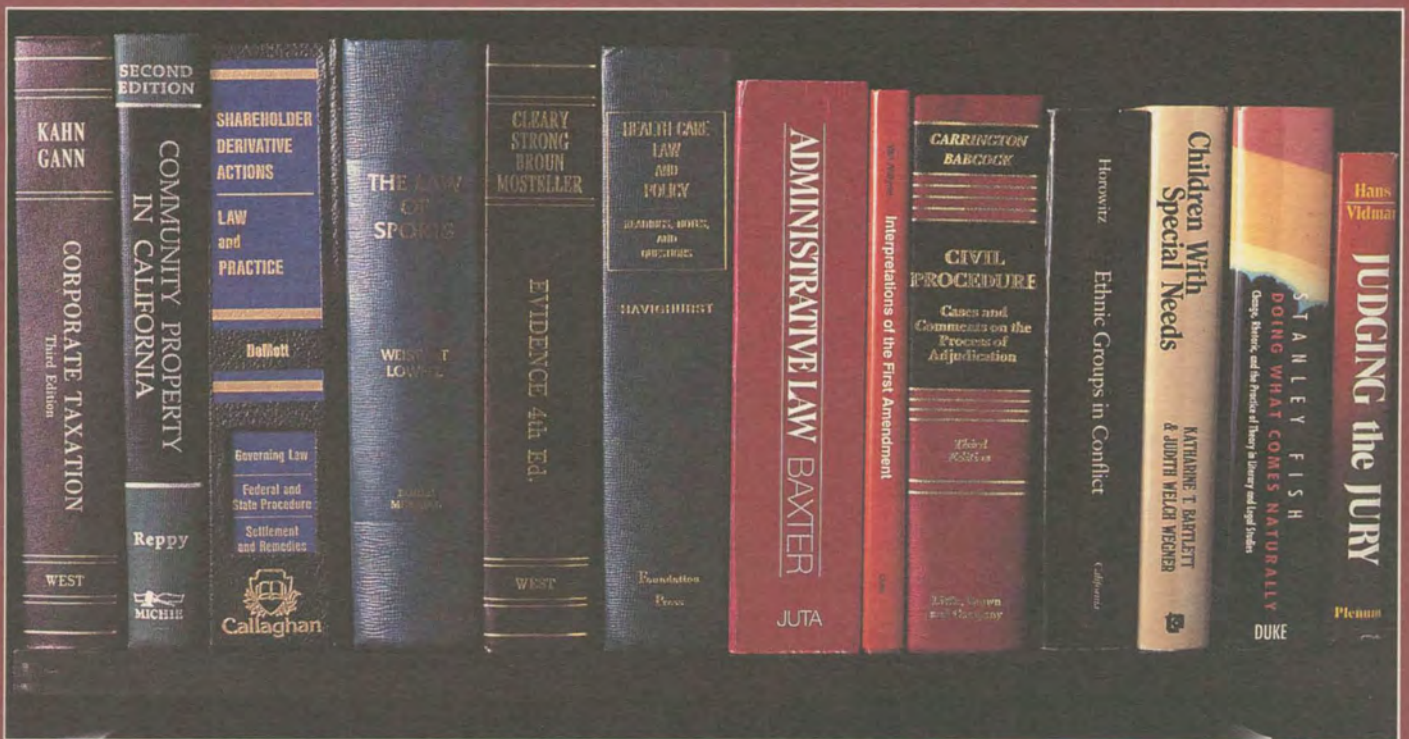


Duke Law Magazine

WINTER, 1990



Commitment

Duke Law Magazine

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From the Dean

These pages give me an opportunity to share with alumni and friends information and issues about various facets of the Law School. In this issue, I want to discuss with you matters relating to our building renovations, admissions, placement, and the public service responsibility of lawyers.

Law School Library Renovations. Included on these pages are pictures of the recently completed renovations of the bottom floor of the library. The reaction of faculty, librarians, and students to the architect's design has been very positive. The combination of lighting, millwork, and specially-designed individual computer carrels creates an inviting environment for students to conduct legal research and to write. The computer carrels house a \$100,000 local area computer network for student use. This network contains word processing, LEXIS, WESTLAW, grammar and citation checks, and computer instructional exercises assigned by the faculty for particular courses. It also contains the on-line library catalogue



for Duke University, the University of North Carolina, and North Carolina State University, which combines the total library resources of these three universities into the third largest university library collection in the United States. Our librarians are actively involved in training students

to utilize this network of computers. When you next visit the Law School, please take the time to walk around the library, including the newly-renovated areas, and to observe the balance among hard-copy materials and new forms of information technology.

Admissions. The number of persons applying to the Law School has increased by eighty-six percent since 1985, with significant increases occurring in 1987-88 and 1988-89. For the fall 1989 entering class, the Law School received a record number of 3,501 applications. Applications received to date for the fall 1990 entering class are over twenty percent ahead of January 1989. The dramatic increase in applicant volume has been accompanied by an increase in the quality of the applicants. Nationwide the number of persons achieving high LSAT scores has increased, and our applicant pool shows that increase as well. The fall 1989 entering class median LSAT is 43, the highest in the School's history, and its median GPA is 3.60.



Forty-three percent of the fall 1989 entering class are women, which is also the highest percent in the Law School's history. The majority of persons enrolled in undergraduate college presently are women, and law schools can expect their enrollment of women to proceed gradually to fifty percent over the next several years. The entering class originates from thirty-eight states and seven foreign countries, illustrating the "national" nature of the Law School's student body. The enrollment of fourteen black minority students is the highest absolute number enrolled, and the twelve percent enrollment of North Carolina residents is also the highest achieved in the last several years.

Our enrollment recruitment efforts are greatly enhanced by the Alumni Admissions Program, which presently involves more than 180 alumni throughout the country. Approximately eighty percent of the admitted candidates were matched with alumni, who personally contacted the candidates. These contacts were made not only to recruit the candidate to Duke, but also to discuss legal education and the profession more generally. This network of alumni greatly enhances our recruitment efforts for excellent candidates.

This rapidly increasing applicant volume is a mixed blessing. We certainly appreciate the perception that the Duke Law School is a location in which many strong candidates want to study law. On the other hand, the cost of operating an admissions office both to recruit students on a nationwide basis and to review this volume of applications has increased significantly over the last several years. Private undergraduate colleges, like Duke, estimate that their admissions operations cost about \$1,000 per matriculated student. Comparable data is not available for private law schools; nevertheless, the cost is significant. One cannot help but imagine that as private schools need to contain costs, a national application system may be developed to eliminate the current duplication of effort among

the law schools due to the growing number of multiple applications.

Placement. Law students have never had a better choice of jobs as the demand for lawyers from top law schools increases more rapidly than the number of students graduating each year. Nevertheless, the law schools themselves have experienced increasing disruption to their educational program caused by the enlarged placement activity. Students spend many hours interviewing firms on campus and then leave school for entire days to interview firms away from campus. Moreover, even first-year students are engaged in a spring semester, on-campus placement season during which firms

recruit only first-years. Also, we use valuable office space for the interviews, often asking adjunct and joint-appointment faculty to relinquish their offices during the fall semester.

We have previously addressed in a small way the problem of students missing classes to interview off-campus by creating a week-long October break and encouraging students to interview during that week. Beginning in the fall semester 1990, we will attempt to control the number of missed classes for on-campus interviews by scheduling 150 of the more than 500 firms that interview during the fall semester over three weekends. This weekend concentration of firms will enable





us to shorten the total number of weeks devoted to firm interviews on-campus, which should benefit the students and the firms.

A significant number of the on-campus interviews are conducted by our alumni. I hope that you and your firms will appreciate the need to conduct interviews during the weekend to lessen the disruption of class attendance and preparation caused by the current placement schedule.

Law Alumni Council and the Public Service Responsibility of Lawyers. The degree to which lawyers are fulfilling their public service responsibility is one of today's most widely discussed professional topics. The degree to which law schools can educate students to understand their future public service responsibility is an equally discussed topic.

Pro bono legal services fall within the broader topic of public service responsibility. Most law schools and lawyers are unwilling to confront the fact that many lawyers are simply not committed to pro bono activities. Law students are sometimes even reticent to bring up the topic in placement interviews. I believe that law schools and their alumni have a role to play in educating students about these issues.

In response to the need to bring these issues to the attention of our students, I requested the Law Alumni Council to present a program at the Law School about the public service responsibility of lawyers. Each year panels appear in the Law School to discuss careers in public interest law and government. In reality, however, most of our students will begin their careers in large law firms in large cities; accordingly, I requested the Council to focus in particular on how large law firms encourage and assist their lawyers in delivering pro bono services.

A panel discussed this topic among themselves and with our students in January. Panelists included **Richard Allen '66**, a partner at Cravath, Swaine & Moore; **Barbara Arnwine '76**, the Executive Director of the Lawyers Committee for Civil Rights under the Law; **James E. Coleman, Jr.**, of Wilmer, Cutler & Pickering; **John J. Coleman, Jr. '50**, the managing partner of Bradley, Arnt, Rose & White; **Thomas A. Hale '82**, a senior associate at Skadden Arps Slate Meagher and Flom; **Craig A. Hoover '83**, a senior associate at Hogan & Hartson; and **Chip Palmer '66**, Vice-President of the Law Alumni Council and a partner in Fulbright Jaworski & Reavis McGrath. The panelists

discussed how large law firms organize themselves to deliver pro bono services. They also discussed if prominent, large law firms fail, or if lawyers individually fail, to volunteer their services in accordance with their public service responsibility, and whether all lawyers should be required to provide pro bono services. At least six states now have under consideration a mandatory pro bono requirement for lawyers. Many lawyers believe that if hortatory efforts fail to convince lawyers to meet their public service responsibility, the mandatory requirement may be adopted in some states.

This panel is part of a larger effort by the Law Alumni Council to present to students alumni panels on various topics about the legal profession. Law school faculty perform the traditional functions of legal education quite well. The faculty may not, however, be as helpful as our alumni in thoughtfully discussing such topics as the evolving nature of law firms, the economics of the profession, or the public service responsibility of lawyers. I warmly thank the Law Alumni Council for organizing these alumni panels to enrich the professional education of our students.

Pamela B. Gann



FORUM

Constitutional and Statutory Responses to *Texas v. Johnson*

Walter E. Dellinger, III*

Two hundred years ago today, members of the first United States Senate and House of Representatives were meeting to agree upon the final wording of the proposed Bill of Rights. On September 24, 1789 the work of that conference committee—perhaps the most important



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ever held by Congress—was presented to the House. Final agreement had been reached to propose an amendment adding the following words to the Constitution of the United States:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof, or abridging the freedom of speech or of the press, or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

No amendment has ever been proposed by Congress that would alter in any way this most fundamental part of the Constitution. Today this committee meets to consider for the first time in 200 years an amendment that would revise the Bill of Rights we adopted two centuries ago. Because I believe that the proposal to amend the Constitution for this purpose is utterly misguided and fraught with peril, I have accepted the committee's invitation to appear.

I will suggest (1) that a simple act of Congress "protecting the physical integrity of the flag in all circumstances" by prohibiting all flag-burning and similar destruction would not necessarily be inconsistent with the Court's opinion in *Texas v. Johnson*, 109 S.Ct. 2533 (1989); and (2) that the proposed amendment to the Constitution of the United States is a truly terrible idea.

Statutory Responses to *Texas v. Johnson*

Although my own view is that a statute imposing criminal punishment for the burning of a privately owned flag may be insufficiently tolerant of dissenting views,¹ I agree with Dean Geoffrey Stone of the University of Chicago that there are at least reasonable grounds to believe that the United States Supreme Court would in fact sustain legislation "protecting the physical integrity of the flag in all circumstances."

A majority of the present members of the Supreme Court have voted to uphold criminal convictions for misusing the United States flag. Four Justices (Rehnquist, White, O'Connor, and Stevens) dissented in *Texas v. Johnson*. A fifth member of the Court—Justice Blackmun—has previously voted to sustain a conviction for flag misuse.

In his dissenting opinion in *Smith v. Goguen*, 415 U.S. 566 (1974), Justice Blackmun stated that the Court should have sustained Goguen's criminal conviction for wearing a small United States flag sewn into the seat of his trousers in violation of Massachusetts' flag-misuse statute. Justice Blackmun interpreted the opinion of the state's highest court as ruling out the possibility that Goguen was convicted on the basis of any "communicative element" and wrote that "I therefore must conclude that Goguen's punishment was constitutionally permissible for harming the physical integrity of the flag"

The majority opinion in *Texas v. Johnson* accommodated Justice Blackmun's view by emphasizing that Johnson was convicted under a statute that made his criminality turn on the communicative impact of his message. The Court, citing to Justice Blackmun's *Goguen* opinion, states "The Texas law is thus not aimed at protecting the physical integrity of the flag in all circumstances, but is designed instead to protect it only against impairments that would cause serious offense to others." *Johnson*, Slip. Op. at 13, and n.6.

As the Texas Court of Criminal Appeals recognized, Johnson was punished for the expression of an idea. Texas did *not* make it a crime to burn or destroy the American flag. Texas prohibited actions affecting the flag *if and only if* those actions expressed an idea offensive to others. The "governmental interest" in *Johnson* was thus directly related to the suppression of the message being communicated.

The proposed federal statute (Biden-Roth-Cohen) eliminates the particular constitutional flaw that was the basis for the Court's decision in *Texas v. Johnson* by changing the federal statute from one that punishes the expression of a "contemptuous" idea to one that simply protects all flags against destruction without regard to the idea being communicated, and without regard to whether there is even any idea being communicated at all.² Such a statute would not, of course, accomplish the objective of targeting for punishment those and only those who express an idea the majority finds offensive. Those who would desire to incarcerate Americans based on the idea those individuals express will not be satisfied with this statute.

The proposed federal statute would be "related to expression" in the sense that a symbolic, expressive

The constitutional issue that would be raised by such a statute is one that the Court has never confronted: may Congress protect a particular symbol—the American Flag—against all destruction of whatever kind?

idea is being protected. But it would not necessarily be "related to the suppression of expression." The constitutional issue that would be raised by such a statute is one that the Court has never confronted: may Congress protect a particular symbol—the American Flag—against all destruction of whatever kind?

In *United States v. O'Brien*, 391 U.S. 367 (1968), the Supreme Court sustained a statute that prohibiting all instances of burning and other destruction of draft cards—regardless of whether any idea was being expressed by the destruction—on the basis of a finding that the statute served various governmental interests in administering the Selective Service System. Those same administrative interests are not present when flags are destroyed.

For me, the difficult question of constitutional law (and of policy) is whether a blanket ban on burning the flag can be justified, as the draft card burning statute was, by a governmental interest "unrelated to the suppression of expression." If the purpose of the Flag Protection Act is not to suppress certain ideas, what is the purpose? I have listened carefully to various formulations of that interest; several seem plausible, none seem entirely clear or wholly persuasive. In the end, even though as a matter of constitutional theory I continue to have doubts about the statute, I agree with those who suggest that there is a reasonable basis in the case law for concluding that the Supreme Court would sustain it.

One final note about the statute: Because it presents such a novel and difficult question, I would have supposed that it was in *everyone's* interest to have a process of judicial review of the statute that was careful, reflective and orderly. For this reason, the provision in the House Bill (H.R. 2978) providing for an extreme form of expedited review seems to me very ill-considered. To have this issue immediately rushed to the Supreme Court the instant it is raised in the pleadings at the trial level in a single district court is not a formula likely to produce a wise and reflective judgment on a matter of fundamental importance for the future of the First Amendment. The "issue" would be considered by the Supreme Court stripped of any of the informing context that could be supplied by a full record. Whatever "facts" are available at that premature stage may well be so variant as to distort the adjudication process.

"The Texas law is thus not aimed at protecting the physical integrity of the flag in all circumstances, but is designed instead to protect it only against impairments that would cause serious offense to others."

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At a minimum that language should be altered to provide for Supreme Court review (bypassing the Court of Appeals) only after a final decision in the trial court. Better yet would be a decision to follow the normal appellate review process, which would provide the Justices of the Supreme Court with the insights and reflection by Judges of the Court of Appeals. It is surely not in the interest of either supporters or opponents of this statute to short circuit the process of deliberation by which its validity should be determined.

The Proposed Amendment to the United States Constitution

The President of the United States has proposed an amendment to the Constitution of the United States to permit the punishment of those who "physically desecrate" the flag. This potentially dangerous amendment would create an entirely unlimited exception to either one, some, none or all of the Bill of Rights; it would place this power in the hands of all future Congresses, fifty state legislatures, the government of the District of Columbia, and perhaps as many as 14,000 local governments; it would set a dangerous precedent for resorting to the amendment process for the curtailment of the rights of the unpopular in general, and for unpopular speech in particular; and it would deprive the First Amendment of much of its moral legitimacy by suggesting that speech that is deeply offensive to most of us will be suppressible, while speech deeply offensive to others must continue to be tolerated.

The Amendment Fails to State Which Provisions, If Any, Of the Bill of Rights It Will Override. One troublesome aspect of the President's amendment proposal is that its text leaves entirely unanswered the absolutely critical question of which provisions of the Bill of Rights it will trump or override. The amendment proposal reads:

"THE CONGRESS AND THE STATES SHALL HAVE POWER TO PROHIBIT THE PHYSICAL DESECRATION OF THE FLAG OF THE UNITED STATES."

On its face, this amendment does not purport to override either the First Amendment or *any* other provision of the Bill of Rights. It simply (and unnecessarily) adds an additional basis of legislative authority to the powers conferred upon Congress. Its wording is similar to the power-conferring clauses found in Article I and in the final sections of the Thirteenth, Fourteenth, and Fifteenth Amendments. It is thus similar to:

"Congress shall have Power to lay and collect Taxes . . ."

"Congress shall have Power . . . To regulate Commerce . . . among the several states

"Congress shall have Power . . . To provide for the Punishment of counterfeiting . . .

"[Article 1, sec. 8]; and

"Congress shall have power to enforce, by appropriate legislation, the provisions of this article." [Fourteenth Amendment, sec. 5]

Each of these granted powers gives legislative jurisdiction to Congress. But the exercise of each of these powers and all other powers granted to the government is limited and constrained by the Bill of Rights.³ Congress may not, for example, exercise its Fourteenth Amendment "power" to enforce the equal protection clause by legislation requiring all newspapers to promote equality daily in their editorials.

If the President's proposed Twenty-Seventh Amendment were read literally, it would do *absolutely nothing* other than unnecessarily make explicit the authority for Congress to legislate with respect to the flag—a power that has always been assumed to exist in any event. Nothing in the *text* of the proposed amendment would exempt the exercise of that power from constraints of the First Amendment. Therefore (on this reading) the amendment would not alter in any way the Supreme Court's decision in *Texas v. Johnson*. Any act passed under the amendment would still have to satisfy the First Amendment, and any statute which, like the Texas statute, made the criminality of burning turn on the nature of the message being communicated, would still be invalid under *Johnson*.

My colleague, William Van Alstyne, one of the nation's most distinguished constitutional scholars, believes that the amendment clearly does not override the First Amendment. In his view, *Texas v. Johnson* would be decided exactly the same way under this proposed amendment because any exercise of the power granted to Congress under the amendment that turned on the communicative message or impact (as the Texas statute did) would continue to be invalid under the First Amendment.

This clearly does not appear to be what the sponsors of the amendment intend. Unless this proposed amendment is understood to override or trump the

It is surely not in the interest of either supporters or opponents of this statute to short circuit the process of deliberation by which its validity should be determined.

One troublesome aspect of the President's amendment proposal is that its text leaves entirely unanswered the absolutely critical question of which provisions of the Bill of Rights it will trump or override.

First Amendment and other provisions of the Bill of Rights, it does nothing. But if it does override provisions of the Bill of Rights, *which* provisions does it override? Some of them? All of them? Only the First, but not the Fourth, Fifth, and Eighth?

Could a state, for example, in some time of great strife in the twenty-first century, punish flag desecration without having to meet the standards of the Cruel and Unusual Punishments Clause? Could a state, in a future not yet clear to us, dispense with jury trials for flag-desecrators? Could a particularly zealous local government ignore the Fourth Amendment and conduct general house-to-house warrantless searches looking for evidence of desecration?

Because The Amendment (and its sponsors) Are Silent About The Critical Question Of Whether And To What Extent It Overrides the First Amendment, The Proposed Amendment Will Produce Uncertainty, Confusion and Conflicting Court Decisions. The Administration has steadfastly declined to state whether, and to what extent, the powers to be exercised under this amendment would be limited by the First Amendment in particular. Until this critical question is answered, it would be wholly irresponsible to propose this amendment to the Constitution. A wholly new jurisprudence of the Twenty-Seventh Amendment will emerge, and it will be marked for years to come by uncertainty and conflicting interpretations. No issue will be more productive of uncertain and conflicting adjudication than the issue of what, if any, First Amendment defenses may be invoked by one prosecuted for some form of desecration after the proposed amendment becomes law.

Consider a simple, and realistic example, drawn from facts very similar to those in *Street v. New York*, 394 U.S. 576 (1969). After the ratification of the Administration's proposed Twenty-Seventh Amendment, a man is prosecuted under a statute identical to the present federal statute which makes it a crime to "cast contempt" upon the flag by burning it. The facts show that he is a veteran who was found kneeling over a carefully folded flag he had been given for his service in the military. Solemnly, with tears in his eyes, he quietly burned the flag. On these facts—virtually identical to *Street*—he could not be successfully prosecuted. There is as yet no evidence that he is treating the flag with "contempt" or as other than "sacred" (desecration). The prosecutor, however, proposes to offer one

additional, critical piece of evidence: the testimony of a witness who heard the defendant say quietly, just as he began his "ceremony," "if they can shoot James Meredith, we don't deserve a damn flag." The defense counsel objects to the introduction of this evidence (which is obviously critical to the government's case) on the ground that its introduction would mean that the defendant would be convicted for the expression of an idea in violation of the First Amendment.

Would the Administration's proposed Flag Amendment permit a defendant who set fire to a flag under these circumstances to be convicted on the basis of evidence consisting of the statement he made about the flag? *I have no idea what the result would be, and neither does anyone else.* And the reason we don't know what the answer to this simple question would be is that the spokesmen for the Administration will not say whether, and to what extent, their proposed amendment overrides the First Amendment.

This is not a trivial problem. It is drawn from one of the four cases the Supreme Court has decided on the subject. And it will inevitably recur under virtually all statutes passed (or retained) after the passage of the proposed Flag Amendment. It will recur because very often the *only* basis for determining whether a physical act involving the flag is a legal act or a "desecration" would be evidence of what the defendant said, or what he wrote on a banner, at the time of the physical act.

There are, as virtually every witness has noted, uncertainties about the application of the First Amendment to various acts under various statutes under the Constitution as now written. But at least we know what the basic principles are. The proposed amendment would introduce a wholly new jurisprudence, and thus produce far more uncertain litigation, especially since neither the text of the proposed amendment nor its sponsors say whether it overrides the First Amendment, and if so, to what extent.

Some states may assume that "the flag" includes a picture in a newspaper; others may judge that it encompassed only a cloth version. Some states may assume that placing a flag on a pair of boots, similar to those the President gave to a leader of China, constitutes "physical desecration" of the flag. (Boots, after all, have often been a symbol of repression.)

Quick resort to the amendment process to make criminals out of a handful of very unpopular dissidents is a dangerous precedent. Sober reflection is missing from this process.



The Washington Post Company

Walter Dellinger testifies before the Senate Committee.

The Proposed Amendment Confers Power of Uncertain Dimension on Fifty States and Countless Local Governments. The conferral of power of uncertain scope, cutting for the first time into the Bill of Rights, might be of lesser concern if only Congress were being so empowered. But the proposal also grants fifty different states the authority to enact legislation to prevent flag desecration. And that increases, by fifty times, the risk that harsh and arbitrary legislation might be enacted at some point in the near or distant future.

This provision also creates the possibility that there will be a wide array of different legislative interpretations by different state legislatures of what constitutes "physical desecration" and what constitutes "the flag." Some states may assume that "the flag" includes a picture in a newspaper; others may judge that it encompassed only a cloth version. Some states may assume that placing a flag on a pair of boots, similar to those the President gave to a leader of China, constitutes "physical desecration" of the flag. (Boots, after all, have often been a symbol of repression.) Some may assume that an artist's rendering of "the flag" in green, white and orange constitutes "physical desecration;" others may conclude to the contrary.

This raises the question of why it is thought necessary to give to state legislatures (and local governments) any new constitutional power over the subject of the flag of the United States. The national government would seem to be the appropriate branch to determine the proper protection of the national flag. The flag is supposed to be a symbol of nationhood and national unity. Why then submit its regulation to the varying legislative determinations of fifty different states?

Adoption of the Proposed Amendment Could Set a Dangerous Precedent for Frequent Resort to the Amendment Process for the Curtailment of the Rights of the Unpopular. The point is a simple one. Quick resort to the amendment process to make criminals out of a handful of very unpopular dissidents is a dangerous precedent. Sober reflection is missing from this process. If this amendment is rushed through Congress and the states, I fear that the appetites of many for quick ways to leap over constitutional barriers will be whetted.

I have argued in the past that the amendment process is a difficult one. [Dellinger, *The Legitimacy of Constitutional Change: Rethinking the Amendment Process*, 97 HARV. L. REV. 386, at 427-430 (1985)] The

principal check, however, has been the Congress. Most of the amendments actually proposed by Congress have been ratified by the states: twenty-six out of thirty-three, to be exact.

States cannot amend, revise, soften, compromise or substitute for a proposed constitutional amendment. They can only vote to ratify or reject. Up or down. For the flag, or against the flag. In these circumstances it is difficult for state legislators to deflect amendment proposals that are immediately popular. Those that affect only a dissident group will be difficult to resist.

With each amendment of this kind, resistance would be lessened for the next amendment affecting an unpopular group. Proposal of this amendment would dangerously "lower the threshold" at which amending the Constitution is seen as a proper response to a perceived problem. Not only dissidents are at risk. Rights like freedom of the press, which now seem secure, would not necessarily be so in the future.

The Proposed Amendment Would Undermine the Moral Legitimacy of the First Amendment. Let us assume that all of the interpretative difficulties of this amendment can be cured, that it does not in fact produce harsh measures and unintended consequences, and that it does not lead to a rush of additional amendments curtailing other First Amendment or other rights.

What then will we have done to the fabric of the First Amendment? For two hundred years we have told groups of Americans who are deeply and understandably offended by certain kinds of speech activ-

Proposal of this amendment would dangerously "lower the threshold" at which amending the Constitution is seen as a proper response to a perceived problem.

It is difficult to imagine a more irresponsible act by this Congress than to send out to fifty state capitols an amendment to the Constitution for a purpose that could likely be achieved by a statute.

ities that they must tolerate those offensive messages in order to serve the higher goal of allowing expression that is "free, robust and uninhibited." We understand your hurt, we say to them, but we must maintain the fundamental principle that "the government may not prohibit expression simply because it disagrees with its message" (*Texas v. Johnson*, Slip Op. at 18). But now, when we face the communication of an idea—disrespect for our flag—that deeply offends the great majority of us, we quickly pass a constitutional amendment eradicating the offending expression from public view.

What would this proposed act of constitutional revision do to the moral legitimacy of the stance our Constitution has taken (and will continue to take) in defense of expression that offends many Americans as deeply as flag burning offends the great majority of us? As Professor Arnold Lowey put it to me so well, "What will we now say to the Holocaust survivor who must tolerate neo-Nazi thugs marching through Skokie?" Once we have quickly passed the Twenty-Seventh Amendment to protect the sensibilities of those who revere the flag, what do we say to those who are particularly offended by, but must continue to tolerate, the burning of crosses by hooded members of the Ku Klux Klan, a brazen reminder of the era of lynching and terror? And what do we say to those who find themselves silenced and marginalized by sexualized (but not constitutionally "obscene") portrayals of women? What enduring constitutional principle will remain unimpaired that will legitimately surmount these claims, once we have swiftly moved to amend the First Amendment to get rid of expression that the majority of us finds offensive?

Conclusion

It is difficult to imagine a more irresponsible act by this Congress than to send out to fifty state capitols an amendment to the Constitution for a purpose that could likely be achieved by a statute. Whatever the shortcomings of a statute may turn out to be, they can be corrected, rapidly and easily, by a simple act of Congress. A hastily approved constitutional amendment, once launched, will be largely beyond recall or revision. A statute is thus far less threatening to our constitutional system than the precedent of this amendment, which would be sent to the states after the shortest incubation time of any proposal in this century.

My colleague William Van Alstyne writes that "the Court's flag decision made a liar out of the demonstrator who set the flag in flame." The Supreme Court's decision in *Texas v. Johnson* said to Johnson: It is not possible to destroy the flag and the principles for which it stands. You can burn one copy, one version, one replica of the flag. But you cannot burn *THE FLAG*. It still flies proudly everywhere, every day, over the land of the free and the home of the brave.⁴ The question before this committee is whether you will now propose a hasty and ill-considered amendment that would compromise that freedom and that bravery.

I urge you not to turn Gregory Lee Johnson into a prophet. The Administration's proposal would reward Johnson with his ultimate trophy, the Twenty-Seventh Amendment to the Constitution of the United States. If we adopt this amendment, Johnson will have succeeded beyond his wildest imagination. He will have succeeded in taunting us into grafting a permanent blemish onto our most fundamental constitutional principle. He will have succeeded in making us just look a little silly, and a little less free, and a little less brave.

1. Although Americans are free either to fly the flag proudly, to ignore the flag, or to express contempt for it, we have, in fact, chosen by overwhelming numbers to fly and display it proudly and to treat it respectfully. And our decision to do so is made far more meaningful by the fact that it is *our free decision*. The individual choice of millions of Americans to respect the flag would be far less meaningful if it were the only choice one could make to avoid imprisonment by the government. As the Texas Court of Criminal Appeals said, in its opinion overturning Johnson's conviction, "... a government cannot mandate by fiat a feeling of unity in its citizens." *Johnson v. State*, 755 S.W.2d 92 (Tex. Cr. App. 1988).

2. Much of the criticism of the Biden-Roth-Cohen bill has concerned its possible application to paper cups, napkins or similar items with flags printed on them, or to the crumbling of newspapers containing sales advertisements with pictures of the flag. The problems could be eliminated simply by defining the "flags" that are covered as flags sold or distributed for display.

3. The Bill of Rights constrains not only powers exercised under the original Constitution, but also powers exercised under amendments added later in time than the first ten amendments. That is, even though the Fourteenth Amendment was added after the Bill of Rights, it does not override or trump the First Amendment or any other provision of the Bill of Rights.

4. The Texas Court of Criminal Appeals noted that the State had not shown that isolated acts of flag burning had lessened the value of the flag as a symbol of national pride. Even if the State has a legitimate interest in promoting the flag as a symbol of national unity, the Texas Court wrote in *Johnson*, the State in its brief "does not aver why the American flag is in such 'grave and immediate danger' of losing the ability to rouse feelings of unity and patriotism such that the Texas statute is 'essential' to prevent its devaluation . . ." *Johnson v. State*, 755 S.W.2d 92 at 97 (Tex. Cr. App. 1988). In the five years since Johnson burned a flag in Dallas, there does not appear to have been any noticeable decrease in the American people's devotion to the flag as a unifying symbol.

It is not possible to destroy the flag and the principles for which it stands. You can burn one copy, one version, one replica of the flag. But you cannot burn THE FLAG.

The Biggest Deal Ever

Deborah A. DeMott*

The RJR Nabisco transaction exemplifies transactions that have, over the last few years, provoked major changes in the United States economy.



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Twenty-five billion dollars buys a lot of Oreos, Winstons, and Milk-Bone dog biscuits. In early December 1988, Kohlberg, Kravis, Roberts & Co. (KKR), a firm specializing in leveraged buyouts, won the contest for ownership and control of RJR Nabisco, Inc., a victory that resulted in the largest corporate control transaction in the United States to date. When the LBO was completed in 1989, the nineteenth-largest industrial company in the United States had increased its indebtedness from \$5 billion to \$20.1 billion. RJR Nabisco's former public shareholders received, in addition to cash, a package of preferred stock and notes convertible into common stock, but immediate control of the company, and its equity, passed to KKR in exchange for a \$1.5 billion equity investment. KKR itself provided an estimated 1% of this equity investment, or \$15 million, and a pool of funds that KKR gathered from institutional investors provided the remainder.

The RJR Nabisco transaction exemplifies transactions that have, over the last few years, provoked major changes in the United States economy. Beyond the transaction's magnitude, its structure and origins demonstrate the increasing obsolescence of long-held assumptions about the finance and governance of large corporations in the United States. For example, many have assumed that the structure of very large companies inevitably involves a division between ownership interests, held by public shareholders, and management, composed of individual managers who typically invest little of their own wealth in company shares. In addition, many have believed that very large corporations are immune to the risk of a takeover simply because of the massive amounts of money required, even if a good number of a corporation's shareholders might avidly accept an offer to sell their shares at a premium over market price. Indeed, many have thought that even large corporations with a predominance of institutional shareholders enjoy such immunity.¹ Many large corporations with solid earnings have long been able to finance most of their needs for additional capital out of retained earnings and thus to operate independently of other equity capital sources like public trading markets. Moreover, such corporations have used little long-term debt to finance operations. As a result of the interrelationship among these factors,

certain large corporations have seemed to resemble non-ownership institutions (like universities, perhaps) more than smaller public corporations in which equity owners' interests and claims seem more immediate.

