

# DUKE LAW MAGAZINE

Summer 2009 | Volume 27 Number 2

“THE FIRST THING  
MR. COLEMAN SAID  
TO ME WAS, **‘WE BELIEVE  
YOU’RE INNOCENT.’**...  
IT WAS LIKE I COULD  
**BREATHE AGAIN.**”

**IT TAKES A VILLAGE TO WORK FOR JUSTICE**



## From the Dean



DEAN DAVID F. LEVI

### Dear Friends,

**D**UKE LAW SENT ANOTHER CLASS of talented, young lawyers into the world this past May. They are among the most accomplished students this Law School has ever seen. They have had the benefit of studying under a remarkable faculty and, equally important, they have had the benefit of learning from one another. They now join our distinguished alumni body and look forward to fulfilling careers in the law.

Even as we admire their accomplishments and ability, we are somewhat concerned for them and the classes behind them. They are launching their careers during a time of great uncertainty. None of us knows whether the changes and contractions in the legal economy are permanent. But we and they must be prepared for a period of continued disruption in the legal profession — just as the Law School and Duke must be prepared for a period of declining endowment revenue.

One way we are meeting this challenge is by working harder than ever to open up the broadest range of career opportunities for our students. We are encouraging them to think expansively about places and positions they may not have previously considered. Through our Bridge to Practice Program, funded in part by alumni, we have created internships for graduating students, many of which have led to permanent employment.

Alumni all over the country, under the leadership of our Law Alumni Association and its chair, Kodwo Gharthey-Tagoe '88, sprang into action this spring to find employment possibilities for our graduating class. As a result of these efforts, all of our 3Ls had jobs by the time they graduated, even though many have been told to report to work months later than expected. I thank all of our alumni who help to mentor and place our graduates; you have made a difference. We will continue to need your help in the years ahead.

Of course, the most important way to meet the challenge of a weak legal economy is to make sure that our graduates are ready on "Day One." Duke graduates are still in high demand. These troubled times serve to emphasize the value of a Duke Law degree and an education that integrates the interdisciplinary study of the law with skills training in an intellectually rigorous setting.

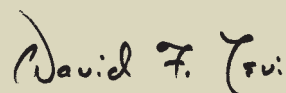
We continue to strengthen our skills training and our practice curriculum. We have nine clinics, each offering excellent experience with real cases and clients. Our moot court and mock trial programs are among the best in the country. Supreme Court Justice Samuel Alito will teach a weeklong intensive course this fall, further expanding our programs in appellate litigation. We have one of the strongest legal writing programs in the country, thanks to the addition of more full-time writing faculty and new upper-level writing courses. We also have added to the ranks of our professors of the practice, who are now offering an array of courses to students seeking the most challenging coursework in specialized areas, including transactional work and litigation. And we continue to develop our curriculum to further unite the study of substantive law with the problem solving, organizational, writing, and speaking skills needed for practice.

Our interdisciplinary approach will become ever more critical. Throughout Duke University, our students' future clients are receiving their education. Through collaboration with those in other professional fields, we have the opportunity to teach our law students how their future clients will think and what their goals will be. Through new courses in the Law School, we are teaching the basics of business, accounting, and finance. Through joint ventures with our counterparts, such as our Environmental Law and Policy Clinic, we are bringing law students together with colleagues across campus to problem solve. We are part of a great university that allows us to draw upon the knowledge and teaching of faculty who are leaders in the fields of business, environmental studies, public policy, medicine, engineering, and more. What a huge benefit this is to our students — and to their future employers.

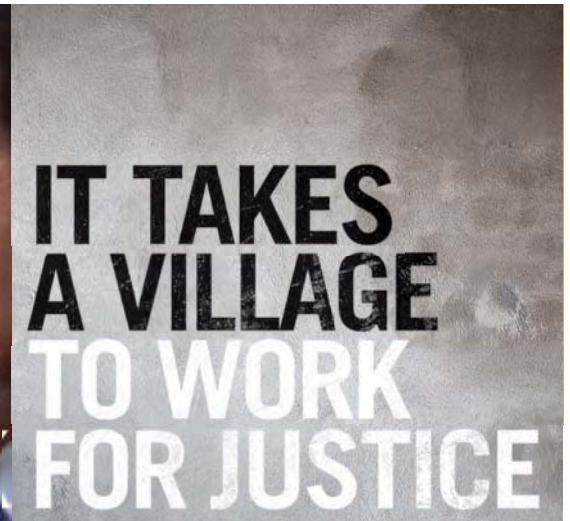
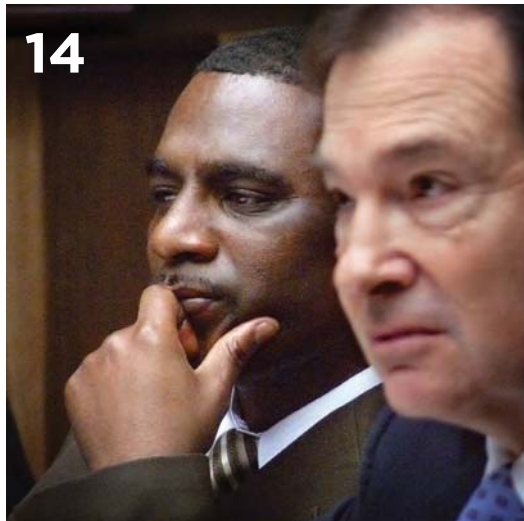
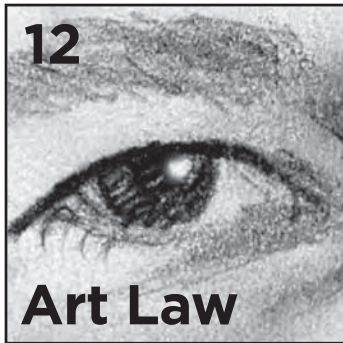
One example of how fully integrative a Duke Law education can be is our new Duke in D.C. program. During the spring semester, eight Duke Law students worked full time in congressional offices, the judiciary committee, and lobbying organizations. They worked on legislation by day, and by night studied their work from an academic perspective under the tutelage of two scholar-practitioners, Sen. Ted Kaufman and Professor Chris Schroeder. We are expanding Duke in D.C. this fall and spring to include the regulation of financial institutions and the making of environmental policy.

Difficult times call for new ideas and new approaches. At the Law School, we have tightened our belt, but we remain focused on recruiting and retaining the strongest possible teaching and research faculty and on helping our students with scholarships, internships, and other opportunities. We have been successful this year on both fronts — we have hired remarkable new faculty and at the same time have expanded our financial aid. We see opportunities for growth amidst the challenges we face. I have every confidence that with the help of the entire Duke Law community we will emerge stronger than ever, with graduates who are prepared for the most demanding and fulfilling kinds of law practices and who will take their place within the leadership of our profession.

I am grateful for the support of our friends and alumni and look forward to hearing from you.

A handwritten signature in dark ink that reads "David F. Levi". The signature is written in a cursive, slightly stylized font.

David F. Levi  
Dean and Professor of Law



## New Faculty

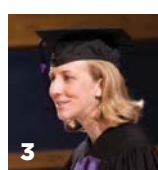
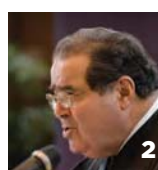
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# News Briefs



JUSTICE ANTONIN SCALIA AND JUDGE ALLYSON DUNCAN OF THE U.S. COURT OF APPEALS FOR THE FOURTH CIRCUIT DURING THE DEAN'S CUP FINAL.

## Justice Scalia presides over Dean's Cup final

**I**N THE FINAL of the 46th annual Dean's Cup Moot Court Competition Jan. 29, four Duke Law students argued the case of *Agustín Aguayo v. Francis J. Harvey, Secretary of the Army* before a three-judge panel headed by Supreme Court Associate Justice Antonin Scalia.

2009 classmates Jessica Rivera and David Maxted argued on behalf of the petitioner, Aguayo, who sought an Army discharge based on conscientious objector status, while Adam Doverspike '09 and Kristin Collins Cope '10 acted as counsel for the respondent. Justice Scalia, Judge Allyson K. Duncan '75 of the U.S. Court of Appeals for the Fourth Circuit, and Judge E. Grady Jolly of the U.S. Court of Appeals for the Fifth Circuit ruled in favor of the respondent, naming Doverspike Outstanding Oral Advocate.

Doverspike and Collins Cope demonstrated mastery of the subject matter and argued well, said the three judges. Scalia and Jolly observed that Rivera and Maxted had the harder argument to make.



JUSTICE SCALIA SHARES A LIGHTEARTED MOMENT FOLLOWING THE DEAN'S CUP FINAL WITH WINNERS KRISTIN COLLINS COPE '10 AND ADAM DOVERSPIKE '09.

In comments to Duke Law students following the competition, Scalia expounded on the significance of oral argument, and the importance of competitions like the Dean's Cup.

"A lot of people are under the impression that [oral advocacy] is a dog and pony show," he said. "The judges have read the briefs, they come in with their minds made up, and this is just a performance for the benefit of your client. If that's the impression you have, you are just wrong. I have never met a judge who doesn't think that oral argument is important." ♡ — *Forrest Norman*

## JUSTICE SCALIA DISCUSSES LIFE IN LAW, JUDICIAL PHILOSOPHY

VISITING DUKE to judge the finals of the Dean's Cup Moot Court Competition on Jan. 29, Supreme Court Associate Justice Antonin Scalia discussed his life, formative legal experiences, and judicial philosophy before a capacity student audience.

Dean David F. Levi and Professor Neil Siegel acted as interviewers as Scalia recounted, often humorously, some of the experiences that put him on the path to the Supreme Court and described how the Court functions.

"I wasn't burning to be a lawyer," noted Scalia, who majored in history at Georgetown University. But he "sort of liked" hanging out at his Uncle Vince's law office in Trenton, he said. "He seemed to have a good life, to enjoy what he did." Scalia said he lost his ambivalence during his first year at Harvard Law. "[Y]ou can feel your mind warping to become a lawyer's mind."

Reflecting on legal education broadly from his vantage point on the bench, however, Scalia offered a critique which reflected his judicial philosophy of adhering to textual interpretation.

JUSTICE ANTONIN SCALIA DISCUSSED HIS CAREER IN THE ACADEMY, GOVERNMENT, AND ON THE BENCH DURING A "LIVES IN THE LAW" INTERVIEW WITH DEAN DAVID LEVI AND PROFESSOR NEIL SIEGEL, JAN 29.



"... You spend your first year suckling at the common law, and your image of the great judge is the judge who knows what the best answer is. ... It so happens that in the bad old days those judges were agents of the king. They weren't interpreting the law, they were making it," he said. "What has

happened between then and now is something called participatory democracy. And the principle function of a judge today is to apply democratically adopted texts — statutes, ordinances, regulations of democratically adopted agencies. That's the main thing judges do." ♣ — *F.N.*

## Campbell '09 and Appellate Litigation Clinic win in D.C. Circuit

THIS IS HOW reporter Mike Scarcella put it in *The BLT*, the blog of the *Legal Times*, on March 6:

"Sarah Campbell greeted the panel judges today and jumped right into presenting her case. By the time it was all over, more than 45 minutes later, Judge Brett Kavanaugh called the performance 'superb' — not a bad compliment for a third-year law student making her debut in the U.S. Court of Appeals for the D.C. Circuit."

Campbell was arguing in support of Peter Atherton, a Washington, D.C., resident who challenged his dismissal from a D.C. Superior Court grand jury. The D.C. Circuit assigned Duke Law's Appellate Litigation Clinic to serve as *amicus curiae* in support of Atherton. Then enrolled in the clinic, Campbell briefed the case and prepared for argument with classmates James McDonald, Eugenie Montague, Emily Sauter, and Eric Wiener. They were supervised by John S. Bradway Professor of the Practice of Law James Coleman Jr. and Senior Lecturing Fellow Sean Andrussier '92, who co-direct the clinic.

In its unanimous June 2 ruling, the D.C. Circuit adopted the clinic's arguments, holding that the

district court erred in granting absolute prosecutorial immunity to an assistant U.S. attorney and in granting absolute judicial immunity to a D.C. jury officer. The court also held — as the clinic argued — that Atherton's procedural due process claim should be remanded for the district court to evaluate qualified immunity in the first instance. "Whether the defendants in this case are entitled to qualified immunity on the due process claim is a challenging question," wrote Senior Circuit Judge Harry T. Edwards in the opinion.

Andrussier, a partner and co-chair of appellate practice at Womble Carlyle Sandridge & Rice in Raleigh, was gratified by the court's decision and by the dedication of the students. "This was a complicated and important case raising numerous issues about absolute immunity, qualified immunity, a liberty interest in grand jury service, and grand jury independence," he observed. "The students assigned to this case worked very hard and were passionate and insightful throughout."

Coleman said the students did an extraordinary job on the brief and, like the judges, had high praise for



SARAH CAMPBELL WAS ELECTED BY HER CLASSMATES TO SERVE AS 2009 CLASS SPEAKER AT THEIR HOODING CEREMONY ON MAY 9.

Campbell's courtroom argument. "The circumstances of the case would have been daunting even for a seasoned lawyer," he said. "These were three very tough members of the court." ♣ — *Frances Presma*

## DUKE IN D.C. GROWS AFTER SUCCESSFUL INAUGURAL SEMESTER

**A**S A MEMBER of the inaugural class of the Law School's Duke in D.C. program, Troy Stock '10 got more than a semester-long externship: He got a summer job.

Stock eagerly accepted the chance to stay on as a legislative aide with Rep. Jason Chaffetz, R-Utah, after the completion of his externship.

"I'm doing traditional legislative aide work. I've been assigned certain issues and I keep track of legislation, meet with interested groups in government as well as lobbyists and outside groups," said Stock. During his externship, Stock was the lead aide for the congressman's first bill, which addressed privacy concerns regarding the use of whole-body imaging to examine airline travelers. Stock also worked on legislation concerning veterans, small businesses, and agriculture.

Stock and his Duke in D.C. classmates gathered weekly for a class taught by Christopher Schroeder, Charles S. Murphy Professor of Law and Professor of Public Policy Studies and director of the Program in Public Law, and Sen. Ted Kaufman, D-Del. The two regularly teach a seminar on Congress at the Law School, and both have deep experience on Capitol Hill and in the executive branch.

"Professor Schroeder and Sen. Kaufman did a good job of bringing in speakers each week who had real world experience in what we were studying," said Stock. "I also felt very fortunate to have a sitting senator come to class. You simply don't get those types of experiences in a normal law school setting."

In the fall 2009 semester, students will work with congressional, regulatory, and private entities related to financial services, while taking a weekly class from Brainerd Currie Professor of Law James D. Cox and Professor of the Practice Lawrence G. Baxter, experts in corporate, securities, and regulatory law.

"Our students are keen to learn just exactly what happened with the economy, and how to fix it," said Baxter. "Dean Levi recognized an opportunity to get involved in some of the policymaking regarding financial services."

Baxter added that the next round of externships will be as hands-on as the first. "We've had conversations with the organizations providing these jobs, and they know we're not interested in a position where the student winds up just answering the phones," he said. "We're asking for a serious role in which they'll be engaged in the policymaking process." ♣ — F.N.



TROY STOCK '10, LEFT, IS SPENDING HIS 2L SUMMER AS A LEGISLATIVE AIDE FOR REP. JASON CHAFFETZ, R-UTAH, FOLLOWING HIS DUKE IN D.C. EXTERNSHIP WITH THE CONGRESSMAN DURING THE SPRING 2009 SEMESTER.

### SPRING 2009 DUKE IN D.C. EXTERNSHIPS:

- Congressional offices of David Price, D-N.C., Mel Watt, D-N.C., James Clyburn, D-S.C., and Jason Chaffetz, R-Utah
- Senate office of Robert Menendez, D-N.J.
- House Judiciary Committee
- Johnson, Madigan, Peck, Boland and Stewart
- Center for Responsible Lending

### Fall 2009 Duke in D.C. externships include:

- U.S. Securities and Exchange Commission
- House Financial Services Committee
- Senate Banking Committee
- Public Company Accounting Oversight Board
- Financial Services Roundtable
- Institute of International Finance

## Program in Public Law launches blog on executive branch power

**A**BLOG DEDICATED TO monitoring, analyzing, and providing a forum for discussing questions of presidential power is the latest initiative of the Program in Public Law.

Launched in February, "Executive Watch" features news stories and commentary about executive-branch actions, including executive orders, presidential memos, and signing statements.

"One of the three major functions of the Program in Public Law is to encourage and contribute to public understanding of important constitutional and public law issues," said Christopher Schroeder, Charles S. Murphy Professor of Law and Public Policy Studies and director of the Program in Public Law. "Executive power issues were raised on numerous occasions during the Bush administration. Many people are watching the extent to which the Obama administration's approach to these questions will parallel or diverge from the Bush administration's approach."

He added that questions of executive power have been present since the founding of the Republic. "What makes them comment-worthy is that they've been controversial in the past eight years," he said.

"We hope Executive Watch will become the go-to site for anyone interested in better understanding a current dispute on the subject of executive-branch power," said Schroeder. "We hope to comment on matters in the news and also to reflect upon larger questions of executive authority in a comprehensive way, all in a highly accessible manner." ♣





## Measuring judges and justice

**J**URISTS AND ACADEMICS convened at Duke Law on Feb. 6 for a conference on the study of judicial decision-making. Presented by the staff of the *Duke Law Journal*, the conference examined controversial efforts by social scientists and others to develop a body of empirical evidence regarding the way judges make decisions.

Panelists and speakers included legal and social science scholars and judges, including Chief Justice Ruth McGregor of the Arizona Supreme Court, Chief Justice Laurie Stith of the Missouri Supreme Court, and Chief Judge Anthony Scirica of the U.S. Court of Appeals for the Third Circuit.

Dean David F. Levi, the former chief U.S. district judge for the Eastern District of California, outlined the differing goals of judges and academics.

"For many years academics and judges have been thinking about the judiciary from their individual scholarly or practical perspectives," he said. "The scholars attempt to evaluate the structural, behavioral, and institutional factors that influence particularly individual judicial decisions . . . while the judges have been studying ways to become more efficient in the face of increasing caseloads while improving consistency and overall fairness."

Levi called for a lasting dialogue between the two groups.

"We hope that this is just the beginning of an ongoing discussion, debate, and connection," he said.



L-R: PROFESSORS BARAK RICHMAN, H. JEFFERSON POWELL, CHRISTOPHER SCHROEDER, AND ERNEST YOUNG AT CONFERENCE ON JUDICIAL DECISION-MAKING.

A lunchtime discussion considered an article titled "Are Empiricists Asking the Right Questions about Judicial Decision-Making?" by Duke Professor of Law and Political Science Jack Knight. "Social science explanations ought to be able to inform the normative assessments of the quality of judges" while admitting that "there is some skepticism about social science research on the courts, both in terms of its persuasiveness and in terms of its relevance," said Knight.

Knight's paper and others presented at the conference were published in the April 2009 issue of the *Duke Law Journal* (Vol. 58, No. 7). ♣ — F.N.

## Colloquia chart trends in financial regulation, public policy

**T**WO SPRING EVENTS focused on charting the emerging framework of public policy and regulation in the "post-crisis" economy.

The implications of nationalizing financial institutions for the banking industry and the roles of regulators and free enterprise were the subject of a public discussion held at the Law School on March 25. Panelists included Robert K. Steel '73, the former president and CEO of Wachovia Corp. and a director of Wells Fargo; Edward Greene, a partner at Cleary Gottlieb Steen & Hamilton and former investments general counsel of Citigroup; Duke University economist Craig Burnside; and Duke Law faculty members James Cox, a specialist in corporate and securities law, Steven A. Schwarcz, an expert in capital markets and systemic risk, and Bill Brown '80, who formerly held senior positions at AIG, Goldman Sachs, and Morgan Stanley.

There was general agreement among the panelists that the government's involvement in financial institutions should be limited to revitalizing those that are unhealthy before

returning them to the public markets, and dismantling "in an orderly way" those that are irredeemable, said Steel, but should not extend to complete government ownership or nationalization. "The sole act of government ownership in an unhealthy institution doesn't make it strong," he said.

Who might best serve as a "super regulator" over financial services companies that pose a systemic risk to the economy was the focus of an event hosted by Jones Day in Washington, D.C., on May 20. Eugene Ludwig, former comptroller of the currency and founder and CEO of the Promontory

Financial Group, Jones Day partner Chip MacDonald, and Duke's Brown took, as their starting point, a Treasury Department proposal for the FDIC to become the conservator or receiver of a variety of financial services companies that could pose such a systemic risk, and the creation of a "super-regulator" to monitor companies that pose risks to the financial system even if they are not banks.

Professor of the Practice Lawrence Baxter, a regulatory expert and former banking executive, served as principal organizer and moderator of the two events.

"The regulatory and public policy environment is changing rapidly to address the aftermath of the financial crisis and to create a workable framework of regulation going forward," said Baxter. "These two events were the first of many, I hope, that will both track and influence the shape of these evolving regimes that will first change the way large companies are regulated and then likely shift to other areas of federal and international regulation such as energy, health care, and environmental management, to name a few." ♣ — F.N.





(L-R) PETER D. FEAVER, ALEXANDER F. HEHMEYER PROFESSOR OF POLITICAL SCIENCE AND PUBLIC POLICY AT DUKE; MARIE BESANCON, FOUNDER OF AMERICAN SUDANESE PARTNERSHIPS FOR PEACE AND DEVELOPMENT; AND JAMES PEARCE JD/LLM '11, DISCUSS THE POLITICS OF INTERVENTION IN DARFUR.

## Conference examines complexities of Darfur crisis



**S**CHOLARS AND POLICY EXPERTS with experience in the Darfur crisis gathered at the Law School March 26–27 to discuss the troubled Sudanese region. The student-organized event highlighted such issues as the International Criminal Court’s warrant for the arrest of Sudan’s president and the possible role of the U.S. in the region.

Speakers included Roger Winter, former special representative of the deputy secretary of state for Sudan; Rod Rastan, legal adviser in the Office of the Prosecutor for the International Criminal Court (ICC); and Marie Besancon, founder of American Sudanese

Partnerships for Peace and Development.

Winter, who has worked in Sudan for more than 25 years, recounted his role in helping broker a peace agreement in 2005 between the Sudanese government in Khartoum and rebels in the South. The Comprehensive Peace Agreement (CPA) ended a 21-year civil war in Sudan, and was considered one of the Bush administration’s most prominent foreign policy achievements. However, rebel groups in Darfur immediately sparked new violence and the Sudanese government responded with the extreme measures that led the ICC to charge Omar al-Bashir, the president of Sudan, with war crimes and crimes against humanity.

The situation in Darfur poses unique diplomatic challenges, said Winter, because the various rebel groups in Darfur are poorly organized and have no real political platform.

“Whereas the [rebels in Southern Sudan] were capable of a viable movement, the rebel leadership in Darfur doesn’t talk to each other,” Winter said.

The conference was organized by the Student Organization for Legal Issues in the Middle East and North Africa (SOLIMENA). James Pearce JD/LLM ’11, who served as a U.N. rule of law officer in Darfur in 2007, said the event accomplished its goal of advancing dialogue and understanding of the crisis there.

“The speakers and panelists did not always agree, but the picture that emerged from the discussions provided a nuanced starting point for those interested in Darfur in the context of international criminal law, U.S. policy responses to mass atrocity, and the future of the Sudanese state,” Pearce said.

