DUKE LAW MAGAZINE

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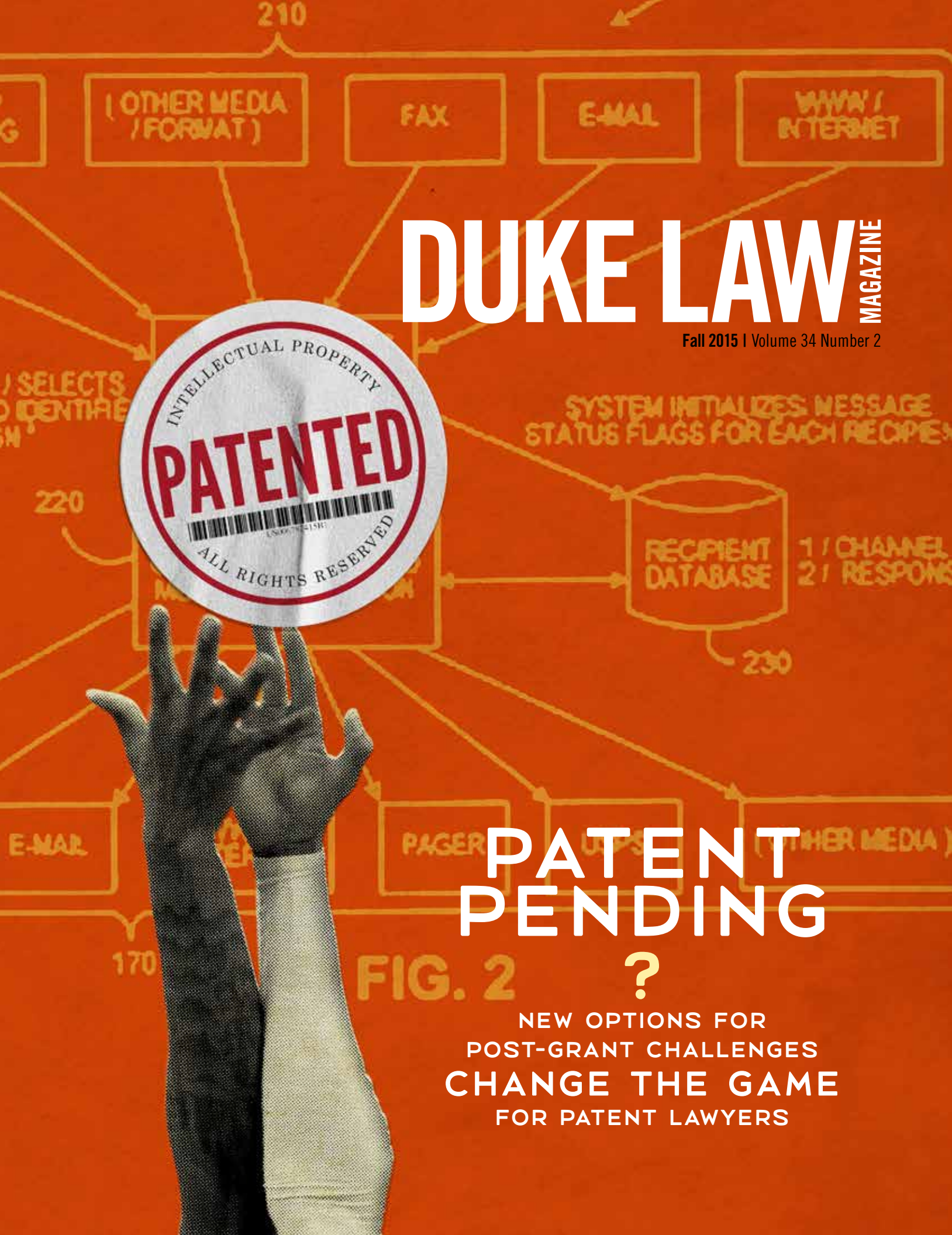


PATENT PENDING?

NEW OPTIONS FOR POST-GRANT CHALLENGES CHANGE THE GAME FOR PATENT LAWYERS

Dear Friends:

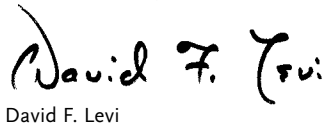
AS MANY OF YOU KNOW from your own time at Duke Law, we have an exemplary faculty of scholars and teachers here. They are leaders in their fields who inspire our students, serve the public, and distinguish this law school as one of the finest anywhere. They are consistently rated at the very top for their skill in the classroom and their creativity as thinkers and writers. Supporting the advancement of their work is one of my primary goals and responsibilities as dean, and many of you have helped. During the current *Duke Forward* fundraising campaign, the generosity of our alumni and donors has funded faculty-led programs like the Center for Judicial Studies, the International Human Rights Clinic, and the Program in Public Law, and endowed eight new professorships, six of them through matching funds provided by Stanley '61 and Elizabeth Star. And shortly before this issue of *Duke Law Magazine* went to press, we announced the receipt of a $5 million grant from The Duke Endowment that will create a matching gift fund to challenge donors to add approximately six more endowed professorships in the next two years. (Read more, page 13.)

One of the attributes of our faculty I appreciate the most is their eagerness to learn together and from one another. Last year, the faculty kicked off an initiative to examine and reflect on our teaching methods and consider new and alternative approaches — from law and other disciplines. The three co-chairs of the initiative — one each from our research, clinical, and writing faculty — reflected our understanding that there are different teaching styles and approaches appropriate to different settings. Beginning on page 32, we asked a number of our faculty members to discuss what they have learned through the Teaching Initiative and how their jobs as legal educators are changing with new generations of students, new technologies, and new understanding of how learning occurs. I think you'll find their answers quite interesting.

Another admirable attribute of our faculty members is their engagement with the most pressing issues of our time, whether in human rights, criminal justice, protection of the environment, access to justice, or constitutional interpretation. A great example is in the area of intellectual property law, where our faculty are doing important work. Three years after the passage of the landmark patent reform legislation known as the America Invents Act, the intellectual property bar is still adapting to the changed landscape for contesting patent rights, which is the subject of our cover story beginning on page 24. These changes to the patent law are still controversial and have been a focus of Arti Rai's scholarship as well as for the Center for Innovation Policy, of which she and Stuart Benjamin are faculty co-directors. The center hosted a June roundtable in Washington on post-grant challenges that attracted academics, lawyers, and policymakers — a perfect illustration of how dynamic faculty can use their skills, stature, and knowledge to convene, increase understanding, and effect change.

The exceptional strength of our intellectual property program is thanks in large part to David Lange, who is retiring from full-time teaching at the end of the year. David arrived at Duke in 1971 after working as a media and entertainment lawyer, long before technology and the Internet would transform the worlds of music, movies, and communications generally. Through his scholarship, such as his pioneering writing on the importance of the public domain, he brought international renown to the Law School, eventually helping us recruit Arti Rai, Stuart Benjamin, Jerry Reichman, and Jamie Boyle to join him. And his extraordinary teaching ability left an indelible mark on generations of Duke Law students. We have two tributes to him as an educator, mentor, scholar, and colleague in this issue: one by Jeff Powell, who in 2009 co-authored with David *No Law: Intellectual Property in the Image of an Absolute First Amendment*, and another by Jennifer Jenkins '97, a former student of David's who is now director of Duke Law's Center for the Study of the Public Domain. (See page 21.)

David's retirement from teaching will be a big loss. But those of you who know him will take heart that in emeritus status David's forceful character and expression will still be evident and influential at the Law School while we continue to build on the foundations he helped to lay.



David F. Levi
Dean and Professor of Law

One of the attributes of our faculty I appreciate the most is their eagerness to learn together and from one another.

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Duke Law faculty discuss changes, challenges, and their constant pursuit of excellence in the classroom.

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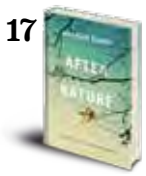

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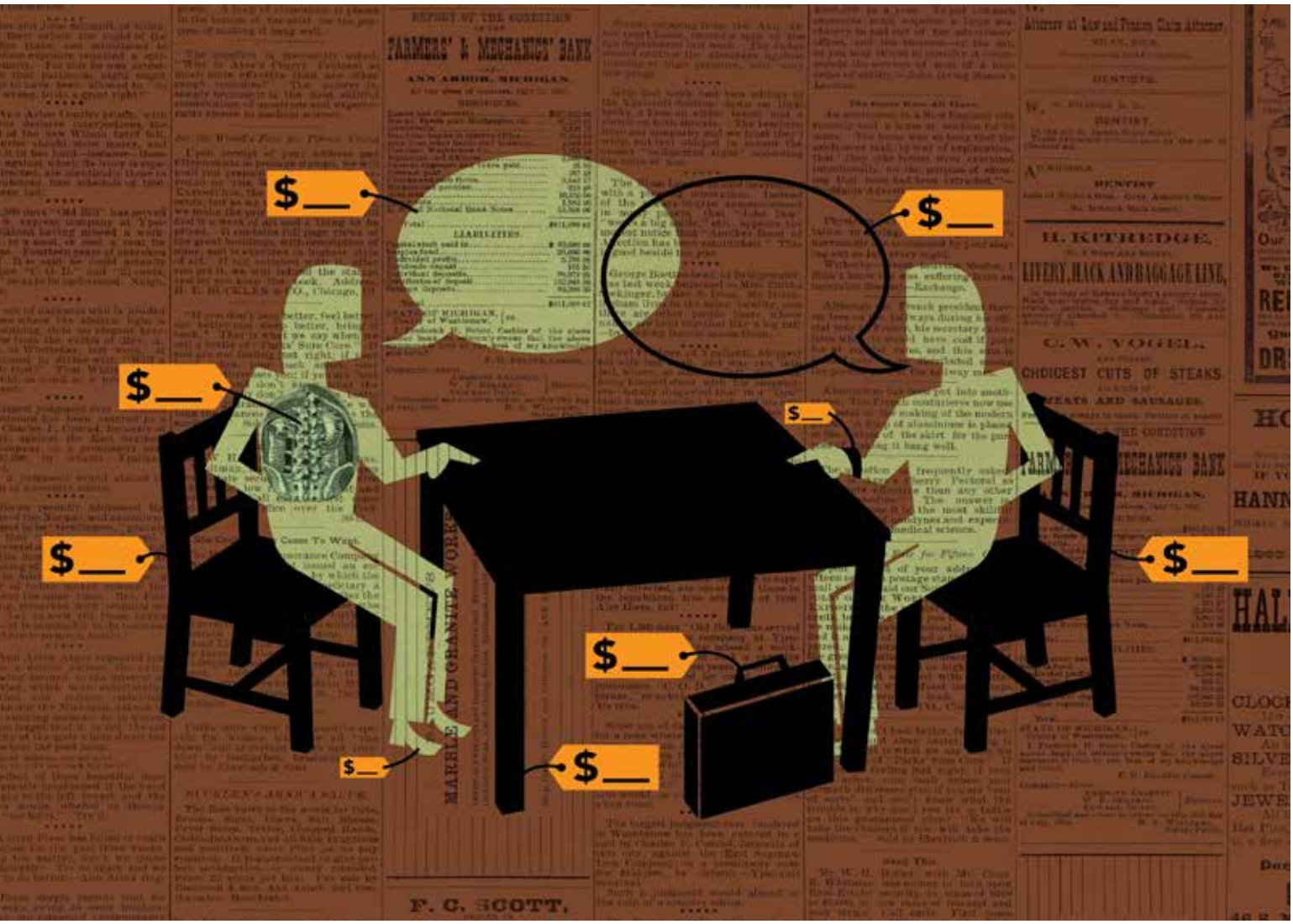
Ideas, achievements, and events from around Duke Law School



Examining the strengths and limits of markets

DUKE LAW FACULTY AND STUDENTS are undertaking a yearlong study of topics at the intersection of law and markets to investigate foundational questions about how law can address market inequalities, how market forces might be effective in areas where laws are ineffective, and the philosophical underpinnings of market-driven and regulatory approaches to various issues.

The Duke Law Project on Law and Markets, led by Professors Kimberly Krawiec and Joseph Blocher, includes faculty workshops, a colloquium for faculty and seminar students, a speaker series, and a symposium that will result in a volume of relevant scholarship in the journal *Law and Contemporary Problems*.

"Our goal is to bring the community together around a broad topic and to really think hard about it," said Krawiec, the Kathrine Robinson Everett Professor of Law. "Joseph and I were excited about law and markets because of work that the two of us had been doing separately about the role of markets as they relate to law."

Krawiec, a scholar of corporate law, securities, and derivatives, also studies non-traditional and taboo markets, such as those for babies — via sperm and egg

Professors Kimberly Krawiec and Joseph Blocher head the Duke Law Project on Law and Markets

donation, surrogacy, and adoption — and for transplant-ready human organs. In some of his recent works Blocher, a scholar of constitutional and property law, has contemplated interstate and sovereign border markets as a possible solution to a range of economic and political problems.

At the project's kick-off event in June, 30 faculty members discussed a controversial 1970 article on blood donation, which argued that a system based on altruism is superior to a market-based system regulated by self-interest. That was followed by a discussion of markets and environmental regulation led by Jonathan Wiener, the William R. and Thomas L. Perkins Professor of Law and Professor of Environmental Policy and Professor of Public Policy, and another on the relationship between economic development and other freedoms led by Barak Richman, the Edgar P. and Elizabeth C. Bartlett Professor of Law and Professor of Business Administration. Several other faculty members have hosted workshops during the fall semester.

Speakers during the spring semester will include Harvard sociologist Frank Dobbins and Nobel Prize-winning economist Alvin Roth of Stanford University, an expert in market design, who will give a public lecture as well as a workshop.

Tackling a wide-range of topics is central to the overall inquiry, Krawiec said. "It's related to a broader notion of market design, which is popular with economists," she said. "Lawyers have a role to play, because many of the objections to having markets operate in certain areas are things that can be dealt with by law." The law, for example, can address inequalities by providing subsidies, she said.

"Markets involve more than money changing hands. A market is a mechanism for allocating scarce resources, and the law has a lot to say about how that should operate, given the various public policy goals we have." That's true, she said, of organ donation, "which is not a literal market, because it's illegal to trade in organs."

The current project was inspired by the Duke Project on Custom and Law that occurred over the course of the 2011–2012 academic year and resulted in a symposium issue of the *Duke Law Journal* with articles on such topics as customs in the art market, norms in kidney exchange programs, and how the Internal Revenue Service draws on custom to under-enforce portions of the tax code. The initiative sparked a number of scholarly collaborations and Blocher and Krawiec hope to replicate.

"We're hoping to connect people who might not otherwise be connected in dealing with problems of law, problems of scarcity, problems of inequality," said Blocher. "Obviously the work that Jennifer Jenkins and James Boyle do regarding the public domain and what goes into and what stays out of the market is hugely important and interesting, but other scholars might not connect it to their work. It might just be seen as a sort of walled-off, intellectual property issue." Boyle, the William Neal Reynolds Professor of Law, is a leading scholar of intellectual property and the founder of the Center for the Study of the Public Domain, which Jenkins '97 directs.

The two-credit Law and Markets Colloquium engages students with readings and workshop presentations on law and markets. Along with the faculty workshops and symposium, it is exposing a range of assumptions and differences of opinion about the roles of law and markets, said Blocher. "People have very different, maybe irreducible, normative visions about what's good and proper for the use of money or other market incentives. But like any question of law, markets, or justice, we don't anticipate a single answer."

"It's more about unearthing the questions we should be thinking about," said Krawiec.

"Markets involve more than money changing hands. A market is a mechanism for allocating scarce resources, and the law has a lot to say about how that should operate, given the various public policy goals we have."

— Professor Kimberly Krawiec

Reardon '14 to clerk for Chief Justice

UNITED STATES CHIEF JUSTICE John Roberts has selected Conor Reardon '14 as a clerk for the 2016-2017 term. Reardon is the ninth Duke Law graduate to be chosen for a clerkship on the high court since 2010.

Reardon, who is currently clerking for Judge José Cabranes of the U.S. Court of Appeals for the Second Circuit, previously clerked for Judge Robert Chatigny of the U.S. District Court for the District of Connecticut.

Conor Reardon '14

"We are all delighted for Conor. He was a terrific law student and he is a kind and modest person," said Dean David F. Levi. "He will be well prepared to clerk for the Chief Justice after clerking with two exceptional judges. By the time he is done clerking, he will have had a unique opportunity to see the federal court system at every level and to have served the justice system. What a wonderful way in which to begin what surely will be a distinguished career in the law."

At Duke Law Reardon served as notes editor of the *Duke Law Journal* and won the Faculty Award for Constitutional Law & Civil Rights and the James S. Bidlake Memorial Award in Legal Analysis, Research & Writing. He is a graduate of Brown University, where he played baseball and was named an All-American. He taught history and literature for Teach For America at a Title I middle school in Bridgeport, Conn., before beginning law school.

Reardon said he was grateful for the "invaluable" support he received during the application process from Levi and several faculty members, including Professors Joseph Blocher, Lisa Kern Griffin, Stuart Benjamin, Curtis Bradley, Stephen Sachs, and Neil Siegel. "A number of them clerked for Supreme Court justices, and Professor Sachs clerked for the Chief Justice," he said. "Their willingness to take the time to write letters for me and give me a vote of confidence was very important."

Sachs called Reardon one of the most impressive students he's met at Duke.

"Conor was a joy to teach, and I think he'll do a great job," he said.

On the Record at Duke Law

» Aug. 27, 2015

FEDERAL ELECTION COMMISSION Chair Ann Ravel discussed the purpose and function — and the dysfunction — of her agency at an event hosted by the Duke Law chapter of the American Constitution Society. While money is essential for candidates to get their messages out, she said, the fact that campaign contributions are now being made by "only a very small sliver" of the American public is a serious problem for our democracy. In the 2014 mid-term election, the number of people who gave to candidates dropped by 11 percent, as compared to the 2010 mid-term, she said.

"About 64,000 fewer people contributed in that campaign and yet there was a lot more money [given]. In fact, it was the highest amount ever given in a mid-term federal election. So the statistic is that one percent of one percent of the American people gave a third of the contributions. ...

"A number of years back, I read a Pew report about the response to the Haiti earthquake. And you may remember that it was the first time that a lot of people were able to make contributions by text message. It was quite prevalent. You could stand in line at Starbucks, have a latte, and text a $10 or $15 contribution. Pew found that people who contributed became invested in Haiti, in what the progress was, in the recovery, in how the money was being distributed, and they followed all the news about Haiti. And not only that, they talked to their friends and relatives and got more and more people to contribute the $10 and the $15.

"So small contributions really make a difference, and I think this is clearly translatable to political campaigns. When people contribute something you get more invested in knowing something about the issues and caring more about the candidates."

Levi co-chairs new N.C. Commission on the Administration of Law and Justice

IN MAY, North Carolina Chief Justice Mark Martin named Dean David F. Levi one of five co-chairs of a new state commission charged with undertaking a comprehensive review of the state judicial system and making recommendations for strengthening the courts within the existing administrative framework.

The co-chairs are focusing on five areas of inquiry: criminal investigation and adjudication, civil justice, technology and its application to the courts, the future of legal services, and public trust and confidence. Levi chairs the commission's Civil Justice Committee. Associate Justice Barbara A. Jackson MJS '14 of the N.C. Supreme Court, another commission co-chair, heads the Technology Committee.

In early September, Martin appointed several other members of the Duke Law community to serve on the commission.

Professor Darrell A. H. Miller was appointed reporter for the Civil Justice Committee, the members of which include Janet Ward Black '85, principal of Ward Black Law in Greensboro, E.D. Gaskins Jr. '66, a partner at Everett Gaskins Hancock in Raleigh, and Robert E. Harrington '87, a partner at Robinson Bradshaw in Charlotte and a member of the Duke Law Board of Visitors.

James E. Coleman Jr., the John S. Bradway Professor of the Practice of Law, who directs the Center for Criminal Justice and co-directs the Wrongful Convictions Clinic, is serving on the Criminal Investigation and Adjudication Committee. State Sen. Floyd B. McKissick Jr. '84 is a member of the Public Trust and Confidence Committee. Matthew W. Sawchak '89, a partner at Ellis & Winters who has taught Antitrust at Duke Law, was appointed reporter for the Legal Professionalism Committee.

Children's Law Clinic secures SSI benefits for disabled child

A CHILDREN'S LAW CLINIC CLIENT was recently awarded more than $25,000 in back benefits and monthly benefits going forward when an administrative law judge found that the Social Security Administration wrongfully denied the child's application for Supplemental Security Income (SSI) assistance. The case was handled by two clinic students during the 2014–2015 academic year, Sarah Sheridan '15 and James Lambert '15, under the supervision of Supervising Attorney Brenda Berlin.

The clinic's adolescent client, Daniel*, suffers from sickle cell disease and multiple mental health issues, at least some of which relate to early abuse and neglect at the hands of his mother and her partner. A woman with a remote family connection, Angela Smith*, agreed to take Daniel and his sister into her home when she heard they faced abandonment, despite being a low-wage worker with a single income. She secured medical care and therapy for Daniel, but had her application for SSI, a monthly cash benefit for low-income, severely disabled children, denied. After her appeal was also rejected, Smith contacted the Children's Law Clinic for help.

Sheridan, then a third-year student, interviewed her and began reviewing Daniel's claim. "I was inspired by Ms. Smith's relentless devotion to Daniel's health," said Sheridan, who is now a litigation associate at Simpson Thacher & Bartlett in New York.

James Lambert '15 and Sarah Sheridan '15

Lambert picked up the case in the spring semester. He interviewed Daniel's therapist, doctor and teachers and then submitted a comprehensive legal memorandum citing their affidavits and Daniel's medical and educational records. In August, the judge issued a fully favorable ruling based on the record before him.

"Working with the clinic was the most rewarding part of my law school experience," said Lambert, who is now clerking for Judge Gerald B. Tjoflat '57 of the U.S. Court of Appeals for the Eleventh Circuit in Jacksonville, Fla. "It is just incredibly gratifying to know that I played a role in helping such a deserving client fulfill her selfless efforts to give two children a safe and healthy home."

> "Working with the clinic was the most rewarding part of my law school experience."
>
> — James Lambert '15

* Client names have been changed to protect client confidentiality.

"I keep waiting for the year when we'll be out of the headlines. It hasn't happened yet."
— Justice Ruth Bader Ginsburg

Justice Ginsburg discusses historic rulings and groundbreaking advocacy

U.S. SUPREME COURT Associate Justice Ruth Bader Ginsburg addressed some of the Court's recent decisions, her advocacy for women's rights, and her current cultural resonance in a wide-ranging conversation with Professor Neil Siegel on July 29.

Ginsburg spoke at the Washington, D.C., offices of Jones Day before a capacity audience of Duke Law alumni and students at the D.C. Summer Institute on Law and Policy, which Siegel directs. The event was her third consecutive summer conversation with Siegel, the David W. Ichel Professor of Law and Professor of Political Science, who clerked for her during the 2003-2004 Supreme Court term.

A series of historic rulings

"I keep waiting for the year when we'll be out of the headlines," Ginsburg said of the recently concluded 2014-2015 term, which closed with historic and controversial rulings upholding health care reform and same-sex marriage rights. "It hasn't happened yet."

Noting that Ginsburg had joined Justice Anthony Kennedy's majority opinion in *Obergefell v. Hodges,* which described marriage as a fundamental right guaranteed by the Due Process Clause of the 14th Amendment, Siegel, a scholar of constitutional law and the federal courts, asked whether she would have written it in the same way. "Or would you have written a different opinion, about discrimination on the basis of sexual orientation or discrimination on the basis of sex?" he asked.

Admitting that she would have relied more on the Equal Protection Clause, which she frequently cites in her jurisprudence, Ginsburg noted that Kennedy's opinion contained "a nice page on equal protection, and the rest is about due process."

She declined to write a concurring opinion, however, finding that "it was more powerful to have a single opinion." She said she keeps a volume of the unpublished opinions of Justice Louis Brandeis in her office as a reminder that is it not always prudent for justices to publicly explain every detail of their diverging opinions.

The Court's decision in *King v. Burwell*, representing a challenge to the use of federal health care

subsidies for those living in states that chose not to set up their own exchanges as part of the Obama administration's health care reform initiative, reached the only conclusion possible by upholding the use of the exchanges, Ginsburg said.

"In the health care case, Congress obviously wanted people to be able to have health insurance in the way that people who sign up for federal exchanges [do]. There's no point in having a federal exchange other than for them to work with subsidies."

Siegel also asked about Ginsburg's decision to join Justice Stephen Breyer's dissent in *Glossip v. Gross*, in which he called for a review of the death penalty's constitutionality, something neither justice had previously done in their decades on the bench.

Ginsburg answered that it was a decision borne of experience and considerable evidence regarding wrongful convictions and executions, poor legal representation, and racial and geographic disparity that leaves defendants accused of identical crimes in different places with radically different chances of facing execution.

"Justice Breyer was speaking on the basis of his experience for 21 years, what he had seen in the Court's effort to create a capital punishment that could be administered with an even hand, and he concluded for reasons that he set out at length that it couldn't be achieved," she said.

