

Duke Law Magazine

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Building for the Future

Duke Law Magazine

DEAN

Pamela B. Gann

EDITOR

Evelyn M. Pursley

ASSOCIATE EDITOR

Janse Conover Haywood

DESIGN CONSULTATION

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**About the Cover**

The cover features the architect's concept of the current Law School Building after completion of Phase III renovations and reconstruction, as shown from the corner of Science Drive and Towerview Road. The concept by the firm of Gunnar Birkerts and Associates of Birmingham, Michigan was approved by the Duke University Board of Trustees in December of 1990.

From the Dean

I want to highlight a few important Law School developments occurring during the last few months.

Faculty Book Publications. Members of the faculty have published books in the last several months that are particularly worthy of mention. Professor Donald Horowitz's new book, *A Democratic South Africa? Constitutional Engineering in a Divided Society*, is reviewed by Professor Lawrence Baxter at page 31. This book provides an outsider's review of the sources of the ethnicity problems in South Africa, and applies Professor Horowitz's extensive prior experience in analyzing ethnic conflict in other parts of the world to tackling the acute problems in South Africa. A great deal of the book is devoted to analyzing methods of creating a stable, continuing democracy in South Africa. This book follows only by five years his major work on ethnic conflict, *Ethnic Groups in Conflict*. In the last few months, Professor Horowitz has carried his expertise to Malaysia, Israel, Japan, France, and Romania for conferences and for longer periods of field research.

Professor Jefferson Powell's main scholarship has been a mix of constitutional history and constitutional jurisprudence. He has been particularly interested in the diverse and eclectic sources of our Constitution's origins, the differing philosophies and politics of its early dominant figures, and the sharp differences in interpretive approach respecting many of its main features. Professor Powell has added to his writings a new book, *Languages of Power: A Sourcebook of Early American Constitutional History*. He provides sources from opinions, congressional debates, letters, pamphlets, scholarly writings, and state legislative materials, and he provides written historical contexts and commentary analyz-

ing their significance for the development of early constitutional discussion.

Twenty years ago, cases and materials devoted to the fourth, fifth, and sixth amendments to the Constitution became separated from basic courses in constitutional law. The same trend is now well underway in respect to the first amendment—the amendment that concerns our rights of free speech, of peaceable assembly, petition, and of the press, of religion, and of the separation of church and state. Reflecting this trend, Professor William Van Alstyne began teaching an elective course on the first amendment about five years ago, and during his teaching of the course developed materials that have recently been published. These materials are meant to be taught after the basic course in constitutional law, and their aim is to capture the principal lines of historical, philosophical, and doctrinal first amendment development, and the primary first amendment case law of the Supreme Court.

Our business curriculum is largely taught by Professor James Cox and Professor Deborah DeMott, who have both published new teaching materials this year. Professor Cox has co-authored a new casebook on securities regulation, which places considerable emphasis on topics of increasing importance in the 1990s, such as internationalization, new financial products, market volatility, enforcement methodology, and the dominance of institutional investors. Professor DeMott has published a new casebook on fiduciary obligation, agency and partnership. It is a book about duties, specifically about several duties the law imposes in various business relationships. Many aspects of the book are often viewed as arising from earlier eras in law, but these concepts are vigorously being applied in modern economic relationships, including, for example, legal constraints im-

posed on lenders in their relationships with business borrowers.

Dramatic changes are also occurring in the field of family law. Among the issues receiving wide public attention are criminal prosecutions of pregnant women for drug abuse that harms fetal development, surrogate mother contracts, enactments of parental consent requirements applicable to minors seeking abortions, rules requiring medical treatment of severely handicapped newborns over the objection of the parents, and curtailments in the due process rights of defendants in child abuse prosecutions. Professor Kate Bartlett is one of the co-authors for the newly-released second edition of *Family Law: Cases, Texts, Problems*, which encompasses developments relating to these and other important topics. Professor Bartlett's special expertise is in the areas of child custody law and state regulation of the parent-child relationship.

Professor Paul Haagen has completed the book *Neither a Borrower Nor a Lender Be*, about imprisonment for debt in England. Professor Haagen chose an important aspect of early modern English history and his book should become the standard work on the history of debt collection. Its chapters include discussions of the demographics of the populations of the debtors' prisons, governance within the debtors' prisons, and the luring back to England of the "fugitive debtors" by the Insolvent Debtor Bills.

Professor Mosteller Ends Term as Senior Associate Dean. For the past two years, Professor Robert Mosteller has served as the Senior Associate Dean for Academic Affairs. Successful handling of the duties of this position requires extraordinary trust and goodwill between this Dean and the faculty and students.

Professor Mosteller has performed this role in such an exemplary fashion that his successor, Professor Paul Haagen, has already indicated that it will be difficult for him to match Professor Mosteller's success. I want personally to thank Professor Mosteller for his service to the Law School and for being such a good colleague and friend during these past two years. He returns to full-time teaching after a sabbatical leave during the spring semester next year.

Building Addition and Renovation.

In March 1991, Duke University received a \$1 million challenge grant from The Kresge Foundation of Troy, Michigan, toward the Phase II expansion and renovation of our Law School building. The challenge grant is conditional upon the Law School's completion of the fund raising for the \$14 million project.

The Kresge Foundation challenge grant is very generous in amount, and it illustrates the Foundation's support of the project and our ability to complete fairly soon the remaining fund raising to meet their challenge. My first priority during the remainder of 1991 is to raise the final \$2 million needed to complete the \$14 million project goal and to meet the Kresge challenge. I will call upon many of our alumni by the end of the year, and I hope that those whom I see will respond affirmatively to help the Law School complete this goal as soon as possible.

Private Adjudication Center and the Dalkon Shield Claimants Trust.

The Private Adjudication Center is an affiliate of the Law School devoted to research, teaching, and service in the field of dispute resolution. The Center is a non-profit corporation established in 1983, and its directors are appointed by the President of the University, a majority of whom are alumni or Law School faculty.

As described at page 38, in April 1991 the Center was selected to administer all procedural matters related to bind-

ing arbitration for the Dalkon Shield claimants. The Trust's selection of the Center recognizes its commitment and expertise in developing alternative dispute resolution methods. There are over 85,000 claims left to be resolved, but one cannot know how many of the claimants will choose the binding arbitration method. Without question, however, the Center is now our largest recipient of mail, outpacing the Admissions Office, which typically receives more mail than any other part of the Law School!

Placement of Our Students. Given the softness in the job market, I am pleased to report that over ninety percent of our graduating class reported employment at the time of graduation. Our final employment report will be as good as in past years, although many of the 1991 graduates had to spend more time than recent graduates in seeking employment. The second-year class experienced a similar situation, with almost the entire class reporting summer employment after a more vigorous search process.

It is likely that the national law schools will have fewer firms visiting their campuses this fall, and those who do visit will interview fewer students. Multi-city firms will have attorneys interviewing for several of their offices at the same time in order to lessen their time interviewing at law schools. Also, many firms have expressed an interest in interviewing only second-year students in the fall, assuming that they will hire their newest associates from their 1991 summer associates.

Our alumni have been particularly helpful this past year in assisting students' searches for jobs outside the on-campus placement interview. This assistance has been so successful that we likely will develop a formal network of alumni throughout the United States and abroad to assist students outside of on-campus interviews.

Public Service Responsibility of Lawyers. The Law School has hired a

part-time coordinator of volunteer *pro bono* services to be performed by our students. The coordinator will locate and facilitate student placements in community services organizations, many of which will be law-related placements.

Programs organized to facilitate or to require *pro bono* student services have increased rapidly during the last few years. Mandatory programs are now in operation at the Pennsylvania, Tulane, Florida State, and Valparaiso law schools, with several other voluntary programs recently approved or under consideration. For many reasons, the Law School favored a voluntary, rather than a mandatory, program at this time.

The primary purpose of these law school programs is educational. Although a program of this type provides some community services and may affect the career choices of a few students, the educational goal is to create in our students an understanding of issues about and methods of delivering legal services to those with less power and money in our society. By participating in the profession's delivery of services not adequately handled by the marketplace, our newest alumni will be able intelligently to discuss public service as members of law firms, bar organizations, and public institutions.

Our students and local community organizations look forward to the organization of this program in the fall of 1991, which will be the first of its kind established by a North Carolina law school. This *pro bono* project, combined with our loan forgiveness program and our Student Funded Fellowships, will operate to enable students to choose between traditional private practice and public interest work, and to understand that even within private practice, their time and skills exist to perform *pro bono* legal services.

I look forward to providing a fuller evaluation of the 1990-91 academic year in our *Annual Report*.

Pamela B. Gann '73

Forum

Freedom of Speech and The Flag Anti-Desecration Amendment: Reflections on Tiananmen Square

William W. Van Alstyne



Les Todd

William R. & Thomas S. Perkins Professor of Law, Duke University. Professor Van Alstyne, who joined the Duke faculty in 1965, is known for his writing and speaking on the subject of constitutional law, appearing regularly in House and Senate proceedings and in briefs for the U.S. Supreme Court. This essay is adapted from notes submitted in opposition to the proposed 27th amendment—the anti-flag desecration amendment—when it was under consideration in the House and Senate, in 1989 and 1990.

Two summers ago, on June 21, 1989, the Supreme Court held that the first amendment does not permit government to imprison people in the United States for burning an American flag in the course of an open political demonstration.¹ The case produced a sensational reaction. It also confounded the pundits who “knew” how the case would come out. At the time, it was thought likely to be a five-to-four decision sustaining the Texas “venerated objects” act Gregory Johnson had violated. As matters turned out, the decision was five-to-four, but holding squarely against the state statute as applied. Moreover, Justices Kennedy and Scalia, recent Reagan appointees who had been regarded quite disparagingly at the time of their ascension to the Court, were among those agreeing with the decision. Indeed, it was the more liberally regarded Justice Stevens, appointed by President Ford, who joined the dissent that would have sent Johnson to jail.

The decision in *Texas v. Johnson* was dramatic also, however, because it came down during a summer unusually full of tumultuous events elsewhere. One-party communist bloc governments were disintegrating in eastern Europe. “Glasnost,” with fledgling demonstrations occurring even in Red Square, had made its appearance in the USSR. Most dramatically by far, however, within three weeks of watching the original film footage of Johnson’s acts as they had originally occurred in front of the Dallas City Hall, replayed on network television the evening of the Supreme Court’s decision, millions were spellbound in watching the shooting of students for demonstrating in Tiananmen Square in Beijing. These two years later, in the spring of 1991, a few lingering exemplary trials of dissidents from Tiananmen Square are still being ritually played out.

Most of all, however, it was the two events, *Texas v. Johnson* and Tiananmen Square, that most sharply characterized the summer of 1989 for me personally. Each in its own way dramatically commemorated two hundred years of history since 1789—the year James Madison introduced the Bill of Rights in Congress. In Johnson’s case, the Supreme Court applied the first amendment (as had the state court) to protect from criminal prosecution a much disliked demonstrator from Dallas from being jailed for defiling a “venerated

¹*Texas v. Johnson*, 491 U.S. 397, 109 S.Ct. 2533 (1989).

object," i.e., the secular symbol of the national flag. A half world away, the answer to equivalent offensive acts had been bullets, arrests, and endless trials with predictable outcomes in Beijing.

But, bafflingly, somehow the contrast seemed to be missed where it should have been most noticed. In Washington, in response to the Court's decision in *Texas v. Johnson*, President Bush had not spoken to the contrast in any favorable way. To the contrary, he moved at once to speak from a symbolically flag-rimmed rostrum specially constructed for the occasion in front of the famous Iwo Jima flag memorial in Washington, publicly calling on Congress to protect the flag by amending the Constitution itself.²

At once, moreover, the faithful party of the opposition, i.e., Democratic Party majorities in both houses, rushed to propose a new "Flag Protection Act." They thus proposed to do by redrafted criminal act of Congress what the President proposed to do by amendment. They, too, distanced themselves from the Supreme Court.³ Aided by strong support by a number of willing academic advisers on how best to recast an existing federal criminal statute to circumvent the *Johnson* decision,⁴ so to steer around *Texas v. Johnson* by changing a few words in a 1968 act adopted in reaction to Vietnam demonstrations, the Democratic leadership persuaded itself to its own new cause. So this is how things went here at home. In turn, once the new effort to get at people like Gregory Johnson was approved in Congress (and the act was assuredly drafted precisely to do so), the President allowed the new congressional federal flag anti-desecration act to become law without his signature, even while indicating that he believed it to be an insufficient substitute for the amendment he continued to support as the appropriate response.

²The proposed 27th amendment was this: The Congress and the States Shall Have Power to Prohibit the Physical Desecration of The Flag of The United States.

³The President's proposal followed not long after his successful presidential campaign against Michael Dukakis in 1988. In the course of that campaign, Mr. Bush repeatedly faulted Mr. Dukakis for his failure, as Governor of Massachusetts, to have signed a mandatory-pledge-of-allegiance act applicable to all public school teachers—an act the Massachusetts Supreme Court had formally advised Dukakis could not constitutionally be enforced. (See the Opinion of the Justices, 372 Mass. 874 (1977).) Without doubt, in promptly proposing the amendment following the Court's decision in *Texas v. Johnson*, Mr. Bush had again taken the initiative on a highly charged issue where the Democrats appeared most vulnerable, i.e., the issue of patriotism and love of country.

⁴The original act of Congress, 18 U.S.C. §700 (1968), provided that the offense was committed by "cast[ing] contempt upon any flag of the United States by publicly mutilating, defacing, defiling, burning, or trampling upon it." The new act, 18 U.S.C. §700 (Supp. 1990), made it a matter of indifference whether one was or was not "casting contempt" on the flag, and whether one was or was not acting in public, i.e., it eliminated such language so that proof of purpose and place would no longer be of statutory consequence. Rather, the federal crime was complete insofar as one "knowingly mutilates, defaces, physically defiles, burns,

Behind Texas v. Johnson, there lay a significant history of struggles over the meaning of free speech in the United States.

The new act of Congress, as we know, was swiftly tested by political demonstrators in Washington, D.C., and in Seattle. Two federal district courts quickly vindicated the President's view. Each held that the disingenuous cosmetic difference between the redrafted federal statute and the original Texas statute struck down in *Texas v. Johnson* was of insufficient constitutional significance to make a difference under the first amendment.⁵ Each, therefore, on facts similar to those in *Texas v. Johnson*, held the new federal act unconstitutional as applied. On June 11, 1990, on further and final review of these two new cases under the revised federal statute, the Supreme Court agreed. It was thus the summer of 1989 in the Supreme Court *deja vu*.⁶

Even then the matter did not end. Rather, the President's proposed amendment was at once reintroduced in both houses of Congress. After a flurry of debate in the House, it was approved by a clear majority. But lacking the extraordinary two-thirds required by article V of the Constitution, it nonetheless died. And as it had thus failed to carry the House by the required two-thirds, shortly thereafter the debate in the Senate also collapsed. Still, the amendment carried the President's own strong personal endorsement and support to the end, and at least one national poll indicated that a substantial number of Americans clearly felt it to be a good measure for the country to enact.

maintains on the floor or ground, or tramples upon any flag of the United States." In theory, therefore, the offense would be punishable wherever it occurred and without reference to the circumstances (if one "mutilated" a flag while alone in one's bedroom, or maintained a flag on the floor of one's locked attic, the statute would apply). Congress persuaded itself, with academic encouragement, that there were votes to be had on the Supreme Court by making changes of this sort. Fancy that.

⁵United States v. Eichman, 58 U.S.L.Wk. 2538 (D.C. Dis. Ct. March 5, 1990); United States v. Haggerty, 58 U.S.L.Wk. 2498 (Dis. W. Wash. 1990).

⁶United States v. Eichman et al., No. 890-1438, June 11, 1990, 110 S.Ct. 2404 (affirming lower court, five-to-four). (The division within the Supreme Court was unchanged from the division in *Texas v. Johnson* itself.) Nine months later, The New York Times, March 20, 1991, p. 20 col. 3, reported a wondrous sequel to the *Eichman* case. According to the Times, on March 20, 1991, Shawn Eichman was convicted of "destruction of Government property, a misdemeanor, and attempted arson of Government property, a felony," when Mr. Eichman tried "to burn a Government owned flag at the military recruiting center in Times Square." There is a lesson to be learned here, but it is hardly obscure. (The first amendment protects demonstrative uses of one's own flag, but it doesn't extend that protection to setting on fire someone else's, even the government's at that.)

... why would Americans who watched the stunningly grim events two summers ago in Tiananmen Square not learn more that is excellent about themselves from that different world?

What did all of this mean? In my view, it meant we had very nearly missed the whole point of the summer of 1989. *Texas v. Johnson* had not been a regrettable decision from the Supreme Court. We should never have wanted it to be overcome. Behind *Texas v. Johnson*, there lay a significant history of struggles over the meaning of free speech in the United States. We had benefitted from that history, not lost by it. We were a better place not a poorer place. Over the years, the Supreme Court had reviewed more than a half-dozen criminal convictions involving flag use alone. The results were not all of a piece, but they etched out a clear and useful first amendment line. It was a line that led to and culminated in *Texas v. Johnson*, and it is one we should have taken greater care to understand and defend.

Quite early, in 1907, the Court had found little difficulty sustaining regulations restricting the commercialization of flags or flag facsimiles as an incident of hawking goods or promoting commercial sales.⁷ In later years, on the other hand, like many ordinary citizens in this country, the Court had experienced genuine problems in keeping faith with the first amendment, in sorting out other events involving flag uses in noncommercial settings. And overall it had drawn significant, useful, first amendment lines strongly protecting rights of political dissent. Prior to *Texas v. Johnson*, a different individual having thought some national policy to be wrong and unworthy of the United States, might have tried to get their point across by flying some facsimile of the flag upside down on their own car antenna, or by turning a larger flag displayed in some front window of theirs facing outward and upside down. Another might have sought to make a different or a similar point by displaying or carrying a flag embossed with the taped superimposition of a peace sign.⁸ Both kinds of acts would be regarded as forms of political expression

clearly protected by the first amendment to our Bill of Rights not just under the Court's decision in *Texas v. Johnson*, but also because they were already so regarded by the Court prior to that decision. Suppose, however, it were otherwise, i.e., suppose we could prosecute and imprison people like these for what they did? What then? What kind of country is it that will so consecrate its secular emblems? How far different is it from Tiananmen Square?

A case may instead involve a black citizen and war veteran (as one case did), stricken by the news account he hears over the radio of the shooting of a civil rights figure in the South. He takes his own flag from the dresser drawer where he has until now kept it well folded; he carries it into the street beside his apartment, where he lives, and cradling it, he burns it in protest and in despair.⁹

And here's another fine case to consider for criminal prosecution likewise. A New York sculptor wishing to make a political suggestion in her own original manner, constructs and displays an original work that never was a flag of the United States, i.e., neither the sculptor's own "flag" or anyone else's. But what she makes is nonetheless very "flaglike" especially when the display is complete. What she has wrought has a projecting part in the shape of a swollen barrel, closely spiraled with alternate red and white stripes. This red-and-white barrel rests on a gun carriage shaped to suggest an oversized scrotum, painted blue, and superimposed with white stars. The message of this work is loud, clear, and confrontational. It goes on art gallery display. Many may think it a physical desecration of the flag of the United States.¹⁰ Others may see a sharp comment they agree or disagree with, but not really different from what one may see in an Oliphant

In his first inaugural address as President, Thomas Jefferson spoke fleetingly on the subject of patriotism at a time of far more serious crisis than any challenge posed in the flag cases that have come before our courts.

⁷ See, e.g., *Halter v. Nebraska*, 205 U.S. 34 (1907).

⁸ See, e.g., *Spence v. Washington*, 418 U.S. 405 (1974).

⁹ Cf. *Street v. New York*, 394 U.S. 576 (1969). For other significant Supreme Court cases on flag use and first amendment protected dissent, see, e.g., *Smith v. Goguen*, 415 U.S. 566 (1974); *Radich v. New York*, 401 U.S. 531, *aff'g*, 26 N.Y.2d 114 (1970), *on habeas corpus* in U.S. ex rel. *Radich v. Criminal Court*, 459 F.2d 754 (2d Cir. 1972), *cert. den.* 409 U.S. 115 (1973); *Bd. of Educ. v. Barnette*, 319 U.S. 624 (1943); *Stromberg v. California*, 283 U.S. 359 (1931).

