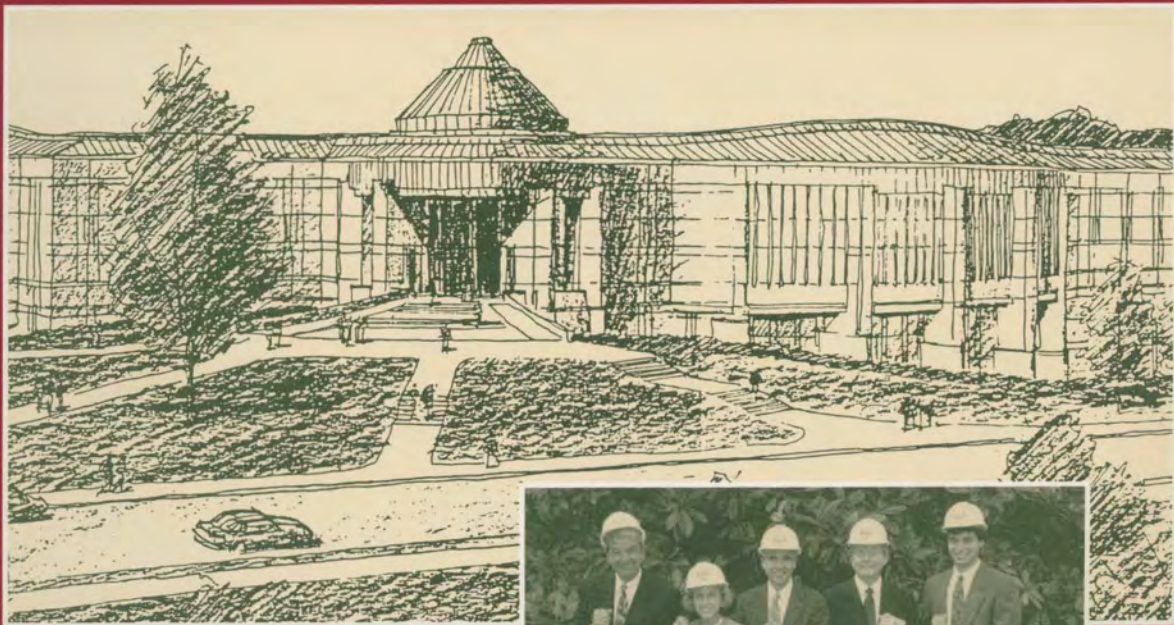


# Duke Law Magazine

WINTER 1993





# Duke Law Magazine

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#### About the Cover

The cover features, in the background, the architect's concept of the current Law School building after completion of the Phase II addition and the Phase III renovations. In the foreground, from left, Robert K. Montgomery '64, Dean Pamela B. Gann '73, Duke President H. Keith H. Brodie, John F. Lowndes '58, and Jay G. Volk '93 officially break ground for the Phase II addition during ceremonies on September 19, 1992.

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## From the Dean

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

### Ground Breaking Ceremony

The Law School celebrated the official ground breaking of its building addition at the fall Alumni Weekend. The gala event occurred on the Law School's lawn, followed by a luncheon shared by faculty, staff, students, and alumni. One University officer commented that this was the best event of its kind in many years at Duke. A longer report appears later in the *Magazine* and contains excerpts from the interesting comments provided by the speakers for the occasion.

### Faculty Awards and Fellowships

I am pleased to report that several of our faculty have recently received awards or fellowships to acknowledge their academic achievements. Donald Horowitz, who holds a joint appointment with Law and Political Science, was honored at the annual meeting of the American Political Science Association, where he received the Ralph J. Bunche Prize. The Bunche Prize, awarded for the best book in the field of ethnic and cultural pluralism, honors Professor Horowitz's *A Democratic South Africa? Constitutional Engineering in a Divided Society*. Katharine Bartlett enjoys a fellowship

at the National Humanities Center in the Research Triangle Park. Neil Vidmar received a Perry Nichols Fellowship, during which he is completing research on medical malpractice juries.

### Academic Planning

Duke University recently completed a comprehensive planning program in which the foundations for the exercise were the planning documents for each of the schools and major administrative divisions of the University. I thought that it would be useful to comment briefly to alumni and friends upon the Law School's plan for the next five to ten years.

The Law School's approach to the basic mission of legal education is distinctive in several respects. The School has achieved a high level of success while remaining relatively small in size. The Law School faculty assessed the appropriate size for the School, and it determined to continue to enroll about 195 juris doctor students and thirty-five young foreign lawyers into the master of laws degree program, for a total enrollment of 620. Thus, there are no plans either to increase or decrease the School's size.

The Law School is known for the extraordinary amount of faculty time and resources placed into the



Dan Crawford

first-year curriculum. About forty percent of all teaching hours of the full-time tenured and tenure-track faculty are used in teaching first-year students. The small section program, in which a faculty member teaches about twenty-two students a substantive course and the accompanying research and writing class, causes this allocation of total faculty resources to the first-year curriculum. The faculty is dedicated to continuing the small section program in some format, but it will continue to review the methods of teaching legal process and writing.

The faculty is committed to professional education as well as active collaboration with students in a wide variety of scholarly and professional activities. The faculty and program of study offer extensive opportunities



to transcend the intellectual parochialism of narrowly careerist professional training by encouraging joint programs of study and joint appointments of faculty. The Duke Law School has more students enrolled in joint-degree programs regardless of size and probably also has the highest number of joint faculty appointments regardless of size. Duke established *Law & Contemporary Problems* in the 1930s, which was the first interdisciplinary legal publication in the United States.

The School's scope is also international, and it is particularly well known for its programs of study in these areas. It has the only summer-entering class, specializing in international, comparative and foreign law through a combined joint juris doctor and master of laws degree program. The Law School's Brussels Summer Institute is also the most international program operated by any American law school, for more than half of the participants and faculty are from countries other than the United States. These programs, along with its master of laws programs for young foreign lawyers, have enabled the Law School to create a student body particularly interested in transnational practice, public international law, and comparisons of different legal systems.

The Law School expects its students to be active intellectual participants in their learning process. As liberally educated professional per-

sons in a learned profession, it also expects its graduates to behave ethically, to be participants in reforming society, and to maintain a lifetime of learning.

The Law School's development plan for the next several years is designed to improve the financial basis upon which the Law School operates. Because the Law School does not plan any enrollment increases, its ability to compete successfully for the best possible students and faculty, and to continue to improve its programs of instruction and the quality of the library and academic computing, will depend upon increases in gift income from unrestricted annual giving and income from new endowments. Thus, the development objectives for the next several years focus upon endowments for student scholarships, for chaired professorships, and to support the library's collection activities. The Law School also wants to complete the design development fund-raising for Phase III of its building program, which is the complete renovation of the current building.

Thus, the Duke Law School's goals, like those at Duke generally, are to improve its faculty, student body, academic programs and computing, library, and facilities over the next five to ten years to maintain its ability to provide one of the very best legal educations in the United States and the world. Although stated simply, these goals are designed to assure

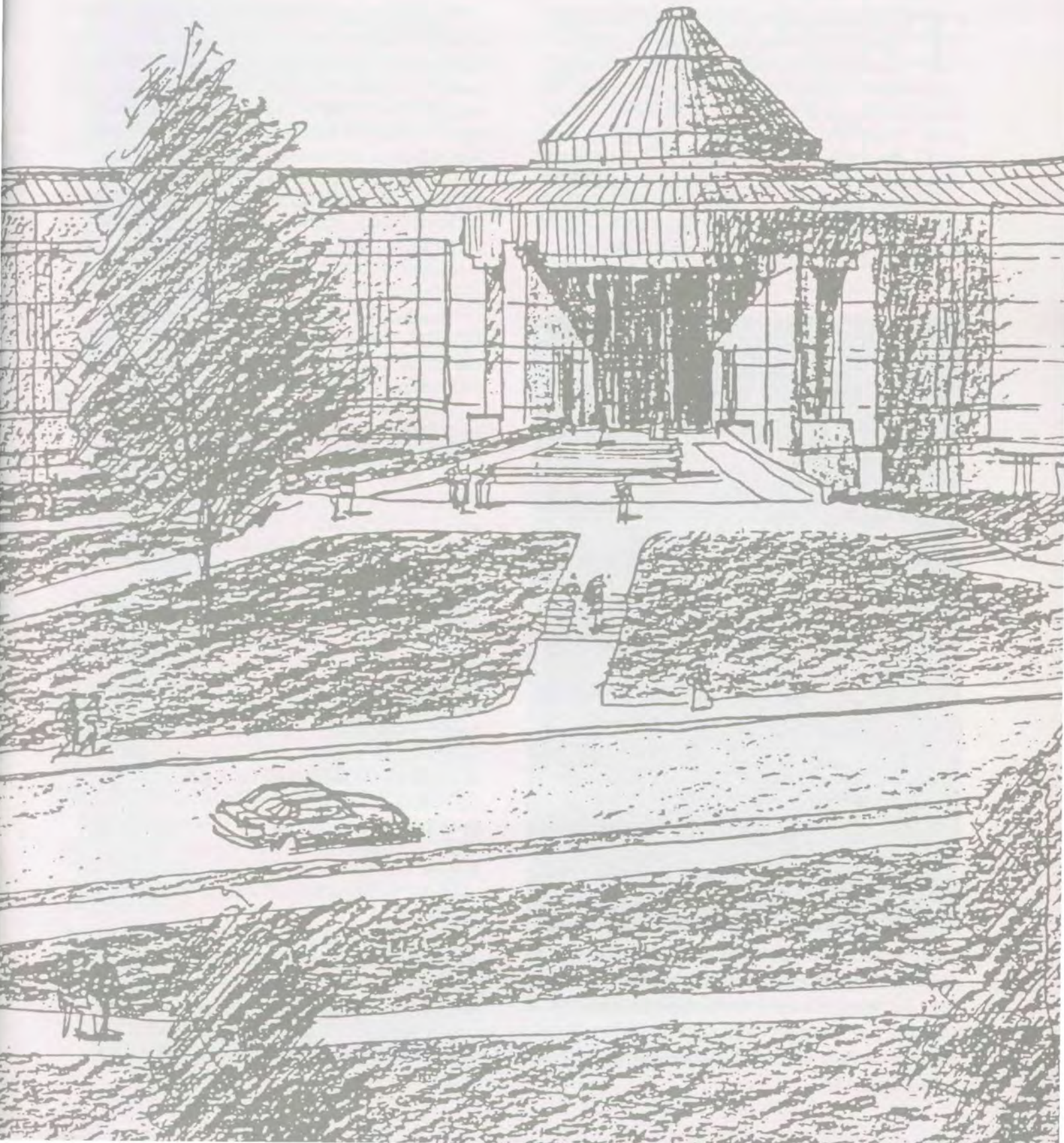
that the Law School will also be able to accomplish its central mission to prepare students through teaching and learning for entry into the legal profession and for lives of significant public and private responsibilities; to maintain a community of scholars to improve and illuminate the law and legal institutions through teaching and research; and to serve the public by applying the learning of its faculty and students for the purposes of law reform and improvements in legal institutions. These basic missions are timeless, but the Law School does achieve distinctiveness in several respects in accomplishing these objectives.

To achieve our plans, the Law School requires the understanding of its alumni and friends that private higher education of this quality only results from their substantial participation through service and gifts to Duke University. I want to close by thanking you for these contributions and what you achieve in your communities and society, which accomplishes one of our stated missions to educate our graduates for significant lives of public and private responsibilities.

*Pamela B. Gann '73*



# THE FORUM





# Advice and Consent to Supreme Court Nominations

*Madeline Morris and Walter Dellinger*

The proper scope of the Senate's role in confirming Supreme Court nominees has been the subject of recurring and often heated debate. The Constitution provides simply that the President "shall nominate, and by and with the advice and consent of the Senate, shall appoint... Judges of the Supreme Court." Although the Senate also has the constitutional responsibility of advising on and consenting to presidential appointments of ambassadors, lower federal court judges, and many executive branch officials, debates over the nature of the Senate's role have generally arisen in the context of Supreme Court nominations.

The central issues of controversy have concerned the criteria the Senate should consider in making confirmation decisions and the appropriate range of questions that may be posed to and answered by a nominee. Debated points regarding appropriate criteria for confirmation have included the degree to which the Senate should defer to the President's preferred choice and whether it is appropriate to take a nominee's political views or judicial philosophy into account. The debate about the scope of questioning has centered on whether it is appropriate for senators to ask and nominees to answer questions about the nominee's political views and judicial philosophy and how these views and philosophy would apply to issues that may come before the Court.

Presidents and some members of the Senate have argued that selecting Justices is the President's prerogative and that, although the President may take a judicial prospect's philosophy into account, the Senate must limit its inquiry to whether the nominee has the basic qualifications for the job. These commentators maintain that the Senate should defer to the President's nomination of any person who is neither corrupt nor professionally incompetent. Others have contested this view and argued that the Senate, when it decides whether to consent to a nomination, is permitted to take into account the same range of considerations open to the President and to make its own independent determination of whether confirmation of a particular nominee is in the best interests of the country.

Presidents have often taken the position that the Senate should defer to the President's choice. President Richard M. Nixon, for example, claimed in 1971 that the President has "the constitutional responsibility to appoint members of the Court," a responsibility that should not be "frustrated by those who wish to substitute their own philosophy for that of the one person entrusted by the Constitution with the power of appointment." This view was echoed by President Ronald Reagan, who asserted that the President has the "right" to "choose federal judges who share his judicial philosophy" and that the Senate should confirm Presidents' nominees "so long as they are qualified by character and competence."

Many of those who agree with Presidents Nixon and Reagan believe that the proper standard for Senate review of Supreme Court nominees is the deferential standard that the Senate has typically accorded to presidential nominations of executive officials, whose confirmation is generally expected unless the nominee is found to lack the character



Jim Wallace

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or competence necessary for the job. This analogy between executive and judicial appointments is not wholly apt. Whereas the President is entitled to have in the executive branch officials who share the President's philosophy and will carry out the chief executive's policies, judicial nominees are expected to exercise independent judgment. Those favoring a more active Senate role in the judicial confirmation process suggest that the proper analogy is to the Senate's role in ratifying or rejecting treaties or to the President's decision to sign or veto legislation—instances in which an independent exercise of judgment by each branch is thought appropriate.

The consideration of the Appointments Clause by the Constitutional Convention of 1787 offers some support for the position that senators should exercise their own independent judgment about whether to confirm a nominee. The convention considered the issue of judicial appointments separately from its consideration of the appointment of executive officers. For much of the summer of 1787, the evolving drafts of the Constitution gave the Senate exclusive authority to appoint judges. Suggestions for giving the appointing authority to the President alone rather than to the Senate were soundly defeated.

On May 29, 1787, the convention began its work on the Constitution by taking up the Virginia Plan, which provided "that a National Judiciary be established ... to be chosen by the National Legislature ...." Under this plan, the executive was to have no role at all in the selection of judges. When this provision came before the convention on June 5, several members expressed concern that the whole legislature might be too numerous a body to select judges. James Wilson's alternative providing that the President be given the power to choose judges found almost no support, however. John Rutledge of South Carolina stated that he "was by no means disposed to grant so great a power to any single person." James Madison agreed that the legislature was too large a body, but stated that "he was not satisfied with referring the appointment to the Executive." He was "rather inclined to give it to the Senatorial branch" as being "sufficiently stable and independent to follow their deliberate judgments."

One week later on June 13, Madison rendered his inclination into a formal motion that the power of appointing judges be given exclusively to the Senate rather than to the legislature as a whole. This motion was adopted without objection. On July 18 the convention reconsidered and reaffirmed its earlier decision to grant the Senate the exclusive power of appointing judges. James Wilson again moved "that the Judges be appointed by the Executive." His motion was defeated, six states to two, after delegates offered, as Gunning Bedford of Delaware said, "solid reasons against

leaving the appointment to the Executive." Luther Martin of Maryland, stating that he "was strenuous for an appointment by the 2nd branch," argued that "being taken from all the States [the Senate] would be the best informed of character and most capable of making a fit choice." Roger Sherman of Connecticut concurred, "adding that the Judges ought to be diffused, which would be more likely to be attended to by the 2nd branch, than by the Executive." Nathaniel Gorham of Massachusetts argued against exclusive appointment by the Senate, stating that "public bodies feel no personal responsibility, and give full play to intrigue and cabal." He offered what was to be the final compromise: appointment by the Executive "by and with the advice and consent" of the Senate. At this point in the convention, however, his motion failed on a tie vote.

The issue was considered once again on July 21. After a debate in which George Mason attacked the idea of executive appointment as a "dangerous prerogative



Ron Ferrell

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[because] it might even give him an influence over the Judiciary department itself," the convention once again reaffirmed exclusive Senate appointment of judges of the Supreme Court. Thus the matter stood until the closing days of the convention. On September 4, less than two weeks before the convention's work was done, a committee of five reported out a new draft providing for the first time for a presidential role in the selection of judges: "The President . . . shall nominate and by and with the advice and consent of the Senate shall appoint Judges of the Supreme Court." Giving the President the power to nominate judges was not seen as tantamount to ousting the Senate from a central role. Gouverneur Morris of Pennsylvania, a member of the Committee, paraphrased the new provision as one that retained in the Senate the power "to appoint Judges nominated to them by the President." With little discussion and without dissent, the convention adopted this as the final language of the provision. Considering that the convention had repeatedly and decisively rejected any proposal to give the President exclusive power to select Judges, it is unlikely that the drafters contemplated reducing the Senate's role to a ministerial one.

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*A foundational precept of the role of an independent judiciary is that judges must render decisions based on the rigorous application of principles, not their personal preferences, much less their biases. The broad agreement about this precept underlies and is reflected in the broad consensus that judicial fitness is an acceptable category of criteria for consent decisions.*

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During the nineteenth century, the Senate took a broad view of the appropriate criteria to govern "advice and consent" decisions. During this period, the Senate rejected more than one of every four Supreme Court nominations. The Senate first rejected President George Washington's nomination of John Rutledge. The Senate went on to reject five of the nominees proposed by President John Tyler and three of the four nominees put forward by President Millard Fillmore. Since 1900, however, the rate of senatorial rejection of Supreme Court nominees has dropped sharply to a twentieth-century rejection rate of a mere one in thirteen.

Virtually all the parties to the twentieth-century debate on appropriate confirmation criteria agree on two threshold issues. The first is that it is appropriate for senators to consider "judicial fitness." No one contests that adequate judicial competence, ethics, and temperament are necessary conditions for confirmation and, therefore, appropriate criteria for senators to consider. The publicly stated bases of opposition to the nominations of Louis D. Brandeis, Judge Clement F. Haynsworth, and Judge George H. Carswell were presented in terms of these threshold, judicial-fitness criteria.

The unsuccessful opposition to Brandeis, nominated in 1916 by President Woodrow Wilson, based its public case against the nominee on alleged breaches of legal ethics. The successful opposition to confirmation of Judge Haynsworth, nominated to the Supreme Court by President Nixon in 1969, was articulated primarily in terms of charges that Haynsworth had violated canons of judicial ethics by sitting on cases involving corporations in which he had small financial interests. In addition to the ethics charges, some opponents raised objections to Haynsworth's civil rights record. Two judicial-fitness objections formed the basis for the successful opposition to confirmation of Judge Carswell, nominated to the Supreme Court by President Nixon in 1970. The primary objection was that Carswell allegedly allowed racial prejudice to affect his judicial behavior. The second theme in the opposition to Carswell was that, as a matter of basic competence, he was at best a mediocre jurist.

Thus, in the Brandeis, Haynsworth, and Carswell nominations, opposition was presented as based on the judicial-fitness criteria of judicial temperament, ethics, and basic competence. In all three of these twentieth-century confirmation controversies, the acceptability of the judicial-fitness criteria went unchallenged.

The second area of general agreement in the debate on appropriate criteria for confirmation decisions is that senators should not base their decisions on the nominee's predicted vote on a particular case or "single issue" likely to come before the Court. Supporters of the nomination of Judge John Parker, nominated to the Supreme Court by President Herbert Hoover in 1930, alleged that opposition to the nomination was based on a "single issue" of Parker's position on a particular labor-law question. Parker's opponents took pains to deny that their opposition was based on a single issue and argued that Parker's ruling in a previous case involving the question reflected Parker's own anti-union bias. This accusation—that, as a judge, Parker was biased in his rulings on such matters—was a way for the opponents of confirmation to frame their objection as one of judicial temperament and, thus, judicial fitness. The



premise underlying the positions of both opponents and supporters of Parker was that a rejection based on a result-oriented single-issue criterion would be inappropriate.

Between the margins of agreement that judicial-fitness criteria are appropriate and that single-issue criteria are inappropriate lies the area of controversy. The debated issue is often framed as whether the nominee's "judicial philosophy" should be considered in the decision-making process. The term "judicial philosophy," when used in this context, refers to a range of concerns including the nominee's theory of judging (that is, the degree of judicial interference with legislative and executive decision making the nominee views as appropriate), the nominee's views on the level of generality at which constitutional provisions should be interpreted, and the nominee's interpretation of specific constitutional clauses or doctrines (such as the applicability of the Equal Protection Clause to women or the existence of a constitutional right of privacy).

The bases of opposition to President Lyndon B. Johnson's 1968 nomination of Justice Abe Fortas (to be Chief Justice) and to President Reagan's nomination of Judge Robert Bork to the Supreme Court were framed largely in terms of these controversial "judicial philosophy" criteria. Consequently, the confirmation battles in these cases raged as much around the appropriateness of the criteria applied as around the merits of the nominees themselves.

The attack on Fortas's judicial philosophy was based on charges that he was a "judicial activist" (meaning that his theory of judging envisioned excessive intervention in the discretion of the elected branches) and that his substantive interpretations (of the First, Fifth, Sixth, and Fourteenth Amendments) were flawed. Supporters of the Fortas nomination responded both on the merits—defending Fortas's theory of judging and his substantive interpretations—and by assailing the judicial philosophy criterion as inappropriate considerations for advice and consent decisions. (Although some ethics charges were raised during the confirmation proceedings, the very serious ethics charges that resulted in Fortas's resignation did not arise until the spring of 1969, during the Nixon presidency, many months after President Johnson had withdrawn his nomination of Justice Fortas to become Chief Justice.)

