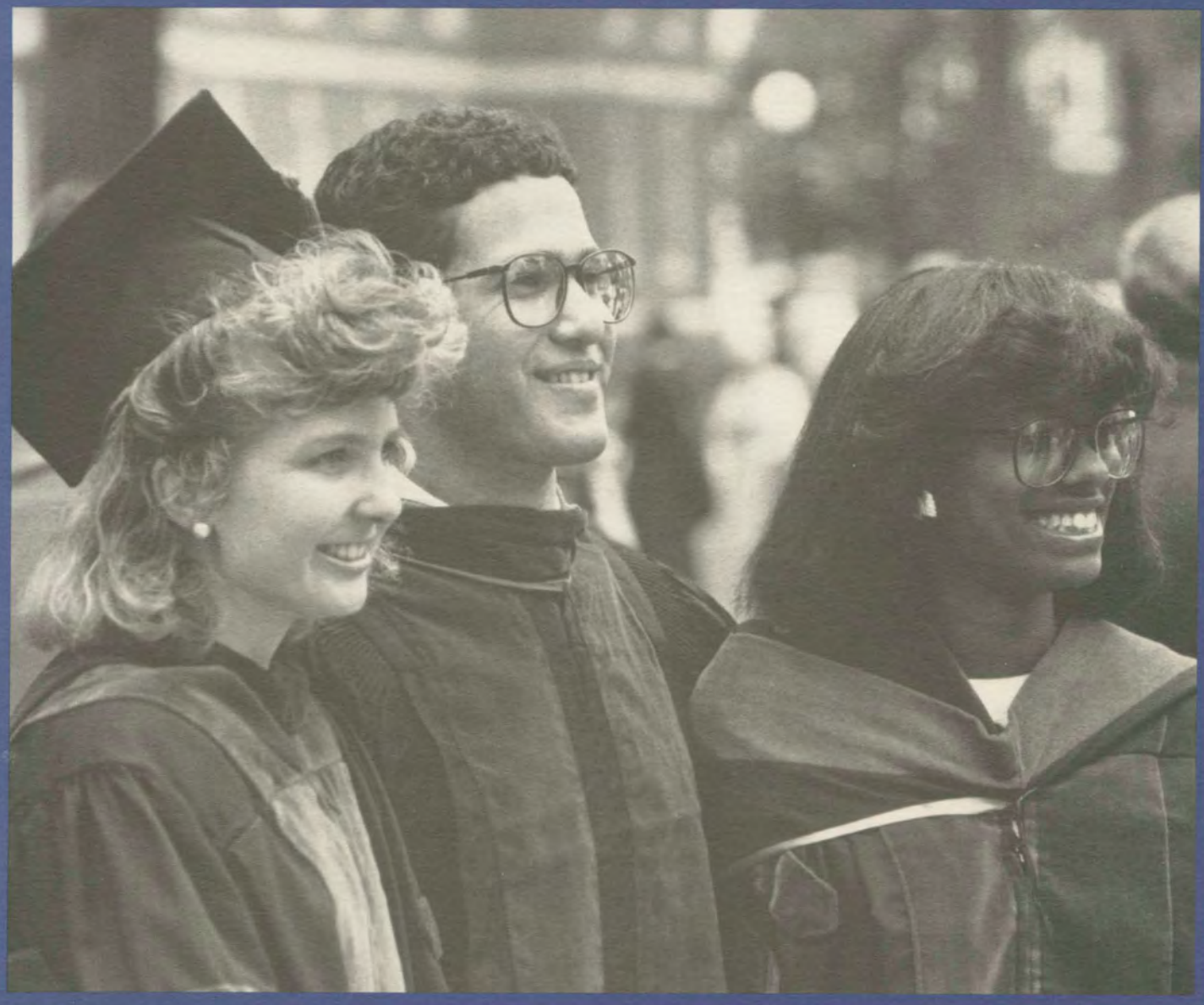
Duke Law Magazine

SUMMER, 1989



New Beginnings

VOLUME 7

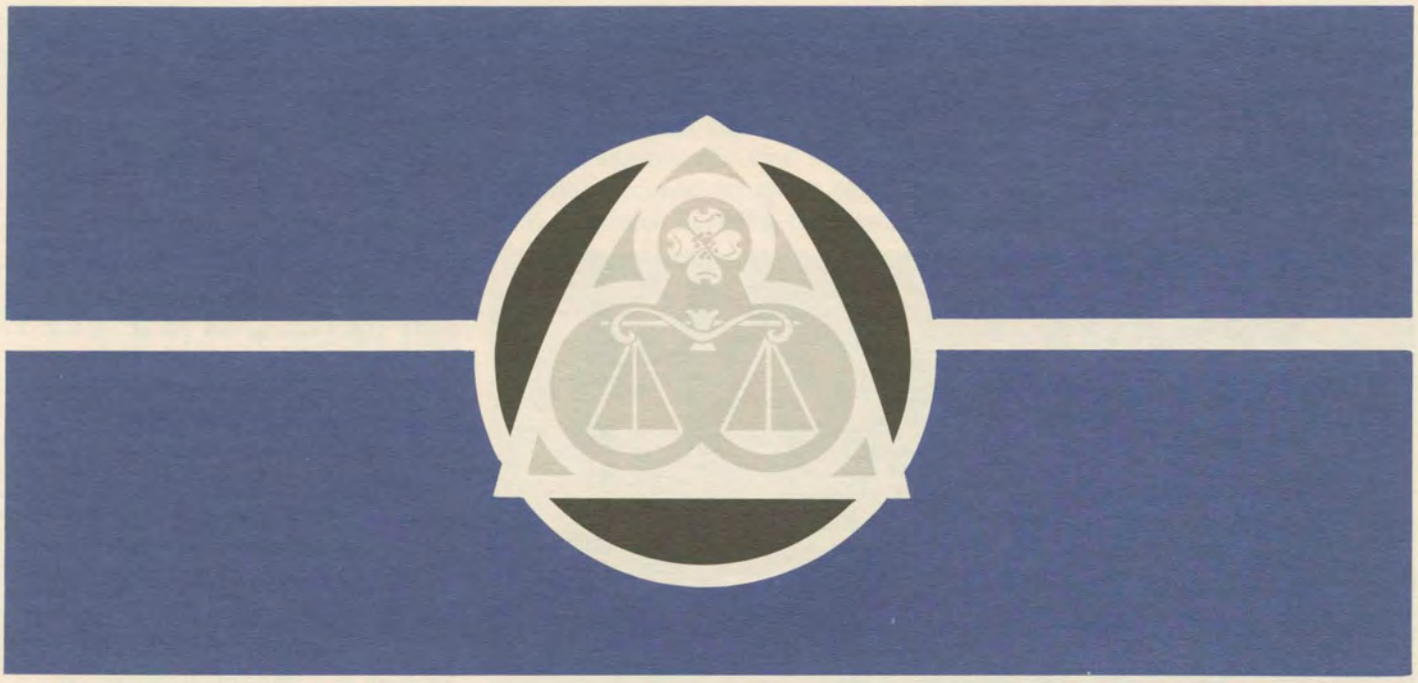
Duke Law Magazine

Contents

DEAN
Pamela B. Gann

EDITOR
Evelyn M. Pursley

ASSOCIATE EDITOR
Janse Conover Haywood



Duke Law Magazine is published under the auspices of the Office of the Dean, Duke University School of Law, Durham, North Carolina 27706

SUPPORT SERVICES
Mary Jane Flowers
Evelyn Holt-Fuller

STUDENT CONTRIBUTORS
D.S. Berenson
Ralph E. Jones
Matthew W. Sawchak

PRODUCTION
Graphic Arts Services

From the Dean

The 1988-1989 academic year has ended very successfully. You will receive an elaborate year's summary in our next *Annual Report* published in the fall, but I want to highlight for you several areas of achievement with which the faculty and I are particularly pleased.

Faculty Appointments. The Law School's success in accomplishing its research and teaching missions most significantly depends upon the excellence of its faculty appointments. Two superb persons have agreed to join us from other faculties.

Jefferson Powell is from Burlington, North Carolina, and joins us from the University of Iowa. His main scholarly work is a mix of constitutional history and constitutional jurisprudence. He is very highly regarded by serious scholars of constitutional law. His principal essays and articles lay out large mappings of the Constitution's origins, its diverse and eclectic sources, its background and foreground, the differing philosophies and politics of its early dominant figures, and the sharp differences in interpretive approach respecting many of its main features that characterized early constitutional disputes. His scholarly writings are very well written, showing the mixture of his disciplinary backgrounds. They are also mature beyond his years. He is presently completing his Ph.D. in the Duke School of Divinity. He will hold a primary tenured appointment in the Law School and a secondary appointment in the Divinity School.

Neil Vidmar is a social psychologist who joins us from the University of Western Ontario, Canada. Social scientists now play a central role in many of the top-ranked law schools. The appointment of Dr. Vidmar as a tenured member of our faculty recognizes that the Law School should have a social scientist on its faculty in order to be a top research legal institution that also provides a professionally adequate education for its students. Dr. Vidmar's research concerns subjects central to the law and the empirical study of the legal process: the jury, the small claims court, medical malpractice, pre-trial procedures, eyewitness testimony, the death penalty, and change of venue applications, among others. Empirical studies of various aspects of the litigation process are well underway, and Dr. Vidmar will add this dimension to our faculty. Pedagogically, it is important to expose our students to social science, since complex litigation increasingly involves expert testimony from social scientists and jury selection analyses.

Admissions. The Law School received 3,500 applications for the 1989 entering class, more applications than it has ever received in its history. We will admit only about one out of each six applicants in order to matriculate an entering class of approximately 180 students. The Duke Law School remains one of the smallest of the national schools, with entering class sizes approximating those at Chicago, Cornell, Stanford, and Yale. I thank the many alumni who have contacted appli-

cants whom we have admitted in order to recruit them to the Law School. Your efforts are very helpful and much appreciated by the applicants.

Building Renovations and Addition. I have previously written you about our plans to reconstruct our current physical plant and make approximately an 80,000 sq. ft. addition. The justifications for this project arise from three areas: (1) the building was designed for a student body size of 300 students, and our current student body is 550; (2) the library must be totally renovated to take advantage of computerization of the research and writing process and compact shelving; and (3) the auxiliary services to support a school of the top rank (or any university) have been greatly enhanced over the past decade (e.g., admissions services, placement services, alumni services, publication services). Currently, the Law School operates a significant part of these auxiliary services outside the Law School building because no space exists in our current building to house them.

Phase I of this total project is currently underway, which is a library renovation project on the basement floor of the four-floor library in the amount of $1.7 million. Phase I fits into the long-term renovation plan of the Law School. It completely modernizes the bottom floor of the library for the purpose of installing $600,000 in compact shelving so that we can store more hard-volume books in a more compact space. The new compact shelving permits other current space to be shifted in use from book storage to direct student use such as the installation of computer workstations. Each station will be wired so that a student may sit at the station and on a single computer have access to catalogues of library resources, LEXIS, WESTLAW, other relevant research data bases, and, in addition, word processing, expert systems, and instructional exercises. Phase I provides the appropriate computer facilities and wiring that we will need in the long-run within the Law School building and also for campus-wide computer networking. Phase I will be completed around September 15, 1989. This scheduling permits us to renovate a significant space in the current building with the least possible disruption to our current teaching and examination schedules.

Olin Foundation Grant for Law and Economics. The John M. Olin Foundation has awarded the Law School a $487,000, three-year operating grant to support a Program in Law and Economics. These funds will provide student

Cecil Maness, of Library Movers, Inc.; Hope Breeze, Head of Technical Services; and Richard Danner, Director of the Law Library, survey the library basement during the early stage of Phase I of the renovation.

fellowships for joint degree students (who in addition to the J.D. degree earn the M.A. in economics), visiting professorships in law and economics, faculty seminar series, symposia and working paper publications, and curricular development grants. The Law School is particularly pleased to have received the Olin Foundation's recognition of the faculty's scholarly interests in this area. The first John M. Olin fellowships have been awarded to a few of the joint degree students in this summer's entering class.

Gifts to the Law School. A full report of gifts to the Law School during the 1988-89 academic year will appear in the fall publication of the *Annual Report*. I am pleased to report that the Law School has received this year more total gifts than at any other time in its history. It has also received the largest total amount from its alumni and friends to the Annual Fund. I warmly thank you for your generous support of our Annual, endowment, and capital funds.

Alumni Relations. I had only assumed the job as Dean for a few weeks when I decided to spend a significant amount of time this first year in traveling around the country to see alumni. I have journeyed to over thirty-five cities and held alumni luncheons. In addition, I have visited many individual alumni in their offices and homes. Through this great odyssey I have been able to discuss with alumni the various achievements of and issues that confront the Law School. It has also provided me the opportunity to listen to your ideas about the Law School and the legal profession. These discussions have provided me with invaluable, thoughtful advice. I express to you my heartfelt thanks for the lengthy discussions and the wonderful social occasions. These visits have also resulted in significant stacks of correspondence! My in-box overflows with mail from alumni! I urge you to keep up the flow of communication.

I have provided you a few highlights from the 1988-89 year. I will discuss these and many more areas with you in our next issue of the *Annual Report*.

Pamela B. Gann

Employees of Library Movers, Inc., load books to be stored in the library's new compact shelving area of the basement.

VOL. 7, NO. 2 / 5

FORUM

The Teaching Role of the Law Librarian

*Richard A. Danner**

**Director of the Law Library and Professor of Legal Research, Duke University School of Law. Professor Danner came to Duke in 1979 as associate law librarian and became director of the Law Library in 1981. He teaches a seminar in legislation as well as legal research. Since 1984, he has been editor of the American Association of Law Libraries'* LAW LIBRARY JOURNAL. *Professor Danner is the 1989-90 President of the American Association of Law Libraries. This article is based on several previously published articles and addresses.*

A major turning point in the history of Duke Law School begins this summer with the start of building renovation in the law library. Planning a new library building in the late 1980s forces the law librarian to come to grips with the changes in the procedures and techniques of legal research wrought by the continuing evolution of information storage and retrieval technologies. At a basic level, space planning forces one to consider how much room to devote to information stored in microform and various electronic formats, as well as in books. At a more fundamental level, however, the issues involved require consideration of the role of the library and law librarians themselves in the life of the law school.

The role of the librarian is defined traditionally in terms involving the acquisition, organization and dissemination of information. Unlike their counterparts in other types of libraries, however, law librarians have long considered teaching to be another essential component of what they do. Morris Cohen, who has served as law librarian at both the Harvard and Yale law schools, points out that law librarians are much more involved with the materials and methods of legal research and bibliography than are other librarians with the materials of their specialities. Because of this involvement, law librarians have assumed the role of experts on legal literature. According to Cohen, law librarians not only are the natural teachers of legal bibliography and the methods of legal research: their expertise creates an *obligation* to teach these subjects.

It is true, of course, that practicing law librarians teach in ways different from those of law professors. The instructional activities of law librarians are ongoing and involve a variety of teaching formats and settings. The teaching of legal research and bibliography is done on a one to one basis in the process of information retrieval, as well as in formal classes.

Legal Research Instructional Programs

Traditionally, though, instruction in research methodology and legal bibliography has been based in the classroom. Librarians and others have written frequently about instructional programs in legal research and how better to train law students in legal

writing and research. No clearly superior model has emerged, as is probably appropriate given the varying missions and objectives of American law schools. Many schools recognize that law librarians' professional training and experience make them somewhat more qualified to teach legal research than writing instructors or others who might be called upon to provide research instruction. Not all law schools make direct use of the skills of law librarians for legal research instruction in the first-year curriculum, however. At a number of schools, the librarian's role in the first-year legal writing curriculum remains underdeveloped. In light of the current interest in improving law students' writing and analytical skills, many law librarians are concerned with developing ways to teach research effectively within their schools' overall writing programs. Although one should not underestimate the difficulties of teaching legal research as a separate course from legal writing, it is possible to devise an effective program of librarian-taught instruction within the first-year writing program.

At Duke, the legal bibliography instructional program has functioned for a number of years as a successful preliminary to first-year writing assignments. The program is made up of five weeks of classroom and hands-on library instruction with accompanying written research assignments, taught and administered by law-trained members of the library staff. It is offered during the first weeks of the fall semester and precedes the legal writing course taught by members of the regular law faculty who are responsible as well for a small-section substantive course. Both the legal bibliography and legal writing courses are organized around the small sections. The makeup of each legal bibliography instructor's course and assignments is largely the responsibility of the individual instructor, who is encouraged to develop a course that anticipates the particular research needs of the writing sections he or she is instructing. There is usually ongoing coordination between the legal research and writing instructors, which provides the potential for flexibility in scheduling and coverage. Sessions can be held throughout the school year as needed to meet the research requirements of specific writing assignments, and additional sessions can be offered on sources and topics outside those of the core legal bibliography curriculum. If the writing assignments will involve legislative history research, special sessions can be offered; students in a contracts section can obtain instruction in UCC research and the specialized tools available. LEXIS and WESTLAW training is offered to all students at times convenient for their writing assignments.

Key factors in the success of this program are the potential for flexibility and the extent to which the writing instructors and the legal research instructors coordinate their courses. At Duke, this relationship is fostered by the school's recognition of the importance of legal research instruction to the writing program.

The role of the librarian is defined traditionally in terms involving the acquisition, organization and dissemination of information. Unlike their counterparts in other types of libraries, however, law librarians have long considered teaching to be another essential component of what they do.

Legal research instructors have law faculty status as a result of their teaching activities.

Benefits and Problems

For students, the major benefit of having legal research taught by librarians is the librarians' expertise in the subject matter. Just as the law school curriculum provides a contracts specialist, not a torts scholar, to teach the first-year contracts course, so should it provide someone with active knowledge of research sources and techniques to teach legal research. Through law training, practical experience, or both, the librarian has the best knowledge and understanding of sources of legal authority, finding aids for specific problems, and differences among competing sources and tools. As more students enter law schools with computer experience, they will need informed instruction on the advantages and drawbacks of computer-assisted research and on the differences among systems. As proliferation of sources and tools makes the legal research process increasingly more complex, the need for students to be trained in the relative merits of alternative problem-solving approaches will increase. There is no reason to believe that either legal writing specialists or teachers of substantive law have expertise in these areas comparable to that of the law librarian or that they are prepared to give research instruction the emphasis that it needs in a complex information environment.

Properly designed, the separate librarian-taught research course also provides some assurance that law students, in their first year at least, are exposed to the variety of sources of legal authority. With most law schools' traditional lack of interest in statutory issues and analysis in the first-year curriculum, it cannot be assumed that the legal writing program will include research and writing problems calling for students to use statutory or administrative law materials. An introduction to these important sources of law and an appreciation of their place in the system are provided through the research course.

The possibly artificial nature of library research assignments in a separately taught course is a potential problem. After students realize that their "treasure hunt" library assignments are not graded and that they

At Duke, the legal bibliography instructional program has functioned for a number of years as a successful preliminary to first-year writing assignments.

will not be asked to apply the sources they find to the writing of a memorandum or brief, how can they be kept interested in the assignments and the course? The assignments and the lectures can more effectively keep student interest if they emphasize the process of legal research as well as the relationships between law-making bodies and the legal authority being sought in the books. Incoming law students may have a surprisingly low threshold of knowledge about institutions of government and their authority to make law. Classroom presentations that discuss how law is made and promulgated, and present the current and historical relationships between those processes and legal research, help maintain student interest in both lectures and assignments better than presentations emphasizing bibliographic detail.

One way to promote a degree of realism in "treasure hunt" assignments is to develop them around a factual situation that poses enough analytical challenge to interest the students and is complex enough to require comprehensive research and the use of a variety of sources. Carried out over several weeks of classroom sessions and assignments, this approach can inject life into a set of canned exercises and enables the students to develop awareness of the interrelationships, not only among the authorities, but among their sources: the bodies that issue the law. Even if the research does not lead to a memorandum or other final written product, the theme approach does provide a measure of continuity to the period of research instruction and an overall problem to be resolved, rather than a series of unrelated drill exercises. The experienced librarian instructor also will find ways to tie the research assignments into what is being covered in one of the first-year substantive courses, or to complement what will be covered in later writing assignments.

Factual Analysis and Query Formulation

Another area to be covered in the research course, and one that if taught properly should keep students interested, is that of factual analysis and question formulation. Traditional approaches to legal research instruction are commonly criticized for their emphases on the bibliographic aspects of legal research. Obstacles to effective learning may be presented if instruction is organized around descriptions of the books of legal research. "This week, we are going to compare the *United States Code Annotated* with the official *U.S. Code* and the *U.S. Code Service*; next week we will talk about the *General Digest*."

Recent critics of the traditional method have emphasized that legal research should be thought of as a process, not all of which takes part in the library. Since library research is only one of a series of steps along the way to solving a legal problem, it is argued that research instruction should be organized functionally to correspond to those steps, rather than along bibliographic lines. Otherwise, in order to make use of the bibliographic information they are given, students have to reclassify the information into its proper place in the research process. If the students fail to reclassify the bibliographic information properly, they may have learned that the various editions of the *U.S. Code* all contain current federal statutory law, but they may not have learned *when* it is appropriate to be looking for a statutory answer at all. In such situations, if the student does not understand the place of various sources in the hierarchy of legal authority and in the research process, library research will proceed at an inefficient trial and error pace.[1]

The real point of these criticisms is that legal research teachers need to spend more time helping students understand what they ought to be doing before going to the indexes of the *USCA* or to a digest, or before they sit down in front of a LEXIS or WESTLAW terminal. The key to effective legal research in a complex information environment is the ability to formulate good initial research hypotheses *prior* to embarking upon the procedures and techniques of either book or computer-based research.

In law, where there is frequently an abundance of research material applicable to a research problem, it is never efficient to try and gather all available material before starting to work on it. Consequently, skill in formulating good research hypotheses—knowing how to ask the right questions—is essential to efficient information gathering. Anyone experienced in teaching legal research or writing knows that law students need to be reminded that there is a time when they have to stop their library research and get down to the business of applying the law to the facts and begin to write.

Through law training, practical experience, or both, the librarian has the best knowledge and understanding of sources of legal authority, finding aids for specific problems, and differences among competing sources and tools.

One way to teach students how to know when to stop is by training them how to organize and begin a research project. In large part this is a matter of understanding the importance of working effectively with the facts of the legal research problem. The facts dictate the issues to research and the sources in which that research will take place. It is only after they organize their thinking about the facts of the problem that legal researchers can do their best when they get to the library phase of research.

In the artificial setting of law school research and writing courses, it is difficult for law students, as new researchers, to realize how important proper characterization of the facts is to finding the law, or how hard it is in real life research to obtain facts and determine what facts are relevant. Students need to learn at the beginning of their education that working with facts is a difficult and important part of the research process. Techniques of fact gathering are difficult to incorporate in either the research or writing curriculum.

Fact analysis—the process of imposing order on relevant facts so to determine their legal significance and use in the search for authority—can be taught in a legal research course much more readily than skills in fact gathering. Yet, it remains an area that legal research and writing teachers tend to ignore or at least to give less emphasis than they might. Proper analysis of the facts of the research process enables the researcher to identify legal issues and develop terms and other descriptors to use as access points to the indexes or the full text data bases. Among the things that the beginning researcher needs to learn early is that facts of legal problems may need to be generalized to be useful. The student needs some guidance on how far to generalize the facts and on the implications of the choices that are made in the process of generalization.

Fact analysis and generalization is an area that is little explored in the instructional literature of legal research. Most text writers and other commentators go no further than to report or suggest variations on the analytical systems proposed by the major legal publishers: West and Lawyers Co-operative/Bancroft Whitney. Each publisher system asks a researcher to categorize the facts of a problem into several elements. Lawyers Co-op has its "TAPP" rule, which asks the researcher to analyze the facts in terms of the Things, Acts, Persons, and Places involved. West has a more complex five-part system, consisting of Parties, Places and Things, Basis of Action or Issue, Defense, and Relief Sought. As can be seen, the Lawyers Co-op system limits itself to categorization of the actual facts of a problem; some of West's elements consider legal theories or tactical and procedural issues that might arise.

These systems and most of the variants on them found in legal research and writing texts imply that fact analysis in legal research is largely a matter of fitting the facts of a case into one or another category. The act of categorization itself will identify which facts are relevant to the research process, and will allow the researcher to frame issues and organize further steps to be taken to find applicable law. Yet, the process is not so easy. Relevance, ranking, and order are unlikely to become apparent through a simple classification of the raw facts of a case under one of several headings or by anticipating a legal theory or tactic that may be part of the case.

As proliferation of sources and tools makes the legal research process increasingly more complex, the need for students to be trained in the relative merits of alternative problem-solving approaches will increase.