¹⁰ This case, too, is modeled on an actual case it closely resembles, see *Radich v. New York*, 401 U.S. 531 (1971), *aff'g*, 26 N.Y.2d 114 (1970), *on habeas corpus* in U.S. ex rel. *Radich v. Criminal Ct.*, 459 F.2d 754 (2d Cir. 1972), *cert. den.* 409 U.S. 115 (1973). (It is a nice question whether such a work could be reached by criminal statute derived from the proposed 27th amendment. In testimony before the House Judiciary Committee, William Barr, Office of Legal Counsel, suggested that the amendment would authorize legislation criminalizing the display of an upside-down flag. See *Hearings Before The Subcommittee on Civil and Constitutional Rights, House Judiciary Committee, 101 Cong., 1st Sess. 188-89 (Statement of Wm. Barr, July 13, 18, 19, 20 (1989)).*

caricature or cartoon. Some may see it as poor art or not as art at all and in any event as in poor taste. But what one should still want to ask is this, namely, what does it matter, i.e., how does one want to conclude in this case? That the artist can be sent to prison because his or her work violates a law duly enacted by Congress or some state protective of flag use, regulating flag design, protecting a "sacred" national symbol? If so, why? Or that the display of the work is, instead, fully protected by the first amendment? And if not this last answer—"fully protected by the first amendment"—*why not?*

The point, moreover, has never been the trivial point of putting merely vexing questions of first amendment construction. That question is, rather, why would Americans who watched the stunningly grim events two summers ago in Tiananmen Square not learn more that is excellent about themselves from that different world? The fact is that in all the debates on the redrafted federal statute and the proposed constitutional amendment, no one ever—so far as I could tell—once gave a single convincing explanation of how we would be better off as a people were we able, simply by wishing it so, to reverse the Supreme Court in *Texas v. Johnson*. The protection Gregory Johnson received in the appellate court of Texas and in the Supreme Court of the United States during the same summer we watched the "protection" of the students in Tiananmen Square said something important. We should not be so eager to appear now to try to say something else.

The proposed amendment, like the Democrats' failed statutory effort, may at best have been moved by some understandable spirit of patriotism. But patriotism takes many forms. In his first inaugural address as President, Thomas Jefferson spoke feelingly on the subject of patriotism at a time

[The] monument of safety for dissent in the United States abides in the first amendment in our Bill of Rights and in our willingness to stand by it. We should take care to leave that amendment alone. We are, or at least we ought to be, unified in the freedom the Constitution provides us, rather than forever seeking ways to subdue it.

of far more serious crisis than any challenge posed in the flag cases that have come before our courts. Addressing those then seeking even to dissolve the Union, Jefferson spoke soberly in this way: "Let them stand undisturbed as monuments of the safety with which error of opinion may be tolerated when reason is left free to combat it." The advice is still altogether sound.

In much of the world, as in Tiananmen Square even now, there are no monuments at all of safety for dissent. Here at home, however, there is, and I think that in several ways *Texas v. Johnson* reminded us what that monument is. That monument of safety for dissent in the United States abides in the first amendment in our Bill of Rights and in our willingness to stand by it. We should take care to leave that amendment alone. We are, or at least we ought to be, unified in the freedom the Constitution provides us, rather than forever seeking ways to subdue it. It is, in the end, freedom of this kind others are still struggling to find.

Medical Malpractice Juries*

Neil Vidmar



Duke University Photographers

Neil Vidmar, who holds a Ph.D. in social psychology, is Professor of Social Science and Law at Duke. He has written articles and co-authored a book on juries and has occasionally served as a trial consultant in civil and criminal cases. He is working on a book about medical malpractice juries.

In 1985 major U.S. newspapers and an AMA task force on liability insurance reported that Jury Verdict Research, Inc. of Solon, Ohio had found that the *average* medical malpractice jury award was \$962,258. In 1987 Dr. Otis Bowen, Secretary of Health and Human Services in the Reagan administration, asserted that the jury system “has become more a lottery than a rational system for compensation of the injured.” In 1988 the *Wall Street Journal* reported that the average malpractice verdict had increased nearly five-fold between 1980 and 1986. An article in a 1989 issue of the *California Law Review* asserted that between 1975 and 1985 the average malpractice award increased from \$220,108 to \$1,017,716. When the *National Law Journal* reported its largest jury awards for 1990, it concluded that there was a “noticeable move toward bigger jury awards,” with medical malpractice included among the top money earners.¹

Medical malpractice litigation draws heated opinions from physicians, insurers, plaintiff and defense bars, consumer groups, and legislators. It plays a central role in discussions about “the litigation explosion,” the “insurance crisis” and the need for tort reform. As the above selected examples indicate, the jury is frequently singled out as a primary cause of all the trouble. Malpractice juries are alleged to be incompetent, erratic, biased against doctors, and prone to giving huge and unwarranted damage awards.

Medical Malpractice Project

To what extent do these claims have validity? Over the past several years my colleagues, Thomas Metzloff, David

*The research on which this article is based was supported by grants from the Robert Wood Johnson Foundation and the State Justice Institute. I wish to acknowledge the contribution of my colleagues on Duke Law School’s Medical Malpractice Project, co-investigators Thomas Metzloff and David Warren ’64; co-authors Laura Donnelly and Jeff Rice ’91; and Julia Burchett ’85, and the many Duke Law students, lawyers, liability insurers, and others who have assisted us over the course of the Project. The opinions and conclusions that I set forth in this article are my own and are not necessarily those of the Robert Wood Johnson Foundation, the State Justice Institute, or my colleagues.

¹See generally, Localio, *Variations on \$962,258: The Misuse of Data on Medical Malpractice*, LAW, MEDICINE & HEALTH CARE 126 (June 1985); The National Law Journal, Jan. 21, 1991, S3; Leahy, *Rational Health Policy and the Legal Standard of Care: A Call for Judicial Deference to Medical Guidelines*, 77 CALIF. L. REV. 1483, 1485 (1989); Daniels, *The Question of Jury Competence and the Politics of Civil Reform: Symbols, Rhetoric, and Agenda Building*, 52 LAW & CONTEMP. PROBS. 269 (1989).

Medical malpractice litigation draws heated opinions from physicians, insurers, plaintiff and defense bars, consumer groups, and legislators. It plays a central role in discussions about the "litigation explosion," the "insurance crisis" and the need for tort reform.

Warren '64, and I have been engaged in an empirical study of medical malpractice litigation in North Carolina that is funded by grants from the Robert Wood Johnson Foundation and the State Justice Institute. A number of other researchers around the United States have also conducted studies on the subject. Recently, Jeff Rice, who has just received his J.D. from Duke and who is also working on an M.D. degree in our medical school, conducted an experiment that compared the awards of jurors with arbitrators. In this article I want to share some of our findings and insights with you. The picture that will emerge is considerably different than that set forth by the critics of malpractice juries.

Our Medical Malpractice Project attempted to capture every malpractice suit filed in North Carolina between July 1, 1984 and June 30, 1987—over 900 cases. In addition we collected similar information on more than 300 other cases filed in selected North Carolina counties between July 1987 and December 1990. Through the court records we followed these cases from beginning to termination. In addition several major medical liability insurers gave us access to their confidential files. We also interviewed lawyers from the plaintiff and defense bars. Finally, we and our students observed trials in their entirety and interviewed the jurors afterward. Our interest has been in all phases of the litigation process, but I will confine my attention here to jury trials.

Of all malpractice suits filed in North Carolina during the period covered in our study about forty percent were terminated without a payment to the plaintiff, about fifty percent resulted in a settlement and about ten percent eventually went before a jury. The trial rate was roughly comparable to other types of civil litigation. The surprising findings—surprising at least with respect to the claims made against juries—involved trial outcomes. The plaintiff prevailed on the issue of liability in just one case in five. As to damages, there were three large awards. A child that suffered brain damage at birth received a \$3.5 million verdict. In another case the jury

awarded the plaintiff's estate \$1.28 million when an anesthesiologist improperly placed an intubation tube during knee surgery, suffocating the plaintiff; and in a case involving a similar anesthesiology accident that resulted in severe brain damage, the plaintiff and her husband were awarded a total of \$750,000. The more typical awards, however, ranged between \$5,000 and \$200,000, with most closer to the low end of the range. The *average* damage award was approximately \$200,000, but the average was inflated by larger awards such as the three described above. The proper summary statistic, the *median*, was not influenced by large awards: it was just \$37,000. Let me reiterate what I have just reported because these findings are very different from the widely prevailing claims about malpractice juries: plaintiffs won only one case in five and when they did win the median award was only \$37,000!

A first question from the statistics that I have provided is whether North Carolina is a typical state. Stephen Daniels at the American Bar Foundation collected data on jury verdicts from forty-three counties in ten states for a period extending between 1970 and 1985. He found that on average plaintiffs prevailed on the liability issue in about thirty-two percent of trials. However, across jurisdictions the win ratios varied from eight percent to fifty-six percent. Median awards in these cases ranged from \$40,000 to over \$1 million. Daniels concluded that there were no national trends across jurisdictions or over time. Patricia Danzon's study of medical malpractice in California found a plaintiff win rate of about twenty-five percent, and research by Rand's Institute for Civil Justice found rates varying between about twenty-five percent to fifty percent and median damage awards of around \$200,000.² Thus, North Carolina appears slightly lower than average with respect to plaintiff win rates and perhaps somewhat lower as to damage awards but certainly within a normal range. Moreover, if other factors involving the way cases are selected for trial are taken into consideration the North Carolina win rates would probably be slightly higher. The details of my reasoning on this issue are too arcane to elaborate in this brief article. I'll just ask you to accept my judgment that North Carolina juries are reasonably typical regarding the frequency with which they find in favor of the plaintiff and in their damage awards.

Now, consider a second question, namely how do our data and those from the other studies I have cited square with the reports of average malpractice awards of \$1,017,716 in my introductory paragraph? For one thing the Jury Verdict Research, Inc., and *National Law Journal* statistics were obtained from screening newspaper reports, voluntary submis-

²Daniels, *Jury Verdicts in Medical Malpractice Cases*. Paper presented at the Annual Meeting of the Law and Society Association, Madison, Wisconsin, June 8-11, 1989; P. DANZON, *MEDICAL MALPRACTICE: THEORY, EVIDENCE, AND PUBLIC POLICY*

(1985); Mark Peterson, *Civil Juries in the 1980s: Trends in Jury Trials and Verdicts in California and Cook County, Illinois*, Rand Corporation, Institute for Civil Justice (1987).

[T]he average award in North Carolina (when plaintiffs prevailed) was about \$200,000, the median award was \$37,000. In short, multi-million dollar verdicts do occur but they are the exception in the totality of malpractice suits.

sion from plaintiff lawyers, and an assortment of other sources. Neither newspapers nor plaintiff lawyers are inclined to report cases in which no award or a small award was given. Thus, the data were not from a representative sample of cases. For another, as I have already noted, statistics relying on averages can be vastly inflated by a relatively few high awards. Recall that while the average award in North Carolina (when plaintiffs' prevailed) was about \$200,000, the median award was \$37,000. In short, multi-million dollar verdicts do occur but they are the exception in the totality of malpractice suits.

The low success rates for plaintiffs at trial would seem to contradict the assertion that jurors are biased against doctors, but they raise another question, namely, are they biased against plaintiffs? I do not think the bias is strong, but it is fair to state that plaintiffs usually carry an extra burden of proof. During *voir dire* it was not unusual to hear more than one prospective juror say "too many people sue their doctors," or "it is just going to raise the health insurance rates for the rest of us." While jurors who were so explicit in voicing their attitudes were usually excused for cause, the same sentiments, in more subtle forms, remained in many jurors chosen for trial. In post-trial interviews jurors said things like, "she [the plaintiff] was just trying to blame the doctors and [the] hospital for a life-long problem," "too many people are unfair to doctors," or "the doctors were just trying to help his wife [who died] and he shows his ingratitude by suing them." Even in cases where the verdict was for the plaintiff, jurors worried about the effect on the doctor's reputation and his finances: "we all felt so sorry for him;" "we worried about whether his insurance would cover it."

Despite the widespread claims that contemporary Americans are litigious, David Engle has documented a set of attitudes that still exist in our society, ones that say that people should accept misfortunes that befall them and not blame others. My interviews with jurors suggest that these beliefs seem to hold particularly true in instances where an unfortunate outcome occurs when a physician is attempting to help a

patient. There is additional research evidence that publicity about "the insurance crisis" and "irresponsible" jury awards has affected many members of the public, causing jurors to behave conservatively.³ Our interviews with malpractice jurors are also very consistent with these findings.

I want to be very clear, however, that our research indicates that a number of other factors contribute to the low win rate for plaintiffs. Sometimes plaintiff lawyers miscalculate the merits of their cases. In suits involving multiple defendants some defendants settle, leaving the remaining defendants, whose liability is more questionable, as the parties in the rest of the case that proceeds to trial. There are also some factors involved in the relationships between lawyers and their clients that impel them to take uncertain cases to trial. I do not have the space to elaborate upon these other factors here, but I mention them to make the point that juror conservatism regarding the plaintiff's burden of proof is only one factor, and probably a less important one. When the evidence at trial points to negligence jurors will overcome their hesitations and find liability.

Jury Competence

Let's turn now to the question of jury competence. This is one of the most problematic issues since it is difficult to obtain consensus on what constitutes competence or incompetence. Nevertheless, I can provide some insight about the matter. There can be little argument that malpractice juries are often given a complicated task. They may be asked to determine causality, negligence, damages and apportion responsibility among multiple defendants (forty-eight percent of malpractice suits involved four or more defendants). They hear conflicting evidence regarding complicated etiologies and medical procedures.

Yet, the views espoused in some quarters that these are solely technical matters that only medical doctors are competent to decide are, to me, unwarranted. First of all, the central issues in many of the trials we observed revolved not around technical issues, despite a lot of testimony on these subjects, but rather on matters of credibility between doctor and patient or among health care providers. For example, in a case involving permanent incontinence following an operation, the jurors heard highly conflicting evidence from competent experts on both sides regarding the proper reading of cystometrograms and the difference between stress and urge incontinence as well as evidence about whether the S3 or the S4 sacral nerve had been severed during the surgery. These were important issues, but in the end the case came down to whether the patient was fully informed of the potential risks

³Engel, *The Overbird's Song: Insiders, Outsiders, and Personal Injuries in an American Community*, 18 LAW & SOCIETY REV. 551 (1984); Greene, Goodman &

Loftus, *Jurors' Attitudes About Civil Litigation and the Size of Damage Awards*, 40 AM. U. L. REV. 805 (1991).

of the operation. The jury chose to believe the doctors' testimony and the medical records saying the matter had been thoroughly discussed over her version that it had not. Similarly, the evidence involving a patient who died pitted the husband's testimony about what various nurses and doctors did and did not do in response to complaints about symptoms of severe stress against the testimony and records of the hospital staff.

In other instances, the technical matters were just not so complicated that they were beyond the reach of laypersons. An obstetrician miscalculated the delivery date of a baby and, as a consequence of treatment based on that assumption, it suffered severe brain damage. The key evidence showed that the obstetrician continued to rely on the date of the mother's last menstrual period despite the fact that his records also showed that other key indicators of stage of pregnancy clearly were not consistent with the initial estimate. In post-trial interviews the jurors demonstrated that they understood these issues.

Now, I do not contend that every case is technically easy or that every juror understands the evidence. Our interviews with jurors have shown, however, that when competent attorneys and experts carefully and repetitiously present the technical issues, many of the jurors do grasp the essentials of the case. Undoubtedly, juries sometimes misunderstand cases, but I submit that the burden of proof rests on the critics who charge that they almost always do.

Damages

The real bottom line on jury performance, of course, is damages. What about the \$3.5 and \$1.2 million awards that were documented in our study and similar awards around the country? Even though median awards are much lower, the million dollar verdicts get our attention.

What is often overlooked is the fact that in many instances the consequences of a medical accident can be financially as well as emotionally horrifying. Consider two examples. A baby suffered severe brain damage at birth and died two and one-half years later. The parents accepted a settlement offer of \$750,000. It sounds like an outrageous windfall for the parents, but they received almost nothing from that amount: the county health service, which had taken responsibility for the child, tendered a bill of \$675,000. In its two and one-half years of life, the child had required that much medical care. In another case a baby with severe brain damage had a life expectancy of seventy-two years. That child will grow to the size of an adult but will be blind, deaf, retarded, unable to use its arms and legs or even sit in a chair, incontinent, highly

susceptible to infections, require frequent physiotherapy to prevent bed sores and so forth. Based on this fact, the plaintiff's experts calculated damages to be in excess of \$6 million. The more interesting part of the story is that after obtaining opinions from three of its own experts, the lowest figure the defendant could arrive at was substantially over \$2 million. Injuries to adults can be costly as well.

The two multi-million dollar jury verdicts in our study can also be compared to settlements. Although our data on settlements do not comprise a random sample, we have documented a number of them that approach the \$3.5 million verdict and others that substantially exceed the \$1.2 million verdict. Unless it can be assumed that defendants and their liability insurers occasionally engage in acts of charity on a grand scale, the principal remaining hypothesis is that defendant liability was reasonably clear and the damages were considerable. These settlement data do not, of course, prove anything about the appropriateness of the large jury verdicts, but they certainly raise the possibility that they may have been reasonable verdicts.

I can also report that jurors often are unhappy about having the responsibility for deciding damages. They feel that they are not given enough guidance by the court. They are very aware of the adversary process and tend to be skeptical of the amounts of damages suggested by plaintiff lawyers. Yet, particularly when liability is also at issue, defense lawyers are hesitant to suggest alternative figures because of fear that jurors will infer an admission of negligence. In one case jurors who gave the plaintiff a sizeable award complained to us about the failure of the defendant to offer his own experts on the matter of damages.

Arbitration Alternative

Recently, Jeff Rice and I undertook an experiment to explore another aspect of the damages issue.⁴ We decided to compare the awards jurors would render with those that experienced arbitrators, a frequently suggested alternative to the jury, would render. Rather than medical and other special damages, our study centered on the more subjective component of damages, namely pain and suffering and disfigure-

... jurors often are unhappy about having the responsibility for deciding damages. They feel that they are not given enough guidance by the court. They are very aware of the adversary process and tend to be skeptical of the amounts of damages suggested by plaintiff lawyers.

⁴J. Rice & N. Vidmar, *Assessing Non-Economic Damages: Lawyers versus Laypersons*. Paper presented at the Annual Law & Society Meetings, The Netherlands, June 28, 1991.

While I believe that the evidence shows that medical malpractice juries have been maligned, a trial is often not the best solution. Plaintiffs and defendants alike often suffer from the costs, delays, and uncertainties of trials.

ment. Our reasoning was that if jurors exhibit pro-plaintiff tendencies it would be on this component that their prejudices would have the best opportunity to be expressed. Incidentally, the Bush Administration's recent proposal to place a cap on pain and suffering awards in malpractice cases is predicated on the assumption that this is one of the causes of "run-away" verdicts.⁵

From the Malpractice Project files we chose a case in which a thirty-two year old woman underwent elective surgery for a bunion on her foot. While she was under general anesthesia someone in the operating room placed a just-sterilized, red-hot instrument on her knee, causing second and third degree burns. The woman experienced considerable pain and suffering from the burn for some weeks afterward and required a skin graft by a plastic surgeon. Despite this treatment the end result is that she now has a permanent, large, unsightly scar in the shape of an upside-down heart on her knee and a lesser scar on her hip and thigh from the skin graft. Our synopsis of the case gave the details of the incident and reported critical portions of her testimony about the pain and about her embarrassment over the scars. Color photographs of the scars were included. The jurors and arbitrators were informed that the doctor admitted liability for the accident and conceded \$7,000 in medical and other damages but that the lawyers for the two sides could not agree on the amount of the award for the pain and suffering and disfigurement. After instructions on the law our subjects were asked to render a damage award and then to answer some additional questions.

We persuaded twenty arbitrators who are on the Private Adjudication Center's select arbitrator list to take part in the study. They all resided in North Carolina. All were senior lawyers representing both plaintiff and defense bars; a number of them were retired judges. Our jurors were forty-five persons from Durham and forty-two from Greensboro who were on jury duty and volunteered to take part in the study while they were awaiting a call to the courtroom.

⁵Hilts, *Bush Enters Malpractice Debate with Plan to Limit Court Awards*, N.Y. Times, May 13, 1991, at 1.

⁶See Vidmar & Rice, *Jury Determined Settlements and Summary Jury Trials: Observations About Alternative Dispute Resolution in an Adversary Culture*, 19 FLA.

