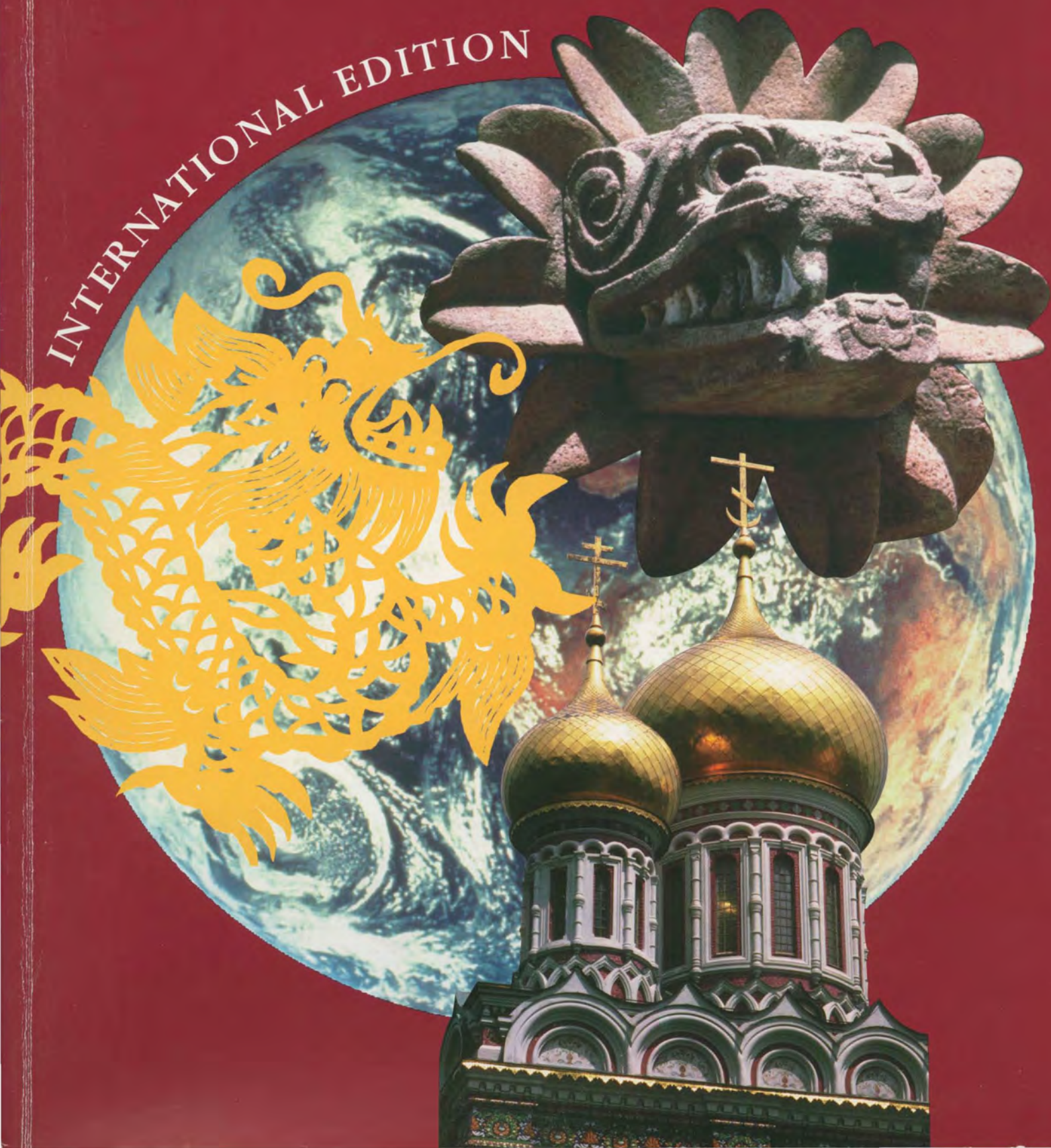


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From the Dean

This issue of the *Duke Law Magazine* focuses on law, lawyers, and legal education in a global economy — topics of increasing importance.

In the last few decades the United States has shifted from a domestic manufacturing economy to a global service economy. The shift is reflected in the evolution of American corporations into multinational corporations and by the global leadership of United States firms in many service fields, including legal services. These shifts will only intensify as we move toward the 21st century.

Asia, outside of Japan, is expected to grow at seven to eight percent and to require \$1 trillion in new capital investments in the next five years. These capital demands will be met from the private sector, which will take private savings from throughout the world, and through private capital markets and financial services institutions, deploy them where they are most needed. Areas outside the Organization for Economic Cooperation and Development and Asia are expected to grow rapidly also, causing a large demand for capital there as well. Even in the West, significant capital needs still exist, as illustrated by the privatization of the telecommunications industry in Germany. The financial services industry in the United States will be among the most important actors in these global capital markets.

International trade flows are also rapidly increasing. With the lowering of trade barriers in many of the fastest growing parts of the world, the development of regional trade areas like NAFTA, and the transformation of GATT into the World Trade Organization, international trade should



Dean Pamela Gann

expand, so long as open financial markets are maintained. These characteristics of the global economy enable nimble corporations to combine capital and labor in locations that favor the highest quality production at the lowest total cost and that take advantage of the lowest available trade barriers.

Parallel to these trends are the revolutions in information technology and the transformations taking place

The best law schools in the United States expect to work in the most dynamic and difficult parts of the domestic and world political economy.

in global telecommunications, which will become the largest industry in the world. Capital and financial markets and telecommunications are still affected, however, by serious global issues: continued barriers to free trade and investment in these sectors; too

much government monopoly; and lack of intellectual property protection and evolution to fit the new technology in most countries. Often domestic regulation, and international regulation to the extent that it exists, can retard the creation of natural linkages between financial markets and services and information technology. The major driver of what happens in the development of capital markets and financial services may be information technology and telecommunications. For example, we may discover in the future that Microsoft has become the largest financial services deliverer in the world.

At the same time, tremendous, darker issues exist. Development throughout the world is causing serious environmental degradation. The projected environmental goods and services market is expected to be at least \$600 billion by 2100. The gap between the "haves" and the "have nots" is widening, both domestically and internationally. The income spread between countries creates a threat that demands assiduous attention, because if the "haves" do not share more with the "have nots," huge immigration and refugee flows can occur. If funds do not go into the "have not" countries, then people are going to come out. Serious ethnic conflict and human rights violations occur daily. Nuclear proliferation is a threat to world security.

All of these significant issues that I have just identified are global. Moreover, all are legally intensive problems for national governments, international organizations, and the huge private sector occupied by multinational corporations. The best law schools in the United States expect to work in the most dynamic and difficult parts of the domestic and world political economy.

These fields—global capital markets and financial services, telecommunications and information technology, the environment, ethnic conflict and human rights, international security—present some of the most pressing issues that they will be addressing.

The curricula of the high status law schools unsurprisingly include a great deal of attention to business organization and the modern economic regulatory state, including the regulation of securities markets and financial institutions, telecommunications, the environment, and intellectual property. Many courses focus on international trade, business transactions, and forms of transnational dispute resolution. Most graduates of these schools will encounter international and foreign law in their practice. For example, a practitioner in civil litigation likely will encounter foreign parties, the need to discover evidence outside the jurisdiction of the United States, or the need to consider international arbitration. In all these instances, the US civil litigator will come into contact with a foreign legal system and lawyers. A practitioner in corporate law increasingly works with American clients making outbound foreign investments and foreign clients making investments in the US economy, thereby servicing the needs of global corporations.

Because transnational lawyers will inevitably work with foreign law and lawyers, law students are encouraged to study comparative law. It introduces students to other legal systems and the substantive law of other nations, and by showing how similar problems are handled differently by other legal systems, it serves as a mirror back on our own system. Often, in fact, comparison shows the distinctive character of American solutions to legal problems and permits us to evaluate them more knowledgeably. Comparison, in short,

permits us to see things we would otherwise take for granted.

Students who expect to engage in transnational practice are encouraged to continue to improve their foreign language skills and, in particular, to take law courses taught in foreign languages. The percentage of foreign students enrolled in high status US

Imagine the cross-cultural understanding that is gained when law school classes composed of both American and non-American students are able to simulate transnational negotiations between lawyers from different countries.

law schools may well increase from 10 percent to 20 percent, thereby enabling American students to work directly with foreign students in the curriculum and to participate in a foreign language table at lunch. Imagine the cross-cultural understanding that is gained when law school classes composed of both American and non-American students are able to simulate transnational negotiations between lawyers from different countries.

Lawyers who service global corporations through large law firms are subjected to an extraordinarily demanding environment. Beginning associate lawyers in these firms are expected already to have mastered excellent legal writing and communications skills and to possess the finest analytical skills. They work in a fast paced environment, utilizing sophisticated computers and information technology through which their legal work is performed.

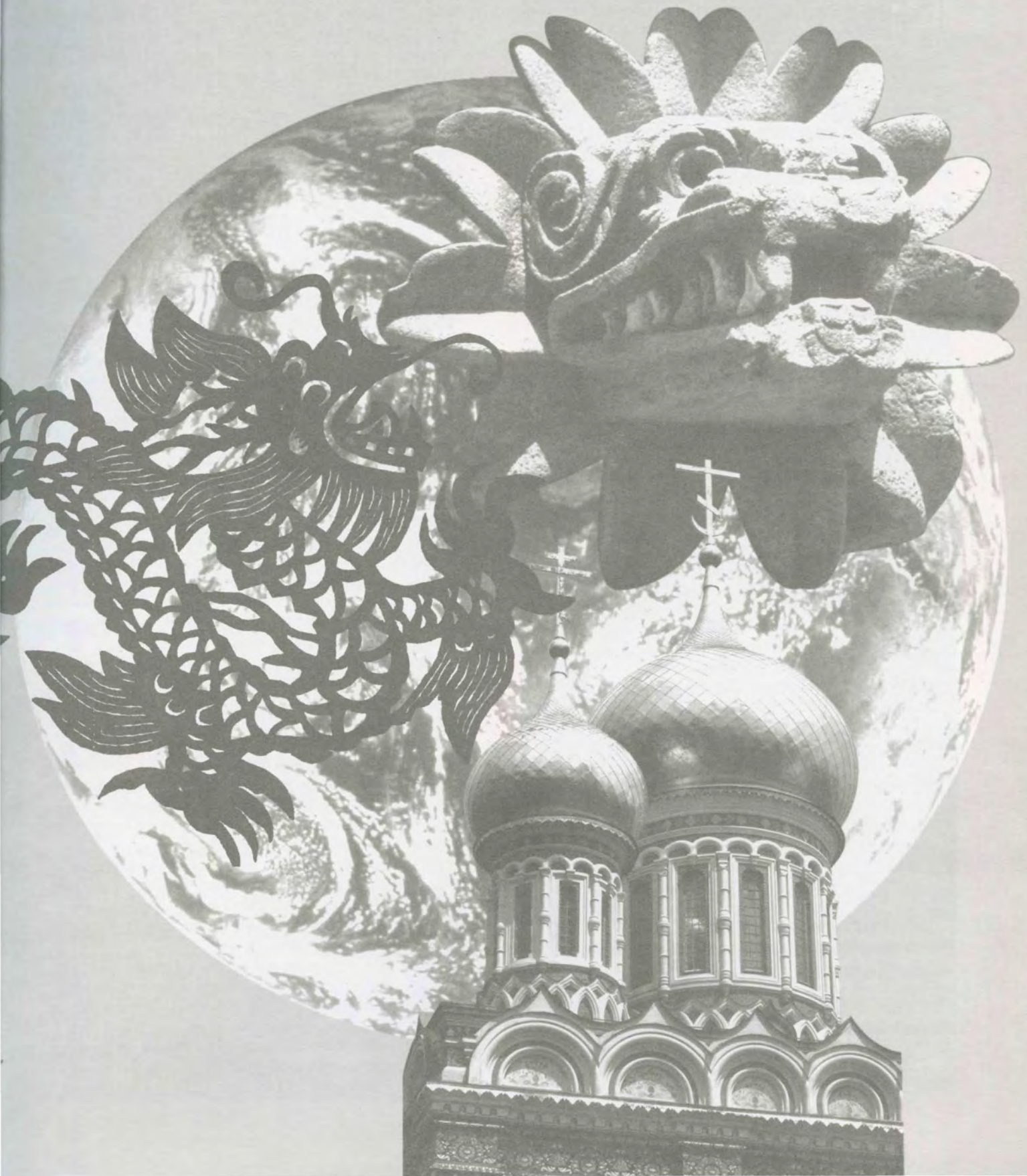
To succeed, they must also possess the management and interpersonal skills required to be effective in a large, complex organization servicing the most talented and demanding clients in the world. Young lawyers must also be comfortable working in an environment that reflects a great deal of uncertainty. The internationalization of practice and the rapidness of technological and business change create significantly higher levels of business uncertainty for clients and law firms than in the past.

We already live in an interdependent world—economically, legally, and in other ways. It is perhaps false even to categorize really important problems and issues as domestic or international. But this distinction has not yet disappeared in the organization of the legal profession. Large US law firms service global corporations. Their young lawyers, whether American or foreign, are almost all trained in American law schools, and mostly in high status law schools. These schools possess an educational comparative advantage in the training of lawyers, both domestic and foreign, for the 21st century. They seek young women and men who have taken the challenges of the global economy seriously in their undergraduate work in preparation for graduate professional training. The well prepared young lawyer—through a combination of undergraduate work and study abroad, and superb legal training—can be among the finest legal professionals in the global economy.

The faculty of the Duke University School of Law has thought carefully about globalization, law, and the legal profession and the Law School is already known for its significant and frequently unique contributions to these important subjects.

Pamela B. Gann '73
Dean

THE FORUM



Germany's Unification and its Discontents

Herbert L. Bernstein

N*ostra res agitur.* This Latin phrase concluded an article of mine in this *Magazine* five years ago (*German Unification: Political and Legal Aspects of Current Events*, DUKE L. MAG., Summer 1990 at 5). At that time Germany's unification was imminent; and "our" interest was certainly involved. Germany's neighbors and allies in the West as well as its neighbors and former adversaries in the East had a lively and perfectly legitimate interest in the conditions and modalities of the unexpected event which was going to reunite the two German states that had come into existence after the second World War.

External Aspects of Unification

Hardly anyone would have predicted the unparalleled ease and speed of the "Two-plus-Four" negotiations which resolved the so-called external aspects of Germany's unification. At first, it appeared as if the Soviet Union would never agree to the membership of a united Germany in NATO. On the other hand, the West was rightly concerned about the prospect of an unaligned Germany with a well-trained and well-armed military force of half a million men, as it possessed at that time. To nearly everyone's

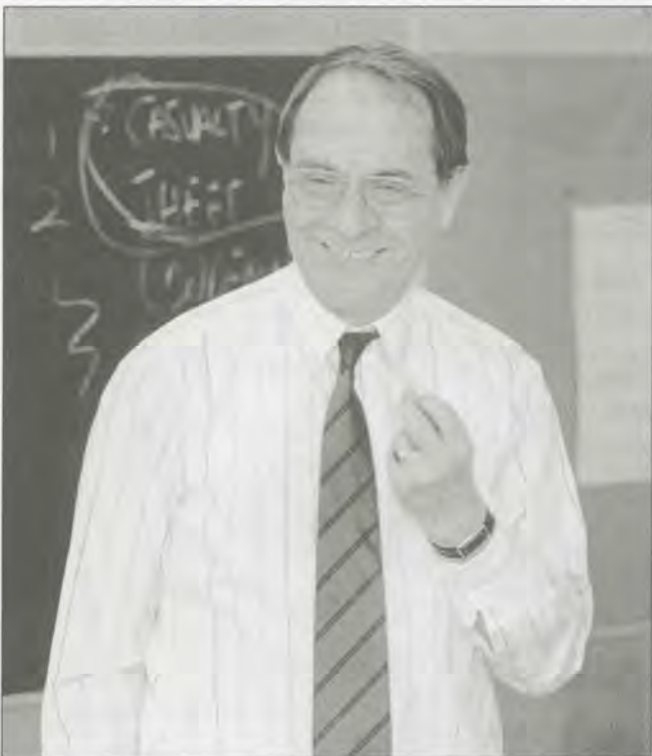
surprise, Chancellor Kohl worked out a deal with President Gorbachev that allowed Germany to remain in NATO with a reduced military force of no more than 370,000 men and on the condition that non-German forces and nuclear weapons shall never be deployed in the Eastern part of reunited Germany.

Another highly sensitive issue involved Germany's Eastern border. As discussed in my earlier article, in strictly legal terms the status of that border was still precarious even after the conclusion of treaties between West Germany and Poland in the early 1970s. From a more political point of view, Poland had reason to suspect that its interests would not be adequately represented at the "Two-plus-Four" negotiations to which it was not a party. Also there may have been a feeling in Poland that the political forces behind Chancellor Kohl which in their majority had opposed the treaties of the early 1970s, would still be unwilling to accept the Oder-Neisse line as a permanent and immutable German border in the East. Eventually the Kohl government did exactly that.

Finally, the continued membership of a united Germany in the European organizations, especially in the Economic Community, presented significant problems. How far could and would the other members go in agreeing to special conditions for the Eastern part of Germany during a transitional period? To what extent was the weight of a member state with 80 million people compatible with the delicate balance among the larger member states (Britain, France, Germany, and Italy) that had existed before? For the time being these questions have been resolved too. Germany got fairly favorable transitional conditions for its Eastern territory. Its considerable increase in population as a consequence of unification, however, did not lead to an increase in voting power in the most important institutions of the Common Market. Only in the European Parliament is Germany's share of votes now greater than that of the other large member states; but this institution continues to be much less powerful than in Western democracies.

In addition to these major political issues of the first order, innumerable other problems had to be addressed, some of them being of a highly technical nature, some involving significant socio-economic consequences. These included the termination of the rights and responsibilities of the four powers with respect to Germany as a whole and with respect to Berlin that I discussed in my earlier article. Also the withdrawal of the Soviet/Russian forces from East Germany within four years and their resettlement in Russia (with considerable financial assistance by the Germans) was arranged. The simultaneous withdrawal of the troops of all four former occupation powers from Berlin was another vexing and—to the Russians—highly sensitive problem. Readers will probably recall that this withdrawal culminated in two separate farewell ceremonies in August of 1994—much to the chagrin of President Yeltsin who came to Berlin for this event.

All of the arrangements dealing with the external aspects of German unification were accomplished within seven months. Considering that the international agreements and accompanying documents embodying the resolution of the complicated issues mentioned before had to be drafted *ad hoc* without the benefit of much, if any, preparatory work, it is truly amazing that this gigantic task was completed at all and within such an unprecedented



DAN CRAWFORD

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short period. This appears even more amazing in view of the fact that not all of the parties involved in this joint endeavor were enthusiastic about the ultimate objective of their efforts: Germany's unification. In fact, French President Mitterand attempted to prevent rapid unification when he traveled to East Germany in 1989; and Prime Minister Thatcher expressed her opposition to "precipitous" unification repeatedly and rather undiplomatically. They were, however, no match for the team of Genscher and Kohl who knew how to placate the Poles, how to strike a deal with the Russians, and how to appeal to the goodwill of the Americans.

Today, more than four years after German unification occurred on October 3, 1990, it seems that the apprehensions and fears which Mitterand and Thatcher shared with millions of people in Europe and elsewhere have more or less disappeared from the political landscape. To be sure, there have been occasional irritations in other countries about this or that policy pursued by the German government, especially in matters supposedly affecting the stability of the German economy and in particular its currency, such as interest rates. Also there have been serious concerns about the resurgence of right-wing extremism in Germany. Violence against foreigners and anti-Semitic actions provide more than sufficient grounds for such concerns. Sadly, however, activities of this kind occur in most European countries today; with respect to this problem media attention is focused more on Germany than on any other nation. In view of the Nazi past there are very good reasons for this; in all fairness, however, it should not be overlooked that in elections right-wing groups in Germany do not get nearly as much support as, for instance, in France or Italy—not to mention the alarming election results of similar groups in the former Soviet Union and other formerly Communist nations. This intensified expression of nationalism, xenophobia, and anti-Semitism has obviously more to do with the collapse of the Soviet empire which for better or worse controlled and contained these tendencies, than with German unification as such which occurred in connection with the demise of Soviet rule in Central and Eastern Europe.

Germany's Internal Problems

All in all, unified Germany has proved, at least until now, to be less of a threat than outside observers anticipated. So who are the discontents today? Ironically, they are to be found primarily among the Germans themselves.

That is not to say that there is any serious political movement attempting to reverse or even only to slow down the process of unification. In 1990 certain elements in the Social Democratic Party, the largest opposition party, cautioned against the speed and some of the modalities of unification. Among intellectuals, especially among writers in East and West Germany, even more fundamental opposition was voiced against the very idea of unification. All of these calls went unheeded. And how could it have been otherwise when hundreds of thousands of people in the East were ready to exercise their new-found freedom to move to the West where living conditions were so much better? Naturally, the most enterprising and most talented young people were in the majority among those moving West. This wave of migration had to be brought under control in view of its potentially disastrous impact on the demography and thus on the future recovery of the East. Creating better, and eventually equal, chances in the East through unification seemed to be the obvious answer.

What we see in Germany today is a fairly widespread feeling of malaise over certain consequences of unification. It can be seen

both in the Eastern and in the Western part of the reunited country, albeit for different reasons. It finds expression in various forms, most drastically in sometimes acerbic jokes that "Wessies" (West Germans) crack about "Ossies" (Germans from formerly Communist East Germany) and vice-versa. It also manifests itself in opinion polls, in the media, and in some elections in which the PDS, the successor party to East Germany's erstwhile ruling Communist party, has recently gained an amazing percentage of votes in some Eastern German regions. These election results have generally been interpreted not as indicating a desire to return to a Communist regime—which the PDS itself does not advocate—but as a way of protest against those economic consequences of unification that many people in Eastern Germany find unacceptable and which they tend to blame on the "Wessies" rather than on their former rulers who bankrupted their part of the country, ruined its environment, and failed miserably to develop its infrastructure.

There are several identifiable grounds for disappointment with the results of German unification among citizens in both parts of the formerly divided nation. Yet one needs to remember that all too frequently emotions—of groups as well as individuals—to some extent defy attempts at rational analysis. Without any doubt, that applies to the case we are considering here. Nonetheless, I will try to identify what I regard as the most important *legal and economic* conditions inherent in the process of unification that seem to have contributed in no small measure to the present malaise.

Currency Reform and Legal Perfectionism

In the summer of 1990, the then still existing two German states entered into the Treaty Establishing a Currency Union and an Economic and Social Union that came into effect on July 1, 1990. By far the most important component of this agreement was the introduction of the West German currency, the D-Mark, in East Germany. The question of the rate at which the worthless East German money was allowed to be exchanged constituted a most controversial issue whose resolution in the end was dictated—as one might expect—by political expediency, instead of economic reasonableness. Sixteen million people in East Germany were permitted to change large amounts of their money into D-Marks at a rate of 1:1, the individual amount ranging from DM 2,000 to DM 6,000 per person (roughly US \$1,350 to \$3,950) depending on a person's age; an even greater volume of worthless East German money which people possessed in excess of the specified sums could be exchanged at a rate of 2:1. At the same time, the legal structures constituting the core of West Germany's economic system and its very elaborate and advanced social and labor law were introduced in East Germany. The principal purpose of this extremely generous arrangement was to provide an incentive for people in East Germany to stay in their part of the country after several hundreds of thousands had already moved to West Germany after the borders opened in November of 1989.

A few months later the formal unification of Germany was accomplished by the Treaty Establishing Germany's Unity—Unification Treaty—which took effect on October 3, 1990. By virtue of this treaty, East Germany, comprising the five re-established states which had been abolished by the Communists in 1954, joined the Federal Republic of Germany ("West Germany") by an act called "accession" in international and constitutional law. One of the cardinal clauses of this treaty, its Art. 8, provides for the wholesale adoption of all of West Germany's law by the "New

Federal States," as they are colloquially called. The treaty, together with its appendices, comprises several hundred pages wherein it specifies in minute detail exceptions to the principle just stated as well as conditions for the transition from the old East German law to the newly adopted law. It took the German negotiators, and the specialists in the various Ministries in Bonn supporting their efforts, less than two months and only three sessions of the complete negotiating teams to review the entire body of German law so as to make the decisions about adaptations necessary for a smooth legal transition in the East. All of this occurred in tandem with the negotiations concerning the external aspects of Germany's unification discussed above.

As a professional achievement of the highest quality, the work of these tireless bureaucrats deserves praise and a great deal of respect. The question remains, however, whether the substance of their labors is equally praiseworthy. In a very informative book on his experiences as the principal negotiator on German unity which has recently been translated into English, Wolfgang Schäuble—a powerful figure in Chancellor Kohl's party—makes it abundantly clear that he did not favor the wholesale adoption of West German law by the East Germans and would have preferred a more selective, gradual introduction of that law since he believed conditions in East Germany did not permit the unmitigated application of several parts of West German law. For example, the Eastern states lacked the corps of skilled professional bureaucrats to enforce environmental protection laws or Germany's very demanding construction codes and urban planning rules. (Under the German constitution the enforcement of most federal laws is in the hands of state agencies and officials.) It could be easily foreseen that application of all these strict laws in a region with a badly polluted environment and a poorly developed infrastructure was bound to create the most serious impediments to the dearly needed industrial investments. It is extremely costly to comply with these laws in substance and it takes an inordinate amount of time for an inexperienced administration to process the requests by prospective investors for permits, waivers and the like. And yet even a man as powerful as Schäuble had to give in to the pressures coming from the (by then democratically elected) East German government supported by Bonn bureaucrats who, as a matter "of principle"—always weighing heavily in Germany—insisted on wholesale adoption of West German laws in the East.

This kind of legal perfectionism must be seen as **one** reason for the fairly slow economic recovery in the "New Federal States" in the aftermath of unification. Schäuble's foresight was well founded. To be sure, there are other reasons not necessarily connected with legal perfectionism. They are, however, closely intertwined with the currency reform policy discussed above. Obviously, the generous exchange rules created an enormous overhang of purchasing power which, because of the lack of an adequate supply of consumer goods in East Germany, would ordinarily have led to an inflationary push. But West German and non-German industry were only too happy to satisfy the demand. All of a sudden East Germans were able to enjoy the luxury of real cars—as opposed to "Trabbies," aptly described as something like a mini-car wrapped around a power-lawn mower—and many other benefits of a Western-style consumer society they had been deprived of for so long.

For many of them, however, a cruel awakening followed before too long. Their wages and salaries were far below Western levels. This was of little consequence as long as the Communist

regime kept prices for most basic consumer items artificially low. With the introduction of a market economy, such subsidies had to be phased out, and people discovered that spending relatively large amounts of cash on expensive cars and similar items left them with inadequate reserves to cope with a situation they had never experienced before: rapidly and disproportionately rising costs of living. Their understandable response was a vehement demand for higher wages and salaries. Nobody could have expected that in the long run the level of compensation for employees in the two parts of reunited Germany would remain grossly disparate. But wage increases in the East should have tracked increases in productivity which, in the wake of unification remained considerably lower than in the West. Under pressure from the traditionally strong German unions, economic reasonableness was again ignored, and wage increases outpaced gains in productivity. As an inevitable consequence, unemployment in the "New Federal States" is dangerously high; after a slight decrease it still amounts to 13 percent, while in Western Germany it is slightly below eight percent. In the Eastern region where people had not experienced unemployment in more than 50 years, the resulting malaise is great. Of course, a considerable percentage of the unemployed would have lost their jobs after privatization of their enterprises even if pay increases had been more moderate. Under Communism these enterprises had to maintain a workforce much larger than actually needed since for ideological reasons unemployment was simply not a viable alternative.

In summing up, the current negative reaction to unification among East Germans can be explained to a large extent by these factors: Legal perfectionism tending to impede investment, a politically motivated currency exchange rate, and unemployment resulting from low productivity coupled with a disproportionately high wage level and also resulting from streamlining the workforce after privatization.

The other side of the ledger reads like this: In the summer of 1990 when the Treaty Establishing a Currency Union and an Economic and Social Union was concluded, a "German Unity Fund" was created with resources to be provided by the Federal Government and the West German states. It was stipulated that this fund would transfer a total of DM 115 billion (roughly US \$70 to \$75 billion) from West to East within the period from 1990 to 1994. At the time, it was thought that this amount would give the region formerly under Communist control a sufficient boost to catch up with the West so as to stand on its own feet after 1994.

Chancellor Kohl and others in his coalition government made campaign promises to the effect that "no new taxes" would be needed to finance Germany's unification. That was 1990, and how different everything looks today! Like so many politicians Kohl had to eat his words. It is to his credit, however, that he admitted to have been mistaken about the full extent of East Germany's disaster—not hiding behind the phrase that "mistakes were made" which leaves it open who made them. The truth of the matter is that transfer payments from West to East since unification have amounted to an average **annual** rate of DM 170 billion (more than US \$100 billion per year). Predictably, this has led to budget deficits and—you guessed it—quite painful tax hikes. A "solidarity tax" was introduced in 1991 allegedly as a temporary measure and then indeed abandoned for a while; it is back now for an indefinite period of time and amounts to a surcharge of 7.5% on everybody's income tax. In addition, indirect taxes, in particular the already extremely high gasoline tax, have been increased. Nobody taking note of these dire consequences will be terribly surprised that

unification doesn't look so great any more in the eyes of many West Germans.

Property Issues

But there is still another legal/economic aspect of German unification which has contributed greatly to feelings of disenchantment on both sides of the former divide and which, at least in the early stages of the post-unification period, may also have been a cause for the slow growth of investment activities in the "New Federal States." A thorny issue arising in the negotiations between the two German states eventually leading to the conclusion of the Unification Treaty in 1990 involved the taking of property by Soviet and East German authorities after World War II. Several waves of expropriations without compensation, in other words confiscations, swept over East Germany; the first occurred in the immediate post-war period and concerned the owners of large agricultural estates as well as the property of people rightly or wrongly accused of an active involvement with the Nazi regime and/or war crimes. Other acts of expropriation, usually without compensation, involved industrial property, apartment buildings, and even single-family homes, especially if the owners were considered to be "enemies" of the Communist regime. In many other instances people lost their property not by an overt act of expropriation, that is not by the exercise of sovereign power. Rather, many losses of title occurred by virtue of a seemingly voluntary act of conveyance. In fact, however, many property owners, especially of residential property, were prompted to agree to such conveyances by machinations of party bosses or Communist state officials who themselves or whose "friends" frequently acquired the property in question on very favorable terms. In other cases the conveyance was motivated by the unprofitability of a piece of property, again mostly residential property, due primarily to severe rent controls. These acts have sometimes been called "cold expropriations."

As mentioned before, at the time of the negotiations between the two still existing German states in 1990, East Germany was represented not by Communists but by a democratically elected coalition government in which the role of the senior partner was played by the same party, the Christian Democrats, that led the coalition in Bonn. Still, the two sides did not have identical views with respect to the various issues to be resolved. In particular, the property issue was seen from widely divergent perspectives. The East German negotiators had in mind not the interests of Communist functionaries and their "friends" who had executed, and/or benefited from, expropriation measures; rather they were concerned about the protection of ordinary citizens who had acquired ownership or certain more limited interests in expropriated property. The West German side felt that both for reasons of constitutional constraints and of political expediency they had to insist on the return of expropriated property "in principle." Thus even before the treaty was worked out, the two sides had to reach a compromise on this most controversial issue. It was embodied in a document termed the Joint Declaration on the Settlement of Open Property Questions of June 15, 1990 which together with an implementing statute was incorporated into the Unification Treaty.

The Joint Declaration, the Treaty and the implementing statute, as amended several times, have three essential components. The first is that expropriations which occurred between 1945 and 1949 under the law or the sovereignty of the Soviet occupation power cannot and shall not be reversed. Secondly, the Declaration

and the Treaty announce as a principle that expropriated property not falling into the first category shall be returned to the former owners or their successors in title; the statute implements that principle. Thirdly, exceptions from this principle are made in certain circumstances, in particular for the protection of present owners and holders of limited rights in the property who acquired their rights in an "honest" manner; other exceptions apply where the return of the property is physically impossible or would adversely affect public interests and where a potential investor interested in the property presents a feasible investment plan which the claimant cannot match.

This solution bears all the earmarks of an unfortunate compromise, perhaps inevitably so. Speaking *grosso modo* one can say that it tends to pit millions of East Germans as present title holders and tenants against millions of people mostly residing in West Germany as claimants for the return of property; more than two million claims have been filed. It also pits potential investors in need of reclaimed property against the claimants for that particular piece of property. Finally, it has infuriated all those who cannot reclaim property confiscated under the law or the sovereignty of the Soviet occupation power between 1945 and 1949. Critics of the compromise solution argue that many of these unfortunate conflicts could have been avoided if a principle of compensation rather than physical return of the expropriated property had been adopted. Wolfgang Schäuble, the West German chief negotiator of the Unification Treaty, on the other hand, in his book takes pride in the fact that his insistence on the principle of return instead of mere compensation helped the government to escape from an unbearable financial burden. At the time of the negotiations it was also argued that the takings clause of the Bonn constitution required the physical return of unlawfully expropriated property unless compelling public policy reasons justified an exception from this principle.

Constitutional Law and Political Wisdom

As a matter of constitutional law the principle of physical return of expropriated property was hardly mandated, even though some experts have made that argument. The acts of taking involved here were not acts of the government of the Federal Republic of Germany which is subject to the Basic Law, the constitution of 1949 which includes a guarantee of private property and compensation in case of a taking of such property. The territory where the acts in question took place did not belong to the Federal Republic at that time. Before 1949 the Federal Republic did not even exist. For these and other reasons, a group of people excluded from the principle of physical return by the "1945-to-1949" Clause who challenged the constitutionality of this exclusion, had their cases dismissed by the German Federal Constitutional Court.

In terms of political wisdom one wonders whether the gains on which Schäuble prides himself are worth the price that Germany continues to pay for the solution he helped to engineer. The conflict-ridden situation it created is likely to plague Germany for quite some time. And even though it is not the sole cause, it greatly exacerbated the mood of discontent prevailing in both parts of the country. Conditions might have looked better today if Schäuble had not had his way on the property issue and had been successful in his attempt to prevent the wholesale adoption of West German law in the East. There is irony in the fact that a politician's successes can be as fateful as his failures.

The Tuna-Dolphin Controversy, the World Trade Organization, and the Liberal Project to Reconceptualize International Law

Benedict Kingsbury

In the 1991 *Tuna-Dolphin* case, a three-member GATT dispute settlement panel reported that the United States had violated GATT (the General Agreement on Tariffs and Trade) by embargoing imports of tuna from Mexico—an embargo imposed because the Mexican tuna fleet did not meet US standards for reduced incidental dolphin mortality. This brought forth a torrent of environmentally-oriented criticism and proposals for reform of GATT. US environmental groups conducted an anti-GATT campaign, invoking the image of a rampaging GATTzilla trampling on US environmental laws and on US sovereignty. In 1994 the US lost another GATT *Tuna-Dolphin* case, this time brought by the



LES TODD

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European Union (EU). All but one of the large-membership US environmental groups opposed—unsuccessfully—US ratification of the 1994 GATT Uruguay Round Agreements extending GATT and folding it into the new World Trade Organization (WTO). A politically potent coalition of environmentalist and pro-protectionist interests—sometimes dubbed ‘baptist and bootlegger’ on the basis of a breezy assessment of the politics of Prohibition—has opposed recent trade agreements in several countries. Such opposition is reinforced by others concerned that the free trade agenda entails sacrificing labor rights, general human rights, social policy, global equity, or other important goals.

The debate on trade-environment issues and the WTO traverses some of the most fundamental problems of contemporary international law. The specific focus of the debate is how to connect environment and trade, two spheres of policy and institutional activity that have evolved in isolation from one another. Behind much of the debate lie questions about how the legal system established among sovereign states should respond to rising interdependence and to the globalization of markets, capital, information, and culture. Four sets of problems command particular attention.

First are the increasing concerns about democratic participation in the international law-making and dispute settlement process. In particular, the traditional analysis of states as unitary actors, with the executive branch providing adequate international representation for the domestic civil society, has increasingly come into question. Second, relations between national and international action are central and defy simplistic categorization. Many pressing issues, including environmental protection, cannot be addressed effectively by individual states, while, in light of the weakness of international institutions, the rules promulgated by international bodies often depend on national action for their enforcement. Third, inter-state institutions are caught in a dual role, as they are created by and answerable to states, yet designed to regulate state behavior. Specialist inter-state bodies such as the WTO secure the power to regulate certain trade practices of states by protecting the sovereignty of states in other areas, but as international governance regimes cover more and more issues, this kind of trade-off becomes harder to maintain. Fourth, as is evident in the apparent conflict between some environmental treaties and WTO rules, it is perfectly possible for standards set in different international agreements to conflict. A theory of international law is needed in which problems arising from this tension between contractual and legislative models of law are rendered soluble, if not simple.

These problems suggest that the traditional conception of international law—an inter-state consent-based system premised on the freedom and juridical equality of mono-voiced territorial states—is overly beneficent toward states, and unpromising as a comprehensive framework within which to explain and systematize everything that happens already, let alone as a basis to deal with further evolution.

One response is to argue that it is time to reconceptualize international law, to move away from the state-centric paradigm toward a broader view of international law as the liberal law of an emerging transnational civil society. Such a society is said to be founded on shared values and transnational interactions among non-state entities: corporations, bar associations, environmental networks, feminist groups, political movements, internet user-groups, migrant workers, religious institutions, and thousands of other structures. States are important actors shaping such a society, but they are not the only actors. This is an attractive view to many environmentalists who see state sovereignty as an obstacle to rational management of global environmental resources and the web of interdependent ecosystems. On the other hand, national sovereignty and politically-accountable national management also has its attractions—for many people in developing countries as well as some of the US environmentalists who opposed the WTO agreements. Some liberals favor the strengthening of international organization to rein in states. Others fear that tendencies of state bureaucracies to dampen or channel the market-liberated energies of non-state actors are replicated and magnified in international institutions. Liberal views diverge, but the core features of the proposed liberal framework merit exploration. The next section of this paper will examine the ways in which the four sets of problems for international law referred to above were addressed in the *Tuna-Dolphin* controversy in the WTO. The final section will use this case study to consider the possible contributions of the liberal project to reconceive international law.

The Tuna-Dolphin Cases

The *Tuna-Dolphin* controversy provides an interesting case study with which to explore some of the implications of globalization and liberalism for evolving conceptions of the international legal system. The WTO is a trade body, established to give effect to a unified and well-ordered body of global trade rules, with very modest environmental expertise. Its core set of rules for trade in goods are those contained in the 1947 GATT (re-adopted by the Uruguay Round agreements), and these make no reference whatever to environmental protection as an explicit justification for departure from trade rules. The trade-environment debates forced it to confront a set of issues with which it was ill-equipped to deal. Ideally it might have looked to a body of co-ordinate competence specializing in environmental matters, but international environmental rules are still only fragmentary, and there is no comparable environmental body capable of settling a range of trade-environment disputes. In a more advanced legal system there might be a body of overarching competence to resolve such problems, but the only general judicial body, the International Court of Justice, is not likely to deal with such cases very often, and political bodies such as the UN Commission on Sustainable Development are not effective enough to resolve many sharply focused disputes.

The *Tuna-Dolphin* cases (1991¹ and 1994²) arose when the US unilaterally closed its markets to one product, yellowfin tuna, in order to protect stocks of a different species, dolphins, found in the high seas and the fisheries zones of other countries. In the Eastern Tropical Pacific dolphin swim above tuna and are often

trapped by purse-seine nets used to catch tuna. In the 1991 case, Mexico challenged the embargo imposed on tuna from Mexico and other primary producing states whose performance with respect to incidental dolphin mortality was regarded by the US as falling short of the standard set for foreign nations by the US Marine Mammal Protection Act (MMPA). The 1994 case was a challenge by the EU and the Netherlands to the US embargo on imports of tuna from 'intermediary' nations which had within the previous six months imported tuna from primary producing nations subject to the US embargo. Neither panel report has been adopted by the GATT Council, so neither has direct legal effect within the GATT/WTO system. The reasoning in the reports has nevertheless reinforced the position of WTO member states hostile to such sanctions, and has altered the negotiating environment with respect to trade sanctions in the WTO and in international environmental agreements.

Defending itself in the GATT proceedings, the US argued that the embargoes were simply the application to imports of rules comparable to those applied internally to tuna caught by US vessels. The panels found, however, that the US rules did not regulate tuna as a product so much as process and production methods (PPMs) for the product, and GATT has not hitherto countenanced regulation of foreign PPMs in most cases. The US measures were prima facie a quantitative restriction on imports contrary to GATT. The question was whether they were permitted under exceptions to GATT (contained in Article XX) allowing certain measures necessary to protect animal life or health, or measures aimed at the conservation of exhaustible natural resources.

The 1994 panel determined that the Article XX exceptions did not allow one state to take trade measures which can work only by forcing other states to change policies pursued within their own jurisdictions. Given that the US embargoes were prima facie contrary to GATT, to uphold them under the exceptions would be (as the 1991 panel had found) to change the balance of rights and obligations under GATT, and in particular to weaken the right of access to markets. In taking a circumscribed view of the relevant exceptions, the panels undoubtedly reflected the preferences of the vast majority of member states, and both panel reports were warmly welcomed.

Four WTO Principles Concerning the Nature of the International Legal System

Amongst the myriad of legal issues raised by the *Tuna-Dolphin* cases and related trade-environment debates, four principles bearing on the nature of the international legal system were adopted or implicitly relied on by the *Tuna-Dolphin* panels. The problems in maintaining each of these principles raise in a very practical way the question whether the present framework for international law is adequate for present and future needs. The four principles will be discussed in turn.

