

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 painting by W. Dendy Sadler entitled "A Breach of Promise." The painting was published by Catalda Fine Arts Inc. of New York City, and the copy photograph was taken by Dan Crawford of Chapel Hill.

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From the Dean

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

Death of A. Kenneth Pye

The death of A. Kenneth Pye on July 11, 1994, came as a great loss to many of us who knew him as a teacher, colleague, dean of the Law School, and chancellor of Duke University. I recall him as a teacher of criminal procedure in my first year of Law School. He was the consummate lecturer, saying that "we could learn how to brief and analyze cases from Professor Sparks." He was surpassed by almost no one in his command of facts and his preparation for any occasion. He believed in a lean administration for the Law School, partly because he could and would do everything, from presiding, to teaching, and responding to anyone in the Law School community who sought him out. My colleague, Professor George Christie, recalls that "Ken Pye was an impressive man. He was a born leader who was able to deal with difficult situations without flinching. Perhaps his greatest single strength was his intellectual honesty. He abhorred fake sentimentality. Ken was a good and dear friend. He will be sorely missed." My colleague, Professor Walter Dellinger, spoke at the A. Kenneth Pye Memorial Service held at Duke Chapel, and the editors have included his apt remarks later in this issue at page 64.

Faculty Recognitions and New Appointments

I am pleased to recognize the recent accomplishments of some of our faculty. Professor William W. Van Alstyne, the Perkins Professor of Law, has been named to the American Academy of Arts and Sciences, an hon-



New professor, Amy L. Chua

orary society of national scholars and leaders. Professor Katharine T. Bartlett has been appointed by the American Law Institute as co-reporter for the Principles of the Law of Family Dissolution because of her substantial reputation in family law, and especially her expertise in the area of child custody.

The University Provost has named Professor Donald L. Horowitz to a James B. Duke Chaired Professorship. He previously held the Law School's Charles S. Murphy Chaired Professorship. This lateral switch to the University-wide James B. Duke Chair was made in recognition of his special accomplishments as a scholar in such fields as ethnic relations and democratization and ethnic violence.

Amy L. Chua joined our faculty on

July 1, 1994, as an associate professor of law. She is a Phi Beta Kappa graduate of Harvard College and a graduate of the Harvard Law School where she was the executive editor of the *Harvard Law Review*. After clerking for Chief Judge Patricia M. Wald of the U.S. Court of Appeals for the D.C. Circuit, she worked for a large firm in New York City, where she specialized in international business transactions. Professor Chua will teach in the field of private international law, including international business transactions and securities law and also in the first-year course in contracts. Her research includes an analysis of the privatization-nationalization cycle in developing countries and her law firm experience includes the privatization of large government-owned corporations. Professor Chua's international teaching interests will complement the curricula taught by Professor Benedict Kingsbury (public international law), Professors Herbert Bernstein and Donald Horowitz (comparative law), and me (private international law), creating a group



The courtyard between the existing building and the new addition nears completion.

of faculty within the Law School to provide students a comprehensive set of offerings in the international and comparative law areas. Professor Chua will also complement Professors Lawrence Baxter, James Cox, and Deborah DeMott in the business curriculum, both domestically and internationally.

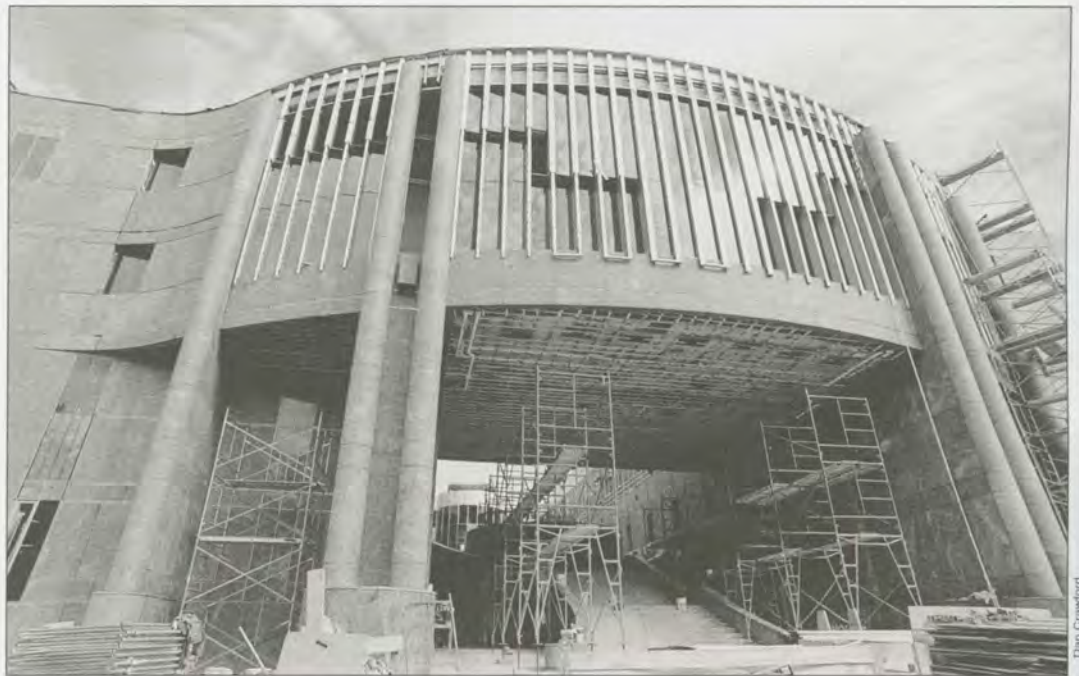
Construction Progress

Occupancy of the new Phase II building occurred at the end of July, which involved moving all of the faculty and administrative staff in the Law School.

The renovation portion of Phase II also began in July, which involves appropriately interconnecting the old and the new buildings, particularly the old and new portions of the library and all of the Law School corridors. The renovation also creates new space for the library staff, student work and study rooms in the library, and a renovated student lounge.

Alumni Leadership

I want to extend a warm, personal note of gratitude to Robert K. Montgomery '64, who has served 11 years, beginning in 1983, as a member of the Board of Visitors and as the Board's chair for the last six years. Bob is an exemplary model of the best of the Duke Law School. He is a fine professional person as a partner in Gibson, Dunn and Crutcher in Los Angeles, and he has provided extraordinary leadership to his local community in Los Angeles, particularly for the 1984 Olympic Games. He has maintained a special loyalty to the Law School, while also being a tireless advocate for bringing together all the various parts of Duke University into a cohesive and workable partnership. I look forward to working with Bob in the future in



Work continues on the new entrance to the Law School.

many more capacities in behalf of the Law School and Duke University more generally, both here in Durham and in California.

President Nannerl Keohane has appointed Lanty L. Smith '67, to succeed Bob as the new chair of the Board of Visitors. After being a corporate partner with Jones Day Reavis & Pogue in Cleveland, Lanty returned to North Carolina, where he was general counsel and later president of Burlington Industries, Inc. He is presently the CEO of Precision Fabrics Group, Inc., headquartered in Greensboro, North Carolina. Neither Lanty nor his family are strangers to Duke. His wife, Margaret Chandler Smith is a graduate of Trinity College and also has a Ph.D. from Duke University, and they are the parents of a rising senior at Trinity College. Lanty previously served a term on the Law School's Board of Visitors, and he responded enthusiastically to the invitation to become the chair of the Board. I very much look forward to working with him in his new leadership capacity.

David G. Klaber '69 was president of the Law School Alumni Association

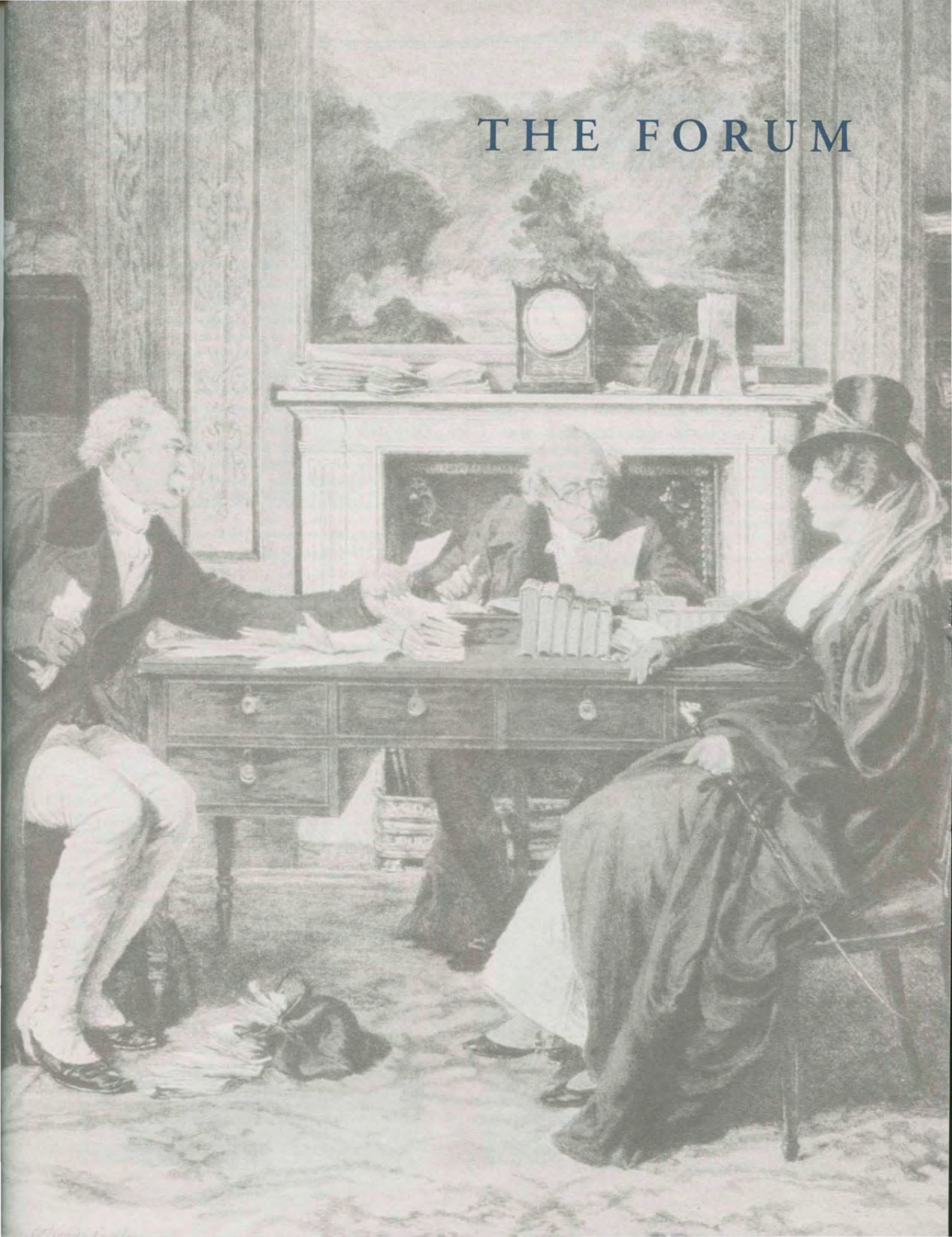
in the 1992-93 and 1993-94 academic years. Dave has been unstinting in his involvement in the Law School. He has interviewed and recruited students from various colleges and universities; he has previously been president of the local alumni association in Pittsburgh; he has served on alumni panels; and he has provided the Law Alumni Association with an expanded agenda of services to both alumni and students while he has been president.

Haley Fromholz '67 succeeded Dave Klaber as the new president of the Law Alumni Association on July 1, 1994. He is a litigation partner in the Los Angeles office of Morrison & Foerster. He brings to the president's position many years of experience in alumni affairs and development activities for the Law School.

Working collaboratively with our fine alumni is the greatest pleasure of my job. I am very grateful to these and other alumni who maintain such an extraordinary interest in the success and well-being of Duke.

Pamela B. Gann, Dean

THE FORUM



Prior Similar Acts in Prosecutions for Rape and Child Sex Abuse

Sara Sun Beale

Congress now has before it a proposal to change the evidentiary rules governing the admissibility of evidence concerning prior similar acts by a person being prosecuted for rape or child sex abuse. Though the crime bill passed by the Senate incorporates such a provision,¹ it is uncertain at this writing whether it will survive the conference process and become law. If it is not enacted by this Congress, the issue seems likely to remain on the legislative agenda.²

If enacted, this legislation will amend the Federal Rules of Evidence to add new rules authorizing the admission of acts of a similar character in a prosecution for either rape or child sex abuse. Although relatively few rape and child sex abuse cases are prosecuted in the federal courts, this proposal is significant because most states now base their own rules of evidence on the Federal Rules.

The highly publicized acquaintance rape prosecution of William Kennedy Smith demonstrated the powerful effect that the proposed amendment might have. The complainant in the *Smith* case testified that she met Smith in a bar and agreed to accompany him to the place where he was staying. She alleged that when they

arrived at the Kennedy estate, Smith suddenly disrobed, grabbed her when she tried to run away, and raped her on the beach. Smith conceded that intercourse had occurred but contended that it had been consensual. The jury acquitted Smith. The jurors were not permitted to hear the testimony of three other women who came forward before trial and offered to testify to similar experiences with Smith.³ Each of the three women claimed that, after initially acting in a friendly and nonthreatening manner, Smith had suddenly undergone a frightening transformation and assaulted her.⁴ It seems obvious that the result in the *Smith* prosecution might have been different if the proposed amendment had been in effect and the jury had heard the testimony of the other women.

This article will review the current law in the United States regarding the admissibility of prior similar acts in prosecutions for rape and child sex abuse and evaluate the arguments for and against enacting the proposed amendments.

The Current Law

All U.S. jurisdictions now place significant restrictions on the admission of evidence concerning prior wrongs and crimes committed by the defendant. There is general agreement that prior acts should not be admitted to prove propensity, and also general agreement on a number of purposes for which prior acts may be admitted, including proof of intent, knowledge, motive, plan, and absence of mistake or accident.⁵ Rule 404(b) of the Federal Rules of Evidence is in force in the federal courts, and it has served as the model for the rules now in effect in more than half of the states. This rule provides:

Other crimes, wrongs, or acts. Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that he acted in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.



Sara Sun Beale is Professor of Law, Duke University. She joined the Duke Law faculty in 1979, after three years at the Department of Justice. Her principal academic interests are in the field of criminal law and procedure.

An earlier version of this article was presented at a conference on Reform of Evidence Law held by the Society for Reform of the Criminal Law in Vancouver, British Columbia, Canada, August 3-7, 1992; this earlier version was published at 4 *CRIM. L. F.* 307 (1993).

¹ Violent Crime Control and Law Enforcement Act of 1993, H.R. 3355, § 831, 103rd Cong., 1st Sess., 139 Cong. Rec. 16288 (daily ed. Nov. 24, 1993). The text of this provision is set out in the box on page 5.

² An amendment of this nature was first introduced by the Bush administration in 1991, and has been reintroduced in numerous later bills in both the House and the Senate. See Comprehensive Violent Crime Control Act of 1991, S. 635, 102nd Cong., 1st Sess. § 801 (1991), 137 Cong. Rec. S3192 (daily ed. Mar. 13, 1991).

³ Although no published opinion is available, contemporary press reports state that the judge ruled "their testimony would prejudice the jury against Mr. Smith" and "[t]hat concern outweighed their testimony's value as showing a pattern of behavior" on the defendant's part. Michael Hedges, *Other Women Paint Smith as Violent, 'Not Too Bright'*, Wash. Times, Dec. 7, 1991, at A4.

⁴ One of the women would have testified that Smith raped her, and the other two would have testified that they prevented attempted rapes. *Id.* One of the women, now a doctor, would have testified that Smith assaulted her in 1988 when she was a medical student, suddenly taking off his clothes after a casual conversation near a pool, acting as if this were normal behavior. *Id.* This was the closest parallel to the Florida victim's version of the events.

⁵ Jurisdictions do differ, however, on the question whether the generally recognized categories are exhaustive or merely illustrative.

Proposed Changes to the Federal Rules of Evidence

Rule 413. Evidence of Similar Crimes in Sexual Assault Cases

(a) In a criminal case in which the defendant is accused of an offense of sexual assault, evidence of the defendant's commission of another offense or offenses of sexual assault is admissible, and may be considered for its bearing on any matter to which it is relevant.

(b) In a case in which the Government intends to offer evidence under this rule, the attorney for the Government shall disclose the evidence to the defendant, including statements of witnesses or a summary of the substance of any testimony that is expected to be offered, at least fifteen days before the scheduled date of trial or at such later time as the court may allow for good cause.

(c) This rule shall not be construed to limit the admission or consideration of evidence under any other rule.

(d) For purposes of this rule and Rule 415, "offense of sexual assault" means a crime under Federal law or the law of a State (as defined in section 513 of Title 18, United States Code) that involved—

(1) any conduct proscribed by chapter 109A of Title 18, United States Code;

(2) contact, without consent, between any part of the defendant's body or any object and the genitals or anus of another person;

(3) contact, without consent, between the genitals or anus of the defendant and any part of another person's body;

(4) deriving sexual pleasure or gratification from the infliction of death, bodily injury, or physical pain on another person; or

(5) an attempt or conspiracy to engage in conduct described in paragraphs (1)-(4).

Rule 414. Evidence of Similar Crimes in Child Molestation Cases

(a) In a criminal case in which the defendant is accused of an offense of child molestation, evidence of the defendant's commission of another offense or offenses of child molestation is admissible, and may be considered for its bearing on any matter to which it is relevant.

(b) In a case in which the Government intends to offer evidence under this rule, the attorney for the Government shall disclose the evidence to the defendant, including statements of witnesses or a summary of the substance of any testi-

mony that is expected to be offered, at least fifteen days before the scheduled date of trial or at such later time as the court may allow for good cause.

(c) This rule shall not be construed to limit the admission or consideration of evidence under any other rule.

(d) For purposes of this rule and Rule 415, "child" means a person below the age of fourteen, and "offense of child molestation" means a crime under Federal law or the law of a State (as defined in section 513 of Title 18, United States Code) that involved—

(1) any conduct proscribed by chapter 109A of Title 18, United States Code, that was committed in relation to a child;

(2) any conduct proscribed by chapter 110 of Title 18, United States Code;

(3) contact between any part of the defendant's body or an object and the genitals or anus of a child;

(4) contact between the genitals or anus of the defendant and any part of the body of a child;

(5) deriving sexual pleasure or gratification from the infliction of death, bodily injury, or physical pain on a child; or

(6) an attempt or conspiracy to engage in conduct described in paragraphs (1)-(5).

Rule 415. Evidence of Similar Acts in Civil Cases Concerning Sexual Assault or Child Molestation

(a) In a civil case in which a claim for damages or other relief is predicated on a party's alleged commission of conduct constituting an offense of sexual assault or child molestation, evidence of that party's commission of another offense or offenses of sexual assault or child molestation is admissible and may be considered as provided in Rule 413 and Rule 414 of these rules.

(b) A party who intends to offer evidence under this rule shall disclose the evidence to the party against whom it will be offered, including statements of witnesses or a summary of the substance of any testimony that is expected to be offered, at least fifteen days before the scheduled date of trial or at such later time as the court may allow for good cause.

(c) This rule shall not be construed to limit the admission or consideration of evidence under any other rule.

Although some states have developed special rules, most U.S. jurisdictions purport to apply the general rule described above to rape and child sex prosecutions. A close examination of the cases reveals that the jurisdictions lacking special rules actually fall into two quite different camps. Courts in the first group of states apply the general rule regarding prior acts with the same rigor in rape and child sex prosecutions as in other types of cases, and not infrequently they exclude prior convictions and uncharged conduct of a similar nature. Courts in the other camp, in contrast, also purport to apply the general rule in prosecutions of this nature, but the rule operates quite differently in practice. In these jurisdictions the purposes for which prior acts may be admitted—particularly, intent and plan—are construed so broadly in rape and child sex abuse prosecutions that virtually any similar act is admissible. In effect, courts in these jurisdictions allow proof of prior acts to show propensity if there is the thinnest pretext of some other purpose for the evidence.⁶

A brief description of a few cases will demonstrate the wide disparity between these approaches. A California decision illustrates how the rigorous application of traditional evidentiary rules can bar evidence of similar acts that would corroborate the complainant's testimony. In *People v. Tassell*, the state supreme court held that it was error to admit evidence of two earlier uncharged sexual assaults that were introduced to show a common design or

plan.⁷ The complainant testified that she met the defendant while she was working as a waitress and agreed to give him a ride home after her shift. She testified that once he was in her van, the defendant grabbed her neck with both hands and pressed his thumbs on her windpipe, pulled her hair, and forcibly had oral and vaginal intercourse. He also told her he would have an alibi if she went to the police and that his name was Mike. Two other women testified to similar experiences. The first witness was also a waitress who met the defendant at work; she, too, claimed that he raped her in her car at the end of her shift. The second witness testified that the defendant picked her up while she was hitchhiking, pressed his thumbs on her windpipe, grabbed her hair, and forced her to have oral and vaginal intercourse. He told this victim that his name was Mike and that his friends would give him an alibi.

The California Supreme Court held that the evidence from these two women should not have been admitted to prove a common plan because the latter is only a "subordinate objective of proof, whose relevance depends upon the presence of some other actual issue, such as identity or innocent intent."⁸ In the case before it, the court concluded there was no issue of identity, since the defendant admitted the intercourse. Nor was there any issue of "equivocal or ambiguous" intent, since neither the prosecution nor the defense claimed that the defendant mistakenly believed that the complainant was consenting.⁹ In light of those circumstances, the court concluded that the common plan rationale was "merely a euphemism for 'disposition,'" and it should not have

⁶ The court candidly recognized this point in *State v. Kitson*, 817 S.W.2d 594, 598 (Mo. Ct. App. 1991) (citations omitted):

Although this concept, labeled the "depraved sexual instinct doctrine" by the Court in *Taylor*, has been rejected in name, it has been adopted in fact. The evidence of sexual misconduct rejected under this concept is simply admitted under the strained and questionable guise of one of the well established exceptions to the rule prohibiting the use of sexual misconduct to attack character.

⁷ 679 P.2d 1 (Cal. 1984).

⁸ *Id.* at 4 (quoting *People v. Covert*, 57 Cal. Rptr. 220, 222 (Ct. App. 1967)).

⁹ *Id.* at 7 n.7. Justice Reynoso dissented on this point, arguing that intent was at issue since the defendant claimed that he had intended consensual intercourse, and the prosecution contended that he had intended intercourse by force or threats. *Id.* at 10, 11.

been admitted.¹⁰ In California and other jurisdictions following a similar approach, prior acts are admissible only if the prosecutor can make a convincing showing that the evidence is relevant to some contested issue other than a predisposition to commit rape or acts of child sex abuse.¹¹

In contrast, other jurisdictions that purport to follow the same evidentiary rules achieve quite different results. For example, in *United States v. Peden*, a prosecution for rape and sexual abuse of a minor, the court upheld the admission of a prior conviction resulting from the defendant's fondling of another child.¹² Although the defendant admitted to having had intercourse with the victim, the court concluded that his prior conviction was admissible to show his "intent to take advantage of one incapable of resisting or unable to appreciate the act, as well as his knowledge that young children are easily victimized."¹³ Similarly, in a prosecution for sexual molestation of a 15-year-old girl, the Iowa Supreme Court upheld the admission of prior conduct with other victims on the ground that this conduct showed the motive of "desire to gratify his lustful desire by grabbing or fondling young girls."¹⁴ It seems clear that the California Supreme Court would find the evidence in the claims of motive or intent in these cases to be merely a euphemism for propensity or disposition.

A third group of states takes a more forthright position and recognizes that prosecutions for rape and child sex abuse justify a special rule permitting the introduction of prior similar acts by the defendant. As one commentator has stated, in these jurisdictions "intellectual honesty triumphed, and the courts eventually acknowledged that they were recognizing a special exception to the norm prohibiting the use of the defendant's disposition as circumstantial proof of conduct."¹⁵ Originally this exception was limited to prior acts involving the same victim and to conduct deemed abnormal and deviant, such as incest and child molestation, and it did not include heterosexual rape.¹⁶ Gradually, however, the exception expanded, first to deviant acts involving third parties and then to rape, as well as deviant conduct.¹⁷

At one time at least 20 states probably followed this third position, recognizing a special rule allowing the admission of prior acts in prosecutions for rape and child sex abuse,¹⁸ but the status of

this rule is now uncertain in many jurisdictions. The special exception came under fire in the 1960s, and courts in several states responded by eliminating the rule or imposing limitations.¹⁹ The introduction of new state evidence codes modeled on the Federal Rules casts further doubt on the survival of a special rule for prior sex crimes, since Rule 404 does not recognize any exemption of this nature. The state courts are divided on the question of whether special state rules should survive the adoption of provisions modeled on Federal Rule 404(b).²⁰

The Proposed Amendments

The Senate crime bill would add two new provisions to the Federal Rules of Evidence.²¹ Proposed Rule 413 would provide:

(a) In a criminal case in which the defendant is accused of an offense of sexual assault, evidence of the defendant's commission of another offense or offenses of sexual assault is admissible, and may be considered for its bearing on any matter to which it is relevant.

Paragraph (d) of this rule defines offenses of sexual assault broadly to include both state and federal offenses involving rape or other forms of sexual assault. Proposed Rule 414 sets out in paragraph (a) a parallel rule of admissibility for evidence of "another offense or offenses of child molestation" offered at a trial for child molestation. Rule 414(d) defines a child as a person under the age of 14, and it defines offenses of child molestation to include state, as well as federal, offenses of child sex abuse. Paragraph (b) of both rules requires that the defendant be given pretrial notice of the prior acts to be offered so that he or she will have a fair opportunity to respond.

The legislative history indicates that evidence admitted under this rule

could be considered as evidence that the defendant has the motivation or disposition to commit sexual assaults, and a lack of effective inhibitions against acting on such impulses, and as evidence bearing on the probability or improbability that the defendant was falsely implicated in the offense of which he is presently accused.²²

¹⁰ *Id.* at 8.

¹¹ Another good example of this approach is *State v. Hansen*, 608 P.2d 1083 (Mont. 1980). The state supreme court reversed the defendant's conviction for rape because of the introduction of evidence of an earlier uncharged rape. There were numerous similarities between the victims' accounts of the two attacks. Both victims testified that they left a bar with the defendant in the early morning hours, that he drove them up into the mountains, that he grabbed them and twisted their thumbs against their wrists, and that he forced them to have intercourse. The court held that the admission of the uncharged rape was improper because it was not sufficiently contemporaneous and not sufficiently similar to the charged rape, and did not demonstrate a common scheme or plan. The court identified several differences between the two attacks and also suggested that sexual acts originating in barroom pickups are so common that they have little value in establishing a common scheme or plan. Finally, the court concluded that any probative value the evidence might have was outweighed by its prejudicial impact.

¹² 961 F.2d 517 (5th Cir. 1992).

¹³ *Id.* at 520.

¹⁴ *State v. Schlack*, 111 N.W.2d 289, 291 (Iowa 1961).

¹⁵ Edward J. Imwinkelried, *Uncharged Misconduct Evidence* § 4:14, at 37 (1991).

¹⁶ *Id.* at 36-37.

¹⁷ *Id.* §§ 4:14-4:15.

¹⁸ See Chris Hutton, *Commentary: Prior Bad Acts Evidence in Cases of Sexual Contact with a Child*, 34 S.D. L. REV. 604, 614 n.47 (1989) (approximately 20 states had or have such an exception).

¹⁹ Imwinkelried, *supra* note 15, §§ 4:16-4:17 (New York courts tightened standards without explicit overruling; Arizona imposed procedural limitations). Scholarly critiques of the special rule are collected in *id.* § 4:16 nn. 6-12.

²⁰ Compare *State v. McKay*, 787 P.2d 479 (Or. 1990) (holding evidence of prior acts admissible to prove sexual predisposition for this victim), and *State v. Edward Charles L.*, 398 S.E.2d 123 (W. Va. 1990) (holding that prior acts of child sexual assault and abuse with same or different victims may be introduced to show lustful disposition toward particular child or children in general), with *Getz v. State*, 538 A.2d 726 (Del. 1988) (holding sexual propensity exception inconsistent with Del. Rule Evid. 404(b)); see also *Hutton*, *supra* note 18, at 614-15 & nn.52-54 (noting prevailing view that the sexual propensity exception did not survive the adoption of Rule 404(b), but Arizona and Nebraska have taken a contrary position and Iowa has vacillated).

²¹ See *supra* notes 1-2. As noted earlier, the various proposals to amend the Federal Rules are virtually identical. The recommended changes are set out in the appendix to this article.

²² 137 Cong. Rec. S3239 (daily ed. Mar. 13, 1991). This passage is taken from the commentary explaining the legislation proposed by the Bush administration. Since the current proposal is modeled on the Bush administration bill, I refer to this Bush administration commentary throughout as the legislative history of the proposal. It should be noted, however, that if this provision is enacted the legislative history will be supplemented by materials explaining the intention of the current Congress.

The Rationale for the Exclusion of Prior Acts

Despite scholarly attacks on the traditional rule barring evidence of prior acts to prove the defendant's character or propensity, and hence actions in conformity therewith,²³ the general prohibition on character evidence remains firmly rooted in U.S. law.²⁴ There are three main reasons given for excluding evidence of prior acts to show propensity and conduct in conformity: irrelevance, prejudice, and procedural efficiency and fairness. In the past 10 years, the scholarly debate has included not only the traditional arguments that shaped the common law but also insights gleaned from modern psychological research.