The awards of the arbitrators, including the \$7,000 in special damages, ranged from \$15,000 to \$75,000. The median award for all twenty arbitrators was \$57,000, a figure very close to the \$58,300 award given by the three arbitrators in the original case. The Durham jurors' awards ranged from \$4,000 to \$100,000, but the median was \$47,000. The Greensboro jurors ranged from \$18,000 to \$198,000 with a median of \$48,500. In short, the jurors' median award was less than that of the arbitrators. We found no gender, education or income differences among the jurors. We also found that the jurors made distinctions between the components of pain and suffering and of disfigurement in a manner similar to the lawyer arbitrators.

The jurors in our experiment did not deliberate and we cannot be sure if the results of the study can be generalized to other types of cases so we will be conducting some additional experiments. However, it is abundantly clear that the results seem very consistent with my theme that on the whole jurors are pretty conservative in medical malpractice cases.

This brief overview of some of our findings from the Medical Malpractice Project does not do justice to the complex issues we have uncovered in attempting to address questions about how juries perform their duties. I will be dealing with these matters in a more extensive work that is in preparation. Nevertheless, I believe that I have conveyed enough information to raise serious doubts about assertions that malpractice juries are consistently pro-plaintiff and incompetent, and that they deliver unwarranted million dollar awards at the drop of a hat.

In concluding let me offer the important qualification that, in my opinion, our findings should not be interpreted as a justification for more jury trials. While I believe that the evidence shows that medical malpractice juries have been maligned, a trial is often not the best solution. Plaintiffs and defendants alike often suffer from the costs, delays, and uncertainties of trials. Much of our Medical Malpractice Project has been devoted to finding alternatives and during the past several years we have assisted involved parties by helping to provide other means to resolve their malpractice disputes. These alternatives have included mediation, arbitration, and a private, voluntary form of summary jury trial that we have labelled a Jury Determined Settlement.⁶ Most of the time both sides have indicated that these procedures were a more satisfying way of resolving their disputes. While jury trial appears to be a reasonable way of resolving malpractice disputes, it should be a last resort.

ST. U.L. REV. in press (1991) for a description of the Jury Determined Settlement; and *Learning to Resolve Disputes Creatively*, DUKE L. MAG., Winter 1991, at 24 for a description of other ADR efforts of the Medical Malpractice Project.

**About the
School**

International Programs at Duke Law School

In the international arena, 1990 will be remembered as the year in which the Cold War ended, Kuwait was invaded, the Uruguay Round of GATT negotiations stalled and international law issues regained prominence in public discourse. At Duke Law School, it will also be remembered as the year in which international programs came of age.

An overview of these developments illustrates the emerging hallmarks of Duke Law School's international programs: flexibility and innovation. In 1990, the Law School:

- was awarded a significant grant from The Ford Foundation to create a Fellowship Program in Public International Law;
- hosted the American Society of International Law's Southeast Regional Conference on "The Use of Military, Diplomatic and Economic Force in the Modern International Arena";
- co-sponsored with Duke's Canadian Studies Center "The Supreme Courts Conference on Constitutional Law" (see article at p. 19);
- launched a new law journal devoted entirely to international law issues, *The Duke Journal of Comparative & International Law*;
- inaugurated the annual "Symposium: Functional Aspects of International Legal Affairs" held in Washington, D.C. and New York City during the School's spring break; and
- approved the move of its Summer Institute in Transnational Law from Denmark to Brussels.



LL.M. students in the Class of '91 enjoy a party at the home of Dean Judith Horowitz and Professor Don Horowitz. From left: Juraj Strasser from Czechoslovakia, Xavier Firpo from Argentina, and Alexander Potdevin from Colombia.

During 1990, the Law School also continued to strengthen its J.D./LL.M. program by inaugurating four-credit thesis and two-credit international research requirements.

Laying the Foundation

During the 1980s, under the leadership of former Dean Paul D. Carrington, Duke Law School's traditional commitment to legal scholarship was expanded to reach the international arena. The first major step was the development of the LL.M. degree in American law offered to foreign graduate lawyers. Enrollment averaged around half a dozen students for the first few years. Today, the program must limit its class size to about thirty-five students, drawn from an applicant pool of over 300 highly qualified individuals. Most international students are young lawyers from China, Japan, Europe and Latin America who seek an overview of American law by completion of Duke's one-year LL.M. and subsequent employment in the United States.

Judy Horowitz, Associate Dean of International Studies, attributes the increased interest in the LL.M. program to four factors:

- (1) greater global demand for comparative and international legal training;
- (2) increasing numbers of international alumni who encour-

age colleagues to attend Duke's LL.M. program; (3) Duke University's overall growing international reputation; and (4) increased visibility due to the activities of international alumni and overseas distribution of promotional posters for the Law School's Summer Institute in Transnational Law.

The J.D./LL.M. joint degree program offered to American students has developed in a similar fashion, with a marked growth of increasingly qualified applicants since the program's inception in 1984. Then, as now, it remains unique in the country. American law students pursue both their J.D. degree and an LL.M. in Comparative and International Legal Studies simultaneously, completing both degrees in three calendar years through a combination of summer study and increased courseloads. Joint degree candidates begin their legal studies in early June (rather than late August) and spend half of the following summer studying European and international law at Duke's Institute in Transnational Law.



Tom Lathrop (left) from Canada and Masayuki Toda from Japan were two members of Duke's 1991 LL.M. Class.

The Law School's Summer Institute in Transnational Law, started in 1986, is also unique, being the only American-sponsored program in which an American professor and an international professor co-teach each course. Class sessions, thus, provide a truly comparative law experience for all participants. The fact that students and faculty live and eat together during the month-long program in dorm-style accommodations offers further opportunity for interaction.

These programs laid the groundwork for recent developments in international legal education at the Law School which have occurred under the leadership of Dean Pamela Gann, who has observed that "Americans often fail to realize the importance of these fields of legal studies until they have already graduated from Law School."

Building on the Foundation

Summer Institute Moves to Brussels. Beginning this summer, the Institute in Transnational Law will move from Denmark to Brussels, a move anticipated with mixed feelings by some former participants. Professor Herbert Bernstein, for example, who taught at the Institute in 1989, has stated "I am very much in favor of the move, even though I love

Denmark and the Danish people. But we can get more out of the program [in Brussels]."

Clearly, the new close affiliation with the Free University of Brussels, which is co-sponsoring the Institute with Duke, and the proximity to the institutions of the European Community will enhance the classroom experience. Faculty members

and administrators plan to develop ties with such European institutions as the European Community Commission and the Council of Europe's Court of Human Rights. Dean Horowitz also looks to develop summer internships for American students with local law firms.

Ford Foundation Fellowship Program. Recognizing the high caliber of international legal education provided in this environment, The Ford Foundation recently awarded Duke Law School a \$125,000 grant to create five one-year fellowships in public international law.

The Fellowship Program will attract students and scholars to the study of public international law and twenty-four law schools throughout the United States have been chosen to participate in The Foundation's efforts to produce the next generation of international law scholars. As Dean Gann notes, "The Ford Foundation correctly identified a need for the United States to educate a larger group of persons for leadership roles in the areas of public international law and international organizations. Many of the best persons operating in these fields immigrated to the United States at the time of World War II, and they are now retiring. . . . The Ford Foundation plans these fellowships as a

step to bring younger U.S. residents into these important fields." Dean Gann feels that The Foundation will likely next focus on the development of the international curriculum in American law schools.

The Law School awarded its Fellowships in diverse and timely fields ranging from international intellectual property to international banking. Recipients are Brenda Brown Kirk (J.D./LL.M. '91), Barbara C. Matthews (J.D./LL.M. '91), Anuja K. Guleria (J.D./LL.M. '92), Michelle B. Nowlin (J.D./LL.M. '92), Annita M. Richardson (J.D./LL.M. '92), and Anne C. Harper (Alternate)(J.D./LL.M. '91). Fellows will spend the majority of the year in residence at the Law School working on research projects with a faculty member. The remainder of their time will be spent conducting field research through short term internships and interviews. (Brief biographies and research descriptions of the Fellows are provided in the adjoining box.)

The Fellowship Program is only one component of The Ford Foundation's overall goal to promote awareness of international law issues. In addition to the Fellowships, The Foundation recently provided funding for regional conferences on international law issues to the American Society of International Law ("ASIL"). The ASIL entertained competitive bids for the right to hold such regional conferences, and last fall, Duke Law School was one of the first recipients of such a grant.

American Society of International Law Regional Conference. On November 10, 1990, the Law School was proud to host the ASIL's Regional Conference on "The Use of Military, Diplomatic and Economic Force in the Modern International Arena." The origins and timing of the conference were not merely fortuitous. During the spring and summer of 1990, Dean Gann and the President of the International Law Society, Barbara Matthews, had discussed the possibility of hosting an

international conference. Of course, when Iraq invaded Kuwait in early August, the appropriate focus of such a conference became clear.

The Conference, organized in record time (just over two months), was chaired by Professor Robinson O. Everett '59, who recently retired as Chief

Judge of the U.S. Court of Military Appeals. The keynote address was delivered by Terrence O'Donnell, General Counsel to the Department of Defense. Four

Ford Foundation Fellows

Annita M. Richardson, J.D./LL.M. '92, is a staff editor of the *Duke Journal of Comparative & International Law*, and a member of the Moot Court Board and the executive board of the Prisoner Rights Project. She studied at Duke's Institute in Transnational Law in 1990 and 1991 and expects to receive a master's degree in international relations from Troy State University's European Division in 1992. A member of ROTC during college, Ms. Richardson received her B.A. degree in political science from Howard University in 1983, where she was the recipient of a National Achievement Scholarship. She served in the United States Air Force in Greece, Korea and Germany from 1983 to 1989, attaining the rank of captain as Chief, Signals Intelligence Collection Branch of the US Air Forces in Europe. During her service career she received many awards and commendations for outstanding service. Her research as a Ford Fellow will study the variant approaches to intellectual property issues, their impact on one another, and their resulting effect on foreign relations. She will spend two months at the United Nations in New York City and then go on to the World Intellectual Property Organization in Geneva and the Max-Planck Institute in Germany.

Anuja K. Guleria, J.D./LL.M. '92, a native of India, is note editor of the *Duke Journal of Comparative & International Law* and a teaching assistant in the Department of Asian & African Languages and Literature at Duke University. She graduated (*summa cum laude*, Phi Beta Kappa) from Denison University in 1989 with a degree in sociology and anthropology. Last summer, she studied international and EEC law at Duke's Institute of Transnational Law in Copenhagen, Denmark. Fluent in Hindi and proficient in Spanish, she has clerked at AYUDA, La Clinica Legal in Washington, D.C., working in immigration and domestic relations. Before coming to Duke, Ms. Guleria spent a year of study and research in India and wrote an honor's thesis entitled "Caste, Class and Labor Relations in the Bombay Textile Industry." Presently, she is writing about Indian constitutional law and caste reservation policy. During her Ford Fellowship, Ms. Guleria will research international law and intellectual property in developing countries in Asia.



Ron Ferrell

Barbara C. Matthews, J.D./LL.M. '91, received her B.Sc. from Georgetown University's School of Foreign Service in 1986. Proficient in French and Spanish, she is a member of Alpha Sigma Nu (National Jesuit Honor Society), Pi Sigma Alpha (National Political Honor Society) and the American Society of International Law. Her LL.M. thesis explored "The Legality and Effectiveness of International Economic Sanctions as an Alternative to Military Action." As president of Duke's International Law Society, Ms. Matthews authored and organized the American Society of International Law's Southeast Regional Conference held at the Law School in November 1990. She has studied Spanish at the University of Madrid and European Community law at Duke's Institute in Transnational Law in Denmark. Ms. Matthews will research emerging trends in comparative and international banking regulation.

Michelle B. Nowlin, J.D./A.M. in Natural Resource Economics & Policy '92, is the recipient of both an ALI-ABA Scholarship and a Law School Scholarship. She has been vice-president of Duke's Environmental Law Society, and served on the founding committee and as editor-in-chief of the *Duke Environmental Law & Policy Forum*. She was also the co-coordinator of the Law School's Earth Week 1990 activities. Ms.

Nowlin graduated with high honors from the University of Florida in 1987 with a degree in English; she also studied at the University of Innsbruck. Prior to entering the Law School, Ms. Nowlin served as an administrative assistant to Richard J. Salem '72, the blind senior partner of a Florida law firm, and last summer was an intern at the Environmental Protection Agency's Office of Research and Development. During her Fellowship year she plans to work with the United

Nations Environmental Program in Nairobi, Kenya, which works toward the establishment of international treaties in all areas of environmental concerns.

Brenda Brown Kirk, J.D./LL.M. '91, entered the Law School in 1988. In the summer of 1989, she studied at Duke's Institute in Transnational Law in Copenhagen, Denmark. She has been a member of the International Law Society and the Environmental Law Society. Before coming to Duke, Ms. Kirk worked for two years as a linguist and staff assistant to the German vice president of an international electronics firm, E-Systems, Inc. in Greenville, Texas. In 1986, she completed her B.A. in German at Austin College in Sherman, Texas, where she received several scholarships for excellence in German. Also a recipient of a Foreign Language Merit Scholarship, Ms. Kirk spent her junior year overseas. Her studies included two months of intensive language training at the Goethe Institute near Munich, followed by a year at the University of Vienna. Ms. Kirk will conduct a comparative study of development banking institutions, focusing primarily upon the newly established European Bank for Reconstruction and Development of Eastern Europe.

panels discussed the implications of the then-current crisis in the Middle East on the following areas: use of military force, use of diplomatic "force," humanitarian law considerations, and use of economic force. Participants included Professor Herbert Bernstein, Professor Gennady Danilenko of the Soviet Union (visiting at the University of Michigan Law School), Lt. Col. Wayne Elliott (Chief, International Law Division, Army JAG School), Professor Vaughan Lowe (visiting Duke from the University of Cambridge), and Admiral (Ret.) Horace Robertson (Professor Emeritus, Duke Law School). Some participants presented papers whose texts were published in the inaugural edition of the *Duke Journal of Comparative & International Law*. All proceedings, including the luncheon, were videotaped; the videotapes are on file at the Law School Library.

The Conference was well attended by members of the local professional and academic community, as well as the student body. In fact, some members of the local bar later organized a substantially similar conference in January which drew heavily from the framework and participants in the Law School's Conference.

In addition, the Law School sponsored two other international conferences this year. In February, *Law & Contemporary Problems* hosted an international conference on "Soviet Joint Venture Law," whose participants arrived from Moscow, as well as Washington, D.C. and New York. Those proceedings are currently in the publication process. In April, the Law School co-sponsored with the Duke University Canadian Studies Center "The Supreme Courts Conference on Constitutional Law." (See article at p. 19).

A New Law Journal. This year, the Law School was proud to recognize its newest student publication, the *Duke Journal of Comparative & International Law*. The *Journal's* origins lie in the



Symposium: Functional Aspects of International Legal Practice. Photographed in the courtyard of the Organization of American States building in Washington, D.C. are: (left to right, front row) Jennifer Dibble '83, Faculty Director; Barbara Matthews, J.D./LL.M. '91, Student Director; Suzanne Markle, J.D./LL.M. '92; Anuja Guleria, J.D./LL.M. '92; Diana Younts, J.D./LL.M. '92; Cynthia Groomes, J.D./LL.M. '92; and Annita Richardson, J.D./LL.M. '92; (back row) Carol Stubblefield, J.D./LL.M. '92; Stephane Schwartz, LL.M. '90; Anne Harper, J.D./LL.M. '91; Jennifer Drogula, J.D./LL.M. '91; Joseph Sollee, J.D./LL.M. '92; and Christopher Donesa, J.D./LL.M. '92.

Duke International Law Society which, for a number of years, annually published student papers on comparative and international law topics. A number of factors contributed to its rise to law journal status. As the J.D./LL.M. and LL.M. programs grew in size, the informal annual began receiving and publishing higher quality material. Simultaneously, the number of highly qualified and motivated students with an international law focus provided a strong basis for the editorial staff. Those interests converged with the Law School's longstanding commitment to legal scholarship and its international programs to create the *Duke Journal of Comparative & International Law*. The first issue was published in May under the leadership of its editor-in-chief, Kristen E. Scheffel (J.D./LL.M. '91).

Symposium: Functional Aspects of International Legal Practice. In the spring of 1990, the Law School also inaugurated an optional one-week program for all its LL.M. candidates. The purpose of the Symposium is to facilitate

interaction between students and key policy makers in public and private international law sectors. The program recognizes that a functional knowledge of who the policy makers are, where they are located, how they think and how they interact is indispensable to the effective practice of internationally-related legal matters. Accordingly, the program brings a group of students to the offices of governmental and non-governmental organizations to meet with top-level attorneys and policy makers.

Originally proposed in 1988 by a first year J.D./LL.M. student, the Symposium has been incorporated as an optional element of the curriculum under the direction of Jennifer M. Dibble '83, Lecturing Fellow. Due to the strong support of the Dean's Office and the high caliber of the participants, which included many Duke alumni, the program has been a great success. In its first year, Duke students were briefed in Washington, D.C. on current international legal issues by Terrence O'Donnell (General Counsel) and John McNeill (Assistant General Counsel) at the Pentagon, Jeff Watson (Attorney Advisor) at the State Department, T.M.C. Asser (Assistant General Counsel) at the International Monetary Fund, Joshua Bolton (General Counsel) at the Office of the U.S. Trade Representative and Robin Boylan (Senior Trial Attorney, Office of International Affairs) at the Justice Department. They were also briefed by the Inter-American Development Bank, Amnesty International, and by Peter Galbraith and Barbara Larkin (Senate Foreign Relations Committee).

In New York, Law School alumni were very gracious. James E. Buck '60 (Secretary, New York Stock Exchange) provided breakfast and a conference room at the Exchange for the group's lively meeting with Louis J. Barash '79 (Merrill Lynch Capital Markets) and Gary Lynch '75 (Davis, Polk & Wardwell). The group also was addressed by Chief Judge Re at the Court of International Trade (where Eric O. Autor '88 was serving as a clerk), and by the United Nations International Law Commission. The final session, hosted by Andrew S. Hedden '66 at Coudert Brothers, brought the trip to a close.

The only problem experienced by the 1990 group was exhaustion. Accordingly, the Symposium this year focused solely on Washington, D.C. Added to its briefing schedule were Claudette Christian (Arent, Fox, Kintner, Plotkin & Kahn), Louis Forget (Legal Advisor, World Bank), Durwood J. Zaelke '73 (Director, Center for International Environmental Law), Robin Ross (Assistant to the Attorney General) and Elizabeth Jacobs (Senior Counsel, Office of International Affairs, Securities & Exchange Commission).

As Ms. Dibble notes, the strength of the program is the opportunity it provides LL.M. candidates to meet and discuss issues with high-level policy makers in a relatively informal setting. She sees the program developing greater sensitivity to student interests, and providing the Master of Law candidates with both substantive and practical opportunities. Participants use the briefings to better define or identify a relevant thesis topic and resource persons for research. The Symposium also provides participants with an overview of the breadth and variety of opportunities available for attor-

neys wishing to practice in the international arena.

Future Plans

Kierkegaard once observed that "Life is understood backwards, but must be lived forwards." Hopefully, in looking back, we carry forward the lessons learned along the way. As this brief overview of international developments at Duke Law School indicates, a strong and unique framework for international legal scholarship and training is evolving. The exciting developments which have taken place in the last year grew out of a foundation laid by Dean Carrington. Dean Gann's leadership has added new vitality and commitment to consolidate and build upon that foundation in many innovative areas. Combined with the initiative of motivated and highly capable students, the program stands ready to complete its first decade with many successes and increased recognition.

And so the issue becomes "what remains to be done?" Dean Horowitz identifies expansion of the building and faculty as prerequisites for internal growth. The program cannot grow in size until the new wing of the building is completed. The program can, however, consolidate its gains and grow in terms of quality. Increased student interest in internationally-related matters requires increased strength in the public international law field. Professor Robertson's recent retirement has made finding another public international law faculty member a priority. As Professor Bernstein notes, "we need an anchor for that component" of the curriculum.

