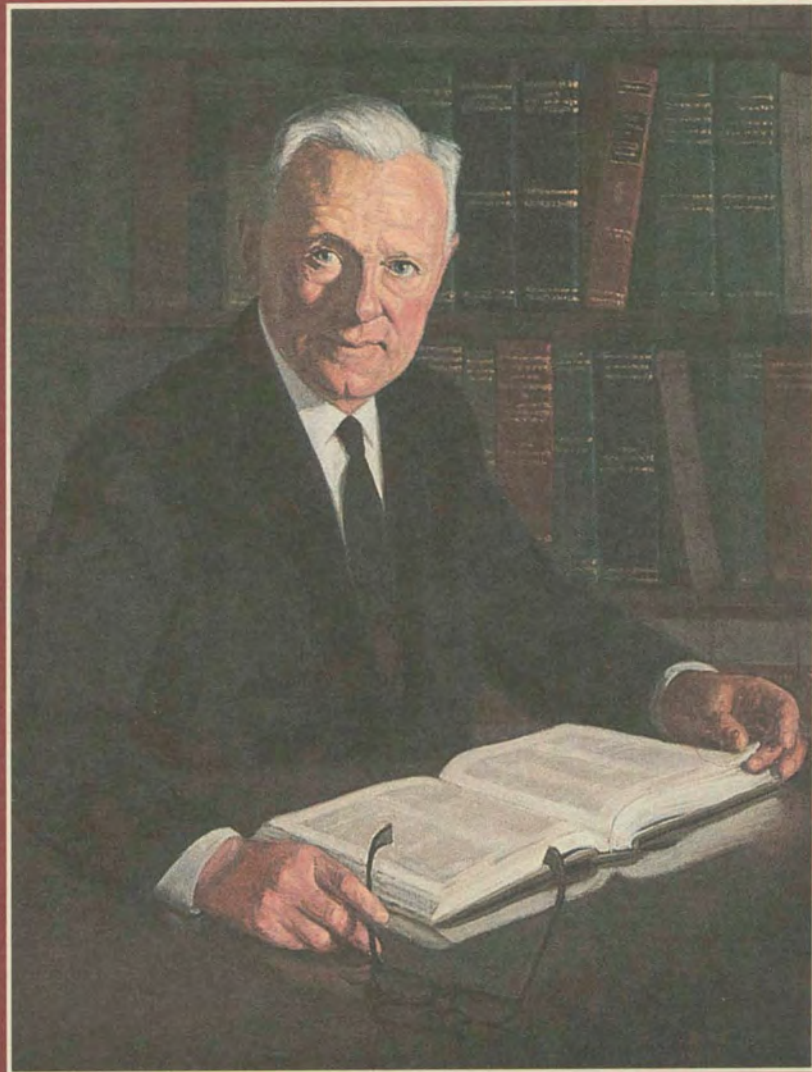


Duke Law Magazine

WINTER 1991



Building on Tradition

Duke Law Magazine

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About the Cover

This portrait of Dean Elvin R. (Jack) Latty was painted by Henry Rood, Jr. in 1967, and now hangs in the Law School's Moot Courtroom, which is named for Dean Latty. The portrait was presented by the Law Alumni Association on September 25, 1976, at a ceremony dedicating the Courtroom to the education of students of the law. See announcement of Latty Chaired Professorship on page 35.

Photo by Dan Crawford

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From the Dean

In these few pages, I want to share with you information about changes on the faculty, perspectives on admissions and placement of students and their concerns about freedom of speech, and the establishment of the Elvin R. Latty Chaired Professorship.

Faculty Changes

James E. Coleman, Jr., will join our faculty in the summer of 1991. He is a graduate of Harvard University undergraduate college and the Columbia University Law School. He has extensive professional experience, including a judicial clerkship, and service with a congressional committee, the Legal Services Corporation, and the Office of Legal Counsel for the U.S. Department of Education. Mr. Coleman will be leaving a partnership in a Washington, D.C. law firm to join our faculty. He has also performed a significant amount of pro bono publico services through his law firm, particularly in the area of capital proceedings. Mr. Coleman will teach civil procedure or criminal law in the first-year curriculum and a seminar on capital proceedings. He previously taught this seminar at Duke in the fall of 1989, and his students provided unusually high praise for their experience with Mr. Coleman.

As reported on page 43 of the *Magazine*, Professor Richard Schmalbeck left the Law School at the end of 1990 to be the Dean of the University of Illinois Law School at Champaign-Urbana. He has taught many of our alumni in areas of federal income taxation, and he has been an excellent colleague to us all. Given the reduction of my time to teaching and the departure of Professor Schmalbeck, we obviously must add someone to our faculty with a



James E. Coleman, Jr.

primary research and teaching interest in the field of federal income taxation.

Student Affairs

Admissions. The Law School's applications for the fall 1990 entering class increased by 22 percent to 4,300. This increased volume is consistent with, but larger than, the national trend of increased applications to law schools during the last three years. We admitted only 14 percent of these applicants to matriculate our class, and still incurred a modest over-enrollment. The admitted students had a LSAT median score of 44 (97th percentile of test-takers) and a median GPA of 3.63.

The number of LSAT test-takers this year is 15 percent ahead of last year, indicating that applicants to law schools may increase yet again. Aside from this indicator, we do not expect applications to law schools to drop significantly for several reasons. Legal education is graduate professional education, and it attracts a diverse set of applicants by age and backgrounds. Also, often persons view the best time to attend professional

schools to be when the economy is weak. Finally, with low enrollments in our colleges in science and technical fields, we will continue to see our recent graduates seeking graduate and professional school opportunities in the social sciences and humanities, law, and business.

Our LL.M. program for young foreign lawyers increases in popularity every year. We continue to experience ever larger numbers of inquiries and completed applications. Because American universities have an international comparative advantage in the quality of higher education, many of them are experiencing increased interest by foreign students. Excellent law schools in the United States are attractive to foreign lawyers because of the integration of United States business into the world economy, the expansion of American lawyers into foreign markets, the sophistication of American law, and the broad scope of our definition of the role of lawyers in business transactions.

Placement. The placement opportunities for law graduates are certainly less prevalent than they have been in recent years. Nevertheless, we had no fewer firms visit for on-campus interviews. The softness in the market was reflected in their providing fewer total offers to our students than in previous years. Clearly, many of our students will continue to find jobs through these on-campus interviews, but we expect more of them to seek jobs through their own initiatives. We are particularly concerned about the placement of our present students because many of them are incurring substantial educational loans on the assumption that their placement opportunities would be excellent and provide them with income streams to repay these loans.

Students and Free Speech. Over the last few years, universities have increasingly been requested to curb particular types of speech, or the circumstances or manner of their utterances. No conscientious president or dean of a school can ignore the issues raised by these requests.

The Dean's Office of the Law School has been recently asked by several law students to speak to the conditions of leafletting mailboxes and posting bulletin boards and other ways of expressing viewpoint on any number of subjects, whether related to the Law School directly or to general issues of politics on a much larger front. I thought that you would be interested in our response, and I have included here a portion of it.

... We understand [that it] may be useful [to provide] some expression of attitude from our office, reflecting a general view, rather than admonition or a reiteration or creation of guidelines. We agree that some attempt by us to share a sense of what we ought to consider in our relations with one another may be helpful.

Duke University does have two general rules affecting student expression and political actions during their residency at the University. These University-wide rules are addressed to certain forms of "disruptive picketing, protesting, or demonstrating," and to specific acts of "sexual harassment." They apply to professional and graduate students as well as undergraduate students. They are, however, quite limited and deliberately do not attempt to cover more than some fairly specific problems that the trustees felt required special attention. They do not reach a great deal that is left more to each person's good judgment, self-restraint, and civility. While it is more, this may collectively be called common sense behavior.

The question then may be to what extent we can continue to count on the notion of common sense. We have always counted on it a great deal in the past, and we hope that we may continue to do so. The Law School and the University are a much better place so long as we can.

Under such notions of common sense, we each should find suitable ways to express our points of view on any number of subjects in ways adequate to show our feelings honestly without, however, a spirit of meanness toward any of our classmates, and without a desire to do them harm or to make them feel disappointed for having elected to devote three years of their young adult lives at this School. Our inability to act without personal rancor or bullying would tend much more to stifle free speech here rather than advance it. It seems simply a matter of common sense that acts of intimidation, humiliation, or of spite and ill will do none of us any good.

When students have allowed standards of civility to slip seriously—in ways repeatedly hurtful to others entitled to share the campus equally with themselves—the response at some universities to such recurrently offensive activities has been more rules. Such requests have been made to us to make more rules, but this is not an undertaking welcomed by us or the faculty. We want you to know why this is so.

Regulation of student expression, whether of particular viewpoints, or even of the circumstances or manner of their utterance, is a very tricky undertaking. Such rules often convey their own intolerance without meaning to do so. However artfully drawn, they can chill a good deal of provocative expression that is surely altogether desirable, especially within a lively professional school. They also tend to convey the message that those who carry unpopular messages are being told to be quiet. The business to "judicialize" academic life and our relationships is often also a sign of mutual failure to operate within the common sense notions discussed earlier.

We are not prepared to tolerate destruction of property, threats to specific individuals, or other actions that threaten one's sense of personal safety. We do not believe that any student would disagree that these are utterly out of bounds. Beyond this, we need to maintain common sense notions of civility, and not meanness or intimidation, in our expression and the

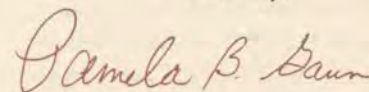
manner of communication to one another. Our failure to do so will inevitably hurt all of us by making this a much diminished environment in which to pursue our individual educational aims.

Importantly, unlike many public universities, neither Duke University nor the Law School has adopted written rules or policies designed to maintain civility without abridging First Amendment freedoms. We continue to pursue equality of access to the educational opportunities on our campus through discussions that we hope will enable us to maintain a lively and cohesive educational community.

Elvin R. ("Jack") Latty Chaired Professorship

As reported at page 35 of the *Magazine*, we announced the establishment of the Latty Chaired Professorship during this fall's alumni weekend. No finer academic acknowledgment could be made to the contributions that Jack Latty made to the Duke University Law School. Few persons in legal education have ever achieved more in behalf of their institution than did he. Because so many alumni of the Law School were recruited by him to Duke, or aided by him with scholarships or personal advice, it was particularly appropriate that this chaired professorship was established by the personal gifts of over 157 alumni of the School. I warmly thank you for your generosity to the School and to the memory of Jack Latty.

Sincerely,



Pamela B. Gann
Dean

Forum

Drugging the Federal Courts

Sara Sun Beale



Professor of Law, Duke University. Professor Beale has been at Duke since 1979. Her principal academic interests are in the field of criminal law and procedure. This article is a revised version of a memorandum to the Federal Courts Study Committee for which Professor Beale is an associate reporter.

One of the most dramatic and undesirable consequences of the federal drug program has largely escaped notice. The current federal drug strategy has strained the federal courts to the breaking point and will soon disrupt their core functions. This crisis is the result of misdirecting federal funds to support federal rather than state drug prosecutions even when there is no need for the specialized resources of the federal system. The federal courts are becoming unintended victims of the Administration's war on drugs.

For 200 years the core functions of the federal courts have been interpreting federal laws and declaring federal rights. The federal courts now specialize in complex civil litigation, which often spans state lines. With approximately 600 trial judges nationwide, the federal judicial system performs a distinctive function not shared by the much larger state judicial systems.

The small federal judicial system is already being inundated by drug prosecutions, and there is a tidal wave of additional cases just over the horizon. As the overwhelmed federal courts perform a necessary triage, criminal cases will generally receive priority. All civil litigants—from corporations to taxpayers to civil rights plaintiffs—will find that the federal courthouse is, as a practical matter, closed to them. This will be a real blow to business litigants, for whom the federal courts have long been the preferred forum.

Current Criminal Caseload and Trends

A review of the caseload data reveals that the federal courts are at a crucial turning point. The criminal caseload has expanded rapidly in the last decade, and all available evidence points to the continuation and acceleration of that expansion. Absent an offsetting reduction in the civil caseload or a substantial increase in the size of the federal courts, the growth of the criminal caseload will soon begin to overwhelm the resources of the federal courts.

The Size and Makeup of the Criminal Caseload. The most significant fact that emerges from a review of the data concerning the federal courts' criminal docket is the meteoric increase in drug cases in the 1980s,¹ a trend that appears likely to accelerate as a result of the Anti-Drug Abuse Act of 1988, P.L. 11-690, 102 Stat. 4181. Between 1980 and 1988, the number of federal drug cases increased 229 percent. Cases

The current federal drug strategy has strained the federal courts to the breaking point and will soon disrupt their core functions.

involving marijuana are up almost 400 percent. Cases related to nonprescription drugs, such as heroin and cocaine, are up 260 percent. Drug cases have risen more dramatically than any other type of case in the federal system. Between 1980 and 1988 drug cases increased from eleven to twenty-four percent of all federal criminal cases.

Even these figures considerably understate the importance of drug prosecutions, since they tend to consume far more resources than nondrug cases. Drug cases typically involve multiple defendants. Detention hearings and motions to suppress are more common in drug than nondrug cases. Moreover, while drug cases in 1988 accounted for only twenty-four percent of criminal filings, they accounted for forty-four percent of the criminal trials and roughly fifty percent of the criminal appeals.

Absent some changes of direction by Congress, the increase in drug prosecutions will continue and indeed accelerate because of the 1988 appropriation of funds to hire additional prosecutors and to augment the budgets of the FBI and DEA.² In light of these appropriations, the Judicial Conference estimates that by 1991 drug case filings will increase from twenty to fifty percent over the 1988 levels.³

The number of nondrug cases in the system has also grown in the last decade, though not as dramatically as drug cases. Between 1980 and 1988 the number of nondrug criminal cases rose thirty-four percent. There is reason to believe that the character of the nondrug cases is changing as well, with an increase in complex prosecutions that tend to consume more judicial resources.⁴

Impact of the Growth in the Criminal Caseload. Although federal civil filings still far outnumber federal criminal filings, the impact of the projected increases in criminal filings will be profound. Criminal cases are far more likely to go to trial than civil cases. In 1988, for example, there were trials in almost eighteen percent of the criminal cases that were terminated, but only five and one-half percent of the civil cases that were terminated. Moreover, because of the restrictions imposed by the Speedy Trial Act,⁵ criminal cases take priority over civil cases on the trial calendar. The pressure to prepare criminal cases for trial within the speedy trial deadline also means that pretrial proceedings in criminal cases must often take priority over civil cases.

Absent congressional action, the dramatic increase in federal criminal filings will soon begin to overwhelm the resources of the federal courts. It seems likely that the initial consequence will be a rapid erosion of the resources available for civil cases. In fact, the Federal Courts Study Committee received reports from judges and prosecutors in districts with heavy drug caseloads predicting that in the very near future those districts will be unable to try any civil cases.⁶

Proposals

Additional Appropriations. Additional appropriations are needed immediately to enable the federal courts to deal vigorously and effectively with their greatly enlarged criminal caseload. The resources of the federal courts have not kept up with the courts' expanding responsibilities. The situation is urgent. Congress should act now to provide the additional judgeships called for in the 1984, 1986, and 1988 biennial judgeship surveys. Action should not be deferred until the 1990 judgeship survey is completed. Further, as described in greater detail in the Judicial Conference's March 1989 report,⁷ the judiciary needs at least \$269 million in additional funding for 1990 just to handle its current caseload effectively, exclusive of the impact of the Anti-Drug Abuse Act of 1988. In light of the additional resources the 1988 Act appropriated for federal investigative agencies and prosecutors, the judiciary will need \$37 million to \$92 million more to meet the additional criminal caseload that will be generated. The war on drugs cannot be waged without cost. The huge increases in the federal criminal caseload generate costly new demands on all parts of the federal judicial system, including magistrates, judges, the marshals service, and probation officers. The federal judicial system cannot play its role in the war against drugs unless Congress provides the necessary resources.

Limiting the Federal Criminal Caseload. As much as possible, federal drug prosecutions should be limited to cases that require the specialized resources of the federal judicial system. No matter how rapidly the resources of the federal system are expanded, the war against drugs cannot be waged solely in the relatively small and specialized federal judicial system. An effective drug enforcement strategy requires a

... the Federal Courts Study Committee received reports from judges and prosecutors in districts with heavy drug caseloads predicting that in the very near future those districts will be unable to try any civil cases.

partnership between the federal government and the states, with each partner playing a distinctive role.

The current federal caseload includes many drug prosecutions that could and should be brought by state prosecutors in state courts. These prosecutions do not involve any interstate or international conduct that requires the unique resources of the federal judicial system. In the Southern District of New York, for example, one day a week has been called "federal day" and all persons arrested by local police on drug charges on that day have been charged with federal rather than state offenses. Another district reports that virtually every criminal charge involving crack cocaine is brought in federal rather than state court. In some federal drug prosecutions the judge is the only true federal participant: a state prosecutor has been designated as a federal prosecutor for that case, and all the witnesses are state and local law enforcement officials.

The sheer number of drug prosecutions poses a threat to the federal courts' ability to perform their constitutional role. Given its small size, the federal judicial system is not capable of expanding to accommodate an ever-increasing share of the drug prosecutions in the United States. If the federal courts are to continue to play their vital historic role of interpreting and enforcing federal law as a whole, the federal criminal caseload must be limited to cases that require the unique resources of the federal system. The federal courts are not designed for—and they cannot effectively accommodate—every case involving crack or all of the drug related cases in which local police make an arrest on one day each week. Even if additional resources are provided, the sheer numbers of those cases will eventually swamp the system. We are already at the point where the sheer number of those cases is jeopardizing the ability of the federal judicial system to process civil cases.

Congress and the executive branch must share the responsibility for narrowing the criminal caseload to drug prosecutions that require the unique resources of the federal system. The Department of Justice and local United States attorneys should immediately begin to refocus their charging policies to reduce the avalanche of drug prosecutions. But in bringing the increasing number of drug cases in the federal

Given its small size, the federal judicial system is not capable of expanding to accommodate an ever-increasing share of the drug prosecutions in the United States.

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courts, the Department of Justice has been implementing what it perceives to be the policy established by Congress in the drug legislation of the 1980s. Congress must clarify federal policy in this area to reflect the specialized nature of the drug prosecutions that should be brought in the federal courts. Funding for future drug enforcement initiatives should also reflect the specialized nature of the federal courts. If Congress is able to provide federal funds for the war against drugs beyond the additional funds needed for the specialized caseload in the federal courts, those funds should be used primarily for drug enforcement at the critical state and local level, not for more federal prosecutions.

This revised strategy reflects the distinctive role of the state and federal governments, each of which must contribute to the war on drugs. Limiting federal prosecutions allows the federal courts to play their distinctive role in the war against drugs without jeopardizing the federal courts' ability to perform their core function of interpreting and enforcing federal law as a whole.

¹The data in this memorandum regarding drug prosecutions is taken from the Report of the Judicial Conference of the United States to Congress, *Impact of Drug Related Criminal Activity on the Federal Judiciary* (March 1989). This report contains a comprehensive discussion of the impact of the increase in drug prosecutions on the federal judicial system.

²For a description of the additional resources provided, see the Judicial Conference Report *supra* n.1 at 10.

³See Table 5 of the Judicial Conference Report *supra* n.1.

⁴There is presently no hard data to support the view that the nondrug cases on the federal docket are consuming more resources case for case than in the past. However, the Federal Judicial Center is currently conducting a time study in all federal districts that will provide the data necessary to make a sophisticated determination of the average time necessary to process various types of offenses. This data will be used to update the case weighting system employed by the Administrative Office of the U.S. Courts.

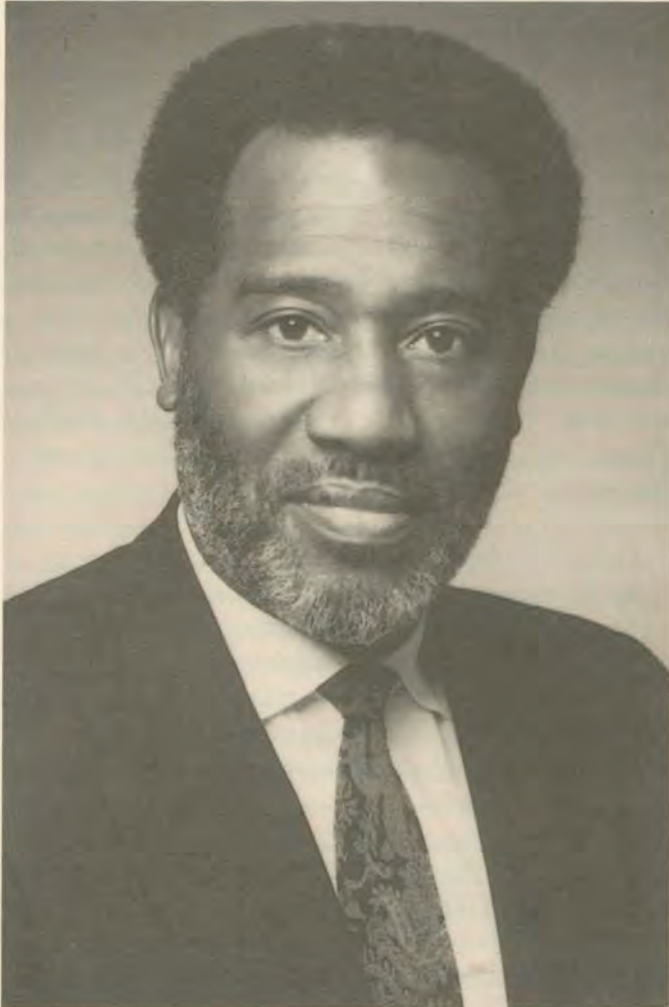
⁵Under the provisions of the Speedy Trial Act, 18 U.S.C. § 3161(c)(1), criminal charges must ordinarily be brought to trial within seventy days after the indictment is filed or made public, excluding certain periods specified in § 3161(h). If trial is not commenced within the specified time, the Speedy Trial Act requires that the charges be dismissed. 18 U.S.C. § 3162.

⁶See e.g., the statement of Anton Valukas, U.S. Attorney for the N.D. Ill. at the Federal Court Study Committee's public hearing, and the letter from the Hon. Judith Keep, U.S.D.C., S.D. Cal., to the Workload Subcommittee of the Federal Court Study Committee. A similar theme was sounded by several of the respondents to the Workload Subcommittee's survey of district judges.

⁷See n.1 *supra*.

The Opening Statement

Charles L. Becton '69 and Terri L. Stein '88



Charles Becton is senior lecturer in law at Duke University, a partner at the Raleigh law firm of Becton, Slifkin & Fuller, and the John Scott Cansler Adjunct Professor in Trial Advocacy at the University of North Carolina. He served on the North Carolina Court of Appeals from 1981 through 1989. Since 1980 he has taught civil and criminal trial practice at Duke Law School. Terri Stein is an associate at Lewis & McKenna in Saddle River, New Jersey. This article was originally published in TRIAL BRIEFS: THE JOURNAL OF THE NORTH CAROLINA ACADEMY OF TRIAL LAWYERS, 3d quarter, 1988, at 22 (Part I), 4th quarter, 1988, at 9 (Part II).

Shakespeare and other literary giants called it the prologue—an introductory statement which sets the stage for the unraveling of historical events in a way that stimulates the interest of the audience. Bach and other maestros called it an overture. Lawyers call it the opening statement, and the virtuosos of trial advocacy know that a powerful opening statement sparks juror interest and credence.

This article surveys the law (discussing its importance in theory and practice), outlines policy reasons for and against full opening statements, and concludes that opening statements are critical in the truth-finding process and, therefore, should not be unduly limited. It will also set forth tips regarding the most effective way to organize and present the opening statement.

Empirical studies conclude that after hearing opening statements, sixty-five to eighty percent of jurors not only make up their minds about the case, but in addition, in the course of the trial, they do not change their minds.¹

The opening statement is a critical part of the trial for two other practical considerations. Depending upon the case, the opening statement can determine the final verdict. An effective opening statement can conclude the trial by promoting settlement. Alfred Julien, noted for his effective opening statements, agrees:

Remember, there will be many more opening statements than final summations in your career. An opening statement, well delivered, sometimes promotes the very settlement that makes it unnecessary to have summation.... Failure to make use of a proper opening statement to win law suits indicates that some lawyers are ignoring one of the most potent weapons in the trial strategist's arsenal.²

The opening statement can bring about the end of the trial for another reason. Although it is rare in practice and generally disfavored, following the opening the majority of jurisdictions permit the trial judge, under certain circumstances, to grant a motion for a directed verdict.³ These states require the party with the burden of proof to set out in the opening statement facts sufficient to establish a *prima facie* case.⁴

Depending upon the case, the opening statement can determine the final verdict. An effective opening statement can conclude the trial by promoting settlement.

In contrast to those jurisdictions holding the granting of an opening statement to be within the trial court's discretion, several other jurisdictions mandate that counsel be permitted to make opening statements.⁵ For example, in North Carolina the rule in a criminal jury trial is that "[e]ach party must be given the opportunity to make a brief opening statement."⁶ Despite this seemingly unequivocal endorsement of the opening statement, in practice, this right has been all but eliminated because, although the granting of an opening statement is not a matter for the trial judge's exercise of discretion, what is discretionary is the content and scope of the openings.⁷

Thus, even in those jurisdictions that permit counsel to make an opening, the structure of the statement—including its length and substance—may be controlled by the trial judge. This limitation is significant because courts have used their discretion to inhibit substantially counsels' presentation of the opening statement. There are times when a trial judge exercises that discretion in a manner that operates effectively to deny counsel the right to make an opening.

In particular, controversy has been sparked by trial judges who, arguably, set unreasonable time limits for the opening statement. In *State v. Paige*, the Supreme Court of North Carolina found no abuse of discretion when the trial judge limited the scope of counsel's opening statements to five minutes per person.⁸ The *Paige* decision's confirmation that the trial judge has virtually unchecked discretion with respect to opening statements followed in the wake of two comparable opinions by the N.C. Court of Appeals.⁹

In *State v. Fie*, the court found that "[t]he trial court was well within its discretion to limit each defense counsel's opening statement to fifteen minutes."¹⁰ In *Keene v. Wake County Hospital Systems, Inc.*, the court held meritless an assignment of error based on the trial judge's limitation of opening statements to five minutes, thereby placing the court's *imprimatur* on such an exercise of discretion.¹¹

The courts justified their decisions by relying on Rule 9 of the General Rules of Practice for the Superior and District Courts, which states that "[o]pening statements should be subject to such time and scope limitations as may be imposed by the court."¹² Although Rule 9's grant of discretion seems to give the trial judge wide latitude in determining the proper scope of an opening, when viewed in light of North Carolina

General Statute section 15A-1221(a)(4) (1983) and the judicially recognized purpose of opening statements, the use of Rule 9 to limit opening statements to two to five minutes seems particularly indefensible. The statute referred to above guarantees that parties in a criminal case be given the opportunity to make a brief opening statement. "Nothing in the statute defines the scope of an opening statement."¹³ Nonetheless, once the state legislature provides such a right, the courts must honor that right. Thus, they may exercise discretion only after that right has been granted.

