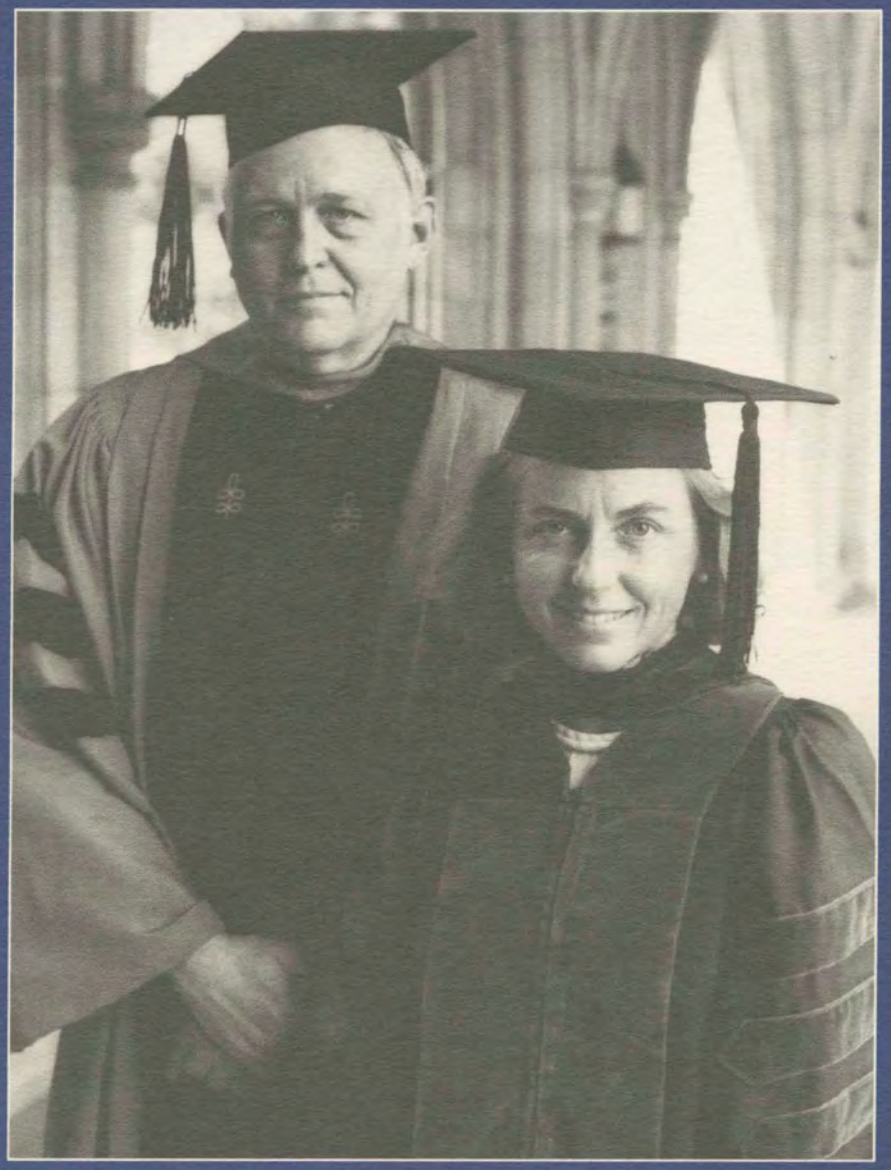
Duke Law Magazine

SUMMER, 1988



Transition

VOLUME 6

Duke Law Magazine

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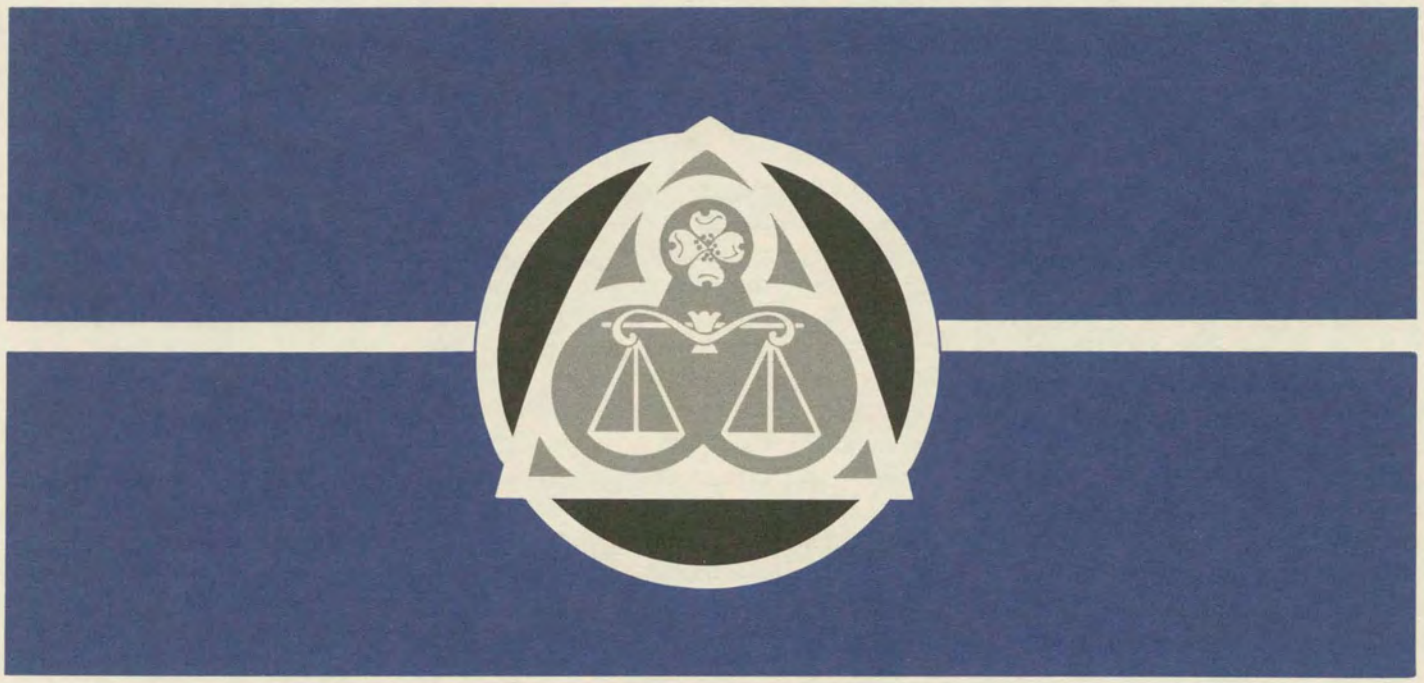

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Editor's Column

This issue announces a major transition at Duke Law School. Paul D. Carrington, who has served as dean here for ten years will be returning to teaching, and Pamela B. Gann, a member of the Law School faculty since 1975, will be assuming the deanship effective July 1, 1988. Both deans are featured on our cover, and some thoughts on the transition are included in the About the School section.

In two timely articles in the Forum, Jim Cox shares his views on the criminalization of insider trading, and John Weistart considers the (non-?) role of the faculty in college sports. The Law School hosted a conference on civil law in China this fall, a report of which is also included.

In addition to the news of our dean change, the About the School section includes articles on the legal ethics course that is now part of the first year curriculum and the clinical curriculum at the Law School. Also included is an article about Duke Law students who are participating in the Guardian Ad Litem program in Durham County either as volunteer guardians or through the Child Advocacy Clinical program established and supervised by Kate Bartlett.

The Docket continues to grow as we receive more information regarding our alumni. In this issue we report on our expanding network with China. The China Program is an important part of the Law School's growing international program. Our alumnus profile for this issue features Jim Poyner '40 who has spent a lifetime making important contributions to the Triangle area and to North Carolina generally. Our Specially Noted feature highlights transitions of a number of Duke Law alumni and faculty members.

In the Alumni Activities section, we continue to share news of your personal and professional milestones with the Duke Law family. We are always pleased to hear from you and hope that you will continue to notify us with news of yourself or your classmates. We also encourage all of our readers to communicate with us so that we can respond to your interests in the *Magazine*.

Letters

Duke Law Journal

I am a graduate of Duke Law School—Sept. 1942. Yes, that fall date is correct. We were under a speedup program arranged so that we could graduate before we were drafted for service in World War II.

I am writing about an item in the latest issue of *Duke Law Magazine*. It is the article on page 34 entitled "*Duke Law Journal*." The article implies—but does not say directly—that a publication called the *Duke Bar Journal* had its beginning in 1951.

If my recollection is correct, we had a *Duke Bar Journal* when I was in school. I had a copy of it in my files for years, but I must have finally discarded it. Therefore, I can't prove my point.

I would appreciate it, however, if you could check it out and let me know. I thought you might be interested in this bit of Duke Law history.

John Lofton

Dear Mr. Lofton:

We appreciate your interest in the history of the Law School and its publications. One benefit we are deriving from publishing articles on programs at the School is increased knowledge of our own history.

You are correct that there was a publication of very similar name at the Law School when you were here in the early '40's. According to the article, "Duke Law School in the 1930's: A Retrospective," published in the Winter 1987 issue of the Duke Law Magazine, *the* Duke Bar Association Journal *was established at the Law School in 1933. This publication was modeled after the journals of state bar associations and carried as one section the proceedings of the Duke Bar Association. A second section published comments on current court decisions of consequence prepared in the Current Decision course by second and third year students of high standing. Evidently, therefore, the* Journal *established in 1951 was a revamping of this earlier publication along the lines of law reviews at other schools.*

Again, we appreciate hearing from you. We hope that you continue to enjoy the Duke Law Magazine. *Please let us know if we can ever provide you with further information.*

Let us know if something piques your interest. Send letters to the editor to:

Editor, *Duke Law Magazine*
Duke Law School
Durham, NC 27706

VOL. 6, NO. 2 / 3

FORUM

The Criminalization of Insider Trading

*James D. Cox**

Indeed, even a few experienced securities lawyers opine that insider trading is a victimless offense.

**Professor of Law, Duke University. Professor Cox joined the Duke Law School faculty in 1979 and teaches primarily in the corporate and securities area. He recently testified on the Insider Trading Proscriptions Act of 1987 before the Securities Subcommittee of the U.S. Senate Committee on Banking, Housing and Urban Affairs. This article is derived from a presentation to those attending the Duke Law School Barristers Weekend in March 1988.*

Insider trading of one measure or another has most certainly been a part of society as long as markets have existed. Its proscription caught the eye of the corporate-securities bar in the mid 1960s with the exciting facts involved in the Second Circuit's landmark decision, *SEC v. Texas Gulf Sulphur Co.*,[1] wherein insiders were required to disclose material nonpublic information or abstain from trading. And, in the last few years a new regulatory dimension has been added to insider trading with intensified enforcement of insider trading within the criminal system. The anomaly throughout these developments has been the lack of agreement among courts and commentators over who is harmed by insider trading. Indeed, even a few experienced securities lawyers opine that insider trading is a victimless offense. If insider trading were to remain purely an SEC civil enforcement matter, answering this question would be less urgent, because so much of the regulation under the federal securities laws is not designed to protect investors from any overt harm, but rather to assure the smooth and fair operation of securities markets. However, the current frequency and intensity of the government's enforcement of insider trading through the criminal justice system not only invites critical reconsideration of the reasons insider trading is prohibited, but also requires a separate justification for using the criminal justice system to serve that cause. The following are some tentative views on these questions that I recently shared with our alumni during Barristers Weekend. Not surprisingly for those who know me, I come out on the proregulation side of these questions and believe that criminalization of insider trading is consistent with both historical and emerging functions of the criminal justice system.

Insider Trading Orthodoxy

First attempts to justify insider trading's proscription focused on how it was believed to harm investors. Insider trading was characterized as unfair, as surely it is, because the insider by virtue of his position or stealth has an unerodible advantage in the information he possesses. But how does this unfairness harm the insider's opposite trader? The insider's trading can easily be seen as a fortuity. The individual investor's

decision to sell or to purchase is unaffected by whether the insider is also secretly trading in that same market. If the insider neither purchased nor sold, the individual investor would nevertheless have pursued his trading strategy. To be sure, sellers are disadvantaged by the nondisclosure of good news as are buyers by the nondisclosure of bad news. But such conclusions fail to implicate why the insider's trading contemporaneous with their possession of such information should impose upon them a duty to disclose.

Modest support for the disclose or abstain rule can be found if the trading and nondisclosure aspects of insider trading are disaggregated. Certainly the insider's trading does impact the supply and demand for the security traded in, so that the insider may preempt a price that was a lower "buy" price or a higher "sale" price than what would have been available to the investor if the insider had abstained from trading.[2] Under such a rationalization, the investor's harm is both problematic and trivial. It is purely in the realm of speculation what price would have been available to outside investors if the insider had not traded. Moreover, in a goodly number of cases, the resolution of this sticky factual question would appear hardly worthy of the considerable effort it will entail. The insider's trading will have minimal impact on the stock's price. And, the argument overlooks benefits that the insider's trading may have conferred on parallel traders, those who also purchase when the insider purchased; for this group, the price and volume changes that the insider's trading stimulated may have attracted others similarly to trade so that such parallel traders unwittingly invested "in a sure thing." But the ultimate problem with the argument that the misdeed of inside trading is that the insider thereby preempts a price otherwise available to others is that this reasoning begs the question. Insiders are permitted to trade, and therefore preempt a price available otherwise to others, when they are not in possession of inside information; therefore, why should they not be similarly free when their trading is on the basis of inside information?

In the light of the above analysis, it is not surprising that insider trading regulation has been more frequently justified by highly generalized incantations of the necessity of preserving the integrity of securities markets so as to preserve investor confidences. Certainly investor confidences are most directly implicated when insider trading is accompanied by various abusive disclosure practices. There is growing evidence that insider trading is *sometimes* accompanied by manipulative practices.[3] Tardy corporate disclosures would be the most likely form of manipulation. Delay gives insiders and others time needed to capture a greater share of the changes in the firm's value. Ambiguous corporate disclosures and signals can also be employed to create market uncertainty against which insiders with a clearer view can further their secret trading agenda. And insiders may even alter timing of corporate activities for the sole purpose of creating

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intertemporal swings in the firm's value; they thereby can reap the gains of their privileged positions by anticipating the direction of stock price movements.

It is the rare inside trading case where such abusive practices have been found to exist and serve the insider's trading agenda. This does not imply, however, that such abuses do not more frequently accompany insider trading. Great uncertainty exists whether sound managerial judgment guided the timing of a corporate announcement and its ambiguities, the initiation or delay of a transaction, or the selection of a riskier project. Moreover, when such abuses are found, it appears far better to justify prosecution by calling a "spade a spade" and addressing directly the manipulative practice than it is to trump the manipulative practice with the fortuitious unfairness to the insider's contemporaneous opposite trader. And, a generalized fear of a potential for abusive disclosure practices to accompany insider trading appears too insubstantial to justify criminal sanctions when the evidence only supports a finding of insider trading.

Close observers of insider trading regulation are aware that most government prosecutions, particularly criminal actions, are against individuals who technically are *not* insiders.[4] Most actions, and certainly those that have captured media attention (e.g., Messrs. Boesky and Levine) involved various market professionals and others who "misappropriate" information from their employer and use that information to purchase or sell another entity's stock. The reasoning supporting the "misappropriation theory"[5] is the necessity of curtailing the "unfairness" to employment relations of such unauthorized uses of the employer's confidential secrets.[6] That this justification is highly privatized, focusing exclusively on protecting the employer of the misappropriator, is underscored by the denial of private investors to recover from the misappropriator.[7] To this formulation must be further added the observation that there is an obvious and troubling discontinuity between the misappropriation theory's emphasis upon the "unfairness" to employment relations and the well-recognized purposes of the antifraud provision to facilitate informed investment decisions, to protect capital markets from manipulation of stock prices and generally to sustain investor confidences in securities markets. A further disconcerting observation is that any and all versions of insider trading types of violation, whether labeled that

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of an "insider," "tippor," or "misappropriator," all involve the unauthorized use of information created by the defendant's employer. Hence, it appears that the clearest and most repeated justification for insider trading regulation is the harm it does to private employment relations. Certainly this is the rationale in the more frequent misappropriation cases, and it is submitted that this rationale is portable to the pure insider trading violation.

Private Rights and Criminal Sanctions

The preceding review leads to a seemingly precarious foundation for insider trading regulation through the criminal process. The central concern is that purely private matters are being protected through criminal prosecutions. For example, the Supreme Court in *United States v. Carpenter*[8] upheld 8-0 the mail-fraud conviction of R. Foster Winans on the highly privatized reasoning that the columnist's unauthorized use of his advance knowledge of his column harmed his employer's economic interests in preserving its reputation. This at least invites the question whether this is an appropriate use of the criminal laws.

A quarter of a century ago this concern was forcefully advanced over that era's economic crime, for example violating price control legislation, when Professor Kadish questioned whether the criminal system was disserved by criminalizing conduct that was "morally neutral" and proscribed one's freedom for the purpose of serving the state's vision of an appropriate economic order.[9] In other sectors of the criminal academic community, concern was expressed about criminalization of victimless crimes, such as vagrancy. These concerns over the contemporary role of criminal law is informed by Lord Devlin's observation that the purpose of the criminal law is to reinforce moral values.[10] Where conduct is morally neutral, such as where it reaches legitimate modes of doing business, not only is there the very real likelihood that prosecutions of such morally neutral behavior will over time be temporized, but also that such a misapplication of criminal sanctions will cause the criminal justice system to lose the public's trust.[11]

Insider trading is not an offense over which there is moral ambivalence, at least not outside of the "Chicago School."[12] In fact, today's increased criminal prosecutions and SEC enforcement actions against inside traders can be viewed as coming center stage where the public concern and condemnation have long played. Clearly no sector of the economy has withheld its condemnation of insider trading and their reactions appear to become stronger as the prevalence of insider trading enjoys heightened visibility with the government's stepped up enforcement profile. Thus, insider trading appears to satisfy Devlin's notion of actions ripe for criminal enforcement and to fall neatly outside the concerns expressed by Professor Kadish, because more appears at stake than our government's view of what fair markets require.

Furthermore, we should not consider it inappropriate for the criminal justice system to be used to redress and recompense purely private injuries. Early criminal and regulatory proceedings in England were a joint arrangement in which the victim served as prosecutor and shared with the state any fine resulting from a successful prosecution.[13] Today, public prosecutions, criminal or otherwise, increasingly provide restitution to those injured by the defendants' violation of public directives. Moreover, restitutionary recoveries are generally viewed as particularly appropriate for white collar offenses as the typical defendant in those cases is affluent and his offense was a calculated attempt to gain an economic advantage, most likely by harming another's property.[14]

So viewed, the enforcement question divides into two distinct, but related questions. The first is whether it is appropriate to expect public resources for the purpose of vindicating merely private rights. This does not question the appropriateness of insider trading's proscription, but questions whether proscription should occur through the arms of government enforcement agencies. In analogous positions where an employee or advisor misappropriates a firm's secrets, customers, or opportunities, private enforcement dominates the field and the near certain summary dismissal of the violator from continued employment with the firm and its related opprobrium surely serve as a pointed reminder to others of the serious repercussions that attend such breaches of confidence. Why not the same approach in the case of insider trading? The second question focuses on the appropriateness of the public enforcement being a criminal proceeding. Certainly concluding that private actions and not public actions should be the sole route for awarding restitution to the victims of insider trading should not itself foreclose a parallel criminal action. The tort of conversion and the crime of larceny continue to coexist, as they have for centuries. The availability of a private remedy does not foreclose the appropriateness of a criminal violation where the public interest is served by criminalizing that which also produces a private right of action. On the other hand, it does

It appears that the clearest and most repeated justification for insider trading regulation is the harm it does to private employment relations.

not necessarily follow that conduct society deems appropriate for public proscription automatically merits criminal sanctions. For example, of the wide array of possible types of securities law violations, only a few tightly drawn categories customarily are the subject of criminal prosecutions. The question arises, therefore, what sets insider trading apart for criminalization?

Technology's Impact On the Private-Public Choice

The explanations for public prosecution of insider trading are partly technological and partly that natural efficiencies exist. Public enforcement enjoys a kind of natural monopoly in this area. The government's enforcement efforts are heavily dependent on the electronic market surveillance systems of the securities exchanges and the National Association of Securities Dealers (NASD). These self-regulatory organizations play a pivotal role in the government's increased enforcement efforts. Sophisticated computer systems not only detect trading irregularities but also can rapidly identify whether the trading involved anyone likely to have access to inside information. These systems make an indispensable contribution to the deterrence and detection of insider trading. Stocks listed on the New York Stock Exchange are subjected to the most intensive surveillance system.

The New York Stock Exchange relies upon three interrelated programs to detect potential insider trading practices. Unusual changes in a listed stock's price or volume are identified within seconds of their occurrence through the NYSE's Stock Watch program. The NYSE's ability to do this is heightened by its participation in the Intermarket Surveillance Group (ISG) whose members include the other seven exchanges as well as the NASD. The ISG coordinates the overall effort of exhanging market data and intensifying surveillance among the exchanges and the NASD. Through ISG, the NYSE can monitor trading in its listed stock on other exchanges as well as options trading in such stocks. It is also standard practice for the NYSE's Market Trading Analysis division,[15] following a listed company's significant public announcement, to make a retrospective review of trading in a listed company's stock for possible abuses before that announcement was made. Once an abnormal trading pattern in an individual listed stock is identified, investigators, also with the aid of rapid information retrieval systems, inquire whether the trading can be attributed to market, industry or company-specific information. When the trading cannot be so explained, the investigation moves into its second stage, the Intermarket Surveillance Information System,[16] whereby the brokerage firms that executed the suspect transactions are identified. This information appears on magnetic tapes and is automatically matched by the ASAM system. This, however, is only the first leg of the tracing process. With the participating broker identified, the investigators next learn on whose behalf the trade was initiated. The investors[17] behind the suspicious trading pattern are then screened[18] through the Automated Search and Match System (ASAM) to determine their relationship, if any, with the listed company.[19] ASAM's data base includes the names and general information for over 500,000 corporate officers, directors, attorneys, accountants, and other advisors. ASAM also includes extensive biographical profiles for 71,000 executives and directors. In total, executives, directors, and advisors from some 44,000 companies and 33,000 subsidiaries are presently included within the ASAM database. An investigation which may begin with several score of traders in the suspect window is, with the aid of ASAM, paired by searching for each name some characteristic in common with the profile information within the ASAM database. For example, the investigator's suspicions are increased when the trader's alma mater or zip code or club membership match with those of an issuer's executive. Moreover, the investigator can enter additional information to the ASAM data base appropriate for the inquiry at hand, such as the names of the investment bankers or lawyers involved in a transaction. These names can be cycled through the list of traders during the suspect period to determine whether any linkage exists among the parties. ASAM is of course not the only ground for suspicion, ISIS facilitates old fashioned investigative questions whereby the investigator can inquire whether any of the traders in the suspect window were those in the know, be they bankers or word processors.

Thus, the all important concern of detecting insider trading requires a substantial commitment of personnel and sophisticated computers which can only occur through centralized enforcement of insider trading. Moreover, to require separate private actions not only is wasteful, but runs the serious risk of underenforcement.[20] Thus, the prevailing practice in which the government obtains recoveries from insiders and the presiding court awards private recoveries appears to be a highly efficient utilization of the criminal justice system.[21]

The central concern is that purely private matters are being protected through criminal prosecutions.

The prevailing role of regulation of insider trading is the protection of highly private values, much as we do by criminally proscribing the tort of conversion.

Criminal Sanctions

As seen, insider trading, including tipping and misappropriation, is not without moral condemnation. It is not a form of regulation introduced solely for the purpose of advancing our society's current vision of the appropriate economic design. The prevailing role of regulation of insider trading is the protection of highly private values, much as we do by criminally proscribing the tort of conversion. To be sure, criminalization of these private wrongs does elevate the posture of the government's activities in this area. Because of this, we are aware more than before that insider trading is a serious concern. For the defendant, the stakes are higher. Their concern is the opprobrium of being labeled a felon; their concern is not that their incarceration is for a fairly stiff period, thereby affording time away from the office to improve his urbane pursuits, such as racketball, with other "white collar" internees. In the end, it would appear that our concern is to reduce the incidence of misappropriation of the employer's secrets. The Insider Trading Sanctions Act sought to accomplish this by authorizing the government to compel disgorgement up to three times the defendant's profits. But for many defendants, few assets exist beyond those gained by their trading. For them, the real deterrent is the prospect of criminal prosecution, not merely giving up what they had wrongfully gained.

The result of this quick journey through contemporary insider trading regulation is that we are reminded again that the historical roots of our criminal law system were intertwined with the enforcement of private rights. Indeed, for most offenses, the early English courts merely provided the forum for private rights to be vindicated. The recovery, later to become known as a fine, was shared by the victim and the state. It would appear, at least on this preliminary assessment, that insider trading's regulation once again reflects a unique, but quite sound, utilization of public resources for the protection of private property.

1. 401 F.2d 833 (1968).

2. Professor Wang refers to this as the "Law of Conservation of Securities," reasoning that there are a finite number of shares available to be traded at any single price and that the insider's trading wrongfully preempts the availability of a price. Wang, *Trading on Material Nonpublic Information On Impersonal Stock Markets: Who Is Harmed, And Who Can Sue Under SEC Rule 10b-5?,* 54 SO. CAL. L. REV. 1217 (1981).

3. For example, in FMC Corp. v. Boesky, [1987 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶ 93,223 (N.D. Ill. 1987) FMC's investment banker was going to withdraw support for the corporation's restructuring unless the proposed price was increased $10. Messrs. Boesky and Levine, on the basis of their secret knowledge of the investment banker's intention to withdraw, engaged in massive purchases of FMC's shares so that FMC's management believed market conditions required they accede to their advisor's demands. *See also,* In re Orfa Sec. Lit. [1987 Transfer Binder] Fed. Sec. L. Rep. 93,225 (D.N.J. 1987) (misleading statements and delayed financial reports accompanied insiders trading).