Like the Fortas nomination, the nomination of Judge Robert Bork to the Supreme Court was opposed largely on judicial philosophy grounds. (Although some critics raised ethical issues, including Bork's role in the "Saturday Night Massacre" in which the special prosecutor in the Watergate affair was fired, these issues did not form a primary basis of opposition.) Judge Bork's theory of judging was assailed as an inadequate conception of the proper role of the Supreme

Court in protecting individual and "unenumerated" constitutional rights. Objections were also presented in terms of Bork's interpretations of specific constitutional clauses and doctrines, including his position on the existence of a constitutional right to privacy, his previous and contemporaneous interpretations of the equal protection clause as regards the protections afforded to women, his interpretations of the First Amendment's free speech clause, and his positions on civil rights. Much of the defense of Judge Bork took the form of challenging the acceptability of these controversial criteria.

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*The ability of elected Presidents and elected senators to exert some general influence on the future course of the nation's jurisprudence is an appropriate (an appropriately limited) popular check on the exercise of the power of judicial review, without which this institution might not be acceptable in a constitutional democracy.*

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The contours of the areas of agreement and disagreement on appropriate advice-and-consent criteria are not surprising. The debate on appropriate criteria follows from the constitutional provisions that structure the process of appointments to an independent, principle-oriented, counter-majoritarian judiciary in a way that requires the consent of an elected, representative, majoritarian body. Senators' views about the proper role of the judiciary inform their positions on the relevance and propriety of each category of advice-and-consent criteria.

A foundational precept of the role of an independent judiciary is that judges must render decisions based on the rigorous application of principles, not their personal preferences, much less their biases. The broad agreement about this precept underlies and is reflected in the broad consensus that judicial fitness is an acceptable category of criteria for consent decisions. Competence in legal reasoning, high ethical standards, and unbiased judicious temperament are prerequisites to the consistent rendering of rigorously reasoned and principled decisions of law.

The same precept—that the essence of the judicial function is to render decisions based on principles—underlies the broad consensus that single-issue result-oriented



criteria are unacceptable. Because of the principle-based nature of the judicial function, a judicial nominee must be evaluated on the basis of the anticipated process of his or her application of principles, regardless of whether that process will produce a senator's preferred outcome in any particular case. The ability of elected Presidents and elected senators to exert some general influence on the future course of the nation's jurisprudence is an appropriate (an appropriately limited) popular check on the exercise of the power of judicial review, without which this institution might not be acceptable in a constitutional democracy. Nonetheless, for Presidents or senators to demand that the judiciary not render decisions based on principle but, rather, act as an agent of the legislature furthering particular preferences, and for senators to enforce this demand by the threat or reality of nonconfirmation, would subvert the independence of the judiciary and violate the spirit of the separation of powers.

Rather than a continued focus on the appropriate criteria for advice-and-consent decisions, a different aspect of the debate over the appropriate role of the Senate in the confirmation process came to the fore during consideration of the nomination of Justice David H. Souter. Souter's views on controversial judicial and political issues were little known. The prominent questions during the Souter confirmation, therefore, were (1) where relatively little is known about the nominee's thinking, how may the Senate properly

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*The core objection to direct questions to the nominee—even on issues that might constitute legitimate decision-making criteria, such as substantive interpretation of particular constitutional clauses—is that, by offering an opinion on such issues, the nominee may thereafter feel bound to hold in subsequent cases in a manner consistent with the opinions stated during the confirmation hearings.*

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learn more about the nominee, and (2) what questions may properly be posed to the nominee during the confirmation hearings? These questions are not merely derivative of the larger question of what decision-making criteria are legitimate. The core objection to direct questions to the nominee—even on issues that might constitute legitimate

decision-making criteria, such as substantive interpretation of particular constitutional clauses—is that, by offering an opinion on such issues, the nominee may thereafter feel bound to hold in subsequent cases in a manner consistent with the opinions stated during the confirmation hearings. Thus, the fear is that the nominee who opines on, say, the level of protection afforded to women by the Equal Protection Clause during the confirmation hearing will, in effect, be “committed” to a certain outcome in future cases involving that issue.

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*Justices would not be in any way committed to be “consistent” with their confirmation comments if it were understood that confirmation comments constitute nothing more and nothing less than frank statements by nominees of their best thinking on a particular issue to date.*

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But fear of judicial precommitment may be exaggerated. Surely there is no requirement that the individuals nominated to our highest court have never thought about—or reached tentative conclusions on—the important issues of law that face the country. So the only issue is whether sharing those thoughts with the senators during confirmation hearings would constitute a commitment not to change those views or not to be open to the arguments of parties litigating those issues in the future. There is no reason to believe that a statement of opinion during confirmation would constitute such a commitment. It would seem reasonable to suppose that an opinion mentioned during a confirmation hearing would be seen as not binding if it were generally understood that such statements are not binding. It would seem reasonable that a nominee might preface an opinion on such an issue with a statement that “these are my initial views on the issue, but they would certainly be open to change in the context of a case in which persuasive arguments were put forth by the parties.” Justices would not be in any way committed to be “consistent” with their confirmation comments if it were understood that confirmation comments constitute nothing more and nothing less than frank statements by nominees of their best thinking on a particular issue to date.



# Theory as Traction: Feminist Methodology in Practice

*Katharine T. Bartlett*

I come from a very practical, New England Yankee family. We lived on a small family farm and the idea was to produce, not theorize. We had some chickens: the point was not to reflect on what a chicken was, where chickens stood in the farm hierarchy, why they moved with such jerky, stilted movements, why the roosters woke us up in the morning, or which came first—the chicken or the egg. The point was to have eggs, to eat. Likewise, we had some cows: the point was milk and butter. We had some steers: the point was beef. And so on. Along these lines, there were many more points available for getting your four rows of corn weeded than for getting your homework done or for reading a book. Unfortunately for me, there were no points at all for day-dreaming.

I did my part on this farm. But I often was the object of lighthearted ribbing because I was not quite as practical as most of the rest of my family. I lacked what my Uncle Edwin referred to “horse sense.” He was the one who caught me trying to get the first car I learned to drive, affectionately known as the “bluebird,” out of the mud by putting down some boards under the wheels. The problem was that the “bluebird,” like most cars, was powered at the rear wheels, while I had put the boards under the front tires. The more I tried to help those front tires get a grip on the boards, the more the rear tires continued to spin and spin themselves deeper into the mud. As I recall it, Uncle Edwin was also the one who had to bring a tractor over the woods one cold dark evening in February to bail me out of another vehicular embarrassment. This time, I had been driving a horse and wagon around the back woods, picking up sap from the maple trees for our maple syrup operation. I had my head in the clouds instead of on my job and so cut a corner too tightly, allowing a tree to lodge itself between the wagon and the wagon wheel. The more the horse strained to go forward, of course, the deeper the tree wedged itself into the axle of the wagon. It was one of those minor events that continues to affect the balance of power in my family.

This was not a family of lawyers and there was a fair amount of skepticism when I mentioned one day that I “might go” to law school. As if becoming a lawyer wasn’t bad enough, I became a law professor and, even worse, I became a legal scholar who did “theory.” My family lost interest. As a teacher of feminist legal theory and the editor of a book by that name, however, I am often asked what feminist legal theory is, and how it relates to legal practice. It is in honor of my Uncle Edwin that I address these questions today.

By theory, I mean explanation: In most vehicles, the motor turns the rear wheels, and it is those wheels that need the traction. A theory can have predictive value: If the wheels being turned by the motor don’t have sufficient grip on the surface, they will simply turn and turn without moving forward; providing traction for the front wheels will not help. Prediction has practical significance: If the purpose is to get the bluebird out of the mud, it is better to put the boards under the rear tires.

By now, an important part of the relationship between theory and practice is all too obvious: If I had known the



Les Todd

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*theory* about how wheels are driven and in particular how the wheels in the bluebird worked, I would never have been caught putting the boards under the wrong tires. What should also be obvious, by now, is that the distinction I first took for granted between theory and practice is quite suspicious; for it is not that I had a command of theory but no practical sense while my Uncle Edwin had practice down but no theory. Rather, being practical required a deeper understanding of how things worked, that is *more theory*, than I had. Because I lacked theory, I had nothing to get me through my mistaken attempts to parrot what I thought I had seen others do.

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*Others looking at women's differences have emphasized the positive, rather than the negative, aspects of those differences, arguing that instead of trying to make women the same as men, the law should celebrate and seek to promote values characteristic of women such as empathy, connection, and nurturance.*

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What, now, about the relationship between *legal* theory and *legal* practice? Theory in law, as in other disciplines, tends to be hidden in the practices to which it relates. To the extent that the assumptions of legal practice are accepted without question, those assumptions—i.e., the underlying theory—need not be stated; in fact, those who hold those assumptions don't even have to know what they are. Although theory is not necessary to explain what everyone takes for granted, it becomes important when the practice doesn't seem to be working, from some particular point of view. Then theory helps to identify the point of view from which it *is* working, and the possible gaps and tensions within a practice whose assumptions have lost their appeal or applicability for all concerned.

In legal practice, many things are taken for granted about law. For example, it is assumed that the law relevant to any given problem can be readily ascertained from existing sources, that it can be applied objectively and neutrally, and that it does not play favorites between individuals or between groups. In the 1970s and 1980s before anyone began talking about feminist legal theory, there were significant efforts to improve the legal status of women within principles of formal equality consistent with these assumptions. Advocates insisted that likes should be treated alike, that women are like men and thus are entitled to be treated like them, that sex-based discrimination is based on inaccu-

rate stereotypes about women, and that even if these stereotypes are accurate about some women or about women on average, individual women are entitled to be treated as individuals rather than on the basis of average group characteristics. These arguments were used successfully to eliminate barriers to women's employment and sex-based discrimination in family law, in government benefits programs, on juries, and in various other areas.

Feminist legal theory is a good example of theory which emerged as distinct from practice only as it began to challenge the unstated assumptions of that practice. As application of formal equality principles have appeared to run their course, it has become apparent that these principles will not be sufficient to end women's disadvantageous position in society. Women continue to play subordinate roles in this society, earning less money than men, working both outside the home and a "second shift" in the home, and many women are victims of violence based on their sex. Feminists felt a need to explain, and get a grip on, these remaining disadvantages which existing law, in so many ways, seemed to deny.

What has resulted is not one, but many, explanations—or feminist legal theories. What binds these theories together is a special interest in explaining the role of gender in law and society and in eliminating disadvantage on account of gender. What makes them feminist, at least as I use the term, is that they are driven by a political judgment that the equality achieved by the law possible under existing legal principles will be insufficient to eliminate much of the disadvantage women face. How they differ is in how they characterize the remaining disadvantage and what answers they propose to eliminate it. I will give some examples of the different feminist theories, first with differences exaggerated to give the theories clear definition, and then with commonalities emphasized in order to show how the methodologies arising from feminist theory may be relevant to legal practice.

Most feminist legal theories focus in one way or another on the issue of women's differences from men. Under the conventional non-discrimination principles I just mentioned, the effort was to minimize women's differences: the more they are like men, the more they are entitled to the same treatment as men, which is what seemed most desirable. But some feminists began to insist that formal equality for women did not amount to meaningful, "real" equality. The bluebird moved a little, but it was still mired in mud. The explanation of feminists pursuing an alternative theory—substantive equality, sometimes referred to as special treatment—is that the situations of women are so different from those of men (they become pregnant, they bear primary responsibility for raising children, the job categories in which they are welcome offer lower pay than those designed



for men, they are more vulnerable to rape and certain forms of harassment) that it is not enough to give them the same formal opportunities as men. To create truly equal opportunity, substantive equality advocates argue, special measures must be taken to account for the special handicaps and disadvantages experienced by women. This theory has been used, successfully, to justify such things as state laws mandating employers to give job security for women who require a disability leave in connection with their pregnancy and childbirth even if they are not available for other disabilities. Women-only colleges and professional associations might also be justified under substantive equality theory.

Others looking at women's differences have emphasized the positive, rather than the negative, aspects of those differences, arguing that instead of trying to make women the same as men, the law should celebrate and seek to promote values characteristic of women such as empathy, connection, and nurturance. These values, it is argued, constitute better models for society and the law than the "male" standards of personal autonomy, abstract rights and individualism to which women seeking equal treatment appear to aspire. This theory, called "different voice" theory, cultural feminism, or connection theory, is very controversial, and has deep implications for many areas of law and for law practice.

Still other feminists stress that the problem for women is not inequality, but subordination to men. So long as equality is the focus, Catharine MacKinnon has argued, women will argue about whether they want to be treated the same as men, or different from men, but either way, the comparison is *to men*. Better, MacKinnon states, to concentrate on the distribution of power between men and women. MacKinnon's brand of feminism, called dominance theory, or to use her own term, "feminism unmodified," asserts that the source of women's disadvantage is not so much the discriminatory treatment of women, but rather the multitude of ways in which society is structured, more or less invisibly, to place women in subordinate roles. (One of these ways is by promoting women's nurturing, caring, connected self; MacKinnon disagrees vehemently with different voices theory.) MacKinnon's claim is that even after explicit forms of legal discrimination have been eliminated, what's left is a society structured invisibly as a kind of affirmative action plan for men.

Every quality that distinguishes men from women is already affirmatively compensated in this society. Men's physiology defines most sports, their needs define auto and health insurance coverage, their socially designed biographies define workplace expectations and successful career patterns, their perspectives and concerns define quality in scholarship, their experiences and obsessions define merit, their objectification of life defines art, their

military service defines citizenship, their presence defines family, their inability to get along with each other—their wars and rulerships—defines history, their image defines god, and their genitals define sex. For each of their differences from women, what amounts to an affirmative action plan is in effect, otherwise known as the structure and values of American society.<sup>1</sup>

While MacKinnon's theory presupposes a kind of male conspiracy to subordinate women, other feminists pursuing postmodern theory developed in other disciplines focus on the extent to which the "structure and values of American society" are constructed and created through social processes over which no single one of us has very much control. Postmodern feminists emphasize that women's differences are not a given (which makes the question only if and how the law should treat those differences) but rather a creation or construction of the rules and social arrangements that attach consequences to those differences. Pregnancy, for example, may be different from anything men experience, but many of its consequences are not biologically compelled but rather arise from social practices and institutions that privatize the burden of pregnancy and childrearing to the individual woman, encourage women's dependency on others, and compromise women's connection to the workplace. Through its emphasis on social construction, postmodern feminists find both hidden constraints in the law and its creative and transformative possibilities.

In exploring the relationship between feminist theory and practice I want to move beyond differences in the theories, with all of their competing implications which I cannot address here, to the common methodologies of the theories and how these might impact upon legal practice. One of these methodologies has been called "asking the woman question," which means identifying the effects of a law or practice so that their unacceptability, either under existing legal criteria or new and better criteria, might be apparent. In particular, if it is determined that a particular rule or rule interpretation or practice which appears to be neutral and objective is shown to create systematic disadvantage for women, judges or legislators might be moved to reconsider conventional interpretations or to enact new laws.

Let me give one example from the family law area. In a child custody case from California, a mother lost custody to a father for two basic reasons: (1) the father had remarried, and his new wife was available to stay at home with the child so that she would not have to be put in day care, and (2) the father had a better job than the mother and thus was able to provide a higher standard of living in

<sup>1</sup> Catharine A. MacKinnon, *Feminism Unmodified: Discourses on Life and Law* 36 (1987).



the home. Advocates for the mother argued that if courts were able to take remarriage and economic security into account, women, who remarried less frequently and who on average earned considerably less than men, would be disadvantaged systematically in child custody cases, and that to the extent these factors had little to do with the strength of the relationship between the child and each parent, this disadvantage was unjustified by the child's interests. The case was won on appeal.<sup>2</sup>

Note, here, that the idea is not to create advantage for women, but to eliminate disadvantage, although there will be disagreements, even disagreements among feminists, about where a particular case falls along this continuum. In this case, the argument was not that women should be favored in child custody actions, but that various convenient proxies for the best interests of the child cannot be used when these proxies have significant gender implications.

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*... if it is determined that a particular rule or rule interpretation or practice which appears to be neutral and objective is shown to create systematic disadvantage for women, judges or legislators might be moved to reconsider conventional interpretations or to enact new laws.*

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An important part of demonstrating the impact of current laws and practices on women is providing accounts of women's actual experiences. What is now understood in the law as sexual harassment used to be viewed merely as good, clean harmless fun which, even if in bad taste, women ought to learn to grin and bear. It came to be understood as discrimination which harms women only after enough stories were told about the effects of these behaviors upon women demonstrated the power of sexual harassment to denigrate women and to undermine their ability to perform their jobs on the same basis as their male counterparts.

Feminist reasoning is often said to be more contextual than conventional legal reasoning. To the extent this observation has any comparative utility (for, of course, all lawyers must think contextually), it is based on the understanding in feminist legal theory that the more abstract a legal principle, the more likely it is to standardize cases into preset types, which tend to reflect the experiences of the dominant

decisionmakers in the society, i.e., men. So, for example, the reasonable person is a person who can protect himself, who makes his own decisions, who can leave a relationship when it doesn't suit him, who is available for steady employment (meaning without the need for six-week or four-month leave periods to bear children or for two hours here and there for the children's doctor's appointments or to attend parent-teacher conferences)—in other words, a reasonable *man*. Bringing out the buried context of a case helps to show that reasonableness should be judged from a particular perspective, and that what seems reasonable, or unreasonable, from one point of view, may look quite different when the situation is examined from other perspectives.

Consider a 1989 North Carolina murder case involving a battered woman who killed her husband after (rather than during) an abusive assault. The woman's effort to defend herself on self defense grounds failed because the trial court, upheld on appeal, concluded that when the defendant killed her husband, she did not have reasonable fear of "imminent" death or great bodily injury. This conclusion followed from the court's assumption that the defendant could have left her abuser after the particular assault in question. But while this assumption might have made sense in the context of a prototype of male-on-male assault, it did not fit the facts of this case, in which the woman was a victim of long-standing physical and emotional abuse. Her husband had repeatedly raped her, forced her to engage in prostitution, physically abused and terrorized her, tracking her down whenever she made a move to leave him and threatening to find her and kill her if she ever tried to leave him or report him to the authorities.<sup>3</sup> In similar situations, other courts building on insights made in feminist legal theory have defined the self defense doctrine more broadly, taking into account the actual experiences of women who are victims of long-standing domestic abuse and interpreting requirements of reasonableness and imminence accordingly.<sup>4</sup>

Credibility issues are often affected by hidden assumptions which, when exposed, may change how a factfinder views a situation. Let's start with the Anita Hill/Clarence Thomas saga, which may not be a routine case but it tells a routine story. Whether or not you believe that Anita Hill was telling the truth when she charged Clarence Thomas with sexual harassment, let's look at the main reason given for not believing her: that if what she alleged really happened, she would not have stayed at her job, she would not have followed Clarence Thomas to a new job, and she would not have kept up with him over the following ten years. The trouble with this argument is that it seems to

<sup>3</sup> State v. Norman, 378 S.E.2d 8 (1989).

<sup>4</sup> See, e.g., State v. Hundley, 693 P.2d 475 (Kan. 1985).

<sup>2</sup> Burchard v. Garay, 724 P.2d 486 (Cal. 1986).



disregard altogether the real cost to Anita Hill of burning all her bridges and abruptly terminating her professional relationship to her boss.

A double standard—a gendered double standard—seems to have been operating here. The hidden assumption is that Anita Hill's career was not very important. This assumption contrasts sharply with one applied to Clarence Thomas, that is, that his promotion to the Supreme Court was *very* important. Thus, for example, he was to be given the "benefit of the doubt." Even if Clarence Thomas had done what was charged, many believed, what he did could not possibly have been bad enough to warrant losing the opportunity toward which he had been working all his life.<sup>5</sup> Her career was dispensable; his was not.

I am not saying that if this double standard had been effectively exposed it might have changed the minds of any senators. Public opinion polls now show, however, that the public perception of Anita Hill's credibility has *improved* since the hearings, and I believe that this improvement is based at least partially upon the public airing of this point, as well as on the enormous increase in writing and talking about women's actual experiences encouraged by this case.

Along these lines in real practice, it can be useful in prosecuting a rape case if some of the gender-based assumptions underlying a juror's potential disbelief of an alleged rape victim might be excavated, so that those assumptions can be examined and (hopefully) undermined. To what extent, for example, might a juror be inclined to attach different, gendered expectations and motivations to a woman and man, both out drinking at the same bar at the same late hour of 3 a.m. in West Palm Beach? Less so, one would hope, if the prosecutor is effective in bringing the issue of gender out in the open, to be examined by jurors who, when faced with the possibility of bias, may be hesitant to act upon it.

Hidden double standards are also all too common in child custody cases. In representing a woman in a child custody case, the attorney who does not wish to have her client prejudiced by this double standard may need to explicitly anticipate and undermine it. I have in mind a South Dakota case, in which a mother, who taught music part-time, lost custody to a father who worked full-time outside the home. The trial court, in ruling against the mother, noted that the mother slept until 9 a.m. on Saturdays, failed to prepare breakfast for her husband who left for work at 7 a.m., and on occasion had run out of jam and cookies. It concluded from these facts that she was unfit for custody because "her primary interests are in her musical career and outside of the house and family."<sup>6</sup> Pointing out the double standard obviously being applied here does not, of course, guarantee that the judge will see the case differently, but it does make it more difficult for the judge to ignore a bias the system tells him he is not allowed to have.

I make, here, only a very limited claim: that feminist legal theory can help a lawyer to better understand how to look at the law and how to frame arguments that in some situations may be useful. Depending on your type of practice, the sorts of issues in which feminist legal theory is potentially helpful may be very limited. My view, however, is that theory—some theory—is inevitable. This is not to say that you cannot practice law without awareness of theory. But any practice that proceeds without a more or less *conscious* theoretical foundation can only be successful within the terms of that practice, which will almost certainly incorporate and reinforce the hidden assumptions of that practice. The bottom line is that if you support the underlying assumptions of existing law and legal practice, you could probably do without anything *generally recognizable* as theory; the hidden assumptions of the system will be your hidden theory. On the other hand, to the extent you may wish to be the kind of lawyer who seeks to question and improve the assumptions of the existing system, you will probably want to think about some of the different theoretical frameworks that might provide some of this kind of direction. Feminist legal theory is not, of course, the only choice. As law students, though, you will certainly also want to acquire some understanding of other perspectives as well—law and economics, for example, or critical race theory, legal process theory, legal realism, legal positivism, or natural law.

