

DUKE LAW MAGAZINE

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UNITED STATES PATENT OFFICE

the Intellectual Property BOOM at Duke Law School

Also: Duke Law welcomes five new faculty
The Duke Blueprint to LEAD

From the Dean

Dear Alumni and Friends,

Fall 2004 could hardly be more exciting.

- Five new faculty members (joining 10 other new faculty since 2000);
- A new University President;
- A stunning new class of 217 JD students and 75 international LLM students;
- The complete renovation over the summer of the remaining two Duke Law School classrooms into high-tech, attractive teaching spaces;
- A fabulous new building facade that has modernized the look of Duke Law School;
- The beginning of construction for the School's new 25,000 square-foot addition;
- National recognition for Duke's innovative "Duke Blueprint" for building professionalism through, among other things, receipt by the DBA of the ABA's 2004 "National Achievement Award;"
- An unbelievably "hot" intellectual property program;
- A \$5 million grant for Duke's new Center for the Study of Public Genomics, in which a number of Duke Law faculty are key players.

And there is no end in sight. It is a personal thrill for me to be part of the commitment made by the Duke Law School community—students, faculty, and staff—to the ever-increasing quality of the School. The hard work, imagination, and enthusiasm of faculty and student leaders have been amazing,

and the dedication and professionalism of the staff have been critical to the School's success. I hope you are as proud as I am to be a part of this team.

As some of you are aware, my five-year term as Dean ends in June 2005. I had thought this five years would be enough time—more than enough—to be away from the classroom and the research that I love. This summer, however, the University administration asked me to stay on as dean for another term. I have agreed to do so. There is still so much to do, including an ambitious building project to finish and a faculty development plan to complete.

I want to thank the graduates and friends of the School who have encouraged me in this decision, many of whose financial support has enabled us to make so much progress toward what the late Duke President Terry Sanford called our "outrageous ambitions." With the continued help of our graduates, we can do even better. **Thank you.**

Sincerely,



Katharine T. Bartlett
Dean and
A. Kenneth Pye Professor of Law



As this issue went to press, Duke University Provost Peter Lange announced the reappointment of Dean Katharine T. Bartlett:

“It is with great pleasure that I write to inform you that Dean Katharine Bartlett, the A. Kenneth Pye Professor of Law, has responded favorably to President Brodhead’s and my request that she serve another five-year term as dean of the Duke School of Law. Our Law School has been greatly strengthened in recent years. While many individuals and groups associated with the School deserve credit for this happy result, it is indisputably true that Dean Bartlett’s vision and commitment to excellence have been critical factors. The School’s faculty has been strengthened, its students remain outstanding, and the Law School’s facilities have been significantly enhanced. But Dean Bartlett would be the first to say there is much more to be done if the Law School is to achieve its ambitious goals. That is why I am so pleased—as I’m confident you will be—that she has agreed to continue for a second term as dean.”

DEAN

Katharine T. Bartlett

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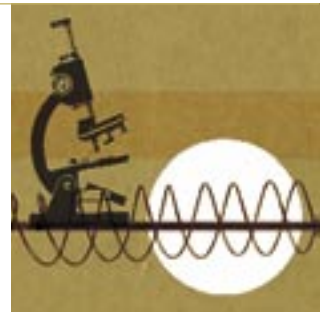
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{Great Lives in the Law}

Goldstone: Law was key in ending apartheid and healing its damage



WALTER DELLINGER SPEAKS WITH FORMER SOUTH AFRICAN CHIEF JUSTICE RICHARD GOLDSTONE, WHO LED AN INVESTIGATION OF APARTHEID-ERA ABUSES.

Justice Richard Goldstone, formerly of the Constitutional Court of South Africa, spoke with Duke Law Professor Walter Dellinger about his professional career before a large crowd at Duke Law School in the first *Great Lives in the Law* event of 2004. Justice Goldstone was a leading figure in combating apartheid in South Africa, and he also served as the chief prosecutor of the United Nations International Criminal Tribunals for the former Yugoslavia and Rwanda.

Growing up in South Africa at a time when South African society was a very fractionalized, sealed-off community, Justice Goldstone had not interacted with other races until attending the University of Witwatersrand, one of two racially integrated universities in the country (the other was the University of Cape Town). It was during college that he fully realized the depth of the injustice of apartheid.

“Within weeks of entering college, I became very frustrated and angry at segregation. I was making friends, for the first time in my life, across the color line. And it’s those sorts of personal friendships that brought home to me the unacceptability and indecency of racial oppression,” he said.

“When I returned to a comfortable home, my black peers had to go to segregated townships. Some of them had to study by candle or paraffin light. And they lived there not because they wanted to but because they had to. They had to carry their IDs, their “passes” as they were called, in their pockets. I didn’t. If they left them at home they were liable to end up in a police station.”

He explained that his post-graduate work with the Ford, Carnegie, and Aspen Foundations convinced him that the only way to overturn apartheid was to encourage more informed, sympathetic judges sitting

on the bench. These foundations, along with others in the U.S. legal community, together launched the Legal Resources Center to attack the apartheid system through South African law. This is where Justice Goldstone got his first glimpse at creative lawyering.

“We were looking at traditional statutory schemes but found that enforcement had been inadequate at best,” he said. The letter of the law provided far greater discretion to judges than had previously been thought, and we were able to encourage a modified judicial system where the accused were more able to exercise their rights under the law.”

Years later, from 1991 to 1994, Justice Goldstone served as chairperson of the Commission of Inquiry regarding the Prevention of Public Violence and Intimidation, which came to be known as the Goldstone Commission. Its mandate was to investigate and describe the causes of intimidation plaguing the country. Some 20,000 people died in the ten years before the release of Nelson Mandela, and the violence became even worse thereafter.

Justice Goldstone said the Commission was given wide discretion to search and seize anywhere in South Africa. “It became a vitally important power because using those powers we were able to at least lift the veil on some of the security force activities that were still going on in the ‘90s, notwithstanding the negotiation process.”

The Goldstone Commission held 142 public inquiries into specific instances of violence in addition to general theme investigations into matters such as the policing of mass marches and demonstrations, which were occurring on a daily basis. Later the Commission held a similar inquiry into ways to reduce the potential for violence

and intimidation during the first democratic election in April 1994.

Dellinger asked Justice Goldstone about his role from August 1994 to September 1996 as the chief prosecutor of the United Nations International Criminal Tribunals for the former Yugoslavia and Rwanda. Dellinger noted that Justice Goldstone placed high importance on confessions, recording or taking account of crimes against humanity like those that occurred in Bosnia. Dellinger asked, “Why revisit crimes during regime changes?”

“The only way to prevent the repeating of history is to expose the truth and the victims,” Goldstone asserted. “There is no question that in South Africa the Truth and Reconciliation Commission

“The only way to prevent the repeating of history is to expose the truth and the victims.”
Justice Goldstone

has resulted in creating one history. White South Africa has been forced to stop denying that discrimination was happening.”

Justice Goldstone identified the two traits that most often drive people to discriminate and commit gross crimes against humanity: dehumanization and fear.

“You need both to do awful things like the Nazis and in Bosnia.” He explained that until crimes have been heard and justice has been done, victims have anger, frustration, and unrequited calls for justice. By making the crimes public, and making the criminals go through the system, victims gain acknowledgement and are able to begin to move past the devastating experiences they have endured.

Justice Goldstone asserted that healing cannot happen in a country until it is able to leave its past behind.

“It’s absolutely critical that a country address the horror and move on to ensure that this sort of thing doesn’t happen again,” he said. ♡



PROFESSOR DEBORAH L. RHODE

{**Rabbi Seymour Siegel Memorial Lecture in Ethics**}

Rhode: Tort reform efforts suffer from distorted view of problem

Professor Deborah L. Rhode identified problems with the American tort system and proposed solutions when she delivered the third annual Rabbi Seymour Siegel Memorial Lecture in Ethics on March 31. Professor Rhode is the Ernest W. McFarland Professor of Law and director of the Stanford Center on Ethics at Stanford University. She based her talk, “Litigation and its Discontents” on a chapter of her upcoming book, *Access to Justice*.

Before an audience of students, faculty and friends of the Law School, Rhode lamented the distorted perception of both litigation-related problems and their root causes, which lead to ineffective tort reforms. “The result is that reform strategies are proceeding without an informed understanding of procedural pathologies, their underlying causes, and the complex trade-offs that solutions will require,” she said.

Rhode challenged the common belief that excessive litigation is the core problem. American litigiousness, itself a myth, is not damaging the U.S. economy or driving malpractice premiums up and doctors out of business, she said. Rhode traced recent increases in malpractice premiums to economic factors other than tort awards and liability risks.

The real difficulty with the litigation system, Rhode suggested, involves its expense, inefficiency, and the inconsistency of

results. Few victims file successful claims, those with the most serious injuries receive too little and, all too often, lawyers are overcompensated. Citing class action cases, where class members’ injuries are often minimal yet settlements are expedient, Rhode noted that “the real parties in interest are the lawyers.”

Many social and medical issues could better be addressed by legislation or regulation, Rhode said, than by such strategies as the tobacco litigation, where legal fees totaled as much as \$150,000 per hour. In that instance, the money could have “more productively gone for treatment if the government had acted earlier.”

Exploring ideological and structural roots for litigation in America, Rhode cited the national reluctance to rely on a centralized government to meet social needs; Americans feel they need to turn to courts to address injuries that could better be dealt with by administrative and social services.

Addressing reform, Rhode said the main goals of the tort system should be dispute resolution, victim compensation and deterrence of negligence. “Criteria we use for assessing the performance of that system ought to include its costs in time, money, and acrimony, and its procedural and substantive fairness,” she said.

Many strategies, such as damage caps and non-voluntary alternative dispute

News Briefs

resolution, she argued, fall short by those criteria. The former generally fail low-income earners whose injury-induced losses are non-economic, and do little to stabilize health care premiums. The latter can be tainted by inequalities in power and resources as lawsuits currently are.

Rhode advocated the use of streamlined, no-fault compensation systems, such as the “honesty policies” of a growing number of hospitals and insurance companies, under which patients are informed of mistakes and compensated for economic losses and expenses. In the malpractice context, these programs are cost-effective, quick, and offer coverage for a broader group of victims. “A rational reform agenda would provide more experimentation with such

The real difficulty with the litigation system, Rhode suggested, involves its expense, inefficiency, and the inconsistency of results.

no-fault frameworks, specialized tribunals, and other ADR approaches, as well as more systematic information about their effectiveness,” said Rhode.

Finally, Rhode called for better disciplinary processes for doctors and lawyers in order to weed out those with a history of incompetence. Building more incentives for prevention of avoidable errors, particularly in health care systems, could also help. “Courts, bar associations, and legislatures could also do more to curb excessive legal fees and frivolous cases,” she said.

Rhode concluded that effective tort reform depends on political and public will. “We do not lack for promising proposals. But we do lack an informed public committed to addressing the most fundamental problems and the forces that perpetuate them.”

The annual Rabbi Seymour Siegel Memorial Lecture in Ethics is sponsored by labor lawyer and senior lecturing fellow Allen Siegel '60, in honor of his brother who died in 1988. Rabbi Siegel was a leading scholar in theology and ethics, particularly medical ethics. ♪

{Meredith and Kip Frey Lecture in Intellectual Property}

“A Darwinian Sea” Branscomb: High-tech innovation travels a treacherous path

Speaking at Duke Law School's fourth annual Meredith and Kip Frey Lecture in Intellectual Property on Feb. 19, noted scholar Lewis Branscomb detailed the evolution of high-tech innovation. Branscomb, the Aetna Professor of Public Policy and Corporate Management emeritus at Harvard University's Kennedy School of Government, defined innovation as a new product or service successfully introduced into the market. But what goes on between invention and innovation?

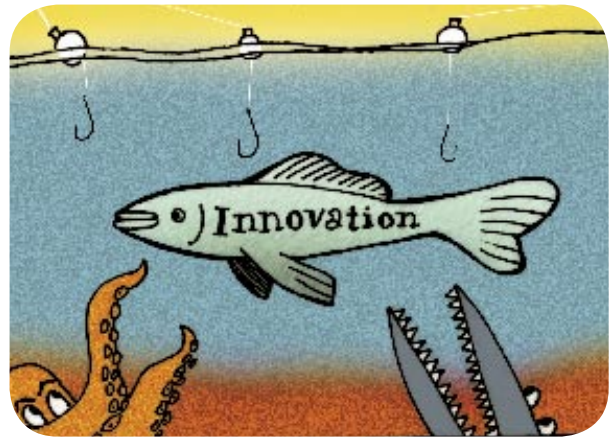
“Some people call it the ‘Valley of Death,’ but I like to call it a ‘Darwinian Sea,’” Branscomb said. He explained that all inventions, ideas, or concepts for innovation “struggle for life in a sea of technical and entrepreneurship risk” that commences even before the research phase takes off and continues throughout development.

High-tech innovation is driven largely by economic factors, Branscomb said, noting that money for research comes in waves that coincide with the economy. “I guarantee that the cyclical nature of the process is not healthy for sustained funding of new ideas and projects,” he said.

“For example, current economic conditions have venture capitalists and corporations looking for innovation that can bring a guaranteed return, resulting in less money being available for front-end research of ideas and potential invention.”

Branscomb told the audience that 25 percent of funding for new products and services is typically driven by “angel investors,” while just four percent is derived from venture capitalists. The remainder comes from government or other company resources.

“Individual angels are in a better position to identify and find others to fund



“The cyclical nature of the process is not healthy for sustained funding of new ideas and projects.”

Lewis Branscomb



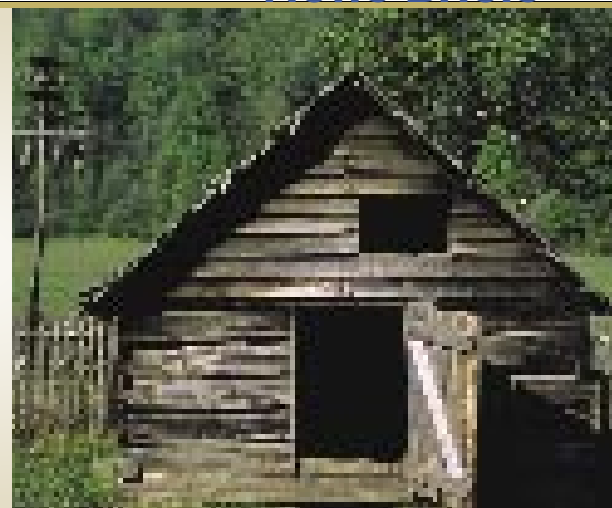
research. They play an absolutely crucial role,” he said.

Despite the assistance of angel investor funding, Branscomb noted that research funding is inadequate. “I think the government should flood the venture capitalists with tax breaks so they’ll fund more ideas,” he said, suggesting that policy should be changed to promote more front-end research.

“It is important for tax policymakers and government officials to understand the risks of innovation, and how to think about the risks in early stages of invention and development without being ruled by them.”

For now, he said, inventors continue to rely upon the trusted networks of venture capitalists and angel investors to determine which inventions will successfully traverse the Darwinian Sea to innovation. ♪

YOU GAVE UP CANCUN FOR THIS?



Students gain hands-on legal experience helping others in Southern Justice Spring Break Mission Trip

The Southern Justice Spring Break Mission Trip, offered through the Office of Public Interest and Pro Bono and organized by Keri Richardson '05, allowed five Duke Law students to spend their spring break working in high-profile, Southern-based legal institutions.

David Bernstein '06 and Scott Edson '05 worked with the Appalachian Citizens Law Center (Appalred), a free legal service for low-income individuals and families that is based in Kentucky. Appalred focuses on coal-related issues, and much of the students' work involved United Mine Workers of America pension claims, property damage issues caused by coal mining, and family law issues such as divorce and child-custody.

Three students, Greg Kanyicska '05, Ian Millhiser '06, and Janey Rountree '05, traveled to Jackson, Mississippi to work with the Mississippi Center for Justice, a newly established organization that was created with the help of a grant from the Stern Family Fund, and is headed by Martha Bergmark, the former acting director of the national Legal Services Corporation. At the Center, students worked with incarcerated children in connection with a large-scale reform effort of the juvenile justice system in Mississippi.

Here are two student accounts of their experiences.

Appalred

Scott M. Edson '05

Getting to Prestonsburg was an experience. The roads were surprisingly good, considering that they went through some of the most rugged terrain east of the Mississippi. They often go where mountains once were. The dynamite-induced sharp sides of the mountains that remain reveal, among the strata, the coal veins that simultaneously brought wealth to the region and poverty to much of its population. There are mountains with bald tops from strip mines, and barren streams blocked with "fill" which have been "reclaimed" after the conclusion of mining operations. The houses that one passes en route largely range from lower-middle-class tenements to run-down shacks evincing the squalor in which much of the region's people live. Nicer dwellings are few and far between.

We stayed at Mt. Tabor, which is a piece of a mountain owned by the Sisters of St. Benedict. The Sisters are active in performing volunteer work in the local community, much of it involving construction work for impoverished local residents.

The Appalachian Citizens' Law Center is situated in a small, upstairs office, one block away from the Prestonsburg Courthouse. It's quite amazing to think of what its three attorneys accomplish from such a humble place, and without the assistance of paralegals or secretaries. The work ranges from environmental law to black-lung benefits claims to United Mine

Workers of America (UMWA) pension claims to everything in between. The attorneys were energetic and engaging and really seemed to care about their work. Though my time there was brief, I was able to research an issue from scratch and draft a memo of the basics in that area of the law, work on a UMWA pension claim pending in federal court, and trek out to a client's property to meet him and survey the damage he claimed was caused by excess runoff from a strip-mine which removed the top of the mountain on which his property is situated.

The latter task was probably the most memorable. The client's main concern was that excess storm runoff deposits debris on his property, causing the stream to erode at an accelerated pace. We met with the client and a representative and attorney from the mining company to assess the damage. This entailed crossing a stream by hopping from rock-to-rock and then climbing up the side of this mountain through the drainage creek. Unfortunately, I left my waterproof boots in Durham, and had to make the climb in my sneakers. Did I mention it was around 30 degrees outside? I couldn't have asked for a more real experience.

Several jokes were made regarding "you gave up Cancun for this," especially as I was hiking up that cold mountain stream. I'm really glad I did it and I'd recommend it to anyone.

Mississippi Center for Justice

Greg Kanyicska '05

Three Duke Law students came to Mississippi for a week not knowing what to expect. What we found was a dedicated group of attorneys trying to secure the promise of justice for those most at risk. The three of us didn't want to leave.

For most law students, spring break is a chance to flee dusty law books and escape to cold drinks on warm, sunny beaches. For us, the escape from the academic was in many ways more refreshing and rewarding. Working for the Mississippi Center for Justice, we got to experience the real impact of laws, passed down from a legislature far removed from the people it affects. We got to witness the administration of these laws by hard-working courts that pushed juveniles through the system as a matter of course for a bureaucracy set up to process rather than help. We got to see judges and lawyers simply doing their job, and kids paying the price for a failing system.



Same-Sex Marriage

Visiting speakers take on legal and personal aspects of difficult issue

Same-sex marriage was the focus of a pair of Law School events in April, collectively called “Speak Now or Forever After Hold Your Peace.” The first featured a debate of the legal issues between same-sex marriage advocate **Gregory Nevins**, a senior staff lawyer in the Southern Regional Office of Lambda Legal Defense Fund, and opponent **Jeffrey Ventrella**, senior vice president of strategic training for the Alliance Defense Fund, the first group to sue to stop same-sex marriages in San Francisco. The following week, **Julie Goodridge** shared her experience of being one of the chief plaintiffs in the landmark case that legalized same sex marriage in Massachusetts. Both events were organized by students.

Debate highlights legal arguments pro and con

“There is simply no justification for the enormous legal, financial, social, and psychological harm that is imposed on lesbian and gay people and our families by the current exclusion from the right to marry,” said Nevins in kicking off the debate. He argued that the U.S. Supreme Court recognized a fundamental right to marry under the due process and liberty clauses of the Constitution in *Loving v. Virginia*, the 1967 case that struck down anti-miscegenation laws. Nevins rejected the argument that “this is the way it’s always been,” saying marriage has changed profoundly over thousands of years—for the better.

“Now, more than ever, marriage is about love, equality, and respect, principles that same-sex couples and different-sex couples share equally. And generally, though not always, it is about building a family for children, where a child will have the love and support of both parents, a principle that all couples who want to marry would likely share.”

While same-sex parenting is commonplace, he added, many states do not allow a child to legally have same-sex parents. “No child should develop a parental bond, only to have it ripped apart if their parents split up or one of them dies,” he said. Nevins called marriage “a unique gateway” to hundreds of rights under state law and over 1,000 under federal law—including Social Security, the ability to roll over 401Ks, and the Family and Medical Leave Act—all designed to protect families and ensure the financial security of families.

“Same-sex couples are also eager to take on the obligations [of marriage] such as child support,” he said. Nevins’ opponent in the debate, Jeffrey Ventrella, said that advocating for same-sex marriage was like telling a geometry expert

to draw a square circle. “You can be passionate about square circles, but the fact of the matter is, you’ll never be able to draw a square circle.” Ventrella cited the Supreme Court’s decision denying a right to physician-assisted suicide in *Washington v. Glucksberg*, for constitutional criteria for evaluating the protectability of liberty interests. “The Court held firmly that those protectable liberty interests are available only for fundamental rights that are deeply rooted in this nation’s history and tradition.” Calling assisted suicide the “ultimate intimate act,” Ventrella said the standard would be even higher for something that deconstructs a public institution such as marriage.

“There’s never been a right to marry the person you love. That’s never been a case for marriage.”
Jeffrey Ventrella

Referring to marriage between one man and one woman as a “transcendent standard,” Ventrella said the law has occasionally “tweaked” it, but has never “obliterated its structure.” “Every time there has been a tweaking, that tweaking was always focused on reconstructing, not deconstructing, the structure of marriage. The reforms always looked to conform marriage to the structure of one man and one woman,” he said, also citing *Loving v. Virginia*. “You can’t have same-sex marriage without first deconstructing marriage. That’s a Mr. Potato Head theory of human relationships: The parts don’t matter. Design is irrelevant.” But, he argued, design is everything. “One of the things you can’t ‘not know’ is that mankind is wonderfully designed in complementary genders, in complementary sexes. And when they come together for life it is, as the Supreme Court said, the surest and noblest foundation of our civilization.” “There’s never been a right to marry the person you love,” said Ventrella. “That’s never been a case for marriage.” ♣

Julie Goodridge: A plaintiff's view of landmark Massachusetts case

In a public conversation with Law School Dean Katharine Bartlett, Julie Goodridge shared her unique perspective as a central figure in the struggle for legal recognition of same-sex marriage.

Goodridge and her partner Hillary Goodridge, a couple since 1987, were the last of the seven plaintiff couples to join the lawsuit for the right to marry in Massachusetts. They happened to hear of it shortly after Hillary had a disconcerting talk with their then-five year-old daughter, Annie.

“She said ‘You don’t love each other. If you loved each other, you’d be married.’”

Goodridge and her partner were picked as plaintiffs after being interviewed extensively by lead counsel Mary Bonauto of Gay and Lesbian Advocates and Defenders, joining six other couples diverse in age, race, and family composition, “people whom the citizens of the Commonwealth could relate to,” said Goodridge. Preparation for the case involved briefings on the laws in Massachusetts, the benefits marriage could bring, and extensive media training that included mock interviews.

“Mary was absolutely adamant that all of us needed to know what was significant about our stories. It was like we were in a workshop and we had to come up with our talking points. We had to stick to them.”

Media attention was the hardest part about their involvement with the lawsuit, Goodridge said, as they acknowledged the importance of letting the public into their lives to some extent. She reached her breaking point when she found a cameraman from PBS filming her daughter alone in a room watching television—something necessitated by the need to keep Annie occupied while she and Hillary attended to the needs of the television crew.

“I said ‘that’s not okay.’ Our family is not about our daughter sitting alone in a darkened room watching television. I became the limit-setter from that point on.” Goodridge said that she wishes she had



JULIE GOODRIDGE DISCUSSES HER CASE WITH GUESTS AT DUKE LAW SCHOOL

Photo by Kevin Siefert, The Herald-Sun

“[Our daughter] said, ‘If you loved each other you would be married.’” Julie Goodridge

been better prepared for such incidents in advance.

Of all the media questions she’s received, she said the constant question about whether same-sex marriage would open the door to polygamy is the hardest, but she has a simple answer.

“I want to marry Hillary, and she’s only one person. This is about our lives.”

Asked by Dean Bartlett to share her thoughts for students in attendance who might someday be involved in law reform litigation, Goodridge said that she wished her lawyer had not been as frank in warning them about the legislative backlash until it got underway.

“On November 19th [when the Supreme Judicial Court of Massachusetts handed down its decision] I just wanted to feel we’d won, not think about the backlash.”

From the start, Goodridge said she wanted a decision that allowed her to marry her partner, not one in favor of civil unions.

“Everyone knows what marriage is. There is nothing different that we want that marriage provides. Civil unions provide separate and unequal status,” she said, noting that the court acknowledged that point in its decision.

With the litigation over, Goodridge said that she is accepting speaking engagements in the South, where her family has roots. Noting that North Carolina still lacks co-parent adoption laws, she said that she will try to help people understand whether they can take a risk like she and her partner did.

Goodridge’s appearance at Duke Law was sponsored by DukeOUT and OutLaw, student groups that support lesbian, gay, bisexual, transgender, and allied undergraduate, graduate, professional, and law students at the Law School and in the Duke University community. ♡

Editor’s note:

Julie and Hillary Goodridge were married May 17, 2004, in Boston.

Business Law Society holds second annual Business Law Career Symposium

The Business Law Society hosted its second annual Business Law Career Symposium in April, with practitioners of corporate and business law—many of them Law School alumni—as featured guests. The annual one-day event brings together students, lawyers, and business leaders in informal settings to help students understand and prepare for business law careers.

"The Business Law Society facilitates the student-alumni connection through events like the symposium and brings some of the tremendous experience and knowledge our alumni have back to Duke Law," said Keri Richardson '05, CFO of the Business Law Society.

"The student leadership of the Business Law Society organized a unique program that was of interest to a large segment of the student body," said, Assistant Dean of Career Services Bruce Elvin. "The experience of the 14 professionals participating in this annual event is broad and deep, and the opportunity for Duke Law students to meet in very small groups with these senior lawyers and business people to discuss issues about a business law practice, expectations of summer and first-year associates, alternative business career paths, and current legal issues impacting corporate clients, is enormously enriching. This is an excellent example of the Law School drawing on its alumni talent to expand the horizons of its students."

The law firm Paul Hastings sponsored the symposium along with the Duke Global Capital Markets Center, the Business Law Society, and the Office of Career Services. ♣

Thanks to this year's visiting alumni:

- Carolyn Zander Alford T '89
- Daniel S. Bowling III '80
- C. Barr Flinn '91
- Caroline B. Gottschalk '90
- Robert E. Harrington T '84, JD '87
- Christopher K. Kay '78
- Gray McCalley '79
- Sidney J. Nurkin B.S. '63, LLB '66
- Barry G. Pea '86
- Shefali Shah '96
- Heather M. Stone JD/LLM '89
- Carol B. Stubblefield JD/LLM '92

Duke Law students win prestigious NC public interest fellowships



SEBASTIAN KIELMANOVICH AND DIMITRI VARMAZIS

It was a clean sweep for Duke Law School when two of its students, Dimitri Varmazis '04 and Sebastian Kielmanovich '04, were awarded the highly sought-after Clifton W. Everett, Sr. Community Lawyer Fellowships. Funded by the North Carolina Interest on Lawyers' Trust Accounts (IOLTA), only two such fellowships are offered each year for entry level, one-year staff attorney positions in selected Legal Aid of North Carolina offices.

"We are thrilled that both of this year's Everett Fellowships were offered to our students," said Duke Law School's Associate Dean for Public Interest and Pro Bono Carol Spruill. "This is an extremely competitive fellowship, and I am very pleased that Legal Aid of North Carolina has recognized the talent and strength of commitment to public service that Dimitri and Sebastian offer."

As Everett Fellows, Varmazis and Kielmanovich will serve low-income, rural North Carolina communities. They will each handle a general caseload addressing issues in poverty law such as housing, employment, consumer transactions, domestic relations, and public benefits. Kielmanovich will be located in Legal Aid's Wilmington office and Varmazis will be working out of its Gastonia office.

Varmazis has always been interested in pursuing a career in poverty law. "I wanted to be able to gain practical experience while serving people who are truly at their last line of defense," Varmazis said.

Kielmanovich described the Everett Fellowship as a valuable and meaningful way of furthering his career. "I am absolutely thrilled about this opportunity. I will be able to help those in the community who most need legal assistance while gaining a great deal of professional and personal experience. I don't see what other path I could have taken as a lawyer that would provide me more happiness," he said. ♣

To learn more about post-graduate fellowships and other opportunities offered by the Office of Public Interest and Pro Bono and the Office of Career Services, please visit <http://www.law.duke.edu/publicinterest>

Duke conference teaches corporate directors how to navigate governance issues

With the sweeping changes instituted by the Sarbanes-Oxley Act and the public's intensive focus on corporate governance, Duke's Global Capital Markets Center hosted its third annual Directors' Education Institute in March. The three-day conference explored some of the central legal and policy issues faced today by board chairs, corporate directors and senior executive officers of publicly traded corporations.

"Duke succeeded in putting together a comprehensive program that covered a lot of ground in a short space of time. The choice and caliber of the keynote speakers and the topics they covered were excellent and set the overall tone for a quality program. The topics were pertinent and thought-provoking," said attendee Brian Harker, president and CEO of Dimon, Inc.

The annual conference, supported by the New York Stock Exchange Foundation, builds upon the strengths of both Duke Law School and The Fuqua School of Business. Through interactive panel discussions and focused break-out sessions, the program teaches participants how to develop a framework for making informed board decisions and exercising sound business judgment. The faculty this March included Herbert M. Allison, Jr., chairman, president and CEO of TIAA-CREF; G. Kennedy Thompson, chairman and CEO of Wachovia Corporation; the Honorable Harvey J. Goldschmid, commissioner of the U.S. Securities and Exchange Commission; and the Honorable Leo E. Strine, Jr., vice chancellor of the Delaware Court of Chancery. Several Duke Law and Fuqua professors also were among the panelists.

"At the end of the conference many participants said that the conference helped them crystallize their thinking about appropriate governance practices for their compa-

nies and how to apply them," said Stephen Wallenstein, executive director of the Global Capital Markets Center and a Duke professor of the practice of law, business and finance. "I was pleased to receive such positive feedback, because we work hard to make this conference unique by balancing attendees' time between panel discussions and interactive break-out sessions where

to help companies build shareholder confidence, improve public perception, and reduce the risk of litigation by instituting procedures to foster responsible oversight. Through these sessions attendees reviewed the relationship between the CEO and the Board, the expanding scope of audit committee responsibilities, the new realities of securities litigation, hot topics in corporate governance, executive compensation, roles and responsibilities of independent directors, and board responses to company crisis events.

"Directors need to be challenging and inquisitive; they must ask hard questions. This conference is intended to help these executives address complex issues with their peers and hopefully return to their corporations with new ideas," Wallenstein said.

"While serving on a number of boards in the last 15 years, including six public boards currently, with five chair assignments, I was still enlightened, enlarged, and enlivened by the substance and style of this program. World class law and business school faculty in combination with fine outside speakers produces a terrific and highly relevant curriculum," said Robert Kamerschen, a board member with R.H. Donnelley.

The next opportunity to attend a DEI is March 16–18, 2005. The conference is accredited by Institutional Shareholder Services (ISS) as a Preferred Boardroom Education Program. Directors attending this program will receive an upward adjustment to their Corporate Governance Quotient™ (CGQ™) as determined by ISS. In addition to DEI, the Institute offers tailored programs delivered at a company's headquarters. These on-site programs assist boards in developing best practices, but are not ISS accredited. Read more about DEI and the Duke Global Capital Market Center at www.law.duke.edu/globalmark. ♣

"Directors need to be challenging and inquisitive; they must ask hard questions."



Interested? Directors' Education Institute

March 16–18, 2005

<http://www.law.duke.edu/globalmark>

they can learn from each other's experiences and points of view."

Wallenstein said each of the four panels and six breakout sessions during the intensive two-day gathering was designed



Erwin Chemerinsky

Neil Siegel

Jedediah Purdy

Catherine Fisk

James Salzman

Welcome to Duke

Five scholars joined the Duke Law faculty this summer after an incredibly successful season of recruiting: All offers extended by the School were accepted.

Adding breadth and depth in the area of constitutional law is a top senior scholar, Erwin Chemerinsky, who joins the faculty as Alston & Bird Professor of Law, along with Neil Siegel and Jed Purdy, both accomplished scholars new to teaching. They arrive at the Law School with Catherine Fisk, a labor and employment law expert, and noted environmental law specialist James Salzman.

“Duke Law School was presented with a wonderful opportunity to join the wooing of five spectacular scholars,” said Professor James Cox, who chaired the 2003–04 Faculty Appointments Committee. “Our success in recruiting them arose in part because we were very clear as to why we wanted each of them, and why their being here would strengthen the Law School. Each of the five fits nicely into our curricular needs, but more importantly, each adds to the vibrant environment of Duke Law School’s commitment to interdisciplinary teaching and scholarship.”

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Erwin Chemerinsky: Teacher, scholar, activist

IN A ROUNDTABLE WAY, Erwin Chemerinsky credits the O.J. Simpson case for helping make him a better constitutional law scholar.

Already well known in academic and legal circles when the Simpson trial began, Chemerinsky developed a high public profile through his televised legal commentary on the case. In the late 1990s, when voters recruited him to run for election to the commission that would revise the city charter of Los Angeles, that public profile helped him win.