4. The Supreme Court has held that the "disclose or abstain" rule only reaches those with a fiduciary relationship to those investors trading contemporaneously with the defendant. U.S. v. Chiarella, 445 U.S. 222 (1980). Thus, in *Chiarella,* a typesetter for a legal printer who traded on his secret knowledge of upcoming takeover targets was outside the disclose or abstain rule because he had no relationship to the corporations whose stocks he traded and, hence, no fiduciary relationship to other investors in those companies. *Id.* at 232-33.

5. The Supreme Court divided evenly over whether the misappropriation theory as applied to a columnist of the Wall Street Journal violated the federal securities laws. Carpenter v. U.S., 108 S. Ct. 316 (1987). The case involved the criminal prosecution of the columnist Winans and his accomplices for trading on their advance knowledge of the contents of the "Heard on the Street" column coauthored by Winans.

6. *See, e.g.,* SEC v. Materia, 745 F.2d 197, 201-202 (2d Cir. 1984).

7. *See, e.g.,* Moss v. Morgan Stanley, Inc., 719 F.2d 5, 16 (2d Cir. 1983).

8. 108 S.Ct. 316 (1987).

9. Kadish, *Some Observations On The Use Of Criminal Sanctions In Enforcing Economic Regulations,* 30 U. CHI. L. REV. 423 (1963).

10. P. DEVLIN, THE ENFORCEMENT OF MORALS (1959).

11. Kadish, *supra* note 9, at 435.

12. *See, e.g.,* Carlton & Fischel, *The Regulation of Insider Trading,* 35 STAN. L. REV. 857 (1983). The economic justifications for insider trading do not withstand close economic analysis. *See* Cox, *Insider Trading And Contracting: A Critical Response To The "Chicago School,"* 1986 DUKE L.J. 628.

13. 2 F. POLLOCK & F. MAITLAND HISTORY OF ENGLISH LAW 449-62 (2d ed. 1898).

14. *See, e.g.,* Goldstein, *Defining The Role of The Victim In Criminal Prosecutions,* 52 MISS. L.J. 515, 533 (1982).

15. Approximately 90 individuals are employed by this division of the NYSE. In 1986 the budget for this division was $8 million of which $3 million was allocated to equipment acquisitions for the surveillance system. HEARINGS ON INSIDER TRADING BEFORE THE SUBCOMMITTEE ON TELECOMMUNICATIONS, CONSUMER PROTECTION, AND FINANCE OF THE COMMITTEE OF ENERGY AND COMMERCE, HOUSE OF REPRESENTATIVES, 99th Cong. 2d Sess. 146 (1986) [hereinafter INSIDER TRADING HEARINGS].

16. The ISIS systems can provide detailed data on such items as the trade or quote price of the stock or option, what brokerage firm participated, and even the identity of the broker on the exchange floor who executed the transaction. All this data is available at an analyst's workstation for 30-75 days and in summary form up to 14 months. Thereafter, it can be reloaded into the system for use. Solodar, *What the New York Stock Exchange Is Doing About Insider Trading,* MANAGEMENT ACCOUNTING 12 (Nov. 1987).

17. The NYSE does not limit its reviews to traders of large blocks, but examines everyone in the suspect trading period. INSIDER TRADING HEARINGS, *supra* note 15, at 139.

18. In 1985 there were 15 million trades on the New York Stock Exchange. The NYSE staff reviewed about 12,000 trades, about 6,000 were price and volume variations which suggested possible insider trading. Of this number, about 600 underwent detailed inquiry and 65 of those were referred to the SEC. INSIDER TRADING HEARINGS, *supra* note 15, at 135.

19. Investigators obviously elicit a good deal of information regarding the trading customer's background and relationship with the issuer from the broker. Investigators access ASAM's data base and matching programs from their workstations using the same terminals that were initially used in the Stock Watch phase of the inquiry.

20. Epstein, *Crime and Tort: Old Wine in Old Bottles,* in ASSESSING THE CRIMINAL RESTITUTION, RETRIBUTION, AND THE LEGAL PROCESS 231 (R.E. Barnett & J. Hagel III ed. 1977). A related concern is that rarely have private insider trading cases not followed a prior government prosecution and private actions do not accompany all government prosecutions for insider trading. *See* Dooley, *Enforcement of Insider Trading Restrictions,* 66 VA. L. Rev. 1 (1980).

21. In 1987, the SEC alone obtained disgorgements exceeding $130 million and in the case of Mr. Levine, a substantial portion of the $11 million recovered was to be applied to Mr. Levine's back taxes and 52% awarded to defrauded investors. BNA Sec. Reg. & L. Rep. No. 20 at 365 (March 11, 1988).

College Sports Reform: Where are the Faculty?

*John C. Weistart**

While each individual campus yields a different story, available evidence suggests a common and consistent failure on the part of faculties to pick up available signals that things were awry in their revenue-producing sports programs.

Many surprising things have been revealed in the recent college sports scandals. But one of the most surprising is the historical absence of effective faculty oversight of the educational experiences of student athletes in big-time college programs. Among the revelations that point to a failure of faculty governance in these matters, the most embarrassing must surely be the dismal graduation rates of athletes in several basketball and football programs. Reports in the popular press indicate that four percent of black basketball players graduated at the University of Georgia in a recent period. At one Big Ten school, the graduation rate for all basketball players was nine percent. At Memphis State, the NAACP—and not the faculty, it might be noted—discovered that in a ten-year period, no black basketball player graduated. The list goes on and covers twenty or more schools that should have been embarrassed.

The troublesome question remains: where were the faculties? In almost all instances, the low graduation rates were accumulated over a period of time. While each individual campus yields a different story, available evidence suggests a common and consistent failure on the part of faculties to pick up available signals that things were awry in their revenue-producing sports programs.

A significant commentary on the present state of athletics and higher education can be found in the manner in which improprieties are revealed. The moving force is much more likely to be a newspaper reporter than a concerned faculty member. Indeed, in two of the past three years, Pulitzer Prizes were awarded to reporters who in effect told university communities how their athletic programs were being run.

The faculty, of course, is not the only entity on campus that should be concerned about serious misdirections in the athletic program. The president and,

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. . . because it is relatively unaffected by the pragmatic demands of day-to-day administration, the faculty properly serves as the conscience of the university, especially in matters that affect an issue as basic as the institution's academic reputation.

as we have recently seen, the board of trustees often share responsibility. But faculties have a particularly important role to play in shaping a school's academic program and, most importantly, in insuring its integrity. In most universities, the faculty's responsibility for defining the institution's educational mission is explicit. Faculties frequently are quick to indicate the primacy of their role in preserving the rigor and legitimacy of the school's other academic pursuits. Moreover, because it is relatively unaffected by the pragmatic demands of day-to-day administration, the faculty properly serves as the conscience of the university, especially in matters that affect an issue as basic as the institution's academic reputation. As a number of universities have learned, the misdeeds of the athletic department can have a great effect in shaping public perceptions on such matters. Hence, the question remains: where were the faculties?

The recent sports scandals suggest at least two significant issues relating to the faculty's role in athletics. First, why did not faculties assume a greater oversight role over the deteriorating conditions of big-time sports? And second, can we expect a better faculty performance in the future? Virtually every school that has experienced a significant sports controversy has subsequently undertaken a major internal review. Typically, the resulting report promises more careful control for the future, often with significant input from the faculty. But we must ask whether, once the warm winds of scandal have passed, faculties will do better than they historically have.

One view of the role of faculty governance in athletics offers little reason for optimism over the long term. A variety of factors, including the highly commercial nature of athletics, work against an effective governance function by faculty members. There is little evidence that universities are prepared to change this business orientation in athletics. Thus, the persistent tension with the university's educational goals is likely to continue. This raises the prospect of a regulatory role for the faculty that is extremely time consuming and that holds limited prospects of success.

A more fruitful alternative for faculties would be to urge that the basic structure of college sports be oriented to reduce its conflict with the university's educational goals. Two changes offer particular promise. One involves eliminating the present university monopoly on preprofessional training in football and basketball. By providing the exclusive training for aspiring athletes, universities assume a social role that inevitably places great downward pressures on academic standards. A second change would end the Athletics Arms Race, as Harry Edwards aptly calls it. At present, college athletics operates according to an arrangement in which the rewards of athletic success go to those who spend the most and demand the least academically. Faculties interested in ending this economic and academic pressure would seek to implement changes that rewarded the athletically successful with recognition, but broadly disbursed the revenues from broadcasting, tournaments, and bowl games.

The fact of the faculty's limited oversight of the academic performance of the athletic department is not much in doubt. Less clear are the reasons why faculties choose not to be involved in matters that have turned out to hold such a great capacity for institutional embarrassment.

Faculties at many universities can properly argue that their athletic departments have been organized purposely to operate at great distance from the normal channels of faculty governance. In some instances—the University of Georgia, for example—the athletic association is a legally distinct entity and the faculty has no juridical claim to regulate its affairs. Even when the athletic department is "part of the university," autonomy may be *de facto.* Not infrequently this happens when a powerful coach insists, and a less forceful president agrees, that the supervision of athletes will remain with athletic personnel. Thus, unlike many other issues of academic policy, the special problems of athletes would not normally come before the faculty.

Ultimately, though, explanations based on internal governance structure are only partial ones. It is often unclear whether the autonomy of an athletic program is the cause or the effect of limited faculty oversight. As many of the recent in-house reform efforts confirm, when faculty assert a strong interest in the treatment and achievement of student athletics, structures can be found to accommodate this concern. Thus, it is likely that there are other, more substantive reasons why faculties have tolerated the considerable distance that many athletic programs have put between themselves and their universities' core academic function.

A search for alternative explanations suggests several points that warrant attention.

The Different Nature of a Major Athletics Enterprise

Big-time athletics—again mainly football and basketball—have taken on a distinctive characteristic in recent years. At many schools, the athletic department operates as the entertainment division of the university. Largely as a result of the impact of television, big-time programs now produce events that compete with a variety of other offerings in the entertainment

market. Increasingly, decisions are made with a view to insuring the suitability of the end product for broadcast purposes.

Most of the large football and basketball programs operate at a substantial profit, largely due to the impact of television. A trip to the Final Four in the NCAA basketball tournament pays each participating school over one million dollars, an amount greatly in excess of the operating expenses of the typical program. When revenues from the conference television package, national telecasts, and ticket sales are added, a three to one ratio of revenues to expenses is not uncommon in basketball. In football, with postseason bowls paying out a total of more than fifty-six million dollars, profits of two to four million dollars in a single program are often attained.

Such levels of profitability are not assured, of course, and continued success requires very astute, very pragmatic decisions about a variety of entertainment-related issues, including how to increase the size of the regular season television audience and how to select opponents so as to attract the attention of the bowls with the most lucrative broadcast contracts. Not surprisingly the entire orientation of the athletic department adjusts to accommodate the demands of producing a successful—that is, profitable—entertainment product. For the people who run the division, a strong business orientation is a necessity. Increasingly success within the profession of athletic administration is judged primarily, although not exclusively, by the dollar results an individual produces.

This athletics-entertainment venture is carried on in an environment that is unusually competitive. College athletics stands in sharp contrast to professional sports in this regard. Revenue-sharing and financial support for weak competitors are the hallmarks of successful sports leagues. The worst NFL team gets as much from the league's lucrative national television contract as does the best. Quite the opposite situation is found at the college level. The greatest rewards from television go only to the most successful programs. These are typically the programs prepared to pay the most for recruiting, facilities, coaches' salaries, and promotion. And the most successful teams have the most to spend. The operative principle seems to be that a school must spend to win and must win to spend. Each new lucrative broadcast arrangement ups the ante and invites an expensive response.

The values important in these ventures are quite different from those that typically come into play in faculty governance decisions. Faculties are not terribly "bottom-line" oriented and have little experience in insuring commercial success in highly competitive markets. Indeed, the best of faculty values—deliberateness, a liberal concern for the treatment of individuals, and an openness that encourages the accommodation of differences—are antithetical to the common ingredients of profitable business ventures.

A variety of factors, including the highly commercial nature of athletics, work against an effective governance function by faculty members.

A more fruitful alternative for faculties would be to urge that the basic structure of college sports be oriented to reduce its conflict with the university's educational goals.

Athletic personnel may thus come to feel that faculties have little to say about athletic policy that will be useful. For their part, faculties may have a natural reluctance to venture into areas where they will be neither welcome nor particularly effective. In the same vein, the trustees and presidents who determine organizational structure often take account of the lack of synergy in this match and develop lines of authority that insure that it does not occur. There is little to suggest to them that the success of the entertainment product will be enhanced by the opposite arrangement.

The Risk of Being Co-opted

A second problem is that faculties involved in athletic policy making appear to run a particular risk of being co-opted into a lenient, if not overly favorable, view of the demands of the athletic department. While this is hardly inevitable, it does occur with sufficient regularity to suggest that a truly independent faculty governance role in athletics may be very difficult to achieve.

Various devices presently in use are intended to preserve a role for the faculty in athletics matters. Each NCAA school has a "faculty representative," for example. Rarely, though, is this position reflective of carefully gauged faculty sentiment. Direct election of the "faculty representative" by the faculty is rare if not nonexistent in big-time programs. More typical is the situation in which the person is designated by the university president after informal approval by the athletic department. Seldom are NCAA votes subject to systematic faculty review. For all of these reasons, the faculty voice in NCAA matters has historically been neither loud nor distinctive.

Many schools have an athletic committee or similar entity that provides the occasion for faculty involvement in deliberations on athletically related issues. Again, at big-time schools, the faculty participation on these bodies has not been noted for its independence. Indeed, such bodies existed at most of the schools that have experienced major scandals in recent years.

The loss of independence by faculty members involved in athletic oversight is difficult to avoid. As

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already noted, "insuring athletic success" is often the stated goal of committees involved in this work and in the modern environment that means heeding the demands of an external marketplace. Athletic department personnel will consistently speak more authoritatively on these matters.

Other features of work on athletic committees present temptations not found elsewhere in university service. Offers of favorable seating at popular events, school-paid trips to postseason contests, and the opportunity to rub elbows with celebrity coaches and players will inevitably have the effect of reducing criticism and encouraging accommodation. This will be true even when these special rewards for committee service are wholly benign. Combining this bit of human nature with a selection process that favors candidates who have a sympathetic orientation to the athletic department, the mildness of the regulation undertaken by university athletic committees is not surprising.

The Modest Professional Rewards for Effective Oversight

Few incentives encourage a faculty member to engage in rigorous examination of athletic department policy. A promising career in English, physics, or geology is not likely to be advanced by correcting the defects of a big-time sports program that enjoys wide support on and off campus. Moreover, the task will seldom be either easy or abbreviated. In short, the absence of professional rewards for university service in the oversight of athletics, the athletic department's coolness to such a role, and the strong incentives to mind one's own business in academia combine to discourage vigorous faculty involvement in reviewing athletic department policy. Indeed, for those who are most promising in their academic endeavors, probing the athletic department may be among the least appealing of administrative assignments.

Almost all of the schools beset by major scandals in recent years have undertaken elaborate self-studies. The end result is typically a thorough report and a list of recommendations addressing a variety of reforms. Increased academic standards for athletes and closer institutional oversight of the athletic policy are commonly urged. The question can reasonably be asked whether these reform efforts provide reason for optimism about the future, either in terms of more effective faculty involvement in athletic matters or in terms of other institutional controls to prevent a recurrence of the problems of the past.

There will certainly be some short-term improvements. Almost every school that has looked at its athletic problems has agreed that standards should be raised for the admission of athletics and that the embarrassing graduation rates of the past should not continue. Moreover, in several schools, the individuals responsible for prior academic misdirections were unmasked and their associations with the university ended. And, in almost all cases, the mechanisms for institutional control were strengthened.

But serious problems are likely to remain. A review of the recent internal reform efforts will reveal that, despite the wide array of matters subjected to reconsideration, little or nothing has been done to address the fundamental cause of the recent scandals—the competitive pressures created by commercialization. Virtually every school that has endured severe academic embarrassment has emerged from its self-study continuing to embrace implicitly, if not explicitly, the notion that its athletic programs will be "competitive." In the present environment, this means that the cycle of spending to win and winning to spend will continue.

If the evidence of the recent past is taken as a guide, such an orientation will present a considerable threat to the goals of academic rigor and integrity. Even where academic standards for the athletic department have been raised, the new standards are likely to be subjected to considerable downward pressures. As several schools have already learned, there will almost always be competitors willing to admit less-qualified athletes. Thus, a pledge to remain competitive commits a school to a course in which the determinants of success are frequently being influenced by the preferences of the lowest common denominator.

The decision to stay in the athletics arms race also means that the basic entertainment orientation of the athletic department is not likely to change. It can be hoped that personnel antagonistic to the academic

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function of the university will be eliminated and that more attention will be given to the athletes' classroom endeavors. But at the bottom line is a bottom line. Even allowing for the many good athletic directors who will execute their functions as their universities dictate, we should not be surprised to find that difficulties of the past reappear. With two-million-dollar bowl games and one-million-dollar basketball tournaments at stake, there will be great pressure to shave off the subtle edges of academic preparedness and substantive achievement. Again, over time some athletic departments will likely conclude that academic minimalism enhances their ability to compete.

Just as the basic orientation of the athletic department is unlikely to change, so are incentives for faculties to become involved in a sustained effort at oversight unlikely to increase. The faculty will continue to be ill-equipped to evaluate claims of necessity in a profit-oriented venture. As in the past, the faculty is apt to find itself deferring to the judgments of those who are more knowledgeable and who have more at stake. In addition, the occasions for reducing faculty independence will persist. And ultimately, the same low level of professional reward that has been evident in the past will attend future efforts at oversight, particularly as recent embarrassments fade. Thus, while things have changed, they have in many respects remained the same.

The time has come to reconsider the agenda for college sports reform. To date, the prevailing assumption has been that what is needed is mainly a tightening of the rules. By and large, the basic structure of big-time sports is left unaffected. These features seem inevitably to lead to a more time-consuming regulatory role.

A more positive approach would seek to modify the structural features of big-time sports that create undue pressures for the academic program. Rather than seeking to increase the degree of control that has to be exercised by faculties and others, this different agenda would undertake to reduce the need for intense oversight. Reform would be undertaken with the specific intention of introducing economic forces more naturally complementary to the university's educational goals.

In redirecting the present debate, attention should be given not only to the substance of proposals for change but also to the matter of how change will be achieved. Any internal, single-campus reform is destined to be ineffective in stemming the influences of commercialization in college sports. For a school that plans to operate a visible program, unilateral disarmament simply will not work. As noted, the intensity of the economic competition and the tools necessary to engage in it will in large measure be dictated by forces beyond the individual campus. Thus, if truly effective reform is to occur, it must be in a different forum, specifically one that has authority to impose collective controls. Several alternatives are available.

In short, the absence of professional rewards for university service in the oversight of athletics, the athletic department's coolness to such a role, and the strong incentives to mind one's own business in academia combine to discourage vigorous faculty involvement in reviewing athletic department policy.

The NCAA is the logical group to provide the necessary legislative response. However, despite four years of repeated scandals, the NCAA has taken little action. The movement of this body has been so halting as to raise doubts about its basic resolves. While there is no particular reason to assume that the NCAA will take a new direction, the matter of resolve is one that can be affected by the actions of the constituent members. Thus, an appropriate first step for a concerned faculty would be to assert a more active interest in how their institution's votes on NCAA matters are cast.

But the NCAA is not the only forum available. In the event of continued inaction by that group, other outlets for concern will become increasingly attractive. An enhanced role for education accrediting organizations is properly explored. Most of these groups presently have authority to review the academic performance of any component of the university, including the athletic department. Much could be done to increase their role. A clear statement of academic standards, meaningful reporting of academic statistics, and the threat of suspension of accreditation offer the promise of an alternative that avoids the limitations of unilateral action.

Perhaps the ultimate forum for collective action is Congress. While college sports have historically enjoyed something approaching legislative immunity,

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this situation may be changing. In recent years, various bills have been introduced to address the ills of college sports. A continued failure of self-regulation by the NCAA increases the plausibility of this type of response. And the antimonopoly fervor in Congress in recent years suggests that such legislation might well take a different view of the economic ground rules of preprofessional sports than does the NCAA.

The issue of where further deliberation should occur is a procedural one. On the substantive side, the focus should shift from debates about merely tightening existing rules to a discussion of changing the basic structure of college sports. Two areas in particular offer the prospect of relieving the university's educational venture from much of the pressure that athletics presently creates.

First, the athletics arms race is not inevitable. A range of choices is in fact available that will ameliorate or eliminate it. Revenue sharing would offer the most complete tempering of the inclination toward commercial excess in individual programs, a lesson well learned by professional sports leagues. Schools would still receive the public recognition that attends success in championship events. But there would be no disproportionate financial bonanza for that outcome. Television rights, fees, and the like would be distributed among a wide group of participants, perhaps all who participate at a particular level of play.

The basic objective of a revenue-sharing arrangement would be to eliminate the pressures for bending academic and athletic rules that arise in the present environment. As occasional ups and downs in programs would carry no particular toll, most of the recent by-words—"win at any cost," "eligibility rather than real education," and the like—would lose their justification. Winning would, of course, still be important. But other values would become much more ready competitors because financial outcomes would have been made independent.

While revenue sharing is an anathema to many athletic administrators, those who take a broader view of university budgets may find it quite attractive. The vast majority of schools offering major sports programs would be better off under such an arrangement, for it offers the unavoidably attractive prospect of both enhancing revenues and reducing expenses. In addition, it promises a stability for the future that cannot be assured in the present environment, in which only winners are rewarded.

If control is not exercised over revenues, then the next logical step is the control of expenditures. In this area, further reform could simply involve an undertaking to execute more effectively a regulatory effort that presently receives only half-hearted attention. The NCAA has a number of rules ostensibly intended to equalize the competitive positions of a large range of schools. Thus, there are limits on the size of team rosters, the size of coaching staffs, and the permissible number of athletic scholarships. But to legislate parity only on these matters is almost certain to be ineffective as a control on competition. No spending controls presently exist for many other items that contribute to a school's competitive position. These include training and playing facilities, promotional expenses, salaries, student housing, and a long list of other items. Not surprisingly, with only a part of the expenditure budget subjected to regulation, the pursuit of competitive advantage finds ample alternative avenues through which to express itself. The incompleteness of the present economic regulation invites a corrective response in the form of more extensive budgetary controls.

A second structural issue warrants attention. At the present, a rather unnatural link exists between academics and athletics at the post-high-school level. A promising high school basketball or football player who wishes to secure further training effectively has no choice but to aspire to a four-year degree program. Moreover, the athlete must be a full-time student; part-time status is insufficient for eligibility. Other program options—community college, technical school, corporate sponsored teams, and minor leagues—are unavailable. In what must surely be one of the great non sequiturs of our society, we tell promising athletes in the two most popular high school sports that to get further physical training they must also embrace our most advanced form of post-high-school degree.

Thus, 100 percent of football and basketball players are required to choose an arrangement that only roughly thirty percent of their nonathlete peers select. Moreover, this limitation is not imposed on other aspiring athletes. Those interested in baseball, hockey, golf, and tennis all enjoy sports options not tied to education, let alone a full-time four-year education.

The contrived nature of the present structure should be a particular concern of faculties. A good deal of available evidence—including the experience of baseball players who can choose between college and minor leagues—suggests that perhaps as many as one-half of present college athletes in football and

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basketball would not choose the collegiate option if good alternatives were available. Thus, educationally it appears that we may be forcing square pegs into round holes. At the minimum, many of the athletes are likely to have their attention focused elsewhere.

Colleges, of course, cannot be expected to bear the full burden of establishing noncollegiate options. But that does not mean that universities and their faculties are powerless to influence the present monopoly. In fact, universities have done much to perpetuate the existing arrangement. Faculties that wished to be relieved of the tensions created by the present compulsory relationships would seek to modify the NCAA rules that sustain them.

A variety of changes could be considered. The mildest alternatives would change existing rules on eligibility. At present, the NCAA embraces an extremely narrow view of amateurism. For the mere receipt of fifty dollars in compensation money, even for an appearance in a perfectly legitimate competition, a young athlete can be denied collegiate eligibility. In a world in which educational values come first, the goal would be quite different: athletes would be encouraged to test their semiprofessional and minor league opportunities before deciding on whether to go to college. An exploratory period of perhaps two years would be allowed. Those who later enrolled in a university presumably would have a more focused interest in the educational opportunity that was available. By the same token, since the university would no longer be the exclusive vehicle for post-high-school athletic training, it could reasonably demand that its athletes approximate the educational achievement of other students.

Conclusion

This article can end where it began, with a reference to the shockingly low graduation rates achieved in several big-time athletic programs. It is difficult to imagine that a faculty at a serious university would tolerate the continuation of an academic program in which, for every student who graduated, nine others did not. Yet, in several athletic programs these levels of failure, and some even worse, were endured.

We would be reassured if we could believe that these institutional lapses were only inadvertent or temporary. However, the frequency of their occurrence and the presence of very powerful economic forces that reward low academic aspiration suggest that the causes are much more basic. Something other than a mere lack of attentiveness appears to be involved. This awareness counsels in favor of a greater boldness in the debate on college athletics than we have seen to date.

At the present, a rather unnatural link exists between academics and athletics at the post-high-school level. A promising high school basketball or football player who wishes to secure further training effectively has no choice but to aspire to a four-year degree program.

Specifically, the time has come to ask whether it is athletic success that is valued or the large dollars that increasingly attend it. The former has a role that can be comfortably accommodated at a university. Profit making, particularly as a part of an intense competitive market, fits much less well. The opportunity to separate athletics from excess does exist. Whether it is pursued is a matter over which the entities with the most at stake—the universities themselves—have considerable control.

