Duke Law Magazine

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About the Cover
The cover features a photograph of a piece from the Law School's collection of legal art. It reproduces a lithograph by Honoré Daumier (1808–1879). 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.

Faculty Recognitions and New Appointments

I am pleased to recognize the recent accomplishments of some of our faculty. Professor Donald Horowitz, who holds a joint appointment with Law and Political Science has been named to the American Academy of Art and Sciences, an honorary society of national scholars and leaders. Professor Walter Dellinger will take a leave of absence to be the assistant attorney general for the Office of Legal Counsel at the Department of Justice. This office provides the president, the White House counsel, and the attorney general with advice on constitutional, administrative and statutory law matters.

The University Provost has named Professor William A. Reppy, Jr., to be the first holder of the Charles L.B. Lowndes Chaired Professorship. Professor Reppy is particularly recognized for his comparative approach to community property and his analysis in the area of conflict of laws as it applies to community property. A fuller description of this recognition occurs at page 33 of the *Magazine*.

Several faculty will join us during the 1993–94 academic year. Professor Benedict Kingsbury will leave Oxford University, England, to join our faculty this summer. He will teach the introductory course in public international law, a course in human rights, and a seminar on international environmental law. Professor Kingsbury's primary research interests include international human rights law, international environmental law, public international law, the United Nations, and international law concerning indigenous peoples and minorities. The addition of Professor Kingsbury to our faculty will greatly strengthen our international programs, particularly our joint juris doctor/master of laws degrees in international, foreign, and comparative law.

Professor Richard Schmalbeck will be returning to our faculty this summer, after being dean of the College of Law at the University of Illinois at Champaign-Urbana. He is no stranger to many of our alumni who were previously his students from 1980 through 1990. He will be teaching in the areas of federal income taxation, tax policy, and law and economics.

Jonathan Wiener will be joining our faculty on January 1, 1994, as an associate professor of law, with a joint appointment with the School of the Environment. After clerking for Judge Jack B. Weinstein and Judge Stephen G. Breyer, he was the special assistant to the assistant attorney general of the Environment & Natural Resources Division of the U.S. Department of Justice. Currently, he is a senior staff attorney at the Council of Economic Advisers, handling issues of the environment, natural resources, and health and safety. His teaching interests include environmental law, risk assessment and regulation, and property and torts. He will complement the teaching and research interests of Professors Christopher Schroeder and Benedict Kingsbury. Duke University has been putting together an excellent University faculty in environmental areas. These three Law School faculty, along with the resources in the School of the Environment, will enable us to provide students a comprehensive set of offerings in environmental law, regulation and policy. These faculty will also strengthen our joint juris doctor and master of environmental management degree program with the School of the Environment.

Benedict Kingsbury

deKun

Jonathan Wiener

Also strengthening our interdisciplinary offerings is the joint appointment to our faculty of Karla Fischer, an assistant professor in Duke's Psychology Department. Her major interests

are the psychological effects of individual participation in the legal system, victimology, and gender and social policy. She is currently working with Professor Neil Vidmar and René Ellis, director of Duke's Private Adjudication Center, on a project addressing the appropriateness of using mediation to resolve "domestic issues" disputes involving battered women.

New Programs

The Law School has been awarded $300,000 from the W.M. Keck Foundation to support a Program in Ethics and the Legal Profession. This award is part of a series of awards that the Keck Foundation is making to several law schools to improve the teaching of ethics. The Duke faculty's approach in this Program is not to focus on developing intensive, short courses, or on developing sub-units of ethics materials for substantive law courses. Our approach, rather, is to develop courses and seminars that deal exclusively with ethical issues in the context of particular legal settings such as civil litigation, criminal litigation, or representing regulated clients; with the profession qua profession; and with the use of philosophical ethics as the basis for developing the practice of ethical behavior within a profession. During the period of the grant, the Law School faculty will provide a self-evaluation of whether this approach to teaching ethics is successful. The faculty will also host a conference for all the law schools who are recipients of these Keck Foundation grants to evaluate the various teaching methodologies that have been developed and to suggest which approaches work.

The Law School and the Department of Political Science have received funding from the Provost to begin a program on international law and organizations. The focus of the program is to bring together international law faculty from the Law School and international relations faculty from Political Science to enable them to work closely together. Scholars in these two fields typically have not worked regularly with one another, and perhaps even more critically few are involved in serious interdisciplinary research. Through this program, faculty will experiment in co-teaching, with preparation of curricula for teaching both law students and political science graduate students together in the same classes. Effective joint efforts by the two faculties will enrich their scholarship as well. This new program is another example of the interdisciplinary nature of our work at Duke University.

Construction Progress

Construction of Phase II of the Law School's building program has advanced smoothly over the last few months. As you can see from the accompanying photograph, the shape and magnitude of the project are now evident. The new space will be occupied in late spring 1994. At this time, the Law School must absorb additional annual operating costs for utilities, maintenance, and so on, totalling approximately $450,000. It is important that our Law School alumni increase their Annual Fund gifts to help us cover these new annual operating costs. I urge each of you to evaluate the size of your Annual Fund gift during the 1993–94 academic year. If all donors to the Annual Fund doubled the size of their gift, the Law School could easily absorb these new costs.

A few hundred of our Law School alumni gave restricted gifts to enable us to afford this new building addition. I ask all of our alumni to help us equally afford to operate it on a day-to-day basis. Your gifts will be critical to our ability to manage these new operating costs.

We are excited about our expected move next year, for we very much need this additional space to accomplish our ambitious goals in research and teaching our students.

Pamela B. Gann '73

Jim Wallace

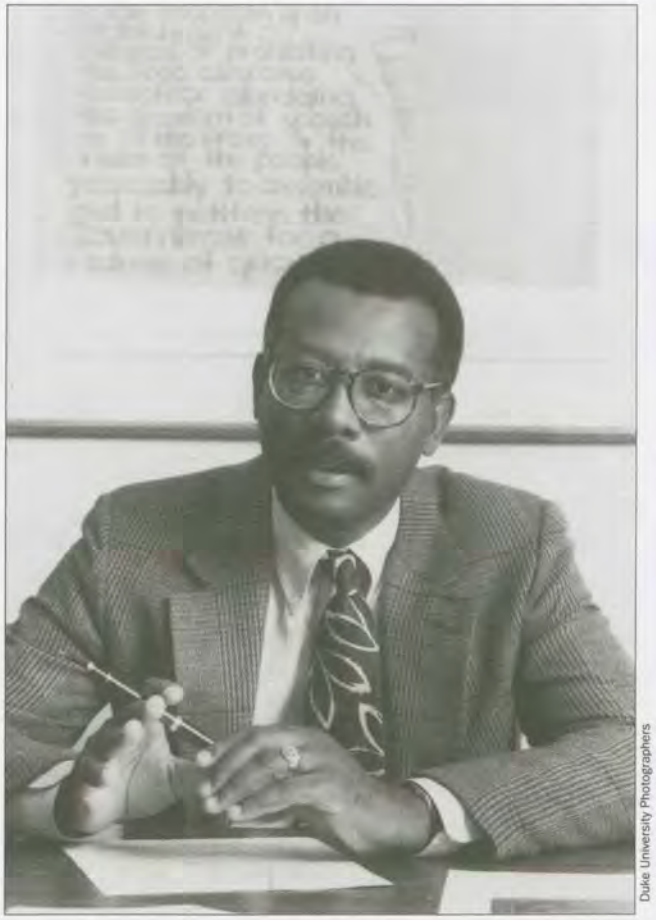
Construction on Phase 2 of the Law School.

THE FORUM

Treason to the Constitution

James E. Coleman, Jr.

In *Cohens v. Virginia,* 6 Wheat. Rep. 264, 404 (1821), Chief Justice John Marshall said, in defending the Court's exercise of jurisdiction in a dispute between Virginia and a citizen of that state, "The judiciary cannot, as the legislature may, avoid a measure because it approaches the confines of the constitution. With whatever doubts, with whatever difficulties a case may be attended, if it is brought before us, we must decide it. We have no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given. The one or the other would be treason to the constitution." I believe that in its handling of the death penalty, the Supreme Court has committed treason to the constitution in both senses that Chief Justice Marshall meant. The Court actively has sought to avoid issues that its own vacillations have created, and at the same time, out of frustration, has attempted to usurp jurisdiction that it did not have in order to avoid jurisdiction it had.



Duke University Photographers

James E. Coleman, Jr. is Professor of Law, Duke University. He joined the faculty in 1991, having previously served in several government positions and as a partner in a large law firm. He teaches criminal law, legal research and writing, and a seminar on capital punishment. This article is a slightly revised version of the speech Professor Coleman delivered as the William P. Murphy Distinguished Speaker on April 12, 1993, at the University of North Carolina at Chapel Hill Law School.

Justice Delayed

Let me put the matter in context. No one involved in the administration of the death penalty is satisfied with the current state of affairs. But there is disagreement over what the problem is. Vivian Berger of Columbia University has described the opposing camps as those who think the problem is one of justice delayed and those who think it is one of justice denied.[1] The Justice Delayed camp believes that lawyers on behalf of properly condemned death row inmates systematically have abused the judicial system to delay executions. This delay frustrates the will of the people and undermines the integrity of the law. In the view of this camp, what is needed is less process and more finality.

The Justice Denied camp sees the problem as one of entrusting a supremely important matter—imposition of the death penalty—to a system that is inherently incapable of carrying out its responsibility fairly and competently. Those in this camp point to the system's principal dependence upon incompetent or marginally competent lawyers to defend socially and mentally marginal individuals charged with capital offenses and to the failure of state and federal judges to address in any principled way the gross errors that are inevitable in such a system.

It is misleading, however, to speak of two camps in this dispute. There really is only one camp that matters, and that is the one that sees the problem as justice delayed. The Supreme Court squarely placed itself in this camp in 1983 when, in *Barefoot v. Estelle,*[2] the Court upheld the Fifth Circuit's summary disposal of a nonfrivolous petition for a writ of habeas corpus. The case came to the Court on an application to stay the defendant's execution. Ordinarily, the court of appeals would have stayed the warrant and given full-merits treatment to the case. In *Barefoot,* however, the Fifth Circuit addressed the merits of the defendant's claim

[1] V. Berger, *Justice Delayed or Justice Denied—A Comment on Recent Proposals to Reform Death Penalty Habeas Corpus,* 90 Colum. L. Rev. 1665 (1990).

[2] 463 U.S. 880 (1983).

in the course of rejecting his application for a stay of execution. A process that ordinarily would have taken months was reduced to several days. As one commentator noted about *Barefoot*, death is different in the context of capital punishment because the state cannot carry out the sanction until the condemned prisoner has exhausted his legal appeals.[3] Thus, because death is different, capital defendants have less time to pursue their appeals.

Barefoot was decided by the Court at the end of its 1982 term. That term marked the turning point in the Court's approach to the death penalty. Robert Weisberg of Stanford Law School describes the four death penalty cases[4] decided then as a rejection of "the romantic account of [the Court's] efforts at death penalty doctrine-making." By this, he was referring to the notion of some optimists that the Court's 1972 decision in *Furman v. Georgia,* 408 U.S. 238 (1972) and to a lesser extent, its 1976 decision in *Gregg v. Georgia,* 428 U.S. 153 (1976), foreshadowed a principled effort by the Court to contain capital punishment within the rule of law. By 1983, however, any such notion was soundly dispelled. I will not attempt here to set out the romantic account of the Court's doctrine-making or its demise. Professor Weisberg has done that exquisitely well.

The point I wish to make is that when the Court decided *Furman* in 1972, it never had the choice of containing capital punishment within the rule of law. The only principled option the Court had to address the concerns about arbitrariness and discrimination expressed in *Furman* was to declare the death penalty unconstitutional in all circumstances. The failure to do that is what is responsible for the unhappy situation the Court finds itself in today.

No Clear Statement

It is wrong to speak of *Furman* as if it represented some clear statement of constitutional law. Instead, the case consisted of nine separate opinions, with no Justice joining in the opinion of any other Justice. Two Justices—Brennan and Marshall—concluded that the death penalty was unconstitutional under all circumstances. Four Justices—Burger, Rehnquist, Blackmun, and Powell—concluded that the death penalty as then administered satisfied the constitution, and three Justices—Douglas, White, and Stewart—concluded that the death penalty statutes before the Court were unconstitutional in application; Stewart and White explicitly rejected the claim that the death penalty was unconstitutional in all circumstances.

The Eighth Amendment challenge to the three death penalty statutes in *Furman* focused on the unbridled discretion the jury had to decide whether to impose the death penalty. Two of the cases involved defendants who had been convicted of rape; the third case involved a defendant convicted of murder. In each case, the jury had the unreviewable choice of sentencing the defendant to life in prison or to death. Nothing in any of the statutes establishing punishment guided that decision. As a result, the decision at best was arbitrary, and at worst was based primarily on race. In concluding that such a system was inconsistent with the standards of decency that had evolved in American society in 1972, Justice Stewart found these statutes "cruel and unusual in the same way that being struck by lightning is cruel and unusual. For of all of the people convicted of rapes and murder in 1967 and 1968, many as reprehensible as these, the petitioners are among a capriciously selected handful upon whom the sentence of death has in fact been imposed."[5] According to Justice Stewart, "if any basis can be discerned for the selection of these few to be sentenced to die, it is the constitutionally impermissible basis of race."[6]

Justice White also objected to the capricious manner in which the statutes operated. His concern, however, was that the death penalty was so infrequently imposed for any crime that it had ceased to be a credible deterrent or "measurably to contribute to any other end of punishment in the criminal justice system."[7] In White's view, the death penalty under such circumstances constituted "the pointless and needless extinction of life with only marginal contributions to any discernible social or public purpose. A penalty with such negligible returns to the State would be patently excessive and a cruel and unusual punishment violative of the Eighth Amendment."[8] White concluded that even for the most atrocious crimes, "there is no meaningful basis for distinguishing the few cases in which the death penalty is imposed from the many in which it is not."[9]

It has been said of the five opinions that combined to declare the death penalty unconstitutional in *Furman* that rather than set forth legal principles to guide the states in developing a constitutional death penalty, they instead present a "declaration of social and political grievances to be redressed."[10] Those grievances for the most part concerned the risk of arbitrariness and discrimination inherent in a system for imposing the death penalty that relied upon unguided discretion. The choices presented after *Furman* ap-

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[3] Weisberg, *Deregulating Death,* 1984 The Supreme Court Review 305, 343–44 (1984).

[4] Zant v. Stephens, 462 U.S. 862 (1983); Ramos v. California, 462 U.S. (1983); Barefoot v. Estelle, *supra;* Barclay v. Florida, 463 U.S. 939 (1983).

[5] 408 U.S. at 309–10.

[6] *Id.* at 310.

[7] *Id.* at 311.

[8] *Id.* at 312.

[9] *Id.* at 313.

[10] Weisberg, *supra,* at 316.

peared to be enactment of statutes that made the death penalty mandatory, enactment of statutes that guided the jury's discretion in imposing the death penalty, or outright abolition.

Although a mandatory death penalty seemed to be what Justice White had in mind, the country's experience with such statutes suggested that few states, given the choice, would take that route. Nor did guided discretion appear promising. In 1971, in *McGautha v. California,* the Supreme Court had rejected a challenge to the death penalty under the due process clause of the Fourteenth Amendment.[11] The principal factor that strongly influenced the Court's decision was its conclusion that it was not possible to draft a statute that meaningfully channeled capital sentencing discretion. In an opinion written by Justice Harlan, the Court said:

> To identify before the fact those characteristics of criminal homicides and their perpetrators which call for the death penalty, and to express these characteristics in language which can be fairly understood and applied by the sentencing authority, appear to be tasks which are beyond present human ability.[12]

The Court in *McGautha* specifically considered and rejected a system for imposing the death penalty that was proposed in the Model Penal Code.[13] Under that system, the jury was presented with a statutory list of aggravating and mitigating circumstances that had to be weighed against each other. In rejecting this approach, Justice Harlan noted that the criteria set out provided only the "most minimal control over the sentencing authority's exercise of discretion."[14] The criteria were not exhaustive; they provided no protection against a jury determined to decide on whimsy or caprice; and they told the jury nothing about how the aggravating and mitigating circumstances interacted with each other. Harlan concluded that the criteria themselves bore witness to the intractable nature of the problem of "standards" which has characterized the history of capital punishment from its beginning.[15] He then made the following observation which foreshadowed the ultimate demise of *Furman*:

> In light of history, experience, and the present limitations of human knowledge, we find it quite impossible to say that committing to the untrammeled discretion of the jury the power to pronounce life or death in capital cases is offensive to anything in the Constitution. The States are entitled to assume that jurors confronted with the truly awesome responsibility of decreeing death for a fellow human will act with due regard for the consequences of their decisions and will consider a variety of factors, many of which will have been suggested by the evidence or by the arguments of defense counsel. For a court to attempt to catalog the appropriate factors in this elusive area could inhibit rather than expand the scope of consideration, for no list of circumstances would ever be really complete. The infinite variety of cases and facets of each case would make general standards either meaningless "boiler-plate" or a statement of the obvious that no jury would need.[16]

This statement written before the decision in *Furman* reflects the principal rationale of today's capital punishment jurisprudence: that because it is not possible to channel in any meaningful way the sentencer's discretion, the next best thing is to insure that the jury is not restricted in the information it may consider in making its decision. That today, is virtually all that the Eighth Amendment requires. To get there after *Furman,* however—that is, to get back to *McGautha*—the Court had to rely upon sophistry and, as Justice Marshall said in his dissent in *Payne v. Tennessee,* raw power.[17] In the process, the Court has seriously damaged itself as an institution, and has undermined its moral authority on the subject of the death penalty. The irony is that the Court probably undertook the course it did because it thought the alternative—to develop a rule of law to address the grievances set out in *Furman*—would be too costly, in terms of both the resources that would be required and the public's short-term rejection of the legitimacy of the effort.

In THE BRETHREN, Bob Woodward and Scott Armstrong report that Justice Stewart was surprised that the decision in *Furman* had not ended the death penalty.[18] If true, Stewart's was a distinct minority view. Almost immediately after the decision, thirty-five states reenacted death penalty statutes designed to address the grievances detailed in the five opinions making up the *Furman* majority. These statutes took one of two forms. About twenty states enacted mandatory death penalties. The remaining fifteen states enacted statutes that required the jury to consider certain aggravating and mitigating factors before imposing the death penalty. The Supreme Court considered the constitutionality of these statutes in the 1975 term in five cases involving defen-

[11] 402 U.S. 183 (1971).

[12] *Id.* at 204.

[13] Model Penal Code § 210.6 (Proposed Official Draft, 1962, and changes of July 30, 1962).

[14] 402 U.S. at 207.

[15] *Id.*

[16] *Id.* at 207–08.

[17] 111 S.Ct. 2587 (1991).

[18] Woodward and Armstrong, THE BRETHREN (1979).

dants sentenced to death for murder. The five cases represented a range of so-called guided discretion statutes and included mandatory statutes from North Carolina and Louisiana.

Doomed to Implosion

The Court's 1976 decisions consist of the key joint opinion of Justices Stewart, Powell, and Stevens (who had replaced Douglass); separate opinions by Brennan and Marshall in which they reaffirmed their view that the death penalty was unconstitutional under all circumstances; an opinion by Justice White; and opinions of the three remaining Justices who had dissented in *Furman* adhering to their view that the death penalty was constitutional in virtually all circumstances. The Court voted 7–2 to uphold the guided discretion statutes, represented by *Gregg v. Georgia*. In the cases involving the guided discretion statutes, Stewart's opinion in *Gregg* purported to approve a scheme that did what Harlan had said in *McGautha* could not be done: give meaningful direction to the jury in deciding when to impose the death penalty.

The key decision in the 1976 cases, however, was the Court's 5–4 ruling that the mandatory death penalty statutes violated the Eighth Amendment. In *Woodson v. North Carolina*, Stewart concluded that the Eighth Amendment required a system for imposing the death penalty that allowed "the particularized consideration of the relevant aspects of the character and record of each convicted defendant before the imposition upon him of a sentence of death."[19] He continued:

> A process that accords no significance to relevant facets of the character and record of the individual offender or the circumstances of the particular offense excludes from consideration in fixing the ultimate punishment of death the possibility of compassionate or mitigating factors stemming from the diverse frailties of humankind.[20]

Although Stewart attributed this result to *Furman*, in fact, the same notion is reflected in Harlan's opinion in *McGautha*. In Harlan's view, however, the desire for particularized sentencing was the reason the Court should *not* require guided discretion.

Justice Stewart's opinion in *Gregg* is the real source of the Court's problem with the death penalty. By suggesting that the Eighth Amendment required guided discretion, he ensured the Court would get bogged down in the effort to establish the contours of such a system. At the same time, Stewart exacerbated the problem by concluding in *Woodson* that such a system also had to permit individualized sentencing. The logic of Stewart's opinions in *Woodson* and *Gregg* is internally inconsistent and doomed to implosion.

For the most part, Stewart's opinion in *Gregg v. Georgia* merely describes and praises the Georgia statute. In doing so, the opinion suggested that the Eighth Amendment required certain of the principal features of the Georgia statute. These include a separate trial for determining the sentence, a procedure to guide the sentencer in reviewing evidence submitted during this penalty phase, and in applying the evidence in a rational way, and a rigorous appellate review procedure to ensure that the death sentence in an individual case was proportional to the sentences in all similar cases and further to guard against arbitrariness and discrimination.