Ginsburg declined to characterize the 2014–2015 term as "a liberal term," instead making one of several references to a libretto by Gilbert and Sullivan: "'Nature always does contrive that every boy and every gal that's born into the world alive is either a little liberal or else a little conservative,'" she said, quoting from "Iolanthe." She followed with a statement of her judicial philosophy: "I think I'm very conservative in terms of wanting to preserve the fundamental boundaries of our Constitution."

Responding to a student's question, Ginsburg cited *Citizens United v. Federal Election Commission* as the Supreme Court ruling with which she was most disappointed. Ginsburg said the 2010 majority opinion, which held that political spending is a form of speech protected under the First Amendment, opened the door to massive spending by corporations in support of candidates and is regrettable "because of what has happened to elections in the U.S. and the huge amount of money it takes now to run for office." She counted *United States v. Virginia*, in which the Court struck down the Virginia Military Institute's male only admissions policy, among the cases of which she was proudest.

Advocating for women, equality

Ginsburg, the second woman appointed to the Supreme Court, was a well-known advocate for women's rights before she became a jurist, co-founding the Women's Rights Project at the American Civil Liberties Union and prevailing in five of the six gender-equality cases she argued before the Court. She discussed the sometimes subtler barriers facing women in the 21st century, noting that when she enrolled in Harvard Law School in 1956, she was one of only nine women in class of nearly 500, and joked that the only available female role models for her as a child were Amelia Earhart and Nancy Drew.

She also described several important cases involving women's rights, noting that the 1981 ruling in *Kirchberg v. Feenstra* opened the way for *Obergefell*. In that case, the Supreme Court used the Equal Protection Clause to strike down Louisiana's "head and master" rule, a provision of state law that gave sole control of marital property to the husband.

The Court's ruling in *Obergefell* was only imaginable after that ruling, she said, because until then, marriage was a "relationship of dominant and subordinate; the nature of the union was not between equals."

Justice Ginsburg spoke with her former clerk, Professor Neil Siegel.

> "I think I'm very conservative in terms of wanting to preserve the fundamental boundaries of our Constitution."
>
> — Justice Ruth Bader Ginsburg

Inspiration, notoriety, and an emerging icon

Ginsburg said she greatly enjoyed the premiere of "Scalia/Ginsburg," a new opera inspired by her friendship with fellow opera buff Justice Antonin Scalia, with whom she frequently disagrees on the bench. She smiled as she recounted a scene in which she breaks through a glass ceiling to help Scalia escape a room where a mysterious figure has trapped him as punishment for his frequent, vociferous, dissenting opinions.

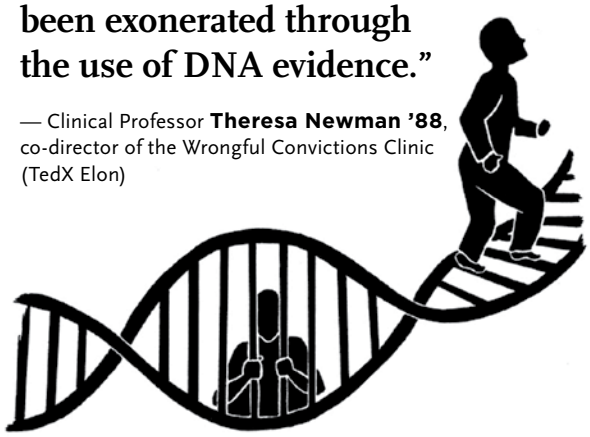
Joking about the popular online "Notorious RBG" meme that links Ginsburg to the rapper Notorious B.I.G., Siegel asked the justice, whose career he called inspirational, how she felt about being something of a pop icon.

Once a law clerk explained the reference to her, Ginsburg said her own research uncovered common ground with the rapper. "Both of us were born and raised in Brooklyn, New York."

Notable &Quotable

"... [F]or a time we believed that the criminal justice system in America was the best anywhere. That it never made any mistakes. But the number ... 325, reveals to us that mistakes are all too common. That's the number of people in the United States, men and women, who've been exonerated through the use of DNA evidence."

— Clinical Professor **Theresa Newman '88**, co-director of the Wrongful Convictions Clinic (TedX Elon)

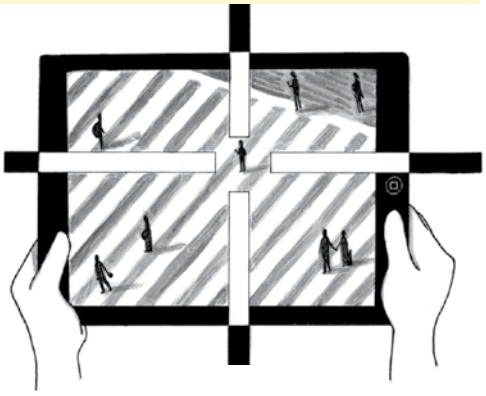


"This verdict skewed the balance between rights and freedoms in a way that would severely stifle musical creativity. If musicians throughout history were not free to capture the 'groove' or style of another song, and had to avoid channeling their influences for fear of a copyright lawsuit, then much of the music we love might not exist. Let's hope the legal lines are not irrevocably blurred."

— Center for the Study of the Public Domain Director **Jennifer Jenkins '97**, on the federal jury verdict that Robin Thicke and Pharrell Williams infringed copyright on Marvin Gaye's 1977 hit "Got To Give It Up" by channeling its groove with their 2014 hit song, "Blurred Lines." (Center for the Study of the Public Domain)

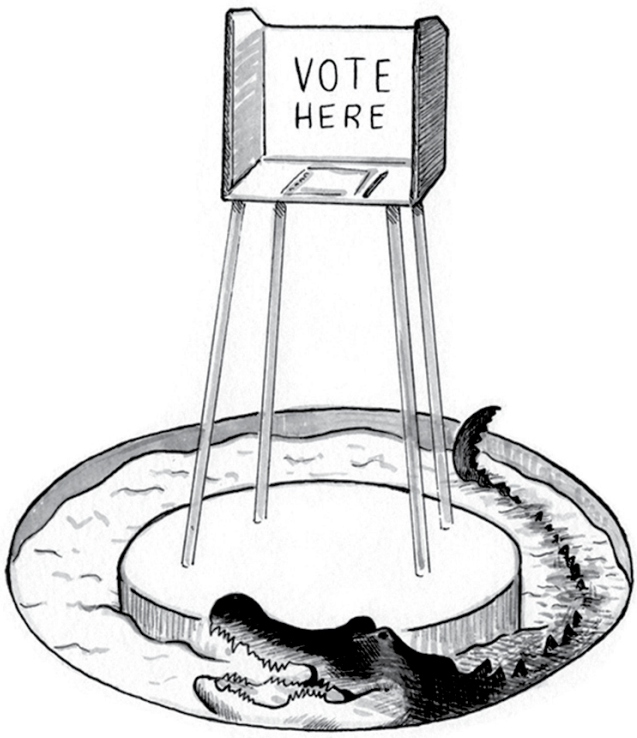
"Everyone is always talking about cyberwar as turning off the electricity. The real [threat of cyberwar] is stuff like this, not a use of force. In the era of big data states will be able to zero in on specific individuals. It's the hyper-personalization of war."

— Professor **Charles Dunlap Jr.**, a retired Air Force major general and executive director of the Center on Law, Ethics and National Security, on the Office of Personnel Management's massive data breach, the second linked to the Chinese government, in which the personal information of millions of government workers and contractors was stolen. (*Think Progress*)



"The notion is that you can reduce health care costs by 'putting skin in the game,' which I always find to be kind of hilarious when you're dealing with people with cancer, multiple sclerosis or HIV. It's not like they have a whole lot of choice in their meds."

— Health Justice Clinic Director **Allison Rice**, who says people with chronic conditions are disadvantaged when, in an attempt to prompt "smarter" decisions on health care, insurers, employers and government-sponsored programs like Medicaid shift more costs onto patients. (*Washington Post*)



"... [W]e have to get to that place where all Americans, no matter what their race or ideology or where it is that they come from, ... Americans recognize that they have a fundamental right to vote and they demand of the legislature, Congress or their state to protect that right, because voting is preservative of all the other rights that we have."

— Professor **Guy-Uriel Charles** calling for voting restrictions to be viewed "as morally suspicious, as bad public policy, and also as unconstitutional." (Here and Now)

"The money that Greece just got was immediately spent on paying back the IMF and paying back the European Central Bank. I mean Greece got a tiny portion of it. They're lending Greece money to pay themselves back, and that's how we got into this awful situation in the first place."

— Professor **Mitu Gulati**, who was involved in the restructuring of Greek debt in 2012 and co-authored a plan, with Lee Buchheit, to increase private sector investment in the country's debt. (Marketplace)

New names, renewed mission for Duke Law clinics focused on health justice

L–R: Senior Lecturing Fellows Allison Rice and Hannah Demeritt '04 and Clinical Professor Carolyn McAllaster

TWO DUKE LEGAL CLINICS that allow law students to hone practical skills by serving the legal needs of clients facing critical and chronic illnesses have new names.

The Law School's oldest clinic, founded in 1996 as the AIDS Legal Project, is now known as the Health Justice Clinic. Clinic faculty and students now assist clients with legal matters stemming not only from HIV and AIDS, but also from cancer diagnoses. The AIDS Policy Clinic, established in 2010, has been renamed the HIV/AIDS Policy Clinic, a reflection of the fact that new treatment protocols have increased the population of individuals living with HIV as opposed to AIDS.

Continuity of mission

In 2014, the AIDS Legal Project began offering legal services to qualifying clients referred by the Duke Cancer Center, as the legal needs of this patient group are similar to those of the HIV population the Legal Project has long served. Referrals from the Cancer Center have created new opportunities for clinic students to engage in direct client representation as they draft wills, establish guardianship plans for children, and pursue health benefits claims, among other matters.

The name change also facilitates the clinic's ability to apply its core expertise in other areas relating to health and justice. "Other patient groups face similar needs, so we want to be open to further expansion as needs arise, from clients with other serious medical conditions," said Allison Rice, who became Health Justice Clinic director on July 1, taking over from its founder, Clinical Professor Carolyn McAllaster.

The clinic's work on behalf of cancer patients complements that of the Cancer Pro Bono Project, for which Rice trains Duke Law student volunteers in interviewing clients and drafting advanced directives. Students in the Health Justice Clinic can handle matters that aren't easily resolved during regular drop-in legal clinics the volunteers offer at the Duke Cancer Center, such as helping patients undergoing cancer treatment exercise their rights to medical leave and insurance.

People living with HIV and AIDS remain the core of the clinic's clients, as they have been for almost two decades. Students continue to help clients with documents relating to end-of-life planning and engage, as needed, with more complex cases relating to such matters as breaches of confidentiality and discrimination.

Rice directs Health Justice Clinic, McAllaster focuses on policy

Rice became director of the Health Justice Clinic after serving as clinic supervising attorney since 2002. She has worked in public interest and poverty law throughout her career, including as managing attorney for Legal Services of Southern Piedmont in Charlotte. She also works on policy issues relating to implementation of the federal Affordable Care Act.

Senior Lecturing Fellow Hannah Demeritt '04 continues to supervise students in their direct representation of clients in the Health Justice Clinic. Demeritt, who joined the clinic team in 2007 while still maintaining a solo criminal defense practice, has extensive experience in appellate litigation and the representation of indigent clients.

McAllaster, who has directed the HIV/AIDS Policy Clinic since it was established at Duke Law in 2010 as an outgrowth of the AIDS Legal Project and an advanced clinical offering for students, now focuses full-time on policy issues relating to the ability of people living with HIV and AIDS to access care and treatment and supervises students in related research and advocacy. She continues to teach AIDS and the Law, and also serves as project director for the Southern HIV/AIDS Strategy Initiative (SASI), a broad-based coalition launched in 2011 to advocate for increased federal resources to stop the spread of HIV in the South, where infection and AIDS death rates are high. The policy clinic, which has attracted significant funding from the Ford Foundation and the Elton John AIDS Foundation, among other sources, is a founding SASI member and institutional leader.

Rice said McAllaster, who received the American Bar Association's 2014 Alexander D. Forger Award for Sustained Excellence in the Provision of HIV Legal Services and Advocacy, has gained a national profile as a policy advocate. "She is fearless, intelligent, and has the ability to keep people with differing interests working towards a common goal," she said.

Students garner notice for research finding health care savings

A RESEARCH PROJECT by Kyle Jaep '16 and John Bailey '16 shows that giving nurse practitioners expanded autonomy known as "full practice authority" would save Pennsylvania at least $6.4 billion over 10 years.

Bailey and Jaep conducted their research last spring, as part of a health law class taught by Professor Barak Richman in which students addressed real challenges and debates facing policymakers around the country.

"Easing restrictions on nurse practitioner scope-of-practice laws will increase access to affordable, quality health care," Jaep said. "Reform will both improve health and save money for Pennsylvanians."

Advocacy groups have used the duo's research in their efforts to end a government mandate that nurse practitioners obtain business contracts with physicians in order to practice. Full practice authority has been adopted by 21 states and Washington, D.C., and is endorsed by the AARP, the Institute of Medicine, the National Governors Association, the Federal Trade Commission, and other nonpartisan organizations.

Passing similar legislation in Pennsylvania would particularly benefit patients living in rural areas, and those who are disabled or dual Medicare-Medicaid eligible, the students found.

"This is a terrific instance of student research having a real impact," said Richman, the Edgar P. and Elizabeth C. Bartlett Professor of Law. "That's the essence of their research — measuring, in dollars and cents, how much Pennsylvania citizens will save if this new rule becomes law."

"It was great to work on something that was immediately relevant," Jaep said. "Seeing the interplay between the economic experts, the legal experts, and the lobbyists was enlightening. But it was challenging to keep our legal conclusions tied to the underlying economics. We had to make sure everything we stated was backed by robust economic research. Professor Richman really helped us achieve that balance."

Jaep testified about the report before the Professional Licensure Committee of the Pennsylvania House of Representatives on Oct. 28.

Kyle Jaep '16

John Bailey '16

On the Record at Duke Law

» Sept. 17, 2015

DELIVERING THE Meredith and Kip Frey Lecture in Intellectual Property Law, Paul Goldstein lamented the contraction of copyright worldwide through exemptions and limitations, particularly since the advent of the Internet. Goldstein, the Stella W. and Ira S. Lillick Professor of Law at Stanford Law School and a global expert on intellectual property law, noted that while copyright owners have "a long history of battles with new technologies," they were, in the past, resolved over time with infringers becoming allies in the form of licensees. That, he said, will not happen in the Internet age.

"Why and how is the Internet different? The Internet is different not just because of its ubiquity, cutting as it does, across all copyright markets rather than one or two. The Internet is different because piracy and other unlicensed uses on the Internet persist and will continue to persist on a scale sufficient to drive down prices for licensed copyright uses to close to zero. When you compete with free, it is free that sets the competitive price.

"The technologies of the Internet created a new market equilibrium in which for the first time the means of delivery, the pipes, command a higher price than the content delivered. As a subscriber, you will pay less for a month of Netflix film and television content 24/7 than you will for a single matinee ticket to a movie theater. But you will also pay 10 times that amount for the broadband service that brings you that content, a price that, not coincidentally, reflects broadband's capacity to bring you free, unlicensed content, as well."

On the Record at Duke Law

» Oct. 28, 2015

JOHN HOPE FRANKLIN VISITING PROFESSOR of Legal History Thavolia Glymph discussed the plight of refugee slaves during the Civil War, placing their story within the broader scholarship on refugees, human rights, and the law of war when she delivered the annual Robert R. Wilson Lecture. Over the course of the Civil War, hundreds of thousands of people fled Southern plantations, hoping to get to the safety of Union lands or Union occupied territory, said Glymph, an associate professor in the Departments of History and African & African American Studies at Duke University. Because they lacked the formal protections of the state that accrue to citizens, relatively few found sanctuary, and many women and children in particular had passed through or died in refugee camps by the time the war ended, she said.

"Despite the growing availability of information on these camps, despite the widening legal embrace of fugitive slaves, refugees remained on the margins of Northern consciousness and their safety came to depend heavily on the dispositions and whims of local commanders. ...

"Black refugees were a stateless people. At no point during the Civil War did any other country offer to take them in. Abolitionists in England might decry slavery, but they made no effort to offer sanctuary. The only country to which black refugees could flee was the United States, but white Northerners opposed their migration there."

Conference considers president's war powers legacy

DUKE LAW CONVENED A GATHERING of leading scholars and former government officials to discuss President Barack Obama's war powers legacy on Oct. 3. Participants in the roundtable, the second in an annual series of foreign relations roundtables held in conjunction with Yale Law School, included several scholars who have addressed war powers issues as government officials.

Curtis Bradley

Each attendee addressed an aspect of the topic in a discussion paper to spur the conversation, said organizer Curtis Bradley, the William Van Alstyne Professor of Law and Professor of Public Policy Studies. He listed a number of controversial legal issues in the Obama administration having to do with war powers, including the use of drones for targeted killings, detainee policy and the Guantanamo detention center, and ongoing controversy over which conditions necessitate Congressional authorization for the use of military force.

"We reflected more generally on the direction of war authority for presidents in the United States," Bradley said. "Are there ways to curb presidential unilateralism, which many considered a problem long before the Obama administration? Should the courts get more involved? They tend to stay out of war powers issues, but it's worth talking about whether they should get involved to push Congress to do more to keep the president from acting so unilaterally. Should there be a new war powers resolution that functions better than the one we have? Should international law be doing more here to address uses of force — for example, uses of force carried out with the ostensible consent of the nation where force is used?"

The goals stated by candidate Obama on the campaign trail in 2008 and the decisions he made in office have added to the discussion about presidential war powers, said Bradley, who served as counselor on international law in the Legal Adviser's Office at the U.S. State Department in 2004.

Harold Hongju Koh, Yale's Sterling Professor of International Law, co-organized the conference with Bradley. Koh, who served as State Department legal adviser from 2009 to 2013, testified before Congress about the legal rationale for some of the administration's decisions regarding congressional use-of-force authorization and drone policy. John Bellinger, who served as legal adviser to the State Department during the George W. Bush administration, also participated in the conference, as did two former heads of the Department of Justice Office of Legal Counsel in the Clinton and George W. Bush administrations, respectively: Walter Dellinger, Duke's Douglas B. Maggs Professor Emeritus of Law, and Jack Goldsmith, the Henry L. Shattuck Professor of Law at Harvard. Professor Charles Dunlap Jr., executive director of Duke's Center on Law, Ethics and National Security, a former deputy judge advocate of the U.S. Air Force, also participated.

Duke Law receives $5 million grant from The Duke Endowment

A $5 MILLION GRANT from The Duke Endowment will support an increase in the number of endowed faculty positions at Duke Law.

The grant will create a matching gift fund to encourage donors to endow as many as six new faculty positions in the next two years. The Duke Law Faculty Endowment Challenge will provide $1 for every $1 a donor commits toward establishing a new endowed faculty chair, professor of the practice or clinical professorship position.

"A strong faculty is the foundation of a great law school," said Dean David F. Levi. "Endowed professorships support and attract distinguished scholars to Duke. Their scholarship generates intellectual excitement and new understandings of our legal system and substantive legal rules. New professor of the practice and clinical professorship positions will help us continue to build our superb professional skills and experiential learning faculty while infusing professional values, including service to the community and access to justice, into the daily life of the Law School."

The commitment will also advance the $3.25 billion *Duke Forward* fundraising campaign. To date, Duke Law has raised $90 million in the campaign in support of its faculty, students, and programs.

This is the second major commitment by The Duke Endowment to the Law School during the campaign. In 2013, the Endowment supported the Center for Judicial Studies with a $5 million grant to fund its operations.

"We are pleased that our support is playing a role in Duke Law School's commitment to excellence," said Minor Shaw, chair of the Endowment's board. "Establishing a law school was part of our founder's hope for Duke University, and we believe this new grant strengthens that legacy for students and scholars today."

Established in 1924, The Duke Endowment in Charlotte, N.C., is one of the largest private foundations in the Southeast. Through its four program areas — child care, health care, higher education and rural churches — it distributes grants to organizations across North Carolina and South Carolina. The Endowment's founder, industrialist and philanthropist James B. Duke, is the same man behind Duke University and Duke Energy, but they are all separate organizations.

For information about utilizing matching funds from the Duke Law Faculty Endowment Challenge, contact Associate Dean Jeff Coates at **(919) 613-7175** *or* **coates@law.duke.edu**.

LEADING QUESTIONS

Intriguing ideas from Duke Law scholars

Do single workers without children face a new form of marital and parental status discrimination and, if so, what, if anything, should be done about it?

"... If law has an expressive function, then laws governing the employment relationship will not only affect the lives of individual workers, but they will also reflect deeper normative assumptions and understandings about the ways in which a society ought to function. If left unchallenged, laws and practices that privilege spousal and parent-child relationships risk reinforcing traditional norms over other types of arrangements. This is regrettable because these norms may leave Americans less open to broader conceptions of community and family. Taking the concerns of [single workers without children] seriously requires Americans consider recognizing and respecting the needs of seniors who are acting as each other's caregivers, of siblings and extended family members, and of close friends in non-conjugal relationships who serve as each other's primary support, among others. Examining the concerns of [single workers without children] not only forces reexamination of the ways in which laws and practices transmit ideas about relationships; this analysis tests and exposes assumptions Americans may hold about autonomy and solitude."

Source: "Single and Childfree! Reassessing Parental and Marital Status Discrimination" by Professor **Trina Jones**, 46 *Arizona State Law Journal* 1253-1346 (Winter 2014).

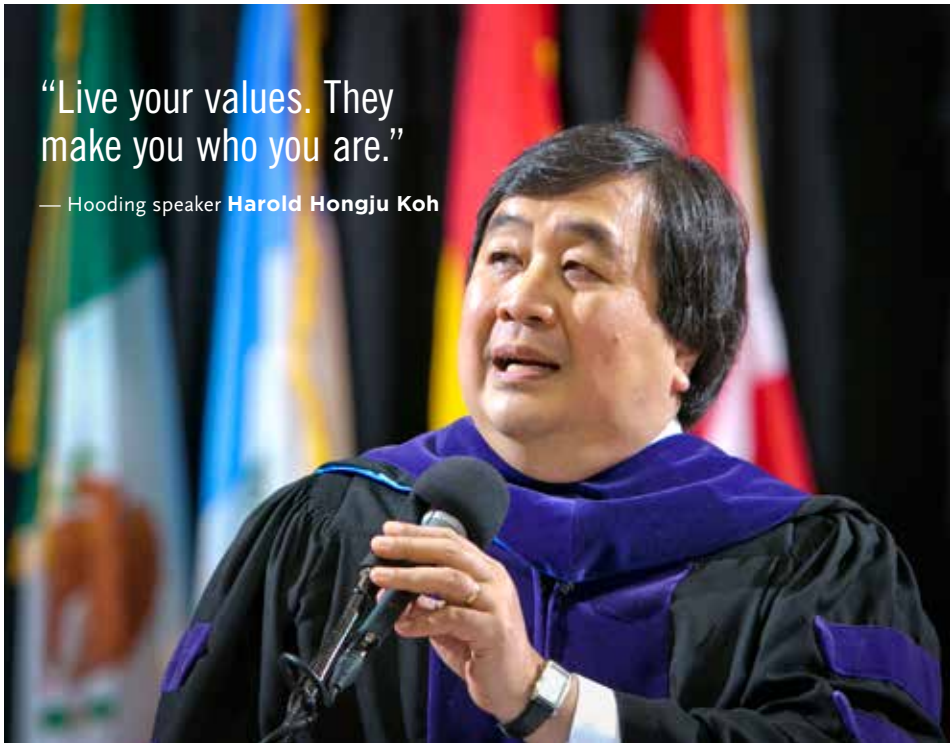
Hooding 2015

DUKE LAW GRADUATES were urged to take on the challenges posed by an increasingly global society and to work for positive change at their hooding ceremony in Cameron Indoor Stadium on May 9.

Hooding speaker Harold Hongju Koh, the Sterling Professor of International Law at Yale Law School and former legal adviser to the U.S. Department of State, counseled members of the Class of 2015 to let their values guide their careers.

"Live your values, they make you who you are," he said. Regardless of the nature of their practice, he added, lawyers ultimately serve one client: "the integrity of the law itself."

The graduates included 206 students who received JD degrees, 16 of whom also earned master's degrees from other schools and 22 of whom graduated with the dual LLM in international and comparative law. Ninety-five international lawyers received an LLM degree, 16 students graduated from the Law School's program in Law and Entrepreneurship, and eight students completed the SJD program, the highest academic degree in law.



Graduates of the Law and Entrepreneurship LLM Class of 2015

JD class speaker Christopher Hood '15

LLM class speaker Yoshiyuki Kambayashi '15

Koh, the former dean of Yale Law School, is a leading scholar of international law and human rights with a long record of public service. He has received multiple honors for his human rights work and has litigated numerous cases involving international law issues in both U.S. and international tribunals. He told the graduates that an embrace of international law and global interconnection counts among America's greatest strengths.