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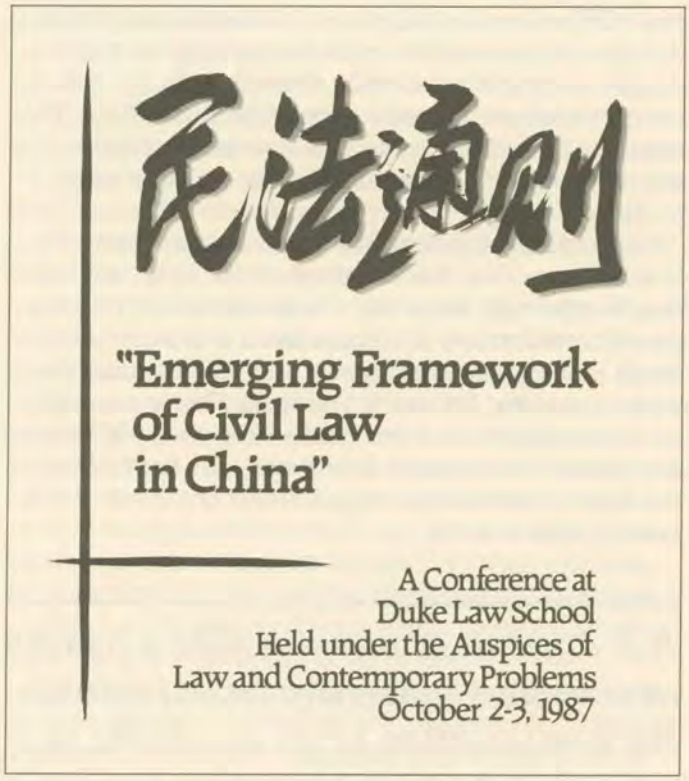
A Conference Report
Emerging Framework of Civil Law in China



Over the last eight years, the Chinese government has attempted to reduce its direct interference in economic life by eliminating or loosening restrictive policies, permitting greater autonomy of decisionmaking, and encouraging new forms of organization. To foster and to regulate this "socialist commodity economy" (or "unified socialist market economy"), which is characterized by increasing horizontal and voluntary relations, China has established a growing body of civil law, highlighted in April 1986 and January 1987 by, respectively, the passage and promulgation of the General Principles of Civil Law. On the second and third of October 1987, this "Emerging Framework of Civil Law in China" served as the subject of a symposium sponsored by *Law and Contemporary Problems* and Duke Law School. Papers presented at the symposium will be published in volume 51 of *Law and Contemporary Problems* under the special editorship of Jonathan K. Ocko, Adjunct Associate Professor of Chinese Law at Duke Law School and Associate Professor of History at North Carolina State University.

Scholars and practitioners from China (Four scholars from China were able to attend under a generous grant from the Ford Foundation.), the United States, and Hong Kong attended the conference, presenting not only the findings of the most recent research, but also, in the case of Professors Tong Rou and Zhao Zhongfu, the views of participants in the drafting process of the new civil laws.

The morning session of the first day of the conference explored the birth and evolution of the General Principles of the Civil Law. Tong Rou, Professor of Law, at People's University in Beijing, began the conference with his presentation of the "Origins, Special Characteristics, and Role of the General Principles of the Civil Law." Tong's work explains the hierarchy of fundamental law (the Constitution), basic law (regulating certain aspects of social relations), and specifically enacted law (subordinate to basic law). According to Tong, the General Principles of the Civil Law serves as basic law regulating the property and personal relations between equal subjects. The General Principles of the Civil Law will play a major role in China's economic reforms by reaffirming basic property relationships between the State and "enterprise legal persons" and by strengthening these State enterprises.

The presentation by Tong Rou, a major participant in the drafting of the General Principles of the Civil Law, was followed by critical examination of the theoretical underpinnings of property rights in the General Principles by Edward Epstein, Lecturer in Law at the University of Hong Kong. Professor Epstein argued that notwithstanding any special "Chinese characteristics" that might be found elsewhere in the civil law, its theoretical framework for legal relations is firmly rooted in the Romanist legal tradition as interpreted by the Pandectists (German legal theorists committed to the systemic study of Roman law) and borrowed from them by Japanese and Chinese theorists before 1949. And, while the property rights defined in the General Principles are "based on a mixed system of public and private ownership," Chinese civil law scholars analyze them with the same theoretical tools as their counterparts in capitalist countries.

Theoretical controversies over basic property notions still exist, however, particularly in regard to the nature and extent of property rights vested in the State enterprise. Epstein asks if the rights purportedly vested in these State enterprises are "real rights" vested in the enterprise which can thus control State property to the exclusion of even State administrative intervention. Are the rights merely an authority to use public property as directed by the State? Is ownership shared by the State and the enterprise? The lack of a clear theoretical basis for State enterprise property rights, Epstein suggests, is an obstacle to a complete reform of China's economy.

In an attempt to educate Americans of the historical context in which present reforms are taking place, Gao Xi-Qing, a graduate of the University of International Business and Economics in Beijing and recipient of a J.D. degree from Duke Law School in 1987, presented his paper, "The Educational and Ideological Background of Chinese Lawmakers." Gao believes that many of the corporate executives who are swarming to China to capitalize on the economic revolution will be profoundly disappointed. While the businessmen and lawyers who deal with China are now better prepared in Chinese language and law than others who previously failed, most fail to comprehend the education and culturalization of the various actors in the Chinese economy.

The afternoon session was devoted to organizations and obligations under Chinese civil law. Fang Liu Fang of the law department of People's University in Beijing began with an examination of Chinese partnership. The 1980's have seen a resurgence of partnerships in China after a period of hibernation. Today, the law of partnership is scattered throughout the General Principles and a number of other economic regulations and reforms. The laws and regulations regulating partnerships are of paramount importance, for provisions which conflict with these laws or regulations are unenforceable. Unlike in the United States where great deference is given to the agreement of the parties or where "gap-fillers" from the Uniform Partnership Act are utilized, Chinese partnership agreements must carefully adhere to specific provisions of the law. Conference participants disagreed as to the legal effect of an oral partnership agreement. The debate focused on whether under the law a partnership agreement "must" or "should" be in writing. Fang explained that an oral agreement would most likely be voidable, but not void.

Another form of economic organization, the State enterprise, was the subject of two papers, "The State Enterprise as a Legal Person" by Zhao Zhongfu, Associate Professor of Law at People's University, and "The Property Rights of the State Enterprise" by Wang Liming and Liu Zhaonian, both instructors at People's University. Zhao's work outlines the requirements and capacities of legal persons under Chinese law. Some participants expressed a belief that the concept of the legal person is elusive and somewhat circular. How does a foreign corporation know if an enterprise with which it is dealing has the legal capacity to assume enforceable obligations? The answer is that in order to assume the obligations, the State enterprise must be a legal person. But whether a State enterprise is a legal person depends, in part, on whether it can assume independent obligations. Zhao explained that the determination turns on the sufficiency of fixed assets and working capital of the enterprise. Whitmore Gray, of the University of Michigan Law School, argued that this leaves the westerner in only a scarcely better position since access to this information is difficult at best. Wang Liming discussed the operation of the State enterprise in China today along with proposals for alternative organizational forms for this important actor in the Chinese economy.

Phyllis Chang, an LL.M. candidate at Columbia University, presented a paper on "Law and Policy in the Development of the Rural Production Responsibility System and the Resolution of Responsibility Contract Disputes." Chang uses the rural production responsibility system, the centerpiece of agricultural reorganization and revitalization, as an illustration that Chinese leaders use policies as well as laws to implement certain economic reforms. Additionally, in adjudicating civil disputes, courts may base their decisions not only on promulgated laws, but also on non-statutory legal principles, policies, opinions of administrative organs, and their own sense of fairness.

The following day, James Feinerman, Associate Professor at Georgetown University Law Center, discussed banking and securities in China. Professor Feinerman claims that the assumptions behind the past ten years of economic and legal reforms in China have been rooted in the belief that creation of a legal regulatory mechanism can engender the very institution which the law has been created to regulate. Thus, China has liberalized its financial markets before the markets even existed. Such instances of the tail wagging the dog have led to certain shortcomings in banking and securities laws such as the question of whether State-owned enterprises may issue shares, questions of the role of specialized banks the statutes and the validity of new financial instruments, and the powers of the non-bank financial institutions. More troubling is the conflict of interest arising from the dual role of the People's Bank of China in controlling the banks which make loans to Chinese enterprises while controlling those enterprises' access to other parts of the capital market.

All the presentations at the conference were discussed fully in both English and Chinese. The papers will all be published in English due to the translation efforts of Professor Ocko, Hing Pitney, and current Duke law students from the People's Republic of China.

The author, Marc Golden '88, is Project Editor for the Law and Contemporary Problems *symposium, Emerging Framework of Civil Law in China.*

ABOUT THE SCHOOL

Deanship Transition

President Brodie and Provost Griffiths introduced Dean Gann at a press conference on May 10, 1988.

Pamela B. Gann, professor of law, becomes dean of the Duke University School of Law, effective July 1, 1988. Gann's appointment will mark a number of firsts for the School of Law. She will be the first woman, North Carolina native, Duke Law graduate and previously practicing lawyer in North Carolina to serve as Law School dean at Duke. In announcing the appointment, Duke President H. Keith H. Brodie praised the new dean as "a highly qualified legal scholar and highly capable leader. Truly, she was the right choice for all the right reasons."

Gann is a Phi Beta Kappa graduate of the University of North Carolina at Chapel Hill, where she received her undergraduate degree in mathematics. A 1973 honor graduate of the Duke School of Law, Gann was elected to the Order of the Coif and served as articles editor for the Duke Law Journal *while a student at Duke. After graduation, she worked as an associate at the law firm of King & Spalding in Atlanta before becoming an associate with Robinson, Bradshaw & Hinson, P.A., in Charlotte.*

In 1975, she joined the faculty of the Duke School of Law as an assistant professor. She was promoted to associate professor in 1978 and to professor in 1981. Gann's teaching and research fields include federal income taxation and international business transactions. She has pursued professional activities in the area of taxation, including membership on the Board of Directors of the New York University/ Internal Revenue Service Continuing Professional Education Program, the Tax Committee of the American Association of University Professors, and the International Fiscal Association. While at Duke, Gann has held visiting appointments at the University of Michigan and the University of Virginia. She has taught internationally in Paris, France; Copenhagen, Denmark; Changchun, People's Republic of China; and at The Salzburg Seminar in American Law and Legal Institutions, Salzburg, Austria. She has been an International Affairs Fellow of the Council on Foreign Relations, spending the fellowship period at the International Monetary Fund and the Office of the U.S. Trade representative. She continues as an active participant in the activities of the Council on Foreign Relations. Gann replaces Paul Carrington, who has served as dean of the School of Law for the past ten years. Carrington, who will be a visiting professor next year at the University of Michigan, the University of California at Berkeley and the University of Texas at Austin, will remain a member of the Duke Law faculty.

Upon Accepting the Deanship of Duke Law School*

I am pleased to be the next dean of Duke Law School. I take advantage of the occasion to make some rather serious, but fairly brief, remarks.

Although pleased to be the new dean, it is fair to say that I did not seek out this position, which seems to be a shared faculty attitude toward deaning. I do not mention that I did not seek this job for reasons of modesty but to emphasize something that is true about deans, provosts, and presidents of the best institutions of higher education in the United States. We all are drawn to the University because we are partakers in its core functions—that of research, writing, and teaching. It is typically with reluctance that we give up these activities to administer the schools or institutions that provide us the opportunity to carry out and enjoy them. It is particularly difficult for a law professor of my age to switch to an administrative role in the University. It is often reputed that brilliant mathematicians find the proof for a significant theorem by the age of 25; perhaps, then, it may be somewhat easy for them to think about becoming an administrator. In any event, few law professors are ever referred to as brilliant at any age. Whatever they have to contribute to scholarship about the law, it is likely to be more significant and informed by age and experience in the law. Thus, I believe that I give up something important about being a law professor at this age to assume this position.

Notwithstanding these observations, I anticipate that being the Dean of this Law School will be immediately enjoyable, because it is a very opportune and interesting time to be here for several reasons.

First—because of my predecessor Paul Carrington. Duke Law School has for some time been viewed as among the best law schools in the United States. Rankings aside, many of us know that Paul Carrington's leadership has caused this Law School to be a qualitatively better institution than when he arrived. He will be particularly identified with the faculty that he has attracted to the school. During his ten years as Dean, by my count, he hired thirteen of its present twenty-nine-member faculty, or nearly 45% of it. He will also be remembered for the interdisciplinary and international dimensions that he added to the faculty, students, and curriculum. These factors—the faculty, and interdisciplinary and international studies—are all viewed as critical measurements of the excellence of a law school. By these measures, Paul Carrington departs his Deanship with the confidence of a job well done.

Second, the Law School and its constituents have a strong sense of self and belief in what they are accomplishing as an educational institution and for the legal profession. It is evidenced, for example, in the faculty's scholarship and participation in political events like the Bork nomination, in the outstanding admissions and placement statistics, and in the comraderie of the faculty and staff. But I can think of no better illustration of this fact than the comment of one of our graduates at this year's commencement. He stated to me that the Law School graduation had been a particularly meaningful event—much more meaningful than his undergraduate ceremony. Faculty, students, and parents, he noted, participated in a formal ceremony on Sunday in which the overwhelming emotional elements were the goodwill and morale of the participants toward one another and the School. This goodwill and morale are the product of a self-confident and mature institution.

Third, we have the opportunity to do something quite concrete and tangible during the next five years—through our planned building project to reconstruct, enlarge and, not least of all, improve the aesthetics of the Law School building. Improving the Law School building and providing additional chaired professorships, and student financial aid, are without doubt the primary goals to be achieved over the next five years. The total fund raising goal for these efforts is substantial—about $20 million.

Finally, I look forward to this administrative assignment because of the Law School's relationship to the University as a whole. Although it is something that we in the law may not like to acknowledge, it is interesting to observe, from a wholistic down to a unit analysis, that several of the very best universities in the United States achieve their excellence without the presence of any Law School! President Brodie's undergraduate alma mater—Princeton University—is perhaps the most elegant illustration of this fact. But it is equally interesting to reverse the observation from the unit up to a wholistic analysis: The best law schools, including this one, are excellent units within equally excellent universities. I challenge you to suggest a single law school among the top tier of law schools which is not associated with an equally top tier University. We are not only a fine and confident Law School whose individual achievements are many; but we are a unit within an equally fine and mature University. This mutuality of excellence will assure our mutual success over the next five years. I look forward to participating with you, my friends, in these shared successes.

Pamela B. Gann

**This is a revised version of remarks made by Pamela Gann at the press conference at which President H. Keith H. Brodie announced her appointment as dean of Duke Law School.*

The Carrington Years of Duke Law School (1978-1988)

Supreme Court epochs are often remembered eponymously, usually by the name of the Chief Justice who left some special mark on the Court. The same mnemonic association may also measure a particular law school, as I think it now does at Duke. As Paul Carrington completes a decade of service as Dean of the Duke Law School (the longest term anyone has served since Jack Latty held the post), we should note just what those years have meant. Here, then, in sketchiest report, is a brief Note on the Carrington years.

Coming Aboard

In accepting the Duke faculty's invitation to assume the deanship, Paul Carrington left Ann Arbor for Durham, in 1978. Carrington already had more than twenty articles to his credit, and his highly successful civil procedure casebook was just then entering its second edition. He was also just finishing his thirteenth year on the Michigan Law faculty. He had been Research Professor at Columbia, visiting professor at six other law schools, and, earlier still, on the regular faculty at Wyoming, Indiana, and Ohio State. A member of the American Law Institute since 1966, an A.B.A. Section chairman for four years, an A.A.L.S. Project Director, an American Bar Foundation Study Director, Federal Judicial Center Advisory Council founder and member, and actively engaged AAUP and ACLU counsel he was, as one says, "going strong." Paul was by far the Duke faculty's first preference for Dean, but we were caught in the usual paradox of such things: the sort of person one most often desires to attract as one's dean is very often the same person already enthusiastically engaged, and therefore least likely to want to respond. The deanship at any law school tends to be a consuming task. The deanship here is assuredly no exception. While we were eager to attract him, we knew the problems of being the dean (mainly, a great deal more work, not a great deal more pay). Still, half to our surprise, he did accept, and when he accepted, we were embarked on the Carrington years.

Setting the Course

The mark of the Carrington years at Duke is clearest in the school's much more complete maturation and cosmopolitan growth as a professional school. It is not reported in student numbers; these are, and will remain so far as we can manage it, at near five hundred places. Rather, it is strongly and differently reported in the complexion and completeness of the school itself.

In respect to its curriculum, for instance, the school already offered seventy-four different courses a decade ago, and drew students from virtually every state. Nonetheless, one hundred and seventeen different courses now comprise the current list of offerings, many extended across disciplinary lines. Thirteen new faculty (tenure and tenure-track faculty) have joined us during the Carrington decade. The number of faculty on extended appointment (that is, appointments of more than a year's duration) has increased from twenty-nine to forty-five. The full teaching faculty has grown even more, expanded from forty in 1977, to seventy this last year.

The Carrington initiative has stretched across disciplines and across continents. John Hope Franklin joined Duke during this time from the University of Chicago and has shared law school courses in legal history, as has also William Leuchtenburg, formerly of Columbia, and currently at Chapel Hill. Stanley Fish (English), Peter Fish (Political Science), Martin Golding

(Philosophy), Daniel Graham (Economics), Jonathan Ocko (Chinese legal history) and Neil Vidmar (Law and Social Science), are additions during the Carrington years. Patrick Atiyah (Oxford), Guy Haarscher (Belgium), Upendra Baxi (India), Koichiro Fujikura (Japan), and Arnold Enker (Israel) reflect Paul's international curricular impact, as do our several visiting colleagues from Canada, at least one of whom is here almost every year.

The Carrington intellectual imprint is also evident in the large number of foreign students now in attendance at Duke. Currently, they are in residence from sixteen countries, including twelve students from the People's Republic of China (where the dean has taught personally), four from the Republic of China (Taiwan), four from Canada, four from Japan, and others from places as distant from one another as New Guinea, Greece, Venezuela, and Denmark.

As a frequent participant at federal circuit court conferences, as well as Reporter for the Advisory Committee on Civil Rules for the Judicial Conference of the United States since 1985, Carrington also succeeded in enlisting a number of notable federal judges into the law school courses on professional and appellate advocacy. Rotating residencies of judges from the courts of appeals currently include Harry Edwards (D.C. Circuit), James Oakes (2d Circuit), John Gibbons (3d Circuit), Dickson Phillips (4th Circuit), James Logan (10th Circuit), and Alvin Rubin (11th Circuit), and Daniel Friedman (Federal Circuit).

Carrington's administrative signature has written its own history in the establishment of the Law School Alumni Affairs Office as well as the Major Projects Office added just last year. As the youngest among the truly national law schools, Duke had already produced an alumni widely dispersed around the United States. Now, however, with larger numbers of Duke law alumni concentrated in several dozen states and cities, it became a Carrington achievement to relate our alumni regularly to one another and to Duke far more substantially than we had previously managed to do. The *Duke Law Magazine* itself, incidentally, is an invention of the Carrington years.

Duke's comparative law program in Denmark is a Carrington initiative, now entering its third year, and going very well. The Private Adjudication Center, introduced wholly on his initiative, has also been fitted into place. His personal energy also brought the *Alaska Law Review* to the Law School, implausible as it might geographically have seemed. It was just five years ago that Paul travelled personally to Anchorage to persuade the Alaska Bar Association that Duke, rather than a far closer school (the University of Washington, Seattle) would be the logical place to have it done. That journal is now an extremely well run publication, published by a first rate student staff. As a complement to the *Duke Law Journal* and to *Law & Contemporary Problems,* it shows the dean's initiative at its best.

Knowing The River and Knowing Oneself

With all these Carrington developments, however, Duke remains most emphatically a thoroughly professional school, a place for training first class lawyers through a recognizable core curriculum, an emphasis on difficult classes, graded work, legal research, strong disciplined habits, a straightforward life in the law. In a word, those who went to this school when Lon Fuller, Douglas Maggs, or Brainerd Currie taught here, or when Jack Latty helped shape its faculty, would still recognize it with affection and pride.

The Law School is possibly more complicated than it once was, or at least it certainly seems so. It is also more international, comparative, and interdisciplinary. "Law and . . . ." are new influences now at Duke: for example, law and economics; law and the social sciences; law and feminist jurisprudence, and so on. The point remains importantly, however, that each is treated always with the same discipline and the same integrity one should want to be able to rely upon, even as a shoemaker would bring to his private workbench, and never produce shoddy goods. And, characteristically, Paul made the point just four years ago, in a brief essay he wrote, in 1984. It provides a last appropriate word on his own decade as dean, as we now welcome him into the faculty, a year hence.

His essay, titled "Of Law and the River," took some few pages and a great lesson from the writings of Mark Twain. Twain was writing of a master riverboat pilot, Twain's own mentor, Horace Bixby, in his *Life on the Mississippi.* Paul's own essay was titled "Of Law and the River," yet it was really on the very same thing that Twain was remembering of his life on the Mississippi and of what ultimately impressed him about Bixby. It was simply, the enduring importance of the example one sets by the quality and care of one's work.

He has not thought of the comparison consciously, I am sure, but each time Paul returns to the Twain story before a new audience (as he often does), when he calls up Horace Bixby to make a certain point, for many of us he is actually reminding us of things altogether applicable not just to Twain's unforgettable mentor on the Mississippi River, but things we all believe are equally applicable, equally true, and equally admirable in his own case, during his years as our colleague and our dean. He set the example of integrity and work here. It is what we shall doubtless remember best. The last ten years have been an important decade in the growth of this national-and-international law school, due in no small part to Carrington's leadership, stimulation, and personal example as dean. He knows the river of the Duke Law School as he knows so much of legal education. We shall miss him this next year, as he spends time in Ann Arbor, Berkeley, and Austin, to return a year hence.

William Van Alstyne

Concentrating on Legal Ethics

Since the mid-1970s and the Watergate era, the American Bar Association has required that each law student complete a course in professional ethics. The ethics course, however, has not always met with success. At some schools, the course was taught by uninterested faculty to uninterested students. As the course was usually scheduled during the student's last semester in law school, the students' attention was understandably elsewhere.

Concern over the state of teaching ethics lead Duke Law School to experiment with methods of teaching the course. Starting in 1983, Duke began teaching professional responsibility to first year students in an intensive week-long course which has been called "an innovative and very constructive program" by Judge Alvin Rubin of the Fifth Circuit Court of Appeals. The program has evolved to become one of the more popular first-year offerings.

The course is offered during the first week after winter break before other spring semester classes begin. According to one student, "Part of its appeal is that it represents a welcome break from the grind of regular classes and traditional case analysis." Dean Paul Carrington, the originator of the intensive approach, agrees. "We figure that maybe we can get their attention not only when they don't have to worry about contracts or torts, but also when they aren't worrying about bar exams, jobs, clerkships, or the other issues that prove distracting during second and third year," Carrington says.

The course's timing is not without some controversy. Only one other major law school teaches ethics during the first year. Some believe that first-year students do not have sufficient experience to approach the sometimes difficult materials. Professor Thomas Metzloff, who has coordinated the program for two years, notes that many law schools are using simulated problems to teach legal ethics later in the law students' career. With first-year students, however, "it is harder to use that type of teaching material effectively given the lack of relevant student experience."

This limitation is more than overcome given the first-year students' "inherent interest in their chosen profession," noted Metzloff. Dean Carrington agrees, and feels that the first year is the best year to teach the ethics course. "First-year students are much more open-minded about the array of ethical issues," he says. Judge James Oakes of the U.S. Court of Appeals, Second Circuit, who along with Judge Rubin has taught the course for the past four years, observed that "students are able early on in law school to come to grips with the problems of real life. After the week, students will have a better idea of the problems that may arise as they study other courses."

Judge Rubin also feels that the intensive nature of the course stresses the importance of ethics. Because no other courses are going on at the same time, the students can concentrate fully on learning about ethics. Its intensive structure consists of two hours of classroom instruction daily by Judges Rubin and Oakes and members of the Duke law faculty. Additional afternoon lectures are offered by members of the legal community with experience in the topic areas.

From the students' perspective, the involvement of Judges Rubin and Oakes has been an integral part of Duke's success. Both judges are respected commentators on the legal profession generally and have written on the subject in law reviews. One student noted, "What's so interesting to me is how their styles complement one another—Judge Oakes is the master of the quip; Judge Rubin the epitome of the serious judge. When they do a joint presentation on a topic like oral argument, it's like a well-rehearsed stage presentation." Their involvement, as well as their availability to talk with students outside class, "adds a special dimension" to the course according to Dean Carrington. "They add authenticity and credibility. They are the perfect people to teach the course. They've been there; they've seen it all."

During the course, the students also receive a practical perspective on a variety of ethical questions from the daily lectures given by a variety of speakers such as practicing private attorneys, government-employed attorneys and Duke Law School faculty members. While students are only required to attend one of the afternoon offerings each day, some students choose to attend both. As one student noted, "the lectures were the first time in law school where you didn't have to take notes, but could just listen and think about what was being said." The wide variety of topics, ranging from the ethics of criminal law to the professional malpractice crisis, also captures the students' interest.

Dean Carrington says the main comment about the course he has heard from students is that the classroom portion of the course should be expanded. Carrington says this observation is a compliment to the program considering the fact that students' usual reaction to an ethics course is "the sooner it is over the better." Duke faculty and administration are currently considering ways to continue and improve this innovative program.

