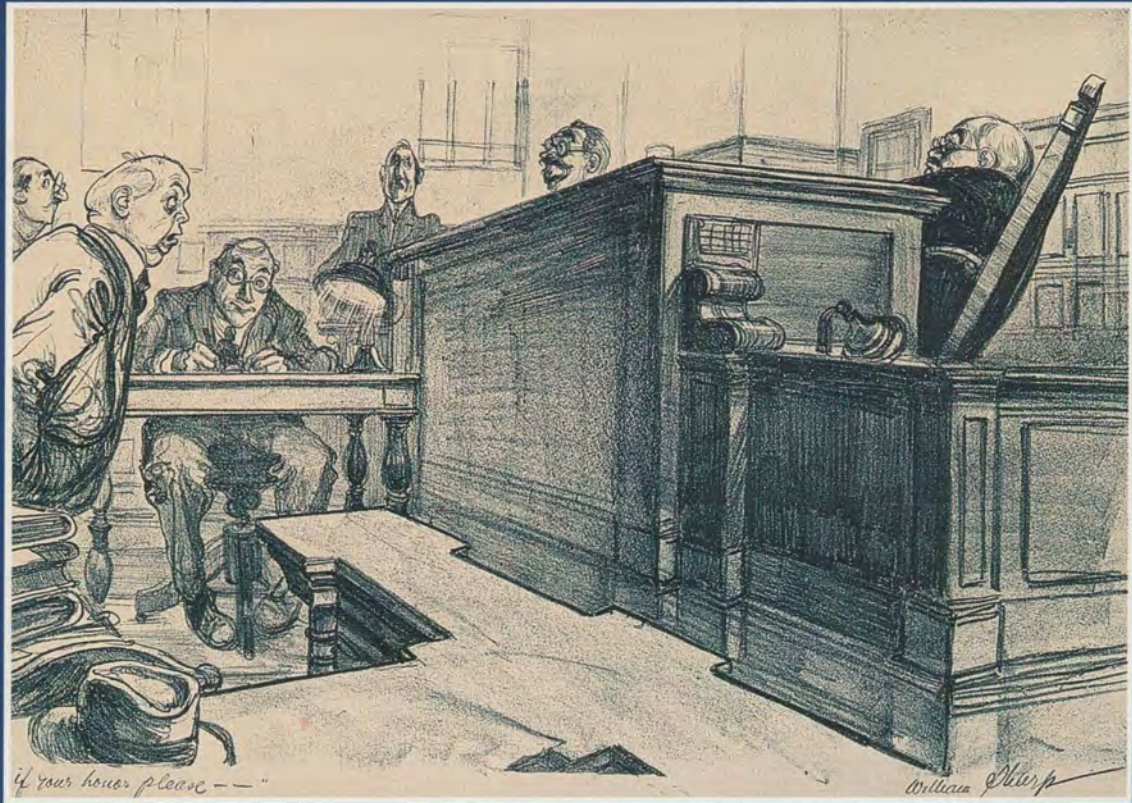


Duke Law Magazine

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About the Cover

The cover features a photograph of a sketch entitled "If Your Honor Please" by William Sharp which is displayed in the Law School's Student Lounge. Sharp (1900-1965) was a staff artist for the *New York Post*, *PM*, and *Esquire* and produced satirical etchings on the legal and medical professions and other themes. Dan Crawford of Chapel Hill took the copy photograph.

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From the Dean

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

Campaign for Duke and Building Program

The University completed The Campaign for Duke on December 31, 1991, raising over \$550 million—\$150 million more than The Campaign goal of \$400 million. During this three and one-half year Campaign, the Duke Law School raised over \$17 million, \$4.5 million more than our goal of \$12.5 million. A full report of The Campaign will be provided to alumni in the Law School's *Annual Report* for the 1991–92 academic year.

The Law School's objectives in The Campaign were to raise funds for the Law School's building program, to increase permanent endowment, and to achieve growth in the Annual Fund while raising restricted funds. All of these objectives were achieved.

Because of the success of The Campaign, in February the University's Board of Trustees approved Phase 2 of the Law School's building program. The Law School proceeded to bid the project, a contractor has been chosen, and construction commences in the summer of 1992.

The official ground-breaking ceremony will be held on Saturday

morning, September 19, in conjunction with the Law School's reunion weekend. Duke University President H. Keith H. Brodie will speak at the ceremony, along with John F. Lowndes '58, the chair of the Law School's Campaign, Robert K. Montgomery '64, the chair of the Board of Visitors, and myself. This joyous event will be attended by many alumni in celebration of the success of the Campaign and the achievement of the important goal of expanding and reconstructing the Law School's building.

Faculty Changes

Professor Richard Schmalbeck will return to the faculty in 1993, after being Dean of the University of Illinois Law School at Champaign-Urbana. His teaching and research interests remain very much the same as those he pursued previously at Duke—federal income taxation and law and economics.

Faculty member Thomas Metzloff was granted tenure and promoted to full professor this year. He continues to teach in the fields of civil procedure, professional liability and professional responsibility, and dispute resolution. A younger colleague, Martin Stone, was promoted to Associate Professor. He is currently pursuing a Ph.D. in Philosophy, but he will return to the faculty on a full-time basis in



Dan Crawford

1993, with a primary appointment in the Law School and a secondary appointment in the Department of Philosophy. He continues to teach in the areas of torts and philosophy. Another younger colleague, Madeline Morris, was also promoted to Associate Professor. She teaches in the areas of employment discrimination, feminist legal studies, and criminal law.

Admissions

One of the most frequently asked questions by alumni concerns the status of admissions to law schools generally and Duke in particular. The Duke faculty often ask similar questions.

A very high percentage of the most capable persons graduating from college are attending law school. For example, it is estimated that about twenty-five percent of Duke's recent Trinity College grad-

uates will attend law school at some point after graduation. The Duke Law School matriculates an excellent student body that has achieved substantial previous academic distinction.

The last few years brought a phenomenal increase in the number of applicants for law schools nationwide. That trend reversed in 1992, and the total number of persons taking the LSAT declined two percent below that of 1991. Also, the total number of applicants to the Duke Law School declined by five percent, which appears to be a decline similar to that experienced by the other top tier private law schools.

Notwithstanding the decline in the number of applications for the 1992 entering class, the overall 1992 applicant pool is stronger than last year's group. The qualifications of the joint-degree, summer-entering class applicants are particularly impressive and likely will be the best the Law School has matriculated. The 1991 entering class enrolled medians were a 3.65 grade point average and a 44 LSAT (96th percentile of all LSAT test-takers). The 1992 entering class statistics are not yet available, but they will be similarly excellent.

Although total applicants nationally declined from 1990-91 to 1991-92, the number applying nationally from minority groups increased for every minority grouping. Because of the changing demographics in the United States, the Law School assumes that total ap-

plications by minorities will increase and applications by Caucasians will decrease, and that minority applicants will increase as a percentage of total applicants to law schools.

It is difficult to project whether the total national pool will remain stable at its current level. Because of the slower growth in the creation of legal jobs in the 1990s, applicants may decline as a reaction to this important market condition. On the other hand, unless there is a significant increase in the number of undergraduates majoring in technical and scientific fields, professional education in law and business will continue to be attractive options in the 1990s. Law school applications should also be sensitive to the attractiveness of Ph.D. programs. Although there will be an increased need for Ph.D. graduates in the 1990s, it is unclear that higher education institutions will have the resources to increase their faculty size or to pay competitive salaries relative to other career opportunities.

The Duke Law School also considers the applicant pool of young foreigners, who have completed their legal training in their home country, for the Master of Laws program. The international impact of American law and legal institutions has been tremendous. The importance of American law and the United States in the international political economy provides American law schools a unique opportunity to train foreign lawyers. Duke expects its applicant pool for

the Master of Laws program for foreign lawyers to remain very strong.

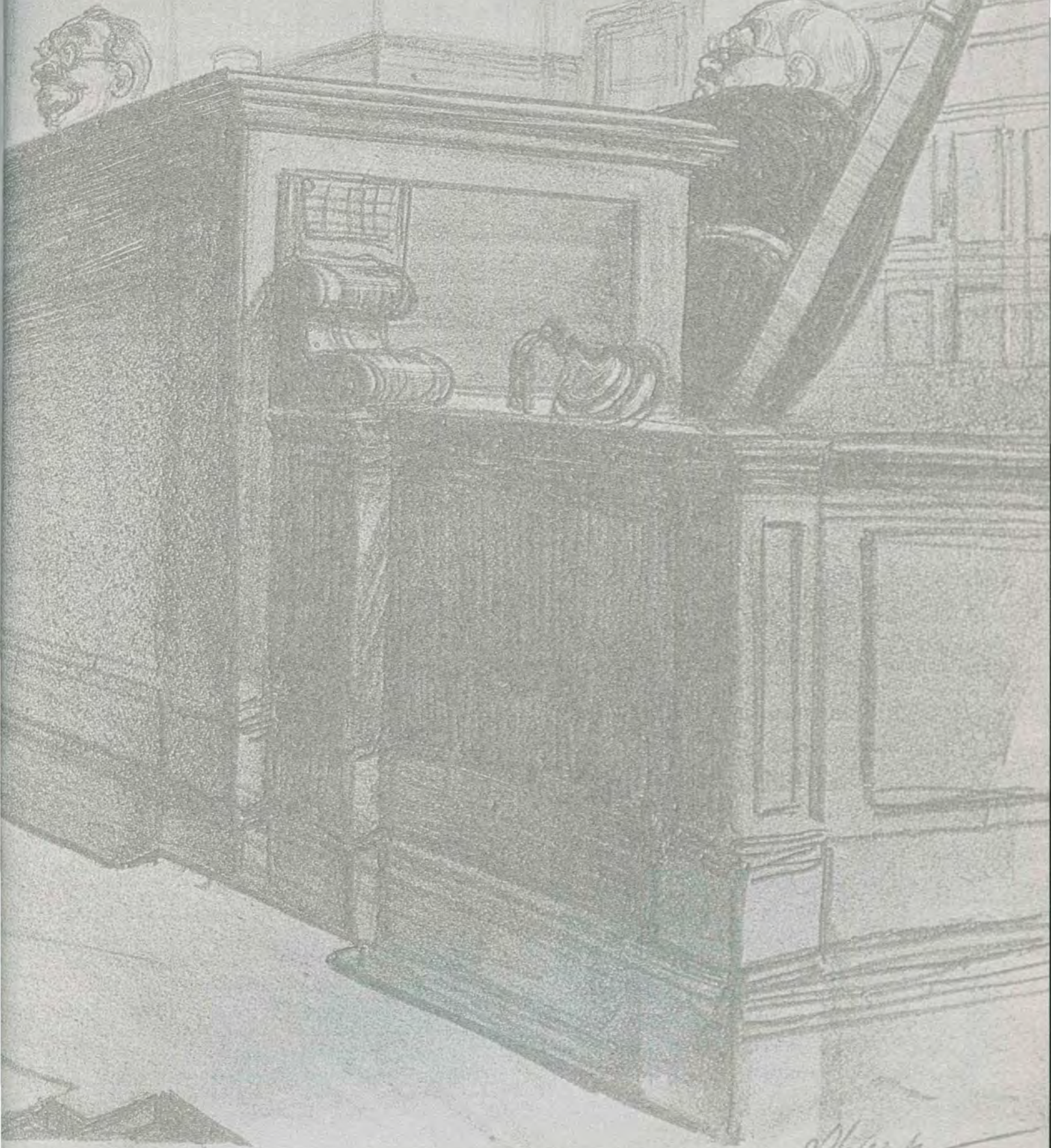
From 1970 to today, the number of American Bar Association-accredited law schools has increased from 146 to 176. Also, the juris doctor enrollments have increased from 78,018 to 129,580. Most of this growth in enrollment has not occurred, however, in the group of law schools that compete for the best applicants. These law schools have shown substantial restraint over growth during this time period. This restraint in growth, combined with the high number of excellent applicants to law schools, means that the students in the best law schools are among the most talented student bodies educated in the history of legal education.

Future Communications

Within the next few months, you will receive a special report on the successfully completed Campaign for Duke and the Duke Law School's *Annual Report* for the 1991-92 academic year. The University has also progressed substantially in the development of a long-range academic plan. The Law School's draft plan has been prepared, and it will be reviewed by the Provost's Office and by the Law School's faculty and Board of Visitors in September. In the fall, I will be able to provide you with a summary of goals identified for the next few years.

Pamela B. Gann '73

THE FORUM



William Sharp

The Art of Paying Physicians

Clark C. Havighurst

One hears again and again from doctors that practicing medicine is an art as well as a science. Paying a doctor is also not entirely a scientific matter. A lot of art is involved as well. Apparently, however, the state of this art remains quite primitive. Indeed, it is amazing how little is known about how to approach the fundamental task of paying physicians for patient care rendered at the expense of a third-party payer, either government or a private insurer. One wonders why the art of paying physicians was not perfected long ago. Medical insurance has been around for over fifty years, and Medicare has been paying



Professor Havighurst is William Neal Reynolds Professor Law. He joined the faculty in 1964, and, in addition to teaching antitrust law, has a special academic interest in the field of health care law and national health policy. This article is adapted from commentary by Professor Havighurst appearing in H.E. Frech III, ed., REGULATING DOCTORS' FEES: COMPETITION, BENEFITS, AND CONTROLS UNDER MEDICARE 132-36 (American Enterprise Institute for Public Policy Research, 1991) (reprinted with permission).

doctors for nearly half that time. Yet physician reimbursement is still a mystery. It is important to ask why this problem remains unsolved.

One clue lies in the expression "physician reimbursement." It is notable that, even though the term "reimbursement" had been in general use for many years, Congress in addressing the problem under Medicare set up a Physician Payment Review Commission, not a Physician Reimbursement Review Commission. Despite its general use, "reimbursement" is clearly a misnomer for what is going on in compensating physicians for their services to beneficiaries of public or private health insurance programs. "Reimbursement" implies that the payer is making someone whole, simply compensating him for outlays made or specific costs incurred. The term is not at all accurate as a description of what today's insurers do when they pay doctors.

It was long the common practice for most payers to reimburse hospitals directly for costs actually incurred, and one might think that the term "reimbursement" was simply carried over unthinkingly to the physician context. But there was more to it than that. One reason why the term was employed, I suspect, was that it successfully avoided any implication that a third party's payment to a physician was in fact a purchase price. Indeed, certain interests found it advantageous to delude the public into thinking that they were looking at something other than a commercial transaction. Ever since medical insurance began, there has been a concerted effort by the medical profession, without resistance from the health insurance industry, to prevent people from thinking of payers or consumers simply as buyers of personal services and of physicians simply as sellers. Partly as a result of that effort, the public went along with the non-market paradigm of medical care for many years, during which there was a systematic neglect of the art of buying physician services—what is now called prudent purchasing.

Some of the reasons why payers approached doctors in such a gingerly fashion for so long are familiar. The doctors set up the first important medical insurance plans, the Blue Shield plans, and designed them as noncommercial prepayment schemes. As joint selling agencies rather independent middlemen, these plans could be counted upon to be allies of their sponsoring providers rather than agents of their subscribers. Physicians used these early plans to set an example for commercial insurers, which were allowed into the market only if they did business in the ways that physicians approved. As Goldberg and Greenberg have shown in a

classic article,¹ there were occasional boycotts, and always a threat of boycott, against plans that adopted an adversarial stance toward physicians and attempted to act as bargainers on behalf of the consumer. As a result of the profession's activities, the commercial health insurers generally fell into line and allowed themselves, as a cartel might do, to be policed by physicians. They thereby avoided the necessity for competitive innovation in the control of moral hazard and in the prudent purchasing of insured services. When all that is added up, there were a lot of years of physician "reimbursement" and no private experimentation with prudent purchasing.

During this period, regulation of various kinds strongly inhibited commercial activity by corporate intermediaries in the health care field. The "corporate practice of medicine" was prohibited, or at least was legally suspect, for many years, and its status is still not fully clarified. In addition, free choice of physician was exalted as a firm tenet of all insurance plans, largely because physicians made it a prime criterion of a plan's acceptability. Although freedom of choice sounds like a good thing, "guild free choice," as Charles Weller has called it in distinguishing it from "market free choice,"² had the effect of limiting the ability of insurers to reward with more patients any practitioner who would reduce fees. Under the free-choice principle, payers had to let the patient choose the physician, whose fees could then be set without confronting a bulk purchaser. Because patients would be reimbursed by their insurers and lacked good information, they did not drive hard bargains.

When the Medicare program came along, its design essentially imitated the reimbursement practices that had emerged in the private sector. Congress adopted the Blue Shield approach to paying practitioners, including the free-choice principle. The idea that a payer should not interfere in the sacred doctor-patient relationship was enshrined in federal law. Precluded from practicing selectivity, government was foreclosed from using its bargaining power in dealing with individual physicians.

Another feature of the era during which it was bad form to speak of insurers *buying* physician services was the tendency to treat physician reimbursement as if it were a purely technical problem, to be addressed scientifically through a formula designed into the system. Thus, insurers developed the practice of referring to "usual, customary, and reasonable" (UCR) fees to determine the maximum fees that they would pay or reimburse. That idea originated with the

physician-dominated Blue Shield plans and was adopted by Medicare. Essentially it embodied the assumption that the appropriate fee to pay a doctor is what other doctors are charging for the same service. On the face of it, that method of paying physicians sounds like using the competitive price to determine appropriate compensation. But with widespread health insurance and its attendant moral hazard and with ignorant consumers facing huge search costs and a market where they could not shop effectively on the basis of price, the prevailing market price was hardly a perfectly competitive one. Furthermore the market price that emerged under these conditions was not external to the Medicare program and other third-party payers, whose reimbursement practices strongly influenced it in an upward direction.

Despite its general use, "reimbursement" is clearly a misnomer for what is going on in compensating physicians for their services to beneficiaries of public or private health insurance programs. "Reimbursement" implies that the payer is making someone whole, simply compensating him for outlays made or specific costs incurred. The term is not at all accurate as a description of what today's insurers do when they pay doctors.

On the face of it, UCR fees looked competitively and objectively determined and thus seemed to have scientific legitimacy. In reality, however, the UCR approach reflected the incredible premise that the majority of physicians, as ethical practitioners, would not abuse their discretion or market power in setting their fees. In effect, payers treated professional norms as if they were just as useful in evaluating the level of professional fees as they were in evaluating the quality or appropriateness of care. Although it is also a mistake to regard the latter issues as purely technical ones, they are certainly more so than are professional fees.

Relative value scales (RVSs) were another part of the effort to treat payment issues as a technical rather than an economic matter. Physician organizations produced RVSs in large numbers in the 1950s and 1960s. The idea was to resolve fairness issues by careful scientific study rather than

¹ Lawrence Goldberg and Warren Greenberg, *The Effects of Physician-Controlled Health Insurance: U.S. v. Oregon State Medical Society*, 2 J. HEALTH POLITICS, POLICY & LAW 48 (1977).

² Charles Weller, *'Free Choice' as a Restraint of Trade in American Health Care Delivery and Insurance*, 69 IOWA L.R. 1351 (1984).

by letting relative values "float." Schedules were developed only for each specialty, however, and not for the profession as a whole. Political conflicts within the profession apparently prevented it from providing a scale that related surgical procedures, for example, to the activities of internists and other specialists. Nevertheless, within each specialty the profession produced quite detailed RVs that aided in the effort to make the payment formula seem fair and technically sound, thereby keeping payers from initiating their own methods of buying professional services.

Phillip Kissam and I wrote an article in 1979 in which we discussed profession-sponsored RVs from an antitrust perspective.³ The main point of that article, in addition to observing the value and occasional use of RVs as formulas to facilitate price fixing, was that RVs were instrumental in the medical profession's larger campaign to keep insurers from becoming active purchasers of medical services. Evidence that we found in the medical literature revealed the profession's overriding fear that innovation in paying physicians might occur on the purchasers' side of the market. But as long as the profession could supply credible payment tools, payers would not be tempted or forced to invent new ones independently.

...one must grudgingly admire the success that the medical profession had in preventing health insurers from discovering for over a generation how to buy medical services effectively in a competitive market... It is now probably time finally to jettison the myth that how to pay physicians is a scientific question, a technical matter that can be resolved by a magic formula developed by experts sitting around a table.

It took payers, both public and private ones, until the 1980s even to begin to study the art of physician payment. The learning process and innovation have only begun, however, and have much farther to go. The public would have been much better off today if the innovation that began tentatively when medical insurance itself began in the 1930s

had been allowed to continue instead of being snuffed out by the efforts of organized medicine, as poignantly recounted by Goldberg and Greenberg. Indeed, one must grudgingly admire the success that the medical profession had in preventing health insurers from discovering for over a generation how to buy medical services effectively in a competitive market.

It is now probably time finally to jettison the myth that how to pay physicians is a scientific question, a technical matter that can be resolved by a magic formula developed by experts sitting around a table. If, though, the magic-formula chimera is still pursued, it would be an improvement if the work on any such formula were done by doctors and other experts who are not sponsored by medical interests. The cooperation of organized medicine in the Harvard study that produced Medicare's new "resource-based" RVs suggests that the profession still hopes that a formula approach can keep physician payment out of the competitive marketplace.

Now that it has finally begun, innovation in paying physicians is likely to proceed faster and more creatively and effectively in the private sector than previously seemed possible. In the private sector, politics will not get in the way of implementing new ideas, and competing health plans can try out a variety of methods, including fee schedules and formulas, in different circumstances. The market now seems to be free enough of the old constraints and inhibitions that real innovation can occur. Thus the public can now expect some real progress where so little was made for so many years. Innovation under market constraints and without fear of retaliation by organized medicine should soon allow payers finally to master the art of compensating physicians.

These observations strongly suggest the desirability of some kind of capitation in the Medicare program. That approach would leave the problem of how to pay physicians largely in private hands, sparing government the task of fashioning a global solution. A decentralized approach would also allow the private sector to work on solving the problem of how to curb inappropriate spending on marginally beneficial health services. Decentralization of decision making on such issues as how to pay physicians and precisely what to pay them to do seems much more promising than trying to solve these problems by official, ostensibly scientific formulas, regulations, and protocols dictating medical practice. One can only hope that physician payment reform under Medicare will not freeze the art of paying physicians in its current, still primitive state.

³ Clark Havighurst and Philip Kissam, *The Antitrust Implications of Relative Value Studies in Medicine*, 4 J. OF HEALTH POLITICS, POLICY & LAW 48 (1979).

Exploring ADR Options: Redesigning the Summary Jury Trial

Thomas B. Metzloff

The widespread interest in alternative dispute resolution (ADR) has resulted in a proliferation of techniques and strategies, each promising important contributions to the fair and efficient resolution of disputes. Judicial policy makers are understandably interested in reaping the benefits offered by particularly effective ADR methods. Faced with limited resources to develop and implement programs, however, policy makers must choose among competing approaches—a choice often made difficult by limited information on how particular processes have performed.



Professor Metzloff is Director of the Private Adjudication Center's Medical Malpractice Program and a member of the North Carolina Dispute Resolution Committee. He joined the Law School faculty in 1985, and teaches civil procedure and dispute resolution, as well as courses on professional responsibility and professional liability. This article is excerpted from *Reconfiguring the Summary Jury Trial*, 41 DUKE L.J. 806 (1992).

The difficulties in analyzing ADR initiatives are particularly acute with the summary jury trial (SJT), an ADR method developed in the federal courts in the early 1980s. In what I will refer to as the "classic" SJT, the opposing attorneys briefly present their respective cases before a jury that renders a non-binding verdict. To minimize the parties' expense and the use of court time, the SJT is greatly abbreviated in comparison to a traditional trial; common descriptions of the process suggest that a typical SJT—targeted at cases that usually require a week or more to try—could be completed in one day or less. This economy is achieved by using various procedural shortcuts, such as restricting questioning during the jury selection, minimizing evidentiary objections, omitting marginal evidence, and curtailing jury instructions. The most important element—usually considered the SJT's *sine qua non*—is the use of attorney summaries of evidence in lieu of live testimony. In this way, the classic SJT imitates, but hardly replicates, a traditional jury trial.

The History of the Classic Summary Jury Trial

Unlike other ADR methods whose roots extend back decades if not centuries, the SJT is of recent origin. First used in 1980, the SJT is the innovation of Judge Thomas Lambros, a federal district court judge in Ohio. Rather than relying on litigants to volunteer, pro-SJT judges typically compelled participation based upon the assumption that judges were best able to identify suitable disputes and that the same dynamics that prevented litigants from settling would likely interfere with their agreeing to the use of this ADR method.

The SJT quickly came to occupy an enviable niche among ADR adherents. Enhanced by active judicial support (which at times approached evangelical fervor), the SJT was quickly accepted within the lexicon of the ADR movement and its use became commonplace in a few federal courts. Its popularity is generally attributed to its unique reliance on lay jurors, although it is also probably the case that judges and litigants are more comfortable with its format because it relies more on traditional adversarial presentation than do other ADR methods.