1. State 'Representatives' Define Interests, Make the Rules, and Settle Disputes

The WTO is a structure predicated on sovereign statehood and the centrality of states as makers and enforcers of trade rules and trade policy, arbiters of disputes, and negotiators of compromises. The WTO continues to regard international trade as the business of state representatives, even while most trading is by non-state bodies, and much of the pressure for and against trade rules and policies comes from sources not necessarily represented by the

¹ *United States Restrictions on Imports of Tuna* (Mexico v. USA), GATT doc. DS 21/R, ILM 30 (1991), p. 1598.

² *United States Restrictions on Imports of Tuna* (European Economic Community and the Netherlands v. USA), ILM 33 (1994), p. 839.

state 'representatives.' Consumer preferences, consumer boycotts, NGO eco-labelling schemes, industry-wide practice codes, and unofficial standards all have impacts on trade relations but are not necessarily within the control of states. Footloose capital, the rise of global sourcing and other forms of interdependence, and the decline of state traders, have all affected the position of states. Yet states continue to use the WTO to reinforce their managerial roles in trade. The state representatives gathered at the WTO in Geneva cannot in practice represent the entire range of interests affected by trade rules. Nevertheless, the WTO remains largely closed to all but accredited state representatives. This has been particularly shocking to US and other environmental groups accustomed to considerable access to government. Very recently the GATT/WTO system has gingerly begun consultations with environmental groups, but a US proposal to invite such groups to address the GATT Council was drowned in a chorus of rejection in 1994.

The WTO faces the essential difficulty that, as an organization created by and resting on the will of states and state representatives, it remains within their power to insulate the organization from national and transnational civil society. Yet such insulation threatens both the quality of the WTO's product and, more seriously, its legitimacy in an international system no longer monopolized by states. Unsurprisingly, this dilemma is evident in problems of rule-making and dispute settlement.

States are represented in WTO rule-making and dispute settlement by their executive branches, usually government agencies responsible for international trade or foreign policy. In the case of the US, the executive branch continues to enjoy considerable freedom in deciding how to argue a case before a GATT/WTO panel, and whether to acquiesce in the adoption of a panel report or to try to prevent adoption through diplomatic pressure and negotiation. The executive has on occasion welcomed—and perhaps even encouraged—adverse GATT rulings as a means to overcome opposing pressures in domestic politics. In 1986 the Reagan administration successfully used an adverse GATT Panel ruling, adopted by the GATT Council with US acquiescence, to discourage Congress from reenacting an 1891 law which protected the US printing industry by prohibiting import of various printed works written by US residents.³

The system of rule-making and dispute settlement by narrowly-based state representatives—who may have more in common with each other than with many of the societal interests they represent—is increasingly controversial. Many Northern environmental NGOs believe the WTO would reach more environment-friendly decisions with a different representative structure. The insufficient involvement of interest groups, civic organizations, legislatures, and other elements outside the executive branch—the 'democratic deficit'—has been a difficult problem for most international organizations. The EU has responded by strengthening the directly-elected European Parliament; the International Labour Organization has long had direct representation of employers and unions as well as governments; and some UN bodies have devised formulae for the limited inclusion of non-governmental organizations (NGOs). These and other international institutions have begun to recognize the direct contributions of national and transnational civil society organizations to agenda-setting, information gathering, scientific knowledge, compliance monitoring, technical

assistance, and other functions, although a surfeit of enthusiasm for NGOs has given way to more sober assessments of their capacities, representativity, and accountability.

2. Enforcement Should Be By Collectively-Approved Action, Not Unilateral Action

The *Tuna-Dolphin* panels manifest the belief that, except where authorized under GATT/WTO rules, trade rights protected by these rules ought not to be interfered with by unilateral action by other states.

The criticisms of unilateral trade measures are well-known. Unilateralism in this context is not subject to effective international supervision, and the risk of mixed motives or the appearance of self-serving behavior is high. In the 1991 *Tuna-Dolphin* case Mexico pointed out that the US tuna boat industry had largely left the region where incidental catches of dolphins posed problems, and noted that Mexico had been subject to earlier US tuna embargoes imposed for quite different (protectionist or fisheries access-coercing) reasons.⁴ There is also a likelihood of subjectivity in cases where the unilateral action is not taken to give effect to an international standard. People in the US had formed a great affection for dolphins, whether endangered species or not, and the US set about pushing Mexico and other states to respect this affection even in the absence of any international agreement on the point. Unless an international agreement on environmental standards is a prerequisite to trade action, it is difficult to see any basis for accepting US GATT-illegal enforcement of its dolphin policy short of accepting that any state might determine and enforce its own 'wildlife' or even 'environmental' policies. But other states endeavoring to enforce environmental standards against the US are liable to find the price very high—the EU ban on beef fed with growth hormones has been met with substantial US trade retaliation against the EU. Less powerful states do not have as many options for environmental unilateralism, a point illustrated by Austria's 1992 law requiring ecolabelling of all tropical timber (but not softwoods, which Austria exported), which was repealed in 1993 under pressure from Austrian exporters threatened with trade retaliation by Malaysia and other tropical timber states. In the GATT Council debates on the 1994 *Tuna-Dolphin* report every representative to speak (apart from the US)—a range including India, the Philippines, Japan, Mexico, Canada, Australia, the EU, the Nordic countries and several others—was against the US measures, and many emphasized their deep-seated opposition to interventionism and unilateralism. (Of course, this does not mean that none of these has taken unilateral trade measures!) This view of the overwhelming majority of states is reflected in the Declaration adopted by states at the 1992 UN Conference on Environment and Development in Rio de Janeiro: 'Unilateral actions to deal with environmental challenges outside the jurisdiction of the importing country should be avoided.'

The problem is that unilateral measures, although repugnant to the overwhelming majority, have on occasion been effective in securing compliance with existing rules or speedy adoption of new and stronger rules. The US has the most explicit policies in this regard, raising familiar debates about US exceptionalism. It is possible that well-chosen measures by one state (particularly a

³ Robert Keohane has drawn attention to this example in work in progress on *Contested Commitments in US Foreign Policy*.

⁴ *United States Restrictions on Imports of Tuna* (1991), para 3.58. Indonesia commented that this was the twenty-third time the US had embargoed imports of tuna since 1975. Para 4.15.

hegemon) will not plunge the system into chaos, while widespread reciprocity in such measures might well do so. The WTO presumption of sovereign equality allows no space for such possibilities. One aim of the Uruguay Round was to tie national trade enforcement action to the use of the WTO process. The long-term success of this ambitious reform will depend on highly effective operation of the WTO dispute settlement process combined with a major shift in member practices; the likelihood is that some independent enforcement action will continue.

3. The WTO Protects States, within their Zones of Jurisdiction, from Impingement by Other States

The *Tuna-Dolphin* panels concluded that policies of one state which are effective only through affecting the conduct of other states within areas of their own jurisdictional competence are not within the GATT Article XX exceptions. Thus if such policies are implemented through measures which prima facie infringe GATT rights, the measures will not be saved by the Article XX exceptions to GATT covering measures aimed at such objectives as protection of life and conservation of natural resources. The GATT Secretariat has put the matter more broadly, treating territory (and perhaps nationality) as the essential basis for jurisdiction regardless of the transboundary or extra-jurisdictional dimension of many environmental and economic interests. A central distinction is drawn between actions taken by a state to protect its own domestic environment from domestic production or the consumption of domestically produced or imported products, which are broadly permitted under GATT/WTO rules, and trade actions intended to shape the environmental policies of other countries, which in many cases are not permitted.

The dilemma for the WTO is that protection of each state's competence in this sphere is a quid pro quo to states for agreeing to the intrusive substantive trade standards established and superintended by the WTO system. The WTO presses states to observe these trade standards within their territories, and a certain amount of enforcement by other states is countenanced. But the WTO's trade disciplines also function as a shield for states from other forms of intrusion.

The WTO model is of state environmental autonomy (from trade measures) within territorially-defined spheres of jurisdiction. This is not a natural starting point for rational ecological management. Ecosystems and environmental damage both run across state borders. One of the core problems of global environmental policy is achieving the necessary cooperation among over 190 different states: further buttressing of national autonomy is not necessarily a step forward.

The problem is particularly acute in relation to global commons such as the high seas or the stratospheric ozone layer. The ideal of the inter-state system is that commons regimes are agreed by all nations, and enforced by all states against their own nationals and throughout their own jurisdictional zones. In reality free-riding by some states, and failures of state will or capacity, are not infrequent.

4. The WTO Should Apply Only WTO Principles

The separation of trade and environment, and the absence of substantive environmental principles within the WTO system, amounts to an assertion of the autonomy of the trade sphere *vis-à-vis* environmental policy. In the 1991 *Tuna-Dolphin* case the panel stated that in accordance with its terms of reference, 'its task was

limited to the examination of this matter "in the light of the relevant GATT provisions", and therefore did not call for a finding on the appropriateness of the United States' and Mexico's conservation policies as such.⁵ The WTO's trade-oriented principles are thus hierarchically superior, for WTO dispute settlement purposes, to the environmental principles found in other parts of international law. The panel saw itself as applying GATT but not general international law: yet the GATT/WTO system is constituted and operated within the international legal system. Failure to make reference to applicable rules of international law because they are not WTO rules manifests the common voluntarist view in international law that parties can—within important limits—choose the applicable rules to be applied by a dispute settlement body. Whether this systemic purity will continue to be pursued in the future must be doubted. The standard terms of reference have been broadened somewhat, and panels may increasingly come to recognize the wider public function of the WTO and their place within a rule of law system. Autonomy is no longer claimed for WTO trade principles *vis-à-vis* intellectual property, and it may be wondered whether the WTO will long hold the line on environmental issues. The WTO Trade and Environment Committee has already begun to discuss a lengthy list of principles of environmental policy, ranging from the polluter-pays and the precautionary principle to life cycle management and inter-generational equity. From an economic perspective, as Robert Repetto argues: 'neither trade liberalization nor environmental protection are inherently or inevitably more important. The measurable efficiency gains from trade liberalization have usually been estimated to be in the range of 1 to 2 percent of GDP. Similarly, the costs of environmental controls and the residual economic losses from environmental damages are both typically 1 to 2 percent of GDP in countries with strong environmental policies, and 3 to 5 percent in countries with weaker policies. Therefore, there is no strong economic case that trade policy should take precedence over environmental policy, or vice versa.'⁶

The most problematic implications of this principle for the WTO dispute settlement system involve conflicts between WTO rules and state actions taken pursuant to explicit trade-restrictive provisions in a widely accepted multilateral environmental agreement. Such trade restrictions are contemplated in treaties concerning endangered species, certain potentially harmful wastes, and products from certain driftnet fishing nations. The clearest case is the 1987 Montreal Protocol on Protection of the Ozone Layer, which contemplates obligatory and discretionary trade sanctions against non-parties to prevent free-riding states from staying outside the regime and gaining a competitive advantage while undermining its effectiveness.

Most of the solutions presently under discussion in the WTO duck the conundrum by employing state consent. The nearest such solution is a waiver of WTO rules, in favor of the Montreal Protocol and similar treaties: such a waiver may be granted by the vote of two thirds of WTO members, and effectively binds the entire membership. However, several of the major actors, including the US and the EU, have expressed doubts about the adequacy and

⁵ *United States Restrictions on Imports of Tuna* (1991), para 6.1.

⁶ See Robert Repetto, *Complementarities between Trade and Environment Policies*, in Zaelke, Orbuch, and Housman (eds.), *TRADE AND THE ENVIRONMENT*, pp. 237-46 at p. 237.

appropriateness of using waivers for such a fundamental long-term purpose, and the WTO does not yet have any agreed solution.

The Liberal Theory of International Law

Proponents of a new liberal paradigm for international law envisage an expanding world of liberal states, spreading out from the Western heartland by diffusion or contagion. Such a world is characterized by tendencies toward: the declining use of large-scale military force in inter-state wars; states becoming representative liberal democracies with independent judiciaries and flourishing domestic and trans-border civil societies; free if regulated market economies fueling social interaction and demands for legal norms and institutions; increasingly dense patterns of transnational interactions among all organs exercising governmental authority, ranging from judiciaries to securities regulators and sub-national legislatures; and the erosion of significant distinctions between the international (including foreign policy) and the domestic. The international legal system should no longer be modelled as the law made by states to regulate their mutual relations. Rather it should be seen to comprise: norms of interaction for individuals and groups in transnational civil society, many of which are chosen voluntarily by contract even if they often rely on state power for enforcement; rules and decisions promulgated by state institutions in transnational dialogue with other relevant institutions; and the law controlling state action, which will be a mixture of international agreements and national law, and will generally be subject to enforcement in national courts and in supranational courts of which the EU's European Court of Justice is a prototype.⁷

This account seems to have much to offer. It captures the process of transnational legal interaction much better than do mainstream rule-oriented accounts. It acknowledges the impact of the market for legal rules and institutions, which has been well documented in such fields as international commercial arbitration. It incorporates the large bodies of legal practice which take place with little or no reference to state legal institutions, such as the establishment of standards (enforced by peer pressure) by transnational industry groups. It takes note of the ways in which political processes and transnational pressures condition state lawmaking and implementation. It gives some account of the patterns of convergence and harmonization among national laws, and through the analytical device of dialogue offers at least a possible view of ways to ameliorate conflicts among legal systems. It unifies public and private, domestic and international. It caters to a limited degree to the impulses of cosmopolitanism, but without implausible displacement of states or the even more implausible postulate that behavior will be based on a universalist ethic of equal duties to all human beings. It takes account of context and of values—at least process values, and probably liberal market values too.

Positing such a liberal conception of international law as a substitute for the standard inter-state conception, does it cast any more illumination on the problems surrounding the four WTO principles discussed above?

First, the problem of the democratic deficit might be met by opening the WTO to wider participation. Systems of NGO participation and direct elections may be more richly described by the liberal account—while they are understood within the existing inter-state framework, but fit uneasily. The more fundamental problems of representation in international trade are, first, that national political processes attach much greater weight to the domestic interests represented there, and second, that both national and international political processes tend to attach more importance to the concretized interests of likely winners and losers than to the diffuse interests of larger groups whose losses or gains may in aggregate be much greater but more distant and less explicit.⁸ One function of international institutions such as the WTO is to counter distortions introduced by these defects in representation. The liberal theory would suggest adopting a system in which interests e.g. of exporters in other states are directly represented in the national political process, and in which diffuse interests are concretized through specifically empowered representatives. There have already been modest developments in these directions, evident in limited representation of foreign and diffuse interests in US politics and in representational devices in the EU—the liberal scheme explains these developments much better than does the traditional framework with its assumption that foreign interests are represented through foreign states.

Second, the difficulty of unilateralism is that while almost all states are against it—and there would be dire consequences for the international system if most states regularly attempted unilateral enforcement—in the decentralized legal system unilateral trade measures can seem to bring results, not only for the state using them, but on occasion for the international community more generally. One influential theory holds that over and above unilateral attempts by states to enforce existing international rules, certain violations of WTO rules by unilateral enforcement of self-promulgated liberal trade standards above WTO levels make a positive contribution in forcing the evolution of WTO standards.⁹

The dilemmas of unilateralism might theoretically be avoided by a radical shift to either a federal-type system with some central standard-setting and enforcement, or a supranational system with central standard-setting and local enforcement monitored from the center. At the international level such a vision applies at most to the EU—and unilateralism has not been eliminated there. The liberal framework does not resolve the problem, but posits the containment of unilateralism through the embedding of state power in a network of shared values and overlapping interests. Some liberals advocate unilateral enforcement as a substitute for collective action in rare cases where it is vitally needed to uphold a widely-supported norm and the arguments for it outweigh its very high costs. This argument for circumscribed unilateralism harmonizes with the liberal disinclination to maintain the equality of states as a central tenet. This is highly controversial prescription, as the *Tuna-Dolphin* debates amply demonstrate, but the liberal framework does at least provide a structure within which to explain and make some sense of current US practice.

⁷ See in particular Anne-Marie Slaughter Burley, *International Law and International Relations Theory: A Dual Agenda*, AMERICAN JOURNAL OF INTERNATIONAL LAW 87 (1993), pp. 205-39; and Anne-Marie Slaughter, *A Theory of International Law and International Relations*, EUROPEAN JOURNAL OF INTERNATIONAL LAW (forthcoming 1995). The account of international law as the liberal law of a transnational civil society discussed in the present article is an amalgam of various current ideas, not necessarily shared by any particular author—the comments relate to the hybrid account, not to the positions of individual authors.

⁸ See e.g. Robert Hudec, "Circumventing" Democracy: *The Political Morality of Trade Negotiations*, NYU JN'L INT. L. AND POL. 25 (1993), pp. 311-22, drawing lessons from the circumstances (especially logrolling) in which US democracy produced the 1930 Smoot-Hawley tariff, which exacerbated the world-wide economic depression.

⁹ Robert Hudec, *Thinking About the New Section 301: Beyond Good and Evil*, in Jagdish Bhagwati and Hugh Patrick (eds.), *AGGRESSIVE UNILATERALISM* (Ann Arbor, 1990), p. 113.

Third, the mismatch between ecosystems and the territorial structure of sovereign states creates grave problems of environmental management—the WTO principle of non-impingement may exacerbate some of these problems. The liberal conception of international law proposes several devices to address these problems: integrating local, national and international decision-making and rule enforcement to promote optimal commons management; creating valuable interests in commons to overcome the market failures analyzed as tragedies of the commons, including some of the inequities resented by developing countries; and assuring adequate representation within national decision-making systems of interests of those living in other states. All of these devices can be understood within the present inter-state system, but the liberal conception may well be richer in describing them and explaining their operation. When it comes to the hard issue of the use of trade sanctions as a technique for influencing environmental choices of other states, the liberal theory has fewer clear implications. Environmentalists favor sanctions through market closure or selective incentives through market access, in order to expedite standard-setting, raise standards, and induce compliance. Yet sanctions have grave problems. As the *Tuna-Dolphin* cases graphically demonstrated, states are often bitterly hostile to sanctions as a means of pursuing environmental objectives even where they themselves endorse and pursue similar environmental policies. In some cases ineffectiveness of commons regimes is partly attributable to refusal of rich countries to compensate poor countries for lost opportunities or higher costs in complying with a new regime, an inequity generating compounded resentment where rich countries have in the past profited from depletion of the same commons. The liberal theory suggests that the damage sanctions cause to the people affected, and the inequities associated with sanctions, ought to weigh more heavily than the existing framework proposes—here, however, the liberal account may be more prescriptive than descriptive.

Fourth, the liberal theory holds out the possibility of transcending the conundrum created by the need of the inter-state legal system both to respect the will of states (which gives it authority) and to restrain the exercise of that will (through international regulation and enforcement). The liberal theory proposes that states not be understood as autonomous sovereigns subject to nothing but themselves and the rules they have agreed to. It makes the plausible point that states and inter-state institutions do not and need not occupy the whole field. Rather states should be seen simply as important loci of power and authority within a transnational civil society which permeates through their borders. That society finds voice and political expression through states but not only through states—the interests of individuals and groups are also expressed in many other ways. International law can be seen as the law of such a transnational society, regulating states but not dependent entirely on states for its existence, content, or implementation. In more ambitious versions of this theory, state sovereignty is in some respects constituted by the law of the transnational civil society, escaping the tendency within the traditional framework for international law to take sovereignty as a pre-legal social fact. While the law of the transnational civil society is weak and overwhelmingly dominated by states, the basic conditions of the Hobbesian anarchy (the metaphoric war of all against all) and the security dilemma (the need of each state to achieve security, which inevitably threatens the security of others) may persist: but the possibility of their transcendence becomes a visible glimmer.

Conclusion

The *Tuna-Dolphin* cases and the WTO trade-environment debates raise difficult issues for the international legal order. All four of the WTO principles discussed here are intelligible within the traditional framework of international law. The problems with them point to discordance between the traditional model of the inter-state legal system and contemporary needs. The liberal theory of international law as the law of an emerging transnational civil society has important attractions in responding to globalization and in proposing a theory of states in a legal system rather than a legal system of states. When applied to a set of specific problems, it exhibits useful explanatory power, but on some of the hard issues seems to be more a vision of future worlds than an operational problem-solving system for the present one. While the European Union, beloved archetype of liberal theorists, has departed in interesting ways from all four principles adhered to by the WTO, the EU remains an institution for the maintenance of states and sovereignty rather than their eclipse. The expansive vision of European Union is being called into question even in Europe—its value as a model for the future of global organization must remain very doubtful.

The liberal framework of international law is helpful, but its proponents are often animated by a vision of a transformed world, and tend to use the theory to prescribe for the whole world rather than simply to explain parts. This triumphalist tendency sees the West as the only viable model, beckoning or coercing those in the outer zones of turmoil to transplant and internalize the Western liberal package.

If the future world envisaged by proponents of the liberal framework were ever to evolve, would it be as rosy as the most optimistic depictions suggest? Probably not. The weakening of the juridical equality of states would probably magnify existing disparities of power, and license the increased use of that power. New layers of privilege among states and polities would emerge, probably rewarding particular types of democratic polities and particular thriving economic models. Some states would decline, but successful states could well maintain their positions and profit from the decline of others. Essential new principles about optimal levels of government and the management of regulatory competition at different levels would not easily be agreed. If a transnational civil society can be said to exist and to be important, the power relations within it are not necessarily more equitable than those in the interstate system, and it may contribute no more to solving fundamental problems of poverty, environmental degradation, and sustainable development besetting much of humanity than does the inter-state system as traditionally conceived. The emergence of necessary social patterns and structures within such a society would be a slow and conflictual process. The UN is already struggling with the problem of determining which NGOs legitimately represent which interest, and systems of accountability of civil society organizations are rudimentary at best. Such a society is bound to be associated by many with increasing globalization and cultural homogenization or dominance, and may well be viewed with suspicion by those people, including members of some indigenous and nationalist groups, who already oppose the WTO, NAFTA, and similar arrangements. Although it addresses problems with principles animating the WTO, the liberal vision of a future world is diametrically opposed to the foes of 'GATTzilla', for whom neither transformative globalization nor the cosmopolitan liberal displacement of national sovereignty seem remotely desirable.

An International Manual for the Law of Armed Conflict at Sea

Horace B. Robertson, Jr.

For seven years beginning in 1987 I was involved in a project to modernize the international law of war relating to armed conflicts at sea. This project was called the "Round Table of Experts on the Humanitarian Law of Armed Conflict at Sea." It convened initially in San Remo, Italy, in 1987 in a preliminary session at the International Institute of Humanitarian Law of San Remo under the sponsorship of the Institute, the University of Pisa (Italy) Faculty of Law, and the Syracuse University School of Law. The work of the Round Table culminated in June 1994 in Livorno, Italy, with the adoption by the Round Table of the *San Remo Manual on International Law Applicable to Armed Conflicts at Sea*. The *Manual* and an accompanying paragraph-by-paragraph commentary, called the "Explanation," will be published by the Cambridge University Press in a few months.

The Round Table was composed of a group of international lawyers and naval experts from a number of countries. Although some of the persons involved were officials of their governments, all members participated in their personal capacities and not as representatives of their governments. The membership of the group fluctuated somewhat over the seven-year period, but a core of

about 30 participants was active in the deliberations of the Round Table for all or nearly all sessions. Twenty-six countries were represented in at least one session.¹

The Necessity for a new "Manual"

The international law applicable to armed conflicts at sea is a diffuse body of law drawn from many sources—the practices of States (including national military manuals published by individual countries for the governance of their armed forces), several treaties on the law of war dating from the early part of this century (some of which have never been ratified and none of which has received universal acceptance), the four Geneva Conventions of 1949, the 1977 Additional Protocol I to the 1949 Geneva Conventions (which applies primarily to the law of land warfare but has some provisions applicable to armed conflict at sea), and the so-called "Oxford Manual" on the Laws of Naval War Governing the Relations Between Belligerents adopted by the Institute of International Law in 1913 (a non-binding but influential restatement of the law as it existed at that time). The very diffuseness of these sources of law suggested that a review was necessary.

In addition, a number of political events and technical developments taking place since the law was last "restated" in 1913 had profoundly affected the way that naval belligerents conducted naval operations against each other, as well as their relations with neutrals. Among the political events were the occurrence of two World Wars, the adoption of the United Nations Charter making the resort to the use of force illegal except for self-defense or when authorized under Chapter VII of the Charter, the generality of the practice by States since World War II of engaging in international conflicts without the formality of a declaration of war, and the significant changes in the law of the sea with the broadening of the territorial sea, the emergence and acceptance of the concepts of the exclusive economic zone, the continental shelf and archipelagic waters.

Technical advances included the emergence of the submarine as a commerce raider, the refinement of aircraft as weapons of war and aircraft carriers as the principal "ships of the line" (at least for major navies), the development of weapons of mass destruction and over-the-horizon missiles, and the development of laser-guided projectiles and other sophisticated electronic warfare devices.

The widespread practice in both World Wars of attacking enemy merchant ships without warning (particularly by submarines), which was clearly contrary to traditional international law, brought into question whether these aberrations were merely violations of the law or had actually wrought a change in the law. Allied practices of so-called "long-distance" blockade and post-World War II "blockade-like" practices (such as the Cuban Missile



SAM GRAY

H.B. Robertson, Jr. is Professor of Law Emeritus. He joined the Duke Law faculty in 1976, after a distinguished career in the United States Navy. He was the highest ranking legal officer in the Navy in 1975. Before retiring from teaching in 1990, he taught in the areas of international law and admiralty.

¹ Argentina, Australia, Austria, Belgium, Brazil, Canada, Chile, China, Croatia, Egypt, France, Germany, Greece, Iran, Israel, Italy, Japan, Netherlands, Nigeria, Norway, Poland, Singapore, Sweden, Switzerland, United Kingdom, USA, and USSR (succeeded during the course of the proceedings by Russia).

Quarantine and the interdiction of shipping and air traffic to Iraq and Kuwait during the recent Gulf Conflict) had substantially altered the thinking of States as to the continued legitimacy of the traditional restrictive rules regarding these methods of naval warfare.

A Plan of Action

The first session of the Round Table at San Remo in 1987 was convened without a very clear idea of what might emerge from the deliberations. A number of the participants, including myself,

The international law applicable to armed conflicts at sea is a diffuse body of law drawn from many sources.

were asked to give reports on certain segments of the traditional law, highlighting what they saw as the current or emerging problems with the law as it was assumed to exist. Except for some general findings that "new technologies and methods of warfare, new developments in the law of armed conflict and in the law of the sea and the increased possibilities of grave harm to the environment as a result of armed conflict at sea" required further study, the Round Table did not come up with a plan of action to conduct such study. It wasn't until the second session of the Round Table, held in Madrid in 1988 under the sponsorship of the Institute, that a definite plan of action for developing a modern restatement of the law of armed conflict at sea emerged. The so-called "Madrid Plan of Action," which was adopted at the end of that session, identified five discrete areas of the law that should be addressed in subsequent sessions of the Round Table, as follows:

- Military objects in the law of naval warfare
 - the principle of distinction
 - legal status of the merchant ship in the law of naval warfare
 - target identification
- Methods and means of combat in naval warfare
 - mines, missiles, torpedoes and other weapon systems
 - state practice in relation to exclusion zones
- Protection of different categories of victims of armed conflicts at sea
- Visit, search and seizure
- Regions of operations in naval warfare (different maritime areas)[this topic referred to the changes that the 1982 UN Convention on the Law of the Sea had brought about in the peacetime law of the sea.]

As to a method of work, the Madrid plan called for subsequent annual sessions to address one or more of the foregoing topics. Preparatory to each meeting a member of the Round Table would prepare a paper on the subject assigned, making such proposals as he/she felt warranted as a result of the study. These preparatory papers were distributed well in advance to the members for study and comment. At the meeting, all participants were free to comment and propose additions or modifications to the reporter's proposals. At the end of each meeting, a drafting committee would attempt to assemble in "restatement" form the results of the Round

Table's deliberations. Where consensus was not attained in the Round Table's deliberations, the drafting committee would state opposing views in brackets [—]. The drafting committee's report was then presented to the plenary Round Table for approval. From the outset it was agreed that the report of each session would be provisional, subject to modification at later sessions in the light of the discussions at those sessions.

The work of the Round Table proceeded in this manner through six additional sessions at Bochum (Germany), Toulon (France), Bergen (Norway), Ottawa (Canada), Geneva (Switzerland), and Livorno (Italy). As the work progressed, the International Committee of the Red Cross (ICRC) played a major role, primarily through the participation of one of its legal advisers as the coordinator of preparatory work and chair of the drafting committee and harmonization group. The ICRC also was host for the Geneva session of the Round Table in 1993 and an intersessional meeting of the harmonization group in the Spring of 1994. This was entirely appropriate, since the development of humanitarian law for the protection of the victims of armed conflict has been one of the ICRC's principal roles since its establishment in the last century.

The work of the Round Table was enhanced and given greater authenticity by the fact that the participants were not solely scholars and international lawyers. A substantial percentage of the members of the Round Table were naval officers, both active duty and retired. Collectively they had vast experience in actual naval operations in all spectrums and aspects of naval environments, ranging from peacetime operations to full, wartime conflict and from small navies engaged in coast-guard type activities to major naval powers employing the most modern, sophisticated weapon systems.

In addition to taking part in all sessions of the Round Table except those at Madrid and Bochum, I also contributed to the work of the group as the Reporter for the session at Ottawa in

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1992 on "regions of operations" and as a member of the drafting committee and harmonization group. This latter group was tasked with harmonizing the texts that emerged from each session and drafting the *Manual* in its final form. Members of the harmonization group also authored the "Explanation" (more about this below).

The Final Product

As is apparent from the above, it was not clear to the Round Table at the outset where its deliberations would eventually lead. A consensus soon developed, however, that its work should lead to some concrete product, but the form of that product was somewhat obscure. Some members thought that we should produce a

draft treaty, which could be presented to the United Nations General Assembly or a sponsoring state² as a preparatory text for negotiation of a treaty on the law of armed conflict at sea. Most participants, however, were less ambitious. What finally emerged is regarded by the Round Table as something in the nature of a "restatement" in the American Law Institute sense of that term—an informal codification of current law but containing some elements of progressive development. The Round Table would like it to be considered as a successor to the Oxford Manual of 1913. In any event, it is hoped that it will influence the behavior of States in their actions as well as introduce some international uniformity in the interpretation of rules applicable to armed conflict at sea.

The Substantive Content of the Manual

In formulating what it considered to be the modern law of armed conflict at sea, the Round Table faced the dilemma of determining the status of many pre-World War I treaties and practices (the "traditional" rules) which, although still technically in effect for a large number of States (including the United States in some instances), were largely ignored during and following World War II. Were these traditional rules to be regarded as binding despite their apparent desuetude, or was their non-observance to be regarded merely as violations of the rules which did not affect their continuing validity? A determination on these issues could not be made independently of a consideration of the effects of the United Nations Charter, which limits the use of force by one nation against another to situations of self-defense against an armed attack or actions taken pursuant to resolutions of the Security Council under Chapter VII of the Charter.

Under the theory of the Charter, any State using force against another except under these limited exceptions would be deemed an aggressor and would be so labeled by resolution of the Security Council. Under the obligations imposed by the Charter, all member States would be required to carry out the mandates of the Council, including any measures against the aggressor to restore peace and security. In theory at least, then, States engaged in a conflict were either aggressors or victims of aggression. There could be no such thing as "neutrality," since the principal duty of a neutral State was impartiality, whereas under the Charter system, States not involved in the conflict were obligated to support the decisions of the Security Council against the aggressor. In actual practice, however, the system has worked as designed only in rare instances. In most cases, the Security Council has been either unable or unwilling to perform in this manner. In nearly all armed conflicts that have occurred in the post-Charter era, both sides have asserted that they are the victims of aggression and each has claimed to be acting in individual or collective self-defense. Under these latter circumstances, the Round Table concluded that the concept of "neutrality" remained a valid one and consequently devoted a substantial segment of the *Manual* to laying out the duties of belligerent and neutral States toward each other.

A second issue raised by the Charter provisions was whether the rules adopted for the conduct of naval hostilities should apply equally to both sides of a conflict, even when one of the parties

has been found guilty of aggression by the Security Council. The Round Table had no difficulty in affirming that the rules applied equally to both sides, finding that the principle was well established in international law and in accord with the humanitarian purposes of the law. In this respect, the *Manual* follows the example of 1977 Protocol I to the 1949 Geneva Conventions, which states in its Preamble that its provisions apply in all circumstances "without any adverse distinction based on the nature or origin of the armed conflict or on the causes espoused by or attributed to the Parties to the conflict."

The Manual attempts to strike a balance between military necessity on the one hand and humanitarian protection of civilian persons and objects on the other.

A new element introduced into the *Manual* is the articulation of the concept of the "military objective." While this idea was inherent in the traditional rules governing search, seizure and capture of enemy and neutral merchant vessels, it had never been articulated as a general principle of the law of naval warfare. The idea behind this concept is the protection of civilian persons and objects from direct attack. The difficulty in naval warfare is that under traditional law, while only enemy warships and naval auxiliaries were subject to attack on sight, under certain circumstances enemy merchant ships, and in some exceptional circumstances even neutral merchant vessels, were subject to capture and under extremely restricted conditions to destruction. With the advent of the submarine and aircraft, with their limited capabilities for stopping, searching and capturing merchant vessels, and removing passengers to safety before sinking them on the one hand, and the integration of merchant vessels into the war-support operations and intelligence networks of the naval forces on the other, the temptation to ignore these traditional restraints on attacking merchant vessels on sight yielded to what was considered "military necessity." By defining the military objective and setting forth criteria that must be met before an attack can take place, the *Manual* attempts to strike a balance between military necessity on the one hand and humanitarian protection of civilian persons and objects on the other. Under *Manual* rules these provisions apply to attacks launched from any type of naval platform—surface, submarine or aircraft.

Another area the *Manual* had to address to bring the law up to date was the changes that had occurred in the law of the sea since the law of naval warfare crystallized in the early part of the Twentieth Century. At that time there was a consensus among States that the breadth of the territorial sea was three nautical miles and beyond that limit all the oceans were "high seas," free for navigation and other lawful uses (including armed conflict) by all States. The consensus on the breadth of the territorial sea began to break down at the end of World War II. Since that time large numbers of States have made myriad claims to diverse types of national jurisdiction beyond three miles. Efforts to restore a consensus led to lengthy negotiations at several international conferences, finally resulting in the 1982 United Nations Convention on the Law of

² The Government of Switzerland, for example, convened the international conference which resulted in the negotiations of the two 1977 Additional Protocols to the 1949 Geneva Conventions.

the Sea. This Convention, which now appears headed toward near-universal recognition as the "new" law of the sea, recognizes a 12-nautical-mile territorial sea with several other areas of more limited coastal-State jurisdiction extending outward as far as 200 nautical miles from the shorelines of coastal States. In the case of a few archipelagic States such as Indonesia, the Philippines and Bahamas, vast stretches of what had been high seas are incorporated into the "archipelagic waters" bounded by the outermost islands of these archipelagic States. Archipelagic waters have essentially the same legal characteristics as the territorial sea—that is, subject to the full sovereignty of the coastal State with only minor exceptions to allow passage through them.

Although the United Nations Convention is "peacetime" law, the zones of national jurisdiction it establishes nevertheless affect belligerent-neutral relations, since the traditional law of naval warfare had well defined rules governing permitted and prohibited activities by belligerents in neutral waters and the duties of neutrals to enforce these rules against belligerents. The Round Table, following the lead of several States whose national operational manuals had already dealt with these issues, incorporated these new concepts of ocean space into the *Manual*.

Another issue that had to be dealt with in the *Manual* was that of so-called "operational zones" in the oceans. The traditional law of naval warfare had recognized the right of belligerent States to control neutral ships and aircraft in the immediate vicinity of naval operations. Beyond that, there was no right to restrict the movements of neutral ships and aircraft other than under the doctrines of visit and search and blockade. Nevertheless, since World War I belligerents had purported to demarcate large areas of the oceans as "exclusion zones," or "free-fire zones," or other zones intended to deny or restrict the normal rights of neutral ships or aircraft in such zones. Other States had, for the most part, protested the establishment of such zones and had refused to recognize them. The Round Table recognized that under some circumstances, the delineation of such zones was helpful in confining the areas of hostile activities, but refused to accept the contention that States establishing such zones could thereby enhance their rights against neutrals or absolve themselves from their duties under international law.

Although the United Nations Convention is "peacetime" law, the zones of national jurisdiction it establishes nevertheless affect belligerent-neutral relations.

Another area as to which the law was largely undeveloped was the law applicable to aircraft in naval conflict. The Round Table fully integrated rules applicable to aircraft into the *Manual*, taking account of the practices of States during and after World War II as well as the current international rules promulgated by the International Civil Aviation Organization for the regulation of air traffic worldwide.

An area that proved particularly troublesome for the Round Table was how to deal with over-the-horizon weapons that had come into the operational inventories of many navies, including

some navies that had little other offensive capability and limited technical capability for control of such weapons once they were launched. While it was recognized that, unlike in land warfare, in most cases naval forces operating at sea were isolated from non-military objectives, there was the possibility that there might be protected vessels (*e.g.*, hospital ships) in the immediate objective area. A decision to launch an over-the-horizon, target-seeking ("homing") weapon into such an area would violate the basic principle of international humanitarian law that parties may not employ methods or means of warfare which are indiscriminate. According to the *Manual*, such weapons are indiscriminate if either (i) they are not or cannot be directed against a specific military objective, or (ii) their effects cannot be limited as required by the rules laid down in the document. After considerable and heated debate, the Round Table included a provision that, in effect, made over-the-horizon missiles and projectiles subject to the same rules of target discrimination as other weapons.

One area of the law of naval warfare in which the "traditional" law appeared to be particularly outmoded was that governing the belligerent's rights to interrupt commerce to the enemy by means short of attack. This area included detailed and technical rules growing out of the practices of the 19th Century dealing with visit and search, absolute and conditional contraband, capture and prize, and blockade. Although modern practice (as exemplified by the practices of coalition forces in the recent Persian-Arabian Gulf War) deviated substantially from the traditional rules, most experts in this field of law recognized the utility of measures short of attack for interdicting or controlling commerce with the enemy. In the Gulf War, for example, the coalition forces interdicted all air and sea traffic destined for Iraq and Kuwait. Yet no formal blockade was proclaimed, and the visit and search procedures did not result in the taking of prizes but rather in diversion of the ships and aircraft to a destination other than one where transshipment to Iraq or Kuwait was possible. There was no cordon of warships in the immediate vicinity of the "blockaded" ports. The *Manual's* provisions take account of these modern innovations. With respect to blockade, for example, the *Manual* maintains the traditional rules requiring notification, formal proclamation, effectiveness, and impartiality of enforcement, but allows flexibility with respect to the composition and stationing of the blockading force and with respect to the actions that may be taken against a vessel or aircraft attempting to breach the blockade. With respect to visit and search, the *Manual's* provisions maintain many of the traditional rules, but allow diversion from the declared destination as an alternative to visit and search and use of the system of "navicerts" adopted by the British in World War II as a way of reducing the need to visit and search at sea. As to contraband, the *Manual* abolishes the traditional distinction between absolute contraband (such items as munitions and implements of war) and conditional contraband (items that may be used either by the armed forces or the civilian population).

Finally, the *Manual* contains a section on Protected Persons, Medical Transports and Medical Aircraft. While detailed provisions in this area of the law are found in the Second Geneva Convention of 1949 and the 1977 Additional Protocol I to the Geneva Conventions, and the *Manual* makes clear that, with one exception, its provisions are not to be construed as departing from those instruments, it attempts to clarify and amplify the application of those treaty provisions to situations of armed conflict at sea.

The one exception from the Geneva law proposed by the Round Table is found in paragraph 171, which states:

In order to most effectively fulfill their humanitarian mission, hospital ships should be permitted to use cryptographic equipment. The equipment shall not be used in any circumstances to transmit intelligence data or in any other way to acquire any military advantage.

This is the only provision in the *Manual* in which the hortatory ("should") rather than declaratory mode of expression is used. The Round Table used this form because it acknowledged that its proposal was contrary to the treaty law on the subject. Paragraph 2 of Article 34 of the Second Geneva Convention states that "hospital ships may not possess or use a secret code for their wireless or other means of communication." The Round Table recognized that this provision had not become obsolete because of desuetude. The "should" indicated the Round Table's concern that the law should be changed.

The Round Table included a provision that, in effect, made over-the-horizon missiles and projectiles subject to the same rules of target discrimination as other weapons.

In explanation of the proposal for a change in the rule, the Round Table pointed out that communication technology has changed dramatically since the rule's adoption in 1949. Today all radio traffic to and from warships is automatically encrypted and decrypted by equipment integral to transmitters and receivers. Hospital ships "should have the same type of communication equipment to avoid delays in receiving vital information caused by having separate and outdated radio equipment that does not have the integral crypto function." Further, combatant forces would be reluctant to send "in the clear" messages as to rendezvous points for transfer of the sick and wounded. The Round Table also noted that Article 31(4) of the Second Geneva Convention provides for neutral observers on hospital ships. Such neutral observers could prevent abuse of the encryption capability.

The Round Table also recognized the utility of the so-called "Red Cross Box" agreed to by the British and Argentine governments during the Falklands/Malvinas conflict of 1982. This neutral zone was particularly helpful in the exchange of British and Argen-

tine wounded. The Round Table decided to include a provision for such defined "no combat" areas in the *Manual* and encouraged their use for any humanitarian purposes to which the parties might agree.