Koh recalled an observation made by a colleague from another country when he represented the U.S. at the United Nations. "He said: 'Your father was an ambassador to the United States, and now you are an ambassador for the United States. In the entire world, this is the only country where that could happen.'" Koh's father had been a diplomat in his native Korea.

JD class speaker Christopher Hood said that a law degree conferred the power to make positive change. "Our legal education is our superpower," he said. "We have a duty to do everything we can to help the powerless. ... Whatever it is that you are passionate about: That's your burning building. Find your burning building. Save it."

LLM class speaker Yoshiyuki Kambayashi, a lawyer from Japan, said that he and his classmates, representing 42 countries, were eager to "bring all that we have learned back to our home countries." The class included Duke Law's first students from Afghanistan, Belize, Kosovo, and Oman.

Dean David F. Levi congratulated the graduates and invited them to remain engaged in the Duke Law community.

"We've shared a lot over the past three years," Levi said. "Our hope is that we will continue to share a lot."

Faculty Focus

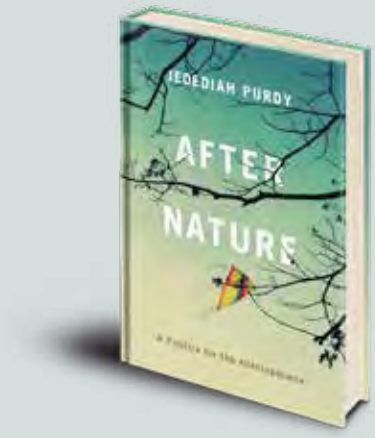
Siegel testifies on judicial activism and the Supreme Court

NEIL S. SIEGEL, the David W. Ichel Professor of Law and Professor of Political Science, testified about recent Supreme Court rulings, judicial activism, and proposals to reduce the independence of the federal judiciary before a subcommittee of the U.S. Senate Judiciary Committee on July 22. An expert in U.S. constitutional law and theory and the federal courts, Siegel told the Subcommittee on Oversight, Agency Action, Federal Rights and Federal Courts that "the 'activism' label is either over-inclusive or misleading.

"A charge of activism seems to be an effort to accuse certain Justices of some kind of serious procedural error apart from the substance of the ruling," Siegel wrote in testimony submitted in advance of the hearing. "But it does not accomplish that purpose, and we would be better off simply debating whether the ruling was right or wrong." He observed that the hearing closely followed the Supreme Court's controversial rulings in *King v. Burwell* and *Obergefell v. Hodges*, which respectively upheld tax credits under the Affordable Care Act and the right of same-sex couples to marry.

It is appropriate and vital for Americans and their elected representatives to "discuss, criticize, and consider proportionate responses to decisions of the Supreme Court with which they disagree," Siegel wrote. But he argued against any "fundamental restructuring" of the constitutional relationship between Congress and the Court that would occur with jurisdiction stripping or a constitutional amendment implementing retention elections for justices as proposed by the subcommittee chairman, Sen. Ted Cruz, R-Texas.

Siegel co-directs the Program in Public Law and directs the D.C. Summer Institute on Law and Policy.



Jedediah Purdy, the Robinson O. Everett Professor of Law, calls for a new way of thinking about political, legal, and cultural solutions to environmental problems in his new book, *After Nature: A Politics for the Anthropocene* (Harvard University Press, 2015). The book, which has been nominated for the Pulitzer Prize, has been praised by critics for its depth and urgency; a review in *Open Letters Monthly* said that *After Nature* "may very well be the *Silent Spring* of the 21st Century."

Purdy writes that since the Anthropocene — the age of humans — began in the agricultural revolution, some 5,000 years ago, mankind has significantly and irreversibly altered nature, to the point, he writes, that "we are something else and so is the world." This new framework for thinking about humanity's place in the natural world acknowledges an undeniable interplay between environmental policy and issues of health, inequality, preservation, and ultimately, survival. Examining the potential effects of embracing a new mode of ecological thought, Purdy traces the history of four distinct modes of American thought about nature, outlining the evolution and cultural and legal legacies of each. "Politics will determine the shape of the Anthropocene," Purdy writes, and through the prism of differing political visions, he describes its potential consequences.

Seung Wha Chang, a member of the Appellate Body of the World Trade Organization, visited Duke Law in the fall semester as the Ken Young-Gak Yun & Jinah Park Yun Visiting Professor of Law. A professor of law at Seoul National University and a scholar of international trade law, Chang taught a short course with Professor Rachel Brewster on dispute resolution in the WTO. On Oct. 7, he delivered the annual Herbert L. Bernstein Memorial Lecture in Comparative Law, offering an overview of the WTO's membership and operations in its 20th year, as well as the challenges in an era when regional trading regimes, like the Trans-Pacific Partnership, proliferate. His public lecture was co-sponsored by the Center for International and Comparative Law.

Professor **Jonathan Wiener** is one of five international experts who worked with Chinese colleagues on an environmental risk management study for China's Council for International Cooperation on Environment and Development. The team met in Beijing in September to prepare its analysis and recommendations. In November, the CCICED accepted the team's report. The report recommends reforming and improving policies and institutions to manage environmental risks, including air and water pollution, soil contamination, chemicals, climate change, and other risks.

For Wiener, this project builds on his longstanding focus on climate change, including China's key role in reducing global greenhouse-gas emissions; and his work on risk regulation in the US, Europe, China, and around the world.

While in China Wiener, the William R. and Thomas L. Perkins Professor of Law, Professor of Environmental Policy, and Professor of Public Policy, also spoke at a two-day conference titled "China-U.S. Climate Change Action and Cooperation" at Duke Kunshan University, and joined meetings with faculty and students in Chinese universities to publicize and recruit for Duke's new International Master's in Environmental Policy degree, which will be available to students at Duke Kunshan in Fall 2017.

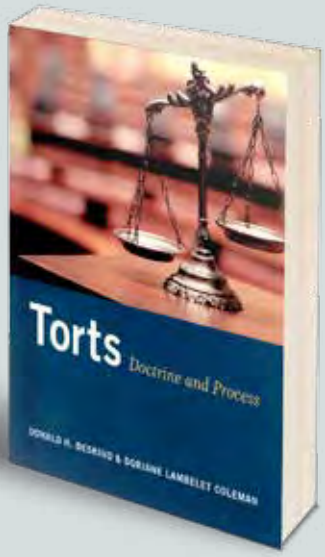
Professors **Samuel W. Buell** and **Margaret H. Lemos** have been honored with Distinguished Chair awards from Duke University. Both are the inaugural recipients of their respective professorships, which were announced by President Richard H. Brodhead on April 30.

Buell, whose research and teaching focus on criminal law and the regulatory state, received the Bernard M. Fishman Professorship, established by Mark '78 and Jill Fishman in 2012 to honor Mark's late father and business partner.

Lemos, a scholar of constitutional law, legal institutions, and procedure, received the Robert G. Seaks LL.B. '34 Professorship. Terry G. Seaks Ph.D. '72 established the professorship, which honors his father, in 2013.

"Professors Sam Buell and Maggie Lemos are talented and admired members of the Duke Law community — insightful, influential scholars in their respective fields, superb teachers, and caring mentors and colleagues," said Dean David F. Levi, who nominated them for their awards. "They are both highly deserving of this honor."

Both the Seaks and Fishman professorships were established during the *Duke Forward* campaign with leadership gifts matched by funds from the Star Challenge Fund established in 2011 by Stanley Star '61 and his wife, Elizabeth Star.



Professors **Donald H. Beskind** and **Doriane Lambelet Coleman** have authored a new casebook, *Torts: Doctrine and Practice*.

For several years, Beskind and Coleman have provided loose-leaf case materials to students in their first-year Torts classes. That approach has been well-received, and they have built on it to produce a complete first-year text that is rigorous and matches the intellectual and analytical capabilities of their students, Coleman said.

The book also reflects the way they teach Torts "in the context of the practice of law as well as the rules of civil procedure," Beskind said. "None of the books we saw in the marketplace did that."

Beskind and Coleman self-published the book in collaboration with Duke University Press, enabling them to offer it at a much lower price than casebooks from traditional publishers. The book, which costs $60, is being sold through Duke University Stores.

Coleman said she hopes the success of the project will encourage other faculty members to consider taking a similar approach to self-publishing.

Ralf Michaels, the Arthur Larson Professor of Law, taught a weeklong course at the prestigious Hague Academy of International Law in August. The five lectures and one seminar, titled "Non-State Law in Private International Law," assessed the extent to which non-state law can be applicable in the conflict of laws.

Since its founding in 1923, the Hague Academy has presented summer courses taught by visiting lecturers to thousands of young international lawyers from all over the world. Lecturing at the academy is considered one of the highest honors in the field of international law.

Michaels is an expert in comparative law and conflict of laws. His current research focuses mainly on three issues: the role of domestic courts in globalization, the role of conflict of laws as a theory of global legal fragmentation, and the status and relevance of law beyond the state.

In October, Michaels was elected to the American Law Institute (ALI). ALI members are distinguished lawyers, judges, and legal academics who produce scholarly work to clarify, modernize, and otherwise improve the law through publication of the highly influential Restatements of the Law, model statutes, and principles of law.

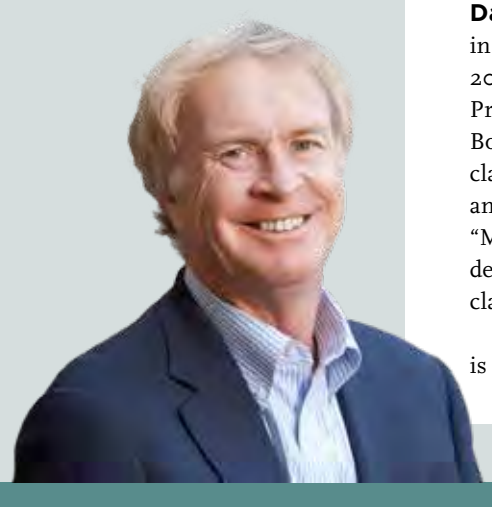
Stuart M. Benjamin, the Douglas B. Maggs Professor of Law, Associate Dean for Research, and co-director of the Center for Innovation Policy, testified before the Communications and Technology subcommittee of the House Energy and Commerce Committee on May 15, weighing in on proposals to reform some processes of the Federal Communications Commission (FCC).

On the matter of improving commission transparency, a key goal of the legislative and rule-making process, Benjamin testified that while some disclosures can "inhibit effective decision-making processes," the sorts of disclosures proposed in the bills before Congress are unlikely to have that effect. "Such disclosures can have real benefits, in terms of public confidence and congressional oversight, and thus are attractive," he wrote in his submission to the subcommittee.

Benjamin served as the FCC's first distinguished scholar from 2009 to 2011. He has written extensively on telecommunications law, First Amendment law, and administrative law, and is the co-author of *Telecommunications Law and Policy*, a legal casebook now in its fourth edition.

James E. Coleman Jr., the John S. Bradway Professor of the Practice of Law, was honored by the American Bar Association's Criminal Justice Section with the Raeder-Taslitz Award on Oct. 23 at the section's fall meeting in Washington, D.C. The award recognizes a law professor whose excellence in scholarship, teaching, or community service has made a significant contribution to promoting public understanding of criminal justice, justice and fairness in the criminal justice system, or best practices on the part of lawyers and judges. "Professor Coleman's dedication to justice, insistence on fairness in the criminal justice system, and commitment to academic excellence exemplifies the values in which the Raeder-Taslitz Award was created," said Section Chair Judge Bernice B. Donald (at right) in an announcement, adding that the section was honored to recognize Coleman with the award.

Coleman, who serves as director of Duke's Center for Criminal Justice and Professional Responsibility and co-director of the Wrongful Convictions Clinic, teaches classes on criminal law, wrongful convictions, capital punishment, legal ethics, negotiation and mediation, and appellate practice, and focuses his scholarship on the legal, political, and scientific causes of wrongful convictions and how they can be prevented.



Daniel S. Bowling III '80 was honored, in April, with the Duke Bar Association's 2015 Distinguished Teaching Award. Presenter Stephanie Kim '17 praised Bowling's infectious enthusiasm for his classes in labor and employment law and on lawyers and personal well-being. "Multiple [nominators] wrote that they've decided to pursue labor law because of his classes," she said.

Bowling, a senior lecturing fellow, is chief executive officer of Positive Workplace Solutions, LLC, which specializes in designing human performance programs and strategies for senior executives, and a practicing labor and employment lawyer. He is also a lecturer at the University of Pennsylvania in graduate-level courses on positive psychology, positive humanities, and character strengths and virtues.

As part of his teaching award, Bowling received a $5,000 stipend from The Class of 1967 Fund.

Jeremy Mullem and **Jeff Ward '09** have been promoted to the governing faculty.

Mullem, who directs the Legal Writing Program, is now a clinical professor of law. He teaches first-year Legal Analysis, Research and Writing, and Contract Drafting and Writing for Publication for upper-level students. His research interests center on the uses of language and rhetoric by lawyers and judges, on the development of scholarly legal writing, and on legal research and writing pedagogy.

Ward, the director of the Start-Up Ventures Clinic, is now an associate clinical professor of law. He focuses his scholarship and professional activities on issues of social enterprise and ensuring equitable access to the tools of economic growth. He has also served as supervising attorney in the Community Enterprise Clinic and as an associate at Latham & Watkins.

Jayne Huckerby, director of the International Human Rights Clinic, has been promoted to clinical professor. Huckerby, who also teaches International Human Rights Advocacy, advises regional and international institutions on gender, human rights, and countering violent extremism. Her works include *Gender, National Security, and Counter-Terrorism: Human Rights Perspectives* (Routledge, 2012), which she co-edited.

Sarah Adamczyk has joined the faculty as supervising attorney and lecturing fellow in the International Human Rights Clinic. She worked with the Norwegian Refugee Council (NRC) for four years, running legal and humanitarian programs in the Gaza Strip, Jordan, and Ukraine. Her research and advocacy has primarily focused on civilian protection, civil compensation, legal status, and access to housing, land, and property rights. She has also practiced at Sidley Austin.

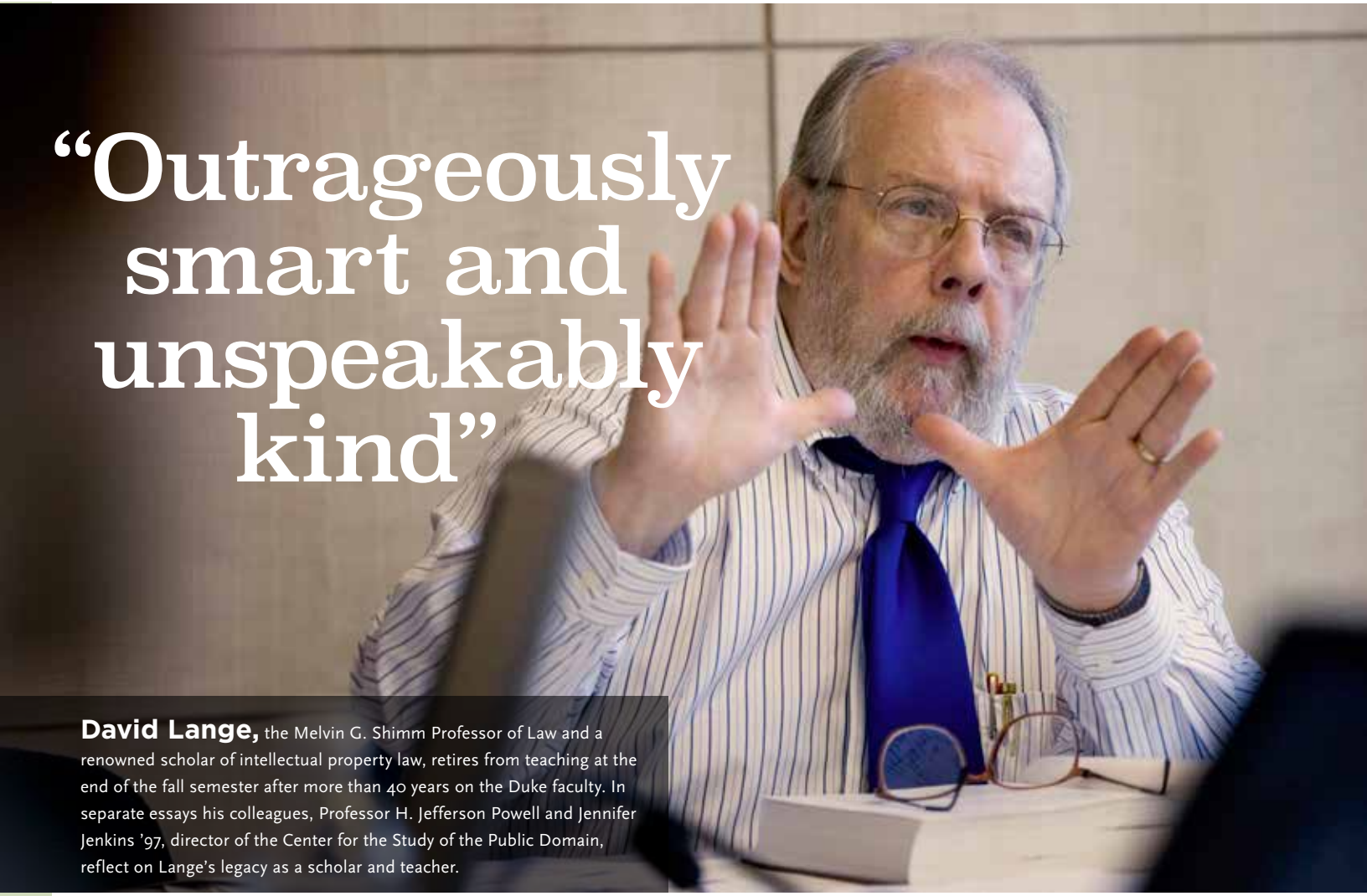
Darrell Fruth, a partner at Brooks, Pierce, McLendon, Humphrey & Leonard in Raleigh, has joined the Start-Up Ventures Clinic as supervising attorney and senior lecturing fellow. Registered to practice before the U.S. Patent & Trademark Office, Fruth works with entities to protect, license, assert, and defend intellectual property rights, including patents, trademarks, copyrights, and trade secrets, and has litigated patent lawsuits spanning a range of technologies. A former environmental engineer, he also deals with legal issues that have complex technical and regulatory components.

Casandra Thomson and **Jena Reger '06** have joined the legal writing faculty.

Thomson was previously a litigator at Latham & Watkins in Los Angeles, where she focused her practice on sports law and complex commercial litigation, including antitrust, RICO, fraud, and insolvency-related matters. She appeared in arbitral proceedings before the Players' Status Committee of the Fédération Internationale de Football Association and the Court of Arbitration for Sport. Thomson clerked for Judge John F. Walter of the U.S. District Court for the Central District of California.

Reger practiced as an associate in the commercial real estate group of Sutherland Asbill & Brennan and, most recently, as editor of firm publications at Ogletree, Deakins, Nash, Smoak & Stuart. She clerked for Judge Orinda Evans of the U.S. District Court for the Northern District of Georgia and for Judge Gerald Tjoflat '57 of the U.S. Court of Appeals for the Eleventh Circuit. She also served as a staff attorney for the Eleventh Circuit.

"Outrageously smart and unspeakably kind"



David Lange, the Melvin G. Shimm Professor of Law and a renowned scholar of intellectual property law, retires from teaching at the end of the fall semester after more than 40 years on the Duke faculty. In separate essays his colleagues, Professor H. Jefferson Powell and Jennifer Jenkins '97, director of the Center for the Study of the Public Domain, reflect on Lange's legacy as a scholar and teacher.

In praise of eternal youth

by H. Jefferson Powell

FOR ALMOST 25 YEARS I have reflected on the fact that David Lange is the youngest member of the Duke Law faculty. Curiously, David has remained the youngest of us throughout that time, while, sad to say, I have gone gray, and (happily) the Law School has hired a wonderful group of other young professors. Making the puzzle even more puzzling, David's work as a scholar, and the role he has played on the faculty, display a wisdom quite unusual in one so young. I can't explain the apparent paradox, so I will simply lay out the evidence for my assertions. Consider the following.

Young scholars are dynamic, innovative, radical in their thinking. Not having settled down into the comfortable competences of the middle-aged, they are intellectually restless, impatient with received wisdom, recklessly daring in the ideas they entertain. Anyone who knows David Lange's scholarly writing knows that all this is true about his work, early and late. David entered the legal academy at a time when few people doubted the comforting notion that copyright and the First Amendment are mutually supportive. In that context, David's justly renowned 1975 essay "Recognizing the Public Domain" committed the academic equivalent of disturbing the peace. The essay went on to play a seminal role in shaping current arguments against the endless expansion of intellectual property claims, but David wrote it two decades or more before worrying about IP's threat to freedom of expression became fashionable. The essay, furthermore, was as imprudent — and as brilliant — in its style and presentation as in its substance: who else at the time would have quoted Groucho Marx, at length, as the capstone of a serious argument in the theory of copyright? (When David revisited the 1975 essay in his 2003 "Reimagining the Public Domain," he must have dumbfounded readers who didn't know him: The almost three decades of reflection that separate the two pieces had made him even more radical.)

David's recent work on the First Amendment and IP is just as wild-eyed — after all, since Justice Black died, who has been foolhardy enough to suggest that we read "Congress shall make no law … abridging the freedom of speech" as if it meant, well, that Congress should make no such law? The very idea is the sort of scholarly absurdity that only the very young and radical would dare to broach. David, characteristically, has co-authored a book (uncompromisingly titled *No Law)* and published a major article not just raising the issue but proposing a complementary and wholesale renovation of the entirety of intellectual property. Only youth can excuse this sort of temerity in print … and only a deep and wise

understanding of both law and human freedom could make possible a tour de force such as the chapter in *No Law* on the famous 1918 *INS v. Associated Press* case, which is the finest study I've ever read of the thought and the rhetoric of a Supreme Court decision.[1]

Young scholars are interested in everything. They'll tackle any subject that piques their curiosity, and they often express their views without a decent regard for academic specialization. They are tempted to spend time and intellectual energy on projects that have no cash value in CV-building or career advancement. The most memorable academic presentation I've ever attended was given by David Lange on the future of the book. He delivered his beautifully crafted paper to an audience of three other Duke professors over delicious bread freshly baked by our greatly missed colleague, the late Jerome Culp. For over an hour Jerome, Lawrence Baxter, and I sat spellbound as David told an elegant story about the prospects for reading that reflected a deep knowledge of, and reflection on, the cultural implications of the Internet (then in its infancy — but David was already fascinated), ongoing changes in the economics of the publishing and entertainment industries, and the valid insights hidden in talk about "postmodernism" (then at its height — David was skeptical but willing to listen). David later deployed some of the same reckless polymathy in his sparkling essay "At Play in the Fields of the Word," in which Michel Foucault, a novel kind of synthesizer (as in the musical instrument), and the 1981 film "Diva," gang up on the law's traditional picture of authorship to demonstrate the necessity and perhaps the inescapability of radical change in copyright law in the "post-literate millenium." But that original paper? Apparently David wrote it just so four friends could have something to talk about while we broke bread together. Only a neophyte would make that sort of mistake: The rest of us would have milked at least three published articles out of the work and erudition David heedlessly spent on Jerome and Lawrence and me. Which brings me to my final piece of evidence: David's generosity.

Young scholars don't have to spend time guarding turf or protecting their reputations. Without turf or reputation as yet, they can afford to be generous. David has plenty of both to defend at this point, but his practice toward other scholars is nicely captured by a single footnote in his "Reimagining the Public Domain" where he characterizes the work of others in terms such as "seminal," "especially attractive," "always read with great respect and interest," and "truly remarkable." But in closing, I want to note that David's liberality of spirit as a scholar is equally reflected in his practice as a colleague. David is neither indecisive in judgment nor shy about expressing his opinion, but in the quarter century I have had the privilege of knowing his views on faculty matters, I have been continually struck by his enthusiastic interest in his colleagues' successes and especially in the welfare of the (other) young faculty, by his kindness toward students and his intense desire to see them succeed, and by his commitment to a fundamental decency in how we conduct the work of the Law School. In these ways as well, David Lange has shown himself truly to be the youngest member of our faculty. I don't know how we will make do without him.

1 David's book, as I mentioned, is co-authored. I have inside information that the chapter on the INS decision can safely be viewed as his work.

In praise of a mentor and friend

by Jennifer Jenkins '97

VOLUMES COULD BE written about Professor David Lange's distinguished career. But no *festschrift* would be complete without a tribute from those he has influenced most — his students.

David Lange joined the Duke Law faculty in 1971. Since then — for over four decades — he has delighted, inspired, provoked, mentored, and transformed the students who took his classes. As one such student in the 1990s, I found it easy to choose my courses: I simply signed up for everything that David taught. It was an impressive roster: Intellectual Property, Entertainment Law, Trademark Law and Unfair Competition, Telecommunications, Independent Film Production, and Torts. (Then, as now, David was tireless as well as brilliant.)