SJT advocates billed it as accurate, useful for a wide variety of case types, easy to implement because it required little additional administrative support, and cost effective for both the parties and the court. Indeed, its proponents went so far as to hail it as a "no risk" procedure because,

even if the parties did not settle, the efforts invested in the SJT would help in preparation for the full trial.

Criticisms soon surfaced, however. Beginning with an article by Judge Richard Posner that questioned both its utility and ethical propriety,¹ the SJT has been subjected to a series of increasingly virulent attacks. Critics, for example, have detailed the difficulties a summary jury has in assessing witness credibility given its reliance on lawyers' summaries of evidence. Similarly, some have questioned whether it is appropriate to permit unprepared attorneys to participate in an SJT where they might benefit from seeing their opponent's presentation prior to the subsequent "real" trial.

These criticisms have been reflected in a series of recent legal challenges directed against the SJT. For example, the Court of Appeals for the Seventh Circuit has held that federal judges do not have the authority to mandate the use of SJTs—a damning blow to the classic SJT theory, which depends in large part upon active judicial involvement in identifying appropriate cases and requiring participation to overcome litigant reticence.²

The SJT and the Settlement Process

The universally acknowledged goal of the SJT is to promote settlement. The SJT's settlement enhancing powers have been explained under at least four different theories.

The Jury Preview Effect. The most often-cited justification for the SJT is that the attorneys will afford the surrogate verdict substantial weight in their settlement calculus. Because of the high cost of trial and its attendant risks, most cases settle if the parties have reasonably common views of the likely odds of prevailing and the probable damages that might be awarded. Trial often represents an unnecessary failure of negotiation in which the attorneys (who for the moment are assumed to be primarily responsible for formulating settlement strategies) have misvalued the case, primarily as a result of the uncertainty associated with foretelling how a jury might decide.

The SJT overcomes this valuation gap by providing an important clue as to how a typical jury would respond. In theory, the verdict impacts the attorneys' bargaining positions—a proposition that at first glance seems perfectly plausible. A plaintiff's lawyer cannot as easily contend that a case is worth \$1 million when a summary jury has just awarded \$100,000; similarly, defense counsel cannot credibly insist that the defendant will prevail on liability after a summary jury finds negligence. To supplement this effect, the attorneys and parties are usually encouraged after the

summary verdict has been rendered to meet with the jurors to inquire into their thought processes. This debriefing provides additional input to assist the attorneys in predicting what a real jury might do.

Party Enlightenment/Cathartic Impact. SJTs are also believed to be effective because the clients are required to attend in the hope that viewing a balanced presentation of the evidence will incline them toward settlement. By hearing both sides of the issues without the filtering of information by their attorneys, clients may, for the first time, be forced to acknowledge the strength of opposing positions or the weaknesses of their own. A related assertion is that the SJT will have a cathartic effect on the litigants. By being provided a "day in court," litigants are more likely to settle even if the summary verdict does not convince parties to rethink the merits of their position. The satisfaction of having had their concerns considered is often a sufficient spur for litigants to revisit the question of settlement.

The Scheduling Impact. Another view is that merely scheduling a case for an SJT may result in settlement. Because some attorneys do little preparation without prodding, establishing a firm date for trial—even a non-binding one—forces attorneys to review the merits of the case, which might serve to change their appraisal of the likely outcome. On a more practical level, the ministerial acts of preparing for an SJT provide occasions for contact between opposing counsel and clients (such as during pre-SJT conferences) that might facilitate negotiations.

The Fear/Exhaustion Factor. A final projected impact, one not as loudly proclaimed as the others, is that SJTs foster settlement by providing litigants with an exposure to the vagaries and expense of the jury system that tends to discourage interest in further litigation. Thus, even if a summary jury result is irrational, it may function to highlight the inherent risk associated with juries. Similarly, because the SJT process admittedly entails some expense, the parties will realize that the "real" trial will be even more costly. In either case, the result is to foster a greater willingness to end the dispute.

The conflicting accounts of the merits of the SJT procedure make it difficult to determine what, if anything, should be done to encourage its development. Unfortunately, there is little empirical evidence to contribute to the debate. The few systematic studies that have been conducted to date have focused on litigant satisfaction, the results of which are mixed.

¹ See Richard A. Posner, *The Summary Jury Trial and Other Methods of Alternative Dispute Resolution: Some Cautionary Observations*, 53 U. CHI. L. REV. 366 (1986).

² See *Strandell v. Jackson County*, 838 F. 2d 884 (7th Cir. 1988).

The Summary Jury Trial in the North Carolina State Court System

Against this shadowy background of incomplete information, consider the evidence derived from a study of SJT use in North Carolina state courts. North Carolina became one of the first states to establish a formal SJT program when in June 1987, the state Supreme Court authorized the use of the SJT in three of the state's thirty-four judicial districts. After the program had been in operation for several years, the North Carolina Bar Association's Dispute Resolution Committee asked Duke's Private Adjudication Center to conduct a study of its operations.

Overview of SJT Use. The North Carolina Supreme Court selected urban districts for the pilot program, assuming that their dockets would include more complex disputes better suited to the process. During the approximately four years covered by the study, however, SJTs were conducted in only seventeen cases. Ten of the seventeen cases concerned claims arising from automobile accidents. Eleven related to determining damages, four centered on liability, and two focused on the plaintiff's alleged contributory negligence.

An important observation is that litigants used a wide variety of SJT formats. Perhaps owing to the program's voluntary nature, litigants exercised substantial influence in designing the SJT's procedures. For example, several different methods of jury selection were employed, ranging from the traditional process used to select a twelve-person jury to abbreviated methods involving pre-trial screening of potential jurors and limited use of peremptory strikes to select smaller juries. Different approaches were also employed with respect to the types of evidence permitted. Approximately forty percent of the cases (seven of seventeen cases) permitted live or videotaped testimony of key witnesses.

There was also surprising interest among participants in converting the SJT into a *binding* process. The majority (nine of seventeen cases) were binding based upon prior agreements by counsel to use the SJT format to determine the precise amount of a settlement within pre-established "high/low" parameters.

Understanding Litigant Interest in the SJT. In surveying the litigants' explanations as to why they agreed to the process, it is apparent that their strategic goals were often unrelated to the supposed virtues of the SJT as a settlement process. Several attorneys explained that their interest was a function of their client's inability to present effectively their own testimony. For example, two disputes involved young children whose parents did not want them to testify in court; the SJT provided a way to resolve their claim without testifying. In other cases, the parties were either unappealing, inarticulate, or the attorney feared that the jury would be biased against them.

Perspectives on Procedural Efficiency: Trial Length and Settlement. The SJT proved to be an efficient procedure in comparison to a conventional trial; using estimates provided by counsel, SJT trial lengths were on average approximately seventy-five percent shorter than traditional trials. In addition, all cases using summary juries under the auspices of the North Carolina program were resolved without resort to a conventional trial. This result is not totally surprising because, as noted above, in the majority of cases the parties had agreed that the SJT result would be binding according to a pre-determined "high/low" agreement.

Litigant Satisfaction. Based upon comprehensive interviews, attorney participants and judges expressed enthusiasm about their experiences. They also reported that the litigants were generally satisfied; as one attorney noted, "the litigant had their day in court, and the case was over. They didn't have to worry about it any more. The clients seemed very satisfied." Jurors also reacted favorably to the process.

Some participants, however, reacted negatively to the procedure. In at least six cases, one or both attorneys raised significant complaints as to how the SJT had functioned. The complaints included insufficient time to prepare, unfair use of summarized evidence by opposing counsel, lack of clear guidelines as to what evidence would be permitted, and inability to obtain court rulings on evidentiary issues prior to the summary trial. Although such criticisms may simply reflect typical implementation problems associated with an experimental program, the concerns also reveal difficulties inherent in a process that relies primarily on attorney summaries of evidence in lieu of live testimony.

SJT and Cost Savings. Most, but not all, of the attorneys surveyed reported that the SJT generated cost savings to them or their clients. Cost efficiencies were reported with respect to case preparation, with more significant reductions attributable to reduced trial lengths and because witnesses did not have to testify. Although it may seem axiomatic that a shortened trial would reduce costs, this assumption does not necessarily follow. For example, although the costs associated with *conducting* the summary trial will almost certainly be lower than those associated with a traditional trial (due to the reduction in trial length) preparation costs may not be significantly lower because extensive preparation may still be required for an SJT.

Understanding the Lack of Use. Despite considerable efforts to publicize the effort, to conduct special educational programs, and to commit judicial resources to encourage its use, the number of SJTs conducted fell well below expectations. Understanding why the program failed to achieve its goals is critical in assessing whether other courts—especially state courts—should commit further resources to developing SJT programs and, if so, how future programs should be designed and implemented.

Based upon interviews with participating attorneys and court officials, there was no consensus on which theory best explains the low number of referrals. Many blamed lawyers for refusing to experiment with SJTs. Judges responsible for implementing the program regularly cited both attorney inertia, as well as a perceived lack of ability or confidence among attorneys in conducting an SJT with its greater demands on the attorney's forensic skills. Both attorneys and judges also mentioned general attorney ignorance about the process as a contributing factor.

Others questioned the program's implementation. Several participants noted that a particular judge, even if an SJT advocate, would sometimes be assigned to a different district under the state's rotational system for judges or otherwise be unavailable to meet with the parties to explain or promote its use. Some attorneys questioned whether individual judges had sufficient time, resources, or interest to promote SJTs effectively.

A third set of comments suggested that the low level of interest was primarily a function of the lack of suitable cases in the state court system. It may well be that the potential pool of appropriate SJT candidates—defined here simply as civil cases that require a week or more to try conventionally—was fairly small in the state court setting. For example, one trial court administrator indicated that in his district there were probably less than five cases a year fitting the classic profile. In comparison, federal dockets are comprised of a much higher number and concentration of potentially lengthy trial cases, making the potential benefits offered by an active SJT program correspondingly greater.

Another oft-stated reason for the low interest level in the SJT expressed by both participating and non-participating attorneys was that the process was unfair or biased. Most of the attorneys expressing a fairness concern believed that the SJT was biased in favor of plaintiffs. Supporting or perhaps creating this view was the presence of two very large summary verdicts rendered in favor of plaintiffs in contested liability cases. In neither case, however, was determining damages the primary issue. In one case, the defendant—owing to a pre-existing high/low agreement—decided as a tactical matter not to present any evidence regarding damages; in the other, the issue was whether the corporate defendant

had negligently entrusted a company vehicle to an employee known to have had a drinking problem.

Rethinking the Summary Jury Trial

Based upon the above evidence from the North Carolina study, what is the appropriate role of the SJT in developing a comprehensive ADR strategy?

The question of whether to mandate SJTs in North Carolina was controversial. On one hand, the results demonstrated that numerous obstacles to the voluntary use of SJTs might be overcome by a mandatory program. On the other hand, several factors weighed against giving judges the power to compel the use of SJTs. First, the majority of attorneys who had participated in the program cautioned against giving state court judges that authority. Second, the SJT appeared well suited to only a small fraction of existing state court claims. Third, a mandatory program could function optimally only if all judges were both familiar with the SJT process and able to analyze its suitability in specific cases. In fact, however, only a few of the state's trial judges had presided in a summary jury proceeding. Finally, permitting judges to mandate its use may tend to limit continued experimentation with summary jury formats, which was widely perceived as a positive feature of the program.

Instead of either eliminating the program or dramatically expanding its scope by affording judges the power to mandate its use, North Carolina decided to restructure the program. The dilemma of how to best utilize the SJT was resolved by the state adopting a unique approach that centered on party-initiated and party-controlled use of summary juries. The North Carolina Supreme Court enacted a rule, drafted by the author, that encouraged litigants throughout the state to flexibly design an SJT format, specifically inviting its binding use.³

The Rule rejects certain shibboleths associated with the classic SJT theory. First, the North Carolina approach tacitly relegates the SJT to a subordinate role in the state's evolving ADR strategy. It was generally believed that other ADR approaches—such as the continued expansion of court-ordered arbitration or the use of mediated settlement conferences—would be better suited to the institutional goal of reducing caseload pressures. Second, the Rule antic-

³The rule provided as follows:

GENERAL RULE OF PRACTICE 23: SUMMARY JURY TRIALS

The senior resident superior court judge of any superior court district or a presiding judge unless prohibited by local rule may upon joint motion or consent of all parties order the use of a summary jury upon good cause shown and upon such terms and conditions as justice may require. The order shall describe the terms and conditions proposed for the summary jury proceeding. Such terms and conditions may include: (1) a provision as to the binding or non-binding nature of the summary jury proceeding; (2) variations in the method for selecting jurors; (3) limitations on

the amount of time provided for argument and the presentation of witnesses; (4) limitations on the method or manner of presentation of evidence; (5) appointment of referee to preside over summary jury trial; (6) setting the date for conducting the summary jury trial; (7) approval of a settlement agreement contingent upon the outcome of the summary jury proceeding; or (8) such other matters as would in the opinion of the court contribute to the fair and efficient resolution of the dispute. The court shall maintain jurisdiction over the case, and may, where appropriate, rule on pending motions.

ipates that most SJTs would be initiated by the parties. Third, the Rule encourages innovative SJT formats by permitting party control over the design of the SJT format—a radical departure from the approach followed by most other courts that have detailed a paradigm SJT model.

Finally, and perhaps most significantly, the Rule emphasizes the SJT's potential as a binding process. To date, virtually no discussions of the SJT have given any serious consideration to its potential as a binding process. Because SJTs are expected to be used in intractable cases, it has perhaps been assumed that the litigants, who by definition are unable to agree on settlement, would be even less likely to agree on a binding ADR process—especially one that entails such a peculiar imitation of the traditional trial process. SJT proponents may simply have concluded that in its present form, the SJT is not sufficiently trustworthy to serve as a binding adjudicatory process except in the rare case. To the surprise of program designers, however, litigants in North Carolina demonstrated an interest in using the SJT in a binding format even in high-stakes disputes with contested liability.

Justifying the Binding SJT: ADR and the Settlement Process

The theory supporting a binding SJT would proceed from a widely different set of operating assumptions than the classic SJT. Instead of speculating as to why certain trial cases fail to settle, the binding SJT's justification would be found in the settlement process itself. In general, ADR procedures serve as supplements to the settlement process by encouraging earlier, less costly settlements. ADR proponents have for the most part assumed that settlement of litigation is inherently desirable. It is almost certainly true, however, that many litigants are coerced into settling cases that they might prefer to adjudicate because of the high costs and delays of settlement, and the risks associated with a traditional jury trial.

If increasing costs of litigation and risk of trial are truly creating even greater incentives to settlement, an appropriate goal for the courts would be to develop ADR methods that respond to this potentially coercive pressure by offering lower cost adjudications that minimize trial risks. The classic SJT does not respond to this potential ADR goal. It does not seek to control high discovery costs or the risk of aberrant jury verdicts. Instead, it functions by emphasizing (and perhaps overemphasizing) the risks and expense of the traditional litigation process.

The SJT could be retargeted to relieve the pressures to settle created by the increasing costs and uncertainty of litigation. In this new formulation, the SJT is not a means of "shunting off" cases headed to trial, but rather a procedure of choice for cost-conscious or risk averse litigants. Developing this option is also consistent with the growing evi-

dence that litigants may prefer some form of adjudication as opposed to settlement.

A restructured SJT could perform this new role by offering litigants the opportunity to reduce both the expense of litigation and the risks inherent in the existing jury system. The theory of the binding SJT rejects the common assumption that the SJT process is intended for cases in which conventional negotiations have failed. Instead, it seeks a broader role for the process by providing an ADR option for litigants presently forced to settle, but who would prefer a binding adjudication if the process could be made less expensive and more predictable.

A well-designed binding SJT serves three goals: (1) it avoids the possibly expensive and unproductive post-SJT negotiating process (as well as with the need to interview jurors after the summary trial to obtain their subjective assessments of case); (2) it removes the distorting impact of an outlying summary jury decision; and (3) it avoids the possibility of an expensive trial.

To be sure, the courts benefit greatly from the risk and expense of the trial setting—these factors provide powerful incentives to settlement upon which the smooth function of the court system is thought to depend. A revised theory of a binding SJT would reject the inherent desirability of this judicially sanctioned game of "chicken," whereby each party speeds to trial in hopes that the other side will veer off and accept a less advantageous settlement. Instead, the binding SJT permits rational litigants to recognize early in the proceeding that they could restructure the race without risking a head-on collision. Although one might question the wisdom of providing additional opportunities for parties to use a jury in lieu of developing ADR methods that utilize more expert decisionmakers, such a development is fully supported by the constitutional protections afforded jury decisionmaking and the fact that for some litigants the jury remains the decision maker of choice.

The Format for the Binding SJT

A binding SJT approach offers the potential for significant cost savings to the litigants. Unlike a court's decision to mandate a classic SJT on the eve of trial, the parties' decision to employ a binding SJT could be made early in the litigation process (indeed perhaps even before suit is filed). After limited discovery, the case could be tried in an abbreviated fashion in which various procedural shortcuts—many borrowed from the classic SJT format such as the use of summarized evidence—could be employed.

Although the precise format of a binding SJT would be subject to negotiation, there are several predictable differences between it and a classic SJT. The litigants' goals in formatting the process would be more broadly defined than in the classic SJT context, where the court-initiated process

is largely driven by an interest in shortening trial lengths. For example, because the parties have committed the resolution of their dispute to the process, they may often be interested in providing more information to the summary jury than would be the case with the classic SJT. Serving this interest might entail the limited use of live or videotaped testimony on critical issues. Although permitting some live testimony does not ensure that a binding SJT would achieve the same level of quality as a full trial, it does overcome many of the criticisms leveled against the classic SJT.

It is unjustified to assume that all of the procedural niceties associated with a traditional jury trial are essential to a fair procedure; whether various evidentiary principles and trial techniques in fact ensure a "fair" trial is questionable. Litigants could rationally decide to forego many of these procedural amenities and accept a less-than-textbook-perfect trial if overall litigation costs could be reduced and if the risk of aberrational jury decisions were controlled. Many cases turn on a few critical issues, but adversarial instincts or the perceived need to bolster weak arguments may result in litigants making repetitive presentations or raising collateral issues during a traditional trial.

One question is how often litigants would agree to resolve their case using a summary process with admitted imperfections. The answer will depend upon developments not easily predicted. First, the incidence of use may be a function of judicial involvement in permitting and indeed encouraging the procedure. Use of the process will also depend to a great extent on the interest of litigants to utilize a lay jury. It may be, for example, that binding SJTs would be more frequently used in certain litigation contexts such as personal injury disputes, where plaintiffs have a preference for lay juror involvement, as opposed to business disputes, where the litigants might prefer experienced arbitrators.

Assuming that binding SJTs are regularly employed, a potentially serious problem may develop. First, by lowering the cost of trial and reducing the risk inherent in trial, the binding SJT model has the predictable effect of increasing the number of trials. This could contribute to court backlogs by requiring additional judicial involvement or commitment of resources in cases that admittedly may have settled on their own accord. The prospects of increasing the total number of trials being conducted under the court's auspices is both figuratively and literally unsettling.

One approach to minimize this potential drain on judicial resources would be to permit or even require the parties to retain private judges to preside over the summary trials. Although concerns have been raised concerning the use of private judges in other ADR contexts, their possible involvement in SJTs should not cause serious objection. Certainly, the task of presiding would appear to be no more onerous than the responsibilities assigned to private attor-

neys who serve as arbitrators in court-ordered arbitration programs who must not only conduct the ADR hearings, but also decide the merits of the case. The use of private judges also serves to reduce any expenses incurred by the judicial system associated with the use of binding SJTs because litigants would ordinarily be expected to pay the fees of the private judges.

Conclusion

The classic SJT is schizophrenic. On one hand, it accepts the existing dynamics for pre-trial discovery and settlement, despite growing evidence that those processes may be inefficient, expensive, and potentially unfair. On the other hand, with respect to the trial process itself, the SJT rejects virtually all existing safeguards, and replaces them with an emaciated version of a traditional trial. This sharp division in approach provides fertile grounds for criticism. The evidence presented here is that the classic SJT is an unattractive option for many courts and in many litigation contexts.

The intensity of recent criticisms of the SJT is unwarranted. The process remains in an experimental phase; it has in its brief history evolved from a sharply regimented procedure used in a narrow band of cases to a more free-wheeling and flexible mechanism. Its stated justifications, however, remain closely tied to its earliest manifestations. Too much attention has been given to debating the merits of an admittedly experimental process, and too little to reexamining and refining its role in the continuing evolution of ADR procedures. The key issue may not be determining whether the SJT has been proven "effective" as defined by some artificial measure, but to continue to debate what role the process may play in contributing to improvements in the settlement process.

Looking past the classic SJT's narrowly defined purpose of reducing trial dockets, there emerges a different vision of what the SJT might accomplish. To date, the ADR movement—especially those aspects that relate to court-annexed alternatives—has focused on ways to facilitate early settlements. A different vantage point recognizes that the settlement process itself may be unfair and inefficient. If true, developing ADR methods designed for cases that are currently settling is a legitimate and important task; that this endeavor might require creating methods that postpone settlement or that seek to change the patterns of settlement incentives should be acknowledged and viewed as a worthy challenge. In that light, the SJT—reconfigured as a binding process targeted at high-stakes disputes—can fulfill a worthy niche in the continued development of ADR options.

What Do You Think About the 27th Amendment?

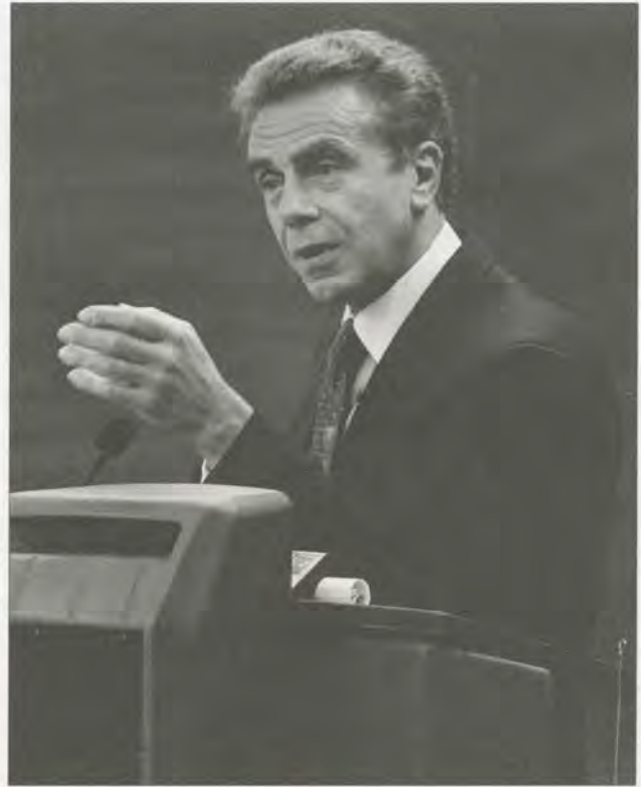
William W. Van Alstyne

“**W**hat do you think about the 27th amendment,” I asked my aching head just last week. I was sitting at my computer terminal in my paper-littered (as usual) office in Room 107 of the Duke Law building. “I mean, what do you think about the 2nd amendment,” I caught myself muttering, trying to get things more clearly in mind, using the description Walter Dellinger suggested was more accurate.

The amendment I was fussing over was not the 27th amendment that many remember having strongly supported in 1972 (the ERA—the Equal Rights Amendment). Nor was it the 2nd amendment so popular with the NRA (the one about the right to bear arms). Rather, it was “the other” 2nd amendment—i.e., the *original* 2nd amendment proposed as part of the list of twelve amendments Congress had approved for submission to the states in its first session two hundred years ago, in 1789. The first two of those proposed twelve amendments, unlike the remaining ten in the list, had failed to attract more than six state ratification votes. That’s the “second” amendment that was bringing on the headache.

In an effort to clear some of my confusion away (all these numbers, all these dates), I swiveled about in my chair to remind myself what this was all about. I turned to the framed copy of those twelve original amendments on my office wall next to the framed copies of the Constitution and Magna Carta. And there, I could make out, in sepia handwritten ink (now hard to read from having faded over time), the original 1st and 2nd amendments that failed to excite the support that had carried the day for the balance of the list—the ultimate Bill of Rights whose bicentennial we passed in remembrance in 1991:

Article the first... After the first enumeration required by the first article of the Constitution, there shall be one Representative for every thirty thousand, until the number shall amount to one hundred, after which, the proportion shall be so regulated by Congress, that there shall be not less than one hundred Representatives, nor less than one Representative for every forty thousand persons, until the number of Representatives shall amount to two hundred, after which the proportion shall be so regulated by Congress, that there shall not be less than two hundred Representatives, nor more than one Representative for every fifty thousand persons.