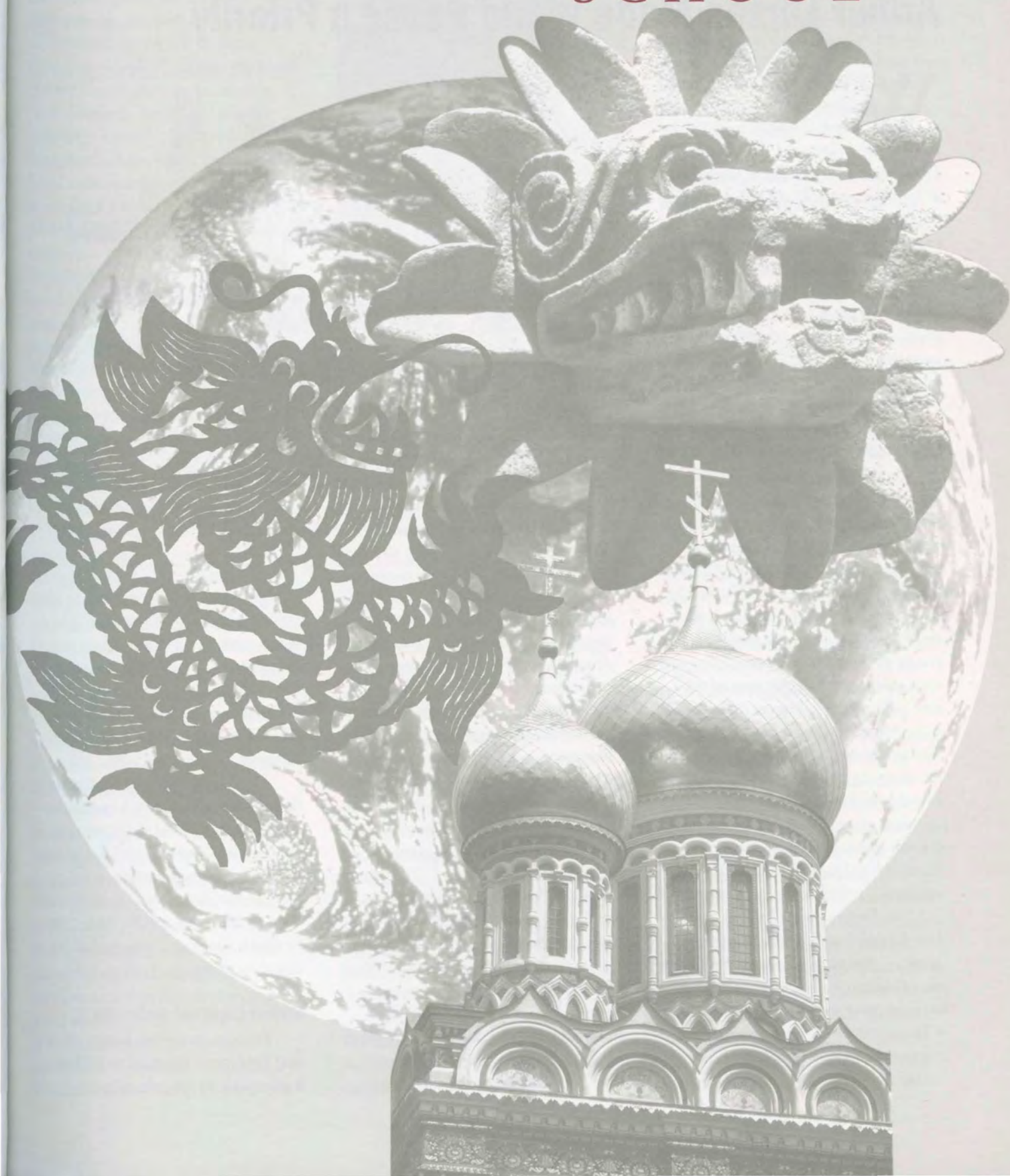
The "Explanation"

About mid-way through the proceedings, it became apparent to the Round Table that the usefulness of the *Manual* would be enhanced if it were accompanied by a detailed commentary on each of its provisions, explaining the sources of each paragraph and summarizing the debates that led to the final product. It was decided by the group that this task should be undertaken by the Reporters who had provided reports on each segment of the Round Table's work. This group also formed the Harmonization Group and participated in the work of the drafting committee. Under the leadership of Ms. Louise Doswald-Beck of the Legal Adviser's Office of the International Committee of the Red Cross, this task was accomplished contemporaneously with the completion of the *Manual*. The commentary, which the Round Table decided at its last session should be called the "Explanation," will be published together with the *Manual* in a single volume.

Significance of the Manual

The *Manual* and its accompanying "Explanation" represent a large investment of time and resources by the International Institute of Humanitarian Law, the International Committee of the Red Cross and the participants in the Round Table. The *Manual* and the "Explanation" will be published by the Cambridge University Press within the next few months. The Institute, the ICRC, and the participants hope that the work and study they have devoted to the project have served a useful purpose. With the end of the Cold War and the reduction of the possibility of global nuclear war, the likelihood of localized and regional conflicts remains and may have increased. Under these circumstances, it is important that the humanitarian rules that attempt to eliminate excessive injury or damage and ameliorate suffering be recognized by all parties to the conflict. In order for them to be effective, there must be some common understanding of these rules and uniform interpretation of them. At this time, when many national military establishments are engaged in revising their manuals and adjusting their military doctrines to reflect current politico-military realities, a new manual, prepared by an internationally diverse group of experts rather than a partisan, national group, should be influential in shaping the doctrines and practices of these national authorities. It was this hope that motivated and sustained the work of the Round Table during its seven years of deliberations.

ABOUT THE SCHOOL



Duke's World Rule of Law Center and Founder Arthur Larson Made World Peace a Priority

When Arthur Larson resigned as special assistant to President Eisenhower in 1958 to found and direct the World Rule of Law Center at Duke University School of Law, Ike wrote: "I am delighted with the prospect that a real contribution to the rule of law among nations can be forthcoming from [the new Duke] center. To depose the rule of force, and to enthrone the rule of law in the disposition of international differences is imperative." Recalled Larson in a 1977 interview: "Ike said 'For anything else I wouldn't let you go, but for this, go.'"

Establishing an International Rule of Law

Duke's World Rule of Law Center was established with the objective to stimulate and forward acceptance of the rule of law at an international level, including its use to settle disputes that threaten world peace. "The law, however it may differ over the globe," said Larson, "is a concept that most people understand, and provides a common meeting ground for men of reason." (The technical term "rule of law" is construed to mean that agreed-upon legal machinery, rather than force, is put to use to settle disputes for which a legal basis for settlement exists.) "The awesome alternative to acceptance of the rule of law by various nations over the world is clear and increasingly ominous," stated Larson at the outset.

The Center, located within the Law School's existing space from its birth in 1958 and in an entire wing of the School at the height of its growth, set forth several long-range objectives:

- To reorganize the International Court system in order to make it more accessible and effective.



"Can you direct me to the new Rule-of-Law Center?" asks Dr. Arthur Larson in a 1958 cartoon by John Sink of the *Durham Herald-Sun*.

- To suggest avenues by which all governments might reach the point of general acceptance of the jurisdiction of such a court system as a matter of routine.
- To seek and find the various common denominators among the laws of different countries, and try to identify a workable core of law which would have general acceptance.
- To investigate possible ways of assuring compliance with International Court decisions.

The World Rule of Law Center was funded primarily by gifts, as well as grants for specific projects. Throughout the 1960s, Ralph Price and his family contributed over \$376,000 to the Center, creating The Ralph C. Price International Peace Studies Fund. With his first gift, Price wrote: "For some time I have been interested in making

a contribution to help in bringing educational and research resources to bear in the most effective way on the task of building a just and durable peace." The Mary Reynolds Babcock Foundation also contributed a substantial gift of \$75,000 in 1960 to help meet the Center's operating needs.

The Center's creation and vision fit perfectly with Arthur Larson's interests. "Law and world peace were two of the biggest commitments I had in my entire life," he said. Larson served as the Center's director and chief advocate from its birth through the mid-1980s, by which time the Center had all but closed its doors.

Matters Legal and Justiciable

From its inception, Larson stressed that the Center intended to confine itself strictly to the rule of law as it

relates to matters that were legal and justiciable. It would not deal with international problems that were essentially political, nor with the possibility of "legislated" world law as distinguished from judicial. Larson explained that the Center did not do research "in the abstract, but rather with the solution to a problem in mind." The Center tackled the legal aspects of issues such as the struggle over Berlin, the Cuban crisis and the legal basis for United Nations forces. Over the years, the Rule of Law Center researched and published books and materials on these topics, as well as on subjects such as propaganda, national sovereignty, disarmament, security, population, and various forms of discrimination. The Center's research was frequently requested by US congressmen and foreign embassies.

Larson's Rise To Prominence

Prior to establishing the Rule of Law Center at age 48, Larson had already attained prominence within the legal and political communities. Born in South Dakota in 1910, Larson graduated from the University of South Dakota Law School and was awarded a Rhodes Scholarship at Oxford University. There he earned his B.A. and M.A. in jurisprudence in the 1930s and his Doctor of Civil Laws degree in 1957 based on his treatise *The Law of Workmen's Compensation*.

After working as an attorney at firms and agencies in Wisconsin and Washington DC, Larson moved on to academia as professor of law at Cornell Law School and dean of the University of Pittsburgh Law School. It was during this time that Larson became one of the world's leading authorities on workers' compensation laws and social security.

Larson's 11-volume workers' compensation treatise is considered a standard reference work. The first two



Arthur Larson

volumes of the treatise earned Larson his national reputation in the early 1950s. Over the next four decades, he revised and expanded the treatise to 11 volumes. "He is quoted by Supreme Court justices in decisions," said a friend and colleague after Larson's death in 1993. "That's very rare for secondary sources." In 1954, Larson was appointed Undersecretary of Labor based on his expertise demonstrated in his definitive books on fast-changing workers' compensation laws and on the social security system.

Shaping Republicanism

In his 1956 book, *A Republican Looks at His Party*, Larson argued for new directions in Republican thinking on both international and domestic issues, coining the term "modern Republicanism," which advocated taking a position toward the center of the political field. President Eisenhower read the book and sent for Larson. A friendship and mutual respect quickly developed.

Larson was asked to join the Eisenhower administration, and spent the next few years attempting to redraw the party's philosophical basis. He

served as director of the United States Information Agency from 1956 to 1957, then as a special assistant, chief speech writer and special consultant to Eisenhower on the rule of law. He left the administration in 1958 to head the Rule of Law Center, but continued to serve as special presidential consultant, first to Eisenhower, later to Kennedy and Johnson.

Kennedy reviewed another Larson book, *What We Are For*, on page one of *The New York Times Book Review* in 1959. Later, Kennedy called Larson's book, *Arms Control, Disarmament and National Security*, one of "the most comprehensive and detailed studies ever published on the subject of arms limitations and should be read by everyone interested in the important problems of our times."

Throughout the 1950s, '60s, and '70s, Larson was called upon by presidents and legislators for his input on world and domestic affairs. He offered advice—both solicited and unsolicited—on topics including Medicare, workers' compensation, sex, age and racial discrimination, and atomic weapons. In 1963 he was elected president of the Peace Research Institute, a Washington-based non-profit research and educational organization whose purpose is to stimulate research on the problems of achieving and maintaining a secure and peaceful world. All the while, Larson maintained his directorship of the Rule of Law Center.

Throughout his career, Larson fought against extremism in the Republican party, countering right-wing influences such as the John Birch Society. In 1964, Larson became chairman of the newly created National Council for Civic Responsibility, whose goal was to counter the extensive propaganda efforts of the Birch Society and other militant right-wing groups. He garnered national media attention that same year when he publicly

Rule of Law Center Helped Attract Top Minds to Duke

During its heyday, Duke's Rule of Law Center attracted some of the best and brightest minds to Duke to join the faculty and pursue their specialties. Two of the faculty members recruited by Arthur Larson in the 1960s were Kazimierz Grzybowski and John Halderman.

Grzybowski Provided Soviet Expertise

Kazimierz Grzybowski was a nationally-known expert on Soviet law and a former director of the Polish Information Center for the Middle East. A member of the Polish Bar since 1936 and later a district court judge in Lwow, he received his master of laws and doctor of laws degrees from the University of Lwow, and his SJD from Harvard University. He served as a member of the 1950 Congress of Comparative Law in Lwow, a consultant to the US State Department on several cases, and editor of the European Law Division at the Library of Congress.

Grzybowski wrote numerous books and articles on international law, Soviet criminal law, economic problems of the Soviet Bloc, Polish legislation and politics, including his 1972 *Freedom of Expression and Dissent in the Soviet Union*.

He was recruited to Duke by Larson in the early 1960s to work at the World Rule of Law Center, which formulated early plans to reach out to the Soviet people with a series of Soviet-American conferences. In addition, Grzybowski taught courses in international law, international business transactions and comparative law. While serving as a senior research associate at the Center, one of the projects Grzybowski headed was a study of Soviet international law doctrine.

"The Soviet Union, although it at one time placed little emphasis on international law in its foreign policy, has recently adopted the position that international law is one of the major areas in which the ideological struggle (with the Free World)

should take place," noted Larson when the project, which was funded by the Carnegie Corporation, was undertaken in 1962. "This is a welcome development, but it underscores the necessity for the fullest and most accurate knowledge on our part of Soviet views, theories and proposals in the realm of international law," Larson contended.

Grzybowski also took a year's leave of absence in late 1962 to become a visiting professor of law at Yale. During that time he continued his work for the

officer at the US Embassy in Ceylon. A member of the US Foreign Service from 1951 to 1960, Halderman had served the State Department as officer in charge of Pacific Settlement Affairs for the Office of United Nations' Political Affairs. He also served with the American delegation to the Palestine Conciliation Commission. At the 1945 San Francisco conference, held to create the United Nations, Halderman served as secretary of the committee which drafted the statute organizing the International Court.

At the Rule of Law Center, Halderman was assigned to prepare an analysis of all needed research on international rule of law, including determining the extent to which research in this area was in progress anywhere in the world. While at the Center, he published several booklets and articles, including "Regional Enforcement Measures and the United Nations" and "United Nations Territorial Administration and the Development of the Charter."

According to Professor Melvin Shimm, a colleague

of Halderman's at Duke, Halderman "was very pained at the declining prestige of the United Nations." Shimm says Halderman felt that no one was entertaining the real and important role the UN could serve in international peace-keeping efforts. Even after the Rule of Law Center closed its doors, Halderman remained at Duke, continuing his research in transnational law, the United Nations and various peace-keeping matters. Halderman passed away in 1990.

Grzybowski and Halderman were just two of the notable scholars and experts recruited to Duke by Arthur Larson to work with the World Rule of Law Center. Some, like Halderman and Grzybowski, chose to stay on at the Law School after the Center was phased out, continuing to enrich the lives and educations of both students and fellow faculty members.

Laura Ertel



Arthur Larson, fourth from left, is flanked by faculty of the World Rule of Law Center, including John Halderman, far left, and Kazimierz Grzybowski, third from left.

Rule of Law Center, including a study of administrative, organizational, and dispute-settling relations between members of the Eastern European bloc, as these bore upon the problem of federalism as it stood at that time.

When the Rule of Law Center ceased to exist, Grzybowski stayed on at Duke, receiving joint appointments in law and political science. He died in April 1993, just one month after Larson died.

Halderman Advocated UN's Role in International Peace-Keeping

John Halderman joined the Center's staff in 1960. As a senior research associate, he was responsible for general research in the area of international law. Before accepting the position at Duke, Halderman was with the US State Department's Division of International Organization Affairs in Washington, DC. Prior to that, he was a political

crossed party lines to support President Johnson's re-election over controversial GOP candidate Barry Goldwater.

Johnson chose Larson to serve on an advisory committee to the president on issues affecting world peace and security. Although Eisenhower once told a magazine that Larson was eminently qualified to occupy the Oval Office himself, Larson felt more comfortable in the legal realm than the political one. In 1965 he resigned as chairman of the National Council for Civic Responsibility to devote more time to his revisions of his *Law of Workmen's Compensation*, and again dedicated his time to further revisions as the Rule of Law Center entered its final phase.

Supporting a Non-Proliferation Treaty

In 1966, in his capacities as director of the Rule of Law Center and as chairman of the newly-formed Educational Committee to Halt Atomic Weapons Spread, Larson wrote to President Johnson: "The lack of [a non-proliferation] treaty, after a year of discussion, increases the apprehension of Americans, already profoundly disturbed by world developments, and provides incentive to the non-nuclear powers to devise their own nuclear programs. Before world events foreclose the opportunity, it is imperative that new initiatives should be undertaken to assure a treaty."

Two years later, Larson again made national headlines when he announced that about 25 countries then had adequate industrial and technological base to develop nuclear weapons, should they so decide. The Rule of Law Center published a pamphlet which addressed the spread of nuclear weapons. In 1969, charging the Nixon administration with stalling on strategic arms talks with the Russians, Larson and other influential politicians and Pentagon critics held a secret con-

ference to launch a drive for a moratorium on the escalating weapons race.

Center Phased Out, But Impact Remains

The Vietnam War signaled the beginning of the end for the World Rule of Law Center. "As a result of a number of things, funds supporting the Center began to dry up. Vietnam was one," explained Larson in a 1977 interview. "When the US was waging an extremely questionable and long war, [it] was not in a good position to tell other people to use the law and the United Nations to settle disputes. Secondly, emphasis had shifted in the sixties from international problems to domestic ones: poverty, urban blight, race relations, the environment, and there was an abrupt shift in foundation money into these areas."

By the mid-'70s, the Rule of Law Center had been reduced drastically in scope, down to three staffers from a former high of 27. "Such work became somewhat unfashionable among foundations 10 years ago," said Larson in 1984. "Now it may be that the pendulum is getting ready to swing," he added hopefully, "especially when you look around the world and see what a mess it's in." But the Rule of Law Center would not be around to address the "mess." Interest in the international rule of law had dwindled, and by the mid-'80s Larson had retired and the Center was phased out.

The original gifts donated by the Price family to help establish the Center continue to enhance the University. By the early 1970s, an endowment had been created from the funds in order to award annual fellowships for the Martha Garner Price Research Fellowship Fund for visiting professors. Established in 1972, these fellowships continue to bring visiting faculty to Duke today.

Larson's papers and publications will also be available later this year in the Floyd Riddick Special Collections Room (currently under development) at the Duke Law School Library. A combination of materials obtained by the library over the years and those donated this past year by Larson's son, Lex Larson, will form the foundation of The Larson Collection, focusing on peace studies and international law. Mark Bernstein, associate director of the library, says that these materials will be used as the basis for grant proposals and fund-raising efforts to purchase books and journals in support of peace studies and international law.

A Musical Analogy

Throughout his tenure at Duke, Larson taught classes at the Law School. He continued to come to campus almost daily after his retirement to work on his research and writings, even in later years when back and leg difficulties interfered with his mobility. In addition to his interests in law and world peace, Larson took time to pursue his interest in music. He was an accomplished musician and composer, as well as a collector of rare stringed instruments. The walls of his Durham home were covered with violas da gamba, violas d'amore, guitars, violins and other rare instruments. Larson played and composed for all of these instruments. He and his late wife, Florence, whom he married in 1935, would often perform for guests—she on the harpsichord, he on one of the old instruments.

Larson once told *Life* magazine that he liked the disciplined baroque music "because it restores your sense of sanity of the world." Throughout his life, Arthur Larson too sought to restore a sense of sanity to the world, using the rule of law as his instrument.

Laura Ertel

Law School Center Promoting National Security Law Conferences

The Law School's new Center on Law, Ethics and National Security, founded on September 1, 1993 by Professor Robinson O. Everett (see *Duke Law Magazine*, Winter 1994 at 20), has recently sponsored several conferences on topics of interest to the national security community.

On November 4-5, 1994, the Center co-sponsored a two-day conference in Charlottesville, Virginia on the subject of "Deterring Humanitarian Law Violations: Strengthening Enforcement." According to Scott L. Silliman, the Center's executive director, "normative provisions promulgated with a view toward prohibiting aggression and humanitarian law violations have been the subject of many articles, books and conferences, but the same emphasis had not previously been given to the question of how these normative provisions should be enforced. In other words, we needed further discussion on what enforcement options are available to the international community to deal with such atrocities as we find in the former Yugoslavia and in Rwanda, and that is exactly what we tried to accomplish in our first conference in Charlottesville."

The conference program featured six panels, with subjects ranging from a historical perspective of non-compliance in conflicts from the Korean War to Rwanda, to an in-depth analysis of the problems facing the newly-created International Criminal Tribunal for the Former Yugoslavia, to the feasibility and practicality of using national courts to prosecute war crimes. Speakers included the Tribunal's prosecutor, Justice Richard J. Goldstone; Professor W. Michael Reisman from Yale Law



Robinson O. Everett

School; Michael J. Matheson, Bruce C. Rashkow and Crystal Nix from the Office of the Legal Advisor in the State Department; The Honorable John H.F. Shattuck, assistant secretary for democracy, human rights and labor at the State Department; Professor (and alumnus) Michael P. Scharf '88 from the New England School of Law; and many other distinguished academics and policy makers in the national security field. "It was a tremendous success," noted Silliman, "and we were encouraged by the comments of all involved to have a second conference where we could again look at some of these highly complex issues."

At the close of the conference in Charlottesville, Justice Goldstone visited Duke Law School at the invitation of Dean Pamela Gann. After attending the Duke-Virginia football game—with a commentary and interpretation of the rules of the sport

provided by Law Professor Paul H. Haagen—Justice Goldstone spent the rest of his time interacting with faculty and law students, including a reception in his honor. On this occasion, he spoke at length about the Tribunal and the problems confronting him as its prosecutor, and then opened himself up for questions from the members of the Law faculty and many others from throughout the University who were in attendance. Finally, during a two-hour brunch just prior to flying back to the Hague, he met with approximately 25 Duke Law students who are involved in a pro bono research project with the purpose of collecting case law and other source material of relevance to some of the complex issues facing the Tribunal.

For example, since those convicted by the Tribunal will be sentenced by reference to the criminal codes of the former Yugoslavia, the students have been doing a great deal of research in the codes then applicable in the now-defunct Yugoslav federation and from the individual republics.

Meeting Justice Goldstone and having the opportunity to converse with him at length about issues facing the Tribunal was an exciting and rewarding experience for the students involved in the project. "Speaking with Judge Goldstone was a wonderful opportunity to further understand the goals and objectives of the Tribunal and to gain greater insight into the legal issues surrounding international criminal adjudication," noted Siobhan K. Fisher, a first-year student. "We left the brunch better able to define the questions we should address in our research for the project," she said.

Following on the heels of its very successful fall conference in Charlottesville and Justice Goldstone's visit to Duke, the Center on Law, Ethics and National Security had another opportunity to host a conference focusing on national security law themes. Working with the Triangle Universities Security Seminar (TUSS), an interdisciplinary consortium of faculty members from research universities in the Triangle area, the Center held a one-day conference at the Thomas Center in the Fuqua School of Business on the subject of "Law and War" on January 20, 1995.

According to Silliman, this was part of a larger effort seeking answers to the causes of war, while pursuing the same course of scholarly research conducted by Quincy Wright of the University of Chicago which resulted in his monumental 1942 work, *A Study of War*. "We were the fifth in a series of 10 individual conferences," said Silliman, "each limited to a particular discipline and how that discipline looked upon the causes of war, and we were privileged to have Professors John Norton Moore '62 from the University of Virginia School of Law, Ruth Wedgewood from Yale Law School, Yoram Dinstein from Tel Aviv University and others present their scholarly views on this vitally important topic." The conference drew academics and practitioners from throughout the country.

But Silliman is most excited about still another major conference slated for March 1995 at Duke. "We're going to go back and revisit some of those issues where we just scratched the surface at Charlottesville, and tackle some new ones as well." In conjunction with the Center for National Security Law at the University of Virginia, Silliman is



John Norton Moore '62

putting together a slate of international legal and governmental experts who will convene on March 9-11 for debate and discussion of such topics as whether

the International Criminal Tribunal has been effective in dealing with the former Yugoslavia and Rwanda, how the international community should deal with terrorism, the quest for a permanent international criminal court, and many others. "We're assembling the world's leading experts," Silliman said, "and we can't help but have a productive session in working towards a resolution of some of these issues."

In quickly becoming a widely-recognized forum for national security concerns, the Center fits within Duke University's outreach programs into the international community. According to Silliman, "I couldn't be more pleased with the support from Dean Gann and the entire Law faculty in everything we've been doing. I just hope that we're able to make a contribution that will further the Law School's—and Duke University's—interests in this area."

Duke Law Students Research Issues for War Crimes Tribunal

Duke University law students are working on a pro bono research project which could help strengthen the legal quality of trials of war criminals in the former Yugoslavia. The students are researching difficult legal issues arising from international efforts to hold a United Nations' war crimes tribunal that will try and sentence suspects accused of committing atrocities during the Balkan conflict.

Richard Goldstone, a distinguished judge from South Africa and the prosecutor for the International Criminal Tribunal for War Crimes in the Former

Yugoslavia, visited the Law School in November 1994 to meet with faculty and students. Goldstone, a South African lawyer for 18 years before being appointed judge in 1980, served as chairman of the Commission of Inquiry Regarding Public Violence and Intimidation preceding the election of South Africa's new government last year. The investigating board, known as "the Goldstone Commission," uncovered links between South African security forces and civilian militias opposed to the African National Congress and issued an important report condemning those activities. Goldstone, ap-

pointed in 1994 by President Mandela to the new South African Constitutional Court, took leave from the Court in July 1994 in order to serve as prosecutor for the International Criminal Tribunal for the former Yugoslavia. His duties have recently been expanded by the UN Security Council to cover atrocities in Rwanda.

Law professors Benedict Kingsbury and Madeline Morris, and CLENS executive director, Scott Silliman, are advising students involved in the research project. "We have a large number of students here who are interested in doing this kind of pro bono work in the area of international human rights," Kingsbury said. "These proceedings will be the first major international tribunals since the Nuremberg and Tokyo trials at the end of World War II. They will be breaking a lot of new ground and will have to resolve a lot of important legal problems. They face serious political obstacles, but given that the UN has decided to go ahead, it is important that the proceedings be of the highest legal quality, and that good research and analysis be available to all parties."

The tribunal, based at The Hague in the Netherlands, plans to fix sentences for the defendants by reference to the criminal codes and practice of courts in the former Yugoslavia, Kingsbury said. Duke students have undertaken the task of collecting case law and other source material from the now-defunct Yugoslav federation and from the individual republics. Language was one of the initial barriers the law students faced when they undertook the project, recalls second-year student Rob Plowden. Two first-year students have been working hard



Richard Goldstone

studying Serbian and Croatian, and will spend much of this summer in Croatia. Students were able to locate English translations of the relevant case law, and other material being used is in German, French or Russian. It is expected that professional translations

Duke students have undertaken the task of collecting case law and other source material from the now-defunct Yugoslav federation and from the individual republics.

will be sought of some Serbo-Croatian material if English translations cannot be obtained elsewhere.

Legal issues students are researching include determining the sentences

for murder and other crimes in the former Yugoslavia and the evidence required by a prosecutor to prove that a crime took place. Students are also researching precedents set at previous war crime trials, particularly cases tried in Yugoslavia resulting from events in World War II. Other groups of students are working on legal issues concerning the transfer of accused persons from state authorities to the Tribunal, and the question of which international law rules were applicable at different stages of the Yugoslav conflict, which depends in part on whether various elements of the conflict were "international" or not. Results of the research will be available to the Tribunal, defense counsel, and anyone else interested. "What the tribunal is trying to do is at the very cutting edge of international law," says Plowden. "The expectation is that what is done with the Yugoslav cases will be an important precedent for other cases, such as the expansion of the Tribunal to try to address the bloodshed in Rwanda."

In March, two officials from the Tribunal, William Fenrick and Minna Schrag, visited the Law School, along with several other leading experts in international criminal law, to attend a conference on "Strengthening Enforcement of Humanitarian Law," co-sponsored by the Center on Law, Ethics and National Security (CLENS) at Duke and the Center for National Security Law at the University of Virginia. Fenrick, a distinguished lawyer who is senior advisor on international law to Justice Goldstone, and Schrag, the Tribunal's senior trial attorney, held a stimulating session to discuss interim research results with about 20 students involved in the project.

Duke Law School Faculty: Becoming International in a Variety of Ways

The rise of the international corporation, growing economic interdependence among nations, and widesweeping advances in communication demand that the law keep pace in an era of rapid and global change. It is no surprise then that the study of international law at Duke is flourishing. Now, more than ever, it is critical that lawyers be aware of other modes, systems, and customs of law, for it is almost a certainty that lawyer and client alike will encounter transactions with international implications. On a more philosophical level, the study of international law provides a basis of comparison from which to examine the choices our legal system has made. Ultimately, such study produces a more thoughtful and effective practitioner.

Including an International Focus

No Duke law student can escape his or her three year tenure without learning something about the relationship between United States law and the law of other nations. Law School faculty attempt to imbue his or her own substantive area with a focus on its international aspects. In his administrative law class, for example, Professor Lawrence Baxter compares US administrative law with administrative law in other countries. He emphasizes the enhanced understanding of United States law which the study of other countries' laws brings: "I have always thought a comparative viewpoint—not only for administrative law but for any subject—is important in helping students (and their teachers!) understand the characteristics of their own legal systems . . . I also use a comparative

approach in federal banking regulation and, of course, in my international banking regulation course. The financial system has become so globalized now that it is simply essential to be aware of how financial services are regulated in other countries—not merely from a procedural point of view but also in terms of the entirely different cultural approach of such systems." Other faculty members regularly study and teach the comparative dimensions of fields such as securities regulation, insurance law, and intellectual property.

Teaching and Lecturing Abroad

The reach of Duke's international focus extends far beyond Durham. Since 1985, the Law School has operated a four-week summer program in

Duke's faculty shine in the teaching of all phases of international law. Each year, students may choose from a wide selection of courses dealing with international issues.

Europe focusing on international, comparative, and foreign law. Since 1991 the program has been at the Free University of Brussels. Over 75 percent of the Duke Law School faculty have taught in this program. In 1995, Duke will operate a Summer Institute in Hong Kong, similar to the Brussels program but more heavily concentrated with students from Asia, New Zealand, and Australia, and with a greater focus

on subjects which have an impact on Asia. (See article on p. 33). The faculty will also take part in teaching at the Hong Kong program, bringing back the type of invaluable insight that comes only from travel and exchange abroad.

Additionally, Duke Law School professors are encouraged to and have taken the opportunity to teach abroad in a variety of settings. An impressive number of faculty members have been Fulbright scholars or lecturers. Many of the faculty have lectured in foreign universities and attended foreign conferences, bringing the total of countries in which the Duke law faculty has taught or lectured to international audiences in the past five years to 40.

Professor Deborah DeMott, who has taught in Toronto, Canada, as a Fulbright Lecturer in Australia, and in the Duke Transnational Institute in Copenhagen, Denmark—where the Duke European program began—believes that the greatest result of her experiences abroad has been deepened insights into legal institutions generally: "I think my own perspective on law has changed as a result of coming to grips with other systems and the way they approach similar problems. I had thought that the United States' approach to regulation was the only way to go, that you couldn't have functioning capital markets [otherwise], which is obviously not true." This summer, Professor DeMott will return to Australia to teach a graduate course and to the Duke European program in Brussels, to teach the second half of a course giving a comparative introduction to corporate law. She is looking forward to the interaction with European faculty members, and values

the friendship that she and several of her colleagues formed in Copenhagen with Professor Joseph Lookofsky, who has since visited Duke on multiple occasions.

An International Curriculum

Duke's faculty shine in the teaching of all phases of international law. Each year, students may choose from a wide selection of courses dealing with international issues. The broad term "international law" may mean the study of comparative law or the study of the

laws of particular countries. However, it generally refers to the study of both public and private international law, the export of American law, and the growing field of international arrangements such as the North American Free Trade Agreement (NAFTA) and the General Agreement on Tariffs and Trade (GATT). Given the continued shrinking of the world, knowledge of international law will soon be required for attorneys practicing in most US cities.

The recent appointment of Professor Benedict Kingsbury has brought significant expertise to Duke's faculty

in public international law. Born in the Netherlands but a citizen of New Zealand, Professor Kingsbury teaches public international law, a course on human rights, a seminar on international environmental law, and an interdisciplinary theoretical seminar on international law and international relations. Previously a visiting professor at Duke while he was a lecturer in law at Oxford University, England, Kingsbury's primary research interests are in public international law, indigenous peoples and international law, international organizations, international human rights and humani-

Regular Visitors from Abroad Enrich International Curriculum

Duke Law School has established a long-term relationship with two international visiting faculty members who return regularly to teach courses and to bring the international perspective to our students.

Every other year, **Koichiro Fujikura**, professor of law at the University of Tokyo, teaches courses about the Japanese legal system and Japanese environmental law at Duke Law School. Further strengthening his ties with the School, he also serves as honorary president of the Tokyo Law Alumni Club, whose members are Duke Law alumni living in Japan and which has been meeting regularly since 1986.

Professor Fujikura finds "Duke Law students intellectually curious and inquiring. I appreciate the fact that their interests are not narrowly focused on laws in the United States." In his course, he emphasizes that, "though the Japanese and the US legal systems have different traditions and are constructed differently, they both work and operate similarly to achieve common goals of law. Environmental law is one illustration where comparative perspectives are useful. Japan and the US share many environmental problems of industrialized societies, yet their legal responses are different." Fujikura notes that the Japanese encountered serious industrial pollution problems in the 1960s, to which they were forced to react and to which they did react, enacting many protective environmental laws. Fujikura believes that "Japan's experience of environmental destruction should be told and the process and development of legal responses in Japan should be analyzed in com-



Koichiro Fujikura

parison with the development of environmental law in the US." Primarily focusing on environmental law and comparative torts in his research, Fujikura is currently working on a joint project to study the implementation of international environmental accords in 10 countries.

Fujikura has written a number of publications comparing Japanese and US law, including *Environmental Law in Japan, A Comparative View of Legal Culture in Japan and the United States*, and *The Role of Law and Lawyers in Japan and the United States* (with Isaac Shapiro and Michael Young). In comparing the two legal systems, he notes: "In Japan, there is one lawyer for about 8,000 people, where in the US there is one lawyer

for about 320 people. I would not doubt that the US is a very litigious society." As to the issue of whether the Japanese constitution, drafted under the auspices of the American occupational government after World War II, should be changed, Fujikura believes that "we should not and need not change our constitution, especially Article 9 which renounces war as a sovereign right of the nation and the use of force as means of settling international disputes. There are many other means than sending troops in order to contribute to international peace and order."

As one might expect, the Law School's presence in Belgium has led to Duke relationships with European scholars. Professor **Guy Haarscher** comes to Duke every other year from Belgium, where he is professor of philosophy and law and director of the Institute for Philosophy and the Center for the Philosophy of Law at the Université Libre de Bruxelles, to teach a course about law and political philosophy. He has written many books about philosophy and the philosophy of law, and received the prize of the Belgian Academy in 1981 for his book on Marx and the prize of the French Speaking Community of Belgium in 1989 for his book on human rights.

In his political philosophy and law seminar, Haarscher analyzes the relationships between political theory and the law in contemporary philosophy. His seminar presents information from a different perspective from the average black letter law class, focusing on an abstract theoretical framework which is then applied to concrete contemporary legal and political issues.

DAN CRAWFORD

International Scholars Join Us From Closer to Home

Every other year, **Percy Luney** regularly makes his way across Durham from North Carolina Central University where he has taught torts, professional responsibility, law office management, conflicts of law, and international law since 1980, and where he serves as dean, to teach courses in Japanese law at Duke. He has been both a Fulbright scholar and a Fulbright lecturer in Japan, and has written widely on a number of subjects, including business transactions with Japan and the Japanese constitution. Equally persuasive when discussing the implications for Japanese society in the ritual of sumo wrestling and the desirability of dispensing with the jury system in American criminal cases in favor of three judge panels, the range of Luney's expertise and interests is broad.

A geologist by training, Luney has always been fascinated with the use that Japan makes of its natural resources. While witnessing Japanese mining practices in Zaire as a Thomas J. Watson Fellow in the mid-1970s, Luney was impressed with the respect and sensitivity the Japanese demonstrated toward the indigenous population. His interest in Japan generally was stimulated by this incident, as he found the Japanese behavior seemingly at odds with the group mentality of Japanese culture. However, he has seen a change in the way the Japanese deal with other nations as Japan has become more of a world power.

Luney believes that Duke is poised and ready for the changes which will come as Japan and other Asian nations become more economically powerful: "Duke has a unique opportunity to really merge international legal education with a traditional legal education in this country and to make it work for all of the students because of its small size. I think to do that effectively, to prepare young lawyers, particularly for the world of the 21st century, you have to give them a taste not only of European legal systems but also Asian legal systems. You can't help it; you [even] run into European companies in Asia."



Percy Luney

At Duke, Luney teaches courses in Japanese law and international transactions with Japan. In the international transactions class, students negotiate an agreement between an American company or the US government and a Japanese company. The last time the course was offered, the students negotiated with students in Japan, providing a real life window into the differences in the two corporate cultures.

The study of Asian law at Duke is supplemented by another visiting professor from a local institution. Each spring, **Jonathan Ocko**, professor of history and chair of the China Studies Group at North Carolina State University, serves as an adjunct professor of legal history at Duke. Ocko has been teaching at Duke since 1980. He alternates teaching Chinese legal history with contemporary Chinese law and society. He is currently finishing a book about the concept of justice in late imperial China.

"It's been a very positive and rewarding experience for me which would be hard to replicate," Ocko said about his relationship with Duke. He likes teaching at Duke because it gives him an opportunity to teach his research in Chinese legal history,

law, and society, and he finds Duke students stimulating. He also enjoys talking with Duke faculty members such as Paul Haagen about legal history. Ocko has found his contact with the Duke legal community to be useful in his work as a consultant helping to bring American and Canadian software into Chinese markets.

In the Chinese legal history course, Ocko emphasizes status and the way that law applies to status. Ocko believes his mandate at Duke is to provide a different perspective than one usually finds in a law school class: "The reason it's [the Chinese history course] offered is as a consciousness raising course, if you want to explore a totally different legal system." He teaches his classes at Duke like graduate seminars. As a history professor and a non-lawyer, his slant is to look at law and society issues and the way law interacts with society: "It's not a 'how to' course. . . I want to teach students to understand Chinese culture and how the Chinese think about the law, and then, they as practitioners can have the skills to function in that environment." As part of the contemporary Chinese law and society course, **Gao Xi-Qing '86**, a Chinese Duke Law alumnus, instructs the students during a two-week focus on securities law and imparts the benefit of his experience practicing law in China.

Even after the infamous actions of the Chinese government in Tiananmen Square, Ocko believes the thrust in Chinese law is toward a more independent, less politicized judicial system: "I would say that . . . in China, if everybody's connections are basically equal so nobody can use their connections to greater advantage, and the state has no particular political interest in a trial, that there is rule of law, but the likelihood of that actually happening is really slender . . . the sphere in which the law operates truly autonomously is growing slowly but surely—it's expanding each year. I think the overall trend is a positive one."

Julia Shields '90

tarian law, and international environmental law.

In the area of private international law, Dean Pamela Gann teaches international business transactions. The course covers international private trade, national and international regulation in goods, and foreign direct investment and transfer of technology.

Students can also learn about civil procedure in United States courts in proceedings to which a foreign national is a party in a course taught by former dean, Harry R. Chadwick, Sr. Professor of Law Paul D. Carrington.

New faculty member Amy Chua also teaches in the areas of private international law, including international

business transactions and comparative business law. She worked for five years at the New York City firm of Cleary, Gottlieb, Steen & Hamilton, specializing in international business transactions, including the privatization of large government-owned corporations in Latin America. Chua hopes "to teach students to think more broadly. In my

spring course on international business transactions, I am introducing students to legal and regulatory aspects of multinational transactions; at the same time, I hope to explore with them the broader social and political consequences of those transactions." The "international orientation of the university as a whole" was a key factor in the decision of Chua to come to Duke. Interested at the

moment in the link between markets and ethnicity, and hoping to take part in the many interdisciplinary opportunities at Duke, she hopes to become involved with the history and political science departments.

Donald Horowitz, James B. Duke professor of political science as well as law, is an example of the interdisciplinary strength of Duke's international

faculty. He has written many books on varied subjects, including government lawyers, military coups, and the courts and social policy. Horowitz also wrote *Ethnic Groups in Conflict*, a comprehensive study of severely divided societies. In 1991, he published *A Democratic South Africa? Constitutional Engineering in a Divided Society*. He teaches an interdisciplinary seminar in compara-

Professors Take Advantage of International Opportunities

Two Duke Law professors had the opportunity to share their expertise on an international level this fall. **Thomas D. Rowe, Jr.**, who teaches civil procedure, federal courts, and constitutional law at Duke taught a short course at the Escuela Libre de Derecho (Free Law School) in Mexico City. **David L. Lange**, who specializes in new technology and intellectual property law, was asked by the government of Vietnam to advise officials on intellectual property programs.

Surveying American Law for Mexican Lawyers

"Duke Law School has been interested in developing relations with Mexico and with Mexican law schools, particularly with NAFTA and other developments. So when our administration raised the possibility of my teaching a short course as an introduction to American law there, I accepted," explains Rowe.

The two-week survey course at this private law school in Mexico City was designed for 60 to 70 Mexican law school graduates who were taking various post-graduate courses. "It was quite a lively and interesting group of students, who were a bit more mature than your average law student because they were already out of school and in practice. I tried to give them a survey of some key areas of American law, some basics of American legal structure, of judicial review in constitutional cases, and of the court structure," says Rowe. "I also tried to include matters that fit with the subjects they were studying and that raised questions of international significance or regarding relations between the US and Mexico."

One of the cases Rowe discussed was that of a Mexican doctor who allegedly kept a US Drug Enforcement Agency agent alive while he was tortured by Mexican drug traffickers. Rowe says that DEA agents apparently arranged for the doctor's kidnapping from Mexico when the US couldn't succeed in extraditing him. "That case went all the way to the US



Tom Rowe, left, with James Ritch '90 and Jacqueline Touchais '90 in Mexico City.