The soundness of these long-held assumptions has been challenged by a series of recent transactions, culminating in the LBO for RJR Nabisco. This article develops the history of the RJR Nabisco acquisition and examines its impact, along with the impact of similar transactions, on these assumptions. It then sketches briefly some of the pertinent legal questions raised by the transaction.

The Story Begins

On October 19, 1988, F. Ross Johnson, the president and chief executive officer of RJR Nabisco, took the outside directors of his company's board out to dinner in Atlanta on the night before a board meeting. Mr. Johnson told the outside directors that he was considering leading an LBO for the company because the price of its stock had, despite his two year effort to increase the stock's value by restructuring the company, continued to lag.² The directors were stunned but did not object to Mr. Johnson's proposal: "We came to the conclusion that shareholders would be best served by a short-term gain," one of the directors recalled later.³ At the time of Mr. Johnson's proposal, RJR Nabisco was trading at around \$55 per share,⁴ and thus the stock market's implicit price tag on the entire company was around \$13 billion.

Although Mr. Johnson's formal proposal did not emerge until a few weeks later, RJR Nabisco promptly issued a press release announcing that members of its senior management, in association with Shearson Lehman Hutton, would offer \$17 billion,⁵ or \$75 per share, to buy out RJR Nabisco's shareholders. This announcement promptly led to a steep drop in the price of the company's outstanding bonds.⁶ As a senior bond trader at Drexel Burnham Lambert (which will shortly enter the story in a major role) said, "Bondholders suffer from those sorts of transactions. . . . It is clear that the industrial bond market cannot benefit from this deal."⁷ Indeed, institutional holders of RJR Nabisco bonds eventually sued, alleging that, among other things, the company neglected to disclose that discussions about a prospective LBO had already occurred when the holders bought their bonds in spring 1988.⁸

On October 25, six days after the RJR Nabisco directors' dinner with Mr. Johnson, KKR announced a competing offer at \$90 per share for a total of \$20.3 billion, subject to the approval of RJR Nabisco's board.⁹ KKR is the leading LBO specialist in the United States. As a result of its prior transactions—all coupling large amounts of debt (principally from bank loans and high-yield debt securities) with small pools of equity collected from institutions—KKR has become an enormous industrial holding company with nearly as much annual revenue as the General Electric Company.¹⁰ Formed only in 1976, KKR nevertheless has many firsts

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to its credit. In 1979, it arranged the first LBO of a large company listed on the New York Stock Exchange¹¹ and, in 1984, the first billion dollar buyout.¹² In 1985, KKR began the \$6.4 billion LBO of Beatrice Companies, a transaction of record size at the time.¹³ KKR reportedly has about \$5 billion available to invest as equity in such transactions, in addition to its own capital.¹⁴ In fact, KKR generally invests in only 1% of the equity in its deals from its own capital. Virtually all LBO funds are organized as limited partnerships, which facilitates individual investors' ability to opt out of participating in particular fund investments.¹⁵

Very large LBOs have become more feasible since banks have developed the practice, when committing themselves to a large loan, of selling smaller pieces of the loan to other financial institutions. Indeed, about 9% of all U.S. bank loans made to corporate borrowers in 1987 were connected to LBOs.¹⁶ In addition, expansion of the market for high-yield debt securities (a.k.a. "junk bonds") enhanced the potential for large LBO transactions. For example, KKR financed its offer for RJR Nabisco in part through the issuance of junk bonds to be sold by Merrill Lynch & Co. and Drexel Burnham Lambert. Many have credited the latter firm with developing the market for high-yield debt securities;¹⁷ Drexel Burnham, however, was also the subject of a January 1989 federal information that alleged various violations of the federal securities laws, none involving the RJR Nabisco transaction.¹⁸

KKR, Mr. Johnson, and Shearson Lehman discussed the possibility of a joint or combined bid, but they reached no agreement. Neither KKR nor Shearson was willing to surrender control in any joint deal or to share control on an equal basis.¹⁹ Although KKR and Shearson reportedly later reached an agreement in principle for a joint bid, the agreement collapsed when the firms' investment banks failed to agree on which bank would manage the debt securities offerings necessary to finance the bid.²⁰ In any event, as a consequence of the participants' failure to make a joint bid, the KKR proposal came to the directors of RJR Nabisco without incumbent management's endorsement or participation.²¹ This circumstance—that the KKR bid appeared to be at least semi-hostile—troubled some investors in KKR's equity pool. The head of one potential investor, a state pension fund, characterized the KKR offer as "a hostile friendly deal."²² In fact, two of the investors in the KKR equity pool were pension funds of companies that, like RJR Nabisco, have headquarters in Atlanta.²³ Nevertheless, on November 2, Charles Hugel, an outside director

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serving as chairman of RJR Nabisco, said that the board was "interested in receiving proposals . . . from all credible parties wishing to present such proposals."²⁴

On November 4, a third group announced that it was considering making an offer. Led by Forstmann, Little & Company, another LBO specialist, and Goldman, Sachs & Company, a large investment bank, the group also included three consumer goods companies.²⁵ This group's announcement provoked controversy on two different scores. First, senior partners in Forstmann, Little had failed to reach terms on a bid during earlier discussions with Mr. Johnson's management group but, according to the management group, had promised not to bid for RJR Nabisco on their own.²⁶ Second, a special committee of RJR Nabisco directors, set up to evaluate all offers, had told KKR and Mr. Johnson's group that it wanted no "pre-selling" of the corporation's assets before the committee determined whether to support a buyout.²⁷ The inclusion of the consumer products companies in the Forstmann, Little group, however, suggested that pre-selling might be occurring.²⁸ This issue fell away when the Forstmann, Little group announced, less than two weeks later, that it had decided not to submit a bid.²⁹

The deal that Mr. Johnson and a small number of other senior executives had made with their financial partners also provoked controversy in early November. This deal promised to give the small management group 8.5% of RJR Nabisco's equity, a stake that could rise to 19.5% if the company met specified financial goals.³⁰ In addition, the deal gave the group veto power over board decisions in the post-buyout company and promised group members a combined annual compensation of at least \$18 million, plus at least \$20 million in bonuses.³¹ In an SEC filing, RJR Nabisco disclosed that Mr. Johnson and nineteen other senior executives would receive "golden parachutes" (or severance payments contingent on a sale of the company) worth \$52.5 million.³² After a newspaper disclosed the terms of this deal, Mr. Johnson wrote to RJR Nabisco's chairman, Mr. Hugel, stating that he had asked his lawyers to "analyze ways in which this stock could be distributed to our employees."³³ In this same letter, Mr. Johnson argued that his group's compensation and equity-share percentages were typical for management buyout agreements.³⁴ Reportedly, however, one potential financial partner in Mr. Johnson's group, Salomon Brothers, refused to agree to these terms.³⁵

On November 8, RJR Nabisco's special committee promulgated five pages of formal guidelines for the disposition of the company and its assets. These guidelines contemplated a single round of bidding, to conclude on November 18.³⁶ The committee was eager to structure the transaction to leave RJR Nabisco's shareholders a substantial equity stake in the post-buyout company.³⁷ The committee also announced that it would favor only a bidder that could do something for RJR Nabisco's shareholders beyond what the company itself could do—like providing a large initial cash payment rather than simply selling off food interests.³⁸

KKR's success in obtaining sufficient information from RJR Nabisco's managers aided its preparation of a bid. A few days prior to the November 18 deadline, Nabisco's chief told KKR that he wanted to provide more information than other managers had furnished about the subsidiary's operations. KKR's head lawyer subsequently sent the special committee a letter on behalf of KKR complaining that some of RJR Nabisco's managers were apparently withholding information.³⁹ The committee promised to remedy the problem.⁴⁰ Some of the committee's own financial advisors similarly complained that at the initial stages even they had not received adequate information to evaluate bids.⁴¹

On November 18, both the management group and KKR submitted bids. The board's special committee, however, extended the bidding deadline by ten days—to November 29—permitting a third bidding group, led by First Boston Corporation, to develop a firm offer.⁴² On November 18, the highest bid was the management group's bid at \$100 per share, for a total of \$22.7 billion.⁴³ KKR's bid was lower at \$21.3 billion.⁴⁴ The First Boston deal, which would have yielded a price of between \$23.8 and \$26.8 billion, contemplated an installment sale of RJR Nabisco's food businesses to the investment group by the end of 1988, to achieve tax savings.⁴⁵ Since Congress had in 1988 repealed the tax provisions that favored installment sales (effective January 1, 1989), closing this aspect of the First Boston deal by the end of 1988 was crucial. Further, the installment sale would result in a \$13 billion installment note, which the investment group, as the note's holder, would need to "monetize" (turn into cash). To date, no one had achieved such a feat with a note of comparable size.⁴⁶

Finally, on November 30, after much confusion on November 29, KKR claimed victory. Its winning bid offered cash and securities worth \$109 for each

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of RJR Nabisco's 227 million common shares and \$108 for each of the company's 1.3 million outstanding preferred shares, totaling \$24.88 billion.⁴⁷ Although the management group claimed that its bid had a higher total value, \$25.42 billion (or \$112 per share), RJR Nabisco issued a statement that its advisors assessed the two offers as "substantially equivalent."⁴⁸ The committee of outside directors recommended acceptance of the KKR offer, and the full board (apparently without Mr. Johnson's participation) voted in favor of the committee's recommendation.⁴⁹ The First Boston group dropped out of the bidding as a result of uncertainties about the bank financing for its bid.⁵⁰

The management group subsequently complained that the bidding process had been unfair. The process had become somewhat confused around midnight, November 30, when the management group learned that the board committee was working out a deal with KKR. At the 5 p.m. bidding deadline on November 29, KKR had submitted a bid of \$106 per share, topping the management group's bid of \$101 per share.⁵¹ Early in the morning of November 30, the management group offered a new bid of \$108 per share and demanded that it be considered.⁵² By midday on November 30, the board committee told both groups that they had a few minutes to formulate a final proposal.⁵³ KKR then raised its bid to \$108 per share, and the management group raised its bid to \$112 per share. The committee invited KKR to raise its bid further, which it did, to \$109 per share.⁵⁴ KKR then gave the committee's advisors a signed merger agreement and stated that they had half an hour to sign on.⁵⁵ In forty minutes, the committee's advisors came back with the chairman's signature.⁵⁶

Belying the definiteness of the amounts given above, each proposal consisted of a complex mixture of cash and securities, so that differing valuations of each proposal were inevitable. The management group offered per share \$84 in cash, preferred stock valued at \$24, and stock in the post-buyout company valued at \$4 (and which would total 15% of RJR Nabisco's equity).⁵⁷ KKR offered \$81 in cash per share, preferred stock valued at \$18 with dividends to be paid with additional shares of preferred stock, plus convertible debentures that it valued at \$10.⁵⁸ After four years, the debentures would be convertible to 25% of the post-buyout company's equity.⁵⁹

The committee ultimately recommended the KKR proposal on the basis of nonfinancial factors. KKR promised to sell neither the tobacco operations nor much of the food business, whereas the management group had planned to sell all the food operations.⁶⁰ KKR also promised to try to maintain employees' benefits, even if it sold particular business operations.⁶¹ Under KKR's proposal, moreover, current shareholders would ultimately receive more equity in the post-buyout company.

Three weeks after KKR's victory, the firm's head, Henry Kravis, flew to Tokyo. The financing of KKR's

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bid called for \$13.75 billion to be raised from banks, and Mr. Kravis asked Japanese banks to provide \$5.5 billion; some observers saw these banks' participation as crucial to the deal.⁶² In Tokyo, Mr. Kravis also spoke with potential Japanese customers interested in purchasing junk bonds that were expected to form part of the deal.⁶³ In addition to Japanese financiers' assistance, the original deal also required \$5 billion in short-term loans, or "bridge financing," with \$3.5 billion coming from Drexel Burnham Lambert and \$1.5 billion from Merrill Lynch.⁶⁴ KKR's plan called for refinancing these bridge loans within a year from the proceeds of the sale of \$2 billion in zero-coupon high-yield bonds and \$3 billion in interest-paying high-yield bonds.⁶⁵

KKR's efforts to recruit banks succeeded. By January 17, 1989, the firm reported that its bank syndicate had received commitments for \$14 billion,⁶⁶ an indication that banks had even oversubscribed. Although analysts were optimistic that KKR could also place the necessary junk bonds, they noted that junk debt financing of other large deals would require the market to absorb \$12 billion of such debt in early 1989, possibly leading to a rise in junk bond interest rates. In mid-January, Drexel increased the amount of its planned junk bond sale from \$3.5 billion to \$4 billion.⁶⁷ By January 31, however, KKR's need for a bridge loan was eliminated: Drexel had decided that it would be able to sell \$5 billion rather than \$3 billion in short-term notes, to be refinanced in the spring with a sale of long-term junk bonds.⁶⁸ One novel feature of Drexel's note sales, perhaps responsible in part for their success, was KKR's payment of cash fees (analogous to "points" paid to a mortgage lender), along with equity stakes in RJR Nabisco, to note buyers. KKR funded these novel cash fees partially from RJR Nabisco's assets, and Drexel funded the rest.⁶⁹

As a result of its magnitude, KKR's buyout of RJR Nabisco will naturally generate large fees for the financial institutions involved in the LBO and related transactions. KKR was entitled to a \$75 million fee for arranging the transaction, a 1.5% management fee for the use of its buyout funds, and 20% of any profit

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that each pool of funds garners from a successful LBO.⁷⁰ Although the \$75 million fee is the largest that KKR has received to date for a single transaction, the amount only slightly exceeds fees that KKR has received for considerably smaller transactions in the past.⁷¹ As of the end of January, Drexel was to receive \$201.9 million and Merrill Lynch \$84.4 million for arranging the requisite junk bond financing.⁷² Each investment bank also expected \$25 million in advisory fees.⁷³ RJR Nabisco disclosed that it would pay \$14 million to each of the two investment firms—Dillon Read & Company and Lazard Freres & Company—that advised the board.⁷⁴ The law firms involved in the transaction have also earned record-setting fees.⁷⁵ Finally, banks that agree to help finance LBOs typically receive commitment fees set by a percentage of the loan amount, a percentage that increases with the amount of the loan. The smallest loan amount for the RJR Nabisco transaction (\$100 million) carried a fee of 1.5%, and the largest lenders were reportedly to receive as much as 3.25% in fees.⁷⁶

Numbers aside,⁷⁷ the most remarkable aspect of this transaction is that the management-sponsored deal lost, even after the management group made a bid economically equivalent (and perhaps superior) to KKR's.⁷⁸ Such an outcome stands out because management groups initiating buyout proposals typically defeat outsiders' competing proposals.⁷⁹ Why is this? And why did the RJR Nabisco contest turn out differently?

Why RJR Management's Offer Failed

Several factors explain management groups' frequent success over competing bidders. If a management group initiates a buyout transaction, it enjoys advantages that flow to any initial bidder: such a bidder chooses the time for the transaction and structures an initial proposal to which other prospective bidders must respond. Moreover, events often move quickly, limiting the likelihood that other prospective bidders will make competing proposals at all. Management groups also enjoy unique advantages. As the RJR Nabisco experience demonstrates, these groups have unlimited access to nonpublic information on their company, whereas outside bidders have circumscribed access to such information at best, and often face serious initial difficulty in getting any access.⁸⁰ Uncertainty thus might cause outside bidders to systematically discount the top price they are willing to pay for a

target, and corporate management can exacerbate such uncertainty by sharply limiting the outside bidder's access to nonpublic information. Moreover, financing is usually easier and cheaper for management-allied groups. Leveraged buyout funds usually will not finance a hostile bid.⁸¹ Incumbent management's control over the corporation's assets typically enables it to obtain lower cost financing.⁸²

Senior management's often considerable rapport with the corporation's directors also provides an advantage for management groups. If control of the corporation is to shift, all things being equal, even outside directors would prefer a victory by a management-backed group. Current managers seem more likely than total "outsiders" to be familiar with corporate operations and sympathetic to the interests of non-management employees and others with long-standing interests in the corporation's stability.

Several factors explain why the contest for RJR Nabisco turned out differently for the management group. Although management's first offer—\$75 per share—represented a 36% premium over the then-current RJR Nabisco market price, it soon appeared unduly low. Within four days, KKR had offered \$90 per share, and soon thereafter RJR Nabisco's directors gained access to studies setting the value of the company, if its component businesses were sold separately, at prices in excess of \$90 per share.⁸³ KKR's ability to make a credible bid at \$90, given RJR Nabisco's size, meant that it could raise sufficient financing for a \$20.4 billion deal. The management group, however, might have underestimated its likely competitors' ability to raise serious money on short notice. The management group's posture became even more controversial when a newspaper article revealed the generosity of Shearson Lehman's financial arrangements, potentially producing \$100 million in profits for each management participant.⁸⁴ As other bidders joined the fray, moreover, the contest became lengthier and pricier. In the end, KKR's proposal, compared with the final management-backed proposal, was more generous to RJR Nabisco's shareholders, eventually giving them 25% of the company's equity. In addition to shareholder benefits, the KKR deal was kinder to the company's nonmanagement employees. Whereas the management group announced plans to sell off all of RJR Nabisco's food businesses, KKR stated that it planned to retain most of the food businesses and all of the tobacco operations. Further, unlike the man-

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Like many companies that have re-structured through buyouts or leveraged recapitalizations, RJR Nabisco had a strong cash flow . . .

agement group, KKR explicitly agreed to guarantee nonmanagement employees' fringe benefits through 1991, notwithstanding any sale of business operations.⁸⁵

Another factor that perhaps contributed to the demise of management's offer was the involvement of F. Ross Johnson himself, a person unpopular in many circles in Winston-Salem, North Carolina, the historic site of the company's tobacco operations. Three years prior to the buyout, the R.J. Reynolds Tobacco Company had merged with Nabisco.⁸⁶ Mr. Johnson, who came from Nabisco, decided that the company should move its headquarters from Winston-Salem to Atlanta, describing Winston-Salem as unduly "bucolic" for a cosmopolitan enterprise like RJR Nabisco.⁸⁷ In Winston-Salem, however, successive generations of people had worked in Reynolds's tobacco operations and, because of the company's generous stock purchase program for its employees, individual residents and local institutions of that "bucolic" place owned about \$2.5 billion worth of RJR Nabisco stock at the time of the buyout.⁸⁸ Winston-Salem families had handed down the stock for generations, like heirlooms or homesteads, exhibiting an unusually emotional, personalized tie to the company.⁸⁹ Winston-Salem, moreover, has been a quintessential "company town" for over one hundred years; in 1988, 15,000 of its residents still worked for RJR Nabisco. Even after KKR's assurances reduced local fears of job losses, employee-stockholders resented the large tax obligations they would incur when they sold their shares. Although Mr. Johnson initiated the events leading to the sale that made many employee-stockholders wealthy, they continued to speak of him in highly unfavorable terms.⁹⁰ As one tobacco worker, interviewed by National Public Radio, said of Mr. Johnson's era of management: "it's not a home town crowd any more."⁹¹ Many Winston-Salem residents seemed ambivalent at best about the LBO. The irreparable change to long-settled local practices, coupled with the widespread perception that the initial management bid was an attempt to buy the company on the cheap,⁹² outweighed (or at least accompanied) residents' satisfaction with their enhanced individual wealth.⁹³

Indeed, Delaware's chancery court⁹⁴ eventually considered the possibility that RJR Nabisco's directors endorsed the KKR proposal in order to repudiate Mr. Johnson publicly. Actions brought on behalf of RJR Nabisco's shareholders challenged the directors' decision to accept the KKR proposal, after receiving substantially equivalent bids, rather than again asking the contestants if they wished to increase their bids.⁹⁵ The

plaintiffs alleged, among other things, that the directors' special committee chose KKR in order to repudiate Mr. Johnson and thereby publicly disassociate themselves from the harsh criticism evoked by the management proposal.⁹⁶ The court denied the plaintiffs' motion for a preliminary injunction. In light of evidence that the committee members and directors acted in good faith, the court held that the plaintiffs would be unlikely to establish that the special committee's action showed an improper motivation that worked in KKR's favor.⁹⁷ The court observed, however, that the alleged motivations, if established, would disqualify the directors' decision from protection under the business judgment rule. In that case, the directors would have pursued the transaction for a reason unrelated to the corporation's best interests, even though the directors themselves did not benefit financially from opposing the corporation's interests. As the court noted, "[g]reed is not the only human emotion that can pull one from the path of propriety; so might hatred, lust, envy, revenge or, as it is here alleged, shame or pride."⁹⁸

One action that had a substantial effect on the transaction's outcome was the directors' decision to disclose Mr. Johnson's proposal to the public on October 20.⁹⁹ Early disclosure enhanced the likelihood that competing bids would be made; indeed, KKR announced its first offer five days after RJR Nabisco issued a press release announcing that the management group would offer \$75 per share.¹⁰⁰ Delaware law probably did not *require* disclosure at that point: Delaware courts have rejected shareholders' challenges to LBOs that were not publicly announced until after the directors and the acquiring entities had signed merger agreements.¹⁰¹ For example, in *In re Fort Howard Corp. Shareholders Litigation*, the Court of Chancery denied plaintiffs' motion for a preliminary injunction to prohibit the closing of a public tender offer that was the first move in a two-step LBO of Fort Howard.¹⁰² A special committee of Fort Howard's directors had signed a merger agreement with the financial partner in the LBO without conducting an auction of any sort, public or private.¹⁰³ The merger agreement, however, contained provisions permitting the committee, during a period of thirty business days following the deal's public announcement, to negotiate with or provide information to any other potential acquirer.¹⁰⁴ One distinction between the Fort Howard and RJR Nabisco LBOs is the relative magnitude of the two transactions: the Fort Howard LBO carried a price of \$3.7 billion,¹⁰⁵ not an insubstantial amount by most measures, but one dwarfed by the \$25 billion price of the RJR Nabisco LBO. Even though the Delaware cases to date do not require directors to conduct an auction in response to a proposal for such a large transaction, the determination whether to pursue the auction route seems well within the range of decisions protected by the business judgment rule.

It is telling that the Federal Reserve Board, and not the Securities and Exchange Commission, is the federal regulatory body most closely watched in the policy debate over LBOs.

Thus, the special committee's disclosure of the management bid, the price disparity between initial bids, and, arguably, Mr. Johnson's local unpopularity led to the unusual result of a management group losing an auction for a company, even when that group's bid was substantially equivalent to the competitor's bid.

The Value Discrepancy

Another startling fact about the RJR Nabisco transaction, along with others like it, is the enormous discrepancy between the company's value as realized in the LBO and its value as reflected in the price of shares traded on the New York Stock Exchange prior to the announcement of management's buyout proposal. How can one best explain this discrepancy in value? Given RJR Nabisco's size, no one factor is likely to suffice. Some observers took management's proposal as an admission that the merger three years earlier between RJR, a tobacco company, and Nabisco, a food company, had failed to produce its expected return for shareholders.¹⁰⁶ To be sure, the operational relationships between manufacturing and selling tobacco, on the one hand, and food products, on the other, are not obvious. However, in light of KKR's apparent willingness to retain all of the company's tobacco operations and much of its food business, one would be mistaken to attribute much of the incremental value realized by this transaction to an expected disaggregation of mismatched operations.¹⁰⁷ Likewise, in evaluating competing LBO proposals, RJR Nabisco's directors were appalled at the extent and cost of incumbent management's perquisites, including lodgings in Palm Springs, California, and a large fleet of jets referred to internally as the "RJR Air Force."¹⁰⁸ However excessive these expenditures might appear, the opportunity to eliminate them does not add up to a \$12 billion premium.

Other types of savings may provide a stronger explanation. KKR disclosed internal RJR Nabisco projections, obtained during the contest, that coupled predictions of increased profit over the next ten years with projections of an initial increase in capital spending, from \$1.1 billion in 1988 to \$1.7 billion in 1989, followed by a decline in capital spending to \$735 million in 1998.¹⁰⁹ Prior to the LBO contest, moreover, the company's Nabisco operation lagged behind competitors in modernizing its facilities and reformulating its cookie and cracker products to replace lard and tropical oils with unsaturated fats.¹¹⁰ On the tobacco front, the profit margin from RJR's cigarette operations

fell in the fourth quarter of 1988, while competitor Phillip Morris's profit margin rose.¹¹¹ And RJR's best-known new product in recent years, the expensively developed "smokeless cigarette" called Premier, was a failure.¹¹² Premier cost 25% to 30% more than ordinary cigarettes, but consumers in test markets disliked its taste and the feel of its part-aluminum holder.¹¹³ On February 28, 1989, RJR Nabisco announced the termination of Premier's market testing and indicated that it had no immediate plans of reintroducing Premier or anything like it.¹¹⁴ The Premier venture was not cheap; KKR reportedly told its bankers that, prior to the LBO, RJR Nabisco's management had planned capital expenditures of \$80 million on Premier in 1989¹¹⁵ and had budgeted an operating loss on Premier of \$100 million.¹¹⁶

Like many companies that have restructured through buyouts or leveraged recapitalizations, RJR Nabisco had a strong cash flow (that is, cash revenues and inflows in excess of the cash outflows needed to operate its present businesses). KKR disclosed that RJR has a projected 1989 cash flow of \$4.5 billion, a financial condition that, if it continues, can easily service and retire debt from the LBO.¹¹⁷ Another common explanation for the premiums paid for companies like RJR Nabisco is improvement in the corporation's brand management—selling more Oreos, Winstons, Milk-Bones, and other products through better marketing.¹¹⁸ Moreover, after a buyout, the relationship between a company's senior managers and their financial partner in a transaction (e.g., KKR) will differ from the prior relationship between senior management and the company's public shareholders. Share ownership and managerial control are no longer divided, and management becomes subject to more focused and immediate financial accountability.¹¹⁹

Finally, but least disputably, debt-financed buyout transactions achieve significant tax savings derived principally from the tax deductibility of interest payments on debt. One recent study examined seventy-six MBOs in publicly held companies between 1980 and 1986.¹²⁰ The typical company in the sample paid almost no federal taxes in its first two years after the buyout.¹²¹ Even after the Tax Reform Act of 1986, which eliminated one source of tax savings, buyout activity continued at a high level.¹²²

The Legal Issues

Like many other restructuring transactions, the RJR Nabisco transaction is striking because of the identity of some of its participants and the sources of its funding. KKR itself is an entity of relatively recent origin, almost as recent a development as the market for junk debt securities.¹²³ Large amounts of capital have become available for debt financing, largely outside established markets for public offerings of debt and equity securities. It is telling that the Federal Reserve Board, and not the Securities and Exchange Com-

Curiously, even after buyout transactions became common, debtholders failed to bargain for greater contractual protection against the financial consequences of restructuring.

mission, is the federal regulatory body most closely watched in the policy debate over LBOs.¹²⁴

One element missing in the RJR Nabisco scenario, but present in many recent contests for corporate control is a "poison pill," that is securities or rights to purchase securities designed to deter hostile bids. Litigation challenging target directors' refusal to redeem a pill has produced a sizable body of Delaware jurisprudence¹²⁵ but no set of clear operational rules covering all circumstances.¹²⁶ Individual cases apply loose criteria like "reasonableness" and "proportionality," stressing all the while that such determinations are highly fact-specific.¹²⁷ Even cases that clarify the law in one respect engender grounds for factual inquiries about new issues in subsequent cases.¹²⁸

Poison pills are not, of course, the only area of development in Delaware law at the moment. The applicable standard for directors' decisions to end an auction is also uncertain. In shareholder litigation challenging such a decision in the context of the RJR Nabisco transaction, the chancery court acknowledged that the precise nature of the directors' duty in the auction context is unresolved.¹²⁹ One might view that duty as an extension or application of the directors' general duty to act in good faith, with loyalty, and with due care.¹³⁰ An alternative view is that the directors' duty in the auction setting, distinct from their general duty to act in good faith and with due care, amounts to a duty to conduct a fair or effective auction.¹³¹ Under the first view, a court examines whether the directors acted with due care and in a good faith effort to achieve an appropriate objective.¹³² Under the alternative view, which operates like a form of strict liability, the court examines whether, after the fact and without regard to the board's good faith, the auction was fair or, perhaps, effective.¹³³ In its May 1989 opinion in *Mills Acquisition Co. v. Macmillan, Inc.*, the Delaware Supreme Court characterized these apparent divergences as "more a matter of semantics than substance."¹³⁴ The court held in *Mills* that directors' decisions incident to conducting and concluding an auction should have as their "primary objective, and essential purpose, . . . the enhancement of the bidding process for the benefit of the stockholders."¹³⁵ Directors who treat bidders unequally must establish that they had a rational basis for the action, founded in the shareholders' interests,¹³⁶ and that their actions were reasonable in relation to the end sought.¹³⁷ The facts reviewed in the *Mills* opinion illustrated a flawed bidding process in which a management-sponsored bidding

group received tactical advantages not available to other bidders (including disclosure of another party's bid). The Supreme Court held that the directors had failed to exercise their "active and direct duty of oversight," a failure that significantly contributed to the mismanagement of the auction.¹³⁸

In recent years, Delaware law on directors' fiduciary obligation to a corporation and its shareholders has evolved to subject directors to affirmative duties, which directors can breach even if they act disinterestedly. To this extent, directors as fiduciaries resemble other types of fiduciaries, like trustees and guardians, whose positions are conventionally held to impart affirmative obligations. In *Smith v. Van Gorkom*, a 1985 case involving a proposed cash-out merger, the Delaware Supreme Court interpreted the directors' duty of care to require that "directors inform themselves as to all information that was reasonably available to them," including the basis on which an acquisition price was computed.¹³⁹ Later in 1985, the Delaware Supreme Court held in *Unocal Corp. v. Mesa Petroleum Co.* that directors confronted with a takeover bid had an obligation to determine whether the bid was in the best interests of the corporation and its shareholders.¹⁴⁰ Directors also have a related obligation to protect the corporation and its shareholders "from perceived harm whether a threat originates from third parties or other shareholders."¹⁴¹ Indeed, the *Unocal* court observed that directors have a duty to "ensure that the minority stockholders receive equal value for their shares," at least when an offeror proposes a transaction that compels an exchange of some shares for junk debt.¹⁴² Under *Unocal*, the directors' duty to protect requires that protective means be "reasonable" or proportional to the threat.¹⁴³ In *Mills*, the Delaware Supreme Court expressly made this standard applicable to directors' decisions during an auction.¹⁴⁴ Finally, directors in particular circumstances may come under an affirmative duty to redeem a poison pill.¹⁴⁵

This judicial invigoration of the director's role is relatively recent. In 1968, a leading academic wrote that he was "very skeptical of the proposition that directors of industrial corporations run any substantial risk of liability for ordinary negligence," uncomplicated by self-dealing.¹⁴⁶ To be sure, it is awkward at best to characterize the more recently enunciated duties as an obligation not to be negligent,¹⁴⁷ and only slightly less awkward to treat them as particular manifestations of the directors' obligation to act with due care.

Non-management employees, like the local community in which the firm operates, may be injured in the aftermath of restructuring.

Both formulations—"avoid negligence" and "use due care"—address how directors discharge their duties, and not the affirmative content of those duties.

Consider, in contrast, the legal position of a trustee. In addition to a duty of loyalty, which requires a trustee to administer a trust solely in the beneficiary's interest,¹⁴⁸ and a duty to use skill and care in doing so,¹⁴⁹ the trustee has many affirmative duties. For example, the trustee must, using reasonable skill and care, preserve the trust property.¹⁵⁰ If the trust has two or more beneficiaries, the trustee must deal impartially with all of them.¹⁵¹ Moreover, if the trustee can reasonably perform her duties personally, she may not delegate them.¹⁵² Directors, of course, are not entirely like trustees in their legal obligations,¹⁵³ but the recent developments in Delaware law give directors *affirmative* duties like those applicable to trustees. In the midst of such evolution, it can be difficult to distinguish between legal developments and legal uncertainty.

One group that is expressly displeased with these transactions, and with directors' role in them, is composed of holders of the target company's debt securities issued prior to the buyout. In any restructuring, present equityholders receive a bonus financed by substantial borrowing. This additional debt reduces the market value of the company's preexisting debt securities. The RJR Nabisco transaction led to litigation against RJR Nabisco, KKR and F. Ross Johnson; two insurance companies that held RJR Nabisco's senior debt securities sued, alleging fraud and breach of an implied covenant of good faith and fair dealing.¹⁵⁴ The federal district court granted the defendant's motion to dismiss the implied covenant claim, observing that the plaintiffs argued for a sort of "unbounded and one-sided elasticity" that would "interfere with and destabilize the market."¹⁵⁵ Express provisions in the RJR Nabisco indentures, in the court's view, clearly authorized the buyout transaction: the indentures' terms contemplated the possibility of a merger and permitted RJR Nabisco to incur additional debt.¹⁵⁶

Curiously, even after buyout transactions became common, debtholders failed to bargain for greater contractual protection against the financial consequences of restructuring. In the mid-1970s, new unsecured public debt of large industrial corporations ceased to contain covenants restricting issuers' ability to incur additional debt and distribute assets to equityholders.¹⁵⁷ Metropolitan Life, which sued RJR Nabisco, considered pressing for protective covenants but concluded it might well encounter significant resistance from public companies, placing it as a lender in the position of trying to impose a "non-standard limitation on potential borrowers" in a highly competitive market.¹⁵⁸ This situation raises the important question of what limits the law may appropriately impose on issuers' behavior that harms creditors who could (at least in theory) have protected themselves by contract.