Some authorities take the position that character evidence based upon prior acts is simply irrelevant to the issue of conduct on another occasion:

The basic reason for the inadmissibility of evidence of other crimes, wrongs, or acts is that such evidence is irrelevant to prove the conduct in question. As Wigmore says, it "has long been accepted in our law * * * [t]hat 'the doing of one act is in itself no evidence that the same or a like act was again done by the same person' * * *." The reason for this is that our knowledge of the causes of human conduct is too weak to provide any major premise that will support the desired inference. . . . The only explanatory model for human conduct expressly recognized by the law of evidence is the concept of "character." But our confidence in this construct is so weak that its explicit use is only authorized under special circumstances.²⁵

The view that character evidence has no predictive value, and hence no relevance, finds some support in modern psychology. The "traits theory" of personality has been discredited by empirical research demonstrating that "behavior is largely shaped by specific situational determinants that do not lend themselves easily to predictions about individual behavior."²⁶

Other authorities—some of whom concede that character evidence may indeed be probative—focus on the prejudicial impact that such evidence may have.²⁷ This view was expressed over 40 years ago by the U.S. Supreme Court, which stated that though such evidence is "logically persuasive," it is too powerful with the jury, and likely to persuade them to prejudice the defendant, denying the accused a fair trial on the charge.²⁸ In recent years, evidence scholars have offered psychological data to buttress the courts' common sense view of the potential for prejudice from the introduction of prior bad acts. Particular attention has been given to what psychologists call the "halo effect": the propensity to over-

simplify and judge others on the basis of some outstanding good or bad quality.²⁹ In addition, psychologists have identified other factors that tend to prejudice jurors against a defendant if prior bad acts are introduced. First, there is evidence that people tend to give greater weight to negative or derogatory information about others than they do to positive information of equal intensity.³⁰ People also overestimate the predictive value of data by making predictions based upon very small samples that statisticians would consider inadequate.³¹ Unfortunately, the inaccurate perceptions that result are difficult to shake, for people tend to interpret all subsequent data so as to maintain their initial belief.³²

Finally, the introduction of past acts to show character and ultimately action in conformity raises procedural concerns. The introduction of evidence about events other than those charged in the indictment may be burdensome and time-consuming, bringing in collateral issues that distract the jury from the main issue.³³ In cases in which the defendant wishes to challenge the occurrence of the other acts, the potential for delay and confusion is significant.

The Arguments For and Against an Exception

The principal reason for following a special rule admitting prior acts of rape or child sex abuse is the structural difficulty of proving sexual offenses under the current evidentiary rules. The offenses virtually always occur in private and there is little, if any, corroborative physical evidence in most cases.³⁴ Hence the cases tend to come down to the complainant's word versus the word of the defendant, with the prosecution required to prove the offense beyond a reasonable doubt. This structural problem is difficult to overcome in the case of the rape of an adult, and it is heightened in a prosecution for child sex abuse, where the victim may be very young.³⁵ Under these circumstances, the verdict often turns on the availability of evidence that can be used to resolve the swearing contest between complainant and defendant. While it is true that there are other offenses, such as theft, that often occur in a clandestine fashion, treating sex offenses differently from other clandestine offenses may be justified. The injury resulting from sex offenses is more serious than that associated with most other offenses, and

²³ Mendez, *supra* note 26, at 1047-48.

³⁰ *Id.* at 1045-46.

³¹ *Id.* at 1048.

³² *Id.* at 1054.

³³ See, e.g., McCormick, *supra* note 27, at 797-98.

³⁴ This statement is generally accurate in most acquaintance rape cases and many child sex abuse cases. Physical evidence typically plays a more significant role in stranger rape cases, where there may be evidence of physical trauma consistent with the use of force, as well as blood or semen, which may help establish the rapist's identity.

³⁵ The court in *State v. Edward Charles L.*, 398 S.E.2d 123, 132-33 (W. Va. 1990) (citation omitted), described some of the special problems in proving child sex abuse:

[T]hese cases generally pit the child's credibility against an adult's credibility and often times an adult family member's credibility. Since sexual abuse committed against children is such an aberrant behavior, most people find it easier to dismiss the child's testimony as being coached or made up or conclude that any touching of a child's private parts by an adult must have been by accident. In addition, children often have greater difficulty than adults in establishing precise dates of incidents of sexual abuse, not only because small children don't possess the same grasp of time as adults, but [also] because they obviously may not report acts of sexual abuse promptly, either because they are abused by a primary care-taker and authority figure and are therefore unaware such conduct is wrong, or because of threats of physical harm by one in almost total control of their life.

²⁴ Professor Kuhns has argued persuasively that there is no real distinction between character and noncharacter evidence because both entail assumptions about the accused's tendencies and disposition. Richard B. Kuhns, *The Propensity to Misunderstand the Character of Specific Act Evidence*, 66 IOWA L. REV. 777 (1981). Others have argued that uncharged crimes can be so highly probative even on a character theory that they should be admitted. H. Richard Uviller, *Evidence of Character to Prove Conduct*, 130 U. PA. L. REV. 845, 883, 890 (1982); see also Hutton, *supra* note 18.

²⁵ See Edward J. Imwinkelried, *The Use of Evidence of an Accused's Uncharged Misconduct to Prove Mens Rea*, 51 OHIO ST. L.J. 575, 576 (1990).

²⁶ 22 Charles A. Wright & Kenneth W. Graham, *Federal Practice and Procedure* § 5239, at 436 (1978) (footnotes omitted).

²⁷ Miguel Angel Mendez, *California's New Law on Character Evidence*, 31 UCLA L. REV. 1003, 1052 (1984).

²⁸ E.g., 1 Kenneth S. Broun et al., *McCormick on Evidence* § 190, at 797-99 (John W. Strong ed., 4th ed. 1992) [hereinafter *McCormick*].

²⁹ *Michelson v. United States*, 335 U.S. 469, 475-76 (1948).

there is a correspondingly greater need to prosecute offenders successfully. Few people would dispute that the sexual abuse of a child works a more profound and lasting harm than a theft and that society has a greater responsibility to identify and punish sex offenders than thieves.

Recognition of this structural difficulty sets the stage for a reconsideration of the objections to prior act testimony in this distinctive context. As noted above, three concerns underlie the rule excluding such evidence: irrelevance, prejudice, and procedure. It is these concerns that must be reassessed in the context of the current proposal to amend the Federal Rules.

The procedural objections are most easily met. The proposed legislation itself disposes of one procedural concern by providing the defendant with pretrial notice and an opportunity to respond to any prior acts that will be introduced. The traditional rule of exclusion is also based upon the concern that introduction of evidence of prior acts would unduly prolong trials and tend to distract the jury from the main issue. Certainly the introduction of evidence of prior acts would somewhat prolong the trials in question.³⁶ Proponents of admission argue, however, that given the importance of successful prosecutions of sex crimes, longer trials are acceptable. Moreover, proponents also argue that evidence of other similar acts would not distract jurors but rather would assist them in resolving correctly the key issue in dispute: whether the complainant or the defendant is telling the truth. The determination of whether such evidence imposes an undue burden on the court or distracts the jury thus ultimately comes down to the question of whether evidence of this type is relevant and highly probative on the disputed issues, or is—as the general rule barring such evidence assumes—of little or no probative value and highly prejudicial.

To frame the debate in terms of the William Kennedy Smith prosecution, if the evidence of the other assaults was indeed highly probative of the question whether the complainant or the defendant was telling the truth, it would not have been a distraction from the main issue, and it would have been appropriate to extend the trial to admit this evidence. On the other hand, if the evidence was of little or no probative value, though it would have been given great weight by the jury, the trial should not have been extended to admit this evidence.

Two different arguments can be made regarding the relevance of prior sex crimes. The first, which was typically used by the courts that developed the common law exception admitting such evidence, is that such conduct is relevant to show an abnormal sexual predisposition strongly linked to repetitive conduct.³⁷ The present proposal relies in part on this argument. The accompanying commentary argues that prior acts are relevant to show the defendant's "motivation or disposition to commit such offenses" in sexual assault cases.³⁸ This argument is said to be especially strong in child sex abuse cases, since "[e]vidence of other acts of molestation indicates that the defendant has a type of desire or impulse—a sexual or sexual-sado interest in young children—that simply does not exist in normal people."³⁹

³⁶ It is not clear how burdensome this would be in a typical case. Relatively few witnesses may be needed or indeed be available to prove prior acts that also occurred in private, where the only witness may be the alleged victim.

³⁷ Imwinkelried, *supra* note 15, §§ 4:14-4:15.

³⁸ 137 Cong. Rec. S3240 (daily ed. Mar. 13, 1991).

³⁹ *Id.*

Though it is popularly believed that sexual offenders are far more likely than other offenders to repeat their offenses, the reality is more complex. The common law sexual propensity exception has been attacked on the ground that the statistics on criminal history actually show that sex offenders have a lower recidivism rate than other categories of offender,⁴⁰ though this argument has been attacked in turn by scholars who point out that the data in question omit undetected recidivism.⁴¹ Since sexual offenses are often not reported, data based only on reported crimes may be quite misleading. Although methodological problems limit the conclusions that can be drawn at present, studies including self reporting show much higher rates of repeated conduct than the data on reported crimes indicate,⁴² and there is evidence that repetition of some forms of conduct is especially likely.⁴³

Indeed, the psychiatric profession recognizes pedophilia as a disorder characterized by "recurrent, intense sexual urges and sexually arousing fantasies, of at least six months' duration, involving sexual activity with a prepubescent child."⁴⁴ Given this definition of a trait or predisposition that is defined by an intense urge or propensity for certain conduct, it is difficult to argue that prior acts that might in turn demonstrate the trait of pedophilia are not relevant to the question whether a given individual has sexually abused a child. Moreover, within the general category of pedophilia it is possible to identify types of individuals who are more likely than others to repeat their conduct, and also to identify circumstances under which certain types of pedophiles are especially likely to commit additional offenses.⁴⁵ One need not accept the discredited character trait theory of personality to agree that a few traits or conditions, such as pedophilia, do have predictive value.

On the other hand, neither the recognition of pedophilia as a psychiatric condition characterized by intense, recurrent, and long-term sexual urges nor the data suggesting that recurrent conduct is characteristic of some forms of pedophilia justifies the wholesale treatment of sexual offenses in the current proposal. "Isolated sexual acts with children"—which would be admissible under the proposed changes—"do not necessarily warrant a diagnosis of Pedophilia."⁴⁶ Moreover, as noted earlier, different forms of pedophilia seem to show different rates of recidivism, and it is questionable whether rape has the same distinctive etiology providing predictive value.⁴⁷ Thus, while arguments based upon the likelihood of repetition, and hence the greater probative value of

⁴⁰ Imwinkelried, *supra* note 15, § 4:16.

⁴¹ Hutton, *supra* note 18, at 622 & n.82.

⁴² David Finkelhor, *Abusers*, in A SOURCEBOOK ON CHILD SEXUAL ABUSE 119, 336 (1986). See generally Lita Furby et al., *Sex Offender Recidivism*, 105 PSYCHOL. BULL. 3 (1989).

⁴³ Finkelhor, *supra* note 42, at 134 (all studies surveyed found abusers of boys among the most likely to repeat; three studies found them more than twice as likely to repeat as offenders against girls); Furby et al., *supra* note 42, at 27 (two studies found lower rate of recidivism for pedophiles than for aggressive/assaultive offenders, that is, rapists); Hutton, *supra* note 18, at 620-23 (distinguishing fixated and regressed child molesters).

⁴⁴ *Diagnostic and Statistical Manual of Mental Disorders (DSM III-R)* 284 (3d rev. ed. 1987) (emphasis added) [hereinafter *DSM III-R*].

⁴⁵ Finkelhor, *supra* note 42, at 134-36; Hutton, *supra* note 18, at 619-23.

⁴⁶ *DSM III-R*, *supra* note 44, at 285.

⁴⁷ For example, some data suggest that a large percentage of college-age men would engage in forcible sexual intercourse if they thought they would not be punished for that behavior. See, e.g., Neil Malamuth et al., *Testing Hypotheses Regarding Rape*, 14 J. RES. PERSONALITY 121, 130, 134 (1980) (51 percent of male college students in sample indicated some possibility that they would commit rape if

prior acts, might justify a more narrowly tailored exception for some forms of child sex abuse,⁴⁸ they do not provide a convincing basis for the broader rules included in the Senate crime bill.

The proposed changes also provide a second, more broadly applicable rationale for admitting prior acts of rape and child abuse. The proposal relies on what Wigmore called the "doctrine of chances," treating prior similar acts as "evidence of the improbability that the defendant has been falsely or mistakenly accused of the crime."⁴⁹ As the bill's legislative history explains:

It is inherently improbable that a person whose prior acts show that he is in fact a rapist or child molester would have the bad luck to be later hit with a false accusation of committing the same type of crime, or that a person would fortuitously be subject to multiple false accusations by a number of different victims.⁵⁰

This reasoning applies not only when identity is at issue but also when the defendant admits that he had intercourse with the victim but claims that she consented.⁵¹ While in individual cases the force of this probabilistic argument may be decreased by showing that the different accusations were not independent or that there is a reason why multiple victims would make false or mistaken charges, these arguments can be presented to the jury when such cases arise.⁵²

The doctrine of chances analysis meets squarely the objection that the prior acts evidence is irrelevant or only weakly probative, but it does not meet the objection that the evidence will be prejudicial. As noted above, the traditional rule of exclusion is based in part on the fear that the jury will give evidence of prior crimes far greater weight than it deserves. Arguments can readily be made both for and against the proposed changes on this ground. In favor of the proposal it can be said that Rule 404(b) reflects the overall judgment that the danger of prejudice from prior acts evidence is not sufficiently great to bar such evidence when it is relevant to prove some disputed issue. Once it has been determined that prior sex offenses are relevant to proving either the act or the intent elements in prosecutions for rape and child sex abuse, this evidence should be admitted subject to the court's general authority to exclude it in a particular case if its prejudicial impact outweighs its probative value. On the other hand, it can be argued that this general calculus should not apply when the prior acts are rape or child sex abuse, to which jurors typically react with anger and disgust. These strong negative reactions are likely to be the most prejudicial and difficult to counter.

they could be assured they would not be punished; 21 percent indicated they would be likely to do so). *But see* Furby et al., *supra* note 42, at 27 (citing evidence suggesting that rapists have a higher rate of recidivism than pedophiles).

⁴⁸ See Hutton, *supra* note 18, at 605, 623-25 (courts should not recognize a general child sex abuse exception, but a more limited use of abuser pattern—with expert testimony and appropriate opportunity for defendant to respond—would be appropriate).

⁴⁹ 137 Cong. Rec. S3240 (daily ed. Mar. 13, 1991).

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.* In fact, it can be argued that in most cases the events would not be truly independent, and that an innocent person with a prior record of similar offenses is more likely than an innocent person without any prior record to be accused and to go to trial. See Richard O. Lempert & Stephen A. Saltzburg, *A Modern Approach to Evidence* 217-18 (2d ed. 1982) (an innocent person with a prior record is more likely to be apprehended because of bias in the investigative process, less likely to have weak charges dropped, and more likely to plea bargain since he or she knows that having a prior record makes conviction more likely).

Finally, it has been suggested that admitting evidence of a rape in the defendant's prior acts with others would be fundamentally inconsistent with the rape shield laws now in force in virtually every U.S. jurisdiction; such laws generally bar evidence of the victim's prior conduct with others.⁵³ The legislative history of the proposal to amend the Federal Rules identifies three reasons for distinguishing between the prior acts of the accused and the complainant in rape prosecutions:

First, there is a basic difference in the probative value of the evidence that is subject to exclusion under such rules. In the ordinary case, enquiry by the defense into the past sexual behavior of the victim in a rape case will show at most that she has engaged in some sexual activity prior to or outside of marriages circumstance that does not distinguish her from most of the rest of the population, and that normally has little probative value on the question whether she consented to the sexual acts involved in the charged offense. In contrast, evidence showing that the defendant has committed rapes on other occasions places him in a small class of depraved criminals, and is likely to be highly probative in relation to the pending charge. . . .

Second, the rape victim shield laws serve the important purpose of encouraging victims to report rapes and cooperate in prosecution by not requiring them to undergo public exposure of their personal sexual histories as a consequence of doing so. Rules limiting disclosure at trial of the defendant's commission of other rapes do not further any comparable public purpose. . . .

Third, the victim shield laws serve the important purpose of safeguarding the privacy of rape victims. . . . In contrast, violent sex crimes are not private acts, and the defendant can claim no legitimate interest in suppressing evidence that he has engaged in such acts when it is relevant to the determination of a later criminal charge.⁵⁴

Conclusion

The final question raised by proposed Rules 412, 413, and 414 is whether their adoption would inevitably undermine the general rule limiting the introduction of prior acts. Of course, the proposal is limited on its face to prior acts of rape and child sex abuse, and the arguments based on greater likelihood of repetition are by their nature applicable only to a limited class of offenses. However, the doctrine of chances argument is applicable to any offense, and it has the potential to override the traditional rules strictly limiting the introduction of prior acts evidence.⁵⁵ In my view, a strong case has been made for the more generous admission of prior uncharged misconduct in rape and child sex abuse cases, particularly in cases of acquaintance rape.⁵⁶ I leave to others the broader question of the desirability of a more general reevaluation of the traditional rules restricting the admission of other crimes evidence.

⁵³ See generally Harriett R. Galvin, *Shielding Rape Victims in the State and Federal Courts*, 70 MINN. L. REV. 763 (1986).

⁵⁴ 137 Cong. Rec. S3241 (daily ed. Mar. 13, 1991).

⁵⁵ Imwinkelried, *supra* note 24, at 585-602.

⁵⁶ For an excellent argument that prior similar acts evidence should be admissible in acquaintance rape cases, see David P. Bryden and Roger C. Park, "Other Crimes" Evidence in Sex Offense Cases, 78 MINN. L. REV. 529, 575-82 (1994).

Contesting the Fiducial Line: Legal Theory and the Duty to Be Loyal

Deborah A. DeMott

Introduction

To what extent, and in what contexts, are human decisions appropriately assumed to be shaped by the actor's rational calculation of self interest? These questions and their corollaries underlie many disputed points in contemporary legal theory. In particular, much work in law and economics presupposes that people make decisions in a rationally calculative way in pursuit of self interest, a presupposition that varies in strength and specificity among authors. This essay examines how law-and-economics theorists characterize fiduciary obligation, that is, the legal obligation to act loyally in the interest of another. A trustee, for example, owes such an obligation to beneficiaries of a trust, as does an agent to her principal and a corporate director to the corporation and its shareholders. My thesis is that a pervasive assumption of rational calculativeness, if defined to have operative content, leads to inaccurate



Duke Photo Department, Jim Wallace

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and unhelpful descriptions of the content and application of fiduciary obligation. Moreover, these questions of characterization matter in shaping the evolution of commercial and social norms that proceeds within the legal community and in the broader society. Justifications for conduct do not develop independently of intellectual constructs. At the least, legal theory ought not wittingly provide the mechanics to undermine the normative core of many relationships.

As conventionally understood outside the realm of law and economics, fiduciary obligation imposes on persons subject to it a distinctive form of obligation. Although the specifics vary among types of relationships, a fiduciary must, within the scope of the pertinent relationship (a matter left considerably to the parties' own agreement to define), abjure the pursuit of self interest when it conflicts with the beneficiary's interests. In such relationships, unlike those defined solely by contract, the fiduciary is not free to take self-interested actions, even those not expressly or impliedly prohibited by the parties' agreement. The law draws what may usefully be called a fiducial line, a fixed point to govern action within the parties' relationship. Like the fiducial line drawn for purposes of navigation or surveying, fiduciary obligation provides a stable plane of reference by which to guide the parties' conduct within their relationship and assess its propriety in the event of disputes.

The scope and consequences of fiduciary obligation can be summarized briefly. The law treats some relationships as inherently fiduciary; by its legal nature such a relationship imposes duties of a fiduciary nature. These include the relationship between an agent and her principal, a union officer and the union's members, a senior corporate officer and the corporation and its shareholders, a trustee and the beneficiaries of the trust, a lawyer and her client, a guardian and her ward, and a partner and the partnership of which she is a member. The precise content of fiduciary obligation in each such relationship varies somewhat, but the basic animating ideas are the same.

The law also recognizes that such a list will never exhaust situations in which fiduciary norms should apply. Fiduciary obligation governs as well in confidential relationships, which are "those informal alliances that arise whenever one person trusts in, and relies upon, another . . . any relationship of blood, business friendship or association in which the parties repose special confidence in each other and are in a position to have and exercise, or actually have and exercise influence over each other."¹ By definition, a person believed to lack integrity and a capacity for fidelity would have a defense against the imposition of fiduciary duty founded solely in a confidential relationship.² No such defense is available in inherently fiduciary relationships. In *Don King Productions, Inc. v. Douglas*, a fighter was unsuccessful in establishing that his relationship with a boxing promoter was one of trust and confidence

¹United States v. Reed, 601 F. Supp. 685, 712 (S.D.N.Y. 1985).

²See *Don King Productions, Inc. v. Douglas*, 742 F. Supp. 741, 770 (S.D.N.Y. 1990).

giving rise to fiduciary duties. The fighter testified that he was one of the few people in the world of boxing "that has ever had anything halfway decent to say" about the promoter, a perception the court held to be inconsistent with a high level of trust.³ On the other hand, had the promoter in fact been a trustee, or an agent, on behalf of the fighter, the fighter's view of the promoter's integrity would not have relieved him from fiduciary duties.

Fiduciary obligation requires the person subject to it to use care in her actions within the scope of the relationship and, more distinctively, it prohibits the creation of a conflict between self-interest and the beneficiary's interest. Early in the Anglo-American development of this body of law, *Keech v. Sandford* held that a trustee committed a breach of trust by obtaining a renewal of a lease for his own benefit (as the new lessee) when the lessor refused to renew the lease for the benefit of the trust beneficiary.⁴ Were the trustee's renewal not a breach of trust, the court reasoned, the con-

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sequences would be obvious. Freed to negotiate to achieve his own interests, any trustee might be tempted to prefer them to the beneficiary's interests. The fiduciary prohibition on creation of conflicts encompasses acts by the fiduciary that compete with business activity within the scope of the parties' relationship.

A significant component of the fiduciary's loyalty to the beneficiary is a duty to disclose material information that is broader than the duties of disclosure created by contract law and tort law. In any relationship, a person who has made a factual representation as to a significant matter has a duty to disclose information she subsequently acquires if its import is to make the prior representation untrue or misleading. A fiduciary is under an additional obligation to disclose material information to her beneficiary whether or not the subsequent information makes a prior representation untrue.⁵

Distinct remedial consequences follow from a breach of fiduciary obligation: the fiduciary has an obligation to compensate the beneficiary for any loss caused by the breach or, alternatively, the fiduciary has an obligation to account for and disgorge any benefit realized through the breach.⁶ The obligation to account and disgorge operates even when the beneficiary cannot show that the breach caused a loss or detriment to his position. In *Keech v. Sandford*, it is no defense to the trustee that his action left the

beneficiary no worse off than he would have been in any event because the lessor independently refused to renew the lease for the benefit of the trust beneficiary. Finally, in some American jurisdictions, some breaches of fiduciary duty expose the fiduciary to liability for punitive or exemplary damages beyond the amounts required to compensate the beneficiary for loss or to disgorge the fiduciary's gain.

Does Judicial Language Matter?

A striking feature of judicial opinions interpreting and applying fiduciary norms is the language used by judges to explain and justify the outcomes they reach. The best-known example appears in Chief Judge Cardozo's 1928 opinion in *Meinhard v. Salmon*:

Joint adventurers, like copartners, owe to one another, while the enterprise continues, the duty of the finest loyalty. Many forms of conduct permissible in a workaday world for those acting at arm's length, are forbidden to those bound by fiduciary ties. A trustee is held to something stricter than the morals of the market place. Not honesty above, but the punctilio of an honor the most sensitive, is then the standard of behavior.⁷

Once bound by fiduciary ties, that is, the rationally calculative pursuit of self-interest is circumscribed by strict rules that favor the interests of the beneficiary over those of the fiduciary. In contrast, prior to forming fiduciary ties, parties deal at arms' length and do not owe each other duties of loyalty. Indicative of the force of Cardozo's formulation, later courts occasionally characterize the conduct expected of a fiduciary as the "punctilio of honor" standard.⁸

Within the law-and-economics genre, many writers characterize fiduciary obligation as a species of contract, in which "the duty of loyalty replaces detailed contractual terms, and courts flesh out the duty of loyalty by prescribing the actions the parties themselves would have preferred if bargaining were cheap and all promises fully enforced."⁹ In consequence, as Judge Easterbrook and Professor Fischel wrote recently, fiduciary duties are "not special . . . they have no moral footing, they are the same sorts of obligations, derived and enforced in the same way, as other contractual undertakings."¹⁰ I return later in this essay to the substantive import of this passage.

More generally one might wonder what to make of the language used in opinions like *Meinhard*, replete as it is with non-contractual-sounding terms and explicit references to morality. Easterbrook and Fischel observe that "we seek knowledge of when fiduciary duties arise and what form they take, not a theory of rhetoric—a theory of what judges do, not of explanations they give."¹¹ This characterization seems to misalign the scholar's project

⁷ *Meinhard v. Salmon*, 249 N.Y. 458, 164 N.E. 545, 546 (1928).

⁸ See *Wartski v. Bedford*, 926 F.2d 11, 20 (1st Cir. 1991), (standard applicable to partner); *In re Van Swearingen Corp.*, 155 F.2d 1009, 1011 (6th Cir. 1946) (standard applicable to trustee); *Alderman v. State*, 615 So. 2d 640, 648 (Ala. App. 1993) (standard applicable to construction contract advisor).

⁹ Frank H. Easterbrook & Daniel R. Fischel, *Contract and Fiduciary Duty*, 36 J. LAW & ECON. 425, 427 (1993).

¹⁰ *Id.*

¹¹ *Id.* at 429.

³ *Id.*

⁴ *Keech v. Sandford*, 25 Eng. Rep. 223 (1726).

⁵ *Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Boeck*, 377 N.W.2d 605, 614 (Wis. 1985) (Abrahamson, J., concurring).

⁶ See RESTATEMENT (SECOND) OF TRUSTS § 205.

of explanation with the phenomenon, judging, to be explained. What judges *do*, they do with words, words purposely chosen to explain and justify the decision being made. Using words to explain and justify a decision is not an exercise in mere rhetoric.

Interestingly, other law-and-economics writers acknowledge implicitly that intellectual fashion and the language it attracts matter because people internalize and act upon their justificatory and explanatory devices. Professor Williamson frets about spillover effects; he identifies a risk that rational calculativeness will pervade spheres of activity that become dysfunctional when people do not act cooperatively or even personal relationships where trustful behavior is essential.¹² For example, the aesthetic quality of an orchestra's output is not likely to be furthered by precise physiological measurement of each player's effort or by a compensation scheme that rewarded such effort. One visualizes the violinists' elbows swinging farther, and the flutists blowing harder, while in the imagination's ear the music deteriorates audibly.

Personal relationships, those created by love, friendship and family ties, are undermined by participants who engage in ongoing rational calculations of their prospects to "trade up" to a better friend, lover or family member. Early in Louis Begley's recent novel, *As Max Saw It*, the narrator (Max) reflects on the collapse of his long-lived relationship with Kate: "ultimately it was the faint indignity of being the abandoned party, and the inconvenience, I minded the most. Kate's skin had begun to coarsen; she was smoking too much; and she had become shrill. In time, I might do better."¹³ This passage skillfully leaves the reader with doubts of many sorts about Max. Even if his statement that he might do better is an attempt to rationalize away his loss, he seems, on balance, to be more comfortable with believing himself a cad than a lover left behind. To be sure, the world of personal relationships is more complex than can be addressed within the ambit of this modest essay. In some relationships, both parties may be attentive to prospects of trading up; or one may be aware of the other's propensity to trade up but love the person unconditionally nonetheless.

Professor Williamson's response to spillover risk is to isolate relationships of personal trust from the proper sphere of calculative behavior. He favors checking calculative excess elsewhere, outside the insulated sphere of personal relationships, by promoting awareness of "attitudinal spillovers," on the one hand and on the other, the nonpecuniary satisfactions that follow in relationships in which exchanges are not monitored too closely.¹⁴ One might instead treat trust as a more general phenomenon, to be valued and protected in commercial as well as personal relationships. In any event, choices about language figure in the spillover phenomenon because they reflect and influence acceptable patterns of explanation and justification for behavior. Even internal monologues (like Max's) are attempts to justify our conduct to ourselves.

Enabling Efficient Breaches

To assess the substantive import of the claim that fiduciary obligation is a type of contractual obligation, it is helpful to test the validity of assertions about the nature and operation of contract

law as applied to fiduciary obligation. One basic point should be acknowledged at the outset. Enforceable contracts, like most relationships that attract fiduciary obligation, begin with a voluntary association and agreement among the parties. An exception in the fiduciary realm is a constructive trust, which is a remedy imposed on a person who might not have intended such a relationship with the trust's beneficiary. As a general matter, the law of contract does not encompass or exhaust the legal consequences of *all* voluntary agreements and associations; many have their own distinct set of legal norms, such as those applicable to transactions in real property, dispositions of property intended to be effective upon the owner's death, and marriage and divorce. For that matter, norms defined by tort law—like fraud and products liability—also apply to voluntary associations, agreements and transactions. Thus, my concern is limited to claims that can be made distinctively about contract law, within the range of legal norms applicable to all voluntary relationships.

Contract law, many writers have noted, is morally unconcerned with whether promises are kept; rules specifying remedies for breach of contract at most compensate the non-breaching party for the value that would have been conferred by the other party's performance, and in many respects such rules operate to under-compensate. Writing in 1897 (well before the emergence of the contemporary law-and-economics movement), Justice Holmes asserted, "[t]he duty to keep a contract at common law means a prediction that you must pay damages if you do not keep it—and nothing else . . . you are liable to pay a sum unless the promised event comes to pass . . ."¹⁵ In any event, you the actor are free, having entered into a contract, to calculate and act upon the course that best furthers your self-interest. Indeed, argue many contemporary theorists, breaches of contract are and should be encouraged to the extent they are efficient. If the breaching party can fully compensate the nonbreaching party, and use his productive capacity to greater gain elsewhere, the breach is efficient. And contract law is stingy in its computation of damages, a trait that makes some breaches efficient at the margin that would not be were contract law damages more expansive. Contract damages in the United States, for example, do not include attorneys' fees incurred by the nonbreaching party to recover after a breach has occurred, nor do they include punitive damages or damages for pain and suffering.