Supreme Court, and the Court held that the kidnapping didn't preclude the American criminal courts from having jurisdiction over the doctor. Needless to say, this wasn't a very popular decision with the Mexicans. "I taught that case in the context of 'well, we do have an extradition treaty with Mexico, and it does provide for means other than kidnapping to get criminals from one country to another. So, where does this leave the extradition treaty? I folded this discussion in with something of considerable interest to them, American law on treaties and other international agreements.'" (The US and Mexico have since negotiated the treaty to ban such kidnappings.)

Opportunities for continued interaction between Duke Law School and the Mexican legal community are expanding. Three Mexican LLM students are currently at Duke, the most ever from that country, according to Rowe, who has spent time with them since his return. A new exchange program for US and Mexican law students is also being developed with the law

department at ITAM, the Autonomous Technology Institute of Mexico in Mexico City.

Other faculty members may have an opportunity to teach in Mexico. "Escuela Libre is very interested in continuing this program," says Rowe. "We're now making arrangements for another faculty member myself to do the same sort of thing next year." Rowe says there's also talk of having a visiting Mexican professor come to Duke to offer our students instruction in Mexican law.

Rowe sees the benefit in fostering a better understanding of each other's legal systems. "It's important that we talk about legal issues, because as we do more and more with each other, these issues will become more and more significant."

Advising the Vietnamese on Intellectual Property

In November, David Lange traveled to Vietnam on the invitation of the Vietnamese government to co-

tive public law and policy: ethnic group relationships, in which the class appraises approaches to the reduction of conflict in deeply divided societies, primarily in Asia and Africa. (See profile of Professor Horowitz on p. 35.)

International study can also lead to a greater understanding of US law and its history. For example, Cynthia Herrup, who holds a joint appoint-

ment in the Law School and the Duke history department and is a recipient of the Walter D. Love prize of the North American Conference on British Studies for her essay, "Law and Morality in Seventeenth-Century England," teaches law students about the history of English criminal law, the precursor to American criminal law.

In studying comparative law, the study of other countries' laws and legal histories in contrast to those of the United States, Duke students benefit by studying with permanent faculty members who are originally from other countries such as South Africa, Germany, and Japan. Thus, students learn to compare US law with the laws of other countries from individuals who

duct several seminars on intellectual property law. "The Vietnamese want to be major players in the world of commerce, in which intellectual property plays a central organizing role," explains Lange. "In order to do that, they want to learn more about intellectual property concepts, particularly as they work in American law, because they think that we have a supple intellectual property system which they would do well to emulate."

Lange taught training courses for government officials, judges, lawyers and other interested parties in Hanoi and Saigon. He was recommended to the Vietnamese government by Tony Salzman '76, a Duke Law alumnus who lives and works in Hanoi. A generous donation by Kraft Foods underwrote a substantial portion of the cost of the trip. "[Duke Law alumnus] Calvin Collier '67, vice president and general counsel of Kraft Foods, was primarily responsible for this welcome gift," acknowledges Lange gratefully.

Lange speaks of the importance of recognizing the merging fields of intellectual property and telecommunications, and observes that the Vietnamese seem fully aware of this phenomenon. "In the international marketplace, you can't meaningfully speak of intellectual property without speaking of telecommunications, and vice versa. That was part of what I took with me when I went to Vietnam, and it is very much a part of what they see themselves. The Vietnamese regard the field of intellectual property as part of the larger field of information technologies—or 'informatics' as they call it. Although they wanted instruction in American law, there is also a sense in which they may even be more sophisticated than we are in terms of the world they see ahead. They view the future with remarkable clarity, largely unencumbered by the past."

Agreeing with Duke's perspective on international relations, Lange says, "The University has committed

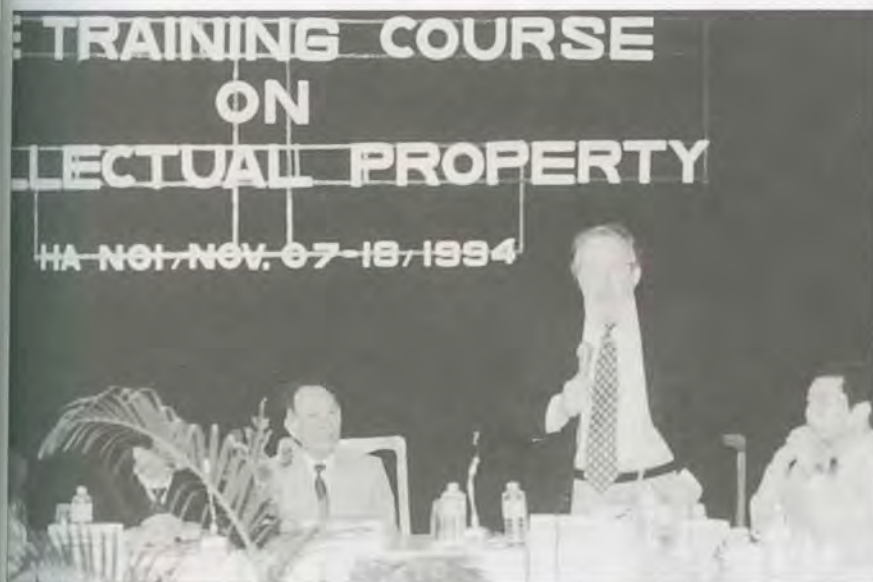
itself to being deeply involved in international relations at every level. For the Law School, law and commerce are the obvious connections. As long as we are in the international arena, it's inevitable that we will be involved in intellectual property because that field of law is absolutely at the center of international trade these days."

During his visit, Lange found himself drawn to the Vietnamese people. "I learned to admire them very much," he says. "There was an attractive quality to the way they thought and reacted and argued about things. Their own ancient and considerable cultural dimensions have been augmented through the years by their interaction with other countries, so that both intellectually and socially they are an especially elegant and cosmopolitan people."

Lange is optimistic about Vietnam's future in the international economic arena. "While I was in Hong Kong recently, someone said that Vietnam will be a mini-superpower in the 21st century, and I would certainly not find that surprising, based on what I observed. In a way," Lange reflects, noting the enormous amount of reconstruction the country must undertake, even down to their water supply, road and transportation systems, "they see the future all the more clearly because they have no choice."

Law School Dean Pamela Gann is enthusiastic about the impact of these types of international opportunities for Duke faculty members. "To be able to offer the Law School's resources—by that I mean our expert faculty—to facilitate the development of legal education and legal systems in other countries is an honor and a privilege. In addition, it's very clear that our returning faculty members bring back with them an enriched comparative perspective which they can share with our students."

Laura Ertel



David Lange, standing, lectures while in Vietnam.

have approached the comparison from the reverse perspective, enhancing the shift in point of view.

Professor Herbert Bernstein is a case in point; born in Hamburg, Germany, he was for many years a member of the faculty of the University of Hamburg. He received a JD from the University of Michigan and has also taught at the University of California. He began his Duke career in 1983 as a visiting professor, teaching comparative law and insurance law. Since 1984, he has been a regular member of the Duke faculty, teaching, among other courses, comparative law, comparative insurance law, and foreign law, which continue to be the primary focus of his research and writing. Professor Baxter, a native South African, who earned post-graduate legal degrees at both the University of Natal and Cambridge University and Professor Kingsbury, who was raised in New Zealand and received his legal training from Oxford University, also provide this kind of international perspective.

Visiting Faculty Enhance International Teaching

The Law School's strength in the international area has led to a rewarding visiting relationship with a number of individuals prominent in various fields of international law, and from many countries. Duke's adjunct legal community also includes visiting professors from other institutions in the Triangle area. (See accompanying sidebars.)

Every other year, Percy Luney, dean of North Carolina Central Uni-

versity Law School, teaches a class about Japanese law. In 1989, two years of planning and work by Dean Luney culminated in the "Symposium on the Japanese Constitution," sponsored by *Law and Contemporary Problems*. According to Luney, who served as special editor of the papers delivered at the

The Law School's strength in the international area has led to a rewarding visiting relationship with a number of individuals prominent in various fields of international law, and from many countries.

symposium and published in *Law and Contemporary Problems*, the symposium brought the name of Duke Law School to prominence in Japan, "because we had all the pre-eminent scholars on constitutional law from Japan at Duke and because it's published—there's a copy that sits on reserve in the International House of Japan—the name of Duke Law School is known at every faculty of law in Japan. So it's given Duke Law, I think, tremendous recognition in Japan." This assertion is borne out by the fact that each year Duke receives a growing number of applications for its LLM program from Japanese students and lawyers.

Similarly, each spring Professor Jonathan Ocko of North Carolina State University teaches a course on Chinese law, society, and legal history. In 1987,

Law and Contemporary Problems sponsored a conference about Chinese law—"Emerging Framework of Civil Law in China" which was organized, overseen, and edited by Ocko. The symposium was successful due to the participation of five prominent Chinese legal scholars, including the man known as "Mr. Civil Law" in China. Ocko plans to organize another symposium at Duke about Chinese law in the fall of 1995, possibly dealing with emerging intellectual property law in China.

The Law School's reputation in international law has attracted many visiting professors from other countries with some of whom regular ties have been established. Every other year, Professor Koichiro Fujikura of the University of Tokyo teaches Japanese law and Professor Guy Haarscher comes to the United States from the Free University of Brussels to teach law and philosophy. Recently, visiting professors have come from Alberta, Beijing, Berne, Cape Town, Copenhagen, Dalhousie, Exeter, Gujarat, Hamburg, Jerusalem, Kyoto, Monash, Munich, Munster, Oxford, Osaka, Seoul, Shanghai, Sydney and Tokyo, enriching the Duke curriculum with specialized course offerings in international, comparative, and geographic law.

As the world becomes more global in orientation and international in flavor, so does the curriculum of Duke Law School, aided by a faculty that is eagerly embracing internationalizing their teaching in a variety of ways.

Julia S. Shields '90

Asia-America Institute Established

Duke Law School has established in Hong Kong a summer legal studies institute focused on transnational legal and business practice in Asia. The institute follows in the footsteps of the successful Duke program in Brussels, Belgium—the Summer Institute in Transnational Law.

The Asia-America Institute in Transnational Law, offered jointly by the Law School and Hong Kong University, will educate young lawyers from around the globe in legal subjects crucial to the ongoing economic expansion in Asia, according to Dean Pamela Gann. The new institute, she said, reflects the increasing internationalization of the legal profession, the need for legal scholars and lawyers trained in international law and business practices, and the Law School's commitment to globalization. "Hong Kong is the financial and legal hub of Asia," Gann said. "The faculty at Hong Kong University are excellent and have expertise in the areas of commercial transactions, banking and finance. This is the best place in Asia for us to be. Our cooperation with a foreign university at this level is fairly unique."

During a trip to Hong Kong in October, Gann and Judy Horowitz, associate dean for international studies at the Law School, visited American, British and Chinese law firms and businesses in Hong Kong and their counterparts in Beijing and Shanghai. During their visits with practitioners, Gann and Horowitz gained insights on legal practice in the Pacific Rim that will be used in developing the institute's curriculum, Gann said.



She added that many of the firms expressed an interest in sending young lawyers to the Hong Kong program for further training. "We expect about a third of our students will be from the United States, mostly from Duke, and the rest primarily from Asia, particularly East Asia," she said. "Having participants from so many different countries is definitely unique."

Courses, including offerings on transnational securities law, comparative intellectual property law, and international environmental law, will be taught in English by faculty from Duke, Hong Kong University and other leading Asian and European universities. Tuition for the four-week program, which runs from July 2 to August 1, is \$2,700.

Gann said the new program fits well with a long-standing interest in international activities at the Law School as well as with the University's focus on globalization. "To be a law school with a national reputation, we have to be doing international and transnational law," Gann said, noting that 10 percent of the School's student body is now composed of international students. "The world is becoming too integrated not to follow this path. As economies become intertwined, legal services also will become more intertwined. Law is evolving and nations are borrowing law from many different sources. It's very interesting to do comparative legal studies right now."

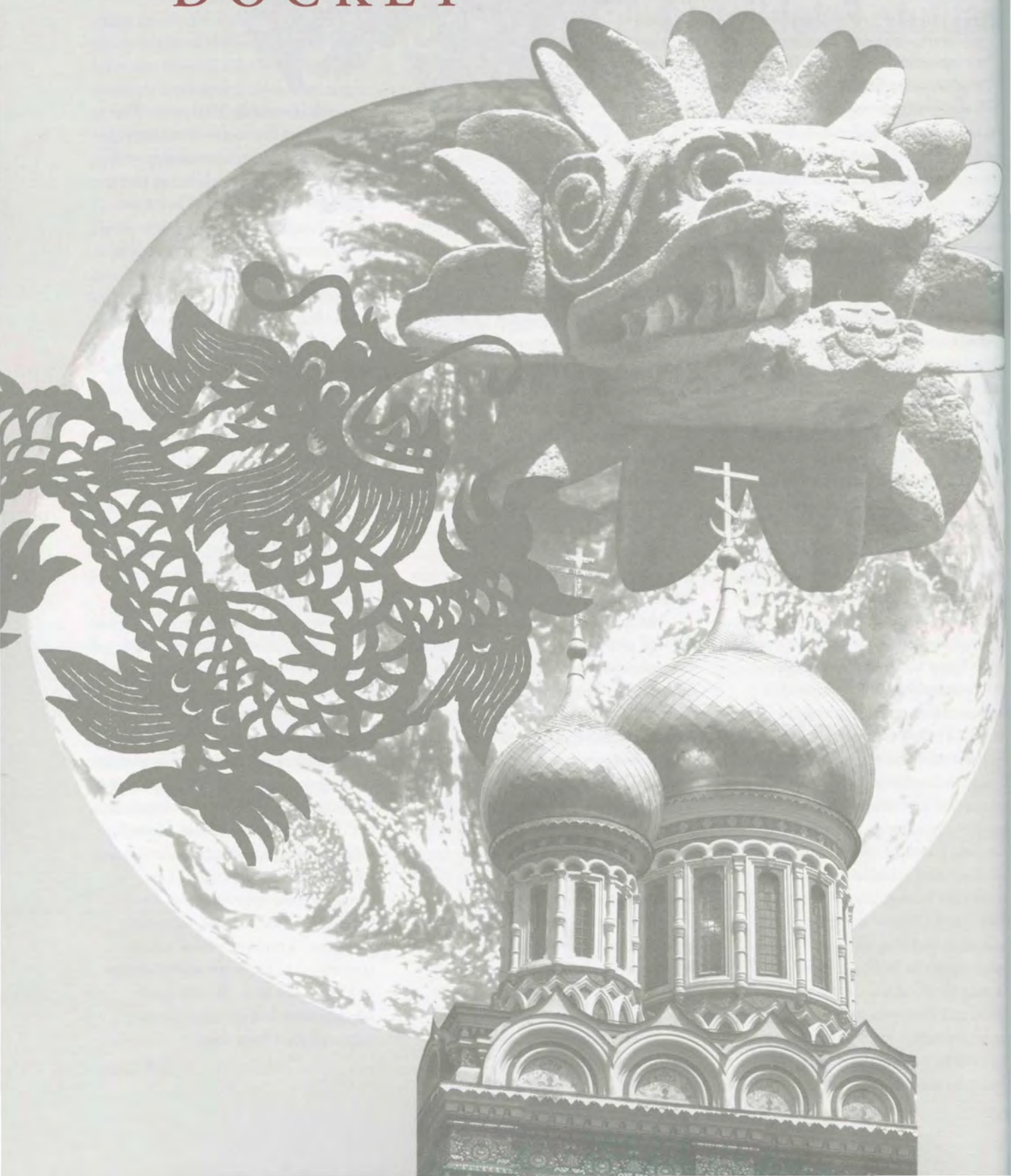
Horowitz said the Law School's summer program in Europe, founded in 1986 at the University of Copen-

hagen and moved in 1991 to the Free University of Brussels to be nearer the center of European Community activity, is serving as a model for the Hong Kong program. In 1994, 83 students from 23 nations, including many from newly democratized countries in Eastern Europe, attended the program in Brussels. With an emphasis on Europe rather than Asia, courses offered by the Brussels program include competitive antitrust, and comparative corporate law, human rights, environmental law, and international dispute resolution. Both summer programs also provide an introduction to American law course.

"The programs give our students an opportunity to learn about the practice of law and the legal systems of many different countries in Europe and East Asia," Horowitz said. "They also have a chance to study with a wide variety of faculty and students with different backgrounds and experiences." Many students returning from the Brussels program have said that having the opportunity to live with people from so many different countries was in some ways almost as important a part of their education as the classes they were taking, Horowitz said. The programs not only benefit students, but provide Duke Law faculty a good opportunity to study, lecture and travel abroad, according to Gann. "The Law School is very committed to the internationalization of Duke," she said. "It's not a new commitment but one that's been nurtured for a long time."

Bill Sasser

THE DOCKET



FACULTY PROFILE

Donald L. Horowitz

Exploring Ethnic Conflicts

Azerbaijan, Bosnia, Chechnya. In the past few years an alphabet's worth of ethnic conflicts has arisen in communism's wake. The places and the conflicts, new and confusing to most onlookers, are familiar territory for Donald L. Horowitz, James B. Duke professor of law and political science. Since the late 1960s, Horowitz has studied ethnic group relations around the world. From Malaysia and Sri Lanka to Romania and the former Soviet Union, Horowitz has systematically researched the causes and solutions of ethnic violence.

Ethnic Study

Although many scholars are now studying the interaction of ethnic groups, Horowitz was one of the first to study ethnicity on its own terms. "Old theories explained ethnic conflict as part of a larger process; for example, that modernization brings on ethnic conflicts," he says. "I explained ethnicity on its own terms. What is it about the friction between groups that makes them dislike each other?" In his 1985 landmark book, *Ethnic Groups in Conflict*, Horowitz compared cases of ethnic conflict in different countries to find patterns that occur across societies. For example, he observed that secession efforts began in "backward groups in backward regions that benefit from subsidies from the center." Although one would expect such groups to wish to retain the benefits of associating with the larger group, "they quickly learn that they cannot compete at the center for power." They conclude that belonging is futile and begin pressing for secession.

Horowitz is committed to finding ways to ameliorate the polarization and violence that can arise in multi-ethnic



Donald and Judy Horowitz

societies. He urges electoral systems that encourage groups to seek the support of other groups. One scheme would be to allow voters to list a series of choices for each race. If their first choice lost, their second or third choice would be counted, until an absolute majority emerged. This would reward candidates who appealed across ethnic lines and give minority voters political influence.

Horowitz emphasizes the limitations of political engineering. "I am very cynical about the ability to make people from different groups love each other," he says. He also cautions that "timing is a very big problem. When

there is enough time, there is no urgency. When there is urgency, there is not enough time." The most important element in any plan to reduce ethnic conflict is "to provide incentives rather than constraints." Instead of forcing societies to reduce ethnic conflict, cohesion must be in politicians' self interest.

Horowitz's scholarship has caught the attention of world political leaders, who frequently consult him on matters of ethnic relations. This fall he consulted with the Commission on Security and Cooperation in Europe (CSCE) on the international friction that arises when "kin state" countries

aggressively protect the interests of their nationals in foreign countries. Recent cases of concern include ethnic Russians in the Baltic States and Hungarians in Romania and the former Yugoslavia.

Pursuing Two Careers Simultaneously

Although Horowitz has made a career's worth of contributions to the field of political science, he has pursued law with equal vigor. After earning a B.A. and law degree at Syracuse and an LL.M. from Harvard, Horowitz concluded that although he enjoyed law, he also wanted to be a political scientist. "Early on I decided I wanted to do both things," he explains. He stayed at Harvard to pursue a Ph.D. in political science.

Thus began a see-saw career which presents a textbook example for those wishing to pursue two careers simultaneously. He took a federal district court clerkship after finishing field work in ethnic relations. Presumably refreshed by a year of reading motions and drafting orders and opinions, he then tackled his dissertation.

The day after defending his thesis, Horowitz flew to Malaysia for a post-doctoral fellowship through Harvard's Center for International Affairs. In Malaysia, he says, "I learned all there was to know about ethnic politics." He chuckles. "Of course, back then it wasn't the hot topic it has since become."

After interviewing politicians in southeast Asia, Horowitz returned to the United States as an appellate attorney with the US Department of Justice Civil Division in Washington, DC. Two years, 36 briefs, and 16 oral arguments later, it was back to academia.

Horowitz spent the 1970s establishing himself as a scholar in both law and political science. Three years at the

Brookings Institution resulted in two legal books, *The Courts and Social Policy* and *The Jurocracy: Government Lawyers, Agency Programs, and Judicial Decisions*. (The first of them won a prize.) Six years at the Smithsonian Institution's Research Institute on Immigration and Ethnic Studies allowed him to do work on ethnicity, including *Ethnic Groups in Conflict*.

Horowitz has seized opportunities for scholarship wherever and whenever they present themselves. Once during a

"Comparative law fosters intellectual empathy, helps us to understand the assumptions of other systems. The more we understand about other systems, the more effective we'll be as lawyers in these systems."

trip home from Malaysia, he was staying with a Sri Lankan family when a member of the family mentioned that he knew someone who had recently attempted a political coup. Horowitz ended up interviewing 26 leaders of the coup attempt, laying the foundation for his 1980 book, *Coup Theories and Officers' Motives: Sri Lanka in Comparative Perspective*. It was the first study of a coup based on first-hand interviews with the participants.

Despite the unpredictable nature of foreign travel, Horowitz often managed to bring his wife, Judy, and their three children—Marshall, Karen, and Bruce—on his trips abroad. Now

grown, all of the children are fluent in at least one foreign language. And Judy Horowitz now takes numerous trips of her own as associate dean for international studies at Duke Law School.

In 1980 the family moved to Durham when Horowitz joined the Duke law faculty. He teaches a seminar on ethnic group relations, which is also open to political science graduate students. He also teaches labor law and criminal law.

After a lifetime of practicing in two distinct fields, Horowitz's interests in law and political science are converging in the 1990s. "Ethnic group relations is the world's major problem," he states. "Lawyers are going to be involved in a major way." Horowitz believes training in comparative law is essential for lawyers working on problems of foreign countries. "How do you persuade someone who doesn't think like you?" he asks. "Comparative law fosters intellectual empathy, helps us to understand the assumptions of other systems. The more we understand about other systems, the more effective we'll be as lawyers in these systems." Horowitz believes a comparative law background is equally essential for lawyers doing international trade work. "Lots of our graduates are in firms overseas. Lawyers who never thought they'd go outside the city in which they practice have ended up on the other side of the globe," he notes. As international transactions become a staple of the American law practice, the demand is increasing for an understanding of the legal, political, and economic systems of other countries.

Comparative Law at Duke

Horowitz believes Duke Law School is an excellent source of interna-

tional law opportunities. "We're doing a lot and we're doing it well," he pronounces. Duke was the first law school to offer a joint JD/LLM in International and Comparative Law that can be completed in three years and two summers. Duke's study abroad programs, in Brussels and now in Hong Kong, mix American law students with foreign students and feature international professors for a portion of each subject.

Horowitz also extols Duke's LLM program for foreign lawyers. Although not unique among American law schools, he points out that Duke's program is more rigorous than most such programs. While many programs design an entire curriculum for their foreign students, Duke mixes those students with its American students. In addition to professors' fast-paced English and a presumption of an understanding of the American legal system, foreign students must grapple with the constant cultural references and slang that characterize American classrooms. Having foreign students in their classes gives the American law students the opportunity to make international connections they otherwise would miss. As a result, Horowitz says, "Many JD's are lifelong friends with foreign LLM's, even if they were not into the international law curriculum."

Horowitz believes American law schools can learn from the LLM students' approach to law. "These students come to Duke ready to borrow ideas to use back home. They take securities regulation to see how our system works so they can try out some of those ideas in their home countries." Horowitz believes legal instruction would benefit by "borrowing" from other legal systems. "American legal education is

essentially completely parochial," he says. "We ignore the sources of law. Some of our law is borrowed heavily from other countries, and I don't mean Great Britain. For example, the concepts of bills and notes is continental. We are allergic to this idea that innovation is exogenous rather than endogenous. It's exogenous. Borrowing is the main source of innovation." Horowitz points out that every subject can be taught with a comparative perspective. "Comparative law is very exciting stuff. Family law, criminal law, labor law. Why study the National Labor Relations Act and not labor law? We're the only country to approach labor law the way we do. There are other ways to approach it."

"I discovered, counter-intuitively, that ethnic riots often occur in areas where the target group is in the majority. It is a desperate kind of violence."

New Book on Ethnic Riots

Horowitz's 1991 book, *A Democratic South Africa? Constitutional Engineering in a Divided Society*, won the 1992 Ralph Bunche Prize. His latest project is a book exploring ethnic riots. He defines an ethnic riot as violence by one ethnic group designed to kill members of another group because of their ethnicity. He has collected data on 150 riots in 50 countries. "I wanted to answer questions such as why, in multi-ethnic societies, does A choose to target B and not C, D, and E? What kinds of events precipitate riots? Where is

the police? Why do the police fail?" he says. "I discovered, counter-intuitively, that ethnic riots often occur in areas where the target group is in the majority. It is a desperate kind of violence."

Ethnic riots are not limited to the Third World. Horowitz points out that in the mid-19th century, ethnic riots in the United States targeted Catholics, Irish, Germans, and immigrants in general. And in the late 19th and early 20th centuries, anti-black riots marred East St. Louis, Detroit and Chicago.

Horowitz does not consider recent minority-led riots in the United States to be "ethnic riots" because their purpose was not to kill members of another group. Rather, they were "violent protests"—aimed at expressing dissent. "The black protests in America in the 1960s were qualitatively different [from ethnic riots]," he says. "They were not out to kill people and, for the most part, they weren't killing people." Horowitz does not expect a recurrence of the older form of ethnic riots in the United States. "But," he admits, "I'd like to know more about Los Angeles." He notes that no statistics have been published from the 1992 Los Angeles riots which break down the attackers and victims by ethnicity.

Horowitz expects his future legal research to address structural questions of "What is it that animates legal change? Why does legal change happen in one way and not another?" He has just published a long article on Islamic law and legal change in the *American Journal of Comparative Law*. No matter what his area of research, Horowitz is fascinated by the question 'why?' "I am interested in the ultimate questions of how and why change comes about," he says.

Amy Gillespie '93

Duke Law Alumni Practice Around the Globe

Covering the Gamut Throughout Europe

At the time of the Moscow coup, an American reporter asked a young woman from Kazakhstan to comment. Her acknowledgement that she had just learned of the coup on CNN brought home to American audiences the reality of the global village. In the past two decades, Duke Law School has become a kind of global village, as well. Non-Americans now account for 10 to 15 percent of the student body, a percentage that Dean Pamela Gann expects to grow. In a recent speech to the Board of Trustees Academic Affairs Committee, Dean Gann proposed that "by the end of the decade, this number increase to 20 to 25 percent."

At the same time the Law School is attracting students from other countries, it is also sending American graduates to practice abroad. NAFTA, the European Union, the evolution of GATT into the World Trade Organization, and the development of Asian trade blocks are creating an open and complex economic and legal environment. More than ever, the skills of American-trained lawyers are in demand worldwide. In the past five years, for example, the number of foreign branches of American law firms has more than doubled. In 1991, the most recent year for which data are available, the US trade surplus for legal services had reached almost \$1 billion. At the same time, the US possesses a mature legal services economy, resulting in declining salaries and downsizing in domestic law offices.

The largest proportion of Duke Law graduates working abroad—American and non-American—are

practicing in Europe. Privatization of government businesses have created unprecedented opportunities for American-trained lawyers in both Eastern and Western Europe. As current and prospective members of the European Union try to balance national and EU interests, they are increasingly looking to those lawyers for experience in a dual legal system, epitomized by the federal-state split in American law.

Duke Law graduates can be found throughout Europe, in legal, government, and corporate circles. Recently, we talked with a sampling of Duke Law alumni, who shared the challenges of their current work and reflected on the contributions of their experience at Duke to meeting those challenges.

D. Rhett Brandon JD '79: American Securities and Corporate Finance Partner in London



More than 50 American law firms now have branches in London—long a relatively accessible legal market for talented corporate lawyers like Rhett

Brandon. A native of North Carolina, Brandon earned an undergraduate history degree as well as his JD at Duke. Of his experience at Duke, Brandon said, "the quality of a Duke education and the scope of educational opportunities which Duke offers have been of great help to me as I have faced the challenges of working abroad."

As a partner in the London office of the New York firm Simpson, Thacher & Bartlett, Brandon specializes in US corporate and securities law. He acts principally on behalf of Euro-

pean clients in connection with their US financing and acquisitions. This past spring, when the Italian government decided to privatize Banca Commerciale Italiana in a deal through a global offering of shares valued at \$1.7 billion, Brandon led his firm's team which provided advice to the underwriters of the offering. In 1993, he assisted Glaxo, the UK-based international pharmaceuticals group, in establishing a joint venture with Warner-Lambert in the United States to market globally over-the-counter versions of Glaxo's prescription drug products.

Every day, Brandon finds himself on the phone with lawyers and clients throughout Europe and the Far East. Though as an international lawyer, his geographic reach is far broader than it would be from his firm's New York base, US lawyers practicing overseas face special challenges in dealing with their non-US clients. "In many instances, a lawyer in Europe is looked at as an implementer of a decision made by others rather than an integral part of the decision making process. European clients and European lawyers are often surprised to experience the depth of involvement which a US lawyer often has in a financing or acquisition transaction."

Brandon's intellectual interests are far-ranging. In 1990, for example, he co-authored an article on the US economic response to the Iraqi invasion of Kuwait. And, though London hardly poses the physical threats of hot spots like Kuwait, Brandon has had to deal with danger. In 1992 and again in 1993, Simpson, Thacher & Bartlett's London offices were badly damaged in IRA terrorist attacks.

Ilona Banhegyi LLM '94: International Business Associate and Law Lecturer in Hungary

Economists predict that the greatest growth in European legal practice will come in Russia and Eastern Europe, where a deficit of economic regulatory law makes demand for US legal skills intense. "One of the most important issues faced by lawyers in Eastern Europe is how to handle competition, a necessary part of privatization, but one that's hard for formerly socialist economies to understand." In making this point, Ilona Banhegyi, a native of Hungary, speaks for her nation, but not for herself. A top law student at Budapest's Eotvas Lorand University, Banhegyi competed successfully for a chance to spend a year at the German-speaking Universite St. Gallen in Switzerland. Upon graduation, she simultaneously worked as an associate at a Budapest law firm and as a research assistant at her alma mater. In 1991, she again competed successfully, this time for a Fulbright Scholarship to attend Duke. She was attracted to Duke, not merely for its reputation, but because she wanted to experience a part of the United States less well known among Europeans.

Banhegyi expected the curriculum to reflect the differences between a continental, code-based system and America's common-law tradition. What was more surprising was the difference in teaching style. "I was surprised by the informal personalities and teaching approaches of my professors—and how they were so available for students," said Banhegyi. This informality carried into out-of-class activities and Banhegyi regularly found herself playing softball and baseball, unlikely pursuits for a cosmopolitan European intellectual.

Following graduation, Banhegyi promptly passed the New York bar and was hired by Shearman and Sterling, a Manhattan-based firm interested in establishing a presence in Eastern

Europe. Currently one of only seven lawyers in the firm's Budapest office, Banhegyi works with Western banks and corporations who are setting up operations in Hungary. Daily, she faces the significant challenge of reconciling international business practice with the Hungarian legal code. This is particularly difficult because until recently Hungary had no national securities commission. Along with a demanding practice, Banhegyi finds time to teach corporate and civil law at Eotvas Lorand University—and to stay in touch with fellow Duke LL.M.s—both socially and professionally.

Margaret Wachenfeld- Jessen JD '89: Handling Corporate Transactions in Brussels & Czech Republic

Unlike Ilona Banhegyi, who began her law career with a grounding in the law of the country where she practices, Margaret Wachenfeld-Jessen has been learning Eastern European law on the job. From US law firm White and Case's Brussels office, Wachenfeld-Jessen spends most of her time shuttling between the Czech Republic, Poland, and—most recently—Albania, where she is advising the government on privatizing major mining enterprises. Though writing contracts and purchase agreements keeps Wachenfeld-Jessen on familiar legal ground, other aspects of her corporate transactional work take her into more challenging territory. Communicating with local counsel, for example, requires an ability to quickly assimilate the particularities of legal codes very different from those she studied at Duke. Currently, the Law School offers several courses in civil code and European Community law, options that weren't available to Wachenfeld-Jessen six years ago.

Wachenfeld-Jessen, who came to Duke with an undergraduate major in marine biology and a special interest in the law of the sea, knew from the start

she wanted to practice internationally. And at Duke, she did not limit her focus to Europe. "While I was getting my law degree, I took Chinese courses and regularly spoke Chinese with Chinese students." Those contacts have endured, and this year Wachenfeld-Jessen was maid-of-honor for Yibing Mao, LLM '89, who practices law in Hong Kong.

Like many Americans seeking law jobs abroad, Wachenfeld-Jessen sought a summer internship with a firm that had operations abroad. Unlike most American students, she found that opportunity sooner than expected. "Just after I arrived at Coudert Brothers in New York, one of the partners called me into his office and said—'guess what, you're going to Hong Kong for a month and a half.'"

When asked for her advice to Americans seeking law jobs in Europe, Wachenfeld-Jessen didn't miss a beat. "Language, language, language—if you have second language skills (particularly French and German), you have a tremendous advantage." Despite a hectic schedule combining lawyering and parenting a toddler, Wachenfeld-Jessen finds opportunities to work on her French. That's in part, she said, because compared to lawyers at major New York and Washington firms, lawyers in most European firms don't work as many hours. "Europeans in general have found a much better balance between work and the family—I respect that very much."

Anders C. Jessen LLM '88: European Union Legal Commissioner in Brussels

Like his wife, Margaret Wachenfeld-Jessen, whom he met at Duke, Anders Jessen is also working outside his native country, but not as a private lawyer. Jessen, a Dane, is a member of the European Community Commission's Legal Service at the EU's headquarters in Brussels. As a lawyer in the

Legal Service, Jessen has responsibility for reviewing all documents presented by the Commission within his field of competence, including draft legislation. Last year alone, more than 1,200 documents were up for his unit's review. Another major area for the Legal Service is representing the European Commission in all cases before the European Court of Justice. Furthermore, the Legal Service gets involved at various stages of infringement procedures brought against Member States, from determining whether an infringement of EU law has occurred, to the preparation of letters to errant Member States during the administrative stage of such proceedings, and finally, if necessary, to actual litigation.

Until this January, Jessen focused on telecommunications, arguably the fastest growing industry in the world. This winter, he was transferred to the politically-charged arena of State subsidies. Any aid a Member State offers to businesses within its borders must be cleared by the Commission and such requests sometimes fly in the face of the Community's goal of an internal market with undistorted competition. "I will find myself having to balance respect for certain national priorities with those of the common market," said Jessen, who anticipates particularly challenging work on airline and agriculture issues.

Jessen found his LLM work at Duke uniquely helpful preparation for his position at the Commission. "Fifty years ago, studying national law was enough. Now European lawyers must have an equal grounding in Community law. Being exposed to the state and federal split within American law was a good introduction to a dual legal system, such as European nations now face," said Jessen. Beyond this specific benefit, Jessen believes that exposure to a foreign legal system, wherever you work, provides an advantage. "You're introduced to new ways of solving

problems and that means you develop mental flexibility."

Nis Jul Clausen LLM '85: Law Professor in Denmark

Like his compatriot, Anders Jessen, Nis Jul Clausen believes that study abroad provides an immense advantage to the European lawyer. A professor at Denmark's Aarhus School of Business, Clausen strongly advises his students to study abroad for a semester, advice taken by more than half of those he teaches in the graduate business law program. "European legal practitioners have over the last decade faced an enormous growth in the need to deal with international aspects of law," said Clausen, who attributes this internationalization to "harmonization of the laws within the European Union . . . and the general globalization of trade and financing."

The need for a global perspective is especially critical in Clausen's area of specialization, securities regulation. Major, worldwide regulatory changes have occurred in the way securities are issued and traded. Clausen believes that the term national stock exchange is fast becoming an anachronism. "Companies raise capital internationally and investors are looking for investments globally. This requires that practitioners as well as academics dealing with securities regulation must work internationally."

And Clausen practices what he preaches. Since he graduated from Duke, he's regularly renewed links with the Law School. In 1990, he taught in Duke's Summer Institute in Transnational Law in Denmark, and he comes to Durham every two years to conduct research. He and Duke Law professor Jim Cox have collaborated on a research article examining the monitoring duties of company directors under the EU, and in 1993 they jointly planned a conference on international securities regulation sponsored by the Copen-

hagen Stock Exchange. Clausen will return to Durham for three months this summer. He expects to do research on American securities law that will help him as a member of the Danish committee tasked with reforming Danish security law, "a reform needed because of the growing internationalization of the Danish market."

Marie Evrard LLM '86: Legal Manager, International Accounting Firm in Brussels



Currently a legal manager at the Brussels office of Coopers and Lybrand, Marie Evrard found her law school experiences at Liege University and

Duke radically different. First of all, it was very easy to get accepted at Liege, "but not so easy to get out." According to Evrard, approximately 60 percent of Belgian law students fail to obtain degrees. At Liege, as in most law schools in countries with a statutory rather than common law tradition, a premium is placed on memorization as teachers generally teach to larger groups of students on an *ex cathedra* basis. At Duke, said Evrard, "memory is used less and instead problem-solving skills are stressed." Though her experience at Duke was positive, Evrard wishes she had waited to come until after she had actually practiced law. Having practical experience, she believes, would have helped her especially in her summer internship with the DC tax firm, Caplin and Drysdale.

Evrard—like many of the other European attorneys interviewed—was quick to note the differences between both the practice of law and the public image of lawyers in America and Europe.

For example, "large audit firms in Belgium (as well as most European

countries) provide legal services to clients (which is quite unusual for the US) but, in Belgium, the legal advisors are not admitted to the bar and do not go to courts (this is different in some other European countries such as France where the members of Coopers & Lybrand providing legal services are lawyers admitted to the bar). She acknowledged that lawyers in America typically work longer hours than those in Europe. But, she added, more time at the office does not necessarily mean more stress and rigor. "In the US, firms allow their lawyers to go jogging, often have a fitness room in the basement, and provide better secretarial support." Evrard confirmed that European lawyers are much less likely to litigate, preferring other means of conflict resolution. Related to this is the belief that lawyers should not advertise and, she explained, most European bars have strict bans against lawyers publicizing their services.

Paul Tulcinsky LLM '86:
Tax Partner, International
Accounting Firm in Brussels



Dean Gann has spoken of her interest in developing a global network of Duke faculty and alumni. Paul Tulcinsky and Marie Evrard

provide practical evidence of how such a network might operate. A classmate of Evrard's at Duke, Tulcinsky recruited her to Coopers and Lybrand, where he is a tax partner.

When Tulcinsky came to Duke, he already had two degrees from the Free University of Brussels—one in law and another in taxation and was employed by a large—by European standards—firm of 57 lawyers. Tulcinsky found the Duke environment very welcoming and his fellow students quite receptive

to him and his experiences. In contrast, and somewhat to his alarm, he encountered a widespread provincialism in the general public. "Americans see the world only in terms of America. It's simply amazing," said Tulcinsky in a 1986 interview, attributing this narrowness of perspective to an American press that largely ignores world politics.

In 1989, Tulcinsky joined Coopers and Lybrand, where he became a partner in 1992. Like a senior tax partner in a US firm, Tulcinsky has multiple responsibilities ranging from consultancy and compliance work with large corporations, to public relations and marketing, as well as coaching and motivating, and managing a staff of associates. In addition, he lectures on international tax law in the Special Tax Program of the Solvay Business School of the Free University.

Tulcinsky—by nature modest—is hesitant to claim for himself a global perspective if global is defined as worldwide. But he does lay claim to a breadth of vision that enables "one not only to identify advantages for oneself or for the firm but also for the Belgian economy in general." From his vantage point at the heart of the European Union, Tulcinsky acknowledges a number of challenges—ranging from the need to understand foreign legislation and legal cultures to increased competition between legal service providers as firms extend their spheres of operation.

Xavier Van der Mersch LLM '84:
Corporate and Administrative Partner
for American Firm in Brussels

Xavier Van der Mersch is one of a growing number of Europeans working for American firms with foreign operations. Van der Mersch's firm, McGuire, Woods, Battle and Boothe, is one of 27 American firms with offices in Brussels. Just five years ago, only seven American firms were doing business out of Brussels. Van der Mersch, a corporate partner, directs a team of Belgian lawyers



that specialize in international transactional work including mergers, acquisitions, divestitures and joint ventures. In addition, his practice includes advising

foreign clients on international labor law matters, European Union issues, and litigation in Belgium. On top of this, he is the partner in charge of administration in the Brussels office.

Since Van der Mersch's clients are multinational companies, he must consider the international implications of all the legal issues he addresses. "This means when a client comes to me with a Belgian legal issue, I not only give advice on how that issue may be solved in Belgium, but also consider what other effects that issue could have on the company's operations in other countries or with respect to European Union law," said Van der Mersch.

Though McGuire, Woods has offices in Zurich as well, it is the Brussels office that has taken the largest share of responsibility for the firm's legal work in Russian and Kazakhstan. Van der Mersch represents the government of Kazakhstan in its negotiations with oil companies located all over the world.

Like others used to the more theoretical pedagogy of European law schools, Van der Mersch appreciated the applied nature of his LLM coursework. "The Duke program emphasized addressing issues from a practical standpoint," said Van der Mersch. "This concept has provided me with a solid basis for my legal work." Van der Mersch also appreciated the international microcosm created by an LLM program with students from all over the world. "The interchange among students with diverse background and various perspectives brought to the discussions proved useful in preparing

me to understand and evaluate issues globally."