If you don't think about the broader theoretical structure of law, you may be a good lawyer, within the terms of the existing system, but you are not likely to be a very creative force for improving that system. You won't be as good at spotting the internal contradictions I talked about, which can be exploited to push existing limits. To the extent you are practicing without a conscious theory, you are almost necessarily conforming, or trying to conform, to the assumptions of the existing system. The best you can do is duplicate, as best you can, what you've been shown. But if that doesn't work, when the results are not what you want, or when your goals change, you may have a problem with traction. When I put the boards under the front tires of the bluebird, I was doing what I thought I had seen my father do many times—I just never noticed there was an issue about *which* tires needed the traction. Theory is not all there is, but as you practice it can give you a little traction to move forward, branch out, change direction, and, most of all, to take responsibility for the role you will play in putting law into practice.

<sup>5</sup> See, e.g., Orlando Patterson, *Race, Gender, and Liberal Fallacies*, N.Y. Times, Oct. 20, 1991, sec. 4, at 15.

<sup>6</sup> *Masek v. Masek*, 228 N.W.2d 334 (N.D. 1975).



# The Trouble with Interpretation

Martin J. Stone

## Interpretation and Semiotics?

My remarks will address a tension not so much between practice and theory, but—insofar as the law is already a theoretical activity (in the familiar sense in which lawyers seek to ground a complaint in a particular legal theory)—between the law's commonplaces and their contemporary academic *re*-theorization. The topic I was asked to cover is "Courses on Interpretation and Semiotics," and, as I hear it, this title presents an example of precisely such a tension. For *interpretation* is familiar. Typically, a lawyer speaks about interpretation when it appears plausible to apply a rule—to extend or withhold it—in different ways. An interpretation



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will make explicit a step that is being taken in the application of the rule, and if the interpretation is authoritative (that of a court, for example), it will also provide a rule for applying the rule in future cases. All this is commonplace. But *semiotics*? How many lawyers can even be expected to know what this term means? Of course, there isn't really a course on "Interpretation and Semiotics" at most American law schools. Statutory or constitutional interpretation, perhaps, for these raise some traditional legal problems, but not interpretation *as such* and not semiotics—the general theory of signs (or however you define it). Insofar as these topics have become problems for contemporary legal theory, our relation to the activity of interpretation itself has become both as intimate and as strange as the relation of Molière's Monsieur Jordain to his own prose: Intimate, in that interpretation is what lawyers and especially judges are supposed to be always doing; yet strange, in that "interpretation" has also become the province of specialists in theory (and sometimes theory of a rather technical kind).

Although the title "Interpretation and Semiotics" might be understood as an invitation, if not exactly to report on, then to *invent* a course, I would like to stress that I am not without reservations about such a course. In order to explain my reservations, I will try to sketch one part of the main discussion—the philosophical dialectic—that would occur in this course.

## The Question of Formalism

I should emphasize that my remarks pertain to interpretation as a foundational concern, the sort of concern that comes out in remarks to the effect that every reading, even every mere identification of a "text," is an interpretation, that you can't, so to speak, get free of interpretation. The counterpart to this in law tends to focus on the adjudication of cases, and in this it inherits the concerns of the legal realists. No one would deny that interpretation plays some role in adjudication, but the problems I have in mind grow out of the attempt to theorize interpretation as a condition of any legal judgment. It is the universality of this thesis about interpretation which makes it sound not just heady, but, to my ears, fishy as well.

One reason for the headiness, I believe, involves a relation between interpretation and another contemporary matter. Briefly, insofar as one way of marking a distinction between (call it) "the legal" and "the political" refers to a contrast between applying and creating social rules, the



thesis about the inevitability of interpretation *might* appear to make that distinction less secure. A well-developed legal system, the traditional idea goes, articulates a distinction between legal and other grounds of decision, and in this sense it can be said to consist in rules. The existence of tort liability rules, for example, means that a court does not undertake to decide whether, *all things considered*, the plaintiff or the defendant should pay for the loss resulting from an accident; instead the court asks (roughly, in the dominant common law paradigm) whether there is a prima facie case that the defendant's negligent conduct was the factual and proximate cause of the plaintiff's injury. To say that adjudication is an affair of rules is just to say that in adjudication the grounds of a properly legal decision are fixed in a way that excludes, or pushes into the background, other normative considerations (moral, political or economic) that might otherwise be brought to bear in deciding the case. But here's the rub. If the application of the legal rules requires an interpretation of them, then the outcome of the case is determined by an interpretive judgment that is not itself constrained by the legal rules. It *seemed* as if the distinction between the legal and the political was a clear one as long as the legal side could be understood to require only practical reasoning in a form relatively immune from contest and dispute, reasoning sometimes described as "mechanical," "automatic," "deductive," or "formalistic." But to speak of an interpretation is to imply (whatever else it implies) that some other interpretation is possible. Interpretation, you might say, takes place in the space of interpretations.

This means that there is some measure of pretense or self-deception present when a judge seems to resolve a case by means of the legal rules alone; her decision must rely on other grounds as well. In the best of cases such "legal politics" may be innocuous, turning only on considerations about which there is a strong professional or social consensus; but, of course, nothing ensures that this is always so. To pretend that it is, or that cases can be decided on entirely neutral grounds (in the limiting case, by a "deduction" from the legal rules themselves), is—so the objection goes—to seek refuge in the fiction of "legal formalism." And in judicial practice, it is to present political judgments as purely legal conclusions.

Such an argument about legal judgment has had a continuous, and even obsessive play in our legal culture. Here, however, I will simply share with you a few of my own thoughts about it. Specifically, I think it is worth trying to identify the *temptations* that lead us to give interpretation a foundational role if only to see in the end why our yielding to these temptations really produces little satisfaction.

### The Limits of Interpretation

I will remark first of all that if we think of our everyday understanding of signs, we encounter a more discriminating use of the idea of interpretation. If last night, in response to the waiter's inquiry, you nodded and he took your plate away, no one would have counted it a mark of your theoretical sophistication if you had then remarked: "See, he *interprets* my gesture as I intended it." You *could* cleverly insist that—as a vertical motion of the head could mean many things and might not even be a deliberate act at all—the waiter must (*implicitly* you will now say) be making an interpretation. But you ought to be clearer whether in saying there was an interpretation you mean to imply that there were real and not just possible or imaginable doubts, hence that it was reasonable or plausible for the man to understand you otherwise. And you must admit that last night no one had any doubts.

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*... the notion of interpretation was seized upon in order to explain how it is possible for general legal rules to determine particular cases.*

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Now consider one way in which the concept of interpretation has been motivated in contemporary jurisprudence. The old practical syllogism is brought out, the major premise giving the rule of law, the minor premise giving some description of the particular transaction that has occurred, a description, call it, of the facts. Since in even the easiest of cases the established description of the facts typically contains no legal language and certainly not the desired legal conclusion (e.g., that the defendant was negligent), it seems that there is always room for a question of the following sort: *In virtue of what* does this case, with its particular facts, fall within the class of cases designated, in principle, by the legal rule? Or more simply: *In virtue of what* do the general legal concepts apply to the particular facts? The answer is: In virtue of some interpretation of those concepts. So an interpretive decision is present in every legal judgment.

Well, if in doing jurisprudence we keep one ear attuned to the ordinary, the nearby and the everyday, we won't enjoy this conjuring trick but will respond to it in the following way: Of course there are cases where it is useful or even necessary to make an interpretation. But is this so in every case?



The woman at the door of this auditorium is checking registration badges. Do you want to say that her every decision this morning depends on an interpretation? You can say this if you like, but that only shows that you are from the start determined to represent the matter in a particular way. You are determined to call every application of a rule an interpretation of it. Yet given the far reaching claims about law made today in the name of "interpretation," wouldn't it be less confusing to keep the word moored for the time being in its original home—the genuinely useful substitution of one linguistic expression for another?

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*...our relation to the activity of interpretation itself has become both as intimate and as strange as the relation of Molière's Monsieur Jordain to his own prose: Intimate, in that interpretation is what lawyers and especially judges are supposed to be always doing; yet strange, in that "interpretation" has also become the province of specialists in theory (and sometimes theory of a rather technical kind)...that you can't, so to speak, get free of interpretation.*

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In fact, our objections lie deeper than this. For the notion of interpretation was seized upon in order to *explain* how it is possible for general legal rules to determine particular cases. But the worry now arises that interpretation, even if it were found or presumed to occur in every case, wouldn't really be an explanation at all. If you picture the law as subject to a kind of general abyss between the general and the particular, it is hard to see how this foundational notion of interpretation is going to help. For every interpretation, every reformulation of the general rule would just hang in the air along with what it interprets. But this shows that if the activity of law is to make sense at all, there *must* be cases in which a judge simply *follows* the rules without interpreting them.

Am I trying to revive an old and discredited formalism? It would be better to say that the whole worry about formalism only arises from a certain picture of the law. In this picture we see a gap between general rules and the determi-

nation of particular cases, and then we think that there must be some theorizable thing in virtue of which this gap is bridged in practice—either an interpretation, or an informal principle, or a political theory, or the goals of policy, or the consensus of a community, or the socialized dispositions or whims or knacks or ideology of the judge. This is the very matter of the contemporary jurisprudence of legal judgment. We demand a theory that fills the gap. But instead of trying to satisfy this demand, we also might question the picture that gives rise to it.

### Two Examples from Tort Law

Let me flesh this out a bit in the form of two examples of the problem as it shows up in the first-year course I teach, Torts—examples that may be best considered in light of an objection to what I have been saying: The law abounds in 'hard cases,' this objection begins, cases in which it is possible to apply the legal rules in different ways. Possible—not because clever doubts can be introduced that would never arise in the billable hour of the real world—but because there are real doubts about what in the particular case the law requires. God knows, applying the law is not like nodding to the waiter. Perhaps not in every case, but certainly in the cases we care *most* about, interpretations are made and the doubts which make them necessary make them politically controversial as well.

Now this rejoinder affords a healthy invitation to not merely theorize in the abstract but to *look and see* how the law behaves—only when we do this, we will see, I think, that this rejoinder really distorts the issues of interpretation, indeterminacy and the political.

*First example:* In the civil-law jury instructions, a jury is asked to apply a very general formula—a formula about reasonable risk-taking, for example—but it is certainly not asked to interpret it. This is worth thinking about. The law, in asking the jury to decide, apparently knows that the legal rules alone do not determine the outcome of the case, but it cares nothing for further interpretation of those rules! Now in some of the model jury instructions, it is actually said, just after the legal standard is stated, that (I quote from the Illinois model instructions) "the law has no view of this matter: it is for you, [the jury] to decide." Let us read this carefully. The law doesn't have an indeterminate view, it has *no* view about whether a particular defendant's conduct was reasonable. By declaring this, the law makes a distinction between its own determinations, which are conceptual or formal, and the actual positive decision which is needed to resolve the case. (Just as the law declares itself distinct from positive decision, so too, the jury's decision traditionally creates no law and has no force as precedent.) Furthermore, at the same time that the law has no view of the defendant's



liability, it does have a *fully* determinate view about the proper concept that must be applied for purposes of resolving his liability, namely the reasonableness of risk. The law brooks no further interpretations of this concept, but only requires its application in an act of judgment. So one might venture to say that the law speaks in this instance with all the determinacy that it makes sense for it to have: it is exactly *this* and not some other concept that must be applied if the case is to be resolved on *legal*, as opposed to some other political or administrative grounds.

This example may help us to identify what seems odd in the quick inference observable today from the law's indeterminacy to its politicality. Such an inference could only appear plausible if one supposed that when the law has nothing to say about the application of one of its rules, so that reaching a result now requires an additional applicative judgment, that reaching this result on *any grounds* at all still amounts to legal judgment.

To see more clearly what is wrong with this, consider my second example, a few sentences from Lord Denning's opinion in the much discussed *Spartan Steel* case. Denning writes:

The more I think about these cases, the more difficult I find it to put each into its proper pigeonhole. Sometimes I say: "There was no duty." In others I say: "The damage was too remote." So much so that I think the time has come to discard those tests which have proved so elusive. It seems to me better to consider the particular relationships in hand and see whether or not, as a matter of policy...

You can see that Denning's disappointment is conditioned by his demand that "duty" and "proximate cause" function as what he calls "tests" rather than, more modestly, as the expression of a certain conceptual requirement: the requirement, roughly speaking, that the injury suffered by the plaintiff be related to the unreasonable risk taken by the defendant (and not the result of some other wrong or misfortune). Because the legal concepts give no "test," but only a ground for decision, Denning feels justified in discarding them and in judging the case on other grounds. Denning's decision remains connected to the law in the sense that the law authorizes *him*, Denning, to decide. (He treats the law, you might say, as if it contained only power-conferring rules, rules of jurisdiction.) But isn't his decision in other respects just an abandonment of legal judgment in favor of something else? Denning's reasoning resembles that of someone who, realizing that the concept of, say, "an appropriate reward" doesn't itself determine how much to pay someone, decides to abandon the concept and never offer one.

### In Conclusion ...

Well, let me sum up. My reservations about a general course on interpretation and semiotics are perhaps also reasons, in the end, for teaching such a course, for they stem from the sense that there is genuine confusion about interpretation, and that the pressure of this confusion is felt not just in academic legal theory but among those whose business it is to apply the law. There is a great deal of difficulty, in particular, in recognizing that interpretation really plays a far more limited role in the law than the current foundational concern with the concept would suggest. A good

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*Perhaps not in every case, but certainly in the cases we care most about, interpretations are made and the doubts which make them necessary make them politically controversial as well.*

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course might be one that studied its exact role—studied rather than, say, theoretically deducing it. Such a course, once it got going, might also explore two matters which run counter to an apparently growing orthodoxy. First, the so-called indeterminacy of legal concepts doesn't itself license or even call for interpretive judgment—witness the institution of the jury. Second and more surprisingly, indeterminacy in the law doesn't in any straightforward way provide grounds for questioning the distinction between law and politics. Alas, it seems just the opposite: To the extent that indeterminacy is another word for the generality of legal rules, we would have to regard it not as a defect in the law but as one of the law's essential or constitutive features: a feature, one might even say, which *distinguishes* law from administration and policy, where once a precise goal or mix of goals has been posited, determinate calculations and decrees become, at least in principle, possible. But perhaps, in regard to this last point, we still need to come to some understanding of the experience—an experience endemic to the strain of realism in our legal culture—of disappointment with law when the law does not concern itself with the result of a case, but only with the concepts by which a legal result—hopefully with good judgment—is to be achieved.



# ABOUT THE SCHOOL





## The Law School Breaks Ground on its New Addition

It is a great day in the life of the Law School," David Klaber '69, president of the Law Alumni Association, proclaimed as alumni, students, faculty and other friends joined together on September 19, 1992 to celebrate the groundbreaking for Phase II of the 84,000 square foot expansion and renovation of the Law School building.

Although construction had already begun in the "backyard" of the Law School, the official groundbreaking ceremony for the new addition was held during Law Alumni Weekend so that returning alumni could participate in the event. For the ceremony, Dean Pamela Gann '73 welcomed to the podium other representatives of the University and Law School communities: Duke University President H. Keith H. Brodie; Chairman of the Law School Board of Visitors, Robert K. Montgomery '64; Chairman of the Law School Capital Campaign, John F. Lowndes '58; and President of the Duke Bar Association, Jay G. Volk '93. In looking ahead to the future, the speakers reviewed the Law School's past accomplishments and the events leading to the groundbreaking.

President Brodie reviewed the early years of law teaching at Duke University reminding the audience of the integral part professional education plays in the life of a great university.

*The study of law at Duke University can be traced as far back as 1850, when the president of Trinity College, Braxton Craven, lectured on Political and Natural law as part of the liberal arts curriculum. From 1868 until Craven's death in 1882, about one-third of the students who took these courses also became lawyers. Although courses in law were intermittently taught at Trinity in later years, it was in 1904 that our school of law, in the modern sense, was really founded.*

*... In September of 1904 the school opened under the leadership of Raleigh lawyer, Samuel Fox Mordecai, who brought... the "revolutionary" new system of classroom*



From left, Robert K. Montgomery '64, Dean Pamela B. Gann '73, Duke President H. Keith H. Brodie, John F. Lowndes '58, and Jay G. Volk '93 officially break ground for the Phase II addition during ceremonies on September 19, 1992.

Dan Crawford

*instruction down from Harvard: the case method. ... He led his law school to recognized excellence—membership in the American Association of Law Schools in 1905 (one of only two institutions elected from the South at that time), and in 1923, a place on the American Bar Association's first list of approved law schools, one of only thirty-nine.... Thus, in December of 1924, Trinity College was well prepared to comply with the directions of the Duke Indenture to arrange its new program of University education, "first, with special reference to the training of preachers, teachers, lawyers, and physicians...."*

*The visionary leaders who were responsible for the creation of a new Trinity College in Durham had included a law school in their dream from the very beginning. So also was the Law School an integral part of the dream that created Duke. Congratulations to all of you who have worked for today's dream—may you take pride in the continuity you help create here, and in your school's identity within a great university.*



Dean Gann thanked President Brodie for his support of the Law School's building project, and noted that the new building would create tangible links to the history of the Law School and the University, and provide adequate space for the current needs of the Law School in both functional and attractive surroundings.

*When I became Dean in 1988, I sat down with President Brodie, and we discussed the priorities for the Law School. We both agreed that the Law School's building program was absolutely the first priority to be accomplished. President Brodie has never wavered from that decision. He has provided fund-raising support and University funding for this Phase II. Moreover, he has given me the highest level of personal support throughout the planning and financing of this building....*

*President Brodie mentioned the beginning of law teaching at Duke by Trinity College President Braxton Craven in the 1850s. His law lectures were part of the liberal arts undergraduate curriculum, of which President Craven was an ardent advocate. I am very pleased that his great granddaughter, Isobel Craven Drill, a Trustee Emeritus of Duke University, made a gift to this building program and that a major meeting room in our new space will house the Braxton Craven Room for University Legal Education. It will house his portrait and be a historical reminder of the beginnings of law teaching at Duke.*

*Society often demonstrates the value that it places on particular human activities by the nature and quality of the buildings housing those activities. This fact is often best illustrated in national capitals.... Duke University's benefactor, James B. Duke, must have understood the importance of buildings, for he personally funded many of the graceful Georgian buildings on the East Campus and the impressive historic Gothic West Campus buildings, including the Duke Chapel. He must have appreciated that Duke University needed to look like a university... and that Duke University should be housed in buildings signifying the importance of its work and contributions to society. Certainly, we all take great pride in the farsightedness to design and build one of the most impressive university campuses in the United States.*

*The Duke Law School shared in these initial resources and facilities, being housed from the 1930s in its own*

*Gothic building, next to the Perkins Library. Many of you were educated in that very building, on which the Italian artisans carved the scales of justice and the Barristers wig into the lintel of its entrance.*

*But the Law School faculty, lead by Dean Elvin R. Latty, determined in the late 1950s that the Law School needed to be larger in size in all its aspects—students, faculty, and library. Dean Latty's ambitions were to create a national law school with a large enough faculty and student body of 300 to have an intellectual and professional impact in the United States. These ambitions could only be accomplished with a new Law School building.*

*Thus, the present red brick building on this site became the new Law School building in September 1962, exactly thirty years ago this month, on the geographic edge of the then existing campus. Fortunately, this structure was built with the generosity of a gift from the Duke Endowment. Unfortunately, some would say, it was built in an era when the University's Board of Trustees must not have believed that buildings made an important statement about the significance of the work of those housed within. As we glance down Science Drive, our eyes will move from law, to biological sciences, to mathematics and physics, and to engineering, all housed in rather plain and simple red brick buildings.*

*Fortunately, the current University Board of Trustees and President Brodie appreciate the original understanding of James B. Duke and President Preston Few about the importance of the quality of architectural design and building materials at a university of Duke's distinction. The Law School's present building program is designed to re-house the Law School in a structure fitting in scope, design, and beauty of materials to the importance of the endeavors of faculty, students, and others who carry out the mission of the Law School. This Phase II will adjust the scope of the building to accommodate the Law School's current academic programs, is designed upon the rich architectural traditions at Duke, and will be finished in granite containing the colors of Duke University's beautiful stone.*

Bob Montgomery '64 reminded the audience of more recent history—particularly involving the Law School building—and looked forward to a more spacious and attractive building.



*It is probably somehow fitting that there is someone here from the Duke Law School class of 1964, because after our class experienced a year of attending classes in some cramped, cozy classrooms in the Gothic buildings of West Campus, we then spent our last two years here at what was then the "new" Law School building. During our time here, the Law School was moved from the center of feverish campus activity to a kind of benign exile in this building at the outlying fringes of campus. As we began our second year of law school, we found ourselves in a cavernous brick facility full of empty space and of very dubious architectural pedigree.... Given the vast amount of empty space in the new Law School building, some of us finally decided to characterize the architectural style as "early American airplane hangar."*

*Thirty years ago—in the fall of 1962—there seemed to be little doubt that the space in the building would be sufficient to house several lifetimes of Law School students. But, of course, here we are today embarking on a groundbreaking for a new facility because the Law School has so clearly outgrown the existing facility.*

*All of us who are here today who can actually tour the existing facility can readily understand why more space is needed. The cavernous open spaces which existed in the building when we moved here in 1962 were chopped up and divided over the years into a virtual maze of little rabbit warrens as space was required for an expanded student body, for expanded faculty and staff, and for the addition of new activities and new functions that have been undertaken during the past thirty years....*

*By virtually all accounts, Duke Law School ranks somewhere in the middle of the top ten national law schools in its ability to attract quality faculty and quality students. On the other hand, however, the size and adequacy of our physical facilities here at the Law School probably would not qualify us for inclusion within the top twenty-five. The bottom-line, harsh reality of the situation is that the future greatness of Duke Law School could be threatened by inadequate physical facilities. Today we come together to celebrate a groundbreaking to set that problem right.*

*Speakers on occasions such as this seem invariably to talk about the word "vision" and the word "perseverance," so I think I should also because they have been so demon-*

*strable in our efforts here. In speaking about "vision" I would first like to note the contribution of President Brodie.*

*I want to take this opportunity today to thank President Brodie and to commend him for his vision and his resulting actions in permitting the Law School's fundraising activities for the new Law School facility to be integrated into the University's Campaign for the Arts and Sciences—thereby giving our efforts here on behalf of the Law School some much needed visibility and credibility.*



Construction of the Phase II expansion and renovation of the Law School building began last summer.