In *State v. Elliot*, the N.C. Court of Appeals stated that "the proper function of an opening statement is to allow the party to inform the court and jury of the nature of his case and the evidence he plans to offer in support of it."¹⁴

Perhaps in the most uncomplicated, straightforward court case, counsel could inform the court and jury of the nature of the case and the evidence counsel intends to present in a mere five (or even ten) minutes. However, in the overwhelming majority of cases, a five-minute time limit will be an insufficient period in which counsel can make an effective opening statement. As the Florida Court of Appeals stated in *Maleh v. Florida East Coast Properties, Inc.*, in response to a trial court's limit of counsel's opening to five minutes:

Unless one takes the view that an opening statement to the jury is nothing more than a bland, bare bones overview of the case with no opportunity to delve into the critical details of the forthcoming testimony, we frankly fail to see how any reasonable person could say that plaintiff's counsel had anything approaching a fair opportunity to make an effective opening statement in this case.¹⁵

Compare the 1934 ruling of the Michigan Supreme Court in *People v. Tenerowicz*¹⁶ finding reasonable, under the circumstances, the prosecution's opening statement that covered seventy pages of printed record and took four hours:

[I]n view of the number of defenses, the nature of the offenses charged, and the further fact that the prosecution relied largely upon circumstantial evidence necessitating proof of a great variety of circumstances and transactions, the opening statement cannot be seriously criticized on the ground that it went too much into details or was of too great length.¹⁷

Obviously, one does not need to advocate for four-hour-long openings to suggest that the permissible length of an opening statement should correspond logically with the needs in a particular case, and that in every case, counsel be permitted to make effective opening statements.

Policy Reasons Supporting Full Opening Statements

Several policy reasons support the need for full opening statements. That need is especially critical considering the near demise of lawyer-conducted *voir dire* in most jurisdictions. Short *voir dire*s conducted by judges seldom unmask the inventory of experiences, values, and beliefs that form the lens through which jurors view cases. The adversary process gives the skilled advocate a chance, during the opening statements, to rid jurors of preconceived and stereotypical notions. Thus, effective opening statements can be invaluable in the truth-finding process.

Legitimacy of Verdicts. In his poem *Ulysses*, Alfred Lord Tennyson said, "I am part of all that I have met." The jury selection process is proof of Tennyson's statement. If jurors were inherently neutral and detached, none would be excused from jury service. Indeed, the prosecutor in capital cases, for example, would accept the first twelve jurors. Our rules regarding challenges for cause and even the trial judges' permitted efforts to rehabilitate jurors are stark recognitions that jurors, like all of us, have certain natural inclinations, predispositions, and predilections.

It is no indictment of our jury system that laymen sometimes say with authority that, "*Lawyer Convincing* could have won that case" or "*Attorney Sincere* would have gotten you twice as much money." It is not an indictment of jurors that judges, bailiffs, or court reporters often say, immediately after jury selection, "That jury is going to convict." Those regular courtroom observers know intuitively that our behavior is largely a function of our experiences.

The idea that our perception and explanation of events are colored by our background and life experiences is consistent with social science studies that show the following:

- a) Jurors tend to side with the lawyers who are most prepared, who are meticulous, articulate, and who give authoritative presentations while demonstrating zeal for their cause;¹⁸
- b) During face-to-face communication, sixty percent of the total message is transmitted non-verbally, thirty percent is transmitted through voice inflection, and only ten percent of the total message is interpreted from the words themselves;¹⁹
- c) Verdicts and awards tend to be more favorable when clients have an appealing image, and, if the client is especially attractive, jurors will increase their identification and liking;²⁰
- d) The parties with the most money or the most skilled lawyers usually win;
- e) Listeners view powerful language as believable and powerless language as ineffective and lacking credibility;²¹
- f) How jurors perceive evidence depends upon what they are prepared for (this is called set phenomenon or synesthesia) and jurors will limit or adjust perception to

The adversary process gives the skilled advocate a chance, during the opening statements, to rid jurors of preconceived and stereotypical notions.

fit their own needs and values and tend to personalize, or even distort, testimony to make it correspond to their own frame of reference (this is called autistic or idiosyncratic perception).²²

These studies point out that legitimacy, as an element of a fair and just verdict, evolves from our notion of social contract. The negligent person is not always found liable. Guilty people sometimes escape punishment; and sometimes, innocent people, who have been implicated by circumstance or false witness go to jail. Simply put, we cannot provide in our system for an absolute truth in which forbidden conduct will automatically transfer into a verdict of liability or a verdict of guilty.

As has often been stated, some witnesses lie; some truthful witnesses appear to be lying; some lying witnesses appear to be telling the truth; some witnesses forget; some witnesses are not heard; some jurors do not listen; some lawyers make mistakes; some witnesses make mistakes; some judges make mistakes. And some jurors, when everything else is equal, subconsciously give the benefit of doubt to people who are most like them.

In a most compelling study, Elizabeth Loftus, a juristic psychologist, randomly picked fifteen people out of a group of forty-five to make life and death decisions. The fifteen people chosen had to decide which fifteen out of the remaining thirty people would live. The other fifteen were to be put to death. And the study was sanitized. There were no confounds or threats to validity; there were no factors like race, sex, or religion to skew the results. Not surprisingly, the fifteen people in the study chose fifteen people to live who were just like them in terms of interest, habits, thoughts, and looks. They were, in effect, saving themselves or those most like themselves.

In a system that acknowledges its own human frailties, the best we can provide is a process that is fair, even if not perfect. Thus, in this social contract, the citizen exchanges the certainty of truth for the expectation of a procedurally fair trial in which the search for truth is nurtured by the adversary process and, in criminal cases, the protections given to a defendant.

To the extent that jurors based their verdicts on "looks," non-verbal communication, powerful language, and predilections, the policy reasons for effective opening statements be-

Our adversary system is designed, in theory, to place litigants on a relatively equal footing so that "the truth" has a chance of winning. Theoretically, each side has an opportunity to convince jurors that its cause is just.

come apparent. Jurors may try conscientiously to apply the facts to the law as they understand it, but the subjective "baggage" they carry weighs heavily in thought processes. Opening statements help dislodge preconceived ideas, counterbalance subjective judgments, and unveil subliminal factors that influence decision-making. This curative function of opening statements is needed even more as an equipoise in the truth-finding process since jury selection by lawyers is being restricted.

The Role of the Adversary Process in the Truth-Finding Process. Our system of dispensing justice is not perfect. It works well, however, because of the adversary process. We indulge the adversary process even though the relative wealth and sophistication of some litigants allow them to hire more skilled advocates. We allow hearsay and other inadmissible matters to come in evidence when the competent as well as the incompetent lawyer fails timely to object. We even tolerate error on appeal in many instances when lawyers fail properly to comply with the letter, as opposed to the spirit, of purely procedural rules. And we do so, sometimes without regard to truth and justice, because we champion the adversary system. Our adversary system is designed, in theory, to place litigants on a relatively equal footing so that "the truth" has a chance of winning. Theoretically, each side has an opportunity to convince jurors that its cause is just. However, truth, badly represented, will often lose in court. Or, to make the point by way of analogy:

I once went to a prize fight. I found myself seated next to a priest. As the fighters entered the ring, one dropped to a knee and crossed himself. I turned to my companion and asked, "Father, will that help him?"

The priest smiled. "If he can fight, it will help him."²³

Counsel can "fight" by giving a full and powerful opening statement, since the opening statement is critical in the truth-finding process.

The Role of Opening Statements in the Truth-Finding Process.

Tell them what you're going to tell them, tell them, and then tell them what you've told them.

The above statement, the motto of some educators, is particularly applicable to opening statements. Few question the value of abstracts, summaries, or synopses in the learning process. When one reviews an outline or reads a digest, the unabridged version becomes more understandable. And so, opening statements allow jurors to see how the pieces of evidence form the proverbial "picture" on the puzzle box. Opening statements give jurors a preview of coming attractions. They help jurors understand the case better. When both sides have a full opportunity to educate jurors about the case, the complete story is more likely to come out, and jurors can better decide where the truth lies. Consequently, it is important that the jurors understand your case from the beginning.

The skilled advocate must be able to articulate the many policy reasons supporting full and powerful opening statements. Moreover, the skilled advocate must be armed with a compelling response when trial judges, with inherent discretion, consider placing restrictions on opening statements.

Response to Limitation on Opening Statements

Citing jury studies suggesting that from sixty-five to eighty percent of all jurors tend to make up their minds after opening statements and do not change their opinions, opponents of full, powerful opening statements argue: (1) that opening statements should not exceed five minutes; (2) that opening statements give overzealous lawyers an opportunity to hoodwink the jury before any evidence is presented; and (3) that opening statements allow overzealous lawyers to travel outside the record, overstate the case, and get inadmissible evidence before the jury.

Arguably, the cited jury studies merely reflect the percent of jurors who ultimately believe that the evidence presented conformed to the lawyer's forecast in the opening statement. Significantly, the studies do not purport to determine the percent of jurors who make up their minds after the first opening statement given by the party with the burden of proof. The studies, fully cognizant of the adversary process,

Opening statements help dislodge preconceived ideas, counterbalance subjective judgments, and unveil subliminal factors that influence decision-making.

Jurors can and do form opinions at various stages during the trial—after listening to a particularly effective witness or a devastating cross examination, after seeing a “slick” persuasive exhibit, or after hearing a convincing and provocative closing argument.

point out that logical interviews by both sides give jurors a more complete picture, help jurors in the truth-finding process, and help counter-balance the jurors’ natural inclination to favor one party or the other.

And even if jurors make up their minds because of a potent opening statement by the plaintiff’s attorney, no reasons exist for alarm. Jurors can and do form opinions at various stages during the trial—after listening to a particularly effective witness or a devastating cross examination, after seeing a “slick” persuasive exhibit, or after hearing a convincing and provocative closing argument. Do we suggest that a litigant not hire the best lawyer? Do we exclude easily understandable and memorable exhibits or illustrative aids? No! Rather, we recognize, according to former U.S. District Court Judge Herbert Stern, that, “[p]eople keep an open mind only for as long as they can avoid it.”

Even now, you are voting on the proposition. People cannot watch a highly competitive adversary contest with detached neutrality. Even non-sports fans choose sides when they view sporting events—they pull for the boxer in the gold trunks, or they pull for the team that is losing or the team that got the last bad call from the referee.

And so it is with appellate judges, who sometimes form tentative conclusions after reading just one brief, and who often form conclusions after reading both briefs before oral argument. That judges, like jurors, have the human capacity to come to quick decisions with very little information is neither surprising nor a matter of grave concern.

Concerns are also baseless that lawyers, in the guise of forecasting evidence, hoodwink jurors during opening statements. That apprehension could be voiced at all stages of the trial, even though the adversary process gives both sides an equal opportunity to bamboozle the jury with superior skills or preparation.

Further, trial advocates need not share the fear of those who think trials would be unduly lengthened by allowing full and complete opening statements. First, the well-prepared lawyer can give a full and effective opening statement in twenty minutes, no matter how complex the case. Second, and more important, if lawyers are restricted to stating only

their claim or defense without any reference to anticipated evidence, little need would exist for opening statements.

The trial judge could simply tell the jury: “This case involves a car accident that happened in Raleigh on August 12, 1987, about four p.m. The plaintiff, traveling on Morgan Street, claims he had the green light, and the defendant, traveling on Salisbury Street, claims he had the green light.”

Or, the trial judge could say nothing, since the above statement would undoubtedly have been made during jury selection. Trial judges who give lawyers only two or three minutes to make opening statements may place too high a premium on court time and efficiency. They pay too much homage to the saying, “justice delayed is justice denied,” while not according any respect to the adage, “justice rushed is justice crushed.”

Finally, the implied cynicism leveled at our profession by the opponents of full, powerful opening statements—that longer opening statements allow lawyers to get inadmissible evidence before the jury—is unfounded. Matters of doubtful admissibility can be resolved by motions *in limine*. And trial judges have always been able to handle the overzealous lawyer bent on traveling outside the record. Moreover, when necessary, mistrials can be granted during opening statements—a very early stage of the trial.

Considering the positive benefits of full and adversarial opening statements, given at a time when jurors are most receptive and attentive, efforts to place short time limits on opening statements seem particularly indefensible. Absolute truth is elusive, but our search for it through the adversarial process is our noblest aspiration.

Organization

Components. In outline form, the components of a good opening statement include the following:

- a) an impact statement that gets the jurors’ attention and explains the theory and theme of the case;
- b) a general introduction;
- c) an explanation of the cause of action, outlining the who, what, where, when, and why (Note: it is important to introduce the parties and to set the scene before telling the story.);
- d) a preview of the evidence;
- e) three key factors that jurors must remember; and
- f) a powerful closing, demonstrating how the theory, theme, and facts warrant a favorable verdict.

Primacy. To make the most of your opening, you must take full advantage of the psychological principle of primacy: people tend to believe what they hear first. The cliché that first impressions last is particularly appropriate to the opening statement. It is at this time that jurors form their initial opinions about you and your case. Therefore, if you present your

To make the most of your opening, you must take full advantage of the psychological principle of primacy: people tend to believe what they hear first.

opening statement effectively, with the right mix of sincerity, emotion, and dignity, you can do as J.W. Donovan suggested in 1885: "Begin to win in your opening statement. Don't wait too long; men seldom change old opinions. See that you help to form their judgment."²⁴

The psychological principle of primacy is relevant not only to the opening statement as a whole, as the first opportunity for counsel to address the jury, but it is also relevant to the first part of the opening statement. That is, the most important part of the opening statement is the first minute. The challenge is to state in this small amount of time what your case is about in a way that will impel the jury to view in your favor everything that happens throughout the trial. As Jim McElhane suggests, the *litmus* test for a good introduction to an opening statement is this: if the jurors heard it, and nothing else, would they understand the case, and would they want to find in your favor?

Develop Theme with Story of Case. The first step to giving an effective opening statement is to create a theory of your case. This theory should explain as much of the uncontroverted evidence as possible in your client's favor. The second step is to create from that theory a theme or phrase that is particularly memorable. After relaying to the jury your theme and your capsulated version of the case, you may develop your opening in three ways. You may present a witness-by-witness summary or you may use the narrative form to tell a story. The latter method is memorable and most persuasive. Jurors will pay attention to you if they are interested in what you have to say. Instead of merely reciting the facts and their legal consequences, tell a story. People love stories. Every case involves an incident that happened to real people. It always has some problem—drama—that caused it to come to trial.

Let the story be your dramatic curtain-raiser. Instead of saying, "the motor vehicle was proceeding westward on the main thoroughfare, and as the other car approached from the other direction going easterly..."²⁵ say instead, "on a day like this, rainy and windy, Marilyn Smith got in her car and was driving down Duke Street right here in town. At the same time, the defendant, driving a truck that had bald tires, only one working windshield wiper, and a dirty, greasy windshield, crossed the center line."

If you are in a state with liberal opening statement rules, you can further dramatize your presentation for maximum

persuasive effect. At a CLE seminar in New Orleans in 1987, Bob Ates effectively used the story approach in a provocative opening:

Ladies and Gentlemen, there's a park here in town. And it's like most other parks—rolling hills, tall oak trees.... But you see very few people there. Children don't play there; couples don't stroll there hand in hand. Jeff Potter will tell you this. Jeff Potter drives by that park every day, to and from work. The park is called "The Garden of Memories." Kathy Potter was buried there over 40 years too soon. We are here today to determine how and why, who is responsible, who must compensate, and how much debt is owed.

You will come to know the Kathy Potter that was buried over 40 years too soon. She lies in that park where no one plays, where you never hear laughter because Charles Schrackle drove over her in the safety zone—the cross walk. We will prove that to you....

Develop Responsive Themes Explaining Everything as a Strength. The attorneys who give effective opening statements have perfected the art of creating a responsive theme. A responsive theme provides a favorable answer for every piece of evidence. It allows you to slide the harmful material under the helpful material, and as the following examples indicate, to explain everything as a strength:

John Diamond never seriously threatened to kill Trudi Doyle. He was reacting to her suicide attempts. He tried to scare her into choosing life by saying, "If anybody is going to kill you, it will be me." The only reason the state knew about this was that John Diamond, himself, told Officer Madden before the unfortunate accident.

On the day Trudi was killed, John Diamond did not hide the gun in his waistband. Benbrook, the head of the Homicide Division, saw it was there. Benbrook never said it was inappropriate.

The state says it has several eye witnesses, but you'll have to decide if the man charged with deliberately planning to kill Trudi Doyle would do so in a glass house in front of several people who knew him well.

Perhaps the best example of explaining everything as a strength is the story (or "tall tale") of the old man injured in a railway accident. He was brought into court on a stretcher. As the plaintiff's lawyer was getting ready to make his opening statement, the defendant's lawyer whispered to him, "Look,

I've got a movie of your man shoveling snow, hanging blinds, and taking in the groceries. Don't embarrass yourself." The plaintiff's lawyer gave an opening statement anyway, and during the opening statement he said, "Ladies and gentlemen, the evidence will show that my client struggled to lift groceries out of the car, but it was too much for him and he found himself on his back. Later, he tried to hang blinds. But it was too much for him, and he found himself flat on his back again. And then, last winter, he tried to shovel snow, and he's never walked since."

This example raises another point: the jury should hear the explanation before the accusation; otherwise, it will sound like an excuse and detract from credibility. No redirect examination could erase the images of the old man shoveling snow. The explanation must come before the accusation.

Omit Reference to Opponent's Burden of Proof. Although many commentators suggest that you should emphasize the burden of proof in your opening, there are few reasons, if any, why the person who does not have the burden of proof should mention it at all. A preponderance of the evidence is so small that you cannot even hide a grain of sugar behind it. Thus, all the other side has to do is to prove their case by a tiny bit. Remember, you must be viewed as the truth giver. You need not hide behind a legal technicality. You appear much stronger when you say, "I will prove to you," and not "The burden is not on me to prove that I didn't do it, and, anyway, they can't prove that I did it."

Tell Jurors What Verdict the Evidence Warrants. Finally, with regard to organization, many opening statements fail because the lawyer never tells the jury what action is expected at the end of the trial. Emphasize that you want the jury to be fair and to act out of conscience but that your client is deserving of a favorable verdict.

Presentation

Be Yourself. When you have to talk to people, whether you are at a party, in a classroom, or in court, you do certain things to make a good impression. If you want people to like you, you do what you think will earn their admiration; if you want people to trust you, you present yourself confidently and sincerely, and you discuss only those subjects about which you are knowledgeable; if you want people to respect you, you treat them as equals and you act professionally. When you make your opening statement, each of these rather sensible tenets of social and professional diplomacy translate into particular rules.

One of the most important rules of advocacy is to be yourself. Notwithstanding the guideline—to present yourself naturally—there are certain traits you should acquire if you do not already have them. In a 1983 study, 2,000 jurors stated that what they recalled most about the trial was the lawyers' demeanor.²⁶ In particular, these jurors sided with the

lawyers who were most prepared, meticulous, and articulate: the jurors responded to those who presented their case authoritatively and demonstrated zeal for their cause. Consequently, the most important part of advocacy is the personal standing of the lawyers. The lawyer who exudes confidence and reeks of sincerity is viewed as the truth-giver.

Depending upon the jurisdictional rules covering *voir dire*, the opening statement may be your first opportunity to address the jury directly. Conversely, the opening will be the jury's first chance to "scope you out" and to develop an opinion not just about your case, but about you. They will like you if you are likeable. Establish eye contact with each juror and talk not at them, but to them; speak conversationally, in terms that a layperson will understand; do not treat the jurors condescendingly.

Be Aware of Your Own Body Language. Your demeanor is critical. Avoid any personal habits that may bother a jury: the use of inappropriate gestures or the failure to use gestures for emphasis; distracting pacing; faulty positioning in relation to the jury or the existence of any barrier between you and the jury; improper voice volume, pitch, and pace; reliance on notes; and word tics—the tendency to say "uh" or "um" or "okay" repeatedly. Remember that during the trial process, much content and substantive information is lost; what remains is an impression, created in large measure by counsel. Jurors want to know whether you are a nice person. Can they trust what you say? Do you believe what you say? Jurors learn that information not only from what you say but from how you say it.

Develop Trust. The jurors will trust you if you earn that trust. Prepare thoroughly for your case and do not read your opening; be candid; be professional; and show compassion, concern, and interest in the case. Remember, it is your job to help the jury to understand the case. As stated by one commentator on opening statements:

From the beginning the jurors need a leader, a teacher, a helper, a guide. They need someone who will tell them what to pack for the trip, since he's been there already. Someone who will say "Trust me. I'll tell you how deep the water is. I'll take you across to the other side and I'll never let go of your hand."²⁷

The opening provides you with the opportunity to tell the jury how each piece of evidence fits in with the other evidence; it provides you with the opportunity to give the jurors the perspective you want them to have.

Consider the example of Emerald City in *The Wizard of Oz*. Although it appeared to be green to everyone who passed through the gate, in fact Emerald City was not green. It only looked green because everyone who entered the city had to wear green glasses once inside. When you make an effective

The opening provides you with the opportunity to tell the jury how each piece of evidence fits in with the other evidence; it provides you with the opportunity to give the jurors the perspective you want them to have.

opening statement, you are, in effect, giving the jury the glasses you want them to wear while you present your case. You can give them plaintiffs' glasses or defendants' glasses. The glasses you give them must provide a matrix in which to fit evidence that supports your case, yet convinces the jury to attribute less significance to unfavorable evidence.

You have been forced to view stories through tinted glasses all of your life. Sometimes the opening statements you hear are so convincing that you do not even see, think about, or consider the possibility that there are two sides to every story. Did you ever consider the opening statement for the big bad wolf in the story of *The Three Pigs*? Sandra Johnson and her trial advocacy students at the University of North Carolina Law School helped me formulate the following opening statement for the big bad wolf:

April 17th was not a good day for Wonlone Wolf. It was the first day on his new job.

Wonlone Wolf had expected April 17th to be one of those typical April days—bright sun, gusty winds sometimes, and April showers. Consequently, he decided to start his new job as a walking door-to-door vacuum cleaner salesperson in the country, since rural folks are reputed to be more friendly than city folks.

Mr. Wolf went to the first house, and it was not a very substantial house. Although things were neat, it was not constructed very well. Thinking that the neat occupant might need a vacuum cleaner, Mr. Wolf knocked on the door. A woman peeked out of the window and shrieked. To be honest, she was a little fat and resembled Miss Piggy. But others had often shrieked in Mr. Wolf's presence, thinking him unattractive, and so, undaunted, Mr. Wolf did exactly what he had been taught to do in vacuum cleaner sales school. He told the woman he wanted to demonstrate the vacuum cleaner, and he sang a jingle: "This vacuum cleaner does not huff and puff. It doesn't make a sound. It will clean your house up and down."

As he sang, he noticed that the winds had picked up and that dark clouds had gathered, so he ran down the road, hoping the occupant of the next house would at least let him in out of the rain. It was not raining when Mr. Wolf got to the next house, so he went through the same routine. Again, while singing the jingle, he saw the approaching gust. Again, he ran to the next house. He was so winded by the time he got there, however, that he was huffing and puffing. And he will tell you how he sounded as he tried to sing the jingle for a third time. "It doesn't huff; it doesn't puff. . . ." He'll also tell you how he felt when that third person in the nice brick house threw a pot of hot water at him.

Mr. Wolf sold no vacuum cleaners on April 17th. In fact, Mr. Wolf went home after visiting only three houses and after being drenched by one of the scattered but intermittent showers. He opened the door to his house. Before he could even get dry, the police arrived and charged him with destruction of property, both real and personal. We will prove to you that Mr. Wolf destroyed no property of the three complaining witnesses on April 17th or on any other day.

You must give jurors the glasses you want them to wear. Remember, however, the jurors will not wear your glasses if they do not trust you. And the jurors will trust you only if you are straightforward and candid in your opening statement. Do not overstate your case. If the defendant was driving fifty mph in a thirty-five-mph zone, it is unwise and unnecessary to claim she was driving sixty-five mph. Admit weaknesses in your case that will inevitably come out. For example, a district attorney should disclose the criminal record of the immunity witness in his opening statement. This is called refutational inoculation—it takes the sting out of prejudicial disclosures that would be made anyway by the defense attorney. In this way, you earn points with the jury for honesty and sincerity while losing nothing.

The jurors will respect you if you behave in a professional manner. Be thoroughly familiar with your case, and treat the judge and opposing counsel courteously. Many jurors think of lawyers as hired guns. They also fear that they will not understand the mechanics of a complicated lawsuit. You need to show that you feel concern for the people involved, and you need to make the jurors relate to your client.

Create an image of your client as a real person with a real problem. When appropriate, refer to her by her first name. Mention her family and her community ties. Similarly, it is a good idea in your opening to include local references: talk about the park in town or the high school football team. By including in your opening statement something familiar to the jurors, you will instantly capture their attention and allay

any fears they might have that they will not understand the case.

Learn to be Persuasive. Although you are not supposed to engage in argument in your opening, that does not mean you cannot be persuasive. Thomas A. Mauet says that test is this: If and only if a witness can testify about a matter can you use that matter in your opening statement. That test, however, states only the minimum that is allowed. For example, although no single witness can testify to all elements of a murder, the prosecuting attorney is everywhere permitted to say in the opening “the evidence will show that John Diamond, after premeditation and deliberation, killed Trudi Doyle,” and that, “based on the evidence produced, the state will ask you to find that John Diamond killed Trudi Doyle in cold blood.” What the prosecutor says is a conclusion based on the testimony of several witnesses. It is argumentative under Mauet’s test, but judges allow it. Jurors are instructed that they can base their verdicts on facts and any reasonable inference based on those facts. So, if you preface your good-faith assertions with three simple words — “we will prove” — you can say just about anything in your opening. Note, however, that unless you are prompted by counsel’s objections to use of the phrase “we will prove,” your opening will be much more effective without continual use of those words. Simply tell the jury a story about what happened.

Significantly, a factual description is often more impressive than conclusory statements. For example, as Irving Goldstein points out, why argue in conclusory fashion that “the defendant failed to maintain a proper lookout and was driving at an excessive rate of speed” when you can better make the point by saying:

“[A]pproximately 50 feet before he struck Johnny, the defendant passed two signs. One sign said, “Caution School Zone,” and the other said, “25 mph.” Yet, when the defendant’s auto struck Johnny, it was going over 40 mph. Also, Johnny was walking with three other children; the day was clear and bright, but the defendant never saw any of the children until after the bumper of his car struck Johnny and Johnny was in the air.”²⁸

Another way to maximize persuasiveness is through the use of visual aids: anything you can say in a courtroom can be presented visually. For example, some commentators suggest that in a personal injury action involving a plaintiff suffering from a herniated disc, you should write the term “Herniated Disc” on the black board. Explain to the jurors that it is a rupture or a tear that causes internal fluid to ooze and puts pressure on roots of nerves in the spinal column. The result will be that every time you use that word, the jury will see it on the black board and recall the definition.

As a noted legal commentator on opening statements said of visual aids:

Behavioral scientists agree that people retain information they see and hear in the courtroom far better than information they merely hear. Visual aids, including videotape, still photographs, films, charts, schematic drawings, and models, present more information, and make a deeper impression than words alone. They are important tools of persuasion and should be used in opening statements to assist the jury in understanding the case and in evaluating evidence when it is presented during trial.²⁹

Note that before using a visual aid, you may need to obtain a pretrial ruling regarding its admissibility.

Do Not De-emphasize the Significance of the Opening.

Do not suggest that what you say is not important. Many lawyers either preface or conclude their opening statements with a type of waiver of responsibility. They tell the jury, “What I say is not evidence,” or “This is simply lawyer talk.” Avoid such statements. By emphasizing the relative insignificance of the opening, you lose credibility, and you suggest to the jurors that they do not need to pay attention.

...Contemplate the devastating effect of the following disclaimers in the following situations.

Shakespearean prologue: “Remember playgoers, the story of these star crossed Italian families is simply a figment of my imagination and there is no historical basis for either character, Romeo or Juliet. Of course the death scene is merely a theatrical device and although they will appear to die, the same two characters will be right here tomorrow for the matinee performance.”