For the Children's Sake:
Duke Law Students Represent the Abused and Neglected*

Duke law students are increasingly becoming involved in one of the most highly publicized and important problems confronting our nation today. It is estimated that 1.5 million to 2 million children are physically abused, sexually molested, or seriously neglected by parents each year in the United States. Nationwide, more than 3,400-5,000 children are murdered annually by their parents or guardians. Those children who survive the abuse and neglect are often left physically handicapped or incapacitated, learning disabled or delayed, and severely emotionally and mentally scarred. In response, Congress enacted the Child Abuse Prevention and Treatment Act, requiring the appointment of a guardian ad litem (GAL) "in every case involving an abused or neglected child which results in a judicial proceeding . . ." in order for states to receive federal foster care funds.[1]

Prior to 1981, North Carolina complied with the federal mandate by appointing an attorney GAL in every child abuse or neglect case. This system of attorney representation was exorbitantly expensive and not entirely satisfactory; attorneys were frustrated by the increased non-legal work they had to perform; and, in many cases, the children were minimally and inadequately represented. According to Cy Gurney Elkins, the GAL program coordinator for Durham County, "Some attorneys were extremely prepared, others had not even met the child they represented. The quality of representation ranged from excellent to virtually nonexistent."

In 1987, the North Carolina General Assembly undertook an effort to improve the efficiency and quality of child representation by approving a pilot project to utilize non-attorney volunteer GALs. From the beginning, Duke law students have played an integral part in this upgraded program. Today, Durham County has the largest volunteer GAL program in North Carolina with more than eighty GALs, ten of whom are Duke law students. In addition, eight to nine students each year from the Duke Child Advocacy Clinic serve in the role of attorneys for GALs in the program.

Duke Students Volunteer

Peter Quigley, a second-year law student, decided to get involved in the community as a GAL after spending a summer in Florida as a clerk in an Orlando law firm. During his time there, Quigley learned about the gravity of child abuse from his sister, a pediatrician. "For the first time, I found out how inept our legal system is in protecting children from abuse and neglect. If a medical professional sees an abused child and nothing is done to protect that child, the next time the professional sees that child, he or she may be dead," laments Quigley. When he returned to Duke last fall, Quigley had a new perspective on his legal education. "I wanted to take a human look at the law. When I saw an ad for the GAL program in the *Herald,* I decided to volunteer." Like Quigley, many Duke law students are recruited by other law students active in the program or by reading notices in *The Herald,* the Law School newsletter. When Jane Lombardi '89 came to Duke Law School she "wanted to do something outside the school that was worthwhile. I considered working with other volunteer programs but decided to work with the GAL program because there is such a tremendous need for people to get involved and to know what is happening to these abused and neglected children," says Lombardi. Other Duke law students, like Lombardi, are interested in supplementing their legal education with social experiences through community involvement. Cy Elkins believes that "the law students have one common interest: seeing that the abused and neglected child's interests are served by the courts and the community." Therefore, the program is eager to accept interested students as GALs. But, each student is carefully screened based on personal interviews with the program directors and recommendations from community leaders. Currently, there are ten Duke law students working on 15 cases, representing more than thirty children. (Chris Felder '88, Daniel Brian King '88, Tom Rohe '88, Sharon Carr '89, Jane Lombardi '89, Peter Quigley '89, Doug Varie '89, Claude A. Allen '90, Kimberly Dunn '90, and Chris Wetherington '90)

GAL volunteers participate in an extensive training program designed to equip them with the resources and skills required to effectively represent and advocate for the children they represent. The training program consists of reviewing written materials on abuse and neglect (including North Carolina statutes and cases), observing active cases with GALs testifying in Juvenile Court, and participating in presentations by court personnel, social workers, child protection services, mental health professionals, school

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**This article is the result of a collaboration between Claude A. Allen '90, who participated in the Durham County Guardian Ad Litem program during 1987-88, and D. Willas Miller '88, a student in the Child Advocacy Clinic for 1987-88.*

counselors, and experienced community volunteers. Kim Dunn describes the training as "very thorough. After the training, you really know how to identify abused or neglected children, how to meet their human needs through the various institutions, and how to effectively press for their rights in court." Heidi Warburton, the assistant GAL director, underscores the importance of the training by emphasizing that "in order for a GAL to be the most effective, he or she must not only be familiar with the broad range of resources and services available in Durham, but also with available programs throughout North Carolina which may help the children and their families."

When a petition alleging abuse, neglect or dependency is filed in juvenile court,[2] the Duke law student assigned to represent the abused or neglected child must:

—Make an investigation to determine the facts and present the facts to the judge at the adjudication.

—Determine the needs of the child.

—Find the available resources within the family and community to meet the child's needs.

—Facilitate, when appropriate, the settlement of disputed issues.

—Explore options with the judge at the dispositional hearing.

—Protect and promote the best interests of the juvenile until formally relieved of the responsibility by the judge.

—Conduct follow-up investigations to insure the orders of the court are being properly executed.

—Report to the court when the needs of the juveniles are not being met.

—Petition to terminate the parental rights of the child's parents when appropriate.

—Participate in post termination of parental rights placement review until an adoption placement order is final.[3]

The student must work quickly to fulfill these responsibilities. "From the time you receive the case file, you have only a few days before the adjudication hearing to make an initial investigation. It is during this time that the law student is under the most pressure and has to be most diligent. You have to investigate the charges, interview all possible leads, and formulate a coherent, thoughtful recommendation that will have a significant impact on a child's future," says Quigley.

Cases a law student GAL handle involve children who often have complex and demanding problems. In addition to the abuse and neglect, the children may be delinquents, educationally and developmentally delayed, or seriously emotionally traumatized by the prolonged abuse and neglect. The more children involved in a particular case, the more complex the issues become which the GAL must consider and address in determining what is in the best interest of the victimized children.

Should the children be left in the home? Should siblings be separated? Should the GAL petition the court for termination of parental rights? These are only a few of the difficult questions that the GAL must answer. Sharon Carr, who represented three children in one case, explains the pressures and responsibilities suddenly thrust upon the law student GAL: "The GAL is required to learn and know as much as possible about the child's past life to be able to make truly thoughtful and sometimes difficult recommendations to the court about what is best for the child's needs." She found that, "you have to be thick-skinned, yet sensitive; tolerant, yet firm; and decisive, yet non-judgmental. Some of the things you discover in the investigation will shock you, but you have to keep your focus and ask the tough questions to make the best decision." Carr further emphasizes that "it's very important to establish a rapport with the person who has abused or neglected the child."

Everyone Benefits

Through this process, the Duke law student not only learns to function under pressure, but also, how to deal with distressing and difficult situations confronting the children. Daniel Brian King has been a GAL for two years. He believes "the greatest skill developed through working as a GAL is empathy. For most law students, first year is a selfish year. I was no different than my classmates. But second year, I decided to get involved in the community." Sharon Carr found that "the law student GAL acquires numerous skills such as interviewing, investigating and social work skills. These are skills which most lawyers will need to use in the practice of law. But, the most important skill I developed is sensitivity to the problems of people [a skill which] one generally does not encounter in the sheltered environment of the law school."

David Q. LaBarre, Durham County's chief district court judge, believes that "the most important legal skill the student acquires is how to advocate, not just in the court room, but also in the back room where many deals are struck through negotiations with the other parties. This kind of informal legal education is not taught in the classroom, but it is very crucial to the legal process. Thus, a program like GAL gives the student the opportunity to expand upon his or her legal knowledge through practical and real life situations, where the student must serve the child's best interest."

Sometimes, the problems the GAL face stem not from the child's family or background, but from the court system itself. "The adversarial system was not designed to serve and protect the abused child's interests and rights. The disruptive effect of the process on the child is often overlooked," asserts one GAL. As evidence, the student contends that "when a child has been abused and the court proceedings have commenced, the child is left to hang in limbo for months while the parties jockey back and forth to press the court to preserve their rights. During this time the child must struggle with guilt, shame, rejection and fear. Therefore, it is imperative that the GAL be attentive to the child's non-legal needs. Cy Elkins supports this

view. "The GAL pushes the system beyond the limits to do what is best for the child. They (GALs) are not constrained by budgets, bureaucracy, or political pressures to not get involved."

Judge LaBarre says "Duke law students have been very helpful to the court in fashioning dispositional plans. The fact that they are law students is particularly helpful because of their understanding of the legal limitations the court has that a layman does not understand." Elkins believes Duke law students are particularly well suited for the role of a GAL. "They are extremely competent and dependable volunteers whose reports are timely and well written. Furthermore, their court presence is particularly noteworthy. When a Duke law student handles a case, the quality of the representation always meets or exceeds my expectations," asserts Elkins. Jane Lombardi is a good example of a student who has successfully pushed the system to obtain what is in the best interest of her child/client. In discussing one abuse case, Lombardi discloses that "DSS wanted to dismiss a petition it filed alleging abuse and neglect before adjudication despite the fact that the charges were substantiated upon investigation. After several continuances, I was able to work on behalf of the child. The court's ruling supported my recommendation." Thus, because of Lombardi's thorough investigation and her vigorous representation to the court, the child's best interest prevailed.

For many Duke law students, the GAL program provides an opportunity to experience an aspect of law to which they are not exposed in their classroom instruction. Kate Bartlett, a Duke law professor who teaches family law and administers the Child Advocacy Clinic, observes that "many Duke law students have never been into a poor person's home or dealt with violence—an integral part of criminal law. Thus, when they are exposed to trauma for the first time, they are initially shocked. After overcoming the shock, they are most eager to work with the family and institutions on behalf of the abused or neglected children. For the first time, the law student is suddenly called upon to perform the duties of a true advocate." According to Elkins, one Duke law GAL had to go into a public housing development to interview witnesses. The student was so shocked that "she refused to get out of the car." Another student "couldn't believe the utter poverty that exists within one block of such a wealthy and prestigious university," she continues. But, for the students, these experiences are invaluable lessons in humanity. Tom Rohe says that volunteers "will often be shocked by many aspects of the case, but you can't let it immobilize you."

Rohe believes that "the program and the Durham community have done much more for me than I could ever do for the program. As a GAL, I quickly learned about the cruel and heinous realities of child abuse and neglect," Rohe confesses. In working for the children assigned to him, Rohe visited a prison to interview a witness, and negotiated with a parent to secure the best outcome for the children. Rohe was successful in obtaining the cooperation of an abusive parent because he used his extensive knowledge of the case and his good rapport with the children and the family to convince the parent to settle on terms most beneficial to the children.

Judge LaBarre believes that one particular area in which law students can be most useful and effective is "in the area of criminal prosecution of child abuse and neglect perpetrators. Because the District Attorney (DA) has prosecutorial discretion, there hasn't been an advocate for the child in criminal court. Since the child is not a very good complaining witness, there is no one who pushes the case for the child in the DA's office." LaBarre believes that law student GALs can be the most effective because "they are not officers of the courts as are the GAL attorneys. Therefore, the law student who has been intimately involved in the case from the beginning can assist the DA in the investigation in a way that an enforcement officer cannot."

The Child Advocacy Clinic

During each of the past five years, eight to nine students have participated in the GAL program by working closely with guardian ad litem attorneys. The students are certified under the State Bar's third year practice rule[4] and work with one of four guardian ad litem attorneys in Durham County who represent children in abuse and neglect cases. Unlike parents' attorneys, Department of Social Services attorneys or District Attorneys, GAL attorneys are guided by one rule and one rule alone: the best interest of the child. In this respect the job is easy—the hard part is deciding what course of action will achieve this goal.

Work assigned by a GAL attorney may take many forms, including active in-court representation of children, interviewing of witnesses, preparation of affidavits and interrogatories, fact investigation, drafting and responding to motions, or any other task that the GAL attorneys might otherwise perform themselves. Kate Bartlett, who devised and now administers the Child Advocacy Clinic recalls, "The course began as a traditional seminar called "Representing the Child." The substance of the course was much broader than it now is, in that it covered such things as handicapped children in public schools, and the institutionalization of children. We had readings and simulated exercises, but no placements." She added the clinical component two years later. "The course then developed more of a focus on abuse and neglect work, because it seemed to me that those were the cases that worked best pedagogically for students."

The course still contains some elements of a traditional seminar. Students meet class two hours weekly for one semester. This time is used for simulated exercises in trial advocacy, interviewing and negotiating, and for guest speakers, lectures and discussions on topics rang-

ing from the detection of sexual abuse in children to the representation of parents in child abuse cases; and, beginning this year, strategy and working sessions on a case adopted by the class as a class project. All students are also required to attend the Durham County Guardian Ad Litem training seminar, under the supervision of their placement attorney. In addition, each student puts in one hundred hours of clinical work over the course of two semesters.

The class project was an addition to the course this year. After considering different ideas, the class voted to aid two GAL attorneys in a class action suit against the Durham County Department of Social Services for failure to provide adequate protection to certain abused children. The students in the class did a good deal of research and drafted affidavits, to help prepare the attorneys for an upcoming summary judgment motion filed by the defense. While it is still unclear what the end result of the litigation will be, the attorneys involved are optimistic and appreciative of the students' help.

When asked what kind of student takes a course like this, Bartlett noted that "as compared with the population of Duke Law School generally, there is a disproportionate number of women and people interested in public interest law." Although true of this year's class, several students also said that their interest in the course was sparked by the opportunity to get some litigation experience before entering a firm full-time. Last fall, eight law students were admitted to the seminar. (Peggy Force '88, Amy Kincaid '88, Robin Rosenberg '89, Mike Wakefield '88, Willas Miller '88, Kirk Halpern '88, Mary Mandeville '89 and Jenny Clarke '88)

Among the stories and comments related by students in the course this year, some common themes appear, and although experiences vary, many of the questions and concerns raised by these experiences are similar. Most students struggle in determining what is in a child's best interests. A question often asked, for example, is: When is it appropriate to remove a child from his home? And just as important: Am I qualified to make that decision?

Peggy Force phrased the concern well: "One of the things that has been most eyeopening is that, even though the situation the child is in may seem horrible to me, that is all the child knows, that is what their security is based on. It's his home, even if it is very destructive. And I'm wondering how much the pattern of abuse is due to the fact that these kids grow up and try to recreate their sense of home by abusing their kids, because that was home to them. It's a bizarre concept."

Robin Rosenberg recounted a case she worked on in which the Department of Social Services removed a father from his home to protect a child from further potential abuse. After an investigation revealed that there was a reasonable basis to believe that the injuries to the child were in fact accidental, Robin felt she knew what to do. "I agreed with the Guardian Ad Litem in this case, that the father should be back with that family right away." Putting a child back into a situation in which it has been injured is, perhaps, the most difficult decision faced by some of the students in the seminar. It is a decision for which no law course can adequately prepare you. Robin felt as though she could rely heavily on her Guardian Ad Litem's advice in this case. "He was an older man, retired, and he could give his full time to the investigation," she said.

Robin did voice a concern shared by many: how much weight should be placed on any one person's opinion when making decisions of such importance? "I know the intention is to do what is in the best interests of the child, but I don't know how successful any one person can be in fulfilling that role," Robin said with much concern. "I mean, when you make a decision today that you're going to remove that child, a whole series of events are put into progress that possibly can never be reversed. Once you get a child into foster care, once it's into the system, it is hard to turn back."

"I like the idea of getting the abusive person out of the home much more than taking the kid out," commented Mary Mandeville. "I think that after being abused, yanking a kid out of his home is, in some cases, even more traumatizing than the initial abuse."

Despite the difficulty of making serious decisions which drastically affect the lives of others—of facing problems without clear answers—the students' consensus is that the seminar was a very positive experience. The general feeling was that the in-class work nicely complemented the clinical work, and that the clinical work was interesting and important.

"The hypothetical in-class problems were as difficult as the real cases were, and we never came up with any one solution in class. Everyone wanted to do something different. That's exactly the way the real cases were," commented Robin.

"It was good to have the speakers from the real world, and the readings to give us a more theoretical view, and the problems and class discussion to teach us all the alternatives. It was a good course in that respect," said Mary Mandeville. "But, it wasn't until we ended the classroom portion of the seminar that I realized just *how* much I got out of it," she added.

"My attorney was involved in two big divorce cases and I called the witnesses and found out everything relevant to the investigation . . . . It took fourteen hours, but it was fascinating," said Amy Kincaid, the only student in this year's class who opted to do divorce/custody work. Amy is planning a career in litigation and found the course invaluable. "This is the only course in law school that put me in touch with reality. It has redeeming social value, not to mention the legal education. I've learned a lot about society and a lot about children," she added.

When asked what she hoped

students would get from this course, Professor Bartlett said, "I hope not only that they learn something about an area of the law they otherwise wouldn't learn, and something about a slice of life to which most of them haven't been exposed. but also that students gain a greater sense of how the law can be used and how it should be used to help people in circumstances that the students might have just as soon ignored. But in a sense, you're preaching to the choir in a course like this, since the people who sign up have already demonstrated an interest, willingness and sensitivity to the problems of other people who can't pay a lot of money." Bartlett also hopes the students will get some practical skills training. "I also want them . . . to develop some familiarity with what legal practice is all about . . . including getting over the shock of having to stand up in front of the judge and talk, or the shock of having to interview real people and negotiate with real attorneys. That's a good thing to do in law school while you're not expected to know how to do all that stuff, as opposed to your first law job when all of a sudden, because you're a lawyer, people expect you to know how to do it all."

Several alumni who participated in the clinic while at Duke believe that it succeeded in every way. Says Suzanne Bryant '85, "It was the best thing I did in law school. I still think about it a lot. Not only did I feel that I was really making a difference in children's lives, but I also had the opportunity to do real lawyerly work while still in school." Gusti Frankel '84 calls it "an absolutely wonderful course. It was important not just because of the issues involved—which were critical—but also because of the opportunity it gave us to spend time in the courtroom." Frankel recalls, "I thought I wanted to do litigation, and this course gave me the opportunity to get up in a courtroom and address a judge for the first time. It helped me to make choices and to learn practical lawyering skills. For example, it was then that I learned the importance of interviewing prior to litigation. I learned how to pull out the important facts and how to use them." Both Frankel and Bryant acknowledge that the students handled a "lot of responsibility." But, they were working under the supervision of an experienced attorney. "The supervisor/student relationship was wonderful," recalls Bryant. I was encouraged to take as much responsibility as I could or would, but there was always someone there to hold my hand when I needed it. She was an excellent role model."

Jane Volland '83 decided to follow that model upon graduation. Today, she practices with Gulley, Eakes & Volland in Durham and also serves as a supervising attorney for the Child Advocacy Clinic in which she had earlier participated as a third year student. "Certainly the course was quite relevant for me; it convinced me that it was the type of work I wanted to do," says Volland, who is now one of four GAL attorneys in Durham. "It was also the first time I felt the excitement of litigation, which helped me realize that I wanted to be a courtroom lawyer." Given her own positive experiences in the course as a student, Volland was delighted when Professor Kate Bartlett invited her to participate in the program as a supervising attorney. Over the past three years, she has supervised five students and found that each one was "a delight to have working with us. They were intelligent, conscientious and dedicated; I know they went beyond the number of hours required for the course."

Volland agrees that the course provides excellent skills training, both in the classroom "where we got to fire questions at the practitioners" who served as guest lecturers and during the placement. "The students do whatever is necessary. They collect data, prepare for court hearings, negotiate settlements and advocate in court." For the future trial lawyers, she feels that one of the most important benefits of the course may be the opportunity to overcome their anxiety about appearing in court for the first time. "I realize now that the more you do it, the more comfortable you become in the courtroom setting." But, as valuable as the program is for the student participants, Volland points out its value to the community as well. "The program is a real asset to our court system."

As for the future, Duke law students can be instrumental in improving programs that protect and serve abused and neglected children. Judge LaBarre believes that "the legislature responds to the concerns of interested persons in the community. The few people in juvenile justice in North Carolina are unable to devote the required time to lobbying the General Assembly. This is but one area where Duke law students concerned about children can be helpful by drafting proposed legislation, attending committee meetings, and making the general public aware of the problems affecting children."

For the Duke Law students involved in the GAL program, the only way to measure success is when you know in your heart that as a result of your work children's lives will be better than if you had not been there to speak out for them. A complete success is when you see an abused or neglected child smile again.

In commenting on the work of Duke law students involved in the GAL program, Cy Elkins notes that "I feel better about human nature whenever I see the spark of energy and hope the students bring to the program. Although there are many opportunities in Durham for Duke law students to make significant contributions to the community, the Guardian Ad Litem Program is one program where Duke law students are making a difference."

1. 42 U.S.C. 5103(b)(2)(G).
2. NCGS 7A-586 defines abuse, neglect and dependency.
3. NCGS 7A-586, -289.24(6), -659, and -660.
4. N.C. BAR RULES, App. E Art. III.

Innovative Clinical Programs at Duke Law School

Opening and closing arguments to the jury are an important part of the simulated trials conducted in Trial Practice.

Prior to entering law school, many students envision that those three tortuous years will transform them into young Clarence Darrows, ready to step from classroom into the courtroom. What they may find is that while law school teaches them about the law and how to "think like a lawyer," much of their practical skills training takes place after graduation under the supervision of a senior partner. This is not a failure of the law school curriculum; law schools simply cannot be expected to turn out experienced lawyers. Many schools, however, have attempted to make the transition from law school to law practice easier by implementing clinical programs. These clinical programs provide training in skills which are fundamental to the practice of law.

Duke Law School offers a clinical program to provide practical training in fundamental legal skills for its students. The program is directed at improving such skills as the ability to write effectively, communicate orally, gather facts, interview, counsel, negotiate, and plan innovative solutions to client problems. The clinical courses may be taken by second- and third-year students, and approximately 250 students each year take advantage of the opportunity. After participating in the clinical program, these students have a solid base of skills which they can then polish with experience.

Curriculum

Traditionally, clinical courses are placement-oriented. Law students gain credit and practical experience by working with lawyers engaged in litigation in the community surrounding the Law School. Duke Law School continues to offer such traditional clinical courses in the areas of child advocacy, which is discussed in depth in a separate article (See p. 24), and criminal litigation. The Criminal Litigation Clinic places twelve to eighteen students with prosecutors, public defenders, and private criminal defense attorneys in Durham, Chapel Hill, and Raleigh. The students appear in court under North Carolina's student practice rule. In addition, they participate in a parallel seminar that simulates a complex criminal investigation and prosecution, concentrating on skills that have not been developed in Trial Practice. These include interviewing, investigation, negotiation, discovery, and preparation of pretrial motions.

In addition to the traditional clinic courses, Duke Law School has offered a number of non-traditional, simulated clinical courses since 1978. These simulated clinical courses provide students with practical skill training in specific substantive areas of the law through simulated exercises. The exercises are formulated by faculty members to raise substantive and ethical legal issues in situations resembling those commonly encountered in a high level legal practice. The current simulated clinical program emphasizes corporate subjects, addressing the type of practice that the majority of Duke students will enter. The simulated portion of the clinical program at Duke Law School can be categorized into three types of courses: trial practice, corporate clinical courses, and appellate advocacy.

Trial Practice Courses

The Trial Practice courses have been the most consistent offerings in the clinical program at Duke Law School. They are the only clinical courses taken by a substantial majority of the students over the past ten years, and most students find them valuable and enjoyable. Gusti Frankel '84, an associate at Wom-

ble, Carlyle, Sandridge and Rice in Winston-Salem, North Carolina, calls Trial Practice "the best time I had in law school. It was exciting and intense. It convinced me that I wanted to be a litigator."

Instructors of the course include both full-time and adjunct faculty members, all of whom have had substantial trial experience. Donald Beskind '77, former associate professor and director of clinical studies at the Law School, is presently a partner in Beskind and Rudolph, a Chapel Hill law firm. In addition to teaching trial practice at Duke Law School, Beskind serves as a frequent lecturer in the continuing education courses sponsored by the North Carolina Bar Association and has prepared instructional material and led programs for the National Institute for Trial Advocacy. The Honorable Charles Becton '69, currently serving on the North Carolina Court of Appeals, has been teaching trial practice at Duke Law School since 1980. William Hutchinson began teaching trial practice at Duke Law School in 1980 after thirty years of private practice in Michigan, devoted primarily to litigation of civil and criminal matters. Elizabeth Kuniholm '80, is an associate at the Raleigh firm of Tharrington, Smith and Hargrove. Associate Dean Gwynn Swinson served as a trial attorney for the Justice Department's Commercial Litigation and Federal Programs Branches before coming to Duke Law School. Robert Mosteller, who teaches both Trial Practice and a more specialized course in Criminal Trial Practice, served seven years as Director of Training and Chief of the Trial Division at the District of Columbia Public Defender Services.

Trial practice teaches litigation skills in a civil and criminal trial setting. On occasion, the School offers a more specialized course in criminal trial practice, which in addition to covering basic trial practice materials, addresses concerns peculiar to criminal litigation, including suppression of evidence and identification under the fourth and fifth amendments. Both courses utilize simulation exercises involving trial preparation, opening statements, closing arguments, motions, evidentiary objections, and examination of lay and expert witnesses. The exercises are videotaped so that the students' performances may later be critiqued by both the student and the instructor.

The Trial Practice courses culminate with the students acting as counsel in a full trial before a panel of lay jurors recruited from the Durham community. After presentation of their cases, the students are able to watch the jury deliberations. Donald Beskind describes this experience as invaluable, because it provides an insight into how the jury perceives the evidence. Dean Swinson also considers this a particularly strong point of the program as "the key to a jury trial is convincing lay people."

Dean Swinson believes that the trial practice course is important because it heightens the students' awareness of all the different aspects and important considerations in handling a case from organizing the materials and planning strategy before entering the courtroom to learning to "speak under fire and make adjustments according to the judge's rulings."

Professor Mosteller views the trial practice courses as "integrative. They pull together things the student has already learned and add practical skills training not taught elsewhere, such as interviewing and other communication skills." Dean Swinson also sees the trial practice courses as an excellent review of academic legal theory—particularly in the field of evidence—as the students are asked to apply their knowledge in a practical way.

Corporate Clinical Courses

The corporate clinical courses are structured to present the student with practical problems normally encountered in specialized areas of a high level corporate law practice. The major strength of the corporate clinical program lies in the breadth of the subject matter available. Over the past several years, the curriculum has included courses in the areas of antitrust practice, business planning, commercial arbitration, commercial practice, entertainment law, estate planning, forensic psychiatry, land use planning and negotiation. The courses are taught by adjunct and full-time faculty members with substantial practical experience in the particular field to maximize the benefit of the courses.