SOLIMENA hopes to hold another conference on Darfur next year, Pearce said. ♣ — *F.N.*



## LAW STUDENTS PIECE TOGETHER SOLUTIONS TO THE GLOBAL FINANCIAL CRISIS

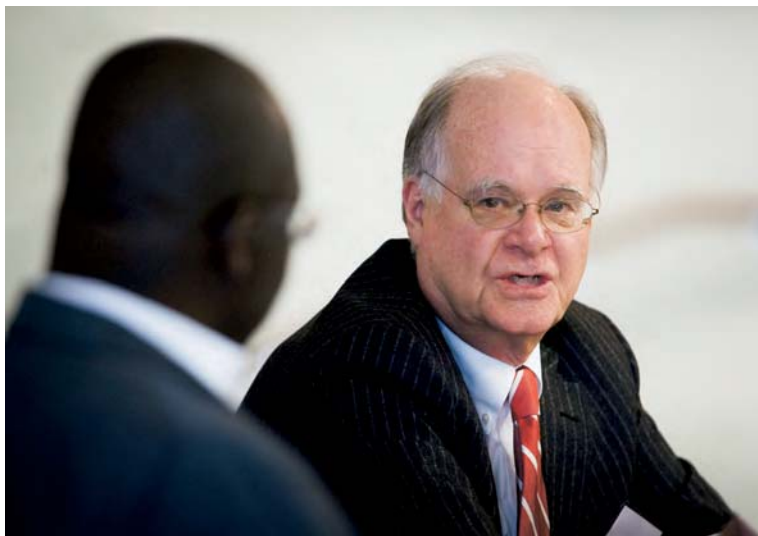
“THE DUKE PROJECT” was a class project with ambitious real-world goals. Over a nine-week period in the spring semester, students in Professor Bill Brown’s class on Legal, Accounting, and Business Responses to the Subprime Crisis presented a host of solutions to specific aspects of the global financial meltdown.

Each student team that presented was joined by experts from the field, such as Deborah Goldstein, executive vice president of the Center for Responsible Lending, who took part in the discussion relating to policy reform in consumer lending and bankruptcy, and Bill McMahan, head of risk management for Goldman Sachs Group.

Throughout the fall semester of his yearlong class, Brown ’80 and his students undertook a forensic analysis of the origins and contagion of the financial crisis. Working in teams, students developed papers that propose approaches to specific domestic and international challenges raised by the crisis, such as economic stimulus, moral hazard, consumer debt, accounting rules, and the role of rating agencies. Brown is including each paper as a chapter of a forthcoming book.

Brown joined the faculty in 2008 as a professor of the practice of law after serving in leadership positions at Goldman Sachs, AIG, and Morgan Stanley, where he specialized in currency and fixed-income markets. He praised the creativity and insight with which his students approached key economic challenges. “This could be the most important set of issues they encounter in their lifetimes — it certainly is the most important issue for the next decade,” he said. “They really have wrapped their arms around this and understand it in ways that many top policymakers don’t.” ♣





**ESQ 2009** JAN. 30–31, 2009

**H**OGAN & HARTSON PARTNER Douglas Wheeler '66, a former secretary of resources for the State of California, and Kodwo Gharthey-Tagoe '88, vice president and general counsel of commercial business for Duke Energy, discussed the practice of energy and environmental law at ESQ 2009. Wheeler and Gharthey-Tagoe were among 23 practitioners who shared their insights on business law practice and options with Duke Law students during the seventh annual Business Law Society's career symposium. ♣

**LOCAL PROPERTY, GLOBAL JUSTICE: LAW AND RESOURCES IN THE ERA OF CLIMATE CHANGE** JAN. 30, 2009

THE ANNUAL SYMPOSIUM of the *Duke Journal of Comparative & International Law* brought leading scholars of environmental law and policy together to explore the implications of property-based solutions to environmental problems.

Panelist Annie Petsonk, international counsel with the Environmental Defense Fund, said the World Trade Organization (WTO) could provide a suitable structure for a binding international agreement on greenhouse gas emissions. "Countries are pounding on the doors of the WTO to get in. Why? Because in exchange for accepting a set of international responsibilities ... they gain access to markets. That's what countries want, that's what their people want." ♣

**RACE & SOCIO-ECONOMIC CLASS: UNRAVELING AN INCREASINGLY COMPLEX TAPESTRY** JAN. 23, 2009

EMINENT SCHOLARS FROM an array of disciplines examined how racism has contributed to socio-economic disadvantage and, conversely, how socio-economic disadvantage has spurred racism. Conference participants considered the role of the law in reinforcing these dynamics and what creative legal interventions could produce better future outcomes.

"Our hope is that the conference will stimulate increased understanding of the law's influence on racial and socio-economic inequality in the U.S. and a better sense of the likely consequences of various policy choices," said Professor Trina Jones, a principal organizer of the conference. It was sponsored by *Law & Contemporary Problems* and the Mills Conversation Series on Race. ♣

**NATIONAL SECURITY UNDER A NEW ADMINISTRATION** APRIL 16-17, 2009

THE 14TH ANNUAL National Security Conference featured experts from the military, policy, and legal spheres addressing myriad issues facing the Obama administration, such as the Middle East peace process, the delicate balance between civil rights and the need to gather intelligence to prevent possible terrorist attacks, immigration policy, and public diplomacy.

"[P]ublic diplomacy ... is all about understanding, informing, engaging, and influencing global audiences beyond foreign governments to promote greater appreciation and understanding of U.S. society, culture, institutions, values, and policies," said Ambassador David Litt, executive director of the Center for Stabilization and Economic Reconstruction, Institute for Defense & Business, during one panel discussion. The United States must make every effort to be truthful, credible, and persuasive, and must engage directly with global audiences, he added. "If we do not define ourselves, our adversaries will define us for the rest of the world."

The conference was sponsored by the Center on Law, Ethics and National Security, the Center for International and Comparative Law, the Program in Public Law, Duke University's Vice Provost for International Affairs and Development, and the Terry Sanford Institute of Public Policy. ♣

**VIEW WEBCASTS OF ALL DUKE LAW CONFERENCES AT [WWW.LAW.DUKE.EDU/WEBCAST/](http://WWW.LAW.DUKE.EDU/WEBCAST/)**

**DOING BUSINESS IN LATIN AMERICA** FEB. 11 & 13, 2009

**I**VAN DUQUE, adviser to the Interamerica Development Bank executive board, discussed the financing of small and medium-sized businesses during "Doing Business in Latin America," a Feb. 13 symposium organized by the Latin American Student Association at Duke's Fuqua School of Business and the Law School's Latin American Business Law Association. Carlos Menem, the former president of Argentina, gave the keynote address. ♣



IVAN DUQUE

## News Briefs

### HABER '09 EARNS DUKE'S FIRST JD/MASTER IN GLOBAL BUSINESS LAW

**J**OSHUA HABER BECAME Duke Law's first recipient of a JD/Master in Global Business Law in May. He earned the dual degree by spending his 3L year in Paris, taking courses on World Trade Organization dispute litigation and global contracts, among others, at l'Université Paris 1 Pantheon-Sorbonne and Institut d'Études Politiques de Paris (Sciences Po).

"It was an eye-opening experience as to how the legal community is very quickly becoming much more international," said Haber, who also earned an LLM in international and comparative law while at Duke. "The thing that I found endlessly amazing was the value the cultural exchange adds to an education. As much as you sit in a classroom — whether it be at Duke University or elsewhere in the world — and learn about other systems, other cultures, and other laws, there is nothing like the experience of actually being in that other place and seeing the dynamic between a legal system and its society."

As an example, Haber recalled his visit to the central court in Paris. Although Duke Law Professor Ralf Michaels had explained, during a first-year class, how French lawyers interact with judges, Haber found that witnessing an exchange highlighted the differences from the American legal process.

"No matter how much you read, you can't fully understand [this situation] unless you are entrenched in that other culture and see it firsthand," he said.

"This program really speaks to the commitment that Duke has to expanding its international base," Haber said. "This is just another example of how they really do take it seriously and recognize its importance."

"It's something that I will forever appreciate. As much as I loved being here at Duke, it really made my three years in law school that much more unique and special." ♡ — *Tanya Wheeler-Berliner*



## Street Law

### STUDENTS OFFER LESSONS IN CREATIVE EXPRESSION, AS WELL AS LAW

**A**N INCREASING NUMBER of Duke Law students are helping young people understand law and the legal system through the pro bono Street Law project. During the spring 2009 semester, 26 students helped teach kids about constitutional and criminal law and staged mock trials in both a local school and a youth detention center.

Assisted by his classmates, Mike Manigault '10 added lessons in creative expression to the curriculum at the Durham Youth Home, the detention center where Street Law has been active for four years. He developed the program after volunteering there and learning about the residents' lives.

"[Street Law volunteers] were teaching the kids about the law, and I think that's great," he said. "I just thought there could be a way for them to express themselves creatively that would be good for them. There's a lot on their minds that I feel they're not always able to process."

In one exercise he asks residents to write a letter to someone they normally wouldn't contact.

"We start off talking about the nature of letters, the form of letters, what letters are supposed to accomplish," he explained. "We read rap lyrics that are written in the form of letters and have a discussion about that. Then they go and write letters. The guys tend to write to fathers who aren't around or gang members on the outside. I remember one girl wrote a really meaningful letter — it was to herself five years ago. It was a mix of pride, because I guess she thought she wouldn't be able to deal with some of the situations she was able to deal with, and hope for the future." ♡ — *F.N.*



### STUDENTS ASSIST HOMEOWNERS FACING FORECLOSURE

**S**TUDENT VOLUNTEERS in the Duke Law Foreclosure Project are helping North Carolina homeowners facing foreclosure through a partnership of government agencies, housing counselors, legal assistance organizations, mortgage servicers, and community groups charged with reducing the rate of foreclosures in the state.

Last fall, law students from Duke, North Carolina Central University, and the University of North Carolina learned to analyze mortgage documents and operate a computer program designed to identify "red flags" in the lending process of a homeowner facing foreclosure.

"We get several files on each person — the Housing and Urban Development form, the loan application, the truth in lending disclosure form, and the loan note," said Elizabeth Hall JD/MA '11, a student volunteer. "We go through and make sure that the settlement agent, the lending company, and the

broker are all appropriately licensed. We also check to make sure the forms are signed. And then we actually get into the nitty-gritty: who paid for what and how much did they pay?"

Troubling files are identified and returned to the North Carolina Office of the Commissioner of Banks, which investigates the issues and works with the homeowners and servicers on loss mitigation or other modifications that might be made to avoid the pending foreclosure.

"Personally this has made me a lot more aware of how thoroughly you need to be prepared to deal with lenders," said Hall. "Professionally, it was interesting to have the initial review of the relevant laws in North Carolina. [It also] makes me very concerned for people without legal training. I think there should be more responsibility on the part of the people who do understand." ♡ — *T.W.-B.*



## INAUGURAL LAW FIRM CHALLENGE

WILLIAMS & CONNOLLY AND McDERMOTT WILL & EMORY TAKE TOP HONORS

**T**HE LAW SCHOOL'S INAUGURAL Law Firm Challenge matched D.C. alumni against one another in an effort to reach 100 percent participation in Annual Fund giving at their respective firms. Alumni at 10 participating firms together donated more than \$180,000 during the month-long, volunteer-driven competition. Williams & Connolly topped all firms employing six or more alumni while McDermott Will & Emory finished first among firms with five or fewer. Jones Day and Dow Lohnes also reached the 100 percent participation level.

At a May 19 wrap-up event hosted by Sidley Austin, Dean David F. Levi and Reggie Love '04 spoke to more than 80 members of the Law School community including alumni, faculty, and current and incoming students. Love, President Obama's personal aide and a member of Duke's 2001 NCAA champion basketball team, reflected on the lessons in teamwork he has learned in sports and politics, and highlighted the collaborative spirit among Law School alumni as demonstrated by the success of the challenge. ♫ — *Matthew Taylor*



## WOMBLE, CARLYLE, SANDRIDGE & RICE ESTABLISHES SCHOLARSHIP, LEADS LAW FIRM GIVING

**T**HE WOMBLE, CARLYLE, Sandridge & Rice Scholarship has been established at Duke Law School with a \$100,000 gift from the firm. Combined with a \$30,000 financial commitment it made to the Willem Vis International Moot Court Competition, Womble Carlyle holds the distinction of being the Law School's most generous law firm benefactor for 2008.

"We are grateful to the lawyers of Womble Carlyle for their generosity and foresight, and we are proud of the longstanding relationship that we share with their firm," said Dean David F. Levi. "The interconnections between Duke Law and Womble Carlyle trace back to the beginnings of both. We have helped one another to flourish. We are proud of the accomplishments of our many graduates at the firm. And we continue to benefit from the assistance of Womble Carlyle lawyers, whether as adjunct faculty, members of our alumni board, or, as in this wonderful instance, supporters of our students."

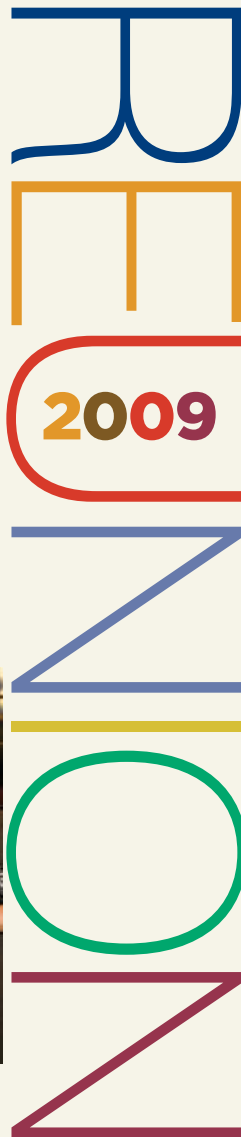
Charles R. Holton '73, a partner in Womble Carlyle's Research Triangle Park office and a senior lecturing fellow at the Law School teaching Arbitration Law and Practice, led the scholarship initiative.

"We feel like we have a significant relationship in a number of ways with the Law School," Holton says. "We are one of the top employers of Duke Law grads, and many of our members are grads, so this is a way of expressing loyalty and gratitude for the training we received as Duke Law students and that continues to go on at the Law School. We want to participate in that and lend support to the ongoing effort."

In addition to Holton, Womble Carlyle partners Sean Andrussier '92 and Marilyn R. Forbes, serve as senior lecturing fellows at Duke Law, as does Deborah J. Hylton '83, who practiced there for 22 years, 15 as a partner. ♫ — *M.T.*



# News Briefs

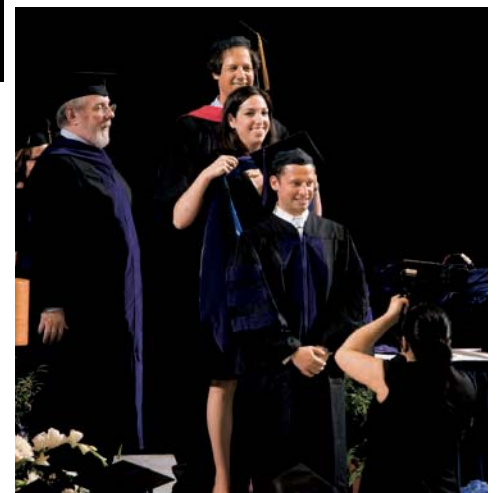
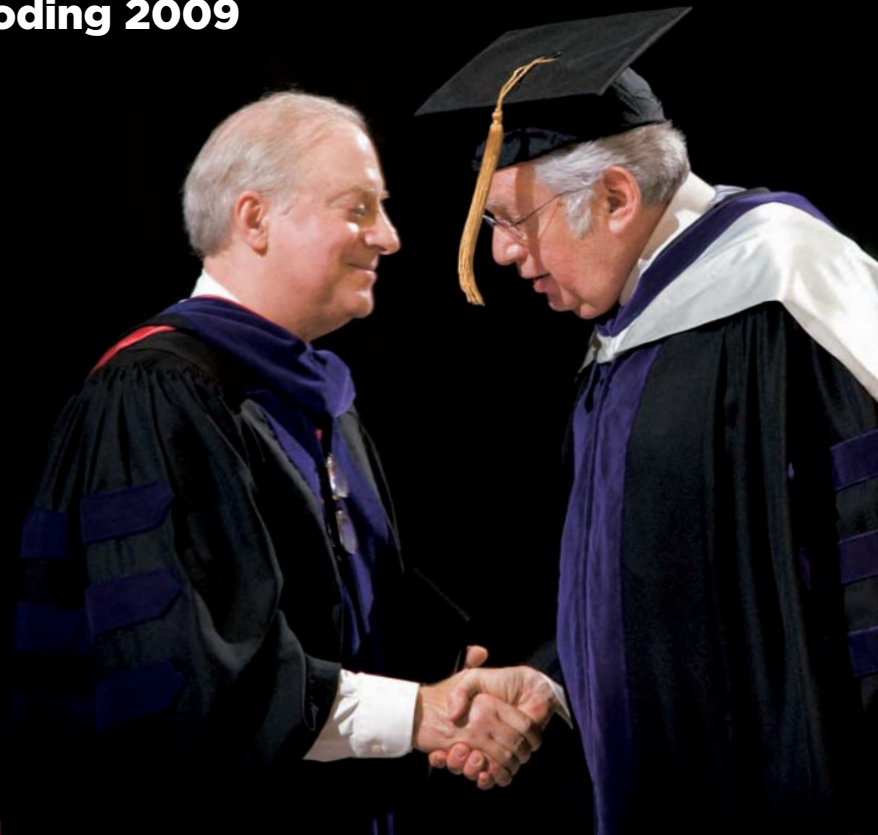


MEMBERS OF classes ending in "4" and "9," as well as members of the Half-Century Club, returned to the Law School April 17-19 to renew friendships, share memories, and take in a transformed facility. Charles Becton '69, Candace M. Carroll '74, Christopher Dean Dusseault '94, and E. Carol Spruill, senior lecturing fellow and former associate dean for Public Interest and Pro Bono, were honored for their professional accomplishments and service to the Duke Law community.





## Hooding 2009



**D**UKE LAW CELEBRATED the members of the Class of 2009 during their hooding ceremony at Cameron Indoor Stadium on May 9.

The event honored 215 JD graduates, including 25 who earned master's degrees from other Duke schools and departments and 22 who also received an LLM in international and comparative law, as well as 76 international lawyers who received LLM degrees.

Chief Judge David B. Sentelle of the Court of Appeals for the District of Columbia Circuit, pictured above with Dean David F. Levi, reminded the graduates that their degrees come with obligations.

"The law creates for its practitioners an oligopoly protected against competition," he said. "The legitimacy of this protection depends not only upon our expertise and understanding in applying the law, but also upon our willingness to devote that expertise not only to our clients, but to those who may not have the opportunity to pay the normal charges to become our clients. You have an obligation not only to your clients, but to society at large."

Dean Levi, JD Class Speaker Sarah Campbell, and LLM Class Speaker Emmanuel Ceusters (below, right) also paid tribute to the graduates. ♪





# Agency, duty, property, scandal

*Deborah DeMott covers it all in a unique seminar on art and the law*



Kelly Murdoch-Kitt

**W**HEN BRANDEIS UNIVERSITY announced early this year that it would close its art museum and sell off its collection to offset dramatic endowment losses, it caused a minor tempest in the art world — and provided Professor Deborah DeMott’s class of Art Law students a terrific case study.

What are a museum’s ethical and legal obligations to its donors? What limits are or should be placed on a museum’s use of revenue generated from the sale of artwork? And who has standing to challenge such a sale?

Such questions animated discussion among students in DeMott’s course this spring, offering new insight into the business of art as well as the interplay of bodies of law that many students previously encountered as discrete fields. The David F. Cavers Professor of Law, DeMott covers a broad range of topics in the course — understanding the aesthetic experience, characterizing artwork for legal purposes, art markets, moral rights and copyright, free expression, forgery, the structural organization of museums, ownership, and looting and repatriation of stolen art.

“What I loved about Art Law,” says Jillian Harrison ’10, whose undergraduate degree in archaeology and interest in ancient artifacts led her to take the course, “is that it pulled together so many areas of law that I didn’t expect — property, criminal law, constitutional law, contracts, international law.”

“I learned that ‘art law’ is a catchall term for a wide variety of legal problems applied to a group of similar clients with specialized needs,” says Katherine de Vos ’10, who is simultaneously pursuing a JD and MA in Art History and hopes one day to teach art history and law. “These clients are not necessarily interested in lawyers who are art aficionados. They are interested in lawyers who understand their situations and can resolve their legal problems.”

For DeMott, the course is an opportunity to synthesize her passion for art with her scholarly interest in issues of agency, business organizations, and fiduciary duty. “I long have been interested in many aspects of visual art and market cultures,” she says. Her interest grew during her work as the reporter for the American Law Institute’s Restatement (Third) of Agency, the definitive summation of the law relating to legal relationships between agents and those they represent. The field, she found, was rife with cases involving art.

“When [former Associate Dean for Academic Affairs] Theresa Newman affirmatively suggested that I teach this course, I resisted because I’m not an intellectual property scholar,” she says. “But when I looked at the issues of



*"It's common for artists to have grievance after grievance with their agents or collectors, and because biographers are not lawyers they aren't sensitive to the legal issues. Sometimes I read these books and think, 'That's a breach of fiduciary duty!'"*

— Deborah DeMott

agency — the material on art dealers, auction houses, intermediary relationships — it piqued my scholarly interests."

In fact, DeMott was granted a research leave for the coming year to work on a book about relationships of agency and influence in art markets. "I'm a fan of biographies of artists, but I have always noticed how the legal perspective is missing," DeMott says. "It's common for artists to have grievance after grievance with their agents or collectors, and because biographers are not lawyers they aren't sensitive to the legal issues. Sometimes I read these books and think, 'That's a breach of fiduciary duty!'"

### *sparkling student scholarship*

DeMott has inspired a similar passion in Sue Chen '09, who took Art Law as a 2L. Chen developed her course paper into an article — published in *Art, Antiquity and Law* in June — arguing that museums should be held to the more rigorous "trust" standard of fiduciary care, rather than the corporate standard as some have suggested, in order to properly fulfill their roles as institutions as well as custodians of artistic treasures.

The trust standard assesses whether a board's decision-making procedure is sufficient to satisfy its fiduciary duty. For museums, that standard is usually met through observance of the profession's code of ethics, which requires certain steps to be taken during deaccessioning processes and prohibits the use of deaccession proceeds for non-acquisition purposes, such as paying for general operations. Violators face sanctions from peer museums, which may refuse to trade or loan artwork, as well as the potential loss of accreditation.

A corporate standard of care, Chen explains, would be far less specific, and might simply require boards to act in the best interest of the institution with little regard to the cultural value of the work they steward or the inherent responsibility of a museum to its public patrons.

"There is a good set of safeguards already in place," says Chen, who will begin a clerkship with Judge Harris Hartz of the U.S. Court of Appeals for the 10th Circuit in the fall. She notes that for most museums, the threat of professional ostracism is enough to prevent violations. Sparked by questions surrounding the Brandeis University situation and aided by a student scholarship grant from Duke Law, Chen is now working on a scholarly paper exploring governance in the university art museum, a relationship complicated by the board's fiduciary duty to the broader institution.

### *Pictures of a case*

Assigning value to a piece of art is perhaps the course's most difficult topic for law students, most of whom are well-versed in the basics of law but can be intimidated, at least initially, by DeMott's inquiries into the definition of art, the aesthetic and stylistic properties of an art object, or the value of a disputed piece.

That's where the slideshows come in. Session after session, DeMott clicks through a series of slides, showing artworks, museums, and even images of artists and art agents whose occasionally sordid stories she tells with delight.

"One of my favorite parts of the class was seeing the slides and hearing Professor DeMott talk about the unscrupulous behavior of agents," says Chen. "She has a very wry way of describing the skullduggery of these people."