Though the bulk of RJR Nabisco's bonds contained no restrictions addressed to the risk of a restructur-

Startling changes in financial practices have occurred in a relatively short period of time, and the consequences of those changes are not confined to the denizens of financial institutions.

ing, the company had during the past three years issued almost \$500 million in Swiss-franc-denominated bonds that gave holders the right to redeem the bonds at initial face value in the event of a corporate reorganization.¹⁵⁹ Two underwriters of the Swiss franc bonds, citing stringent capital preservation norms in Swiss fiduciary law, threatened to force redemption unless KKR agreed to a satisfactory settlement with the bondholders.¹⁶⁰ Thus, bondholders' vulnerability is far from inevitable. Sophisticated lenders, like the plaintiffs in the actions against RJR Nabisco, do not present an urgent case for affirmative legal intervention when risks which they foresaw in fact materialize.

Conclusion

Restructuring, nonetheless, both embodies and provokes profound change. Long-held assumptions about management's preferences for stability and asset growth funded by retained earnings have become inaccurate, destabilizing the relationships premised on them. More generally, as one commentator observes, the "restructuring movement presupposes diminished relational solidarity."¹⁶¹ In this view, F. Ross Johnson might not be a villain, but his obvious pursuit of a self-serving agenda defeated others' expectations, expectations that were real although not captured in explicit contract terms. The question of the appropriate legal response to claims that such expectations have been disappointed is a difficult one. Is a public-law response appropriate? If so, on behalf of what categories of claimants, and on what terms? Should the law leave parties to anticipate and allocate the risks associated with corporate restructuring and to establish appropriate contracts?

Other, less sophisticated, constituencies are inevitably affected by these transactions as well. Non-management employees, like the local community in which the firm operates, may be injured in the aftermath of restructuring.¹⁶² In the wake of the buyout, RJR Nabisco ceased work on Premier, the smokeless cigarette, as noted above. In September 1989 it announced plans sharply to cut cigarette shipments in order to curb excess inventories.¹⁶³ The same month RJR Nabisco announced plans to sell its Del Monte canned-food business, having already contracted to sell Del Monte's tropical fruit unit.¹⁶⁴ These announced sales followed the sale in June of five European food businesses for \$2.5 billion.¹⁶⁵ By the end of September, 300 headquarters employees had been discharged, along with 1,640 employees in tobacco

operations.¹⁶⁶ RJR Nabisco's long-established reputation as a stable and generous employer makes it less likely that its non-management employees would anticipate the prospect of buyout-induced disruptions. On the other hand, RJR's friendly merger with Nabisco, four years prior to the buyout, itself produced enormous upheaval, as Nabisco's (and F. Ross Johnson's) faster-paced management culture invaded RJR's more placid environment.¹⁶⁷ At some point, perhaps, the inevitability of change itself becomes foreseeable to all.

Financially speaking, we have sailed to Byzantium.¹⁶⁸ Startling changes in financial practices have occurred in a relatively short period of time, and the consequences of those changes are not confined to the denizens of financial institutions. In September 1989 prices in the junk bond market plummeted and yields leapt following the near-collapse of the highly-leveraged retailing empire of Campeau Corporation.¹⁶⁹ In this environment, RJR-Nabisco's bonds were said to epitomize "quality junk."¹⁷⁰ Beyond the junk bond market itself—whose immediate effects are limited to market participants—future transactions requiring junk bond financing may receive closer and more conservative assessment from prospective lenders. And defaults among junk bond issuers, if they lead to further restructurings, may have broad consequences. Thus, it is yet to be seen whether a financial Byzantium will prove stable and desirable in the long run.

1. See generally L. LOWENSTEIN, WHAT'S WRONG WITH WALL STREET: SHORT-TERM GAIN AND THE ABSENTEE SHAREHOLDER 57-63 (1988) (describing the institutionalization of stock markets and its consequences).

2. Helyar & Burrough, *Nobody's Tool: RJR Nabisco Board Asserts Independence in Buy-Out Decisions*, Wall St. J., Nov. 9, 1988, at A1, col. 1, col. 1.

3. *Id.* (quoting outside director).

4. Sterngold, *Managers' Huge Stake in a Private Nabisco*, N.Y. Times, Nov. 14, 1988, at D1, col. 3, D5, col. 2.

5. Sterngold, *Shearson Risks, Rewards on RJR Nabisco*, N.Y. Times, Oct. 22, 1988, at 33, col. 3, col. 3; Sterngold, *Buyout Specialist Bids \$20.3 Billion for RJR Nabisco*, N.Y. Times, Oct. 25, 1988, at A1, col. 6, col. 6 [hereinafter *Buyout Specialist Bids \$20.3 Billion for RJR Nabisco*].

6. Gilpin, *Bid for RJR Nabisco Jolts Bonds*, N.Y. Times, Oct. 21, 1988, at D11, col. 1, col. 1.

7. *Id.* (quoting senior bond trader).

8. Wallace, *Nabisco Sued over Bond Drop*, N.Y. Times, Nov. 18, 1988, at D3, col. 4, col. 4.

As it happens, KKR had discussed a buyout with Mr. Johnson in September 1987, thirteen months before Johnson's own proposal surfaced. Sterngold, *The Nabisco Battle's Key Moment*, N.Y. Times, Dec. 2, 1988, at D15, col. 1, col. 2; cf. *In re RJR Nabisco, Inc. Shareholders Litig.*, [1988-1989 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶ 94,194, at 91,703 (Del. Ch. Jan. 31, 1989) (KKR was purportedly earlier rebuffed in an effort to entice management to join in an LBO). In a court filing, Mr. Johnson acknowledged that six months prior to his announced buyout proposal, a large shareholder approached him with an offer to buy the company. Durham (N.C.) Morning Herald, Jan. 22, 1989, at B1, col. 3, col. 3. The shareholder, C.D. Spangler, Jr., owned less than 1% of RJR Nabisco's stock through family-held corporations. *Id.* at B1, col. 1. Mr. Spangler, the president of the University of North Carolina, is also a director of Jefferson Pilot Corp., an insurance company that is suing RJR Nabisco over the devaluation of RJR Nabisco bonds it purchased prior to the LBO. *Id.* at B1, cols. 3-4. Cf. Metropolitan Life Ins. Co. v. RJR Nabisco, Inc., 716 F. Supp. 1504, 1523-24 n. 32 (S.D.N.Y. 1989) (director Spangler apparently never disclosed fact of unsolicited bid to fellow directors of Jefferson-Pilot).

9. *Buyout Specialist Bids \$20.3 Billion for RJR Nabisco*, supra n.5, at A1, col. 6.

10. *Id.*

11. *Id.* at D6, col. 6.

12. *Id.*

13. *Id.* The Beatrice transaction produced an antitrust obstacle to the RJR Nabisco deal, which was eventually resolved. Through Beatrice, KKR controlled brands that competed with RJR Nabisco brands. KKR announced at the end of January that it had reached an agreement with the staff of the Federal Trade Commission to sell either RJR or Beatrice brands to eliminate overlaps, specifically those in Chinese foods, soy sauce, packaged nuts, and ketchup. Smith & Waldman, *Buy-Out of RJR Proceeds as Financing Is Expanded, Antitrust Pact Is Reached*, Wall St. J., Jan. 31, 1989, at A3, col. 2, cols. 2-3.

14. *Buyout Specialist Bids \$20.3 Billion for RJR Nabisco*, supra n.5, at D6, col. 6.

15. Messineo, *Proposed SEC Rules May Impact LBO Funds*, New York L.J., Sept. 21, 1989, at 5, col. 1.

16. Bartlett, *A Corporate Milestone*, N.Y. Times, Oct. 26, 1988, at A1, col. 4, D6, col. 5.

17. See, e.g., C. BRUCK, THE PREDATORS' BALL 344-50 (1988).

18. See Cohen, *Criminal Charges Filed Against Drexel Indicate Alleged Wrongdoing by Milken*, Wall St. J., Jan. 25, 1989, at A4, col. 2.

19. Sterngold, *Joint Deal for Nabisco Is Rejected*, N.Y. Times, Oct. 27, 1988, at D1, col. 6, col. 6.

20. Burrough & Helyar, *RJR May Get a Third Offer, Topping Others*, Wall St. J., Nov. 7, 1988, at A3, col. 1, col. 2.

21. Sterngold, supra n.19, at D1, col. 6.

22. Wallace, *Several Giant Pension Funds Investing in Offer for Nabisco*, N.Y. Times, Oct. 31, 1988, at A1, col. 5, D5, col. 1.

23. *Id.* at A1, col. 5 (Coca-Cola Company and Georgia-Pacific Corporation).

24. *RJR Nabisco Stock Surges*, N.Y. Times, Nov. 3, 1988, at D4, col. 4, col. 4.

25. Sterngold, *Nabisco Officials Weigh Suit to Block a Bid*, N.Y. Times, Nov. 7, 1988, at D1, col. 3, col. 3.

26. *Id.* at D1, col. 4.

27. *Id.* at D14, col. 4. "Pre-sold" assets are those committed to purchasers before a putative seller acquires the entity that owns the assets.

28. *Id.*

29. Sterngold, *Forstmann Declines to Bid on RJR Nabisco*, N.Y. Times, Nov. 17, 1988, at D1, col. 3.

30. Sterngold, supra n.4, at D5, col. 3.

31. Sterngold, supra n.25, at D14, col. 4.

32. Sterngold, *RJR Nabisco Discloses Guidelines for Its Buyout*, N.Y. Times, Nov. 9, 1988, at D6, col. 3, cols. 3-4.

33. Sterngold, supra n.4, at D5, col. 4.

34. *Id.*

35. *Id.*

36. Sterngold, supra n.32, at D6, col. 3, cols. 3-4.

37. *Id.* at D6, col. 4.

38. *Id.*

39. Sterngold, supra n.8, at D15, cols. 2-3.

40. *Id.*

41. *Id.* at D15, col. 3.

42. Sterngold, *Tax Hurdles Seen on Bid to RJR Nabisco*, N.Y. Times, Nov. 22, 1988, at D1, col. 6, col. 6.

43. *Id.*

44. Sterngold, supra n.29, at D15, col. 1.

45. *Id.* at D1, col. 6, D8, cols. 3-4.

46. *Id.* at D8, col. 4.

47. Sterngold, *RJR Nabisco Suitor Claims \$24.88 Billion Victory*, N.Y. Times, Dec. 1, 1988, at A1, col. 2, col. 2, D8, col. 1.

48. *Id.* at D8, col. 1.

49. *Id.*

50. *Id.* at D8, col. 2.

51. *In re RJR Nabisco, Inc. Shareholders Litig.*, [1988-1989 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶ 94,194, at 91,704 (Del. Ch. Jan. 31, 1989).

52. *Id.* at 91,706.

53. See *id.*

54. *Id.* at 91,707.

55. See *id.*

56. Sterngold, supra n.47, at D8, col. 4.

57. *In re RJR Nabisco*, [1988-1989 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶ 91,706.

58. *Id.* at 91,706-07.

59. *Id.* at 91,705.
60. *See id.* at 91,708.
61. Helyar & Burrough, *How Underdog KKR Won RJR Nabisco Without Highest Bid*, Wall St. J., Dec. 2, 1988, at A1, col. 6, A11, col. 6.
62. Cowan, *Banks to Get Steep Fees in Nabisco Deal*, N.Y. Times, Dec. 20, 1988, at D5, col. 4.
63. Sanger, *Kohlberg, Kravis Seeks Japan's Help on Nabisco*, N.Y. Times, Dec. 22, 1988, at D2, col. 5, col. 5.
64. Cowan, *Efforts Begin to Rebuild Nabisco's Morale*, N.Y. Times, Dec. 3, 1988, at 35, col. 3, 37, col. 4.
65. *Id.*
66. Smith, *RJR Buy-Out by KKR Clears Hurdle as \$14 Billion of Bank Loans Are Set*, Wall St. J., Jan. 18, 1989, at A3, col. 1, col. 1.
67. *Id.* at A3, col. 2.
68. Smith & Waldman, *supra* n.13, at A3, col. 2.
69. Although such fees are not unusual in private placements of bonds, fees for buying junior notes were novel to this transaction. *See* Smith, *How Drexel Overcame Big Hurdles in Selling Junk Issue for KKR*, Wall St. J., Mar. 3, 1989, at A1, col. 7, A7, col. 3. Like the commitment fees paid to bank lenders, *see infra* text accompanying n.76, the junior note buyers' fee percentage scaled upward with the amount of debt purchased. *Id.*
70. Smith, *KKR to Receive \$75 Million Fee in RJR Buy-Out*, Wall St. J., Feb. 1, 1989, at A6, col. 1, col. 1.
71. *Id.* For example, in 1986, KKR received a fee of \$45 million for the \$6.2 billion management buyout of Beatrice Companies. *Id.*; *see also* Williams, *King of the Buyouts Kohlberg Kravis Helps Alter Corporate U.S.*, Wall St. J., Apr. 11, 1986, at A1, col. 4.
72. Smith & Waldman, *supra* n.13, at A12, col. 2.
73. *Id.*
74. Sterngold, *Talking Deals: A Feeding Frenzy on Nabisco Fees*, N.Y. Times, Nov. 10, 1988, at D2, col. 1, col. 1.
75. Law firms involved in the RJR deal will receive more than \$60 million in fees. Sontag, *\$60 Million in Fees*, Nat'l L.J., Dec. 19, 1988, at 2, col. 1. The transaction used the services of 200 lawyers from at least 10 law firms, who represented bidders, investors, and sundry banks, and reportedly billed at premium rates for furnishing round-the-clock service in a high-pressure atmosphere. *Id.* Transactions in the wake of the LBO, like the formal tender offer to RJR Nabisco shareholders and asset sales, along with litigation, will also require lawyers' services. *Id.*; *see also* For Further Details, *See Carton No. 587*, Wall St. J., Mar. 15, 1989, at B1, col. 1, col. 1 (reporting that over the Christmas holiday, KKR employed 150 attorneys from Latham & Watkins, Los Angeles, to compile 680 cartons of documents in response to an FTC request for information, which required a DC-9 jet for shipping data to Washington). Lawyers and support staffs working on such large transactions seem to have problems handling the numbers involved. The lawyer for one RJR Nabisco bidder reported: "As we kept typing letters, the last three zeros occasionally dropped out . . . [p]eople were not used to typing billions." Sontag, *LBOs Put New Focus on the Bar*, Nat'l L.J., Dec. 19, 1988, at 1, col. 4, 20, col. 3 (quoting First Boston's attorney).
76. Cowan, *supra* n.62, at D5, col. 4.
77. Economists predicted that completing the transaction, which entailed the transfer to KKR of \$18.9 billion from banks as well as KKR's purchase of 74% of RJR Nabisco's shares, would cause a "blip" in U.S. money supply statistics. Anders, *RJR Finale Will Send Money Coursing*, Wall St. J., Feb. 9, 1989, at C1, col. 3.
78. *Cf. In re RJR Nabisco, Inc. Shareholders Litig.*, [1988-1989 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶ 94,194, at 91,713 (Del. Ch. Jan. 31, 1989) (holding that directors' preference for KKR proposal was not "so beyond the bounds of reasonable judgment as to raise an interference of bad faith").
79. Cowan, *Losers Get Some Spoils in Fight for RJR Nabisco*, N.Y. Times, Dec. 2, 1988, at D14, col. 5, col. 5.
80. *See supra* nn.39-41 and accompanying text.
81. Coffee, *Proportionality after Pillsbury: The 'New' Delaware Common Law on Defensive Tactics*, 1 MERGERS & ACQUISITIONS L. REP. 981, 989 (1989).
82. *Id.* *Cf. TW Services, Inc. Shareholders Litig.*, [Current] Fed. Sec. L. Rep. ¶ 94,334, at 92,177 (Del. Ch., Mar. 2, 1989) (hostile bidder claimed to have waived condition in bid requiring offer to be approved by target's board; bidder asserted waiver would cause it to incur an additional \$3.6 million in financing costs if tender offer were to be consummated and \$3.75 million in non-refundable fees if offer not consummated).
83. Sterngold, *Nabisco Battle Redefines Directors' Role*, N.Y. Times, Dec. 5, 1988, at A1, col. 2, D5, cols. 1-2.
84. Sterngold, *supra* n.83, at D5, col. 2.
85. *Id.* at D5, col. 6.
86. Sterngold, *supra* n.4, at D5, col. 1.
87. *See* All Things Considered: Winston-Salem (NPR broadcast, Dec. 12, 1988) (tape on file with author).
88. *Id.*
89. *Id.*
90. *Id.* (One employee described Johnson's initial bid as an attempt to "steal the company.")
91. *Id.*
92. During the buyout contest, the following song, created by a local radio station's morning disc jockeys and sung to the tune of *Santa Claus Is Coming to Town*, proved popular:
- You better watch out,
You better pay heed,
We're all going to be the victims of greed,
F. Ross Johnson's not coming to town.
- Id.*
93. In the same vein, a local journalist observed: "We have seen the future and didn't even get its license number." *The RJR Shuffle*, *The Independent* (Durham, N.C.), Dec. 16, 1988, at 3, col. 2, col. 3.
94. Despite strong ties to North Carolina, RJR Nabisco is a Delaware corporation.
95. *See In re RJR Nabisco, Inc. Shareholders Litig.*, [1988-1989 Transfer Binder] Fed. Sec. L. Rep. (CCH) 94,194, at 91,700 (Del. Ch. Jan. 31, 1989). A shareholder action brought in New York alleged that negligent advice from the investment banks advising the special committee caused it to terminate the auction prematurely and accept an inferior bid. *See Schneider v. Lazard Freres & Co.*, No. 09905/89, slip op. (N.Y. Sup. Ct. Aug. 16, 1989). In September 1989, the supreme court denied the defendants' motion to dismiss, which relied on their lack of contractual privity with RJR-Nabisco's shareholders. In an earlier case, the appellate division held that an investment bank could be liable to shareholders for negligent or wrongful preparation of a fairness opinion if the bank knew the opinion would be used by shareholders in assessing the fairness of the offer to buy their shares. *See Wells v. Shearson Lehman/American Express, Inc.*, 127 A.D.2d 200, 514 N.Y.S.2d 1 (1987), *rev'd on other grounds*, 72 N.Y.2d 11, 530 N.Y.S.2d 517, 526 N.E.2d 8 (1988). The investment banks advising RJR-Nabisco's special committee argued in their appeal (yet to be decided) that giving advice to a board committee differed from giving assistance more directly to shareholders through a fairness opinion. *See Franklin, On Shaky Ground*, N.Y.L.J., Oct. 5, 1989, at 5.
96. *Id.* at 91,702, 91,710-13.
97. *Id.* at 91,703, 91,710-14.
98. *Id.* at 91,711.
99. *See* Helyar, *RJR Nabisco Buy-Out Would Fit the Pattern of a Restless Chief*, Wall St. J., Oct. 21, 1988, at A1, col. 6, col. 6.
100. *See Buyout Specialist Bids \$20.3 Billion for RJR Nabisco*, *supra* n.5, at A1, col. 6.
101. *See, e.g., In re Fort Howard Corp. Shareholders Litig.*, No. 9991, slip op. (Del. Ch. Aug. 8, 1988) (Westlaw, 1988 WL 83147).
102. *Id.*, slip op. at 52.
103. *Id.*, slip op. at 21.
104. *See id.*, slip op. at 19.
105. *Id.* slip op. at 3.
106. *See, e.g., Sterngold, supra* n.4, at D5, col. 1 ("In effect, Mr. Johnson was admitting that the merger . . . failed to produce the expected return for shareholders.")
107. Another possibility is that the stock of a company with a track record of unsuccessful acquisitions trades at a discount from the company's asset value, in part because investors believe that the company's management will continue to use its earnings or other funds to make unsuccessful investments. An LBO can "capture" this discount. For a full explication of this argument, *see* Black, *Bidder Overpayment in Takeovers*, 41 STAN. L. REV. 597, 635 (1989).
108. Helyar & Burrough, *supra* n.61, at A11, col. 1.
109. Smith, *Investment Bankers Should Get at Least \$386.3 Million in RJR Nabisco Buy-Out*, Wall St. J., Dec. 8, 1988, at A4, col. 2, col. 4.
110. Waldman, *KKR Girds for Tricky Turns in Buy-Out*, Wall St. J., Feb. 1, 1989, at A6, col. 1, col. 1. In March 1989, Nabisco Brands, Inc., announced that, although it had no target date for removing saturated fats from its products, it would attempt to do so as quickly as possible. *Unit Says Many Products Are Free of Tropical Oils*, Wall St. J., Mar. 6, 1989, at B5, col. 5. Nabisco reported that only four to

six of its products still contained tropical oils, while about 60 still contained lard. *Id.*

111. *Unit Says Many Products Are Free of Tropical Oils*, Wall St. J., Mar. 6, 1989, at B5, col. 5.

112. Waldman, *supra* n.110, at A6, col. 4.

113. Waldman & Morris, *RJR Nabisco Abandons "Smokeless" Cigarette*, Wall St. J., Mar. 1, 1989, at B1, col. 3, col. 5.

114. *Id.* at B1, col. 3.

115. *Id.* at B1, col. 4. The \$80 million capital spending on Premier that RJR Nabisco planned for 1989 amounted to 4.7% of total capital spending planned for that year (\$1.7 billion). See *supra* text accompanying n.109.

116. Waldman & Morris, *supra* n.113, at B1, col. 4.

117. White, *KKR Tells Its Partners RJR Is a Bargain But Gives Them Few Numbers to Prove It*, Wall St. J., Dec. 5, 1988, at A4, col. 2, col. 3.

118. See *The Year of the Brand*, The Economist, Dec. 24, 1988, at 95. Especially in the food industry, which has in recent years become more product-competitive than price-competitive, capturing strong brands assures shelf space in retail food stores and thus market share. See *Cheese Whizz*, The Economist, Oct. 22, 1988, at 74, 75.

119. See Waldman, *New RJR Chief Faces a Daunting Challenge at Debt-Heavy Firm*, Wall St. J., Mar. 14, 1989, at A1, col. 6.

120. Kaplan, *Management Buyouts: Evidence on Taxes as a Source of Value*, 44 J. FIN. 611 (1989).

121. *Id.* at 628-30.

122. *Id.* at 631. In particular, the Tax Reform Act eliminated the possibility of stepping-up the basis of the assets of the buyout company from their pre-buyout tax basis to their appraised fair market value. The step-up would yield higher deductions for asset depreciation. See *id.* at 619-22.

123. See generally Loomis, *Buyout Kings*, Fortune, July 4, 1988, at 52 (discussing KKR's origins and operations).

124. See *Man of the New Year*, The Economist, Jan. 7, 1989, at 13, 14 ("For the Fed, the S&Ls and the LBOs make an ironic couple of concerns."). In March 1989 the SEC proposed amendments to the disclosure schedules filed under the Williams Act that would increase the disclosure obligations of LBO funds. See SEC Rel. 34-26599, 54 Fed. Reg. 16360 (Mar. 6, 1989). The amendments require responses to specified questions (concerning identity, background, funding and purposes) of each person contributing 10 percent or more of the group's capital or entitled to 10 percent or more of its profits or assets upon liquidation. See Messineo, *supra* n.15.

125. See, e.g., TW Services, Inc. Shareholders Litig., [Current] Fed. Sec. L. Rep. ¶ 94,334 (Del. Ch., Mar. 2, 1989) (court declines to require redemption of pill where bidder's tender offer was conditioned on approval of target's board); Grand Metropolitan PLC v. Pillsbury Co., [1988-1989 Transfer Binder] Fed. Sec. L. Rep. ¶ 94,104 (Del. Ch., Dec. 16, 1988) (court grants preliminary injunction requiring redemption of pill; court finds retention of pill served no purpose other than preventing shareholder from accepting fully-financed cash bid for all shares); City Capital Assocs. v. Interco, Inc., [1988-1989 Transfer Binder] Fed. Sec. L. Rep. ¶ 94,084 (Del. Ch., Nov. 1, 1988) (court grants preliminary injunction requiring redemption of pill; pill may not be used to frustrate shareholders' choice between board's proposed restructuring and bidder's cash offer for all shares).

126. See Yablon, *Poison Pills and Litigation Uncertainty*, 1989 DUKE L.J. 54, 73-81.

127. *Id.* at 73.

128. *Id.* at 78-80.

129. See *In re RJR Nabisco Shareholders Litig.*, [1988-1989 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶ 94,194, at 91,714-15 (Del. Ch. Jan. 31, 1989). The chancery court attributed its uncertainty on this point to the limitations of the Supreme Court's bench ruling in a case about management's auction-related decisions, see *Mills Acquisition Co. v. Macmillan, Inc.*, [1988-1989 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶ 94,072, at 91,025 (Del. Ch. Nov. 2, 1988) (in auction for sale of corporate enterprise, there must be "the most scrupulous adherence to ordinary principles of fairness"), *rev'd* [Current Transfer Binder] *id.* ¶ 94,401, at 92,602 (Del. May 3, 1989). *In re RJR Nabisco*, [1988-1989 Transfer Binder] Fed. Sec. L. Rep. (CCH) at 91,715.

130. See *id.*; accord *In re J.P. Stevens & Co. Shareholders Litig.*, 542 A.2d 770, 781-84 (Del. Ch. 1988) (auction does not require "level playing field" if directors act with care and in good faith pursuit of shareholders' interests).

131. See *In re RJR Nabisco*, [1988-1989 Transfer Binder] Fed. Sec. L. Rep. (CCH) at 91,714; accord *In re Holly Farms Corp. Shareholders*

Litig., [1988-1989 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶ 94,181, at 91,644 (Del. Ch. Dec. 30, 1988) ("Even if the Board thought it was acting in good faith, the sale process itself was so substantially flawed that the Board's actions, considering all the facts and circumstances, were not likely to have maximized the value of the corporation for its shareholders and, therefore, its actions cannot be viewed as being rational.").

132. See *In re RJR Nabisco*, [1988-1989 Transfer Binder] Fed. Sec. L. Rep. (CCH) at 91,714-15.

133. See *id.* at 91,714. Even if an "effective" auction is required, the court held that boards need not conduct perfect auctions to escape liability. *Id.* at 91,715.

134. 559 A.2d 1261, 1288 (Del. 1988).

135. *Id.* at 1287.

136. *Id.*

137. *Id.* at 1287-88.

138. *Id.* at 1281.

139. 488 A.2d 858, 877 (Del. 1985).

140. 493 A.2d 946, 954 (Del. 1985). For discussions of the potential significance of *Unocal*, see Coffee, *supra* n.81; Gilson & Kraakman, *Delaware's Intermediate Standard for Defensive Tactics: Is There Substance to Proportionality Review?*, 44 BUS. LAW 247 (1989).

141. 493 A.2d at 955.

142. *Id.* at 957.

143. *Id.* at 955.

144. 559 A.2d at 1287.

145. See n. 125 *supra*.

146. Bishop, *Sitting Ducks and Decoy Ducks: New Trends in the Indemnification of Corporate Directors and Officers*, 77 YALE L.J. 1078, 1101 (1986).

147. *But see* Smith v. Van Gorkom, 488 A.2d 858, 873 (Del. 1985) (holding that "concept of gross negligence" is applicable test to determine whether directors' business judgment was informed).

148. RESTATEMENT (SECOND) OF TRUSTS § 170(1) (1959).

149. *Id.* § 174.

150. *Id.* § 176.

151. *Id.* § 183.

152. *Id.* § 171.

153. See, e.g., DeMott, *Beyond Metaphor: An Analysis of Fiduciary Obligation*, 1988 DUKE L.J. 879, 908-09, 909 n.136; Marsh, *Are Directors Trustees? Conflict of Interest and Corporate Morality*, 22 BUS. LAW 35 (1966).

154. 716 F. Supp. at 1507.

155. *Id.* at 1520.

156. *Id.* at 1519.

157. Bratton, *Corporate Debt Relationships: Legal Theory in a Time of Restructuring*, 1989 DUKE L.J. 92, 117.

158. 716 F. Supp. at 1513.

159. Winkler, *Two Underwriters Demand RJR Call Swiss Franc Bonds*, Wall St. J., Feb. 7, 1989, at C1, col. 5.

160. *Id.* at C19, col. 5. In March, a Swiss court issued a temporary order to block completion of the LBO. White, *Swiss Court Seeks to Halt Takeover of RJR Nabisco*, Wall St. J., Mar. 23, 1989, at A19, col. 3.

161. Bratton, *supra* n.157, at 171.

162. Macey, *Externalities, Firm-Specific Capital Investments, and the Legal Treatment of Fundamental Corporate Changes*, 1989 DUKE L.J. 173.

163. Waldman, *RJR Tobacco Unit Set to Cut Its Shipments*, Wall St. J., Sept. 22, 1989, at A4, col. 1.

164. Smith, *RJR Plans Sale of a Food Unit For \$1.48 Billion*, Wall St. J., Sept. 8, 1989, at A3, col. 4.

165. Deutsch, *RJR's Brave New World*, N.Y. Times, Sept. 17, 1989, 3 (Business), at 1, col. 2.

166. *Id.*

167. *Id.*

168. Yeats, to be sure, was writing in an entirely different context, see W. Yeats, *Sailing to Byzantium*, in COLLECTED POEMS OF W.B. YEATS 217 (2d ed. 1952), but the first line of the poem ("[t]hat is no country for old men," *id.*) seems highly descriptive of today's fast-track corporate finance.

169. *Being Scrapped*, The Economist, Sept. 23, 1989. This collapse was, in retrospect surely, no surprise. At the end of 1988, Campeau's balance sheet showed \$88 million in equity versus \$11.4 billion in debt, \$3 billion of that short-term debt. By late September, after reports of an impending recapitalization, the yield on some Campeau debt issues rose to 32%. See *id.*

170. See *id.*

ABOUT THE SCHOOL

Financial Aid: An Investment in the Future



Mary T. Hawkins, Financial Aid Counselor, assists students in financing their legal education.

If a man empties his purse into his head, no one can take it from him; an investment in knowledge always pays the best interest.

*Benjamin Franklin
(1706-1790)*

The contemporary state of financial aid to education may be far removed from Benjamin Franklin's world, but his sentiment certainly applies both to Duke Law School, which makes a significant investment in financial aid to its students, and to the law students themselves who invest not only their time but also considerable amounts of money towards their legal education. While at one time, financial aid to education may have been a novel idea, in today's world, it is increasingly the norm. At Duke Law School, where tuition alone is over \$14,000 this year, approximately sixty percent of the students are currently receiving financial assistance in the form of either grants given or loans processed by the School, or both.

The cost of legal education generally has risen dramatically in recent years with increasing costs and Duke's tuition has not been immune to such increases. Its tuition places it, along with other prestigious institutions, among the ten most expensive private law schools in the country. Given the Law School's small endowment, over eighty percent of its overall operating budget comes from tuition revenues.

The Law School's expense budget is driven by three principal cost elements—instruction (consisting mainly of faculty salaries and benefits), student financial assistance,

and support of the Library. The portion of the budget being spent on scholarship assistance has risen significantly in recent years, necessitated in large part by the increases in tuition. The Law School presently returns approximately one quarter of its tuition revenues to students in the form of financial aid. Clearly, this is a significant investment of the Law School's funds to its students.

Deciding to Invest

A prospective student's elation triggered by a letter of acceptance from Duke Law School is often cut short by the realization that acceptance is actually an invitation to commit at least \$42,000 to the School over the next three years for tuition alone. For some students the impending bill is not a major concern, but for others it becomes a considerable weight against which to balance the desire to attend Duke Law School.

To enable students to attend Duke, the Law School offers financial assistance in three primary areas: scholarships and grants (both need and merit based), loans, and a loan repayment assistance program. The Law School also seeks to inform prospective students of programs to help ease the financial burden of a legal education, assists them in securing such funds, and continues to counsel matriculated students regarding financial management. During required entrance and exit interviews, and on a continuing basis while enrolled, students receive counseling on all aspects of their current indebtedness, their rights as borrowers and the loan conditions imposed by the various lenders, as well as receiving detailed information as to repayment schedules upon graduation.

When applying for admission to Duke Law School, each prospective student must complete a financial aid statement as well as an application for admission. On this "yellow form" an applicant notes whether he or she is interested in financial aid assistance and, if so, whether it would be based on need or merit. Applicants who are able to manage

their finances without assistance are asked to indicate that on the form as well. This information allows the School to know whether an applicant wishes to be considered for a grant, and, if so, on what basis.