At a minimum, beginning researchers need guidance in learning how far to generalize or broaden the specific facts of a research problem before starting to categorize the facts, frame issues, and begin library research. An example of how to do this from one text is based on the statement: "At the time of the accident, defendant was driving a blue 1967 Ford Falcon." Following the categories of any of the classification systems, a "thing" for this problem is obviously the "blue 1967 Ford Falcon." But how should the Falcon best be characterized to analyze the problem and do the research? The systems themselves provide little help for the process of categorization. Certainly, a researcher moderately skilled in using proximity connectors could sit down at a LEXIS or WESTLAW terminal and pull up cases dealing with blue 1967 Falcons. Such a specific entry would not work in the West digest system, but this fact is probably too specific to be legally significant anyway. Among the things that the beginning researcher needs to learn early on is that facts of legal research problems may need to be generalized to some degree in order to be useful for issue framing and access to published law. The students need guidance on how far to generalize and on the implications of choices made in the generalization process. They need to realize that the blue 1967 Ford Falcon is a part of a series of increasingly broader categories, such as: all 1967 Ford Falcons; all 1967 Ford automobiles; all Ford automobiles; all automobiles; all motor vehicles; all vehicles.[2] Choice of category is significant to the research result. If there is no applicable law for automobiles, there may be one for motor vehicles; if the facts specify a truck, perhaps a law on automobiles will not apply.

It is essential as well to re-evaluate and to reformulate research hypotheses during the reading and evaluation phase of legal research. Critics point out that legal research instructors may not emphasize

The experienced librarian instructor also will find ways to tie the research assignments into what is being covered in one of the first-year substantive courses, or to complement what will be covered in later writing assignments.

enough that, until the material is read, the researcher hasn't found the law itself, but only the books where it is written. Only after reading does the researcher learn whether initial questions were correctly stated. Stressing the importance of reading underscores the need to define a good research strategy for each problem, and that there is a tie-in between fact analysis and effective use of the resources of law found during the library phase of research.

Legal Research and the Law Librarian

In all academic and research libraries, the growing complexity and expense of new information technologies are causing a fundamental change in library services and a new recognition of the librarian's role as an instructor of research techniques. Library instructional programs, once seen as supplementary to reference services, are now taking on a more central role. In law schools, the librarian's teaching role always has been vital since professional training requires not only that students learn where the reference desk is located, but that they know how to conduct research on their own, both while in law school and once in practice.

Perhaps most important to the development of an effective and successful first-year legal research instruction program is institutional acknowledgment of the librarian's importance as a teacher and contributor to the law school's educational mission. Such recognition will not come without librarians believing that legal research instruction is important enough to be included within the law school curriculum and that the process of legal research is itself a fit subject of study and research. Academic law librarians may have done too little to convince law faculties that the legal research process itself should be recognized as an appropriate area of interest and specialization for academic lawyers and law librarians. The advent of full-text legal data bases, such as LEXIS and WESTLAW, has led, for example, to a number of creative studies of what sources judges cite in legal opinions, but further studies of how judges and lawyers actually conduct their research are needed. Scholarly examination of these questions will not only add to our understanding of the legal research process, but will provide insight for improving the teaching of legal research in the law school.

Of course, the law schools and law librarians are subject to criticism over how well that mission is fulfilled. An appropriate answer to charges that summer associates and recent graduates come out of the law schools ill-equipped to do legal research, however, is to provide them better training from persons skilled and involved in legal research, rather than from writing instructors or regular faculty for whom legal research technique is at best a secondary interest. At some law schools, a trend toward more advanced research courses in the second and third years demonstrates that legal research is a subject of interest and importance to the law school curriculum, and that legal research is itself an appropriate area for research and study. Advanced legal research training, however, should not be at the expense of the law librarian's continued involvement in the first year curriculum, where a grounding for effective legal research can be established for each student.

---

1. The process approach to research instruction is argued most forcefully by Christopher and Jill Wren in their book THE LEGAL RESEARCH MANUAL (2d ed. 1986), and article *The Teaching of Legal Research,* 80 LAW LIBRARY JOURNAL 7-61 (1988). A response, arguing, among other things, for the continued viability of the bibliographic approach is Berring & Vanden Heuvel, *Legal Research: Should Students Learn It or Wing It?* (forthcoming in LAW LIBRARY JOURNAL).

2. This example is from W. STATSKY & R. WERNET, CASE ANALYSIS AND FUNDAMENTALS OF LEGAL WRITING 158-59 (1977).

In law schools, the librarian's teaching role always has been vital since professional training requires not only that students learn where the reference desk is located, but that they know how to conduct research on their own, both while in law school and once in practice.

Health Care as a Laboratory for the Study of Law and Policy

*Clark C. Havighurst**

**William Neal Reynolds Professor of Law, Duke University School of Law. Professor Havighurst has been at Duke since 1964 and is Director of the Law School's Program on Legal Issues in Health Care. He also teaches antitrust law. This essay is adapted from the foreword to* HAVIGHURST, HEALTH CARE LAW AND POLICY: READINGS, NOTES, AND QUESTIONS *(1988), and originally appeared in* 38 J. LEG. ED. *499 (1988).*

Unlike most law school courses, health care law cannot be taught simply as a discrete body of legal doctrine. Instead, the teacher of health care law finds many points at which some larger body of public law (e.g., tax or antitrust) or private law (e.g., torts or insurance) impinges on health care providers or patients and creates special problems that warrant separate study. Although there are also many statutes, regulations, and legal rules that apply exclusively to the provision and financing of health care, they affect so many different matters, emanate from such diverse sources, and are so uncoordinated, inconsistent, and incomplete that they fail to constitute a coherent legal regime that can be studied as an integrated whole. In short, it quickly appears that the common denominator that best unifies the study of health care law is the health care industry itself.

My own course in health care law is organized around the special institutions of the industry and the public-policy concerns and issues to which they give rise. This essay attempts to indicate the substantive scope of the course and why I regard a course in health care law as potentially more than just a curricular frill and preparation for practice in a specialized field. Precisely because the legal framework within which the health care industry now operates is so amorphous and unsettled, health care law provides a uniquely valuable vantage point from which to view generally the operation of legal institutions and the interplay of law and policy. It is a fortuitous additional benefit that the course also includes lessons in ethics, professionalism, and professional regulation that carry over to the law student's own profession.

Teaching Law in Action

Making a single complex industry the focal point of a law school course is something of a pedagogical innovation. To be sure, there have been courses in transportation, communications, and banking law, but they have mostly focused on particular, relatively coherent regulatory regimes. Perhaps occasional courses in sports law, education law, entertainment law, or agricultural law have addressed a range of

Precisely because the legal framework within which the health care industry now operates is so amorphous and unsettled, health care law provides a uniquely valuable vantage point from which to view generally the operation of legal institutions and the interplay of law and policy.

legal problems besetting a single field of activity, but these fields lack the magnitude, complexity, and universality of health care. The study of law in such specific contexts does have the virtue of capturing some of the reality of law practice—legal problems pop up in all directions rather than in accordance with some internal logic of the law itself. But health care law also offers superior opportunities for conveying information about, and insights into, the legal system itself. In my more idealistic moments, I visualize a course in Health Care Law and Policy as a third-year elective that students would value not so much as a bread-and-butter subject but as an exercise in applied jurisprudence that shows how law evolves and how it influences, for better or for worse, the overall performance of a single, intrinsically fascinating industry. In any event, without neglecting the practical side, I try to teach the course in this way, come who may.

The health care sector of the economy offers a unique opportunity for the study of law in action for several reasons. First, the industry has undergone extraordinary changes in recent years as professional dominance has given way to other influences. The rapidity of the transformation and the absence of any single watershed event or impelling cause create opportunities for observing the performance of the legal system in promoting, retarding, and adapting to developments. Although the legal system originally bolstered the old medical regime and embodied most of its tenets, changes in legal rules and doctrine eventually contributed to the collapse of the old system and the development of a more chaotic, partly market-driven system. There are, however, many respects in which the law has been slow to change and still inhibits innovative responses to new economic conditions. The contribution of legislation to the evolution of the industry has been mixed, reflecting old ways of thinking as often as new ones. At the same time, many of the most crucial developments in health care law, especially in the all-important antitrust sphere, have been the result of judicial decision. Again and again, the student will need to ask whether a particular statute, regulatory action, legal doctrine, or judicial decision comports with new developments or with any clear-cut policy toward the health care field.

Health care law also provides special insights into the law-making process because so many significant issues affecting the industry and its legal environment remain unsettled. The questions yet to be resolved include not only legal fine points but many fundamental policy issues of a kind that are rarely open for more than academic debate. In addition to a continuing regulation-versus-competition debate, there has been an even more fundamental tension between, on the one hand, centralization of decision making in professional or governmental hands and, on the other hand, devolution of authority to consumers and their voluntarily selected agents. There are many useful lessons to be learned from witnessing efforts of the legal system to accommodate the aspirations of professionals, the interests of consumers, the rights of patients, the imperatives of the political system, and the democratic appeal of reforms based on consumer sovereignty and restored cost-consciousness.

The diversity of the sources of law governing health care also makes the health care industry a valuable laboratory for the study of the legal system. Both Congress and state legislatures have major roles. In addition to presenting issues of statutory policy and interpretation, the course offers many illustrations of federalism in action (e.g., the Medicaid program and many delegation and preemption issues, including several under the state-action doctrine of antitrust law, the McCarran-Ferguson Act, and ERISA). The administrative process is also heavily involved in health care; the Health Care Financing Administration, the Federal Trade Commission, and state licensing and other regulatory agencies all have major roles. Local government is involved in the provision and financing of services and in health planning.

Defining the proper law-making role of the judiciary presents especially challenging issues in the study of health care law. Courts acting primarily in a common-law mode govern several important areas (e.g., redressing medical malpractice and defining hospital/physician relations and the powers of voluntary associations). Federal and state courts are also involved in evaluating health care legislation under constitutional norms, interpreting statutes and their underlying (and sometimes conflicting) policies, and supervising administrative action. Perhaps most tellingly, there are enlightening opportunities for questioning the very need for judicial intervention. The question of the appropriate scope of judicial activism arises vividly in the health care field in the interpretation

. . . legal problems pop up in all directions rather than in accordance with some internal logic of the law itself.

and enforcement of private contracts, in the supervision of private actions (e.g., hospital staffing decisions), in the oversight of voluntary organizations (e.g., agencies engaged in accreditation and credentialing), in judicial review of questionable statutes and administrative actions, and in the administration of antitrust law.

Finally, cutting across everything else that the student must consider in the study of health care law are major social policy issues. In addition to engaging the student's political interest as an advocate for or against extensive in-kind redistribution, the health care sector offers a good opportunity to address such issues pragmatically, by focusing on both the legal and practical details of entitlement programs and the disadvantages as well as the benefits of different ways of addressing the needs of the poor. Without losing sight of the important patient interests at stake, students can examine issues relating to costs, including the hidden cross-subsidies implicit in expedient legislative or judicial policies. Because American society falls well short of honoring its professed commitment to providing health care to those who cannot finance it for themselves, law students have an excellent opportunity to encounter volatile public issues in the context of the real-world governmental institutions and private actors that must be involved in any redistributive effort.

Teaching Policy and Economic Issues

In addition to shedding light on the workings of the legal system, the study of health care law can illuminate problems of public policy that a student may not encounter so explicitly or so forcefully elsewhere in law school. The problem of controlling health care costs, which absorbs so much public and private energy, is best understood as a challenge to achieve efficiency in the allocation of societal resources. Emerging evidence about the limits of medicine and about the extent of scientific uncertainty dramatizes the challenge. Similarly, many of the claims made on behalf of the quality of care also raise (or should be seen to raise) questions of the how-much-is-enough variety. Although efficiency is a central theoretical concern of economics, attempts to achieve it in health care by either market or nonmarket means encounter major political and practical difficulties emanating from the prevalent belief that health (and, by implication, health care) has, or should have, no price. Law students would benefit from an introduction to such societal dilemmas and to the practical problems they present both to advocates and to public and private decision makers.

Other persistent themes in the rigorous study of health care law include the twin market imperfections that bedevil all risk shifting and insurance: "moral hazard" and "adverse selection." At stake are the viability of private health care financing and the currently dominant policy of relying upon competition between financing plans to achieve efficiency. The market peculiarities that complicate health care financing often determine the form of public and private actions to control costs without sacrificing essential quality. A course in health care law can serve as an excellent introduction to the complexities of both social and private insurance.

Although the legal system originally bolstered the old medical regime and embodied most of its tenets, changes in legal rules and doctrine eventually contributed to the collapse of the old system and the development of a more chaotic, partly market-driven system.

Other large policy themes to which a student may be introduced through the study of health care law include the tension in the American polity between centralized and decentralized decision making—that is, between an orderly, regulated system featuring homogeneity, paternalism, and orthodoxy, on the one hand, and a disorderly, pluralistic marketplace featuring producer independence, consumer sovereignty, and competitive diversity, on the other. Although it is customary to speak of a health care "system," developments in recent years appear to have moved the nation away from earlier visions of a social enterprise operated under fairly strict professional or governmental control. A related issue is whether government regulation or some more market-oriented alternative offers the better solution to the severe dysfunctions of the health care economy.

Breaking down the general themes further should lead the student to contemplate other issues that may not surface explicitly or with the same force elsewhere in legal training. The student is confronted at many points by questions concerning the performance of the legislative branch of government. Indeed, health personnel regulation and statutory prohibitions on commercial practices in health care provide some of the best illustrations of the ability of interest groups to use state legislative processes to secure their own advantage. An introduction to "public choice" theory may impart some desirable sophistication while also preparing the student for legislative struggles that are a constant feature of health care law at both the state and federal levels.

The study of health care law also invites attention to the role and utility of economic incentives and self-interest in motivating market participants, both lay and professional. A great deal of health care law revolves around the legitimacy of such incentives and of corporate agents, both nonprofit and for-profit, as intermediaries between professional and patient. Few

The problem of controlling health care costs, which absorbs so much public and private energy, is best understood as a challenge to achieve efficiency in the allocation of societal resources.

law students are otherwise introduced to issues of this kind, to the not-for-profit corporation, or to federal, state, and local tax exemptions. The policy context of the course can make the introduction to such issues particularly memorable.

Health care law also deals with information, the quantity and quality of which are vital to social control through either governmental action or market forces. The health care industry helps to offset the market's chronic underproduction of information when it provides authoritative opinion on quality by granting accreditation for institutions and credentials for personnel. The public, however, still lacks a diversity of sources and views on many debatable matters that are implicit in these judgments on provider quality or competence. Law students can ponder the role of information and the power of the legal system to influence its production and dissemination (e.g., in the parallel use of first amendment principles and antitrust law to lift artificial restraints on professional advertising). In many respects, the health care sector is appropriately viewed as a malfunctioning marketplace of competing ideas and not merely as a market for technical services. Indeed, many of the economic failures of the health care market can be laid at the door of one-party rule by the medical profession and the consequent lack of public debate and informed consumer choice.

Overview of a Course in Health Care Law and Policy

My course begins by introducing the basic institutional, legal, economic, and policy framework of the health care industry. In addition to highlighting access issues, this introduction focuses on the legal and policy tensions between altruism and professionalism, on the one hand, and commercialism and antitrust policy, on the other. The course then covers sequentially the two sides of the all-important quality/cost trade-off without losing sight of the central reality around which the course revolves—the trade-off itself. Personnel credentialing and regulation are taken up first, followed by careful consideration of the quality-of-care and related organizational and liability issues in institutions. Tort liability is examined at length as a quality-assurance mechanism, but with its policy implications in full view. The course then turns to cost containment, focusing first on government regulation of the private sector and then on cost-control measures being employed in public programs. Finally, cost containment in the private sector, including such innovations as health maintenance organizations and preferred-provider arrangements, receives extensive attention. Throughout the treatment of specific legal topics, policy threads can be woven to produce a rich fabric.

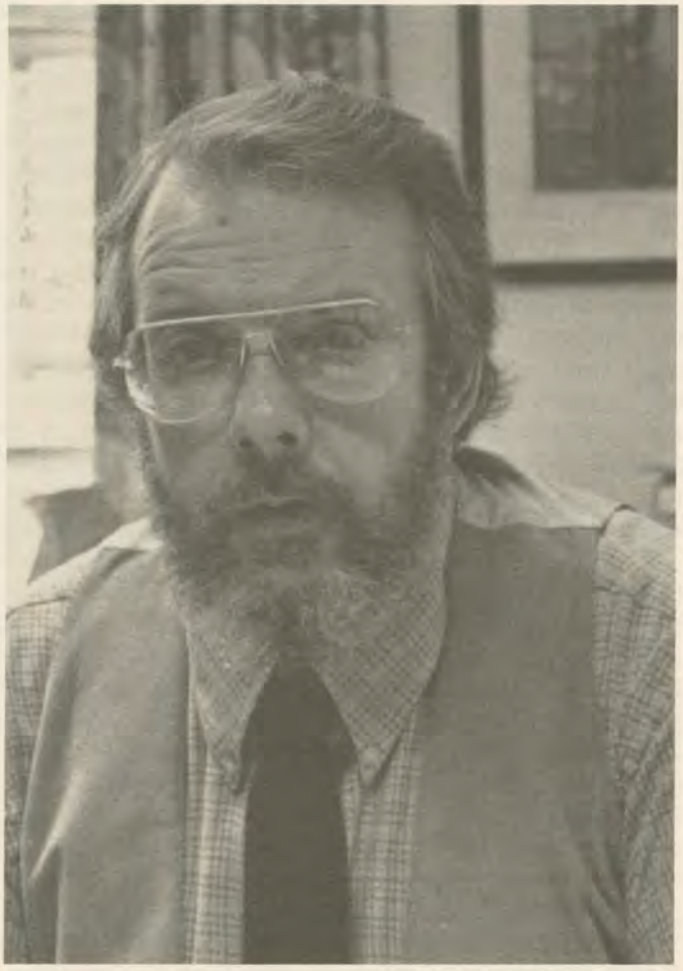
Unfortunately, time constraints require that most "bioethics" issues be left in the background for another course or seminar. My course does, however, include at the end—as issues requiring a synthesis of cost, quality, and access concerns—some dilemmas related to medical technology and the rationing of health services, especially in the context of so-called "catastrophic" disease. Questions involving such hard choices and many others in the bioethical sphere seem to me best addressed only after one has a first sense of the health care industry, its financing and cost problems, its mix of public and private decision making, and the various mechanisms by which resources are or might be allocated to health care. In an ideal curriculum, bioethics would be taught in a last-semester seminar.

If teachers who were originally drawn to health care law by a fascination with philosophical dilemmas and the qualitative aspect of the doctor-patient relationship choose not to teach the proposed course because bioethical issues are downplayed, perhaps someone else on the faculty might be recruited to undertake the course. Although the subject matter may not fall into anyone's particular speciality, there are apt to be some law teachers who are looking for a vehicle—a laboratory, as it were—in which to impart to students the broad perspectives on legal institutions and public policy that a course focused on the health care industry can provide.

Indeed, many of the economic failures of the health care market can be laid at the door of one-party rule by the medical profession and the consequent lack of public debate and informed consumer choice.

Intellectual Property Under the Constitution

*David L. Lange**



**Professor of Law, Duke University. Professor Lange has had substantial professional experience in radio, television, cable, and motion picture production, and has served as a member of the Governing Committee of the ABA Forum on the Entertainment and Sports Industries. He joined the Duke Law faculty in 1971, and teaches in the areas of intellectual property, entertainment law and torts. He is also of counsel to a law firm with offices in Charlotte and Research Triangle Park. This piece is a revised version of remarks made by Professor Lange at the spring 1989 Barristers Weekend.*

Someone has said: "To know the past is to understand the present; but to anticipate the future—ah, to do that is to walk among the ages." I want to anticipate the future, briefly, in a few remarks about some issues affecting intellectual property which I expect will arise under the American constitution in that century which now lies but a decade ahead. I think you may find the subject intriguing. But it is also vast; and so I must trust you to appreciate my need to move swiftly, and to sketch in broad strokes.

The constitution empowers Congress to enact legislation recognizing rights in intellectual property under two grants of authority—one general, the other specific.

The general authority is the commerce clause—which is in fact so general that it cannot be supposed to have any particular bearing upon the subject matter of intellectual property at all! I am led to suggest, then, the first, the broadest, and by far the most intriguing constitutional issue of them all: namely, whether a clause as general as the commerce clause can be counted upon adequately to constrain the growth of subject matter in a field of doctrines fraught (as intellectual property doctrines are fraught) with profound implications for every aspect of the intellectual life of our nation. Many surely will come to think the commerce clause inadequate to that task in the next century. I think it is now.[1]

Meanwhile, however, things do go on, more or less as they have for two centuries. Under the authority of the commerce clause Congress acts to regulate trademarks, unfair competition, trade secrets and, indeed, a host of other activities touching upon intellectual property in one fashion or another—some of these activities quite broad (like international trade), and others quite narrow (like the manufacture of microchips).[2]

Of course it is neither accurate nor fair to say that Congress is altogether unconstrained in these matters. The commerce clause is generous, but not unlimited in what it allows; and besides, other constraints operate as well: states may act, by custom or right in our federal system, so as to "preempt" Congressional activity—not of course de jure, but de facto, as in the

case of trade secrets and dilution which are primarily matters still dealt with in our time under state laws.[3]

Then there is also the more specific clause within Article I (Article I, section 8, clause 8), which empowers Congress to establish laws with respect to writings and discoveries:

> The Congress shall have Power . . . [t]o Promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries.

This is the clause—we can call it Clause 8—under which all federal copyright and patent laws originate. And here, it may be, is a grant of power to Congress on terms which also limit what can be done: literally, so as to make valid only those laws which promote the progress of science and the useful arts.

This clause, couched in the quaint language of the eighteenth century, hardly explains itself; and the Framers left us little in the way of directly relevant history.[4] Still, we are not obliged entirely to speculate about meaning. Two centuries of usage, by courts and Congress alike, suggest in broad terms: first, that Clause 8 is indeed a limitation upon congressional power; and second, that it permits traffic in rights primarily in order to enrich the public domain.[5]

And so we might suggest—as I did in testimony I gave some six years ago to the House Subcommittee which oversees copyright legislation—that in Clause 8 the constitution establishes a system of adverse presumptions, against the weight of which proponents of new or additional rights in the fields of copyright and patents must establish the legitimacy of their claims.[6]

Indeed, Congressman Kastenmeier (the Subcommittee Chairman) subsequently adopted what he called the "Lange test" for new legislation under Clause 8. So, for example, when the Microchip Protection Act of 1984 was passed, it was evaluated (and found sufficient) not only under the commerce clause, but also under the more demanding requirements of Clause 8—and in this latter case, more specifically still, under a four-part test essentially like the one I had suggested in my testimony.[7]

You may be sure that efforts to restrain the growth of intellectual property in this fashion do not go unchallenged by the would-be proprietors of rights in these fields.[8] But an effort to insure an orderly growth of rights in the field of intellectual property, on principles ordained by the constitution, is, in my opinion at least, no cause for embarrassment.

For what is increasingly troublesome about this field is that it is expanding so rapidly and so recklessly as to consume itself in internecine conflict—a conflict which ultimately threatens the public domain (that seedbed of impulses and ideas, that common ground of human experience from which all creativity ultimately must come) with annihilation.[9]

The Berne convention requires an adhering country to secure claims which are grounded in what are frequently referred to as the "moral rights" of authors.

These are strong assertions. They should be supported with examples. I am in the process now of drafting a treatise in which I hope sucessfully to do just that. Meanwhile, however, today, let me give you a very specific example—this one drawn from my own professional involvement in the dynamic field of moral rights.

It may be helpful if I begin, though, with (as they say) a bit of background. Last month (in March, 1989), the United States finally joined some sixty other countries around the world in adhering to the Berne Convention—an important international convention which moderates copyright claims among its adherents.

The Berne Convention is laudable in many respects. I have no doubt we would have adhered to it years before—but for a vexing problem caused by article *6bis* which requires adhering nations to provide protection for an author's right "to claim authorship . . . and to object to any distortion, mutilation, or other modification of, or other derogatory action in relation to . . . [his] work which would be prejudicial to his honor or reputation." In effect, the Berne convention requires an adhering country to secure claims which are grounded in what are frequently referred to as the "moral rights" of authors.[10]

Moral rights, in conventional understanding among intellectual property lawyers, include these: the right to be identified as an author; the right to withdraw from identification as an author; the right to publish (sometimes called the right to divulge) a work; and the right not to have one's work distorted, truncated or otherwise mutilated by others.[11]

Well, you may say, but then surely no one can sensibly object to claims like these which appear to be grounded in common decency indeed, in morality. I must confess, however, that I did object in still more testimony I gave to Congress on this subject, briefly and somewhat indirectly, two years ago.[12] And I draw some reassurance from the fact that my views were shared by many others who expressed them at greater length, and more directly, than did I.[13]

I take ultimate comfort, moreover, in the fact that when Congress finally enacted legislation to implement adherence to the Berne Convention—again, the legislation which took effect March 1 of this year—it did so against a background of legislative history which made it clear that our own copyright system would afford no direct support for a claim of moral rights. Instead, such rights as one might seek would have to be found in a number of other separate doctrines al-

ready well-established in our legal system—doctrines such as defamation, privacy, the right of publicity, unfair competition and trademark law, and so on.[14]

But still—why this reluctance to address the subject directly in the law of copyright? What harm could that lead to? The immediate answer is that it might well violate Clause 8 were Congress to establish moral rights as a dominant predicate of our copyright system. In our constitutional system we recognize the rights of authors for limited times in order to encourage original expression. Our intention is to enrich the public domain, into which all copyrighted work one day must fall. Our concern for the rights of authors as such is, therefore, quite limited: at best, an author's rights are distinctly secondary to the intellectual economy which, in effect, the system establishes.[15]

In this constitutional system we differ from many other nations which give the author's rights a far higher priority.[16]

I believe our system to be the wiser. And I will continue with my example to suggest more particularly why this may be so—and why also we must be careful, both in our time and in the future, to insure that our constitution's wise constraints not be overridden by transient enthusiasms.