In one session, DeMott clicked through a series of paintings as she discussed controversy surrounding the Archibald Prize for portraiture, one of Australia's most prestigious art awards. Since the generous cash prize was first awarded in 1921, it has sparked litigation over issues such as whether caricature constitutes portraiture and how to properly interpret the requirement that the winning portrait be "painted from life."

In the 1970s, artist John Bloomfield received the Archibald Prize for his photo-realistic portrait of a man he had never met, painted large-scale from a magazine photograph. The trustees who administer the prize revoked it following criticism from other artists who argued that Bloomfield had not painted his subject from life. Six years later, another artist was widely thought to have used a photograph in painting a portrait of a friend. Bloomfield sued the Archibald trustees for reinstatement of his prize — and lost. The distinction: the winning artist's photograph was used as an aid in painting someone he knew in life, and Bloomfield used a photograph as the sole basis for a portrait of someone he did not know.

DeMott says questions surrounding the determination of artistic value are challenging for students, but that "trying to understand why these questions matter so deeply is important to understanding what the law contributes," she says. She likes to discuss the Archibald Prize in particular because it "helps us see how aesthetic tastes can shape how the law might be applied."

### *Cultivating appreciation*

While she knows that few of her students will ever litigate an art law case, DeMott hopes they develop a new appreciation for works of art and the variety of actors involved in sustaining the art world.

"I hope this course helps these prospective lawyers think about their social role," she says. "Many lawyers are collectors or consumers of art or fiduciaries or counselors of cultural institutions. I hope they can see art as a complement to what they do or a refuge."

At the least, DeMott's students come away with a deep appreciation for their professor's enthusiasm for and knowledge of a unique and complex topic.

"I greatly enjoyed Professor DeMott's passion for the subject," says de Vos, who is spending her summer studying the history and regulation of art markets in Italy. "She is incredibly learned in multiple fields, and I find her ability to merge law and art in coherent, fluid discourse very inspiring. I hope to teach similar material in the future, so I consider her a 'teacher' in more ways than one, since I am not only learning the material, but also how to convey it." ♡

— Melinda Myers Vaughn





FOR 12 YEARS, KALVIN SMITH HAS BEEN IMPRISONED FOR A BRUTAL CRIME THAT HE SAYS — AND MANY BELIEVE — HE DID NOT COMMIT. A DEDICATED TEAM OF ADVOCATES, ALL MEMBERS OF THE DUKE LAW COMMUNITY, ARE WAGING AN UPHILL BATTLE TO WIN HIS FREEDOM.

# IT TAKES A VILLAGE TO WORK FOR JUSTICE



BY PHOEBE ZERWICK



**AUTHOR'S NOTE:**

*KALVIN MICHAEL SMITH IS INCARCERATED at the Albemarle Correctional Institution, a medium-security prison in Stanly County, N.C., where he works in the barbershop, reads, and writes letters. Now 38, Smith is serving a 23- to 29-year sentence for the brutal 1995 beating of a young, pregnant store clerk in Winston-Salem, a crime he says he didn't commit.*

*In January 2009, Smith lost a motion for a new trial. His advocates at the hearing all firmly believe he is innocent and is a likely victim of prosecutorial misconduct, false testimony, and incompetent trial counsel. All are members of the Duke Law School community: David Pishko '77, Clinical Professor Theresa Newman '88, and David Bernstein '06. They plan to stay on his case through the appeal process, still hopeful that justice will, someday, be done. Professor James Coleman Jr. supervised the students who investigated the case for the Duke Innocence Project and assisted the lawyers who represented Smith.*

*I met Smith and Coleman in 2004 when I was looking into Smith's case as an investigative reporter for the Winston-Salem Journal. By then Coleman had been reviewing evidence in the case for a year. He and I worked more closely than I would have*

*normally worked with a source, each of us understanding the tenuous trust between a lawyer and a journalist. After the newspaper published my series of articles that raised doubts about Smith's guilt in November 2004, I moved on to other stories, but Coleman, Newman, and a dedicated group of Duke Law students involved in Duke Law School's Innocence Project, including Bernstein, pressed on.*

*When I first met him, Smith was clearly frustrated by the slow progress of his innocence claim. When I visit him following his failed hearing, he is disappointed, but seems more patient, clearly trusting the members of his legal team to do their jobs. "I've gotten to the point where I love Mr. Coleman," Smith tells me, adding that he calls Coleman often — at work, at home, on his cell phone.*

*Sometimes he feels as though he's a burden to his advocates. But they tell him not to worry.*

*As Smith heads back to his cellblock at the end of our hour-long visit, he calls back with a question.*

*"Are you going to be talking to Coleman today?" Smith asks. "Tell him I'll call him tonight. About 7:30. I need to talk to him." — Phoebe Zerwick*

**KALVIN SMITH DRESSED** for his court hearing last January in a new suit and shoes his father bought him for the occasion. He hadn't worn anything but prison-issued khakis and work shirts since a jury in Forsyth County, N.C., had convicted him in 1997 of the near-fatal beating of Jill Marker.

In those 12 years Smith hadn't really felt human. The new clothes helped. He was looking forward to testifying for the first time, and telling a judge that he was not the one who had beaten Marker and left her for dead.

His lawyers projected confidence. But Smith felt he couldn't trust the justice system that had sent him away in the first place.

"I really, deep down inside didn't look for them to do the right thing," he says a few days after the January hearing.

His lawyers had gathered over the weekend in Winston-Salem to prepare for the hearing. James Coleman Jr., Duke's John S. Bradway Professor of the Practice of Law and co-director of the Wrongful Convictions Clinic, knew Smith's case inside out, although he was not representing Smith as his lawyer. He had been investigating the case since 2003, and spent a good part of the weekend tracking down witnesses to make sure they would show up for court.

David Pishko '77, a partner at Elliot Pishko Morgan in Winston-Salem who had taken the case pro-bono, would question witnesses and make the oral arguments. Clinical Professor Theresa Newman '88, who co-directs the Wrongful Convictions Clinic, would be co-counsel. David Bernstein '06, who worked on Smith's case as a

OPPOSITE PAGE, TOP: KALVIN SMITH; BOTTOM, L-R: JAMES COLEMAN JR., DAVID PISHKO '77, THERESA NEWMAN '88, DAVID BERNSTEIN '06, JOE DAVIS '07



**“HIS STORY SOUNDED CREDIBLE. HE TOLD THE STORY IN A WAY THAT DIDN'T SEEM DESIGNED TO CONVINCE ME HE WAS INNOCENT,” SAYS JAMES COLEMAN OF HIS FIRST MEETING WITH SMITH.**



student Innocence Project volunteer, flew in from New York where he was an associate at Fried, Frank, Harris, Shriver & Jacobs. He had conducted legal research for the motion with assistance from other associates through the firm's pro-bono program.



SMITH'S THREE LAWYERS AND COLEMAN felt they had strong legal grounds for a new trial. First, there was evidence of incompetence by Smith's trial lawyer, who had spent only 59 hours on the case prior to trial and had allowed the brain-damaged victim to identify Smith without a challenge. They also had evidence that prosecutors had failed to produce evidence, in violation of the Supreme Court's 1963 ruling in *Brady v. Maryland*. And the two witnesses who testified against Smith at his trial had since recanted and would testify that police had pressured them for their testimony.

"It was clearly the strongest post-conviction claim I ever had," says Pishko.

But there was more than the law driving them as they worked into the night preparing for court. They all had taken the leap of faith lawyers rarely make: they believed their client was innocent.

## PROVING INNOCENCE: AN UPHILL CLIMB

INNOCENCE IS NOT PART of the normal legal lexicon. Juries find defendants guilty or not guilty, never innocent. Lawyers defend their clients regardless of their guilt or innocence. And while we are all presumed innocent under the law, innocence is not a legal claim.

That's changing with the growing number of convicted felons who have been exonerated in the last 17 years by DNA evidence. To date, 232 defendants convicted of rape, murder, and other heinous crimes have been found not simply "not guilty," but innocent, establishing innocence work as a new area of law.

Duke Law started its Innocence Project in 2000 as one of the founding projects of the N.C. Center on Actual Innocence, a loose network of university-based organizations where faculty and students work together in a quest for justice. Coleman and Newman serve as faculty advisers.

Smith wrote to the center in 2003, and his case was referred to Coleman for review.

Today students can earn course credit for some of their work through the Wrongful Convictions Clinic, but not so in 2003. Coleman and a core group of students, Emily Coward '06, Joe Davis '07, and Bernstein, read through hundreds of pages of trial record, police reports, and transcripts from interviews with witnesses — enough to tell them that the case against Smith didn't hold up.

Smith says his first meeting with Coleman, in the spring of 2004, changed his life.

"The first thing Mr. Coleman said to me was, 'We believe you're innocent,'" Smith says. "To hear that coming from someone other than my family, that just took a load off my back. It was like I could breathe again."

By then, Smith had been in prison for seven years and had good reason for despair. After conviction, the burden of proof shifts from the prosecution to the defense. No longer presumed innocent, it was now up to Smith to prove that he deserved a new trial.



THE DEC. 9, 1995, attack against Jill Marker had been big news in Winston-Salem.

She was beaten as she was getting ready to close up the Silk Plant Forest, an artificial plant store in a busy shopping center that was stocked that week with Christmas trees and decorations.

The beating left her in a coma with a fractured skull. The local media closely followed the investigation and the progress of her limited recovery, reporting on the birth of her infant son while she was in the coma and her transfer to a nursing home close to her parents' Ohio home, but the crime remained unsolved.

At first police focused their investigation on a 46-year-old white man named Ken Lamoureux. He had a history of domestic violence and psychiatric problems and met Marker when she taught at his children's day-care center. At least two witnesses saw Lamoureux in the store the night of the attack. But the investigation ran cold, and he was dropped as a suspect.



**SMITH'S LAWYERS AND COLEMAN FELT THEY HAD STRONG LEGAL GROUNDS FOR A NEW TRIAL. FIRST, THERE WAS EVIDENCE OF INCOMPETENCE BY SMITH'S TRIAL LAWYER. THEY ALSO HAD EVIDENCE THAT PROSECUTORS HAD FAILED TO PRODUCE EVIDENCE, AND THE TWO WITNESSES WHO TESTIFIED AGAINST SMITH AT HIS TRIAL HAD SINCE RECANTED.**

**"IT WAS CLEARLY THE STRONGEST POST-CONVICTION CLAIM I EVER HAD."  
— DAVID PISHKO '77**



**KALVIN SMITH AND DAVID PISHKO AT SMITH'S JANUARY 2009 HEARING, WHERE SMITH PETITIONED FOR A NEW TRIAL.**

Photo: David Rolfe (*Winston-Salem Journal*)



**SMITH SAYS HIS FIRST MEETING WITH COLEMAN, IN THE SPRING OF 2004, CHANGED HIS LIFE. "THE FIRST THING MR. COLEMAN SAID TO ME WAS, 'WE BELIEVE YOU'RE INNOCENT.' TO HEAR THAT COMING FROM SOMEONE OTHER THAN MY FAMILY, THAT JUST TOOK A LOAD OFF MY BACK. IT WAS LIKE I COULD BREATHE AGAIN."**

Smith first came to police attention in June 1996, after a jilted girlfriend reported him. He also was dropped as a suspect after he passed a polygraph test. But in January 1997, another jilted girlfriend reported him to police. After an interrogation, Smith signed a statement, putting himself at the crime scene. He was arrested immediately.

The case against him fell into place quickly. One friend told police he had been at the plant store with Smith. Another told police that she heard Smith brag about the beating. And three months before the trial, Marker purportedly identified him from a photo lineup.

Still unable to speak or walk and nearly blind, she made a dramatic witness at his trial. Prosecutors wheeled her in and she pointed to Smith as her attacker.

After deliberating for two days, the jury convicted Smith of assault with intent to kill and armed robbery.

## **BUILDING THE CASE**

COLEMAN IS A DELIBERATE MAN. During his long career in private practice, including 12 years as a partner at Wilmer Cutler Pickering Hale & Dorr in Washington, D.C., he routinely took on capital collateral cases on a pro bono basis; he joined the Duke Law faculty after defending serial murderer Ted Bundy in his petitions for post-conviction relief from his Florida convictions and death sentences.

As Coleman and the students reviewed Smith's case, several questions stood out.

They couldn't understand why the police had aborted their investigation of Lamoureux, the first suspect in the case. It seemed clear to them, too, that witness statements against Smith were coerced.

Smith's conduct also made little sense. Why, for example, had he gone to the police station and given a statement to implicate himself?

In his initial meeting with Smith, Coleman watched him closely, listening for lies.

"His story sounded credible. He was emotional, but that wasn't what convinced me," Coleman says. "He told the story in a way that didn't seem designed to convince me he was innocent."

Two years after Coleman took on Smith's case, Duke University found itself at the center of a media storm with its own case of wrongful arrest when three white lacrosse players were charged with sexual assault.

The national press descended on the campus to tell the story of students at the elite school who had gotten what was coming to them. That story quickly blew up, as evidence of a false accusation emerged. Eventually the state attorney general intervened, charges against the students were dropped, and the prosecutor who had treated them unfairly was forced to resign in disgrace.

After leading an internal review of the lacrosse team's conduct on campus, Coleman was one of the first to suggest there was misconduct by the local police and prosecutor.

He can't help but compare Smith's case to that of the three lacrosse players who had the best lawyers in the state defending them. He notes the roles that race and resources play in the outcome of such cases and the importance of the attorney general and bar officials being concerned about the injustice. Coleman points to comments made by Reade Seligmann, one of the exonerated lacrosse players, after charges against him were dropped.

"This entire experience has opened my eyes up to a tragic world of injustice I never knew existed," Seligmann said. "If it is possible for law enforcement officials to systematically railroad us with no evidence whatsoever, it is frightening to think what they could do to those who do not have the resources to defend themselves."

## **"ADVOCATES OF THE TRUTH, FIRST AND FOREMOST"**

INNOCENCE CASES BEGIN as fact-finding efforts. Finding a legal defense is not the goal — getting to the truth is. The lawyers and students working the cases tell clients they must tell the entire truth. If they uncover convincing evidence of guilt during their investigation, they close the case. "We are their advocates," Newman points out. "But they know we are advocates of the truth, first and foremost."

The work gives students practical experience with court records, police reports, and witnesses, and also teaches them the limits of the law they have been taught to uphold, she adds.





**FINDING A LEGAL DEFENSE IS NOT THE GOAL IN INNOCENCE CASES — GETTING TO THE TRUTH IS. THE LAWYERS AND STUDENTS WORKING THE CASES TELL CLIENTS THEY MUST TELL THE ENTIRE TRUTH. “WE ARE THEIR ADVOCATES. BUT THEY KNOW WE ARE ADVOCATES OF THE TRUTH, FIRST AND FOREMOST.” — THERESA NEWMAN '88**

As students, Davis and Coward visited Smith several times in prison, always leaving with a sense of guilt that they could return to school while Smith went back to a prison cell for a crime they believed he did not commit.

“This was Calvin’s life every day,” says Davis, who just finished clerking for Judge Henry Coke Morgan Jr. of the U.S. District Court for the Eastern District of Virginia. “That, at times, made me feel really guilty — that we weren’t doing more or moving faster.”

Bernstein, who started working on Smith’s case as a 2L, juggled his work on Smith’s case with a busy commercial litigation practice. “[Litigation] takes on new meaning when it’s to help get someone out of jail who you know is innocent,” he says, adding that he can imagine himself in Smith’s place. He keeps a photograph on his desk of Smith’s supporters marching through Winston-Salem on Martin Luther King Jr. Day last year.

Newman and Coleman see innocence work as a way to break down the traditional adversarial relationship between prosecutors and defense attorneys. Since the work is not about legal maneuverings, why not find a way for prosecutors and advocates to cooperate?

Coleman took this approach with Tom Keith, the district attorney in Forsyth County, having reason to believe that Keith would be open to Smith’s claim of innocence because of an earlier wrongful conviction in the county.



IN 2003, DNA EVIDENCE exonerated Darryl Hunt, who had served almost 19 years in prison for the rape and murder of a young copy editor in Winston-Salem. Keith had opposed Hunt’s bid for new trial, but when DNA evidence identified the real killer in the case, Keith joined defense attorneys in asking for the charges against Hunt to be dismissed.

Coleman praises Keith’s initial cooperation. Keith signed a voluntary consent order giving the Duke Innocence Project access to the prosecutor’s files in Smith’s case and encouraged the police to make their evidence available.

The police files contained a video of an interview with Marker in October 1996, three months before Smith’s arrest. Coleman had

read about the interview in the police reports, and he suspected that Marker had been shown a photo lineup that included Smith’s picture, but he had never seen the video.

It showed Marker reviewing three photo spreads, two of black men and one of white men. Because she could not speak, police asked her to nod her head ‘yes,’ or shake her head ‘no,’ in answer to their questions. Marker was unable to identify any of the black men, and appeared to identify a man in the lineup of white men.

The video forms the crux of Smith’s argument for a new trial. The police reports say nothing about the photo lineups or whose pictures she saw, and the photos were never shared with the defense before trial, as they should have been. Yet at the January hearing, the lead detective in the case testified that one of the lineups included Smith’s picture and another included a photo of Lamoureux.

If Marker could not identify Smith as her attacker in October 1996, how was it that she identified him a year later at his trial, asked Coleman? And if Smith’s trial lawyer had seen the video, why had he not used it to challenge her testimony? If he had not seen it, then the prosecutors were guilty of misconduct.

Coleman says that once he brought his questions to Keith, the district attorney stopped returning his phone calls and emails. Still, Coleman pressed Keith to work with him on Smith’s release long after his students urged him to give up, hoping to change the way prosecutors and defense advocates work on such cases.

But by late 2007, with no movement from the prosecutor’s office, Coleman and Newman decided it was time to go back to the adversarial model and file a motion for a new trial. That meant they needed to find a trial lawyer in Winston-Salem to argue the case. They were referred to Pishko through Hunt’s attorney.

## **A REWARDING CASE — “EVEN WHEN YOU LOSE”**

PISHKO STARTED OUT IN CORPORATE law after his graduation from Duke, but says he “missed working for the underdog.” He and his partners at the law firm they launched in 1988 specialize in professional malpractice, labor and employment, workers’ compensation, and civil rights, among other areas.





**“LITIGATION TAKES ON NEW MEANING  
WHEN IT’S TO HELP SOMEONE OUT OF  
JAIL WHO YOU KNOW IS INNOCENT.”  
— DAVID BERNSTEIN '06**

**“I TOLD [KALVIN] IT WAS ROUND ONE  
OF A 15-ROUNDER. I TOLD HIM WE  
WERE GOING TO KEEP FIGHTING AND  
HE NEEDED TO KEEP HIS HOPES UP  
AND STICK WITH US.”  
— DAVID PISHKO**



Photo: David Rolfe (Winston-Salem Journal)

Pishko has done post-conviction work for death-row inmates. But he says this is the first time he has ever represented someone he believes to be innocent.

“There’s nothing more rewarding than representing someone like Calvin Smith, even when you lose,” he says.

Smith changed into a new suit for his January hearing, but jailers insisted he keep the shackles on his ankles as he sat at the defense table beside Pishko. Newman sat behind them.

Smith’s father, mother, brother, and sister were in the gallery, along with Coleman and Bernstein. His youngest son, who was an infant when he went to prison, came to see him for the first time. And the benches were filled with community activists who have rallied behind him, including Hunt, a sharp contrast to his 1997 trial where his only supporters were members of his immediate family.

While Smith’s testimony was not needed for the legal claims, his lawyers knew that he needed the chance to tell his story.

Smith looked directly at the judge as he spoke, but with constant objections from the state he didn’t feel he was being heard. When he wasn’t on the stand, Smith kept up a constant flow of questions for Pishko.

“I know I got on Pishko’s nerves because I was writing so much down and sending him notes,” Smith says later. “Ask him that. Ask him that. I wanted every little detail to come out.”

The lawyers believed they had the law on their side. But they also knew the pressures on the judge. Marker is blind and the state’s witnesses have all recanted. Giving Smith a new trial would have amounted to setting him free.

For the last day of the hearing the bailiffs cleared the first two rows. Smith took that as a bad sign; court officials would want a buffer zone if he lost, to maintain order in the courtroom.

That morning, after hearing argument from the lawyers for both sides, Judge Richard Doughton denied the motion without comment and instructed the state to draft an order.

In the days leading up to the hearing, his lawyers had done their best to boost Smith’s confidence and at the same time help him prepare for a loss. They knew the odds, but the loss was harder than they expected.

“I told him it was round one of a 15-rounder,” Pishko recalls of trying to console Smith. “I told him we were going to keep fighting and he needed to keep his hopes up and stick with us.”

Newman found herself holding back tears.

“I never thought it was hopeless, because the law was on our side,” she says. “We really did win on the law.”

All members of Smith’s legal team say they laid solid groundwork for an appeal, either in state or federal court. And Coleman is confident that some day they’ll find evidence that points to the real attacker. He is already working to track down a woman he believes was talking to Marker on the phone shortly before the attack. Maybe she knows who was in the store that night.

“I think we’ll get him out of prison by getting his conviction overturned,” Coleman says.

But that won’t be enough. Coleman wants to prove his innocence. To do that, he believes he will need to solve the crime. ♡

## POSTSCRIPT:

*On March 17, a citizen’s committee reviewing the police investigation of the case on behalf of the Winston-Salem City Council sent a resolution to the Council saying they had found no credible evidence that Calvin Michael Smith was at the Silk-Plant Forest on the day or at the time of the assault on Jill Marker.*



Phoebe Zerwick is a freelance writer in Winston-Salem, N.C.



# Faculty Focus

## Laurence R. Helfer

### Scholarship explores recipes for international institutions to succeed



**T**O UNDERSTAND HOW an international institution operates, says Laurence Helfer, “you need to talk to the people who work within it and to the public and private actors who make use of the institution.”

Helfer, a leading scholar of interdisciplinary approaches to international law, human rights, and international intellectual property who joined the Duke Law faculty July 1, has done just that with his latest project — an exploration of the Andean Tribunal of Justice (ATJ). The ATJ is a little-known international court created by the Andean Community, South America’s second largest trading block, whose members include Bolivia, Ecuador, Peru, Colombia, and, until 2006, Venezuela. Helfer’s study of more than 1,400 ATJ rulings has yielded new insights into how international institutions, including

courts, operate when transplanted from one region to another and how they can contribute to developing the rule of law in areas where it is weak.

As with the more widely studied European Court of Justice on which it was modeled, the ATJ has jurisdiction over a wide variety of issues, including trade, taxes, tariffs, and intellectual property (IP). But unlike its European cousin, the ATJ’s docket is dominated by IP disputes. Within the IP area, Helfer concludes, the ATJ has helped to create a “rule of law island” in the Andean Community: The tribunal’s decisions are widely respected and followed by administrative agencies and courts in the Community’s member states.

Helfer, who came to Duke from Vanderbilt Law School where he was a professor of law and director of the International

Legal Studies Program, undertook a series of research trips to the region with Northwestern University political scientists Karen J. Alter and M. Florencia Guerzovich. They interviewed judges, government officials, administrative agency officials, attorneys, and private actors who participate in ATJ litigation. Their findings are being published in a series of papers. The first, “Islands of Effective International Adjudication: Constructing an Intellectual Property Rule of Law in the Andean Community,” was the lead article in the January 2009 issue of the peer-reviewed *American Journal of International Law*.