In fact, the Georgia statute did little to guide the sentencer's discretion. The only limitation it placed on the jury's discretion was a requirement that before the death penalty could be imposed, the sentencer had to find that at least one statutory aggravating circumstance existed in the case. These aggravating circumstances hardly narrowed the category of murderers eligible for the death penalty. And the inclusion of circumstances such as the offense "was outrageously or wantonly vile, horrible or inhuman" as in the Georgia statute or that it was "heinous, atrocious or cruel" as in the Florida statute, only ensured further litigation while leaving juries free to act arbitrarily or capriciously. Following *Gregg*, the Court immediatly began a retreat from its principles.

The Court's full retreat from *Furman* came in *McCleskey v. Kemp*.[21] There the Court upheld the Georgia statute against a claim that the death penalty was being imposed primarily upon the basis of the race of the murder victim. The Court assumed the validity of a statistical study which demonstrated that defendants charged with killing white victims were 4.3 times more likely to receive the death sentence than defendants charged with killing black victims. The Court rejected the challenge under both the equal protection clause and under the Eighth Amendment.

In dismissing the defendant's claim that the Georgia statute was arbitrary and capricious in application, the Court acknowledged the "risk of racial prejudice influencing a jury's decision in a criminal case."[22] The issue, however, was at what point did that risk become constitutionally unacceptable. The Court said that disparities in sentencing are an inevitable part of our criminal justice system. It con-

[19] 428 U.S. 262, 303 (1976).
[20] *Id.* at 304.
[21] 482 U.S. 920 (1987).
[22] *Id.* at 308.

cluded that the racial discrepancy indicated by the Georgia statistical study was not constitutionally significant.

Aside from its dismissal of the significance of racial disparities in the imposition of the death penalty, the opinion in *McCleskey* is also notable for the homage it pays to discretion. Although the "power to be lenient [also] is the power to discriminate," the Court said, "a capital punishment system that did not allow for discretionary acts of leniency would be totally alien to our notions of criminal justice."[23] Justice Harlan could not have said it better. After *McCleskey,* little of constitutional significance flows from the concerns about arbitrariness and discrimination that animated *Furman.*

Struggling to Understand

As the Court was retreating from *Furman,* it also was trying to stem the tide of litigation that its retreat had spawned. To its great frustration, however, the Court has been significantly less successful in that endeavor than it has been in shedding itself of the constraints of *Furman.*

What has frustrated the Court is the need to deal with issues created by capital sentencing statutes enacted immediately after *Furman* before anyone, including the Court, knew what *Furman* meant. These states were forced to guess what direction the Court would take, and the consequences of that guessing has produced the chaos that the Court now rails against.

Many states, for example, reasonably thought that *Furman* required mandatory death penalties. Other states just as reasonably thought that *Furman* could be satisfied with statutes that strictly limited which aggravating and mitigating factors the sentencer could consider. Both approaches addressed the apparent need to channel the sentencer's discretion. But the Court rejected both approaches. And with respect to guided discretion, the Court said there was no need to define aggravating circumstances except at the threshold level of defining the capital offense. On the other hand, the Court said the constitution prohibited limiting the sentencer's consideration of any mitigating evidence relevant to the offense or the character and background of the defendant. These principles only evolved, however, during the Court's own struggle to understand *Furman.*

The litigation from the states' precipitous attempts to respond to *Furman* continues to clog the Court's docket. The result has been numerous false starts and long delays. And each new decision intended to deal with one issue gives rise to yet more issues to be decided. The Court's first response was to restrict the availability of the writ of habeas corpus. It did so by aggressively using the procedural default[24] and abuse of the writ[25] doctrines, and by barring the litigation of novel claims in collateral proceedings.[26] Last term, it toyed with totally eliminating the availability of the writ in cases where the defendant had a full and fair hearing on the merits of his constitutional claim in state court, but in the end backed down.[27] There is no doubt, however, that the Court is at the end of its patience. The future may be reflected in what happened last year in the case of Robert Alton Harris.

Extraordinary Action

In April 1992, Harris was to become the first defendant executed by the state of California. To avoid execution, Harris filed numerous claims, including one made in a civil class action that his execution by cyanide gas would violate the Eighth Amendment.[28] The district court to which Harris' case was assigned concluded that the claim was not frivolous and issued a temporary restraining order staying Harris' imminent execution to permit consideration of the merits. The state appealed to a panel of the Ninth Circuit which vacated the stay. Attorneys for Harris petitioned the full Ninth Circuit to reinstate the order. A majority of the judges considering the petition voted to stay Harris' execution so that the full court could review his novel claim.

The Court actively has sought to avoid issues that its own vacillations have created, and at the same time, out of frustration, has attempted to usurp jurisdiction that it did not have in order to avoid jurisdiction it had.

The Supreme Court in the early morning of April 21, 1992, vacated the Ninth Circuit's stay.[29] Harris again appealed to the Ninth Circuit and Judge Harry Pregerson of that court again stayed the execution, continuing to believe that Harris' claim was not frivolous. This caused the Supreme Court to come unhinged. In an order issued two hours after Judge Pregerson entered his stay, the Supreme Court again vacated the stay, but punctuated it order with the following injunction: "No further stays of Robert Alton Harris' execu-

[23] *Id.* at 312.

[24] Coleman v. Thompson, 111 S.Ct. 2546 (1991).

[25] McClesky v. Zant, 111 S.Ct. 1454 (1991).

[26] Teague v. Lane, 489 U.S. 288 (1989).

[27] West v. Wright, 112 S.Ct. 2482 (1992).

[28] Fierro v. Gomez, 790 F.Supp. 966 (N.D. Cal. 1992).

[29] Gomez v. United States District Court, 112 S.Ct. 1652 (1992).

[30] Vasquez v. Harris, 112 S.Ct. 1713, 1714 (1992) (No. 5).

tion shall be entered by the federal courts except upon order of this Court."[30] Harris subsequently was executed.

In an article in the Wall Street Journal following the execution, former Judge Robert Bork praised the Court's action. He called the Court's broad injunction "extraordinary," but "necessary."[31] He suggested the Ninth Circuit was "determined to flout the law until Harris died of old age." Bork had it exactly wrong. The Ninth Circuit was only trying to do what its jurisdiction required, to give Harris a fair hearing on his claim. It is relevant that Harris was executed before any court had ruled on the merits of his claim; indeed, the Supreme Court did not even have jurisdiction to rule on the merits.

Both Bork and the Supreme Court treated Harris' claim as if it were presented in a habeas petition. In fact, the claim was made in a class action filed under the Civil Rights Act. As a result, the rules governing habeas claims did not apply. Notwithstanding that, the Court essentially used those rules to avoid reaching the merits of Harris' claim and thereby clear the way for his execution. Thus, the Court said Harris had "no convincing explanation for his failure to raise the cruel and unusual punishment claim before."[32] But, Harris was not required to provide any explanation for the timing of his Civil Rights Act claim; nor was the constitutional challenge filed too late under the law that governs civil rights claims. It also is revealing that in discussing the factors that it took into consideration in deciding to permit Harris to be executed, the Supreme Court did not mention the possibility that Harris' execution might violate the constitution; that factor was at least as strong an interest as California's interest in "proceeding with its judgment."

Finally, Judge Bork's discussion of the "extraordinary" action taken by the Supreme Court to clear the way for Harris' execution fails to address what I think is the central issue: whether the Court even had the authority to take the action. Bork says only that the action was "necessary." The Supreme Court was equally silent; it said nothing about the source of its authority. But consider what the Court purported to do. It ordered that no federal judge could stay Harris' execution without an order from the Supreme Court. The effect of such a broad injunction, if it were legal, would have been to strip all federal courts of the power to enforce their decisions in all matters relating to Harris. Thus, for example, if a district court had concluded that Harris in fact was innocent and that the state unconstitutionally had suppressed the evidence of his innocence, neither that court nor any other lower federal court would have been able to prevent Harris' execution. One response is that the Supreme Court surely would have stayed the execution in that circumstance. But what gives the Court the authority to arrogate such power? That is the issue that Bork and the Court did not address.

In its October 1992 volume, the *Yale Law Journal* published three articles discussing the Supreme Court's actions in the Harris case.[33] In one of those articles, Judge Stephen Reinhardt of the Ninth Circuit wrote that *Harris* did not just happen. "It was no accident. It was inevitable. It was the logical culmination of a series of Supreme Court decisions subordinating individual liberties to the less than compelling interests of the state and stripping lower federal courts of the ability to protect individual rights."[34] I agree. And as Judge Reinhardt notes, the fast track resolution of claims that characterizes death penalty litigation is spreading to other types of cases as well.

Of the three articles published by the *Yale Law Journal*, two criticized the Court's actions in *Harris* and one defended the Court. But even the authors of the article that defends the Court agreed that the Court lacked authority to enter the injunction purporting to relieve all federal courts of power to stay Harris' execution. "We cannot imagine where the Court could possibly derive authority to issue such an order.... Even more fundamentally...such a broad order is probably unconstitutional."[35]

In his book THE PEOPLE AND THE COURT, Charles Black described the primary and necessary function of the Supreme Court in our system of government as validation. "What a government of limited power needs," he wrote, "is some means of satisfying the people that it has taken all steps humanly possible to stay within its powers. That is the condition of its legitimacy, and its legitimacy, in the long run, is the condition of its life."[36] The Supreme Court performs this function through judicial review. According to Black, if the Court is deprived of its power to set bounds to governmental action, or if the public loses confidence that the Court itself "regards this as its duty and will discharge it in a proper case, then it must certainly cease to perform its central function of unlocking the energies of government by stamping governmental action as legitimate."[37]

The Court also loses its function of validation by itself acting lawlessly. The Court is approaching that point with the death penalty. What remains to be seen is how extensive the damage will be.

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[31] Bork, *An Outbreak of Judicial Civil Disobedience*, The Wall Street Journal, at 19A (April 29, 1992).

[32] 112 S.Ct. at 1714.

[33] 102 YALE L.J. 205–79 (1992).

[34] Reinhardt, *The Supreme Court, the Death Penalty, and the Harris Case*, 102 YALE L.J. 205 (1992).

[35] Calabresi and Lawson, *Equity and Hierarchy: Reflections on the Harris Execution*, 102 YALE L.J. 255, 271–72 (1992).

[36] C. Black, THE PEOPLE AND THE COURT, at 52 (1960).

[37] *Id.* at 53.

A Judicial View of Military Justice

Robinson O. Everett

Some lawyers, whose only contact with courts-martial was in World War II, probably consider the term "military justice" to be an oxymoron. Even those who dealt with the system more recently during the Korean War or the Vietnam War—after extensive reforms had been made—may still have some concern about the fairness of trials by court-martial and may wonder whether command influence has been eliminated.

Military Justice Fair

I am glad to report, on the basis of my rather extensive experience as chief judge of the U.S. Court of Military Appeals, that military justice now is at least as fair a system as any in the world. In some respects it is superior to any other system of which I am aware. Let me begin by a brief background on military justice, which applies to members of the Army, Navy, Air Force, Marine Corps and Coast Guard, wherever they may be located and even when they are on leave or are far away from military installations. *Solorio v. United States,* 483 U.S. 435 (1987).

Robinson O. Everett is Professor of Law, Duke University. He began teaching at the Law School in the early 1950s and was elected to regular membership on the faculty in 1967. He was chief judge of the U.S. Court of Military Appeals from 1980–90, and has since resumed full-time teaching in the areas of criminal procedure, criminal law and national security law. This article is the slightly revised text of an address given by Judge Everett at the September 1992 meeting of the Wake County, North Carolina Senior Lawyers. It was originally published by THE SENIOR LAWYER, *Vol. 3, No. 1, October 1992.*

The basic statute is the Uniform Code of Military Justice, which was first enacted in 1950, to take effect a year later. The Code contains 146 articles which correspond to sections 801–946 of Title 10 of the U.S. Code. The punitive articles—which define offenses punishable by court-martial—are contained in Articles 77 through 134, 10 U.S.C. §§ 877-934. They define both military offenses—such as unauthorized absence, disobedience of duty, and misbehavior before the enemy, which are unique to the military establishment—and a variety of other crimes like those tried in state and federal courts—such as murder, rape, robbery, and burglary. One punitive article that has received recent judicial attention is Article 125, U.S.C. § 925, which deals with sodomy. This article was interpreted by the Court of Military Appeals to encompass non-commercial homosexual or heterosexual activity, even when privately engaged in by consenting adults. *United States v. Fagg,* 34 M.J. 179 (CMA 1992), *cert. denied,* 61 U.S.L.W. 3257 (1992).

Two of the punitive articles are very broad: Article 133, 10 U.S.C. § 933 punishes conduct unbecoming an officer and a gentleman (which now has been construed to include a lady), and Article 134, 10 U.S.C. § 934 (the "general article") prohibits conduct prejudicial to good order and discipline, service-discrediting conduct, and violations of Title 18 or other federal criminal statutes. Interestingly, up to the present the Supreme Court has rebuffed any constitutional attacks based on the alleged vagueness of these articles. *Parker v. Levy,* 417 U.S. 733 (1974).

Trial System, Procedures and Protections

Offenses committed by service members—and military status is a prerequisite for military jurisdiction, *Reid v. Covert,* 351 U.S. 487 (1957)—may be tried by a general court-martial, which can impose any punishment authorized by the Congress and the president up to and including death; by a special court-martial, which can sentence an accused to as much as six months confinement, partial for-

feitures of pay for a like period, and a bad conduct discharge; or by a summary court-martial, which can impose no more than thirty days confinement or a month's forfeiture of pay, along with certain reductions in grade. A general court-martial must have at least five members and a special court-martial, at least three. The general and special courts-martial are presided over by military judges—senior military lawyers who have no other duties and are experienced and well trained. A summary court-martial, however, consists only of a single officer, who need not be legally trained.

An accused can waive trial by the court-martial members and elect to be tried by the judge alone. Indeed, this is done in a high percentage of cases. However, if the accused does not elect to be tried by judge alone, both the findings and the sentence are determined by the court-martial members. This, of course, is unlike the system in either the federal courts or in most state courts, where, even if the defendant is tried by a jury, the defendant will be sentenced by the judge. There have been proposals to change military justice in this regard, and I believe a change would make sense and make the system more efficient.

An accused can waive trial by the court-martial members and elect to be tried by the judge alone. Indeed, this is done in a high percentage of cases.

One of the remarkable features of the military justice system is its provision for right of counsel. An accused—whether a buck private or a four-star general—is entitled to free military counsel in a trial by court-martial. The accused need make no showing of indigence in order to be furnished a lawyer. Moreover, to a limited extent, the service member has a right to select the military lawyer who will represent him. Of course, if the accused has the means, the accused also may retain a civilian lawyer to represent him before a court-martial or for an appeal.

Even before trial, the service member receives protections that go beyond those granted in the civilian community. Article 31 of the Uniform Code, 10 U.S.C. § 831, provides warning rights broader than those under *Miranda v. Arizona,* 384 U.S. 436 (1966). Those rights are triggered by interrogation or by a "request" for a statement, rather than by "*custodial* interrogation." Incidentally, these protections for service members do not appear to have handcuffed military investigators.

If the sentence adjudged by a special court-martial includes a bad conduct discharge or if the sentence adjudged by a general court-martial includes either a dishonorable or bad conduct discharge or extends to one year confinement or more, the case is automatically reviewed by a Court of Military Review within the particular military department. Article 66, 10 U.S.C. § 866. This court is composed of senior military lawyers—typically colonels and lieutenant-colonels or in the Navy captains or commanders.

Review by this court extends beyond matters of legal error. For example, the Court of Military Review must disapprove a conviction if its members are not persuaded beyond reasonable doubt by the evidence—as they weigh it and even though the evidence may be "legally sufficient." Furthermore, the Court of Military Review has the task of reviewing the appropriateness of a sentence and may reduce the sentence. On the other hand, there is no provision in the Code for government appeals seeking sentence increases. In courts-martial an accused is better situated than in criminal trials in the federal district courts, because there are no sentencing guidelines and few mandatory minimum sentences.

Case Review

A case can move from the Court of Military Review to the Court of the Military Appeals in three ways. If it is a death case, review is mandatory. Secondly, the government has a right of appeal on issues of law which it may designate. This right is exercised perhaps twenty-five times a year. The overwhelming number of its cases come to the Court of Military Appeals by petition for discretionary review under Article 67 of the Uniform Code, 10 U.S.C. § 867. I suppose that in about eight to ten percent of these cases review is granted.

Incidentally, in the fiscal year before I came to the court on April 16, 1980, less than 1,600 petitions for review had been received by the court. However, by fiscal year 1984, the number of petitions reaching us had soared to almost 3,300. The chief reasons were the war on drugs (an incredible percentage of our cases were drug-related) and the hard-boiled approach being taken by the Armed Services as they attempted to restore discipline and to recover from the trauma of the Vietnam War. I understand that now the caseload is down to around 1,200 a year, partly because of the downsizing of the Armed Services and partly because recruiters can be more selective than a few years ago, enabling them to avoid recruiting persons whose past conduct has been marginal.

For more than thirty years, the Court of Military Appeals was the court of last resort for a service member convicted by court-martial. There was, of course, the possibility

of collateral attack in a federal district court—typically by means of a writ of habeas corpus—but the grounds for such attack were very limited. On August 1, 1984, however, an addition to Title 28 took effect which, in some cases, authorizes petitions for a writ of certiorari from the Court of Military Appeals to the U.S. Supreme Court. 28 U.S.C. § 1259. However, the Court of Military Appeals plays a unique role as a gatekeeper for the Supreme Court. If the Court of Military Appeals has granted an accused's petition for discretionary review, the case becomes eligible for review on writ of certiorari; but if the court has simply denied the petition, the case is ineligible for review by the Supreme Court.

One of the remarkable features of the military justice system is its provision for right of counsel. An accused—whether a buck private or a four-star general—is entitled to free military counsel in a trial by court-martial. The accused need make no showing of indigence in order to be furnished a lawyer.

Supreme Court Review Rare

Up to now there have been almost 200 petitions for certiorari by the Supreme Court, but I believe only three have been granted. On May 24, 1993, the Supreme Court granted review in *Weiss v. United States* to determine whether the appointment of military trial and appellate judges by the Judge Advocate General violated the Appointments Clause of the Constitution and also to determine whether the Constitution requires that such judges be appointed for fixed terms. 61 U.S.L.W. 3783 (May 24, 1993). Another was in the *Solorio* case, *supra,* which involved the scope of military jurisdiction. There, the Court of Military Appeals had upheld court-martial jurisdiction over a Coast Guardsman charged with off-base child molestation and the accused sought Supreme Court review.

In affirming our decision, the Supreme Court ruled that a service member—solely by virtue of military status—is subject to military jurisdiction at all places and times, so long as that status persists. In two other cases, which involved right-to-counsel issues, the Supreme Court granted certiorari and summarily remanded for further consideration by our court. Frankly, I was quite pleased with those grants of review, because I had written dissenting opinions in our court.

Court of Military Appeals: Special Cases

Now let me discuss briefly some of the cases which came to our court. Many have involved drug offenses. To my disappointment, I also noted that an ever-increasing number concerned child sexual abuse. Frequently, the issues the court confronts are quite novel and have not yet been encountered in other courts. For example, the Court of Military Appeals was probably the first appellate court to consider whether an assault has been committed if a service member had sexual relations with another person without disclosing that he had AIDS. The court also had occasion to deal extensively with the Fourth Amendment issues raised when a service member is compelled to submit to urinalysis as part of drug testing and, if positive, the results are then used in a trial by court-martial.

One of the most interesting cases that we confronted was *U.S. v. Matthews,* 16 MJ 354 (1983), which involved a soldier who had brutally stabbed and slain a librarian at a post where he was stationed in Germany. For this offense, Matthews had been tried by an Army general court-martial, which had adjudged the death sentence. It was our duty to determine whether the death penalty had been properly imposed. We held that, according to Supreme Court precedents involving capital punishment, the procedure used by the court-martial—and authorized at the time by provisions of the *Manual for Courts-Martial*—did not comply with constitutional requirements.

Subsequently, in *U.S. v. Curtis,* 37 MJ 252 (CMA 1991), which involved a young Marine at Camp Lejeune who had killed his supervisor and that officer's wife, we held that the changes in court-martial procedure for capital cases—which had been made by Executive Order of President Reagan after the *Matthews* decision—had resolved the earlier constitutional issues. Incidentally, a number of people throughout the country watched the oral argument of *Curtis,* which was telecast on C-Span as part of the court's Project Outreach program.

Another case reached us under very unusual circumstances. Commander Billig, a Navy surgeon, had been convicted by a court-martial for manslaughter and negligent homicide because of the way in which he performed his duties at the Bethesda Naval Hospital. However the Navy-Marine Corps Court of Military Review—the intermediate court from which appeal may be taken to the Court of Military Appeals—had ruled that the evidence was factually insufficient to sustain a conviction. In other words, using

this unique power that I mentioned earlier, the members of that court had weighed the evidence and found that it was not credible enough to sustain the conviction of Dr. Billig.

In turn, an anonymous complaint was submitted to the Department of Defense inspector general by means of a "hotline" maintained by that official. According to this tip, there had been an *ex parte* contact with the members of the Court of Military Review before they rendered their decision. There also was a "suggestion" of bribery.