Class with David Lange was a unique experience. My notes bear witness not only to his prodigious legal knowledge, but also his linguistic gifts. This is hardly surprising. In addition to being a legal scholar, he is an accomplished novelist and a poet. In class, David recites Shakespearian monologues and hip hop lyrics with equal finesse. He is a connoisseur of *everything*, and I mean everything. Our class heard about the nuances of intellectual property doctrine, but we also paid attention to the beauty of a well-turned phrase and were introduced to an incredible range of films — a single discussion could feature references to "The Apostle," "Diva," and "Shane" (a perennial favorite). And, fittingly, we would exit the classroom feeling as one does after watching a great movie. He's that good.

Yet his teaching prowess is only part of the story. David's efforts outside of the classroom are just as important. He has mentored countless students over the years, and launched many, many careers. David is the reason I went into the intellectual property field, and I am far from alone in that. It is daunting to think of the hours he has spent assisting, advising, and collaborating with students. I was lucky enough to collaborate with him on a short film called "Nuestra Hernandez" about culture and the legitimacy of appropriation. At the end of the film, the credits for the unlicensed snippets (reflecting the very point he was seeking to make about appropriation) ran for so many minutes the audience began laughing out loud, finally getting the joke. I can testify that he is as inspiring a collaborator as he is a teacher.

When he was honored with the Law School's Distinguished Teaching Award in 2009, one of the student nominators described David as "Amazing. He is funny and engaging.

Never shy about expressing his own opinions, but always open to other points of view. He is tough but fair, outrageously smart, and unspeakably kind." I think his students over the years would agree.

The best way to appreciate all that David has done for students is to hear from them directly. Here is just a smattering from David's distinguished 44-year career at Duke.

Raymond Goodmon III '77: David is a cherished friend. He is a wonderful teacher who loves what he does. He is kind, honest, humble, and very humorous. He reminds me of the best father, brother, and friend (all in one person) that a man could have. To say I've benefitted from my friendship with him would be an understatement for the ages.

Kip Frey '85: As a teacher, David was both awe-inspiring and hilarious. Those of us in his Torts small section spent many hours reliving moments from class, both because they were so entertaining and, probably more importantly, because we needed mutual reassurance in the face of realizing that none of us would ever be that good. As a mentor and friend, David played a pivotal role in my life; my debt to him is unbounded. I think the way I do because of his influence, and every step in my career bears the mark of his encouragement and counsel. And if anyone ever starts to become impressed with their writing acumen, they need only read "Recognizing the Public Domain" to be appropriately disabused of that notion.

Terri Southwick '85: As a professor, David Lange is peerless. In class, he is both educator and performer. His extraordinary intellect and exquisite eloquence compelled me to enroll in every class he offered — and even one he didn't. (I persuaded Professor Lange to tutor me in a 12-credit-hour independent study of fair use. My apologies to all of his students who were later denied such a privilege under the "Southwick-Lange Rule," established to prevent such a glorious abuse of the system.) As a person, David Lange is incomparable. He speaks, as Mark Twain would say, the language the deaf can hear and the blind can see: kindness. His respect for and honesty with his students, colleagues, and friends attests to the character and integrity of the man, as well as the teacher. David Lange is my treasured mentor, who always makes me think more critically, and my cherished friend, who never fails to make me laugh. I am sorry that future Duke Law scholars will not have the privilege of being his students, but I am elated that he will have more time to write the American Western novels for which he has earned such critical acclaim and commercial success in Japan.

> "His gifts as a teacher are in the public domain, and we're all the richer for it. Bravo!"

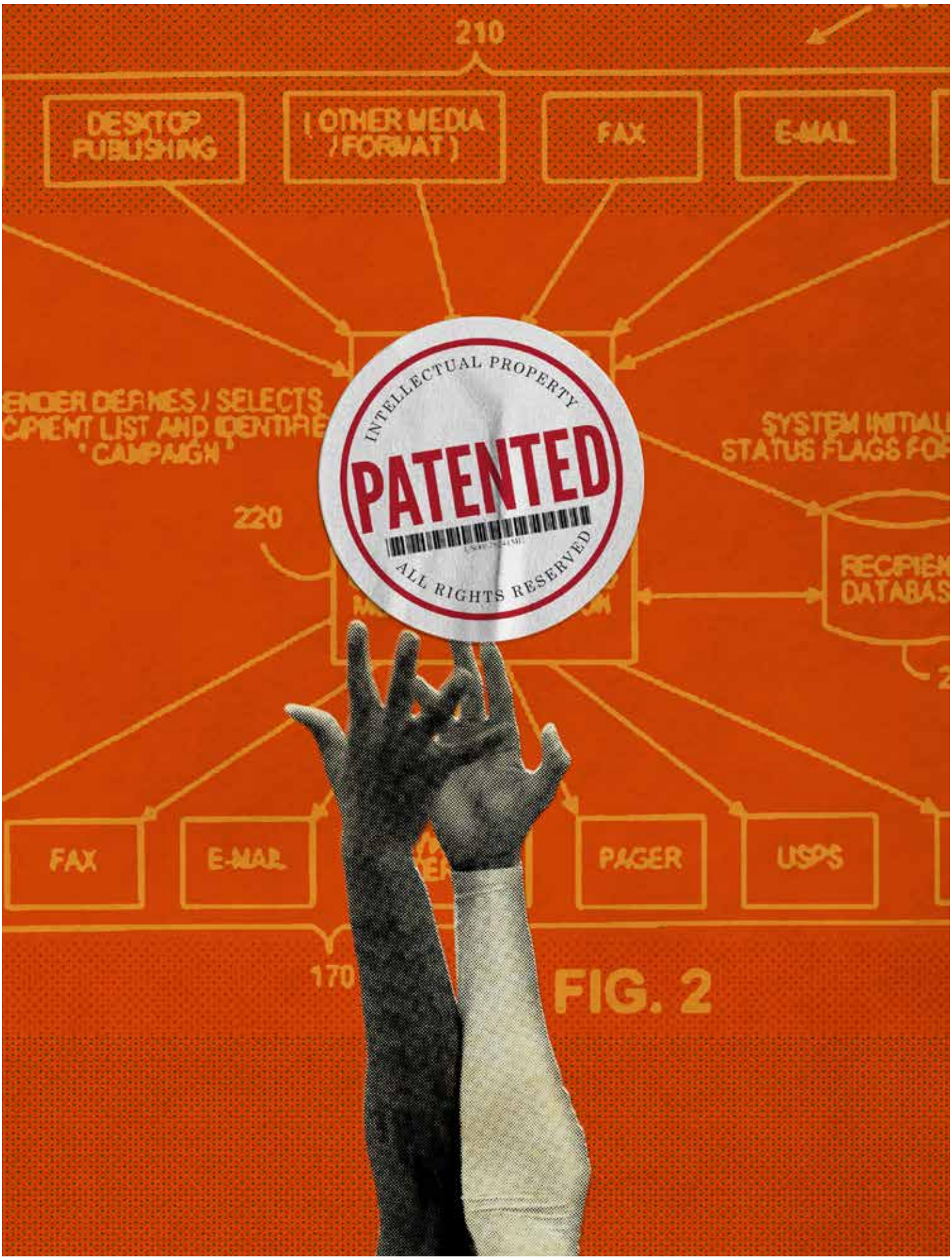
Risa Weaver-Enion '10: There are many words I could use to describe David Lange: teacher, mentor, fellow whiskey drinker. But the word I like best is "friend." We share a love of cinema, the written word, freedom of expression, and red velvet cake. I never fail to be impressed by his ability to speak in fully formed paragraphs, complete with semi-colons and parentheticals. While at Duke, I took every class David taught, and then I worked as his research assistant, asked him to be my student note and my independent study advisor, and co-authored a journal article with him. He was always generous with his time and advice. David inspires me to strive for excellence and eloquence in my writing and in life, and I am honored to call him my friend.

Shiveh (Reed) Roe '12: Professor Lange — or "David," as he would remind me to call him now that I have graduated — is an incredibly kind and generous mentor of Duke Law students and alumni. Despite my intimidation when I first reached out to him over email, David warmly took me under his wing, from advising my student note research to guiding me to my dream job as a trademark and copyright lawyer and collaborating with me on editing a textbook and co-publishing a law review article. His courses on IP, trademark, and entertainment law were highlights for me and so many students, and we will never forget hearing David rap OutKast lyrics when dissecting the Rosa Parks lawsuit, or sipping sherry while watching creative student videos on entertainment law.

If David's students could give a standing ovation in a magazine article, we would do so now. But since we cannot, we will just have to appropriate all of the gifts that he has given us. To quote one of his favored muses, Jerry Garcia: "Once we've played it, it's yours." Or to paraphrase from David's own work: His gifts as a teacher are in the public domain, and we're all the richer for it. Bravo!

On behalf of all the students who have benefited from your teaching, your mentoring, and your friendship, thank you, David.

Jennifer Jenkins '97 is the director of the Center for the Study of the Public Domain.



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PATENT PENDING ?

NEW OPTIONS FOR POST-GRANT CHALLENGES CHANGE THE GAME FOR PATENT LAWYERS

By FRANCES PRESMA

JAMES SMITH '86 had been a patent lawyer for a quarter-century when he joined the U.S. Patent and Trademark Office (PTO) in May 2011 as its chief administrative patent judge. Having spent 18 years in private practice and seven more in industry, most recently as chief intellectual property counsel at biopharmaceutical giant Baxter International, Smith knew the system for prosecuting and litigating patents inside and out.

That patent litigation was time consuming and expensive was a given. Patent challenges in federal district courts are frequently bundled with other issues, such as allegations of infringement and damages, and they generally take years to resolve, with discovery a key source of expense for litigants. "In the 10 years before I went in-house," Smith says, "I can't think of any case that didn't involve between 500,000 and 1 million documents on any one side and didn't end up costing between $5 million and $20 million per side." »

Photo illustration by Marc Harkness. Photo by Paolo Bona / Shutterstock.com

He arrived at the PTO to lead the Board of Patent Appeals and Interferences as sweeping reform that promised to impact every aspect of the U.S. patent system was nearing final passage in Congress. The Leahy-Smith America Invents Act (AIA), the first legislative overhaul of the patent system since 1952, received broad bipartisan support on Capitol Hill. When he signed it into law on Sept. 16, 2011, President Barack Obama hailed its potential to "speed up the patent process so that innovators and entrepreneurs can turn a new invention into a business as quickly as possible."

Much of the public's attention focused on the shift in awarding of patent rights from the "first to invent" to the "first inventor to file" an acceptable patent application; critics claimed the change, coupled with ambiguities associated with the "grace period" patent applicants have to file after any public disclosure of their inventions, would set up a race to the patent office that advantaged large corporations with in-house IP experts over independent inventors. For many in the patent bar, though, another provision of the new law loomed even larger: an expansion of the PTO's authority to adjudicate a range of post-grant patent challenges, including the establishment of a new patent court, the Patent Trial and Appeal Board (PTAB). Whereas the docket of the pre-AIA Board of Patent Appeals and Interferences was primarily filled by patent filers whose applications had been rejected by examiners, and most third-party disputes were left to federal district courts, the PTAB could handle several types of contested proceedings that challenge the validity of granted patents. Administrative judges with patent expertise would oversee the proceedings, making them less expensive and more efficient than traditional court challenges, and trials would have to wrap up within one year or, in exceptional circumstances, 18 months.

Created by the America Invents Act, the Patent Trial and Appeal Board can handle several types of contested proceedings that challenge the validity of granted patents.

When the PTAB came into being in September 2012, Smith became its inaugural chief administrative patent judge. He spent the next three years building the new system, facilitating the addition of more than 150 new patent judges to the 95 already at the PTO, staffing four new satellite offices with the goal of reducing the agency's backlog of appeals while also efficiently managing the new trial docket, developing new rules and guidelines, and holding frequent education and information sessions for members of the patent bar across the country. Although he maintained a punishing schedule, it was "the ultimate patent lawyer's dream" to play a part in transforming the system, says Smith, who stepped down from his judgeship in July.

"The ability of the Patent Trial and Appeal Board to get to an answer, at least on patentability, within one year, I think is revolutionary," he says. "I know that if I had been in practice, either in-house or at a firm, all the strategy discussions would have been different post-AIA."

"The ability of the Patent Trial and Appeal Board to get to an answer, at least on patentability, within one year, I think is revolutionary. I know that if I had been in practice, either in-house or at a firm, all the strategy discussions would have been different post-AIA."

— James Smith '86, former chief administrative patent judge at the U.S. Patent and Trademark Office

In 2015 Smith received the Outstanding Public Service Award from the New York Intellectual Property Law Association and the Champion of Intellectual Property Award from the Intellectual Property Law Section of the Washington, D.C. Bar.

A mixed response

The system of administrative post-grant patent challenges ushered in by the AIA has, in fact, emerged as one of the hottest topics in intellectual property law. Many engaged with the patent system praise it as a venue for efficient resolution of disputes at a fraction of the cost and in far less time than traditional litigation entails. In this respect, they say, it has delivered on the promise of patent reform to remove roadblocks to innovation.

But others criticize the breadth of jurisdiction the law conferred on the PTO, particularly the procedures and standards for instituting patent reviews and resolving them. To these critics, the AIA has wrought a range of unintended consequences, even abusive actions that actually undermine the rights of inventors by introducing uncertainty about the validity of newly granted patents, and thus deterring potential investors.

At a high-level forum convened by the Duke Law Center for Innovation Policy in Washington, D.C., last June, PTAB Deputy Chief Judge Scott Boalick assured attendees that his fellow judges focus only on the strength of the arguments and evidence before them. "We decide cases under the law and regulations as they exist," he said.

But in the event's keynote address, Sen. Chris Coons, D-Del., argued that the tribunal has become far more powerful than Congress ever envisioned. Coons, who enthusiastically supported passage of the AIA, has co-sponsored a bill that would make it harder to invalidate a patent at the PTO. It is one of several "second round" patent-reform bills pending in Congress that include provisions to scale back PTAB jurisdiction and narrow the grounds for challenging patents and measures to limit administrative challenges perceived as abusive.

"The America Invents Act tried to address concerns about patent quality" by offering a safeguard against poor-quality patents slipping by patent examiners overwhelmed by the volume of applications, Coons said. "But a few years in, we are at a crossroads where there is a significant mismatch in legal standards that have led to confusion, uncertainty, delays in enforcement of patent rights, and steadily rising costs for both plaintiffs and defendants." Given the importance of intellectual property to attracting venture capital investment in start-up companies, patents granted by the PTO should enjoy a presumption of validity, he said. "What matters is whether an investor today will decide to take a risk on a small team of inventors with a terrific idea that could change the world and save lives."

Elvin R. Latty Professor of Law Arti Rai, who organized the forum as faculty co-director of the Center for Innovation Policy and is an expert in patent law and the biopharmaceutical industry, acknowledges that concerns about post-grant patent challenges run high, especially in that sector, where research and development is particularly costly.

"The research is very clear that especially for small companies operating in the life-sciences space, the patent is the be-all and the end-all," she says. "Without a patent, small firms won't get the venture capital they need for further development. And filing a patent application isn't enough. Investors will watch closely to see how your patents pan out. But the counter-argument is that we don't want to incentivize bad patents. The whole goal of the patent system is to provide incentives for good inventions, not trivial ones."

While serving as administrator of the PTO's Office of External Affairs from 2009 to 2010, Rai advocated for the establishment of a quick and inexpensive administrative process to challenge patent validity. She is now engaged in two empirical studies of how parties to patent disputes are factoring the PTAB into their litigation strategy.

"My colleagues and I want to see what kinds of strategic decisions parties are making," she says. "When defendants choose to

Several "second round" patent-reform bills pending in Congress include provisions to scale back PTAB jurisdiction and narrow the grounds for challenging patents and measures to limit administrative challenges.

Photo illustration by Marc Harkness. Photo by Laszlo Szirtesi / Shutterstock.com

challenge certain patents that have been asserted against them, how do they make the choice between challenging at the district court and at the PTAB? And if our goal is to promote innovation, is this ultimately creating strategic behavior that's harmful to innovation?

"Before we start amending the system, we think it's important to have actual data we can use to determine what the real problem is, and whether a problem exists at all."

Mining the data from a complex system

A marquee element of the AIA was the transformation of the patent system from a first-to-invent to a first-inventor-to-file system. That change brought the U.S. into greater harmonization with the rest of the world, says Stephen Merrill, executive director of the Center for Innovation Policy, who had advocated for doing so in a 2004 blueprint for patent reform he co-authored as head of the National Academies Board on Science, Technology, and Economic Policy.

"Every other country had gradually moved to a first-to-file system," says Merrill, noting that the emphasis on being the first to file a patent application promised to reduce evidence-heavy, contentious disputes over an invention's provenance. Under first inventor to file, issues relating to origin would arise only if it was alleged that the filer of the patent was not, in fact, the inventor.

Many practitioners report that in spite of its legal importance, the move to a first-inventor-to-file regime has not significantly changed patent filing behavior, in terms of timing or content of applications. "It wasn't a sea change for those of us operating with international patent law in mind," says Pamela Sisson '08, assistant general counsel at Monsanto, whose intellectual property docket includes managing product patent portfolios in more than 90 countries. She relies on the longstanding Patent Cooperation Treaty to facilitate simultaneous filings around the world, as do most other attorneys serving biotechnology and pharmaceutical clients that market internationally. And she advises even start-up entrepreneurs to think broadly in their patent strategy: "You can miss opportunities if you don't have an IP strategy that thinks beyond the borders of the United States."

The establishment and the trial authority of the PTAB represent a far bigger change to the system, says Sisson, and Merrill agrees. "That was probably the most significant change that we recommended in the 2004 report," he says. The rationale: to establish a mechanism for double-checking patent quality that was faster and cheaper than litigation.

As structured in the AIA, the PTAB has authority to review patents granted both under the old first-to-invent regime as well as those granted since. In addition to handling appeals from adverse decisions by examiners (and hearing almost 9,900 in the fiscal year that ended Sept. 30, 2014), the tribunal has authority to hold trial proceedings in four specific types of challenges to granted patents. One type of challenge called post-grant review has yet to yield trials, as it applies only to patents with an effective filing date after March 16, 2013, when the AIA's first-inventor-to-file regime came into effect. Another challenge, known as a derivation proceeding, represents a relatively rare dispute between inventors concerning the provenance of similar inventions in applications filed at different times.

> "Before we start amending the system, we think it's important to have actual data we can use to determine what the real problem is, and whether a problem exists at all."
>
> — Arti Rai, Elvin R. Latty Professor of Law

It is the two other types of proceedings that have populated the PTAB trial docket and are at the heart of the current controversy: inter partes review (IPR), in which challenges to patent claims are based on prior art in patents or printed materials; and covered business method review (CBM), which allows challenges to be brought on a number of patentability grounds and primarily affects computer, communications, and mechanically related patents. Any party can ask for a trial under circumstances set out in the AIA, including those that have been sued for infringement, and once the PTAB decides the standards for granting review have been met, the matter has to proceed through to a final resolution. Both IPR and CBM can trigger stays of pending litigation on the same questions of validity. Those who challenge patents in an IPR cannot raise issues decided by the PTAB in future lawsuits; decisions of the PTAB can be appealed to the U.S. Court of Appeals for the Federal Circuit.

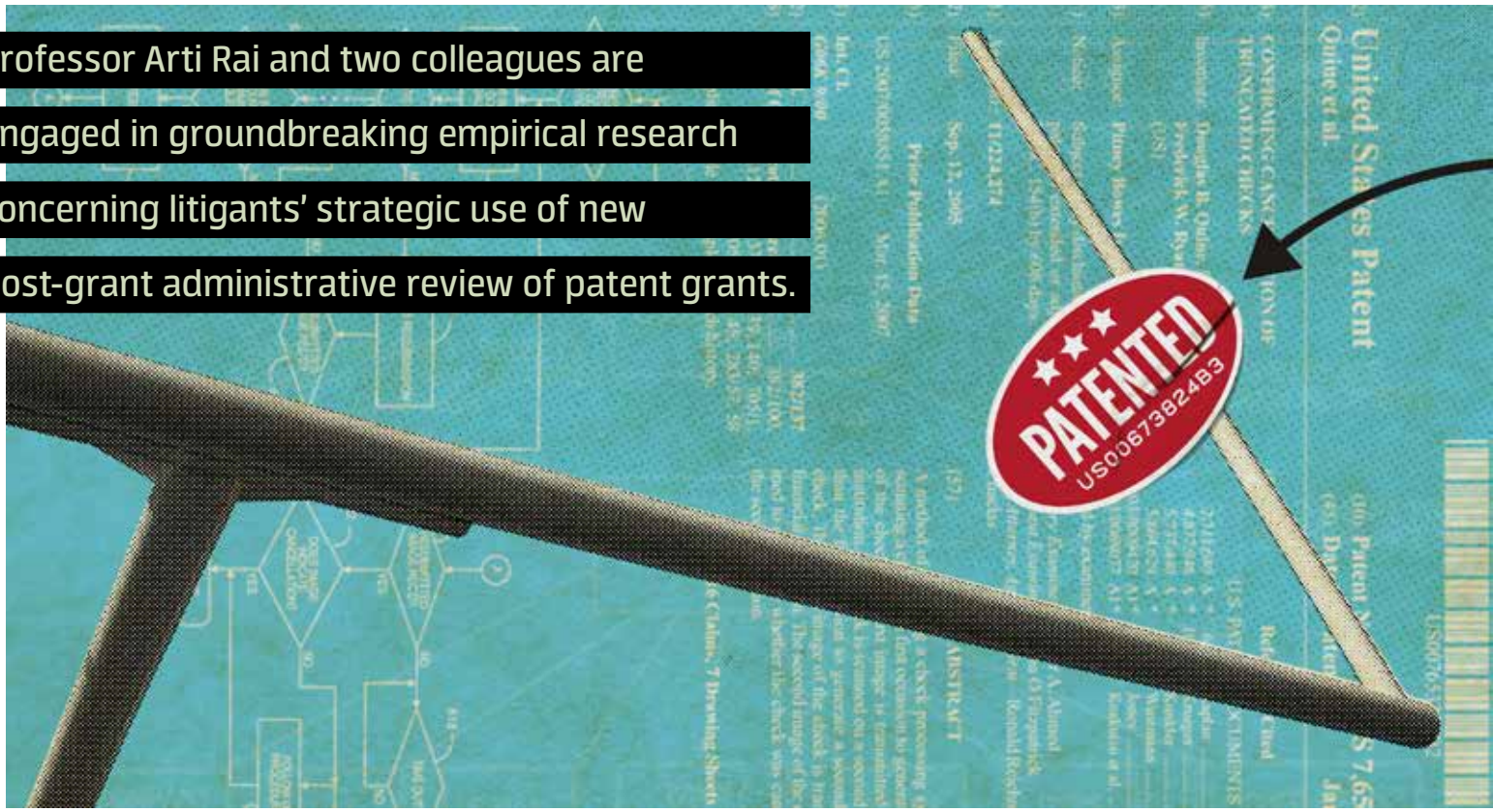
As it happens, this new system of administrative review came into being during a particularly unsettled period for patent law. The practice known as patent trolling — in which non-practicing entities buy patents in bulk (often questionable ones) and threaten or launch infringement suits in order to extract settlements — has proliferated, generating both wariness and weariness of litigation among patent holders and investors. And a recent series of Supreme Court rulings pertaining to patentability of subject matter — most notably *Mayo Medical Laboratories, et al. v. Prometheus Laboratories, Inc.* (2012) and *Alice Corporation Pty. Ltd. v. CLS Bank International, et al.* (2014) — have caused consternation in certain sectors, such as the business-method software and biomedical-device industries.

What has prompted the high court's recent interest in patent law? "I think most people would agree that some patents issued in the '90s and early 2000s should not have been issued," says Darrell Fruth, a partner and intellectual property attorney at Brooks, Pierce, McLendon, Humphrey & Leonard in Raleigh. As supervising attorney in the Law School's Start-Up Ventures Clinic, Fruth helps students address clients' intellectual property needs, among other matters. "Many patents of that era involved new computer and Internet applications for a range of activities and functions. You had this tranch of very broad patents, and in many cases, fairly indefinite patents. Maybe the floodgates were opened too widely."

In *Mayo*, the Supreme Court found that a method for managing the dosage of drugs for an individual patient was not patentable, as the method in question was simply describing a "law of nature." The Court then rejected patent claims on computer software used to facilitate financial transactions in *Alice*, on the grounds the claims covered "abstract ideas," which are not patentable. Taken together, the cases offer a test for patentability, but leave a key question unanswered, says Rai, who teaches courses in administrative law, patent law and policy, and law and policy pertaining to innovation in the life sciences.

"First, you look at what's claimed in the patent, and if it covers an abstract idea, a 'law of nature,' or a 'product of nature,' like a gene, because those things are not patentable in and of themselves. If the patent covers one of those three elements, you look to see if there is 'something more,' according to *Alice*. But the 'something more' has not been clarified, and that has everyone tearing their hair out." Simply executing a business method via computer software on a general purpose computer, for example — the *Alice*

Professor Arti Rai and two colleagues are engaged in groundbreaking empirical research concerning litigants' strategic use of new post-grant administrative review of patent grants.



scenario — does not render one of these inventions patentable, she says, but exactly what does remains unclear.