Antitrust Practice examines the problems of current doctrinal and theoretical interest in this field, including vertical restraints, merger policies, and joint ventures. The students confront these problems by examining their effect with regard to the competitive aspects of a particular industry. They then prepare documents, such as opinion letters and petitions for certiorari, with particular emphasis upon learning to speak to different audiences in an effort to be forcefully persuasive. The course is conducted by Calvin Collier '67, a former chairman of the Federal Trade Commission now practicing in Washington, D.C.

Commercial Arbitration exposes students to the fundamentals of arbitration in the context of construction law. Student teams use project documents of a recent case to develop practical skills in formulating theories of the case, preparing the claims/defense manuals, gathering evidence, writing briefs, interviewing witnesses and making formal arguments. The teams then present their case to an arbitrator who rules on evidentiary matters and renders a written award. A critique follows each arbitration session. The course is taught by C. Allen Foster, a Greensboro attorney specializing in the arbitration field who has served as President of the American College of Construction Arbitrators.

Michael Wakefield '88 describes the Commercial Arbitration course as "very practical. The twenty-hour arbitration session took a lot of work to prepare, but it was worth it. I learned a tremendous amount." A 1984 Duke Law graduate also described the arbitration course as very practical. "It gave a very realistic picture of the amount of preparation required in any type of dispute

resolution. The training is very helpful and is equally applicable to all types of dispute resolution." An added benefit of the arbitration course is the instructor, Mr. Foster—described by one former student as "uniquely entertaining."

Commercial Practice presents students with a variety of tasks involved in the resolution of commercial disputes and invites several groups of alumni to participate in the educational process. The course is administered by Evelyn Pursley, the Law School Assistant Dean with responsibility for alumni affairs, who reports "I enjoy administering this program because it gives me an opportunity to work with alumni in a different way."

Students in the Commercial Practice course are divided into small "law firms." Each of these firms receives a portfolio of problems prepared by a group of Duke Law School alumni (known as external examiners) who are associates in law firms throughout the country. Each student is asked to analyze the legal problem and prepare a draft memorandum. Another group of Duke Law alumni who are senior partners in major law firms conference with the students and review the memoranda. The revised memorandum is then evaluated by the external examiner who devised the problem. Each student is then assigned to a "client" from the Duke MBA program. After classroom instruction and practice in negotiation techniques, the students must advise their clients regarding the legal situations and pursue negotiations with an opposing counsel. Dean Pursley finds that "for many students the negotiations phase is particularly enjoyable. It is an important part of the work they will do as attorneys and not something they get much training for in law school. The addition of the business school clients is a real plus because it gives the law students practice in explaining legal issues to lay people and helps them to realize that the client is the boss and final decision-maker in this situation." Regardless of the outcome of the negotiations, each student then prepares a brief in response to a motion for summary disposition under the supervision of the senior partner. This brief is evaluated by the external examiner. A group of alumni judges then visits the school to hear oral arguments on the briefs.

Dean Pursley feels that a real strength of the program is the fact that students work with a legal problem from beginning to end. The student must investigate the legal issues, attempt to negotiate a settlement, and finally argue the issues before a judge. The Honorable Garrett Brown '68, a federal district judge who participated in the program in 1987 and 1988, termed it "an innovative, educational program. I am glad to see that the Law School is providing such realistic and challenging courses for its students."

Judge Friedman listens to oral argument as part of his instruction in brief writing and oral argument.

In *Entertainment Law,* students study the legal, financial, and business considerations of practice in the entertainment industry. Through student participation in several simulated projects, many aspects of the production process are analyzed in light of the attorney's role in supporting the producer's coordination of creative talent and commercial interests. The course is taught by Duke Law Professor David L. Lange, who has served as a member of the Governing Committee of the ABA Forum on the Entertainment and Sports Industries.

Robert Nagle '87, an associate with Buchalter, Nember, Fields, Chrystie & Younger in Los Angeles, felt that the course gave him a good perspective on the relationship between entertainment and the law. "The simulated problems are very realistic and they give a very accurate insight into the field. As a result of taking the course, I feel that I can discuss concerns of the entertainment industry with anyone in the field."

Estate Planning examines the problems and techniques in estate planning and administration. Students are required to prepare recommendations and draft documents for hypothetical clients. In making their recommendations, the students must take into consideration the specific intentions of their clients as well as facts determined through analysis of client files. Discussion lectures include presentation by a trust officer, a CPA and a CLU, thus providing exposure to related disciplines. The course is taught by Ralph McCaughan '66, Associate University Counsel for Development. Before coming to Duke in 1981, Mr. McCaughan practiced law in the field of estates and trusts in Fort Lauderdale, Florida.

Forensic Psychiatry is designed to provide a working knowledge of the interface between law and psychiatry. Primary focus is on the roles

and responsibilities of the attorney and the psychiatrist in the commitment process, the right to demand or refuse treatment, and the determination of competency to stand trial and criminal responsibility. Students taking the course become involved with the interviewing and observation of patients in each of these areas. The course is taught by Dr. Sally Ann Cunningham Johnson, the Director of Forensic Services and Clinical Research at the Federal Correctional Institution at Butner, North Carolina.

Negotiation and Settlement offers an examination of an attorney's role as negotiator, attempting to resolve disputes prior to adjudication. The course focuses on techniques, ethics, and other aspects of the negotiation process. Students in the course form teams and negotiate settlements for simulated problems involving commercial transactions, personal injuries, real estate transactions, antitrust and labor relations. The course is taught by Professor F. William Hutchinson, who developed his expertise in this field through thirty years of litigation practice.

When offered, the *Land Use Planning* clinic is taken concurrently with a survey course, which covers public and private nuisance law, zoning, subdivision control, housing codes, street mapping and condemnation. Both courses have been taught by Richard F. Babcock, who practiced land use planning in Chicago for thirty years. He also served as President of the American Planning Association in 1971-72 and as Chairman of the Advisory Committee of the American Law Institute Project on Model Land Development Code from 1965 to 1975. He has written four books, including *The Zoning Game.*

In this clinical course, each student writes a paper which is an in-depth study of a select jurisdiction to determine the impact of a particular legal issue in land use planning on communities in those jurisdictions. The issues explored in the course include the Central Business District and the Sherman Act; the impact of changing demography in the last thirty years on local zoning policies; the acceptance or rejection of the halfway house; and the attitude of the communities toward "time sharing." Each student then chooses a piece of vacant land in the vicinity, investigates its zoning, and decides upon a use for the land which would not be allowed under its present zoning status. After interviewing members of the community and investigating the substantive law, each student writes a proposal on the procedure to follow to get the zoning changed, pinpointing where opposition will arise and how to overcome it. Finally, the student leads a class discussion on his problem and his proposed solution.

One former student described the land use planning course as "amazing. The insights on land use provided by Professor Babcock are better than anything that appears in print."

Appellate Advocacy

Federal Courts and the Appellate Process is a relatively new addition to the clinical program at Duke Law School, first appearing in 1983. It provides an opportunity for the in-depth study of appellate practice and procedure in the federal courts. The course involves an applied research and writing project, along with traditional lectures and class discussions. The course culminates with oral arguments before an experienced judge. Substantive coverage includes jurisdictional issues of particular interest at the appellate level; final orders and interlocutory appeals; standing and ripeness issues; prudential considerations militating against appellate review; waiver of appealable issues; the proper scope and standard of review (with emphasis on administrative agency appeals); and the remedial authority of the courts. In addition, the course deals with certain practical problems of advocacy and judicial administration, such as when and what to appeal, preparation of appellate briefs, oral advocacy, dispute settlement techniques, decision making processes, and special institutional problems facing appellate judges.

One of our courses in this area is taught by the Honorable Harry Edwards of the United States Court of Appeals for the District of Columbia Circuit. The other uses a team of judges from the federal courts of appeal. Judge Dickson Phillips of the Fourth Circuit teaches a classroom component concentrating on appellate jurisdiction. Judge Daniel Friedman of the Federal Circuit provides instruction on brief writing and oral argument, and most recently Judge James Logan of the Tenth Circuit and Judge John Gibbons of the Third Circuit critiqued briefs and held oral argument.

The simulated clinical programs provide the student with a great deal of practical skill training while still in school. As a result, the participants should find the transition from law school to law practice somewhat easier for they already have a strong base of skills developed. Robert Nagle felt that the program gave him a definite initial edge on the job. Susan Henderson '87, an associate with Gardere & Wynn in Dallas, Texas, noted another benefit of the clinical program. "Law school generally gives you little idea of what you will do as a lawyer. The clinical program is an exception because it gives you a somewhat realistic picture of the practice of law."

The clinical program is not without limitation. It must be conceded that the program does not provide students with all of the skills necessary to practice in a certain specialty. One Duke Law graduate described the program as "leaving some holes, but providing the broad picture." Another graduate added that his clinical courses were perhaps the part of law school most relevant to his practice and deserved much more exposure. He cautioned, however, that "while the program provides training in many practical skills, these skills still require the polish that only comes with experience." Though the clinical program may not produce a fully formed Clarence Darrow, it does at least take the student part of the way down the road from the classroom to the courtroom.

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THE DOCKET

Participating in Changes in the Chinese Legal System

The author, Allison Rottmann, '88 spent the 1985/86 school year in China where she studied in the law department of People's University of China (Zhongguo Renmin Daxue) in Beijing.

On October 1, 1949, Mao Zedong proclaimed the establishment of the People's Republic of China. That same year, the new communist government abolished all existing civil law. From that time until the present decade, little legal development occurred, but once begun, the pace has been rapid. Recognizing the importance of a legal framework for China's modernization and increasing economic contacts with the outside world, the Chinese government has targeted legal education for growth. Duke Law School is contributing to China's legal development by offering Chinese students an opportunity to study American law. Currently, there are thirteen students from the People's Republic of China enrolled in the J.D. program at Duke, two more studying for the LL.M. degree, and six alumni. The School is also offering courses in Chinese law and society to American students.

The Law School's China program started by chance with a letter from Shi Ximin, a graduate student at the Beijing Institute of Foreign Trade, who indicated an interest in studying law in the United States. Mr. Shi, trained in English and economics, was working on a degree comparable to an M.B.A. His progress had not been uneventful, however, as he had served as an officer in the Red Guards during the Cultural Revolution and as a helicopter pilot in the Chinese Air Force in addition to being twice "rehabilitated" for ideological shortcomings. He had also found time to develop a hobby—translating contemporary American fiction into Mandarin; his specialty is Faulkner. The faculty found his letter so interesting that arrangements were made enabling Mr. Shi to enter Duke for a J.D. degree in 1982. Now an alumnus working as an associate at Whitman and Ransom in New York, Mr. Shi '85 explains that Duke's China program is unique due to its emphasis on the J.D. degree. Even now, when many other law schools have Chinese students, Duke remains alone in primarily graduating Chinese J.D.s, rather than LL.M.s. He feels this is important because many people believed that Chinese students could not make it through a rigorous J.D. program, and Duke has proved that they can. "Duke is succeeding at a tremendous experimental job and is turning out qualified lawyers," says Mr. Shi, who works in the firm's corporate division and is substantially involved with international joint ventures. Duke's unique program is recognized in China, where an internal government newspaper cited Duke's legal program as one of the world's best for Chinese students.

Following his enrollment, Mr. Shi persuaded the Law School to admit Gao Xi-Qing, the following year. Because there were then two Chinese students studying law at Duke, representatives of China's

Ministry of Education visited the Law School in the fall of 1983. The next summer, Dean Paul Carrington visited China, and plans were made for the exchange of legal students. By 1984, the Law School was committed to its China program, and the number of participants has continued to grow.

Why is Duke committing its resources to the legal education of Chinese students? As Dean Carrington explained, the commitment reflects a faculty judgment that what is happening in China now is enormously interesting. China's culture is 7000 years old (and has gotten along most of that time without much in the way of lawyers). China is now developing a legal system and profession, and that in many ways makes for the most interesting legal event of the century. "If China's legal activity is not more portentous than *Brown v. The Board of Education,*" said the Dean, "It is at least in that class. Duke's program is an attempt to play a small part in China's legal growth by enrolling a few students each year in the J.D. program."

Chinese Students in the J.D. Program

Most of the Chinese students agree that law school, particularly the first year, is extremely demanding. Gao Xi-Qing '86 found his first day of class to be ominous. On the morning after his arrival in the United States, Mr. Gao went to his first law class—Property, taught by Professor Sparks. Mr. Gao was unaware of the fact that 105 pages had already been assigned for class; he thought the professor would give an introduction to the course on the first day, as his experiences in China led him to expect. As fate would have it, Professor Sparks promptly called upon Gao Xi-Qing. Not only was Mr. Gao unprepared to answer, he could not even understand the question! During Mr. Gao's first year at Duke, he only had four hours of sleep each night. At first, he was unable to appreciate the cultural barriers he confronted in the classroom. Only later did he realize what he had missed, such as the jokes told by Professor Christie in Torts class. As he explained, even American youth know legal basics such as *Brown v. The Board of Education.* For him, everything was new and therefore required two or three times the amount of energy as compared with his American classmates.

Now, Mr. Gao is himself teaching law at Duke. In addition to his current position in the corporate division of Mudge Rose Guthrie Alexander & Ferdon in New York, Mr. Gao teaches International Business Transactions with China at Duke Law School. In August 1988, he will return to Beijing, China and join the legal faculty of the University of International Business and Economics (Wai Mao Xneyuan).

Although the usual law students' complaints of too much work, too little sleep, not enough money, and tough competition are also voiced among the Chinese contingent at Duke, the visiting students are stimulated by their studies. One student commented that American law is interesting because room is always left for argument, and more often than not, legal conclusions are open-ended. Another student likes the American adversary system in which everyone has a guaranteed right to argue his individual claims. The student noted, however, that although the right to challenge was guaranteed, one must have money to pay for the pursuit of that right. Another found it interesting that the specific laws themselves were not taught in the classroom.

Zhang Danian '89, from Shanghai, has both LL.B. and LL.M. degrees from Fudan University. Since Mr. Zhang has studied law extensively in China, he can sometimes directly compare Chinese and American law and determine what China might learn from the American legal system. Mr. Zhang finds that in the business and economic fields, American law is much more sophisticated than Chinese. In recent years, China has considered adopting some economic mechanisms from western countries. When borrowing or introducing something from a foreign source, Zhang Danian believes one must first know what one truly hungers for, then taste most of what is available, while finally digesting only some.

Wang Yaxiong '89, of Taiyuan, Shanxi Province, received his LL.B. degree from People's University of China (Zhongguo Renmin Daxue) before joining the legal faculty there. Professor Wang, notes that, although China is now focusing more atten-

While studying in China, Rottmann also taught classes in English.

Law Firms Participating in the Duke Law China Program, 1987 or 1988

Bradley, Arant, Rose & White	Birmingham
Carrington, Coleman, Sloman & Blumenthal	Dallas
Coudert Brothers	New York
Dechert Price & Rhoads	Philadelphia
Furth, Fahrner, Bluemle & Mason	San Francisco
Hancock, Rothert & Bunshoft	San Francisco
Krusen Evans and Bryne	Philadelphia
Isham, Lincoln & Beale	Chicago
King & Spalding	Atlanta
Kirkpatrick & Lockhart	Pittsburgh
Lewis and Roca	Phoenix
McCutchen, Doyle, Brown & Enersen	San Francisco
McGuire, Woods, Battle & Boothe	Richmond
Morrison & Foerster	Los Angeles
Morrison, Hecker, Curtis, Kuder & Parrish	Kansas City
Paul, Weiss, Rifkind, Wharton & Garrison	New York & Washington
Salem, Saxon & Neilsen	Tampa
Sidley & Austin	Washington
Ware & Freidenrich	Palo Alto
Womble Carlyle Sandridge & Rice	Winston-Salem

tion on legal training, there is still much that can be learned from American methods, such as making a greater investment in legal education in order to aid China's new economy-oriented policies. Professor Wang is, however, critical of case law analysis as the primary means of teaching law, considering it to be an inefficient study method.

Law Firm Participation

An important aspect of Duke's China program is the work experience which the students receive each summer. This opportunity to gain valuable practical training is made possible through fellowships offered by law firms participating in Duke's program. Bill Hirsch '64 of Morrison, Hecker, Curtis, Kuder & Parrish in Kansas City, said that one of the reasons his firm participates in the program is to give something back to society. The firm's participation is a way to contribute to developing good relations with other countries, which Mr. Hirsch believes to be important. Sang Bin Xue '89 from Harbin, China, worked for Morrison Hecker. The firm enjoyed having Mr. Sang, and treated him the same as any other clerk. He worked hard, but also had the opportunity to meet people. Mr. Hirsch mentioned that Sang Bin Xue is an excellent cook, and prepared dinners for some of the more fortunate members of the firm.

Chris Knight '71 of Isham Lincoln & Beale (now with Hopkins and Sutter) in Chicago, mentioned similar reasons for that firm's participation. In addition to helping out the Law School, Mr. Knight said an international element was added to the firm's summer program. Because cultural differences are so vast, the global, cross-cultural aspect of participating in Duke's program is very important. Participation in the program provides a firm's lawyers with an excellent opportunity to meet and work with a foreign attorney. Attorneys at the firm provided Zhao Jinsu the opportunity to see how a large corporate law firm operates, and went out of their way to give him feedback, so he could hone his lawyering skills.

Culture Shock

Judith A. Horowitz, Assistant Dean for International Studies, is coordinator of the China program. In the course of her work, Dean Horowitz participates in making admissions decisions, corresponds with prospective Chinese applicants, provides orientation for new students, acts as a liaison with those law firms who provide training for Chinese students, and personally counsels students on a wide variety of problems. Beyond the academic rigor of law school, most students find their biggest problems to be culturally related. As Dean Horowitz pointed out, many of the problems which the Chinese students face are the same as their American classmates, but the problems are often magnified because of the unfamiliar environment and the lack of a familiar support system. After arriving in this country, the students must rapidly learn new management skills. They must learn to determine what is important and what is not in coping with such matters as time, transportation, and money. They confront a different set of values in the United States. Great cultural differences exist between the two nations and are the root cause of many difficulties. Zhao Juisu, a third-year student from Shanghai, aptly describes the problems faced in dealing with American life as an "emotional and psychological dilemma or pressured experiences in a different social and cultural environment which could hardly be fully understood or appreciated by Americans."

Many of the students have left spouses and young children behind in China. Naturally, this situation is the cause of much loneliness and homesickness. The students also miss their country itself—Chinese music, food, reading materials, etc. When Li Xiaoming '90, thinks of his homeland, he remembers and misses the Chinese spirit of cooperation: "When it snows overnight, everyone in my city, Beijing, would get up early the next morning and clear up the roads together—public or private . . . ."

The Chinese students are amazingly adaptable, nevertheless, and they operate with amazing facility once they become accustomed to life at Duke. Many of them have

also enjoyed the opportunity to travel in the United States. When asked to describe their best time or favorite place, some students mentioned Disney World, stating that it was a wonderful combination of technology, imagination, education, and fun.

Some students have had the opportunity to view some of the country's natural wonders. Tian Hui, a third-year student from Beijing, worked as a summer associate with Lewis & Roca in Phoenix, Arizona. She therefore had the opportunity to visit the Grand Canyon, which she describes as "gorgeous." Several cities were mentioned as favorite places: Washington, D.C., because it is a place where all types of people can find something to suit their tastes; Boston, for its beauty, rich culture, historic sites, and good restaurants and universities; New York, because even if it is not the best place to travel, it is the best place to know America. One student considered Duke Law School his favorite place because it gave him knowledge and happiness.

Wu Yanlei '88 is from Shanghai, where he taught maritime and public international law at Fudan University. His best time in the United States happened at a church in Washington, D.C. at 5:30 in the morning on a cold winter day. Along with some "yuppies," Mr. Wu worked in a soup kitchen serving breakfast to the city's homeless. The experience left Mr. Wu feeling happy, because he learned how much some people really care for those who are less fortunate.

Wang Yaxiong, who is always curious and optimistic about life in the United States, chuckles over an experience from his summer clerking experience. After work one day, Mr. Wang went out for drinks at a local bar with a few associates from the Philadelphia firm where he was employed. Unaware that Mr. Wang worked at the firm on a fellowship and received only a living expenses stipend, one of the other clerks asked what he was going to do with all the money he was making. Wang jokingly replied, "I'll spend all my money helping the proletariat around the world." He was surprised when co-workers appeared dumbfounded—not sure whether Mr. Wang was serious.

Li Xiaoming, however, has been disturbed by attitudes toward China's form of government. Mr. Li was surprised to find here a general paranoia concerning communism. He feels that nothing is worse than being labeled a communist in American society. The tragedy is, he stated, that very few people bother to ask themselves if they really understand what communism is and how it operates in various different cultures.

When asked about their worst experiences in the United States or at Duke, most students spoke of homesickness, first year pressures, illness during exams, and cultural misunderstandings. A few students, however, had more specific stories to relate. One student had a bad experience while returning home on foot from the doctor. Suddenly, she felt extremely sick and faint, so she sat down on the ground in a parking lot. She asked a woman who was passing by for help. The woman responded, "I'm busy" and refused to help. Eventually, the student did feel strong enough to continue walking home. Later the experience helped put into perspective a discussion of the good Samaritan from her first year Torts class.

American Students Study China

The Law School presently also offers American students the opportunity to study Chinese law and society. The School offers two seminars, Chinese Law and Society and Chinese Legal History, taught in alternate years. These courses survey legal thought and practice in the People's Republic of China, focusing particular attention on the relation of law to social ideals, social change and politics. The courses specifically consider socialist theories of law, conventional criminal and civil processes, informal and extrajudicial institutions, international law and trade law. The courses are taught by Jonathan Ocko, who has served as an associate professor of legal history at the Law School on a part time basis since 1983. Professor Ocko also supervises independent study programs for students who have specific interests to pursue. He is presently serving as special editor to the symposium issue of *Law and Contemporary Problems* devoted to the Emerging Framework of Civil Law in China. The conference of symposium authors was held at the Law School in October of 1987. (See Conference Report at p. 16)

In addition to the seminar in International Trade Transactions with China taught at the Law School by Gao Xi-Qing, the 1988 Duke in Den-

Duke law students studying in China also enjoyed visiting the Forbidden City. L. to r. Dan Scheinman '88, Gerald Lee '85, Ross Katchman '87, Don Gotcher '85, Sang Ben Xue '89.

Our Chinese students enjoy socializing when not studying. Tian Hui '88 and her husband, Peng Li, with the author's husband, Steven Mandelberg.

mark program will offer a course in Trade with the People's Republic of China. The Law School has also offered Chinese language courses for law students interested in working on their language skills in addition to the Chinese language courses offered by the University.

A number of our American students have also spent some time in the People's Republic of China. Under the original agreement between the School and the Ministry of Education, nine of Duke's students with at least some prior Chinese language study spent a year at the People's University in Beijing or Fudan University in Shanghai. These students studied Chinese language, audited some law courses and taught some English courses. The students found it particularly useful to become immersed in Chinese language and culture. More of our students may be able to take advantage of this type of opportunity now that Chinese universities are establishing programs geared to the needs of Americans and Europeans who want to study in China.

The Future

Just as changes are occurring in China, Duke's China program may also see some changes soon. In the early 1980s, Duke Law School stood alone in having Chinese J.D. students from the People's Republic of China. Duke is no longer unique, as many other law schools now have students from China. Originally, the Law School, by agreement, accepted qualified students from only four Chinese universities. Dean Horowitz stated that admissions decisions will no longer be so exclusive. Duke will rely more on a free market to admit the best candidates. In the future, the Law School may reduce the number of new students each year, to make the program easier to administer. The program will also begin to encourage more LL.M. candidates.

In considering the possible effect that Duke's Chinese alumni may have upon the development of law in their own country, Dean Carrington remarked that it would be unwise for China to emulate American law as law cannot be simply transplanted. Such a transplant would be suspect by nature. The Dean hopes that exposure to American law will open the Chinese legal mind to other possibilities, with the result being more creative than it would have been otherwise.

Wu Yanlei believes that, in the long run, Duke's Chinese alumni may exert a powerful influence in China's legal development and foreign trade sector. Mr. Wu thinks that China will change its power structure and the way that talented people are put into positions. These people will then affect the process of modernization. Ten years of an open door policy is up against thousands of years of tradition, as well as nearly forty years of orthodox Marxist teachings. Yet in spite of the frustrating ups and downs that reform brings, China will likely continue to change.

Changing Deanships

Several law alumni in addition to Pamela Gann are involved in changing deanships. Frank T. Read '63 will step down as Dean of the University of Florida College of Law on June 30; he has served as dean there since 1981. He has recently accepted the deanship at the University of California Hastings College of Law in San Francisco, which he will begin on August 15. Read will be succeeded at Florida by Duke Law alumnus Jeffrey E. Lewis '69, who has served as Associate Dean at that school since 1982. Thomas A. Edmonds '65 also recently changed deanships. He left the deanship of the University of Richmond School of Law in December 1986 to become dean at the University of Mississippi Law School in January 1987. Dale A. Whitman '66 will be returning to teaching at the University of Missouri School of Law at Columbia where he has served as dean since 1982.

When Dean Read steps down at Florida in June, he will already have served as a law school dean for fourteen years and as a teacher and administrator even longer. Following a stint in private practice with a law firm in Minneapolis and in corporate practice with American Telephone and Telegraph, Read returned to Duke Law School as an assistant professor and assistant dean; he later served here as associate dean and tenured professor. In 1974, he became dean of the University of Tulsa College of Law, and in 1979 moved to the deanship of the Indiana University School of Law at Indianapolis. In 1981 he accepted the deanship at the University of Florida School of Law with the avowed goal of "moving that school to the first rank of America's great public law schools." The consensus in Florida is that the Read years constituted a period of continued progress which has benefited the school enormously resulting in national and international recognition. Highlights of Read's tenure cited by his colleagues include:

Frank T. Read '63

—Construction and occupation of the $4.1 million Bruton-Geer Hall, a second law school building which has relieved a severe space shortage at the School. Most of the funding for the project was raised from private sources despite the fact that the country was experiencing a recession, and the fact that the Law School had never run a major capital campaign and had only a small annual giving program. Dean Read spent much of his tenure, particularly in the early years, on the road visiting with alumni who not only contributed to the construction of the new building but then followed through with increased support to the school's annual enrichment fund.