... the Court of Military Appeals plays a unique role as a gatekeeper for the Supreme Court. If the Court of Military Appeals has granted an accused's petition for discretionary review, the case becomes eligible for review on writ of certiorari; but if the court has simply denied the petition, the case is ineligible for review by the Supreme Court.

Late one afternoon in June 1988, I was phoned by the chief judge of that court, who informed me that he and other judges of his court had a petition to submit to our court. This unusual request prompted me to inquire about the nature of the petition. He explained that, as part of an investigation that had been initiated by the inspector general, the members of the Court of Military Review and their staff had been ordered by the judge advocate general of the Navy to appear on a Friday morning for interview by an investigator from the inspector general's office.

As a result, we opened our clerk's office early the next morning to receive the petition. Then I contacted by phone the other two judges of our court, both of whom were away from Washington at the time. We issued a temporary restraining order against the judge advocate general, the inspector general, and Secretary of Defense Carlucci.

Ultimately, a hearing took place, in which the judges of the court below were represented, at our request, by a former general counsel of the Department of Defense. Injunctive relief was granted, although our court then appointed one of our own judges as a special master to inquire into the alleged misconduct. *Court of Military Review v. Carlucci,* 26 MJ 328 (CMA 1988). An extensive inquiry on his part led to the conclusion that nothing improper had occurred, but this case was especially important in terms of reaffirming the independent status of the Courts of Military Review and, indeed, the independence of the military justice system from extraneous influences.

Some 400 cases which arose in Europe were concerned with the effects of remarks by a division commander. His comments were subject to the interpretation that, if charges were preferred against a member of his division, the supervisors of the accused should be reluctant to testify in his or her behalf as character witnesses. Emphasizing that "command influence is the mortal enemy of military justice," we acted to assure that no service member who had been court-martialed was prejudiced in any way by the general's comments. *U.S. v. Thomas,* 22 MJ 388 (CMA 1986).

Opportunity for Innovation

The opportunity for innovation helped make my service at the Court of Military Appeals a very interesting and challenging experience. For example, we initiated Project Outreach to acquaint both the military community and the general public with the military justice system and with our court. Incident to that project, our court heard oral arguments outside of Washington—at law schools, such as Wake Forest and the University of Virginia, and at the service academies.

We also allowed the videotaping and televising of some of our arguments. And so we became, I believe, the first and only federal appellate court whose proceedings have ever been televised. Incidentally, I believe Project Outreach was a very beneficial effort. The quality of justice did not suffer, but the public became much better informed about our work.

Also, we initiated a history of the court and of appellate review in the military justice system. This has already resulted in one volume by an eminent historian, Jonathan Lurie, who now is working on the second volume. To know your history enables you to avoid repeating your mistakes.

I am grateful for having the opportunity to have served for more than a decade as chief judge of a court which confronted challenging issues daily. Most of all, I am grateful for the opportunity to participate in a mission that to me has great meaning—protecting the rights of the men and women who are willing to risk their lives to protect our country.

ABOUT THE SCHOOL

The Virtual Library! Enhancing Information Access through the Law School Networks

The Duke Law Library prides itself on being the dynamic research hub of the Law School. Its mission, as defined in the Library Strategic Plan, is "to provide access to resources and a full range of services in order to support the curriculum and programs of the Law School, promote the advancement of legal scholarship, and meet the legal information needs of library users." To fulfill this mission, the library is engaged in a large-scale effort to take advantage of new network technologies to provide enhanced services to students and faculty. One major move in that direction was the extension of the campus computer information network (DukeNet) to the Law School building which allowed for the use of the Internet.

Jim Wallace

Claire Germain and Ken Hirsh use the Law School's computer network.

What is the Internet?

The Internet is an international system of interconnected networks that allows access to computers at various universities, corporations and government institutions.[1]

Since the Internet allows for the connectivity of separate electronic resources, it permits its users to get access to online library catalogs, indexes and a wealth of other resources from a single terminal. The Duke Law Library seized the opportunity presented by this technological break-through and installed the Student Research Network for students with an extensive menu of choices. A year or so later, a separate Faculty Network was installed for the Law School, and in 1992, both networks were enhanced with Library Services menus.

The Student Research Network

The installation of the Student Research Network in 1989 was made possible by the vision of the director of the law library, Professor Dick Danner [see profile of Professor Danner at page 28], who had specially-built student workstations placed throughout the library, rather than restricted to a separate computer lab, so that students could use both books and electronic resources in their study carrels, as well as word processing to complete their assignments. At first, students accessed the online catalog and Lexis and Westlaw via dial-in modems. After the extension of DukeNet to the Law School, faculty and students began accessing these services and others over the Internet in simultaneous sessions. On the Student Research Network, students are presented with a menu of choices, developed by the library, that gives them immediate and transparent access to a great variety of services adapted to their needs, including library information services (the virtual library), word-processing, software programs, and electronic mail.

Students and professors can "talk" to each other, since the two networks are bridged. Through the Internet, they can also join electronic discussion groups ...and bulletin boards.

The Student Research Network is an MS-DOS based local area network (LAN), running on Novell software, that is accessible 24 hours a day to registered Duke law students. Currently, the network consists of thirty-three workstations and four printers located on the two lower levels of the library. An Apple Macintosh and printer are

[1] Thanks to Ken Hirsh, acting manager of computing services, for the definition.

available primarily to convert documents to MS-DOS and back. WordPerfect is used for word processing. Pegasus mail is used for electronic mail (e-mail). The Student Research Network is connected to the Faculty Network.

New Services Available

Students and faculty can now access a variety of library and other information sources. They have e-mail addresses to facilitate communication within the building and with their correspondents throughout the world who have an Internet or Bitnet[2] electronic mail address. Students and professors can "talk" to each other, since the two networks are bridged. Through the Internet, they can also join electronic discussion groups (there is one for law students and a variety of others on all imaginable topics), and bulletin boards. They can check the weather (through a host at the University of Michigan which puts out the U.S weather forecast). They can request documents to be sent to them electronically from remote locations (through FTP, or File Transfer Protocol). Students have access to Computer-Assisted Legal Instruction (CALI) exercises, as assigned by a teacher, or on their own. Faculty course outlines are available on the network. Other materials are added when appropriate, e.g., recently, the Law School rules were added, with a simple hypertext system and word search capability. Students soon may also be able to schedule placement interviews electronically. The Student Research Network is even equipped with a computer virus check program!

Also, through the Student Research and Faculty Networks, members of the Duke Law community have access to the following research resources from a single terminal: the library online catalog, library periodicals, other serials and acquisitions data, interdisciplinary periodical indexes such as CARL Uncover, subject access to a national library catalog called OCLC First Search, Lexis and Westlaw, *Current Index to Legal Periodicals*, and the *Index to Foreign Legal Periodicals.*

Despite the advantages, having so many choices for information sources may become bewildering to users. Law librarians, therefore, play an essential role in teaching students and faculty to use these new technologies, which information can be found online, and when to go to the books in the library.

Library Information Services

Online Catalog. The law library has shared an online catalog with other area universities since 1986. The Triangle Libraries Research Network (TRLN) comprises Duke University in Durham, North Carolina State University in Raleigh and the University of North Carolina at Chapel Hill with a total collection estimated to be the second-largest collection of library materials in North America. Users can tell whether an item is available or checked out, and because of reciprocal borrowing agreements, they can check out circulating materials from the three school libraries. Students and faculty can also produce bibliographies by downloading search results into wordprocessing files.

Innopac's Online Acquisitions and Serials System. Thanks to Innopac, a separate acquisitions and serials system, which is shared by all Duke libraries, students and faculty can check whether the law library or any library on campus has a book on order, and whether the library has received the latest issue of a particular periodical.

UnCover's Periodical Index. UnCover (produced by the Colorado Alliance of Research Libraries) provides student and faculty access to journal articles and tables of contents of over 12,000 legal and interdisciplinary periodicals. This is particularly useful at Duke, which supports joint-degree programs in history, economics and other subjects and offers a large number of interdisciplinary courses. Designed for the public, the system is menu-driven and user-friendly. On-screen instructions encourage users to get their articles from the area libraries. Copies of articles can be ordered online for an average cost of $10 per article, including the copyright fee, and are faxed within twenty-four hours.

FirstSearch's Union Catalog. FirstSearch (offered by the Ohio College Libraries Center) provides access to over twenty-four million records held at nearly 15,000 libraries around the country and abroad. It contains over forty databases. One of these databases, "Worldcat," is the OCLC online union catalog. Searches are by author, title and subject key word. Each record indicates whether Duke or other libraries own the item. Once a book is found, it can be located in one of the Duke libraries, or, if not found, requested from another library via interlibrary loan.

[2] "Because It Is Time Network," an IBM NJE-based network of principally educational institutions.

Lexis and Westlaw. Students and faculty are connected to Lexis and Westlaw over the Internet which provides faster connection than telephone/modem connections. They can use programs such as Lexform for Lexis to format search results into wordprocessing files without the need for retyping the information. They can set up Selective Dissemination of Information (SDI) searches (Eclipse on Lexis and PDQ on Westlaw) that store searches and update them automatically on a regular basis (daily, weekly, etc). Documents can also be downloaded or printed.

University of Washington's *Current Index to Legal Periodicals.* This weekly index updates the other legal periodical indexes and is useful for current awareness and good for preemptive searches.

Index to Foreign Legal Periodicals. The *Index to Foreign Legal Periodicals* indexes over 600 foreign language legal periodicals, essays and collections. The database goes back to 1985 (the Index itself started in 1960).

National Bureau of Economic Research Working Papers Index. This NBER (National Bureau of Economic Research) Working Papers Index provides convenient access to the NBER Working Papers which are held in the law library as a resource for the whole campus. The Law School sponsors a program in law and economics.

A number of software programs also help in the preparation of documents. CiteRite II checks the citations in a document against the proper Bluebook format. Grammatik V analyzes the writing style of a document and advises users of potential problems, such as grammatical errors. Westcheck and Checkcite review briefs and memoranda, extract the citations and logs onto Westlaw or Lexis to check the citations against Shepard's, Insta-Cite or both. With these new services, students and faculty get enhanced access to books and periodical articles. They get access to information in a way impossible to imagine before the introduction of networks. They also have that information at their fingertips, without having to perform tedious research from set to set in the library. The concept of the scholar's workstation, as a single terminal to be used for a variety of research applications, is now a reality!

The Student Research Network and Faculty Network are important resources for computer research. The library also has several dedicated Lexis and Westlaw terminals on various floors of the library, including a computer room which can be used for group training, as well as two terminals equipped to play compact discs (CD-ROMs). Students and faculty can also access Lexis and Westlaw from their homes if they have a phone line and a modem.

The electronic library is... an option presented to students and faculty and can provide tremendous help when used together with the more traditional materials found on the library shelves in print or microform.

Information Overload?

Despite the advantages, having so many choices for information sources may become bewildering to users. Law librarians, therefore, play an essential role in teaching students and faculty to use these new technologies, which information can be found online, and when to go to the books in the library. These information specialists know how to navigate through the many information sources available and advise students and faculty on how to find information in the best place and most convenient format, whether electronic or print.

The electronic (or digitized) library will not replace the print library in the foreseeable future. Many electronic sources are rather shallow in coverage and emphasize newer information, and there are many gaps. Not every book is in electronic form. The electronic library is, however, an option presented to students and faculty and can provide tremendous help when used together with the more traditional materials found on the library shelves in print or microform.

It is easy for students to move from the workstation to the main reading room of the library which is still a congenial place for students to gather materials for group research projects. Tables are reserved, for instance, in the reading room in the fall for first year writing projects and throughout the year for law journal editors to do cite-checking. The law library has, however, already charted its path toward the future and enhanced its role because, in addition to being a repository of legal materials, it has become a gateway to electronic information resources for the benefit of its users.

Claire M. Germain

Claire M. Germain is currently Edward Cornell Law Librarian and Professor of Law at the Cornell Law School. Until July 1, 1993, she was Associate Director of the Library and Senior Lecturer in Comparative Law at Duke Law School. This is a modified version of an article that originally appeared in 5 Trends in Law Library Management and Technology *1 (March 1993).*

Emerging Trends in Dispute Resolution

The Private Adjudication Center, Inc. (the "Center") began in 1983 as a Law School affiliate organization dedicated to developing information to improve the administration of justice. One of its primary goals was the investigation and use of innovative dispute resolution techniques. In the early 1980s, alternative dispute resolution (ADR) chiefly involved the administration of arbitration and mediation services. Some organizations had been providing arbitration services in labor and construction cases for over sixty years. The ADR movement, though, was beginning to expand in new directions. Developing trends included the marketing of arbitration and mediation services to insurance companies for use in personal injury cases and the development of corporate dispute resolution programs. At about the same time, the courts in both the state and federal systems sought to reduce docket backlogs and to improve the administration of justice through court annexed mediation and arbitration programs.

During the early days of this period in ADR, the Center initiated some trends of its own. It actively provided services in many personal injury and other insurance cases. It developed a corporate dispute resolution program for Toyota Motor Sales, USA and examined innovative ways of resolving multi-party disputes in complex litigation. The Center also acted as administrator of a court-annexed arbitration program from 1984 to 1988 for the United States District Court for the Middle District of North Carolina. The program eventually adopted by the court was studied and a report compiled by the Rand Corporation with financial support from the National Science Foundation, Rand's Institute for Civil Justice, and the National Institute for Dispute Resolution.

Today the ADR movement has expanded beyond standard form services with fixed procedures, such as half-day arbitrations and mediation, and begun to embrace systems custom designed for a particular program or case. The Center has pioneered the design of many unique dispute resolution options.

Toyota Arbitration Program

The Toyota Reversal Arbitration Board program, mentioned above, illustrates the use and value of custom ADR procedures. This program, developed and administered by the Center for Toyota Motor Sales, resolves disputes that arise between Toyota dealerships over the allocation of vehicle sales credits. The program utilizes the services of nine arbitrators who are responsible for resolving disputes in twelve Toyota sales regions. The use of this relatively small number of arbitrators, each hearing a separate calendar of disputes, affords each arbitrator more experience with the Toyota sales credit policy and with the typical fact patterns which give rise to sales credit disputes. The arbitrators' experience in turn contributes to the highly consistent resolution of disputes which the program has enjoyed. Since implementation of the program, the number of disputes between dealers has been reduced dramatically. Research conducted at the Center indicates that the introduction of a neutral party into the dispute resolution process has led to improved relations between dealers and Toyota, and to increased dealer satisfaction with the decision-making process itself. The program has been recognized by the Center for Public Resources for excellence in corporate dispute resolution.

Airport Case

The Center has continued to attract many interesting cases and has created unique dispute resolution options. Locally, the Center designed and administered an arbitration procedure for a case involving 125 claimants who had alleged inverse condemnation due to increased noise from hub expansion at Raleigh-Durham International Airport (RDU). The case was assigned to a senior judge who recognized that trying 125 separate cases was not the preferred way to proceed. Although the cases would involve many overlapping issues, it was estimated that each case might require two weeks trial time and

Dan Crawford

Jim Fuller discusses exhibits used in the RDU arbitrations at a Center CLE program during Barristers Weekend in April.

significant resources due to differences in valuation of the properties. Recognizing that the plaintiffs, the defendant, and the judge did not want to try the cases individually, the Center designed a process that quickly eliminated issues common to all cases, such as the history of RDU operations and various relevant definitions, by requiring that the parties agree to a two-day presentation of background information with time limits imposed on each side.

The second phase of the process involved the arbitration of test cases. Eight cases were jointly selected by the parties as representative of the full range of affected properties, from the least noise-impacted to the most noise-impacted areas.[1] A half day arbitration hearing before three arbitrators[2] was then scheduled for the first four test cases.

The arbitrators heard the first four test cases and then, in accordance with the Center's designed procedures, issued detailed opinions in support of their decisions in an effort to give the parties additional tools for settlement. After the first four cases were decided, the parties entered preliminary settlement negotiations. When the parties could not settle the dispute, the Center scheduled the arbitration of the next four cases. After hearing the decisions of the arbitrators in these last four test cases, the parties settled 121 out of 125 cases.[3]

Dalkon Shield Settlement

The Center is also developing expertise in providing alternative dispute resolution options in mass torts. In April of 1991, the Center was selected by the Dalkon Shield Claimants Trust as the administrator responsible for handling all procedural matters related to binding arbitration programs for Dalkon Shield claimants.

The Dalkon Shield Claimants Trust was established to compensate individuals who have claims arising from the use of the Dalkon Shield, an intrauterine device manufactured and distributed by the A.H. Robins Co. in the early 1970s. Thousands of claims were filed against the company due to alleged Dalkon Shield related injuries. In 1985, the A.H. Robins Co. filed for Chapter 11 bankruptcy with approximately 7,000 claims pending and about fifteen claims being filed a day. Prior to the bankruptcy filing, approximately 9,500 cases had been settled for a total in excess of $500 million. The total number of claims filed after an impressive notice campaign ordered by the District Court exceeded 300,000.

In 1987, the District Court for the Eastern District of Virginia ruled that the remaining claims for injuries arising from use of the Dalkon Shield were fairly valued at $2.475 billion. The Fourth Circuit approved Robins' $2.475 billion reorganization plan which included the establishment of the Dalkon Shield Claimants Trust. Approximately 141,643 claimants have settled their claims with the Trust for a total of more than $632 million. About 37,000 claims remain unsettled.

The Dalkon Shield Claimants Trust offers three options for claimants. Under Option 1, claims are not evaluated by the Trust, and payment is awarded in the amount of $725 for Dalkon Shield users, $300 for non-users, and $125 if there is conflicting information concerning use. Option 2 provides a limited review for those who can establish their Dalkon Shield use and injury with a schedule of amounts provided for specific injuries. Option 3 provides for a full review of evidence to show Dalkon Shield use and injury.

If a claimant is dissatisfied with the offer received from the Trust under the appropriate Option, the Trust will undertake an in-depth review of the claim and invite the claimant to a voluntary settlement conference. The Claims Resolution Facility established by the reorganization plan sets forth a timetable for electing arbitration, trial, or ADR with deadlines tied to the date of the settlement conference. Under the timetable, if no settlement is reached at the settlement conference, both the claimant and the Trust must submit written proposals no later than sixty days after the conference. The proposals must remain in effect until ninety days after the conference. If settlement is still not reached, the Trust will certify the claimant's eligibility to choose either binding arbitration or trial at a location convenient to her. The United States District Court for the Eastern District of Virginia will issue an order allowing the claimant to proceed after the claimant makes the election.

There are three alternative dispute resolution options available to claimants: (1) Regular Arbitration; (2) Fast-Track Arbitration; and (3) a program simply referred to as ADR. A Regular Arbitration hearing can last no more than three days. A Fast-Track Arbitration hearing lasts no more than one day and has a maximum award of $10,000. The ADR program (first offered to claimants in April 1992) has a maximum hearing time of two and one half hours, a maximum award of $10,000, and may be elected before attending a settlement conference. All three programs require participation in pre-hearing conferences. Hearings are held within sixty days of the conference for the ADR program and within 120 days for the other two programs. Hearings occur in major metropolitan areas reasonably convenient to the claimant.

If a claimant receives an Option 3 early evaluation offer of $10,000 or less, the Trust will send the claimant an election form. The claimant must use

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[1] A majority of the claims involved residential properties.

[2] Each side selected one arbitrator from a list maintained by the Center; through a ranking procedure, the Center designated the third arbitrator.

[3] The remaining cases will be scheduled for arbitration in half-day sessions per the agreement.

the election form to elect to proceed through either (1) in-depth review and settlement conference or (2) alternative dispute resolution.

If a claimant elects ADR, the Trust will send to the claimant an Agreement to Submit to Binding Alternative Dispute Resolution ("ADR Agreement"). Within ten days of receiving the claimant's signed ADR Agreement, the Trust will file an application with the United States Bankruptcy Court for the Eastern District of Virginia seeking an order permitting the claimant to proceed to ADR. Once the Trust receives the court order certifying that the claimant may proceed with ADR, it sends that information to the Center.

The Center is responsible for selecting and training panels of arbitrators from which individuals are selected to conduct the hearings. The arbitrators are retired trial judges, lawyers with at least ten years of significant trial experience and who have been in active practice or judging within the last two years, or persons with comparable experience who are deemed qualified by the Center. No one with any involvement in Dalkon Shield litigation is eligible to serve as an arbitrator. The Center continues to recruit, organize and train panels of arbitrators to serve in the Dalkon program throughout the United States.

The Center felt that the program would be best served by arbitrators who had enough background information about cases and case types to focus more time on particular issues relevant to each claimant who elected to participate. To provide this background, the Center developed training sessions for arbitrators, focusing on issues specific to the Dalkon Shield litigation including training in obstetrics/gynecology and epidemiology. Experts were recruited from the Centers for Disease Control and Duke University Medical Center. Training sessions have been held in Denver, Columbus, San Francisco, the District of Columbia, and Los Angeles. The sessions were videotaped and tapes are now provided to new arbitrators to prepare for their hearings.

Since July 1991, twenty-two claimants have elected Regular Arbitration and thirty-three claimants have elected Fast-Track Arbitration. The ADR program has been very popular among claimants with less serious injuries as they are ensured of being scheduled for their hearing within six months of their certification date and the proceeding is less formal than either trial or Regular or Fast-Track Arbitration. Since its inception in April 1992, 795 claimants have elected ADR; 645 of those claimants have been certified by the District Court for ADR.