According to Helfer, the ATJ’s effectiveness is attributable in part to the domestic administrative agencies that apply Andean IP law when reviewing applications to register patents and trademarks. These agencies,

created in the 1990s with the support of international financial institutions such as the International Monetary Fund and the World Bank, are led and staffed by attorneys and other professionals committed to the fair and evenhanded application of legal rules. Several of the agencies operate outside of national civil service systems and

## Laurence R. Helfer

### Recent and forthcoming scholarship

HUMAN RIGHTS AND INTELLECTUAL PROPERTY: ANALYSIS AND SOURCES (co-authored with Graeme W. Austin; under contract with Cambridge University Press)

*Building Judicial Supranationalism in the Andes: Understanding Preliminary Reference Patterns in the Andean Community*, 41 N.Y.U. J. Int’l L. & Pol. (forthcoming 2009) (with Karen J. Alter)

HUMAN RIGHTS (2d. ed., University Casebook Series, Foundation Press, 2009) (with Louis Henkin, Sarah H. Cleveland, Gerald L. Neuman and Diane F. Orentlicher)

*Islands of Effective International Adjudication: Constructing an Intellectual Property Rule of Law in the Andean Community* 103 Am. J. Int’l L. 1 (2009) (with Karen J. Alter and M. Florencia Guerzovich)

*Redesigning the European Court of Human Rights: Embeddedness as a Deep Structural Principle of the European Human Rights Regime*, 19 Eur. J. Int’l L. 125 (2008)

*Monitoring Compliance with Un-ratified Treaties: The ILO Experience*, 71 L. & Contemp. Probs. 195 (2008)

*Nonconsensual International Lawmaking*, 2008 U. Ill. L. Rev. 71

*The New Innovation Frontier? Intellectual Property and the European Court of Human Rights*, 49 Harv. Int’l L.J. 1 (2008)



## Faculty Focus

have independent revenue streams, resulting in considerable operational autonomy.

All of these factors have combined to create an enclave of respect for the rule of law, Helfer says. “The agencies have developed a relationship with the ATJ whereby the court clarifies Andean IP standards for them, but also strengthens their fidelity to the rule of law by requiring them to follow fair and transparent procedures.” In this way, he adds, the ATJ has bolstered the autonomy and independence of the agencies relative to other government actors.

In an era in which the number of international institutions and tribunals is expanding, Helfer’s close examination of the ATJ and the Andean Community legal system offers several broader insights for scholars and policymakers. One involves how successful institutions from one region operate when transplanted to another. “We show,” says Helfer, “that for an international institution to function effectively in countries where the rule of law is weak, it needs to build a relationship with actors in the government who have a professional stake in seeing that international rules and decisions are followed.”

Helfer’s empirical study of the ATJ represents the latest evolution in an ambitious

research agenda that includes international intellectual property and human rights, two subjects he will teach at Duke Law. He has explored the growing interface between the two in numerous articles and a forthcoming book. He also is a co-author of the fully updated casebook, *Human Rights*.

Helfer will introduce the casebook at Duke when he teaches International Protection of Human Rights next spring. An enthusiastic teacher of rapidly-evolving, topical subjects, Helfer says he regularly identifies current events and real-world problems for students to analyze in the classroom. Students also assist him with his many research projects.

Duke’s Harry R. Chadwick Sr. Professor of Law, Helfer also serves as co-director, with Professor Curtis Bradley, the Horvitz Professor of Law and Professor of Public Policy Studies, of the Center for International and Comparative Law (CICL). Helfer looks forward to continuing established CICL programs such as the Global Law Workshop and to introducing a series of interdisciplinary roundtables that will bring together small groups of scholars in related fields for intensive workshops on draft papers. As an incoming board member

of Duke’s John Hope Franklin Institute for the Humanities, Helfer also looks forward to introducing social science and humanities scholars at Duke to the Law School’s highly interdisciplinary faculty.

“Professor Helfer is a tremendous addition to our faculty,” says Dean David F. Levi, adding that Helfer’s broad range of research interests complements and strengthens the Law School’s programs in international law, intellectual property, and human rights. “He is a creative and forceful institution builder who will help unify many parts of the university that are interested in human rights and interdisciplinary research.”

Levi also points to Helfer’s engagement with international courts, international organizations, and nongovernmental groups around the world as qualities that could facilitate experiential learning opportunities for Duke Law students. Helfer set up several international externships for students when he led the International Legal Studies Program at Vanderbilt. “He is in a position to help students gain important practical experience in international law and policy. There are not many people who have the breadth of knowledge and contacts he has,” Levi observes. ♡ — Frances Presma



## Kimberly D. Krawiec Scholar of corporate and securities law and “unconventional markets”

**M**ORE THAN EIGHT YEARS AGO, Kimberly Krawiec published a scholarly article that raised eyebrows with her suggestion that banks bore some burden for the phenomenon of “rogue” trading. Risk, she observed, netted profit, and banks sometimes encouraged it, rewarding short-term profits with sizeable year-end bonuses.

“Back then people thought it was a little crazy to suggest that financial institutions turned a blind eye to, or even encouraged, ‘unauthorized’ trading,” says Krawiec, who revisits the subject in “The Return of the Rogue,” recently published in the *Arizona Law Review*. “They asked, ‘Are you saying that banks actually have a financial incentive to encourage this type of risk-taking?’ That’s exactly what I was saying. Now, in the midst of the financial crisis, the reaction is much different.”

Krawiec joined the Duke Law faculty July 1, after more than six years on the faculty of the University of North Carolina School of Law; she also has taught at Harvard, the University of Virginia, and Northwestern University law schools. Having started her career in the corporate and derivatives group at Sullivan & Cromwell in New York, she has long examined emerging issues in those areas in her scholarship and teaching, focusing in particular on legal compliance and unconventional markets. Derivatives, hedge funds, and mortgage-backed securities all fell into that category in the relatively recent past, she notes with a laugh.



## Kimberly D. Krawiec

### Recent and forthcoming scholarship

*Price and Pretense in the Baby Market*, in *BABY MARKETS: MONEY, MORALS, AND THE NEOPOLITICS OF CHOICE* (Cambridge University Press, forthcoming 2009)

*Operational Risk Management: An Emergent Industry* in *OPERATIONAL RISK TOWARDS BASEL III: BEST PRACTICES AND ISSUES IN MODELING, MANAGEMENT AND REGULATION* (G.N. Gregoriou, ed.) (John Wiley and Sons, forthcoming 2009)

*Show Me the Money: Making Markets in Forbidden Exchange*, 72 *Law & Contemp. Probs.* (forthcoming 2009)

*Sunny Samaritans and Egomaniacs: Price Fixing in the Gamete Market*, 72 *Law & Contemp. Probs.* (forthcoming 2009)

*The Return of the Rogue*, 51 *Ariz. L. Rev.* 127 (2009)

*Altruism and Intermediation in the Market for Babies*, 65 *Wash & Lee L. Rev.* (2009)

*Signaling Through Board Diversity: Is Anyone Listening?* (with L. Broome) 77 *U. Cin. L. Rev.* 431 (2008)

Krawiec continues to keep a close eye on regulatory proposals sparked by the current financial crisis. “It will be interesting to see whether this becomes an opportunity for real, meaningful change in the regulatory system, or whether we implement regulations that look different but in many ways maintain the status quo,” she says. “The outlines of some of the proposals for regulation are rather vague — the key will turn on implementation.”

Much of Krawiec’s recent work extends her interests in industry self-regulation, legal compliance, and newly emerging markets to the interconnected sectors of what she terms the “parenthood market”: reproductive services, such as assisted reproductive technologies and in-vitro fertilization; adoption; surrogacy; and egg and sperm markets. These represent a robust and growing industry with many market characteristics and regulatory issues that parallel those in more traditional markets, she says.

In two recent papers Krawiec criticizes a legal regime that fails to fully acknowledge a “market in babies” and allows intermediaries, from physicians to adoption agencies, to profit handsomely for their services, while those supplying the raw materials of baby-making, including egg donors, surrogates and birth parents, face legal and other restrictions on their earning capacity. Asymmetric legal restrictions insist that baby-market suppliers “derive a large portion of their compensation from the utility associated with altruistic donation,” she writes in “Altruism and Intermediation in the Market for Babies.”

Some of the resistance comes from women themselves, she observes. “There is a traditional fear of market incursions into certain aspects of ‘femaleness,’ including reproduction. This time-honored hostility toward market advances into life’s most sacred and intimate areas is understandable, but problematic,” she says. “The tension becomes increasingly acute as reproduction, parenthood, and sexuality — areas of life that we prefer to consider governed by love, emotion, or commitment — appear more openly commercial.”

Yet, Krawiec maintains, the insistence on treating exchanges in an impersonal, profit-centered market as if they were motivated by something else — altruism or emotion, for example — thwarts the devel-

opment of sound legal rules. “Moreover,” she adds, “it increases the dependence and disadvantage of suppliers in these markets, who are predominantly women, and often burdens customers as well.”

Collusive price-fixing in the egg market is one market perversion that thrives in the “shadows,” she argues in “Sunny Samaritans and Egomaniacs: Price Fixing in the Gamete Market.”

“We would look at this behavior differently if we dropped the illusion that egg sellers are ‘donors’ and, instead, openly acknowledged that these are quite active, but not always competitive, markets,” she says.

In “Sunny Samaritans,” part of a forthcoming symposium issue of *Law & Contemporary Problems* on “forbidden markets” for which she served as special editor, Krawiec points to the use of professional guidelines from the American Society for Reproductive Medicine that dictate prices considered reasonable for eggs — \$5,000 under normal conditions, and up to \$10,000 in special circumstances — as one mechanism by which intermediaries have colluded to set prices. “In a long line of cases, courts have refused to tolerate anti-competitive conduct disguised as professional ethical guidelines.” There are other parallels to traditional financial markets and the types of intermediary misconduct often found there, she adds, pointing to recent incidents of surrogacy intermediaries absconding with clients’ funds.

Krawiec, who teaches Business Associations, Financial Derivatives, and a seminar called “Taboo Trades” that examines markets in everything from sperm, eggs, and human organs to prostitution and vote buying and selling, says the balance between market forces and government control, industry self-regulation and state intervention, and personal choice and shared public-policy goals is a tension common to all of the markets she studies. In that regard, all of her scholarship seeks to answer the same question: When can government regulation improve on unconstrained market forces, and when will it do worse?

Krawiec further argues that “the particular type of regulation predominant in the United States, under which a substantial portion of the governance is left to the regulated industry itself, gives rise to a

perversity of its own — a very profitable legal compliance industry that includes lawyers, accountants, and risk-management and human resources experts,” she says. “[These are] groups with independent self-interest and professional preservation goals that are not always compatible with the original regulatory goals.

“The ways in which the legal system struggles to keep pace with quickly changing or growing markets, how the law and mechanisms of private ordering attempt to resolve those tensions, which interest groups have attempted to capture the political process in order to influence the regulation governing those markets, and what is the public-interest rhetoric that they employ to effectuate those attempts are issues that cut across all of my scholarship,” she says.

“Professor Krawiec is an engaging scholar and teacher whose work on derivatives, hedging, financial rogues, intermediaries, and unconventional markets is of the greatest interest, particularly in the current economic turmoil,” says Dean David F. Levi. “She is a most welcome addition to our faculty.” ♡ — *F.P.*



# Joseph Blocher

## Scholar examines emerging issues in First, Second Amendment doctrine

**A**S A LAW STUDENT, Joseph Blocher wanted to be a clinical professor. He co-chaired the Legal Services Organization at Yale Law School, from which he graduated in 2006, worked in several different clinics, and remains deeply committed to public interest and pro bono work.

But during his first clerkship with Judge Rosemary Barkett of the U.S. Court of Appeals for the 11th Circuit, his love of scholarship won out.

“I had all these ideas,” says Blocher, who had published scholarly articles at Yale and during his earlier graduate studies in land economy at Cambridge University. “So I started writing articles on weekends. And after I had done three of them, I thought, ‘Wouldn’t it be great if I could do this all the time?’” Having emerged as a productive scholar in the areas of constitutional and property law, Blocher has his chance — he joined the Duke Law faculty July 1 after completing a clerkship with Judge Guido Calabresi of the U.S. Court of Appeals for the Second Circuit.

Blocher’s research and scholarship, most recently focused on the First and Second Amendments and the federal courts, broadly explores the role of institutions in the creation, interpretation, and application of legal theory and doctrine. He is especially interested, he says, “in considering the extent to which informal institutions receive, or should receive, deference from the formal legal system, and the ways in which that deference manifests itself in doctrine.”

In “School Naming Rights and the First Amendment’s Perfect Storm,” published in 2007 in the *Georgetown Law Journal*, Blocher examined an emerging free speech issue — the expanding practice of local governments selling to private parties the right to name public schools. An ambitious paper published in the *Duke Law Journal* in 2008, “Institutions in the Marketplace of Ideas,” brought together the leading metaphor for the First Amendment — the marketplace of ideas — with one of the leading economic theories, the “new institutional economics.”

In an article recently published in the *New York University Law Review*, “Categoricalism and Balancing in First and Second Amend-



### A HOMECOMING

**F**OR JOSEPH BLOCHER, launching his academic career at Duke isn’t just a matter of finding a welcoming scholarly community. It’s a homecoming.

Blocher is currently the only Durham native on the governing faculty, a distinction previously held by the late Professor Robinson Everett.

“For me, accepting Duke’s offer was a no-brainer,” says Blocher. “Durham has a mix of nice folks, great culture, and incredible research institutions, all within reach. It’s a wonderful place to be a professional. There are a lot of people doing a lot of exciting things.”

Given that his father is on the faculty at the University of North Carolina-Chapel Hill, Blocher admits to being a die-hard Tar Heel fan — an allegiance he shares with his fiancée Marin Levy, who will join the Duke Law faculty in the fall as a lecturing fellow.

“I was able to keep my allegiance quiet during my Duke interviews,” he says.

ment Analysis,” Blocher parses the majority and dissenting opinions in the Supreme Court’s 2008 ruling in *District of Columbia v. Heller*, the so-called D.C. gun-rights case, for clues to the standard of review that will govern Second Amendment cases going forward. Having worked extensively on the case during a year of appellate practice at O’Melveny and Myers in Washington, D.C. — under Walter Dellinger, Duke’s Douglas B. Maggs Jr. Emeritus Professor of Law, who argued the case in the Supreme Court on behalf of the District of Columbia — Blocher sees *Heller* as just the opening salvo in a body of modern jurisprudence on the subject.

“The next big battle or series of battles will be about who gets to invoke the Second Amendment and how much of a gun right it protects,” he says.

While Justice Antonin Scalia, in his majority opinion, took a categorical approach to the gun right, excluding certain people, places, and kinds of arms from Second Amendment protection, Blocher explains, Justice Stephen Breyer, in dissent, used more of a balancing test. “You would ask, ‘In any of these particular cases, or in the case of any particular law, does the benefit outweigh the burden, given whatever weight we want to attach to those?’ Those



are very different ways of creating a standard for review.”

The justices’ differing approaches in *Heller* are reminiscent, Blocher argues, of an earlier debate undertaken by Justices Black and Frankfurter in the development of First Amendment doctrine. For the most part Black lost his campaign for an “absolute” First Amendment to Frankfurter’s more “balancing standards approach,” Blocher says.

The *Heller* court never fully articulated what it views as the actual purpose of the Second Amendment, he adds. “We don’t know for sure if it’s an amendment intended to prevent tyranny by the government or one intended to protect people’s right to self-defense against criminals. And those lead to very different places in terms of categories you create — in terms of what kinds of guns are protected or what kinds of people can wield them,” says Blocher.

“Joseph Blocher has the qualities we look for in an entry-level appointment — a taste and aptitude for scholarship, high energy, creativity, demonstrated productivity, and enthusiasm for working with students,” says Katharine T. Bartlett, A. Kenneth Pye Professor of Law and chair of the entry-level appointments committee. “I am thrilled that he is joining this faculty.” ♣ — *F.P.*

## Joseph Blocher

### Recent and forthcoming scholarship

*Property and Speech in Summum*, 103 NW. U. L. Rev. Colloquy (forthcoming 2009)

*Categoricalism and Balancing in First and Second Amendment Analysis*, 83 N.Y.U. L. Rev. 375 (2009)

*Reputation as Property in Virtual Economies*, 119 Yale L.J. Pocket Part (2009)

*Institutions in the Marketplace of Ideas*, 57 Duke L.J. 821 (2008)

*Amending the Exceptions Clause*, 92 Minn. L. Rev. 971 (2008)

*School Naming Rights and the First Amendment’s Perfect Storm*, 96 Geo. L.J. 1 (2007)



## Lawrence Baxter and Kathryn Bradley

### PROFESSORS OF THE PRACTICE PROVIDE ESSENTIAL BRIDGE TO PRACTICE

**T**WO INDIVIDUALS lately appointed as professors of the practice of law are already well known to members of the Law School community.

Kathryn Webb Bradley has been a senior lecturing fellow since 2005, teaching courses in family law and ethics. She is currently director of Legal Ethics and the administrator for the Capstone Project and Domestic Externship Program.

A former clerk to Justice Byron R. White of the United States Supreme Court, Bradley is of counsel at Hogan & Hartson, where she was formerly a partner, practicing trial and appellate litigation in the firm’s Washington, Baltimore, and Denver offices. She has taught Legal Research and Writing at the University of Virginia, and has been an adjunct instructor of Legal Writing, Constitutional Law, and Federal Jurisdiction at the University of Maryland School of Law.

A member of the governing faculty from 1986 to 1995, Lawrence G. Baxter has returned to Duke Law after spending more than a decade in the financial sector. In addition to leading an interdisciplinary program on modernizing the regulatory state, Baxter is teaching a course on regulatory reform and supervising the Duke in D.C. program in the fall 2009 semester with James Cox, Duke’s Brainerd Currie Professor of Law. He also teaches Banking Regulation in a Post-crash Economy to upper-year and dual-degree students.

Baxter is a top scholar of administrative law, domestic and global banking regulation, and comparative law who began his academic career in at the University of Natal in his native South Africa. In 1995 he joined Wachovia Bank in Charlotte, N.C., serving first as special counsel for strategic development and later as corporate executive vice president, founding Wachovia’s Emerging Businesses and Insurance Group and eBusiness Group, then serving as Wachovia Corporation’s chief eCommerce officer. Since leaving Wachovia in 2006, he has served as a consultant and adviser to members of the online security industry and various Internet startup businesses in the caregiving, entertainment, social networking, and recruiting sectors.

Bradley and Baxter join a growing cadre of professors of the practice of law that now includes James Coleman, the John S. Bradway Professor of the Practice of Law, a top appellate litigator, and expert in criminal law and wrongful convictions; Scott Silliman, director of the Center on Law, Ethics and National Security and a former Air Force Judge Advocate; leading litigator Michael Tigar; and Bill Brown ’80, whose long Wall Street career included leadership positions at AIG, Goldman Sachs, and Morgan Stanley.

All bring extraordinary practice experience into the classroom in addition to their highly interdisciplinary scholarly interests, says Dean David F. Levi. ♣ — *F.P.*



# Jedediah Purdy reflects on the evolution of freedom in America



**P**ROFESSOR JEDEDIAH PURDY begins his latest book, *A Tolerable Anarchy: Rebels, Reactionaries, and the Making of American Freedom*, with a recreation of the 1775 debate in London over the demands from the colonies for less royal interference and more self-government — demands that were already couched in the language that would become the Declaration of Independence, “the language of consent and rebellion, and unalienable rights,” says Purdy. From Burke and Johnson’s clash over the colonists’ prospects to the present day, Purdy traces how successive generations of Americans have redefined the promises articulated in the Declaration to continually create new forms of political community.

Purdy spoke with Duke Law Magazine about his book.

**DUKE LAW MAGAZINE:** Frame this debate between Johnson and Burke.

**PURDY:** The crux of the debate was whether it would be possible to develop a political community on ideas as radical as the Americans were pronouncing. Johnson said, “No, these ideas are hopelessly abstract and amount to a ‘charter of anarchy,’ because everyone will have his own idea of what it means to be free, and everyone will just withdraw his consent from government at the time when it offends his conscience, and you’ll have no more legitimate order.”

Burke agreed that legitimate order was the only meaningful form of freedom — [he and Johnson agreed] that freedom was always a social achievement within a set of partly inherited institutions and familiar practices.

But Burke thought it was not entirely out of the question that the Americans could build a new kind of political tradition out of these extreme ideas and this ungovernable language. And he said that if they could, that would prove that anarchy might prove to be tolerable after all. And he said that if there was one set of terms on which the Americans could succeed, it would be that they could produce a political tradition out of anti-traditional elements of repudiation and insurrection and build a political community out of anti-communitarian impulses, antinomian conscience, and radical individuality. The book is the story of that tradition.

**DLM:** How did the Declaration serve as an anchor for that kind of tradition of repudiation and rebellion?

**PURDY:** The Declaration, in some ways, must have seemed to Johnson like the perfect proof for his case against the Americans. On the one hand, it used the most nakedly abstract claims of natural liberty — life, liberty and the pursuit of happiness, and unalienable rights — implying that if any of them is interfered with, a right to rebel against an established government ensues.

It is, actually, a kind of wild-eyed political theory, and at the same time is grossly hypocritical. One of the abuses the colonists were complaining about was interference with their liberty to control and keep their own slaves. So Johnson would have said that they were either crazy or criminally hypocritical — either way there is nothing to admire.

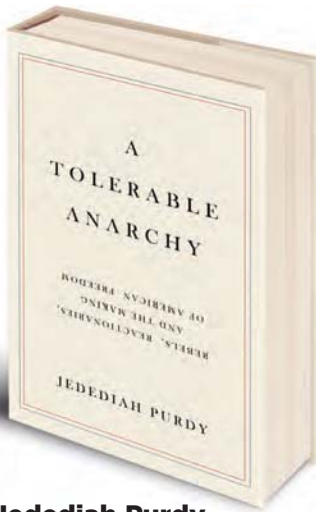
And a part of my argument is that exactly because the Declaration of Independence was so riven with inconsistency and a kind of excess, brimming with ideas that no one was prepared to make good at the time, it became available to later generations of Americans demanding a deepening and expansion of the country’s social practice of freedom to include more people and more dimensions of people, to include the dignity of previously excluded groups.

Frederick Douglass is my favorite example. The thing that many of the Founders would have been clearest on, as an example of what they didn’t mean by freedom, was slave rebellion. Douglass, I argue, did something like turn slave revolt into a mode of constitutional interpretation. He insisted that the Constitution could be read as an anti-slavery document, despite that fact that it was pulsating with compromises about slavery, because it should be approached as an attempt to make good on the unfulfilled promise of the Declaration. Douglass once said that “there is no man who doubts that slavery is wrong for himself.”

To insist on that and to have faith that that demand will be not just the end of the social order that you live in now, but the beginning of a new and more open and more generous and more inclusive and more decent social order — that’s the kind of innovation within a tradition and rupture within the continuity of a tradition that people went on to use the Declaration for, to say, in a sense, we are “re-founding” the project of defining a political community according to the liberty of each of its members.

And if the founders had succeeded in writing a more consistent piece of political philosophy, the product might have





**Jedediah Purdy**  
***A Tolerable Anarchy: Rebels, Reactionaries, and the Making of American Freedom***  
 (Yale University Press, 2008)

lacked the emancipatory potential that later people found precisely in the Declaration's overreach and its inconsistency, which gave them things to grab hold of and open up and rework.

**DLM:** Largely through their inaugural addresses, you trace how American presidents have framed public discussions about freedom and American society.

**PURDY:** There are two questions that get addressed by the way that we talk to one another in public about the country and about citizenship.

