

DUKE LAW MAGAZINE

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FRESH
PERSPECTIVES
at home and abroad

From the Dean



DEAN DAVID F. LEVI

Dear Alumni and Friends,

2008 is now behind us. For all the excitement of the presidential election, the financial crisis marked 2008 as a difficult year, and many of us may bid the year good riddance. Yet at Duke Law we found much to appreciate, even celebrate, in this past year.

The November dedication of the J. Michael Goodson Law Library and the Star Commons was a marvelous event, highlighted by remarks from Justice Anthony Kennedy. With soaring windows overlooking campus, these inspirational spaces solidify the interdisciplinarity of the Law School's intellectual life and our central place within the University. Faculty and students from all across campus are now drawn to our building because it is so beautiful and inviting. It is good to welcome them here. We are indebted to J. Michael Goodson '66, Elizabeth and Stanley Star '61, and our friends at The Duke Endowment for their support and leadership in this project that has transformed our school. Those of you who have not seen the new building are in for a treat. Please come enjoy a cup of coffee or lunch in the Star Commons and tour the new Goodson Library. You will be very pleased.

Our international reunion in June underscored Duke Law's growing presence throughout the world. Alumni from as far as Israel and Chile came to Munich to renew their ties to Duke Law and participate in various programs on international higher education and globalization. We have an astonishingly interesting and far-flung group of international alumni who have great loyalty to Duke Law. Our LLM program is one of the very best, thanks to Deans Judy Horowitz and Jennifer Maher '83. The loyalty and support of our international alumni are among the great strengths of Duke Law School. With their assistance, we have a wonderful opportunity to build upon our existing international programs and to expand our international law faculty and student body.

The past year also was a very good one for scholarship at Duke Law. Our faculty published eight new books, including two that underscore our leadership in intellectual property: Professor James Boyle's *The Public Domain: Enclosing the*

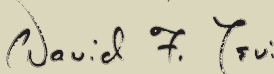
Commons of the Mind (Yale University Press), and *No Law: Intellectual Property in the Image of an Absolute First Amendment* (Stanford University Press), by Professors David Lange and H. Jefferson Powell. (Professor Powell also published another excellent book this year, *Constitutional Conscience: The Moral Dimension of Judicial Decision*.) The rigor and creativity of our faculty's scholarship is matched only by their dedication to students. Of this combination, we can all be immensely proud.

Still, for all our milestones, 2008 will be most remembered for the painful economic turbulence toward the end of the year. Thus far, Duke University and the Law School have weathered the storm. The endowment has suffered, but applications for admission to the Law School are up, continuing a recent trend. We are using resources strategically, and we will continue to seek ways to be more focused and efficient. But we will need to work very hard this year to maintain our momentum and to continue to pursue the ambitious goals we have set for the continued growth and excellence of our faculty, for the expansion of our curriculum, and for the additional financial and other support to our students.

If there is a positive way to view the current turmoil, it is perhaps this: This crisis has provided us with an unusual opportunity to teach and to learn. Many of our professors are focusing their teaching and academic writing on the crisis. For example, Professor Steven Schwarcz is in high demand as a speaker about the financial markets and has published prolifically on the credit crisis, both in academic journals and in the newspapers. His scholarship includes the leading legal article on systemic risk. Visiting Professor Bill Brown '80 relies upon his extensive experience in financial management from years with AIG, Goldman Sachs, and Morgan Stanley as he and his students analyze the financial markets and crisis and develop regulatory and economic solutions. On Dec. 4, we hosted — in our new Star Commons — an extraordinary conversation among some of the world's most important participants in the financial markets, all of them with a Duke Law connection: Gao Xiqing '86, president and chief investment officer of China's sovereign-investment fund; Stephen A. Schwarzman, chairman and co-founder of the Blackstone Group and father of a 2006 Duke Law graduate; and John A. Canning Jr. '69, chairman and co-founder of Madison Dearborn Partners. Led by our own Professor Jim Cox, their discussion of the global crisis and its origins covered history, culture, politics, and finance. It was a fascinating demonstration of what the Law School can do to bring academics and practitioners together to achieve a greater understanding of the problems we face.

We greet the new year with cautious optimism, with hope and determination. We believe that as a nation we will get through the challenges of today and tomorrow in major part through higher education. This is not the time to reduce our commitment to the education of the next generation, particularly the next generation of Duke lawyers, but rather to renew and even strengthen it. We will need them. They are incredibly talented, energetic, and hopeful. With the energy of our students, the insight of our faculty, and the experiences and influence of our alumni, Duke Law School will be a strong voice in the public policy debates that are about to begin. I look forward to 2009 and the opportunities it will bring.

With best wishes,


David F. Levi

DUKE LAW

MAGAZINE

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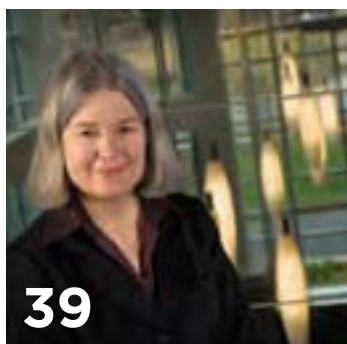


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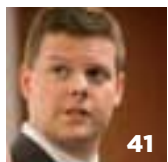


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Members of the Duke Law community who live and work abroad share their stories.



News Briefs



GAO XIQING '86 IS VICE CHAIRMAN, PRESIDENT, AND CHIEF INVESTMENT OFFICER OF THE CHINA INVESTMENT CORP., CHINA'S SOVEREIGN-INVESTMENT FUND.

PROFESSOR JAMES COX, JOHN CANNING JR. '69, STEPHEN SCHWARZMAN, AND GAO XIQING DISCUSSED THE CAUSES AND POSSIBLE SOLUTIONS FOR THE INTERNATIONAL MONETARY CRISIS, DEC. 4.

Private equity, sovereign funds and the global credit crunch

THREE LEADING INVESTORS offered their views on the causes of and possible solutions to the global credit crisis before a capacity Duke Law audience on Dec. 4.

John Canning Jr. '69, Stephen Schwarzman, and Gao Xiqing '86, discussed U.S. accounting methods, the government's decision to let Lehman Brothers fail, and the ongoing effort to rouse a comatose world economy during their wide-ranging conversation. Canning is chairman and co-founder of Madison Dearborn Partners, a private equity firm in Chicago, Schwarzman is chairman and co-founder of New York-based private equity firm

the Blackstone Group and a former head of Lehman Brothers' global mergers and acquisitions team, and Gao is the vice chairman, president, and chief investment officer of the China Investment Corp., China's sovereign-investment fund.

Moderator James Cox, the Brainerd Currie Professor of Law and an expert in securities law, began the conversation by highlighting the rapid downturn of world financial markets over the last year.

"A year ago, we would have been having a debate and discussion here about the role of sovereign wealth funds. This was a burning issue," he said. "Little did we

know that in a few months time, sovereign wealth funds in various parts of the world were going to be bailing out our banks [and] financial institutions."

Origins of a crisis

Schwarzman and Canning identified an aggregate of systemic problems in financial markets, bad business models for investment banks, and an overly optimistic housing strategy as key sparks for the financial crisis. Canning put leverage "right at the top" of its many causes.

"In 1982, outstanding leverage was 200 percent of GDP," he said. "It went straight

up to 365 percent in June. If it takes that long to get back, or if it takes 16 or 18 years, it's going to be a very painful time, because deleveraging just drops the price of assets."

Blinded by a vibrant economy, most leading financial experts failed to discern what should have been clear, Canning added.

"It all looks so obvious in hindsight that the business model of an investment bank was not sustainable. In 2004, Henry Paulson led a group of investment banking people to the SEC, and said 'Take off the rules that limit our leverage.' As a result... these entities were levered 30-to-1. And the problem with them was funding long-term illiquid assets with short-term credit."

Schwarzman pointed to bad mortgages as the first link in a long causal chain leading to recession.

"The idea of lending money to, basically, poor people, is the story of how this started," he said. "It was a well-intentioned, government-oriented objective. ... In 2002, low-income people were comprising about two percent of the mortgage market for buying homes. By 2006, depending on how you measure who is poor — or poorer — you had as high as 30 percent of mortgages being made to people who, fundamentally, couldn't pay them back."

Congress's initial failure to pass the Troubled Asset Relief Program (TARP) "bailout" bill in September, along with the government's decision to let Lehman Brothers fail, had profound and far-reaching consequences, Schwarzman said.

"For people in the United States, we just looked at it as another mess, another bunch of incompetence by our government," he said. "But if you're outside the United States, you have a different view. The U.S. is 26 percent of world GDP, the U.S. dominates finance, and the world expects us to make things right. And as you watched the television and saw these people wandering around the House of Representatives, setting their own house on fire, the rest of the world looked at this and said, 'These people are out of control, they're not going to rescue us, we're all going to go down, [so] the answer is let's not shop.'"

While Schwarzman suggested the mark-to-market fair accounting method required by the Securities and Exchange Commission helped exacerbate the crisis by driving values down, Gao disagreed, saying

the SEC requirements helped China feel safe investing in America.

"I have the baggage of being a former regulator and also a former lawyer, and I've been working on securities issues for more than 20 years," Gao said. "In China, we still believe that the United States is the best country to invest in, and for this particular reason: It's a lot more transparent, a lot more predictable. But once you change the rule, like Steve was suggesting, then we would have problems [investing]."

Lehman's failure pivotal

Schwarzman called the government's decision to let Lehman fail a "triggering event."

"All of the people in the world who give financial institutions money all of a sudden said, 'I don't trust this system to give me my money back, so I'm not going to give you money,'" he said.

"It was the first time creditors were not protected," Canning added. "When Bear Stearns went, when Freddie and Fannie were rescued, creditors were protected and the equity guys got creamed. As soon as creditors were not protected and they wouldn't let Lehman become a bank over that weekend, Merrill Lynch smartly sold itself, Goldman and Morgan Stanley became banks, immediately the buck was broken on the money market funds, AIG had to be rescued, the London Interbank Rate went up by 400 basis points, and banks stopped lending to each other because no one wanted to try and figure out which entity wouldn't be rescued."

A long, hard recovery

Gao said that America's chronic overspending endangers its status as a world power. "Americans have been spending other people's money or your own future money for too long," he cautioned.

"Do you feel pretty confident that it's at least going to take us a double-digit number of years to de-lever, and that we're going to be looking at pretty flat asset values going forward for some time?" Cox asked Canning.

"I do, because there are no buyers for these assets," Canning said. "It's going to be write-offs, it's going to be sales at pennies on the dollar, and it's going to be a very long, painful period of time."

Schwarzman praised efforts by world governments to unfreeze the credit mar-

Letting Lehman Brothers fail was a triggering event, said Stephen Schwarzman: "All of the people in the world who give financial institutions money all of a sudden said, 'I don't trust this system to give me my money back, so I'm not going to give you money.'"

kets, saying that continued worldwide cooperation will be necessary to fix the problems plaguing finance.

"It was the most extraordinary coordinated action that, at least in my life, I've ever seen in finance," he said. "They basically saved the system."

The role of private equity and sovereign wealth funds

As to the future of his industry, private equity, Canning predicted that it would operate on a reduced scale going forward. "In 2006, 2007, there were 18 buyouts of \$10 billion or more," he said. "I don't think there's been a \$5 billion buyout since that time."

Cox asked Gao about the changing perception of sovereign wealth funds as the crisis unfolds.

"This time last year, we were regarded as being a sinister institution with ulterior motives and people were looking at us with a lot of suspicion," Gao said, adding that large-scale investment by China's sovereign wealth fund has also been viewed negatively in Western Europe.

"Now, a year later, we seem to be hearing different stories — but really it's not that different. It is my humble, lawyerly, pessimistic view ... that we need to do something right now because the market is coming down and people are panicking about the situation, so we probably need to make some investment to feel welcome in these places.

"[Our chairman] said, 'The price is going down further, and we don't want to catch a falling knife.' I said, 'This is what they want us to do. We'll try to catch a falling knife, and if we get cut, people will still love us, but if the market turns up, nobody will want us.'" ♣ — *Forrest Norman*

Law School launches “Duke in D.C.”

THE LAW SCHOOL'S “Duke in D.C.” program began its inaugural semester with the start of the Obama administration, with eight law students settling in to posts in the nation's capital — on lawmakers' staffs, with congressional committees, and with law firms and agencies that have legislative interaction. The program offers second- and third-year students who are interested in public policy and careers in federal service an inside look at both through semester-long externships.

“I'm awfully excited about this opportunity,” said Professor Christopher Schroeder, director of the Program in Public Law, who is spearheading the Duke in D.C. program. “One thing we do in the Program of Public Law is encourage people to look to the public sector, not necessarily for their entire career, but as part of a career. And I think exposing students to the realities of these situations is a superior way of modeling that kind of career path than just simply talking about it in class.”

Duke Law students are working in the congressional offices of David Price, D-N.C., Mel Watt, D-N.C., Jason Chaffetz, R-Utah, and James Clyburn, D-S.C.; the Senate office of Robert Menendez, D-N.J.; the House Judiciary Committee; the law firm of Johnson, Madigan, Peck, Boland and Stewart; and the nonprofit Center for Responsible Lending.

Scott Bernstein '09, is working with Rep. Price's Legislative Director Tommy Ross.

“After taking Professor Scott Silliman's course at Duke, I became very interested in national security law and the public policy debates surrounding it,” Bernstein says. “As chairman of the Homeland Security Appropriations Subcommittee, Congressman Price is in the thick of those debates and helps create national security law.”

Price has consulted Duke faculty — including Silliman — regarding national security issues in the past, Ross said.

“The Duke faculty have a wealth of knowledge on these issues,” he said.

Schroeder, the Charles S. Murphy Professor of Law and Professor of Public Policy Studies, created the externship program with Ted Kaufman, who now represents Delaware in the United States Senate. Both men have years of experience on Capitol Hill and in the executive branch. The two have regularly collaborated to teach courses on Congress at Duke Law.

Schroeder was the deputy assistant attorney general in the Office of Legal Counsel at the Department of Justice, and headed that office in 1996 and 1997. He also served as chief counsel to the Senate Judiciary Committee and during the Obama-Biden transition served as a member of the Justice and Civil Rights Team examining the operations of the Department of Justice.

Kaufman was appointed by Delaware Governor Ruth Minner to fill Vice President Joseph Biden's Senate seat until a special election is held in 2010. Long a senior lecturing fellow at Duke Law, Kaufman worked on Biden's Senate staff for 22 years, 19 as chief of staff.

“This is a chance for students to get a sense of how elected officials and government agencies work through problems, what sorts of information they need, the pressures they're subject to,” said Dean David Levi. “I think this experience could be

invaluable for any of our students who may practice law at the intersection of public policy.”

Levi said it will be especially interesting for students to be in D.C. as the government struggles for solutions to the global financial crisis.

“We know we are entering into a period in which possible further regulation of business and the economy is going to be front-and-center,” he said. “There is going to be a huge need for people who can think through what happened to our banking and regulatory systems and what the appropriate fix is. If we are to avoid cycles of too much and too little regulation, we will need lawyers who have a broad vision, who understand the history, who have technical expertise, who are interested in what other countries are doing, and who can bring an academic focus. That's what makes this inaugural Duke in D.C. program so exciting.”

Levi said the program takes advantage of the Law School faculty's expertise, as well as proximity to the capital. “Because our law faculty is so actively engaged in matters of national policy importance, it is impossible for me to think of any professor who could not take a group of students to D.C. for a semester and benefit them enormously.”

Schroeder credits Levi with getting the program off the ground.

“We have a lot of connections in D.C., both through the Law School and the public policy school, and everybody always said it would be a great idea,” Schroeder said. “But if you had to look for the cause of it happening now, it would be that Dean Levi has made it a priority and said, ‘Let's go ahead and give this a try.’”

Students can earn a maximum of 14 credits through Duke in D.C. based on an externship, a parallel academic course, and a research paper. ♡ — FN



RYKE LONGEST AND MICHELLE NOWLIN JD/MA '92
SUPERVISE THE ENVIRONMENTAL LAW CLINIC.

Up and running hard: Duke's Environmental Law and Policy Clinic

AS A MEMBER of the inaugural class of Duke's Environmental Law and Policy Clinic, James Toy '08 was pleased — and surprised — to handle a case that satisfied his interest in cutting-edge clean technology and investment.

"I got to work on a venture capital fund that involved clean technology," says Toy, who now works for Simpson Thacher & Bartlett in Palo Alto, Calif. "I didn't plan it, and you wouldn't think that an environmental law clinic would be involved with a venture capital fund, but it was, and it worked out really well for me." It also taught him a lot about professional responsibility, he adds. "You learn about producing for clients. You can never just throw something together, because people are really depending on you."

Michael Hiatt JD/MEM '09 appreciates the perspective he gained working on a project to help the New Hope Creek Corridor Advisory Committee block the construction of an unnecessarily destructive bridge across the creek in Duke Forest.

"I've had some exposure to national groups working on big regional issues, but the New Hope Creek project was a chance to understand the importance of local groups facing these issues," says Hiatt. "It

sounds corny, but you actually see democracy in action."

For Ryke Longest, director of the year-and-a-half-old clinic, that means that students are getting exactly what they need: a crash-course in dealing with clients and real-world situations in a way that acknowledges the blend of law, science, and policy that characterizes environmental challenges. "I think our students have found that the clinic is a useful preparation for professional life after graduation," says Longest, who came to Duke after 14 years as an environmental lawyer for the North Carolina Department of Justice.

Because environmental issues often involve multiple parties and require an interdisciplinary approach, the clinic is open to law students as well as those pursuing graduate degrees in Duke's Nicholas School for the Environment, or joint degrees through both. The mixture of students from different disciplines and a range of clients with different needs helps to prepare students in a way that purely theoretical exercises can't, Longest notes.

Handling cases for nonprofit groups and indigent individuals also allows students to learn about building relationships with

AMONG THE CLINIC'S PROJECTS DURING THE FALL 2008 SEMESTER:

- submission of comments on the legal and scientific aspects of a proposed naval undersea warfare training range off the North Carolina coast;
- evaluation of flooding problems caused by new development in Elizabeth City, N.C., in conjunction with the N.C. Coastal Federation;
- representation of Pender Watch & Conservancy in its opposition to a proposed cement manufacturing plant on the Cape Fear River;
- research and recommendations regarding legal and regulatory reform to support the development of small-scale, localized, sustainable agriculture in the Carolinas, for the Carolina Farm Stewardship Association;
- preparation of a draft Environmental Impact Statement for Citizens Against OLF (Outlying Landing Field) regarding the impacts a proposed naval landing field would have on residents and habitat in Gates County, N.C.

clients and with the other stakeholders in environmental issues, according to Longest. "These are the kinds of things that are overlooked in the study of law, but become very important in the practice of law," he says.

The word is getting out among students and clients alike: Enrollment has tripled (from its original four to 12 students in the current semester) and increasingly challenging projects are filling the clinic's docket.

To help meet student and client demand, Michelle Nowlin JD/MA '92, joined the clinic as a supervising attorney in July. A co-founder of the *Duke Environmental Law and Policy Forum*, Nowlin returned to Duke after 13 years with the Southern Environmental Law Center, where she handled complex environmental policy and litigation. Having been a member of the clinic's founding advisory board, Nowlin observes that its success and continued growth is a foregone conclusion.

"I just think there is an incredible pent-up demand in the community and in the law school," she says. ♡ — F.N.



International reunion in Munich a huge success

MORE THAN 100 members of Duke Law School's extended community gathered for an international reunion in Munich June 19-22, taking the opportunity to reconnect with one another and with Duke faculty. Duke University President Richard Brodhead joined Dean David Levi and members of the Board of Visitors in Munich to celebrate the Law School's increasingly international nature.

The event in Germany attracted alumni from across the globe — Europe, Central and South America, and the Middle and Far East — for four days of socializing, touring, and substantive discussions on such issues as copyright and global opportunities and challenges in higher education. ♣



JOIN THE VEREIN

THE DUKE CLUB of Germany now offers more than a social and professional networking opportunity for alumni — it offers an outlet for giving back to Duke. The club has officially registered as a *verein*, or charitable organization, allowing members to make tax deductible donations to their alma mater for the first time.

Led by Sibylle Gierschmann LLM '99, Marcus Nauheim LLM '96, and Sabine Schmidt-Pischner LLM '89, the club has already made a significant commitment to support the Herbert L. Bernstein Memorial Lecture in International and Comparative Law for the next five years.

“Professor Bernstein was a role model for all of us, academically as well as personally,” wrote Gierschmann. “His warm welcome and guidance at Duke made Duke Law School such a special place not only for German LL.Ms.

“We hope that our donation helps to hold his memory in the highest esteem also for future generations. For us he will always remain to be the role model that he was. Surviving the Nazi persecution is one thing, but to still follow your academic career the way he did and remain tolerant and generous in order to allow you to support later generations coming from the country that made it so hard for you shows what a great man he was. With our gesture we would also like to thank his wife, Waltraud, who supported him on his way and opened her house for *kassler* and *sauerkraut* parties.” ♡



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To learn more about making a gift using your IRA, contact Katharine B. Buchanan: 919.613.7217 or buchanan@law.duke.edu.

Duke Law Establishes Franklin Chair in American Legal History



JOHN HOPE FRANKLIN, JAMES B. DUKE
EMERITUS PROFESSOR OF HISTORY

DUKE LAW SCHOOL is conducting a national search to fill the newly-established John Hope Franklin Chair in American Legal History. The School hopes to hire a scholar by the fall who will teach and conduct research on the history of race in the South, civil rights, and constitutional law, according to Dean David F. Levi.

The James B. Duke Emeritus Professor of History at Duke University and a leading figure in the fields of African-American history, American race relations, and Southern legal history, Franklin taught legal history at Duke Law from 1985 to 1992.

“With this chair, we are hoping to attract a dynamic scholar who shares the same research interests as Dr. Franklin,” says Levi.

The Franklin Chair is designed in part to inspire the next generation of legal historians, while exposing all law students to the complex history of the law in the American South and elsewhere.

“Part of what lawyers do is to swear an oath to protect the Constitution. Much of what explains the acceptance of law in this country is based on the history of its devel-

opment,” Levi says. “Lawyers should understand this development and be able to explain it to others. We have the opportunity, particularly with a strong history department at Duke Law School, to become a center of legal history.”

Levi says that the creation of the Franklin Chair adds to the Law School’s expertise in legal history. This new professorial position will supplement a faculty with existing strengths in the subject area, including Professor Paul H. Haagen; H. Jefferson Powell, the Frederic Cleaveland Professor of Law and Divinity; Professor Ernest A. Young; and Curtis A. Bradley, the Richard A. Horvitz Professor of Law and Public Policy Studies.

The lead donors for the \$2.5 million endowment are William Louis Dreyfus ’57 and The Duke Endowment. Other donors include the Duke Energy Foundation, Larry Thompson, and Dean Levi, who has known Franklin since his youth.

“The creation of new professorships for our school is probably the most important development objective that we have. This is the way in which we will move the school forward,” Levi says. “It’s very exciting that this professorship came together, and I’m personally extraordinarily grateful to everyone who contributed to the effort. It’s a wonderful initiative, and it’s going to be very important to the Law School and to the people of the region as we move forward.”

Honoring a stellar career

Franklin was the historian for the team of lawyers who conceived of and implemented the legal strategy culminating in *Brown v. Board of Education*. He worked with Thurgood Marshall’s NAACP Legal Defense Fund to help document the history of the 14th Amendment and its import for public school accommodations. He had previously worked with Marshall in 1948 as part of

Lyman T. Johnson’s federal lawsuit challenging Kentucky’s Day Law, which prohibited blacks and whites from attending the same schools.

The renowned historian has received numerous awards and honors for his scholarship and service. His book *From Slavery to Freedom* is the authoritative history of African Americans in the United States after the Civil War. He received the Presidential Medal of Freedom, the nation’s highest civilian honor, in 1995, and the John W. Kluge Award, recognizing his lifetime achievements in the humanities, in 2006.

Franklin graduated from Fisk University and later received both his master’s and doctoral degrees in history from Harvard University. He has taught at many institutions, including Fisk University, St. Augustine’s College, North Carolina Central University, Howard University, and the University of Chicago. After joining the Duke University faculty in 1982, Franklin taught legal history at the Law School with Professors Walter Dellinger and William E. Leuchtenburg.

The son of a lawyer, Franklin says he is deeply honored by the establishment of the Franklin Chair.

“My own education would’ve been incomplete without the experience of teaching in a law school,” Franklin says. “It meant that much to me in telling me how to approach history, and as I’ve looked back on it, it’s very important for lawyers to have a sense of history. The two fields are very much interwoven.”

The Franklin Chair in American Legal History is the latest Duke University honor for the retired historian. The Duke University Library houses the John Hope Franklin Collection for African and African-American Documentation, established in 1995. The John Hope Franklin Humanities Institute (FHI) was founded in 1999, followed shortly thereafter by The John Hope Franklin Center for Interdisciplinary and International Studies. ♡ — Matthew Taylor

ON VOTING RIGHTS:

“THE [HELP AMERICA VOTE ACT] started out as a reaction to the debacle of the 2000 election, but in the end it’s done very little to guarantee a new right to vote and it’s sown a lot of confusion along the way. Part of this is because the act seeks to perpetuate the idea of matching voters on the voting rolls to various other lists that are maintained by the government, but it turns out that those lists are often quite inaccurately maintained.”

— *Voting rights expert Pamela Karlan, the Kenneth and Harle Montgomery Professor of Public Interest Law at Stanford Law School. Speaking on Oct. 31, Karlan condemned the Bush administration’s record of pursuing claims of voter fraud, while virtually ignoring instances of voter suppression.*



ON INTERNATIONAL LAW:

“... INTERESTINGLY, IF YOU LOOK at the big strategic paper that Bush issued on this point — [the preemptive use of military force] — it is very focused on the preexisting international law and trying to make an argument that that international law supports this new direction. You may or may not be persuaded by it, but it very fully engages with international law and does not run away from it.”

— *Curtis Bradley, Duke’s Horvitz Professor of Law and Public Policy Studies, argued on Nov. 19 that the lessons to be learned from the relationship of the Bush administration to international law “are much more complicated than the conventional story of simple disregard for international law as law.” That includes its assertion of a preemptive right to intervene with force in states that are making weapons of mass destruction, he said.*

Lessons Learned
Lecture series examines legacy of the Bush administration

THE PROGRAM IN PUBLIC LAW and the *Duke Journal of Constitutional Law and Public Policy* undertook an examination of key legal constitutional and policy issues that have arisen in the course of the Bush administration over the fall semester. A roster of distinguished scholars each addressed a specific topic and gauged significant issues and priorities that lie ahead.

“Presidents and their administrations exert great influence over the country’s public policy agenda, including over matters of legal and constitutional policy,” said series organizer Christopher Schroeder, Charles S. Murphy Professor of Law and Public Policy Studies and director of the Program in Public Law. “In discharging their constitutional responsibility to protect and defend the Constitution, presidents must also interpret the Constitution, and those interpretations then shape our ongoing national conversation over its meaning, as well the content of cases that come before the Supreme Court.” Topics addressed through the fall semester included voting rights, science, civil rights, executive power, and international law.

All talks are available to be viewed as webcasts at <http://www.law.duke.edu/webcast/>.

ON CIVIL RIGHTS:

“BY DECLINING TO URGE a categorical prohibition on the use of race, President Bush disappointed conservatives who have long insisted that anything short of blanket rule will invite universities to engage in more and more creative forms of affirmative action, so it must have been particularly galling to those conservatives that the Supreme Court, in upholding educational diversity as a compelling interest, directly quoted part of the administration’s brief, [in the University of Michigan affirmative action cases.]”

— *Goodwin Liu, a law professor at the University of California-Berkeley and co-director of its Chief Justice Earl Warren Institute on Race, Ethnicity, and Diversity, noting that the government’s amicus briefs in Grutter v. Bollinger and Gratz v. Bollinger “actually affirmed diversity as a compelling interest” for institutions of higher education. Speaking on Oct. 22, Liu focused his analysis on racial equality issues and the Civil Rights Division of the Department of Justice, decrying undue politicization in the DoJ, but finding some encouraging trends as well, as in President Bush’s appointment of minorities to high-level cabinet posts.*

The Guantanamo Defense Clinic: Three years of groundbreaking litigation

DENNIS SCHMELZER JD/LLM '09 describes himself as “leaning more to the right, normally.” Having worked in Brussels for the U.S. mission to the European Union prior to coming to Duke, he had heard U.S. State Department Legal Adviser John Bellinger III make persuasive arguments in favor of the detention and trial of detainees in the war on terror. He signed up for the Guantanamo Defense Clinic as a 2L after he heard Professor Madeline Morris, the clinic’s director, challenge Bellinger on some of those points during Bellinger’s 2006 visit to Duke Law.



PROFESSOR
MADELINE MORRIS

“I thought, if anything, I could learn what the other side is and how it’s argued,” recalls Schmelzer, adding that working in the clinic changed his view — and helped him

realize that the issues at the core of the Guantanamo debate defy right-left characterizations. “That an objective, independent decision-maker is necessary to restrain an executive is not a right or left issue but a systemic issue,” he says.

Most significant to Schmelzer, who continued as an advanced clinic student through the fall 2008 semester, is the rigorous and creative legal inquiry students can undertake in the course of their work. “The clinic provides a unique environment where you can argue and work through difficult questions,” he says.

A key role in detainee defense

The Law School’s Guantanamo Defense Clinic, established in 2005 under Morris’s direction, has played a key role in framing the legal challenges to the Military Commissions Act and other laws governing the Guantanamo detentions.

Since the inception of the clinic, Duke students have worked closely with lead counsel representing defendants charged for trial at Guantanamo, crafting legal theories, analyzing case strategies, and preparing briefs, motions, writ petitions, and other filings for military commission and federal court proceedings. Governed by new and untested statutes including the Detainee Treatment Act of 2005 and Military Commissions Act of 2006, each case has posed numerous original and weighty issues.

The clinic has worked with defense counsel on 10 of the military commission cases, including *U.S. v. Hamdan*, *U.S. v. Hicks*, and *U.S. v. al Bahlul* — the only cases that have been concluded in the commissions since their initiation in 2001. Current clinic cases recently stayed by order of President Barack Obama include *U.S. v. Khalid Sheik Mohammed et al*, the joint prosecution of five detainees charged with masterminding and aiding the 9/11 attacks — in which clinic students are assisting counsel for defendant Mustafa Hawsawi — and the case of Mohamed Jawad, one of two juveniles charged under the Military Commissions Act.



Students' theories, research, and writings have found their way into briefs in proceedings at all levels of the Guantanamo litigation, including the Supreme Court of the United States, in the cases of *Hamdan v. Rumsfeld* and *Boumediene v. Bush*.