Chemerinsky describes the year-and-a-half he spent as chairman of the city charter commission as “all-consuming” and often frustrating—the commission was deadlocked with a rival city council commission until Chemerinsky and his counterpart in the other group worked out a single proposal through lengthy one-on-one negotiations. Still, the new charter, which was approved by Los Angeles voters in June 1999, is the work of which he is most proud. “I learned a lot about constitutions,” says Chemerinsky, who had earlier served as an advisor to Belarus on the drafting of its constitution. “I really got a sense of how everything in a city charter is a compromise. Nothing in that document is exactly the way I’d want it to be. Now I realize that every part of the U.S. Constitution is also a compromise.”

Chemerinsky’s civic work continued in 2000 when he was tapped by the Los Angeles Police Protective League to head an independent investigation into the LAPD’s Rampart scandal, involving corruption in the anti-gang unit of its Rampart precinct. Currently Chemerinsky, who the *L.A. Weekly* calls “incorruptible,” is heading a panel to reform L.A.’s contracting practices at the airport, harbor and Department of Water and Power. Chemerinsky will complete the job, which he took on “before Duke was on the horizon,” after relocating to Durham.

Chemerinsky says he’s loved his civic work. “I’ve learned so much from the



ERWIN CHEMERINSKY TALKS WITH IAN MILLHISER '06

“LAW IS THE MOST POWERFUL TOOL FOR SOCIAL CHANGE THERE IS. I still believe that, although I’ve found that social change is a lot harder to achieve than I originally imagined.”

things I’ve done. My teaching and scholarship have all been enriched as a result.”

A prolific writer, Chemerinsky brings his expertise to the public through frequent contributions of articles and opinion editorials to newspapers and magazines.

“I contribute in part because it is a way of educating a broader audience, getting my opinion across, and also because I love to write.”

Chemerinsky remains active as a public interest lawyer, saying that was his goal in choosing law as a profession.

“Law is the most powerful tool for social change there is. I still believe that, although I’ve found that social change is a lot harder to achieve than I originally

imagined.” He currently is co-counsel in one case in which the Supreme Court has granted review, and three others are pending where he is seeking a hearing in the high court.

The call for social justice embodied in the core Jewish principle of *tikkun olam*—“healing a broken world”—has always resonated deeply with Chemerinsky, who grew up on the south side of Chicago in a “fairly traditional” Jewish family.

“There was a commitment to social justice that I saw in my father’s beliefs,” he explains. “I was also strongly influenced by growing up in the ’60s and by the civil rights lawyers in that era.”

In Chemerinsky’s opinion, the U.S.

Supreme Court under Chief Justice William Rehnquist has a dismal record on issues of social importance, such as school desegregation and prisoners' rights.

"The Rehnquist Court's rulings have been animated by a conservative vision that fails to protect those that most need the Court's protection," he says. "Courts have the important role of protecting minorities who won't be protected by the political process."

Chemerinsky's upcoming book takes a critical look at the Court's recent federalism decisions. Tentatively titled *Empowering Government*, it will be published next year by Stanford University Press.

"The Court has severely limited the power of Congress to legislate to achieve important social goals, such as cleaning up nuclear waste, and legislating against the possession of guns in schools."

Of the rulings the Court rendered at the close of the last session, Chemerinsky thinks the decision regarding the Guantanamo detainees was a good one, but the decision on sentencing guidelines in *Blakely v. Washington*, which he has had the occasion to discuss at a summer retreat of the 10th Circuit, has caused havoc.

"The basic reasoning is right—you shouldn't be convicting people for one crime and sentencing them for another," he said. "But in the space of ten days, one court threw out sentencing guidelines, another said it was unaffected by *Blakely*, and still another is sending the issue back to the Supreme Court."

The 2004 election will have huge significance for the Supreme Court, Chemerinsky argues.

"There are likely to be three vacancies on the Court in the next term—it's very reasonable to believe that Justices Rehnquist, Stevens and O'Connor won't be on the Court in 2009. Given that almost every important decision of constitutional law has been narrowly decided on a 5-4 or 6-3 vote, replacing two or three justices will change the outcome on every single issue."

Teaching, inside and outside the classroom, is his greatest professional joy. At the University of Southern California, where he was on the faculty for 21 years, he taught both in the law school and at the undergraduate level. He also lectures around the country to judges and in bar review classes. Duke Law students raved about his style when he was a visiting professor in the fall of 2002.

"He made sure we learned not just the law, but its social implications, as well," says Sam Forehand '05, a member of the Federalist Society who was in Chemerinsky's constitutional law class as a 1L. "He would query us for policy arguments for and against the status quo, always making sure that the class's political leanings didn't keep us from considering all points of view."

Forehand also praises Chemerinsky's accessibility, including his invitation to students to join him for "brown bag lunches."

"By the end of the semester, I think he'd had lunch with the whole class. His office door was always open—and more than once I caught him in the hallway for a random greeting turned extended discussion," says Forehand. "Professor Chemerinsky definitely brings to Duke Law School an exceptional love for students and teaching."

Chemerinsky is the inaugural Alston & Bird Professor at Duke Law School. ♪

Neil Siegel: A Duke fan returns

RECALLING THE TIME HE WAS WEIGHING OFFERS from Duke and Berkeley, where he earned his law degree and Ph.D., Neil Siegel says that his taste in clothes influenced his decision.

"My wife, Maria, pulled out a photo album, because she was teaching her second graders about photography. In many of the pictures from our time in Berkeley, I was wearing either a Duke shirt or Duke shorts," says Siegel, who has a BA in economics and political science, and an MA in economics from Duke. "Durham is the only place in the country I can wear my Duke gear without being reviled."

Siegel is a devoted Blue Devils fan. He refers to a marriage between a college friend and a Carolina graduate as a "mixed marriage." He named one of his cats "Duke," and would have called the other "Blue Devil" had Maria not prevailed with "Max." As an undergrad, Siegel often followed the Duke men's basketball team on the road, and spent many nights camped out in the tent-city known as "Krzyszewskiville," sometimes sleeping on the sidewalk. Particularly memorable were two frigid weeks one January that got him "really sick," but had a big payoff: participation in a Duke-Carolina game.

"By the time the game comes, you're exhausted, but you're also exhilarated and the adrenaline is rushing through your system. Being in Cameron Indoor Stadium before that game, I remember thinking, 'this must have been what the French revolution felt like,'" he recalls, laughing. "You have so much invested; you feel so much a part of the team."

A Long Island native, Siegel put down roots in Durham that went beyond basketball, and called his return a homecoming of sorts. "It means a lot to me not just to be doing what I'm doing, but to be doing it at Duke. It's the place where I came into myself."

Of the connections he made in Durham, Siegel speaks warmly of his undergraduate economics professor, Craufurd Goodwin, who remains a good friend. Goodwin says he's thrilled to have Siegel back at Duke, as he recalls their first meeting.

"I was teaching a large class in introductory macroeconomics—over 300 students. On the first day, as I was trying to illuminate things generally, a hand went up. Neil said—politely—that he thought I might have neglected certain assumptions. He has a great combination of breadth and depth, serious attention to detail, humor, and wit. I hope he'll build bridges to economics."

Siegel will teach primarily in the areas of federal courts and constitutional law. A high school social studies teacher first sparked his interest in the Constitution; in his senior year, Siegel led his team to a second-place finish in the national "We the People" Constitution competition, sponsored by the Center for Civic Education. He recalls hearing retired Chief Justice Warren Burger speak at the awards ceremony, enjoying a winners' tour of the Oval Office and Rose Garden at the White House, and meeting with the first President Bush, his famous dog, Millie, and her pups. Characteristically, Siegel got down on his hands and knees in front of the President of the United States in order to play with the dogs.



NEIL SIEGEL CLERKED FOR JUSTICE RUTH BADER GINSBURG

“It means a lot to me not just to be doing what I’m doing, but TO BE DOING IT AT DUKE. It’s the place where I came into myself.”

Siegel is joining the Duke Law faculty after a year-long clerkship with Justice Ruth Bader Ginsburg of the United States Supreme Court. It is hard, he says, to overstate how much that clerkship and previous legal experiences will influence his work in the classroom and his scholarship.

“I’m much more of a lawyer now, more in tune with the concerns of students, the vast majority of whom will practice,” he says.

He finds frustrating the growing divide between what scholars write and what judges and practitioners read. “At least much of the time, I want to write scholarship that a justice might consider consult-

ing in preparation for oral argument.”

In that regard, Siegel is pleased to be joining a law school that not only tolerates but also affirmatively supports faculty who practice—a set of priorities he believes is rare among elite schools.

“I look forward to working with people like Walter Dellinger, Erwin Chemerinsky, and Jim Coleman, who practice as well as teach and write. I hope to do so as well.”

Having also clerked for former Chief Judge J. Harvie Wilkinson III of the United States Court of Appeals for the Fourth Circuit, Siegel highly recommends clerkships to students.

“It’s a rare chance to be part of the judicial machinery—you see how it functions and sometimes dysfunctions. Courts are human institutions occupied by people who make choices that are sometimes inspiring and reaffirming, and sometimes disappointing, both in terms of substantive disagreements about the law, and also in terms of the sorts of considerations that inform a decision.”

After his year as a Supreme Court clerk, Siegel says he no longer sees “the Court.” “What I see are nine individuals, each with his or her own ideological and methodological commitments.”

Clerking also gave Siegel a firm appreciation for “legal craft”—the phenomenon that explains why some briefs, arguments, and opinions are, indeed, better than others. It was a particular privilege to be mentored by Justice Ginsburg, he notes.

“She’s a liberal icon, but she’s also a great lawyer. She’s an expert on matters of procedure and she chooses every word with great care. I learned a lot going back and forth with her.”

He speaks of Justice Ginsburg with enormous personal fondness, offering, by way of example, her inclusive approach to such potentially divisive issues as gender.

“She never made me feel like there were some things I [as a white male] couldn’t understand or be a part of. One lesson I take from my experience with the Justice is that in order to make moral progress, both men and women have to be invested and included in the quest for social justice. It’s a healthy and balanced world view. Some might call it feminism, too much or too little, but I call it fairness.”

Justice Ginsburg expressed a similar fondness for her former clerk.

“Neil Siegel was a delight to have in chambers,” says Justice Ginsburg, who will visit the Law School in January 2005. “He was very energetic and enthusiastic, with a sparkling mind. I think the students will find him wonderfully engaging and, as the French would say, *sympathique*.”

Of his year inside the Supreme Court, Siegel notes that most people would be surprised to see how genuinely collegial the Justices are.

“While they sometimes disagree strongly and draft sharply worded opinions, as a general matter, they tend to be quite friend-

ly with one another. You can see it during oral argument, for example, when Justices Thomas and Breyer smile and whisper to each other. My Justice's office is full of pictures of Justice Ginsburg with her colleagues, particularly Justice Scalia; in one, the two of them are on an elephant together in India. Now that's friendship." ♡

SIEGEL ON DUKE BASKETBALL:

“TIME STOPPED as I witnessed the ball travel...”

My favorite Duke men's basketball moment was being at the Spectrum in Philadelphia in '92 when **Christian Laettner** hit “the shot” to send Duke to another Final Four and its second national championship. I remember there being 2.1 seconds left during the time out, and feeling that it wasn't over. I was locked in and focused, watching **Coach K** on the sidelines. I then saw **Grant Hill** throw the ball across the court; Laettner caught it, turned, and released. Time stopped as I witnessed the ball travel through the air and fall effortlessly through the net. And then—pandemonium. ♡



Jedediah Purdy: Looking at America from inside and out

JED PURDY HAS LONG BEEN FASCINATED by the position of being both inside a culture and outside it at the same time.

He found himself in that position growing up in rural West Virginia, where he was home-schooled until age 13, and identified with the “outsiders” he found in the novels of Chaim Potok, the essays of Lionel Trilling, and the criticism and memoirs of Alfred Kazin. Since leaving Appalachia for Exeter at age 16—after three somewhat out-of-step years at the local high school—Purdy has lived in various cultural capitals of the northeast.

“There I belonged better, but not completely,” he says.

Purdy took a look at America from inside and out in *Being America: Liberty, Commerce, and Violence in an American World*, his second book exploring American life and culture. In 2001 he traveled widely, gathering perspectives on America abroad. Wherever he went, the basic decency of the American people was widely accepted, he observes, as was a marked appreciation of the American constitutional experience.

“There was an enduring attraction to the American model and experience of self-governance, independent of politics and foreign policy. Almost reflexively, people are emotionally drawn to the Constitution as a standard of the possible, imperfectly achieved.”

Having started his journey before 9/11, it became clear in its aftermath that, regardless of America's status as icon of democracy and personal liberty, the world watches with fascination when these principles are betrayed.

“If we can't uphold these high standards when we're under threat, that serves as license

to others to say these things are fine when convenient, but optional.”

Purdy was motivated to write *Being America* in part to help readers recognize that understanding between cultures involves an exercise in sympathy in service of judgment. He also hoped to spark a discussion of such notions as patriotism and nationalism.

“It is patriotic to be critical and worried about your country. It is not the duty of the patriot to fall in line with orders. We must see clearly what we’re doing and see its effects on the rest of the world and on us.”

Purdy’s first book, *For Common Things: Irony, Trust and Commitment in America Today* was, in many ways, a passionate call for engagement in public life. In the five years since its publication, Purdy notes that indifference to politics has largely diminished, for reasons that range from the tragedy of September 11th and the policies of the current administration to the collapse of the high-tech sector that fueled the “fantasies” of the late ’90s.

“Before 2000, it seemed that it didn’t matter who became President,” he says. “The revival of political engagement among young people in the past few years has been dramatic. We’re in a healthier moment in many ways than we were in then, even though this is a time of worry and crisis. We are rebuilding the civic wherewithal to deal with crises.”

Purdy will focus his teaching on constitutional and property law.

“I am interested in how property arrangements, in the economic and social realms, like constitutions in the political domain, set up the basic rules of relationships, the distribution of power and of capability, and the terms on which people have to approach each other. I think economics are qualitative: They produce kinds of social relations and kinds of personality; and

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property is one of the core moving parts.”

Purdy’s other passion is the environment, both personally as an avid outdoors enthusiast, and academically.

“I have begun to think about how property regimes can be designed to incorporate stewardship of natural places. I’m interested in the variety of ways we can conceive of the natural world—not just as a source of resources but something more intrinsically valuable,” he says, adding that this ties back into the notion of property and its history in legal thought going back centuries. “The colonists were asking who could claim North America, and under what terms.”

His experience of being home-schooled fundamentally shaped Purdy’s approach to learning. “Learning did not have its own season, room, or time of day. Learning was living with a child’s curiosity, and there was no living without learning,” he wrote in *For Common Things*. In many ways, he takes a similar approach to his pursuits as a scholar and writer.

“I continue to get intensely curious about things. I’ll grapple with an issue and try to make sense of it. The questions we all ask are not assignments, but natural expressions of being at grips with the world. It’s one of the great things about being a teacher and scholar—you can continue to do that.”

“Jed Purdy remarkably exemplifies a person of open mind looking not only at the small picture, but the large picture of the world,” says Judge Pierre N. Leval of the United States Court of Appeals for the Second Circuit, for whom Purdy clerked

after completing *Being America*. “He is a brilliant young man with his eyes and all of his sensory faculties open to explore the condition of the world, to appreciate and understand with a new and unbiased assessment, not being overly prejudiced by those of his predecessors, but reaching a new appraisal and new conclusions of his own about American society and world society, and the role of the law in all of them.”

Purdy has also held fellowships at Harvard Law School’s Berkman Center and the New America Foundation in Washington, DC, and served as editor of *Democratic Vistas*, a collection of essays that explore democracy in America, which was published this spring by Yale University Press.

Now Purdy is ready to put down roots at the Law School and in his new home in Durham’s Trinity Park neighborhood.

“I look forward to having neighbors, to bicycling across campus, being in a community of teachers and students and getting down to work.”

“I am very excited about Jed Purdy joining the faculty,” says Professor Jeff Powell, who will co-teach “Readings in Ethics” with Purdy in the fall semester. “Jed is a learned person in all of the best senses of that adjective, and he will bring to bear on his teaching and scholarship an avid curiosity and an extraordinary range of interests. I am sure that his brilliance, enthusiasm, and humanity will make him a wonderful member of our community from the standpoint of students and staff alike.” ♡

Catherine Fisk: Combining scholarship with a passion for social justice



CATHERINE FISK

AS A LAW STUDENT, Catherine Fisk looked for an application of law that was socially relevant, one that would allow her to contribute to her own vision of social justice. She found the perfect fit as a lawyer and scholar focusing largely on workplace issues.

“Most people work for a living and spend most of their waking hours at work. What could be more important to our sense of self, to our sense of fairness, than how law treats issues of fairness and dignity at work?”

Fisk has explored the subject intricately in theory and practice throughout her career, looking at issues as diverse as union organizing by immigrant janitors, humiliation in the workplace, and the ownership of workplace knowledge in the nineteenth century. She joined the Duke Law faculty this summer after teaching at the University of Southern California Law School. From 1992 until 2003, she was professor of law and William M. Rains fellow at Loyola Law School. She was a visiting professor at Duke Law School in the fall of 2002, and has also taught at UCLA and the University of Wisconsin.

“Catherine Fisk’s work in the historical roots of modern employment and intellectual property law is of national renown—I am extremely excited that she will be our colleague,” says Duke Law Professor Laura Underkuffler.

In addition to labor and employment, Fisk’s interests include civil procedure and civil rights.

In the late 1990s, Fisk was part of a group of scholars studying the successful unionization efforts of Latina janitors in Los Angeles, whose methods have since been replicated by hotel and restaurant workers in large cities around the country.

“Part of what made that campaign successful was the ability of the union to conceptualize union organizing and civil rights in terms of a social movement, not just a legal action. The janitors involved churches and social groups, combining the success of union organizing with civil rights activism, even inspiring some of the upper class tenants of the buildings the janitors were cleaning. It took luck, talent, and hard work on the ground.”

Fisk has recently completed co-editing a book on the history of leading labor law cases,

Labor Law Stories, to which she also contributed a chapter on the rights of undocumented workers. It will be published by Foundation Press in 2005.

For Fisk, legal protections in the workplace should include protection for emotional well-being, a conviction which led her to explore humiliation on the job. “I know of few women who haven’t experienced some form of humiliation or sexual harassment at work,” observes Fisk. “The Clarence Thomas hearing and what happened to Anita Hill really galvanized my thinking. Sexual harassment is bad enough. But being humiliated when you speak out is just as bad.” Humiliation can work both ways, Fisk adds. “Individuals charged with sexual harassment can be humiliated too. The process of vindication of legal rights through litigation can be psychologically devastating. As lawyers, we should be concerned about that.”

In the same vein, Fisk urges her students to think about the human impact of the litigation process.

“How we define what rights exist is a function of whether we think litigation can remedy harms. How we go about enforcing rights ends up mattering a lot

“HOW WE DEFINE WHAT RIGHTS EXIST is a function of whether we think litigation can remedy harms. How we go about enforcing rights ends up mattering a lot in the lives of the litigants.”

in the lives of the litigants.”

When teaching civil discovery, she asks students to think about moral “gray areas,” situations where discipline or disbarment are not at risk, but speak to the kinds of lawyers they want to be.

“If you are defending a sexual harassment case and taking a deposition from a plaintiff, would you ask questions of the plaintiff that may or may not be relevant, in part because you know her humiliation might prompt her to settle on terms favorable to the defendant? There are lots of choices to make. I want to give students the tools to make those decisions.”

Fisk also uses her passion and enthusiasm for her pro bono cases to ignite discussion in the classroom. “Students are hungry to be lawyers. It is relevant to them how I use law. I often ask them what they would do, and they give excellent insight.”

Fisk, who has been active in the American Civil Liberties Union in Southern California, inherited her passion for social justice from her family. “I was raised on anti-war demonstrations and peace rallies,” she says, laughing. “I can’t imagine being any other way.” Her left-leaning parents had experienced anti-labor and anti-communist persecution in the 1950s; at one point, her mother was accused, falsely, of being a Communist spy. “The accusation devastated her personally,” Fisk says. “I learned early on that attacks on people’s loyalty, just because their politics are different, are wrong.”

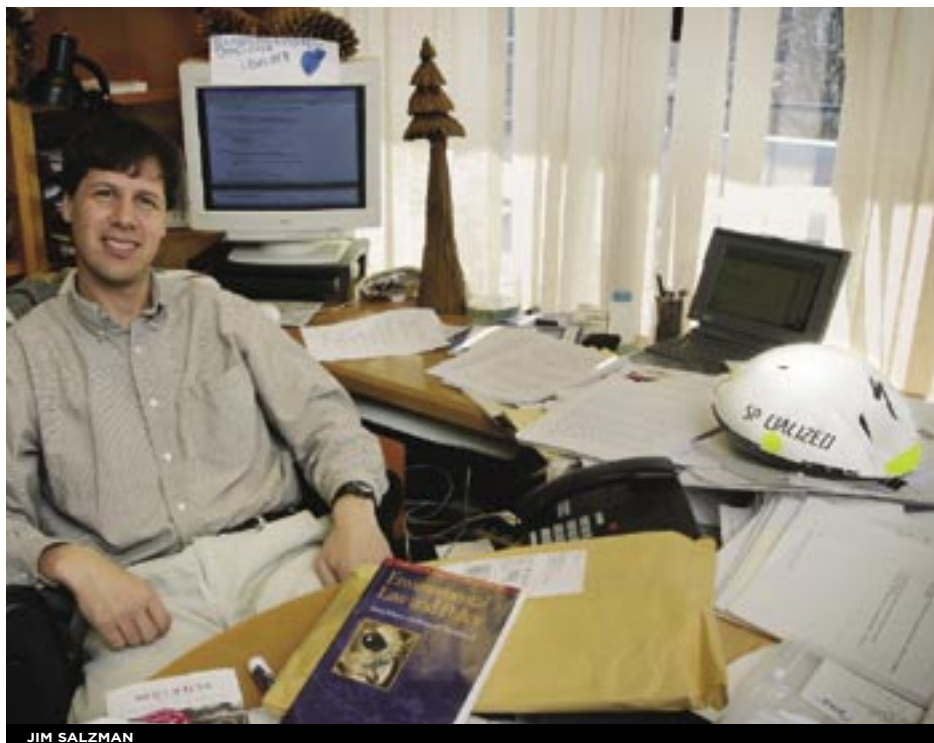
In recent years, Fisk has immersed herself in aspects of legal history. “In order to understand why the law is the way it is, you have to understand where it came from.” She is currently researching a book on the ownership of workplace knowledge and innovations in the 19th century employment relationship. Although employees had relatively few rights in those days, they had far more control over the ideas and knowledge they brought to their work as well as their workplace innovations. Fisk is investigating how and why the law changed to the current practice where employees, as a rule, assign all rights in workplace creation and innovation to their employers.

Relocating to the east coast will make it easier to access large corporate archives for her research and will put her in closer touch with legal historians both at Duke and UNC. Duke Law School has a particular appeal, she says, for the strength of its faculty in both scholarship and practice.

“In some elite law schools, there is a trend toward scholarship of interest mainly to academics and less engagement with the practice of law and scholarship of interest to the bench and bar. Duke has done a great job of attracting faculty who do both.”

In her term as a visiting professor at Duke, she was “blown away” by the level of student engagement. “I really like teaching and really like students. It’s a joy to find students so engaged with the faculty and with the life of the Law School.” ♪

James Salzman: Conservationist brings unique experience to Law and Nicholas School



JIM SALZMAN


JIM SALZMAN IS CONVINCED that if we just give them a chance, natural systems can quite literally pay their way in the world.

“The first value that comes to mind when people think of forests is timber. But timber often may not be the most valuable thing forests produce. Their provision of clean water and carbon sequestration, among other things, may be more valuable, but this isn’t reflected in any markets, so we think of these services as free. If we are concerned with drinking water quality, we shouldn’t just think about building treatment plants. It can be a better economic and ecological decision to focus, instead, on protecting the watershed source in the forests.”

Creating markets for ecosystem services has been the focus of Salzman’s recent scholarship. He spent 2003 as a Fulbright Senior Scholar in Australia, studying that country’s initiatives and challenges in

protecting what he calls “nature’s services.” In an opinion editorial in the *Canberra Times*, Salzman made the public case that a perspective focusing on protecting and restoring nature’s services has the political benefit of justifying, in simple financial terms, why habitat preservation and biodiversity conservation are vital policy objectives.

“IF WE ARE CONCERNED ABOUT DRINKING WATER QUALITY, we shouldn’t just think about building treatment plants. It can be a better economic and ecological decision to focus, instead, on protecting the watershed source in the forests.”



Salzman joined the Duke Law faculty July 1 after almost a decade at the Washington College of Law at American University, and having served as a visiting professor at Harvard, Yale, and Stanford. He also has a faculty appointment at the Nicholas School of the Environment and Earth Sciences.

“Jim’s research on creating markets for ecosystem services is deeply important; it is helping energize innovative investments in conservation around the world,” says Jonathan Wiener, William R. and Thomas L. Perkins Professor of Law and Professor of Environmental Policy at the Nicholas School. “A century from now I hope we will look back at this work and see that it profoundly changed the shape of economic development and environmental protection. Some people say the environment is too important to leave to markets; in my view, the environment is too important to leave out of markets, and Jim Salzman is a leading figure in that effort.”

Salzman has long been concerned with the environment, but not always as an academic. Before he started law school at Harvard in the mid-1980s, he was a field biologist. On Chincoteague, a barrier island on the eastern coast of Virginia, he worked with wild ponies and geese for the Fish and Wildlife Service. Relocating to Point Reyes Bird Observatory on the northern California coast, he tagged songbirds and elephant seals.

Just a few months into law school, frustrated with sitting in the classroom instead of working in nature, Salzman worried that he had made a huge mistake.

“I decided that if I was going to stay in law, it had to be for a reason,” he remembers. “I went to see the dean of Harvard’s Graduate School of Arts and Sciences and

said I wanted to create a joint degree in environmental law and policy. She told me it would be my funeral.” But Salzman got the go-ahead to develop a unique joint degree program between engineering and law.

It was a prescient move.

“I was on the crest of the environmental wave just as it started peaking. The year I graduated, the planet was *Time’s* ‘Man of the Year.’”

A Sheldon Fellowship took Salzman to Paris after graduation, but his project fell through. With funding and no project, he offered his services for free to the environmental division of the Organization for Economic Cooperation and Development (OECD).

Then luck kicked in again.

While attending an OECD meeting in Sweden on the issue of eco-labeling, for which he had written the background papers, the European Union delegate announced the surprise launch of a Europe-wide eco-label program. Though a good deal younger than any of its other staff, the OECD needed an expert and Salzman was the closest thing it had on hand. He quickly became one and traveled around the world working with governments, business and environmental groups in the organization’s 24 member countries.

An offer from Johnson Wax to manage the company’s environmental performance in Europe later took Salzman into the private sector. For the first time, he was in the position of being regulated, as opposed to being a regulator.

“It was a wonderfully humbling experience. I quickly found out that in spite of my ‘killer’ resume, I knew nothing about process,” he says. “I learned that the people on the plant floor might have a lot less schooling or fewer credentials than me,

but they were the ones who actually knew how to get things done. They were the real environmental drivers in the company.”

His transition from the private sector to academic was almost accidental. Living in London, Salzman decided to apply for academic positions simply as a short term means to bring his family back to the U.S., cognizant of the absence on his resume of the standard credentials for law professors—law review, clerkship, and law firm experience.

But his unusual background stood him in good stead. At American University he quickly became one of the leading environmental scholars in the country, and he feels his “different” experiences have been a benefit. He is particularly proud of his *Casebook on International Environmental Law*, written with two collaborators. It is the leading text in the world, adopted by over 120 law schools. “It went against the traditional way of teaching about the subject, focusing on international law as a negotiated process and highlighting the importance of non-state actors, such as environmental groups.”

Salzman loves his work. “The issues are just so interesting and important. You need to feel good at the end of the day about the work you are doing.” Elected a fellow of Britain’s Royal Geographical Society, Salzman also loves the fact that his work has let him travel widely. “I’ve lectured on every continent except Antarctica, and I’m working on that,” he says.

Salzman calls the opportunities at Duke Law and the Nicholas School ideal.

“Duke’s strengths feed into my interdisciplinary interests. There will always be great collaborators like Jonathan Wiener and Chris Schroeder, and Duke is a first-rate law school.” ♪

TEN OTHER NEW FACULTY HAVE BEEN APPOINTED SINCE 2000:
James Boyle, Stuart Benjamin, Francesca Bignami,
Doriane Coleman, Ralf Michaels, Joost Pauwelyn, Arti Rai,
Jerome Reichman, Barak Richman, and Lawrence Zelenak.

A lot has changed since 1975



Average starting salary for a Duke Law grad was \$18,000

Duke Law tuition was \$2,750

Law books and supplies \$220



Today: \$125,000

Today: \$33,870

Today: \$1,300

& now

One of the few things that hasn't changed at Duke Law since 1975 is membership in the Barrister Donor Society. In honor of the Society's 30th anniversary, the Duke Law Board of Visitors voted to upgrade the status of this distinguished giving club. Beginning in July 2004, membership in the Barristers will be granted to alumni and friends who annually donate \$2,500* or more to Duke Law School.

- | | |
|----------------------------|----------------------------|
| The Latty Circle | \$100,000+ |
| The Everett Circle | \$50,000 - \$99,999 |
| The Shimm Circle | \$25,000 - \$49,999 |
| Barrister Colleague | \$10,000 - \$24,999 |
| Sustaining Member | \$5,000 - \$9,999 |
| Member | \$2,500 - \$4,999* |



Questions?

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* graduate of five years or less, judges, educators and those who work for the government or in public service are members at \$1,000

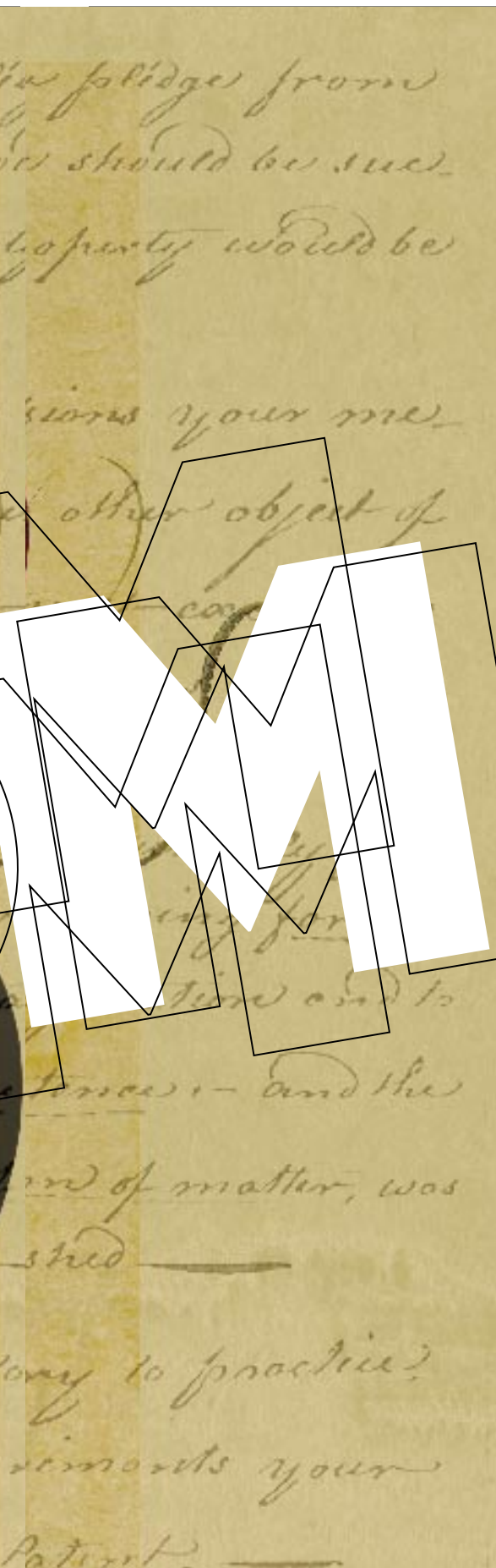
Alumni paying on Barrister pledges made in previous fiscal years will continue to be members for the duration of their pledges

UNITED STATES PATENT OFFICE

THE INTELLECTUAL PROPERTY

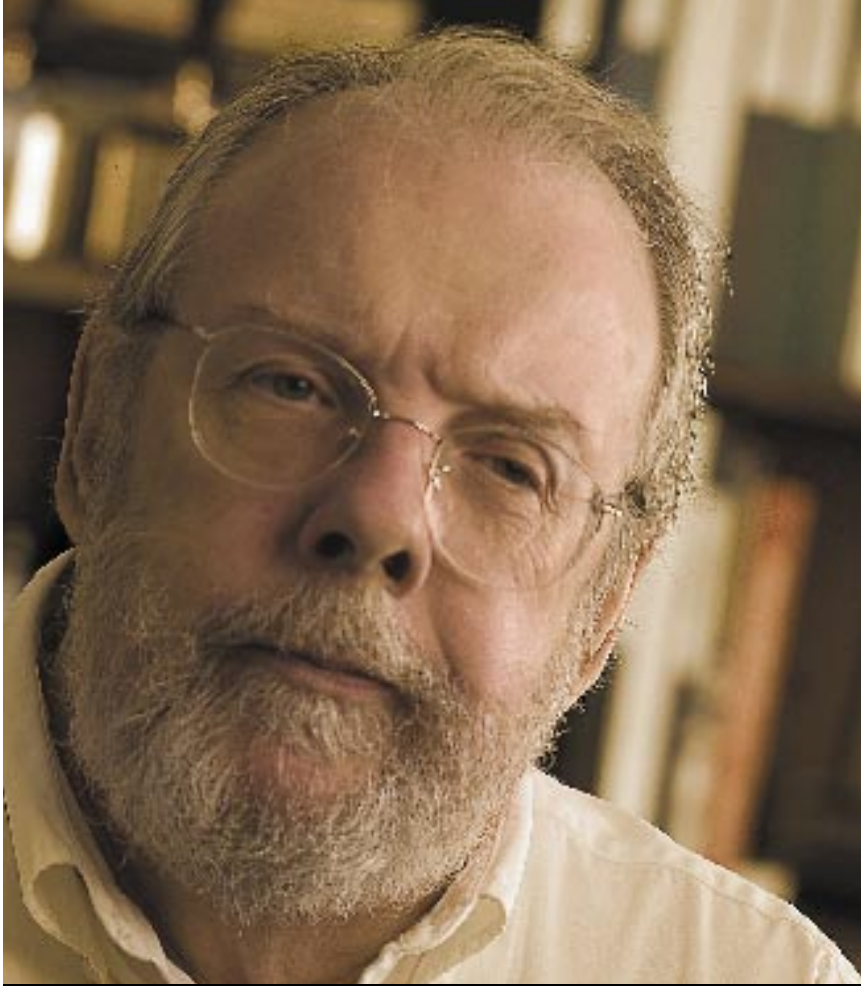
BOOD

AT DUKE LAW



David Lange not only started the intellectual property program at Duke Law School; he *was* the program for over 25 years.