Student interest in this area is not limited to J.D./LL.M. and LL.M. students. Professor Bernstein's comparative law classes are consistently filled with

predominantly J.D. students. High attendance at the three international conferences held at the Law School this year also reflect broad-based student interest in these issues. Similarly, three members of the Moot Court Board found themselves arguing international issues before Justice Antonin Scalia and Second Circuit judges at the Irving R. Kaufman Securities Law Moot Court Competition this spring. One of two issues presented for oral argument was the extraterritorial application of the Exchange Act's anti-fraud sections (10(b) and 14(e)). Cris D. Campbell (J.D./M.Phil. '91), C. Barr Flinn (J.D./LL.M. '91) and Raphael C. Winick (J.D. '92) won the national competition.

In addition, Dean Horowitz would like to see a "stronger Japanese law program." Accordingly, Professors Lawrence Baxter, James Cox, William Van Alstyne and Dean Gann travelled to Japan in May to visit Japanese universities, financial institutions, government agencies and corporations. They also attended an event for the Law School's Japanese alumni. Professor Percy Luney and Associate Dean of Admissions Gwynn Swinson (LL.M. '86) will spend the 1991-92 academic year in Japan. And during his sabbatical next year, Professor Bernstein plans to spend several weeks in Japan.

In short, current plans articulate the same priorities which have made the program such a success to date. Maintaining its commitment to legal scholarship and education, the Law School continues to search for innovative means to meet changing needs in a flexible manner.

Barbara C. Matthews '91

The Supreme Courts Conference on Constitutional Law

From April 4-6, 1991, Duke University hosted "The Supreme Courts Conference on Constitutional Law," the focus of which was a comparative examination of constitutional issues in the United States and Canada. The conference was the result of twenty-two months of planning and coordination on the part of its key organizers, including representatives from Duke's Canadian Studies Center and the Law School, the Faculties of Law of the University of Ottawa and the University of British Columbia, and the Supreme Courts of both Canada and the United States. Participants in the conference included practitioners, senior scholars, and students from both countries. Two Supreme Court justices of the United States, Chief Justice William Rehnquist and Associate Justice Sandra Day O'Connor, attended the conference, as did six of the justices of the Canadian Supreme Court, including Chief Justice Antonio Lamer and Chief Justice Brian Dickson (retired).

According to Dr. Clark Cahow, Director of the Canadian Studies Center at Duke and the conference's primary organizer, the idea for this event originated two years ago while he was visiting Canada, working with DeLloyd Guth of the Faculty of Law at the University of British Columbia and Robert Sharpe (now Dean of the Faculty of Law at the University of Toronto), who was at the time Executive Legal Officer to the Supreme Court of Canada under Chief Justice Dickson. Dr. Cahow's academic background is in the field of constitutional history and he teaches in the History Department. At the time of Dr. Cahow's visit to Canada, Duke's Canadian Studies Center was exploring new program development ideas, one of



Chief Justice William Rehnquist

which was in the area of legal studies. This led to the initial concept for the conference.

"Quite frankly," says Dr. Cahow, "initially people thought [the conference] would never come off, because it was too big." He notes, however, that the cooperation of Professor William Van Alstyne, a recognized scholar in the field of constitutional law, and the support of Dean Pamela Gann of the Law School helped make the conference a reality.

By all accounts, the conference was a success and provided an interesting cross flow of ideas. The conference was divided into five separate panels: Joint Seminar for Supreme Court Justices, Federalism, Amending the Constitution, Freedom of Speech, and Dimensions of Equality. Professor Van Alstyne, who developed the substantive outline for the panel discussions, notes, "I thought all the panels were substantively quite good and expect the papers to be first-rate." He found, however, that "the opening session featuring the respective Chief Justices as a point of interest and perhaps a

sense of glamour may be considered the highlight of the conference."

Because of the commonalities between the United States and Canada, the conference agenda offered a variety of rich comparison. Speaking on the question of federalism, Chief Justice Lamer noted a key distinction between Canada's Supreme Court, as a national court, and the United States Supreme Court, as a truly federal court. Canada's Court must resolve differences within the provincial common law, while the United States Court respects the distinction between state and federal jurisdictions. In the area of freedom of speech, Professor Van Alstyne points out that "Canada has some lively controversies on group libel. In fact, Canada has a criminal group libel law, which would almost surely be unconstitutional in the United States." Additionally, both Canada and the United States have faced a variety of questions under their equal protection laws, including the viability of affirmative action programs.

The conference participants noted that the timing of the conference was

“particularly ripe” in terms of some recent developments in the two countries, for example, the bicentennial celebration of the United States’ Bill of Rights and Canada’s on-going discussion of the Canadian Charter, in light of the recent failure of the Meech Lake Accord.

There is a long and rich history of shared interests between the United States and Canada which made this conference a natural outgrowth of existing relations. Both countries have common law backgrounds with substantive judicial review of legislative acts. Dating

from 1789, the United States has the oldest written, judicially enforceable constitution in the world. In 1982, Canada joined the ranks of countries whose constitution serves as a source of real law when it added to its constitution an entrenched Charter of Rights and Freedoms to be enforced by the Canadian judiciary.

However, as Professor Van Alstyne notes, there are very distinctive differences in the development of the Canadian Supreme Court, particularly in terms of the court’s “start up” time.

“Cases are coming up swiftly and in great numbers, challenging a variety of issues on constitutional grounds. People don’t really remember that the United States Supreme Court had years and years, in which they had very little to do and lots of patience and time, to grope their way to what would become the pattern and practice of the United States Supreme Court. . . . This is not true of the Supreme Court of Canada.” Chief Justice Rehnquist, during the Joint Chief Justices Seminar, also pointed out that the well-established constitutional review power of the United States Supreme Court was not an overnight occurrence. The United States Supreme Court is “viewed as the granddaddy of constitutional courts. But it would be a mistake to think it sprung like Minerva from the head of Zeus. It was very slow in getting started,” he noted. Chief Justice Rehnquist also recounted the story of United States diplomat, John Jay, who turned down a seat on the Supreme Court to become instead governor of New York because he believed that the Court would never amount to anything.

Professor Van Alstyne also characterized the timing of the conference as an on-going feature of Duke’s interaction with Canadian students and visiting law professors in programs at the Canadian Studies Department and the Law School. This history of cooperative participation, he says, creates a “lively interest and natural affinity, with good reason to think there would be comparative utility in seeing what uses the Canadian Court might begin to make of American customs in constitutional law. Also, what use of its style of analysis, by way of persuasion and analogy.” Conversely the conference highlighted instances where the United States may make use of Canada’s developing constitutional customs. For example, Canada may be developing legal theories, or there may be provisions in its Charter of Rights, or there might arise lines of reasoning or policy developments in its Supreme Court from which the United States can borrow.

“THE SUPREME COURTS CONFERENCE ON CONSTITUTIONAL LAW” TOPICS & PANELISTS

CONVENOR

Professor Clark R. Cahow,
Director, Canadian Studies

JOINT CHIEF JUSTICES SEMINAR

- * The Honorable Chief Justice William Rehnquist of the United States
- * The Right Honourable Chief Justice Antonio Lamer of Canada

Moderator:

Professor William Van Alstyne,
*Perkins Professor of Law,
Duke University School of Law*

FREEDOM OF EXPRESSION

Moderator:

The Honourable Walter Tarnopolsky,
Court of Appeal, Supreme Court of Ontario

Panelists:

- * Professor Kathleen Mahoney,
Faculty of Law, The University of Calgary
- * Professor Yves De Montigny,
Faculty of Law, University of Ottawa
- * Professor R. Kent Greenawalt,
*Cardozo Professor of Jurisprudence,
Columbia University School of Law*
- * Professor Scot Powe, Jr.,
*Anne Green Regents Chair in Law,
The University of Texas School of Law*

FEDERALISM

Moderator:

Professor David Engdahl,
University of Puget Sound School of Law

Panelists:

- * Professor Katherine Swinton,
Faculty of Law, University of Toronto
- * Professor André Tremblay,
Faculté de droit, Université de Montréal

- * Professor Richard Epstein,
*James Parker Hall Distinguished
Service Professor, University of
Chicago Law School*
- * Professor Martha Field,
Harvard University Law School

DIMENSIONS OF EQUALITY

Moderator:

Professor Sylvia Law,
New York University School of Law

Panelists:

- * Dean C. Lynn Smith,
*Faculty of Law, The University
of British Columbia*
- * Professor M. David Lepofsky,
*Counsel, Constitutional Law,
Ministry of the Attorney General, Ontario*
- * Professor Drew S. Days, III,
Yale Law School
- * The Honorable J. Harvie Wilkinson, III,
*United States Court of Appeals for
the Fourth Circuit*

AMENDING THE CONSTITUTION

Moderator:

Professor Peter Hogg,
Faculty of Law, Osgoode Hall Law School

Panelists:

- * Professor Andrée Lajoie, CRDP,
Faculté de droit, Université de Montréal
- * Professor Dale Gibson,
Faculty of Law, The University of Manitoba
- * Professor Henry Monaghan,
*Harlan Fiske Stone Professor of Constitutional
Law, Columbia University School of Law*
- * Professor Walter Dellinger, III,
Duke University School of Law

There are already some examples of an exchange of ideas between the two courts. In 1987, the Canadian Supreme Court decided an "abortion rights" case akin to the 1973 decision of the United States Supreme Court in *Roe v. Wade*. The outcome was similar, though not identical, to the outcome of the *Roe* case. To the extent that Canada is developing a differing jurisprudence in this controversial area, it may very well influence the character of the "abortion rights" debate in the United States, an area that is far from settled.

Chief Justice Lamer mentioned that in 1982, as the nature of the cases before the Canadian Court changed to reflect questions of laws arising under the Charter of Rights, his Court began receiving reports from the United States Supreme Court. The United States cases are used as persuasive argument. On the other hand, Chief Justice Rehnquist noted that the impact of Canadian law on the United States is not as great as it could be. He recalled that he cited a Canadian opinion to support the position he took in deciding a recent case. "There has been some exchange; there should be more," he acknowledged.

Both Professor Van Alstyne and Dr. Cahow feel that it was not difficult to match up the timeliness of current events within the two countries, the likelihood of useful dialogue and exchange, and the availability of talented people, in order to see the potential usefulness this conference might have in serving the community. At a dinner in his honor, Chief Justice Dickson stated that the papers presented during the panels "represent a major contribution to legal learning and to the jurisprudence which our two great countries share."

Just as the substantive development of the conference was a result of cooperative efforts, so was the ability to provide the necessary funding for the conference. In all, a total of 7,000 invitations were extended to attend the conference; paid conference registrants covered approximately fifty percent of the cost of the conference. The remainder was directly

sponsored by contributions from the Canadian Studies Center, the School of Law, and the Office of the President. Additional donations and gifts were provided by the A.J. Fletcher Foundation, American Airlines, Bakatsias Inc., External Affairs and International Trade Canada, Glaxo Inc., the Mary Duke Biddle Foundation, the Ministry of Justice and Attorney General of Canada, Mobil Corporation, and the North Carolina Department of Cultural Resources.

Student participation in the conference was also quite significant in contributing to its success. Dr. Cahow credited the students within the Canadian Studies Center and the Law School for putting the pieces together. "I couldn't have done it without them." Students participated in the detailed coordination of the conference, including escorting the justices and registering participants. Additionally, Supreme Court judicial clerks and student representatives for each of the panel members and the moderators, attending from several universities and organizations, were invited to participate in the conference as observers. The Law School's International Law Society hosted an informal dinner welcoming the student participants. Barbara Matthews '91, the Society's President, notes that "we have sponsored several substantive projects throughout the year. The purpose of this dinner was to create an informal, social event for the students involved to get to know each other and enjoy themselves."

Law & Contemporary Problems will publish the panelists' papers which were presented at the conference. Theresa A. Glover '88, General Editor of *Law & Contemporary Problems*, expects that the papers should be ready for publication in the winter 1992 edition. This publication will be the second symposium on Canadian constitutional law published by *L&CP*. In August of 1982, *L&CP* presented "Reshaping Confederation: The 1982 Reform of the Canadian Constitution." Professor Van Alstyne suggests that the publication of the panelists'

papers "will serve as an enduring product of the conference, because it will go beyond the community of participants to generate very interesting comparisons and projects for further work."

Dr. Cahow recently initiated a Fellows Program that also will greatly advance research in the area of United States-Canada jurisprudence. The Research Fellows will be selected from post-graduate students or faculty, working in law or law-related disciplines, and will involve internships in each of the Courts. The program is intended to require extended access to the libraries of both courts, as well as to nearby National Archives and university law libraries. Last, but not the least of the numerous achievements from the success of the conference, Dr. Cahow has received enough positive feedback from this year's participants to consider hosting another conference within a two-year time frame.

As an observer to the conference, it is difficult to pick a singular highlight of the conference. All the panelists' presentations were quite enlightening and thought-provoking. The contributors are noted in their respective fields and did an excellent job of conveying their expertise. It was, as Professor Van Alstyne noted might be the case, truly rewarding to get first-hand accounts from Chief Justices Rehnquist and Lamer on the development and internal workings of their respective courts. It is quite certain that all the key participants, who made this event a success, deserve a hearty thanks from the legal community at large, in terms of helping to advance the comparative knowledge and the joint benefits of United States-Canadian constitutional jurisprudence. Moreover, the personal relations developed are perhaps just as important. As Chief Justice Dickson noted in his personal thanks to Dr. Cahow and other participants in the conference, "We of Canada [and the United States] have come as your guests, we will leave as your friends."

Annita M. Richardson '92

The Docket

Serving One Client: In House Counsel

Duke Law alumni pursue a tremendous variety of legal careers. Though the majority are first placed and continue to work in private practice with law firms around the country, nearly ten percent of alumni work for a corporation. Some know when they leave the Law School that they want to pursue a career with a corporation, but many more move to such a position later.

Moving In House

Vincent L. Sgrosso, Vice President and General Counsel for BellSouth Advertising and Publishing Corporation and a 1962 graduate of Duke Law School, tells an interesting story of how he moved from private practice to an in house counsel position. While working for a private law firm in Jacksonville, Florida, Sgrosso was asked by Nate Wilson '50 at Southern Bell to help find someone with Sgrosso's type of experience to fill a legal position within the company. "I wasn't interested in the job at that point. I was contacting people for Southern Bell, but I had a real problem finding people who were interested in interviewing." In explaining this difficulty, Sgrosso says, "There was a real bias. People looked at corporate lawyers as not being 'full' lawyers, as just contacts between the company and outside counsel." However, after talking with Southern Bell and learning of its legal department's way of operating, Sgrosso recognized the benefits of an in house position with Southern Bell, and eventually took the job himself. It proved to be an insightful move.

The bias that Sgrosso notes has continued in some areas but is being replaced by a growing respect for such in house positions. In contrast to earlier

days when an in house counsel was a liaison with outside counsel, he explains that "the first question we ask at BellSouth is 'Do we want to do it inside?'" According to Sgrosso, a lot of companies are looking at the legal expense of outside counsel and want to know if the expense is warranted. "We go to outside counsel only if they have expertise or resources that we don't have." In addition, Sgrosso notes that there are no longer the pressing reasons to go to outside counsel. "Companies used to go outside for representation by local lawyers who were familiar with the local practice, the judges, practitioners and juries in a particular area. Society is getting much more mobile. A good in house lawyer, just as an outside attorney, will either know the local practice or associate a local counsel."

Lee G. Schmutde '75, Counsel and Director of Governmental Affairs for Walt Disney World Co., agrees with Sgrosso's analysis of the trend toward in house counsel. He notes a general growth



Lee G. Schmutde '75

in inside counsel over the last five years. According to Schmutde, "Corporate practice is the wave of the future. Corporations are adding to their law staffs because of the economic pressures of hiring outside counsel. They are discovering that staff attorneys are every bit as good as outside counsel, and sometimes better because they know their client so well."

Even though companies are more willing to expand their staff positions,

why are attorneys becoming increasingly willing to leave private practice to pursue careers with a single company? The reasons are varied. Calvin J. Collier '67, Senior Vice President and General Counsel at Kraft General Foods, Inc., wanted a varied career from the outset. "Early on, I contemplated pursuing a career which



Calvin J. Collier '67

included government service, private practice, and corporate counsel. One of the wonderful things about law practice is that it allows you to make contributions in many different fields." In the sev-

enties, Collier held several government positions including Deputy Undersecretary of the U.S. Department of Commerce, Associate Director of the Office of Management and Budget, and General Counsel and later Chairman of the Federal Trade Commission, before going into private practice. After mentioning to a friend that his self-imposed ten year target for private practice was nearly up, Collier received an offer from the Chairman of Kraft General Foods, Inc., for whom he had previously done some work as outside counsel. Collier notes that in private practice he often had the opportunity to work closely with inside counsel. "I envied their continuous and comprehensive relationship with the client and their ability to provide counsel over a broad range of legal issues. I found that in private practice I was no longer living up to the Renaissance ideal that had driven me to study law."

Kimberly Sue Perini (formerly Kimberly Sue Blanton) '81, who joined the

legal department at Marriott Corporation in 1986, worked in private practice for five years and did not enjoy it. "I was debating whether to even continue in legal practice when I accepted the job at Marriott." According to Perini, the attraction of working for a corporation when you are still at the associate level is that "the pressure comes from the client, not from other attorneys in the office." She found private practice to be "a very uncomfortable experience. If no one senior partner is in charge of an associate, then that associate is fair game for any partner. A partner doesn't want to hear that you are already tied up doing something for another partner. It is impossible to prioritize your work in such an environment, and you end up working extremely long hours to satisfy everyone's needs." In contrast, Perini finds that in working for the client directly, "I can prioritize the demands of my single corporate client much better than I could the conflicting demands of numerous senior partners." She says that an important thing for students to remember is that there are a lot of different opportunities out there. "You shouldn't adopt the attitude that you have to take the best job with the biggest law firm. The prestige that goes with a big firm may not be what makes you happy."

Corporate Benefits

Part of what has contributed to the bias against lawyers going into in house positions is that the salary is generally perceived to be much lower than in private practice. Vin Sgrosso cites the competitive salaries being paid by top law firms to attract students as part of the problem. "Firms in Atlanta are paying large salaries to attract new lawyers. The firm itself doesn't pay for that. The client does. We (BellSouth) can hire someone and give them full salary and benefits more cheaply than we can hire outside counsel and still get an excellent work product."

Gray McCalley, Jr. '79, who worked in private practice and for the State Department before settling on Coca-Cola as "the premier address for doing outbound international work," believes that in house counsel salaries are competitive with those in private practice at the starting level. He notes, however, that as you move up the scale towards partnership years, corporate salaries do not move as rapidly. McCalley does not see this as significant. "The difference is that partners in a law firm then have to pay for their own benefits. In house, it's all part of a compensation package. In addition, in many companies you get stock options which tie your compensation to the long term success of the company."

This is an opinion reflected by several of the attorneys interviewed. Most think that salaries tend to be competitive with private firms at the starting level, but may fall behind at the ten or eleven year mark. Those corporate attorneys holding the most senior positions, usually designated General Counsel, tend to be on equal footing with their counterparts in private practice. Most of the attorneys also agreed that even though salaries may not be as high at the middle levels as they would be in private practice, the compensation is still satisfactory. In addition, many attorneys who work in house argue that any discrepancy in salary is more than compensated for in terms of benefits.

Jay W. Gendron '84, Director of Legal Affairs for Lorimar Productions, cites having a contract as one of the most attractive benefits. Gendron enjoys the security that a contract provides. Having come to Lorimar from private practice, he notes that some benefits are similar to those found in private



Jay W. Gendron '84

practice, while some are definitely unique to the company, such as the fact that the hours are generally less grueling than in private practice. Since much of Gendron's work involves reading scripts for television shows and movies to determine what is legally acceptable to broadcast, he cites a unique benefit of his position as having the opportunity to meet and work with some of the creative people behind the scenes of television, as well as meeting some of the stars on the screen.

Attorney Client Relationship

Leslie P. Klemperer '78 at Delta Air Lines, Inc. describes the benefits of corporate practice as "outstanding." In addition to a competitive compensation package including benefits such as retirement and medical plans, Klemperer points to



Leslie P. Klemperer '78

Delta's flight benefits which can be very rewarding. Other benefits unique to Delta are less tangible but just as important to Klemperer. "Delta is a company that cares about its people.

This is perhaps best demonstrated by Delta's no lay off policy and commitment in keeping its team together in good times and bad. There's a lot of security in that." That security and team concept is one benefit obviously appreciated by Delta employees. Klemperer speaks with pride when he describes how in 1982, in the midst of a slumping airline industry, three Delta flight attendants organized a voluntary payroll deduction program in order for employees to buy the company its first Boeing 767 to thank Delta for refusing to lay off employees or cut salaries. As Klemperer notes, "it helps to work for a company that cares about its people, because then the people will care about the company."