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Article the second... No law, varying the compensation for the services of Senators and Representatives, shall take effect, until an election of Representatives shall have intervened.

Evidently the inspiration of the first of these unapproved amendments, the one called “article the first,” was to build into the Constitution an initial assurance of substantial local accountability for each House member (not more than 30,000 constituents per representative initially and not more than 40,000 until, using that basis of reckoning, the House had two hundred members, and further

providing that the House would never have less than two hundred members thereafter), while also providing that neither should the House be permitted to grow to a size larger than necessary for there to be at least one representative for each 50,000 persons. The measure looked forward. It anticipated future population growth and up to a point it disallowed any measure that might dilute the personal, local representative nature of each Representative. In anticipating that growth, however, it also carried its own small precaution; unless some ceiling were set respecting the total number of representatives the House might contain, the time might come when the House would become unduly unwieldy. (As it was, the proposed ceiling, limiting the maximum size of the House, was extremely generous seen from today's perspective.¹)

The inspiration of the "article the second" was obviously somewhat different—a precaution against too much self-interest in Congress in the exercise of its spending power in the setting of its own salary and emoluments. Hardly a foolproof measure.² It didn't even require any exceptionally large vote to pass such bills (say, 3/5ths or 2/3rds affirmative vote to raise one's own pay), as might quite sensibly have been proposed. Instead, it merely postponed the taking of effect of any variation in compensation, "until," as it says, "an election of Representatives shall have intervened." Moreover, it also contains a certain "Catch 22" of its own—i.e., by no means is it just a proposal that would keep current members from at once benefiting from raises they might be tempted to vote themselves.³

Indeed, some keen observers of the time noticed that the proposal was not entirely a taxpayer's blessing—as it might have been had it simply forbade any congressional pay *increase* from taking effect until after the next House election. It is also an "incumbents protection" act, or at least

so it is in part, as some at the time quickly figured out. For it is "any variation" (and not just "any increase") the amendment disallows from taking any immediate effect. So the proposal also provides a cushion for members in Congress against the downside risk of constituent pressure to take less salary and benefits than they have been receiving, as might be brought to bear, say, in a recession or in other circumstances when the economy might be in distress and the emoluments of office holding might seem to be unreasonably high: *no decrease Congress might vote in respect to its own compensation could have any immediate effect on any of those voting to "accept" it.*

How nice for Congress that the amendment would have this effect. And insofar as any such measure would be approved to affect the emoluments or pay of members of the House (and not just the Senate, where members serve six-year terms), such legislation would merely encumber their successors, and not themselves during the balance of their term of office. Perhaps it was partly in recognition of this feature that the original 2nd amendment failed to draw more than six state ratification votes during the two year period when all the rest of the proposed amendments, save itself and the 1st, were approved in 1791.⁴

Even assuming some in the House might seek reelection (and thus become their own successors), still, according to the very terms of the amendment no such enacted decrease would affect them unless they were successful in being re-elected. Well, that's not such a bad thing looked at from their point of view. Were they not re-elected, they would have the strong consolation of knowing they would thereby avoid having to live under the more modest standard of compensation they had approved (and which their successors, in turn, would be forbidden to alter during their own first two-year term).⁵

¹ If continued to the present time, it would mean we would now have a House of Representatives of 5,000 members (250 million people divided by fifty thousand). Fancy that.

² Though not unprecedented, either, for in fact, the Constitution has another provision of the same sort—i.e., one that postpones the effect of some acts Congress may adopt that are most likely to benefit themselves. So, Article I, Section 6, clause 2 had provided (and even now still provides): "No Senator or Representative shall, during the Time for which he was elected, be appointed to any civil Office under the Authority of the United States, which [office] shall have been created, or the Emoluments whereof shall have been increased during such time...."

This generally forgotten clause, incidentally, has actually had more use than one might suppose. For example, Senator Orrin Hatch of Utah was a rumored leading prospect for nomination to the Supreme Court just a few years ago but since Congress had enacted a general pay raise, including the pay of Supreme Court members, Senator Hatch became ineligible for appointment to the Supreme Court during the balance of his six year term. And a little

earlier, when President Nixon named William Saxbe, a senator from Ohio, to be Attorney General, this clause similarly threatened to bar the nomination for the same reason—i.e., the salary for that office had then been recently increased pursuant to an act of Congress. But in this instance a compliant Congress found a way out. It passed a special law lowering the Attorney General's salary to its former level, after which Saxbe's name was resubmitted and he was then quickly confirmed as Attorney General. (*Query* whether this made the matter constitutionally kosher.)

³ In contrast, there is no similar "Catch 22" of the sort I'm about to describe, in Article I, Section 6, clause 2, *supra* n.2.

⁴ Actually, there is no reason to be coy about this matter, i.e., these were among the reasons that drew misgivings to this amendment. James Madison himself, incidentally, expressed no enthusiasm in its behalf.

⁵ This is so, of course, because any such legislation, even merely to restore compensation to its previous level that those who voted to cut it had enjoyed, could have no effect until still another election had intervened—and this according to the amendment itself.

Looked at in this last-mentioned way, moreover, the proposed amendment might even be self-servingly politically useful to the more well-to-do members in Congress. For they could use it if they had a mind to do so as a means of discouraging prospective opponents from contesting their seats. How so? By voting to fix a lower congressional compensation for at least the two years following the very next election, one might usefully discourage prospective candidates less well to do than oneself from even attempting to seek the office—candidates unable to match the incumbent's campaign expenditures and unable to stay out of debt if made to depend solely upon the lower compensation the office would unalterably carry for a minimum of the next two years.⁶

So, much like the original, unratified 1st amendment, the original 2nd amendment was subject to equivalent misgivings of its own. Even if it were to be made modestly serviceable (say, simply to limit Congress from increasing its own benefits without some intervening election), still this amendment was not suitable.⁷ Rather, far from simply accomplishing that task (that not all thought to be sound in its own right), this amendment seemed to do something more, and not all of it for the good.

Neither the original 1st nor 2nd amendments, therefore, were felt to be up to the same scale of the better drafted amendments of the time, i.e., the other ten amendments promptly ratified as the Bill of Rights. And so matters passed into history two centuries ago, noticeable since then principally just on a few ornamental office wall copies in faded sepia ink.

II

Presumably all this is indeed just a bit of forgotten legal history even the readers of the *Duke Law Magazine* might not be expected to know. And why should they? Lacking

framed sepia stained wall copies of their own, even the best lawyers can be forgiven not knowing what a 204-year-old amendment happened to say or why it failed to make the grade in 1791. Perhaps, one would say, if the matter came up all over again, one could bestir oneself over trivial pursuits of this kind. But only if Congress again proposed something like the original 2nd amendment would it again become newsworthy. In the meantime, one not teaching a light load might be pardoned for not sharing any particular excitement of this sort. In a practical world, in today's world, what does it matter what the original 2nd amendment may or may not have provided, or why it did not survive the contemporary scrutiny of those to whom it was submitted for ratification in the existing state legislatures of two hundred years ago, or why it was left behind?

Well, it might matter if one had imagined a life everlasting for proposed amendments, a capacity of indefinite life, quiescent in incubant oblivion for mostly two centuries then suddenly born again in a whole series of little noticed resolutions by state legislatures, the earliest⁸ of any of the contemporary ones coming a full century and eighty-seven years after the amendment failed as part of the original Bill of Rights.

And, in fact, Congress evidently has a theory of just this sort, though for some reason it did not care to have it reviewed (it turned aside requests to hold hearings). For that is the story of the 27th (or is it the 2nd?) amendment. Preferring to avoid anything calling attention to its salaries and emoluments in this presidential election year,⁹ Congress has now declared the whole task of proposing and of ratifying a new amendment as a task already done.¹⁰

III

And so we now have a 27th amendment...or do we? I suppose we do (certainly Congress has said so¹¹). Never-

States." The vote was 99-0 in the Senate, 414-3 in the House. What a remarkable accord on a matter of unprecedented constitutional novelty as this most assuredly was. Votes of this near unanimity seldom come (except, perhaps, on votes to recess or to adjourn). The longest time any past amendment had actually taken to be ratified by the states was four years. The longest time Congress itself has ever expressly deemed appropriate was ten years (actually seven years, beginning with the 18th amendment, plus an added three-year extension belatedly approved in the more recent case of the ill-fated ERA). One would have thought the novelty of the notion of resuscitating the original 2nd amendment by late ratification counting two hundred years after its sole proposal by Congress would have been worth a day or two of reflection in House and Senate Committee review. But there was no such review.

¹¹ Is this conclusive? Alumni who remember *Coleman v. Miller*, 307 U.S. 433 (1939) from con law may certainly think so (for they will recall certain dicta by four justices that Article V amendment questions are "nonjusticiable" questions committed solely to Congress). Yet, if so, here's a curious point. Professor Tribe recently published his view that the original 2nd amendment became a valid amendment the moment Michigan adopted its resolution of ratification

⁶ This anticipated use of the clause was also given as one reason in opposition to the proposed amendment at the time it was under active review.

⁷ Indeed, such an amendment would not look like this amendment. Rather, it would look more like the comparable clause already written into the Constitution, in Article I, Section 6, clause 2 (*supra* n.2).

⁸ (Wyoming, on March 3, 1978.) The previous last state to have ratified was Ohio, in 1873, eighty-two years after the last of the original six states to have acted favorably on the amendment, as of 1791. During the next fourteen years subsequent to Wyoming's ratification, the amendment quietly acquired ratifications in thirty additional states until, on May 7, 1992 (Michigan), the total ratifications reached thirty-eight (3/4ths of fifty states), counting a whole period of two hundred and three years.

⁹ E.g., its own recent substantial self-approved salary increases, its House banking practices, franking privileges, etc.

¹⁰ On May 21, 1992, by concurrent resolution Congress congenially declared the 27th amendment to be "valid...as part of the Constitution of the United

theless, in the supplement to the casebook I've recently been using,¹² it will go in with an asterisk. And here's why. The explanation is just a personal way of coping with the headache I've been unable to overcome in thinking about Congress and how it sometimes behaves in matters of constitutional law. It goes also to what one thinks one owes to others just as a teacher, in thinking about matters of this sort, and to try to do so as best one can according to some larger constitutional sense of general right or wrong.

Almost no one seemed aware of the background events prior to congressional announcement of the amendment. And few had given any thought to the puzzle whether an amendment proposed more than two centuries ago could in fact accumulate valid additional ratifications so far removed from the single occasion of its proposal by Congress when it was originally under active review with the balance of the original Bill of Rights, when it failed. Congress (albeit with no hearings on the question) has evidently concluded that it may pass into the Constitution in this extraordinarily leisurely manner. But there is nothing in Article V that defers this sort of question to Congress,¹³ and in fact the Supreme Court has unanimously suggested that it is thoroughly incorrect.

Back in 1921, the Supreme Court actually addressed this very question, about the original 2nd amendment itself.¹⁴ It did so incidental to its discussion of a different issue then before the Court albeit a question also involving the timeliness of state ratifications within some relevant period reasonably contemporaneous of the date an amendment might be proposed. In taking on this question (which, incidentally, it did *not* deem to be "nonjusticiable"), here is what the Court unanimously declared, first starting at the logical beginning place, namely, the text of Article V. Ad-

ressing that text, the Court began: "It will be seen that this article says nothing about the time within which ratification may be had—neither that it shall be unlimited nor that it shall be fixed by Congress. What then is the reasonable inference or implication? Is it that ratification may be had at any time, as within a few years, a century or even a longer period; or that it must be had within some reasonable period which Congress is left free to define?" Then, having set the general framework for the ensuing discussion, this was the Court's unanimously presented review:¹⁵

We do not find anything in [Article V] which suggests that an amendment once proposed is to be open to ratification for all time, or that ratification in some of the states may be separated from that in others by many years and yet be effective. We do find that which strongly suggests the contrary. First, proposal and ratification are not treated as unrelated acts but as succeeding steps in a single endeavor, the natural inference being that they are not to be widely separated in time. Secondly, it is only when there is deemed to be a necessity therefor that amendments are to be proposed, the reasonable implication being that when proposed they are to be considered and disposed of presently. Thirdly, as ratification is but the expression of the approbation of the people and is to be effective when had in three-fourths of the States, **there is a fair implication that it must be sufficiently contemporaneous in that number of States to reflect the will of the people in all sections at relatively the same period, which of course ratification scattered through a long series of years would not do.** These considerations and the general spirit of the Article

(May 7, 1992), making it the 38th state to do so (counting from 1789). In Professor Tribe's published opinion (*Wall Street Journal*, p. A15, May 13, 1992), the amendment took full effect on that date, period—Congress had no function to perform (a conclusion conveniently making it unnecessary for Congress to hold any hearings). Virtually the same day (*Washington Post*, p. A1, May 8, 1992), Professor Dellinger emphatically agreed that no action by Congress was needed and that the constitutional status of the original 2nd amendment was beyond the purview of Congress. But there was a slight difference between the two, even so, and it was this: According to Tribe, the original 2nd amendment was, as of May 7th, a new and valid part of the Constitution of the United States, whereas in Dellinger's view, the original 2nd amendment was not and could not be anything of the sort—because it had lapsed more than a century before. (In short, were the amendment brought to Congress, it ought not matter—because it was far, far too late.) (See also Dellinger, *The Legitimacy of Constitutional Change: Rethinking the Amendment Process*, 97 HARV. L. REV. 386, 425 (1983) (same point).)

¹² W. Van Alstyne, *FIRST AMENDMENT CASES AND MATERIALS* (Foundation Press, 1991). The casebook is no competitor of the standard constitutional law casebooks. It is devoted merely to the provisions of the first amendment, the law of which has become sufficiently complex that is now taken up separately

and subsequent to the basic course (much in the manner as had already happened in respect to the fourth, fifth, and sixth amendments, the focus of a separate criminal procedure course). But it turns out that a large number of other clauses in the Constitution are themselves also pertinent to first amendment adjudications (e.g. the 14th amendment, the speech-and-debate clause, the clause defining and limiting the definition and punishment of treason, the clause in article VI forbidding any religious tests). So, quite properly, the whole of the Constitution is also included at the front of this new casebook for ease of reference and use in the course. That being so, of course the annual supplement would note and reproduce any new amendment. (Not to do so would suggest that one has been asleep at the switch.)

¹³ This is just the point mutually stressed by Tribe and Dellinger (*supra* n.11). For both, either the amendment was valid at the instant of Michigan's ratification or it was not (because it had long since lapsed). If the latter, it could not be resuscitated by anything Congress might do (except to propose the amendment anew).

¹⁴ *Dillon v. Gloss*, 256 U.S. 368 (1921).

¹⁵ It is unusual to quote so extensively from an Opinion by the Court, but in this instance it may be worthwhile.

lead to the conclusion expressed by Judge Jameson [citing to Jameson on Constitutional Conventions, 4th ed., Sec. 585] 'that an alteration of the Constitution proposed today has relation to the sentiment and the felt needs of today, and that, if not ratified early while that sentiment may fairly be supposed to exist, it ought to be regarded as waived, and not again to be voted upon, unless a second time proposed by Congress.' That this is the better conclusion becomes even more manifest when what is comprehended in the other view is considered; for, according to it, four amendments proposed long ago—two in 1789, one in 1810 and one in 1861—are still pending and in a situation where their ratification in some of the States many years since by representatives of generations now largely forgotten may be effectively supplemented in enough more States to make three-fourths by representatives of the present or some future generation. **To that view few would be able to subscribe, and in our opinion it is quite untenable.** We conclude that the fair inference or implication from Article V is that ratification must be within some reasonable time after the proposal. *** Of the power of Congress, keeping within reasonable limits, to fix a definite period for the ratification we entertain no doubt.

IV

Dillon v. Gloss is just one view of this matter, of course, but still it is interesting, is it not? And might one expect that the deference one branch of government owes another in this country would operate both ways, rather than in just one as Congress may suppose? It has been often enough observed that the Court ought to be respectful of Congress, so not lightly to judge its powers, or lightly upset what it does. Rather it has often enough been said that the Court should second guess the constitutional positions taken by Congress, if at all, only after the most careful inquiry and respect that is Congress's due. Certainly, however, one might expect this to work the other way 'round as well, though it very seldom does. The story of the 27th amendment is a story demonstrating that it does not.

Dillon v. Gloss provided the Supreme Court's considered view of what Article V requires in order that an alteration or addition to the Constitution be deemed to satisfy the Constitution. It is also a compelling view, and it was measuredly ventured in a wholly noninflammatory way by a unanimous Supreme Court, a Court including Holmes, Brandeis, and Edward White, the Chief Justice of the United States. One might suppose Congress would provide good reason to suggest why it is not sound if, indeed, it is not.

In *Dillon*, the Court expressly considered the idea of an amendment proposed (and never renewed) in one century,

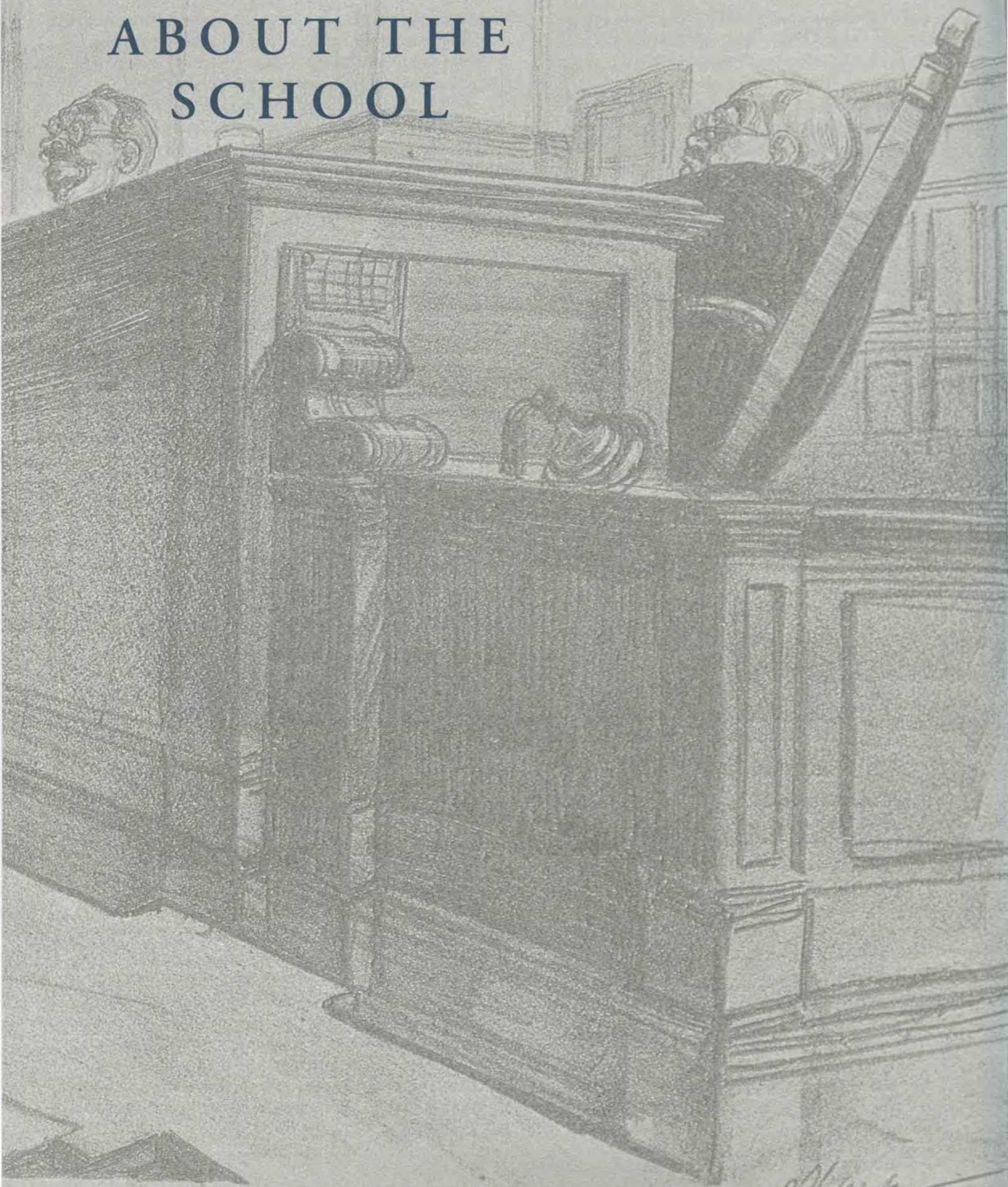
accumulating ratifications in another "by representatives of generations now largely forgotten," and whether it was capable of working ratchet-like, through ensuing centuries "by representatives of the present or some future generation," to some lumbering, arithmetically successful end. It rejected the idea as being inconsistent with any sensible understanding of Article V extraordinary consensus. And, in the Court's view, though Congress might anticipate this sort of matter and so in advance "fix a definite period," still, were it to do so, even its own provisions would need to "keep within reasonable limits," if it did. The notion of a proposed amendment with everlasting incubant durability was turned aside (in the Court's view "quite untenable"), and the 2nd amendment was itself given as an example of a proposal long since lapsed unless Congress wished to renew it again by proposal, which it never did (and never has).

In the annals of the law, however, we have not seen much of that reciprocity by Congress for the Court's views as it expects for its own. Certainly we have not seen much of it when Congress has evidently been of the view that its own re-election interests might be disserved. And that is the actual story of the 27th amendment—as you probably already knew or should have guessed in merely witnessing these recent events.

Neither the original 1st nor 2nd amendments, therefore, were felt to be up to the same scale of the better drafted amendments of the time, i.e., the other ten amendments promptly ratified as the Bill of Rights.

Meantime, what shall one say of this amendment? May an amendment proposed by a Congress in 1789 as part of a larger set, having failed to attract the requisite consensus of state ratifications common to the rest of the set during the era of its active consideration, and never renewed by any later Congress during a time span of two hundred years, yet be deemed to have survived for purposes of acquiring sufficient ratifications staggered over decades and centuries? In the Court's own one recorded opinion, the answer is "No." Does Congress actually believe the contrary, moreover, or is it that Congress doesn't actually have a belief at all? Perhaps that is more appropriate for you to say. The view from Durham, however, for whatever its worth, is to see Congress as through a glass, darkly, in the annals of its treatment of our constitutional law.

ABOUT THE SCHOOL



Gaining A New Perspective Through the Pro Bono Project

Although Carol Spruill is only a part-time member of the Law School faculty, her work as coordinator of the Law School's voluntary Pro Bono Project has brought a breath of fresh air into the Law School community. In its first year of operation, the project, which matches student volunteers with pro bono opportunities in the local community, saw eighty-eight successfully completed placements.

"My participation in the Pro Bono Project has been a very positive experience for me," said Susan Smith '93, who did research on title issues for the North Carolina Museum of Art during the spring. "It has given me a renewed sense of purpose." Smith said that her work at the Museum of Art has given her the confidence to pursue a legal career that suits her interests. "I was having a very hard time finding an aspect of the law that suited me, but I have always had an interest in art and my work at the Museum helped give me some direction," said Smith, who is considering a full-time career that involves art and the law. "As a result of my work for the Museum, I now know that there is something out there for me."

At a time when corporate law firms across the country are cutting back on their summer clerkship programs and full-time hiring, many Duke students are feeling confused and uncertain about their legal careers. However, the Pro Bono Project and a revamped Loan Forgiveness Program have increased student awareness and interest in government and public interest careers as an alternative to a corporate law practice. According to Spruill, about ninety students participated in the Pro Bono Project in the 1991-92

school year, some having contributed nearly 200 hours.

"The purpose of the program is not to redirect people that have chosen careers in corporate law, but to foster in students a sense of sharing and a desire to give back to the community as professionals," said Spruill, a 1975 graduate of the University of North Carolina School of Law at Chapel Hill. "I tell students that it can be very fascinating and rewarding to become a part of the life of a public interest organization or government agency."

At a reception last spring, Dean Gann commended Spruill for the success of the Pro Bono Project and also recognized and praised students for their pro bono service. Dean Gann said she envisioned the program as having several important purposes. "First, we thought that some of our students were more likely to choose careers in public service if they had a

first-hand opportunity to work in the public sector," she said. "Second, although most of our graduates will go to larger firms, we hope that the experience they have gained from the Pro Bono Project will make them interested in participating in pro bono activities once they join a firm. Third, many of our graduates will be government, professional and community leaders and we want them to understand the importance of delivering legal services to help the poor and to address other social problems."

Although the program is not designed to result in permanent employment for students or to recruit students for government service or public interest work, it provides an excellent opportunity for students interested in government and public interest careers to gain valuable experience. The program also provides an excellent opportunity for students who are undecided about



Tracye Grinnage '94 (center) with her supervisors from North Carolina Legal Assistance, Judith Washington (left) and Roshia McGill.