Dalkon Shield ADR claimants are scheduled in groups depending on geographic location. They are then assigned to a referee living close to their area. The pre-hearing conferences are scheduled back-to-back, consecutively, on the same day. Hearings are scheduled on a two case per day basis. It is believed that the success of this program will likely establish it as a model for the resolution of other mass torts.

Medical Malpractice Cases

The Center is also involved in the design of custom dispute resolution procedures for specialized cases such as those typically found in the area of medical malpractice. The Center concluded its important research in the area of medical malpractice litigation during the 1991–92 fiscal year. The project was the result of a major grant from the Robert Wood Johnson Foundation to study existing litigation patterns in malpractice cases and to develop alternative methods of resolving cases. A substantial body of data has been gathered and has already dispelled misinformation regarding medical malpractice litigation in North Carolina. For example, the empirical evidence suggests that medical malpractice juries are not consistently pro-plaintiff, nor do they lack the competence to render decisions, and do not necessarily render runaway awards.[4]

The Center has developed, employed and evaluated detailed ADR procedures specifically tailored to these medical malpractice cases. One such procedure administered by the Center in medical malpractice and other serious cases is called a "jury determined settlement" which is similar to a summary jury trial.[5] In the jury determined settlement, the parties are bound by the jury decision, which is limited by pre-trial agreement of the parties setting minimum and maximum award amounts. The Center now has more experience than any organization in the Southeast in providing ADR services in medical malpractice cases.

Conclusion

The Center will maintain its current focus on the development of dispute resolution systems for complex cases and mass torts, as well as on the design of corporate dispute resolution programs. It will continue to critically evaluate alternative dispute resolution and conduct research on ongoing programs and new procedures. The focus of the Center's service provision will involve procedures that aim to improve the administration of justice and encourage the use of arbitration and mediation options in appropriate circumstances. Efforts to improve the dissemination of information about dispute resolution procedures to law students and the practicing bar will remain an important goal of the Center.

René Stemple Ellis '86
Executive Director
Private Adjudication Center

[4] Vidmar, *The Unfair Criticism of Medical Malpractice Juries*, JUDICATURE, Vol. 76, No. 3 (1992).

[5] The summary jury trial is a dispute resolution technique pioneered in the federal courts in the early 1980s. In a summary jury trial a case is resolved via trial with imposed time limits to a jury that renders a non-binding decision.

Rabbi Seymour Siegel Moot Court Competition

On February 12–14, 1993, the Law School hosted the Third Annual Rabbi Seymour Siegel Moot Court Competition. The competition is sponsored by Duke Law alumnus Allen G. Siegel '60, in honor of his brother who was a noted scholar in the field of medical and legal ethics.

Twelve teams from law schools around the nation participated in this year's competition. The problem argued by the advocates raised the question of what ethical duties are owed by a law firm to the government, in the course of the firm's representation of a savings and loan institution. The problem also raised due process issues regarding the government's ability to take unilateral action under the Financial Institutions Reform, Recovery and Enforcement Act of 1989 to freeze the assets of the law firm.

During the competition, each team briefed the problem and argued in three preliminary rounds, with the top eight teams advancing to the elimination rounds. The quality of oral and written advocacy in this year's competition was quite impressive. The team from the Florida State University School of Law won the competition in a close final round against advocates from Mercer University. Awards also were presented to the competitors from the Chicago-Kent School of Law for having prepared the best brief and to an advocate from the Cumberland School of Law for best oralist.

Jim Wallace

The final round judges are shown with Mr. Siegel. From left: Justice Sarah Parker, Allen Siegel '60, Chief Judge Gerald Tjoflat '57 and Judge Peter Fay.

Preliminary Round Judges

Robin Anderson
Graham & James

Elizabeth Armstrong

Robert Flowers Baker '61
Spears, Barnes, Baker, Waino, Brown & Whaley

John Q. Beard '60
Lawyers Mutual Liability Insurance Company

Victoria Bender
Bender & Wallis

Virginia C. Bennett '92
Bell, Seltzer, Park, & Gibson

Brian Brown
Moore & Van Allen

Joan Harre Byers '74
North Carolina Department of Justice

Gloria M. Cabada-Leman '92
Moore & Van Allen

Sean Callinicos '89
Maupin Taylor Ellis & Adams

Rick Castiglia
Department of Defense

Richard Cook '89
Maupin Taylor Ellis & Adams

Linda Daniels '83
Daniels & Daniels

Christine Witcover Dean '71
United States Attorney's Office

Douglas F. DeBank '62
DeBank, McDaniel & Anderson

George William Dennis, III '75
Teague, Campbell, Dennis & Gorham

David Dreifus '80
Poyner & Spruill

Katherine E. Flanagan '90
Petree Stockton

E.O. Gaskins '66
Everett Gaskins Hancock & Stevens

Fern E. Gunn '82
North Carolina State Bar

Elizabeth A. Gustafson '86
Duke University School of Law

Anne Fitzgerald Hulka '90
Smith, Anderson, Blount, Dorsett, Mitchell & Jernigan

Elizabeth Fairbank Kuniholm '80
Elizabeth Kuniholm, Attorney at Law

Margaret Lumsden '88
Hunton & Williams

John W. Marin '80
Maupin Taylor Ellis & Adams

Suzanne O'Hanlon Markle '92
Graham & James

Margaret DeLong Martin '82
LeBoeuf, Lamb, Leiby & MacRae

Susan McAllister
Smith, Anderson, Blount, Dorsett, Mitchell & Jernigan

Pressly M. Millen '85
Womble Carlyle Sandridge & Rice

Kelley Dixon Moye '89
Moore & Van Allen

Ann Marie Nader '89
Moore & Van Allen

Timothy John O'Sullivan '90
Bell, Seltzer, Park & Gibson

Elisabeth S. Petersen '72
Elisabeth S. Petersen, Attorney at Law

Mark J. Prak '80
Tharrington, Smith & Hargrove

David Monroe Rooks '76
Northern, Blue, Little, Rooks, Thibaut & Anderson

John Sasser
Moore & Van Allen

Agnes Schipper
Moore & Van Allen

Marlene Spritzer

Kip Sturgis '80
North Carolina Department of Justice

Michael Thornton
Moore & Van Allen

Michael E. Weddington '73
Smith, Anderson, Blount, Dorsett, Mitchell & Jernigan

Richard Weintraub '76
Durham City Attorney's Office

Thomas R. West '79
North Carolina Office of Administrative Hearings

Faculty Members

Thomas B. Metzloff

Thomas D. Rowe, Jr.

THE DOCKET

ALUMNUS PROFILE

Gao Xi-Qing '86

Founding a Securities Market in the People's Republic of China

In 1988, the chill of the spreading U.S. economic freeze hadn't fully gripped Wall Street's "masters of the universe." The "bonfire of the vanities" (Tom Wolfe's book of that name dominated best seller lists that year) still burned as RJR Nabisco changed hands for a record $25 billion. Wall Streeters pocketed millions in what would be viewed as the spectacular last hurrah of a decade distinguished by financial pyrotechnics.

Halfway around the world, in the People's Republic of China (PRC), the mood was a good deal more somber. The economic liberalization of the early '80s that had attracted Western companies hungry for new markets was being reversed. Inflation was increasing at an alarming rate, and the mood of the country was turning sharply conservative. The following year, the tragedy of Tiananmen Square would be played out as the government loosened its embrace of the West and tightened central planning and control.

Gao Xi-Qing '86

Getting Started

It was at this critical juncture that Gao Xi-Qing '86 left New York to return to his native China after a two-year stint at a Wall Street law firm. His project: to help strengthen China's ailing state-run businesses with the development of a full fledged securities market, an idea he and others had been tinkering with since early 1988. The question was, would a tool that seemed the very symbol of decadent capitalism be accepted in a Marxist system, especially one in which growing economic troubles had tempered the enthusiasm for foreign ideas?

The answer, it turns out, was yes. Acceptance was cautious. Masters of the universe don't exist in a culture that values society over the individual, and finds Western aggressiveness offensive. But government ministries warmed to the idea because state-owned businesses desperately needed new sources of capital and incentives to become profitable. On his return to China, Gao co-founded the Stock Exchange Executive Council, and then founded Beijing Investment Consultants, Inc. (BICI), and later, Haiwen & Partners, all of which are key institutions in developing securities exchanges in Shanghai and Shenzhen, the special economic zone bordering Hong Kong. The firms also were instrumental in developing China's Securities Trading Automated Quotation System (STAQ), an over-the-counter electronic trading system modeled on NASDAQ. Gao recently resigned from the above mentioned firms to become the general counsel and director of public offerings of the China Securities Regulatory Commission in Beijing.

BICI and Haiwen & Partners have become the nexus of a thriving securities industry in China. Many members of the two firms were educated abroad, receiving legal educations at Southern Methodist University, Queen's College in Ontario, Canada, and the London School of Economics, as well as Duke. These people set up the PRC's securities exchanges, wrote its securities laws, and are negotiating to bridge the gap between the PRC and Hong Kong legal and accounting systems. Their work should result in joint regulation of the two markets when Britain cedes control of Hong Kong to the PRC in 1997.

Duke's Connection

The success of China's securities exchanges underscores the significance of Duke's decision in 1984 to commit resources to the legal education of Chinese students following an official visit by a delegation from the Chinese Ministry of Education. Former dean Paul Carrington said then, "the commitment reflects a faculty judgment that what is happening in China now is enormously interesting. China's culture is 7,000 years old, and has gotten along most of that time with few lawyers.

China is now developing a legal system and profession, and that in many ways makes for the most interesting legal event of the century."

In addition to receiving as many as twenty-five PRC students into the J.D. and LL.M. programs, as well as a steady supply of visiting scholars, the Law School sent a small number of American students to China. Duke J.D. students studied as part of an exchange arrangement at People's University in Beijing and at Fudan University in Shanghai. Duke faculty members Carrington, George Christie, Pamela Gann, Jonathan Ocko and William Van Alstyne visited and taught in China, and regular links between Duke and PRC law faculties were established.

After Tiananmen Square, the number of Chinese students enrolled at Duke diminished substantially. Interest in China continues nevertheless, and Gao has returned to the Law School twice since 1988 to offer seminars on trade with China. One of Gao's former students from the University of International Business and Economics received her J.D. degree in May, and another of his students will begin work toward an LL.M. this fall.

Early Growth

Gao reports that Chinese investors have taken to securities buying with relish. Indeed, demand far outstrips supply, leading to the necessity of lotteries for new issues. The markets have attracted a high percentage of individual investors—nearly sixty percent of market participation is by individuals. Gao concedes that some of that interest is fueled by unrealistic expectations. "In mainland China people are much less sophisticated in terms of capital markets. Someone tells them, look, you can make ten times your original investment in five days...and no one says, 'No, I don't believe it.'" Investor reaction to the swings of the young markets has been sanguine, however, and interest has remained high despite market volatility. (The Shanghai index dipped from 1420 in May of 1992 to 393 in November of that year; then rallied to 1536 this February.)

Though individual investor interest has focused on the two floor exchanges, Gao views the electronic STAQ system as "the future of the industry. In Europe they have basically done away with most of these floor trading exchanges," he says. "You go to the London Stock Exchange—it's a museum now. Because people all go back to their offices and watch on their screens."

STAQ, piggybacking on the computer system of the Aviation Ministry, links thirty cities. China's CAAC airline often is derided as "China Air Always Cancelled," but Gao defends the decision to use their mainframe, saying the problems are with the administration of the system, not with the system itself or its programmers. The STAQ system was designed with input from NASDAQ officials.

While the role of China's stock market in the total capitalization of the country's corporations still is small, Gao credits the securities exchanges with being important agents in the PRC's impressive recent economic perfor mance. The total economy grew nearly 13 percent in 1992. Industry growth came to 21 percent, with collective enterprises increasing 29 percent, foreign investment enterprises 49 percent, and non-state enterprises contributing to 61 percent of new industries. State enterprises increased their value 14 percent. Retail sales grew nearly 16 percent. The market mechanism accounted for 70 percent of all capital goods sold, and in retail sales, the ratio was even higher, reaching 90 percent.

Says Gao, "In 1988 people saw China as maybe a potential market; now they see it as a very profitable market." Important financial institutions such as Merrill Lynch, Goldman Sachs, Morgan Stanley, First Boston, and Salomon Brothers all have sent high-ranking representatives to China recently. Plans are afoot to trade nine "red chip" companies in Hong Kong and New York— including Tsing-Tao beer, whose tremendous popular appeal has financiers vying to underwrite the offering.

Following Tiananmen Square

The stock exchange project became a rallying point for activists within the Chinese government in the dispiriting days following the Tiananmen Square confrontation. "Everything was dead after June 4," says Gao. "I lay at home eight hours a day watching the movie tapes I brought back to China [from the U.S.], because I couldn't do anything better. But then, I thought about it. I realized we can't be like this, so I started trying again, going to the various government ministries and trying to persuade the younger people there and some of the open-minded older people to carry on. You just go on and on, and eventually, you move some people." A group began to meet regularly on Wednesday afternoons. "We would talk and talk, and people would come in and say, 'This is like an oasis on the desert, because you know, when I go back to my ministry, everything is so dead.' We would feel totally jubilant after the meetings, and we would go out, and say, 'Now, we still have hope.'"

Gao takes issue with the Western view of China's bureaucrats as intractable ideologues. "It's like here [in the U.S.]," he says. "You read about all the discrimination, the struggles among human beings. But if you go talk to specific individuals, usually you find people are very nice. If you believe what you are doing is really right, eventually more and more people will accept it. This is what happened with our cause. I would just go on talking to people. And they would say, 'Obviously, you

really believe what you say.' And I said, 'I do.'"

Gao is careful to avoid aligning the effort to develop capital markets with any particular economic theory. A stock exchange, he says, "is more of a technical tool, which can be used by any state, any system. It's like a car you drive. Whether you're a communist or a capitalist, it doesn't matter whether you drive a Toyota or a Mercedes." To emphasize the technical, rather than the ideological, nature of the Chinese stock market, he says, "We call ourselves 'The School of Technicalities.'" He adds, "I can't tell them [government colleagues], 'This is how Americans do, so do it.' They immediately say, 'Go away, we don't want to hear what Americans do. This is China.'"

Developing Securities Law

Though the stock exchanges are in place, development of securities law has come more slowly. Little precedent exists in China for establishment of securities markets. For about twenty years under Nationalist rule, multiple exchanges burgeoned in Shanghai and Shenzhen, trading not only stocks but futures and commodities such as sugar, cotton, and petroleum. But those short-lived and relatively freewheeling exchanges, abolished when the Communists took over in 1949, left little to build on some forty years later. Gao expects full development of a legal framework in the interests of all parties involved to take time. "I studied American antitrust law for a long time—studied it for a whole year and a half—and it took twenty or thirty years for them to finally get serious about it, right? Securities law in [the U.S.] as well. People are only getting really super serious in the past ten or twenty years."

Chinese securities law has borrowed heavily from the established Anglo-American tradition. Gao notes that Chinese law has grown in the last five years from a one-page document titled "State-Run Enterprise Bonds Regulation" to a whole set of central and local laws and regulations governing securities issuance, trading, markets, institutions, and settlement. He tells his Duke classes, with a hint of irony, "The regulatory agencies also have grown, if not in strategy and skills, at least in their numbers, size, power and willingness to rule."

As Hong Kong and the PRC prepare for the departure of the British in 1997, Gao has been involved extensively in the effort to align the two systems of corporate governance. Hong Kong investors are reluctant to bring suit in mainland Chinese courts, due to their lack of a track record in corporate law. The two governments have agreed to a system of arbitration facilitated by the fact both are signatories to the 1958 New York convention recognizing foreign arbitral awards. Gao is hopeful that the SEC in the United States will be satisfied with an arbitration arrangement, as well.

The idea of fiduciary duty of boards of directors is new to the PRC. Directors are used to owing responsibility to one shareholder—the state—and were puzzled by Gao's insistence on including fiduciary duty in its company law. The concept first appeared as a single sentence. However, as the PRC has tried to attract foreign capital, foreign investors have expressed interest in the issue, and the idea has become more fully articulated in China's emerging securities law. China has no FDIC equivalent offering investor protection against broker bankruptcies because brokerage houses so far are state-owned and backed by state assets.

Challenges Ahead

China's securities industry has become a magnet for talented and energetic young people. Gao hopes the magnet will draw more of the people who left China in the '80s to study abroad and decided not to go back. Of the thousands who left, few have returned. "Every time I come here [to the U.S.], I tell all my friends that they should come back, and build this thing." Gao notes that while his own government salary is low—about $1 a day, plus housing and some meals—partners in private practice can do well in the material sense. The major partners of BICI and Haiwen & Partners, for example, enjoy such perks as cars and cellular phones. He also points out that recreational activities such as skiing and paragliding are inexpensive in China. "These things are all very cheap compared to the States. We do have recreation—we don't just live a Spartan life every day!"

But it is evident that for Gao, the real thrill is the work at hand, and the opportunity to make a difference. On Wall Street, he says he felt like "a cog in a huge, huge machine—because the system is so institutionalized." In China, he points out, the securities industry is just beginning, and opportunities to take on responsibilities that would be reserved for senior partners on Wall Street are available to younger people in the PRC. "I tell them, this is a chance you would never get in the United States—this kind of work. The largest company in China—we are taking it public internationally. In the States, there would be all these bigshots doing it."

"You just need millions of people involved in this industry," he says. "You have four million enterprises in China, which eventually I hope will all go public. You have billions of dollars out there to be made. And you have all this infrastructure to be built up. Think about it! That's the kind of excitement, the challenge, that would appeal to young people."

Deborah M. Norman

ALUMNUS PROFILE

Douglas P. Wheeler '66

Environmentalist for a New Era

While trees do grow in Brooklyn, you won't find many environmentalists among Brooklyn-bred lawyers. But Douglas P. Wheeler '66 fits few stereotypes about environmentalists. A Republican who got his start in politics under Richard Nixon '47 and is as at home in business attire as he is in outdoor gear, Doug Wheeler possesses a commitment to the environment that owes more to reason and pragmatism than to passion and ideology.

Unlike a growing number of Duke Law students and recent alumni, Wheeler did not come to Duke bent on a career in environmental law. His goals were not so well-defined. "I came to Duke with the idea of a career in government and public policy and the assumption that I wouldn't practice law." At Duke, Wheeler began to develop the analytical acumen and centrist instincts that have since served him so well. "Law school strengthened my impetus to government service," says Wheeler, "which seemed a way to pursue a career while serving the country. Many of us at Duke realized that you didn't have to choose between fighting or opposing the war in Vietnam to make a contribution."

Upon graduation, Wheeler did not head straight for Washington. Instead, he joined Duke alumnus Al Murchison '64 in private practice in Charlotte, North Carolina where he specialized in real estate and land use. Murchison quickly appreciated the practical and incisive cast of Wheeler's intellect. "Unlike many beginning lawyers, Doug was able to grasp the big picture immediately," says Murchison, who describes Wheeler as "too open to be a politician in the classical sense."

Murchison encouraged his colleague to run for a seat in the North Carolina General Assembly in 1968. Wheeler lost, but his bid brought him to the attention of national Republican strategists. Soon, he was invited to join the new Nixon administration as a legislative attorney for the Department of the Interior. By 1972, Wheeler had become Deputy Assistant Secretary for Fish and Wildlife, and Parks.

Collectively, while we have not forgotten Nixon's achievements in foreign policy, Vietnam and Watergate eclipse his administration's accomplishments on the domestic front. It's easy to forget that the environmental movement was virtually created during this administration, a time when the Environmental Protection Agency was established, the Wilderness Act passed, and the first Earth Day held. For Wheeler, the early 1970s were an exciting time to be part of government. "Nixon saw the political advantage of being involved in the environmental movement," notes Wheeler, who had the opportunity to draft some of the most important, early environmental legislation.

In 1977, Wheeler left government for more than a decade of leadership in the not-for-profit sector. Between 1977 and 1980, he served as chief operating officer of the National Trust for Historic Preservation, turning his attention from environmental protection to historic preservation. From there, he became founding president of the American Farmland Trust, where he conceived and implemented a strategy to conserve threatened farmland that was effective enough to attract financial backing from more than 30,000 individuals, corporations and foundations.

Douglas P. Wheeler '66

In 1985, Wheeler accepted a major leadership position in national environmentalism. He became the executive director of the Sierra Club, a position which, while often frustrating, provided a number of the political insights that guide him today. The greatest challenge Wheeler faced while with the Sierra Club was convincing a segment of first generation members that the job of raising public awareness, vital at one time, was largely a completed one. "It was time, I believed, for the organization to shift its focus from advocacy and confrontational approaches to cooperative problem solving."

In 1987, Wheeler moved back to Washington to work with The Conservation Foundation, a position which enabled him to combine his interests in historic and resource preservation. By 1990, Wheeler had taken the helm of the foundation's "Successful Communities" program, an initiative devoted to reconciling economic growth with environmental protection.

Wheeler's talents as a reconciler of competing interests put him at the top of the list when California Governor Pete Wilson was seeking a secretary for resources in 1990. Wilson's own environmental record suggests the importance this position was to assume in his administration. As a member of the California Assembly in the 1960s, Wilson championed coastal protection, laying the ground work for the Coastal Protection Initiative Act, passed in 1972. He also wrote legislation mandating improved land-use planning. In announcing Wheeler's appointment, Wilson confirmed his pledge "to bring an environmental ethic to the office and state government" and stated "in Doug Wheeler I have found someone to make that happen—who can balance the need for economic development with sound conservationist policies."

west. As a participant in this spring's Portland environmental summit, he found much to praise. "The right questions are being asked and the right parties are involved. It was heartening to see everyone agree there was a need to break the impasse." Part of breaking this impasse, says Wheeler, is moving beyond the single species approach of the Endangered Species Act to consider ecosystem management.