All admissions decisions, however, are "aid-blind," according to Gwynn T. Swinson, Associate Dean of Admissions. Requests for financial aid are not factored into the decision to grant or deny admission. She stresses that "the financial information is requested at the time of application so that once a decision to admit a candidate is made, the School can immediately begin the process of awarding scholarships. In this way we can in most cases inform a student of his or her acceptance *and*, shortly thereafter, let them know what money, if any, is available to them from Duke." Once a student has been admitted to the entering class, the process of considering financial aid begins.

Scholarships

When an offer of admission has been made, the file of each admittee requesting financial aid is reviewed by the Scholarship Committee, which reviews the request for financial aid and allocates scholarships and grants based on consideration of both stated need and merit. The Committee, chaired by Dean Swinson, includes three additional faculty members (currently Professors Bill Reppy, Jeff Powell and Senior Associate Dean Bob Mosteller). Professor H. B. Robertson, who was a member of the Committee for several years, applauds the role of the faculty members on the Committee. "Committee membership is very time consuming," he says, but "faculty input [in this area] is very important because of the influence it has on the quality of the student body."

Acceptances to the entering class go out on a "rolling" basis, and the Scholarship Committee also awards its funds in this manner. During the spring semester, the Scholarship Committee meets weekly, considering requests of all accepted candidates who ask for need or merit based scholarships. Dean Mosteller

notes that "it is tough to keep the commitments for financial aid within bounds as the admission process 'rolls' along." In addition to the income information submitted by applicants, other factors that the Committee considers in making awards are the individual's undergraduate loan history, the number of family members enrolled in college, and special circumstances.

Some scholarship funds are earmarked for those students who are most in need of financial assistance as demonstrated by the submission of detailed reports to the School. Other awards are granted based on the "merit" of the applicant. Merit, for this purpose, is usually defined as extraordinary academic promise manifested by grades and test scores which are substantially above the class medians, and extraordinary achievement or unusual experience or background. The applicant's recommendations are examined closely. The giving of merit scholarships allows the Law School to compete both with other prestigious private law schools and with less expensive public institutions in attracting those students who reasonably can be expected to make significant contributions to the community. As one current student put it, "I was going to Michigan, then when I found out about the scholarship award I began to think very seriously about Duke." However, the majority of scholarship awards are based on a combination of both need and merit considerations.

Because of the uniform high quality of Duke's admitted applicants, the Scholarship Committee must make difficult choices in distributing limited funds. "Service on the Scholarship Committee is extremely labor-intensive," Dean Swinson notes. "Our faculty members put in long hours reviewing the pertinent data, and making considered decisions. At many other law schools, faculty members are not nearly as involved in the scholarship decision process. Our allocation process is really quite personal and individualized."

For each entering class, the Committee is given a total budget



to a total grant to be disbursed over the student's first five semesters of Law School. This schedule makes more money available early, when it is most needed before lucrative summer legal employment lessens the financial burden for most third-year students. Duke imposes no academic performance requirements, other than remaining in good standing, in order to retain scholarship grants. "Our up-front guarantee," Dean Swinson states, "relieves the stress associated with the uncertainty as to whether the scholarship will be renewed and probably reduces cut-throat competition somewhat. Also, the long-term commitment allows students to make informed decisions as to whether Duke is affordable before making the commitment to attend Duke."

The drawback to the "front-loaded" disbursement of scholarship funds is that almost no grant money is available to students whose financial situations change after the initial financial aid assessment. Only two scholarships are reserved for upper-class students. The School does, however, try to assist students who are faced with unexpected financial emergencies, and loan programs are available to augment scholarship awards in certain situations.

of scholarship money to allocate. This allocation is a combination of funds from three sources—interest from endowed scholarships, restricted gifts, and revenue from the general operating budget of the Law School, with the largest portion presently coming from the School's general operating revenue.

The Law School currently has a number of endowed funds for student scholarships. Most have been funded by, or in honor of, alumni of the School, and some scholarship monies are received from charitable foundations or law firms. Vincent L. Sgrosso '62, for example, supports the Jenny Ferrara Scholarships named in honor of his grandmother. "She was, during my law school experience, a great source of encouragement not only to me, but also to a number of my classmates," Sgrosso states. "She even accompanied us on a job hunting trip to Florida. I wanted to honor her memory and values in a special way. Duke Law School immediately came to mind. [The Scholarship] also recognizes the Law School's importance to me and others in helping us attain our goals," he adds.

Another fund, The Jack M. Knight Memorial Fund, was established by a group of partners at the Charlotte,

North Carolina law firm of Robinson, Bradshaw & Hinson in memory of a 1971 Law alumnus. Students from North and South Carolina are given preference for the Knight Scholarships, and they maintain a personal relationship with Tena Knight, widow of Jack Knight. Mrs. Knight notes that, "Jack's scholarship was vital to his attending Duke Law School. . . . Meeting the students is the best part of the scholarship for me. The law that Jack Knight loved and to which he was so dedicated lives through these young scholars."

For many students the offer of a scholarship is one of the deciding factors in a decision to attend Duke Law School. "The scholarship really differentiated Duke as a choice from a group of very fine law schools," notes Ron Krotozynski '91. "The scholarship also gives me flexibility in making career decisions. It will allow me to take a judicial clerkship," he adds. Garrett Epps '91 echoes this feeling: "Given my goals, which are public interest and academics, I'm not sure that I could have justified the cost difference between Duke and a state school without the scholarship to bridge the gap."

Scholarship awards are generally made in the form of a contract with the student, committing the School

Student Loans

While the Law School makes its financial investment in students through scholarship aid, a major source of student financial investment in their own future comes through ever-increasing student loans. The investment is sometimes very substantial—often more than \$50,000. For many students, however, this is money very wisely spent. As someone who borrowed heavily to attend the Law School, Terry Hynes '79, now a partner at Sidley & Austin in Washington, D.C. states that, "While the prospect of incurring substantial debt to attend law school may appear daunting to today's students, I firmly believe that borrowing to finance an education at a nationally-recognized school like Duke is the

wisest investment a future lawyer can make."

The process of getting loans is a complicated matter, but one made easier by a helpful financial aid counselor, Mary Hawkins. Once a student's file has received the attention of the Scholarship Committee in the grant allocation process, Ms. Hawkins reviews the file for the purpose of determining a student's eligibility for the various available loan programs.

From a desk awash with loan applications, university forms and financial status reports, Hawkins doles advice to financially-frazzled students with a smiling face and comforting words. When asked how she handles the ever-increasing volume of paperwork, Ms. Hawkins says wryly, "it seems to handle me." With a total School enrollment of over 500, she successfully processes well over 1,000 loans a year. Much of Ms. Hawkins time is spent both counseling students on handling their loan debt and playing "problem solver," finding loan programs which law students can use and keeping up with the constantly-changing federal regulations. She notes, "loan programs tend to be somewhat less available to fund graduate education. There are not as many state and federal programs available to graduate students. This causes some of our students a lot of frustration because funds that were available to them as undergrads just aren't there any more."

Ms. Hawkins determines a student's financial need based on an average budget for the year as mandated by federal regulations. This budget is what the student should need for living and academic expenses. From that budget she subtracts an amount previously determined by a government-approved agency for family contributions and any scholarship awards. The difference is the student's unmet need, which in most cases serves as the basis for loan determination.

Need-based loans are allocated in the form of government-subsidized loans and work-study awards. Work-

study is a government-sponsored program which allows second- and third-year students to earn money while providing a service to the School, such as research for a professor or clerking in the Library. (First-year students are not eligible for work-study funds to encourage them to concentrate on their academic work.) "The work-study program is wonderful," says Janeen Denson, Circulation Librarian. "It allows the students to earn money and it helps the Library to deal with its workload. Having the work-study students allows the circulation desk to remain open for long hours to service the Law School community."

Ms. Hawkins also counsels students regarding the funds available in the form of "non-need based" loans. Ms. Hawkins notes that she is making "more loans for fewer people. The trend seems to be that we have more and more students who must borrow the *full* amount of living and educational expenses. Fewer students are borrowing partial amounts to supplement savings or family contributions." Hawkins cites, as an example, a third-year student who will graduate this spring with over \$80,000 in loans acquired during both undergraduate and graduate school. While this is admittedly an extreme example, she notes that "a student graduating with \$600 per month in loan payments is not a rare occurrence." And she estimates that among those students in the current first-year class who are borrowing to finance their Law School education, "most will graduate in 1992 with debt burdens of between sixty and sixty-five thousand dollars."

For many students borrowing to finance their legal education is the only option available. Rhonda Tobin '90 notes, "I'm paying my own way through school, so I didn't have any choice but to borrow the money. I could have gone to a cheaper school, but it is worth it to be at Duke." Another student, Doug Brooks '91, who is also borrowing heavily to attend law school, says that "it will be a lot of money when I get out, but I have a job

and the pay scale in Atlanta will allow me to enjoy a good standard of living while I pay off my loans." Brooks acknowledges, however, that the "loans rule out doing public interest work or a judicial clerkship. Not applying for a clerkship may be unwise, but my debt is too great."

Another trend noted by Ms. Hawkins is the increase in the number of students starting law school with sizeable indebtedness from financing their undergraduate education. The Congressional Joint Economic Committee coined the term "debtor generation" back in 1987 when reporting that nearly half of all U.S. students leave college in debt. That report painted a grim picture: increasing reliance on loans could price many students out of higher education, the economic future of financially inexperienced borrowers could be jeopardized, debt-laden students might be inclined to pursue more financially rewarding professions or default on their loans, and the repayment of loans could be placing a heavier burden on women and minorities who must devote a larger share of their income to the debt.

Loan Forgiveness Program

Ms. Hawkins stresses her concern for the huge debts many students are accruing. She worries that leaving school with a high debt persuades some students to accept the jobs with the highest salaries. "Some students with interests in public service or government jobs may not pursue such a career in order to secure a higher paying job that will earn them the funds to repay their debt," she stated.

This concern is shared by the Law School faculty, and in May of 1988, the faculty approved a program under which the School will assist students who accept low-paying public interest employment following graduation to repay the loans they undertook to support their Law School education. Because of the tremendous uncertainty about the scope of the long-term obligation

that would be placed on the operating budget by the loan forgiveness program, there are clear limitations with regard to the nature of the employment included and the maximum salary covered by total or partial "forgiveness." Nevertheless, the faculty's action is, with its limited resources, an attempt to ameliorate the hardship imposed on graduates taking such public interest jobs and a response to the School's obligation to support public interest service by its graduates.

Under the program, the Law School will make payments of all or a portion of the institutional loans incurred by Duke Law graduates of the classes of 1988 through 1995 who accept full-time employment in certain public interest jobs at sal-

aries below designated levels. The School does not yet have experience to evaluate the adequacy of the program to achieve its intended effects, and the program will remain under continuous review.

The Future of Financial Aid at Duke

While the School would like to award more money in the form of scholarships and grants, Professor William Reppy, as a member of the Scholarship Committee, prudently points out the counter-balancing concern that the Committee not overextend itself or its funds in its exuberance. In awarding scholarship assistance, he says, "We have to say 'no' to some people we'd like to say 'yes' to. The corollary, of course,

it that prospective students may have to say 'no' when they would like very much to say 'yes' to Duke Law School."

What is the solution? The strain of "recycling" tuition revenues back into scholarship allocations negatively influences the amount of scholarship money available. Professor Robertson feels that the School allocates a sufficient amount of its operating budget to provide financial assistance to students. The Law School "should not divert any more of its budget to its financial aid program," he says. Dean Pamela Gann stresses the need for endowed scholarship funds to enable the Law School to attract the most worthy students. "We absolutely must reduce the almost total dependence of our financial aid program on tuition revenues. We need increased endowment for the School that can be ear-marked for scholarship aid. We also need to increase annual giving."

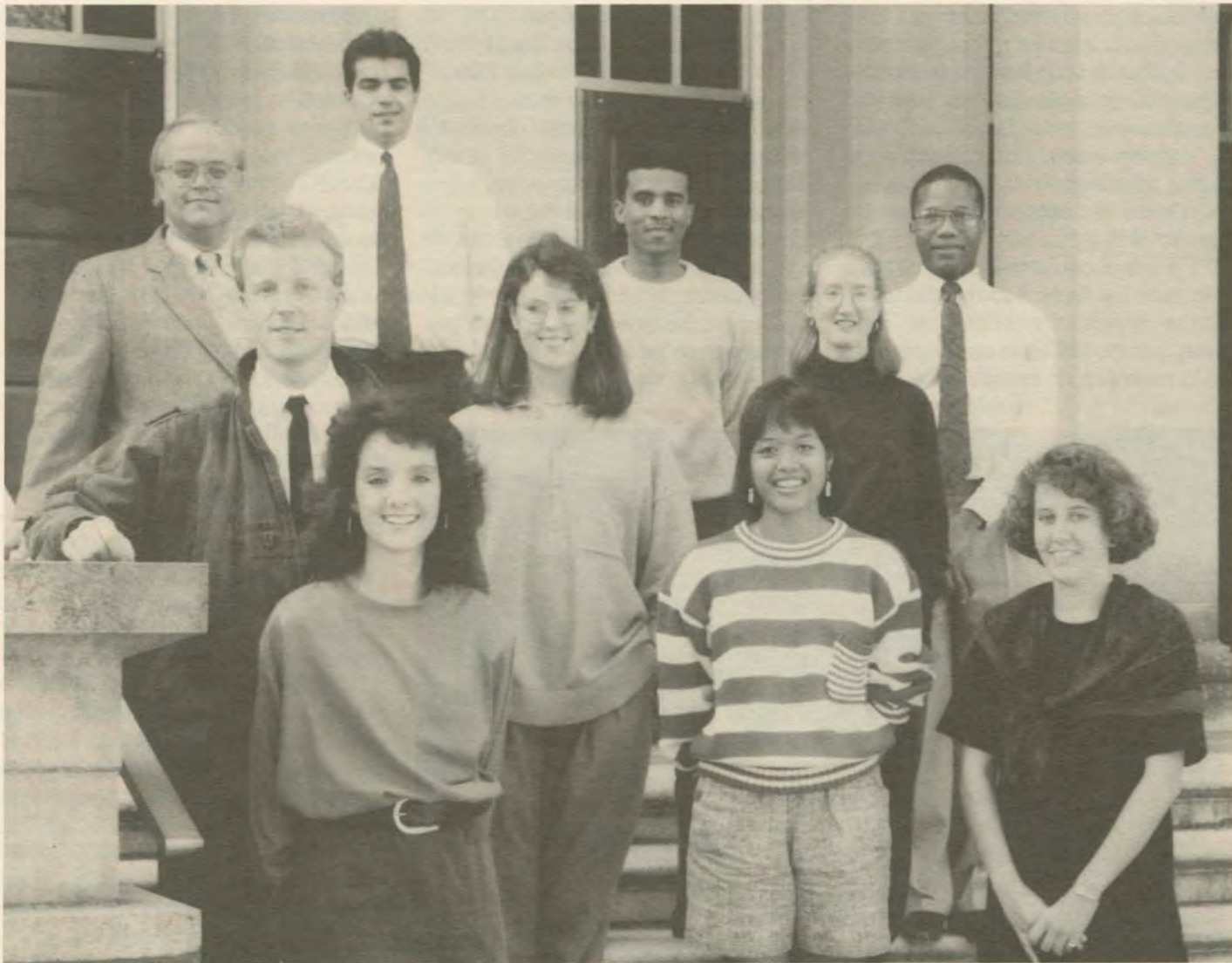
With regard to graduating students' loan burdens, Dean Gann notes that turning out students with substantial educational debts is not unique to Duke Law School and admits that the increasing costs of a quality legal education are somewhat mitigated by the increase in salaries and opportunities available to graduates. However, she sees a real need "to increase the School's financial aid budget so that we can permit students to make decisions about their future employment that are not dominated by the need to have a large salary to facilitate loan repayment."

While Duke Law School does not seem to be alone in its quest, the need for a larger base from which draw scholarship assistance is very real at Duke. The School needs to have investments made by its friends and alumni to help ensure that Duke Law School can in the long-run attract the best students and can maintain the high quality of its legal education.

This article is the result of contributions from Darla Pomeroy '91 and members of the Law School administration.



The B.S. Womble Scholarship



Current Womble Scholars pictured are: (from left, row 1) Tracy D. Traynam '92, Miriam R. Aricbea '90, Terrill L. Johnson '90; (row 2) David M. Shaw '92, Laura Dagenbart Fennell '91, Mary E. Spear '92; (row 3) G. Garrett Epps '91, Agustin D. Diodati '91, Spruell Driver '91, and Claude A. Allen '90.

Current Womble Scholars not pictured are: David M. Battan '90, Owen Autry Butler '90, Frank J. Chut, Jr. '90, M. Monique Garris '92, John R. Hairr, III '90, and Steven M. Marks '92.

Since 1961, the B.S. Womble Scholarship Fund has provided funding for scholarships to assist students attending the Law School of Duke University in financing their legal education. The Womble Scholarship is a critical factor in attracting outstanding students to the Law School and, thus, in maintaining the excel-

lence of the student body for which Duke is recognized.

Fund Established

In October of 1961, Edith Womble, wife of B.S. Womble, and their children—Lila, William (Bill), Olivia, Edith, Calder and Ruth—created a

scholarship fund at Duke Law School to honor her husband. According to Bill Womble Sr. '39, the Scholarship was established in his father's name "to memorialize his tremendous abiding interest in Duke and the legal profession. To our family it is appropriate for that interest to be perpetuated. Both Duke and the

legal profession were two of Dad's greatest interests throughout his life." The Scholarship was also created "to encourage more and better students to come to Duke," says Calder Womble '47.

B.S. Womble's children continue to share these interests. All six children attended Duke University as undergraduates and both Bill Sr. and Calder received their law degrees from Duke. Bill Womble, Jr. '67 also received his undergraduate and law degrees from Duke. The three are now partners in the Winston-Salem based law firm which bears B.S. Womble's name—Womble, Carlyle, Sandridge and Rice. The Womble family "continues to have a strong interest in the development of the Scholarship Fund as an appropriate memorial for Dad," says Bill Womble Sr. This interest is evidenced by the yearly contributions made by members of the family to the Scholarship Fund and by the recent additional pledge of \$110,000 by Bill Sr., Calder and Bill Jr.

Awarding the Scholarships

The agreement establishing the Fund provides that the principal determining factors used for selecting recipients are the applicant's moral character, scholastic ability, seriousness of purpose and leadership potential. Although financial need may properly be considered, it is not to serve as a principal factor. First consideration is to be given to worthy students who obtained their undergraduate education from Duke.

Calder Womble describes the selection of these criteria as "those which Dad thought made a good person. Each factor is equally important. While grades are significant, they are not to be overshadowed by the other criteria." Bill Womble, Sr. adds that seriousness of purpose was included because his father "lived by the teachings that 'the law is a jealous mistress' and that 'a lawyer who has stopped studying has retired, whether he knows it or not.' Throughout his life, he was a real student of the law."

The Law School's Scholarship Committee determines which applicants will be awarded Womble Scholarships. That Committee is chaired by Gwynn T. Swinson, Associate Dean of Admissions, and includes three other faculty members. The Committee "works very hard to honor the Womble family's criteria," says Dean Swinson. From the pool of successful applicants, it is determined which applicants meet the recommended criteria. According to Swinson, the Committee looks at "recommendations, grades, experience, background, LSAT scores and other factors. Womble Scholars usually have extraordinary recommendations. They are persons who motivate others; who have an unusual amount of experience in another field; who are leaders on their campuses, or who have an unusual background which will add to the diversity of the class."

From the successful applicants who meet the criteria, first consideration is given to students who attended Duke as undergraduates. Additional consideration is given to North Carolina residents, "because of the prominence of the Wombles in the North Carolina legal profession," states Swinson. However, the Scholarship is not limited to Duke students or North Carolina residents. Once the recipients of the Scholarship are determined, "the Committee attempts to balance the distribution of the funds available to ensure the recognition of those students who meet the criteria of the donors," adds Dean Swinson.

B.S. Womble— Renaissance Man of the Twentieth Century

In 1882, B.S. Womble was born in Chatham County, North Carolina, the son of the Rev. William Fletcher Womble and Olivia Snipes Womble. His personal and professional accomplishments demonstrate his devotion to his family, church, profession, school and state.

Mr. Womble entered Trinity College, now Duke University, in 1900



B.S. Womble

and graduated in 1904, having been a member of Trinity's first basketball team. Under Dean Samuel Fox Mordecai, Mr. Womble was part of Trinity's first law class, attending from 1904 to 1906. He spent an additional year studying law at Columbia before commencing the practice of law in 1907.

Mr. Womble served as a member of the Board of Trustees of Trinity College and of Duke University from 1915 until his death in 1976, and was its Chairman from 1960 to 1963. Mr. Womble's dedication to Duke was not confined to academic and administrative matters. He was also a follower of Duke athletics, attending each of Duke's football contests, including both home and away games.

B.S. Womble was equally dedicated to his chosen profession—integrity and competence were paramount. His study of the law was never-ending, and he used his abilities for the betterment of the profession and of his firm. Mr. Womble served as president of the North Carolina Bar Association during 1936-37 and was also an active member of the American Bar Association. In his personal practice, he was the director and general counsel for Wachovia Bank and Trust Company and for Security Life and Trust Company (now Integon). Additionally,

he represented many other corporations and clients, including a close association with R.J. Reynolds Tobacco Company. Under Mr. Womble's leadership, Womble, Carlyle, Sandridge and Rice grew more than ten-fold.

Mr. Womble's activities on behalf of the state and community are legion. Some of his more significant achievements included: member of the North Carolina General Assembly from 1925 to 1931, the first two-year term as a member of the House of Representatives and the last two terms as a member of the Senate; member of the State Judicial Council for six years; member of the State Advisory Budget Commission; member of the Winston-Salem School Board from 1930 until 1942; and president of the Winston-Salem Rotary Club.

Mr. Womble was also actively involved with the Centenary Methodist Church. He served on various church committees, successfully promoted the construction of a new church building and also taught a Bible class at Green Street Methodist Church for a number of years.

The Importance of the Womble Scholarship

As Dean Swinson states, "The Womble Scholarship is extremely important as a vehicle for recruiting outstanding students and interesting individuals. Because of the increase in tuition and living expenses, the importance of the Scholarship has increased. Scholarship assistance has always been important, but it is now critical and essential." Pamela B. Gann, Dean of the Law School, adds "the Scholarship is important in showing successful applicants how they can afford the next three years of law school. Thus, the Scholarship is essential in making law school more affordable so as to get the successful applicant to matriculate at Duke."

Discussions with both past and present recipients of the Womble Scholarship describe the precise role which the Scholarship played in their decisions to attend Duke.

According to Paul K. Sun, Jr. '89, who is currently serving as a judicial clerk to the Honorable J. Dickson Phillips of the Fourth Circuit, "The Womble Scholarship was a very important consideration. I recognized that Duke was a good school, but the Scholarship provided a financial incentive as well as indicating that Duke, as an institution, was interested in having me as a student. This meant a great deal to me."

For Spruell Driver '91, the Scholarship fulfilled a similar purpose. "Duke as a law school was, in and of itself, very attractive, but the Womble Scholarship definitely placed Duke in a more competitive position. Additionally, it felt good to know that the School recognized that I had attributes other than just grades."

Claude Allen '90, current President of the Duke Bar Association, stresses the importance which the Scholarship has in attracting North Carolina residents. "I think the Scholarship is especially important to North Carolina residents who have the option of attending the Law School at the University of North Carolina which is very affordable. By reducing this cost advantage, the Scholarship allowed me to concentrate solely on the merits of the School, to concentrate on the faculty and program at Duke rather than the debt which I would incur." He adds that "although Duke's LL.M. program was a perfect match for my interests and background, I had not seriously considered Duke since the cost of attending was prohibitive. The Scholarship made the biggest difference."

The Scholarship also benefits the School in a more subtle way. "I absolutely believe that the Scholarship has increased my sense of responsibility to contribute to the School as an alumnus," says Robert Blum '78, who is now a partner at Thelen, Marrin, Johnson and Bridges in San Francisco. "I contribute yearly, in part from respect for the School and in part for the gratitude of receiving the Scholarship." Margaret Lumsden '88, an associate at Hun-

ton and Williams in Raleigh, echoes this sentiment. "I certainly think that Duke gave me tremendous opportunities and that it is the obligation of all alumni, particularly those who receive substantial financial aid, to try to give something back."

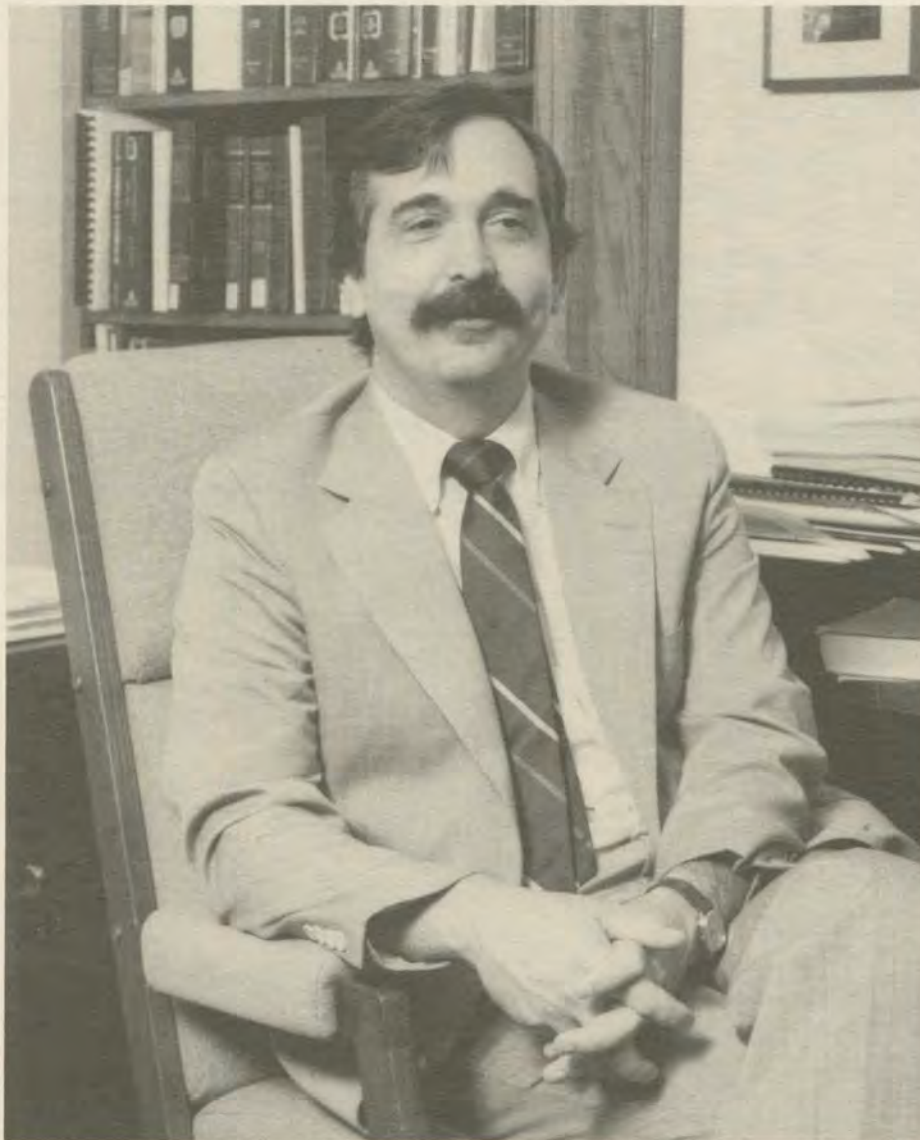
David Shaw '92, a native of England who has spent the past eight years studying and working in the United States, adds that this duty to contribute continues while at Duke. "Because the Law School has seen fit to award me this prestigious Scholarship, I feel that it is significant that I give something back to the University and to the area in general. It is surely important not only to get the best education possible, but to be involved with some of the more philanthropic activities of the School, such as tutoring underprivileged children and working with Habitat for Humanity."

Dean Swinson points to the unique and vital quality of a named scholarship. "The Womble Scholarship has a special prestige factor which makes it more personal. The name implies a personal interest of the donor in selecting a recipient. It extends beyond the giving of funds. This aspect may be intangible, but it helps the Law School immeasurably. It is this personal quality which makes the Scholarship so important and which may lead to a greater feeling of responsibility on the part of the student to contribute something in return." Finally, she adds, "Donors, like the Womble family, set a splendid example for the students they assist. They are great role models. It is hoped that recipients will follow their example."

In establishing the Scholarship, the Womble family has perpetuated B.S. Womble's interest in both Duke and the legal profession. By so doing, they have ensured that the composition of the Law School's student body continues to include those students who share B.S. Womble's dedication to be "real students of the law."

Agustin Diodati '91

THE DOCKET

*Faculty Profile***A Commitment to the Law***Robert P. Mosteller*

Bob Mosteller's explanation for choosing a career in the law is simple and direct, "I liked *Perry Mason* and never outgrew it. I thought it looked like an interesting life. One's professional life ought to be fun and interesting. I tend to work very hard and to organize my life around my work."

This penchant for hard work expressed itself in varied ways as Bob Mosteller ventured from days of watching *Perry Mason* in Vale, North Carolina through a distinguished academic career to work in the Public Defender's Office in Washington D.C. Since 1983 he has been devoting his efforts to a teach-

ing career at Duke Law School. In addition, last summer he began a two year term as the senior associate dean of academic affairs, a job he describes simply as "helping the School to run."

The Early Years

Dean Mosteller, the middle child of five, grew up on a farm forty miles west of Charlotte that had been in his father's family for 200 years. The young *Perry Mason* showed academic promise early. He attended a consolidated high school that drew students from a number of neighboring farm communities, graduating at the top of his class. He was also president of the student body and a captain of the basketball team.

Last year Mosteller enjoyed returning to the school to deliver the commencement address. He talked about the advantages and the disadvantages people carry with them when they grow up in a small place and suggested that an awareness of where they come from will be helpful as students make decisions about their lives. Among the strengths, he claimed a sense of tradition and an understanding of loyalty and responsibility. But he warned that one must be wary of the narrow perspective that sometimes accompanies small town life. He told his young audience that a product of this narrow perspective is the tendency to not aim high enough in life's goals.

At the University of North Carolina, Bob Mosteller continued his tradition of involvement and hard work. He held the office of attorney general of the student body and served as president of Phi Beta Kappa, while completing a degree

in history. Upon graduation in 1970, he was one of four people to receive the Frank Porter Graham award in recognition of a notable contribution to activities at the school.

After college Dean Mosteller ventured north to Yale Law School. His was a circuitous route through law school. After his first year, he left for the Kennedy School of Government at Harvard where he worked on a master's degree in Public Policy. At the end of his year at Harvard, he went out to California to work in the presidential primary of George McGovern. He has fond memories of this trip with "a bunch of hippies on the Berkeley Bus," a converted moving van that ran between Boston and Berkeley. In the fall, he continued to work for McGovern, running the campaign in an Ohio congressional district.

He then returned to law school and spent a year commuting between New Haven and Boston while finishing his master's degree. In law school Mosteller concentrated most of his study on criminal law. "I never took a UCC course for instance; I knew I wanted to do criminal law. Criminal law is what made law interesting for me. I did, however, choose some other courses just to be exposed to the professors. For example, I took Contracts II from Grant Gilmore, who was magnificent."

After receiving his law and master's degrees in the spring of 1975, Mosteller spent the rest of the year working for the Connecticut Department of Environmental Protection and studying for the North Carolina Bar. The next year he clerked in Asheville for Judge Braxton Craven, Jr. of the Fourth Circuit, whose grandfather was the first president of Duke, which was at that time Trinity College in Randolph County.

It was through this experience that Dean Mosteller met Elizabeth Gibson, now his wife, who was his successor as clerk for the judge. Gibson was a Duke undergraduate and attended law school at the University of North Carolina, where she is now a member of the fac-

ulty. Basketball is a controversial subject for the couple; she cheers for Duke and he cheers for UNC. "It's the undergraduate loyalty; it's hard to shake," Mosteller points out.

The Public Defender

Following his clerkship, Dean Mosteller took a job with the Washington D.C. Public Defender's Office. A year later Elizabeth joined him in Washington, first clerking for Justice Byron White of the Supreme Court and then in private practice.

Dean Mosteller is very enthusiastic about his years at the Public Defender's office. "It was gratifying to feel a sense of social purpose. It's part of the whole liberal notion of society. I think of criminal law as meting out justice within a system that recognizes rights." He sees his interest in criminal defense work as linked to the commitments behind a Public Defender's office. "My job there responded to the proposition that before the government can take someone's liberty, they must demonstrate in a public forum that they are justified in taking that action. It is all based on rights protection. If we have a system of something we call justice, the least revered members of our society deserve protection of their rights."

The Washington D.C. Public Defender's Office is one of the "Cadillac" public defender programs. It was a pilot program in the sixties and Ken Pye, former dean of Duke Law School, was involved in its early planning. Dean Mosteller considers himself fortunate to have had the opportunity to work at the Washington D.C. office. "People from all over come to practice criminal defense work there. It is one of 'the' places to do criminal law. They put a heavy emphasis on training lawyers and the case load, although demanding, is lighter than it is in other P.D. offices."