*Secondly, I want to commend the vision of Paul Carrington. As dean of the Law School for ten years, he, of course, has assembled a top flight faculty and has expanded an exciting curriculum with joint degree programs and other offerings. He then started the ball rolling toward obtaining an expanded facility to house the Law School. His vision seemed quixotic and unattainable several years ago, but, nevertheless, here we are today at this groundbreaking.*



*Now let's talk a moment about the word "perseverance." There may be people who actually enjoy doing substantial fundraising while they pursue their legal careers in "real life." Certainly not I. Somehow, John Lowndes found the time and he had the perseverance to head up the Law School building campaign and make it the success that it has been. The Board of Visitors takes this opportunity to thank John for his tireless efforts on behalf of the Law School.*

*And, finally, we must pay special tribute to the perseverance of the moving force behind this new Law School project—Dean Pamela Gann. She transformed vision and mere musings, speculation and high hopes into real action. She has been the driving force, the spark plug and the quarterback in her perseverance in moving us toward realizing our financial goals. We salute Pamela and congratulate her for having engineered this success.*

*... It seems clear that the architectural style of the completed building will no longer be referred to disparagingly as "early American airplane hangar." We must all look forward eagerly to the completion of the new facility which seems destined to be hereafter described as the "eclectic metamorphosis of Gothic and Georgian traditions" here at Duke. That description alone should be worth the price of admission.*

Dean Gann noted that "this groundbreaking ceremony is a tangible product of the success of The Campaign for Duke." Duke University began the most ambitious fundraising effort in its history on July 1, 1988. With a goal of \$400 million for all purposes, The Campaign for Duke surpassed its objectives by raising pledges totaling nearly \$565 million at its conclusion in December 1991. The Law School participated in this three and one-half year Campaign with its own fund-raising effort of unprecedented scope. At the conclusion of The Campaign over 4,000 donors had provided \$17.1 million in total pledges and gifts to the Law School, substantially exceeding its Campaign goal of \$12.5 million.

One of the primary purposes of the Campaign was to enable the Law School to proceed with Phase II of its building program. John F. Lowndes, a Trinity College graduate of 1953, and a Law School graduate of 1958, who served as the chairman of the Law School's Campaign reflected on the efforts behind the addition.

*I have been fortunate enough to be involved in a small way with the dedicated efforts and sacrifices which have led to this groundbreaking, and to this new addition to the Law School. As in many worthwhile endeavors, the hardest part of this effort has been raising the money to construct and operate this much needed addition.*

*In this regard, Duke University, and President Brodie, have been supportive, creative and generous, and have made a substantial financial contribution to the success of this venture. The hard work in the money raising business, however, was done in the trenches over a period of several years—one donation at a time.*

*Paul Carrington, during his deanship, began the campaign to raise funds for a substantial addition to the present building. He brought in Lucille Hillman to help him plan and direct the campaign, and together they began the tortuous process of identifying and visiting alumni and others who were prospects for contributions. This difficult process was not made any easier by the fact that the Law School has a small, young, and widely dispersed alumni which did not have a tradition of giving significant amounts to their Alma Mater...*

*When Pamela Gann became Dean, she picked up the campaign in midstream and brought her very considerable talents and determination to this effort. Dean Gann gave this project the highest priority, and over the last several years, she has repeatedly traveled the length and breadth of this land visiting alumni and gathering contributions for the new Law School....*

*Pam not only completed the task of raising the money for the new building, but in doing so she created much good will among the Law School alumni which will benefit the Law School for many years to come. A great part of the credit for today's event must go to Dean Pamela Gann....*

*The alumni, from the very first, were expected to provide a large portion of the money needed for this endeavor, and I am happy to report to you that the alumni successfully met this challenge. Many of the alumni gifts were significant in size and importance. Most of the alumni gifts were, what is called in the trade, "stretch gifts," which means they represented real sacrifices. All of the alumni gifts evidenced a real regard and affection for the School which has given so much to its alumni. The alumni, who have always been*



*proud of the Duke Law School, deserve to be proud of themselves for their support of this campaign.*

*I hope you will pardon a few personal remarks about law buildings and things I care about.*

*I have a very long history with the Duke Law School. My father, Charles L.B. Lowndes, came to Duke to teach in the Law School in the early 1930s, and he taught here until he died in 1967. Two of the most important things in his life were his pride in the Duke Law School and his affection for its students.*

*I grew up in and around the Law School. Most of my pleasant memories of law school buildings, however, are of the original Law School building.... I remember, however, Jack Latty, a great teacher and dean, telling me of the plans to build this building in the early nineteen sixties. He was excited because then, as now, the Law School sorely needed more space, and because he liked the architecture of the new building which was not to be gothic, but what he called modern colonial, not unlike a new "Holiday Inn."*

*I know that both my father and Jack Latty would be very pleased about the new building we are celebrating today, and for that matter, with the continued excellence of the Duke Law School.*

Jay Volk '93, current president of the Duke Bar Association, represented the student body during the ceremony, for as Dean Gann reminded the audience, "One of the primary purposes of this building program is to provide the scope and quality of space necessary for Duke to carry out the educational mission with its students, who are among the very, very most talented group of American law students in the United States."

*I had the chance to speak with some alumni over breakfast yesterday. In the course of conversation, we began to talk about building projects other than our own Law School. Since I am a baseball fan, we discussed how many baseball teams either recently completed or were in the process of completing new stadiums. Toronto, Baltimore, Chicago, Denver and Cleveland all had a vision for a new stadium. When the teams moved into their new stadiums, the players were excited, the fans were excited, and the communities were excited.*

*It is the anticipation of this kind of excitement that you can sense among the students and faculty of the Law School. We feel that the Law School is taking steps to bring the facilities in line with the quality of the faculty and students by providing a comfortable, attractive learning environment. This new building will provide the space necessary for each student to reach his or her potential.*

*This was not the initial mood at the Law School. I am not sure if all of you are aware that the construction crews were dynamiting during the first few weeks of school. Some students were heard to comment, "If the classes aren't earth shattering, the dynamiting sure is!"*

*Eventually, we adjusted. In fact, after a few days, professors started making profound points just before dynamiting. This was particularly effective with the first year students, who thought that professors had somehow contracted with God for the thunderous explosions.*

*On behalf of the students, present and future, I would like to tell you that we are excited about the new space in the building. In the past few years, major student initiatives have been undertaken to begin an international law journal and an environmental policy forum magazine. With more space housing the same number of law students, students will have more room to take more initiative.*

*This is a springtime for the Law School. It is a time to grow; a time to reaffirm our standing as a top law facility. But, it is also a spring training. It is a time for students and faculty to learn more about each other under somewhat difficult circumstances, while both await completion, opening day, and the beginning of a new season for Duke Law School.*

Construction continues on the L-shaped addition that will create a rectangle with the existing L-shaped building, around a central, open courtyard. This addition will house the faculty and administration of the Law School and add three small classrooms. The courtyard with lighted, interlocking stone walkways and tree shaded benches will provide a welcome repose from the intensity of law study. The Law School community looks forward to occupying the new space in 1994.



## Duke Domestic Violence Advocacy Project

In the courtroom, where justice turns on nuances of meaning, the words "He hit me" are as vague as the air into which they are spoken. Where did the blow strike? When? Was it administered by a fist—a table? Yet those three diffident words often are the sum total of the case initially offered by a battered woman to the courts. For women numbed by daily abuse, to speak out at all is a victory. To tell their stories in the detail required by the law may be impossible. That is where the Duke Domestic Violence Advocacy Project comes in, matching Duke law students with abused women seeking relief against their batterers in Durham County District Court.



Jim Wallace

*Elizabeth J. Catlin '94 was Duke Law School's recipient of the annual Student Pro Bono Service Award of the North Carolina State Bar. This award was established by the Bar to recognize the public service being rendered by law students. Catlin founded and continues to lead the Domestic Violence Advocacy Project, and also plays an active role in several other student service organizations.*

The program was developed in the fall of 1991 as part of the Law School's voluntary Pro Bono Project. Forty women students currently participate, wedging an average of three court visits a month into demanding academic schedules. They research cases, provide information on defendants' prior records to time-pressed assistant district attorneys and district attorneys, and advise victims of domestic violence what to expect from the judicial system. Advocates also can be courtroom witnesses to what they have observed, and can corroborate the condition of a victim when they first met.

Durham County Chief District Court Judge Kenneth C. Titus has said that as many as fifty percent of battered women in the past have not pressed charges because they were too intimidated by the judicial process. While it's too soon to tell whether the year-old Duke project has affected those numbers, Val Wylie, the court's Victim Witness Director, says law students have been successful in convincing women not to drop charges. "I can see where it is going to be effective. They [the law students] provide the moral support for victims in court."

A sign of the acceptance of the project is the court's designation last fall of a permanent room so that advocates can meet privately with women before their court appearances. The District Court also has approved an unusual source of funding: Fines levied against abusers will support the project's work.

The seed for the domestic violence project was planted when Elizabeth Catlin, now a second-year law student, contacted the Orange/Durham County Coalition for Battered Women upon

her arrival in Durham last year. Told the Coalition was not active in legal advocacy because they didn't have the people, Catlin was determined to involve Law School students.

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*A woman who has recently been assaulted and whose batterer may be sitting in court nearby is fearful and intimidated. "I've gone to court with so many women where the most helpful thing I did for them was sit between them and their batterer so they couldn't see him."*

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Before coming to Duke, Catlin had volunteered at a battered women's shelter in Northampton, Massachusetts as a hotline advocate. Eventually, she was trained as a legal advocate so she could accompany women to court. Though advocates couldn't provide legal representation, they did explain legal options and advised women what to expect from the courts. They also were a supportive presence for women in the unfamiliar and intimidating courtroom environment. Says Catlin, "Doing legal advocacy for the shelter was one of the reasons I decided to come to law school. There just seemed to be such a solid connection between the efforts I was making and the assistance a woman received."



Catlin's interest dovetailed with the formation of the Law School's voluntary Pro Bono Project (reported in the Summer 1992 *Duke Law Magazine*). Coordinator Carol Spruill spent several weeks structuring the project. A particularly sensitive issue has been the need to avoid crossing the fine line into the unauthorized practice of law. "This is one of the most difficult areas," Catlin says, "because you can offer support and information to women, but you can't tell them what to do with it." For example, a law student can help a woman fill out a complaint form in her own words, but can't "speak for" her by rephrasing those words.

Says Kit Gruelle, Director of Advocacy and Community Education for the Orange/Durham County Coalition for Battered Women, "When we put this program together last year we had no idea there would be the response that there was. You would think that women in law school would have enough to do with just keeping their studies going. But the response was just incredible. That says a lot about who they are as people. They don't want to get just what there is to get out of textbooks—they want some real experience. They want to give something to the community they're in."

Law students who become legal advocates complete a day and a half of training. Training includes an introduction to the Durham County court system, including the steps required for civil and criminal procedures. Training also includes an introduction to the basic parameters of domestic violence: what it is, how the law treats it, and how advocates can address it. Says Catlin, "We talk about the typical responses to domestic violence—why women don't leave." Also discussed is the difficulty of introducing the law into intimate relationships. For example, some states have a marital rape exemption stemming from the view that married couples are one, rendering

the concept of rape meaningless. Even a restraining order can be problematic. "On the one hand," says Catlin, "the woman initially feels she never wants to see the guy again. On the other, they may need to meet to discuss children and finances. If the woman meets with the batterer under those circumstances, it weakens the restraining order."

for a woman. According to Department of Justice figures, in three-fourths of spousal assault cases, the battered woman was divorced or separated when the incident took place. According to the Coalition, leaving increases by seventy-five percent a woman's chances of being killed by her batterer.

Exactly what is "battering?" According to the Coalition, "Battering can be

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*"You would think that women in law school would have enough to do with just keeping their studies going. But the response was just incredible. That says a lot about who they are as people. They don't want to get just what there is to get out of textbooks—they want some real experience. They want to give something to the community they're in."*

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The domestic violence project members work closely with the Orange/Durham County Coalition for Battered Women. The Coalition is patterned after a pioneering program in Duluth, Minnesota, which has counterparts nationwide. Advocacy and Community Education Director Gruelle played a significant role in shaping the Duke legal advocacy project. She emphasizes the democratic nature of domestic violence, which cuts across all classes of people. Because its victims often blame themselves and remain silent about abuse, its widespread nature has been slow to be recognized. The statistics are chilling. According to the Coalition, domestic violence occurs in more than half of all American homes, and the majority of victims—ninety-five percent according to the Department of Justice—are women. Forty percent of all murdered women are killed by the men in their lives. Fifty percent of women's injuries seen in hospital emergency rooms are the result of battering. Trying to escape the batterer can heighten the danger

a punch or a kick, harassment, threats, constant put-downs, sexual assault, severe beatings, and murder." Once it starts, it often continues and escalates. John Garmatz, who counsels court-referred batterers for the Coalition and holds a master's degree in human development and the family, cites three major causes of the problem. "It [violence] is a learned behavior," he says. Most men who batter have either witnessed or been the victims of violence as a child. Your concept of what makes up a relationship and how you settle and solve problems is affected by believing that violence can be used." Violent men also have "a clear need to have control over their partners—maybe even power." They see conflicts in a relationship as a win/lose struggle, rather than something requiring mutually satisfactory resolution. A third cause of domestic violence is "an atmosphere in our culture that accepts violence against women."

"If you ask people individually, they'll say no, that's not right," Garmatz says. "But ask them about a specific



incident, and they might say, 'In that situation I might have done the same thing.'" Gruelle cites a recent example of this ambivalent attitude toward domestic violence. A pregnant woman whose husband had kicked her in the stomach was told by her physician, "Tell your husband if he is going to kick you he should kick you somewhere besides your belly."



Jim Wallace

From left, Carol Spruill, Elizabeth Catlin and Kathryn Branch discuss the Law School's Domestic Violence Advocacy Project.

Gruelle believes the situation can improve with early (primary grades) education about what it means to be in a healthy relationship, and changes in prevailing attitudes about intervention in "private" matters. "So many people cling to the notion that 'what happens behind the front door is our business and no one else's'. And there's a lot of shame, fear and guilt mixed in with it. So it's an uphill battle."

Law students working with battered women in the courts describe a mix of frustration and reward. Says Kathryn Branch '94, "Battered women live in a world of enormous stress and in order to cope they put up a shield to keep everything out to the point they don't react to anything. It's difficult to break through that. They're thinking, 'Who is this law student who

just drove up in a Volvo and thinks she's going to help me with something?'" Battered women also tend to minimize accounts of violence, which is counter-productive in the courtroom. Says Branch, "They say, 'He hit me,' when actually he cracked her skull with a baseball bat."

Student advocates often must make legal sense of incoherent stories—ragged, looping accounts punctuated by outrage, tears, self-blame and doubt. Sometimes they are told by women who may not be immediately sympathetic, and whose problems may be complicated by alcoholism and mental illness. On the other hand,

says Branch, "it's real satisfying if you can break through that and really help someone." She has found that the moral support provided by the legal advocates can be more helpful to a battered woman than the legal help. A woman who has recently been assaulted and whose batterer may be sitting in court nearby is fearful and intimidated. "I've gone to court with so many women where the most helpful

thing I did for them was sit between them and their batterer so they couldn't see him. One woman wanted me to hold her hand through the whole trial and I did. She wanted me to hold her hand when she got up in the witness box and the judge let me do it. She wouldn't talk otherwise."

A common frustration mentioned by the student advocates is the frequency with which victims of domestic violence drop charges after filing them. Says Branch, "The main problem in getting convictions for battering is that so many women are so afraid of their batterers that they'll make the step of filing the charge but won't be able to carry it through." Complicating the issue is the economic dependency of many battered women, regardless of socio-economic status. Catlin notes many can't leave because they have nowhere go, and no job prospects in order to support themselves and their children.

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*"One woman wanted me to hold her hand through the whole trial and I did. She wanted me to hold her hand when she got up in the witness box and the judge let me do it. She wouldn't talk otherwise."*

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Another common frustration among student advocates is the difficulty of remaining dispassionate when a woman decides to return to an abusive relationship. "You really have to let the woman make her own decisions," Catlin says. "You can't go in there with



an agenda, because what you're doing then is perpetuating the same thing: You hold the power and you tell the woman what is 'best' for her." Says Branch, "It's one thing to look at [domestic violence] as a social problem to be solved. But they [battered women] are trying to cope ... they're trying to get through the next twenty-four hours, get through the next week, and sometimes they think it's better to just back off, or things might get worse."

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*"You feel like, 'I'm going to law school, I'm learning all these things, and this is a fairly simple, common problem and I should be able to take care of it,' and not to be able to is upsetting."*

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Julie Youngman '94 recalls assisting an older woman suffering from mental illness. "She had so many problems compounding her battering problems it seemed too big for anyone to handle. It took me an entire afternoon to get her to fill out the one-page form to go to the judge and get a temporary restraining order. And it turned out later she had been in many times before and she never followed through and she actually didn't show up the next week for the hearing. She wasn't really looking for a permanent solution. She wasn't ready to say, 'Enough is enough.'"

Youngman, who recalls other, positive experiences with domestic violence victims, voices a common impulse among student advocates, "When you meet these people you just want to make everything better. You

feel like, 'I'm going to law school, I'm learning all these things, and this is a fairly simple, common problem and I should be able to take care of it,' and not to be able to is upsetting."

Student advocates find that pro bono work adds a welcome dimension to their academic experiences. Says Youngman, "In class things are theoretical and in court things are practical. In class you don't talk about the piles of reports you have to go through to get any little thing done, like a temporary restraining order, or just the practical thing of how do you deal with a distressed client." Besides, she says, "It's healthy to get away and not just be a law student—to do something for somebody other than yourself."

Says Branch, "It's one thing to sit in a classroom and to know principles of contract law and when you can repudiate a contract and when you can't. And it's another thing to actually sit there with someone with two black eyes telling you her husband is going to kill her children and what can she do about it."

For some student advocates the project has brought home their own vulnerability to a problem that is no respecter of income or privilege. Natasha Rath '94 says her interest in the project was sparked because someone she knew was coping with domestic violence. "As a woman living anywhere in the United States, it's an important thing to know about—to know the signs to look for in an abusive situation—in my own life and my friends' lives."

Pro Bono Program Coordinator Spruill is careful not to promote the domestic violence project as a solution to a social problem, but rather as a student development opportunity. "It is a community service—anytime someone

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*"In class things are theoretical and in court things are practical. In class you don't talk about the piles of reports you have to go through to get any little thing done, like a temporary restraining order, or just the practical thing of how do you deal with a distressed client."*

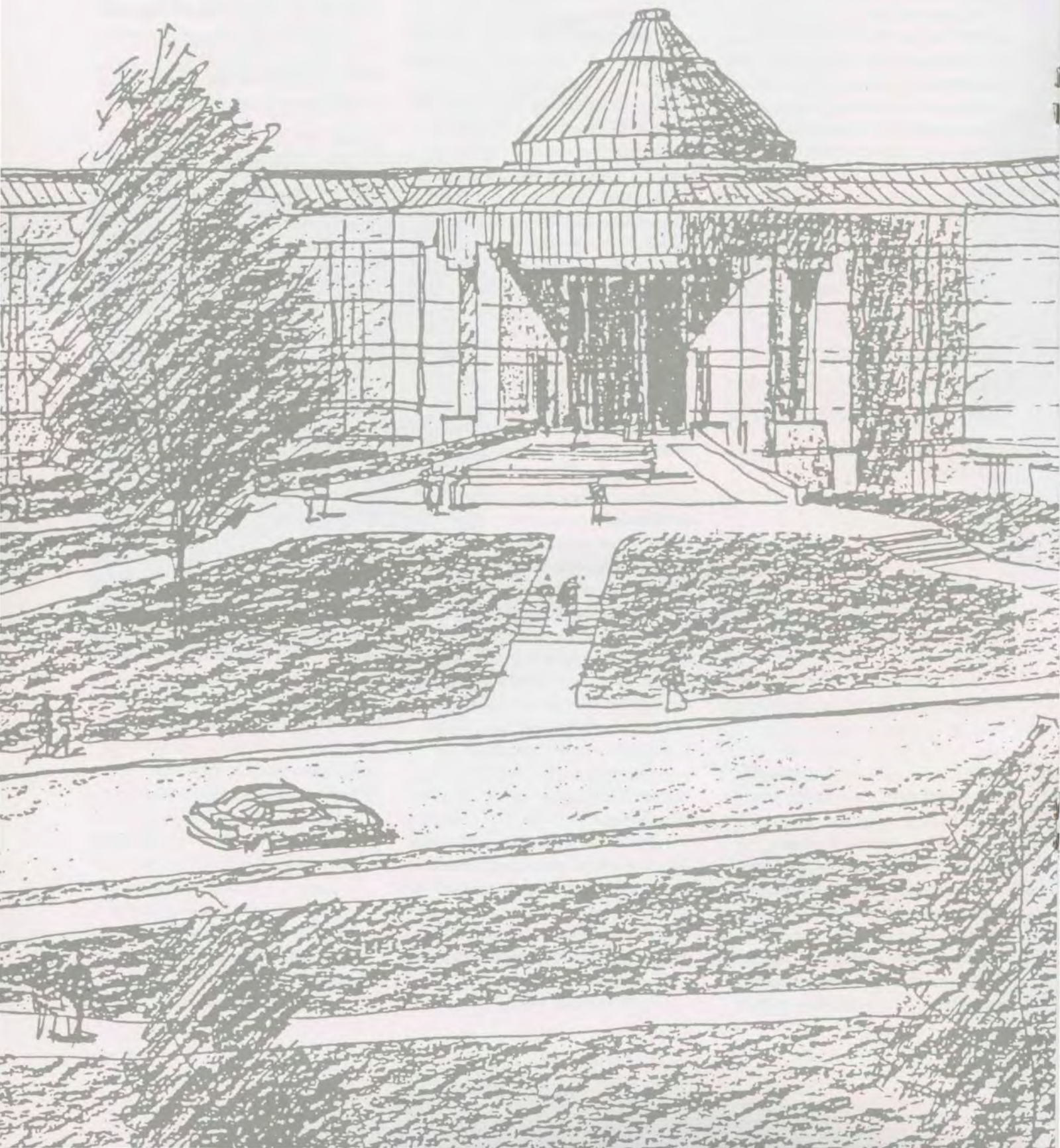
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gets help they weren't going to get otherwise, it's a great service. But I don't see it as a way to solve the world's problems in a systematic way. You can't say 'Let's not have legal services or victims' advocacy services because we have students.' They can't do the whole job—they are a supplement to it." Spruill emphasizes the importance of the project in broadening law students' understanding of social problems and the need for public advocacy. She recalls a speech on domestic violence she once made at another campus. "They didn't want to hear it," she says. "I could see that I was interrupting their romantic view of life. I remember a campus reporter asking me afterward if I was happily married!" She adds, "If you put yourself out and have these experiences with part of life that is unfamiliar to you it can have a profound effect on your view of the world."