Three years ago I agreed to represent Hollywood's Hal Roach Studios in an exceedingly controversial matter then pending before the Register of Copyright. The subject was "colorizing"—a process by which movies originally rendered in black and white can be tinted electronically, so as to afford approximately the quality of color I remember seeing in the better examples of late-period Republic Studios cowboy films.

The question raised by the Register—quite properly so, I want to make it clear; he was merely doing his job as custodian of copyright under the constitution—was whether the process of adding color to films could lead to a new and separate copyright in the colorized version. I thought it could, as did a number of other lawyers with whom I joined in briefing the case. Eventually, the Register agreed.[17]

The narrow copyright question in that proceeding was arcane; and I will not stop to discuss it here in any additional detail. For the real question in the colorizing controversy I want to address in these remarks is the far more controversial question of moral rights.

Colorized versions of classic movies do distort the original work. They may also render it accessible for the first time to a public whose tastes are appealed to only in the tinted version.

One of the colorized pictures I defended (if "defended" is the word) was that fine old classic, "It's a Wonderful Life", with James Stewart. You remember it; it has cheered the hearts of all who have seen it at more Christmas times than one might wish to acknowledge. It was also—is also—Jimmy Stewart's own personal favorite. Among all the many fine films he made, none so touched his own heart as "It's a Wonderful Life." Splendid though it was, however, the work eventually fell into the public domain. And now, in 1986, Hal Roach Studios had colorized it.

The picture was originally filmed by a cinematographer named Joe Walker, who shot it in black and white shortly after World War II. Walker had died just as the colorizing controversy was heating up almost four decades later. And Stewart—deeply offended by the colorized version (through which, he said, he found himself unable to sit)—expressed sympathy for Walker in terms of indignation that called to mind a celebrated denunciation delivered by an equally outraged United States Senator named Smith to his morally bankrupt colleagues, circa 1940!

Here, then, was an appealing scenario: a major film star protecting the moral rights of an obscure artist whose creation and enduring monument had been debased by the forces of contemporary Philistinism. An appealing scenario—except that, as it happened, things were not exactly as they appeared to be. What Stewart didn't realize was that Walker himself had actually approved the colorized version before he died![18]

I give you this story in part because I think it has its own charm and I like to tell stories like that. But I give it to you as well because it conveys something of the subtlety and the complexity of issues which arise when an author's proprietary claim in expression is grounded in moral rights. Who, indeed, is the author in this case? Is it Stewart, or the cinematographer? Or someone else again? The producer? The director, perhaps? Or even the studio!?

In truth, I think, the moral rights in cases like this one lie elsewhere altogether. At some point, I would insist, each of us should be entirely free under law to see in any work of art whatever he or she wishes to believe is there. Surely this is the essence of what it means to exchange the limited protection of a monopoly in expression (as under our constitutional system of copyright) for an ultimate dedication of the work to the public domain.

You may disagree, of course. Many do. The controversy over colorizing has yet to abate.[19] But at least let me tell you one thing more about the aftermath of this particular controversy—again, something very personal and, I hope, something at least modestly illustrative of the underlying issues.

I own two prints of "It's a Wonderful Life." One is the original version in black and white; the other is the colorized version Hal Roach gave me while I was

working on the case. I watch the black and white version once or twice annually, usually with my wife—but rarely with my children, who don't share my appetite for movies which aren't in color. And so, as it happened, my son Daniel found it possible to sit through that film for the first time only because he could now watch it in a colored version. Daniel did agree with Stewart that the work was "outrageous." But in Daniel's lexicon that term generally conveys strong approval. Indeed, it amounts to an unqualified endorsement, suggesting substantial merit on aesthetic grounds!

Colorized versions of classic movies do distort the original work. They may also render it accessible for the first time to a public whose tastes are appealed to only in the tinted version. That, I believe, is exactly as it should be.

Holmes warned us—in one of the few copyright cases to address the underlying constitutional dimensions in the law of copyright—that we must be careful not to allow copyright itself to become the indirect arbiter of public taste.[20] We run that risk when we fix a work forever in the version of it envisioned by its first creator. And it is for this reason (wisely and correctly, I believe) that Congress has refused to embrace moral rights under the copyright system our constitution permits.

Questions of this character—that is to say, questions inviting an inquiry into the constitutional underpinnings of the law—have arisen relatively infrequently in the two centuries since we began to recognize rights in those intangible, ephemeral expressions of human creativity that we call, collectively, intellectual property.

Today they abound on every hand. Confronted by an electronic technology which is having an impact in our time that surely rivals the impact of the press upon fifteenth century England, we are finding that our jurisprudence is not yet equal to the challenge.

How are we to decide issues in which a new technology (like the double-headed VCR, or DAT) confronts rights held by motion picture proprietors or recording artists? Each side may sensibly claim to "advance the progress of science and the useful arts." But who is to have priority—and on what grounds?

How are we to apportion rights among the players in a field as vital, as exciting, as important—and as essentially foreign to every established copyright and patent principle in our law—as the field of computer technology has become in our time?

How are we sensibly to recognize legitimate priorities among authors in an entertainment age dominated by derivative works? The question is not a minor one. Were Shakespeare alive and working today, it is unlikely that he could write a single one of the plays he left as his enduring legacy to the English language. He was, to be blunt, a plagiarist; a genius, perhaps; but a plagiarist undoubtedly. (Today, presumably, he would be employed writing television treatments for Lorimar.)

These and several scores of questions like them are going to require not just attention, but resolution in the century ahead. It will be a challenge to our constitution equivalent in substance to the challenge we have faced under the first amendment in this century.

The outcome presumably will be beyond our own personal experience. But it is open to us all to participate in the formation of the agenda: to see the challenges clearly; to begin the debates; and to carry them as far as our vision and our energies allow.

Meanwhile, for those of us who have the pleasure of practicing in this field, or the privilege of teaching it—it is, truly, a wonderful life!

---

1. *See Intellectual Property and Trade, 1987: Hearings on H.R. 1931 before the Subcomm. on Courts, Civil Liberties, and the Administration of Justice of the House Judiciary Comm.,* 100th Cong. 1st Sess. 110 (1987) (statement of Professor David Lange).

2. *See* Kastenmeier & Remington, *The Semiconductor Chip Protection Act of 1984,* 70 U. MINN. L. REV. 417 (1985).

3. *See, e.g.,* Kewanee Oil Co. v. Bicron Corp., 416 U.S. 70 (1974).

4. *See* M. NIMMER & D. NIMMER, NIMMER ON COPYRIGHT § 1.02 (1988).

5. Graham v. John Deere, 383 U.S. 1 (1965). *But cf., id.* § 1.03.

6. *See Copyright and Technological Change, 1983: Hearings before the Subcomm. on Courts, Civil Liberties, and the Administration of Justice of the House Judiciary Comm.,* 98th Cong. 1st Sess. 55 (1983); *Audio and First Sale Doctrine, 1983: Hearings on H.R. 1027 and 1029 before the Subcomm. on Courts, Civil Liberties, and the Administration of Justice of the House Judiciary Comm.,* 98th Cong. 1st Sess. 308 (1983).

7. *See* Kastenmeier & Remington, *supra,* n.2, at 440.

8. *Cf.,* J. LARDNER, FAST FORWARD: HOLLYWOOD, THE JAPANESE, AND THE VCR WARS 280-281 (Norton 1987).

9. *See* Lange, *Recognizing the Public Domain,* LAW & CONTEMP. PROBS., Autumn 1981 at 147.

10. *See* Baumgarten & Meyer, *Effects of U.S. Adherence to the Berne Convention* 10-12, in THE U.S. COPYRIGHT OFFICE SPEAKS: CONFERENCE PROCEEDINGS (Prentice Hall Law & Business 1989).

11. *See* NIMMER, *supra* n.4, at § 8.21.

12. *See* Hearings, *supra* n.1.

13. *See generally Berne Convention Implementation Act of 1987: Hearings on 1623, 2962 and S. 1301 before the Subcomm. on Courts, Civil Liberties, and the Adminstration of Justice of the House Judiciary Comm.,* 100th Cong. 1st Sess (1987).

14. *See* Baumgarten & Meyer, *supra* n.10. *See also* NIMMER *supra* n.4, at § 8.21.

15. *See* Graham v. John Deere, 383 U.S. 1 (1965); Mazer v. Stein, 347 U.S. 201 (1954).

16. *See generally* STEWART, INTERNATIONAL COPYRIGHT AND NEIGHBOURING RIGHTS (1983).

17. *See* Oman, *The Copyrightability of Colorized Motion Pictures Under the U.S. Copyright Law,* 23 COPYRIGHT 381 (December 1987).

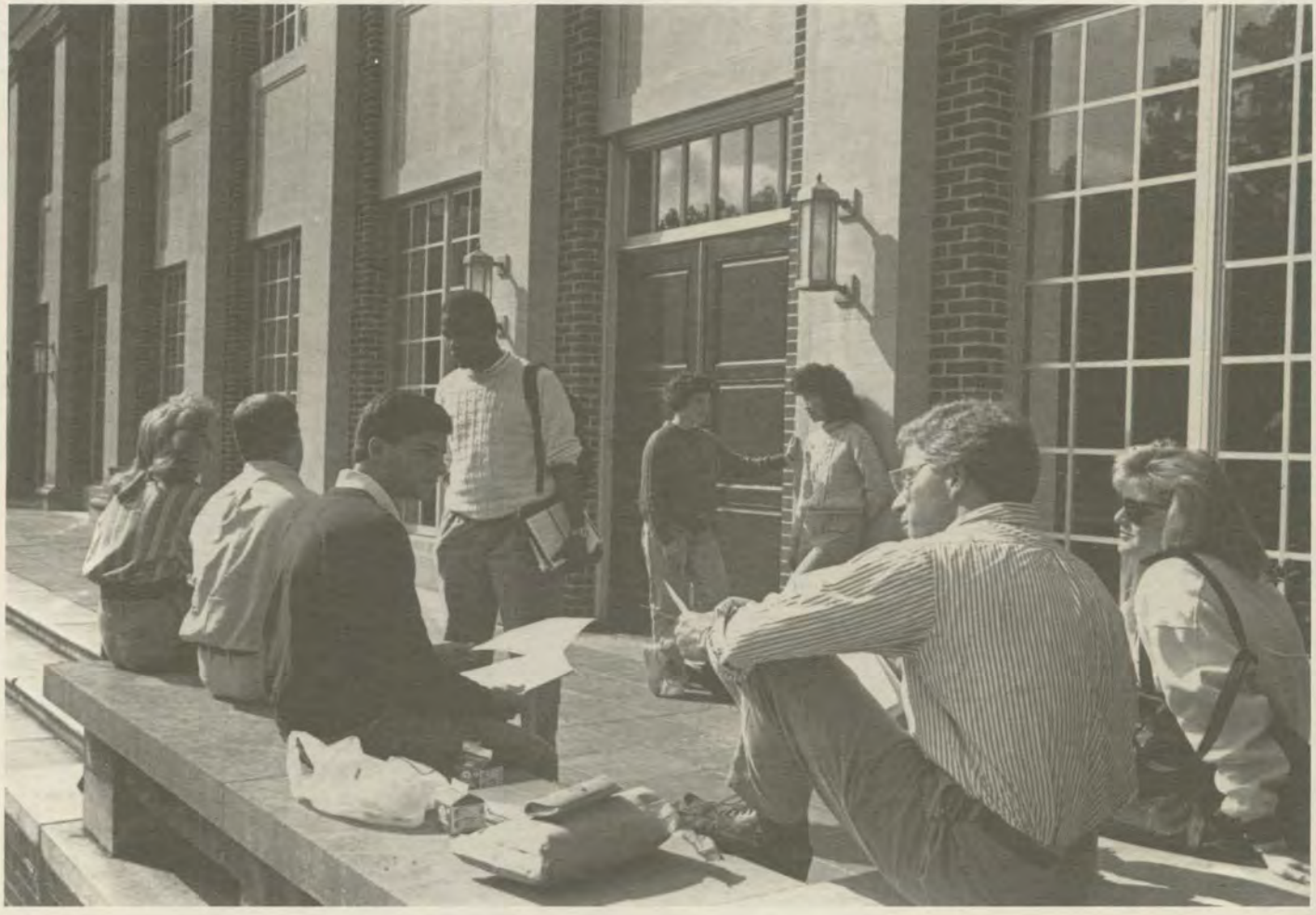
18. My version of this story is derived from personal sources. An abbreviated version appeared at page 17 of the January, 1987 issue of *Channels,* a trade journal.

19. For a thoughtful examination of the controversy by an author who shares my conclusion on the merits, *see generally* Beyer, *Intentionalism, Art, and the Suppression of Innovation: Film Colorization and the Philosophy of Moral Rights,* 82 NW UNIV. L. REV. 1011 (1988).

20. Bleistein v. Donaldson Lithographing Co., 188 U.S. 239 (1903).

ABOUT THE SCHOOL

Admissions: Enrolling the Best and the Brightest



When James B. Duke established the Duke Endowment in 1924 transforming Trinity College into Duke University, his objectives for the newly created University were summarized in the seventh article of the Endowment Indenture. One of the cardinal principles stated is "to admit as students only those whose previous record shows a character, determination and application evincing a wholesome and real ambition for life." The Law School Office of Admissions takes this charge seriously in recruiting and admitting the best and brightest students.

Duke's admissions statistics are impressive by any standard. In 1985 Duke received 1877 applications for admission. This spring the School received 3500 applications—the largest number in its history. This number represents an eighty-six percent increase in applications over the last five years. This is also a significant increase over last spring's total which fell just short of 3000 applications. While law school applications have been increasing nationwide, the increase in applications to Duke Law School for the 1988 entering class—twenty-seven percent—exceeded the nation-wide increase of twenty percent.

The 182 men and women who comprised that class represent the realization of last year's admissions and recruiting goals. The statistical data for these students remain vir-

tually unchanged from the year before, as the median LSAT is 42 and the median grade point average is a 3.54. The students come from ninety-seven different colleges and universities. Thirty states and four foreign countries—China, Panama, South Africa, and West Germany—are represented.

The increase in applicants to law schools in general has been attributed to the higher profile of lawyers resulting from media coverage of the hearings related to Robert Bork's nomination to the U.S. Supreme Court, the Oliver North hearings and trial, or even the *L.A. Law* television series. But, no doubt, the increase in applications to Duke Law School may also be attributed to the active recruitment efforts of Duke faculty, staff, students and alumni.

A Tradition of Excellence

The Duke Law School Admissions Office administers an active recruitment program designed to bring some of the best and brightest minds to Duke to study the law. This program represents the continuation of a long tradition of high standards and aggressive recruiting in an effort to maintain the School's reputation as a truly national school. As former Duke Law Professor W. Bryan Bolich noted in a 1968 speech at a law alumni luncheon, the objective of the School has always been to "provide such a broad legal education as to prepare one for practice in any state." That objective remains the mission of Duke Law School today.

In 1904, Samuel Fox Mordecai became dean of the Trinity College School of Law. The School quickly set new standards of excellence in legal education by adopting the case method as a basis for instruction and by requiring three years of study for the LL.B. degree. Trinity also established high standards for admission to the law program by requiring two years of prior college education. These requirements were among those adopted by the American Bar Association in 1921 as part of an attempt to upgrade legal education and bar admission. Thus, when the ABA published its first list of approved law schools, Trinity (Duke) was among the thirty-nine schools so listed.

In the 1930's, under the direction of Dean Justin Miller, the School actively sought to establish Duke Law as an institution with a national scope and character. Miller, a former dean at Southern California Law School, embarked upon this ambitious program by recruiting legal scholars from California and around the country. The impact of the new admissions program resulted in a student body that was more geographically and institutionally diverse than in previous times. For example, in 1937, the 102 Duke Law students represented twenty-nine states and fifty-five undergraduate institutions.

In 1958, Professor E.R. ("Jack") Latty was appointed dean of Duke Law School. Latty inaugurated an unprecedented era of activity for the School by spearheading a drive for a new building to accommodate the growing law program. "Dean Latty had a definite vision and plan to make Duke a national law school," says Dean Pamela Gann '73. He personally recruited top students from around the United States to come to Duke and procured additional scholarships to support his efforts.

Debra O'Reilly, current Director of Admissions for the Law School, says that "Latty is noted for his work in expanding the diversity of the Law School. I have been told that he would show up on college campuses around the country and tell promising students he had identified why they should come to Duke." Latty's work was a tremendous success. By 1967, the student body had grown to 340 students from forty states and seventy-five colleges and universities. These students possessed high scholastic credentials as well as other outstanding qualifications.

Through the seventies and into the early eighties, Assistant Dean Charles A. Howell, affectionately known as "Charlie" to the Law School community, continued to provide the personal touch to the Law School Admissions Office. Those who entered the Law School during those years describe her as someone who had a particular knack for admitting people who could contribute of themselves to the School and to their classmates, as well as benefit from the education offered them.

In 1983, then-dean Paul Carrington appointed Gwynn Swinson, who is the current Associate Dean of Admissions. Swinson, in conjunction with Dean Gann and the Faculty/Student Admissions Committee, sets the goals and policies for admissions. Much of Swinson's time, however is spent on the road. In the tradition of Dean Latty, she travels throughout the United States to increase the public's awareness of Duke Law School.

Swinson was recently elected to the Board of Trustees of the Law School Admission Council (LSAC). She indicates that "not only was I pleased to be elected by my counterparts at other law schools, but being on the Board allows me to become involved in broad policy issues concerning admissions." For example, LSAC conducts empirical research on the validity of the Law School Admissions Test and individual test questions; addresses ethical questions involved in recruiting applicants and the admissions process; and sets the fees and fee policy for the test.

Prior to being elected to the LSAC Board, Swinson was active in LSAC affairs through a subcommittee and work group. "Although being active in the LSAC can be time-consuming, it is professionally useful and personally rewarding to participate in the governance process through which current admission policy questions are addressed," Swinson states. She also notes that Duke has a history of involvement with activities of the LSAC. "Professor Deborah DeMott previously served on the Board and was helpful in informing me about Board activities." Swinson, who will serve

on the Board for three and a half years, emphasizes that "in order to keep the admission process in perspective, it is important to understand the broader issues."

Recruiting Qualified Applicants

Admissions Director Debra O'Reilly asserts that "in terms of law school admissions, where you rank is incredibly powerful in determining a school's ability to attract the most highly qualified applicants." Once you pass that hurdle, the Admissions Office plays a critical role in enrolling the right applicants. Dean Swinson therefore sees "the objectives of our recruitment system as twofold. First, we inform prospective applicants about what Duke has to offer. Second, the Law School assists accepted candidates to make informed decisions as they consider their options. Prospective students are more likely to make intelligent choices when they have sufficient information upon which to base such important decisions."

Thus, as O'Reilly states, "admissions can be seen as a public relations arm of the Law School. Admissions personnel are usually the first and sometimes the only contacts applicants have with Duke. We must convey not only accurate information but also an attractive picture of the School's program."

But Swinson is quick to add that professional admissions officers also serve as "informal resource counselors to prospective applicants and students in the course of providing general information about law schools and the admission process, as well as specific details about their individual schools." Dean Swinson also emphasizes that "pre-law advisors at institutions of higher learning play an important role in counseling students about where to apply and to enroll. The Law School Admissions Office is sensitive to the importance of pre-law advisors at undergraduate schools around the country."

Dean Swinson also serves on the Executive Committee of the Southern Association of Pre-Law Advisors (SAPLA), and attends conferences sponsored by several other pre-law advisor associations. In 1985, Duke hosted the fifth annual SAPLA conference, which brought one hundred pre-law advisors to campus. At last fall's SAPLA conference, held at Wake Forest Law School, Swinson chaired a panel on what pre-law advisors should know about the admissions process.

Utilizing An Effective Alumni Network

Swinson and O'Reilly have adopted a blanket approach to recruitment across the country. Between the two of them, they participate in all five large regional law school forums sponsored by the Law School Admissions Council each year. Additionally, they respond affirmatively to scores of invitations to attend law school fairs at colleges and universities by using the volunteer services of Law School alumni who raised the Law School's banner in dozens of cities and before hundreds of prospective students this past fall.

Duke Law School's international reputation for excellence is due, in large part, to the visibility of Duke Law alumni who are located throughout the United States and around the world. Among their ranks are prominent lawyers, judges, legislators, government officials, corporate executives, and teachers, many of whom are interested in helping the Law School attract and enroll the best candidates. Positive response to alumni contact convinced the Law School Admissions Office to make a concerted effort to expand alumni involvement in the process. The Alumni Admissions Program (AAP) was established in 1985, at the direction of then-dean Paul Carrington.

The Alumni Admissions Program currently involves more than 180 alumni coast-to-coast as volunteers. Extensive use of alumni in the recruitment process is a unique feature of Duke Law School's admissions program. "Although many undergraduate institutions use alumni in their recruitment efforts, as far as we know Duke is the only law school with such a program," O'Reilly proudly states.

Alumni involved in the program may work with the Admissions Office in either or both of the recruitment phases—spreading the word about Duke Law School to potential students and/or talking to individual applicants who have been admitted to the School and are trying to decide whether to enroll. Dean Swinson notes that "with such a small admissions staff it would be impossible for us to recruit as effectively without the assistance of our alumni. They are the best ambassadors for the School. They deserve a great deal of credit for the success of our recruitment program."

Many alumni visit with pre-law advisors and undergraduates at nearby colleges and universities. For instance, Jerry Novick '84 and Marc Golden '88, both University of Pennsylvania undergraduate alumni, teamed up for a presentation at their alma mater in Philadelphia this year which attracted more than fifty attentive undergraduates. Alumni Bill Blancato '83 and Jim Lilly '85 spoke to students at Wake Forest University in Winston-Salem, North Carolina, the city where they both practice.

Margaret A. Behringer '85 of Charlotte, North Carolina has traveled to a nearby college to meet with prospective students because she is committed to helping Duke maintain its diversity. "Duke needs to continue its efforts to attract well-rounded students," she says. In Vermont, Middlebury College played host to an annual visit by Dan Jacobs '82, who notes that loyalty to his undergraduate school as well as to Duke Law School spurs his efforts. "I am fond of both schools and enjoy making a compatible match between Middlebury students and Duke Law School."

Rick Hofstetter '82, who recruits regularly at his alma mater, Indiana University-Bloomington, agrees. "With a clear conscience I can tell Indiana University students that Duke is a great place because it was a really good experience for me." Michael Evers, now a rising third year, found this contact to be effective. "My contact with Mr. Hofstetter as an undergraduate personalized the admissions process. I was no longer just a number, and that had a positive effect on my decision to come to Durham."

Enrolling the Class

Duke Law School admitted only twenty percent of all applicants for the Class of 1991. It is unlikely that the acceptance rate will increase for the next entering class. This reflects the intense competition for admission and the selectivity of the School. Most students apply to more than one law school and decide between or among those schools where they have been admitted. Thus Duke, like other law schools, accepts more students than it will enroll. The number of admitted students who enroll at Duke determines the "yield." Duke's yield has been in the thirty percent range for several years.

Dean Swinson notes that once the Admissions Office has determined that an applicant will be an asset to the class and admitted that student, it is important to help the student see the advantage of choosing to enroll at Duke. Alumni in the AAP have helped to accomplish this task in a personal way. Under the current program, alumni are matched one-to-one with a recently admitted student. The purpose of the program is "to personalize the admissions process to an extent, but also to serve as a recruitment tool by linking a prospective student with someone who has gone through the entire Duke Law School cycle from admissions to employment," says O'Reilly.

At a minimum, alumni call and congratulate the prospective student. They also make themselves available to answer questions about Duke, life in Durham, and law as a profession. Alumni are encouraged, if at all possible, to invite the prospective student to visit their law firms and/or go out for lunch. This is particularly useful because it provides a prospective student with an opportunity to see a Duke lawyer successful in her or his career. "Additionally, it's a great way for our geographically dispersed alumni to keep in touch with Duke and to contribute to our efforts from where they are," adds Swinson.