An expert on international criminal law and the law of war, Morris served as adviser to the chief defense counsel and then as chief counsel to the Office of the Chief Defense Counsel for Military Commissions. Through her own long-standing involvement in the military commission litigation, Morris has been able to bring students into the center of the fray. Students' theories, research, and writings have found their way into briefs in proceedings at all levels of the Guantanamo litigation, including the Supreme Court of the United States, in the cases of *Hamdan v. Rumsfeld* and *Boumediene v. Bush*.

The work of the clinic has, by now, covered an enormous range of issues, including those relating to combatant status, definitions of "armed conflict," torture and interrogation, personal and subject-matter jurisdiction, pro se representation, handling of classified evidence, and the core structure of the Constitution's separation of powers.

"We've gone down so many different paths [of inquiry], done so much research and analyzed different aspects of the legislation, we really do have an internal institutional memory on defense issues relating to Guantanamo that others don't. That includes even the Office of the Chief Defense Counsel, where rotating tours of duty ensure a constant turnover of military defense personnel," observes Allison Hester-Haddad '08. Hester-Haddad led the clinic during Morris' sabbatical in the Fall 2008 semester — after posting hundreds of hours of work herself as a clinic student. (See profile, page 48.)

Military commission defense attorney Major David Frakt agrees, saying that having the benefit of the clinic's expertise has been "extraordinary." "Professor Morris and Allison Hester-Haddad have encyclopedic knowledge of virtually every issue related to the commissions," says Frakt, a JAG Corps reservist who is defending Mohamed Jawad, a young Afghani detainee. "On several occasions, I have asked for the clinic

to do some quick research on an issue, only to find that they already had a detailed research memorandum on the topic, such as on aspects of the legislative history of the Military Commissions Act.

"I have incorporated significant portions of Guantanamo Defense Clinic products into suppression motions, motions on personal and subject matter jurisdiction, and motions relating to the law of war, detainee abuse, and child soldiers," he adds. "Professor Morris testified as an expert on three separate jurisdictional motions in the Jawad case and was recognized as a 'distinguished legal scholar' in the commissions' rulings. An article on personal jurisdiction she co-wrote with several clinic students was submitted to the commission as persuasive authority."

The student experience

In the fall of 2007, lawyers representing Lakhdar Boumediene in his habeas corpus petition to the Supreme Court called on Morris for consultation on a military law issue. Schmelzer, whom Morris assigned to work directly with the habeas counsel, developed an original theory based on an Army regulation pertaining to combatant status determination. His theory was incorporated into the reply brief for the petitioner in *Boumediene v. Bush* before the U.S. Supreme Court. Part of his theory, Schmelzer notes, relied on "flaws" in the memo promulgated by former Deputy Secretary of Defense Paul Wolfowitz establishing the combatant status review tribunals.

"It meant a lot to hear from the lawyers that, 'We've read that memo 40 times and never picked out that line,'" he says. "It

shows how many legal discoveries really can be that basic and how well prepared we can be already, as students, to help out. It was a great honor to work on that case."

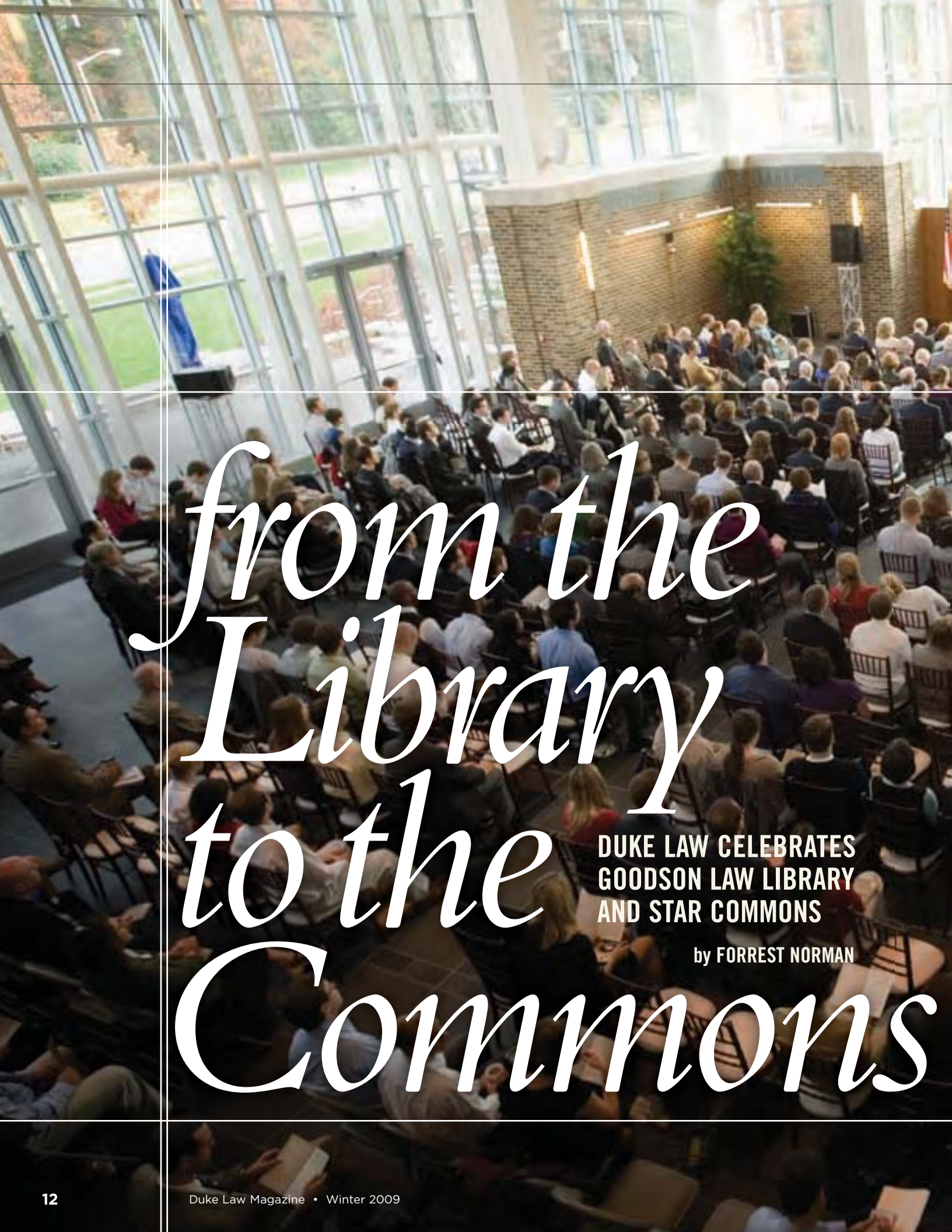
Looking ahead

Going forward, the clinic will remain engaged on the litigation front and will participate in policy and legislative processes defining U.S. posture on counterterrorism and detainee affairs, says Morris.

Shortly after the Supreme Court granted certiorari in the case of Ali Saleh al-Marri in December, counsel for the petitioner contacted Morris for consultation. "The clinic students have had to hit the ground running this semester with amicus briefs in *al-Marri* due at the end of January," says Morris. (A citizen of Qatar, al-Marri was arrested in December 2001 in Illinois, where he was studying. After first being held on a material witness warrant, he was labeled an enemy combatant and has been held at a naval brig in South Carolina.)

On Jan. 22, as this issue of *Duke Law Magazine* went to press, President Obama issued an executive order to close Guantanamo within a year. Beyond the complex issues concerning Guantanamo itself, Morris says, "the debate will go to the fundamentals of U.S. counterterrorism policy. It will require an honest and rigorous discussion of the role of preventive detention in preventing catastrophic terrorist attacks. Preventive detention is currently used extensively for counterterrorism — not only through military detention, but through immigration detention, material witness arrests, and other mechanisms — largely without political acknowledgment and without legal structures tailored for that purpose."

Morris is currently completing *Terror and Integrity: Preventive Detention in the Age of Jihad*, on which she has collaborated with Hester-Haddad, and clinic alumni Stephen Bornick '07, and Landon Zimmer '07. It will be published by Oxford University Press in 2009. ♣ — Frances Presma



*from the
Library
to the
Commons*

**DUKE LAW CELEBRATES
GOODSON LAW LIBRARY
AND STAR COMMONS**

by FORREST NORMAN



Speaking at the Law School's building dedication ceremony Nov. 8, Supreme Court Associate Justice Anthony M. Kennedy called the synergy between the J. Michael Goodson Law Library and adjacent Star Commons a fitting metaphor for the evolution of important ideas, from their isolated inception to their public presentation and discussion.

"[Students] go to the library and they begin to study and we hope they encounter what Holmes called 'the secret joy of isolated thought,'" Kennedy said. "In the Commons, the students discuss the ideas of the law, the concept of justice, the meaning of freedom, with students from other disciplines, other backgrounds, from other countries. And so it goes — from library to Commons.

"The law... begins with intangibles, abstractions, philosophical concepts, so it is always a pleasure to participate in the dedication of a building, something that's real and tangible and palpable," Kennedy told a capacity gathering of almost 400 students, alumni, faculty, and friends of the Law School.

Kennedy's remarks capped a week of lectures, panel discussions, and celebratory gatherings that brought the extended Duke Law community together in the new spaces. These included a gala dinner honoring those who contributed to their development, a lunchtime series of topical lectures and panel discussions featuring faculty scholars and alumni, an outdoor Duke Bar Association reception for students, staff, and visiting alumni, and a special program celebrating the Goodson Law Library. (See story, page 17.)



JUSTICE ANTHONY M. KENNEDY



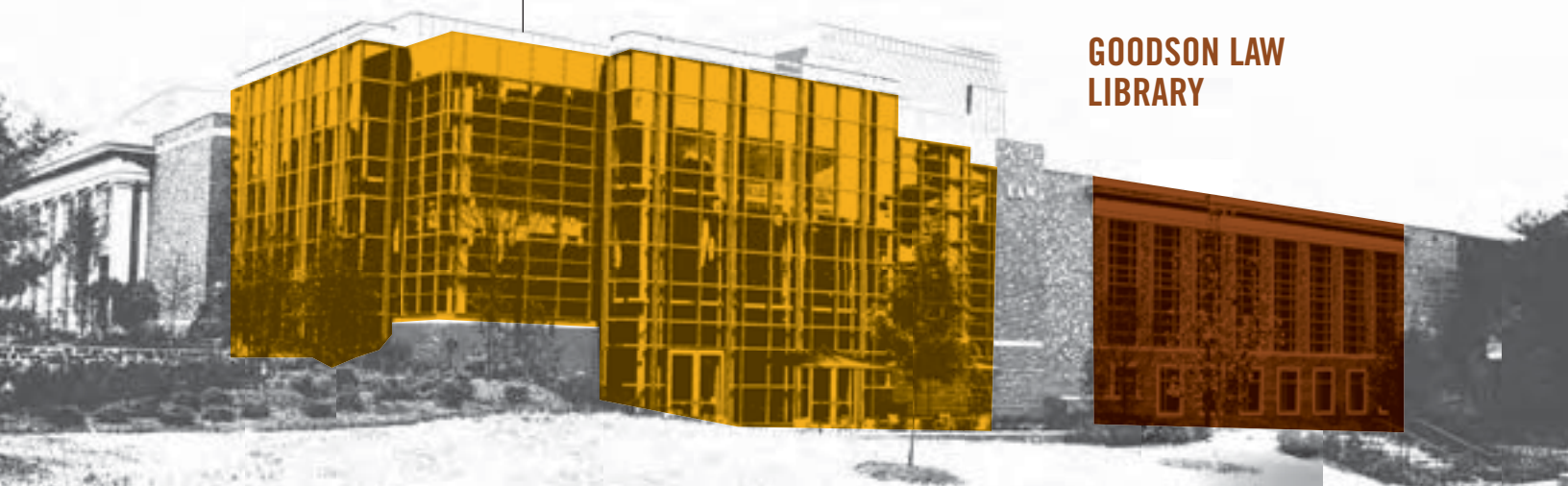
from the
Library
to the
Commons



STANLEY STAR '61 AND J. MICHAEL GOODSON '66

STAR COMMONS

GOODSON LAW LIBRARY



“The combination of this library, in its spectacular new condition, and Star Commons, virtually adjacent to it, really gives us such a sense of pride as alumni as to what this school has become now physically, as well as reputationally.”

— George Krouse '70

Celebrating two remarkable spaces — and the community that built them

The Goodson Law Library, named in honor of J. Michael Goodson '66, features a new façade and seating arrangements that take advantage of two-story glass window walls that bathe the main reading room and mezzanine in natural light. The reading room offers centralized access to library, computing, web, and media services.

“The Goodson Library celebrates and supports the life of the mind, the hard work of scholarship and rational inquiry,” Dean David Levi said during the dedication ceremony. “It is a place of contradictions: quiet and excitement, peaceful reflection and the agonizing grasping for understanding. ... It stands apart from the world and yet is very much of the world, as our new windows reflect and reveal.”

The new 4,200-square-foot Star Commons, named in honor of Stanley Star '61 and his wife, Elizabeth, provides a massive, window-walled space that also takes advantage of natural light and allows an expansive view of the campus outside the Law School's walls. Balconies overlook the slate-floored Commons, where students, faculty and visitors can eat, read, study, or work together. The adjacent Refectory Café has helped make the Star Commons a gathering place for people from across the Duke campus, Levi said.



“Already, it has provided the setting for programs and events that have enlivened the life of our law school. Already, it has attracted colleagues from around campus to the Law School. Already, it has become a central part of our daily lives.”

Duke University President Richard Brodhead reflected on how bricks and mortar complete the Law School.

“... [T]he real foundation of a law school ... is not a building but rather a culture of thought, and if you should be able to develop that to a very high degree, nevertheless the

day might occur to you when you might say to yourself, ‘Wouldn’t it be nice to have a nice building too?’” Brodhead said. “And when you reach the point where a great law school has a great building, you realize it wasn’t just an ornament, it really is an enabler of things, and so it had a function that was not secondary after all.”

Professor Thomas Metzloff and Rufy Research Professor of Law Richard Danner, the senior associate dean for Information Services, who were instrumental in the design and planning of the Star Commons and Goodson Library, thanked everyone involved in executing the new spaces, including alumni Raymond “Buck” Ferguson ’70, Al Adams ’74, and David Ichel ’78, who served as co-chairs of the Board of Visitors Building Committee. Metzloff, who managed much of the construction on behalf of the Law School, also praised former Dean Katharine Bartlett, the A. Kenneth Pye Professor of Law, under whose leadership the building projects were launched.

Jillian Harrison ’10, vice-president of the Duke Bar Association, spoke at the dedication ceremony, thanking Stanley and Elizabeth Star, J. Michael Goodson, and other alumni for their generosity. “It’s not

from the Library to the Commons



“Duke was, and is now, a place where both students and alumni feel at home. Although, thanks to Mr. Goodson, and Stanley and Elizabeth Star, that home is now much roomier and far better appointed.” — Judge Allyson K. Duncan ’75

lost on the student body, and it’s certainly not lost on me, that the renovations over the past few years have been incredibly student-focused,” she said. “It was Duke Law School’s unique culture that brought me to Durham. That our alumni chose to support the school in this way tells me that they not only remember how special this community is, but that they’re committed to keeping it that way.”

Stanley and Elizabeth Star said the new Commons lived up to their high expectations. “This really is a tremendous addition and it just blends in well,” Stanley Star said. “The wall around the Commons, and the garden — it’s lovely, it’s just beautiful. We had occasion to see it [at] night with the lights on, and it’s just extraordinary.”

“An edifice for the exploration and evolution of the rule of law”

Kennedy called the new building a fitting edifice for the exploration and evolution of the rule of law, which he said was crucial to the maintenance of justice around the world. “We still must make the case for the rule of law, and we still must remember that our freedom and our security consist of the world of ideas,” he said.

In reference to the theme of the dedication events — Duke Law Enlightened — Kennedy traced the progress of “enlightenment ideals” from Isaac Newton, who he called “the poster-boy for the enlightenment,” to George Washington and the founders of the American legal and political system, who further advanced the evolution of enlightenment-era principles. The Anglo-American legal system was a product of these ideas, Kennedy said, and is a necessary underpinning for a free civilization.

“These buildings are a tribute, not only to the liberality of your benefactors, but of their commitment to these purposes,” Kennedy said. “Your presence here and these magnificent projects indicate your commitment to that proposition — that the work of freedom is never done.” ♡



Duke Law dedicates the J. Michael Goodson Law Library

PROMINENT LAW LIBRARIANS and Duke University leaders praised the Law School's renovated J. Michael Goodson Law Library during a special event on Nov. 6. The panel discussion and reception were part of the Law School's weeklong celebration of the renovated library and new Star Commons.

"A great law school, a great research faculty, must have a great library," said Dean David Levi at the reception. "We now have such a library. And while we may praise the play of light, the comfort of the space and the chairs, let us also appreciate the skill, the learning, and the helpfulness of those who work in this library."

Levi offered special thanks to The Duke Endowment and its trustees, represented at the event by Chairman Russell Robinson II '56, for their support of the library. "The Duke Endowment's significant support of this project has been vital," he said.

In his remarks, Robinson stressed University founder James P. Duke's belief in the importance of the legal profession and the written word.

"Mr. Duke, in the indenture that created The Duke Endowment and provided for the building of the University, specifically provided that there would be a law school ... and mentioned lawyers in that because 'they are most in the public eye and, by precept and example, most capable of uplifting mankind,'" Robinson said.

"Mr. Duke knew that words matter, and that words are the means by which we conceive and develop and express and preserve the rules and the dreams by which we live. And ever since the beginning of the printed word, libraries have been the essential repository of all of that," he added.

Speakers also paid tribute to J. Michael Goodson, who committed \$10 million to the Law School in support of the library.

"We are deeply indebted to J. Michael Goodson for this new library," Levi said. "His extraordinary commitment to this project marks a milestone in the history of the Law School. It is the largest single commitment ever made to Duke Law School, and it is a transformative commitment, as all of us can see."

Goodson, who traveled from New Jersey to attend the building dedication weekend events, said the library was "worth waiting for."

"The heart of the law school is the student body and the faculty, but the library lives on and transcends all these other forces," he said. "I just thought it was something that needed to be done. The funding was heavy, but the opportunity to be a part of it and have my name associated with Duke Law School — I thought it was a good tradeoff."

Duke University President Richard Brodhead observed that law libraries are the underpinning of legal scholarship and the legal profession, which he called a "text-based profession."

"[Law] is based on the writing down of laws, the writing down of opinions. Well before there was a tradition of law schools, the way you could become a lawyer was by reading the law. John Adams became

a lawyer without going to law school, Abraham Lincoln became a lawyer without going to law school, John Marshall became a lawyer without going to law school, because somewhere they had access to some group of books from which you could get the fundamental mastery of the law."

Ruffy Research Professor of Law Richard Danner, senior associate dean for Information Services said the renovated library was now equal to the excellence of the faculty, staff,

and students at the Law School, and provided a refuge for reading and reflection with its new study areas and carrels. Danner also said he was grateful to have a fitting room for the Floyd M. and Marguerite F. Riddick Rare Book and Special Collection, accumulated when the late Floyd Riddick was U.S. Senate parliamentarian from 1964 to 1974.

The 21st-century law library

Prior to the reception and dedication in the library, Danner convened a conversation about the 21st-century law library with heads of the Yale and Harvard law libraries.

"Those of us in the library profession have long admired Duke Law School and the Duke Law Library," said Blair Kauffman, law librarian and professor of law at Yale. "We always know that Duke is one step ahead of everybody else. Open access digital repositories — they've done it, and Dick [Danner] has written about it. How do you serve this new generation of scholars that are doing empirical legal research? Look to Duke and see what they're doing."

Law library renovations are "strategically wise decisions for law schools," he said, in order to keep pace with technological innovations and a new generation of students who tend to be high users of libraries. ♡ — F.N.



DUKE PRESIDENT RICHARD BRODHEAD

GLOBAL PERSPECTIVES



IN A VISIT TO DURHAM in mid-November, Young-Gak “Ker” Yun ‘88 speaks about America’s spreading financial meltdown with authority — and hope.

As the founder of the powerhouse Korean consulting firm Samjong KPMG, Yun helped pull his country through the Asian financial crisis that struck in 1997. Forming a joint venture with a Los Angeles restructuring firm — thereby introducing that specialty to Korea — Yun and his partners eventually disposed of 60 percent of the non-performing assets held by Korean firms.

“Korea turned around over three or four years time, and I’m sure the U.S. will turn around, too,” he says, offering a vote of confidence for the recently-launched “bailout.” But he adds a note of caution for the U.S., the same advice he gave his government a decade ago: “You can’t give money to companies with moral hazard issues. You don’t want to rescue companies that are morally and ethically ‘not right’ and those that are marginally viable. If

you save all of them, you’re going to run into another problem. It’s a time to undertake *real* restructuring, so those marginal companies have to go.”

Today Yun’s company, with 2,000 employees, focuses on globalization strategies for Korean businesses like Hyundai and Samsung. He has also launched two private equity funds for global investment, one of them devoted to investment in alternative energy technologies.

With a modest chuckle, Yun notes that he is frequently asked by interviewers for the secret to his success. “And without hesitation I always say, ‘My law school education at Duke.’ I’m serious! This is where I really learned the ropes.” Apart from law, he says, he learned, after surviving the rigors of first year, to “re-tool and regroup,” gaining self confidence that made him continually ready to “accept new challenges and try new things.”

Like Yun, who is profiled on page 20, fully 10 percent of Duke Law graduates live and work outside of the United States, exporting talent, know-how, and confidence around the globe. In the following pages, we meet just a few members of the Law School’s growing international community.



Fully 10 percent of Duke Law graduates live and work outside of the United States, exporting talent, know-how, and confidence around the globe.



Young-Gak "Ken" Yun
JD/LLM '88
Founder and chairman, Samjong Holdings,
and senior managing partner, Samjong KPMG
Seoul, Korea

IN THE EARLY 1990s, South Korea's economic development lagged well behind that of neighboring Japan, according to Young-Gak "Ken" Yun. "We were, I'd say, 20 to 25 years behind Japan," he observes during a November trip to Durham.

"We've caught up a bit — look at Samsung," he says with a laugh, pointing to a large-screen television in a restaurant at the Washington Duke Inn. "Our products became quite competitive with the Sonys and the Panasonics."

These days Yun helps Korean giants such as Samsung and Hyundai plan and execute their global business strategy through the firm he launched in 1991 as the Samjong Law Office. Now a strategic-consulting powerhouse with more than 2,000 employees who combine accounting, legal, and investment-banking expertise, the growth of Samjong KPMG reflects the depth of Yun's contribution to his home country: He has been able to "fill the gaps" in Korea's economic infrastructure.

After almost 15 years in the United States, Yun returned in 1990 armed with four degrees, including an MBA from the University of Chicago and his Duke JD and LLM, and work experience at Hewlett Packard, Arthur Young, and Sidley Austin in Washington, D.C. At Sidley he focused on international trade, representing Korean companies in anti-dumping and other trade-related actions brought in the U.S.

It was expertise that came in handy as soon as he got home. "There were no trade specialists in Korea at the time, so I got there and these cases popped up and I said, 'This is something I can do!'"

With a corresponding dearth of highly-trained international trade specialists in government, Yun was tapped to advise Korea's trade team in the Uruguay Round of the General Agreement of Tariffs and Trade (GATT) that led to the establishment of the World Trade Organization (WTO) in 1995. He subsequently attended the various WTO "review sessions" held to ensure that legislation adopted by member countries was in accordance with WTO rules and regulations and undertook the review of Korean legislation, calling it one of the most rewarding and engaging projects he's worked on.

"That was quite tough," he says. "You have to understand other countries' legislation and compare that to the WTO negotiations and make sure there are no differences, gimmicks or hidden agendas in the legislation. Again, it was something I learned in the U.S. and could use to help my native land."

Excessive corporate borrowing launched a financial crisis in Korea in 1997, exposing another gap Yun could expertly fill in his country's professional infrastructure. "The country didn't have any financial restructuring expertise," he recalls. "We were asked by the government, actually, to go out and find some expertise and bring it home." In 1998, Yun's company formed a joint venture with Houlihan Lokey Howard & Zuckin, a Los Angeles-based restructuring firm. Yun served as president of Samjong Houlihan Lokey, which played a major role in Korea's economic stabilization and restructuring.

"We ended up disposing of 60 percent of the country's 'non-performing assets,'" Yun says, adding that they took a hard line against rescuing companies compromised by moral hazard. They also used securitization to facilitate a quick recovery. "Again, it's a legal process that we had to bring in. Korea didn't have a system like that, so the securitization system and the Securitization Act, which triggered the disposition of non-performing assets, were built based on our recommendations and advice. And a lot of buyers came in, domestically and from overseas."

These days Yun focuses on the globalization of Korean companies. He recently advised Hyundai Motors and its Kia Motors subsidiary on their respective recent expansions into the Czech Republic and Slovakia and Georgia.

The growth of Ken Yun's company reflects the contribution he has made to his country: He has been able to "fill the gaps" in Korea's economic infrastructure.

He has also spearheaded the creation of two private equity funds for global investment to encourage mid-sized Korean firms and others focusing on energy efficiency and alternative energy technologies to globalize their operations. "There are some really good companies that can sell their know-how, products, and technologies to other countries, but they are very afraid of going overseas. We say, 'Let's go together,' and we take them to places like Malaysia, China, and Kazakhstan with their know-how, technologies, and services."

A devout Christian, Yun is quick to thank God for his success. He is also quick to credit his legal education at Duke, expressing his gratitude by undertaking a number of alumni leadership roles. A life member of the Law School Board of Visitors, he also serves on the advisory board of the Global Capital Markets Center, is the recent past president of the Duke Club of Korea, which he helped establish as one of the most active in the world, and has effectively helped raise the profile of Duke University in Korea, success reflected in the increased numbers of Korean undergraduates.

"This is where I really learned the ropes. It is an educational institution and a training ground, but Duke Law School really taught me how to organize myself, how to prepare myself and, where necessary, how to be aggressive," he says. "A law school education is not just about you becoming a lawyer. It is really about you becoming a self-confident human being." ♡

Going global:

Two Duke alumni reflect on what makes a cross-border collaboration work

PHOEBE KORNFELD '90 graduated with her JD shortly before Shabbir Wakhariya '91 began his LLM studies at Duke. They met more than a decade later when Kornfeld, then in-house counsel for Chiron Corp., retained Wakhariya regarding a vaccine-manufacturing joint-venture project Chiron's German subsidiary was entering into in India.

"As I made calls to several colleagues, Shabbir's name came up several times," recalls Kornfeld, now general counsel for Vienna-based vaccine-maker Intercell AG. "When I checked online to find out more about him, it was a real pleasure to find there was a Duke connection. That just added a layer of confidence to support the references I had received from others."

Wakhariya divides his time between New York, where he is a partner at Kelley Drye & Warren, and Mumbai, where he is a founding member of Wakhariya & Wakhariya and handles "inbound" referrals from Kelley Drye and other international law firms. Having joined Kelley Drye in 1992 to work in its established Indian law practice, Wakhariya specializes in cross-border mergers and acquisitions and securities offerings, and maintains a general corporate and litigation practice.

He supported Kornfeld in that initial joint-venture project and another involving marketing and sales, and subsequently in a variety of corporate governance, transactional, regulatory, and contentious matters in India.

On their first deal, Wakhariya immediately flagged a critical issue for Kornfeld: the fact that her company had an existing joint venture in India.

"An Indian regulation required consent to be obtained from the existing joint venture partner before a new joint venture could be formed in the same business," explains Wakhariya. "That's been one of the thorniest issues in India at any given point in time, ... a protectionist measure that has been frequently misused by Indian businesses."

Armed with Wakhariya's early warning of the obstacle posed by the regulation, Kornfeld was able to work with her company to negotiate its resolution with the existing joint venture partner, she says. "We had other business issues on the table with that partner, and we added this [development] to the package. Had we only received that information at some later date, or had we not been adequately advised about how serious an issue this could be, it could have cost us a lot more to receive the necessary clearance from that partner."

Because Indian company law does not recognize shareholder agreements, Wakhariya also counseled Kornfeld that all the terms of the [existing] shareholders' agreements needed to be incorporated into the bylaws of the new joint-venture company — the "articles of association" — or they would not be enforceable.

Historically, Indian lawyers have not acted as advisers, according to Shabbir Wakhariya. "This is very different from the U.S. approach [where] business lawyers think like business people."



India is a "very complicated market to work in," Kornfeld observes, adding that the fact a German subsidiary was involved in her initial project "added yet another layer to the varied analysis they were trying to open up." Accustomed to retaining local counsel to assist with cross-border transactions all over the world, Kornfeld says Wakhariya gave her exactly what she was seeking: sophisticated services and strategic, proactive advice delivered in a highly responsive manner.

"My clients at Chiron and Novartis were conducting business internationally, but expected the work be done to the best U.S. standards," says Kornfeld, adding that she also was hired for her knowledge of U.S. standards as the first European-based lawyer at Chiron. Having worked on international corporate, commercial, and transactional matters for most of her career — she practiced with White and Case in New York, Frankfurt, Paris, Budapest, and London before moving in-house — Kornfeld's expectations of Wakhariya reflected what she offers her senior executive team: "I give them a legal and commercial analysis at every turn, not just the legal analysis." (See Kornfeld profile, page 23.)

When looking for the "right" lawyer to handle international work, she generally looks for someone with a second law degree, Kornfeld says. "Those are the lawyers who [most often] meet those requirements — who have the level of sophistication and understand the responsiveness I require to best serve my clients." Seeing that Wakhariya had studied at Duke offered her an assurance that he had been educated to the highest standards. "I wasn't just expecting

an excellent Indian lawyer or even one who has been exposed to the U.S. system. It indicated the ability to think comparatively and to think about issues of international law."

Wakhariya, who calls his time at Duke "one of the best experiences" of his life, agrees that international schooling and training is essential. "The kind of training and exposure we get in the United States and the kind of care we are used to exercising for clients really does not exist in India," he says. "Clients like Phoebe are not looking only for a great Indian lawyer. They are looking for somebody who will be able to take charge of the situation, put themselves in her shoes, and be able to guide and anticipate problems and tell the in-house counsel what they should look out for.

"Historically, Indian lawyers have simply responded to instructions being given by their clients, rather than acting as advisers — they have only answered questions insofar as they have been directly asked," adds Wakhariya. "This is very different from the U.S. approach [where] business lawyers think like business people and proactively advise their corporate clients on what the issues should be, how they should be addressed, and how risks should be minimized."

In India as in other developing countries, Wakhariya points out, foreign clients cannot assume that laws are implemented as written, and must find the right local counsel "with hands-on experience maneuvering clients through the implementation of that law on their operations."

Transactional practice itself is relatively new in India, says Wakhariya, only emerging as a distinct specialty after the Indian economy began to liberalize in the early 1990s, as he was beginning his career in the United States. That he happened to be doing the right thing at the right time he attributes to pure luck. He credits his success as a bi-cultural lawyer to sheer hard work. "There's no substitute for it." ♣

Shabbir Wakhariya LLM '91
Partner, Kelley Drye & Warren, New York
Founding member, Wakhariya & Wakhariya, Mumbai, India

Phoebe Kornfeld '90
General counsel, Intercell AG
Vienna, Austria



With her fluency in German serving as a passport to an international career in law, Phoebe Kornfeld has acquired deep expertise in vaccine development.