*Deborah M. Norman*



# THE DOCKET





## ALUMNUS PROFILE

Floyd M. Riddick

## Bringing Order: Parliamentarian to the Senate

**I** hate to talk about myself, to tell you the truth," says Dr. Floyd M. Riddick, parliamentarian emeritus of the United States Senate and a '32 and '35 Duke graduate. The self-effacing remark is consistent with the behind-the-scenes role Riddick played as parliamentarian of the U.S. Senate from 1965-74. (He was assistant parliamentarian before that, from 1951-64.) Seated before the presiding officer at the lower dais in the Senate chamber, Riddick occupied the eye of the storm in the major Senate debates of his time, including the civil rights movement and the Vietnam War. Upon his retirement, dozens of senators took the floor to praise Riddick's skill in endowing a succession of fledgling presiding officers with "the illusion of command and competence" in the combustible atmosphere of Senate discourse.

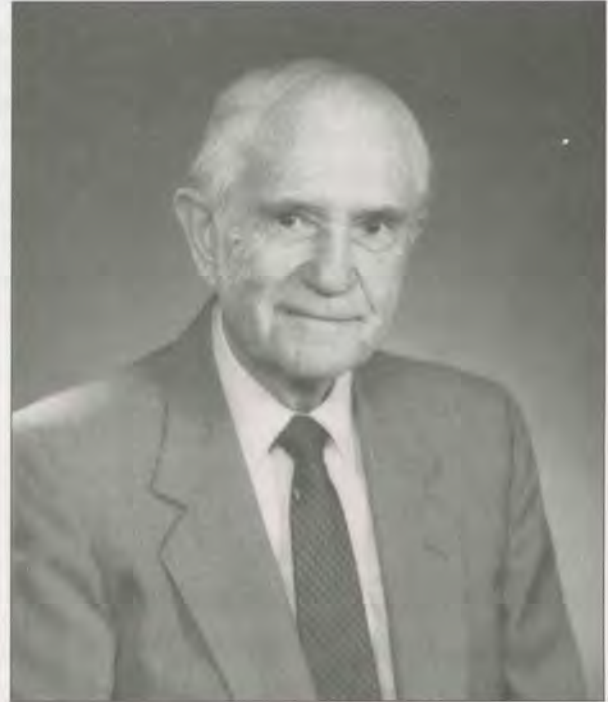
*"His quiet direction, spoken only for the ears of the senators seated directly behind him, and indiscernible in the Senate gallery or on the Senate floor, would be repeated loud and clear [by the presiding officer], accompanied by appropriate raps of the gavel."*

Former Senator William Spong, later dean of William & Mary Law School, writes of Dr. Riddick's capabilities in leading untutored presiding

officers through complex and heated parliamentary entanglements. "His quiet direction, spoken only for the ears of the senators seated directly behind him, and indiscernible in the Senate gallery or on the Senate floor, would be repeated loud and clear [by the presiding officer], accompanied by appropriate raps of the gavel." Spong notes that Riddick is "perhaps the foremost authority on parliamentary procedure in the United States," and likens Riddick to great parliamentarians John Hatsell, parliamentarian of the House of Commons in the 18th century, and Thomas Jefferson, whose manual is the original code of rules for the Senate.

An Oklahoma senator once remarked on the importance of Riddick's post, "Many parliamentary decisions are more important than votes." Thus the parliamentarian, "like Caesar's wife, must be above suspicion on all counts." Riddick's former colleagues gave him high marks for integrity. Senator Jacob Javits said of Riddick, "When you put a problem to him, he rarely answers inobjectively, and he has no inhibition about the fact that he may have to rule on it and that he might rule differently."

As assistant parliamentarian and then parliamentarian under presidents from Harry Truman to Jimmy Carter, Riddick had a unique vantage point from which to observe the "greats and



Floyd M. Riddick

would-be greats" who moved through the Senate chambers, shaping national and international policy. In the course of his career, Riddick had tea with Einstein and witnessed Senator Hiram Johnson weep in his office at the onset of World War II. Research professor Richard A. Danner, director of the Duke Law Library, recalls visiting Riddick in his Washington office before Riddick's retirement. "His office was filled with memorabilia, testifying to the warmth and esteem with which members of the Senate regarded him."

Riddick once likened the job of parliamentarian of the U.S. Senate with keeping store. "It may be quiet for a long time," he said. "Then all hell breaks loose." Riddick spent the whole of one turbulent week in the Senate chambers as the members hotly debat-



ed civil rights legislation. That was the only time during Riddick's tenure that the Senate took a roll call vote questioning a procedural decision made by the presiding officer—a decision made on Riddick's advice.

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The parliamentarian's main assignment, Riddick says, is to advise the chair of what the situation is and how he should rule. “Always if I had time, I wrote out a ruling to give the chair on a point of order made or some comment.” An example of the implicit trust Riddick inspired is then-vice president Lyndon Johnson's response to a point of order made during a controversial discussion on, “as I recall, a provision involving legislation to a general appropriation bill which is not in order under Rule XVI. I had been talking to some senators and one indicated he was going to make a point of order on the issue under discussion.” Riddick quickly advised Johnson of the situation, and the vice-president requested a written opinion. Riddick immediately dictated a detailed, two-page opinion

in his office and then returned with it to the Chamber to hand it to the vice-president just as the point of order was being made. “He didn't even have time to look at it,” Riddick recalls. “He took it and read every word to the Senate from the beginning—it was two typewritten pages—and then he said in a ringing voice, “That's the decision of the chair.”

Even an august body such as the Senate has a human touch, accommodating the personal needs of its members. Riddick recalls that one year the Congress voted to reconvene its next session in January later than usual, so that Speaker Sam Rayburn could spend his birthday with his family. But the ever-vigilant parliamentarian noted a fact forgotten by the legislators: It was the year following a presidential election, and the proposed date to reconvene fell after January 6, when by law electoral votes must be opened in joint session of Congress and counted to determine officially who is the next President of the United States. Riddick quickly called the White House and advised them to veto the proposed legislation.

Born in 1908 in Trotville, North Carolina, Riddick received his B.A. in political science from Duke in 1932. He completed his Ph.D., also in political science, at Duke in 1935. While working on his master's thesis, Riddick explored the tremendous influence wielded by the collective decisions of three key members of the House of Representatives—the Speaker, the Rules Committee Chairman, and the Majority Leader. From this initial insight into the role of Senate leadership in shaping policy, Riddick expanded his ideas in a paper on political and parliamentary procedure in the House that evolved into his first published work. Riddick authored his first book, *Congressional Procedure* in 1941 and later co-authored *Congress in Action*

with George H.E. Smith. He subsequently published *U.S. Congress Organization and Procedure* in 1949. That book brought Riddick recognition as an expert in legislative proceedings.

Riddick was called to the Senate as the first editor of the *Daily Digest*, printed in back of the *Congressional Record*, which he established and for which he created the format. Now considered indispensable, the *Digest* was authorized by the Legislative Reorganization Act of 1946. It contains the legislative program for the day, as well as a list of committee meetings and hearings, and includes a brief resume of Congressional business for the previous day.

Riddick's growing reputation resulted in an invitation from Charles Watkins, the first parliamentarian of the U.S. Senate, to become his assistant. Riddick hesitated, as his heart was set on a political career. He took the job at the urging of friends and advisers who pointed out the enormous importance of such a position. While assistant parliamentarian, Riddick co-authored the first edition of the work that established his reputation as an authority on parliamentary procedure. *Senate Procedure*, published in 1958, compiled for the first time the opinions, precedents and practices developed since Senate rules were last codified in 1884. Riddick since has assumed sole authorship of





the massive (1,600-page) volume. The latest edition was authorized in 1985 by a joint resolution of the Congress.

Riddick's most recent work is *Riddick's Rules of Procedure*, a general reference on parliamentary procedure considered to be a definitive authority on the subject. The volume has been adopted by such prestigious organizations as the international scientific organization Sigma Xi and the Washington, D.C.-based Cosmos Club, a select group of intellectuals from a variety of literary and scientific fields.

In addition to the above works, Riddick authored numerous books, pamphlets and articles on Congress. From the 76th Congress in 1939 to the 90th Congress in 1968 he wrote a series of annual articles summarizing each Congressional session. Those accounts appeared in the *American Political Science Review* and the *Western Political Quarterly*.

Over the years of his association with the Senate, Riddick acquired a unique collection of senatorial materials, including autographed books written by or about senators. Riddick has donated the collection, including such titles as Sam Ervin's *Just a Country Lawyer*, Margaret Chase Smith's *Declaration of Conscience*, J. William Fulbright's *The Arrogance of Power*, and several books by Richard M. Nixon '37, to the Law School. He and his wife, Marguerite, also established an endowment fund to care for and preserve the collection. Director of the Library Danner calls the collection "very useful and unusual—we're very fortunate to have it." It is perhaps the only collection in the country that includes such a variety of senatorial voices over such a long period of time, offering the researcher an excellent vantage point from which to examine the nature of the senatorial office. Riddick continues

to augment the collection with additional published works.

In 1991, the Riddicks made another generous gift to the Law School, this time to the building program, and the Rare Books and Special Collection Room in the refurbished Law Library will bear their name. "The commitment of Marguerite and Floyd Riddick is truly significant," says Dean Pamela Gann, "in that it is unusual that a donor will contribute a rare collection, provide an endowment for its maintenance and care, and also donate the funds required for its permanent location."

from Dean Justin Miller on some of his first published articles.

Despite his eighty-five years, Riddick still is engaged in his love affair with the Senate. He presides over Model Senates at Stetson University in Florida, Birmingham Southern in Alabama, and Goucher College in Baltimore, Maryland. "We run them just like the Senate as far as possible," he says. "They have majority and minority leaders, they appoint committees, they file reports, they debate bills. The idea is to train students how to be deliberate, how to speak effectively, to be prepared on the legislative issues they want to debate."

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Riddick's interest in the Law School stems from an early desire to become a law professor. While persuasion from then-graduate dean and political science professor R.S. Rankin convinced Riddick to go into political science, Riddick took courses in the Law School with the Class of 1937. He vividly recalls law professor Douglas Maggs' classroom manner. "If you didn't have a clear-cut answer to a question, he'd bear down on you, and you trembled. It gave you a mental attitude that you'd better be right and you'd better be good." Riddick also gratefully recalls editorial assistance

Of the subsequent careers of Model Senate alumni Riddick says, "You'd be surprised how many are working on the Hill today"—evidence that "the Senate's truly indispensable man," as Riddick once was known, continues his contribution to the workings of government.

*Deborah M. Norman*



## Deborah A. DeMott

## Thinking Globally About Corporate Law

Duke Law Professor Deborah A. DeMott lives close enough to campus to offer her home as an emergency change of venue for an interview, in case the construction din outside her office escalates. She has been on the Law School faculty nearly two decades and appears to be looking forward to the next two. But if these facts suggest an untravelled life, they mislead. DeMott is one of Duke's more peripatetic faculty members, having taught in Toronto, Australia, Texas, Colorado and California during her Duke tenure. In the process she has acquired an international reputation as a teacher and scholar.

## A New Organizing Principle

DeMott's exposure to different ways of thinking and looking at corpo-

rate law around the world has led her to take a fresh view of some classic subjects. Behind such deceptively bland recent titles as *Shareholder Derivative Actions* (1987) and *Fiduciary Obligation, Agency and Partnership* (1991) are ideas that have influenced contemporary thinking about corporate law.

The work on fiduciary obligation is DeMott's most recent. Written in the fading glow of the overheated '80s, the book is a thoughtful analysis of the nature of loyalty. "The timing was extraordinarily perfect," says Law School Dean Pamela Gann. "While aspects of this subject are very old, they have become common concerns in modern commercial relationships. This book looks at historical matters such as loyalty among persons and between persons and organizations in a modern business setting."

DeMott became interested in the book's subject as a Fulbright Scholar in Australia in 1986. "I became intrigued by the idea of the duty of loyalty. I had never thought about it before as a central organizing principle. It may have been getting away from my immediate environs and reading some very different material generated by a very different legal system that made me think about that." DeMott wryly admits the idea that "people could have some duty to put the interests of someone else before their own interests" ran counter to the prevailing mores of the last decade. "One of my colleagues suggested to me that the book

would sell better if I called it *Fiduciary Opportunity* instead of *Fiduciary Obligation*." She smiles puckishly. "Something like, *Other People's Money and How to Get Rich*."

In a recent article on the RJR Nabisco transaction ("The Biggest Deal Ever," *Duke Law Magazine*, Winter '90 at 12), DeMott analyzed the \$25 billion RJR Nabisco transaction in terms of the ideas expressed in her fiduciary obligation book. In the article she noted the startling changes that in a few short years had changed the American financial landscape. "Financially speaking, we have sailed to Byzantium," she wrote, referencing the line in T.S. Eliot's *Sailing to Byzantium*, "[t]hat is no country for old men."

In her analysis DeMott pointed out changes in financial practices "are not confined to the denizens of financial institutions." Shareholders, creditors, non-management employees, the community in which the firm operates—all are affected. She noted the recent evolution of Delaware law now holds directors of corporations accountable for affirmative duties, so they are more like other types of fiduciaries, like trustees and guardians.

In light of what DeMott terms "this judicial invigoration of the director's role," her work on fiduciary obligation is especially relevant. Says Dean Gann, "Her ability to have identified this field and to have done something about it promptly will be very important to the curriculum in law schools. It also has identified an area in which a lot of research needs to be done."

Has DeMott noted significant changes between the '80s and the '90s in terms of corporate attitudes about the duty a corporation and its directors



Deborah A. DeMott



owe to interested parties other than shareholders—such as creditors of a corporation? “I don’t see any big change in that area evolving out of the ’80s,” she says. “It’s an area of considerable uncertainty. The American assumption has been that it’s simply a matter of contract between the corporation and the creditor, and that this duty of intense loyalty is really owed to shareholders in the corporate setting. Because some of the transactions in the ’80s went dramatically amiss, this naturally raised the question whether additionally directors should consider creditors’ interests and the level of risk they undertake. I see discomfort with aggressively leveraged transactions that used a lot of debt to finance them.”

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*“She is someone recognized as having a true command of corporate law in all the Commonwealth countries. There are very few people, if any, who have that.”*

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#### **Crossing Boundaries**

DeMott is esteemed for her international comparative work due to her residency and scholarship in Australia, Canada and Britain. Says colleague Robert Austin, former law department head at Sydney University and now a partner in a major Sydney law firm, “In terms of comparative securities regulation she is one of the top four scholars in the English-speaking world.” Columbia University law professor John Coffee says, “She is someone recognized as having a true command of corporate law in all the Commonwealth countries. There are very few people, if any, who have that.”

DeMott’s most extensive international work has been in Australia. In 1986 she was a Fulbright Senior Scholar at Sydney and Monash Universities, returning twice since then. She taught last summer at Bond University in Queensland, and will return next year to teach at the University of Melbourne. In comparing American corporate law with that in Australia, DeMott notes private corporations are of marginal importance to the Australian economy, with interesting consequences for securities regulation. “Because private capital historically has played a less significant role in the Australian economy than it has here, private corporations don’t matter as much,” she says.

DeMott noted an Australian paradox in the ’80s: the phenomenon of private sector “buccaneers” operating in a society which is fundamentally economically conservative. “The fact that so much essential economic activity is conducted under government auspices suggests a society overall that’s pretty averse to risk. On the other hand there are fringe elements, who truly in the ’80s were like movie stars, with an intense public interest in their activities, who were carrying on business in very flamboyant ways.” She recalls giving a talk on the coast of Queensland to a group that included securities lawyers and investment bankers. The site, she says, was a gambling casino: “It was wonderfully appropriate for the time!”

DeMott notes that Australian corporate law is far more complex than U.S. law. In her office is a brace of volumes half a foot thick, encompassing Australian corporate statutes. The Delaware statute, which regulates many U.S. companies, is a slender half-inch. “Much more is prohibited [in Australia],” she observes. “Less is left to market controls. The fact that Australia seems to have cycles of severe recession followed by dramatic financial expansion, with flamboyant finan-

cial operators, might be an explanation for why there’s an attempt there to regulate things more tightly.”

What sparked her interest in Australia? “I got interested in how other countries regulated corporations and corporate law, particularly in takeover transactions in the early ’80s. The first one I worked on was Britain. Then I became separately interested in other countries toward the mid ’80s, particularly Canada and Australia.” She pauses, then offers a glimpse of the sense of fun with which she blows the dust off even the driest subject matter: “When I was a child—eight or so—I was given a globe for Christmas, and I was fascinated by it [Australia]. It was kind of down there all by itself, and it was an appealing shape.”

DeMott has lectured widely in recent years, a legacy of her Fulbright sojourn. “Part of the thought behind the program is that Fulbright scholars should travel widely in the country they’re sent to. You’re encouraged to accept invitations from institutions to visit them, and to give lectures. And I’ve continued in that mindset ever since.” While in Australia, DeMott covered thousands of miles, travelling to give papers at Australian National University in Canberra and the University of Adelaide, and to gatherings in Perth and the coast of Queensland. She also vacationed in the outback, where she was photographed on the back of one of the country’s herd of 40,000 camels, which are exported to Saudi Arabia for racing. In tribute to DeMott’s eclectic interests, her Australian colleague Austin says, “I can say without fear of contradiction that she is the only American who has thoroughly mastered both Australian corporate law and riding an Australian camel.”

#### **At Duke**

Along with Professor James Cox, DeMott is largely responsible for teaching the Law School’s business curricu-



lum. She is as esteemed a teacher as she is a scholar, and received the University Scholar/Teacher of the Year Award in 1989. In her letter of nomination, Dean Gann noted DeMott's versatility as an instructor. DeMott teaches both in the Law School's first-year curriculum and in advanced courses in business, corporate and securities regulation. She is known for her ability to stimulate intense interest in the subjects she teaches. Former student Alan Berman '83, who now teaches at the University of Wollongong Law School in Australia, says DeMott's teaching inspired his career choice. "She was the best professor I had in law school," he says, noting she had "quite a following" in his class. Berman confesses he doesn't have a lot of interest in corporate law, yet he found DeMott's class compelling: "I've kept my outline from Corporate Law because I thought the information was so valuable."

Mike Vernier '87 assisted DeMott with the research that culminated in publication of *Shareholder Derivative Actions*. He now practices with Davis Polk & Wardwell, a New York corporate law firm with roots reaching back to 1849. His experience in practicing corporate law has heightened his appreciation for DeMott's acute perception of the business and economic realities that underlie the practice of corporate law. Vernier also says her teaching prepared him well for counseling clients on business issues surrounding the law. "Many of our projects are new and different," he says. "We're constantly presented with novel questions. They require not only our ability to apply law, but to flesh out for clients some of the business issues raised by the structure of a transaction. That requires more than just knowing law. One of the things [DeMott] brought to my law school experience is an unusual amount of that perspective."

DeMott's travels give her a unique vantage point from which to evaluate Duke as an institution. "I think Duke

is a nicer place in terms of the way it treats most people involved with it, either as students or employees. The fact that we're not in a major urban area, the fact the School is relatively small, the fact that the architecture of our present building doesn't segregate the faculty and the students. Plus the fact that most of the faculty and most of the students are in this building all day. There is plenty of opportunity for casual interaction."

DeMott says one of her favorite classrooms is the somewhat cramped one in which she teaches basic corporate law to 159 students. She finds the atmosphere more positive and friendly than in large classrooms with more spacious layouts on other campuses.

Duke's special openness extends to the attitude of the library staff: "They have a service orientation, helping people get access to the collection. In some other places the attitude is more curatorial, to try to protect the collection from its users," DeMott observes.

### A Service Orientation

DeMott is valued at Duke for her service both on-campus and off. She is a member of North Carolina's General Statutes Commission, which is made up of appointees from state law schools, the state bar and members of the legislature. The Commission drafts statutes at the direction of the legislature as well as the public. She has worked on issues as diverse as fine art prints, trusts, and adoption. "One thing I've learned from being on the Commission is the difficulty of drafting statutory language that does not create more problems than it solves," DeMott says.

On campus, DeMott has chaired the Faculty Compensation Committee, which recently considered the University's conflict of interest policy for faculty members. "I think the Duke policy came out being considerably less intrusive in people's lives apart from Duke than some other universities' policies [that she is aware of]," she says.

DeMott has just become a member of Duke's Coordinating Committee for Long-Range Planning, which she observes has resulted in "lots of long documents to read." In the process, she says she has gained new perspective on the workings of the University as a whole—the kind of perspective she consistently seeks in her academic work, and which has taken her around the globe.

### Supreme Court Cite

The high point of DeMott's professional life to date, she says, came in spring 1991. "The U.S. Supreme Court, in one of the last opinions written by Justice Marshall before he retired, cited my book [*Shareholder Derivative Actions*]*—*cited it four times actually, in a short opinion! The position the Court came out with unanimously was an argument that's in the book—an argument that I had presented earlier in an article, so it was a gratifying experience."

The citations were noted in *Kamen v. Kemper Financial Services, Inc.*, 111 S.Ct. 1711 (1991), which considered issues surrounding the requirement that a shareholder make a "precomplaint demand" on the directors of a corporation before initiating litigation against them. "The question was whether control over a derivative suit is simply a procedural artifact or whether it goes more profoundly to questions about power within the company. I was always very strongly of the second mind—that these are very substantive questions going ultimately to control over management accountability."

With her usual wry wit, DeMott concludes, "Someone told me, after reading about this, that even if I were to leave this world tomorrow, there it would be, in the pages of *U.S. Reports*—giving a sort of permanence to this accomplishment."

Deborah M. Norman



## Executive's Guide to Marketing, Sales & Advertising Law\*

by David C. Hjelmfelt '65

Marketing retail products can be fraught with legal pitfalls. How does one avoid antitrust problems; create a valid system of franchises; keep from violating product labeling statutes? While David Hjelmfelt's new book, *Executive's Guide to Marketing, Sales & Advertising Law* is not a substitute for legal counsel, its purpose is to inform marketing managers and other executives about various issues so that they can remain on the right side of the law.