Louise A. Matthews '69 was asked to join the program by Dean Gann. This spring she met with a prospective student and invited him to lunch with two other recent Duke graduates. Matthews believes that "involving recent graduates is best because they are better able to say something about recent events at the School."

Chris Loeb '84, of Charlotte, North Carolina participates in the Alumni Admissions Program because he likes "helping out the Law School." Loeb believes the program is successful because "meeting with the students and answering their questions makes them feel that they are being seriously considered by the School. It also shows that Duke Law alumni are deeply committed to and involved in the School."

Stanley Barringer '82 participates in the program because of his experiences at Duke. As a graduate of Nyack College in New York, he had "always heard the name 'Duke University' mentioned in the context of being an excellent university. But I didn't even know what state it was in." When Barringer visited the area during his senior year, he dropped by the Law School without an appointment to look around. "Suddenly I found myself set up with an appointment to meet with the dean of admissions and attending a criminal law class. Two weeks later I was accepted and decided to come to Duke," he says. Barringer's personal experience with

admissions at Duke makes him an ideal representative for the School because he believes that "hearing about real experiences is a crucial supplement to the glossy brochures you receive from interested law schools."

The best evidence of the success of the Alumni Admissions Program is the class of 1989—the first entering class exposed to the program. "The yield from the pool of applicants for the Law School was so strongly affected by the program that we had an overwhelmingly positive response which produced one of the largest classes in the history of the School," says O'Reilly.

Another important asset of the Admissions Office is the current student body. "We feel that if we can get a prospective student into contact with an alumnus or alumna and then get the prospect to meet students here, we can convince the prospective student that Duke is the place for her," states Gann. "This networking is an effective recruitment tool. First, because Duke Law alumni speak affirmatively about their experience at Duke. Then, the enthusiasm of our current students completes the process."

From February until the end of the school year, prospective students, whether admitted or not, visit the Law School to help make their decisions. Swinson admits that "the current building does not present an image consistent with Duke's trademark for distinct architecture. It was built in another era for a smaller Law School community. However, if we can introduce the prospective student to some current students and faculty, their enthusiasm can overcome the limitations of the physical facilities. Of course, we look forward to presenting a positive image on both fronts when our building is renovated and expanded."

The Admissions Office will send the visiting prospective student to first year classes and to lunch with current students. Many applicants find the interchange with law students to be a chance to ask the "real" questions about Duke as well as law school in general. According to O'Reilly, it is during these visits that prospective students begin to sense the collegial though competitive atmosphere of Duke Law School.

Many students cite the size of the Law School community and the friendly environment as reasons for coming to Duke. One student from Hawaii had visited the School in early May on his first ever trip to North Carolina. While here, he was able to attend a Durham Bulls game, meet with Dean Gann and Dean Swinson without appointments, and hold informal, casual conversations with students.

For Dara Grossinger '91, this contact with the students was definitely the selling point for Duke: "Honestly it's the people that got me down here. All the schools I looked at had good reputations, but the closeness between and among students and faculty at Duke was important to me." States Gann, "This

Members of the class of '89—the first class exposed to the Alumni Admissions Program—celebrate their graduation.

demonstrates how important student contact and good will are to a successful admissions program."

Maintaining Diversity

Because of Duke's commitment to maintaining high standards for admission as well as a diverse student body, the Admissions Office spends time recruiting students who can add something special to the Law School environment. Dean Gann explains, "Diversity means where a student is from, their school, socioeconomic background, ethnicity, and age. Here, we are extremely diversified, but we have to work at keeping our diversity in many areas." As an example, Gann notes that sixty-eight percent of current Duke students come from the East Coast. "Hence, the Admissions Office concentrates some of its efforts on recruiting students from the West and Midwest regions of the country."

Dean Swinson indicates that "geographic balance is one of many factors we consider in seeking to achieve diversity in each class." Notes O'Reilly, "someone from Iowa who has done farm work will be different from a person who grew up in Manhattan, but each student we enroll has something significant to contribute to the Law School experiences of his or her classmates in addition to what is taught in a class."

In addition to enrolling students from around the country and from a large number of undergraduate schools, Duke Law School seeks to enroll students from a variety of backgrounds. Says Swinson, "enrolling students from diverse backgrounds enhances the intellectual and social aspects of the learning process for all class members by providing different perspectives."

Maintaining ethnic diversity is an important goal for the School. "We monitor the black, native American, Asian and hispanic applicant pools. We are especially attentive to black and native American applicants because these two groups historically have been discriminated against in North Carolina," says O'Reilly. Minority enrollment accounted for eleven percent of the 1988 entering class and the number of black students doubled—in part due to personal attention to admitting these applicants. (See related story on BLSA Weekend.)

Dean Gann points out that "geographic distribution has made it particularly difficult to attract Asian-Americans to Duke. But, with the assistance of our alumni, like Pauline Ng '89, who will be working in Los Angeles, we will try to enhance those recruitment efforts." It is important to note that Duke does not have specific numerical goals for minority recruitment or enrollment. "Our actions are influenced to a degree by the size and quality of the applicant group. We review each application for evidence that the individual can handle the work at Duke," says O'Reilly. "We want our students to succeed and seek to insure that admitting an applicant will be neither a disservice to the student nor to the Law School."

Women represented forty-two percent of the students in the 1988 entering class. Nationally, the percentage of women enrolled in all ABA-approved law schools was also forty-two percent. The Law School continues to encourage women to apply and seeks to maintain the strong representation of women in future classes.

Duke seeks to enroll students from different economic backgrounds, as well. "Maintaining diversity by income has been and continues to be a serious problem for all private institutions," says Dean Gann. "Duke admits students regardless of their financial need. Financial assistance in the form of scholarships, loans, and work-study is made available to as many students as possible. But there is not enough money available to give to every student who needs it." As a result, some students who meet Duke Law School's high standards and are accepted for admission are unable to attend Duke and opt for less costly—and often less prestigious—legal education. For this reason, increased endowment for scholarships is an important goal for the Law School's fund raising efforts over the next few years.

Duke Law School is also interested in maintaining diversity among age groups. The Faculty/Student Admissions Committee looks favorably on increasing the enrollment of older students interested in returning to law school. Though sixteen percent of the 1988 entering class was twenty-five or older, the median age of that class was twenty-two and the average age was twenty-three.

According to Dean Gann, recruiting older students is particularly difficult because "most people have to move to attend law school. For older students, this means they have to quit their jobs, pack up their families, and relocate to Durham. Many are unable to do this. Even though we have a good number of older students enrolled in the program, this number is low relative to older students enrolled in urban law schools."

Because Duke is a national school, many people do not recognize the importance of North Carolina as a home for the School and its alumni. The Office of Admissions has made a concerted effort to recruit North Carolinians. For the class of 1991, that effort was quite successful. Despite serious competition with the University of North Carolina at Chapel Hill (UNC) and its low in-state tuition, the Duke Law class of 1991 boasts eighteen North Carolinians—the second highest number of students from any one state. Dean Swinson notes that "since 1985 ten percent of the students in each entering class have been North Carolinans. That is a significant improvement from some earlier years when the enrollment of North Carolinians dropped below five percent."

John R. Hairr III, '90, a Raleigh native and an undergraduate alumnus of UNC, plans to work in Charlotte this summer. He notes, "if we can just get them [North Carolina residents] to realize that it makes sense to practice in North Carolina with a Duke Law degree, we will get even

more North Carolinians. We need to let them know the extent of the Duke Law network throughout North Carolina firms."

Because of the School's desire to increase its exposure abroad, the Admissions Office is particularly interested in attracting degree candidates of foreign origin. Duke receives hundreds of applications each year from international students. Dean Gann points out that "any top-ranked university must think globally. Whatever we do internationally, foreign lawyers must be involved. Given the internationalization of legal practice and the increased mobility of attorneys, firms are interested in hiring students with training in international law and international lawyers with U.S. connections."

Judy Horowitz, Associate Dean for International Studies, works closely with the Admissions Office to select international students for the three-year J.D. program. Additionally, Horowitz devotes much of her time to directing the international LL.M. program in which international attorneys come to Duke for one year to work towards the LL.M. degree. To date, Duke Law School has more than one hundred international alumni located in more than twenty-five countries around the world.

Debra O'Reilly, Director of Admissions

The Process

The Admissions program requires year-round cultivation. Requests for information and applications begin arriving in April and May—sixteen months before those students will be enrolling in law school. For the class of 1991, the Law School received a record fourteen thousand inquiries.

In the fall, following the matriculation of the previous class, the most intense recruiting for applicants goes on as alumni, staff, faculty, and students speak to prospective applicants through law fairs, college-sponsored professional-school days, and visits to colleges and student groups.

Under the Law School's "rolling admissions" system, there is no formal deadline for the submission of applications, though applicants are encouraged to complete their files by mid-January. Review of completed applications begins in December and continues until the class is filled. Applicants begin receiving responses as early as January. This policy allows the Admissions Committee to grant the most competitive applicants admission as soon as possible, while releasing those who are less competitive.

At the Law School, Debra O'Reilly oversees the application screening and selection process. Because of space limitations in the Law School building, the Admissions Processing Office is located three miles away from campus in the Pickett Road annex. "The divided office arrangement, with Dean Swinson in the Law School and our offices on Pickett Road, creates many problems in work flow and communications," states O'Reilly.

She says that visitors to the Pickett Road building are kept to a minimum because "it's not the face we choose to show the public. But we try to do the best we can with what we have." Swinson adds that, "the Admissions staff is excellent. They work very well as a team and their efforts are highly commendable." Meanwhile, the Admissions staff is looking forward to having new quarters when the Law School building is expanded and renovated.

Swinson and O'Reilly ensure that all individual applications are reviewed. They make recommendations to the Faculty/Student Admissions Committee. Though student committee members are asked to participate in policy discussions and decisions, only faculty members review the applications. At Duke, as at many law schools, the three most important criteria considered in reviewing an applicant's file, in the order of importance, are the Law School Admission Test (LSAT) score, the undergraduate grade point average (GPA), and the undergraduate institution attended.

Although reliance on purely academic criteria is appropriate in making some decisions, particularly those involving candidates either clearly admissible or clearly inadmissible, the majority of applications fall between these extremes. For these applications, Duke will give

careful consideration to more subjective factors such as proven capacity for leadership, dedication to community service, excellence in a particular field, motivation, graduate study in another discipline, work experience, extracurricular activities, and personal and character information provided in letters of recommendation. Also, in interpreting the applicant's GPA, judgments must often be made regarding the strength of the course of study pursued and the significance of class rank or the progression of grades.

No quotas are employed in the admissions process. However, because the Law School makes a conscious effort to achieve a broad diversity in each entering class, an individual student may be selected not only for his or her marked potential for academic success, but also because application materials indicate that he or she can bring to Duke unique personal qualities or talents that will enhance the overall character of the entering class.

Procedures for admission to the summer joint degree programs are no different from those established for the regular J.D. program commencing in the fall semester. Graduate school admission tests are not required. Students must elect whether they wish to be considered for entrance in the summer or fall, and may not be considered concurrently for admission to both programs.

The selection process for M.A. applicants is bifurcated. Upon a favorable decision by the Law School Admissions Committee, the applicant's file will be forwarded to the appropriate Graduate School department for review, and applicants must be formally admitted to the M.A. program by the Graduate School.

Applicants for any of the other joint degree programs offered by the Duke Law School are considered for admission to both schools on the same basis as those applicants who are applying for the individual programs. The admission decision of one school has no bearing on the admission decision of the other school. If accepted for admission by both schools, the applicant is automatically eligible to participate in the established joint degree program.

Duke Law School admits very few transfer students because very few students leave the program. Occasionally students do leave for personal reasons, creating space in the second year class. A transfer applicant must present evidence of the satisfactory completion of one year of study at any law school that is a member of the Association of American Law Schools, and be eligible for readmission to that school. To be given serious consideration for admission, an applicant should rank in the top third of the class. Two academic years of law study must be completed at Duke.

Financial Aid

Dean Swinson, who chairs the Law School's Financial Aid Committee, describes the admissions process as being "aid blind." The fact that a student has requested financial assistance has no bearing on the decisions of the Admissions Committee. Requests for aid are considered by the Financial Aid Committee after the Admissions Committee has decided to extend offers of admission.

The Financial Aid Committee consists of three faculty members who meet regularly with Dean Swinson during the spring to consider financial aid requests. Swinson notes that the Committee "works very hard to review requests for scholarships in a timely manner after the Admissions Committee accepts applicants. The Financial Aid Committee understands that an acceptance from Duke may have little meaning before notification is received about scholarships by those who requested assistance."

The Law School has a long-standing practice of not requesting enrollment deposits before accepted candidates are informed of the decision on their financial aid requests. Dean Swinson emphasizes, "the Committee is keenly aware of the high cost of legal education at a private institution like Duke, as well as the debt burden of students who borrowed heavily to finance their undergraduate education. We genuinely try to help make legal education at Duke affordable for as many students as possible. Unfortunately, the pot of funds isn't large enough to subsidize all students who seek scholarships."

After the Financial Aid Committee determines scholarship awards, the Law School's Financial Aid Counselor, Mary Hawkins, advises students about loan programs and eligibility criteria.

Dean Swinson describes Hawkins as "very dedicated and professional." She adds, "Mary works closely with entering and upperclass students assessing their financial aid packages and in exploring alternatives."

It is not unusual for financial aid packages at Duke to include a combination of scholarship and loan funds. According to Hawkins, "at least half of our students receive a combination of grants and/or loans." Though Duke's admission decisions are made independently of an applicant's financial need, in many instances a prospective student's decision to enroll may depend on the availabiltiy of financial aid.

The role of the Admissions Office is crucial to the life of Duke Law School. Admissions must first bring top students for professors to instruct in the law. In turn, the best and most accomplished professors seek intellectually challenging students to teach. Because of the top quality students and faculty, law firms, judges, and corporations then seek to recruit Duke graduates to work with them. The end result is that admitting the best and brightest students to Duke Law School continues to enhance the value of the Duke Law degree and to maintain a reputation as an excellent institution for training young lawyers.

This article is the result of contributions from Claude A. Allen '90, John S. DeGroote '90, Evelyn M. Pursley '84 and Gwynn T. Swinson '86.

BLSA Recuitment Conference

Though the number of black law students at Duke remains small, the Admissions Office and the Duke Black Law Students Association ("BLSA") are committed to aggressive recruitment of qualified black students. Gwynn Swinson, Associate Dean for Admissions, explains that "the Law School is very sensitive to the fact that our enrollment of minority students is less than we'd like it to be. Minority enrollment at Duke Law in 1988 was eleven percent, while in 1987, only five percent of the students receiving J.D. degrees at ABA-approved law schools were minority students. Thus, Duke is not out of step with national law school enrollment patterns, but we're not content. We have a genuine commitment to expand the diversity of our student body and the legal profession."

To that end, the Third Annual Black Alumni/Recruitment Conference was held February 24-26. BLSA invited selected black applicants, identified by Admissions, to spend a weekend at Duke Law School. The prospective students had the opportunity to attend class, meet with faculty and administrators, participate in roundtable discussions with students and alumni, and get a firsthand view of student life at the Law School. Months of planning by BLSA, coupled with financial and administrative aid from the Admissions Office, culminated in this Conference which Dean Swinson called "the best Recruitment Weekend we've had, judging from the response of the participants and the alumni."

Recruitment Weekend's Role

When asked about Duke's progress in increasing black student enrollment, Tanya Martin, third-year law student and BLSA Alumni Co-Chair, perceived that it was "slow, but steady. The enrollment numbers are so small that when we see an increase, say, from six blacks to twelve, we've doubled our numbers. What we have now is a big difference from ten years ago, when we only had one or two black law students." According to Martin, BLSA's purpose in sponsoring the Recruitment Weekend "is to promote the Law School as an attractive alternative for minority applicants. By showing the students the congenial environment of Duke Law, we hope to entice them to enroll here."

Twelve black students entered Duke Law School's class of 1991. Swinson feels that last year's BLSA Recruitment Weekend played an important role in persuading many of the prospective black students to seriously consider enrolling at Duke. She observed that "regardless of ethnicity, some prospective applicants don't seriously consider Duke because of the high median LSAT and GPA for each entering class. And for black applicants lacking previous ties to the South, some Southern stereotypes are a negative public relations factor which Duke must work to overcome. These two factors may discourage applications and enrollment by blacks. The BLSA Weekend is one way to help address these concerns."

Swinson believes that when Admissions can identify competitive candidates in Duke's applicant pool and persuade them to look at the campus, talk with the students and professors, and observe a class, "they are pleasantly surprised by the genuine feeling of camaraderie among the students. The BLSA Weekend reinforces the fact that black students here are not socially or intellectually isolated. This is a crucial factor that helps increase black student enrollment."

Alumni Presence

Last year marked the first time that BLSA invited Duke Law School's black alumni to its Recruitment Weekend. About twenty-five attended, and the feedback from alumni and prospective students alike was so positive that BLSA invited the alumni to return this year. The alumni also helped to actively identify and recruit potential students. At the Conference, they led panel discussions and attended scheduled activities, where they discussed their experiences in the legal profession and answered questions. "The presence of our black alumni can't be emphasized enough," Swinson said. "It ties the whole Weekend together because contact with the alumni enables prospective students to learn about the benefits of a Duke Law School education. Students can ask about career paths, options, and the placement services available at the Law School. They can see that our black alumni, though small in number, are extremely successful in the profession."

Swinson added that the alumni provide "positive reinforcement of the overall quality of legal education, student life and career opportunities for Duke Law students and graduates. They emphasize that Duke provides an excellent entree to the legal profession and is very competitive in the national job market." The alumni presence during the Weekend also provides an interesting historical perspective of where Duke Law graduates have gone and

Associate Dean Gwynn Swinson (left) meets with prospective students during the BLSA Recruitment Weekend.

how attitudes have changed. Martin observed that "when blacks first started graduating from Duke Law School in the late sixties and early seventies, they wanted to avoid the South. A lot of visible prejudice existed there. Attitudes have changed over time, and prospective students can see that Duke's black graduates now practice throughout the nation."

The BLSA Conference is held in conjunction with Duke Law School's annual Conference on Career Choices at which Duke Law alumni lead panel discussions about the particular career paths they have chosen. BLSA invited the visiting students to attend a variety of the Career Choices panels. Swinson is delighted that the two conferences coincide, since the Conference on Career Choices offers an additional opportunity for the prospective students to learn about the myriad career options open to Duke Law graduates.

The Conference

BLSA members devote much of their time and energy toward organizing the Recruitment Conference. In addition to BLSA's own efforts, it receives the aid of the Admissions Office. Swinson was very pleased that the administration, under Dean Gann's initiative, budgeted for funding specifically to assist BLSA in planning and coordinating this year's Conference for the first time. According to Swinson, these funds enabled the Admissions Office to play a greater role in helping to organize the Weekend. Admissions helped produce the invitation letters, compile the responses, and schedule events. The Office also worked to ensure constructive contact between faculty and the prospective students. Swinson intended a higher faculty profile in this year's Conference. She personally contacted faculty members to ask for their participation at lunch or at informal meetings with the students, receiving very positive responses from the faculty, whom she said were "most willing to participate in the Weekend."

With the resources and assistance of Admissions, BLSA was able to offer a full agenda of activities to the nineteen prospective students and ten alumni attending the Conference. On Friday, February 24, the students' day included Law School and campus tours, informal meetings with faculty members, and the opportunity to attend a first-year class. BLSA sprinkled social activities throughout the day as well. On Saturday, the prospective students were busy with BLSA-sponsored panels and roundtables. These discussions addressed the recent Supreme Court decision on minority set asides (*City of Richmond v. J.A. Croson Co.*, 109 S. Ct. 706 (1989)), and posed hypothetical circumstances which a black attorney might face in a mostly white practice. Saturday's activities culminated in cocktails and a banquet at the Sheraton University Center.

Weekend's Effectiveness

Lasting impressions had already been made long before the conclusion of BLSA's Recruitment Weekend. The prospective students questioned had formed an enthusiastic opinion of Duke Law School by the time Friday's schedule had begun to wind down. Asked why he had chosen to attend the Weekend, a prospective student from the University of Georgia commented that "if you're looking at a lot of good law schools,

Professor Sara Beale discusses life at Duke Law School.

a weekend like this helps set the school apart. You can see firsthand why its a good law school, instead of going on what you've heard or read." The student had attended a first-year property class that morning, and was impressed with the students' attitude. "They seem really motivated, but not superficial or cutthroat," he said. The friendliness of the students and faculty surprised another prospective student. She had been uncertain of what to expect and explained that "a prospectus can't describe what the atmosphere of a law school is really like."

Asked to articulate what unique attributes Duke Law School possesses to attract the prospective black student, Swinson herself responded, "The personality of Duke Law School is very impressive. It is much less intimidating than prospective students perceive it to be. Once they come here, the students love the campus. They are impressed by the small size of the Law School and its spirit of collegiality. The School sells itself once they come to visit." If a mere visit will successfully recruit a potential student, then the additional perspective gained by attending BLSA's Recruitment Weekend will certainly persuade more prospective black students that they belong at Duke Law School.

Karen Cashion '90

A panel of the Conference on Career Choices held in conjunction with the BLSA Recruitment Weekend.

VOL. 7, NO. 2 / 31

THE DOCKET

Faculty Profile

Health Law Expert

Clark C. Havighurst

Clark Havighurst, who presently serves as the William Neal Reynolds Professor of Law at Duke University, began his relationship with Duke Law School somewhat fortuitously. Upon discovering that a history of back troubles made him ineligible to become an officer in the military, Havighurst applied for and was chosen to be a research associate at Duke Law School. Thus, he left the military five months early to do work in the public interest on a small business grant at the Law School. "But for that experience," Havighurst said, "I would never have had any connection to Duke."

That connection resulted in a twenty-five year relationship between Duke Law School and Havighurst, who began his teaching career at Duke in 1964. In addition to teaching antitrust law, he has a particular academic interest in the field of health care law and national health care policy. He has also taught courses on securities regulation, corporate insiders' problems, regulated industries, administrative law, and legal accounting.

The Path to Duke Law School

Havighurst received an early exposure to the law. He was born and raised in Evanston, Illinois, where his father was a law professor and, later, dean of Northwestern Law School. Even so, Havighurst did not know that he wanted to attend law school until shortly before he graduated from Princeton with a degree in English. "I can no longer reconstruct my decision to go to law school," Havighurst says. "It was not in my mind when I went to college. It just turned out to be the logical thing to do."

Havighurst entered law school at Northwestern immediately after graduating from Princeton. After receiving his law degree he joined a law firm in New York. But shortly after his arrival in New York, Havighurst was drafted into the military. He entered the army with the intention of becoming an officer. "I applied for the Army JAG Corps and I went through basic training thinking that at any minute I might become a first lieutenant and outrank my company commander," he recalls. But instead, Havighurst was assigned as a legal clerk in a law office.

After about a year, the army finally decided to make Havighurst a first lieutenant. Before he actually received his promotion, however, the surgeon general's office decided that his back problems were such that he could not become an officer. Ironically, the day he received this news, he was assigned to a detail moving safes. "I was laughing so hard, I almost dropped one," he recalls. Havighurst decided that it was time to get out of the army and get on with his legal career. "I was twenty-seven years old with a law degree assigned to k.p. (kitchen police)," Havighurst recalls.

Anxious to put his legal education to use, Havighurst began to look into alternative ways in which he might complete his military obligation. Fortunately, a fellow law clerk in the army had spent some of his free time researching that question and had discovered that one alternative was to do work in the public interest. When his friend found such a job and left the military, he left Havighurst with the files containing his research.

One of the opportunities in the file was the research associate position at Duke Law School. Havighurst spent one year working on a Small Business Association grant under the direction of Professor Hodge O'Neal. During that year, he wrote his first book—on deferred compensation for key employees. In 1961 he returned to New York as an associate for what is now the law firm of Debevoise & Plimpton. He worked primarily in the areas of securities and corporate law.

Several years later, E.R. ("Jack") Latty, then dean of the Law School, offered Havighurst the opportunity to teach at Duke. "I wasn't really in the market for a teaching job, and whether I ever would have sought one is unclear," Havighurst says. He found the offer to teach especially appealing, however, because it included the opportunity to edit *Law and Contemporary Problems* (*L&CP*), which was then a faculty-edited publication. Havighurst describes

this opportunity as extremely attractive because "it seemed like a wonderful way to broaden my horizons and explore some things that I had never had time to consider at length. While I was happy in the law practice, it seemed that teaching would be an interesting thing to try out." He thought Duke was an up-and-coming law school, and—having spent time in Durham when he was a research associate—he believed the area had potential and offered "a nice life."