While he was at the Public Defender's Office he worked as a trial attorney for three years, spent a year in the appellate division, and then served as director of the training

program for two years. His inclinations toward teaching are revealed as he describes watching new recruits develop into really good trial lawyers. "People can learn to be good trial lawyers. After three years people become quite competent. It is gratifying to watch."

During his last year in Washington Mosteller was chief of the trial division—a great honor. The position reflects recognition as the best trial lawyer at the finest of Public Defender's offices. He describes the job as similar to the duties of a first lieutenant; the chief manages the office but also carries a reduced case load and is still "in the fighting."

Dean Mosteller has many engaging stories from his years at the Public Defender's Office, including three hair-raising stories of clients who appeared to be guilty but through quirks were shown to be innocent. In one rape case, the only point in question was identity. The man charged had what people in the criminal law trade call a "family alibi" meaning that he stated he was with his family at the time of the offense, a type of alibi usually accorded little weight by juries.

The client was placed in a lineup where victims of two separate rapes both identified him. Fortunately for the client, he had been in jail, unable to make bail on Mosteller's case, at the time of the second rape; and it was clear to the prosecutor and the police that the same man had committed both rapes. The case was dismissed. Mosteller believes that his client could have spent much of the rest of his life in jail if he had not been delayed in making bond until the day after the second rape, because it would have been very hard to prove his innocence in the face of the evidence. None of the witnesses appeared to be lying; they were simply mistaken about identity.

In the rape case, Dean Mosteller believed his client was innocent, but that wasn't always true. In another case, when Mosteller felt relatively confident that his client was

guilty, the case was suddenly dismissed by the prosecution. It happened that on the day of the grand jury hearing three different witnesses independently went to the prosecutor and said that they had identified the wrong person; the man who really committed the crime was sitting in the lobby waiting to appear as a witness in another case. It was not that unusual, Mosteller says, to find the victim of one armed robbery a short time later the defendant in another case, although finding the real perpetrator in the prosecution's witness waiting area was a fluke.

Mosteller names his first trial of a first degree murder charge as his most memorable moment. He took over the trial after it had been tried twice before, both trials ending in a mistrial with an eleven-to-one guilty vote. The third time they won an acquittal.

Mosteller tried eight first degree murder cases while he was at the P.D.'s office and won acquittals in two. Over time he began to believe that juries use a different standard of proof for more serious charges. His sense is that juries seem to acquit more easily in trials on lesser charges. He attributes this tendency to a psychological phenomenon operating in serious cases like murder. "I think juries have the sense that this is a nasty person, or else he wouldn't be here. They don't like to let nasty people out on the street."

Mosteller feels that the Washington D.C. prosecutors were generally very good and that they put cases through a fairly rigorous screening process that dumped charges that appeared ill-founded. But he sees a danger in the fact that juries tend to assume some guilt in these more serious charges because at the same time the screening process tends to become less rigorous on higher counts because of public pressure.

Near the end of this stint at the P.D.'s Office, Mosteller saw that he was becoming jaded. "The lawyer just doesn't know if the client is guilty. I came to the point where I simply operated under the premise

that my client was guilty, and that [guilt] didn't matter at all. Every client deserved my best effort. It is a sobering responsibility, and it is not always easy to face. What was probably my best work as a lawyer resulted in getting a person off who later committed a homicide."

Mosteller admits that he misses life at the Washington D.C. Public Defender's Office, but he doesn't want to do it again. "It is like trials, they are fun *to have had*. The turnover rate at the P.D.'s Office is very high. Though there are a few people who stick it out, most people don't make it a career. The job tends to occupy your whole life—long hours, demanding preparation, constant anxiety and stress in trials. It was never acceptable to say 'I don't have time.' Though we had a relatively low case load, around thirty-five cases at a time, the expectations were very high."

"I still work a lot of hours here, but I have more control of my schedule and can determine which hours I work," Mosteller notes. "At the P.D.'s office I would typically work all week and then roll out of bed Sunday morning and spend the hours between eight o'clock and two o'clock interviewing clients at the jail because that was a slow time at the jail and it was easier to interview a lot of people in a short time. I'll never forget the smell of detergent and food in that place. Though it was really an interesting life, when I start missing the work, I think of those Sunday mornings."

Returning Home to Teach

In 1983 Bob and Elizabeth decided to accept teaching positions at Duke and Carolina. It was a decision "to return home." They only applied to two places and probably would have remained in Washington D.C. if they had not gotten the jobs at Duke and Carolina. They have two children, Daniel who is eight years old and was born in Washington D.C., and Benjamin who is three years old and a North Carolina native. In addition to the usual activities of a young family, they have

taken time during the past two years to further deepen their roots by building a home in the mountains of North Carolina.

Dean Mosteller enjoys teaching. "The thought of teaching was always in the back of my mind. Teaching has been a respected vocation in my family. My mother and several members of my extended family teach school at different levels. Before I went to the Washington Public Defender's Office I looked into the possibility of moving from there to teaching. It turns out it is a fairly common pattern."

Mosteller still thinks of himself "as a lawyer. Now I'm a lawyer who teaches." In fact, as a member of the North Carolina Bar Mosteller does some legal work. "I'm working on a death penalty case now and I do some appellate work," he reports.

Dean Mosteller is very happy with his decision to teach at Duke. "I enjoy the classroom contact and the freedom to explore ideas. The students are pleasant, and they generally work very hard. It is a good group of very smart people. The faculty here is also very friendly, and we tend to get along well."

Dean Mosteller teaches in the areas of evidence and criminal procedure. He teaches evidence as "trial evidence," focusing on the trial courtroom rather than on theory. During his years at Duke, Mosteller has devoted a significant amount of time to developing the Criminal Litigation Clinic, a responsibility that he has surrendered during his tenure as associate dean.

As part of the Clinic, the twelve to eighteen students are placed with prosecutor's and public defender's offices in the area. At the same time, Mosteller runs a complex case simulation as part of the class. His experience in the D.C. Public Defender's Office is evident in the way he focuses the course with an emphasis on investigation, discovery and pre-trial motions.

At the beginning of the process, the students are divided into defense and prosecution and are given the

name and phone number of the client and of the chief detective. After that point, they are on their own. Mosteller hires work-study students to act the parts of the different persons involved in the case but the students in the class have to find those persons, ask questions, uncover information and plan their strategy.

Mosteller himself wears many different hats during the Clinic, playing judge or police chief or any other role that is needed to complete the experience. Planning and carrying out the class is tremendously time intensive, but Dean Mosteller feels that it is important to make the experience as real as possible. "It takes lots of time, but it is really fun."

Helping the School to Run

On July 1, Mosteller accepted a two year position as senior associate dean. The main reason he took the assignment he articulates as, "wanting to support Dean Gann. I really feel that she is committed to the welfare of this institution. I see this job as designed to support the work she is trying to do. I think that she is an excellent Dean and she deserves our support."

Mosteller finds Gann's "agenda for this place congenial with my own sense of things. For example, she puts a high premium on teaching. Teaching is not always a priority at top law schools, but she is focusing on teaching excellence as an important goal." Since significant fund-raising is also a particularly important goal for the School now, Dean Gann has the burden of raising money. Mosteller decided that he "could support her by helping to keep things running here so that she could focus more of her time on issues outside of the day-to-day working of the School."

Dean Mosteller's job is an amazing hodge-podge; it involves everything from the mundane headaches of parking and office allocation to curriculum development. He supervises student services and registration and is helping to develop more

effective assistance in the placement of graduates in judicial clerkships. He also works to arrange for visiting professors and to develop faculty hiring possibilities, though he emphasizes that the decision-making finally rests with the Dean on faculty matters. "She sets the direction, I try to implement it."

"Basically, I gather information and focus it to a decision-making point for the Dean," says Mosteller. "I am good at gathering and organizing facts. I tend to be very focused in things; that is both my strength and my weakness. This kind of information gathering is gratifying because it matters. Dean Gann really reads the stuff and thinks about it. I also enjoy making things work; I liked that aspect of some of my work at the P.D.'s office and I enjoyed working on political campaigns because of the opportunity to organize and see something done. I think that is helpful here. I really don't

see myself as having any specific goals for this position. I'm here to keep things running."

Bob Mosteller's commitment to the law has broadened beyond the example set by *Perry Mason* and has taken many different forms over the years. But everything he has done coheres within his philosophy of life generally, expressed in his advice to people who are thinking about working in the law. "It has something to do with working hard and enjoying what you do. I think law ought to be interesting and fun. I wouldn't encourage anyone to do this only as a way to earn a comfortable living, because there are lots of other ways to do that. There's something more here. The law ought to be fulfilling, an opportunity to take chances and to do what you want to do."

Denise E. Thorpe '90



Dean Mosteller meets with Ms. Sally Alston, staff specialist (right), and students.

Alumnus Profile

Running the Nation's Most Profitable Railroad

Arnold B. McKinnon '51

Many small boys love to play with trains, often dreaming that they are running the locomotive. Few boys progress beyond those dreams. Therefore it seems ironic that a boy whose primary dream in life was to be a small town lawyer like his father ended up running the nation's most profitable railroad. And the greater irony may be that the "romance of the rails" that captivated the other boys wasn't even a factor in Arnold B. McKinnon's rise to his current position as President, Chairman and Chief Executive Officer of the Norfolk Southern Corporation.

Fortuity

Instead, "it was somewhat fortuitous that I was . . . offered a job with a railroad. The general counsel [of the Southern Railway] at the time I was finishing law school had gone to old Trinity and turned to the dean of Duke Law School to look for suggestions for a young lawyer," related the 62-year-old graduate of Duke Law School. That fortuity has not been McKinnon's alone. Under McKinnon's tutelage Norfolk Southern, the nation's biggest coal hauler and its fifth largest freight carrier, has been one of the most, if not *the* most profitable and productive corporations in the transportation industry.

In 1988, Norfolk Southern's operating revenues increased 8.5% to \$4,461.6 million (on assets of \$10,059.1 million); its after tax income increased 268.4% to 635.1



million; and the shareholders' earnings per share increased 285.7%. These statistics leave little doubt that the company's shareholders should be thankful that McKinnon chose to work for Southern Railway Systems after graduation in 1951 rather than for his father's firm in Lumberton, North Carolina.

Although he did not follow his father and brother back to Lumberton, McKinnon did follow in their footsteps when he attended Duke University and then its Law School. As his law school experience, which included serving on the editorial

board of *Duke Law Journal*, came to an end, McKinnon and his father agreed that it would be a good experience for the younger McKinnon and his wife Oriana to live in Washington, D.C. for a year or two. "I never had any intention of staying in Washington," McKinnon recalls, "[but] I found as I worked in it, the kind of law practice I had with a corporation was challenging, [and] was in many ways . . . like [working in] a smaller law firm."

Once hooked, McKinnon stayed on at Southern to become the General Solicitor in 1965, the Assistant

Vice President for Law in 1969, Vice President for Law in 1971 and the Senior Vice President for Law and Accounting in 1975. As more time passed, he became Executive Vice President for Law and Accounting and then Executive Vice President for Law and Finance in 1981. One year later, Southern Railway merged with Norfolk & Western Railway to become Norfolk Southern, and McKinnon made his switch from law to business as the Executive Vice President for Marketing.

This switch was facilitated by McKinnon's understanding of the railroad industry's (then ongoing) deregulation. "I had done an awful lot of work on the legislation and understood what the new marketplace approach was going to have to be," said McKinnon. "I didn't start behind the technical experts who had been experts on traditional fares and things. . . . I had done a lot of organizational work and in a merger you're going to have to pull together a lot of people. Those were the kinds of background skills that led me to move out of law and into the market."

An Evolving Career

Much like the events that lead to his initial employment with Southern, climbing the corporate legal ladder and then crossing over to find a niche in the "marketplace" was not part of a blueprint that McKinnon had previously inked. Rather, as he climbed the legal ladder McKinnon found himself assisting managers in other departments in their business judgments. As these interactions increased, McKinnon became more interested in management, "and when the opportunity came to get more into it I jumped at it. I can't say it was any master plan but more just an evolving thing that worked out well for me. . . . [Y]oung people ought to be planners, but I think that they ought not let their plans get in the way of their progression into things that they find satisfying."

Despite his career's evolution from law to business and management, McKinnon still makes use of

his legal education, which he says has served him well. Although a lawyer's inclination to incessantly weigh the alternatives could be a detriment to a businessman and CEO who needs to make quick decisions, McKinnon's own operating style has overcome that potential disability. "Even as a lawyer I always felt a responsibility . . . that it was not a lawyer's job to tell the client what he cannot do; [instead] it's the lawyer's job to tell him how he can, within the legal framework, do what needs to be done for the business. I think that approach helped me get a feel for what business was about," McKinnon continued, "and to the extent that I've had any success as a manager it came from the approach I had as a lawyer."

Furthermore, law school and movement within the Southern's legal department helped make McKinnon a generalist, a background he feels is more helpful for senior executives than a technical one, unless the executive is in a technically oriented job. Finally, according to McKinnon, a person's educational background may not be so important in the long run for "management is really more an art than a science."

CEO Avoids Being a 'Helping Hand Lawyer'

Even though his legal education is still useful, McKinnon makes it a point not to be a "helping hand lawyer" when problems come up at the railroad. "I made up my mind when I left the law department, or at least the law and finance supervisory work, that the best thing I could do is not to try to practice law but to be a good client. And I think that it's counter-productive for me to try to get involved in the day-to-day activities of the law department." Still, McKinnon hopes that his legal background enables him to ask intelligent questions when Norfolk Southern's chief counsel recommends action in major litigation or contract negotiations in which the CEO has been involved.

As a lawyer, McKinnon had none of the formal management training

that one of his three sons, Colin, received at the Fuqua School of Business. (All three of the McKinnon children—Arnold, Colin and Henry—attended Duke University.) But as he moved up the legal department ladder, McKinnon became responsible for supervising a group of lawyers that had "production schedules," and then had to be a manager of production, personnel and related matters as the Vice President for Law. He also had to act as the interface between the legal department and the other departments that needed legal advice.

Those experiences gave McKinnon "a combination of some training in managing people and in managing 'production.'" I suppose the same is true in a small law firm, but more so in a great big law firm, that you have to learn to manage production if you're going to keep the client satisfied. So perhaps that's the training that all lawyers get; I got it more simply because of the broader exposure I had through having positions in a number of different areas of our business."

Prior to becoming a manager McKinnon was a general corporate attorney. As such he worked in real estate, tax law, and general corporate law—financial transactions, SEC matters—the type of work that is done in a general corporate law firm. To his relief, McKinnon was not slated to be an ICC rate expert or to handle some other technical transportation specialty. Although he did not specialize in lobbying or legislative work, the fact that Southern Railway was headquartered in Washington, D.C. meant that McKinnon was actively involved in legislative matters, an involvement that grew when he supervised the legislative and public affairs department.

Among the legislative work that McKinnon was involved in was the Staggers' Act of 1980, which deregulated many segments of the railroad industry. The Act exempted piggyback business and boxcar traffic from regulation, as well as giving railroads more leeway to withdraw from dual routes.

Revolutionary Impact of Railroad Deregulation

According to McKinnon, the Act has had "a revolutionary impact. I think greater changes have come since 1980 than had come in the 50 years before in the railroad business . . ." Essentially the Act took the railroads from a cartel environment with oversight by a regulatory body to a direct marketplace environment where companies can have special contracts for special situations or give discounts to beat competition. Under the old system a common rate for the whole industry was set through a cartel process and then approved by the ICC. This led to a situation where, as McKinnon described it, "your only real competition was in combination of services and who could be the nicest to the traffic officer of the shipper."

"That's changed," said McKinnon. Now "we have to be just as customer service and price oriented as the corner drugstore." The need for more responsive customer service and market price orientation caused a complete change in the industry's mindset in terms of speed of action and "providing service that had special value." The new era has also seen railroads move to the forefront of new marketing concepts to attract customers and differentiate products. Overall, deregulation has made railroads "a much more efficient industry and much more a factor in the market place. We were becoming a buggy-whip in an automotive era."

Throughout his career McKinnon's philosophy has been one of careful, steady progression. His maxim, as written by Alexander Pope, is "be not the first by whom the new are tried, nor yet the last to lay the old aside." McKinnon feels the adage really means "that you better look at all of the parameters of something before you jump into it." While this philosophy could work as a brake on innovation, a tendency which McKinnon admits he must guard against, it still encourages research and new ideas with

the understanding that the ideas will be tested in small increments.

"I believe that incremental change is often . . . more effective than quantum leaps both in terms of being able to manage them and being able to implement them. But each one of [those incremental changes] may be something that's completely new and you build them together and you've got what in five years time might look like a spectacularly different animal than what you started with."

Norfolk's Strategy: Stick With the Core Business

This philosophy has obviously served McKinnon and Norfolk Southern very well. And in keeping with that philosophy, Norfolk Southern has not followed the lead of many of its competitors by diversifying into areas outside the transportation industry. This is not to say that McKinnon's management has made Norfolk Southern a stagnant, one dimensional corporation—the railroad does have coal properties in West Virginia, natural gas developments in West Virginia and Kentucky, and a number of real estate interests, including a new Omni Hotel in Charlotte.

Additionally, the corporation was a major stockholder of Piedmont Airlines prior to the airline's merger with US Air and it acquired North American Van Lines, a household moving and truckload freight business, in 1985. But "all of these things really grew out of the core transportation business," McKinnon stressed. "As a matter of strategy we have concluded that we are best served and best serve our stockholders by sticking to that core business."

Norfolk's acquisition of North American Van Lines expanded its core business: the combination of Norfolk's trains and North American's trucks has allowed the company to start a just-in-time, containerized trucking and rail service dubbed "Triple Crown." The bulk of the Triple Crown business is moving recently completed auto parts from Detroit manufacturing plants to Mid-

Western assembly plants just as they are needed, a service that saves the car manufacturers money by limiting inventory costs. On the return trip, the truck/rail containers pick up industrial goods in the South. Norfolk Southern's long term plan for the Triple Crown service is to divert some of the \$100 billion freight traffic that currently moves by truck back to the trains.

Given his success as both a lawyer and a businessman, McKinnon has a unique vantage-point from which to view the interplay between law and business. One "scene" that McKinnon has watched is the number of people and the amount of time and money that goes into the law and the legal process. And like Harvard University President Derrick Bok (who has a J.D.), McKinnon believes that "we have gotten overburdened with the 'product' of lawyers."

Although he will not go to the extreme of damning his own profession by saying "we ought to get rid of all of the lawyers" or by agreeing with Bok's statement that the United States is wasting its top talent by having people go into the law rather than business, engineering, or the sciences, McKinnon thinks that law schools must make their graduates understand that a lawyer's job is one of a facilitator. It is a lawyer's duty "to help the whole system move more smoothly and efficiently and not to bog it down in some of the products of the law. . . . [T]he job of a lawyer is . . . [not] to be just a negativist."

"I think that [being a negativist] is a danger that all lawyers have to watch, and I think that they have to recognize it as both a serious public relations problem [and] a serious fundamental problem. And I think the law schools should be helpful in encouraging lawyers to recognize what [Bok's] statement [stands for], and to say "we're not going to be guilty of being . . . a drag on society, rather we will be a valued addition to it."

Jack Alden '90

Alumnus Profile

U.S. Attorney, The Best Job Government Can Give a Lawyer

Breckinridge L. Willcox '69

Breckinridge Willcox '69 never planned on a career as a federal employee. But after eighteen years of government service, the promise of a pension after twenty years, and talk of a pay raise, the United States Attorney for the District of Maryland is reconsidering his options.

Nearing the end of his four-year term as a Reagan appointee, Willcox may seek a reappointment from George Bush, lengthening his tenure in what he considers "the best job government can give a lawyer."

Looking back, his path to a position as one of the key legal repre-

sentatives for the federal government seems like a logical sequence of calculated stepping stones, but Willcox said he never had a "career blueprint." The draft board helped him make his first employment decision. During his senior year at Yale University, he received a notice to report for a physical. To get a deferment for law school, he promised to join the Marine Judge Advocate General Corps after receiving his degree. Graduating from Duke Law School during the height of the Vietnam War, his next three years were already spoken for.

After fulfilling his military commitment, Willcox worked for two years in Washington, D.C. as the executive assistant for former United States Senator Charles McC. Mathias, Jr. of Maryland. During his stint on Capitol Hill, Willcox met Richard Thornburg, who was at that time, the nominee to be the Assistant Attorney General for the Department of Justice Criminal Division.

"My joining the Department was kind of fortuitous," Willcox recalls. "Thornburg asked me to apply, and I did." Over the next ten years, Willcox shot up in the Department's ranks, eventually becoming Chief of the Fraud Branch of the Criminal Division.

In 1984, Willcox left the Department to build a white collar fraud defense practice in a private Washington firm. "I left government, cut the umbilical cord, and didn't look back at all. I was happily enjoying my law firm as much as a career prosecutor can ever enjoy defense work," Willcox said. But two years later, he "got the call" asking him if he



would be interested in the U.S. Attorney position. After hesitating for three or four days, he decided to accept. "It's a wonderful job, and this office has for decades had a wonderful reputation in terms of non-partisan, professional law enforcement."

The Job of U.S. Attorney

As one of ninety-four U.S. Attorneys in the country, Willcox runs a legal staff of forty-five assistants from his well-secured office in the federal courthouse in Baltimore. Willcox reports that the Maryland district is "the third or fourth most active in the country in defending government physicians in medical malpractice actions," expending twenty-five percent of its resources to defend the United States in such civil actions. The bulk of the office work, naturally, is in prosecuting criminal cases for the government, some 1,500 annually.

It is the rapid pace and the nearly overwhelming case load that appeal to Willcox. "I have tried to stay very active as a trial lawyer myself—that is my love," he said. "I attempt to try two cases a year, and I've managed that with *some* difficulty." Although he can point to a few significant trials he has handled in the last few years, Willcox feels he is not in court enough.

He convicted two defendants on a retrial of extortion and tax evasion charges. One of the defendants was a major narcotics dealer in Washington, D.C., who was the prime suspect in the shooting and wounding of an Assistant U.S. Attorney in Washington. The case was reversed on appeal, and the assistants that handled it at the initial trial had left the office. "It was a tough case, and I think the boss ought to take over a few cases that are not slam-dunks," Willcox remarked. He also prosecuted a savings and loan fraud case against the principals of the First Maryland Savings and Loan in a seven-week proceeding, resulting in convictions last May.

The most memorable case for Willcox was the espionage trial of Samuel Morison, a naval analyst

who worked in suburban Maryland. Morison stole satellite intelligence photographs taken of the first Soviet nuclear-powered aircraft carrier and gave or sold them to a weekly shipping publication. The photographs were printed, and Morison was prosecuted on charges of espionage and theft. Willcox wrote the brief and argued the case on appeal in the Fourth Circuit. The Supreme Court denied certiorari in 1988.

Morison's conviction sent shock waves through press organizations. "They felt, I guess not incorrectly, that the logical next step would be to prosecute the press," Willcox said. "They are almost as guilty, for taking the confidential information and printing it, as Samuel Morison is. There have been no prosecutions of the press yet, but that precedent case is on the books."

Outside of his courtroom appearances, Willcox spends most of his time supervising and allocating the resources of his large legal corps. The majority of the cases prosecuted by the Maryland office are referrals from the Federal Bureau of Investigation, the Drug Enforcement Agency, the Internal Revenue Service, or Customs. The bulk of the cases involve white collar criminals and drug organizations.

Prosecuting Drug Offenders

Although Maryland is not a primary drug import site, one fourth of the open files and half of the trials handled by Willcox's staff are drug crimes or drug-related offenses of money laundering or illegal racketeering. Willcox points out that most of the drugs come from Miami or New York. "We focus on gangs trafficking in major amounts of cocaine, crack and heroin. We try to take down a whole organization at once—the Maryland street dealers, the Maryland importer, the source in Florida or New York. We try to work the case long enough to get at the source," he said.

Willcox feels that his office has been successful in its legal battles against drug offenders. In July, assistant U.S. attorneys in the Baltimore

office successfully prosecuted two ringleaders of a "murder-for-hire racketeering enterprise" that revolved around a drug gang in a West Baltimore project.

In these complex, drug-related cases, Willcox finds that attorneys in his office get very involved in the prosecution from the outset. "You have to target who you want to go after, and how you get from here to that defendant can be a tortuous path. There is a lot of consensual phone monitoring that the assistant has to be involved in. The wire taps are almost exclusively the assistant's responsibility. All search warrants are signed by the assistant, and any cooperation deal for witness immunity can only be signed off on by a prosecutor."

Thus much of the legal activity involves the investigation of large-scale drug organizations from the bottom up. "In a drug ring, you don't have boy scouts as witnesses," Willcox added. "You are using people who have pled guilty themselves, who are trying to cut a deal."

Although Willcox recognizes the success his attorneys have had in prosecuting major drug violators, he makes an effort to limit the drain these cases could have on the office's resources. "I could devote forty-five of my assistants to doing nothing but narcotics cases, but I don't think we are making a huge dent in the drug war," he said. "Everybody in law enforcement agrees that you are not going to win the war on the prosecution side—the supply side. You are going to win it on the demand side—in the homes, the churches, the schools."

Maintaining A Balance

To balance the time-consuming focus on drug cases, Willcox also emphasizes prosecutions in the area of white collar fraud and corruption. The Maryland office, according to Willcox, has always been preeminent in that area—successfully prosecuting Vice President Spiro Agnew and former Maryland Governor Marvin Mandel. Willcox also directed the activities of his assistants in the re-

cent Wedtech prosecution of State Senator Clarence Mitchell and a procurement fraud case against Martin Marietta.

This is the work Willcox confessed most interests him. He spent almost nine years in the Fraud Section of the Department of Justice's Criminal Division and built a thriving private defense practice in white collar fraud and corruption.

Beyond the well-entrenched activities in drugs and white collar crime, Willcox has made his contribution to the Maryland district office by establishing an environmental practice. He has also instituted a procedural review for all cases during the pre-indictment stage. "To my horror that was not being done," he said. "So we set up a devil's advocacy unit. We critique the theory of prosecution and the language of the indictment in order to get as good a prosecution as we can." This process helps Willcox familiarize himself with a portion of the many cases handled by his assistants.

Although Willcox keeps a closer watch on the more politically charged, newsworthy cases, he gives his as-

sistants a high degree of autonomy. Similarly he rarely finds himself answering to his superiors in Washington. "We are pretty much independent up here. We don't get overbearing guidance from the Department and aren't required to get permission for most of the things we do," Willcox said. "I nominally report to the Attorney General, but I have an enormous amount of resources, and enormous power, and I can basically set my own agenda."

Although Willcox recognizes that the office of the U.S. Attorney has, in the past, been used as a presidential tool for setting a partisan agenda, Willcox believes that the U.S. Attorney position has become more a post for sharp prosecutors than lax politicians. He estimated that out of the ninety-four U.S. Attorneys, approximately eighty-eight had prior experience as federal prosecutors. He rarely receives calls from Republican officials, and when he does, they are simple inquiries about the status of an investigation.

"I'm a lawyer who happens to be in a politically appointed job," he said. "I, for one, think that the political appointment of U.S. Attor-

neys is a bad idea. Law enforcement these days is so specialized a calling, and so important a calling, that it has to be done in an absolutely non-partisan, professional way."

Although the position is a popular stepping stone to political office and prestigious judgeships, Willcox said he has no aspirations to run for office, and he doesn't want to be a judge—"at least not any time soon. I'm a trial lawyer. I'm an advocate, and I think advocates have trouble being judges," he said. "It's tough for an advocate who is used to taking a position to sit in a reactive position."

Regardless of what Willcox does next, he has left his mark on the Department of Justice, and he has no regrets. "It was always a point of irritation to me that my colleagues in private firms were making twice or three times what I was making. But, if you want to be a trial lawyer, there's little opportunity for that in most big firms. The work I've done has always been enjoyable and professionally rewarding."

Susan Heilbronner '91

*Book Review***Robert Dole:
American Political Phoenix****Stanley Goumas Hilton '75*

Stanley Goumas Hilton '75 worked as a Senate aide and counsel to Bob Dole in 1979 and 1980. Combining his personal experience and interest in the senator with an extensive amount of research, he examines Dole's political career and potential as a future president in his book, *Bob Dole: American Political Phoenix*. Hilton's work was in no way sponsored or even sanctioned by Senator Dole. His request for a personal interview with the senator was denied. On the other hand, Hilton reports that there was no attempt to discourage the writing or censor any part of it. Thus, he is able to discuss candidly the senator's personality and analyze the motives for his political actions.

Bob Dole was raised in Russell, Kansas by middle class parents who belonged to the Democratic party. His father was a private businessman who believed in hard work and reportedly spared little time or affection for his son. Nevertheless, the son had tremendous respect for his father. Driven by a desire to win the attention and affection he failed to receive from his father, Dole became an ambitious and over-achieving young man. An anecdote that best reflects his nature concerns a high school football game in which Dole "threw and caught his own pass and scored a touchdown."

Following a mediocre freshman year at the University of Kansas at Lawrence, Dole was drafted and entered the U.S. Army in 1943 as a second lieutenant. In 1945, as World War II was coming to a close,



Stanley Goumas Hilton is in private practice in San Francisco. Since graduation from the Law School, he has received an MBA from Harvard, worked as minority counsel to Senator Dole, and as an assistant to the California State Senate. He has recently completed writing two novels.

he spent less than two months in Italy where a shoulder wound sent him back to the states in a body cast. For months Dole was confined to military hospitals where inadequate treatment not only inhibited his recovery from the battle wound, but nearly cost him his life as a severe infection resulted in the loss of a kidney. A bitter man, he returned to Kansas to face the remainder of his life with a useless right arm.

Hilton suggests that the unaffected father and the incompetent

and harsh treatment received in U.S. military hospitals are two things that have most influenced Bob Dole's character. Dole emerged from these experiences as an individual who works to excess and is, in general, distant and distrusting, yet has great empathy for the disadvantaged.

Dole continued and completed his formal education at Washburn Municipal University in Topeka by obtaining both an undergraduate and a law degree. While still a student, he won his first election—a seat in the Kansas House of Representatives. From there he began a political climb that would take him to the Russell County Attorney's Office, the U.S. House of Representatives, and finally the U.S. Senate.

In describing Dole's political nature, Hilton repeatedly refers to him as a pragmatist and a chameleon. Throughout his career Dole has seemed to display no strong philosophical beliefs, and has appeared to sway with the prevailing political winds. Bob Dole has made many political moves that appear to be motivated by an effort to gain national attention or political support. The first evidence of this was his decision to run for political office in 1950. Rejecting the party of his parents, Dole opted for the party in favor, both nationally and in Russell—the GOP.

Hilton explains that despite Dole's reputation as the "Zelig of American politics," some of his views have remained constant. One of those is the belief that the handicapped deserve special consideration. Another is his rather intense dislike of Ted Kennedy and George Bush. Aside

*(Contemporary Books, 1989)

from ideological differences, both Bush and Kennedy represent, in Dole's view, the wealthy, patrician New Englander. The antipathy he feels toward George Bush even led him to ruin his own presidential chances in 1980, in order to make sure that the Bush campaign was unsuccessful.

In 1975, Bob Dole married his political soulmate, Elizabeth Hanford. Elizabeth, a pragmatist in her own right, was a registered Democrat and White House assistant under President Johnson, but quickly changed her party affiliation when she stayed on at the White House to work for Nixon in 1969. This marriage not only gave Dole an understanding political partner, it also gave him a boost up the social ladder, since the Hanford social and economic background contrasted with that of the Doles from Russell, Kansas.

Hilton's book was written while Bob Dole was campaigning for the Republican nomination for president in 1988. A portion of the book is therefore devoted to speculation about what sort of president Dole would make. Aided in part by the wisdom of Duke professor James David Barber, Hilton attempts to analyze Dole's character. Barber's well-known study has grouped past U.S. Presidents into four categories based on a study of their personality traits during childhood and early years. Each category combines an active or passive trait with a positive or negative one. Active presidents work hard as opposed to passive ones. Positive presidents enjoy their work while negative ones do not. John Kennedy is considered to have been an active positive president; Calvin Coolidge, a passive negative. In Hilton's conversation with the professor, Barber expresses the view that Dole would be an active president, but is unsure as to whether he would be an active positive or active negative president. On the

positive side the senator appears to have made an effort to improve his image and is married to a woman with a positive personality. Yet, the fact that he often comes across as a bitter and antagonistic man might place him in the category of active negative.

Hilton thinks the characteristics that would likely contribute to a successful Dole presidency are his stringent work habits, his compassion for and understanding of minorities and the disadvantaged, and his vigilant attitude toward foreign powers. He also displays an independence in his opinions that would make him less likely to be influenced by special interest groups. On the other hand, some characteristics that might lead to an unsuccessful presidency for Dole are his failure to develop good public speaking skills, his tendency toward sarcasm and use of cutting wit, and his basic distrust of the press. The latter characteristic has manifested itself in Dole's efforts to control what is printed about him. Another negative trait that would probably hinder a President Dole is the difficulty he has communicating one on one. There are many references by the author to the senator's aloofness in dealing with his staff. Too much criticism and too little positive reinforcement have evidently not endeared Dole to either colleagues or aides.