Indeed, that type of loyalty and stability was cited by several of the persons interviewed as one of the chief benefits of working for a corporation. Lee Schmutde at Walt Disney World Co. notes, "Corporate practice provides an excellent opportunity for people who want a sense of security. It's more stable than private practice." In addition, Schmutde enjoys some of Disney's unique benefits. "It's always sunny in Florida, and we can go to the park whenever we want. In addition, we are proud to work for a company with a good image. We can hold our heads up proud wherever we go because we work for a first class operation." Schmutde adds with a laugh, "It also helps to have an easy product to sell."

Bruce A. Davidson '72, Vice President and General Counsel for Blue Cross Blue Shield of Florida, says that he found himself more interested in being



Bruce A. Davidson '72

part of a business concern than in building a practice. "It's a matter of personal needs and desires. I needed to be a part of a company doing something worthwhile." Davidson notes that since

joining Blue Cross Blue Shield he has become excited about the growth of the company and its success. "There's a loyalty that develops, and if that turns you on, then it's a good match." However, he does caution that such loyalty and client closeness may cause problems. "There is a lot of truth to the saying that familiarity breeds contempt. You have to balance your desire to get involved in the company with your need (as a lawyer) to keep enough distance to give good advice. Your conduct must be consistent with some degree of independence."

Career Paths

One of the most frequently cited employee benefits unique to corporations is the possibility of stock options which tie part of the attorney's compensation to the overall success of the company. However, Frederic E. Dorkin '56, Director of Legal Services for Boeing Electronics Company, reminds that all corporations are not alike. "You can make tremendous financial rewards if you end up in a group getting incentive awards and stock options. But in many companies there are only a couple of positions like that." He notes that this creates a different kind of competitiveness in legal departments, and the question becomes how selections are made for these higher positions. "In a law firm, you offset expenses by generating income. In a corporation, a legal department is pure expense. Although there's no pressure to generate business, there's a cost pressure to demonstrate that you are doing something beneficial for the company. You must be more efficient than in a law firm."

The concern about opportunities for advancement within a corporation may be one of the factors that has, in the past, discouraged lawyers from pursuing in-house positions. However, limited opportunities in the legal department may often be offset by other types of movement within the company. William H. Grigg '58, Executive Vice President for Duke Power Company, feels that the advantages in working for a company outweigh the lack of opportunity.

"Whereas anyone who works hard in private practice can be a partner, there can only be one general counsel for a company. The advantage of working for a company is that the resources of a corporation eliminate much



William H. Grigg '58

of the need to worry about economic issues. As an attorney, you can focus on doing the job right. There are pressures to be right and to do a good job, but there is no pressure to produce for every fifteen minute increment." Grigg also feels that within corporations there are many opportunities outside the legal department. "A legal degree is as valuable as an M.B.A. Many C.E.O.s are lawyers."

The type of internal advancement opportunities available may have a great deal to do with the structure of the company. Kim Perini, who works in hotel development and finance in Marriott's sixty-lawyer legal department, says that with such a large law department advancement is somewhat limited. "It's a very steep pyramid. There is the general counsel, then a few assistant general counsels, and then everybody else." She comments, however, that "there are opportunities with your business clients if you want to pursue them. For instance, several attorneys at Marriott have left the legal department to go into hotel development."

Frederic Dorkin at Boeing notes that in a corporation it may be necessary to change roles in order to advance. Dorkin, who joined Boeing in 1972, has made a habit of changing jobs every seven years and is pleased that his last several moves have been within the Boeing Corporation. "I moved to the corporate staff in 1978, and I have been with two other divisions within the company since then. I try to promote movement between divisions; it keeps interest up and helps make people eligible for more positions."

Gray McCalley says that in Coca-Cola's 102-member legal department there are opportunities for both vertical and horizontal advancement. He comments that while few attorneys are able to leave the legal department for advancement into the business end of the organization, there are numerous opportunities within the legal department itself. He explains that while in a firm

there is only the opportunity for vertical advancement, in a corporation "there are all kinds of slots. There is vertical advancement in that you can move into positions of ever greater supervisory responsibilities. But there are also opportunities for horizontal moves."

Variety

McCalley explains that at Coca-Cola there are both line lawyers, who have direct responsibility for an operating unit and who tend to be generalists, and staff attorneys, who serve as specialists in particular fields. Illustrating the diversity of his responsibilities, McCalley may, in a single day, handle legal problems ranging from bottler restructuring in Hungary to issues involving the Olympic Games. Such a variety of practice is not uncommon for in house counsel. While many companies require individuals to specialize, others require their attorneys to be largely generalists. Lee Schumde at Walt Disney World Co. enjoys the fact that he has the opportunity to deal with all facets of the Disney operation. "We call it the world's largest general practice. We deal with all kinds of legal problems on a daily basis." There is also room for specialization, and Schumde himself concentrates in the defense of worker's compensation suits.

Although Jay Gendron is very specialized as a production attorney for Lorimar, he also enjoys the variety of problems which come his way on a daily basis. "I look forward to coming to work because there is something a little different every day. Not too long ago, I was visiting a set for a spoof of *The Honey-mooners* to see if it too closely resembled the original set!" Cal Collier at Kraft General Foods remarks that the variety of clients which you forsake by going to work for one single client is replaced by the opportunity to handle so many different aspects of that client's operations. "It's like trading a cafeteria meal for a seven course French dinner."

Along with the variety that may go along with corporate work is a feeling that the "quality of life" is sometimes better in a corporation than in a private firm. Bill Grigg at Duke Power argues that corporations are especially good for women. "Corporations tend to be more flexible with respect to things like maternity leave and time off. Clients demand an awful lot of a lawyer's time, but corporations tend to be more flexible." This attitude is shared by Kim Perini at Marriott, who is balancing her career with motherhood, and currently works part time. "Marriott was good about allowing me to work part time. However, although I am technically off work on Fridays, I often spend half my time on Fridays on the phone with clients!"

While there is a general enjoyment of the lack of pressure to generate clients and to bill hours, in house lawyers caution that the work is still very demanding. Leslie Klemperer at Delta explains, "It's definitely not a nine to five job. The hours are often long and the work complex." Vin Sgrosso at Bell South notes that his lifestyle did not change when he moved from private to in house practice. "You bring with you whatever work ethic you already have. My hours are as long now as anyone else's in private practice. The most significant aspect is not having to work to get clients. Our client works with us and is pleased to have us."

Hiring from Law School

Before law students begin to think that corporate work is the ideal alternative for getting a job in a slumping legal market, Frederic Dorkin cautions that while there may have been an increase in hiring in house counsel, there has also been a tremendous increase in competition for those positions. In addition, he notes, "The boom in growth has been going on for about ten years. Now that we are in a recession, companies are looking much more carefully before they hire new attorneys. I think we are going

to go through a shaking out period—a slowing of growth in house and maybe even some downscaling of operations."

One additional problem faced by students seeking to go in house directly from law school is that many companies prefer to hire attorneys with a few years experience in private practice. As Cal Collier explains, "There is a strong belief that law firms and some government agencies are superior at training young lawyers. Large and midsized firms have training committees and programming. Not too many companies can rationalize that approach."

Cynthia Peters, Director of Placement at the Law School, agrees that "most in house departments are not in a position to hire directly from law school and provide the kind of training that a young lawyer needs in order to be productive." She notes, however, that "more students are interested in working for corporations. Because more and more in house departments are keeping the sophisticated work for themselves, students are beginning to perceive that they can have a very satisfying legal career within a corporation."

Despite the rising level of student interest, Peters reports that "there has been only a small increase in the number of corporations interviewing on campus. The increase has definitely not kept up with the level of interest on the part of the students. In house departments who are interested in 'growing their own lawyers' would find substantial interest on the part of students at Duke. Those corporations who recruited last fall had full interviewing schedules."

John Guidry, a 1991 graduate who has opted to work for Proctor & Gamble in Cincinnati, pursued an in house career during his entire three years at the Law School. Guidry spent three years at IBM prior to enrolling at Duke Law School and, although initially open to the idea of working for a private firm, he soon began planning a return to

corporate America. "The opportunity to focus your legal efforts on a single industry, the chance to practice preventative law rather than remedial law, the feeling of being part of a much larger team, and the luxury of acquiring an in-depth knowledge of your client's business—all these factors told me that an in house



John Guidry '91

career would be the most satisfying for me. In addition, I knew from my IBM experience that corporate benefits and concern for the employee's personal welfare often reach levels unmatched by

private firms. Finally, I knew that the fear of the 'stifling corporate environment' was unfounded; I have always found the corporate culture and its tremendous resources to be facilitating, not confining."

Guidry, a new father, is also concerned about the legal community's recognition of and response to the needs of two-career families. "Corporations seem to work harder than private firms at meeting the needs of the two-career family, often by providing more predictable hours, flexible benefits, a variety of services (such as spousal relocation programs, childcare programs, and parental leave programs), and by showing a more general readiness to intertwine the employee's career and family goals."

With very few corporations hiring directly from law school, Guidry is quick

to recognize that any law student single-mindedly pursuing an in house career will be required to make some sacrifices. "By limiting myself to in house positions, my wife and I had to give up all but the most basic of geographic preferences, satisfying ourselves with the possibility of living anywhere from Atlanta to New York to Delaware to Houston to Memphis to New Jersey to Cincinnati. We think the sacrifice was well worth it."

One company that does hire directly out of law school is The Coca-Cola Company. According to Gray McCalley, "A few years ago, Coca-Cola made the decision to grow its own lawyers. The people we look for have done well in school, are self-starters, and are ambitious. We have the equivalent of a three-year associate program where we rotate new attorneys through various departments within the legal division. This teaches them how the company functions and exposes them to different practice areas. In advising students who are looking for in house positions, McCalley urges students to look carefully at what the people really do. "In house counsel is still an evolving field. I suspect that at some companies in house counsel are still used just to manage outside lawyers. Also, you should look carefully at the training opportunities available in the company."

For those students interested in pursuing a position within a corporation, those who are already in house offer a great deal of advice. Both Bill Grigg at Duke Power and Vin Sgrosso at Bell-South advise students to take a year or two to clerk for a judge. As Sgrosso says,

"If you go to work for a big firm out of law school, you'll be carrying someone else's books. Working for a judge, you have the opportunity to see a lot of lawyers in practice." Sgrosso then advises going with a firm for a couple of years where you can get valuable experience in litigation and negotiation. Grigg also advises trying to split a summer working for a company while still in law school to see if the environment is compatible.

Whether a student or a practicing attorney seeking to change careers, compatibility is the primary thing to consider in a company. Bruce Davidson at Blue Cross Blue Shield advises, "It is important to ensure that the company you choose is one that has integrity and a moral sense which is consistent with your own. Remember, you will be one with your client." Frederic Dorkin at Boeing further explains, "Every company is a product of its own history with its own culture. Sometimes they do fit your personality and sometimes they don't. It is important to remember that you will have more of a team role than an individual role." Cal Collier at Kraft General Foods sums up the advice: "The most important thing is to evaluate the culture of the company. Students usually choose jobs based on other things and culture is what they know the least. They should talk to the people at a company since it will be those people you will be learning from. The people of an organization, whether it's a company or a law firm, dwarf every other dimension."

Leigh Anne Battersby '92

Legal “Soldier” and Scholar

Faculty Profile of George C. Christie

“I had always wanted to be a professional soldier,” reveals George C. Christie, Fulbright Scholar, former editor-in-chief of the *Columbia Law Review*, and current James B. Duke Professor of Law. “But with my personality, I thought I would be better off doing something else.” Curiously, the “something else” he chose to do in many ways resembles a military career. From legal bootcamp at Columbia University to teaching all over the world, Professor Christie has instructed wave upon wave of young minds in the disciplines of torts and legal philosophy. If the army of legal academia had its own requirements for warriors and heroes, George Christie would surely be numbered in its highest ranks.

Duke University Photographers



Professor George C. Christie

The Early Years

Professor Christie grew up in a predominantly Jewish neighborhood in upper Manhattan. His father left Greece for political reasons in 1920 and settled in New York where he met Mr. Christie’s mother, also a Greek immigrant. George Christie was born there in 1934 and attended a neighborhood grammar school, P.S. 187. Although raised in the Greek Orthodox church, his parents enrolled him in Xavier High School, a Jesuit military academy where, after four years, experience taught him that his strengths lay elsewhere.

Because his father died when was fifteen, Professor Christie attended Columbia University so that he could live with his widowed mother. He had not initially considered becoming a lawyer even though his father had been an attorney in Greece. Professor Christie remembers thinking at first of a career in

physics or mathematics—his older sister is a physicist—rather than law. He even tried his hand at economics, but modestly recalls that he didn’t think he was good enough at any of these subjects, particularly math and physics. The one regret Professor Christie has about his undergraduate education was that, for financial reasons, he had to take advantage of the professional option program which combined college and law school. Through scholarships and hard work, he was able to graduate first in his class from Columbia Law School at the age of twenty-three.

After a brief stint in the Army, Professor Christie began his legal career in private practice with Covington & Burling in Washington, D.C. He left practice to attend graduate school at Harvard University (where he received his S.J.D.) and was a Fulbright Scholar

at Cambridge University in England (where he received a Diploma in International Law). He then joined the law faculty of the University of Minnesota where he taught for almost four years. In January 1966, he returned to Washington, D.C. to serve as Assistant General Counsel for the Agency for International Development for the Near East and South Asia.

What brought George Christie to Duke in the fall of 1967 was one man—Dean F. Hodge O’Neal. Dean O’Neal had met Professor Christie while visiting at the University of Minnesota. After his stint in public service, Dean O’Neal convinced Professor Christie to come to Duke rather than return to Minnesota. Professor Christie remembers he was quite ambivalent about the decision at the time, but now believes it was the correct choice.

Like Father, Like Family

Professor Christie’s devotion to legal scholarship is possibly surpassed only by his devotion to his family. Even beyond being recognized for his academic achievements, Professor Christie would want to be remembered as a good father and husband. Not surprisingly, talent and intelligence are far from lacking in his three children. His eldest son, Serge, graduated from Duke (Trinity ’90) and is now studying for his Masters of Fine Arts at the New York Academy of Art. Thirteen-year-old daughter Rebecca has completed her first year at Mary Baldwin College in Virginia, where she is part of a special program for exceptionally gifted young women. She was selected, along with others her age, based on written essays, standardized-test scores, grades,

and personal interviews. Professor Christie's youngest son, Nicholas, is turning nine and is already an avid Duke basketball fan. His wife, Deborah, a graduate of the University of North Carolina Law School, is Assistant General Counsel of the Liggett Group, Inc.

In recent years, Deborah has worked long hours, and Professor Christie has shouldered more of the familial responsibilities. He currently does a lot of the cooking and shopping; tasks which, he admits, take substantial amounts of time and emotional energy. When not pursuing academics, Professor Christie prefers spending quality time with his family. He particularly treasures throwing a baseball around with Nick and an occasional round of golf with his older son Serge. He has taught his daughter Rebecca how to score a baseball game and loves to go to Bulls games and occasional major league games with her and her brothers. He tries to play tennis doubles with a group of faculty colleagues at least once a week.

Teaching Internationally

At Columbia Law School, Professor Christie was attracted to both the practical and theoretical sides of the law. His wide-ranging intellectual interests subsequently have taken him all over the world, both as teacher and student. He has done graduate work in legal philosophy at both Harvard and Jesus College, Cambridge. As a Fulbright Scholar in England, he was also able to pursue his interest in international law which culminated in his first published work, "What Constitutes a Taking of Property Under International Law," published in the *British Yearbook of International Law* in 1963. Subsequently, George Christie has concentrated his efforts in the areas of tort law and jurisprudence.

In 1985, Professor Christie resided as Senior Lecturer at the University of Otago in Dunedin, New Zealand and, with the aid of some Fulbright funds, visited other New Zealand universities and

did research on New Zealand's accident compensation scheme. As in many countries, the students there study law as undergraduates and Professor Christie was responsible for teaching a class of eighteen and nineteen year-olds the law of torts. When asked if there were any fundamental differences in either the subject matter or the students, Professor Christie replied facetiously "my New Zealand students may have been even less prepared than my Duke students." He then explained that law was primarily taught by lecture so the students were not used to responding to questions. The general principles of negligence and intentional torts were the same, he said, but that, in New Zealand, recovery for pure economic loss was more extensive, while of course liability for negligently caused personal injury has been abolished. His Fulbright research on New Zealand's compensation scheme was used to expand an existing section in his own casebook on torts. Professor Christie remembers fondly the frequent student-organized dinners accompanied by considerable wine, beer, etc.; a practice he found "not unattractive."

That same year, Professor Christie lectured at Fudan University in Shanghai. During his month-long visit, he came to understand how the American system of recovery might seem odd to his Chinese students. Many were puzzled at the concept of granting recovery for such causes as negligent infliction of emotional distress and pain and suffering. Professor Christie realized that our recovery system was showing his foreign students more than just American law; it was reflecting the comparative affluence of the U.S. economy and the social concerns of individuals working within that economic system.

Reflections on the Past

During his twenty-four years at Duke, George Christie has seen many things change. Many students and faculty have come and gone in his time at Duke.

In his early years in law teaching, he recalls that law students were more homogenous with fewer women and minorities, and few foreign students. However, even by the time Professor Christie came to Duke in 1967, all universities were experiencing changes, particularly with the onset of the Vietnam War and the "greater radicalization of the student body." Although the Law School has greatly benefitted from its expansion—it has doubled in size since he came here—Professor Christie feels that the School was more "cozy" with more camaraderie among the faculty and the students when it was smaller.

Broadening the curriculum with additional electives is a change that Professor Christie is not convinced has always been for the better. "I believe there is a core of knowledge that every lawyer ought to have," he explains. With the proliferation of electives, he worries "that some students will graduate without that core." With these concerns, Professor Christie commented on the changes in law teaching he has witnessed over the years.

"When I first started teaching in 1962, most of the faculty, and a significant number of students, had substantial practical experience outside of an academic context—many of the students were veterans of military service." Professor Christie had over four years of practice both at a private firm and in public service when he arrived at Duke. "Due to the economics of law teaching, younger teachers will have very limited practical experience, perhaps only a clerkship period with a judge and few will have practiced in a firm other than perhaps as summer clerks." He sees this trend as changing the nature of the law school experience, making it more an academic experience with less professional training. While in law school, he believes that a young lawyer should learn the "trade" of being an attorney; "by 'trade,' I mean learning habits of carefulness, coherent reasoning," and an "expo-



The Christie Family. Back row, George and Deborah. Front row, Serge, Nicholas and Rebecca.

sure in a rigorous way to serious legal problems." Professor Christie believes that this can best be accomplished by exposure to those who have had substantial experience dealing with such problems.

One aspect of the Law School that has not changed, according to Professor Christie, is the reason students come to Duke to get their degree. He notes that students, past and present, are remarkably similar in interests and aspirations as well as abilities. Overall, George Christie sees Duke as a healthy institution with good student/faculty relations and potential for the future.

Works for Today and Tomorrow

From early on in his career, Professor Christie had wanted to make a positive contribution to the fields of jurisprudence and torts. Thus far, he has authored texts in both areas as well as various articles. *Jurisprudence: Text and Readings on the Philosophy of Law* (1973) brings together the great legal philosophers and examines the philosophical issues underlying our legal system. This was followed, in 1982, by his monograph *Law, Norms and Authority*. In 1983, the first edition of his *Cases and Materials on the Law of Torts* was pub-

lished, the second edition of which appeared in 1990. His current projects include a legal-philosophical article on the moral obligation to obey the law which is in the December 1990 issue of the *Duke Law Journal* and an article on punitive damages for the *Anglo-American Law Review*, to be published in England and be circulated within the next few months. In addition to his busy writing schedule, Professor Christie finds time to serve on the Duke University Management Board and on the Editorial Board of *Law and Philosophy*.

George Christie plans to spend this summer preparing a speech he will give at a Perelman Foundation Philosophical Symposium in Brussels in October, 1991 and foresees expanding the project into either an article or book. He looks forward to resuming his writing on legal philosophy after spending the last five years concentrating primarily on torts. Professor Christie will be taking a leave of absence to teach torts and jurisprudence at Northwestern University for the 1991-92 academic year. He will try to get home to Durham to see his family at least every other weekend.