Before leaving private practice in New York and moving to Durham, Havighurst bought his Porsche 356C in Europe. Today, twenty-five years later, he still drives that Porsche. His positive feelings about Duke and Durham have been equally long-lived. He and his wife, Karen, a graphic designer who also owns her own special-events business and plays the harp, raised two children in Durham. Their son graduated from Northwestern last year, and is currently traveling in Europe, and plans to enter Duke's public policy program in the fall. Their daughter just finished her sophomore year at Davidson.

Although Havighurst enjoyed practicing law in New York, he soon decided that teaching had a special appeal for him. "You don't have the same pressure upon you," he says, "which is an awfully nice feature. You are able to set your own agenda to a great degree and do things that interest you."

Health Law Expert

The agenda of interest that Havighurst set for himself at Duke involved health care law. Like his relationship with Duke, Havighurst's interest in this area of the law developed somewhat fortuitously. As editor of *L&CP,* he took a suggestion from the dean that the Law School should do something with the Medical School. Havighurst worked with medical faculty to do a symposium in *L&CP* called "Medical Progress and the Law." "Because I had my name on that issue of the journal," says Havighurst, "I got a phone call from the government saying 'you must be an expert in health law problems.' " The government contacted Havighurst because it was interested in encouraging more academic work in law schools on problems related to health law.

This phone call from the government led to Havighurst's organization of a committee on legal issues in health care. The committee consisted of twelve members, including academics, who worked in various phases of the field. It convened several times to talk about the emerging issues in health law, encouraged law reviews to cover health issues, and held a few conferences. This activity eventually led to a two-volume symposium in *L&CP.* "While I was working on those things I became increasingly aware of how the health industry was changing and how a lot of the problems that were arising were amenable to scholarly attention from the perspective that I had developed in antitrust law, economic regulation, and the law and economics approach," Havighurst recalls. "The more I looked, the more interesting those problems became."

This realization led Havighurst to write an article on health maintenance organizations (HMOs) in *L&CP.* In the article, Havighurst argued that HMOs might make the health care industry competitive in ways that it had never been. This, he argued, might help control the cost of care and improve the system's ability to allocate resources efficiently. Up until this time the fact that Havighurst was editor of *L&CP* meant that most of his early scholarship had been published under other people's names. His article on HMOs was one of the first to be published under his own name and marked the beginning of what was to be a prolific writing career in the area of health care law. "From that point on, it turned out that the health care industry offered an unlimited set of topics for original research and writing," Havighurst says.

Havighurst's work during this period attracted some attention, including a chance to spend a sabbatical year (1972-73) at the newly formed Institute of Medicine of the National Academy of Science. At the time, very few people were writing on health care law. Havighurst admits it is much more difficult to get anyone's attention nowadays because so many more people are writing on these topics. It is doubtful, however, that Havighurst himself has trouble attracting attention, having established himself as one of the foremost authorities in the field of health care law.

Jim Blumstein, professor of law at Vanderbilt and former visiting professor at Duke, calls Havighurst a "major figure" in the health care field. Blumstein also has a special academic interest in health care law and worked with Havighurst when he was a visiting law professor at Duke in 1974. Blumstein says Havighurst was a true pioneer in the application of marketplace principles to the health care industry. "When Havighurst started writing about these issues in the early '70's," Blumstein said, "legal doctrine and common perception was that marketplace principles and the health care industry were not compatible." That presumption has changed, according to Blumstein. "Although no one individual was responsible for this change in attitude," he says, "Havighurst was certainly one of the most influential, articulate advocates of the application of marketplace principles to the health care industry."

In 1978-79, Havighurst spent a year on sabbatical at the Federal Trade Commission (FTC). During that year, Congress, with Havighurst's help, amended the 1974 federal health planning legislation, making explicit remarks about competition in the health care industry and how competition might be desirable. Havighurst calls this "a significant shift in Congressional thinking . . . because the idea up to that point had been that regulation would have to solve all the problems and that there was no room for competition in the industry."

It was not only through his writing that Havighurst contributed to bringing about this change in thinking. While he was at the FTC, Congress voted down a proposal by the Carter Administration to regulate hospital rates across the board. Havighurst participated in the Congressional hearings, including Senate and House debates between advocates of more regulation and advocates of less regulation and more competition. Eventually, Congress began to lean towards less regulation and more competition. "To my mind, 1979 was a watershed year in health policy," Havighurst says. He also believes it is of some interest that this shift in Congressional thinking occurred before the Reagan Administration took office.

Also while at the FTC, Havighurst worked on a book on deregulating the health care industry, which he completed in 1982. The book covers the federal health planning legislation passed in 1974 and amended in 1979. The FTC's work in enforcing the antitrust laws in the health care industry was just getting into high gear when Havighurst was at the FTC, which allowed him to contribute in that area also. Havighurst was elected as a member of the Institute of Medicine in 1981.

At Duke, Havighurst has enjoyed the benefit of several government grants that have supported his work in the health care area. The Law School's Program on Legal Issues in Health Care, of which Havighurst was director, attracted quite a bit of funding in the 1970s and early 1980s. The grants gave him access not only to secretarial and research help, but also allowed him to employ a full-time attorney.

David Warren '64, who teaches medical law and hospital law at Duke Medical School and also coordinates the JD/MD program with Havighurst, says that Havighurst has made a tremendous contribution to the field of health care law with the Program on Legal Issues in Health Care. Warren is particularly impressed by the fact that Havighurst has worked with and provided guidance for young people interested in health care law. "A number of students and research assistants have been associated with the program under Professor Havighurst and have gone on to be very important in the field," he says. One example is Glenn Hackbarth '77, who worked for Havighurst in 1979-81, before joining the Department of Health & Human Services, where he held important policy jobs, eventually becoming Deputy Administrator of the Health Care Financing Administration.

Warren, who describes Havighurst as "one of the gurus of the field of health care law," says that Havighurst was not only one of the original proponents of analyzing the health care industry from a marketplace viewpoint, but also a very early advocate of no-fault insurance for the medical malpractice problem. Although not yet a reality, says Warren, the idea is receiving active consideration right now.

The Future

Havighurst will be on sabbatical again during the 1989-90 academic year in Washington, DC, this time in the private sector. He will be with Epstein, Becker & Green, which has a health care law practice. He plans to spend a lot of his time writing, particularly regarding policy issues. Havighurst does not yet know precisely what issues or problems on which he will focus. "I finally feel like I have said something fairly definitive about just about every problem [in the health care area] that interests me," he said.

The sabbatical will allow Havighurst to get back into the policy process as well. For the past couple of years he has been working on a casebook, *Health Care Law and Policy,* which has taken him out of the policy arena to a degree. It is the second casebook in the field. "I'm probably not the most objective source but I'm content with the way it turned out," Havighurst says. A more objective source, Dean Pamela Gann, says that one of the things that is so impressive about Havighurst is that "not only is he one of the top people working on legal issues in the health care industry as a scholar and commentator, but he has also developed a very sophisticated casebook for teaching purposes." She says that what is particularly unique about Havighurst, as well, is the fact that he studies the health care industry as a whole, rather than isolating the various aspects such as antitrust or medical malpractice.

When Havighurst returns from his sabbatical in Washington, DC, he will continue to teach health care law and antitrust courses. He is concerned with the fact that fewer and fewer law students are enrolling in the antitrust course. "I think it is an important part of any lawyer's education to understand something about how competitive markets work or don't work," he says. Havighurst suspects that many students are not taking the course because law firms have indicated during interviews that antitrust activity is down and that their practices in that area are not growing. "Whether or not that is where the legal work is at the moment, it is still an important part of a legal education," Havighurst asserts. "Students are neglecting what I think is a fundamental subject on the grounds that it doesn't seem to be marketable at the moment." Havighurst says the course is also important because it provides some economics that one might not get from other law courses.

Havighurst believes that the course in health care law is more than just preparation for practice in a specialized field. According to him, the largely amorphous and unsettled legal framework within which the health care industry currently operates provides a unique opportunity to study the operation of legal institutions and the interplay of law and policy. The course also provides lessons in ethics, professionalism, and professional regulation that, according to Havighurst, carry over to the law student's own profession.

Diane Morse '90

Alumnus Profile

Solicitor General, Lawyer for the United States

Kenneth W. Starr '73

At forty-two, Kenneth W. Starr '73 is the new U.S. Solicitor General. For most lawyers, this position as the federal government's chief advocate before the U.S. Supreme Court would be the pinnacle of a legal career. Starr, however, who is leaving the U.S. Court of Appeals for the D.C. Circuit for the new position, is now widely viewed as a leading contender for any Supreme Court vacancy that might occur during the Bush administration.

In an interview shortly before his confirmation, Starr did not disavow interest in a move to the Supreme Court. "I don't know any lawyer who would not be honored by the opportunity—but one can't plan one's life around it," he said. "I loved being a judge."

In July 1983, when Ken Starr went before the U.S. Senate Judiciary Committee as President Ronald Reagan's nominee to the U.S. Court of Appeals for the District of Columbia Circuit, then-chairman of the committee Strom Thurmond asked Starr, who had been serving as counselor to the U.S. attorney general, whether it was appropriate for Justice Department officials to go straight to the federal bench. "Mr. Chairman, I do not foresee any difficulty," Starr replied. "The chief justice, whom I was privileged to serve [as a law clerk], came directly to the Court of Appeals for the District of Columbia from the Justice Department Civil Division. Justice White came from the Office of Deputy Attorney General."

A bit later in the hearing, Senator Arlen Specter asked whether being only thirty-seven years old would be a disadvantage to Starr on the bench. "I think not surprisingly, Senator, that it is an advantage," Starr replied. "It is not without precedent. In fact, Justice Story was appointed to the Supreme Court at the age of thirty-two. The first chief justice of the United States was chief justice of the State of New York at the age of thirty-one."

Supreme Court appointments were even then very much on Starr's mind. Since his elevation to the D.C. Circuit, his name has increasingly been mentioned by others as a possible Republican appointee to the Court. That speculation has taken on renewed urgency after Starr's nomination and confirmation this spring as solicitor general of the United States, a post that has served as a springboard to the Court for a number of justices, including William Howard Taft, Stanley Reed, Robert Jackson, and Thurgood Marshall. (Former Solicitor General Robert H. Bork was nominated for the Court by President Reagan in 1987, but was rejected by the U.S. Senate.)

Coming to the Law

Starr's life history reveals a long-standing interest in politics and public office. Starr was born in Vernon, Texas, in 1946 and grew up in San Antonio. He studied political science at George Washington University in Washington, D.C., and went on to pursue a graduate degree in political science at Brown. At the time, his hope was to combine an academic career with electoral politics. But after his years in Washington, watching politics close up, he found himself frustrated with the theoretical, quantitative approach of academic political science.

"I was not keen on what I saw on the horizon [for political science]—a very strong emphasis on the quantitative, on crunching numbers, and on the use of computers," he said. "Not only was it slightly intimidating, but it was not an area I was particularly interested in."

After receiving his A.M. degree from Brown, Starr spent a year as a program/escort officer for the U.S. State Department's Bureau of Educational and Cultural Affairs (now part of the United States Information Agency), arranging tours of the

United States for students from sub-Saharan Africa. Then he decided on law school as the best vehicle for his ambitions, picking Duke because "it was a good school, and they gave me a modest amount of financial assistance."

Starr married Alice Mendell in the spring of 1970 and entered Duke that fall. Alice Mendell Starr finished her undergraduate studies at Duke. It was "a wonderful place for us," Starr said. "We studied together in the basement of the law library." (The Starrs today have three children.)

Starr found law school itself "a marvelous switch from graduate school. I loved the common law courses—that surprised me. I hadn't expected that I would like private law." Starr particularly recalled his first-year constitutional law class with Professor William Van Alstyne, whom he found to be "stunningly good." Van Alstyne's course was more intellectually challenging than any course Starr had taken in graduate school. "I was working hard at thinking. I had been surprised at how seldom I was asked to do rigorous thinking in graduate school." Professor Walter Dellinger, Starr's first-year small-section instructor in civil procedure, was also "a wonderful teacher," Starr said. "I enjoyed the symmetry of procedure. It appealed to the sense of orderliness in me."

Professor Hodge O'Neal, a former James B. Duke professor of law and dean of the Law School who is recently retired from Washington University in St. Louis, remembered Starr as "an extremely bright student—always prepared, very resourceful in coming up with answers to legal problems. I recall that he showed unusual insight into the problems. He was certainly among the top-flight students I have had in forty years of teaching law."

One of Starr's classmates was Pamela Gann, now dean of the Law School. Starr and Gann served together on the *Duke Law Journal*, where, Starr recalled ruefully, Gann defeated him in staff elections for articles editor. Starr served as note and comment editor of the *Journal*.

In a recent interview, Pamela Gann recalled Starr in his student days as "extroverted, comfortable with himself, likable. He brought out the best in people around him." She remembered Starr as a moderate Republican. "I never identified him as an extreme. I did identify him as a politically engaged person. I think we would have predicted that if anyone in the class would have gone into public service of a prominent nature it would be Ken. He was always drawn toward a career in public service—it could have been elective or the route that he actually took. That he was successful was unsurprising."

Professor Robert W. Hillman '73 of the University of California at Davis Law School, who served as editor-in-chief of the *Duke Law Journal*, says that "the thing that I recall most clearly about Ken is his decency in dealing with people. I think it's very unusual to see a fellow as decent as Ken do as well as he has in public service." As a law student, said Hillman, Starr was "a conservative with a strong humanitarian instinct." On the *Journal*, Starr was "the voice of moderation." Hillman, who will teach at Duke as a visiting professor next fall, remembered a conversation with Starr during their third year in which Starr wondered aloud whether he would do better to go to California and become active as a Republican or go home to Texas and become a Democrat. "We both agreed that the two [California Republicans and Texas Democrats] were almost indistinguishable," Hillman said. "I advised him very strongly to go to Texas."

Since 1987, Starr has served as a member of the Law School's Board of Visitors, which has given him an opportunity to reflect on the changes in legal education since his Duke years. "Legal education is much more theoretical in bent now than it was previously," he said, adding that "the jury is still out" on this change in emphasis. "It would be unfortunate if the pendulum swung too far in the direction of the theoretical underpinning of the law. Duke has remained on the traditional end of that spectrum." In addition, law schools today place more emphasis on specific-skills training, Starr said. This change is not entirely favorable either, in his opinion. Simulated practice can lead students into empty posturing. "There is a limit to playing lawyer without a very strong foundation in substantive areas of law."

Starr said that Duke Law School is now more "interdisciplinary in thrust—and I view that as an extremely healthy development. The faculty is larger and more diverse, and the School is more directly and substantively involved in the profession, not just the bar but the bench." As an example, Starr cited his colleague on the D.C. Circuit, Judge Harry Edwards, who travels to Durham every fall to teach federal appellate practice. "We're also much stronger in the international area than we were when I was there."

A Legal Career

After leaving Duke, Starr spent a year as law clerk to Judge David Dyer of the Fifth Circuit, then worked for a year in the Los Angeles office of Gibson, Dunn & Crutcher before taking a post as law clerk to Chief Justice of the U.S. Supreme Court Warren E. Burger. Starr fondly remembers his two years in the chief justice's chambers and refers often in conversation to lessons he learned from Burger. Burger, he said, was personally "very warm, very charming, very wise." In a reminiscence he wrote for the *Harvard Law Review* Starr recalled the informality of Saturday conferences in the chief justice's chambers, at which Burger would prepare lunch: "There were no stewards or waiters or the like, just the Chief rustling up some soup (beef bouillon frequently entered an appearance) and a little something he brought from home. . . . Great legal battles were fought again over soup and crackers (and perhaps a homemade jam or sauce), particularly the [U.S. Justice] department's civil suits [during

Burger's tenure at Justice] with the magnates of Greek shipping."

During the interview, Starr offered a historical assessment of Burger's sometimes controversial tenure on the Court and a reply to scholars who suggest that Burger lacked the vision and stature of his predecessor, Earl Warren. "He ranks extremely high as an administrator of the system and someone who believed strongly that we did have something called a federal judicial system that faced serious dangers that required him to devote his attention to its problems," Starr said. "To the extent that he was devoting his time to those problems, he could not devote his time to his work at the Supreme Court." Burger, Starr said, was a "progressive reformer," but one with a judicial philosophy that held that "judges were not to infringe on the prerogatives of the legislature."

Burger took office in 1969. The times Burger faced, Starr said, were very different from those that confronted Warren on his accession to the court in 1953. "History should in fact view the Warren Court as a temporary episode in our constitutional history that was aimed at achieving fundamental reform at a time when human rights were being grossly violated. But eventually democratic institutions caught up. Congress became the force for reform. Chief Justice Burger was not seeking to undo the reforms of the 1960s. It was a restorative role. Even though he was sometimes being characterized as a terribly conservative figure. The truth is captured in [Vincent] Blasi's collection of essays, *The Burger Court: The Counter-Revolution That Wasn't*. [Burger] felt that there was an undue swinging of the pendulum in criminal procedure, but [the Burger Court] was not a swing back—it was a refusal to expand."

After his two years at the Supreme Court, Starr returned to the Washington office of Gibson, Dunn, where he became a partner. In 1981, when President Reagan named Gibson, Dunn partner William French Smith his attorney general, Smith asked Starr to join him as counselor to the attorney general. In that job, Starr said, "I would see—with 'need-to-know' exceptions in national-security matters—every piece of paper that the attorney general saw." Starr oversaw the attorney general's professional staff and participated in the selection of judicial nominees, including the search process for a replacement for Supreme Court Justice Potter Stewart, which produced the nomination of Sandra Day O'Connor, the first woman to sit on the Supreme Court.

Starr was also a participant in one of the most controversial decisions of the Reagan Justice Department, the decision to intervene in a Supreme Court case considering whether the U.S. Internal Revenue Service (IRS) had the authority without a specific congressional directive to deny tax-exempt status to private schools and colleges that discriminated by race in student admissions. That case, *Bob Jones University v. United States*, 461 U.S. 574 (1983), became a sore point for critics of the administration's approach to civil-rights matters, because the Justice Department filed an *amicus curiae* brief urging the Court to rule that the IRS had acted wrongly. The Supreme Court ruled in 1983 that the IRS position was correct. The adminsitration's intervention was seen as active encouragement to the so-called "segregation academies" founded in the South as a means of avoiding court-ordered desegregation of public schools.

In the interview, Starr confirmed press reports that he had argued against the position the Justice Department eventually adopted. But he defended the decision from charges that it was motivated by hostility to civil rights and a desire to send a positive signal to racist voters. "It was a misguided effort to achieve an important principle," he said. "The principle is that in our system of legislative powers the legislature makes the law. For reasons squarely grounded in democratic theory it was held that the IRS had gotten involved in making judgments against what was clearly an educational institution, and that was done without legislative sanction. I felt that [the department's position] was misguided and argued against it. It was highly inappropriate and unseemly for us to shift positions, having urged the Supreme Court at first to grant certiorari in order to uphold the IRS. It became an issue of major import, but it was discussed within the department, including by career employees within the office of the solicitor general, as a legal matter, not a political accommodation."

President Reagan considered naming Starr to a vacancy on the Fourth Circuit, but the nomination was blocked by the opposition of Senator John Warner (R-Va.), on the grounds that, at thirty-six, Starr lacked the maturity and experience necessary. (The nomination eventually went to J. Harvie Wilkinson, another youthful Justice Department official, but one with impeccable political ties in Virginia.)

Later that year, Reagan named Starr to the D.C. Circuit. This court, which is often in the thick of important administrative-law and separation-of-powers cases, is considered by many to be the second most important appellate court in the country, after the Supreme Court. It is also a training ground for future Supreme Court justices, including Burger and current Associate Justices Thurgood Marshall and Antonin M. Scalia.

Starr arrived at a time when the court was a center of political controversy. Until Reagan's election, the D.C. Circuit had been one of the nation's most liberal courts. Conservative Reagan appointees often found themselves in sharp disagreement with their more liberal colleagues, such as Judge Edwards and Judge Abner Mikva. Starr said that reports in the legal press of a split in the court were overdrawn. "The polarization is grossly exaggerated to the point of being a matter of annoyance to the judges," he said. "Our caseload is heavily involved with public law, and so one would

expect the philosophical differences to come out. We tend to disagree on the things that a group of Americans at a town meeting would disagree on—issues of constitutional law, for example. But the process of judging is much more grounded in the techniques and procedures lawyers employ every day, and we agreed much more often than one would expect from reading press accounts."

Starr found himself at the center of a number of highly visible cases and earned a reputation as a solid conservative with more moderate instincts than his controversial colleague Robert Bork. In *Tavoulareas v. Piro*, 817 F.2d 762 (1987), he coauthored with a liberal colleague, the late J. Skelly Wright, an opinion seen as having important implications for First Amendment press freedom. The case involved a lawsuit by William Tavoulareas, the chairman of Mobil Oil, against *The Washington Post*, which had printed an investigative series suggesting that Tavoulareas had used his corporate position to "set up" his son in a lucrative shipping company doing business with Mobil. Press-freedom advocates had bitterly criticized a district court ruling that suggested that juries could consider a newspaper's policy of pursuing investigative reporting as evidence of the "actual malice" necessary to sustain a charge of libel by a media defendant against a public figure such as Tavoulareas.

In their 1987 ruling, Starr and Wright set aside the judgment, writing that "we reject the proposition that a jury question of actual malice is created whenever a libel plaintiff introduces evidence that the newspaper vigorously pursues high-impact stories of alleged wrongdoing."

But in another 1987 case, *Hammon v. Barry*, 813 F.2d 412, Starr incurred the wrath of civil-rights advocates when he invalidated an affirmative action plan adopted by the District of Columbia Fire Department on the grounds that "the statutory goal of a racially balanced workforce . . . stands condemned by Title VII [of the Civil Rights Act of 1964] and by the higher law of the Constitution." Legal critics charged that Starr's decision misapplied an earlier Supreme Court decision, *Johnson v. Transportation Agency, Santa Clara County*, 480 U.S. 616 (1987). Starr's decision in *Hammon* was one basis for the strong criticism of his nomination by the Reverend Jesse Jackson. Jackson wrote to Attorney General Richard Thornburgh that the nomination dashed his hopes that the new administration would "send a clear message of commitment to the goal of equal justice under law." In Starr, Jackson wrote, "once again we have a nominee for the Justice Department who strongly opposes affirmative action remedies to help those who suffer from racial discrimination."

A spokesperson for Thornburgh replied that the attorney general was "sorry that the Reverend Jackson can't join in the almost unanimous praise that has been given to Judge Starr's nomination, and he hopes the Reverend Jackson can become familiar with Judge Starr's record."

Though Starr's confirmation hearing before the Senate Judiciary Committee was considered to be unusually long and well attended—largely because of the belief that this appointment moves him to the forefront of prospective nominees to the Supreme Court—the appointment failed to generate significant organized opposition. At the hearing Starr pledged to restore the independence of the office and seemed to project a more lawyerly than political role. "I would not take a position as solicitor general that was not legally defensible," he testified. "But, it would be difficult to imagine such a situation arising."

To both Democrats on the committee seeking promises that he would not advocate the overruling of Supreme Court precedent and Republicans seeking assurances that he would challenge precedents considered to be wrongly decided, Starr pointed out that his actions would have to depend upon the context. Stating that he would not enter the office with a specific agenda of issues to pursue, Starr pointed out that "[t]he solicitor general doesn't have the liberty to opine on a large range of issues. He reacts to the caseload." In response to concerns that the office had been politicized, Starr stated, "The solicitor general must be true to the rule of law. That has to be his ultimate loyalty." He did, however, acknowledge that "Congress did not create a truly independent office in the S.G."

The Job

In moving to the solicitor general's office, of course, Starr has moved toward more, not less, controversy. As chief advocate for the administration before the Supreme Court, the new solicitor general will find himself in the forefront of many issues that were bitterly contested in the 1988 presidential election, including abortion, church-state relations, and criminal justice.

The solicitor general's office itself was the focus of controversy in the Reagan years. A 1988 book, *The Tenth Justice: The Solicitor General and the Rule of Law*, by Lincoln Caplan, charged that the Reagan administration had politicized the office, forcing its solicitors general to pursue the administration's political agenda even when the underlying legal issues of pending cases did not support the ideological cast the administration supplied. In so doing, Caplan charged, the Reagan Justice Department had weakened the ability of the solicitor general to serve as a source of independent judgment about government appeals and undermined the confidence that justices traditionally feel in the solicitor general, who has been dubbed the "tenth justice" because of his or her collaborative role in setting the Court's agenda.

In the interview, Starr set out his vision of the solicitor general's office. "The solicitor general is certainly a unique officer of the Court, for the reason that he appears there with such unremitting regularity," he said. "It is a special relationship,

and a unique relationshp, between the two branches." The office serves a "gatekeeping role" that "protects the [Court's] docket" by refusing to carry on appeals from government agencies that are repetitive or have little chance of success, according to Starr. A solicitor general can compile "an enviable record of success by saying no [to government officials eager to pursue appeals to the Court]."