And Wheeler is doing just that as he grapples with allocating and protecting California's scarcest resource—water. Recently, he has been focusing on the San Francisco Bay-Sacramento/San Joaquin Delta and its associated wetlands. This estuary is the junction point for moving water in California north to south, and rising statewide water consumption threatens to degrade the fragile ecosystem. Instead of concentrating on individual species that are already seriously endangered, Wheeler and his colleagues have encouraged a broader, proactive strategy that looks to relationships among species within an entire ecosystem.

As California's chief environmental officer, Wheeler is daily challenged to demonstrate that environmental and economic benefits are mutually compatible. Part of this challenge is moving beyond the "command and control" policies of the 1970s and 80s.

As California's chief environmental officer, Wheeler is daily challenged to demonstrate that environmental and economic benefits are mutually compatible. Part of this challenge is moving beyond the "command and control" policies of the 1970s and 80s. Noting that seventy to eighty percent of Americans now identify themselves as environmentalists, Wheeler believes that the environmental movement is entering a new era in which the carrot (economic incentive) is proving more powerful than the stick (legal mandate).

Wheeler is heavily involved in the 'owls versus timber' controversy occupying center stage in the Pacific Northwest. As a participant in this spring's Portland environmental summit, he found much to praise. "The right questions are being asked and the right parties are involved. It was heartening to see everyone agree there was a need to break the impasse." Part of breaking this impasse, says Wheeler, is moving beyond the single species approach of the Endangered Species Act to consider ecosystem management.

This broader approach may keep one species—the California gnatcatcher, a small gray songbird in Southern California—from dwindling to endangered levels, and at the same time promises to protect fellow ecosystem denizens like the cactus wren and the wood-tail lizard. Wheeler has departed from earlier practice by rejecting a wholesale moratorium on new development. Instead, under his plan, developers have access to five percent of the land in question, but that ceiling is strictly enforced. Such compromise reflects a widening of the debate, as divergent interests ranging from avid environmentalists to farmers, land developers and water suppliers have gained seats at the negotiating table. The efforts of California's Republican administration to head off an owls vs. jobs logjam have impressed even a Democratic administration, and President Clinton has promised federal support for the program.

When Wheeler entered Duke Law School in 1963, there were no environmental law classes. As he puts it, "we had to make all the connections for ourselves." In the upcoming year, current Duke Law students will be able to choose from an array of environmental law offerings, including a joint degree program with Duke's School of the Environment. Wheeler encourages students to see these offerings not as narrow job preparation for environmental lawyers-in-training, but as part of a broad-based legal education. Environmental decisions and their consequences, he asserts, will touch lawyers in all areas of practice. Moreover, he believes, lawyers with environmental experience will be in a particularly strong position to move between private practice and government service. Certainly Doug Wheeler's own richly varied career bears this out.

Lucy Haagen

FACULTY PROFILE

Richard A. Danner

Leading Duke's Law Library

Duke's first law librarian William Roalfe in 1930 laid the groundwork for one of the finest collections of Anglo-American and Western European law references in the world. Current associate dean for library and computing services, and research professor of law Richard Danner has continued the tradition of excellence. He not only has expanded the outstanding print collection but also has invested in an electronic network that allows Duke access to other premiere collections around the world and creates the electronic backbone for the "library without walls" of the next century. "Richard Danner is a real leader in integrating new library and computer technology into the Law School library," says Dean Pamela Gann.

Law school libraries are at the hub of an information revolution that is expanding library boundaries while contracting the time it takes to secure information. Electronic research services such as Lexis and Westlaw bring to students' fingertips information that once was available only by perambulating library stacks on foot—or waiting for a volume to arrive from an off-campus collection. Studying no longer is a matter simply of "hitting the books"—it's also a matter of going "on-line." [For more information on this subject, see The Virtual Library! Enhancing Information Access through the Law School Network on page 15.]

Danner has ensured that Duke is keeping pace. "We're pretty well advanced—not all schools are networked to the extent we are," he says. "Nearly all the law schools are going to have machines sitting at people's desks. But the key thing is the network, which provides the ability to connect within the building and go anywhere in the world to obtain information."

Danner is widely recognized for his contributions to the field of law librarianship. As a past president (1989–90) of the influential American Association of Law Libraries (AALL), and editor of the Association's internationally-circulated *Law Library Journal* since 1984, he has been instrumental in shaping the profession's agenda. Roy Mersky, Hyder centennial professor of law and director of research at the University of Texas Law School, salutes Danner's contribution to the highly-regarded *Journal:* "Under his leadership, the *Journal* has become a scholarly, intellectual publication that we in the profession seek out for its articulation of important issues and concerns."

"Richard Danner is a real leader in integrating new library and computer technology into the Law School library," says Dean Pamela Gann.

Says Carol Billings, director of the Law Library of Louisiana and president-elect of AALL, "He is an original thinker, a superb writer and editor, a good teacher, and a fine manager. Dick will be remembered and appreciated by AALL members for the high quality he has brought to *Law Library Journal* and for two of the most important initiatives ever undertaken by AALL—the long-range planning process and the creation of a research agenda." Judy Genesen, executive director of the AALL, praised Danner's highly effective leadership of the AALL strategic planning initiative, which she points out took just a year to complete though it was the first in the organization's eighty-five year history.

Jim Wallace

Richard Danner

Danner has published and lectured extensively. His most recent book, *Strategic Planning: A Law Library Management Tool for the '90s,* has become a resource for law library planning around the country. As chairman of an AALL special committee, Danner this year oversaw formulation of a national research agenda of importance not only to law libraries, but also to other educators and public policymakers. One issue under study is how increased reliance on electronic research will affect development of the law. Another, which Danner has addressed in professional journals, is public access to legal information sources. Regarding the latter, Danner has been an advocate for public access to legal information, and has called for national attention to issues arising from increasing reliance on electronic information provision.

Danner points out that as legal professionals turn to commercial electronic databases to obtain legal information, that information may become less available in printed form—and to average citizens. "Without lucrative professional patronage, traditional legal research publications—the ones citizens rely on in libraries of all types—will become more expensive, less available, and may disappear entirely," he says. He believes law libraries should become more active in providing legal research training for general librarians, and promote collaboration between general libraries and electronic database vendors to develop low-cost public access to commercial databases through public libraries.

Danner's strategic planning strengths have been of major importance to Duke in developing the law library. He noted some years ago that "adaptation to change is overtaking growth as the driving force in law and other research libraries." The library has led the general automation of the Law School. The School has its own faculty and student networks, including thirty-three desktop terminals in the library providing student access to such information sources as Lexis and Westlaw. Users logged more than 11,000 hours on research services in 1991. The law network is integrated into DukeNet, which is connected to the international research network, Internet. "Having those three levels gives students and faculty increasing capabilities, so they can go directly to the source of information."

The library plans to increase the numbers of carrels equipped with communications connections. "What we've moved towards is a workstation environment where at one machine you can sit and do your writing and obtain the information you need and stay right there without asking the library to obtain something for you," Danner says. Students can access databases that provide indices to journal articles, tap into the local on-line catalog for all campus libraries, and request that documents be delivered to them. If students or faculty are writing a paper and need to access cases, they can move into Lexis, and then download documents into their word processing programs. Access to Lexis and Westlaw means that newly-decided cases are available sooner than ever, and creates access to federal agency decisions and documents previously difficult to obtain and maintain in printed form.

As information retrieval has grown more complex and expensive, the librarian's research expertise has become increasingly important to the Law School's array of resources. "Knowing how to ask the right questions is essential to efficient information gathering," Danner has said. "Students may have learned that the various editions of the *U.S. Code* all contain current federal statutory law, but they may not have learned *when* it is appropriate to be looking for a statutory answer at all... [students need to] understand the place of various sources in the hierarchy of legal authority and in the research process." The researcher's time is not the only important factor here: computer-assisted legal research (CALR) services are expensive. To peruse a federal case on Westlaw, for example, could cost the equivalent of $4 a minute. Thus it pays off both in time and money to map out a search strategy before going on-line.

Danner has been an advocate for public access to legal information, and has called for national attention to issues arising from increasing reliance on electronic information provision.

A strong advocate of the law librarian's teaching role, Danner teaches a seminar in legislation and a class in legal bibliography, including legislative history and computerized legal research, and has taught classes on legal research for non lawyers through Duke Continuing Education, as well.

Faculty and students alike laud the service-orientation of Duke's law library in comparison with law libraries elsewhere. Not coincidentally, the library's location is literally at the heart of the Law School building, ringed with faculty offices and classrooms. Says Danner, "For me that's always been one of the good qualities about Duke—faculty, students and librarians are using the same facility for research, and that creates a lot of interaction and sense of community." He notes also that Duke doesn't have a separate faculty library, so faculty do a lot of research in the library—another impetus for its excellent collection. The library

staff prepares research bibliographies for faculty, and notifies faculty of new publications and other developments in their fields.

The Law School's relatively small size and lack of bureaucracy allows the library staff to focus on providing reference, research and technical support to users. Says Danner, "The major thing that distinguishes this library is that, in addition to its strong core collection, it also has invested in developing a highly-skilled staff and in providing the capabilities for users to be able to explore not only the local collections but information beyond the confines of the library itself."

Dan Crawford

Faculty and students alike laud the service-orientation of Duke's law library in comparison with law libraries elsewhere.

In line with the philosophy of accessibility, Duke's law library is open to the public, and its collection is used extensively by the North Carolina legal community, both through the borrower's program and through a photocopying service that is the largest of its kind in the state. Danner expects the law library to see even greater use when the Terry Sanford Institute of Public Policy building is completed across the street from the Law School in 1994. The library is seeing increasing interdisciplinary use on campus, as well. Danner says a recent survey found that about twenty percent of the law library's circulation is to other departments on campus.

Danner believes the Law School's building expansion project is particularly well-timed to coincide with the shift from print to electronic information. "The fact we have been able to design a library that will readily take advantage of the shift will be a major thing. I think we are in a position with the new building to take advantage of that change at the time that it's gaining momentum." He believes one of the challenges of the next decade will be finding the balance between electronic resources and continued development of print materials, such as monographs, treatises, and foreign and international materials, that are available only in print form.

Danner received his J.D. from the University of Wisconsin in 1979 and his M.S. in Library Science from the same institution in 1975. He graduated Phi Beta Kappa in political science and did graduate work at MIT before undertaking library and law degrees. Danner has been at Duke fourteen years, coming from the University of Wisconsin in 1979.

Danner considers Durham a good place to raise a family, and lives with his wife, Cheryl Sanford, son Zachary and daughter Katherine. Ultimately, he enjoys working at a small school with a large library collection and library services that are appreciated by its faculty and students. "I don't have much interest in being in a larger place, or in a state institution with more bureaucracy," he says. "I'm interested in being a law librarian, and in being in a place where that work is appreciated and supported. It's increasingly an exciting thing to be doing and Duke is where I want to be doing it."

Deborah M. Norman

BOOK REVIEW

Crisis in the Gulf: Enforcing the Rule of Law*

by John Norton Moore '62

On August 2, 1990, Iraq invaded and seized Kuwait in what became known as the "Gulf Crisis." Within weeks a coalition of countries established "Desert Shield" to prevent further expansion of Iraq's invasion and on January 16, 1991, "Operation Desert Storm" began, leading to the military defeat of Iraq in February. In *Crisis in the Gulf: Enforcing the Rule of Law,* John Norton Moore '62 sets out his brief supporting the action taken by the United States and other coalition forces.

Moore takes us step-by-step through the points of international law that justify the actions taken by the United Nations and the coalition. Along the way he introduces terms of art relating to international law, such as "customary law," and explains the legal effect of signed but unratified treaties. In this way the book may serve as an introduction to international law, particularly the law of war.

The author begins with an enumeration of the rules of law that Iraq's invasion violated. This includes the paramount violation of Article 2(4) of the U. N. Charter committed when Iraq began a "war of aggression." The invasion violated a number of other documents to which Iraq was a signatory, including earlier agreements it had with Kuwait concerning the definition of the countries' shared borders, the pact of the League of Arab States and the Joint Defence [sic] and Economic Cooperation Treaty Between the States of the Arab League. Following the adoption of U.N. Security Council resolutions calling for Iraq's withdrawal, Saddam Hussein's regime was in direct violation of these resolutions. While it seems paradoxical that there are rules civilized nations have agreed on governing the conduct of war, such rules are accepted as incorporated into treaties or as customary law. Iraq breached many of these rules, by launching a sneak attack without a previous declaration of war, by kidnapping civilians including foreign nationals, by mistreating prisoners of war, and by committing ecocide in its destruction of hundreds of Kuwaiti oil wells and by its deliberately causing an oil spill larger than any the world had previously known. The author is able to clearly distinguish between Iraq's conduct of the war in contravention of these rules, and the conduct of the coalition forces, whose efforts to comply with the "rules of war" are well documented in the book.

After detailing the unlawfulness of the Iraqi attack, Moore discusses the lawfulness of the coalition response that began with economic sanctions and ultimately concluded with the routing of Iraq's armed forces in February 1991. A key factor here is the requirement of necessity and proportionality. As the author points out, "The purpose of these further requirements is to minimize the use of force and to achieve economy in coercion when force must be used; that is, to limit responding coercion to the amount that is reasonably necessary for the protection of fundamental values."

Moore discusses the diplomatic initiatives that were undertaken, finding that they were not necessary under international law but the fact the coalition engaged in attempts to solve the crisis further supports the position that the coalition's response was a lawful one.

In the remainder of the book, the author discusses and discredits Iraq's claimed justification for invading Kuwait, talks about community enforcement mechanisms as a means of deterring aggression in the future, and relates the trip he and others made to Kuwait shortly after its liberation. The details of that trip give the reader a glimpse of the horrors inflicted on Kuwait and its citizens by Saddam Hussein. Photos of the mass destruction otherwise impossible to imagine show the ecological ruin inflicted by Iraq.

The annexes to the book include a documentary history of the prior relations between Iraq and Kuwait and the actions taken by the United Nations and its constituent organizations. This section of the book compiles in one ready source documents that otherwise would require an extensive search of U.N. and other collections.

Moore's book is a thorough introduction to and explanation of the rules of war, as well as a well-reasoned argument against the Iraqi position and in favor of the actions of the United Nations and its coalition members. If those seeking to prosecute Iraq or Saddam Hussein for war crimes or to secure recompense for Baghdad's actions bring their action to an international tribunal, this book may serve as the underpinning of their case.

John Norton Moore '62 is Walter L. Brown Professor of Law, Director of the Graduate Law Program and Director of the Center for National Security Law at the University of Virginia, where he teaches national security law.

Reviewed by Kenneth J. Hirsh, Reference Librarian and Senior Lecturing Fellow at the School of Law Library since 1989.

*New York: Oceana Publications, 1992.

BOOK REVIEW

Constitutional Theory: Arguments and Perspectives*

by Michael J. Gerhardt and Thomas D. Rowe, Jr.

Any smart lawyer who practices in the general area of public or governmental law should keep Gerhardt and Rowe's *Constitutional Theory: Arguments and Perspectives* close at hand. To rework the wisdom of a famous philosopher, those who fail to read constitutional theory are destined to do it badly. And, at least in my humble view, lawyers cannot adequately represent clients in most public law cases these days absent some familiarity with contemporary constitutional arguments and perspectives. (While some theorists would argue that no distinctions should be drawn between "public" and "private" law, I will leave that particular theory alone.)

I have learned of the need for constitutional theory in such various forms of litigation as municipal cable, school finance, and commercial advertising cases. Although unable to make any larger boasts about my performance, I know that my participation in Professor Rowe's constitutional theory class at Duke enabled me to see arguments for clients that otherwise would not have been within my comprehension.

Ron Ferrell

Thomas D. Rowe, Jr. is Professor of Law, Duke University. He joined the Duke Law faculty in 1975, and writes and teaches in the fields of civil procedure, complex litigation, judicial remedies, federal courts, and constitutional law. Michael J. Gerhardt is Professor of Law at the College of William and Mary.

Constitutional Theory does an outstanding job of covering constitutional theory from multiple angles. Part I "Why Theory?" examines the philosophical processes and principles animating constitutional theory. Part II "Sources" surveys the various resources —the language of the constitutional text, the governmental structure of powers that it implicitly establishes, the documentary evidence of the framers' intent, and case-law precedent—as well as their methodological uses in constitutional theory. Part III "Perspectives" illuminates the political nature of today's constitutional viewpoints. And Part IV "Conclusion" reviews some of the skeptical questions now being raised about the desire for any all-purpose or "unitary" theoretical perspective.

In the next few years, Part III "Perspectives" will probably prove to be the most useful section of *Constitutional Theory.* The politics of constitutional theory seems sure to gain in importance with the ascension to the presidency of former constitutional law professor Bill Clinton. The Clinton years could usher in a new age of liberal constitutional theory and its emphasis on giving contemporary meaning to various rights guaranteed in the constitution. The Reagan 1980s, of course, witnessed the revival of conservative constitutional theory and its opposing emphasis on looking back to the "original intent" of the constitutional framers. Gerhardt and Rowe catalogue these contending theories, their prominent spokespersons, and the tensions within both perspectives.

Constitutional Theory also gives detailed attention to the fascinating ferment in "radical" constitutional theory. When I was in law school during the early 1980s, a group of mainly white male scholars associated with the "Critical Legal Studies" (CLS) movement was establishing a foothold for radical constitutional theory in the nation's top law schools. Their main theme was that mainstream liberal theory's formalistic construction of procedural and substantive "rights" is ultimately incoherent and serves as a mystifying tool of political oppression. But within the last few years, the different radical voices of feminist and "critical-race" theorists have emerged in part to challenge the old CLS notion that "we" should simply dispense with reliance on rights-based theories. *Constitutional Theory* recognizes this growth and diversity in radical theory by giving a separate chapter to all three tendencies.

The effect of Gerhardt and Rowe's generous treatment of all contemporary perspectives is to leave the reader with the accurate impression that the field of constitutional theory resembles a cacophonous intellectual bazaar. More curmudgeonly analysts might spend more time scoffing at the theoretical ambitions of some contemporary scholars. But Gerhardt and Rowe instead provide an extremely fair-minded and patient explication of constitutional theory's present state.

Reviewed by Pope McCorkle '84, Of Counsel, Everett Gaskins Hancock & Stevens, Raleigh /Durham, NC.

* Michie, 1993.

Faculty News

Dellinger Appointment

Walter E. Dellinger, III has been nominated to become assistant attorney general for the Office of Legal Counsel, a job he describes as the "attorney general's lawyer." In an introduction ceremony at the White House in April, Dellinger promised to offer the executive branch "detached and objective" legal advice and "at times, Mr. President, to give you advice you'd rather not hear." The president, the White House counsel, and the attorney general all rely on the Office of Legal Counsel for substantive analysis of constitutional, administrative, and statutory law.

Since February, Dellinger had been advising the President on constitutional matters as an associate counsel in the White House, while still fulfilling his teaching duties at the Law School. Even before officially joining the White House staff, he played a key role in drafting Clinton's first executive orders, which overturned a series of restrictive abortion-related regulations.

Everett and Powell Argue Before Supreme Court

On April 20, 1993, **Robinson O. Everett** and **H. Jefferson Powell** may have made history as the first two members of a law school faculty to argue against each other in the United States Supreme Court. The case, *Shaw v. Reno,* 61 U.S.L.W. 4818 (U.S. June 28, 1993), concerns the practice of redistricting in compliance with the Voting Rights Act.

Everett, representing himself and four other Durham voters, including Professor **Melvin G. Shimm**, argued that the state General Assembly violated constitutional principles when it created districts that would "guarantee the election to Congress of persons of a specific race." Especially contested is congressional District 12, which snakes for 175 miles along Interstate 85 and from Durham to Gastonia, winding through Greensboro, Charlotte and other cities with significant black populations. Everett told the justices he wasn't opposed to considering race as a factor in creating congressional districts, but objected to using it as the determining factor with a view to electing a quota of minority representatives. He said that the General Assembly had disregarded compactness, contiguousness, geographic boundaries and "common community interests" in attempting to comply with the federal Voting Rights Act and its interpretation by the Justice Department.

Powell, representing the Attorney General's office, said that the legislature was complying with the federal Voting Rights Act when it created the 12th District. The Justice Department had rejected the state's first redistricting plan, which called for only one majority black district, asking the state to create a second such district. "At a very deep level this is not a debate over constitutional principles," says Powell. "It's a disagreement over what, concretely, the Constitution permits and demands over the pursuit of those ideals. This is a precisely focused case in that, in a way, everybody has agreed except on what the legal conclusions should be."