—Four years of Quality Improvement Funding from the Florida Legislature, amounting to $2 million above and beyond the normal state funding, though Read has expressed disappointment that the School has been unable to receive funding from the Legislature for a library addition.

—Establishment of three $1 million Eminent Scholar Chairs through a combination of private and public funding and two $300,000 endowed professorships which has allowed the School to recruit and retain leading scholars by offering competitive faculty salaries.

—Establishment of three $100,000 scholarship endowments and several annual scholarships and awards which has strengthened the schools' ability to recruit increasingly well qualified students and to reward outstanding achievement.

—Increased national recognition for the School and its faculty stemming from involvement in national organizations and conferences and innovative curricular programs and research. Read's philosophy was to "recognize that we are an integral part of the legal profession. As the entry point to the profession, it is important that the profession understands what we're doing and that we understand the problems facing the profession. I believe in a high degree of dialogue between the profession and the academy."

—Broadening of the curriculum, with emphasis on legal writing, skills training, international law and the enhancement of traditional law courses. In response to the expressed needs of practicing attorneys, Florida restructured its legal research and writing program to provide individualized instruction and made Legal Drafting a required course. The College now has major writing requirements in all three years. Several new international curricular programs have been implemented including a summer orientation program for international lawyers and law students, one of only two comprehensive orientation programs at U.S. law schools for those who plan

to enter American graduate programs. According to Ken Pye, president of Southern Methodist University and former professor and dean at Duke Law School, Florida is making its mark in the international arena and truly "internationalizing the school."

Despite the success and enjoyment he has reaped as dean at Florida, Read says that he and the school are ready for a change. "I think I have stayed long enough to provide some continuity. It's now time for the institution to seek new leadership and renewed energy." He is looking forward to his new position at Hastings. Evidently, Read's experience in Florida and his strengths in the areas of alumni relations and private fund raising figured prominently in his selection, which followed a national search. Hastings is the nation's second-largest state supported law school based on enrollment and is the only "free standing" public law school in the country, meaning that it is governed by an independent board of directors with the dean functioning as its chief operating officer. In accepting the position, Read noted "Hastings is an outstanding law school with great potential. This position offers me a challenge to use whatever talents I have in a new and creative enterprise."

Jeffrey E. Lewis '69

When Read steps down as dean, he will be handing the reins to Associate Dean and fellow Duke law alumnus, Jeffrey Lewis '69. Lewis joined the law faculty at the University of Florida as an assistant professor in 1972, having previously served as an assistant professor at the University of Akron School of Law. He was promoted to associate professor in 1975 and to full professor in 1977. In 1982, he was named associate dean with responsibility for budgeting and curricular planning. A specialist in civil procedure and evidence, Lewis intends to continue teaching while fulfilling his new administrative role. Lewis says that, as dean, he hopes to build upon the successes of past deans to ensure that Florida continues to have one of the best public law schools in the country. "Our strength lies in our alumni, faculty and students, and I plan to call upon that strength to realize our potential."

Dale A. Whitman '66 is stepping down as dean of the Law School at the University of Missouri in Columbia. Whitman has devoted most of his professional life to teaching and law school administration with brief stints in private and government practice. He has served as dean at Missouri, which he describes as an immensely rewarding and satisfying role, since 1982. In reviewing his years as dean, he notes several positive changes that have occurred at the School during his tenure. First, a new building was constructed to provide badly needed space. Official dedication ceremonies for the building, which was funded by the legislature and by alumni and friends of the School, will be held in September. Though pleased with the addition, Whitman's challenge to the School and its alumni as he leaves the deanship is to help see to it that the School receives the financial support for its faculty and library that will maintain the high quality of its programs. In 1985, the School established a Center for the Study of Dispute Resolution under faculty direction. Building on this project, faculty members developed a book and accompanying simulation exercises on dispute resolution for first-year law students, and the school is becoming nationally known as a leader in this growing and increasingly important field.

Dale Whitman '66

Whitman also cites success in recruiting increasing numbers of minority students, many of whom have already established successful careers while remaining involved with current minority students and current programs at the School. The school has also recruited a number of strong faculty members, and Whitman commends the entire faculty for their ability to balance fine teaching, publication and service to the bar.

All in all Whitman finds, "Morale is strong, and productivity is high," so he leaves the deanship with very positive feelings. He does, however, "long to return to the faculty and to full-time teaching and research." While serving as dean, he has continued to collaborate with Grant Nelson of the Missouri faculty in writing a series of books and articles in the field of real estate finance. The two have plans for more books and articles, and Whitman looks forward to having more time to devote to "hold up my end of the partnership."

Thomas A. Edmonds '65 left the deanship of the T.C. Williams School of Law at the University of Richmond in December of 1986. In

January 1987 he returned to his home state of Mississippi to become dean of the Law School at the University of Mississippi, where he began his teaching career twenty years before. The Jackson Mississippi native began his teaching career at the Ole Miss Law School in 1966 and served there until 1970 with the exception of one year spent at Duke Law School as a visiting faculty member. From 1970 to 1977, he

Thomas A. Edmonds '65

taught at the Florida State University Law School. Edmonds then served as dean at Richmond for ten years, which he professed to be "long enough for anyone to serve in this type of position at any one institution."

To commemorate his deanship, the University of Richmond Law School Association presented a portrait of Edmonds to the School. At the portrait unveiling, the president of the Association read a resolution of appreciation for Dean Edmonds which thanked and commended him for his "many years of devoted and distinguished service to the [School]." Among the accomplishments cited by the Association were: the establishment of a Law School Placement Office and creation of the position of Associate Dean for Academic Affairs; the addition of a library wing; a dramatic increase in funding through the Law School Annual Fund; the establishment of a firm scholarship program, and the expansion of Virginia's Tuition Assistance Grant Program to include law students. In addition, the school's faculty was increased by the addition of both full-time and adjunct members; the curriculum was broadened; and a number of clinical placement programs were established.

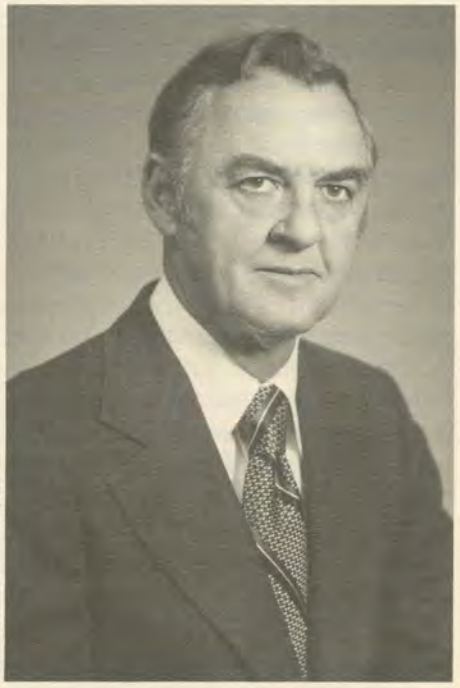
Edmonds left Richmond with mixed feelings as he had enjoyed working with the students, faculty, and alumni there, but he was also eager to take up the new challenges awaiting him at the University of Mississippi—that state's oldest and the nation's fourth oldest state-supported law school. Since his arrival at the Mississippi Law School, he has been working with the faculty and administration to identify special areas in which the school may become well known while holding onto long-established traditions. Because he feels that it is "critically important that the basic budget at the University be augmented," Edmonds is making fund raising—both public and private—a top priority. In an effort to spread the word regarding his hopes and plans for the School, he spent a great deal of time following his arrival at Ole Miss meeting with legislators and alumni.

It is gratifying to note that so many of our alumni are engaged in shepherding the institutions which will be providing the next generation of our profession.

Alumnus Profile

Versatile, Energetic Leader

James M. Poyner '40



Burnie Batchelor Studio, Inc.

Versatility and energy are perhaps the best words to describe Jim Poyner. These qualities have made him a leader in many areas—including business, law and community service—in North Carolina and have kept him vitally involved in the growth and change in the state, and, in particular, in the Research Triangle area.

Poyner refers to himself as a true resident of the Triangle. This area is his home, and his roots grow deep here. Poyner was born in Raleigh where his great grandfather, Aldert Smedes, had founded St. Mary's Episcopal College in 1842. Rev. Smedes was succeeded as head of the school by Poyner's grandfather, Dr. Bennett Smedes in 1877. Poyner later served the School himself as a member and later Chairman of its Board of Trustees.

The Student Musician

Poyner's musical talent and his considerable energy helped him to finance his college career. By the age of 12, having become proficient on the drums and trombone, Poyner was playing road engagements with his high school orchestra. In fact, before the advent of child labor laws, Poyner was appearing with his mother and brother on WPTF's late-night Night Owl show. Thus, it seemed natural to form his own band—the Collegians—in 1933. As Poyner recalls, "That was in the '30's and job prospects weren't too good. We felt fortunate to be able to pay our way through School. We played all over the South and in New York City." In fact, the band members did not have a weekend or summer night free from 1933 through 1937.

Though his career eventually led in other directions, he continues his interest in music. "I haven't played professionally for many years, but I do a little arranging and have done some writing." Another member of his band, Les Brown, did pursue a musical career forming Les Brown and his Band of Renown. Poyner has been working with his old friend and colleague on a project entitled "Fifty Years of Les Brown Music" in California.

Poyner laughingly claims to have been on "the ten year plan in college." He received both a bachelor's degree and a master's degree in chemical engineering at North Carolina State before entering Duke Law School. "My thinking was that the combination would prepare me as a patent lawyer or help me up the corporate ladder with a chemical company. Since then, I have found that the math and accounting courses I took and the type of thinking processes developed by studying the sciences and the law have served me well."

The Lawyer

Following his graduation from Duke Law School, Poyner began practicing law in Raleigh. His legal career in Raleigh was, however, interrupted after two years when, in 1942, he was called into the Army. The military made good use of his background. Poyner served in the legal division of the Chemical Warfare Service. In fact, as a 28-year-old major, he became the commanding officer of a 13-state legal division headquartered in Dallas, Texas. He received the Legion of Merit for his service.

While in Dallas, he continued to think of and promote his home state. So successful was he in fact that he returned to the state not only with his wife, Florence, whom he met and married in Dallas, but also with two army buddies who became influential members of the Triangle community. John Geraghty of New York became a partner in the law firm Poyner founded upon his return to the state, and Charles Cameron of Mississippi led in the formation of Cameron-Brown mortgage company and First Union Corporation.

The law firm established by Poyner in 1946 became Poyner, Geraghty, Hartsfield & Townsend in 1955. Over the next thirty years, the firm prospered and grew into

one of the leading law firms in the state. Poyner recalls, "We always had the philosophy of growing with our clients. As they prospered and grew, so did we. Also, our proximity to the Research Triangle Park was a major factor in our growth. As new people came in, we got our share."

On January 1, 1986, the firm merged with Spruill and Spruill to create Poyner & Spruill, one of the largest law firms in the state. A year later, on January 1, 1987, Poyner & Spruill merged with two other law firms—Harris, Cheshire, Leager & Southern and Meadows Johnson & Spinks—to become the largest firm in the Triangle area and the fourth largest in North Carolina. On May 1, 1988, Poyner & Spruill opened a Charlotte, North Carolina office.

Poyner insists, however, that the firm will not forget its roots. While its practice is statewide and includes a number of multi-national companies, a majority of its clients are located in the Research Triangle area and Eastern North Carolina. "We have always been a business oriented firm—securities, taxes, banking, real estate and corporate law. I don't see that changing." The firm is organized into four divisions: business, real estate, litigation and—recognizing the increasing complexity of "the connections between business, government and the law"—government relations. Poyner feels that the firm is fortunate to have partners who are familiar with the complexities involved in this type of practice. Co-Chairmen of the Government Relations division include former Governor James Hunt, former Associate Justice of the North Carolina Supreme Court, J. Phil Carlton and Duke Law School alumnus and former State Representative Marvin D. Musselwhite, Jr. '63. Musselwhite is also Chairman of the Real Estate Division and serves as Co-Chairman of the firm's Management Committee.

In addition to the time devoted to his private law practice, Poyner has devoted his considerable energy to the administration and enhancement of professional associations. He served as president of the North Carolina Bar Association in 1967-68 and was Chairman of the Bar Association Committee which solicited the necessary funds for land acquisition and construction of the Bar Center. The Center was built with funds donated by North Carolina lawyers and was one of only a few such centers in the country.

Since 1967, he has been a member of the ABA National Conference of Bar Presidents. He is a Life Member of the Fellows of the American Bar and a member of the American Judicature Society, serving as Director from 1972 to 1976. He has also served his Law School. He was a member of the original Law School Board of Visitors and is presently a life member of that body.

Business and Community Leader

Poyner's energy has extended to a wide variety of activities in the business community and to the pursuit of civic improvement. In addition to founding his law firm, Poyner was co-founder of Cameron-Brown Company, mortgage bankers, and founder and Chairman of the Board of the Eastern Standard Insurance Company. Much of his time in recent months has been spent as Chairman of the Executive Committee for First Federal Savings and Loan Association where he has also served as Director and Vice Chairman of the Board.

Poyner's community interests ranged from local to regional and statewide. He served as president of the Raleigh Chamber of Commerce. He also served two terms in the state Senate in the late 1950's. His most significant contribution to the region, however, may have been the vision and leadership he contributed to the growth and continuing success of the Research Triangle area. "Governor Hodges had the vision and foresight," Poyner remembers, "but I think the development of the Triangle area was almost to be expected. As a true Triangle resident, I just knew that the universities would be the center of something wonderful. I was happy to be a part of it." Poyner was a big part of it. In 1961, when, as he recalls, there were less than 500 people working in Research Triangle Park, Poyner served as General Chairman of the Triangle Area Executive Tour, which was one of the first programs designed to bring executives from across the country to the area so they could see its potential for themselves. As Poyner observes, "That tour helped us contact a large, select group of people at one time."

Other such visits followed as the area developed. In 1964, as President of the Raleigh Chamber of Commerce, Poyner was involved in a similar venture made possible by the hard work and cooperation of business and government leaders from around the region and across the state. The Chambers of Raleigh, Durham and Chapel Hill with the cooperation of nine other chambers arranged for a two-day tour of the Piedmont Crescent for then Governor Sanford and 280 business leaders. Poyner observes, "We never had a problem getting the cities' business and government to cooperate. It always seemed that folks just linked arms and made things happen." The results of this kind of showcasing the potential of the area are obvious. The Triangle area continues to grow and attract new people and new technology. Never content to rest on his laurels, however, Poyner points out that "as we continue to grow, I believe one of the main problems we must address, in addition to the basic challenge of growth and how to manage it, is where will the institutions that started it all, the universities, expand. In order to continue our progress we must find ways to help the institutions grow."

Since 1981, Poyner has been semi-retired. Though the emphasis so far seems to have been on the "semi" rather than the retired, he is looking forward to having more time to play golf—a hobby which has become a passion. Indeed, he has played in sixty-four pro-ams in the last twenty years including fourteen Bob Hope Classics. He is hoping to be able to spend more time at this pursuit.

SPECIALLY NOTED

Williams Retires as Chairman of Board of Trustees

Randy Berger

L. Neil Williams, Jr. (A.B., 1958; J.D., 1961) stepped down as chair of the Board of Trustees of Duke University in May after deciding not to seek a sixth term. Williams had served as chair since 1983. In announcing his decision, Williams said that although he could continue to serve enthusiastically in the chair position, "five years seem[ed] like a right time to change . . . . It is important that other people have the opportunity to make their contribution."

In order to ensure a smooth transition, Williams informed the Board in May 1987, one full year in advance, that he would not seek a sixth term as chair. During the past year, Williams has worked closely with Fitzgerald Hudson, vice-chair of the Board of Trustees, Williams' successor as chair. Williams said he will also continue to serve on the Board's Executive Committee through the 1988-89 academic year to provide further assistance with the transition process.

Williams' term as chair coincided with numerous changes and accomplishments at Duke, including the retirement of President Emeritus Terry Sanford and the search for a successor; record numbers of applicants to the undergraduate and graduate schools; successful capital fund raising projects and the planning, approval, and/or completion of a number of "brick and mortar" projects, including the Law School's own plans for a building renovation/addition effort.

Viewing the proper role of the Board of Trustees as a policy-making body largely removed from the day-to-day administration of the University, Williams said he focused on two major objectives while chair. First, he insisted that the university engage in "long-term planning in a fairly meticulous way." Calling this an "ongoing process," Williams believes that the University must constantly work to "identify its true needs over time." One visible result of this planning emphasis is the establishment of the Duke Land Resources Committee which studies the University's long-range land use. During his tenure as chair, Williams also continued what he termed the "targeted excellence" approach initially proposed in a report written several years ago by A. Kenneth Pye, former Chancellor of the University and Dean and Professor of Law, who is currently president of Southern Methodist University. According to Williams, since it is "basically impossible for Duke to do everything well, it is important for the University to focus on things it *can* do well—that will make a contribution that is distinctive."

With respect to the Law School, Williams notes that it is one of the areas of the University that has made "tremendous progress" under the targeted excellence approach. However, he adds that "an unfinished item on the agenda and a priority concern is the need to enhance the Law School's physical facilities." Williams views the Law School's current building project as a critical step necessary to maintain both the Law School and University's academic preeminence. He emphasizes the need for "great cooperation" within the University to ensure the project's success over the next several years. On the issue of cooperation, Williams favorably notes that the "good thing about the Duke Board of Trustees is that they're trustees for an entire institution. This sort of orientation is important and should continue as it helps ensure University-wide progress."

Describing his time as Chair of the Board as a "fascinating experience—the most interesting and challenging volunteer position that I have ever had," Williams will continue to serve the Board as a trustee through the remaining four years of his second six-year term (University by-laws limit trustees to two consecutive six-year terms). "I believe in the institution—the need to support it financially and otherwise. I am happy that I've been able to give something back to Duke through service on the Board. And as always, Duke continues to give something to me—my years on the Board have been a wonderful learning experience."

Active in Law School alumni affairs as a member of the Law School Board of Visitors, Williams says that he hopes to have more time to be "directly involved in law school affairs in the future." He notes, however, that his immediate plans are to "be fully engaged in the practice of law. I am lucky that my family and partners at the law firm (Williams is currently Managing Partner, practicing in the area of corporate law, at Alston & Bird in Atlanta) have been so understanding in providing the flexibility to allow me to attend to my Duke responsibilities. It's now time for me to make up for their indulgence."

Hardin named UNC Chancellor

Paul Hardin '54 has been elected to the post of Chancellor of the University of North Carolina by the UNC Board of Governors upon the recommendation of UNC President C.D. Spangler, Jr. He takes office July 1, 1988. At a press conference announcing his selection, Hardin stated that he would bring "stamina, enthusiam and a lot of experience" to his new post. He has previously served as president of Wofford College, Southern Methodist University and Drew University. Though admitting a lack of experience at a large public research university, Hardin finds that "the very thing that makes some people wonder if I'm sane is what attracts me. Something I have not done in a very interesting life full of experience and full of a lot of happiness and satisfaction is to preside over a large public university with all those political processes and structures. I can't wait to give it a try." Hardin was nominated for the chancellorship after an eight month national search that attracted 105 nominations and applications.

While at Duke Law School, Hardin served as editor-in-chief of the *Duke Law Journal.* Following his graduation, he practiced law in Birmingham, Alabama and served with the United States Army Counter Intelligence Corps before returning to join the faculty at Duke Law School in 1958, becoming a full professor in 1963. In 1968, Hardin became president at Wofford College in South Carolina where he remained until 1972 when he was named president of Southern Methodist University in Dallas. He resigned that post in 1974 following disagreements with some university trustees over his decision to report and correct infractions in NCAA rules. In 1987, SMU was hit with the most severe penalty ever administered by the NCAA when the football program was suspended for continued infractions of NCAA rules even while on probation.

Hardin has been president at Drew University since 1975, where he is said to employ a low-key management style with high visibility in institutional relations. During his thirteen years at Drew, the school's endowment grew from $22 million to $70 million, and Hardin is looking forward to one of his chief tasks at UNC—leading the campus in its bicentennial fund raising effort. Hardin also hopes to work to strengthen professional programs and to improve faculty salaries and fringe benefits. He does not, however, foresee radical reorientation as the University is already a leader among state colleges and research universities. Hardin and his wife, Barbara, both North Carolina natives, are looking forward to returning to the state.

Horowitz named Murphy Professor

Donald L. Horowitz has been named the Charles S. Murphy Professor of Law. Horowitz, who is also a professor of political science, began his teaching career at Duke in 1980. With the exception of service as an attorney in the Civil Division of the U.S. Department of Justice, he has primarily been engaged in research at the Harvard Center for International Affairs, the Council on Foreign Relations, the Brookings Institution and as senior fellow at the Smithsonian Institution's Research Institute on Immigration and Ethnic Studies.

Horowitz, who has served as Chairman of the American Academy of Arts and Sciences Planning Group on Ethnicity since 1984, has lectured and published extensively. In 1977, he received the Louis Brownlow Prize of the National Academy of Public Administration for his book, *The Courts and Social Policy.* His most recent book is *Ethnic Groups in Conflict.* He is also a recipient of the Woodrow Wilson Center Fellowship, a Rockefeller Foundation Fellowship, and a Guggenheim Fellowship.

Charles S. Murphy, a North Carolina native, graduated from Duke University in 1931 and from Duke Law School in 1934, and also received an LL.D. in 1967. Mr. Murphy was a distinguished public servant, holding positions in the administrations of Presidents Truman, Kennedy and Johnson. He also served on the Law School Board of Visitors and on the University Board of Trustees.

Professor Sparks Retires*

"What did Hattie have?" is the infamous question Professor Bertel M. Sparks perenially asked his first year property students early in the semester when discussing the case *Lewis v. Searles.*[1] After several invariably incorrect or at least imprecise answers (My notebook contains a marginal notation of the Professor's general advice that day: "Be precise—*know* what your words mean!"), further brave volunteers would be acknowledged by Professor Sparks. He would lean far over the lectern with both arms sprawled as if to get a better measure of his students, fix his gaze for several seconds on a student who had her hand raised, take off his glasses, and finally invite comment with his trademark query: "Well, what do you want to tell us?" After almost forty years as a law professor, Professor Sparks has retired but not before we could turn the tables and put his question back to him.

A native of Kentucky, Professor Sparks showed a keen interest in the law at an early age. During his grade school years, he would sneak away from his chores several times per year on days when the circuit judge made his visits to McKee Village. Once inside the courtroom, the future law school professor was treated to an interesting docket—primarily an assortment of bootlegging and moonshining cases, larceny and assault actions, with an occasional murder prosecution thrown in for good measure. "I always knew I was going to be a lawyer someday," Professor Sparks recalls. Although the product of a rather modest background—few thought he would "attend college, let alone law school"—Professor Sparks would not give up on the dream of the young man who hung around the local courthouse—he

would find a way to attend law school.

But the path to law school would be a bit longer than average and contain a few detours. After working his way through Eastern Kentucky University during the worst period of the economic crisis of the 1930s, Professor Sparks graduated in 1938 with a B.S. degree as well as some pressing financial obligations. "The country was still in the midst of the depression, and I quite simply didn't have the money to attend law school." Instead, he found a job as a teacher at a local public high school, teaching a "little bit of everything—history, public speaking, math, commercial law, and 'business machines,' or typing as we now call it." Professor Sparks taught for three years, during which time he applied and was admitted to law school. Planning to enroll in law school in the fall of 1941, Professor Sparks was diverted by yet another national emergency—World War II. He was drafted into the U.S. Army in June 1941, so near and yet still so far from attending his first law school lecture.

If he could not attend law school, however, Army life soon did not appear to be all that unpleasant an alternative. Drafted with a "one year commitment," the would-be law student reported to basic training in Fresno, California. Violating one of the cardinal rules of the enlisted man on his first day of basic training, Professor Sparks volunteered when an officer asked if any of the new recruits could type. ("It didn't sound like too bad a deal to me.") Sparks was quickly assigned to the personnel and administration unit at the base. "I never took another day of basic training," he recounts. "The base officers essentially 'passed me through' and looked the other way!"

Thus began a four and one-half year stint in the Army that encompassed such diverse experiences as patrolling the California coast following the Japanese invasion at Pearl Harbor, overseeing various administrative responsibilities in domestic based personnel assignments, and "trying to catch spies" during overseas duty with the Counterintelligence Corps in Casablanca, Iran, Algiers, France and Germany. Always a quick study, Professor Sparks was given increasingly important duties in the Counterintelligence Corps. He considers his toughest and most sensitive assignment acting as special liaison to General Eisenhower's headquarters in Paris coordinating personnel activity for the Allied Southern European invasion in August 1944. Although given the opportunity to return to the United States in a teaching capacity at an Army training post in early 1945, Professor Sparks did not want to return to the States unless his service commitment was over and he could attend law school. ("I didn't want to go back home unless I could get on with *my* life.") So he violated another cardinal soldier's rule ("get back to the States any way you can"), had himself declared "essential" by the commanding officer in Paris, and stayed on to assist with the Allied occupation of Europe. He remained in France until October 1945 when he received his honorable discharge and returned to the States.