At the same time, Starr said, "there are only nine justices. The solicitor general is there to represent the United States, and that means the people of the United States. But in our system, executive power is vested in one person, the president. There are dangers in democratic theory in saying that the solicitor general is 'independent' [of the president]. But the solicitor general has a duty of offering independent judgment. The solicitor general is more constrained as an advocate [than lawyers representing state governments or private litigants]. It is more important that the solicitor general be honest, forthright, and candid with the Court than that the solicitor general win a case. That's unique about the solicitor general's role."

Many observers will be watching Starr's first year in office closely for indications of whether the Bush administration will pursue the same kind of activist—even confrontational—legal strategy that the Reagan Justice Department followed. "It's premature for me to be thinking about that," Starr said, indicating that many of these decisions will be made as specific cases arise. "The office of the solicitor general is reactive in the same way the Supreme Court is reactive."

At the same time, according to Starr, "we now know that the United States has filed its brief and is taking a forthright position that *Roe v. Wade*, 410 U.S. 113 (1973), should be overturned. That's a fairly substantial example of legal advocacy. Beyond that, it's too soon to tell. But I will say that President Reagan's election was, to borrow from Professor Bruce Ackerman of Yale, a constitutional moment, because of what he was taking to the people. A strong legal strategy was part of that. Aggressive litigation policies and efforts to overrule precedents are healthy. If a president hypothetically views a particular course of the Supreme Court as profoundly wrong, it would be curious if he did not—in an appropriate way, consistent with the rule of law—urge the Court to change it."

Garrett Epps '91.

Professor Melvin G. Shimm (left) greets Judge Starr at the Board of Visitors meeting held in March in Durham.

Book Review

American Space Law: International and Domestic*

Nathan C. Goldman '75

Many years ago the great British explorer George Mallory, who was to die on Mount Everest, was asked why did he want to climb it. He said 'Because it is there.' Well, space is there, and we're going to climb it, and the moon and the planets are there, and new hopes for knowledge and peace are there. And, therefore, as we set sail we ask God's blessing on the most hazardous and dangerous and greatest adventure on which man has ever embarked.

> *President John F. Kennedy Address on the Nation's Space Effort, Rice University, Houston, Texas. Public Papers of the Presidents of the United States: John F. Kennedy 668, 671 (Sept. 12, 1962).*

Since the beginning of time, women and men have been fascinated by the stars, the planets, and the blue, ethereal sky. In 1640 John Wilkins wrote: "Yet I do seriously and in good grounds affirm it possible to make a flying chariot in which a man may sit and give such a motion unto it as shall convey him through the air. . . . 'Tis likely enough that there may be means invented of journeying to the moon; and how happy they shall be that are first successful in this attempt." How happy indeed. On July 20, 1969, Neil Armstrong alighted from his "flying chariot" and greeted the earth: "The Eagle has landed. . . . That's one small step for a man, one giant leap for mankind."

Nathan Goldman is an attorney in private practice in Houston. He has also served as adjunct professor of space law at the University of Houston School of Law and as visiting professor at Rice University.

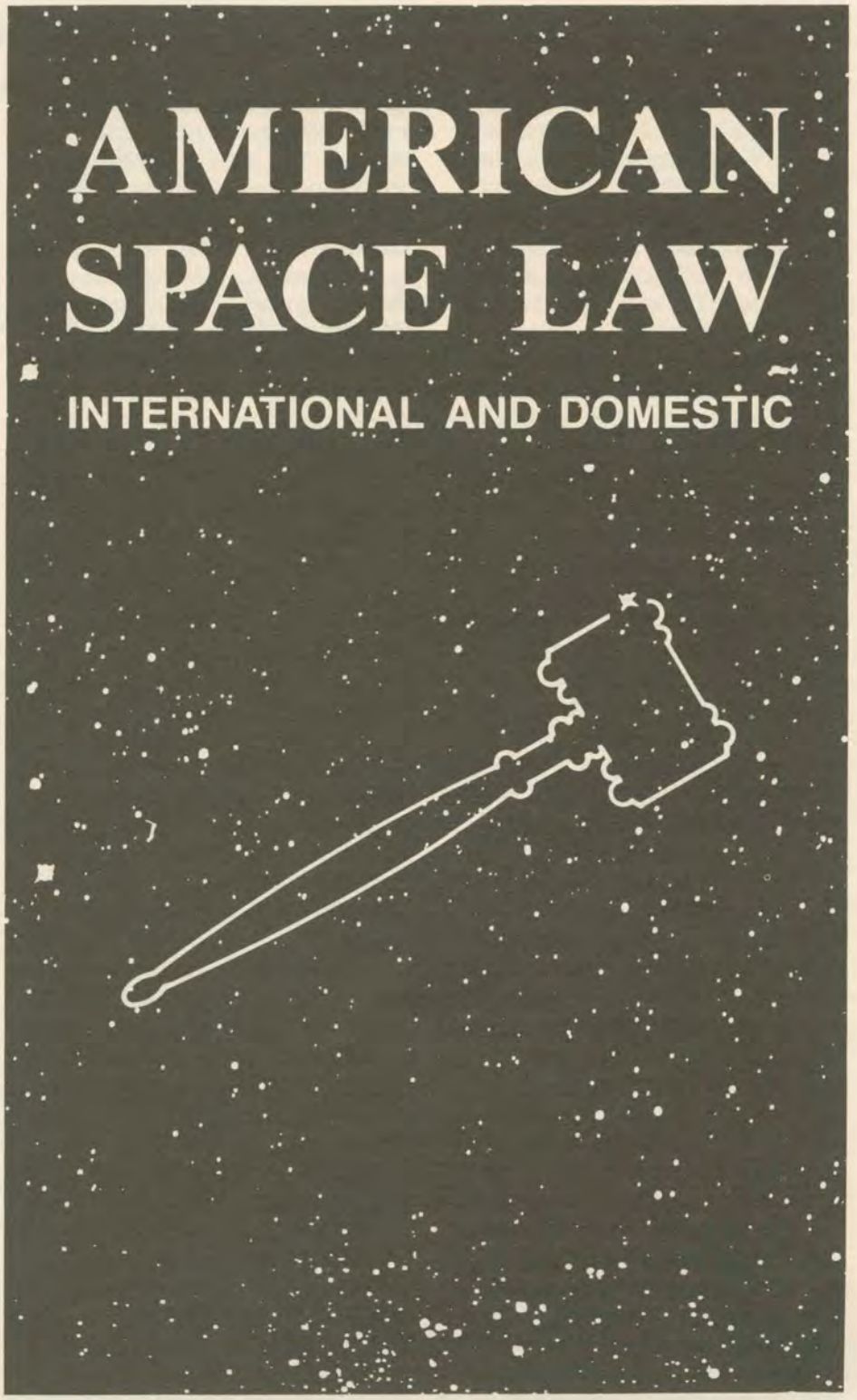
Mr. Armstrong's successful step traced its technological roots to the International Geophysical Year, an international effort in 1957-58 to study the earth's environments, including outer space. Developing a legal infrastructure for mankind's space efforts, however, has proven to be more problematic. Thus, although most legal observers generally agreed that the well-developed principles of sovereignty over the seas should serve as a model for the development of a basic theory of space law, legal scholars quickly recognized that these ancient principles would prove to be inadequate for the more complex legal issues that were likely to arise in space. Today, as activities in outer space progress from scientific exploration to commercial exploitation, the problem of constructing a coherent system (or at least a coherent theory) of space law has resulted in an extensive literature on that subject, including more than one thousand law review articles, several space law journals and a number of space law treatises. One recent addition to this literature is *American Space Law, International and Domestic*, written by Nathan C. Goldman '75 and published in 1988 by the Iowa State University Press.

Mr. Goldman's book is intended to serve both as a reference book for the space industry and as an introductory treatise for law students. Therefore, recognizing the student's need for basic information about the history of space exploration and the emerging role of space exploitation, Mr. Goldman includes a helpful selected bibliography at the end of his book. In addition, numerous end notes lead the curious general reader to a wide variety of useful sources of information about outer space. Mr. Goldman raises without resolving fascinating legal questions. It may be that the subject of space law, which is still in

*(Iowa State University Press, 1988)

its relative infancy, does not yet lend itself to extended analysis. In any event, Mr. Goldman's book teaches several important lessons, such as the uniquely multidisciplinary nature of the subject matter and the widely varied sources of information which must be consulted in handling many space law problems.

American Space Law may be of even more interest to the international political scientist or legal theorist, because Mr. Goldman discusses the effect on the evolving theory and practice of space law of what he perceives to have been a "fundamental shift" in the nature of space activity itself. That shift, as he describes it, is from the early days of space exploration to the current era of commercial space exploitation. Mr. Goldman contends that this change in emphasis in mankind's space activities has been accompanied by a change in the legal approach that has been applied to these activities. He categorizes this as a movement "from the international to the domestic and from the esoteric to the mundane commercial aspects of space." Accordingly, he divides his work into two parts, one covering the years 1957 to 1980, which he labels "the era of international public law," and the second, covering the years 1980 to the present (or, actually, to 1986, which is as far as his book extends), which he labels the period of "municipal law."



The first era began after the Soviet Union orbited Sputnik in 1957. At that point, the nations of the world quickly undertook to guarantee the peaceful use of outer space for the "benefit of mankind." Representatives of many disciplines began in earnest to address the problem of governing outer space exploration activities; the results of their efforts include six space treaties formulated within the United Nations and a number of major treaties and agreements negotiated outside the context of that body. The most significant of these treaties was the basic charter of international space law, the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies, done January 27, 1967, 18 U.S.T. 240, T.I.A.S. No. 6347, 610 U.N.T.S. 205. Entered into force on October 10, 1967, this treaty includes the following provisions: (1) all persons have a common interest in the exploration and use of outer space for peaceful purposes, (2) the moon and other celestial bodies are free for exploration and use by all states, (3) no states shall place in orbit around the earth "any objects carrying nuclear weapons or any other

kinds of weapons of mass destruction," (4) all states shall use the moon and other celestial bodies "exclusively for peaceful purposes," (5) astronauts are to be regarded as envoys of all people, (6) states shall be internationally responsible for national activities in space, (7) states shall retain jurisdiction and control over their launched space objects, (8) cooperation and mutual assistance shall guide nations engaged in space activities, (9) stations on the moon and other celestial bodies are to be open to other states on the basis of reciprocity, and (10) most significantly, Article II, stating that "Outer space, including the moon and other celestial bodies, is not subject to national appropriation by claim of sovereignty, by means of use or occupation, or by any other means."

Treaties or conventions formulated after 1967 deal with the rescue of astronauts, the return of objects launched into outer space, equitable compensation for damage caused by space objects and the highly controversial declaration that the moon and its natural resources are the "common heritage of mankind," and therefore, all nations of the world must share equitably in the benefits of the moon's natural resources. Similarly, treaties and agreements formulated outside the United Nations context harmonized and facilitated the use of communication networks, encouraged the peaceful use of the radio frequency spectrum and the related geostationary satellite orbit, improved maritime communication networks, and even allowed for international arbitration for the settlement of disputes related to space.

Mr. Goldman describes all of these international agreements in his book, and, in addition, includes as appendices texts of some of the significant treaties and conventions.

The second half of Mr. Goldman's book, covering the years 1980 through 1986, is labeled "American municipal space law." According to Mr. Goldman, this period was characterized by the exploitation of space, increased access to outer space by more nations of the world, "the atrophy and obsolescence of most space treaties and the shift toward a domestic law of outer space." To illustrate, the author highlights current space topics such as the demilitarization of space, solar power satellites, direct broadcast satellites, geosynchronous orbit, nuclear power sources in space, and remote sensing technology. He also discusses the courts' role in domestic space law and briefly summarizes decisions on selected legal issues, including questions of civil and criminal jurisdiction, property rights, licensing, Federal Communication Commission rate-making, contract disputes, and numerous unanswered questions surrounding the tragic Challenger accident. Mr. Goldman also describes the most significant statutes passed during this period and the various United States government agencies involved in their administration, most notably, the National Aeronautics and Space Administration.

As women and men look forward to the twenty-first century and the continued exploitation of outer space, nettlesome issues remain to be resolved. Some of these issues which Mr. Goldman mentions are (1) the gathering and dissemination of information by means of remote sensing (gathering information about the earth's natural resources, weather, and agricultural activities from satellites in space), (2) the peaceful use of nuclear power sources in space, (3) the definition or delimitation of "outer space" versus "air space" (including questions related to the geostationary orbit over the equator), and (4) prior consent related to the signals of popular direct television broadcasting satellites. Although members of the United Nations have been seeking to resolve these and similar issues since 1979, such thorny issues are not subject to easy compromise. As a result, Mr. Goldman concludes that nations will continue to rely more on bilateral agreements and national legislation and less on treaties formulated in the United Nations.

The shift in the law of outer space away from international cooperation is, of course, by no means fortuitous, and it is likely that the earlier approach was doomed to failure once mankind turned its space efforts from exploration to commerce. After all, although human beings have been exploring the seas since antiquity, it is only recently that technology has enabled the sea beds to be exploited in a commercially feasible manner, and, as has been demonstrated in recent years, the nations of the world have been unable to reach any type of comprehensive agreement as to how that exploitation should proceed. Nevertheless, one still wishes for a better result in space, if for no better reason than the ancient symbolic connection between the heavens and mankind's highest and best aspirations. Thus, we look forward to the future and hope that when Mr. Goldman someday updates his work to include post-1986 developments, he will be able to conclude that his earlier sharp dichotomy between the "international era" and the "municipal era" of space law is by then no longer accurate.

Reviewed by Betty Hertel, Reference Librarian and Instructor in Law, Duke University School of Law.

SPECIALLY NOTED

Professor Maxwell Retires

"The best thing about studying law," explains Dick Maxwell, "is you can take your education and it's negotiable. The law is *so* broad in terms of what you can do. It can move from place to place and activity to activity." Professor Maxwell has himself taken advantage of this negotiability as he has served as scholar, teacher, dean, and advisor. As he retires and friends and colleagues reminisce, the warmth and affection that his name evokes is evidence that this deep appreciation for new opportunities and for people is an important part of the powerful presence Professor Maxwell provides at Duke Law School.

Born in Minnesota, Professor Maxwell entered the University of Minnesota with a focus on chemical engineering and then pre-med. "I wound up in the law sort of by default," he explains. "I was too clumsy to do the lab experiments in my science and engineering courses."

Halfway through his law training at the University of Minnesota, Professor Maxwell joined in the efforts of the United States in World War II. "It's what everyone was doing. They said go, and we went." In 1942 he moved to the west coast, married his wife, Frances, and three weeks later left for the Pacific arena. He served as a staff officer with the naval air operations and amphibious forces for four years. After the war, he finished his law degree and served as the student president of the *Minnesota Law Review*.

The University of North Dakota was the first stop in Professor Maxwell's teaching tour. "I am from Minnesota," he explains. "I liked the idea of being able to fish and teach." He was at the University of North Dakota for two years. During that time he became familiar with the Williston Basin Oil Reserves, the last big oil discovery in the United States. He served as counsel to the Amerada Petroleum Company during the early development of the basin. This knowledge proved important as he developed specialties in oil and gas law and real estate.

From the University of North Dakota, Professor Maxwell moved to the University of Texas. It was there that he developed a specialty in oil and gas law. Maxwell points to work he did with Stephen Riesenfeld on *Modern Social Legislation* as the impetus behind his decision to enter academia. But he describes his specialty in oil and gas as another "matter of default." His location in Texas and the knowledge of the politics of the upper Midwest that he gained during his time in North Dakota combined to point him in the direction of developing mineral law.

After four years at the University of Texas, Professor Maxwell moved to the University of California at Los Angeles. There he served twenty-six years; during eleven of those years he held the position of dean.

Duke's Professor Walter Dellinger describes Maxwell as "the most successful law school dean of the last quarter century. He took a small fledgling law school in California and in the space of ten years, through hard work and great insight, built it into one of the nation's finest law schools." Professor Maxwell was dean at UCLA from 1958 to 1969. He explains that this was a "lively time to be in education." During his tenure as dean he found his work with African countries and his efforts to expand the reach of legal education and curriculum challenging and exciting. "It was during the time when there was a great emphasis on expanding the role of minorities and social change. There are great challenges in the job of a dean. It is also hard work." During this time he also worked with the American Bar Association developing early law education programs for primary and secondary schools.

Professor Maxwell enjoys the opportunities to be a part of new places that his life in academia has provided. He has been a lecturer for

the U.S. State Department in Liberia, Ethiopia, and Nigeria. He held visiting chairs at the University of Minnesota, the University of Singapore, and the University of Colorado, and has been a visiting professor at Columbia, Gonzaga, and Texas Tech. He was a Fulbright lecturer at Queen's University in Belfast in 1970.

The Board of Visitors of the Law School originally brought Professor Maxwell to Durham. At then-dean A. Kenneth Pye's invitation, Professor Maxwell spent six years on the Board. When he decided that it was time for a change, Professor Maxwell accepted an invitation to serve as a visiting professor at the Law School in 1979. In 1981 he moved to Duke and accepted a position as the Harry R. Chadwick, Sr., Professor of Law. He cites a beautiful place to live, a change of pace from the west coast, people he enjoys, and Duke basketball as the primary incentives for his move to North Carolina. He admits that "some have accused me of coming here because UCLA went downhill after John Wooden."

At Duke, Professor Maxwell's primary teaching areas are oil and gas and real estate finance, although he describes two summers teaching property as some of his "most pleasant experiences" because of the greater student-teacher contact. Professor Maxwell enjoys the students at Duke, although he feels that they travel too much in the fall semester.

In addition to his teaching and scholarship, Professor Maxwell has contributed to the life of the School in other important ways. He recently served as head of the dean search committee and is often given special administrative tasks because of his extensive academic experience. Dean Pamela Gann describes him as a "Senior Wiseperson" who has provided "guidance, advice, and a good sense of humor" in helping chart the course of the Law School over the last ten years. "He is really a very special person, a sweet, thoughtful, charming man who is always willing to be a sounding board for ideas or problems."

Professor Dellinger points to Maxwell as "an enormously valuable influence on the rest of the faculty. He is a wonderful role model as scholar and teacher. He is generous with his time and his willingness to help guide and shape younger members of the faculty."

Former dean Paul D. Carrington notes that "Dick Maxwell was surely one of the most accomplished classroom teachers of his generation. In his youth at Texas in 1948 his animation and intensity earned him a sobriquet, 'The Screaming Eagle.' In 1982, a group of Chinese educators visiting Duke identified Maxwell as the appropriate role model for law teachers in China."

Students express similar appreciation of Professor Maxwell. Brad Bryan, a second-year student who worked in the oil and gas field before entering law school, took Professor Maxwell's oil and gas course in the fall. "Professor Maxwell," says Bryan, "is that rare combination of leading scholar in his field and outstanding teacher. He has a tremendous ability to communicate very technical legal concepts in a way that students can readily grasp. We are fortunate to have the opportunity to study under a scholar who has made such a tremendous contribution to the field of oil and gas."

In looking back on his years in teaching, Professor Maxwell feels that his own teaching style has not changed much, but that the total law school experience has changed considerably. He cites the wider prospects for law graduates and the role of women as two areas that have mushroomed during his tenure. In the 1950s he taught a very bright female student who has since become a federal judge. But when she first graduated, Professor Maxwell did a lot of pushing and pulling to get her a job. The subsidy and the hands-on training that comes from summer jobs are other positive changes he sees in the law school experience.

Professor Maxwell's professional accomplishments are manifold. He received the Distinguished Teaching Award from UCLA in 1976 and from Duke in 1987, and was the recipient of the UCLA Medal in 1982. He was awarded an LLD (Hon.) by California Western in 1983. He was President of the Association of American Law Schools in 1972 and is an editor of the *Oil and Gas Reporter*. He has done work for the American Bar Association, the California State Bar Commission, the Employee Rights Board of the City of Los Angeles, and the National Executive Committee of the Order of the Coif. He has served as Chairman of the Council on Legal Education Opportunity and as a member of the Board of Directors of the Constitutional Rights Foundation. He has also served as a board member at a number of educational institutions. He does oil and gas arbitration and chairs the Board of Directors of the Private Adjudication Center at Duke.

Pictures in his office show that Professor Maxwell is rightfully proud of his private accomplishments as well. In addition to the good fortune of finding a wife who was willing to marry him and three weeks later wave goodbye as he set off for war, Professor Maxwell has enjoyed the gift of two sons and three grandchildren. His two grandaughters, ten and eight, reside with their parents in Texas. His grandson, seven, lives with his parents in Indiana.

Knowing his great love for the "negotiable" quality of the life he has created, one needn't worry about Professor Maxwell's capacity to enjoy the days to come. Fishing, hiking, and spending time with his grandchildren are a few of the activities on his list; but, fortunately for Duke law students, this retirement is not a full retirement. Professor Maxwell will continue to teach a limited number of courses at the Law School next year. So the good humor and encouragement of a very important "Senior Wiseperson" will continue to grace our shared life on Science Drive.

Denise Thorpe '90

Carrington Named Chadwick Professor

Paul D. Carrington, former dean of the Law School, has been named the Harry R. Chadwick, Sr. Professor of Law, effective July 1, 1989. He was one of ten University professors to be named to distinguished professorships on April 27 by University Provost Phillip A. Griffiths.

The Chadwick Chair was established in 1978 by Harry R. Chadwick, Jr. '53 and his wife, Laurel, in honor of his father. The first Chadwick Professor was Richard C. Maxwell, who retired in June. Other members of the Law School faculty who hold distinguished professorships are George C. Christie, Clark C. Havighurst, Donald L. Horowitz, and William W. Van Alstyne.

Carrington came to Duke in 1978 as professor and dean of the Law School. A native of Dallas, he began his teaching career in 1957 and has taught at more than a dozen law schools. He has been on the faculties at Harvard University, the University of Wyoming, Indiana University, Ohio State University, and the University of Michigan. After stepping down as dean in the summer of 1988, he has spent the past year on sabbatical while teaching at the Universities of Michigan, California at Berkeley, and Texas.

Long recognized as a leading expert in the fields of judicial administration, civil procedure, and legal eductation, Carrington currently serves as the Reporter for the Advisory Committee on Civil Rules of the Judicial Conference of the United States. He has served on various committees of the Association of American Law Schools, the American Bar Foundation, the American Bar Association, the Federal Judicial Center, and others. His professional experience includes a brief stint in private practice in Dallas and in a military law office, as well as occasional work for the American Civil Liberties Union and the American Association of University Professors.

Dean Gann noted that "this recognition was long overdue. He always placed others forward on the faculty for chairs rather than himself while he was the dean for the last ten years." She also noted that "Professor Carrington's accomplishment in remaining a highly productive scholar while serving ten years in a busy and successful deanship was nothing short of remarkable."

"He is preeminent as a scholar in federal courts and civil procedure. He is also a primary figure in the United States in the field of education, legal education, and professional ethics. Throughout his work, he has shown significant intellectual and social courage. Occasionally, his conclusions are unpopular with a given audience, but this fact has never inhibited his presentations. Perhaps his most significant current work pertains to services as Reporter for the Federal Rules of Civil Procedure, which is a truly major position within our profession."

Gifts to Duke Law School

Womble Family Members Make Gift

Several members of the Womble family of Winston-Salem, North Carolina, who are alumni of Duke Law School, recently made generous gifts to the B.S. Womble Scholarship Endowment Fund at Duke Law School. William F. Womble, Sr. '39, Calder W. Womble '43 and William F. Womble, Jr. '67 have jointly committed $110,000 to the Fund. The Womble Scholarship was established in 1961 by the wife and children of Bunyan Snipes Womble in his honor and in recognition of his active and loyal support of Duke University. The family chose to benefit the Law School particularly because it provided the training for Mr. Womble's chosen profession.

Bunyan Snipes Womble graduated from Trinity College in 1904 and attended Trinity College Law School from 1904 to 1906. He later served on the Board of Trustees of both Trinity College and of Duke University. While a Trustee, he served as Chairman of the [Board's] Law School Committee and as Chairman of the Board of Trustees.

Members of the Womble family have continued to make contributions to the Scholarship Fund over the years for which they have been recognized as Barristers. This most recent gift from the sons and grandson of the original honoree was applauded by H. Keith H. Brodie, President of the University, as "generous and substantial. We commit ourselves to making [the Wombles] proud of this decision and gift for which we are extraordinarily grateful."

As provided when established, income from the Womble Scholarship provides one or more schol-

arships annually at the Law School. According to Pamela Gann, Dean of the Law School, such endowment income for financial aid is critically important to the School. "In 1988 we awarded a total of $630,000 in scholarships to students in the first-year class, and only approximately $60,000 of that amount was covered by endowment income. If we are to be able to continue a relatively need-blind admissions policy in order to attract the best students possible to Duke, we very much need increased endowment support. Thus, gifts like these help us satisfy some of the most important central policies of the Law School admissions process, and we warmly thank the Wombles for their generosity."