The PTO has released procedural rules and substantive guidelines offering the agency's interpretation of these Supreme Court rulings and relevant Federal Circuit decisions, as well as its governing statutes for patent examiners, PTAB judges, filers, and attorneys. One concern is that defendants being sued for infringement will engage in what Rai refers to as a sort of "reverse-trolling" behavior: going to the PTAB with allegations that the patent in question is invalid simply for purposes of obtaining a settlement. In August, the PTO issued new rules, allowing judges to impose fee shifting if administrative challenges are used abusively.

"There is a lot of complexity in the system," says Rai. "And every time you have complexity coupled with smart lawyers, you have strategic behavior."

Litigants' strategic behavior is the subject of groundbreaking research Rai began in January 2015 with Professors Jay P. Kesan of the University of Illinois Law School and Saurabh Vishnubhakat of Texas A&M Law School, a former fellow and postdoctoral associate at the Center for Innovation Policy who was, until recently, an expert advisor to the PTO chief economist. Mining a database of all district court filings since 2010 and all petitions for review to the PTAB from the time of its creation, they are undertaking the largest empirical study to date of post-grant administrative scrutiny into patent validity. Their first publication of three, forthcoming in the *Berkeley Law & Technology Review*, outlines how PTO administrative reexamination procedures are intersecting with federal court litigation in a number of ways, including who is petitioning the PTAB for review and what types of patents and claims they are challenging.

PTAB challenges are closely connected with infringement litigation, either threatened (through cease-and-desist letters) or real, their research has found. More than 86 percent of patents being challenged at the PTO are also being litigated, and about 13 percent of litigated patents are also being challenged in district court. As was the case with pre-AIA administrative challenges, "review requests frequently arise as a retaliatory tactic by defendants in infringement lawsuits," they write. In particular, challenges to computer-related patents are primarily being brought by parties defending infringement lawsuits, they report. However, a significant minority of IPR challenges, on the order of about 30 percent, are brought by entities that have not previously been sued.

They also found that across all technology areas, IPR petitions that challenge the nonobviousness of a patent are more likely than not to be instituted. Subject matter-based CBM challenges, they found, "are overwhelmingly instituted, at a rate of 71 percent, whereas for all other grounds to challenge validity, decisions not to institute predominate by a statistically significant margin."

Rai and her co-authors conclude that a critical question for their future research is whether challenges brought by those who have not been sued represent beneficial collective action against "bad patents" or potential harassment.

In a second empirical investigation, in collaboration with Associate Professor Jacob Sherkow of New York Law School, Rai is looking at how IPR is being used — or abused, as critics allege — to challenge a certain class of pharmaceuticals listed in the Food and Drug Administration's "Orange Book." Those drug patents are also covered by the Drug Price Competition and Patent Term Restoration Act (the Hatch-Waxman Act), which is designed to promote the manufacture of generic drugs by opening the patents to court challenges.

"The great effort and success in U.S. patent law has been uniformity of approach to all technologies, both those known and those yet to be developed. It seems to me that if we change that approach to treat particular types of technologies differently, we need to have a pretty good reason to do that. The reasons should not be that the pocketbooks of any particular sectors of technology have more influence over legislators than some others." — James Smith '86

The duo reported on their findings in a letter solicited by the U.S. Senate Judiciary Committee last June as the committee considered further patent reform and an exemption from IPR proceedings for the biopharmaceutical sector. The letter addressed two specific questions about the PTO's expanded jurisdiction: whether some hedge funds are abusing the system by simultaneously filing IPRs and short-selling securities in the pharmaceutical companies that own them (to improve their takeover prospects), and, more broadly, whether IPRs "have upset the balance between medical innovation and patient access" struck in the Hatch-Waxman Act.

The answer to both questions seems to be "no." As of June 15, they reported, only four percent of IPR petitions had been challenges to Orange Book patents, and of the four written decisions the PTAB had made in those cases, it had upheld the validity of every claim at issue. One hedge-fund group, Hayman Capital, had in fact filed 16 IPR petitions against Orange Book patents, but it was the only hedge fund to do so, and nine of the patents were simultaneously being litigated by generic drug manufacturers in district courts. The PTAB had not, as of the date of the letter, decided to institute proceedings on any of the hedge fund's petitions for review. What's more, Rai and Sherkow reported, data showed that the availablity of IPR was not discouraging generic pharmaceutical manufacturers from asserting their rights under the Hatch-Waxman Act.

"Large-scale, technology-specific changes to IPRs should be made only if the evidence suggests a need for such change," they wrote to the committee. "We fear that adding legal complexity to an already byzantine area of law stands to make the regulation of intellectual property in pharmaceuticals even more unwieldy and further subject to gamesmanship."

Avoiding gamesmanship

In an August interview, former PTAB chief Smith, a member of the Duke Law Board of Visitors and the newly formed Center for Innovation Policy Advisory Board, also urges caution on the issue of sector-specific "carve-outs" from the system of administrative post-grant review. "The great effort and success in U.S. patent law has been uniformity of approach to all technologies, both those known and those yet to be developed," he says. "It seems to me that if we change that approach to treat particular types of technologies differently, we need to have a pretty good reason to do that. The reasons should not be that the pocketbooks of any particular sectors of technology have more influence over legislators than some others."

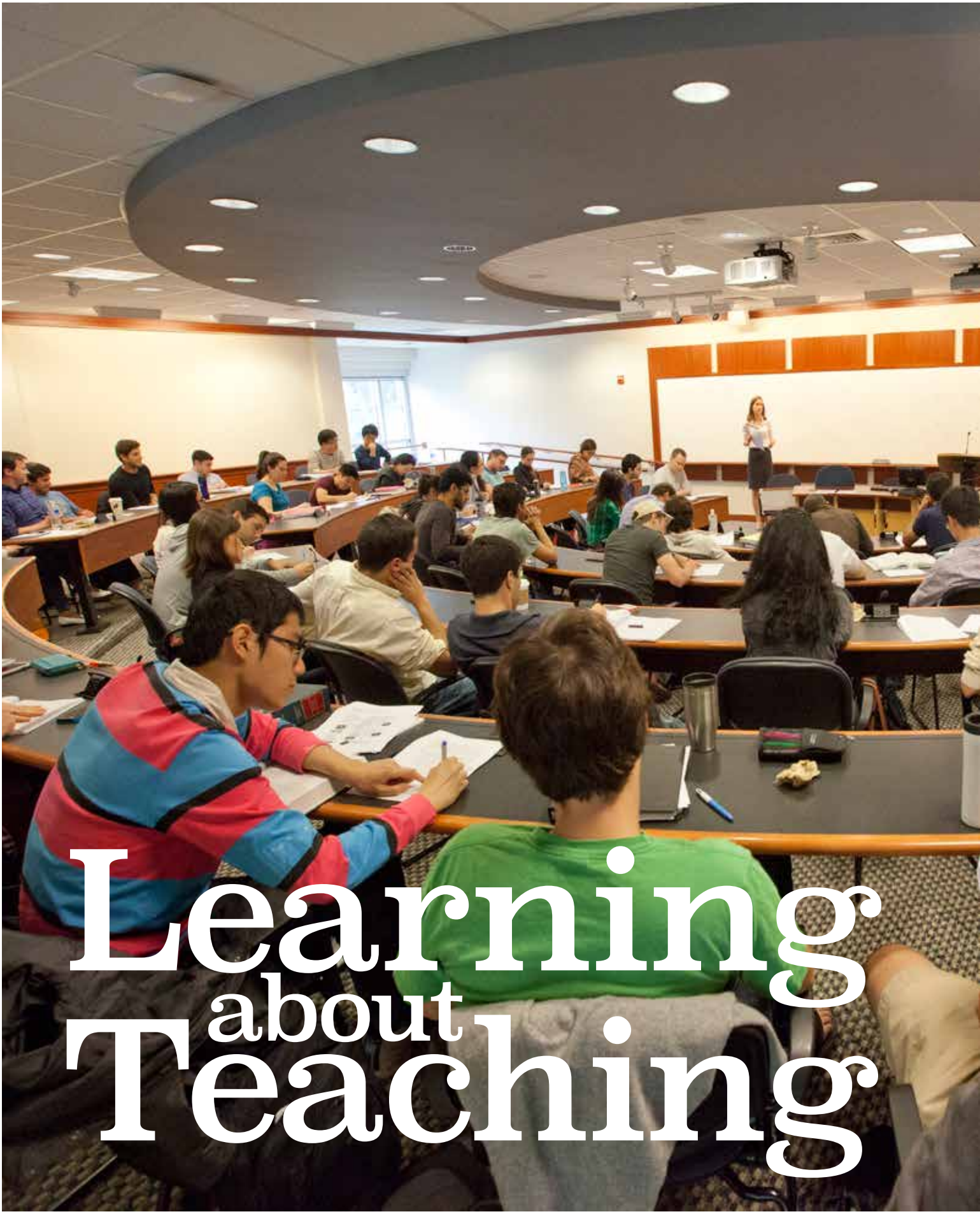
Smith says he is gratified that while some patent-reform efforts implicate the operations of the PTAB, none are attacking the quality of the tribunal's work. Petitions for trials poured into the PTAB at three times the volume expected when the AIA passed — nearly 1,500 were received in fiscal year 2014, according to the PTO's annual Performance and Accountability Report — and the tribunal met all related statutory deadlines, even reducing the number of backlogged appeals from rejected patent applications by about 4,000. And the overwhelming majority of PTAB decisions that have been appealed to the Federal Circuit since 2012 have been affirmed.

Still, Smith acknowledges that some in the patent bar feel the PTAB has not been sufficiently friendly to patent owners, such as those who disagree with the PTO's application of CBM review to more than just a narrow type of software patents. If, in fact, the legislation has had a broader sweep than legislators intended, they can amend it, he says. But like Rai, he would prefer to give the system more time to mature before further changes are made.

Smith, who is now chief intellectual property counsel at Ecolab, says a question he received from a patent attorney at a CLE session in Detroit illustrated the extent to which some members of the bar may simply be overreacting to the changes introduced by the AIA.

"He asked, 'What should we all do to revise our strategies so as to make our patents PTAB-proof, or IPR-proof?' To me, that's like asking 'How do you actually make sure your inventions are patentable, and if they are unpatentable, how do you make sure that the un-patentability won't be discovered?' My advice was and is, 'Be honest with yourself and don't try to game the system.'

"The question people should be asking and answering honestly, all the time, is 'Does my technology represent a patentable contribution under the law?' If the answer is yes, you won't have to worry about a patentability trial."



Learning about Teaching

Edited by
Andrew Park

WITH ITS small class sizes and accessible professors, Duke Law has long been known for the strength of its teaching. But the teaching of law has undergone dramatic changes since the days of "The Paper Chase" and *One L*, from the introduction of computers in the classroom in the '80s and '90s to the more recent emphasis on clinical and experiential learning. »

Learning about Teaching

Last year, the Duke Law faculty convened the Teaching Initiative, a series of presentations, discussions, and small-group interactions aimed at evaluating existing teaching methods and exploring new approaches, insights from psychology and neurobiology as to how students learn, and ways in which the classroom experience might be further enhanced. They also formed "teaching triangles," groups of three professors who visited one another's classes and then offered feedback on what they saw, and groups of clinical, writing, and recently hired faculty members addressed their particular teaching challenges. In August, Professors Guy-Uriel Charles, Elisabeth de Fontenay, Neil Siegel, and Jane Wettach gathered to talk about the initiative and about how the role of the law teacher is changing. »

Clinical Professor **Jane Wettach** directs the Children's Law Clinic and teaches courses on education law and policy. She served as a co-chair of the Teaching Initiative.

Guy-Uriel Charles, the Charles S. Rhyne Professor of Law, teaches courses on constitutional law, campaign and election law, statutory interpretation, and identity politics and law.

Associate Professor **Elisabeth de Fontenay**, a corporate law scholar, teaches Business Associations and Corporate Finance.

Neil S. Siegel, the David W. Ichel Professor of Law and Professor of Political Science, teaches courses on constitutional law, constitutional theory, and the federal courts. He co-chaired the Teaching Initiative.

Jane Wettach: How do you think the teaching of law has changed over time?

Guy-Uriel Charles: I think law schools, many years ago, were thought of as places where people went to survive trial by fire. Clearly, for this generation that is not at all the case. Not only do faculty really care about their students, but they don't view their classroom interactions as opportunities to humiliate students or to try to make them tougher. It doesn't mean that we're not pushing our students intellectually and it doesn't mean that we're not challenging them, but I think the mindset has changed as to what is the relationship between the professor, the student, and the classroom, and it is not what the stereotypical assumption of a law school was about 20, 25 years ago.

Elisabeth de Fontenay: Another change is the introduction and then the ebb and flow of technology. When I went through law school, everyone used a laptop in classes. Then suddenly we realized that's not actually good for learning in many cases. And there has been sort of a retrenchment as a lot of professors here ban laptops and have found that it's just dramatically changed the dynamic of the classroom experience.

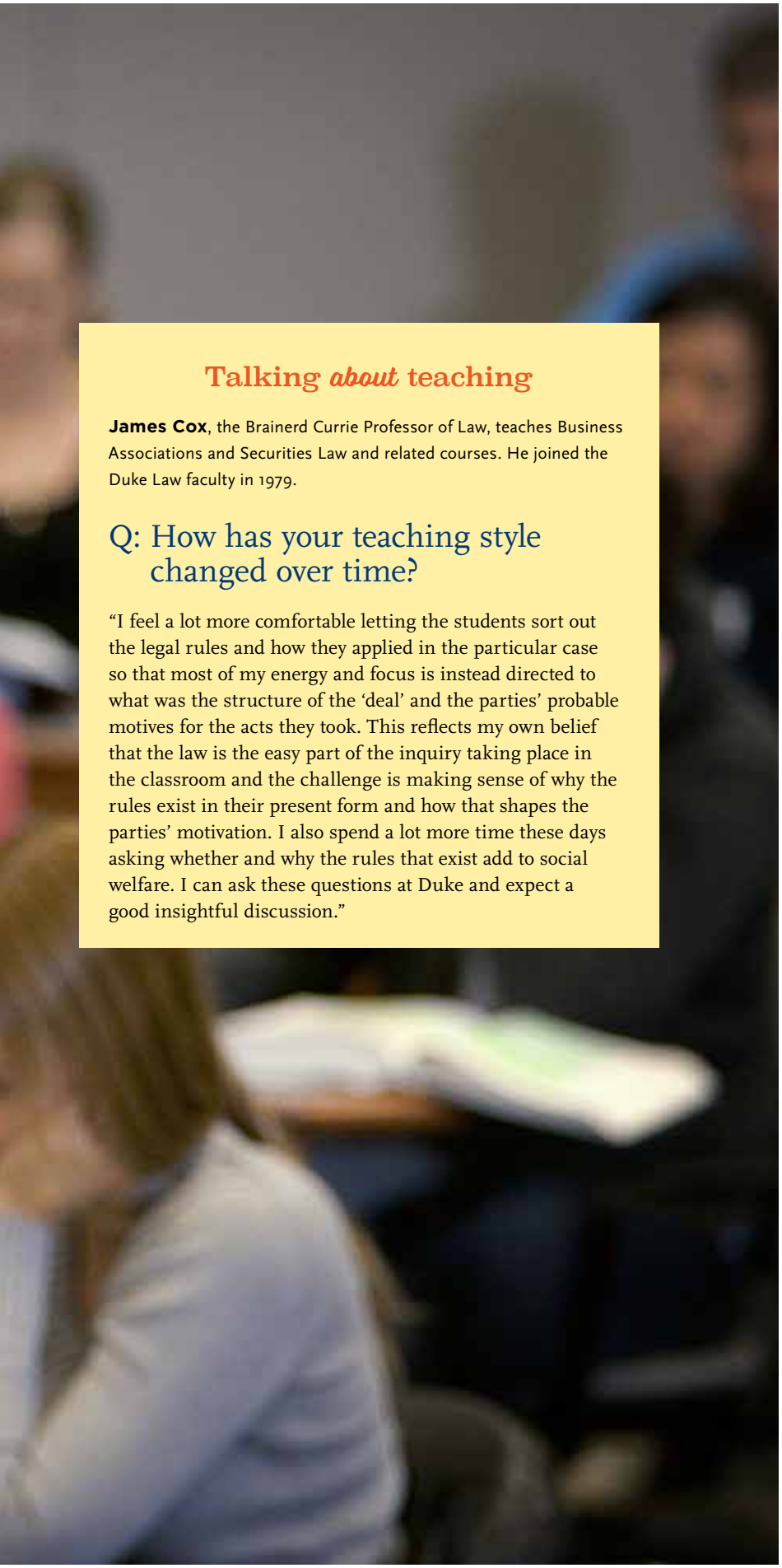
Neil Siegel: The general lesson I have gleaned is that people learn by actively doing as opposed to passively receiving. And so it has made me less inclined than I might otherwise be to simply lecture. I will give students questions to think about, problems to puzzle over outside of class, more ways for them to be actively engaged in learning before, during, and after class. And I think that's great preparation for them to be learners for the rest of their lives, but also excellent professional preparation for the practice of law. You can read a bunch of briefs and think you know what a case is about, and then you show up for the moot court and get asked questions, and suddenly the case is a lot more difficult than you thought it was. I think we've got to try and replicate that experience for our students before it counts.

Wettach: And I might also note the influx of clinical education to the law school experience as a means of operationalizing what we know. Students need to do things to connect what they've learned in the classroom to how it actually works in real life, how it works on the ground. The clinics give them that opportunity to say, "Oh yeah, I read a case that said this was the principle," and then see how it actually works to represent a client by arguing that principle or distinguishing that principle. Here at Duke Law School, we've gone from zero clinical opportunities to 11 in 20 years, which represents a huge commitment to clinical education. I think we've witnessed the learning process and seen the importance of allowing students to implement what they have learned by having to figure out the problem as it applies in *this* set of facts and also having to learn that the facts aren't always handed to you in a nice couple of paragraphs.

Clinics help students see how legal principles work in real life, says Professor **Jane Wettach**: "The clinics give them that opportunity to say, 'Oh yeah, I read a case that said this was the principle,' and then see how it actually works to represent a client by arguing that principle or distinguishing that principle."

de Fontenay: As Guy mentioned, there is no longer an adversarial relationship between the professor and the student. Another big change is we don't think there is an adversarial relationship among students — it's not competition. The students really feel like a cohesive cohort, and they work together in class and outside of class. It's a very different learning model than "we stand each on our own and we answer questions when we're called on."

Siegel: Imagining the practice of law as a cooperative, collaborative exercise as opposed to an individualistic, antagonistic exercise, makes for a happier learning environment and a happier lawyer. It's a more realistic assessment of what lawyers do, whether they're clerking in a chambers or whether they're working as part of a litigation team in a law firm, or putting a deal together.



Talking *about* teaching

James Cox, the Brainerd Currie Professor of Law, teaches Business Associations and Securities Law and related courses. He joined the Duke Law faculty in 1979.

Q: How has your teaching style changed over time?

"I feel a lot more comfortable letting the students sort out the legal rules and how they applied in the particular case so that most of my energy and focus is instead directed to what was the structure of the 'deal' and the parties' probable motives for the acts they took. This reflects my own belief that the law is the easy part of the inquiry taking place in the classroom and the challenge is making sense of why the rules exist in their present form and how that shapes the parties' motivation. I also spend a lot more time these days asking whether and why the rules that exist add to social welfare. I can ask these questions at Duke and expect a good insightful discussion."

Learning about Teaching

Wettach: There is a lot of technology available to us as professors that we didn't have when we were students. Does it enhance the classroom experience and students' learning to be able to Google the answers to questions, show a PowerPoint or a video, or listen to a clip from NPR?

Charles: It is fascinating to be in a classroom where information can be either verified in real time, figured out in real time, de-confirmed in real time.

Siegel: I think it's a tricky balance because I've had the experience Guy is talking about: "Well, I just can't remember the exact date of a decision," or, "Has the Oklahoma Supreme Court decided yet?" And a student can look it up in seconds and we know the answer in the very class in which the question arises. At the same time, I've gone back and forth with electronic devices in the classroom because I've decided that good people simply cannot help themselves when they have access to them. Part of what we need to be teaching our students is the need to stay focused and disciplined. You can't be in court or in a meeting with a client staring at your phone or looking things up on the Internet or checking the latest email.

de Fontenay: I think, if used properly, technology can definitely keep things exciting for the students and keep them engaged, but it can also be a crutch. As Neil said, it's a delicate balance, even for the professor. And I tell my students, it's a very asymmetric position that we're in where I can use all the technology that I want, and I am one of those folks who bans laptops in my classroom.

Wettach: When I teach the cases about free speech in school, I put up pictures of things that the students in these cases had on their t-shirts. I think for the law students, seeing the t-shirt in front of them enhances their ability to reflect on it, and imagine it, and think about, "Okay, if I'm the principal in that school, what is the impact of that on the other students and is that going to cause a disruption in the classroom?"

Siegel: I have as well. If you think, for example, about a discussion of police brutality, if it's on video it's a completely different ballgame in terms of the impact on people.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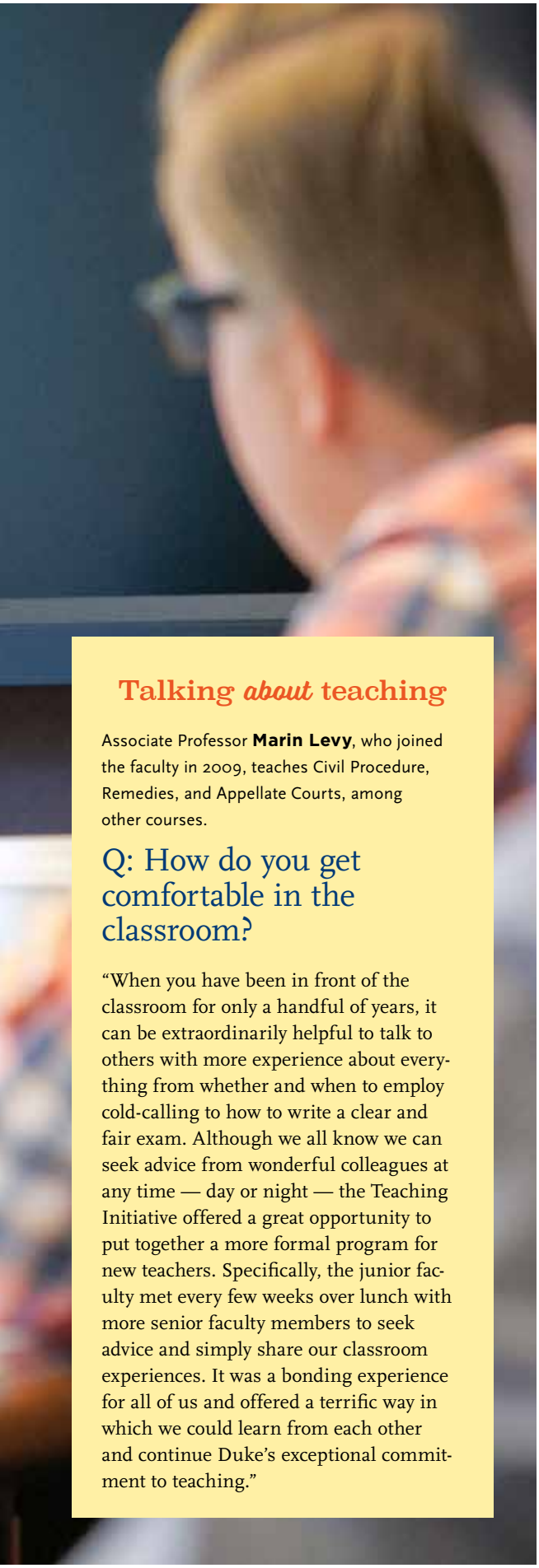
Learning about Teaching



Talking *about* teaching

Associate Professor **Marin Levy**, who joined the faculty in 2009, teaches Civil Procedure, Remedies, and Appellate Courts, among other courses.

Q: How do you get comfortable in the classroom?

"When you have been in front of the classroom for only a handful of years, it can be extraordinarily helpful to talk to others with more experience about everything from whether and when to employ cold-calling to how to write a clear and fair exam. Although we all know we can seek advice from wonderful colleagues at any time — day or night — the Teaching Initiative offered a great opportunity to put together a more formal program for new teachers. Specifically, the junior faculty met every few weeks over lunch with more senior faculty members to seek advice and simply share our classroom experiences. It was a bonding experience for all of us and offered a terrific way in which we could learn from each other and continue Duke's exceptional commitment to teaching."

Done well, the Socratic method offers an effective way of conveying what's relevant, says Professor **Neil Siegel**. "It calls upon students to utilize a variety of different skills that lawyers require. It's ... engaging verbally and overcoming anxiety about speaking in public settings. It's requiring students to think on their feet."