The first question concerns the dignity of being a citizen and the responsibility of being a citizen. This is the question of civic identity. The second question concerns the role of government.

I argue that for much of the 19th century, when presidents talked about what it meant to be an American and how government figured in that picture, they talked about a world of open, really *laissez faire* economic opportunity, which they identified with the principle of free labor. Every person can be a person of substance was the idea, as long as [government] enforces an equal playing field of free contract among people who own their own time and talent, and who own their own bodies. Freedom in the antebellum period is equal democratic

dignity for white men and, after the Civil War, it's equal democratic dignity for all men — at least that's the idea particularly among northern Republicans.

But in the late 19th and early 20th centuries this idea was driven increasingly hard by the rise of industrial capitalism and a continental economy. You could work for generations in this new economy as hard and as honestly as you like, and you're still not going to be the one who owns the factory. It comes to seem, increasingly, that it is the structure of the economy, rather than people's own character and efforts that is determining the shape of their lives, and this is a whole new problem. And the answer to the problem that progressive reformers give is that the state should present a power concentrated and large enough to reshape the system in a way that will give citizens more opportunity and protect them from the violent vicissitudes of modern life.

Woodrow Wilson opens his first inaugural address, in 1913, with a totally different picture of the country than anyone has ever given before. He talks about women and children for the first time. He talks about workers with vulnerable bodies who can get sick and be broken by factory labor. He says we have to remake our common institutions to make good on the old principles of equal opportunity. And this sets in motion the problem that presidents through Lyndon Johnson wrestle with — they say, explicitly, especially FDR, LBJ, and Wilson, that the world has grown too vast and complex for people individually to understand let alone control with their private choices.

So in 1981, when Ronald Reagan famously said, "Government is not the solution, it's the problem," he rejected, explicitly, the whole progressive picture of what the role of government was and of the social circumstances — complexity and scale — that gave it that role. He said, "If you feel constraint in your life, it's either because you are not trusting yourself — and self-trust is both the American right and the American responsibility — or because the government is intruding too much into your life."

**“[B]ecause the Declaration of Independence was so riven with inconsistency and a kind of excess, brimming with ideas that no one was prepared to make good at the time, it became available to later generations of Americans demanding a deepening and expansion of the country’s social practice of freedom to include more people and more dimensions of people, to include the dignity of previously excluded groups.”**

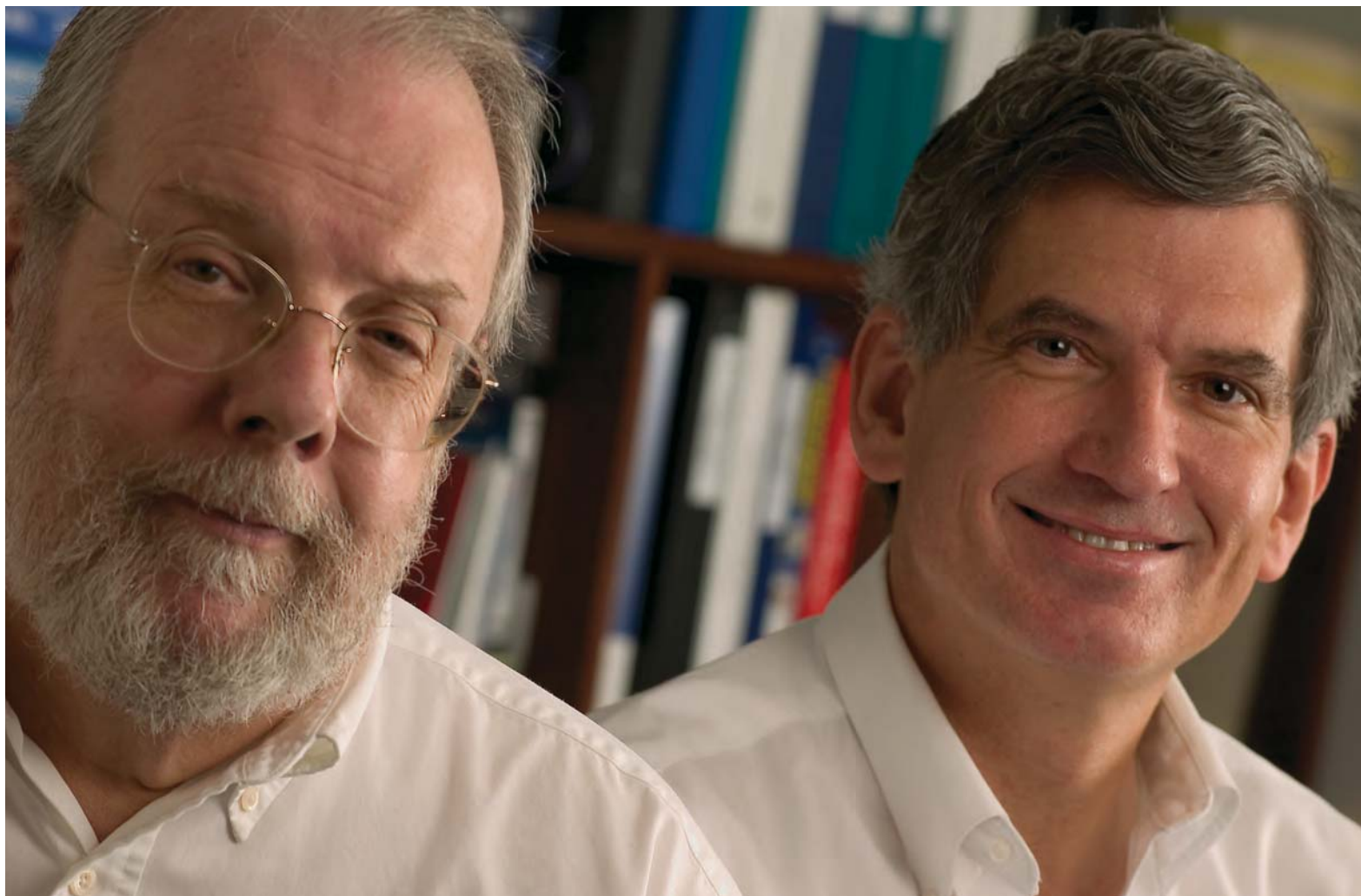
— Jedediah Purdy

In a sense, Reagan said the whole 20th century political project was a mistake. And in the decades after that it was, in fact, very difficult to talk about the role of the state in shaping the economy, and difficult to talk about citizenship as a matter of interdependence and creating the institutions that we all have to live in together.

Which was why it was so surprising to hear Barack Obama, in his 2004 Democratic National Convention address, say simple things like, "If there's a grandmother who has to choose between a prescription and the rent, that diminishes my life, even if it's not my grandmother." To hear him talking about solidarity and fairness and have those things sound American, and genuine, and contemporary, made me wonder why that was so hard to do. In some ways, actually, it was asking that question in 2005 that led me to go back and read the history of presidential language.

One of the purposes I've come to think of the book as having is giving a broader sense of political tradition in which the events [surrounding Obama's election] make sense. I think it's about a democratic community that has a tradition of reinterpreting its past in terms of a better possible future. That really is the tradition — the change is the old thing that we've recurrently done. ♡ — F.P.





DAVID LANGE AND H. JEFFERSON POWELL

# Lange and Powell reexamine the relationship between copyright and free expression

**D**AVID LANGE ADMITS that he has always liked “coloring outside the lines” — writing what he thinks and believes, whether or not it is “practical.”

Lange, the Melvin G. Shimm Professor of Law, and H. Jefferson Powell, Duke’s Frederic Cleaveland Professor of Law and Divinity, have done just that in their latest book, *No Law: Intellectual Property in the Image of an Absolute First Amendment*. Not only do they propose a novel reading of the First Amendment, they also re-imagine copyright and other expressive parts of intellectual property as a result.

Copyright is generally upheld against First Amendment claims, Lange says, and this is so despite the awkward fact that a state-sanctioned system awarding exclusive

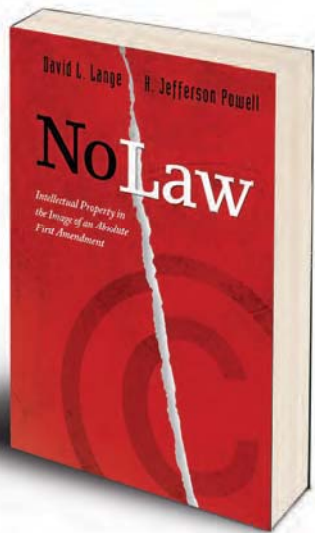
rights in expression obviously abridges freedom of speech and press. “Courts generally use a hierarchy of balances in assessing whether or not a given interest in expression is abridged. In the case of copyright, however, we do not even bother to balance the interests. The Supreme Court simply decrees that copyright in its traditional forms ordinarily does not violate the Amendment.”

The Supreme Court, in fact, has never directly addressed questions of conflict between the First Amendment and copyright law. “I suspect that what this illustrates is the tendency of law to allow our category schemes to obscure substantive issues,” says Powell. “The discussion of IP and the Constitution had been assigned

to the domain of the copyright and patent clauses before judicial interpretation of the First Amendment was really up and running, and no one really questioned that intellectual division of labor for a long time except the brilliant [Melvin] Nimmer.”

Nimmer, the late preeminent copyright scholar, proposed that as long as the underlying idea itself is free, the granting of exclusive rights for expression, for limited times, would not necessarily conflict with the First Amendment, Lange explains. “What’s more, copyright’s fair use doctrine offers at least a limited right to excerpt or otherwise deal in a supposedly fair way with expression in works while they are under copyright,” he says. “On these grounds, both Nimmer and the Court have thought





**David Lange and H. Jefferson Powell**  
***No Law: Intellectual Property in the***  
***Image of an Absolute First Amendment***  
 (Stanford University Press, 2008)

that surely copyright poses little threat to First Amendment interests.”

For their part, however, Lange and Powell view copyright as posing serious obstacles to our individual and collective ability to engage in expression, whether creative or otherwise. “These obstacles represent not just an affront to the public domain in a larger sense but ... also a more focused affront to the First Amendment,” says Lange. Both situations could be rectified, he suggests, if the First Amendment were read as an absolute.

“Justice [Hugo] Black, when he sat on the bench from 1937 to 1971, was, among other things, a proponent of what he called ‘the absolute rule of the First Amendment.’ As most of us know, Black thought that ‘no law’ meant no law. The rule is that Congress is simply not free to make a law that abridges freedom of expression,” says Lange. As Nimmer himself conceded, if Black’s view were to prevail, then copyright would certainly conflict with the First Amendment.

Taking “no law” to mean literally no law moves “from a balancing of competing interests to a direct definition of what an abridgement of speech and press means,” Lange says. Since expression is at the heart of what copyright protects in some at the expense of others, it would be difficult to say that copyright does not abridge expression.

What would happen to copyright if the First Amendment were read as an absolute? “Somewhat to our surprise, we came to

the conclusion that a good deal of what we recognize as protectable in copyright we might be able to salvage,” says Lange. “We might, for example, still be able to grant exclusive rights in streams of actual profits from a work. But we would not be able to go on supporting the kind of exclusive rights in expression that we have accustomed ourselves to recognizing in the case of copyright.

“Copyright proprietors could no longer prevent others from expressing themselves freely, whether or not that expression might infringe under current law,” he adds. “That would be so because the First Amendment would now actually say, with respect to exclusivity abridging expression, ‘No law means no law.’”

How practical is that suggestion? Powell and Lange agree that their book is unlikely to spark a dramatic change in copyright or intellectual property law. But they share a hope that their ideas will inspire a more robust debate about the right to free expression and the limitations that copyright law imposes.

“I do hope that our arguments will show others in Congress, the judiciary, the academy, the media, and elsewhere that a number of widely-held assumptions are simply wrong,” Powell says. “It is not true that there is no defensible version of Justice Black’s absolutism. It is not true that allowing the First Amendment a serious role in shaping IP will simply destroy

IP. It is not true that freedom of expression and the provision of incentives for expression have to be reconciled by simply subordinating freedom to incentives — more or less the current position — or that freedom is inherently incompatible with the creation of incentives.”

And who is to say that in the end their effort will not gain adherents? Lange recalls that he had expected his 1981 essay on the then-obscure subject of the public domain to go unnoticed. Instead, his ideas seemed to spark a lively and abiding interest in the subject in discourses that have now moved well beyond his original aims, both within the academy and in the field of intellectual property at large.

“Meanwhile, if we in the academy do not exercise our freedom to offer the opinions we actually hold, never mind whether they may gain immediate favor, then I would judge our profession a very dreary business,” Lange says.

“I hope,” he adds, “that when we speak about re-imagining intellectual property in the image of an absolute First Amendment, as we do in our book, that others will find our arguments stimulating and persuasive. But if not, then it will still have been well worthwhile for us simply to have done as Justice Brandeis suggested the First Amendment was intended to make it possible for all of us to do: ‘to think as we please and speak as we think.’” ♡ — Melinda Myers Vaughn





### Sen. Ted Kaufman A fresh perspective on the upper chamber

**H**E MAY BE a freshman United States senator, but Ted Kaufman was already a veteran of the chamber when he was sworn in to fill the seat vacated by Vice President Joseph Biden. Kaufman spent 22 years on Biden's staff, 19 as chief of staff.

Firm in his decision to serve only two years until a successor is chosen in a special election, Kaufman is making the most of his time in office. He serves on the Judiciary and Foreign Relations committees, has introduced legislation aimed at restoring confidence in the markets, and, as the Senate's only professional engineer, is even finding public service opportunities for engineers tied to the stimulus package. As he has for the past 19 years, Kaufman continues to share his insights on and experience in Congress with Duke Law students, having co-directed the Duke in D.C. program with Professor Christopher Schroeder during its inaugural semester. He also shared his new view of a familiar institution with Duke Law Magazine.

**DUKE LAW MAGAZINE:** What has surprised you most about stepping into the lawmaker's role?

**KAUFMAN:** I'm surprised at how enjoyable it is. I never realized the major enjoyable parts about being a senator that you just never get to do as a staff person, [such as] asking questions in committees and being able to talk to witnesses about issues I am concerned about.

When I left the Senate in 1994, after the Republicans took over the House and Senate, there was a lot of bad feeling. Something has changed. I find that senators get along with each other very well. That doesn't mean they don't have disagreements on the floor. But there isn't nearly the animosity.

Now, these are very, very difficult times. It's a lot of work to figure out what my opinion is on what we should be doing, on everything from the economic recovery package to the housing markets, to financial regulation, to what we should be doing in

Iraq and Afghanistan and other international problems. It's a lot of work to really try to get to the bottom of things. But there are also these very enjoyable experiences. And if you were ever going to be in the United States Senate, in my entire experience, this is the two years to be there.

I always try to look at the bright side of even the darkest thing. I really think President Obama was right and I think everyone agrees, Republican and Democrat, that there have to be major changes in the way we've done business in Washington, not just in the last eight years, but the last 15 to 20 years. You're never going to get change when things are going well. We have to make changes in the next two years. They really are going to affect this country for many years.

**DLM:** Tell me about your co-sponsorship of the Fraud Enforcement and Recovery Act along with Sens. Patrick Leahy and Charles Grassley.

**KAUFMAN:** We got together, the three of us, and put in a bill to try to go after financial fraud. After Sept. 11, we took large numbers of our FBI agents and transferred them to counterterrorism activities. That was absolutely the right decision. But we've never filled those positions. In fact, there were fewer financial fraud cases filed in 2008 than in 2001, even with all the problems we had in 2008. Right now there are only about 240 FBI agents working on financial fraud.

This bill [which passed in the Senate on April 28] does a number of things. It increases the number of FBI agents working on financial fraud to the number — 1,000 or so — we had working on it before Sept. 11. It also [provides for] training and education — these financial fraud cases are quite complex. And it provides funding for prosecutors. It's important to track down the folks who committed these crimes.

The vast majority of people on Wall Street are honest, good people. It's quite clear, though, that there were a lot of things that went on, from the mortgage brokers to the security analysts, to the ratings agencies and the bankers — there were a lot of people who took advantage of this and made a lot of money. It's really important that we send a message to folks that there



aren't two levels of justice in this country: If you rob a bank, you go to jail, and if you're a banker and you rob somebody, you should go to jail, too.

**DLM:** Tell me about the bill you've introduced to reinstate the "uptick rule" that the Securities and Exchange Commission rescinded in 2007. I know it has broad, bipartisan support.

**KAUFMAN:** In short selling, you literally borrow the stock, sell it at \$15 and buy it back at \$10, so you've made \$5. There's nothing wrong with short selling — I've done it myself. But there are two requirements that got changed by the Securities and Exchange Commission.

The uptick rule, which was around for about 70 years, said you had to buy stock at fair market rates. People couldn't get together to manipulate the market by driving the price of the stock down. Before there could be a short sale there had to be an uptick. Let's say a stock is selling for \$15. If it goes to 14 and a half, you can't sell it short. If it goes to 14 and a quarter you can't sell it short. If it goes to 14 you can't sell it short. But then it goes back to 14 and a quarter — once you have an uptick, then you can sell the stock. That stops these "bear market raids." There's a lot of anecdotal data that [bear market raids] really hurt Bear Stearns and Lehman Brothers, and some say that's why the banks went down so badly.

The second thing the bill requires is that to be able to sell stock, you have to be able to hold it. You can't do what's called a naked short sell. Then short sells become speculative — you don't have to put anything up, and therefore you can have really serious problems. These things are pretty well endorsed by the vast majority of people in the business.

We need to reestablish credibility in our markets. And not reinstating the uptick rule and banning naked short selling — failing to wipe out these abuses in the markets just sends the message we've not learned, and we're not willing to change.

My hope is that we won't have to go through the whole process to pass the bill, if the SEC will move to make these changes. [Editor's note: The SEC had the matter under consideration at press time.]



SEN. TED KAUFMAN ARRIVES AT FORWARD OPERATING BASE RAMROD IN SOUTHERN AFGHANISTAN IN APRIL.

**DLM:** Tell me about your committee and subcommittee work. You serve on several subcommittees of the Foreign Relations Committee and the Judiciary Committee, both committees that Sen. Biden was on for many years.

**KAUFMAN:** I have 20-some years' experience working with these committees, so I understand the issues. I'm only staying for two years, so really I thought it would be good to be up to speed.

And for the last 14 years I was on the Broadcasting Board of Governors, which oversees all U.S. international broadcasting. So I've pretty much had to follow what's going on in countries all over the world. I've spoken with most of the leaders in government, both when I worked for Sen. Biden and on the Broadcasting Board of Governors.

My first interest is to bring the troops home from Iraq and leave a stable government behind. So I'm working on that. And obviously, to get our efforts in Afghanistan straightened out. We really left Afghanistan prematurely. We have let the Taliban come back — we have some really serious problems in Afghanistan. [Editor's note: Shortly after this interview, Kaufman traveled to Iraq, Afghanistan, and Pakistan to meet with deployed soldiers, foreign leaders and American diplomats.]

**DLM:** Your days are numbered in the Senate by your own choice. To what extent has that been freeing for you?

**KAUFMAN:** I don't have to worry about a lot of things I'd have to do if I was running for office, and I feel like I have two years to spend 100 percent of my time really trying to solve the country's problems. It's a wonderful thing.

I managed to convince the vast majority of Sen. Biden's staff to stay — I had hired some of them myself. So I really didn't have to hire many people and could hit the ground running.

There is an African saying, "When an old man dies it's like a library burns." And I feel like there's a lot of books in there for me and there are a lot of things I can do. What a great blessing to be able to use what I've learned during this two-year period that is like nothing I've ever experienced in my lifetime in the Senate. I don't know when there's been a time when we've had a combination of domestic and foreign policy challenges like we have right now. What we do now, for good or bad, there's going to be some big changes.

I said for many years that one of the great things about being chief of staff was that at the end of the day, the senator made the decision. I played a role. But now I'm the one making the decision. You can look at something and see how it works, but when you're actually doing it, it really does make it more three-dimensional. ♪ — F.P.

# Schmalbeck, Benjamin, Young, and Helfer honored with distinguished professorships

**P**ROFESSORS Richard L. Schmalbeck, Stuart M. Benjamin, Ernest A. Young, and Laurence R. Helfer have been honored with distinguished professorships.

Schmalbeck becomes the first Simpson Thacher & Bartlett Professor of Law. A specialist in tax law who has been a Duke Law faculty member for 25 years, Schmalbeck has focused on issues involving nonprofit organizations and the federal estate and gift taxes. Active in federal tax reform efforts, he also has served as an adviser to the Russian Federation in connection with its tax reform efforts. He is a former dean at the University of Illinois College of Law.

Schmalbeck is the co-author, with Lawrence Zelenak, Duke's Pamela B. Gann Professor of Law, of a leading casebook, *Federal Income Taxation*, now in its second edition. Duke Law students have twice honored Schmalbeck with the Duke Bar Association's award for distinguished teaching.

Benjamin, who also serves as the Law School's associate dean for research, received the Douglas B. Maggs chair. A faculty member since 2003, Benjamin is an expert in telecommunications, administrative, and First Amendment law, as well as other areas of constitutional law. His recent articles include "Fixing Innovation Policy: A Structural Perspective," 77 *George Washington Law Review* 1-88 (2008), and "Who's Afraid of the APA? What the Patent System Can Learn from Administrative Law," 95 *Georgetown Law Journal* 270-336 (2007), both with Arti K. Rai, Duke's Elvin R. Latty Professor of Law, and "Tennis with the Net Down: Administrative Federalism without Congress," 57 *Duke Law Journal* 2111-2155 (2008), with Professor Ernest A. Young.

Benjamin is the co-author of *Telecommunications Law & Policy*, a leading casebook now in its second edition. He is a former clerk for Supreme Court Associate Justice David H. Souter and a veteran of the Office of Legal Counsel in the U.S. Department of Justice.

One of the nation's leading authorities on the constitutional law of federalism,



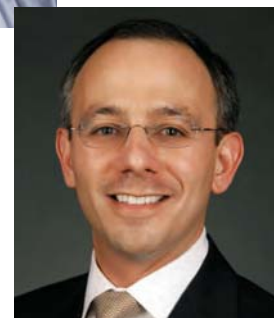
SCHMALBECK



YOUNG



BENJAMIN



HELFER

Young was awarded the Alston & Bird Professorship. He has written extensively on the Rehnquist Court's "Federalist Revival" and the difficulties confronting courts as they seek to draw lines between national and state authority. Also a former clerk to Justice Souter, he writes on constitutional interpretation, constitutional theory, and comparative constitutional law. Young is an active commentator on foreign relations law, where he focuses on the interaction between domestic and supranational courts and the application of international law by domestic courts.

A member of the American Law Institute, Young joined the Duke Law faculty in 2008, after serving as the Charles Alan Wright Chair in Federal Courts at the University of Texas at Austin School of Law, where he had taught since 1999.