Hjelmfelt '65 has previously written a book on antitrust law, and he begins this book with an overview of the law on that subject. The various acts governing antitrust (the Sherman Act, the Clayton Act and the Robinson-Patman Act) are briefly explained. Later chapters integrate an explanation of antitrust with specific types of questions.

One chapter, for example, addresses tie-in sales. Hjelmfelt begins by defining them and explaining how they can harm competition. He then lists the requirements for a tying violation: that there are two products involved (one example given is cemetery lots, grave markers and installation services), that the availability of one product is conditioned on the purchase of the other, that the seller has enough economic power to coerce the purchase of the second product, and that there is a significant effect on interstate commerce. He also discusses monopoly leveraging, a situation closely related to tying arrangements.

This step-by-step approach, illustrated by examples, helps to make the subject clear to a reader unfamiliar with antitrust or with the law affecting marketing in general. The arrangement of the book also encourages its use when a specific question or problem is encountered.

An executive at a company contemplating franchises could read the chapter entitled "Creating a Distribution System" to learn how to set up a legal franchise system. After explaining what a franchise is, and how the system is regulated by the Federal Trade Commission, Hjelmfelt concludes with a table comparing franchises and company-owned outlets that will help the manager determine which system is better suited to the company's needs.

The book also covers advertising, product labeling, warranties, sales by mail, and unfair practices not mentioned in the sections on antitrust. The reader can see exactly what information must be on the label of a new automobile; what a creditor must disclose before opening an open-end consumer credit account; or the rules for holding a contest as part of product marketing (e.g., the odds of winning

a prize should not be misrepresented, and the company must be sure that the contest is not really a lottery, which is illegal).

Although written for business executives, the book contains items of interest to any consumer. In the chapter on trademarks I was intrigued to discover that the terms Murphy bed, Bundt, and Rack O'Pork are now considered generic terms that cannot be used as trademarks. (Unfortunately, we are not told what a Rack O'Pork is.) While the information on intellectual property is necessarily sketchy, it will give a manager the basics necessary to avoid obvious problems.

I particularly liked the layout of the book. Every chapter is divided into sections, most of them less than a page in length. The bold lines and headings dividing sections make the book easy to read and to use as a quick reference tool. Many sections contain "Key points" which summarize the law in that area in one or two sentences. ("Key point: Age can be considered as part of an empirically designed credit rating system if it is soundly designed. Age can be used to favor a creditor." (p. 176) There are also "Red Flags" scattered throughout the book. These warn of possible legal problems. ("Red Flag: Many state statutes regulate contract renewal rights. This is especially true with respect to franchise agreements." (p. 279) Many of these red flags advise that legal counsel be consulted before taking certain actions.

In writing this book, David Hjelmfelt has provided marketing managers with a useful source to consult when considering new ways to sell their products.

Reviewed by Janet Sinder, Head of Public Services and Senior Lecturing Fellow



David Hjelmfelt is a sole practitioner and of counsel to the Washington, D.C. firm of Goldberg, Fieldman & Letham, and is an expert on antitrust litigation. He has counseled a large number of business clients on the legal issues involved in marketing their products, and has written numerous articles on topics ranging from franchise contracts to the taxation of businesses.

\*Prentice Hall, 1990.



## The Cultural Revolution in Cuba\*

by Roger A. Reed '73

Roger Reed's new book, *The Cultural Revolution in Cuba*, is a fascinating look at the Cuban revolution from a new perspective. Reed '73 argues that the revolution is not just a political or economic revolution, but, in fact, a cultural revolution. Reed's insight into the revolution comes from scholarly study, extensive interviews with Cuban intellectuals and personal experience. He lists nearly 100 artists and writers he interviewed between 1987 and 1991. The interviews took place in Cuba, the United States and in various cities across Europe.

Reed visited Cuba three times between 1985 and 1991. In 1985, he spent two weeks travelling throughout Cuba. He returned in 1988 for twenty-five days during which time he conducted interviews in Havana. He found that Cuban officials did not question his activities as long as he interviewed

members of the official writers' union. However, when he began to interview dissident intellectuals, he was subjected to lengthy interrogation by the State Security police. He was told by officials that if he continued his investigation, he would be expelled from the country. When he returned in 1991, he was intercepted by State Security police at the airport, forbidden to enter the country, and put on the next plane back to Madrid.

In *The Cultural Revolution in Cuba*, Reed argues that when Castro came to power in 1959, he undertook more than just a political or economic revolution; his goal was to transform Cuban society itself and to create the "New Man." Castro's "New Man" would no longer hold traditional values, but would instead be instilled with a revolutionary consciousness. In order to create this "New Man," Castro would have to change the people's cultural beliefs. Castro's plan for accomplishing this difficult task was through the use of propaganda and censorship. He sought to disseminate propaganda in favor of the revolution, and censor all ideas and writings he considered counterrevolutionary.

Reed shows how widespread propaganda in Cuba has been since the early days of the revolution. Castro's stated goal is to reform the thinking of the Cuban people; therefore, he has attempted to control and coordinate all means of communication, including art, literature and journalism, to convey his revolutionary message to the masses.

Reed also takes a close look at censorship in Cuba and the effect it has had on intellectual life. Censorship in Cuba goes far beyond what we think of as censorship and has extended to

taking over newspapers, closing down publishing houses, confiscating manuscripts, burning libraries, firing journalists, imprisoning writers, and creating self-censorship on the part of artists and writers who fear the threat of official retaliation.

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*Castro's stated goal is to reform the thinking of the Cuban people; therefore, he has attempted to control and coordinate all means of communication, including art, literature and journalism, to convey his revolutionary message to the masses.*

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Reed has divided the Cuban revolution into five distinct stages: "The Romantic Revolution" (1959-61); "The Phoney Truce" (1961-68); "The Dark Age" (1968-76); "The Velvet Prison" (1976-86); and "The Sinking Ship" (1986-present). Reed explains how propaganda and censorship played a key role in the Cuban revolution at each of these five stages. Early in Castro's regime, in a speech, "Words to Intellectuals," Castro announced the type of artistic and literary material that would be permitted in Cuba: "Within the revolution everything; against the revolution, nothing." This remains Castro's philosophy to this day. In each chapter of the book, Reed describes the intellectuals' reactions to government policies and how those



Roger A. Reed is a journalist at the United Nations in Geneva, Switzerland. He has previously been a deputy district attorney in Los Angeles, and was publications director for the Council for Inter-American Security in Washington, D.C.

\*Geneva: Latin American Roundtable, 1991.



policies were enforced against artists and writers who attempted to speak out against the revolution.

Reed not only chronicles events of censorship in Cuba, but also looks at why censorship in Cuba exists. The traditional explanation has been that Castro uses censorship to repress opposition or criticism, thus allowing him to remain in power. Reed argues that maintaining power is only part of Castro's reason for censoring so heavily. Castro wants more than just to remain in power; he wants to liberate the Cuban people and build a better society where the "New Man" will prosper. Reed states that Castro will use every available means to achieve his goal, including censorship.




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*By telling the stories of so many Cuban intellectuals affected by censorship, Reed shows that Castro's phrase "within the revolution, everything; outside the revolution, nothing" is so vague that the government can suppress or forbid anything at will by simply labelling it counterrevolutionary.*

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By telling the stories of so many Cuban intellectuals affected by censorship, Reed shows that Castro's phrase "within the revolution, everything; outside the revolution, nothing" is so vague that the government can suppress or forbid anything at will by simply labelling it counterrevolutionary. Since the state owns all the newspapers, publishing houses, television and radio

stations, it has had complete control over what information is disseminated to the Cuban people.

Reed concludes that recent events in Cuba indicate the cultural revolution is crumbling. He points to the increasing alienation of the intellectuals who remain in Cuba and the number of defectors in recent years. Moreover, propaganda and complete censorship are not as pervasive as they have been in the past. Due to shortages of paper and other raw materials in Cuba, it has become virtually impossible to produce the quantity of propaganda that has been produced in the past. Additionally, many artists and writers are no longer willing to create the propaganda in a time where it is impossible to argue that the revolution has brought prosperity and a better life to the Cuban people. Reed writes that censorship has declined for two reasons. First, radio and television broadcasts are being directed to Cuba from the United States, thus breaking up the government's longstanding monopoly on telecommunications. Second, in recent years, more artists and writers are declining

to practice the strict self-censorship that they had been forced into in the past. Reed argues that the weakening of propaganda and censorship and the increasing alienation of intellectuals signal the breakdown of Cuba's cultural revolution.

This book will undoubtedly stimulate interest in further study for many of those who read it. To assist the reader, Reed has compiled an extensive bibliography of books and articles, in English and Spanish, that will provide an excellent foundation for further research.

The *Cultural Revolution in Cuba* provides a detailed account of the life of Cuban intellectuals during the Castro regime not available elsewhere. This book will be interesting and enlightening reading for anyone, and is especially recommended for those interested in Cuba, censorship, or human rights.

*Reviewed by Meg Collins, Reference Librarian and Lecturing Fellow*



**Katharine T. Bartlett**, Professor of Law, is spending the 1992-93 academic year at the National Humanities Center in Research Triangle Park. Her project, "Negotiating Tradition in Law," is an exploration of the appropriate role for social tradition in defining liberty interests protected by the United States Constitution, particularly those pertaining to the family. Finding herself in the middle of the debate on "family values," Bartlett's approach challenges current Supreme Court formulations of tradition as a past which can be simply identified and retrieved for the present, but she also rejects the claims that past traditions can, and should, be abandoned altogether. Instead, she views tradition as a complex, and inevitable, negotiation between present and past, simultaneously discovered and created by those who are both constituted by the past and agents of its construction. In the law, this means both taking seriously practices and values inherited from the past, and taking responsibility for those practices and values we chose to make our own.

**Donald L. Horowitz**, Charles S. Murphy Professor of Law and Professor of Political Science, has been awarded this year's Ralph J. Bunche Prize by the American Political Science Association (APSA). Named for the African-American political scientist, U.N. Undersecretary and Nobel Laureate, the Bunche Prize is awarded for the best book in the field of ethnic and cultural pluralism. Horowitz won the prize for *A Democratic South Africa? Constitutional Engineering in a Divided Society*, published by the University of California Press.

"I am particularly pleased to receive a prize named for Ralph Bunche because I have great respect for his achievements," Horowitz said. "I am also pleased to receive a prize for a



Donald Horowitz, left, receives the Bunche Prize from Peter Skerry at the American Political Science Association annual Meeting.

book on the difficult problems of South Africa. It is flattering to be thought to have made progress." Internationally known for his work on ethnic conflict, Horowitz has traveled to such countries as Romania, Malaysia and South Africa to study the causes of ethnic conflict and look for possible solutions.

**H.B. Robertson**, Professor of Law Emeritus, spent the 1991-92 academic year as the Charles H. Stockton Professor of International Law at the United States Naval War College in Newport, Rhode Island. In addition to teaching a course in National Security Law, Professor Robertson moderated seminars on the law of the sea and the law of armed conflict in the four resident courses at the Naval War College. These resident courses include junior and senior officers from all of the United States armed forces as well as specially selected officers from over twenty foreign navies.

Professor Robertson continues to serve as a member of the Council of Ocean Law's Panel on the Law of

Ocean Uses, which meets periodically to address issues relating to the law of the sea. He also served as a member of the Naval War College Advisory Committee on military operational law.

**Neil Vidmar**, Professor of Social Science and Law, received the Perry Nichols Distinguished Scholar Fellowship/Grant for the summer of 1992 from the National College of Advocacy (the educational branch of the Association of Trial Lawyers of America). The Nichols Fellowship's goal in 1992 was to support research exploring the relationships between medical malpractice litigation and the "health care crisis" in America.

Professor Vidmar's fellowship/grant resulted in the publication of "The Unfair Criticism of Medical Malpractice Juries," 76 *Judicature* 1 (1992), and two other forthcoming articles, one examining research bearing on the "deep pockets" hypothesis and one comparing the decisions of jurors with experienced legal professionals.



## John Hope Franklin Retires

John Hope Franklin, professor of legal history, retired from teaching at the Law School at the end of the 1991-92 academic year. Franklin, who is also James B. Duke professor emeritus of history, had co-taught with Walter Dellinger and William Leuchtenburg the popular course on Constitutional History since 1985.

During a distinguished career covering nearly six decades, Franklin has taught at many universities, including Fisk, Chicago, Harvard, Stanford and Duke. He served as president of the Southern Historical Association, president of the Organization of American Historians, president of the American Historical Association, and president of the American Studies Association. He has held many acclaimed fellowships and received dozens of awards and honors, including ninety-five honorary degrees. He has published eleven books and edited eight more, and written nearly 100 articles.

However, as noted by his colleague William Leuchtenburg who holds the Kenan chair in history at the University of North Carolina at Chapel Hill, "for all his immense industry as a teacher and a scholar, John Hope has not been content with the cloistered world of study. He played an instrumental advisory role with NAACP attorneys in preparing the brief in *Brown v. Board [of Education]*, served on the Presidential Advisory Board on Ambassadorial Appointments and the U.S. Advisory Commission on Public Diplomacy in the Carter years, was chairman of the Board of Trustees of Fisk, a member of the board of the Museum of Science and Industry in Chicago, of the Chicago



Ken Haywood

John Hope Franklin (center) is flanked by his colleagues William Leuchtenburg (left) and Walter Dellinger.

Public Library, of the Orchestral Association of Chicago, of the National Humanities Center, of the National Council on the Humanities, even of Illinois Bell Telephone. And he is such a well-regarded orchid grower that there is an orchid that has been named for him!"

Professor Franklin's retirement was celebrated by the Law School faculty during their annual dinner in September. As noted by Dean Pamela Gann, "John Hope has been formally retired for several years, but he has been far from retiring. He has continued to teach, lecture, write and publish.... We reluctantly accept his decision to retire from teaching at the Law

School. But this ends only one aspect of his participation in our community, for I know that he, as a true scholar and colleague, will always join us on many occasions." In concluding the celebratory evening, Dean Gann presented Professor Franklin with two potted orchids "as a small statement of our gratitude for your splendid participation in our community."



## Lowndes Receives Dean's Alumni Achievement Award



Dean Crawford

Dean Pamela Gann presents the Dean's Alumni Achievement Award to John F. Lowndes '58.

During the 1992 Law Alumni Weekend, Dean Pamela Gann presented the first Dean's Alumni Achievement Award to John F. Lowndes '58. To commemorate the award, she presented Lowndes with a Steuben crystal sculpture containing a replica of the Duke University Chapel, the architectural feature that alumni most recall about Duke University.

In presenting the award for the first time, Dean Gann described the special relationship between alumni and their university. "You, our graduates, must be the sons and daughters of your alma mater, Duke University.... I submit that you can never get away from us. For it must be as John Henry Newman wrote in *The Idea of a University*, that the University is where 'a habit of mind is formed which lasts through life, the University is Alma Mater for life,' for we will be with you perpetually in mind and spirit even though many years pass before you

physically return again to Duke's splendid campus."

"It is also important that alumni, in turn, care for their alma mater. This is especially true for private higher education, because academic institutions like Duke University will not be able to continue to be among the very best institutions in the country and the world without alumni lifetime commitments to provide services and gifts to the private universities they attend."

"Thus, I believe that there is a special dual relationship between the dean of a school of Duke University, who has special duties toward alumni, and the school's alumni, on the other hand, who also have a special relationship with, and duties toward, their alma mater. Occasionally, the actions of alumni fulfill this special relationship that I have just described in an extraordinary fashion. When that happens, the dean of the Law School will present a special Dean's Alumni

Achievement Award. Such an award is not likely to be made every year. The very infrequency of the award is to indicate that it is to be made in special cases."

This award was presented to Lowndes for his leadership of the Law School's component of the Campaign for Duke. Duke University began the most ambitious fund-raising effort in its history on July 1, 1988. With a goal of \$400 million for all purposes, The Campaign for Duke surpassed its objectives by raising pledges totalling \$564.8 million at its conclusion in December 1991. The Law School participated in this three and one-half year Campaign, with a fund-raising effort of unprecedented scope. At the conclusion of The Campaign, over 4,000 donors had provided \$17.1 million in total pledges and gifts to the Law School, exceeding The Campaign goal of \$12.5 million by thirty-seven percent. The tangible results of this Campaign were celebrated at the groundbreaking ceremony at Law Alumni Weekend.

According to Dean Gann, "John Lowndes provided the alumni leadership for the Law School's Campaign. He traveled with me on many occasions to call upon other alumni to support the Campaign. He also came to the Law School and worked with Professor Melvin Shimm for gifts from the Law School faculty and others in the local community. During the Campaign, John and his wife, Rita, established the Charles Lucian Baker Lowndes Professorship of Law, which is named for John's father, one of the earliest James B. Duke Professors at Duke University. Many alumni fondly remember their tax classes with Professor Lowndes."



## Dukes Award Goes To Palmer

“Chairing the Campaign was not John’s first service to the Law School. He has also been an active member of the Law School’s Board of Visitors, and he is now a Life Time Member of the Board. He has been the president of the Duke Law School Local Alumni Association in Orlando, Florida, and he and his wife, Rita, who is also a lawyer, have graciously managed local alumni events, and welcomed me and other faculty to Orlando and to their home.”

“John is also one of the founding partners of his law firm in Orlando. He has pursued with vigor Duke graduates, and the firm has many lawyers who hold at least one degree from Duke. I think it would be fair to say that John would almost always hire a Duke graduate in preference to other law school’s graduates if he could just find enough of them from each class at Duke.”

“John has also served on many boards and is a civic leader of his community. He has provided the type of local leadership that law schools have always expected of their graduates, to be persons who seek out active participation in public life.”

“John is a superb example of what the Law School expects its graduates to achieve in the legal profession and in providing service and support to their community and to the University. [He is] an outstanding son of his alma mater, Duke University.”

In accepting the award, Lowndes professed to be quite “overcome.” He acknowledged that he had been involved in the Law School for a long time. It was his feeling, he said, that he owed “a great deal to the Law School” and he had always been “proud to pay it back.” He assured the assembled alumni that he had always felt that he “benefitted more from the relationship with Duke Law School than I have given.”



Dan Crawford

Dara DeHaven '80, president of the Law Alumni Association, presented the Charles A. Dukes Award to Richard A. Palmer '66.

During Law Alumni Weekend ceremonies, Richard A. Palmer '66, immediate past president of the Law Alumni Association, received the University’s 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, and is given annually to alumni who have gone “above and beyond” the call of duty in volunteer leadership roles.

Dara L. DeHaven '80, president of the Law Alumni Association presented Palmer with a plaque commemorating the award. Palmer was nominated by the Law School to receive the award for his service to the Law School and the Law Alumni Association.

During his second term on the Law Alumni Council, Palmer agreed to rotate through the officer roles (serving as secretary/treasurer, vice-president/president-elect, president and immedi-

ate past president). This commitment extended his service on the Council for several years. While vice-president he chaired the two standing committees, Awards and Nominations; chaired an ad hoc committee to consider the Law Alumni Association dues structure; and served as a member of the ad hoc Educational Programs Committee. He also served as a member of the Class of 1966 Reunion Fund Raising Committee. In addition, Palmer served for several years as a senior partner for the Commercial Practice Clinical Seminar in which role he returned to the School once each semester to counsel students on their legal research and writing projects. Upon receiving the award, Palmer expressed his appreciation for the recognition but stated that he had considered it a “privilege to work with the Council.” He found that the increased contact with alumni, students, faculty, and administration of the School had made him even more proud of Duke Law School.



## John H. Adams Receives Murphy Award

John H. Adams '62 received the eighth annual Charles S. Murphy Award during the Law Alumni Association meeting at Alumni Weekend on September 19, 1992. Dara L. DeHaven '80, president of the Law Alumni Association, presented Adams with a set of etched crystal bookends to commemorate the award and expressed to him the pride the entire Law School community feels for his accomplishments and his public service.

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 on the Duke University Board of Trustees.

The Awards Committee of the Law Alumni Council endorsed Adams, who is co-founder and executive director of the Natural Resources Defense Council, as the 1992 recipient because of his leadership in the field of environmental protection. Following his graduation from Duke Law School in

1962, Adams was in private practice in New York for several years before becoming the assistant U.S. attorney for the Southern District of New York. In 1970, he helped establish the Natural Resources Defense Council (NRDC).

The NRDC was launched by the Ford Foundation and a group of New York lawyers with shared ambitions to set up a public-interest environmental law firm. A non-profit membership organization dedicated to protecting natural resources and improving the quality of the human environment through its staff of lawyers and scientists, the NRDC has grown from a handful of supporters to over 95,000 supporting members and now has several offices throughout the United States. It has a staff of 125 and a budget of over \$15 million and supports several publications. The organization's

influence on and monitoring of the United States environmental laws have earned it the title, "The Shadow EPA."

The NRDC has helped to pass nearly all of the environmental laws in the United States, including the Clean Air Act, The Clean Water Act and the Toxic Substances Control Act. It works to increase the public's understanding of environmental issues through a number of programs including sponsorship of a nationwide toll-free information phone line on toxic substances. It brings lawsuits that may set widely applicable precedents or may preserve natural resources. Research projects are conducted and federal departments and regulatory agencies concerned with the environment are monitored on a regular basis. The NRDC also negotiates with government and industry officials regarding the drafting and interpreta-



John H. Adams '62 received the Charles S. Murphy Award from Dara L. DeHaven '80, president of the Law Alumni Association.



## Classroom Named in Honor of Carl Horn, Jr. '47

tion of environmental laws and regulations. As Tom Stoel '37, a member of the NRDC Board of Trustees since 1981, notes, "Under John's direction, the NRDC...has achieved a remarkable reputation with courts, legislatures and executive agencies for the quality of its work and the integrity with which it presents its views."

Adams' public service also extends to many other professional and community associations. Since 1979 he has served as president of the Open Space Institute. He is on the Board of Directors for the Catskill Center for Conservation, the Hudson River Foundation of Science and Environmental Research, the World Resources Institute, the Winston Foundation for World Peace, the Institute for Resource Management, the League of Conservation Voters, the New York Lawyers Alliance for Nuclear Arms Control and the American Conservation Association. He is also a member of the Governor's [New York] Environmental Advisory Board. Adams also serves the Law School as a member of the Board of Visitors.

In accepting the award, Adams expressed his particular pleasure in receiving an award from his Law School. He also noted that his service on the Board of Visitors had made him aware of the School's efforts to impress upon students the importance of public service. He praised the voluntary pro bono project for students, the loan forgiveness program for graduates taking public interest positions and the environmental law clinic as examples of this effort that "uplift the Law School and make us all proud."