Riddicks Create Endowment for Law Library

Floyd M. (Trinity '32, Law '37) and Marguerite F. Riddick of Arlington, Virginia have created the Riddick Endowment for the Law Library. Income from the fund will be used to "support the purchase, processing, storage, and preservation of materials on legislative and parliamentary procedure, and on legal materials relating to American government in the Duke University Law Library."

Dr. Riddick is the Parliamentarian Emeritus of the United States Senate, and the former editor of both the *Congressional Daily* and *Legislative Daily.* He has been closely associated with Congress since 1939, and was responsible for developing the "Daily Digest" section of the *Congressional Record.* He is the author of *Senate Procedure—Precedents and Practice,* "a compilation of the rules of the Senate, portions of laws affecting Senate procedure, rulings by the Presiding Officer, and established practices of the Senate," last published in 1981. By joint resolution of Congress, the next edition will be called "Riddick's Senate Procedure."

In 1979, Dr. Riddick donated his collection of autographed books written by or about senators to the Duke Law Library. This collection, "The Floyd M. Riddick Collection of Senatorial Materials," has been augmented with materials written by senators past and present from the Library's general collection and by purchases from the Library's general fund.

In acknowledging the establishment of the Riddick Endowment, Professor Richard Danner, Director of the Law Library, noted "Dr. and Mrs. Riddick have been generous donors to the Law Library since 1979, both in books from Dr. Riddick's personal collections and in funding to support purchase of materials on legislative and parliamentary procedure. The endowment will allow us to continue and expand our acquisition of materials in those areas. We are most pleased that our good friends have chosen to continue their interest in the Library in this way."

Olin Foundation Grant

In January 1989, the Board of Trustees of the John M. Olin Foundation awarded a grant of $487,500 over a three year period, to support a program of Law and Economics at the Duke University School of Law. The benefits of this grant will be wide-spread and are greatly anticipated by both faculty and students at the Law School.

The grant will allow Duke to join other national law schools, such as Chicago, Stanford and Yale, in increasing the focus placed upon economic reasoning in the law. According to Dean Pamela Gann, "The purpose of this grant is to enable us, over a three year period, to develop a cohort of students, faculty and curriculum in the particular area of law and economics. After this period, we would expect to have this area fully incorporated into our program. Law and economics is now recognized as a significant aspect of legal analysis and problem solving . . . and we want our students and our curriculum to reflect this. A school of Duke's stature should be very active in this area."

It should be noted that Duke is already active in this field of law, most notably through its faculty whose work currently involves or employs the insights of the economist in the analysis of legal problems. Examples include Clark Havighurst, William Neil Reynolds Professor of Law, who is presently in the final stages of writing a casebook entitled *Health Care Law and Policy* which uses a law and economics analysis of the health care industry, and Jerome Culp, Associate Professor of Law, who is currently completing his study on the opinions of Judge Richard Posner, the highly economically-oriented member of the Seventh Circuit, which was originally published in the Autumn 1987 edition of *Law and Contemporary Problems.*

Many members of the School's faculty find the materials generated by law and economics relevant to their own specialties and believe that Duke can effectively utilize this type of grant. "The strength of our faculty is the extent to which we are connected to real legal questions and real legal problems. I would hope that these programs [resulting from the grant] will integrate economics more fully into that realm," explains Professor Culp. "The criticism of economics is that it is too theoretical and not practically grounded. If these programs are Duke-oriented, they will be practical."

The grant will most likely be used in a three-pronged effort to increase law and economics development at the Law School. A primary area of use will be research support, permitting the School to expand and develop a visiting speakers program while allowing faculty research leaves. It is hoped that a senior economics scholar will spend a year at Duke on a visiting professorship program, thus greatly increasing the possibilities for major research projects in law and economics by both the visiting scholar and by the faculty member on leave.

It is also anticipated that financing will be provided for curricular development, either to strengthen the law and economics content in the School's current courses or to develop new courses dealing exclusively with the subject of economics in legal analysis. In either or both cases, implementation is expected to begin by 1991 or 1992.

In addition, a portion of the grant is to be set aside to provide support for the J.D./M.A. Program in Economics and Law and to fund the dedication of one issue each year of the School's journal, *Law and Contemporary Problems,* to focus on topics involving the interplay between legal and economic issues.

Special Gifts to the Building Fund

In order to reach the ambitious fund raising goals set to accomplish the needed Law School renovation and endowment, many alumni and friends of the Law School are making generous "stretch" gifts. Such gifts will be regularly reported in the *Duke Law Magazine* and the Law School *Annual Report.*

At this time we are particularly pleased to acknowledge the gifts of B. Richard Burdman '56 and John A. Canning, Jr. '69, who have each pledged individual gifts of $100,000 to the Law School. Both Burdman and Canning devote significant time and energy to the Law School as members of the Board of Visitors. Richard Burdman also serves on the Major Projects Council.

In addition to these exemplary gifts, the Law School has received a gift of $250,000 from an alumnus donor who wishes to remain anonymous. Such gifts are crucial to the success of our efforts.

1989 Class Gift

Some members of the Class of 1989 have already made pledges to the Law School which they will pay over a three year period. Funds from their first year pledges will benefit Phase I of the Law School renovation by purchasing computers and related furniture. Pledges for the second and third year will go to the Law School Annual Fund which supports the operating budget of the Law School.

To date, twenty percent of the class has pledged over $25,000 over the three years. Matching gifts from employers will bring the three year total to over $30,000. Approximately $6,000 of the pledged amount will be paid during the 1989-90 year to be used for Phase I of the building project. The average annual gift pledged by class members rose from $150 the first year to $275 by their third year. And, by the third year out, at least nine members of the class will be Barristers by giving $500 or more to the Law School Annual Fund.

These figures, particularly the average gift, compare very favorably with figures from our most recent classes in which the average gift for the first three years following graduation has not risen above $100, though the average gift for all alumni is over $200.

The Law School is most grateful to our most recent graduates for their support and vote of confidence in the future excellence of the Law School. Class members who have not yet made a pledge but wish to participate in the program may call or write the Law School Alumni Office.

The Currie Lecture

Left to right: Dean Pamela B. Gann '73, John H. Lewis '67, Mrs. Brainerd Currie, Professor W. Michael Reisman

This year's Currie Lecture by Professor W. Michael Reisman of Yale Law School was well attended by faculty and students from both the Law School and the broader Duke community. Professor Reisman's subject, "International Systems of Arbitral Control: Case Studies and Breakdowns," is an issue he has been researching as part of a larger work on international commercial arbitration. The focus of Professor Reisman's lecture was an analysis of common procedural weaknesses in international commercial arbitration as it is conducted at the International Court of Justice in the Hague, at the World Bank's International Centre for the Settlement of Investment Disputes, and under the 1958 New York Convention. However, the lecture was far from a mere critical condemnation of the current state of affairs; Professor Reisman also squarely addressed the need for theoretical and practical rethinking in the field in order to prevent systemic paralysis.

The balancing of theory and practice, and the search for innovative solutions to legal quandries are appropriate recurring themes in the Currie Lectures which have been delivered annually at Duke Law School since 1967. The Currie Lectures are a result of the determination of their originator and benefactor, John Lewis '67, that Brainerd Currie's brilliance and contributions to the law and to Duke Law School should not be forgotten after Currie's untimely death in 1965. A Duke Law School professor from 1946-49 and 1961-65, Currie is undoubtedly best remembered for his introduction of the concept of governmental interest analysis to the field of conflict of laws. It was in recognition of his book, *Selected Essays on the Conflict of Laws* (1963), that Currie was the first recipient of the Triennial Coif Award for legal scholarship. As was said at the time the award was conferred on Currie, "it seems clear enough that after Brainerd Currie that dark science called the conflict of laws can never be the same again."[1] Nonetheless, Currie's influence on the law and on his students resulted as much from his personal enthusiasm for his work as from his intellectual abilities. It is probably fair to say that Currie's legal poetry, "Rose of Aberlone,"[2] should be required reading for all bar exams.

Speakers that Duke Law School has hosted during the twenty-two years of the Currie Lectures have included Justice Traynor, speaking on the effect of conflict of laws questions on criminal law, Judge Friendly, discussing administrative law, John Hart Ely examining constitutional values, and Phillip Areeda exploring the relationship between economics and the law. The scope of the lectures is befitting their dedication to Brainerd Currie. As Justice Traynor has stated, Currie "was a man of genius whose work affords us insights for resolving some of our most troublesome legal problems."[3] Through the lecture series and the publication of each lecture in the *Duke Law Journal*, Currie's spirit of excitement for challenging the frontiers of the law lives on.

Phoebe Kornfeld '90

---

1. W. Malone, 1964 Ass'n Am. Law Schools, Pt. 2, p. 80.
2. 10 STUDENT LAWYER 4 (1965).
3. Traynor, *Conflict of Laws in Time: The Sweep of New Rules in Criminal Law*, 1967 DUKE L.J. 713, 713.

ABA Committee Meets at Duke Law School

The American Bar Association's (ABA) Standing Committee on Lawyer's Public Service Responsibility (SCLPSR) was organized to actively encourage and assist lawyers in fulfilling an ethical obligation by volunteering their time and skill for the benefit of the poor and disadvantaged in our country. As it became apparent that the efforts of individual attorneys were not sufficient to meet this need, the Committee began to focus its efforts on encouraging participation from law firms and law students, as well as the bar associations.

On January 21, 1989, Committee members met at the Duke University School of Law for their semi-annual meeting. The day-long session was co-hosted by Duke Law School, the ABA, and the North Carolina Bar Association (NCBA), and featured panel discussions on the status of pro bono in North Carolina and the Law School's role in encouraging public service responsibility for future lawyers.

Recognizing the growing need to increase the number of volunteers coming from private law firms, the Committee has begun a new project to help law firms incorporate into their practice a system for serving the poor. Currently being completed for distribution to the private sector is a guide that accumulates the successful efforts of those firms that have been able to provide pro bono services in addition to their regular practice. It is hoped that this guide will aid private firms in developing effective ways to handle their pro bono requirements. "The function of the Committee is to increase lawyer awareness of how they can enhance their public service responsibilities," said Pamela Gann, Committee member and dean of Duke Law School. "Hopefully we are succeeding in our efforts towards these areas."

North Carolina Private Bar Efforts

Panelists Marjorie Putnam, Director of Pro Bono Activities at the North Carolina Bar Association and Charles Sasser, managing attorney at Legal Services of the Southern Piedmont, explained the activities, accomplishments and future goals of their programs in part by highlighting particularly interesting and involved cases they have handled. Ms. Putnam discussed representation of Cecilia Ogugua, a Nigerian national who faced deportation by the Immigration and Naturalization Service for the overstay of a student visa. Mr. Sasser gave a chronological history of *Hyatt v. Heckler,* 757 F.2d 1455, a pro bono case undertaken by the Charlotte firm, Robinson, Bradshaw & Hinson, co-counselled by Legal Services. (For a discussion of this case, see "In the Public Interest," *Duke Law Magazine,* Winter 1989, at 43-44.) The Robinson firm received the 1984 NCBA Pro Bono Service Award and the 1984 ABA Pro Bono Award for work on the case. The firm donated attorneys' fees received for this case to the Mecklenberg County Volunteer Lawyers Program to support other pro bono efforts.

Jerome R. Eatman, Jr., a partner in the Raleigh office of Poyner & Spruill, presented the Committee with an in-depth discussion of how his law firm recently established a public service division to coordinate the firm's pro bono work. As chairman of the new division, Mr. Eatman explained that it had become necessary for Poyner & Spruill to respond to the increasing need to provide free legal services to the poor. The firm chose to create a specific division to cope with pro bono problems after studying the successful pro bono programs that had been implemented in other East Coast firms. Advice was also gleaned from the ABA, the NCBA, and the pro bono coordinator of the local Wake County Volunteer Lawyers Program.

Underprivileged clients are referred to the division chairman from various community groups. The chairman then assigns the case to one of the firm's attorneys, based upon the type of expertise required, the geographic constraints of the case, and the current workload of the attorney. This system allows Poyner & Spruill to handle a much greater volume of pro bono cases by spreading the workload among the firm's eighty lawyers and four North Carolina offices. This also allows the chairman to maintain a high degree of quality control by ensuring the match of lawyer competence to each case requirement.

Partners are often assigned to review an associate's performance on pro bono assignments.

Although many lawyers at Poyner & Spruill have long been involved in pro bono work on an individual basis, the establishment of the public service division marks a significant departure from the traditional approach taken by North Carolina's large law firms. Notably, the time commitment is now between twenty-five and fifty hours a year per attorney, greatly increasing the availability of legal services to low-income North Carolinians.

Only limited classes of civil cases, such as guardianship for juveniles, are guaranteed the assistance of an attorney. Last year, the State of North Carolina spent over $1.8 million for defense attorneys needed to represent indigent persons charged with criminal offenses through the court-appointed lawyer system and the public defender program. The state spent almost nothing on legal representation for indigent cases in civil matters. Legal Services of North Carolina does its best to alleviate the situation; yet it is estimated that there are 1.2 million North Carolinians who are eligible for legal services for civil representation. Unfortunately there are only about 100 legal services attorneys in North Carolina, resulting in a ratio of approximately one attorney per 12,000 clients. This shows the graphic importance of the work being performed by private firms and the great need for increased efforts in the area of pro bono services.

The work of the public service division at Poyner & Spruill has the added benefit of sending a strong message to the younger lawyers in the firm that pro bono is not just tolerated but is to be expected of the legal profession. By building expected pro bono participation into an attorney's workload, Poyner & Spruill has effectively reduced the possibility of penalities occurring from pro bono work, such as lost time in billable hours or an economic loss to the attorney.

The Law School's Role

Both Jack Alden, the student representative for the Forum for Legal Alternatives at Duke Law School, and Dean Pamela Gann spoke to the Committee regarding the Law School's responsibility to encourage and develop the public service obligations of future lawyers. In his presentation, Mr. Alden stressed that the ability to practice law is a privilege that carries with it an obligation to provide pro bono assistance to those requiring it. The legal profession, he maintained, has helped to create a judicial process that makes it virtually impossible for a citizen to achieve a favorable outcome without the benefit of an attorney. It is therefore vital that lawyers aid those who are unable to pass through the financial barriers to legal representation. According to Mr. Alden, firms need to eliminate the negatives associated with an attorney undertaking pro bono work and instead strive to create job incentives encouraging such activity.

Mr. Alden described a number of groups at Duke Law School that give students who already have an interest in pro bono work the opportunity to recognize public service obligations. These include the Prisoner Rights Project, the Forum for Legal Alternatives, the Environmental Law Society, the Public Interest Law Foundation, the Volunteer Income Tax Assistance program, and the Student-Funded Fellowship program.

Many people seek an immediate solution to the problem from the law schools. One suggestion is that more opportunities could be provided by which students could practice their future professional duties, thus removing the concept of pro bono work from the theoretical to the actual. Indeed, Duke Law School is working on a clinical program

PILF Fellowship

The Public Interest Law Foundation (PILF) is an independent, non-profit organization operated and funded by its membership, which consists of Duke Law alumni, students, faculty and interested community members. PILF hopes to make fellowship awards predominantly or exclusively to recent Duke Law School graduates who propose one-year projects in public interest law.

The Public Interest Law Foundation plans to grant its first fellowship award in the spring of 1990. Grant applications will be available by September, 1989 and anyone interested in applying for the grant should contact PILF by mail at Duke Law School. The Board of Directors will evaluate project proposals from third year students and alumni to select the grant recipient(s).

to aid students in discovering the importance of public service work. According to Dean Gann, "Duke is currently in the process of developing a pre-trial litigation clinic and hopes to place students into pro bono areas for learning."

Julie Jackson, Director of the Community Service Program at Tulane Law School described the mandatory pro bono program for all law students instituted there in the fall of 1988—the first ABA-approved law school in the United States to establish such a requirement.

Students are required to perform community service using the skills and knowledge acquired in the classroom. Each student must complete a minimum of twenty hours of legal service on behalf of indigents. The required hours are ungraded, but are recorded on the student's transcript together with the eighty-eight hours of credited course work. While not as profound or prolonged as clinical experience, such service will affect many more students. There are various avenues for student placement to handle both civil and criminal matters involved in a wide range of subject areas.

Presently, approximately half the Tulane students are assigned to work with a volunteer attorney on a case (or cases) allocated to that attorney through the New Orleans Pro Bono Project, which was established by the non-profit Louisiana Bar Foundation to provide civil legal services, free of charge, to indigents, through volunteer attorneys. Students are also assigned to specific legal service providers. For example, students assist in client interviews and screening for Project Save, which provides legal aid and shelter for battered women in the New Orleans metropolitan area. An example of a placement in the criminal sector is the Opelousas Indigent Defender Program where students assist public defenders in all stages from arraignment to plea bargaining or to trial.

The essential premise of Tulane's program is the "trickle-up" theory of moral obligation—the belief that, if the organized bar is not yet willing to impose any public service mandate upon itself, the best way to alter attorneys' attitudes is from the ground up by instilling in law students a sense of the responsibilities they must shoulder when they become members of the bar. If they are infected with pro bono fever, they are likely to spread the contagion.

The Committee hopes that its efforts and programs such as those described by the panelists will help to foster an awareness in law students and to educate them about the obligations of lawyers to provide public service assistance. A videotape and classroom materials were developed by the ABA for use in ethics and professional responsibility classes. The videotape shows the pro bono activities of four attorneys and includes short statements by a variety of pro bono attorneys about why they do volunteer work. The Committee has long maintained that pro bono responsibility must begin in law school. As U.S. Supreme Court Justice Sandra Day O'Connor has stated, "too many lawyers are insensitive to their greater ethical and social responsibilities, not because such responsibilities do not exist or have not been recognized, but because they are neglected in legal education, thus nurturing inattention to them when lawyers enter practice."

D.S. Berenson '90

Justice Scalia Lectures at Duke

On January 24, 1989, Justice Antonin Scalia of the United States Supreme Court delivered the first annual *Duke Law Journal* Administrative Law Lecture before an enthusiastic audience of about 700 members of the Duke University community. The Justice's remarks at Duke drew widespread press attention, including a comment on National Public Radio's "Morning Edition."

Justice Scalia, long recognized as a leading scholar and jurist in the administrative law field, spoke on "Judicial Deference to Administrative Interpretations of Law"—a topic that he characterized as "not for sissies." His lecture analyzed the theoretical background, practical implications, and future direction of the "*Chevron* doctrine," the federal courts' recent practice of accepting federal agencies' reasonable interpretations of ambiguous terms in statutes administered by such agencies. (The doctrine gets its name from *Chevron U.S.A. Inc. v. NRDC*, 467 U.S. 837 (1984), in which the Supreme Court mandated deference to agencies' "permissible" interpretations of law.)

Justice Scalia's visit to Duke Law School included meetings with Dean Pamela Gann, the Law School faculty, and the staff of the *Duke Law Journal*. The text of Justice Scalia's lecture will appear in the *Journal*'s twentieth annual Administrative Law Issue, which will be published in summer 1989.

Alumni Activities

Class of 1933

Rufus W. Reynolds, United States Bankrupty Judge for the Middle District of North Carolina, has now retired after forty-two years on the bench. During his career he handled over 40,000 cases—the most widely known being the recent PTL case in South Carolina.

Class of 1938

Charles R. Warren has retired from the firm of Warren, Parker, Williams, Stilwell & Morrison in Danville, Virginia.

Bill Moscoso '41

Class of 1941

Guillermo (Bill) Moscoso recently received the Distinguished Service Medal from the United States Department of the Army for exemplary service to the Army in war and peace for thirty-six years. He also was decorated by the Principality of Monaco with the "Order of Grimaldi," for seventeen years of distinguished service as Honorary Consul General in Puerto Rico and the U.S. Virgin Islands.

Class of 1951

James A. Scott is now of counsel to the Cleveland firm of Kaufman & Cumberland.

David Zwanetz remains in private practice in Philadelphia, where he was recently reappointed for another six year term to the Board of Revision of Taxes & Board of View of Philadelphia.

Class of 1952

Lina Lee Spence Stout, has retired from the private practice of law in Durham, where she continues to make her home.

David C. Goodwin '55

Class of 1955

David C. Goodwin, a partner in the Miami office of Morgan, Lewis & Bockius, has been named president-elect of the Miami Chapter of the American Board of Trial Advocates. Goodwin is a former president of the National Association of Railroad Trial Counsel and is a fellow of the American College of Trial Lawyers.

Class of 1959

Robert C. Hudson retired in December 1988 as Counsel for the Atlantic Division, Naval Facilities Engineering Command, Department of the United States Navy after twenty-five years. At his retirement he was awarded the Navy Superior Civilian Service Award, the highest honor that can be bestowed on a civilian employee.

Class of 1960

Rufus S. Hill, Jr. has retired as an attorney with the Interstate Commerce Commission.

Class of 1961

Joseph C. O'Rorke retired on November 1, 1988 from First Citizens Bank in Raleigh after twenty-six years of service. He was a vice president and trust officer. His retirement plans include travel and volunteer work.

Arthur B. Parkhurst has joined Mediation, Inc. of Ft. Lauderdale, Florida as a mediator/attorney. Mediation, Inc. provides neutral third party intervention to settle major pending litigation.

Class of 1963

E. Lawrence Davis, a partner in the Raleigh office of Womble, Carlyle, Sandridge & Rice, has been selected chairman of the North Carolina Democratic party.

John W. Wilcox has joined the Berlin, Connecticut real estate firm of ERA Phanco Realty, Inc.

Class of 1964

Charles M. Finn is now with the International Association of Financial Planners, located in Atlanta.

Lonnie O. Grigsby is Executive Vice President for Finance and Administration of IBP, Inc. in Dakota City, Nebraska.

Charles A. Powell, III has joined the Birmingham, Alabama firm of Powell, Tally & Frederick.

David Robinson II is now self-employed in Miami.

Richard H. Rogers has recently established three new businesses in the Dayton, Ohio area. He has a private practice in that city, concentrating on construction/real estate, international law, general business, sports and entertainment law. He has also established Rogers International, Inc., an international marketing firm; and, with his wife, Jane, has opened "Artwear Collage," which offers art fashion accessories from around the world.

Class of 1965

Eric F. Matthies, a partner in the firm of Matthies, Cross, deBoisblanc, Haldin & Robbins in Ocala, Florida, has been appointed to the Dean's Advisory Council of the School of Veterinary Medicine at the University of Florida, Gainesville.

Class of 1966

Barrington H. Branch has joined Corporex Companies, Inc. of Cincinnati as executive vice president.

John Cairns has joined the Minneapolis firm of Briggs and Moran. He continues to practice in the areas of real estate development, land use, zoning and public affairs law. He is a director of the Minnesota Shopping Center Association and formerly served as president of the Minneapolis City Council.

F. Sherwood Lewis has become a partner at the Washington, D.C. firm of Silver, Stein & Mulliens.

Brian A. Snow was appointed General Counsel and Special Assistant to the President of Colorado State University in October 1988. Before this appointment, he was in private practice in Denver for more than twenty years, specializing in corporate and securities law. He previously served as a trustee of Colorado State and as a member of the Colorado State Board of Agriculture. He and his wife, Crissie, reside in Ft. Collins.

Robert C. Hunter '67 (left) and James A. Adams '67, (right), co-winners of Drake Law School's Outstanding Professor Award.

Class of 1967

James A. Adams and *Robert C. Hunter* have been named co-winners of the Drake University Law School's 1988-89 Outstanding Professor Award by a vote of the 1989 graduating class. This marks the third time that each has won the award from Drake, where they both serve as professors of law.

Robin Chambers is now with the firm of Corrs, Pavey, Whiting & Byrne in Melbourne, Australia.

Class of 1968

Stuart M. Foss has been named Special Assistant to the General Counsel, United States Government Printing Office in Washington, D.C.

Kent E. Mast has joined the Atlanta office of Hunton & Williams.

Robert W. Maxwell II is a partner of the Cincinnati firm of Keating, Meuthing & Klekamp.

Stephen P. Pepe has been appointed chair of the Labor & Employment Law Department of O'Melveny & Myers in Los Angeles. He authored the 1988 Supplement to Avoiding and Defending Wrongful Discharge Claims (Callaghan & Co. 1987).

Stuart F. Pierson has been named a partner in the Washington, D.C. office of the firm Davis, Wright & Jones, where he concentrates in the areas of litigation, media law, and white-collar representation.

Class of 1969

Christine Keller is a partner at the Galveston, Texas firm of Greer, Foutch, Herz & Adams.