An additional theme of the book, as presented by its subtitle, becomes more interesting with the events that have transpired since the writing. Dole's ability to "rise from the ashes" like the mythical phoenix is well documented by Hilton. An ill-timed divorce from his first wife; the minor, but virtually ignored role he played in some of the Watergate scandals; a failed vice presidential campaign with Gerald Ford in 1976; and a financially and emotionally draining run for the presidency in 1980 were pitfalls from which Dole emerged with little political damage. Follow-

ing his failure to win the 1988 Republican nomination, the question becomes whether the "American political phoenix" can again become a serious contender for the highest office in the land. One can be certain that Hilton is closely watching Dole's actions under the Bush presidency.

Mr. Hilton's book is an interesting and well-written account of Senator Dole's career. There is no question that he admires his subject and supports his presidential aspirations. He states in the opening paragraph of the preface that he thinks "Dole is a truly unique person with the potential to become a great president." Yet, it is also clear that he has not let this admiration blind him to the senator's shortcomings. In light of frequent references to the fact that most people who know Bob Dole do not have neutral feelings toward him, Mr. Hilton must be commended for the level of objectivity he is able to maintain.

Reviewed by Hope E. Breeze, Head of Technical Services, Duke Law Library.



SPECIALLY NOTED

Professor Robertson Retires

Sam Gray



Professor Horace B. Robertson, Jr. retired from his teaching position in December leaving a legacy of notable accomplishments. Since coming to Duke Law School in 1976, Professor Robertson has taught torts and contracts small section classes and the accompanying research and writing program, as well as public international law, admiralty, and seminars on international organizations and the law of the sea. He also has supervised the course in American law for international students for four years.

In addition to his teaching responsibilities, Professor Robertson held the position of senior associate dean of the Law School from July 1986 until June 1989. As senior associate dean, he was second in command to first, Dean Paul D. Carrington, and then, Dean Pamela B. Gann. During his three year deanship, Robertson handled the multitude of daily internal administrative and organizational matters that keep the Law School running smoothly while freeing the dean to concentrate on broader policy issues. It

was during Robertson's tenure as senior associate dean that the plans for renovating the Law School facilities were launched. Working with the architects and shepherding the renovation project became added components of Professor Robertson's already busy schedule.

Of course, as a member of the faculty, Professor Robertson was also involved in a number of other activities. He has served on numerous Law School committees and has been the director of the joint J.D./LL.M. program in comparative and international law since its inception in 1986. For three years, Professor Robertson was a member of the Duke University Academic Council, and he has been a regular participant in the Law School's fund raising telethon.

The Duke International Law Society (DILS) owes much to Professor Robertson. Debra Kelly '90, the current president of DILS, emphatically expressed her "appreciation for all that Dean Robertson has done for DILS over the years. He has been a major supporter of the International Law Society. Dean Robertson's enthusiasm for our participation in the Jessup International Moot Court Competition was instrumental in our ability to compete in the national semi-final last year."

Professional responsibilities beyond the Law School have also received Professor Robertson's steady attention. He has been a member of the Panel on the Law of Ocean Uses, sponsored by the Council on Ocean Law, since its inception in 1983. Professor Robertson is also a member of the advisory committee for operational law for the Naval War College and a member of the board of advisors for the University of Virginia's Center for Oceans Law and Policy. Since coming to the Law

School, Professor Robertson has been writing and publishing, primarily on a range of issues having to do with the law of the sea, and on the law of naval warfare.

Whether in his capacity as a teacher or as an administrator, regardless of how many tasks he was juggling at once, Professor Robertson always made it seem that the only matter on his mind was the one at hand. Martin Ricciardi '90, who was in Robertson's class on public international law, remarked that "despite his busy schedule, Professor Robertson's door was always open for students who had questions." In the smaller classes, Professor Robertson even let his sense of humor surface, as anyone who has contemplated the causes of action in the case of *Robertson v. Good Ship Lollipop* in admiralty class can attest.

Professor Robertson's thirteen years at the Law School were preceded by an extraordinary thirty-one year career in the Navy. Following graduation from the U.S. Naval Academy in 1945, Professor Robertson spent five years as a line officer, during which time he was on one of the first ships to arrive in Tokyo Bay after V-J Day. He also served as an air control officer aboard a radar picket ship during the Bikini nuclear tests, and served on a destroyer of the United States Seventh Fleet, based in Tsingtao, China, during the later stages of the Communist revolution against the Nationalist Chinese government.

Under Navy sponsorship, Professor Robertson attended law school at Georgetown University, receiving his J.D. in 1953 after serving as editor-in-chief of the *Georgetown Law Journal*. Having sailed smoothly through law school, Robertson was assigned to legal duties in the Navy, and his responsibilities steadily mounted.

En route to becoming the Judge Advocate General of the Navy, the highest position attainable for a Navy attorney, Professor Robertson's career seems never to have had a dull moment. He was a member of the U.S. delegation to the first United

Nations Law of the Sea Conference in 1958 and a member of the U.S. delegation to the U.N. Seabeds Committee's Sixth Preparatory Session for the Third U.N. Conference on the Law of the Sea in 1973. As special counsel to the Secretary of the Navy from 1964 to 1967 and special counsel to the Chief of Naval Operations from 1970 to 1972, Robertson worked with Admiral Zumwalt, Paul Nitze and others on problems including the Navy's position on the F-111B aircraft program and the future of a nuclear navy. From 1968 to 1970, Robertson was stationed in the Philippines as assistant chief of staff to the Commander of Naval Forces for Legal Affairs.

By the time of his retirement from the Navy in 1976, Professor Robertson had achieved the rank of Rear Admiral. He had attended the Naval War College for a year's instruction on naval planning, and had earned an M.S. in International Affairs from George Washington University. In recognition of his service as Deputy Judge Advocate General and Judge Advocate General, Professor Robertson was decorated with the Distinguished Service Medal.

Professor Robertson says of his naval career, "The best part of naval service is that it is like an extended family. Everyone cares about everyone else. I have found something of the same experience here at Duke."

Within days of his retirement from the Navy, Professor Robertson had moved to Durham to teach at the Law School. Ken Pye was dean of the Law School at that time, and he was instrumental in bringing Professor Robertson to Durham. Writing from his current position as president of Southern Methodist University in Texas, Ken Pye recalls: "I had no doubt that Robbie would be an excellent addition to Duke, bringing maturity and experience, as well as intellect, to the faculty. He came as a visitor with no assurance of a permanent appointment, but the faculty quickly appreciated the added dimension he could pro-

vide. He has more than fulfilled my expectations"

Professor Robertson is married to Patricia (Trish) Lavell, and they have two sons, Mark, born in 1952, and Jim, born in 1954. Trish was a Duke employee herself from 1979 to 1983, serving as the director of alumni travel. Since leaving that job, she has devoted her energies primarily to work as a volunteer in the American Red Cross. Her present responsibilities there include chairman of volunteers for the Central North Carolina Chapter. She expects that Professor Robertson's retirement from teaching will have little effect on her busy schedule of volunteer activities. Trish has also enjoyed the Duke Law School connection. Professor Robertson's students fondly remember her gracious hospitality at small section get-togethers.

The Robertsons' son Mark is a marine biologist employed by the Nature Conservancy in the Florida Keys, and son Jim is an attorney who, after several years litigating environmental issues in private practice and for the U.S. Department of Justice, now works in the Maryland office of the Chesapeake Bay Foundation in Annapolis. Mark and his wife, Deborah, have a two-year-old daughter, Emily, who will occupy an important place in the Robertsons' retirement agenda.

Although he does have plans to travel extensively to visit family and friends, Durham and the Law School will continue to be Professor Robertson's home port. He is currently editing a book on the law of naval warfare, and will continue to have responsibilities vis-a-vis the Panel on the Law of Ocean Uses, the University of Virginia's Center for Oceans Law and Policy, and the Naval War College. As though that were not enough, Professor Robertson was recently appointed by Governor Martin to the North Carolina Marine Science Council. It appears that Professor Robertson is about to redefine the term "retirement."

Phoebe Kornfeld '90

Duke Hosts Symposium on the Constitution of Japan



The Constitution of Japan is of special interest in the United States because it was partially drafted by Americans following Japan's surrender in World War II. In September, at a conference entitled, "The Constitution of Japan—The Fifth Decade," Japanese and American scholars reviewed the development of constitutional law in Japan during the past four decades. The scholars examined how the 1947 Constitution had been woven into the general institutional framework of the Japanese traditionalist society. They also discussed how trends in Japanese constitutional law development will indicate the future legal framework in which businesses and the Japanese government ministries must operate.

The symposium was the culmination of nearly two years of work and planning by visiting associate professor Percy R. Luney, Jr. and was co-sponsored by Duke Univer-

sity School of Law and *Law and Contemporary Problems*. Professor Nobuyoshi Ashibe (Gakushuin University Faculty of Law and president of Koho Gakkai), Professor Yasuhiro Okudaira (University of Tokyo Institute of Social Science), Professor Kazuyuki Takahashi (University of Tokyo Faculty of Law), and Professor Lawrence Beer (Lafayette College Department of Government and Law) assisted in planning this symposium.

Funding was provided by the Japan-United States Friendship Commission, Japan Foundation, Duke University's Asian-Pacific Studies Institute, and the North Carolina Japan Center. In addition, the Asia Foundation provided scholarships so that two young constitutional law scholars from Japan could attend the symposium.

Professor Luney stresses the significance of the symposium. "No symposium on Japan in America has ever had the participation of so

has ever had the participation of so many leading Japanese law scholars in the same legal subject area." Luney recalls being jokingly told that if anything had happened to the plane on which the Japanese scholars arrived, he might have been labeled a national criminal in Japan, as the nation would have lost so many of its leading constitutional law scholars.

Each participant at the symposium presented a paper and/or commented on a group of papers, and those papers and comments will be published in a forthcoming edition of Duke's *Law and Contemporary Problems* and later in book form. "This publication will probably be the most in-depth study of the Japanese Constitution ever done in English," says Professor Luney. "Hopefully it will be the first in a series on the Japanese legal system."

Following Japan's surrender in World War II and the subsequent occupation of Japan by the Allied

Forces, the Japanese government, under the guidance of the General Headquarters and the Supreme Commander of the Allied Powers, adopted a new constitution. As Duke law Professor William W. Van Alstyne points out, this Constitution of Japan "was partly imposed by General MacArthur, and not the 'natural' product of Japanese tradition or will." The Japanese Diet formally adopted the Constitution on May 3, 1947, replacing the Meiji Constitution of 1889.

MacArthur's staff, many of them New Dealers, helped ensure that the Constitution of Japan had many of the same features of the American Constitution. The Constitution of Japan guarantees fundamental human rights, establishes legislative supremacy, and delegates government responsibility between the executive, legislative and judicial branches of government. Not only is the Japanese government charged with the negative duty of refraining from violating the enumerated rights of its citizenry, but the Japanese government also has a positive duty to promote the economic and social welfare of its citizens. Finally, Article 9, perhaps the most famous provision in the Japanese Constitution, forever renounces war as a means of settling the nation's international disputes.

Following the symposium, Professor Van Alstyne made the following observations:

It has many of the same features as our own [American] Constitution, including a strong bill of rights set of provisions on personal liberties and equal protection clauses . . .

My firm impression is that the Japanese Constitution does *not yet de facto* approach the equal status of our Constitution, however, partly because it was imposed, and thus some degree of domestic reluctance to credit it, within the politics and administration

of Japanese culture and decisional hierarchies, is not difficult to understand . . .

Given the customs, culture, prior forms of government, etc. historically in place in Japan, to be sure, I do not mean to brush over difficulties the courts of Japan may appreciate more than you and I (as arrogant, individualistic westerners) might be inclined to do. Even so, the pace of actual, engaged constitutional law is, by any fair standard, still largely relatively "soft" constitutional law. (In countries more-or-less dominated by a single political party that also holds a large national legislative majority, this necessarily means that as judicial decisions may apply the Constitution in a manner that the dominant party dislikes, action is fairly easily taken simply to alter the Constitution itself.) And I believe the papers presented in the symposium at Duke reflected this difference . . .

After four decades under the new Constitution, the Japanese people have successfully made the transition to popular sovereignty and a democratic government. But Professor Luney notes that while certain areas of Japanese law have developed in the direction of American law, striking differences, based on Japanese history, tradition and culture remain. These and other aspects of Japanese constitutional law, including judicial review and the status of the emperor, as well as the contemporary movement calling for revision of the Constitution, were thoroughly discussed and debated by the symposium participants.

Now that the symposium is over, the task of editing the papers for publication begins. According to Barbara Baccari '90, executive editor of *Law and Contemporary Problems*, her staff is going to have to rely extensively upon interlibrary

loans, since only the University of Washington School of Law Library and the Library of Congress have copies of Japanese caselaw. Professor Luney is assisting in the editing process.

Because of the number of international participants "this conference took much more effort than others in terms of preparation," reports Janse Haywood, communications and conference coordinator at the Law School. "Not only were many of the attendees from Japan, several visiting the United States for the first time, but the Japanese delegation remained in Durham for five days." In order to make the foreign guests feel as welcome as possible, Ms. Haywood enlisted student members of the Deans' Advisory Council to greet and escort the symposium participants to the various social events and campus tours. The students were encouraged to socialize with the Japanese guests. Claude Allen '90, president of the Duke Bar Association, recalls, "Having taken courses in Japanese law, it was a real thrill to meet the people whom I had quoted extensively."

Reaction to the symposium by participants has been favorable. Professor Isao Sato of Tokai University, the senior member of the Japanese delegation of scholars, wrote Dean Pamela Gann that "the Symposium on Japan's Constitution was genuinely historic and very successful." Professor Michael Young of Columbia University writes, "Great conference. I couldn't believe the firepower you recruited from Japan." Professor John Haley of the University of Washington called it "in terms of both substance and personal enjoyment, the best symposium I have attended."

In commenting on the recent symposium, Dean Gann stresses the benefit of Duke's hosting such an event. "The Japanese academics participating acquired first-hand knowledge of Duke University and the Law School. This in turn will be helpful in the recruitment and admission of Japanese students to the J.D. and LL.M. programs."

Duke already has an expanding network of ties with Japan [see Making the Japanese Connection, *DUKE L. MAG.*, Winter 1988, at 44], including an active group of alumni. The thirteen Duke Law alumni currently living in Japan have formed the Tokyo Law Alumni Club. Hideyuki Sakai '82 is president of the group. Koichiro Fujikura, professor of law at the University of Tokyo and visiting professor at Duke Law School, serves as honorary president.

The alumni in Japan have been meeting regularly since 1986. Both Professor Luney and Taylor D. Ward '88 (who spent 1988-89 studying in Japan as a Fulbright scholar) have served as guest speakers for the group. Professor Paul D. Carrington has been awarded a fellowship from the Japan Society for the Promotion of Science, and will spend several months in Japan during the spring of 1990. The Law School looks forward to continuing and solidifying its expanding ties with Japan.

Pamela L. Lohr '91

Japanese Scholars Participating in the Symposium

Nobuyoshi Ashibe, *Gakushuin University Faculty of Law*
 Hiroyuki Hata, *Hiroshima University Faculty of Law*
 Yoichi Higuchi, *University of Tokyo Faculty of Law*
 Taisuke Kamata, *Doshisha University Faculty of Law*
 Mutsuo Nakamura, *Hokkaido University Faculty of Law*
 Yasuhiro Okudaira, *University of Tokyo Institute of Social Science*
 Akira Osuka, *Waseda University Faculty of Law*
 Isao Sato, *Tokai University Faculty of Law*
 Kazuyuki Takahashi, *University of Tokyo Faculty of Law*
 Hidenori Tomatsu, *Seijo University Faculty of Law*
 Noriho Urabe, *Kobe University Faculty of Law*
 Masahiro Usaki, *Tsuru University Social Science Division*
 Yoshiaki Yoshida, *Meiji University Faculty of Law*

American Scholars Participating in the Symposium

James E. Auer, *Vanderbilt University Institute for Public Policy Studies*
 Lawrence Beer, *Lafayette College Department of Government and Law*
 B.J. George, *New York Law School*
 John Haley, *University of Washington School of Law*
 Dan Fenno Henderson, *University of Washington School of Law*
 Hiroshi Itoh, *SUNY-Plattsburgh Political Science Department*
 Percy R. Luney, Jr., *Duke University School of Law*
 Margaret McKean, *Duke University Political Science Department*
 John Maki, *University of Massachusetts, Emeritus*
 Mark Ramseyer, *UCLA School of Law*
 Frank Upham, *Boston College School of Law*
 Michael Young, *Columbia University School of Law*



Gifts to Duke Law School

Lowndes Professorship Created



John and Rita Lowndes

John F. Lowndes (T'53, L'58) and his wife, Rita A. Lowndes, have created a chaired professorship at the Law School in honor of his father, the late Charles L.B. Lowndes. Charles Lowndes was a member of the Duke Law faculty from 1934 until his death in 1967, and was the first James B. Duke Professor of Law. The establishment of the chair was announced at the Law School's annual faculty dinner in September.

Appointments to the chair will be made to recognize law professors who, at the time of their appointment, have made distinguished contributions to the legal profession through scholarship, teaching and service to the profession or its institutions. Candidates for the chair may be evaluated on the basis of

a record of achievement either at Duke Law School or at another institution. Nominations will be made by the dean of the Law School.

Income from the fund will be added to the Lowndes' original gift of \$452,510 until it reaches the \$1 million endowment goal for a University chair. This gift will count toward The Campaign for Duke, a University-wide fund-raising drive to raise \$400 million by the end of 1991. It also counts toward the Law School's \$12.5 million component goal of the Campaign.

During the ceremony announcing the creation of the chair, Professor Melvin G. Shimm praised Charles Lowndes as "a good and great man whom I was privileged to know and call a friend . . . I venture to

say that he more profoundly and beneficially influenced my professional development than any one else I have known."

Professor Shimm also thanked John and Rita Lowndes "for endowing this chair in [Charlie's] memory. It will forever link his name with an institution that he loved and in which he invested so much of himself, an institution that was such a vital part of his life and that he so importantly helped to shape and direct on the path to its current preeminence in legal education. This seems so very right and proper."

Dean Pamela B. Gann noted that "the establishment of this chair is very meaningful to the Law School community in so many ways. It recognizes and honors Professor Lowndes who was a distinguished member of the Law School faculty for thirty-three years. Professor Lowndes is widely and fondly remembered by our alumni as an important figure in their legal education, and they will learn of this professorship with great pleasure."

Charles L.B. Lowndes was born in Puerto Rico in 1903, and graduated from Georgetown University. He received both his LL.B. and S.J.D. degrees from Harvard University. After working briefly for a New York law firm, Lowndes served on the law faculty at Georgetown University until coming to Duke in 1934. He served as acting dean of the Law School during 1949-50.

A nationally known scholar in the field of federal taxation, Professor Lowndes was the author of many articles and books. In 1946 he was one of six tax experts appointed to study federal tax procedure, and in 1950 he was a member of a special committee appointed to investigate the administration of North Carolina courts. During his career he also taught at the University of North Carolina, the University of Michi-

gan, and the University of Florida.

John Lowndes is the founding partner of the Orlando, Florida law firm of Lowndes, Drosdick, Doster, Kantor & Reed, where he specializes

in the areas of real estate, tax and business law. He was graduated first in his Law School class and was a member of the editorial Board of the *Duke Law Journal*. Lowndes

now serves as a member of the Law School Board of Visitors and chairs its Major Projects Council. Rita Lowndes is an alumna of the University of Florida College of Law.

Siegel Moot Court Competition Established



Rabbi Seymour Siegel

Allen G. Siegel '60 will fund an annual interscholastic moot court competition at the Law School in honor of his late brother, Rabbi Seymour Siegel, who died in February of 1988. Rabbi Siegel was a recognized scholar in the area of medical-legal ethics and an architect of contemporary Conservative Jewish theology. Allen Siegel is a partner in the Washington, D.C. firm of Arent, Fox, Kintner, Plotkin and Kahn.

The initial Rabbi Seymour Siegel Moot Court Competition is scheduled to be held in the spring of 1991 and will comprise sixteen teams from ABA-accredited law schools known to have active programs in the study of ethical issues, especially those intersecting medical-legal interests. Each school may send two teams to the Competition, and the teams will be judged on both written briefs and oral arguments. It is anticipated that the Competition will take place over a three-day period, and will culminate in an awards banquet for all participants and judges.

Within the Law School, the Competition will be administered

by a committee drawn from the membership of the student Moot Court Board under the supervision of a faculty adviser appointed by the dean. Mr. Siegel will provide funding to support the Competition, including cash prizes to be awarded to the winning team, best brief, and best oralist. Mr. Siegel will also, in conjunction with associates from his law firm, assist the Law School in the organization and management of the Competition by drafting the problem, providing qualified attorneys to review and grade the briefs, assisting the Law School in obtaining distinguished judges for the final round of competition, and preparing bench memoranda for the judges.

In announcing the Siegel Competition, Dean Pamela B. Gann expressed the hope that it "will develop rapidly into a very prestigious competition. We are delighted that Allen Siegel wants to make such an event possible at Duke, and I know that our Moot Court Board will very much enjoy the opportunity to host the Competition. We are deeply grateful to Mr. Siegel for his exemplary and continued support of the Law School."

In addition to practicing law, Allen Siegel teaches as a senior lecturer at the Law School where he annually offers a seminar in collective bargaining. Drawing upon the skills and knowledge he has acquired as a labor relations practitioner, Siegel engages his students in intensive examination of the various facets of the management-union relationship and the dynamics of the negotiating process.

Mr. Siegel also annually funds the David H. Siegel Scholarship at the Law School, named in honor of his father. The Siegel Scholarship is given to upperclass students demonstrating substantial need, high achievement, and an outstanding potential for contribution to the legal profession.

Rabbi Seymour Siegel was for the forty-one years prior to his death associated with the Jewish Theological Seminary in New York City, first as a student and later as an instructor and as the Ralph Simon Professor of Ethics and Theology. Rabbi Siegel was also known as the "rabbi of the neo-conservatives," forging close ties with the movement's major thinkers, like Irving Kristol, Michael Novak, and Norman Podhoretz.

In the 1960s, Rabbi Siegel participated in civil-rights marches and rallies protesting the Vietnam War, but he later came to believe that unbridled liberalism was a threat to Jewish rights. He had close ties to several recent administrations, and was appointed by President Reagan as the executive director of the United States Holocaust Council. He spent two years organizing the effort to build a memorial to the Holocaust victims in the nation's capital.

Although he became politically conservative, Rabbi Siegel was a religious liberal within Conservative Judaism. He headed the Committee

on Jewish Law and Standards of the Rabbinical Assembly for more than a decade. He authored hundreds of articles and was the author of two books, "Judaism and Jewish Law" and "God in the Teachings of Conservative Judaism." He was preparing a third book at the time of his death.

Rabbi Siegel was a visiting senior

research fellow at the Kennedy Institute for Bioethics at Georgetown University and a visiting scholar at the Woodrow Wilson Center for Scholars in Washington, D.C. He also served on the President's Commission on Ethics in Medicine and Biomedical Research and on the Advisory Council of the Republican National Committee.

In addition to his articles, books, and lectures, Rabbi Siegel spent many hours answering the questions of rabbis across the country for whom he was the final authority on religious law. The Law School is honored to host a competition honoring such a distinguished scholar and religious leader.

Fund Endowed to Honor Judge Snepp

Friends, colleagues, and alumni of the Law School have established an endowment fund in honor of Judge Frank W. Snepp, Jr. '48. Judge Snepp retired as a Mecklenburg County, North Carolina Superior Court judge in August 1989, after twenty-two colorful, and sometimes controversial, years on the bench.

Solomon Levine '48 and Benjamin S. Horack '41 chaired a committee in Charlotte to raise money for the fund to honor their friend and colleague. A total of \$18,880 was raised from ninety contributors, most of whom had no prior Duke connection, but rather were moved to contribute to the fund by their strong affection and respect for Judge Snepp.

Income from the fund will provide unrestricted support to the Law School, to be used at the dean's discretion. Dean Pamela Gann notes

that she plans to use the fund "to provide scholarship assistance for our students. Scholarship funds are a high priority for the School, and we are grateful that so many of Judge Snepp's friends have chosen to honor him in this way."

A Memphis, Tennessee native, Snepp was elected to the North Carolina General Assembly in 1957, where he established a reputation as a voice for young conservatives. He remained in state politics for only four years, however.

In 1967, Snepp was first elected to the Superior Court bench, where he quickly gained a reputation as an incorruptable and brilliant legal scholar, with the courage to take on controversial cases and make unpopular decisions. He was known for running a strict courtroom, and was often critical of the criminal justice system, saying it coddles

criminals and does not do enough to protect victims of crimes.

Judge Snepp served as vice president of the North Carolina Bar Association in 1980, and that same year was president of the North Carolina Conference of Superior Court Judges. During his career, he also served as chairman of the 1967 North Carolina Jail Study Commission, as a member of the Bar Association's Penal Study Commission, and on the Commission on Correctional Programs and Rehabilitation.

A vocal advocate for fostering cooperation among the many agencies that make up the legal system, Snepp was quoted by the Associated Press as saying, "By yelling loud enough, you can get things done. Courts don't belong to judges. They don't belong to lawyers. They belong to the people."

Baker & McKenzie Grant

The Law School has received a \$5,000 scholarship grant from the law firm of Baker & McKenzie through its Law Student Assistance Program. This program is part of the firm's overall Equal Employment Opportunity Program, which consists of a number of components, including a series of efforts designed to increase the number of minority applications to Baker & McKenzie and to increase the proportion of acceptances of offers.

Baker & McKenzie's Law Student Assistance Program is specifically designed to provide scholarship assistance to law schools for the purpose of increasing minority enrollment.

This year, Baker & McKenzie made twenty grants to law schools to be allocated to first-year minority students. The grant received by Duke was divided equally between two minority members of the Class of 1992.

As a part of its program, Baker & McKenzie has challenged other law firms in the United States to join them in providing scholarship assistance to increase minority enrollment at national law schools. Baker & McKenzie will increase the funds it makes available from \$100,000, to a maximum of \$200,000, in increments of \$10,000 for each program adopted by another firm (or

group of firms) that establishes comparable annual assistance of at least \$100,000 per year to support increased law school enrollment by minority students at participating schools.

The Law School hopes to participate in the Baker & McKenzie program in future years. According to Associate Dean Gwynn Swinson, "we believe we would be in a position to increase the enrollment of minority students if more scholarship funds were at our disposal. We truly hope that other law firms will follow the fine example set by Baker & McKenzie."

Estate Planning Conference Scholarship Endowment

The Estate Planning Council of Duke University has recently created a permanent endowed scholarship fund at the Law School. The Estate Planning Conference Scholarship was funded through a single cash gift of \$50,000, which represents past proceeds from the Council's Annual Estate Planning Conference. The scholarship is reserved for a third year law student with a particular interest in estate planning, and the first recipient will be named in 1990.

The Estate Planning Council was established in 1978, under the leadership of Roland Wilkins '55,

who was at that time an assistant dean at the Law School. The Council's goals are to promote Duke University as a vehicle for giving and also to further the goals of the estate planning profession. Members of the Council include attorneys, accountants, and development, banking and University officers, many of whom are graduates of Duke University or the Law School. Norwood A. Thomas, Jr. (T'55) has served as Chairman of the Council since its inception, and spearheaded the drive, together with Mr. Wilkins, to establish the scholarship fund. Mr. Thomas is a Senior Vice Presi-

dent of Central Carolina Bank & Trust Company in Durham.

The Estate Planning Conference is a two-day event, usually held in the fall. It is co-sponsored by the Law School, and features distinguished speakers lecturing on topics such as "Drafting for Generation Skipping Transfers," and "Estate Planning in the International Arena." The next Conference will be October 11-12, 1990. For information, contact Mr. Roland Wilkins, Director of Planned Giving at the Duke Medical Center, at (919) 286-5557.

Professor DeMott Receives University Scholar/Teacher Award



Deborah DeMott and H. Keith H. Brodie, M.D.

Professor Deborah A. DeMott was named the recipient of the 1989 Duke University Scholar/Teacher Award at the Founder's Day Convocation in December. The award, given annually by the Board of Higher Education and Ministry of the United Methodist Church, honors a Duke faculty member for excellence in both teaching and research, recognized concern for students and colleagues, significant contributions to the scholarly life of the University, and commitment to high stan-

dards of professional and personal life. The award, which includes a \$2,000 honorarium, was presented to Professor DeMott by University President H. Keith H. Brodie.

In nominating Professor DeMott for the award, Dean Pamela Gann noted that "she is particularly versatile in her course offerings, teaching not only contracts and legal research and writing in the first-year curriculum, but also advanced, complex courses in the business, corporate, and securities regulation

fields. . . . Her wealth of knowledge and intense interest in the subject matter stimulates her students to a depth of inquiry sometimes missing in other courses."

Dean Gann further stressed that Professor DeMott "has established a preeminent reputation as a scholar in the fields of corporate law, securities regulation and fiduciary obligation. Her treatise, *Shareholder Derivative Actions*, published in 1987, is the seminal work in that important field of law." Professor DeMott's current writings have taken an international comparative approach to takeover regulation, earning her a Fulbright Senior Scholarship at Sydney and Monash Universities in Australia in 1986.

Professor DeMott stated that she is grateful for the support of her work by her Law School colleagues and the University generally. "I feel blessed to have work that I enjoy so thoroughly. I'm pleased that the award suggests the value of integrating teaching with scholarship." Professor DeMott noted that she will contribute a part of the \$2,000 award to the Law School's Building Fund.

Charles H. Miller '34 Receives Murphy Award



Charles H. Miller, Dean Pamela Gann, Nick Gaede

Charles H. Miller '34, professor emeritus of the University of Tennessee College of Law, received the fifth annual Charles S. Murphy Award during the Law Alumni Association meeting on October 21, 1989. Nick Gaede '64, president of the Association, presented Professor Miller with a set of etched crystal bookends to commemorate the award.

The Murphy Award is presented annually by the Law School Alumni Association to an alumnus of the School who, through public service or dedication to education, has shown a devotion to the common welfare, reflecting ideals exemplified in the life and career of Charles S. Murphy. Murphy was a 1931 graduate of Duke University; he graduated from Duke Law School in 1934, and received an honorary LL.D. from Duke in 1967. A native North Carolinian, Murphy died in 1983. During his career, he held several positions in the Truman, Kennedy, and Johnson Administrations. He also served as a member of the Law School's Board of Visitors and as a University Trustee.

Professor Miller, a Law School classmate and close friend of Charles Murphy, was recognized for his lifelong dedication to two central themes of the award—legal education and public service. In presenting the award, Gaede noted that as founder and director of the Legal Aid Clinic at the University of Tennessee, Professor Miller had devoted his professional life to "providing training and a sense of civic responsibility to law students and young lawyers and to assuring that legal aid and other services be provided to those in need."

Charlie Miller, a native of Salisbury, North Carolina, taught at Duke from 1932 to 1946. He helped to found the Duke Legal Aid Clinic, the first such clinic, and served as its assistant director. In 1947, Professor Miller joined the faculty at Tennessee, where he founded the second legal aid clinic in the country, serving as its director from 1947-1975. When the clinic began, the staff consisted of one full-time person, one part-time assistant, and one secretary handling a caseload

of over 200 with twenty-five to forty students per quarter. By the time Miller retired, the Legal Clinic had become the functional equivalent of a large law firm, with fourteen professionals, a nine-member support staff, one paralegal, and eight student clerkships with approximately seventy-five students per quarter, a caseload of over 6,000 per year and responsibility for all indigent legal services in Knox County.

Gaede reported that, as one who obviously believes in a "hands on approach" to legal education, Miller claims as his favorite quote a paraphrase from the medical profession: "To study the phenomena of law in society without books is to sail an uncharted sea, while to study books without clients is not to go to sea at all." Gaede, who had spoken with Marilyn Yarborough, dean of the University of Tennessee Law School, reported that she knew of "no one who could be more deserving of such an award than Professor Miller." She said, "Charlie Miller is first class. He has devoted his life to the law and to public service. Many lawyers, the Knoxville community and legal education in general are deeply indebted to him."

In 1976, Professor Miller received the Society of American Law Teachers (SALT) Award which recognizes successful innovators who have made significant contributions to the development and reform of legal, governmental or social institutions. He published widely, with special emphasis on legal aid clinics, and co-authored with W.E. Cole a book entitled, *Social Problems, A Sociological Interpretation*.

Miller has been a long-standing member of the National Legal Aid and Defender Association; the National Council of Legal Clinics; the Knoxville Bar Association Committees on Legal Aid and Legislation; and the American Association of Law School's Committee on Legal Clinical Teaching. He has also served as co-chair of the ABA Committee on Student Practices and vice-chair of the Knoxville Legal Aid Society.

Professor Miller also served in many leadership positions in his community. He was president and member of the Board of Directors of the Council of Community Agencies; director of the Family Service Association of Knoxville; board member of the Knoxville Area Mental

Health Association; and trustee of the Physicians' Medical Education and Research Foundation.