Radio announcer: “Hi Kiddies. In today’s Lone Ranger adventure there will be the usual sounds of Silver and Scout galloping over the prairies. Don’t be misled. Those aren’t real horses. What you’ll be hearing is our soundman Fred Finkle hitting some rubber cups on an office desk.”³⁰

Indeed, the only situation in which it may be appropriate to make such a disclaimer is when opposing counsel has just given a particularly compelling opening statement. In that event, you may wish to say, “What my opponent has just said is not evidence; the evidence will come from the witnesses.”

Do Not Overload Jurors. Pay attention in your opening to the volume of information you are asking jurors to remember. Most people have a limited capacity to remember details, so rather than presenting too much detail in your opening, it

is a better idea merely to provide the jury with an overview of your case. Do not overload the jury with too many facts and too many names. Pretend you are a film director, and edit representative scenes.

At trial jurors must assimilate, sort, and structure new information. They must think clearly and be able to defend their thinking to fellow jurors. In addition to judging credibility of witnesses and the weight to be given to testimony, jurors must be able to test the validity of testimony without being influenced by their natural predilections. This is a tall order, even for human beings who conscientiously try to be honest with themselves.³⁰ The virtuoso makes the jurors' job easier with a clear opening statement that sparks juror interest and credence.

As in life generally, initial impressions often become lasting impressions. Accordingly, make sure your case gets off on the right footing. This can only be achieved when you forcefully deliver a logical opening statement which clearly demonstrates the facts which entitle your party to a favorable verdict.³¹

¹See Colley, *The Opening Statement Structure, Issues, Techniques*, TRIAL (1982) (citing H. KALVEN & H. ZEISEL, *THE AMERICAN JURY* (1966) ("80 percent of all jurors make up their minds on the issue of liability after opening statements and do not thereafter change their minds"); J. JEANS, *TRIAL ADVOCACY* 199 (1975) (a study to jurors confirmed "that their ultimate decision corresponded with their tentative opinion after opening statements in over 80 percent of the cases").

²Julien, *The Opening Statement*, in *ON TRIAL: MASTERS OF THE COURTROOM* 147 (N. Sheresky ed. 1977).

³See, e.g., *United States v. Capocci*, 433 F.2d 155 (1st Cir. 1970); *Hanley v. United States*, 416 F.2d 1160 (5th Cir. 1969), *cert. denied*, 397 U.S. 910 (1970); *Euresti v. Washington Terminal Co.*, 280 F.2d 629, 630 (D.C. App. 1960) ("the granting of a motion . . . for directed verdict after a[n] . . . opening statement is not to be lightly undertaken"); *Young v. Barks*, 158 Mich. App. 709, 405 N.W.2d 395, 400 (1987) (citing *Ambrose v. Detroit Edison Co.*, 380 Mich. 445, 157 N.W. 2d 232 (1968) ("directed verdict after an opening statement is a limited and disfavored action, which is only proper where an opening statement, in addition to the pleadings, fails to establish a plaintiff's right to recover"); *Alexander v. Seligman*, 131 A.D.2d 528, 516 N.Y.S.2d 260 (1987); *Arcuri v. Great American Ins. Co.*, 342 S.E.2d 177 (W.Va. App. 1986); *Austin v. City of Scottsdale*, 140 Ariz. 579, 684 P.2d 151, 153 (1984); *Hertz v. CBI-Fairmac Corp.*, 445 A.2d 1004 (D.C. App. 1982); *John Norton Farms, Inc. v. Todago*, 124 Cal. App. 3d 149, 177 Cal. Rptr. 215 (4th D. 1981); *Hays v. Missouri Pacific Railroad Co.*, 304 S.W.2d 800 (1957). *But see Noble v. Arkansas*, Slip Op. No. CACB 86-173 (Ct. App. Ark. Apr. 29, 1987) ("failure to state *prima facie* case in an opening statement does not warrant a directed verdict"); *Porro v. Franco*, 448 So.2d 614 (Fla. App. 3d Dist. 1984) (citing *Southern Wood Industries v. Florida Carolina Lumber Co.*, 84 So.2d 589 (Fla. 1956) (trial court has no authority to dismiss case before party completes case in chief). *White v. State*, 11 Md. App. 423, 274 A.2d 671 (1971).

⁴See, e.g., *Knapp v. Wabash RR Co.*, 375 F.2d 983 (8th Cir. 1967). *Haynes v. Monroe Plumbing and Heating*, 48 Mich. App. 707, 211 N.W.2d 88 (1973).

⁵See, e.g., *United States v. Hershenow*, 680 F.2d 847, 888 (1st Cir. 1982) ("provided he confines himself to a discussion of what he intends to show, a

defense in a criminal case has a right to make an opening statement regardless of whether he intends to call witnesses . . ."); *State v. Elliot*, 69 N.C. App. 89, 316 S.E.2d 632 (1984) (citing N.C. GEN. STAT. § 15A-1221(a)(4) (1983)); *Wright v. United States*, 508 A.2d 915, 919 (D.C. App. 1986) (citing *Jennings v. United States*, 431 A.2d 552, 560 (D.C. 1981), *cert. denied*, 457 U.S. 1135 (1982)) ("in a criminal case tried before a jury, the defense has the right to make an opening statement."); *State v. Burnette*, 337 So.2d 1096 (La. 1976) (citing L.S.A.C. CRIM. P. art. 765 (opening statement is optional)). *Anderson v. State*, 262 Ind. 345, 316 N.E.2d 367 (1974) (citing IC 35-1, Burns' IND. STAT. ANN., 1956, § 9-1805 (allowing prosecution and defense to "briefly" state case and evidence with which they expect to prove it)); *Commonwealth v. Weeden*, 457 Pa. 436, *cert. denied*, 420 U.S. 937 (1974) (citing PA. R. CRIM. P. 19 P.S. Appendix 116(a) (defendant may present opening statement)). *Hampton v. United States*, 269 A.2d 441, 443 (D.C. App. 1970) ("in a criminal case tried to a jury the defendant has a right to make an opening statement . . ."); *Caraway v. State*, 417 S.E.2d 159 (Tex. Cr. App. 1967) (citing *Vernon's ANN. C. CRIM. P. art. 36.01, § 5* (in criminal trial, defense has right to make opening statement)); *State v. Burrwell*, 98 Ariz. 37, 401 P.2d 733 (1965) (citing 17 A.R.S. R. CRIM. P., rule 255, subd. 3 (permitting opening statement)).

⁶*State v. Paige*, 343 S.E.2d 848 (N.C. 1986) (quoting N.C. GEN. STAT. § 15A-1221(a)(4) (1983)).

⁷E.g., *State v. Brown*, 428 So.2d 438 (La. 1983) (trial judge has wide discretion to control scope and extent of opening statement); *United States v. Freeman*, 514 F.2d 1184, 1192 (1975) ("the scope and extent of defendant's opening statement rests largely in the discretion of the trial court") (citing 23-A, C.J.S. Criminal Law Section 1086 (1961)); *Norton v. State*, 564 S.E.2d 714 (Tex. Cr. App. 1978) (citing *Vernon's ANN. C. CRIM. P. art. 36.01, subd. 5*)).

⁸343 S.E.2d 848, 849 (N.C. 1986).

⁹*State v. Fie*, 80 N.C. App. 577, 343 S.E.2d 248 (1986); *Keene v. Wake County Hosp. Systems, Inc.*, 328 S.E.2d 883 (N.C. App. 1985). See also *West v. Martin*, 11 Kan. App. 2d 55, 713 P.2d 957 (1986) (emphasizing that plaintiff failed to object or request additional time, court found no abuse of discretion where, in personal injury action, the trial court limited counsel's opening statements to ten minutes each).

¹⁰80 N.C. App. 577, 343 S.E.2d 248, 252 (1986).

¹¹328 S.E.2d 883 (N.C. App. 1985).

¹²*Id.* at 885 (quoting Rule 9 of General Rules of Practice for the Superior and District Courts).

¹³*State v. Paige*, 343 S.E.2d 848, at 858 (N.C. 1986).

¹⁴69 N.C. App. 89, 316 S.E.2d 632, 636, *disc. rev. denied, appeal dismissed*, 311 N.C. 675, 321 S.E.2d 148 (1984).

¹⁵491 So.2d 290, 291 (1986).

¹⁶*People v. Tenerowicz*, 266 Mich. 276, 253 N.W. 296 (1934).

¹⁷*Id.* at 301.

¹⁸Cramer, *Probing the Minds of Jurors*, TRIAL, Summer 1980, at 5.

¹⁹RASICOT, *JURY SELECTION, BODY LANGUAGE AND THE VISUAL TRIAL* 5 (1983).

²⁰*Id.* at 131.

²¹Colley, *The Opening Statement: Structure, Issues, Techniques*, 18 TRIAL at 52 (Nov. 1982).

²²Colley, *Friendly Persuasion: Gaining Attention, Comprehension, and Acceptance in Court*, 17 TRIAL at 44-45 (Aug. 1981).

²³STERN, *TRYING CASES TO WIN* I-1 (1985).

²⁴DONOVAN, *SKILLS IN TRIALS* 128 (1891).

²⁵HAMLIN, *WHAT MAKES JURIES LISTEN* 148 (1985).

²⁶Cramer, *Probing the Minds of Jurors*, TRIAL, Summer 1980, at 5.

²⁷HAMLIN, *supra* n.25, at 111.

²⁸GOLDSTEIN, *TRIAL TECHNIQUES*, § 10:10, at 13 (1984).

²⁹Colley, *The Opening Statement: Structure, Issues, Techniques*, 18 TRIAL at 53 (Nov. 1982).

³⁰JEANS, *TRIAL ADVOCACY* 205 (1975).

³¹Sorensen, *Jury Selection and the Behavioral Sciences*, 2 LITIGATION 30-31 (1976).

³²MAUET, *FUNDAMENTALS OF TRIAL TECHNIQUES* 49 (1980).

**About the
School**

Extra-Curricular Activities: The Faculty and Public Service

“One measure of the success of a great national university is how it contributes to problem-solving, at both the local and national levels,” says Dean Pamela Gann. “Problem solving” by Duke Law School faculty often takes the form of public service—an important extra-curricular activity for many law faculty. While all schools should meet that duty, in the view of Dean Gann a professional school “has a special obligation to share its expertise to solve problems.” She emphasizes the responsibility “to contribute both to the profession and to society.”

Working in the public service to solve problems brings with it a number of benefits, Gann explains. “For one, public service enriches the experience of the faculty by giving them a taste of how ideas clash with reality. Second, public service work clearly helps the local, state, and national legal communities, which benefit from the learning and research of the faculty. Finally, public service benefits Duke by raising our profile both in North Carolina and on a national level.”

A Sense of Perspective

Several members of the faculty fulfill this goal of public service and make contributions to problem solving in a variety of ways. Perhaps the greatest example of public service on the Law School faculty is Robinson O. Everett, who recently stepped down as Chief Judge of the United States Court of Military Appeals in Washington, D.C. Judge Everett says, “As a result of being on the bench, I have a new appreciation for the helpful role played by scholarship, both by students and professors. Frequently, it has helped me gain perspective on a tough problem.”

Judge Everett, who has been affiliated with the Law School since 1950, served on the Court of Military Appeals for ten years. He observes that “having been a law teacher, I appreciated the importance of a well constructed opinion. Though law professors may study opinions too closely, and lose sight of the fact that they are the product of a collegial exercise, I tried to craft opinions that could be studied, analyzed, and applied. Since opinions do more than settle a dispute, they must be seen as precedent and written in an intelligible manner.”

Serving on the bench also gave Judge Everett a slightly different perspective on the academy. “I find myself somewhat more forgiving toward appellate opinions, and more appreciative of brevity. Law professors need to appreciate the complexity of opinions, the trade-offs that take place which result in less consistent opinions. I think law professors would gain much by listening to the discussions among judges.”

Judge Everett notes that “public service has always been high at Duke, but I think the level of activity today is as high as ever. There are lots of examples, both in North Carolina and on a national basis, of the faculty making a real contribution.” He concludes, “I have enjoyed my opportunity to serve on the court and in a variety of other activities. Public service is a most worthwhile pursuit for the law faculty.”

Court Reform

Law School faculty serve the public interest in other, less direct ways. For Tom Rowe, civil justice reform has enslaved him over the past few years and kept him busy in a variety of projects.

Working for the American Law Institute, Professor Rowe produced a Background Paper for a study on how our civil litigation system could be structured in a “better way.” See Rowe, “American Law Institute Study on Paths to a Better Way: Litigation, Alternatives, and Accommodation—Background Paper,” 1990 *Duke L.J.* 824. Rowe also is serving on the ALI’s Project on Complex Litigation as an adviser. In addition, he is a consultant on the ALI Project on Product and Process Liability, preparing the chapter on attorney’s fees, litigation expenses, and prejudgment interest.

His work with the most immediate impact, though, was as Reporter for a subcommittee of the Federal Courts Study Committee. “Responding to mounting public and professional concern with the federal courts’ congestion, delay, expense, and expansion,” the Committee’s final Report of last April begins, “this committee of diverse membership appointed by the Chief Justice at the direction of Congress has conducted a fifteen-month study of the problems of the federal courts and presents in this report its analysis and recommendations.” The Committee consisted of two senators and congressmen, a number of federal and state judges, a university president and former solicitor general, two practitioners, and a top Justice Department official. Professor Rowe worked for over a year as the Reporter for the Subcommittee on Workload, chaired by District Judge Jose A. Cabranes. The Subcommittee examined, among other areas, civil and criminal caseload problems, ADR, and complex multi-state litigation.

Les Todd



Professors Tom Rowe and Sara Beale review their work on the Federal Courts Study Committee.

In describing the work of the Subcommittee, Professor Rowe is struck by how drug cases are altering the nature of *civil* litigation: "At this rate, ADR could be the only option on the civil side in some districts due to drug cases. Some districts have virtually *no* civil trials. . . . That has got to build up pressure for reform." Rowe adds that ADR has increased in attractiveness, at both the district and appellate level. Indeed, he notes that both the Second Circuit and D.C. Circuit currently have non-mandatory ADR procedures, and though they are somewhat controversial, they seem to work. Professor Rowe says that one of the Committee's recommendations was to permit, but not require, the expansion of the current ADR "experiment" under way in ten districts, including the Eastern District of North Carolina, to all 100 districts. "I liken this to the '100 Flowers' campaign," Rowe jokes. "It is not that we want to dictate that ADR is for everybody, but if a district decides it wants to try it by local rule, then it should be able to."

The Committee, authorized by the Judicial Improvements and Access to Justice Act of 1988, gave its Report to the Chief Justice, the President, and

brought home to me the strengths of views of present users. The extent to which groups affected sit up and holler, even when they really have no basis to complain because they are *not* being hurt in a meaningful way, took me aback. I was surprised at the vehemence of the response. It shows why it is hard to reform, even though the reforms may make the system more efficient." Rowe adds that he nonetheless looks forward to more work in the trenches of federal court reform.

Sara Sun Beale joined Tom Rowe in working for the Federal Courts Study Committee, serving as an Associate Reporter for the Workload Subcommittee. She focused on the criminal aspect of the federal court workload problem. According to Professor Beale, her expertise in criminal law was enlisted by Tom Rowe after the Committee discovered that none of the reporters had any familiarity with the criminal portion of the federal courts' caseload. Professor Beale says, "They realized that they needed to study the impact of drug cases and the new federal sentencing guidelines." Beale notes, "Drug prosecutions are the number one problem. They pose a bigger problem than diversity. Drug enforce-

ment calls on the whole federal criminal justice system—marshals, public defenders, prosecutors, and ultimately the prison system. It is very resource intensive." The reason why drugs so dominate the federal docket are many, according to Beale, and include mandatory minimum sentences (leaving no incentive for plea bargaining), speedy trial requirements, and, most important, the explosion of federal prosecutorial resources being devoted to the drug problem.

In assessing what he learned about federal court reform, Professor Rowe observes: "I was surprised at the strength of existing interests. Any structure builds up interests, and taking away that structure causes quite a stir. This exercise really

members of Congress on April 2—"On time!," Rowe exclaims, "though that required a lot of late night faxing."

From her work with the Committee, Professor Beale became convinced not only that the number of federal drug prosecutions was increasing rapidly, but also that many of these cases belonged in state rather than federal court. (Professor Beale's views were published in an Op-Ed in the Wall Street Journal, *see* Beale, "Get Drug Cases Out of Federal Court," Wall St. J., Feb. 8, 1990, at A16, col. 3 and also appear at page 4.) She drafted a proposal for the Committee that embodied these views, recommending that the federal courts be used for drug cases if and only if the case could not be prosecuted in the state courts. This proposal was difficult for some members of the Committee to support, given the public pressure to get tough on drugs. After revisions to emphasize a recognition of the seriousness of the drug problem, the Committee did adopt the recommendation Beale drafted, which states that Congress should reallocate funds to assist state criminal justice systems in meeting their responsibilities for combatting drugs.

When asked whether Congress is likely to follow the Committee's recommendation regarding drug cases, Beale responds: "It has to get worse before it gets better. There should be pressure from the judges, the bar, and the public when they simply can't get civil trials in their district. It is already true that some districts don't do civil trials." She predicts, "In less than five years you will begin to see regional effects, and the

pressure will build. When that happens, we hope the Committee's recommendations will be a blueprint for reform." Before then, Beale acknowledged that reform per se "has no constituency."

The work of the Committee entailed a lot of travel for Beale, back and forth to Washington for ten public hearings, numerous committee meetings, and discussions with the chairman and Committee members. Professor Beale also spent much time working on the Federal Courts Study Committee's draft proposals for substantial changes in the sentencing guidelines, but these draft provisions engendered strong opposition, particularly from the United States Sentencing Guidelines Commission. Although many of the draft recommendations regarding the guidelines were deleted from the Committee's final report, the Report does state that "sentencing guidelines . . . are causing serious problems according to many judges, public defenders, [and others]." The Committee concluded that additional study should be conducted by outside, disinterested researchers with the goal of meeting the objections. Beale suggests that "while that language may not appear to be much, I tell you that it was a fight to get that. And in the end, once the data begins to pile up, maybe the call for study will help bring about the necessary changes."

Professor Beale concludes her thoughts on the process by saying that it was challenging and worthwhile, but, quoting Arthur Vanderbilt, she observes that "law reform is no sport for the short winded." Professors Beale and Rowe have seen their stamina somewhat rewarded already, as the last Congress enacted several of the Federal Courts Study Committee's less controversial recommendations in the wee hours just before adjournment. Beale added that she may pursue this question when she has research leave next spring.

Professor Paul Carrington, like Professors Beale and Rowe, spends much time devoted to studying and reforming

the federal court system. Carrington serves as the Reporter to the Advisory Committee on Civil Rules. Appointed to this post by the Chief Justice of the United States, Carrington serves for the Advisory Committee as the reporter and defender of revisions in the civil rules. All civil rule changes begin with the Advisory Committee, which then reports its proposed changes to the Standing Committee on Federal Rules. Rule changes approved by the Standing Committee are then forwarded to the Supreme Court, which generally accepts the changes. The Court then passes the rule changes to Congress for a lay-over period after which they become effective unless Congress has acted to set aside the rule change.

In addition to reporting rule revisions to the Standing Committee, Professor Carrington is charged with drafting the rules and doing background research. That includes reviewing the correspondence regarding civil rules received by the Administrative Office of the U.S. Courts. These Reporter duties make significant demands on Professor Carrington's time, and require frequent presentations at Judicial Conferences of the Circuit Courts and testimony before Congress. This work led to a recent article, "'Substance' and 'Procedure' in the Rules Enabling Act," 1989 *Duke L.J.* 281.

Statutory Reform

While Professors Rowe, Beale, and Carrington were engaged in studying the federal court system, Professor James Cox for the past five years has been hard at work rewriting the North Carolina Business Corporation Act. As a member of a

drafting committee headed by Russell M. Robinson II '56, and including Clarence "Ace" Walker '55, Professor Cox "worked to update the old statute. It was written in 1955 and was a good law at the time, filled with lots of 'Lattysms' [Dean E.R. "Jack" Latty served as a principal draftsman of the statute]. While it was a good act, we needed to update it."

For five years, Professor Cox traveled to Raleigh for once-a-month meetings with the drafting committee, which was authorized by the General Statutes Commission. In addition, he appeared before the Commission at a number of hearings. The drafters were successful in crafting a new law, and last summer it was signed by the Governor.

The revised Business Corporation Act, according to Cox, "follows the Revised Model Act, with discrete changes. We kept some of the old, used some of the Model Act, and then redrafted some parts to meet our needs." Cox, who also was involved in the rewriting of California's business law, found that the North Carolina experience "was more fruitful. Our handiwork will last for twenty years. That Act, which we, especially Russell, poured a lot of energy into, with fairly intensive time commitments, will serve lawyers and corporations well into the next century."



Professors Jim Cox and Lawrence Baxter both worked on statutory law reform in North Carolina.

Although heavily involved in revising the North Carolina law, Professor Cox also found time to testify before both the United States Senate and House on the Insider Trading and Securities Fraud Enforcement Act of 1988, which was passed in October of that year.

Like Professor Cox, Lawrence Baxter also has been engaged in the study and reform of North Carolina laws. He worked closely with the North Carolina Bar Association's Task Force on Administrative Law and Procedure to reform the state's administrative system. The Task Force was chaired by John N. Fountain, and was charged with studying the recently enacted administrative law system to see how it should be reformed. Baxter describes the existing system as "pretty progressive. Our job was to reassess the new system, to see how it could be improved." The Task Force met regularly over a year and a half and reported recommendations to the Bar Association Board of Governors, but these were rejected.

The North Carolina Bar Association also appointed Professor Baxter to its Section on Administrative Law, where he serves on the Section Council. In addition to his work in North Carolina, Baxter continued to pursue his specialty, federal banking law and administrative law. In 1987-1988, he wrote a report for the Administrative Conference of the United States on adjudications in the savings & loan system, *see* Baxter, "Life in the Administrative Track: Administrative Adjudication of Claims Against Savings Institution Receiverships," 1988 *Duke L.J.* 422, and this report marks one of the first comprehensive studies of procedures to be followed in the now burgeoning S&L bailout. As a result of that report, Professor Baxter collaborated with the Administrative Conference in providing expertise and counsel to the House and Senate Banking Committees when they considered S&L bailout legislation.

"That experience was enormously rewarding," Baxter says, "since the legislative committees had to examine a wide range of issues on administrative procedures and constitutional law." The result was the mammoth Financial Institutions Reform, Recovery, and Enforcement Act, signed on August 9, 1990. Broad-ranging though the Act is, however, it barely begins to address the problems currently being experienced in the S&L and banking industries.

On the prospects of resolving the crisis, Professor Baxter is hardly sanguine: "It's a huge problem which is only partially understood by the public. Estimates of the overall costs of the bailout range wildly, and there are dozens of opinions on causes and cures. Even where the experts agree on the need for reform, the political environment complicates the ability of Congress and the Executive to do what will have to be done. Ingrained beliefs, ranging from memories of the Depression and even reaching all the way back to President Andrew Jackson's veto of Congress's renewal of the charter of the Second Bank of the United States, continue to influence political decision making despite the fact that they are quite inappropriate within the context of the modern financial services industry, both domestically and internationally."

Professor Baxter is now at work on a related study for the Administrative Conference, this time examining the enhanced enforcement powers of the federal banking agencies. He is joined in this study by Professor Roy Schotland of Georgetown University, and their report is expected to be completed during 1991.

Serving as Commentators

Professor John Weistart performs public service of a different kind, though his contribution is no less significant. Weistart explains: "I don't really see what I do as being 'public service' as you traditionally think about it. To me, that usually suggests helping the downtrod-

den. What I do is more serve as an objective commentator on issues I care about deeply—higher education and sports. I think I can contribute to the public debate on these issues by pointing out which side is making good arguments, and which side is saying nothing much."

Weistart certainly has contributed to the debate on sports and academics. In editorials in the *Chronicle of Higher Education* and *Academe* (Bulletin of the American Association of University Professors), Weistart has made plain his view that "[a]t many schools, the athletic department operates as the entertainment division of the university." He also wrote, "[O]ne of the most surprising [things revealed in recent college sports scandals] is the historical absence of effective faculty oversight of the educational experiences of student athletes in big-time college programs."

Weistart wrote this last comment in August 1987, and recent events have certainly not disproved it. In fact, Professor Weistart chairs the Athletic Committee of the American Association of University Professors, and chaired a recent AAUP Special Committee on Athletics, which issued a report in January 1990, "The Role of Faculty in the Governance of College Athletics." The Report found "ample evidence that the problems in college sports are persistent, substantial and fundamental." It called on the faculty to reassert its role "in defining and monitoring the educational experiences of athletes...."

In commenting on his role in the debate over academics and athletics, Weistart notes up-front that "being at Duke makes it easy for me. They're clean, so I really don't have to worry about that." He explains, "I try to focus on real world conflict, between commercialization and the role of the university. And the conflict inherent in the term 'student-athlete.' You notice that we don't hear anyone say that term anymore. Ten years ago that was considered accurate. Today, after comments point-



(Left to right) Professors Walter Dellinger, Bill Van Alstyne and John Weistart discuss current legal issues.

ing out the hypocrisy, you don't hear that anymore. That's an accomplishment. Another hypocrisy was the role of sports departments. At many schools they're nothing but TV production units. People now realize that. Of course, if you take the entertainment role of sports departments at face value, then it's just a small step to paying athletes. Now depending on your view that's either abhorrent or your next logical step."

Weistart points to a resurgence of the faculty voice. "There are a lot of factors against faculty involvement. For one, faculty like sports, both the competition and the attention it brings. Second, it is hard to get involved. Third, there's no real payoff for cleaning up your sports department." Despite that, Weistart notes a growing restlessness among faculty sensing that they must reassert their control.

On the notion of the university "healing thyself," Weistart is less than optimistic: "Internally generated reform is not possible. The NCAA is a captive regulatory agency. Change will come, but it will be spurred by outsiders. Notice where all the revelations came from regarding N.C. State. It was from the reporters and the press. Sports scandals have been driven by the press. They are

the ones who are out front on these stories, not the universities. That external scrutiny and changes caused by the broadcast industry will alter college athletics."

Other Law School faculty also make their contribution by informing the debate on important questions. For instance, Professor Walter Dellinger

has kept busy after 1989's Supreme Court decision in *Webster v. Reproductive Health Services*, carrying the case for a woman's right to abortion to the Congress of the United States, to legislative committees in Idaho, and to the Supreme Court. After *Webster*, which was reported by some in the media (and among pro-life groups) to overrule *Roe v. Wade*, states have been rethinking and rewriting their laws governing abortion. As part of that debate, Professor Dellinger testified before an Idaho legislative committee considering strict anti-abortion laws. In addition, Dellinger presented testimony to Congress on what is permissible and appropriate after *Webster* and *Roe*. Professor Dellinger also wrote an *amicus* brief for 130 members of Congress in the case of *Turnock v. Ragsdale* (No. 88-790), urging the Court to adhere to *stare decisis* and not overrule *Roe v. Wade*. Professor Dellinger further explored this argument in Dellinger & Sperling, "Abortion and the Supreme Court: The Retreat from *Roe v. Wade*," 138 *U. Pa. L. Rev.* 83 (1989). In this term of the Supreme Court, Dellinger is co-counsel for the National Association of Women Attorneys, who have filed a brief in *Rust v. Sullivan* challenging government restrictions to patients in feder-

ally-funded family planning clinics.