Wettach: Is there still value to the traditional Socratic method?

Siegel: I think there is great value in it. It is, to a large extent, part of what is distinctive about legal education and various settings in which lawyers practice. If students know that they're going to get asked a series of easy, to moderate, to difficult questions based upon what they've read, they're going to prepare more vigorously than if they're just going to be on the receiving end of a lecture that is very likely to bore them. If you do it well, it's a way of conveying what's relevant and what's not relevant: What does a case or an issue actually turn on? What's the difference between the easy cases and the hard cases? It calls upon students to utilize a variety of different skills that lawyers require. It's not just reading and understanding, it's engaging verbally and overcoming anxiety about speaking in public settings. It's requiring students to think on their feet. They're not always going to have a lot of time to answer a difficult question, and you learn that the more you think about it ahead of time and anticipate questions ahead of time, the better you're likely to do when it counts.

I don't think that's all there is to law practice, and it's not all there is to teaching. It's important to do it in a way that Guy was describing, which is to maintain the rigor of past generations of legal education but combine it with the kindness that was often absent — to make it clear that it's not personal, it's not about dominance and hierarchy. It can be done in a very humane way as opposed to a humiliating way. And I think you're also teaching students how to exercise power responsibly — that after they gradu-

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Tackling sensitive subjects in class helps prepare lawyers for engagement in practice, says Professor **Guy-Uriel Charles**: "We cannot avoid talking about difficult subject matter and sensitive issues. We have to think about how do we engage in that conversation in a way that's thoughtful and respectful, but pedagogically effective."

ate, they're going to be in positions of authority over people, and it will matter how they speak to them, and the questions they ask them, and whether they help when someone is struggling with an answer or whether they slam them down and then move on to the next victim.

Charles: I'm very Socratic, specifically in the first year. I once experimented teaching two classes, using Socratic in one and not in the other. The students in the non-Socratic class learned less and their exams were less sharp. And it's for a lot of the reasons that Neil is articulating, starting with if you know that you are going to be asked questions and that you have to learn to think critically about the material, you will approach it differently. They will be lost for a bit, and I tell them that at the very beginning of the semester — it's okay. And every once in a while there has to be a reorientation because the purpose is not to make the students feel lost. There has to be a pedagogical purpose, and it has to be done in a humane way. But I think it is okay for students to recognize that there are times in which you are going to have to muddle your way through and figure out how do I do that with confidence knowing that I'll find my way and that this is part of a process.

Wettach: We've been reading about whether professors should give "trigger warnings" when they're about to talk about something that might impact an individual student emotionally, and that we should be careful about approaching topics that are sensitive or might just make students upset. What do you think?

Charles: Part of this is generational. As a society we have become much more tolerant, much more understanding, much more humane. Now, we're trying to think about what does it mean in the law school classroom that has historically had its challenges with tolerance, diversity, humanity, etc. At the same time, we're preparing lawyers for engagement in society and they have a distinctive role to play. They have to learn to think about and confront difficult questions. You have to learn how to face up and manage your emotions so you're representing the client. You can't fully identify with a client — that will cloud your judgment — and you can't fully alienate yourself from the client. And part of the task of the law school classroom is to help the students figure those things out. We cannot avoid talking about difficult subject matter and sensitive issues. We have to think about how do we engage in that conversation in a way that's thoughtful and respectful, but pedagogically effective.

de Fontenay: This does not come up so often in my area, business law. People don't tend to get physically upset about poison pills and things like that. It comes up for me in a very different way. I have been very sensitive to the research showing that minority students and women come into law school with a confidence problem, so I have taken that as my mission to change the way that I teach such that everyone feels like they have a stake in the class, and everyone feels like they can contribute meaningfully. I do a lot of group work and I get people to volunteer participation from each group — somebody just volunteers and talks. By the end of the class everyone is participating and really showing what they can do.

Siegel: I teach some difficult, controversial subjects, including abortion and affirmative action, and to my surprise, the latter seems more controversial for law students than the former. I wouldn't call what I do a trigger warning, but I preface the discussion by acknowledging how personal and emotional some of these issues are and stressing the importance of welcoming all voices within a broad range of reasonableness and being mutually respectful and professional.

I agree with Guy that we are training lawyers and they have to be prepared to look at pictures and videos and texts that are going to make them profoundly uncomfortable, if not distraught. We can do it in a kind, respectful way, but we can't avoid talking about the difficult subjects. I have real concerns about maintaining control over the class as well as maintaining academic values if I'm going to proceed day by day through the syllabus and make a judgment about which topics deserve a trigger warning

Talking *about* teaching

Professor **Doriane Lambelet Coleman** teaches courses and seminars related to children and the law and medicine and the law, and multiple sections of first-year Torts.

Q: How do you reach a student who is struggling?

"Through our 1L academic support programming, we try to ensure that all of our incoming students have the study skills necessary for a successful law school experience. But when particular students express concern that they are struggling, either during the fall semester before they have gotten their grades or afterwards, we work with them individually. We identify points of weakness and then meet with them to strengthen these areas. Most students who are struggling have problems in one of three areas: with daily prep — they have either not learned how to or accepted the significance of reading carefully and instrumentally, and developing strong briefs from that process; with outlining — they are unable to make useful outlines as a result of their less-than-optimal daily prep, or they have chosen to outline the material only generally or not at all; and with exam taking — they have not learned how to distinguish a statement of law facts from analysis. These are all skills that can be taught. Joseph Blocher, Jo Ann Ragazzo, Tia Barnes, and I have been asked to work on this project specifically, but every 1L faculty member is in some way engaged in the effort."

Learning about Teaching

Talking *about* teaching

Lecturing Fellow **Rebecca Rich '06**, assistant director of Legal Writing, served as co-chair of the Teaching Initiative. She teaches first-year Legal Analysis, Research and Writing and upper-level seminars on scholarly writing and writing for electronic discovery.

Q: How has technology changed what you teach in legal writing classes?

"We continue to teach our students to do legal analysis — to find sources of law, to read those sources thoroughly and critically, to understand and clearly articulate legal rules from those sources, and then to apply those rules precisely and with sufficient depth of analysis to a client's situation. And to do all of that clearly and concisely, in writing. So we still start with teaching office memos because they push students to master that skill set. But new technology, of course, presents new and different ways of communicating in writing that can require some unique skills — I'm thinking, for example, of email, Powerpoint presentations, and the prevalent use of smartphones. In our upper-level writing courses, we talk about distilling legal analysis down to a short email or to bullet points in a presentation, which requires the writer to identify and communicate key points of analysis with even greater precision and conciseness. And in a new class session in the 1L legal writing program devoted to preparing students for their summer jobs, we teach professional email communication. So the core legal writing curriculum hasn't changed in lots of ways, but we recognize that there are many more ways to communicate now."

and which don't. To me, it's anti-intellectual, it ends up being highly ideological, and it's not part of the kind of academic and professional enterprise that I'm trying to pursue with my students.

Charles: For me there are no issues. There are no issues that one cannot talk about. When we talk about affirmative action, I will press students no matter what their race. When we talk about abortion, I will press students no matter their gender, recognizing that for some students in that classroom, that's a deeply, deeply personal issue. They may have had some experience with it. We cannot take them off of the curriculum and still provide a top-notch educational experience.

In my Civil Procedure class a number of years ago, we took up a case about a gay rights question. And unbeknownst to me, the student that I was calling on and was pressing fairly hard was a gay student. I was pressing in a respectful way, not one that was mocking. I was pressing the student to take a position different from the position that the student would be comfortable with. I'm glad that I didn't know the student's sexual orientation. I think it's extremely important for everybody in the classroom to think about really hard questions and sensitive issues, and to address them.

de Fontenay: In my Corporate Finance class, I have a very large contingent of foreign LLM students who come with very different backgrounds and a different pedagogical background as well. I said, "I would be very grateful if you would each sign up for a five-minute period to present some topic relating to the capital markets in your home country. It's entirely voluntary, you don't get graded on this." They all volunteered to do it and they did the most fantastic job. It was so much fun and we learned so much, and the JD students were delighted. They asked so many good questions, they followed up, they really got excited about it, and it felt like a way of bridging people's different backgrounds and learning experiences in a way that ultimately was helpful for everyone, including for me.

At some level it's about treating students all the same way while bearing in mind that they have differing backgrounds, and trying to get them to share some of that, even in something like business law, where it doesn't seem like it would come up. So when we talk about mergers and acquisitions and business associations, I try to get someone to present the viewpoint of labor, which doesn't often come up in those courses. And someone will have come from a town

Learning about Teaching

in Ohio that was devastated by a company being acquired and folks laid off. We can get a really good, healthy discussion going if I try to get people to volunteer their own experiences.

Siegel: Particularly when I teach difficult material, I try to discipline myself to imagine that there are people on all sides of the issue in the classroom. For example, if I teach the Virginia Military Institute case, in which the Supreme Court held that VMI's male-only admissions policy violated the Equal Protection Clause, I try to imagine that there are people who went to VMI in the classroom and that there are women who wanted to go but were ineligible to apply. The way we talk about issues sometimes can be affected by who is in the room — and who we imagine is in the room.

Receiving colleagues' input through the "Teaching Triangles" program was extremely helpful, says Professor **Elisabeth de Fontenay**: "I came away with some fantastic ideas about what to do and some comments on my own teaching style — very simple changes that I could make that never would have occurred to me on my own. Having a friendly observer just offer casual tips was a very, very fortunate experience."

Wettach: Let's talk about assessment and exams. We've made a lot of progress in how we teach law, but I don't think we've made as much progress in how we assess what we teach, and whether we actually are assessing in a way that reflects whether students learned it. No matter how well students have learned the material, if they're not good writers, they're not going to get a good grade on the exam. And it's not because they don't know the material, it's because they aren't the best at expressing what they know. Or they don't respond well in a timed situation.

Now those are skills they need to learn to be lawyers — they need to be able to express themselves very clearly in writing, and they need to be able to do it under some time pressure because lawyers have time pressure all the time. Nevertheless, I'm not sure that those are the metrics we should be using to judge how well students have learned in our classroom. I don't use an exam in my clinic class. I'm able to observe what students do, I'm able to get drafts, give feedback, let them try again. In our conversations there is a lot of back and forth where they can express to me how they're thinking about a problem, how they're expecting to solve the problem, and I can assess much better whether they're really incorporating the skills that I'm trying to teach them in that clinical setting. It works much better. I think it offers a much truer measure of what they've learned, but is not practical for a large law school classroom.

Siegel: Assessment is changing. I don't give in-class exams; I give what I view as a three- or four-hour exam in the context of an eight-hour take home. I agree that students, like lawyers, need to work under time pressure, but I've found that the kind of time pressure that a two- or three-hour in-class exam imposes on students does not make for a realistic assessment. When I was dealing with last-minute stay applications in death-penalty cases as a law clerk, and I had a pile of papers to go through, and the execution was at two in the morning, I still felt like I had substantially more time than I did on those crazy, three-hour, in-class law school exams in which no notes were permitted, and in which it was like a glorified food fight to spot all the issues and make as many non-frivolous arguments on both sides that one could in the time allowed. I fear that is testing in substantial part who can deal with the kind of anxiety and immediacy of the situation. So what I've done over time is give a practice mid-term to my first-year students regarding which I give the class in-depth feedback, and then a final take-home exam, which is all of their grade except for participation.

I think there is wisdom in something Coach K said in the last NCAA tournament with his young team in mind. He said that if he were a teacher, he would want to know how his students were doing at the end of the semester more than how they were doing throughout the course. Because a lot of times, teams and students don't get it initially, and particularly with beginning law students it's hard enough to get it at the end, let alone during the first two weeks, or three weeks, or six weeks.

Wettach: Law schools have not spent much time developing an infrastructure for professors to learn how to teach. What did you take away from the Teaching Initiative?

de Fontenay: I took away several things. The first was how deeply committed the Duke Law faculty is to teaching. I was genuinely overwhelmed by the level of participation across the board and people's interest in becoming better at teaching, which is something really commendable, particularly at a school that is so well-known for its research.

Second, I found the Teaching Triangles program to be a remarkable experience. It was just so much fun to sit in on other classes and to see how things are done differently. I hope that others learned at least something from my class, and I came away with some fantastic ideas about what to do and some comments on my own teaching style — very simple changes that I could make that never would have occurred to me on my own. Having a friendly observer just offer casual tips, was a very, very fortunate experience.

Charles: I've had lots of people in my classroom — family members, strangers, parents of students — and I was surprised by the fact that when a senior and a junior colleague came into the classroom, that I was a bit on edge. But it was also great to have the feedback from colleagues, even after almost 15 years of teaching. There is always something that you can do better, and there are lots of ways of improving. And it demonstrated the collegiality of this faculty, with people taking it seriously and providing supportive but critical advice.

Siegel: I think it reflects the extent to which there is a serious collective commitment here to being good teachers — to an extent that is, I think, unusual among elite schools. And it's infectious. I recently had a colleague who has been here a lot longer than I have tell me that, for the first time in a long time, he was nervous about teaching a first-year class because he felt like he couldn't let the place down. I think that sentiment is both admirable and typical of the faculty culture here at Duke Law.

Profiles

Meha Shah JD/LLM '94

MEHA SHAH became legal adviser to the U.S. Embassy in Kabul, Afghanistan, in May, assuming duties in her first overseas post with the U.S. Department of State that she likens to those of a general counsel of a small city. Called on to address everything from employment and operational matters to security and military issues in the course of a day, Shah routinely relies on her well-honed ability to spot and analyze problems, to negotiate, and to utilize the subject-matter expertise of her colleagues.

"There is humbleness in knowing what you don't know," she says. "You need to know what you don't know and listen to experts on the subject matter. You need to learn how to ask questions and know when you can rely on people." That approach and insight have been key to her success over a 20-year career in foreign affairs, government service, and international law.

Shah began her career focusing on import and export regulations as an international trade attorney at Dechert Price & Rhoads in Washington, D.C., having accepted the first job offer she received. It was a good move: Advising clients on those matters prepared her well for her first State Department post within the Office of the Legal Adviser, when she worked on export controls in the Political and Military Affairs Section.

Her second post in the Legal Adviser's Office gave Shah what she still considers a career highlight: the opportunity to draft the Kimberley Process that governs the international diamond trade. As attorney-ad-

"It's wonderful and inspiring to see what the Afghan people are doing. There are young people and not-so-young people who have come back to rebuild the country. … You feel very hopeful about their future."
— Meha Shah '94

viser in Economic and Business Affairs, Shah participated in multifaceted negotiations to develop international protocols for certifying the legitimate mining and selling of rough diamonds, while cutting off exports from rebel factions in conflict zones that were destroying villages, devastating natural areas, abusing workers, and ignoring international trade norms.

"It was a challenge to work with so many stakeholders — the trade agencies, the development agencies, the State Department, industry, and NGOs. And because it was a nonbinding arrangement we had industry on equal footing with the governments, which presented its own challenges," she says. "Giving civil society players that prominent of a seat — when we were used to working only with diplomats — completely changed how we had the discussion."

After Kimberley Process negotiations concluded in 2006, Shah joined the White House National Security Council as director of international environmental issues, where she addressed climate change and cross-border trucking services, among other things. "Adapting to a leadership role where I just did not know the subject matter" was a new and exciting challenge, she says. Leaning on trade, energy, transportation, and environment experts in the federal agencies, she created a process for managing work, making decisions, and conveying them back to the agencies for implementation.

Moving back to the Office of the Legal Adviser in 2007, Shah again faced an unfamiliar and deeply technical subject area as she helped craft U.S. strategy for halting the spread of nuclear weapons and fostering peaceful nuclear energy cooperation. Over five years as attorney-adviser for the Nonproliferation Section, she worked to develop guiding principles for the International Atomic Energy Agency's international nuclear fuel bank, developed the State Department's position on a private-sector Supreme Court challenge to government controls on nuclear fuel imports, and advised on U.N. Security Council and IAEA resolutions on Iran.

The technical details of nuclear energy were new and daunting, but the process of learning, negotiating, and moving policy forward was familiar, Shah says.

"Coming to these issues as a lawyer and, at this point, having a fair amount of experience analyzing things I didn't know, came in very handy. We were breaking down a problem into component parts, figuring out step-by-step how to get to a point where you can make a recommendation."

Shah says the most difficult work of her career came during her assignment to the Africa and Near East Section, where she served as the central contact for all matters related to the ongoing conflict in Syria, including legal issues relating to foreign assistance, support to the armed opposition, terrorist designations, political transitions, U.S. and U.N. sanctions, and armed conflict. She once again found herself grateful for her colleagues' enormous breadth of substantive expertise.

"I hadn't dealt with human rights or with terrorism issues," she says. "I had to gather information from so many different experts in order to provide recommendations to the clients, the policymakers. If you're going to tell your client a statute needs to be interpreted in a certain way, you've got to know the precedent, you've got to be able to explain why the advice is what it is."

Many of the policy choices were stark, she says. "This was maybe the first time in my entire career when I didn't know what the right answer is. Making

a decision about military intervention, for instance, has so many ramifications. I used to tell the policy clients, 'I'm really glad I'm just your lawyer giving you options. Because I don't know if I could make these decisions.'"

And while the media might focus public attention on the deep disagreements among policymakers, Shah says people in government service know that they can and do make a big difference. "You don't see that in the public, but if you are in government and part of the process you see that even when you are dissatisfied with the outcome, you've been able to raise issues and promote options. It is a robust process."

Shah describes her current post in Kabul as being a lot of fun, although to outsiders it may seem like a conflict zone. "Working on the compound is like being in a village," she says. "I meet people here I would never have crossed paths with in D.C. The ability to live and work with these people has been the most unexpectedly enjoyable part of the job."

She particularly enjoys the chance to work with her Afghan counterparts — despite difficult security conditions that can make travel challenging.

"It's wonderful and inspiring to see what the Afghan people are doing," she says. "There are young people and not-so-young people who have come back to rebuild the country, smart people who are working on big challenges. You feel very hopeful about their future."

As a member of the Duke Law Alumni Association, Shah often counsels students considering careers in international law and government service. She attributes her own career success more to good luck and solid instincts than methodical planning. "Perhaps if I were starting a career now, I'd be more calculated and targeted," she says. "But I think maybe it works out better when you don't know any better and you go with your instincts. My advice to people now is to work with people you like."

— *Melinda Myers Vaughn*

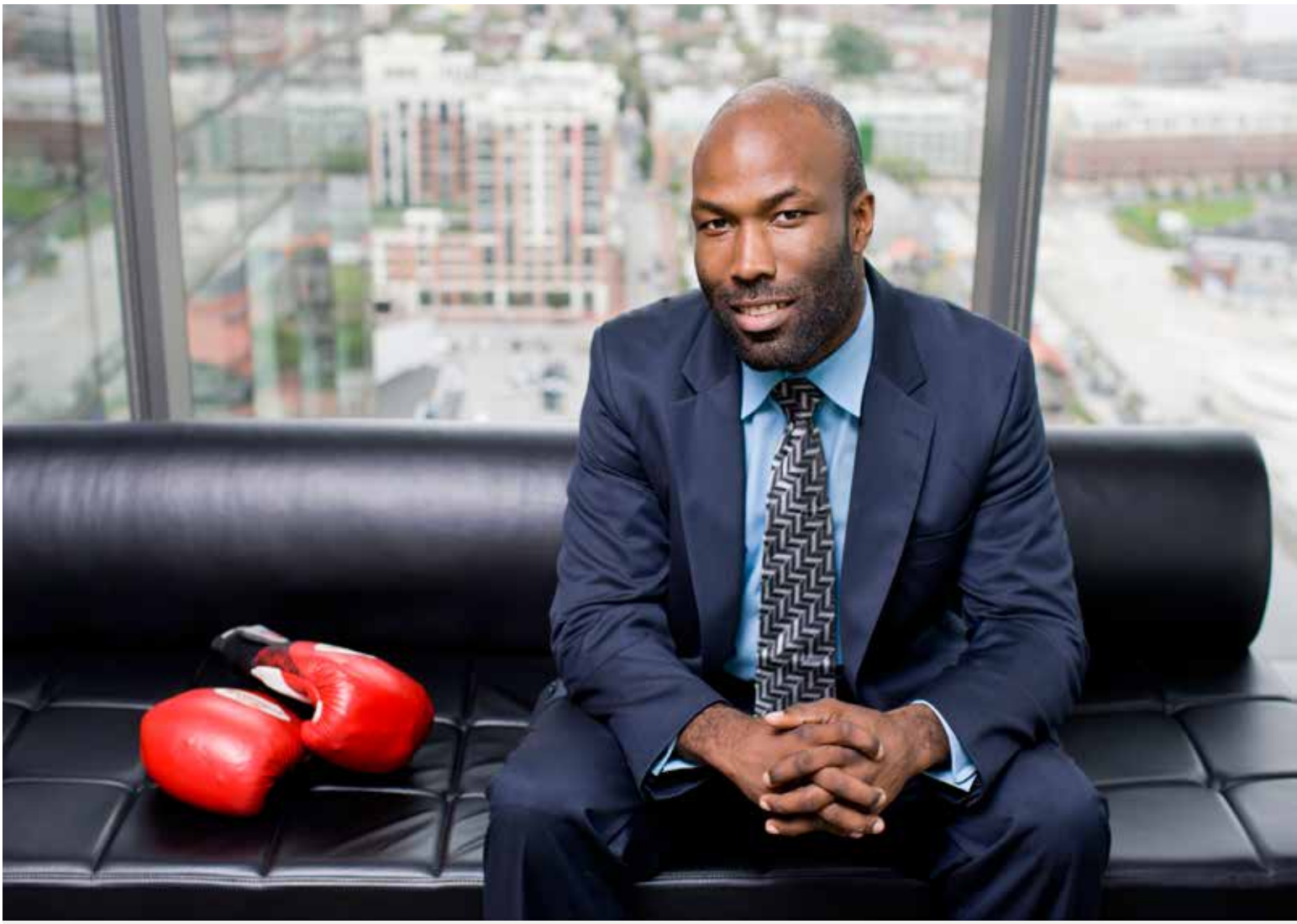

Photo: Nick Griner, *Baltimore Business Journal*.

Venroy July '07

BY DAY Venroy July enjoys a spectacular view of Baltimore's Inner Harbor from his office at Hogan Lovells, where he is a corporate associate. But most evenings his second career as a professional boxer takes him to gritty gyms in neighborhoods where people are struggling and where some of his sparring partners are literally fighting to improve their lives.

"Most people don't go into boxing unless they have no other choice," he said in a TEDx talk at the University of North Carolina at Chapel Hill last February. But July appreciates the perspective he gains and the friends he's made in the two distinct worlds of boxing and corporate law. "I get to hear their concerns and see their conditions."

Sometimes July's fellow fighters ask him for advice on managing money and going to school. "The fact of the matter is that boxers often lose their money quickly because they never had anyone to teach them about things like finances," he says in a subsequent interview. "I know I serve as something of a role model because they can see it's not all about boxing, but about going to college and becoming a professional."

July got those lessons from his parents, who moved his family from their native Jamaica to the South Bronx when he was 11. His father also introduced him to boxing.

"I remember being a kid and watching matches with him," says July. "Boxing became a significant part of our relationship." But long before July stepped into the ring (with his proud father watching his fights whenever possible), his parents pushed him to succeed in school — and planted the idea that he might someday become a lawyer.

"In Jamaica and in many immigrant populations, there is this view that there are a couple of respected professions, like law and medicine," he says. "As far as I can remember, I would argue and my parents would always tell me, 'You're going to be an attorney!' It stuck."

Encouraged by his parents, July left his admittedly rough neighborhood for The Taft School, a boarding school in Watertown, Conn., where he succeeded both academically and athletically, winning a state wrestling title and earning all-state honors in wrestling, football, and track. His academic achievements helped him win a Morehead-Cain Scholarship to UNC-Chapel Hill, where he majored in political science and economics, and wrestled as a Tar Heel after redshirting his freshman year.

July also wrestled for the Blue Devils during his first year of law school, but switched to boxing soon after, having taken up the sport during his 1L summer. "Boxing and being active helped to break my days up and helped me study — I wasn't just reading cases day after day," he says. He trained throughout his time at Duke Law and following his graduation, when he joined a Washington, D.C. law firm, competing, quite successfully, on the side. In 2009, he won the Novice Golden Gloves Championship of D.C. That made him consider taking his hobby further, even though he was nearing 30.

"I figured I'm old, let's go pro and see how it works," he says. Since 2009, he has accumulated a record of 16 wins, two losses, and three draws. He is currently ranked in the top 20 nationally in the cruiserweight class.

While July keeps his two professional endeavors quite separate, he credits boxing — and the healthy habits that are essential to his conditioning — with keeping him sharp, refreshed, and relatively stress-free in his practice. Likewise, he brings the mindset of the lawyer to the business side of sports. His expertise in transactional law helped him realize that the standard terms of boxing contracts often weren't fighter-friendly. "I rejected certain agreements that people had proposed to me initially," he says. "It made me realize how easily people can get taken advantage of in this sport."