**Dieter Fullemann LLM '83:
Secretary, Supreme Court of
Switzerland**

Dieter Fullemann, who is secretary—or legal administrator—in the Swiss Supreme Court, is not quick to jump on the global bandwagon. With a note of humor, he remarked, "the only global perspective I possess is a perspective of the Lake of Geneva, which is global (in size) when viewed from my office window." In a more serious vein, he elaborated. "There really is no such thing as a correct global perspective. Physical realities are lots more complex." Fullemann believes that to be effective, lawyers must think concretely and specifically, rather than abstractly and universally.

Fullemann, who is in the Court's Second Civil Section, deals mainly with bankruptcy and family law cases. Recent economic downturns in Switzerland have hit the construction industry particularly hard. And—as in the United States—marriage in Switzerland is becoming a more fragile institution. Unlike the US Supreme Court, Switzerland's highest court often deals with international arbitration cases since many courts of international arbitration have their seat in Switzerland. In contrast to his colleagues in other European countries, Fullemann encounters relatively few American lawyers—Geneva and Zurich together have only seven American law firms. Not yet a member of the European Union, Switzerland is just beginning to see the proliferation of laws and legal service providers characteristic of EU member states.

Unlike most LLM candidates from Europe who come to Duke having studied law only at the undergraduate level, Fullemann brought with him a doctorate in law and considerable legal experience. While at Duke, he particularly enjoyed the close contact with

professors, because "in Switzerland, the professor is a rather distant person." Though proficient in English, he valued the opportunity to learn legal English—a linguistic challenge even for American students.

**Bharat Dube JD '86:
Associate Counsel for Intellectual
Property, Cartier International
in Geneva**

While most consider Eastern Europe and Russia to be the most fertile ground for American-trained lawyers seeking in-house practice in Europe, entrepreneurial Duke JDs like Bharat Dube do find interesting positions with Western European corporations. Dube's resume epitomizes the new global lawyer. A native of Calcutta, Dube earned a national scholarship to attend a high school in Wales that attracted students from 60 nations. From there he was recruited by Harvard, where he majored in social studies. Dube was attracted to Duke because he believed an American law degree would be a strong asset in India, where he expected to practice.

Having interned at the United Nations, upon graduating in 1986 Dube was hired to work at the World Intellectual Property Organization, a UN agency. During his four-year stint there, Dube travelled widely, particularly in Asia and the Pacific. Though he enjoyed interacting with high government officials, and learning firsthand about international trade, Dube missed actual legal practice. "I was a quasi-bureaucrat and wanted something in the field—practicing law, not just dealing with policy," said Dube. In 1990, he got this opportunity when he was offered a position with Swiss-based Cartier as an associate in-house counsel for intellectual property.

Though Switzerland is the home of international arbitration, Dube is heavily involved in litigation; Cartier, he estimates, may be involved in 2,000

cases a year. Cartier forms part of the Vendome Luxury group, which comprises some of the world's best known luxury brands including Dunhill, Montblanc, Piaget, Sulka, Baume & Mercier, Chloe and Karl Lagerfeld. The counterfeiting of luxury goods is big business, and the focus of Dube's practice is in the area of anti-counterfeiting. According to GATT estimates, last year counterfeiters accounted for a loss of legitimate business approaching one hundred billion US dollars.

As manufacturing in Asia has burgeoned, so has counterfeiting and Dube has recently spent considerable time in China. Unlike Western countries, China does not have well-developed intellectual property protections. Dube cites a recent case in which a major US software manufacturer lost hundreds of thousands of dollars to unauthorized copies of its software and was awarded a paltry \$200 in damages by a Beijing court. In his most recent Chinese counterfeiting case, Dube fared considerably better. He wisely chose to have the case tried in Shenzhen, a town neighboring Hong Kong with a reputation for progressive judges. "I was as surprised by the quickness of the case—a mere three months—as I was with the award in excess of \$50,000," said Dube.

Dube has not given up the idea of settling in India—and returns once or twice a year to see his family in Delhi, a trip that brings him in contact with economic realities he doesn't experience at Switzerland. He has great respect for his brother, a journalist who worked at the World Bank in Washington, who has recently returned to India to write a book on poverty.

**Joaquin Carbonell JD '77:
President, BellSouth Europe:**

Just as many JDs in the US use their legal skills as managers rather than lawyers, a number of Duke Law grads abroad are pursuing careers in business.

Like Bharat Dube, Joaquin Carbonell has been on the move his entire life, a mobility that may have bred the adaptability crucial for a global manager. Born in Cuba, at age nine Carbonell was sent by his parents to the United States where he landed in an orphanage. After a brief stay, he found a more permanent home with a foster family in Lacrosse, Wisconsin.

After triple-majoring at Boston College and graduating *summa cum laude*, Carbonell entered Duke Law School determined to pursue inter-

national corporate law. After Duke, Carbonell was hired as a lobbyist by BellSouth. In 1992, he was named president of BellSouth, Latin America and last year became president of BellSouth, Europe. Among Carbonell's recent coups was winning a \$300 million bid to provide cellular service in Israel. Carbonell has just met a bidding deadline in the Netherlands and is in the process of leading BellSouth's efforts to expand into eastern Europe.

For Carbonell—bilingual since childhood—language and cultural

awareness are the two most essential skills for the global manager. It is crucial, he told a reporter from Business Week in an October 1994 interview, "to be able to adapt one's business style to the cultural environment . . . from Latin America's low-key working to the in-your-face negotiation that's needed in Israel." Carbonell's advice to those seeking a career in international business? "Cultivate a mentor or peer who will keep you tuned into doings at headquarters."

Enjoying Exciting Careers in Asia

In its latest survey of the global economy, The Economist made a striking prediction. By the year 2020, Asia will account for seven of the world's 10 largest economies. Japan, China, and India will maintain their current top-10 positions, while South Korea, Indonesia, Thailand and Taiwan will displace traditional European giants, including Italy and Britain.

Japan excluded, Asia is expected to grow at seven to eight percent per year and to require \$1 trillion in new capital investments in the next five years alone. Such a vibrant economic market is also a vibrant, but challenging, legal one. The legal practitioner in Asia faces a dynamic and complex environment in which markets are transforming, regional trade agreements are being forged, and political institutions are evolving to provide stability and protect rights.

Dean Gann sees Asia as a vital sphere for Duke Law School operations in the coming decade. "The US economy is very mature, with steady but unspectacular growth, and it possesses a mature legal services economy," stated Gann, noting a decline in the opportunities and relative incomes facing US-based lawyers. The draw of practicing abroad, especially in Asia, will only

strengthen during the coming years. According to Gann, fast growing market areas like Asia typically suffer from too little law; they lack modern economic regulatory law, adequate intellectual property protection, and legal education capable of keeping pace with the need for a critical number of highly skilled lawyers. "Together, these factors indicate that the Law School ought to react by speeding up globalization," said Gann. And Asia is a centerpiece of the proposed internationalization of the Law School.

As Duke Law School shifts its attention east, the experience of alumni currently practicing in Asia becomes a vital asset. Increasingly, as Dean Gann and Associate Dean for International Studies Judy Horowitz chart the course of Law School internationalization, they are relying on the experience of alumni like those profiled here.

The Law School has enjoyed important ties with Japan for more than a decade. Faculty visits to and from Japanese universities have been frequent for a number of years. For example, since 1985, Professor Koichiro Fujikura of the University of Tokyo, has been a biannual visitor at Duke teaching courses in Japanese public law. Conversely, adjunct pro-

fessor Percy Luney, also dean of North Carolina Central University Law School, has spent repeated teaching and research leaves at Japanese universities, enriching the course he regularly offers at Duke in Japanese law. In the past decade, more than 30 Japanese students have earned law degrees at Duke. Together, this interchange has created a rich environment for preparing lawyers—American and non-American—for legal careers in Japan.

Paul B. Ford, Jr. JD '68:



"We are not just exporting existing financial products to Asia; rather, these markets are breeding grounds for new products."

Whether it was the reassuring credibility of Walter Cronkite or a stimulating international affairs class in high school, Paul Ford is not sure. But, whatever the stimulus towards the international arena, it has been a dominant and persistent theme in Ford's life.

When Ford was at Duke in the late '60s, although virtually none of his

classes had an expressly global focus, he was exposed to the incisive legal reasoning and larger vision that have served him well in his international practice. Ford particularly recalls the influence of Professor Arthur Larson, whose work in the Eisenhower administration gave him a global perspective unusual among American law faculty at the time.

When Ford joined Simpson, Thacher and Bartlett in 1968, virtually none of the major New York firms had a presence in Asia. Even now that leading US firms have offices in Hong Kong, Tokyo and are considering beginning operations in Singapore and Korea, Ford believes that US firms have yet to fully understand and embrace the global arena. "When law firms have a preeminent reputation in the states, there's always the question of why we need to do this," said Ford of the decision to globalize. But, believes Ford, if firms are to retain their standings as top quality franchises, they must be willing to locate near their clients, who—increasingly—are in Asia.

When he became a partner in 1976, Ford began a concerted effort to build up the firm's international practice. In 1984, for instance, he coordinated two international conferences on investment in the People's Republic of China. In 1990, Ford received the go-ahead to open an office in Tokyo. That office is now under the direct management of a young American lawyer, whom Ford notes is fluent in Japanese. Proficiency in Japanese, said Ford, is increasingly viewed as indispensable to the lawyer practicing in Japan, because even in Tokyo, clients often do not speak English well enough to converse about complex legal and financial matters.

It is widely accepted that American law firms are changing the way Asian corporations do business. But, believes Ford, doing business in Asia is also influencing the development of financial

and legal "technology" in the United States. "Faced with adapting to the civil law traditions of Asian countries where tax and bankruptcy interests are different from ours, we will have to modify and create new [legal and financial] technologies." In his humbler moments, Ford suggests that, far from being essential to the development of Asian markets, "we face the challenge of remaining relevant in markets like China that are large enough in their own right" to be viable without depending on the US.

For many international lawyers, an interest in global affairs remains restricted to their paid work. Not so Paul Ford, whose pro bono activities center around international affairs. Ford is chairman of the Foreign Policy Association (FPA), a national organization dedicated to educating the general public about foreign and global issues. The FPA sponsors discussion groups, seminars and public forums in which participants meet, debate and form considered opinions on key policy topics. Last year's forums focused on issues ranging from forging a democratic union in South Africa to US trade with the Pacific Rim.

Hideyuki Sakai LLM '82:



"I was Duke's first Japanese law graduate."

Hideyuki Sakai came to Duke having worked for three and a half years at a

Tokyo law firm started by an American. "It really was premature for me to study law in the US—I had engaged in purely domestic Japanese law and had little idea of the American system," said Sakai. At Duke, he confided, "I learned a little bit about American law and a lot about the American people." And

some of his positive impressions challenge popular notions. While Americans look with envy on the conscientiousness and discipline of Japanese parents, Sakai is equally quick to praise American child-rearing. "In Japan, we always say how bright and cute the other person's child is; in American parents say good things about their own children. I think this helps encourage self-confidence, which leads to self-respect."

As a corporate lawyer, Sakai spends much of his time on bankruptcy cases, many of which involve multinationals. In late 1993, he handled a case for a real estate company with holdings in the US and Japan that had to be shepherded through the courts of both nations. In his practice, Sakai assists foreign clients who are just coming into the Japanese market, as well as Japanese companies just beginning to do business in the West.

Sakai's career typifies that of the increasingly entrepreneurial Japanese lawyer who has studied in the US. Following his studies at Duke, Sakai joined Blakemore and Mitsuki, a corporate firm started by a far-sighted American who came to Tokyo as part of the rebuilding initiative following World War II. Well-established with Japanese and international clients, Sakai has just established his own practice.

The first Duke Law School graduate in Japan, Sakai was a natural choice to head the Japanese Duke Law Alumni Club. This year, at the annual send-off party for students heading for Duke, the club hosted more than 25, evidence of the emerging network of Japan-based Duke Law grads.

Hirofumo Goto LLM '84:

"In Japan, any person can join a company's legal staff if that company believes he or she is qualified."

An in-house lawyer for Japanese-based Sumitomo Metal Mining Co.,

Hirofumo Goto handles a wide range of legal matters. He reviews and drafts contracts including joint venture, licensing and distributorship agreements. He manages trademark registration and makes due diligence investigations related to acquiring shares of other companies or building plants in foreign countries. He also manages dealings with consulting attorneys, domestically and internationally, as well as devising and overseeing the company's overall litigation plan.

In these many roles, Goto regularly encounters differences in the way Americans and Japanese conduct business. "Japanese and American customs related to business are very different," said Goto. "As is widely acknowledged, contracts with US companies are long and detailed, in contrast to contracts between Japanese companies which are much simpler and shorter." Goto attributes this to the difference between civil and common law systems, as well as to a Japanese preference for resolving conflict through consultation rather than litigation. However, he has found himself increasingly engaged in legal consulting, contract drafting and the modification of in-house rules in response to changing legal circumstances.

In Japan, explained Goto, there is a marked difference between the training of litigators and other legal practitioners. Most aspiring legal professionals study law as undergraduates, but upon graduation the great majority go to work directly for private corporations or the government rather than preparing for the examinations required to litigate or enter the judiciary. With a pass rate of only two percent and the need to commit years to preparation, studying for certification as an attorney is not a viable option for most. Large Japanese corporations typically draw chiefly on the talents of in-house counsel, bringing in outside attorneys much less frequently than do American corporations. The former,

suggested Goto, sometimes have a keener and a pragmatic understanding of the business transactions that are at the heart of most legal controversy. Recognizing the value of this practical expertise, universities have recently begun to invite members of corporate legal staffs to join their law faculties, modifying an institution that once favored theory over practice.

Goto believes that US law has had a significant impact on Japanese law, including—but not limited to—anti-trust, commercial code, securities regulation, and unfair trading practice. Stiff court expenses are used to deter suits against company directors, but a new law has just lowered those costs, opening the way to shareholder suits. Similarly, a law facilitating product liability cases has just passed the Diet. This should prompt companies to establish more stringent and elaborate safety rules and manuals.

Richard M. Allen LLB '66:



"At Cravath, we view the assignment to Hong Kong just like any other assignment."

Hong Kong, with its six million people, 98 percent of

whom are ethnic Chinese, enjoys the world's 10th largest trading economy and a gross domestic product per capita that is larger than her soon-to-be ex-mistress, England. According to Asian experts, Hong Kong also has a more developed infrastructure, better social services and a more educated populace than Britain. As a vital juncture between East and West, Hong Kong is a financial hub through which inbound and outbound investments flow into and out of China. It is also a cultural hub, where Ivy League and Oxford graduates worship at the world's

largest outdoor statue of Buddha. Finally, Hong Kong is a political hub where issues of human rights will increasingly be tested as July 1, 1997 approaches and the influence of China increases. Collectively, these factors make Hong Kong a fascinating legal market, one that has become a magnet for American law firms.

Rich Allen never aspired to become an "international lawyer," and claims that "there is nothing glamorous about practicing abroad." A partner specializing in business and corporate law at Cravath, Swaine and Moore, Allen has a strong interest in conservation issues in his own backyard. A founder of the Environmental Planning Lobby, Allen has devoted much pro bono attention to promoting environmental protection in New York.

Allen claims that when in 1994 Cravath was looking for someone to open a branch office in Hong Kong, he was chosen not for his Asian expertise, but primarily "because of my family situation; it was easier for me than for many of my partners to relocate to Asia for three years." For Cravath associates, according to Allen, practice abroad is not considered any different from any other reassignment, say from a banking to a securities group. Unlike many of its rival firms, Cravath does business out of a single office in Asia, making the scope of the Hong Kong branch's operations vast, particularly given a staff of only two partners and seven associates.

Allen finds his foreign surroundings "much like a large, western city," but with a very different and very challenging business environment. "Asian economies are incredibly volatile—activity can skyrocket and then suddenly disappear." He likens the difference in business transactions in Hong Kong and New York to the "differences between the life experiences of a teenager and an older person—the teenager has constant ups and downs and flits

from one direction to another, while the older person maintains a better focus and has a better grasp of priorities."

Though not taken with the glamour of practicing abroad, Allen does believe practicing law abroad is a broadening—but also humbling—experience. "In the US, all of us—particularly lawyers—see ourselves as dominating the world. In Asia, lawyers are thought to be nothing more than necessary evils."

Allen has been helpful to Deans Gann and Horowitz in setting up the Asia-American Institute in Transnational Law slated to begin this summer in Hong Kong. At the Institute, Allen will be offering a seminar in project finance. He also hosted a Hong Kong alumni gathering for the deans.

Kichimoto Asaka LLM '87:

"In Japan, teaching and practicing law are quite different pursuits."

The majority of professors in American law schools come to teaching having practiced law. In contrast, Japanese law faculties contain theoreticians rather than practitioners. But increasingly, theoreticians like Kichimoto Asaka are seizing opportunities to study abroad where they are exposed to practice-oriented teaching methods. Asaka is among a new breed of Japanese legal academics who are challenging the formalistic pedagogy that has long been the norm in Japanese legal education. Using case studies and the Socratic method, Asaka encourages student participation.

Unlike Hideyuki Sakai and Hirofumo Goto whose knowledge of the US legal system was minimal before they came to Duke, Asaka arrived in Durham with a strong foundation in Anglo-American law. Prior to pursuing an American LLM, Asaka completed an LLM in American civil procedure and worked as a teaching assistant in the Faculty of Law at the University

of Tokyo. At Duke, Asaka conducted background research for former dean Paul Carrington, who was reporter for the Federal Civil Rules Advisory Committee, that resulted in suggested federal rules revisions that eventually made their way to the US Supreme Court.

In 1993, Asaka returned to the United States as a visiting scholar at Boalt Hall Law School in Berkeley. There, he researched the history of federal courts. "Federalism is essential for Japanese to understand if they are to grasp American law," said Asaka. For example, explained Asaka, Japanese law students were surprised to learn that Rodney King's double trial did not constitute double jeopardy.

Asaka believes that Japanese legal education must expand its focus to keep pace with the global economy. The fact that very few Japanese practice outside Japan has served as a damper on the development of international legal studies. But as more Japanese legal scholars follow Asaka's example and study abroad, pressure to internationalize legal education will mount.

Edmund Tiryakian JD/MBA '81:

"Where a law degree is common currency in the US, Asia remains a wide-open market, where an American JD or LLM is still very much sought after."

Edmund Tiryakian found that the combination of law and business degrees from Duke put him in a strong position to be hired by an international bank. "An MBA gives you the ability to talk to the product guys in house and legal training helps in talking to outside counsel," said Tiryakian. From Duke, Tiryakian was hired by the United Bank of Switzerland (UBS) and sent to its London office. In addition to his joint degree, Tiryakian offered strong language skills in French and German, a decided advantage in European banking.

In 1993, Tiryakian was sent to the UBS 500-person office in Hong Kong, as assistant to the branch manager. In this position, he serves as inside counsel and compliance officer, with responsibility for reviewing contracts, leases and other legal documents. He also is the liaison when outside counsel is used. Within a day, a single transaction may put him on the phone to colleagues in Switzerland, Beijing, and New York. When asked about the challenges of practicing law in Asia, Tiryakian immediately notes the language barrier. He finds it difficult to get English language legal periodicals quickly enough and wishes that he were more skilled in Mandarin. Still, he notes, English functions as the *lingua franca* of commerce in Asia. "When a Thai and a Malaysian get together, they speak in English."

Like other Americans practicing abroad, Tiryakian notes interesting differences between the image of lawyers in and outside the US. He appreciates that the British colonial vestiges remaining in Hong Kong lend to his profession a certain nobility. This decorum is enhanced by the requirement that lawyers in tribunals wear wigs. But Tiryakian daily sees signs that Hong Kong is losing its identity as a western preserve.

Hong Kong's reversion to China in 1997 seems a lot closer to Tiryakian than to most Western observers. "It's actually less than 1,000 days and we're already seeing signs of the transition. Newspapers are becoming more circumspect. More and more often Beijing is making pronouncements and dictating policy," said Tiryakian, who sees Hong Kong's future in vibrant, but turbulent terms. For the foreseeable future, believes Tiryakian, Western banks have a niche to fill in Asia as exporters of capital. But Tiryakian also sees signs of instability amid the dynamism. "Well-heeled Hong Kong residents are scrambling to get second passports and many are investing in real estate abroad," he said.

Although Tiryakian notes ruefully that he has been out of the US both times Duke won the NCAA basketball championship, he claims not to feel cut off from Duke in Hong Kong. "I've been surprised at the number of Duke Law grads—from multiple ethnic and national backgrounds—working at top firms here." Tiryakian expects to see 25 Duke graduates when he attends an upcoming Duke Alumni Association meeting.

Xuan Yan JD '87:



"The biggest challenge a corporate lawyer in China faces is the lack of clear laws and rules that can be used to govern commercial transactions."

As AT&T's only lawyer stationed in China, Xuan Yan is hard to catch, since during an average work week he clocks 12-16 hours a day, six and sometimes seven days a week and travels several thousand miles.

Xuan attended Duke on a Richard Nixon Scholarship, a part of a visionary collaboration with the People's Republic to educate legal leaders developed by Paul Carrington during his deanship. As an undergraduate English major, Xuan came to Duke with a language advantage but, unlike most non-Americans at the Law School, absolutely no prior legal study. Like most Duke Law grads, Xuan most values not any particular training in international law, but the rigor of being forced "to think as a lawyer."

In the summer of 1985, Xuan was hired by the Philadelphia firm, Dechert, Price and Rhoads, where he worked as a research assistant for Paul H. Haagen, who joined the Duke Law School faculty the following fall. After graduation, Xuan spent another two years at

Dechert in general practice, where he had his first exposure, and later many more, to China related legal matters.

From Dechert, Xuan joined, as its associate corporate counsel, New Jersey-based Inductotherm Industries, the world's largest manufacturer of induction melting equipment. At Inductotherm, Xuan experienced first hand some of the difficulties of doing business with China. An attempt to establish a joint venture ran aground when the Chinese company refused to commit to keeping proprietary manufacturing intelligence confidential. A subsequent attempt to get around the intellectual property snafu through a wholly owned subsidiary also failed. According to Xuan, Inductotherm's application to establish a wholly owned subsidiary was turned down because it wasn't "grand enough to make the officials look good on TV—we just weren't willing to spend millions of dollars up front." Finally, Inductotherm decided to support its booming equipment sales to China through a representative office in Shanghai.

In 1991, Xuan became division counsel of Crompton and Knowles, a Pennsylvania-based manufacturer of dyestuffs. Just as he was about to be transferred to Charlotte where he would be nearer to major textile manufacturing, the company's customer base, Xuan began receiving recruitment calls. As an American-trained lawyer, he was in demand by companies rapidly expanding operations in Asia. Though he hated to forgo a return to North Carolina, the opportunity to become regional counsel for ATT in China and to help ATT conquer the largest telecommunications market in the world proved irresistible. ATT-China now employs more than 1,000 people. Xuan has legal responsibilities for AT&T's nine representative offices in China and eight joint ventures. He just helped AT&T receive approval from the Chinese government to establish a holding company which will act

as the parent of AT&T companies in China and centrally manage and coordinate AT&T's China business operations, including several hundred million US dollars in yearly sales. Xuan was recently elected to serve a four-year term on the Board of Directors of the holding company. He is also secretary of AT&T China. To accommodate AT&T China's increasing need for legal services, Xuan will soon add a new lawyer to his staff.

Most challenging for Xuan is the lack of clear law and legal precedent governing business transactions. "You often don't have anything solid to go by," he said. "The advice you give is almost always 'maybe or maybe not.' Even in areas where there are laws and regulations they are so inconsistently interpreted and applied, you can't advise clients as you do in the US. You have to rely on intuition and experience and proceed cautiously."

Amy Wen-yueh Chin LLM '91:



"A rapidly shifting economic climate means a heavy workload—I'm always having to quickly read books and articles to catch up on all the new financial products and regulations."

Taiwan has long been regarded by the international financial services community as an attractive market. But now, its relative political stability, and geographical as well as cultural proximity to China, make it an especially appealing center for financial—and legal—expertise. Some Asia-experts even predict that Taiwan will surpass Hong Kong to become the service center for the Far East. More than ever, Taiwan-based law firms are seeking practitioners with western legal training. Increasingly, American law degrees

are common currency among associates and partners in Taiwan's larger firms, like Tsar and Tsai where Amy Wen-yueh Chin is an associate in the securities practice group.

Chin knew from her research into American law schools that Duke ranked highly. But when a friend who preceded her in the LLM program provided a personal endorsement, Chin decided definitely on Duke. A graduate of Soochow University Law School, Chin came to Duke knowing she wanted to focus on banking regulation and securities law. She found coursework in securities regulations with Professor James Cox particularly valuable. Chin especially appreciated the opportunity for group study, including the communal production of memos.

Chin's practice is truly international. She works chiefly on overseas convertible bond and equity issues, dealing with international securities firms regularly. Domestically, she frequently handles public listing of companies and offerings of securities. Recently, she was selected by her firm for the China Practice Group and is reading up on Chinese law in preparation to go to Shanghai. Chin believes her LLM experience has been valuable beyond the professional skills and credentials she acquired while at Duke. She has kept in touch personally with Duke alumni worldwide and considers these "friends for life" the most wonderful experience at Duke.

Jiin-Fang Lin LLM '84/SJD '89:

"In terms of protecting civil rights, I see a lot of similarity among countries. We share a common interest in attaining equal rights for every person."

At the time Jiin-Fang Lin was considering American law schools, she

was already well into her legal career. In Taiwan if a person wants to be a public prosecutor or judge he/she must have qualifications beyond a law degree, including success on a competitive entrance examination, and 18 months of intensive training followed by a second written exam. In addition to overcoming these hurdles, Lin had practiced five years as a public prosecutor and three years as a district court judge. Against this backdrop, the prospect of law school appeared positively relaxing. As she said, "It was good time for me to study abroad and take a rest." She applied to and was accepted by several top US law schools, including Duke. Lin attributes her decision to attend Duke to Associate Dean for International Studies Judy Horowitz. "She called me personally and after talking with her briefly I realized she knew almost everything about me. I figured if she was so efficient, then the School must be an effective school."

After completing her LLM, Lin joined her husband in Boston, where he was working on a degree at MIT and she was a visiting scholar at Harvard. "After two years there, I started thinking," said Lin. "If I went home then, I wouldn't have accomplished anything. I should study for an advanced degree." In 1987, Lin returned to Duke, where she worked on her SJD in criminal procedure with Professor Sara Beale, focusing her dissertation on search and seizure.

Returning to Taiwan—with two Duke degrees and an infant son born at Durham Regional Hospital—Lin resumed her job as a district court judge, a particularly weighty responsibility given the lack of juries in Taiwan. Lin found death penalty cases particularly difficult, but at least on these, she was able to seek the assistance of two additional judges. In 1990, Lin

was chosen one of Taiwan's "Ten Outstanding Young Women," an award presented in a national ceremony by President Lee Teng-hui.

Currently, Lin sits on a Court of Appeals, which functions somewhat differently from its US counterpart. For example, not only is a dissenting judge prohibited from writing a dissenting opinion, he or she must write the opinion for the majority, a practice Lin sees as less than optimal. Lin has also taught courses in criminal procedure at Taiwan's Central Police Academy.

Lin has observed a number of ways in which the US is influencing the Taiwanese legal system. Wildlife and intellectual property protections, for example, have become much more stringent in response to western pressure. Lin has also seen the lighter and darker sides of an expanding global economy from her position on the bench. "We are seeing more and more foreigners in our courts and the amounts of money at stake are becoming enormous. International drug and gun smuggling cases are also on the rise."

Dean Gann estimates that she spends close to 25 percent of her time travelling outside the United States. During 1995, much of this time will be spent in Asia, seeking to develop cooperative relationships with institutions across the continent. But Dean Gann will also be making personal visits to the growing number of Duke Law alumni working in Asia. Together with their counterparts in the Americas and Europe, these alumni are part of an important network of "global elites." And the expertise and goodwill contained in this network, believes Gann, will be vital to the success of the Law School's accelerating global initiative.

Lucy Haagen

Programs Encourage International Exchange

Fulbright Recipients Around the World

"The experience of living and studying in another country transformed the way I looked at the world and influenced my whole life."

— J. William Fulbright,
program founder

"The best way to appreciate others' viewpoints, their beliefs, the way they think, and the way they do things, is to interact with them directly on an individual basis—work with them, live with them, teach with them, learn with them, and learn from them."

— Fulbright Grant Brochure

The Fulbright Program scholarship fund was created by the US Congress in 1946, immediately after World War II, to foster mutual understanding among nations through educational and cultural exchanges. Arkansas Senator J. William Fulbright, sponsor of the legislation, saw it as a step toward building an alternative to armed conflict. Fulbright died earlier this year at the age of 89.

Each year the Fulbright Program allows more than 800 Americans to study or conduct research in over 100 nations. The US Student Program gives recent BS/BA graduates, master's and doctoral candidates, and young professionals and artists opportunities for personal development and international experience. Grantees plan their own programs, with projects which may include university coursework, independent library or field research, special projects in the social or life science, or a combination.

The annual competition for these highly-desirable and prestigious scholarships draws thousands of applicants—less than one-fifth ultimately receive Grant awards. The Institute of International Education (IIE) coordinates the activities relevant to the US graduate student program and

conducts the annual competition for the scholarships, most of which are for one academic year of study or research.

The Fulbright Program is funded by an annual Congressional appropriation and contributions from other participating countries. Under the policy guidance of the J. William Fulbright Foreign Scholarship Board, appointed by the US President, the US Information Agency sponsors the program in cooperation with binational Fulbright Commissions and Foundations abroad as well as US embassies.

Along with opportunities for intellectual, professional and artistic growth, the Fulbright Program offers invaluable opportunities to meet and work with people of the host country, sharing daily life as well as professional and creative insights. The program promotes cross-cultural interaction and mutual understanding on a person-to-person basis in an atmosphere of openness, academic integrity, and intellectual freedom.



Michael Samway '96 JD/LLM candidate (standing, third from right) in Santiago, Chile, surrounded by youths at a vocational training center.

In addition to providing opportunities for American students to study and do research abroad, Fulbrights also provide foreign students with an opportunity to experience American culture and education first-hand.

Duke Law School has a long history of participation in the Fulbright program, both with students going abroad and hosting foreign students who come to the US on Fulbright Grants. Below, several Duke law students and alumni who have participated in the Fulbright Program—past, present and future—share their experiences.

Helping the Impoverished in Chile

"I spent nine months in a Chilean slum, where I underwent the most profound experience of my life," wrote **Michael Samway**, a '96 JD/LLM candidate in his personal statement for the Fulbright Grant application. "Living with the poor has given me a unique perspective on human needs. I know

that it is important, as a student of human rights, to go beyond the theoretical realm, to advance into the world of the practical, and to share, eat, cry, celebrate, mourn, and demand together with the poor. Law is a powerful mechanism for affecting social change, and I hope to use my degree to that end. As a law student now, I feel obligated to return to the marginalized communities in Santiago."

Samway proposed, with the aid of a Fulbright Grant, to return to La Pintana, the most impoverished community in Santiago. In 1991-92, Samway had lived in that slum, teaching carpentry, counseling youth at a drug rehab center, and helping kids get out of prison. His proposal was accepted, and Samway is now investigating legal assistance programs in La Pintana "aimed at strengthening a justice system which in theory guarantees the rights of all Chileans, but in practice is in need of modernization."

"This was ultimately a personal decision," says Samway, "because the work I'm doing here is not directly related to my career direction—I hope to practice private international law in Latin America." Samway was a summer associate in the corporate international section of Morgan, Lewis & Bockius and recently published an article on foreign investment and tax law in Chile.

Samway has worked with Chile's Ministry of Justice in a new program which "not only provides legal representation for poor persons before tribunals, but also holds workshops to inform people of their rights," he explains. "The poor can also come to these new centers for legal advice on any topic. These are novel ideas here, at least in practice," he notes.

Recently, he designed a questionnaire to determine clients' needs at legal clinics and also their perception of access to the justice system after five years of democratic rule. Samway hopes that his proposal will be integrated into a city-wide evaluation

conducted by the Ministry of Justice. Samway also plans to publish short pieces in Spanish on new techniques for dispute resolution in marginalized communities, and to produce a directory of public and private legal aid services available in poor areas.

Samway is joined in Chile by his wife, Jennifer, who holds master's degrees in agricultural economics from the University of Missouri and in public health from Johns Hopkins University. She had also worked in Latin America before coming to Chile, spending nearly a year on a research project in Bolivia. "One of our aims," says Samway, "is to write something together on social services for the poor in general, as Chile consolidates its transition to democracy and continues to develop its neoliberal economic model."

Despite the heavy workload, Samway and his wife have made time to travel around the country and experience the Chilean landscape and culture. "We've camped at 15,000 feet in the altiplano (high plain) region, trekked in the spectacular peaks of the Andes, and we recently took crampons, ice axes and a guide and climbed a snow-capped volcano in Chile's lake district. We've also been to Chilean folk festivals, music recitals, exhibits of indigenous art and political lectures."

When his Grant ends in August, Samway will return to Duke to finish law school, then begin a career in private law working in international business transactions with Latin America. "One day I would like to return to the State Department Legal Adviser's Office [where he had served as a law clerk] and eventually join the diplomatic corps."

Samway says that the principal objective of his Fulbright experience "is to produce something useful for people in marginalized sectors of Santiago."

Studying Law in Singapore

Before receiving a Fulbright Grant, Michael Reading JD/LLM '93 had visited Singapore several times over a five-year

period, but never for a stay longer than three months. His goal was to return for a longer period of time.

While at Duke Law School, he studied international and comparative law, and applied for the Grant. "Studying in Singapore was a logical continuation," he says. "I saw the Fulbright as a way to set myself apart from [the others interested in pursuing a career in international law]."

During the summer of 1991, Reading worked at Palakrishnan & Partners in Singapore (Palakrishnan is a well-known attorney there, and recently defended Michael Fay, the American teenager who was caned), and as a summer associate at Coudert Brothers in that country in 1992. Reading says he has built his career and resume based on his desire to return to Southeast Asia. "Singapore is becoming the hub of Southeast Asian development," Reading explains. "Many organizations are moving their Southeast Asian operations from Hong Kong to Singapore, since it is ideally positioned geographically to handle activities from India to Vietnam."

His Fulbright Grant, which ran from July 1993 to May 1994, gave Reading the opportunity to graduate from the Master of Law program at the National University of Singapore, where he studied a mixture of international business law and local commercial law. "I would not have been able to afford to come to Singapore to get the LLM without the Fulbright Grant," he notes.

Immediately after his Grant work, Reading returned to New York to work for Coudert Brothers, an international law firm, where he worked mostly on distress debt trades and aircraft operating leases. This past December, Reading again returned to Singapore to work for White & Case.

"My whole objective in going to law school was to enter into a transactional practice in Southeast Asia," explains Reading. "This is exactly what

I am doing now—mostly in the area of project finance and securities.”

Reading says that Singapore is a wonderful place to live. “In many ways it is more pleasant than living in many places in the US. Professionally it is far superior, and for raising a family there is no comparison with any place that I have lived. However, the drawbacks are that I enjoy winter and outdoor activities—neither exist in Singapore. Additionally, I have a very large dog (a Rottweiler) and it is difficult to find places where we can really let him go and play without concern.”

Of his year in the Fulbright program, Reading maintains: “I wouldn’t trade my [Fulbright] experience for anything. It was—and is—invaluable to my career.”

Studying US-Japan Trade Relations and Trade Law



Lester Kiss

Lester Kiss, a JD/LLM candidate at Duke, applied for a Fulbright Grant during his senior year at Princeton. Just after he arrived at Duke to start his program this past summer, he

got the word that he was accepted as a Grant recipient.

Kiss plans to travel to Japan this summer, where he’d like to study law and the Japanese legal system for several months before starting his Grant work in September. He wrote his Grant proposal on US-Japan trade relations and trade law. “I will be advised by a professor who specializes in international trade law,” explains Kiss. “I’ll be doing that research in Japanese and ultimately I’ll write a thesis on the subject.” Kiss is no stranger to Japan. He spent his junior year abroad there, learning the language. Since that experience, he has continued to take Japanese language classes.

The Fulbright program has opened up new opportunities for him: “Without the Fulbright, I wouldn’t have the opportunity to really go in-depth and study from a Japanese perspective—to see US-Japan trade relations from their side,” says Kiss. “Spending the year there is going to allow me to utilize Japanese sources to do research to see how they view the problem. We have so many trade frictions with Japan and I know that they think the Americans are totally off-base and we think they’re completely wrong. This opportunity will enable me to see things from a different perspective, and perhaps think of some different possible solutions.”

After completing his year abroad and returning to Duke to complete his degrees in 1998, Kiss hopes to practice international trade law or a similar field. He is optimistic that his Fulbright experience will be beneficial to his future plans.

In addition, he looks forward to a change of pace: “I came to Duke directly from Princeton. Since my program started in the summer, I didn’t have any time off, so it’s going to be nice to have some time to do something free and do some research that I’ve always wanted to do.”

Experiencing America First-Hand

While Kiss makes plans to go to Japan, one of his classmates has traveled in the opposite direction. **Hitomi Yoshida**, a ’95 LLM candidate who holds a Bachelor of Law degree and an LLM from Doshisha University in Japan, is studying at Duke Law School this year on a Fulbright Grant. Yoshida is working on her doctorate in comparative constitutional law, and plans to be a professor back in her native country.

“It’s great to come to the United States,” says Yoshida, “because I am studying the constitutional law of the US and I wanted a chance to live where the law was happening. The Fulbright has given me the chance to do that.”

During the fall semester, Yoshida concentrated on getting a background in American law. This spring semester, she plans to take at least two courses at the Law School, and to work on independent study research in property rights with Professor Laura Underkuffler as her advisor. Yoshida says her interest in property rights stems from the Supreme Court decision in May 1994 in the case of *Dolan v. Tigard*, 114 S.Ct. 2304 (1994). Based on this research, she plans to submit an article to the publishing committee at her Japanese university.

While in America, Yoshida has had the opportunity to meet several Supreme Court justices in person. This past October, an American professor who had visited her Japanese university invited her to a meeting of the American Society for Legal History in Washington, DC. There Yoshida met Justices David Souter and John Paul Stevens and retired Justice William Brennan.

This is Yoshida’s second visit to the United States. In 1988, she spent a month as an exchange student at Amherst College, the sister college to her Japanese alma mater. After this year is done, she plans to finish her studies in Japan, where she has at least one year left in the doctoral program. As for returning to the US in the future, Yoshida says “I would like the chance to come to the US again to get more background, then teach in Japan.”

Throughout the years, the Fulbright program has provided many Duke Law students with unique opportunities to experience other cultures, to learn new perspectives, and to make a difference in the lives of others in our global community. Fulbright Grants have enabled Duke students and graduates to contribute to the world, just as the entire Duke community has benefited from exposure to the visiting Fulbright scholars the School has hosted.

Laura Ertel

Bundeskanzler Scholarships in Germany

Rarely has a nation experienced the number of convulsive events that Germany did from 1989 to 1991. The changes began with the fall of the Wall dividing its communist East and capitalist West and were highlighted by reunification in 1991. Nearly five years later, the aftershocks are still being felt by the country's political, economic and social systems.

For Duke student **Sean Murphy**, a '96 JD/LLM candidate, and alumni **Phoebe Kornfeld '90** and **Todd Daubert '93**, a desire to document this country in transition led to a fully-funded year of independent research in Germany as Bundeskanzler Scholars.

In 1990, the German government established the Bundeskanzler Scholarship program to expose future American leaders to the new Germany. Administered by the prestigious Alexander von Humboldt Foundation, the program is funded by the Chancellor ("Bundeskanzler") of Germany. This sponsorship allows the scholars invaluable access to members of government and industry, including Chancellor Kohl himself, who makes a point of meeting personally with the scholars at least once during each year. Each year the program selects 10 Americans to pursue independent research projects in Germany. After only four years, Duke Law School already claims three of the program's participants.

Interest in German Business

From 1991-93, Charlottean **Sean Murphy** studied the privatization of businesses in the former East Germany. Murphy had witnessed much of the new Germany's tumult first-hand while spending an undergraduate year abroad there during 1989-90. "It was an incredibly exciting time to be in Germany," he recounts. "One thing happened after another that no one expected." He returned to Germany



Sean Murphy

after graduating from Davidson College in 1991. After five months at the Kiel Institute for World Economics, he worked in the Treuhandanstalt, the agency responsible for privatizing the East German state's assets. This assignment included an emotional stint in a small branch office in the former East German town of Gera. His great-great-grandparents had emigrated from that region a century before. "It was incredible," he says. "No member of my family had been there in over three generations. It was a part of our heritage that was closed off by World War II and then suddenly reopened by the fall of the Wall."

Each year the program selects 10 Americans to pursue independent research projects in Germany. After only four years, Duke Law School already claims three of the program's participants.

After his scholarship year, Murphy sought a law school that would allow him to pursue his interest in Germany and its law. Presently a second year student, he pronounces Duke's joint JD/LLM program "an absolutely perfect fit." Murphy has been struck by the growing demand for attorneys to work with foreign companies in the United States. "There are 250 German companies with subsidiaries in North Carolina, 95 of which are located in and around Charlotte," he explains. "And

right now there's only one German-speaking attorney in Charlotte offering his services to this growing segment of the business community." After graduation, Murphy may double that number by returning to Charlotte to work with some of the German subsidiaries there.

For now, Murphy is planning his LLM thesis, which will follow up on his privatization research, under the supervision of Professor Herbert Bernstein. "Duke has an ideal program and an excellent faculty member with whom to study and prepare the thesis," he concludes.

Professor Bernstein is a common thread for all of the Bundeskanzler Scholars. Both Kornfeld and Daubert credit his assistance in shepherding them through the highly competitive application process. A German native, Bernstein explains that his familiarity with "German practices and German ways of thinking" allowed him to help develop research proposals that would interest the German selection committee.