Professor Dellinger also has participated in another recent debate—flag burning. After last year's decision striking down the Texas law regulating flag burning, Dellinger testified before the Senate Judiciary Committee opposing a constitutional amendment and suggesting a federal statute seeking to regulate flag burning, while not a proposal he favored, might well pass Supreme Court review. After last summer's decision striking down a federal law regulating flag burning, Congress again wrestled with an amendment to the Constitution to permit regulation of flag burning. Opposing the amendment, Dellinger asked the Judiciary Committee, "Once we have swiftly moved to amend the Constitution to get rid of a form of expression that the majority finds offensive, what enduring principle of our constitutional tradition will remain unimpaired that will legitimately trump the claims of those deeply wounded by other kinds of expression?" He concluded that "In a world that is bursting forth with new democracies, there is a newly awakened admiration for the Constitution of the United States. Amending our Constitution so that we can punish these few dissidents would make our President seem just a little silly, and make our country—the land of the free, and the home of the brave—seem a little less free, and a little less brave. This amendment is unworthy of the United States."

Professor Dellinger has also written articles on various constitutional issues this year in *The New York Times*, *The Washington Post*, and *The American Prospect*. He continues to advise several members of the United States Senate on constitutional issues and serves on the Executive Board of the National Lawyers' Council of the Democratic Party.

Professor Christopher Schroeder also has been active in advising the Congress. He served as Counsel on the Senate Judiciary Committee from August 1987 to

February 1988. Previously, he advised the Committee on lower court appointees, and then was asked by Committee chairman Senator Joseph Biden to work with him full time on the appointment to fill the seat of retiring Justice Lewis Powell.

"Working with the Senate Judiciary Committee made it terribly obvious that ideas taught in law school have real world significance," says Professor Schroeder commenting on his work with the Judiciary Committee on the nomination of Robert Bork. "To a large extent, the Bork nomination was an argument about desirable methods of constitutional interpretation." He adds that the debate "replayed and amplified an academic debate that had been going on in law schools for fifteen to twenty years. It shows that ultimately it was more than an academic debate; it spills over into politics. It also shows that, as politics employs these arguments, it reshapes those ideas. The two are not completely merged. They each have their own arena."

Schroeder emphasizes that the academic debate laid the groundwork for the Bork nomination debate: "The fact that we had debate over original intent for fifteen years enabled the Bork nomination to be understood as an effort to put someone with that constitutional perspective on the Supreme Court." Professor Schroeder notes that the hearings were a real education for himself and the Committee about judicial philosophy. "Contrary to popular perception, the interest group politics were going on outside. Much of the hearings were devoted to discussion of judicial philosophy. . . . The hearing record stands as a summary and extension of the academic discussion."

More recently, Professor Schroeder worked on a task force on hazardous air pollutants for the Washington-based think tank, Resources for the Future. He explains, "Occasionally they put together working groups, ten to twelve people, to

see if they can form a consensus on some critical issue. I was asked to participate in this one, which was to advise the EPA on the right approach on regulating air borne toxic pollutants," under the Clean Air Act. The group did come up with a consensus position which was submitted to the EPA. Recently, the EPA issued a rule "that bears some resemblance to our recommendations. In substantial part they reflect the recommendations. Of course you can never tell what influence our ideas had, but the final rule was close to our proposal."

In commenting on the value of this experience, Schroeder notes that "it is often very useful to confront people with whom you disagree face-to-face, not just through their writings, which may not represent views very well. Meeting these various people was an excellent opportunity. Also, I think this consensus building approach can work well, and it should be tried in other areas."

Another frequent contributor to public debate is Professor William Van Alstyne. He has served as General Counsel to the American Association of University Professors (AAUP). As their Counsel, he filed an *amicus* brief at the Supreme Court in *University of Pennsylvania v. EEOC*, arguing that the tenure review process should be protected from discovery in suits charging discrimination in promotions. (The Supreme Court unanimously held that universities were not entitled to such protection. 110 S. Ct. 577 (1990)). As counsel he was also responsible for overseeing the national legal staff of the AAUP.

Health care law and policy are the special interest of Professor Clark Havighurst. As a member of the Institute of Medicine of the National Academy of Sciences, he sits on its Board of Health Care Services, which oversees an extensive agenda for study and research on topics related to national health policy. According to Havighurst, "the studies we oversee are requested by Congress or other government agencies or funded by

grants from foundations and the IOM's own endowments. Our Board meetings are occasions for shaping studies and identifying where the next problems will arise." A recent project was a two-volume study of quality-assurance mechanisms for use in the Medicare program.

In 1989-90, Havighurst was on sabbatical leave in Washington, D.C. "I was not primarily engaged in public service at this time," said Havighurst, who has spent earlier sabbaticals at the IOM and the Federal Trade Commission. Instead, he was a consultant in residence with Epstein, Becker & Green, P.C., a leading health care law firm. He did, however, consult with congressional staff from time to time and with the Physician Payment Review Commission. He also sat on an IOM committee to advise the Department of Health and Human Services on implementing legislation to develop "practice guidelines" for medical treatments. The practice guidelines movement, about which Havighurst has written in two forthcoming articles, "is more complicated and controversial than it sounds," he says. "Guidelines could easily have the effect of regulations, and I have been arguing, to the Department and anyone else who will listen, that they should develop pluralistically and be used to facilitate the exercise of consumer choice."

Professor Havighurst served in 1988-89 as Executive Director of the Private Adjudication Center, filling in for Paul Carrington, who was on sabbatical. As Executive Director, he prepared long-range plans for the Center and negotiated a long-term relationship with the Law School.

As the foregoing examples attest, members of the Duke Law School faculty respond to the call to public service in a variety of ways. Such service continues to benefit the Law School community and the legal community.

Learning to Resolve Disputes Creatively

Few developments in the area of civil procedure are more interesting or potentially important than the growing use of alternative methods of dispute resolution. For the past six years, Duke Law School has been a major participant in the development of ADR methods. Primarily through the efforts of former Dean Paul D. Carrington, Duke established the Private Adjudication Center, a non-profit affiliate of the Law School, to develop, administer, and analyze the utility of various ADR methods. The Center has been active in many ways including serving as the administrator of a major research effort to study the use of non-binding arbitration in all federal court cases involving up to \$150,000 in the Middle District of North Carolina.

One of the Center's principal purposes is to involve Duke law students in its activities. While this is not always easily done, the Center's Medical Malpractice Research project, under the direction of Professors Thomas Metzloff and Neil Vidmar, has been able to include student involvement. The research project, supported by a grant from the Robert Wood Johnson Foundation, has included two principal activities: (1) researching existing malpractice litigation patterns; and (2) using ADR solutions to resolve actual malpractice cases. Student involvement in both portions of the project has been extensive. For example, during each summer of the project's existence, three to four students have been employed as research assistants in collecting and analyzing data. During the year, a number of students have been involved in a research tutorial relating to their work.

The work performed by the students has been quite diverse. In the summer of 1990 for example, two students, Leanne Steele '92 and Diana Younts '92, worked extensively on collecting data to analyze the impact of a North Carolina statute designed to speed up malpractice cases by requiring early designation of expert witnesses. The students spent approximately two weeks reviewing case files in the largest counties in the state. Two other students, Donny Willett '92 and Thom Peters '92, were involved in researching summary jury trials in North Carolina. Their work will result in a report to be presented to the North Carolina Supreme Court to assist in formulating policy in this area.

Perhaps the most innovative use of student resources relates to the project's efforts to promote the use of ADR in actual malpractice cases. The Center's work in employing students in the consideration of ADR options in actual cases is supported by a grant from the Smith-Richardson Foundation. While a number of law schools are showing an increased interest in ADR, Duke is a leader in providing clinical experiences to its students. To date, most law schools have had to rely upon simulations to explore the different strengths offered by alternative forms of dispute resolution. The Duke model being developed by the Center seeks to engage law students directly with practicing attorneys to evaluate the use of different methods of procedure in actual cases. "Discussing arbitration, mediation, or other forms of ADR in the abstract is difficult. Having students observe and participate in ADR discussions in real cases makes the proce-



Thom Peters '92 and Donny Willett '92 meet with John Martin during a summary jury proceeding held in Robeson County in July, 1990 in an obstetrics malpractice case.

dural options come alive. Our hope, of course, is that it will make them better lawyers because they have evaluated these options without any preconceptions of the 'right' way to resolve a case," explains Professor Metzloff.

The Center has been actively involved in promoting the use of ADR for approximately a year and a half. In that time, the Center has administered ADR to resolve cases with a value of over \$5 million dollars. The Center has employed a variety of ADR methods including mediation, non-binding arbitration, a variety of forms of binding arbitration, and summary jury procedures. "A central premise of our work is that we do not presuppose that there is a single 'alternative' that works best for all malpractice disputes," states Professor Metzloff.

An important aspect of the program is to seek cases in which one side or the other is simply interested in considering the *possible* use of ADR. A student researcher is assigned to find out about the case and propose a specific ADR solution. The other students then meet with

the project's directors to discuss the recommendation. The recommendation is then communicated with the attorney involved and, if approved, discussed with opposing counsel.

If the parties remain interested, there are usually several meetings or telephone conversations required to hammer out the specific details of the ADR agreement. Students are often involved in this stage as well. After attending the meetings, they frequently draft an ADR agreement. In other cases, students have attended court hearings to approve the use of the ADR procedure.

If an agreement is reached, the Center must then administer the procedure. In an arbitration case, this primarily involves retaining the arbitrators and finding a suitable place to hold the arbitration. Arrangements for a summary jury proceeding can be far more elaborate. For example, a major emphasis is placed upon shortening the time of jury selection. To accomplish this, the Center prepares a specific jury questionnaire to pre-screen potential jurors, and students interview the potential jurors prior to jury selection.

While most hearings run smoothly, problems can arise. In a major summary jury trial held in Catawba County, the case had to be heard in a small magistrate's courtroom without any jury box. Jeff Rice '91, who helped administer the case, recalls that "the day before the trial started, we were considering calling a local church to see if they had any portable pews that we could use to make a jury box." In another case in which most of the evidence was presented by video, the TV monitor provided by the court reporter was too small which caused a scramble to find a suitable replacement.

Because the ADR procedures are typically limited to at most a few days, students are able to observe the entire hearing or summary trial. This past summer, for example, students were able to observe a two-day arbitration involving



Plaintiff's counsel Elizabeth Kuniholm '79, and John Edwards with Judge John Martin during summary jury trial.

the calculation of damages suffered by an infant receiving a serious overdose as well as a three-day summary jury trial in a major obstetrical case. In fact, the students often play a far more active role than that of a mere observer. In all cases, students have served as assistants to the judge or arbitrator. These students are usually permitted to listen in on private "in chambers" discussions between attorneys and the judge. They also can frequently meet with the judge or arbitrator to discuss in private any issues that came up during the hearing. Indeed, in one arbitration, the students served as law clerks and helped the arbitrator draft an opinion.

Following the hearing, the Center typically performs follow-up research on the decision-making process. This involves personal interviews with either the arbitrators or the jurors. Students are often involved in the interviewing process. "It was very enlightening interviewing a juror. You come away understanding that what seemed like an unimportant point had a lot of impact on how the juror decided the case," remarked one student.

In sum, student involvement runs from the initial discussions about whether to use ADR through to the completion of the case. "The best part of the experience is that you can watch the

situation unfold. We were able to see the 'big picture,' including rather candid assessments by the lawyers and judge about the process as well as the result. The whole experience was great!" notes another student.

Perhaps most gratifying is the appreciation that users of the Center's ser-

vices have expressed for the work that the Center and its student assistants have given to them. Elizabeth Kuniholm '79, has been involved as an attorney in two of the cases the Center has handled. "It has been a pleasure working with the Center in these cases. In each case, thanks in large part to their assistance, we were able to decide cases in days instead of the weeks that would have been required if handled in the normal fashion."

Of course, not all cases reviewed culminate in the use of ADR, but even in those cases there may be some benefits. David Warren '64, who serves as Administrative Director for the project, recalls that "we were asked to explore ADR options in a major case that was in a stalemate position only to have the case settle after expending considerable time exploring alternative approaches. It turned out that by discussing procedural issues and making some headway on those issues, the parties improved their communication and found out that they could consummate a settlement." Perhaps just as important as why some cases are amenable to ADR is why other cases are not suitable for an alternative solution. "In seeing the obstacles that exist to the use of ADR, I think the students learn a great deal about the current litigation system," remarks Professor Metzloff.

The Docket

Taking Care of Business

Duke Law Alumni Pursue Business Careers

Successful legal careers take many different forms for the alumni of Duke Law School. While many alumni have pursued successful careers as associates and later as partners in law firms, others have found success as counsel for businesses or corporations. Some alumni choose to teach, while others serve as judges. In spite of the varied paths a legal career may take, many law alumni choose a career outside the immediate practice of law—a career in business.

Although a small percentage of Duke Law graduates are active in business, those who are contribute greatly to a variety of business activities. Whether the enterprise is a family-operated business in Atlanta, Georgia or a large investment firm in Chicago, Illinois, a Duke Law alumnus can be found hard at work at the pulse of many business endeavors.

“Almost all of our graduates directly enter traditional areas of the profession, including clerkships, law firms, government agencies, and corporate in-house counsel positions,” says Dean Pamela B. Gann. “I imagine that a majority of our alumni will always work in traditional areas of the legal profession, but I also expect that the percentage in business will gradually increase. A number of lawyers express dissatisfaction with their work after about twenty years, and many of them will be seeking alternative careers for the next twenty years of their life. Some of these will be in business.”

Dean Gann notes that “those who leave [traditional] areas of the profession and enter business tend to fall into the following categories—those whose family are in business; those who work first inside corporations as lawyers and then switch over to management; and those who work for particular corporate clients of a law firm and subsequently leave the

law firm to work directly for the corporate client.”

Continuing Family Tradition

Carl E. Bolch, Jr. '67 was planning to pursue a career in business when he earned an undergraduate degree from



Carl E. Bolch, Jr. '67

the University of Pennsylvania's Wharton School of Business in 1964. Bolch, Chairman of the Board and Chief Executive Officer of Racetrac Petroleum, Inc., a family-owned and operated retail gasoline and convenience store chain headquartered in Smyrna, Georgia, opted away from a graduate degree in business, however, to come to Duke Law School. Bolch had watched his father do legal work for Racetrac Petroleum with the benefit of only a few undergraduate law classes and reasoned that a law degree would help him with future business undertakings.

While at Duke, Bolch was already leaning strongly toward going home to help with the family business, and law school did not change his mind. “I guess I am one of those rare individuals who suffered through law school knowing that I wasn't going to practice law. Fortunately, I enjoyed the academic side of the study of law.”

When Bolch returned home after graduating from Duke Law School, Racetrac Petroleum was recording \$4 million per year in sales. Now it boasts over \$700 million in annual sales and has 300 stores in fourteen states. Racetrac Petroleum is also the largest supplier of ethanol in the South.

Bolch views the legal training he received at Duke as being very important to his operating a prosperous business. It is “virtually impossible to do business in America today without some legal knowledge. The study of law teaches one how to recognize and organize problems. It provides you with a good framework for problem-solving. Unfortunately, it doesn't teach you the solution.”

The ability to work with a lawyer as a peer and then back away to exercise business judgment is another plus Bolch sees to operating a successful business. “That way you don't let lawyers make the decisions. I have the confidence to make a business decision.” Bolch notes that the needs of his business are such that Racetrac Petroleum has a staff of three other attorneys and four paralegals and must also occasionally consult outside counsel.

Unlike Bolch, Wade H. Penny, Jr. '60 did not foresee a career in the family business. A former member of both the North Carolina House of Representa-



Wade H. Penny, Jr. '60

tives and the Durham City Council, Penny is President and Legal Counsel for Penny Furniture Stores, a chain of three retail furniture stores in the Triangle area founded by his father in 1936.

He is also President and Legal Counsel for two family-owned real estate investment corporations and a family-owned retail lawn and garden supply center in Durham, North Carolina.

Penny's love for politics was one of the reasons he decided to pursue a legal education rather than going to medical

school. After law school Penny went to Washington, D.C. on a Richardson Foundation Fellowship for a year to work for North Carolina Congressman L.H. Fountain. In 1961, he returned to Durham where he practiced law for nine years.

“I didn’t figure that I would practice law, but after you get into [law school], you get caught up with the intrigue of practice and how you will perform.” Penny describes his former practice as “an old country-type law practice” which handled mainly traffic cases and criminal defense. “I practiced in the pre-high tech era. The adverse economics of solo practice had not yet come to the forefront.”

Although Penny speaks modestly of his former legal practice, he accomplished what is viewed by some as the greatest achievement for an American lawyer—a victory before the United States Supreme Court. In *Klopper v. State of North Carolina*, 386 U.S. 213 (1967), Penny argued that a Duke zoology professor who was convicted of criminal trespass in relation to an incident in Chapel Hill at a segregated restaurant had been denied his constitutional right to a speedy trial because the State of North Carolina refused to bring the case to trial or to submit to a conclusive dismissal of the charge. *Klopper* was the first case in which the Court acknowledged that the Sixth Amendment guarantee of a speedy trial was applicable to the states through the Fourteenth Amendment.

Fresh from his victory before the Supreme Court, Penny went to Raleigh in early 1967 to represent Durham in the state House of Representatives. Penny describes politics as his “true love” and views “serving the republic as the highest and best use” of one’s legal education. While serving in Raleigh, he realized that he did not want to go back to the life of a solo practitioner.

In 1970, Penny decided to enter the family business, in part to be with his father—an association he greatly treasured. “I enjoy the freedom of being in business. It doesn’t have the constraints

of a law practice. That doesn’t mean that you don’t work hard, but that you get to make your own deadlines and determine your own objectives.”

The technical knowledge of tax law and commercial law as well as the experience of working with people gained while practicing law has been very helpful to Penny while managing a business. “A legal background gives one an advantage in looking beyond the immediate future. It helps one clearly and accurately predict future outcomes.”

Richard A. Horvitz ’78, a Co-Trustee of his family’s trust in Cleveland, Ohio, practiced law for two years before entering the family businesses. At that time, a testamentary trust established by his grandfather owned newspapers, cable television systems, real estate, and a highway construction company. However, because of escalating family disharmony, a decision was later made to liquidate the corporations and split the proceeds into equal but separate subtrusts for the three family lines represented by the children of the testator. Horvitz’s family subtrust is in the process of redeploying the assets to insure growth for future generations. The focus of their strategic asset allocation plan is on marketable securities. Despite the sale of his family’s active holdings, Horvitz is content with his decision to leave large firm practice and enter the business world.

“Business is similar to what you do in law. I am very happy with my legal background. It develops the ability to think and rationalize—to develop a deductive approach to problems. Law trains you to be a very critical reader.”

A major difference Horvitz perceives between law and business is the emphasis of the work. Law is problem-oriented while business is opportunity-oriented. “Keep in mind that there is a big difference between the study of law and the practice of business. Don’t let your ability to identify problems keep you from identifying opportunities.”

Horvitz remains involved in the Law School as both a Barrister and a member

of the Board of Visitors. “Personally, I loved Duke. I found the people there to be very well-balanced. I can’t think of a nicer place to go [to law school] than Duke.”

The Lateral Move

John A. Canning, Jr. ’69 took a much different route into the business world. From Duke Law School, Canning went straight to the legal department of First Bank of Chicago, where he



John A. Canning, Jr. '69

did acquisitions and transactional work. Now Canning is President of First Chicago Venture Capital, the largest institutionally affiliated high-risk equity investment firm in the nation.

Canning certainly does not regret making the transition from the practice of law to a business career. “I have a great situation here. A lawyer has to be 100% right all of the time. If I’m right six out of ten times, then I’m doing a great job. There are no sleepless nights for me. I’ll be here until I retire.”

Much of what Canning does on a daily basis has legal implications. Whether considering the structure of a particular investment, the tax ramifications of an investment, or the need to insulate a client from liability, Canning finds his legal background invaluable. “My legal practice has been a great foundation to my business career.”

Canning is quick to point out that careers in law and careers in business often go hand-in-hand. “In general, law practice does not preclude a career in business. A high-quality firm gives you great experience and high exposure. Really good transactional lawyers always have business opportunities available to them down the road.”

Another Duke Law School graduate who took advantage of a business oppor-

tunity stemming from his legal practice is John M. Hines '65. After nineteen years of a very successful practice in tax and corporate law, Hines accepted a position with a company for which he had previously done a substantial amount of work as an attorney.

Hines, Executive Vice-President and Secretary of A.C. Monk & Co., Inc. in Farmville, North Carolina, is in charge of finance and administration for an international tobacco dealership. It was immediately apparent to Hines that international business was fundamentally different from the practice of law. "Coming out of private practice, I had a lot to learn. In particular, I had no experience in international trade. I had to change my thought process; make it global."

Despite the differences between law and business, Hines still finds his legal background beneficial, especially the training in analytical thinking that a legal education provides. "The analytical training I received helps me go right to the main point of a problem. That is very valuable." Hines also notes that legal experience is very helpful in hiring and firing attorneys.

In talking to law students, Hines feels equally comfortable recommending a business career as a career in law. "Both [law and business] can be very rewarding. I think it is really important to make a decision about what you enjoy in life. Law is a jealous mistress. A legal practice can be very stimulating and very rewarding—both personally and financially. It boils down to a question of what you want to do with your life in the long run."

As President and Chief Executive Officer of Financial Security Assurance in New York City, Robert P. Cochran '74 oversees a financial guaranty company established exclusively to guarantee corporate debt obligations. Cochran left private practice in 1985 to join three others in founding FSA, the first company of its kind. Through the use of

100% unconditional Triple-A guaranties, FSA handles billions of dollars in transactions every year and is expanding into the international marketplace.

"I certainly didn't expect anything quite like this," Cochran says. "Starting out with a private firm that did corporate practice was a great training ground. I loved what I was doing, but this was an opportunity that I just couldn't pass up. FSA is strong and profitable and has world-wide growth opportunities. It deserves and will get all of my attention for some time to come."

Cochran assumed his present position with FSA in August of 1990. He formerly headed FSA's Financial Guaranty Group where he over saw the credit underwriting committee, which approves or disapproves every transaction. FSA handles only twenty-five to thirty transactions a year and Cochran is close to every issue.

"Over the last five years, my role has evolved more toward management. A sound legal training from a high-quality law school has helped my business efforts. It's an enormously valuable background that prepares you for hard work, problem solving, and results orientation."

As President of Real Estate Titles, Inc., a title insurance company based in Winston-Salem, North Carolina, W. Dunlop White, Jr. '59 writes title insurance for various types of real estate transactions. Real Estate Titles is a privately held corporation with three shareholders and five employees. "Our business is specialized real estate law. We attempt to recognize and apply certain legal principles. For example, risk [in a real estate transaction] is based on state statutes and case law; we must know if this is the type of risk we can assume. Our work is much more legal than administrative."

A native of Lexington, North Carolina, White practiced real estate law there and in Greensboro for six years after leaving Duke Law School. In 1965, he accepted the opportunity to manage a

title insurance agency and eventually started his own company in 1978. "Starting my own business was one of the very best decisions I have ever made in my life," states White. He enjoys the freedom and independence of being the owner of his own company, but warns that one must first pay the dues. "[Starting a business] can't be easily done right out of law school. You need the legal background you get from working with a firm. Otherwise, you don't know the practical approach. The best way to learn it is to experience it."

Although experience is a key ingredient to business success, White also views his days at Duke as important to his career. "The education I received at Duke Law School was second to none. There were only thirty-nine students in my class; we were all very close to each other and close to the members of the faculty. This helped tremendously in discussing and analyzing problems. This closeness has been carried over into our business. It's something we're especially proud of."

Deciding between a business career and a traditional legal practice is a choice that will continue to confront alumni and future graduates of Duke Law School. While both choices may prove rewarding, the decision between law and business is an inherently personal decision that must consider potential setbacks as well as rewards. For those who make the choice of a business career it is comforting to have the example of other alumni who are successful and happy having made similar choices.

James A. Gleason '92

Using the Law to Improve People's Lives

Alumna Profile of Barbara R. Arnwine '76

Barbara R. Arnwine '76 is a fighter. She is an idealist with a practical sense of how to get things done. Most of all she is a visionary, a model for those currently in and entering the legal profession of how to hold to your ideals and use your talent to improve your world.

In 1930, the dean of Duke Law School, Justin Miller, described the characteristics which distinguish good lawyers from great ones:

Altruism combined with realism; knowledge of fundamental principles and capacity to apply them; courage to insist on the right and patience to achieve it; understanding of the timidity of the weak; fearlessness of the domination of the powerful; sympathy for the mistakes of the indiscreet; caution of the craftiness of the unprincipled; enthusiasm for that which is fine and inspiring; reverence for that which is sacred; these are some of the characteristics of great lawyers.

Barbara Arnwine is one of those great lawyers which Miller envisioned. Her career since leaving Duke has led her from providing legal services to the poor across North Carolina, to fighting for civil rights in courtrooms in Boston, to lobbying for civil rights legislation on Capitol Hill. From the soup kitchen to the senator's office, Arnwine's career has been devoted to using her legal talent to improve the world around her.

Deciding to be a Lawyer

Arnwine entered Duke Law School from Scripps College where she first "saw the potential of law for being a tool to improve people's lives." It was at



Dan Crawford

Barbara R. Arnwine '76

Scripps where she had a chance to work closely with a lawyer who served as advisor to the black student union. She also worked with another black lawyer who dealt mainly with negotiating and settling contracts for the college.

Through exposure to these two lawyers, Arnwine recognized the potential and the power that lawyers have to be a positive social force. "It was within that framework that I saw many, many keys which could unlock doors . . . , doors which were closed to blacks, other minorities, and women."

Arnwine's decision to come to Duke was one of many decisions that characterize her individuality and her ability to establish her own path and follow it. She was one of only five women at Scripps to take the LSAT and the only one to enroll in law school the following year, despite the discouragement of some administrators at Scripps who felt she belonged in liberal arts and advised her that law school was too technocratic for

her talents and a misuse of her creativity and brain power. Fortunately, the president of Scripps supported Arnwine's commitment as he saw tremendous potential in a legal career.

Indeed, Arnwine's creativity was sparked by her experiences at Duke. Her first clinical class fascinated her. She was active in Duke's clinical program which involved students in local legal aid programs. Here, Arnwine found an outlet for her talents and a means to use law as the tool she had been looking for.

Though she found her experiences at Duke professionally rewarding, she characterizes her legal education as a period of painful growth. "I would say that it was an enriching experience, not a fun one," Arnwine says jokingly. "There is no doubt in my mind that I received as solid a legal education as you can receive," but she found there were times both while at Duke and after leaving that she felt estranged from the School as a black woman. "It is only now that I am reestablishing strong contacts with the Law School."

She returned to Duke to participate in the School's Alumni Seminar on Law Firm Delivery of Pro Bono Legal Services in the spring of 1990, and she currently serves on the School's Board of Visitors. She has seen first-hand the "dynamic changes in the School" over the past few years. Among them she notes Dean Pamela Gann's direction and contribution.

From Dean Gann's point of view, Arnwine's association with the Law School is a positive one. "Whenever I see lawyers who have worked with Barbara Arnwine, their comments are always the same: she is a superbly effective professional. I am quite pleased that she accepted President Brodie's invitation to be a member of the Board of Visitors. She

has already brought a number of ideas, particularly about student affairs, to my attention. We will look forward to her counsel as the Law School proceeds to develop further a pro bono project for law students."