The war was over, the G.I. bill had been enacted and Professor Sparks now had the time and money to attend law school. He enrolled for the next entering law school term at the University of Kentucky

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**The author, Mark DiOrio '88, took first year property with Professor Sparks.*

in January 1946. (To accommodate demand, Kentucky was admitting students at the beginning of each quarter.) Possibly trying to make up for lost time, Professor Sparks attacked the study of law with a vengeance. He completed the requirements for the LL.B. degree in just slightly over two years, attending law school for nine consecutive quarters, and compiling an outstanding record of academic achievement in the process. Professor Sparks was graduated first in his class at Kentucky and served as Editor-in-Chief of the *Kentucky Law Journal.*

It was at Kentucky that Professor Sparks crystallized an interest in becoming a law professor and decided to pursue graduate study in the law. He chose the University of Michigan for his graduate work—a likely choice considering that Michigan had one of the great property scholars of the era, Lewis Simes, on its faculty. Professor Sparks explains, "I thought Michigan was the only place for me. I had wanted to attend graduate school there for quite some time." Professor Sparks was a Cook fellow at Michigan and studied directly with Simes, his advisor: "He was a wonderful advisor—a real gentleman, extremely supportive of the graduate students, generous with his time, and not one to show off his exhaustive intellect at the expense of making any of us [the graduate students] look or feel stupid."

After Professor Sparks received an LL.M. from Michigan in 1949 (he later also earned an S.J.D. from the University), he moved directly to a teaching position at New York University. Although New York was a long way from both McKee Village and Ann Arbor, living in a major city was another one of those experiences that Professor Sparks just "had to have. New York seemed to be the place to be. It was where it was at, so to speak." At NYU, he taught primarily in the areas of Wills and Trusts and Future Interests, and also served for a period of time as Director of Admissions. While at NYU, he also published two books, *Contracts to Make Wills* (1956) and *Cases on Trusts and Estates* (1965), as well as numerous articles in the fields of both law and economics.

At NYU, as at Duke, Professor Sparks has counted many "movers and shakers" in the world of law, politics and business among his former students. For example, he fondly recalls meeting a particular incoming first year student on a Saturday afternoon several days before the fall term was to begin while the latter was walking around the halls of the NYU law school ("casing the joint, most likely"). After some introductory pleasantries, Professor Sparks asked the young man from Oregon what he hoped to do with his law degree. The student replied that he wanted to be a United States Senator and planned to return to his home state as soon as practicable to challenge and, of course, beat the long-term incumbent in a local election. Maybe seeing a similarity in the young man's determination to his own early ambition to attend law school, Professor Sparks was impressed with the student's drive and sense of destiny. A few short years following his graduation from NYU, Bob Packwood played out his scenario perfectly, winning the first of many terms to the U.S. Senate.

Professor Sparks came to Duke Law School in 1966 after a stint as a visiting professor. "I liked it so much that I decided to stay!" While at the Law School, he continued teaching in the areas of Trusts and Wills and Future Interests, but also added the first year property course, which he hadn't taught that often at NYU. Professor Sparks' property lectures have been a mainstay of the first year curriculum at Duke for many years. Well known for his insistence that students prepare case briefs for class, Professor Sparks reports that "even if they don't like to do it at the time, most students eventually realize that preparing briefs and closely reading the cases helps them immensely in the long run. They're better able to see both sides of an argument and to recognize and distinguish closely analogous fact patterns." He has always taken a keen interest in the academic and personal progress of his students, assisting many with their job searches over the years, both during their time at the Law School and following graduation.

Although Professor Sparks believes that the intellectual caliber of law students at Duke continues to improve, he has noticed that today's students in general appear to be less focused on the practice of law than they once were. While Sparks concedes that this is not necessarily a bad development, it does strike him as odd that many current students have never been inside a courtroom. But, whether headed for practice in the courtroom or not, Professor Sparks' students have received excellent training in his classes—he has always demanded that students begin developing high standards of professionalism from their first day in the law school environment. Calling himself a bit "old fashioned," Professor Sparks emphasizes that his teaching philosophy has always been simple—to impress upon students the virtues of hard work and thorough preparation; to instill in them a consciousness of their future role and responsibilities—both to clients and to the larger society—as attorneys; and to foster a sense of commitment to the practice of law as an honorable profession.

When asked about future plans, Professor Sparks' face breaks into the somewhat cryptic smile he often flashed during his lectures when simplifying a particularly difficult case or mystifying concept: "I've been near enough to the top of life's mountain," he says, "to see the other side. And I'm happy to report that there is life after retirement!" Unfortunately, for future generations of Duke students, that retirement means that there will be something missing from their law school experience, not the least of which is that *Lewis v. Searles* will just become another case in the Property Casebook.

1. 452 S.W.2d 153 (1970). For those who are interested, Hattie Searles had a fee simple determinable subject to divestiture of an undivided two-thirds interest upon her marriage.

In Memory of David F. Cavers*

Duke University Archives

I am honored to share in this celebration of the life of David Cavers. I come here in two capacities—as his student and as the representative of Duke Law School, an institution which still bears his stamp.

I first met David Cavers in September 1954, when as a third year student I sought admission to his graduate seminar on Legal Education. From that day until his death, David Cavers was my teacher. Thus, as recently as 1986, we held a long, and for me instructive, discussion of the vituperative controversy in which I became enmired by my use or misuse of Mark Twain's reflections on the subject of professionalism. That discussion was a reprise to a conversation held in 1955 about a seminar paper I had written on Karl Llewelyn's ideas about legal education. On that earlier occasion, we had reflected on the nature and causes of the vituperation between Karl Llewelyn and Roscoe Pound. On both occasions, the teacher evaluated the student's appreciation of the gentle virtues which the student sadly lacked.

Never a man to lead the unexamined life, David instilled an ambition perpetually to question the assumptions which underlie and shape the institutions which we as law teachers inhabit, preserve, and extend. For these lessons, though imperfectly mastered, I will always be grateful.

I am here today, however, not merely to express my own gratitude, but also that of an institution which greatly benefited from its association with David Cavers. Our professional law school at Duke was founded in 1930; David came to us in 1931, and remained on our faculty through his wartime service in the government until his departure to Harvard in 1945.

David was revered by his students and colleagues at Duke. There are barely 200 living alumni who attended our law school during David's time, and I have received letters from over forty in the last month, most recalling a special event in which David had indelibly touched their lives. Most share the conclusion written in a 1934 postcard by a first year student to his parents in Cedar Rapids: "Cavers was best." There are, however, more specific themes to those letters.

Genius is a word that appears frequently. That is a big word, yet one not lightly used. Its use in this case reflects enormous admiration for David's intellectual gifts, particularly for his ability to discern and depict central realities even when obscured or eclipsed by multiple illusions.

He wrote a pure prose and imposed that style on his students, where it is still reflected in their letters written a half century later. It was a style also imposed on his journal, *Law and Contemporary Problems,* during the years of his editorship. That, I suspect, as much as the novel nature of the publication accounts for its stunning success, a success which our school enjoys to this day.

But it was more than a literary style; it was an eye for the previously unrecognized center of a matter enabling him to make complex matters truly less complex. Indeed, alas, if only there were more men like David Cavers, we would not be bound to fulfill E.B. White's awful but indubitable prophecy that "complexity has a bright future." Oh that David might have been the draftsman of the Tax Simplification Act!

Yet even his pure style and his eye for simplifying themes were not all. Due must be given to the idea of David's journal, which featured cross-disciplinary study of current legal issues as a constant theme. It has been said that a genius is one who does the right thing first, and, in that sense, his journal was ingenious. It reflected, more perhaps than any other institutional development of the first half of this century, the creative force of Legal Realism, the dominant jurisprudential expression of that time. In his first

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**These remarks were delivered by Paul D. Carrington, Dean at Duke University School of Law, at a ceremony celebrating the life of David Cavers, held at the Memorial Church, Harvard University, April 22, 1988. Professor Cavers died March 5, 1988.*

foreword, he insightfully contrasted his enterprise with that of the *Harvard Law Review,* which he had earlier served as president. He, of course, venerated the *Review*; yet it is now true that *Law and Contemporary Problems* has become as venerable as was the *Review* at the time of his writing.

It is a further mark of David's genius that, although he edited an interdisciplinary journal, he was a lawyer's lawyer, making no pretense of attainment in fields other than his own. There is irony that a founding editor of such a journal should be primarily devoted in his own work to the field of conflict of laws, a subject that can rightly be described as a study of problems that lawyers make for themelves, problems having almost no connection to the insights of any other academic discipline. Indeed, when *Law and Contemporary Problems* published a symposium in honor of David on the subject of Conflict of Laws, it was not to be imagined that anyone but lawyers could be asked to contribute. Some day we may have scholarship on the Economics or the Sociology or the Psychology of Conflict of Laws, but it would be a bold special editor who would undertake responsibility for a symposium of such articles. What is reflected in this irony is the breadth of David's mind and the range of his interests, both so great as to justify the designation of genius. He brought remarkable intellectual breadth to bear on his arcane field.

Genius was one theme of our regard for David, but it was secondary to our esteem for his kindness as a teacher. His kindness extended to the classroom even at a time when harsh rigor was the standard affect of the law teacher, an affect which provided the inspiration for the legendary Professor Kingsfield. As a teacher, he was "swift to hear, slow to speak, and slow to wrath." Well-remembered still is an event in which David called upon the ablest student in his class to defend a judicial decision. An able defense was made and followed by a series of gentle questions which turned the defense on its head, revealing its fundamental unsoundness. This produced a concession by the student that he had unwisely approved the decision; the concession was then followed by another series of gentle questions which revealed the even greater weakness of the opposite position which the student had just adopted as his own, causing him at last to reaffirm his original support of the outcome, if not the reasoning, of the decision.

But David's kindness to Duke students went far beyond the classroom. Remembered are the beckoning call of the clanking of iron against iron in late spring afternoons behind our library, when David would demonstrate the superiority of the South Carolina over the North Carolina method of pitching horse shoes. Remembered also was the variation on ping pong doubles played with lungs not paddles, the object being to blow the ball off the table at the adversaries' end. One student from California, then in his first year of law school, still remembered the menu of a 1934 Christmas dinner at the Cavers' home. Another recalled an unexpected visit to his Denver law office in 1940. Many recalled his help in securing employment, no easy matter for a graduate of a new school hitting the streets fifty years ago. Because of his kindness and concern, members of that generation of Duke students consulted David about their careers for many years, continuing to do so long after he had come to Harvard. And more than one continued to seek his counsel following his retirement to Florida.

Mingled with that kindness was a gentle humor that David brought to his teaching and writing. It was an understated yet contagious humor. Often it was just an unexpected flourish, perhaps merely a turn of phrase, that interrupted the simple purity of his language. Or perhaps more frequently it was simply an astonishing economy of language.

The humor is not really captured in remembered events. It is perhaps better preserved in David's writing. Thus, as a one-time student of the conflict of laws, I carry with me David's engaging hypothetical used as a theme to his elegant 1933 article:

> A salesman induces a married lady in state A to order several feet of *belles lettres.* Her order is received and accepted by the publishers at their offices in state B and they express the books to her residence in state A. After reading through two inches and paying for six, she repents of her bargain. The publishers sue in state A. The lady pleads want of capacity to contract. [T]he law of state A is reminiscent of the time when husband and wife were one . . . [while] the law of State B mirrors the latest views of the National Woman's Party on sex equality before the law.

I also recall the gentle homily used to illustrate the difference between the conflict of laws theories of Walter Wheeler Cook and Learned Hand, long perceived to be the same. The tendency to conflate these two theories reminded David of:

> the way in which my son resolved a like problem when, at the age of four, he encountered tuna fish salad. "Isn't that chicken?" he inquired after the first bite. Told that no, indeed, it was fish, he restored his world to order and concluded the matter by remarking to himself, "Fish made of chicken."

Unifying this remarkable intellect and this gentility was another quality which for at least some of us was his most memorable trait—his exceptional grace. More than a few of us have tried to emulate that precious inner calm reflected in both his thought and his demeanor. He seemed throughout to have lived his life according to the injunction of William Cullen Bryant:

> so . . . that when the summons came to join the innumerable caravan, he . . . [would be] sustained and soothed by an unfaltering trust, like one who wraps the drapery of his couch about him, and lies down to pleasant dreams.

Law School Gifts

Duke University Archives

Samuel Fox Mordecai

R.C. Kelly Law Endowment Fund

The Follin family of Greensboro, North Carolina has established an endowment fund at the Law School which will be used to provide scholarships to Law School students. Ms. Ellen Kelly Follin wished to establish the fund in honor of her father Richard C. Kelly and her grandfather, Samuel Fox Mordecai. Samuel Fox Mordecai served as dean of the Duke University Law School from 1905 to 1927, and recipients of the scholarships will be known as Mordecai scholars.

According to materials collected and privately printed by Dean Mordecai's students, this era at the Law School was not only exciting and challenging but inspirational. "We didn't just study law, we *lived* law. Mr. Mordecai was inspirational. He ran a strictly professional school and taught law 'in the grand manner' with a single aim: to make great lawyers . . . . He loved his students, and they loved him."

Richard C. Kelly, who graduated from the School in 1907, was among the students inspired by Dean Mordecai. Mr. Kelly went on to establish himself as an outstanding attorney and citizen in Greensboro. President Brodie noted, "As [the family's] generosity will help the Law School carry on the tradition of excellence established by Mr. Mordecai, this endowment is a particularly apt tribute to these distinguished attorneys."

Walter Law Scholarship Endowment Fund

Robert William Walter '81 established a scholarship endowment fund in the name of himself and his father, Robert Wheaton Walter '47. Mr. Walter wishes to have scholarships awarded to "well-rounded students intending to pursue business law careers." Mr. Walter is practicing law in Denver, Colorado with O'Connor & Hannan. His father, Robert Wheaton Walter, also lives in Denver where he has been active in the establishment and oversight of companies which supply equipment to the oil industry.

Gwynn Swinson, Assistant Dean for Admissions and Student Affairs points out that such scholarship funds are increasingly important to the School and its students. "With the cost of tuition continuing to rise, it becomes increasingly important for us to be able to offer financial assistance to well-qualified students."

Miller & Chevalier Award

The Washington, D.C. law firm of Miller & Chevalier has had a long-standing connection with the Law School both as a firm and through its members who are Duke Law School alumni. This spring, the law firm established an annual award at the Law School to honor three second year students who have performed exceptionally well as members of the editorial boards of the three scholarly publications. Recipients will be chosen by the officers of the journals. An award of $500 will be presented to each recipient at the annual banquets for the *Duke Law Journal, Law and Contemporary Problems* and *Alaska Law Review.*

Alumni Activities

Class of 1937

Richard M. Nixon has a new book on the market entitled *1999: Victory Without War.* The former president described his book as "the product of a lifetime of study and on-the-job training in foreign policy." According to the *New York Times,* Nixon demonstrates his statecraft by answering the questions he raises about the present state of the world in a thorough and systematic manner.

Class of 1939

Erma G. Greenwood, "of counsel" to the firm of Kramer, Johnson, Rayson, McVeigh, Leake & Rodgers in Knoxville, Tennessee, is still actively engaged in the trial of product liability cases, representing defendants.

Class of 1940

Margaret Adams Harris was honored recently as Woman of the Year for 1988 by the Quota Club of Greensboro, North Carolina. Harris was chosen because of her contributions to the community spanning forty-eight years. A former Greensboro Mother of the Year, Harris also served as president of the local PTA council, and a former officer of the N.C. Congress of PTAs, chaired the curriculum study committee for the Greensboro Schools, and was the first woman to serve as chair of the Greensboro Board of Education. In addition to other responsible positions in state-wide education, Harris is a Duke University trustee emerita. She served as the first woman president of Duke's General Alumni Association.

Class of 1948

Robert P. Barnett received the Wallace M. Johnson Award for community service in March 1988 at the 65th anniversary dinner of the New Castle County Chamber of Commerce. Long active in the Wilmington, Delaware, community, Barnett is currently president of the county's Economic Development Corporation and chairman of the Delaware Heritage Commission.

Class of 1950

Nathan H. Wilson joined the firm of Ulmer, Murchison, Ashby & Taylor in Jacksonville, Florida, as a senior partner in late 1987.

Class of 1951

Arnold B. McKinnon was named national trustee of the National Board of Boys Clubs of America in March 1988. McKinnon will play an active role in determining the goals and policies which guide the national organization. He serves as president and chief executive officer of the Norfolk Southern Corporation and resides in Norfolk, Virginia.

Class of 1954

Marshall G. Curran is now associated with McCune, Hiaasen, Crum, Ferris & Gardner in Fort Lauderdale, Florida.

Paul Hardin was elected to the post of chancellor of the University of North Carolina at Chapel Hill, effective July 1, 1988. (See article on pg. 45.)

Class of 1955

John A. Carnahan received the George W. Ritter Award presented by the Ohio State Bar Foundation in November 1987. Carnahan is a partner in the firm of Arter and Hadden in Columbus, Ohio. He served as president of the Ohio State Bar Association in 1983-1984. The Foundation presents the award annually to a public agency, court, or individual in recognition of outstanding contributions to justice.

Abraham I. Gordon was recently chosen district governor-elect for Rotary's 57 club Southern Connecticut district. Gordon, a past president of the Bridgeport Rotary Club, will serve as governor-elect for 1988 and will automatically serve as governor during the 1989-90 year. An active Rotarian nationally and internationally, Gordon is also a partner in the Gordon & Scalo law firm in Bridgeport, Connecticut.

Class of 1956

Carl P. Rose is now engaged in the private practice of law in the District of Columbia and serves as Special Counsel to the Farm Credit Council. He and his wife, Ruth, reside in Arlington, Virginia.

Class of 1959

Robinson O. Everett was presented the Earl Kintner Award by Federal Bar Association President Stanley Fisher at the FBA annual convention in Memphis, Tennessee in September 1987. Everett, the recipient of the FBA's most prestigious award and member of the faculty at the Duke University School of Law, is serving as Chief Judge of the U.S. Court of Military Appeals in Washington, D.C.

Class of 1962

J. Marne Gleason recently accepted the position of Vice President with MONY in Purchase, New York.

James W. McElhany, a nationally recognized expert in trial practice and advocacy, served as the keynote speaker at the Drake University 51st Annual Supreme Court Day Weekend in March 1988. McElhaney, a Joseph C. Hostetler professor of trial and advocacy at Case Western University School of Law, holds one of only two endowed chairs in trial advocacy in the nation and is the author of *Effective Litigation, Trials, Problems and Materials and Trial Notebook.* He is a faculty member of The Professional Education Group and also serves on the faculty of the National Institute for Trial Advocacy in Boulder, Colorado.

Class of 1963

Frank T. Read was recently named dean of the University of California Hastings College of Law in San Francisco. Read will assume the deanship on August 15, 1988.

Read was selected following a national search. He served as dean of the University of Florida College of Law in Gainesville for seven years where he will be succeeded by *Jeffrey Lewis* '69. (See article on pg. 39.)

Class of 1965

Ward B. Stevenson, Jr. and his wife, Margot, are living in London, England. Stevenson is the resident partner in charge of the London office of Rogers & Wells.

Class of 1966

Robert D. Cabe became vice president and general counsel of Arkansas Blue Cross and Blue Shield in Little Rock in February 1988. In March, he was also elected secretary of the company.

James B. Maxwell was recently elected a Fellow of the International Society of Barristers. The Society's membership of approximately 600 trial lawyers is dedicated to excellence in advocacy, to the preservation of the advocacy system and of the right to trial by jury, and to the encouragement of young lawyers to enter the field of trial practice. Maxwell is a member of the Durham, North Carolina, firm of Maxwell, Martin, Freeman & Beason.

Curtis Meyer

Lanty L. Smith '67

Class of 1967

Lanty L. Smith finalized the purchase of the Precision Fabrics Division of Burlington Industries, Inc., of Greensboro, North Carolina, in February 1988. The new corporation organized by Smith is Precision Fabrics Group, Inc., and he serves as the firm's chief executive officer.

Class of 1968

Robert K. Garro, vice president of the Continental Bank in Chicago, recently authored the "Forms of Holding Title" chapter for the 1988 supplement of *Basic Estate Planning* published by the Illinois Institute of Continuing Legal Education.

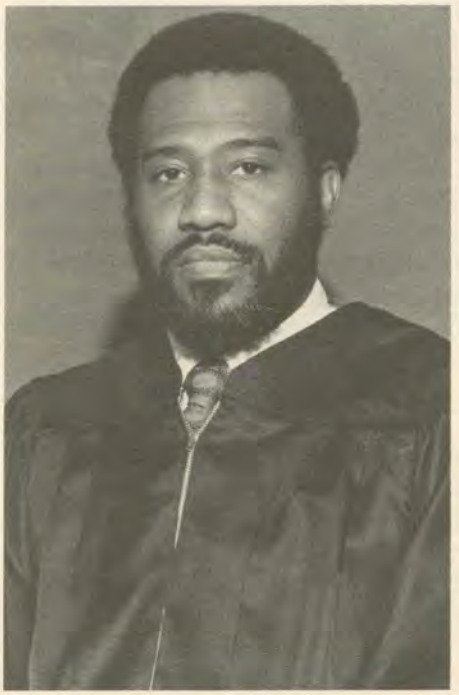
Stephen P. Pepe co-authored *Avoiding & Defending Wrongful Discharge Claims.* The book was published through Callaghan & Company and released in the summer of 1987.

Edward A. Reilly '68

Edward A. Reilly, a tax and estate planning lawyer, is now a partner in the Research Triangle law firm of Harlow, Reilly, Derr & Stark. Reilly was previously a partner in the New York City firm of Shearman & Sterling. He and his wife, Patricia, reside in Durham, North Carolina.

Ernest C. Torres was confirmed by the U.S. Senate as a judge on the U.S. District Court in Providence, Rhode Island.

John C. Weistart, professor of law at Duke University, was the recipient of the 1988 Distinguished Teaching Award. Weistart addressed the graduating class at the Law School's degree awarding ceremony May 8, 1988.



Charles L. Becton '69

Class of 1969

Charles L. Becton, North Carolina Court of Appeals, received the William J. Brennan, Jr. Advocacy Award at ceremonies held at the University of Virginia on January 10, 1988. Becton was the second judge to receive the award named in honor of the U.S. Supreme Court Justice. Becton was honored for his efforts to improve the trial skills of lawyers. He teaches trial advocacy classes at the University of North Carolina School of Law, where he is the John Scott Cansler Adjunct Professor of Law, and at the Duke University School of Law, where he is a Senior Lecturer of Law. During the last twelve years, Becton has taught lawyers how to try cases at trial advocacy institutes all across the country.

Robert M. Hart joined the firm of Donovan Leisure Newton & Irvine in New York City in February, 1988.

Jeffrey E. Lewis, associate dean of the University of Florida College

of Law, succeeds *Frank T. Read* '63 as dean effective July 1, 1988. After a national search, Lewis was selected for his strong internal and external leadership abilities. Lewis has been in the field of education for nearly two decades, and he is highly regarded as an effective administrator. (See article on pg. 39).

Class of 1971

Christopher N. Knight joined the firm of Hopkins & Sutter in Chicago, Illinois. Knight has represented numerous governmental bodies and underwriters as bond counsel and underwriters counsel, and specializes in creative public financings, as well as bank financings and credit enhancements.

Douglas B. Morton was named chairman of the Civil Benchbook Committee for the Indiana Judicial Center. The committee should publish in September 1988.

The Rowland, Co., Inc.

Steven Naclerio '71

Steven Naclerio was named senior vice president of Bacardi Imports, Inc., of Miami, Florida, in January 1988. Naclerio was formerly vice president of the corporation. In addition to his continuing responsibilities as general counsel and assistant secretary, Naclerio will also be increasingly involved in the international aspects of the company as well as other business relationships with autonomously-run Bacardi organizations. Naclerio joined the company in 1977 as assistant general counsel, became general counsel in 1983, and vice president in 1984.

Michael L. Richmond was promoted to Professor of Law at the Nova University Center for the Study of Law in Fort Lauderdale, Florida.

Ronald H. Ruis recently moved from California to a fishing village on the northeast coast of Spain. Ruis is writing science fiction novels as well as engaging in some international law practice.

Bryan E. Sharratt was appointed to the University of Wyoming Board of Trustees. Sharratt is a partner in Sharratt & Sharratt in Wheatland, Wyoming.

Class of 1972

Robert T. Brousseau is a litigation and bankruptcy partner in the Dallas law firm of Stutzman & Bromberg. He recently addressed analysts and examiners of the Federal Home Loan Bank Board on the legal implications of distressed real estate workouts.

Cym H. Lowell joined the firm of Johnson & Swanson in Dallas, Texas. Lowell was formerly in law practice in Indianapolis, Indiana.

Class of 1973

Mark S. Foster was elected to the Managing Committee and has assumed the role of managing partner with the law firm of Stinson, Mag & Fizzell. The firm is the largest law firm in Kansas City, Missouri, and also has offices in Overland Park, Kansas, and Dallas.

Pamela B. Gann succeeds Paul D. Carrington as dean of the Duke University School of Law effective July 1, 1988. She's the first North Carolina native and first Duke Law graduate to serve as dean. (See article on pg. 19.)

Robert W. Hillman, Professor of Law at the University of California at Davis, received that school's Distinguished Teaching Award at an awards dinner this spring.

Kenneth G. Starling has been appointed Deputy Assistant Attorney General in the Antitrust Division of the U.S. Department of Justice. He was formerly the Chief Counsel for Antitrust at the Senate Judiciary Committee. He is married to *Susan Parker Starling,* '72. The Starlings have two children and reside in McLean, Virginia.

Class of 1974

Norman A. Smith formerly a partner in the firm of Boyle, Alexander, Hard and Smith in Charlotte, North Carolina, has formed the firm of Smith and Feerick. The new firm will carry on a general business practice with particular emphasis on civil litigation, including malpractice and products liability defense and other complex litigation involving computer litigation support. Smith remains active in the Naval Reserve Intelligence Program and was recently promoted to the rank of Captain, USNR.

Class of 1975

David B. Franklin returned to San Francisco recently after a four year stay in Hawaii. Franklin is a partner in the firm of Berg, Ziegler, Lichtman & Anderson.

Hugh Ranald McDonald has joined the firm of Jones, Day, Reavis & Pogue in Irvine, California.