IN ADDITION to handling a wide variety of complex cross-border transactional, intellectual property, and regulatory work in course of her career, Phoebe Kornfeld has an unusual level of expertise in the international vaccine-development process, for which she admits a deep and abiding passion.

“In terms of adding value to society, [vaccines] are fantastic,” says Kornfeld, now general counsel for Vienna-based vaccine-maker Intercell AG, and previously in-house counsel for Chiron Corp. and Novartis Vaccines and Diagnostics. The field allows her to work with an extraordinarily diverse group of talented people, she adds. “The diversity goes not just to cultural background, but to education, training, focus, and expertise — vaccines require expertise. I’ve had the opportunity to work with many outstanding scientists, physicians, and technicians.” On the business end, too, there is a “level of commitment” that isn’t found in all areas of the pharmaceutical industry, she says.

Legally, vaccine development stands apart from other pharmaceuticals because of vaccines’ distinctive use, Kornfeld explains. “It’s not the same as a drug that an ill person will take because they think it will do some good. This is taking a foreign substance and putting it into someone who, at that moment in time, doesn’t need it — so it had better not hurt them!”

Different cultural determinatives guide individual countries’ regulatory authorities and scientific communities, she says. “It’s based on what they have been exposed to historically and what has happened in their country with respect to their experiences with different vaccines.”

At one point, Kornfeld found herself negotiating, on Chiron’s behalf, for the supply of a pandemic influenza vaccine with the national health authorities of Germany, the United Kingdom, France, Italy, and the United States. “Those were separate negotiations for the very same product — an imaginary product that didn’t exist at the time, and for a use that might never occur. It was really fantastic to see the different countries’ approaches.”

She also supported the research and development of a vaccine tailor-made to control a meningitis B epidemic in New Zealand. “I supported that project from start to finish — from the initial response to the tender that was put out by the New Zealand Ministry of Health to getting the term sheet, negotiating the contract, and then seeing the product through the clinical studies,” she says. The key was the provision for an independent review of any issue that could cause the breakdown of the relationship.

At any time, a governmental entity “might throw its weight around” and make arbitrary, even politically-motivated decisions, notes Kornfeld. “The commercial entity in those circumstances can only be protected if they provided for an independent arbiter or expert of some kind to come in and advise both sides as to whether there is a resolution to the issue on the table.” Had such a provision not been inserted in the contract in question, “I’m not sure that New Zealand would have its epidemic under control the way it does today,” she says.

A Long Island native, Kornfeld credits her fluency in German with being a passport of sorts, first to a career in international business law with White and Case in New York, Frankfurt, Paris, Budapest, and London, and then to her vaccine-related work; Chiron was specifically looking for an American lawyer who had practiced internationally and was willing to live in Germany, where its vaccine division was located. It was an “easy fit” because it revisited issues Kornfeld had researched while pursuing a PhD in political science at Duke in the 1980s; her dissertation focused, in large part, on the West German vaccination program in Cameroon as a facet of its foreign aid initiatives.

“I didn’t join Chiron because I was looking for a vaccines position,” she says, “but I knew I would be more than willing to devote my time and energy to learning more about the industry. And I was right.” ♡



**Mohammed Al-Sheaibi
oversaw the development
of laws that established
a framework for a
regulated capital market
in Saudi Arabia.**

**Mohammed Al-Sheaibi
LLM '90, SJD '93
Director, Legal Department
Saudi Arabia Monetary Agency**

securitization specialist at Dechert in Charlotte, N.C., who published an article on the project in the *Stanford Journal of International Law*.)

“We looked to Malaysia and other countries in the Far East as emerging markets, and then we would see how Finland and Denmark and others handled these issues. We became perfectionists,” Al-Sheaibi jokes of the “hundreds and maybe thousands of hours” he and Cox spent crafting and adjusting the draft law. Taking into account the regulatory approaches of diverse countries around the globe, as well as obtaining the input of myriad experts from the U.K. and U.S. and other jurisdictions, plus the close review by experts at SAMA, they made sure it covered all major issues, from public offerings and reporting obligations of public companies, proxy solicitations, and insider trading to the structural requirements for the exchange and the licensing of traders and other intermediaries. They also built in flexibility for regulators.

“We handled the major issues in the law and left the details to be handled by regulations issued by the board of the capital markets authority so they could remain flexible to the needs of the market,” says Al-Sheaibi, adding that one commentator, a leading U.K. lawyer, labeled the draft law “user friendly.”

A unique facet of the legislation, he notes, is its creation of a two-level court to handle disputes regarding trading and violations for which he and Cox wrote all the rules. “It provides for quick and efficient decision making. You don’t want to send a dispute to a regular court where it will take a long time to be resolved.”

The specific need of the Saudi Arabian market was “at the top of our minds” throughout the process of developing the Capital Market Law, Al-Sheaibi says. He also notes, with obvious satisfaction, that the legislation sailed through its review and approval by Saudi Arabia’s legislative body, the Shura Council, before being signed into law by the Council of Ministers in June 2003.

Now fully occupied at SAMA with the legal affairs of his country’s monetary authority, Al-Sheaibi clearly relishes the contribution he and Cox made to the development of Saudi Arabia’s capital market. The Kingdom’s securities markets are now regulated by an independent Capital Market Authority, there is a dynamic yet formally-structured stock exchange, and professional brokerage firms and investment banks serve as market mediators. “It was a major change to go from having no regulator to a major independent agency who makes sure the markets operate with full disclosure and transparency,” he says. ♣

For his SJD research at Duke, Dr. Mohammed Al-Sheaibi undertook a comparative study of stock trading practices and capital market regulation in six Persian Gulf states aligned in a regional common market — Bahrain, Kuwait, Oman, Qatar, the United Arab Emirates, and Saudi Arabia. In the early 1990s each member of the Gulf Cooperation Council (GCC) had a different way of operating its stock exchange, yet all sought greater harmonization in order to facilitate cross-border transactions as their capital markets developed, he explains.

“Some of them had organized a stock exchange with a legal structure but no regulator or SEC equivalent,” says Al-Sheaibi, who heads the legal department of the Saudi Arabia Monetary Agency (SAMA), the country’s central bank. “Others had company laws but their capital requirement was very limited.” With the busiest market in the GCC — and the largest in the Middle East — Saudi Arabia used its banks as brokerage firms, operating a *de facto* exchange that offered electronic trades but had no formal regulatory structure for them.

Supervised by James Cox, Duke’s Brainerd Currie Professor of Law, Al-Sheaibi also found approaches applicable to the GCC countries in the Swiss and German capital market systems and brought them into his comparative study. With its recommendations for regulating capital markets and for economic liberalization across the GCC member states, Al-Sheaibi’s Duke thesis has been widely consulted. All the GCC members have since organized stock exchanges and a number have also established capital market regulators. Cross-border trades are now the norm. “It was a very useful and highly pragmatic [project], not just an academic view,” he says.

After completing his SJD, Al-Sheaibi personally oversaw the development of laws that established a framework for a regulated capital market in Saudi Arabia. Throughout the multi-year undertaking, he again collaborated with Cox, an internationally renowned expert in securities and company law, who served as consultant and reporter. The two mined the laws and regulations of many emerging and developed markets, cherry-picking best practices that would achieve their goals for a fair, transparent, and efficient market on a line-by-line basis. (In the project’s later stages, Cox was assisted by another former student, Joseph W. Beach ’98, now a finance and



Rindala Beydoun finds no disadvantage in being a woman lawyer in the Arab world. “It can be an advantage in negotiations,” she says.

HAVING OVERSEEN the opening of offices in Doha, Qatar, Abu Dhabi, and Dubai in the past year, Latham & Watkins partner Rindala Beydoun can attest to the fact that the Middle East is a hot market even when the world economy seems stone cold.

A specialist in mergers and acquisitions and private equity, Dubai-based Beydoun handles transactions throughout the Arab world and beyond.

“It’s been fun to be involved in the development of this region,” says Beydoun who was an equity partner at Vinson & Elkins before moving to Latham & Watkins in early 2008. “There is a lot of development and positive energy — a lot of ‘buzz.’ Our contribution [as lawyers] is small compared to that of the main investors, but it’s been fun to be a part of it.”

A native of Southern Lebanon who moved to Michigan as a teenager, Beydoun says her trilingual fluency has been an asset in her transnational practice. “It’s been very useful to have Arabic in Libya and French in Algeria, Tunisia, and Morocco. It’s been one of the reasons I have been able to get a lot of work in North Africa.”

Beydoun came to Duke Law primarily because of its strong program in international law; her long term goal was always to return to the Middle East. Directly out of law school, she got “tough training” in mergers and acquisitions working under a mentor, Julia Darlow, at Dickinson Wright in Detroit. “It was a time of a lot of consolidation in the auto industry and she represented some of the German, Japanese, and Canadian auto parts suppliers. We worked on a ton of acquisitions over three years, one after the other, and I absolutely loved it. She supported me and involved me in every transaction she worked on.” Although she took an in-house position after her first child was born — largely because of the job’s scaled-back hours — Beydoun says she loved private practice and always planned to return.

Beydoun moved with her family to Dubai eight years ago, just as its development boom was exploding. After working first for Dubai’s largest local firm, Tamimi & Co., and Mastercard International, she joined Vinson & Elkins, the first major U.S. firm to open an office in the emirate.

What is it like to be a woman lawyer in the Arab world? “I have never felt that I have been disadvantaged by the fact that I’m a woman,” Beydoun replies, noting that her earliest legal role model was a beloved aunt who was something of a pioneer in Southern Lebanon in her choice of a profession. “In fact, I think it might be an advantage — sometimes I feel that a man will take a comment from a woman that they would not take from another man. It can be an advantage in negotiations.” On business trips to Saudi Arabia she says she takes particular care with her dress and conduct and even where meetings are held. “It’s a bit more prickly there, but not impossible.”

Beydoun suggests that westerners interested in practicing in the region gain some background in comparative and international law — she studied European Union law at Duke’s summer institute in 2001. She also favors U.S. experience, ideally in a large firm. “I always advise young graduates to work in the United States first. The breadth and depth of the training one gets in New York firms is unparalleled.” Beyond that, she cautions westerners against making generalizations about the Middle East and the Arab world.

“Be careful about lumping the whole region’s issues in one basket,” she says. “Every country has its own identity and culture.” ♣



Rindala Beydoun
JD/LLM '94
Partner, Latham & Watkins
Dubai, United Arab Emirates

Faculty Focus



Guy-Uriel Charles Preeminent election law scholar joins Duke Law faculty

GUY CHARLES' CURRENT PROJECT bears the catchy and provocative title "We the (Colored) People." It's one he's been thinking about for a long time, says Charles, a leading scholar of constitutional law with particular expertise in issues relating to race, election law, law and politics, and civil procedure. He will join the Duke Law faculty July 1 after visiting for the 2008-09 academic year.

"This is a project on what it means for people of color to be taken seriously as full citizens in American democracy, especially where they experience profound and existing racial inequality, not explicit, state-sponsored racial discrimination of the Jim Crow variety, but simply as a result of the history of this country and as a result of the social location in which

they find themselves," says Charles, currently the Russell M. and Elizabeth M. Bennett Professor of Law at the University of Minnesota Law School.

"So this is a project that is about the meaning of the Constitution and the meaning of the Reconstruction Amendments — how one can reconceive these amendments to address the problem of racial inequality, while at the same time being conscious of not burdening innocent individuals too much. It's about trying to find the right balance."

In formulating his argument, Charles mines contemporary jurisprudence relating to the Equal Protection Clause, such as the University of Michigan affirmative action cases and *Parents Involved v. Seattle School District No. 1*, which considered race-based school assignment, for helpful "nuggets".

"For instance, Justice O'Connor's opinion in *Grutter v. Bollinger* contains some important principles about citizenship and why the state is more 'legitimate' when a wide variety of individuals are represented in all of its professions — you don't simply have a ruler class that is of one race," says Charles. "It's an important principle that can be drawn upon and built out." Justice Kennedy's concurring opinion in *Parents Involved* contains important concerns about existing racial inequality that can be built upon, he adds.

In his work, Charles suggests that the concept of citizenship might provide a better rhetorical device for addressing inequality than do the notions of fairness or equality. "How can you say that, 'Yes, we are committed to equal citizenship' when you have predictable and persistent racial inequality?" he asks. "You know that people are affected by it, you know it's going to persist, and you refuse to do anything about it? That seems, to me, to belie anything except a symbolic assessment of citizenship."

A native of Port-au-Prince, Haiti, who grew up in Stamford, Conn., Charles says he entered law school at the University of Michigan with the goal of becoming a civil rights lawyer. He found a calling in academia as soon as his first-year criminal law

professor suggested he think about teaching, and discovered his scholarly focus the next year in a class on law and democracy which brought together issues of constitutional law, democracy, race, and political theory — all of his passions.

“It contained all of the elements that interested me as an academic, but also as a human being. Questions of democracy ... make a fundamental difference in the lives of human beings and the way they live their lives,” observes Charles, who as a 2L also began graduate studies in political science and co-founded the *Michigan Journal of Race and the Law*. “If you have an oppressive government and an oppressive system, and if you don’t have a democratic voice, you are living a life as a human being that is very different and is in some instances lesser than that others are living, whether it’s because of economic want or whether it’s because you don’t have the freedom to worship as you want to or not worship as you want to, or whether you can’t pursue the career you want, etc. All of those things are abstract ideals, but when they don’t work out, they have a profound impact on the lives of individuals.”

Judge Damon Keith, of the U.S. Court of Appeals for the Sixth Circuit, for whom Charles clerked, remains a role model and mentor. “An animating principle of Judge Keith’s life is the importance of giving back,” says Charles, recalling his service as a speechwriter for the judge. “He always included a message about giving back to your community and leaving a place better than you’ve found it.” Charles notes that “doing the judge proud” remains a legacy of his clerkship.

At Duke, Charles’ expertise will guide the creation of a center on race and politics. “I want it to be an entity that people turn to when they want to know about an issue related to law, race, and politics or studies in those areas, and hope to shape public policy on law, race, and politics, as well,” he says. During his eight-year tenure at the University of Minnesota, he served as interim co-dean, director of the Institute for Law & Politics, senior fellow in law and politics

at the Institute on Race and Poverty, and faculty affiliate at the Center for the Study of Political Psychology. He also has served as a member of the National Research Commission on Elections and Voting and of the Century Foundation Working Group on Election Reform.

An award-winning teacher who makes it clear to students that all perspectives are welcome in classes that tackle sometimes sensitive subjects, Charles also is a frequent media commentator. He blogged throughout the recent presidential campaign, and observes that issues raised by the election of Barack Obama figure significantly into his areas of academic expertise and interest in a number of ways that he plans to explore.

“Certainly the election of the first black president is significant as a historical matter,” he says. “But will it be significant as a substantive matter? Will it change our conception of our racial identities? Will people begin to think of themselves as Americans and less as white Americans, and black Americans? Will it bring in a commitment to eradicating racial inequality? Will it bring in a commitment to address pressing socio-economic concerns, or will people say, ‘Now that we’ve broken this barrier, we’re done. This really means that everybody in America has a chance at succeeding, and if you aren’t succeeding it’s nobody’s fault but your own.’”

Charles says he was lured to Duke for its warm, intellectually rigorous, and effortlessly trans-disciplinary community. “The faculty is an intellectually dynamic and fantastic group of people. But as smart and accomplished they are, they’re also really nice people. So for me, the Law School brings together what I like to think of as both parts of my personality: someone who is very much interested in academics, who takes the academic life and the study of the mind very seriously, who takes teaching and writing very seriously, but also someone who is a good citizen. I think Duke is composed of a lot of good citizens.”

Colleagues inside and outside the Law School say he’ll fit right in. “It’s a wonderful match on both sides,” comments Heather

Gerken, the J. Skelly Wright Professor of Law at Yale and a scholar of voting rights and election law, the role of groups in the democratic process, and the relationship between diversity and democracy. “Guy Charles is the law school version of a trifecta. He’s a person who possesses sound institutional judgment, he’s a dedicated and energetic contributor to his school and the academic community, and he is an unfailingly interesting scholar.”

“Professor Charles is one of the leading young scholars of election law in the nation,” says Dean David Levi. “It will be wonderful to have him permanently at Duke Law School, both for the creativity and breadth of his scholarly interests and for the excitement that he brings to the classroom.” ♡ — *F.P.*

Guy-Uriel Charles Recent and forthcoming scholarship

- *Direct Democracy and the Voting Rights Act* (forthcoming, California Law Review)
- *Democracy & Distortion*, 92 Cornell L. Rev. 601 (2007)
- *Race, Redistricting, and Representation*, 68 Ohio State L. J. 1185 (2007)
- *Taking Citizenship Seriously*, 30 Harv. J. L. & Gender 353 (2007)
- *On the Renewal of Section 5 of the VRA: Why Congress Failed Voters of Color*, in MAKING EVERY VOTE COUNT: FEDERAL ELECTION LEGISLATION IN THE STATES (Andrew Rachlin ed.) (Princeton University 2006) (with Luis Fuentes-Rohwer)
- *Reexamining Section 5 of the Voting Rights Act*, in THE FUTURE OF THE VOTING RIGHTS ACT (Russell Sage Foundation, Epstein, Pildes, de la Garza, and O’Halloran, 2006) (with Luis Fuentes-Rohwer)
- *Preclearance, Discrimination, and the Department of Justice: The Case of South Carolina*, 57 S.C. L. Rev. 827 (2006) (with Luis Fuentes-Rohwer)



Katharine Bartlett: Making the most of “good intentions”

ANTI-DISCRIMINATION LAW has been extremely effective in combating various forms of overt employment discrimination, but is likely to be counterproductive in eradicating the most subtle forms of unconscious bias in the workplace, according to Katharine T. Bartlett.

Long known as one of the country's leading scholars of gender and the law and family law, Bartlett, the A. Kenneth Pye Professor of Law and former Law School dean, has taken on employment law and workplace discrimination as a new area of scholarly inquiry. Her current article-in-progress, which bears the working title “Good Intentions,” probes how to effectively engage people's best inclinations to operate without bias at work, while acknowledging internal, often unconscious bias as a persistent and significant problem.

“This sort of bias involves everything from avoiding eye contact with members of minority groups or women, sitting further away from them at meetings, or at lunch, socializing less with them, expecting less of them in the quality of the work they do, and

even over-praising them when they do a reasonable job. We find many ways, not all of them consistent and most of them unconscious, to express our anxiety about race and gender,” Bartlett explains.

“These behaviors or avoidances often don't seem subtle at the receiving end, although the people who are sending the signals are usually completely clueless about any bias or prejudice on their part,” she adds. “If we notice it at all, it tends to be in other people, not ourselves.”

Having spent much of her 2007-08 sabbatical year at New York University Law School and Columbia Law School combing legal and social science literature looking for solutions to deal with unconscious workplace bias, Bartlett says she came to realize that the key is not further legal regulation that more readily assumes that discrimination has occurred, but rather strategies that build on most people's genuine desire to be unbiased. “People mean to be fair to others, and accepting of those who are different. They may need strong legal norms to define what being fair means, but then they need to be given responsibility and a chance to participate constructively in creating a non-discriminatory workplace. Sometimes the law's intrusion and blaming inhibits rather than encourages that sense of personal responsibility.”

The social science literature points to the need to have people internalize, rather than externalize, the non-discrimination goals of the law, says Bartlett. “People are most likely to internalize norms if they feel autonomous, competent, and related. Law, when it assumes the worse of people, can undermine all three of those things. Too much fear of blame and reprisal, particularly with respect to behaviors people do not experience as discriminatory, tends to make them defensive, resentful, and uncooperative. From this posture, the law's commands may be successful in eliminating overt forms of prejudice, but not the more pervasive unconscious ones.”

In an overly legalistic setting, people will come to believe that if they have followed

the prescribed protocols, then they have satisfied their obligations. “So they design, distribute and/or comply with required policies, make sure that minorities and women are in the pools for the searches they conduct, fill out properly the numerous EEO forms, and don't make racist and sexist comments.” These kinds of external controls on people's biases are necessary, but they won't be enough to reduce unconscious bias. That requires a more internalized commitment.

“The law can block people from acting on some of their discriminatory impulses,” Bartlett says, but to alter those impulses, to a certain extent the law needs to get out of the way. “People need to be empowered — to understand inclusiveness in the workplace as a personal responsibility, not just a legal one. When people know it won't happen without them, they are more likely to go to the next level.”

When she started her research, Bartlett notes she was contemplating how best to regulate internal or unconscious bias; advocating less regulation “was the farthest thing from my mind,” she admits. “The more I got into the psychological literature involved, the more it seemed to me that law could actually be a hindrance. It can get in the way by ordering some ‘doable’ things, like filling out forms, that absolves people of responsibility without actually changing their unconscious biases. This process is primarily one that people need to take charge of themselves. We have to come at it from a different direction, taking advantage of people's good intentions. People need information, not more rules. They need opportunities to interact with others not like themselves, in contexts in which common bonds are discovered and forged. They need to experience their increasing comfort with others as personal and voluntary, not institutional and forced.”

Bartlett continues to pursue teaching and scholarship on gender and the law — her analysis of the gender integration of the Virginia Military Institute will appear in Foundation Press's *Women and the Law Stories* in 2009. But she says she has found it refreshing to teach a new course. “It involves a lot of issues that I knew nothing about. I have a great class, and I'm learning a lot.” ♣ — F.P.

Bill Brown '80: Bringing Wall Street into the classroom

STUDENTS IN Bill Brown's classes got a banker's-eye-view of the world economic crisis as it unfolded through the fall 2008 semester.

With the credit crisis spiraling out of control as he was planning his first three courses pertaining to capital markets, corporate finance, and business law and planning, Brown, a visiting professor of the practice of law, wanted his students to learn how to read fluctuations in the equity, interest rate, credit, commodity, and foreign exchange markets. That's why he arranged for all of them to have access to "Bloomberg Professional," the software commonly used by brokers and bankers to graphically track these markets. Beyond that, he wants them to leave his classes fluent in how complex derivatives and structured instruments operate in fixed income and equity markets.

"My goal is that the Duke students who come out of my classes will set themselves apart from any other law school in the country in their fluency on these issues," says Brown, who was a partner at Sidley Austin in New York before launching an 18-year career in financial services. In leadership positions at Goldman Sachs & Co., AIG International, and Morgan Stanley, he specialized in currency and fixed income markets, most recently serving as global co-head of listed derivatives at Morgan Stanley, and he is eager to share his expertise. "I want to make sure that students can work in law firms, hedge funds, or banks, and actually have a good sense of what their products are."

More practitioners need these capabilities, he says. Having spent years selling financial services, Brown defends such products as credit default swaps and collateralized debt, mortgage, and loan obligations (CDOs) as "great instruments", provided they are used properly. "Many want to reject these altogether, rather than focusing on correcting the marketplace in which they operate. Some institutions entered into credit default swap transactions recklessly, and the lack of a central clearing house

threatened the market when Lehman toppled and AIG teetered," he says, adding that marketplace predatory lending practices also caused misuse of CDOs.

"The bottom line: not enough lawyers and businesspeople focused on how these products were being used or misused. But if they had better familiarity they could have served as a check on the system." Predicting an era "where every practice and product is going to be called into question, regulations will be imposed, and businesses and directors will want to be more thoughtful," Brown is taking students in his Fixed Income Markets class on a "deep dive" into how all the structured products in the marketplace work.

In Legal, Accounting, and Business Responses to the Subprime Crisis, Brown is challenging students to find ways to



fix the credit markets. Working in teams through the spring semester of the year-long class, students are writing papers on such issues as bailout strategy, market structure, regulatory policy, loan disclosure, solutions for subprime borrowers in trouble, the performance of ratings agencies, ethical obligations of lawyers, and the proper roles and responsibilities of intermediaries like brokers, banks, and independent directors. Each paper will form a chapter of a book to be published by the Duke Global Capital Markets Center. "When it comes out we'll send it to every policymaker I can find," says Brown.

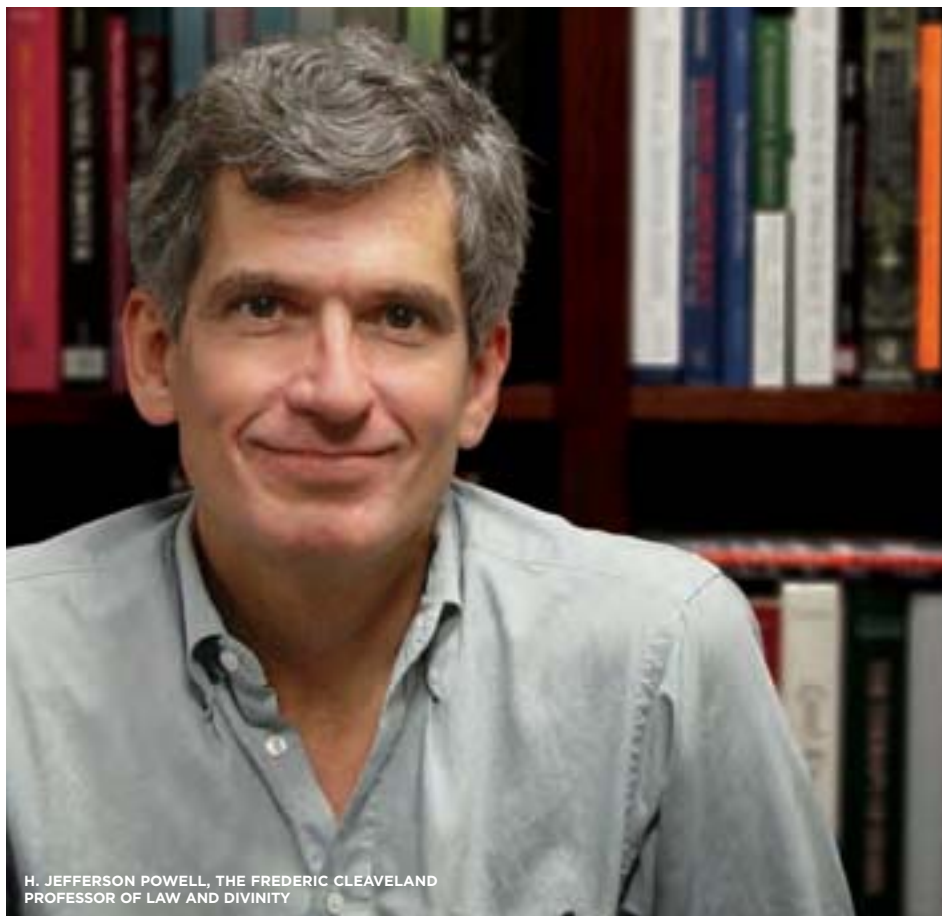
"Professor Brown's classes are among the best I've had at Duke," says Ryan Martin '09 who is in two of them. "He has done a great job explaining a number of financial products, structures, and transactions, including credit default swaps. And at this time in history, his courses are revolutionary."

A former member of the Law School's Board of Visitors, Brown routinely shared his ideas for making legal education more relevant to students by giving them "a practical sense of the world in which they're operating," first with former Dean Kate Bartlett and then with Dean David Levi. During the April 2008 reunion weekend, Levi suggested that Brown come back to put his ideas into practice. The offer came at a perfect time for Brown, who had recently left Morgan Stanley to launch two entrepreneurial ventures.

Partnering with a PhD chemist — a friend from his undergraduate days at MIT where he majored in biology and political science — Brown launched 8 Rivers Capital and Palmer Labs last May, enterprises that he describes as a technology developer and a venture capital company bonded together. Seeking out entrepreneurs who have "grown" technology companies and cashed out, Brown and his partner bring them in as equity partners in their companies, to finance and commercialize technologies related to biomedical devices, gene replacement therapy, traditional energy, alternative energy, and the telecom and automotive industries, among others.

Brown says his experience at Morgan Stanley, where he managed more than 500 members of sales, marketing, information technology, and operations teams in nine locations globally, taught him how to "put a whole business together." He is clearly having fun building his Washington, D.C.-based businesses — and sees this as the perfect time to do it. "Over the next five years, those who have access to capital are going to have the some of the best investment opportunities imaginable. We are entering a period where ideas and cash flow will be king," he says.

He is also clearly having fun in class. "We're creating a level of excitement about the markets that is truly, truly exciting," he says, "and I am grateful to have some of the most energetic and enthusiastic students out there." ♣ — *F.P.*



H. JEFFERSON POWELL, THE FEDERIC CLEVELAND PROFESSOR OF LAW AND DIVINITY

Neither fool nor cynic: Jeff Powell's happy Constitution

Book review by Andrew E. Taslitz

A GREAT NOVEL is not easily forgotten. It is a gripping read, hard to put down. Its language is to be savored, its characters worried over, its tale embraced. It touches the heart as well as the mind, and it offers novel insights into human nature and institutions. We would rarely describe nonfiction in such emotionally intense terms. Yet they well capture my reaction to H. Jefferson Powell's beautifully written and spiritually uplifting new book, *Constitutional Conscience: The Moral Dimension of Judicial Decision*.

Most constitutional law scholarship is depressing, either foolishly pretending law to be a mechanical enterprise divorced from politics or a cynical one masking politics. Jeff Powell offers a third, happier way ignored by fools and cynics alike: that of virtue.

The Constitutional Virtues

Powell defines a "virtue" as "a habit or disposition of mind or will, oriented in (say) Aristotelian thought to happiness or *eudaimonia*, and in the American constitutional tradition to the interpretation and application of the Constitution as supreme law." Powell thus begins by linking constitutional interpretation to fostering character development in pursuit of human happiness and flourishing.

Faith

In the classic way of moral philosophers, Powell argues that the American constitutional tradition rests on certain, perhaps implied, presuppositions that in turn entail certain virtues. The first presupposition is that the Constitution is intelligible over time. But the words of the text cannot be intelligible if separated from the "political and legal enterprise that the words constitute."



H. Jefferson Powell *Constitutional Conscience: The Moral Dimension of Judicial Decision*

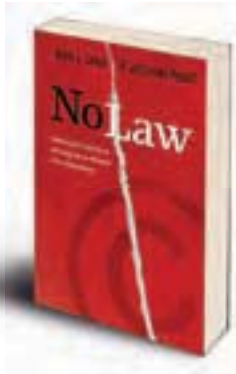
(University of Chicago Press 2008)

Divining meaning from this enterprise and the text also presupposes that Americans can "talk meaningfully about the purposes and goals of the American project." But such talk is "intrinsically laden with political and moral content" and fraught with the certainty of principled disagreement.