Lawyer in the Public Interest

From her clinical seminar in poverty law at Duke, Arnwine began to lay the groundwork which has led to her successful career in public interest. After graduation, she began working in legal services with the support of a Reginald Heaber-Smith fellowship. The fellowship provided a stipend which paid her salary as a legal services attorney and allowed her three years to pursue the type of law she was most interested in. "It was a difficult decision," Arnwine says, remembering the pressures which threatened to distract her from following her goals. "There is a whole lot of pressure to put on the suits and go to the interviews and try to outrank everyone with the money you make." Though not immune to such pressures, as with her decision to go to law school, Arnwine chose to follow her own path. "When it comes down to it, there are people out there who need lawyers and cannot afford them. My participation in corporate law would not change the balance in the corporate world, but I knew I could make a hell of a difference where I chose to go."

Arnwine chose to work at legal services in Durham. With the backing of her fellowship she worked for three years helping the poor in the community where she had gone to school. Though financially she had chosen a less profitable path, her career developed rapidly. She became director of administration for Statewide Legal Services of North Carolina, and then moved on to become Executive Director of the Boston office of the Lawyer's Committee for Civil Rights. Fourteen years after law school she is now the national Executive Director of the Lawyer's Committee for Civil Rights with a practice which is "con-

stantly challenging, extremely rewarding and very diverse." Her work involves fund-raising, public relations, media contacts, public speaking, negotiating with the White House, lobbying senators, managing a staff and, most of all, litigating. Balancing all of those tasks is "time consuming, aggravating but extremely fulfilling." Her position requires her to work in diverse legal areas from voting rights, fair housing, and employment discrimination, to human rights violations by South Africa in Namibia.

In the twenty-six years since the Lawyer's Committee was established, it has grown to include offices in Boston, Philadelphia, Washington, Chicago, San Francisco, Los Angeles and Denver. It was founded to stimulate and coordinate the involvement of attorneys from the private bar in civil rights litigation. The organization co-counsels cases with major law firms throughout the nation.

Originally founded to work in the area of civil rights litigation, the organization's efforts have spread to a wide variety of civil rights issues in areas which do not exclusively involve litigation. The Committee's projects include working with government officials and Congress to ensure strong governmental support of fair employment laws, providing technical assistance to attorneys in Voting Rights Act proceedings, and advocating on behalf of fair housing policies for increasing the availability of affordable housing.

The Committee also has an international focus, working to increase awareness in the legal profession of the erosion of the rule of law in South Africa and initiating or intervening in proceedings in this country to deter U.S. support for the apartheid regime. Arnwine oversees all of these projects. Her job requires her to be "a jack of all trades" at times as well as calling upon her talent as a well-trained litigator.

Although her work pulls her in many directions and she finds herself dealing frequently with all of the frustra-

tions that the profession has to offer, Arnwine says with confidence that "there has never been a moment in my legal career that I have ever felt anything but challenged and very happy. I have truly enjoyed being a lawyer and the work that I have done."

While she manages a staff of attorneys and oversees diverse and challenging projects, one of the most challenging and rewarding aspects of her life is being a mother. She takes advantage of the time she can spend out of the office to be with her four-year-old son, Justin. Time at home is often spent quietly, reading or listening to music and occasionally on Justin's favorite activity—going to the park.

Arnwine's strength as an individual and her talents as a lawyer have led her on a path of difficult but meaningful choices and tremendous rewards. Her work is constantly challenging and fulfilling and the benefits of her efforts extend to all parts of the community. In looking back on her career and remembering making the choices which many students at Duke now face, Arnwine offers this advice: "If you really want to make a difference, you should think carefully about how you use your legal talents... Being a lawyer can be either very important or it can be meaningless. Your ability to use your training and choose your direction will be dulled or sharpened depending on how you use it."

Arnwine gained from Duke "a superior legal education." In turn, her accomplishments contribute to the service of her community and to the distinction of the School where she first developed her legal talent.

F. Joseph Diab '92

Administrative Law Expert from South Africa

Faculty Profile of Lawrence G. Baxter

When Lawrence Baxter joined the Duke Law School faculty in 1986, he was "one of the best legal scholars in South Africa," says Dean Pamela Gann. She adds that "he has brought great strength to the faculty because of his strong comparative background," which she notes is a derivative of his dealings with the many sources of South African law. Since his arrival at Duke Law School, Professor Baxter has quickly become an expert in American fields of law, most notably in the administrative, banking, constitutional, and comparative law areas.

International Roots

At the youthful age of thirty-seven, Lawrence Baxter has achieved much. A native of Pietermaritzburg, he received a bachelor of commerce in 1973 and an LL.B. in 1975 from the University of Natal. After briefly practicing law, he continued his education at Cambridge University, receiving an LL.M. and a Diploma in Legal Studies in 1977 and 1978, respectively. Upon his return to South Africa from England, Baxter again practiced law for a short stint until the University of Natal appointed him to its law faculty in 1978 and, within four years, promoted him to professor of law. In 1985, before coming to the United States, Professor Baxter completed a Ph.D. in administrative law at the University of Natal.

Baxter originally came to Duke Law School at the invitation of former Dean Paul D. Carrington as a visiting professor for the spring semester of 1986. He was offered a full-time appointment



Professor Lawrence G. Baxter

by the Law School during that visit, and in March of 1990, he was granted tenure status by the University.

To complement his strong background in comparative institutions, Professor Baxter has served as a visiting professor in several countries. In 1984, he visited the University of Cape Town, and in 1988, he was a visiting fellow at Wolfson College, Cambridge. This past summer, Professor Baxter served as an adjunct professor of law at Bond University in Queensland, Australia. He intends to continue spending at least part of his summers on the Gold Coast, and he notes that "Bond Law School is very exciting because it is the first concentrated effort to establish an American-style law school in Australia." At Duke, Professor Baxter has found such a style to be conducive to student-teacher

interaction, and he says that "it's exciting to see Bond Law School emulate this."

American Success

Most recently, Professor Baxter has enjoyed success at the United States Supreme Court level. His study entitled "Life in the Administrative Track: Administrative Adjudication of Claims Against Savings Institution Receiver-ships," which was commissioned by the Administrative Conference of the United States, was cited in *Coit Independence Joint Venture v. FSLIC*, 109 S.Ct. 1361 (1989). The Supreme Court partly relied on Baxter's study to strike down Federal Home Loan Bank Board strategies for dealing with failed savings and loans. Subsequently, Professor Baxter, on behalf of the Administrative Conference, consulted with staff on the House and Senate Banking Committee during the formulation of the Savings and Loan bailout legislation in 1989.

Professor Baxter enjoyed another United States Supreme Court success when he, along with Professors Walter Dellinger and Jeff Powell, successfully argued *Wilder v. Virginia Hospital Administration*, 110 S.Ct. 2510 (1990), in January of last year. Professor Baxter has commented that "working with Powell and Dellinger was rewarding as much because of the collegueship and mutual respect" that the three gained for one another, as the actual win. The outcome of the *Virginia Hospital Administration* case has tremendous implications because the Court found that hospital care providers have a right, under the Medicaid Act, to sue in federal court to ensure their "reasonable and adequate" reim-



Professor Baxter with daughters Imogen, Rochelle, and Chantal.

bursement for the costs of treating indigent patients. The holding means that hospitals across the country will be better able to collect potentially millions of dollars from Medicaid.

Despite his busy schedule at Duke, Professor Baxter continues to be active in community legal affairs. He is currently the American Bar Association Vice-Chairman of the Committee on International and Comparative Administrative Law. He has served as a member of the North Carolina Bar Association's Task Force on Administrative Law and Procedure and as treasurer and council member of the Bar Association's Section on Administrative Law. Additionally, he served as consultant to the Administrative Conference of the United States in Washington, D.C. on the adjudication of creditor claims in savings and loan receiverships, and, most recently, on the enforcement powers of the federal banking regulatory agencies under the new bank reform legislation. (See also "Extra Curricular Activities: The Faculty and

Public Service" at p. 18.)

An accomplishment about which Professor Baxter is modestly proud is the recent incorporation of a part of his *Administrative Law* treatise into the new edition of an American casebook entitled *Fundamentals of Administrative Practice & Procedure* by Charles Koch, Jr. Baxter admits that he was pleasantly surprised by the reception of his treatise because "it constitutes international recognition of a book written primarily for a South African audience." The reproduced excerpt explains the evolution of administrative law in common law jurisdictions versus the corresponding evolution in European systems.

In addition to Professor Baxter's legal accomplishments, he continues to place his teaching responsibilities high on his priority list, and he notes that "teaching is very rewarding." According to his small section students, he manages to develop a wonderful rapport. As a current student adds, "he is accessible at almost anytime to discuss classroom top-

ics, the stresses of law school or just to have a friendly conversation." With the heavy time demands on faculty members, Baxter's students are most appreciative of the personal interest he takes in them. A former student comments that Professor Baxter "truly cares about helping his students while, at the same time, encouraging you always to do your best."

Outside the classroom, Professor Baxter spends much of his free time with his three daughters. At ages three, five and eight, the girls require a great amount of time and energy; however, Professor Baxter says that he gets a "tremendous amount of joy" by being around their "unmitigated happiness and innocent outlook on life." Often, he and his daughters spend time together at the beach or playing miniature golf. They enjoyed the recent holidays together visiting friends and relatives in South Africa. In addition to his family activities, Professor Baxter enjoys reading, keeping himself in good physical shape (he can often be spotted at MetroSport Athletic Club), and windsurfing.

Presently, in addition to his many responsibilities at Duke Law School, Professor Baxter is preparing another Administrative Report which will examine the enforcement powers of federal banking agencies. He plans to present a related paper in New York later in the year. Additionally, Professor Baxter is making initial plans to prepare a new edition of his *Administrative Law* treatise. Moreover, he continues to fill a fully active role at Duke Law School by serving on the Appointments Committee, as chairperson of the Faculty Advisory Board for the *Duke Journal of International & Comparative Law*, and as a member of the University-wide Academic Council. Students and faculty are certainly pleased to have Professor Baxter as a member of the Duke Law School faculty.

Kendra R. Stetser '92

Book Review

*Law Firm Breakups: The Law and Ethics of Grabbing and Leaving**

by Robert W. Hillman '73

Last season, viewers of *L.A. Law* saw McKenzie Brackman partner Arnold Becker leave the firm to form a partnership with another attorney. Arnie left in the wee hours of the morning, with a banker's box full of client files in hand. In the following week's episode he was called on the carpet by a judge hearing the motion for injunction filed by his "former" partners. As is true for many *L.A. Law* stories, this was a case of art imitating life.

The current high mobility of lawyers and the resulting attempts to bring resources, such as clients and associates, from one firm to another is a hot topic. Nearly every issue of the *National Law Journal* contains an article reporting on the defection of lawyers from a firm and the resulting struggle over firm assets. With so many lawyers jumping ship and the resulting litigation, a treatise on the subject is timely.

Professor Robert W. Hillman of the University of California at Davis has written a comprehensive treatise on the subject. The author analyzes the law applicable to firm breakups using a number of theories: ethics codes, tort and agency law, partnership law, and corporate law. For each of these, Hillman presents the arguments, which generally come down on the side of either the departing firm member or those left behind, a thorough discussion of cases from several jurisdictions which have considered the matter, and his argument as to the correctness of those cases.

In the chapter on the role of ethics codes, Hillman looks at both the American Bar Association's Model Code of

Professional Responsibility and the later ABA Model Rules of Professional Conduct. Cases applying these codes have generally held that agreements between firm and departing lawyer determining who gets a client are too restrictive of the client's right to choose his or her own counsel. Even covenants not to compete, which are routinely used in business relationships, are untenable when they restrict a client's right to choose a lawyer.

The chapters on tort and agency law and partnerships take on the question of grabbing and leaving from a different perspective, looking more at the rights of the firm and its individual members rather than at those of the clients. Especially detailed is his discussion of the partnership law concept of winding up the business of a firm following dissolution.

Throughout the book, the reader is struck by the insistence of courts in applying time-honored concepts of partnership law to law firms, even when the firms have taken on the corporate form and the respective state legislature has clearly delineated the difference between professional service corporations and partnerships.

In many states, there are more questions than answers in response to the two most important questions asked by the parties to a firm breakup: who gets the clients and (how) do we divide the fees for work we've already done for those same clients.

Hillman succinctly answers the question in his conclusion: "When considered together, the law regulating the relations of business partners and the rules applicable to the conduct of lawyers



Robert W. Hillman '73

Robert W. Hillman has been a member of the faculty at the University of California at Davis School of Law since 1981. He has also taught at the University of Southern California, Duke University, New York University, and the University of International Business and Economics in Beijing, China. He teaches in the areas of business planning, securities regulation, corporations and international transactions.

as professionals yield standards that are conflicting, fluid, and, to a considerable extent, ignored by many lawyers in their quest for better opportunities."

The book is extensively footnoted and in appendices reprints the Uniform Partnership Act, selected provisions of both the Model Code of Professional Responsibility and the Model Rules of Professional Conduct, selected ethics opinions from the ABA, and "Materials Concerning the Insolvency and Reorganization of Professional Associations and Corporations—Legal, Ethical and Practical Considerations" from a program of the Business Bankruptcy Committee of the Section of Business Law held during the meeting of the National Conference of Bankruptcy Judges on October 3, 1988.

The book is highly recommended for any attorney contemplating a lateral move, and is indispensable for the attorney representing either the one who moves or the ones left behind.

Reviewed by Kenneth J. Hirsh, Reference Librarian and Instructor in Legal Research.

*Little, Brown and Company, 1990

Latty Professorship Established at Law School



Dan Crawford

From left, Carolyn Latty Mann and Ruth Latty with Dean Pamela Gann after announcement of establishment of Jack Latty Professorship.

A distinguished professorship named in honor of the late Elvin R. (Jack) Latty has been established at the Duke University School of Law. The Latty Professorship of Law was created by gifts and pledges from alumni and friends in the amount of \$560,000. Income from the fund will be added to the gifts made to date until the fund reaches the \$1 million endowment goal for a University chair.

The professorship was announced by Dean Pamela B. Gann during a ceremony at Law Alumni Weekend on November 3, 1990. "Rarely in the history of any law school is one teacher so esteemed for his intellect, leadership, and personal warmth, as was Jack Latty," said Gann. Latty was a distinguished, nationally-known scholar of corporate law. His impact on corporate law in North Caro-

lina continues to be reflected in the most recently enacted Business Corporation Act, which contains provisions first drafted by Latty.

"Jack Latty served Duke Law School from 1937 until 1973 during which time he was dean of the School from 1958 until 1966 and William R. Perkins Professor of Law from 1966 until his retirement in 1973," Gann noted. "Dean Latty made his mark upon Duke through his recruitment of renowned faculty such as Arthur Larson, Hodge O'Neal, William Van Alstyne, Clark Havighurst, Kenneth Pye and Brainerd Currie; by building a national student body through his memorable personal recruiting style; and by building a new law school building, the construction of which he personally supervised. It is still today known as 'the house that Jack

built.' Dean Latty is universally remembered by students, colleagues and alumni with affectionate respect and admiration."

Born in Hopkinton, Massachusetts in 1903, Latty married Ruth Kenyon Wagner, who continues to reside in Durham, in 1926. He received his B.A. from Bowdoin College in 1923; his J.D. from the University of Michigan; his S.J.D. from Columbia University; and an LL.D. (honorary) from Bowdoin College in 1975.

Before joining the Duke faculty, he taught at the University of Kansas and at the University of Missouri. At various dates after 1937, Latty enjoyed visiting professorships at George Washington University, Stanford University, the University of North Carolina, The University of Texas, the University of Puerto Rico, the University of Florida, and as a Fulbright lecturer at Pavia in Italy. A contributor of articles to professional journals, he also wrote *Subsidiaries and Affiliated Corporations* in 1936, *Introduction to Business Associations* in 1951, and *Basic Business Associations* in 1953.

Appointments to the chair will be made to recognize law professors who have made distinguished contributions to the legal profession through scholarship, teaching and service to the profession or its institutions. The endowment will count toward The Campaign for Duke, a University-wide fund-raising drive to raise \$400 million for endowment, construction and operations by the end of 1991. It will also count toward the Law School's \$12.5 million component goal of The Campaign for Duke.

Remarks by Professor Melvin G. Shimm upon the Announcement of the Elvin R. (Jack) Latty Professorship



Melvin G. Shimm

Many memorable professors have been associated with the Duke Law School. Some have attained towering national and even international stature. But none, I suspect, have left on the Law School as extensive and indelible an imprint as has Jack Latty. Of course, his tenure spanned almost four decades, and (as I can personally attest) one can come to know many students and alumni merely by virtue of hanging on as the years roll by. But longevity of service alone doesn't explain the legion of Jack's admirers, and it accounts not at all for the warmth of the regard in which Jack was and continues to be held by all of us.

To say that Jack was "unique" would be a tired cliché. He did, however, possess a number of positive qualities that while perhaps not individually remarkable, combined to make him a very special kind of person—almost a *deus ex machina*, if you will—who, as perfectly as anyone could, rose to the occasion and successfully championed the Law School at a stage of its development when its future was most critically in the balance. I won't rehearse the details of his battles other than to note that they laid the

foundation of the great Law School that we celebrate today.

I think that the highest accolade that Jack ever gave me was his description of me as his "utility infielder." I say this because although it may sound quite prosaic, this term epitomized for Jack the ideal kind of faculty colleague he himself aspired to be—the unselfish team player who shrank from no assignment (however unappealing) and gave every task he undertook his best shot. And Jack approximated this ideal as well as anyone I have known. Never a grandstand performer, he designed innovative courses and volunteered to teach overloads in order to improve the program of instruction. He quietly and effectively picked up administrative slack when others faltered—editing *Law & Contemporary Problems*, chairing various committees, and taking on the burdens of the Deanship in what were the Law School's darkest hours. He subordinated his own personal and professional needs to what he perceived to be the greater good of the Law School, and he invested himself in the Law School as I believe no one else has done, before or since. And all of this was done with an effervescent and infectious kind of confidence, cheerfulness, and energy that swept even dubious associates along with him, inspired them, and drew from them their finest efforts.

Lest you incline to dismiss my remarks as a standard, sterile eulogy, be assured that I don't intend falsely to paint Jack as a faultless paragon—no one is. In fact, he and I did differ on some issues—occasionally rather strongly. But whatever our disagreement, I never questioned the sincerity and intensity of his devotion to the Law School. Indeed, his almost all-consuming single-mindedness in this regard was perhaps the flaw that the Greek tragedians tell us must inhere in even our greatest heroes.

Jack was truly a great person. When he retired, I urged the Trustees (unsuccessfully, I regret to say) to name this building for him. It would have been a most deserved and fitting recognition. But Jack's true and more enduring memorial—though perhaps more ephemeral in substance—rather can be seen in the character and the direction that he gave to this Law School. And the creation of an endowed chair in his name, underwritten so generously by so many of his former students and friends, attests a universal appreciation of this fact and is a tribute that Jack, despite his modesty, would genuinely have cherished. For this, for the faculty, I thank you all very much.

Remarks by Charles W. Petty, Jr. '63 upon the Announcement of the Elvin R. (Jack) Latty Professorship



Charles W. Petty, Jr. '63

Mrs. Latty, Mrs. Mann, Dean Gann, Professor Shimm, members of the faculty, alumni, and friends, it is a great personal honor for me to be asked to speak for Duke Law School Alumni on

the occasion of the announcement of the Latty Chair, and to share a podium with another one of the most memorable professors we had—Mel Shimm. This will be largely a personal remembrance, but I'm sure I speak for all alumni of the generation that knew Jack when I say that he was a singular influence in our choice of career and development as young lawyers.

Thirty years ago I came to Durham in the springtime to see whether there was a place for

me at Duke. Dean Latty's office then of course was in the old building off the Quadrangle. The combination of the gothic stone building, the wood panelled interior, the clutter of his office, the tweed jacket, the pipe, the white hair, and the Yankee shrewdness with which he assessed me and my prospects were totally overwhelming in that first encounter. There wasn't the slightest doubt in my mind when I went out to drive back to Charlotte that afternoon that

I had encountered an unusual man, and that I wanted to come to the Duke Law School and be a part of all I had seen.

Every lawyer counts among his strongest memories the experience of the first years in law school. I think of Douglas Maggs, all bushy eyebrows and ferocity, sparring with us over the concept of foreseeability in the Palsgraf case, and challenging our conservative assumptions. A gentle Dale Stansbury, wondering whether we should agree with a court's inference that the draftsman of a contract who varied the form of a recurring expression at the end of a long document, had really intended a different meaning, or maybe had gotten just "a little tired of saying it the same way every time." Bryan Bolich, the Oxford rugby player, resplendent in tweeds and green and yellow vests, citing mountains of law review articles for the very diligent and shouting "Look it up". The wit and energy of Robinson Everett, who taught us criminal law in three weeks. Paul Hardin, whose stories about law practice in Birmingham I can still remember. Hodge O'Neal, whose swamp-water Louisiana accent and Socratic classroom style graced an incredible intellect and ability to teach. Mel Shimm, who is with us today, and who the mysterious Mordecai Society recognized as our ablest classroom instructor. (Mel and Robbie Everett have remained our friends and connection with the Law School since graduation.) Francis Paschal, Brainerd Currie, Charlie Livengood, Charlie Lowndes, each with a strong and memorable classroom style.

Mr. Currie, whose son David is here today, was of course one of the most exciting and interesting classroom lecturers we had. His article, on Kilberg v. Northeast Airlines, developed before our very eyes in classroom discussions, became our lead article in the 1963 Duke Law Journal, and later the centerpiece of a collection of his essays on Conflict of Laws in hardcover form. I remember Mr. Paschal most strongly as he spoke for all of us at the Duke Chapel in a memorial for Professor Maggs—a piece which we also published in the Journal

that year. We had less contact with Arthur Larson and Hans Baade in the early years, but they strongly influenced the intellectual tone of the School. A small faculty, it would have to be acknowledged, but giants in the eyes of those of us who experienced the Duke Law School in the early 60s.

It is the ultimate tribute to the man that Jack Latty created the environment in which we each had a personal and deeply intellectual experience with him and each of his colleagues. His pulpit, of course, was Chattel Transactions, a mimeographed set of materials whose only common theme was the legal process itself. He wanted us to learn how to think like lawyers and talk like lawyers and it didn't make a great deal of difference whether we were debating the ownership of Treasure Trove or the concept of "title passing" in determining risk of loss. We could just as easily studied the Old Testament or Shakespeare or Thomas Hobbs. One had the impression that he could take any complex literature as the basis for challenging young lawyers to think and analyze. No one ever used a simple "Ahhhh" with greater eloquence. No one could turn the tables in a discussion as quickly with a "How come." We were entertained, we were challenged, and somehow that course seemed to tie together and put in perspective everything we learned in all of the other courses. Jack Latty was more than anyone the unifying spirit of our legal education experience at Duke.

I think it must be obvious from the fact that more than forty percent of the graduating members of the Class of 1963 have contributed to the creation of the Latty Chair that our class felt a special relationship to Jack. We had the feeling that we were part of something very extraordinary. Mel Shimm has said in his piece in the Duke Law Journal about Jack that in the Spring of 1958, just two years before he recruited us for the Law School, the then Acting Dean reported only fifteen applications for the entering class. It was after that meeting, according to Mel, that Jack, without any formal

status, began a one man promotional tour of small liberal arts colleges across the country recruiting students for Duke.

Last week, the training and recruitment partner in my firm sent around a survey from the October Prentice Hall Lawyer Hiring and Training Report which ranks Duke as second in the United States after Yale and substantially ahead of Harvard, Chicago and Stanford in placing its students with law firms across the country, and we all know what has happened to the volume of applications. Not all of the credit for that dramatic change goes to Jack, we must also remember his successors, but few among us would dispute that his was the influence which set this School on its present course and made it possible for others to continue and build on the foundation which he laid. This building has been called the "House that Jack built." We now designate a Latty Chair. For those in my generation at the Law School, what we remember most is that we were Latty's boys. He never let us forget that. He followed us in the profession. He visited us. He remembered our undergraduate schools, and even our LSAT scores. So, for the Alumni, I am extremely pleased to be a part of this ceremony today to honor a man who so strongly influenced us all and who so strongly influenced the development of this School. The designation of this Chair is an appropriate and proper step to commemorate and complete his memory in our minds. I thank you very much, Dean Gann, for letting me share this moment with that memory.

Palmer to be Law Alumni Association President



Dan Crawford

New Law Alumni Association officers from left, Richard A. (Chip) Palmer '66—President; David G. Klaber '69—Secretary/Treasurer; Dara L. DeHaven '80—Vice-President/President-Elect; and Vincent L. Sgrosso '62, Immediate Past President.

During the Law Alumni Association meeting on November 3, 1990, Vincent L. Sgrosso '62 passed the presidency of the Law Alumni Association (LAA) to Richard A. (Chip) Palmer '66. Palmer thanked Sgrosso for his significant contributions to the Association over the past few years and presented him with a gavel and stand to commemorate Sgrosso's service as the 1989-90 president.

Sgrosso lives in Atlanta, Georgia, where he is vice president and general counsel of BellSouth Advertising & Publishing Corporation. In addition to his service to the Law Alumni Association, he is a member of the Law School Board of Visitors and served as the chair of the Barristers in 1988-89.

Palmer also acknowledged with pleasure that the last three presidents of the Law Alumni Association were present: A.H. (Nick) Gaede, Jr. '64 (1988-89),

John Q. Beard '60 (1987-88) and Charles W. (Chuck) Petty, Jr. '63 (1986-87). Palmer thanked all of the past presidents for their commitment to increasing the vitality and the practical contributions of the Law Alumni Association to the entire Law School community.

Palmer then introduced the other new LAA officers: Dara L. DeHaven '80, vice-president/president-elect and David G. Klaber '69, secretary/treasurer. Speaking for all the officers and members of the Law Alumni Council, he noted that they were looking forward to working with Dean Gann to further strengthen the bonds and communication between alumni and the Law School. Noting that we are embarking on an exciting and challenging time in the life of the Law School, he urged all alumni to become involved with alumni programs.

New Journal to Publish in the Spring

Last April, the Law School faculty approved the new *Duke Journal of Comparative & International Law*. The *Journal* evolved from the *International Law Society Annual*, which had published student papers since 1986. The move reflects several of Duke's strengths: a renowned comparative law faculty; the joint degree in International and Comparative Law; the LL.M. program for foreign students; and the Summer Institute in Transnational Law.

Approximately ten second-year students will be selected as staff members each year based on work submitted for publication. Several foreign LL.M. students will become special staff members during their year at Duke.

The *Journal* will publish two issues per year, including one issue devoted entirely to the European Community. It is anticipated that the premier issue will contain articles by both American and foreign lawyers and student notes on subjects including German unification, the Persian Gulf crisis, terrorism, and international business and environmental law.

Subscriptions are available through the *DJCIL* at (919) 684-4821 or Ms. Mary Jane Flowers, Publications Business Manager, at (919) 684-5966. Alumni are encouraged to submit articles addressing current issues in comparative, international or transnational law. Please direct further inquiry to: Ms. Kristen E. Scheffel, Editor-in-Chief, *Duke Journal of Comparative & International Law*, Duke Law School, Durham, North Carolina 27706.

Charles S. Rhyne Receives Murphy Award

Charles S. Rhyne '37 received the sixth annual Charles S. Murphy Award during the Law Alumni Association meeting at Law Alumni Weekend on November 3, 1990. Vincent Sgrosso '62, president of the Law Alumni Association, presented Rhyne with 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 including serving as administrative assistant and special counsel to President Truman, undersecretary of agriculture under President Kennedy and counselor to President Johnson. He also served as a member of the Law School's Board of Visitors and as a University Trustee.