Comparative Study Helps Clients

Bernstein approached **Phoebe Kornfeld '90** about applying for the Scholarship the year after she graduated. Although she was then working in the corporate department at White & Case in New York City, she explains, "the possibility of living in Germany during such an important period in its history—so shortly after the fall of the Wall—was irresistible."

Kornfeld had already spent much of her academic life studying Germany and comparative politics, earning a BA in German and government from St. Lawrence University and a PhD in political science from Duke. Her doctoral research focused on comparative politics and included a year of study in Hamburg. This time, she decided to

study the way the reunified Germany dealt with crimes committed in the former East Germany. This inquiry meshed with research she had done at Duke Law School on the way Germany's post-war legal system and judiciary dealt with crimes committed under the Nazi regime. "I compared the 'de-Nazification' of the German legal system in the post-war period with the 'de-communization' of the German legal system in the post-Wall period," she explains. By observing trials and interviewing lawyers, politicians and bureaucrats, she also developed a better understanding of Germany's legal and political systems.

That knowledge is serving Kornfeld well. Since returning to White & Case after her Scholarship year, her ability to communicate with and work with German clients has led to stints in the firm's Frankfurt, Prague, Paris, and Budapest offices. Kornfeld works on international transactions and analyzes issues of local law for domestic and foreign clients. She believes her year in Germany gave her "an understanding of the goals and concerns of Germans today," she says. "Without that understanding, my work with German clients would be considerably less effective."

Intrigued by Changes



Todd Daubert '93

Although **Todd Daubert '93** first became interested in German law and the comparative legal method while studying at Duke with Professor Bernstein and Visiting Professor Humberto

Briceno, he was introduced to the Bundeskanzler program by German citizen Christoph Partsch LL.M. '92, while they were both studying for the New York bar exam. Daubert and Partsch, who

was working for the German Embassy at that time, spent their breaks discussing issues of German and US law. Daubert, intrigued by the opportunity for independent research in a country undergoing tremendous change, decided that the Bundeskanzler program was an ideal way to continue his legal education.

Daubert is spending the 1994-95 year learning about the rights and remedies of foreigners under German law. Facing both economic pressure caused by reunification and world recession and an increasing influx of asylum applicants, Germany re-evaluated and amended its post-war policy of encouraging guest workers to fulfill short-term labor shortages and liberal asylum laws. Daubert is evaluating the effectiveness of these measures, which have been in operation since 1993.

Although he spoke no German before beginning his Scholarship, he quickly gained language proficiency by taking advantage of the Bundeskanzler program's one-month intensive language course in Bonn, followed by an additional month of language training given in conjunction with an introductory seminar about Germany. Daubert then spent three months studying law at the University of Konstanz. "Studying German law from within Germany is fascinating, because you gain a deeper appreciation for the differences in the legal education system and legal philosophy, and how these differences are reflected in Germany's administrative structures and laws. Without fully understanding these differences, it would be very difficult to gain anything beneficial from simply reading Germany laws."

Daubert is now working in the office of Barbara John, the Commissioner of Foreigners' Affairs of the Berlin Senat. The Commissioner's office, among other things, addresses questions concerning the Berlin Senat

policy on foreigners and integration, consults and coordinates the work of all departments dealing with related issues, promotes assimilation of immigrant subgroups, and provides information for those seeking advice on integration and foreign policy, as well as on legal and political questions. "I have the unique opportunity to learn how the German laws and policy have affected foreigners in Germany, not only by listening to the stories of foreigners who consult the office for advice, but also by discussing these cases with people who have the authority to influence the political discussion about these issues."

During his 1993-94 clerkship with Judge Gerald B. Tjoflat '57, chief judge of the Eleventh Circuit Court of Appeals, Daubert became aware of the intense social, legal, and political issues surrounding legal and illegal immigration to the United States. "I decided to study foreigners under German law because I hoped that I could contribute information about the German approach to these issues to the current debates in the United States." He will join the law firm of Wiley, Rein & Fielding in Washington, DC next year. Although he expects to work primarily on international trade issues, he plans to publish articles detailing the results of his work on German law in both the US and Germany and to continue working with refugee and immigration issues in a pro bono capacity.

All three Duke recipients believe the Scholarship experience has enhanced their understanding of a complex and changing country. Thanks to the dedication of professors like Herbert Bernstein, Duke is well-represented among the next generation of American leaders with firsthand knowledge of the new Germany.

Amy Gillespie '93

Increasing and Strengthening Contacts with Eastern Europe

Duke Law School has become one of the premier international centers of legal education in the world, educating students from as many as 25 foreign countries each year, and offering a pioneer JD-LLM program in international and comparative law. Here two Duke students reflect on their experiences at the Ukrainian Legal Foundation and speculate on prospects for a rule of law in Ukraine while other students and scholars participate in Duke programs.

Experiencing Legal Reform in the Ukraine

We often take our legal system for granted. We recognize the problems, worry about excess cost, accessibility, and delay. But we forget how well the system works to resolve disputes and to protect us. To see how life could be without a working legal system all you have to do is take a peek behind what was the iron curtain at the legal chaos that cripples attempts at reform in Ukraine.

The problems start at the top, where there is no adequate mechanism to resolve disputes between president and parliament, down to the local level

where you have to wait hours or even days in order to get any document notarized, unless, of course, you can afford the bribe. These problems are compounded by the cacophony of laws, decrees, directives, coming from the legislature, the president and government agencies that are liable to conflict so fundamentally with each other so as to be undecipherable. Just discovering what the law is can be a major undertaking.

Worst of all, the higher levels of the legal profession have adopted an attitude at odds with the necessity for change as they are strongly connected

to the ruling elite. Thus, they are secure in their positions in government and in legal institutions while also being in a position to block the democratization of the legal profession and the transition of the law from an instrument of governmental control to one of individual rights.

The orientation of the legal system toward protecting the government has brought it into disrepute. Until now it has been almost impossible to bring a civil suit successfully against the government. The standard manner of assuring victory in any case was to appeal directly to the judge, usually with cash or presents. This worked unless the Communist Party had a particular interest in the suit, in which case a well-placed telephone call would ensure the "proper" verdict.

When I went to Ukraine in the fall of 1992, I had none of these problems on my mind. I arrived with the hopes of studying the collapse of political power and the role of nationalism in creating an independent Ukrainian state out of the remains of the Ukrainian Soviet Socialist Republic. Little did I know that my wife's work with the Ukrainian Legal Foundation and my discovery of the fundamental nature of a working legal system would convince me to leave Soviet studies to take up a career in law.

The Ukrainian Legal Foundation (ULF) is one of the few organizations in Ukraine today dedicated to the creation of the stable legal framework necessary for the development of a democratic society with a market-oriented economy. This foundation was created by Ukrainian lawyers, with Western input and funding, in an attempt to



Photo of the staff of the Ukrainian Legal Foundation, summer 1994. Jennifer Labach is at far right, front row with Ken Labach immediately behind her.

bring to Ukraine that which we take for granted, the rule of law, an independent judiciary and legal profession, and comprehensive legal education.

Under the leadership of Serhiy Holovaty, a prominent independent member of the legislature, the ULF has tackled a number of projects including the creation of Ukraine's first independent legal publishing house, a legal library containing one of the largest collections of Western legal literature in Ukraine, and of most interest to those connected with Duke Law School, in the fall of 1995 they will soon open the doors to a new law school.

Duke Law School's interest in Ukraine and the work of the Ukrainian Legal Foundation began when Associate Dean for International Studies Judith Horowitz travelled to Moscow and Kyiv in the winter of 1993 to

interview applicants for the Edmund Muskie Fellowship Program, an award intended to bring young scholars from the former Soviet Union to study in the United States. The Muskie Fellowship Program is funded by the United States Information Agency and facilitated by US-based organizations that provide local support in the target countries. Of these organizations one of the most widespread is the Soros Foundation, operating in 22 countries in Eastern Europe and the former Soviet Union. Among the many projects sponsored by Soros is the Ukrainian Legal Foundation.

For the past three summers, the Soros Foundation has also provided funds to bring students from Eastern Europe and the former Soviet Union to Duke's summer program in Brussels. Last summer, it funded 16 students



One of Duke's two Muskie Fellows for 1994-95 is **Askar Moukhitdinov** from Kazakhstan. He is currently studying commercial law, international business transactions and conducting independent research in the field of oil and gas. After his May graduation from Duke, he plans to do an internship with an American law firm specializing in these areas, then return to Kazakhstan or another former Soviet Bloc country to join a law firm which also specializes in these fields. Oil and gas is one of the biggest industries in the former Soviet Union.

Participating in foreign study programs is common for students in Kazakhstan, explains Moukhitdinov. But many of the government scholarships are reserved for undergraduates. As a graduate student, he was pleased that the Muskie Fellowships were available to fund his studies.

In February, Moukhitdinov travelled to Washington, DC for a gathering of all the current Muskie Fellows. "The purpose was to meet other participants from our program and to meet with government officials, because the US government sponsors this program. We also met with Edmund Muskie, and talked with psychologists about culture shock when we came here and preparing us for culture shock when we go back. I've found that there's not much time for culture shock since I'm always studying and I'm spending all my time with my books!"

In spite of all the time spent studying, Moukhitdinov is still finding his year at Duke Law School to be a great experience. "We have many students from different countries, not only from the former Soviet Union, but from Europe, Latin America, South Africa, America . . . Everyone is different, from all different cultures, and we're trying to adjust to each other, to understand each other. It's very interesting."



From left, Kay Walker of the Law School's Office of International Studies with Stanislav Shevchik and Anna Veiksha, visiting researchers from Ukraine.

Anna Veiksha is one of two scholars at Duke Law School this year preparing to become faculty members at a newly established law school in the Ukraine. The school will train new lawyers as well as provide advanced training for legal professionals. "Last semester I sat in on some courses, worked on teaching techniques, and wrote a paper on international commercial arbitration," says Veiksha. "I talked with professors from the Law School as well as with judges from the United States appellate courts who were here to teach courses." The paper will become the basis for the international commercial arbitration course she will teach when she returns home.

This semester, she is preparing a second course on comparative contract law. Veiksha believes that her experience here will be useful not only with the students she will be teaching but perhaps even more importantly with her generation of young lawyers who, facing the opening up of Ukraine to the world and looking for a place in that world, are willing to accept new ideas and learn from someone who has spent time in the West.

from seven countries at the Brussels program, and it typically also provides funding for two students to study in Duke's LLM program.

The Ukrainian Legal Foundation had been asked by the Soros Foundation to distribute applications for the Muskie Fellowship in Ukraine and to provide space and support for the selection interviews for all American universities, Duke included. It was at the office of the ULF that Dean Horowitz met Halyna Freeland, a Canadian lawyer and the then executive director of the ULF. Freeland proposed that

Duke take an active role in the creation of their new law school, the Center for Legal Studies. The new school is intended to be an independent, post-graduate institution, teaching subjects generally ignored in the standard Ukrainian law school curriculum. Duke Law School's role would be to host Ukrainian researchers for an academic year so that they might observe courses and see how a Western law school operates. During the year, they would work with Duke faculty to develop curricula for the courses they would teach in Ukraine. These researchers,

together with their colleagues visiting other law schools in Europe and North America, would form the nucleus of the faculty at the new law school.

The first two Ukrainian researchers arrived at Duke in the fall of 1994. They are now attending classes, working with faculty, visiting administrators and preparing to teach new courses in Kiev next fall. Anna Veiksha, a graduate of the University of Donetsk in Ukraine and an LLM candidate at the Central European University in Budapest, is working on courses in international trade and arbitration. Stanislav Shevchik, a graduate of the Kharkiv Juridical Academy and former member of the procurator's office in the city of Kharkiv, is preparing for a course in comparative constitutional law.

The problems inherited from the Soviet legal system are especially visible at the top of the political structure. While I was working as a copy editor of an English language version of the Constitution, I noticed that there is no legal mechanism to resolve a dispute between the president and parliament except the impeachment of the president or the dismissal of parliament. In the Soviet era, this was not a problem because both groups were taking orders from the Communist Party. But when these two branches become adversaries, the situation becomes dangerous.

The best example of this situation occurred in Russia in the fall of 1993, but it could just as easily occur in Ukraine because of the constitutional similarities. The crisis started because of a long-standing power struggle between President Yeltsin and the Chairman of Parliament Alexander Rutskoi. They were at loggerheads over the shape of the new Russian constitution and the pace of economic reform. Unfortunately, the legal framework left by the Soviet era constitution gave neither side a peaceful mechanism for resolving the dispute. Yeltsin dismissed Parliament, which in turn impeached him. The situation was uncertain until



Salvi Slavov (shown fourth from left at an Institute dinner) of Bulgaria was one of 16 students from seven countries in Eastern Europe and the former Soviet Union who attended the Duke Transnational Institute in Brussels last summer. "That was the first time I ever left Eastern Europe and entered the West," says Slavov. "I had the rare chance to learn more, firsthand, about the EC and its legal environment. Integration in 'Europe proper' is the top priority for all Eastern European countries."

Slavov, the only student from Bulgaria, believes that he contributed to the Institute as well, with "a (modest) degree of maturity and adaptability, an eager desire to learn and explore, and a unique cultural perspective." He notes that the geographic diversity of the student body provided for "an amazing cultural diversity. We all benefitted from the plurality of cultural, academic and personal perspectives."

"Their presence brings a great deal to the Summer Institute," notes Judy Horowitz, associate dean for international studies. "They bring information on legal systems and developing legal systems about which Duke students would otherwise know very little. Ours is the only summer program with students from places like this, outside programs in Eastern Europe itself. It's an opportunity for students from different cultures to take classes together, interact socially, live and learn together."

Sarene Loar (far left) and Wendy Rogers (far right), two American Duke Law students who attended last summer's Institute, agree. They found it enlightening to meet students from Albania, Bulgaria, Romania, the Ukraine and other Eastern and Central European countries, and to learn about their legal education, legal careers, and legal systems. "Everyone benefitted from having them with us; we have all made contacts upon which we will always be able to call in the future, whether as friends or professionals."

Interning with the Ukrainian Legal Foundation

As I boarded my Swissair flight to Kiev last May, I was excited, but somewhat apprehensive, about what awaited me. I was on my way to a six-week position as a summer intern at the Ukrainian Legal Foundation. I had been warned that it would be tough, that Ukraine was a poor country, that there might not be enough food to eat, and that radioactivity from Chernobyl (some 60 miles north of Kiev) was still present. But, as a joint JD-LLM candidate at Duke University's School of Law, I felt fortunate to have the opportunity to work, even for a short time, in a former Soviet bloc country during its transition to a Western legal culture. So off I went.

What I found in Kiev was not at all what I had expected. Although the airport was somewhat run-down, the city was lovely. Kiev, the mother city of Russia—although now in Ukraine—has a long and proud tradition. It was here that in the 9th to 11th centuries were founded the state from which all later Russian states were descended (Kievan Rus) and the Orthodox church. There is marvelous architecture and beautiful parks. It is a very open city of wide boulevards, wonderful for strolling. And the people are very friendly. I settled into an apartment, provided by the Foundation, which overlooked one of the city's botanical gardens, and looked forward to my first day of work.

I walked to the Foundation that first day, not sure what I would find. What I found was a group of energetic people, crammed into small quarters, working on a variety of projects. The Ukrainian Legal Foundation was formed in 1992 by a small group of Ukrainian lawyers. Believing that in order to effect political, economic and democratic reforms it would be necessary to reform the legal system in Ukraine, the Foundation's goal is to help establish the rule of law in Ukraine. To this end the Foundation, funded by the Soros Foundation, has initiated a number of major and minor projects. These include the establishment of a new law school, the Center for Legal Studies, in Ukraine; the establishment of a legal library and creation of a legal publisher; founding of the Ukrainian Center for Human Rights; assistance with legislative drafting; organization of legal conferences and symposia; and selection of individuals for scholarships and internships in Western countries.

My first day at the Foundation I was introduced to Serhiy Holovaty, a member of the Ukrainian Parliament and president of the Foundation, and



Maurine Murtagh

Halyna Freeland, its executive director. I also met Jennifer Labach, then executive assistant to Holovaty and Freeland, and now assistant director for the Commission on Radio and Television Policy (a collaborative project of the DeWitt Wallace Center for Communication and Journalism of Duke University and the Carter Center of Emory University), and her husband, Ken, then an English language editor for the Foundation, and now a first-year law student at Duke. Jennifer and Ken took me under their wing that first day at the Foundation and showed me the ropes.

I soon became involved in two projects at the Foundation. The first was to help organize and participate as an observer in an international conference on arbitration that brought together British arbitration experts and Ukrainian lawyers interested in learning more about this form of dispute resolution. Of particular interest to the Ukrainian participants was the question of jurisdiction. Since many of their contracts dated from the Soviet era, the Ukrainians were concerned that Russia had declared itself the legal successor to these contracts. Worrying that Russian arbitration would not be unbiased, the Ukrainians sought ways to protest Russian jurisdiction. The British experts were able to give appropriate advice on this and a myriad of other topics.

My second project involved a conference on the codification of the Civil Code of Ukraine. This con-

ference brought together a working group of Ukrainian lawyers who had drafted the Code and, German, Dutch, and Russian experts on civil codes. The draft Code, an ambitious undertaking, had been completed by the Ukrainians in a short period of time. Christina Maciw, a member of the Foundation Board, and other members of the Foundation, including Ken Labach, had been very helpful in producing and refining this draft. German participants in the conference were quick to point out that it had taken Germany some 30 years to produce its civil code.

The Conference was a great success. Participants worked through the document article by article, offering suggestions and modifications. One issue of particular importance, that remained unresolved, was whether the Ukrainian Civil Code should incorporate a commercial code (as in the Netherlands), or whether this should be a separate document (as in Germany). But great progress was made in refining the draft Code and further meetings were planned for this fall. I helped to produce a summary, in English, of all the suggested changes. This, in turn, was translated into Ukrainian by Ihor Tsymbalisty, a Foundation staff member.

The Conference, it seemed to me, was a great example of the Foundation's work at its best. Through the cooperative efforts of the Foundation staff—from translators, to Board members, to administrative personnel—and the working group of Ukrainian attorneys, a draft Civil Code was put together efficiently. The Foundation then orchestrated the Conference, bringing together acknowledged experts in the field, and provided a forum for a real dialogue by the participants. This, in turn, will lead to a new, improved draft Code.

For me, however, life in Kiev was more than work on conferences and other projects. I also found time to go to the ballet and opera in Kiev, both of which are of a very high standard. I also did some touring in the city, visiting such famous sights as St. Sophia Cathedral and the Caves Monastery. But, perhaps best of all, I made a wonderful group of new friends at the Foundation. So, by the time I boarded my return flight in late June, I was sad to leave Kiev, but happy that I would see some of my new friends, like Jennifer and Ken Labach, here at Duke. And happy that the valuable work of the Foundation was continuing.

Maurine M. Murtagh '96

the army stepped in to support Yeltsin by shelling the parliament building.

I happened to be in Moscow to take the LSAT just before the culmination of this tragedy and realized that the legal framework of the constitution had left neither side any choice in this matter. The authors of the old Soviet constitution, knowing that the Communist Party controlled both the president and parliament, never conceived of a need to have a mechanism to resolve their disputes. Unfortunately, the drafts I have seen of the new

Ukrainian constitution have not addressed this problem.

Other areas of law have similar problems. Confusing taxation laws stifle private business and foreign investment; the financial markets are dominated by unregulated pyramid schemes (one of these, named MMM, recently collapsed in Moscow); crime is at an all time high and is linked to large-scale corruption in government; and the citizenry is passive.

People who live in a democratic society operating under the principle

of the rule of law must take an active, participatory role in their society. Programs like those run by the ULF and supported by Duke Law School are providing young lawyers with the tools they need to make a difference. Once abroad these lawyers can gain the experience necessary to challenge the status quo and reshape the legal system so that it can meet the challenges of an open society and the demands of a public ready for change.

Kenneth J. Labach '97

LLM Student Elected to Hamburg State Legislature

Karsten Tietz, a '95 LLM candidate, is busy juggling his studies with his new position as a representative in the Hamburg state legislature in his native Germany. Tietz will commute between Durham and Germany for the next few months until graduation, then will return to Hamburg to serve in Parliament and continue his law studies. At age 24, Tietz is the youngest representative in the history of Hamburg's state legislature.



Karsten Tietz '95

Long active in the Christian Democrat Party (the federal majority party, and the opposition party in Hamburg), he served as vice-chair of the Young Christian Democrats before coming to Duke.

Tietz was 41st on the party's list of potential representatives when they won 36 seats in the Hamburg legislature. His opportunity arises about a year and a half into the term because several party representatives have stepped down. He will serve out the remainder of the four-year term.

When he returns to Hamburg, in addition to serving in Parliament, Tietz

will begin the last stage of his legal education. In the final phase he will receive practical training as he rotates through five different legal areas over the course of two years. He will start in either criminal court or state prosecution.

Tietz does not believe that politics should be a career. Instead, he sees it as a way to serve his community. "In Germany, as in the US, there is frustration with politicians," he notes. "Some have started in politics so early they have no other education. These 'professional politicians' are fighting for their jobs to support their families, so they use dirty tricks and aren't honest. This leads to public frustration with politicians." Currently, serving in Hamburg's legislature is not a full-time job. "Hamburg representatives are expected to earn a living. Sessions start at 4 pm and go into the night, and you can't earn a living from politics alone."

Tietz has his priorities firmly in order. "First priority is my education, second priority is politics. If I'd done anything else but juggling completing my studies at Duke, then I would have been exactly what I criticized."

Coming to Duke has enabled Tietz to "combine the opportunity to live in the US with a good move for my future career." Large German law firms

require the ability to work with international firms in English, he explains, and it's often a prerequisite to have an international degree. Visiting the US also gives Tietz a view of Germany's possible future. "There are some things Americans experience which you can imagine Germany will face in 10 or 15 years—violence, crime, public apathy about politics and political issues both within and outside the country. Right now it's different in Germany, but we're headed the same way. We should do something about it before it gets to that point." Tietz is now trying to coordinate a program which would enable Duke students to visit Germany for a month as interns with the federal and state legislatures, providing an invaluable hands-on experience in international government.

Tietz says he chose Duke for his LLM studies because "Duke had the combination of an excellent reputation and a good location." He knows that his schedule will be much more hectic when he returns to Hamburg, so he is enjoying "having the time to relax, lay back and do things—play tennis, join the Duke Chapel Choir, take French classes, go out with friends."

Laura Ertel

Shea is New Director of Annual Fund

James J. (Jim) Shea joined the Law School Alumni Relations and Development office as director of the Annual Fund on August 22, 1994. He is responsible for implementing programs (including class agent activities and phonathons) to meet established goals for the Duke Law School Annual Fund—those gifts from alumni and other friends of the Law School which directly supplement the School's operating budget. Shea works with staff and with student and alumni volunteers to accomplish these goals.

Shea comes to Duke from Emory University in Atlanta, Georgia, where he worked with the annual giving programs of nine schools, including the law school, and where he had previously directed Emory's gift records office.

Associate Dean Evelyn Pursley notes, "We have enjoyed welcoming Jim to the Law School where he has shown tremendous energy and enthusiasm for his new position. Our volunteers are enjoying working with him, and I know that his experience will serve us well."

"This is an outstanding opportunity for me professionally," Shea says. "The development program's success was evident to me before I arrived, and since August I've received numerous calls from annual fund colleagues from all over the country. Each wants to find out more about 'how we do it.'"

'How we do it' includes class agent programs, student phonathons, the law firm campaign and simply asking alumni to contribute to the Annual Fund. What sets Duke Law School



Jim Shea

apart though, Shea feels, is its alumni. "There is a satisfaction our graduates achieve through being involved with alumni affairs, fundraising, and career development." He adds, "they have made

me feel comfortable and many have shown enormous energy levels. We are continuing to grow in annual fund support, and that's an important signal—financial generosity is certainly needed for the School to continue providing an excellent legal education. I feel good about the prospect of increased alumni support."

Gifts to the Law School

Lowry Unitrust

William J. Lowry L'49 T'47 has established the William J. Lowry Charitable Remainder Unitrust with a gift of \$722,550, of which a minimum of 85 percent will benefit the Law School. With the termination of the Unitrust, the corpus of the Unitrust will fund the William J. Lowry Endowment Fund, the income from which will be spent at the discretion of the Dean of the School of Law.

In acknowledging the establishment of the Lowry Unitrust, Dean Pamela Gann said, "Bill Lowry has again shown his tremendous generosity to the Duke University School of Law. The flexibility provided for the use of the income reflects his confidence that the income will be used by the Dean every year where it can best assist the Law School in achieving its most urgent goals."

Whitehurst Family Endowment Fund

Lee A. and Ann Dickerson Whitehurst of Raleigh, North Carolina have established The Lee A. Whitehurst and Ann Dickerson Whitehurst Family Endowment Fund with a gift of \$498,000. The Fund will provide discretionary funds to the Dean of the Law School. Dr. and Mrs. Whitehurst are the parents of Alan, E'94 L'97, Bradford T'97 and Amy T'98. Dr. Whitehurst, a former member of the Duke University Medical Center housestaff, is a surgeon.

Kraft Gift for Lange Travel

Kraft Foods, Inc. contributed \$10,000 to subvent the travel expenses of Professor David Lange, who traveled to Vietnam in November 1994 at the invitation of the Vietnamese government, to teach a comprehensive train-

ing course in all aspects of intellectual property to government officials, judges and lawyers in Hanoi and Ho Chi Minh City (Saigon). (See article on p. 30.)

Goldbergs Donate Paintings

Robert A. T'40 L'49 and Dorothy Goldberg T'38 of North Conway, New Hampshire have donated two paintings to the Law School—"Trout Fishing, Camden, Maine" by Wesley Webber 1841-1914 and "On the Way to Mr. Lafayette" by Edward Hill 1843-1923. Both paintings have been hung in the Burdman Faculty Lounge. Webber and Hill were members of the Hudson River School of Art and the White Mountain School of Art.

Fund-Raising Underway for New Clinic for Persons with HIV/AIDS

The Law School is in the midst of a fund-raising campaign for an exciting new clinical offering at the School. In December, the Law School faculty approved the academic merits of the AIDS Legal Assistance Project, a Law School clinic for persons with HIV/AIDS to begin in the fall of 1995. Clients will be represented by Duke Law students working under the close supervision of clinical instructors at the Law School. Eight to 12 students per semester will receive academic credit for assisting persons with HIV/AIDS with their legal problems. Each student will work 100 hours per semester. They will receive classroom instruction as well as one-on-one supervision for their clinic cases. The project will remain open in the summer months through the use of work-study students.

Students will assist indigent HIV infected persons free-of-charge with testamentary and health care documents; permanency planning for children; public benefits; insurance coverage; guardianship proceedings and employment and housing discrimination.

The project is an expansion of the AIDS Wills Project, a volunteer project at the School which started in January 1994. Between 25 and 35 Law student volunteers have been working under the supervision of faculty member Carolyn McAllaster preparing health care and testamentary documents for clients with HIV/AIDS. Clients have been referred by Duke Medical Center's Infectious Disease and Pediatric AIDS clinics, ACRA (AIDS Community Residence Asso-

ciation), the AIDS Services Agencies in Durham and Raleigh, and the Durham and Wake County Health Departments.

There is no other legal office in North Carolina devoted to serving the legal needs of the HIV/AIDS population. Clients from throughout North

There is no other legal office in North Carolina devoted to serving the legal needs of the HIV/AIDS population. Clients from throughout North Carolina will receive assistance.

Carolina will receive assistance. The primary client base proposed to be served by the project, however, is indigent HIV/AIDS clients in the Triangle. It is estimated by the HIV/STD Control Section of the North Carolina Department of Environmental Health and Natural Resources that there are between 8,272 and 10,340 persons in the Triangle alone infected by the HIV virus. Clients served by the clinic are expected to mirror the demographics of the Duke Infectious Disease Clinic and the Pediatric AIDS Clinic. Just over 50% of the patients seen at the Infectious Disease Clinic are African-American. Approximately 70% are male. The majority of the parents at the Pediatric AIDS clinic are single mothers, African-American, with an average monthly income of \$391. As

Daniel Hudgins, director of the Durham County Department of Social Services says: "This Department sees the problems associated with HIV/AIDS, especially as it affects families with young children, as one of the emergent issues of this decade. Staff members working with these families have cited legal services as one of the unmet needs of this population."

Duke Law School has made a significant commitment to the AIDS Legal Assistance Project. The project will be housed at the Law School and students will be given academic credit for providing some 2,000 free hours of legal assistance per year to persons with HIV/AIDS. There is demonstrated student interest at Duke as evidenced by the students who have already volunteered for the AIDS Wills Project. Strong working relationships have already been established between the existing AIDS Wills Project and Duke Medical Center, Durham and Wake County Health Departments, the AIDS Community Residence Association and the AIDS Services Agencies in Durham and Wake Counties.

The Law School is seeking to raise the \$130,000 in direct costs needed to launch the project in the first year. This project is a pioneering model for the School. Contributions towards this important effort may be sent to: The Duke AIDS Legal Assistance Project, Duke University School of Law, Box 90360, Durham, North Carolina 27708-0360. For more information, contact Carolyn McAllaster at (919) 613-7036.

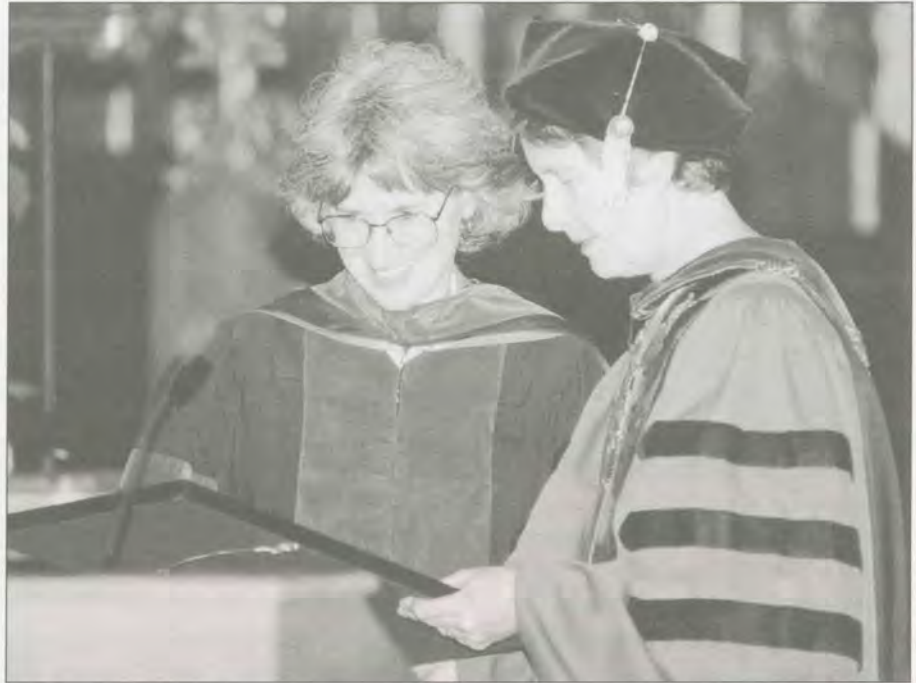
Faculty News

Bartlett Named Scholar/ Teacher of the Year

Katharine T. Bartlett, professor of law and senior associate dean for academic affairs, has been named the Duke University Scholar/Teacher of the Year. She received the award from President Nannerl O. Keohane during the annual Founders' Day convocation in Duke Chapel in December. The award was created in 1981 by the Board of Higher Education and Ministry of the United Methodist Church for the purpose of "recognizing an outstanding faculty member for his/her dedication and contribution to the learning arts and to the institution." It carries with it a \$2000 stipend, which Bartlett has donated to the Urban Ministries Center of Durham and to the Student Funded Fellowship program at the Law School. Bartlett is the second member of the law faculty to receive the Award; Deborah A. DeMott was the 1989 Scholar/Teacher of the Year.

Dean Pamela B. Gann describes Bartlett as "a complete professor," citing her teaching, research and service contributions. "Kate is a superb teacher in both 'old' and 'cutting edge' topics. She teaches regularly family law, gender and the law, and feminist legal theory. . . . She draws both young men and women into her courses. She has published major teaching materials in family law, gender and the law, and feminist legal theory, and she is a popular and wise teacher, who is able to use in her courses her own widely adopted books."

Bartlett began teaching part time at the Law School in 1979, and joined the full-time faculty in 1981.



Kate Bartlett, left, receives the University Scholar/Teacher of the Year Award from Nan Keohane, president of Duke University.

LES TODD

Beale to Lead Hospital Trustees

Sara Sun Beale has been elected chair of the Board of Trustees of Durham County Hospital Corporation. She has served on the Board since 1990. As chair, she appoints the committees that control



Sara Sun Beale

JOHN ELKINS

finances, physician credentialing, risk management and quality improvement, the outreach activities of the corporation, and its planning. She sits ex officio on all board committees, and also is a member of the board of the Foundation for the Better Health of Durham. She is in close contact with the hospital administrators (daily or even more fre-

quently), and is the first chair to be able to log in to the hospital network, so that she is accessible by e-mail as well.

In this time of phenomenally rapid change in the health care industry, Beale notes that "it is both challenging and rewarding to work with the board, administration, medical staff, and employees of Durham County Hospital Corporation to achieve the corporate mission, which is to improve the health status of the Durham community."

Franklin Receives Award, Celebrates Birthday

John Hope Franklin, professor emeritus of legal history, was honored in October as a recipient of the Carter G. Woodson Medallion during the 79th annual convention of the Atlanta,

Georgia chapter of the Association for the Study of Afro-American Life and History. The award recognizes Franklin for his contributions to the preservation and promotion of African-American history.

In January, Duke University celebrated Franklin's 80th birthday. The celebration featured a keynote address, "Race, History, and John Hope Franklin," by Pulitzer Prize-winning author David Levering Lewis, a community reception, and a dinner hosted by Duke President Nannerl O. Keohane.

Although officially retired, Franklin has two research projects underway, including an ambitious study of runaway slaves that will show ways a large number of men and women put their lives on the line to escape bondage.

Horowitz Looking For Peace in Chechnya

Donald L. Horowitz, James B. Duke professor of law and political science, was in The Hague on January 13-16, 1995, for a meeting to discuss ethnic conflict in the former Soviet Union in the light of the Chechnya invasion. The conflicts discussed were Crimea-Ukraine, Moldova-Gagauzia-Trans-Dniestria, Tatarstan-Russia, and Georgia-Abkhazia. The presidents of Trans-Dniestria, Tatarstan, Gagauzia, and Abkhazia attended and participated in wide-ranging discussions about the possibility of ameliorating tensions.

Luney Named NCCU Law Dean

Percy R. Luney, Jr., an adjunct member of the Duke Law faculty since 1985, was named dean of the Law School at North Carolina Central University (NCCU) in Durham in July 1994. An expert on international law and the Constitution of Japan, Luney has been a member of the NCCU faculty since 1980. He was a visiting scholar at the University of Tokyo in 1983, 1986 (as a Fulbright Scholar), and 1990. He was a Fulbright Lecturer on the Kobe University Faculty of Law in 1991-92. (See article on faculty teaching international law on p. 29.)

Maxwell Receives Teaching Award

Richard C. Maxwell, professor emeritus, has been named one of the first recipients of the Clyde O. Martz Teaching Award presented by the Rocky Mountain Mineral Law Foundation. Maxwell, along with Professor Howard R. Williams and the late Professor Charles J. Meyers, both of Stanford Law School, received the award in recognition of their landmark book, *Cases on Oil and Gas Law* (originally published in 1956 and now in its sixth edition), for their abilities as teachers of oil and gas law, and for their many accomplishments and contributions to the field of oil and gas law over many years.

Maxwell joined the Duke faculty in 1979, after serving on the faculties of the University of North Dakota, the University of Texas, and at UCLA, where he was also dean. Although he officially retired in 1989, he continues to teach at the Law School on a regular basis.

Metzloff and Mosteller Join Commission



Robert P. Mosteller

Thomas B. Metzloff has been named a member of the Commission for the Future of Justice and the Courts in North Carolina, and **Robert P. Mosteller** has been named the reporter to

the Criminal Justice Committee of that Commission. The Commission was created by Chief Justice James Exum of the North Carolina Supreme Court to study North Carolina's courts and to recommend a judicial system for the next century. The Commission will develop a vision of an ideal judicial system that can serve North Carolina for decades. The members will be asking fundamental questions about the best means of resolving disputes and administering justice.

Law Alumni Association News

The Duke Law Alumni Association (LAA), which includes all Duke Law alumni, sponsors programs designed to advance legal education and to promote communication between alumni and the Law School. Following is a report on some of these programs.

Alumni Seminar

An Alumni Seminar, "Changes in the Delivery of Legal Services and How They Affect Your Job Search" was held at the Law School on October 6, 1994. The LAA-sponsored Alumni Seminars bring alumni back to the Law School to speak to students on topics of current interest in the legal community. This panel provided information on how recent changes in the delivery of legal services have affected decisions made by law firms, including hiring, compensation and partnership.

The members of the panel were all distinguished alumni actively involved at Duke through the Board of Visitors and/or the Law Alumni Association Board of Directors: **Randolph J. May '71** is a partner in the Washington DC office of Sutherland, Asbill & Brennan, who specializes in communications law. He served for a number of years as the assistant and then associate general counsel of the Federal Communications Commission where he exercised supervisory responsibility in areas subject to the FCC's regulatory jurisdiction. He presently serves on the associate review committee for his firm. **Ronald R. Janke '74** is a partner with Jones, Day, Reavis & Pogue in Cleveland, Ohio. He has served for many years as the principal environmental lawyer on a national basis for numerous companies, including several in the *Fortune 500*. He has extensive knowl-

edge of the application of environmental laws affecting industrial and commercial sectors and broad experience in major federal and state regulatory programs. **David G. Klaber '69** is from Pittsburgh, Pennsylvania, where he is a partner with Kirkpatrick & Lockhart. He specializes in litigation on behalf of both plaintiffs and defendants, with particular experience in products liability, personal injury, construction, commercial litigation, and defamation. **Haley J. Fromholz '67** has recently become a superior court judge for Los Angeles County. Before that he was a partner with Morrison & Foerster in Los Angeles, California, where he specialized in business litigation and also served as a member of the firm's Partner Compensation Committee.

The panel was moderated by **Richard J. Salem '72**, a founding partner of Salem, Saxon & Nielson in Tampa, Florida. He practices in the areas of corporate business, governmental/administrative and international transactions as well carrying management responsibilities for this 17-member firm.

"Students found the panelists to be extremely informative," notes Bob Smith, director of career services, "especially in the area of how law firm hiring decisions are made. There is no doubt that this information regarding the hiring process will prove extremely valuable to students' job searches."



From left, Dave Klaber '69, Richard Salem '72, Haley Fromholz '67 and Randy May '71 participate in the Alumni Seminar.

DAN CRAWFORD

Law Alumni Weekend

The classes ending in '4' and '9' celebrated their reunions on October 7 and 8 during Law Alumni Weekend 1994. Over 200 alumni and their families returned to renew friendships with classmates and ties with faculty at the Law School. Members of the Half Century Club also attended. The classes ending in '0' and '5' will return next October 13 and 14 to celebrate their reunions during Law Alumni Weekend 1995.

The Weekend began on Friday afternoon with a student/alumni luncheon, sponsored by the Law Alumni Association. First held in 1992 at the suggestion of the Law Alumni Association Board of Directors, the luncheon promotes interaction between alumni and students. Alumni returning for their reunions are invited to sign-up for the luncheon and asked to provide their specialty areas. This provides an opportunity for a student to be matched with alumni by interest in specialty area or geographic region so that alumni can share useful information with the students over lunch.



DAN CRAWFORD

Bob Montgomery '64 and Dean Pamela Gann

The luncheon was held on the front lawn of the Law School to accommodate the outstanding response—over 50 students and 75 alumni, including members of the Law School's Board of Visitors. Said David Klaber, immediate past president of the LAA and current member of the Board of Visitors, "Students enjoy the luncheon because it gives them a unique opportunity to get their questions answered and their fears assuaged, one-on-one. Alumni love it because they can relive their Law School days, which get better and better as the years pass by."

Ronald Janke '74, a member of the LAA Board of Directors who specializes in environmental law, also met with a group of students from the Environmental Law Society during the lunch. "We were very happy that Mr. Janke took the time to meet with us," notes Tim Profeta '97, president of the Environmental Law Society. "He gave us great insight into the issues and type of practice found in the environmental department of a big firm like Jones, Day."

For the second year, Friday evening offered an all-alumni reception and dinner, during which the Law Alumni Association held its annual meeting. Saturday morning offered a substantive legal education program (for which CLE credit was offered) presented by William Van Alstyne from Duke Law School and Jay Hamilton from the

Sanford Institute of Public Policy on "Violence, the Media and First Amendment Issues." The program was followed by the ever-popular North Carolina Barbecue held on the front lawn. Various activities were offered on Saturday afternoon such as golf, a visit to the Museum of Life

and Science, and tours of the Duke Primate Center and Duke Gardens. The traditional class dinners ended the Weekend on Saturday evening.

The Law Alumni Association meeting, on Friday evening, began with remarks from Dean Pamela Gann and included the honoring of several alumni for their professional achievements and their loyalty and devotion to the Law School.

Montgomery Receives Dean's Alumni Achievement Award

Dean Pamela Gann awarded the Dean's Alumni Achievement Award to **Robert K. Montgomery '64**. This award honors an alumnus or alumna who has demonstrated in an extraordinary fashion an understanding of the special relationship with and duties toward Duke Law School. In presenting the first such award to **John F. Lowndes '58** in 1992, Dean Gann noted that "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." In presenting a Steuben crystal sculpture to commemorate the award to Montgomery, Dean Gann reflected upon his service to the Law School:

It has been 30 years since Bob met Dean Jack Latty's initial expectations at Duke. Except for a brief stint in a

corporation, Bob has practiced continuously as a corporate and securities lawyer at the same law firm (Gibson, Dunn & Crutcher in Los Angeles)—that steadiness alone is increasingly exceptional today—where he is one of the most important leaders of one of the largest law firms in the world. He has gone on to be involved in important civic activities, particularly his active role as senior vice president of the Los Angeles Olympic Organizing Committee for the 1984 Olympic games.