The constitutional virtue these presuppositions entail is that of "faith," both as belief and as an activity of commitment. "The constitutional virtue of faith," Powell explains, "involves both an acceptance of the Constitution's intelligibility (it is not just an empty vessel into which we can pour whatever values and preferences we choose) and an undertaking to govern oneself as a constitutional actor in accordance with the Constitution's intelligible meaning." It is the virtue of faith that enables the possibility of respectful dialogue about the document's meaning.

Candor and Integrity

Powell's second presupposition is the unavoidable presence of uncertainty in divining the Constitution's mandates. This ambiguity means that constitutional interpretation is "an intellectually creative activity, not a mechanical process of unveiling outcomes already fixed in the text." For such creativity to be more than mere posturing, the virtues of candor and integrity are required. Candor about ambiguity and the true, complete reasons supporting



New from Jeff Powell and David Lange,
Duke's Melvin G. Shimm Professor of Law

No Law: Intellectual Property in the Image of an Absolute First Amendment

(Stanford University Press 2008)

Lange and Powell not only propose a novel reading of the First Amendment, they also re-imagine copyright and other expressive parts of intellectual property as a result. (Review forthcoming in the Summer 2009 issue of *Duke Law Magazine*.)

a particular decision is essential if decisions are to be taken seriously in a world in which it is risible to claim that they are beyond dispute. Candor allows the system moral dignity and is more than just sincerity and honesty. Candor is “the disposition to seek, and so far as possible to achieve, a congruity between the mind grappling with the constitutional issue before it and the language in which that struggle and its resolution is expressed, ‘living speech,’ as James Boyd White has memorably described it.”

Candor is linked to integrity, “the virtue of seeking in any given situation that interpretation ... that honestly seems to the interpreter to be the most plausible resolution of the issues in the light of text and constitutional tradition.” The Constitution may thus not be used as a means to achieve goals stemming from other sources but rather be “itself the ground for their decisions.” Self-deception and not openly considering all relevant factors fails this test.

Humility

Powell's third presupposition is that the Constitution assumes that “disagreement on matters of great importance is ineradicable...” yet that community can be maintained in the face of such disagreement. But this presupposition holds only if those who act under the Constitution possess the virtue of humility, “the habit of doubting that the Constitution resolves divisive political or social issues as opposed to requiring them to be thrashed out through processes of ordinary, revisable politics.” Powell still expects political positions to be passionately held, but he sees the Constitution as a way of framing debate, not shutting it down. In short, “the Constitution leaves disagreement to the political realm of conflict and

faction, where the big-enders may win today and the little-enders tomorrow, and ensures that the conflict may continue by forbidding governmental attempts to shut down debate.” Humility decidedly *does not*, Powell emphasizes, equate to deference to the political branches. Rather, it simply requires that the Court neither curtail dissenting views nor eliminate them from the public agenda.

Acquiescence

Powell's final constitutional virtue — “acquiescence” — stems from the combination of the Constitution's presupposition that not only its text but its *purposes* be “comprehensible and humanly attractive,” that there be a practical means for settling principled disputes, that how we do constitutional law defines us as a people, and that this peoplehood is an ongoing project linking past, present, and future. “Acquiescence” is the predisposition to (rebuttably) presume that past decisions merit respect. Such respect, even for decisions with which a Justice disagrees, recognizes the possibility of his own error, the value in the debate and resolution of past disagreements, and the importance of the voice of America as a temporal community. Explains Powell,

The virtue of acquiescence locates the constitutional decisionmaker within the broader American community, which encompasses the past, with its controversies, conclusions, and errors, as well as his or her contemporaries, who share the past, as well as the obligation to treat constitutional decision as the search to implement not a partisan or parochial perspective but what Madison called the national judgment and intention.

Powell also concludes that the virtues themselves entail a small number of substantive constitutional values, whose meaning should by now be self-explanatory: the priority of the political, the absence of orthodoxy, and the inclusion of everyone in the “community

of those who count, whose voices must be heard.” Powell believes that his study suggests some modest institutional reforms, such as greater openness in government and attention to the constitutional virtues in legal education, but his articulation of the virtues themselves is his signal contribution. Powell further reminds us that we are a republic of laws, not justices, so constitutional interpretation is everyone's business. Moreover, he concedes the possibility that the ideals that he outlines are themselves fantasy or too often inadequately demonstrated in practice. Yet he believes that history offers hope for promise and that, if he is wrong, we face a future too bleak for him to accept. Powell concludes:

Constitutional law is an experiment, as all life is an experiment. The experiment is modest in its goals — we have not formed a political community to bring about the Kingdom of God or even the classless society. Our goals have been to alleviate human suffering and to empower men and women to live their lives as they see fit but to do so in a political community that demands their allegiance to it and to their neighbors, and is worthy for all its flaws of making such demands. Such an enterprise, we have thought, nourishes our individual spirit and our social impulses alike. At the heart of the more than two centuries of American constitutionalism is the conviction that this is an experiment worthy of continuing.

The Happy Constitution

Jeff Powell's Constitution is a “happy one,” for it is devoted to human flourishing stemming partly from virtuous persons and institutions. It is, in this sense, an antidote to the depressing constitution, a form of constitutional Prozac working not through physical chemistry but through beautiful prose that simultaneously brings a smile to the reader's face and a tear to his eye. ♡

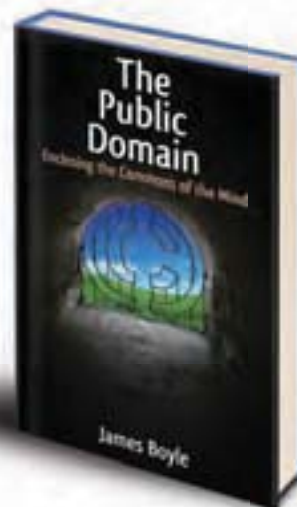
Andrew E. Taslitz is a professor of law at Howard University and currently the Welsh S. White Distinguished Visiting Professor of Law at the University of Pittsburgh. He is a scholar of constitutional criminal procedure, criminal law, and evidence whose most recent book is Reconstructing the Fourth Amendment: A History of Search and Seizure 1789-1868 (NYU Press 2006; paperback forthcoming 2009).



Care you should: James Boyle and *The Public Domain* Book review by Robert Cook-Deegan

JAMES BOYLE'S *The Public Domain: Enclosing the Commons of the Mind* has one main purpose: to explain why policies governing intellectual property matter and to get us riled up to protect a valuable public domain. His pellucid prose is a call to arms, laying out the arcana of intellectual property law in plain English. We all have a stake in copyright, patents, trademark, trade secrets and other ways that law creates incentives to do the work of the mind and the hand — to write, to make music, to share pictures, to do science, to paint. Yet few of us pay much attention to how that law works, or what is at risk when it does not work well. Boyle puts it starkly: "Intellectual property rules will profoundly shape science, culture, and the market in the information age, [but] they just seem obscure, wonkish, hard to get excited about."

Have you noticed that it has gotten harder for jazz musicians to borrow one another's melodies, that much of the past century's literature remains under copyright, whereas a century ago, it would have been freely available? James Joyce published *Ulysses* in 1922 and died in 1941; almost a decade into the new century the works of an author who died at the beginning of World War II are still under copyright. If ever there were an author whose works could benefit from modern tools of text analysis, it would surely be Joyce. But the irascible executor of his estate, Stephen James Joyce, has wielded copyright like a club. He has blocked several commemorations of his grandfather's work, even by the Irish Government



James Boyle
The Public Domain: Enclosing the Commons of the Mind
(Yale University Press, 2008)

(which passed a law in response) and has constrained any scholarship that provokes his capacious sense of offense or arouses his deep suspicion of academics — the very constituency most responsible for keeping Joyce's legacy alive and sustaining his main source of income.

It is not too much of an overstatement to say the nonexistent searchable online census of *Finnegans Wake* is collateral damage from Disney's evergreening of the copyright for Mickey Mouse. Why? Disney is ready to defend its royalties and lobby for longer periods of copyright, but few even notice the lamentable paucity of tools for appreciating the greatest writer of the last century, fewer still are aware of its main cause: a dyspeptic heir brandishing copyright law.

Even as our technology makes worldwide access to information instantly available, changes in the law are deliberately dumping sludge in the information pipeline. Courts have expanded the subject matter that can be patented, Congress has several times extended copyright and passed the Digital Millennium Copyright Act at the behest of film and music purveyors. Boyle argues that intellectual property law is vital and valuable, but it has gotten out of balance as more of our intellectual space has been enclosed, the fences raised higher, and the gates more heavily patrolled.

Admittedly, not all the news is bad. The Supreme Court has made a series of recent

***The Public Domain* concisely describes how legal incentives intended to augment intellectual endeavor can also impoverish our culture. ... Notes Boyle: “One of the most stunning pieces of evidence to our aversion to openness is that, for the last 50 years, whenever there has been a change in the law, it has almost always been to expand intellectual property rights.”**

decisions that lighten the headweight of the patent-law sledgehammer by giving judges discretion over issuing injunctions for patent infringement and assessing proportionate damages. The Court of Appeals for the Federal Circuit, the main appeals court for patent cases, narrowed the range of patentable “inventions” in its October decision *In re Bilski*. But Boyle’s fundamental point remains — the price of preserving a robust public domain is eternal vigilance.

The Public Domain concisely describes how legal incentives intended to augment intellectual endeavor can also impoverish our culture. This results from a cognitive bias that identifies foreseeable risks but discounts unanticipated benefits that arise from openness and sharing. Notes Boyle: “One of the most stunning pieces of evidence to our aversion to openness is that, for the last 50 years, whenever there has been a change in the law, it has almost always been to expand intellectual property rights. (Remember, this implies that every significant change in technology, society, or economy required more rights, never less, nor even the same amount.)”

The cognitive bias that privileges control of risk over network benefits from openness combines with a political economy in which the financial stakes and risks are great for the few and the benefits are also large but much more diffuse for the many. That is, we have a problem of attention asymmetry in which interest groups whose business is threatened by new technologies and open sharing pay close attention to intellectual property law and work

to ensure it promotes their interests. They quite understandably and legitimately pursue their interests in a participatory democracy, but the countervailing motivations to preserve a robust public domain are relatively weak.

Italian engineer-turned-economist Vilfredo Pareto characterized the mathematics of this game theoretic problem a century and a half ago from his academic post in Lausanne: “... the loss of one Franc to each of one thousand persons and of a thousand Franc gain to one individual ... [that individual] will expend a great deal of energy [and the thousand] will resist weakly.” Boyle notes “we have at least four problems: an issue that is perceived as obscure, affecting scattered groups with little knowledge of each other’s interest, dominated by an ideology that is genuinely believed by its adherents, in the place of which we have to make careful, balanced, empirically grounded suggestions.” His proposal is a social movement to correct the balance, and *The Public Domain* is his vehicle.

Yale University Press has adopted an enlightened policy of allowing simultaneous publication online in PDF format that can be freely downloaded from www.thepublicdomain.org, a policy singularly well suited for Boyle’s main thesis of openness and availability of scholarly material on the web.

Boyle’s final chapter is devoted to an extended analogy to the environmental movement, an argument that a social movement is needed to protect the public domain. Until June 1962, Rachel Carson

was a relatively unknown marine biologist who had successfully become a beloved nature writer. Her life, as ours, changed when her book *Silent Spring* was serialized in *The New Yorker* and then appeared in book form that September. She caught the wave of a growing social movement focused on pesticide use, air pollution, water pollution, and conservation of the natural environment. Her rise was fomented by a ham-fisted chemical industry whose vitriolic defensiveness and scorched earth rhetoric turned a quiet but impassioned writer into a heroine and cultural icon. Their vilification enhanced Rachel Carson’s stature and fanned the sparks of a book into the flames of a major social movement that brought us Earth Day and the Environmental Protection Agency ... and Al Gore. Rachel Carson died in 1964. In 2009, you can pull up *Silent Spring* on Google books for free. Her books are a part of our culture. I would have quoted her, but if you go to rachelcarson.org, you’ll find a friendly notice: “All requests for permission to quote or to otherwise use Carson’s words from any source must be secured from Ms. Frances Collin, Trustee of the Estate of Rachel Carson. She is the only person who can give permission. She can be contacted at P.O. Box 33, Wayne, PA. 19087-9998.” Need we say more? ♪

Robert Cook-Deegan MD is the director of the Duke Institute for Genome Sciences and Policy’s Center for Genome Ethics, Law and Policy.



Photo by Scott J. Ferrell/Congressional Quarterly/Getty Images

SEN. TED KAUFMAN, D-DEL., WIFE LYNNE, AND FORMER VICE PRESIDENT DICK CHENEY, JAN. 16

A 1960 graduate of Duke University, Kaufman has taught classes relating to Congress at the Law School since 1991. He is the founder of Public Strategies, a political and management consulting firm in Wilmington, Del., and was a charter member of the nine-member Broadcasting Board of Governors, an independent federal agency responsible for all non-military, international broadcasting sponsored by the U.S. government.

“I think the people of Delaware should be delighted by this choice,” said Professor Christopher Schroeder at the time of Kaufman’s Senate appointment. “Ted is one of the most conscientious, honest, and hardworking people I have ever been associated with and I know he will work 24/7, 365 days a year for the people of Delaware and the entire United States.” ♣

Kaufman sworn in as United States senator

SENIOR LECTURING FELLOW Ted Kaufman has been sworn in as a United States Senator. Delaware Gov. Ruth Ann Minner named Kaufman to serve in the seat vacated by Vice President Joseph Biden until 2010, when a special election will be held.

Having served on Biden’s Senate staff for 22 years, 19 as chief of staff, Kaufman also headed his two presidential bids. Following the Nov. 4 presidential election, Kaufman co-chaired Biden’s transition team and served on the advisory board of President Barack Obama’s transition team.

Interdisciplinary project tackles energy, climate innovations

A RECENT PROJECT on innovations in energy and climate, particularly as they relate to China and other developing countries, tapped into Duke’s cross-disciplinary strength in intellectual property and environmental law and policy. Sponsored by Chatham House in London, the home of the Royal Institute on International Affairs, the project brought together Duke Law intellectual property experts Jerome Reichman, Bunyan S. Womble Professor of Law, and Arti Rai, Elvin R. Latty Professor of Law, Jonathan Wiener, Perkins Professor of Law and Professor of Environmental Policy and Public Policy Studies, and Richard Newell, Gendell Associate Professor of Energy and Environmental Economics at Duke’s Nicholas School of the Environment.

“One part of the solution to global climate change is to put a price on greenhouse gas emissions through a tax or a cap and trade system. Another key part of the solution has to be to design incentives that will motivate the development and diffusion of new, climate-friendly technologies,” said Wiener. “But strong intellectual property rights, although a powerful motivation for the development of new technologies, sometimes also impede the diffusion of those same technologies. So this project explores to what extent this dilemma will afflict innovation in climate-friendly energy technology, especially in China.” ♣

Duke Law faculty assist presidential transition team with agency review



PROFESSORS Christopher Schroeder and Arti Rai helped review government agencies for the Obama-Biden transition team.

Schroeder, the Charles S. Murphy Professor of Law and Public Policy Studies, served on the Justice and Civil Rights Team examining the operations of the Department of Justice. During the Clinton administration, he served as a deputy assistant attorney general in the Office of Legal Counsel in the Department of Justice, and as acting head of that office 1996-97. He is the director of Duke’s Program in Public Law and of counsel at O’Melveny & Myers in Washington, D.C.

Rai, the Elvin R. Latty Professor of Law, served on the Science, Technology, Space, and Arts Team assigned to the Department of Commerce. An expert in patent law, law and the biopharmaceutical industry, and health care regulation, Rai’s current research, funded by the NIH, focuses on intellectual property issues raised by collaborative research and development in areas ranging from synthetic biology to drug development. ♣

APPOINTMENTS
AND HONORS

James D. Cox, Duke's Brainerd Currie Professor of Law, was named to the Standing Advisory Group of The Public Company Accounting Oversight Board in October. The group advises the board, a private, nonprofit corporation created by the Sarbanes-Oxley Act of 2002 to oversee the auditors of public companies.



Professor Donald L. Horowitz will be honored by the Ethnicity, Nationalism and Migration section of the International Studies Association (EMNISA) at the Association's upcoming 50th annual convention. The James B. Duke Professor of Law and Political Science, Horowitz will receive the 2009 EMNISA Distinguished Scholar Award for his contributions to the study of ethnicity, nationalism, and migration. He will also take part in a "Distinguished Scholar's Panel" at the convention, to be held Feb. 15-18, 2009 in New York City.

Horowitz has written extensively on the problems of divided societies and issues related to constitution building. He is a member of the Secretary of State's bipartisan Advisory Committee on Democracy Promotion and is president of the American Society for Political and Legal Philosophy. ♪



Professor Michael Tigar, a leading trial and appellate litigator, was honored by the Office of the Appellate Defender with its Gould Award for Outstanding Oral Advocacy. The award was presented at OAD's annual "First Monday in October" fundraiser at New York University School of Law. At that time, Tigar successfully argued for the respondent in a mock Supreme Court argument of *Van de Kamp v. Goldstein*, a case concerning prosecutorial liability for wrongful convictions obtained through the suppression of exculpatory evidence. The case is on the high court's docket in the current term.

The OAD is a non-profit organization that provides high-quality appellate and post-conviction representation to indigent defendants. ♪

James Salzman aids China's macro-environmental strategy

PROFESSOR JAMES SALZMAN served as one of five international experts selected by the Asian Development Bank for work with the Chinese Ministry of the Environment as it drafts its macro-environmental strategy. He participated in workshops in Beijing in May and July and in the formal report launch in October.

Duke's Samuel F. Mordecai Professor of Law and Nicholas Institute Professor of Environmental Policy, Salzman synthesized the findings and discussions of international experts working on the project into broad recommendations for the ministry, and wrote case studies on common themes that have come up in the different areas under consideration, such as monitoring, citizen participation, and enforcement, among others.

"We are not trying to tell the Chinese what to do, but are offering examples of how other countries have dealt with these challenges," Salzman said. "The main goal with these case studies is to offer models that provide some useful insight into what might work — or, equally important, what might not work — in the Chinese context. No country has ever tried to create significant environmental protection measures in the face of such rapid economic growth." ♪

**Second Circuit cites Griffin article on compelled cooperation**

IN UPHOLDING THE DISMISSAL of fraud charges against 13 former partners and employees of accounting firm KPMG in August, the Second U.S. Circuit Court of Appeals cited the work of Professor Lisa Kern Griffin in its decision. A former federal prosecutor, Griffin is a scholar of federal criminal justice policy.

The decision held that the government had interfered with the indicted employees' Sixth Amendment right to counsel when it pressured KPMG to withhold payment of the defendants' legal fees. In doing so, prosecutors were following U.S. Department of Justice guidelines that require corporations to cooperate and isolate or identify employee targets in order to avoid corporate prosecution.

According to the court's reasoning, the government's threat to indict the corporation compelled KPMG to cooperate with authorities by violating its policy of advancing employees legal fees, wrote Chief Judge Dennis Jacobs. In reaching this conclusion about the boundaries of state action, he quoted Griffin's 2007 article, "Compelled Cooperation and the New Corporate Criminal Procedure," 82 N.Y.U.L. Rev. at 367: "The threat of [ruinous indictment] brings significant pressure to bear on corporations, and that threat 'provides a sufficient nexus' between a private entity's employment decision at the government's behest and the government itself." ♪



Testimony

Schroeder says “torture memo” skipped OLC best practices

During the Clinton administration, Schroeder served as a deputy assistant attorney general in the Office of Legal Counsel in the Department of Justice, and as acting head of that office in 1996-97. His testimony addressed an OLC memorandum dated Aug. 1, 2002 authorizing the use of aggressive techniques in the interrogation of detainees at Guantanamo Bay and elsewhere, the so-called “torture memo,” which was withdrawn by another OLC memorandum in 2004. In addition to offering testimony on the scope of executive power asserted by OLC lawyers in the Bush administration as reflected in the 2002 memorandum, Schroeder evaluated its content in light of 10 “best practices” guidelines he compiled with 18 other former OLC lawyers who served over several administrations. “Such practices are not guarantees that legal advice coming from the Office of Legal Counsel can be kept free from legal error, but they are time-tested means for reducing the likelihood of such errors and improving the quality of advice that is given,” he wrote in his prepared testimony. “They ought to be valued for those reasons.”

An excerpt of his testimony follows.

Guideline Number Eight states that “Whenever time and circumstances permit, OLC shall seek the views of all affected agencies and components of the Department of Justice before rendering final advice.” Wide consultation increases the chances of drawing on relevant expertise located elsewhere, both inside Justice and outside. Departments and agencies charged with administering statutes and other laws often have had lengthy experience with the legal ambiguities and issues raised by them. OLC may not always agree

Professor Christopher Schroeder Charles S. Murphy Professor of Law and Public Policy Studies

United States House of Representatives
Committee on the Judiciary,
Subcommittee on the Constitution, Civil
Rights, and Civil Liberties, June 26, 2008

with the legal positions taken by other components of the executive branch, but carefully listening to them can only improve the quality of the product.

Specifically, whenever OLC is asked to analyze a criminal statute, it typically consults with the Criminal Division of the Department of Justice, which as the component charged with overseeing the prosecution of individuals for violating the criminal laws naturally must regularly engage in interpreting them ... [C]onsultation often involves multiple divisions, departments or agencies.

... The 2002 memorandum is silent with regard to consultation. Most of the investigative reporting on how these memoranda [the Aug. 1, 2002 memoranda and another that remains classified] were constructed concludes that only a very small group of high level officials had access to their contents until after they became final. Both the State Department and the INS administer applications of the anti-torture statute in making asylum and immigration status determinations, but we have no indication that their advice was sought ...

Guideline Number Two states that “OLC’s advice should be thorough and forthright, and it should reflect all legal constraints, including the constitutional authorities of the coordinate branches of the federal government — the courts and

Congress — and constitutional limits on the exercise of governmental power.” ... One of the shortcomings of the 2002 memorandum is that it appears to reach firm legal conclusions without disclosing that there are some substantial counter arguments to or weaknesses in the reasoning that has been used to justify those results. ... Exacerbating the problem, no mention is made of the fact that the Convention Against Torture expressly states that the prohibition on torture is absolute, countenancing no exceptions, regardless of any claim of necessity. Nor does the memo even mention the official position of the United States, articulated in the U.S.’s Report to the UN Committee Against Torture in 1999: “No official of the government, federal, state or local, civilian or military, is authorized to commit or to instruct anyone else to commit torture. Nor may any official condone or tolerate torture in any form. No exceptional circumstances may be invoked as a justification of torture. U.S. law contains no provision permitting otherwise prohibited acts of torture or other cruel, inhuman or degrading treatment or punishment to be employed on grounds of exigent circumstances (for example, during a ‘state of public emergency’) or on orders from a superior officer or public authority.” ...

Whenever possible, written advice from the Office of Legal Counsel should acknowledge counter arguments or difficulties that its reasoning may face when it is reviewed by others. For one thing, acknowledging the counter arguments shows to the reader that the arguments have been considered and, if the memorandum is thorough, will also indicate why in the end the OLC advice finds them not sufficiently compelling to alter the conclusions reached. For another, it allows the ultimate “clients” of the analysis, who will frequently include law-trained individuals, to evaluate the quality of the advice, not having simply to rely upon an OLC conclusion. This empowers the attorney general and president to evaluate whether to overrule the advice, or far short of that, for all policymakers to assess whether they will decline to take action even though OLC has concluded they may take that action. ♡

Beyond the Bailout:

Duke Law Faculty reflect on the financial crisis and the way forward

1 | Perspectives on the financial crisis

By Steven L. Schwarcz

What caused the financial crisis?

The making and subsequent securitization of subprime mortgage loans are at the root of the financial crisis. These loans, which were strongly encouraged by government players, were generally repaid from the proceeds of mortgage refinancing when home prices appreciated. But when home prices unexpectedly began depreciating, borrowers who relied on refinancing defaulted on their mortgage loans.

These loan defaults caused a cascade of failures. Some low-investment-grade-rated mortgage-backed securities that were highly dependent on subprime mortgage payments began to default, and some AAA-rated securities that, similarly, were highly dependent on subprime mortgage payments began to be downgraded. This, in turn, spooked investors who believed that “AAA” meant iron-clad safety and that investment-grade meant relative freedom from default. Investors started losing confidence in ratings and avoiding debt securities.

With fewer investors, the price of debt securities started falling. Firms using debt securities as collateral had to mark them to market and put up cash, requiring the sale of more securities, which caused market prices to plummet further downward in a death spiral. Banks and other financial institutions holding mortgage-backed securities had to write down their value, making these institutions appear more financially risky. Counterparties, concerned that these institutions might default on their contractual obligations, stopped dealing with them. Credit then collapsed.

Federal efforts to address the problem have generally come too late. If the govern-

ment had strategically purchased mortgage-backed and similar securities at the outset of the crisis to stabilize financial markets, the credit collapse might have been avoided or lessened in impact. At that time, however, there was no political will to use taxpayer money in this innovative way.

We must now restore confidence in financial institutions and markets so that credit begins to flow again. We also need to focus on increasing the ability of homeowners to stay in their homes, such as by amending bankruptcy law to allow judges to modify the terms of home mortgage loans. Otherwise, continuing foreclosures will result in further home value depreciation, increasing defaults and the downward spiral of the real economy.

Avoiding future financial crises

Most of the causes of the current financial crisis can be divided conceptually into three categories: conflicts, complacency, and complexity. One might propose a fourth category, cupidity, but greed is so much a part of human nature that it adds little insight to view it as a separate category.

The types of conflicts most responsible for the current crisis are not due to innovations, such as the originate-to-distribute model of loan origination, but rather are more traditional — such as conflicts in the way that managers are paid, receiving high compensations and bonuses for arranging deals or investments that later fail. We are now beginning to address these types of conflicts. Complacency is a more difficult category because government cannot change human nature (although it can try



to affect behavior). Complexity is the most difficult category. Solving problems of financial complexity may well be the ultimate 21st-century market goal.

Modern financial markets and investments are sometimes too complex to fully understand. Furthermore, in a complex system, signals are sometimes inadvertently transmitted too quickly to control. To address these problems, we need a governmental entity to help stabilize irrationally panicked markets by purchasing securities — essentially acting as the equivalent of a market liquidity provider of last resort. Although private investors have the wherewithal to perform this role, the current financial crisis demonstrates that they cannot be counted on

to do so. Among other things, private investors usually want to buy and sell securities, not waiting for their maturities, whereas a governmental market liquidity provider can wait until maturity, if necessary.

These categories also do not capture the full and unique problem of systemic risk, which arises from a type of tragedy of the commons. Because the benefits of exploiting finite capital resources accrue to individual market participants — whereas the costs of exploitation, which affect the real economy, are distributed among an even wider class of persons — market participants are generally motivated by pure economic self interest. Therefore, even in a simple financial system with no conflicts and hyper-diligent market participants, systemic risk is theoretically possible.

Conceptually, therefore, the solution to systemic risk is to impose regulation that internalizes those external costs. But that is a difficult task because of the myriad ways in which externalities can arise. In the subprime crisis, for example, imposing “suitability” requirements on mortgage loans and otherwise restricting “predatory” lending may have helped to internalize externalities, but these restrictions almost certainly will not address the next crisis. Similarly, making mortgage lending safer by imposing loan-to-value restrictions (conceptually similar to the federal margin regulations) would have addressed the subprime crisis, but it would have the unintended consequence of making the cost of housing more expensive.

Absent effective means to avoid systemic risk by requiring market participants to internalize externalities, there still may be a pragmatic way to mitigate the likelihood of systemic collapse. Systemic collapses result from a chain of defaults; but if the chain can be broken, the defaults won't be transmitted. The same type of market liquidity provider of last resort that can stabilize panicking markets can also break the chain of defaults — and therefore is the best way to prevent a recurrence of the economic crisis we now face. ♣

Steven L. Schwarcz is the Stanley A. Star Professor of Law and Business. His numerous recent articles relating to systemic risk, securitization, the subprime crisis, and complexity as a catalyst for market failure can be found at www.law.duke.edu/fac/schwarcz.

2

Cost of a bad bailout? \$8.5 trillion. The value of a good one? Priceless ...

By Bill Brown

ON THE ROAD to our current crisis, we became convinced that “someone else” was watching over the risk to make sure we stayed out of trouble. Several Pied Pipers led us down this path, starting with the former chair of the Federal Reserve Bank, Alan Greenspan, who kept administering an economic palliative just when we were on the threshold of the cleansing process of a business-cycle bottom. Congress joined the party with its drawn-out dismantlement of Glass-Steagall. Aiding and abetting were the Fed, the Securities and Exchange Commission, and the Commodity Futures Trading Commission — all pushing down the road of deregulation.

The banks joined in, with compensation schemes rewarding short-term results and virtually ignoring any possibility that those results might later sour. [Former Treasury Secretary] Hank Paulson himself contributed by creating a bailout plan that

refloated the banks (at least most of them), but with no provision to ensure that resulting proceeds would be recycled back into the economy. Then, depending on what day it was, the government announced that it was propping up selected parts of corporate America and some of the very financial instruments of mass destruction that got us here.

Currently, we have earmarked for this crisis a potential of \$8.5 trillion dollars of expenditures. In today's dollars, that far exceeds the collective costs of all the wars in our nation's history (\$5.8 trillion), all NASA spending (\$0.86 trillion), the Marshall Plan (\$0.1 trillion), the New Deal (\$0.5 trillion), the savings and loan crisis (\$0.3 trillion) and the Louisiana Purchase (\$0.2 trillion). We have become convinced that money is the solution, and it doesn't matter where it is spent. Nothing could be further from the truth.



Sure, money is critical to preventing a liquidity trap. More critical, however, is that wiser heads prevail. In that vein, let's consider the following suggestions, starting with the proscriptions.

1. Do not think that it is the government's responsibility to provide indiscriminate support for illiquid securities. If the securities have ascertainable value, fine; if their value is uncertain, then we have more thoughtful ways of cleaning up bank balance sheets than shooting craps with taxpayer money.
2. Do not assume that all financial instruments slammed by the media are intrinsically bad. Bad carpenters blame their tools, good carpenters blame themselves, and media need headlines. Credit default swaps and CDOs are great tools; we just happened to have a few bad carpenters.
3. Do not hand out subsidies to every industry that is failing. This is a time for economic restructuring; better to spend money on our future, not our past.
4. Do not simply throw trillions of dollars around hoping that it is going to be recycled back into the productive parts of the economy. Hope is not a strategy.
5. Do not have the government heavily involved in directing where money goes. Pork barrel politics is a temptation that Congress has never been able to resist. The Work Projects Administration and other New Deal programs did not get us out of the Great Depression. World War II did by focusing money on productivity, not a bunch of bridges to nowhere.

