree in engineering from Drexel University, then enlisted in the Marine Corps. During World War II he served as senior engineering officer of a night fighter squadron in Guam and throughout the South Pacific. After the war, McCardell attended Duke Law School, where he graduated first in his class. He was a deputy attorney general in New Jersey, then joined two other attorneys to form his own firm. A specialist in defense law, McCardell was inducted as a fellow of the American College of Trial Lawyers in 1973. Three years later, he was given the Trial Bar Award by the Trial Lawyers of New Jersey. He retired in 1981. He is survived by his wife, Dorothy S. McCardell, three daughters and three sons.

Drury Blair Thompson, 77, died on June 28, 1996. A native of Danville, Virginia, he graduated from Davidson College in 1941 and entered active military duty in the South Pacific during World War II. He was decorated with the Bronze Star, the Purple Heart and the Silver Star. During the Korean War, he taught at the Infantry School and served as Assistant Judge Advocate General. After graduating from Duke Law School, Thompson joined the legal department at Southern Bell Telephone & Telegraph in Atlanta. He became vice president and general counsel in 1974, a position he held until he retired in 1983. He is survived by his wife, Virginia Jones Thompson; sons, Drury Blair, Jr. and James Reynolds Thompson; a daughter, Terry Elizabeth; and five grandchildren.

1949

James A. Howard, 78, a native of Norfolk, Virginia, died October 18, 1996. Howard attended the University of North Carolina, Chapel Hill on a basketball scholarship and played both varsity basketball and baseball, serving as co-captain of the 1941 basketball team. He was a Lieutenant Commander in the U. S. Navy during World War II. Howard worked his way through Duke Law School as a football referee in the Old Collegiate Southern Conference, then opened his practice in Norfolk. He served as president of the Norfolk-Portsmouth Bar Association and the Virginia State Bar and was elected a fellow of the American College of Trial Lawyers. For several years, he was a representative for the Federal Fourth Circuit on the ABA Nationwide Committee for the screening of nominees for federal judgeships. A Master of Ruth Masonic Lodge, Howard was also on the Board of Visitors of Old Dominion University and an honorary life member of Duke Law School's Board of Visitors. For many years, he arranged pairings of college football teams for play in the Oyster Bowl, the proceeds benefitting crippled children. In 1977, he was the Norfolk Sports Club's sportsman of the year. Survivors include his wife, Ellen; two daughters, Martha H. Stathis and Susan H. Slaughter; a son, James A. II; and four grandsons.

1952

Joseph J. Moscou, 67, senior partner at Ruskin, Moscou, Evans and Faltisheck in Mineola, New York, died July 7, 1996. Moscou graduated from Hobart College in 1949 with a B.A. in History. After completing his law degree at Duke Law School, he began his practice and eventually became a partner in his own firm. His specialties were creditors' rights, bankruptcy and commercial lending. He served on the Bankruptcy Committee of the Association of the Bar of the City of New York and worked on what is now the Bankrupty Code. He has lectured on factoring, commercial financing and lender-liability matters. He is survived by his wife, Judith; four children, Jonathan, Karen, Deborah, and Nancy; and two grandchildren.

Lina Lee Spence Stout, 85, died on November 28, 1996. Stout attended Meredith College, graduating in 1932 with a degree in English. She graduated from Duke Law School in 1952 and was employed by Secretary of State Thad Eure as his legislative liaison before opening her own law practice in Durham in 1953. One of the first women attorneys in Durham, she specialized in estate planning and only recently retired. Stout was active in her church, civic affairs and the Democratic party. She was preceded in death by her husband, Mack Stout. She is survived by two sons, Stephen E. and David L. Stout; five grandchildren and two great-grandchildren.

1960

Ronald L. Palmer, 61, of Jacksonville, Florida, died on August 16, 1996. A native Floridian, Palmer received his undergraduate education at The University of the South and came to Duke Law School where he was president of the Delta Theta Phi Law fraternity and received the Law Week Award. After graduating, he served in the Judge Advocate General's division of the U. S. Air Force, then joined a law firm. He practiced law for 20 years as a senior partner specializing in products liability defense, then formed a partnership and a manufacturing and construction business known as Palmer Panels, Inc. In 1991, he became a sole practitioner. He is survived by his wife, Liz Palmer, and two children, Angela and Hugh.

1966

Ben L. Paddock, 56, of Fort Smith, Arkansas, died March 31, 1996. An Arkansas native, Paddock attended the University of the South where he received a B.A. in political science in 1961, then entered Duke Law School. He was also a member of Phi Beta Kappa. Paddock specialized in corporate and business law. He served as a member of the Board of Trustees of various organizations, including Doss Sutton Charitable Foundation, the Fort Smith City Retirement Trust, was a Director of Harbor House and past president of the Fort Smith Public Library Board. Survivors include his wife, Anita; two daughters, Jennifer Paddock and Elizabeth Goff; two sons, Brady and David X.; and three grandchildren.

1980

Celeste Marie Norris Mitchel, 41, died on March 5, 1996, in Bellevue, Washington. She earned a B.A. in Economics from the University of Puget Sound, graduating in 1977. After receiving her J.D. from Duke Law School, she was associated with Bogle & Cates in Seattle; Arky, Freed, Sterns, Watson & Greer; and Stearns, Weaver, Miller in Miami. After a brief time at home with her children, Celeste and her family moved to Issaquah, Washington, and she resumed her practice of law with Bogle & Cates of Seattle, specializing in estate planning. Most recently, she moved to the firm of Gores & Blais and, in February 1995, was named a shareholder. She is survived by her husband, **Alan M. Mitchel '80,** and two daughters, Sarah Rose and Elizabeth Anne.

1988

Heimerick G. Jansen died in Moscow in August, 1996. Please see Judy Horowitz's article in this issue on Jansen's life and career.

1997

Eric D. Pinsky, 23, first-year student, died January 8, 1997 in Durham. A native of Cincinnati, Ohio, Pinsky graduated from the University of Michigan in December 1995 with a degree in economics. His honors thesis was published as a discussion paper by the World Bank, and he was senior editor of the *Michigan Journal of Economics* and a peer advisor with the University of Michigan Honors Office. He also had a keen interest in Latin American culture and studied in Salamanca, Spain. Pinsky was pursuing a JD/LLM in comparative and international law at Duke Law School where he was awarded a Miller & Chevalier Charitable Foundation Scholarship in recognition of his outstanding record. He is survived by his parents, Mr. and Mrs. Michael Pinsky of Cincinnati and a brother.

the stage is set...

REUNION WEEKEND

APRIL 4-6, 1997

Tentative schedule of events

Friday, April 4

11:00 AM - 5:00 PM	Registration
12:30 - 4:00 PM	Law Alumni Council Lunch and Meeting
7:00 PM	Banquet, Washington Duke Inn
9:00 PM	Duke Law Drama Society: Georges Feydeau's *A Flea in Her Ear*

Saturday, April 5

7:30 - 9:30 AM	Tee times, Washington Duke Inn
8:00 AM - NOON	Registration
8:00 AM	Continental Breakfast
9:00 AM - NOON	Issues Forums
NOON - 2:00 PM	Carolina Barbecue and Children's Entertainment
6:30 - 9:00 PM	Class Receptions and Dinners
9:00 - MIDNIGHT	Student Funded Fellowship Casino Night with Dancing and Cash Bar

Sunday, April 6

11:00 AM - 1:00 PM	Brunch with International Students

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