But Bob always held a special place in his life for his alma maters. I hear that he is exceptionally loyal to his undergraduate college, Williams, but I know that he has always maintained his special loyalty for Duke Law School and Duke University. He has been a tireless advocate for Duke—always bringing together the various parts of Duke into a cohesive and workable partnership.

He has illustrated his dedication to the success of the Law School and the University most noticeably by his chairmanship of the Law School's Board of Visitors for the past six years and by his membership on the successful Campaign for Duke University-Wide Executive Committee. He has always represented Duke in Los Angeles, and, most recently, he has assumed the chairmanship of Duke's Development Council for Los Angeles.

For me personally and for [former] Dean [Paul] Carrington, and for many others, Bob set a particularly strong example as chairman of the Board of Visitors. Even though he had a busy schedule, he never missed a meeting and no meeting ever had to be scheduled around his time; he led the Board and me through the first serious long-range planning process ever undertaken by the Law School and the University; he was a Law School advocate in raising the funds for our new building addition, providing leadership at a particularly critical time. But perhaps the most telling comments were from other alumni who have worked closely with him. Upon the end of Bob's term as chairman of the Board of Visitors, I received many letters saying that 'it will be hard to replace Bob'; 'I don't know whether we can find the right person to replace Bob'; and some in desperation 'must we really replace Bob'. These sentiments from his alumni colleagues

and friends speak more effectively than I can.

By this award, I have no intention to "retire" Bob's Duke Law School jersey; rather, I know that this is just a momentary pause to thank him for all that he has given to us in the past. He is going to continue to be a leader for Duke University.

Bob has the respect of all of us. He has done more than even Jack Latty would have required. Most of all Bob is a superb example of what the Law School expects its graduates to achieve in the legal profession in providing support to their community and to the University. I declare Bob Montgomery to be an outstanding son of his alma mater, Duke University.

Dara DeHaven '80 Honored with Charles A. Dukes Award

The Charles A. Dukes Award, named for the late Charles A. Dukes, a 1929 graduate of Duke University and former director of Alumni Affairs, is given annually to alumni who have gone "above and beyond" the call of duty in volunteer leadership roles. The recipients of the award are chosen by the Awards and Recognition Committee of the Board of Directors of the Duke University General Alumni Association.

Dara L. DeHaven '80, nominated by the Law School to receive this award, was not able to be present to accept the engraved plaque as a symbol of Duke's appreciation of her service but was honored by LAA president Haley Fromholz for her volunteer activities for the Law School. DeHaven has served in a number of roles to the Law School over the years. She served on the Law Alumni Association Board of Directors for seven years, from 1987-1994, during which she rotated through the officer positions. She served as the immediate past president for two terms, 1992-93 and 1993-94, while the by-laws were being revised; president 1991-92; vice-president/president-elect 1990-91; and secretary/treasurer 1989-90. She has been active in

LAA programs, including service as a panelist for the Conference on Career Choices in 1990 and as a moderator for the Alumni Seminar in 1992; both programs are offered to students by alumni. She has also been committed to helping raise money for the Law School by serving in the past as a class agent for the Annual Fund and serving on her class reunion fund-raising committee in 1990-91.

DeHaven, who also holds an undergraduate and master's degree from Duke, is currently serving her third year as the Law School's representative to the University's Alumni Association Board of Directors. When asked about her feelings for Duke and receiving the award, she remarked, "Duke has been a continuing source of friendships, learning and professional development for almost 25 years. Volunteering gives me an opportunity to give back to Duke."

Kenneth Starr '73 Receives Charles S. Murphy Award

Kenneth W. Starr '73 received the Charles S. Murphy Award at the LAA Friday night dinner. This award is presented annually by the Law School Alumni Association to an alumnus of the School who, through public service and/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 LLD from Duke in 1967. During his career, he held several positions in the Truman, Kennedy and Johnson administrations. He was also a member of

the Law School's Board of Visitors and the Duke University Board of Trustees.

The Awards Committee of the LAA Board of Directors recommended that Kenneth Starr receive the Murphy Award because he has dedicated most of his career to public service. Starr studied political science as an undergraduate at George Washington University and as a graduate student at Brown University and worked for a year for the State Department's Bureau of Educational and Cultural Affairs before entering law school. In 1973-74, Starr served as a law clerk to United States Court of Appeals Judge David W. Dyer on the Fifth Circuit and in 1975 to Chief Justice Warren E. Burger. He then practiced law as a litigator in Los Angeles and Washington, DC, becoming a partner with the firm of Gibson, Dunn & Crutcher.

In 1981, Starr became counselor to United States Attorney General William French Smith, a position he held until he was appointed to the United States Court of Appeals for the District of Columbia in 1983 by President Reagan. Starr left the bench to become the solicitor general of the United States during the Bush administration. As solicitor general, he argued 25 cases before the Supreme Court involving a wide range of governmental regulatory and constitutional issues.



Kenneth Starr '73, left, receives Murphy Award from Haley Fromholz '67.

Since leaving his position as Solicitor General in 1993, Starr has joined the law firm of Kirkland and Ellis in Washington, DC. In August 1994 he was appointed special prosecutor in the Whitewater investigation. (See p. 71).

First Charles S. Rhyne Award Goes to Russell Robinson, II '56

The Duke Law Alumni Association (LAA) has established the Charles S. Rhyne Award to honor alumni in private practice who have made significant contributions to public service. This award will be presented annually "to an alumnus or alumna of Duke Law School whose career as a practicing attorney exemplifies the highest standards of professional ability and personal integrity and who, in addition, has made a significant contribution *pro bono publico* in education, professional affairs, public service or community activities. **Russell M. Robinson, II '56** is the first recipient of the new alumni award.

The award was named after **Charles S. Rhyne '37**, a senior partner in the law firm of Rhyne & Rhyne in Washington DC, who has been an active trial lawyer since 1937. He has represented chiefly states, cities and counties in cases in federal and state courts throughout the United States,

including serving as lead counsel in the "one man, one vote" case of *Baker v. Carr*, 369 U.S. 226 (1962).

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

Rhyne served the organized bar through his participation and leadership in a variety of legal organizations. In addition to membership on and chairmanship of several sections and committees of the American Bar Association (ABA) and committees of the ABA House of Delegates, he served as president of the American Bar Association in 1957-58. He had earlier served as chairman of the ABA House of Delegates. He was also president of the Bar Association of the District of Columbia. He is a life member and director of the American Judicature Society, a fellow of the American College of Trial Lawyers, and a life member of the Fellows of the American Bar Foundation for which he also served as chairman.

Rhyne served as counsel to a number of federal departments and agencies including the Federal Commission of

Judicial and Congressional Salaries; the Office of Civilian Defense; the National Defense Advisory Commission; and the Commission on President Kennedy's Assassination. In addition, he was special legal consultant to the President of the United States in 1959-60. He also served as the personal representative of the

President to the United Nations High Commissioner for Refugees in 1971-72 and as counsel to the Commission for the Observance of the 25th Anniversary of the United Nations in 1970-71.

Russell Robinson graduated from Duke Law School in 1956, where he was editor-in-chief of the *Duke Law Journal*. He also attended Duke University as an undergraduate. He began practicing in Charlotte in 1956. In 1960 he helped form the law firm which is now Robinson, Bradshaw & Hinson, where he specializes in corporate and securities law and litigation. The LAA committee which recommended Robinson as the first recipient of the Rhyne Award did so because they thought he was the exemplar of what they wanted the award to represent. Robinson's professional ability and personal integrity are well known. As was noted when he received the Judge John J. Parker Award in 1993, the highest honor bestowed by the North Carolina Bar Association: "Colleagues say Robinson represents the best the profession has to offer—a superb intellect, impeccable integrity, unassuming modesty, and a willingness to share his knowledge and ability with others."

Robinson was instrumental in drafting the original North Carolina Business Corporation Act in the 1950s and served as chairman of the Business Corporation Act Drafting Committee of the NC General Statutes Commission from 1968-73 and from 1985-91. He authored *Robinson on North Carolina Corporation Law*, which is so well-known among North Carolina lawyers that it is often referred to as "one's copy of *Robinson*." He has served as a member of the Board of Governors of the North Carolina Bar Association and its Executive Committee. He has been the president of the 26th Judicial District Bar Association and twice served as a director of Legal Services of the Southern Piedmont. He is a member of the American Law Institute and a fellow of the American Bar Foundation. He



Russell Robinson '56, left, with Charles Rhyne '37.

LAW ALUMNI ASSOCIATION NEWS

has been devoted to a number of educational institutions.

Robinson has been a member of the Board of Trustees for the University of North Carolina at Charlotte since 1987 and has served as its chairman since 1989. He joined the Duke Law School Board of Visitors in 1983 and served on the Johnson C. Smith University Board of Visitors from 1978-84 and as its chairman from 1984-86. He has served as counsel for the John Motley Morehead Foundation since 1965 and has served as a trustee for both the Woodberry Forest School and the Charlotte Country Day School.

Robinson has also found the time to devote to many civic and community organizations. In 1987, he became a trustee to the Duke Endowment and has chaired the Hospital and Child Care Divisions since 1990. He has been very active in the United Way of Central Carolinas, serving in many capacities, including president, general campaign chair, member of the Board of Directors and the Executive Committee, and Policy Committee chairman.

Robinson has also been active in numerous other organizations and community projects. He has served as president and a director for the Charlotte Speech and Hearing Center, the Florence Crittendon Home and the Wing Haven Foundation and as a director for the YMCA, Junior Achievement of Charlotte, the Charlotte Chamber of Commerce, Goodwill Industries of the Southern Piedmont and the Presbyterian Hospital Foundation.

Russell Robinson's devotion to public service is also instilled throughout the law firm he helped to establish. *Robinson, Bradshaw & Hinson* received the first Pro Bono Service Award from the North Carolina Bar Association and the firm also received the American Bar Association's first Pro Bono Publico Award presented by the Standing Committee on Lawyers'

Off-campus alumni events held to date in 1994-95 include:

	<u>EVENTS</u>	<u>FACULTY HOST</u>	<u>LOCAL HOST</u>
CALIFORNIA	Orange County	William Reppy	Randall Erickson '71
	Los Angeles	William Reppy	Phil Sotel '62
	San Francisco	William Reppy	Robert Pringle '69
LOUISIANA	New Orleans	Evelyn Pursley	
		American Bar Association Reception	
		Thomas Rowe	
	Association of American Law Schools Breakfast		
MINNESOTA	Minneapolis	Laura Underkuffler	John Kirby '68
MISSOURI	Kansas City	Thomas Rowe	John Black '73
NORTH CAROLINA	Durham/Chapel Hill	Thomas Metzloff	James Maxwell '66
	Charlotte	William Van Alstyne	Clarence Walker '55
	Greensboro	Robinson Everett	Gary Beaver '82
	Winston-Salem	Robinson Everett	William Blancato '83
WASHINGTON	Seattle	Sara Beale	Michele Sales '81
EUROPE	Brussels, Belgium Cully, Switzerland Zurich, Switzerland	Judy Horowitz	Paul Tulcinsky '86
		Pamela Gann	Olivier Peclard '86
		Pamela Gann	Stephan Blattler '90
HONG KONG		Judy Horowitz and Pamela Gann	Richard Allen '66
TAIWAN	Taipei	Judy & Don Horowitz	Amy Chin '91
		Amy Chua	

Public Service Responsibility. The firm was honored for its extensive work in a landmark class-action lawsuit charging the federal government wrongfully denied Social Security disability benefits to thousands of North Carolinians. The firm contributed over 3,300 hours of work to the lawsuit, which went to the US Supreme Court twice. **John Wester '72**, who lead the firm's team in the case says, "At every step of the way in this litigation, Russell has encouraged each of us on the firm's team who have taken the case through the courts. That is characteristic of him. This is a man whose public spirit looms large."

LAA Board of Directors New Members and Officers

The Board of Directors welcomed *the new members recommended by its nominating committee* at the fall meeting in October 1994. The new members are: **Phil Sotel '62**, Pasadena, California; **Barrington Branch '66**, Atlanta, Georgia; **Michael Pearlman '70**, Rochester, New York; **Pamela Peters**

'78, Winter Park, Florida; **Karen Jackson '78**, Philadelphia, Pennsylvania; **Bruce Baber '79**, Atlanta, Georgia; **Michele Sales '81**, Seattle, Washington; **Helen Nelson Grant '84**, Columbia, South Carolina; **Porter Durham '85**, Chattanooga, Tennessee; and **Brent Clinkscale '86**, Greenville, South Carolina.

During the Law Alumni Association meeting, president Haley G. Fromholz '67 thanked immediate past president David G. Klaber for his outstanding service, presenting him with an engraved gavel and stand to commemorate his service as president from 1992 to 1994. Klaber called the gavel "a cherished gift that serves as a daily reminder of my friends in the Law Alumni Association, in the Law School and the Class of 1969."

Klaber, a partner at Kirkpatrick & Lockhart in Pittsburgh, Pennsylvania, joined the Law Alumni Association Board of Directors in 1989-90. He has chaired both standing committees of the Board (Awards and Nominations) and the ad hoc committee on

Communications and the Education Committee which explored and recommended faculty programming for Law Alumni Weekend as well as reviewing student/alumni programming. In 1992-93 he drafted revised by-laws for the Association which streamlined and clarified operating procedures, agreeing to stay on an extra year as president to implement the revised officer rotation schedule.

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 and currently serves on the Law School Board of Visitors.

Klaber finds the Association in good hands under Fromholz. "The Law Alumni Association is particularly blessed to have newly-appointed Judge Fromholz at the helm. His judicial temperament and wisdom are well known to the members of the Association and are bested only by his dedication to the Law School. Haley's enthusiasm for Duke Law School and its graduates have helped to give the Law School a major presence on the West Coast."

Fromholz was appointed to the California Superior Court, Los Angeles County this fall. Before that he was a litigation partner at Morrison Foerster's Los Angeles office. He joined the LAA Board in 1989-90. He has served on and chaired both standing committees (Awards and Nominations). Because of the by-laws revision in 1993, he served an additional year as vice-president and therefore served as chair of the standing committees for two years. While secretary-treasurer he chaired the ad hoc committee to review the LAA treasury policies. He has chaired the Education Committee for two years, and in 1993-94 he served on a committee to review the LAA matching program for the Student Funded Fellowship.

Local Alumni Associations and Events Expand Globally

The local law alumni associations and the events they sponsor help to maintain a sense of community and identity with the Law School and among our alumni.

The Law Alumni Relations and Development Office sends Dean Gann or other faculty representatives to share information about the state of the Law School at these off-campus alumni events throughout the year.

As our alumni spread around the globe, the Law Alumni Association now recognizes six international associations and hopes to see this number continue to grow. Though the Law School cannot send a representative to every international association every year, it sponsors an event each year for all alumni in Europe in conjunction with the Transnational Institute now in Brussels, Belgium and holds events in other countries whenever faculty and administrators are traveling and working there.

This year Judy Horowitz, associate dean of international studies, and alumnus **Paul Tulcinsky '86**, hosted a reception and dinner at the Tulcinsky family home in Brussels, Belgium in July. Students and faculty participating in the summer program, along with alumni living in Europe, attended the dinner. The event provided an opportunity for interaction among alumni from many different countries and a chance for them to greet Law School faculty teaching at the Institute and to meet current Duke Law students.

Richard M. Allen '66 hosted a dinner in Hong Kong for Law School alumni in mid-October at which

Upcoming Events

May 13, 1995	Law School Hooding Ceremony and Graduation Reception
May 14, 1995	University Commencement
August 7, 1995	American Bar Association Reception Chicago
October 12, 1995	Alumni Seminar
October 13-14, 1995	Law Alumni Weekend 1945, 1950, 1955, 1960, 1965 1970, 1975, 1980, 1985, 1990

Dean Gann and Associate Dean Horowitz, traveling in Asia to forge and strengthen ties for the Law School, represented the Law School. Dean Gann announced and discussed with alumni the new Asia-America Institute in Transnational Law, which will be co-sponsored by Duke Law School and the University of Hong Kong Law Faculty in Hong Kong beginning in July 1995.

With the help of **Stephan Blattler '90** and **Olivier Peclard '86**, Dean Gann and Professor William Van Alstyne met with alumni over dinner in Cully and Zurich during their vacation trip to Switzerland last August. In addition to bringing news from the Law School, they enjoyed learning about more about the careers of the alumni—and about the best hiking spots in the Alps.

In December, Dean Horowitz and new faculty member Amy Chua visited Taiwan and saw several alumni at their law and government offices. With the help of **Amy Chin LLM '91**, a Duke University alumni party was held in Taipei; approximately 30 Duke University alumni, nine of whom were Law School alumni, attended. Professor Donald Horowitz and Jed Rubinfeld, a visiting professor at the Law School, also were in attendance.

As the Law School becomes ever more international such alumni exchanges will become more frequent and more beneficial to all.

Professional News

'37 **Richard W. Kiefer** is senior partner with the firm of Hooper, Kiefer and Cornell in Baltimore, Maryland.

'39 **John E. Hoffman** now practices with the firm of Hoffman Thompson Skekloff Rogers & McNagny in Fort Wayne, Indiana.

'47 **Matthew S. (Sandy) Rae, Jr.** has been elected treasurer of the Chancery Club, a Los Angeles peer selection legal society. He has also been elected vice-president of the Southern California Phi Beta Kappa Association.

'48 **John M. Turner** is a full-time mediator and arbitrator in Coral Gables, Florida.

'49 **Charles F. Blanchard** has been selected as the 1994 recipient of the Joseph Branch Professionalism Award of the Wake County, North Carolina Bar Association. The award is presented annually to the practicing attorney in Wake County who "best exhibits the qualities of professionalism." Blanchard is a senior partner in the Raleigh firm of Blanchard, Twiggs, Abrams and Strickland.

'51 **James F. Perry** retired on January 1, 1994 as vice president of the corporate law department at State Farm Mutual Automobile Insurance Company in Bloomington, Illinois.

'53 **Jack H. Chambers** has joined the Jacksonville, Florida office of Foley & Lardner as an of counsel member. He practices in the areas of corporate, real estate, and securities law.



Jack H. Chambers '53

'59 **John C. Russell** has joined the New York City firm of Krull & Tract as a partner, specializing in mergers and acquisitions, securities regulation, corporate restructuring, partnerships, formation of oil and gas partnerships and joint ventures, negotiation and structuring of acquisitions and divestitures.

'62 **Vincent L. Sgrosso** retired as vice president and general counsel of BellSouth Corporation in Atlanta, Georgia on December 31, 1994. He will remain in Atlanta doing arbitration and mediation work.

'63 **Glenn E. Ketner** of Salisbury, North Carolina, has been appointed by Governor Jim Hunt as a trustee of Rowan-Cabarrus Community College.

Gerald T. Wetherington, chief judge of the circuit court in Dade County, Florida, is in residence this semester at Duke Law School teaching a seminar on lawyers in the criminal setting and serving as acting president of the Private Adjudication Center.

'64 **Charles A. Powell**, a partner in the Birmingham, Alabama-based firm of Powell & Frederick, has been named chairman of the Section of Labor and Employment Law of the American Bar Association. He is a founding member of the American Council of Employment Lawyers and was an editor of both the second and third editions of *THE DEVELOPING LABOR LAW*, the standard treatise on the National Labor Relations Act.

'65 **Peter B. Archie** has been elected senior vice president/law of OESI Power Corporation in Portland, Oregon. OESI acquires, develops, operates and sells interests in geothermal power projects in the western United States, Alaska and Hawaii.

C.N. Revelos, professor of law at the Detroit College of Law, is on sabbatical leave for 1994-95 to work on the 4th volume of *MICHIGAN PRACTICE SERIES—BUSINESS ASSOCIATIONS*, and on a casebook on chapter 11 bankruptcy reorganizations.

'66 **David B. Blanco**, an attorney with House & Blanco in Winston-Salem, North Carolina, has been named chairman of the local board of directors of Southern National Bank.

James A. Courter has joined the Washington, DC firm of Verner, Liipfert, Bernhard, McPherson and Hand, where he is active in the firm's legislative and federal affairs practice.

Anthony S. Harrington has been appointed chairman of the President's Intelligence Oversight Board, of which he has previously been a member. He is a partner in the Washington, DC office of Hogan & Hartson.

Womble Receives 50-Year Award

William F. Womble '39 received the 50-Year Award from The Fellows of the American Bar Foundation during their 1995 Annual Meeting in February in Miami, Florida. The award is given to "a lawyer who, during more than 50 years of practice, has adhered to the highest principles and traditions of the legal profession and of service to the public." Below are excerpts from the text prepared by **Clarence (Ace) Walker '55** to announce the Award:



William F. Womble '39 (left) received the 50-Year Award of the Fellows of the American Bar Foundation at their 39th Annual Meeting in Miami. The award was presented by Herbert D. Sledd (center), vice-chair of the Fellows.

There is a tendency to think retrospectively when describing the recipient of an award that is available only to those who have practiced law for half a century or more; but this is not the way one normally thinks about William Fletcher Womble. Bill Womble is currently busy serving as chair of the Senior Lawyers Division of the North Carolina Bar Association. He has recently taken over as chair of the Affiliate Outreach Committee of the American Bar Association's Senior Lawyers Division. One has the feeling that other leadership responsibilities are yet to seek him out, and that he will accept them, always saving time to enjoy his [family]. It is the present and the future that engage Bill Womble's attention . . .

Bill was the second of six children of Bunyan Snipes Womble, a lawyer. He received his A.B. and J.D. degrees from Duke University and Duke Law School, whereupon he took a job with his father's law firm as an associate in 1939. He met and married Jane Payne Gilbert of New York in 1941 and soon thereafter entered the Army Air Force where he served throughout World War II, being released with the rank of major at the end of the war in 1945. He was sent overseas in September 1943 for service with the 12th and 15th Air Force Service Commands in North Africa, Corsica, and Italy.

In 1946 Womble returned to his practice with Manly, Hendren & Womble (now Womble Carlyle Sandridge & Rice) and became a partner in 1947. He developed an active practice in litigation, real estate, probate and trust, banking, insurance and corporate law and served as counsel to the City of Winston-Salem and the local school board. Over the 55 years since Bill joined the firm in 1939, Womble Carlyle Sandridge & Rice has grown from five lawyers in Winston-Salem to more than 180 lawyers

located in Winston-Salem, Charlotte, Raleigh and Atlanta. He has been a major force in this growth, having served as managing partner of the firm for six years and more recently as consulting partner.

Bill's service in the organized bar began with the Junior Bar Conference in the late 1940s, and he served as its Fourth Circuit representative to the ABA in the early 1950s. He went on to become president of the Winston-Salem Junior Bar in 1954. He was active in the Forsyth County Bar, where he served as president in 1962, and in the North Carolina Bar Association, where he served in a variety of leadership positions. As its president in 1966-67, he was instrumental in desegregating the membership of the North Carolina Bar Association.

Through his activities in the Junior Bar Conference and the North Carolina Bar Association, Bill Womble became active in the National Conference of Bar Presidents and the American Bar Association. He served in the ABA House of Delegates for nine years, on the ABA Board of Governors for three years, on the National Conference of Bar Presidents Executive Council for four years and on the ABA Standing Committee on Ethics and Professional Responsibility for six years. His contributions in these positions was always active and important. He served as chair of the Operations Committee of the ABA Board of Governors and on its Executive Committee, and as chair of the Ethics Committee's Judicial Code Subcommittee, which produced the Model Code of Judicial Conduct that was adopted

by the House of Delegates in 1990. He served as North Carolina chair of The Fellows from 1983 through 1988.

An important aspect of Bill Womble's service to the organized bar has been his commitment to the financial support of, and fund raising for, worthy bar causes. In 1986-88 he chaired the highly successful Founders Campaign that established a permanent endowment for the North Carolina Bar Foundation. In 1986-92 he served as a member of the ABA's Resource Development Council. He is a Life Patron Fellow of the American Bar Foundation, a member of the President's Club of the Fund for Justice and Education, and a major donor to the North Carolina Bar Association Endowment.

Remarkably, Bill Womble's devotion of this tremendous time and energy to his practice and the legal profession has not come at the expense of his commitments to church, community or alma mater. At Centenary United Methodist Church in Winston-Salem, he has served as chair of the Official Board and chair of the Board of Trustees, and in 1975 was one of the organizers of the Triad United Methodist Home, where he has served as treasurer and president and continues to serve as a director. He was chair of the Forsyth County United Way in 1948 and thereafter was the first president of the Experiment in Self-Reliance, a local anti-poverty program. He was a founder and first president of the Association for the Handicapped. He has served as president of the Winston-Salem Chamber of Commerce and president of the Winston-Salem Rotary Club, as a trustee of Winston-Salem State University and as a trustee (including chair of its Board) of High Point College.

Lawyers would not all agree on the essential components of professionalism, but we would agree that we know it when we see it. We all see it unmistakably in Bill Womble. And we understand why he was chosen in 1984 to receive the North Carolina Bar Foundation's prestigious John J. Parker Award for "conspicuous service to the cause of jurisprudence in North Carolina," and why he now joins the illustrious roster of lawyers chosen to receive The Fellows Fifty-Year Award for adhering to "the highest principles and traditions of the legal profession and of service to the public."

ALUMNI ACTIVITIES

'67 **Haley J. Fromholz** is now a judge of the Superior Court of the State of California for the County of Los Angeles, a trial court of general jurisdiction.

Peter K. Lathrop has been named vice president, director of taxes at Alexander & Alexander Services, Inc. in New York City, a global organization of professional advisers providing risk management, insurance brokerage and human resource management consulting services from offices in more than 80 countries.

'68 **Carl F. Bianchi** recently retired as administrative director of the Idaho courts, and is now the director of legislative services for the Idaho State Legislature, directing legislative research, bill drafting, state budget and appropriations, and financial audits.

John R. Brownell has been nominated to the 1994 class of fellows of the Nebraska State Bar Foundation. He is the senior partner of Lauritsen, Brow-

nell, Brostrom, Stehlik & Thayer in Grand Island, Nebraska.

Rosemary Kittrell is a student in the graduate program at the University of Georgia, pursuing a masters degree in social work. She continues as staff attorney with the Prosecuting Attorney's Council of Georgia, specializing in capital prosecutions and electronic surveillance.

O. Randolph Rollins has been appointed executive vice president and general counsel for Tultex Corporation, an apparel manufacturer and marketer in Martinsville, Virginia.

Edward R. Leydon, vice president/law for Rhone-Poulenc Rorer, has been elected a director of the World Affairs Council of Philadelphia, Pennsylvania.

'69 **Robert M. Hart** is commuting to Duke Law School this semester from his law practice in New York City to teach the securities regulation II seminar.

Duke Presence on Rules Committee

The chair of the federal Civil Rules Advisory Committee, Judge Patrick Higginbotham, has noted the danger of a Duke takeover of that committee! At a recent meeting, Justice **Christine M. Durham '71** was added to the 13-member group as the representative of the state judiciary. She joins **Frank W. Hunger '65** who serves on the committee in his capacity as assistant attorney general of the Civil Division of the Justice Department, and **Professor Thomas D. Rowe, Jr.**, who is the reporter for the committee. Professor Rowe replaced **Professor Paul D. Carrington**, who was the committee's reporter for many years.

'70 **Charles B. Neeley, Jr.**, an attorney with Maupin, Taylor, Ellis & Adams in Raleigh, North Carolina, has been awarded the Distinguished Eagle Scout Award by the National Boy Scouts of America. The honor goes to former Eagle Scouts who have achieved preeminence in their careers and community.

'71 **Gail Levin Richmond**, a member of the law faculty of Nova University in Ft. Lauderdale, Florida, has been elected to a three-year term on the Law School Admissions Council Board of Trustees.

'72 **David W. Hardee** has been appointed president and co-chief executive officer of Kleer Vu Industries, Inc., a manufacturer of photographic albums, storage, and protective devices for industrial, commercial, and family uses, located in Compton, California. He will also join the company's Board of Directors. Hardee continues as a general partner of Hardee Capital Partners, an investment partnership, in Santa Monica.

Amos T. Mills, III was recently elected to a two-year term as president of the Ocean City Beach Citizens' Council in

Starr Named Independent Counsel

In early August 1994, **Kenneth W. Starr '73** was named the independent counsel to investigate the Whitewater inquiry. Starr was appointed by a three-member Special Division of the United States Court of Appeals to replace Robert Fiske as independent counsel. Fiske had been chosen by Attorney General Janet Reno, and the judicial panel ruled that the independent-counsel law was meant to avoid having an administration investigate itself. As independent counsel, Starr has the authority to reopen areas of the investigation already reviewed by Fiske.

Starr is a partner in the Washington, DC firm of Kirkland & Ellis. He was solicitor general during the Bush Administration and is a former circuit judge on the United States Court of Appeals for the District of Columbia. Starr is a life member of the Law School's Board of Visitors.

Starr acknowledges that the Whitewater investigation will be difficult, but, he says, "I don't say no to public service. I am open and receptive to it in



any form." At Law Alumni Weekend 1994, Starr received the Charles S. Murphy Award for public service (see p. 65).

ALUMNI ACTIVITIES

North Topsail Beach, North Carolina. Over 100 families reside at Ocean City Beach, which was one of the first ocean-front beaches established for Blacks in North Carolina.

John R. Wester, a partner with Robinson, Bradshaw & Hinson in Charlotte, North Carolina, has been elected a fellow of the American College of Trial Lawyers. He practices in the areas of employment discrimination, federal and state constitutional law, and commercial and securities law.



John R. Wester '72

'73 Daniel T. Blue, Jr. has had an endowed chair established in his name at North Carolina Central University in Durham. The chair, financed by the C.D. Spangler Foundation, will be a professorship in the political science department. Blue, who recently stepped down as speaker of the North Carolina House of Representatives, graduated from NCCU in 1970.

Marsha Taylor Gepford has opened a home-based solo law practice in Madison, New Jersey, dealing primarily in the area of real estate.

Gary W. Libby, a solo practitioner in Portland, Maine, was recently elected a trustee of the Portland Water District.

'74 Ronald M. Marquette has become a special deputy attorney general in the Special Litigation Division of the North Carolina Department of Justice.

Thomas E. McLain has been appointed by President Clinton to serve a three-year term as a commissioner on both the Japan-United States Friendship Commission and on the United States-Japan Cultural Commission. He has been appointed as financial advisor to the Friendship Commission. McLain is

a partner in the Los Angeles, California office of Perkins Coie.

Ira Sandron, an immigration judge in Miami, Florida, was selected to serve as an acting member of the Board of Immigration Appeals in Falls Church, Virginia for the month of April 1994. He spoke on a program on courtroom security at the ABA Annual Meeting in August.

Mary Ann Tally, public defender in Fayetteville, North Carolina, has been appointed to the National Criminal Justice Commission.

Raymond L. Yasser, a professor of law at the University of Tulsa College of Law, recently received the university's most prestigious teaching award, the "Outstanding Teacher Award."

Frances A. Zwenig is now vice president and counsel for the US-Vietnam Trade Council, which strives to improve trade and other relations between the United States and Vietnam.

'75 Jon P. Bachelder has been elected chair of the Michigan State Service Council of the American Red Cross. The Council consists of 15 members who are representative of the five geographic districts in Michigan. He is a partner in the firm of Warner, Norcross & Judd in Grand Rapids, where he practices employment and environmental law.

Albert A. Skwartz, Jr. has been appointed general counsel of Alexander & Alexander Services, Inc. of New York City, an organization of professional advisers providing risk management, insurance brokerage and human resource management consulting services from offices in more than 80 countries.

'76 Ralph B. Everett has been appointed by President Clinton to the President's Board of Advisors on Historically Black Colleges and Universities. Everett is the managing

partner of the Washington, DC office of Paul, Hastings, Janofsky & Walker.

L. Keith Hughes has joined the firm of Hopkins & Sutter, as partner and head of the firm's corporate transactions practice group in the Dallas, Texas office.

Stephen P. Kieffer has earned his master's degree in physical education at San Diego State University, where he was a teaching assistant and assistant rugby coach. He is pursuing a PhD in human movement (biomechanics) at the University of Western Australia in Perth.

Robert C. Weber has been inducted into the American College of Trial Lawyers, and is president-elect of the Cleveland, Ohio Bar Association. He is a partner with Jones, Day, Reavis & Pogue, and chair of the firm's products liability and regulation section.

C. Michael Wilson announces the formation of his firm in Charlotte, North Carolina, where his practice is divided between corporate/business representation and personal injury/wrongful death.

'77 Michael A. Ellis has been elected to the Board of Trustees of the Jewish Education Center of Cleveland, Ohio, which plans curricula for Jewish education for children and adults. He is a principal with the firm of Kahn, Kleinman, Yanowitz & Arns where he practices in the corporate and securities area; he is also a member of the firm's technology group. Ellis is also president of the Cleveland Area Development Finance Corporation, a division of the Greater Cleveland Growth Association.

Ember Reichgott Junge has been elected Senate assistant majority leader in Minnesota. She is the first woman to serve in the second-ranking leadership post



Ember Reichgott Junge '77

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in the Senate; she is serving her fourth term. Reichgott Junge practices law part-time, and is chair of Success by 6 Northwest, an early childhood initiative.

Gary E. Meringer has joined the New Orleans, Louisiana office of Phelps Dunbar, where he practices in the areas of securities, corporate and general business law.

Susan Freya Olive has been reappointed to the North Carolina General Statutes Commission and has been named a member of the North Carolina Board of Law Examiners. She practices intellectual property law with the firm of Olive & Olive in Durham.

'78 Christopher K. Kay, a partner with the Orlando, Florida office of Foley & Lardner, has been named "board certified" in civil trial law by the Florida Bar. Kay practices in the area of complex business and commercial litigation, and is vice president of the Florida Citrus Bowl.

Alan Mansfield has become a shareholder of the firm of Greenberg Traurig, resident in the firm's New York City office. He concentrates in complex civil and white-collar criminal litigation. He is a mediator to the United States District Court for the Southern District of New York, and an arbitrator for the National Association of Securities Dealers, Inc.

'79 John P. Higgins has joined the St. Petersburg, Florida office of Carlton, Fields, Ward, Emmanuel, Smith & Cutler as a shareholder.

Denise L. Majette was unopposed in the November election and retained her seat as a judge on the State Court of DeKalb County in Decatur, Georgia.

Juliann Tenney was selected as the leader of the Group Study Exchange of Rotary District 7710 for its five-week tour of Australia in November-December. She teaches for the Duke University Nonprofit Management Program.

James E. Williams, Jr. is the chief public defender of Chatham and Orange counties in North Carolina.

Rhonda Reid Winston has been confirmed as a judge in the District of Columbia Superior Court.

'80 Clifford B. Levine has been appointed vice chairman of the Pittsburgh, Pennsylvania Planning Commission and named a member of Pittsburgh's Zoning Board. He practices as a partner with Thorp, Reed & Armstrong, specializing in commercial, administrative, and land use litigation.

Marjorie S. Schultz announces the opening of the firm of Schultz & Farnier in Houston, Texas, specializing in estate planning and probate with a special emphasis on charitable giving.

Bruce P. Vann announces the formation of the firm of Meyer & Vann in Los Angeles, California, specializing in bankruptcy, corporate and litigation matters, with a special emphasis on real estate bankruptcy and entertainment financing.

'81 John J. Coleman, III has authored a third book, ALABAMA WORKERS' COMPENSATION PRACTICE (Guide Publishing Co.). Proceeds from the book will profit Kid's Chance Scholarship, a scholarship for the children of persons killed or totally disabled on the job. Coleman is a partner in the Birmingham, Alabama office of Balch & Bingham, practicing management-side employment law.

Linda Cox Fornaciari announces the opening of her law office, specializing in business transactions for emerging businesses in the Silicon Valley area of California.

J. Arthur Pope is the chief financial officer and treasurer of Variety Wholesalers, Inc., a 500-store regional retail chain in Raleigh, North Carolina. He recently served two terms in the North Carolina House of Representatives.

'82 James E. Bauman has joined the firm of Mallery & Zimmerman in Milwaukee, Wisconsin.

James B. Hawkins has been named president of the public communications group of BellSouth Telecommunications, Inc., in Atlanta, Georgia.

Richard R. Hofstetter has become a partner in the Indianapolis, Indiana law firm of Mantel, Cohen, Garelick, Reisweg & Fishman.

Vincent J. Marriott, III has become a partner in the firm of Ballard Spahr Andrews & Ingersoll in Philadelphia, Pennsylvania. He is a member of the firm's litigation department and concentrates



Vincent J. Marriott, III '82

in the areas of bankruptcy and workouts.

I. Scott Sokul has been appointed vice president of governmental relations of The Everidge Group, a governmental affairs, political, and public relations firm based in Orlando, Florida. He successfully managed the re-election campaign of US representative John Spratt (D-SC) on behalf of the Democratic Congressional Campaign Committee.

T. Richard Travis has joined the corporate and tax section of the firm of Manier, Herod, Hollabaugh & Smith in Nashville, Tennessee, where he practices in the areas of trust tax, and estate and business planning.

D. Reginald Whitt is in residence at Duke Law School this semester, teaching a course on religion and government. Father Whitt is affiliated with the Dominican House of Studies in Washington, DC.

Richard C. Zeskind has been named in-house counsel of Eastern Savings Bank in Baltimore, Maryland.

'83 **Gwen S. Anderson** announces the formation of G.S. Anderson & Associates in Denver, Colorado, emphasizing real estate law, hotel and resort law, commercial litigation, business and commercial law, and air

quality and government regulation. Anderson is also of counsel to the firm of Grimshaw & Haring.

Lisa E. Cleary, a partner with the New York City office of Patterson, Belknap, Webb & Tyler, has been selected as one

of 12 lawyers in New York to receive the President's Pro Bono Service Award from the New York State Bar Association. She was honored for her work as chair of the Board of Directors of MYF Legal Services, Inc., an organization

Improving International Labor Conditions

"It strikes me as bizarre that more people are sensitized to not buying tuna captured in nets than they are to not buying carpets, garments and other consumer goods made with child labor, bonded labor, or by workers who have absolutely no rights," states **Terrence (Terry) Collingsworth '82**, who is now trying to address this problem. "There is presently no effective organization to represent workers, farmers and individuals in this new global order [which recently culminated in the ratification of the General Agreement on Trade and Tariffs (GATT)], so I've made a first start by trying to advocate for workers and bring differing groups together to pursue mutual interests."

Based in Nepal, Collingsworth currently holds two positions: general counsel to the International Labor Rights Education and Research Fund (ILRERF) and country director for the Asian-American Free Labor Institute (AAFLI) programs in Bangladesh, Cambodia and Nepal. Most of his work abroad is done for AAFLI, while his ILRERF duties involve both policy development in Washington, DC and developing coalitions with worker and human rights groups to further the goal of making the ILRERF the global organization which will coordinate issues of common concern to workers.

Collingsworth works closely with individual governments if they are willing to work with him. Cambodia and Nepal have requested his assistance as a consultant, while the Malaysian government, he says, harassed him and ultimately forced to him to leave the country.

Developing Enforceable Labor Standards

With ILRERF, Collingsworth is working to create enforceable international labor standards. He works with labor lawyers, trade unions and human rights groups to create a demand for a "social clause" in the GATT agreement to assure labor and environmental standards and to provide necessary balance in the global economy. ILRERF is a Washington-based non-profit which studies labor conditions in specific countries, lobbies for improved global labor standards, and files test cases in all possible forums to advance enforcement of labor standards.



Terry Collingsworth '82, left, with James Wyatt '82 and young Alexander Collingsworth.

In Malaysia, Collingsworth was arrested for marching with workers protesting a US company which had fired workers leading the effort to form a union. Collingsworth was asked to leave the country. "I did, but returned overland from Thailand to continue assisting the workers in an advisory capacity." When a local newspaper quoted the Malaysian Minister of Labor as saying that it was unfortunate that Collingsworth had left the country since he would have been happy to discuss labor problems, Collingsworth called the Minister and took him up on the offer. The two had a long debate in front of local media, but Collingsworth says the televised version was heavily edited and "I appeared to be agreeing, with my silence, to the Minister's statements."

Improving Rights for Workers

AAFLI, an international institute of the AFL-CIO, has been conducting union development programs in Asia for nearly 20 years. Collingsworth first got involved with AAFLI in 1992 when he went to Nepal to draft the country's first Trade Union Act. Following

passage of this legislation, he stayed on in Nepal for AAFLI to develop the trade union movement under the new law.

While in Nepal, Collingsworth says, "I noticed the obvious and pervasive problem of child labor, particularly in the carpet factories, and got involved in publicizing the problem and advocating for the creation of schools and the enforcement of existing compulsory education laws." In order to lead by example, AAFLI recently opened a school for former child workers, providing food, lodging, clothes, and high quality education and vocational training.

In Bangladesh, where there has been a labor law system since British colonial times, the government has formed a commission to revise and modernize the labor laws. Collingsworth has been invited by several union leaders on the commission to advise them as to necessary changes to improve labor standards.

He is also working with the founders and leaders of the Bangladesh Independent Garment-Workers Union (BIGU), which is organizing the one million female workers making garments for export to the US

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whose mission is to ensure that poor New Yorkers are not denied equal access to justice because they cannot afford a lawyer.

Seth Forman was selected by the Guam Legal Services Corporation as Guam's

Volunteer Lawyer of the Year for 1994—the attorney “who has given the most time to assist in attaining ‘equal access to justice’ to the low income community.” He practices with the law offices of Keogh & Butler in Agana.

and Europe. Bangladesh has recently become a garment manufacturing center due to extremely low wages. “The average *monthly* salary for a garment worker is \$15, which is for over 70 hours per week. The conditions are nearly identical to the sweatshops in England and the US around the turn of the century,” says Collingsworth.