Clinton Richardson authored a book entitled *The Venture Magazine Complete Guide to Venture Capital.* According to Richardson, the book is a "practical guide to investments in private companies and is written for the entrepreneur and investor." Richardson is with the Atlanta law firm of Arnall Golden & Gregory. The book was published in 1987 by New American Library.

Class of 1976

Eric H. Halvorson has rejoined Godfrey & Kahn, S.C., as a shareholder in the firm's Green Bay, Wisconsin, office. Halvorson was in the Milwaukee office from 1976-1985. From 1985-1987, he was vice president/general counsel of Salem Communications Corporation in Camarillo, California. He will remain a member of the Board of Direc-

tors of Salem Communications Corporation.

Sheri S. Labovitz was named a partner at the law firm of Alston & Bird in Atlanta, Georgia. Labovitz specializes in commercial real estate. She joined the firm in 1978.

Branch L. Winegeart, III recently joined the firm of Mahoney Adams Milam Surface & Grimsley, P.A., in Jacksonville, Florida.

Class of 1977

Harold I. Freilich, joined the firm of Davis, Graham & Stubbs in Washington, D.C. His practice is primarily in the area of corporate, securities and commercial real estate.

Robert G. Moskowitz was named senior vice president and general counsel for Shamrock Holdings, Inc., in Burbank, California. Moskowitz joined the company in 1986 as vice president, legal affairs.

Ember D. Reichgott was recently honored by the Minnesota Chapter of the National Association of Women Business Owners as "Public Policy Advocate of the Year" for 1988. Reichgott serves in the Minnesota State Senate and was honored for her work in promoting legislation affecting Minnesota small businesses and women business owners in particular. Reichgott is also an attorney part-time with The General Counsel, Ltd., a law firm that provides business clients with legal services similar to those of in-house counsel.

Geoffrey H. Simmons has been appointed by the American Bar Association's Standing Committee on Lawyers Public Service Responsibilities to oversee pro bono programs and projects. Simmons was appointed to a three-year term. He is also a board member of Legal Services of North Carolina.

Kim West is a partner in the law firm of Lewis, D'Amato, Brisbuis & Bisgaard of Los Angeles, California.

Class of 1978

William B. Bunn accepted the position of corporate medical director for the Manville Corporation in Denver, Colorado. He and his family are now residing in Denver. Bunn was with Bristol-Myers Company in Wallingford, Connecticut.

Steven R. Gilford joined the firm of Mayer, Brown & Platt in Chicago, Illinois.

Bruce Jacques became a partner in the firm of Higgs, Fletcher & Mack in Escondido, California. Jacques published an article entitled "Implied Indemnity in Breach of Contract" in the March 1988 issue of *California Lawyer.*

Gregory A. Robertson became a partner at the firm of Alston & Bird in Atlanta, Georgia. Robertson joined the law firm in 1985 and specializes in securities regulation, real estate syndication and corporate financial transactions, including mergers and acquisitions.

Jerome C. Scowcroft with Schwabe, Williamson, Wyatt & Leniham of Seattle, Washington, served as a panelist during the International Conference on Maritime Arbitration in Vancouver, B.C., Canada, in May 1988.

Class of 1979

Richard D. Blau of San Antonio, Texas, co-authored articles for the March and April 1988 editions of the *Journal of Taxation* regarding the federal income taxation of S Corporations. He currently chairs a subcommittee of the Committee of S Corporations of the ABA Tax Section and serves as a member of the editorial board of *S Corporations: The Journal of Tax, Legal and Business Strategies,* a quarterly publication. He co-authored a book on the federal income taxation of S Corporations which is scheduled for release by Callaghan & Company later this year.

Claudia A. Carver became a partner with the firm of Paul, Hastings, Janofsky & Walker in Los Angeles, California.

Thomas A. Croft became a partner with the firm of Porter & Clements in Houston, Texas.

Solveig Overby is teaching a course in Law and Information Technology at Hampshire College, Amherst, Massachusetts.

Class of 1980

G. William Brown, Jr. is a partner in the law firm of Sidley & Austin in New York.

Dara DeHaven is a partner in the law firm of Powell, Goldstein, Frazer & Murphy in Atlanta, Georgia.

Linda B. Griffey is a partner in the Los Angeles law firm of O'Melveny & Myers.

John H. Hickey has been made a partner in the 23-attorney firm of Hornsby & Whisenand, P.A., in Miami, Florida.

Richard C. Van Nostrand is a partner in the law firm of Mirick, O'Connell, DeMallie & Lougee in Worcester, Massachusetts.

Class of 1981

John J. Coleman, III published "Muddy Waters: Allis Chalmers and the Federal Policy Favoring Labor Arbitration" in the *Washington & Lee Law Review* Volume 44, Number 2. Coleman has also published in the *Saint Louis University Law Journal,* the *Cumberland Law Review, Barrister, Personnel,* the *Personnel Journal,* and the *Birmingham Bar Bulletin.*

Marvin Richmond

Jeffrey Donaldson '81

Jeffrey L. Donaldson is a partner with the law firm of Mirick, O'Connell, DeMallie & Lougee in Worcester, Massachusetts. Donaldson has been associated with the firm since 1981 and is engaged in the practice of corporate and securi-

ties law. Donaldson is a member of the Central Massachusetts Region Board of Directors of the Society for the Prevention of Cruelty to Children and serves on the Executive Committee and as Secretary of the MSPCC. He is also a member of the Clark University Small Business Development Center Advisory Council.

Patrick B. Fazzone recently received a Fulbright Award to do research in Australia during the 1989 academic year. Fazzone is an associate with the law firm of Collier, Shannon, Rill & Scott in Washington, D.C.

Donald J. Rendall, Jr. is a member of the firm of Sheehey Brue Gray & Furlong in Burlington, Vermont.

Dennis G. Friedman is now a member of the Chicago, Illinois, law firm of Mayer, Brown & Platt.

Elizabeth Page Potter is now Director of the Legal Assistants Program at Meredith College in Raleigh, North Carolina.

Mark W. Ryan is now a member at the law firm of Mayer, Brown & Platt in Chicago, Illinois.

William Stoner has become a partner with the law firm of Lillick McHose & Charles in Los Angeles, California. Stoner specializes in commercial and business litigation and is a registered CPA. He joined the firm in 1981.

David E. Sturgess became a principal in the forty-attorney law firm of Updike, Kelly & Spellacy, P.C., in Hartford, Connecticut.

Neil Tucker is now a partner with the law firm of Lillick McHose & Charles in Los Angeles, California. Tucker specializes in real estate law with particular emphasis in construction and permanent financing, leasing, purchase and sale, and development work. Tucker joined the firm in 1981.

Class of 1982

Richard W. Evans has become associated with the law firm of Harlow, Reilly, Derr & Stark in Research Triangle Park, North Carolina.

Donald S. Ingram has become associated with the law firm of Harlow, Reilly, Derr & Stark in Research Triangle Park, North Carolina.

Douglas L. McCoy became a member of the law firm of Hand, Arendall, Bedsole, Greaves & Johnston in Mobile, Alabama.

Peter A. Sachs, an associate with Jones & Foster, P.A., West Palm Beach, chaired a workshop for the Palm Beach County Bar Association entitled "The Constitution: Teaching Strategies for the Bicentennial Celebration." The day-long workshop for secondary social studies teachers was presented by the PBCBA and the *Palm Beach Post.* The project evolved during a search for an appropriate and creative way to celebrate the 200th anniversary of the Constitution. The teacher workshop was organized with the assistance of the *Palm Beach Post* whose educational staff presents workshops for teachers to introduce them to various ways newspapers can be used in curriculum. Sachs told *The Florida Bar Journal,* "The bar association was proud to be involved in such a professionally run and successful program, and by reaching so many teachers, the project has reached literally hundreds of school children with its message about the Constitution."

Hezekiah Sistrunk, Jr. is a partner with the newly-formed firm of Love and Willingham in Atlanta, Georgia.

Ellen Stebbins became a partner in the Houston, Texas, law firm of Dotson, Babcock & Scofield. Stebbins concentrates primarily in the areas of real estate and commercial finance.

Diane A. Wallis is now a partner in the firm of Crisp, Davis, Schwentker, Page & Currin in Raleigh, North Carolina.

Class of 1983

Ronald L. Clever announces the opening of his office for the general practice of law in Allentown, Pennsylvania.

David A. Zalph recently joined the law firm of Shutts & Bowen in West Palm Beach, Florida. Zalph concentrates primarily in the areas of commercial real estate, business, and municipal finance law.

Class of 1984

Sol W. Bernstein is now an associate with the New York City law firm of Windels, Marx, Davies & Ives.

Helen Nelson Grant is now a partner with the law firm of Gergel, Burnette & Nickles in Columbia, South Carolina. A Columbia newspaper, *The State,* recently published a profile of Ms. Grant. She acknowledges that, as a black woman in a predominately white male profession, she faces obstacles and even prejudice at times. Her remedy to these challenges is to rely on her father's counsel: "If you're the best prepared and best qualified, nothing is impossible."

Jonathan A. Gruver joined the firm of Akin, Gump, Strauss, Hauer & Feld as a labor/litigation associate. Gruver is in the Washington, D.C. office.

Robert P. Monyak has become an associate with the law firm of Love and Willingham in Atlanta, Georgia.

Patrick Michael Rosenow is an instructor in civil law, director of continuing legal education, and director of environmental law instruction, AF Judge Advocate School. Rosenow is a Captain and is stationed at Maxwell AFB, Montgomery, Alabama.

Shiji Tawra moved to Tokyo recently and plans to stay for a year.

Class of 1985

Lynne E. Barber is now associated with the firm of Olive & Olive, P.A., in Durham, North Carolina.

Charna L. Gerstenhaber is an associate with the law offices of Russel H. Beatie, Jr., in New York City.

Arthur J. Howe is now associated with the firm of Schopf & Weiss in Chicago, Illinois.

Torsen Lange is the author of *The Role of Lockouts In Labor Conflicts: A Legal Study of American and German Approaches,* published by Peter Lang Publishing, Inc. Lange, his wife, Norma, and daughter, Anja Martina, left Hong King recently. He is now on an executive assignment with BASF Philippines, Inc. in Manila, Republic of the Philippines.

Elizabeth H. Liebschutz is now associated with the firm of Richardson, Berlin & Morvillo in Washington, D.C.

Andrew L. Shapiro is now associated with the firm of Ross, Dixon and Masback in Washington, D.C.

Ronald E. Sharpe is now associated with the firm of Sacks, Montgomery, Pastore & Levine in New York City.

Loren A. Weil is now an associate with the Chicago law firm of Winston & Strawn.

Class of 1986

T.R. Kane published "Prosecuting International Terrorists in United States Courts" in the *Yale Journal of International Law,* Summer 1987. Kane, a Lieutenant Colonel in the U.S. Marine Corps practices international and criminal law. He is currently stationed at Camp Lejeune, North Carolina.

Stephen A. Labaton has been named legal affairs reporter for *The New York Times.* Labaton is gaining recognition as one of the top financial section writers for the *Times.*

Margaret J. Neilsen joined the San Francisco law firm of Broad, Schultz, Larson & Wineberg.

Anne Wilkinson is the assistant legal counsel for the Honorable James G. Martin, Governor of the State of North Carolina.

Class of 1987

James Chin-hsien Chen has been promoted to section chief of the Department of Treaty & Legal Affairs with the Ministry of Foreign Affairs in Taipei, Taiwan. He is in charge of international agreements and related legal matters.

Huei-huang Lin has been promoted to director of the office of student affairs with the Judiciary Training Institute of the Ministry of Justice in Taipei, Taiwan.

Tish Walker Szurek is an associate with the law firm of Kemp, Smith, Duncan & Hammond. Szurek is in the firm's El Paso, Texas, office.

James A. Thomas is now associated with the firm of Harlow, Reilly, Derr & Stark in Research Triangle Park, North Carolina.

Class of 1988

Taylor D. Ward received a Fulbright fellowship for 1988-89. He will be conducting research in northeastern Japan at Tohokee University in Sendai.

Personal Notes

'65—*Richard Moore Morgan* married Rebecca Lynne Owens on September 12, 1987 in Wilmington, North Carolina. Morgan is a partner in the firm of Stevens, McGee, Morgan, Lennon and O'Quinn in Wilmington.

'71—*John R. Ball* married P. Preston Reynolds on January 9, 1988 in Duke Chapel. Both graduated from Duke University Medical School. Ball also graduated from Duke Law School and is executive vice president for the American College of Physicians.

'73—*John S. Black* and his wife, Darcy, announce the birth of their daughter, Katheryn Anne Black, on January 12, 1988.

—*Donald O'Brien Mayer* married Mary Ann Garth on November 28, 1987. Mayer teaches business law at Western Carolina University. The Mayers make their home in Sylva, North Carolina.

'75—*John Howell* and his wife, Jina, announce the birth of their second son, Michael Lawrence, on December 29, 1987.

—*Gary Lynch* and his wife, Donna Parratt, are the proud parents of a baby boy, Trevor Clark, born January 4, 1988.

'76—*Peter J. Kahn* and his wife, Pamela, proudly announce the birth of their first child, a daughter named Alyssa Jonas, on April 17, 1987.

'77—*David S. Feinman* and his wife, *Elizabeth M. Weaver* '80, announce the birth of their first child, a boy named Matthew Alexander, born on December 12, 1987.

'78—*Marilyn Hoey Howard* and her husband, Charlie, are the proud parents of a second son, John Thomas Howard, born January 19, 1988.

—*James T.R. Jones* married Jane Craig of Gatlinburg, Tennessee, on January 2, 1988. They are making their home in New Albany, Indiana.

—*Gregory Scott Lewis* and his wife, Susan, are the proud parents of a third child, a son, Trevor Alton Lewis, born April 8, 1988.

—*Lawrence G. McMichael* and his wife, Carol Stern, announce the birth of their second child, David Stern McMichael on March 11, 1988. McMichael is a partner in the law firm of Dilworth, Paxson, Kalish & Kaufmann in Philadelphia.

'80—*Lori E. Terens* and her husband, *Eric Holshouser*, both class of 1980, announce the birth of a 9 lb. 5 oz. son on March 16, 1988. They named their first child Eric James Holshouser, Jr.

—*Elizabeth M. Weaver* and her husband, *David S. Feinman* '77 announce the birth of their first child, a boy named Matthew Alexander, born on December 12, 1987.

'81—*John J. Coleman III* and his wife, Liz, announce the birth of a son, John J. Coleman IV (Jack), born December 31, 1987.

'82—*Barbara Ann Zippel* and her husband, *Thomas Pickrell,* both class of 1982, announce the birth of their second child, a son, John Wesley Pickrell, on January 1, 1988.

'83—*Coralyn and Gary Benhart,* both class of 1983, are the proud parents of a son, Robert Kenneth, born December 12, 1987.

—*Susan J. Cole* married Dr. Glenn Dranoff on August 30, 1987. The Dranoffs live in Cambridge, Massachusetts.

—*Robba Addison Moran* and her husband, Jerry Moran, announce the birth of a daughter, Kelsey Paige, on February 14, 1988.

'84—*Hiro Goto* recently married.

—*Marc Leaf* and his wife, *Mary Woodbridge,* '85 announce the birth of their third child, a daughter, Constance Davis Leaf, on February 22, 1988.

Christopher W. Loeb, married Terry Armstrong on May 14, 1988. Loeb is an associate with Robinson Bradshaw & Hinson, P.A., in Charlotte, North Carolina.

—*Karen Brumbaugh Mozenter* and her husband, *Michael,* both class of 1984, announce the birth of a daughter, Rachel Ann, on April 2, 1988.

Margaret (Peggy) Jean Reinsch and her husband, Bruce A. Jones, are the proud parents of their first child, a son named Edwin Tucker Reinsch Jones, born April 16, 1988.

'85—*Suk-Ho Bank* recently married.

—*Hidefumi Kobayashi* announced the birth of a daughter recently.

—*Domingo Diaz* announced the birth of a daughter recently.

—*Marshall David Orson* married Jennifer Deskins Cole on October 17, 1987 in Abingdon, Virginia. Orson is an attorney with the Paul, Hastings, Janofsky and Walker law firm in Atlanta.

—*Darrell R. Van Deusen* and *Caroline E. Emerson,* both class of 1985, married May 9, 1987. They make their home in Baltimore, Maryland.

—*Mary Woodbridge* and *Marc Leaf* '84 announce the birth of their third child, a daughter, Constance Davis Leaf, on February 22, 1988.

'86—*Alvaro Aleman* announced the birth of a daughter recently.

—*Thomas F. Blackwell* and his wife, Lisa, are the proud parents of a son, Zebadiah Benjamin Blackwell, born December 28, 1987. Blackwell is an associate with Jenkens & Gilchrist in Dallas, Texas.

'87—*Luisa Fernandez* married recently.

Obituaries

Class of 1936

W.D. "Pete" Murphy a prominent attorney and civic leader in Batesville, Arkansas, died on December 24, 1987, in a Little Rock hospital. He was a senior partner in the Murphy, Post, Thompson, Arnold and Skinner law firm. During his 48 years of law practice, he served as president of the Independence County Bar Association and as examiner for the Arkansas Bar Association. He received the Kiwanis Citizenship Award in 1986.

Paul D. Robeson of Robesonville, North Carolina, died on February 8, 1988 while vacationing in Torremolinos, Spain.

Class of 1940

F. John Beattie of Parma Heights, Cleveland, Ohio, died on March 16, 1988.

Class of 1947

Calvin Gearhart died on November 25, 1987 at King's Daughters Medical Center in Ashland, Kentucky. Gearhart overcame polio as a youth, earned his law degree, and became one of the longest serving county attorneys in Kentucky history. At the time of his death, Gearhart was associated with the firm of Gearhart, Vigor and Pitt.

Class of 1954

John Eric Swanstrom, of Shrewsbury, Massachusetts, died of a heart attack on August 14, 1987. Before attending Duke Law School, Swanstrom had graduated from Worcester Academy and earned a bachelor's degree at Clark University. While at Duke, he was head of the professional ethics committee of the American Law Student Institute. Mr. Swanstrom was a trial lawyer in Worcester, Massachusetts.

Class of 1958

C. Eugene McCartha died in late 1987.

Jesse D. Henry of Miami, Florida, died of a stroke on July 11, 1987.

Class of 1969

William E. Pursley, Jr. died at his home in Arlington, Virginia, on November 25, 1987. A former Capitol Hill staff member, he had been a Senate lobbyist with Shell Oil Company for the past five years. Before coming to law school, he was an Angier B. Duke Scholar at Duke University where he made Phi Beta Kappa. As an undergraduate, he also won a Rotary International Scholarship and attended the London School of Economics.

Class of 1978

Dr. John Hunt Rutledge died on December 5, 1987 at Columbia Presbyterian Hospital in New York City. Rutledge received his M.D.-J.D. degree from Duke University and a master's degree in public health from Harvard. Since September 1985, he served as Deputy Commissioner for the New Jersey State Department of Health in Trenton, New Jersey. Rutledge resigned in November 1987 due to declining health. Graveside services were held in Richmond, Kentucky.

UPCOMING EVENTS

LAW ALUMNI WEEKEND
OCTOBER 21-23, 1988

FRIDAY, OCTOBER 21, 1988

2:00 p.m.	Registration Desk Opens, Law School Lobby
2:00 p.m.	Law Alumni Council and Board of Visitors Meeting, Law School
6:00 p.m.	Reception, Gross Chemistry Lobby
7:30 p.m.	Dinner on your own
9:00 p.m.	Hospitality Rooms at Sheraton University Center

SATURDAY, OCTOBER 22, 1988

9:00 a.m.	Registration Desk Opens, Law School Lobby
9:00 a.m.	Coffee and Danish, Law School
10:00 a.m.	Professional Program and Law Alumni Association Meeting
12:00 Noon	Pig Pickin' catered by Bullock's Bar-B-Que, Law School Lawn
1:30 p.m.	Duke vs. Maryland Football Game
6:00 p.m.	Reception and Reunion Dinner at Sheraton (by class)
9:00 p.m.	Hospitality Rooms at Sheraton University Center

SUNDAY, OCTOBER 23, 1988

9:00 a.m.	Barristers Breakfast*
10:00 a.m.	Council for the Annual Fund Meeting, Sheraton University Center

The class of '62 enjoyed getting together for their 25th reunion in 1987.

**Barristers* of the Law School are alumni and friends who contribute $1,000 or more annually to Duke Law School. Contributors of $500 or more annually are *Barristers* if they are seventy years of age or older; judges, teachers, government officials or graduates of less than seven years.

Reunion Coordinators:

1948	Frank Snepp Superior Court Judge Charlotte, North Carolina (704) 342-6738	1968	Carl F. Lyon, Jr. Mudge Rose Guthrie Alexander & Ferdon New York, New York (212) 510-7318
1953	Harry R. Chadwick Chadwick & Chadwick St. Petersburg, Florida (813) 327-5444		Edward A. Reilly Harlow, Reilly, Derr & Stark 1000 Park Forty Plaza P.O. Drawer 13448 Research Triangle Park North Carolina 27709 (919) 544-5555
1958	Robert L. Burrus, Jr. McGuire Woods Battle & Boothe Richmond, Virginia (804) 644-4131	1973	Sarah Adams 56 Westminister Drive, N.E. Atlanta, Georgia (404) 876-8363
	John F. Lowndes Lowndes, Drosdick, Doster, Kantor & Reed Orlando, Florida (305) 843-4600	1978	Christopher G. Sawyer Alton & Bird Atlanta, Georgia (404) 955-2420
1963	Charles W. Petty Hamel & Park Washington, D.C. (202) 835-8032	1983	Richard Garbus Marks Marase & White New York, New York (212) 832-3333
	Brian Stone Atlanta Volunteer Lawyers Foundation Atlanta, Georgia (404) 521-0790		

The law classes of 1938-40 will have a joint 50th year reunion in 1989.
The law class of 1943 had a joint reunion with the classes of 1941 and 1942 in September 1987.

OTHER UPCOMING EVENTS

American Bar Association, 1988 Annual Meeting, Toronto, Canada

Monday, August 8, 1988, Duke Law School Alumni Reception, 6:00 to 7:30 p.m., L'Hotel, Ontario Room. Please join us and get acquainted with our new dean, Pamela Gann.

Conference on Career Choices

The third annual Conference on Career Choices will be held in February 1989. Panels will feature Duke Law alumni who will discuss their professional careers as well as respond to topics of particular interest and concern to students.

Barristers Weekend

Barristers Weekend will be March 31-April 1, 1989. This special weekend is held annually for members of the Barristers Club. Barristers are alumni, faculty, parents and other friends who contribute $1,000 or more annually to Duke Law School. Contributors of $500 or more annually are Barristers if they are also graduates of less than seven years, seventy years of age or older; judges; teachers; or government officials. Donors of $2,500 or more are Sustaining Barristers.

For more information on Upcoming Events, call the Law Alumni Office at (919) 489-5089.

Annual Fund Campaign Begins

BE TRUE TO YOUR SCHOOL

As our new dean reminds us in these pages, we can all take pride in the fact that, for some time, Duke Law School has been considered one of the best law schools in the country. As she observed, the Law School and its constituents—alumni, faculty, students and other friends—are also quite fortunate in sharing a tremendous sense of goodwill toward each other and the institution. That sense of goodwill is reflected in the fact that, for the last five years, over forty percent of Duke Law alumni have participated in the Law School's Annual Fund Campaign providing unrestricted support to the operating budget of the Law School—and thus to current educational programs. That participation rate is competitive with other law schools of our stature. In fact, few law schools boast a higher participation rate. (Though it would be fun to join the competition between Penn and Yale who are pushing for 56% and 57% respectively while also competing for the top participation rate in the country.)

Though the size of the average gift contributed by alumni has also increased over time, we lag behind other law schools of our stature in this measure. It is time to change that fact. We need the assistance of each of you to help increase the annual contribution to the Law School through the Annual Fund Campaign.

STAND UP AND BE COUNTED

The 1988-89 Annual Fund Campaign runs from July 1, 1988 through June 30, 1989. Dean Gann has accepted the challenge of finding increased funds for the Law School so that the School can continue to provide an exceptional educational program, attract excellent faculty, grant financial aid to deserving students and enlarge and improve the Law School building. Please join me in sending the message to the faculty and administration that we appreciate their keeping Duke Law School at the forefront nationally and that we want to do our part to contribute to one of the finest legal education programs in the country. Your gift *does* make a difference, especially at this crucial point in the Law School's history.

Donald B. Craven
Chairman
Duke Law School Annual Fund

Make the stretch to a Leadership Gift

University wide
$10,000 or more ..... Few Association President's Council
$ 5,000 or more ..... William Preston Few Association
$ 2,500 or more ..... Sustaining Barrister
$ 1,000 or more* ..... Barrister
$ 500-$999 ..... Patron
$ 250-$499 ..... Supporter

**or $500 or more for donors who are graduates of less than seven years, seventy years of age or older, judges, teachers or government officials.*

CHANGE OF ADDRESS

Name _____ Class of _____

Firm/Position _____

Business address _____

Business phone _____

Home address _____

Home phone _____

Return to Law School Alumni Office.

PLACEMENT OFFICE

Anticipated opening for third ☐, second ☐, and/or first ☐ year law students, or experienced attorney ☐

Date position(s) available _____

Employer's name and address _____

_____

Person to contact _____

Requirements/comments _____

☐ I would be willing to serve as a resource or contact person in my area for law school students.

Submitted by: _____ Class of _____

Return to the Law School Placement Office.

ALUMNI NEWS

The *Duke Law Magazine* invites alumni to write to the Alumni Office with news of interest such as a change of status within a firm, a change of association, or selection to a position of leadership in the community or in a professional organization. Please also use this form for news for the Personal Notes section.

Name _____ Class of _____

Address _____

Phone _____

News or comments _____

_____

_____

_____

_____

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Duke Law Magazine
Duke University School of Law
Durham, NC 27706

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