Now for the steps we should take:

1. Do get the Federal Reserve actively involved in helping banks lend the money they have. The Fed has done a great job in helping banks rebuild their balance sheets (bank reserves are being amassed at a record pace). It now needs to help banks see ways to use bailout money to help each other and the economy.
2. Do take a page from Reagan's Economic Recovery Tax Act of 1981 (ERTA). Its biggest economic contribution was in stimulating investment in productive capacity. It did this by resurrecting the investment tax credit and creating accelerated depreciation for capital assets. The private sector had to spend its money first — only then could it become entitled to government benefits. This allowed the private sector to operate unfettered by politics.
3. Do create special incentives for private investments in the nation's future. Obvious targets include energy and transport. More generally, though, our future rests upon idea generation. The incentive structure for private industry should be aligned accordingly.
4. Do focus on jobs. As we embrace our future, we need to let go of parts of our past. This means retooling our workforce in ways we have not seen since bringing women into the economy in World War II. We need to harness the experience of older workers and keep them in the workforce longer. This will enhance productivity and take the pressure off of the Social Security system.
5. Do focus on education. It has been at the center of what makes this country great. Support needs to come from all directions. Universities have an opportunity to reach out to practitioners who can enhance learning in unique ways. On this last point, I count myself especially fortunate. ♣

Bill Brown '80 is a visiting professor of the practice of law and a founder of 8 Rivers Capital, LLC and Palmer Labs, LLC. He has held senior positions at Sidley Austin, Goldman Sachs & Co., AIG International, and Morgan Stanley.

3 Regretted deals

By Deborah A. DeMott

LAW STUDENTS LEARN early that contract law is unsympathetic to parties who seek to jettison commitments they've come to regret when the commitment is embodied in an enforceable contract, even though changed circumstances make profound regret a rational response to the earlier commitment. The ongoing credit crisis has inspired several noteworthy instances of buyers' and lenders' regret — notably where highly leveraged buyouts depend on bank financing.

Some deals, including those for United Rentals, Inc., Sallie Mae, and Penn National Gambling either collapsed or were revised through negotiations. Others, including Clear Channel Communications and Huntsman Chemical Corp., which I discuss below, prompted litigation.

What makes high-priced deals vulnerable to regret in light of changed circumstances is the time lag between a final agreement and closing. Interim changes in circumstances — always possible in such deal structures — were unusually profound and scary in the past year. Additionally, the dynamics that shape deal-making may seem disconnected from the legal significance of contract terms. However, vulnerable deals are indicia, not of failures in contract law, but of miscalculating what the future might hold. In particular, miscalculation may be aggravated by competition for a particular target company and by the perceived need to agree to a term to conclude a deal. Of course, the cause of one party's regret may be the source of another's relief.

Deal terms necessarily reflect the economic context in which a deal is negotiated. It's well known that prospective bank lenders, prior to the credit crisis, were relatively indifferent as to whether buyout deals contained covenants — legally-enforceable promises concerning the target's



finances and other circumstances — so strong were lenders' incentives to get deals funded and then sell off investment interests in buyout loans.

Competition for a particular target also shapes negotiations between representatives of target firms and prospective acquirors. A cautionary tale can be found in the \$10.6 billion buyout deal concluded in July 2007 between Huntsman Chemical Corp. and Hexion Specialty Chemicals, Inc., which contemplated Hexion's acquisition of Huntsman through a cash merger.

Hexion, 92 percent owned by the private equity firm Apollo Global Management, bested another prospective acquirer in competitive bidding for Huntsman. In addition to offering a higher price per share for Huntsman, Hexion committed to relatively stringent deal terms: In particular, the merger agreement gave Hexion no "out" from its duty to complete the purchase should its financing become unavailable; it contained no covenants concerning Huntsman's results in future quarters; it required Hexion to use its best efforts to consummate financing; and it provided for liability uncapped in amount if Hexion

breached any promise in a knowing and intentional manner.

The agreement did provide Hexion an out in the event of a material adverse effect on Huntsman's business as a whole — with the payment of \$325 million — though courts place a heavy burden of proof on regretful buyers in such circumstances. Thus, the agreement had terms that strongly favored Huntsman and allocated to Hexion the risk that its lenders — Credit Suisse and Deutsche Bank — would decline to fund the transaction according to the terms of their commitment letter with Hexion.

Hexion's ardor for Huntsman cooled markedly as Huntsman experienced poor results in the first quarter of 2008. Exploring possible exit routes from its duty to close the transaction, Hexion hired a financial firm to furnish support for the theory that consummation of the highly leveraged deal would leave Huntsman insolvent. Huntsman sued Hexion and its parent, seeking specific performance of the merger agreement. Huntsman won.

In a lengthy opinion, the trial court found that Hexion intentionally breached the agreement to avoid closing the merger.

That the deal was so stringently favorable to the target, noted by the court at several points in its opinion, does not make the contract unenforceable. In mid-December, Huntsman settled with Hexion, agreeing to transfer about \$1 billion in value. Huntsman's separate suit against Credit Suisse and Deutsche Bank is scheduled for trial in May.

A very different result occurred with the termination of the \$41 billion buyout of BCE, Inc. to a private investor group. The deal was scrapped in early December when KPMG opined that BCE would be insolvent post-buyout; the KPMG solvency opinion was a condition of the buyout agreement. That relatively unusual term reportedly was inserted by BCE's lawyers to allay concerns of its bondholders that the buyout would leave the company with a debt-heavy capital structure. Its presence was, no doubt, welcomed by the banks that had earlier committed to fund the jumbo-sized transaction, and may become standard practice going forward. ♣

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Grassroots investment: Not a cause of economy's ills, but key to a cure

By Andrew Foster



LAST FALL, A CHORUS of conservative commentators put the blame for the meltdown of the financial services industry squarely at the feet of federal efforts to increase homeownership rates among minority and low-income populations. In particular, these critics cited the Community Reinvestment Act (CRA) as a prime example of overbearing federal legislation that forced financial institutions to make home loans to unqualified borrowers, thus triggering the subprime mortgage crisis that now threatens the stability of both the national and global economies.

There are plenty of causes for the current economic downturn but the CRA is not one of them. Instead, the CRA is an example of the type of clear, common-sense regulation needed to help strengthen the system and protect against future crises.

The CRA was enacted in 1977 and is a key component of a series of fair lending laws, including the Fair Housing Act, the Equal Credit Opportunity Act, and the Home Mortgage Disclosure Act (HMDA), all designed to address illegal discrimination by financial institutions against low-income and minority individuals and com-

munities. Such illegal discrimination unfairly restricts the ability of otherwise credit-worthy borrowers to obtain the loans that they need to, among other things, purchase homes, start and operate businesses, pay for higher education, and finance community development activities.

While its critics charge that the CRA requires banks to engage in lending to unqualified borrowers, there is no evidence to support this claim. For example, current research has consistently shown that only about 6 percent of the subprime home loans that are at the root of the current crisis were originated or purchased by banks that are subject to the CRA. Thus the vast majority of these toxic loans were made by lenders not subject to this regulatory framework. Given this reality, any claim that the CRA caused the subprime crisis is clearly false.

Far from requiring banks to engage in irresponsible lending, the CRA merely requires financial institutions to work to actively meet the credit needs of all the communities in which they take deposits and otherwise do business. In all cases, the CRA requires that covered financial institutions' lending, service, and investment activities be carried out in a manner consistent with all applicable safety and soundness regulations.

Since their passage, the CRA and its companion laws have resulted in hundreds of billions of dollars of productive and profitable investments in economically disadvantaged communities. It's worth noting that all top banking regulators, including the chairwoman of the FDIC and the controller of the currency, have defended the CRA against the recent attacks by its critics.

Because the current credit crisis disproportionately impacts low-income and minority communities and because illegal discrimination in the credit markets is a continuing problem, any long-term economic recovery will require both a recommitment to the ideals of the CRA and a strengthening of the law. Specifically, the Obama administration should work quickly to take at least the following steps:

1. To address the increasing complexity of the financial services system, the CRA should be extended beyond banks to all institutions that provide core consumer financial products and services. For example, the CRA should be extended to insurance companies.
2. Laws that mandate the disclosure of information about the practices of financial institutions need to be either amended or enacted to provide real transparency so that the public can more effectively assess whether an institution is engaging in illegal discrimination or irresponsible lending. For example, the HMDA should be amended to require the collection and disclosure of the credit scores of loan applicants, as well as the terms of credit extended to those applicants.
3. Substantial additional resources should be appropriated to the federal agencies responsible for administering the CRA, as well as safety and soundness laws, so that they have the staff, expertise, and systems needed to be effective regulators.

Over time, it will be important to look at substantially reforming the CRA as part of any broader effort to modernize federal regulation of the financial services industry. In the immediate future, however, it is critical that those of us who understand the value and impact of the CRA defend it against unwarranted attacks and promote the incremental changes that can enhance its effectiveness. The CRA has been and continues to be a powerful tool for promoting the safe and sound extension of credit, on reasonable terms, to borrowers and in communities that would otherwise not likely be able to access the capital needed to finance growth and development. In the current environment, this crucial tool is needed more than ever. ♡

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Profiles



Arlinda F. Locklear '76: Native American legal pioneer

ARLINDA LOCKLEAR has spent most of her career attempting to secure recognition and rights for American Indian tribes. Considered a pioneer in American Indian law, Locklear has handled a wide range of claims relating to water and land, reservation boundaries and sovereignty, and federal recognition of tribes, including the Lumbee Tribe of North Carolina, to which she belongs.

"There are more than 550 recognized Indian tribes in the U.S. — each with its own history, culture, problems, and legal issues — and representing so many of them and getting to know them has been some of the most gratifying work in the world," says Locklear.

It can be slow going. Now in private practice in Washington, D.C., Locklear has two major endeavors relating to tribal claims that she has handled for more than 20 years: a land claim on behalf of the Oneida Indian Tribe of Wisconsin against the State of New York,

and the official recognition of the Lumbee Tribe by the federal government. "If I can do these two things, I'll have accomplished what I wanted to do," she says.

Hailing from a military family, Locklear spent most of her early years in Panama City, Fla., and Charleston, S.C. But Robeson County, N.C., her parents' birthplace and the seat of the Lumbee Tribe, will "always be home," she says, noting that she grew up with a foot in two cultures.

"I was Lumbee, which made me an oddity, unless I was at home [in Robeson County]. But I don't think I placed myself in broader Indian country context until college," she recalls. After auditing an undergraduate class on Indian history at Duke while in law school, Locklear was encouraged by her professor to become involved with the nonprofit Native American Rights Fund (NARF). After law school she joined NARF and remained there until 1987, working first in Boulder, Colo., and then transferring

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to its Washington, D.C., office in order to learn more about the legislative system.

In 1984, Locklear became the first American Indian woman to argue before the Supreme Court when, in *Solem v. Bartlett*, she successfully challenged the State of South Dakota's authority to prosecute a member of the Cheyenne River Sioux Tribe for on-reservation conduct.

She was appointed lead counsel after several more senior NARF lawyers turned down the case. "When they came to me, I said, 'Absolutely — who would turn down an opportunity to go before the Supreme Court?'" she recalls, adding that her confidence was boosted by past moot court experience at Duke with Professor William Reppy Jr., now Charles L. B. Lowndes Emeritus Professor of Law.

The experience was "so exciting, and such a kick, that I thought briefly about doing a Supreme Court practice," she says. "In the end I couldn't. I had started taking on my own tribe's work at this point, and I knew that was why I'd gone to law school."

Still, in 1985 Locklear again appeared before the Supreme Court arguing *Oneida Nation v. County of Oneida* on behalf of Wisconsin's Oneida Tribe. She formulated and argued the theory, adopted by the Supreme Court, that tribes have a federal common law right to sue for possession of tribal land taken in violation of federal law. The entire claim remains under appeal since the Supreme Court had before it only a small portion of the entire 250,000-acre claim. It faces an uncertain future because of an apparent erosion of tribal rights in the courts, including the Supreme Court.

"My fear is that if the Supreme Court takes it this time, we may lose," she says. "There have been dramatic changes over the past 20 years, including several right-leaning appointments to the Court. What we expect now from federal- and district-court levels is less risk-taking than in the past."

She also sees public attitude toward Native Americans as "colored" by Indian gaming. "People think all tribes are wealthy, which is not the case. The bias now is more against our clients' claims, so we end up settling more than litigating," she says. "Getting things done by agreement ... is better for everybody in the long run," she adds.

Locklear has been trying to win federal recognition for the 55,000-member Lumbee Tribe since 1988. "[This] Congress will be the fifth in which we've tried to get special legislation passed. [The last] Congress came closer than ever in the past 15 years," she says.

Achieving recognition is difficult and can be controversial, often provoking opposition from other tribes, she observes. "Indian country is among some of the poorest segments of the United States, and non-recognized tribes are at the bottom." Although she is widowed and one of her two children is still in college, Locklear has done as much work as possible on a pro bono basis for groups that otherwise can't afford to mount claims and take on challenges.

The slow pace of Indian claims isn't daunting to Locklear, who has received multiple honors, including the Outstanding Woman of Color Award from the National Institute of Women of Color in 1987 and the Kate Stoneman Award, for her "commitment to change and expanding opportunities for women," from Albany Law School last spring.

"I get enough wins — one every 10 years or so — to encourage me to hold on and hold out," she jokes. "And Indians have a different sense of time than non-Indians, a more communal attitude. I take the long-term view that even if I don't live to see it, at least I'm advancing it so the next generation can pick it up." ♡ — *Debbie Selinsky*



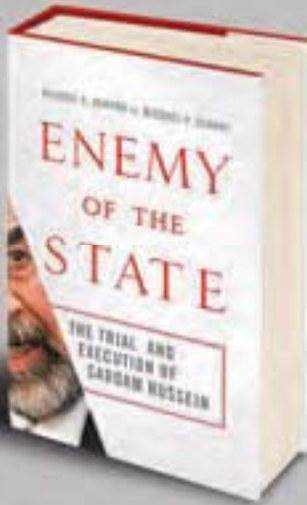
Michael Scharf '88: An insider's look at war crimes and justice

Having publicly opposed the U.S. invasion of Iraq, Michael Scharf says he was surprised to be invited to help train the judges, prosecutors, and defense counsel of the Iraqi High Tribunal who would try Saddam Hussein.

Scharf, who has advised and trained judges for such war crimes tribunals as those in Rwanda, Sierra Leone, the former Yugoslavia, and Cambodia, made his position clear to the director of the State Department's Regime Crimes Liaison Office, who was extending the invitation. "I pointed out that I had written, in various articles and op-ed pieces, that a U.S.-sponsored trial done by Iraqis would not look legitimate," recalls Scharf.

"He said, 'We know all that.'" But the director also knew of Scharf's expertise with war crimes tribunals. While in the State Department's Office of Legal Adviser in the early 1990s, Scharf crafted the U.N. Security Council resolution, rules, and statute pertaining to the Yugoslavia Tribunal.

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“He said, ‘If you think it’s not fair, help us make it fair. And if you think it’s not effective, help us make it effective.’ That was a challenge I found hard to turn down,” says Scharf, a professor at Case Western Reserve University School of Law and director of Case Western’s Frederick K. Cox International Law Center and its War Crimes Research Office. He agreed to oversee the training with one caveat: That he could publicly comment on the trial.

Now Scharf and colleague Michael A. Newton offer an “unvarnished” look at the trial in *Enemy of the State: The Trial and Execution of Saddam Hussein*, published in September by St. Martin’s Press. Although it was “the messiest” of the international war crimes trials he has seen, Scharf says it was not a sham. “Most of the people involved, on all sides, were heroic. They were trying to do their best in the face of tremendous challenges, including efforts by the Iraqi government to inappropriately influence the proceedings.”

Observing that “it’s really hard to hold a trial in the middle of insurgency,” Scharf notes that many people involved experienced tragedy, including an investigative judge and interpreter that Scharf had worked with. During the nine-month trial, three of Saddam Hussein’s 12 defense counsel were murdered, prompting the defense team to boycott the second half of the trial. Scharf commends the courage of the court-appointed defense counsel, who replaced the boycotting lawyers, in mounting a spirited defense, even when under threat from Saddam. His book’s title derives, in fact, from Saddam’s directive to counsel regarding closing arguments.

“He stood up and pointed his finger at this very diminutive and scared court-appointed defense lawyer and said, ‘We want to discredit this trial. We don’t want closing arguments,’” recounts Scharf. “‘If you give one, we will consider you the enemy of the state.’ It was a threat — he was saying this guy would be hunted down if he gave an argument. But the lawyer got up and gave a very good, three-hour-long closing argument for Saddam and his co-defendants.” The lawyer was nominated for the U.K. Bar Association’s Rule of Law Award for his courage, Scharf adds.

The fact that the trial was televised ensured transparency, as did the tribunal’s permissiveness with Saddam. “They allowed him to speak whenever he wanted, even though he was represented by counsel,” he says. “He would directly address the people who were watching him on TV, telling them to go out and kill Americans and the

people who were ‘collaborating’ with the Americans.” While Scharf thinks the diatribes — and their corresponding spikes in violence — were avoidable, he says he also found value in letting Iraqis mount a “boisterous” trial characteristic of their system of justice.

“There were a lot of things that looked alien to us because we didn’t understand the Iraqi way,” he says. “But it was a building block toward their transition to the rule of law.” He disagrees with the Iraqi insistence on seeking the death penalty for Saddam, however, as it undermined international support for the proceedings and ensured that Saddam would not be available to stand trial for more serious charges, such as the Anfal Campaign.

Subsequent to the Saddam trial, Scharf was asked to make a series of presentations to the judges of the Rwanda Tribunal in Arusha, Cambodia Tribunal in Phnom Penh, and International Criminal Court in The Hague about how to maintain control of a courtroom when the defendant is determined to disrupt the proceedings. According to Scharf, the next test case will be the trial of former Bosnian Serb leader Radovan Karadzic, which will commence this year before the Yugoslavia Tribunal in The Hague.

During a recent sabbatical, Scharf served as special assistant to the prosecutor at the U.N.-sanctioned Cambodia War Crimes Tribunal. “Like Iraq, the crimes occurred 30 years ago,” he says. “While everybody thinks the evidence is crystal clear because the skulls from the killing fields are piled up everywhere, the fact is that virtually all of the grave sites were contaminated and there was no good chain of custody because they made memorials out of all the mass graves.” Scharf notes that he also is looking forward to helping Uganda launch a domestic war crimes tribunal and truth and reconciliation commission to complement international war crimes trials, through the nonprofit organization he co-founded, the Public International Law and Policy Group.

When asked how he can be so upbeat in the face of mass tragedy, Scharf responds: “I feel very fortunate that this specialty chose me when I was in the State Department at the right time. I feel that I’ve had a chance to make a difference on the world stage and if, ultimately, these trials end up saving lives or deterring other atrocities, or even just bringing about justice so the victims can live out the rest of their lives in dignity, then I think there is something to be cheerful about.” ♣ — F.P.



Richard Baer '83: In-house excellence

LAST JUNE, *Corporate Counsel Magazine* named the in-house law department at Denver-based Qwest Communications International, led by Rich Baer, the “Best Legal Department of 2008.” In conferring the accolade, the editors cited a working culture that promotes work-life balance and job satisfaction for the staff lawyers, and the top quality of their work product over a wide range of issues. In particular, *Corporate Counsel* lauded their management and settlement of massive shareholder lawsuits arising from a corporate accounting scandal in 2001.

In an October interview, Baer modestly deflects a suggestion that his 95-member legal team is “the best,” but admits enormous pride in their work and ability.

“We hire very experienced lawyers and many of them come from large law firms, so they have good, sound training,” says Baer, who took over as Qwest’s general counsel in 2002 after serving as special counsel to the CEO. Baer now also serves as executive vice president, secretary, and chief administrative officer. He adds that he is particularly proud of his team’s “hands-on” nature.

“Each and every one, from our line-level lawyers all the way up to our most senior attorneys who are vice presidents and the principal supervisors of the department, doesn’t just supervise work but is

involved in developing the work product,” he notes. “I think that’s fairly unique among law departments.” In fact, almost all contract negotiations, disclosure and corporate governance, trademark, and immigration work is done in-house.

Having taken over the legal department as Qwest faced a “perfect storm” of potentially devastating challenges, such as multi-billion dollar shareholder lawsuits and Department of Justice, SEC, congressional, and state-level investigations into potential corporate wrongdoing, Baer personally set the hands-on standard. Over approximately five years, he and a colleague directly negotiated the settlement of a massive class-action suit, as well as a number of separate lawsuits brought by large institutional investors.

Baer, who headed the litigation practice at Sherman and Howard in Denver before joining Qwest, knew it would be unusual for the plaintiffs’ lawyers to negotiate directly with in-house lawyers as opposed to going through “the typical drill” with an outside firm. He also wanted to “humanize” the company in light of the “unrelenting bad press” it was receiving, he says.

“We wanted [the plaintiffs] to understand that there were faces and human beings behind the company, because it was — and is — a very good company that has thousands of truly superlative employees. I think it worked. We were viewed somewhat differently by the plaintiffs’ lawyers over time and it was not just a run-of-the-mill case for them.”

In fact, he and colleague Stefan Stein reached a “very fair settlement” of the class action for a fraction of the damages claimed. They subsequently applied a similar strategy to the remaining shareholder lawsuits, which they managed to settle concurrently, despite having to undertake separate negotiations with six principal law firms overseen by three mediators around the country. “Getting all of those negotiations to conclude at the same time was the most challenging thing I’ve ever had to do as a lawyer,” says Baer, with a laugh.

Baer forged his expertise in the telecommunications industry at Sherman and Howard, where he represented a number of telecoms. But he credits his first job as a Brooklyn prosecutor with fundamentally shaping his approach to litigation.

“Most people in big law firms rarely see the inside of a courtroom and if they do, it’s not with a jury present,” he says of his tenure as an assistant district attorney. “As a prosecutor, I was able to make all the mistakes a young trial lawyer tends to make and learn from every one of them. I learned what worked for me as a litigator.” A key lesson involved how best to position a case before a jury, he adds. “If you constantly look at how to prevail in front of a jury, it puts you in a good position to resolve it in advance of trial.”

As he worked to defend and resolve Qwest’s various lawsuits and investigations, Baer also worked to build a sustainable workplace for its lawyers who “were just working far too hard” when he started. He implemented flex-time, part-time, and telecommute options designed to improve work-life balance for his lawyers.

Baer, who has two daughters with his wife, Anne, a Duke grad whom he met on a blind date, says he understands the importance of giving his employees workplace flexibility.

“We don’t pay our lawyers what a partner might make at a major law firm,” he observes. “As a result, our contract with our lawyers has to be that we are not going to work them as hard. It’s really important for us to stay true to that in order for us to retain them.” *Corporate Counsel Magazine* noted that the department’s turnover rate is down to approximately 4 percent from almost 25 percent just a few years ago. Job satisfaction also stems from a policy of facilitating professional advancement and encouraging lawyers to gain new skills by circulating among specialty areas.

Baer also is continually adding to his own skill-set. As chief administrative officer, a position he added to his roster of responsibilities in August, Baer oversees Qwest’s risk management and compliance, insurance, securities, and environmental groups, and has taken responsibility for human resources, public relations, public policy, and federal and state governmental relations.

“I’m learning every day and, believe me, there’s a lot to learn,” he says. “I’m enjoying it. It’s very, very challenging and intellectually stimulating, and a great opportunity for me to further develop management and leadership skills.” ♡ — *F.P.*



Harrison Dillon '03: Renewable energy entrepreneur

Harrison Dillon’s company, Solazyme, made headlines in January 2008 when it test-drove a Mercedes powered by its algae-derived diesel fuel around the Sundance Film Festival in Park City, Utah. Since then, “Soladiesel™” officially met the American Society for Testing and Materials diesel standard, the European Biodiesel Standard, and the U.S. Military diesel standard — the first algal fuel to do so for any of these three standards — and produced the world’s first microbial-derived jet fuel. Solazyme has partnered with Chevron Technology Ventures and others to develop its technology further.



Dillon, Solazyme's president and chief technology officer, hopes to be able to produce Soladiesel™ on a large scale and at a price competitive with fossil-based fuels within two or three years. But the San Francisco-based company he founded with a college pal six months after graduating from Duke Law "is well below the necessary cost for a lot of other products that are going to make it to market before the large-scale transportation fuel," he adds.

"We are a renewable oil-production technology company first and foremost," says Dillon, who points out that Solazyme's technology can be used to make any product made with oil as a raw material, from diesel, jet, and home-heating fuel, to plastics, cosmetic ingredients, edible oils, and cleaning supplies.

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Solazyme's unique process — featured in the Sundance award-winning documentary "Fields of Fuel" — involves growing algae in the dark and feeding them large quantities of carbohydrates, which they then convert to oil. It bypasses algae's natural process of converting photosynthetic energy to glucose, and then to oil for the purposes of storing energy, Dillon explains. "We use a combination of things like genetic engineering and fermentation processes similar to the way beer is brewed or ethanol is made. We optimize the oil-production process to get this stuff made at very high volume and low cost."

Using waste-stream cellulosic sugar as feedstock for the algae — everything from wood chips and sawdust to corn stalks and molasses — helps minimize the carbon footprint involved in the manufacturing process and sidesteps criticism about a "food vs. fuel" trade-off that can be levied against biofuels like ethanol. "We don't use carbohydrates that compete with food," says Dillon. "Our technology can take a pile of sawdust and turn it into oil that can be used to make diesel fuel, or into a high-nutrition edible oil that can be used to feed people." Many people derive a high percentage of their daily caloric intake from cooking oil, which has tripled in price in the last few years, he notes.

"We can make food and we can make fuel. We built this company to solve problems."

The idea for using algae as a source of renewable energy first occurred to Dillon while he was pursuing a PhD in human genetics at the University of Utah in the mid-1990s. "The Human Genome

Project was in full swing, but I wanted to use genetics for things that were a little more creative," he recalls. "I thought renewable energy sounded interesting." He "stumbled across algae" while reviewing scientific literature to find out how biotechnology might be applied to renewable energy. But while he could see the potential in algae, he "didn't

think the technology was really there yet." He realized that the technology *had* arrived when he read an issue of the journal *Nature* devoted to the Human Genome Project during his 1L spring break.

"I read all the highly technical stuff about how they cloned all these genes and how they organized it and the high-throughput robotics they used in order to systematically analyze an enormous amount of genetic information, and I realized that you could apply all of this to algae, if you chose to," Dillon recalls with obvious excitement. Taking advantage of Duke's interdisciplinary strength, he arranged to earn law school credit while "learning about algae" from a leading researcher, Biology Professor Elizabeth Harris, now a member of Solazyme's scientific advisory board.

Having entered law school specifically with a view to getting a "useful tool" to help two Silicon Valley novices launch a biotechnology company — his co-founder, Jonathan Wolfson, serves as CEO — Dillon made that his focus during his 2L and 3L years at Duke Law.

"At the end of my first year, I sat down with Steven Schwarcz [Stanley A. Star Professor of Law and Business] and asked him what courses I should take to help me start a biotech company, rather than those he would recommend if I planned to become a patent attorney in a law firm," says Dillon, who wrote Solazyme's first — successful — patent application while a 2L and now manages the company's legal affairs and intellectual property portfolio, in addition to his other duties.

Observing that crafting persuasive arguments is at the heart of everything he does in a start-up company operating in a capital-intensive area, Dillon adds, with a laugh, that he couldn't have built his company without the skills he learned at Duke. "I don't think people realize that when they say, 'You've got a biotech company. Why did you bother going to law school?'" ♣ — *F.P.*



Allison Hester-Haddad '08: Forging new paths in law

ALLISON HESTER-HADDAD transferred to Duke Law as a 2L attracted, in particular, by the opportunity to enroll in the Guantanamo Defense Clinic. Securing a place in her second semester, she logged more than 350 hours of work — more than triple the clinic’s requirement — and continued working with Professor Madeline Morris, the clinic director, on Guantanamo cases through the following summer and her 3L year.

“I became obsessed with the issues I was working on — subject-matter jurisdiction and the critical role of the *ex post facto* clause. In enacting the Military Commissions Act of 2006, Congress created military commissions unlike any others we’ve ever had, cherry-picking the law of war, military law, and criminal law,” says Hester-Haddad. “It clearly hasn’t worked very well.”

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Now a litigation associate at WilmerHale in Washington, D.C., Hester-Haddad remained in the clinic as an advanced student and served as case manager in her third year. After graduating last May, she returned to Duke Law for the fall 2008 semester, serving as a lecturing fellow and leading the Guantanamo Defense Clinic during Morris’ sabbatical.

“When Alli became a student in the clinic, she showed an exceptional ability to grasp complex ideas and to see their implications,” says Morris. “She quickly emerged as a student with whom I could hammer out a difficult issue.

“In the summer of 2007, when we were writing *amicus* briefs for *United States v. Khadr* [the case of Omar Khadr, a Canadian detainee who was 15 years old when captured in Afghanistan], I asked Alli to read an article that I myself must have read 10 times before. She came back the next day, pointed to a passage, and asked: ‘Have you noticed this?’ I had not. It was critical, a brilliant point — and the core of what has become a centrally important part of the debate. Allison was, to say the least, an extraordinary student to work with. She is at the beginning of what will undoubtedly be an extraordinary career.”

Hester-Haddad has developed such expertise in issues relating to military commissions that she has twice lectured at “stand-down” — the two days of orientation, briefings, and strategy sessions with defense counsel held at the beginning of each semester for incoming clinic students.

By her own account, her most memorable experience came as she worked on the *Khadr* case. All charges against detainee Omar Khadr had been dismissed by the presiding officer of the military commission, Judge Peter Brownback. (The legal basis for the dismissal was, in fact, a theory that originated at the Duke clinic, says Morris.) The government appealed the dismissal to the

Court of Military Commissions Review (CMCR), a court that was provided for in the Military Commissions Act but had not yet actually been established when the government filed its appeal.

“I realized while we were writing the brief that we were appealing to a court literally being created to hear this issue. Its rules were being written *while* we were writing the brief. Its judges hadn’t yet been appointed,” recalls Hester-Haddad.

“One of the most surreal moments of my life was walking into the CMCR courtroom [for the oral argument]. It was completely amazing to me that this was a criminal appeals court created for the very issue it was about to hear.”

The daughter of two trial lawyers, Hester-Haddad did not originally plan to pursue a legal career. But, working in the juvenile division of the Public Defender’s Office in her home town of Ft. Lauderdale after completing her undergraduate degree at Tulane, she sometimes found herself “frustrated” that staff lawyers were arguing motions she had written, and decided to apply to law school. At the Public Defender’s Office, too, she demonstrated her initiative in forging new legal paths by helping to establish the new position of “disposition specialist.” In that position, she served as liaison on children’s behalf between her office, justice officials, mental health and substance-abuse professionals, and community service providers, working with them to secure sentences that would be successful alternatives to incarceration.

In addition to leading the Guantanamo Defense Clinic during the fall of 2008, Hester-Haddad taught the Appellate Practice seminar with Professor Michael Tigar. “It was an amazing experience to learn from him — to observe how he thinks and goes about constructing questions and arguments in the class,” she says of working with Tigar. Tigar returns the admiration.