When asked what he believes students should take away from his classes, George Christie leaned back in his chair and thought for a moment. In a most Christiesque manner, he said, "I would like students to leave my classes with the notion that law is serious business which should be done carefully and in accordance with high standards. I also want them to understand that life, law, I myself, have a fair amount of humor about us . . . that one can take something seriously without being too serious about it."

Julian S. Myers '92

Book Review

*A Democratic South Africa? Constitutional Engineering in a Divided Society**

by Donald L. Horowitz

Apartheid is one of those concepts that everyone, without exception, thinks he or she understands. Everyone knows that apartheid constitutes the foundation of government in South Africa, that it is abhorrent, and that it must go. Even those who could not show you where South Africa is on a map are quite comfortable in exhorting the immediate abolition of this system of government and its replacement by a system of "majority rule."

Apartheid is, however, a highly complex political, social and legal system of racial segregation that is difficult enough to comprehend, let alone eradicate. For decades, a veritable deluge of literature, scholarly and otherwise, has been published on the subject. The major recent steps in South Africa towards the abolition of apartheid have redirected this flood of enquiry toward the shape of the new South Africa. Still, much of importance remains unexamined, not least because the emotional heat generated by the practice of apartheid has rendered some relevant issues virtually taboo. Given South Africa's diverse population, in which there are major divisions among the "black" population according to tribal and national origin, in which there is a substantial population of persons of "mixed race," and where whites are themselves divided along ancestral lines, nothing could be more relevant for the dilemma of reform in South African than the question of ethnicity. Yet this has long been one of the subjects most abjured by non-government commentators and analysts.



Donald L. Horowitz is Charles S. Murphy Professor of Law and Professor of Political Science at Duke. He has published several books, including *The Jurocracy*, a book about government lawyers, *The Courts and Social Policy*, for which he was awarded the Louis Brownlow Prize of the National Academy of Public Administration, and *Ethnic Groups in Conflict*. He joined the Duke faculty in 1981.

Reflecting, as it does, a reaction to the racially-exclusive vision upon which apartheid is based and the skillful exploitation of ethnic divisions by the South African government in order to maintain domination by Afrikaner nationalists over everyone else in the country, the

strong reluctance to deal with ethnicity is understandable. The South African experience has tended either to blind reform-minded South Africans to the reality of their own diversity or to channel their thinking toward accepting the structure of existing divisions as a basis for devising a new constitution. On the one hand, there are plenty of proponents of a "democratic," "non-racial" South Africa in which each vote will have one value and the country will be ruled according to simple majoritarian principles. Any potential problems stemming from ethnic diversity are simply wished away. On the other hand, elaborate "consociational" structures have been offered in terms of which the governmental preserves of different groups will be protected by the techniques of proportional representation and minority vetoes. Not surprisingly, opponents of consociationalism often object to the entrenchment of racial and ethnic divisions which they anticipate this style of government will perpetuate.

* University of California Press, 1991

In his new book, *A Democratic South Africa?*, Don Horowitz challenges this two-track thinking, and he does so by grasping the nettle of ethnicity by its roots. As he observes, South Africa presents perhaps the most acute case imaginable of racial and ethnic conflicts. Yet it is also true that the South African case is most acute only by degree, and not in kind. Professor Horowitz is therefore able to marshal his wide-ranging experience in the long-term study of ethnic conflict in many other parts of the world in aid of his analysis of the South African situation. Horowitz has probably examined the basis of South African ethnicity, its ramifications and its likely future effects, more honestly and thoroughly than anyone else I am aware of.

In *A Democratic South Africa?* Professor Horowitz first sets about the difficult task of identifying what it is that makes the analysis of ethnicity so crucial to resolving the South African conflict in a relatively peaceful and stable way. He isolates the objections to talk about ethnicity, and the subtle ways in which comparative experiences elsewhere provide both guidance and false analogies for South Africa. He also demonstrates how ethnicity has continued to assert itself in other societies long after their "revolutions." "Politics all over Africa—and nearly all over the world," he observes, "has a strong ethnic component" and there is no reason to assume that things would be any different in a future South Africa.

This does not mean, however, that political institutions in a new South Africa need be racial or ethnic. In the book the task of devising these institutions is addressed after a thorough-going analysis of the nature of South African ethnicity, its dimensions and its history. Professor Horowitz examines the formidable obstacles to the creation of a stable democracy that confront South Africa including, not least, the elusive meaning of "majority rule" in a complex and divided society. Here again, his status as a foreigner enables him to deal with the prob-

lem free of the adversary relationship that has developed in South Africa itself, so that instead of succumbing to the temptation of merely advocating the substitution of majority oppressors for minority oppressors he is able to draw careful distinctions between the kind of majority rule that merely involves census taking—a counting of heads—and the type of majority rule associated with stable democracies in which floating or marginal voters have a real opportunity to choose among competing parties. Building on this latter notion, Horowitz argues that the focus of the electoral system should be on incentives, rather than constraints. In other words, the electoral system should be devised in such a manner as to make it necessary for parties to bid for the votes of supporters on shifting issues, perpetually facing the threat that they will lose support. A whole chapter is devoted to the various electoral devices that might, with varying degrees of success, be employed in order to bring about a suitable incentive-based voting system.

While the focus of the book is, rightly I believe, on the mechanics of democratic implementation, and the electoral system in particular, Horowitz also addresses related issues, including the structure and uses of the presidency and—all too ominously relevant, given the history of so many failed revolutions—the armed forces. As a lawyer who has been concerned with the operation of the South African legal system as it has both protected and oppressed individual rights, I would personally have preferred more detailed treatment in the book of the role of the courts and a bill of rights in the new South Africa: there are only two pages on the subject. But there is no doubt that it is the electoral system that will be crucial to the maintenance of a stable democracy in the future South Africa. Professor Horowitz makes this compellingly obvious and, in doing so, *A Democratic South Africa?* makes a major and unique contribution to the process of reform for that country.

At no stage in his analysis does Professor Horowitz underestimate the enormity of the task for South Africa. On the contrary, and unlike too many starry-eyed South African reformers, he acknowledges that the task is almost, though not completely, overwhelming. But it is one that is of course imperative, and proper attention to the electoral foundations of the constitution is essential if, as he concludes, South Africa is to avoid the probability that "one person, one vote, one value, and one state will degenerate into only one legal party and one last election."

The book serves greatly to enhance our understanding of the complexities of South Africa, its politics and its people, and as such must surely be required reading for anyone who wishes to gain some insight into that tragically beautiful country.



Les Todd

Reviewed by Lawrence G. Baxter, Professor of Law. Professor Baxter is a native of South Africa. He joined the Duke faculty in 1985 and specializes in administrative, banking, constitutional and comparative law.

Alumni Seminar

The Changing Nature of Law Firm Practice

Under the sponsorship of the Law Alumni Association, the Law School has established an alumni seminar program which addresses timely issues regarding the legal profession through alumni panel discussions. On April 4, 1991, a panel of seven alumni discussed the changing nature of law firm practice.

The purpose of this panel discussion was to address in general the changes in law firms over the past decade and the future of law firms into the twenty-first century. Specific topics covered included the generation and division of law firm income; "rainmakers;" the impact of megafirms and multiple offices; and the movement away from partners and associates as the sole division of lawyers within a firm. Dean Pamela Gann noted that "because so many of our students will enter private practice, this topic was really about what they are about to experience personally."

Members of the panel were all distinguished alumni who are actively involved in the School through the Board of Visitors or the Law School Alumni Council. They all actively participate in the management of their firms in a variety of ways.

—**Robert L. Burrus, Jr. '58** is a senior partner and chair of the firm's management committee at McGuire, Woods, Battle & Boothe in Richmond, Virginia, where he specializes in corporate finance and securities.

—**Jonathan T. Howe '66** is the founding partner and president of Howe & Hutton in Chicago. He specializes in representation of not-for-profit and regulated industries.

—**George R. Krouse, Jr. '70** practices in the securities and corporate areas. He is a



Bob Burrus '58 and Chuck Petty '63

partner in the New York City office of Simpson, Thacher & Bartlett, where he has served on firm executive committees handling partnership decisions, partnership compensation, client development, and associate assignments.

—**Robert K. Montgomery '64** specializes in business and corporate finance law. He is a partner in the Los Angeles firm of Gibson, Dunn & Crutcher, where he manages the corporate group in the firm.

—**Sidney J. Nurkin '66** is a partner with Powell, Goldstein, Frazer & Murphy in Atlanta, specializing in corporate and banking law. He has served on the firm's management committee.

—**Charles W. Petty, Jr. '63** is a partner in the Washington, D.C. firm of Hopkins Sutter Hamel & Park, where he specializes in corporate finance.

All of these panelists are members of the Law School's Board of Visitors. Moderator for the panel was **David G. Klaber '69**, Secretary/Treasurer of the Law Alumni Council, and a partner at Kirkpatrick & Lockhart in Pittsburgh.

Alumni seminars on additional topics will be planned for 1991-92. Video tapes of the seminar programs and the spring Career Conference, which invites alumni to talk with the students regarding career choices, are available in the Law School Placement Office.

1990-91 Distinguished Teacher Award

Paul Veidenheimer '92 (left), immediate past president of the Duke Bar Association (DBA), presented the 1990-91 Distinguished Teacher Award to Visiting Professor W.H. (Joe) Knight, Jr. during

a reception for faculty and students on April 9. The Distinguished Teacher Award has been presented annually by the DBA since 1985 to recognize outstanding classroom contributions by a

member, or members, of the Law School faculty. Previous winners of the award are Professors Thomas Metzloff, Melvin Shimm, Sara Beale, John Weistart, James Cox, Richard Maxwell, and Thomas Rowe.

Professor Knight is a member of the faculty of the

University of Iowa College of Law; he visited at Duke for the spring 1991 semester, teaching banking law and contracts. In making the presentation, Mr. Veidenheimer noted that, "In a school filled with distinguished teachers, Professor Knight has been truly remarkable. He has inspired students with the power of his own example and evoked true admiration through the integrity and graciousness which he has exhibited daily. His selfless attitude both within and outside the classroom made him a tremendous addition to the Law School community Professor Knight has served as a most welcome friend, teacher and role model to all students. That he should achieve such status within such a short time is testimony that he is, truly, a distinguished teacher."



Les Todd

1991 Currie Lecture



Les Todd

Lea Brilmayer (third from right), Nathan Baker Professor at Yale Law School, presented the 1991 Brainerd Currie Memorial Lecture at the Law School on Friday, March 1. She spoke to an audience of faculty and students on "Liberalism, Community & State Borders." The Currie Lecture, presented each spring, is named in memory of Professor Brainerd Currie who was a member of the Law School faculty in both the late 1940s and the early 1960s.

Pictured (from left) are Professor William Reppy; John H. Lewis '67 and his wife, Harriet, of Miami, Florida, the benefactors of the Currie Lecture; Professor Brilmayer; Pic Currie, the widow of Professor Currie; and Senior Associate Dean Robert Mosteller. Next year's Currie Lecture will be presented by Professor Peter Schuck, also of the Yale Law faculty.

Special Gifts to the Law School

Kresge Foundation Challenge Grant

The Kresge Foundation of Troy, Michigan has made a \$1 million challenge grant toward the Phase II renovation and expansion of the Law School. The challenge grant is conditional upon the Law School's completion of the fund raising for the \$14 million project.

Total project costs of Phase II, including financing costs, is projected to be \$14.5 million. Phase I was the \$1.6 million renovation of the Law Library completed in 1989. Phase II will include the addition of a new wing for faculty and administrative offices, seminar rooms, a courtyard, additional space in the Library, and a new heating and cooling system. The third phase will involve renovation of the existing Law School building, plus the addition of the exterior facade.

"The Kresge Foundation challenge grant is very generous in its amount," says Dean Pamela B. Gann. "It illustrates the Foundation's belief in the project and in our ability to complete the remaining fundraising to meet the grant's challenge. This project will provide all the space needed by the Law School to operate effectively." The Kresge Foundation is an independent, private foundation created by the personal gifts of Sebastian S. Kresge. At the time of the challenge grant to Duke, the Foundation had awarded thirty-seven grants in 1991 for a total of over \$14 million.

Riddick Endowment to the Law Library

The Rare Books and Special Collection Room in the renovated Law Library will be named in honor of Floyd M. Riddick '37 and his wife, Marguerite S. Riddick, in recognition of their gift of \$150,000 to the Law School. Dr. Riddick, Parliamentarian Emeritus of the United States Senate, previously gave the Law Library his personal collec-

tion of legislative and parliamentary procedure materials. The Riddicks have also established an endowment fund to care for and preserve the collection.

"The commitment of Marguerite and Floyd Riddick to the Building Fund is truly significant," explains Dean Gann, "in that it is unusual that a donor will contribute a rare collection, provide an endowment for its maintenance and care, and also donate the funds required for its permanent location. The Rare Books and Special Collections Room in the renovated Library will be a handsome and gracious room for small meetings and will reflect the Law School's appreciation for the Riddick's enlightened generosity."

McCown Scholarship Endowment

Sue Vick McCown '50 and Wallace H. McCown '48 have established a \$100,000 scholarship endowment fund at the Law School. The McCowns and their daughter, Linda H. McCown '88, practice law in Manteo, North Carolina.

In announcing the scholarship, Dean Gann noted that "we are especially appreciative that the McCowns have specified a preference for the scholarship recipients to be North Carolinians who desire to practice in North Carolina. It is appropriate that the McCowns, who practice in Manteo, have chosen to encourage the presence of Duke-trained lawyers in the state in this meaningful way."

Mead Data Central Gift

In addition to gifts to the Law Library and Placement Office, Mead Data Central, the providers of LEXIS/NEXIS®, has supported Law School activities in a number of ways since the fall of 1990. Mead provided computer workstations, complete with modems and printers, to ten faculty members

who participated in a program in which these faculty members assigned an exercise involving LEXIS research to one of their classes.

Mead has now also agreed to provide \$900 per year for three years to provide cash prizes to each Bidlake Award winner, given to the best performer in each research and writing small section. The first set of prizes was given this spring. Also in the spring of 1991, Mead gave the Law School \$2,000 to support the Dean's Cup Moot Court Competition and, in particular, to provide cash prizes for excellence in brief writing and oral advocacy. For 1992, Mead increased its commitment to provide \$3,000 both to continue prizes for the Dean's Cup Competition and to provide prizes for excellence in work for our journals.

1991 Class Gift

The Class of 1991 held a fundraising campaign during their final spring semester. The Committee members of the 1991 Graduating Class Campaign solicited three-year pledges from their classmates. The Committee, chaired by Juan F. (Pancho) Aleman, was the largest and most active Graduating Class Campaign Committee ever.

Funds from the first year pledges will pay for benches and planters in the outdoor commons area when the building addition is complete. Funds received from pledges in years two and three will be directed to the Annual Fund which provides funds for current operating expenses. To date, fifty percent of the class has pledged over \$22,000 to be paid over the three years. Matching gifts from employers will bring the three-year total to over \$24,000.

The Law School is grateful to its most recent graduates for their participation in this Campaign. The fifty percent participation rate is higher than total

alumni participation in the Annual Fund has ever been. As the Graduating Class Campaign becomes a tradition at the Law School, it is hoped more students will choose to participate in their Graduating Class Campaign. The Law School thanks every participant in the Class of 1991 for their generous support.

Class members who have not yet made a pledge but wish to participate in the Campaign should call (919) 489-5089 or write the Law School Office of Alumni Affairs.

Law School Annual Fund Reaches Campaign Goal

The Duke Law School Annual Fund reached its Campaign for Duke component goal of \$1,500,000 in March 1991—nine months before the Campaign is to conclude. The Campaign began July 1, 1988, and is scheduled to conclude December 31, 1991. University-wide, the Campaign for Duke totals passed the \$400 million goal in February 1991, but efforts continue to reach each of the component goals.

The Law School Annual Fund goal could not have been reached without the efforts of many volunteers. An increased number of activities have involved numerous volunteers including alumni, faculty, parents and students who have made contributions both of time and money to the Law School Annual Fund. Their determination and commitment were key to this success.

While the Campaign for Duke goal has been reached, the Law School Annual Fund still has ambitious goals to meet. Significantly increasing the Annual Fund, which directly supports the operating budget, is a necessity for the Law School. In the short term, the Annual Fund, in excess of funds needed to support current programs, will help support the building expansion and renovation. In the longer term, an increased Annual Fund will allow the School to remain competitive with our peer schools by helping to pay for basic operating costs and for additional programs.

Final Round of the Dean's Cup



Ron Ferrell

The Final Round of the annual upper-class Dean's Cup Competition was held on Saturday, March 2 with the Honorable Anthony M. Kennedy of the United States Supreme Court presiding. Joining Justice Kennedy on the bench were Judge Dorothy W. Nelson of the Ninth Circuit Court of Appeals and Judge A. Raymond Randolph of the Court of Appeals for the District of Columbia. After an hour of argument interrupted by frequent and rapid questions from the bench,

the judges unanimously praised both student advocates and named David M. Shaw '92 the winner of the round.

Pictured above after the conclusion of the round are (from left) Edward H. Trent '92, runner-up; Judge Nelson; David Shaw; Maurice O. Green '91, Chair of the Moot Court Board; Justice Kennedy; Annita M. Richardson '92, Law Day Coordinator; Judge Randolph; and Augustin D. Diodati '91 and Thomas D. Sydnor '91, Dean's Cup Coordinators.

Final Round of the Hardt Cup



Ron Ferrell

The Final Round of the annual first-year Hardt Cup Competition was argued on Saturday, April 6. Presiding was the Honorable Aubrey E. Robinson, Jr., Chief Judge of the United States District Court for the Dis-

trict of Columbia. The problem for the Hardt Cup concerned whether parents of children who object to inoculation on religious grounds may be required by the state to permit inoculation for AIDS.

Pictured

(from left) are Judge Robinson; "Judge" Ronald J. Krotoszynski, Jr. '91; Julia A. Eklund '93, winner of the Hardt Cup; "Judge" Loni Caudill '91; and Jeffrey C. Dobbins '93, runner-up.

Siegel Moot Court Competition

The first annual Rabbi Seymour Siegel Memorial Moot Court Competition took place at Duke Law School this year on February 15 and 16. While Duke students have participated in national moot court competitions for years, the Siegel Competition is the first interscholastic competition hosted by the Law School.

The Siegel Cup is sponsored by Allen G. Siegel '60 in memory of his brother, the Rabbi Seymour Siegel. (See *Siegel Moot Court Competition Established*, DUKE L. MAG., Winter 1990, at 52.) Rabbi Siegel, who died in 1988, was a noted medical-legal ethics scholar, and thus the first competition focused on legal ethics. The topic for this year's problem was suggested by Allen Siegel and researched last summer by Loni Caudill '91 and Kelly Moore '91, two members of the Moot Court Board designated for this purpose as Siegel Fellows. Mr. Siegel and a member of his firm created the record for the problem, and, along with a third attorney, judged the briefs. At issue was the constitutionality of a rule of legal ethics forbidding testimonial advertising by an attorney, a topic of current interest.

Mr. Siegel, who has actively supported academic achievement by establishing scholarships and fellowships at several institutions of higher education, including the David H. Siegel Memorial Scholarship at the Law School, generously provided the competition with monetary scholarship awards as well as funding a stipend for the Siegel Fellows and providing an awards banquet for all participants and judges and a luncheon for the final teams and judges. He also provided mementos for all participants and covered all the incidental expenses of the competition. At the banquet, Mr. Siegel gave a moving tribute to his



From left: Kenneth Starr '73, Allen Siegel '60, Judith Kaye, and Gerald Tjoflat '57.

brother, saying that the annual competition will keep alive the spirit of the scholar, loving family member, and educator that Rabbi Siegel was.

Eight schools fielded teams for the competition this year: Albany Law School at Union University, the University of Arkansas at Little Rock School of Law, the University of California at Berkeley School of Law, Catholic University of America School of Law, University of Connecticut School of Law, Cumberland School of Law of Samford University, Santa Clara University School of Law, and the University of Southern California Law Center. Duke chose not to compete in the inaugural Siegel Cup competition to avoid any appearance of bias in favor of its team.

The preliminary rounds of the competition were held on Friday, February 15 and were judged by local attorneys, many of whom were Duke Law alumni. The Durham office of the North Carolina firm of Moore & Van Allen contributed generously to the success of the competition, as seven of their attorneys donated time to assist in judging the preliminary rounds.