Participating in the Pro Bono Project greatly enhanced my educational experience at Duke. It helped me to understand exactly why I was in law school and how much good can be done with the law. It was a grounding experience—it allowed me to have a realistic perspective on law and life. It is easy to get lost in the case books and forget what it is all for and that there are people out there whose lives are affected by the law every day (in good and bad ways).

Amy Allen '94, North State Legal Services

their careers to explore different career options. "For students interested in public interest careers it's essential that they have a demonstrated commitment to public interest work," said Spruill. "Having a pro bono placement can give a student the opportunity to enhance his or her resumé with public interest experience and to make valuable contacts with people who are already a part of the public interest community."

"I think Duke has a responsibility to educate students about careers in the law other than corporate law," said Tracye Grinnage '94, who volunteered eight hours a week in the spring to the North Central Legal Assistance Program in Durham. Her responsibilities included client interviews, case investigations, negotiations, and research and

writing in the areas of consumer law and public benefits.

Grinnage said that her first year of law school was very stressful and unexciting until she began working at Legal Services. "I had my own small caseload and would always leave work with a big grin on my face because I was using my skills to help people in need," said Grinnage, who received an IOLTA (Interest On Lawyers Trust Accounts) grant to continue working with the Legal Assistance Program this summer. "This experience has opened my eyes to what attorneys really do, something I wasn't getting from law school. It brings life to the theory that I learn in class."

The Pro Bono Project is structured so that students can select possible placements from a list of public interest organizations, firms doing pro bono work, and government agencies that have expressed an interest in volunteer assistance from Duke Law students. Students generally commit to work during the school year for a designated number of hours a week, without receiving any course credit or monetary compensation.

Spruill's job is to solicit and coordinate placement opportunities and to match students with organizations that suit their interest and desired time commitment. "The Pro Bono Project is designed to provide an awareness of the delivery of legal services to those with less money and power. It allows stu-

dents the opportunity to become acquainted with the work of lawyers who serve the public via the government and non-profit organizations," said Spruill. "The placements provide much needed services to the community while demonstrating each student's commitment to the profession."

"We view the pro bono experience as providing our students with an opportunity they may never have again to obtain a first-hand experience serving the poor and addressing social problems," said Dean Gann. "Hopefully, it has made them better informed and attentive to these issues so that they will be able to exercise leadership in these areas."

Spruill's work as Pro Bono Coordinator at Duke began in the fall of 1991. Prior to coming to Duke, she



My pro bono placement gave me a whole new perspective on the study and practice of law. From the books at Duke Law School to the real world of pro

bono work is quite a leap—a leap I think that enriches and completes the formal law school education...and that opened my eyes very wide in the process!

*Jessica Buranosky '94,
Child Advocacy Commission of Durham*



Doing this opened my eyes to what being poor really means. By stepping in to lend a hand, I felt I was easing in some tiny way the burden carried by

people who walked in the office door.

*Michael S. Welsh '93, Henderson Office,
North Carolina Legal Assistance Program*

worked in Legal Services for fifteen years, seven as Deputy Director of Legal Services of North Carolina. She also has a wide variety of experience with non-profit organizations and bar associations.

"Law schools from around the country are giving increasing emphasis to pro bono, and the American Bar Association has urged lawyers to make a fifty hour per year commitment to pro



Sometimes the daily pressures of law school make me feel powerless. Yet, when I go into a prison, I realize what it really means to be powerless. Help-

ing a prisoner have a chance at having a voice is important to everyone and rewarding to me.

*Jim Worthington '92,
North Carolina Prisoner Legal Services*

bono work as part of their professional obligation," said Spruill, who in addition to her formal job responsibilities counsels students who are interested in full-time and summer public interest employment.

Spruill says that Duke is the only law school in the state and one of only a handful in the country that has a pro bono program with a designated faculty coordinator. "I was given a lot of flexibility by the faculty in creating the program, which I have formulated along the way based on suggestions I have received from faculty and students," she said. The program is designed so that students have a variety of ways to show their commitment to



The Pro Bono Project allows us as students to find out that we have actually learned enormous amounts of useful knowledge. It is also satisfying to

learn how to use my legal training to help others.

Tyler Smith '94, North Carolina Attorney General's Consumer Protection Division

public service. There are both legal and non-legal placement opportunities. The location of placements also varies, with students working in Durham, Raleigh, Chapel Hill, Henderson, and Hillsborough, North Carolina.

"In creating the program, I focused on projects that were legal, but I sought placement opportunities that would offer students a variety of choices in terms of subject matter areas and job functions, such as research and writing, courtroom work, client contact, and policy analysis," said Spruill. "I try to place students with organizations that will let them assist with the nuts-and-bolts of what their organization does. I want students to do real work and to have real responsibility."



It sounds trite, but this internship left me with a much better perspective on how fortunate I am. I was working with kids who'd been expelled from school for carrying guns... instead of just reading about them in *Newsweek*.

Kira Druyan '93, Child Advocacy Clinic of Durham

Spruill says that she has had no difficulty attracting a variety of placement opportunities for students. She also said that feedback from the legal community about the Pro Bono Project has been very positive. "Duke Law students are seen as very competent, so it wasn't hard to convince organizations to accept Duke students as volunteers," she said. "The legal community is very pleased with the work our students have done through the program and are excited that Duke Law students' interest in local pro bono appears to be increasing."

"Students come to us with a lot of motivation and our association with them energizes the whole office," said Rosha Ward McGill, managing attor-

ney of the Henderson branch office of North Central Legal Assistance Program. "Their ability to do research is very helpful since, with so many clients to see, it is hard for us to have focused time to do all the research we would like to do. We think we get as much out of these placements as the students do," said McGill.

"I feel very encouraged when I see a law student from Duke who wants to volunteer in the Durham community as a guardian ad litem for abused or neglected children," said Cy Gurney, executive director of Durham County's Guardian Ad Litem Program. "I have told people that the law students are my best volunteers because they are most reliable and dependable and under-

stand the importance of deadlines—filing dates, court dates and appointments. I also appreciate their many diverse backgrounds," she said.

The first year of the Pro Bono Project officially ended with the spring reception at the Law School for student volunteers and the lawyers with whom they worked. Spruill will evaluate the program and recruit new placement opportunities over the summer so that she and the students can "hit the ground running" when classes begin again in the fall.

Samuel L. Starks '92

BLSA Hosts Regional Convention

The Annual Black Law Students Association (BLSA) Southern Regional Convention was hosted by Duke's BLSA chapter in February. The Annual Frederick Douglass Moot Court Competition, held in conjunction with the convention, was also coordinated by the Law School's BLSA chapter. Over 200 participants from thirteen states spent four days in Durham. The convention theme, "Making the Connection—The Power from Within," stressed the importance of networking among African-Americans, particularly within the legal and business professions.

After reviewing several proposals from other law schools, the National Black Law Students Association had selected Duke Law School as the site for the 1992 Southern Convention, and Duke's convention committee had begun planning during the spring of 1991. Co-chairs for the convention were Avis Kinard '93 and Monique Garris '92. Committee chairs included Guenet Beshah-Tapscott, Jacqui Broughton, Terrie Hagler, Alysia Jones and Karen Woodard, all members of the Class of 1993.

Convention participants were welcomed to Duke University by Dean Pamela Gann and regional BLSA officers at an informal reception on February 12. Meanwhile, the Douglass Moot Court competitors were briefed on competition rules. The following three days were filled with plenary sessions, workshops, speakers, and social events.

Convention registrants attended two luncheons featuring Duke Law alumni as guest speakers. Barbara Arnwine '76 delivered a thoughtful speech at the Civil Rights luncheon. In addition to talking about the pas-



Duke Law students who planned the BLSA Regional Convention are from left, **front row:** Alysia Jones '93, Jacqui Broughton '93; **center row:** Monique Garris '92, Guenet Beshah-Tapscott '93, Avis Kinard '93; **back row:** Terrie Hagler '93 and Karen Woodard '93.

sage of the Civil Rights Bill of 1991, she shared her experiences as executive director of the Lawyers' Committee for Civil Rights Under the Law. The following day, Amos Mills, III '72, a special agent for the Federal Bureau of Investigation, highlighted the achievements of African-Americans in honor of Black History Month. A panel discussion on "Affirmative Action and the Law" featured Allyson Duncan '75, associate professor of law at North Carolina Central University, and Jerome Culp, professor of law at Duke University. They provided a synopsis of the current development of affirmative action law.

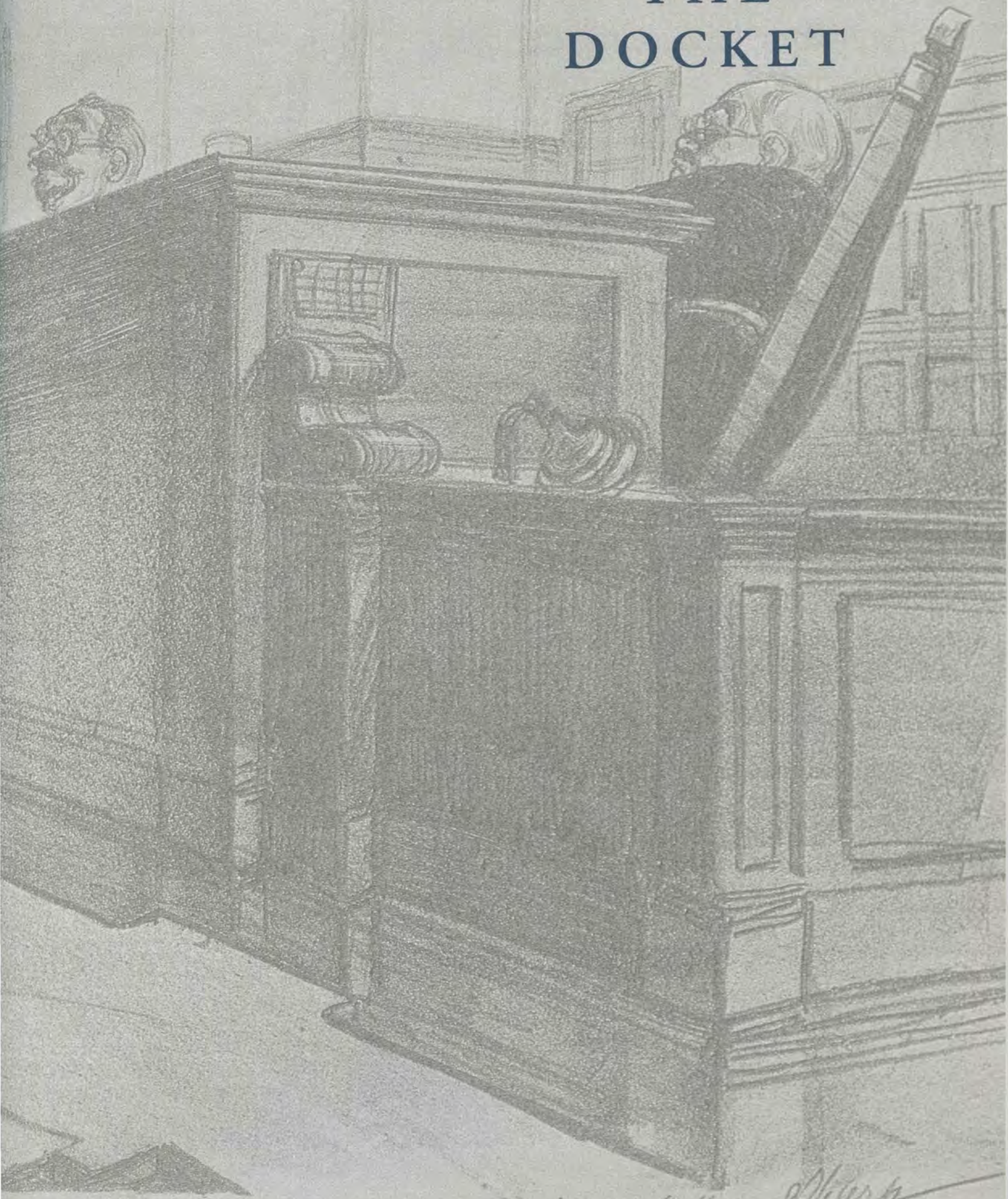
While luncheons and seminars provided forums where law students could interact with prominent attor-

neys, the highlight of the convention was the closing awards banquet. Justice Bruce McM. Wright of the New York Supreme Court was the keynote speaker. Through poetry and personal anecdotes, he gave his impressions of the American judicial system.

The Duke BLSA chapter thanks the Law School administration, University President H. Keith H. Brodie, BLSA alumni, several corporations, local businesses and area attorneys for helping to make this Regional Convention such a success.

*M. Monique Garris '92 &
Avis M. Kinard '93*

THE DOCKET



William Sharp

Academic Lawyering: Choosing Classroom Over Courtroom

Most graduating law students are happy to be leaving law school. After three years spent analyzing cases that have already been decided and cramming for exams full of hypotheticals, most Duke Law graduates are only too glad to put their hard-earned skills to work in the “real world” of legal practice. What is it, then, that has enticed some of these practitioners back to academia? What rewards (and costs) have accompanied this return? We put these questions to several of the approximately 175 Duke Law alumni currently pursuing careers in teaching or educational administration. Their answers were as varied as their interests; yet within this variety, common themes emerged.

Virtually everyone with whom we spoke noted the importance of significant legal experience as a prerequisite for teaching. Perhaps highest on the list of benefits associated with academic careers was intellectual freedom, the liberty to pursue issues of personal interest. A number spoke of the entrepreneurial challenges and opportunities open to the enterprising academic, including consultation on appellate cases and professional collaborations. Still others mentioned the benefit of semesters spent on leave teaching or researching at other universities in the United States and abroad. Some pointed to flexibility of working conditions as a major advantage of academic law. And almost universally, the alumni interviewed cited the vitality of their Law School experience at Duke as a major factor in their decision to teach.

Moving into the Classroom

While Linda Malone '78, a chaired professor at William & Mary's Marshall-Wythe School of Law, claims

not to have gone to law school specifically intending to become a law professor, she does concede that “it was always something that was in the back of my mind.” Following graduation, Malone went directly into private practice, first in Atlanta, and then in Chicago. After three years, she was ready to make a move into teaching. To provide a good foundation for the transition, she also spent a year clerking for the Honorable Wilbur Pell of the U.S. Court of Appeals.

Malone's appointment at Marshall-Wythe permits her to combine diverse, but related, interests in environmental and international law. She has written on human rights in the occupied territories of Israel, examined the question of damage recovery after the Chernobyl nuclear plant accident, and published two books on environmental issues. In June of this year, she was an official delegate to the Earth Summit in Rio de Janeiro, representing the London-based Center for International Environmental Law.



Linda Malone '78

In addition to her research and teaching, Malone has been recently charged with establishing and directing an LL.M. program for foreign students. She took advantage of this past semester spent visiting at Duke to learn from colleagues involved in the Law School's LL.M. program. “It was great to be able to draw on the experience of people who have been doing this sort of thing for more than ten years.” Malone sees broader advantages in “academic visiting,” a common practice among law professors. “Visiting at another law school is always beneficial. It gives you a new perspective on your home institution, providing new ideas and the comfort that many of the problems are the same everywhere.”

Rodney Smolla '78, Arthur B. Hanson Professor at Marshall-Wythe, like his wife and classmate Linda Malone, came to law teaching via a judicial clerkship and a stint as a litigator in a large Chicago law firm. A specialist in constitutional law, Smolla directs Marshall-Wythe's Institute of Bill of Rights Law and has a particular interest in first amendment issues. This year, for example, he published a book entitled *Free Speech in an Open Society*. Smolla also has the distinction—rare if not unique among Duke Law alumni—of being a published playwright. This year, at the urging of a New York producer, he adapted his book on the libel suit pitting former *Hustler Magazine* editor Larry Flynt against evangelist Jerry Falwell for the stage.

For Smolla, the breadth of opportunities offered by academic law has been a major attraction. He enjoys the freedom to take on special projects, including consulting on first amendment litigation for civil liberties orga-



Rodney Smolla '78

nizations. Recently, he worked with the ACLU on a successful challenge to the confidentiality provision of the state's judicial ethics board. Smolla has also been able to explore different fields of law through his teaching, and he estimates that he has taught at least fourteen different subjects, from remedies to jurisprudence.

Like Linda Malone, Smolla values the opportunity that legal academics have to visit at other law schools. He used his time at Duke this spring to renew ties with colleagues, both professional and personal. He quips, "You could say I took my case to a higher court,"—i.e. the basketball court where Duke Law Professor Jerome Culp gave him some pointers on his game.

Both Smolla and Malone concur that despite early apprehensions, being hired as a couple has not posed problems. "We initially worried about conflicts of interest or perceptions of favoritism, but it has turned out to be a total non issue," says Smolla. Smolla and Malone, the parents of a three-year-old, also agree that among dual-career possibilities open to lawyers, academic law is perhaps the most compatible with family life. According to

Smolla, "being a university professor is a wonderful way to have a family. Its flexibility allows you to control when and how you work."

Seasoned Practitioners Turned Law Teachers

George Frampton's '41 Duke Law experience contributed directly to his move into teaching. During the twelve years he practiced in New York before and after World War II, and in Washington as a wartime government agency attorney before entering the Army, Frampton stayed in close touch with one of his favorite professors, David Cavers. After Cavers left Duke to become an associate dean at Harvard Law School, he recruited Frampton to participate in a newly instituted teaching fellows program, designed to prepare a select group of top-flight practitioners for academic careers and to give first-year law students direct contact with active practitioners. From there, Frampton accepted a position at the University of Illinois College of Law, where he continues to teach alternative dispute resolution as an emeritus professor, having served as vice chancellor during the 1970–72 "days of rage," as well as a law faculty member, and having been a visiting law professor at New York University and at the University of California at Berkeley.

Like Linda Malone and Rod Smolla, Frampton has retained professional as well as personal ties to Duke. He co-authored a widely-accepted casebook, *Basic Business Associations*, with the late Dean Elvin R. (Jack) Latty, and is currently affiliated with Duke's Private Adjudication Center through his activities in alternative dispute resolution. Frampton also does arbitration for several organizations, including the New York Stock Exchange, the American Arbitration Association, the National Association of Securities Dealers, and the National Futures Association.

Over the course of his career, Frampton has witnessed some significant changes in legal education. He has welcomed the growing diversity of law school populations, noting that forty-seven percent of those recently admitted at Illinois are female. Some of the changes in law schooling, Frampton observes, reflect changes in law practice. "Law firms have become more fluid, more volatile. It used to be that lawyers stayed with one firm; today more lawyers change firms, and more firms break up." Frampton also notes the growing role of placement. "It used to be that law schools didn't assume any responsibility for finding jobs for graduates; now placement has become a major school function not only for law students but also for alumni."



Nancy Russell Shaw '73

Nancy Russell Shaw '73, who has just completed her second year teaching trusts and estates as a Senior Lecturing Fellow at Duke, also came to law teaching in mid-career. But for Shaw, unlike Frampton and the majority of legal academics, entering teaching did not mean leaving practice. As counsel to the North Carolina firm of Poyner & Spruill, Shaw maintains offices in both Raleigh and Charlotte. Asked how she juggles two careers, Shaw

points to the support of her colleagues at Poyner & Spruill, “a wonderful group of junior partners, associates and paralegals.”

Like Linda Malone, Shaw did not enter law school with a specialty in mind, but soon after she entered private practice, estate planning became “her field.” According to Shaw, trusts and estates “is an area of the law that is full of drama, while at the same time, as a lawyer you get a lot of human contact and are able to help people directly.” This experience in the trenches has enlivened her classes; even the most jaded of upperclass students have been stimulated by her combination of “war stories,” humor and practical hints for dealing with clients and avoiding malpractice (the “M” word as she calls it). Shaw believes not only that practice has contributed to her teaching, but that the reverse is also true. “As a practitioner, I’ve been enriched by teaching—it keeps me intellectually engaged.”

Shaw unabashedly admits to loving Duke, teaching, and the law—though not necessarily in that order. She finds working with Duke students extremely rewarding. “They are a joy to teach, so intelligent and enthusiastic.” Shaw also shares Linda Malone’s positive memories of her Duke Law classmates and values her ongoing connections with them, many of whom now occupy prominent legal and public positions. Counted among her classmates for example, are Duke’s current Dean, Pamela Gann; Dan Blue, Speaker of the North Carolina House of Representatives; and Ken Starr, Solicitor General of the United States.

Like Nancy Shaw, **William H. Adams, III ’50**, a faculty member at George Mason University School of Law, is quite new to law teaching. After receiving both an A.B. and LL.B. from Duke, Adams embarked on a distinguished career in private practice that earned him a listing in *Best Lawyers in America*. During his career, Adams

served as outside general counsel for Barnett Banks, Florida’s largest bank holding company, and the Florida Medical Association. He also served as outside regulatory counsel in Florida for Southern Bell Telephone and Telegraph. When he accepted a faculty position at GMU School of Law in 1990, Adams was a senior partner of Mahoney, Adams, Milam, Surface, and Grimsley in Jacksonville.



William H. Adams, III '50

The breadth of Adams’ legal experience gives him a unique perspective on legal education. This perspective is conditioned by his longstanding commitment to professional responsibility and ethics. To his law teaching, Adams brings a strong interest in philanthropy. He is, for example, a founding member and former chairman of Associated Marine Institutes, cited by the National Council of Juvenile Judges as the most innovative and effective juvenile rehabilitation organization of its kind in the nation. According to Adams, the legal profession has a “great public responsibility to keep society on as near a civilized level as we can.”

At GMU, Adams’ major responsibility is coordinating the law school’s banking track. However, like many legal academics, his interests are broader than a single specialty. One of his latest projects is an examination of how criminal law is used to enforce economic regulations. He hopes to provide

guidelines for distinguishing between criminal conduct and the more innocent misinterpretation that results from the overwhelming complexity of current regulatory law.

Adams credits his Duke Law education with forming his attitudes about legal pedagogy. He believes “strongly in case analysis, the kind I learned at Duke before 1950.” For Adams, case analysis involves a solid grasp of facts, procedures, and holdings, as well as the ability to put cases together creatively to discern larger principles. According to Adams, law professors should not presume to take full responsibility for their students’ legal education. “Law school simply gets you ready to be a lawyer; the honing of skills happens through law practice.” He also cautions that legal education not be-

come too abstract, urging that legal curricula be designed with attention to achieving a balance between theory and practice.

Teaching in North Carolina

Allyson K. Duncan ’75 is one of a number of Duke Law alumni who are teaching in North Carolina law schools. She is also one of a growing number of legal academics who combine teaching with judicial and administrative careers. Currently on a two-year leave of absence from North Carolina Central University School of Law, Duncan is serving as a commissioner at the North Carolina Utilities Commission. She has also completed a recent term as a judge on the North Carolina Court of Appeals.

Duncan can trace her interest in law teaching back virtually to infancy. “My mother taught at NCCU; I remember crawling around the moot courtroom and having law students as

babysitters.” But like most law professors, Duncan did not go directly from law school into teaching. After Duke, she clerked on the District of Columbia Court of Appeals and from there accepted a legal position with the Equal Opportunity Commission. Ironically, it was Duncan’s success there that led her into teaching. “As is typical in government, with promotions I got farther and farther away from the actual practice of law.” By the time she left the Commission, she had assumed responsibility for a staff of eighty and spent most of her time handling personnel rather than legal issues. An offer to teach promised to bring a return to the front line of legal practice.



Allyson K. Duncan '75

Duncan acknowledges that her first few years of teaching were incredibly intense and demanding, and claims “never to have worked so hard in my life.” She has, however, found her hard work amply re-paid by the responsiveness of her students and she finds the variety of her students at NCCU particularly rewarding. In the same classroom it is not unusual to find a scientist who graduated from MIT sitting next to a pig farmer who delivered her

own children. “I have enjoyed teaching in a law school like NCCU that has so much diversity,” says Duncan. “I feel that I am perhaps more important in the lives of my students than I would be in a more homogeneous, or elite environment.”

Duncan has also benefitted from the chance to become involved in only those cases that have interested her. She points out that, unlike in private practice, in law teaching “your overhead is covered and this gives you great freedom.” Among the research interests Duncan has pursued is workplace safety, and particularly the question of how the workplace must adapt to the increasing presence of women. Among the issues she has examined is the increased risk of miscarriage apparently caused by prolonged exposure to computer monitors.

In contrast to Allyson Duncan and Linda Malone who entered law teaching by design, **Carol Boyles Anderson '80** claims to have “just sort of fallen into it.” Upon graduating from Duke, Anderson accepted a job as a prosecutor with the district attorney’s office in Winston-Salem, North Carolina. With several years of trial experience under her belt, Anderson was ready to move on to something else. As she puts it, “I think every prosecutor has a limited life span—there’s only so much crime and grime you can stand in a lifetime.”

Yet, it was not simply avoiding a negative that impelled Anderson to accept a teaching position. As a prosecutor, she supervised Wake Forest law students doing clinical practice. This contact with students, says Anderson, put her in a teaching role, a role which she relished. Therefore, when a faculty position came open at Wake Forest, she had few reservations about taking it.