“Allison is a superb teacher about litigation, in part because she embodies and communicates the qualities that a litigator must have: attention to detail, the ability to build a narrative from facts about a client’s experience, and enthusiasm about the process of seeking justice,” he says.

From Morris, who has become a close friend and mentor, Hester-Haddad says she’s learned to be more patient and deliberate while preparing an argument. “She’s taught me to think behind things until we have the best argument — in a certain way, she has taught me how to think.” Hester-Haddad and 2007 Duke Law alumni Stephen Bornick and Landon Zimmer are collaborating with Morris on a book about Guantanamo, counterterrorism, and detention.

Hester-Haddad is grateful for the litigation experience she gained through the Guantanamo Defense Clinic and is certain it will stand out as a singular experience in her legal career.

“The cause is amazing,” she says. “I know I’ll never get a chance as an attorney to make the arguments I made through the clinic — to work with a statute that was hastily crafted in a crisis atmosphere — and to fight so hard against some of its shortcomings. You have a real opportunity to get creative and think outside the box. You’re fighting to keep the law of war intact. You’re fighting to keep the Constitution intact. And you are never forgetting there’s an actual person [you’re representing].” ♣ — *F.P.*

James Pearce JD/LLM ’11: From Darfur to Durham

I STANBUL, CAIRO, DARFUR ... DURHAM? Along with a brief sojourn in Cyprus where he got married, these have been the latest stops in James Pearce’s international odyssey.

Durham may seem like an anomaly in Pearce’s itinerary, but he says that Duke Law School was the natural next step after getting a degree in human rights law at the American University in Cairo,

STUDENT PROFILE

and working with refugees in Turkey, Egypt, and Sudan. Pearce enrolled immediately after serving for a year as a rule of

law officer with the United Nations Development Programme in the troubled Darfur region of Sudan, in northeast Africa.

“I was the only one among the rule of law officers in the office who didn’t have a degree that allowed me to practice law,” he says, noting that a master’s degree in human rights law does not confer that privilege. “I wanted a better understanding of how the law structures human interactions, how it can be relevant in a society, and to what extent people’s adherence to the law legitimizes it. ... These are, to me, the fascinating philosophical questions, and I felt like I needed to really know the law to explore them.”

Pearce taught at a school for refugee children, mostly from Iraq and the Horn of Africa, in Istanbul following his 2003 graduation from Yale, where he was a history major. “I started to get a sense about ... the kinds of difficulties they were facing in Istanbul, even difficulties accessing organizations specifically set up to work with them,” he says. “This fascinated me and disturbed me, and so I wanted to get a better sense of what was going on and how I may be able to do something to address it.” That curiosity led to his studies at the American University in Cairo, where he graduated with a master’s degree in human rights law in 2006.

In Cairo, Pearce worked for Africa and Middle-East Refugee Assistance (AMERA), a nonprofit organization that assists refugees and trains human rights lawyers. “People who I’d worked with there had gone on to work for the United Nations as rule of law officers in Sudan,” Pearce recalls. “It seemed like a good fit for me, too. My



JAMES PEARCE, CENTER, WITH COLLEAGUES IN DARFUR.

master's thesis was on the relationship between humanitarian intervention and internally displaced persons, so this was the kind of work I felt committed to, that I wanted to do."

In El Geneina, a city with "a wild west feel" — and eight refugee camps ranging in size from 2,000 to 25,000 people — in volatile western Darfur near its border with Chad, Pearce worked with local lawyers and paralegals, providing training on dispute resolution, Sudanese law, human rights law and governance issues, as well as funding and support for efforts to educate the local populace about the legal system.

"In Darfur, people go to community leaders rather than the judicial system," he says. "In much of West Darfur, perceived wrongs are handled through custom and traditional practices. We were able to get lawyers for some people who didn't even know what lawyers are."

Although he satisfied his goal of augmenting his theoretical studies of humanitarian issues with real-world experience, Pearce found that his work in Darfur did not ease the skepticism he felt about the

U.N. before he took the job.

"I wasn't really sure that we were accomplishing that much," he says, bluntly. "I learned a tremendous amount about Sudanese politics, about the Arabic language, and about how the U.N. functions in all this, but I really didn't feel that the resources expended for our particular program were justified by the results we produced. Small victories are

nice, and they make you feel good, but not when you're pumping millions and millions of dollars into something."

While it fueled skepticism about his program, Pearce's Darfur experience also sharpened his interest in law.

"We'd hold workshops and talk about things like, 'What does it take for an armed movement to become a political party?'" he recalls. "We would try and put the opposition movement leaders on the spot and say, 'You've shown that you don't like things the way they are. What does the rule of law mean to you? What kind of platform do you support?'" He applied to Duke — he has family roots in the Triangle — while still in Darfur.

Pearce has worked quickly to share his interests with the Duke Law community. He co-founded the Student Organization for Legal Issues in the Middle East and North Africa (SOLIMENA), a group that promotes educational, research, and professional development opportunities for students with an interest in the region and its peoples. The group is planning a conference on Darfur at the Law School in March. ♡ — *F.N.*

Alumni Notes

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Duke Law Half Century Club

Charles F. Blanchard '49 has been installed as president emeritus of the North Carolina Academy of Trial Lawyers and attended a ceremony and reception recognizing the creation of the Charles F. Blanchard Historical Collection of the North Carolina Supreme Court Historical Society. Charles and Archie Ashley Williams were married in Raleigh on July 13, 2008.

Bachman Brown '50 has been awarded the Order of the Long Leaf Pine, the highest civilian award the state of North Carolina extends to its citizens. Bachman worked on the task force to incorporate Kannapolis, N.C., and served as the city's first mayor from 1985 to 1993. He is the past president of the Cabarrus County Bar Association and the 19-A Judicial District Bar and currently serves as president of Alexander, Brown & Dameron.



Carlyle C. Ring Jr. '56, of counsel with Ober Kaler in Washington, D.C., has been named to the 2009 edition of *Best Lawyers in America* in information technology law.

John F. Lowndes '58, founding partner of Lowndes, Drosdick, Doster, Kantor & Reed in Orlando, has been recognized as a 2008 Florida "Super Lawyer" for real estate law.

Class of '60

Herbert O. Davis, an attorney with Smith Moore Leatherwood in Greensboro, N.C., has been named to the 2009 edition of *Best Lawyers in America* for banking law and corporate law.

Class of '61

L. Neil Williams, trustee emeritus of Duke University, has been named to the board of Piedmont Hospital Foundation. Neil is the former managing partner of Alston & Bird in Atlanta. After retiring from the firm, he served as general counsel and global partner at AMVESCAP PLC.

Class of '62

Charles E. Burgin of Dameron, Burgin, Parker & Jackson in Marion, N.C., has been inducted into the General Practice Hall of Fame of the North Carolina Bar Association. To be eligible, lawyers must have practiced law for at least 25 years, a significant portion of that time having been devoted to the general practice of law, and be members in good standing of the North Carolina State Bar.



Wallace C. Harrelson of Greensboro, N.C., the public defender of the 18th Judicial District, was honored with the Chief Justice's Professionalism Award for dedication and commitment to the principles of professionalism and public service in October. North Carolina Chief Justice Sarah Parker presented Wally with the award at the quarterly State Bar Councilor's dinner in Raleigh. Wally became the state's first public defender on Jan. 1, 1970.

Class of '66

Dale A. Whitman, the James E. Campbell Missouri Endowed Professor Emeritus of Law at the University of Missouri School of Law, has had an endowed chair named in his honor, the first faculty chair at the law school. The Robert L. Hawkins Jr./Dale A. Whitman Chair acknowledges the contributions Dale has made as a faculty member and as dean of the law school from 1982-88. He is a scholar of property law.

Class of '67

Thomas A. Jorgensen, of counsel with Calfee, Halter & Griswold in Cleveland, has been recognized by the 2008 *Chambers USA Guide* as a leader in the area of employee benefits and employee compensation. *Chambers* recognizes Tom's "fantastic technical expertise."

Class of '68

Lon Bouknight has rejoined Steptoe & Johnson as partner in the Washington, D.C., office. Lon recently retired from Edison International where he was executive vice president.



Robert W. Maxwell II, a partner with Keating Muething & Klekamp in Cincinnati, was named to the 2009 edition of *Best Lawyers in America* in labor and employment law.

O. Randolph Rollins, of Richmond, Va., has established a nonprofit called "Drive-To-Work" to assist low-income persons in restoring their driving privileges so they can drive to work and keep a job. The Virginia DMV Commissioner and others are on the board, and the project is assisted by Randy's former firm, McGuireWoods.

Charlie Rose, host and producer of the PBS daily interview program "Charlie Rose," gave the keynote address to the Class of 2008 at Fordham University's 163rd commencement.

Class of '69

John A. Canning Jr., chairman and co-founder of Madison Dearborn Partners and chairman of the Federal Reserve Bank of Chicago, has been appointed to the board of directors of Exelon Corporation, one of the nation's largest electric utilities.

Class of '70

Kenton Kuehnle, a partner with Allen, Kuehnle & Stovall in Columbus, Ohio, has been awarded the Robert L. Hausser Memorial Award by the Real Property Section of the Ohio State Bar Association. The award recognizes outstanding achievement, contribution, and leadership in the practice of real property law. Ken is co-author of *Ohio Real Estate Law*, a three-volume treatise, and *Ohio Condominium Law*, a one-volume handbook, both published by Thompson-West.

Charles B. Neely, of Raleigh, was appointed by former North Carolina Gov. Mike Easley to serve on the E-mail Records Review Panel, which is conducting a comprehensive review of policies concerning the retention of e-mail messages under North Carolina's public records law. Chuck is a partner in Williams Mullen's litigation and tax law sections.

Class of '71

Mary Joyce Carlson has joined Motley Rice in Mt. Pleasant, S.C. Mary Joyce is the former general counsel to the health care division of the Service Employees International Union, the largest health care industry union in the U.S.

Class of '72

C. Marcus Harris, an attorney with Poyner Spruill in Charlotte, has been elected to a two-year term as a vice president of the North Carolina Bar Association. Marcus

Alumni Notes

serves as a member of the board of directors of the NCBA Foundation.

Samuel Johnson, a partner at Poyner Spruill in Rocky Mount, N.C., and his wife, Velma (WC '69), received the Boy Scouts Distinguished Citizens Award. The award recognizes their many years of outstanding dedication and leadership that has improved the quality of life for their community.

Cym Lowell has published a new international thriller, *Riddle of Berlin* (iUniverse). Cym, an avid reader, tri-athlete, and philosopher, lives and works in Dallas, where he is a partner at Gardere Wynne Sewell. For additional information visit <http://www.cymlowell.com>.



John R. Wester, a partner with Robinson Bradshaw & Hinson in Charlotte, N.C., is president-elect of the North Carolina Bar Association. He will succeed

Charles L. Becton '69 as president in the 2009-2010 term.

Class of '73

Mike Ciccarone joined Fowler White Boggs in Fort Myers, Fla. Mike practices in the areas of real estate, land development, and eminent domain. He is the former chairman

of the Florida Bar Grievance Committee for the 20th Judicial Circuit.

Pamela Brooks Gann, president of Claremont McKenna College in Claremont, Calif., has been elected to the Southwestern Law School's Board of Trustees.

Patrick W. Kelley has been named assistant director of the FBI's Office of Integrity and Compliance (OIC) by Director Robert S. Mueller III. Patrick was selected to lead the newly established OIC in June 2007 and was tasked with developing, implementing, and overseeing a program that promotes FBI compliance with all applicable laws, regulations, rules, and policies. He is the first to assume the role of assistant director.

Mike Weddington, a partner with Smith Anderson in Raleigh, chairs the North Carolina Bar Association's Administration of Justice Committee and serves as vice chair of its Board of Legal Specialization. Mike's practice focuses on commercial litigation, representation of licensed professionals in disciplinary and licensing matters, ADR, and appellate advocacy.

Class of '74

Fred W. Fulton, a partner with Thompson & Knight in Dallas, has been recognized by *The Legal 500 US* for expertise in tax law.

Donna Coleman Gregg is the communications scholar-in-residence at Catholic University of America, the Columbus School of Law's Institute for Communications Law Studies. Donna was most recently a senior policy adviser within the White House Office of Science and Technology Policy, where she worked for Richard M. Russell, the U.S. ambassador to the 2007 World Radio Communication Conference.

Mary Ann Tally of Fayetteville, N.C., has been elected to a three-year term on the board of directors of Legal Aid of North Carolina, representing the North Carolina Academy of Trial Lawyers. Mary Ann is an attorney with the Center for Death Penalty Litigation.

Class of '75

James H. Carll, a partner and chairman of the board of Archer & Greiner in Haddonfield, N.J., has been named a "Top Attorney" in *SJ Magazine* in the area of securities law. James specializes in securities law, financing, and corporate law, with special emphasis on complex business transactions, mergers and acquisitions, tax exempt organizations, and health care law.

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Ronald H. Hoebet, a partner at Hoebet, Boise & Olson in Portland, Ore., was named to the 2008 edition of *Best Lawyers in America* in the area of white collar and non-white collar criminal defense. Ron has been named to the list for 20 consecutive years.

Class of '76

David B. Adcock joined Ogletree, Deakins, Nash, Smoak & Stewart in Raleigh. David previously was general counsel of Duke University and Duke University Health System and director of Hospital Partners of America.

Stephen Roady was awarded the "2007-2008 Professor of the Year Award for Classes Under 30 Students," for teaching Oceans and Coastal Law and Policy at Duke's Nicholas School of the Environment. An environmental lawyer with Earthjustice, Steve also regularly teaches at the Law School.

Class of '77

Donald Beskind, a partner at Twigg, Beskind, Strickland & Rabenau in Raleigh and a senior lecturer and director of the Trial Practice Program at Duke Law, has been inducted into the International Academy of Trial Lawyers.

Michael L. Eckerle, a partner at Bingham McHale in Indianapolis, has been named a 2008 "Super Lawyer" in the business/corporate area.

Steven R. Gilford has joined the Chicago office of Proskauer Rose as partner. His practice focuses on the representation of major corporations in commercial disputes with an emphasis on insurance litigation for policyholders.



C. Thomas Work was the keynote speaker at the Pennsylvania Bankers Association Wealth Management and Trust Conference in October in Hershey, Pa. He spoke about current issues under the Pennsylvania Uniform Trust Act, of which he was a principal author. Tom is the chair of the estates and trusts department at Stevens & Lee in Reading.

Class of '78

Reginald J. Clark, a partner with Sutherland Asbill & Brennan in Atlanta, has been named president of the Board of Trustees of the Southern Federal Tax Institute.



J. Andrew Goddard, a partner at Bass, Berry & Sims in Nashville, has been inducted as a fellow of the American College of Environmental Lawyers, a professional organization of private sector attorneys who practice in the field of environmental law. Drew is the first attorney in Tennessee to be invited to join the organization and

one of only 50 attorneys nationwide so honored in 2008.

Lawrence G. McMichael, a partner at Dilworth Paxson in Philadelphia, has been named a "Super Lawyer" in the 2008 *Corporate Counsel* edition.

Class of '79

Laura M. Franze has joined Hunton & Williams in Dallas as partner. Laura co-chairs the firm's national labor and employment practice and is based in Los Angeles and Dallas.



JOHN HIGGINS '79

John Higgins, senior counsel with Holland & Knight in Tampa and senior vice president and general counsel for the Tampa Bay Rays, threw out the ceremonial first pitch before the first game of the American League Division Series. John was the first employee hired by the Rays in 1995, three years before the team's inaugural game.

Class of '80

G. William Brown Jr. has joined the Duke Law faculty as a visiting professor of the practice of law after a long career in law and investment banking. His teaching focuses on business law, business planning, capital markets, and corporate finance. Bill also has co-founded Palmer Labs and 8 Rivers Capital, which are involved in the development and commercialization of new technologies in biotech, energy, transportation, and communication. (See story, page 29.)



John Hickey, a trial lawyer and past president of the Dade County Bar Association, has been elected to the Florida Bar Board of Governors. Jack also has been named to the "Legal Elite" in the area of personal injury by *Florida Trend* magazine and as a "Top Lawyer" in personal injury and maritime law by the *South Florida Legal Guide*.

Eric Holshouser, who specializes in labor and employment law, has joined Fowler White Boggs in Jacksonville, Fla., as a shareholder. Eric also has been listed in the 2008 edition of *Best Lawyers in America*, *Florida Super Lawyers*, and *Chambers USA: America's Leading Lawyers for Business*.

Gordon R. Kanofsky has been named chief executive officer and vice chairman of the board for Ameristar Casinos, Inc. Gordon, who previously served as co-chairman and executive vice president, joined the company in 1999.

Douglas Kingsbery, a partner at Tharrington Smith in Raleigh, was named to the 2008 edition of *Best Lawyers in America* in criminal law. He also was named as one of North Carolina's "Legal Elite" in litigation by *North Carolina Business Magazine* and was named a 2008 North Carolina "Super Lawyer" by *Charlotte Magazine*.



Justin Klimko, a shareholder in Butzel Long in Detroit, was profiled in the November 2008 issue of *DBusiness* magazine. He is named in the listing of "Best Lawyers in Metro Detroit" in the 2009 edition of *Best Lawyers in America* in the categories of corporate governance and compliance, corporate, mergers and acquisitions, and securities law.

Kimberly Till is the president and CEO of Harris Interactive, a leading custom market research firm that operates globally. She also serves on the company's board of directors. She was most recently the CEO of TNS North America, the largest custom market research firm in the U.S., and also has served in executive roles at Microsoft, AOL, Sony, and Disney.

H. Glenn Tucker, of Greenberg Dauber Epstein & Tucker in Newark, N.J., has been elected chair of the Business Law Section of the New Jersey State Bar Association. He teaches a transactional law skills course at Seton Hall University School of Law and was selected by the New Jersey Supreme Court to serve on the newly-formed ad hoc committee on continuing legal education. Glenn was named one of the "Top 100 New Jersey Super Lawyers" and to the 2008 edition of *Best Lawyers in America* in corporate mergers and acquisitions.

Alumni Notes

Class of '81

John J. Coleman III, has been voted among Alabama's top 50 lawyers in all specialties in the 2008 edition of *Super Lawyers*. A fellow in the College of Labor and Employment Lawyers and a 15-year selection in *Best Lawyers in America*, John is a partner at Burr & Forman in Birmingham, where he lives with his wife, Liz, and son, Jack.

Marianne Corr has been elected vice president and general counsel at the University of Notre Dame. Marianne, previously vice president and deputy general counsel for Textron Inc., in Providence, R.I., oversees all university legal matters.

David Gustafson of Arlington, Va., was appointed to the United States Tax Court by former President George W. Bush. David has previously served the Court of Federal Claims Section of the Tax Division in the Department of Justice as a trial attorney, assistant chief, and chief of the section.

Michael C. Flynn has been appointed acting general counsel of the U.S. Department of Housing and Urban Development (HUD). He serves as chief legal adviser to the secretary, deputy secretary, and principal staff. Michael, who previously served as HUD's general deputy counsel, continues to serve as counselor to the HOPE for Homeowners Board of Directors.

Cecily Hines has been named president of The Foundation for Minneapolis Parks. Cecily previously served as vice president and general counsel, legal adviser and consultant with ev3, Inc., a provider of technologies and therapies for peripheral vascular and neurovascular markets, in Plymouth, Minn.

John Yates, a partner with Morris, Manning and Martin in Atlanta, has been named as one of the "25 most influential people in the Southeast tech scene" by *TechJournal South*. An interview with John appeared in the November 2008 issue.

Class of '82

Sharon Fountain, a partner with Thompson & Knight in Dallas, has been named to the 2009 edition of *Best Lawyers in America* for employee benefits law. Sharon also was recently recognized by "The Legal 500 U.S." for expertise in tax law. She is listed in *Who's Who Legal: Texas 2008*, published by Law Business Research Limited.

Frederick Robinson, a partner with Fulbright & Jaworski, has been named a D.C. "Super Lawyer" for 2008. Rick is the partner-in-charge of the health law practice in his firm's Washington, D.C., office.

Mark D. Shepard, a lawyer with Babst, Calland, Clements and Zomnir, in Pittsburgh, has been named to the 2009 edition of *Best Lawyers in America* for commercial litigation.

James Wyatt, III, a partner at Wyatt & Blake in Charlotte, has been inducted as a fellow of the American College of Trial Lawyers. James specializes in criminal and civil trial work.

Class of '83

Richard Baer, executive vice president and general counsel at Qwest Communications International in Denver, was appointed chief administrative officer in August 2008. In addition to leading Qwest's law department and the company's risk management and compliance efforts, Rich oversees public policy, federal relations, human resources, labor relations, corporate communications, the Qwest Foundation, corporate social responsibility, and sponsorships and events. Rich and his team at Qwest were named the Best Legal Department for 2008 by *Corporate Counsel* magazine. (See story, page 45.)

John R. Knight has joined The Rohatyn Group, an international emerging markets investment firm, in its Singapore office. John previously was with JPMorgan Chase Bank, also in Singapore.

Class of '84

David Eggert has moved with his family to South Korea. He has joined the faculty of Handong International Law School in Pohang, where he teaches antitrust law, litigation, and appellate advocacy. Handong teaches U.S. and international law from a Christian perspective. David also works with Justice Ventures International, an organization he helped found that assists local groups in India and China that combat human trafficking and slavery, urban poverty, and lack of access to justice. David previously was a partner at Arnold & Porter in Washington, D.C.

John F. "Sandy" Smith, a partner with Morris, Manning & Martin in Atlanta, has been named founding chairman of the external advisory board of The Institute for Research in the Social Sciences (IRISS) at Stanford University.

Class of '85

Lou Michels has joined Baker & McKenzie in Chicago, as partner. Lou previously was with McGuireWoods.

Class of '86

Gao Xiqing, vice chairman, president, and chief investment officer of China Investment Corp., has begun a five-year term on the Duke University Board of Trustees.

Class of '87

Marc Israel has joined Vanguard Title Agency in New York as executive vice president. Marc previously was with American Land Services.

Harlan I. Prater, IV, a partner with Lightfoot, Franklin & White in Birmingham, Ala., has been sworn in as a fellow of the American College of Trial Lawyers. Harlan focuses his civil trial work on products liability, pharmaceutical and medical device, and business litigation.

Yan Xuan has joined Scientific Games as president, Greater China, and senior vice president, Scientific Games International. Yan, who previously was with Oracle Corporation, is responsible for the execution of the company's strategy and growth in this new market, which includes mainland China, Hong Kong, and Taiwan.

Class of '88

Kodwo Gharthey-Tagoe has been appointed vice president and general counsel of commercial businesses for Duke Energy Corporation. Kodwo leads the group responsible for providing legal services to the company's commercial business operations, including its Midwest non-regulated generation, Duke Energy International, Duke Energy Generation Services, and the company's telecommunications businesses. Kodwo lives in Charlotte with his wife, Phyllis, and their three daughters.

Shirley Clouser Greagan of Selkirk, N.Y., is a stay-at-home parent of two.

Michael P. Scharf, professor of law and director of the Frederick K. Cox International Law Center at Case Western Reserve University School of Law, has published his 10th book, *Enemy of the State: The Trial and Execution of Saddam Hussein* (St. Martin's Press). For more info visit <http://www.enemyofthestatebook.com>. (See story, page 43.)

Class of '89

Kimberly A. Brown, a partner at Thorp Reed & Armstrong in Pittsburgh, has received the 2008 Lynette Norton Award from the Pennsylvania Bar Association Commission on Women in the Profession. The award recognizes a female lawyer who excels in litigation and has demonstrated leadership in mentoring female attorneys. Kim is also president-elect of the Allegheny County Bar Association. Her term begins in July 2009.

Elizabeth Michael married Tim Wilks on Feb. 29, 2008, in Melbourne, Australia. Their blended family includes Elizabeth's sons and Tim's children. Elizabeth continues to practice commercial law as principal/

director of City Pacific Law Firm in Melbourne.

Bill Mureiko, a partner with Thompson & Knight in Dallas, has been named to the 2009 edition of *Best Lawyers in America* for trusts and estates law.

Paul Sun Jr., a partner at Ellis & Winter in Raleigh, has been sworn in as a fellow of the American College of Trial Lawyers. Paul's practice focuses primarily on business litigation and appeals.

Michael Tkacik is the director of the Stephen F. Austin State University School of Honors in Nacogdoches, Texas. He continues to teach classes in American government and foreign policy, international terrorism, international law and organization, war, politics, and strategy in SFA's College of Liberal and Applied Arts.

Class of '90

Nadine Faruque has joined UniCredit Group as senior executive vice president and head of compliance and corporate affairs. Nadine was previously with Merrill Lynch International. She is based in London.

Terrill Johnson Harris, an attorney with Smith Moore Leatherwood in Greensboro, N.C., has been named to the 2009 edition of *Best Lawyers in America* for health care law.

Drew Rosenhaus has published *Next Question: An NFL Super Agent's Proven Game Plan for Business Success* (Berkeley Hardcover).

Class of '91

Kari Lynn Decker has joined APX, Inc., in Santa Clara, Calif., as managing director. Kari focuses on the company's regulatory and government affairs program, including the Western Climate Initiative and California's implementation of "AB32," its landmark greenhouse gas legislation.

Maurice O. Green is superintendent of schools for the Guilford County School District, the third-largest school district in North Carolina, serving more than 71,000 students at 120 schools and employing approximately 10,000 people. Mo previously was deputy superintendent and chief operating officer of the Charlotte-Mecklenburg School District.

Caryn McNeill, a partner with Smith Anderson in Raleigh has received recognition from the North Carolina Bar Association and Business Leader Media for her pro bono contributions. Caryn co-chaired the 4ALL Task Force, a NCBA initiative that works to address systemic problems relating to legal services to poor North Carolinians.

Douglas Nazarian has been named chairman of the Maryland Public Service Commission. Doug has served as general counsel for the commission and was one of the architects of the regulatory reform strategy initiated by the previous chairman.

Class of '92

Sean Andrussier is co-teaching Duke Law School's Appellate Litigation Clinic with Professor Jim Coleman. Sean is co-chair of the appellate practice group at Womble Carlyle Sandridge & Rice in Raleigh.

Philip Cooper and his wife, Karen, announce the birth of their daughter, Madeline Dorothy, on July 11, 2007, who joins big brother Dylan. Phil joined Locke Lord Bissell & Liddell in Atlanta as a partner in the firm's corporate department.

Michelle Nowlin has joined the Duke Law faculty as a supervising attorney and senior lecturing fellow in the Environmental Law and Policy Clinic. She supervises students from the Law School and the Nicholas School of the Environment who work in the clinic and co-teaches the seminar portion of the clinic. Michelle was previously with the Southern Environmental Law Center in Chapel Hill. (See story, page 5.)

Class of '93

Craig Factor has joined Innovative Silicon, Inc. in Santa Clara, Calif., as vice president of legal affairs and general counsel. The company is the inventor and licensor of the Z-Ram® ultra-dense memory technology for stand-alone DRAM (dynamic random access memory) and embedded memory applications.



Rob Marcus, a partner in Smith Moore Leatherwood's Charlotte office, has been named an "Impact Law Leader" by *Charlotte Business Leader* magazine and has been named

to the 2009 edition of *Best Lawyers in America* for commercial litigation and mass tort litigation.

Jayant Reddy and his wife, Christine, announce the birth of their second child, son Ravi Jacob, on Feb. 4, 2008.

Class of '94

Mark R. Brown, counsel with Kaye Scholer in West Palm Beach, Fla., has been certified by the Florida Board of Legal Specialization and Education as a wills, trusts, and estates specialist. Mark is already board certified as a tax specialist. According to the Florida Bar, approximately 40 Florida lawyers have both certifications.



Russell B. Killen, a partner at Parker Poe Adams & Bernstein in Raleigh, has been elected mayor of Knightdale, N.C.

John Lange, of Port Townsend, Wash., has joined Intellicheck Mobilisa as general counsel.

Russell A. Miller has joined the faculty of Washington & Lee School of Law in Lexington, Va., as an associate professor. His teaching and scholarly research focus on comparative constitutional law and public international law. Russell previously was at the University of Idaho College of Law.

Mary Margaret Ogburn, a shareholder at Blanco Tackabery & Matamoros in Winston-Salem, has been elected to the North Carolina Bar Association Business Law Section Council for a three-year term. Mo concentrates her practice in the areas of business law and intellectual property.

Elizabeth Patrick, a Presbyterian (USA) pastor, married Dr. Bill Linderman in May 2008. They reside in Bristol, Tenn.

Adam G. Safwat was recently named to the position of assistant chief in the Fraud Section of the Criminal Division of the U.S. Department of Justice. Adam's responsibilities include supervising securities fraud cases and helping to advise federal prosecutors nationwide on corporate and securities fraud prosecution practices and policies. In addition, Adam continues to be a co-lead prosecutor on several major corporate fraud prosecutions.

Class of '95

Robert Lance Boldrey, a member of Dykema Gossett in Lansing, Mich., has been named to the 2009 edition of *Best Lawyers in America* for gaming law.



Henry Didier has been named one of Florida's 2008 Legal Elite by *Florida Trend* magazine, and as one of "40 Under 40" by the *Orlando Business Journal*. Hank, who

began his own firm in early 2007, is a nationally known products liability attorney and frequent speaker at legal conferences.

Timothy Dodd is vice president of corporate business development and strategy with Warner Brothers Entertainment in Burbank, Calif.

Adrian Dollard, of San Francisco, has launched a new financial services venture called Qatalyst Group, a technology-focused merchant bank.

Alumni Notes

John C. Shipley Jr., an assistant U.S. attorney in the Southern District of Florida, has received the Attorney General's Award for Exceptional Service. Former U.S. Attorney General Michael B. Mukasey honored John and his colleagues in the U.S. Attorney's Office for the Southern District of Florida for their successful investigation and prosecution of Jose Padilla and two others for supporting Al Qaeda and other terrorist organizations.

Cynthia Johnson Walden, a principal with Fish & Richardson in Boston, has been named to the Legal Media Group's 2008 *Guide to the World's Leading Trademark Law Practitioners*. Approximately 200 U.S. attorneys are listed in the guide.

Elaina Cohen Werner and her husband, Jeff, announce the birth of their daughter, Danielle Shayna, on Aug. 22, 2008. Danielle joins big brother Mitchell.

Class of '96

Thomas L. Harper Jr. has rejoined Buist Moore Smythe McGee in Charleston, S.C., as a principal. Thomas specializes in commercial real estate, acquisitions and development, commercial leasing, banking, and corporate law.

Christopher McLaughlin is an assistant professor of public law and government at the School of Government at the University of North Carolina-Chapel Hill. Chris previously was assistant dean for student affairs at Duke Law School.

Erik Moses has been appointed by the mayor of Washington, D.C., to serve as chief executive officer of the D.C. Sports and Entertainment Commission. Erik previously was the interim director of the city's Department of Small and Local Business Development.

Class of '97



David R. Esquivel, a member of Bass Berry & Sims in Nashville, has been elected chair of the board of directors of the Tennessee Justice Center.