When Lange joined the faculty in 1971, intellectual property wasn't generally thought of as a distinct legal discipline; rather, practitioners tended to see themselves as emphasizing some sub-specialty such as copyrights, trademarks, or patents. Lange was a pioneer, who had represented media clients before coming to Duke, and was invited by the late Edward Rubin '37, then a distinguished member of the California entertainment bar, to become a founding member of the first American Bar Association Forum Committee on the Entertainment and Sports Industries in the mid-1970s. >>



PROFESSOR DAVID LANGE

It was the advent of new technologies, beginning with cable television in the late 1960s and continuing with photocopiers and audio and video technologies in the 1970s, that both altered the control copyright proprietors had over their markets and indicated the need to take intellectual property at large more seriously, Lange explains. The globalization of trade in the '80s contributed to the wide adoption in America of the terminology used elsewhere—"intellectual property," or IP—and a new approach to related issues, he says. Then the explosion of digital technologies in the '90s, and particularly the appearance of the personal computer and the Internet, accelerated the pace at which IP issues were taking center stage among law firm clients' professional needs. As the new millennium approached, intellectual property had achieved a place in the legal profession few could have anticipated 30 years before.

To keep the curriculum current with this

changing area of law, Lange just kept adding to his teaching load. Jennifer Jenkins '97 recalls taking, among other intellectual property courses, a great survey course, classes in entertainment, telecommunications, and trademark law, and one on independent film production. "IP at Duke was David Lange in all his brilliance," she remembers.

Lange himself says "the program was bursting at the seams and student demand was very, very great. One person simply could not keep up with the need."

That's when Duke Law School made a serious commitment to intellectual property, recruiting leading scholars Jerome Reichman and James Boyle to the faculty in 2000.

Reichman, Bunyan S. Womble Professor of Law, is an expert in science and innovation policy as well as international intellectual property issues, such as how the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) of

1994 might be used to benefit developing countries. Boyle, William Neal Reynolds Professor of Law, writes about legal issues in cyberspace and about the history and theory of intellectual property.

With these three scholars as anchors of a new and ambitious IP focus, other faculty became attracted to Duke. Arti Rai, one of the country's top specialists in the field of patents, biotechnology, and pharmaceuticals, joined the faculty in 2003, supplying the legal expertise for Duke University's initiatives in the genomic sciences. Stuart Benjamin, a prominent expert in telecommunications law, also joined the faculty in 2003. Tracy Lewis, Martin Black Professor of Economics at the Fuqua School of Business and director of its Innovation Center, received a joint appointment to the Law School in 2004.

To provide greater institutional visibility and support, the Center for the Study of the Public Domain (CSPD) was established,

“The students are central to what we do here, and not just as passive consumers.”

James Boyle

and also made some key hires. In August of 2002, Jennifer Jenkins was appointed as director of the CSPD. Jenkins teaches a seminar in Intellectual Property, the Public Domain, and Free Speech and runs the CSPD’s “Arts Project.” (See related story page 38.) The CSPD also appointed Anthony So as senior fellow in health and science policy in March 2004. So, who also has an appointment at the Sanford Institute of Public Policy Studies, is spearheading the CSPD’s efforts on access to medicines. (See related story page 36.)

The expertise of these faculty members is further supplemented by that of distinguished lecturers and adjunct faculty, many of whom work in the biotech and digital companies of the Research Triangle.

“Our coverage of the intellectual property field is now second to none,” states Lange.

But the intellectual property program’s relationship to its students is more than that of a well-stocked store with a wide range of offerings for its customers. “The students are central to what we do here, and not just as passive consumers,” explains Boyle. “I think that is one of the hallmarks of David’s approach, and I think the people who have come to teach at Duke came, in part, because they share it.” Student activities around intellectual property have burgeoned in recent years; there is, for example, an active Intellectual Property and Cyberlaw Society, whose annual “Hot Topics” conference has attracted considerable praise, and an online student journal, the *Duke Law and Technology Review*, whose innovative iBrief format is now much imitated. (See related story page 24.) Yet this just scratches the surface, according to Boyle.

“First of all, we have so many students with interdisciplinary interests. Twenty-five percent of our students are joint-degree candidates, and so you have an incredible richness in the classroom. One does not need any particular background for general

intellectual property study, but when you are discussing operating systems, or gene sequences, or ideas about authorship in literature, it is great to have people in the class who can speak up about that subject from a non-law perspective. The second thing is that Duke has started attracting students because of our strength in intellectual property. So you have people in our classes who arrive already excited by the material, maybe on the arts side or because they have dealt with some issue of rights over computer programs or access to medicines. They come with a strong set of ideas about the policies in the area. And third, there are a lot of students to whom all of this is brand new. Each of those groups has something to offer in class discussion, but it is the combination that is particularly exciting.”

Garrett Levin ’06 says he chose Duke Law primarily because of its exceptional intellectual property program.

“I was a documentary film editor before coming to law school, and I wanted to learn as much as I could about IP. The commitment the Law School has shown in assembling the IP faculty convinced me that there aren’t many places that are doing the high quality work that happens here with Professors Boyle, Lange, Reichman and Rai.”

Building excellence

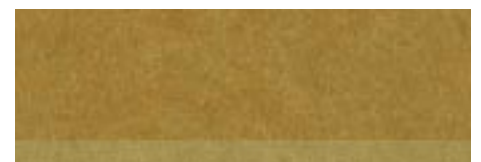
Dean Katharine Bartlett says intellectual property scholars have been recruited with a view to building a first-rate program and making the intersection of law, science, and innovation a strategic focus of the Law School.

“There are amazing strengths at this University in the sciences, engineering, business, medicine, and policy. The science and technology emphasis in the Law School leverages these assets and our own to create one of the most exciting IP presences in the country.”



INTELLECTUAL PROPERTY CURRICULUM and RELATED COURSES 2004-2005

Advanced Copyright: Digital Technologies and Others
Antitrust
Bioethics
Copyright Law
Current Issues in International Law
Entertainment Law
First Amendment
Independent Feature Film Production, Finance, and Distribution
Intellectual Capital and Competitive Strategy
Intellectual Property
Intellectual Property, the Public Domain, and Free Speech
International Intellectual Property
International Trade Law
Law and Literature
Patent Claim Drafting
Patent Law and Policy
Trademark Law and Unfair Competition
Telecommunications Law



Center for the Study of the Public Domain

The story of Duke Law's CSPD also starts with David Lange. Professor Boyle credits Lange with framing an essential issue for intellectual property scholars in his 1981 article, *Recognizing the Public Domain*.

"He argued that scholars were focusing all of their attention on intellectual property, not focusing on the dangers of over-protecting material and impoverishing the public domain, because they assumed that it was plentiful and would always be there," explains Boyle. "He concluded 'and that, of course, is what they said about the buffalo. And where are the buffalo now?'" It is that notion of the dangers of ignoring the role of the public domain that prompted the founding of the CSPD.

"Any thoughtful intellectual property scholar would say that the balance between IP and the public domain is vital to having a vibrant, successful system for innovation, whether in culture or in inventions, yet around the world, there was not a single institution devoted to the study of the public domain," says Boyle. "It's as if we had a thousand schools of Industrial Development and not a single School of the Environment. It's not that one should restrain industrial development, but if you want to have sustainable development, you have to understand the environment as well. At its best, that is what good intellectual property policy does. Sometimes creating a property right can actually expand the public domain; without patents, for example, which require disclosure and which eventually expire, we would have to rely on trade secrets, with the risk that the invention never becomes freely available. The key thing is to make sure that the expansion of rights serves, rather than hinders, the goals of the system."

Professor Jerome Reichman agrees. "If over-protectionist intellectual property rules make it hard to get the basic inputs to innovation, it will end up hurting our own innovation efforts rather than help-

Of iBriefs, MP3s, and Public Interest: Student initiatives in IP at Duke

The explosion of scholarship and initiatives in intellectual property at Duke Law School has not come solely from the faculty; over the past four years, students have demonstrated spectacular intellectual engagement and creativity, both in and out of the classroom. Three examples follow.

IP/Cyberlaw Society's 3rd annual "Hot Topics" symposium

Peer-to-peer music file-sharing is an unquestionably "hot topic." An estimated 50 to 60 million people currently engage in file-sharing, it's the subject of numerous bills pending on Capitol Hill, and hundreds of lawsuits and criminal prosecutions are aimed at shutting the practice down. It was, then, a fitting topic for a half-day panel discussion and debate, part of the Intellectual Property and Cyberlaw Society's 3rd annual "Hot Topics in Intellectual Law Symposium" held March 26.

"The issue of file-sharing is of importance not only to the recording and music industries, but functions as a referendum on copyright law itself," said Professor David Lange in introductory remarks. "Never before our time have individuals massively confronted copyright in their everyday lives in the way that we now do." Panel moderator Raymond Ku, professor of law at Case Western Reserve University School of Law and the associate director of the Center for Law, Technology and the Arts, agreed with that assessment, noting that copyright treats creators, distributors, and the public differently.

"Peer-to-peer changes the equation. The publisher and distributor drop out of the picture and are replaced by the public," said Ku.

The student-organized panel included Dean Garfield, vice president of legal affairs for the Recording Industry Association of America, which has sued to stop file-sharing, and Jason Schultz, a staff attorney for the Electronic Frontier Foundation, who called for voluntary collective licensing as a way to compensate artists and copyright holders, without shutting down the practice. Other views came from Jim Burger, who represents technology companies on IP, communications, and government policy matters, and Mark Ishikawa, who described himself as an internet "private investigator" hired by copyright holders to detect infringers and pursue them under the Digital Millennium Copyright Act (DMCA).

"Users should have no reasonable expectations

of privacy when they are using peer-to-peer networks," said Ishikawa, adding that he can easily track down the date, time, and Internet provider address of any file exchange.

"I thought [the students] did a very professional job of bringing together people with vastly different viewpoints on a controversial issue," said participant Schultz. He said the informal contributions of Judge Randall R. Rader of the United States Court of Appeals for the Federal Circuit gave additional depth to the panel.

The file-sharing debate was followed by an exploration of the crucial issue of specificity in the language of patent claims, with the keynote address delivered by Judge Rader, a top jurist and teacher of patent law. It continued in breakout sessions led by practitioners and academics in such areas as nanotechnology, biotechnology, antitrust in software product markets, and recommendations for patent reform.

According to Grant Yang '05, past president of the IP and Cyberlaw Society, "Hot Topics" is designed to appeal to academics, practitioners, and students with diverse interests. Rising 2L David Breau, the incoming president, feels the March program succeeded well in that regard. "People were engaged and interested—attorneys as well as students."

Duke Law and Technology Review: An Online Pioneer

The staff of the *Duke Law and Technology Review* (DLTR) celebrated its final faculty approval as a permanent Duke Law School journal this spring, the last step in a four-year process.

Entirely a student initiative, DLTR takes a highly innovative approach to the law journal format, as well as to issues relating to technology and the law. Published online with over 300 regular subscribers, DLTR pioneered the iBrief, which crosses an op-ed style with a traditional journal's rigorous standards of research and analysis.

"At 10-15 pages, iBriefs are designed to be more accessible than traditional law journal

“Striking the right balance between what is protected by exclusive rights and what remains free for all to use and build upon is vital to the functioning of the IP system, and the innovation and creativity it seeks to promote.”

Jennifer Jenkins

ing them,” offers Reichman, whose work takes an international view. “As more and more innovation comes out of today’s developing countries such as China and India, it’s going to increase enormously the costs of innovation here, especially by small- and medium-sized firms who will not be able to get affordable access to the inputs they now take for granted.”

Boyle, Lange, and Reichman convened the Conference on the Public Domain in November 2001, which jump-started activity and discussion on the role of the public domain in all spheres of innovation. Attracting scholars and creators in such areas as science, history, environmental systems, art, law, software, film, and music, it represented the first large-scale inquiry into the issue of whether the trend towards expanded intellectual property rights would best stimulate innovation and investment in the face of new technologies. The consensus of concern at the conference is what led to the establishment of the CSPD at Duke in 2002, funded by a generous \$1 million gift from an anonymous donor. Boyle, Lange, Reichman, and Arti Rai all serve as faculty co-directors of the CSPD.

From the start, the CSPD has sought to highlight the public domain as an essential part of the intellectual property system. Jenkins, the CSPD’s director, puts it this way: “The Center aims to preserve the same thing—innovation—that the IP system is designed to facilitate. Striking the right balance between what is protected by exclusive rights and what remains free for all to use and build upon is vital to the functioning of the IP system, and the innovation and creativity it seeks to promote.”

Public Interest Opportunities

In recent years, Duke Law students have worked on an array of pressing public interest issues in the intellectual property area.

Through seminars that offer the opportunity to work with public interest organizations, students have participated in a series of practical projects. One of these projects—researching privacy issues on a computer operating system for the Electronic Privacy Information Center—eventually led to action by both the Federal Trade Commission and European Union. Another project allowed students to prepare and present a formal 50-page comment to the Federal Communications Commission.

This spring, during a seminar on intellectual property, the public domain, and free speech, students worked on thorough analyses of issues surrounding proposed legislation that would provide broad legal protection for databases. Their papers examined Commerce Clause limits on this legislation, existing protections for databases under copyright as well as contract law, differences between the current proposal and established misappropriation doctrines, and an in-depth study of the legal database industry’s methods for protecting its databases.

“I felt I was doing something that could actually make a difference,” says Kerri Smith, who participated in the seminar. “It was amazing what a law student could do in analyzing challenging, complex issues that were both interesting academically and important from a policy perspective.”

Working closely with Professors David Lange, Jeff Powell, James Boyle, and Fellow Daphne Keller, several students also assisted in the research and drafting of a Supreme Court *amicus* brief in *Eldred v. Ashcroft*, the case challenging Congress’ most recent 20-year extension of the copyright term. While the challenge to the term extension was ultimately unsuccessful, the *amicus* brief was cited by Justice Stephen Breyer in a strong dissent.

Students continue to perform public interest work through independent studies and research positions with the Center for the Study of the Public Domain. Several students are currently working with the CSPD’s Arts Project on articles and multimedia materials that illustrate the impacts of intellectual property law on creative processes.

“The work that they are doing involves legal analysis, but it also gathers artists’ stories and perspectives,” says Jennifer Jenkins, director of the Project. “The interdisciplinary nature of this work has allowed students with artistic backgrounds to apply these in their legal education—with great results.” ♣

articles,” says editor-in-chief Ryan King ‘05. “Any educated person should be able to read them without being bogged down by a lot of legalese, but a technology lawyer should be able to pick them up and find the pieces relevant and interesting.”

DLTR covers topics relating to intellectual property, business law, free speech, privacy, telecommunications, and cybercrime, among others. Articles currently posted at <http://www.law.duke.edu/journals/dltr> include a summary and analysis of the FCC’s new wireless local number portability rules, a review of how patent infringement cases could be affected by the “complexity exception” of the Seventh Amendment, which allows a judge to deny a jury trial in a civil case if he or she feels the issues are too complex to allow a jury to offer an informed decision, and the issue of patenting computer data structures. DLTR is attracting contributions from international practitioners, as well as students, from a broad spectrum of disciplines.

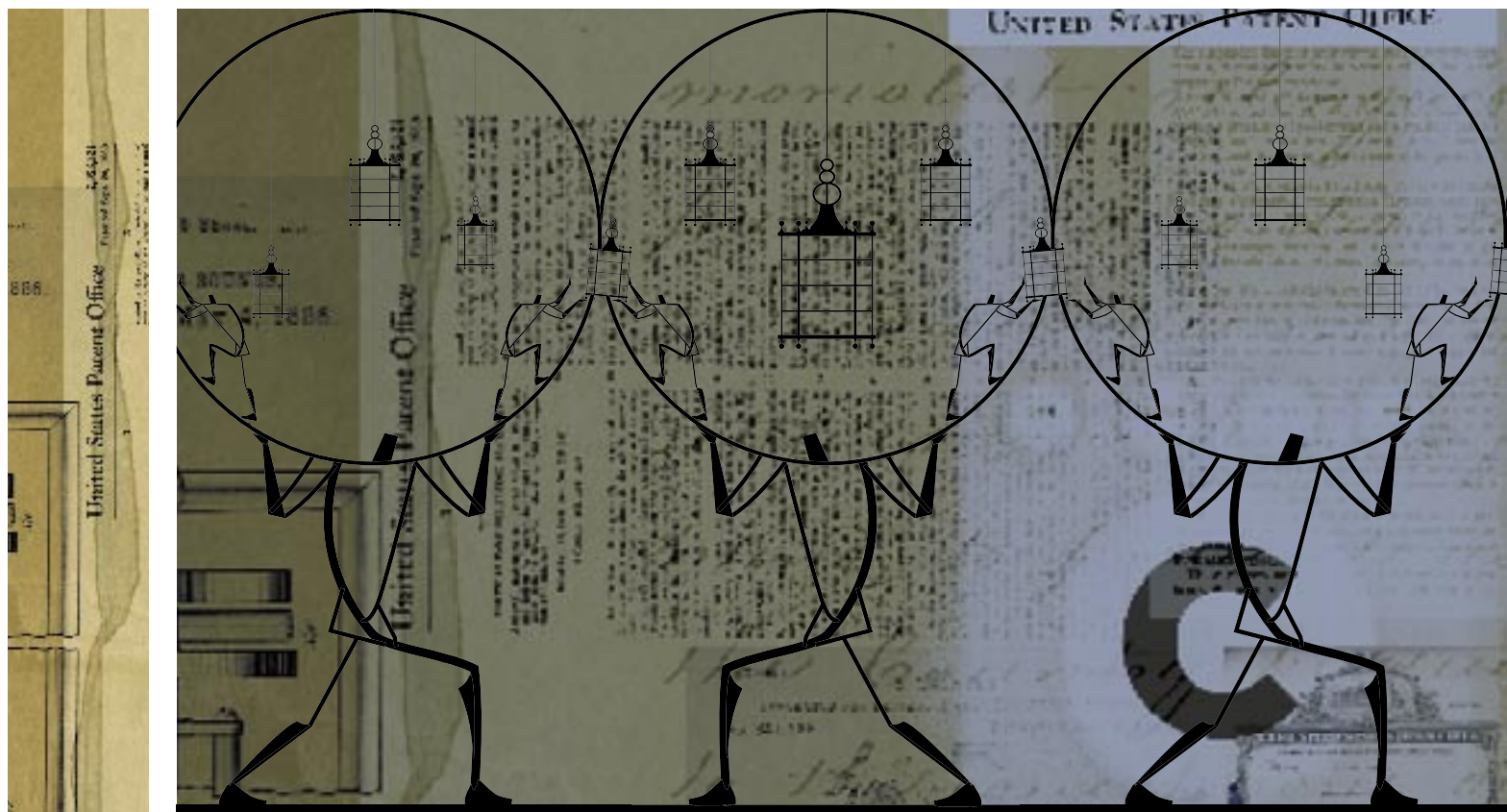
“Practitioners are starting to find us, as contributors as well as readers,” says King. “The shorter format and freer style lends itself well to their contributions.”

Continuity and frequency of publication allows DLTR to be the first to cover controversies in technology regulation, and to continue to follow the issues as they evolve, says Kerri Smith ‘05, DLTR’s managing editor.

“Traditional journals take a year to publish, so we can be the first to cover an issue,” said Smith of DLTR’s plans to publish an iBrief every two weeks throughout the academic year.

King credits the last board of DLTR with establishing a regular and frequent publication schedule, and securing approval as a permanent journal. With a vastly expanded staff, the result of an aggressive drive to recruit top 2Ls and 3Ls, King says quality will be the focus in the coming year, the goal being tightly written articles on timely issues that are put through a rigorous 10-step editing process.

“There are very few all-electronic journals in law. DLTR was one of the first and immediately set high standards both for its innovative approach and the quality of its writing,” says Richard Danner, senior associate dean for information services and Archibald C. and Frances Fulk Ruffy Research Professor of Law. “As a largely student-written journal, DLTR counters the trend of most law journals to publish fewer student contributions, thereby increasing the value of participation for Duke Law students. The journal ties in directly with the Law School’s academic priorities, and it was an easy matter for the faculty to grant final approval last year.”



CSPD events: from international trade to documentary film

Just as there are intricate, reciprocal connections among natural systems—changes in one often spur reactions elsewhere—so are there intricate connections in areas traditionally governed by intellectual property rights. One major success of the CSPD has been exploring those connections through interdisciplinary conferences, meetings, an ongoing lecture series, and continuing research.

In April 2003, the CSPD hosted the Conference on International Public Goods and Transfer of Technology under a Globalized Intellectual Property Regime, a major conference on the harmonization of international IP rights since the TRIPS Agreement of 1994. Organized by Jerome Reichman and Keith Maskus, professor and chair of the Department of Economics at the University of Colorado at Boulder, and primarily funded by the Rockefeller and John D. and Catherine T. MacArthur Foundations, the conference brought together legal scholars, economists, and political scientists to address the proper

balance between private and public rights and interests in an incipient transnational system of innovation, to serve both developing and developed economies. Of particular focus were issues relating to the ability of governments to provide such critical public goods as health, education, and environmental protections in a global regime that increasingly relies on massive privatization of technical inputs.

Papers presented at the conference have resulted in this summer's Symposium issue of the *Journal of International Economic Law* and a collection, *International Public Goods and Transfer of Technology under a Globalized Intellectual Property Regime*, forthcoming from Cambridge University Press. The conference was successful in raising the visibility of a wide range of policy issues, some of which have been pursued in subsequent international meetings.

Proliferating property rights and their effects on arts and culture are the focus of the CSPD's Arts Project, which in April 2004 hosted a conference called "Framed!: How Law Constructs and Constrains Culture." Held in conjunction with "Full-Frame," one of the nation's leading docu-

mentary film festivals, it was a forum for lawyers, musicians, and world-renowned documentarians to discuss the increasing conflict between copyright and creativity. Panel discussions explored issues such as hurdles faced by filmmakers in clearing rights and renewing limited licenses for images and music, and how the line between permissible borrowing and theft in music has shifted in recent years.

In 2003, the CSPD also launched an interdisciplinary lecture series on "The Information Ecology," which has featured presentations by scholars from Duke and around the country on innovation economics, genomics, telecommunications, media policy, electronic privacy, and a variety of other subjects. Upcoming speakers in the Information Ecology series include James Love, director of the Consumer Project on Technology, who will speak about alternative ways of funding research and development that would promote access to essential medicines.

The breadth of the CSPD's approach yields both theoretical and practical benefits. "One of the real advantages has been the wealth of detail it has generated about

“Diverse as all these projects are, there is a common theme here, a Duke signature: great scholarship translated into policy proposals that actually make the world a better place.”

Dean Katharine Bartlett

the way intellectual property actually works in different areas of creativity,” explains Boyle. “This not only leads us

to a better understanding of innovation, but it is also practically fascinating because of the possibilities for productive transplants: There may be practices in one area, say in music or software, which inspire you to wonder whether an approach like that could work in science or medicine. Arti Rai’s work on open-source drug discovery, which borrows ideas from software development, is one example. Jerry Reichman’s comprehensive study of compulsory licenses in different areas of industry is another. The idea is really the stitching together of issues raised across cultural and scientific arenas. That gives you practical insights, which in turn gives you more theoretical insights—it’s a dialectic, a back and forth process where you get a more sophisticated understanding of both.”

Major developments in public genomics and access to medicines

The CSPD’s activities in the areas of science, health, and distributive justice got two major boosts in 2004.

First, partly due to a generous \$100,000 donation from an anonymous donor, the CSPD was able to collaborate with Duke University’s Center for Genome Ethics, Law and Policy (GELP) and the Sanford Institute to set up the Program on Global Health and Technology Access, to be directed by Dr. Anthony So. (See related story page 36.) The program will work to solve patent problems impeding drug development and distribution.

“Our goal is to provide the global poor with better and more affordable access to essential medicines such as HIV/AIDS drugs,” states So. Related projects will

CSPD
<http://www.law.duke.edu/cspd>

Framed!
<http://www.law.duke.edu/framed>

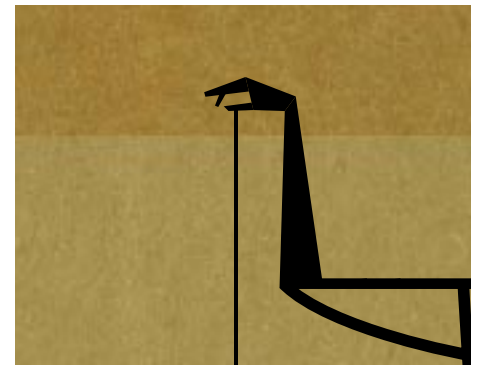
include Professor Rai’s open-source approach to inventing drugs that fight tropical diseases. (See related story page 30.)

Second, a number of

Duke Law faculty were part of an extremely ambitious, five-year, \$5 million grant application to the National Institutes of Health and the Department of Energy, for the “Centers of Excellence” Program in Ethical, Legal and Social Aspects of the Human Genome. The grant, which was coordinated by Dr. Robert Cook-Deegan, director of GELP, is expected to result in the establishment of a Center for the Study of Public Genomics at Duke and designation of Duke as one of the prestigious national Centers of Excellence. The new Center will focus intensively on the effects of intellectual property on genomic research, development and medicine. Its projects will include Professor Rai’s application of open-source data sharing to genomics research, and Professors Reichman and Lewis’ research on promoting scientific innovation with compensatory liability rules. (See related stories, pages 28, 30, 33.)

From science to music, from film to genomics, the profusion of activities can be almost dizzying. David Lange’s virtuoso one-man band is now at least a string quartet and well on its way to being a full orchestra. In the process, the development that Lange masterminded has really exceeded expectations.

“We are very proud of what the intellectual property program has achieved,” says Dean Bartlett. “Diverse as all these projects are, there is a common theme here, a Duke signature: great scholarship translated into policy proposals that actually make the world a better place.” ♪

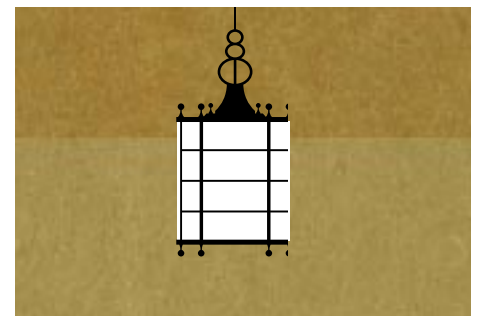


COLLECTED PAPERS FROM CSPD CONFERENCES

Collected Papers: Duke Conference on the Public Domain, 66 Law & Contemp. Probs. (2003)
<http://www.law.duke.edu/journals/lcp/indexpd.htm>

Selected Papers: Conference on International Public Goods and the Transfer of Technology Under a Globalized Intellectual Property Regime, 7 J. Int’l Econ. Law, Issue 2 (2004)
http://www3.oup.co.uk/jielaw/hdb/Volume_07/Issue_02/

INTERNATIONAL PUBLIC GOODS AND THE TRANSFER OF TECHNOLOGY UNDER A GLOBALIZED INTELLECTUAL PROPERTY REGIME, Ed. Maskus and Reichman (forthcoming from Cambridge University Press, 2005)





“Some companies love patents, but at the same time hate gene patents. They want to patent their technologies, but don’t want to have to pay royalties on every single DNA segment they use.”

Robert Cook-Deegan

ing, modeled on software, might be applied to genomics research as an alternative to the patenting tradition. Jerome Reichman, Bunyan S. Womble Professor of Law, and Tracy Lewis, Martin Black Professor of Economics and director of the Innovation Center at the Fuqua School of Business, who has a cross-appointment at Duke Law School, will explore how a regime of compulsory liability rules could work as an alternative to property rights in the context of genomic science and industry. (See related stories, pages 30 and 33.) The Center also includes faculty from Duke’s Sanford Institute of Public Policy, School of Medicine, and Department of English, as well as Georgetown University’s Kennedy Institute of Ethics, with its DNA Patent Database.

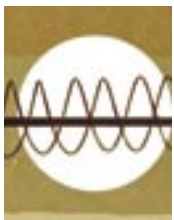
“To do good work in this area, you need business, law, science, and ethics,” Cook-Deegan says. “Duke has pulled this all together; it’s extraordinary.”

By design, the new Center will look at alternatives to the traditional intellectual property framework.

“If there’s anything that resonates as belonging to all of us, it’s our genes,” observes Cook-Deegan, noting that some pioneering genomics researchers argue for the practical value of a robust scientific commons, an area of focus by Duke Law scholars such as Rai, Reichman, and William Neal Reynolds Professor of Law James Boyle.

“At the same time, you have another set of players operating in the private sector, doing the same experiments, generating the same data, but handling it in a completely different way. There’s a chance here to compare how those different frameworks play out,” Cook-Deegan explains.

The genetic field is unusual in part because of a limited number of genes—about 22,000 in the human genome—that produce approximately 100,000 proteins. Argues Cook-Deegan, “If you allow exclusiv-



Dynamic law and hot science

Duke Law School faculty integral to new Center for the Study of Public Genomics

Duke University is poised to establish a new interdisciplinary Center for the Study of Public Genomics. An announcement is expected at press time regarding a \$5 million, five-year grant to the Duke Institute for Genome Sciences and Policy’s Center for Genome Ethics, Law and Policy (GELP) from the National Institutes of Health and the Department of Energy to establish the new Center. This will make the Institute for Genome Sciences and Policy a formally designated national Center of Excellence for Ethical, Legal and Social Implications Research.

Duke Law School faculty are “absolutely central” to the new Center’s core research projects, says GELP Director Robert Cook-Deegan, MD, who has close ties to the Center for the Study of the Public Domain. Cook-Deegan’s own research contribution to the Center will be policy histories of DNA sequencing, micro-array technologies, and the information-sharing practices for each. Duke Law Professor Arti Rai will investigate how open-source data shar-

ity over genes, then you are really building fences around things that everybody needs access to in order to make scientific progress. When you have a system bounded by nature, there is the potential for bottlenecks. Bottlenecks and exclusive property rights are a volatile mix.”

While early genetic innovations of the mid-1970s were not patented, the norms shifted rapidly toward patenting in academia, partly as a result of the Bayh-Dole statute of 1980 that gave universities the rights to the intellectual property they create with federally supported research, according to Cook-Deegan. “When biotechnology and pharmaceutical firms started pouring research and development money into molecular biology in the 1980s, their business models depended on patents. Everybody was patenting, but for somewhat different reasons.

“The default premise has shifted over 30 years from a certain skepticism regarding the value of patents to ‘we love patents.’ And patents have been applied to more and more things, including fairly basic methods—genes in their purified forms, cells, cell-lines, software, even methods used in computers—all sorts of things people produce in molecular biology laboratories.

“Only through litigation can the validity of these patents be tested,” Cook-Deegan adds. Since litigation usually only becomes worthwhile once products get to market—generally a 15- to 20-year cycle in pharmaceuticals—that process is just getting underway.

“The surge in DNA patenting really began in 1994,” says Cook-Deegan, citing data from Georgetown’s DNA Patent Database (<http://dnapatents.georgetown.edu>), a unique data resource for the new Center. “And the peak may have passed, based on drops in DNA patent counts each year since 1999.”

The cumulative nature of innovation in genomics makes intellectual property a critical concern. “Some companies love patents, but at the same time hate gene patents,” explains Cook-Deegan, offering as an example companies that make DNA “chips,” which necessitate the use of hundreds of thousands of gene segments. “They want to patent their technologies, but don’t want to have to pay royalties on every single DNA segment they use.”

Other companies base their entire business plans on strong patents on genes—they find genes and patent them so that

they get licensing fees. “These companies have a huge stake in opposing patent reform that might limit their intellectual property,” argues Cook-Deegan.

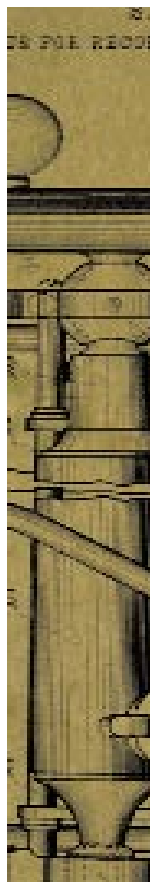
“Somebody has to be looking out for the public interest, and this is part of the Center’s role.”

Cook-Deegan cites examples where private and public interests have found an acceptable balance. Gene splicing, or recombinant DNA, was one of the two seminal genome technologies of the 1970s. The “Cohen/Boyer” patent was held jointly by Stanford University and the University of California (Berkeley) until its expiration in 1997, covering both a powerful research tool and production mechanism. Instead of exclusively licensing the technology to a single company, the universities licensed it relatively cheaply for commercial users to ensure that it generated revenue, and built in a de facto research exemption—academics could use it for free.

“The patent generated a quarter-billion dollars that the universities plowed back into research, but the patent did not block extremely wide adoption of the method, and it had little if any effect on prices of the drugs made using recombinant DNA.

“The crucial issue is not just what is patentable or not, but how the patents are used and licensed. Patents don’t inherently help or hinder innovation,” explains Cook-Deegan. “Patents can do both, and sometimes a single patent can do both at the same time, but in different ways for different applications.