In striking contrast, the norms imposed by fiduciary obligation operate to discourage the calculated pursuit of self-interest that underlies accounts of efficient breach. For starters, the beneficiary will always have the remedial option of compelling the fiduciary to account for and disgorge profit gained through the breach, as an alternative to seeking compensation for loss. A rationally calculative beneficiary who sues his fiduciary should, of course, choose the remedy that yields the larger recovery. In this respect remedies for breach of fiduciary obligation resemble those generated by norms of property law, which does not permit one person to take what belongs to another even though the taker can use the property to generate greater gains than can its owner. Such remedies operate *ex ante* to deter breach. Put more metaphorically, once the fiducial line is drawn, the well-known legal consequences of breach make it idle for a fiduciary to reckon the gain a breach would produce.

The language in opinions like *Meinhard v. Salmon*, moreover, is uncongenial to concepts like efficient breach precisely because it

¹²Oliver E. Williamson, *Calculativeness, Trust and Economic Organization*, 36 J. LAW & ECON. 453, 481-83 (1993).

¹³Louis Begley, *As Max Saw It*, 10 (1994). As it happens, the fictional Max is a law professor, a point that need not detain us.

¹⁴Williamson, *supra* note 12, at 481-84.

¹⁵Oliver Wendell Holmes, *The Path of the Law*, 10 HARV. L. REV. 457, 462 (1897).

articulates normative footings for fiduciary duty. Emphatic judicial emphasis on punctilios of honor and duties of finest loyalty, if internalized by private parties, discourages the calculated pursuit of self-interest. Justice Holmes, to be sure, observed that his conception of contract "stinks in the nostrils of those who think it advantageous to get as much ethics into the law as they can."¹⁶ The incorporation of ethical norms into a portion of the law is a major dimension of judicial opinions analyzing alleged breaches of fiduciary obligation, a dimension that distinguishes fiduciary relationships from those in which concepts like efficient breach are useful.

Concepts of efficiency and anticipated economic benefit are, however, useful in understanding the reasons why people enter into fiduciary relationships. Given the prospective liability, why would anyone join a partnership? Why would anyone other than an altruistic family member serve as a trustee or a guardian? Why (for that matter) does anyone become a lawyer? One hypothesis is that people who subject themselves to fiduciary norms fail to understand and properly account for their risks of liability, risks that may seem remote when the relationship is initially undertaken. As a general explanation, this hypothesis is not plausible; too many people—many of them demonstrably clever and well-informed—have served as fiduciaries. A more plausible hypothesis for the assumption of fiduciary obligation in commercial settings is simply a well-founded calculation of personal benefit through conduct that conforms to fiduciary norms. Prospective partners, for example, anticipate mutual advantage through their association; some fiduciaries, like trustees and lawyers, additionally anticipate future benefit by developing a reputation for faithful and competent service. Indeed, a prospective beneficiary who realizes that breach will not be efficient for his fiduciary can assign a more certain value to their relationship and pay for the fiduciary's services knowing that breach should not be an attractive option for the fiduciary.

In contrast, the contract-law world of efficient breach is less certain; a contracting party lacks accurate foresight into future developments that would make breach attractive to the other party and will always lack full information about the other party's propensity to breach the contract if self-interest so dictates. Of course, if these risks can be identified with precision, they can be insured against. The magnitude of the risk in any particular relationship will be difficult to assess because the likelihood of a self-interested breach is impossible to predict, even if the party has a known track record. Pricing the insurance would thus be difficult. In any event, to the extent any risk is insurable, the insurance is not free. Nor do markets for insurance themselves operate without cost or friction.

In commercial settings especially, it is helpful to distinguish between motives for entering into a relationship, which are likely to be self-interested, and norms that govern conduct within the relationship once it is formed. The relative certainty created by a fiduciary norm, oddly enough, should facilitate more accurate calculation of whether entering into a particular fiduciary relationship will be advantageous. Such certainty—created by the legal norm applicable to the relationship—substitutes for contractually-defined insurance against a set of risks surrounding the party's future self-interested conduct. It also obviates or, at least, reduces the loss described by Roger Cotterrell that otherwise results as "the pace of economic, financial life . . . slows as individuals calculate

more carefully and more reluctantly whether and when to involve themselves in relationships of reliance which appear to them increasingly insecure."¹⁷ And once in a relationship, fiduciary obligation reduces the costs of ever-vigilant distrust of the other party. In short, fiduciary norms reduce a commercial form of entropy. Along related lines, Professor Cooter and Mr. Freedman argue that the law of fiduciary duty deters misappropriation of the beneficiary's property by presuming that misappropriation has occurred, in many situations in which the beneficiary would have difficulty establishing its actual occurrence. As a result, at the outset of any relationship governed by fiduciary norms, the beneficiary's confidence in the other party is enhanced.¹⁸ Within an established fiduciary relationship, to betray the beneficiary's confidence will not be advantageous to the fiduciary.

The incorporation of ethical norms into a portion of the law is a major dimension of judicial opinions analyzing alleged breaches of fiduciary obligation, a dimension that distinguishes fiduciary relationships from those in which concepts like efficient breach are useful.

Carving-Out and Contracting-In to Duties

To be sure, the precise or technical content of fiduciary norms varies among types of relationships. The duties applicable to corporate directors under the general fiduciary aegis of loyalty are not identical to trustees' duties. Variability also occurs because the parties' own agreement significantly shapes the relationship and the norms applicable to it. This point, of course, is crucial in evaluating the claim that fiduciary norms are in essence contractual. My concrete focus will be examples drawn from the law of trusts, but other areas of the law would, I think, support the general points.

A trust is "a fiduciary relationship with respect to property, subjecting the person by whom the title to the property is held to equitable duties to deal with the property for the benefit of another person, which arises as a result of a manifestation of an intention to create it."¹⁹ The settlor, who creates the trust and transfers title to the property to the trustee, would typically manifest his intentions in a written trust agreement. A typical trust agreement designates the beneficiary, specifies the nature and extent of the trustee's powers regarding trust property, and determines the trustee's duties. In particular, trust law recognizes that "the terms of the trust"—the provable manifest intention of the settlor—determine

¹⁷Roger Cotterrell, *Trusting in Law*, 46 CURRENT LEG. PROBS. 75, 95 (1993, part 2).

¹⁸See Robert Cooter & Bradley J. Freedman, *The Fiduciary Relationship: Its Economic Character and Legal Consequences*, 66 N.Y.U. L. REV. 1045, 1074 (1991).

¹⁹RESTATEMENT (SECOND) OF TRUSTS § 2. The existence of a trust for legal purposes does not require trust beneficiaries to demonstrate that they actually reposed psychological trust in the trustee. For treatments of the psychological and institutional circumstances of trust, see TRUST: MAKING AND BREAKING COOPERATIVE RELATIONS (Diego Gambetta ed. 1988).

¹⁶*Id.*

the nature and extent of the trustee's duties and powers.²⁰ In the absence of terms determining otherwise, the trustee—among other duties—must keep and render accurate accounts and furnish accurate information to the beneficiary, must use the skill and care of

a prudent person in administering the trust, must deal impartially with beneficiaries and must segregate trust property from the trustee's own property and use reasonable care to preserve trust property and make it productive. Most fundamentally, the trustee has a duty of loyalty "to administer the trust solely in the interest of the beneficiary" and, in dealings with the beneficiary, to deal fairly with him and "communicate to him all material facts in connection with the transaction which the trustee knows or should know."²¹ All such duties, though are subject to "the terms of the trust."

On closer inspection, trust law limits the efficacy both of carve-outs from otherwise-applicable fiduciary duties, as well as transaction-specific waivers or consents to transactions that constitute breaches of trust. Although a trust agreement may include exculpatory provisions that relieve the trustee of liability for breach of trust, exculpatory provisions are ineffective to relieve the trustee from liability to account for any profit derived from breach of trust. Nor may the trustee be exculpated against liability resulting from breaches of trust committed in bad faith or with reckless indifference to the beneficiary's interests.²² Even when the beneficiary consents to a transaction, if the trustee has an interest in it adverse to the beneficiary's interest, the beneficiary is not bound unless the transaction is fair and reasonable.²³

One reason for these restrictions is definitional. If a trust agreement could effectively relieve the trustee of her duty to account for profit derived from a breach of trust, the trustee would not be a fiduciary in any operative sense, and the settlor would have created a relationship other than a trust. The transaction purportedly creating the "trust" would, in operative effect, be a gift of the property to the trustee who would be free to use it solely in her own interests. A separate reason for the restrictions is prudential. Trustees, it is feared, may overreach both in drafting trust instruments and in procuring beneficiaries' consent to problematic transactions.

In any event, the concept just explicated is that of carving-out from otherwise applicable fiduciary duties through the terms of an instrument or other agreement. In many respects, agreements subject to general contract law proceed in the opposite direction—the parties contract into duties, and contract law imposes on each party only those duties of performance that the party agreed to assume. Contract law, to be sure, has some mandatory content discussed later, but the defining feature of the process of contracting is the specific identification and assumption of duties.

To characterize fiduciary obligation as essentially contractual, given this background, law-and-economics theorists use the construct of the hypothetical contract. Easterbrook and Fischel argue that fiduciary obligation is contractual because "the duty of loyalty replaces detailed contractual terms" and courts specify the content

of the duty by imposing on the parties the terms they hypothetically would have agreed to "if bargaining were cheap and all promises fully enforced."²⁴ But if the parties to an actual relationship do not bargain out its terms fully, how do we know what they would have agreed to? Why assume that, in any particular relationship, a bargain reached by the parties would replicate the law of fiduciary obligation as it presently exists?

Indeed, the limits that trust law invariably imposes on general exculpations and transaction-specific consents manifest skepticism of actual bargains and agreements. Actual bargains reflect each party's intensity of need or desire to conclude a deal and each party's skill in bargaining to achieve her ends (which contract law itself does not require be candidly disclosed to the other party). Nor does the parties' opportunity to bargain foreclose judicial imposition of fiduciary duties when a dispute later arises; moreover, courts impose relatively exacting forms of the duty of loyalty in relationships in which the parties likely had an actual opportunity to bargain over the terms of their relationship. *Meinhard v. Salmon*, the origin of the "punctilio of honor" label, involved a two-person joint venture in real estate in which the joint venturers had a detailed written agreement. Likewise, many courts impose fiduciary duties on fellow shareholders in small, closely-held corporations but not in larger publicly traded corporations.²⁵ If fiduciary obligation were a judicially-crafted substitute for the parties' own bargain, one would expect the obligation to operate more stringently when the parties lacked a realistic opportunity to bargain and less stringently in cases like *Meinhard* and closely-held corporations.

Mandatory Elements of Contract Law

The parties' agreement does not control all aspects of a relationship governed by the general law of contract. Mandatory rules of law (among other things) prohibit fraud, require certain agreements to be in writing to be enforceable, and limit the parties' ability freely to specify the remedies to apply in the event of breach.²⁶ More generally, contract law imposes on parties a duty to act in good faith in the performance and enforcement of the contract. That contract law imposes such a duty suggests a convergence between contract law and fiduciary obligation because both require other-regarding behavior.

The extent of the convergence, however, is far from complete. Many contract cases, in fact, hold that self-interested behavior is not a breach of contract, even when the legal framework is expressly understood to include a duty of good faith and the self-interested conduct injures the other party. In a leading example, *Metropolitan Life Insurance Co. v. RJR Nabisco, Inc.*, RJR Nabisco incurred enormous amounts of additional indebtedness to fund a leveraged buyout transaction.²⁷ The impact—clearly foreseeable—of the additional borrowing was sharply to reduce the market

²⁰ See Easterbrook & Fischel, *supra* note 9, at 427.

²¹ Compare *Noakes v. Schoenborn*, 116 Or. App. 464, 841 P.2d 682 (1992) (holding that controlling shareholder in closely-held corporation is a fiduciary toward minority shareholders) with *Kahn v. Sproule*, 842 F. Supp. 423 (D. Ore. 1993) (court declines to apply *Noakes* principle when public market exists for minority's shares).

²² For a theoretical treatment, see Michael J. Trebilcock, *THE LIMITS OF FREEDOM OF CONTRACT* (1993).

²³ *Metropolitan Life Insurance Co. v. RJR-Nabisco, Inc.*, 716 F. Supp. 1504, 1516-23 (S.D.N.Y. 1989).

²⁰ *Id.* § 164(a).

²¹ *Id.* § 170.

²² *Id.* § 222.

²³ *Id.* § 216(3).

value of debt securities previously issued by RJR Nabisco. The court held that the subsequent borrowing did not violate any duty of good faith owed by RJR Nabisco to its prior creditors; had they wished to constrain its ability subsequently to borrow massive amounts of money, the loan instruments could have so provided.

In short, the contractual duty of good faith is not fiduciary obligation labelled in different language; it does not proscribe self-interested conduct that, as in *RJR Nabisco*, could readily be addressed in the parties' agreement.²⁸ Instead, the contractual duty of good faith prevents parties from evading the consequences of the express commitments they have made and from abusing the other party. For example, if a shoe manufacturer enters into a contract with a leather supplier to buy all its requirements of leather for some period of time, the buyer's duty of good faith limits the quantity of leather it may demand to one determined "in good faith."²⁹ But the leather supplier is free, unless the contract explicitly provides otherwise, to furnish leather to the manufacturer's

Many aspects of fiduciary obligation resist explanation if one begins with a robust assumption that all human conduct is driven by the rationally calculative pursuit of self-interest.

chief competitor. On the other hand, a director of an incorporated shoe manufacturer would owe fiduciary duties to the corporation and its shareholders; if the director acquired an undisclosed interest in the competing manufacturer, the director would have breached her fiduciary duty of loyalty.

Interestingly, many law-and-economics theorists characterize as "opportunistic" conduct that seems excessively self-regarding. Although the term "opportunism" always conveys moral disapproval in this literature, it gathers under one umbrella conduct that has different legal consequences. Relatedly, law-and-economics theorists define the term differently.³⁰ To Professor Williamson and his co-authors, an opportunist attempts "to realize individual gains through a lack of candor or honesty in transactions."³¹ Translated into legal categories, Professor Williamson's definition would encompass a fraudfeasor, one who induces a transaction through a misrepresentation of fact, but not a buyer in a requirements contract relationship who demands quantities beyond the needs of his business, so long as he doesn't lie. Professor Kotritsky's definition is broader: opportunism is the "strategic withholding of information"; a party also acts opportunistically by strategically avoiding making a commitment in negotiations when the other

party's trust or ignorance will stifle demands for a formal bargain.³² Professor Kotritsky's definition would catch parties who do not lie and who withhold only the information that they are not trustworthy.

Other writers, prominent among them Judges Posner and Easterbrook, emphasize the problem of sequential performance: in a contract relationship in which one party must perform first, the other may seek occasions to evade his obligation to perform in return.³³ A common example would be an employer's decision to terminate a long-term employee shortly before his pension vests. This definition, though, is difficult for lawyers to use operationally because it catches both conduct that is a "mere" breach of contract, if the breach follows the other party's full performance, as well as conduct that attracts sanctions beyond the remedies available for simple breaches of contract. Insurance companies, for example, who decline or refuse to pay claims for no good reason are often subject to extracontractual tort remedies, chief among them punitive damages.

Finally and most broadly, Professor Cohen defines opportunism as "any contractual conduct by one party contrary to the other party's reasonable expectations based on the parties' agreement, contractual norms, or conventional morality."³⁴ Under Professor Cohen's definition, all breaches of contract would presumptively be opportunistic. This definition of opportunism either vitiates the moral disapproval the term conventionally conveys, or undermines the posture of moral irrelevance into which Justice Holmes so resolutely cast breaches of contract. Although they define opportunism in divergent ways, many contemporary law-and-economics theorists, unlike Justice Holmes, explicitly treat some breaches of contract as morally culpable. Broad definitions of opportunism, in particular, undermine the claim that within the law-and-economics tradition, contractual duties lack moral footing.

Conclusion

Many aspects of fiduciary obligation resist explanation if one begins with a robust assumption that all human conduct is driven by the rationally calculative pursuit of self-interest. The operation of this body of legal doctrine is distinctive and, in particular, is dissimilar in major respects to general contract law because its function is different. It protects expectations of loyal behavior within specific types of relationships. The value of fiduciary obligation in commercial settings is that its imposition is known to proscribe certain types of self-seeking conduct. Paradoxically, drawing the fiducial line by requiring other-regarding conduct from one party can be beneficial to all within a relationship.

²⁸ *Id.* at 1519. See further William W. Bratton, Jr., *Self-Regulation, Normative Choice, and the Structure of Corporate Fiduciary Law*, 61 GEO. WASH. L. REV. 1084, 1122-28 (1993); Deborah A. DeMott, *Beyond Metaphor: An Analysis of Fiduciary Obligation*, 1988 DUKE L.J. 879, 892-902.

²⁹ See UCC § 2-306(1).

³⁰ For a fuller discussion, see Deborah A. DeMott, *Do You Have the Right to Remain Silent: Duties of Disclosure in Business Transactions*, 19 DEL. J. CORP. L. 65 (1994).

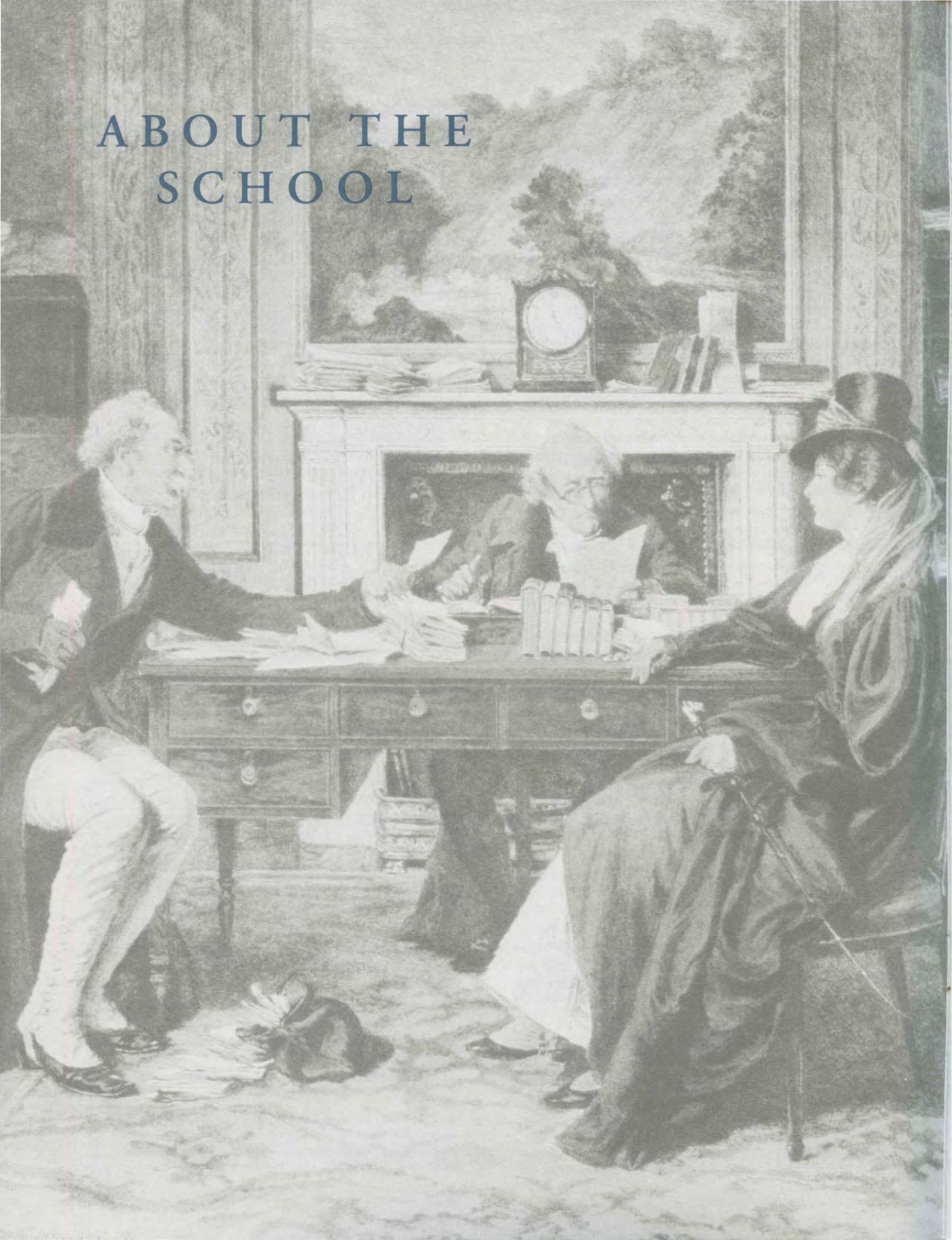
³¹ See Oliver E. Williamson et al., *Understanding the Employment Relationship: The Analysis of Idiosyncratic Exchange*, 6 BELL J. ECON. 250, 258 (1975).

³² See Juliet P. Kotritsky, *Bargaining with Uncertainty, Moral Hazard and Sunk Costs: A Default Rule for Precontractual Negotiations*, 44 HASTINGS L.J. 621, 642-43 (1993).

³³ See Richard A. Posner, *ECONOMIC ANALYSIS OF LAW* 89-90 (4th ed. 1992); *Jordan v. Duff & Phelps, Inc.*, 815 F.2d 429, 438 (7th Cir. 1987) (Easterbrook, J.).

³⁴ See George M. Cohen, *The Negligence-Opportunism Tradeoff in Contract Law*, 20 HOFSTRA L. REV. 941, 957 (1992) (footnotes omitted).

ABOUT THE SCHOOL



Teaching Trial Skills

In the changing world of legal education in the United States, the 1994 model for teaching trial practice to young lawyers is fast-paced and practical. It has replaced an older, more passive model—one in which teachers simply told students what to do without ever giving them a chance to do it, according to Donald H. Beskind '77, an attorney with the Raleigh firm of Blanchard, Twigg, Abrams and Strickland, and a senior lecturing fellow at Duke Law School who supervises the trial practice program.

"The new model is a response to firms trying fewer cases and having less opportunity to provide trial training for new lawyers. Without anybody actually realizing it, there was a time when neither law firms nor law schools were putting the time or resources into training young attorneys to actually try cases," says Beskind, who has been instrumental in developing pioneering methodology for teaching trial skills. "Once upon a time, firms had the time to wine and dine and train new attorneys; now, in the increasingly competitive legal services market, firms expect attorneys to work and function immediately. That means they need to learn more trial and other skills in law school."

Carol Boyles Anderson '80, a professor of trial advocacy, agrees. "In the old days, corporate clients never questioned the common practice of dispatching a senior partner and a junior associate to depositions and trials. Though the senior partner actually did all the work, the junior associate came along to learn critical trial skills. Clients, however, are no longer willing to pay for in-house mentoring, the traditional method of training new associates. It was a luxury that modern law

firms can no longer afford. This throws the responsibility for training young lawyers to try cases back into the laps of the law schools, and most are ill-equipped to meet the challenge. But not Duke's students," she adds. "They are getting some of the best trial advocacy training in the country."

Learning by Doing

Beskind, who received his LL.M. degree from Duke in 1977, said he

the general aspects of public speaking, persuasion and communication to consider. . . . Trial practice doesn't replace actual experience, but it can make that first actual experience much more pleasant and successful. The trial-and-error method of learning isn't efficient; now, we're teaching learning-by-doing in simulated cases in Duke's classrooms."

Beskind also involves other litigators in working with the students.



Don Beskind (at judges' bench) presides during trial practice class. Elizabeth Catlin '94 (at podium) addresses the jury.

Duke Photo Department, Les Todd

learned as a law student participating in early trial practice teaching experiments that there's a world of difference between knowing what the law says and actually putting that knowledge into practice with a real client, judge and jury. "There are so many things one doesn't learn in the normal course of classroom study," Beskind said. "For example, on top of learning how to examine and cross-examine a witness, how to deal with expert witnesses and make closing arguments, there are all

Michael Dockterman '78, now practicing in Chicago who has taught NITA courses for eight years, declares it is "great coming down to help teach." He enjoys seeing the change in students in just a day or two of classes as they "see other people learn through trial and error, giving them the courage to try things and to be self-critical."

"If all you do is observe, you learn to imitate," says Dockterman. By actually doing the work, you learn that you need to accommodate your own

strengths and weaknesses. You also learn the "need to struggle to find the right style for the job that needs to be done. The most effective cross in some cases is a very gentle style; for other witnesses it is a rigorous cutting examination."

The alumni who work with the program primarily critique student performances of the various skills and

"Clients . . . are no longer willing to pay for in-house mentoring, the traditional method of training new associates. It was a luxury that modern law firms can no longer afford."

in doing so share their experiences and accumulated wisdom about how to try a case. For Dockterman, this is the most interesting aspect of the class as students have a chance to see themselves on tape and receive critiques from peers and practitioners so that they can "realize what is effective about other's presentations and their own."

Carol Anderson '80, who also returns to help with the trial advocacy courses, credits her experience taking these same courses with Beskind when a law student as being "largely responsible for the career choice I've made—trial advocacy and clinical teaching at Wake Forest Law School." Obviously it was a good choice, as Anderson just received the Association of Trial Lawyers of America Jacobson Award as the best trial advocacy teacher in America.

The first recipient of the Jacobson Award, Charles L. Becton '69, also continues to teach trial practice at the Law School on a regular basis. He describes his class as a "show-and-tell presentation" that stresses maximum participation on the part of his stu-

dents. The idea is to get students on their feet as much as possible."

The most innovative and exciting part about the trial advocacy programs over the last few years is the intensified trial practice experience for some students through unique scheduling. For two and a half very long days over the first weekend of the semester, the students do nothing but trial advocacy. They spend mornings in lectures and the afternoons and evenings in exercises. At the end of the weekend, the course is half over. The class meets a few more times during the term and then is completed with the students' mock trials.

Becton says the program is well-liked. Students get this class out of the way and can concentrate better on other classes. Most importantly, during those intense few days, students give their full attention to learning the intricacies of trial advocacy. Becton further notes that "although lectures and demonstrations are an important part of the course, the heart and soul of this 'learning by doing' class is student participation in simulated trial practice exercises. Or, as many trial advocates now say:

Tell me, and I will forget
Show me, and I will remember
Involve me, and I will understand."

Elizabeth Kuniholm '80, who also teaches trial practice finds, "In my experience students both fear and enjoy the process. The class itself is a chance to learn in a protected environment. I always tells the students that their best learning will occur if they make themselves vulnerable and are willing to take risks. Trial practice class, because it is small and intimate, and because it is not real (no one's life or livelihood hangs in the balance), is a place to experiment and test their limits in a supportive environment."

She also finds that trial practice is a very different experience for "most students who have reached second or third year at Duke Law School and have

mastered the art of academic achievement. Persuading a jury is an art for which most of us are grossly unprepared. That kind of communication is simply not reinforced or taught in the cerebral world of academia. For this reason, I always tell my students that in trial practice they will be doing a different kind of learning and developing skills different from the ones that have been valued for their many years of academic success. The kinds of skills that are needed in trial are often new to them and are essentially performance and communication skills."

International Exchange

The evolution in teaching trial skills is one that can be traced over decades and from Great Britain to the States and back again, according to Beskind, a program director for the National Institute for Trial Advocacy and a teacher of trial practice at Duke since 1977.

In the 1970s and early '80s, some U.S. scholars expressed admiration for the English legal system, which sepa-

"Trial practice class, because it is small and intimate, and because it is not real (no one's life or livelihood hangs in the balance), is a place to experiment and test [students'] limits in a supportive environment."

rates trial lawyers, known as barristers, from other attorneys, called solicitors, Beskind said. "So, for a time, we brought over some of the best barristers in England to help us train trial lawyers." But in recent years, U.S. attorneys, such as Beskind and former Duke faculty members Joe Harbaugh and

Tony Bocchino, have developed the new techniques required for what became, in essence, an entirely new method of legal education. "Some of the techniques we developed and used at Duke in the '70s are still used today

system has been one of sharing for more than 200 years. Now, other countries, like Russia and New Zealand and Australia, have begun to express interest in having us come to teach trial practice courses."



Doug Chalmers '95 (at podium) practices his technique during Don Beskind's trial practice class.

in law schools and firms across the country," according to Beskind.

That methodology is of particular interest now in England, where there's a movement afoot to increase the "rights of audience" of solicitors allowing them to try cases formerly reserved for barristers. Beskind and other attorneys have been traveling to England several times a year to offer such courses in law schools and firms. In September, he will be at Oxford for a week teaching the first such program for barristers who evidently watched "the solicitors get trained and are thinking that they could learn from the teaching methodology as well." Beskind stresses, however, that "this is not a case of the U.S. sending lawyers to Britain to show them how to do it. Our relationship with the English legal

"It's an entirely different scenario when you're arguing in front of a jury and a judge, with another attorney breaking your train of thought with objections. It calls for a lot more thinking on your feet not to be thrown off by the unexpected and the adverse. It teaches you how to hold your ground."

Becton has also taught internationally. In the summer of 1988, he was invited to bring his skills to the Republic of South Africa. Through the

United States-South African Leadership Exchange Program, which is based in Washington, D.C., Becton and three other Americans taught trial advocacy to black lawyers in Durban, Johannesburg, and the Transkei and Zululand homelands.

Young Lawyer Thinks Classes Useful

Closer to home, trial skills courses are not required at Duke but are always filled with upperclass students who believe they need this kind of training. In trial practice, students take turns filling all the roles found in a courtroom—from judge and jury to attorneys, defendants, plaintiffs, and witnesses. The proceedings are videotaped and analyzed during group discussions and in individual sessions with Beskind.

Scott Pritchett '92, who is now a civil litigator in Raleigh, said trial practice was one of the most "significant and useful" things he gained as a law student. "I found that what you learned in class wasn't really useful until you had to apply it to a specific set of facts. It's an entirely different scenario when you're arguing in front of a jury and a judge, with another attorney breaking your train of thought with objections. It calls for a lot more thinking on your feet not to be thrown off by the unexpected and the adverse. It teaches you how to hold your ground."

Another important aspect of Beskind's trial practice course was the opportunity to learn to work with other attorneys, Pritchett added. "We had to work with two other attorneys on our team, so we learned to share responsibilities, pooling our strengths and weaknesses so that we could develop strategies to put the best spin on the case. Now that I've been working for a while, I can see how important that was."