As he crafted a strategy to advance his own sports career, July saw an opportunity to help other fighters in Baltimore find fights in their weight classes that had financial terms that met their best interests. Last year he formed his own promotion company, Hardwork Promotions, also spotting a business opportunity in Baltimore's somewhat nascent market between much bigger boxing scenes in Washington, Philadelphia, and New York. "I understand how these contracts work and how to put deals together," he says. "I thought that I would give it a shot."

> "I use boxing to capture kids' attention. … [T]hey think I'm smart because I'm a lawyer, but also cool because I'm a professional boxer."
>
> — Venroy July '07

Soon after, July found a way to help the broader community while building a boxing fan base. When a fraternity brother mentioned that high ticket prices for a fight discouraged him from bringing his son, July recalled how he and his father, who died in January 2013, had bonded over boxing.

"Those memories of watching matches with my father were so influential on my life," he says. "I wanted to provide that opportunity for other boys." Through Hardwork Promotions he launched the "Bring Your Boys" program, which reduces general admission ticket prices to $10 from $40 for fathers and sons attending fights.

"You hear in the news about the absence of men," July says. "I want to create an atmosphere where fathers feel comfortable to bring their boys, have a good time, and get to see them enjoy themselves."

In and out of the ring, July actively tries to reach young people through his sport and his story.

"I use boxing to capture kids' attention," he says. "I speak with kids in schools and organizations because I know it's impactful for them see a black male who isn't just a jock but also an intellectual. The concept is that being smart is not cool, but they think I'm smart because I'm a lawyer, but also cool because I'm a professional boxer. That message is important, especially for young black men to hear."

July ended his TEDx talk last February by reiterating how his daily journey from the nicest parts of Baltimore to "some of the worst parts of town" has enabled him to build friendships in both and sparked an understanding of what he can do in the face of race and class disparity. He challenged the young people in his audience to similarly engage with people of different races, backgrounds, classes, and cultures, and to have honest and possibly difficult conversations.

"That's how we move the ball forward" on issues of race and class, he said. "You have to force yourself to be uncomfortable. You have to force yourself to have this perspective." — *Avery Young*

Marcus Benning '17

AS A DUKE UNDERGRADUATE, Marcus Benning, who served both as president of the Black Student Alliance and senate president pro-tempore for the Student Government, was instrumental in establishing a new student social housing group focused on black culture. Now, as president of the Black Law Students Association (BLSA) and as a LEAD fellow, he is helping lead the diversity and inclusion effort at Duke Law.

"I really love Duke," says Benning. "But my relationship with Duke is complicated, because I want to change so many things about it."

Attending "Common Ground," a student-led retreat organized by the Duke Center for Race Relations early in his sophomore year was a pivotal experience for Benning, who majored in history and linguistics. It helped him understand, he says, the experiences of diverse minority groups on campus, and laid the foundation for many of his leadership activities. "We spent three days talking about race, gender, and sexual orientation. We argued and cried and figured it out together. It kind of changed my life."

Benning, a native of Atlanta, credits his mother with sparking his passion for community engagement and social justice. She also made sure he had people in his life "who would mentor me in ways she could not," like his high school band director, who Benning says taught him the importance of punctuality, respect, hard work, and perseverance through music. Shortly after arriving at Duke he found two more mentors at the Mary Lou Williams Center for Black Culture: Director Chandra Guinn and Assistant Director Sean Palmer. They were instrumental, he says, in his development as a leader and as a scholar.

Guinn says Benning's personality was evident from the first day she met him. "He had very strong opinions, a willingness to share them, and a willingness to have his mind changed," she says. "He is a young man with a desire to see other people excel along with him."

Benning got started on doing that when he secured a $500 award from a Duke University think-tank during his freshman year to launch the Duke Connects Challenge, an effort to build ties between Duke students and Durham residents. He invited his classmates to submit proposals for projects that would benefit the city, as measured by their sustainability, affordability, and community impact.

"From talking to other students, I learned about lingering tensions between Duke and Durham," he says of his motivation for the challenge. "I got the impression they were exacerbated by the lacrosse incident and were never completely resolved." The winning challenge proposal, submitted by residents of Randolph Hall on East Campus, engaged students in cleaning up and improving public parks.

As a sophomore, Benning worked successfully to establish a new academic and social housing group at Duke for students interested in immersing themselves in black cultural awareness and aca-

demic engagement. Open to students of all races and ethnicities, the Black Culture Living Group on Central Campus houses 22 students and works closely with the African and African American Studies Department and the Mary Lou Williams Center to host educational events and discussions relating to the diversity of the African Diaspora.

"This group is particularly important as social justice campaigns such as Black Lives Matter take shape," he says. "Hopefully students who have lived in the Black Culture Living Group and others like it will launch movements of their own to tackle the injustices they experience."

Aiming for a career in corporate law, Benning decided that Duke remained a good fit for law school academically, and that his work on campus wasn't finished. Active in BLSA as a 1L representative, he is pleased, now as president, to be partnering with "seven other talented, determined second-year students" on the executive board. "Because BLSA's board is so diverse — they bring experience from a variety of industries, including education and energy, and have lived and traveled all over the U.S. and around the world — our initiatives and events will naturally capture a wide range of perspectives and reach broad audiences."

In September, Benning served as both a host and panelist at a community discussion of the works of Harper Lee that attracted students and faculty from across campus. Framing the conversation as an exploration of idealism and personal responsibility to enact positive social change, he challenged his fellow students to "reimagine Duke and reimagine the world to seek and expect the best of this place, and to thrust that vision into reality with our activism." He drew a parallel between the falsely accused character of Tom Robinson in *To Kill a Mockingbird*, and the unarmed black men whose deaths sparked the Black Lives Matter movement.

"The story isn't new, and neither is our responsibility as future lawyers and scholars of all disciplines to determine our role in reimagining the world as a just and equal place," he said.

"One of the beautiful things about Marcus," says Sean Palmer, one of Benning's undergraduate mentors, "is that he left undergrad with an agile mind that I think is being empowered at the Law School."

One of BLSA's top priorities for the current academic year is addressing the discomfort students of color sometimes feel with the way race is handled in the classroom. As an example, Benning cites his own discomfort when one classroom video on dealing with difficult negotiators featured the cultural cliché of "an angry black woman" to make the point. "In the 21st century, racism is not about people's intent, but about the impact of what they do and the signals that you're sending," he says.

BLSA recently surveyed black students about their experiences at Duke Law in class and out, and is working to compile the data into a comprehensive report with concrete recommendations for the dean.

Benning, who interned at Burr & Forman in Birmingham, Ala., and Smith Moore Leatherwood in Raleigh over his 1L summer, intends to spend much of his last two years at Duke advocating for increasing university funding for "the Mary Lou," the organization that helped nurture his leadership skills and his activism. "The whole purpose of me being here is to shake stuff up," he says. "There's no reason why this place should be the same way it was when we got here." —*Rachel Flores Osborne*

Black Lives, Atticus Finch, and the Ethics of Legal Fictions

Marcus Benning, left, helped lead a community discussion on the works of Harper Lee on Sept. 17. He was joined by Duke junior Henry Washington, Karla FC Holloway, the James B. Duke Professor of English and Professor of Law and Professor of Women's Studies, and Katharine T. Bartlett, the A. Kenneth Pye Professor of Law.

"I really love Duke. But my relationship with Duke is complicated, because I want to change so many things about it."

— Marcus Benning '17

Ben Shellhorn JD/MBA '15

BEN SHELLHORN ADMITS to having some trepidation in choosing to pursue his professional education at Duke.

Shellhorn, a longtime volunteer organizer for the New York Pride Parade, arrived on campus in the summer of 2012, shortly after gay-rights supporters failed to stop a constitutional amendment banning same-sex marriage in North Carolina. More than one friend suggested he was "crazy" to be going south for law school, he says. But it did not take long for him to feel welcome in Durham.

"I came in a bit apprehensive about the environment, but found the Triangle to be open and progressive," Shellhorn says. He quickly built connections both at Duke Law and elsewhere on campus. "I was plugged in with Duke Out, which is the umbrella for the LGBT groups on campus, and made friends with PhDs, MDs, and [undergraduates], and that was a good way for me to find a community."

It's also one of many areas in which he has taken a leadership role. Shellhorn has been an active OUTLaw member since day one, serving as president of the Law School's LGBT affinity group during his second year. He also served as the Duke Bar Association's representative to the Graduate and Professional Student Council (GPSC) as a 1L, as GPSC's student life coordinator during his second year, and as its president during his third year at Duke.

He estimates that he invested about 20 hours per week in leading GPSC, in addition to carrying a full course load at the Law School and the Fuqua School of Business, working as a teaching assistant, and

serving as content editor for the *Duke Law & Technology Review*. But taking on a series of leadership positions on campus — he is now a young trustee of Duke University — has given Shellhorn the opportunity to work to strengthen a sense of community for all graduate and professional students.

"It was extremely rewarding," he says of his work with GPSC. Asked about key achievements, he quickly lists three: a consistent increase in attendance and participation at meetings; achieving parity in representation on the university's Board of Trustees with the undergraduate student body; and a lifesaving initiative — for birds.

"It may not seem important, but a lot of birds fly into the transparent glass on new buildings on campus and die," he says. After a project led by environmental PhD students showed that birds on campus were dying in unusually high numbers, GPSC successfully pressed the Board of Trustees to take action. In late summer, the university applied patterned film on the windows of the Fitzpatrick Center for Interdisciplinary Engineering, Medicine and Applied Sciences (CIEMAS), a four-building complex where the majority of bird deaths occur.

In fact, Shellhorn is particularly satisfied to have helped boost the influence of graduate and professional students, who make up about 56 percent of Duke's student body, on the Board of Trustees. While undergraduates have traditionally been represented on the board by three young trustees serving three-year terms and grad students elected two trustees for two-year terms, Shellhorn helped negotiate a new arrangement.

"We decided we would alternate the cycle: In the coming year the graduate students will elect a trustee to a three-year term and the undergraduates will elect a trustee to a two-year term," he explains. "Every other year it will alternate between who has three and who has two, but eventually we'll have parity. That was really important to me and it took a lot of work with [University Secretary] Richard Riddell, with the undergraduates, and with the board itself to work out a compromise."

Last spring, GPSC members elected Shellhorn to serve as a young trustee for a two-year term. He recently attended his first meeting of the Board of Trustees in an observer's capacity and will become a voting member of the board in his second year.

Building a sense of community among Duke's LGBT students has been important to Shellhorn, who has overseen volunteer coordination — and been named volunteer of the year — for New York's Pride Parade. In addition to revamping OUTLaw's website and building strong connections with affinity groups elsewhere on campus, Shellhorn has worked with the Office of Admissions to attract top LGBT candidates to the Law School.

"Potential applicants can send us their personal statements and we will give them feedback," he says. "Who knows if they will use the personal statement to come to Duke or go elsewhere, but we think it's a nice gesture that is emblematic of a congenial and friendly community here." OUTLaw members also reach out to admitted students with calls and emails to encourage them to matriculate at Duke Law.

Having studied theatre at Colorado College, Shellhorn found himself intrigued by management theory while pursuing a graduate degree in media studies at New School University. He subsequently managed operations for four New York City restaurants for several years, and paid close attention when his hospitality firm was acquired by a private-equity firm.

"I thought, 'That's what I want to be when I grow up,'" he says, laughing. And he says he's found exactly the hybrid professional training he was after in Duke's dual JD/MBA program, from which he'll graduate in December.

"I've really loved it," he says. "I've been able to take classes that make sense for me, so I've taken classes at the Law School that will be applicable if I decide to go into business long term, and I've taken classes at Fuqua that I think will help if I go to a law firm long term."

After spending his 1L summer working in the Fair Housing Project at Legal Aid of North Carolina, Shellhorn spent the following summer working as a consultant for Bain & Company in New York, managing a turnaround strategy for an international client. Over the past summer, as an associate in the private equity and hedge fund groups at Ropes & Gray in New York, he worked closely with a partner on a $3 million venture capital deal. "I was doing all the due diligence and the markups of the target company," he says. "It was an amazing experience."

It helped, he says, that he is comfortable addressing the financial implications of legal transactions and understands the business side. "When the business people send you a document like a capitalization table or a 'waterfall' chart, you definitely need to be able to understand it," he says. Taking courses like Structuring Venture Capital and Private Equity Transactions, taught by Kip Johnson '94, and gaining practical experience in the Start-Up Ventures Clinic have been extremely valuable, he adds.

Now an advanced student in the Start-Up Ventures Clinic, Shellhorn is working on a policy document relating to best practices in university technology transfer and developing documents to help student and faculty researchers in related negotiations and transactions. During his initial semester in the clinic he worked on structuring and launching the Duke Angel Network, through which investors connected to the Duke University community can invest in early stage start-ups with Duke roots.

"Ben has been a trusted and dependable colleague in the Start-Up Ventures Clinic," says Associate Clinical Professor Jeff Ward '09 who, as clinic director, supervises Shellhorn on his projects. "I've been able to lean on him for sophisticated work because he is a big-picture thinker and a great communicator. He's also a source of frequent comedic relief, which makes working with him really fun."

Shellhorn says his engagement at Duke, in the clinic, in classes, and through his leadership service, has been motivated by a desire to build community and to give back, "and then take it to the next level." He also admits that he simply likes to stay busy.

"If my schedule isn't packed from 9 a.m. to 9 p.m., I'm bored out of my mind." — *Frances Presma*

Alumni Notes

1961

Phillip Hubbart has published *Making Sense of Search and Seizure Law: A Fourth Amendment Handbook* (2d ed., Carolina Academic Press, 2015). He retired as a judge from the Third Judicial District of Florida in 1996 and returned to private practice as one of the founding members of Wetherington, Klein & Hubbart in Miami.

Llewelyn Pritchard received the 2015 Outstanding Lawyer Award from the King County (Wash.) Bar Association (KCBA) in June. A 50-year member of the KCBA, Llew is a partner at Helsell Fetterman in Seattle. He has held leadership positions in the KCBA, the Washington State Bar, and the American Bar Association, as well as in other local, national, and international groups.

Let your classmates know how you've been!

» Drop us a line at **law.duke.edu/alumni**

For *Super Lawyers* and other professional kudos, see page 56.

1964/1965

The Florida Bar honored the following alumni on June 26 at its 50-Year Member Celebration:

John Flanigan '64, a shareholder and specialist in banking, finance, and commercial real estate at Haile Shaw & Pfaffenberger in North Palm Beach Gardens, and a past president of the Palm Beach County Bar Association;

Thomas Wilson '64, United States magistrate judge for the Middle District of Florida in Tampa, who has served on the bench since April 1979;

Patrick Coughlan '65, the president of Conflict Solutions, based both in Naples and Boynton Beach, Fla., and Raymond, Maine;

Philip Shailer '65, an arbitrator for Mediar, Inc. in Ft. Lauderdale, who has served as a state attorney, public defender, and city attorney, as well as in private practice and as a senior executive for Alamo-Rent-a-Car; and

Eric Matthies '65, who now practices with the firm of Matthies & DeBoisblanc in San Francisco.

1967

Bill Constangy, a retired N.C. Superior Court judge, has been awarded the Order of the Long Leaf Pine, North Carolina's highest civilian award, by Gov. Pat McCrory. He also received the Leaders in Law award from *N.C. Lawyers Weekly* and Elon University. Bill is now an arbitrator, mediator, author, and public speaker in Charlotte. He has written several recent articles including: "Enforceability of Employment Contract Covenants Not to Compete in North Carolina's Changing Business Environment," 15 *Wake Forest J. Bus. & Intell. Prop. L.* 382 (2015); "Medical Practice Competition Restrictions," *N.C. Lawyers Weekly* (April 23, 2015), reprinted in *The Resource of the N.C. Association of Defense Attorneys*; and "Problems with N.C.'s 'Blue Pencil Rule,'" *N.C. Lawyers Weekly* (March 10, 2015).

1968

Gordon Rather, above at right, received the Lifetime Achievement Award of the American Board of Trial Advocates (ABOTA) at its national board of directors meeting in San Francisco on May 2. A partner in the Little Rock office of Wright Lindsey & Jenkins, Gordon has served as president of ABOTA's Arkansas chapter, as well as its national president in 1996. He is the only person to receive the Lifetime Achievement Award from both National ABOTA and the ABOTA Foundation.

1969

Alan Goldsberry retired on Feb. 8, after more than 28 years as a judge on the Common Pleas Court in Athens County, Ohio. He was elected five times in his county, always unopposed. He previously had a private law practice and served on the Athens City School Board.

1971

Randolph May testified on Capitol Hill on May 15 before the Communications and Technology subcommittee of the House Energy and Commerce Committee in its hearing titled "FCC Reauthorization: Improving Commission Transparency." Randy is president of The Free State Foundation and former associate general counsel at the FCC. His new book is *The Constitutional Foundations of Intellectual Property: A Natural Rights Perspective* (Carolina Academic Press, 2015, with Seth L. Cooper).

Steven Naclerio, of counsel at Richman Greer in Miami, co-authored "7 Corporate Trends in Law and Politics" which appeared in the March 2 issue of *Corporate Counsel.*

1973

George Biddlecome retired on Dec. 31 after three six-year terms presiding over Elkhart (Ind.) Superior Court 3, which handles most of the county's cases involving child victims and some of the major drug cases, criminal confine-

ment, and kidnapping cases. He was elected to the bench in 1996 after working in private practice for 23 years, serving as a deputy prosecutor for 20 of those years. He continues as a part-time senior judge and private mediator.

1974

Candace Carroll has been named one of the "Women Who Impact San Diego" by *San Diego Metro* magazine. Candy is an appellate practitioner and of counsel with Sullivan Hill Lewin Rez & Engel. She is also a director of the San Diego Opera. BOV

Curtis Collier, a senior U.S. district judge for the Eastern District of Tennessee, received the 2015 American Inns of Court Professionalism Award for the Sixth Circuit on May 14. The award is presented to a lawyer or judge whose life and practice display the highest standards of character, integrity, ethics, civility, and professionalism. BOV

Donna Gregg received the 2015 U.S. Telecommunications Training Institute Chairman's Award for outstanding service as volunteer professor and lead instructor of "The Rule of Law and Best Practices in Telecomm Regulation" course, which is designed to empower telecommunications professionals and regulators from developing nations who are working to strengthen the rule of law in their countries. Donna is an adjunct senior fellow at The Free State Foundation. BOV

1975

Allyson K. Duncan, a judge of the United States Court of Appeals for the Fourth Circuit, began a two-year term as president of the Federal Judges Association (FJA) on April 15. She has been a member of the FJA board of directors and executive committee since 2011. On Oct. 1, she also became chair of the Committee on International Judicial Relations of the U.S. Judicial Conference, by appointment of Chief Justice John Roberts. BOV

Ash Pipkin received the 2015 Hunt-Morgridge Award from the Food Bank of Central and Eastern North Carolina, a Feeding America affiliate based in Raleigh that serves 34 counties. The award, given annually, "recognizes extraordinary leadership and dedication to hunger relief efforts." Ash served on the Food Bank's board from 1994 to 2010 and as board chair in 1997-1998.

1978

Michael Dockterman has joined Steptoe & Johnson as a partner in the Chicago office, where his primary focus is commercial litigation and white-collar criminal defense. Michael also teaches a section of Trial Practice at Duke Law each spring. BOV

Rod Smolla became dean of Widener University Delaware Law School on July 1. Rod served as president of Furman University from 2010 to 2013, and has also served as dean at Washington & Lee Law School and the University of Richmond Law School.

This section reflects notifications received by June 30, 2015.
BOV denotes membership on the Law School's Board of Visitors.

1980

Dan Bowling, a Duke Law senior lecturing fellow, received the Duke Bar Association's 2015 Distinguished Teacher Award in April. At the Law School, Dan teaches labor and employment law and a course on lawyers and personal well-being, and leads seminars exploring the connection between happiness, legal professionalism, and work satisfaction. He is chief executive officer of Positive Workplace Solutions, LLC, which specializes in designing human performance programs and strategies for senior executives, and a practicing labor and employment lawyer.

Shirley Fulton received the 2014 Chief Justice's Professionalism Award from N.C. Supreme Court Chief Justice Mark Martin on Jan. 21. Now retired from the bench, Shirley served more than 20 years in the Mecklenburg County Courthouse as a senior resident superior court judge, resident superior court judge, district court judge, and assistant district attorney. She led the courts in developing a system-wide strategic plan, successfully campaigned for bonds to build the current courthouse, and developed programs to assist with the needs of non-English speaking court participants.

John (Jack) Hickey gave a presentation entitled "Availability of Punitive Damages in Unseaworthiness Injury, Death, and Zone of Danger Cases" at a St. Thomas University School of Law symposium on Punitive Damages in the Maritime Law in April. The symposium was sponsored by The Florida Bar Admiralty Law Committee, St. Thomas University School of Law, and the ABA Torts and Insurance Practice Section Maritime Law Committee.

Andromeda Monroe has joined Greenberg Traurig in Ft. Lauderdale as a project attorney in its insurance regulatory and transactions practice group. She previously was the owner/principal of her own law firm, Monroe Law, P.L.

Claire Moritz retired in January from her position as vice president for legal services at WakeMed in Raleigh, after nearly 30 years of service as its only in-house general counsel. In April, Claire was the 10th recipient of the Distinguished Service Award presented by the Health Law Section of the North Carolina Bar Association. Former section chair, **Christy Gudaitis '86**, presented the award at the section's annual meeting.

1981

John Yates has joined the board of directors of The Florida Venture Forum, a statewide support organization for venture capitalists and entrepreneurs. John is the chair of the technology practice at Morris, Manning & Martin in Atlanta. BOV

1984

Michael Kaelin, a principal at Cummings & Lockwood in Stamford, Conn., received a Community Service Award from Connecticut Legal Services, Inc., at its October 2014 annual meeting for

1983

Carlos Pena '83 made his Duke affinity clear at Mount Everest base camp last October and atop Mount Kilimanjaro in February, where he is pictured above at right with his brother-in-law, Tim Mohin, a 1982 Duke Forestry graduate. "There is life after law," says Carlos, who retired as general counsel of Pepperidge Farm in the fall of 2013.

his fundraising efforts on its behalf. Mike is a member of the CLS board of directors and on the board of selectmen of the Town of Wilton.

1985

William Horton, a partner with Jones Walker, has been named head of the firm's Birmingham, Ala., office. In May, he was the featured speaker at the ABA's 25th Annual National Institute on Health Care Fraud Conference in Miami, speaking on "The Foundations of Health Law."

Michael Kalish was named deputy general counsel of the Metropolitan Transportation Authority in New York City in November 2014. He previously was a member of the labor and employment section of Epstein Becker & Green.

1986

Suzanne Bryant and Sarah Goodfriend were granted Texas' first same-sex marriage license on Feb. 19. Suzanne has a private law practice in Austin, specializing in assisting second-parent adoptions for gay and lesbian couples.

Skip Finkbohner, a partner at Cunningham Bounds in Mobile, Ala., has become a fellow in the American College of Trial Lawyers, and was inducted into the International Academy of Trial Lawyers.

Liz Gustafson, Duke Law School's associate dean of academic affairs, received a Duke University 2014 Meritorious Service Award in Executive Leadership for her contributions to the Law School and the University.

James Smith, who stepped down as chief administrative patent judge at the United States Patent and Trademark Office on July 30, was honored by the New York Intellectual Property Law Association with its Outstanding Public Service Award at the organization's 93rd Annual Dinner in Honor of the Federal Judiciary, held March 27 in New York City. James also received the 2015 Champion of Intellectual Property (ChIP) Award from the Intellectual Property Law Section of the Washington, D.C. Bar in May. BOV (Read more, page 24.)

1987

Suk-ho Bang has been appointed president of the English-language network Arirang TV, in South Korea. From 2008 through 2011, he served as president of the Korea Information Society Development Institute. He has taught law at Hongik University since 1993.

Have news to share?

» Drop us a line at **law.duke.edu/alumni**

Jonathan Shapiro has joined Littler Mendelson as a shareholder in the firm's new Portland, Maine, office. He specializes in employment, labor, and employee benefits law and litigation.

1988

Theresa Newman, clinical professor at Duke Law School, gave a Ted-X talk at Elon University on March 24 in which she discussed the need to remove innocence cases from the adversarial process. Theresa is co-director of the Duke Law Wrongful Convictions Clinic, associate director of the Center for Criminal Justice and Professional Responsibility, and faculty adviser to the student-led Innocence Project.

Michael Scharf, the Joseph C. Hostetler - BakerHostetler Professor of Law at Case Western Reserve University School of Law, was appointed dean in August, after serving as interim dean since 2013. He continues to direct the Frederick K. Cox International Law Center. Michael is co-editor of *Prosecuting Maritime Piracy* (Cambridge University Press, 2015), which focuses on the unique issues arising in the course of domestic piracy prosecutions, from the pursuit and apprehension of pirates to their trial and imprisonment.