As a clinical professor at Wake Forest, Anderson teaches litigation and supervises the law school’s judicial extern program. She also coaches Wake Forest’s trial team, a team that has finished in the top eight out of 220 law

schools nationally for the past four years. Anderson’s early enthusiasm for teaching has not waned and she describes herself as “in the right niche for my interests. I wouldn’t have wanted to teach something like civil procedure.” Anderson especially values the interactivity of her classes, in which “students have to perform all the time and I get to watch them grow and change, not just see results in a blue book at the end of the course.”

While she agrees with Allyson Duncan that law teaching is not less work than practice, Anderson cites its flexibility as a major benefit. As the parent of a one-year-old, she finds law teaching “a very nice fit with motherhood, a way to pursue an interest in litigation without having to be killed by it.”

While most law teachers come to law first and teaching second, **John M. Conley '77**, Ivey Research Professor at the University of North Carolina School of Law, did just the reverse. Conley first came to Duke in 1972 as a doctoral student in anthropology, but soon found himself drawn to fix his anthropological lens on the American legal system. Thus, when his dis-



John M. Conley '77

sertation advisor departed for New York University, instead of accompanying him as would have been customary, Conley enrolled in Duke Law School, creating his own ad hoc joint-degree program and earning both J.D. and Ph.D. degrees.

After six years spent as a litigator, Conley decided it was time to return to academe. "I knew if I stayed in practice any longer, I'd be making too much money to just walk away from it—it's also true that the academic world may become suspicious if you seem too contaminated by the real world." This decision led Conley to accept a position at Chapel Hill. While UNC is Conley's primary affiliation, he also holds an adjunct appointment in Duke's Department of Cultural Anthropology.

Several of the alumni interviewed identified professional collaborations as an occasional side benefit of academic law. For Conley, however, such a partnership has been a central and enduring part of his career. In the mid-70s, Conley forged a research partnership with Duke anthropology professor William "Mack" O'Barr that is still going strong. In their first collaborative study, Conley and O'Barr identified characteristics of "powerless speech," common in poor rural whites, urban blacks, and non-professional women. According to Conley, powerless language reflects uncertainty, deference, and lack of authority on the part of the speaker, containing frequent use of phrases like "sort of," preference for inquisitive intonation, and a general impreciseness about details. Not surprisingly, the study confirmed that jurors take the testimony of "powerless speakers" less seriously than that of their more "powerful speaking" counterparts.

In 1990, Conley and O'Barr jointly published a book based on a study of witness testimonies in small claims court. Small claims court was chosen because it provided a forum in which witnesses and litigants are allowed to tell their stories, unimpeded

by the controls imposed by lawyers and judges when the stakes are greater.

Conley also notes that the study provided interesting insights into the jurisprudence of lay people. "In contrast to legal professionals who analyze legal problems in terms of rules, remedies and rights, lay people see these issues in broader social terms." Conley and O'Barr have recently turned their attention to speech in a radically different realm, the world of Wall Street investors.

Anne M. Dellinger '74 also teaches law at the University of North Carolina. But unlike John Conley, her appointment is in the University's Institute of Government. The Institute was created in 1931 to help state and local governments in North Carolina solve problems such as how to obtain effective and fair administration of criminal law, provide sound and honest financing of government, and deliver efficient and economical governmental services. The Institute provides training programs for local and state officials, writes and distributes publications that serve as classroom texts and office reference works, responds to officials' requests for advice and information on legal and administrative issues, provides professional services to the General Assembly, and responds to citizens' requests for information.

Dellinger, who became sold on the Institute during a summer clerkship, describes her work as "halfway between law practice and law teaching." Though she offers a seminar in health law at the UNC Law School, the majority of her students are not aspiring lawyers, but people holding jobs in state or local government. She values the opportunity "to think, write, and teach about the actual problems of people who are trying to function in state or local government." Dellinger is also the editor and author of several chapters in a treatise, *Health Care Facilities Law*, published by Little Brown in 1990.

Right now, Dellinger is at work on a particularly urgent and all too actual problem. According to state health records, last year in North Carolina, 800 girls under the age of fifteen became pregnant. Dellinger is currently considering the legal ramifications of this startling statistic, including whether or not these young girls should have the right to determine the outcomes of their pregnancies.

Combining Government Service and Law Teaching

Like Anne Dellinger, John Norton Moore '62 has pursued a career that allows him to combine interests in law and government. For Moore, academic law has been fertile soil for his entrepreneurial energies, which have been directed at founding the relatively new field of national security law. Moore, who is the Walter L. Brown Professor of Law at the University of Virginia School of Law and Director of the Graduate Law Program, also directs the University's Center for National Security Law and wrote the first comprehensive casebook in this now widely accepted discipline.

Moore is unusual among Duke Law alumni in not having practiced before beginning his teaching career. Yet Moore brought to his first law teaching position at Virginia an impressive breadth of legal training. After receiving an LL.B. from Duke, he was a fellow at the University of California Legal Studies Program, earned an LL.M. at the University of Illinois and completed a fellowship at Yale Law School.

For two decades, Moore has combined scholarly work with public service, counting himself "very fortunate in having the opportunity to go back and forth between an academic environment and government." Among his numerous public accomplishments, Moore is perhaps most proud of having established and directed the United States Institute for Peace, a nonpartisan



John Norton Moore '62

and independent federal agency devoted to promoting international peace through education and research. Moore also served, among five presidential appointments, as United States Ambassador to the United Nations Conference on the Law of the Sea and as chairman of the National Security Council Inter-agency Task Force on the Law of the Sea. During the Gulf Crisis, Moore served as legal advisor to the Kuwaiti Ambassador and in 1990 he co-chaired, with the U.S. Deputy Attorney General, joint U.S.-U.S.S.R. talks on the rule of law. He has also been a consultant to the Arms Control and Disarmament Agency and the President's Intelligence Oversight Board and has served on the legal team for the United States in two cases before the International Court of Justice.

A Consummate Law School C.E.O.

While most legal academics shoulder some administrative responsibility, Frank T. Read '63 has made administration a central focus of his career. With some wryness, he notes his distinction as "the only guy in the country who has done four deanships in a row." Currently in his fourth year as dean at

the University of California Hastings College of Law, Read has also been at the helm of the law schools of the University of Florida, Indiana University, and the University of Tulsa.

Like George Frampton, Read attributes his choice of career to the influence of a Duke Law professor. During five years of private practice in New York City, Read kept in close contact with Paul Hardin, III '54, "my old mentor." When Hardin left Duke to accept the presidency of Wofford College, he recommended Read to fill his place at Duke. From the very start, Read—hired as both an assistant professor and an assistant dean—combined teaching, scholarship and administration.

As an associate dean under Ken Pye, Read recalls a true baptism by fire. Five months from his tenure vote and a week prior to the Kent State massacre, Read found himself temporarily in charge of the Law School when Pye became University Chancellor. As student picketers surrounded the Law School demanding that students be released to campaign against the Vietnam War and that Richard Nixon's portrait be removed from the building, Read was grateful for the support and counsel of the senior faculty, particularly Hodge O'Neal, Mel Shimm, and Arthur Larson. After this "heavy bout of administration," Read welcomed the short respite provided by a Ford Foundation grant that culminated in a book on the desegregation of the deep south. "After Duke, I thought I'd never dean again," said Read, who nonetheless in 1974 was wooed by the University of Tulsa into taking the first of his deanships. In each of these deanships, Read has made a significant impact. Among his accomplishments: raising capital funds and overseeing major building projects, increasing the size and calibre of law faculties, enriching and broadening the curriculum, and establishing substantial scholarship endowments.

What does it take to weather the pressures of deanship, year after year? According to Read, successful and satisfied deans are comfortable with power sharing. "You can't be intimidated by a job that gives you all the responsibility but no power." Read compares effective deans to effective umpires. "If the umpire is doing his job well, you remember a good game, but don't remember him. Good deans are also somewhat invisible—what people see is a law school humming along, with money and resources coming in." Read also believes the desire to serve is crucial. "You can't place too much value on your own financial and personal well being." Finally, Read believes that deans "should not overstay their welcome.

Like an hourglass, every deanship has a limited time." Although deaning has been "a lot of fun," Read looks forward to returning to full-time teaching and scholarship—but won't say when.

These academic alumni stressed the many positive aspects of their chosen careers. What of the "opportunity cost" involved in leaving practice for teaching? While Allyson Duncan did note the temporary shock of adjusting to a lower salary and John Conley mentioned salary differentials between practice and teaching as a reason for changing course earlier rather than later in his career, foregone income did not emerge as a major issue. Rodney Smolla speaks for many who have chosen academic law when he says, "the quality of life law teaching provides is incredible. I wouldn't trade it for three or four times the salary."

Lucy Haagen

Tom Karas '59

For the Defense

In Arizona nature has offered some of its most spectacular flourishes, from saguaro-studded deserts to the Grand Canyon; and in its public life, from the ill-fated reign of Evan Mecham to Azscam, the state on occasion has proven equally colorful. In such a setting it is not surprising to find a vivid personality like Tom Karas, a 1959 graduate of Duke Law School.

Karas' fierce independence and passion for upholding the constitutional rights of defendants in criminal cases have led him into the rather unusual (for a Duke Law graduate) status of sole practitioner and criminal defense lawyer. As Dean Pamela Gann points out, Duke primarily educates its graduates for larger institutional practice in major metropolitan areas. On the other hand, she notes that Duke believes in a liberal arts legal education so graduates can succeed in "anything they want to do." Karas agrees that his experience at Duke has proven invaluable in his area of practice. "The training and discipline at Duke really prepared me," he says.

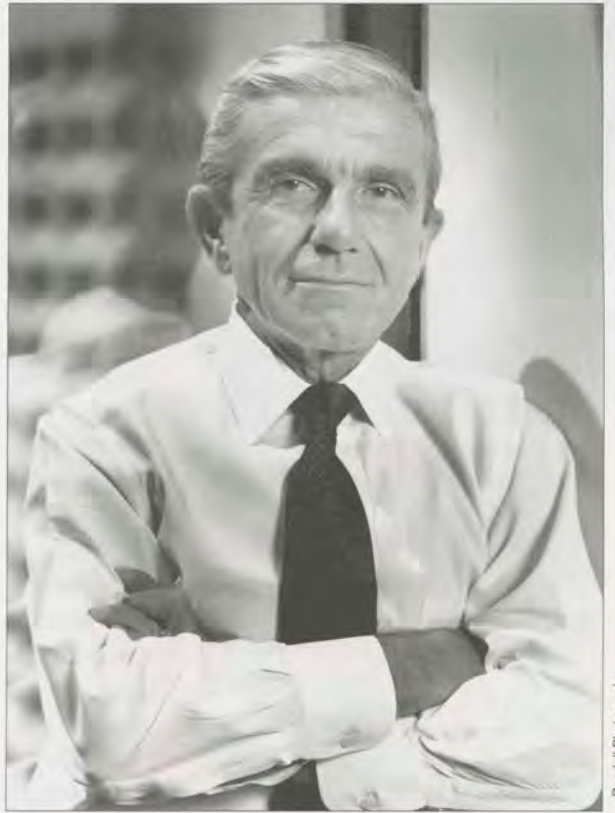
After graduating from the Law School, Karas' first five years were

"I have never worked with anyone who was as exacting and who demanded such high standards. He was very, very zealous in the representation of all of our clients. He literally kept a personal tab on every file."

spent as a prosecutor, first as a Maricopa County Attorney and then as Assistant United States Attorney, Chief of the Criminal Division for the District of Arizona. Then, in 1965, Karas was tapped to run the first Public Defender Pilot Program in the United States. On completion of the pilot, he became the first U.S. public defender, and upon entering private practice in 1976 criminal defense became his life work.

The greatest challenge of the pilot public defender's program was to establish the reputation of the office, remembers Karas. "A major goal of the program was to provide quality representation to indigents charged with federal crimes. We did that," he says.

In order to establish the seriousness of the public defender's office, Karas developed rigorous policies. Arizona State Appeals Court Judge Thomas C. Kleinschmidt '65, who worked for Karas in the public defender's office, says of his old boss, "I have never worked with anyone who was as exacting and who demanded such high standards. He was very, very zealous in the representation of all of our clients. He literally kept a personal tab on every file." Kleinschmidt recalls that Karas required "same day" response to clients



Tom Karas '59

Rendall Photography

calling from jail for representation. Karas also instituted a policy of not representing anybody who wanted to turn informant. Says Kleinschmidt, "Karas thought, and I think he is absolutely right, that [representing informants] destroyed the confidence of defendants in general in the defender's office." Of the some 3,000 cases handled by the public defender's office in the years Kleinschmidt worked with Karas, the judge recalls only two complaints regarding incompetence of counsel, a remarkable record.

During his years as public defender, Karas began to establish a reputation for the original insights that are

a hallmark of his practice. He and Kleinschmidt worked together on *United States v. Cleveland*, 503 F.2d 1067 (9th Cir. 1975), a landmark case followed by several others that resulted in the rewriting of the United States Code regarding major crimes such as murder and aggravated assault. The net effect of several separate statutory provisions regarding major crimes committed on reservations was resulting in disparate punishments for Native Americans and non-Native Americans.

in civil First Amendment work. "The 'unconstitutionally vague' doctrine historically had been viewed as separate—it had not been dealt with in a First Amendment-freedom of speech setting," says Michael Benchoff, a Karas colleague who has practiced law for thirty years and is a criminal lawyer with Arizona's largest law firm.

The case was considered extremely difficult, factually. (Steiger had been a top aide to impeached Arizona governor Evan Mecham, and was convicted

Karas' client under the Hazardous Waste Management Act, using as evidence a secretly-obtained soil report prepared by a consulting firm employed by the defendant. The report had been prepared upon advice of counsel. Karas successfully argued that the consulting firm was part of defense counsel's "investigative staff," and that its report met all the tests of "work product."

Says Benchoff, "The *Excel* case is an extraordinary achievement. It reiterated the elevated role that privileges still play. It essentially says that if you're going to violate a recognized, traditional, valued privilege, such as attorney-client or work product, then that in and of itself is a sufficient affront to the system and justice that we're going to make you start all over again, without regard to the weight and wealth of the other evidence you may have. When people speak about privileges in seminars, all the speakers—and they're usually civil practitioners—hit on *Excel*."

Karas is known for his direct, forceful courtroom style and razor-sharp cross examinations. Kleinschmidt recalls a murder case in which Karas, in a breathtaking turn of the tables, proved through the government's chief witness that the witness, rather than the defendant, had committed the crime. "The judge told the government that he was going to dismiss the case, as I remember," says Kleinschmidt, "and he had to stop the trial and warn the witness that he was incriminating himself."

Karas notes that criminal defense practice has broadened dramatically since he began his practice, particularly in the last decade. The change, he says, is due in large part to the expansion of criminal work in large law firms, as economic and regulatory issues have increasingly come before the courts. Now, he says, "several large law firms in the city have employed highly-skilled criminal defense lawyers to oversee

As a highly respected sole practitioner—he is acknowledged as one of the leading criminal defense lawyers in Arizona—Karas enjoys the advantage of being able to take on a small, hand-picked caseload.

"It was a complicated statute," recalls Kleinschmidt. "Cleveland was my client, but Karas was the one who discovered this [the difference in punishments]. He's the best I've known at analyzing statutes."

As a highly respected sole practitioner—he is acknowledged as one of the leading criminal defense lawyers in Arizona—Karas enjoys the advantage of being able to take on a small, hand-picked caseload. Intense and inventive in his approach, he expends on each case the care of a jeweler shaping a fine stone, frequently logging hundreds of uncompensated hours honing particularly productive angles. The results often are precedent-setting, both in the criminal and civil arenas.

In *Arizona v. Steiger*, 781 P.2d 616 (Ariz. Ct. App. 1989), for example, Karas successfully overturned on appeal the defendant's extortion conviction using a unique combination of First Amendment free speech and unconstitutional vagueness arguments that promise to have further application

of extortion for threatening to remove a political appointee to the Arizona parole board if he did not vote according to the governor's wishes). Karas argued on Steiger's behalf that the language of Arizona's "intimidation statute," under which Steiger had been indicted, was not only unconstitutionally vague with respect to Steiger, but that it also jeopardized the First Amendment rights of others, as it failed to provide specific guidance to those required to issue direction to others.

In another case that has attracted national attention, *Arizona v. Excel Industries*, 777 P.2d 686 (Ariz. 1989), Karas successfully blocked the state's appeal to overturn a trial court's finding that evidence used to charge his client had been improperly obtained. At issue was the protection from discovery of defense counsel's work product—an issue with ramifications so broad that amicus briefs were filed by sources as diverse as trade associations, corporations and civil defense law firms. In that case, a state grand jury indicted

and defend corporate white-collar and environmental investigations and prosecutions.”

Outside his practice, Karas has been a determined advocate of defendants’ rights. He sat on the Criminal Justice Section of the American Bar Association for eight years, during which he became chairman. During his tenure, the Section approved and recommended rigorous standards governing grand jury proceedings. Those standards were adopted by the American Bar Association. Karas notes, “A prosecutor before the grand jury wields tremendous power and must be checked because the proceedings are secret and there is no defense lawyer or judge to monitor him. The standards ensure that proceedings behind closed doors better comport with due process and fairness.”

Karas was the first criminal defense lawyer to lead the Arizona State Bar. Despite the obvious difficulties such a post imposed on a sole practitioner, Karas took on the job “because I felt the membership should be more involved in the process, and I wanted a criminal defense lawyer to lead the bar.”

As a member of the Advisory Committee on Federal Criminal Rules, Judicial Conference of the United States (U.S. Supreme Court), Karas has worked toward broadening disclosure in federal criminal cases. “Discovery in federal criminal cases is so limited

that it is extremely difficult to meet the charges and confront accusers,” Karas says. “We have made progress and hope to make more.”

Karas was the first criminal defense lawyer to lead the Arizona State Bar. Despite the obvious difficulties such a post imposed on a sole practitioner, Karas took on the job “because I felt the membership should be more involved in the process, and I wanted a criminal defense lawyer to lead the bar.” Says Kleinschmidt, “He was very well-liked as president of the state bar, and people had great confidence in him. And it was good for the criminal lawyers here in Arizona because even fairly sophisticated people often don’t understand the criminal bar and the importance of the role criminal defense lawyers play. To have someone from that field out in front was good for everybody.”

In addition to his other posts, Karas has served as chairman of the National College for Criminal Defense, and is a fellow of the prestigious American College of Trial Lawyers. The latter honor is accorded to fewer than one percent of trial lawyers in Canada and the United States, and in any state.

Over the years, Karas has maintained ties with former Duke associates such as Professor Robinson Everett. Everett recalls teaching Karas in his early classes on the old campus and more recently, served with Karas on the Rules Committee. Coincidentally, Everett also is serving on the Supreme Court-appointed committee to evaluate the public defender program set up by his former student a quarter of a century ago. Everett says he has been impressed, over the years, with Karas’

unique personality, combining a cheerful good nature in personal contacts with ardent independence in his practice. “He is always thinking on his own—not someone you can push around. He will make a thorough inquiry. I was impressed by the contribution he made on the work of the [Rules] Committee and I took great pride in his contributions.”

Karas has a son, Chris, 26, and a daughter, Teresa, 25. Both are graduates of Arizona State University. Chris now is in the home construction business, and Teresa is contemplating following in her father’s footsteps in going into law practice.

What advice would Karas give someone contemplating a career in criminal defense? “Commitment to the Bill of Rights. There is no room for discouragement because recent Supreme Court decisions undermine constitutional protections put in place during the sixties and seventies. The pendulum swings, yet my tools remain the Fourth, Fifth and Sixth amendments to the constitution. It requires one hundred percent commitment. There is nothing else I would rather do.”

Deborah M. Norman

FACULTY PROFILE

Walter E. Dellinger, III

'The Walter Dellinger Constitutional Law Show'

“As one of my colleagues says, being a law professor is a loop hole in life—and we ought to keep secret from people how much fun it is,” says professor of law Walter E. Dellinger, III in his typical North Carolina twang. If it is rare for a person to love his work so much, then Dellinger is a true exception. Very quotable and published everywhere from *The Washington Post* to *The Harvard Law Review* to *The New Republic*, he is an advocate who attacks everything he does with an intense passion. He has gone from being in the first generation of his family to attend college to the top of his profession.

Growing Up in North Carolina

Dellinger was born in Charlotte and at the age of twelve, his forty-year-old father died. In order to raise him and his two sisters, Dellinger's mother went to work as a sales clerk in a men's clothing store. He notes, “I think that undoubtedly made me more aware of the kinds of problems that women face in this culture.” His sister, Barbara, a senior in high school when their father died, attended UNC-Greensboro before pitching in to help support the family and now directs the HeadStart Program in Charlotte. His younger sister, Pamela, is an accountant in Charlotte.

Being an Irish-Catholic in Charlotte was a rarity at the time, and one of Dellinger's memories of his early years was having to leave his fifth grade class every Thursday during a bible class designed for Protestants, making him acutely aware of the stigmas that society places upon even small boys because of matters of religion, race, or gender.

“Dell,” as he was known in high school, first began to realize his interest in public issues while in high school. It was also at that time that “Dell” was first introduced to public speaking. He remembers “being almost booed off the stage at Boy's State for making a speech about prejudice.”

As the son of high school graduates, Dellinger entered a new world when he enrolled at the University of North Carolina at Chapel Hill in the late summer of 1959. “I think that Carolina in those days in some ways had a greater cross-section of the state than it does now—most of the people on my floor were kids who were first-generation college kids. Carolina, with low in-state tuition, was the one place I could go. My older sister and my mother helped me pay for it, and I worked in various jobs most of the time I was there. I was dormitory manager, a waiter, and ran the dry cleaning con-

cession in the dormitory, and finally wound up being a freshman advisor in my last year.”

Carolina also introduced Dellinger, who majored in political science, to the harsh social realities of being in the South in the 1960s. He says that “what was so wonderful about being at Carolina in the 60s was the social turmoil that was going on. It was probably more of a social experience than an intellectual experience. The sit-ins began in Greensboro in 1961 at North Carolina A&T, and I wound up on the picket line outside the Varsity Theater in Chapel Hill, which admitted only white patrons in those years. I think the process during my college years of coming to grips with the racial issue and segregation was a very formative experience for me, and that's probably what was most important about the time I spent at Chapel Hill.”



Walter E. Dellinger, III

M. J. Sharp

Changing Aspirations at Yale Law School

In the fall of 1963, Yale Law School was another different world for the young man from North Carolina. "On the first day of school, 165 students showed up, most of them committed to changing the world." (Among that year's third-year class were Gary Hart, Governor Jerry Brown, and Major League Baseball Commissioner Fay Vincent.) "Those who were confident saw themselves as senators, and those who were very confident thought of themselves as presidents," Dellinger told *The New York Times*. "And the shy ones made friends with the ones who were going to become presidents and would make them federal judges."

The boy who entered Yale Law School with aspirations of going back to North Carolina and becoming governor, came out a changed man, someone with a new love of the law. Dellinger recalls "I went off to Yale Law School thinking I would come back and go into politics, but in some ways Yale ruined me for politics because... I became so fascinated with the intellectual side of law that I really didn't want ever to do without it, and in that sense I think it shaped what I was going to do.... I thought it was wonderful and never wanted to be very far away from the intellectual side of the law after that experience."

While at Yale, Dellinger tried his hand at corporate law, spending the summer after his second year at the firm of Paul, Weiss, Rifkind, Wharton, & Garrison in New York City. "I felt a personal commitment not to go to any law firm that discriminated against Jewish applicants, which was still quite common... Paul, Weiss was also one of the few New York law firms that was basically oriented towards the Democratic party," he says.

These experiences made him feel a need to go back to the South. "I found

it stimulating, but didn't think that the life of New York lawyering was for me. Yale Law School in some ways made me recognize that I really was a Southerner. I never thought of myself as a Southerner, because... everybody that I knew or had ever known was a Southerner. Indeed, it was that feeling that made me think I wanted to go back to the South and work on problems of race, which lead me to go to Mississippi after graduating from law school."

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Ole Miss & The Supreme Court

Along with four of his Yale Law School classmates, Dellinger accepted a job as an associate professor of law at the University of Mississippi. "It was a strange and wonderful situation in which the majority of the faculty had graduated from Yale Law School in the preceding three or four years. The Ole Miss Law School had gotten a new dean who was committed to providing the lawyers to provide a black presence in the Mississippi bar, which had been almost entirely all white. It was challenging, fun, and sometimes difficult to be down in Mississippi when that was the front line. I was teaching political and civil rights at the University of

Mississippi Law School within two years of the battle over the admission of James Meredith to the University."