The Awards Committee of the Law Alumni Council endorsed Rhyne as the 1990 Award recipient because of his lifelong dedication to public service through a variety of avenues including legal education, the bar and bar associations, the federal government and national and international institutions.

Rhyne received an A.B. from Duke University in 1934 and attended Duke Law School from 1934 to 1935. He completed his legal education at George Washington University in 1937. In 1958, he received an honorary LL.D.



Charles S. Rhyne '37 receives the Murphy Award from Vin Sgrosso '62.

degree from Duke University.

Rhyne showed his dedication to education by serving as a professor of American government in the Graduate School at American University in 1945 and as a professor of law at George Washington University from 1948 to 1954. He has also served on the Boards of Trustees of both Duke University and George Washington University.

Rhyne served the organized bar through his participation and leadership in a variety of legal organizations. In addition to membership in many sections and committees of the American Bar Association (ABA) and committees of the ABA House of Delegates, he served as president of the ABA in 1957-58. He had earlier served as national chairman of the Young Lawyers Section in 1944-45 and chairman of the ABA House of Delegates in 1956-57. In addition, he chaired the Section of International and Comparative Law in 1948-49 and the

Aeronautical Law Committee from 1946 to 1954. He was also president of the Bar Association of the District of Columbia in 1955-56. In 1957-58, he served as vice-president of the National Legal Aid Association, the Inter-American Bar Association and the International Bar Association. He is a life member and director of the American Judicature Society, a fellow of the American College of Trial Lawyers, and a life member of the Fellows of the American Bar Foundation of which he also served as chairman in 1959-60. He is a life

member of the American Society of International Law.

Rhyne served as counsel to a number of federal departments and agencies. He was general counsel to the Federal Commission on Judicial and Congressional Salaries in 1954-55. He served as counsel to the Office of Civilian Defense, the National Defense Advisory Commission, and the Commission on President Kennedy's Assassination. In addition, he was special legal consultant to the President of the United States in 1959-60. He also served as the personal representative of the President to the United Nations High Commissioner for Refugees in 1971-72 and as counsel to the Commission for the Observance of the 25th Anniversary of the United Nations in 1970-71.

Rhyne is a senior partner in the law firm of Rhyne and Rhyne in Washington D.C. He has been an active trial lawyer since 1937, representing chiefly

states, cities and counties in cases in federal and state courts throughout the United States, including serving as lead counsel in the "one man, one vote" case of *Baker v. Carr*, 369 U.S. 226 (1962).

Rhyme serves as president of the World Rule of Law Center, which was established in 1963 to afford an oppor-

tunity to lawyers from all nations to meet and exchange views and to build peace by helping to build law internationally. In his remarks to the alumni on Law Alumni Weekend, (printed below), Rhyme noted that, though we face a time of trouble and confusion, we as lawyers also face a time of challenge and oppor-

tunity. He declared his belief that the idea of using law, including the making of new law, to end or prevent trouble is spreading locally, nationally and internationally as the real answer to our problems.

A Tribute to a Great Public Servant: Charles Springs Murphy

Remarks by Charles S. Rhyme '37, November 3, 1990

I come here to honor and pay tribute to a great man of the law, who held many high federal offices and practiced law in Washington most successfully for almost fifty years. No one in high federal office received more respect, appreciation and affection. I believe it well-earned and warranted in the case of Charlie Murphy. His career was crowded with achievement. Charlie was so free from ostentation and humbug in a city epitomizing these traits that my words of praise would disturb him were he here. But quietly, carefully and in a most wonderful way, he has earned our praise and that of so many others who have benefitted from his life of service to the public good.

I knew Charlie for nearly fifty years. I first knew him as legislative counsel for the Senate of the United States for fourteen years. I knew him as President Truman's administrative assistant and special counsel, as undersecretary of agriculture, president of the Commodity Corporation, chairman of the Civil Aeronautics Board, counselor to President Johnson, and member of two great law firms. We served together as Duke Trustees. Our careers caused our contacts to be many and they are happy times to look back upon.

I am proud of Charlie Murphy and his great public service career as a dedicated man of the law, and know that you join me in that pride. I have received many honors in my career but none is more cherished by me than the Charles S. Murphy Award because of my high regard for Charlie and what he accomplished in the public service.

In selecting something to speak to you about, I at first considered telling you about the indecision, the confusion, the floundering in Washington today. It is awful, but you read the newspapers and listen to the newscasts, and you long ago must have concluded that trouble is the trademark of our day. If Charlie Murphy were here, he would talk about ways and means of getting rid of trouble rather than regurgitate the troubles that exist. Uprisings in Eastern Europe, trouble and turmoil in the Persian Gulf, Africa

and other places abroad you hear and read about in the media constantly. Disrespect for law, in fact, open and defiant law-breaking is the major feature of current troubles at home and abroad.

But this is a joyous occasion honoring a man who lived a happy life because he was doing what he wanted to do. While not forgetting our troubles, I decided I could do more good by talking about something positive which is gradually being used to get at, prevent and eliminate, the root causes of so many of these troubles, locally, nationally, and internationally. Steadily, sturdily and almost imperceptibly, something is growing which is bigger, more meaningful and of more consequence to mankind than all of these troubles. In fact, these troubles are a part of the cause of this enormous development. The development of which I speak is the dramatic growth and support for the rule of law to meet the needs of our day.

As we pause to honor this great man of the law, it is well to take a look at the law itself, especially its frontiers where the world of tomorrow is being created by the law makers of today. They are using the concept most admired by humanity throughout the world. Newscasters and newspapers dwell so much on bad news, they miss, and seldom publicize, the good things that are going on in the world. As an example, they miss the significance of the fact that the "cure" concept, or substance, most often offered for each of our current troubles is the enforcement of the rule of law, whether it be in existence or a needed new law or international treaty adapted to current problems.

The idea of using law—usually new law—to end or prevent trouble is being hailed locally, nationally, and internationally as the real answer to our problems. Law offers the only common concept, the only body of principles which people universally comprehend, admire and respect. People are suggesting such new law as city ordinances aimed at safer streets, state laws to prevent riots, federal law to prevent organized crime, and international law providing disarmament to prevent war and law treaties to end current conflicts. The list is almost endless and growing. Changes and developments in the law to meet these troubles—

these needs—of our day are here, or are on the way. Mine is therefore a message of hope, rather than a viewing with alarm.

There are indeed a lot of good things going on in the world, not only in law but in other disciplines and on other subjects. The law is becoming a part of this vast improvement in the lot of man. Worldwide, the health of most people has improved due to medical miracles. Scientific and technological advances have increased the economic and social welfare of millions of our people. So in spite of the refrain "trouble, trouble, trouble," I believe there are many good things happening in the world which far outweigh our troubles.

I find that the common interests of mankind are largely the same. All peoples want peace with justice and a fair share of the world's economic production. And they are organizing on a vast scale to achieve these goals. Hand in hand with our law reform programs are vast programs of cooperative endeavors in many disciplines and activities. These programs are a major facilitating factor in the growth of transnational law and international legal institutions.

Let me mention a few illustrations of the non-law cooperative endeavors which have an impact on law growth. In religion, the ecumenical movement has brought vast changes and meaningful cooperation. In science, "miracle" drugs have been developed to cure polio and a whole host of afflictions. In worldwide political cooperation, the United Nations and its specialized agencies, with all their defects, incapacities and frustrations, are an enormous advance over the old League of Nations. Nearly every nation in the world has been mobilized in support of the rule of law as the best answer to the Persian Gulf crisis. Regional organizations like the European Communities and Central American Common Markets are also great advances in political cooperation of peoples.

The dismantling of communism in Eastern Europe and within Russia itself is indeed a turn to the law. I could go on and on listing the

growth of international cooperative efforts. In several hundred fields these are aimed at contributing to the betterment of humankind in areas as divergent as crime, fishing, sports, art, weather, patents and labor. The very nature of the vast changes of our day have made mankind a communicating whole, and a more and more cooperative whole, nationally and internationally. The age-old barriers of time and distance, mountains and seas are no more. Language differences are being surmounted.

We of the law have not been idle. Worldwide volunteer cooperative efforts to promote the growth of law have not been meager or without impact. In fact, the law's growth has been most meaningful. Law has provided lasting permanent benefits by embodying some of the vast changes wrought by cooperative efforts into law rules and legal institutions. There is more international law today than in all history and its volume is growing rapidly. The United Nations and its specialized agencies are largely responsible for this growth. The necessities forced by expansion of worldwide trade and travel are also responsible in the sense that they are requiring this growth.

The World Peace Through Law Center is the only organization in the world that affords an equal opportunity to lawyers from all nations to meet and exchange views and act on the most important problem in the world: world peace. The Center was created in 1963 to help build peace by helping build law internationally. It has been a phenomenal success. The Center deserves some credit for the current turn to the law throughout the world. The Center has legal professionals from nearly all nations working in its programs to create more law within the world community. No other international legal organization has such a vast cooperative program underway. No other international legal organization is open to all members of the judicial and legal profession of all nations in their individual capacities only.

The World Jurist Association is an amalgamation of the World Associations of Justices, Judges, Lawyers and Law Professors created by the Center. It is a new name adopted at one of the most successful world legal conferences ever held this April in Beijing, China, The Fourteenth Conference on the Law of the World, as best describing all legal professionals.

A lot of the troubles between nations flow from uncertainties in the law. Each disputant claims the law is on its side. The more we collect, define, and strengthen transnational law, the fewer will be the number of opportunities for disputes. Where law exists and is known to and accepted by nations, it works.

To meet the needs for fair and expeditious settlement of disputes growing out of all I have said above, such as the upheavals in Eastern Europe where they are creating new governments, the

Center will soon announce the creation of a World Arbitration Court. There are existing arbitration courts, but they are limited in scope and manpower. The Center's World Arbitration Court will cover the world and all peaceful means of dispute resolution, including mediation, for example, and conciliation.

Looking at the whole of the world and the area where law growth has done the most for the most people, it must be concluded that law has done most—has grown most—in the field of human rights. The Black or African-American in the United States, the poor in nearly all nations are the major beneficiaries of this growth. For the first time, not only in our country, but around the world as well, law for the poor (or more precisely, the opening up of the law's benefits to the poor) is a most important development. The law regime in most countries has been set up largely for the benefit of only part of our people. The poor, the disadvantaged, have not been made to feel that the law of the past—or even of the present—is their law. Their participation in its making, its benefits, its operations have been and are too meager. Law has been more to restrain than to help these people.

"The law" has too long been identified with the well-to-do. Bringing education, housing and medical care to the poor has for years attracted public attention and support. Billions in federal funds have been poured into such medical and related aid. Now for the first time in all history, law for the poor is beginning to attract public attention and support. For the first time in all history, federal funds are being spent to provide legal aid to the poor.

Court decisions holding that the Constitution requires that accused persons be furnished a lawyer have helped trigger this revolutionary expansion. But the national focus on the lives of slum residents and what those residents need most has laid bare the fact that the most neglected need has been law. Studies reveal that slum residents are the major victims of unfair housing leases, illegal sales contracts, crooked loan sharks, and erroneous court convictions. The list is much longer. The effect has been a use of what has been misrepresented as "the law" to help clamp a perpetual substandard existence upon slum residents. The terrible anger and the anguish of those left out by society is, in the long run, something which society can ignore only at its peril both to its conscience and to its existence. There can be no sanctuary for the rich in a world of the starving. For the first time "neighborhood" law offices and expanded legal aid are causing law to help rather than oppress the poor. The value of legal help for the poor is tremendous. Equal access to law is essential if we are to prove that legal procedures offer a substitute for demonstrations and riots. But most of all, simple justice demands that equal access.

Poor nations as well as poor people are finding that the law is their best vehicle for progress. It offers a method of organizing economic and other assets and capacities through a universally known and used process and principles. This is a major reason for more and more resort to, and reliance upon, the law.

With law reform thus being as important as it is, why don't we have a more organized, more effective, better financed effort to achieve it? Why is the public knowledge of this reform so non-existent? These are hard questions to answer. People react to law like they do the air we breathe and the water we drink. They take law for granted. They assume it will always be ready to perform. They make outcry for new law only after crisis or disaster has made the need clear. It took the Coconut Grove disaster to bring about nationwide laws imposing seating limits and prohibiting fire hazards in night clubs. It took a war to produce the United Nations. One could multiply these illustrations by many scores. "Locking the door after the horse is stolen" is a familiar event in the life of the law.

My thesis is that all is not trouble and darkness in the world. These illustrations of advancement in the law dispel the darkness and prevent trouble. Like Charlie Murphy, I have lived my adult life in the law. I have had the great good fortune to be in rather fulsome contact with the lawyers of our nation and the world. In every nation the message is that law is on the march.

The "regime of law," which is spreading all over the world, is a harbinger of hope in a troubled world. Law is slowly but surely demonstrating that it can do the job. Public support for and confidence in the law is growing. A lot of creative initiative is being shown. Imagination, vigor and resourcefulness are the main ingredients of this program. The world's lawyers of all nations are talking to each other about law reform and helping each other. They articulate a common belief in the ideal of the rule of law.

I do not say that tyranny, tension, misgovernment, poverty, disease, do not exist—they do. I merely insist that much is being done to change these through law. The willingness of lawyers of all nations to work together on vast law reform projects insures them a better chance of success. We of the law have our greatest challenge and our greatest opportunity. If we help create enough law fast enough we can help humankind get through this era of trouble.

In a strong rule of law lies the liberty of the people and in the liberty of the people lies the hope of the world. That is what Charlie Murphy's life of public service as a lawyer personified. That is why we are here to pay our homage to him.

Dukes Award Goes to Gaede

During Law Alumni Weekend ceremonies, A.H. (Nick) Gaede '64, immediate past president of the Law Alumni Association, was recognized as a recipient of the Charles A. Dukes Award as determined by the Awards and Recognition Committee of the Board of Directors of 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. The Award is given annually to alumni who have gone "above and beyond" the call of duty in voluntary leadership roles.

Vincent Sgrosso '62, president of the Law Alumni Association presented Gaede with a plaque commemorating the Award. Gaede was nominated by the Law School to receive the award for his service as an officer of the Law Alumni Association. In 1985-86 he was a member of the Law Alumni Council when plans were made to rejuvenate that body and to establish an active alumni program for the Law School both at the School and throughout the country. Based upon his interest and leadership in those



Nick Gaede '64 (left) receives the Dukes Award from Vin Sgrosso '62.

meetings, he was asked to assume the role of secretary/treasurer for 1986-87 and to rotate through the officer roles to the presidency. He agreed to do so 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 nomina-

opportunities to serve the Law School and its alumni as an officer of the Law Alumni Association. He noted the continued strides the Law School is making to communicate with its alumni through both established and new programs and urged all alumni to take advantage of opportunities to get involved in alumni programs.

tions—establishing policy in addition to conducting their business for the year. While serving as an officer of the Law Alumni Association, Gaede also organized the Alabama local alumni association and served as its first president.

Gaede, who is a partner at Bradley, Arant, Rose & White in Birmingham, Alabama, expressed his appreciation for the

Miss America at Duke

Marjorie Judith Vincent, a third-year Duke Law student currently on leave of absence during her reign as Miss America, returned to the Duke campus on November 2, 1990. She spoke at a reception for Law School and University faculty and students and visited pediatric patients at Duke Medical Center. Vincent also made appearances at North Carolina Central University, the Durham Women's Shelter for Hope, and at a reception for Durham civic leaders.

As on many of the stops on her tour,

while in Durham Vincent talked about domestic violence, the issue she is focusing on during her reign. She addressed the subject during a news conference with New York Mayor David Dinkins, and gave a speech on domestic violence to a meeting of attorneys in Illinois. Vincent, who is traveling around 20,000 miles per month as Miss America, will return to the Law School for her third year this fall. She plans a career in corporate law, specializing in international matters.



Marjorie Judith Vincent

Professor Schmalbeck New Law Dean at Illinois



Richard L. Schmalbeck

Richard L. Schmalbeck, a member of the Duke Law School faculty since 1980, assumed his duties in December as the new dean of the University of Illinois College of Law.

Schmalbeck, a native of Chicago, taught and wrote on a variety of subjects in the areas of federal taxation and economic policy. His most recent work, an essay on the efficiency costs of high capital gains rates, was published in full in *Tax Notes* this past summer, and in an abbreviated form in the summer 1990 issue of the *Duke Law Magazine*. While at Duke, he served at various times as vice-chair-

man of the University Academic Council, chairman of the University Hearing Committee, and, most recently, as chairman of the University Committee on Sexual Harassment in Employment.

In commenting on his departure from Duke, Dean Pamela B. Gann noted that "Professor Schmalbeck was considered among our best teaching faculty, in a field that is not always easy to communicate successfully to law students. I personally will miss him as a colleague since we shared teaching and research interests. We wish him every success in his new position, for which he is extremely well suited."

Schmalbeck said that while he was looking forward to the challenges of his new job, he was going to miss many things that he had come to appreciate over the last ten years, including "my good friends here at Duke, the support

of an extremely sound and well-managed institution, the *esprit* of the Duke law students, mild weather, and Duke basketball."

Schmalbeck earned a bachelor's degree in economics, with honors, from the University of Chicago in 1970, after which he worked as an economist and assistant to the director of the Illinois Housing Development Authority. He graduated from the University of Chicago Law School in 1975, where he was associate editor of the *University of Chicago Law Review*. Schmalbeck worked in the Office of Management and Budget in Washington during the administration of President Gerald Ford and in 1977, joined Caplin & Drysdale, a Washington law firm. He has also taught at the University of Michigan and Northwestern University.



Members & spouses of the Class of '50 celebrate their 40th reunion at the Omni Europa on November 3, 1990.

Duke Hosts Conference on Canadian Law and Legal Literature



Pictured at the Aqueduct Conference Center are conference organizers, speakers, and guests: Patrice LeClerc, Claire Germain, John E. C. Brierley, Denis Le May, Herbert Bernstein, Richard Danner, Jeffrey Talpis, and Thomas Carbonneau.

While concern over the likelihood of approval of the Meech Lake accord dominated the news from Canada last spring, a group of distinguished Canadian legal scholars gathered in North Carolina with others interested in Canadian studies for a Conference on Canadian Law and Legal Literature. Held on May 25-26, 1990 at the Aqueduct Conference Center near Chapel Hill, the Conference was sponsored by the Duke Law Library and the Duke University Canadian Studies Center. The theme of the Conference, "The Civil Law Heritage in North America," was especially relevant to the background of current events, as the Canadian provinces and Prime Minister Mulroney struggled (unsuccessfully) to gain unanimous approval of the accord, which would have granted status as a "distinct society" to the province of Quebec, Canada's only civil law jurisdiction.

The Conference was the second on the topic of Canadian Law and Legal Literature organized by Professor Richard Danner and Senior Lecturer in Comparative Law Claire Germain of the Law Library, and the Duke Canadian

Canadian law and legal literature, and faculty from North Carolina law schools. An aim of each conference has been to develop and improve cooperative ties among law libraries in the United States, Canadian studies programs, and Canadian law libraries. Through mixtures of substantive and bibliographic topics in the programs, and selection of attendees with diverse interests and backgrounds, each conference has provided an unusual opportunity for dialogue among law librarians, law faculty members, and others interested in researching Canadian law.

The first Conference in 1987 had as its theme "The Commonwealth Perspective," and featured Professor Noel Lyon of Queens University Faculty of Law in Kingston, Ontario on "Group Rights in the New Canada;" Professor Danner on "Comparative Statutory Interpretation;" Professor Douglas Verney of York University in Toronto on "Parliamentary Supremacy versus Judicial Review;" Professor Lillian MacPherson of the University of Alberta Faculty of Law in Edmonton on "Indexing Canadian Legal Literature;" and Professor Denis Marshall of

Studies Center. Primary support for each Conference has come from the U.S. Department of Education. Each has been invitational and has been limited to about thirty attendees, including Canadian and American law librarians, other librarians with interests in

the University of Manitoba in Winnipeg on "An Introduction to Canadian Legal Research."

Speakers at the 1990 Conference were Professor John E.C. Brierley of the McGill University Faculty of Law in Montreal on "The Civil Law in Canada;" Professor Denis Le May of the Universite Laval in Quebec on "Approaches to Quebec Legal Research;" Professor Jeffrey Talpis of the University of Montreal on "The Changing Face of Quebec Private International Law;" and Professor Thomas Carbonneau of Louisiana State University on the "Survival of the Civil Law in North America."

In addition to a grant from the Office of Education, the 1990 Conference was supported by donations from several publishers of Canadian law books, Carswell, Co., Ltd., Maritime Law Books Ltd., and Richard De Boo Publishers. Professor Talpis was sponsored by the Quebec Government Office in Atlanta. Patrice Le Clerc of the Canadian Studies Center co-organized the Conference with Professor Danner and Ms. Germain.

To close the Conference, Professors Brierley, Le May and Carbonneau offered a panel discussion on the issues of the earlier sessions. In many ways, the future of the civil law in Canada is dependent on resolution of the larger issue of Quebec's status within the nation. As Carbonneau noted, however, Quebec has a stronger cultural and linguistic basis for its civil law heritage than Louisiana. With that in mind, it is likely that civilian approaches will withstand whatever future relationships are established with the national government.

Special Gifts to the Law School

Estate of Phil Sloan '74

The Law School has received a gift of \$278,000 from the estate of Phil Sloan '74, who died April 18, 1990. Dean Pamela B. Gann and University President H. Keith H. Brodie have designated that the gift be used towards the Law School's Building Fund, and that a room in the new building be named in Sloan's memory.

At the time of his death, Sloan was counsel to the town of Clifton Heights, New York's Zoning Appeals Board, a senior attorney with the New York Division of Housing and Community Renewal, and a commissioner on the New York Board of Equalization and Assessment. Sloan is fondly remembered by his classmates and professors for his late afternoon bagpipe serenades outside the Law School building, a talent which he nurtured after Law School graduation as a member of the Albany, New York Police Pipe and Drum Band.

The Honorable Larry J. Rosen '73, judge of the City Court of Albany, New York and a close friend of Phil Sloan, noted that "Phil always emphasized that his happiest years were those spent at the Law School. It is so fitting that Phil's generosity to the Law School will be memorialized. I have lost, as have all Duke Law graduates, a most loyal and dear friend."

Ford Foundation Grant

The Law School is pleased to report an award of \$125,000 from The Ford Foundation. The grant will provide five fellowships for students selected because of their interest in pursuing academic and professional careers in the field of public international law. The grant will also offer support for student-initiated activities sponsored by the Law School's International Law Society.

Associate Dean for International Studies Judith A. Horowitz expressed delight at the announcement of the Ford grant. She explained that the School is currently conducting a search for a faculty member in the area of public international law. That professor, she noted, "will certainly be excited to find five outstanding students eager to develop their interest and expertise in public international law. Our search has demonstrated the need for academics in this field, and Duke is pleased to be participating in the Ford initiative to create a new cadre of public international law professors and practitioners."

Gifts to the Building Fund

The Law School is pleased to announce the receipt of two gifts of \$100,000 or more to the Building Fund. These gifts will count toward the School's \$12.5 million component goal of the University's \$400 million Campaign for Duke. Isobel Craven Drill (Trinity '37), a trustee emerita of the University, has made a commitment to donate \$250,000, and Henry J. Oechler, Jr. '71 has committed \$100,000 to the Building Fund.

Isobel Craven Drill's gift was made in honor of her grandfather, Braxton Craven, a former president of Duke University. With trustee approval, a room in the Law School's new addition will be named the "Braxton Craven Room for University Legal Education. Braxton Craven was a key figure in the development of legal education at Trinity College in the 19th century. He was the first lecturer at the Law School, presenting instruction on political and natural law, constitutional law and international law.

"The gift of Isobel Drill to the Law School is a wonderful demonstration of faith and confidence in the teaching of

law as first initiated over 100 years ago by her distinguished grandfather, Braxton Craven," said Dean Pamela B. Gann. "Therefore, it is particularly appropriate that this room in the Law School be named in his memory."

Henry Oechler is a partner in the New York City law firm of Chadbourne & Parke, where he has a general corporate practice, specializing in aviation-related law. He has recently been appointed to the Law School's Board of Visitors. According to Dean Gann, "Mr. Oechler has been extraordinarily interested in the academic and capital needs of the Law School, in alumni affairs more generally, and in the placement of our graduates. We very much appreciate his active participation in so many facets of the School."

Miller & Chevalier Classroom

A classroom at the Law School has been designated the Miller & Chevalier Classroom. This is the first room at the Law School to be so designated in many years, and joins the Elvin R. Latty Moot Courtroom in this category.

The naming of the classroom was made possible by the gifts of three alumni partners at the Washington, D.C. office of Miller & Chevalier: Donald B. Craven '67, Emmett B. Lewis '67, and Numa L. Smith, Jr. '41, who is now retired. The gifts of these alumni were matched by the Miller & Chevalier Charitable Foundation for a total gift of \$100,000.

"The partners of Miller & Chevalier and its Charitable Foundation have made important gifts to legal education," notes Dean Gann, "including capital gifts, scholarship funds, and awards to recognize outstanding student notes in the various law journals. They have set an example that we wish more firms would emulate."

Professional News

'36—Alvin O. Moore is a city judge in Lookout, Tennessee.

'37—David H. Henderson has authored *On Point—A Bedside Reader for Hunters & Fishermen*, published in the fall of 1990 by Amwell Press of Clinton, New Jersey.

—William L. Mosenson has retired as president of Pennsylvania Growth Investment Corporation in Pittsburgh.

'39—William F. Womble served as chair of the Judicial Code Subcommittee of the ABA Standing Committee on Ethics and Professional Conduct. In August 1990, the ABA House of Delegates approved the 1990 Model Code of Judicial Conduct prepared by the ABA Standing Committee.

'40—Margaret Adams Harris and R. Kennedy Harris were recognized as Fifty Year Members of the North Carolina State Bar in October 1990.

'41—Guillermo (Bill) Moscoso received a citation from the United States Navy on May 17, 1990 for "unparalleled support provided to the U.S. Navy in Puerto Rico and throughout the Caribbean Basin." Also in May, he was elected honorary president of the U.S. Armed Forces Retired Officers Association, Puerto Rico chapter. He writes a column on political matters for several Puerto Rican newspapers.

'46—Jeroll R. Silverberg was recently selected by the *Connecticut Law Tribune* as one of the top six matrimonial lawyers in Connecticut. He is president of the firm of Silverberg, Marvin & Swaim of New Canaan and former president of the Connecticut Chapter of the American Academy of Matrimonial Lawyers.



Bill Moscoso '41

'47—Jonathan Z. McKown resigned as the resident judge of the Seventh Judicial Circuit in Gaffney, South Carolina in May of 1990. He is now practicing with the firm of Ross & McKown.

—Robert F. Moore retired in June 1990 from Allstates Design and Development Company, Inc. in Trenton, New Jersey.

'49—Charles F. Blanchard was elected secretary-treasurer in July of 1990 of the International Society of Barristers, an organization of 600 trial lawyers in the United States and abroad which encourages the continuation of advocacy under the adversary system.

'50—Robert I. Cooper continues his solo law practice in Torrance, California, where he specializes in employment law.

—Walter H. Mason, Jr. is now a staff examiner for the North Carolina Insurance Guaranty Association. An active civic volunteer in Raleigh, he recently was presented with the Fifty Year Ameri-

can Red Cross Service Award and the Hope Chest Award of the M.S. Society. He is also a singing member of the Durham Savoyards.

'51—Edward A. Loeser, retired senior vice president for operations of Rockwell International, now resides in Scottsdale, Arizona.

'52—Lee H. Henkel, Jr. has opened a solo practice in Atlanta, Georgia.