“A consensus is emerging that patents



GELP DIRECTOR ROBERT COOK-DEEGAN

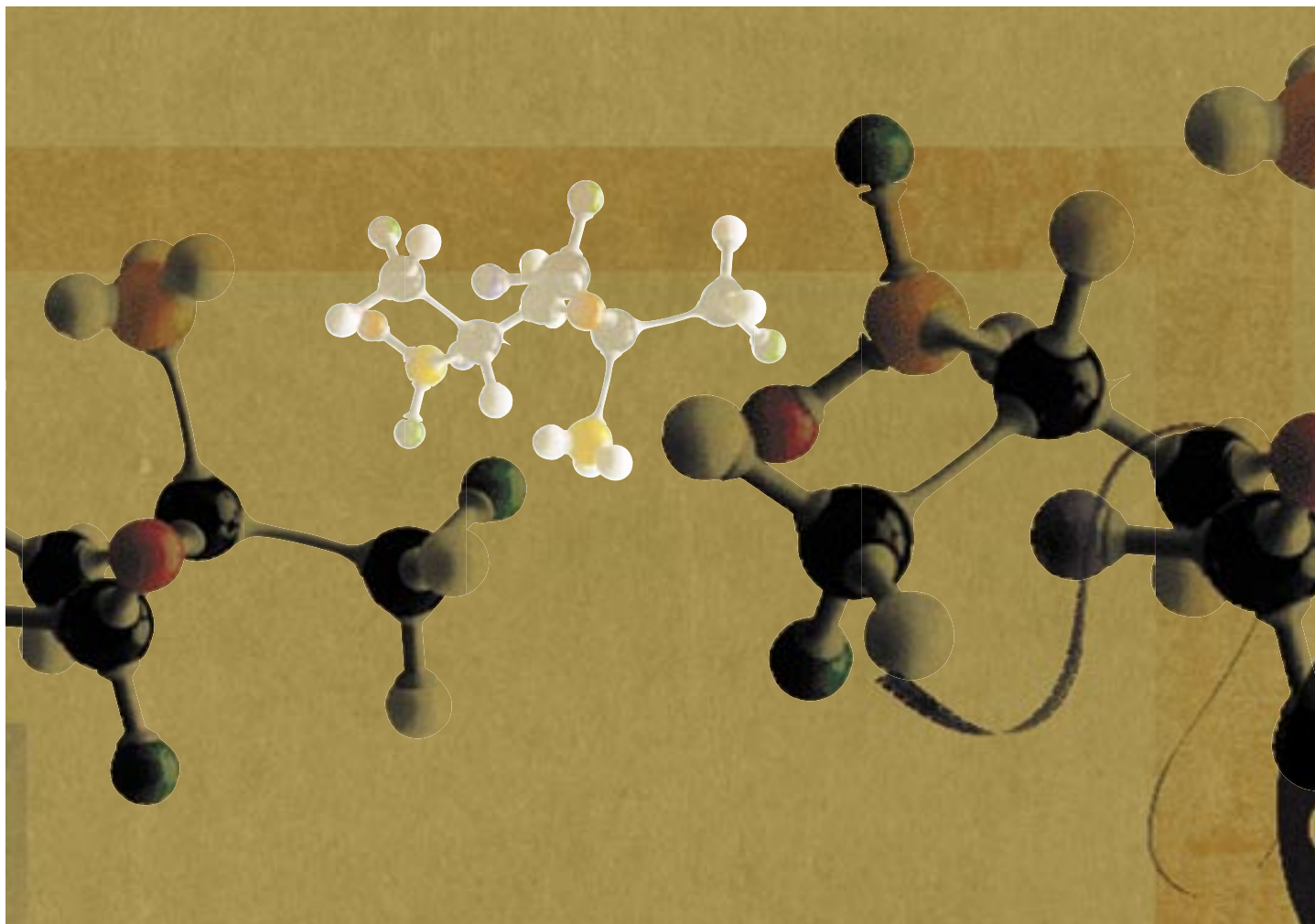
are not working well in DNA diagnostics,” he continues. “Groups that were doing some DNA tests have stopped because of the intellectual property; prices are higher, and incentives to innovate are lower. The patents basically cover an association between DNA sequence and disease—a

basic discovery—but the genetic test that follows may not require extensive investment to develop. Any lab can do the DNA test just knowing the association. The patent holder has little stake in doing the test cheaper,

faster, or more accurately because price and profit are driven by the monopoly, not the technology. Why spend money to slim down a cash cow?

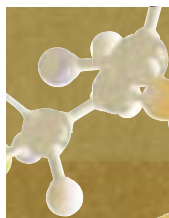
“We’re hoping to add to the debate a mix of people who are thinking of it from the perspective of the system as a whole and the public interest, not just vested interests,” says Cook-Deegan. “The vested interests may reach decisions that are fine for all of us most of the time, but when they aren’t, we’ll be watching.” ♡

Learn more about the Center for Genome Ethics, Law, and Policy, its upcoming programs and events, and the new Center for the Study of Public Genomics: <http://www.law.duke.edu/gelp>



“With open and collaborative approaches generally, there may be room for creativity or the possibility of creativity that wouldn’t come if you just had one pharmaceutical company working on a drug.”

Arti Rai



Open Source: How far can it go?

Arti Rai looks at open and collaborative drug development models

An expert in patent law and the norms of biopharmaceutical research, Arti Rai sees some problems in the current system.

“It may be difficult to get a lot of progress in terms of complex diseases like cancer through some of the current structures we have in place, such as the emphasis on individual labs that are small and focus on only one gene or one protein,” she argues.

In the area of tropical diseases, such as malaria, the failure of the biopharmaceutical patent system is primarily economic. “It’s not that the issues are so scientifically complex but rather that there’s little monetary incentive to do research in the area,” explains Rai, who joined the Duke Law faculty in 2003.

Rai has two separate research initiatives that explore how alternative methods of drug development can get around these problems.

On the tropical disease front, Rai, along with collaborators Stephen Maurer of the Goldman School of Public Policy at the University of California, Berkeley, and Andrej Sali, a computational biologist at the University of California, San Francisco, has proposed a unique open approach to drug development in areas where profit expectations do not justify large investments in research and development. In some ways it would resemble the “open source”

movement in software development, which has produced products such as Linux. The proposal was featured in June in *The Economist* magazine's "Technology Quarterly."

"We're trying to put an experimentation model in place that would draw upon the expertise of a large number of people," Rai says, explaining that scientists across different labs would volunteer to work together on data, as opposed to just swapping source code. "Rather than screening for participation at the outset, we would screen output to see whether it was really good or not."

The combination of volunteer labor and public domain or donated research tools would help keep the costs of finding a promising drug candidate down. Such candidates would then go into commercial development based on competitive bidding.

Rai explains that the Tropical Disease Initiative, or TDI, is intended to create more drug candidates for another non-profit organization, Virtual Pharma, to develop. Virtual Pharma looks for good

For more information on the Tropical Drug Initiative, see http://economist.com/displaystory.cfm?story_id=2724420.

drug candidates that aren't being developed because nobody has the monetary incentive to do so. It then funds contract research organizations or pharmaceutical companies to develop those drugs.

"Right now the Virtual Pharma pipeline is somewhat dry. It's done a very good job of trying to address one problem in the research and development value chain, and TDI is going to address another problem, which is keeping the supply pipeline full."

Whether or not TDI-developed drugs would go into the public domain is a bit of an open question. Doing so would keep costs down—so-called "transaction costs" mount quickly when lawyers are involved in negotiating the details of proprietary rights mechanisms and licensing strategies. On the other hand, observes Rai, there may be a small developed-country market for drugs to fight certain tropical diseases, such as malaria, with travelers or military personnel as its likely consumers.

"Putting [the drugs] in the public domain would make it difficult to give addi-

An empirical look at innovation



PROFESSOR STUART BENJAMIN

What works best to stimulate innovation: a regime that has very strong property rights, or one that doesn't, such as a commons? Are there significant characteristics of specific industries that would make them better or worse candidates for a property regime or some other regime, or for specific organizational structures? These are the questions Law Professors Stuart Benjamin and Arti Rai are tackling with a new research project.

Benjamin and Rai are gathering empirical data to find out how people are actually working and innovating in areas like biomedical research, telecommunications, software, and nanotechnology.

"We want to gather data on which approaches are used, and which ones are successful," explains Rai. "In what sorts of situations has a property rights model worked best, and in what situations have other models been preferable?"

One industry may support more than one model, as the highly proprietary approach of Microsoft and open-source



PROFESSOR ARTI RAI



“Why does Linux work? Why are so many programmers willing to spend hours of their time for no salary? It may be they get a psychological benefit from not working for a company.”

Stuart Benjamin

approach of the Linux system indicate in the software industry, Benjamin notes.

“Why does Linux work? Why are so many programmers willing to spend hours of their time for no salary? It may be they get a psychological benefit from not working for a company,” he suggests, noting that their contributions are often made anonymously.

That may not work in other areas, such as cellphone development, Benjamin suggests. “Maybe to design the next generation of cell phones you actually need a hierarchy—someone at the top to say it has to have particular functions.”

Rai has studied the biomedical industry extensively—including open-source projects—and finds that developing cures for complex diseases may require different organizational structures and property regimes than for simple diseases.

Benjamin, an expert in telecommunications law and policy, believes the issue has immediate relevance in the area of radio spectrum—wireless technologies—as the Federal Communications Commission is now trying to decide the extent to which it should be regulated as a commons or could operate more efficiently under private ownership.

There is consensus that totally open access wouldn’t work with respect to spectrum, Benjamin explains, because a lack of regulation would lead to untrammelled interference as ever higher-

powered devices drown each other out. Advocates of a spectrum commons claim to have solved the interference problem with a network of low-powered devices that repeat each other’s messages.

“That requires an entity that creates protocols and ensures that they are followed,” says Benjamin. “The question is a comparative one—does it make more sense to have a private company create that protocol as opposed to the government?”

He argues, in a recent paper, that private ownership would work best. “The obvious advantage of private control is flexibility—a private company can make decisions

quickly, and it has a profit motive to make the best decisions it can, unencumbered by an extensive regulatory structure.” Monopolies are likely to be avoided as different networks specialize in different kinds of communications, and can be further undercut by a requirement that networks interconnect with one another, he explains.

“The most crucial point is that we don’t know if these networks are going to work as planned. There’s a big risk of failure, and I would prefer that shareholders, rather than taxpayers, bear that risk.”

There is no blanket answer to what regime works most efficiently across the board, says Benjamin. “The question is, in any given situation, which makes for greater innovation and results in greater ultimate benefit to society?” ♪

Stuart Benjamin’s analysis and policy recommendations regarding spectrum regulation can be found in “Spectrum Abundance and the Choice Between Private and Public Control,” 78 N.Y.U. Law Review 2007 (2003).

tional monetary incentives to the developer, such as the ability to charge higher prices in developed country markets.”

Rai and her colleagues are seeking funding to bring together computational biologists and other life science researchers to discuss basic scientific, legal, and organizational protocols for TDI.

Rai’s second research project regarding open and collaborative practices involves various open biomedical research initiatives, including open source bioinformatics software, open databases, and open “wet lab” biology. One wet lab project on which she is currently focusing is a group of laboratories known as the Alliance for Cell Signalling (AfCS).

Cell signaling, which is relevant to many, if not all, complex diseases, is now known to be a much more complicated process than was previously thought. No single laboratory has the resources to address the complexity involved, so the AfCS is trying something new in biopharmaceutical research, notes Rai. “In lieu of having one huge lab, they are trying to ‘glue’ together eight existing labs.”

The experiment tests a belief held by many economists and organizational theorists that the hierarchy involved in huge pharmaceutical firms stifles creativity, as compared to small biotech companies.

“It may be that a setting like AfCS that takes small labs and then tries to bind them together creates some opportunity for coordination, but also allows some independence. That may be the best, or the worst of both worlds,” she says, noting that such “experiments in doing experiments” are essential. “It’s clear that the old ways of doing things won’t necessarily work in the future, and even if they work in some areas and some diseases, they probably won’t work as well as we’d like for complex diseases.

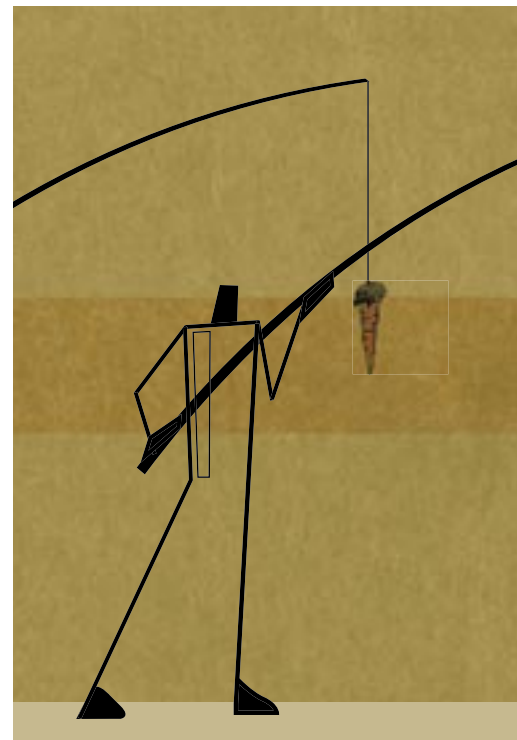
“With open and collaborative approaches generally, there may be room for creativity or the possibility of creativity that wouldn’t come if you just had one pharmaceutical company working on a drug.” Still, she stresses that collaborative models are complements to more traditional models. “We don’t need to get rid of the old approaches, but some percentage of our budget should involve new approaches and we should evaluate what we’re getting from them.” ♪

“The beauty of a liability rule is that it’s non-exclusive from the beginning, there is no free riding, and at the same time, it is not like an unexpected compulsory license after the fact. Unless you have a truly pioneering invention, you should not get powerful rights to exclude value-adding improvers who pay their way.”

Jerome Reichman



PROFESSOR JEROME REICHMAN



It's all about the follow-on

Reichman and Lewis revive liability rules

From an economist's perspective, Tracy Lewis sees two challenges involved in keeping the innovative process going.

“First, we as a society have to set up incentives for inventors and innovators to go out and discover new ideas and technologies—we have to provide the carrot. Once they make their marvelous discoveries, we have to set up institutions which encourage them or allow them to share their knowledge with others, with consumers, or with future inventors who can build on their initial innovations,” explains Lewis, Martin Black Professor of Economics at the Fuqua School of Business and director of the Innovation Center there. Lewis has a cross-appointment at Duke Law School.

While intellectual property rights, such as patents and copyrights, give innovators a return for their productive efforts, those rights also allow their holders to exclude the use of their property from others who might benefit, including follow-on inventors.

“The problem of follow-on innovation is crucial because virtually all modern technological innovation is cumulative and sequential,” says Jerome Reichman, Bunyan S. Womble Professor of Law.

Reichman and Lewis are researching a regime of compensatory liability rules to facilitate follow-on invention that will be applicable over a wide sphere of innovation.

The new Center for the Study of Public Genomics will sponsor two case studies, one investigating how intellectual property is managed and shared in the biopharmaceutical market, and the other investigating the management of bioinformatics and biomedical databases. “These case studies will provide guidance to us in determining how best to implement liability rules in particular applications,” notes Lewis.

Elaborating on the basic problem, Reichman claims that the most valuable forms of innovation today consist of know-how, rather than big inventions. “And the particular characteristic of modern know-how is that it tends to be embodied on or near the face of the product.

“Whereas reverse engineering once bought an innovator lead-time to recoup his investment, now none may be available,” says Reichman. All that is required, in most cases, is duplication.

Reichman laments the proliferation of exclusive property rights over sequen-



tial innovation—often “minuscule variations”—that has taken place in response to the problem of diminished lead-time.

“It makes it harder and harder for improvers to do what is essential. We’re creating thickets of rights and barriers to entry, impoverishing the public domain and making it more and more difficult for anyone to improve.” This is particularly shortsighted, he says, because everyone will be a borrower and a lender at some point.

At the outset, a compensatory liability regime along the lines proposed would confer rights both on the original inventor and the follow-on user, explains Lewis. “The innovator has a right to capture a reasonable return for the good, hard effort that he put into his invention, but he’s not allowed to bar subsequent use of his invention for the purpose of value-adding, follow-on innovation.”

“By the same token, the follow-on user must reasonably compensate the first innovator for his research and development costs,” adds Reichman.

Lewis offers the example of the pharmaceutical drug maker who might need to obtain the licenses for multiple compounds—all of which are covered by independently held patents—to produce a new drug. Each

“Liability rules signal to other potential users in the economy that they will have access to these very important inventions ... at a reasonable price. That can really stimulate economic activity and open up entire new industries.” Tracy Lewis

patent holder has the power to shut down production of the new drug by refusing access or demanding an exorbitant price for a license.

“Those issues are often not resolved, because it’s just too difficult to get the simultaneous agreement of all the patent holders,” explains Lewis. “A liability rule established up front will cut through many of these difficulties.

“Liability rules signal to other potential users in the economy that they will have access to these very important inventions and can go ahead and invest and produce complementary products that use the invention, because when needed, they’ll have guaranteed access at a reasonable price,” Lewis says. “That can really stimulate economic activity and open up entire new industries.”

“The beauty of a liability rule is that it’s non-exclusive from the beginning, there is no free riding, and at the same time, it is not like an unexpected compulsory license

after the fact,” says Reichman. “Unless you have a truly pioneering invention, you should not get powerful rights to exclude value-adding improvers who pay their way.”

Both Reichman and Lewis would like to see liability rights encoded in statute, to establish them as a default regime. But, they say, different industries could adapt the model to their own needs, and set industry specific royalty rates and supplemental rules.

“The regime would provide protection against wholesale duplication in head-to-head competition in the same market for a period of years—we have no law that does that now,” argues Reichman.

“But if you do make an improvement on my innovation, two things happen—I become your partner and you owe me a reasonable royalty—and I can eventually borrow back that same improvement for purposes of my own further improvement, in which case I owe you money. The difference between us is an offset between the two improvements.



PROFESSOR TRACY LEWIS

“Transactions aren’t based on litigating about who owns what—we avoid that enormous cost—but on how much the improver owes the first mover. History proves that if that’s all that’s in question, parties will bargain around a liability rule,” says Reichman.

Liability rules are nothing new, he explains, and “it’s never been ‘all or nothing’—exclusive property rights or totally free competition—as many economists and lawyers believe. Historically, exclusive property rights were very hard to get, and most innovation was protected by a form of liability rules that protected trade secrets in unfair competition law, especially in common law countries. Today, however, in the information age, secrecy becomes largely irrelevant, because the product itself reveals the innovative information. This marvelous semi-commons—not a true public domain—was the basis of our whole innovative apparatus for 150 years.

“This isn’t adding intellectual property, but repairing the loss of this crucial functional liability rule that mediated, historically, between the patent and copyright paradigm,” says Reichman. “If we don’t take steps along this line, we’ll just get a flood of more and more anti-competitive rights until we won’t be able to innovate any more.” ♣

The economists: Lewis and Cohen add further depth to IP at Duke

Intellectual property is a wholly interdisciplinary undertaking at Duke Law School, involving a number of different schools and centers within the University. Some of the closest ties are to the Fuqua School of Business, and specifically with economists Tracy Lewis and Wesley Cohen.

Tracy Lewis, the Martin Black Professor of Economics at the Fuqua School and the director of its Innovation Center, has a secondary appointment to the Law School. In addition to his work on a compensatory liability regime, Lewis is interested in the issue of optimal disclosure of intellectual property.

“When someone develops IP, there is an obvious benefit to society for having them disclose all the details of the product they’ve developed,” explains Lewis. “On the other hand, making someone disclose all of the information that they have puts them at a competitive disadvantage in the marketplace. I’m interested in the optimal trade-off between requirements for liberal disclosure on one hand, and how to write requirements that will actually induce the innovator to make full disclosure.”

Wesley Cohen, Frederick C. Joerg Professor of Economics and Management at the Fuqua School and co-director of the Innovation Center, has done unique empirical studies of patent effectiveness.

Motivated by scholarly predictions for biomedical innovation of an imminent “anti-commons”—excessive fragmentation of property rights that could seriously impede innovation—Cohen and others surveyed 70 researchers in biotechnology, pharmaceutical, and academic research settings. In “Working Through the Patent Problem,” in *Science*, they reported that the anti-commons has not arisen, largely because researchers are cross-licensing, inventing around patents, and pervasively infringing patents on “upstream” research tools.

“While it’s useful to conjecture and think through what intellectual property rights might or might not do from a social welfare perspective, it’s extremely important to find out what is actually happening,” says Cohen, noting that he hopes to follow up this pilot study with a more comprehensive survey. “We never imagined, until we went out and talked to people, how pervasive infringement of research tool patents was.”

Infringement often goes undetected in private laboratories, says Cohen, while university researchers and administrators often

assume, falsely, that their infringements are shielded by academic research exemptions.

In other empirical work that spans the entire manufacturing sector, Cohen has also addressed the question of whether patents stimulate research and development. Overall they do, he claims, working best in drugs, biotechnology, and medical devices to protect the fruits of R&D investment, but also having a positive effect in such areas as semiconductors and communications equipment.

“That doesn’t mean that patent policy couldn’t be revised in ways that make it even more effective as an engine of innovation,” adds Cohen, who has just completed a three-year term on the National Academies’ Committee on Intellectual Property Rights in the Knowledge-based Economy that addressed “implementable” patent reforms. Perhaps the most important of the committee’s recommendations, he said, is that the U.S. government adopt a “post-grant review” period, similar to those in Europe and Japan, where third parties would have the opportunity to challenge the validity of any patent in an administrative proceeding. The objectives are to reduce costly patent litigation, as well as diminish the uncertainty surrounding patent validity much sooner than is currently the case, where validity can only be assessed via litigation.

Cohen hopes to plug other gaps in data regarding patent effectiveness, such as how patenting affects access to specific industries—whether entry is restricted to large corporations whose patent portfolios give them leverage in cross-licensing negotiations—and to what extent patents are essential to stimulate investment in development of research tools that support drug discovery.

“Wes Cohen’s pathbreaking empirical work on how patents actually work in different industries provides an essential foundation for those of us who think about how the patent system should work,” notes Duke Law Professor Arti Rai.

In September, the Innovation Center at Duke University will be hosting a major conference on patents, “Patent Policy: Using, Abusing, and Reforming.” The first in a series of events on innovation and competition, the conference will feature presentations from Lewis, Cohen, and Duke Law Professors Jerome Reichman and Arti Rai. For more information, see <http://faculty.fuqua.duke.edu/centers/innovation/events.htm>. ♣



From smoke-free temples to technology trusts

Scholar sees impact of IP issues on global health emergencies

Dr. Anthony So, newly appointed senior fellow in Health and Science Policy at the Center for the Study of the Public Domain, is telling a story about his years at the Rockefeller Foundation, where he worked on global health issues ranging from improving access to medicines to enabling developing countries to respond to the challenges of tobacco use. His work to stem the epidemic of tobacco had taken him to Cambodia, a country where over half the men smoke.

“I had not been back in Phnom Penh in several years—not since the mid-’90s as part of a White House Fellows delegation. Then you could hear gunfire on the streets, and our visit coincided with news of renegade Khmer Rouge units capturing foreigners in Sreiem Reap. The genocide had robbed the coun-

try of its public health infrastructure. Now the streets of Phnom Penh were noticeably different. Tobacco promotions were everywhere. The Health Minister said that even the nation’s *flags* along one avenue had been replaced by Davidoff cigarette promotions for an upcoming concert.”

Dr. So was in Phnom Penh funding grassroots programs to work on tobacco control, building capacity at the community level. “We had started to work with the Adventist Development Relief Agency (ADRA) on their ‘Smoke-Free Buddhist Monks’ project. After several workshops, the Buddhist monks at the leading teaching temple in Phnom Penh—all two hundred of them—collectively decided to quit smoking. A year later, over 90 percent remained off

cigarettes. The monks declared the temple grounds smoke-free, refused cigarettes as offerings, and when finished with their training, started to spread this message in their home provinces. I remember joining an ADRA outreach team as they set out to one of these temples. An hour and a half outside of Phnom Penh, where the roads were no longer paved, I could still see roadside cigarette stands. Not even Coca Cola had vendors along these rural roads. My only consolation—at the end of this road, there would be...a smoke-free temple.”

His tone is upbeat, but it becomes somber when So turns to some of the current tragedies that global health policy has to deal with, tragedies that are epitomized, but not limited to, the HIV/AIDS epidemic.

“We read about the plague, or the black death—about the depopulation of whole areas, about children left as orphans—and it seems safely removed in history. But we are living through such a period. In 50 years, people will look back and say ‘you had the drugs. Why couldn’t you figure out an affordable and effective way to get them to the people who were dying?’”

His commitment to these issues is sufficiently obvious that one wonders at first why he is at Duke working with a group of intellectual property scholars, rather than continuing his distinguished career at Rockefeller. His answer is that the difficulties in global health are not just medical or scientific. “Think of AIDS as an example. To race against this epidemic, we are going to have to solve legal problems as well as medical ones.”

The idea of legal scholars saving lives seems strange. But as So talks it becomes clear that the legal problems to be solved are complex. Again, he uses the example of AIDS drugs. “If we had a single combination drug pill dosed twice a day as opposed to a handful of drugs taken separately several times a day, we would be in a very different position in terms of patient compliance. In the area of HIV/AIDS this is crucial.” But assembling a single combination pill at an affordable price is not so easy. “Multiple manufacturers may hold patents on drugs needed for combination therapy—such as for AIDS, but also for tuberculosis and malaria—and cross-licensing these patents must happen if the combination therapy is to go to market.” How can that cross-licensing be achieved quickly and cheaply?

One possible answer, on which So is working, is a “technology trust,” an institution that would pool essential intellectual property assets in order to streamline development and contain costs. It is a concept that is still in its early stages, he says.

“Pooling of intellectual property raises all sorts of questions: How do you regulate availability of intellectual property in the trust for those who have joined and those who remain outside,” So says. “How do you handle the antitrust issues that arise, what are the penalties for those who leave the pool? There’s a lot to be worked out.”

Dr. So emphasizes that protecting the economic structures of the developed

“In fifty years, people will look back and say ‘you had the drugs. Why couldn’t you figure out an affordable and effective way to get them to the people who were dying?’” Anthony So



DR. ANTHONY SO

world is important in considering proposals like the technology trust. “We have to get the right incentives for continued research and innovation.” But he believes that the importance of the technology trust may not be limited to distributing the fruits of pharmaceutical research, it may play a role in helping to ease barriers to research in the first place. “Science is a cumulative and sequential process. Patents can help drive that process, but if they are granted too broadly or in the wrong areas they can also help to block it. It’s easy to see how not having access to a basic building block of knowledge would make follow-on innovation difficult.”

Facilitating that deeper understanding of innovation is one of So’s research goals—a necessarily interdisciplinary goal that helps to explain the multiple appointments he holds. Apart from his position as a senior fellow at the CSPD, So has also been appointed as director of the new Program on Global Health and Technology Access at the Sanford Institute and serves on the Steering Committee of the Center for Genome Ethics, Law and Policy.

Dr. So says that Duke is one of the best places imaginable to tackle these crucial questions of intellectual property and global health, and he looks forward to working with colleagues such as Jerome Reichman, Arti Rai, James Boyle, Tracy Lewis, Wesley Cohen, and Robert Cook-Deegan. “At any international gathering about intellectual property rights, someone from Duke always seems to be there,” he observes. “Duke has become a real incubator of cutting-edge ideas. That makes it an exciting place.”

James Boyle, William Neal Reynolds Professor of Law, is frankly exultant about luring Dr. So to Duke, away from the other elite academic institutions that pursued him. “It is a great coup. It is not simply that he is a physician with unique policy expertise, or one of the most admired professional philanthropists in international health care, or that he is an inventive scholar whose ‘technology trust’ idea holds real promise. It is that Anthony is a final piece of a puzzle in work we are doing here. He really helps to bring our interdisciplinary efforts together. We are delighted he has joined us.” ♡



JENNIFER JENKINS



A passion for art and IP

Jennifer Jenkins '97 describes her first class in intellectual property, taught by Professor David Lange, as a transforming experience.

"He began the semester with a discussion of the Ansel Adams photograph 'Moonrise Over Hernandez,' and used it as a springboard for wrangling with some of the fascinating issues that underlie the concept of intellectual property. 'What are the creative elements in this photograph? What should it mean to protect a moonrise, once we decide that it has actually been created? What if someone went to the same site and tried to replicate the work, or, through serendipity, happened to take a similar photo? Is this legal?' At that moment I became intensely interested in intellectual property law. He set my career path in motion."

Jenkins, also a fiction writer and musician, went on to take as many of Lange's other classes as she could. Following graduation, while getting an MA in English at Duke, she collaborated with him on a video, "Nuestra Hernandez," which revisited the Adams photograph as the starting point for a fictional documentary dealing with appropriation. Lange, for his part, calls Jenkins "supremely creative."

When she began working as an associate with Kilpatrick Stockton in Atlanta, Jenkins' artistic background made her a natural to work on intellectual property cases involving musical and literary works. These included the pivotal copyright case surrounding publication of *The Wind Done Gone*, Alice Randall's 2002 novel that parodied the romanticized portrayal of slaveholding society in *Gone with the Wind*. Jenkins' firm was retained after the heirs of Margaret Mitchell had filed for a temporary restraining order and preliminary injunction against Randall's publisher, Houghton Mifflin, on the eve of publication. It was a complex and compelling case that, she says, touched a nerve for her because of the effective ban against publication of Randall's work, which raised issues at the core of the First Amendment's free speech protections.

"Randall had used elements from *Gone with the Wind* for parody, for satire, for social and political commentary and criticism. There was a strong intuitive sense that this kind



“It became clear to me how critical it is for copyright law to draw the right line between what artists can and cannot use, both in terms of its impact on what – and how – artists are allowed to create, and on the type of creative works we as a culture can enjoy.”

Jennifer Jenkins

of speech should be permissible. But the role of the prior restraint doctrine in copyright cases was unclear, and while the Supreme Court had articulated a copyright ‘parody’ defense, this defense had not yet been applied to a literary work such as ours. We were in uncharted territory, and there was a lot at stake.”

The case highlighted an ongoing debate as to whether there should be an independent First Amendment defense to copyright claims, or whether free speech concerns are adequately accommodated by copyright doctrines such as fair use. The District Court granted the injunction against the book’s publication, rejecting both fair use and First Amendment arguments. After an expedited appeal, the 11th Circuit vacated this injunction from the bench on the grounds that it was an unconstitutional prior restraint of speech. Then the Court’s full opinion, issued almost six months later, focused on fair use, finding *The Wind Done Gone* to be a parody of *Gone with the Wind*.

Another case that stood out for Jenkins involved the alleged appropriation of a simple synthesizer accompaniment in a hip-hop song. With a solid background in music theory—she plays multiple instruments—Jenkins found herself having to explain such things as the conventions of borrowing in different music genres, and the specific relevance of certain rhythmic variations to the hip-hop genre. “We were trying to mold music to legal doctrine without deforming either in the process.”

Jenkins says her experience in practice cemented her love of intellectual property and her appreciation of how the law must adjust to support creation in different art forms. “It became clear to me how critical it is for copyright law to draw the right line between what artists can and cannot use, both in terms of its impact on what – and how – artists are allowed to create, and on the type of creative works we as a culture can enjoy.”

An outgrowth of that passion is the

Arts Project of the Center for the Study of the Public Domain, which Jenkins established shortly after her return to Duke Law School as the CSPD’s director in 2002. Issues relating to music and the creation of documentary film have been a particular focus, and in early April, she was able to showcase them during a one-day conference called “Framed!: How Law Constructs and Constrains Culture.” Held in conjunction with Durham’s acclaimed Full-Frame Documentary Film Festival, it brought together filmmakers, musicians, and legal experts to discuss the interplay between art and intellectual property.

“One recurring theme was the tension between the artists’ need to protect and make a living from their works, and their need to use protected content in order to create in the first place. The question at the heart of the conference became: How can we strike the balance between providing economic incentives, and ensuring the availability of necessary raw materials, in a way that best nurtures creativity?”

During the conference, world-renowned documentarians recounted experiences with legal hurdles, such as trying to clear rights to images and music in their films. “Documentaries are records of our culture, and our culture is full of legally protected materials—songs, photographs, television shows, logos, signs,” Jenkins explains. “Filmmakers are necessarily going to capture some of this in their footage. But in order to distribute their documentaries through conventional channels, they must often clear the rights to almost all of this content, whether it’s the focal point of the scene, or merely an incidental or fleeting detail.”

In some cases, this means that documentary scenes are actually fictionalized—if a background song is too expensive to license, it will be replaced by one in the public domain. The conversation surrounding the song may in turn be manipulated as well. Particularly troubling are the impacts

of licensing practices on important historical documentaries. Films such as “Eyes on the Prize,” a record of the civil rights movement, are no longer sold or distributed outside of educational settings, due to the prohibitive costs of renewing licenses. “Imagine such a documentary without the music of the 50s and 60s, or the snippets of news and popular programs necessary to give a feel of the time,” says Jenkins. “But since such licenses expire relatively quickly, those records of our culture are literally disappearing from circulation.”

“Framed!” also explored how copyright law and musical composition intersect and often collide at the fine line between creative borrowing and theft. A live demonstration illustrated some of the finer issues of appropriation in music—how different traditions reinforce the practice of borrowing and recombining musical elements, the various motivations for doing so, such as homage or parody, as well as the distinction between “spontaneous” borrowing, as might occur in a live jazz performance, and that of a more premeditated kind. “In the music area, it’s one thing to read the law on the books, and another to see how it actually plays out,” observes Jenkins. “What happens in practice can depend as much on the customs in a given musical genre or the assumptions of a group of artists as it does on the words in the Copyright Act.”

As is fitting for someone immersed in art, IP, and issues relating to the public domain, Jenkins wants to share the CSPD’s work. Among other things, she is now focusing on expanding and packaging the insights from the Arts Project in DVD, print, and even cartoon formats, in order to make them informative, accessible, and entertaining for a wide audience. All online material will be available under Creative Commons licenses. “Through our efforts, we hope to build greater awareness and understanding of the crucial legal and policy issues that help to shape our culture.” ♪



Protecting the Information Ecology

David Lange describes his colleague, James Boyle as being “a dynamo—someone who throws off ideas like sparks at a 4th of July celebration.”