The Law School was honored to have the United States Solicitor General Kenneth W. Starr '73, the Honorable Gerald B. Tjoflat '57, Chief Judge of the Eleventh Circuit Court of Appeals, and the Honorable Judith S. Kaye of the New York Court of Appeals as judges for the final round on Saturday, February 16. Judge Tjoflat has been a close friend of the Siegel family for many years, and Judge Kaye is a cousin of the late Rabbi Siegel. At the awards banquet, Judge Kaye also reminisced about Rabbi Siegel's scholarship and gentle spirit.

The scholarships for Best Brief and Best Oralist went to the teams from Albany and Southern California, respectively. The finalists in the competition were the teams from Berkeley and Cumberland. After an hour of tough questions from a very active panel, Cumberland was designated the winner of the first Siegel Competition. The second Siegel Competition will be on February 21-22, 1992.

Loni Caudill '91

Private Adjudication Center to Administer Dalkon Shield Claimants Trust Arbitration Program

On April 9, 1991, the Private Adjudication Center was selected as the administrator of the program for handling all procedural matters related to binding arbitration for Dalkon Shield claimants. Back in 1986, Carmon J. Stuart '38, the Private Adjudication Center's Vice President for Adjudication Services, identified a potential role for the Center to play in the resolution of the then 450,000 claims facing the Dalkon Shield Claimants Trust. As a former clerk of court for the United States District Court in the Middle District of North Carolina and co-creator of the court-annexed arbitration program in that court, Stuart said he "recognized the potential service that the Center might render to the bankruptcy court in resolving Dalkon Shield claims," and suggested that to court officials in Richmond.

This idea was followed up with conversations with court representatives and Duke Law faculty. In early 1990, Stuart and René Stemple Ellis '86, the Center's Executive Director, visited Trust personnel and expressed the Center's renewed interest and again suggested its availability at such time in the future as the need for arbitration presented itself.

The Dalkon Shield Claimants Trust was established to compensate the men, women and children who have claims arising from the use of the Dalkon Shield intrauterine device, manufactured and distributed by the A.H. Robins Co. in the early 1970s. The \$2.3 billion trust was created as part of the plan of reorganization. To date, more than 110,000 claimants have settled their claims. There are about 87,000 claims left to resolve.

The final plan for resolution of the bankruptcy estate states a preference for



René Stemple Ellis '86 and Carmon Stuart '38

negotiated settlements first, arbitration second, and litigation as a last resort. In January 1991, five years after the idea occurred to Stuart and one year after the 1990 visit, the Center received a request for proposals from the Trust. The Trust solicited proposals for alternative dispute resolution services (ADR) from several ADR service providers across the country, and the Center was selected as administrator of the program on April 9, 1991.

The Center will handle all procedural matters related to binding arbitration for Dalkon Shield claimants. "The Private Adjudication Center is recognized among providers of alternative dispute resolution services for its commitment to the development and refinement of (dispute resolution) methods," said Michael M. Sheppard, Director of the Trust.

Ellis says that the Center will also be responsible for selecting and training panels of arbitrators from which an individual will be selected to conduct the hearings. The arbitrators will be "retired

trial judges, lawyers with at least ten years of significant trial experience and who have been in an active practice or judging within the last two years, or persons with comparable experience who are deemed qualified by the Center," according to Ellis. No one with any involvement in Dalkon Shield litigation may serve as arbitrator.

The Trust released its rules for binding arbitration on April 22. Dalkon Shield claimants who have rejected their settlement offer from the Trust may select binding arbitration ninety days after their voluntary settlement conference. The Trust provides three settlement options with offers ranging from \$725 to an unlimited amount depending on the claimant's injuries and the amount of proof that she has that the intrauterine birth control device caused them. If a claimant is dissatisfied with the offer she receives, even after a settlement conference with a representative of the Trust, she can request binding arbitration or a jury trial at a location convenient to her. The Trust just recently completed the first settlement conferences in San Francisco and Denver.

Ellis is the Program Director for the Dalkon arbitration program and Stuart is the Program Coordinator. They will also be assisted by Professor Thomas B. Metzloff of the Duke Law faculty and Professor David G. Warren '64 of the Duke Medical School.

ALUMNI ACTIVITIES

Professional News

'40—G. Neil Daniels has retired from the firm of Brooks, Pierce, McLendon, Humphrey & Leonard in Greensboro, North Carolina.

'42—George B. Pollack has retired from the practice of law in Perth Amboy, New Jersey.

'45—Viotti E. Morgan has retired from Matthew Bender & Co. Inc. in Oakland, California.

'47—Robert F. Murray has retired as Director of Contracts, Defense Division of the Brunswick Corporation in Skokie, Illinois.

'48—R.M. Gardner has joined the Fort Lauderdale, Florida firm of Gunster, Yoakley & Stewart.

'56—Russell M. Robinson, II has authored the fourth edition (1990) of *Robinson on North Carolina Corporation Law*, published by The Michie Company of Charlottesville, Virginia. He is a partner at Robinson, Bradshaw & Hinson in Charlotte, North Carolina.

'61—Alexander E. Drapos has joined the firm of Fletcher, Tilton & Whipple in Worcester, Massachusetts.

—George H. MacLean has been promoted to Vice President and Associate General Counsel of Hanson Industries in New Jersey, the United States arm of Hanson PLC, a British-American industrial management corporation.

—Robert E. Mitchell is now Vice President, Sales & Marketing, of the DocuFind Corporation in Larchmont, New York.

'62—John G. Lile is with the firm of Wright, Lindsey & Jennings in Pine Bluff, Arkansas.

Douglas P. Wheeler '66 was appointed by California Governor Pete Wilson on December 26, 1990 to be that state's Secretary for Resources. In announcing the appointment, Governor Wilson stated that "In Doug Wheeler, I have found someone...who can balance the need for economic development with sound conservationist policies." Wheeler says he "shares the Governor's commitment to conservation of California's natural resources, and I hope to help in continuing his leadership on these critical issues."

The Resources Agency has responsibility for a range of environmentally sensitive programs, including departments or commissions dealing with water, forests, energy, fish and wildlife, conservation and parks. Wheeler has served in a number of important conservation capacities, including Vice President of the World Wildlife Fund & The Conservation Foundation, as Executive Director of The Sierra Club, as President of the American Farmland Trust, as Executive Vice President of the National Trust for Historic Preserva-



Douglas P. Wheeler '66

tion, and as Deputy Assistant Secretary for Fish and Wildlife and Parks of the United States Department of the Interior.

'63—Richard R. Swann has joined Dempsey and Associates in Winter Park, Florida.

'64—Arthur A. Kola, a partner specializing in labor law and employment litigation in the Cleveland, Ohio office of Squire, Sanders & Dempsey, has been elected to the Board of Directors of the American Arbitration Association.

—David G. Warren, a professor in the Canadian Studies Department at Duke University, has received a Canadian Embassy grant to develop an undergraduate course on the Canadian Health System, together with a teaching videotape.

'66—James A. Courter has returned to private practice with the firm of Courter, Kobert, Laufer, Purcell & Cohen in Hackettstown, New Jersey after serving in the United States House of Representatives.

—James B. Maxwell, a partner in the Durham, North Carolina firm of Maxwell & Hutson, was presented with the Sertoma International Service to Mankind Award by the Friendly North State Sertoma Club in January 1991. For the past twenty-five years, Maxwell has been a volunteer swimming coach to thousands of youngsters and, in 1989, he became the co-chairman of the Durham County Community Shelter for HOPE. He is past president of the NC Trial Lawyers Association, the Durham YMCA, and the Durham Arts Council.

—Ralph L. McCaughan has become of counsel to the Durham, North Carolina firm of King, Walker, Lambe & Crabtree where he concentrates in estate planning and trusts.

'67—James A. Adams, Professor of Law at Drake University Law School in Des Moines, Iowa, was recently awarded that University's newly-created Board of Governor's Excellence in Teaching Award.

'68—Robert K. Garro has been named a partner in the Chicago, Illinois office of Katten, Mushin & Zavis, where he concentrates his practice in trusts and estates.

—Richard V. Jones has joined Bressler, Amery & Ross in Florham Park, New Jersey.

—Donald H. Messinger has been



Donald H. Messinger '68

named Partner-in-Charge of the Cleveland, Ohio office of Thompson, Hine and Flory. He is also Vice Chairman of the firm's corporate

and securities area.

—Edward A. Reilly has opened a law office in Darien, Connecticut.

—O. Randolph Rollins has been named Deputy Secretary of Public Safety in the Office of the Governor of Virginia in Richmond.

—Marlin M. Volz, Jr., Vice President of the Davenport Bank and Trust Company in Davenport, Iowa, has been appointed by Governor Terry Branstad to a four-year term on the Iowa State Transportation Commission.

'69—James R. Moore is now a partner in the Seattle, Washington firm of Perkins Coie.

—Breckinridge L. Willcox joined the Washington, D.C. firm of Arent, Fox, Kintner, Plotkin & Kahn as a senior partner on July 1, 1991.

'70—Jean C. Coker has joined the Jacksonville, Florida office of Holland & Knight as a partner specializing in probate and estate planning.



Jean C. Coker '70

—James C. Frenzel is now with the Atlanta, Georgia firm of Greene, Buckley, Jones & McQueen.

'71—Randolph J. May is now with the Washington, D.C. office of Sutherland, Asbill & Brennan.

—David L. Sigler, of The Gray Law Firm in Lake Charles, Louisiana, has co-authored a treatise, *Estate Planning in Louisiana*, due for publication by Lawyers Cooperative Publication Company in 1991.

—David B. Wuehrmann is now an attorney at the Federal Energy Regulatory

Commission in Washington, D.C.

'72—Benjamin C. Abney has joined the Atlanta, Georgia firm of Minkin & Snyder.

—John D. Englar, Vice President, General Counsel, and Secretary of Burlington Industries, Inc. in Greensboro, North Carolina has been elected to the Board of Directors of its parent company, Burlington Industries Equity, Inc. —Walter W. Manley, II has joined the firm of MacFarlane, Ferguson, Allison & Kelly in Tallahassee, Florida.

'73—Eleanor D. Kinney, Professor of Law at Indiana University in Indianapolis, has published "Rule and Policy Making for the Medicaid Program: A Challenge to Federalism" in 51 *Ohio State L.J.* 855-916 (1990).

—Cheryl Scott Rome has been named an administrative judge for the United States Department of the Interior, Office of Hearings and Appeals, Interior Board of Contract Appeals, in Arlington, Virginia.

Daniel T. Blue, Jr. '73 was elected Speaker of the House of the North Carolina General Assembly on January 30, 1991. Blue, a Democrat from Wake County, is the first black to lead the House in North Carolina, and one of only two black state house speakers in the nation. He served as the head of the Jesse Jackson delegation during the 1988 Presidential Campaign, and has long been active in Democratic politics.

Upon accepting the leadership position, Blue promised to lead in "an open and fair manner" and asked House members to put aside their political differences and work together in solving the state's problems. North Carolina is confronting budget problems caused by a revenue shortfall exceeding \$1 billion, and its leaders will grapple with legislative and congressional redistricting and other disputed issues ranging from gubernatorial veto to abortion.

Blue is a partner in the Raleigh firm of Thigpen, Blue, Stephens & Fellers and is a honorary life member of the Law School's Board of Visitors. He was the keynote speaker this spring during Duke University's celebration of Martin Luther King, Jr. Day.



Daniel T. Blue, Jr. '73

'74—**Ronald M. Marquette** has retired from the Air Force and is now a partner in the Rocky Mount, North Carolina office of Poyner & Spruill where he practices civil litigation.

—**John R. Moffat** is President of the Skagit County, Washington Bar Association, and has just completed a three-year term on the Washington State Bar Association Committee of Law Examiners. He is a contributing author/editor of the soon-to-be-published *Washington Deskbook on Construction Law and Public Bidding*, and continues his work as the attorney for Skagit County with a municipal law practice emphasizing land use, construction and personal injury defense.

—**R. Wade Norris** has become a partner in the San Francisco, California firm of Jones Hall Hill & White.

—**Kenneth E. North** has been selected to serve a three-year term as an articles editor of *The Tax Lawyer*. He is also the co-author of a two-volume work published in 1986 by The Michie Company entitled *Criminal and Civil Tax Fraud: Law, Practice, Procedure*.

—**Ira Sandron** is now an Immigration Judge in Miami, Florida.

—**Thomas C. Stevens**, who specializes in banking law and in representing financial institutions, has been named Firmwide Managing Partner of Thompson, Hine and



Thomas C. Stevens '74

Flory. Based in the Cleveland, Ohio office, he will oversee all aspects of the firm's ten offices, including responsibility for financial affairs and long-range planning.

'75—**Allyson K. Duncan** has been appointed by Governor James Martin to

the North Carolina Utilities Commission and the North Carolina Board of Public Telecommunications Commissioners. She is also an Associate Professor of Law at North Carolina Central University in Durham, where she teaches property, appellate advocacy and employment discrimination.

—**Albert A. Skwiertz, Jr.** has been named Vice President and Associate General Counsel of Alexander & Alexander Services, Inc., a global insurance brokerage, risk management and human resource management consulting company headquartered in New York City.

'76—**David B. Post** is now Manager (Bankruptcy Specialist) at Arthur Andersen & Company in Atlanta, Georgia.

—**Stephen E. Roady**, an attorney at Andrews & Kurth in Washington, D.C., has authored "Permitting and Enforcement Under the Clean Air Act Amendments of 1990," 21 *Env't. L. Rep.* 10178 (1991).

'77—**Edward D. Heath, Jr.** is now of counsel to the Wichita, Kansas firm of Hershberger, Patterson, Jones & Roth, concentrating in worker's compensation and negligence law.

—**Susan Freya Olive** has been appointed to the North Carolina General Statutes Commission. She practices intellectual property law with the firm of Olive & Olive in Durham.

—**Gary A. (Skip) Poliner** is Associate Director of Northwestern Mutual Life in Milwaukee, Wisconsin.

'78—**Robert T. Cozart, II** has joined the firm of Jackson, Tufts, Cole & Blanc in San Francisco, California.

—**David C. Kohler** is now with Turner Broadcasting Systems, Inc. in Atlanta, Georgia.

—**Jerry C. Mailey**, a Lt. Colonel in the Army Reserve, served as Chief, Contract Management Branch, ARCENT Con-

tracting Command in Saudi Arabia during Operation Desert Shield/Storm.

—**Lawrence G. McMichael** is currently a member of the Executive Committee of Dilworth, Paxson, Kalish & Kauffman in Philadelphia, Pennsylvania and chairs its bankruptcy department.

—**Mark R. Morano** is now a partner in the Greenville, North Carolina firm of Williamson, Herrin, Barnhill, Savage & Morano. He recently represented the defendant in one of the first non-medical malpractice summary jury trials handled by Duke Law School's Private Adjudication Center.

'79—**Valerie T. Broadie** has been named Director of Development at Howard University in Washington, D.C.

—**Richard D. Ellingsen** is now with Davis Wright Tremaine in Los Angeles, California.

—**Timothy W. Mountz**, a shareholder in the Dallas, Texas based firm of Locke Purnell Rain Harrell has been elected Chairman of the Board of the 24,000



Timothy W. Mountz '79

member Texas Young Lawyers Association. He is a former President of the Dallas Association of Young Lawyers.

—**Steven D. Wasserman**, a partner in the San Francisco, California litigation firm of Sedgwick, Detert, Moran & Arnold, has recently been elected to the Board of Directors of the Center for Southeast Asian Refugee Resettlement. He was also recently appointed to the San Francisco Unified School District Citizens' Affirmative Action Review Committee and served this year as a member of the California Democratic Party State Committee.

—Neal O. Williams has been named Assistant General Counsel for Transamerica Insurance Group in Woodland Hills, California.

'80—Anita W. (Schoemaker) Coupe, a partner in the firm of Morgan, Lewis & Bockius, has relocated to the firm's New York City office.

—John W. Marin has been named to the National Association of Basketball Coaches' 1991 Balfour Silver Anniversary All-American Team. The team is comprised of outstanding college basketball players from the class of 1966 who have gone on to distinguish themselves in their respective careers. Marin is a player representative certified by the National Basketball Players Association and the NFL Players Association and practices sports law and agency at Maupin, Taylor, Ellis & Adams in Raleigh, North Carolina.

—Frank L. Polk is now of counsel to the Oklahoma City, Oklahoma firm of Naifeh & Woska.

'81—John J. Coleman, III, a partner practicing in the labor relations and employment section at Balch & Bingham's Birmingham, Alabama office and an Adjunct Professor at Samford University's Cumberland School of Law, has recently published two books. *Employment Discrimination in Alabama* (Southern University Press), covers state and federal employment discrimination statutes in Alabama state and federal courts. *Disability Discrimination in Employment* (Clark Boardman, Ltd.) covers federal disability discrimination legislation, including the Americans with Disabilities Act, as well as applicable state legislation on this subject. Proceeds from the first book will fund a minority scholarship.

—Glenn E. Cravez now has a solo practice in Anchorage, Alaska.

—Patrick B. Fazzone, a partner in the firm of Collier, Shannon & Scott, spends seven to eight months a year in



Patrick B. Fazzone '81

the firm's Sydney, Australia office and the remainder of the year in its Washington, D.C. office. He is also a Lecturer at the University of Sydney Law School, where he teaches courses in international business law, international trade regulation, public international law and maritime law at the LL.M. level.

—Kimberly Blanton Perini is a Senior Attorney working for Marriott Corporation at its headquarters in Bethesda, Maryland, concentrating in hotel development and finance.

—Terry B. Resk is now a partner at Fleming, Haile & Shaw in North Palm Beach, Florida.

—Thomas Richelo announces the formation of the Law Offices of Thomas Richelo in Atlanta, Georgia on March 1, 1991. His firm practices construction law, public contracts, environmental law, and general civil litigation. He is a frequent author and speaker on construction law topics for bar association and industry groups.

—Edmund C. Tiryakian is with the Union Bank of Switzerland in London, England.

'82—Thomas M. Ewing was named a member of the firm of Chadbourne & Parke on January 1, 1991, resident in the firm's New York City office.

—Scott D. Goetsch has been made a partner in the firm of Semmes, Bowen and Semmes, residing in the firm's Baltimore, Maryland office. He is a specialist in environmental, products liability, construction and insurance litigation.

—John S. Harrison has authored *North Carolina Life and Health Insurance Claims—A Guide for Claims Managers*

and *Trial Lawyers*, published in January 1991 by The Harrison Company (no relationship).

—James B. Hawkins has been named



James B. Hawkins '82

President and Chief Executive Officer of Dataserve Financial Services, Inc., a BellSouth company headquartered in Eden Prairie, Minnesota.

—Donald S. Ingraham has joined

General Electric Company in its Research and Development Center in Schenectady, New York as a patent attorney.



Donald S. Ingraham '82

—Ann L. Majestic, a partner in the Raleigh, North Carolina office of Tharrington, Smith & Hargrove, was recently elected to serve a two-year term on the Board of Directors of the Council of School Attorneys.

—Thomas W. Pickrell has been named a partner in the Phoenix, Arizona law firm of Sacks, Tierney, Kasen & Kerrick.

—Diane W. Wallis announces the opening of the firm of Bender & Wallis in Raleigh, North Carolina.

'83—Kenneth R. Breitbeil is a partner in the Houston, Texas firm of McFall & Sartwelle.

—Jean Gordon Carter has been named a partner in the Raleigh, North Carolina office of Hunton & Williams, where she practices in the tax area, including estate

and tax exempt matters, and in the health care area.

—**Frank P. Fedor** has been named a partner in the Sacramento, California firm of Diepenbrock, Wulff, Plant & Hannegan. As a member of the firm's litigation practice group, he specializes in business litigation in state and federal courts.

—**Rondi R. Hewitt** is now Assistant Head, Corporate Policy for Glaxo, Inc. in Research Triangle Park, North Carolina and Surrey, England.

—**Kimberly Hill Hoover** is now with the Washington, D.C. office of Ross & Hardies.

—**Timothy J. Pakenham** has been named a partner in the Atlanta, Georgia firm of

Alston & Bird, where he concentrates on real property, real estate finance and development, and partnership law.

—**Michael**

T. Petrick has been made a partner in the Atlanta, Georgia firm of Alston &



Michael T. Petrick '83

Bird, where he specializes in state and local taxation and federal income taxation.

—**C. Scott Rassler** is now with Bienenfeld Lasek Rassler & Horowitz, insurance advisors and consultants in Fort Lauderdale, Florida.

—**James C. Reilly** has been named Vice President/General Counsel of Eastern Health System, Inc. in Birmingham, Alabama.