Duke University and the Law School honored Carl Horn, Jr. T'41 L'47 with the naming of Classroom 104 at a dinner party celebrating the Law School's successful completion of the Campaign for Duke. The dinner was held at the Charlotte, North Carolina home of Nancy Russell Shaw T'70 L'73 and Dale Shaw T'69 M'73, on November 4.

At the dinner, Dean Pamela Gann noted that "the naming of Classroom 104 as the Carl Horn, Jr., Classroom provides the University and the Law School with an excellent opportunity to memorialize in the Law School building our historical ties to the Duke family and Duke Power Company through the leadership provided by our alumni Carl Horn, Jr., William B. McGuire L'33 and William H. Grigg T'54 L'58.

She continued, "In Article Seven of the Duke Indenture, which created Duke University, James B. Duke directed the Trustees that 'courses at this institution be arranged, first, with special reference to the training of preachers, teachers, lawyers and physicians, because these are most in the public eye, and by precept and example can do most to uplift mankind. . . .' The Carl Horn, Jr., Classroom will serve as an excellent reminder of the vision of Mr. Duke and the leadership of Mr. Horn in a major industry and as a public spirited citizen of Charlotte. The Carl Horn, Jr., Classroom, which seats 100 students, will be used to teach first-year courses and upperclass courses such as corporations, basic federal income taxation, evidence, administrative law, and intellectual property law. Additionally, when an audience of



Carl Horn '47 receives plaque from Dean Pamela Gann '73.

100 is anticipated, the Horn Classroom will be the location for major speaker events and special alumni presentations. This room will, therefore, be the scene of some of the most memorable events in the life of the Law School community."

Several Duke Law School graduates have held leadership positions in the Duke Power Company. William McGuire served as president of and consultant to Duke Power Company from 1959 to 1974. Carl Horn was president and chief executive officer of the Company from 1971 to 1976, and chairman of the board and chief executive officer from 1976 to 1982. William Grigg is vice chairman of the Duke Power Company board. The Carl Horn, Jr., Classroom was made possible through a gift of the Duke Power Foundation for the Law School's Endowment Fund for Excellence.



## Klaber To Be Law Alumni Association President

During the Law Alumni Association meeting on September 19, 1992, Dara L. DeHaven '80 passed the presidency of the Law Alumni Association (LAA) to David G. Klaber '69. Klaber thanked DeHaven for her service to the Association and the Law School which he characterized as "filled with enthusiasm and boundless energy." He presented her with a Waterford gavel and engraved stand to commemorate her service as the 1991-92 president.

DeHaven recently joined the firm of Ogletree, Deakins, Nash, Smoak & Stewart in Atlanta, Georgia as a partner. She has served on the Law Alumni Council since 1987, chairing both standing committees (Awards and Nominations) in 1990-91. Also in that year, she served on the class of 1980

Reunion Fund Raising Committee. She is now serving a two year term as the Law School representative to the Duke Alumni Association Board of Directors.

Klaber is a partner at Kirkpatrick & Lockhart in Pittsburgh, Pennsylvania. He joined the Law Alumni Council in 1989-90. He has chaired both standing committees of the Council (Awards and Nominations), as well as an ad hoc committee on Communications and currently serves on the Education Committee which will explore and recommend faculty programming for Law Alumni Weekend as well as reviewing student/alumni programming. Klaber also helped organize the Pittsburgh local alumni association in 1987 and served as its first president.

He received the University's Charles A. Dukes Award in 1991 for his alumni service to the Law School.

Klaber introduced the other LAA officers: Haley G. Fromholz '67, vice-president/president-elect; Valerie T. Broadie '79, secretary/treasurer; and Richard A. (Chip) Palmer '66, immediate past president.

Klaber noted that his service to the Law School has intensified his feeling that Duke Law School is "unique." He urged other alumni to continue to be involved with the Law School as much as possible whether it be through local alumni associations or by returning for reunions and for other alumni programs at the Law School.

Klaber expressed his pleasure in watching the activities of the Law Alumni Association grow rapidly over the last few years and in the fact that it is now not only serving the alumni but also the students and the Law School. For example, alumni/student programs such as the Career Conference and Alumni Seminars help provide career counseling and insights into the practicalities of law practice. After again urging that all alumni stay involved with the Law School, Klaber dismissed the group to attend the Groundbreaking Ceremony for the Law School building addition and to celebrate "a wonderful day in the life of the Law School."



Dan Crawford

During Law Alumni Weekend, Dara L. DeHaven '80 (far left) passed the presidency of the Law Alumni Association to David G. Klaber '69 (far right). Also pictured are, from left, Richard A. Palmer '66, immediate past president; Haley G. Fromholz '67, vice-president/president elect; and Valerie T. Broadie '79, secretary-treasurer.



## Alumni Seminar on Career Lifestyles

The Law Alumni Association continues to sponsor alumni seminars which addresses timely topics regarding the legal community through alumni panel discussions. On September 17, a panel of alumni discussed career lifestyles. This topic was chosen in accordance with the decision by the Law Alumni Council that the focus of the seminars in the immediate future should be career counseling. Student response to the alumni seminars has been very positive. Students feel that alumni can present information about careers by drawing upon their own experience that might not be readily available through the Office of Career Planning & Placement. Videotapes of alumni-student programs sponsored by the Law Alumni Association are made available to students by the Office of Career Planning & Placement and the Law Library.

This panel of alumni provided information to the students on the lifestyles that different types of careers offer. They discussed their current careers, including any significant changes made to the career path, describing the balances they have achieved within their professional lives considering the time they devote to client development, management and other professional commitments. They also described how they have balanced their professional and personal lives.

Members of the panel included alumni in a variety of positions who were able to discuss diverse career lifestyles. **John M. Conley '77** is a professor of law at the University of North Carolina at Chapel Hill and holds an adjunct appointment in Duke's Department of Cultural Anthropology. Before joining the UNC faculty he was in private practice as a litigator.

**Ralph B. Everett '76** is a partner and vice chair of the Washington office of the international firm of Paul, Hastings, Janofsky & Walker, where he heads the firm's legislative practice group. A twelve-year veteran of Capitol Hill, Everett served as chief counsel and staff director of the U.S. Senate Committee on Commerce, Science and Transportation. Prior to holding that position, he was the Committee's minority counsel and staff director and was legislative and special assistant to Senator Ernest F. Hollings. **Donna C. Gregg '74** specializes in communications and copyright law. Immediately following graduation, she spent a year at the Federal Communications Commission before entering private practice. She is currently a partner at Wiley, Rein & Fielding in Washington, D.C. **Vincent L. Sgrosso '62** is vice president and general counsel with the BellSouth Advertising Corporation in Atlanta, Georgia. He has been with BellSouth Corporation since 1968. Before that he was in private practice. **Dara L. DeHaven '80**, president of the Law Alumni Association, served as moderator of the panel. She has been in private practice in Atlanta since her graduation. This year she joined the firm of Ogletree, Deakins, Nash, Smoak & Stewart, as a partner specializing in labor, employment law and litigation.

The Law Alumni Council hopes to continue to sponsor two Alumni Seminars during each academic year. At its spring meeting in February the Council will determine the topic for the next scheduled seminar to be held on April 15, 1993 in conjunction with the Barristers/Board of Visitors Weekend.



Ralph Everett '76 talks with students following the Alumni Seminar.



## Professional News

**'36 Edward Rubin** remains of counsel to the firm of Mitchell, Silberberg & Knupp in Los Angeles, California.

**'37 David H. Henderson**, of Charlotte, North Carolina, has completed the third of a trilogy of outdoor essays and fiction. He regularly contributes to national outdoor magazines, and is the book editor for *Pointing Dog Journal*. His newest book was published in August by Winchester.

**'38 Horace L. Bomar** continues to practice business and probate law in Spartanburg, South Carolina.

**'47 Matthew S. Rae, Jr.** has been appointed by the National Conference of Commissioners on Uniform State Laws to chair the Drafting Committee for Revision of the Uniform Principal and Income Act. He is also a member of the Drafting Committee for a Uniform Defamation Act.

**'48 John M. Turner** has retired as a circuit judge in Dade County, Florida, after serving for thirty-three years. He has returned to the practice of law in Miami.

**'51 Arnold B. McKinnon** retired on September 1 as chairman and chief executive officer of Norfolk Southern Company in Norfolk, Virginia. He had worked with Norfolk Southern, and its predecessor company, Southern Railway Systems, for over four decades.

**Charles E. Villanueva**, a New Jersey state superior court judge in Newark since 1979, has been appointed a state appeals court judge by the New Jersey Supreme Court effective September 1, 1992.

**Carmon J. Stuart '38** has been named the 20th recipient of the Judge John J. Parker Memorial Award, the highest honor bestowed by the North Carolina Bar Association. Judge Parker died in 1958 after fifty years as a member of the bar including thirty-two years as a judge of the United States Court of Appeals. The award, which is not given every year, honors the memory of Judge Parker, encourages the emulation of his "deep devotion and enduring contribution" to the law and to the administration of justice, and recognizes conspicuous service by others in the cause of jurisprudence in the state of North Carolina.

Since retiring in 1983 after twelve years as the clerk for the United States District Court for North Carolina's Middle District in Greensboro, Stuart has been active in the development of court-ordered arbitration, especially with the North Carolina Bar Association's pilot project and as vice president of Duke's Private Adjudication Center. He served on the North Carolina Bar Association task force that recommended the state pilot



arbitration program in 1985 and has since chaired the committee which has seen that effort through to fruition.

"He has made major contributions," said Greensboro attorney L. Richardson Preyer. "He has brought about the most important innovations in North Carolina since Spencer Bell's." Bell, from Charlotte, was the first winner of the Parker Award back in 1959.

**'56 David H. Allard** has been appointed by Secretary of Health & Human Services Louis Sullivan as regional chief administrative law judge for Region I in Boston, Massachusetts.

**Gary S. Stein** has been confirmed to a tenured seat on the New Jersey Supreme Court, permitting him to serve until mandatory retirement at age seventy. He began service on the court in January 1985.



## ALUMNI ACTIVITIES

'59 **Frank H. Abernathy, Jr.**, president of Abernathy & Co. in Richmond, Virginia, served as national president of the Phi Delta Theta fraternity for 1992.

'63 **Gary C. Furin** was commissioned as an admiral in the Texas Navy by Governor Ann Richards in June. He is a sole practitioner in Atlanta, Georgia, where he specializes in immigration law.

**Lucius H. Harvin, III**, chairman of the board of Rose's Stores, Inc., headquartered in Henderson, North Carolina, has been selected to the Discount Hall of Fame. He was the sixteenth person inducted into the Hall, joining other well-known retailers such as Sam Walton and Harry Cunningham.

'64 **Charles E. Burgin** has become president-elect of the North Carolina Bar Association. He is a trial lawyer with the firm of Dameron and Burgin in Marion. He is a past president of both the McDowell County Bar Association and the 29th Judicial District Bar, and has served on the N.C. Bar Association's Board of Governors.



Charles E. Burgin '64

**John D. Leech**, a partner with the Cleveland, Ohio firm of Calfee, Halter & Griswold, has been elected to a three-year term to the national Board of Trustees of the American Hospital Association. He also chairs the health care practice section of his firm.

**Robert K. Montgomery**, a senior partner in the Los Angeles, California office of Gibson, Dunn & Crutcher, has been elected to the Board of Directors of Rose's Stores, Inc. of Henderson, North Carolina.

'65 **Donald B. Gardiner** has joined Banc One Capital Corporation in Columbus, Ohio as an investment banker in the corporate finance and venture capital areas.

**David C. Hjelmfelt** was invited to teach international trade law for the second year at the Institute for International Trade in Kiev, Ukraine last October. He co-authored with Channing D. Strother, Jr. an article, *Antitrust Damages for Consumer Welfare Loss*, 39 CLEVELAND STATE L. REV. 505 (1992). See the review of his book, *Executive's Guide to Marketing, Sales & Advertising Law* at page 35.

**William H. Lear** has been appointed by the U.S. House of Representatives to the National Commission on Manufactured Housing.

'67 **Norman G. Cooper**, retired colonel in the United States Army, is special assistant to the general counsel of the Department of Veteran Affairs in Washington, D.C.

**Robert E. Sheahan** recently published a book entitled *Personnel and Employment Law in North Carolina*.

'68 **Lynn E. Wagner** has formed the Orlando, Florida litigation firm of Cabaniss, Burk & Wagner, with an emphasis on products liability, toxic substances, environmental, construction, equal employment and commercial litigation.

'69 **Kathleen M. Mills** has been appointed assistant general counsel of Bethlehem Steel Corporation in Bethlehem, Pennsylvania.

'71 **Michael W. Conlon** has been named partner in charge of the Washington, D.C. office of Fulbright & Jaworski.

**James R. Fox**, a director of the Winston-Salem, North Carolina firm of Bell, Davis & Pitt, has been appointed to serve as a voting advisory member on the Ethics Committee of the North Carolina State Bar.

**Laurent R. Hourcle** has retired as a colonel in the United States Air Force, and has accepted an appointment as associate professor of law at George Washington University, working with graduate law students in environmental law.

'72 **David W. Hardee** announces the formation of Hardee Capital Partners, L.P., an investment partnership in Pacific Palisades, California.

**Richard O. Pullen** has founded a new communications company, Communication Innovations, Inc., in New Rochelle, New York.

'73 **John S. Black** has been elected president of the 20,000-lawyer Missouri Bar. He is a partner at the Kansas City firm of Swanson, Midgley, Gangwere, Clarke & Kitchin, where he practices in the areas of business law, sports law and civil litigation.



John S. Black '73

**Eugene A. Ritti** is a partner in the Boise, Idaho office of Hawley Troxell Ennis & Hawley. He is chair of the firm's litigation department, and his practice emphasizes commercial litigation and the representation of utility companies in property tax valuation disputes in the northwestern states.



## ALUMNI ACTIVITIES

**Roy R. Robertson, Jr.** is a partner at Eichhorn, Eichhorn & Link in Hammond, Indiana.

'74 **James R. Eller, Jr.** has joined Glenfed, Inc., in Glendale, California as corporate secretary, and has been named corporate counsel and secretary of its principal subsidiary, Glendale Federal Bank.

**L. Lynn Hogue** has been promoted to lieutenant colonel in the U.S. Army Reserves and is an instructor at the Law Department of the U.S. Military Academy at West Point.

'75 **Nathan C. Goldman** has authored his third book, *Space Policy: An Introduction*, Iowa State University Press, 1992.

'76 **John R. Flavin** is president of Grosvenor International, an international real estate and asset management firm based in Washington, D.C.

**Lewis E. Melahn** is director of the Department of Insurance for the State of Missouri.

**Eugene M. Schwartz** is a senior attorney with the Office of Thrift Supervision, U.S. Treasury Department, in Jersey City, New Jersey.

**Daniel Van Horn** is now an assistant United States attorney for the District of Columbia.

'77 **Michael A. Ellis**, a principal with the firm of Kahn, Kleinman, Yanowitz & Arnson in Cleveland, Ohio, was a moderator at the Department of Commerce's 1992 Ohio Securities Conference in November. He moderated the panel called "Small Business Initiatives—SEC Proposals," and specifically discussed "Regulation A and Intrastate Offerings."

**D. Ward Kallstrom** has been named chair of the ABA Joint Committee on Employee Benefits for 1992-93, and management co-chair of the ABA Labor & Employment Law Section Employee Benefits Committee. He was senior editor of *Employee Benefits Law* (BNA, 1991 and 1989-91 supps.).

'78 **Dwight M. Doskey** continues to practice criminal law privately and as head of the Appellate Division of the Public Defender's Office in New Orleans, Louisiana.

**John Hasnas** is now an assistant professor at Georgetown University's School of Business Administration.

**James T.R. Jones** was recently granted tenure at the University of Louisville School of Law.

**H. Michael Keller** has been recognized as the "Natural Resource Lawyer of the Year" by the Energy, Natural Resources, and Environmental Law Section of the Utah State Bar. He practices environmental law with the Salt Lake City firm of Van Cott, Bagley, Cornwall & McCarthy, and was honored for his "tireless contributions to the profession and the community."



H. Michael Keller '78

**Linda A. Malone** has been named the Marshall-Wythe School of Law Foundation Chair in recognition of her outstanding contributions to the Marshall-Wythe School of Law at the College of William & Mary. She teaches environmental and international law, and is the first female professor to receive a named professorship at Marshall-Wythe.

**Pamela A. Peters** has been elected to a second term as a commissioner in the City of Winter Park, Florida. Her special interests include redevelopment and rehabilitation of economically blighted areas and environmental concerns such as lakes and storm water management and solid waste management.

'79 **Diane Rowley Toop** is a visiting professor at the University of Louisville School of Law for the 1992-93 academic year.

'80 **Celeste Norris Mitchel** is now practicing at Bogle & Gates in Seattle, Washington.

**Michael S. Thwaites** is a partner in the Greenville, South Carolina office of Ogletree, Deakins, Nash, Smoak & Stewart.

**R. Scott Toop** has been relocated to Louisville, Kentucky by his employer, Pepsico, to be division counsel of its KFC subsidiary.

'81 **Leslie K. Thiele** has become of counsel to the firm of Whiteman, Osterman & Hanna in Albany, New York.

'82 **Stanley P. Barringer, Jr.** now works for Bristol-Myers Squibb Co. in Evansville, Indiana.

**Ruth Dukelow**, a library establishment specialist at the Library of Michigan in Lansing, has authored *The Library Copyright Guide*, published by the Association for Educational Communications and Technology (Washington, D.C., 1992).

**James B. Hawkins** has been named general attorney for BellSouth Enterprises, Inc. in Atlanta, Georgia. He also continues as president and CEO of Dataserve Financial Services, Inc., a BellSouth company in Eden Prairie, Minnesota.



## ALUMNI ACTIVITIES

**Thomas Logue** has been appointed to the Board of Directors of the Dade County Florida Bar Association, a volunteer association of over 5,000 lawyers in Dade County. He is an assistant Dade County attorney, representing local government in civil litigation.



Thomas Logue '82

**D. Michael Underhill** has been elevated to partnership at Morgan, Lewis & Bockius. He is a member of the labor & employment law section of the firm, resident in Washington, D.C.



D. Michael Underhill '82

**'83 Clement R. Gagne, III** is now a partner with the firm Janis, Schuelke & Wechsler in Washington, D.C.

**R. Benton Gray** has been elected to partnership in the Cleveland, Ohio office of Thompson, Hine and Flory, where he is a member of the firm's litigation group.

**Omer G. Poirier** is now with the United States Attorney's Office in Honolulu, Hawaii.

**Robert M. Wyngaarden** announces the formation of the firm of Johnson & Wyngaarden in Lansing, Michigan, practicing general civil litigation and professional liability defense.

**'84 Jonathan L. Drake** has been elected a partner in the firm of Dechert Price & Rhoades in Philadelphia, Pennsylvania, where he is a member of the federal and state tax practice group and the mergers and acquisitions/restructuring practice group.

**Duane M. Geck** has been named a member and shareholder of Severson & Werson in San Francisco, California.

**John H. Jameson** is marketing manager for cellular operations at American Mobile Satellite Corporation in Washington, D.C.

### Correction

In the Summer 1992 issue, it was incorrectly reported that **Jerold J. Novick**, Class of '84, had been named a partner in the Philadelphia, Pennsylvania firm of Earle Palmer Brown & Spiro.

The *Duke Law Magazine* regrets any misunderstanding this error may have caused.

Mr. Novick became a partner at Wolf, Block, Schorr and Solis-Cohen in Philadelphia on February 1, 1992. He is a member of that firm's real estate department, and concentrates his practice in the financing, development and leasing of commercial real estate, such as shopping centers, office buildings and condominium projects.

**Margaret J. Reinsch** is senior legislative analyst for the Joint Standing Committee on the Judiciary of the Maine State Legislature.

**Wilson A. Schooley** has been appointed to the cabinet level position of national budget director of the American Bar Association Young Lawyers Division. He is a shareholder with the firm of Jennings, Engstrand & Henrikson in San Diego, California, where he is a member of the commercial litigation and construction law practice groups.

**Elizabeth B. Wright** has been elected to partnership in the firm of Thompson, Hine and Flory, resident in the firm's litigation group in Cleveland, Ohio.

**'85 James E. Lilly** has been named a partner in the Winston-Salem, North Carolina office of Womble Carlyle Sandridge & Rice.

**Neil D. McFeeley**, an attorney with the Boise, Idaho law firm Eberle, Berlin, Kading, Turnbow & McKlveen, has been re-elected to the American Judicature Society's Board of Directors. Pressly M. Millen has become a partner with the firm of Womble Carlyle Sandridge & Rice, resident in the Raleigh, North Carolina office.

**Peter A. Thalheim** continues his solo practice of commercial law serving New York City and Fairfield County, Connecticut.

**Henry E. Valenzuela** announces the formation of the personal injury firm of Yerrid, Knopik & Valenzuela in Tampa, Florida.

**Albert G. Van Marwijk Kooy** has been named a partner with the firm of Trenité Van Doorne in Amsterdam, The Netherlands, where he practices labor, employment and general commercial law.

**'86**

**Peter J. Juran** has become a shareholder with House & Blanco in Winston-Salem, North Carolina, where he concentrates in civil litigation.



Peter J. Juran '86

**Karen L. Manos (Tremblay)** has been promoted to major in the United States Air Force.



## ALUMNI ACTIVITIES

**James D. Smith** has been named assistant dean and adjunct professor of law at the Emory University School of Law in Atlanta, Georgia. He directs student affairs and teaches intellectual property. He is also of counsel to the firm of Arnold, White & Durkee in Houston, Texas.

**Paul T. Stagliano** has joined the legal department of BellSouth Telecommunications in Atlanta, Georgia, practicing in the labor and employment law area.

'87 **Lisa Thompson Kaplan** is now a writer and editor in the education division of LOMA, an insurance education association in Atlanta, Georgia.

**Bart J. Patterson** has joined as a shareholder the newly-created litigation firm of Daughton, Hawkins, Brochelman & Guinan in Phoenix, Arizona.

**Christopher J. Petrini**, a litigator with the Boston, Massachusetts firm of Hinckley, Allen, Snyder & Comen, is vice-chairman of the Framingham School Committee, in the second year of a three-year elected term.