Many of those “sparks” have been generated in Boyle’s continuing efforts to broaden the political debate about intellectual property policy. In 2003, he received the World Technology Award in Law for his theoretical work on the “intellectual ecology of the public domain.” The award focused on a series of articles over the last 10 years in which he traces out the analogies between the history of the environmental movement and the current tendency to narrow the public domain, a process Boyle calls “The Second Enclosure Movement.”

But, for all his work on protecting the public domain, Boyle sees himself as “one of the last defenders” of intellectual property.

“If you take the very valid function of intellectual property, which is to encourage people to produce new stuff—new books, new songs, new drugs—and you apply ‘legal steroids’ [such as copyright extensions] to it, so that it just bloats and grows and gets bigger and big-

ger without constraint, two things are going to happen. One is, people are going to lose all respect for it. The other is that you’re actually going to end up impeding the very process of creativity that you were trying to encourage,” said Boyle, speaking last fall at *Duke Magazine’s* Faculty Forum.

Boyle finds ways to bring his theories into the realm of practice—the Center for the Study of the Public Domain being only one example. Another is Creative Commons (<http://creativecommons.org>), a digital non-profit organization of whose board Boyle was a founding member.



“We have to ‘invent’ the public domain before we can save it.”

James Boyle

Creative Commons is a non-legislative solution to problems posed by copyright law’s current “default” rules. Until relatively recently, authors who wished to protect their works were required to indicate this by including a copyright notice with them. Today’s default rules make copyright protection automatic, whether or not authors intend for their works to be copyrighted, and without providing a mechanism for authors to express alternative preferences.

“On the Internet, the result is a vast morass of potentially useful content that is in legal limbo—with no indication of copyright status or allowable uses,” Boyle explains. “Obviously you can read or watch what is there, but are you allowed to use it in various ways? Can a teacher adapt a calculus exercise for her own school, or a digital filmmaker include a particular fragment of video? The author might be delighted to have you use the material, but it will take you a laborious search to find that out, and even then, you might be unsure.”

Creative Commons provides online licenses that enable copyright owners to specify their intentions with regard to uses of their works—for example, they can make them available only for non-commercial use, or only with attribution. The organization is only 18 months old, but by current estimates, over 1 million of these licenses are already in use, by everyone from individual “bloggers” and artists to institutions such as the Internet Archive and MIT, which has put all of its course materials online under Creative Commons licenses. While acknowledging that Creative Commons may be a “second-best solution” to legislative changes, which are unlikely, Boyle emphasizes its

instructive value for reform efforts.

“We constructed something that embodies the principles which we think are right, rather than offering a criticism of what is wrong,” Boyle says. “Often the most effective form of advocacy is a community of people who simply build an alternative that works. And in this case we are doing exactly what intellectual property is supposed to be doing, allowing authors to create and to share their works under the terms they choose.

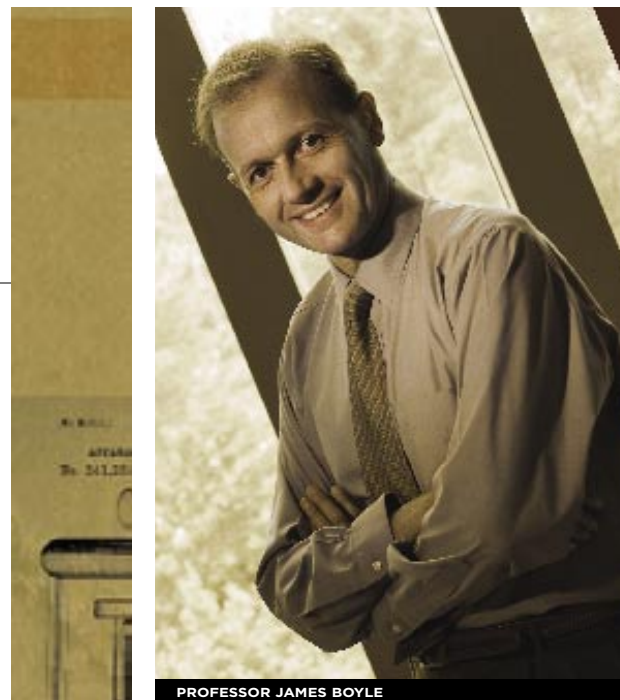
The reaction [including the 2004 “Prix Ars Electronica” and a new \$1 million grant from the Hewlett Foundation] has exceeded even our expectations.”

Creative Commons’ most recent projects range from a music “sampling” license, to an effort Boyle is focusing on particularly, the formation of a new entity called Science Commons, which will try to solve problems of access to scientific data. “That is something that dovetails nicely with the path-breaking work that Jerry Reichman is doing on science, Anthony So is doing on technology trusts and Arti Rai is doing on open source drug discovery. I literally have some

of the world’s leading thinkers on these issues just down the hall. It is an incredible luxury.”

Though it has interesting practical applications, Boyle’s theoretical work itself has

also been attracting interest beyond the ivy tower. A lengthy article in January’s *New York Times Magazine* called “The Tyranny of Copyright?” was devoted to the ideas that he, and a number of other academics, including Larry Lessig of Stanford and Yochai Benkler of Yale, have been propounding about copyright law in



PROFESSOR JAMES BOYLE

the digital era. Why was copyright theory gracing the pages of the *New York Times*? The author, Robert Boynton, labeled these scholars as the leaders of an intellectual reform movement that aims at preserving the Jeffersonian ideal of intellectual property in the age of the Internet, and opposing “the permission society” where each dab of culture is tightly controlled, passively consumed and accompanied by a fee. Boynton’s article concluded this way.

“James Boyle has likened the movement’s efforts to establish a cultural commons to those of the environmental movement in its infancy. Like Rachel Carson in the years before Earth Day, the Copy Left today is trying to raise awareness of the intellectual ‘land’ to which they believe we ought to feel entitled and to propose policies and laws that will preserve it. Just as the idea of environmentalism became viable in the wake of the last century’s advances in industrial production, the growth of this century’s information technologies, Boyle argues, will force the country to address the erosion of the cultural commons. ‘The environmentalists helped us to see the world differently,’ he writes, ‘to see that there was such a thing as “the environment” rather than just my pond, your forest, his canal. We need to do the same thing in the information environment. We have to “invent” the public domain before we can save it.’” ♪

James Boyle is one of four regular columnists for the *Financial Times* online-edition’s “New Economy Policy Forum.” Columnists debate regulatory and legal issues generated by—and also shaping—high-tech industries. The forum is published bi-weekly, on Thursdays, at <http://www.ft.com/techforum>



PROFESSORS DAVID LANGE AND JEFF POWELL

No Law:

An Absolute Reading of the First Amendment

Long-time colleagues David Lange and Jeff Powell are co-authoring a book to be called *No Law: Intellectual Property in the Image of an Absolute First Amendment*. Combining their scholarly perspectives from intellectual property and constitutional law respectively, Lange and Powell explore what it would mean for intellectual property if the text of the free speech and press clauses of the First Amendment were to be read as Justice Hugo Black and some others have read it, namely, as an absolute constraint upon Congressional power to abridge freedom of speech or press.

"A central tenet of the Amendment is that government cannot exclude one person from thought and expression in order to favor another," Lange observes. "Yet intellectual property rights, as the law currently understands them, often do exactly what the Amendment prohibits."

"The contemporary interpretation of the Amendment takes its shape from a larger approach to constitutional interpretation exemplified by Justice Holmes," Powell adds. "For Holmes and those who have shared his thinking, constitutional rights are to be understood chiefly through an evolving system of balances, which courts impose and weigh in the course of litigation."

In practice, say the scholars, this approach has come to mean that the First Amendment is governed by exigencies of one sort

or another. In the case of intellectual property the balance has been struck in favor of property regimes that can clearly interfere with individual rights to think and publish as one pleases – this on the understanding that forbidding such interference would destroy the interests protected by intellectual property.

"What we propose is that Holmes' balancing approach to the First Amendment is less satisfactory in this setting than the stricter reading favored by Black," they say. "An absolute approach is preferable as a matter of constitutional construction, and also consistent with continuing concerns for the legitimate interests of intellectual property rights holders. Rights holders would forfeit much of their ability to prohibit appropriations by others, but with Congressional approval could retain an adequate measure of incentives to encourage continued productivity."

While most scholars dismiss Justice Black's absolute reading of the First Amendment as simplistic and unworkable, Lange and Powell hope to show that neither is true.

"We anticipate criticism and opposition," Lange says. "We are willing to be bold, but we think that what we are offering here is fundamentally sound and practical."


No Law is to be published by Stanford University Press in 2005. ♣

EDUCATING LAWYERS, BECOMING LEADERS THE DUKE BLUEPRINT TO

LEAD

“Think about the three values you held most dear before coming to law school. As you go through the first weeks of class, ask yourself if they are being given sufficient weight in the classroom.”

Addressing 44 joint-degree students at their orientation to Duke Law School, Professor John Weistart invites them to speak up when they notice a significant value being overlooked. Having spent a morning exploring their individual motivations for enrolling and their expectations of the law, Weistart closes the session by noting that all of the students are bound to mature over the course of their three years at the Law School.

“But if you come out of Duke Law School a different person, ask if there is something here that changed you,” he tells them. 

Focus on Values

Without mentioning the Duke Blueprint to LEAD (Lawyer Education and Development), Weistart's line of inquiry exemplifies the focus on personal and professional values that underlies this innovative tool for lawyer development.

The two-year-old Blueprint is a concise list of principles that guide legal education and activities at Duke Law School. More than either a traditional code of conduct or a list of professional ideals, the Blueprint expresses a set of attainable goals for students to help them succeed in law school and beyond—engage intellectually, act ethically, lead effectively, serve the community, build relationships, practice professionalism, and live with purpose.

“Our goal is to help students become leaders in their communities, not just good lawyers,” explains Assistant Dean for Student Affairs Jill Miller, who was instrumental in drafting the Blueprint, and whose Office of Student Affairs facilitates its pervasive incorporation into activities.

“The Blueprint serves as a set of expectations for the entire Duke Law community.” Faculty and staff are essential partners, she adds, as their participation demonstrates to the students the importance of maintaining Blueprint principles beyond graduation and in their professional and personal lives.

Miller notes that the Blueprint is introduced to admitted students even before they enroll, to make them aware of the Law School's emphasis on professionalism and community. “We want students who share these values. It's important to recognize that the Blueprint isn't something that has been imposed from above. In large part, it reflects back to them the reasons they chose to attend law school.”

Keri Richardson '05 describes the Blueprint as an “amazing” document. “It reminds people that being a person of integrity and cultivating personal relationships are equally, if not more, important than grades. It emphasizes things like ethics and growing as a person, being open-minded. It exemplifies what makes Duke Law School a unique place.”



CLAUDE PLATTEN '06 AND KERRI SMITH '05 TAKE PART IN A “DEDICATED TO DURHAM” WORKDAY

Fostering Collaboration

Garrett Levin '06 agrees that at Duke relationships matter.

“If someone misses a day of class, other people will share their notes and work without being asked. Students go out of their way to help each other,” he says. As an orientation leader, he urges incoming students to build relationships with their classmates and with their professors.

“They are brilliant scholars who are also incredible teachers and really want to be engaged with students.” He notes, by way of example, that Professor Jeff Powell has been known to send out multiple e-mails to students with thoughtful answers to their in-class questions.

For her part, Richardson recalls getting a call from Professor Sara

Beale after her first law school exam.

“If someone misses a day of class, other people will share their notes and work without being asked. Students go out of their way to help each other.” Garrett Levin '06

“We met, and she reviewed the exam, showing me what I had done and explaining what she was looking for. She showed me how to

write a law school exam, and that advice has helped me ever since.” Richardson says she's found other friends and mentors among the faculty, including Professor Stephen Wallenstein. “I can go to him for academic and professional advice—just about anything.”

Building a Responsible Community

The Blueprint has helped foster a climate in which students, as well as staff, take ownership of the community and assume responsibility for the quality of their experiences here.

“There is far less griping than there has been in the past,” says Senior Associate Dean for Academic Affairs James Coleman. “The whole idea is to create the kind of problem-solving approach as a community that would cause our students—as students and then as lawyers—to be engaged. Among other things we invite students to engage with [administrators] in discussions, and to come to us in the spirit of constructive dialogue with issues that might be brewing, preferably with proposed solutions.”

An important recent innovation is the Community Roundtable, a network of student leaders and administrators that meets regularly to discuss issues of common interest. The Duke Bar Association Executive Board, journal editors, leaders of every student organization, and various deans and staff are eligible for membership in the Roundtable. It serves as an effective “early warning system” for problems at the Law School, as well as the appropriate forum for proposing community programming and collaborative efforts.

Student leaders attend an annual off-campus retreat that focuses specifically on the Blueprint principle to “Lead Effectively.” In sessions facilitated by professional coaches, the retreat includes discussion of the Blueprint concepts of leadership as well as an exploration of concrete issues facing the Law School.



DUKE BLUEPRINT

Lawyer Education And Development

The Blueprint spells out the principles that guide the Duke Law community.

ENGAGE *intellectually*

- Contribute in class by answering questions and posing your own
- Continue discussions with your professors and classmates outside of the classroom
- Pursue academic interests through extracurricular activities like journals, symposia, research projects or moot court

ACT *ethically*

- Be truthful, candid and fair, even if your actions go unnoticed
- Make it a point to learn the Law School Rules and Honor Code, as well as the rules governing the legal profession
- Confront ambiguous situations with sound judgment, avoiding even the appearance of impropriety
- Find ways to turn controversy and conflict at the Law School into opportunities for ethical responsibility and leadership

LEAD *effectively*

- Assume a leadership role in a student group (or start your own)
- Take advantage of the Community Roundtable, Leadership Retreat, personal assessment tools and other opportunities to identify and develop your own leadership style
- Be intentional about learning from your mistakes and sharing credit for your successes

BUILD *relationships*

- Meet professors at lunch discussions and conferences, or invite them to be advisors for your student group or an independent study
- Seek out alumni working in areas of the law and of the world that interest you
- Find a mentor; be a mentor
- Explore diversity among people and points of view by participating in Law School events such as student debates, panels and International Week

SERVE *the community*

- Volunteer for at least one community service or pro bono activity each semester
- Further the relationship between Duke and Durham by assisting the Duke-Durham Neighborhood Partnership or the Volunteer Center of Greater Durham
- Effect positive change by serving on the Graduate and Professional Student Council or a Law School faculty-student committee

PRACTICE *professionalism*

- Produce the best, most complete work product of which you are capable; exceed expectations
- Treat everyone with respect
- Contribute to the legal profession by joining a committee of the American Bar Association or North Carolina Bar Association

LIVE *with purpose*

- Take concrete steps to preserve your physical and mental well-being
 - Build activities into your schedule that require you to try new things
- Make deliberate personal and career choices based upon your own values, needs and goals*

Teresa Sakash '06, who attended the retreat in October 2003, says it was invigorating to meet with other students engaged in creating an exciting school environment, and to explore her own leadership style.

"Being sensitive to your own strengths and shortcomings as a leader, as well as those of the people you are trying to lead, is a critical, but often overlooked component of great leadership, and is a skill that I really hope to develop while in law school."

Miller says the Blueprint's success in building community is strongly evident in the level of cooperation and collaboration among all student organizations.

"We have been able to avoid the kinds of conflicts and tensions between organizations that might historically have arisen based on their ideologies," she explains. "The goal for many of our groups is to engage as many people as possible, not just to support one political agenda, because they realize that it's far more interesting for everyone if both sides are represented. Students think in terms of championing a dialogue, not just one side of an issue." By way of example, Miller

"The goal for many of our [student] groups is to engage as many people as possible...Students think in terms of championing a dialogue, not just one side of the issue."

Jill Miller

notes how the student ACLU affiliate and the Christian Law Society jointly sponsored a meeting with Michael Newdow, the atheist lawyer who took his challenge of the words "under God" in the Pledge of Allegiance to the U.S. Supreme Court.

Engaged with Education

Duke Law School has long had a reputation for offering a first-rate, rigorous legal education. Students are increasingly taking the lead academically, both through involvement in symposia, journals, and moot court, which have long traditions, and through the creation of ad-hoc seminars, a unique feature of the Duke Law experience.

Last semester, students took the lead in organizing seminars in such diverse areas as investment banking law, Latin American law, constitutional law, and Russian constitutional law.

"The pedagogical value comes from the process, as much as from the substance—sitting down with

a group, trying to figure out how to navigate through the material, who will take leadership on different issues and what the final product will be," says Director of Academic Advising Christopher McLaughlin '96. "The investment banking seminar brought in prominent guest speakers almost every week—alums from across the country. It was all student initiative. I think that's the most unique aspect of the Duke Blueprint—it puts students in the driver's seat of the class rather than just going along for the ride."

When Sebastian Kielmanovich '04 had an idea for an in-depth class on Latin American law, he was thrilled with the response.

"I had the support of the administration from the beginning—everything was open and available to make an idea a reality. That's why I find this place unique."

"I had the support of the administration from the beginning—everything was open and available to make an idea a reality. That's why I find this place unique."

Sebastian Kielmanovich '04

Living Fully

The Blueprint also reminds students that it is essential to stay engaged with their basic values and outside interests.

"It's easy to get bogged down in law school in a one-track way—students get focused on grades, career plans and the competition," says Miller. "By reminding students in the Blueprint to live with purpose—to take care of themselves and keep their values, needs, and goals in mind, we are showing them that we truly believe these things are important from the outset."

It is a service to the School, and ultimately to the profession, if students are encouraged to pursue their personal strengths and pas-

LIVING THE IDEALS

David Cooke '07 describes community service as a calling.

"I'm from a single parent home," said the native of East Flatbush, Brooklyn. "I come from a tough environment, where fatherlessness was the norm. A lot of my friends from New York are either in jail or dead. But I had a great mom, and I've been very fortunate. That's why I have a heart to give back and to mentor."

Since 2001, the UNC-Chapel Hill graduate has served as executive director of an educational intervention program, the Youth Life Foundation of the Triangle.

The program is located in the East Cornwallis Public Housing Community near downtown Durham, a densely populated neighborhood of single-parent families and an average family income of under \$5,000. While the focus at the outset was on children in grades K-5, Cooke said it quickly became apparent that more was needed. The program now offers parenting and money-management classes, GED classes for parents, and a teen

leadership club. Average GPAs for the children enrolled have risen to 3.1 from a low of 1.6, says Cooke.

Cooke credits his mother's high expectations and the support he received from extended family for pulling him through his formative years. Still, he's passionate about the need for young men to have role models.

"When we started our teen club, 26 guys showed up—gang members, involved in drugs and all of those things—and said 'teach me. I want to learn.' There's a yearning in every man's heart to have an older man mentor him and give him an example."

Cooke says his decision to combine a JD degree with an MPP in public policy is part of his continuing desire to be involved in community revitalization.

"I would never give up working at the grassroots level, but knowledge and information is so pertinent—it can shorten a 10-year process to two. I feel I have a lot to offer—I have a heart to help out the disenfranchised."

sions as well as their technical and analytical skills, adds McLaughlin.

“To say that ‘we admitted you to Duke because of all the different talents you have, and some are going to be in the classroom, and some are going to be out of the classroom’—I hope this invites students to bring their passions into their legal education.”

Serving the Community

It is an expectation at Duke Law School that students will be involved in extra-curricular activities. Director of Student Activities John Spencer applauds students’ wholehearted commitment to creating a service-oriented Law School atmosphere.

“We help to facilitate activities and events, but the students take the lead. They’re starting new organizations—five in the last year alone—taking organizations that have been dormant and revitalizing them, taking existing organizations in new directions. Students are still satisfying all their academic obligations and performing well, but are leaving behind a legacy outside of the classroom as well.”

The Blueprint also demands a commitment to the community beyond the walls of the Law School, reminding students that the privilege to study and practice law carries with it an obligation to do more than simply earn a degree and earn a living.

Through its many clinical, pro bono and outwardly focused programs such as Dedicated to Durham, which involves students and faculty in community improvement projects throughout the city, students are embracing the ethic of “giving back.” One organization, the Volunteer Income Tax Assistance Program, showed particular strength this past year, by engaging over 30 members of the Duke Law community in preparing tax returns for low-income citizens. This effort was spearheaded by Janna Lewis ’05.

“Students are still satisfying all their academic obligations and performing well, but are leaving behind a legacy outside of the classroom as well.”

John Spencer

Emphasizing Ethics

The Blueprint highlights ethics as a central expectation of all academic and non-academic endeavors, and they are integrated throughout the curriculum. During orientation, through case discussions, students are asked to reflect on the moral and legal guidelines that will apply to them through their legal education and their careers.

“We try to impress on the students the fact that expectations go beyond producing quality work—the profession is a demanding one both substantively and ethically,” said McLaughlin.

Special emphasis on the Honor Code, at orientation and during a weeklong event in the first semester, is intended to help students reflect on the consequences of improper actions. During Honor Code Week, judges visit the Law School to outline the standards of behavior they expect among opposing counsel and between counsel and judges. A particularly meaningful message comes from an alumnus, Jim

Toms ’68, who was disbarred and served time in federal prison for illegal acts performed as a lawyer.

“All of us, at some level, will have an opportunity to cut a corner or come close

to a line, whether it’s a personal one or one that the state bar association sets for you. We want students to see that oftentimes it is by making small decisions that don’t seem overly monumental that it becomes a slippery slope,” says McLaughlin.

As student advisors, Miller and McLaughlin are often struck by the degree to which students internalize the ethical provisions of the Blueprint and Honor Code. More than once, Miller has had students self-report mistakes they have made while writing take-home exams and assignments, or ones they failed to report in their law school applications, knowing that doing so will likely result in sanctions.

“We try to impress on the students the fact that expectations go beyond producing quality work—the profession is a demanding one both substantively and ethically.”

Christopher McLaughlin

LIVING THE IDEALS

Teresa Sakash ’06

After graduating from Yale in 1999 with a degree in history and a teaching certificate, Teresa Sakash joined the Peace Corps. She describes her two years as an English instructor at a rural high school in Madagascar as a formative experience. “The Peace Corps gave me a chance to think about what I really value in a context where everything was challenged. I realized that when combined, initiative and passion lead to change.”

Teresa has shown both at the Law School, which she chose partly because she felt the Duke University community, in its way, needed her. Active in a number of law-student organizations such as the Public Interest Law Foundation and the International Law Society, Sakash devotes much of her energy to creating community for gay, lesbian, bi-sexual, and

transgendered students through DukeOut, a campus-wide organization, and OutLaw, at Duke Law School. “There is still homophobia on campus, and there’s a sizeable student population that doesn’t feel comfortable being out. There is a lack of role models and mentors—for some reason, many lesbian, gay, and bi-sexual faculty don’t stay at the University.”

Teresa spent her 1L summer working with North Carolina Gay and Lesbian Attorneys against a proposed constitutional amendment in the state against gay marriage and on issues related to second parent adoption by gays and lesbians.

“Only by staying true to what I value will I end up in a spot that’s comfortable for me when I get out. The things I do now, while not all legal in orientation, are giving me skills that will help me do what I care about. Education is multi-dimensional. It isn’t just what happens in the classroom or even within the walls of the Law School.”



The **Office of Student Affairs** is charged with the primary responsibility for collaborating with other Law School departments in developing, refining, and implementing the Duke Blueprint. Clockwise from top: **Jill Miller, Christopher McLaughlin, Shanda King, John Spencer.**

LIVING THE IDEALS

Chris Panaro '06 isn't afraid to ask questions when he's facing hard choices. A simple question, he's found, can lead to answers—and spark valuable relationships.

As a Duke undergrad, Panaro planned to become a doctor. When a year abroad sparked an interest in international law, his advisors suggested he get in touch with former Duke Law Professor Michael Byers to find out more about career opportunities. Not only did Byers take the time to answer those questions, he invited Panaro to accompany a JD/LLM group to the conference of the American Society of International Law in Washington, DC.

"Professor Byers was the reason I went to law school and came to Duke. He was willing to sit down with an undergrad and explain things,

and take me along on a trip to learn more about the field," says Panaro, who maintained a close relationship with Byers through his first year.

Panaro continues to seek advice of and build relationships with professors, other students, whoever has the information he needs. "I believe that if you just keep going with what you know, and never stick your head out into new areas, you won't learn. If you look for it, you'll get excellent help and advice."

Fluent in Portuguese, Panaro spent part of the past summer working for the law firm Veirano Advogados in Rio de Janeiro, Brazil. The placement was suggested and arranged by two Duke LLM students who work for that firm, with whom Panaro became friendly as a 1L.

"All the LLMs are already practicing lawyers with a wealth of experience. Most people thinking of working in international law don't realize that there are 70 of their classmates already doing it!"

Professionalism

One of the ultimate goals of the Blueprint, professionalism is inextricably linked with high standards of engagement and ethics, and the ability to forge strong relationships, both professional and personal. All the Blueprint elements combine to build qualities of professionalism.

“Learning about one’s strengths and values is a fundamental step to building a career,” says Assistant Dean for Career Services Bruce Elvin ’93. “You learn about your strengths and values by engaging in the Law School community both in and beyond classes, building professional relationships, undertaking pro bono projects, or leading one of the School’s many clubs and organizations. Serving the community may also help you learn about yourself—what you want to highlight or avoid in a career.”

Elvin urges students to think and explore the values that matter to them from the time they start Law School. He points out that the summer between the first and second year of law school is an ideal time to experiment with jobs they’ve never considered—a public interest job for a student with corporate goals, a private sector job for someone more inclined to public interest work. In addition to helping students identify personal values and professional goals, the Office of Career Services works with students to ensure they understand the expectations of professionals in the workplace.

“As the work environment that our students are entering continues to evolve rap-

idly, it is important that our graduates are cognizant of the factors required to excel,” notes Elvin. “In my opinion, one of the skills most prized by employers—whether public or private—is taking ownership of one’s work and transcending the attitude of simply being an employee. The entire Blueprint is geared towards developing a sense of ownership, and one of our goals is to ensure students seize ownership of their own careers.”

Peter Kahn ’76, chair of the Duke Law School Board of Visitors, applauds the emphasis on professionalism.

“After 28 years of legal practice, I remain more convinced than ever of the need for improving professionalism among the bar. The Blueprint is an excellent start, not only at the law school level, but also for practicing attorneys. By setting high standards of intellectualism and professionalism for law students, the Blueprint instills in them a moral, ethical and professional compass that will serve them well for years to come.”

McLaughlin says that the Duke Law experience is different than it was when he was a student.

“Then it was acceptable to simply come here, study hard, keep your head down, get a good job and not be a bother. Now we would say, ‘that’s okay, but you can do more and we expect you to do more.’ The Blueprint really is all about raised expectations.”

Garrett Levin has simple advice to incoming 1Ls regarding the Blueprint. “Put it where you can find it.” ♣

Duke Bar Association Takes Top ABA Honors

The Duke Bar Association has been named the top student government in the country by the American Bar Association. DBA’s receipt of the 2004 “National Achievement Award” was announced Aug. 6 at the ABA Annual Meeting in Atlanta, and was based on the quality of its leadership, programs within and outside the Law School, and interactions with students, faculty, administrators, and legal and non-legal communities—all by-products of the Duke Blueprint.

DBA sponsored over 170 student-initiated events during the past academic year and involved over 500 participants in its community service initiatives.

“The award is a tribute to the efforts of the 2003-04 DBA Executive Board, and especially past president Shireen Matthews ’04, past vice president Katy Soby ’05, and 3L Vikram Patel, the new DBA president and its former community service chairperson. Given the efforts of literally hundreds of students who participated in DBA-sponsored organizations and events, this award is really a testament to the leadership of the entire student body,” said Assistant Dean for Student Affairs Jill Miller. “We already knew that we had great students at Duke, and it’s nice for others at the national level to recognize their hard work and dedication to our community.”

LIVING THE IDEALS

Keri Richardson ’05 keeps busy. As a 2L she chaired the Women Law Students Association and spearheaded organization of the Business Law Society’s Career Symposium. Her leadership commitments have occasionally taken a toll on her GPA, but she says she wouldn’t have it any other way.

“I wouldn’t trade my experience in law school for anything. I’ve been fortunate to be able to interact with so many people—from professors to those in media relations and library services, career services and external relations. I think my broad experience has given me contacts other people wouldn’t have.”

Although she’s planning a career in corporate law, Richardson veered off that path in first year, taking part in the Southern Justice Spring Break Mission Trip in Montgomery, AL.

“I wanted to see what kind of difference lawyers can really make. These lawyers, many from elite schools, are making a pittance and working their tails off to help people overlooked and failed by the system.”

Richardson spent her time reviewing potential cases, presenting her opinions to staff lawyers, and attending oral arguments in the Alabama Supreme Court. An Alabama native, Richardson says it made her question why that state doesn’t have a public defender system. “Perhaps adequate representation from the beginning would help with the outcome, since many of the cases aren’t rock solid.” Richardson helped organize—and expand—the trip as a 2L.

Richardson feels that Duke Law students should take advantage of the opportunities they have to try new things. “The more you experience, the less myopic you’ll be when you get out. Law school represents three years when you can really grow as a person. Getting good grades is not all of it.”

{Faculty Focus

Four appointed to distinguished professorships



ERWIN
CHEMERINSKY



STEVEN
SCHWARCZ



LAWRENCE
ZELENAK



JONATHAN
WIENER

Four faculty members were honored this spring with distinguished chairs—three of them new professorships made possible by generous gifts during the recently completed Campaign, in which faculty support was the highest Law School priority.

The **Alston & Bird Chair** was funded by L. Neil Williams '61, in honor of his former law firm. This chair was awarded to **Erwin Chemerinsky**, a well-known constitutional law scholar, lawyer, author, and teacher, who is profiled on page 11.

"I am so honored to be the first Alston & Bird professor at Duke Law School," said Chemerinsky. "I had a terrific experience as a visiting professor at Duke in the fall of 2002 and am very excited to return. I very much look forward to the chance to again work with and learn from Duke's wonderful students and faculty."

The **Stanley A. Star Professorship** was established in business and commercial law by Stanley A. Star '61, his wife Elizabeth, and the Star Family Foundation. It was awarded to **Steven Schwarcz**, an internationally prominent scholar in the area of asset securitization and structured finance. His book, *Structured Finance: A Guide to the Principles of Asset*

Securitization, is in its third edition and has been translated into three languages.

"The chair is particularly gratifying because I'm one of only a small handful of people who came into the academy after a lengthy career in legal practice, and my work focuses more than typical academic scholarship on solving real-world problems," said Schwarcz. "It's nice to have this recognition because there's always been a tension between the practice and legal scholarship."

The **Pamela B. Gann Professorship** was established by alumni and friends of the Law School to honor the career of Pamela B. Gann '73, former dean of Duke Law School. It was awarded to **Lawrence Zelenak**, a top tax scholar who was recruited last year from Columbia Law School. Also a prolific writer, he has recently published *Federal Income Taxation*, a casebook co-authored with Professor Richard Schmalbeck.

"It's a terrific honor," said Zelenak. "I was especially pleased that it is named for Pamela Gann, because she was a tax scholar before she became dean."

Jonathan Wiener, named **William R. and Thomas L. Perkins Professor of Law**,

also holds secondary appointments at the Nicholas School of the Environment and Earth Sciences and at the Sanford Institute of Public Policy. He is a leading expert on U.S. and international environmental law, climate change, precaution, risk regulation, and risk-risk trade-offs. On the faculty since 1994, Wiener's most recent book is *Reconstructing Climate Policy*.

"This is a tremendous and unexpected honor; it's already an honor to be part of the Duke faculty," said Wiener of his chair. "William Perkins was James B. Duke's lawyer, and this is one of the earliest chaired professorships associated with the Law School, which makes this a particularly endearing connection to the Law School and to the University."

The Perkins chair was held for 30 years by William Van Alstyne, who retired this spring, and has joined the William and Mary law faculty.

"I am thrilled that Duke Law School can recognize these superb scholars with distinguished professorships," said Dean Katharine Bartlett. "This was possible because of the great generosity of some loyal and committed alumni. The scholars they help us to honor are among our very best." ♡

Using foreign law in U.S. courts: A comparatist's view

With his current research project, Professor Ralf Michaels hopes to insert the comparatist's view into the ongoing debate as to whether or not foreign law has a place in U.S. constitutional interpretation.

"I hope to show two things. First, foreign courts and law are not a new source of law or a new mode of interpretation, but can be used in various ways that are in accordance with traditional kinds of constitutional interpretation in this country. Second, those can be used quite often in two ways, supporting a progressive or non-progressive position, often depending on whether they are taken as an argument that we should follow or one that we should reject."

Like scholars, the members of the U.S. Supreme Court are divided over the use of foreign law, Michaels says. While the Chief Justice has indicated his support and Justice O'Connor and others are receptive, Justices Scalia and Thomas firmly oppose the use of foreign law on principle.

"Justice Scalia makes only two exceptions—one where the interpretation involves a treaty or matter of international law, or where a certain interpretation is bound to have 'disastrous effects,'" notes Michaels. "In that case, he claims not to be looking at foreign law, but foreign effects."

Using comparative law is a compatible extension of normally accepted methods of constitutional and statutory interpretation, not an additional tool, says Michaels.

"If, for example, justices hold the position that they should not look at the effects of their decisions, then even the use of foreign law accepted by Justice Scalia would not be open to them. But that doesn't mean they are opposed to foreign law per se, but opposed to that particular tool of statutory interpretation," he explains. "I hope to prove that even if your opinion is one that only the original intent of the framers, or the original meaning of the text count, that does not close you off from the use of foreign law within the determination of that intent or meaning."

Foreign law has long been used in U.S. Supreme Court arguments and decisions,

Michaels points out. It was used frequently in the early days of the Republic, and its relevance was discussed in the infamous decision in *Dred Scott v. Sanford*, with regard to European countries' anti-slavery laws. More recent cases, such as *Roe v. Wade*, cite to foreign sources liberally, and the practice has increased in the past five years. "The debate is a very current one."