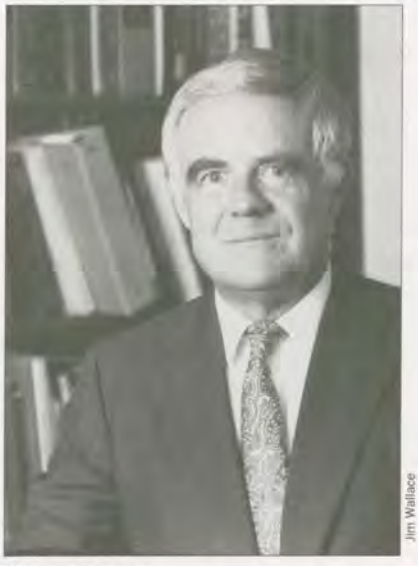
On June 28,1993, the Court ruled in a 5-4 decision that congressional districts designed to benefit racial minorities may violate the rights of white voters and are open to questions of constitutionality. In the opinion written by Sandra Day O'Conner, the case was returned to district court where it stated, "If the allegation of racial gerrymandering remains uncontradicted, the District Court further must determine whether the North Carolina plan is narrowly tailored to further compelling governmental interest." *Id.*at 4826.

Horowitz Honored

Donald L. Horowitz has been elected to the American Academy of Arts and Sciences, an honorary society of scholars and national leaders, which conducts studies of current public, social and intellectual issues. Founded in 1780 by a small group of scholar-patriots led by John Adams, the Academy now has 3,150 fellows and 550 honorary members.

Reppy Named Lowndes Professor

William A. Reppy, Jr., a member of the Law School faculty since 1971, has been named the first holder of the Charles L.B. Lowndes Chaired Professorship. This chair is named for Professor Charles Lowndes, who served on the Law School faculty from 1934 until his death in 1967. Professor



Jim Wallace

William A. Reppy, Jr.

FACULTY NEWS

Lowndes himself was a distinguished professor, holding the first James B. Duke chair in the Law School. A 1990 gift from Professor Lowndes' son, John F. Lowndes '58 and his wife, Rita A. Lowndes, of Orlando, Florida, established the chair in memory of John's father.

In announcing Professor Reppy's selection, Dean Pamela Gann noted that "Professor Reppy has always been an achiever. The child of a distinguished member of the California state judiciary, he graduated with great distinction from Stanford University and was first in his graduating class at Stanford Law School. He was a judicial clerk for Supreme Court Justice William O. Douglas. After practicing law in Los Angeles, he joined our faculty in 1971. His primary field is community property law.... He has been an intellectual leader in the comparative approach to community property. In addition to his scholarly writ- ings, he has published the leading teaching text in his field. He has also been one of the most perceptive analysts in the area of conflict of laws in the field of community property."

Dean Gann also noted that "Professor Reppy possesses undiminished enthusiasm for his teaching, particularly in the Law School's small section first year research and writing program. It is unusual for a scholar also to be so enthusiastic about the skills training methodologies for professional students.... If I could summarize William Reppy in a single word, I would use the word 'formidable.' He is formidable about everything whether it is his gardening or his love or the law. We are fortunate that this formidable academic is at our University."

Haagen Steps Down; Germain Goes to Cornell

Paul Haagen (left), senior associate dean for academic affairs at the Law School since 1991, stepped down on June 30. Although no longer senior associate dean, he will continue to oversee the construction of the addition to the Law School which should be completed in spring 1994. The new senior associate dean, a rotating position held by tenured members of the Law School faculty, is Katharine Bartlett.

Claire Germain (right), associate director of the Law Library and senior lecturer in comparative law has left the Law School after seventeen years to accept a position at Cornell University as the Edward Cornell law librarian and professor of law. In April, Dean Pamela Gann (center) hosted a student/faculty reception honoring both Haagen and Germain and presented each with a Duke University captain's chair.

Les Todd

1992-93 Distinguished Teaching Award

One of the Law School's newest faculty members, **James E. Coleman, Jr.** (right) was named the recipient of the 1992–93 Duke Bar Association (DBA) Distinguished Teaching Award. Coleman joined the faculty full-time in 1991, having previously been a visitor to the Law School in the fall semester of 1989. He teaches criminal law, legal research and writing, and a seminar on capital punishment. Before coming to Duke, he was a partner in a Washington D.C. law firm and also held federal government positions.

In presenting the award, DBA president Greg Brown '95 (left) remarked that "the ability to motivate, guide and to teach his students by example are a few of the many reasons why Professor Coleman has been chosen as this year's distinguished teacher."

The DBA Distinguished Teaching Award has been presented annually since 1985 to recognize outstanding classroom conrtibutions by a member of the Law School faculty. Previous winners include Thomas Metzloff, Melvin Shimm, Sara Beale, John Westart, James Cox, Richard Maxwell, and Thomas Rowe.

Les Todd

SPECIALLY NOTED

1993 Currie Lecture

The 1993 Brainerd Currie Memorial Lecture was delivered in March by Professor Margaret Jane Radin (right), professor of law at Stanford University. A teacher in the fields of property, jurisprudence, and law and social philosophy, she spoke on "Compensation and Commensurability" 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. Also pictured below are Dean Pamela Gann (left) and Professor Currie's widow, Pic (center), who still resides in Durham.

Jim Wallace

Second VanSchaick Unitrust Established

John Morel VanSchaick of Eustis, Florida, has established the John Morel VanSchaick Second Unitrust with a gift of $104,000. Like its companion unitrust established in 1991, the Second Unitrust, upon its termination, will benefit the John Morel VanSchaick and Jule Kennedy VanSchaick Endowment Fund, to provide full-tuition scholarships.

When acknowledging the establishment of VanSchaick's Second Unitrust, Dean Pamela Gann said, "The Law School is very fortunate to count John among its friends. He is a very generous man who appreciates the importance of scholarship funds to enable the Law School to enroll some of the most talented students in the United States."

VanSchaick is a nephew of former Dean Samuel Fox Mordecai, who served as dean of the Trinity College Law School from 1904 until his death in 1927. Dean Gann noted that "John takes a great deal of pride in the success of his uncle in establishing the Law School at Trinity College and in the fondness with which Dean Mordecai was remembered by his students."

Keohane Named Duke President

Nannerl Overholser Keohane assumed the presidency of Duke University on July 1, 1993. Formerly president of Wellesley College, she is the first woman to serve as president of Duke. She replaces H. Keith H. Brodie, who returns to teaching and research after eight years as Duke's president.

Nannerl Keohane

Keohane has earned degrees in philosophy, politics, and economics from Oxford University, and a doctorate in political science from Yale University. She has said that she wants "to be a central player in the growing commitment of Duke to diversity, both in terms of student and faculty recruitment and in the international sense."

Duke Law professor, Sara Sun Beale, served on the Presidential Search Committee, which considered more than 180 nominees for the position. Beale notes that "Dr. Keohane is already recognized as one of the most outstanding figures in higher education, who possesses a keen understanding of the challenges and opportunities of the current environment. She has the vision and administrative ability to maintain the best from Duke's past and to take it to new excellence in the future. Dr. Keohane will be effective in dealing with all of Duke's constituencies, including faculty, students, and alumni. She will also be an excellent spokeswoman for both Duke and higher education. Duke could not have made a better choice for a president to lead it in the 1990s."

Law Alumni Association News

The Law Alumni Council (LAC), the governing body of the Law Alumni Association (LAA), meets twice annually to make decisions concerning alumni programs at the Law School. The fall meeting of the LAC is held in conjunction with Law Alumni Weekend and includes representatives from our local law alumni associations. The LAC business meeting is held in the spring in conjunction with the Conference on Career Choices.

Following is a report on some of the programs considered at the spring LAC meeting.

The Alumni Directory

A new all-alumni directory should be distributed in early fall to all alumni who have paid their Law Alumni Association dues or made a gift to the Law School during 1991–92 or 1992–93. (Others may purchase the directory for $25.00.)

The Law Alumni Association, with the approval of the Law Alumni Council, recently purchased a database publishing software program for the Law Alumni Affairs Office. The Alumni Office has been working with a computer consultant to adapt the software to fit the needs of the office. This software will permit the Alumni Office to produce the Alumni Directory from their records on a regular basis. The Alumni Office asks all alumni to keep that office informed of all address and phone changes so that the directory will be as accurate as possible.

In our summer all-alumni mailing we will be asking alumni to review information and specify their specialty areas so that this information can be included in the next directory. We hope that this information will make the directory even more helpful to alumni for business referrals.

Dan Crawford

Mary Woodbridge Leaf '85 and Richard Chryst '89 answer follow-up questions at the 1993 Career Conference.

Educational Programs

The Education Committee of the Law Alumni Council met in the spring to consider student/alumni programs and programs for alumni and reported to the Law Alumni Council.

The **Career Conference** and **Alumni Seminar** series, sponsored by the Law Alumni Association for the students, continue to be successful programs. Given today's tight job market, students are responsive to the advice of our alumni. Alumni are able to provide information about their careers and experiences, their personal choices and lifestyles, otherwise not available to students.

Several topics of student interest were recommended for the upcoming alumni seminars including specialization, client development, lawyer satisfaction, and ethics in the real world. The next seminar, scheduled in conjunction with Law Alumni Weekend on Thursday, October 7, 1993, will focus on specialization and address the questions: what is specialization; is it necessary or desirable and, if so, when; and does it give more or less flexibility.

The Committee also considered **alumni programs** for those returning during Law Alumni Weekend and Barristers Weekend, and recommended providing substantive programs with an interactive format that would allow significant input from alumni based on experience. Because of the variety of legal specialties among our alumni, the Committee recommended general topics for the programs that would be of interest to all, such as constitutional law, regulatory issues, ethics and professionalism, private international law and alternative dispute resolution (ADR).

"Alternative Dispute Resolution in Complex Litigation" was the topic presented to alumni during the Barristers Weekend in April. The first hour of the program was a description of how one attorney has used ADR in his cases. During the second hour, participants broke into group sessions for role play-

Dan Crawford

Alyse Bass '89 (left) continues discussions with students following a panel at the 1993 Career Conference.

ing to design ADR options in mock cases and then came back to discuss their experiences.

Because of the positive response to this program, the Education Committee has recommended a similar program on ADR for Law Alumni Weekend. This program will cover the types of ADR techniques that are available and how to make a decision as to the most appropriate technique for a particular case. Small group sessions will explore specific fact patterns for ADR possibilities and an opportunity will be provided for discussing insights from these sessions.

Alumni Placement Services

Given current interest in lateral hiring, the Law Alumni Council recommended more widely publicizing the services offered to alumni by the Law School Office of Career Services. That office offers its services to alumni seeking a job change through telephone and in-office advising sessions and a bi-monthly alumni inquiry list. The alumni inquiry lists include job opportunities for experienced attorneys and references to other publications that contain job opportunities. Alumni interested in seeking new positions or in advertising available positions are invited to contact the Office of Career Services at 919-684-5429 for further information.

LAA By-Laws Revision

The Law Alumni Council reviewed a revision of the Law Alumni Association constitution and by-laws and recommended that it be presented to the alumni for approval.

The revised by-laws provide for a change in terminology: The Law Alumni Association would continue to include all law alumni (those completing at least two semesters and leaving in good standing); the Law Alumni Council would continue to include all presidents of local associations and members of the LAA governing body; the governing body of the LAA, which includes at least fifteen alumni members and the LAA officers, would be called the Law Alumni Association Board of Directors; and the Executive Committee would be composed of the LAA officers.

Alumni members of the Board of Directors shall be elected by the Board upon nomination by the Nominating Committee. Officers shall be elected by a majority of Board members present at the spring business meeting. Twenty-five percent (25%) of the Board shall constitute a quorum for the transaction of business.

The LAC will seek approval of the by-laws revision at the LAA meeting scheduled for Friday evening, October 8 during Law Alumni Weekend. Copies of the by-laws are available from the Law Alumni Affairs Office upon request.

SFF Challenge Grant

The Student Funded Fellowship program (SFF) is a student organization formed in 1977–78 to raise money for grants to students taking summer jobs in the public sector where they would receive little or no salary, such as jobs in public interest organizations and public defender and legal services offices. SFF contributions are raised from students and other members of the Law School community through an annual spring pledge drive and t-shirt sale.

The Law Alumni Association has been contributing to SFF since the 1984–85 academic year (with gifts ranging from $500 to $4,000). This year the Law Alumni Association offered a challenge grant to the Student Funded Fellowship. Because the LAC felt that it was important to maintain the student funded orientation of the program, it approved a matching program based on the participation rate of student contributors. The LAC proposed to give the SFF $2,500 if student participation reached 10% of the student body, $4,000 if it reached 15% and $5,000 for reaching a 20% participation rate with a $5,000 ceiling on the contribution.

During its spring pledge drive, SFF more than doubled the participation rate from last year and achieved the 20% participation required to receive the full $5,000 contribution from the LAA. Frank Simpson '95, co-chair of SFF, was enthusiastic. "With the LAA challenge gift, we could show students that their pledges would help the 1993 recipients, as well as those for next year. In 1992, sixty students made pledges, this year 136 students pledged."

New Members

The Law Alumni Council looks forward to welcoming its new members: Wayne Rich '67, Washington, DC; Renée Montgomery '78, Raleigh, North Carolina; Alexandra Korry '86, New York, New York; Pauline Lee '88, Houston, Texas; and Dan Bowling '80, Columbia, South Carolina. Richard Salem '82, of Tampa, Florida, will join the Executive Committee as secretary/treasurer.

If you would like more information about any of these programs, please contact the Law Alumni Office at 919-489-5089.

SPECIALLY NOTED

Braxton Craven Inn of Court Established

An American Inn of Court, named in honor of Braxton Craven, a former president of Duke University, has been established at the Law School. President Craven was a key figure in legal education at Trinity College in the 19th century, and was the first lecturer at the Law School. Local judges and attorneys, and Duke Law students make up the Inn's membership.

Professor Robinson O. Everett '59, first president of the Craven Inn of Court, was the driving force in establishing the Inn because of his positive experiences with an Inn of Court while serving as chief judge of the U.S. Court of Military Appeals in Washington, D.C. Everett says, "We are proud to be the first officially chartered Inn in North Carolina and pleased to be fully functioning now with a group of alumni and other friends of the Law School who are showing great interest and enthusiasm for the program."

The American Inns of Court movement is dedicated to improve skills, professionalism and ethics in the practice of law. Inns are designed to help lawyers become more effective advocates with a keener ethical awareness. The American Inns have adopted a modification of the traditional British model of legal apprenticeship to fit the American legal system. The Inn meets regularly for a social hour and program. There are over 200 Inns in the United States, many affiliated with law schools.

Dan Crawford

The first program for the Braxton Craven Inn of Court was planned and presented by (from left) Professor Jim Coleman, Joan Byers '74 and Richard Cook '89.

During each meeting of the Inn, a team typically consisting of a judge, a student, and several attorneys of varying experience makes a presentation on a current or controversial legal issue. The programs are designed to stimulate in-depth discussions among Inn members, and CLE credit is available for attendance at these programs.

The first meeting of Duke's Inn of Court was held on March 11. A program on "Investigation in Capital Cases" was presented featuring a demonstration of witness interviewing techniques. A second program on April 8 considered the question: How should lawyers respond to requests by the news media for information relating to pending litigation in which they are involved as counsel, and featured an interview demonstration conducted by a reporter from the *Raleigh News & Observer.*

Members of the Law School community in the Raleigh/Durham/Chapel Hill area who are interested in participating in the Inn of Court in the future or in finding out more about the Inn should contact Evelyn Pursley in the Law Alumni Office at 919-489-5089.

Braxton Craven Inn of Court

Judges

W. Earl Britt
U.S. District Court, Eastern District of North Carolina

William A. Creech
Tenth Judicial District Court Wake County, North Carolina

Alexander B. Denson '66
U.S. District Court, Eastern District of North Carolina

Robinson O. Everett '59
U.S. Court of Military Appeals, Senior

J. Rich Leonard
U.S. Bankruptcy Court Eastern District of North Carolina

J. Dickson Phillips, Jr.
U.S. Court of Appeals Fourth Circuit

Willis P. Whichard
North Carolina Supreme Court

Attorneys

Robert F. Baker '61
Donald H. Beskind '77
Charles F. Blanchard '49
Richard S. Boulden '86
Joan H. Byers '74
Melanie S. Caudill '91
James E. Coleman, Jr.
Richard N. Cook '89
Christine W. Dean '71
Eura D. Gaskins, Jr. '66
Debra Graves
Paul M. Green '85
Dianna W. Jessup
Terry R. Kane '86
James B. Maxwell '66
Thomas B. Metzloff
Renée J. Montgomery '78
Katherine A. O'Connor
Timothy J. O'Sullivan '90
Rodney E. Pettey
Mark J. Prak '80
Donald R. Strickland '84
James C. Thornton
Cynthia L. Wittmer '81

Students

Frank Dale '94
Theodore Edwards '94
Bruce Elvin '93
Craig Factor '93
Jon T. Hoffman '94
Willie H. Johnson, III '94
David Kendall '94
Michele Vroman '94

Professional News

'35 **Roy M. Booth** is now of counsel for the firm of Booth, Harrington, Johns, Campbell and Kantlehner in Greensboro, North Carolina.

'40 **Harold M. Missal**, although officially retired as a judge for the Superior Court of Connecticut in Bristol, has been called back to help with the backlog of civil cases on the docket.

'43 *Reunion plans are underway for the Class of '43. Law Alumni Weekend will be October 8–9, 1993. Details have been mailed. Please contact the Law Alumni Office at 919-489-5089 if you have not received the information or if you have any questions.*

'48 *Reunion plans are underway for the Class of '48. Law Alumni Weekend will be October 8–9, 1993. Details have been mailed. Please contact the Law Alumni Office at 919-489-5089 if you have not received the information or if you have any questions.*

'49 **James B. Stephen** has retired as a circuit court judge in Spartanburg, South Carolina.

David K. Taylor, following his retirement after thirty-two years with Mobil Oil, has filled various positions at the School of Foreign Service at Georgetown University, including professorial lecturer in international affairs and senior fellow in international business diplomacy.

'51 **Grace Collins Boddie**, senior counsel and vice president for contracts of the Research Triangle Institute, was recently presented with an Alumni Achievement Award from Longwood College in Farmville, Virginia, where she received her undergraduate degree.

Arnold B. McKinnon has been appointed to a five-year term on the Virginia Port Authority Board of Commissioners. He recently retired as chairman and chief executive officer of Norfolk Southern Corporation.

'52 **Ray Graves** is presently of counsel for the firm of McGavick, Graves in Tacoma, Washington.

Alan C. Sugarman is the retired chief executive officer and general counsel of Milstone Trading Corporation in Boca Raton, Florida.

Russell M. Robinson II '56 of Charlotte, North Carolina is the recipient of the Judge John J. Parker Memorial Award, the highest honor bestowed by the North Carolina Bar Association. The purpose of the Judge J. Parker Award is to honor the memory and the accomplishments of Judge Parker and to encourage the emulation of his "deep devotion and enduring contribution" to the law and to the administration of justice. Judge Parker died in 1958 after fifty years as a member of the bar including thirty-two years as judge of the U.S. Court of Appeals. Robinson received the award during the annual meeting of the NC Bar Association in June.

Russell M. Robinson II '56 (left) receives the Parker Memorial Award from George Mast (right).

Colleagues say Robinson represents the best the profession has to offer—a superb intellect, impeccable integrity, unassuming modesty and a willingness to share his knowledge and ability with others.

His particular field of interest is corporate and securities law and litigation. In fact, he was instrumental in the drafting of the original North Carolina Business Corporation Act in the 1950s. Robinson, founder of the Charlotte law firm Robinson, Bradshaw & Hinson, has twice chaired the Business Corporation Act Drafting Committee of the NC General Statutes Commission. Robinson has been an active member of the NC Bar Association, having served on several committees, and he has also been active in community projects. He has been director or president of a number of civic and charitable organizations including the local United Way, the Charlotte City Club, the Charlotte Speech and Hearing Center and the Florence Crittendon Home.

Robinson is a trustee of the Duke Endowment and the University of North Carolina at Charlotte. He is a member of the Board of Visitors at Duke University Law School and Johnson C. Smith University.

ALUMNI ACTIVITIES

'53 *Reunion plans are underway for the Class of '53. Law Alumni Weekend will be October 8–9, 1993. Details have been mailed. Please contact the Law Alumni Office at 919-489-5089 if you have not received the information or if you have any questions.*

'57 **Robert H. Beber** has been elected executive vice president of W. R. Grace & Co. in Boca Raton, Florida. He continues to serve as Grace's general counsel.

Robert C. Wagner retired in 1992 as deputy clerk of the Superior Court of New Jersey in Trenton.

'58 *Reunion plans are underway for the Class of '58. Law Alumni Weekend will be October 8–9, 1993. Details have been mailed. Please contact the Law Alumni Office at 919-489-5089 if you have not received the information or if you have any questions.*

'60 **John Q. Beard** has been named president of Lawyers Mutual Liability Insurance Company of North Carolina, headquartered in Raleigh.

'62 **Phillip K. Sotel**, who resides in Pasadena, California, is involved in real estate investment, farming, ranching, and the occasional practice of law with a specialization in foreign oil and gas exploration and production.

'63 *Reunion plans are underway for the Class of '63. Law Alumni Weekend will be October 8–9, 1993. Details have been mailed. Please contact the Law Alumni Office at 919-489-5089 if you have not received the information or if you have any questions.*

'64 **Kenneth G. Biehn**, a judge for the Bucks County, Pennsylvania Court of Common Pleas, has been elected president judge, putting him in charge of the county court system's budget, personnel and other administrative areas.

Judge Kenneth G. Biehn '64

Charles E. Burgin, a trial lawyer in Marion, has become the 99th president of the North Carolina Bar Association. He was elected to the position during the Association's annual meeting in June. He has been president-elect since last June. From 1982–85 he served on the Association's Board of Governors.