'55—Jerry H. Cates is president of Cates Construction and Development Companies in Atlanta, Georgia.

—John F. Kuffner is now semi-retired from the practice of law with the Kuffner & Pierce Law Office in St. Marys, Ohio.

'56—John D. Johnston, Jr. has retired as professor of law at New York University and now resides in Asheville, North Carolina.

'58—Calvin A. Pope, a retired circuit judge for the State of Florida, continues his private practice in Tampa. He also acts as a mediator and arbitrator for federal and state cases.

'59—Davis W. Duke, Jr. has joined the firm of Gunster, Yoakley & Stewart in Ft. Lauderdale, Florida.

—Robinson O. Everett stepped down as Chief Judge of the United States Court of Military Appeals in October 1990, and has resumed his full-time teaching duties at Duke Law School. He was recently re-elected to the American Judicature Society.

'60—Ronald L. Palmer is now a sole practitioner in Jacksonville, Florida.



L. Neil Williams, Jr. '61

L. Neil Williams, Jr. '61 was named by the Duke Alumni Association to receive its ninth Distinguished Alumni Award, presented in December at the University's Founders' Day ceremonies. Williams is past chair of the Duke Trustees, and past president of both the Duke Alumni Association and the Law School Alumni Association.

The award is given to alumni who have distinguished themselves by contributions they have made in their own fields of work, in service to the University, or in the betterment of humanity. All alumni are eligible for consideration.

Williams is a partner with Alston & Bird in Atlanta, Georgia, where he is also a civic leader. He was a charter member of the Barristers, a member of Duke's Founders' Society, past chair of the Trinity College Board of Visitors, and a former member of the Boards of Visitors of the Law School and the Institute of Policy Sciences and Public Affairs.

'66—Henry H. (Bucky) Fox has become a partner in the Ft. Lauderdale, Florida office of Dykema Gossett, where his practice concentrates in the representation of financial institutions in litigation and secured transactions.

'67—Nathaniel G.W. Pieper has authored "Cruise Ship Passenger Claims and Defenses," 21 *Journal of Maritime Law & Commerce* 151 (April 1990).

—William B. Singer has joined the Cincinnati, Ohio firm of Schwartz, Manes & Ruby where he specializes in complex business litigation, zoning and eminent domain, and municipal and school law.

'68—Paul B. Ford, Jr. has established the Tokyo, Japan office of the firm of Simpson Thacher & Bartlett. Ford has been a partner in the New York City office of Simpson Thacher for fifteen years and has been active in the development of the firm's international practice. —Stuart M. Foss was appointed administrative law judge for the United States Government Printing Office in August of 1990.

—R. Bertram Greener, of the firm Fredrikson & Byron in Minneapolis, Minnesota, represented the Law School at the ceremony installing George Latimer as the new dean of the Hamline University School of Law in September 1990.

—David E. Prewitt has been re-elected vice chairman of the Pennsylvania Bar Association Aeronautical and Space Law Section. Prewitt, a partner in the Philadelphia firm of Korn, Dline & Kutner, also serves as publicity chairman of the Lawyer-Pilots Bar Association, and is a colonel in the U.S. Army Reserves.

—Charles P. Rose, Jr., who for the last six years has hosted the Emmy Award-winning, CBS show "Nightwatch," is now anchoring the syndicated magazine series, "Personalities," which debuted in September 1990.

'61—Robert F. Baker is serving as chairman of the North Carolina Judicial Campaigns Committee, a committee formed by the N.C. Bar Association to maintain ethical standards of conduct by candidates for judicial office and to inform the public of background information on judicial candidates.

'62—J. Marne Gleason is now general counsel of Scientific Atlanta, located in Norcross, Georgia.

'63—Edgar J. Roberts, Jr. was elected executive vice president of Moody's Investors Service in New York City in July of 1990.

—Jerry G. Thorn was named deputy assistant secretary for labor-management standards of the United States Department of Labor in October of 1990.

'64—John C. Carlyle has joined the firm of Varnum, Riddering, Schmidt & Howlett in Grand Haven, Michigan.

'65—D. David Cohen has retired from the active practice of corporate and securities law in New York City and is

now vice president of business development for Data Switch Corporation in Shelton, Connecticut.

—Peter S. Gilchrist, III was named to the Board of Governors of the North Carolina Bar Association in June of 1990 for a three-year term. Gilchrist has served as district attorney of the 26th prosecutorial district of North Carolina in Charlotte since 1975. He is also the state director of the national District Attorneys Association.

—Gordon P. Peyton was recently appointed by the Virginia Supreme Court to one of two at-large seats on the Virginia State Bar Disciplinary Board.

—John J. Rufe was appointed a judge of the Court of Common Pleas of Bucks County, Pennsylvania in December of 1989.

—Ronald G. Seeber, city attorney for Winston-Salem, North Carolina, will teach a course on municipal law at Wake Forest University Law School in the spring of 1991.

—Edgar H. Sims, Jr. has been elected chairman of the Democratic Party of Georgia and a member of the Democratic National Committee.

'69—**William A. Ettinger**, an attorney for American Telephone & Telegraph Company, has relocated to the San Francisco, California office.

—**Charles M. Firestone** is now director of the Program on Communication & Society of The Aspen Institute in Washington, D.C., where he also has a private, part-time law practice.

—**John M. Hoos** has been named to the Board of Directors of the Hewitt Associates Foundation in Lincolnshire, Illinois.

—**Edward R. Leydon** has been promoted to vice president-law, international of Rhone-Poulenc of France, resident in Fort Washington, Pennsylvania. Rhone-Poulenc recently acquired Rorer Group, where Leydon was assistant general counsel, and is in the process of combining its pharmaceutical operations around the world.



Graham C. Mullen '69

—**Graham C. Mullen** has been appointed, and was confirmed by the United States Senate in September 1990, to the United States District Court for the Western District of North Carolina.

'70—**C. William Reamer** has joined the firm of Lord Day & Lord, Barrett Smith in Washington, D.C.



Robert J. Shenkin '70

—**Robert J. Shenkin** has been elected judge of the Court of Common Pleas of Chester County, Pennsylvania, where he began a ten-year term in January 1990.

'71—**Laurent R. Hourcle** is now an environmental attorney and assistant general counsel at the Pentagon in Washington, D.C.

—**James K. Kerley** announces the formation of the general civil litigation law firm of Kerley & Sierra, with offices in Sierra Vista and Tucson, Arizona. The firm specializes in wrongful death, medical malpractice, products liability, and personal injury litigation.

—**Randolph J. May** joined the Washington, D.C. office of Sutherland, Asbill & Brennan in December 1990.

—**Gail Levin Richmond** has authored the fourth edition of her textbook, *Federal Tax Research: Guide to Materials and Techniques*, published by Foundation Press in August 1990. She is an associate dean and professor of law at Nova University in Ft. Lauderdale, Florida.

—**Bryan E. Sharratt** has been elected president of the Board of Trustees of the University of Wyoming. He practices personal injury litigation in Wheatland, Wyoming.

'72—**Richard G. Rudolf** has recently been named corporate counsel to Sulzer Bros., Inc. of New York City, a U.S. holding company for a Swiss-based diversified manufacturing and engineering company.

—**Robert E. Stagg, Jr.** has joined the firm of Perrie, Buker, Stagg & McCord of Atlanta, Georgia.

—**Thomas J. Triplett** has been named executive director of the Minnesota Business Partnership.

'73—**Daniel T. Blue, Jr.** won the unanimous Democratic nomination for Speaker of the House of the North Carolina General Assembly in December 1990, virtually assuring that he will become the first black to hold the office when the new speaker is elected on January 30, 1991. Blue is also a partner in the Raleigh firm of Thigpen, Blue, Stephens & Fellers and is an honorary life member of the Law School's Board of Visitors.

—**George M. Kingsley** is with the Office of Counsel, United States Army Corps of Engineers in Winchester, Virginia.

—**Roger S. Martin** has joined the Charlottesville, Virginia office of McGuire, Woods, Battle & Boothe.

—**Donald O. Mayer** has joined the faculty of Oakland University in Rochester, Michigan.

—**Kenneth A. Nickolai, Jr.** has completed the Master's of Public Administration Program at Harvard University, and is currently the assistant manager of the Narragansett Bay Project, one of the National Estuary Programs in Providence, Rhode Island.

—**M. Scott Ramey** now serves as an elected judge of the Sylvania, Ohio Municipal Court.

—**Cheryl Scott Rome** is now senior trial counsel at the United States Department of Justice in Washington, D.C.

—**James P. Zimpritch**, a partner at Pierce, Atwood, Scribner, Allen, Smith & Lancaster in Portland, Maine, has authored *Maine Corporation Law & Practice*, as part of The National Corporation Law Series published by Prentice Hall Law & Business of Englewood Cliffs, New Jersey.

'74—**John M. Bremer** is now the vice president, general counsel and secretary of The Northwestern Mutual Life Insurance Company in Milwaukee, Wisconsin.

—**Nick A. Ciompi** has been appointed associate university counsel for health affairs of Duke University.

—**Robert P. Cochran** has been named president and chief executive officer of Financial Security Assurance, Inc. of New York City.

—**Philip G. Cohen** is now general tax counsel and head of tax research planning & federal audit of Unilever United States, Inc. of Englewood Cliffs, New Jersey.

—**Lawrence J. Skoglund** is now a partner at the firm of Erstad & Riemer in Minneapolis, Minnesota, where he specializes in the defense of insurance claims.

—**Patricia H. Wagner**, special counsel to the Seattle, Washington firm of Heller, Ehrman, White & McAuliffe, has been elected to the Board of Directors of the Seattle-King County Bar Association for a three-year term.

'75—**Michael F. Fink** is counsel, spacecraft operations for GE Astro-Space Division in Princeton, New Jersey.

—**Nathan C. Goldman** is a lecturer at Rice University in Houston, Texas, teaching in the business law area.

—**John B. McLeod** is a partner with Haynsworth, Marion, McKay & Guerard in Greenville, South Carolina, where he is engaged in general and employment litigation.

—**Thomas E. Prior** is managing partner of the firm of Prior & Buser in Atlanta, Georgia.

—**Norman E. Taplin** is currently a partner at Taplin, Howard & Shaw in West Palm Beach, Florida, and is chairman of the Board of Governors Bank in Palm Beach County, Florida.

'76—**Harris R. Anthony** now serves as general attorney-Florida, for Southern Bell Telephone & Telegraph Company in Miami, Florida.

—**Betsy I. Carter** has been named senior counsel of J.C. Penney Company, Inc. in Dallas, Texas.

—**James D. Drucker** now heads Global



James D. Drucker '76

Sports, a Philadelphia, Pennsylvania-based sports marketing and television production company.

He recently signed a new, long-term contract as a

legal analyst and correspondent for ESPN. He is former commissioner and legal counsel for the Continental Basketball Association.

—**Jimmie Lee Huitt, Jr.** has joined Coopers & Lybrand in Richmond, Virginia.

—**Robert J. Kasper, Jr.** is now an attorney with Kissell & Massucio in Bellows Falls, Vermont.

—**Robert E. McCorry** was recently promoted to the rank of captain in the United States Naval Reserve. He is a partner in the firm of Lachapelle & McCorry in Pawtucket, Rhode Island.

—**Kiyoshi Nakatusi** is president and owner of TMC Designs, Inc. in Gardena, California.

'77—**Jeffery M. Cook** was recently elected president of the Public Defender Association of Pennsylvania.

—**Dennis E. Hayes** announces the formation of the firm of Hayes & Lindell in Jacksonville, Florida which engages in the practice of business and corporation law, and commercial litigation.

—**Alma Tina Hogan** was appointed on July 15, 1990 as vice president of operations of Perini Land and Development Company—California Division. Perini Land and Development Company is the real estate subsidiary of Perini Corporation, an international construction company. She is the first woman vice president in the 100 year history of the company.

—**George C. Leef** has been named labor law policy advisor to the Michigan Senate.

—**Susan Freya Olive** has been elected chairman of the board of North Carolina Prisoners' Legal Services. She practices with the intellectual property law firm of Olive & Olive in Durham.

—**Ember D. Reichgott**, a state senator in Minnesota, was recently honored at the Minnesota State Bar Association Convention as a recipient of the Minnesota Legal Services Coalition Pro Bono Publico Attorney Award. Reichgott was honored for her work during the 1990 legislative session in obtaining nearly \$900,000 of funding for legal services for low-income Minnesotans.

—**Stephen C. Rhudy** is a lecturer in the Department of Agricultural and Resource Economics at North Carolina State University in Raleigh.

—**C. Thomas Work** has been elected a fellow of the American College of Trust and Estate Counsel, formerly the American College of Probate Counsel. Work is with Stevens & Lee in Reading, Pennsylvania.

'78—**David A. Bernat** is now with Merrill Lynch in New York City.

—**Alfred F. Jahns** is practicing natural resource, energy and environmental law with the firm of Marron, Reid & Sheehy in Sacramento, California.

—**Michael Jenkins** has been appointed the city attorney of the City of Malibu, California.

—**Jane Makela** has been selected as the "1990 Outstanding Young Lawyer" by the Dallas, Texas Association of Young Lawyers, primarily in recognition of her efforts to establish a pro bono legal services program for battered women.

—**Mark D. Tucker** has been named secretary and general counsel of Dow-United Technologies Composite Products, Inc. in Wallingford, Connecticut.

—**Thomas J. Ziko** was promoted in April of 1990 to special deputy attorney general of North Carolina, head of the Education Section which represents the University of North Carolina system, the Board of Community Colleges and the State Board of Education in most of their litigation.

'79—**Jean Taylor Adams** will be teaching a course on real property security and suretyship in the spring semester of 1991 at Wake Forest University Law School in Winston-Salem, North Carolina.

—**William G. Anlyan, Jr.** is now the associate director of development for the North Carolina Museum of Art in Raleigh.

—**Alan R. Bender** has been named senior counsel of General Cellular Corporation in San Francisco, California.

—**Richard D. Blau** has joined the firm of Snell and Wilmer in Phoenix, Arizona.

—**Thomas A. Croft** is now an associate professor at the University of Arkansas at Little Rock Law School.

—**Donald P. Fedderly** practices with the firm of Fedderly and Shaw, which has offices in Long Valley, New Jersey and on the west coast and specializes in commercial litigation.

—**David W. Morgan** is chairman of the math department at The Bishop's School in La Jolla, California.

—**William C. Nordlund** recently accepted a position as an attorney with

Constellation Holdings, Inc. in Baltimore, Maryland. He has also received his M.B.A. degree from the J.L. Kellogg Graduate School of Management at Northwestern University.

—**Solveig J. Overby** is now with the United States Attorney's Office in Burlington, Vermont.

—**Stephen J. Pettit** has been named assistant general counsel with the Occidental Chemical Corporation in Dallas, Texas.

—**Jeffrey B. Ritter** has been appointed legal adviser on behalf of the United States to the United Nations' Economic Commission for Europe Working Party on Facilitation of International Trade Procedures located in Geneva, Switzerland. He also continues his legal practice in Columbus, Ohio at the firm of Schwartz, Kelm, Warren & Rubenstein.

—**Nita L. Stormes** has taken a one-year leave of absence from the United States Attorney's Office in San Diego, California to take graduate courses in clinical psychology.

—**E. Patrick Swan, Jr.** has joined the San Diego, California firm of Luce, Forward, Hamilton & Scripps, where he specializes in products liability defense and business litigation.

—**Juliann Tenney** has been named executive director of the Southern Growth Policies Board based in Research Triangle Park, North Carolina. The Board develops plans for growth in thirteen southern states and Puerto Rico.

—**Steven D. Wasserman**, a partner in the San Francisco, California-based firm of Sedgwick, Detert, Moran & Arnold, has been approved by the National Association of Securities Dealers, Inc. (NASD) to serve as an arbitrator. He will be responsible for working with other arbitration panelists to resolve disputes between customers and brokerage firms who are members of the NASD or associated persons of those firms.



Steven D. Wasserman '79

—**James E. Williams, Jr.** is now the public defender for Judicial District 15-B of North Carolina located in Carrboro.

'80—**Craig M. Brooks** has become associated with the law firm of Houston Harbaugh in Pittsburgh, Pennsylvania, where he primarily practices labor and employment law.

—**Thomas M. DiVenere** is managing director of the capital division for Houlihan Lokey Howard & Zuken in Chicago, Illinois.

—**Stephen Q. Giblin** was named a partner in the Cleveland, Ohio office of Jones, Day, Reavis & Pogue on January 1, 1990, where he specializes in environmental law.

—**J. Edward Glancy** is now senior attorney in the Rulemaking Division of the National Highway Traffic Safety Administration in Washington, D.C.

—**John H. (Jack) Hickey** published an article in the June 1990 edition of the *Florida Bar Journal* entitled "Credit Agreements Required in Writing: The New Statute of Frauds." He practices complex litigation in Miami, Florida with the firm of Hickey & Jones.

Kimberly Till '80 has been selected as a White House Fellow for 1990-91. The highly competitive White House Fellowships offer an opportunity to participate in and learn about the federal government from a unique perspective. For one year, Fellows are full-time employees of the federal government working in the Executive Office of the President or in an Executive Branch department or agency. Throughout the year, Fellows also meet with leaders from government, business, academia and journalism in intimate, off-the-record sessions.

During her year as a White House Fellow, Till is working on a variety of international trade projects with Secretary of Agriculture Clayton Yeutter. She accompanied Secretary Yeutter to the final round of the GATT negotiations in Brussels in December and is participating in negotiations on the U.S.-Canada and U.S.-Mexico Free Trade Agreements. "This is an extraordinary opportunity," Till notes, "and gives me insight and exposure to high levels of international policy-making. It is interesting and educational, and I encourage other Duke Law



Kimberly Till '80

alumni to look into the program." She is on sabbatical as an international management consultant with Bain & Company in London, where she develops business strategies at the corporate overview level.

—**Bruce V. Hillowe** is director of forensic mental health services at the Pride of Judea Mental Health Center in Douglaston, New York. He is also self-employed, offering psychological services (psychotherapy and psychodiagnosis), forensic psychology (civil and criminal), and mental health law. Additionally, he serves as legal counsel to the Ethics Committee of the New York State Psychological Association.

—**Justin G. Klimko** served as an adjunct professor at the University of Detroit Law School in the fall of 1990. He practices with the Detroit firm of Butzel Long Gust Klein & Van Zile where he specializes in mergers and acquisitions, and securities law. He is also chairing a state bar committee on standardization of legal opinions in business transactions.

—**Charles R. Perry** is now with Landauer Associates, Inc. in Atlanta, an international real estate firm headquartered in London and New York.

—**R. Scott Toop** is now division counsel for PepsiCo's Kentucky Fried Chicken subsidiary in Purchase, New York. As

former international counsel for PepsiCo International, he was in Moscow on April 9, 1990 to sign a new ten-year, \$3 billion barter agreement between Pepsi and the Soviet government. He has also participated in joint ventures between Pepsi's Pizza Hut subsidiary and the Moscow City Council to operate Pizza Hut restaurants in Moscow, and represents both Pepsi and the Soviets when negotiating with third parties.

'81—**Douglas L. Carter** is now a shareholder in the firm of Linde Thomson Langworthy Kohn & Van Dyke in Kansas City, Missouri.

—**Robert B. Kelly** is a partner at the Washington, D.C. office of Piper and Marbury.

—**Emily O'Keefe Koczela** is now an adjunct faculty member of Marquette University Law School in Milwaukee, Wisconsin, where she teaches in the first-year legal research and writing program.

—**John P. Pedranghelu, Jr.** is a partner at the firm of Russo & Russo in North Bellmore, New York.

—**Joyce S. Rutledge** has accepted a clerkship position with Associate Judge Sarah Parker of the North Carolina Court of Appeals in Raleigh.

—**Richard L. Strouse** was named a member of the firm of Ballard, Spahr, Andrews & Ingersoll on July 1, 1990, resident in the firm's Philadelphia, Pennsylvania office, where he practices in labor, employment and general litigation.

—**Leslie K. Thiele** has opened a law office in Schenectady, New York, concentrating on international business transactions and immigration.

'82—**Josie A. Alexander** has been named one of ten "Outstanding Young People of Atlanta for 1990." An attorney with Jackson, Lewis, Schnitzler & Krupman, she was honored at a ceremony in November 1990 by Mayor Maynard H. Jackson

—**Terrence P. Collingsworth** is associate professor of law at Loyola Law School in Los Angeles, California.

—**E. Brian Davis** is now an assistant United States attorney for the Western District of Kentucky, specializing in the prosecution of white collar criminal cases, especially financial institution fraud cases.

—**Peter W. Goodwin** has become board certified in oil, gas and mineral law by the Texas Board of Legal Specialization and is counsel for Mobil Exploration & Producing U.S., Inc. in Houston, Texas.

—**James B. Hawkins** has been named vice president and general counsel of Dataserv, Inc., a BellSouth company headquartered in Eden Prairie, Minnesota.

—**Martha J. Hays** was named a member of the firm of Ballard, Spahr, Andrews & Ingersoll on July 1, 1990, resident in the firm's Philadelphia, Pennsylvania office.

—**Karen S. Koenig** has joined RTKL Associates, Inc. as general counsel with responsibility for overseeing a wide range of legal matters affecting the 700-person design firm headquartered in Baltimore, Maryland.



Deborah H. Hartzog '83

—**James L. Lester** has been made a partner in the Greensboro, North Carolina office of Patton, Boggs & Blow, where his concentration on construction law has broadened to include all types of complex litigation.

—**Elizabeth Roth** was named a partner in the new law firm of General Counsel Associates in Sunnyvale, California on October 1, 1990. She specializes in counseling on employment law issues for companies.

—**Ellen R. Stebbins** has become a partner in the Houston, Texas office of Honigman Miller Schwartz and Cohn.

—**M. Jayne Wright** is director at The Tome School, located in North East, Maryland.

'83—**Coralyn Meredith Benhart** was recently promoted to general attorney with the Aluminum Company of America (Alcoa) in Pittsburgh, Pennsylvania.

—**Gary L. Benhart** has joined Equibank of Pittsburgh, Pennsylvania as vice president and senior counsel of commercial lending.

—**Frank P. Fedor** has been invited to join the partnership of Diepenbrock,

Wulff, Plant & Hannegan in Sacramento, California.

—**Hollis M. Fitzgerald** is senior corporate counsel at Advanced Micro Devices, Inc. in Sunnyvale, California.

—**Robert W. Fuller** was named a member of the firm of Robinson, Bradshaw & Hinson in Charlotte, North Carolina in March 1990.

—**Deborah H. Hartzog** was named a partner in the Raleigh, North Carolina office of Womble Carlyle Sandridge & Rice in October 1990, where she practices in the areas of corporate law and securities regulation. She is the chair of the Federal Securities Regulation Subcommittee of the North Carolina Bar Association.

—**Douglas R. Rubens** has joined Primerica Corporation of New York City as an investment banker.

—**Andrew B. Williams, II** has joined the firm of Smith & Diment in Carrollton, Georgia.

'84—**Sol W. Bernstein** has joined the New York City office of Winston & Strawn as an associate.

—**Aaron L. Fuchs** has retired from the practice of law and has taken a pilot's position with Atlantic Southeast Airlines, a Delta connection airline.

—**Helen Nelson Grant** gave the commencement address at Columbia College

of South Carolina, her undergraduate alma mater, on December 14, 1990. Grant is a partner in the Columbia law firm of Gergel,

Burnette, Nickles, Grant & Ouzts, a member of the Board of Trustees of Columbia College, and a board member of

the Cultural Council of Richland and Lexington Counties.

—**Mitchell I. Horowitz** is now a tax associate at Fowler, White, Gillen, Boggs, Villereal & Banker in Tampa, Florida.

—**Loren B. Mark** has recently become a senior attorney with the Internal Revenue Service District Counsel in Omaha, Nebraska.

—**Robert Markowitz** has transferred his criminal law practice in Palo Alto, California to another attorney to spend a year travelling and writing a novel.

—**Mark H. Mirkin** became of counsel to the firm of Quarles & Brady in September of 1990. He is resident in the firm's West Palm Beach, Florida office and coordinates its Florida corporate and securities practice.

—**Audrey McKibbin Moran** has been named director of specialty division for the State Attorney's Office, Fourth Judicial Circuit of Florida in Jacksonville. She was also selected to be a member of the Homicide Prosecution Team.

—**Patrick M. Rosenow** has received the Alfred Kuhfeld Award as the outstanding young Air Force judge advocate for 1989. He now holds the rank of Major and is a staff judge advocate at March AFB, California.

—**John F. (Sandy) Smith** has been elected to the Board of Trustees of Stanford University for a five-year term beginning on September 1, 1990.

'85—**Arthur H. Adler** joined David S. Brown Enterprises in Garrison, Maryland on October 1, 1990.

—**Seth M. Bernanke** has joined the firm of Parker, Pollard & Brown in Charlotte, North Carolina. The firm handles personal injury, workers' compensation and plaintiffs' medical malpractice cases.

—**Harry P. Brody** has become associated with the firm of Maupin Taylor Ellis & Adams, which has offices in Raleigh, North Carolina, Washington, D.C., and Rock Hill, South Carolina.

—**Frances R. Brown** is now an attorney for the City of Orlando, Florida.



Helen N. Grant '84

—**Robert B. Carroll** has joined the Securities & Exchange Commission in Washington, D.C. as an attorney in the Division of Investment Management.

—**Lisha Wheeler Goins** is now practicing in the area of tax-exempt municipal finance, specializing in housing for low and moderate income families with the firm of Powell, Goldstein, Frazer & Murphy in Atlanta, Georgia.

—**Lynn Gilleland Hawkins** has joined the firm of Moyle, Flanigan, Katz, Fitzgerald & Sheehan in West Palm Beach, Florida, where she practices commercial litigation and employment law.

—**Michael R. Hemmerich** is now with Thompson, Hine & Flory in Cleveland, Ohio.

—**Michael A. Kalish** has joined the litigation department of Winthrop Stimson Putnam & Roberts in New York City, where he specializes in all aspects of labor and employment law.

—**Marianne O. LaRivee** is now an undergraduate law instructor at the United States Air Force Academy in Colorado, where she specializes in military justice.

—**David S. Liebschutz** is a consultant for the Rockefeller Institute at the State University of New York in Albany.

—**Elizabeth Hoffman Liebschutz** has become an associate at the firm of DeGraff, Foy, Conway, Holt-Harris & Mealey in Albany, New York.

—**Kenneth G. Mattern**, a Major in the United States Air Force, now teaches at the Judge Advocate General School at Maxwell Air Force Base, Alabama.

—**Davia Odell Mazur** has become a shareholder in the firm of Stearns Weaver Miller Weissler Alhadeff & Sitterson, resident in the firm's Miami, Florida office.

—**Melinda L. McNichols** has joined the firm of Bailey & Hunt in Miami, Florida.

—**Paul D. Meade** now practices insurance defense litigation—personal injury, products, and civil rights—with the firm of Halloran & Sage in Hartford, Connecticut.

—**Pressly A. Millen** is an associate with Womble Carlyle Sandridge & Rice in Raleigh, North Carolina.

—**J. Robert Moxley, III** was elected in September 1990 to the Democratic Central Committee for Howard County, Maryland. Rob practices in the area of commercial real estate with Venable, Baetjer & Howard in Baltimore.

—**Ieva Miesnicks Rogers** is now working with the firm of Shanley & Fisher in Morristown, New Jersey.

—**Kenneth D. Sibley** was named a director of the Raleigh, North Carolina firm of Bell, Seltzer, Park & Gibson on January 1, 1991.