It surfaced in the 2003 decision in *Lawrence v. Texas*, which held that a Texas statute criminalizing homosexual sex in the privacy of one's home was unconstitutional. The majority argument cited decisions of foreign courts, including one of the European Court of Human Rights, which had struck down a British anti-sodomy law.

In his dissent in *Lawrence*, Justice Scalia took issue with that use of foreign law, arguing that the European court had no authority to comment meaningfully on the U.S. Constitution—and in fact was not doing so—and that the decision was cited simply for its agreement with the outcome desired by activist justices.

Michaels challenges the common belief that citing foreign law is a practice bound to favor progressive arguments. *Lawrence*, in fact, overruled *Bowers v. Hardwick*, a 1986 case that used an earlier decision of the European Court of Human Rights to prove that even "progressive Europeans" criminalized sodomy.

If conservative courts, such as those in Iran, were cited, the positions supported would be conservative, Michaels argues. Furthermore, such a view is contingent upon the fact that within the western world the U.S. is comparatively conservative; another western court's decisions might appear progressive relative to the U.S. position, not due to the use of foreign law, per se. Finally, even European courts can be less progressive than those in the U.S., according to Michaels, who notes that the position of *Roe v. Wade* is probably more progressive than that in most European countries.

"Opponents are often rightly critical of the eclectic choice of foreign sources made by proponents of comparative law," says



PROFESSOR RALF MICHAELS

Michaels. "But this is, then, a problem in the specific argument and by no means intrinsic to the use of foreign law."

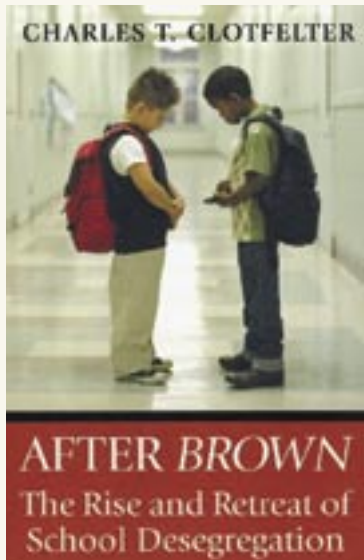
Michaels also argues that courts use foreign law not as positive guidance, but cite to it as a counter-argument. "You find that in references that are made to evil legal systems like apartheid or Nazi systems. 'Because Nazi Germany did this, then we should not'—that's a use of foreign law."

As a recent example of foreign law being used to support a conservative position, Michaels points to the Justice Department memo of August 1, 2002 on the definition of torture; the author cited to a 1978 European Court of Human Rights decision as support for his opinion that torture goes beyond cruel, inhuman, or degrading treatment or punishment.

Michaels notes that the debate on the use of foreign law in constitutional interpretation is one that is generally restricted to constitutional lawyers who may not always fully understand the distinction between international law—laws to which the U.S. is bound—and comparative law, which looks at the laws of other countries for example or non-binding precedent.

"Constitutional lawyers very much care about the allocation of power between judges and Congress, but also between democratically elected institutions within the U.S. versus foreign institutions," he explains. "That's only a small part of the debate. Comparatists can add a lot in saying what it actually means to use foreign law, and how you can use foreign law in perfect accordance with this allocation." ♣

Book Review



Professor Charles Clotfelter's
After Brown: The Rise and Retreat of School Desegregation

(Princeton University Press, 2004)

Examining the legacy of *Brown v. Board of Education*

Book review by Erwin Chemerinsky

The simple and tragic reality is that American public education is separate and unequal. Schools are more segregated today than they have been for decades and segregation is rapidly increasing. Wide disparities exist in funding for schools. In 1954, in *Brown v. Board of Education*, Chief Justice Earl Warren spoke eloquently of the importance of education and how separate can never be equal. A half century later, in an ever more technologically complex society, education is even more essential.

The causes for this tragedy are easy to recite. There never has been the political will to pursue equal educational opportunity. No President since the 1960s has devoted any attention to decreasing segregation or to equalizing school funding. The Supreme Court refused to allow the needed steps to deal with the problem in its holding that metropolitan school districts can be created as a remedy only in very limited circumstances and that disparities in school funding do not violate the Constitution. Moreover, Supreme Court decisions in the 1990s have required the lifting of even successful desegregation orders, causing the resegregation of schools.

The 50th anniversary of the *Brown* decision has led to the publication of a number of important books discussing the legacy of that landmark case. None of the new works is more impressive than Duke Professor Charles Clotfelter's superb book, *After Brown: The Rise and Retreat of School Desegregation*. Clotfelter brings the tools of an economist and social scientist to presenting and analyzing data concerning school segregation. Although empirical research is the foundation for Clotfelter's effort, the book is clearly written and easily accessible to those with little or no statistical training. Also, Clotfelter goes far beyond just presenting data and frames the policy issues that must be confronted in dealing with school segregation.

In many ways, Clotfelter's book is a

unique and important contribution to the literature on the legacy of *Brown v. Board of Education*. First, he shows that *Brown* had a dramatic effect in increasing interracial contact among students. After presenting the data, Clotfelter concludes: "The overriding fact that emerges about post-1954 developments is the radical change in school environments. For the 40 percent of the nation's public school students who lived in states under de jure segregation at the time of the *Brown* decision, this transformation was the most dramatic." By 1972, schools in the southern and border states were the least segregated in the country.

Clotfelter's data and analysis is quite significant because it challenges the conclusions of scholars who have claimed that *Brown* made no difference. For example,

Professor Gerald Rosenberg, in an influential book, *Hollow Hope*, argued that *Brown* has had little effect and that courts inherently are doomed to fail when they act to change society. Clotfelter persuasively shows that *Brown* dramatically increased interracial contact among students.



CHARLES CLOTFELTER

Second, Clotfelter offers clear explanations for why more has not been achieved in desegregating schools. White flight to private and suburban schools has been a key factor in limiting the effectiveness of desegregation efforts. Residential segregation is inherently tied to school segregation and little has been done for decades to counter this problem.

Clotfelter shows that the Supreme Court deserves a great deal of the blame for the failure of society to realize more of *Brown's* promise. In *Milliken v. Bradley*, in 1974, the Supreme Court largely precluded courts from imposing interdistrict school desegregation remedies. In many metropolitan areas, school desegregation efforts are doomed unless minority students can be transferred to suburban schools and

white children brought into city schools. Clotfelter's data demonstrates that much of the current segregation of schools is a result of the absence of metropolitan area remedies.

Moreover, in a series of decisions in the early 1990s, the Supreme Court held that successful desegregation efforts must cease once a school achieves "unitary" status. Although the Court never defined "unitary status," the result of these rulings has been the end of very effective desegregation orders in schools systems across the country, ranging from Charlotte, NC to Oklahoma City. Clotfelter documents the effects of these decisions in causing the resegregation of American public education.

Third, in a fascinating chapter, Clotfelter focuses on colleges and universities. Few other scholars examining the impact of *Brown* have looked at this. After carefully presenting the data, Clotfelter writes: "The racial composition of American colleges and universities changed markedly over the half-century following the *Brown* decision." Clotfelter also shows that the continued existence of historically black colleges and universities has not significantly impeded desegregation.

As the country celebrates the 50th anniversary of *Brown*, it is easy to be discouraged by the failure to create integrated, equal public schools. All institutions share responsibility for the failure to do more to desegregate education. The Supreme Court deserves a great deal of the blame for its decisions precluding metropolitan-wide desegregation efforts and for not finding that disparities in school funding are unconstitutional. Presidents and Congress deserve the blame for their ignoring the issue for so long.

Clotfelter's book documents the failures, but also provides a basis for hope. He shows that *Brown* has made a real difference and he outlines the type of policies that can succeed in the future in decreasing segregation and make equal educational opportunity a reality. Any serious discussion of American public education must now include a consideration of Clotfelter's research and analysis. ♣

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Representing the modern criminal defendant:

A conversation between Robinson O. Everett and Walter T. Cox III

Cox: Judge Everett, you and I have been associated for 20 years, first as colleagues on the Court of Military Appeals and more recently, sharing the lectern at Duke Law School. Almost all of our professional work together has been related to criminal law. Talk to me about the significant changes you've seen in criminal law and society's view of crime and punishment over these many years.

Everett: Well certainly criminal law has become increasingly complex over recent years, and many new crimes have come onto the books that were never dreamed of earlier. The Internet in particular has given rise to new cyberspace crimes that we would not have dreamed of 15 years ago. Perhaps the most significant shift driving societal perceptions is the increasing influence of the broadcast media, in that now we have cases that are publicized not only in a regional area but nationally and internationally, be it the Kobe Bryant case, the Martha Stewart case, or other celebrated trials in the recent past. Another important change in process has been the increased use of plea bargains to dispose of criminal prosecutions. One of the greatest skills a criminal defense lawyer can possess today is the ability to negotiate a good deal for his or her client.

Cox: Looking back over the years, can you think of any other time in our history where so much emphasis has been placed on white collar crimes? We pick up the paper every day and read about Martha Stewart, Enron, Rite Aid, Tyco. Do you recall anything similar?

Everett: Nothing. I think it is largely because of the changing role of the media. Now you can actually watch many of these trials on television, although the federal



courts have not gone so far. I think [the Court of Military Appeals] was a pioneer in allowing transmission or videotaping of an actual court hearing. Print and broadcast coverage has never been as in depth as we see today. The fact that the public is so well informed creates new dynamics and new risks and problems so that these high profile cases certainly appear to be unparalleled in our history.

Cox: What advice do you have for the modern lawyer whose client is involved in a crime – especially a white collar crime?

Everett: An attorney must recognize that his or her client may have a very strong ego. It is very important to explain to the client very soberly the risks that are involved and make it clear to the client that he or she may

become a sacrificial lamb for the benefit of a prosecutor who is trying to establish what he or she believes to be an important principle. The attorney also should consider employing accounting firms, engineering firms, or other skilled professionals to provide the technical expertise to help organize a compelling and comprehensive defense. We need to recognize our own shortcomings in analyzing and dealing with these modern crimes.

Cox: It has been my experience as a practicing attorney and as a judge, that the client who is willing to face up early to his or her situation, accept responsibility, and seek a rational solution is often better off at the end of the day than those clients who want to fight the issues “tooth and nail” as we used to say. What is your view?

“An attorney must recognize that his or her client may have a very strong ego. It is very important to ... make it clear to the client that he or she may become a sacrificial lamb for the benefit of a prosecutor who is trying to establish what he or she believes to be an important principle.” Duke Law Professor Robinson O. Everett



PROFESSOR EVERETT ACCEPTS THE PRESTIGIOUS JUDGE JOHN J. PARKER MEMORIAL AWARD, THE HIGHEST HONOR BESTOWED BY THE NORTH CAROLINA BAR ASSOCIATION, FROM NCBA PRESIDENT GRAY WILSON '76 AND ALLYSON DUNCAN '75, IMMEDIATE PAST PRESIDENT OF THE NCBA, AT THE GROUP'S ANNUAL MEETING IN JUNE 2004

Robinson O. Everett Criminal Law Symposium

An Introduction to Modern Criminal Law for the Civil Law Practitioner

Friday, October 22, 2004
Duke Law School
1:00 pm to 5:00 pm

Reception honoring Judge Everett to follow

Information & registration:

Walter T. Cox III
walter.cox@nelsonmullins.com
(843)534-4250

Doris Kelly
kelly@law.duke.edu
(919)613-7137

Everett: Even the client who considers himself or herself innocent may be misinterpreting or simply not knowledgeable about the law. The lawyer must carefully explain the applicable law to the client, as well as the risks involved. A jury has to make a determination of the facts, subject to a judge setting aside a verdict. A 12-person jury may arrive at a horrible conclusion; they can make an error or you may have one juror who persuades the others to a faulty conclusion. So there is a risk in both criminal and civil litigation. You have to make the client understand that risk.

Cox: In a sense, however, a client has the right to make the government prove its case “beyond any reasonable doubt,” and that client should not have to pay a higher price for pleading innocent. It strikes me, however, that Martha Stewart’s case is a perfect example of how modern-day practice differs from what you and I saw

30 to 50 years ago. The criminal defense lawyers of that era knew the judges, knew the prosecutors, and there was high drama in every courthouse around the state when the judge came to town. Today, the dynamics have changed and one has to know a whole lot more about the intricacies of criminal defense work than ever before.

Everett: Yes, I agree. And as a final thought, I want to mention that the modern lawyer must also know about alternatives to sentencing. There are various pretrial programs for first offenders. If the client suffers from drug or alcohol addiction, programs are available. The lawyer needs to consider urging probation with unique conditions such as community service as an alternative to jail. Even after the sentence has been imposed, there are ways and procedures to have it reopened. There is so much for the modern lawyer to consider. ♡

{Faculty Notes

Katharine Bartlett

Panelist, "The Approximation Rule: Are Predictability Presumptions and Best Interests Compatible?" at the 41st Annual Conference of the Association of Family and Conciliation Courts on Best Interests Revisited: Challenging Our Assumptions, San Antonio, Texas, May 2004

Sara Sun Beale

2004 Supplement to *FEDERAL CRIMINAL LAW AND ITS ENFORCEMENT* (3d ed. 2000) (with Abrams)

Presented paper on the effect of the media's treatment of crime, Faculty Workshop, Notre Dame University, January 2004

Presenter, trial of terrorism cases in the federal courts, Federal Judicial Center's program on Law and Terrorism, Duke Law School, March 2004

Session chair and presenter, Law/Scientist Panel, exploring the questions each discipline would like to ask, and which they could answer, Gruter Institute's Conference on Law, Behavior, and the Brain, Squaw Valley, CA, May 2004

Donald Beskind

Presenter, "Appellate Oral Advocacy," Anthony Amsterdam Death Penalty Post Conviction Conference, Georgia State University, June 2004

Presenter, "Appellate Oral Advocacy," Atlanta Public Defenders, July 2004

Named Honorary Young Lawyer of the Year, Young Lawyers Section of the North Carolina Academy of Trial Lawyers recognizing CLE teaching and writing for the Academy

Francesca Bignami

Mixed Administration in the European Data Protection Directive: The Regulation of International Data Transfers, 1 Rivista Trimestrale di Diritto Pubblico 31 (2004)

Presented paper, "European Administration at the Hauser Colloquium: Theorizing the New Europe," NYU School of Law, February 2004

Presented paper on the right to civil society participation in European governance at "Back to Government? The Pluralistic Deficit in Decision-Making Process and Before the Courts" Conference, University of Trento, Italy, June 2004

Lecturer on American administrative law at the Masters Program in Public Administration, University of Rome, La Sapienza, June 2004

Paul Carrington

Clients I Remember: Part Three, 14 Experience 28 (Spring 2004)

Commentary, in Duncan Kennedy, *LEGAL EDUCATION AND THE REPRODUCTION OF HIERARCHY: A POLEMIC AGAINST THE SYSTEM* (NYU Press, 2004)

The Evils of Longevity, 7 Green Bag 2d 121-123 (2004)

Father's Day Eulogy to William Kelley, 7 Green Bag 2d 209-214 (2004) (with Christopher Machera)

Punitive Damages - The American Tradition of Private Law Enforcement, 7-2004 Humboldt Forum Recht at: <http://www.humboldt-forum-recht.de/7-2004/index.html>

Erwin Chemerinsky

The Constitution and Punishment, 56 Stanford Law Review 1049-1080 (2004)

Constitution Bars Prosecution of Long-ago Child Abusers, 40 Trial 64-66 (January 2004)

Entrenchment of Ordinary Legislation: A Reply to Professors Posner and Vermeule, 91 California Law Review 1773-1819 (2003) (with John C. Roberts)

Fairness at the Ballot Box: What Good is the Right to Vote if Every Ballot Isn't Counted?, 40 Trial 32-37 (April 2004)

Five Justices Hold Firm on 'Soft' Campaign Money, 40 Trial 78-80 (March 2004)

Government is Not Required to Aid Religion, 40 Trial 84-87 (May 2004)

Life in Prison for Shoplifting: Cruel and Unusual Punishment, 31 Human Rights 11-14 (Winter 2004)

George Christie

CASES AND MATERIALS ON THE LAW OF TORTS (Foundation Press, 4th ed. 2004) (with others)

Taught two sessions of the Duke-Cambridge seminar on Comparative Constitutional Law, Cambridge University, Cambridge, England, February 2004

Charles Clotfelter

AFTER BROWN: THE RISE AND RETREAT OF SCHOOL DESEGREGATION (Princeton University Press, 2004) (see review, p. 53)

Do School Accountability Systems Make it More Difficult for Low Performing Schools to Attract and Retain High Quality Teachers?, 23 Journal of Policy Analysis & Management 251-271 (Spring 2004) (with others)

Private Schools, Segregation, and the Southern States, 79 Peabody Journal of Education 74-97 (No. 2, 2004)

Doriane Coleman

Teaching Genetics and the Law, 43 Jurimetrics 505-616 (2003) (reviewing Lori B. Andrews et al., *GENETICS: ETHICS, LAW AND POLICY* (2002)) (with Harrison F. Dillon)

James Cox

SECURITIES REGULATION: CASES AND MATERIALS (Aspen, 4th ed. 2004) (with Robert W. Hillman & Donald C. Langevoort)

2004 Supplement to *COX AND HAZEN ON CORPORATIONS* (2d ed. 2003)

Managing and Monitoring Conflicts of Interest: Empowering the Outside Directors with Independent Counsel, 48 Villanova Law Review 1077-1095 (2003)

SEC Enforcement Heuristics: An Empirical Inquiry, 53 Duke Law Journal 737-780 (2004) (with Randall Thomas & Dana Kiku)

United States Securities Laws Enter New Terrain: Corporate Governance and Attorney Responsibilities after Sarbanes-Oxley, 77 Australian Law Journal 293-298 (2003)

Richard Danner

Speaker, "Copyright Law and the American Library," University of Cape Town, Cape Town, South Africa (April 2004)

Re-elected, Executive Committee, Association of American Law Schools, 2004

Elected First Vice-President, International Association of Law Libraries, 2004-2007

Deborah DeMott

Restatement (Third) of Agency (Tentative Draft No. 5, 2004) (Reporter)

Fiduciary Obligation in the High Court of Australia, in CENTENARY ESSAYS FOR THE HIGH COURT OF AUSTRALIA 277-294 (Peter Cane ed., 2004)

In Praise of a Bibulous Author, in BEYOND EXCELLENCE: DUKE LAW LIBRARY FACULTY SCHOLARSHIP 2003 5-11 (April 2004)

Statutory Ingredients in Common-Law Change: Issues in the Development of Agency Doctrine, in COMMERCIAL LAW AND COMMERCIAL PRACTICE 57-83 (Sarah Worthington ed., 2003)

Transatlantic Perspectives on Partnership Law: Risk and Instability, in GOVERNANCE OF CLOSE CORPORATIONS AND PARTNERSHIPS: U.S. AND EUROPEAN PERSPECTIVES 275-292 (Joseph A. McCahery et al. eds., 2004)

As Reporter, presented and defended Tentative Draft No. 5 of Restatement (Third) of Agency at Annual Meeting, American Law Institute, May 2004

External Reviewer, Faculty of Law, University of Western Ontario, May 2004

Taught course, Commercial Issues in Equity, LLM program, University of Sydney Faculty of Law, June 2004

Presenter, keynote lecture, "Imputation of Knowledge in Financial Entities and Professional Service Firms," Conference on Regulating Conflicts of Interest in the Commercial World, University of Sydney Faculty of Law, June 2004

Presented paper, "Independent Directors: Beyond Disinterest," Corporations Workshop, Business Law Section, Law Council of Australia, June 2004

Diane Dimond

2004 Distinguished Teaching Award—Duke Law School

Presenter, "Negotiation," Annual CLE conference of Legal Aid of North Carolina, April 2004

Catherine Fisk

Book Review, 51 Buffalo Law Review 409-425 (2003) (reviewing, Alice Kessler-Harris, IN PURSUIT OF EQUITY (2003))

Authors at Work: The Origins of the Work-for-hire Doctrine, 15 Yale Journal of Law & the Humanities 1-70 (2003)

Andrew Foster

Founding Chair, NC Leap, Inc., a new nonprofit organization whose mission is to increase pro bono opportunities for business lawyers in North Carolina.

Paul Haagen

Lecture, "Reform of Intercollegiate Athletics," Haverford College, October 2003

Keynote Address, "Achieving Balance: Division III Athletics," Haverford College, April 2004

Frequent commentator on legal issues relating to violence in sports, Title IX, conference re-alignment, and doping

Represented Duke University in the NCAA investigation of Corey Maggette and Duke's men's basketball program

University Representative, NCAA/AAUP meeting in Indianapolis on intercollegiate athletic reform

Clark Havighurst

I've Seen Enough! My Life and Times in Health Care Law and Policy, 14 Health Matrix 107-130 (2004)

Cynthia Herrup

The Punishing Pardon: Some Thoughts on the Origins of Penal Transportation, in THE ENGLISH AND PUNISHMENT (Simon Devereux & Paul Griffiths eds., Macmillan, 2004)

Director, Graduate Studies, Duke History Department

Board of Editors, *Cultural and Social History*

Kenneth Hirsh

Law School Education in the 21st Century: Adding Information Technology Instruction to the Curriculum, 12 William & Mary Bill of Rights Journal 873-885 (2004) (with Wayne Miller)

Donald Horowitz

Elected Vice President, American Society for Political and Legal Philosophy, January 2004

Speaker, "Northern Ireland Agreement and the aptness of the current electoral system in Northern Ireland for reducing the conflict in that territory," sponsored by Democratic Dialogue, a Belfast-based civil-society organization, and the Constitution Unit of University College, London, January 2004

Commentator, Conference on "Wielding American Power," Duke University, February 2004

Presenter, "Equality in Divided Societies," Princeton University Center for Human Values, February 2004

Speaker, "Ethnic Conflict and the Challenge of Constitutional Design in the World Today," Distinguished Open Lecture Series, University of the West Indies, St. Augustine, Trinidad, February 2004

Speaker, "Challenges of Ethno-Federalism: Iraq and Afghanistan," Conference on the "Micro-Foundations of Federal Institutional Stability," Duke University, May 2004

Concluding Speaker, Sawyer Seminar, "Rights, Resistance, and Conflict," sponsored by the Centre for Early Modern Studies, University of Aberdeen, Scotland, May 2004

David Lange

INTELLECTUAL PROPERTY: CASES AND MATERIALS (2d ed., West 2003) (with Mary LaFrance & Gary Myers)

Jennifer Maher

Elected Secretary, International Law and Practice Section, North Carolina Bar Association

Speaker, "Maximizing the internationalization of U.S. Students' Legal Education: Ideas for Making the Most of Your Resources," Association of American Law Schools Annual Meeting, January 2004

Carolyn McAllister

Issues in Family Law for People with HIV, in AIDS AND THE LAW, Ch. 13 (2004 Supplement) (with Carol Suzuki & Jeffrey Selbin)

Presenter, "Legal Needs of HIV-Infected Clients," Workshops for HIV Peer Mediators, Duke Infectious Diseases Clinic, March and May 2004

Panelist, AIDS Service Providers in Durham, Black Church Week of Prayer for the Healing of AIDS, Greater Emmanuel Pentecostal Temple, Durham, NC, March 2004

Speaker, "Estate Planning Issues for Members of Non-Traditional Families," Emerging Legal Issues: Non-Traditional Families, NC Bar Association Family Law Section Annual Meeting, Charleston, SC, April 2004

Faculty Notes

Elected Chair, North Carolina AIDS Advisory Council, February 2004

Francis McGovern

Asbestos Legislation II: Section 524(g) Without Bankruptcy, 31 *Pepperdine Law Review* 233-260 (2004)

Speaker, "The Evaluation of Damages," Cour de Cassation, Paris, France, January 2004

Speaker, "Mediator as Leader," Fox Leadership Program, University of Pennsylvania, Philadelphia, PA, February 2004

Speaker, "Asbestos Litigation," Cour de Cassation, Paris, France, February 2004

Speaker, "Designing Compensation Systems," Program on Negotiation, Harvard Law School, Cambridge, MA, February 2004

Speaker, "Resolving Mass Torts," Stanford Law School, Palo Alto, CA, March 2004

Speaker, "Federal-State Compensation in Mass Torts," Section on Litigation, American Bar Association, Orlando, FL, March 2004

Speaker, "Strategic Mediation," Schwartz Lecture, Ohio State University School of Law, Columbus, OH, April 2004

Speaker, "Resolving Mass Torts," University of Houston School of Law, Houston, TX, April 2004

Speaker, "Mediation Strategy," The McCammon Group, Richmond, VA, May 2004

Speaker, "Mass Torts Settlement," Mealey's Asbestos Conference, Chicago, IL, June 2004

Speaker, "Allocation of Damages," Harris-Martin Asbestos Conference, Chicago, IL, June 2004

Speaker, "The Ethics of Group Settlement," Mealey's Asbestos Conference, Chicago, IL, June 2004

Ralf Michaels

Fünf Minuten Rechtsvergleichung [Five Minutes of Comparative Law], 4 *Rechtsgeschichte* 239-242 (2004)

Book Review, 12 *Zeitschrift für Europäisches Privatrecht* 874 (2004) (reviewing TOWARDS A EUROPEAN IUS COMMUNE IN LEGAL EDUCATION AND RESEARCH (Michael Faure, Jan Smits & Hildegard Schneider eds., 2002))

Die Auslegung und Fortbildung ausländischen Rechts [Judicial Interpretation and Development of Foreign Law], 116 *Zeitschrift für Zivilprozess* 3-56 (2003) (with Nils Jansen)

Editorial Board, *American Journal of Comparative Law*

Editorial Board, *German Law Journal*, March 2004

Presenter, La délocalisation de compétence judiciaire pour contrats et délits (De-Placing Jurisdiction for Contracts and Torts), January 2004

Presenter, Symposium, Transnational Civil Litigation in the European Judicial Area and in Relations with Third States, ULB, Brussels, January 2004

Madeline Morris

Democracy, Global Governance and the International Criminal Court, in FROM SOVEREIGN IMPUNITY TO INTERNATIONAL ACCOUNTABILITY: THE SEARCH FOR JUSTICE IN A WORLD OF STATES (Ramesh Thakur & Peter Malcontent eds., 2004)

The Disturbing Democratic Defect of the International Criminal Court, XII *Finnish Yearbook of International Law* 109-118 (2001, published 2004)

Prosecuting Terrorism: The Quandaries of Criminal Jurisdiction and International Relations, in TERRORISM AND THE MILITARY 133-146 (Wybo Herre ed., 2003)

Robert Mosteller

2004 Supplement to *NORTH CAROLINA EVIDENTIARY FOUNDATIONS* (1998)

Admissibility of Fruits of Breached Evidentiary Privileges: The Importance of Adversarial Fairness, Party Culpability, and Fear of Immunity, 81 *Washington University Law Quarterly* 961-1016 (2003)

Joost Pauwelyn

Environmental Risk, Precaution and Scientific Rationality in the Context of WTO/NAFTA Trade Rules, 24 *Risk Analysis* 461-469 (2004) (with D. Crawford Brown & Kelly Smith)

Going Global or Regional or Both? Dispute Settlement in the Southern African Development Community (SADC) and Overlaps with other Jurisdictions, in *Particular That of the WTO*, 13 *Minnesota Journal of Global Trade* 231-304 (2004)

How to Win a WTO Dispute Based on Non-WTO Law: Questions of Jurisdiction and Merits, 37 *Journal of World Trade* 997-1030 (2003)

Iraqi Reconstruction Contracts and the WTO: "International Law? I'd Better Call My Lawyer." *Jurist: Forum*, December 19, 2003 at: <http://www.jurist.law.pitt.edu/forum/forumnew133.php>

The Puzzle of WTO Safeguards and Regional Trade Agreements, 7 *Journal of International Economic Law* 109-142 (2004)

A Typology of Multilateral Treaty Obligations: Are WTO Obligations Bilateral or Collective in Nature?, 14 *European Journal of International Law* 907-951 (2003)

Speaker, "NAFTA at 10 Years: Is it Still in Canada's Interest?" Workshop, University of British Columbia, Vancouver, Canada, January 2004

Presented paper, "Bridging Fragmentation and Unity: International Law as a Universe of Inter-Connected Islands," 25th Anniversary Symposium of the Michigan Journal of International Law entitled "Diversity or Cacophony? New Sources of Norms in International Law," Ann Arbor, MI, March 2004

Panel presentation, "Jurisdiction of the World Trade Organization," Annual Meeting, American Society of International Law entitled "Mapping New Boundaries: Shifting Norms in International Law," Washington, DC, March-April 2004

Organizer and Chair, Third Conference on International Trade and Human Rights, Georgetown University, Washington, DC, April 2004

Panelist, "The Intersection of Trade Law, Human Rights and Environment," Inaugural Conference of the European Society of International Law entitled "International Law in Europe: Between Tradition and Renewal," Florence, Italy, May 2004

Panel presentation, "Is the Vienna Convention on the Law of Treaties Outdated?" at the Annual WTO Meeting of the British Institute of International and Comparative Law, London, May 2004

Pro bono legal advice to the group of Caribbean countries part of CARIFORUM on their negotiations of free trade agreements with the U.S. and the EU

Jeff Powell

Reflections on a Conversation, 19 Georgia State University Law Review 931 (2004) (symposium on H. Jefferson Powell, THE PRESIDENT'S AUTHORITY OVER FOREIGN AFFAIRS (2002))

The Three Independences, 38 University of Richmond Law Review 603-614 (2004)

Jedediah Purdy

DEMOCRATIC VISTAS: REFLECTIONS ON THE LIFE OF AMERICAN DEMOCRACY (Yale University Press, 2004) (editor with Anthony T. Kronman & Cynthia Farrar)

Speaker, "Social Interventions into Human Nature: The Case of Property," Political Economy Colloquium, Barnard College, Columbia University, April 2004

Paper, "Evaluating Technology: The Perspective of Freedom," Berkman Center for Internet and Society, Harvard Law School, April 2004

Keynote speaker, "Being New York," Bonn Biennale, a literary and cultural festival, Bonn, Germany, June 2004

Speaker, "Why America Must not Fail (and How it Could)," North American Studies Program lecture series, Bonn University, Bonn, Germany, June 2004

Arti Rai

LAW AND THE MENTAL HEALTH SYSTEM (West Group Publishing, 4th ed. 2004) (with Ralph Reisner & Chris Slobogin)

Engaging Facts and Policy: A Multi-Institutional Approach to Patent System Reform, 103 Columbia Law Review 1035-1135 (2003)

Jerome Reichman

Discussion Framework and a Contractually Reconstructed Research Commons for Science and Innovation, in THE ROLE OF SCIENTIFIC AND TECHNICAL DATA AND INFORMATION IN THE PUBLIC DOMAIN 73-86, 141-160 (Julie M. Esanu & Paul F. Uhlir eds., 2003)

Saving the Patent Law from Itself: Informal Remarks Concerning the Systemic Problems Afflicting Developed Intellectual Property Regimes, in PERSPECTIVES ON PROPERTIES OF THE HUMAN GENOME PROJECT 289-303 (F. Scott Kieff ed., 2003)

William Reppy

COMMUNITY PROPERTY IN THE UNITED STATES (Carolina Academic Press, 6th ed. 2004) (with Cynthia A. Samuel)

Reappointed, NC General Statutes Commission for a two-year term, May 2004

Member, Legislation Committee of the NC Task Force to Abolish Animal Fighting

Speaker, "Animal Law in North Carolina: An Overview," at the UNC Law School's annual CLE event, Festival of Learning, February 2004

Speaker, Cabarrus County Animal Task Force, on the benefits of using civil suits seeking injunctions as opposed to criminal prosecutions to deal with animal cruelty, February 2004

Speaker, "Property Rights of Unmarried Cohabitants and the Conflict of Laws," NC State Bar Family Law Section's annual meeting, Charleston, SC, May 2004

Panelist on the issues raised by James La Veck's documentary *The Peaceable Kingdom* (with Tom Regan and James La Veck), Raleigh, April 2004

Judge, First Annual National Moot Court on Animal Law, sponsored by the National Center for Animal Law, Harvard Law School, February 2004

Barak Richman

Organizational Responses to Discontinuous Innovations: A Case Study Approach, 8 International Journal of Innovation Management 87-114 (2004) (with Jeffrey Macher)

Speaker, "Behavioral Economics and Health Policy: Understanding Medicaid's Failure," Yale/Stanford Junior Faculty Forum, New Haven, CT, June 2004

Speaker, "A Transaction Cost Economizing Approach to Regulation: Understanding the NIMBY Problem," American Law and Economics Association Annual Meeting, Chicago, IL, May 2004

Commentator, "Illinois Brick: Is It Time for Remodeling?" Institute for Law and Economic Policy Annual Conference, Miami, FL, April 2004

Thomas Rowe

CIVIL PROCEDURE (Foundation Press, 2004) (with Suzanna Sherry & Jay Tidmarsh)

Chair, AALS Committee on Professional Development

Civil Rules Advisory Committee Alumni Panel on the Process of Amending the Civil Rules, Conference on Electronic Discovery, Fordham University School of Law, February 2004

James Salzman

Mozart and the Red Queen: The Problem of Regulatory Accretion in the Administrative State, 91 Georgetown Law Journal 757-850 (2003) (with J.B. Ruhl)

The Organization for Economic Cooperation and Development Guidelines and Corporate Codes of Conduct, in THE AUTO PACT: INVESTMENT, LABOUR AND THE WTO (Maureen Irish ed., 2003)

Richard Schmalbeck

FEDERAL INCOME TAXATION (Aspen, 2004) (with Lawrence Zelenak)

The Tax Protest Movement: Vernice Kuglin and Voluntary Compliance, 23 NewsQuarterly (ABA Section of Taxation) 14-16 (Winter 2004)

Panel moderator, "Nontaxable Entities," Critical Tax Conference, Rutgers-Newark Law School, April 2004

Paper, "Is the Equity-Efficiency Trade-off Obsolete?," Symposium on "The State of the Federal Income Tax," Boston College Law School, April 2004

Steven Schwarcz

SECURITIZATION, STRUCTURED FINANCE, AND CAPITAL MARKETS (Matthew Bender, 2004) (with Bruce A. Markell & Lissa Lamkin Broome)