In his third year of law school, Dellinger had applied to be a clerk to Supreme Court Justice Hugo L. Black. Although he was not accepted, he re-applied during his second year in Mississippi and was accepted for the 1968-69 term. "I felt some kinship with Justice Black as a Southerner on the Court, and had long admired the courage of his First Amendment opinions in the 1950s," Dellinger states. "I think that the only year I found more exciting than the first year of law school—which was pure, unmitigated fun—was the year I was clerking. I was there during the last year that each Justice had only two law clerks, so the workload was substantial but it was really fun. Justice Black spent a lot of time with his clerks. I learned a great deal from him."

Dellinger recalls that "Justice Black always made the decision about how his opinions were going to come out, decided exactly what the opinions would say in the most important cases and in the ones he really cared about he did all the first drafts himself. He had a very strong intellect and a very well-developed approach to constitutional law, and he knew what he thought. He loved to argue about the cases and how they should be decided, and enjoyed having a law clerk disagree with him and argue with him, but in the end, he would always remind you that only one of you had been appointed by the president and confirmed by the Senate, and that he was the one who got to make the final decision. I did disagree some, and I used to stay up late at night writing memoranda trying to change his tentative position on cases. I assumed at the time that they were having some influence, but I laugh at that in retrospect. I think that I didn't land a lick on Justice Black's approach to the cases, but...every now

and then he'd add a small point to the argument he'd decided to make."

"It certainly was a year of intensely thinking about the law.... It was a very good sort of year-long continuing seminar. It was most challenging to work on an opinion when you don't agree with it—in some ways it is good training to do that. Whenever briefing and arguing a case, it is very important to think of and develop the best arguments for the other side, so you can anticipate them, and you have to train yourself to think hard about the best arguments in support of positions with which you do not agree."

But the main feature of Dellinger's teaching style is his humor. As The Raleigh News and Observer put it, "when he comes to the classroom, Dellinger doesn't just teach, he hosts the 'Walter Dellinger Constitutional Law Show.'"

Coming to Duke

Dellinger always knew that he wanted to return to North Carolina. When he was recruited to come to Duke in 1969 by then-dean of the Law School, Ken Pye (now president of Southern Methodist University), he seized the chance and has never left for a significant period of time. "By that time, I had decided that I really was interested in academic law. In retrospect, I think I would have been better served by having some years in law practice before going into teaching. I found that later when I took a year off (during 1980–81) and practiced law full-time that it was very beneficial to teaching and writing to have done that."

What is it about academic life which Dellinger loves so much? "I very much enjoy being part of the university community, and I love to get in on the edges of debates on literature, and economics, and political science

with university colleagues—I find that very stimulating. I think interacting with students is an aspect of the job that is generally very pleasant and often very stimulating, and I enjoy that aspect of it. It makes for a nice balance. I found that the year I spent at the National Humanities Center with a study and no duties and no classes to teach seemed very strange and isolated. I very much missed the human contact. I thought it was going to be ideal, but there was clearly something missing. I think that one of the advantages of teaching first-year law students is that you get some practice in trying to ex-

plain things to people who are not already experts. I find trying to explain legal issues to a wider audience to be very challenging, and I think that teaching first-year courses is a good experience in practicing that."

Dellinger has worn many hats since his arrival at Duke in 1969. He was associate dean from 1974 to 1975, acting dean from 1976 to 1978, and has taught classes ranging from first-year constitutional law and civil procedure to upperclass electives such as "The Summer of 1787" and a Supreme Court seminar. He has been a visiting professor at both Michigan Law School and the Southern California Law Center. No matter how many other things have taken his time, however, teaching has remained a constant.

Dellinger sports an informal style from his six-year-old Volkswagen convertible to a wardrobe that concentrates heavily on dark blue suits and very casual clothes. It is not unusual

for him to come into class in a pair of ripped jeans with a jacket and tie. But the main feature of Dellinger's teaching style is his humor. As *The Raleigh News and Observer* put it, "when he comes to the classroom, Dellinger doesn't just teach, he hosts the 'Walter Dellinger Constitutional Law Show.'" Whether joking about 'Saturday Night Live' or giving an impression of a Supreme Court oral argument, Dellinger always evokes humor from students as they learn the law. As Dellinger himself puts it, "good humor can sometimes be a useful tactic in dealing with very difficult and painful issues."

Todd Stafford '92 notes, "because of his style, which is casual, animated, and heavily reliant on humor, sometimes it seems like he's not as serious about something as he is. But he is the most difficult person to oppose because you want to like him. You know if you're going to beat him, you're going to have to beat him at his game, which is humor, and he's very eloquent to boot."

"For me, the insights that he's able to give us are things you can't find in a book. They're special to us," says Howard Rubin '94, who took Dellinger's constitutional law class this past spring. "A Dellinger course is great theater. It's theater in the sense that constitutional law has come to life, and it has substance and style. I think I've learned from him that there is more to the law school experience than black letter law."

Says student Rubin, "what excites me is that he is so impassioned about his work. You can tell that underlying what he does is an understanding of human rights. For all of the analytical processes of constitutional law, you always get the feeling that he's never losing sight of the fact that it all comes down to people's rights."

Working on the same faculty as William Van Alstyne has been what Dellinger calls "a great learning expe-

rience for me. Bill had been in law teaching for several years when I came to Duke. For years when we were on the same teaching schedule, we would talk about that day's classes every morning before class, and I found it a wonderful learning experience—being able to discuss issues with Van Alstyne is one of the things that really makes being at Duke valuable to me.”

In the Public Eye

Walter Dellinger is not the type to protest or get violently excited about such an emotional subject as abortion rights. Rather, he bases his arguments on a thorough analysis of the text of the Constitution. It is this level-headedness that prompted the National Abortion Rights Action League (NARAL) to name him co-chair of its National Commission on America Without Roe earlier this year.

But being Catholic (he was married in a Catholic church and both of his children were baptized in Catholic churches), the cause of abortion rights was not easy for Dellinger to join. As he tells it, “I have never thought that the question of whether *Roe v. Wade* was rightly decided was an easy question. That is a question that I have struggled with a great deal. I have wound up being an advocate on the question and resolved it to my own satisfaction. I guess the first time I did any serious work on reproductive rights issues was in early 1989. After President Bush won the 1988 election, it became clear that a point was going to come when *Roe v. Wade* was going to be seriously in jeopardy. So it really has only been for the past three and a half years that I have worked on this particular issue. I have spent a fair amount of time on it [recently] because the legal-political-congressional-social aspects of the issue are so complex—I found there are a great deal of demands for someone who has thought a lot about the issue. I look forward



Walter Dellinger teaches constitutional law.

News & Observer Publishing Co.

to the day when women have clearly established rights to make this decision and we can go on to other issues.”

“I think if we ever put the abortion issue behind us, I’d like to spend my time volunteering for the Children’s Defense Fund and to work on children’s issues...but it may be a long time. This is an issue that will never fully be resolved, but if we elected a pro-choice president, we would have a very good chance of securing national legislation by Congress, which would create a national statutory right for a woman to make this decision for herself and eliminate state restrictions. I would not be surprised to see both parties run pro-choice candidates in 1996. Working on the enactment by Congress and electing a president who will sign the Freedom of Choice Act is my present major professional goal.”

Dellinger had the uneasy role in 1987 of testifying against Judge Robert Bork, his former teacher of antitrust law at Yale, who as acting dean Dellinger had tried to recruit to join the Duke Law School faculty. Dellinger recalls, “I both advised and briefed members

of the Judiciary Committee during the Bork hearings and testified at the Bork confirmation hearings. My testimony was that I had been a student of Judge Bork’s and had learned a great deal from him and greatly admired his intellect, but I thought that the Senate should decline to confirm him. It was for a lot of reasons—it was appropriate that the president meet the Senate halfway on the ideology of nominees, which the president had not done with the nomination of Judge Bork.”

As for the more recent Souter hearings, Dellinger recalls that “I read all of Justice Souter’s opinions as a lower court judge and briefed and advised several Democratic members of the Senate on the Souter hearings—some of whom voted against confirming Judge Souter, and some of whom supported Judge Souter.”

In January of 1990, Dellinger successfully argued for the respondent in the Supreme Court case, *Wilder v. The Virginia Hospital Association*, 496 U.S. 498 (1990), in a decision that, in his words, “should greatly benefit the poor.” In a 5–4 decision, the Court

said that health care providers such as hospitals and nursing homes have the right to sue in federal court for higher payments of Medicaid.

Dellinger is typically low-key about this success, saying “I thoroughly enjoyed it. It was a very difficult case, but I was well prepared by my colleagues, Lawrence Baxter and Jefferson Powell, with whom I wrote the brief. It was a very active case—I believe there were more than forty questions asked in thirty minutes. The toughest questions were from White and Scalia—White’s questions were important—it was our speculation that our only chance to win was White casting a fifth vote in our favor, which he did. I had no idea that the case would be considered important enough to be page one, column one in *The New York Times* when I argued it.”

But others are not so reticent. For instance, Dawn Johnson, legal director for NARAL, said “I remember the [Supreme Court] clerks saying it was the best argument they’d heard all year. They were saying he did a brilliant job—and this was his first argument before the Court.”

Outside the Law

Dellinger and his wife, Anne Maxwell Dellinger, met while students at Carolina, and have been married twenty-seven years. She received her J.D. from Duke in 1974, and is a professor of public law at the Institute of Government at the University of North Carolina. They have two sons, Hampton and Andrew.

In some ways following in his father’s footsteps, older son Hampton is a rising third-year law student at Yale. But he has no desire to be a law professor. As Dellinger puts it, “Hampton is very much his own person and will do different kinds of things. I tried not to influence either of my sons in terms of what they wanted to do.”

Breaking the family mold is Andrew, who is the only member of the immediate family not in the legal profession. He is a senior at Prescott College in Arizona, and is interested in religion and philosophy and their relationship to the environment. His father says that at Prescott, “there is lot of involvement with the outdoors and experiential learning. I actually admire Andrew’s strength of character...to resist following the path of the law.”

A person who works seven days a week does not have much time outside the law and his family. But it is not unusual to see Dellinger jogging during lunchtime, and he also enjoys taking bike rides around the countryside. Hobbies? “I like watching politics and watching sports, but in presidential election years I don’t have much time for being a basketball fan.”

Dellinger’s dream is simple: “I would love to be a successful rock and roll singer. It seems less and less plausible as my life goes on that I will actually achieve this goal.” But he still finds time to listen to opera and 60s rock and roll. As he puts it, “I can’t run without the stimulus of the rock and roll beat, but I find myself gravitating to a slower tempo—I used to run to Little Richard and now I run to the Platters.”

But besides these few diversions, the law and his family consume his life. “I really love law so much that I tend to read the *Harvard Law Review* while on vacation. I have very little separation between work and the rest of life—and that is both good and bad. My work is my life, and it is what I enjoy doing. I tend to work all the time, which is wonderful in that my job is something that is most often what I would be doing if I could be doing anything I wanted to.”

What Next?

Dellinger says that “my basic plan for the future is that I would like to do

some major scholarly work as the primary commitment of my time. I have been talking to a number of publishers about a book on constitutional theory. I would like to continue to be involved, with somewhat less of my time, in public issues.”

But there may be much more on the horizon. The November issue of *The American Lawyer* listed Dellinger as one of their “liberal stars” among candidates for the Supreme Court, writing that he is “a respected, judicious moderate constitutional scholar and champion of abortion rights who is well connected in Democratic circles and has made fewer enemies than [Harvard law professor Laurence] Tribe.”

Dellinger is hesitant in talking about a future role in government or as a Supreme Court justice, saying “there are thousands of people in this country who would be good Supreme Court justices. Arranging your life to be on the Supreme Court makes about as much sense as trying to commit suicide by standing on the top of a hill and trying to get hit by lightning. I suppose that at some point in my life I would think about being a judge. It would be fun to be involved in law on behalf of the government in some capacity, and I would consider it, but I am really happy with what I’m doing.”

What are Dellinger’s plans for the long term? He says, “I’ve never actually planned very well for the future, I’ve just sort of stumbled along. I didn’t know I wanted to go to law school until my senior year in college. I didn’t know that when I started teaching at Ole Miss that I would wind up being a law teacher.” Not bad for someone who has just stumbled along. We will all be watching to see what he stumbles into next.

Douglas Neu '94

Transnational Law Research: A Guide for Attorneys*

by Claire M. Germain

Thirty years ago, a foreign lawyer coming to the United States was in for a surprise. This person, not at all a fictitious entity as the reviewer is ready to certify, was looking to the United States with great expectations. More than twenty years earlier, America, voluntarily or forcibly, had abandoned its isolationist policy by entering World War II. And this post-war period, unlike that after World War I, saw no withdrawal of the United States from world politics. Militarily and politically, it became one of the two superpowers and the leader of what was then called, proudly if somewhat naively, the Free World. But more than that had happened. American ideas and products had become greatly appreciated, even idolized, as an expression of a post-war lifestyle in many

countries within the American domain reaching from Japan to West Germany.

So our lawyer of 1962 reaching the shores of this country expected to encounter a legal community vigorously inspired by the greatness of America's new role in the world. In this community practitioners and academics alike would be eager to learn as much as possible about legal, social, and economic conditions everywhere in the world, and at least in the countries within the American sphere of influence. Government agencies and the business world would seek the advice of experts on international law. Reform-minded people would promote comparative law studies in a never-ending search for the "best" solutions to society's problems in the "one world" that had finally arrived.

The Zeitgeist, however, of 1962 was not at all up to the task facing the United States as a world leader. People in general, and the large majority of lawyers in particular, showed very little interest in the world outside their own borders. Very few law schools devoted substantial resources to international and comparative law. With the exception of some law firms in metropolitan centers, the bar regarded these areas irrelevant to legal practice. Only occasionally would benefactors, most notably the Ford Foundation, support research projects involving international or comparative law. To the extent that these disciplines were flourishing at all, the sad truth is that America owed this largely to Hitler's madness which had driven many of the best legal academics and practitioners out of Germany, Austria, and some other countries. The majority of them had come to the United States.

Much has changed since the arrival in 1962 of this reviewer in the country of his dreams and disillusionment. The book under review and its author represent the changes most visibly. Claire Germain came to the United States in 1974 as a French lawyer who was also thoroughly familiar with the German language, culture, and law. In this country she obtained an M.C.L. degree from Louisiana State and an M.L.L. from the University of Denver. She joined the staff of the Duke Law Library in 1977, and became the associate director in 1984. Within a few years she has thus been phenomenally successful in her career.

Almost everybody on the faculty and many cohorts of students have greatly benefited from Germain's expertise as a librarian or, to put it more appropriately, as an information specialist in American law for students and guests from abroad, and in comparative and international law for everyone in need of information in these areas. In addition to rendering assistance in individual cases, she offers library and computer information to groups of users every year and teaches regular courses in legal research for international students as well as American students in the J.D./L.L.M. program at Duke.

All of this is an indication of the great significance attributed to international and comparative studies at Duke, but also at many American law schools today. Probably nobody at Duke or elsewhere is in doubt any longer about the important role of these subjects to people in the United States. A generation or two ago foreign lawyers working as law librarians in this country, such as Lily M. Roberts,



Duke University Photographers

Claire M. Germain is Senior Lecturer in Comparative Law and Associate Director of the Law Library. She teaches legal research and a seminar in civil law.

* Transnational Publishers, Inc., 1991.

Kate Wallach and Kurt Schwerin, found it much harder to get the recognition and support for their work that they deserved. Fortunately, things have greatly changed for the better.

After so much introduction and introspection we finally get to the book under review. However, actually everything said before was designed to provide the setting which demonstrates that this is the right book at the right time. American lawyers in their majority have finally come to understand that international and foreign law are of vital importance to many of their clients and also that the comparative method is an indispensable tool for law reformers and jurists. Yet very few lawyers here and abroad are sufficiently familiar with the ways and means of research in these areas. Given this handicap, attorneys cannot serve their clients adequately, law professors cannot teach, and students will not learn the way they should. Claire Germain's book provides badly needed assistance to all of them as well as to government officials, business people and everybody else coming in touch with problems of "transnational" law, a term Germain uses in the most comprehensive sense so as to denote everything in the law which is not exclusively of concern to one national legal system only.

Organizing and presenting the amorphous mass of topics and materials existing in this broadly defined realm of the law for the purpose of providing research guidance is a gigantic task. Being virtually without predecessor Germain solves this problem extremely well.

In the first chapter of her book she introduces the readers to procedural and practical issues of foreign and international law. To be sure, the information provided here relates to somewhat heterogeneous topics. But it makes eminently good sense from a practice-oriented perspective to proceed exactly as Germain does. The lawyer with a

transnational problem is most likely to encounter, first of all, the procedural issues for which this book provides detailed research guidance. And in many instances it will also be necessary or at least desirable for the American lawyer with a transnational problem to get to information about lawyers abroad as well as the national and international organizations of lawyers.

In the next two chapters, Germain supplies a wealth of information on primary and secondary sources of transnational law. Again the guidance she offers to the uninitiated as well as to the more experienced user of this publication will prove to be invaluable. And the organization of this information once more follows patterns of inquiry most likely to arise in actual practice rather than preconceived notions of legal theory. Still, even taking this approach, the job of putting all of this information and information about sources of information together in a somewhat manageable form must have been an arduous one. It is a job well done in this groundbreaking book.

Compared to amassing the materials in the preceding three chapters it must have been relatively easy to group the "subjects" in Chapter IV, the presently last and most voluminous part of the text. Most of these subjects are represented by subject-matter areas of the law. As of now they reach from "Air Law" to "Environmental Law." Along with such subject-matter topics there are sub-chapters dealing with international organizations, such as the Council of Europe and the European Community. The purist may criticize such logical inconsistencies which necessarily lead to some overlap and maybe even a little confusion. For instance, where does one look in a search for documents coming from the Council of Europe involving cultural property? (The answer is: under "Cultural Property": § 3.02 Council of Europe.) Yet the practically-minded user of the book

will be grateful to the author for sacrificing on all too rigid (French-style?) logic by including sub-chapters on international organizations whose role in transnational law is growing rapidly.

The user will also appreciate how the subjects are almost uniformly treated in each sub-chapter. Following some background information and an identification of current issues there are lists of textbooks and treatises "Where to Start," often with a brief characterization of their content. Next the reader is told "Where to Find Texts of Documents," which periodicals and organizations concern themselves with a certain area of transnational law, and where to go "For Further Reading." Finally, a list of bibliographies, research guides, and other research sources is provided. This organization of the materials and, even more importantly, the information itself supplied under each heading will be found extremely helpful. One can only hope that the parts of Chapter IV reaching from "Family Law" to "War" which at the time of publication were still "in preparation" will soon be added to this looseleaf work, as I am assured they will. Also the addition of Chapter V with research information on seventeen European countries would further enhance the already great utility of this admirable work. It is safe to predict that it will soon be found indispensable as a research guide by everyone with a problem in transnational law. Indeed, not only American users or those in other Common Law countries will greatly benefit from it.

In recognition of her outstanding accomplishments represented by the book under review, Claire Germain has received the 1992 Joseph L. Andrews Bibliographical Award from the American Association of Law Libraries.

*Reviewed by Herbert L. Bernstein,
Professor of Law*

Languages of Power: A Source Book of Early American Constitutional History*

by H. Jefferson Powell

Professor Jefferson Powell's new book, *Languages of Power: A Source Book of Early American Constitutional History*, is a marvelous candy-store overflowing with intellectual and historical treats for students of American constitutional history. The book is a rich and diverse compilation of speeches, articles, correspondence, legislative debates, legal briefs, judicial opinions, statutes, state constitutional provisions, and other sources drawn from the period surrounding and immediately following the creation of the United States Constitution.

Professor Powell has done a masterful job of selection and editing, and the book is anchored by his perceptive

and persuasive opening essay, setting forth the various themes that dominated constitutional argument during the formative years. What emerges is a portrait of public discourse about the meaning of the Constitution that is striking in its depth and sophistication.

In contemporary times, we debate the extent to which the "original intent" of the framers should be probative (or even dispositive) in interpreting the Constitution. The debate over the place of original intent is not, however, itself original—it began virtually the moment the Constitution was drafted. James Madison, for example, criticized President George Washington's 1796 message to the House of Representatives because it contained a reference to the intent of the Philadelphia convention's framers, arguing that it had been the state ratifying conventions that had turned the Philadelphia "draft of a plan, nothing but a dead letter" into living fundamental law. Judge Spencer Roane similarly argued, in a judicial opinion, that he had examined the journals of the convention that adopted the Virginia Declaration of Rights merely "as a matter of curiosity," for he deemed it right to reject such "extraneous information" in "forming my conclusions upon the constitution." Professor Powell thus concludes that no one "at that time regarded the records of a constitution's origins as the sole determinants of its meaning."

The competing roles of the respective branches of government in the process of constitutional interpretation were hotly contested in the early years. Henry Clay, for example, argued against the notion of "legislative precedent," in which weight is given to a legislature's own prior actions in assessing the constitutional legitimacy of new legislative

proposals. Clay maintained that "once substitute practice for principle, the expositions of the Constitution for the text of the Constitution, and in vain shall we look for the instrument in the instrument itself." Yet despite the elegance of Clay's assertion, Powell notes that on balance it did not prevail. Persons such as John C. Calhoun invoked the clever argument that legislative precedent could not substitute or supplant the meaning of constitutional provisions, but that such prior enactments did "prove the uniform sense of Congress and the country," and in that sense, "they furnished *better evidence* of the true interpretation of the Constitution than the most refined and subtle arguments."

Powell chronicles the intense debates over the relative authority and sovereignty of the federal government and the states, and the role of the federal judiciary as arbiter. These arguments concerning federalism and the judicial function were often highly nuanced. Thomas Jefferson, for example, did not frontally assault the notion of judicial review, he merely attempted to contain it. In a letter to Abigail Adams, he did not question the courts' "right to decide what laws are constitutional and what not," but only the broader claim of the courts that they could decide constitutional questions "not only for themselves in their own sphere of action but for the legislature and executive branch also in their own spheres."

Debates over federalism and individual rights were not distinct in early constitutional discourse, but intertwined. Assertions of states' rights were often articulated as vital to the preservation of civil liberties. Thus Thomas Jefferson turned to the states



Port Ferrell

Jefferson Powell has been professor of law and divinity at Duke University since 1989. At the Law School, he teaches contracts, constitutional law and constitutional history. For the 1991–92 academic year, he was visiting professor at the University of North Carolina at Chapel Hill School of Law.

* Carolina Academic Press, 1991.



for relief from the Alien and Sedition Acts. This has both irony and resonance from the perspective of modern times. On the one hand, under the typical patterns of modern politics we would normally not think of politicians asserting states' rights doctrines for the purposes of protecting freedom of speech; on the other hand, as the current Supreme Court has become increasingly conservative, there is a renewed interest in states as the forums for pressing claims for civil rights and civil liberties.

Jefferson would ultimately have his chance to "nullify" the Alien and Sedition Acts in quite a different way—by pardoning those prosecuted under them when he became President. Powell selects a wonderful passage from one of Jefferson's letters, in which Jefferson passionately explains:

I discharged every person under punishment or prosecution under the Sedition Law because I considered, and now consider, that

law to be a nullity, as absolute and as palpable as if Congress had ordered us to fall down and worship a golden image, and that it was as much my duty to arrest its execution in every state as it would have been to have rescued from the fiery furnace those who should have been cast into it for refusing to worship his image.

Powell warns that in examining the early American constitutional experience, we must be careful not to superimpose too much of our modern constitutional law terminology and conceptual framework on the discourse of the framers—and in that warning he is surely right. But in counterpoint, I was astounded by how astonishingly *modern* their thoughts often appeared. At a time when we debate, for example, the extent to which the press should expose the private lives of public officials, it is worth considering a passage from Alexander Hamilton, who was arguing in defense of the printer of the news-

paper *The Wasp*, who had been indicted in New York for libeling President Jefferson. Hamilton's court argument was widely circulated and read in pamphlet form; it was a ringing defense of freedom of the press. Hamilton included, however, the following observation:

Personal defects can be made public only to make a man disliked.... Still however it is a subject of enquiry. There may be a fair and honest exposure. But if he uses the weapon of truth wantonly; if for the purpose of disturbing the peace of families; if for relating that which does not appertain to official conduct, so far we say the doctrine of our opponents is correct....

These are only a few select examples of the many offerings in this volume. Anyone interested in American constitutional law and history will benefit from the many insights and lessons Professor Powell's book provides.



Reviewed by Rodney A. Smolla '78, Arthur B. Hanson Professor and Director of the Institute of the Bill of Rights, Marshall-Wythe School of Law, The College of William & Mary. Professor Smolla was visiting professor of law at Duke University for the spring semester of 1992.