—**Peter G. Weinstock** has authored "Directors and Officers of Failing Banks: Pitfalls and Precautions," 106 *Banking L.J.* 434 (1989). He is an associate at Jenkins & Gilchrist in Dallas, Texas.

'86—**Daniel B. Bogart** was recently appointed assistant professor of law at Drake University Law School in Des Moines, Iowa, where he will teach real estate transactions, property, and other real estate-oriented courses.

—**Sally Coonrad Carroll** is now an associate with Jones Day Reavis & Pogue in New York City.

—**Bharat Dube** has joined the intellectual property department of Cartier International based in Geneva, Switzerland.

—**Michael D. Kaplowitz** is attending the Paul Nitze School of Advanced International Studies at The Johns Hopkins University.

—**Frederick Kennedy, III** is now trial counsel specializing in civil litigation for the United States Army at the Pentagon.

—**Filip K. Klavins** has taken a one-year leave from the New York City office of Baker & McKenzie to teach American contract law at the University of Latvia Law School in Riga, Latvia (USSR), and to work in the Latvian Foreign Affairs Ministry, Latvian Parliament and the Latvian Bar Association.

—**Mary E. LaFrance** has joined the faculty of the Florida State University College of Law in Tallahassee.

—**Jean Sih Lidon** is now with the Roseland, New Jersey firm of Carella, Byrne, Bain, Gilfillan, Cecchi & Stewart.

—**Michael M. Marnell** is now associated with the University of San Francisco Jesuit Community.

—**Mark R. Moeller** has been named assistant regional counsel of The Prudential Insurance Company of America in Atlanta, Georgia.

—**Francis J. Mootz, III** joined the faculty of Western New England College School of Law in Springfield, Massachusetts in July of 1990. He will be teaching contracts, commercial law and legal theory.

—**Marcel H.R. Schmocker** has been named general counsel of ADIA International SA in Lausanne, Switzerland.

—**Richard P. Virnig** is an attorney with Nationwide Insurance Company in Houston, Texas.

—**Richard H. Winters** is now a seminarian at Seabury-Western Theological Seminary (Episcopal) in Evanston, Illinois.

'87—**Amy Majewski Aguggia** has become an associate at Wortman, Nemeroff & Bulett in College Park, Maryland.

—**Deborah Dunn Brown** has joined the legal department of Delta Air Lines, Inc. in Atlanta, Georgia.

—**Scott A. Cammarn** is an associate in the Columbus, Ohio office of Jones, Day, Reavis & Pogue where he specializes in banking law and consumer lending.

—**Steven J. Davis** is now an associate in the Dayton, Ohio office of Thompson, Hine & Flory specializing in real estate law.

—**David J. DeMar** has joined the Law Office of Leonard L. Finz in New York City.

—**David B. Falstad** was named an associate of Gurney & Handley in Orlando, Florida on October 1, 1990.

—**Kenneth J. Lowenhaupt** has a solo practice in Miami, Florida.

—**Stephanie A. Lucie** has recently become an associate with Winstead, Sechrest & Minick in Houston, Texas, where she practices in the area of corporate transactions.

—**J. Parker Mason** is now an associate with Graham and Dunn in Seattle, Washington.

—**John R. May, Jr.** is a student at Harvard Business School in Boston, Massachusetts.

—**Gregory E. Neppi** has joined the Antitrust Division of the Department of Justice in Washington, D.C. as a trial attorney.

—**Bart J. Patterson** is now an associate with Bryan Cave McPheeters & McRoberts in Phoenix, Arizona.

—**Katherine Strozier Payne** has recently taken the position of assistant general counsel with USTravel Systems, Inc. in Rockville, Maryland.

—**Rachel Contorer Perlman** is now with the Chicago, Illinois firm of McBride, Baker & Cotes.

—**Christopher J. Petrini** is now a litigation associate at Hinckley, Allen, Snyder and Comen in Boston, Massachusetts.

—**Julie O'Brien Petrini** has become an associate at Hale & Dorr in Boston, Massachusetts.

—**Alice Higdon Prater** has become a career judicial law clerk for United States District Judge James H. Hancock in Birmingham, Alabama.

—**Erika Chilman Roach** has joined the litigation section of Ice Miller Donadio & Ryan in Indianapolis, Indiana.

—**H.E. Dan Shasteen** is now with the firm of Voss, Coe, Castlebury & Thiel in Newport Beach, California.

—**Laurel E. Solomon** has joined the new Durham, North Carolina firm of Hayes Hofler & Associates, which has a general litigation practice.

—**W. Joseph Thesing, Jr.** has joined Schiff Hardin & Waite in Chicago, Illinois as an associate in the litigation department.

—**Penelope C. Trowbridge** has relocated to the firm of Hopkins & Sutter in Chicago, Illinois.

—**Christopher Q. Wintter** announces the formation of the firm Wintter & Cummings in Hollywood, Florida, specializing in commercial and construction litigation.

'88—**Timothy A. Baxter** has moved to Boston, Massachusetts to practice with the firm of Gaston & Snow.

—**Jay B. Bryan** is now an associate with Fleishman and Walsh in Washington, D.C.

—**Mark G. Califano** is now with the Washington, D.C. office of Skadden Arps Slate Meagher & Flom.

—**Willie O. Dixon, IV** has become an associate of the Durham, North Carolina office of Moore & Van Allen.

—**Theresa A. Glover** has joined the extended faculty of the Duke Law School as general editor of *Law & Contemporary Problems* and supervisor of the *Alaska Law Review* effective July 1, 1990.

—**Thomas M. Howell** has joined the firm of Smoot Adams Johnson & Green in Fort Myers, Florida.

—**Beata Iracka-Jostmeier** is an associate with LeBoeuf, Lamb, Leiby & MacRae in New York City, specializing in ERISA and handling some Eastern European practice.

—**David A. Leff** is now an associate with the firm of Jacobs, Gurdberg, Belt & Dow in New Haven, Connecticut, where he practices in the area of civil litigation.

—**Gary M. Lisker** has accepted a one-year position as a law clerk to the Honorable Stanley F. Birch, Jr. of the United States Court of Appeals for the Eleventh Circuit in Atlanta, Georgia.

—**B. Ida Patterson** spent the spring 1990 semester as a visiting associate professor of law at the University of Iowa.

—**David A. Payne** has been appointed a United States attorney for the District of Columbia.

—**Christopher J. Supple** has joined the United States Attorney's Office for the Eastern District of Virginia in Alexandria.

—**James Walker, IV** is now with the Atlanta, Georgia firm of Morris, Manning & Martin.

—**Jill A. Whitworth** began a judicial clerkship in July 1990 with the Honorable James H. Williams, Chief Judge of the United States Bankruptcy Court for the Northern District of Ohio.

—**Young-gak (Ken) Yun** has gone to Seoul, Korea to establish an office for his firm, Sidley & Austin. He will also be managing the firm's Korean clients.

'89—**Filip Ameloot** is a counsellor at law at the Yagi Sogo Law Offices in Tokyo.

—**Eric L. Hiser** has become an associate in the environmental law section of the firm of Fennemore Craig in Phoenix, Arizona.

—**Robert M. Howard** is now with the firm of Latham & Watkins in San Diego, California.

—**Jean-Paul Hupez** is an associate in the Brussels, Belgium office of Stibbe, Blaisse & De Jong.

—**Stephan Radermacher** is with the Raleigh, North Carolina firm of Maupin Taylor Ellis & Adams.

—**Matthew W. Sawchak** has become an associate at the Raleigh, North Carolina office of Smith Helms Mulliss & Moore.

—**Lindsey W. Stravitz** has relocated to the Richmond, Virginia office of Hunton & Williams.

—**Paul K. Sun, Jr.** has become an associate with Smith Helms Mulliss & Moore in Raleigh, North Carolina.

Personal Notes

'63—Julian C. Juergensmeyer was married to Ewa Krystyna Gmurzynska on February 14, 1990 in Gainesville, Florida, where he is a member of the law faculty of the University of Florida.

'75—Thomas P. Miller was married to Mary Dougherty in Crestwood, New York on September 15, 1990. Thomas is a policy analyst for the Competitive Enterprise Institute in Washington, D.C.

'76—James A. Davids and his wife, Sue, are the proud parents of their fourth child, a son named Timothy Edward, born on March 13, 1990.

—Melinda A. Mits was married to Mas Sakioka on September 30, 1990 in Westminster, California. Melinda is with the Law Offices of Tan & Sukiama in Los Angeles.

—Anthony David Salzman was married to Ruby Shang on May 11, 1990 in New York City.

'78—Richard W. Brunette and his wife, Jane, are happy to announce the birth of twin sons named James and Peter on March 22, 1990. They now have five children.

—Jane Makela was married to Dr. John Ogden Vogt on March 3, 1990. They reside in Dallas, Texas, where Jane is a partner at Carrington, Coleman, Sloman & Blumenthal.

'79—Carl W. Dufendach and his wife, Karen, are the proud parents of their fourth child, who was born on December 31, 1989. Carl is a partner at Warner, Norcross & Judd in Grand Rapids, Michigan and is chairman of the firm's professional staff committee.

—Mark A. Kelley and his wife, Rose, are pleased to announce the birth of their second son, named Taylor Walton, on March 13, 1990.

Informal Reunion Aboard the Natchez



Several women from the Class of '80 celebrated an informal reunion in New Orleans in April of 1990. **Left to right:** Barbara Anderson of Lewis and Anderson in Durham, North Carolina; Priscilla Weaver of Mayer, Brown & Platt in Chicago, Illinois; Linda Griffey of O'Melveny & Myers in Los Angeles, California; Dara DeHaven of Powell, Goldstein, Frazer & Murphy in Atlanta, Georgia; Marjorie Schultz of Fulbright & Jaworski in Houston, Texas; and Katie Holliday of the Children's Law Center in Charlotte, North Carolina.

—Nancy A. Nasher was married to David J. Haemisegger on October 28, 1990 in Dallas, Texas, where they reside. Nancy is general counsel of the Raymond D. Nasher Company.

—Evan Zucker was recently married to Dr. Paula Eisenhart in San Diego, California, where Evan is an associate specializing in civil litigation with Mulvaney & Kahan.

'80—Stephen Q. Giblin and his wife are happy to announce the recent arrival of their third child and first son, named Patrick James.

—Andromeda Monroe and Raynold Jean-Francois are pleased to report the birth of a son, Peter Alexander, on June 9, 1990.

—Genevieve Harris Roche and her husband, Con, are the proud parents of a son, Kevan Connor, born on September 1, 1990.

—W. Steven Woodward was married to Nanciann Frazier on May 5, 1990. They reside in Narberth, Pennsylvania, a suburb of Philadelphia, where Steve is a partner in the firm of Drinker Biddle & Reath.

'81—Marshall S. Adler is proud to announce the arrival of his second son, named David, on January 17, 1990.

—Linda S. Cox was married to Bert Fornaciari on July 14, 1990. Linda practices with Hancock, Rotherth & Bunshoft in San Francisco, California.

—Carl R. Gold announces the birth of a son, named Travis Revel, on June 16, 1990.

—**Suzanne M. Hornaday** was married to Matthew L. Birmingham on October 27, 1990 at the home of her parents in Dataw Island, South Carolina. Suzanne is an attorney at Investors Title Insurance Company in Chapel Hill, North Carolina.

—**Melissa M. May** was married to Thomas E. Brydges on May 26, 1990. Melissa is a partner at Hodgson, Russ, Andrews, Woods & Goodyear in Buffalo, New York.

—**Abigail T. Reardon** was married to Arthur A. Cosnell on June 2, 1990 in New York City, where Abby is a partner at Nixon, Hargrave, Devans & Doyle.

'82—**Margaret A. DeLong** was married to John M. Martin on June 9, 1990 in Durham. Margaret is an attorney at LeBoeuf, Lamb, Leiby & MacRae in Raleigh, North Carolina.

—**P. Russell Hardin** and his wife, Melanie, are the proud parents of their first child, a son named Paul Russell, Jr., born June 15, 1990.

—**Richard R. Hofstetter** and his wife, Kathleen, are pleased to announce the birth of their son, named Richard, on February 5, 1990.

'83—**Coralyn Meredith Benhart** and **Gary L. Benhart**, both Class of '83, are happy to report the birth of their second son, named Bryan Edward, on September 28, 1990.

—**Mary Alice Carson** was married to Ed Robison on December 30, 1989. Mary practices with Fisher, Tousey, Leas & Ball in Jacksonville, Florida.

—**David B. Chaffin** was married to Elizabeth Whitehead in July of 1990. David is with DiCara, Selig, Sawyer & Holt in Boston, Massachusetts.

—**Craig A. Hoover** and **Kimberly Hill Hoover**, both Class of '83, are pleased to announce the birth of their first child, a daughter named Stephanie Claire, on May 9, 1990.

—**Diane Cahoon Magee** and **Richard D. Magee, Jr.**, both Class of '83, are the proud parents of their first child, a girl named Katherine Elizabeth (Katie), born on May 8, 1989.

'84—**Sol W. Bernstein** was married to Risa A. Janoff on December 30, 1989. They reside in New York City.

—**Mary J. Hildebrand** was married to Robert J. Kovacs in Plattsburgh, New York on June 9, 1990. They reside in Caldwell, New Jersey.

—**Lauren Wood Jones** and her husband, David, are pleased to announce the arrival of a second son, Bryan Geoffrey, born on August 21, 1990.

—**A. William Mackie** and his wife, Linda, are happy to report the birth of a daughter named Diana Waltress on February 5, 1990.

—**Audrey McKibbin Moran** proudly announces the arrival of a daughter named Caitlin McKibbin Moran on July 7, 1989.

—**Steven P. Natko** was married to Sherrie L. Edelman in Philadelphia, Pennsylvania on November 24, 1990. Steve is an associate in the Philadelphia office of Pepper, Hamilton & Scheetz.

—**David P. Rhodes** and **Paula McDonald Rhodes**, both Class of '84,

are the proud parents of a daughter, named Amanda Lynn, born on October 20, 1990.

—**Charles R. Simpson** and his wife, Jan, are happy to report the birth of their third child, a boy named Timothy Robert, on August 17, 1990.

—**Leslie Anne Wheeler** was married to Jason Chervokas on June 18, 1989. They reside in New York City, where Leslie practices bankruptcy and real estate law with Robinson Silverman Pearce Aronsohn & Berman.

'85—**Arthur H. Adler** was married to Esther Ann Brown on November 12, 1989 in Baltimore, Maryland.

—**Margaret A. Behringer** was married to John Patrick Maloney on November 10, 1990 in Charlotte, North Carolina, where Meg is with the firm of Moore & Van Allen.

—**Seth M. Bernanke** was married to Ellen R. Goldberg in Charlotte, North Carolina on May 13, 1990.

—**Rachel Bornstein** was married to John Kennedy Setear on July 8, 1990 in Mitchellville, Maryland. Rachel practices with Hogan & Hartson in Washington, D.C.



Alumni 'chow down' on Bullock's Barbeque during Alumni Weekend '90.

—**William W. Horton** was married to Judilyn Brooks on February 24, 1990. Bill is an associate with the Birmingham, Alabama-based firm of Steiner Byars Haskell Slaughter Young & Johnson, where he concentrates on corporate, securities and health care matters.

—**Paul D. Meade** and his wife, Clare, proudly announce the arrival of their son, Zachary.

—**Siobhan O'Duffy Millen** and **Pressly M. Millen**, both Class of '85, are happy to report the birth of a daughter, named Cecily, on December 25, 1989.

—**J. Robert Moxley, III** was married to Ann M. Moore on April 7, 1990. Rob is an associate at Venable, Baetjer & Howard in Baltimore, Maryland.

—**Ieva Miesnicks Rogers** is pleased to announce the birth of a son, named Oliver, in December 1989.

—**David A. Trott** and his wife, Kappy, proudly report the birth of their first child, a son named David, Jr., on November 1, 1990.

—**Peter G. Weinstock** and his wife, Hilarie, are happy to announce the arrival of their first child, a son named William David, on May 2, 1990.

—**Catharine Emerson Wymer** and her husband, John, are the proud parents of their first child, a girl named Sarah Catharine, born on July 11, 1990.

'86—**Janine Brown** and **Alex Simmons**, both Class of '86, were married on May 19, 1990 in Atlanta, where they reside. Janine is an associate with Powell, Goldstein, Frazer & Murphy, practicing in the corporate technology section. Alex is an associate with Schreeder, Wheeler & Flint.

—**René Stemple Ellis** and her husband, Ken, proudly announce the arrival of their first child, a daughter named Emily Catherine, born on November 26, 1990.

—**Christopher Mark Kelly** and his wife, Christine, happily report the birth of a daughter, named Meghan, on May 2, 1989.

—**Francis J. Mootz, III** and **Caren A. Senter**, both Class of '86, are proud to announce the birth of their first child, a girl named Catherine Sarah, on March 12, 1990.

—**Margaret J. Nielsen** was married to Neal Ruxton on June 23, 1990 in San Francisco, California, where they make their home. Meg is an associate with Broad, Schulz, Larson & Wineberg.

—**Thomas W. Peterson** was married to Teresa Mote on August 11, 1990. They reside in Indianapolis, Indiana, where Tom is an associate with Ice Miller Donadio & Ryan.

—**Robert A. Scher** was married to Amy Jeanne Binder in Miami Beach, Florida on April 7, 1990. They reside in New York City, where Bob is an associate with Freidman, Wang & Bleiberg.

'87—**Brian C. Quist** and his wife, Molly, happily report the arrival of a daughter, named Mary Katrina Anne, born on November 29, 1989.

—**Tish Walker Szurek** and her husband, Paul, proudly announce the arrival of a son, named Paul E. Szurek, Jr., born on May 21, 1989.

'88—**Mark R. DiOrio** and his wife, Jill, are pleased to announce the birth of their daughter, named Bailey Grace, on June 30, 1990.

—**Philip M. Nichols** was married to Amy E. Sears on August 4, 1990. Phil is an associate with Ropes & Gray in Boston, Massachusetts.

'89—**Maria H. Benecki** was married to Charles A. Sowders, II on May 12, 1990. They reside in Dallas, Texas, where Maria is now an associate for Akin, Gump, Strauss, Hauer & Feld.

—**Sean Callinicos** and his family were sworn in as naturalized United States citizens in May of 1990 in a ceremony in Greensboro, North Carolina.

—**Markus Waldis** and his wife, Lu, happily announce the birth of a daughter, named Michelle, on September 25, 1990.

Class of '86 Celebrates Scher/Binder Wedding



Sixteen members of the Class of '86 gathered at a wedding party for Bob Scher '86 and Amy Binder in New York City on May 19, 1990. **Standing left to right:** Gordon Kingsley, Michael Kaplowitz, John Methfessel, Filip Klavins, Bob Scher, Mark Gustafson, Brett Fallon, John Grossbauer and Matt Brenneman. **Seated left to right:** Stephen Labaton, Michael Immordino, Michael Friedman, Chris G. Kelly, Liz Johnson Gustafson, Kris Larkin Stewart, and Meg Nielsen Ruxton.

Obituaries

Class of 1922—A.C. Jordan of Durham died on August 9, 1990. Professor Jordan had taught English at Duke University since 1925. He attended the Law School from 1919 to 1922 and received his master's degree from Columbia Law School in 1923. Professor Jordan was an adviser to the North Carolina Text Book Commission and a past president and chairman of the research committee of the North Carolina English Teachers Council. He was vice president of the College English Association for North Carolina, Virginia and West Virginia.

Professor Jordan is survived by his wife, Jane Myers Jordan; four daughters, Sally J. Bloodworth and Patsy J. Grable, both of Bahama, North Carolina, Julie J. Wrenn of Apex, North Carolina, and Ann J. Ogren of Windermere, Florida; a sister, Octavia J. Ogren of High Point, North Carolina; and ten grandchildren.

Class of 1934—Joseph H. Armfield, Jr. of Greensboro, North Carolina died on December 16, 1989. A retired minister, Armfield served churches in Tennessee, Mississippi and North Carolina. He formerly practiced law in Greensboro.

Rev. Armfield is survived by his wife, Elizabeth; a son, Joseph III of Denver, Colorado; three daughters, Betty McNeely of Montgomery, Alabama, Anne Armfield of Greensboro, and Margaret Armfield of Greensboro and New York City; and four grandchildren.

Class of 1937—Thomas E. Butterfield, Jr. died on July 28, 1990. He was a partner at the firm of Butterfield, Joachim, Brodt, Morrison & Longenbach in Bethlehem, Pennsylvania.

Class of 1939—Robert W. Bogue died of cancer on August 26, 1990 at his home in Chevy Chase, Maryland. Mr. Bogue was an investment adviser and vice president of J.W. Redmond & Company since 1962. He had previously served in the legal offices of Southern

Railway, the Civil Aeronautics Board, and the old Office of Price Administration, as well as in private law practice where he specialized in federal tax matters. He was a past board member of the Columbia Hospital for Women.

Mr. Bogue is survived by his wife, Eleanor Hawley Bogue; two sons, Richard A. Bogue of Chevy Chase and Robert W. Bogue, Jr. of Baltimore; and four grandchildren.

—John S. Forsythe, of Alexandria, Virginia, died on May 27, 1990 of cardiac arrest in Martinsburg, West Virginia. Mr. Forsythe was a lawyer with the United States Labor Department prior to World War II. He served in the Navy in Europe during World War II, and remained in the Naval Reserve until 1975, retiring with the rank of captain.

In 1945 he became general counsel for the House Committee on Education and Labor, and in 1955 was named general counsel of the Senate Labor Committee. He also served for a year as general counsel of the Federal Coal Mine Safety Board of Review. In 1970, Mr. Forsythe became associate general counsel for the Life Insurance Association of America. In 1980, he joined the Washington, D.C. firm of White, Fine & Verville, retiring in 1984.

Mr. Forsythe is survived by his wife, Patria; a daughter, Carol Sperry of Arlington; a son, Richard, of Port Orange, Florida; a stepson, Gerald Winalski of Alexandria; and a grandchild.

Class of 1941—Warren C. Stack, of Charlotte, North Carolina, died on July 15, 1990. A native of Monroe, North Carolina, Mr. Stack served as a captain in the Army Air Forces during World War II, after which he moved to Charlotte and began his own civil and criminal trial practice. He retired in 1989 as counsel to the Charlotte firm of Tucker, Hicks, Hodge and Cranford.

He was a past president of the

Mecklenburg County Bar Association and served on the North Carolina Board of Bar Examiners for several years. He was a member of the American College of Trial Lawyers, the American Trial Lawyers Association, the International Academy of Trial Lawyers, and the International Society of Barristers.

Mr. Stack is survived by his wife, Dorothy; two daughters, Elizabeth Findlay of Cincinnati, Ohio and Susan Cathcart of Orchard Park, New York; and six grandchildren. The family asked that memorials be made to the Duke University School of Law, Durham, North Carolina 27706.

Class of 1948—Manley K. Fuller, Jr. of Hickory, North Carolina died on October 15, 1990, following a period of declining health. Since 1982, he had practiced law in Hickory with his son, John G. Fuller, specializing in estate planning, probate, corporate counseling and taxation. For thirty-three years following his graduation from the Law School, Mr. Fuller served as senior vice president, trust officer and director of the First Union National Bank in Hickory. He was a lieutenant in the U.S. Navy during World War II.

Mr. Fuller was a former president of the Trust Division of the North Carolina Bankers Association. He was active in many local civic organizations, including service on committees of the Greater Hickory Chamber of Commerce, as a director at First Security Co. Inc., and as a member of the board of trustees of North State Academy.

Mr. Fuller is survived by his wife, Catherine Gordon Crowell Fuller; two sons, Manley K. Fuller, III of Tallahassee, Florida and John G. Fuller of Hickory; and three daughters, Dr. Catherine G. Fuller of Los Angeles, California, Elizabeth C. Fuller of Westport, Connecticut, and Frances R. Fuller of Boston, Massachusetts.

Class of 1958—William D. Caffrey of Greensboro, North Carolina died on January 4, 1991 of complications from diabetes. He was a partner in the firm of Nichols, Caffrey, Hill, Evans & Murrelle and had served for over twenty years as attorney to the Greensboro Board of Education. Prior to attending Duke Law School, Mr. Caffrey served as a teacher and principal at the Aycock School and Caldwell School in Greensboro.

Mr. Caffrey was a trustee and former chairman of trustees at Greensboro College, and a member and past president of its Sports Council. He was counsel to the Bishop of Western North Carolina United Methodist Church and past president of the Greensboro Civitan Club.

He is survived by his wife, Ona Willis Caffrey; two sons, Dr. W. Daniel Caffrey, Jr. and Russell H. Caffrey, both of Greensboro; and one grandchild.

Class of 1963—James O. Stassinof of Springfield, Virginia, died on May 31, 1990 in Washington, D.C. He was a supervisor for the Federal Bureau of Investigation. Mr. Stassinof is survived by his wife, Helen; his mother, Helen of Charlotte, North Carolina; a son, O. Steven; a daughter, Elizabeth; three sisters; and several nieces and nephews.

Class of 1978—Serena A. Crawford, her husband, Gregory A. Robertson, and Michael R. Johnson, all of Atlanta, were killed in a head-on car collision on June 15, 1990 in DeKalb County, Georgia. Mr. Johnson's wife, Susan Brooks, also a member of the Class of '78, was injured in the accident. Friends since meeting during Law School, the couples were reportedly driving home from a birthday celebration when their car was struck by another vehicle which crossed the center line.

Ms. Crawford was a legal advisor with the Confederation Life Insurance Company and Mr. Robertson was a partner in the Atlanta firm of Alston & Bird, which he joined in 1985. Survivors of the couple include their two young children, Gregory, Jr. and Elizabeth; her parents, Ray and Dorothy Crawford; and his parents, Howard and May Robertson.

Mr. Johnson was a partner in the Atlanta firm of Neely & Player, where he

had worked for twelve years. His survivors include his wife, Susan Brooks, who is on sabbatical from the DeKalb County district attorney's office; and two young sons, Patrick and Steven.

A memorial fund has been established, the purpose of which will be to fund law scholarships. Direct contributions for the fund may be sent to Associate Dean Lucille Hillman, Duke Law School, Durham, North Carolina 27706.

Professor Emeritus J. Francis Paschal died at his home in Durham on January 10, 1991. A native of Wake Forest, North Carolina, Professor Paschal received his undergraduate and law degrees from Wake Forest College, and a master's and doctorate from Princeton University. He served in the Navy during World War II, and following the war was research director for the North Carolina Commission for the Improvement of the Administration of Justice. From 1949 to 1954 he practiced law with a private firm in Raleigh. He joined the Duke Law faculty in 1954, teaching in the areas of civil procedure and federal courts. He retired in 1986.

Professor Paschal served a term as chairman of the North Carolina Advisory Committee to the Civil Rights Commission and on the North Carolina General Statutes Commission. He also served a term as chairman of the Duke University Academic Council, and was a visiting professor at the University of North Carolina in 1956 and 1966. Professor Paschal wrote on a variety of legal subjects, including a full-length biography of Justice George Sutherland of the United States Supreme Court.



Professor Emeritus J. Francis Paschal

Professor Paschal is survived by his wife, Primrose McPherson Paschal; five brothers, Robert Allen Paschal, Paul Paschal and Edward Paschal of Wake Forest, Dr. George Paschal, Jr. of Raleigh, and Richard Paschal of Reidsville; and four sisters, Laura Helen Paschal and Catherine Paschal of Wake Forest, Dr. Mary Paschal of Raleigh, and Ruth Paschal Lupton of Alamance.

Memorial contributions may be made to the Duke University School of Law, Durham, North Carolina 27706.

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