'Idiot's Guide' to Sovereign Debt Restructuring, 53 Emory Law Journal 1193 (2004) (Georgetown Law School symposium on sovereign debt restructuring)

Is Securitization Legitimate?, in INTERNATIONAL FINANCIAL LAW REVIEW 2004 GUIDE TO STRUCTURED FINANCE 115 (2004)

Rethinking the Disclosure Paradigm in a World of Complexity, 2004 University of Illinois Law Review 1-37

Securitization Post-Enron, 25 Cardozo Law Review 1539 (2004) (symposium issue on "Threats to Asset-Based Finance")

Subnational Debt Restructuring and the Rule of Law, 1 Journal of Restructuring Finance 129-153 (2004)

Keynote speaker, 2004 Annual Conference, Corporate Law Teachers Association of Australia & New Zealand, Australian National University, February 2004

Plenary speaker, University of Melbourne Conference on Corporate Governance, February 2004

Faculty Notes

Lecturer, JD Guest Lecture, University of Melbourne Law School, March 2004

Paper presentations, subsequently to be published, *Cardozo Law Review Symposium on Threats to Asset-Based Finance* and at Georgetown Law School conference on sovereign debt

Presented Faculty Workshops at Vanderbilt University Law School (January 2004), The University of Melbourne Law School (April 2004), the University of Sydney Faculty of Law (April 2004), National University of Singapore Faculty of Law (February 2004), Monash University Law School (March 2004), the University of Auckland Research Centre for Business Law (April 2004), University of Delhi Faculty of Management Studies (February 2004), and Victoria University Centre for International Corporate Governance Research (March 2004)

Keynote speaker at Asian Securitisation Forum meeting in New Delhi, India, February 2004

Associate editor, *The Journal of Restructuring Finance*

Editorial Board, *The Journal of Business Law Education*

Senior Fellow, The University of Melbourne Law School, Spring 2004

Parsons Visitor, University of Sydney Law Faculty, Spring 2004

Provided pro bono expertise to Financial Accounting Standards Board (FASB) in connection with its Extinguishment of Liabilities Project

Provided pro bono expertise to the Securities and Exchange Commission in connection with its study of special purpose entities required under the Sarbanes-Oxley Act

Allen Siegel

Nominated to six year term as a member of the Maryland Labor Relations Board, by Governor Robert N. Ehrlich, Jr. of Maryland, subject to confirmation by the Maryland Senate

Scott Silliman

Guest lecturer, "National Security Issues in the War on Terrorism," UNC Law School's 14th Annual Festival of Legal Learning, Chapel Hill, NC, February 2004

Guest lecturer, "Responsibilities of an Occupying Power in Iraq," JFK Special Warfare Center, Fort Bragg, NC, February 2004

Speaker and Moot Court Judge, The Detainees at Guantanamo Bay, College of William and Mary School of Law, Williamsburg, VA, February 2004

Speaker, "Legal Issues in the War on Terrorism," Duke Club of Hartford, Hartford, CT, March 2004

Organizer and Guest Lecturer, "Law and National Security in the War on Terrorism," a two day program for federal judges presented by the Federal Judicial Center and hosted by Duke Law School, March 2004

Guest Presenter, "The President versus David Hicks," Full Frame Documentary Film Festival, Durham, NC, April 2004

Sponsor and Panel Chair, "U.S.-Canadian Security Relations: Partnership or Predicament," a two-day conference sponsored by Duke University's Center on Law, Ethics and National Security and Canadian Studies Program, Durham, NC, April 2004

Speaker, "Obligations under the Geneva Convention and the Prosecution of Terrorists," Duke Law Alumni Weekend, Duke Law School, April 2004

Speaker and member, Committee of Experts, "Protecting Human Rights in the War on Terrorism," a symposium sponsored by the Center for Civil and Human Rights at Notre Dame Law School and the Open Society Institute, New York, NY, May 2004

Invited witness and panelist, "Legal Theory Behind Torture, Interrogations, War and Presidential Authority," an open hearing sponsored by the House Committee on Armed Services and the House Permanent Select Committee on Intelligence, United States Congress, Washington, DC, June 2004

Guest lecturer, "War Crimes and Criminal Prosecution," United States Naval Academy Faculty Workshop, United States Naval Academy, Annapolis, MD, June 2004

Member, American Bar Association Standing Committee on Law and National Security

Numerous media interviews in national/local television, radio and newspapers/news magazines on issues of international law involving the use of force, national security, the war on terrorism and military law

Laura Underkuffler

The Blaine Debate: Must States Fund Religious Schools?, 2 First Amendment Law Review 179-197 (2004)

"Analysis of *Locke v. Davey*," for Duke Program in Public Law website, February 2004

"Blaine Amendments and the First Amendment," published on the website of the Pew Charitable Trust

Paper presentation, "Church Autonomy and Free Exercise," at Conference on Church Autonomy, Brigham Young University, February 2004

Presented paper, "The Idea of Property," UNC Faculty Workshop, January 2004

Invited Speaker, "Religious History and the Supreme Court," UNC Law School, January 2004

Paper presentation, "Comparative Takings Issues," plenary session of the AALS Conference on Environmental Law and Property (panel with Prof. Vicki Been and Prof. Eric Freyfogle), University of Oregon, June 2004

"The Individual, Religion, and Government: The Founding Era's Legacy," lecture given as a part of History Connect! Summer Institute, for Durham Public School teachers, June 2004

Neil Vidmar

Asserted But Unproven: A Further Response to the Lindgren Study's Claim that the American Bar Association's Ratings of Judicial Nominees Are Biased, 19 Journal of Law & Politics 177-202 (2003) (with Michael J. Saks)

Jurors and Juries, in BLACKWELL COMPANION TO LAW AND SOCIETY (Austin Sarat ed., 2004) (with Valerie P. Hans)

When All of Us Are Victims: Juror Prejudice and 'Terrorist' Trials, 78 Chicago-Kent Law Review 1143-1178 (2003)

Testimony on tort reform and medical malpractice, North Carolina House Blue Ribbon Task Force on Medical Malpractice, Raleigh, NC, January 2004

Presenter, "Potential Jury Prejudice in Criminal (and Civil) Litigation," 19th Annual Criminal Law Update Seminar of the South Carolina Bar, Charleston, SC, January 2004

Presenter, "Experimental Simulations and Tort Reform: Avoidance, Error and Over-reaching" in Sunstein et al., PUNITIVE DAMAGES (2002), 2004 Randolph W. Thrower Annual Symposium: The Future of Tort Reform: Reforming the Remedy,

Re-balancing the Scales, Emory Law School, Atlanta, GA, February 2004

Presenter, "Seeking the Invisible Profile of Medical Malpractice Litigation: Insights from Florida," Tenth Annual Clifford Symposium: Starting Over? Redesigning the Medical Malpractice System, DePaul University School of Law, Chicago, IL, April 2004

Speaker, Potential Jury Prejudice: A Cross-National Perspective. Colloquium, School of Psychology, University of New South Wales, Sydney, Australia, May 2004

Stephen Wallenstein

The Legal Environment of Corporate Governance, in GOVERNANCE AND RISK 164-186 (George S. Dallas ed., 2004)

Jane Wettach

Guest, KEI Productions (Japanese public television) "School Security in American Schools," June 2004

Guest, "Legal Eagles" radio show, WNCU, "School Discipline," May 2004

Presenter, "Reauthorization and Reform: A Conference About the Education of Students with Disabilities," Chapel Hill, NC, May 2004

Guest, "The State of Things" radio show, WUNC, "Corporal Punishment, Suspensions, and other School Discipline," April 2004

Presenter, "Legal Writing for Non-lawyers," Legal Aid of North Carolina Statewide Meeting, April 2004

Presenter, "Rethinking the Constitutionality of School Suspensions," Law and Policy Society Seminar, UNC School of Law, March 2004

Presenter, "The Legal Rights of Children with Disabilities," NC Chapter of the International Dyslexia Association Annual Meeting, Atlantic Beach, NC, March 2004

Presenter, "The Legal Rights of Children with Disabilities," Training program for Mental Health Case Managers, Durham, NC, March 2004

Guest lecturer, "The Individuals with Disabilities Education Act," UNC Law School, March 2004

Presenter, "Resolving Special Education Disputes," Autism Society of North Carolina, February 2004

Jonathan Wiener

RECONSTRUCTING CLIMATE POLICY: BEYOND KYOTO (American Enterprise Institute Press, 2003) (with Richard B. Stewart)

Convergence, Divergence, and Complexity in US and European Risk Regulation, in GREEN GIANTS: ENVIRONMENTAL POLICIES OF THE UNITED STATES AND THE EUROPEAN UNION (Norman Vig & Michael Faure eds., 2004)

Editorial, Disconnects in Evaluating the Relative Effectiveness of Conservation Strategies, 18 Conservation Biology 1-3 (June 2004) (with others)

Hormesis, Hotspots and Emissions Trading, 12 Biological Effects of Low Level Exposures (BELLE) 20-31 (March 2004)

Practical Climate Change Policy, 20 Issues in Science and Technology 71-78 (Winter 2004) (with Richard B. Stewart)

The Regulation of Technology and the Technology of Regulation, 26 Technology in Society 483-500 (2004)

"Precaution in a Multirisk World," Resources for the Future (RFF) Washington, DC, April 2004

"Risk Analysis under Federal Law," Harvard School of Public Health, Washington, DC, April 2004

"Tragedy and Comedy in the Climate Change Commons," University of Chicago Law School, Chicago, IL, January 2004

Larry Zelenak

FEDERAL INCOME TAXATION (Aspen, 2004) (with Richard Schmalbeck)

The Myth of Pretax Income, 101 Michigan Law Review 2261-2274 (2003) (reviewing Liam Murphy & Thomas Nagel, THE MYTH OF OWNERSHIP: TAXES AND JUSTICE (2002))

Robert and Joan Beber: Giving what they love



BOB AND JOAN BEBER

“I have done rather well, and I attribute that to Duke. And this is just one way of showing some appreciation.” Bob Beber

ing and relaxing.” The Bebers have indicated their interest in adding additional sculptures to the garden in future years.

“Bob and Joan Beber’s gifts will make a difference in more than one respect,” said Dean Katharine Bartlett.

“Until Bob introduced the subject of sculpture, we never imagined the huge difference some first-rate landscaping might have on the aesthetics of the Law School corner. I am enormously grateful for his larger vision of the project.”

Beber thinks very highly of Trapp as a talented artist who works in all forms of media, a rarity in today’s highly specialized art world.

“These days you go to an art show, or a gallery and they will display the works of a particular artist who does terrific watercolor. Or you go to another gallery, and they display an artist who does terrific oils,” says Beber. “Then you go over to France—particularly in the south of France—and you find artists that worked in pastels, they worked in oils, they did a little sculpting, they did some glass blowing. They were multi-faceted. Wayne Trapp is one of the few artists that I have met who is in that category. I think the only medium that he doesn’t

work in is watercolor. I have oils, pastels and sculpture by Wayne Trapp. He is truly a well-rounded artist.”

Bill Brown, too, has a unique style and works exclusively in metal. He has pieces in collections throughout North America and in a number of museums. He is on the staff of the nationally known Penland School of the Arts as a visiting professor when not working in his studio.

Bob Beber is a consultant for W.R. Grace & Company, having retired as general counsel in 1998. Before that he was executive vice president, general counsel, and a member of the Board of Directors of GAF Corporation, and staff vice president and general attorney for RCA Corporation. He is an honorary life member of the Law School’s Board of Visitors and has served on his Reunion Committee.

Beber also received his undergraduate degree from Duke in 1955. During that time, he performed with the Duke Symphony and with a band called “The Ambassadors.” He wrote music and conducted the pit orchestra for productions of *Hoof ‘n Horn*, Duke’s student theater group. Joan Beber graduated from the Women’s College at Duke in 1956. The pair were set up on a blind date while undergrads. They have three daughters, Andrea, Judith, and Deborah, and three grandchildren. The Bebers are members of Duke University’s Founders’ Society.

Beber says his interest in art grew from his high school days. He attended the for-

When Duke Law School began planning for renovations along Science Drive, the plan focused on the building façade and new addition. Thanks to alumnus Bob Beber ’57 and his wife, Joan WC ’56, the renovation will include a sunken garden and two magnificent sculptures: “Tilted Arch,” a corteen steel sculpture by noted Western North Carolina artist Wayne Trapp, and “Rain River,” by another nationally known North Carolina sculptor, Bill Brown. The garden, which is expected to be named the Robert H. and Joan Parsons Beber Garden, will provide a welcome gathering spot for students, faculty and staff, along with an inviting landscape for passing pedestrians and motorists.

“What I envision for the School is a sculpture garden,” Beber says. “I want to see an attractive area in front of the Law School that would look nice, serve the university well, and where the students would enjoy gather-

ALUMNI PROFILE



"RAIN RIVER" BY BILL BROWN

mer Music and Art High School in New York City, the predecessor of the High School of Performing Arts, which was the background for the movie and television show "Fame." Beber studied music—including piano, trumpet and trombone—but was required to take art appreciation classes as well. He says it just stuck with him, and that his wife eventually joined him in the pursuit.

"We are active in the arts in two regards," Beber says. "One, we collect. I also like making art available to the public. I see things I like, and I have no place to put them in my own private collection, because I have every wall in our homes [in Florida and Linville Ridge, NC] full." The Bebers have contributed pieces to the collection of the Turchin Center for the Visual Arts at Appalachian State University.

Beber urges more alumni to give something back. Even if the gift is nominal, he says, it could help in some regard toward bettering someone's future. He also says that folks should donate in areas that inter-



"TILTED ARCH" BY WAYNE TRAPP

est them, as he and Joan do with art.

"I come at it differently. I'm into art. And I would like to make the Law School not only intellectually superior, but physically one of the most attractive law schools in the country."

Beber says he has great respect for the Law School and for the faculty and staff that it has assembled over the years.

"Today you can build terrific structures," he says. "You can make them modern and efficient, and make them up-to-date electronically and technically. But if you don't

have the right staff, the building is just going to sit there and people aren't going to come there. It's the faculty that makes a university. I think that's true across the board. And I think the faculty at the Law School is top-notch."

He also speaks very highly of Dean Bartlett. "She knows how to run a law school, how to manage," he says. "I think she is doing a wonderful job. She has been able to attract people

like me, who have had a little success in business, to show our respect for the Law School. You know, if it wasn't for the education I got at Duke, who knows, I would probably be playing third trumpet in some funky band out in the Midwest.

"I have done rather well, and I attribute that to Duke. And this is just one way of showing some appreciation. I wish more people would do the same. I'm hoping that with my doing what I'm doing, someone is going to sit down, see it, and say 'if he can do it, why can't I?'" — *Brett Cornwright* ♡

Karla Holloway: Duke English professor begins law study



KARLA HOLLOWAY

During orientation for Duke Law's summer-starting students, Karla Holloway '05 laughs when asked what she'd be doing if not attending law school. She admits to being self-conscious about her answer. "I'd be writing away in Bellagio."

Holloway, the William Rand Kenan, Jr. Professor of English at Duke University, completed a five-year term as dean of the Humanities and Social Sciences on June 23. She is the author of several books in the area of literary and cultural studies, among them *Codes of Conduct: Race, Ethics and the Color of our Character* (Rutgers University Press, 1995), and *Passed On: African-American Mourning Stories: A Memorial* (Duke University Press, 2002), which was a finalist for the 2003 Hurston/Wright Legacy Award.

Holloway had planned to apply for a Rockefeller fellowship and spend her first sabbatical in 26 years—the last 12 at Duke—writing in Italy. Instead, she's studying

contracts with 1Ls at Duke Law School.

Holloway says her decision to give up Bellagio in favor of a one-year Master of Legal Studies program is the result of a long-held interest. She had once considered going to law school as an alternative to getting her Ph.D. in literature, and thinks her choice might have been different had she ever contemplated a career as a law professor.

"I had always thought of the law as practicing, and there's nothing in me that has ever wanted to practice, but there's a lot in me that has wanted to know the law."

That urge has grown stronger, she says, as her interests in cultural studies have broadened. Through her work on a national bioethics advisory committee, she found herself engaged by issues of reproduction and race, which intersect with medicine and law. She recently taught a course on bioethics and narrative, dealing with everything from end-of-life issues to stem-cell issues.

STUDENT PROFILE

"I'm really good at memory and interpretation and imagination," Holloway says. "But I wonder what happens when you bring a different kind of analysis to that and what happens to the narratives then."

"At this point in my career, to be the kind of cultural studies scholar and professor I want to be, I think it would be incomplete not to give some attention to the law," Holloway adds.

With her book *Codes of Conduct*, she found herself stepping away from the purely literary, theoretical analyses she had done before, as she explored such concepts as witness reliability and the nature of "testimony" in the context of the Anita Hill sexual harassment case. Earlier this year, before enrolling in law school, she wrote a paper arguing that W.E.B. DuBois' *Souls of Black Folk* may have been influenced by a decision on the right to privacy that Justices Louis Brandeis and Samuel Warren issued in 1890.

"This is a way of thinking about African-American literature that I certainly wouldn't have done 20 years ago, but there's something now, and it might just be a certain age and my own scholarly maturity, that makes me realize that for my own work, this is necessary."

Simply auditing law classes or using the law library for research was not a satisfying option for Holloway. "I've never been one to do what my father would call 'half-step,'" she says. "Not having to take the exam, not having to do the reading, that felt 'half-step' to me—it just didn't feel substantive enough." She also wanted to fully understand the information she would be receiving. "I have such respect for the ways in which my colleagues in the law value a community of opinion because of casework, and that to me is a great responsibility. I thought I would be 'half-stepping' if I didn't have the same commitment to the material."

Reaction from friends and colleagues to her decision to go to law school has been a mixture of incredulity and envy. "People

think I'm fully nuts," she says with a laugh. "And then I get 'I've always wanted to do that—tell me what it's like so I can too!' But many aren't surprised."

Holloway says she struggled at first to adapt to the role of student, and was tempted to "hide" at the back of the room, but got helpful advice from her daughter, a 28-year-old graduate student in physics at Harvard. "She told me that the way to be a good student was to sit mid-way in the room, make sure you have the teacher's eye, and engage in the class. And listening to the ways my classmates are thinking about ideas and working with concepts is helpful," Holloway says. She knew she was truly accepted as a student when, late in the first week of classes, she was invited by a classmate to join a study group. "That's wonderful icing," she says, laughing.

Duke Law Professor Trina Jones has also provided "truly joyful encouragement," says Holloway. "Her consistent friendship and advice have been an essential welcome for me."

Having contemplated applying to Yale for law, Holloway is grateful that Duke Law School Dean Katharine Bartlett helped her to appreciate what was in her own back yard. "She has been so encouraging, that it was hard to turn down that enthusiasm. It matched my own," Holloway says. In fact, the two will co-teach a class called "Readings in Ethics" in the fall, and Holloway hopes the relationship will continue after she returns to the English department. "I hope this cross-school relationship is a part of my own identity in my next career at Duke," says Holloway. "I hope to be able to cross-list my courses with the Law School and have a formal or informal relationship after I finish."

Holloway is certain that she's found a great way to spend a sabbatical. "In the end, I'll be better at what I love, which is teaching and writing. And what I wanted most is a conversation. Here, what I get is a community of informed participants and I get to sit and listen—what better way to spend a sabbatical. I'm having a great time." ♡

Omar Rashid: Aiming to heal the sick and the system

Omar Rashid '06 has a favorite quote from Henry Ford: Obstacles are trifling things—you see them only when you take your eyes off your goals.

Rashid's goals are daunting; he is working simultaneously toward a JD and an MD from Duke, and plans to become a surgeon.

"Being in the operating room and having people give you permission to go inside their bodies—it's incredible," he says. "I just couldn't imagine how great medicine was before I did it."

As a teenager in Hollywood, Florida, Rashid volunteered at the local hospital. He started doing odd jobs—giving tours and working in the MRI lab. Then Hurricane Andrew hit in 1992, and Rashid got to help with the hospital's hurricane relief. That led to other jobs, such as working in the human resources and risk management departments.

"Eventually I knew the hospital almost better than anybody. By the time I was applying to college, I knew I wanted a career in medicine."

Rashid, who is of Cuban and Jordanian heritage, grew up with an interest in minority rights. He found an outlet first as an undergraduate at Dartmouth College, where he helped both Latino and Native American student groups find a voice and a sense of community on campus. This interest was sparked further when, in his first year of medical school, Rashid attended a speech by Tom Perez, the outgoing director for the Office of Civil Rights in the Department of Health and Human Services under President Clinton.

"He really showed the link between civil rights, law, and medicine. I had never really thought of medicine in those terms at all," he says. That's when Rashid decided to apply to Duke Law School.

"I have been researching Title XI and how the Civil Rights Act applies to medicine," Rashid explains, noting that these provide guidelines for so-

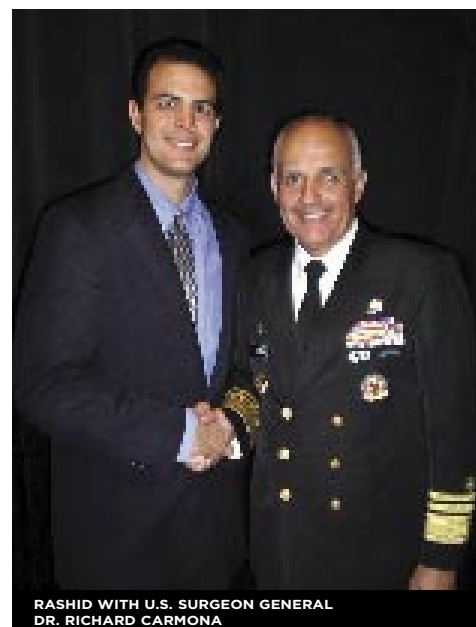
called "culturally appropriate" services. "Physicians have an obligation to provide care so patients understand what is going on. But for some reason, the system isn't working. The outcomes of the diagnostic process, and even the way patients are being treated, have varied along lines that are not really scientific, but are more sociological. I want to tie the two together."

Rashid doesn't feel that he is smarter or more ambitious than anyone else, and often makes that point with other students.

"If I can do it, they can do it too. You can get paralyzed if you look at obstacles. I tell them 'Find out what your passions are in life, and then just go for it!'"

—Brett Cornwright ♡

"Physicians have an obligation to provide care so patients understand what is going on. But for some reason, the system isn't working."



RASHID WITH U.S. SURGEON GENERAL DR. RICHARD CARMONA

STUDENT PROFILE

Michael Sorrell: Teaching people to win

Whether offering advice in corporate boardrooms or gymnasium locker rooms, Michael Sorrell '94 feels at home. After serving as a special assistant to the executive director of the President's Initiative on Race at the White House, then practicing law for a few years with Luce & Williams in Dallas, Sorrell started his own consulting firm earlier this year, having been

ALUMNI PROFILE

consulting part-time since 2000. The company, Victor Credo LLC, specializes in strategic problem-solving for large corporations, such as American Airlines, as well as sports management.

"We help our clients with internal problems that have external consequences," Sorrell explains.

Victor Credo—from the Latin "a winner's creed"—also offers consulting and public relations training to coaches and professional athletes.

"One of the most important things to me is helping people change the direction of their lives," Sorrell says of his motivations for starting his business. "There were two ways I could accomplish that—reaching people through sports, or reaching people through the media and politics. This is about education. It's about teaching people things that are going to change the scope of their lives, and change the possibilities of their lives."

In that vein, Sorrell established the Vera Williams Sorrell Foundation to help young people who are troubled financially or otherwise prepare for and attend college. The foundation is named for his mother who passed away in 1999.

"I'm very proud of that program," Sorrell says. "Right now, we have students at Williams College, Stanford, Xavier, and one of them is going to Duke this fall. We've got students all over the place who have gone through the program and have already seen that they can be successful."



MICHAEL SORRELL

Since 1999, Sorrell also has run a summer basketball tournament for college-aged athletes, the Coca-Cola Global Games, along with Dallas Maverick's President Donnie Nelson. The tournament attracts top international players, as well as NBA coaches and scouts.

Sorrell attended Oberlin College in Ohio. He was a starter on the basketball team for four seasons, and wound up being the school's fifth leading all-time scorer. Following that, he came to Duke and earned his master's degree in public policy. After working a year for North Carolina Legal Services, he attended Duke Law School, giving him the foundation to provide excellent counsel, both in the law and in life.

In advising athletes who are turning pro, such as former Georgia Tech basketball star Chris Bosh, Sorrell's firm does everything from investigating possible teams, to managing press conferences, to preparing clients for the grilling that teams give their prospects. Using an idea he picked up from Duke Law professors who advise Duke players who are turning pro, Sorrell's staff tutors players on

"I want to help people achieve the dreams they have for themselves and teach them to win at the things that are important to them."

various features of the cities they might find themselves in—geography, history, economic base, and politics.

"In the sports business there are a lot of people whose primary agendas might not be in the athlete's best interests," Sorrell says. "My staff and I don't see these kids as our tickets to anything. Our goal is simply to ensure that these athletes avoid the 'bad days' that arise from exposure to people who don't have their best interests at heart—and grow in the process."

Sorrell is quick to point out that his company's main focus is solving problems for businesses—both sports and non-sports related. He also credits Duke Law School with helping his career, even though he's no longer a practicing attorney.

"I loved law school," says Sorrell, who has served on the Law Alumni Association Board of Directors, and as the Law Reunion Committee co-chair for the fifth and tenth reunions of the Class of '94. "I enjoyed what I learned. I'm an active alum. I stay in contact with my classmates. It's really hard for me to state accurately how much I enjoyed my experience there. But by the same token, I knew that being an everyday practicing corporate attorney was never going to be a comfortable fit for me. It took me a little while to accept this. I'm fortunate that I'm able to earn a living by chasing my passions—public service, basketball and education.

"I want to help people achieve the dreams they have for themselves and teach them to win at the things that are important to them." — *Brett Cornwright* ♣

This page begins “around the law school section.

{ Around the Law School



A Successful Summer: Completing Phase I

by Tom Metzloff

Duke Law School was a busy place this summer as two different construction teams raced the clock to complete Phase I of our building project. Phase I included two main elements: **1. the complete reconstruction of two large classrooms;** and **2. the re-facading of the front of the building.** The \$3.5 million project was successfully completed on-time with the new classrooms ready to greet the entering Class of 2007.

Demolition began the day after graduation and within a week, the inside was reduced to bare concrete floors. New walls sprang up seemingly overnight, followed by insulation, conduit, new ductwork, and wood paneling. At the same

CONSTRUCTION UPDATE

time, old brick was being jack-hammered off to be replaced by a beautiful new "Duke brick." The new look front features an elegant window wall that greatly enhances the image of the Law School.

The new main classroom is an amazing addition. Now flooded with natural light, the room includes about 50 theatre style seats in the back which expands its capacity to over 170 for special events.

Phase II—the addition of a new 25,000 square foot wing—began immediately after the completion of this summer's work. Planning is on-going with respect to Phase III—the enclosure of the atrium which is scheduled to begin in Summer 2005. ♪



The \$3.5 million project was successfully completed on-time with the new classrooms ready to greet the entering class of 2007.

Reunion Weekend 2004



ABOVE: ROBERT GALLAGHER '04, DEAN BARTLETT, AND GRAY CHYNOWETH '04.

BELOW: MARGO JACKSON '79, VAL BROADIE '79, AND DENISE MAJETTE '79

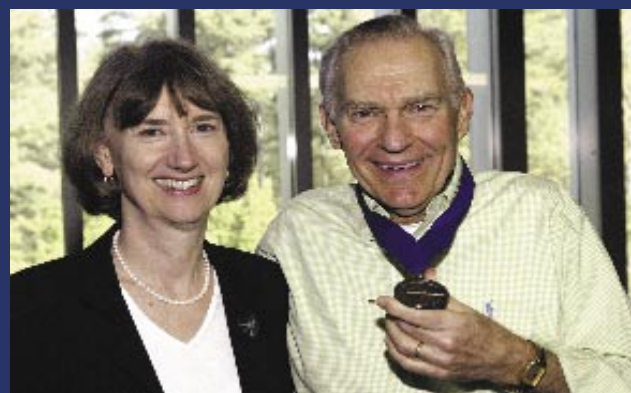


LEFT: GROUNDBREAKING FOR THE BUILDING RENOVATION, TOM METZLOFF, TALLMAN TRASK, DEAN BARTLETT, SUZI HAAS LL.M. '85 JD '87, AND PETER KAHN '76.

BELOW: PROFESSORS JIM AND DORIANNE COLEMAN WITH RETURNING MEMBERS OF THE CLASS OF 1999.



BRENDA BECTON '74, RIGHT, TALKS WITH FRIENDS



DEAN BARTLETT WITH PAUL HARDIN '54



WILLIAM VAN ALSTYNE AT PODIUM,
WITH DAUGHTER HARLAN MARGARET



It was a Reunion Weekend to remember, with nearly 900 alumni, friends and family in attendance April 18-20. Among the highlights: a bittersweet farewell to one of Duke Law School's most recognized professors, **William Van Alstyne**. The Fifth Annual Conference of the Program in Public Law, held Friday and Saturday morning, celebrated his scholarship and many professional contributions. Participants included David Currie, Dan Farber, Garrett Epps '90, Jesse Choper, Walter Dellinger, Rod Smolla '78, Jim Chen, and Susan Low Bloch.

Van Alstyne, who joined the Duke faculty in 1965, left Durham this summer to join his wife, Professor Lan Cao, on the faculty of the William & Mary School of Law. He was further honored at the all-alumni dinner Friday evening, where he was presented with the **A. Kenneth Pye Award**, which honors the life, work, and character of former Law School Dean and Duke University Chancellor Pye, and recognizes outstanding contributions to the field of legal education by Duke Law alumni or other members of the Duke Law community. Also that evening, the William Van Alstyne Professorship in Constitutional Law was announced. This professorship, a gift by J. Michael Goodson '66, will be used to recruit an exceptionally strong scholar in the constitutional law field.

Three other awards were presented at the dinner. **Robert Warwick '69** was presented the **Charles S. Murphy Award**, which honors a graduate whose career reflects the ideals exemplified in the life and career of Murphy T'31 L'34, who held positions in the administrations of Presidents Truman, Kennedy, and Johnson. Warwick retired in 2002 after a long career in public service, including 24 years with the Federal Home Loan Bank of Atlanta developing and expanding its Affordable Housing Program. He remains active in a number of local, regional, and national community economic development groups, and serves on the Advisory Board of Duke Law School's Community Enterprise Clinic.

John Canning '69 received the **Charles S. Rhyne Award**, which honors an individual who exemplifies the highest standards of professional ability and personal integrity through a career in law or business, and an equal commitment to the community. Canning is co-founder and president of Madison Dearborn Partners, one of the largest private equity investment firms in the U.S. His extensive community involvement includes service and support for the Minority Business Enterprise Committee of the Illinois Bar Association, the Northwestern Memorial Hospital, the Children's Inner City Educational Fund, the Chicago Community Trust, Denison University, the Field Museum, and Northwestern University.

The **Young Alumni Award** went to **John Reed Stark '89**, Chief of the Office of Internet Enforcement in the Division of Enforcement of the U.S. Securities and Exchange Commission. He is the first person to hold this position, which leads a 15-person team that tracks down individuals who use the Internet to try to manipulate the stock market. Stark, who has published numerous scholarly articles, also teaches a course at Georgetown University Law Center on securities law and the Internet.

This year's reunion classes contributed more than \$950,000 to the Annual Fund in gifts and pledges.

It's not too early to start thinking about Reunion Weekend 2005. Mark your calendars for April 13-15 (Friday-Sunday). For more information, please visit www.law.duke.edu/alumni/reunions.htm. ♣

SAVE THE DATE
REUNION
2005
April 13-15, 2005



Olson advises law graduates on professional success—and failure

Declaring disdain for the entire genre of graduation speeches, United States Solicitor General Theodore B. Olson offered Duke Law graduates an unusually sardonic and witty guidebook for *failing* in law and in life when he addressed them at their hooding ceremony on May 8th in Cameron Indoor Stadium. The 307 members of the graduating class of 2004 included 228 students who earned the JD degree, 78 who earned the one-year LLM in American law, and one, Yoav Oestereicher, who earned the SJD.

Directing his tongue-in-cheek remarks to the few graduates who might be determined to “go off the track,” Olson advised them to “go it alone,” resist teamwork, and wallow in envy and anger at the success of their colleagues.

“It is remarkable how much an organization can succeed if its members cheer on and help one another. It is also amazing how swiftly an enterprise can be undermined, demoralized, and sabotaged by a few acts of selfishness, envy, or back-biting.”

Olson went on to suggest, tongue-in-cheek, that cultivating a smug and superior attitude, carelessness, stifling one’s individuality, setting easily attainable goals, and avoiding risks, such as those that come with taking on unpopular pro bono cases and government service, also guarantee failure. Alternatively, challenging oneself and engaging in public service breeds likely success.

“Every lawyer I have ever known who has spent some time working in government has come away richer in friendships, experience, and perspective. They’ve become better, more versatile, and more successful as lawyers and more productive as citizens,” he said.

Introduced by Dean Katharine Bartlett as a man known for “his strength of purpose, integrity, and judgment,” Olson noted that risk leads to insight, as successful people learn more from their failures than their successes. “Experience is important, but

the quality of one’s experience is more important, and what we learn from what we experience is more important still.”

CLASS OF
2004

The Solicitor General concluded his speech by noting that failure will be hard to achieve for members of the graduating class. “You are talented, hard-working, and resourceful or you wouldn’t be here today,” he said. “Those who endure will prevail.”

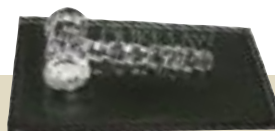
Earlier in the evening, joint-degree candidate Jeremy Entwistle offered childhood anecdotes as he cautioned his classmates to be vigilant to injustice and to take responsibility for their individual actions.

Urmaz Peiker, speaking on behalf of the LLM class, reminded his classmates of the value of friendship and the necessity to always be ethical, honest, open, and friendly. “At the end of the day, your reputation is all you have,” he said.