Debbie Selinsky and Evelyn Pursley '84

Public Interest Thriving at the Law School

Wes Powell '94, who helped AIDS and HIV-positive patients write their living wills, powers of attorney and wills, and Rick Peltz '96, who worked to explain the relevance of the First Amendment to area middle-schoolers, represent the diversity and reach of Duke University School of Law's thriving Pro Bono Project.

Increasing Interest

Established three years ago as a formal volunteer program directed by Carol Spruill, the Pro Bono Project is an effort to interest as many students as possible in a public service experience. (The *Magazine* featured the establishment of the Pro Bono Project in its Summer '93 issue.) The Project has grown rapidly: in the first year 87 students participated, and in the second year, 180 law students were involved in organized pro bono work for those who can't afford legal services. During the 1993-94 academic year, a total of 225 law students volunteered. The Pro Bono Project also spawned two new, related programs: a luncheon series, which is open to all students who want to supplement their experience with a group learning situation, features speakers from public interest areas and discussions of related books, and the Poverty Law Seminar offers an in-depth exposure to poverty law issues.

The 225 students who participated in 1993-94 offered a variety of much-needed services to the Duke and Triangle Area communities, and were supervised by 93 area professionals. The students worked in over 100 locations in more than 30 subject-matter areas in the public, private and non-profit sectors. Their job functions ranged from research to in-court repre-



Duke Photo Department, Les Todd



Duke Photo Department, Les Todd

Above: Lark Hayes (gesturing at end of table) leads a luncheon discussion on environmental law. Left: Rick Peltz '96 (leaning on the right) presents a workshop on the First Amendment to local eighth-graders.

approximately 12 students volunteered with the Guardian ad Litem program.

Getting Involved

Rick Peltz '96 from Baltimore, Maryland, has made the First Amendment the basis of his studies. While he hasn't yet decided if he'll become an attorney focusing on media issues or a journalist focusing on legal issues, Peltz has had a strong interest in freedom of press and expression since his experiences as editor of his high school and college newspapers. On May 11, Peltz presented a workshop on the First Amendment with a member of the North Carolina Press Club, an affiliate of the National Federation of Press Women (NFPW), to 26 eighth-graders at Githens Middle School in Durham.

Using a variety of participatory teaching methods suggested by the national Student Press Law Center in Washington, D.C., and materials pre-

sentation, from policy advocacy to client interviewing and case preparation. Several organizations or projects received the energies of more than one student. For example, 35 students were involved in the AIDS Wills Project, 27 students participated in the newly-revived Volunteer Income Tax Assistance (VITA) program, and

pared by the First Amendment congress, Peltz said he hoped they communicated some basic understanding of the amendment's importance. "The really important thing that we want to convey to the students is that the First Amendment isn't just something vague floating out there that doesn't affect them. They will encounter it as young people, perhaps, for example, in the form of censorship of the school paper," Peltz said in an interview.

year at the Law School to a project with North State Legal Services. During a recent interview, Montgomery said she was interested in seeing "how the law affects the lives of real people." After talking with Spruill, she decided on a pro bono project in legal services so that she could see how a case is put together and played out in the court system.

Montgomery assisted Carlene McNulty, managing attorney of North

to see during early discovery phases things you don't learn in law school," said Montgomery. "[It] absolutely added so much to my first year of law school experience. I've seen the civil procedure process in action. It makes what we were learning in civil procedure class seem more real."

This experience reinforced to her how difficult it is to overcome language and cultural barriers in pursuing access to the legal system and that people who are interested in public service need to understand and relate to the variety of backgrounds and situations represented. "I think every student at Duke Law School should do pro bono work at some point during their three years here. It's good to expand our perspectives no matter what aspect of law we choose to pursue. Anytime we extend ourselves to other people and experiences it's good for us and for our communities."

Working Together

The AIDS Wills Project provides specialized services to a growing number of needy Durham residents—those with HIV or AIDS. The project began with Duke Law adjunct faculty member Carolyn McAllaster, who had been volunteering her individual services as an attorney to area HIV and AIDS patients. She received so many requests from people wanting assistance with living wills, wills, and powers of attorney that she sought volunteers from the Law School.

The project was exactly what Wes Powell '94, a Brownsville, Tennessee native, had been seeking. "Making a will and a living will are good ideas for everybody, but especially for AIDS patients, who know they will reach a point when they can't communicate their health care needs," Powell said in an interview. "Durham and North Carolina have been hard-hit by AIDS, not only the gay male population but particularly the African-American population. Until I became really involved



Duke Photo Department, Les Todd

Carolyn McAllaster and Wes Powell work on the AIDS Wills Project.

"And while there are First Amendment rights available only to older people—the right to vote, drink, drive, go to R-rated movies—students have some rights now. For example, they can publish a student newspaper, they can write a letter to the editor of a newspaper—these are things students need to understand about the First Amendment so that they can show responsible use of their rights and continue to fight for them." Peltz continues to pursue his interest this summer as an intern with the Student Press Law Center, which is directed by Mark Goodman '85.

Loren Montgomery '96 devoted much of her free time during her first

State Legal Services, who is litigating a class action suit on behalf of employees at a poultry processing plant. During her first semester, Montgomery spent time on general intake interviews at NSLS in Hillsborough. She also traveled to Siler City to interview some of the poultry workers, many of whom are Latino and speak little or no English. As Montgomery had worked and been involved in Latino communities in Los Angeles prior to coming to Duke, she speaks Spanish fluently and was able to communicate with the workers.

Montgomery also prepared research memoranda on various issues related to the case. "It was interesting

in this project, I didn't realize how many people there were who needed the kind of services we can provide. A living will, which enables the patient to make advance decisions about his future health care, lets AIDS patients rest easier, knowing they've taken the burden of decision-making from their families and loved ones."

McAllaster had worked primarily through the AIDS Service Project of Durham to connect with AIDS and HIV-positive patients who live in the Fitz-Powell Apartments, a federally-funded apartment complex in Durham for people who are disabled, particularly from AIDS, and with the AIDS Community Residence Association's Blevins House, a Durham residential facility providing care for six AIDS patients. She, Spruill and Powell got together to have Duke Law students take up a program at the Duke Medical Center's infectious disease center previously run by law students from the University of North Carolina at Chapel Hill.

While student Powell and faculty supervisor McAllaster hoped they'd get eight or ten volunteers at the Law School for the AIDS Wills Project, 35 students signed up for the program this year. "Many of the students who volunteered told us they'd never met anyone with AIDS and felt that it was important to do so, to humanize AIDS victims and to help those who can't afford lawyers," Powell said. Students, who worked in pairs, saw a total of around 15 clients this academic year, while Powell personally had about 12 clients this year.

Under McAllaster's professional supervision, students helped HIV and AIDS patients write their wills, living wills, traditional powers of attorney, and health care powers of attorney, which designate a person to make health care decisions when the patient is no longer able to communicate. Fortunately, many of the student volunteers for the AIDS Wills Project are

Powell Receives Pro Bono Award

Wes Powell '94 has been named this year's Outstanding Pro Bono Student for Duke Law School by the North Carolina Bar. Each year, the Bar honors one student from each of the five North Carolina law schools. Powell has been active in the Law School's Pro Bono Project for three years, working for the NC Civil Liberties Union, North State Legal Services, and for the law firm of Patterson, Harkavey & Lawrence doing pro bono work on an employment discrimination case. He also served as the student director of the AIDS Wills Project.

first-year law students who will keep the project growing for the next couple of years, Powell said. Annette Parent '96, new student director of the project, is working with Powell to ensure that some level of service is available to HIV and AIDS patients in the Triangle over the summer.

The Volunteer Income Tax Assistance (VITA) program was revitalized in 1993-94. Under the leadership of Tania Dyson '95, Craig Lair '95 and Shannon Geihlsler '96, VITA again offered income tax assistance to people who are unable to afford the assistance of professional preparers. Working out of a local community center, the students enlisted the volunteer services of 24 other students to provide tax preparation assistance to people living in the area. All three student leaders will return in 1994-95 so VITA is expected to remain a viable alternative for public service.

Learning Over Lunch

The Luncheon Series was started as an effort to create a public interest community to give people the opportunity to discuss public interest issues as a group. Spruill remarked that it represents "an open classroom studying public interest issues." During 1993-94, there were 14 different events in one of three formats: speakers from the com-

munity who have had a major impact in a policy area; students discussing their public service experiences; and student-led discussions of agreed-upon books. Seven outside speakers presented discussions on a wide variety of topics, from Ran Coble, director of the N.C. Center for Public Policy Research, discussing emerging democracies, based on his world travels with a Kellogg Fellowship to Mary Lee Hall, executive director of Farmworkers Legal Services in Raleigh, speaking about the plight of migrant farmworkers. Other speakers were Lark Hayes, N.C. director of the Southern Environmental Law Center in Chapel Hill, on environmental law; Pam Silberman, founder of the N.C. Health Access Coalition and the deputy commissioner of the N.C. Health Planning Commission, on health care reforms; Abdul Rasheed, president of N.C. Community Development Initiative, Inc., in Raleigh, on community economic development; Greg Malhoit, director of the N.C. Legal Services Resource Center, on education issues; and Sherri Rosenthal, a former Legal Services attorney who has worked with gay & lesbian rights and who developed the Eno River Cooperative Living Project, on creating your own public interest career.

Three student presentations were part of the Luncheon Series. Winston Henderson '96, spoke of his experiences working with inner city youth in New York City teaching survival skills. Linda Sauer '94 and James Smith '94 shared a program during which they discussed their summer experience in legal services offices. Sauer worked on the Navaho Indian Reservation and Smith worked on voting rights litigation in eastern North Carolina. Jessica Buranosky Lee '94, James Knudsen '94 and Carolyn Kimbler '94, who spent three years working with the Guardian ad Litem program, spoke of their experience serving as friends, confidants and representatives of abused and

neglected children going through the Durham County court system.

In addition to all their Law School reading, students involved in the book club made a commitment to read books that dealt with public interest issues. During 1993-94 four books were read and discussed. James Smith '94 led a discussion on *Faces at the Bottom of the Well—The Permanence of Racism* by Derrick A. Bell. The discussion on *Praying for Sheetrock* by Melissa Fay Greene was led by Carol Spruill. John Coburn '95, who has done extensive work with educational issues, led a discussion on *Savage Inequalities—Children in America's Schools* by Jonathan Kozol. The fourth book in the series was *The Alchemy of Race and Rights—The Diary of a Law Professor* by Patricia J. Williams. Deb Kuhn '94 and Mary Johnson '96 led the discussion. Plans are already underway for the book club for 1994-95. Six books have been selected for discussion and Kristi Olson '96 will lead the first discussion on *Within Our Reach: Breaking the Cycle of Disadvantage* by Lisbeth B. Schorr. Other books to be discussed include *Black Robes White Justice*, Bruce Wright; *Making All the Difference—Inclusion, Exclusion and American Law*, Martha Minow; *The Broken Contract: A Memoir of Harvard Law School*, Richard D. Kahlenberg; *Sexual Violence: Our War Against Rape*, Linda A. Fairstein; and *Dead Man Walking: An Eyewitness Account of the Death Penalty in the United States*, Helen Prejean.

Poverty Law Seminar Added

The Poverty Law Seminar provided the most formal classroom experience and the most in-depth exploration of issues related to poverty and the inadequacy of access to justice for the poor. Limited to 21 students and taught by Carol Spruill during the spring 1994 semester, the two-hour course covered many substantive areas including health, food and income

Year-End Recognition

The Duke University School of Law recently honored the 225 students who volunteered their time to public service this year and the 93 supervisors who participated in this year's Pro Bono Project with a reception and awards presentation. The awards presentation, which featured remarks by Dean Pamela Gann, included the following:

- Chris Leobsack '96, whose undergraduate studies focused on soil agronomy, received the Most Perfect Award for a project to study pollution of easements by utility companies.

- North Carolina assistant attorney general David Kirkman and students Randy Lehner '96, Jon Lurvey '96 and Jim Levy '96 received the "Don't Call Me" Award for their work on a fraud case against telemarketers from Las Vegas.

- North Carolina State Legal Services managing attorney Carlene McNulty and student Loren Montgomery '96 received the "We Are Not Too Chicken to Take You On" Award for work on a class-action lawsuit on behalf of Hispanic poultry industry workers.

- Awards for unusual projects were given to students Kristi Olson '96 for developing Duke University Medical Center policies and procedures for treatment of obese patients; to Marja Lutsep '95 and Rick Sherley '95 for incorporation of the Magnolia Opera Co. and contract drafting for the American Dance Festival; to Brian Hurowitz '96 for research on questions about North Carolina obscenity laws for ManBites Dog Theater; and to Jennifer Slone '96 and her supervisor Stewart Fisher for research on stand-by counsel issues in the Philip Berrigan case.

- Students Tania Dyson '95, Craig Lair '95 and Shannon Geishler '96 were recognized for revitalizing the Volunteer Income Tax Assistance program with Operation Breakthrough.

- Student Andrea Williams '95 was honored for starting a new group, Families of Murdered Victims Assistance Program.

- Sam Straight '96 accepted congratulations on behalf of all the students in the new Custody Investigation Program started by Durham County District Court judge Richard Chaney.

- James Knudsen '94, James Smith '94, Elizabeth Catlin '94, Sue Abbott '94 and West Powell '94 were honored for their contributions and years of service to the Duke and Durham communities.

programs, employment, housing, education, community economic development, and family law. The students received skills-training in client interviewing, problem-solving and how to represent non-profit corporations. The course was partially clinical in nature in that each student worked on a specific case for a client and wrote a 20-30 page paper on the experience. One student won a Social Security hearing for a client with AIDS and four students

who represented clients in unemployment hearings won their cases. The Poverty Law Seminar will be taught again in 1994-95.

By developing good public service habits during Law School it is hoped that students will see the value of public service and the importance of making time in their careers for public service.

Debbie Selinsky and Cynthia Peters

New Research and Writing Program

This summer, the Law School introduced a new Legal Research and Writing program of instruction. The program, which was designed by a faculty committee during the 1993-94 academic year, evidences the Law School's continued commitment to writing and research excellence. Theresa A. Newman Glover '88, who will continue to serve as editor and supervisor of the Law School's various journals, was named director of the program and Janet Sinder, the Law Library's head of information services, was appointed director of research.

In the past, the Law School's first-year research and writing course was bifurcated into a research component and a writing component. The library teaching staff instructed students in research methodology the first six

The new program integrates the research and writing components of the course, linking specific research goals with writing tasks.

weeks of the semester, and then the writing instructors—tenured or tenure-track members of the faculty—guided the students through a variety of writing assignments for the remainder of the fall semester. While this faculty-intensive approach has been a hallmark of the Law School's first-year program, the new program promises to provide a more unified experience and greater opportunity for classroom and individualized instruction.

The new program integrates the research and writing components of



Theresa Glover



Janet Sinder



George Gopen

the course, linking specific research goals with writing tasks. The research and writing instructors are paired for each section of students, providing an opportunity for team-teaching or specialized instruction throughout the now year-long course. To further systematize the teaching of legal research and writing, all instructors will employ a single instructional methodology—one that provides a common vocabulary and teaching approach.

At the request of the faculty committee, Dr. George Gopen, director of the Duke University Writing Program, agreed to serve as consultant to the Law School's program and to train the instructors in the teaching methodology he helped establish. Gopen's methodology is informed by the "reader expectation theory," the theory that clear and effective writing can be taught by meeting the reader's expectations—at the word, sentence, paragraph and document level. The new program concentrates not on how writers can go about fulfilling writing assignments, but rather on how readers go about interpreting a finished document. In their substantive courses, the

students learn how to be creative in constructing a variety of interpretations of a given piece of prose; in their writing course, they learn how best to limit the number of interpretations of their prose that others will be able to make.

The new program also provides ample opportunity for revising drafts and critiquing classmates' work, both of which will encourage thoughtful analysis, informed redrafting and audience awareness ("reader reception").

The new program concentrates not on how writers can go about fulfilling writing assignments, but rather on how readers go about interpreting a finished document.

The intertwined research and writing tasks additionally promise to enhance retention of research skills and promote more effective research strategies.

Professor Katharine Bartlett, senior associate dean for academic affairs and

Duke Photo Department, Jim Wallace

Duke Photo Department, Bruce Feeley

a member of the faculty committee that recommended the new writing program to the faculty, is highly enthusiastic about the changes and about the quality of the new staff. "We thought the market would be strong and we

couldn't be more delighted with the blend of academic strength and first-rate practical experience our instructors bring to the program."

The new program will be supervised by a faculty committee and will

benefit from the continued involvement in 1994-95 of Professor Thomas Rowe, who will be assisting in the greater integration of computer technology into legal research and writing instruction.



Duke Photo Department, Jim Wallace

Diane Dimond



Duke Photo Department, Jim Wallace

Allison Rice



Duke Photo Department, Jim Wallace

Jane Wettach

The Writing Instructors

The new program will be greatly enhanced by the efforts of the three new writing instructors who joined the program over the summer in preparation for teaching the incoming class. The instructors have extensive practice experience in both the private and public sectors. Diane Dimond, a 1977 graduate of Harvard Law School, has specialized in commercial litigation for more than 15 years. Since 1984, she has practiced with Poyner & Spruill in Raleigh, where she was named a partner in 1987.

Allison Rice, a 1984 graduate of Boston University School of Law, practiced with Legal Services of Southern Piedmont, Inc., in Charlotte, for approximately

eight years, the last several of which as managing attorney. Most recently, Rice has served as consultant to Legal Services of Southern Piedmont, Inc., and as contract attorney with Ferguson, Stein Law Offices also in Charlotte.

Jane Wettach, a 1981 graduate of the University of North Carolina School of Law, began practice as staff attorney with the Legal Aid Society of Northwest North Carolina in Winston-Salem. After several years, Wettach joined East Central Community Legal Services in Raleigh, where she most recently served as senior attorney with an emphasis in education and employment law.

Successful Training Program for Taiwanese Judges

For three weeks in May, Duke Law School ran a successful judicial training program for four judges from the Court of Appeals of Taiwan, R.O.C. The group was led by Judge Jiin-Fang Lin, who received her LL.M. ('84) and S.J.D. ('89) degrees from Duke Law School. In addition to Judge Lin, Judges Ching-You Tsay, Chiang-Hsiang Lin and Ching-Yuan Wu also attended the program.

Program director Carolyn McAllaster, senior lecturing fellow at the Law School, described the goal of the training: "The judicial administration of Taiwan is interested in obtaining a comprehensive view of the operation of the trial courts in the United States on the state and federal levels in order to evaluate possible changes in the Taiwanese judicial system."

Studying the Courts

Since there are no jury trials in Taiwan, the judges were impressed with the American commitment to trial by jury and with the amount of time devoted to such trials. They watched a criminal and civil jury trial and an arbitration in the state courts. They met extensively with the state trial judges and the arbitrator presiding over these trials. They also had briefing sessions with several Durham County court officials including the district attorney, trial court administrator, clerk of court and the arbitration coordinator. The judges observed arguments in the North Carolina Supreme Court and Court of Appeals, and met with the clerk of the Supreme Court, Christie Speir Cameron, and the associate director of the Administrative Office of the Courts, Dallas Cameron.

In each of these sessions, the judges asked questions and took



Taiwanese judges enjoy Duke's hospitality. From left, Chiang-Hsiang Lin, Ching-Yuan Wu, Jiin-Fang Lin, Carolyn McAllaster, and Ching-You Tsay.

detailed notes on the duties of the judges and case management systems. They particularly liked the system of having the attorneys submit proposed findings of fact and conclusions of law.

The judges were here on an election day, and were quite intrigued by the North Carolina system of electing judges from the trial level to the state supreme court. In Taiwan, judges must take an extremely competitive exam following law school in order to sit on the bench.

In the federal system, the judges observed part of a civil case before United States District Court Judge Earl Britt, and met with Judge Britt. They also had briefings with the chief assistant to the United States attorney for the Eastern district, Wayne Rich, and with the United States District Court clerk of court, David Daniel and members of his staff.

While in Durham, the judges took advantage of the expertise on the Duke Law faculty and met with Professor

Sara Sun Beale to learn about federal criminal procedure, with Professor Herbert Bernstein to learn about the German system of having two laypersons and a judge sit on some cases, with Professor Thomas Metzloff to hear about alternative dispute resolution, and with Carolyn McAllaster to learn about federal civil procedure.

On the Road

Towards the end of their second week in the United States, the judges went on the road, traveling first to Washington, D.C. They toured the Supreme Court, and visited with Yanlei Wu '88 at Sidley & Austin. They also spent an afternoon at the Federal Judicial Center learning more about our federal court system during sessions arranged by William Eldridge '56, the Center's director of research. The weekend was spent seeing the sights of Washington and taking lots of pictures.

On Monday it was on to Richmond, Virginia, where the judges

visited the Dalkon Shield Trust and were briefed by Mike Shepard, director of the Trust. After stopping off at the Fourth Circuit, they headed for Williamsburg, where in one day they went from an 18th century courtroom in Colonial Williamsburg to a demonstra-

tion courtroom of the 21st century at William & Mary Law School.

By the end of the program, the judges had received and digested extensive information about our state and federal trial courts. Through their graciousness, they made many new friends

and even managed some shopping. After leaving Durham, they were off for a week's vacation in Boston, New York, Chicago and San Francisco.

Carolyn McAllaster

Changes in Career Services Office

Exciting things are developing in the Career Services area! Ninety percent of the May 1994 graduates had full-time legal employment as of Graduation Day, proving that the Career Services Office has been very successful. The Law School has set ambitious goals for its Career Services operation, and given the changes in the legal profession and the economy, the decision was made to expand the professional career counseling staff and the array of services offered.



Robert Smith

A national search for a new director with a Juris Doctor degree and law-related experience has been completed, and Robert E. Smith is the Director of Career Services beginning July 5, 1994. Smith's experience will enable him to network effectively with potential employers as well as counsel law students about career planning in the changing legal employment market.

Robert Smith began his legal career as a clerk to the Honorable George Barlow, then Chief Judge, United States District Court for the District of New Jersey. He then worked four years as a litigator at Curtis, Mallet-Prevost, Colt & Mosle, a large law firm in New York. Following that,

Smith became in-house litigation counsel for a Fortune 500 company in New York.

Most recently, Smith has been an attorney placement consultant in Washington, D.C. He was a founding partner of the legal search firm that was selected as the best in Washington and one of the top ten in the nation by *The American Lawyer*. He will bring to Duke almost 10 years of experience in recruiting, client development, job search training, and attorney placement.

Cynthia Peters will remain on the professional staff as assistant director of career services, and will continue her

excellent work with students. She has also represented Duke well on the national level, serving on the Board of Directors of the National Association of Law Placement. On-campus recruiting will continue to be coordinated by Sandra Peters, who also manages the extensive database of employers.

The Career Services suite in the new Law School building addition is roughly six times larger than its old space. The new suite features computers for students to use for career search purposes, an expanded resource library, and soft seating and a hospitality area for employers and recruiters.



New Career Services space provides comfortable seating. Along the far wall, computers will be available to assist students' job searches.

Dan Crawford

Fourth Annual Siegel Competition

A record 16 teams competed in the Fourth Annual Rabbi Seymour Siegel Memorial Moot Court Competition held at the Law School February 25-27, 1994. Schools from the University of Maine to Cumberland School of Law (in Birmingham, AL) and from Chicago-Kent to William & Mary sent students to the competition. Although Duke does not field a team in order to avoid appearances of impropriety, Duke Moot Court Board members are actively involved in developing the problem and administering the competition.

Funded by alumnus Allen G. Siegel '60 in memory of his brother, the competition focuses on problems involving medical or legal ethics. This year, students argued the constitutionality of a statute banning assisted suicides as applied to a disabled person. Arguing before the distinguished final argument panel of Chief Judge Gerald Tjoflat '57 of the Eleventh Circuit, Associate Justice Robert Benham of the



Pictured following the 1994 Siegel Competition are, from left to right, Justice Robert Benham, Lee Childs and Lynn Barrett (the runners-up from Cumberland Law School), Chief Judge Gerald Tjoflat '57, Allen Siegel '60, Margaret Underwood and Renee Martin (the winners from Villanova Law School), and Professor Rhoda Billings.

Georgia Supreme Court, and Professor Rhoda Billings of the Wake Forest Law School (former justice of the North Carolina Supreme Court), the team from Villanova prevailed over Cumberland.

Many Duke alumni volunteered to serve as judges for the preliminary rounds. A list of volunteers follows. The Law School is extremely grateful for their generous donation of time.

Volunteer Judges for the 1994 Siegel Competition

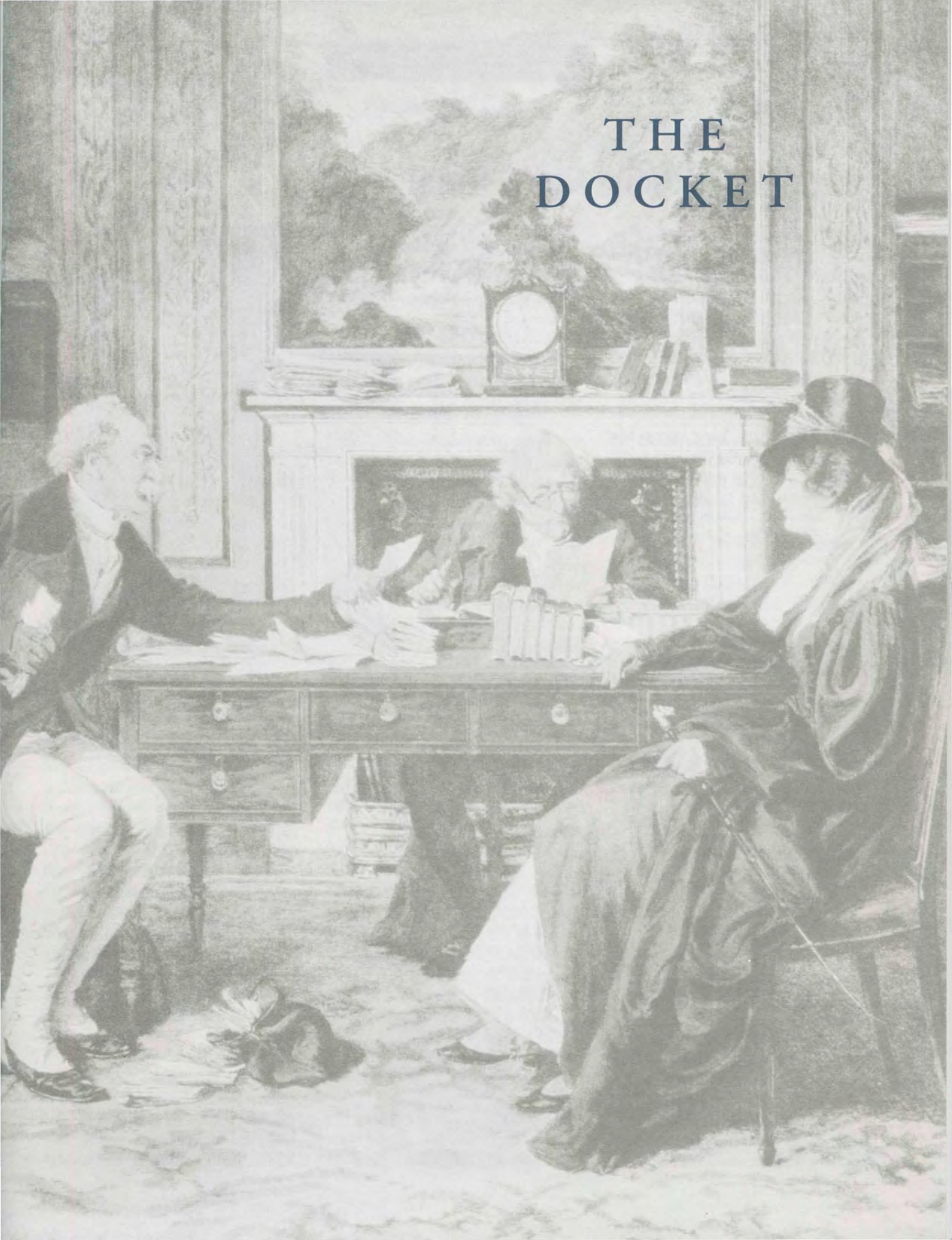
Cynthia Adcock-Steffey '91
Robin Anderson
Elizabeth Armstrong
Brenda C. Becton '74
Victoria Bender
Gary K. Berman '75
Richard S. Boulden '86
William J. Brian, Jr. '89
Brian Brown
David T. Buckingham '83
Marianna Burt
Joan Harre Byers '74
Kevin Capalbo
Rick Castiglia
Richard N. Cook '89

Roger M. Cook '84
William Cotter '79
Lauren Dame
E. Lawrence Davis, III '63
Christine Witcover Dean '71
Douglas F. DeBank '62
F. Joseph Diab '92
Allyson K. Duncan '75
René Stemple Ellis '86
Richard W. Evans '82
Richard W. Farrell
Robert C. Glesener '86
Paul M. Green '85
Elizabeth A. Gustafson '86
Thomas A. Harris '71

Charles R. Holton '73
David R. Hostetler '90
Celia Grasty Jones '90
Jodee Sparkman Larcade
Susan McAllister
Amy Shaw McEntee '91
Pressly M. Millen '85
William E. Moore, Jr. '81
Claire L. Moritz '80
Robert J. Morris '88
Patrick Oglesby
Timothy J. O'Sullivan '90
Robert F. Page '69
Elizabeth S. Petersen '72
John D. Prather '88

Scott M. Pritchett '92
John M. Reagle '91
David M. Rooks '76
Patrick M. Rosenow '84
Robert Schapiro
Agnes Schipper
Stuart M. Sessoms, Jr. '74
Steven M. Shaber '76
Marlene Spritzer
Juliann Tenney '79
Michael E. Weddington '73
Richard N. Weintraub '76
Thomas R. West '79

THE DOCKET



William H. Grigg '58

Right Man for the Right Time

There is an ancient Chinese curse that, roughly translated, says, "May you be born in a time of great change." For the electric utility industry in the United States, now is such a time. The man chosen to lead Duke Power Company, the nation's seventh largest electric utility, through this difficult period is William H. Grigg, chairman and CEO and a 1958 graduate of Duke Law School. The question is how will Grigg use his legal training and financial skills to weather this time of great change?