Helfer joined the faculty July 1 as the Harry R. Chadwick Sr. Professor of Law. He came to Duke from Vanderbilt Law School where he was professor of law and director of the International Legal Studies Program. At Duke Law he also serves as co-director of the Center for International and Comparative Law. Helfer is a widely-respected scholar whose research interests include interdisciplinary analysis of interna-

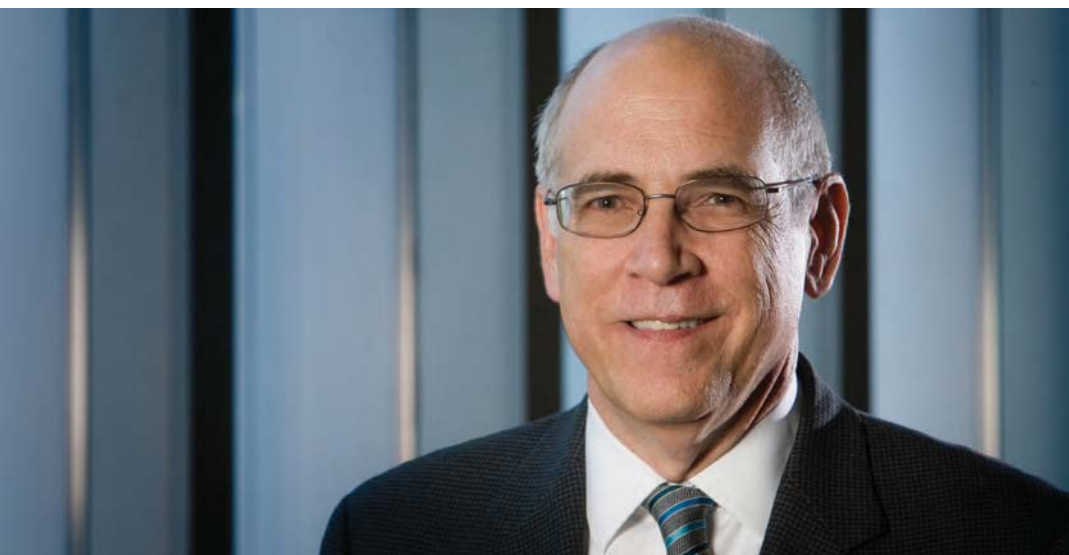
tional law and institutions, human rights, international litigation and dispute settlement, international intellectual property law and policy, and lesbian and gay rights. (See profile, Page 21.)

"These members of our faculty are exceptionally gifted scholars and lawyers who are leaders in their respective fields," said Dean David F. Levi. "All highly interdisciplinary and committed to the pursuit of knowledge in the service of society, a hallmark of Duke Law School and Duke University, they also are engaged teachers. They are all deeply deserving of these distinguished professorships."

Levi emphasized the significance of having a professorship named for Simpson Thacher & Bartlett. "More Duke Law graduates practice at Simpson Thacher than at any other single law firm. George Krouse ['70] who spearheaded the endowment of this chair, is a former chair of the Law School's Board of Visitors, and his partner, David Ichel ['78] is the incoming BOV chair. As with already established chairs such as the Alston & Bird, Maggs, and Chadwick professorships, we greatly appreciate the generous investment in our faculty excellence that the Simpson Thacher & Bartlett chair represents." ♣ — F.P.



## FACULTY NEWS BRIEFS



### Schroeder nominated to lead DOJ Office of Legal Policy

**C**HRISTOPHER SCHROEDER, Charles S. Murphy Professor of Law and Professor of Public Policy, has been nominated by President Barack Obama to the post of assistant attorney general for the Office of Legal Policy, Department of Justice. Confirmation was pending at press time. The assistant attorney general for the Office of Legal Policy serves as the primary policy adviser to the attorney general and deputy attorney general and develops and implements significant policy initiatives of the Department of Justice. Director of the Law School's Program in Public Law and co-director of the Duke in D.C. program, Schroeder served in the Clinton administration as acting assistant attorney general in the Office of Legal Counsel at the Department of Justice. He also has served as chief counsel to the Senate Judiciary Committee. ♪

### Boyle's *Public Domain* receives 2008 McGannon prize

**T**HE PUBLIC DOMAIN: *Enclosing the Commons of the Mind* by William Neal Reynolds Professor of Law James Boyle was selected as the winner of the 2008 Donald McGannon Award for Social and Ethical Relevance in Communications Policy Research. Published by Yale University Press, *The Public Domain* argues that our music, culture, science, and economic welfare all depend on a balance between ideas that are controlled and those that are free, between intellectual property and the public domain. Boyle claims this balance has been upset and argues that the erosion of the public domain is something every citizen should care about.

"Professor Boyle's book thoroughly and incisively tackles a topic that will no doubt be at the forefront of the communications policy agenda for years to come," said Professor Philip Napoli, director of Fordham University's Donald McGannon Communication Research Center. ♪



### Cox scores a "hat trick"

**F**OR THE THIRD CONSECUTIVE YEAR, an article co-authored by Brainerd Currie Professor of Law James Cox has been selected in a poll of teachers in corporate and securities law as one of the best in that field. "There are Plaintiffs and ... There are Plaintiffs: An Empirical Analysis of Securities Class Action Settlements," 61 *Vanderbilt Law Review* 355-386 (2008), which Cox co-authored with Randall S. Thomas and Lynn Bai, was selected as one of the 10 best corporate and securities articles of 2008 in *Corporate Practice Commentator's* annual poll. The list, according to editor Robert B. Thompson, reflects the choices of law professors teaching in the area from 450 articles. ♪

## TRANSITIONS



**Robert P. Mosteller**, a noted scholar and teacher of criminal procedure and evidence, has retired after 26 years on the Duke Law faculty. Now the Harry R. Chadwick Sr. Emeritus Professor of Law, Mosteller continues to teach and pursue scholarship as a professor of law and the J. Dickson Phillips Distinguished Professor at the University of North Carolina-Chapel Hill, where he visited in the 2008-09 academic year. He received the Duke Bar Association's Distinguished Teaching Award in 2005. ♪



**E. Carol Spruill** stepped down as associate dean of the Office of Public Interest and Pro Bono. She continues to teach her popular Poverty Law class as a senior lecturing fellow. Spruill has led public interest and pro bono initiatives at Duke Law since 1991, when she was hired to start the Law School's Pro Bono Project. At various spring events, students, faculty, and alumni offered Spruill multiple tributes for her development of a vibrant public interest and pro bono community at Duke Law. The Duke Bar Association presented her with a special award for distinguished service to the Law School community. She also received the Law Alumni Association's A. Kenneth Pye Award at the Reunion 2009 kick-off celebration. ♪



**Laura Underkuffler**, the Arthur Larson Distinguished Professor, retired from the faculty in January after 20 years at Duke. She is currently the J. DuPratt White Professor of Law at Cornell University. A scholar of property law, constitutional law, and the role of moral decision-making in law, she also has been involved in international projects concerning property rights and regime change, and the problem of corruption and democratic governance. The author of *The Idea of Property: Its Meaning and Power* (Oxford University Press, U.K.), Underkuffler won the Duke Bar Association's Distinguished Teaching Award in 2003. ♪



## Nora Jordan '83 A diverse portfolio

**N**ORA JORDAN'S ADVICE for Duke Law graduates is to be flexible about your career plans and to learn as much as you can wherever you end up. That mentality has fueled Jordan's own professional growth and development during a 26-year career at Davis Polk & Wardwell in New York City, where she is head of the firm's investment management group. Jordan advises clients on collective investment vehicles, including hedge funds, mutual funds, closed-end funds, and private equity funds, and acts as counsel to the adviser, the fund, or the independent directors.

"When I was at Duke Law School, never in a million years did I think I would be an expert on hedge funds — I didn't even know what a hedge fund was — but I came to Davis Polk and tried a little bit of this and a little bit of that," Jordan says. "I found my way to the investment management group,

**ALUMNI PROFILE**

where the work is fascinating and my colleagues are exceptional. I think it is a matter of just trying things and seeing what works and what you find interesting."

Jordan was the 1981 Hardt Cup Champion and served as note and comment editor for *Duke Law Journal*. Following her 2L year she planned on being a labor lawyer. Instead, she switched to litigation and joined Davis Polk, where she planned to stay for two years before returning home to Cleveland to work at a small firm. "That didn't happen," she says. "I changed my mind totally."

Jordan initially handled assorted assignments in leasing, banking, public offerings, and litigation, all in an effort to absorb as much knowledge as possible. The learning process continues to this day, she says. Her current work load includes advising

clients who want to establish, invest in, or manage a fund as part of the U.S. Treasury's Public-Private Investment Program (PPIP), introduced in March, which functions to rid banks of toxic mortgage assets by providing guarantees and leverage to private investors. PPIP is part of the federal Troubled Assets Relief Program.

"It's tough to keep up with this stuff," Jordan says. "The Treasury will announce these programs and they come out with these long rules. It gets announced at 1:00 and at 1:05 you have a client on the phone asking you what it says. This has been happening basically since Lehman went under on Sept. 15, 2008. We know the date because it affected so many of our clients in so many ways."

Jordan benefits from the work of Davis Polk associates who dissect new regulations for the firm's teams. The approach is consistent with Davis Polk's collaborative,

lock-step approach to doing business, says Jordan. "Having these great associates makes all the difference. We send memos to clients usually within 24 hours of an announcement, and our clients are very appreciative of that. We very much have a collaborative spirit at Davis Polk, and I work well in that environment, so it's the perfect fit for me."

Jordan's portfolio also includes the Morgan Stanley-Citigroup joint venture that was announced in January. The joint venture will create the largest U.S. retail brokerage by combining Morgan Stanley's global wealth management business with Citigroup's Smith Barney brokerage. The new brokerage, known as Morgan Stanley Smith Barney, will have more than 20,000 brokers and \$1.7 trillion in client assets. Jordan is representing Citigroup in the transaction as well as offering advice to the joint venture.

"That is one thing I love about my job," Jordan says. "It is never boring, and it's something new all the time."

Davis Polk's willingness to accommodate part-time working arrangements also has contributed to Jordan's job satisfaction. She worked three days a week for more than four years after the second of her three daughters was born. She returned to a full-time schedule when her youngest child was in nursery school and made partner in 1995.

"Davis Polk was cutting edge at the time, as it was unusual for a big New York City law firm to let people work part time," Jordan explains. "It was fantastic. I progressed with my class and really felt like I had the best of both possible worlds: an interesting job, but at the same time could spend time with my kids."

Having followed a career path that drifted from the direction she charted as a student, Jordan returned to Duke Law last November for a panel on "The Credit Crisis: A View from the Street." Jordan shared the panel with one of her favorite former professors, Brainerd Currie Professor of Law James Cox.

"Duke's been good to me," Jordan says. "I think you get an unbelievable education and its stellar reputation opens doors. I wouldn't be at Davis Polk but for Duke, so I'm very grateful to it." ♡ — *Matthew Taylor*



## Christopher Kang '01 East Wing ambassador

**C**HARGED WITH PERSUADING lawmakers to support Obama administration policies, Chris Kang says success in his job is heavily dependent on building relationships on both sides of the aisle.

“A lot of the job is about building goodwill,” says Kang, one of 10 special assistants to the president for legislative affairs. “One way we do that these days is by notifying offices of grants that are being distributed through the Economic Recovery Act so that their constituents have an opportunity to take advantage of them. Sometimes relationship-building might involve an invitation to the White House for a member to attend an event or meet with the president.”

With his assignment to the Senate, in-depth knowledge of senators’ priorities is also key, he adds. “The fact is that we’re all pushing for what we believe is best for the country, whether or not we agree on policy, so we try to find consensus as often as possible.

“These strong relationships are the foundation for substantive negotiations,” Kang continues. He and his counterparts start by working with various executive branch agencies to refine the administration’s overall position on legislative proposals and then negotiate with Congress on language and policy.

Kang was well prepared for his current position through seven years on the staff of Sen. Richard Durbin, D-Ill. Having started with Durbin as a legislative correspondent straight out of law school, Kang quickly moved to the senator’s Judiciary Committee staff, eventually working on criminal justice and constitutional issues as counsel. For the four years prior to his White House appointment, Kang ran Senate floor operations for Durbin, the Democratic whip.

“I gained a lot of experience in how the parliamentary process works, what some of the opportunities and pitfalls are, and a sense of the relationships the members have with each other — their priorities and their concerns,” he says.

From Durbin Kang says he learned how to be effective in public service. “I learned about different opportunities to impact

policy even if it wasn’t through legislation. So when I worked on the Judiciary Committee, sometimes it would be trying to address concerns with amendments in committee, and other times it involved writing letters to agencies and working with people in our Chicago field office to find ways to help people within the current structure.”

Kang got his taste for public service from his parents, South Korean immigrants who both worked in special education in Gary, Ind., public schools. “My father lost his eyesight in a sports accident when he was a teenager and had to fight the discriminatory policies in Korea at the time, first to be given the right to attend university, and then to come to the United States to pursue graduate education,” says Kang. “From him I learned a lot about the power of government and the power of policy to both limit and to help people.” His parents have been active in policy relating to disability; Kang’s father was appointed by President George W. Bush to serve on the National Council on Disability.

Attending the University of Chicago, where he majored in public policy and economics, helped push him in a progressive direction, Kang says. “Being in an institution of privilege surrounded by the South Side neighborhoods of Chicago where people are a lot less fortunate was formative for me in thinking about equal access to education and opportunity.” He focused his thesis on the Illinois public school finance system.

Knowing that he wanted a career in public service, Kang prepared during his years at Duke Law. He headed the Public Interest



Law Foundation for two years and took all of the substantive policy classes available to him. Among those were the classes on Congress taught by Christopher Schroeder, the Charles S. Murphy Professor of Law and Public Policy Studies, and Senior Lecturing Fellow Ted Kaufman. After running into now-Sen. Kaufman, D-Del. (see Page 30) at the Capitol earlier this year, Kang joined his former professors in the classroom, sharing his experience with law students enrolled in the new Duke in D.C. program.

Kang says he still gets a charge from public service and calls working in the East Wing of the White House fun. “But the part that’s the most meaningful is also the part that’s the most daunting — tackling the challenges the country faces now,” he says. “It’s an exciting time to be part of this — to play a role in shaping a budget and an agenda for the next five to 10 years. It’s a great job, and it’s an honor to have the opportunity to play a small part in trying to move this country in the right direction.” ♣  
— Frances Presma

### ALUMNI PROFILE



## Keith Ernst '96 Consumer advocate

**R**EFLECTING ON the economic crisis during an interview in his office at the Center for Responsible Lending in downtown Durham, Keith Ernst suggests that the foreclosure rate is worse than even “routinely hyperbolic headlines” indicate.

“Right now, the best projections are that over the next four years, one in 12 homes with a mortgage in North Carolina will be lost to foreclosure, and nationally it’s almost 15 percent,” says Ernst, senior policy counsel for CRL, who also earned an MA in public policy from Duke. As many as one-third of the subprime mortgages that originated in 2005 or 2006 will ultimately end in foreclosure, he adds.

Ernst and his colleagues predicted a foreclosure crisis almost three years ago. At a time when national subprime foreclosure rates were relatively modest, they studied the performance of subprime mortgages across a spectrum of housing markets. “We

saw a very clear relationship,” says Ernst. “Strong housing prices led to modest foreclosure rates — 2 or 3 percent.”

Using data that predicted a national housing downturn, the researchers looked into the expectations for subprime mortgage performance. “We foresaw foreclosure rates skyrocketing, from relatively low rates up to one in five subprime mortgages being foreclosed,” says Ernst. “And ultimately the foreclosure rates will be much higher because we’re dealing with a down housing market and a crippled financial sector.”

Ernst is proud of the empirical research that CRL undertakes on a wide range of consumer issues, from predatory lending practices to how banks service subprime loans. He and his colleagues are committed to shaping a transparent, empirically-based, and balanced body of evidence relating to consumer protec-

tion, which has made them highly credible participants in the policymaking process, he explains.

They also try to stay one step ahead. That’s why CRL, an affiliate of the Durham-based nonprofit Self-Help Credit Union, released its foreclosure research in 2006 and is now investigating how banks and other financial institutions are helping borrowers manage the financial crisis as well as what policies are needed to prevent

a recurrence. In early June, he expresses optimism with such developments as the passage of credit-card reform and the Obama administration’s highly structured mortgage modification program, despite the Senate’s rejection of a proposal to allow bankruptcy judges to modify mortgages as a last resort.

“It has been a very promising time,” he says. “Now our challenge is to monitor that program and to identify shortcomings to make sure it delivers on its promise. If it

proves unable to deliver, then our obligation is to document that, to make sure that policymakers understand where the problems are and to recommend solutions.” Ernst is buoyed by the fact that policymakers seem to be realizing that investors’ long-term interests are aligned with those of consumers.

A Long Island native who arrived in Durham for law school and never left, Ernst says he always knew he wanted a public interest career. “I always wanted to part of a process that made the world a better place for all the families out there who are trying to just have a good life for themselves and their kids,” he says.

He never summered or interviewed with a firm and actively pursued pro bono projects throughout law school. He says he remains grateful for the mentorship of former Associate Dean for Public Interest and Pro Bono Carol Spruill, as well as such professors as the late Jerome Culp, and is equally grateful for Duke’s loan forgiveness program that made public interest work possible.

A summer internship at what is now the North Carolina Justice Center led to Ernst’s first policy job after graduation: working on the state’s implementation of the welfare reform laws passed during the Clinton administration. He then worked with the Institute for Southern Studies, helping community and labor organizations throughout the South use research to achieve their public policy objectives. Since joining CRL in 2001, he’s done everything from front-line research to lobbying for consumer protections against predatory lending in more than half a dozen states.

Now Ernst focuses primarily on managing research projects and formulating the “right questions” that will make a case for change to policymakers and private lenders.

“The great thing about this job is the ability to think big, to think creatively, to work on a variety of projects, and to have the resources to do it,” he says. “We’re fairly unique in a lot of ways as an organization, so a lot of times what gets me excited and bounding up the stairs in the morning is the notion that we’re doing something that other people aren’t doing [or] hasn’t been done in quite the way we’re doing it. A lot of the excitement for me in this job is creating new paths.” ♡ — *F.P.*

ALUMNI PROFILE



## Susan Pourciau '09

### Empowered nonprofit leader



University. At Duke she served on the editorial board of the *Duke Law Journal*, on the Moot Court board, as managing director of the Duke Law Innocence Project her 2L year, and as co-chair of the Public Interest Law Foundation her 3L year, among many other extracurricular activities. She participated in the Children's Law Clinic and did an externship with the Orange County Public Defender's Office, as well.

Pourciau says that she was in awe of her classmates, whose ages were close to those of her own 26-year-old daughter and 23-year-old son. "They were all pretty remarkable," she says. "I don't think I was ready to go to law school when I was 24. It took me another couple of decades."

Having spent many years behind the lectern, Pourciau says she was also very impressed with the Duke Law faculty. "One of the things I found so amazing about the professors is that they excel in their own individual fields in terms of competence, writing, publishing, and expertise, but they also were genuinely friendly, supportive, and enthusiastic people," she says. "It's easy for a professor to do either of those well, but it's hard to find a professor that can do both of those things well. That makes it a much better environment for the students."

For Pourciau, that environment fostered a great deal of personal development. "I was working in that same general area — with homeless populations — before I came to law school, but I felt like I was not doing the best possible job," she says. "There seemed to be something lacking, but I didn't know what it was. And now, having had three years at Duke Law, I have many more skills than I had before."

Creativity in problem solving, persuasive speaking, and a new level of analytical reasoning are all examples she cites. Perhaps most important, though, is newfound confidence in herself and her abilities. "A few years ago, others might have thought I could take this job, but I felt like I could not," she says. "Now I know I can because of the metamorphosis that occurred during these three years." ♡ — *Tanya Wheeler-Berliner*

**A**FTER 12 YEARS of teaching accounting at Florida State University and five years working with nonprofit agencies serving homeless individuals, Susan Pourciau '09 decided that she needed a change.

"I felt like I had gone as far as I wanted to go or could go with either of those jobs," she says. "So I came to law school to experiment and see what I wanted to do with the rest of my life."

#### ALUMNI PROFILE

And though she had always expected that law school would lead to a public interest career, Pourciau never imagined that her journey might lead her right back to where she started. "Even in my third year, I really didn't know where my path was going to take me," she says.

"In a surprise twist of fate, folks I used to work with before I came to law school called me to say that there was a job open at the major nonprofit agency in that area that provides services to people experiencing homelessness," she continues. "And my initial response was, 'Well, no. See, I'm just graduating from law school and I really need to be a lawyer.'"

After further thought, Pourciau called back and eventually received an offer to become the executive director of the Big Bend Homeless Coalition in Tallahassee, Fla. The agency serves homeless individuals in an eight-county area in northern Florida, providing direct services and coordinating the efforts of other organizations to ensure a continuum of care for the homeless population. "It was really quite incredible," she says. "I had not even looked outside of law for jobs. And, as life frequently does, it just handed me the perfect thing that I wasn't expecting." Pourciau began her new job June 1.

"Sometimes the other students would say, 'Life is short, you should do what you want to do,'" she says. "But I would tell them, 'Life is also long. So you can do one thing for awhile and then there is plenty of time to do other things, too.'"

Coming back to law school "kept me feeling young," says Pourciau, who also holds bachelor's and master's degrees from the University of South Florida and a PhD in accounting from Arizona State

# Dennis O'Connor '10

## Engineer, inventor, and (soon) attorney

**R**EFLECTING ON HIS PURSUIT of a legal career after a long and successful tenure as a microprocessor engineer, Dennis O'Connor points out that both fields involve problem solving. "The practice of law is about solving problems for people," says O'Connor, a gregarious 50-year-old. "Every aspect and element of law is attractive to me on that basis. Engineering is also about problem solving — it just doesn't always have that personal element."

The named inventor on more than 30 patents filed during the 15 years he worked for Intel Corp. in Chandler, Ariz., O'Connor explains that many of them involve "highly technical things that are deep in the heart of a microprocessor." Occasionally, though, he sought inspiration in the view of suburban sprawl from the fourth floor of the Chandler R & D campus.

"I would ask myself, 'Is there something new we can do with a microprocessor that these people would want that would make their lives better or make my life better?'" That line of inquiry, along with his love of the syndicated sci-fi drama "Babylon 5," led to his invention of the digital video recording technology now best known to consumers as the "TiVo" box.

"I would get home from work when the show was half-way through, and didn't like to wait until it finished taping and have to rewind the tape," he recalls. "So I thought about whether there was a way a PC could solve the problem." Although Intel did not pursue manufacturing the system beyond developing a few prototypes — the company's commercial success was based on microprocessors — O'Connor says he takes great satisfaction in being the named inventor on the patented process. "TiVos are great. They changed my life."

Having graduated from SUNY Albany with a degree in math in addition to two years at the Rensselaer Polytechnic Institute in Troy, N.Y., O'Connor says he learned most of his engineering skills on the job at General Electric's Corporate R & D Center

during the 1980s. "It was an exciting time. For an engineer, that place was magic. You could walk down the halls and look into the lab bays and see everything that other people were doing." It was at GE that he found his interest and ability in the microprocessor architecture work that eventually took him to Intel.

Encouraged by Intel to patent novel microprocessor features, O'Connor found that he liked working with patent lawyers and agents. As a member of the intellectual property committee for his business group, he also helped determine which inventions warranted patent applications, an exercise that he says helped him take a hard look at the novelty of his own work.

As much as he enjoyed engineering, O'Connor says he periodically thought about going into law. Undergraduate elective courses had impressed upon him the fundamental logic of law, he says.

"Looking at the underlying issues and the unresolvable problems to which society has to cobble together a makeshift solution got me first thinking that someday I might want to be a lawyer." He finally decided to make the career shift thanks to financial security resulting from the Internet and Phoenix real estate booms, coupled with the fact that Intel was selling his division.

Just as he found "magic" at GE's Corporate R & D Center at the start of his engineering career, O'Connor describes Duke Law as "Disneyland for the mind," referring to the intellectual discourse available in class and out. "Even in engineering you will not find this level of intelligent, rational thinking among so many people in one place," he says, adding that being an older student both helps him to fully



appreciate the experience and makes him determined to make the most of it. Law school highlights have included working as a research assistant for Professor Jerome Reichman, the Bunyan S. Womble Professor of Law and a leading expert in international intellectual property, and serving as president of the Intellectual Property and Cyber Law Society; O'Connor was lead organizer of the group's highly successful 2009 "Hot Topics" symposium.