Previous recipients of the Murphy Award are Carlyle C. Ring, Jr. '56, former president of the National Conference of Commissioners on Uniform State Laws; Hale S. McCown

'37, retired justice of the Nebraska Supreme Court; Gerald B. Tjoflat '57, who is presently the chief judge of the United States Court of Appeals for the Eleventh Circuit, and Gerald T. Wetherington '63, chief judge of the 11th Judicial Circuit (Dade County) Florida.

Dukes Awards go to Sgrosso and Keziah



S. Perry Keziah and Vincent L. Sgrosso

During Law Alumni Weekend ceremonies, Vincent L. Sgrosso (T'57, L'62) and S. Perry Keziah (T'52, L'54) were recognized as recipients of the Charles A. Dukes Award as determined by the Duke University General Alumni Association. The award is named for the late Charles A. Dukes, a 1929 graduate of Duke University and former director of alumni affairs, and is given annually to alumni who have gone "above and beyond" the call of duty in voluntary leadership roles.

Nick Gaede '64, President of the Law Alumni Association, presented Sgrosso, who was nominated by the Law School, with a plaque commemorating the award. As only the second person to hold the office of chairman of the barristers, Sgrosso solidified this volunteer position for the Law School. The chairman handles all personal solicitation activities for the Law School Barristers throughout the annual fundraising cycle, and also presides over Barristers Weekend festivities in the spring. Last spring, at his suggestion, Sgrosso sent personal letters to all

Barristers after the weekend encouraging attendance at the next such event.

While serving as Barristers chairman, Sgrosso was also vice president/president-elect of the Law Alumni Association and its governing body, the Law Alumni Council. In that position, he was responsible for chairing the nominating and awards committees. Sgrosso will be president of the Association during 1989-90, and also recently began service as a member of the Law School Board of Visitors.

Sgrosso lives in Atlanta, where he is vice president and general counsel of BellSouth Advertising & Publishing Corp. In addition to his service to the Law Alumni Association and the Barristers, he is a member of other Duke groups, including the Duke Atlanta Alumni Association, the Alumni Admissions Advisory Committee, and the Founders' Society. He is also a trustee of the Private Adjudication Foundation.

Sgrosso serves as a volunteer because he feels Duke has given something valuable to him. "I thor-

oughly enjoyed my undergraduate years and feel that Duke Law School prepared me extremely well for the practice of law."

Perry Keziah received his Dukes Award from Trinity College for his service in numerous capacities. He has been chairman of the Alumni Admissions Advisory Committee and has assisted with class reunions and gift campaigns. He is a former High Point Alumni Chapter president, president of the Class of 1952, co-chairman of the High Point Area Capital Campaign for Arts & Sciences and Trinity Scholars Campaign, member of the Board of Directors of the Duke General Alumni Association, member of the Trinity Scholarship Selection Committee, member of the General Alumni Association Executive Committee and director of the High Point Duke Alumni Club. A partner in the firm of Keziah, Gates and Samet, Keziah is particularly proud of his involvement in making High Point the first community that each year offers a local high school student a full, four-year scholarship to Duke.

Keziah is also involved in many Law School activities. He is a member of the Barristers and is a class agent. He served as reunion coordinator for the Law Class of 1954 as they celebrated their 35th reunion in the fall.

Keziah sums up his volunteer spirit by saying, "Antithetically to our big city brethren at the bar, we who are country lawyers find ourselves with more time than money; and volunteer work in Duke's service has been for me an appropriate means of satisfying my sense of obligation."

Sgrosso New Law Alumni Association President



Nick Gaede and Vincent Sgrosso

During the Law Alumni Association meeting on October 21, 1989, A.H. (Nick) Gaede '64 passed the presidency of the Law Alumni Association (LAA) to Vincent L. Sgrosso '62. Sgrosso thanked Gaede for his significant contributions to the Association and presented him with a gavel and stand to commemorate his service.

Gaede was a member of the Law Alumni Council in 1985-86 when plans were being made to rejuvenate that body. Because of his interest and leadership, he was asked to assume the role of secretary-treasurer for 1986-87 and to rotate through the officer roles to the presidency. Gaede accepted the appointment, even though such service significantly extended his term on the Council. In 1987-88, under the newly revised by-laws of the LAA, Gaede, as vice-president, chaired the two standing committees—awards and nominations—setting policy in addition to conducting business for the year. While serving as an LAA officer, Gaede also organized the

Alabama local alumni association and served as its first president.

Gaede thanked the assembled alumni for the opportunity to serve as president of the association and acknowledged the increase in alumni involvement with the Law School and the Law School's heightened efforts to communicate with alumni over the past few years. He commended Sgrosso to the group, citing his leadership of the Law Alumni Council standing committees while serving as president-elect. Gaede also expressed his optimism for the continued vitality of the LAA under the leadership of Sgrosso and the other new officers, Richard (Chip) Palmer '66, vice-president/president-elect and Dara L. DeHaven '80, secretary-treasurer.

Gaede closed his term by challenging the Alumni Association, the local associations and all Law School alumni to strengthen their ties with the Law School and to help address the financial burden of a Duke education by supporting the Law School's fund-raising efforts.



Sara Beale

DBA Distinguished Teaching Award

Professor Sara S. Beale was voted the 1988-89 winner of the Duke Bar Association Distinguished Teaching Award. As winner of the award, Professor Beale addressed the Class of 1989 during the ceremony awarding degrees in May.

Created in 1984, the Distinguished Teaching Award recognizes outstanding teaching by Law School faculty members, and seeks to promote student-faculty interaction and awareness. Nominations for the award are made by current students and the winner is selected by a committee of the Duke Bar Association. The recipient is given \$500 to use in the purchase of books for the Law Library. A bronze plaque listing the award winners is on display in the Law School lobby.

Previous winners of the Distinguished Teaching Award are: 1984-85, Thomas D. Rowe, Jr.; 1985-86, Richard C. Maxwell; 1986-87, James D. Cox; 1987-88, John C. Weistart.

Alumni Activities

Class of 1933

William C. Lassiter has been honored by the North Carolina Press Association by the creation of an award bearing his name. The William C. Lassiter First Amendment Award will be presented annually to an individual for contributions promoting and enhancing First Amendment principles. Lassiter is the retired general counsel of the North Carolina Press Association.

Class of 1942

William J. Lohr was recently elected to the Baldwin-Wallace College Sports Hall of Fame, having held four records in track while a student. He was also given the Baldwin-Wallace Alumni Association Award for meritorious service to the college. Now retired, Wallace resides in Siesta Key, Florida.

Class of 1947

Matthew S. Rae, Jr. is serving as vice-chairman of the executive committee of the State Bar of California Conference of Delegates for 1989-90.

Kenneth F. Wooten, Jr. has retired from the practice of law with the firm of Bailey, Dixon, Wooten, McDonald, Fountain & Walker in Raleigh.

Class of 1948

Edward L. Meadows has retired from the claims department of Norfolk & Western Railway Company in Roanoke, Virginia.

Frank W. Snepp, Jr. retired in August 1989 as a judge on the Mecklenburg County, North Carolina Superior Court. A scholarship fund has been established at the Law School in his honor. (See story on p. 53.)

Frederick H. Stone recently retired as general counsel and senior vice president of The Franklin Life Insurance Company in Springfield, Illinois.

Class of 1950

William H. Adams, III has become a chaired professor at the George Mason University School of Law in Arlington, Virginia. He will remain of counsel to his firm, Mahoney Adams Milam Surface & Grimsley, in Jacksonville, Florida.

Class of 1952

Charles A. Comer has retired as trust officer of American National Bank & Trust Company in Chattanooga, Tennessee.

Class of 1953

Wade H. Dickens, Jr. has retired from the practice of law with his firm, Dickens & Dickens, in Buxton, North Carolina.

Class of 1954

Vern D. Calloway, Jr. has been named attorney general of the State of Florida in Tallahassee.

S. Perry Keziah, Jr. was named a recipient of the Charles A. Dukes Award for outstanding volunteer service to Duke University. (See story on p. 56.)

Class of 1955

Clarence W. (Ace) Walker was elected an assembly delegate for District Five of the American Bar Association during its annual meeting in August 1989. Walker is a partner in the firm of Kennedy Covington Lobdell & Hickman in Charlotte.

William L. Woolard was sworn in as international president of the Lions Club, a worldwide organization dedicated to helping the blind and visually impaired, in June. He is a partner in the Charlotte firm of Jones, Hewson & Woolard.

Class of 1956

Lloyd C. Caudle has been re-elected for an additional term of service to the Duke University Board of Trustees. He is a founding partner of the Charlotte firm of Caudle & Spears.

Class of 1957

Robert H. Beber was elected corporate vice president and director of litigation with W. R. Grace & Company in New York City.

Gerald B. Tjoflat became the Chief Judge of the United States Court of Appeals for the Eleventh Circuit on October 1, 1989. He has served as a circuit judge since 1975.

Class of 1959

Leif C. Beck is now chairman of The Health Care Group in Plymouth Meeting, Pennsylvania.

J. Terry Emerson is with the firm of Sedam & Shearer in Fairfax, Virginia.

Class of 1960

Rufus S. Hill, Jr. has been named senior adjudicator of the Claims Group at the U.S. General Accounting Office in Washington, D.C.

Class of 1961

William Yates Manson is now a judge for the Durham County District Court.

Llewelyn G. Pritchard has joined the firm of Hellsell Fetterman Martin Todd & Hokanson in Seattle.

Class of 1962

Allen G. Burgoyne has opened a private law practice in Pelham, New York.

Thomas M. Davidson is now a partner in the New York firm of Lidell, Sapp, Zivley, Hill & LaBoon.

Johnie L. Joyce, Jr. retired from the Federal Bureau of Investigation in May of 1989. In June, he became chief of security for the Texas Medical Center in Houston.

Vincent L. Sgrosso was named a recipient of the Charles A. Dukes Award for outstanding volunteer service to Duke University. (See story on p. 56.)

Class of 1963

John B. Gordon was named outstanding lecturer in the North

Carolina State University College of Humanities and Social Sciences, where he teaches business law.

J. Thomas Menaker, and his wife, Bonnie, have both left their law practices in Harrisburg, Pennsylvania and set sail on their 42-foot boat to become "cruisers." They will live aboard 'The Star' and sail from port to port! Along the way, they'll do some work for Greenpeace and the Cousteau Society by tracking Gulf Stream currents and checking for pollution in water samples.

Class of 1964

Samuel P. Bell, III is a partner in the Tallahassee, Florida law firm of Cobb, Cole & Bell.

Girard E. Boudreau, Jr. is now regional managing partner in the Atlanta office of Jones, Day, Reavis & Pogue.

Anthony F. Sauber was promoted in May 1989 to executive vice president, Business and Legal Affairs of MCA Recreation Services, a division of MCA, Inc., in Universal City, California.

Ted R. Todd is a judge for the Fifth Judicial Circuit of Indiana in Madison.

Edward A. Vrooman was appointed by Governor Cuomo of New York to the Board of the Metropolitan Transportation Authority, the nation's largest transportation agency. Vrooman is a partner at the firm of Olwine, Connelly, Chase, O'Donnell & Weyher.

Class of 1965

Jonathan L. Alder has become a shareholder in the Dallas firm of Locke Purnell Rain Harrell and heads the firm's labor section. He will remain of counsel to Alder, Cohen & Grigsby, the firm he founded in Pittsburgh in 1981. Alder specializes in representing management in labor issues in the health-care industry.

Charles G. Campbell is now with the labor relations division of Morning Star Foods, Inc. of Dallas.

Patrick C. Coughlan is president of Resolve Disputes, Inc. in Portland, Maine.

Thomas A. Edmonds has stepped down as dean of the University of Mississippi School of Law to become executive director and chief operating officer of the Virginia State Bar, headquartered in Richmond.

Jerome W. Gerde is serving as chairman of the Bay County, Florida Republican Executive Committee.

Lawrence W. Klute has been named general counsel of Duncan Aircraft Sales of Florida, Inc. in Venice, Florida.

James P. (Pat) Piper has joined the Law Offices of Windle Turley in Dallas.

Edan G. Unterman is now general counsel of Kajima International, Inc. in Fort Lee, New Jersey.

Robert J. Stanton is president of Refraction Corporation in Newark, New York.

Class of 1966

Bruce H. Anderson has been selected the first president and managing partner of his ten-attorney firm, Hutchinson, Anderson, Cox, Parrish & Coons in Eugene, Oregon. He practices in the areas of business and international law, land use, and environmental law.

Jonathan T. Howe, senior partner and president of Howe & Hutton in Chicago, has recently co-authored the "Injunctions" chapter for the 1989 supplement to *Chancery and Special Remedies*, published by the Illinois Institute for Continuing Legal Education.

T. William Porter, III, founding partner of the Houston firm of Porter & Clements, was recently elected to the Executive Committee of the Alley Repertory Theatre Company and is co-chair of its corporate capital funds drive. He is also a member of the board of the Houston Business Arts Fund, a consortium of major corporate donors to the arts in Houston.

Douglas P. Wheeler has been appointed executive vice president of The Conservation Foundation of Washington, D.C.

Class of 1967

John T. Berteau, a partner in the Sarasota, Florida firm of Williams, Parker, Harrison, Dietz & Getzen, served as a lecturer to the Florida Bar during its advanced estate planning series from March to May, 1989.

Clyde A. Burkhardt has joined Bedford Capital in New York City.

Col. Norman G. Cooper is serving as judge advocate to the United Nations Command, U.S. Forces Korea and 8th U.S. Army, ROK, the senior military lawyer in Korea.

William Lyman Dillon has joined the Atlanta office of Jones, Day, Reavis & Pogue.

Robert J. Hackett became a director of the firm Fennemore Craig in Phoenix on July 1, 1989. He concentrates in the corporate and securities law area.

Rev. Stephan E. Klingelhofer is now serving as Rector of St. Luke's Episcopal Church in Kalamazoo, Michigan.

F. Sherwood Lewis continues in private practice as a sole practitioner with offices in Vienna, Virginia and Washington, D.C.

Robert E. Sheahan, Jr., who practices labor, employment and environmental law in High Point, North Carolina, has recently purchased a Florida company, Wine Concepts, Inc., a "wine-of-the-month" club. Sheahan serves as editor of *World of Personnel* magazine, on the board of editors of *Employee Testing and the Law*, and is a contributing author of *The Developing Labor Law*, published by ABA-BNA.

Lanty L. Smith, chief executive officer of Precision Fabrics, Inc. of Greensboro, North Carolina, has been elected to the Board of Directors of Wittenberg University.

Class of 1968

Robert Frey has been named president of Whirlpool do Brazil, S.A., a wholly owned subsidiary of Whirlpool Corporation. He will also remain an elected vice president of Whirlpool. He and his family have moved to Sao Paulo, Brazil.

James J. Kendig has joined the Nashville, Tennessee firm of Waller, Lansden, Dortch & Davis.

William P. Pinna has been appointed chair of the Asset and Investment Management Committee of the Law Practice Management Section of the American Bar Association.

Class of 1969

E. Victor Roberts has become a partner at Neely & Player in Atlanta.

Young M. Smith, Jr. is now a sole practitioner in Hickory, North Carolina.

Class of 1970

Victor A. Cavanaugh is now a partner at Elarbee, Thompson & Trapnell in Atlanta, specializing in labor relations law.

James K. Hasson, Jr. was recently elected director of the Foxfire Fund and a trustee of Reinhardt College in Waleska, Georgia. Hasson is a partner at Sutherland, Asbill and Brennan in Atlanta.

William F. Robinson, Jr. has recently joined the legal department of Data General Corporation in Westboro, Massachusetts.

J. Allen Walker has assumed the duties of judge of the General District Court, 20th Judicial District, sitting in Leesburg, Virginia.

Robert F. Weaver, Jr. has retired from the practice of law in Columbus, Ohio to pursue a career as a charter boat captain, sole practitioner and teacher in Mississippi. In the spring of 1990 he plans to sail from Annapolis to Bermuda and the Bahamas before returning to Biloxi.

Class of 1971

Arthur A. Abplanalp, Jr. is serving as vice-president and member of the executive committee of the Colorado Bar Association for 1989-90. He is a shareholder in the firm of Earl, Baird & Williams in Vail.

Sylvia L. Beckey has returned to private practice with the New York City firm of Sheft & Sweeney.

Holly N. Brandstetter is now counsel for the Monsanto Company in St. Louis, Missouri.

John A. DeFrancisco has written and published a book entitled *What Happened to This Child? The Golden Murder Case*, an account of a highly publicized murder case in Syracuse, New York, where he practices civil and criminal litigation. DeFrancisco is also an adjunct professor at Syracuse University College of Law.

Karla Harbin Fox has been named associate dean of the University of Connecticut School of Business Administration.

Randolph J. May has been appointed chairperson of the Common Carrier Committee of the Federal Communications Bar Association.

Bryan E. Sharratt has been elected vice president of the Board of Trustees of the University of Wyoming.

Class of 1972

Robert B. Breisblatt has become a partner in the firm of Welsh & Katz in Chicago.

Joseph E. Claxton has returned to the full-time faculty of the Mercer University School of Law, after serving as vice president for executive administration of Mercer University.

Rebecca Thacher Halbrook has recently joined the legal department of Revlon, Inc. in New York City.

Laura J. G. Long has been named a partner in the Research Triangle Park, North Carolina office of Moore & Van Allen, where she concentrates in business law.

Glen A. Payne has been named vice president and general counsel of Financial Programs, Inc., investment adviser and distributor of no-load mutual funds in Denver.

Class of 1973

B. Bernard Burns, Jr. was recently appointed vice president and associate general counsel of AMCA International, a diversified manufacturing and engineering company which has relocated its headquarters to Charlotte.

C. Wells Hall, III has been named to the Board of Governors of the North Carolina Bar Association for a term to expire in 1992. He is a partner in the Charlotte office of

Moore & Van Allen, where he practices in the areas of tax and estate planning.

Sberrie Lavine Krauser was sworn in as a judge of the District Court of Maryland on August 3, 1989, becoming the first woman in the United States to serve on the same bench as her mother.

William L. Kurtz has joined the firm of Fennemore Craig in Phoenix.

G. Thomas Love, III is a principal in the Memphis, Tennessee firm of Mercer, Meidinger, Hansen.

Roy R. Robertson, Jr. has become of counsel in the Chicago office of Ross & Hardies, where he concentrates in energy law and regulation.

Lawrence J. Rosen was elected in November to a ten-year term as a judge on the Albany, New York City Court. He had served as a part-time city judge since 1985.

Class of 1974

Kenneth P. Adler has opened a computer consulting business, concentrating on consulting for the legal community. He also maintains his private law practice in Sandpoint, Idaho.

Joel K. Belway has joined the San Francisco firm of Stanton, Kay & Watson.

Ronald Van Chernak is president of business properties for First Business Brokers, Inc. in Colorado Springs.

James R. Eller, Jr. has joined the firm of Charlston, Revich & Williams in Los Angeles.

Stephen L. Elliott has opened his own office for the practice of law in Roswell, New Mexico.

Thomas E. McLain has become a partner in the merchant banking firm of Alfred Checchi Associates, Inc. in Los Angeles.

Dean A. Messmer is now the managing partner of Lasher, Holzapfel, Sperry & Ebberson in Seattle. His practice centers on commercial litigation and representing creditors in bankruptcy.

C. Richard Rayburn, Jr. announces the opening of the firm Rayburn, Moon & Smith in Charlotte.



Donald W. Wallis '74

Irwin N. Rubin has joined the firm of Gilvert, Segall & Young in New York City.

Ira Sandron has been named co-chair of the Immigration Committee of the Federal Bar Association.

Brett A. Schlossberg has established the firm of Schlossberg & Associates, P.C. in Berwyn, Pennsylvania. The firm practices primarily in the areas of domestic and international corporate law.

Phil Sloan was appointed to the New York State Board of Equalization and Assessment, which establishes policy with respect to real estate tax assessment.

Mary Ann Tally has been named president-elect of the North Carolina Academy of Trial Lawyers. She will take office on July 1, 1990. She is public defender for the state's 12th Judicial District in Fayetteville.

Donald W. Wallis has joined the Jacksonville, Florida office of Holland & Knight as a tax partner.

Class of 1975

John A. Howell has joined the Washington, D.C. office of Ross & Hardies.

John R. Kernodle, Jr. has been named executive director of the Community Justice Resource Center at Guilford College in Greensboro, North Carolina, where he is also a

lecturer in justice and policy studies. The Resource Center has received contracts to staff jail over-crowding studies in four North Carolina counties.

Gary G. Lynch has become a partner at the New York City law firm of Davis Polk & Wardwell.

Linton L. Moyer is the co-editor of the Pennsylvania Bar Association Workers' Compensation Newsletter. He is a partner in the Pittsburgh firm of Thomson, Rhodes & Cowie.

Lee G. Schmudde has been named director of governmental affairs at the Walt Disney World Company in Orlando.

William J. Trull, Jr. has just completed a year as president of the Family Services Center in Asheville, North Carolina.

Class of 1976

David B. Adcock was appointed in July 1989 as counsel to Duke University, the school's top legal officer.

Michael R. Casey has opened the firm of Casey and Molchan in Ft. Lauderdale, Florida.

Michael G. Culbreth has been named director of employee relations of the Federal Paper Board Co., Inc. in Reiglewood, North Carolina.

Winford R. Deaton, Jr. entered into his own law practice in January 1989 in Shelby, North Carolina.

Daniel J. Dugan has been named a partner at Spector Cohen Gadon & Rosen in Philadelphia.

Ralph B. Everett has become a partner in the Washington, D.C. office of Paul, Hastings, Janofsky & Walker, where he will head the firm's legislative practice.

Lewis E. Melahn has been nominated by the Governor of Missouri to serve as director of the Division of Insurance.

Stephen E. Roady has been appointed counsel to the minority staff of the Senate Committee on Environment and Public Works. He has responsibility for legislation pertaining to Superfund, federal facility clean-up, and the Toxic Substance Act.

Aron M. Schwartz is serving as the chair of the Supreme Court



G. Gray Wilson '76

of New Jersey District X Ethics Committee for 1989-90.

Debra J. Stuart is now assistant United States attorney for the Southern District of Florida in Miami.

J. Alexander Tanford has been appointed the Ira C. Batman Faculty Fellow at Indiana University School of Law in recognition of his contribution to scholarship.

G. Gray Wilson has written a two-volume treatise, *North Carolina Civil Procedure*, published by The Michie Company. Wilson is an attorney in the Winston-Salem firm of Petree, Stockton & Robinson, where he practices in tort and insurance litigation, products liability and aviation law, as well as commercial and tax litigation.

Allan D. Windt announces the opening of the Law Offices of Allan Windt in Philadelphia.

Class of 1977

Mary S. Burnett is now senior trial attorney, International Trade Field Office, Commercial Litigation Branch of the U.S. Justice Department, located in New York City.

Luis A. De Armas has been appointed administrative partner of the Miami office of Shutts & Bowen, where he specializes in corporate, banking and securities law.

Judith L. Harris, an attorney with GTE Service Corporation, has relocated from Stamford, Connecticut to the Los Angeles office.

Susan Freya Olive is serving during 1989-90 as chairman of the North Carolina Federal Bar Advisory Council, as chairman of the NCBA Technology & the Law Committee, and as treasurer of NC Prisoner Legal Services, Inc.

J. Wilson Parker, professor of law at Wake Forest University in Winston-Salem, was recently recognized by the North Carolina Academy of Trial Lawyers for special service to student advocacy.

Robert L. Pettit has joined the Federal Communications Commission in Washington, D.C.

Ember D. Reichgott, a state senator in Minnesota, has been selected by the American Council of Young Political Leaders as one of a ten-member bipartisan delegation to Taiwan and Hong Kong, under the group's political leader exchange program.

Kim William West has founded the law firm of Radcliff & West, with offices in Los Angeles, Honolulu, and Washington, D.C.

John E. Zamer has joined the Atlanta office of Jones, Day, Reavis & Pogue.

Class of 1978

Benita S. Baird has been named deputy general counsel of news and operations of Turner Broadcasting System, Inc. in Atlanta.

John Hasnas has been named a law and humanities fellow at the Temple University School of Law in Philadelphia.

Marilyn Hoey Howard has been promoted to commercial group counsel of the semiconductor sector of Harris Corporation in Melbourne, Florida.

Wendy Collins Perdue has been promoted to associate professor at the Georgetown University Law Center.

Robert D. Phillips has joined the firm of Bowles & Verna in Walnut Creek, California.

Sarah Holzweig Steindel is now with the firm of Rabner, Allcorn & Widmark in Upper Montclair, New Jersey.

Class of 1979

Louis J. Barash has been named director of Merrill Lynch Capital Markets in New York City.

Alan R. Bender has been promoted to the position of vice president of product development at Equitec Financial Group, Inc., a diversified financial services company in Oakland, California.

Mark G. Burnette has joined the Decatur, Georgia firm of Weekes & Candler.

Claudia A. Carver has been elected to the Board of Governors of the State Bar of California. She is a partner in the Los Angeles office of Paul, Hastings, Janofsky & Walker and is an officer and trustee of the Los Angeles County Bar Association.

Jeffrey C. Coyne has joined, as a partner, the Los Angeles office of Coudert Brothers.

Joel H. Feldman has joined the firm of Friedman, Mallinger & Brown in Boca Raton, Florida.

Richard C. Finke has been named senior litigation counsel for W.R. Grace & Company in New York City.

Herman A. Gailey, III announces the opening of the law firm of Katherman Martz & Gailey in York, Pennsylvania.

Janis Caplan Gordon is now an attorney with McKenzie & McPhail in Atlanta.

Benjamin C. Kirschenbaum has joined Towers Properties Limited of Stamford, Connecticut.

David W. Matson has been named general counsel of Sprint Services in Overland Park, Kansas.

D. Duncan Maysilles is now with the Intervarsity Christian Fellowship of Decatur, Georgia. He serves as campus minister at Emory University and Georgia Tech.

Gray McCalley, Jr. has joined The Coca-Cola Company in Atlanta, Georgia.

Mark S. McCarty is now with the firm of Artchison, Snyder & Hoag in Seattle.

Mary Susan Philip was named a partner in the Washington, D.C. firm of Powers, Pyles & Sutter.

H. Michael Pyles has been named manager of human resources for the General Electric Aircraft Engine Group in Evendale, Ohio.

Scott H. Raskin is now general counsel of Trammell Crow Ventures in Dallas.

Carl J. Schuman was appointed assistant United States attorney for the District of Connecticut in New Haven in June 1989.

Denise Majette Welch has been elected vice-president/president-elect of the DeKalb Lawyers Association, DeKalb County, Georgia. She has also formed a partnership for the practice of law, Jenkins, Nelson & Welch, in Atlanta.

J. William Widing, III is now with the Reading, Pennsylvania firm of Stevens & Lee.

William T. Wilson has become a partner in the firm of Legg, Wilson & Smith in West Chester, Pennsylvania.

Rhonda Reid Winston has joined the Pre-Trial Service Agency in Washington, D.C. She is a member of the Law School's Board of Visitors.

Class of 1980

Edwin R. Acheson, Jr. has joined the firm of Frost & Jacobs in Cincinnati, Ohio.

Roger J. Bagley has been named a partner at Hawkins, Delafield & Wood in New York City.

Ellen Jane Bickel is now a partner at Emmet, Marvin & Martin in New York City.

Robert A. Carson is a partner at the Chicago firm of Gould & Ratner.

Kyle A. Citrynell has become a partner in the law firm of Handmaker & Citrynell, with offices in Louisville and Paris, Kentucky. She recently authored the chapter on the Federal Communications Commission for West's *Federal Practice Manual*, and frequently lectures and writes on the subjects of copyright, trademark and unfair competition.

J. Lawrence Crocker is now an associate professor at the New York University Law School, teaching criminal law, torts and jurisprudence.

Shirley L. Fulton has been elected to serve an eight-year term as resi-

dent superior court judge for District 26A in Charlotte, North Carolina.

Barry A. George is the tutorial coordinator for Peirce Junior College in Philadelphia.

Gregory M. Gordon has been named a partner at the Dallas office of Jones, Day, Reavis & Pogue.

Mary Metil Grove is a partner at the Richmond, Virginia firm of Christian, Barton, Epps, Brant & Chappell.

James P. Holdcroft, Jr. was elected executive vice president and chief financial officer of Manhattan Savings Bank in New York City.

Michael W. Jorgensen joined the firm of Bracewell & Patterson in its newly-opened Dallas office as a partner in the corporate law area.

Douglas P. Lambert has become a member of the firm of Fleming, Haile & Shaw, resident in the North Palm Beach, Florida office.

Clifford B. Levine has been named a litigation partner at Thorp, Reed & Armstrong in Pittsburgh.

Claire L. Moritz has been named vice president of legal services for the Wake County Hospital System, Inc. in Raleigh.

Robert Patrick Murphy is now with Proskauer Rose Goetz & Mendelsohn in Washington, D.C.



Anita W. Schoomaker '80

Paul J. Pantano, Jr. has joined the Washington, D.C. office of McDermott, Will & Emery.

Genevieve Harris Roche has become assistant general counsel of Touche Ross & Company in New York City.

Anita W. Schoomaker has been admitted to partnership in the firm of Morgan, Lewis & Bockius. She is a member of the firm's labor and employment law section in Washington, D.C., where she represents management clients in the private and public sectors.

Michael W. Smith has become a partner in the New York City office of Bryan, Cave, McPheeters & McRoberts.

Michael S. Thwaites has joined the firm of Ogletree, Deakins, Nash, Smoak & Stewart in Greenville, South Carolina.

Bruce P. Vann became a partner in the Los Angeles office of Keck, Mahin & Cate, where he continues to practice in the corporate and securities area, with an emphasis on entertainment industry clients.

Elizabeth M. Weaver has been named a partner in the firm of McKenna Conner & Cuneo in Los Angeles.

Class of 1981

Marshall S. Adler announces the opening of the firm of Adler & Strickland in Orlando.

Nancy T. Bowen is a student at the Georgetown University Law Center, where she is pursuing an LL.M. degree.

Diana S. Deane is now with the Princeton, New Jersey office of Drinker, Biddle & Reath.

James A. Fieber has been elected managing partner of the Fieber Group, a real estate development firm located in Wilton, Connecticut.

David D. Gustafson became assistant section chief in the Tax Division of the United States Department of Justice in March of 1989.

Leigh H. Hopkins received his M.D. from Johns Hopkins University in 1989 and is now an orthopaedic surgeon in Richmond, Virginia.



S. William Richter '81

Jack D. Kearney was recently promoted to vice president in the Corporate Finance Department of Robinson-Humphrey Co. Inc. in Atlanta.

Nancy Holland Kerr is now counsel to the Law Office of John E. Ford in Irvine, California.

Craig B. Merkle has joined the firm of Goodell, DeVries, Leech & Gray in Baltimore.

James A. Pope has recently completed his first session as a representative to the North Carolina General Assembly.

S. William Richter has been elected to partnership in the firm of Reed Smith Shaw & McClay. He is resident in the firm's Philadelphia office and his practice is devoted to business and finance matters, with an emphasis in banking law and municipal finance law.

Susan Peters Rosborough has been named associate counsel at Allstate Insurance Company in Northbrook, Illinois.

Michael L. Ward has joined Showtime Networks, Inc. in New York City.

Steven M. Zeidman is now acting assistant professor of clinical law at the New York University School of Law.

Class of 1982

Josie A. Alexander is now an associate at Jackson, Lewis, Schnitzler & Krupman in Atlanta.

Wade E. Ballard has joined the firm of Edwards, Ballard, Bishop, Sturm & Clark in Spartanburg, South Carolina.

Gary L. Beaver has left the U.S. Marine Corps, and is now with the firm of Patton, Boggs & Blow in Greensboro, North Carolina.

Bernard H. Friedman has formed the firm of Talmadge & Friedman in Seattle. The firm concentrates on appellate practice, state and local government law, and securities litigation.

Peter W. Goodwin has been named counsel to Mobil Exploration & Producing, U.S., Inc. in Houston.

Fern E. Gunn was recently appointed chair of the Minorities in the Profession Committee of the North Carolina Bar Association. She is employed as a deputy counsel at the North Carolina State Bar in Raleigh.

Richard R. Hofstetter was a panelist at a seminar on "International Trade: Advising Export Clients and Protecting Clients Abroad" in October in Indianapolis. The semi-

nar was sponsored by the Indiana Continuing Legal Education Forum.

James L. Lester has moved to Greensboro, North Carolina to practice with Patton, Boggs & Blow.

Ann L. Majestic has been named a partner in the Raleigh firm of Tharrington, Smith & Hargrove, where she specializes in education law.

Robert W. Mann, Jr. became a regional attorney for the National Association of Securities Dealers, Inc. in Atlanta in December 1989. He prosecutes securities violations internally for the NASD, a self-regulatory agency.

Elizabeth Roth has joined the Palo Alto, California firm of Wilson, Sonsini, Goodrich & Rosati as a part-time litigator with a labor and employment specialty.

Steven A. Schneider has joined the firm of Johnson & Gibbs in Dallas.

A. Bradley Shingleton has become an associate at the Washington, D.C. office of McGuire, Woods, Battle & Boothe.

Sharon Powers Sivertsen is now a senior attorney with the Federal

Deposit Insurance Corporation in Washington, D.C.