Laying the Groundwork

Bill Grigg, a native of Shelby, North Carolina, attended Duke University as an undergraduate through 1954. He spent two years in the Marine Corps then returned to Duke to get a law degree. Grigg practiced law

At Duke Power, Grigg has earned a reputation as an intelligent, hard-working manager who gets along well with his fellow employees. . . . "[H]e feels just as much at home in a pick-up truck on a service run as he does in the boardroom."

in Charlotte for four years, then joined Duke Power Company in 1963 as an assistant general counsel. He has been with the company ever since.

At Duke Power, Grigg has earned a reputation as an intelligent, hard-working manager who gets along well

with his fellow employees. He has steadily climbed the ranks of Duke Power, serving variously as vice president of finance, general counsel, senior vice president of legal and finance, vice president of customer service and vice chairman.

In April, Grigg succeeded Bill Lee as chairman and CEO. At a news conference announcing Grigg's appointment, Lee said, "Bill [Grigg] is very bright. He has a high level of energy. His vision is way out ahead. He's a natural leader. . . . Yet he feels just as much at home in a pick-up truck on a service run as he does in the boardroom."

Change

Lee, an engineer by training, presided over Duke Power in an era of rapid construction of new power plants and growth in employees and customers. But Grigg's job will be considerably different. There will be no more building of big power plants, the workforce will have to be trimmed, and the steady addition of new customers is by no means assured. Duke Power, and electric utilities as a whole, are entering a new era in which they will have to get "lean and mean" to keep the customers they already have and attract new ones in the face of growing competition.

For the better part of a century, electric utilities have been granted monopolies to produce and sell elec-



William H. Grigg '58

tricity in territories of varying size. Their only real competition has been from natural gas utilities, and only then in areas where gas lines run. Utility profits have been assured, and also limited, by state regulatory commissions. The industry has attracted stolid types who might best be characterized as risk-avoiders, certainly not entrepreneurs who thrive in a competitive environment.

In recent years, technological advances in generating equipment have made it possible for independent, unregulated enterprises to produce electricity at prices comparable to what the regulated utilities have offered. Further,

ALUMNUS PROFILE

the deregulation fever that swept up the airline, telephone, trucking and banking industries in the 1970s and 80s has now reached the electric utility industry. Federal authorities are considering allowing the creation of a nationwide power grid, in which power producers can "wheel" electricity around the nation (and Canada) and customers can buy from the lowest bidder. All of this means that utilities will face competition from multiple sources, and will have to trim costs and increase efficiencies to retain their current customers or even stay in business.

Facing the Challenge

"At this particular time, Bill Grigg is the best person I know of to lead Duke Power," says Robert Koger, president of the North Carolina Alternative Energy Corporation and former head of the North Carolina Utilities Commission. "I was always impressed with the presentations he made before the commission as chief counsel. He's got strong legal and financial skills, which utilities need now more than ever. Beyond that, he's a good listener, which is crucial in a time of change."

Grigg has helped Duke Power through tough times before. In 1973, the company was on the verge of bankruptcy due to cost-overruns on nuclear power plant construction and dramatic increases in fuel costs for its coal-burning power plants. Grigg saved the day by convincing institutional investors to float \$100 million in five-year bonds—this at a time when Duke's bond rating had dropped from AAA to A and no other utility was able to sell bonds with less than a AA rating.

Asked how he feels about stepping in the fire again, Grigg says, "Every electric utility executive must be willing

Grigg thinks his legal training will serve him well in a situation where the rules governing the industry are being rewritten. His persuasiveness and knowledge of the industry may enable him to influence the nature of re-regulation where others might simply respond to or fight it.

to change. I think I can adapt to a very different environment." Grigg thinks his legal training will serve him well in a situation where the rules governing the industry are being rewritten. His persuasiveness and knowledge of the industry may enable him to influence the nature of re-regulation where others might simply respond to or fight it.

With characteristic modesty, Grigg says, "I'm fortunate that Duke is a very efficient, low-cost producer of electricity. Our rates are among the lowest in the industry. The way you win in this environment is to provide better service at lower cost."

Grigg also hopes to find new sources of revenue from Duke Engineering & Services Inc., which provides engineering, professional and technical services worldwide, and Crescent Resources, Inc., Duke Power's land development arm. Those and other Duke Power subsidiaries earned \$24 million last year. Grigg wants to raise that to \$100 million by 1998.

The Duke Bond

Duke Power Company was started by the same man who founded Grigg's

alma mater—James Buchanan Duke. J.B.'s grand dream was to harness the power of the rivers of the North Carolina piedmont, electrify industry, and use the profits to plow back into the welfare of the region. Grigg has been proud to watch that dream come true, and to be a part of it.

Grigg says he's also been proud to watch Duke University grow in size and prestige, particularly on the basketball court. Grigg is an ardent Blue Devil fan, and as a resident of Charlotte, he was able to get a ringside seat at the NCAA Final Four Basketball Championship in April. Grigg also maintains more formal ties to the University. He serves on the Fuqua School of Business Board of Visitors and has served on the Board of Directors of the Law Alumni Association. And he maintains strong friendships from his days at the Law School. "In 1958, there were only 37 people in my Law School class," he says. "We were practically a family, and some of my best friends today were ones I made in that class."

John Manuel

Paul S. Nathanson '67

Master of Chaos

“Paul is somewhere between a scholar and a street hustler,” says Dr. Richard Peck, president of the University of New Mexico in Albuquerque. As someone who models himself after the legendary community organizer, Saul Alinsky, Paul Nathanson '67 should take that as the compliment it was intended to be. Dr. Peck was referring to Nathanson's latest assignment as his special assistant in charge of community relations. Nathanson has used the job to establish partnerships between the university and such unlikely groups as Navajo Indians living in isolated rural communities.

Dr. Peck has equally high praise for Nathanson's other job as executive director of UNM's Institute of Public Law—a position he has held for more than a decade. “The Institute is Paul's creation,” the president says. “He has been responsible for all kinds of activities that have been of great benefit to both the university and the community.”

The Path

Since graduating from Duke Law School in 1967, Nathanson has chosen a career path unlike that taken by most law graduates. He started off in typical fashion as an associate in the tax department for a major law firm—O'Melveny and Myers in Los Angeles. But he soon molded the job in his activist fashion by opening a pro bono clinic for the elderly. “I helped the elderly poor with things we were already doing for our rich clients—drafting wills, advocating on their behalf on landlord tenant issues,” Nathanson says.

In 1972, Nathanson was hired as the first executive director of the

National Senior Citizens Law Center, located in Los Angeles and Washington, D.C., a part of the National Legal Service Corp. He held that job until 1980. Asked what attracted him to working with senior citizens, particularly the elderly poor, Nathanson replies, “Initially, it was a gut issue. I would go out to Pershing Square and see all these old people pushing their belongings in a grocery cart. It just didn't seem right. Once I got into it, I found that substantive legal issues are exacerbated when you are poor and old. The poorer and older you are, the more likely it is you are reliant on a bureaucratic maze like Medicare. Lawyers wrote the laws for these programs and you often need a lawyer to interpret them.”

In 1979, Nathanson met his wife-to-be, Marcia Green. She had always wanted to practice Indian law, so in 1980, Nathanson resigned as director of the Law Center and moved with Green to New Mexico. Nathanson received an assistant professorship at UNM and, true to form, expanded from there to a clinical law program for the elderly in the mountains of northern New Mexico.

In 1983, Nathanson was hired to run the University of New Mexico's Institute of Public Law—a job he has held ever since. The Institute is modeled after the Institute of Government at UNC-Chapel Hill, and performs a



Paul S. Nathanson '67

wide variety of tasks from the training of tax collectors to training of judges. Under Nathanson's direction, the Institute's budget has grown from \$200,000 to \$1.8 million per year. It has focused on programs designed to help New Mexico's culturally diverse population, and on national projects in aging and health policy and ethics.

Involvement

“They say the future of America is brown,” Nathanson explains. “In that respect, New Mexico is a harbinger for the future. We have a large and growing Spanish-speaking community and a large Indian population. We are a laboratory for new policies and programs.”

Nathanson's particular concern has been how to get important policy messages—be it the need to wear seat belts, or the need to vote—across to a culturally diverse population. “It’s not just a question of putting messages in their own language,” he says, “it’s understanding how they hear the message.”

Nathanson has involved the Institute in producing radio pieces that are fed to local stations for broadcast throughout the state. These include topics such as what to do when a flu epidemic hits a community. Nathanson has also sponsored an initiative whereby high school students use the local CBC network television station to produce their own news program and public service messages. “It’s a wonderful way of empowering the students,” Nathanson says. “We’ve won some Rocky Mountain Emmys and major national awards for the show. Charles Kuralt even did a ‘Sunday Morning’ piece on us.”

While directing the Institute, Nathanson also teaches courses in legislative policy at the UNM School of Law. “I try to make my students aware of the importance of giving citizens more access to the law,” he says, “of translating messages so that people of different cultures and levels of education can understand them and utilize them for their benefit.”

New Horizons

Because of his demonstrated respect for diversity and his accomplishments in community organizing, Nathanson was asked by the university president in 1993 to be his special assistant for community relations. Nathanson accepted the position with relish, and, as Dr. Peck testified, has brought real depth to it. “Most public

relations functions involve the university boasting about itself,” Dr. Peck says. “Paul has actually gone out and helped people in the community, such that they become our p.r. agents.”

As an example, Dr. Peck describes Nathanson’s idea of holding seminars for the members of the Hispano Chamber of Commerce on how to bid on university contracts. As a result of

“I try to make my students aware of the importance of giving citizens more access to the law,” he says, “of translating messages so that people of different cultures and levels of education can understand them and utilize them for their benefit.”

those seminars, a number of small, Hispanic-owned businesses have won new business from the university, and the Chamber, in turn, regularly features stories on the university in their newsletter.

“I’m trying to determine how the university can be of more assistance to the community,” Nathanson says. “It’s not rocket science—a lot of what needs to change is just attitudinal. The typical attitude of universities toward their communities is ‘we’re here, that should be good enough for you.’ Well, maybe it’s not good enough. I realize that our primary mission is to educate. But our budget is \$800 million a year, only \$150 million of which is spent for instruction, so there’s a lot more going on. We should at least ask how the funding we get might be used for the

betterment of the community.”

Recently, UNM announced plans to open a Health Sciences Center. Nathanson urged key planners of the center, including Dr. Peck, to travel with him around the state and ask New Mexicans what they would like the center to do. The process proved successful in more ways than one. “We discovered concerns that rural people would like to see addressed through the center, such as distance learning, and programs to get doctors out into the communities,” Nathanson says. “But we also brought people together who’d never met each other before—doctors and the president of the university, driving through the snow to speak to real people in rural New Mexico.”

Back in Albuquerque, Nathanson set up meetings with legislators and cabinet secretaries to explain what the center would be doing. “We really surprised them,” he says. “The president was able to say, ‘I’ve been out talking to your constituents and it’s clear we need to partner with so-and-so on such-and-such a health care delivery program.’ We’d obviously taken the time to go out and listen to people. The legislators couldn’t say we didn’t know what we were talking about.”

Asked what has kept him in that job for more than a decade, Nathanson says, “The subject matter is always changing, the venues in which we can do something to help people are always changing. . . . It’s hard to get bored.” But Nathanson readily admits that neither he nor the path he’s chosen is a model for the average law student. “Part of my strength is to take risks, to not think linearly, to understand that chaos can be creative. That’s not something most lawyers like.”

John Manuel

William W. Van Alstyne

Teaching the Constitution

When William Van Alstyne entered Stanford Law School in the fall of 1955, he was certain of one thing: he did not want to become a professor. To follow in the footsteps of his history professor father, he believed, would be to condemn himself to frustration. "My father was a very gloomy person," Van Alstyne recalls. "And I related his gloom to the fact that he was a history professor. His sense of fulfillment was very vague. There was always an uncertainty whether his teaching made any difference."

The Professor

Yet by 1959, after brief stints at the California and United States Departments of Justice, Van Alstyne found himself teaching law at Ohio State University. He credits "the ineluctable pleasure of a good idea and other people's clash on their writing about it" for drawing him back to the academic life.

Today it is difficult to imagine Van Alstyne as anything but a law professor. For 35 years, the last 29 at Duke, he has projected the larger-than-life persona of a motorcycle-riding, pipe-smoking academic who also happens to be one of the most respected constitutional law scholars in the world. "William Van Alstyne is the crown jewel of the Duke faculty," says long-time faculty colleague and friend Melvin Shimm. "He embodies all of the virtues that one would hope to find in a faculty member." Van Alstyne values his performance in the classroom as much as his work as a scholar. "It's easy to just try to advance oneself professionally at the expense of teaching," says Shimm. "Bill is a productive scholar, but he doesn't do it at the

expense of his students and teaching. Teaching is his primary concern."

Van Alstyne tries to sharpen students' minds by challenging their assumptions. "This is a graduate school," he says. "And while one is being trained to be an advocate, it should be like a graduate school in that you're still cultivating people's maturity



William W. Van Alstyne

and critical faculties. I try to teach slightly against the grain. Not so much that it will fail or become frustrating, although for some students it does. But 'against the grain' means to stay in touch with what students are thinking and feeling these days, what their predisposition is about a certain area of the law, and then teach mildly against it."

"I don't want to fall into a congenial discussion in class, where we move along, all acquiescing in a certain social view, for example, that we definitely agree that the world is full of racism, and isn't it awful, and don't we need to do x, y, and z. I find it more

useful to say, 'Well, that's probably right, but what do you mean by 'racism,' and where are its manifestations, and how do you deal with it most effectively?' To the extent that some students get lost, it's a flop. But I would like students to walk out of my class feeling that they got something out of listening to others or to me that they would not have gotten had they just listened to tapes or read the material or gone to some other lecture." Some of his students don't walk out of his classes so much as they stumble, dazed by the 50 intense minutes of fast-paced, high-level intellectual discourse Van Alstyne inevitably delivers.

Constitutional Study

Van Alstyne is at his best in his perennially oversubscribed upper-level course on the First Amendment. This demand is partly attributable to Van Alstyne's reputation as the country's foremost expert on the First Amendment. In addition to his authoritative casebook, his vitae boasts 37 articles on freedom of speech and religion and academic freedom. Student interest is also piqued by the controversial and high-profile subjects addressed by the First Amendment, including political speech and obscenity. Van Alstyne intentionally exposes students to real-life examples of the speech they abstractly seek to protect. For example, recent classes have included a tape recording of Two Live Crew's "Nasty as They Wanna Be," a recording that was banned as obscene in Durham as well as elsewhere.

"Some of it's provocative, some of it's willful. Some of it's probably gratuitous," Van Alstyne admits. "But in a First Amendment course, it's critical to prepare people to be real lawyers. It's a

tremendous mistake to leave out very concrete examples. Students overwhelmingly want to be understood as open to new ideas, unflinching, tolerant. But it's a matter of coming clean as to what we are talking about in fact. You want to lift up the actual facts of some of these cases, particularly in the obscenity area. This stuff is pretty shocking. It's hard to see how it makes much social contribution. But you also ask, 'what is it that makes me want to send these people to prison?' So I would insist that it's not all fun and games."

Although a First Amendment specialist, Van Alstyne has published extensively on the topics of equal protection, judicial review, constitutional amendment, federalism, and separation of powers. "I've tried over the years to keep moving on, and finding additional things that I hadn't previously attended to, rather than merely becoming a superspecialist in the First Amendment," he says.

"Anybody who presumes to stay with constitutional law over a substantial period of time has to become acquainted with the rest of this document, with the rest of its history, rather than just bits and pieces. No one ought to feel comfortable with themselves if a person should walk in and say, 'Well professor, I've just been reading the Constitution again, and here's a clause I hadn't really noticed before. What do you think about this?' I don't want to reply, 'Well, I actually never thought about that.' Not after 30 years in the field!" he laughs.

Appearing well-informed is not his only reason for studying different areas of the Constitution. Rather, he believes that only by studying the many clauses of the Constitution can one understand the document as a whole. "There's a chemistry in the document; there are synergies among the clauses. The Constitution is likely to become a very funny document if it is farmed out among specialists who don't see any



Bill Van Alstyne vacationing in the Galapagos Islands.

continuity of theme or uniformity of principles. You'll just be a better scholar if you try to pay attention to all of it over a period of time."

Playing Different Roles

Understanding the Constitution as a whole also helps Van Alstyne maintain his sense of intellectual integrity. "It allows you to determine whether you have an authentic consistency of

"There's an enormous tension between being an excellent academic and an excellent social reformer," he reflects. "The latter reflects a powerful commitment to what one regards as a more just society. The former will not allow that to be the controlling force."

position, regardless of the constitutional law subject that you're addressing. Otherwise, the likelihood is enhanced that you're not an academic anymore; you're becoming an advocate."

"There's an enormous tension between being an excellent academic

and an excellent social reformer," he reflects. "The latter reflects a powerful commitment to what one regards as a more just society. The former will not allow that to be the controlling force. If you're an academic, you're required to have a greater sense of documentary integrity, of authenticity of decision, rather than merely social preference or even your emotion as to in which direction justice lies."

"There are those who see constitutional law as simply another lever by means of which you try to bring about varieties of social change one way or the other. But these are instrumentalists, opportunists of constitutional law. I had to resolve this early in my career and try to come to an understanding of my own principles."

"Van Alstyne is a very meticulous and honest scholar, a scholar of great integrity," agrees George Christie, another long-time Duke law faculty colleague. "He is prepared to take unpopular positions if he thinks they are intellectually compelled." Most recently, Van Alstyne has interpreted the long-neglected Second Amendment in support of the National Rifle Association's essential claim that citizens have some genuine personal right to own guns. For those who dislike the

results he reaches, he routinely recommends constitutional amendment. "The amendment process is a way to bring about changes in a manner in which the instrument itself is not violated," he says.

Yet for all of his focus on the intellectually right result, Van Alstyne also seeks opportunities to test his theories in practical arenas. He has been president and general counsel of the American Association of University Professors and chaired the Association of American Law Schools's Committee on Academic Freedom and Tenure. He has appeared both as counsel and as *amicus curiae* in a wide variety of constitutional cases in the federal courts, including the Supreme Court, and in numerous hearings before various Senate and House Committees on proposed amendments to the Constitution, pending legislation and constitutional questions, separation of powers, war powers, constitutional conventions, civil rights and civil liberties, and nominations to the Supreme Court.

"Occasionally doing an *amicus* brief lets you check your sense of reality," he says. "There is an anxiety that if one confines oneself to the classroom—and the captive audiences of students who are not quite free to express their own views—and the law journals, one might risk an artificial kind of hermetic scholasticism, away from what legislatures and courts are in fact doing. It's nice once in awhile to do a piece of advocacy, to get involved in those conversations and experiences and to see whether it meshes and whether you can hold your own and whether it makes any difference, whether it connects to reality—or whether what you've been writing or thinking has become so attenuated, so desiccated, so antiquarian, that you're just some kind of quaint curiosity."

"So moving in and out of the more litigative or adversarial role is a partial testing. It's also, actually, much easier in some ways," he says. "You're not responsible for trying to get to the truth of the matter, you're responsible for doing the best you can within the bounds of ethical scruples. Deciding which perspective will prevail and the responsibility for getting to the truth of the matter, that's for the judges or even the academics. That's much harder."

The Broader Perspective

Outside the law, Van Alstyne greatly enjoys hiking, scuba diving,

Van Alstyne considers free speech to be crucial to a civilized society. "All in all," he says, "freedom of speech is vastly more important than the right to vote. I have no doubt about it."

and travel, interests he shares with his spouse, Duke Law School Dean Pamela Gann '73. Together they have enjoyed trekking the Inca trail, hiking in the mountains of Switzerland and the Pacific Northwest, and scuba diving in the Caribbean, often joined by one or more of Van Alstyne's three children, Lisa, Allyn and Marshall. Also sharing a strong interest in the Law School, when possible they combine their adventurous travel plans with trips on behalf of the School as when over the past spring break, they visited with an alumni group in Panama and then vacationed with the help and advice of Jaime Aleman '78. Last summer after visiting Asia, where Gann represented the Law School in

Hong Kong, China and Japan, they embarked on a trekking excursion in the Himalayas. Closer to home, they can often be seen cheering on the Blue Devils in Cameron Indoor Stadium.

Van Alstyne's perspective on the Constitution has also been enriched by his experiences abroad. He has taught and given professional papers in Germany, Austria, Denmark, the Soviet Union, China, Japan, Canada, and Australia. He was a Fulbright Lecturer in Chile and a Faculty Fellow at the Hague International Court of Justice. His exposure to other constitutional systems has convinced him that any successful constitution must contain certain crucial features. First, the amendment process must be relatively difficult, so that the document can weather shifts in the political winds. Second, there must be a fair degree of independent judicial review. "It's a very simple thing," he says, "but you'd be dumbfounded at how few countries have that modicum of judicial independence that's reflected in our Article III." Third, there must be some kind of habeas corpus clause. "It is certainly crucial to be able to push a piece of paper out between bars to some magistrate who literally has the power to require the military or the executive department to produce the body of the prisoner and show just cause for his detention."

Finally, Van Alstyne considers free speech to be crucial to a civilized society. "All in all," he says, "freedom of speech is vastly more important than the right to vote. I have no doubt about it. Because if you can really be held harmless for your speech, even if you can't vote, I'm quite convinced that no regime can exist if it can't silence its critics. Even if nobody votes, a government can't stand against sheer ridicule."

Amy Gillespie '93

Faculty News

Bartlett Co-Reporter on Family Dissolution Project

Katharine T. Bartlett was appointed in April by the American Law Institute as co-reporter for the Principles of the Law of Family Dissolution. Her co-reporter is Ira Ellman of Arizona State University College of Law. This appointment acknowledges Professor Bartlett's substantial reputation in family law, and especially her expertise in the area of child custody law which will be her focus of attention in the ALI project.

Bartlett has served as senior associate dean for academic affairs during the 1993-94 academic year, and has agreed to extend her service in the position one more year. While holding this administrative post, Bartlett has remained an active scholar, continuing to publish in the areas of gender discrimination and feminist legal theory.

Hauerwas Named to Chair

Stanley M. Hauerwas, who holds a joint appointment with the Duke Divinity School and the Law School, has been named the Gilbert T. Rowe Professor of Theological Ethics. In his most recent book, *Dispatches from the Front: Theological Engagements with the Secular* (Duke University Press, 1994), Hauerwas says he seeks to show readers, especially non-Christians, that God is much more interesting than Christians and theologians have managed to make him seem. Toward this end, Hauerwas combines Christian theology and social criticisms in essays that attack what he sees as current sentimentalities about topics such as the



Donald L. Horowitz

importance of family, the role of compassion in Christianity and the significance of democracy.

Horowitz New James B. Duke Professor

Donald L. Horowitz has been named to a James B. Duke Chaired Professorship. He previously held the Law School's Charles S. Murphy Chaired Professorship; this lateral switch to the University-wide James B. Duke Chair was made in recognition of his special accomplishments as a scholar. An authority on ethnic relations, democratization and ethnic violence, Horowitz has spent the 1993-94 academic year on leave while working on a book entitled "The Deadly Ethnic Riot." His project has been funded by a grant from the Carnegie Corporation.

Van Alstyne Elected to AAAS

William W. Van Alstyne 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 approximately 3,150 fellows and 550 honorary members. In his latest publication, *The Second Amendment and the Personal Right to Arms*, 43 Duke L.J. 1236 (1994), Van Alstyne's analysis of the Second and Fourteenth Amendments of the Constitution indicates federal and state governments may not infringe upon the personal right of citizens to "keep and bear arms," although each may provide appropriate controls to respond to criminal misuse or abuse.

Wiener Appointed to Community Service Commission

In January 1994, **Jonathan B. Wiener** was named by North Carolina Governor James Hunt to the state's newly formed Commission on National & Community Service. Professor Wiener spent the fall of 1993 in Washington DC, serving as an advisor to the new National Service program. National Service will award grants—largely through the state Commissions—to support innovative community-based service programs that "get things done" by accomplishing demonstrable benefits for underserved communities

in the areas of education, health, safety and the environment; and it will train service participants in specific skills and mutual trust, and offer them educational scholarships. National Service aims to put 20,000 "Americorps" participants in the field in 1994 (rising

to 100,000 by 1998), making it many times larger than the overseas Peace Corps while more community-based than the federal Civilian Conservation Corps of the 1930s. North Carolina is home to a multitude of creative, energetic community service enterprises,

and its Commission is at the forefront of states working to launch Americorps. Professor Wiener has also worked to organize local community service efforts in Boston and in Washington, and is eager to be involved in service efforts in his new home state.

Schmalbeck Receives Distinguished Teacher Award

Richard L. Schmalbeck honestly doesn't get it when students praise his class in end-of-semester reviews as "not bad, for a tax law course." "The first time I read that remark, I thought, 'That's a little like saying dinner wasn't bad, given that it was lobster. What's his point?'" Schmalbeck said in an interview. "The secret is that I've chosen a field that is actually exciting but isn't thought to be so by my students. So I get credit for making it interesting, when it's intrinsically interesting."

Schmalbeck, known among students for his low-key, conversational teaching style, has obviously made believers out of some Duke law students. They selected him to receive the Duke Bar Association Distinguished Teacher Award for 1993-94.

Schmalbeck insists there's no deep secret to what he does with tax law in the classroom. "The best thing a classroom teacher can do in 50 minutes with students is to add something to the material students have already read, to explain it better, to illustrate it in ways that promote its understanding. This is where I believe a teacher can really make a difference," he said. Schmalbeck added that for many students entering law school from majors such as political science or comparative literature, courses such as tax law, while not computational, represent the first time they've delved deeply into "quantitative" material—something that can be a little intimidating or uncomfortable.

The teaching award is especially significant to Schmalbeck because it comes at the end of his first year back at Duke after a three-year stint as dean of the Law School at the University of Illinois. He'd been on the Duke faculty for 10 years before accepting the dean's job at Illinois in 1990. He and his family happily returned last summer to their adopted North



Richard Schmalbeck (right) is congratulated by Thomas Morey '96, incoming Duke Bar Association president (left) and Gregory Brown '95, outgoing president (center).

Carolina, where he re-joined Dean Pamela Gann in teaching tax law courses at Duke.

While his course reviews by students have been generally positive over the years, Schmalbeck said that he believes he learned even more about the importance of good teaching during his stint as an administrator. "As dean at Illinois, I paid a lot of attention to teaching evaluations. And I've been involved in ABA site evaluations at law schools for the past three years. . . . One major difficulty is that teaching, by nature, is hard to evaluate. We can, as researchers, send free-standing pieces around the world, and

while most good teachers are doing cutting-edge research, good teaching can't be packaged that way," he said. "So it's reassuring to see university administrators at the intermediate level and higher making good faith efforts to treat teaching as seriously as scholarship."

The DBA Distinguished Teacher Award has been presented annually since 1985. Previous winners include James Coleman, Thomas Metzloff, Melvin Shimm, Sara Beale, John Weistart, James Cox, Richard Maxwell and Thomas Rowe.

Debbie Selinsky

Law Alumni Association News

The Law Alumni Association Board of Directors (Board), 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 Board is held in conjunction with Law Alumni Weekend and includes representatives from local law alumni associations. The Board 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 Board meeting.

The Alumni Directory

A new all-alumni directory was mailed last fall to all alumni who 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 by contacting the Law School Alumni Office.)

The Law Alumni Association will sponsor the next Law Alumni Directory in 1995. Because the directory is used by many alumni for referrals, it was suggested that specialty areas be included in the next edition. The Law 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.

Law Alumni Weekend

Attendance has been good for Law Alumni Weekend even though Law School alumni are widely dispersed. The Board agreed, however, that they would like to increase attendance at reunions. At their suggestion, this year the phone tree system was implemented in the spring instead of late summer. The phone tree system has proved to

be a valuable tool in bringing alumni back to the Law School. It involves alumni who want to help generate interest in the reunion making calls to their classmates to encourage attendance.

Educational Programs

The Education Committee of the LAA Board of Directors met in the spring to consider future student/



Terry Richard Kane '86 (far right) talks with law students following the Career Conference in February 1994.

alumni programs and programs for alumni and reported to the Board. The LAA continues to sponsor the **Career Conference** and **Alumni Seminar** for students. Alumni who participate in these programs 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 upcoming alumni seminars, including government careers, public interest careers, law firm governance, lawyer satisfaction, the economics of law practice, and client development. The Committee agreed to continue to select topics that would help students make career-related decisions.

The next seminar, scheduled for October 6, 1994, just prior to Law

Alumni Weekend, will address "Changes in the Delivery of Legal Services." The Committee suggested several panelists: a journalist covering legal topics to discuss trends in the legal community; an attorney from a corporation to talk about in-house services and how decisions are made to retain outside counsel; a consultant to law firms or someone who does lawyer

recruiting; and a managing partner from a law firm. The Committee also recommended bringing in representatives from small to medium-sized firms to talk to the students about their practices.

The Committee also considered alumni programs for those returning during Law Alumni Weekend

and Barristers Weekend. The topics reviewed included constitutional law, ethics and professionalism, international law and regulatory issues.

Alumni and other friends of the School returning for Barristers Weekend in April enjoyed the program, "The Office of Legal Counsel, Lawyers to the Executive Branch" presented by Jeff Powell and Christopher Schroeder, Duke Law School faculty members serving as deputy assistant attorney generals, assisting Walter Dellinger, the assistant attorney general in the Office of Legal Counsel. They discussed the responsibilities of the Office of Legal Counsel which include advising President Clinton and Attorney General Reno on the constitutionality of government actions and congressional bills.

Topics for the program for the upcoming Law Alumni Weekend were considered. It was suggested that Professors Robinson Everett and Jeff Powell could discuss the constitutional issues involved in the redistricting case, *Shaw v. Reno*, and the experience of arguing the case before the Supreme Court. Another recommendation was the internationalization of law practice, presented by a panel of faculty and alumni. The Committee asked Dean Gann and Associate Dean Pursley to pursue ideas and seek other suggestions from the faculty.