Wilson D. Perry, who is Assistant General Counsel of Northwest Mutual Life Insurance Co. in Milwaukee, has recently been appointed by the Wisconsin Insurance Commissioner to serve on the Board of the Wisconsin Insurance Security Fund. He has also been elected to the Board of the Montana Life and Health Insurance Guaranty Association.

Dale B. Ramerman now serves as a Superior Court Judge for King County, Washington.

Peter A. White is President of International Skye Associates, Inc. of Washington, D.C.

Class of 1970

Kenton L. Kuehnle, a partner in the Columbus, Ohio office of Thompson, Hine and Flory, has been listed in *The Best Lawyers in America*, published by Woodward/White, Inc. of New York. He was recognized in the real estate area.

R. Mack Rudisill, Jr. has joined the Orlando firm of Foster & Kelly.

Class of 1971

Patrick C. McGinley, professor of law at West Virginia University, was a visiting professor at the University of Oregon during the spring

semester of 1989. In 1988, he was on sabbatical and researched environmental law issues in England, Japan and Peru. He also testified before the U.S. Senate Interior Committee on public land issues.

Frank "Trip" Sizemore, who is serving his third term in the North Carolina State House, was chosen to chair the Guilford County delegation during the General Assembly's current session.

M. John Sterba, Jr. is the editor of *Drafting Legal Opinion Letters*, published by John Wiley & Sons, Inc.

Class of 1972

James Scott McAlister has been named Inspector General of the Utah Department of Corrections in Salt Lake City.

Class of 1973

Robert W. Boyd, who practices in Maitland, Florida, has been named a member of the Alma College (Michigan) Board of Trustees. Boyd is a 1969 graduate of Alma College and lives with his wife, MaryCarol, in Longwood, Florida.

Pamela B. Gann was one of three recipients of the North Carolina Association of Women Attorneys 1988 Public Service Awards. These awards are given based on contributions to women in the legal profession and women's rights under the law.

C. Wells Hall III, a partner focusing on federal and state taxation and estate planning in the Charlotte, North Carolina office of Moore & Van Allen, has been elected a Fellow of the American College of Probate Counsel. The ACPC honors lawyers who have distinguished themselves in the areas of wills, trusts, estate planning and estate administration.

Andrew F. Reish has left active duty with the United States Air Force and has joined the Falls Church, Virginia intellectual property firm of Birch, Stewart, Kolasch & Birch, where he is with the litigation group.

Kenneth G. Starling has joined the firm of Sutherland, Asbill & Brennan, as a partner in their Washington, D.C. office.

Kenneth W. Starr was named Solicitor General of the United States. (See story at p. 35.)

Durwood J. Zaelke announces the establishment of the Center for International Environmental Law (CIEL) which he will serve as director. The CIEL, based in London, will offer aid to Third World countries and others with ecological problems and will develop international laws to protect the environment. U.S. Senator John H. Chafee recently praised the CIEL as "a bold new initiative in international environmental law that holds great promise in our battle to address global environmental challenges."

Class of 1974

Ellie G. Harris is an assistant professor of finance at the University of Minnesota. She received her Ph.D. in finance from Northwestern University in 1987.

Ira Sandron is now an attorney with the Immigration & Naturalization Service of the United States Department of Justice in Washington, D.C.

Phil Sloan represented Duke Law School at the ceremony for dedication of a new moot courtroom complex at the Albany [NY] Law School in September 1988.

Patricia H. Wagner has joined the Seattle, Washington firm of Heller, Ehrman, White & McAuliffe.

Class of 1975

Nathan C. Goldman has been elected Vice President of the National Space Society, a 20,000-member organization dedicated to further the exploration of outer space. He has also been elected to the Board of Directors of the Houston Space Business Roundtable. (See review of his book on p. 40.)

Paul H. Tietz has become a partner in the Minneapolis, Minnesota firm of Popham, Haik, Schnobrich & Kaufman, Ltd.

Class of 1976

Barbara R. Arnwine is now the Executive Director of the Lawyers Committee for Civil Rights Under Law in Washington, D.C.

Russell M. Frandsen has been named a partner in the Los Angeles firm of McKenna, Conner & Cuneo, where he specializes in corporate and finance law. In January, he was appointed to a new four-year term on the Private Industry Council of the Los Angeles County Board of Supervisors. The Council provides policy guidance and oversees operation of federally funded job-training programs for the County.

Johnnie W. Mask, Jr. has become board certified in the specialty area of criminal trial advocacy by the National Board of Trial Attorneys. He is a Senior Trial Attorney in the Office of Public Defender, Jersey City, New Jersey.

Class of 1977

Lea F. Courington is now a partner in the Dallas firm of Gwinn & Roby.

Dana N. Levitt has been named First Vice President and Counsel of Security Pacific National Bank in Los Angeles.

Ember D. Reichgott, a State Senator of Minnesota and a corporate attorney with The General Counsel Ltd., has been named Chair of the Civil Law Division of the Minnesota Senate Judiciary Committee. Senator

Ember D. Reichgott '77

Reichgott has been a Senate leader in legislation concerning corporate issues, family violence and court matters.

Geoffrey H. Simmons has been elected President-elect of the Wake County, North Carolina Bar Association. Simmons is in private practice in Raleigh, and also serves as president of Legal Services of North Carolina.

Jay V. Stribling, an attorney in Dallas, has been certified by the Texas Board of Legal Specialization in oil, gas and mineral laws.

Class of 1978

Robert M. Blum has become a partner in the San Francisco firm of Thelen, Marrin, Johnson & Bridges.

Gregory S. Lewis '78

Gregory S. Lewis recently spoke at a Bureau of National Affairs Conference on "Coping with Corporate Change: Labor and Employment Law Issues Affecting Plant Closings, Joint Ventures, Acquisitions and Other Corporate Restructurings," in Washington, D.C. Lewis is a partner in the D.C. office of Morgan, Lewis & Bockius, where he practices labor and employment law on behalf of management and employers. He is also the Vice-Chair of the Labor Relations and Employment Committee of the Public Utility Law Section of the ABA.

Renee J. Montgomery '78

Renee J. Montgomery, a partner in the Raleigh law firm of Adams, McCullough & Beard, was recently elected President of the North Carolina Society of Healthcare Attorneys, a non-profit association that aims to make available to its members educational materials and programs on emerging issues in health law.

Chris A. Rallis has been promoted to senior counsel in the law department of Burroughs Wellcome Company in Research Triangle Park, North Carolina.

Chris A. Rallis '78

Class of 1979

Michael B. Lichtenstein has been named assistant general counsel of the Marriott Corporation, resident at the international headquarters of Marriott in Washington, D.C. He has responsibility for legal matters affecting corporate procurement and distribution, and real property dispositions.

Steven G. Polard has been made a partner of the firm of Graham & James, and has been appointed head of the Bankruptcy Department of the firm's Los Angeles office.

David H. Wilder became a partner in the Albany, New York firm of Cooper, Ervin, Savage, Nolan & Heller on January 1, 1989. He concentrates in the areas of commercial litigation and bankruptcy.

Steven D. Wasserman has been named a partner at the San Francisco firm of Sedgwick, Detert, Moran & Arnold.

Pam Ford Wright is now a staff attorney for Legal Services of Middle Tennessee in Nashville.

Class of 1980

Kim J. Barr remains with Arthur Andersen & Co., now resident in their Seattle, Washington office.

James T. Crouse has been named a partner in the firm of Speiser, Krause & Madole, a plaintiff's general negligence firm which concentrates in aircraft accident litigation. He is resident in the firm's San Antonio, Texas office.

John H. Hickey, a partner in the Miami firm of Hickey & Jones, recently spoke before the International Association for Financial Planning Symposium in Miami. His topic was "Professional Liability Insurance: Protecting Yourself from Angry Client Litigation."

H. Glenn Tucker has become a partner in the Newark, New Jersey firm of Greenberg, Dauber & Epstein.

W. Steven Woodward is now a partner in the Philadelphia office of Drinker, Biddle & Reath.

Class of 1981

John J. Coleman, III was named a partner of the Birmingham and Montgomery, Alabama law firm of Balch & Bingham, effective January 1, 1989, where he practices in the area of labor and employment law. His article, "When Injured Workers Return," was published in the February 1989 issue of *Personnel Journal*.

John G. Milakovic was named a partner in the Harrisburg, Pennsylvania firm of Beckley & Madden on January 1, 1989.

William K. Richardson is Regional Marketing Manager for Wang Laboratories, Inc. in Los Angeles.

Michele Miller Sales was named a partner of the Seattle, Washington firm of Oles, Morrison & Rinker on January 1, 1989.

David C. Tarshes has become a partner in the Seattle, Washington firm of Davis Wright & Jones.

Sharon Kronish Wasserman has been named a partner at the firm of Stein, Lubin & Lerner in San Francisco, where she specializes in real estate and finance.

Class of 1982

Nina F. Collins has joined the firm of Blakesler, Chambers & Peterson in Traverse City, Michigan.

Peter A. Cotorceanu has become a partner in the Williamsburg, Virginia firm of Graber, Knicely & Cotorceanu, where he specializes in estate planning, trusts and civil litigation.

Margaret A. DeLong has become an associate at the Raleigh office of LeBoeuf, Lamb, Leiby & MacRae.

Dennis R. Dumas is now with the New York City firm of Winthrop, Stimson, Putnam & Roberts.

Richard A. Lukianuk has been named Associate General Counsel of Sheller-Globe Corporation in Detroit, Michigan.

Richard K. O'Donnell has joined the Atlanta firm of Summers, Jones & O'Donnell.

Jennifer A. Putman is a partner in the Kansas City office of Armstrong, Teasdale, Schlafly, Davis & Dicus, where she specializes in civil litigation.

Flurin von Albertini has become Assistant Vice President of UBS Securities, Inc. in New York City.

Class of 1983

Lisa P. Ansilio has joined Beckman & Associates in Philadelphia.

Robert W. Griffith, Jr. has opened a solo practice in Woodbridge, Virginia.

Reid A. Holter has been named a partner in the Rochester, New York firm of Lacy, Katzen, Ryen & Mittleman.

Michael P. Lampert is now a principal in the law firm of Jacobson, Berkowitz & Lampert in Boca Raton, Florida. He practices primarily in the areas of tax and estate & business planning. He is also an instructor at Florida Atlantic University, teaching corporations.

Patrick T. Navin has become associated with the Chicago office of Baker & McKenzie, where he continues to specialize in tax litigation and ERISA matters.

Omer G. Poirier has joined the United States Attorney's Office in Tampa, Florida, as of March 1, 1989.

C. Scott Rassler is now an insurance advisor in Ft. Lauderdale, Florida with Massachusetts Mutual, specializing in business and estate planning matters.

Bruce H. Wynn has become an associate in the Atlanta firm of Hansell & Post, where he practices primarily in the area of employee and executive compensation laws.

David A. Zalph has joined the Boca Raton, Florida firm of Moore, Farmer, Menkhaus & Juran, where he practices principally in the areas of real estate, securities, banking, and corporate and municipal finance.

Nancy L. Zisk is an associate at Ross, Dixon & Masback in Washington, D.C., where she practices labor law, focusing primarily in the area of equal employment opportunity. She recently served as co-chair of a Bureau of National Affairs conference on "Law Firms in Transition."

Class of 1984

Virginia C. Antipolo has become a shareholder in the Everett, Washington firm of Anderson Hunter, where she continues her practice in corporate and business counseling and employee benefit and retirement planning.

Diane M. Barber has been named General Counsel of the Franklin Mint in Philadelphia.

Michael F. Bartok has been named Associate Counsel of Gulf & Western, Inc. in New York City.

Arthur L. Coleman continues to practice with the Columbia, South Carolina firm of Nelson, Mullins, Riley & Scarborough. He also now teaches part-time at the University of South Carolina Law School in the areas of legal research and writing and constitutional law.

David J. Farrell announces the opening on May 1, 1989 of the Maritime Law Offices of Squires & Farrell in Seattle.

Hirofumi Goto is now resident in the Fremont, California office of Sumitomo Metal Mining, U.S.A., Inc.

John H. Jameson has joined Malchow & Company of Washington, D.C., where he is a Democratic political consultant.

Michael G. Jarman has become an associate at McNees, Wallace & Nurick in Harrisburg, Pennsylvania.

Evelyn M. Pursley has been promoted to Associate Dean of Alumni Affairs at Duke Law School, where she also serves as a Senior Instructor in Law.

Eric M. Weiss has become an associate at Skadden, Arps, Slate, Meagher & Flom in New York City.

Class of 1985

Gill P. Beck, a Captain in the United States Army, is now a Litigation Attorney assigned to the Pentagon in Washington, D.C.

Aaron Jay Besen has become an associate in the Portland, Oregon office of Weiss, DesCamp & Botteri, where he specializes in federal and state tax, and corporate, partnership and non-profit law.

Janet Ward Black has joined the firm of Wallace & Pope in Salisbury, North Carolina.

Alan M. Cregg is now with the firm of Cregg & Cregg in Lawrence, Massachusetts.

Daniel F. Danello has become an associate in the Washington, D.C. firm of Miller & Chevalier.

Gordon A. Kamisar is a litigation associate at the Washington, D.C. firm of Wickens, Koches & Cale.

David C. Profilet is now an associated with the Miami office of Stroock & Stroock & Lavan.

Dana Whitehead is an associate in the Baltimore firm of Frank, Bernstein, Conaway & Goldman.

Thomas M. Wilson is now an associate with Barrack, Rodos & Bacine in San Diego, California.

Class of 1986

Elyce Stuart Abraham is now with the New York City firm of Pircher, Nichols & Meeks.

Kathleen J. Byrnes is an associate at White & Robbins in Philadelphia.

Mark D. DeSantis is now an associate with the Oakland, California firm of Kincaid, Gianunzio, Caudle & Hubert.

Christopher J. Hagan has joined the Washington, D.C. firm of Davis, Graham & Stubbs.

Terry R. Kane serves as a legal advisor and legislative assistant to the Chairman of the Joint Chiefs of Staff in Washington, D.C.

Marcel H.R. Schmocker is now serving as corporate counsel to Inspectorate International AG in Bern, Switzerland.

Class of 1987

Rachel Contorer is now an associate in the Chicago firm of Pope, Ballard, Shepard & Fowle.

David J. DeMar has recently become an associate at the firm of Jacob, Medinger & Finnegan in New York City.

Benoit Feron has joined the Brussels law firm of Puelinckx, Linden, Grolig & Uyttersprot where he is an associate in the field of international business and international arbitration.

Thaddeus S. Gauza is now an associate at the Chicago firm of Freeman, Freeman & Salzman.

Ross N. Katchman has returned from Taiwan, and is now an associate at McCutchen, Doyle, Brown & Enersen in San Jose, California.

Elizabeth A. Miller is an associate with the firm of Bardehle Pagenberg Dost Altenburg Frohwitter Geissler & Partner in Munich, West Germany. Beginning in August 1989, she will serve as clerk to the Honorable Haldane R. Mayer on the Court of Appeals for the Federal Circuit.

Robert H. Nagle is now an associate at Christensen, White, Miller, Fink & Jacobs in Los Angeles.

Ellyn Roberts has joined the San Francisco firm of Greene, Radovsky, Maloney & Share as an associate.

James A. Thomas has become an associate at the Atlanta law firm of Vincent, Chorey, Taylor & Feil.

Class of 1988

Jay B. Bryan has joined the Atlanta firm of Alston & Bird.

Personal Notes

'75—*Paul M. Wright* and his wife announce the birth of their daughter, Faith Marie, on March 24, 1988.

'76—*Byron L. Huffman* and his wife, Kathleen (Fuqua School of Business '75) are pleased to announce the adoption of two brothers, Victor Julio, age 5, and Jonathan, age 3, from Costa Rico.

'77—*Jay V. Stribling* and his wife, Deborah, are pleased to report the birth of their third child and third son, Robert Allonby Curnutte Stribling, on December 17, 1988.

'79—*Harold C. Spears* married Teri Habich on March 18, 1989 in Charlotte, North Carolina. Hal is a partner in the Charlotte firm of Caudle & Spears.

—*Thomas R. West* and his wife, Dana Marie Hagh, are proud to announce the birth of their first child, a daughter named Katharine Elizabeth, born November 13, 1988.

—*Mary Elizabeth Dunn White* and her husband, Don, are pleased to report the birth of their son, William Raley White, on June 7, 1988.

'81—*Michael B. Kupin* was married to Rhonda Kaplan on October 22, 1988 in Roslyn, New York. Michael is an associate at the Newark firm of Sells Cummis Zuckerman Radin Tischman Epstein & Gross.

'83—*Susan Cole Dranoff* and her husband, Glenn (Duke A.B. '81, M.D. '85) are pleased to announce the birth of their daughter, Rachel Elizabeth, born March 18, 1989.

—*Ronald G. Hock* married Barbara C. Vinson on November 12, 1988. They reside in Tampa, Florida, where Ron is an associate with Foley & Lardner & Hill.

—*Michael P. Lampert* married Angela Gallicchio on December 6, 1987. They reside in West Palm Beach, Florida.

—*C. Scott Rassler* was married to Karen Rodensky on March 4, 1989 in Ft. Lauderdale, Florida.

'84—*John H. Jameson* and Connie Myers were married on December 17, 1988 in Orangeburg, South Carolina. They make their home in Washington, D.C.

—*George C. McFarland, Jr.* and his wife are the proud parents of a daughter, Megan Davis McFarland, born October 20, 1988.

'85—*James E. Lilly* and his wife, Dawn, are pleased to announce the birth of their third child, a daughter named Kaitlin Elizabeth, born May 3, 1989.

'86—*Maria E. Arosemena Arango* and her husband, Richard, are the proud parents of their first child, a daughter named Victoria Eugenia Arango on January 3, 1989.
—*Christopher M. McDermott*, and his wife Lucy, are pleased to announce the birth of their second daughter, Sarah Mary, on December 6, 1988.
—*C. René Stemple* was married to Kenneth A. Ellis on April 8, 1989 in Morgantown, West Virginia. They make their home in Durham, where René is Director of Case Management of the Private Adjudication Center, an affiliate of the Law School.

'87—*Scott A. Cammarn* was married to Heather L. Whirlow (Duke M.A. '88) on September 10, 1988. They make their home in Columbus, Ohio, where Scott is an associate at Jones, Day, Reavis & Pogue.
—*Erika Chilman* married Neal Richard Roach, Jr. on September 3, 1988. Erika practices securities litigation at Carrington, Coleman, Sloman & Blumenthal in Dallas.
—*Rachel Contorer* married Dr. Neil Bradford Perlman, on May 6, 1989 in Northbrook, Illinois. They make their home in Evanston.
—*David P. Jones* and his wife, Lynn, are the proud parents of their first child, a son named Taylor Evan, born November 4, 1988.
—*Amy L. Majewski* and *Paul M. Aggugia*, Class of '88, were married on January 7, 1989. They make their home in New York City, where Amy is an associate with Holtzmann, Wise & Shepard and Paul practices with Willkie, Farr & Gallager.

'88—*Paul M. Aggugia* was married to *Amy L. Majewski*, Class of '87. (See above.)
—*Kirk Halpern* married Lori Haimowitz on May 14, 1988 in Jacksonville, Florida, where Kirk is an associate at Commander, Legler, Werber, Dawes, Sader & Howell.
—*Linda H. McCown* and her husband, Butch Boone, are pleased to announce the birth of their daughter, Kristen Vick Boone, born on November 7, 1988.

Obituaries

Class of 1937

Emma Lee Smith Crumpacker died April 13, 1989, in Cape Coral, Florida. Ms. Crumpacker was a native North Carolinian, and lived in Manteo before retiring to Florida nine years ago. She is survived by a daughter, Dottie C. Lowery of Cape Coral; a son, Bill Crumpacker of Ft. Myers, Florida; two sisters and three grandchildren.

Class of 1939

James W. Blackburn died October 11, 1988 in Louisville, Kentucky. He was a retired attorney for the Federal Land Bank, and had previously been an assistant in the Kentucky Attorney General's office and was a major in the Army Reserve. Blackburn was also a World War II veteran. He is survived by his wife, Clare Y. Blackburn, and a brother, Lee H. Blackburn of Slidell, Louisiana.

Class of 1949

Harold T. Fletcher, Jr., of Grand Rapids, Michigan, died on March 18, 1988.

Class of 1950

Hedley G. Pingree, of Goffstown, New Hampshire died on August 13, 1988. He was a retired District Court judge and practiced with the Manchester firm of Wiggin & Nourie. He had also served as a master of the Hillsborough, New Hampshire County Superior Court and in 1986 was an administrative law judge for the United States Department of Labor in Camden, New Jersey. Pingree worked with many local government projects, and church, business and educational organizations. He is survived by his wife, Marilyn Warren Pingree of Goffstown; a son, James, also of Goffstown; a daughter, Nancy Pingree MacKenzie of Sacramento, California; and grandchildren.

Class of 1951

John Jackson Irwin, Jr. of Tucson, Arizona died on February 2, 1989. He was professor emeritus at the University of Arizona School of Law, where he specialized in the fields of labor law and worker's compensation. Irwin had previously been a member of the faculty at Creighton University and had been in private practice in Jacksonville, Florida and Charleston, South Carolina. He is survived by his wife, Cecelia; a son, John J. Irwin III; a daughter, Janet Mary Mulrow; two brothers; five sisters; and four grandchildren.

Class of 1960

J. Crispin Soich, of Pittsburgh, died in early May, 1989. He was with the firm of Stokes, Lurie & Tracy and specialized in representing hospitals and doctors involved in malpractice claims. He was previously a member of the faculty of the University of Pittsburgh Graduate School of Public Health, and was a former solicitor for the city of Clairton, Pennsylvania. Soich is survived by his wife, Zella Kay Soich; a son, Terry of Phoenix; a daughter, Cheryl Long of Orlando; his parents, two sisters, and two granddaughters.

A memorial fund has been established for Soich. Classmates and friends who wish to contribute to the fund may send checks to the Major Projects Office of the Law School.

UPCOMING EVENTS

HALF-CENTURY WEEKEND
SEPTEMBER 29-30, 1989

Fiftieth Reunion celebration for the Classes of 1938, 1939 and 1940 and a special Half-Century celebration for all alumni who have celebrated the 50th anniversary of their graduation from Duke Law School.

Reunion Coordinator: **Hubert K. Arnold '39**
6616 Aberdeen Street
Wichita, Kansas 67206
(316) 684-2772

LAW ALUMNI WEEKEND
OCTOBER 20-22, 1989

FRIDAY, OCTOBER 20, 1989

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
9:00 p.m.	Hospitality Rooms available at Hotels

SATURDAY, OCTOBER 21, 1989

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, Law School
12:00 Noon	North Carolina Barbeque catered by Bullock's Bar-B-Que, Law School Lawn
1:30 p.m.	Golf and other campus activities
6:00 p.m.	Reception and Reunion Dinners (by class)
9:00 p.m.	Hospitality Rooms available at Hotels

SUNDAY, OCTOBER 22, 1989

9:00 a.m.	Barristers Breakfast*

Reunion Coordinators:

1949 **Charles T. Speth**
Speth & Speth
Marion, South Carolina
(803) 423-7648

1954 **S. Perry Keziah, Jr.**
Keziah, Gates & Samet
High Point, North Carolina
(919) 889-6900

1959 **Harrison K. Chauncey, Jr.**
Alley, Maass, Rogers, Lindsay & Chauncey
Palm Beach, Florida
(407) 659-1770

1964 **David G. Warren**
Duke University Medical Center
Dept. of Health Administration
Durham, North Carolina
(919) 684-4188

1969 **David G. Klaber**
Kirkpatrick & Lockhart
Pittsburgh, Pennsylvania
(412) 355-6500

1974 **Jerry W. Jernigan**
Wray, Layton, Cannon, Parker & Jernigan, P.A.
Charlotte, North Carolina
(704) 373-0751

1979 **Sara S. Beezley**
Route 2, Box 317A
Pittsburg, Kansas 66762
(316) 724-4111

1984 **Sol M. Bernstein**
Windels, Marx, Davies & Ives
New York, New York
(212) 237-1094

**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 judges, teachers, government officials or graduates of less than seven years.

OTHER UPCOMING EVENTS

American Bar Association, 1989 Annual Meeting

Monday, August 7, 1989, Duke Law School Alumni Reception, 6:00 to 7:30 p.m., Hilton Hawaiian Village, Sea Pearl Suite I-II. Please join Dean Pamela Gann and other alumni.

Conference on Career Choices

The fourth annual Conference on Career Choices will be held in February 1990. 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 23-24, 1990. This special weekend is held annually for members of the Barristers Club.

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

Alumni and faculty enjoy renewing friendships during events in 1988-89.

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 _____

_____

_____

_____

_____

_____

_____

_____

_____

Return to Law School Alumni Office.

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

Address Correction Requested

NON-PROFIT ORG.
U.S. POSTAGE
PAID
DURHAM, NC
PERMIT No. 60