Denise Gough is vice president, legal affairs, for Scripps Networks' "Great American Country" cable network. Denise joined Scripps Networks in 2005 as lead counsel.

Gerald Meek has joined Poyner Spruill as a litigator in its Raleigh and Charlotte offices. Jerry is the past chairman of the N.C. Democratic Party.

Erin L. Roberts has joined the Falls Church, Va., office of Whiteford, Taylor & Preston as counsel. Erin practices in the firm's labor and employment section. She previously was with Womble Carlyle Sandridge & Rice.



Kathleen M. Sellers and her husband, Trey Gardner, announce the birth of their daughter, Isabel, on July 11, 2007. Isabel joins her two older sisters, Anna and Evie.

Gillian Thackray joined Covington & Burling in San Francisco as partner. Gillian specializes in patent litigation and counseling. She is a fellow of the American Academy of Trial Counsel.

Class of '98

Nicole Becton married Steven Jackson on Nov. 8, 2008, in Washington, D.C. **Erik Moses '96** and **Arden Phillips '98** were in attendance.

Robert Buchholz, chairman of the board and founder of Town Center Bank in Coppell, Texas, has been elected to the board of directors of SWS Group, Inc., a holding company that offers a broad range of investment and financial services through its subsidiaries.

Jin-Gyeong Cheong, presiding judge at the Seoul Northern District Court in South Korea, has received his PhD from Seoul National University. His thesis was titled "Remedies for Unfair Dismissal."

Gialisa Whitechurch Gaffaney, her husband, Bernard, and their son, Caden, announce the birth of Annika Cartier Gaffaney, on May 29, 2008.

Steven Horowitz, a managing director at The Altman Group, a New York consulting firm that provides bankruptcy services, has created "Bankruptcy Bill" (above), a comic strip about the life and times of Bill, a hapless bankruptcy lawyer. Horowitz writes the strip illustrated by Gideon Kendall. More information is available at <http://bankruptcybill.wordpress.com>.

Ken Schwartz joined Piedmont Healthcare, Inc., in Atlanta, in August 2007 as vice president of compliance.

Carol Von Urf Kelley and her husband, Ed, announce the birth of their son, Jack, on March 17, 2008. Jack joins big sister, Maggie.

Darren C. Wallis has joined Permit Capital in West Conshohocken, Pa., an independent investment firm dedicated to managing the financial assets of its members and other limited partners, as partner and portfolio manager. Darren previously was with Osage Ventures.

Jonathan Walsh was named partner at Curtis, Mallet-Prevost, Colt & Mosle in New York. Jon specializes in securities litigation and accounting malpractice matters.

Class of '99

Tara Marie Allen, senior counsel in the business transactions section of the Austin, Texas, office of Jackson Walker, has been named a "Texas Rising Star" by *Texas Monthly* magazine.

David Dixon has been named a preferred shareholder by Dowling, Aaron & Keeler in Bakersfield, Calif. David also was appointed as an Eastern District lawyer representative to the Ninth Circuit Judicial Conference.

Pascal Duclos was shortlisted by the International Law Office (ILO) for the 2008 European General Counsel Award in the general commercial category. According to the ILO, shortlisted lawyers excel both in their specific roles and across the full spectrum of in-house responsibility.

Gary Eichelberger has joined Ellis & Winters in Raleigh as an associate. Gary's practice focuses on civil litigation with an emphasis on commercial disputes, employment matters, real estate, and insurance coverage law.

Tara Ertischek, of Nashville, has been named a shareholder of Baker Donelson, where she concentrates her practice in securities, mergers and acquisitions, and general corporate matters.

Barb Goffman's story, "Compulsive Bubba," appears in *Chesapeake Crimes 3*, a collection of mystery short stories set in the Chesapeake Bay region. The book is published by Wildside Press. Her first short story was nominated for a 2005 Agatha Award. Barb is associate general counsel at Sallie Mae, where she focuses on regulatory compliance.

Joseph Lombardo has been named partner at Chapman and Cutler in Chicago, where he practices corporate and general litigation.

Alex McLin, of Switzerland, has been appointed to the position of secretary general of the Federation Equestre Internationale (FEI). Alex joined the FEI in March 2005 as general counsel and deputy secretary general and has been acting secretary since September 2007.

Jay Rao, a portfolio manager at Seneca Capital in New York, has been elected to the Still River Systems board of directors. Still River Systems is working to provide a proton beam radiotherapy (PBRT) system for use at cancer centers around the world. Jay leads Seneca's health care investments and maintains a clinical appointment at Bellevue Hospital and a faculty appointment at New York University School of Medicine.

Kirk Rasmussen has been named a shareholder at Winstead PC in Dallas.



Kerry Reichs of Washington, D.C., has written her first novel, *The Best Day of Someone Else's Life*, published by Harper Collins. Information about the book and Kerry's nationwide tour can be found at www.harpercollins.com/kerryreichs.

Kimberly May Rosen is currently staying at home and enjoying time with her daughters, Sela and Mimi.

Susan Rozelle has been awarded tenure at Capital University Law School and was elected secretary of the Association of American Law Schools Criminal Justice Section.

Varun Sahay has joined Sioen Industires N.V. as CEO Asia Pacific.

Jennifer Sullivan has become general counsel and director of government affairs of Entegry Wind Systems, a manufacturer of commercial-scale wind energy turbines based in Boulder, Colo. Jennifer previously was a partner with Faegre & Benson.

Zephyr Teachout, a visiting assistant professor of law at Duke Law School, delivered the inaugural lecture in the 2008 Saul O. Sidore Lecture Series at Plymouth State University in Plymouth, N.H.

Jennifer Paisner Williams, senior litigation counsel for the Office of Immigrant Litigation in the U.S. Department of Justice, received the Attorney General's Award for Distinguished Service from former U.S. Attorney General Michael B. Mukasey. Along with nine others, Jennifer was honored for her work on the Military Commissions Act and the Detainee Treatment Act relating to the government's response to motions filed by more than 100 Guantanamo Bay detainees.

Class of '00

Jill Dash has accepted a position as associate director for lawyer chapters at the American Constitution Society for Law & Policy in Washington, D.C.

Scott Dodson served as a visiting associate professor at Duke Law School during the Fall 2008 semester. Scott is an assistant professor of law at the University of Arkansas School of Law.

Rick Fenton has joined Technology Crossover Ventures, a Palo Alto-based private equity and venture capital firm, as a principal and associate general counsel.

Brett Lund, previously head of Legal, IP and Licensing for Syngenta, joined Gevo, Inc., a biofuels company in Englewood, Colo., as vice president and general counsel.

Shelly Marie Martin, of Brown Goldstein Levy in Baltimore, has been named partner. Shelly represents individuals, businesses, and nonprofit organizations in a variety of civil and criminal matters.

David E. U. Morris has been selected by *Diversity MBA* magazine for its "50 under 50 Corporate Executives" list and by *Crain's Detroit Business* "40 under 40" Class of 2007. He also has been appointed to the Investment Review Board of the Michigan Pre-seed Capital Fund, which provides early stage financing to life science, technology, and advanced manufacturing companies and is funded by the state of Michigan. David is a founder and managing director of Oracle Capital Partners, a Detroit-based private equity firm.

Michael LeVine has taken a new position as Pacific counsel and senior adviser for Oceana, an international nonprofit organization dedicated to protecting the world's oceans. Michael lives in Juneau, Alaska.

S. William Walker has joined Mayer Brown in Charlotte as an associate. He previously worked as a senior finance associate at Hunton & Williams.

Class of '01

Collin Cox, a partner with Yetter, Warden & Coleman in Houston, received Baylor University's 2008 Herbert H. Reynolds Outstanding Young Alumni Award in October.

Matthew Fox and his wife, Shannon, announce the birth of Henry Alexander Fox on June 18, 2008. Matthew is an attorney in the Division of Mineral Resources at the U.S. Department of the Interior.

Fernando Fresco has joined KUFPEC, an international oil company engaged in exploration, development, and production of crude oil and natural gas in the Middle East, Asia, Africa, and Australia. Fernando was previously with Pan American, a subsidiary of BP, in Argentina.

D'lorah Hughes is a visiting assistant professor of law, teaching in the Health Law Clinic at Case Western Reserve University School of Law.

Sarah E. Gohl Isabel has joined the law firm of Powell Goldstein in Atlanta, where she specializes in trusts and estates. Sarah previously was with Troutman Sanders.

Amy Pope and her husband, Neil Allison, announce the birth of their daughter, Charlotte Pope Allison, on March 4, 2008. Amy is counsel in the Office of Policy and Legislation, Criminal Division, at the Department of Justice.

Mary Richardson has joined Bowdoin College in Brunswick, Maine, as associate director of gift planning. Mary previously

Alumni Notes

was the executive director of Maine Initiatives.

Faye Rodman and Christopher Barbour were married on June 21, 2008 in Greensboro, N.C. The wedding party included classmates **Kristen Lee Barnett**, **Lisa Hall Johnson**, and **Courtney Duke Foster**. Faye is labor and employment counsel for Turner Broadcasting System, Inc. in Atlanta.

Jana Scharf Safra and **Seth Safra** announce the birth of Jared Ian on July 27, 2008. Jared joins big sister, Lauren.

Jamieson A. Smith and his wife, Komal, announce the birth of their son, Jahan Kumar, on Sept. 19, 2007.

Class of '02

Christine Son's first novel, *Off the Menu*, which follows the lives of three high-achieving friends, has been published by NAL/Penguin Group. Christine is a senior attorney at J.C. Penney Corporation in Plano, Texas. For more information about her book, visit <http://christineson.com>

Class of '03

Stephan Bauer has moved within Norr Stiefenhofer Lutz from the Berlin office to the Dusseldorf office. Stephan works in corporate mergers & acquisitions and IT/telecommunications practice groups.

Melissa Danson has joined Axiom in New York City. Melissa previously was an associate with Kleinberg, Kaplan, Wolff & Cohen. Her practice focuses on real estate transactions involving office and industrial properties.

Alex Davie joined Sconyers Warmbrod Capital Management in Franklin, Tenn., as executive vice president and general counsel. Alex previously was with Ballard Spahr Andrews & Ingersoll in Philadelphia.

Karla McKanders has received a tenure-track appointment at the University of Tennessee Law School. Most recently, Karla was a visiting Reuschlein Teaching Fellow at Villanova University School of Law.

Eric Spencer has returned from Iraq, having led more than 300 combat missions in Baghdad as an infantry platoon leader. Eric is an associate with Snell & Wilmer in Phoenix.

Christopher Volk has joined the law firm of Weiss Serota Helfman Pastoriza Cole & Boniske in Fort Lauderdale, Fla. Christopher practices in the firm's construction litigation group.

Sean Ward has joined Neuberger Berman in New York as vice president and counsel.

Class of '04

Saud Alarifi has joined DLA Piper as a legal consultant in the Islamic Finance Department in its Dubai office.

Sarah E. Bell, a litigation associate with Pryor Cashman in New York, has been awarded the President's Pro Bono Service Award in the Young Lawyer category by the New York State Bar Association. The award is given for extraordinary pro bono service.

Graham Chynoweth married Tara Hurst in New Canaan, Conn., on Sept. 29, 2008. Gray joined Dynamic Network Services, Inc., a New Hampshire-based Internet technology company, as its first general counsel in November 2007 and was named to the *New Hampshire Union Leader's* 2008 list of the "40 Under Forty" who have made a difference in the state.

Caroline Cosby and her husband, David Shuford, announce the birth of their son, William Blackburn, on March 30, 2008.



Nicolas Diebold and his wife, Valerie, announce the birth of their son, Laurin Fynn, on July 21, 2008.

Thomas Franca has joined Simpson Thacher & Bartlett in Rio de Janeiro, Brazil.

Robert Gallagher has joined First Reserve Corporation, a private equity firm in Greenwich, Conn., as assistant general counsel.

Scott J. Goldstein has joined Greenberg Dauber Epstein & Tucker in Newark, N.J.

Merrill Hoopengardner and her husband, Andrew, announce the birth of Eleanor (Ella) Gayle, on July 8, 2008.

Sophie-Charlotte Marquet and her husband, Olivier Marquet, together with their first daughter, Chloe, welcomed the arrival of Victoria Marie Ava on July 24, 2008.

D. Fon Muttamara-Walker, has joined the litigation group of Potter Anderson & Corroon in Wilmington, Del. Fon previously was with Young Conaway Stargatt & Taylor.

Michelle Valteau has joined Thompson Hine in Atlanta as an associate in the real estate practice group. Michelle previously was an associate with Stites & Harbison. She focuses her practice on commercial real estate law, including commercial dispositions and acquisitions, development projects, leasing matters, and commercial mortgage loan transactions.

Lisa Vatch has joined Fraser Milner Casgrain in Montreal, Canada, as an associate.

Class of '05

Tom McCudden has joined the Federal Defender's Office in Hartford, Conn., as a research and writing attorney.

David Moncure has joined Shell Oil Company in Houston as an electronic discovery legal counsel. David previously was with Fullbright & Jaworski.

Keri A. Richardson has joined Neuberger Berman Private Equity in New York as vice president and counsel. She previously was with Simpson Thacher & Bartlett.

Bastiaan Ryckaert was married to Elisabeth Zouhoff on Dec. 15, 2007, in Brussels, Belgium.

Class of '06

Angela Heywood Bible, husband, Chris, and daughter, Isabelle, welcomed Thomas Heywood, born May 2, 2008. Angela is practicing oil and gas law in the Global Projects group at Baker Botts in Houston.

Henry Lee Falls and Elizabeth LeBaron Willett were married on June 14, 2008, in Baltimore. Lee is an attorney with Smith Currie & Hancock in Charlotte.

Chris R. Johnson has joined Fish & Richardson as an associate in Austin. Prior to joining the firm, Chris was a law clerk to Judge Alvin A. Schall of the U.S. Court of Appeals for the Federal Circuit.

Luciano Cruz Morande joined Arteaga Gorziglia & Cia in Santiago, Chile. Previously, Luciano was an international lawyer in the New York office of Cleary Gottlieb Steen & Hamilton.

Natalie Prescott, an associate with Latham & Watkins in San Diego, received the California State Bar 2008 Jack Berman Award of Achievement for Distinguished Service to the Profession and the Public. The award recognizes the public service of a young or new lawyer. Natalie and her husband, **Oleg Cross**, of Cooley Godward Kronish, were named to the "Best Young Attorneys" list by the *San Diego Daily Transcript* in 2007. They have co-authored *Nail Your Law Job Interview*, which will be available on Amazon.com in March. (See story, page 60.)

Randy Stoker has accepted a position as an assistant United States attorney in Norfolk, Va. His work is focused in the criminal division, specifically drugs and guns and white-collar cases. Randy previously was a law clerk for the federal magistrate judge in Norfolk.

Class of '07

Christian Dysart and **Kimberly Kisabeth** are serving as co-fellows of the Center for Criminal Justice and Professional Responsibility at Duke Law School for the 2008-2009 academic year.

Anne Hazlett and Jim Sherwood were married on Sept. 13, 2008, in Wheeling, W. Va. They now reside in Washington, D.C.

Ryan McLeod completed his clerkship for Judge William B. Chandler III of the Delaware Court of Chancery and has joined Wachtell, Lipton, Rosen & Katz in New York City.

Elizabeth Richardson-Royer finished a one-year clerkship with Chief Judge William T. Moore Jr. in the United States District Court for the Southern District of Georgia. She has joined Gibson, Dunn & Crutcher in Los Angeles.

Greg Sergi is clerking for Judge Pamela Ann Rymer of the U.S. Court of Appeals for the Ninth Circuit in Pasadena.

Derek Wisniewski and his wife, Karen, welcomed their first child, Emma, on May 2, 2008. Derek is a real estate attorney for K & L Gates in Charlotte.

Class of '08

Jonas Anderson and his wife, Rachel, announce the birth of their son, Ramsey Joseph, on Sept. 19, 2008.

Jennifer M. Avery joined Thompson & Knight in Dallas in the firm's corporate and securities practice group.

Emilia Beskind is a Prettyman Fellow at Georgetown Law Center, working toward her LLM in advocacy. In her first year of the two-year fellowship, Emilia is studying and practicing criminal law in District of Columbia courts.

Adam B. Hill joined Thompson & Knight in Dallas in the firm's real estate and banking practice.

John Saragas is working in Cyprus on a J. William Fulbright Grant. John is researching the role of non-governmental organizations in relation to the ethnic conflict the island has experienced since 1963. John received a master's degree from the University of Athens in 2005.

Matthew Wolfe and his wife, Stephanie, announce the birth of their daughter, Clara Juliet, on May 12, 2008.

Natalie Prescott '06 and Oleg Cross '06

HAVING MET in the financial aid office on their first day of law school, Natalie Prescott and Oleg Cross quickly noted their shared roots — both left their native Ukraine and went on to obtain undergraduate degrees in the United States. They also shared a passion for advocacy, writing, and public service. They deepened those interests at Duke, where Oleg served as an articles editor of *Law & Contemporary Problems*, was a founding member of the *Duke Journal of Constitutional Law & Public Policy*, and served nonprofits at the Community Enterprise Clinic, and Natalie was an editor in chief of the *Duke Journal of Comparative and International Law* and also immersed herself in the AIDS Legal Project, exceeding her required clinic service by more than 100 hours.

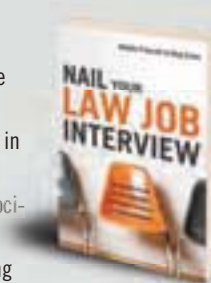
Now married and practicing law in San Diego, the couple continues to pursue what Oleg, a litigation associate with Cooley Godward Kronish, describes as common goals relating to their lives and profession. Both were named to the *San Diego Daily Transcript's* "Best Young Attorneys" list in 2007 and 2008. And Natalie, who practices appellate and insurance litigation with Latham & Watkins following a clerk-

ship with Judge Roger T. Benitez of the U.S. District Court for the Southern District of California, was recently honored by the State Bar of California for her public service work. She received the California State Bar 2008 Jack Berman Award of Achievement; the prestigious award is given to one young lawyer annually for distinguished service to the profession and the public.

Natalie and Oleg also have co-authored *Nail Your Law Job Interview: The Essential Guide to Firm, Clerkship, Government, In-House, and Lateral Interviews*, which will be released by Career Press in March. (The book is pre-selling on Amazon.com.)

"This is a very practical book geared both to young attorneys and to senior lawyers seeking to make a lateral move," Natalie says. "It focuses specifically on the interview — the most important part of getting a job offer. From attending lunch interviews to dealing with challenging questions, arrogant interviewers, dress code, and more, we offer insiders' perspectives on every possible issue that may come up at an interview."

"We wrote it because, when we were interviewing, there wasn't a book of this kind," Oleg adds. "Duke gave us a solid starting ground and an abundance of experiences, and we hope we can now share what we've learned with others." ♣
— Debbie Selinsky



In Memoriam

Class of '37

Thomas B. Stoel, 94, died Sept. 27, 2008, in Portland, Ore. He graduated from Hobart College before attending Duke Law School where he met Caroline Phillips, a classmate who became his wife.

Joining a Portland law firm in 1937, Mr. Stoel practiced business and tax law. He interrupted his legal career to serve as an officer in the Navy from 1944 to 1946.

While serving as managing partner of his firm from 1970 to 1981, Mr. Stoel helped orchestrate a merger that made Stoel Rives the largest Oregon-based law firm. After his wife was not allowed to practice law when she moved to Portland, he pushed the firm to hire women and make them partners. He retired from the law firm in 1985 but continued his civic and charitable activities.

Mr. Stoel served as chairman of Willamette University's board of trustees and was a member of the First Unitarian Church of Portland. He also served as chairman of the Riverdale School Board, president of the City Club of Portland and trustee of the Rose E. Tucker Charitable Trust. A lifelong Democrat, he supported the American Civil Liberties Union and Planned Parenthood.

Mr. Stoel received the Simon Benson Award from Portland State University in 2004 and the Aubrey Watzek Award from Lewis & Clark College in 2000. The U.S. District Court of Oregon Historical Society gave its lifetime achievement award to Thomas and Caroline Stoel in 2006.

Mr. Stoel was preceded in death by his wife in 2007. Survivors include sons Thomas Jr. and Peter; daughters Polly and Carol Stoel-Gammon; seven grandchildren; and one great-grandchild.

Class of '40

Elliott O. Foster, 93, of Gilmanton Ironworks, N.H., died Sept. 15, 2008. He graduated from Bates College and served in the Army during World War II, following his graduation from law school. Mr. Foster retired from Paul Revere Life Insurance Co. in Worcester, Mass., where he worked as an insurance claims adjuster. He enjoyed building stone walls, gardening, reading, and Duke University sports.

Mr. Foster was predeceased by his wife of 65 years, Elsie. He is survived by his son, Elliott O. Foster III; daughter Constance M. Wood; and three grandsons.

Class of '46

Henry Carter Foss, 92, died July 26, 2008, in Hilton Head, S.C. He received undergraduate and law degrees from Tulane University and served as an intelligence officer and legal officer with the Army Air Forces during World War II before obtaining his LL.M. from Duke Law.

Mr. Foss practiced law in New Orleans before becoming a legal and financial adviser with an Interior Department agency in Washington, D.C., in 1950. In 1953, he opened a private practice in Bethesda, Md. He rejoined the government in 1964, working first at Fannie Mae and later with the Army Materiel Command as a procurement lawyer. He retired from the Army's Office of the Command Counsel in 1989.

Having been an avid tennis player in his youth, Mr. Foss returned to the sport in the 1970s, eventually becoming ranked among the nation's top-five players older than 70. In 1995, at age 80, he won a national clay-court championship. He also was a top-ranked doubles player in his age group.

Mr. Foss is survived by four children, Anna Buck, Linn, Katherine McClintic, and Helen; and five grandchildren.

Class of '47

Duncan W. Daugherty Jr., 82, died March 25, 2008, in Huntington, W.Va. He was predeceased by his daughter, Elizabeth Daugherty Hendrix, and brother, Boice Neal Daugherty. He is survived by his wife of 59 years, Dorothy; son Duncan; brother David; and two grandchildren.

Class of '48

Dan Edward Walton, 89, of Palm Beach, Fla., died June 13, 2008. He attended Vanderbilt University on a football scholarship, playing tackle under coach Bear Bryant; he was named an All-American tackle in his senior year of 1941-42. After serving in the Army Air Corps, where he was commissioned as a second lieutenant, he fought in World War II with the 15th Air Force in Italy and was discharged as a major in 1946.

Following his graduation from Duke Law School, Judge Walton practiced law in Houston with Butler, Binion, Rice & Cook until 1953, when he was appointed a Harris County assistant district attorney. He was elected Harris County district attorney in 1954. In the late 1950s, he received the Outstanding Texas Prosecutor Award from the Texas Law Enforcement Foundation.

Judge Walton re-entered private practice in 1960 and in 1962 served as John Connally's Harris County campaign manager in Connally's race for governor. In 1966, he was appointed judge of the 178th District Court. He was re-elected five times without opposition.

Judge Walton served as president of the Houston Junior Bar Association; a member of the board of directors at St. Luke's Hospital; commander of American Legion Post 627; president of Texas District & County Attorneys Association; and state

director of the National Association of District and County Attorneys.

He was a member of the Masons, Holland Lodge No. 1; the Shriners; and Fraternal Order of the Eagles. He was given the Lifetime Member Award by the Houston Chamber of Commerce and earned the Outstanding Vanderbilt Alumni Award. He was named to the *Sports Illustrated* Silver Anniversary All-American Team in 1966. Judge Walton is survived by his daughter, Gigi Tylander; sons, Gib and Dan; and six grandchildren.

Errol Jordan Warren Sr., 86, died April 10, 2008. He graduated from the University of South Carolina before attending Duke Law School. Mr. Warren was a retired partner of Warren's Tire Center in Rocky Mount, N.C.

Mr. Warren was preceded in death by his wife, Rae Hufham Warren; daughter, Frances Warren Kincheloe; and brother, Bernice Warren, Jr. He is survived by his sons, Errol Jr. and James; brother, William; and seven grandchildren.

Class of '52

Lee Hampton Henkel Jr., 79, died May 30, 2008. He received his undergraduate degree from Duke University and graduated from Duke Law with distinction and Order of the Coif. At Duke, where he met his wife, Mr. Henkel was a member of the Duke Ambassadors Dance Band, the Duke Marching Band, the Duke golf team, and the Sigma Chi Fraternity. He was named a "Significant Sig" by Sigma Chi International in 1988.

From 1952 to 1971 Mr. Henkel practiced tax and corporate law in Columbus, Ga., and became a senior partner of Swift, Page, Henkel and Chapman. His practice focused on advice regarding sales, investments, mergers of corporate clients, federal taxation, estate-planning, and tax controversies. In 1971 he was appointed by President Richard Nixon '37 as the ranking assistant general counsel of the U.S. Treasury Department and chief counsel of the Internal Revenue Service. Serving under Secretaries of the Treasury John B. Connally, George P. Schultz, and William E. Simon, he supervised approximately 800 lawyers in the national, regional, and district offices of the Office of Chief Counsel throughout the U.S. Upon leaving government in 1973, Mr. Henkel received both the IRS Commissioner's "Award of Excellence" from Commissioner Johnnie Mac Walters and the Treasury Department's "Exceptional Service Award" from Treasury Secretary George P. Schultz.

In Atlanta, Mr. Henkel practiced tax and corporate law as a senior partner of Henkel and Lamon; Henkel, Hackett, Edge, Fleming; and Troutman, Sanders, Lockerman

Class of '60

Allen G. Siegel: Senior lecturing fellow, benefactor

Allen G. Siegel, 74, a senior lecturing fellow at Duke Law for 30 years, died July 28, 2008.

A Chicago native, he earned his bachelor's degree from the College of the City of New York in 1957. Following his graduation from Duke Law, he practiced law in Jacksonville, Fla. He later served as a field attorney for the National Labor Relations Board. In 1964, he joined the law firm of Arent Fox, where he became a partner and helped build one of the most successful labor and employment practices in Washington, D.C.

A member of the District of Columbia and Florida Bars, Mr. Siegel was considered an expert in the areas of collective bargaining and labor law, particularly as it relates to the Taft-Hartley Act. He also had extensive experience in matters arising under the Fair Labor Standards Act, various civil rights laws, and matters relating to unjust termination. He served as president and general counsel of the National Parking Association and was appointed chairman of the Maryland Labor Relations Board in 2003.

In addition to teaching labor and employment law at Duke, Mr. Siegel was an active member and supporter of the Law School community. In 1990, he established the Rabbi Seymour Siegel Memorial Moot Court Competition at Duke Law to honor his brother, a leading theologian and medical ethicist, who passed away in 1988. The moot court program later became an annual lecture series, also named for Rabbi Siegel, focusing on topics in law, ethics, and medicine. Mr. Siegel also established the David H. Siegel Memorial Scholarship

at Duke Law to honor his father. He served as a director of Duke's Private Adjudication Center, which studied alternate dispute resolution techniques such as arbitration and mediation.

"He was a warm, generous, loyal and loving person, who included in his expansive definition of family not only his deeply-loved wife, children, grandchildren, parents, and brother, but also his former professors and his colleagues at Duke Law School," said Assistant Dean Jennifer Maher '83.

An active civil servant and philanthropist, Mr. Siegel served as president and general counsel of the local affiliate of the United Cerebral Palsy Associations of America; director of the personnel committee, general counsel, first vice president, and chairman of the Jewish Social Services Agency; and as a member of the board of regents of The Catholic University of America. He created the Phillip M. Siegel Memorial Scholarship at The Catholic University of America School of Engineering and the Jeanette Siegel Memorial Scholarship administered by the Jewish Social Services Agency.

Mr. Siegel was the 1996 recipient of the Lehrman-Pikser Award for Public Service, administered by the Jewish Social Service Agency of Greater Washington. He was a member of the American Bar Association, the U.S. Supreme Court Historical Society, the American Judicature Society, the University Club of Washington, and Order of the Coif.

Mr. Siegel is survived by his wife, Rochelle; son Jonathan, and his wife, Jody; daughter Dina Siegel Kessler T'86 and her husband, Ross Kessler; and grandchildren. ♣

teacher. He enjoyed his trumpet, his model car collection, politics, watching Duke basketball, and piloting airplanes.

He is survived by his wife of 58 years, Barbara; son, Lee III; daughters, Lynn and Cathy; brother, Jack; and six grandchildren.

Class of '58

Edward Ernest Rieck II, 80, died April 30, 2008, in Jupiter, Fla. He graduated from Amherst College. After law school, Mr. Rieck joined the Army, where he was a member of the Counter Intelligence Corps, stationed in Berlin, Germany. At the time of his retirement he was general attorney for Consolidated Natural Gas Company. Mr. Rieck was a long-standing member of the Fox Chapel Golf Club and the Duquesne Club, and he was involved in a number of community activities that included trustee of Shady Side Academy and Little League baseball coach.

He is survived by his wife, Margaret; sons Edward III, John, and Gustave; siblings Albert, Letitia, and John; and three grandchildren.

Class of '59

Davis W. "Bill" Duke Jr., 76, died Sept. 18, 2008, in Tallahassee. He graduated from Duke University before attending Duke Law School where he was a member of the Order of the Coif and Omicron Delta Kappa. During law school Mr. Duke served in the Office of Special Investigations for the Air Force.

Mr. Duke practiced at McCune Hassen in Fort Lauderdale for 42 years. He represented a wide range of clients in general commercial matters as well as environmental, land use, administrative and antitrust law. In addition, he represented hospitals and medical professionals in health care matters that included practice acquisitions, peer reviews, contract negotiations, litigation defense, medical staff administration and by-laws.

In 1990, he helped open the Broward County office of Gunster, Yoakley & Stewart and in 1997 launched the firm Duke, Mullin and Galloway, which later became associated with Tripp, Scott.

Involved in Republican politics for much of his life, Mr. Duke served as chairman of the Broward County Republican Party and Broward County campaign manager for former Gov. Claude Kirk. He also was active in First Presbyterian Church as legal counsel, trustee, elder and soloist with the choir. He was a fellow with the American College of Trial Lawyers, former trustee with Broward Community College, former member of the Hundred Club and former member of the 17th Circuit Judicial Nominating Commission.

and Ashmore. He also was president and co-owner of Neiderhoffer-Henkel and Company, a merger and acquisition consulting firm with offices in Atlanta, New York, Chicago, Albuquerque, Los Angeles and Highlands, N.C. He was chairman of the boards of Continental Southern, a developer of real estate in Fulton, Gwinnett, and Cobb Counties in Georgia, and Sands Investment, a developer and operator of resort properties in Myrtle Beach, S.C. In retirement, Mr. Henkel was a consultant in tax and corporate matters and mergers and acquisitions.