Faculty News

In October 1991, **Professor George C. Christie** delivered one of the featured addresses at the *Congrès International Chaim Perelman* sponsored by the



Université Libre de Bruxelles and the Foundation Chaim Perelman. Scholars came from all over the world to present papers on the subject of informal methods of argumentation, that is all argumentation which does not fit into mathematical/deductive methods. In his paper entitled "The Universal Audience and the Law," Professor Christie continued his exploration of the characteristics of ideal audiences

and how the concept of an ideal audience shapes and affects the arguments made by judges and lawyers. His paper will be published in the proceedings of the *Congrès* and an off-shoot will be published in the *Revue du Centre International de Philosophie et de Théorie du Droit* edited in Paris and published in Athens.

Professor William Van Alstyne

received the Marshall-Wythe Medallion from the Marshall-Wythe Law School at the College of William & Mary during a ceremony in Williamsburg, Virginia in May. The Medallion



is presented rotationally on a three-year cycle, on nomination by the law faculty and with approval of the University President—one year to a member of the judiciary, the next to a member of the practicing bar, and the next to an academic honored for distinguished scholarship. The 1989 recipient was the Honorable Robert R. Merhige, Jr. of the United States District Court; the 1990 recipient was Mr. Julius Chambers, General Counsel of the NAACP Legal Defense Fund.

In introducing Professor Van Alstyne, **Rodney Smolla '78**, the Arthur Hanson Professor of Law at William & Mary, noted that Professor Van Alstyne "is surely by any measure one of the top scholarly voices in modern constitutional law. Perhaps more importantly, however, he has through example demonstrated how it is possible to maintain, in the midst of the often overpowering currents and cross-currents that swirl through contemporary constitutional discourse, a scholarly solidity and neutrality that is remarkable in its courage to 'call it as he sees it,' rising above mean politics and ideology, dedicated, above all, to honesty."

In April, Professor Van Alstyne presented the Harrelson Lecture at North Carolina State University, speaking on "Reflections on the World's Oldest Constitution." The John W. Harrelson Lectureship was established by a bequest from the late Col. John W. Harrelson, chancellor of NCSU from 1934 to 1953, to bring outstanding scholars to the campus to speak. The Harrelson Lecture traditionally is considered the most important address given at NCSU each year.

Dean Gann Accepts Reappointment

Dean Pamela B. Gann has been offered and has accepted reappointment for another five-year term as Dean of the Law School. She became Dean in 1988, and her current term expires June 30, 1993. The second term runs until 1998. In his letter of invitation to Dean Gann to continue, Provost Thomas A. Langford wrote [in part]:

I especially want to comment on the sterling quality of your leadership of the School. Faculty, staff, and student morale is exceptional; development activities have reached a new level; the quality of faculty and programs has been maintained; and the outside evaluators of the School have endorsed your excellence.

You have also contributed in a fine manner to University decisions, to the Deans Council discussions, and as an acute commentator on significant issues. We anticipate with pleasure your continued contributions.

Dean Gann states that "I am very pleased to accept another term as Dean. Although the Law School is already a distinguished academic unit, it continues to aspire to greater eminence, and Duke University is in the middle of an important evolution into a mature research university. These factors make the job very interesting. I am personally grateful for the opportunity to serve the University and the Law School community."

Pye Receives Honorary Degree

A. Kenneth Pye, president of Southern Methodist University and former chancellor of Duke University and dean of the Duke Law School, was awarded an honorary doctor of law degree by Duke President H. Keith H. Brodie during commencement ceremonies on May 17, 1992. In making the presentation, Brodie lauded "A. Kenneth Pye, lawyer, educator, distinguished university administrator, by exemplifying the highest standards of integrity you help sustain the excellence of American higher education."

During his twenty years at Duke, Pye served as University counsel, chair of the athletic council, twice as dean of the Law School, and twice as chancellor. In 1987, he left to become president of Southern Methodist University

(SMU), which was then floundering in the aftermath of overwhelming athletic scandal. During the last five years, building on his "reputation for absolute integrity," Pye has strengthened and revitalized SMU's liberal arts tradition and has lifted the cloud over its athletic department. Brodie noted that "Duke University is proud to honor you, for you have set a public example of ethical leadership in higher education that serves the best interests of the nation."



A. Kenneth Pye receives honorary degree from Pelham Wilder, University Marshall.

1991–92 Distinguished Teacher Award



Visiting faculty member, Meade Emory (right) was named the recipient of the 1991–92 Duke Bar Association (DBA) Distinguished Teacher Award. In presenting the award, DBA president Ed Trent '92 (left) noted that stu-

dents nominating Emory for the award said that "he made tax fun with his wit and good sense of humor." Emory, a practitioner from Seattle, taught Duke's basic tax and corporate tax courses during the last two spring semesters.

Emory is of counsel to the firm of Lane Powell Spears Lubersky, where his practice consists of issues primarily related to federal taxation including planning, controversy and litigation. For the past five years, he has taken a leave from his firm each spring to teach tax law at different schools, including Tulane,

NYU and UCLA. He has held a variety of positions, including assistant to the Commissioner of the IRS, a member of the law faculties of California-Davis and the University of Iowa, legislative counsel to the Joint Committee on Internal Revenue Taxation of the U.S. Congress, and trial attorney and chief counsel for the IRS.

The DBA Distinguished Teacher Award has been presented annually since 1985 to recognize outstanding classroom contributions by a member of the Law School faculty. Previous winners of the award are W.H. Knight, Jr. (visiting from the University of Iowa), Thomas Metzloff, Melvin Shimm, Sara Beale, John Weistart, James Cox, Richard Maxwell and Thomas Rowe.

Law School Conferences and Seminars

Frontiers of Legal Thought Conference

The third annual student-run Frontiers of Legal Thought Conference was held in January and focused on issues of race, gender and justice. Panels were held on the following topics: critical legal studies, hate crimes, cultural defenses, child custody, African-American males and the criminal justice system, rape reform law, gender-specific schools for inner-city populations, Native American legal issues, self-defense and battered women, and the war on drugs and its effects on women of color. Twenty-nine law professors, practitioners, educators, judges, and sociologists from across the country joined ten professors from Duke Law School to discuss both the legal and social issues surrounding these topics.

Organized in 1990, the student-run and student-funded Frontiers Conferences attempt to address perceived crises in legal education and to provide a forum in which areas of legal theory that are often ignored in the classroom may be explored. Jolynn Childers '93 and Sara Emley '93 co-chaired this Conference with the goals of involving a larger part of the Duke community and expanding the points of view presented. Themes such as violence against women and problems concerning race and homosexuality were explored so that students would have the tools to apply their legal educations to concrete social problems. The solicitation of many points of view on controversial issues made this Conference the most

successful in terms of student interest and attendance. In addition to Duke students and faculty, the Conference drew a substantial audience participation from the local communities.

The fourth annual Frontiers Conference, to focus on law and the family, is scheduled for January 21-23, 1993.

Conference on Career Choices

The sixth annual Conference on Career Choices, co-sponsored by the Duke Law Alumni Association and the Duke Bar Association, was held in February. The Conference serves as a means of career counseling for students through the sharing of alumni experience and offers a variety of topics to help students make career decisions. The panels this year included legal specialty areas, career and lifestyle comparisons, public service in law, international law careers, and alternative career choices. Each panel consists of four or five alumni who return to the Law School to share experiences with students. Alumni and students have an opportunity to meet informally following the panels and during an afternoon reception.

Alumni Seminar on Career Pathways

The Law Alumni Association continues to sponsor alumni seminars to address timely topics regarding the legal community through alumni panel discussions. In April, a panel of four alumni discussed career pathways to help the Law School in the area of career counseling.

The Law Alumni Council agreed at its fall meeting that the focus of the seminars in the immediate future should be career counseling, given the changes in the legal community affecting hiring. The LAC suggested that alumni could present information about careers by drawing upon their own experience that might not be readily available through the Office of Career Planning & Placement. This panel provided information to students on the careers of some alumni, particularly the routes followed to arrive at current careers and what students can do both immediately and after they leave the Law School to prepare themselves for such careers.

Dean Pamela Gann cautioned students that "until about five years ago, many of our graduates left the Law School with the expectation that they had chosen a law firm for life. Some of them went to clerkships and to work for the government, assuming they would make about one more employment change. We can say with



John A. Forlines, III '82 (left) and Thomas J. Andrews '64 at the Career Conference.

SPECIALLY NOTED



Dan Crawford

Alumni and students meet at the Alumni Seminar in April.

certainty that the legal profession has changed so substantially that those of you who are now graduating are almost certainly going to change jobs several times in your life. These changes can actually be extraordinarily useful to your professional growth and career satisfaction."

Members of the panel included alumni who moved from private practice to in-house corporate, from government to private practice, from large firm to smaller firm, and from legal to non-legal positions. Panel members are highlighted below.

Leif C. Beck '59 is chairman and consultant for the Health Care Group, Inc. in Plymouth Meeting, Pennsylvania. He was formerly managing partner and tax specialist with Pepper, Hamilton & Scheetz in Philadelphia.

Calvin J. Collier '67 is senior vice president and general counsel of Kraft General Foods, Inc., with responsibility for the company's legal activities and support functions. He has previously been a member of the Federal Trade Commission and has served as general counsel and associate director for economics and general government at the Office of Management and Budget. He has also worked with a number of federal agencies including the

Department of Housing and Urban Development. Prior to joining Kraft in 1988, Collier was for ten years a partner in the Washington, D.C. office of Hughes Hubbard & Reed.

James P. McLoughlin '82 served as a law clerk to the Honorable Eugene A. Gordon, Senior District Judge for the United States District Court for the Middle District in Greensboro, North Carolina after graduating

from Law School. He later worked for the firm of Paul Weiss Rifkind Wharton & Garrison in New York City, and in 1986 he joined Moore & Van Allen in Charlotte, concentrating on commercial and securities litigation.

Breckinridge L. Willcox '69 has served as United States Attorney for the District of Maryland and is now a senior partner in the criminal fraud litigation practice of Arent Fox Kintner

Plotkin & Kahn in Washington, D.C. Before becoming U.S. Attorney, he was in private practice in Washington, D.C., having earlier served as a trial attorney in the Fraud Section, United States Department of Justice. He also served on active duty as a captain in the Marines in the Judge Advocate General Corps during the Vietnam War.

Collier and Willcox are also members of the Law School's Board of Visitors. Moderator for the panel was **Haley J. Fromholz '67**, secretary/treasurer of the Law Alumni Council. He is a partner in Morrison & Foerster in San Francisco, specializing in commercial litigation.

Alumni Seminars on additional topics are being planned for 1992-93. The first will be on Thursday, September 17 in conjunction with Law Alumni Weekend. The topic, as suggested by student interest, will be "Lifestyle Comparisons."



Dan Crawford

Breckinridge Willcox '69 and Mike Elston '94 talk at the Alumni Seminar.

Schuck Delivers 1992 Currie Lecture

Peter H. Schuck, Simeon E. Baldwin Professor at Yale Law School, presented the 1992 Brainerd Currie Memorial Lecture in March. He spoke on "The Elusiveness of Simplicity in Law" to an audience of students and faculty. The Currie Lecture is presented each spring by a distinguished academic in memory of Professor Brainerd Currie who was a member of the Duke Law School faculty in both the late 1940s and early 1960s.

Next year's Currie Lecture will be presented by Professor Margaret Jane Radin of Stanford Law School.



Peter H. Schuck

Special Gifts to the Law School

Gifts to Endowment

Robert Wheaton Walter '47 has established the Robert Wheaton Walter Gift Annuity. Upon termination of the annuity, its assets will benefit the Robert William and Robert Wheaton Walter Law Scholarship Endowment Fund. (Robert William Walter is the son of Robert Wheaton Walter and graduated from the Law School in 1981.)



Bob Walter '81 and his father Robert Walter '47 at the 1981 graduation ceremony.

Howard and Sigrid Pederson Foley '37 have established the Howard and Sigrid Foley Charitable Remainder Annuity Trust. Upon termination of the annuity, its assets will create the Howard S. and Sigrid P. Foley Fund which will provide unrestricted support for the Law School.

"These alumni have chosen to benefit the Law School by an inter vivos planned gift," says Dean Pamela Gann, "which combines attractive tax benefits with a gift of permanent endowment to the Law School. We hope that other alumni will find these planned gifts equally attractive since the Law School's most important financial need is increased permanent endowment."

1992 Graduating Class Gift

The Class of 1992 held a fund-raising campaign during their final semester. The members of the 1992 Graduating Class Campaign Committee, chaired by Douglas Jackson, solicited three-year pledges from their classmates.

A total of \$10,000 from the first two years of pledge payments will be used to establish a fund to support a Major Speakers Program at the Law School. The Dean's Office will provide an additional \$15,000 to endow the fund. Additional funds received from those years and from year three will be directed to the Annual Fund which provides support for current operating expenses. To date, forty-two percent of the class has pledged over \$18,000 to be paid over the three years. Matching gifts from employers will bring the three-year total to over \$23,000.

The Law School is grateful to its most recent graduates for their participation in this Campaign. 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.

Professional News

Carmon J. Stuart '38 received the Duke University Presidential Award for his outstanding service the Law School and the Private Adjudication Center on May 28, 1992. Since his retirement as clerk for the United States District Court for the Middle District of North Carolina in 1983, Stuart has devoted his attention to the activities of the Private Adjudication Center. He was instrumental in securing the Center-administered pilot program for court-annexed arbitration in the Middle District. As its most involved manager, Stuart deserves much of the credit for the success of that program. His dedication to the Center and the court-annexed program sustained the Center through its initial growing pains. He continues to make unselfish contributions to the work of the Center as its mentor of court management.

Stuart's colleagues note that he views this effort to improve the administration of justice through new and innovative efforts at resolving disputes as one of the most significant activities of his career. This is not only evidenced by his work at the Center, but also through his service to the

North Carolina Bar Association— particularly his work with the Dispute Resolution Committee, and his role as chair of the Subcommittee on Court Ordered Arbitration. In 1986, Stuart co-drafted the "Rules for Court Ordered Arbitration in North Carolina," and in 1987 he drafted the Bar Association's publication, "Benchmark for Arbitrators."

Stuart was also the guiding force in securing the administration of the Dalkon Shield Claimants Trust Arbitration Program for the Center. Over a period of five years, he recommended the Center and its programs to Trust personnel, and was rewarded in April 1991 when the Center was selected as administrator of the \$2.3 billion trust. The Center now handles all procedural matters related to binding arbitration for Dalkon Shield claimants.

When Stuart attended Duke Law School, he was given a grant of \$400. In accepting the Presidential Award, he said that his involvement with the Law School was part of his effort to "repay the loan." Dean Pamela Gann, who made the presentation to Stuart, remarked, "Carmon



says that in 1938, when he graduated from Duke Law School, he was given the gift of an education and through his efforts at the Center he feels in some way he is repaying an important debt. I think we would all agree that he's repaid it many times over."

'52 **Norwood Robinson** announces the formation of the firm of Robinson Maready Lawing & Comerford in Winston-Salem, North Carolina.

'64 **Charles W. Mertel** has been appointed by Governor Booth Gardner to fill the seat of a retiring judge on the King County, Washington Superior Court. He will stand for election in November to fill the remainder of the retiring judge's term. Mertel is a senior partner at Short, Cressman and Burgess in Seattle where he practices personal injury, premises liability, professional negligence, products liability, and toxic litigation.

'65 **Raymond A. McGeary** has accepted the position of director of development at The Dickinson School of Law in Carlisle, Pennsylvania, where he is responsible for institutional fundraising, with a special emphasis on planned giving.

'66 **Anthony S. Harrington** was named in April to be general counsel and overall legal consultant to the Clinton for President campaign. He will be an outside counsel, while still practicing law as a partner with Hogan & Hartson in Washington, D.C.

Dale A. Whitman has re-joined the faculty of the J. Reuben Clark Law School at Brigham Young University in Provo, Utah, where he taught from

1973–78. He spent the last ten years as dean and professor at the University of Missouri Law School.

'68 **Robert C. Fox**, professor of law at Metropolitan State University in St. Paul, Minnesota, has been named team leader of the United States Table Tennis Olympic Team to the Barcelona Olympic Games. Fox is currently ranked in the top twelve senior (over age forty) table tennis players in the country.

O. Randolph Rollins was appointed secretary of public safety for the Commonwealth of Virginia by Governor Douglas Wilder in March. He was previously deputy secretary, and now heads eleven Virginia state agencies dealing with

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public safety, including the Department of Corrections, the Parole Board, the Department of Youth and Family Services, and the Virginia State Police.

Gerald T. Wetherington '63, a circuit judge for Dade County, Florida, has been honored by the National Center for State Courts (NCSC) with its 1992 Distinguished Service Award. The award was presented during the Florida Bar's Annual Convention in June. The NCSC gives nationwide Distinguished Service Awards in several categories; Judge Wetherington was recognized in the category for trial judges for his "outstanding contributions to the administration of justice nationally and for the work he has done for the Center."

Judge Wetherington has been a Dade County circuit judge since his appointment in 1974 by Governor Rubin Askew. He was chief judge of the Eleventh Judicial Circuit for ten years before stepping down in July 1991. The Duke Law Alumni Association honored him in 1988 with the Charles S. Murphy Award for public service.

The NCSC is a nonprofit organization, headquartered in Williamsburg, Virginia, working to modernize court operations and to improve justice at the state and local levels throughout the country.



'69 **Norman E. Donoghue, II**, a partner at Dechert, Price & Rhoads in Philadelphia, Pennsylvania, was recently elected to the International Academy of Trust & Estate Lawyers.

Frank M. Mock has joined the firm of Baker & Hostetler as a partner in its Orlando, Florida office.

'71 **Randall Erickson** has joined the firm of Crowell & Moring, resident in its Newport Beach, California office, where he specializes in construction contracts.

'72 **Amos T. Mills, III**, a special agent for the Federal Bureau of Investigation, has been appointed to the National Council of the Federal Bar Association. In February, he was a featured speaker at the Black Law Students Association Southern Regional Convention hosted by Duke Law School.

Edward T. Reibman took office in January as a judge of the Court of Common Pleas in Allentown, Pennsylvania's trial court of general jurisdiction.

'74 **David L. Buhrmann**, a partner at McMahon Surovik Suttle Buhrmann Cobb & Hicks in Abilene, Texas represented Duke in February at the inauguration of the president of Abilene Christian University.

Mary Ann Conklin is the managing attorney of the Waterbury office of Connecticut Legal Services, Inc.

Johnnie L. Gallemore, Jr. is now professor and chairman of the Department of Psychiatry and Behavioral Science at the Eastern Virginia Medical School in Norfolk, Virginia.

Philip H. Moise has joined Long, Aldridge & Norman in Atlanta, Georgia as a partner on the Growth Strategy Practice Team, where he continues as a corporate/securities lawyer representing technology, biotech and other types of growth companies.

'75 **John W. Welch**, noted religious scholar and professor of law at the J. Reuben Clark Law School of Brigham Young University, has been named editor of *BYU Studies*, the university's prestigious quarterly journal. He is also a director and former president of the Foundation for Ancient Religion and Mormon Studies.

'76 **Dean M. Cordiano** has been made chairman of the Environmental Practice Group at Day, Berry & Howard in Hartford, Connecticut, supervising the work of eighteen environmental attorneys.

Ralph B. Everett was recently named assistant managing partner of the Washington, D.C. office of Paul, Hastings, Janofsky & Walker.

'77 **Lauren E. Jones** practices with Jones & Associates in Providence, Rhode Island, specializing almost exclusively in appellate matters.

Ember D. Reichgott, a state senator in Minnesota, recently graduated from the University of St. Thomas with an MBA degree. She is currently a vice president of the Corporate Counsel Association of the Minnesota Bar Association.

'78 **William G. Anlyan, Jr.** was named vice chancellor for advancement at the University of North Carolina at Wilmington in February. He will supervise the Division of University Advancement which is responsible for fund-raising, constituency relations, including alumni and parents, and news and publications.

Howard L. Levin, a partner at Brown, Rudnick, Freed & Gesmer in Boston, Massachusetts chairs the Real Estate Section of the Boston Bar Association.

'79 **Alan R. Bender** was recently named general counsel and corporate secretary of General Cellular Corporation, a San Francisco, Califor-

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nia-based public telecommunications company.

Jeffrey C. Coyne has established the firm of Coyne, Milner, Uriarte & Lorch in Pasadena, California, practicing commercial litigation, insolvency and bankruptcy law. He is also a member of the standing panel of bankruptcy trustees for the Central District of California and serves as a receiver for the Los Angeles Superior Court.

Gray McCalley, Jr. has relocated to Oslo, Norway, where he is division counsel for the Nordic and Northern Eurasia Division of The Coca-Cola Company.

Hubert P. van Tuyll has joined the faculty of the Department of History of Augusta College in Georgia after five years as a faculty member and administrator at Union College of Kentucky.

'80 Michael W. Jorgensen has joined Dallas, Texas-based Global Missions Fellowship as general counsel and an international church planter. He will lead evangelistic church planting teams to Eastern Europe and Latin America.

Fredric A. Rollman has had his name added to the firm of Donfeld, Kelley & Rollman in Los Angeles, California where he concentrates in the areas of real estate and business law.

'81 G. Beate Czerwenka is now working for the Federal Ministry of Justice in East Berlin in the area of transport law. She has published two recent books: *INTERNATIONALES KAUFRECHT: KOMMENTAR* (1991) (a commentary on the UN Convention on Contracts for the International Sale of Goods) and *RÜCKGABE ENTEIGNETER UNTERNEHMEN IN DEN NEUEN BUNDESLÄNDERN* (1991).

Michael L. Ward has been named vice president and counsel of sales and marketing of Showtime Networks, Inc. in New York City, where he will continue to be primarily responsible for the legal affairs of the sales and marketing activities of SNI, including Showtime, The Movie Channel, Showtime Satellite Networks, All News Channel and SET Pay Per View.



Michael L. Ward '81

'82 Peter A. Cotorceanu, a partner with Graber, Knicey & Cotorceanu in Williamsburg, Virginia, was recently elected to the Board of Governors of the Trusts and Estates Section of the Virginia State Bar and published an article in the Section's newsletter entitled "Those Pesky Crummey Powers—How Now?" He also is a lecturer in law at the Marshall-Wythe School of Law of The College of William & Mary where he teaches a course on legal skills.

Patricia A. Casey has become a member of the firm of Akin, Gump, Hauer & Feld, resident in the firm's Washington, D.C. office.

Richard R. Hofstetter has been named an individual winner of the 17th Annual Sandi Servaas Memorial Award, presented by the Historic Landmarks Foundation of Indiana, in recognition of his successful efforts to raise public awareness for preservation. He is president of the Athenaeum Foundation, Inc., which is renovating a century-old historic building in downtown Indianapolis.

Richard A. Lukianuk is now associate counsel at United Technologies Automotive, Inc. in Dearborn, Michigan, where he has management responsibility for all European and Canadian legal affairs of the Automotive Group. He has also just been appointed co-

chair of the Board of Visitors of the Duke University Canadian Studies Center.

Robert W. Mann, Jr. has been promoted to senior regional attorney for District No. 7 (Atlanta) of the National Association of Securities Dealers.

Frederick Robinson was named a partner in the firm of Fulbright & Jaworski in January, resident in the firm's Washington, D.C. office. He is a member of the litigation department, where he concentrates his practice on white collar crime and federal administrative matters, including government contracting and program integrity issues.

Sharon Powers Sivertsen has been selected as the senior counsel for closed bank litigation and policy for the Federal Deposit Insurance Corporation in Washington, D.C.

'83 Alan B. Berman is now a law professor at Wollongong University in Australia.

Susan Cole Dranoff has joined the law faculty at Northeastern University School of Law in Boston, Massachusetts as an assistant professor.

Lawrence L. Friedman is a senior attorney in the Litigation Division of the New York State Insurance Fund, based in the Long Island office.

Daniel F. Gourash has been named a partner in the Cleveland, Ohio office of Porter, Wright, Morris & Arthur, where he practices in the area of complex civil litigation.

Scott D. Harrington was made a partner in January at Manatt Phelps Phillips & Kantor in Los Angeles, California, where he specializes in music law.

Craig A. Hoover was named a partner in the Washington, D.C. office of Hogan & Hartson on January 1, 1992, where he practices in the area of commercial litigation.

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Kimberly Hill Hoover is of counsel to the firm of Dickstein, Shapiro & Morin in Washington, D.C. and is an adjunct member of the faculty of Washington College of Law at American University.

Ronald G. Hock has joined the Tampa, Florida firm of Langford, Hill, Mitchell, Trybus & Whalen.

'84 **Angela Sirna Curran** is studying for her LL.M. degree in health law at Loyola University of Chicago Law School and is a teaching fellow with Loyola's Institute for Health Law.

Kris E. Curran has been named a partner with Coffield, Ungaretti & Harris in Chicago, Illinois, where he specializes in real estate law.

Mary J. Hildebrand has been made a partner with the Roseland, New Jersey law firm of Friedman Siegelbaum. She is a member of the Corporate Group with particular expertise in the computer and high technology area.

Lee D. Mackson became a partner at the Miami, Florida law firm of Shutts & Bowen on January 1, 1992.