SFF Challenge Grant

The Student Funded Fellowship Program (SFF) is a student organization formed in 1977 to raise money for grants to students taking summer jobs in the public sector where they 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 through an annual spring pledge drive.

The LAA has contributed to SFF since the 1984-85 academic year (with gifts ranging from \$500 to \$5,000), most recently through a challenge grant. The Board of Directors felt that it was important to maintain the student funded orientation of the program, so it approved a matching program based on the participation rate of student contributors. The Board proposed to donate \$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. This year the LAA contributed \$4,500 based on an 18.5% participation rate.

Awards Committee

The Awards Committee recommended Kenneth W. Starr '73 to be the 1994 recipient of the Charles S. Murphy Award and Russell M. Robinson, II '56 to be the first recipient of the Charles S. Rhyne Award. Starr and Robinson will receive their awards at the all-alumni reception and dinner on Friday, October 7 during Law Alumni Weekend 1994.

The Charles S. Rhyne Award, a public service award given for the first time in 1994, recognizes distinguished



Sharon Carr Harrington '89 (far left) continues discussions with students following the 1994 Career Conference.

Dan Crawford

alumni in private practice who devote much of their time to public service through scholarship, education, pro bono representation, professional or community affairs, or public service. The award honors Charles S. Rhyne '37, who is senior partner in the law firm of Rhyne & Rhyne in Washington, D.C. Rhyne has had a distinguished career as a trial lawyer representing mainly states, cities and counties in cases in federal and state courts throughout the U.S., including serving as lead counsel in the "one man, one vote" case of *Baker v. Carr*, 369 U.S. 226 (1962). He is recognized for his lifelong dedication to public service through a variety of avenues including legal education, the bar and bar associations, the federal government and national and international institutions, and he received the Law

School's Charles S. Murphy Award in 1990.

The Charles S. Murphy Award will continue to recognize alumni whose careers have been mainly in public service, education or public interest practice.

New Members

The Board of Directors approved the new members recommended by its nominating committee and will welcome them at the fall meeting:

Phil Sotel '62, Pasadena, California; Barrington Branch '66, Atlanta, Georgia; Michael Pearlman '70, Rochester, New York; Pamela Peters '78, Winter Park, Florida; Karen Jackson '78, Philadelphia, Pennsylvania; Bruce Baber '79, Atlanta, Georgia; Michele Sales '81, Seattle, Washington; Helen N. Grant '84, Columbia, South Carolina; Porter Durham '85, Chattanooga, Tennessee; and Brent Clinkscale '86, Greenville, South Carolina.

Local Alumni Association Meetings

During the 1993-94 year several events were planned in conjunction with meetings around the country.

New York City. A large group of alumni enjoyed the annual reception held in conjunction with the annual meeting of the American Bar Association held in New York in August 1993. The reception was hosted by Associate Dean Evelyn Pursley '84 and incoming president of the LAA, Haley Fromholz '67.

Orlando, Florida. A reception was hosted by Dean Pamela Gann in January in Orlando, coinciding with the annual meeting of the Association of American Law Schools (AALS), with the help of Jay Whitehurst '82, president of the local association in Orlando. Alumni from the area and alumni members of the AALS—faculty and administrators—were invited to attend.

Washington D. C. Professor Walter Dellinger, assistant attorney general in the Office of Legal Counsel, hosted an

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alumni reception with local president, David Vaughan '71, in February in Washington, D.C. at the Metropolitan Club. Vaughan also hosted a luncheon with Dean Gann in May in conjunction with the annual meeting of the American Law Institute (ALI) to which alumni from the area and alumni members of the ALI were invited.

North Carolina. Dean Gann and Associate Dean Pursley hosted a reception in Myrtle Beach, South Carolina on June 24 in conjunction with the annual meeting of the North Carolina Bar Association.

Europe. Judy Horowitz, Associate Dean for International Studies, along with alumnus Jean-Francois Willame '92, hosted a reception and dinner at Willame's family home in Brussels, Belgium in July. This event is held annually in conjunction with the Law School's Institute of Transnational Law. All alumni living in Europe and students attending the summer program are invited to the dinner, which provides an opportunity to meet informally with both Duke Law School faculty members and the international faculty teaching at the program. The July event had over 90 people in attendance.

The local law alumni associations help to maintain a sense of community and identity with the Law School and among our alumni. The Law Alumni Office tries to send Dean Gann or a faculty member to host an event at least once a year with each local association. The Law School host shares information on the state of the School, current faculty projects and other items that may be of interest to alumni. In addition to the events noted above, other local association events were held this year (see box) with the help of the local association president or an alumnus/a from the area.

If you would like more information about any of these programs, please contact the Law Alumni Office at 919-613-7013.

<i>Additional Events</i>	<i>Faculty Host</i>	<i>Local Host</i>
ALABAMA		
– Birmingham	Dean Pamela Gann	John Coleman '81
ARIZONA		
– Phoenix	William Reppy	Thomas Pickrell '82
CALIFORNIA		
– Orange County	David Lange	Randall Erickson '71
– Los Angeles	David Lange	Phillip Sotel '62
– San Diego	David Lange	Jan Adler '78
– San Francisco	David Lange	Robert Pringle '69
COLORADO		
– Denver	William Reppy	Steven Plissey '84
CONNECTICUT		
– Hartford	Dean Pamela Gann	Dean Cordiano '76
FLORIDA		
– Ft. Lauderdale	Dean Pamela Gann	Gail Richmond '71
– Jacksonville	Melvin Shimm	Lori Terens '80
– Miami	Dean Pamela Gann	David Profflet '85
– Palm Beach	Dean Pamela Gann	Peter Sachs '82
– Tampa	Melvin Shimm	Emil Marquardt '65
GEORGIA		
– Atlanta	Sara Beale William Van Alstyne	Alfred Adams '74 Alfred Adams '74
ILLINOIS		
– Chicago	Dean Pamela Gann	Martin Marta '72
MASSACHUSETTS		
– Boston	Dean Pamela Gann	Howard Levin '78
MARYLAND		
– Baltimore	Dean Pamela Gann	Mitchell Kolkin '76
NEW JERSEY		
– Newark	Dean Pamela Gann	Glenn Tucker '80
NEW YORK		
– New York	Robinson Everett	Valerie Schwarz '83
NORTH CAROLINA		
– Charlotte	Dean Pamela Gann	John Miller '75
– Durham	Sara Beale	James Maxwell '66
– Greensboro	Tom Metzloff	Gary Beaver '82
– Raleigh	Sara Beale	Renée Montgomery '78
– Winston-Salem	Dean Pamela Gann	Bill Blancato '83
OHIO		
– Cleveland	Dean Pamela Gann	Jim Rydzal '71
OREGON		
– Portland	Melvin Shimm	Ronald Hoebet '75
PENNSYLVANIA		
– Philadelphia	William Van Alstyne	Michael Sholtz '88
SOUTH CAROLINA		
– Charleston	Dean Pamela Gann	Sidney Boone '64
TEXAS		
– Dallas	Dean Pamela Gann	Jeffrey King '80
– Houston	Dean Pamela Gann	Marjorie Schultz '80
VIRGINIA		
– Richmond	Thomas Metzloff	John Patterson '72
WASHINGTON		
– Seattle	David Lange	Michele Sales '81
BELGIUM		
– Brussels	Judy Horowitz	Jean-Francois Willame '92

Upcoming Events

August 8, 1994	ABA Meeting Reception
October 6, 1994	Alumni Seminar
October 7, 1994	Board of Visitors Meeting
October 7, 1994	Law Alumni Association Board of Directors Meeting
October 7-8, 1994	Law Alumni Weekend 1944, 1949, 1954, 1959, 1964 1969, 1974, 1979, 1984, 1989
April 7-8, 1995	Building Dedication Barristers Weekend Board of Visitors Meeting
May 13, 1995	Graduation Reception
May 14, 1995	Degree Awarding Ceremony
October 13-14, 1995	Law Alumni Weekend 1945, 1950, 1955, 1960, 1965 1970, 1975, 1980, 1985, 1990



Professors Chris Schroeder (left in background) and Jeff Powell lead a discussion about "The Office of Legal Counsel, Lawyers to the Executive Branch" during Barristers Weekend in April 1994. Both Schroeder and Powell served as deputy assistant attorneys general at the Justice Department during 1993-94.



From left above, Robinson Everett '59, Kenneth Starr '73 and Jefferson Powell chat during Barristers Weekend 1994.

LAW ALUMNI WEEKEND

October 7-8, 1994

Friday, October 7, 1994

11:00 - 5:00 PM	Registration Desk Open at Law School
12:00 - 1:30 PM	Student/Alumni Luncheon, Law School
2:00 PM	Law Alumni Association Board of Directors Meeting, Law School
7:00 PM	All Alumni Reception and Dinner Alumni Association Meeting, Washington Duke Inn
9:00 PM	Hospitality Suite open at Washington Duke Inn

Saturday, October 8, 1994

9:00 AM - 2:00 PM	Registration Desk Open at Law School
9:00 AM	Coffee and Danish, Law School
10:00 AM	Continuing Legal Education Program, Law School
12:00 noon	North Carolina Barbecue, Law School Lawn
1:30 PM	Golf at the Washington Duke Golf Course
2:00 PM	Duke University Primate Center Tour
2:00 PM	Duke Gardens Tour
7:00 PM	Class Dinners - Various Locations
9:00 PM	Hospitality Suite Open at Washington Duke Inn

REUNION COORDINATORS

Law Class of 1949 Charles Speth
45th Year Reunion Marion, South Carolina
803-423-7648

Law Class of 1954 William Kaelin
40th Year Reunion Fairfield, Connecticut
203-255-5455

Law Class of 1959
35th Year Reunion

Law Class of 1964 Kenneth Biehn
30th Year Reunion Doylestown, Pennsylvania
215-348-6066

Law Class of 1969 David G. Klaber
25th Year Reunion Pittsburgh, Pennsylvania
412-355-6498

Law Class of 1974 Philip Moise
20th Year Reunion Atlanta, Georgia
404-527-4380

Law Class of 1979 Valerie T. Broadie
15th Year Reunion Silver Spring, Maryland
202-806-4956

Law Class of 1984 Sol Bernstein
10th Year Reunion New York, New York
212-602-1511

Law Class of 1989 Susan Prosnitz
5th Year Reunion Boston, Massachusetts
617-343-4550

Gifts to the Law School

Funds to Support Adoption Conference

Dr. Joseph A. Puma of Galax, Virginia, recently donated funds to support the conference, "Defining Family: Adoption Law and Policy" at Duke Law School on April 8-9, 1994. The conference was sponsored by the new interdisciplinary student publication, *Duke Journal of Gender Law and Policy*. Student organizers of the conference included Elizabeth Catlin '94, Wes Powell '94 and Michael Sorrell '94.

The keynote address was delivered by Harvard Law School professor Elizabeth Bartholet, author of *Family Bonds: Adoption and the Politics of Parenting*. She spoke on the impact of biological bias on adoption practices and reproductive technology. Other issues discussed at the conference were the 'Baby Jessica' case, interdisciplinary adoption issues, gay and lesbian adoption, and transracial adoption. The conference considered some of the most important issues in family law and was a tremendous success for faculty, students and the surrounding community. It accomplished Dr. Puma's goal of obtaining serious attention for the public policy and legal issues about adoption, and it provided a platform for the successful inauguration of the new *Journal of Gender Law and Policy*.

Dr. Puma specializes in cardiovascular medicine at Twin County Medical Associates in Galax, Virginia, and is a consulting associate in the Division of Cardiology at the Duke Medical Center. Dr. Stephen H. Royal, medical



Paul H. Sanders

director of the Cardiac Catheterization Services of Southeastern Regional Medical Center of Lumberton, North Carolina, also made a gift to the conference.

Sanders Gift Annuity #3

Paul H. Sanders '34 has established a third annuity to benefit Duke Law School. Sanders taught at Duke Law School for 10 years, from 1936 to 1946. During World War II, he worked with the National War Labor Board and served in the U.S. Navy. He returned to the classroom in 1948, teaching law at Vanderbilt University in Nashville, Tennessee until the late 1980s.

In 1990, Sanders established the Paul H. Sanders Charitable Gift Annuities No. 1 and No. 2. Upon ter-

mination of the three annuities, the funds will be added to the *Law & Contemporary Problems* Endowment Fund. Sanders was associate editor of *Law & Contemporary Problems* from 1937 to 1946, and he comments that L&CP's "approach to better understanding of a significant law-related problem attracted me from the very beginning. I want to help keep a publication like this doing its job."

Thompson & Knight Law Scholarship Endowment

Members of the firm Thompson & Knight of Dallas, Texas, have established a need-based scholarship fund for the Law School. Those alumni participating in the scholarship gift include: Margaret S. Alford Loomis '78, Cheryl E. Diaz '87, Sharon M. Fountain '82, M. Lawrence Hicks, Jr. T'67, David E. Morrison '77, James R. Peacock '82, and Joe A. Rudberg T'68. Matching funds from Thompson & Knight were also added to the fund.

Dean Pamela Gann especially thanked Lawrence Hicks for his leadership in establishing the gift. "He and his colleagues understand the importance of scholarships to matriculate talented students regardless of their personal ability to attend Duke. It has also been fairly unusual for graduates in law firms to come together to make a restricted gift to their law school, and these alumni have established an important donor precedent for others to follow."

1994 Currie Lecture

Professor Ernest J. Weinrib of the University of Toronto Law Faculty presented the 1994 Brainerd Currie Memorial Lecture on March 18, 1994. His topic was "Gains and Losses Under Corrective Justice." Professor Weinrib, whose scholarship and teaching have concentrated on tort law, legal theory and Roman law, also taught a special class at the Law School on "The Fetus as Aggressor: Abortion, Self-Defense, Interpretation & Jewish Law."

Professor Weinrib is best known for a series of influential articles written over the past decade on the nature of



Ernest J. Weinrib

private law. Taking tort law as their central example, these articles attempt to defend a version of classical legal thought—a style of thought about law which Weinrib sees as coming under threat in the predominant (and largely instrumentalist) assumptions of con-

temporary legal scholarship. These articles on private law have culminated in a fresh statement of Weinrib's view in a book which is forthcoming this year from Harvard University Press entitled *The Idea of Private Law*.

The Currie Lecture is presented each spring by a distinguished aca-

dem in memory of Professor Brainerd Currie who was a member of the Duke Law faculty in both the late 1940s and early 1960s. Recent lecturers include Margaret Jane Radin of Stanford University, Peter Schuck of Yale Law School, and Lea Brilmayer, now at New York University.

Canadian Law Conference



Dan Crawford

In April, the Law Library in conjunction with the Duke Canadian Studies Center sponsored its fourth invitational conference on Canadian Law and Legal Literature at the Aqueduct Conference Center near Chapel Hill. The theme for 1994 was "Canada and the World." The keynote address on Canada's international trade policy and NAFTA was given by Professor Armand deMestral of the law faculty of McGill University. Other speakers included Stephen Clarke of the Library of Congress Law Library on US and Canadian free trade; Claire Germain of Cornell Law School on NAFTA; Benedict Kingsbury of the Duke Law faculty on trade and the environment; and Patricia Young of McGill on electronic sources of legal information in Canada.

Pictured are, from left, Duke Law Professor Richard Danner, co-organizer of the conference; Claire Germain, Edward Cornell law librarian and professor of law at the Cornell Law School (and former associate library director at Duke); Professor Armand deMestral of McGill Law School in Montreal; and Patricia Young, law librarian at McGill.

Professional News

'37 **Farley Hunter Sheldon** is the development and personnel director of the Rocky Mountain Institute in Snowmass, Colorado.

'39 **William F. Womble**, partner with Womble, Carlyle, Sandridge & Rice in Winston-Salem, has been named chair-elect of the Senior Lawyers Division of the North Carolina Bar Association.

'44 *Reunion plans are underway for the Class of '44. Law Alumni Weekend will be October 7 & 8, 1994. Details have been mailed. Please contact the Law Alumni Office at 919-613-7013 or 613-7017 if you have not received the information or if you have any questions.*

'49 *Reunion plans are underway for the Class of '49. Law Alumni Weekend will be October 7 & 8, 1994. Details have been mailed. Please contact the Law Alumni Office at 919-613-7013 or 613-7017 if you have not received the information or if you have any questions.*

Charles F. Blanchard, senior member of the Raleigh, North Carolina firm of Blanchard, Twiggs, Abrams & Strickland, has been elected president of the International Society of Barristers. The



Charles F. Blanchard '49

organization is limited to 600 trial lawyers, barristers, judges and law professors in the United States, Canada, New Zealand, England, Belgium, Luxembourg, Sweden and Puerto Rico.

Leila Sears reports that she is enjoying her retirement in North Pomfret, Vermont. She previously was assistant vice president of the American Kennel Club.

'50 **Nathan H. Wilson** has been honored by Florida Community College at Jacksonville, which is constructing the Nathan H. Wilson Center for the Arts. He was chair of the College's Board of Trustees from 1984 to 1989.

Hardin Receives Honorary Degree

Paul Hardin, III '54 was awarded an honorary degree by Duke University during the May 8, 1994 commencement exercises. Hardin, who is the chancellor of the University of North Carolina, received the doctor of humane letters award from Duke President Nannerl Keohane, who noted that, "Duke University is proud to honor you, for your work as a teacher, as a criminal-justice scholar, and as a university president and champion of higher education whose professional life has been characterized by your devotion to integrity and fair play."

President Keohane further commented that Hardin's "career in higher education has been an impressive demonstration of what can be accomplished through creative approaches to academic programs and unswerving dedication to high principle. . . . You have headed the state system's flagship institution with skill, diplomacy, humor and vision through a major fund-raising effort and the bicentennial celebration of the opening of our country's first state university."

Hardin received both his undergraduate and law degrees at Duke, serving as an editor of the *Duke Law Review* and singing in the Duke Chapel Choir. He taught at the Law School from 1958 to 1968 and served as a University trustee from 1968 to 1974. Before becoming chancellor at UNC in 1988, Hardin, a Charlotte, North Carolina native and a U.S. Army veteran, was president of Wofford College in Spartanburg, South Carolina from 1968 to 1972; of Southern Methodist University from 1972 to 1974; and of Drew University in Madison, New Jersey from 1975 to 1988.

Active both in local and national educational and professional organizations, Hardin is a past president of the National Association of Schools and Colleges of



Paul Hardin III '54

the United Methodist Church and a former chairman of the Legal Services Review Panel of the National Association of Independent Colleges and Universities. The first chairman of the Durham Human Relations Council, Hardin continues to serve as co-chairman of the Japan-U.S. Conference of University Presidents.

Montgomery Receives University Award of Merit

In April, during his last meeting as chair of the Law School's Board of Visitors, **Robert K. Montgomery '64** was presented a Duke University Award for Merit by President Nannerl O. Keohane. The Award for Merit is given at the President's discretion to persons serving the University in recognition of special and extraordinary contributions to the University community. Montgomery has been a member of the Board since 1983, and served as its chair since 1988.

In presenting the Award, President Keohane noted that "Bob is an exemplary model of the best of the Duke Law School. He is a fine professional person—having joined the law firm of Gibson, Dunn & Crutcher in Los Angeles when it was 70 lawyers and watching the firm grow to hundreds of lawyers throughout the world. He has also provided extraordinary leadership to his local community. Perhaps his greatest achievement in community service was his active role as senior vice president of the Los Angeles Olympic Organizing Committee for the 1984 Olympic Games."

Keohane also mentioned Montgomery's service to the Law School and the University, stressing that "while always maintaining his special loyalty to the Law School, Bob has also been a tireless advocate for bringing together all the various parts of Duke University into a cohesive and workable partnership. He has always advocated that the President should



Robert K. Montgomery '64 is congratulated by Duke President Nan Keohane (left) and Dean Pamela Gann.

be a "University" President, and that students should be brought up to be "University" graduates, and that alumni leaders should represent the "University" and not the special interests of their own narrow constituencies."

Members of the Board of Visitors were joined for the Award presentation by Law School faculty members, administrators, and by Montgomery's wife, Valerie, and their daughter, Loren, who is a member of the Law School Class of '96. Noting that Montgomery took over as chair of the Board of Visitors in 1988, the same year that Pamela Gann became Dean, Keohane said that Montgomery and Dean Gann had "created an effective faculty/alumni leadership team

in guiding the Law School through the past six years. They can stand together with great pride in the continued improvement of every aspect of the Law School during this time and for bringing to reality the magnificent building that is nearly completed."

In addition to his service to the Board of Visitors, Montgomery is also the current chair of the Duke University Development Council for Los Angeles, is a member of the Duke University Executive Leadership Board for Los Angeles, and is a member of the Law School Barristers. He has previously been an agent for the Law Class of '64, a member of the Southern California Arts & Sciences Executive Committee, and has served on several other University and Law

School committees and organizations. He has previously received the University's Charles A. Dukes Award for Outstanding Volunteer Service, and based on his gift to the Law School's Fund for Excellence, the registrar's office in the new addition will be named the Robert K. Montgomery Registrar's Suite.

Dean Gann said that "Bob Montgomery has been absolutely exemplary in his attention to the Board of Visitors and the Law School. It is hard for me to imagine being Dean without his being simultaneously the chair of the Board. Many members of the Board of Visitors told me that he was irreplaceable. I am counting on his continuing to be a good friend of Duke University."

'52 Grady B. Stott, senior partner with the firm of Stott, Hollowell, Palmer and Windham in Gastonia, North Carolina, has been inducted into the North Carolina Bar Association's General Practice Hall of Fame. The Hall of Fame recognizes "a lifetime of exemplary service and high ethical and professional standards as a

general practitioner of the law and for providing a role model for all lawyers in North Carolina."

'54 Reunion plans are underway for the Class of '54. Law Alumni Weekend will be October 7 & 8, 1994. Details have been mailed. Please contact the Law Alumni Office at 919-613-

7013 or 613-7017 if you have not received the information or if you have any questions.

S.G. (Cy) Clark has been appointed to a special National Labor Relations Board Advisory Panel, consisting of union lawyers and management lawyers that will provide the Board

with information on a variety of topics. Clark is senior general attorney for employee relations for U.S. Steel in Pittsburgh, Pennsylvania.

'57 Richard E. Glaze, a partner with Petree Stockton in Winston-Salem, is a member of the Executive Council of the Senior Lawyers Division of the North Carolina Bar Association.

'59 Reunion plans are underway for the Class of '59. Law Alumni Weekend will be October 7 & 8, 1994. Details have been mailed. Please contact the Law Alumni Office at 919-613-7013 or 613-7017 if you have not received the information or if you have any questions.

Julian W. Walker, Jr. retired in March after 26 years as the South Carolina trust executive for Wachovia Trust Services, in Columbia. He began his bank trust career in 1967 after six years of private practice in Norfolk, Virginia.

'61 Arthur B. Parkhurst is a senior mediator associated with Mediation, Inc. in Fort Lauderdale, Florida. He has conducted over 2,000 mediation conferences in state and federal cases.

'62 Charles O. Verrill was recently awarded the Charles Fahy Distinguished Adjunct Professor Award at Georgetown University Law Center, where since 1977 he has taught a course on international trade law and regulation. He continues as head of the international practice at Wiley, Rein & Fielding in Washington, D.C.

Smith to Chair Board of Visitors

Lanty L. Smith '67 of Greensboro, North Carolina, has been appointed by Duke President Nannerl O. Keohane to chair the Law School's Board of Visitors beginning July 1, 1994. Smith succeeds Robert K. Montgomery '64 who chaired the Board for the last six years.

Dean Pamela B. Gann '73 said that she is "delighted that Lanty Smith has agreed to serve in this capacity. William R. Patterson '50 provided significant leadership on the Board from 1977 to 1987, followed by Robert Montgomery's strong performance from 1988 to 1994. The Law School has experienced such attentive and significant assistance from the chair of the Board of Visitors in the past, that it was very important to find another alumnus who could follow these earlier examples. Lanty combines extensive professional experience both in private practice and in business, with significant volunteer leadership positions in Greensboro and in North Carolina. He also cares deeply about Duke University from which he has a Law School degree and his wife has both undergraduate and doctor of philosophy degrees, and in which one of his daughters is currently enrolled as a Trinity College student. I personally look forward to working closely with him in this capacity."

Smith is chairman of the Board of Directors and chief executive officer of Precision Fabrics Group, Inc., a leading manufacturer of high-technology, specification textile products. He previously was president and general counsel of Burlington Industries, Inc., and practiced law as a partner of Jones, Day, Reavis & Pogue in Cleveland, Ohio. Smith is also presently the chairman of the Board of Directors of The Greenwood Group, Inc., which operates the largest franchise business of Manpower Temporary Services.



Lanty L. Smith '67

A recent recipient of the Outstanding Community Service Award from the Greensboro Jaycees and the Americanism Award from the Anti-Defamation League, Smith is an avid public service volunteer and community leader. He is a member of the Board of Directors and of the Executive Committee of First Union Corporation; he is also a director of Masland Industries, Inc. and Southern Optical Company. He is a member of the Rotary Club of Greensboro, the Greensboro Development Corporation Executive Committee, the Board of the North Carolina Institute of Medicine, and of the North Carolina Institute of Public Leadership. He is vice chair of the Board of Trustees of Cone Hospital and of the Board of Visitors of North Carolina A&T State University. He is a member of the Board of Governors of The Center for Creative Leadership, a trustee of the North Carolina Textile Foundation and president of the Board of Directors of The Foundation of Greater Greensboro.

'63 Edward S. Robe, senior partner of the Robe & Robe law firm in Athens, Ohio, has been appointed to serve out an unexpired term on the bench of the Athens County Juvenile-Probate Court; the

unexpired term will be on the ballot in November. Robe has also been installed as president of the Ohio State Bar Foundation, an educational and charitable organization.

'64 Reunion plans are underway for the Class of '64. Law Alumni Weekend will be October 7 & 8, 1994. Details have been mailed. Please contact the Law Alumni Office at 919-613-7013 or 613-7017 if you have not received the information or if you have any questions.

Richard H. Rogers has organized the firm Rogers, James & Dulancy in Dayton, Ohio, which concentrates on business, construction and international law.

John D. Taylor retired as managing director of The Chase Manhattan Private Bank in April. He has been named a department executive for the Asian Development Bank, where he will have responsibility for the Bank's private sector activities. He will be located in Manila, The Philippines.

'65 **Jeffrey P. Hughes**, vice chairman, announces the formation of The Cypress Group, Inc., a merchant banking firm in New York City.

Fred A. Windover is vice president and general counsel of Allegro Microsystems, Inc., an international manufacturer of semiconductors in Worcester, Massachusetts.

'66 **James B. Maxwell**, a partner of the Durham firm of Maxwell, Freeman & Beason, has been elected to the Board of Governors of the North Carolina Bar Association.

Douglas P. Wheeler, the secretary of the Resources Agency of the State of California, has been appointed a charter member of the Yosemite Concession Services (YCS) Advisory Council. The Council will be a consultant to YCS to help maintain a proactive and environmentally sensitive park operation.

'67 **James A. Adams** has been named the Richard M. and Anita Calkins Distinguished Professor

Durham Joins Duke Trustees

Christine M. Durham '71 has been selected to fill an unexpired term on the Board of Trustees of Duke University beginning July 1, 1994. She is an associate justice of the Utah Supreme Court, which she joined in 1982, after serving on Utah's general jurisdiction trial court for three and one-half years. As a trial judge, she was the presiding judge in her district and served a term as president of the Utah District Judges' Association. Before coming to the bench in 1978, Durham practiced law in North Carolina and in Salt Lake City and was an adjunct professor at the J. Reuben Clark Law School at Brigham Young University. She previously taught a course on medical jurisprudence at the Duke University Medical Center and was a research associate at the Law School.

Dean Pamela Gann notes that "Christine Durham was an exceptional Law School student, and she has gone on to significant achievements in the profession. Her work on the Law School Board of Visitors proved that she can be an effective member of advisory and governing university bodies, so I know that she will be a significant leader for the Duke University Board of Trustees. She is also the first Law School graduate to join the Board of Trustees since L. Neil Williams, Jr. '61 became a member in 1980 (he is now a Trustee emeritus) and Lloyd C. Caudle '56 became a member in 1983 (he is serving his second term, which expires in 1995)."

Justice Durham has recently been appointed by Chief Justice Rehnquist to the United States Judicial Conference Advisory Committee on Civil



Christine M. Durham '71

Rules. She is a founding member and past president of the National Association of Women Judges. Justice Durham was a co-organizer of Women Lawyers of Utah in 1980 (and was that group's Woman Lawyer of the Year in 1986), and has served as president of the Women Judges' Fund for Justice. She is a member of the Council of the American Law Institute, a fellow of the American Bar Foundation, a former member of the Board of Directors of the American Judicature Society, and a life member of the Duke Law School Board of Visitors. She also teaches a course on state constitutional law at the University of Utah College of Law.

of Law at the Drake University Law School in Des Moines, Iowa. He teaches trial practice, evidence, criminal practice and procedure.

William H. Steinbrink has been named president of Laurel Industries, Inc. in Cleveland, Ohio, which refines antimony oxide, an additive used as a fire retardant in plastics. The company also has a plastics compounding division. Steinbrink has been on Laurel's board since the company was formed in 1983.

'68 **Roger H. Kissam**, general counsel and secretary of Welbilt Corporation in Stamford, Connecticut, was recently elected a vice president.

Stephen P. Pepe, a partner with O'Melveny & Myers in Los Angeles, California, is the co-author of *Designing an Effective Fair Hiring and Termination Compliance Program*, Vol. 9 of the Corporate Compliance Series published by Clark Boardman Callaghan and co-author of *Privacy in the Workplace* published by Merchants and Manufacturers Association. Pepe is

Blue Receives Honorary Degree

Daniel T. Blue, Jr. '73, speaker of the North Carolina House of Representatives, was awarded an honorary doctor of laws degree by the University of North Carolina at Chapel Hill during graduation ceremonies in May. Blue is a seven-term legislator from Wake County; he was elected speaker of the House in 1991 and was re-elected to the post in 1993. The first African-American speaker, Blue has guided a divided General Assembly through several crises. In 1991, he oversaw the resolution of a \$1.2 billion budget shortage that resulted in large spending cuts and tax hikes. The next year, he helped re-write workplace safety laws after a fire killed 25 workers at a Hamlet, North Carolina poultry plant.