**Julie O'Brien Petrini** was made a junior partner in the Boston, Massachusetts firm of Hale and Dorr, where she is a litigator specializing in general commercial and trademark matters.

'88 **Erik O. Autor** is now international trade counsel on the minority staff of the United States Senate Committee on Finance, where he advises the minority members and assists in drafting trade legislation.

**Lori E. Handelsman** has become assistant general counsel for the Department of Environmental Regulation in Tallahassee, Florida.

**John H. Kongable** has been promoted to major in the United States Air Force, and has been reassigned as appellate government counsel, Air Force Legal Services Agency at Bolling AFB in Washington, D.C.

**Philip M. Nichols** is now an assistant professor at The Wharton School of Business at the University of Pennsylvania, where his research centers on international law.

**Howard A. Skaist** is now a patent attorney at GE's Corporate Research and Development Center in Schenectady, New York.

**Carolyn E. Zezima** is a juvenile criminal prosecutor in Manhattan Family Court in New York City.

'89 **Eric L. Hiser** practices environmental law in Phoenix, Arizona, and writes a monthly column in *HAZMatters*, the newsletter of the Southern Arizona Environmental Management Society. He also serves as conservation chairman of the local Boy Scout council.

**Mark L. Kaplan** has joined the Atlanta, Georgia firm of Glass, McCullough, Sherrill & Harrold as an associate.

**Frank J. Kokoszka** announces the formation of the firm of Blau, Eberhardt & Kokoszka in Chicago, Illinois, practicing general civil and commercial litigation, with an emphasis in commodity futures, bankruptcy, insolvency and creditors' rights.

**Susan Prosnitz** has become staff counsel to the Boston, Massachusetts Police Department.

'90 **Jeanette E.M. Almsatter** is now an associate in the Stockholm, Sweden office of Baker & McKenzie.

**Miriam R. Arichea** has joined the tax litigation group at Bryan Cave in St. Louis, Missouri.

**Rebecca Ament Carr** is now practicing employment and labor law with Verner, Liipfert, Bernhard, McPherson & Hand in Washington, D.C.

**Bradley B. Furber**, an associate at Bogle & Gates in Seattle, Washington, has written *Two Promises, Two Propositions: The Wheeler-Howard Act as a Reconciliation of the Indian Law Civil War*, 14 U. Puget Sound L. Rev. 211 (1991).

**Sally J. McDonald** has joined the firm of Rudnick & Wolfe in Chicago, Illinois, practicing labor and employment law.

**Julius Nyang'oro** has been promoted to associate professor and became chairman of African and Afro-American Studies at the University of North Carolina at Chapel Hill on July 1, 1992.

**Janis R. Williams**, an attorney with Fennemore Craig in Phoenix, Arizona, has been elected to the Board of Directors of the American Cancer Society in Scottsdale.

'91 **Cynthia Adcock-Steffey** is now a staff attorney at North Carolina Prisoner Legal Services in Raleigh.

**Jennifer Alvey** is now an associate with Howrey & Simon in Washington, D.C., and is a member of the Board of Directors and chair of the Community Service Committee of the Duke Club of Washington.

**Kristen Scheffel Crisp** has become an associate at Oppenheimer Wolff & Donnelly in Chicago, Illinois.

**F. Brian Schneiderman** practices general business law with Mays & Valentine in Norfolk, Virginia.



## Personal Notes

'65 **William H. Lear** was married to Jorlee Williams in 1992.

'67 **Robert E. Sheahan** of High Point, North Carolina, was married to Pati Smith on March 20, 1991.

'71 **Peter R. Seibel** and his wife, Karen, are pleased to announce the birth of their first child and son, Tyler Randall, born on May 14, 1992.

'72 **Edward Reibman**, and his wife, Elizabeth, proudly announce the birth of a son, Samuel Preston Reibman, on August 27, 1992.

'78 **Nancy Halleck** and her husband, Tom Hart, are pleased to announce the birth of a son, Matthew Halleck Hart, on March 8, 1991.

**James T.R. Jones** and his wife, Jane Irby, are happy to report the birth of a second child, Anne Shirley, on November 13, 1991.

**Jane Makela** is pleased to announce the birth of a daughter, Kathryn Makela Vogt, on December 1, 1991.

'79 **Carl J. Schuman** and his wife, Mary, happily report the birth of their first child, a daughter named Brooke Anne, on June 5, 1992.

'80 **W. Steven Woodward** and his wife, Nanciann, are the proud parents of their first child, a daughter named Alexandra Frazier Woodward, born on December 26, 1991.

'81 **Alan S. Madans** is pleased to report the birth of a daughter, Hannah, on November 12, 1991.

'82 **Stephen M. Dorvee** was married to **B. Ida Patterson '88** on June 6, 1992. Steve and Ida both practice with Arnall, Golden & Gregory in Atlanta, Georgia, and Steve is a member of the City Council in Roswell.

**Kalju Nekvasil** was married to Johanna Feliciano on February 22, 1992. Kalju is a partner with Goodman & Nekvasil in Safety Harbor, Florida

'83 **Robert M. Wyngaarden** and his wife, Teresa, are happy to announce the birth of their third child, Marie Lillian, on December 8, 1991.

'84 **Lee D. Mackson** and his wife, Andrea, are pleased to report the birth of their first child, a daughter named Samantha Bryn, born on July 29, 1992.

**Margaret J. Reinsch** and her husband, Bruce Jones, are happy to announce the birth of their second son, Cooper Whitney Reinsch Jones, on April 30, 1992.

**Robert P. Riordan** and his wife, Carolyn, happily announce the arrival of their second daughter and third child, Claire Elizabeth, born on July 21, 1992.

**Peter G. Verniero** and his wife, Lisa, are pleased to announce the birth of their first child, a daughter named Jennifer Lynn, on October 5, 1992.

'85 **Carrie Emerson** and **Darrell Van Deusen**, both Class of '85, are pleased to announce the birth of their second child, a daughter named Margaret, on June 26, 1992.

**Eric Isaacson** and **Susan Weaver '88** are the proud parents of a daughter, Clio Alyssa Weaver Isaacson, born on May 6, 1992.

**Siobhan O'Duffy Millen** and **Pressly M. Millen**, both Class of '85, are happy to announce the birth of their second child, and first son, Conor McAuley Millen, on March 6, 1992.

'86 **Deborah Macheimer Bartlett** and her husband, John, announce the birth of their first child, Erin Louise Bartlett, on February 17, 1992.

**Pamela Gronauer** was married to Al Barker Hill on June 6, 1992. Pam now practices with Macey, Wilensky, Cohen, Wittner & Kessler in Atlanta, Georgia.

**Peter J. Juran** and his wife, Beth, announce the birth of twin daughters, Jeanette Melody and Mary Josephine, on April 21, 1992.

**Thomas W. Peterson** and his wife, Teresa, are pleased to report the birth of their first child, a daughter named Ashley Elizabeth, on November 11, 1991.

'87 **Frank E. Derby** was married to Emily Pachuta on October 25, 1992 in Brookline, Massachusetts. Frank is an associate with Christy & Viener in New York City.

**Lisa Thompson Kaplan** and **Mark L. Kaplan '89** are happy to report the birth of their first child, Caroline England, on January 31, 1992.

**Bart J. Patterson** announces the birth of his third child, and first son, Kendal James, on June 5, 1992.

**Julie O'Brien Petrini** and **Christopher J. Petrini**, both Class of '87, are delighted to announce the birth of their son, Shawn Joseph, on June 11, 1992.



**Cecelia Smith-Schoenwalder** and her husband, Tim, are happy to report the recent birth of a son, Todd Carper Schoenwalder.

**Laurel E. Solomon** was married to Paul C. Nicholson on October 17, 1992 in Durham, where Laurel practices with Hayes Hofler and Associates.

**'88 Mark R. DiOrio** and his wife, Jill, announce the birth of their second child, a son named Luke Cameron, on April 20, 1992.

**B. Ida Patterson** was married to **Stephen M. Dorvee '82** on June 6, 1992. They reside in Roswell, Georgia and both practice at Arnall, Golden & Gregory in Atlanta.

**Emily D. Quinn** is pleased to announce the birth of a daughter, Keelin Quinn Ryan, on April 19, 1992.

**Sandra Seaton-Todd** is happy to announce the birth of a daughter, Sarah Jean Seaton-Todd, on November 9, 1992.

**Susan Weaver** and **Eric Isaacson '85** are happy to report the birth of a daughter, Clio Alyssa Weaver Isaacson, on May 6, 1992.

**'89 Mary Dalton Baril** and her husband, Steve, are happy to announce the birth of a daughter, Elizabeth Dalton Baril, on June 4, 1992.

**Michael Grundei** is proud to announce the arrival of a son, Scott, born on April 26, 1992.

**Mark L. Kaplan** and **Lisa Thompson Kaplan '87** are pleased to announce the birth of their first child, Caroline England, on January 31, 1992.

**Susan Maxson** was married to Thomas S. Dick on October 17, 1992. Susan is an associate with Chadbourne & Parke, specializing in reinsurance in their Washington, D.C. office.

**'90 Claude A. Allen**, and his wife, Jannese, are happy to announce the birth of their first child, Claude Alexander Allen III, on October 2, 1992.

**Elizabeth I. Gallop** was married to Joel Dennis on September 6, 1992. Betsy is in-house counsel at The Medicine Shoppe International in St. Louis, Missouri.

**Lorri Gudeman Powell** and her husband, Jeff, proudly announce the birth of their first child, a daughter named Sara Jo, on November 2, 1992.

**'91 C. Barr Flinn** was married to **Kendra Stetser '92** on September 12, 1992.

## Obituaries

### Class of 1932

**Joseph T. Carruthers, Jr.**, 85, of Greensboro, North Carolina, died on October 25, 1992. He was retired from the Greensboro firm of Carruthers and Roth, a former member of the North Carolina House of Representatives, and a former member of the North Carolina Senate. He was a World War II veteran, a former member of the N.C. National Guard, a former president of the Greensboro Bar Association and chairman of the Greensboro Redevelopment Commission. He was also active in numerous civic organizations.

Carruthers is survived by a daughter, Carol C. Painter of Durham; two sons, Joseph T. Carruthers, III of Winston-Salem, North Carolina and Thomas D. Carruthers of Greensboro; a foster son, Marvin Carruthers of Greensboro; nine grandchildren; and three great-grandchildren.

### Class of 1938

**Charles R. Warren, Jr.**, 77, of Danville, Virginia, died in December 1991 after a year of declining health. He practiced criminal law in Danville for fifty years, and was the founding

partner of the firm of Warren, Parker, Williams and Stilwell (now Williams, Stilwell, Morrison and Grimes). He was a past president of the Virginia Bar Association, and was active in community affairs.

Warren is survived by a daughter, Lucie Warren Wolfe of Gettysburg, Pennsylvania; a stepson, Andrew Hargraves of Abingdon, Virginia; two sisters, Maria Warren Bromleigh of Williamsburg and Louise Warren Wyman of Cadillac, Michigan; and two grandchildren.



## ALUMNI ACTIVITIES

**Class of 1941**

**A. Fred Rebman, III**, 74, of Chattanooga, Tennessee, died on October 13, 1992. He was a partner in the firm of Spears, Moore, Rebman and Williams where he specialized in civil litigation and corporate law, and was the attorney for the Chattanooga-Hamilton County Convention and Trade Center. Rebman served in the Navy during World War II, and was a former president of the Chattanooga Bar Association and the Estate Planning Council of Chattanooga. Rebman was a fellow in the American College of Trial Lawyers and a member of the Chattanooga Bar Foundation's Fellow program.

Rebman is survived by a sister, Annie Kate Rebman Moore; a nephew; and three great-nephews.

**Class of 1951**

**Alfred E. Dufour**, 64, of Aiken, South Carolina, died on September 3, 1992. A veteran of the Navy during World War II, he was a partner in the firm of Dufour, Dufour & Johnson. He was a member of the South Carolina Bar, an original member of the Board of the South Carolina Bar Council, and chair of numerous committees for the South Carolina Bar. For over twenty-five years, Dufour was a member of the Advisory Board of the South Carolina National Bank, Aiken Office, and he served as an officer of several civic organizations.

Dufour was a founding member of the Board of Directors of the Aiken County Public Defender's Association and served as its first treasurer. He was a former president of the Aiken County Bar, and served as attorney for the City of Aiken and as a United States Magistrate for several years.

Dufour is survived by his wife, **Milly S. Dufour '51**; three sons, Glenn

Dufour of Columbia, South Carolina, Stephen Dufour and Raymond Dufour, both of Aiken; his mother, Louise Dufour of Charleston; a sister, Elizabeth D. Rivers of Charleston; and two grandchildren.

**George E. Orr**, of Miami, Florida, died on May 2, 1992 of cancer. He had been a Dade County circuit judge since 1974, and had served three terms as board president of the Dade Youth Fair and Exposition.

Orr is survived by his wife, Rusela; seven children; and seven grandchildren.

**Class of 1965**

**Gerald Donald Dansby**, 60, of Perry, Florida, died on December 27, 1992. He practiced law in Perry, with several different partners, from 1966 until his death. He served at various times as county attorney for Taylor County, as public defender for the Third Judicial Circuit, and as attorney for the Taylor County School Board and for the Development Authority.

Dansby is survived by three brothers, Sherrill A. Dansby of Tallahassee, Florida, Larry Dansby, and H. Bishop Dansby of Rockingham County, Virginia; and a sister, June Fleckenstein of Flint, Michigan.

The family has asked that memorial gifts be made to Duke University Law School, Dean's Office, Box 90362, Durham, North Carolina 27708.

**Class of 1957**

**Theodore P. Huggins**, 63, of Danville, Virginia, died on July 25, 1992 from injuries he sustained in a fall. He had practiced law in Danville since graduating from the Law School. He was a veteran of the United States Army, having served in Korea, and was former president of the Danville Bar

Association and a member of the Virginia Trial Lawyers Association.

Huggins is survived by his wife, Kathleen Adkins Huggins; a son, William Sidney Huggins of Richmond; a daughter, Elizabeth H. Brown of Danville; and three grandchildren.

**Class of 1969**

**Charles S. Mill, Jr.**, of Aiken, South Carolina, died on September 1, 1992. He was a retired lieutenant colonel in the United States Marine Corps, and had been commanding officer at Camp Lejeune, North Carolina.

Mill is survived by his parents, Mr. and Mrs. Charles S. Mill of Aiken; and a brother, Jeffrey Mill of Mystic, Connecticut.

**Class of 1971**

**Ernest E. Ratliff** of Clinton, North Carolina, died on September 20, 1992 in an automobile accident. He was an attorney in Clinton.

Ratliff is survived by two daughters, Yasmin Ratliff and Chanda Ratliff, both of Raleigh; a son, Mark Ratliff of Holly Springs, North Carolina; a sister, Velma Peacock of New York; two brothers, Daniel Ratliff of Lillington, North Carolina and Robert Ratliff of Baltimore, Maryland; and six grandchildren.

**Class of 1974**

**Robert B. Elwood**, of New York City, died on March 24, 1992. He was an attorney with LaBoeuf, Lamb, Leiby and MacRae. He was also a student at the Julliard School of Music.

Elwood is survived by his mother; a sister; and two brothers.



**Class of 1976**

**Fred Raymond Butner**, 41, died October 7, 1992, in Key West, Florida, from injuries suffered as the result of a fall. Fred was born and reared in Winston-Salem, North Carolina, where much of his family still lives. He graduated from R.J. Reynolds High School there in 1969. He was a Duke undergraduate, class of 1973, with a degree in Economics (with distinction), and also a graduate of Duke Law School, Class of 1976.

At Duke, Fred was active in student government and in politics. He served as ASDU attorney general and treasurer, was a member of the North Carolina Student Legislature, and was named the North Carolina Young Democrats Outstanding College Member. Fred served as special assistant to University President Terry Sanford, and was national delegate coordinator for the Terry Sanford Presidential Campaign in 1972. He was also a member of Pi Kappa Phi, the Old Trinity Club, and was a founder and director of the Duke Day Care Program.

While at Duke Law School, Fred served as president of the Duke Young Democrats, was a member of Phi Alpha Delta, was a Moot Court participant, and served as representative to the Duke Alumni General Council.

Following graduation from Duke Law School in 1976, Fred moved to Key West, Florida, where he lived continuously until his death. He initially served as an assistant state attorney, then

moved into private practice with the law firm of Neblett and Sauer. For the last ten years, he had a solo general practice, with a particular emphasis in personal injury and trial work. He also had a law office in Boone, North Carolina.

In addition to being a practicing lawyer, Fred had also been an instructor of law at Florida Keys Community College. He had a weekly radio program "The Law and You" on WKWF radio station, and occasionally also guest hosted a local television talk show.

Fred was a past president of the Monroe County (Fla.) Bar Association and served on the Florida Bar Board of Governors. He was a member of the Florida, North Carolina and District of Columbia bars, as well as the Association of Trial Lawyers of America and the American Bar Association. In 1983, he was recognized as an Outstanding Young Man of America.

Fred was also quite active in a number of community and civic affairs. He was a past president of the Monroe County Democratic Party, a state committeeman for the Florida Democratic Party, past president of the Key West Business Guild, served on the Salvation Army Board of Directors, and was active in the Metropolitan Community Church. In 1988, Fred was a delegate to the Democratic National Convention, where he proclaimed himself the "Southernmost Delegate in the U.S." Fred also devoted considerable energies to defending

the civil rights of minorities and the oppressed, and in 1991 drafted a human rights ordinance that was enacted by the Key West City Council.

In articles shortly after Fred's death, the Miami Herald stated:

"As an attorney, major Democratic Party organizer, radio show host, civil rights advocate, and leader in his church, Butner was at the center of Key West life. He had a boyish face, an eager grin, an enormous suit collection, a passion for public life, and an overactive fax machine and an office in a restored wood-slatted Conch House where he dubbed himself the "Southernmost Attorney in the Nation"... "He caused us to rethink who we are and what we really believe," [the minister presiding over Fred's memorial service] said. "If your civil rights were challenged, Fred was right there for you. He had a passion for civil rights."

Fred is survived by his parents, Fred W. Butner, Jr. and Martha H. Butner of Winston-Salem, North Carolina; two brothers, **Blain B. Butner '80** of Arlington, Virginia, and David E. Butner of Winston-Salem; numerous other relatives in North Carolina; and his dog of many years, a Great Pyrenees named Duke.

The family has asked that memorial gifts be made to Duke University Law School, where an appropriate memorial will be designated.

*Blain B. Butner '80*

**Marianna Long**, 86, of Durham, died on September 7, 1992. Ms. Long first joined the staff of the Duke University Law Library in 1928, and retired as director in 1973. She was a member of the Daughters of the American Revolution, the Durham Women's Club, and the Kings Daughters Club.

Ms. Long is survived by two sisters, Virginia Howell of Atlanta, Georgia and Carolina Sanford of Myrtle Beach, South Carolina; two brothers, Locke Long of Salisbury, North Carolina and Robert Long of Statesville, North Carolina; and a lifelong friend, Evelyn Harrison of Durham.

**Gene Teitelbaum** died on November 11, 1992. He served as associate law librarian at Duke for several years in the early 1970s. In 1975, he became director of the Law Library at the University of Louisville. He resigned that position in 1986, remaining on the Louisville faculty teaching copyright, negotiable instruments, constitutional law, and administrative law.



UPCOMING EVENTS

Law Alumni Weekend.....October 8-9, 1993

The following classes will celebrate their reunions in 1993:

- Class of 1942 and prior .....The Half Century Club
- Class of 1943.....50th reunion
- Class of 1948.....45th reunion
- Class of 1953.....40th reunion
- Class of 1958.....35th reunion
- Class of 1963.....30th reunion
- Class of 1968.....25th reunion
- Class of 1973.....20th reunion
- Class of 1978.....15th reunion
- Class of 1983.....10th reunion
- Class of 1988.....5th reunion



Class of 1942 celebration



Alumni, faculty and friends enjoy Law Alumni Weekend 1992.





## UPCOMING EVENTS

For more information on upcoming events, call the Law Alumni Office at (919) 489-5089.

Conference on Career Choices .....February 5, 1993  
 Law Alumni Council Meeting.....February 6, 1993  
 Alumni Seminar .....April 15, 1993  
 Barristers Weekend .....April 16-17, 1993  
 Board of Visitors Meeting.....April 16-17, 1993  
 Commencement .....May 16, 1993  
 Board of Visitors .....October 8, 1993  
 Law Alumni Weekend .....October 8-9, 1993

### All-Alumni Directory

The Duke Law Alumni Office is working on a new all-alumni directory. That office now has in place software that will make it possible to publish alumni information from computerized records in that office on a more regular basis. Many alumni have found the directory to be a great help in networking and in providing business referrals.

We will be proof reading alumni information throughout the spring in anticipation of a mid-year publication date so **be sure that your address information is up-to-date in the Law Alumni Office.** Complimentary copies of the directory will be mailed to those alumni paying law alumni dues and/or making a gift to the Law School during the fiscal year.



Vincent Sgrosso '62 and John Conley '77 participated in the 1992 Alumni Seminar.



Donna Gregg '74 talks with students following the 1992 Alumni Seminar.



## Change of Address

(Return to Law School Alumni Office)

Name \_\_\_\_\_ Class of \_\_\_\_\_

Firm/Position \_\_\_\_\_

Business address \_\_\_\_\_

Business phone \_\_\_\_\_

Home address \_\_\_\_\_

Home phone \_\_\_\_\_

## Placement Office

(Return to Law School Placement Office)

Anticipated opening for:  third,  second, and/or  first year law students, or  experienced attorney

Date position(s) available \_\_\_\_\_

Employer's name and address \_\_\_\_\_

Person to contact \_\_\_\_\_

Requirements/comments \_\_\_\_\_

I would be willing to serve as a resource or contact person in my area for Law School students.

Submitted by: \_\_\_\_\_ Class of \_\_\_\_\_

## Alumni News

(Return to Law School Alumni Office)

The *Duke Law School Magazine* invites alumni to write to the Alumni Office with news of interest such as a change of status within a firm, a change of association, or selection to a position of leadership in the community or in a professional organization. Please also use this form for news for the Personal Notes section.

Name \_\_\_\_\_ Class of \_\_\_\_\_

Address \_\_\_\_\_

Phone \_\_\_\_\_

News or comments \_\_\_\_\_

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*Duke Law Magazine*

Duke University School of Law  
Durham, NC 27706

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