His experience at Duke has changed him, says O'Connor: "How I think about the world and how I view the world has changed. I've become less politicized. I have a deeper appreciation that some problems can't be solved."

O'Connor is spending his 2L summer working for Judge Roslyn Silver of the Arizona District Court in Phoenix, where he and his wife intend to permanently return after his graduation. While he's certain he can be happy in any area of legal practice, he admits a natural affinity for intellectual property law.

"Being an engineer is who you are — it isn't a job," he says. "It's the same with law. If I can practice in patent and technology law, I can keep both those parts of me engaged. And that would be enormously fun — to be able to apply both my legal and engineering skills to solve problems for people. That's got to be the dream job for me." ♡ — F.P.

### STUDENT PROFILE



# Alumni Notes

TELL US WHAT YOU ARE DOING:

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

## 1958

**John Lowndes** has been named to the 2009 edition of *Best Lawyers in America* in real estate law. John has been included in the list for each of the past 25 years. He is a founding partner at Lowndes, Drosdick, Doster, Kantor & Reed in Orlando.

## 1964

**Richard Rogers** has sold his entrepreneurial/international law practice and moved from Dayton, Ohio, to Santa Fe, N.M., where he is the publisher and executive editor of *Santa Fe Sun Monthly*, an award-winning literary monthly magazine focused on the Southwest.

## 1967

**Robert G.M. Keating** has been named vice president for strategic initiatives at Pace University. Robert previously was the dean of the New York State Judicial Institute.

## 1968



**Robert W. Maxwell II** has been named to the 2009 edition of *Ohio Super Lawyer*. Bob has practiced for 39 years and has been a partner at Keating Muething

& Klekamp in Cincinnati since 1988. He represents management in all areas of labor and employment law and has extensive experience in labor negotiations, arbitrations, employment law, and litigation in federal and state courts and proceedings before government agencies.

**Gordon Rafter** has been honored with the American Board of Trial Advocates' (ABOTA) first-ever Lifetime Achievement Award. Gordon is a longtime ABOTA member from Little Rock, Ark. He has served as the organization's national president (1996) and as president of the Arkansas chapter (1987-1988). He has been a member of the national board of directors since 1989, chaired multiple committees,

and received the Foundation's Masters in Trial Award in 1994.

**Ernest Torres** has announced his retirement after 21 years on the federal bench. He was nominated to the U.S. District Court, District of Rhode Island, by President Reagan in 1987, and served as chief judge from 1999 to 2006.

## 1969

**Norman E. "Ned" Donoghue** is working as a co-trustee of private trusts at Enhanced Philanthropic & Fiduciary Solutions. Ned began consulting to charities in 2008 after working for five years as the director of planned giving for the Philadelphia Orchestra following his retirement from Dechert in 2003. He is married to Peggy O'Donnell; they have two daughters, Maya and Maggie.

**Robert Pringle** has become a partner at Winston & Strawn in San Francisco.



## Daniel T. Blue Jr. '73

**D**ANIEL T. BLUE JR. has been elected to chair the Duke University Board of Trustees. He was elected to the board in 1995 and most recently served as vice chairman. He becomes the first African-American to chair Duke's board.

Blue also has been selected to fill the North Carolina Senate seat left vacant by the death of Sen. Vernon Malone.

A 1970 graduate of North Carolina Central University, Blue was first elected to the North Carolina State House of Representatives in 1980, where he served as speaker. He left the legislature in 2002 to run for the U.S. Senate and returned to the House in 2006. Blue is a managing partner of the law firm Blue, Stephens & Fellers in Raleigh. ♫

## David W. Ichel '78



**D**AVID W. ICHEL has been selected chair of the Law School's Board of Visitors. He has been a member of the Board since 2002.

A partner in the litigation department of Simpson Thacher & Bartlett in New York, Ichel specializes in complex commercial disputes and advising companies, boards of directors, industry associations, and institutions on litigation-related issues. He is a member of the American Law Institute and is the current chairman of the Product Liability Committee of the Association of the Bar of the City of New York. He also is the immediate past chairman and a current member of the Board of Directors of MFY Legal Services, Inc., one of the principal providers of free legal services to the poor in Manhattan. He is listed in a number of publications, including *Who's Who* (World and America), *Chambers USA*, *Best Lawyers in America*, and *SuperLawyers*. ♣

### 1971

**James R. Fox** has been named among the "Legal Elite" in the January 2009 issue of *Business North Carolina*.

**Bob Gerken** is working as general counsel with Taylor-Wharton International and continues to operate a charter fishing business that runs out of New Jersey in the summer months and North Carolina in the winter months.

**Douglas B. Morton** has taken senior status as judge of the Fulton (Indiana) Circuit Court where he has been on the bench for 30 years. He is enjoying spending time with his family.

### 1972

**Ronald Reisner**, a judge of the Superior Court of New Jersey, has been assigned to the court's criminal trial division. He serves as an instructor at the annual judicial conference of all New Jersey judges. He was nominated by Gov. Jon Corzine for tenure in the Superior Court in October 2008 and confirmed by the New Jersey Senate.

### 1974

**Candace Carroll** has been appointed chair of Sen. Barbara Boxer's judicial appointments committee for the Southern District of California.

### 1975



**Bruce A. Christensen** has been selected for inclusion in the 2009 edition of *The Best Lawyers in America* and has been named a "Top Lawyer" by the 2009 *South Florida Legal Guide*. Bruce is a shareholder with the Miami office of Richman Greer. He concentrates his practice on family law, divorce, and domestic relations.

### 1976

**Ralph Everett** served on President Obama's transition team in the areas of science, technology, space, and the arts. Ralph is the president and chief executive officer of the Joint Center for Political and Economic Studies, the nation's premier African-American think tank.

### 1977

Correction: In the Winter 2009 issue of *Duke Law Magazine*, **Donald Beskind** was incorrectly noted as having been inducted into the International Academy of Trial Lawyers. That honor should have been attributed to Don's partner in the Raleigh firm of Twiggs, Beskind, Strickland & Rabenau, **Donald Strickland '84** (see Class of '84). We apologize to both for our error. — *The Editor*

**Michael Ellis** has been elected to the national board of directors of Friends of AKIM USA. Friends of AKIM USA provides funding for AKIM Israel, the largest organization in Israel caring for mentally handicapped, Down Syndrome, and developmentally disabled children and adults. Michael is a corporate and securities attorney with the firm of Porter Wright Morris & Arthur in Cleveland.

**Paul Lisankie** has been named Alaska's regulatory commissioner. Paul was admitted to the practice of law in Alaska in 1985 and has more than 20 years of state service.

### 1978

**Robert Blum** has joined Nixon Peabody's San Francisco office as a partner in the business litigation group.

**Deborah Charnoff** is pursuing a doctoral degree in history at the Graduate Center of the City University of New York, with a major in early modern Europe and a minor in modern Europe.

**Christopher B. Kehoe** has been named to the Maryland Court of Special Appeals by Gov. Martin O'Malley. Christopher has been a partner at Ewing, Dietz, Fountain & Kehoe in Easton, Md., since 1983.

### 1979

**Michael Pearce** has been elected a Los Angeles Superior Court commissioner.



**Jon C. Yergler** has been named to the 2009 edition of *The Best Lawyers in America* in real estate law. Jon has been included in the list for the past 10 years. He is a partner at Lowndes, Drosdick, Doster, Kantor & Reed in Orlando, specializing in hotel and restaurant development and real estate transactions, development, and finance.

### 1980

**David Dreifus** has been selected for inclusion in *Law & Politics'* ranking of North Carolina "Super Lawyers" for business litigation. David is a partner at Poyner Spruill in Raleigh.

**Kimberly Till** has been appointed as president, CEO, and a director of Harris Interactive Inc. Prior to her appointment, Kimberly served as CEO of TNS North America, the largest custom market research firm in the United States.

### 1983

**David Chaffin** has joined White and Williams as a partner in the commercial litigation department and managing partner of the Boston office. He previously was a partner in a litigation boutique firm in Boston.



**Deborah J. Hylton** has been elected chair of the board of directors at Wells Dairy, makers of Blue Bunny® ice cream and novelties. Since 2006, Deborah has been offering strategic management and consulting services through Hylton Consulting Services in Chapel Hill. In the spring of 2008 she completed her role as restructuring officer of KMC Telecom and taught Mergers & Acquisitions at Duke Law.



**Bruce J. Ruzinsky** has been named to the 2009 edition of *The Best Lawyers in America* for the field of bankruptcy and creditor-debtor rights law. Bruce is a partner in Jackson Walker's Houston office.

1984



**Mark H. Mirkin** has joined Carlton Fields in the firm's corporate, securities, and tax practice group. Mark focuses his practice on corporate and securities law, with an emphasis on entrepreneurship and emerging growth companies. Prior to joining Carlton Fields in West Palm Beach, Fla., Mark was a partner with Williams Mullen in North Carolina.

**Donald Strickland**, a partner at Twiggs, Beskind, Strickland & Rabenau in Raleigh, has been inducted into the International Academy of Trial Lawyers. In his litigation practice, Don specializes in serious personal injury, wrongful death, business torts, professional negligence, and premises liability cases. [Correction: In the Winter 2009 issue of *Duke Law Magazine*, this honor was incorrectly attributed to Don's law firm partner, Donald Beskind '77. We apologize for our error. — *The Editor*]

1985

**Gill P. Beck** has been promoted to brigadier general and assigned as chief judge (IMA) of the U.S. Army Court of Criminal Appeals. He serves in that capacity when the chief judge is deployed.

**David S. Liebschutz** has been named director of the Albany, N.Y., office of the Center for Governmental Research, a 93-year-old nonprofit think tank and consulting firm. David previously was the assistant dean for career and alumni programs at the University of Albany's Rockefeller College of Public Affairs and Policy.

1987

**Suk-Ho Bang** has been named president of the Korean Information Society Development Institute, a policy think tank for the Korean Communications Commission.



A TRADITION OF GIVING  
 MARTHA HAYS '82 AND RICH HORWITZ '82

IT HAS BECOME A FAMILY TRADITION. Whenever Martha Hays '82 drives from Delaware to attend meetings of the Duke Law Board of Visitors, she makes sure to visit two Durham locations: Duke's campus bookstore and Bullock's Barbeque. At the bookstore she loads up on new Blue Devils gear. When she begins the journey home, Hays visits Bullock's, cooler in hand, to buy dinner for husband, Rich Horwitz '82, and their daughters, Julia, 16, and Emily, 14. "Starting about three hours before I get home, Rich will call me on my cell phone and ask 'Where are you?'" Hays notes with a laugh.

Hays and Horwitz met while waiting in line for Duke basketball tickets in the fall of 1979, their 1L year. Hays spent 25 years with Ballard Spahr Andrews & Ingersoll, where she was a partner in the business and finance department and served as co-chair of the firm's investment management group. She retired in August 2007 to spend more time with her daughters. After clerking for New Jersey Supreme Court Justice Robert Clifford '50, Horwitz joined Potter Anderson & Corroon in Wilmington. He is currently a partner at the firm with a practice that includes commercial litigation, primarily focusing on intellectual property, contract, and business tort matters.

Hays and Horwitz have remained involved with the Law School community by attending each of their reunions and sharing in the camaraderie among members of their graduating class. After a beloved classmate, Bernard Friedman, passed away in 2006, Hays and Horwitz were the lead donors to a gift that endowed a scholarship in his honor. It is among a series of gifts the two have made to the Law School since graduating.

The couple recently decided to do their most substantial giving by including a charitable bequest to Duke Law School in their estate plans. Along with other alumni and friends who have planned an estate or life income gift to Duke, Hays and Horwitz have been welcomed into the Heritage Society.

"It's a way for us to make a contribution that does not involve additional use of current funds," Hays says. "I'm a firm believer of leading by example. I think it's the right thing to do, and it's a fairly painless way to help the school that doesn't immediately affect us."

"It's something that I think my parents had always kind of impressed on me — the importance of giving, particularly to those who made a significant contribution to where you end up," Horwitz adds. "Certainly the Law School did that for us, personally and professionally." ♡ — *M.T.*

FOR MORE INFORMATION, please contact Katharine B. Buchanan, JD (T'92) at (919) 613-7217 or [buchanan@law.duke.edu](mailto:buchanan@law.duke.edu).

# Alumni Notes

**James Felman** served as a panelist at the Capitol Hill Crime Summit “Smart on Crime Policies: Increase Public Safety, Reduce Costs, and Improve Lives” on March 3. Jim is co-chair of the sentencing committee of the ABA’s Criminal Justice Section and a member of the Constitution Project’s sentencing committee. He is a partner at Kynes, Markman and Felman in Tampa.

**Brian Rubin** presented at The Knowledge Congress webinar “Rule 3110: Opening Gates for Optimal Corporate Performance” on Jan. 6. The National Association of Securities Dealers’ Rule 3110 provides specific requirements for how NASD members capture and store customer information. Brian is a partner at Sutherland in Washington, D.C.

## 1988

**Kodwo Gharthey-Tagoe** has gained membership into the Executive Leadership Council, one of the nation’s premier leadership organizations for African-Americans at Fortune 500 companies. Kodwo is vice president and general counsel of commercial businesses for Duke Energy. He lives in Charlotte with his wife, Phyllis, and their three daughters.



**Jo Ellen Whitney** has been recognized for 20 years of service with Davis Brown. Jo is a senior shareholder at the Iowa firm. She is listed in *Super Lawyers Iowa* for employment and labor and health care.

## 1989

**Dominick C. Colangelo** has been appointed CEO of Promedior, a product-focused biopharmaceutical company in Malvern, Pa., that focuses on treatment of fibrotic diseases and disorders. Dominick previously was executive vice president for corporate development and operations at Oscient Pharmaceuticals in Waltham, Mass.

**Mark Rosenberg** served as a panelist at Search Engine Strategies 2008 Conference and Expo. Mark is an intellectual property attorney who is of counsel to the intellectual property practice group at Sills Cummis & Gross in New York City.

**Paul K. Sun Jr.** has been elected to membership in the American Law Institute, an organization whose members are selected on the basis of professional achievement and demonstrated interest in improving the law. Paul’s law practice at Ellis & Winters in Raleigh focuses primarily on business litigation and appeals.

## 1990

**Bernard Chao’s** article, “Rethinking Enablement in the Predictable Arts: Fully Scoping the New Rule,” was published in

the *Stanford Technology Law Review’s* Spring 2009 issue. His article, “After *eBay, Inc. v. MercExchange*: The Changing Landscape for Patent Remedies,” was published in the *Minnesota Journal of Law, Science and Technology’s* Spring 2008 issue. Bernard is a partner in Chao Hadidi Stark & Barker’s Silicon Valley office.



**James Hactor** has been named to the 2009 edition of *The Best Lawyers in America* for corporate law. Jim is a partner specializing in corporate and securities, mergers and acquisitions, federal tax, and state tax at Lowndes, Drosdick, Doster, Kantor & Reed in Orlando.

**Tom Perrault** has joined Glu Mobile, a leading global publisher of mobile games, as vice president of global human resources and facilities. Tom previously was vice president of human resources for ZipReality. He lives in San Francisco with his husband, Sal Giambanco.

**Elizabeth Waetzig** has launched Change Matrix, a consulting business that works with clients primarily in the health care and mental health sectors to motivate, manage, and measure change.

## 1991

**Colm F. Connolly** has joined Morgan Lewis & Bockius as a partner in the litigation department of the firm’s Philadelphia office. Colm previously served as the U.S. Attorney for the District of Delaware.

## 1992

**Jennifer Knapke** has been elected an equity shareholder at Winstead PC in Dallas.

**Karl Metzner** and his wife, Caroline Lisa Werner, announce the birth of their son Gavin Metzner, on Jan. 5, 2009.

**Samantha Evans Ross** and her husband, **David Ross ’93**, announce the birth of Julia Evans Ross, on June 30, 2008. Julia joins sister Annalise.

## 1993

**Jim Adams** has been named regional executive director of the National Wildlife Federation’s Pacific Region, encompassing California, Oregon, Washington, Alaska, and Hawaii. He is based in the Anchorage and Seattle offices.

**Robin Harris** is the new executive director of the Council of Ivy Group Presidents, effective July 1, 2009. In her position, Robin serves as the chief executive officer of the Ivy League athletics conference. Robin previously worked at Ice Miller in Indianapolis in the firm’s collegiate sports and NCAA compliance practice. Before

joining Ice Miller, she spent nine years as an NCAA administrator.

**David Ross** and his wife, **Samantha Evans Ross ’92**, announce the birth of Julia Evans Ross on June 30, 2008. Julia joins sister Annalise.

## 1994



**Ted Edwards** has been named one of *Business North Carolina* magazine’s “Legal Elite” for 2009. Ted is a member of Smith Moore Leatherwood’s Raleigh practice.

**Stacie Strong**, an associate professor of law at the University of Missouri School of Law, has recently published *Research and Practice in International Commercial Arbitration: Sources and Strategies* (Oxford University Press). She also recently published an article on international class arbitration in the *University of Pennsylvania International Law Journal*. In addition to her academic pursuits, Stacie performs in the mid-Missouri area with her jazz band, Tappuccino, which features her tap dancing as a core musical element.

**Lisa Sumner** has been selected for inclusion in *Law & Politics’* ranking of North Carolina “Super Lawyers” in the bankruptcy and creditor/debtor rights category. Lisa was named among the “North Carolina Rising Stars” for 2009. She is a partner at Poyner Spruill in Raleigh.

**Christopher J. Vaughn**, an attorney with Carruthers and Roth in Greensboro, N.C., has been recognized in the 2009 edition of *The Best Lawyers in America* in the area of real estate law.

## 1995

**Steven Blum** has received the 2008 Fred Goldberg Jr. award for attorney excellence by the IRS chief counsel. Steve is a special counsel with the IRS Office of Chief Counsel in Washington, D.C.



**Gregory V. Brown** has joined Jackson Walker as a partner in the firm’s Houston office. Greg’s practice focuses on litigation and arbitrations.

**Jackson Moore** and Jeanne Blackstock Moore welcomed their fourth child, Anna Lindsay, on Nov. 28, 2008. She joins Elizabeth, Jack, and Charlotte. The family resides in Raleigh, where Jackson is a partner at Smith, Anderson, Blount, Dorsett, Mitchell & Jernigan.

**Askar Moukhidinov** has been named to head the new Curtis, Mallet-Prevost (Kazakhstan) TOO office in Almaty. Askar’s office concentrates on international



transactions and arbitration relating to Kazakhstan and the region in general.

## 1996

**Gunnar Birgisson** is a senior attorney covering energy regulatory issues for NextEra Energy Resources, formerly known as FPL Energy, the largest owner of wind farms in the U.S. Gunnar lives in Arlington, Va., with his wife, Amanpreet, and their two sons.

**Markus Nauheim** has been elected partner at Gibson Dunn & Crutcher in the firm's Munich, Germany, corporate office. Markus is a German- and U.S.-qualified attorney who concentrates on cross-border and domestic mergers and acquisitions, private equity investments and venture capital deals, and cross-border joint ventures.

## 1997



**E. Jewelle Johnson** has been named one of "Atlanta's Top 100 Black Women of Influence" by the Atlanta Business League for the second time. Jewelle is a partner specializing in employment litigation defense at Fisher & Phillips and co-chairs the diversity committee. She also was named a "Georgia Super Lawyer Rising Star" for 2009 by *Georgia Superlawyer Magazine*.

**Michelle Appelrouth Seltzer** and her husband, Yosefi, announce the birth of their son, Elliott Bernard, on Oct. 1, 2007. Michelle is a trial attorney at the Department of Justice Antitrust Division in Washington, D.C.

## 1998

**Derek Apanovitch** has joined Conversion Partners, a private investment firm in Tampa, as vice president of operations.

**George B. Donnini** has been named an "Up & Coming Lawyer" by *Michigan Lawyers Weekly*. A profile of George ran in the Dec. 8, 2008, issue of the magazine, which featured 10 rising stars of the Michigan bar. He is a litigator and shareholder in Butzel Long's Detroit office and focuses on white-collar criminal defense, SEC enforcement actions, corporate investigations, and general commercial litigation.

**Manuel S. Frey** has been elected partner at Paul, Weiss, Rifkind, Wharton & Garrison in New York. Manuel works in the corporate department and focuses on broad-based cross-border derivatives, structured products, and hedge funds.

**Marianne Fassel-Kahn** and **William Kahn '00** announce the birth of their twin daughters, Lucile and Pauline, on Dec. 15, 2008.

**Allison Rosenberg** has relocated from Greenberg Traurig in New York to the firm's Tokyo office. She is member of the Daini Tokyo Bar Association and the Inter-Pacific Bar Association.

## 1999

**Christian Broadbent** has been selected as senior counsel to SEC Commissioner Elisse B. Walter.

**Konstantin "Stan" Chelney** has been admitted to the partnership at Orrick, Herrington & Sutcliffe. Stan is a member of the firm's litigation group and is based in New York. His practice focuses on complex commercial litigation and arbitration, regulatory investigations, and corporate governance.

**Lisa Glover** and her husband, Stephen Keith, announce the birth of their second daughter, Grace, on July 3, 2008. Lisa is now the assistant town attorney for the Town of Cary, N.C.

**Andrew Hutton** has been elected a shareholder at Clark, Thomas & Winters in Austin, Texas, where he focuses generally on pharmaceutical products liability, medical device, and mass tort litigation.

**Amy J. Kolczak** and **Michael Kolczak** announce the birth of their son, Maxton Smith, on Dec. 10, 2008. Maxton joins his brother, Alex. Amy, a partner at Owen, Gleaton, Egan, Jones & Sweeney, and Mike, a staff attorney for Judge Susan Edlein of Fulton State Court, live in Atlanta.

**Rut Ley** and her husband, Marc, announce the birth of their daughter, Frieda, on Sept. 20, 2008. Frieda is the couple's second child. Rut lives in The Hague, where she works as a prosecutor with the International Criminal Tribunal for the former Yugoslavia.

**Jeffrey D. Litle** has been named to the partnership at Jones Day. Jeff works in the mergers and acquisitions group in the Columbus, Ohio, office. His practice focuses on transactional work, relating primarily to mergers and acquisitions, private equity and intellectual property, and technology matters.

**Joseph Lombardo** and his wife, Allison, announce the birth of their twins, Henry Joseph and Mirela Scarlett, on Jan. 29, 2009. Joseph is a partner at Chapman and Cutler in Chicago, where he practices corporate and general litigation.

**Cynthia A. O'Neal** has been named director of external affairs for North Carolina Lt. Gov. Walter Dalton.

**Rita Pang** and her husband, Edwin, announce the birth of their daughter, Candace, on Oct. 8, 2008.

**Amy Vieta** has been named to the partnership at Jones Day. Amy is in the mergers and acquisitions group in the firm's New York office. Her practice focuses on transactional work, relating primarily to mergers and acquisitions, private equity, and intellectual property and technology matters.

## 2000

**Keith Barnett** has been elected as a litigation partner at Sutherland Asbill & Brennan in Atlanta.

**Crystal Cook** has joined Epstein Becker & Green as an associate in the Atlanta office.

**Kirk Jensen** has been elected partner in Buckley Kolar's Washington, D.C., office. Kirk's practice focuses on retail and commercial financial services.

**William Kahn** and **Marianne Faessel-Kahn '98** announce the birth of their twin daughters, Lucile and Pauline, on Dec. 15, 2008.

**Melissa Marler Lambros** and her husband, John, announce the birth of their daughter, Katherine Anne, on Dec. 14, 2008.