Active in several regional and national legislative committees, Blue serves on the executive committee of the Southern Legislative Conference and the National Conference of State Legislators. He practices civil litigation with the Raleigh firm of Thigpen, Blue, Stephens and Fellers. He recently received the Outstanding Leadership Award from the North Carolina Academy of Trial Lawyers in recognition of his work in the 1994 special session on crime. He is the recipient of the Robert F. Kennedy-Jacob Javits Award for State Advocate of the Year in 1993. This award is given by the National Congress for Community Economic Development. He also received the Leadership Award from the National Association



UNC-CH News Services, Dan Sears

for Equal Opportunity in Higher Education in 1993 and was a recipient of the National 4-H Alumni Recognition award in 1991.

During the UNC ceremony, Blue's remarks made on the occasion of the Bicentennial of the Bill of Rights in 1991 were remembered and praised. Blue noted that Americans seem to be losing faith in con-

stitutional government. He called for a new revolution, "a revolution of thinking . . . that brings us together as communities, neighbors, and friends. That revolution should be based on . . . the need for all of us to participate in our government and to make sure it works the way we designed it."

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also co-author of *Defamation in the Workplace*, and co-editor of the *California Employment Law Letter*, both by M. Lee Smith Publishers.

'69 Reunion plans are underway for the Class of '69. Law Alumni Weekend will be October 7 & 8, 1994. Details have been mailed. Please contact the Law Alumni Office at 919-613-7013 or 613-7017 if you have not received the information or if you have any questions.

Charles L. Becton, a partner with Fuller, Becton, Billings & Slifkin in Raleigh, North Carolina, has been elected president of the North Carolina Academy of Trial Lawyers. He is a former North Carolina appellate judge.

John A. Canning, Jr., president of First Chicago Venture Capital in Chicago, Illinois, has been named to the Board of Trustees of Northwestern University.

Charles H. Gibbs, Jr. is now a partner with Sinkler & Boyd in Charleston, South Carolina, handling commercial litigation cases.

Kathleen M. Mills has been elected an assistant secretary of Bethlehem Steel Corporation in Bethlehem, Pennsylvania, where she is also assistant general counsel. She handles general litigation work with an emphasis on antitrust, employment, mining and civil rights matters.

'70 **John R. Dawson** will serve as president of the Milwaukee, Wisconsin Bar Association for the 1994-95 operating year. He is also chair of the Advisory Group of the Eastern District of Wisconsin (a pilot district) under the Civil Justice Reform Act of 1990, appointed by Chief Judge Evans of that federal district. Dawson is a partner at Foley & Lardner.

'71 **Laurent R. Hourcle** is the deputy director of the new George Washington University Environmental Law and Policy Program, in addition to his regular faculty responsibilities. He has authored *Military Secrecy and Environmental Law*, published in the Winter 1993 issue of the NYU ENVIRONMENTAL LAW JOURNAL.

Advocating for Children

"A world class community begins by caring about its children," says **Katie Holliday '80**, co-founder and executive director of the Children's Law Center in Charlotte, North Carolina. Holliday graduated from Wake Forest University in 1970 with a degree in psychology and a passion for helping young people at risk. The logical next step was a masters degree in counseling and a career as a high school teacher and guidance counselor. "But after seven years in public education, I realized I needed other skills to more effectively advocate for children," she says. That realization brought her to Duke Law School in 1977. At Duke, Holliday claims she was "never a typical law student," and credits Duke with allowing her the flexibility to shape her program around her public service interests. This included a focus on civil rights and extensive work with legal services in her native Charlotte.

Immediately out of law school, Holliday clerked for Charlotte federal district court judge James B. McMillian. "Working with the federal courts crystallized my interest in making sure there was access to the system for all—not just the privileged," explains Holliday. But instead of moving directly into public law, Holliday spent three years in private practice honing her advocacy skills. Unlike many new attorneys, Holliday did not wait until she had her regular case load under control to take pro-bono cases. "I took court-appointed cases in juvenile court right away, and soon I found my high juvenile court load was outweighing everything else."

After three years as an associate at James, McElroy and Diehl in Charlotte, in 1984 Holliday moved into full-time child advocacy work as an attorney for the Mecklenburg County Guardian ad Litem Program (GAL). This program uses trained volunteers working in tandem with lawyers to ensure that every child involved in an abuse or neglect case gets representation. As a GAL attorney advocate, Holliday encountered a service delivery system "so fragmented and inadequate that children simply weren't being served." While she had the daily satisfaction of being on the front lines helping to steer children



Katie Holliday '80

through confusing and often unresponsive court proceedings, she realized that helping at-risk children find more stable lives would require a broader, multi-faceted approach.

Thus, in 1987, Holliday and a like-minded colleague founded the Children's Law Center (CLC), an umbrella organization dedicated to assuring that legal and social service processes work for children. Guided by the proposition that children be treated as citizens in their own right, rather than parental property, the CLC assists thousands of children every year. Obtaining a heart transplant for a two-year-old, demonstrating that a 13-year-old can function successfully outside a psychiatric hospital, reinstating an honors student excluded from school for bringing a knife to work on an arts project, CLC and volunteer staff work on many fronts.

Holliday is quick to point out that the CLC serves more than children; it serves the entire community. "If all children in Charlotte-Mecklenburg County could grow up in environments that promote their well-being, this community would not be plagued

with a crowded jail, a clogged court system, an overburdened child welfare system, inadequate police protection and a school system that cannot direct all energies to the teaching-learning process."

As executive director, Holliday's responsibilities grow and change daily. Managing a staff—paid and volunteer—numbering upwards of 250 on a lean budget of \$660,000 requires incredible energy and ingenuity. Like all those at the helm of not-for-profits, Holliday logs many hours and miles raising funds. This year, she's also spent considerable time in Raleigh as coordinator of "Justice for Children," an advocacy group representing the interests of children caught in the juvenile justice system to North Carolina legislators. Concerned that children might suffer in the "get tough" climate of the Special Crime Session, Holliday and her colleagues pushed hard—and successfully—for programs designed to deter rather than merely punish juvenile offenders.

Holliday reflects positively on her Duke Law experience. In law school, she had relatively few classmates who shared her unwavering interest in public law. Yet, since graduation, she has increasingly come to rely on a rich network of Duke classmates in the private sector to support her work. In turn, she's lent her support to Duke's efforts to expand public interest law. This summer, the CLC has its first Duke summer intern, John Coburn '95, and this past January, Holliday was a panelist at the Frontiers of Legal Thought Conference, "Criminal Justice: Towards the 21st Century." "The conference was a magnificent undertaking. I've been impressed by what Duke's undertaking in the whole public interest arena."

Personally, Holliday believes her own experience as the parent of three daughters, nine-year-old twins and a 12-year-old, probably has been the greatest single influence on her career. "Having children really did take me in a different direction—it led me to feel just how crucial the parent-child relationship must be. It's made me try to always look at situations from a child's viewpoint."

Lucy Haagen

Randolph J. May has been appointed to serve as a public member of the Administrative Conference of the United States, which conducts studies and makes recommendations concerning the improvement of government

administration and justice. May is a partner in the Washington, D.C. office of Sutherland, Asbill & Brennan, where he specializes in communications law. He has recently authored an article on judicial review.

Bryan E. Sharratt has been appointed deputy assistant secretary of the Air Force for reserve affairs at The Pentagon. He will be responsible for overseeing and establishing policies for the Air National Guard, the Air Force Reserve

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and the Civil Air Patrol. He will also manage the counterdrug activities of the U.S. Air Force.

David L. Sigler, a director of The Gray Law Firm in Lake Charles, Louisiana, has been elected a fellow of the American College of Trusts & Estates Counsel.

'72 Jeffrey S. Portnoy has been elected as the Hawaii State Bar Association representative to the ABA House of Delegates and has been appointed chair of the Hawaii Federal District Court Advisory Committee. A partner in the Honolulu firm of Cades, Schutte, Fleming & Wright, he is the author of *MASS COMMUNICATIONS LAW IN HAWAII*, published by New Forums Press.

David A. Thomas is editor-in-chief and principal author of *THOMPSON ON REAL PROPERTY, THOMAS EDITION*, a 15-volume treatise on American real property law, published in June 1994 by The Michie Company. He wrote six of the 15 volumes, and assembled a team of 30 other property law professors from around the country to produce a completely new edition of the old treatise, which had been out of print since 1981. Thomas has been professor of law at Brigham Young University since 1974.

Laurence R. Tucker has been elected vice president of the Missouri Bar for the 1993-94 term. He is a partner at the Kansas City firm of Watson, Ess, Marshall & Enggas, litigating personal injury, contract disputes, and product and personal professional liability cases.

James W. Ummer has become a shareholder in the Pittsburgh, Pennsylvania firm of Babst, Calland, Clements and Zomnir.

'73 S. Ward Greene has been inducted into the American College of Bankruptcy. He practices with the firm of Greene & Markley,

which focuses on bankruptcy, collection, real estate and commercial law, in Portland, Oregon.

John J. Pomeroy has been elected vice president-secretary and general counsel of Allendale Insurance in Johnston, Rhode Island. Allendale Insurance specializes in loss control management and the insurance of industrial and institutional properties worldwide.

John D. Volk now practices with the firm of Fthenakis & Volk in Palo Alto, California.

'74 *Reunion plans are underway for the Class of '74. Law Alumni Weekend will be October 7 & 8, 1994. Details have been mailed. Please contact the Law Alumni Office at 919-613-7013 or 613-7017 if you have not received the information or if you have any questions.*

Alfred G. Adams, Jr., a partner with Sutherland, Asbill & Brennan in Atlanta, Georgia, has been named chairman of the firm's real estate department. He specializes in commercial real estate and creditors' rights, and is a former chairman of the Real Property Section of the Georgia Bar.

Howard B. Gelt has been re-elected chair of the Democratic Party of Colorado. He is a partner at Sherman & Howard in Denver, specializing in international business matters.

Jay J. Levin has been named a partner at Powell, Goldstein, Frazer & Murphy in Atlanta, Georgia.

Thomas E. McLain is a partner and head of the corporate department of the Los Angeles, California office of Perkins, Coie. He specializes in complex international business transactions, with a special emphasis on Asia. He is a member of the advisory board of *International Computer Lawyer* and the advisory committee for the U.S. Agency for International Development-funded Indonesia Law Reform Project.

Clair F. White has become a partner at the newly-formed law firm of Barlow and Hardtner in Shreveport, Louisiana.

'75 Stanley G. Hilton has authored *SENATOR FOR SALE: A BIOGRAPHY OF SENATOR BOB DOLE*, forthcoming from St. Martin's Press. Hilton is a former aide to Dole. He is now practicing law in San Francisco, California and is an adjunct lecturer teaching political science at Golden Gate University.

'76 Robert E. McCorry, Jr. has retired from the United States Naval Reserve with the rank of captain after 25 years of service. He is currently serving as president of the Board of Directors of the Pawtucket Day Nursery Association, the oldest (101 years) child day care center in the state of Rhode Island.

Celia A. Roady has joined the firm of Morgan, Lewis & Bockius as a tax partner, resident in its Washington, D.C. office. She focuses on federal and state income taxation primarily involving tax-exempt organizations.

'77 Ember Reichgott Junge practices with The General Counsel, Ltd., a firm that provides time-shared in-house counsel services to corporations in the Minneapolis/St. Paul, Minnesota area. She is also serving her 12th year in the Minnesota Senate, and is now the majority whip and chair of the Senate Judiciary Committee. She also serves on the Tax, Education, and Elections and Ethics Committees.



Ember Reichgott Junge '77

Richard W. Scott has been appointed executive vice-president and general counsel for the Western National Corporation in Houston, Texas.

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'78 Karen I. Jackson is now the assistant dean for career planning at Temple University School of Law in Philadelphia, Pennsylvania. She is also vice president for programming of the Board of Directors of the Philadelphia Bar Education Center, and has recently been appointed to the Board of Directors of the Duke Law Alumni Association.

Gregory S. Lewis is now president and CEO of U.S. Africa Airways, Inc. in Reston, Virginia.

Richard J. Webb has been named a partner at McCarter & English in Newark, New Jersey, where he specializes in health care law.

'79 *Reunion plans are underway for the Class of '79. Law Alumni Weekend will be October 7 & 8, 1994. Details have been mailed. Please contact the Law Alumni Office at 919-613-7013 or 613-7017 if you have not received the information or if you have any questions.*

Jeffrey C. Coyne is chairman and chief executive officer of Divi Resorts, currently headquartered in Miami, Florida and scheduled to relocate to Chapel Hill, North Carolina.

Kevin P. Gilboy, a fiduciary partner with Dechert, Price & Rhoads in Philadelphia, Pennsylvania, recently served as co-course planner, author and lecturer for the



Kevin P. Gilboy '79

Pennsylvania Bar Institute program titled, "Estate Planning for Second Marriages." Gilboy is a member of the firm's employee benefits practice group, where he concentrates in S corporations and Pennsylvania inheritance tax.

'80 Carol Boyles Anderson, a professor of law at Wake Forest University in Winston-Salem, North

Carolina, has been awarded the Association of Trial Lawyers of America (ATLA) 1994 Jacobson Award for being the best trial advocacy teacher in the country.

Russell S. Jones is a partner with Shughart, Thompson & Kilroy in Kansas City, Missouri. He is now the head of the firm's trademark, copyright and intellectual property litigation and enforcement group. He also does other types of commercial and business litigation.

Elizabeth Fairbank Kuniholm, who practices in Raleigh, has been elected legal affairs vice president of the North Carolina Academy of Trial Lawyers.

Jane Pickelmann Long has moved to Memphis, Tennessee and is an attorney with Apperson, Crump, Duzane and Maxwell, where she practices defense litigation, commercial and banking law.

John W. (Jack) Marin won the 1994 Michael Jordan-Ronald McDonald Children's Charities Celebrity Golf Classic in Woodridge, Illinois in June. A former NBA all-star, he is the first basketball player to win a national celebrity golf event. Marin is a partner in the firm of Maupin, Taylor, Ellis & Adams in Raleigh, North Carolina.

Andromeda Monroe is the senior associate corporate counsel with American Bankers Insurance Group in Miami, Florida, with primary responsibility for assumption reinsurance arrangements.

Robert E. Rigler announces the formation of The Rigler Law Firm in Alexandria, Virginia, concentrating on the representation of commercial banks, investment banks, insurance companies and other financial institutions.

[Editor's Note: This announcement was originally published in the Winter 1994 issue under an incorrect class year heading. Our apologies.]

'81 David S. Addington has been named president of the Alliance for American Leadership, a political action committee chaired by former

secretary of defense Dick Cheney in Washington, D.C.

Charles J. Ingber has relocated to Portland, Oregon, and is with the firm of Weiss, Jensen, Ellis & Botteri, specializing in taxation, estate planning and assisting closely-held businesses.

Blake A. Watson joined the faculty of the University of Dayton School of Law in 1992, where he teaches environmental law, natural resources law, administrative law, and property. He was voted professor of the year by the first-year class in 1992-93, and professor of the year by all three classes in 1993-94.

'82 W. David Edwards, an associate with Womble Carlyle Sandridge & Rice in Charlotte, North Carolina, has co-authored Chapter 28, *Partners & Partnerships* in CHAPTER 11 THEORY AND PRACTICE: A GUIDE TO REORGANIZATION (James F. Queenan, Jr., Philip J. Hendel & Ingrid M. Hillinger, eds., 1994). He practices in the areas of bankruptcy and commercial litigation.

Barbara S. Esbin has been promoted to assistant chief, Tariff Division, Common Carrier Bureau of the Federal Communications Commission in Washington, D.C.

'83 Mark L. Koczela has been named treasurer and executive vice president for finance and administration of ARI Network Services in Milwaukee, Wisconsin. ARI is the leading provider of electronic commerce services to several distribution channels in or close to the agribusiness industry. ARI's services allow customers to conduct business transactions electronically, computer-to-computer.

Michael A. Lampert, a tax attorney in West Palm Beach, Florida, is the chair of disaster services for the Palm Beach County chapter of the American Red Cross. He is also treasurer of the Jewish Family and Children's Service of Palm

Legal Affairs Correspondent at *The Times*

"I'm much more of a jailhouse lawyer than many of my colleagues in big practices who develop specialties," says **Stephen Labaton '86**. And the broad range of legal issues he covers appeals to Labaton, who has worked with *The New York Times* since his first year in law school.

The son of a lawyer and brother of Duke Law grad, Mark Labaton '88, Steve Labaton came to Duke in 1983 thinking about both journalism and law. Having written for both his college and high school newspapers, he "liked the idea of being paid to be curious." A conceptual interest in law led him to pursue a joint-degree program, earning an MA in philosophy along with his JD. But Labaton's interest in journalism did not steer him away from a hard core, corporate law curriculum. And he credits the rigor of Duke's case-study method with providing him invaluable investigative skills.

Between his first and second years, Labaton landed an internship with *The Times*. After law school, he continued there as a clerk in the business news section. Within four months, he was writing his own biweekly business and law column. In 1987, he was promoted to legal affairs correspondent, covering stories focusing on the prosecutions of Ivan Boesky and Michael Milken, as well as the major corporate takeovers and bankruptcies that have come to symbolize the excesses of the 1980s.

In 1990, Labaton was transferred to *The Times'* Washington Bureau, where the range of his assignments broadened considerably. In the past year he has written about Hilary Clinton's commodity trading, the Branch Dividians, the Denny's restaurant chain discrimination judgment, gays in the military, and recently the indictment of veteran Congressman Dan Rostenkowski.

Labaton reflects a growing trend among major news media to hire legal affairs correspondents with law degrees. He acknowledges that a journalist who is a quick study can pick up sufficient legal knowledge on the fly to handle most stories. As a trained lawyer, though, Labaton believes he has a definite edge when it comes to reading legislation and deci-



Stephen Labaton '86

phering complex financial transactions. These skills were invaluable when he spent a month this winter uncovering the connections between Hilary Clinton's commodity windfall, the failed Madison Guaranty Savings and Loan, White House aide Vincent Foster's suicide, and the Whitewater real estate venture.

Labaton finds his Duke Law experience provides other advantages as well. He frequently consults his former professors—both in Durham and in Washington. "In a sense, I feel I haven't left the Law School. I can pick up the phone on the pretext of working on a story and talk to professors like Jim Cox on corporate securities, Richard Schmalbeck on tax questions, and Walter Dellinger at the Justice Department." And Duke Law professors often send Labaton to other sources, helping him build an extensive and reliable information network. Labaton's law degree is also a decided investigative asset when it comes to dealing with other lawyers. "Lawyers who know you're a lawyer open up to you. They also know it's harder to mislead you."

In contrast to practicing lawyers, who typically do as much business as law, Labaton enjoys the luxury of being able to focus exclusively on legal issues. "Because I have to think and write about it daily, I'm probably more absorbed in law than many of my contemporaries." Though Labaton sees parallels between the work of a journalist and a lawyer, he describes his work as closer to the work of a judge. "You have to maintain clear objectives and standards of justice. There are people at *The Times* who are advocates—I'm not one of them."

While he claims not to be an advocate, Labaton's abiding commitment to the public interest is unmistakable. Covering the government's handling of the Branch Dividian crisis in Waco, Texas, he was able to establish the veracity of an agent who had been accused of lying, ultimately exposing serious incompetency in the leadership of the federal Bureau of Alcohol, Tobacco and Firearms. Another such opportunity came in his recent coverage of the discrimination suit against the Denny's restaurant chain. Charged with deliberate and systematic mistreatment of black customers, Denny's CEO insisted that instances of poor service were isolated and that the corporation could not be expected to control every employee of the company. Labaton quickly established the disparity between this disclaimer and Denny's reputation as a tightly controlled, hierarchical company. Talking with lawyers for the plaintiffs, Labaton uncovered micro-managing by a "hands-on executive who runs every detail of the 1,500 restaurant chain down to the temperature of the oil for the french fries." As an ironic footnote to the article, Labaton noted that the \$54 million judgment against Denny's was likely to have little effect on parent company Flagstar's bottom line—in part because payments to its black customers are tax deductible.

In summing up the appeal of journalism, Labaton admits to taking pleasure in "comforting the afflicted and afflicting the comfortable."

Lucy Haagen

Beach County and president of the Palm Beach Tax Institute.

J. Daniel McCarthy is currently assigned as a special assistant to the Secretary of the Navy for legal matters in Washington, D.C.

Susan Westeen Novatt has joined the new law firm of Nordman, Cormany, Hair & Compton in Oxnard, California, as a tax attorney.

'84 Reunion plans are underway for the Class of '84. Law Alumni Weekend will be October 7 & 8, 1994. Details have been mailed. Please contact the Law Alumni Office at 919-613-7013 or 613-7017 if you have not

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received the information or if you have any questions.

David M. Lockwood has been named a partner in the firm of Stradley, Ronon, Stevens & Young in Philadelphia, Pennsylvania.

Steven P. Natko has become a partner in the Trenton, New Jersey office of McManimon & Scotland.

Stevan J. Pardo has been named a shareholder in the firm of Greenberg Traurig Hoffman Lipoff Rosen & Quentel in Miami, Florida.

Edward Redlich is in Los Angeles, California, and is a writer for the legal drama "Sweet Justice," to be on NBC this fall.

'85 **Janet Ward Black** has become a partner in the Greensboro, North Carolina firm of Donaldson & Horsley. She has been named North Carolina liaison counsel for Federal Breast Implant Litigation by the Honorable Sam Painter (E.D. Alabama) and she has been appointed to the executive council of the litigation section of the North Carolina Bar Association. She is also a member of the board of directors of the Presbyterian Counseling Center in Greensboro.

David S. Liebschutz is the director of marketing and special projects for the New York Environmental Facilities Corporation (EFC). EFC, established in 1970, is one of New York's 39 public benefit corporations; it helps local governments, state agencies and private businesses comply with state and federal environmental laws and regulations in the most cost-effective way.

David C. Profilet announces the formation of his new firm, Profilet & Associates in Miami, Florida. The firm specializes in business bankruptcy cases, loan work out negotiations and commercial litigation.

C. Forbes Sargent, III has been named a partner at the firm of Mahoney, Hawkes & Goldings in Boston, Massachusetts.

'86 **Ellen Soffin Coffey** is now an assistant counsel with the Commonwealth of Pennsylvania State Employees' Retirement System in Harrisburg.

Christy M. Gudaitis has been named a partner in the Charlotte, North Carolina office of Smith Helms Mulliss & Moore.

Gordon F. Kingsley, Jr. is a vice president at J.P. Morgan Securities, Inc. in New York City, working as an investment banker with responsibility for Latin America private sector clients.

Alexandra D. Korry has been named a partner in the firm of Sullivan & Cromwell in New York City.

Kelly J. Koelker is on a one-year leave of absence from law practice to teach research, writing and advocacy at Georgia State University College of Law.

Bozena Sarnecka-Crouch is a senior legal specialist for Polish law at the Law Library of Congress. She has recently returned from a year in Warsaw working as a Polish liaison of the Central and Eastern European Law Initiative (CEELI). CEELI is a project of the American Bar Association designed to support the process of law reform in Eastern and Central Europe. A premise of the project is that lasting economic and political reform is dependent on a functioning system of law and on adherence to the rule of law.

Anne T. Wilkinson has relocated to San Diego County, California, where she is currently a full-time mother to her two daughters, ages four and almost one.

'87 **Axel Bolvig III** has become a partner in the Birmingham, Alabama office of Bradley, Arant, Rose & White, where he practices in the areas of construction law, public contracts law and general commercial litigation.

Scott A. Cammarn has become a partner in the Columbus, Ohio firm of Zeiger, Dremer & Carpenter, which specializes in banking law.

R. Wilson Freyermuth, Jr., a professor at the University of Missouri-Columbia School of Law, was selected by the students at the school as the outstanding teacher for 1994. He is also the recipient of the Annual Award of the American College of Commercial Finance Lawyers for the best legal article relative to commercial finance law. His article was *Of Hotel Revenues, Rents, and Formalism in the Bankruptcy Courts: Implications for Reforming Commercial Real Estate Finance Law*, 40 U.C.L.A. L. REV. 1461 (1993).

Thaddeus S. Gauza announces the opening of a solo practice in Chicago, Illinois, specializing in business and commercial litigation.

Timothy R. Johnson has joined the Southern Pacific Transportation Company in San Francisco, California, as manager of labor relations.

Stephanie A. Lucie has been elected vice president of the Houston Young Lawyers Association. She practices corporate securities law in the Houston office of Weil, Gotshal & Manges.

Robert L. Maddox, III has been appointed assistant general counsel of Providian Corporation in Louisville, Kentucky. He provides legal support for Providian's retail annuity business. Providian, formerly Capital Holding, is a leading provider of consumer financial services including insurance, consumer loan and annuity and pension products.

Wendy Beth Oliver is now practicing law part-time with the firm of Sussman, Shank, Wapnick, Caplan & Stiles in Portland, Oregon. She is also writing a book about her travels over the last year through Asia and Latin America.

Lindsey A. Rader has been elected a partner at Shapiro and Orlander, a Baltimore, Maryland-based firm. She

Alumnae Clerk at U.S. Supreme Court

This summer, **Landis Cox '92** and **Ann Hubbard '92** will complete one-year clerkships at the United States Supreme Court. Cox, from Greensboro, North Carolina, clerks for Chief Justice William Rehnquist, while Hubbard, who is from Durham, clerks for Justice Harry Blackmun.

The work has been fast-paced and diverse, encompassing both the breadth and depth of the law. In helping the justices sift through some 6,000 certiorari petitions, Cox and Hubbard have analyzed cutting-edge issues in virtually every area of the law. Each has written more than 200 lengthy memoranda assessing petitions' "cert-worthiness." For the approximately 110 cases the Court hears each year, they have crafted bench briefs discussing the issues and applicable law. And they have drafted majority opinions, concurrences, and dissents, which demand exhaustive research and scrupulous attention to detail.

Cox finds opinion-drafting to be simultaneously the most stressful and most enjoyable part of the job. "There's a creative element involved in putting all the pieces together," she says. "It also provides good interaction with the Chief. He takes our drafts and definitely revises them. And that's just a great learning process."

Hubbard agrees. "The beauty of clerking is having a mentor. Often when you go into practice, senior partners will be too busy to take time to edit your work or try to unravel your analysis."

Both clerks report that despite their justices' stature, they feel comfortable challenging and arguing with them. "We have good conversations about the cases," Cox says. "The Chief is a curious person. He likes to learn. He has never made me feel uncomfortable about voicing what I think is the right way to approach a problem." Hubbard concurs. "Justice Blackmun always makes the call, but he takes his clerks' advice seriously. He has invited me to disagree with him and allowed me to persist in disagreeing."

While many judges form lasting bonds with their clerks, few spend as much time with them as Justice Blackmun, who breakfasts with his clerks every morning for an hour. "Our conversations range from law to baseball to music," Hubbard says. "He is gen-



Ann Hubbard '92 (left) and Landis Cox '92 relax at the Supreme Court courtyard with Ann's new puppy, named Brennan.

uinely interested in our lives and our opinions." Hubbard feels privileged to work with Blackmun in his last term before retirement. A 1970 Nixon appointee, Blackmun has become the "conscience of the Court," she says. "He's the one who is likely to say, wait a minute. When you think about denying a federal prisoner's *in forma pauperis habeas* petition because it's three days late, think about the conditions in which this person wrote it. Think about the effect of our decisions on people's everyday lives." Every evening as Blackmun leaves the Court, he instructs his clerks with the same words: "Work hard. And be kind."

Rehnquist too has an established persona on the Court. He is well-known as the intellectually formidable leader of the Court's conservative wing. But his clerks also know him as a well-rounded, fun-loving boss. Rehnquist often joins his clerks for doubles tennis and engages them in his many other interests,

including music and geography. "He has a good sense of humor," Cox says. "He is really fun to work for!"

Both clerks admit to frustrations on the job. "The worst part of the job is the executions," Hubbard declares. "Any time there's an execution anywhere in the country, the Supreme Court will stand by to take last minute appeals. Because executions usually are in the dead of night, the justices often are at home, which leaves the clerks here at the Court to read the materials that are faxed in. Next to the fax machine is a cot to sleep on. When an appeal is faxed in, no matter what time of night, we get it, read it, then call the justice. Sometimes the defendant is actually innocent, but by the time an appeal reaches us, there is seldom anything this Court can do."

Cox's concern is more mundane but ever-present. Despite 14-hour days, including weekends, she confesses, "I always wish I had more time to feel comfortable with my understanding of each issue and what the right answer is. There's so much to do that I have to be satisfied with a lower level of certainty than I like." Cox, who previously clerked for Judge Carlton Tilley of the Middle District of North Carolina, has one more clerkship left. This fall she will serve on the Iran-United States Claims Tribunal in the Hague, the Netherlands. The Tribunal was established to settle claims arising out of the United States's economic sanctions against Iran in the 1970s.

Hubbard, who previously clerked for Judge Patricia Wald of the U.S. Court of Appeals for the D.C. Circuit, will join the Chapel Hill office of the Charlotte, North Carolina firm Ferguson, Stein, Wallas, Adkins, Gresham & Sumter. She sums up her Supreme Court experience: "The opportunity to work with Justice Blackmun and the other clerks—in our chambers and on the Court—has been unparalleled."

Editor's Note: As the Magazine was going to press, we learned that Jeffrey Carlton Dobbins, a 1994 graduate, will clerk for Justice John Paul Stevens in the 1995 term.

Amy Gillespie '93

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concentrates in public finance and municipal law.

Kenneth D. Sibley, a partner with Bell, Seltzer, Park & Gibson in Raleigh, North Carolina, has edited *THE LAW AND STRATEGY OF BIOTECHNOLOGY PATENTS* (Butterworth-Heinemann, 1994).

'88 **Willie O. Dixon IV** has joined the firm of Burford, Pugh, Lewis and Dixon in Raleigh, North Carolina, where he practices in the area of business and commercial law.

David M. Feitel is a staff counsel for the U.S. Senate Select Committee on Ethics in Washington, D.C.