Steven P. Natko has joined the firm of Kraft & McManimon, resident in the firm's Newark, New Jersey office.

Jerold J. Novick was made a partner of the Philadelphia, Pennsylvania firm of Earle Palmer Brown & Spiro on February 1, 1992. He is a member of the firm's Real Estate Department, and concentrates his practice in the financing, development and leasing of commercial real estate, such as shopping centers, office buildings and condominium projects.



Jerold J. Novick '84

Robert P. Riordan has been named a partner at the Atlanta, Georgia law firm of Alston & Bird, where he is a member of the Labor Department, concentrating on employment discrimination actions.



Robert P. Riordan '84

C. Geoffrey Weirich has been elected a partner in the international law firm of Paul, Hastings, Janofsky & Walker, resident in the Atlanta, Georgia office. He specializes in the representation of employers in all facets of labor and employment law.

'85 **Sanna Small Franklin** is now teaching at the University of California at Los Angeles School of Law.

'86 **Toni M. Fine** has been honored as one of the individual recipients of the 1991 Domestic Violence Award presented by the District of Columbia Coalition Against Domestic Violence. She is with the D.C. office of Crowell & Moring.

Filip K. Klavins announces the establishment of the law firm of Klavins & Birkavs, SIA, in Riga, Latvia.

Donald S. Kunze has been named a partner in the firm of Davis Wright Tremaine in their Seattle, Washington office. He practices in the areas of communications and media law, and civil litigation.



Donald S. Kunze '86

Jeffrey T. Lawyer was named a partner in the firm of Petree Stockton on January 1, 1992. Resident in the firm's Winston-Salem, North Carolina office, he practices in the areas of taxation and general business law.



Jeffrey T. Lawyer '86

Ellen Fishbein Mills is now an associate at Zuckerman, Spaeder, Goldstein, Taylor & Kolker in Washington, D.C., practicing in the areas of tax law and estate planning.

Daniel R. Schnur has been named vice president, general counsel and secretary of Richfood Holdings, Inc. in Richmond, Virginia.

Lisa Deitsch Taylor, a health care attorney at Shanley & Fisher in Morristown, New Jersey, recently made a presentation at a seminar entitled "Physician's Survival Guide," sponsored by the National Health Lawyers Association and the American Medical Association in New Orleans, Louisiana.

'87 **Regina M. Blus**, a consultant with the Sitka Corporation in Alameda, California, has been elected secretary of the board of the San Francisco Women Lawyers Alliance.

Pierre R. Destexhe has recently been named one of three European corporate counsel for Baxter International of Belgium, where he is in charge of several European and North African countries.

James E. Felman has been named a shareholder in the Tampa, Florida firm of Kynes & Markman, where he continues his practice of white collar criminal defense law.

John F. Guyot has become an associate with Wiley, Rein & Fielding in Wash-

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ington, D.C., where he is engaged primarily in the representation of banks and other financial institutions with emphasis on federal banking and securities laws.

Gordon S. Kiesling is now an associate at Brown & Wood in New York City.

Stephanie A. Lucie has recently become associated with the Houston, Texas office of Weil, Gotshal & Manges, where she practices corporate and securities law. She has also been elected to serve a second term on the Board of Directors of the Houston Young Lawyers Association.

James A. Thomas has become an associate at the firm of Harlow Evans & London in Research Triangle Park, North Carolina.

88 **Jean-Daniel Chablais** is now working in the legal department of the International Finance Corporation, an international organization affiliated with the World Bank in Washington, D.C.

Gary M. Lisker is now a commercial litigation associate with Hunton & Williams in Atlanta, Georgia.

89 **Mark T. Hurt** is an associate with Jones, Day, Reavis & Pogue in Dallas, Texas.

Kevin C. Kaplan has become an associate at Coffey, Aragon, Martin & Burlington, a litigation firm in Miami, Florida.

Ann Marie Nader has been elected as a council member of the newly formed International Law and Practice Section of the North Carolina Bar Association. She is an associate in the Raleigh office of Moore & Van Allen.

John E. Pelletier has recently become assistant vice president to The Boston Company Advisors, Inc. and counsel to the Institutional Funds Group division of Lehman Brothers in Boston, Massachusetts.

Samuel L. Starks '92 has been given the 18th annual John Warren Davis Award. The award is presented by the Legal Defense Fund of The Earl Warren Legal Training Program, Inc. The Davis Award is named in honor of the late Dr. John Warren Davis, who initiated the law scholarship program for the NAACP Legal Defense and Educational Fund. Nominations for the award are made by law schools across the United States. The recipient is chosen on demonstrated leadership ability, academic excellence and promise for a successful legal career.

Starks is a 1989 cum laude graduate of the University of South Carolina, where he majored in political science and was a part-time legislative intern to the South Carolina General Assembly. While at Duke, Starks served as an editor of the *Duke Law Journal*, volunteered for community service projects, was a writer for the *Duke Law Magazine* and represented juvenile and adult defendants as a part-



time volunteer in the Durham County Public Defender's Office. Starks has also done volunteer work at the Public Defender's Office in Washington, D.C.

Starks begins his career as a law clerk for The Honorable Daman J. Keith of the United States Court of Appeals for the Sixth Circuit in Detroit, Michigan.

Susan Prosnitz is a litigation associate with Hinckley, Allen, Snyder & Comen in Boston, Massachusetts.

90 **Stephen J. Gilhooly** is now with the Dallas, Texas office of Jones, Day, Reavis & Pogue.

Michael D. Kabat has joined the firm of Fisher & Phillips in Atlanta, Georgia, which engages exclusively in the practice of labor relations and employment law, representing management.

Felix J.L. Mello has joined the firm of Negri, Teijeiro & Incera, an Argentine law firm in Buenos Aires City, which specializes in banking law, international business transactions, and tax planning.

Walter S. Peake is now an associate with the Buffalo, New York office of Phillips, Lytle, Hitchcock, Blaine & Huber.

Mark A. Redmiles has recently joined the firm of Berenbaum & Weinshienk in Denver, Colorado.

Jacqueline O. Shogan has joined Nash & Co., in Pittsburgh, Pennsylvania,

where she specializes in healthcare law.

Gerard J. Waldron serves as senior counsel of the U.S. House of Representatives Subcommittee on Telecommunications and Finance in Washington, D.C.

Nazim Zilkha practices with the corporate department of Anderson Kill Olick & Oshinsky in New York City.

91 **Calvin B. Bennett** is currently serving as the senior defense counsel for the Marine Corps Air Station in Cherry Point, North Carolina.

G. Garrett Epps will be an assistant professor at the University of Oregon Law School in Eugene beginning this fall. His short story, *The Heart Operation*, was published in *ELVES IN OZ* (University Press of Virginia, 1992).

Jason F. Trumbour is currently studying for a Ph.D. in law at Fitzwilliam College, Cambridge University. His research topic is an analysis of the plea rolls from the Court of Exchequer from 1307 to 1377.

Personal Notes

'67 Donald B. Craven and his wife, Jacki, happily announce the birth of a daughter, Katherine (Kate), on April 22, 1992.

'77 Jay R. Hone was married to Heather Wilson on September 7, 1991. Jay has a solo practice in Albuquerque, New Mexico.

'79 Jeffrey C. Coyne announces the adoption of his fifth child, Joseph Paul, born April 18, 1991.

Hubert P. van Tuyl and his wife, Debra, report the birth of their first child, a daughter named Laura Alexandra, in October 1991.

'82 Ruth S. Cohen was married to Kenneth B. Hammer on June 16, 1991. They reside in Bloomfield Hills, Michigan; Ruth is an associate with Jacob & Weingarten in Troy.

'83 Christopher C. Kerr and his wife, Karen, announce the

birth of their second child and first son, Christopher Thomas, on March 25, 1992.

Ronald G. Hock and his wife, Barbara, are happy to announce the birth of their second child and first daughter, Darcy O'Connell Hock, on January 7, 1992.

'84 Leslie Wheeler Chervokas and her husband, Jason, are pleased to announce the birth of their daughter, Emily, on September 9, 1991.

Angela Sirna Curran and **Kris E. Curran**, both Class of '84, are happy to report the arrival of a daughter, Joanna, born June 4, 1990.

'86 Susan Bysiewicz and **David H. Donaldson**, Class of '87, are pleased to announce the birth of their first child, a daughter named Ava Rose, on December 31, 1991.

Kelly J. Koelker was married to Robert E. Wolfe on June 27, 1992 in Atlanta, Georgia, where Kelly is an associate in the employment law department of Paul, Hastings, Janofsky & Walker.

'87 David H. Donaldson and **Susan Bysiewicz**, Class of '86, are pleased to announce the birth of their first child, a daughter named Ava Rose, on December 31, 1991.

Susanne Haas and **Ross C. Formell**, both Class of '87, were married on June 15, 1991 in Frankfurt, Germany. They reside in Minneapolis, Minnesota where Susanne works as counsel in the Office of General Counsel for Honeywell, Inc., and Ross is an associate with Best and Flanagan.

Alice Hidgon Prater and **Harlan I. Prater, IV**, both Class of '87, are happy to report the birth of a daughter, Catherine Ruffin, on May 28, 1992.

Duke Team Wins Philadelphia Charity Tourney

On April 25, 1992, a group composed largely of Duke Law alumni captured the championship in the sixth annual Philadelphia Bar Association charity softball tournament, which raises money for the Support Center for Child Advocacy. This is the Duke team's fifth championship in this tournament (having fallen to third place in 1991).

Ray Wierciszewski '90, Brad Krouse '90,

Steve Scolari '84, Tucker Boynton '79, Brian Cary '85, and Dave Lockwood '84 represented Duke Blue in the tournament. Other Duke Law team members, George McFarland '84 and Jerry Novick '84, were both "visited by the stork" within days of the tournament and had to withdraw. Five additional team members were made honorary Duke Law alumni for the event.



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'88 Martha Schauer Klinker and her husband, Michael, happily announce the arrival of their first child, a daughter named Caroline Schauer Klinker, born on February 19, 1992.

Josiah C.T. (Joe) Lucas and his wife, Sally, are pleased to report the birth of their second son, Haines Demarest, on March 25, 1992.

'89 Mark T. Hurt and his wife, Rhonda, are the proud parents of a daughter, Lauren Elizabeth, born on July 4, 1991.

Dania A. Long was married to Don Alan Leatherman on September 14, 1991 in Arlington, Virginia. Dania is an attorney for the Corporate Division of the Internal Revenue Service Chief Counsel in Washington, D.C.

Janelle M. Sherlock was married to Christopher P. Pearson on September 1, 1991 in Carmel, California. They reside in Atlanta, Georgia.

'90 Daniel A. Kent was married to Lisa Dianne Jones on February 8, 1992. Dan is an associate with Alston & Bird in Atlanta, Georgia.

Jacqueline O. Shogan and her husband, Jeffrey, happily announce the arrival of a second child, Jeffrey Charles, born on September 1, 1991.

'91 Spruell Driver, Jr. was married to Alice Elaine Willis on July 25, 1992 in Knoxville, Tennessee. They will reside in Kingsport, where Spruell is an in-house corporate attorney with Eastman Chemical Company.

Jennifer L. Gimer was married to Robert D. Hays on April 11, 1992. Jennifer is an associate with Alston & Bird in Atlanta, Georgia.

Obituaries

Class of 1934

Robert G. Seaks died May 25, 1992 in Winston-Salem, North Carolina. From 1949 until his retirement, Seaks practiced with the Washington, D.C. firm of Wheeler and Wheeler, where he specialized in work before the FCC and the Interstate Commerce Commission. A Navy veteran, he was stationed in Guam and Hawaii during World War II, and received the Bronze Star. After the War, he joined the Justice Department, where he served as special assistant to the attorney general.

Seaks is survived by his wife, Elizabeth Seaks of Advance, North Carolina; a son, Terry Seaks of Greensboro; a sister, Margaret Lewis of Reedsville; and two grandchildren.

Class of 1936

Robert N. Cook a professor emeritus at the University of Cincinnati College of Law, died April 3, 1991 at home. He was 79.

Cook was the originator and principal developer of the Comprehensive Unified Land Data System in the mid-1960s. The computerized data system allowed specific property to be

pinpointed by coordinates. The system could provide zoning, building, safety, occupancy and sanitation data as well as traditional real estate information, such as ownership and financing, about specific properties. He was also an organizer of the North American Institute for the Modernization of Land Data Systems.

Cook served as chairman and vice chairman of the American Bar Association Committee on Improvement of Land Records and was the principal organizer of several major conferences on improvement of land records.

He received the key to the city of Winston-Salem, N.C., for his work to modernize land records in Forsyth County, N.C. President Richard Nixon '37 also wrote him in 1970 praising his "outstanding leadership in the campaign to modernize land title record management."

Born in Vicksburg, Pa., Cook received his undergraduate degree in 1933 from Bucknell University in Lewisburg, Pa. He received his law degree in 1936 from Duke University in Durham, N.C. Before coming to the University of Cincinnati in 1963,

he was law professor at Case Western Reserve University in Cleveland among other schools.

Survivors include his wife, Katherine, of Clifton, Ohio; one son, Robert, of Amesbury, Mass.; and two daughters, Katherine Leith of Chapel Hill, N.C., and Ann Krebs of Cincinnati.

Class of 1937

Frederick Stockman Albrink of Norfolk, Virginia died October 19, 1991. He was a member of the law firm of Kellam, Pickrell, Cox and Tayloe, and was a retired captain in the U.S. Navy.

Survivors include his wife, Lucille Gibbs Albrink; two daughters, Anne Amy Albrink of Santa Fe, New Mexico, and Emily A. Hartigan of Lincoln, Nebraska; a brother, Karl Albrink of LaVita, Colorado; and one grandchild.

Class of 1939

Hubert K. Arnold of Wichita, Kansas died June 8, 1992. Arnold was for thirty years in private practice in Hyattsville, Maryland. He formerly served as president of the Lawyers Title

Company of Prince Georges County, Inc., and was executive vice president and general counsel of the Prince Georges County Board of Realtors.

In 1987, Arnold received a masters degree in anthropology from Wichita State University and during his retirement he served as an adult vocational counselor for the Wichita school system. He served as reunion coordinator for the Law School's Half Century Club in 1989, and has endowed three scholarship funds at the Law School—the Majorie Patrick Arnold Endowment Fund (honoring his wife); the Giles, Rich, Stoner Endowment Fund (honoring his sisters); and the Dehoff/Arnold Endowed Law Scholarship (in memory of his parents).

Arnold is survived by his wife, Marjorie P. Arnold; a stepson, James L. Patrick of Colorado Springs, Colorado; a stepdaughter, Marcia S. Patrick of Houston, Texas; three sisters, Dorothy Giles of Hyattsville, Maryland, Naomi Rich of Gettysburg, Pennsylvania, and Ruth Stoner of Denton, Maryland; and three step-grandchildren.

P. Bradley Morrah, Jr., a former state senator from Greenville, South Carolina, died February 17, 1992. Morrah first served as a member of the S.C. House of Representatives in 1941, resigning to enter military service, where he was awarded the Bronze Star and seven battle stars in World War II. From 1953–66, he served in the South Carolina Senate, the longest continuous term of any former single county senator.

Morrah was chairman of the S.C. American Revolution Bicentennial Committee and the U.S. Constitution Bicentennial Commission of S.C. He was a former member of the Board of Visitors at The Citadel, former president of the Greenville Little Theatre, a former member of the Greenville City

School System, and a former member of the State Parks, Recreation and Tourism Commission.

Survivors include a daughter, Irene Morrah Ingold of Greenville; a son, P. Bradley Morrah, III of Greenville; two sisters, Mrs. Hugh Graham of Greenville, and Mrs. Joel Rice of Belton; and two grandchildren.

Class of 1950

Guy A. Hamlin of Winston-Salem, North Carolina died January 26, 1992. A World War II veteran, Hamlin re-entered the Army after graduating from the Law School as a member of the Judge Advocate General Corps, and served various tours in the United States, Europe and Asia. Following his retirement from active duty in 1967, he was appointed an assistant attorney general for the State of North Carolina with offices in Asheville.

Surviving are his wife, Dara; and a son, Bradley, of Asheville.

Class of 1951

Arnold Harlem died on January 17, 1992. He was the retired deputy director of business and services for the New York Zoological Society of the Bronx for fourteen years before his retirement in 1988. From 1971 to 1974 he was divisional general manager of the Automatic Retailers Association and was former vice president of the Macke Company of Washington, D.C. He was an Army veteran of World War II.

Surviving are his wife, Marilyn; a son, William; a daughter, Carol Yamane; and a grandchild.

Class of 1952

Clyde L. Propst, Jr. died on May 9, 1991. He practiced law in Concord, North Carolina.

Class of 1955

Claude Wallace Vickers, of Durham, died on June 1, 1992. He had been retired for many years from private law practice in Durham.

Vickers is survived by his wife, Elizabeth Smith (Lib) Vickers; a daughter, Nan Vickers Crawford of Winston-Salem; a brother, Ronald Vickers of Fort Worth, Texas; a sister Mildred Vickers Peed of Durham; and two grandsons.

Class of 1967

Hervey M. Johnson of New York City died on March 19, 1992. He was a member of the faculty of Pace University School of Law, which he joined in 1976. He specialized in constitutional law, first amendment and contract law. Johnson was associated for several years with the New York firm of Davis Polk & Wardwell.

Johnson was a founding member of New York Lawyers for the Public Interest, a member of the Steering Committee of the Council of New York Law Associates, and a member of the Board of Directors of the Volunteer Lawyers for the Arts.

A member of the editorial board of the *Duke Law Journal* while in Law School, Johnson sponsored the Hervey M. Johnson Book Award for the best note by a third-year staff member of the *Journal*. His estate will continue to sponsor the award, which has been renamed the Hervey M. Johnson Memorial Book Award.

Johnson is survived by his wife, Irene Deaville Johnson; an infant daughter, Mary Patterson Johnson; a stepdaughter, Jessica Gabrielle Sann; and two brothers, James Evans Johnson, Jr. of Virginia Beach, Virginia and Gilbert Patterson Johnson '63 of Pound Ridge, New York.

ALUMNI ACTIVITIES

Class of 1969

Michael A. Braun, 48, died April 18, 1991 after a long illness. Braun was born in Racine, Wisconsin and had been a resident of Charleston, West Virginia since 1964. He was appointed city clerk in 1987.

"Michael Braun will be missed in the legal fraternity as well as in city government" said Mayor Kent Hall. "He's known about his fatal disease at least six years, and I've never heard him complain. He worked practically every day before he entered the hospital for the last time. He was extremely conscientious."

Braun was a graduate of Colgate University and Duke University School of Law. He was a practicing attorney in Charleston and a member of the West Virginia Bar Association for more than 20 years. He was a partner in Smith & Braun since 1982.

He also served as hearing examiner for the West Virginia Insurance Commissioner and chairman of the Charleston Civil Service Commission. He was a member of Trinity Evangelical Lutheran Church. He was associated with Arthur B. Hodges Center and did volunteer work at Shawnee Hills Mental Health Center.

Braun is survived by his parents, Elmer A. and Carol M. Braun of Charleston, West Virginia; and by his sisters, Kathleen Braun of Lexington, Kentucky and Susan B. Halonen of Cincinnati.

Class of 1973

Charles M. Brown, Jr. of Salt Lake City, Utah, died on January 2, 1991. He was a solo practitioner in Midvale, Utah, and a musician with and business manager for the Helvena Symphony.

Brown's survivors include five sons, two daughters, his parents, two brothers, and a sister.

Class of 1976

Kenneth L. Marshall, 40, died of cardiac arrest December 21, 1991. He had been ill with cancer.

Marshall was an assistant district attorney for Fulton County Georgia from 1978 until his death. He was assigned to the Juvenile Court as a prosecutor and also worked in the Superior Court, where he drew up felony charges and presented them to the grand jury for indictment.

He was a "steady person, efficient in his duties," said Lewis Slaton, the Fulton district attorney. "You always knew he would be there and do what was necessary."

Kenneth Lawrence Marshall was born October 17, 1951, in Atlanta. He received a degree in economics from Brown University and a law degree from Duke University School of Law in 1976.

He was chairman of the "Home Front" Committee of AID Atlanta, which established and maintained residences for people with AIDS who had no place to live. He was a director of Planned Parenthood of Atlanta, a founding member of Black and White Men Together/Atlanta, and a founding board member of the Atlanta Campaign for Human Rights, and he belonged to the Brown Club of Atlanta, Friends Atlanta, the Atlanta Urban League, and West Hunter Street Baptist Church.

He received awards from the National Association of Black and White Men Together, Black and White Men Together/Atlanta, AID Atlanta and Planned Parenthood of Atlanta.

Surviving are his father, of Atlanta; three brothers, Clifton W. Marshall of Birmingham, and Calvin T. Marshall and Kenneth W. Marshall of Atlanta; and a sister, Eleanor C. Marshall of Atlanta.

Class of 1991

Agustin D. Diodati of High Point, North Carolina, died on January 31, 1992 from injuries sustained in an automobile accident in Durham. He had practiced with the Winston-Salem office of Womble Carlyle Sandridge & Rice.

Diodati is survived by his parents, Agustin and Alicia Diodati of High Point; two brothers, Paul A. Diodati of Nashua, New Hampshire and Marcelo E. Diodati of Roanoke, Virginia; and his maternal grandmother, Alda Zunino of Buenos Aires, Argentina.



UPCOMING EVENTS

ABA Meeting Reception	August 10, 1992
Alumni Seminar	September 17, 1992
Board of Visitors	September 18, 1992
Law Alumni Council Meeting	September 18, 1992
Law Alumni Weekend and Half Century Celebration	September 18-19, 1992
Law Alumni Council Meeting	February, 1993
Conference on Career Choices	February, 1993
Alumni Seminar	April 15, 1993
Barristers Weekend	April 16-17, 1993
Board of Visitors	April 16-17, 1993
Commencement	May 16, 1993

LAW ALUMNI WEEKEND AND HALF CENTURY CELEBRATION
September 18-19, 1992

Friday, September 18, 1992

- 9:00 a.m. Board of Visitors Meeting
 12:00 Noon Student/Alumni Luncheon, Law School
 2:00 p.m. Registration Desk Opens,
 Law School Lobby
 2:00 p.m. Law Alumni Council Meeting, Law School
 6:00 p.m. Alumni Cocktail Party, Gross Chemistry
 8:00 p.m. Class Dinners
 8:00 p.m. Half Century Banquet, Duke Art Museum
 9:00 p.m. Hospitality Rooms available at Hotels

Saturday, September 19, 1992

- 9:00 a.m. Coffee and Danish, Law School
 10:00 a.m. Alumni Association Meeting and Ground
 Breaking Ceremony for Law School
 Building Addition, Law School
 12:30 p.m. Alumni Luncheon on the Lawn,
 Law School
 5:30 p.m. Tailgate Barbeque, Law School
 7:00 p.m. Duke vs. Rice, Wallace Wade Stadium
 OR
 7:00 p.m. Class Dinners
 9:00 p.m. Hospitality Rooms available at Hotels

Sunday, September 20, 1992

- 9:00 a.m. Barristers Breakfast, * Washington Duke Inn

* *Barristers of the Law School are alumni and friends who contribute \$1000 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

- Half Century** Ralph Lamberson
 Williamsburg, Virginia
 (804) 253-2377
- 1942** Ralph Lamberson
 Williamsburg, Virginia
 (804) 253-2377
- 1947** Harold D. Spears
 Ironton, Ohio
 (614) 532-5815
- 1952** E. Norwood Robinson
 Winston-Salem, North Carolina
 (919)631-8500
 Grady B. Stott
 Gastonia, North Carolina
 (704) 864-3425
 Thomas W. Seay, Jr.
 Salisbury, North Carolina
 (704) 633-4746
- 1957** Gerald B. Tjoflat
 Jacksonville, Florida
 (904) 791-3416
- 1962** Nathan R. Skipper, Jr.
 New Bern, North Carolina
 (919) 633-1000
- 1967** Wayne A. Rich, Jr.
 Washington, D.C.
 (202) 514-2123
- 1972** John W. Patterson
 Richmond, Virginia
 (804) 775-4338
 Elisabeth S. Petersen
 Durham, North Carolina
 (919) 493-8477
- 1977** Raymond H. Goodman, III
 Raleigh, North Carolina
 (919) 821-1220
- 1982** Bernard H. Friedman
 Mukilteo, Washington
 (206) 742-8160
 David B. (Rocky) Chenkin
 New York, New York
 (212) 223-0400
- 1987** Eve E. and Jasper A. Howard
 Washington, D.C.
 Jasper (202) 662-6000
 Eve (202) 637-5627

Change of Address

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Name _____ Class of _____

Firm/Position _____

Business address _____

Business phone _____

Home address _____

Home phone _____

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 _____

Address _____

Phone _____

News or comments _____

Duke Law Magazine

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