Timothy J. Pakenham '83

—**Robert M. Wyngaarden** is a partner with Kitch, Saurbier, Drutchas, Wagner & Kenney in Lansing, Michigan.

—**David A. Zalph** is now self-employed as an attorney practicing primarily in Indian River County, Florida.

—**Robert L. Zisk** became a partner with the law firm of Schmeltzer, Aptaker and Shepard in Washington, D.C. on February 1, 1991.

'84—**Arthur L. Coleman** was named a member of the firm of Nelson, Mullins, Riley & Scarborough in Columbia, South Carolina in January 1991.

—**John S. Egan** was named a member of the firm of Nelson, Mullins, Riley & Scarborough in Columbia, South Carolina in January 1991.

—**Mark J. Goodman** was named a partner of Swift Currie McGhee & Hiers in Atlanta, Georgia on January 1, 1991, where he practices in the areas of insurance defense, auto liability and workers compensation.

—**Mary J. Hildebrand** is a Senior Attorney with the Roseland, New Jersey firm of Friedman Siegelbaum, where she practices in the computer and high technology area. In January 1991, her article "How to Protect Your Legal Rights When Acquiring Hardware or Software: Dealing with the Vendor's Form Contract" was published in the New Jersey and Metropolitan New York edition of *Manufacturers' Mart*.

—**Kenneth J. Krebs** is now an associate in the Columbus, Ohio office of Squire, Sanders & Dempsey.

—**Min-Kyo Lee** has joined Kim & Chang in Seoul, Korea's largest law firm.

—**Donna G. LeGrande** is now with the Raleigh, North Carolina office of Graham & James.

—**Lin Jiin-Fang**, a judge of the Shibli District Court and fourth section chief of the fourth department of the Judicial Yuan, has received one of the 13th Annual Ten Outstanding Young Women of Taiwan Awards. She also teaches courses on criminal procedure at the Central Police College and is currently a Visiting Scholar at Duke Law School.

—**Scott D. Livingston** is now with the firm of Marcus & Schapra in Pittsburgh, Pennsylvania.

—**Eugene A. Norden** has moved to Moscow to be Director of Marketing and Leasing for "Perestroika," a multi-billion dollar Soviet-American real estate development venture.

—**Stacy Rose** is now with Anderson Associates in Indianapolis, Indiana.

—**Wilson A. Schooley** has been made a partner in the San Diego, California firm of Jennings, Engstrand & Henrikson, where he specializes in business and civil litigation. He is also Director of all standing committees of the American Bar Association's Young Lawyers Division and is a member of the ABA/YLD National Chair's Cabinet.

—**Kathryn A. Underhill** has been named a partner in the Washington, D.C. office of Hopkins & Sutter.

—**William E. Wright** has been made a partner in the Winston-Salem, North Carolina office of Petree Stockton &



William E. Wright '84

Robinson, where he practices primarily in the area of employee benefits law.

'85—**Carla J. Behnfeldt** is now with the Commodity Fu-

tures Trading Commission in Washington, D.C.

—**James Chin-hsien Chen** is now the Deputy Director General of the Coordination Council for the North American Affairs Office of Taiwan in Seattle, Washington.

—**Nis J. Clausen** is the head of the Odense University Department of Commercial Law in Odense, Denmark, and was recently a Visiting Scholar at Duke Law School.

—**Arthur J. Howe** has been named a partner in the firm of Schopf & Weiss in Chicago, Illinois.

—**William D. Morris** has joined the Houston, Texas office of Akin, Gump, Strauss, Hauer & Feld.

—**Michael S. Smith** has joined Kubicki, Draper, Gallagher & McGrane in West Palm Beach, Florida where he maintains a civil trial practice.

—**L. Campbell Tucker, III** is now with the firm of Rogers & Hardin in Atlanta, Georgia.

'86—**Carol Suzanne Bryant** now has a solo practice in Washington, D.C.

—**Michael D. Gyongyosi** is now Legal Counsel to Penta Hotel-Management in Berlin, Germany.

—**Donald S. Kunze** is an associate with the law offices of Davis Wright Tremaine in Seattle, Washington.

—**Daniel R. Schnur** has become General Counsel of Richfood, Inc., a wholesale food distributor headquartered in Richmond, Virginia.

'87—**Kichimoto Asaka** is now a Professor of Law at the University of Tokyo, teaching anglo-American law.

—**C. David Birman** has been named Assistant Director and Grant Manager of the Brooklyn, New York AIDS Task Force, an education and social service agency. In March 1991 he finished his first novel, *The Book of Billy*, set at a fictional law school in North Carolina.

—**David T. Bjorgvinsson** has joined the faculty of the University of Iceland.

—**Robert E. Harrington** is now an associate at the New Orleans, Louisiana firm of Stone, Pigman, Walther, Wittmann & Hutchinson.

—**Timothy R. Johnson** has recently accepted a transfer to the Lodi, California offices of General Mills, Inc., based in Minneapolis, Minnesota.

—**John R. Keller**, an attorney for Eastern Carolina Legal Services in Goldsboro, North Carolina, has received a grant from the North Carolina Legal Assistance Foundation as part of its first cycle of loan forgiveness grants to graduates of the five North Carolina law schools.

—**Stephanie A. Lucie**, an associate in the Houston, Texas office of Winstead Sechrest & Minick, has been elected to the Board of Directors of the Houston Young Lawyers Association for the 1991-92 term.

—**Helene Bertaud Pinoteau** is now an international real estate assistant for Banque Worms in Paris, France.

—**Elizabeth Miller Roesel** has become an associate in the Washington, D.C. office of Kirkland & Ellis.

'88—**Erik O. Autor** is now an associate in the international trade group at



Charles G. Francis '88

Skadden Arps Slate Meagher & Flom's Washington, D.C. office.

—**Charles G. Francis** is practicing with the Raleigh, North Carolina office of LeBoeuf, Lamb, Leiby & McRae.

—**Kirk W. Halpern** now works for the Buckhead Beef Company in Atlanta, Georgia.

—**John H. Kongable**, a Captain in the United States Air Force, served as Staff Judge Advocate for the 33rd Tactical Fighterwing (Provisional) during Operation Desert Shield.

—**Roger H. Stein** has joined Glenn Street Associates in White Plains, New York.

—**Akira Taguchi** now works in the legal department of Nippon Motorola Ltd., a wholly-owned Japanese subsidiary of Motorola Inc. in Tokyo, Japan. He is primarily responsible for the legal aspects of Nippon Motorola's business in Japan.

—**Taylor D. Ward** has become associated with White & Case in New York City.

'89—**Filip Ameloot** has taken a research position at the University of Tokyo Law Faculty.

—**Dale S. Appell** is now a special agent for the Northwestern Mutual Life Insurance Company in Tampa, Florida.

—**A. Sheba Chacko** is pursuing an LL.M. degree at Georgetown University Law Center.

—**Sharon Carr Harrington** is now an associate at the firm of Bryan, Jupiter, Lewis & Blanson in New Orleans, Louisiana.

Personal Notes

'64—Richard H. Rogers was married to Belinda S. Hogue on April 14, 1991. They reside in Dayton, Ohio where he runs a private law practice, an international trade firm, and a mergers and acquisitions business.

'72—John D. Englar and his wife, Linda, are pleased to announce the birth of their first son, named Kevin, on January 23, 1991.

'76—Eugene M. Schwartz and his wife, Naomi, are the proud parents of their first child, Alex Jacob, born on January 18, 1991.

'80—Eric J. Holshouser and Lori Terens Holshouser, both Class of '80, are happy to report the arrival of their second son, Andrew Todd, born on February 3, 1991.

'81—Kimberly Blanton Perini and her husband, Robert, are the proud parents of their third child, a daughter named Kristiana, born November 15, 1990.

'82—Margaret Hayba Gonzales is pleased to report the arrival of a second daughter, named Emily, born on June 21, 1991.

'83—Robert M. Wyngaarden and his wife, Teri, happily announce the arrival of their second child and first daughter, named Adelyn Jo, on July 23, 1990.

—Nancy Levine Zisk and Robert L. Zisk, both Class of '83, are pleased to announce the birth of their second child and first daughter, named Abigail, on February 11, 1990.

'84—Mark J. Goodman and his wife, Terri, are happy to report the birth of their third child and second daughter, named Jennifer, on March 23, 1990.

'85—Linda A. Arnsbarger was married to Brian Busey on May 18, 1991 in Alexandria, Virginia. Linda is with the Washington, D.C. office of Morrison & Foerster.

'86—Thomas F. Blackwell and his wife, Lisa, happily report the birth of their third child, a son named Ezekial Noah, on April 24, 1991.

—Brett D. Fallon was married to Sherry Ruggiero on July 14, 1990 in Mount Laurel, New Jersey. They reside in Wilmington, Delaware where Brett is an associate with Morris, Nichols, Arsht & Tunnell.

—Alan Fishel and Robin Hayutin, both Class of '86, joyfully announce the birth of their daughter, Bonnie Elizabeth Fishel, on May 13, 1991.

—Richard H. Winters and his wife, Margaret, are pleased to announce the birth of a daughter, named Emily Jean, on November 16, 1990.

'87—Robert E. Harrington and his wife, Sharon Carr Harrington, Class of

'89, are the proud parents of Jourdan Carr Harrington, who was born September 11, 1990.

'88—Billy Ray Caldwell and Maria-Lisa Gibbons, both Class of '88, were married on February 24, 1990. They presently reside in Los Angeles, California.

—Timothy J. Covello and Diane W. Fitzcharles, both Class of '88, were married on October 27, 1990. They reside in Hartford, Connecticut where Diane is a patent attorney at Chilton, Alix & Van Kirk and Tim is an associate at Shipman & Goodwin.

'89—Elizabeth A. Michael was married to Russell D.P. Armstrong (Fuqua '90) in Boynton Beach, Florida on January 5, 1991. They reside in Melbourne, Australia where Elizabeth is a solicitor with the firm of Freehill, Hollingdale & Page.

—Pauline Ng was married to John Lee on June 2, 1990 in Los Angeles, California. They now reside in Houston, Texas where Pauline is an associate with Thelen, Marrin, Johnson & Bridges.

—Sharon Carr Harrington and her husband, Robert E. Harrington, Class of '87, are the proud parents of Jourdan Carr Harrington, who was born September 11, 1990.

—Stephan K.T. Radermacher was married to Jessica Bagg on March 1, 1991 in Starnsberg, Germany.

Obituaries

Class of 1919

Ray K. Smathers of Silver Spring, Maryland died on November 18, 1990. Mr. Smathers was a native of North Carolina and served in the Army during World War I. He practiced law in Georgia and North Carolina before returning to active duty in the Army in 1936. During World War II, his assignments included a tour in Europe on the staff of the 12th Army Group, commanded by General Omar Bradley. After the war, he served in Japan as a liaison to Japanese courts. His last assignment was as a lawyer at Walter Reed Army Medical Center.

Mr. Smathers is survived by his wife, Rolande; a daughter, Raymonde Kaye Mize of Tulsa, Oklahoma; and five grandchildren.

Class of 1940

John S. Moore died on December 24, 1990 of heart problems. He had practiced with the firm of Ely, Moore and Tilbury in Batavia, Ohio for thirty-five years, served in the Army during World War II, and was a member of the Batavia Lodge 104 F&AM and the local chapter of the Veterans of Foreign Wars.

Mr. Moore is survived by his wife, Nellie; five daughters, Linda Dingo, Sarah Kincaid and Katherine Moorehead, all of Batavia, Jane Jones of Pittsburgh, Pennsylvania, and Elizabeth Toole of Smithfield, Virginia; ten grandchildren; and one great-grandchild.

Class of 1948

Thomas Emmet Walsh of Spartanburg, South Carolina died on September 13, 1990 in Lowmoor, Virginia. He was senior partner of the firm of Gaines and Walsh, served as the Spartanburg City Attorney from 1961 to 1988, was a member of the South Carolina House of Representatives from 1956 to 1960, and served in the Army during

World War II. Mr. Walsh was president of the Spartanburg County Bar Association in 1974. He had served on the South Carolina Bar Association Board of Governors since 1984 and was its president in 1987-88.

Mr. Walsh served on many commissions and civic boards, including the South Carolina Commission of Higher Education, the South Carolina Board of Commissioners on Grievance and Discipline, the National Institute of Municipal Law Officers, and the Board of Trustees of Spartanburg College. He was president of the Wofford College Alumni Association in 1968 and 1969, and was a trustee of the South Carolina Methodist Foundation.

Mr. Walsh is survived by his wife, Mary Lynch Wentling Walsh; three daughters, Marilyn W. Walsh of Pittsfield, Massachusetts, Joanne W. Babin of Spartanburg, and Natalie W. Bishop of Nashville, Tennessee; four sons, William E. Walsh, Marshall T. Walsh and Thomas Emmet Walsh, III, all of Spartanburg, and David L. Walsh of Columbia; one brother, James F. Walsh of Orangeburg, South Carolina; and ten grandchildren.

John D. Xanthos of Burlington, North Carolina died on June 9, 1991 after several months of declining health. A native of Wilmington, North Carolina, Mr. Xanthos had practiced law in Burlington since his graduation from the Law School. He was a past president and secretary of the Alamance County Bar Association.

Active in many community service organizations, Mr. Xanthos was past chairman of the Board of Trustees of the First Reformed United Church of Christ, and he served on the National Board of Homeland Ministries. As a member of the Burlington Lions Club, Mr. Xanthos had served as president of

the Burlington Club, as state chairman of the White Cane Blind Association, as Boys' Home chairman at Lake Waccamaw and as state district governor of District 31G.

Mr. Xanthos is survived by his wife, Leona Parker Xanthos; two daughters, Susan Xanthos Harris of Burlington and Robyn Xanthos Morris of Greensboro; one son, Jay Xanthos of Atlanta, Georgia; two sisters, Bessie Frankos and Sophia Sijaka, both of Wilmington; two brothers, Pete Xanthos of Whiteville, North Carolina and Andrew Xanthos of Raleigh; and six grandchildren.

Class of 1950

Wade E. Vannoy, Jr. of West Jefferson, North Carolina died on March 27, 1991. He was a partner in the firm of Vannoy & Reeves since 1973, and also served as the town attorney for West Jefferson for more than thirty years. Mr. Vannoy served on the Ashe County Board of Education and on the Board of Directors of First Citizen's Bank. During his legal career, he also was a member of the Judge Advocate General Corps and worked at the Pentagon.

Mr. Vannoy is survived by his wife, Dawn Colvard Vannoy; three daughters, Amanda V. Johnston of North Wilkesboro, Jennifer V. Dollar of West Jefferson, and Mary Colvard Vannoy of Jefferson; one stepson, Dusty Colvard of Crumpler; and three grandchildren.

Class of 1956

C. Kitchin Josey of Scotland Neck, North Carolina died suddenly on May 7, 1991. He was a partner in the firm of Josey, Josey & Hanudel of Scotland Neck and Roanoke Rapids, North Carolina, and served three terms in the North Carolina House of Representatives beginning in 1971. During the 1975-76 session, he was speaker pro

tempore. He also served on many legislative committees, being most active on the House Appropriations Committee.

Mr. Josey is survived by his wife, Linnell Bruce Josey; two sons, Claude Kitchin Josey, Jr. and Robert Bruce Josey, both of Scotland Neck; a daughter, Roberta Josey Kemp of Scotland Neck; a sister, Ann Josey Egleston of Waynesboro, Virginia; and seven grandchildren.

Class of 1966

William Lee Johnson, Jr. of Lenoir, North Carolina died on November 5, 1990 after a brief illness. After graduating from the Law School, Mr. Johnson served in the U.S. Army for three years in the Adjutant General's Office and then began practicing law in High Point, North Carolina. He later practiced in

Burlington, North Carolina and served in the Alamance County district attorney's office.

In 1982, Mr. Johnson became Assistant District Attorney for Caldwell County. At the time of his death, he was Senior Assistant District Attorney for the 25th Judicial District of North Carolina.

Mr. Johnson is survived by his father, Lee Johnson, and stepmother; a son, Robert of Hickory, North Carolina; a daughter, Perizad of Istanbul, Turkey; a brother, Albert of Mount Gilead, North Carolina; and a sister, Sarah Holder of Concord, North Carolina.

Class of 1970

Maurice L. (Pete) Jenks, III of Littleton, Colorado died March 3, 1991 in the crash of United Flight 585 near Colorado Springs. Mr. Jenks was Assis-

tant Jefferson County Attorney, responsible for reviewing legislative bills that affected the county. He also represented the county public works department and coordinated the county's litigation.

Prior to becoming County Attorney, Mr. Jenks had been a teacher, a geologist and a lawyer for two private firms and for American Television and Communications Corporation. He ran for a seat in the Colorado House in 1976 and was active in Republican Party activities.

Mr. Jenks is survived by his wife, Anne; a daughter, Marla; a son, Nathan; his mother, Carolyn P. Jenks of Needham, Massachusetts; and a sister, Margaret C. Jenks of Pownal, Vermont.

F. Hodge O'Neal, who served as Dean and James B. Duke Professor at Duke Law School from 1971 to 1976, died on January 20, 1991 in Sarasota, Florida due to complications from heart surgery. Dean O'Neal joined the faculty of Washington University in St. Louis as George Alexander Madill Professor of Law in 1977, served as Dean from 1980 to 1985, and retired in 1988.

Besides Duke and Washington University, Dean O'Neal also taught at the University of Mississippi, Vanderbilt and Mercer, where he also served as Dean. He held visiting professorships at New York University, Michigan, Florida, and the University of the Pacific. He practiced law in

New York City in 1941-42 and served in the U.S. Navy from 1942 to 1945.

A widely recognized authority on closely held corporations, Dean O'Neal was the author of two treatises, *Close Corporations: Law and Practice* and *Oppression of Minority Shareholders*, as well as more than fifty law review articles. He received his undergraduate and law degrees from Louisiana State University, and advanced law degrees from both Harvard and Yale.

Dean O'Neal is survived by four daughters, Laurie of Franklin, Virginia, Dee of Bolinas, California, and Nancy and Karen, both of Durham; two sons, F. Hodge, III of Monroe, Louisiana and Mark of Durham; and five grandchildren.



Dean Emeritus F. Hodge O'Neal

UPCOMING EVENTS

LAW ALUMNI WEEKEND and HALF CENTURY CELEBRATION/OCTOBER 18-19, 1991**Friday, October 18, 1991**

- 2:00 p.m. Registration Desk Opens, Law School Lobby
- 2:00 p.m. Law Alumni Council & Board of Visitors, Law School
- 6:00 p.m. Reception, Gross Chemistry Lobby
- 7:45 p.m. Half Century Banquet and special class events
- 9:00 p.m. Hospitality Rooms available at Hotels

Saturday, October 19, 1991

- 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 Barbecue 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 Suites available at Hotels

Sunday, October 20, 1991

- 9:00 a.m. Barristers Breakfast*

* 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.

REUNION COORDINATORS

- 1941 Benjamin S. Horack
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- 1951 J. Carlton Fleming
Charlotte, North Carolina
(704) 331-4900
- 1956 Professor John D. Johnston, Jr.
Asheville, North Carolina
(704) 274-0350
- 1961 Roger S. Poore
San Francisco, California
(415) 788-2040
- 1966 Barrington H. Branch
Cincinnati, Ohio
(606) 292-5500
- 1971 John H.C. Barron
Washington, D.C.
(202) 331-7760
- 1976 Jack D. Griffith
Greenville, South Carolina
(803) 242-6360
- 1981 Michele M. Sales
Seattle, Washington
(206) 623-3427
- 1986 Anne T. Wilkinson
Durham, North Carolina
(919) 544-7246

OTHER UPCOMING EVENTS

- Board of Visitors October 18, 1991
- Law Alumni Council Meeting October 18, 1991
- Law Alumni Weekend and Half Century Celebration October 18-19, 1991
- Conference on Career Choices February, 1992
- Board of Visitors April 9-11, 1992
- Barristers Weekend April 10-11, 1992
- Commencement May 17, 1992
- Law Alumni Weekend
and Half Century Celebration September 18-19, 1992

(Classes of 1942, 1952, 1957, 1962, 1967, 1972, 1975, 1982 and 1987 will celebrate their reunions.)

CHANGE OF ADDRESS

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Name _____ Class of _____

Firm/Position _____

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Home address _____

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PLACEMENT OFFICE

(Return to Law School 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 _____

ALUMNI NEWS

(Return to Law School Alumni Office)

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 _____

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News or comments _____

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