He was the founder and first chairman of the Board of Trustees of Southern Federal Tax Institute, the chairman of the Section of Taxation of the State Bar of Georgia, a

member of the American College of Tax Counsel, a founder and first president of the Atlanta Tax Forum, and a member of the Board of Trustees of the American Tax Policy Institute. He served as a member of Duke Law School's Board of Visitors and as an adviser to Duke's Fuqua School of Business.

Mr. Henkel was as an active member of Rotary clubs in Columbus and Atlanta (Buckhead) and in Washington, D.C., and in volunteer leadership positions with the Columbus Boys Club, the Columbus YMCA, the Columbus Symphony Orchestra, and the Atlanta Symphony Orchestra. He was a member of the Timothy Class at Peachtree Road United Methodist Church, where he was a frequent Sunday School

Charles “Charlie” Howell: Longtime Dean of Admissions

Charles “Charlie” Richardson Howell, 76, the former dean of admissions for Duke Law School, died June 20, 2008. Between 1960 and 1983, she helped students select classes, professors, and jobs, and became a surrogate mother to many classes of students. Known for her flair for fashion and elegance, she was deeply respected throughout the Law School community.

A native of Littleton, N.C., Dean Howell attended Meredith College and moved to Durham in 1955. She was an individual of strong faith and a long-time member of Duke Memorial United Methodist Church. She was preceded in death by her only son, Stan Howell. ♣

Mr. Duke is survived by his wife of 53 years, Constance; sons Andrew and Bryan; daughter Lizanne Miskelly; and six grandchildren.

Class of '61

Fredrick L. Rice, 72, of Jacksonville, Fla., died May 6, 2008. Mr. Rice received his BA from Duke University in 1958. He served in the U.S. Army Judge Advocate Corps and U.S. Army Reserves, achieving the rank of captain, and practiced law in the Jacksonville and St. Augustine areas for more than 40 years.

Mr. Rice is survived by his wife of 40 years, Marian; children Laurie and Michael; and three grandchildren.

Class of '66

Dale D. Conroy, 65, of Spruce Pine, N.C., died May 27, 2008. He received his undergraduate degree from Duke University in 1964. After graduating from law school he worked as an F.B.I. agent in Chicago and Atlanta and as a stock broker at Merrill Lynch in Charlotte. He later was self employed in the dental supply business in Atlanta before retiring in 1995 and moving to Spruce Pine. Mr. Conroy enjoyed playing golf and was an avid fan of Duke basketball.

He is survived by his wife of 30 years, Ima; daughter, Angie Sundgren; and one grandson.

Class of '73

Richard Boggs Calaway, 60, of Little Rock, died April 24, 2008. He received his undergraduate degree from the University of Arkansas at Fayetteville and an LLM from Georgetown University. He spent the majority of his legal career serving as an administrative law judge for the Arkansas Workers' Compensation Commission.

Judge Calaway was known to his friends as a true Renaissance man. He loved traveling, art, literature, and the Razorbacks, all with equal enthusiasm, and had a

passion for dancing. He particularly enjoyed traveling with his daughter, Malissa, whom he raised as a single parent.

He is survived by his wife of one year, Margarita Eloina “Lena” Zavalza Calaway; daughter, Ana Malissa; sisters, Carol Wilson and Cathy Fudge; and brother, William.

Class of '91

Melanie S. “Loni” Caudill, 55, of Durham, died May 10, 2008. Ms. Caudill attended Concord College and obtained a BSc degree from the University of Central Florida. She attended Duke Law and graduated with honors after a successful business career, which included positions with Auto Train, General Mills Inc., and U.S. Surgical. She was a litigator and partner at Moore and Van Allen, specializing in medical malpractice defense and health care risk management/avoidance.

Among her many civic and community activities in Durham, Ms. Caudill offered pro bono legal services to the Hurricane Fran Disaster Relief Program and to the Democratic National Party as an attorney on call on Election Day in 1992. She provided pro bono representation through the Volunteer Lawyers Program of Durham County and assisted with the successful capital appeal of a death row inmate.

Ms. Caudill is survived by her mother, Beulah M. Shelton; siblings Vicki Barish and Terrance Shelton; and several nieces and nephews. She was preceded in death by her father and one brother.

THANK
YOU





Dear Alumni and Friends,

ON BEHALF OF the Duke Law Board of Visitors, I want to thank our alumni and friends for your steadfast support of our faculty, students, and programs. I am delighted to be able to thank the community of donors who made cash contributions of \$11.3 million in the fiscal year ending June 30, 2008, including nearly \$5 million in gifts and pledges for the Law School's endowment.

I am particularly pleased to report that the Law School experienced the best Annual Fund year in its history. The Annual Fund, which you helped to raise a record \$2.25 million, is a crucial source of funding for Dean David F. Levi, enabling him to allocate these resources based upon his assessment of immediate needs and opportunities that arise throughout the year. On the strength of the Annual Fund, the Law School continued to provide support for student financial aid, added new clinical and visiting faculty, enhanced the legal writing curriculum, and provided support for public interest programs. All this while continuing to recruit outstanding new faculty members like Ernest Young, Guy-Uriel Charles and Lisa Kern Griffin.

We also met, and actually surpassed, our \$10 million goal for our Financial Aid Initiative. I want to offer special thanks to Candace Carroll '74 for her role in this success, both as a generous donor, along with her husband, Len Simon '73, and as the Law School's representative on the Duke University Financial Aid Initiative Development Committee.

Our newest graduates continue to raise the bar for the rest of us. The Class of 2008 became the sixth Law School class to establish a permanent scholarship endowment in its name. The class also broke a record for member participation; 63 percent made gifts to the Law School, and more than 56 students joined the ranks of the Barrister Donor Society. The commitment shown by

our recent graduates sets an example for all of us in perpetuating Duke Law's strong tradition of philanthropy.

The most remarkable development of the past year, however, is quite tangible. I encourage you to come back to campus to visit your Law School. You will find the same friendly faces of students, faculty, and administrators for which Duke Law has always been well known. But now, you will see them studying and socializing within one of the most beautiful and functional physical facilities of any law school in the country. Last November, many of our alumni gathered to celebrate the new space and show our gratitude for the generosity of J. Michael Goodson '66, Elizabeth and Stanley Star '61, The Duke Endowment, and a host of other benefactors. While Duke Law Magazine and the wonders of webcams give you some notion of what we have done, please visit Duke Law to see for yourselves our newly renovated library, outstanding classrooms, and spectacular new student commons.

The building presents us with a continuing challenge to fill it with the outstanding faculty and students who are Duke Law today. Dean Levi has shared with me his enjoyment in meeting the members of the broader Duke Law community over the past 18 months. I know he will continue to turn to you for your advice, your ideas, and your time to help the Law School prepare the next generation of leaders within the legal profession and beyond. Of course, every gift, large and small, helps.

Thank you for your time, energy, and financial support in making Duke Law School one of the most exciting places in the world to teach and study law.

Sincerely,



Michael Dockterman '78
Chairman, Duke University School of Law
Board of Visitors





J. MICHAEL GOODSON '66 AND SON, MICHAEL, IN THE LIBRARY THAT BEARS GOODSON'S NAME.

J. Michael Goodson '66

AFTER GROWING UP ON A FARM in Southeast North Carolina, J. Michael Goodson came to Duke University, where he earned his bachelor's degree in accounting in 1963 before attending Duke Law. He holds the distinction of being the first Duplin County resident to graduate from Duke and notes that his journey from rural roots to successful international business career puts him in some pretty good company.

"I tell people that I was born in Northern Duplin County and Michael Jordan [lived in Wallace] at the other end of Duplin County," says Goodson, chairman and CEO of New Jersey-based Crest Group Incorporated. "We both did okay."

On Nov. 7, Goodson and his 13-year-old son, Michael, joined nearly 400 members of the Duke Law community — students, faculty, alumni, and friends — to dedicate the Star Commons and J. Michael Goodson Law Library. Goodson's \$10 million gift to the Law School, the largest single gift in the institution's history, made possible the extensive library renovation that was completed in the fall of 2008.

"The heart of the Law School is the student body and the faculty, but the library lives on and transcends all these other forces," Goodson says. "I just thought it was something that needed to be done. The opportunity to be a part of it and have your name associated with Duke Law School, I thought it was a good tradeoff."

Goodson initially set out to become a tax lawyer but turned to investment banking in the late 1960s after realizing the earning potential that the latter career offered. Ultimately, he

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transitioned into business, where he consistently finds that his legal training has practical applications.

“In the business world, every day of the week there are ongoing legal ramifications of what you’re doing,” Goodson says. “I think it’s indispensable to be effective, particularly if you’re in the international area of commerce, to do your job as CEO if you don’t have a legal background.”

In the ‘80s, Goodson used his legal and investment banking skills to take control of Crest Ultrasonics. What was then a \$7 million company is now the global leader in the patented processes of precision ultrasonic cleaning, ultrasonic plastic welding, and vibration welding, thanks in large part to Goodson’s patented discovery in 1996 of the ability to enhance the transmission of high-frequency ultrasonics with aluminum oxide, silicon carbide, and other high-tech ceramics. Crest Group has manufacturing sites in Germany, France, Switzerland, the U.K., China, Malaysia, and the U.S.

“[Goodson] was enabled by his education here and has now reached back to enable the education of others,” said Duke President Richard Brodhead during a Nov. 6 reception celebrating the naming of the Goodson

Law Library. “That’s a pretty good definition of what a university is, too. A university is a group of buildings surrounding a library in which people who were enabled reached forward to help enable the fulfillment of the promise of others.”

It was a meeting with President Brodhead in April 2006 that convinced Goodson to confirm his gift plans for the law library. “That interview and my perception of Brodhead’s leadership abilities was the clincher for finalizing the gift,” he says.

In addition to the library that bears his name, Goodson founded the William Van Alostne Professorship and has supported the Thomas F. Keller Professorship, the Edgar P. and Elizabeth C. Bartlett Professorship, the Law School Annual Fund, and endowments honoring Martin L. Black Jr. and Elvin R. Latty. He has been on the Duke Law Board of Visitors since 2005 and is a member of both the James B. Duke Society and the Duke University Founders’ Society.

“I think in terms of the future of the Law School and the impact that gifts can have, I’ve targeted the gifts for things that I believe are strategically important,” Goodson says.

He jokes that his pattern of gifts to the intellectual life of the Law School may

reflect a sense of guilt over not doing more while he was a student at Duke; however, many of his contributions demonstrate a clear appreciation for the people who contributed to an enjoyable and enriching law school experience.

“I have very fond memories of the professors and the student body from those days,” says Goodson, who explains that he and his classmates were “spoiled” by the easy access they had to professors. “I was here many, many years ago, and the Law School was smaller then, but there seemed to be an abundance of truly outstanding professors.”

Goodson also notes his appreciation for Professor Katharine Bartlett’s vision and tenacity during her tenure as dean of the Law School from 2000 to 2007.

“I saw that she had the leadership to focus on the needs and what she could do to help the Law School grow, and I thought she deserved recognition for her leadership,” Goodson says. “These initiatives for the library and for the commons are initiatives that were taken during her watch, and I felt she did an outstanding job.” ♡

— *Matthew Taylor*



STANLEY AND ELIZABETH STAR, CENTER, WITH THEIR FAMILY: SON-IN-LAW BRAD WINER B '00, AND SONS STEPHEN T '07 AND RICHARD B '08.

Stanley '61 and Elizabeth Star

TWENTY YEARS AGO, Stanley and Elizabeth Star lived in Fredonia, N.Y. and by their town admission were as far removed emotionally as they were geographically from Duke Law. Stanley attended the Law School as a member of the Class of '61 but had long since traded his legal aspirations for his business interests, which have included turning his family's 19th-century winery in Western New York into one of the country's leading private-label juice manufacturers.

The Stars reconnected with Duke when they got an unexpected visit from a Law School development officer. The interaction brought back fond memories of Stanley's time in Durham and laid the groundwork for a longstanding relationship that has been rewarding for the couple and the school alike.

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"Several years ago, I was really looking for a charity or something to become interested in beyond my business interests," Stanley explains. "I met some people from Duke and I became part of the Duke family. It's always nice when you donate and become part of a family — you really feel part of the family, and that's what we get. It's just a very warm place to be."

The Stars have made Duke Law School a primary beneficiary of their extensive philanthropic efforts, including a \$3 million gift for the newly constructed Star Commons, a 4,200-square foot gathering space that serves as a physical manifestation of Stanley and Elizabeth's central role in Duke Law's growth and development over the past two decades.



“I think it was important to build the Commons because of the idea that not only was it for student use, but it could also serve other purposes,” Stanley says. “It’s really a multi-faceted room, and it’s really a wonderful addition to the Law School.”

“It’s so fulfilling to see a project like this come to fruition,” Elizabeth adds. “You lead, certainly, by example, and we have tried to do that.”

The Stars got their first look at the finished space during the building dedication weekend in November and described it as “extraordinary.” During the Nov. 7 dedication ceremony, Dean David Levi pointed out the valuable role the Star Commons takes in the life of the Law School community.

“Already, it has provided the setting for programs and events that have enlivened the life of our Law School. Already, it has attracted colleagues from around campus to the Law School. Already, it has become a central part of our daily lives,” said Levi.

In addition to the Commons, the Stars fund the Stanley A. Star Professorship and the Star Scholarship and have hosted

multiple Duke Law events in their Naples, Fla., home. Stanley also served as a co-chair of the Law School’s Building Campaign Committee, a position that added to an already lengthy resume of service to Duke. He is a member of the Law School’s Board of Visitors and the Board of Advisors of the Global Capital Markets Center, a joint initiative between the Law School and the Fuqua School of Business.

The value the couple places on relationships like those they have established with members of the Law School community extends into their professional and personal lives as well. Stanley makes a regular practice of greeting individual employees when he visits his company’s juice manufacturing plants. The practice is consistent with his philosophy that a business should be a caring institution.

Avid sailors, the Stars fly a Duke flag on their boat, a gift from Al Buehler — a former Duke track and cross country coach — whom the Stars met in the Caribbean. It has served as a calling card to Duke graduates they encounter on their many voyages.

“We meet Dukies all over the place, in the Caribbean, in the Northeast, everywhere we take the boat,” Elizabeth says. “I think everyone in our family has this real love for this university and the work that is done here. It’s become a very important part of our lives.”

In addition to Stanley’s time at Duke Law, two of the Stars’ children have Duke undergraduate degrees, and their son-in-law graduated from the Fuqua School of Business.

While the Stars’ network of Duke friends and associates extends far and wide, the couple is particularly proud of their relationship with the Law School and the tangible contribution they have made to its growth with their support of the Star Commons.

“This is one of the top 10 law schools in the United States, it’s a really prestigious school, so it’s an honor for us to be involved with it,” Stanley says. “To be able to make this physical plant that much more attractive to students, I hope really has an impact on the school in the long run.” ♡ — M.T.



RUSSELL ROBINSON II '56

The Duke Endowment

PRIOR TO SIGNING the Indenture of the Trust that established The Duke Endowment, James B. Duke brought the document to his Charlotte home for a

IN APPRECIATION thorough review. Over the course of four long working days, Mr. Duke read the Indenture aloud for the Endowment's original trustees and the group discussed its contents line by line. The Indenture, which was ultimately signed on Dec. 11, 1924, established the causes and institutions that are to receive funds from the Trust, the procedures for administering the Trust, and the reasons for these choices.

The initial reading of the Indenture was done by choice; however, subsequent readings of the document before the assembled trustees have been required on an annual basis ever since. The unique oratorical task currently falls to Russell Robinson II, chair of The Duke Endowment, and takes 42 minutes to complete.

Robinson '56 spoke of this responsibility and how it relates to the Endowment's decision to support the Law School's recently completed building project during the November celebration of the J. Michael Goodson Law Library.

"Mr. Duke knew that words matter, and words are the means by which we conceive and develop and express and preserve the rules and the dreams by which we live," Robinson explained, "so it is extremely important that a Law School such as Duke have a library such as this."

The Duke Endowment donated \$6 million to the Law School's building campaign. Since its inception, the Endowment has been a significant partner to Duke University; its gifts to the Law School have included support of various faculty professorships, a prestigious student scholarship fund, and the Children's Law Clinic.

"We are very grateful for our relationship with The Duke Endowment and with the trustees of the Endowment, many of whom are distinguished graduates of the Law School," said Dean David Levi during a Nov. 6 ceremony celebrating the naming of the Goodson Law Library. "By supporting the Law School, the Endowment carries out the wishes of the founding family that by precept and example Duke lawyers should participate in the uplift of mankind."

Established in 1924 by industrialist and philanthropist James B. Duke, The Duke Endowment is one of the nation's largest private foundations. Headquartered in Charlotte, its mission is to serve the people of North Carolina and South Carolina by supporting selected programs of higher education, health care, children's welfare, and spiritual life. While the Indenture specifically named institutions that the Endowment should sup-

port, including Duke University, it also gives trustees broad discretion to make grants for similar charitable purposes in accordance with Mr. Duke's original wishes.

"The Law School was mentioned in Mr. Duke's indenture. He specifically said he wanted to provide for a law school of national distinction," said Robinson, founding partner of Robinson Bradshaw & Hinson in Charlotte. "The library of course is the centerpiece of the Law School, so we were very enthusiastic about doing that."

Robinson expressed equal enthusiasm for the Star Commons, which he noted serves a central role for the Law School community in function and form.

"[The Star Commons] provides a distinctive part of the University, with the light shining out at night, and the light streaming in during the daytime," he said. "We think it captures symbolically the spirit of practicing law."

Robinson explained that the light streaming out of the Star Commons signifies the spirit of lawyers searching through past case law late at night; meanwhile, the light streaming in represents the presence of truth and justice that arrive as the result of this search.

Overall, Robinson said the Law School he attended in the '50s cannot be compared to the renovated and expanded facility that now stands at the corner of Towerview Road and Science Drive.

"When I was a student here we were in a small building on the main quad. The library was a small room on the first floor," Robinson said. "It's just remarkable what this space has become." ♣ — M.T.



Buck Ferguson '70

RAYMOND “BUCK” FERGUSON didn’t anticipate becoming an expert in construction after he graduated from law school, but nearly 40 years after leaving Duke he finds himself a veteran of significant building projects in his hometown and at his alma mater, including the Law School’s recent renovation and expansion.

After graduation, Ferguson moved home to Seattle with his wife, Mary, whom he met at Duke. He worked at a law firm before later joining the King County Prosecuting Attorney’s Office, where he was one of the lawyers representing the county in negotiations with contractors and professional sports franchises to build the Kingdome, a multi-sport stadium.

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In 1982, he took a position managing Microsoft’s legal team and general administrative groups, giving him oversight of all of the company’s facilities. “Microsoft was growing so fast that it needed a new headquarters,” Ferguson says. “I was responsible for the first 2.5 million square feet of headquarters, which is still used today.”

Ferguson spent much of the time during his 12 years with Microsoft constructing the company’s campus. “I was responsible for finding the land, hiring the architect, negotiating leases, and getting the contractors,” Ferguson says. When the company went public, he became responsible for investor relations and had daily contact with Wall Street.

While he was at Microsoft, Ferguson joined several of his baseball-loving colleagues in purchasing the Seattle Mariners. He soon became involved in the construction of another stadium in Seattle to replace the aging Kingdome; this time, however, he was part-owner of

the team occupying the facility. “It was ironic to be on the other side of the negotiating table from where I was almost 20 years before,” he says.

Ferguson greatly enjoyed his experiences at Duke, and two of his children have followed in his footsteps. One of his daughters graduated from Duke Law in 2008 while another graduated from Trinity in 2004. However, Ferguson did not return to the school for 15 years until a visit from former Dean Pamela Gann ’73 convinced him to do so.

“Something hit me that all the success, fun, and satisfaction I’ve had with my career and life is based on the educational opportunities of the Duke Law School,” he says. Ferguson joined the Board of Visitors in 2001 but wasn’t sure that he would enjoy the role. The “incredible energy” of fellow members convinced him otherwise, and he became more involved in the Law School community.

Ferguson’s expertise in building construction made him a natural fit for the Law School’s Building Campaign Committee. “I have really enjoyed being involved in the additions to the school,” he says. “While the Law School is not about the bricks and mortar — it’s the people inside who make it — we need to have a comfortable facility. While there are many great architects, the building’s users always need to help in the design.”

In addition to the time, money, and energy he’s contributed to the Law School’s expansion, Ferguson helped plan the international outreach initiative orchestrated by former Board of Visitors Chair Peter Kahn ’76, including Board of Visitors’ meetings in China in 2005 and Germany in 2008. “We really need to have a presence internationally, and I was happy to help organize these trips,” Ferguson says.

A third Duke project Ferguson enjoyed planning with Kahn was the surprise retirement party for outgoing Dean Katharine Bartlett in 2007. “We had 125 people who really cared about the school celebrate everything she’s done for it,” Ferguson says. While Kahn helped the plan event, he had no idea that Ferguson also had a surprise roast planned for him that same night, which included the presentation of gifts that reflected Ferguson’s love for baseball — personalized bobblehead dolls. ♡ — *D. Elstein*



Al Adams '74

AL ADAMS HAS MANY longstanding personal and professional connections to Duke. Born at Duke Hospital in 1948, Adams moved away from Durham with his family during his early childhood; however, he returned to Duke years later, graduating with a bachelor's degree in history in 1970 and a JD, with distinction. He remains a loyal supporter of the University and the Law School and gives back to both in a variety of capacities, including his recent role as a member of the Law School's Building Campaign Committee.

Adams has been an enthusiastic advocate for the capital improvements and is certain they will benefit the Duke Law community greatly.

"Duke Law School now has a library with state of the art — or science — technology combined with a pleasant and comfortable interior, and in the Star Commons, a magnificent, spacious, and welcoming area for student gathering as well as more formal conference and guest functions," he says. "These two areas have a synergistic effect on the Law School as a whole and will no doubt enable the school to more readily attract prospective students and faculty."

After fulfilling a nine-month military commitment in the National Guard, Adams enrolled in law school where he met his wife, Sarah. They married shortly after her 1973 graduation. Adams fondly recalls Dean Kenneth Pye's mentorship as the young couple worked to support themselves while Adams completed his own law degree.

Having spent his entire career at Sutherland Asbill & Brennan in Atlanta, where he is a partner, Adams now chairs its real estate practice group. He focuses his practice on real estate and creditors' rights, representing foreign and U.S. investors, lenders, and developers in connection with virtually every type of real estate project. He says he greatly enjoys counseling his clients through projects and helping them achieve their goals and objectives. He has been widely recognized for his expertise; in addition to being recognized in the area

of real estate law in *Best Lawyers in America* and as one of the country's leading business lawyers by *Chambers USA* for the past five years, he was designated a "Georgia Super Lawyer" in the area of real estate for 2004–2008 and *Atlanta* magazine identified him as one of the top 100 Georgia attorneys for both 2008 and 2009.

Adams has served on numerous alumni committees for the Law School, beginning in 1990 with the Law Alumni Association Board of Directors. In 2005, he and Sarah joined the Board of Visitors' trip to China, where they attended various intellectual property seminars and were part of a program to connect with alumni in Asia. In 2006, Adams became a life member of the Board of Visitors, of which Sarah is also now a member. He has also taught Real Estate Finance as a senior lecturing fellow for the Law School since 2006.

Adams says he believes strongly in the importance of mentoring young lawyers in his firm and enjoys teaching. "It affords me an opportunity to engage with young people who are enthusiastic about learning the law and the prospect of practice. It's gratifying for me to be able to have some part in shaping their careers, and, I hope, in giving them a good foundation in real estate finance."

Two former Duke students make Adams especially proud — his sons John and Jeff graduated from Trinity College in 2001 and 2004, respectively. Both earned degrees in history, just like their father. Jeff continued on in his parents' footsteps, graduating from the Law School in 2008. He now works at Alston & Bird in Atlanta. Altogether, the family of four holds a combined seven degrees from Duke University.

Adams recognizes that today's law students are looking to develop skills that will not just help them become legal technicians, but also that will provide them with leadership opportunities in a variety of professions, ranging from non-profit organizations to politics. Looking to the future, Adams believes that highlighting the Duke Law Blueprint, a set of principles for leadership, will enable the Law School to continue attracting a strong and diverse student body of leaders. ♣ — I. Monahan



David Ichel '78

DAVID ICHEL'S INVOLVEMENT as co-chair of the Law School's Building Campaign Committee is a manifestation of the pride he takes in giving back to his alma mater.

A partner at Simpson Thacher & Bartlett in New York City, Ichel has served on reunion committees, the Law Alumni Association Board of Directors, and the Law School's Board of Visitors. He also is a past chair of the New York Metropolitan Duke Law School Alumni Association. These efforts, and his work on the building committee, dovetail neatly with Ichel's philanthropic philosophy toward the Law School.

"I have three pillars of interest in terms of giving: helping the physical plant, helping the faculty, and helping the students," Ichel says. "Given how much I loved my Duke Law School experience, the ability to continue that experience, give back, and make it a better place for future generations of Duke students provides an unbelievable amount of psychic income."

Ichel's dedication to Duke — which is shared by his wife, Jan — can be traced to his experiences as a Duke undergraduate and then as a law student. The New Jersey native did not intend to head South for college, but a campus visit at his father's recommendation sold him on the University. Four years later, he needed little convincing to remain in Durham for law school.

"It was an amazing seven years at Duke University, and every day in my practice I'm reminded of how helpful the Duke Law School experience was," Ichel says. He identifies the quality of instruction at the Law School, the leadership skills he learned, and the friendships he made with fellow Duke students and others in the Duke community as key contributors to his success as a litigator. Ichel focuses on a wide range of complex commercial litigation, including securities and banking litigation, class action defense, product liability and mass tort defense, antitrust and unfair trade practice claims, defamation, insurance coverage, and insurance company insolvency litigation. He holds an unblemished record defending beverage industry clients in product liability and mass tort cases.

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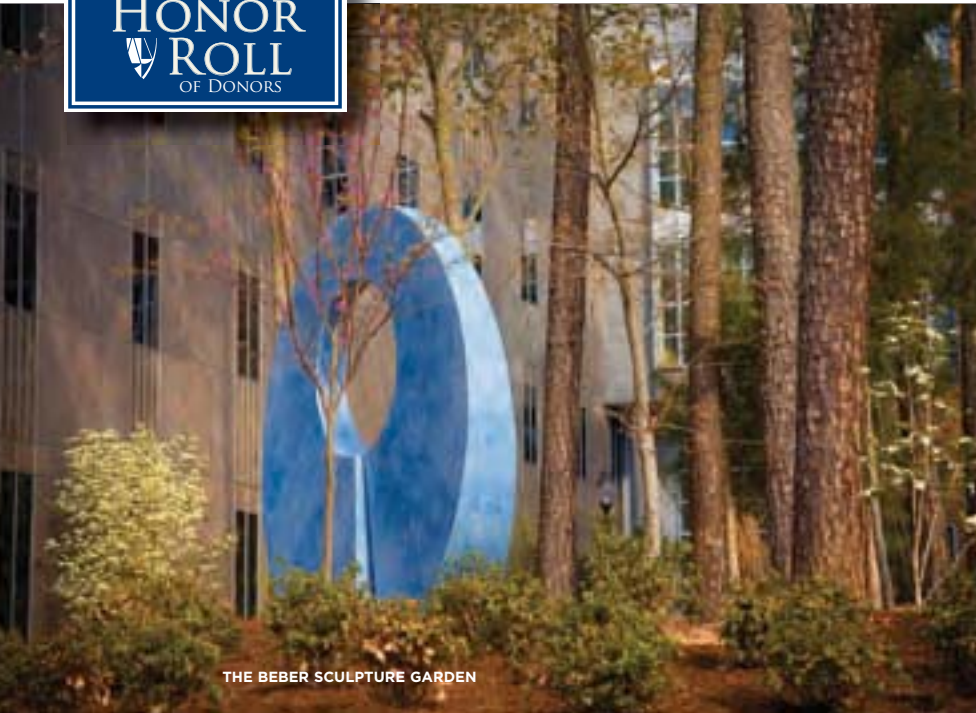
Equally as valuable to Ichel as the skills he learned at Law School are the relationships he shares with other alumni. No matter the need — local counsel in a different jurisdiction, a lawyer to whom he can refer a case should his own involvement represent a conflict of interest, or even just common ground with an opposing lawyer — Ichel says he can find what he is looking for within the Duke network, a reality that he believes has an instructive quality to it. "I think that sends a good message to current law students," Ichel says. "Don't view your classmates as competitors."

It was the strength of his relationship with classmate Chris Kay, for example, that helped Simpson Thacher stand out when Kay, then general counsel for Toys "R" Us, was looking for a firm to serve the company as chief outside counsel in 2000. "Other firms we looked at were equally outstanding, but with Dave Ichel on point, I knew we would always have a sincere commitment and desire to help our company succeed," Kay said. Simpson Thacher worked with Kay, who became the chief operating officer, on a number of securities offerings, tax issues, international franchise litigation, arbitration, and eventually handled the

company's 2005 \$6.6 billion sale to a group of private equity investors. The firm continues to represent the toy retailer.

As Ichel sees it, the Duke Law connection speaks to the quality of the professional and creates an instant sense of camaraderie; it also provides a friendly audience for conversations about one of his favorite topics: Duke basketball. Fittingly, the Law School's David W. Ichel Seminar Room (Room 4046) is nicknamed "the basketball room," a nod to the circular desk arrangement that resembles a basketball hoop. Ichel, a season-ticket holder at Cameron Indoor Stadium, says he was attracted to the room's intimacy, its advanced technology, and its view of the surrounding landscape. But the nickname certainly did not hurt.

"I think that was the main attraction," Ichel jokes. "If it hadn't been called the basketball room I wouldn't have considered it in the first place." ♣ — M.T.



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1963: ANOTHER DEDICATION AND CELEBRATION

ABOVE: DEAN ELVIN (JACK) LATTY CHATS WITH UNITED STATES CHIEF JUSTICE EARL WARREN BEFORE THE DEDICATION OF DUKE LAW SCHOOL'S NEW BUILDING ON LAW DAY. CHIEF JUSTICE WARREN WAS THE PRINCIPAL SPEAKER AT THE DEDICATION CEREMONY, RIGHT.



Spring 2009

Duke Law Conferences and Symposia

- 1/23/09** **Race and Socio-Economic Class: Unraveling an increasingly complex tapestry**
Law & Contemporary Problems
- 1/30/09** **Local Property, Global Justice: Law and resources in the era of climate change**
Duke Journal of Comparative and International Law
- 2/6/09** **Hot Topics in Intellectual Property Symposium**
Intellectual Property and Cyberlaw Society
- 2/6/09** **Conference on Measuring Judges and Justice**
Office of the Dean and *Duke Law Journal*
- 2/13/09** **Doing Business in Latin America**
Latin American Business Law Association and Latin American Student Association, Fuqua School of Business
- 2/13/09** **Moving Education Forward: Perspectives and innovations in education law and policy**
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Duke Journal of Gender Law and Policy
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Duke Law Journal
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– Bill Hoye, Associate Dean
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