In her remarks to the class of 2004, Dean Bartlett commended the scholarship, activities, and energies of its mem-



“It is remarkable how much an organization can succeed if its members cheer on and help one another. It is also amazing how swiftly an enterprise can be undermined, demoralized, and sabotaged by a few acts of selfishness, envy, or back-biting.”



2004 Justin Miller Award Winners Announced

bers, saying they had changed the Law School. “What you stand for, who you are, how you view the world—have influenced your classmates and your faculty. You are our ambassadors, and whether we remain a top echelon Law School depends, in no small part, on what you do, who you are, and what others come to think of your abilities, your character, and your professionalism.”

The evening’s final speaker, Peter Kahn ’76, chair of the Law School’s Board of Visitors, urged the graduates to take advantage of the “extended family” of alumni, who are eager for them to succeed, and to become active as alumni themselves.

“Duke Law School, like the family it is, will always welcome you back,” Kahn said. ♡

Five graduating JD students were named winners of the 2004 Justin Miller Awards at the Duke Law Graduation Gala held May 6 to honor the Class of 2004. The annual awards were presented to Merrill Hoopengardner and Robert Gallagher for Citizenship, Andrew Tripp for Integrity, Xavier Baker for Intellectual Curiosity, and Michael Greenwald for Leadership. Fellow students nominated candidates for the awards, which emphasize the Law School’s commitment to furthering these values in its students and in the legal profession.

Assistant Dean for Student Affairs Jill Miller, a member of the selection committee, said of the awards, “We were overwhelmed by the number of nominations we received—from JD students in all three classes and from our LLMS. It is a testament to the impact

our students’ actions have on their classmates, and the sense of community we all care so much about.”

For each of the awards, a student who had nominated the winner read excerpts from nominations. Honorees were then presented with personalized crystal gavels. In addition, winners’ names have been added to plaques on permanent display in the Law School next to a portrait of Justin Miller, Duke Law Dean from 1930–34, and a new book in the Law Library collection has been dedicated on behalf of each winner.

The Justin Miller Awards are presented to graduating Duke Law students each spring. Nominees must be 3L or LLM students. Nominations can only come from other students, and are reviewed by a committee of students, faculty, and administrators. ♡

{ Alumni Notes

1954

James F. Young received the annual Spirit of the Port award, presented by the Seamen's Church Institute. The honor is bestowed each year on an individual who best exemplifies the spirit of integrity, honor, and industriousness to which all members of the maritime community aspire. He is a litigation partner with Fox Rothschild in Philadelphia, PA.

1956

Leif Beck recently sold his medical practice management publishing company and returned to group practice consulting on a limited basis.

1967

William H. Steinbrink is serving as interim president of Wittenberg University in Springfield, OH.

1968

David Harlow, who recently joined the Raleigh office of Nelson Mullins Riley & Scarborough, was named to North Carolina's "Legal Elite" in the patents/intellectual property law category by *Business North Carolina* magazine in its January 2004 issue.

Lynn E. Wagner, president of Litigation Alternatives, Inc. in Winter Park, FL, has been appointed to the arbitration panel of the New York Stock Exchange and the United Mine Workers of America/Bituminous Coal Operators Association, District 17.

1970

Kenton "Ken" Kuehnle has authored a three-volume treatise on Ohio Real Estate Law, published by West Publishing Company. He dedicated the treatise: "To Bertel M. Sparks (1918-1994), professor at Duke School of Law, who taught Real Property Law and Integrity." Ken practices law in Columbus, OH with Allen, Kuehnle & Stovall and is listed in *The Best Lawyers in America*. He has served as the chair of the Ohio State Bar Association's Real Property Section Board of Governors and has become a member of the American College of Real Estate Lawyers.

1971

James R. Fox, of Bell, Davis & Pitt, in Winston-Salem, NC, was named among the "Legal Elite" in the January 2004 issue of *Business North Carolina*.

1972

William C. Basney has retired after 32 years as in-house counsel with CSX Transportation and joined Edwards Cohen, a boutique real estate firm, in Jacksonville, FL, where he resides.

Ernie Blake, now retired from ShawPittman in Washington, DC, was recently elected mayor of Breckenridge, CO.

1973

Charles Holton, a partner in the Research Triangle Park, NC office of Womble, Carlyle, Sandridge & Rice, is now an adjunct professor at Duke Law School, teaching Ethics and the Law of Lawyering.

1975

K. Rodney May was sworn in as a United States Bankruptcy Judge for the Middle District of Florida, in Tampa on December 18, 2003. Previously, he was a partner in the Orlando firm of Gronck & Latham, with a business bankruptcy practice throughout Florida. Prior to 2000, he had been a partner in the Orlando office of Foley & Lardner. He was a board member and past president of the Central Florida Bankruptcy Law Association. He is an invited lecturer in the Advanced Bankruptcy Seminar at the University of Florida School of Law.

Tom Miller has joined the majority staff of the Joint Economic Committee, U.S. Congress, as senior health economist. He previously was director of health policy studies at the Cato Institute.

1976



John B. Gontrum will be president of the Baltimore County Bar Association for 2004-2005. He is counsel in the real estate and land use practice group in Whiteford, Taylor & Preston's Towson office.

1977

Edward T. Hinson, Jr. was inducted into the American College of Trial Lawyers at that organization's annual meeting in October 2003. He is a partner at James, McElroy and Diehl in Charlotte, NC.

Timothy E. Meredith has been appointed judge for the Fifth Circuit of the Maryland Court of Special Appeals. He is a partner in Warfield, Meredith & Darrah, and is a past president of the Anne Arundel County Bar Association.

1980

Shirley L. Fulton was appointed to the Board of Trustees of Evergreen Investments. Fulton, a former senior resident superior court judge for Mecklenburg County, NC, is now a partner with Helms, Henderson & Fulton. Evergreen Investments is the brand name under which Wachovia Corporation conducts its investment management business.

Priscilla Weaver retired in January 2004 as a partner in the Chicago office of Mayer Brown Rowe & Mawe, in order to return to music, her first love. She and her husband, Steve, are moving to their ranch in Jacksonville, OR.

1981

John C. Yates has been designated as a "Super Lawyer" and featured in *Atlanta* magazine. He is a partner with Morris, Manning & Martin in Atlanta, GA.

1982

Jennifer Kyner announces the opening of her law practice, Kyner & Reffer, in Overland Park, KS, effective January 1, 2004. Previously, she was a partner with the law firm of Armstrong Teasdale, where she practiced for the last 22 years.

Julian E. "Jay" Whitehurst has been appointed chief operating officer of Commercial Net Lease Realty, Inc. in Orlando, FL. He has been executive vice president and general counsel since February 2003.

1983

Bruce J. Ruzinsky, a partner with Jackson Walker in Houston, was selected as a 2003 Texas "Super Lawyer."

1984

Sol Bernstein has joined the financial institutions practice of Herrick, Feinstein as a partner resident in its New York City and Newark, NJ offices.

Roger Cook is a senior staff attorney in the Raleigh office of Legal Aid of North Carolina, Inc. He provides civil legal assistance to low-income persons across a range of legal problems, including housing, consumer, domestic, public benefits, and employment.

Mitchell Horowitz has recently been named as statewide corporate practice group leader for Fowler White Boggs Banker, based in Tampa, FL. His practice primarily focuses on mergers, acquisitions, and other business transactions, as well as federal and state civil tax controversy. He is also chair-elect of the tax section of the Florida Bar.

Michael P. Manning has joined Greenberg Traurig's New York office as of counsel in the firm's real estate operations department.

John F. "Sandy" Smith has been designated as a "Super Lawyer" and featured in *Atlanta* magazine. He is a partner with Morris, Manning & Martin in Atlanta, GA.

1985

Elizabeth Hoffman Liebschutz has been appointed to the position of administrative law judge in the New York State Department of Public Service's Office of Hearings and Alternate Dispute Resolution.

1987

Carl David Birman was sworn in to the practice of law in the courts of New York on February 25, 2004. He continues to work as a per diem associate in the Law Offices of Bernard H. Broome, Esq., a sole practitioner with an emphasis on major complex personal injury litigation in the five boroughs of New York City.

Timothy R. Johnson recently joined the U.S. Department of State. After the completion of language and functional training in the Washington, DC, area, he will be posted to the U.S. embassy in San Salvador, El Salvador as vice consul of the U.S.

Brian A. Sher has joined the firm of Bryan Cave as a partner in its Chicago office.

Alan D. Wingfield, a partner in the Richmond, VA office of Troutman Sanders, was named to *Virginia Business* magazine's "Legal Elite" in the intellectual property law category.

1988

Jay B. Bryan has joined Nelson Mullins Riley & Scarborough as a partner in the law firm's Atlanta office.

David Abba Schwarz was married to Julie Anne Lubin on November 23, 2003 in Santa Monica, CA.

Howard S. Thompson has joined the newly-formed law firm, Daspin & Aument, in Chicago, IL. He is a partner in the firm's real estate practice.

T. Scott Wilkinson recently became vice president and general counsel for Atlanta Spirit, which owns and operates the NBA's Atlanta Hawks, the NHL's Atlanta Thrashers, and Philips Arena. Atlanta Spirit, purchased these sports properties from Turner Broadcasting System, Inc. on April 1, 2004. Scott had worked for the past five years as assistant general counsel for Turner Sports, supporting all of TBS's sports holdings.

1989

Sheba Chacko and her husband, Karim, announce the birth of their second son, Hugh Ninan Hepburn Suratgar, on January 15, 2004.

Wendy Sartory Link, managing partner of the law firm of Ackerman Link & Sartory of West Palm Beach, FL, was named the winner of the Sun Sentinel Company's 2003 Excalibur Award as Small Business Leader for Palm Beach County. The award recognizes individuals for their business leadership and wide-ranging community accomplishments and service.



Kenneth A. Murphy has joined the Philadelphia, PA firm of Saul Ewing as a partner in its litigation department.

1990

John Sabine DeGroot has been named vice president, deputy general counsel and chief litigation counsel at BearingPoint, Inc., a global consulting firm formerly known as KPMG Consulting, Inc. based in McLean, VA. He lives in Great Falls, VA, with his wife, Hillary, and their son, Jack.

James Scott Farrin has opened new headquarters for his nine-office firm, The Law Offices of James Scott Farrin, in Research Triangle Park, NC. The firm specializes in the areas of personal injury and business litigation.

Donald M. Nielsen, has been named a director of the law firm of Bell, Davis & Pitt, in Winston-Salem, NC. He was also named among the Legal Elite in the January 2004 issue of *Business North Carolina*.

Patrick Sutton and his wife, Kathryn, announce the birth of their second child, Daniel Patrick Sutton, on January 26, 2004. The Suttons live in Alexandria, VA. In addition to his interior design practice, Patrick is a contributor to *Fine Homebuilding* magazine, for which he regularly authors the "Drawing Board" column as well as other homebuilding and design features.

1991

Gary Brock is a lieutenant colonel in the United States Army's Judge Advocate General Corps, and has just assumed the duties as the staff judge advocate for Fort Eustis, VA.

Adam Milani received tenure at the Mercer University School of Law effective July 2003, and was elected to the American Law Institute later in the year. He has co-authored a casebook on disability law, and a Nutshell in that area to be published in 2004.

Therence Pickett and his wife, Robyn, announce the birth of their first child, Lauren Kristen Pickett, on January 29, 2004.

1992

Donald Willett and his wife, Tiffany, announce the birth of their son, Jacob Noble Willett, on February 18, 2004.

1993

Katie Kessler joined Citigroup Global Markets, Inc. as senior vice president and associate general counsel.



Michael Taten, a partner in the business transactions section of the Dallas office of Jackson Walker, was honored by *Texas Monthly* magazine in its July 2004 issue as a "Texas Rising Star Super Lawyer." Rising Stars must be 40 years old or younger, and have been in practice less than 10 years.

Alumni Notes

1994



Photo by Christine Nguyen, The Herald-Sun

Kate Branch is the owner of Branch's Chapel Hill Bookshop in Chapel Hill, NC. It was featured as "Business of the Week" in the Durham *Herald-Sun*, Tuesday, May 4, 2004.

Valerie Yoder Busch and **Mark Busch '95** announce the birth of their third son, Elliot Michael Busch, on January 24, 2004.

Christopher Dusseault and his wife, Sarah, announce the birth of their first son, Luke Christopher Dusseault, on November 7, 2003. In the same week as Luke's birth, Christopher was elected to the partnership of Gibson, Dunn & Crutcher. He is resident in the firm's Los Angeles office and a member of the firm's litigation and antitrust and trade regulation practice groups.

Larry Fox has been appointed secretary and general counsel of Cargill Dow, a joint venture between Cargill, Inc. and The Dow Chemical Company. The venture makes biodegradable plastic from corn. Larry lives by a lake in Minneapolis with his wife, Beth, and daughter, Nora.

Jeff Layne has been named a partner in the Washington, DC office of Fulbright & Jaworski.

Howard Rubin has joined the Washington, DC office of Sonnenschein Nath & Rosenthal as a partner in the litigation group and the information security and internet enforcement group. Rubin was previously a partner at Shea & Gardner in Washington, DC, where he specialized in complex civil litigation at the trial and appellate levels.

Lisa Sumner has been named a partner in the Raleigh office of Poyner & Spruill. She practices in the area of bankruptcy, creditors' rights and commercial litigation.

Felicia S. Turner is serving in a presidential appointment in the Department of Justice. She is one of 21 United States Trustees. The United States Trustee Program's mission is to prevent fraud and abuse in the bankruptcy system.

Chris Vaughn and his wife, Dana, announce the birth of their second son on October 22, 2003. Chris is a director with the law firm of Carruthers & Roth, in Greensboro, NC. He is a member of their commercial real estate and finance practice group. In May 2004, he received an award in appreciation of extraordinary services rendered to the Real Property Section of the North Carolina Bar Association for 2003-2004 and was elected vice chair of the Section for 2004-2005.

Matthew Watson was elected shareholder at Lionel Sawyer & Collins in Las Vegas, NV, effective January 1, 2004.

1995

Mark Busch and **Valerie Yoder Busch '94** announce the birth of their third son, Elliot Michael Busch, on January 24, 2004.



Jeffrey Collins has been named a partner in the Boston, MA firm of Foley Hoag. He concentrates in the areas of investment advisers and private investment funds and venture capital financings.

Chris Marquardt was named a partner in the Atlanta, GA office of Alston & Bird. His practice focuses in the area of labor and employment.

Rick Peltz was granted tenure at the William H. Bowen Law School of the University of Arkansas at Little Rock. He is an associate professor teaching torts and constitutional law.

James Petrie has recently been appointed corporate counsel for Plazacorp Retail Properties Ltd., a publicly traded company specializing in the retail real estate market in Quebec and Atlantic Canada.

Tatsubumi Sato has been named a judge at Tokyo High Court, Intellectual Property Fourth Division.

1996

Billy Ching was recently named partner at Nelson, Mullins, Riley and Scarborough, in Atlanta, GA. He practices in the areas of mergers and acquisitions, venture capital and corporate securities. Billy and his wife, **Beth Turner '96**, are the parents of two-year-old McKenna.

Thomas L. Harper, Jr. recently became a shareholder in the firm of Hagood & Kerr, Mount Pleasant, SC, where he concentrates his practice in the areas of commercial real estate and business transactions.

David Kushner has become a partner in the Raleigh, NC office of Brooks, Pierce, McLendon, Humphrey & Leonard.

Alexia Pappas has been an assistant U.S. attorney for the District of Columbia since 2000, first in the sex offense and domestic violence section, and more recently prosecuting fraud and public corruption cases. She gave birth to her first daughter, Nicoletta, on February 24, 2003.

1997



John L. Barlament has been named partner in the Milwaukee, WI office of Michael Best & Friedrich.

Rony Jara has been named one of the top 20 attorneys under the age of 40 by *Latin Lawyer* magazine.

Arne Kluewer has been named a partner in the Frankfurt, Germany office of Clifford Chance. He concentrates his practice in banking and capital markets.

Anne Emmert Krouse and **Geoffrey Krouse** announce the birth of their identical twin daughters, Grace Elizabeth and Caroline Emma, born April 30, 2004.

Traci Jones Lovitt recently accepted a position as assistant to the Solicitor General of the United States, a capacity in which she will defend U.S. interests before the U.S. Supreme Court.

Aaron Rugh was married to Dr. Ruth Innes on February 21, 2004. **Steve Romine '97** and **Jeffrey Hart '97** were groomsmen. **Hollie Hays '97** and **Juliann Tenney '79** attended. The newlyweds live in Yorktown, VA.

Scott Thomas Ryan married Laura Ann Weaver on November 8, 2003 in the Duke Chapel. The couple resides in Charlotte, NC.

Brennan B. Tucker has been named a partner in the Kansas City, MO office of Blackwell Sanders. He has practiced in its corporate department since joining the firm as an associate in 1997.

1998

George Donnini was honorably discharged from the United States Marine Corps in October 2003, following four years of service. Thereafter, he and his wife, **Rebecca (Gerskin) Donnini '98** relocated to Detroit, MI. George joined Butzel Long, and concentrates primarily on white collar criminal defense matters.

Rebecca joined Honigman Miller Schwartz and Cohn and concentrates primarily on tax and estate planning matters. Their daughter, Alison Joy, was born in October, 2001, and their son, George Louis, was born on February 24, 2004.

Seth Jaffe married Jennifer French on April 4, 2004 at the Sarah P. Duke Gardens. Following a honeymoon trip to Sorrento, Italy, the couple resides in Raleigh, NC.

Luis Felipe Merino recently started the firm Avendano y Merino Abogados. He was also listed as one of the best 20 attorneys under 40 years old by *Latin Lawyer* magazine.

Carrie Printz is managing director of David Carrie, a legal search firm in New York. She previously practiced law at Paul Hastings and Kramer Levin.

Lee C. Robinson has joined the United States Securities and Exchange Commission as an attorney in the Division of Enforcement. He is working out of the Central Regional Office in Denver, CO.

Jocelyn Strauber and her husband, Mark Gordon, announce the birth of their daughter, Sydney Alexandra Strauber Gordon, born on May 4, 2004.

Tricia Valles is a shareholder in the law firm of Morgan, Lamb, Goldman & Valles, in Tampa, FL. She concentrates her practice in the areas of medical malpractice, employment law, and appellate law.

Darren Wallis has joined SAP AG as a director of corporate development, where he will focus on global acquisitions and developing and executing SAP's growth strategies worldwide. He has also been named venture partner with Cross Atlantic Capital Partners, an information technology-focused venture capital firm.

Gialisa Whitchurch married Bernard Gaffaney on September 20, 2003 at St. Clement's By-the-Sea in San Clemente, CA. They reside in Redondo Beach, CA. This fall, she will teach an advanced constitutional seminar in sexuality, gender identification and the law at Chapman University School of Law, and will dedicate the course in memory of Professor Jerome M. Culp, Jr.

1999

Helen Burt joined the South African law firm, Webber Wentzel Bowens, as an associate in the intellectual property department.

Brian Fowler has joined the products liability group of the Richmond, VA office of Troutman Sanders.

Amy (Buckley) Monahan recently joined the University of Missouri as an associate professor of law.

Dara Steele-Belkin and her husband, Jeff Belkin, announce the birth of their first child, Sabrina Steele Belkin, on October 14, 2003. They reside in Atlanta, GA.

Veronica Zarate began working at Bonelli, Ered, Pappalardo Studio Legale, located in Milan, Italy, in March 2004.

2000



Treb Courie is a captain in the Judge Advocate General Corps and has just returned to his base in Kitzigen, Germany after a six-and-a-half month deployment in Iraq. As chief of claims for the 1st Infantry Division, headquartered in Tikrit, he was charged with implementation of the Foreign Claims Act, under which Iraqis can be compensated for personal injury or property damage caused by American forces. In Kitzigen, he will work as an Army prosecutor.

Antoinette Jones married Reginald Marbray in St. Petersburg, FL, on November 8, 2003.

Frances Turner Mock and her husband, Kevin Mock, announce the birth of their son, Jackson Kevin Mock, on April 5, 2004. Frances is teaching a section of legal writing at the Law School this fall.

Ignacio Pallares is a senior associate in the Barcelona office of Cuatrecasas Abogado. He was listed in the 13th edition of "Who's Who in American Law," in the mergers and acquisitions, corporate and commercial sections.

Isha Youhas and her husband, Andrew, announce the birth of their son, Nathaniel Gideon Youhas, on June 16, 2004.

2001

Gena Brie Lavallee has joined the West Palm Beach, FL, office of Gunster, Yoakley & Stewart, as an associate. Her practice will concentrate in the area of corporate law.

Johan Mattsson and his wife, Kiley Mattsson, announce the birth of their first child, Astrid Alene Mattsson, on February 10, 2004.

Martin Mengelle has accepted a position as the new counsel for the Northern Latin America region at Electronic Data Systems Corporation, based in Plano, TX.

Antony Sanacory joined the Atlanta office of Duane Morris, as an associate in January 2003.

Julie Saker accepted a position with the Office of the Senate Chief Counsel for Employment, in Washington, DC, in February.

Desiree Sumilang is in the Hong Kong office of Allen & Overy for a few months, working and traveling throughout Asia. She had recently completed a six-month secondment to Credit Suisse First Boston (Europe) in London as internal counsel.

Jonathan Werner and his wife, Eileen, announce the birth of their son, Robert Jonathan Werner, on July 28, 2003. Jonathan became an associate at Liner Yankelevitz Sunshie & Regenstreif in Westwood, CA, on October 15, 2003.

Bradford Whitehurst married Jill Kimberly Wilson on March 27, 2004 at Duke Chapel. The couple has residences in Durham, NC, and Arlington, VA.

Bradley Wiltshire has joined the Dallas, TX office of Jackson Lewis, as an employment litigation associate.

2002

Julie N. Searle has joined the Houston, TX office of Baker & Hostetler as an associate.

2003

Lewis W. Schlossberg has joined the Philadelphia, PA office of Blank Rome as an associate. He is a member of the general litigation practice group.

Tell us what you are doing!

www.law.duke.edu/alumni/alumdir/update.html

In Memoriam

1933

Bob Adams, 93, died January 26, 2004 at his home in Cheyenne, WY. Born June 17, 1910, in Salem, NJ, he attended St. John's College before attending Duke Law School.

With his brother, Leonard, Mr. Adams traveled to South America before World War II and after a series of adventures, became a manager of a Chilean winery. Upon his return to the States, he stopped in Denver and took a job with the King Mortgage Company. In 1949, on temporary assignment in Cheyenne, Bob fell in love with Wyoming and his wife-to-be, Ruth Mullis. They were married on the "Bride and Groom" show in Hollywood, Calif., on March 1, 1950.

Mr. Adams became involved with Wyoming politics, serving as Cheyenne City Commissioner, Wyoming Insurance Commissioner and as a Democratic legislator in the Wyoming House of Representatives in 1957 and 1965. He remained active in politics throughout his life and became both a mentor and a political pollster. Mr. Adams was a Shriner, an Elk, a Mason and an honorary Casper Trooper.

Mr. Adams is survived by his wife Ruth; daughter, Dr. Andrea Adams and son-in-law Dr. Gene Millhouse of Rochester, MN; son, Dr. Robert Adams and daughter-in-law Evie Diakakis Adams of Ogden, UT; daughter, Marta Adams of Carson City, NV.

1947

Thomas David Smart, Sr., 84, died November 27, 2003 in Denver, CO. Born March 18, 1919, Mr. Smart earned a bachelor of arts degree from Duke University in 1941 before returning to Duke to study law.

After graduation, Mr. Smart joined Lowell White before becoming a partner with Long, Hyman & Smart in 1949. He then opened a solo practice and continued this work until the creation of Smart & Smart P.C. in 1968. Mr. Smart served as president of Smart, Defurio & Brooks until his retirement in 1981.

Mr. Smart is survived by his wife Dorothy; children Milton and Sandra Havens, Vanessa Berger and Thomas Smart, Jr.; five grandchildren; and four great-grandchildren.

1949

Ben Harrison Logan, 86, died May 25, 2004 in Sun City West, AZ. Born on September 20, 1917 in Hamilton, Ontario, where his father, Ben Harrison Logan, Sr., was on a brief engineering assignment, he was raised in Akron, OH. After graduating from the University of Akron

in 1939, Mr. Logan served as company commander in Patton's 3rd Army during World War II. He was the captain of the 355th Infantry, 89th Division that liberated the concentration camp in Ohrdruf, the first such camp discovered in the American Zone. After the war he headed a military government detachment in Obernberg Landkreis. He attained the rank of major and earned the Combat Infantryman's Badge and the Bronze Star.

After obtaining his law degree from Duke University, Mr. Logan served as assistant vice president of Employer's Reinsurance Corporation in Kansas City, MO. He then served as a general corporate attorney for the Roper Corporation in Kankakee, IL and later as general counsel for True Temper Corporation.

Mr. Logan is survived by his wife, Hilda; his sons Ben H. Logan, III of La Canada, CA and Thomas H. Logan of Breckenridge, CO; his daughter-in-law Lucia Alston Logan; and his grandchildren Ben Harrison Logan, IV and Deidra Alston Logan of La Canada, CA.

William John Lowry, 82, died May 6, 2004 in Hendersonville, NC. Born February 16, 1922, Mr. Lowry received a bachelor of arts degree from Duke University in 1947, remaining at Duke to study law.

After graduating from Duke Law School, Mr. Lowry relocated to Columbus, OH where he worked as an associate with Joseph Harter and then at Isaac & Postelwaite. He then became senior attorney, antitrust and law services with Marathon Oil Company, where he remained throughout his professional career, until retiring to Hendersonville, NC in 1985.

Mr. Lowry is survived by his wife, Marian; and his children, Thomas, Betsy, Margaret, and Katharine.

1951

Thomas T. Chappell, 78, died April 24, 2004. Born November 15, 1926, Mr. Chappell served in the Navy during World War II. He then graduated from Duke University with a bachelor's degree in economics in 1947, before remaining at Duke to earn his JD.

After graduating from Duke Law School, Mr. Chappell relocated to New Jersey where he was worked at Lamb, Hutchinson & Chappell before becoming a partner with Ryan & Hartung. Most recently, he had been a trial lawyer with Garrity, Graham, Favetta, and Flinn, in Montclair. Mr. Chappell was also an active member of the legal community, as a member of the Essex County, Morris County, New

Jersey, and American Bar Associations. He was also a member of the New Jersey Supreme Court Committee on Civil Practice, the American Arbitration Association's Panel of Arbitrators, the American Society of Hospital Attorneys, and the National Association of Railroad Trial Attorneys. Mr. Chappell previously served as president of the New Jersey Defense Association, a fellow of the American College of Trial Attorneys, and a member of the American Judicature Society and the International Society of Barristers.

Mr. Chappell is survived by three sons, Thomas Tye Chappell IV, Richard Chappell, and William Chappell; a daughter, **Amy Beth Chappell Slutkin '91**; four grandsons; and a granddaughter.

1955

J. Peter Friedrich, 75, died June 28, 2003 in Fort Lauderdale, FL. Born February 19, 1928 in Syracuse, NY, Mr. Friedrich graduated with honors from Colgate University. After earning his law degree from Duke in 1955, he and his wife, Marjorie, relocated to Fort Lauderdale, FL.

Mr. Friedrich became a trust officer and vice president of First National Bank of Fort Lauderdale and received the Outstanding Young Man of the Year Award from the Fort Lauderdale Junior Chamber of Commerce. From 1964 to 2003, he practiced law in the field of wills, trusts, and estates, serving most recently as senior partner of Friedrich & Friedrich.

Mr. Friedrich served on many county and statewide probate law committees and was a frequent lecturer on the subject of wills, trusts, and estates. He also served as president and director of the Broward County Estate Planning Council. Since 1972, Mr. Friedrich was an active member and officer of the Coral Ridge Yacht Club, serving as secretary for many years and was recently designated secretary emeritus.

Mr. Friedrich is survived by his wife of 51 years, Marjorie Friedrich; his sons John (Jack) Peter Friedrich, Jr. and Jason P. Friedrich; his daughter, Johnanna Patricia Gaines; grandchildren, Conrad and Alexis; daughter-in-law, Annette Friedrich and son-in-law, D. Marshall Gaines.

1959

Tom Karas, 69, died February 9, 2004 in Phoenix, AZ. Originally from Chicago, IL, Mr. Karas relocated to Phoenix after his graduation from Duke Law School.

Mr. Karas devoted his career to criminal law, beginning his professional life as a Maricopa County attorney. He

then went on to become an Assistant United States Attorney, chief of the Criminal Division for the District of Arizona. In 1965, the first Public Defender Pilot Program in the United States was started in Phoenix, and Mr. Karas ran the program. He remained with the Public Defender program until 1975 when he joined Lewis & Roca. He later opened his own criminal defense practice.

Mr. Karas is survived by his wife, Barbara; children, Christian and Theresa; their mother, Brenda; a grandson, Nicholas; and stepchildren, E.G., Sarah and Bridgette.

1971

Sylvia Louise Beckey, 57, died October 20, 2003 in Houston, TX. Born February 8, 1946, in Lynwood, CA, Ms. Beckey earned a bachelor's degree with special honors in Plan II from the University of Texas at Austin. Following her graduation from UT-Austin, Ms. Beckey earned a JD from Duke Law School and an LLM from New York University School of Law. She also studied overseas at The Hague Academy of International Law in the Netherlands, and the Alliance Francaise in Paris.

After law school, she worked as a legislative attorney for the American Law Division of the Congressional Research Service in the Library of Congress. She wrote legislative reports for the Equal Credit Opportunity Act and won a Meritorious Service Award as associate editor for a major treatise entitled "The Constitution of the United States—Interpretations and Analysis."

Ms. Beckey moved to New York City in the early 1970s and entered private law practice as a trial attorney and became one of the first female attorneys on Wall Street. She also served as a law clerk for Federal District Judge Mary Johnson Lowe, as assistant corporation counsel for the City of New York and a staff member of the U.S. Securities & Exchange Commission in its New York Regional Office.

Ms. Beckey is survived by her mother, Rita J. Beckey; her brothers, Colonel Andrew D. Beckey (USA Retired) and Arthur J. Beckey; her sister, Rita D. Cinquemani; and numerous nieces and nephews.

1979

Jeffrey S. Turner, 48, died July 17, 2004, in Maui, HI. Born in Owensboro, KY, on October 16, 1955, he received his bachelor's degree, earning Phi Beta Kappa distinction, from the University of Kentucky in 1976. He earned his JD with highest honors, and was on the

editorial board of the *Duke Law Journal* and a member of the Moot Court Board.

Mr. Turner joined Kaye Scholer in 2000, as a commercial law expert and counsel in the firm's Los Angeles office. He wrote extensively on secured lending and commercial finance, including intellectual property financing, and co-authored the financial treatise *Asset Based Lending: A Practical Guide to Secured Financing* (Fifth Edition, PLI Press 2002). At the time of his death. Mr. Turner was the chair of the commercial financial services committee of the American Bar Association, and served as chair of the commercial law committee of the Los Angeles County Bar Association from 1990 to 1992, having been a member since 1983. He chaired the California State Bar's council of section chairs from 1994-1995.

Mr. Turner is survived by his wife, Meredith Jackson; daughters, Jessica, Christine, and Julia Turner; stepchildren, Trevor and Mercedes Jackson; father, William T. Turner; and sisters, **Felicia Turner '94** and Kathy Swanton.

1980

Bruce Philip Vann, 48, died February 8, 2004 in Los Angeles. Born December 14, 1955 in Omaha, NE, Mr. Vann earned a bachelor's degree from Washington University in St. Louis, MO in 1977 before attending Duke Law School.

After graduation, Mr. Vann moved to Los Angeles, CA, where he worked for several law firms before serving as a founding partner of the Century City firm of Kelly, Lytton & Vann. Mr. Vann was also active in the community, serving as president of Temple Judea, one of the largest congregations in the San Fernando Valley.

Mr. Vann is survived by his wife, Susan; sons, Michael and Corey; parents, Donald and Gloria Vann, Palm Desert, CA; brother, Martin and sister-in-law, Judy, Calabasas, CA; sister, Sally Rotenstreich and brother-in-law Jeff, Atlanta, GA.

1985

Dennis Lee Casey, 50, died unexpectedly of an apparent heart attack on February 15, 2004 in Annapolis, MD. He had been playing basketball with friends. Born June 16, 1953, in Taylorville, IL, Mr. Casey was raised in Anaheim, CA. He graduated with honors from Stanford University in 1975 before attending Duke Law School.

Following graduation, he practiced law in the Maryland region, first clerking for the Fourth Circuit Court of Appeals

in Baltimore, then working in private practice at Paul, Hastings, Janofsky and Walker in Washington, DC. From 1997 until the time of his death, he worked as a compliance attorney specializing in employment law for Global Exchange Services in Gaithersburg.

He is survived by his mother, Marguerite Casey of Anaheim, CA; two children, Colin and Katherine Casey of Annapolis; his brothers, Donald Casey of Anaheim, Edward Casey of San Clemente, CA, and John Casey of Fullerton, CA; his sister, Sharon Sutton of Cape Girardeau, MO; and his former wife, Elizabeth Buckman of Annapolis, MD.



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Duke Law School

Selected Events

Fall 2004

SEPTEMBER

22

Program in Public Law

Jamie Gorelick

Commissioner, 9/11 Commission

28

*Fourth Annual Herbert L. Bernstein Memorial Lecture
in International and Comparative Law*

Chibli Mallat, EU Jean Monnet Chair in European Law

University of St. Joseph

Beirut, Lebanon

OCTOBER

8-9

Leadership Weekend

Meetings of the Board of Visitors, Law alumni Association Board of Directors and the Future Forum

18-22

International Week

22

Robinson O. Everett Criminal Law Symposium:

An Introduction to White Collar Crime for Civil Law Practitioners

25

Great Lives in the Law

John Hope Franklin

NOVEMBER

16

Brainerd Currie Memorial Lecture

Nancy J. King

Vanderbilt University Law School

24

*Duke Environmental Law and Policy Forum 2004 Fall Symposium:
"Environmental Regulation, Energy and Market Entry"*

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