**Pammela Quinn Saunders** has joined the Office of the Legal Adviser at the U.S. Department of State. Pammela works on legal issues arising from the Department's New Embassy Compounds program and diplomatic law issues relating to the acquisition, lease, and disposal of real property abroad.

**P. Brian See** has joined Williams Mullen's Richmond, Va., office as a partner and chair of the electronic discovery and litigation technology practice group. Brian advises attorneys and clients on issues related to electronic records retention and the identification, preservation, collection, review, and production of electronically stored information.

**Jeremy Steele** has been appointed vice president, general counsel, and chief compliance officer of Gardner Denver, Inc. Jeremy previously served as acting general counsel.



**Mechelle Zarou** has been elected partner at Shumaker, Loop & Kendrick in Toledo, Ohio. Mechelle practices in the firm's employment and labor practice group. She received the 2008 Trustees Award from the Toledo Bar Association and the 2008 "20 Under 40" leadership award. She has been selected for inclusion in *The Best Lawyers in America* in the immigration law category and has twice been recognized as an Ohio "rising star" by *Super Lawyers* magazine.

# Alumni Notes

## 2001

**Collin Cox** and Jacquelyn Cox announce the birth of their son, Clayton Aubrey, on Nov. 29, 2008. Collin is a partner at Yetter, Warden & Coleman, a litigation boutique located in Houston.

**Christopher Kang** has been appointed special assistant to the president for legislative affairs for President Obama. Chris previously worked as senior floor counsel for Illinois Sen. Richard Durbin. (See profile, page 35.)

**Randy Katz** has received the Attorney General's Award for Distinguished Service, one of the highest honors given by the Department of Justice, for his work on groundbreaking health care fraud cases that led to the indictment and conviction of more than 100 defendants. Randy is a federal prosecutor in the Economic Crimes Section of the U.S. Attorney's Office in the Southern District of Florida.

**Michael Oakes** has joined Hunton & Williams as counsel. Michael works in the firm's Washington, D.C., office.

**Evgenia Rebotunova** is a managing director of the Russian branch of Europolis, an Austrian asset management and investment fund.

**Desiree Sumilang** has been named in the 2009 edition of *Chambers Asia* as an "up-and-coming lawyer" with a rising profile. The publication, which ranks the leading law firms and lawyers across Asia, noted Desiree's work as overseas counsel on Philippine transactions. Desiree lives and works in Hong Kong.

## 2002

**Heather M. Bell** has joined Mitchell, Williams, Selig, Gates & Woodyards in Rogers, Ark., as counsel to the firm's business group. Heather previously served as an associate attorney for Gibson, Dunn & Crutcher in San Francisco.

**Aaron Futch** has been hired as assistant general counsel at Intelsat General Corporation in Bethesda, Md. Intelsat is the government services division of the world's largest satellite communications company.

**Robert Hyde** has been promoted to principal with Rafel Law Group in Seattle. Robert is chair of the King County Bar Association Young Lawyers Division Board of Trustees and has been named a "rising star" by *Washington Law & Politics* magazine in 2007, 2008, and 2009. In 2009, he was one of only 11 Washington lawyers named a "rising star" for his work in the insurance coverage practice area.

**Katheryn Lloyd** has been named a partner in the law firm of Carpenter Lipps & Leland in Columbus, Ohio. Katheryn's practice focuses on commercial litigation. She also has been identified as a "rising star" in the 2007 and 2009 editions of *Ohio Super Lawyers* in the area of business litigation.

**Jessica Richman-Dworkin** married Matthew Dworkin on Nov. 15, 2008, at the West Point Academy Jewish Chapel. Alumni in attendance were **Marcella Harshbarger '02**, **Aya Kobori '02**, and **Lone Loschenkohl** (Duke Law Transnational Institute Geneva Summer 2000). Jessica and Matt live in the Washington, D.C., metro area.

## 2003

**Kendra Montgomery-Blinn** and her husband, Sam, announce the birth of their daughter, Neva Marie, in June 2008.

**Divesh Gupta** has been promoted to senior counsel at Constellation Energy in Baltimore.

## 2004


**Trey Childress** and his wife, Lisa, announce the birth of their son, Donald Earl Childress IV ("Jacob"), who was born on Nov. 24, 2008. Trey is an associate professor of law at Pepperdine University School of Law. He

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previously worked in the appellate practice group at Jones Day in Washington, D.C.

**Graham "Gray" Chynoweth** has been named as one of "25 Leaders for the Future" by *Business New Hampshire Magazine*. Gray was one of 11 founding members of the Manchester Young Professionals Network in 2004 and is currently on the organization's board of directors. He also co-chairs the governor's Task Force for the Retention and Recruitment of a Young Workforce. He is general counsel at Dynamic Network Services in Manchester.

**Kerry Drozdowicz Varbaro** married Gian Varbaro in Orange, Conn., on Nov. 15, 2008. **Dana Buschman Ziker '03** attended.

**Walt Wood** has returned to the Triangle area to practice with Martin & Jones in Raleigh.

## 2005

**Nora Adkins** and her husband, David, announce the birth of their daughter, Taylor Elyse Adkins, on Dec. 19, 2008.

**Chris Baird** and his wife, Heather, announce the birth of their daughter, Violet May, on Nov. 21, 2008. Violet joins her brother, Henry.

**Nicolas Robeson** and his wife, Malu, announce the birth of their daughter, Olivia, on Jan. 10, 2009. The couple lives in Chile.

**Bastiaan Ryckaert** has joined Goodyear Dunlop Tires Europe B.V. as attorney EMEA in the company's regional executive offices in Brussels, Belgium.

## 2006

**Takashi Kokubo** has joined Integral Corporation as an attorney/investment professional. Takashi studied business in Europe while working with his previous law firm.

**Teddy Schwarzman** has joined the financing division of Cinetic Media in New York City. Teddy previously worked as an attorney at Skadden Arps, where he specialized in corporate restructuring and real estate.

**Howard Wachtel** married Jaime Teitelman on Dec. 31, 2008, in Springfield, N.J. Howie is a litigation associate at Simpson Thacher & Bartlett in New York City.

## 2007

**Ben Mitchell** and his wife, Amanda, announce the birth of their son, Quinn Saunders, on Aug. 28, 2008.

**Leah Nicholls** has been selected for the Civil Rights/Public Interest Clinical Fellowship at Georgetown Law. Leah previously was the 2008-2009 recipient of the Supreme Court Assistance Project Fellowship with the Public Citizen Litigation Group in Washington, D.C.

**Joe Ope** has transferred from the Houston office of Fulbright & Jaworski to the firm's Dubai office.



EZRA BETHEM PHILLIPS ENJOYS THE WINTER 2009 ISSUE OF DUKE LAW MAGAZINE.

**Segev Phillips** and his wife, Courtney, announce the birth of their son, Ezra Bethem, on Aug. 15, 2008. The family lives in Boston, where Segev works for Goodwin Procter.

## 2008

**Javier Carrizo** is working as a lawyer in the international unit of Morgan & Morgan, Panama and Central America's largest law firm.

**Aryeh Hersher** has joined Seyfarth Shaw's San Francisco office. Ari works in the labor and employment department.

**Patrick C. Wooten** has joined the Charleston, S.C., office of Nelson Mullins Riley & Scarborough. Patrick practices in the areas of business litigation, class-action defense, pharmaceutical and medical device litigation, premises liability, and products liability.



## SCHOLARSHIP LUNCHEON 2009

**Katherine Shea '10** and **Vincent Sgrosso '62** were among more than 250 alumni, students, and friends of Duke Law School who gathered at the Washington Duke Inn on Feb. 21 to honor scholarship donors and recipients. Shea is the recipient of the Jenny Ferrara Scholarship, which Sgrosso established in 1984 in honor of his grandmother. He is an honorary life member of the Law School's Board of Visitors.

## Class of '41

**Daniel Roberts Dixon II**, 97, died on Jan. 17, 2009, in Wilmington, N.C. A native of Rocky Mount, N.C., he received an AB degree in 1937 from William and Mary where he was awarded the Algernon Sydney Sullivan Award for service. Following his graduation from Duke Law and service as a captain in the United States Air Corps, Mr. Dixon became a North Carolina certified public accountant and earned an LLM in taxation from New York University in 1951. He practiced law with Hamel, Park and Saunders in Washington, D.C., in 1951-52, after which he joined Dixon and Hunt in Raleigh, where he practiced until 2002. Mr. Dixon also served as an associate professor of business law and economics at North Carolina State University from 1954 to 1976.

Mr. Dixon was the author of *The Graphic Guide to Fundamental Accounting* and published articles in law journals and trade publications. A past president of the Wake County Chapter of Phi Beta Kappa, he also was a member of the North Carolina Bar Association, Wake County Bar Association, and Omicron Delta Epsilon. Mr. Dixon was a member of the Navy League of the United States and served as a judge advocate from 1990 to 1996. He also was an inventor, carpenter, poet, musician and writer.

Mr. Dixon was predeceased by his wife, Carol, two brothers, and two sisters. He is survived by his son, Daniel R. Dixon III; daughter, Carolyn Dixon Dyess; and two granddaughters.

## Class of '42

**John B. Breckenridge**, 91, died Feb. 17, 2009, in Evansville, Ind. A native of Plattsburg, Mo., he graduated from William Jewell College, where he received national honors in debate and was selected to represent the United States in a series of international debates in England and Wales. In addition to his law degree from Duke, he attended Harvard University Graduate School of Business Administration. He served as a naval officer in the Pacific Theatre from 1942 to 1946, retiring with the rank of lieutenant commander.

Mr. Breckenridge began his law career with Mudge, Stern, Williams and Tucker in New York. He then joined the Bristol Brass Corporation in Bristol, Conn., as assistant to the president and general counsel. In 1959 he became secretary and head of the legal department of Mead Johnson and Company in Evansville and was appointed vice president of the company in 1963.

He was active in the Methodist Temple and the Rotary, and was a director and past president of Indiana University's Friends of Music.

Upon retirement from Mead Johnson in 1982, Mr. Breckenridge became a docent in the planetarium of the Evansville Museum and taught Business Law as an adjunct professor at the University of Southern Indiana. He loved to travel and visited more than 70 countries. He also was an avid tennis player.

Mr. Breckenridge is survived by his wife, Eleanor; sons, John, Stephen, and Alan; and five grandchildren.

## Class of '47

**Elizabeth A. Chase**, 87, died Dec. 28, 2008, in Adelphi, Md. Born in Ithaca, N.Y., she earned a bachelor's degree from Cornell University in 1942. After graduating from Duke, she joined the legal staff of the U.S. Department of the Treasury in Washington, D.C. From 1955 until her retirement in 1973 she worked for the Department of Health, Education and Welfare (HEW), first on the policy planning and legislative staff for the Office of Vocational Rehabilitation and later as a consultant and adviser to the surgeon general on legislative issues. She also worked for the Bureau of Health Manpower.

Ms. Chase received the Justice Tom C. Clark Award from the Federal Bar Association in 1972 and the Secretary's Distinguished Service Award from HEW in 1973. She was a member of New York Avenue Presbyterian Church in Washington and the Metropolitan Opera.

## Class of '48

**Hollie Conley**, 87, died on Jan. 11, 2009, in Gibson City, Ill. In addition to Duke Law School, he was a graduate of Alice Lloyd College and the University of Kentucky. He served in the U.S. Navy during World War II. After serving as Floyd County (Ky.) and Commonwealth attorney, he spent 28 years as a judge of the Circuit Court. Together with his wife, Minnie, he also owned and operated Conley's Kentucky Food Store in Garrett, Ky., for more than 40 years. He was an avid hunter and University of Kentucky Wildcats basketball fan.

Judge Conley was preceded in death by his wife, two brothers, and two sisters. Survivors include his children, Judelle Conley, Danise White, and Hollie Conley; sisters, Bessie Draughn and Sallie Scherrer; six grandchildren; and seven great-grandchildren.

**Donald J. Cregg Sr.**, 87, died on Nov. 11, 2008, in Wilmington, Mass. Born in Methuen, Mass., he graduated from Duke University and returned to Duke for his LLB after wartime service in the United States Navy. Following law school, he assisted his father, Hugh Cregg, the district attorney of Essex County, and later practiced law with his father and son at Cregg and Cregg.

Predeceased by his wife, Alice, Mr. Cregg is survived by his sons, Alan and Donald; brother, Hugh; sister, Natalie Ballard; and three grandchildren.

**Edwin Peter Friedberg**, 88, died on Jan. 19, 2009, in Cary, N.C. A native of Nassau County, N.Y., he interrupted his undergraduate studies at Duke University to enlist in the Marine Corps, serving as a first lieutenant in World War II and seeing action in the Pacific Island campaigns. After graduating from Duke Law and gaining membership in the North Carolina bar, he joined the Pittsburgh office of the chief counsel of the Internal Revenue Service. He returned to North Carolina in 1951 and became the first tax specialist in Eastern North Carolina. Also licensed as a CPA, he practiced for more than 50 years, representing clients in civil and criminal tax matters.

In 1988, Mr. Friedberg became of counsel to Howard, Stallings, Story, From & Hutson in Raleigh.

Mr. Friedberg was predeceased by two brothers. He is survived by his wife, Nancy; his children, Jody G. Pagano, Charles I. Friedberg, Ellen O. Virchick, Alisa C. Spivey, Rodney I. Carroll, and Melinda Easterday; 12 grandchildren; and one great-grandchild.

## Class of '49

**Edwin Eugene Boone Jr.**, 87, died on Oct. 23, 2008, in Frisco, Texas. A native of Greensboro, N.C., he graduated from the University of North Carolina at Chapel Hill with a bachelor's degree in commerce. A Marine Corps veteran, he was stationed in the Pacific during World War II. He practiced law in Greensboro for 56 years and was a member of the Greensboro Kiwanis Club and Greensboro Country Club.

Mr. Boone was preceded in death by his sister. He is survived by his wife, Elizabeth; son, William; three granddaughters; and one great-granddaughter.



## Class of '50

**W. Warren Cole**, 82, died on Nov. 1, 2008, in Daytona Beach, Fla. A Navy veteran, Mr. Cole served as city attorney for Daytona Beach in the late 1950s. He was a founding member, in 1950, of the firm Cobb & Cole, a past president of the Volusia County Bar Association and the Daytona Beach Area Chamber of Commerce and was a fellow of the American College of Trust and Estate Counsel. He was certified as a mediator by the Florida Supreme Court.

Mr. Cole was a member of the judicial nominating commission for the 7th Judicial Circuit and was a member of the 7th Judicial Circuit Grievance Committee for nine years. Involved in a myriad of civic affairs, he was chairman of The Community of 100 and served for many years on the board of the YMCA. Active in the Presbyterian Church, Mr. Cole served as an elder, Counsel on Ministries member, and delegate to the General Assembly.

He is survived by his wife of 57 years, Rose Mary; sons, John and Stephen; daughters, Mary Hester, Sandra Mooneyham, and Carol Cole Czczot; brother, Charles Edward "Ted"; and five grandchildren.

## Class of '52

**Peter B. Scuderi**, 80, died on Nov. 13, 2008. Raised in South Philadelphia and a 1949 graduate of Temple University, he practiced law in Center City, Pa., for more than 20 years. From 1963 to 1971, he was a hearing examiner for the Pennsylvania Liquor Control Board. He was a Republican committeeman in South Philadelphia from 1953 to 1973.

He became a federal magistrate judge for the Eastern District of Pennsylvania in 1974, a position he held for more than three decades. During the 2006 trial of al-Qaeda conspirator Zacarias Moussaoui, Judge Scuderi was among the jurists who volunteered to explain the simulcast of the trial proceedings to the families of victims of the Sept. 11 terrorist attacks.

Judge Scuderi was a member of several professional organizations, the Bala Golf Club, and was the American Red Cross of Southeastern Pennsylvania's former blood-donor chairman. He loved history and was a Civil War buff. He enjoyed babysitting his grandchildren.

Judge Scuderi was preceded in death by his wife, Loretta. Survivors include his sons, Peter and Joseph; three sisters; and five grandchildren.

## Class of '57

**George William Hackett Sr.**, 78, died on Dec. 23, 2008, in Naples, Fla. A veteran of the Korean War, he attended both Syracuse University and Alfred University, where he earned a bachelor's degree.

Mr. Hackett was predeceased by his daughter, Jilyne Iona-Marie. He is survived by his wife of 55 years, Catherine "Kay"; son, George W. Hackett Jr.; sisters, Jean Guilford and Donna Ornt; brother, Henry; and three grandchildren.

## Class of '61

**Walter Francis Moossa**, 71, of Andover, Mass., died on March 1, 2009. He received a bachelor's degree in biology from Clark University and an MBA from Babson College. Mr. Moossa served as a lieutenant in the United States Marine Corps. He worked for more than 25 years at American Mutual Insurance Company, retiring as senior vice president and investment manager.

Mr. Moossa is survived by his wife of 44 years, Sheila; daughter, Mary Jurek; son, John; and five grandchildren.

## Class of '70

**Robert F. "Bob" Weaver Jr.**, 69, died on Dec. 21, 2008, in Biloxi, Miss. He was a native of Meridian, Miss., and a graduate of Auburn University. He was a veteran of the Marine Corps and served during Vietnam. After practicing law in Columbus, Ohio, for 20 years, he moved to Biloxi where he taught English at Biloxi High School.

Mr. Weaver was predeceased by his wife, Judy; father, Robert F. Weaver, Sr.; and sister, Susan Prichard. He is survived by his mother, Billie; sons, Matthew and Bo; brother, Mike; and two grandchildren.

## Class of '78

**Henry Hall "Hank" Wilson III**, 57, of Charlotte, died on Feb. 7, 2009. A native of Monroe, N.C., he graduated *magna cum laude* from Harvard University in 1973. In Charlotte, where he practiced law for 30 years, he served on the boards of a number of local charities including Programs for Accessible Living and Goodwill Industries of the Southern Piedmont. He was a member of the State of North Carolina's Board of Ethics from 1984 until 1986.

Mr. Wilson enjoyed classical music. He played the oboe from an early age, studying under some of the most renowned oboists in America. His father, who was an aide to the president in the Kennedy and Johnson administrations, imbued Mr. Wilson with an abiding interest in politics and public policy. He was active for many years in local, state, and national Democratic Party politics.

Most recently, Mr. Wilson enjoyed mentoring young people in the Seigle Avenue Partners Program. He attended Caldwell Memorial Presbyterian Church. His other interests included ancient history, art, travel, exotic food, and the wonders of nature.

Mr. Wilson is survived by his wife, Terry Kerr; daughter, Mitchell; and sisters, Jean Wilson Mulvihill and Nancy Wilson.

As this magazine went to press, we learned of the passing of Professor **Robinson O. Everett '59**. He died in his sleep on June 12, 2009. A Duke Law professor for more than 50 years, Everett was a senior judge of the U.S. Court of Appeals for the Armed Forces and among the most respected experts on military justice in the nation. "For many of our alumni, Professor Everett is Duke Law," said Dean David Levi. "We will all miss his ready smile, his generosity of spirit, and his inexhaustible supply of ideas for new projects and new opportunities for students and for this Law School."

A tribute to Everett's life and legacy will be featured in the next issue of *Duke Law Magazine*; please also visit our memorial web site at [www.law.duke.edu/everett](http://www.law.duke.edu/everett).

# Sua Sponte

## “John Hope Franklin ...

was one of the most remarkable Americans of the 20th century. He was the master of the great American story of that century, the story of race. John Hope wrote it, he taught it, and he lived it.

“He worked on a crucial brief for *Brown v. Board of Education*, he marched in Selma, he lectured all over the world and he taught all of America to see through his uncompromising eye. But it was not just what he did but how he did it that marked his greatness. He understood that the public good was not merely a set of substantive outcomes; it is also defined by how we go about reconciling our competing visions of that public good. It is about how we view one another when we peer across the great divides of policy, preference, political party, and personhood. John Hope Franklin looked at those who opposed him and saw fellow human beings.”

— Walter Dellinger, the Douglas B. Maggs Emeritus Professor of Law, writing in *The Washington Post* March 26, 2009.

.....  
Best known for his epic 1947 work, *From Slavery to Freedom: A History of African Americans*, Franklin taught constitutional history at Duke Law School from 1985 to 1992, along with Dellinger and William Leuchtenburg, the William Rand Kenan Jr. Professor Emeritus of History at the University of North Carolina-Chapel Hill. ♡

**John Hope Franklin**  
James B. Duke Emeritus  
Professor of History  
Jan. 2, 1915 - March 25, 2009



# DUKE LAW MAGAZINE

[HTTP://WWW.LAW.DUKE.EDU/MAGAZINE](http://www.law.duke.edu/magazine)

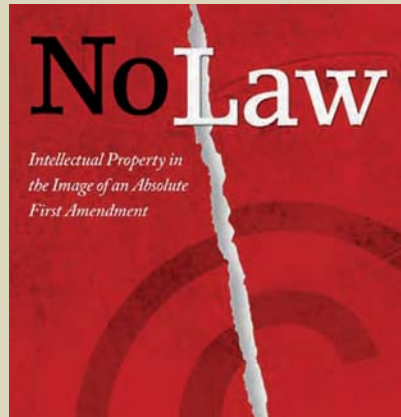
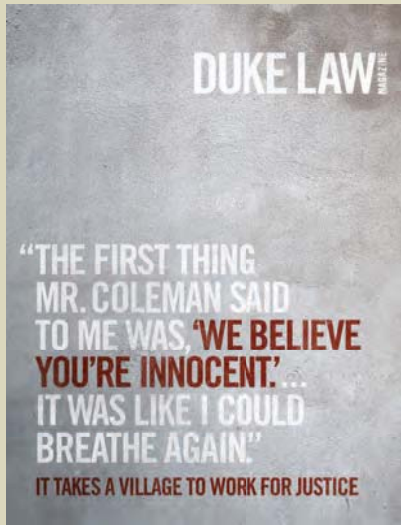
## DEAR READERS,

AS YOU CAN SEE, *Duke Law Magazine* has been streamlined. This issue is more compact than the last, not due to any shortage of community news, but because more of that news is going online.

After you have read and, we hope, enjoyed this issue, we invite you to see our online supplement. You'll find it at <http://www.law.duke.edu/magazine>. You will be able to read about — and watch — some of the people and issues covered in the print magazine in greater depth, and we'll be updating the supplement regularly as new developments in these stories arise. We will have more profiles of community members — alumni, faculty, and students — and include video of conferences, panels, and speakers, links to faculty commentary, and coverage of alumni news and events.

We would love to hear your thoughts on our changes. Please email comments to [news-events@law.duke.edu](mailto:news-events@law.duke.edu).

Sincerely,  
Frances Presma  
Editor, *Duke Law Magazine*



Selected Fall 2009 conferences, symposia, and events:

- 8/17-21**    **LEAD Week**  
*Duke Law welcomes the Class of 2012*
  
- 8/18**        **On-campus Interviews begin**
  
- 9/25-26**    **Evaluating Judges, Judging, and Judicial Institutions**
  
- 10/2**        **Terrorism and the Law of War:  
How Should We Categorize Combatants in an Age of Non-State Warfare?**  
*Duke Journal of Comparative and International Law*
  
- 10/23**      **Ecosystem Services Markets in a New Era of Environmental Policy**  
*Duke Environmental Law & Policy Forum*  
and the USDA Office of Ecosystem Services and Markets
  
- 11/6**        **Turning Points in the History of the Federal Income Tax**  
*Law & Contemporary Problems*
  
- 11/6-7**     **Scholarship Roundtable: The Law and Politics  
of International Cooperation**  
*Center for International and Comparative Law*