In Cambodia, Collingsworth is working exclusively on drafting a comprehensive labor code. “Due to Cambodia's unique and bloody history, many of the present members of Parliament spent the last 20 years in labor camps, in hiding, or living as political refugees in other countries. Consequently, their lack of expertise required that a number of consultants be brought in. I was invited to do the labor code, working with the chair of the Parliament's Labor Committee and the Minister of Labor. Drafting the code was the easy part,” says Collingsworth. “Since [these two politicians] are from two of the formerly warring parties, they have a fierce hatred of each other, and now my job has become serving as an intermediary between them to get them to agree on a final draft law.”

Collingsworth feels that his experience at Duke has made a tremendous difference in his life. “I was trained to think and reason, not just to spit back theories, and this has served me well, especially now that I'm practicing in an area that did not exist when I was in school.”

After graduating from Duke, Collingsworth was an associate at Perkins Coie in Seattle, specializing in labor law and litigation. “I often found, especially in employment cases, that the plaintiffs or individual employees were represented by very marginal lawyers, while the employer had this huge law firm. I began to feel like things were out of balance and I was on the wrong side. When I left the firm, it was to begin working for employees, unions, etc.” After leaving Perkins Coie and before starting his next job, Collingsworth spent four months traveling around India. “It really changed my life. After seeing some of the poorest people in the world, and being invited to slums in Calcutta and Bombay, I knew that I had no real problems. No matter what else happened to me in life, I knew that I

was still fortunate and would never know true misery or poverty. This set me free in that I left behind any desire to ‘get rich’ or self-evaluate based on material possessions.”

Upon his return from India, Collingsworth taught at the Cleveland-Marshall College of Law at Cleveland State University, then at Loyola Law School in Los Angeles. He spent a year as a professor-in-residence at the Equal Employment Opportunities Commission (EEOC) before joining with AAFLI and ILRERF.

Collingsworth's wife, Sufie Berger, is a photographer. They live in Nepal with their son, Alexander, who was born this past August. They recently hosted Duke classmate **James F. Wyatt III '82** and his wife Edna on their honeymoon. “It was fun for us to show Nepal to them,” says Collingsworth. “Most people have never seen some of the things that are normal here: cows everywhere (to Hindus, cows are holy and are free to walk the streets); children who are thrilled if you spend a few minutes speaking English with them; mountains that are two or three times higher than anything in the US; and poverty and happiness on a grand scale.”

Collingsworth's long-term goal is “to form a global organization that represents workers and indigenous people to provide a balance to the already well-organized multinational firms. I hope to be able to offer the equivalent of the ‘Good Housekeeping Seal of Approval’ to products made under conditions that meet reasonable standards for rights for workers. The network exists globally, but what is lacking is consumer awareness and funds.” He believes that progressive, forward-looking companies can promote themselves “by appealing to consumers who care about worker rights and people. A trend is beginning to take hold where companies are doing this,” notes Collingsworth. “Levi's, for example, has a voluntary ‘Code of Ethics’ that pledges to only do business with contractors who comply with the laws in their home countries.” Of his work, Collingsworth says: “I feel I have finally found a use for my legal and advocacy skills that allows me to make a unique contribution in the world.”

— Laura Ertel

John Randolph Prince, III has authored *Where No Minds Meet: Insurance Policy Interpretation and the Use of Drafting History*, 18 VT. L. REV. 409 (Winter 1994). The article concerns issues arising in environmental and toxic tort insurance coverage disputes. Prince practices commercial litigation with the firm of Anderson Greenfield & Dougherty in Philadelphia, Pennsylvania.

Rebecca Davis Prince is associate counsel for the Crozer-Keystone Health System in Philadelphia, Pennsylvania.

Robin Bernstein Taub announces the formation of the firm of Paradiso, Dack & Taub, with offices in Bethesda, Maryland; Vienna, Virginia; and Washington, DC.

M. Edward Taylor has become corporate counsel for human resources of Univar Corporation, a multi-national chemical distributor in Seattle, Washington.

'84 Sol W. Bernstein has joined the legal department of National Westminster Bancorp in New York City as vice president and counsel.

Ronald L. Claveloux is now deputy general counsel of First Deposit Corporation in San Francisco, California.

Kurt W. Florian, Jr. has been elected partner in the Chicago, Illinois office of Lord, Bissell & Brook, where he concentrates on corporate finance matters.

Briget M. Polichene has recently relocated to Indianapolis, where she is the chief counsel to the Indiana Department of Insurance.

'85 Christopher D. Mangum has been named a partner at Alston & Bird in Atlanta, Georgia.

Kenneth G. Mattern received an LL.M. degree in environmental law from George Washington University in 1993. He is a major in the United States Air Force, and is legal advisor to commanders and engineers at 23 installations and aircraft plants regarding environmental compliance and cleanup programs.

Providing Legal Support for Poland's Emerging Democracy

"Don't come."

This two-word telegram from her mother was received by **Bozena Sarnecka-Crouch '86** in 1980 as she prepared to return to her native Poland after a six-month visit to the United States. "The news was not optimistic," Sarnecka-Crouch explains. Russians were planning to invade Poland, and those outside the country were urged by friends and family members to stay away.

Sarnecka-Crouch, who has a JD from the Warsaw University School of Law and worked as an assistant professor of law in Poland, began making plans for her new life in America. She started her American legal education at Tulane, and then transferred to Duke in 1984 to pursue her JD degree. She fondly remembers her days at Duke Law School. "There was an openness to foreign students—it was like having an extra family. I felt very protected," she recalls. "All the professors and the administrators knew me by name, even those I didn't have classes with."

Upon graduation from Duke in 1986, she clerked for the US Bankruptcy Court of the Central District of California in Los Angeles, then worked for a labor law firm in L.A. Then, two years after her initial application, she received a job offer from the US Library of Congress in Washington, D.C. to work as a Polish law specialist. "The job was made for me," she says. "It combined my experience in US and Polish law."

While contemplating the offer, she spoke with former Duke Law professor Kazimierz Grzybowski (who died in 1993), a fellow Pole, who had worked at the Library of Congress in a similar position. "He was so happy," she recalls. "He told me it would be good for Poland if I got this job." Her decision made, she moved back to the East Coast in 1988.

At the Library of Congress, Sarnecka-Crouch researches and writes reports about legal issues concerning Polish and Russian law for the United States Congress, other government offices, and the judiciary. She has co-authored a range of comparative law publications, including: "Immigration Laws Concerning Admission and Resettlement of Refugees," "Campaign Financing of National Elections in Foreign Countries," "Legislative Ethics in Democratic Countries of the World," and "Firearms Regulations in Various Foreign Countries."

A new opportunity arose in 1992, one which would bring her back to her native Poland for only



Bozena Sarnecka-Crouch '86, left, with Supreme Court Justice Sandra Day O'Connor.

the second time in 13 years. The newly formed Central and East European Law Initiative (CEELI), a project of the American Bar Association designed to support the process of law reform in Eastern and Central European countries, was looking for a Polish liaison. CEELI's premise is that lasting economic and political reform is dependent upon a functioning system of law and on adherence to the rule of law. The pro bono service project makes US legal expertise available to emerging democracies, utilizing a network of volunteer lawyers, judges and law professors. CEELI recognizes that US expertise and traditions offer only one approach for participating countries to consider, and that they may prefer to follow the example of other civil law countries.

Sarnecka-Crouch took a sabbatical leave from the Library of Congress and returned to Warsaw, Poland for 10 months. As only the third liaison in the CEELI project (the first two were in Bulgaria and Hungary), she joined the fledgling organization which now boasts over 100 American participants in many Central and Eastern European countries. Her return to Poland "was haunting," she recalls, "coming back to find that things were totally gone from my life. I met people I hadn't seen in 13 years—former co-workers who are now high level officials. It's very different because there is democracy and freedom now. But it's also a total upside-down

change imposed on people. I chose to come to the United States—I imposed that change on myself. The change came to them, and it was a big challenge.

"[The Polish people] were against communism, and they idealized capitalism. They didn't know any bad features of capitalism. Then they found themselves without jobs, without money, without a possibility of support." She says life in Poland is still very difficult. "It's extremely tense, extremely stressful, and very unsure of the future for individuals."

As a CEELI liaison, Sarnecka-Crouch had the opportunity to make a positive impact on her native country. She served as a "needs assessor," identifying how CEELI resources should be used in order to provide the best assistance to the Polish Parliament, government agencies and law schools in the restructuring of the Polish legal system during political and economic transition. "CEELI didn't provide anything unless Poland asked for our help," she explains. For example, "if they said they had problems with money laundering, CEELI would send appropriate attorneys and specialists to assist them."

Working with CEELI provided Sarnecka-Crouch with a new outlook on her American colleagues. "While working with CEELI, I really appreciated American lawyers. The people who came to Poland to provide free help were a special kind of people." She met American law professors on sabbatical teaching in Polish law schools for \$30 to \$40 a month. "They loved Poland. They enjoyed helping people understand American law in order to reform their own law."

At a meeting of the CEELI executive board and liaisons in Austria, Sarnecka-Crouch presented a report on CEELI's progress in Poland. Among the members of the CEELI Executive Board were Sandra Day O'Connor, Supreme Court justice and Lloyd Cutler, former White House counsel. "Imagine. I was giving a speech and Justice O'Connor was taking notes!"

Sarnecka-Crouch is philosophical about her impact on Poland's development through her CEELI experience. "You cannot change the total reality," she says. "But by doing your little tiny brick for the building, you can have an impact."

—Laura Ertel

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William D. Morris is a partner in the Houston, Texas office of Akin, Gump, Strauss, Hauer & Feld, working in the commercial finance area.

Marshall D. Orson has been promoted to vice president/business affairs at Turner Home Entertainment in Atlanta, Georgia, the Turner division responsible for book publishing, home video, interactive products, licensing and merchandising, educational services and international theatrical distribution. He also continues as vice president/business affairs of TBJ Productions, the division which handles documentary production. He has been elected chairman of APPLE Corps, an independent advisory and oversight group to the Atlanta public schools.

Ann M. Riposanu has been promoted to deputy general counsel at K-III Communications Corporation in New York City, a diversified communications company focused on education, information and magazine publishing.

Loren A. Weil has become a partner with the Chicago, Illinois office of Winston & Strawn.

'86 Susan Bysiewicz has been appointed chair of the Connecticut General Assembly's Government Administration and Elections Committee; she is serving her second term.

Robert T. Danforth is an associate at McGuire, Woods, Battle & Boothe in Charlottesville, Virginia, where he practices in the area of estate planning and administration. He also teaches a class on the same subject at the University of Virginia School of Law.

Brett D. Fallon has been elected to a two-year term on the executive council of the Young Lawyers' Division of the American Bar Association, representing Delaware and the District of Columbia. He is an associate in the Wilmington, Delaware office of Smith, Katzenstein & Furlow, where he practices general litigation.

John D. Methfessel, Jr. is a partner in the firm of Methfessel & Werbel in Rahway, New Jersey, where he is a trial attorney specializing in insurance defense matters.

Susan Canter Reisner has been elected to partnership in the Louisville, Kentucky firm of Stites & Harbison, where she practices in the employee benefits area.

'87 Mary R. Boland is pursuing a PhD degree in English at the University of Rochester, where she also teaches.

Thomas A. Gauza is now corporate counsel of Baxter International, Inc. in Deerfield, Illinois.

Robert E. Harrington has been elected to partnership in the firm of Stone, Piggman, Walther, Wittmann & Hutchinson in New Orleans, Louisiana.

Marc Israel announces the opening of his law practice in New York City, specializing in litigation, landlord/tenant matters, banking and foreclosure actions, and real estate transactions.

Amy K. Johnson is an assistant staff judge advocate for the United States Air Force in Washington, DC.

Timothy R. Johnson has joined the part-time faculty at California State University—Hayward, where he will teach employment relations. He continues as manager of labor relations for Southern Pacific Lines in San Francisco.

Stephanie A. Lucie has become assistant general counsel of Transco Energy Company in Houston, Texas.

Elizabeth Miller Roesel is an associate in the intellectual property department of Kirkland & Ellis in Washington, DC.

'88 Kodwo P. Gharthey-Tagoe has joined the Richmond, Virginia office of Mays & Valentine, working primarily in the areas of energy, communications, and insurance regulation as well as international business, focusing particularly on Africa. He

has also been appointed co-chair of the Subcommittee on African Trade and Investment of the ABA Section on International Law and Practice.

Kelley A. Grady is a litigation associate at Reed Smith Shaw & McClay in Philadelphia, Pennsylvania.

Michael P. Scharf, a professor at the New England School of Law in Boston, Massachusetts, has published *Report of the ABA Task Force on Teaching International Criminal Law*, 5 CRIM. L. FORUM 91 (1994), and co-authored AN INSIDER'S GUIDE TO THE INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA: A DOCUMENTARY HISTORY & ANALYSIS (1994).

Michael C. Sholtz has been named the associate director of planned giving for Duke University.

Holly E. Stroud is practicing with Jones, Day, Reavis & Pogue in Dallas, Texas.

Winston J. Zhao is working for Clifford Chance in Hong Kong, advising foreign clients doing business with the People's Republic of China.

'89 Sean Callinicos has become the chief counsel to the Clean Air, Wetlands, Private Property and Nuclear Regulation Subcommittee of the United States Senate, chaired by Senator Lauch Faircloth (R-NC).



Sean Callinicos '89

Sharon Carr Harrington has been named the director of the Office of Environmental Affairs for the City of New Orleans, Louisiana.

John E. Pelletier has joined Funds Distributor, Inc. in Boston, Massachusetts, as senior vice president and general counsel, and he has also been elected corporate secretary of the Dreyfus Funds.

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Gary H. Pilnick is working in Tokyo, Japan for Mori Sogo Law Offices, where he specializes in international transactions. He will return to the firm of Jenner & Block in Chicago, Illinois in the summer of 1995.

Robin L. Rosenberg has joined the West Palm Beach, Florida office of Foley & Lardner, where she practices in the litigation department.

'90 **Karen R. Cashion** has relocated to Atlanta, Georgia, and is practicing with the firm of Meadows, Ichter & Trigg.

Timothy S. Crisp has joined the Chicago, Illinois office of Winston & Strawn.

Anthony Taibi has published *Banking, Finance and Community Economic*

Empowerment: Structural Economic Theory, Procedural Civil Rights, and Substantive Racial Justice, 107 HARV. L. REV. 1463 (1994).

Gerard J. Waldron has joined the Washington, DC office of Covington & Burling as special counsel, where he works in the communications and legislative practice areas.

Changing Mongolia's Legal Framework

After 70 years of Russian dominance, Mongolia is searching for a new identity. "Since the first democratic elections took place in 1990, the country has begun a transition from a centrally planned economy to a market economy," explains **Heimerick (Rick) Jansen, LL.M. '88**.

Jansen is a legal advisor in Ulaanbaatar, Mongolia, helping to develop Mongolia's new legal framework in a variety of ways. He is currently writing a needs assessment for the country's legal sector, which will be distributed among foreign donor organizations upon its completion. Since April 1994, Jansen has been assisting the Supreme Court of Mongolia and the Ministry of Justice with the interpretation and drafting of new legislation based on a market economy. He also reviews Mongolia's existing business and commercial laws.

Recently, Jansen has lectured to Mongolia's legal community on subjects including bankruptcy law, property rights, contracts, privatization of state-owned enterprises, the European Union, the independence of judges and the Dutch judicial system. "I also assisted Mongolia's judiciary with the drafting of a code of conduct for its members and made several trips to the countryside to get acquainted with working conditions of judges and lawyers outside the capital." Jansen says these conditions include poor housing, communications, education and salaries, as well as a dearth of office equipment such as faxes and copy machines.

The concept of private property, particularly as related to immovables, is still an issue on the Mongolian political agenda, says Jansen. "Opponents of land privatization are concerned that this would destroy pastures and think it would be contradictory to Mongolia's historical traditions," he explains. "On the other hand, supporters of privatization of land believe that this would help utilize currently unused land, develop free market relations, and attract foreign investment." The privatization of livestock has gone quite well, notes Jansen. At present, more than 90



Rick Jansen '88 astride a horse in the Sobi Desert.

percent of all livestock in Mongolia is privately owned.

Jansen says he applied for this position because he wanted an opportunity to explore the legal environment outside the big law firms. He was chosen as a finalist for the job by the United Nations, and the Mongolian government ultimately selected him. This one-year project is sponsored by the United Nations Development Program (UNDP) and Stichting Nederlandse Vrijwilligers (SNV), a Dutch governmental development organization. It is co-financed by the Asian Development Bank.

Prior to his stint in Mongolia, Jansen worked in Brussels for an American law firm, practicing international commercial and corporate law as well as the law of the European Union. Immediately after Duke, he did a traineeship in Paris with a French law firm, then was an associate at a Dutch law firm in Rotterdam, where

he practiced Dutch commercial, corporate, labor and environmental law.

When not working, Jansen has spent time traveling around the Mongolian countryside and in China. Of life in Mongolia, he says that "one starts valuing the simple things in life again, such as having a hot shower or a well-functioning telephone, since these things are more the exception than the rule here."

Jansen says that although Mongolian culture differs from European culture, it is not that different. "Many Mongolians got Europeanized when they were studying in the former Soviet Union and other countries of the former Eastern Bloc." A recent addition to Mongolian culture, he notes, is vegetables ("before it was just mutton and rice"). Jansen says the food supply is not as bad as it used to be, "but fresh vegetables and good meat apart from mutton are still hard to find.

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Elizabeth Zirkle Williams has opened a law and mediation practice in Gaithersburg, Maryland.

'91 **Susan L. Heilbronner** has joined the Washington, DC office of King & Spalding, working as an associate in the area of white collar criminal defense.

Dana J. Lesemann has joined the service industry practices division of the Bureau of Consumer Protection in the Federal Trade Commission in Washington, DC.

Maureen Gimpel Maley is now assistant general counsel of Genesis Health Ventures in Kennett Square, Pennsylvania.

David S. Sager has joined the Morristown, New Jersey and New York City law firm of Porzio, Bromberg & Newman, as an associate in the litigation department.

Juraj Strasser is counsel of the European Bank for Reconstruction and Development in London, England.

Thomas K. Wallinder is on leave from the law firm of Mannheimer Swartling in Stockholm, Sweden, and is currently working in the corporate finance department of Merrill Lynch International Ltd. in London, England.

Xianping Wang has been appointed adjunct professor by the Management College of Civil Aviation Administration of China, teaching international aviation strategy and international aviation relations.

Arnold W. Winter, an associate in the Philadelphia, Pennsylvania office

of Obermayer, Rebmann, Maxwell & Hippel, was recently appointed vice president of membership and development and a director of the German-American Chamber of Commerce, Inc.—Philadelphia. At his firm, he serves domestic and international clients as a member of the corporate and real estate department.



Arnold W. Winter '91

Arnold W. Winter '91

'92 **Sean E. Andrussier** has accepted a clerkship with the Honorable Karen LeCraft Henderson of the United States Court of Appeals for the DC Circuit for the 1995-96 term.

Robert S. Chang has joined the faculty at California Western University School of Law in San Diego, where he will teach contracts and a seminar entitled "Law and the Intersection of Race, Gender, and Ethnicity." His article,

The discovery of apple juice or canned soup on your shopping tour becomes a thrilling experience."

Jansen notes that many of this country's 2.2 million citizens "are extremely curious, perhaps because of 70 years of isolation. Buddhism is still pretty much alive. Destroyed temples are being rebuilt and the Dalai Lama is a frequent visitor to the country." Alcoholism is a major problem. "One can find the glass of broken bottles of Arkhi (Mongolian vodka) nearly everywhere in Ulaanbaatar."

Historically, Mongolia has been closely allied with the former Soviet Union since 1921, and was sometimes referred to as the unofficial 16th Republic of the Soviet Union. Jansen notes that Mongolians are now trying to re-identify themselves with Genghis Khan, the great warrior and unifier of the Mongolian people back in the 13th century. "They take a lot of pride in their past," says Jansen, "but in my opinion they should focus more on their future." Even now, half of the population lives as semi-nomadic herdsmen in the countryside, the other half mainly in Ulaanbaatar.

One change over the past few years is the growing trend of Mongolians turning away from jobs in the public sector and trying their hand at private business. Jansen says this is the result of a widening gap between salaries in the public and private sectors. A minister, member of Parliament, or a judge—Jansen says—makes only \$50 a month.

A native of the Netherlands, Jansen earned his Civil Law degree at the University of Amsterdam in 1987, then enrolled at Duke to pursue an LL.M. He came to the US to get acquainted with the Anglo-American legal system (the Netherlands has a civil/continental legal system) and to broaden his legal horizons.

American law schools differ from Dutch schools, says Jansen, in that "American law students may be more motivated than their Dutch counterparts. As a rule, Dutch law students do not have the burden of a

loan, and as a consequence, it is less important to find a \$70,000 position after graduation. They will never find that anyway, since the starting salary for Dutch attorneys is approximately \$30,000."

Another major difference is that "Dutch law students are age 18 when they enter law school, often too young to make a motivated choice. Law studies are seen more as a general type of education." Only 10 to 15 percent of Dutch law students go on to become attorneys, judges, or enter other, strictly legal professions.

Jansen modestly jokes that he chose Duke because "they accepted my application!" He claims to have driven "the biggest car in North Carolina"—a Buick station wagon, on frequent outings to the Metro Club, Ninth Street Bakery and Brightleaf Square. Jansen says he had a great time at Duke, getting acquainted with fellow Europeans and Americans, and finding the professors very helpful to foreigners.

With nearly a year of consulting experience in Mongolia under his belt, Jansen sees room for improvement of development efforts: "One of the fascinating things to observe is the circus of foreign consultants and experts who fly into Ulaanbaatar. Many seem to work in the same area and offer the same type of assistance. I think that in order to make development aid more effective, the coordination between donor countries and organizations and the Mongolian authorities must improve considerably."

Jansen keeps in touch with the Law School via frequent, humorous letters detailing the trials and tribulations of a stranger in a strange land. Telling tales of getting his apartment robbed by a Mongolian policeman, falling through a stand which collapsed during the Naadam horseraces, dressing up for the Peace Corps' Halloween party, and examining the remains of a dinosaur, it is obvious that Jansen is making the most of his year in Mongolia.

—Laura Ertel

ALUMNI ACTIVITIES

Toward an Asian American Legal Scholarship: Critical Race Theory, Post-structuralism, and Narrative Space, 81 CAL. L. REV. 1241 (1993), is scheduled to be reprinted in 1 ASIAN L.J. (1994).

Jon E. Cohen is running a real estate development and property management company in Newport, Rhode Island.

Denise A. Dosier is a corporate law/health care associate with Bryan Cave in St. Louis, Missouri.

Gail H. Forsythe has been chosen as the first discrimination ombudsperson for the Law Society of British Columbia to mediate harassment disputes involving lawyers. She practices in Vancouver and Edmonton, Canada, specializing in dispute resolution and mediation.

M. Monique Garris is the academic coordinator for the 1995 Special Olympics World Summer Games in New Haven, Connecticut.

James A. Gleason has a general law practice in Thomasville, North Carolina.

Norman H. Petty, Jr. has joined the business and finance department of Morgan, Lewis & Bockius in Philadelphia, Pennsylvania.



The Class of 1974 celebrated its 20th reunion in October with Professor William Reppy (seated at piano).

Laura L. Segal is a corporate associate at Paul, Weiss, Rifkind, Wharton & Garrison in New York City.

'93 **Jacquelynn M. Broughton** is practicing with Clark, Ladner, Fortenbaugh & Young in Philadelphia, Pennsylvania, primarily in the areas of securities and products liability litigation.

Teresa DeLoatch has joined the Charlotte, North Carolina office of Petree Stockton as a litigator.



Teresa DeLoatch '93

Personal Notes

'51 **Milly S. Dufour** was married to Albert H. Peters, Jr. on August 21, 1993. They reside in Aiken, South Carolina.

'65 **Alexander B. Denson** was married to Mary Haywood on October 2, 1993. They reside in Raleigh, North Carolina.

'68 **Paul B. Ford, Jr.** and **Nancy Young** announce the birth of

their daughter, Jade Augustine Young Ford, on June 26, 1994.

'76 **Russell M. Frandsen** and his wife, Christie, report the birth of their tenth child and fifth daughter on January 26, 1994.

'78 **Edward P. Tewkesbury** and his wife, Fran, announce the birth of their third child, a daughter named Anne Elizabeth, on January 6, 1994.

'79 **Carl J. Schuman** and his wife, Mary, announce the birth of their second child and first son, Joseph Peter Schuman, on August 10, 1994.

'80 **Jeffrey P. King** and his wife, Gail, announce the birth of their first child, a daughter named Katherine MacConnell King, on July 8, 1994.

Lisa Margaret Smith was married to William Edward Bowen on October 8, 1994.

ALUMNI ACTIVITIES

1994 in White Plains, New York, where Lisa is an assistant United States attorney. They reside in Wilton, Connecticut.

'81 Linda Cox Fornaciari announces the birth of a second child, a daughter named Carol Cox Fornaciari, on July 3, 1994.

'82 Lorraine Shook Berkowitz reports the birth of a third child, a son named Michael Shook Berkowitz, on December 7, 1993. He joins his sister Rachel and brother Aaron.

James F. Wyatt, III was married to Edna Sandoval on October 15, 1994. They reside in Charlotte, North Carolina, where James is in private practice.

'83 David T. Buckingham and his wife, Cynthia, report the birth of a daughter, Anne Elizabeth, on January 7, 1995.

Jean Gordon Carter and her husband, Michael, announce the birth of a son, William Gordon Carter, on May 25, 1994.

Richard L. Garbus, and his wife, Peggy, announce the birth of their second daughter, Berett Elizabeth, on July 21, 1994.

Ronald G. Hock and his wife, Barbara, report the birth of their third child and second son, Trevor Hollingsworth Hock, on August 17, 1994.

'84 Patricia Beaujean-Lehtola and her husband, Jouni Lehtola, announce the birth of their second child, a daughter named Lila Marcela, on July 18, 1994.

Sol W. Bernstein and his wife, Risa, announce the birth of their second son, Ari Phillip, on February 1, 1994.

'85 Seth M. Bernanke and his wife, Ellen Goldberg, report the birth of a daughter, Mariah Lina Bernanke, on November 6, 1994.

J.S. (Chris) Christie announces the birth of his third child, a daughter named Sarah Wallace Christie, on October 9, 1993.

J. Page Davidson and his wife, Nina, announce the birth of a daughter, Jessie Elizabeth, on February 26, 1994.

J. Porter Durham and his wife, Meredith, announce the birth of their third child, a daughter named Everett Leighton, on January 10, 1995.

Eric A. Isaacson and **Susan Weaver**, Class of '87, report the birth of a second daughter, Audrey Louise Weaver Isaacson, on June 7, 1994.

Peter A. Thalheim was married to Maura Delaney Puckett on June 18, 1994 in Old Greenwich, Connecticut. Peter has a solo commercial law practice in Greenwich. Attending the wedding were several members of the Class of '85: Siobhan and Press Millen, Steven Lazar, Alan Cregg and Robert Carroll.

L. Campbell Tucker, III and his wife, Burnet, announce the birth of their first child, a daughter named Elizabeth Carlisle (Carley) Tucker, on July 25, 1994.

'86 Catherine Deery Barshay and **Clifford A. Barshay** announce the birth of their first child, a daughter named Emily Clare Barshay, on May 13, 1994.

Susan Bysiewicz and **David H. Donaldson**, Class of '87, announce the birth of their second daughter, Leyna, on December 22, 1993.

Alexandra Allen Carr and her husband, Timothy, announce the birth of a daughter, Julia Elizabeth Carr, on July 25, 1994.

Robin G. Hayutin and **Allen G. Fishel** announce the birth of their second child, Ryan Elliott Fishel, on June 28, 1993.

'87 Scott A. Cammarn and his wife, Heather, announce the birth of a second child, Kevin John, on September 27, 1994. He joins his older sister, Cindy.

David H. Donaldson and **Susan Bysiewicz**, Class of '86, announce the birth of their second daughter, Leyna, on December 22, 1993.

Eve Noonberg Howard and **Jasper A. Howard** report the birth of a son, Charles Durham, on June 16, 1994.

Elizabeth Miller Roesel and her husband, Thomas, announce the birth of a daughter, Erica Corinne Roesel, on June 6, 1994.

Sherry White Tatum and **James E. Tatum, Jr.**, Class of '89, announce the birth of a son, James E. Tatum, III, on November 16, 1994.

Susan Weaver and **Eric A. Isaacson**, Class of '85, report the birth of a second daughter, Audrey Louise Weaver Isaacson, on June 7, 1994.

'88 Timothy A. Baxter was married to Lynn E. Digby in Boston, Massachusetts on October 9, 1993. Tim practices with Morrison, Mahoney & Miller in Boston.

Jody K. Debs was married to George H. Gigliolio in 1993. They reside in San Francisco, California, where Jody is employed by Bechtel Corporation, working on public sector engineering and construction projects.

Maria B. Douvas was married to Hence Orme on May 14, 1994. They reside in New York City, where Maria is an associate with Stroock & Stroock & Lavan.

Kelley A. Grady and her husband, John Janda, report the birth of a second son, Conor, in April 1994.

Richard L. Gulino was married to Becca Biggio on August 28, 1993 in Washington, DC.

James E. Shepherd V and his wife, Brenda, announce the birth of their

ALUMNI ACTIVITIES



Alumni socialize during Law Alumni Weekend 1994.

first child and son, Kyle Anthony, on June 10, 1994.

Taylor D. Ward and his wife, Sally, announce the birth of a son, Richard McSween (Mac) Ward on March 10, 1995.

'89 Gayle Crellin Anthony and her husband, Kevin, announce the birth of their first child, a son named Robert Justin Anthony, on November 30, 1993.

Mark T. Hurt and his wife, Rhonda, report the birth of a second child, William Alexander, on March 14, 1994. He joins his older sister, Lauren.

John B. Persiani was married to Theresa Grinwis on September 24, 1994. They reside in Jupiter, Florida.

Kenneth A. Remson was married to Jana Raeanne Kealaokeaumoe Chun on September 10, 1994 in Kahuku, Hawaii. Groomsmen included Sean Hughto '89 and Alan Levine '88; Karen Wingo '89 attended. Ken practices in Los Angeles, California with Jones, Day, Reavis & Pogue, where he specializes in insurance litigation.

Janelle M. Sherlock and her husband, Chris Pearson, announce the birth of their first child, a son named Jake Maxwell Pearson, on August 6, 1994.

James E. Tatum, Jr. and Sherri White Tatum, Class of '87, report the birth of a son, James E. Tatum, III, on November 16, 1994.

'90 Caroline F. Bergman was married to Michael R. Gottschalk on March 5, 1994. They reside in Chatham, New Jersey; Caroline practices with Cravath, Swaine & Moore in New York City.

Michael D. Kabat was married to Nancy A. Stoll in Pittsburgh, Pennsylvania on May 29, 1994. Classmates Jay Fisher and Jeff Israel were among the groomsmen. They reside in Atlanta, Georgia, where Michael practices with the firm of Fisher & Phillips.

Scott L. Kaufman and his wife, Audrey, announce the birth of a son, Aaron Joshua, on December 10, 1993.

Martin Schaefermeier and his wife, Grace, announce the birth of a daughter, Elizabeth Anna, on July 14, 1994.

Anthony Taibi was married to Hester Leone Furey on June 18, 1994 in New York City. Tony is practicing with the firm of Kutak Rock in Atlanta, Georgia.

'91 Anne Eldridge Connolly and Colm F. Connolly announce the birth of a son, John Eldridge Connolly, on August 11, 1994.

Amy Shaw McEntee and her husband, David, announce the birth of a son, William Shaw McEntee, on December 2, 1994.

'92 Christoph J.R. Partsch announces the birth of a daughter, Cara Jacobea Ada Henriette, on September 8, 1994.

'93 James J. Bergin was married to Kathrin Andrea Zimmermann in Schaffhausen, Switzerland on August 20, 1994. They now reside in New York City, where James is an associate with Donovan, Leisure, Newton & Irvine, practicing securities regulation.

Lars S. Bramhelft and his wife, Louise, announce the birth of a second daughter, Pernille, on January 14, 1994.

Rebecca A. Denson and David C. Nelson, Class of '94, were married at Duke Chapel on August 6, 1994. They reside in St. Louis, Missouri where they both practice law.

Frances S. Lowenfield was recently married to David R. Blair in the Duke University Chapel.

Mark U. Thurmon was married to Caroline Erin Barry on October 8, 1994 in Baton Rouge, Louisiana. They reside in Austin, Texas, where Mark is an associate at Arnold, White & Durkee.

'94 Richard S. Arnold, Jr. was married to Judith Nicholas on August 12, 1994 in Ertlingen, Germany. They reside in Palo Alto, California, where Rick is an associate with Wilson, Sonsini, Goodrich & Rosati.

Jennifer L. McCracken and Jason G. New were married on August 20, 1994. They reside in Chicago, Illinois.

David C. Nelson and Rebecca A. Denson, Class of '93, were married on August 6, 1994 at Duke Chapel. They reside in St. Louis, Missouri where they both practice law.

Obituaries

Class of 1926

Bryce R. Holt, 92, of Greensboro, North Carolina, died on June 7, 1994. He was an attorney with the firm of Holt, McNairy and Harris, and served as a United States district attorney during the Truman and Eisenhower Administrations. He was the past president of the Greensboro Civitan Club, the Greensboro Bar Association, and the Duke Alumni Association.

Surviving are his wife, Marion K. Holt of Greensboro; a son, Bryce R. Holt, Jr. of Chattanooga, Tennessee; a daughter, Catherine H. Hudnell of Greensboro; five grandchildren; and four great-grandchildren.

William H. Smith, 93, of Salisbury, North Carolina, died on October 27, 1994. In the late 1920s and early 30s, Smith was a high school coach and principal. In 1934, he moved to Salisbury, where he organized Pilot Paint Company, becoming its president in 1935. He was assistant treasurer of Carolina Rubber Hose from 1936 to 1943, and was president of Morlan Park Real Estate Company in 1941. He was president of Morris Plan Loan Company from 1942 to 1966 when he converted the company to a commercial bank, the Security Bank & Trust Company. He remained chairman of the board until 1985.

Smith was a past chairman of the North Carolina Bankers Association and a past director of the North Carolina Bankers Association of Auditors and Comptrollers. He served as a member of and chair of the Salisbury School Board, was a president of the Rowan County Duke University Alumni Association, and was a director of the local United Fund and Chamber of Commerce. He directed the Salis-

bury Foundation, was treasurer and director of the Rowan Development Corporation, and served on the Uptown Improvement Committee. In 1958, Smith was chosen "Man of the Year" by the Salisbury Lions Club.

Smith is survived by a son, Harley Smith; two grandsons; and three great-grandsons.

Class of 1942

M. Haynes Brown, 77, of Erwin, Tennessee, died on March 29, 1994. He had served for a number of years as sessions court judge for Unicol County and had operated A.R. Brown and Company, a retail establishment founded by his father, until its closing in 1985. Brown was a veteran of World War II, having served in the US Navy. He chaired the Unicol County Board of Education, served on the Board of Control of the Unicol County Memorial Hospital, and on the Unicol County Industrial Commission during the 1950s and '60s.

Brown is survived by his wife, Beryl Stoker Brown; three daughters, Suzanne Brown Sumrall of Atlanta, Georgia, Martha Brown Stromberg of Erwin, and Alexandra Brown of Lexington, Virginia; three sisters; five grandchildren; and several nieces and nephews.

Class of 1948

Julius G. Carden, Jr. of Atlanta, Georgia, died on October 15, 1990 of cancer. After serving in World War II, he joined the FBI and was later a manufacturer's representative to the textile industry. He had retired as president of Carden Sales Company. He is survived by his wife, Shirley; two sons; and a daughter.

Class of 1951

Standish S. Howe of Durham died on June 1, 1994, after a long illness. A lawyer in private practice, he was a former assistant city attorney for Durham. He was awarded the Bronze Star for bravery during World War II and was a member of Durham American Legion Post #7. He is survived by his friend and companion, Mary Hintz.

Class of 1952

Harold E. Ford, 66, of Madison, Indiana, died on August 5, 1994. He was a veteran of the United States Army. He served as a city judge in Madison from 1953 to 1955, as attorney for the Jefferson County Department of Public Welfare from 1955 to 1966, as attorney for the Madison Consolidated Schools from 1965 to 1981, and as an attorney for the Switzerland County School Corporation from 1968 to 1973.

Ford was the prosecuting attorney for the Fifth Judicial Circuit from 1967 to 1970. He was president of the Jefferson County Bar Association in 1966 and treasurer in 1956, and was a member of the Indiana Trial Lawyers Association.

Ford is survived by a daughter, Cynthia Ford Childress of Bloomington, Indiana; a son, Brian S. Ford of Madison; three brothers, Bryon Ford, Lynn Ford, and Gerald Ford; two sisters, Janet Ensley and LaVada Bostwick; and four grandchildren.

Bob Allen Franks, 69, of Washington, Pennsylvania, died on June 3, 1994. He was a veteran of World War II, serving with the US Navy in the Pacific from 1943 to 1946. He practiced law in Washington from 1953 until his retirement in 1992. He was

OBITUARIES

elected Washington County prothonotary in 1963 and was re-elected for six terms.

Franks is survived by his wife, Estella McFadden Franks; a daughter, Rita Franks White of Morgantown, West Virginia; a brother, Lee David Franks of Columbus, Ohio; and two grandsons.

Class of 1963

Brian Stone, 57, of Durham, died on January 16, 1995. He was director of the Atlanta Development Office of Duke University from 1966 to 1970, and was a partner in the law firm of Stone & Pennington in Atlanta from 1970 to 1979. He left the firm to become the first executive director of the Atlanta Volunteer Lawyers Foundation, where he served until 1989. From 1985 to 1986, he was president of the Lawyers Club of Atlanta. He was a past president of the Leadership Atlanta Alumni Association and a long-time national director of the Close Up Foundation Board in Washington, DC.

In recent years, since returning to Durham, Stone had served as a consultant to the NC State Bar Plan for Interest on Lawyers Trust Accounts, and as a consultant to the Law School's Private Adjudication Center.

Stone served on the Law School's Board of Visitors until 1990, when he was named an honorary life member of the Board. He served on the School's Major Projects Council and as a volunteer leader of the University's Arts & Sciences Capital Campaign. In 1986, he was honored by the University with the Charles A. Dukes Award for Outstanding Volunteer Service.

Stone is survived by his wife Betsey Beach Stone; two daughters, Jennifer Stone Oates of Memphis, Tennessee and Meredith Stone of Chicago, Illinois; a son, Brian Stone, Jr., Duke '93, of Durham; his parents, Julian Bernard and Frances Stone Rosenthal of Dur-

ham; a brother, John Rosenthal of Durham; and a grandson.

Class of 1972

Luke M. Brown, III of New York City, died on March 11, 1994.

Class of 1973

William E. Hill, 44, died on September 1, 1994. He was employed by the Employee Advocacy Program of the District of Columbia Chamber of Commerce. He began his career in private practice, later serving as a trial attorney for the Justice Department, and as assistant chief counsel for the Food & Drug Administration. He also served as counsel to the Office of Budget and Management during the Carter Administration, and was an adjunct professor at Georgetown University and American University. Hill was co-founder of CACTUS, a mentoring and tutoring program for inner-city children.

Class of 1975

William J. Reifman, 42, of Los Angeles, California, died on November 20, 1994. He was a partner in the Los Angeles office of Mayer, Brown & Platt, where he was a litigator. He became a partner at the firm's Chicago, Illinois office in 1982. In 1985, Reifman moved to Los Angeles to open Mayer, Brown & Platt's West Coast office.

Reifman is survived by his wife, Cheryl; two daughters, Rebecca and Abigail; a son, Robert; his parents, Beth and Phillip Reifman; and two sisters, Barbara and Sallye.

Class of 1985

Michael J. Barnes, 34, of New York City, died in October of 1993. He had worked for Morgan Stanley & Co., Inc. and as an associate at Winthrop, Stimson, Putnam & Roberts. He was a 1981 graduate of the University of Notre Dame.

Laura B. Humphries, 34, of Arlington, Virginia, died in late September 1994. She was employed by the Federal Communications Commission, and had previously worked for the Washington, DC firms of Leventhal, Senter & Lerman and McKenna, Wilkinson & Kittner in the area of communications law. She was a 1982 graduate of Vanderbilt University, and was a volunteer adult literacy tutor.

A fund has been created at the Law School in memory of Humphries to purchase books in the communications law area for the Duke Law Library. Donations may be directed to the Office of Alumni Affairs and Development, Duke University School of Law, Box 90389, Durham, NC 27708-0389.

Richard E. Rosenberg, 37, of Oakland, California, died September 13, 1994, from injuries sustained in a car accident in Waltham, Massachusetts, where he had traveled to attend a family member's wedding. He was a development officer for the Green Industry Program, a recycling project and development fund for the City of San Jose, California. He had previously worked in the San Jose department of affordable housing, and was an associate at Morrison & Foerster in San Francisco for three years following his graduation from the Law School.

Rosenberg is survived by his parents, Alvin and Beverly Rosenberg of Newton, Massachusetts; two brothers, Jeffrey and Larry; a sister, Carol Leonard; and grandparents, Samuel Melnick and Sara Rosenberg.

A fund has been created at the Law School in Rosenberg's memory to benefit the Law School's Pro Bono Project. Donations may be made to the Office of Alumni Affairs and Development, Duke University School of Law, Box 90389, Durham, NC 27708-0389.

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ALUMNI NEWS

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Name _____ Class of _____
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