Charles E. Burgin '64 (left) receives the gavel as the president of the North Carolina Bar Association.

'65 **Ross J. Smyth**, a partner in the Charlotte, North Carolina firm of Kennedy, Covington, Lobdell & Hickman, was recently elected to the American College of Real Estate Lawyers.

'66 **Michael W. Field** is a partner at Cyril and Crowley in San Francisco, California.

R. Jack Hawke was recently re-elected chairman of the North Carolina Republican Party, a position he has held since 1987.

William K. Holmes, a partner with Warner, Norcross & Judd in Grand Rapids, Michigan, has been named a fellow of the American College of Trial Lawyers. He specializes in corporate, commercial and securities litigation.

William K. Holmes '66

'67 **John T. Berteau**, who practices with the firm of Williams, Parker, Harrison, Dietz & Getzen in Sarasota, Florida, has written ESTATE PLANNING IN FLORIDA, published by Pineapple Press, Inc. (1993).

John T. Berteau '67

'68 *Reunion plans are underway for the Class of '68. Law Alumni Weekend will be October 8–9, 1993. Details have been mailed. Please contact the Law Alumni Office at 919-489-5089 if you have not received the information or if you have any questions.*

R. Bertram Greener has received the Minnesota State Bar Association's top honor, the Award of Professional Excellence. He is an attorney with Fredrikson & Byron in Minneapolis.

David A. Harlow is now a partner in the Durham, North Carolina office of Moore & Van Allen, where he is part of the firm's intellectual property practice group.

'70 **Julie Anne Gaisford** has joined, as a shareholder, the firm of Sherrow, Draher & Gaisford in Seattle, Washington, where she will continue her practice in general litigation with an emphasis in commercial and personal injury.

ALUMNI ACTIVITIES

Keith K. Hilbig has resumed his commercial litigation practice with Smith & Hilbig in Torrance, California, after serving for three years as a volunteer representative of the Church of Jesus Christ of Latter-day Saints in Switzerland and other European countries.

Robert J. Shenkin, presiding judge of the Pennsylvania Court of Common Pleas, Ninth Judicial District, has been honored as a new life fellow of the American Bar Foundation.

Gail Levin Richmond has been named acting dean of the Shepard Broad Law Center at Nova University in Fort Lauderdale, Florida.

'72 **Ronald W. Frank** has joined the firm of Babst, Calland, Clements and Zomnir of Pittsburgh, Pennsylvania as a shareholder. He is the chair of the International and Comparative Law Section of the Pennsylvania Bar Association.

Amos T. Mills, III recently celebrated his twentieth anniversary as a special agent for the FBI. He is currently assigned to the Washington, D.C. Metropolitan Field Office where he also serves as a legal advisor.

Karla W. Simon is a contributing author to *Environmental Tax Handbook: Strategies for Compliance.* This handbook provides practical analysis of this tax specialty, serving the needs of the tax specialist and environmental professionals.

'73 *Reunion plans are underway for the Class of '73. Law Alumni Weekend will be October 8–9, 1993. Details have been mailed. Please contact the Law Alumni Office at 919-489-5089 if you have not received the information or if you have any questions.*

Dana G. Bradford, II, a partner with Baumer, Bradford, Walters & Liles in Jacksonville, has been appointed chair of the Florida Board of Bar Examiners.

B. Bernard Burns, Jr. has been named vice president, general counsel and secretary of United Dominion Industries, Limited, a manufacturing, construction and engineering company in Charlotte, North Carolina.

Dennis L. Kennelly practices employment law in Menlo Park, California.

Eleanor D. Kinney, professor of law and director of the Center for Law and Health at Indiana University School of Law-Indianapolis, has authored *The Role of Judicial Review Regarding Medicare and Medicaid Program Policy: Past Experience and Future Expectations,* 35 ST. LOUIS U. L.J. 759 (1991).

Kenneth W. Starr, former Solicitor General of the United States, has joined the Washington, D.C. office of Kirkland & Ellis, where he will serve on the firm's policy committee.

'74 **C. Richard Rayburn, Jr.**, a partner at Rayburn, Moon & Smith in Charlotte, North Carolina, has been named to the 1993–94 edition of Woodward/White's *The Best Lawyers in America* for bankruptcy law.

'75 **Allyson K. Duncan** has been named a member of the North Carolina Bar Association Board of Governors, to serve a three-year term. She is a commissioner on the North Carolina Utilities Commission in Raleigh.

K. Rodney May, a partner in the Orlando, Florida office of Foley & Lardner, has been elected president of the Central Florida Bankruptcy Law Association.

Francis M. Morrison, III, a partner with Day, Berry & Howard in Hartford, Connecticut, has been elected to membership in the American College of Trial Lawyers.

'76 **Robert J. Beggs** has been elected president of International Diamond & Gold Company, a chain of retail jewelry stores in Columbus, Ohio and Seattle, Washington.

Russell M. Frandsen announces the formation of the firm of Radcliff, Rose & Frandsen, a general practice firm in Los Angeles, California. He concentrates in high technology, venture capital and tax law.

Miguel A. Orta is executive director of the State of Florida Individual and Family Grant Program in Miami, an agency which aids in the recovery from Hurricane Andrew.

Nick R. Pearson, a partner at Carter, Ledyard & Milburn in New York City, is also counsel to the Business Council for the United Nations.

G. Gray Wilson has been named a member of the North Carolina Bar Association Board of Governors to serve a three-year term. He practices in Winston-Salem.

'77 **Paul B. Eaglin** has become associate general counsel for the University of Alaska system, located in Fairbanks.

Susan Freya Olive, who practices intellectual property law with Olive & Olive in Durham, has been elected president of the North Carolina Association of Women Attorneys.

Kathryn Arthur Steinberg is on leave to raise two active sons. She is PTA president and vice president of the Volunteer League of San Fernando Valley.

Robert A. Steinberg is a partner with Davis, Wright, Tremaine in Los Angeles, California, specializing in transactional, tax, health care, partnership and franchising law.

ALUMNI ACTIVITIES

'78 *Reunion plans are underway for the Class of '78. Law Alumni Weekend will be October 8–9, 1993. Details have been mailed. Please contact the Law Alumni Office at 919-489-5089 if you have not received the information or if you have any questions.*

David W. Ichel, a partner at Simpson Thacher & Bartlett in New York City, has recently been elected to membership in the American Law Institute.

Rodney A. Smolla is director of the Institute of Bill of Rights Law and Arthur B. Hanson professor of law at the College of William & Mary. His book, FREE SPEECH IN AN OPEN SOCIETY, has recently been named the winner of the William O. Douglas Prize of the Commission on Freedom of Expression of the Speech Communication Association for the most distinguished monograph on freedom of expression.

'79 **Dale E. Hollar** announces the establishment of his office for the private practice of law in Raleigh, North Carolina.

'80 **Elizabeth F. Kuniholm** has been named a member of the North Carolina Bar Association Board of Governors to serve a three-year term. She practices in Raleigh.

William B. Miller, vice president for law of APAC, Inc., a construction company in Atlanta, has won the GEORGIA STATE BAR JOURNAL'S third annual fiction writing competition for his short story, *Spirit of Law.* He also won first place in last year's competition.

'81 **Michael L. Chartan** has been named a partner in the firm of Ross & Cohen in New York City, where he practices construction law.

Marianne Corr is now with Corr, Stevens & Fenningham in Warminster, Pennsylvania, where she primarily practices insurance defense.

G. Nicholas Herman continues his civil and criminal trial practice with the firm of Bernholz & Herman in Chapel Hill, North Carolina. He is also an adjunct professor at North Carolina Central University and at the University of North Carolina, teaching appellate advocacy, trial practice, legal research and writing, and legal methods.

Michele M. Sales is now practicing with firm of Steele and Sales, in Seattle, Washington.

'82 **Dirk G. Christensen** is a partner at Bondurant, Mixson & Elmore in Atlanta, Georgia, specializing in commercial litigation with an emphasis on franchise and employment litigation.

Richard W. Evans is now a partner in the Durham, North Carolina office of Moore & Van Allen, where he is part of the firm's intellectual property practice group.

Richard K. O'Donnell announces the formation of the firm of Menden & O'Donnell in Atlanta, Georgia.

I. Scott Sokol has been appointed director of development for Planned Parenthood of Greater Orlando, Inc. in Winter Park, Florida.

'83 *Reunion plans are underway for the Class of '83. Law Alumni Weekend will be October 8–9, 1993. Details have been mailed. Please contact the Law Alumni Office at 919-489-5089 if you have not received the information or if you have any questions.*

Jeffrey M. Anders is now legislative counsel to the Pharmaceutical Manufacturers Association, a Washington, D.C.-based trade association which represents the research-based pharmaceutical industry in the United States.

M. Timothy Elder has been elected to partnership at the firm of Smith, Gambrell & Russell in Atlanta, Georgia.

Robert P. Fletcher has joined Nixon, Hargrave, Devans & Doyle as a partner in the firm's Washington, D.C. office. He is active in the firm's banking/lending and litigation practices.

Robert P. Fletcher '83

Daniel F. Gourash is now serving as chair of the ABA Young Lawyers Division. He is a partner with Porter Wright Morris & Arthur in Cleveland, Ohio.

Robert M. Krausz has co-written "Hello, Muddah! Hello, Fadduh!," a revue using two dozen of Allan Sherman's 1960's parodies, presented at Circle in the Square in New York City.

Karl W. Leo has founded the firm of Leo and Associates in Huntsville, Alabama, practicing business and commercial law.

Toshio Nakao has joined the firm of Taft, Stettinius & Hollister as a partner, splitting his time between the firm's Washington, D.C. and Cincinnati, Ohio offices, mainly representing Japanese clients.

Patrick T. Navin has been named a partner in the Chicago, Illinois office of Baker & McKenzie, where he practices as a tax attorney specializing in international and domestic employee benefits and executive compensation.

Laura Stuart Taylor has been made a partner in the San Diego, California office of Sheppard, Mullin, Richter & Hampton.

'84 **C. Mark Baker** has been named a partner in the Houston, Texas office of Fulbright & Jaworski, practicing in the litigation department.

Michael F. Bartok is now senior counsel of Paramount Communications, an entertainment and communications company based in New York City.

ALUMNI ACTIVITIES

Barbara Tobin Dubrow has become a partner in the corporate section of the firm of Sherr, Joffee & Zuckerman in West Conshohocken, Pennsylvania.

A. Les Fuchs is currently a pilot for Atlantic Southwest Airlines.

Jay W. Gendron has been promoted to vice president of legal affairs for Lorimar Television in Burbank, California. He is now responsible for all legal aspects of production for the company, including rights acquisition and contract negotiation.

Jay Gendron '84

Kyung S. Lee has joined the Houston, Texas office of Verner Liipfert Bernhard McPherson and Hand as a shareholder, practicing in the areas of creditors' rights, debt restructurings and corporate reorganizations.

Mark H. Mirkin announces the opening of the firm of Mirkin & Woolf in West Palm Beach, Florida, handling corporate, finance, securities, mergers, acquisitions, divestitures, partnership and tax law.

Briget M. Polichene has been promoted to general counsel for the Committee on Banking, Finance & Urban Affairs for the U.S. House of Representatives in Washington, D.C.

David P. Rhodes has joined the appellate division of the U.S. Attorney's Office for the Middle District of Florida in Tampa.

Howard E. Schreiber has been named a shareholder in the real estate section of the Dallas, Texas office of Jenkens & Gilchrist.

C. Robert Simpson is president of Sterling Mortgage Company in San Juan Capistrano, California and also president of Tanlines, a surfing accessories manufacturing company.

'85

Janet Ward Black is now an associate in the Greensboro, North Carolina firm of Donaldson & Horsley.

R. Daniel Douglass has become a partner in the Atlanta, Georgia firm of Varner, Stephens, Wingfield & Humphries.

Lisha Wheeler Goins practices with the firm of Howell & Goins in Atlanta, Georgia in the areas of public finance, non-profit corporate law, general corporate law and affordable housing and community development.

Lisa Catt Heydinger has been made a partner in the Charleston, South Carolina office of Nelson, Mullins, Riley & Scarborough.

William W. Horton has been named chairman of the health law practice group of Haskell Slaughter Young & Johnston in Birmingham, Alabama.

Meg Behringer Maloney is a partner in the Charlotte, North Carolina office of Moore & Van Allen, concentrating in employment law and commercial litigation.

Paul D. Meade has been named a partner at Halloran & Sage in Hartford, Connecticut.

J. Robert Moxley, III has become vice president of SDC Group, Inc., a real estate development company in Ellicott City, Maryland.

David C. Profilet announces the formation of the firm of Profilet & Venzer in Miami, Florida, where he will continue his bankruptcy practice.

'86

Thomas F. Blackwell announces the formation of the law firm of Blackwell & Lovelace in Dallas, Texas, specializing in business formation, general corporate law, high tech, computer law and trademarks and copyright.

John D. Briggs, II has been named a partner in the Dallas, Texas office of Hopkins & Sutter.

Alan G. Dexter has become a partner in the Charlotte, North Carolina office of Parker Poe Adams & Bernstein.

Elizabeth J. Gustafson has been promoted to assistant dean for admissions at Duke University School of Law.

Michael Petersen-Gyongyosi has joined the Numich office of Haarmann Hemmelrath & Partner, a firm of attorneys, ccountants and tax consultants.

Christopher J. Hagan is now a senior associate at Davis, Graham & Stubbs in Washington, D.C., specializing in venture capital and merger and acquisitions law.

Michael D. Kaplowitz is pursuing a Ph.D. degree in resource economics at Michigan State University in East Lansing.

Stephen M. Lynch has been named a shareholder in the Charlotte, North Carolina firm of Robinson, Bradshaw & Hinson.

Thomas W. Peterson has been named a partner at Ice Miller Donadio & Ryan in Indianapolis, Indiana, where he concentrates his practice in the firm's municipal finance section.

Patrick J. Rooney has become a partner in the firm of Rider, Bennett, Egan & Arundel in Minneapolis, Minnesota, where he practices in the area of civil litigation.

'87

John R. Archambault is practicing in Greensboro, North Carolina with the firm of Brooks Pierce McLendon Humphrey & Leonard in the areas of commercial litigation, banking and employment law. He has been elected to the North Carolina Labor and Employment Law Section Council.

ALUMNI ACTIVITIES

D. Randall Benn is an attorney-advisor in Washington, D.C. for the Environmental Protection Agency's Office of Water, with lead responsibility for working with Congress and the regulated community to amend the Clean Water Act, and for the office's international activities in Eastern and Central Europe, Mexico and the Caribbean.

Steven J. Davis is a senior associate in the Dayton, Ohio office of Thompson, Hine & Flory, specializing in real estate law.

James C. Dever, III has joined the Raleigh, North Carolina office of Maupin Taylor Ellis & Adams, where he practices in the areas of litigation and government contracts.

Katherine Strozier Payne has been promoted to vice president and assistant general counsel of USTravel in Rockville, Maryland, the nation's third largest travel agency.

Erika Chilman Roach is now in-house counsel for Indiana Gas Company in Indianapolis.

John F. Sharkey is now an international tax attorney for Johnson & Johnson at the company's world headquarters in New Brunswick, New Jersey.

James A. Thomas has joined the Durham, North Carolina office of Moore & Van Allen, practicing in the firm's intellectual property practice group.

Michael C. Turzai has joined the litigation section of the Pittsburgh, Pennsylvania office of Houston Harbaugh.

'88 *Reunion plans are underway for the Class of '88. Law Alumni Weekend will be October 8–9, 1993. Details have been mailed. Please contact the Law Alumni Office at 919-489-5089 if you have not received the information or if you have any questions.*

Paul M. Aguggia is now a partner in the Washington, D.C. firm of Breyer, Zinski & Aguggia, representing financial institutions.

Mark G. Califano is now a federal prosecutor in the U.S. Attorney's Office in New Haven, Connecticut.

Andrew A. Martin has been elected a fellow of the College of Legal Medicine and is a delegate to the American Medical Association and the Louisiana State Medical Society. He is on the staff of Tulane Medical Center in New Orleans.

Michael P. Scharf has accepted a position as assistant professor of law at the New England School of Law, where he will teach public international law, human rights law, and international criminal law.

Howard A. Skaist has been promoted to patent attorney at the GE Research and Development Center in Schenectady, New York, where he is responsible for filing patent applications for programs in the signals and systems laboratory and the control systems laboratory.

Darryl D. Smalls is now an associate with the Columbia, South Carolina office of Nelson, Mullins, Riley & Scarborough.

Susan D. Somach is spending two years as a guest lecturer at the Faculties of Law and Economics at Janus Pannonious University in Hungary, teaching courses in American law, banking, legal English and business English. She is also teaching at Eotvos Lorand University Law School in Budapest.

'89 **Michael L. Flynn** has joined the Charlotte, North Carolina firm of Kennedy Covington Lobdell & Hickman, where he will specialize in corporate and banking law.

Michael L. Flynn '89

Allen W. Nelson is now with Freeman & Hawkins in Atlanta, Georgia, practicing in the areas of employment law and entertainment law.

John B. Persiani has joined Ocwen Financial Corp. in West Palm Beach, Florida.

Kenneth A. Remson is now a partner in the Palo Alto, California office of Anderson Kill Olick & Oshinsky, primarily representing utilities seeking insurance coverage for environmental liability.

Danian Zhang has joined the Hong Kong office of Baker & McKenzie as an international business lawyer, working with the firm's China group.

'90 **Francisco J. Arbide** is an associate in the Miami, Florida office of Stearns Weaver Miller Weissler Alhadeff & Sitterson.

James R. Glenister is an associate with Paul Hastings Janofsky & Walker in Atlanta, Georgia, where he specializes in employment law.

Jill C. Greenwald is a litigation associate at Whitman & Ransom in New York City.

Anne Fitzgerald Hulka has taken a leave of absence from her law firm in Raleigh, North Carolina to lead a three-month expedition on the Alaskan Kenai Peninsula this summer.

Patricia Ryan O'Meara has become an associate at the firm of O'Neill, Snell, Banowsky & McClure in Dallas, Texas.

'91 **Gary R. Brock** is now serving as the chief of the Administrative and Operational Law Division, Office of the Staff Judge Advocate, 2nd Armored Division at Fort Hood, Texas.

Takaaki Fujimoto is assistant manager in the legal section, corporate planning department of Kokusai Securities Co., Ltd. in Japan.

Dana J. Lesemann is practicing civil rights litigation at Kurzban, Kurzban & Weinger in Miami, Florida.

Amy Shaw McEntee has joined the Raleigh, North Carolina office of Maupin Taylor Ellis & Adams, where she practices in the creditors' rights and bankruptcy areas.

Rita M.K. Purut has joined the firm of Moore & Van Allen in Durham, North Carolina as an associate in the intellectual property practice group.

Joel M. Scoler is an associate in the insolvency department of Borden & Elliot in Toronto, Canada.

'92 **F. Randolph Lynn** has joined the law firm of Sneed Lang Adams & Barnett in Tulsa, Oklahoma as an associate in general litigation.

Recent Grads Prosper in Japan

Amy Gillespie '93

While their classmates settled into positions in New York, Atlanta, and Washington, D.C., three recent graduates have taken detours to Tokyo, Japan.

For **John Hoffman '92**, **John Gardiner '92**, and **Filip Ameloot '89**, real-world experience in one of the world's most vibrant cities has been a valuable supplement to their Duke Law educations. John Hoffman is spending this year as a research fellow on the law faculty at Tokyo University. He is studying the problem of "pollution export" by Japanese multinational corporations and the responses of the Japanese legal system, government, and indutry.

John Hoffman '92

The position has led to exciting ventures beyond the academic setting. Hoffman has consulted at an all-Japanese law firm and is one of five members of the "Japan Group," a team studying international environmental treaty compliance as part of a ten-nation forum. "This opportunity has opened up a tremendous amount of options, both in the private and public law fields," says Hoffman. Hoffman will return to the United States next year for a federal appellate clerkship.

John Gardiner '92, went to Tokyo for fourteen weeks before joining Shaw, Pittman, Potts, and Trowbridge in Washington, D.C. as an associate. He wanted to experience the life of the Japanese business people with whom he will interact in his chosen field of international business and transactions.

John Gardiner '92

Gardiner spent two and a half months at Sumitomo Metal Industries, Ltd, a large integrated steel company, and a month at Sumitomo Life Insurance Company, one of the world's largest insurance companies. He experienced all aspects of the life of the salaryman, commuting on crowded subway trains, touring manufacturing facilities, and attending formal meetings with managers and executives.

"At private meetings or on other occasions, I always asked questions about society, life and work, and gained an appreciation of many of the values that the Japanese hold," Gardiner says. "It has helped me tremendously as far as gaining a perspective about a culture and country that few Americans understand. This understanding will assist me in negotiating and interacting with the Japanese in the future."

Filip Ameloot '89, was an attorney in Belgium before coming to Duke for his LL.M. Through an on-campus interview at Duke, he landed a short-term position at a Japanese law firm. When that position ended, he realized he did not want to leave Japan. He spent the next year doing research and studying Japanese at Tokyo University.

He then joined electronics giant Pioneer's export administration section in Tokyo. The precision and accuracy emphasized in his legal education has proven unexpectedly useful. "The Japanese have a deep-rooted sense for detail," he reports. "It is nearly an obsession." Ameloot may continue to work in Tokyo or be transferred home to Belgium, where Pioneer's European headquarters are located.