Loren Monroe Feitel is an associate with the firm of Patton, Boggs & Blow in Baltimore, Maryland.

Charles T. Francis announces the formation of the firm of Wood & Francis in Raleigh, North Carolina, concentrating in the areas of civil litigation, municipal and land use law, felony criminal defense, business representation, appeals, insurance law, commercial litigation, and employment and labor law. He is also a member of the Raleigh City Council.

George R. (Randy) James is president of James International Group, Inc. in Tampa, Florida, which provides consulting services to United States businesses that wish to enter the Eastern European, and particularly the Czech, markets.

Beate Jostmeier has spent the last two years in Brussels, Belgium and Warsaw, Poland developing the Central European practice group for the firm of LeBoeuf, Lamb, Greene & MacRae, where she is a senior associate in the international practice department of the New York City office.

'89 *Reunion plans are underway for the Class of '89. Law Alumni Weekend will be October 7 & 8, 1994. Details have been mailed. Please contact*

the Law Alumni Office at 919-613-7013 or 613-7017 if you have not received the information or if you have any questions.

Carlotta Martin Brown is a litigation partner at the firm of Honigman, Miller, Schwartz and Cohn in West Palm Beach, Florida.

Robert S. Michaels is now a staff attorney at the Environmental Law & Policy Center of the Midwest in Chicago, Illinois, a regional public interest organization that provides legal-technical support to grassroots environmental groups in the midwest. He concentrates on clean air and transportation issues.

Susan Prosnitz has been named chief of litigation for the Boston, Massachusetts Police Department.

Wendy D. Sartory has become a real estate and finance associate in the firm of Gunster, Yoakley & Stewart in West Palm Beach, Florida.

'90 **Gregory A. Balke** is a legal protection officer with the United Nations High Commissioner for Refugees in Dushanke, Tajikistan.

John S. DeGroot is now an assistant vice president and counsel for First USA, Inc. in Dallas, Texas.

Xiaoming Li is one of three attorneys who have opened the Hong Kong office of the firm Debevoise & Plimpton. The office will concentrate initially on project finance and related securities transactions and joint ventures and other forms of direct investment. Li concentrates in joint venture and financing transactions.

Michael J. Watton announces the opening of his business, LawyerTemps, Inc. in Milwaukee, Wisconsin. The business places lawyers in temporary, part-time legal positions in industry, law firms and government.

Cynthia L. Weisman is with The Branch Law Firm in Albuquerque, New Mexico, where she works exclusively on

breast implant multi-district litigation.

'91 **Juan F. (Pancho) Aleman** is now in Panama City, Panama working for the investment arm of Grupo del Istmo, a Panamanian holding company.

Chinyere Okoronkwo has joined the bankruptcy and commercial law group of the Seattle, Washington office of Stoel Rives Boley Jones & Grey. She focuses her practice on creditors' rights, workouts and bankruptcy law.

Garrett Epps, an assistant professor of law at the University of Oregon, has authored *On Constitutional Seances and Color-Blind Ghosts*, 72 N.C. L. REV. 401 (1994).

Jane Elizabeth Davis Smith is now practicing in the Frankfurt, Germany office of Jones, Day, Reavis & Pogue, working on international arbitration matters.

Shabbir S. Wakhariya is a litigation and corporate associate with Kelley Drye & Warren in New York City.

Xianping Wang has been elected a partner in the Washington D.C.-based firm of Galland, Kharasch, Morse & Garfinkle. He heads the firm's office in Beijing, People's Republic of China.

'92 **Sean Andrussier** is now clerking for the Honorable M. Blane Michael, U.S. Court of Appeals for the Fourth Circuit.

Gail H. Forsythe has joined the Vancouver, British Columbia firm of Singleton Urquhart MacDonald, where she specializes in commercial and construction mediation, partnering workshops, corporate dispute resolution system design and conflict management.

Francis M. Gregory, III has joined the Washington, D.C. firm of Pantaleo & Lipkin, specializing in labor, employment and civil rights law.

Douglas H. Hsiao, an associate with Jenner & Block in Washington, D.C.,

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has co-authored *And Where You Go I'll Follow: The Constitutionality of Anti-stalking Laws and Proposed Model Legislation*, 31 HARV. J. ON LEGIS. 1 (1994).

Douglas H. Jackson is practicing corporate and securities law with Keck, Mahin & Cate in Chicago, Illinois.

Michael S. Sherman is an associate at Pelino & Lentz in Philadelphia, Pennsylvania, concentrating in health care law.

Edward H. Trent has completed his two-year clerkship with the Honorable John H. Moore, II, chief judge, U.S. District Court, Middle District of Florida in

Jacksonville. He has accepted a position as an assistant state attorney for the State of Florida.

Paul S. Veidenheimer has joined the law firm of Bernstein, Shur, Sawyer and Nelson in Portland, Maine, where he concentrates in products liability and patent matters in the firm's litigation department.



Paul S. Veidenheimer '92

'93 **Jeffrey A. Benson** is now an associate in the Raleigh, North Carolina office of Petree, Stockton, where he concentrates in commercial real estate.



Jeffrey Alan Benson '93

Mark F. Dever has become an associate concentrating in communications law with Drinker, Biddle & Reath in Washington, D.C.

Catherine F.L. Stanton has joined the Chicago, Illinois law firm of Keck, Mahin & Cate.

Personal Notes

'62 **Charles O. Verrill** was recently married to Dena Sollins. They reside in Washington, D.C.

'77 **Jay R. Hone** and Heather Wilson announce the birth of a second child and son, Joshua Paul, on October 12, 1993.

Ember Reichgott was married to Michael Junge on October 23, 1993. They reside in Minneapolis, Minnesota.

'78 **Jaime E. Aleman** and his wife, Pilar, announce the birth of a third child, Juan Manuel, on June 22, 1994. He joins a brother and sister.

Linda A. Malone and **Rodney A. Smolla** announce the birth of their second daughter, Corey Colleen Malone Smolla, on April 5, 1994.

'79 **Denise L. Majette** was married to Rogers J. Mitchell, Jr. on August 4, 1993. They reside in Stone Mountain, Georgia, where Denise is a judge on the State Court of DeKalb County.

'80 **Stephen Q. Giblin** and his wife, Debbie, announce the birth of a son, Kevin Matthew, born on March 24, 1994. Kevin joins his sisters, Meghan and Lauren, and brother Patrick.

'81 **Nancy Holland Kerr** and her husband, John, announce the birth of a daughter, Julia DeEtte Kerr, on January 3, 1994. Julia joins her brother, Alexander, age four.

'84 **Diane M. Barber** and her husband Robert Mobley, announce the birth of their first child, a daughter, on February 17, 1993.

Briget M. Polichene and her husband, Chuck Nunzio, announce the birth of a daughter, Sarah Elizabeth (Sallie), on April 8, 1994.

'85 **Brenda Hofman Feis** and her husband, Lance, announce the birth of their first child, a son

ALUMNI ACTIVITIES

named Benjamin Harry, on November 24, 1993.

Thomas J. Gorman and his wife, Nanette, announce the birth of their first child, a son named Patrick Gerard, on July 8, 1993.

Grant B. Osborne and his wife, Anna, announce the birth of their first child, a daughter named Kathleen Stowe, on October 13, 1993.

'86 **Ellen Soffin Coffey** and her husband, Rick, announce the birth of a daughter, Cecelia Marie Coffey, on July 30, 1993.

Pamela Gronauer Hill and her husband, Al Hill, announce the birth of a daughter, Elizabeth Lea, on December 8, 1993.

Gordon F. Kingsley, Jr. and his wife, Barbara, are the parents of a son, Wilder, age two.

Alexandra D. Korry and **Robin Panovka**, both Class of '86, announce the birth of their first child, Rebecca Michelle Panovka, in November 1993.

'87 **Joel B. Bell** was married to Susan Taylor on December 4, 1993. They reside in Baltimore, Maryland, where Joel is director of international team sports for Advantage International.

Jennifer Carson and her husband, Ernesto Luciano-Pérez announce the birth of their third child, a son named Gabriel Ernesto Luciano-Carson on September 25, 1993. He joins his twin sisters, Celeste Rene and Marina Janelle, who are three.

Rachel Contorer Perlman and her husband, Neil, announce the birth of twin daughters, Laura Elizabeth and Caroline Anne, on January 20, 1994.

'88 **Jeffrey P. Bloch** was married to Sharon Beth Arnold on November 7, 1993 in Washington, D.C., where Jeff is a senior attorney with the Federal Deposit Insurance Corporation.

Jonathan M. Crotty and his wife, **Lisa Maloney Crotty**, Class of '89, announce the birth of twin sons, Matthew Ryan and William Garrett, on January 15, 1994.

Kodwo Pere Ghartey-Tagoe and his wife announce the birth of a second child, a daughter named Essie Aseda, on April 17, 1994.

David M. Feitel and his wife, **Lorin Monroe Feitel**, Class of '89, announce the birth of their first child, a daughter named Alexandra Lee Feitel, on January 29, 1994.

Martha Schauer Klinker and her husband, Mike, announce the birth of a second daughter, Meredith Stone Klinker, on October 21, 1993.

'89 **Lisa Maloney Crotty** and her husband, **Jonathan M. Crotty**, Class of '88, announce the birth of twin sons, Matthew Ryan and William Garrett, on January 15, 1994.

Patricia Romano Schoenberg and **Claude I. Schoenberg**, both Class of '89, announce the birth of their second child, a son named Noah Isac, on May 13, 1994. He joins his sister Elizabeth.

'90 **Jacqueline W. Jarvis** was married to Sean Michael Jones on May 30, 1993. They now reside in Charlotte, North Carolina, where Jacqueline is an associate in the corporate and securities group of Moore & Van Allen.

Audrey M. LeVine was married to Geoffrey Manicone on May 22, 1993. Audrey is a senior court attorney to the Honorable Charles LaTorella, Civil Court in Queens, New York.

Sally J. McDonald was married to Rich Levin on October 16, 1993. They reside in Chicago, Illinois, where Sally is an associate with Rudnick & Wolfe, practicing labor and employment law.

Michael J. Watton and **Debra Marcus Watton**, both Class of '90, announce the birth of their first child, a daughter named Melissa Lauren, on November 24, 1993.

'94 **Richard J. Oelhafen, Jr.** was married to Alvina M. Ma on May 15, 1994 in Nashville, Tennessee. They reside in Atlanta, Georgia, where Richard is an associate with Alston & Bird.

Obituaries

Class of 1925

Charles Ware Bundy, 97, of Charlotte, North Carolina, died on January 10, 1994. He had practiced law in Charlotte since 1925, retiring a few years ago. He was the oldest member of the Mecklenburg County Bar Association and served on the Charlotte Parks and Recreation Commission. He had been a page in the U.S. House of Representatives and was a member of the Mecklenburg County Democratic executive committee. A World War I Army veteran, Bundy was a member of the American Legion, the Phalanx Masonic Lodge and Oasis Temple of the Shrine.

Bundy is survived by his wife, Katharine; a sister, Mrs. Victor Will; and a stepson, Robert Smathers.

Class of 1932

J. Berkley Wilson, 84, of Indianola, Iowa, died on August 26, 1993. He was a senior partner with the Indianola law firm of Wilson, Fowler & Fusco, and was a member of the Indianola Men's Garden Club, the Iowa State Bar Association, the Warren County Bar Association, the Masonic Lodge and the IOOF Lodge. He was a former member of the Iowa Bar Association board of governors.

Wilson is survived by his wife, Ena; a son, Richard Witcher of Des Moines; and two grandchildren.

Class of 1933

Norman Spark Herring, 85, of Green Valley, Arizona, died on February 14, 1994. He practiced law in Arizona and California, and before the U.S. Supreme Court. Herring is survived by a daughter; two sons; seven grandchildren; and two great-grandsons.

Class of 1936

Horace L. Bomar, Jr., 81, of Spartanburg, South Carolina, died April 25, 1994. He was a senior partner in the law firm of Holcombe, Bomar, Cothran and Gunn, which he established in 1946. He was an assistant United States attorney from 1940 to 1942 and served in the U.S. Navy in World War II from 1942 to 1946.

Bomar was past chairman of the Kennedy Free Library, now Spartanburg County Public Library. He was a member and past president of the Spartanburg County Bar Association and of the South Carolina Bar Association. He was a member and past president of the Spartanburg Kiwanis Club and the Spartanburg Chamber of Commerce, and a former board member and president of the Piedmont Club. He was a current board member of Spartan Radio Casting and Tietex Corporation.

He is survived by his wife, Martha Grier Bomar; two sons, H. Leland Bomar, III and J. Grier Bomar of Spartanburg; a daughter, Betty B. Littlejohn of Greenville, South Carolina; a brother, John Earle Bomar of Spartanburg; two sisters, Lou B. Thomason and Elenor B. Hunt of Spartanburg; 11 grandchildren; and two step-grandchildren.

Francis E. Walker, 84, of Durham, died on February 20, 1994. From 1942 to 1964, he was assistant secretary and legal counsel for Wright Machinery Company in Durham. From 1964 until his retirement in 1975, he was employed by Blue Cross and Blue Shield of North Carolina.

Walker was a member of the Durham City Schools Board of Education from 1965 to 1969, and was a member of the Durham Lions Club, serving as its president in 1946 and as district

governor in 1947. In 1960, Walker was selected Durham's Father of the Year.

Walker is survived by his wife, Annie Carpenter Walker; two sons, Francis E. Walker, Jr. of Durham and Thomas Walker of Sarasota, Florida; and five grandchildren.

Class of 1937

Carl H. Nissen, 81, of Meriden, Connecticut, died April 7, 1994. He was an World War II Army veteran, and worked for the State of Connecticut as a division chief in the Department of Transportation until his retirement in 1985.

Nissen is survived by his wife, Catherine Graycer Nissen; two daughters, Nancy Fryer of Branford, Connecticut and Judith Rooney of Wallingford, Connecticut; and six grandchildren.

Richard Milhous Nixon, 81, the 37th President of the United States, died from a massive stroke on April 22, 1994 in a New York City hospital. Following his graduation from the Law School in 1937, Nixon returned to his hometown of Whittier, California, where he practiced law for four years. At the outset of World War II, he worked at the Office of Price Administration for several months, then served as a noncombat Navy officer in the South Pacific from 1942 to 1945. Upon his return from service, he won election to the House of Representatives, where he served until 1950. Nixon was then elected to the Senate.

From 1953 to 1960, Nixon served as vice president under Dwight D. Eisenhower. In that position, he assumed many of Eisenhower's obligations as leader of the Republican Party and represented the Administration in many overseas trips. In 1960, he ran

for president, narrowly losing the election to John F. Kennedy. In 1962, he lost his bid for the California governorship. He remained active in politics throughout the mid-1960s, while also practicing law in Los Angeles and New York City.

In 1968, Nixon captured the Republican presidential nomination and narrowly defeated the Democratic nominee, Hubert H. Humphrey and a third party candidate, George C. Wallace. In 1972, he defeated Democrat George S. McGovern, to win his second term. He resigned the presidency on August 9, 1974, driven from office by the Watergate scandal and its ensuing cover-up.

In the two decades following his resignation, Nixon wrote many books and traveled extensively. Nixon's wife, Pat, died in 1993. He is survived by his two daughters, Patricia Nixon Cox and Julie Nixon Eisenhower, four grandchildren, and a brother.

In Memoriam Richard M. Nixon

The following statement, written by Dean Pamela B. Gann, was mailed to the Nixon Library for President Nixon's funeral services and to remain in the Library's archives. Having been asked by approximately 100 of our students to honor President Nixon at their graduation



Class of '37 Reunion Dinner at the White House

On May 9, 1972, President Richard M. Nixon hosted a black tie dinner in the White House for the members of his 1937 Law School class and their spouses. Present to celebrate their 35th reunion were, left to right, *top row*: Hale McCown, William E. Washburn, Carl H. Nissen, Davis Williams; *fourth row*: Arthur A. Brooks, Jr., Harland F. Leathers, Therman J. Troxler; *third row*: William R. Perdue, Jr., Thomas B. Stoel, Lyman Brownfield, James M. Haley, J. Mack Holland, Jr., William J. Baird; *second row*: Fred Albrink, William R. Lybrook, Charles S. Rhyne, David Henry Henderson, John David McConnell, Basil Lee Whitener; *front row*: Claiborne B. Gregory, Caroline Phillips Stoel, President Nixon, Helen Lanier McCown, Richard W. Kiefer, John Richard Fay, Emma Lee Smith Crumpaker, Homer H. Hilton, Jr., and Sigrid Pedersen Foley.

ceremony, we included this printed version of the statement in the May 8, 1994 graduation program. Though we do not normally recognize the deaths of faculty, alumni or friends of the Law School at graduation, an exception was made in this case because of the students' request and because President Nixon's death had occurred so close in time to the graduation weekend. We chose this permanent method to remember him at the ceremony because the statement provides a useful summary of President Nixon's associations with the Law School and his particular interests in foreign affairs and China,

including the special efforts of the Duke Law School in the last ten years to educate Chinese students about law and legal institutions.

In 1934, Richard M. Nixon responded to a notice on the bulletin board at Whittier College, announcing twenty-five \$250 tuition scholarships to Duke University School of Law. Nixon joined many other needy Phi Beta Kappa college graduates who began their legal education together at Duke in the 1930s at a Law School reorganized under the leadership of President William Preston Few and Dean Justin Miller, who had arrived from the University of Southern California. They were taught by a young and

brilliant faculty, attracted by generous starting salaries made possible by gifts in the 1920s from James B. Duke.

President Nixon worked while a student in the Law School library to supplement his tuition scholarship. He had a very distinguished academic career as a student, graduating third in his class and being honored with membership in the Order of the Coif. He was also invited to work with Professor David Cavers on his new interdisciplinary law journal called *Law and Contemporary Problems*, for which he wrote and published an article. He was

OBITUARIES

elected president of the Duke Bar Association, foreshadowing his interest in elective office. His family joined him in 1937 for his graduation, after which he returned to Whittier and became the first graduate of the Duke School of Law to become a member of the California bar.

President Nixon has remained a loyal alumnus of the Law School, where his 1937 classmates established a student scholarship endowment fund in his name. Through gifts from students, faculty and alumni, his portrait was presented to the Law School in 1969. President Nixon graciously hosted the 35th reunion of his class in the White House in 1972. He has been interested in the Law School's recent efforts to educate Chinese students in the law and legal institutions in a larger effort to create a rule of law in the People's Republic of China. In recognition of President Nixon's impressive achievements in foreign affairs, several of these Chinese students have been awarded the Richard M. Nixon Scholarship, along with American students who have shown a special interest in international law and organizations.

President Nixon had a distinguished and innovative record in international affairs during his presidency. His 1972 visit to China was probably his greatest foreign policy triumph, creating the opportunity for the United States later to establish formal diplomatic relations with China for the first time since the Communists controlled China. He was deeply respected by the Chinese leadership for his seminal act of diplomacy. His October 1989 visit to China, following the Tiananmen Square crackdown on demonstrators, was also probably his greatest act of statesmanship as a former president.



Duke University Archives

Nixon Portrait Commissioned for Law School

Renowned artist Joseph Wallace King is shown with President and Mrs. Nixon at the White House in 1969 with his portrait of the President. The portrait was commissioned by the Law School's Alumni Association and was presented to the School during the commencement ceremony in May 1969. The portrait was briefly removed by pranksters in 1974, but it was recovered undamaged and is now stored in a vault for safekeeping until such time as a decision can be made as to where and how the portrait may be appropriately displayed and protected.

He alone was able to communicate to the Chinese leaders the outrage and disappointment in the United States and elsewhere about these events, warning the Chinese leaders not to sink into "a backwater of oppression and stagnation." He is also closely associated with modern international arms control treaties. He signed the SALT treaty in 1972, and in his recent writings, he has stressed the importance of recognizing the limits of the use of force. He has always been concerned with the issues and problems in the separation of powers between the Executive Branch and the Congress in the conduct of foreign affairs. Since leaving the office of president, he has

written several books, much of the contents of which deal with the views of a senior statesman about foreign affairs. President Nixon will be considered by many to be the most interesting president in this century in the conduct of foreign affairs, both as president and as a subsequent senior statesman.

President Nixon is the only graduate of Duke University to hold the offices of vice-president and president of the United States. The Duke University School of Law salutes its graduate, President Richard M. Nixon, for his endless quest to address questions of public life and about humankind.

*Dean Pamela B. Gann
Duke University School of Law*

Class of 1939

Rufus Heflin Powell, III died April 7, 1994 in Durham. His first career was as an agent for the FBI. He later returned to Duke University, where he was an assistant dean of the Law School for one year, and secretary of the University for 16 years.

Powell is survived by his wife, Mattie Bell Thomas Powell; two daughters, Martha Powell Wilkins of Raleigh, North Carolina and Margo Powell of Atlanta, Georgia; two brothers, Joe Reade Powell of Charlotte, North Carolina and Lt. Col. Thomas Clay Powell (Ret.) of Lady Lake, Florida; a sister, Anne Powell Leathers of Durham; and two grandchildren.

Class of 1947

Arthur B. Craig of East Lansing, Michigan, died on September 3, 1993. He retired as a bill drafter and head of research for the State of Michigan Legislative Service Bureau. He is survived by his wife, Isabel; a son; his mother; three sisters; and a grandson.

Class of 1948

George L. Breithaupt, 73, of Mount Vernon, Ohio, died on June 15, 1994. For many years, he was a practicing attorney in Knox County, Ohio, and had been a director of the Peoples Bank in Gambier, Ohio. He was a former chairman of the Knox County Democratic Party, and was an Army veteran of World War II.

Breithaupt is survived by four sons, George Breighaupt, Jr. of New York, New York, John Breithaupt of Wakefield, Massachusetts, James Breithaupt of Phoenix, Arizona, and David Breithaupt of Gambier; a sister, Virginia Helbling of Dresden, Ohio; and two grandchildren.

James Harrison Greene, 71, of Syracuse, New York, died in February 1994. He retired in 1982 as assistant general counsel after 31 years with the Carrier Corporation. He was a lieutenant in the Navy during World War II, serving in the Pacific.

Greene is survived by his wife, Jean Jeffrey Greene; a son, James H. Greene, Jr. of Hillsborough, California; and three grandchildren.

Hal Akard Masengill, of Bristol, Tennessee, died on August 23, 1993. A World War II Army veteran, he practiced law for over forty years in his native Tennessee. He was a member of the Sullivan County, Tennessee and American bar associations.

Masengill is survived by his wife, Carrie Jean Masengill; five daughters, Ann Habenicht of Seattle, Washington, Ellen Keys of Lilburn, Georgia, Marsha Benthin of Kalamazoo, Michigan, Elizabeth Stark of Aspen, Colorado, and Logan Nance of Fort Collins, Colorado; a sister, Margaret DeVault of Bristol; 12 grandchildren; two nephews; and one niece.

Class of 1973

William E. Walter, 46, of Wynstone, North Barrington, Illinois, died November 30, 1993 in East Stroudsburg, Illinois. He was a corporate attorney for Borg-Warner Corporation in Chicago.

Walter is survived by a son, Geoffrey William of Garden City, Illinois; his mother, Madelyn McConnell of East Stroudsburg; a step-sister, Coleen McConnell and a step-brother, John McConnell, both of Stroudsburg.

Friends and Faculty

Ruth W. Latty, 86, the widow of former dean of the Law School, Elvin R. (Jack) Latty, died in Durham on June 15, 1994 following a long illness.

Mrs. Latty was a native of Ann Arbor, Michigan, but was a longtime resident of Durham, moving here with Professor Latty in 1937. She received her undergraduate degree from the University of Michigan and a master's degree from the University of North Carolina at Chapel Hill.

She served as librarian for the Durham Public Library for many years. She was an artist known for her paintings and was a frequent exhibitor throughout North Carolina. She was a member of the Folio Club of Durham, Durham Arts Guild, and the Three Arts Society.

Mrs. Latty is survived by a daughter, Joan Latty Freeman of Pacific Palisades, California; a sister, Mary Elizabeth Gall of Pacific Palisades; a brother, Phillip Wagner of Baltimore; and two grandchildren.

A. Kenneth Pye, 62, former professor and dean of the Law School, died on July 11, 1994 after a short battle with inoperable cancer. His failing health led Pye in late June to resign as president of Southern Methodist University, a position he had held for almost seven years.

Pye came to Duke in 1967 as dean of the Law School; he also served two stints as chancellor of Duke University, from 1970-71 and 1976-82. He had also been university counsel and director of Duke's International Studies Program. He was a former chair of Duke's Athletic Council and had served as the NCAA representative from Duke.

OBITUARIES



Ruth and Jack Latty are shown at the celebration of the opening of the Law School's Rule of Law Center in April 1966.

Ruth Latty Remembered

The passing of Ruth Latty marks a close to a remarkable time in the life of the Duke Law School. She and Jack were married in 1926. They came here in 1937. Jack was the dean who, in the 1950s, moved the Law School more dynamically than anyone had since its new beginning with the construction of Duke University. But Ruth was the spirit that moved Jack, and hers was also the spirit of a great person wholly in her own right as well.

Ruth was a genuinely gifted artist (her paintings, as others have noted, are exhibited even now and are still among my favorites). She was also well educated, smart, lively, and good looking as I'm pretty sure she knew. Uninhibitedly outspoken, articulate, always engaged, Ruth was fully a partner in Jack's ambitions for the Law School and in the mutually active professional lives they shared. She understood the University, she spoke

forcefully to what was weak as well as what was excellent about this institution, what it needed, and how to go about securing it getting done. She possessed a special wit, moreover, a quickness that made one want to check one's own impressions with her, just to see whether, or how, one might have gone amiss. She passionately loved Jack, and Jack, I think, fully knew how lucky he was in Ruth.

There will be other fine moments in the life of this University and this Law School. And there will be other people memorable to each of us as well. But I do not think they can be better than the times when Ruth Latty was among us, or more memorable people than she. Here, at the "house that Jack built," Ruth's own presence will be greatly missed.

William W. Van Alstyne

Pye left Durham in August 1987 to become the ninth president of Southern Methodist University, taking over a university that just a few months earlier became the first ever to receive the NCAA "death penalty" for chronic violations in its football program,

including payments to players from boosters. Shortly before Pye arrived, SMU was banned from fielding a team for two years. Pye has been credited with leading the school back from the penalty period. "He quickly restored the integrity and credibility of SMU

athletics by instituting tough reforms, including closer supervision of athletics and a system of checks and balances to guard against future problems," SMU has said in a statement.

A straight-talking administrator, Pye led Duke through many tough decisions, including the retrenchment and elimination of several programs and academic units at the University. He was an advocate of the American university as a strong center of undergraduate learning and as a source of professional training in law, medicine, theology and business.

"Ken Pye was one of the most well-known persons in legal education," notes Dean Pamela Gann. "He served as president of the Association of American Law Schools and was a frequent speaker and writer on legal education. While president of SMU, he was the keynote speaker at a conference of university presidents and deans on legal education last year. I have received inquiries about his health from legal educators all over the country during the last few months. Ken had a special gift for using facts and statistics in his analysis of legal education and higher education more generally. People loved to hear him speak because he was in such command of his topics. He was also a fine teacher and scholar. He was the "compleat" professor and administrator and served as an excellent mentor to younger colleagues about what it meant to be an university educator."

George Christie, James B. Duke professor of law, joined the faculty in 1967, the same year as Pye. Christie recalls that "Ken Pye was an impressive man. He was a born leader who was able to deal with difficult situations without flinching. Perhaps his greatest single strength was his intellectual hon-

Ken Pye Remembered

Remarks by Professor Walter Dellinger at the memorial service for Ken Pye at Duke Chapel on July 15, 1994.

What I remember best about Ken was his laugh; it came easily and often, frequently following one of his own irreverent remarks. As perhaps only Judy and Henry are aware, the world could know only some of what this great man was all about.

In a vocation surrounded by pomp and circumstance, there was about Ken not a trace of pretense or pomposity. As dean, he knew no limits to his job description; I remember seeing him early on a Saturday morning cleaning up the Moot Courtroom in anticipation of Law Day. And I remember seeing him late in the evening, calling around the country to lawyers he knew personally trying to place in jobs the most hard-to-place of his graduating students.

To many outsiders he must have seemed like a bull in an academic china shop, grudgingly admired for his hard-headed management skills. But to those on the law faculty who knew him as a colleague, Ken was a brilliant intellect, widely read in the classics, in history and in biography. As he became a university leader he reveled in immersing himself in the great intellectual pursuits of the many and varied departments under his purview.



A. Kenneth Pye

On the surface, Ken was always jauntily irreverent, never pious, a Catholic leader of Methodist schools whose wit at times seemed to teeter on the brink of anti-clericalism. And yet, those who know him well knew that his deep religious conviction was a fundamental guide for his life and work. He read Aquinas and Cardinal Newman; he studied the lives

of Saint Thomas Becket and Sir Thomas More; and on their examples he modeled his life.

As Ken was to religion, he was to law. Although he often laughed about silly laws and foolish lawmakers, and told wonderful stories about the foibles of the bar, at the end of the day he was deeply devoted to the concept of the rule of law, to the profound idea of norms binding even on government itself.

To work with Ken at Duke day after day was to be constantly dazzled by his decisiveness, his gift for problem solving, his keen sense of strategy and timing, his vision of where a law school, and then a university, should go. But there were still more important things to learn from Ken—things like integrity, candor, fairness. His devotion to family was inspiring. In Ken, decency went all the way down.

In the end, what mattered most about Ken was a simple matter: his deep and abiding integrity. He went through life and work determined to do the right thing, every time, wholly regardless of whether it made people like him or dislike him . . . which, in the end, was why so many people loved him.

I have never known a better man.

Walter E. Dellinger, III

esty. He abhorred fake sentimentality. Ken was a good and dear friend. He will be sorely missed."

Pye is survived by his wife, Judith Hope Pye, and their son, Henry Wil-

liams Pye, both of Dallas. Memorials may be made to the A. Kenneth Pye Scholarship Endowment established at the Law School by former Duke president and U.S. Senator Terry Sanford or

to the A. Kenneth Pye Cancer Research Fund at the University of Texas Southwestern Medical Center.

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ALUMNI NEWS

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