I. Scott Sokul is serving as political and field director for Florida State Senator George Stuart (D-Orlando) who is running for the Democratic nomination for governor.

M. Jayne Wright is now an assistant attorney general in the Office of the Attorney General in Baltimore.

Class of 1983

William A. Blancato has been named a partner in the law firm of Hendrick, Zotian, Cocklereece and Robinson in Winston-Salem, North Carolina.

Angela D. Davis has become associated with the firm of Winstead, McGuire, Sechrest & Minick in Houston.

Robert P. Fletcher has become a partner in the Washington, D.C. office of Hopkins & Sutter.

Seth L. Forman has become an associate at Keogh and Butler in Agana, Guam.

Daniel M. Gray is now an attorney for the United States Securi-



Federal Bar Association Banquet

The Honorable Robinson O. Everett '59, Chief Judge of the Military Court of Appeals (third from left), met with some of his former Duke Law students during the Federal Bar Association Annual Convention in August. From left are: Cleveland C. Gambill '75, Assistant U.S. Attorney in Louisville; Garrett E. Brown, Jr. '68, Federal District Judge in Newark; Judge Everett; Ira Sandron '75, of the Immigration & Naturalization Service; Ned P. Everett '51, a realtor in Arlington, Virginia; Amos T. Mills '72, now an FBI agent; and Robert C. Mueller '71, who is on the staff of the Court of Military Appeals.

ties & Exchange Commission in Washington, D.C.

Eileen S. Hoffner has joined the Office of Steven S. Siegel in Cedarhurst, New York.

Sally Sharp Reilly has become a corporate attorney for Southern Progress Corporation in Birmingham, Alabama, a subsidiary of Time, Inc. Magazine Company.

Per Haakon Schmidt, an attorney in Copenhagen, Denmark, has published *Teknologi og immaterialret*, an intellectual property text.

Stephen L. Spector has joined the MaceRich Company in Santa Monica, California.

Kathleen A. Wechter is now with the New York City firm of Fried, Frank, Harris, Schriver & Jacobsen.

John R. Welch has joined Chevron Overseas Petroleum, Inc. in San Ramon, California.

Rebecca Strawn Wilson is now an attorney in the Office of the Chief Counsel, Employee Benefits & Exempt Organizations of the Internal Revenue Service in Washington, D.C.

David A. Zalpb has been named a shareholder in the firm of Moore, Farmer, Menkhaus & Juran in Boca Raton, Florida.

Class of 1984

Doron D. Bard is serving as vice consul to the United States Embassy in Oslo, Norway.

Michael F. Bartok has been named associate general counsel of Paramount Communications, Inc. in New York City.

Jeffrey D. Butt has joined the Tampa, Florida firm of Shear, Newman, Hahn & Rosenkranz.

David R. Cohen has joined the Treasury Department of the Internal Revenue Service in Miami.

Amy M. Flick has become an associate at Macey, Wilensky, Cohen, Wittner & Kessler in Atlanta.

Jonathan A. Gruver has become an associate in the labor and employment law section of Porter, Wright, Morris & Arthur in Washington, D.C.

John H. Jameson is pursuing his M.B.A. degree at Harvard Business School.

Diane E. Katz has joined the firm of Moot & Sprague in Buffalo, New York.

Paul J. Levenson is now with the firm of Widett, Slater & Goldman in Boston.

Karen Brumbaugh Mozenter has been named associate for legal affairs at The Ohio State University.

Peter Petrou is with the firm of Cuyler, Burk & Matthews in Morristown, New Jersey.

Julie Meister Pinke is now a sales specialist with West CD-ROM in New York City.

Briget M. Polichene was recently promoted to deputy general counsel of the United States House Banking Committee.

David P. Rhodes has become an associate in the Tampa, Florida law firm of Glenn, Rasmussen, Fogarty, Merriday & Russo.

Steven M. Samaba has been named a partner in the Tampa, Florida firm of Annis, Mitchell, Cockey, Edwards & Roehn.

Captain Jeffrey A. Stonerock is now a trial attorney in the Contract Appeals Division of the U.S. Army, stationed in Falls Church, Virginia. He received his LL.M. degree in 1989 from the Army Judge Advocate General School at the University of Virginia.

David T. Thuma is now practicing in Albuquerque, New Mexico with the firm of Poole, Tinnin & Martin.

Robert L. Toms, Jr. has been named a partner in the Los Angeles firm of Lewis, D'Amato, Brisbois & Bisgaard.

Michael H. Weed has joined the firm of Aufmuth, Fox & Baigent in Palo Alto, California.

Class of 1985

Lynn E. Barber was elected to a three-year term on the Board of Directors of the North Carolina Civil Liberties Union. She also serves as president of the Wake County Chapter of the NCCLU.

Michael J. Barnes has joined Morgan Stanley & Co., Inc. in New York City.

Janet Ward Black has become a partner in the firm of Wallace, Whitley, Pope & Black in Salisbury, North Carolina.

Allan A. Capute has joined the Office of the General Counsel of the Securities & Exchange Commission in Washington, D.C.

John L. Charvat, Jr. has been promoted to major in the United States Army.

Anne W. Claussen has joined the Office of the Treasurer of the State of Florida in Tallahassee.

Jonathan B. Ealy is now with the Anchorage, Alaska office of Heller, Ehrman, White & McAulliffe.

Randy M. Friedberg has become an associate at Townley & Updike in New York City, where he specializes in trademark and copyright counseling and litigation.

Charna L. Gerstenhaber has joined the firm of Brown & Wood in New York City.

Paul M. Green is an attorney for North Carolina Prisoner Legal Services, Inc. in Raleigh.

Arthur J. Howe has recently co-authored the "Failing Bank Litigation" chapter for the 1989 supplement to *Advising Illinois Financial Institutions* published by the Illinois Institute for Continuing Legal Education.

Eric A. Isaacson is now an associate with Milberg Weiss Bershad Specthrie & Lerach in San Diego, California.

Steven R. Lazar has joined the legal department of Ciba-Geigy Corporation in Research Triangle Park, North Carolina.

Gerald A. Lee is an associate with the firm of Berlack, Israels & Liberman in New York City.

Major John J. Michels, Jr. has been assigned to the Judge Advocate General School at Maxwell AFB in Montgomery, Alabama, teaching administrative and labor law.

Eric J. Murdock joined the Washington, D.C. office of Hunton & Williams in November 1989 as an associate on the antitrust and trade regulation team.

Marshall D. Orson has joined Turner Broadcasting System, Inc. of Atlanta as an entertainment lawyer.

Steven M. Solinga has joined CPC International, Inc. in Englewood Cliffs, New Jersey as a tax attorney.

Peter A. Thalheim has opened his own law practice in Old Greenwich, Connecticut.

Mary L. Woodbridge was elected managing director at the investment bank of Merrill Lynch in New York City.

Class of 1986

Charles E. Adams is now a patent attorney for United Technologies Carrier Corporation in Syracuse, New York.

David M. Allen has joined the recently-established firm of Schlossberg & Associates, P.C. in Berwyn, Pennsylvania, where he specializes in international corporate and commercial law.

Daniel B. Bogart has joined the firm of Vincent, Chorey, Taylor & Feil in Atlanta.

Richard S. Boulden has recently become associated with the Durham firm of Newsom, Graham, Hedrick, Bryson & Kennon.

John D. Briggs, Jr. is a real estate attorney in the Dallas office of Hopkins & Sutter. He will begin teaching in an adjunct capacity at Southern Methodist University School of Law in 1990 in the area of civil rights legislation or real estate property security.

Kathleen J. Byrnes is now a full-time visiting legal writing instructor at the School of Law at Villanova University.

Susan Bysiewicz has joined the Hartford, Connecticut office of Robinson & Cole.

Captain Jerone C. Cecelic is now stationed in the 7th CID Region in Seoul, Korea.

David F. Cooper is with the Atlanta firm of Holt, Ney, Zatzoff & Wasserman.

Bharat Dube is now a consultant with the World Intellectual Property Organization in Geneva, Switzerland, a specialized agency of the United Nations.

Pamela J. Gronauer has joined the Atlanta office of Jones, Day, Reavis & Pogue.

William J. Kabnk has joined West Publishing Company's research and development team in St. Paul, Minnesota.

Terry R. Kane is now assistant staff judge advocate to the Commandant of the Marine Corps for Operational Law.

Carl D. Kinsky has been named an assistant public defender in St. Louis, Missouri.

Mary-Elise Long is now an associate at the Washington, D.C. office of Fried, Frank, Harris, Shriver & Jacobson.

Jessica Essex Lorden has joined the employment litigation division of IBM Corporation in White Plains, New York.

Michael M. Marnell is pursuing his Ph.D. degree in the Philosophy Department at Duke University.

William D. Matthews is an associate at the Atlanta firm of Greene, Buckley, DeRieux & Jones.

Gary Myers is now a professor at the University of Mississippi School of Law.

Chauncey G. Parker, IV is now with the Office of Prosecution—Special Narcotics in New York City.

Barry G. Pea has recently been named assistant counsel in the corporate section of the legal department of Burroughs-Wellcome Company in Research Triangle Park, North Carolina.

Mark D. Reeth has become an associate in the Newark, New Jersey firm of Hellring Lindeman Goldstein Siegal Stern & Greenberg.

Patrick J. Rooney, II has joined the Minneapolis firm of Rider, Bennett, Egan & Arundel.

Caren A. Senter has been named associate counsel to The Travelers Companies of Hartford, Connecticut.

James D. Smith is now an associate at Arnold, White & Durkee in Houston.

Lisa Deitsch Taylor is now with the firm of Shanley & Fisher in Somerville, New Jersey.

Richard P. Virnig has become an associate at the Houston firm of Hirsch, Glover, Robinson & Sheiness, where he specializes in civil litigation.

Anne T. Wilkinson has joined the firm of Hollowell & Silverstein in Raleigh.

Class of 1987

David J. Berger has become an associate at the Palo Alto, California firm of Wilson, Sonsini, Goodrich & Rosati.

Karen A. Besok has joined the firm of Smith, Somerville & Case in Baltimore as an associate.

Regina M. Blus is now with the firm of Steinhart & Falconer in San Francisco.

Deborah Dunn Brown is now an associate with Alston & Bird in Atlanta.

Richard W. Brown is an associate at Smith, Gambrell & Russell in Atlanta.

ToNola D. Brown has become an associate at the Greensboro, North Carolina firm of Nichols, Caffrey, Hill, Evans & Murrelle.

Reginald J. Clyne is with the Coral Gables, Florida firm of George, Hartz & Lundeen.

Frank E. Derby is now with the New York City firm of Christy & Viener.

Pierre R. Destexhe has joined the Los Angeles office of Seyfarth, Shaw, Fairweather & Geraldson as an associate.

R. Wilson Freyermuth, Jr. has become an associate in the Raleigh office of Womble Carlyle Sandridge & Rice.

James Alec Gelin has moved to Atlanta and is an associate in the corporate department of Arnall, Golden & Gregory.

David Goren is now with the firm of Shulte, Roth & Zabel in New York City.

Susanne Ingeburg Haas is counsel for Honeywell, Inc. in the corporate headquarters in Minneapolis.

Robert E. Harrington is an associate at Wilmer, Cutler & Pickering in Washington, D.C.

Veronique J. Heim is now an associate at the Los Angeles firm of Dumas & Taron.

Timothy R. Johnson recently completed the requirements for the

degree of Master of Personnel and Employee Relations at the University of South Carolina, graduating first in his class. He has joined Minneapolis-based General Mills, Inc. as a human resource management junior executive resident in the Toledo, Ohio office.

Kevin M. LeWinter has become an associate in the Phoenix firm of Bess & Dysart.

Susan Gwin Ruch is an associate with Allman Spry Humphreys Leggett & Howington in Winston-Salem, North Carolina, where she practices in the areas of business law and commercial real estate.

Junya Sato recently returned to Tokyo, Japan and has rejoined Furness, Sato & Ishizawa as a partner, after spending a year and a half in practice in New York City.

Class of 1988

Susan L. Beesley is with the firm of Latham & Watkins in Washington, D.C.

Amy Kincaid Berry is now an associate at the Los Angeles firm of Hill Wynne Troop & Meisinger.

Mark G. Califano has become an associate at the Washington, D.C. firm of Dunnells, Duvall, Bennett & Porter.

Jean-Daniel Chablais has joined the Cleveland, Ohio office of Jones, Day, Reavis & Pogue.

Kevin M. Connelly has become an associate at Oppenheimer, Wolff & Donnelly in St. Paul, Minnesota.

Margaret A. Force has joined the Raleigh firm of Pinna, Johnston, O'Donoghue & Burwell.

Charles G. Francis is now an assistant United States attorney for

the Middle District of North Carolina in Greensboro.

Theresa A. Newman Glover has recently joined the Raleigh office of Womble Carlyle Sandridge & Rice.

Paul E. Harner has joined the Columbus, Ohio office of Jones, Day, Reavis & Pogue.

George R. James is now with the Atlanta firm of Powell, Goldstein, Frazer & Murphy.

Heimerick G. Jansen has joined the firm of Van Anken, Verstegen & Esser in Rotterdam, The Netherlands.

Enrique R. Jelensky has joined the firm of Patton, Moreno & Asuat in Panama City, Panama.

Mark Labaton has become an associate in the Washington, D.C. office of Dewey Ballantine Bushby Palmer & Wood.

Joseph S. Larisa, Jr. has joined the firm of Edwards & Angell in Providence, Rhode Island.

Andrew A. Martin has joined the Tulane Medical Center in New Orleans as a resident in pathology, subspecializing in forensics, toxicology and environmental medicine. He has been appointed to the Louisiana State Legislative Committee on AIDS to draft state AIDS legislation.

Christa A. McGill has joined the Office of the General Counsel of the Department of Health & Human Services in Baltimore.

Mary Reddick Moses has joined the Education Section of the Civil Rights Division of the United States Justice Department.

Philip M. Nichols has become an associate with Ropes & Gray in Boston.

Virginia A. Noble is now an attorney with the Equal Employment Opportunity Commission in Washington, D.C.

Kwasi Nyamekye has joined the firm of Beckley, Singleton, Delaney, Jemison & List in Las Vegas.

Barbara Ida Patterson has recently joined the Atlanta firm of Arnall, Golden & Gregory.

John D. Prather is now with the firm of Young, Moore, Henderson & Alvis in Raleigh.

Emily D. Quinn has joined the



Alumni renew friendships during Law Alumni Weekend '89.

firm of Byrnes & Keller in Seattle.

Lisa R. Reid has joined the firm of Sullivan & Cromwell, resident in the London office.

Rawn H. Reinhard has become an associate in the Chicago office of Skadden, Arps, Slate, Meagher & Flom.

Deborah E. Richardson is an associate at Emmet, Marvin & Martin in New York City.

Michael P. Scharf is now an attorney-adviser in the Office of the Legal Adviser of the U.S. State Department in Washington, D.C.

Stephen J. Segreto has joined the Washington, D.C. office of Morgan, Lewis & Bockius.

Sandra J. Seaton is an associate at Poe, Hoof & Reinhardt in Durham.

Michael C. Sholtz has joined the firm of Wolf, Block, Schorr & Solis-Cohen in Philadelphia.

Howard A. Skaist has become an associate at the Portland, Oregon firm of Stoel Rives Boley Jones & Grey.

Christopher J. Supple has joined the firm of Hale & Dorr in Boston.

Taylor D. Ward has returned from a year of study at Tokoku University in Sendai, Japan under a Fulbright scholarship. He is now an associate at Webster & Sheffield in New York City.

Susan K. Weaver is an associate with the firm of Lorenz, Alhadeff, Lundin & Oggel in San Diego, California.



Barbeque from Bullock's is enjoyed at Law Alumni Weekend '89.

Personal Notes

'69—*Norman E. Donoghue, II* was married to Margaret O'Donnell on September 23, 1989. They make their home in Philadelphia, where Ned is a partner at Dechert Price & Rhoads.

'71—*Ted A. Schumacher* was married on February 14, 1989. He and his wife, Yvonne, live in Roswell, Georgia.

—*David L. Vaughan* was married on April 7, 1989. He and his wife, Barbara, reside in Washington, D.C.

'73—*William L. Kurtz* announces the birth of his fourth child and second son, David Thomas, born on March 18, 1989.

'75—*William J. Trull, Jr.* recently married S. Kim Bogue. They make

their home in Asheville, North Carolina.

—*Paul M. Wright* and his wife, Lisa, are proud to announce the birth of their second child, a son named Josiah, born on April 29, 1989.

'76—*Aron M. Schwartz* announces the birth of his second child, Daniel, born in March 1989.

'77—*Edward T. Hinson* and his wife, Dottie, announce the birth of their second child, Rebecca Elizabeth, born January 10, 1989.

'78—*Jana Banaban Cogburn* announces the birth of her first child, Cara Anne, born on September 11, 1989.

—*James T.R. Jones* and his wife, Jane, announce the birth of their first child, Jennifer Lee, born on May 19, 1989.

—*Linda A. Malone* and *Rodney A. Smolla* are happy to announce the birth of their daughter, Erin Angeline Malone Smolla, on May 21, 1989.

—*Edward P. Tewkesbury* and his wife, Fran, are pleased to report the birth of their first child, Edward, Jr., born on October 21, 1989.

'79—*Carol Gray Caldwell* and her husband, Harry, are pleased to announce the birth of their first child, a daughter named Jenna Gray Caldwell, born August 14, 1989.

'80—*G. William Brown, Jr.* and his wife, Amy, announce the birth of their second daughter, Lauren.

—*Colleen C. McCarthy* was married on August 20, 1988 to Kevin Boozel. They have started a small, gourmet food products business, while Colleen continues to practice law full-time in Erie, Pennsylvania.

—*Alan M. Mitchel* and *Celeste Norris Mitchel* are the proud parents of their second child, a daughter named Elizabeth Anne, born September 15, 1989.

'81—*Cynthia Leigh Wittmer* announces the arrival of a daughter, Joncie Kimball Wittmer Sarratt, born June 22, 1989.

'82—*Gary L. Beaver* and his wife, Jane (Duke '79), are the proud parents of their second child and first son, Alexander Lee, born on June 26, 1989.

—*Nina F. Collins* was married to Charles L. Carey, II on September 23, 1989. They will continue to re-

side in Traverse City, Michigan where Nina is an attorney with Blakeslee, Chambers, Peterson, Dalrymple & Christopherson.

—*David S. Felman* was married to Judy Altobell on December 10, 1988.

—*Steven A. Schneider* was married to Kathy Ellen Minor of Austin, Texas on February 12, 1989.

'83—*William A. Blancato* and his wife, Eileen, proudly announce the birth of their daughter, Lynda, on January 31, 1989.

—*Seth L. Forman* was married to Cristina Rusiana on June 26, 1989. They make their home in Agana, Guam.

—*Deborah H. Hartzog* and her husband, Fulton, are proud to announce the birth of their son, Joshua Hylton, on March 18, 1989.

—*Christopher C. Kerr* and his wife, Karen, are pleased to announce the birth of their first child, Kelsey Elizabeth, on October 3, 1989.

—*Nora M. Jordan* and *W. Allen Reiser* announce the birth of their second child, Mary Campbell Reiser, in September 1989.

—*John Randolph Prince* and *Rebecca Davis Prince* are the proud parents of a son, John Carter, born September 20, 1989.

'84—*Michael F. Bartok* was married to Patricia Hayashi on October 14, 1989. They reside in New York City.

—*Duane M. Geck*, and his wife, Terri, announce the birth of their first child, Kevin Douglas, born on December 5, 1988.

—*Paul A. Kramer* announces the birth of a daughter, Ariel Mairi, on April 15, 1989.

—*Patricia Beaujean Lehtola* and her husband, Jouni, are the proud parents of Carl Marcel, born on August 10, 1989.

—*Lee D. Mackson* was married to Andrea Chodorow on June 22, 1989.

—*Briget M. Polichene* was married to Chuck Chamness on August 26, 1989. They make their home in Washington, D.C.

—*Wilson A. Schooley*, and his wife,

Janine, are happy to announce the birth of their daughter, Taylor Samara, on May 11, 1989.

—*Richard S. Smith, Jr.* was married to Jeanne M. Galvin (Duke '82) on October 7, 1989. Richard is an associate at the Hartford, Connecticut firm of Murtha, Cullina, Richter & Pinney.

'85—*Lynn M. Gilleland* was married to John C. Hawkins on July 1, 1989. They make their home in Winter Park, Florida.

—*Elizabeth Hoffman Liebschutz* and *David S. Liebschutz* happily announce the arrival of a daughter, Jennifer Ellen, born on January 27, 1989.

—*Loreen M. Marcil* was married to Christopher R. Holmes in Washington, D.C. on October 28, 1989.

—*John J. Michels, Jr.* announces the birth of a second son, Evan Lee, born October 13, 1988.

—*Belle Meltzer Toren* and her husband, Aviv, are pleased to announce the birth of their second son, Yuvan Ronen, on November 8, 1988.

'86—*Thomas F. Blackwell* and his wife, Lisa, are proud parents of a second child, Jillian Meredith, born on November 16, 1989.

—*William J. Kabnk* was married to Michelle Larson on September 18, 1988. They make their home in Coon Rapids, Minnesota.

—*Nina R. Ledis* was married to David Cannon on October 14, 1989 in Philadelphia. They make their home in New York City, where Nina is an associate at Spengler Carlson Gubar Brodsky & Frischling.

—*Marcel H.R. Schmocker* announces the birth of a son, Michael Marcel, on June 25, 1989.

—*Jane G. Spillman* was married to Daniel J. Converse on April 15, 1989 in Bethesda, Maryland. They make their home in Vienna, Virginia. Jane is an associate at Hopkins & Sutter in Washington, D.C.

—*Peter B.B. Tobias* was married to Heather Craik in Toronto, Canada on October 28, 1989. Peter is practicing corporate law with Fraser & Beatty in Toronto.

—*Anne T. Wilkinson*, and her husband, Shrin, announce the birth of their first child, a girl named Nina Reilly Rajagopalan, born November 8, 1989.

—*Richard H. Winters* was married to Margaret W. Mohr on May 20, 1989 in Lake Forest, Illinois.

'87—*Pamela J. Hazen* and *William G. Maddox*, Class of 1988, were married on October 14, 1989. They make their home in Alexandria, Virginia. Pam is an associate at Thelen, Marrin, Johnson & Bridges; Bill is with Paul, Hastings, Janofsky & Walker.

—*Jasper A. Howard* and *Eve E. Noonberg* were married on September 9, 1989 in Baltimore, Maryland. They make their home in Washington, D.C., where Jasper is an associate at Covington & Burling, and Eve is an associate at Hogan & Hartson.

—*Cecilia C. Smith* was married to Timothy Glenn Schoenwalder on May 7, 1989 in Tallahassee, Florida, where they reside. C. C. is an associate at Hopping Boyd Green & Sams.

—*Amy F. Solomon* was married to Allen M. Hecht on August 17, 1989.

They make their home in Great Neck, New York.

—*Katherine A. Strozier* and *David A. Payne*, Class of 1988, were married on September 23, 1989 in Washington, D.C., where they make their home. Kathy is an associate at Dow, Lohnes & Albertson, and David is with Gibson, Dunn & Crutcher.

—*Sherri J. White* and *James E. Tatum, Jr.*, Class of 1989, were married on September 24, 1989 by her father, Bishop Frank O. White, in Freeport, New York. They make their home in Bowie, Maryland. Sherri has been with the Suffolk County, New York District Attorney's Office for the past two years. Jim is an associate with the firm of Howrey & Simon in Washington, D.C.

'88—*Amy L. Kincaid* was married to Kenneth Berry on December 31, 1988.

—*William G. Maddox* and *Pamela J. Hazen*, Class of 1987, were married on October 14, 1989. They make their home in Alexandria, Virginia. Bill is an associate at Paul, Hastings, Janofsky & Walker; Pam is with

Thelen, Marrin, Johnson & Bridges.

—*David A. Payne* and *Katherine A. Strozier*, Class of 1987, were married on September 23, 1989 in Washington, D.C., where they make their home. David is an associate at Gibson, Dunn & Crutcher and Kathy is with Dow, Lohnes & Albertson.

—*Melissa A. Prien* and *James Walker, IV* were married on September 30, 1989 in San Francisco, where they make their home. Melissa is an associate at Pillsbury, Madison & Sutro and James is with Cooley & Godward.

'89—*Deborah Stone* and *Daniel Grossman* were married on August 12, 1989 in Atlanta, where they reside. Deborah is an associate at Long, Aldridge & Norman; Daniel is with Powell, Goldstein, Frazier & Murphy.

—*James E. Tatum, Jr.* was married to *Sherri J. White*, Class of 1987, on September 24, 1989 in Freeport, New York. They make their home in Bowie, Maryland. Jim is an associate at Howrey & Simon in Washington, D.C.

Obituaries

Class of 1930

Lester A. Smith of Raleigh died on February 9, 1989.

Class of 1931

Robert B. Billings, who was retired and living in Durham, died on September 16, 1989.

Class of 1932

M. Emmett Ward, Jr. died on December 3, 1989 in Vicksburg, Mississippi, where he had practiced law since 1932, most recently as a senior attorney with the firm of Ward, Martin, Hassell, Jones and Williford. He was a member and former regent of the American College of Probate Counsel and a member of the American College of Trial Lawyers.

Mr. Ward was a member and past president of the Warren County Bar Association. He served on the board of directors of the Vicksburg YMCA, and was president of the Vicksburg Junior and Senior Chambers of Commerce. He was also a trustee of the Vicksburg Hospital Foundation and a former chairman of the board of directors of Merchants National Bank. Mr. Ward is survived by his wife, Ellena; a daughter, Mary Ward Slack of Mountain View, California; a son, *M. Emmett Ward III* '67 of New York City; and one grandchild.

Class of 1936

Edwin C. Kellam, of Norfolk, Virginia, died on November 18, 1989. He was a partner in the firm

of Kellam, Pickrell, Cox and Tayloe. Mr. Kellam was one of the principal organizers of the Princess Anne Historical Society and the William and Mary Concert Series in Norfolk. He was active on the boards of Virginia Wesleyan College, the Virginia Museum of Marine Science and the Virginia Beach Arts Center.

Mr. Kellam is survived by his wife, Helen Owen Kellam; a daughter, Sarah, of Norfolk; two sons, Severn of Norfolk, and Edwin, Jr. of Virginia Beach; four brothers; and five grandchildren.

Murry A. Miller died on December 17, 1988 in Asheville, North Carolina.

Walter M. Upchurch, Jr., who was retired and living at the Methodist Retirement Home in Durham, died on January 22, 1989.

Class of 1937

Capt. Leonard R. Hardy died of cancer on January 10, 1988 in Virginia Beach.

Basil L. Whitener died on March 20, 1989 at his Gastonia, North Carolina home. Mr. Whitener was the state's 10th District congressional representative from 1957 to 1969. A veteran of the U.S. Navy, he also served in the North Carolina House for two years before World War II. He was the solicitor of the 14th Judicial District from 1946 to 1956 and practiced law in Gastonia. Mr. Whitener is survived by his wife, Harriet, and four children.

Class of 1941

Henry H. Sink died on September 20, 1989. He was a partner in the Raleigh firm of Parker, Sink, Powers, Sink & Potter. Mr. Sink was a past president of the Wake County Bar Association and was instrumental in establishing the Legal Aid Society of Wake County.

Mr. Sink is survived by his wife, Susan D. Sink; three daughters, Rosemary S. Unsworth of Raleigh, Susan S. Burgess of Port St. Lucie, Florida, and Honora S. Newell of Charlotte; two sons, Henry, Jr. and Robert, both of Raleigh; and two grandsons.

Class of 1948

Richard A. Leuthold died on March 7, 1989 after a lengthy illness. He served in the U.S. Navy during World War II, and spent three years as corporate counsel for Firestone Tire & Rubber Co. In 1952, he returned to his hometown of Warren, Pennsylvania and established a law practice, which he continued until his death. Mr. Leuthold is survived by a sister, Phyllis Davis, of Warren, a niece, a nephew, a grand-niece and a grand-nephew.

Ray Moody Seigler died on February 3, 1989 in Columbia, South Carolina after an eight-month illness. He practiced with the Columbia firm of Seigler, Earle and Ellsworth until his death. He was a deacon of his Baptist church and a member of the South Carolina Baptist

Ministries for the Aging from 1983 to 1987. He is survived by his wife, Mary Ann, two sons, a daughter, two brothers, a sister, two step-brothers, and two step-sisters.

Class of 1951

James R. Barfield died on March 19, 1989. He retired in 1988 as a partner in the Jacksonville, Florida law firm of Cowles, Hayden, Facciolo, McMorrow & Barfield. He is survived by his wife, Florence, a son, two daughters, three sisters and two grandchildren.

Class of 1960

Thomas H. Lee, who recently retired as a Durham County superior court judge, died on Tuesday, November 14, 1989 after a lengthy illness. Elected in 1966 to the district court bench, he ascended to the superior court in 1974, and in 1977 became Durham's senior resident superior court judge. Although he officially retired in January of 1989, Judge Lee continued to serve as an emergency judge until his death.

A retired captain in the U.S. Army, Judge Lee was vice president of the Conference of Superior Court Judges in 1986 and 1987 and helped to establish Durham's Dispute Settlement Center. He is survived by his wife, Ginny Jackson Lee of Durham; two sons, Thomas, Jr. and David, both of Durham; and a brother, J. Grover Lee, Jr. of Fayetteville.

Class of 1964

William T. Sims died of a stroke on August 14, 1988. He was owner and president of a travel agency in Deltona, Florida.

Class of 1971

Gregory A. Oppedal was killed in a two-car accident on September 30, 1989 in Carroll County, Maryland, near the Pennsylvania state line. Also killed were his two children, Erica, age 14, and Damon, age 12, and three other persons. His wife, Nancy, was severely injured in the accident, but is now recovering at the home of her parents in Illinois.

Since 1986, Oppedal had served as a senior vice president and head of the trust department of the Farmers Bank and Trust Company in Hanover, Pennsylvania. He was previously employed by the First Virginia Bank of Norfolk. Mr. Oppedal was a member of the Hanover Rotary Club, the United Way of York County, and the York County SPCA.

Other survivors include his parents, Charles and Jeraldine Phillips, and a sister, Jo Hubbard, of Springfield, Illinois. The family can be contacted through Ms. Christine Neri, Vice President & Trust Officer, Farmers Bank and Trust Company, 13 Baltimore Street, Hanover, PA 17331.

Class of 1981

Robert P. Press of Seattle died on July 17, 1989. He is survived by his parents and a sister.

Law School

John W. Halderman died in Durham on August 1, 1989 at the age of 81. Mr. Halderman came to Duke in 1960 as a senior research associate for the now inactive World Rule of Law Center. Although he retired in 1972, the following year he was named a scholar in residence at the Law School, where he continued to work daily for several years.

Mr. Halderman worked for the U.S. State Department for twenty-three years, where he helped to formulate the United Nations charter. He served as a legal adviser to the U.S. delegation to the U.N. General Assembly. He accompanied Eleanor Roosevelt, the American representative to the General Assembly and the Human Rights Commission's first chairwoman, to the first commission meeting in Geneva.

Mr. Halderman also served as a legal officer to the U.S. diplomatic mission in Berlin during 1953-54, as U.S. Consulate-General in Casablanca, Morocco in 1955-56, and as political officer at the U.S. Embassy in Ceylon (now Sri Lanka) from 1957 to 1958. He is survived by his wife, Eleanor Lonergan Halderman, and a son, Charles R. Halderman.

UPCOMING EVENTS

For more information on upcoming events, call the Law Alumni Office at (919) 489-5089.

Conference on Career Choices	March 2, 1990
Barristers Weekend	March 23-24, 1990
Board of Visitors Meeting	April 6-8, 1990
Commencement	May 13, 1990
Law Alumni Weekend '90	November 2-3, 1990

The following classes will celebrate their reunions in 1990:

Classes of 1944, 1945 and 1946 (joint reunion)	45th reunion
Class of 1950	40th reunion
Class of 1955	35th reunion
Class of 1960	30th reunion
Class of 1965	25th reunion
Class of 1970	20th reunion
Class of 1975	15th reunion
Class of 1980	10th reunion
Class of 1985	5th reunion

The Law Class of 1940 celebrated a joint 50-year reunion with the Classes of 1938 and 1939 in September 1989.



Members of the Classes of 1938, 1939 and 1940 celebrated their Half-Century Reunion in September 1989.

CHANGE OF ADDRESS

Name _____ Class of _____
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PLACEMENT OFFICE

Anticipated opening for third , second , and/or first year law students, or experienced attorney
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Employer's name and address _____

Person to contact _____
Requirements/comments _____
 I would be willing to serve as a resource or contact person in my area for law school students.
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ALUMNI NEWS

The *Duke Law Magazine* invites alumni to write to the Alumni Office with news of interest such as a change of status within a firm, a change of association, or selection to a position of leadership in the community or in a professional organization. Please also use this form for news for the Personal Notes section.

Name _____ Class of _____
Address _____
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News or comments _____

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