Filip Ameloot '89

All three graduates are enthusiastic about their Japanese adventures. In the words of Filip Ameloot, "Tokyo can be pretty addictive."

Two '92 Grads to Clerk at Supreme Court

Landis Cox '92

Two 1992 graduates, **Landis Cox** and **Ann Hubbard**, have been hired as clerks for United States Supreme Court justices for the 1993–94 term. Cox will clerk for Chief Justice William Rehnquist, while Hubbard will work for Justice Harry Blackmun. Both have spent the past year clerking for lower court judges—Hubbard for Patricia Wald of the U.S. Court of Appeals for the D.C. Circuit, and Cox for U.S. District Judge Carlton Tilley, Jr. of Greensboro, North Carolina.

Both admit to some pre-job jitters. "It still has an air of unreality to it," says Hubbard. "Until I get my badge and my desk, it'll be hard for me to believe it's actually going to happen." Cox adds that she is "thrilled to have the opportunity to have the chance to work with people at the top of the legal field, not just the justices, but the co-clerks as well."

Both also credit the support of Duke faculty and administrators with encouraging them to apply for the clerkships and assisting them in the application process. "I would not have applied," says Hubbard, "had several professors not encouraged me. Having two students from Duke as clerks is no accident. Dean Gann has committed the School to making the effort to place more students in clerkships."

Ann Hubbard '92

Duke Law Alumni Capture Philadelphia Bar Association Charity Softball Championship

On Saturday, June 5, 1993, beneath gray and misty skies, the Duke Law Alumni softball team won its sixth championship in the Seventh Annual Philadelphia Bar Association Young Lawyers Section Softball Tournament for the benefit of the Support Center for Child Advocacy. Duke alumni, Steve Scolari '84, Ray Wiercieszewski '90, Carl Williamson '88, George McFarland '84, Gregg Melinson '89, Brian Cary '85, and Dave Lockwood '84 were assisted by honorary Duke Law alumni Buck Rightmeyer, Greg Gotowchikov, John Murphy, and Fred Levin. A few new alumni seem to charge the team with vigor each year.

For many of the "older" alumni, this event represents an annual reunion and a chance to exchange law school war stories. The Philadelphia alumni share the warmest greetings and the good fortune of their victory with other Duke Law alumni everywhere.

Personal Notes

'68 **Paul B. Ford, Jr.** and his wife, Nancy Young, are happy to report the birth of their son, Hunter Chang Young Ford, on February 21, 1993. Paul is a partner at Simpson, Thacher & Bartlett in New York City.

'76 **Russell M. Frandsen** announces the birth of his ninth child, a son named Christian, on November 23, 1991.

'78 **Jane Makela** is pleased to announce the birth of a second daughter, Anne Ogden Vogt, on February 14, 1993.

'79 **Carol Gray Caldwell** and her husband, Harry, are happy to announce the birth of their third daughter, Laney Gray Caldwell, on September 8, 1992.

Grillet/Tiryakian Wedding

Edmund C. Tiryakian '81 was married to Jacqueline Grillet of Ambilly, France on July 11, 1992 at the Duke Chapel in Durham. Ed and Jackie reside in Zurich, Switzerland, where he works for Union Bank of Switzerland. Attending the wedding were ten members of the Class of '81, pictured below with their spouses at a reception held at the Washington Duke Inn.

Pictured left to right, back row: **Dave Lewis, Mark Lewis, Dave Swinton, Bruce Saul, Ed Tiryakian, Kevin Fitzgerald, Ben Burke Howell, Jay Jenkins** and **Mark Clark** (groomsman). Left to right, front row: **Pat Fazzone,** Mary (Mrs. David) Lewis, Betsy (Mrs. Mark) Lewis, Polly Saul, Jackie Grillet Tiryakian, Karen Fitzgerald, Kathy Howell, Linda Jenkins, and **John Pedrangehlu** (groomsman).

Bob Boyd

'81 **Jonathan L. Abram** is pleased to report the birth of a second daughter, Cleo Constantine Abram, on January 25, 1993.

'82 **Lynette Remen Zinberg** is proud to announce the birth of her second child and first son, Benjamin Isaac Zinberg, on November 24, 1992.

'83 **M. Timothy Elder** and his wife, Susan, are the proud parents of their second child, a daughter named Katherine Anne Elder, born on January 24, 1993.

Rondi R. Hewitt was married to Mike Grey on April 23, 1993. Rondi is the director of public policy for Glaxo, Inc. in Research Triangle Park, North Carolina.

Rebecca Strawn Wilson and her husband, Fred Kopatich, are pleased to report the arrival of a son, Arturo Kopatich, on December 26, 1992. Arturo was born August 4, 1992 in El Salvador.

'84 **Michael F. Bartok** and Patricia Hayashi happily announce the birth of their first child, Cameron Bartok, on October 18, 1992.

Kenneth J. Krebs and his wife, Jacqueline, are pleased to announce the birth of their second child and first son, Samuel Richard Krebs, on March 15, 1993.

Briget M. Polichene and her husband, Chuck Nunzio, happily report the birth of their first child, a son named Charles, on June 26, 1992.

ALUMNI ACTIVITIES

Wilson A. Schooley and his wife, Janine, are pleased to announce the birth of their second daughter, Linnea Katharine Schooley, on February 21, 1993.

Patricia Anne Speth was married to Raymond Stephen Blackmon on April 24, 1993 in Murrells Inlet, South Carolina. Anne practices law in Marion, South Carolina.

'85 **Paul D. Meade** is proud to announce the birth of his second child, a daughter named Caroline Beauchamp Meade, on January 6, 1993.

J. Robert Moxley, III is pleased to report the birth of a son, James Robert Moxley, IV, on January 10, 1993.

David A. Trott and his wife, Kappy, happily announce the birth of their second child, a daughter named Taylor Rose, on September 30, 1992.

'86 **Lisa Long Kennedy** and **Kermit B. Kennedy**, both Class of '86, joyfully announce the birth of their second child, Daniel Christopher Kennedy, on June 25, 1992.

Alexandra D. Korry and **Robin Panovka**, both Class of '86, were married on May 16, 1993 in New York City, where they reside.

Daniel R. Schnur and his wife, Debbie, are pleased to report the birth of their third child, a son named Max Jacob Schnur, on February 15, 1993.

Richard H. Winters and his wife, Margaret, are happy to announce the birth of twin daughters, Elizabeth Elinor and Mary Ailsa, on June 19, 1992.

'88 **Susan E. Ciferni** was married to Joseph E. Kinsella, Jr. on August 29, 1992. Susan is an associate at Bigham Englar Jones & Houston in New York City.

Kevin G. Mulcahy was married to Julie C. Fissinger in February, 1993. They reside in Brooklyn Heights, New York, where Kevin is a corporate communication consultant and public speaking instructor.

Thomas M. Rohe was married to Mary K. Husting on August 8, 1993. They reside in Milwaukee, Wisconsin, where Thomas is an attorney at Otjen, Van Ert, Stangle, Lieb and Weir, specializing in worker's compensation law.

Lisa C. Shapiro was married in February 1993 to Chip Boehm. Lisa practices at Verrill & Dana in Portland, Maine.

'89 **Allen W. Nelson** was married to Amy Baptiste in September 1991.

Robin L. Rosenberg was married to Michael F. McAuliffe on February 14, 1993 in Washington, D.C., where they reside. Both Robin and Michael work for the Justice Department.

Maria Benecki Sowders is proud to announce the arrival of twin sons, Thomas Alton Sowders and Lee Andrew Sowders, born January 22, 1993.

'90 **Miriam R. Arichea** and her husband, Jeffrey Brackett, happily report the birth of their first child, Joshua Thomas Arichea Brackett, on November 9, 1992.

Stefaan Callens and his wife, Hilde, are proud to announce the birth of their first child, a son named Sabastien, on April 15, 1993.

Terrill Johnson was married to George M. Harris, III on October 10, 1992. They reside in Greensboro, North Carolina, where Terri is an associate with Smith Helms Mulliss & Moore.

Gregory D. Omer and his wife, Tracy, are the proud parents of a son, Zachary Davis Omer, born on December 18, 1992.

Jacqueline Ouzts Shogan and her husband, Jeff, are pleased to report the birth of their third child, John Edward Shogan, on February 16, 1993.

'91 **Maureen T. Gimpel** was married to Christopher E. Maley on March 13, 1993. Maureen is an associate with Dechert, Price and Rhoads in Philadelphia, Pennsylvania.

Trent W. Ling was married to Annette Lim on October 2, 1992 in Cancun, Mexico. They reside in Orlando, Florida, where Trent practices in the area of worker's compensation litigation at Zimmerman, Shuffield, Kiser and Sutcliffe.

'92 **Christoph J.R. Partsch** was married to Swetlana von Bismarck in Wiesbaden, Germany on October 3, 1992.

Scott W. Stevenson, an associate at Hancock, Rothert & Bunshoft in San Francisco, California, was married to Ms. Scott Rodwell Trotter on April 17, 1993 in Durham, North Carolina.

Obituaries

Class of 1931

C.Emile Saint-Amand, 85, of Gaffney, South Carolina, died on December 24, 1992. He was senior partner of the Gaffney law firm of Saint-Amand, Thompson and Brown and had been active in the Gaffney business community for many decades. He had served for more than fifty years as a member of the Board of Directors of First Piedmont Federal Savings & Loan. He had also served in the South Carolina House of Representatives and as the highway commissioner for the Cherokee/Spartanburg District. He was one of the founders of the Cherokee County Boys & Girls Club.

Survivors include his wife, Alice Littlejohn Saint-Amand; a son, Nathan Saint-Amand of New York; a daughter, Emilia Seed of New York; a brother, Robert Saint-Amand of Jacksonville, Florida; a sister, Mrs. John C. Anderson of Wilmington, North Carolina; and four grandchildren.

Class of 1935

Rollo Bergeson, 82, died April 6, 1993 in Des Moines, Iowa. A Navy veteran of World War II, he was elected Iowa secretary of state in the late 1940s and also made an unsuccessful bid for the U.S. Senate during that time. After leaving public office, he was owner and general manager of KCBC radio station in Des Moines and later president of West Des Moines State Bank.

Bergeson donated a large tract of land that today is part of Living History Farms, an historic site. He was a longtime supporter of Des Moines homeless shelters and food pantries and quietly donated much of his wealth to others less fortunate.

Survivors include a son, Eric of Des Moines; a daughter, Kristina Campbell of Scottsdale, Arizona; a brother, Milo of Sioux City; a sister, Ardis Blythe of Sioux City; and numerous nieces and nephews.

Class of 1936

E. Hoover Taft, Jr., 80, of Greenville, North Carolina, died November 13, 1992. A native of Greenville, he practiced law there for fifty-five years. He was also a former chairman of the Louisburg College Board of Trustees, and was "proud to have led [its] desegregation during the civil rights movement," according to his son, Thomas F. Taft, a former North Carolina senator. He also helped steer Louisburg College, the oldest church-supported junior college in the United States, to financial stability and to significant improvement of its facilities. The school's largest and newest classroom building was named for him in 1984.

Taft was also the founder of a development company and national hardware supply operation. He was active in the American Red Cross, helping to establish the nation's first official blood program after World War II.

He is survived by his wife, Helen Fleming Taft; two sons, E. Hoover Taft, III and Thomas F. Taft, both of Greenville; two sisters, Florence Taft Blount and Gertrude Taft Massey, both of Greenville, a brother, Joseph Marvin Taft, Jr. of Greenville; and six grandchildren.

Class of 1939

Charles H. Gibbs, 77, of Charleston, South Carolina died on July 6, 1993. He was a partner in the firm of Sinkler, Gibbs and Simons and a fellow of the American College of Trial Lawyers. He was a Navy veteran, having served during World War II and retiring as a commander in the Naval Reserve.

Gibbs was active in community affairs. He had served as a Ward 2 alderman, as chairman of the Charleston County Zoning Committee, as chairman and vice chairman of the Charleston County Planning Board, as chairman of the United Community Welfare Planning Council, and as chairman of the Charleston County Democratic Executive Committee.

He was also a former member of the Board of Directors of St. Francis Xavier Hospital and the Board of Trustees of the College of Charleston.

Gibbs is survived by his wife, Margie Lee Street Gibbs; two sons, **Charles H. Gibbs, Jr. '69** of Charleston and Benjamin S. Gibbs of Sanford, North Carolina; a brother, James G. Gibbs of Charleston; a stepdaughter, Margaret S. Wilson of Charleston and four grandchildren.

Class of 1940

James Schuman Shepard, 78, of Liberty, Indiana, died on April 18, 1993. The first judge of the 89th Judicial Circuit Court in Liberty, he served on the bench from 1975 to 1978, when he retired. He had previously practiced law with the James S. Shepard law firm. He was a Navy veteran of World War II, and was national collegiate debate champion in 1936.

OBITUARIES

Judge Shepard is survived by four daughters, Nancy Anne Williams, Elaine Herrin, Mary Ellen Shepard, and Sarah Anne Shepard; and four grandchildren.

Class of 1942

Frank X. Donovan of New York City, died on February 22, 1993. He was diagnosed in November 1992 as having ALS/Lou Gehrig's disease. He was a veteran of World War II, having served in the Navy, and he practiced law for many years in Stewart Manor, New York.

He is survived by his wife, Eileen Donovan; two daughters, Mary Clinton and Theresa Donovan; three sons, Joseph, Francis and Michael; a sister, Rita Eagan; two brothers, Thomas A. and Thomas, and two grandchildren.

Donald W. Fuller, of Cape Coral, Florida, died June 5, 1993. He practiced law for thirty-five years in Endicott, New York, where he was also village attorney, assistant police justice, and a member of the Zoning Board of Appeals. He was a past president of the Endicott Visiting Nurse Association, and was a candidate for the New York State Assembly in 1976. He was a mayoral candidate in Endicott in 1945 and a former committeeman of the Republican Party.

He is survived by his wife, Phyllis; two sons, Donald, Jr. of Cape Coral and Richard of Chesapeake, Virginia; a daughter, Eloise Cobb of Powhatan, Virginia; two brothers, Clifford of Appalachin, New York and William of Melborne, Florida; four grandchildren; and several nieces and nephews.

Class of 1948

George W. Moody, 72, of Reno, Nevada, died December 17, 1992. He was a lawyer and a career Air Force officer. He served as a navigator during World War II and was awarded the Distinguished Flying Cross, Air Medal and Legion of Merit. He retired in 1977 as a lieutenant colonel, last holding the positions of chief of civil law and deputy judge advocate general for the 8th Air Force in Shreveport, Louisiana.

Moody is survived by his wife, Jeannette Hilda; three sons, Eric and Brian, both of Reno and Christopher of Exeter, New Hampshire; a daughter, Mary Jane Williams of Reno; two sisters, Margaret Moody of Falls Church, Virginia and Mildred DeMars of Johnson, Vermont; seven grandchildren; and numerous nieces and nephews.

Class of 1950

Col. Laurence J. Beltman, Sr. died June 19, 1993 in San Antonio, Texas. Before his retirement, he served as assistant attorney general in Texas for twelve years. He retired from the U.S. Army as a colonel and an appellate military judge in 1973.

Beltman is survived by his wife Diana G. Beltman; his mother, Sarah Beltman; fourteen children; sixteen grandchildren; and six great-grandchildren.

Class of 1961

Richard W. Kreidler, 55, of Jacksonville, Florida, died in January, 1993. A retired county judge, he had practiced law in Jacksonville for over twenty years, and served on the bench for nine years before retiring. He was a member of the Jacksonville and Florida bar associations.

Survivors include his wife, Patricia Kreidler; a daughter, Amy Erin of Winter Park, Florida; a son, Chad Eric, of Jacksonville; a sister, Mertye Heberly of Coeure D'Alene, Idaho; and a granddaughter.

Class of 1968

James L. Rohwedder, 48, of Kenner, Louisiana, died on December 6, 1992. He was a corporate attorney with Freeport-McMoRan, Inc. in New Orleans. He is survived by his mother, Marveen Rohwedder of Arkansas.

Class of 1971

Christopher S. Flanagan, 47, of Northampton, Pennsylvania, died on December 18, 1992. He was an attorney, secretary and corporate counsel for Lehigh Portland Cement Company of Allentown for the past eleven years.

He is survived by his wife, Sarajane Price Flanagan; his father, Frank V. Flanagan of Saratoga Springs, New York; a son, Peter and daughter, Leigh, both of the home; and a sister, Susan, of New York City.

OBITUARIES

Faculty

Kazimierz Grzybowski, 85, emeritus professor of law and political science, died on April 25, 1993. He was a nationally known expert on Soviet law and was a former director of the Polish Information Center for the Middle East. A native of Lwow, Poland, he received the Military Cross for service in the Polish Army in World War II.

Grzybowski was recruited to Duke in 1964 by Arthur Larson to work at the Law School's Rule of Law Research Center, which formulated early plans to reach out to the Soviet people with a series of Soviet-American conferences. Grzybowski taught courses in international law, international business transactions and comparative law.

A member of the Polish bar since 1936 and later a district court judge in Lwow, Grzybowski received his master and doctor of laws degrees from the University of Lwow and an S.J.D. from Harvard. Before coming to Duke, he taught at several schools including the University of Leiden in Holland, Yale Law School, the University of Michigan, and the University of Strasbourg in France. He wrote numerous books and articles on international law, Soviet criminal law, economic problems of the Soviet bloc, and Polish legislation and politics.

Dean Pamela Gann said she recognizes Grzybowski's career contributions and also feels a personal loss. "On a personal level, I will remember his *bon vivant* manner and his passion for Swedish cars. I will never forget everything that he shared with me about his experiences in Poland during World War II. I will also never forget what he could not bring himself to share with me about those same experiences."

Grzybowski is survived by his wife, Zofia. Memorial donations may be made to the Law School's general scholarship fund.

Arthur Larson, 82, James B. Duke professor of law emeritus, died on March 29, 1993. Before coming to Duke in 1958, he served as undersecretary of labor, director of the United States Information Agency, and as a special assistant to President Dwight D. Eisenhower. Prior to holding these posts, he practiced law in Milwaukee and served on the law faculty of the University of Tennessee. During World War II, Larson held a position in the Office of Price Administration.

After World War II, Larson joined the law faculty at Cornell University and later served as professor and dean of the law school at the University of Pittsburgh. At Duke, he was the second James B. Duke professor named at the University, and he headed the Law School's Rule of Law Research Center. The Center's principal activity was research and publication on questions of law and international organization bearing on security, peace, disarmament, and world order. He continued his consulting work while at Duke, and counseled President Lyndon B. Johnson on international affairs and worked with the U.S. State Department and the United Nations.

"Arthur Larson was one of the best known scholars on the faculty through his work on workers' compensation and employment discrimination, and through his work on international law and foreign affairs," said Dean Pamela Gann. "He was a fine teacher; he worked with dozens of students outside the classroom and involved them in his research and publications."

Although he retired from teaching in 1980, Larson continued to work on his publications, most notably his eleven volume legal treatise on workers' compensation. His other publications include a treatise on employment discrimination, numerous books and articles on international law and several other books. In recent years, he continued to come on campus most every day to work on his research and writings despite back and leg difficulties which interfered with his ability to move.

Larson and his late wife, Florence Newcomb Larson, were also both talented musicians. They often hosted parties at which they would play for their guests on different pieces from their extensive collection of rare stringed instruments.

Larson is survived by a son, Lex Larson of Durham; a daughter, Anna Larson of Takoma Park, Maryland; a sister, Marguerite Hogue of Seattle, Washington; a brother, Richard Larson of Madison, Wisconsin; and six grandsons. Memorial contributions may be made to the Arthur Larson Scholarship Fund at the Law School.

UPCOMING EVENTS

October 7, 1993	Alumni Seminar
October 8, 1993	Board of Visitors Meeting
October 9, 1993	Law Alumni Council Meeting
October 8–9, 1993	Law Alumni Weekend and Half Century Celebration
April 15–16, 1994	Barristers/Board of Visitors Weekend
May 7, 1994	Graduation Reception
May 8, 1994	Degree Awarding Ceremony

LAW ALUMNI WEEKEND AND HALF CENTURY CELEBRATION
October 8–9, 1993

Friday, October 8, 1993

12:00–1:30 p.m. Student/Alumni Luncheon, Law School

12:00–5:00 p.m. Registration Desk Open at Law School

2:00 p.m. Law Alumni Council Meeting, Law School

7:00 p.m. All Alumni Cocktail Party and Dinner Alumni Association Meeting, Washington Duke Inn

9:00 p.m. Hospitality Suite available at Washington Duke Inn

Saturday, October 9, 1993

9:00 a.m.–2:00 p.m. Registration Desk Open at Law School

9:00 a.m. Coffee and Danish, Law School

10:00 a.m. Faculty Program on Alternative Dispute Resolution, Law School

12:00 noon North Carolina Barbecue, Law School Lawn

1:30 p.m. Duke vs. Clemson, Wallace Wade Stadium

1:30 p.m. Duke University Primate Center Tour

5:00 p.m. Class of 1963 Cocktails and Dinner, Angus Barn

7:00 p.m. Class Cocktail Parties and Dinners Various Locations

9:00 p.m. Hospitality Suite available at Washington Duke Inn

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ALUMNI NEWS

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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 of marriages, births or adoptions for the Personal Notes section.

Name _____ Class of _____

News or comments _____

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