1989

Michael Ross has been promoted to full professor of history at the University of Maryland at College Park. His book, *The Great New Orleans Kidnapping Case: Race, Law, and Justice* (Oxford University Press, 2014) won the 2014 Kemper and Leila Williams Prize and the 2014 New Orleans Public Library Foundation Award for Non-Fiction. On March 11, Michael delivered the Supreme Court Historical Society's Leon Silverman Lecture at the U.S. Supreme Court where he was introduced by Associate Justice Anthony Kennedy. The talk, entitled "The Supreme Court, Reconstruction, and the Meaning of the Civil War," was broadcast on C-SPAN.

1990

Brad Furber has been named COO of the Michael Crouch Innovation Centre at the University of New South Wales, Australia. Brad previously was managing director of Aery Advisors.

Dana Garcetti Boldt has been appointed deputy chief attorney at the Office of the Independent Monitor, which provides civilian oversight of the Los Angeles County Department of Probation. Dana is also owner of Dana Boldt Acupuncture in Los Angeles.

1991

Sue Heilbronner has co-founded and serves as CEO of MergeLane, a mentorship-driven investment program with a focus on promoting women-run start-ups. Headquartered in Boulder, Colo., MergeLane aims to bring more women into the start-up community and achieve investor returns through the acceleration of high-growth, gender-diverse companies.

1992

Thomas Telfer has published *Ruin and Redemption: The Struggle for a Canadian Bankruptcy Law, 1867–1919* (University of Toronto Press, Osgoode Society for Canadian Legal History, 2014). Thomas is a professor at the Western University Faculty of Law in London, Ont.

Geovette Washington, former general counsel and senior policy advisor in the Office of Management and Budget (OMB), became senior vice chancellor and chief legal officer at the University of Pittsburgh on July 1. In this capacity, she also serves as an officer of the university.

Don Willett, a justice on the Texas Supreme Court, has been named by the Texas State House of Representatives as the official "Tweeter Laureate of #Texas." In its ceremonial recognition, the Texas House called Don a "lively and engaging presence on Twitter," with over 15,000 followers. Don is also pursuing his Masters in Judicial Studies from the Law School and is scheduled to graduate in May 2016.

1993

Adam Cohen has joined the Berkeley Research Group in New York as a managing director. He obtained his Certified Information Systems Security Professional certification in 2014 and teaches classes as an adjunct professor at Fordham Law School. Adam previously was a principal in forensics technologies and discovery services at Ernst & Young.

Sara Emley has joined the staff of Duke Law School as director of judicial clerkship programs. Sara previously was partner and of counsel at Buckley Sander in Washington, D.C.

1994

Chuck Ghoorah and his wife Karen welcomed their second son, Hudson, born Dec. 8, 2014.

Kevin Lally has been selected as the chief of the Organized Crime and Drug Enforcement Section of the Criminal Division of the U.S. Attorney's Office for the Central District of California, which targets international narcotics cartels. Previously a deputy chief in the Violent and Organized Crime Section, Kevin has served as the Central District's Organized Crime and International Organized Crime coordinator, and regularly teaches RICO-based classes at the National Advocacy Center.

1995

Jean Billyou has been promoted to vice president and counsel, corporate division, at Pacific Life Insurance Company, located in Newport Beach, Calif. Jean joined Pacific Life in 2008 as an assistant vice president and investment counsel.

Ted Edwards has joined The Banks Law Firm, headquartered in Research Triangle Park, N.C., as a principal and chair of the firm's litigation section. Ted was previously a partner at the Raleigh office of Smith Moore Leatherwood.

1996

John Carter received a master of theology (ThM) degree in May from Boston College, and has started its PhD program in theological ethics. In 2010, John received a master of divinity (MDiv) degree from Wake Forest University was ordained as a Baptist minister.

Pamela Polacek, a member of McNees Wallace & Nurick in Harrisburg, Pa., has been named president of the Dauphin County Bar Association for 2015. Pamela practices in the energy, communications, and utility law practice group.

1997

Diana Allen, vice president and general counsel of ChannelAdvisor, has been recognized by the *Triangle Business Journal* as a 2015 Women in Business award winner. The Women in Business Awards

Kudos

The following alumni have been recognized by their peers for excellence in their respective specialty areas as listed in such publications as *Best Lawyers in America*, *Super Lawyers*, *Chambers USA*, *Law 360*, *BTI Client Service All Stars*, and *Thompson Reuters*. See details at law.duke.edu/alumni/news/classnotes/. This list reflects notifications received by June 30, 2015, and includes such designations as "Rising Stars."

James Fox '71
Laurence Tucker '72
Fred W. Fulton '74
John Keller '75
John (Jack) Hickey '80
Irene Keyse-Walker '81
Sharon Fountain '82
Matt Firestone '83
Toshio Nakao '83
Jeffrey Schloemer '83
Michael Kaelin '84
Terrill Harris '90
Donald Nielsen '90
Mark Claypool '91
David Cox '93
Robert Marcus '93
Christopher Vaughn '94
Cynthia Johnson Walden '95
Randall Lehner '96
Dustin Rawlin '00
Nicole Crawford '03
Patrick Wooten '08

recognize women in the Research Triangle who are dynamic and outstanding leaders with significant accomplishments in business and community service.

Dayatra Matthews was elected executive vice president of the N.C. Association of Defense Attorneys at the group's annual meeting in June. Dayatra is senior vice president of legal and compliance for the Local Government Federal Credit Union in Raleigh.

Erik Rickard has joined the Columbus, Ohio, office of Barnes & Thornburg as a partner and member of the firm's real estate department. He previously was a partner at Squire Patton Boggs.

1998

Brian Castro is the national ombudsman and assistant administrator for regulatory enforcement fairness at the U.S. Small Business Administration. This program advocates for small businesses at the federal level.

Jill Steinberg is national coordinator for child exploitation prevention and interdiction in the Office of the Deputy Attorney General, U.S. Department of Justice. She testified in March before the House Committee on the Judiciary, Subcommittee on Crime, Terrorism, Homeland Security, and Investigations on restitution for victims of child exploitation offenses.

1999

Lori Andrus, a partner in Andrus Anderson in San Francisco, was profiled in the *National Law Journal* in May as one of its 75 Outstanding Women Lawyers. Lori specializes in mass torts and personal injury litigation, and is one of the organizers of Women En Mass, a networking and advocacy group for female mass tort lawyers.

Gabriel Feldman received a distinguished chair award at Tulane University Law School in March. He is now the Paul and Abram B. Barron Associate Professor of Law. A leading expert in sports law, Gabe also directs the Sports Law Program and serves as associate provost for NCAA compliance at Tulane.

Kathleen Gutman, senior affiliated researcher at the Institute for European Law of the University of Leuven, has authored *The Constitutional Foundations of European Contract Law, A Comparative Analysis* (Oxford University Press, 2014). The book provides a detailed examination of the EU's competence in the field of contract law and an extensive comparative study of the contract law framework in the U.S.

David Harrison was elected partner of Mayer Brown on Jan. 1. He heads the firm's corporate team in Ho Chi Minh City, Vietnam.

Alyssa Rebensdorf has joined the Minneapolis office of Faegre Baker Daniels as counsel in the food litigation and regulatory practice and as a member of the national food and agriculture industry team. She previously practiced in Minneapolis with Blackwell Burke.

2001

Andrew Bender and his wife Julia welcomed daughter Ellery Winslow Bender on Dec. 26, 2014. She joins big sister Isla. Andrew works at GSC Financial in New York City.

Amy June has joined Hartline, Dacus, Barger, Dreyer in Dallas as of counsel. Amy previously practiced in California.

Joshua Malkin, an executive director of Morgan Stanley Wealth Management, was named one of the top 40 financial advisors under age 40 in the U.S. by *On Wall Street* magazine for 2015. He runs The Malkin Group of Morgan Stanley in New York, and is a member of the Chairman's Club, awarded to the firm's top financial advisors.

Gideon Moore and his wife, Anne, welcomed a daughter, Happy, who they adopted in the fall of 2014 in Zhuhai, China.

2002

Jennifer Evans has joined American Airlines as senior attorney, employment law. She previously practiced at O'Melveny & Myers.

Brendon Fowler has joined Perkins Coie as senior counsel in the firm's communications practice in its Washington, D.C., office. Brendon previously was a partner at K&L Gates.

Bob Hyde has been promoted to assistant chief counsel in the Phoenix City Attorney's Office, where he leads a team of five attorneys in finance and development matters.

Eli Mazur has been promoted to partner in the Vietnam-based law firm, YKVN, where he focuses his practice on the pharmaceutical industry. Eli, who has lived in Hanoi since 2004, joined YKVN in 2010.

2003

Allison (Beard) Campbell and her husband, Mark, welcomed a son, Mason Edward Campbell, on Oct. 21, 2014. He joins big sister Ellie. Allison is a shareholder in the real estate group of the Tampa, Fla., office of Hill Ward Henderson.

Gillian Rattray Carcia has been promoted to assistant general counsel at Harvard Pilgrim Health Care in Wellesley, Mass.

Edward Moss has been admitted to partnership in the New York office of O'Melveny & Myers, where he focuses his practice on securities litigation.

Lew Schlossberg, an associate at Blank Rome in Philadelphia, cofounded Wall Street Magnate, a free fantasy trading platform with over 50,000 members. It is used by university and high school investment clubs.

Amy (Ligler) Schoenhard and her husband, Paul, welcomed a daughter, Emma Rose, on March 21, 2015. She joins siblings Elizabeth, Aidan, and Austin. Amy is of counsel at Arent Fox in Washington, D.C.

2004

James Bowers has joined the staff of Harvard Law School as assistant director of admissions and financial aid for the Graduate Program. James previously was dean of admissions for Shimer College in Chicago.

Gray Chynoweth has been named COO and executive vice president at SilverTech, a digital lifecycle agency, in Manchester, N.H. He previously was COO at Dyn (Dynamic Network Services, Inc.). Gray and his wife, Tara, welcomed a son, Lincoln Rodney, on Dec. 5, 2014.

Tim Kuhner has authored *Capitalism v. Democracy: Money in Politics and the Free Market Constitution* (Stanford University Press, 2014). Tim is associate professor of law at Georgia State University.

Lance Oliver has been named partner in the Mt. Pleasant, S.C., office of Motley Rice, where he focuses his practice on class actions, mass torts, and other complex litigation.

Alyssa Rower and her husband, Dan Fay, welcomed a daughter, Emily Rose Fay, on March 22, 2015. She joins big brother, Oliver. Alyssa practices matrimonial law at the New York firm of Aronson Mayefsky & Sloan.

2005

Gretchen Bellamy, assistant general counsel, legal administration and external relations for Wal-Mart, Inc., is a co-editor of *Corporate Responsibility for Human Rights Impacts: New Expectations and Paradigms* (American Bar Association, 2014). In January, Gretchen shared the Wal-Mart Stores, Inc. Dr. Martin Luther King, Jr. Visionary Award on behalf of the Wal-Mart Legal Department, which recognizes those who have made significant and tangible contributions in the areas of diversity and inclusion, justice, and human rights. In April, she was named Outstanding International Corporate Counsel 2015 by the ABA Section on International Law.

Britt Biles and her husband, Lacey Biles, welcomed a son, Alexander Kelly Hough Biles, on Feb. 1, 2015. He joins big brother, Talbot. Britt is assistant chief litigation counsel at the Securities & Exchange Commission.

Reed Clay joined the administration of Texas Gov. Greg Abbott in January as senior adviser. He previously was senior counsel to the Texas attorney general, and a Texas assistant solicitor general.

Fang Liu has joined Mei & Mark's Washington, D.C., office as a partner, where she leads the firm's business law practice. She focuses her practice in the areas of corporate and securities law, with a particular emphasis on China-related matters. She previously was senior counsel at Loeb & Loeb in Washington.

Samantha Lunn has joined the financial services industry team as senior counsel in Husch Blackwell's Chattanooga, Tenn., office. She previously was an advisor and in-house counsel for a Chattanooga-based industrial manufacturing company.

Julie Parker and her husband, Cleve, welcomed a daughter, Olivia Rose, on Dec. 9, 2014. Olivia joins big brother Grayson. Julie is senior vice president at Highbridge Capital Management in New York City.

2006

Benjamin Ahlstrom has joined the U.S. Patent and Trademark Office as associate counsel. He was previously assistant attorney general for the state of New York.

Casey Dwyer has been promoted to partner in the Washington, D.C., office of Finnegan Henderson Farabow Garrett & Dunner, where her practice focuses on patent litigation and arbitration, primarily in the chemical, pharmaceutical, and medical device areas.

John Jo has been elected to partnership in the Raleigh office of Smith Anderson, where he focuses on business-related litigation, representing clients across a variety of industries in matters such as contract disputes, commercial torts, insurance coverage and shareholder disputes.

Ian Millhiser has published *Injustices: The Supreme Court's History of Comforting the Comfortable and Afflicting the Afflicted* (Nation Books, 2015). Ian, a senior constitutional policy analyst for the Center for American Progress in Washington, D.C., spoke to Duke Law students about his book on Oct. 22 at an event sponsored by the Program in Public Law.

Vann Pearce has been promoted to partner in the Washington, D.C., office of Orrick, Herrington & Sutcliffe. Vann represents clients in high-stakes patent infringement litigation, and counsels clients on other intellectual property matters.

Amy Yeung, assistant general counsel at ZeniMax Media in Bethesda, Md., has been named a 2015 "Top 10 30-Something" by the Association of Corporate Counsel. The award program recognizes the outstanding achievements of in-house counsel between the ages of 30 and 39.

2007

Meredith Tanchum Altieri and her husband, Dan, welcomed a son, Davis Brett Altieri, on March 17, 2015. They live in New York City.

Vinny Asaro (LLMLE '12) has joined the real estate department at Paul Weiss Rifkind Wharton & Garrison in New York. He previously was CEO at H.L. James LLC, a company he founded, and was a director at Rock Creek Capital.

Maria Reff Coor has been elected to partnership in the Washington, D.C., office of BakerHostetler. She is a member of the litigation group and focuses her practice on environmental law, representing clients in litigation and administrative law matters.

Shardul Desai was a member of the team honored by the Criminal Division of the U.S. Department of Justice on Dec. 10, 2014 with the Assistant Attorney General's Award for Exceptional Service. The team was recognized for "superior performance in organizing and leading a complicated and groundbreaking take-down operation, combining civil and criminal authorities to dismantle the notorious Gameover Zeus botnet and related Cryptolocker malware." Shardul is an assistant U.S. attorney in the Western District of Pennsylvania.

Lauren Flatow has joined the Charlotte office of Winstead as of counsel in the real estate finance practice group. She previously practiced with Cadwalader in Charlotte.

Jennifer Cisk Hutchens has been named a shareholder in the Charlotte office of Robinson Bradshaw & Hinson, where she focuses her practice on corporate health care matters, representing a wide range of clients including hospitals, medical practices and dialysis providers. She and her husband, John Davis Hutchens, welcomed a son, John Davis Jr., on April 10, 2015.

Brandon Robinson has been promoted to partnership in the Birmingham, Ala., office of Balch & Bingham, where he is a member of the firm's energy section. On March 13, 2015 he and his wife, Brandi, welcomed a daughter, Adeline Grigg Robinson.

2008

Sachin Bansal has joined the New York office of Paul Hastings as a senior associate in the government investigations/white collar group within the litigation department.

Laura (Beach) Dugan and her husband Brendan welcomed a son, Thompson Cavanaugh Dugan, on March 29, 2014. He joins older brother Bobby. They live in Charlotte, N.C.

Vaishali Gopal is now director of customer operations at Pramata Knowledge Solutions Pvt., Ltd, a San Francisco-based technology company. She is based in Bangalore, India.

Eric Lashner has joined Wells Fargo as director of commodities compliance based in Houston. He previously was special counsel at the Commodity Futures Trading Commission in Washington, D.C.

Jennifer Pusateri and **Michael Pusateri** welcomed a daughter, Josephine Anne, on Feb. 17, 2015.

Scott Skinner-Thompson authored "The 'Straight' Faces of Same-Sex Marriage," in *Slate* (April 24, 2015). Scott is an acting assistant professor at NYU School of Law.

Ryan Mellske '09 served as head coach of the Duke Law LLM Moot Court Team, in the 2014-2015 academic year, preparing the team to participate, last March, in the American University Washington College of Law LLM International Commercial Arbitration Moot Court Competition. Ryan is an associate at the international arbitration firm Three Crowns in Washington, D.C. Pictured, L–R: Prasad Hurra '15, Ryan Mellske '09, Viviana Mendez, Mi Cheung Suh '15, Mohammad Al Rasheed '15, and Wai Hei (Marco) Chan '15, who is now pursuing his JD.

Tell us how you're doing!

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Monica Chaplin Starosta married Moises Starosta on Jan. 31, 2015, in Miami Beach.

Aisha Gayle Turner has been named managing director of national development for OneGoal, a Chicago-based, teacher-led college persistence organization, which identifies, trains, and supports teachers to lead underperforming high school students to reach their full potential and graduate from college. Aisha previously was managing director for corporate and foundation relations for Teach for America.

2009

Jonathan Christman has joined the staff of Liberty Counsel in Orlando, Fla., as senior litigation counsel. He previously practiced at Fox Rothschild in Erie, Pa.

Jessica Hartzog and her husband, Chris, welcomed a son, Cooper Michael Hartzog, on July 17, 2014.

Bo Harvey has joined the Los Angeles office of McGuireWoods as an associate. His practice focuses on representing financial market participants in connection with capital market transactions, derivatives, prime brokerage, and financial regulation. Bo previously was assistant general counsel at Och-Ziff Capital Management.

Melvin Hines and the company he started in 2012, Upswing International, Inc., based in Durham, were named a winner of an NC IDEA grant in the fall of 2014. Upswing is an online tutoring and data collection service, aimed at helping colleges and universities across the country retain students. More than 20 schools currently partner with the service.

Sonja Ralston was honored by the Criminal Division of the U.S. Department of Justice on Dec. 10, 2014 with the Assistant Attorney General's Award for Outstanding

David Roche '13 and his wife, Megan, competed, on July 4, as members of the U.S. Long Distance Mountain Running Team at the 2015 WMRA World Long Distance Mountain Running Championships, hosted by the Zermatt Marathon on Switzerland's Matterhorn. They earned their spots on the team after competing in last fall's World Mountain Running Championships in Casette di Massa, Italy. David is a staff attorney in the Ocean Program at the Environmental Law Institute in Palo Alto, Calif.

Contributions by a New Employee, given to an attorney who has been with the Department for fewer than five years. The award recognized Sonja's service with the Division's Appellate Section over the last three years, including work on five merit cases in the Supreme Court and 14 oral arguments in the court of appeals.

2010

Amelia Ashton married Evan Thorn on April 11, 2015 at Duke Chapel. Amelia is an associate in the torts group of Crowell & Moring in Washington, D.C.

Katherine de Vos Devine has been named the first executive director of the Black Mountain College + Arts Center in Asheville, N.C. Katherine is also completing her PhD in art history at Duke.

Waverly Gordon has joined the professional staff of the House Energy and Commerce Committee's Subcommittee on Health. Waverly previously worked as senior policy advisor for Rep. Jan Schakowsky, D-IL.

Lauren Page has joined the trusts and estates team in the Wilmington, N.C., office of Smith Moore Leatherwood. She also was chosen to attend the 2015 North Carolina Bar Association's Leadership Academy.

Adam Pechtel has opened Pechtel Law, in Kennewick, Wash., where he specializes in employment law and family law matters. Before returning to his home state of Washington in 2014, Adam attained the rank of captain in the U.S. Marine Corps in which he served as a judge advocate at Marine Corps Base Hawaii and aboard the USS *Tortuga*.

Jonathan Reich chaired a committee of the N.C. Captive Insurance Association (NCCIA) which has created a code of ethics for its members. This first-in-the-nation code requires all current and future NCCIA members to agree in writing to adhere to its 10 canons for ethical conduct. Jonathan practices in the Winston-Salem office of Womble Carlyle Sandridge & Rice.

Lorcan Shannon opened the Law Offices of Lorcan Shannon, a boutique full-service immigration law practice based in New York City, in February 2015. Lorcan is also of counsel with John Murphy & Associates, a commercial litigation firm.

Christopher Vieira has joined Nossaman LLP's San Francisco office as an associate focusing on complex business litigation and commercial disputes. He previously practiced with Irell & Manella in Newport Beach, Calif.

Keisuke Wada has opened a private law firm, IBS Law Office, in Nagoya, Japan. He previously practiced with Clifford Chance in Tokyo.

2011

Joanna Huang has joined Linklaters as an associate in the Brussels office. She previously was an associate at Hogan Lovells in Washington, D.C.

Matthew Rinegar has joined Schlumberger Ltd. in Houston as legal counsel, corporate. He previously practiced at Latham & Watkins.

Ryan Stoa, a senior scholar at Florida International University School of Law in Miami, has been named an FIU Top Scholar for 2015. Ryan, who joined the faculty in 2011, writes about the law of disasters, international development, energy, and natural resources and is deputy director of the FIU School of the Environment, Arts, and Society's Global Water for Sustainability Program.

2012

Vinny Asaro (JD '07, LLMLE '12) has joined the real estate department at Paul Weiss Rifkind Wharton & Garrison in New York. He previously was CEO at H.L. James LLC, a company he founded, and was a director at Rock Creek Capital.

Justin Becker has joined the international trade and dispute resolution practice in the Washington, D.C., office of Sidley Austin. Prior to joining Sidley, Justin worked for the Department of Commerce in the Office of the Chief Counsel for Trade Enforcement and Compliance.

Christopher Berg completed two judicial clerkships and has joined the Washington, D.C., office of Williams & Connolly as an associate.

David Coleman has joined the Washington, D.C., office of Akin Gump as an associate in the litigation practice, after completing a two-year clerkship with Judge Lynn N. Hughes of the Southern District of Texas.

Alexandra Costanza and **Morgan Whitworth** were married on May 30, 2015 in Carmel, Calif. Alex and Morgan both completed judicial clerkships in Florida in July. They have relocated to San Francisco, where Morgan will join Latham & Watkins, and Alex will practice at Bryan Cave.

Arie Eernisse has joined the Seoul office of Shin & Kim as a foreign attorney in the international dispute resolution practice group. Following graduation, he clerked for Judge Delissa A. Ridgway at the U.S. Court of International Trade.

Upsana Garnaik has been promoted from research associate to assistant professor of law at Jindal Global Law School in New Delhi, India. She is also assistant director of the Centre for Health Law, Ethics and Technology.

Roberto Lewin has joined Urendo Rencoret Orrego & Dorr in Santiago, Chile as a senior associate focusing on labor law. He has been teaching in the labor and employment area since 2013 at the Universidad Andres Bello.

Ashley Powell married John Bradley Nosek on March 14, 2015 at The Citadel in Charleston, S.C. Ashley has opened a solo practice in Greensboro, N.C.

Matthew Tynan has joined Brooks Pierce as an associate in the business litigation practice in the firm's Greensboro, N.C., office. He also advises clients on a diverse range of energy law issues and environmental regulatory matters. Matt previously was an associate at Hogan Lovells in Washington, D.C.

2013

Philip Alito has joined the Permanent Subcommittee on Investigations of the U.S. Senate Committee on Homeland Security and Governmental Affairs as staff counsel. He previously was an associate at Gibson Dunn.

Ethan Blevins has joined the Pacific Legal Foundation, Northwest Center in Bellevue, Wash., as a fellow/public interest attorney.

Elisa Greenwood Fulp has joined Joerns RecoverCare in Charlotte, N.C., as corporate counsel. She previously practiced with The Van Winkle Law Firm.

Seena Ghebleh has joined the IP and technology firm of Weiss Brown in Scottsdale, Ariz.

Emily May has joined the Washington, D.C. office of Arnold & Porter as an associate in the litigation practice group. She previously clerked for Judge Albert Diaz of the U.S. Court of Appeals for the Fourth Circuit.

Theresa Monteleone joined the Raleigh office of Smith Anderson in November 2014, where she focuses on financing transactions and other corporate and commercial matters. She previously was with Mayer Brown.

Joshua Podolnick has joined Davis & Gilbert in New York City as a litigation associate. He was previously an associate at Skadden Arps.

Andy Peluso married Kathryn "Katie" Alberts on Nov. 8, 2014 in Tampa, Fla., where Andy is an associate at Hill Ward Henderson.

Gray Wilson completed his clerkship with Judge **James C. Dever III '87** of the U.S. District Court for the Eastern District of N.C., and has joined the commercial litigation and real estate development practices of the Raleigh office of Smith Anderson.

Melissa York has joined the banking and finance practice at Reinhart Boerner Van Deuren in Milwaukee. She was previously an associate at Godfrey & Kahn.

2014

Jason Lamb has joined the Office of Technology at North Carolina State University in Raleigh as a licensing associate. He has also been admitted to practice patent law before the U.S. Patent and Trademark Office.

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Adventure?
Awards?

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In Memoriam

(Received January 1, 2015 – September 1, 2015)

Class of ’43

Gerald “Jerry” Leo Meyerson
March 9, 2015

Class of ’45

Elwood M. Rich
January 29, 2015

Class of ’47

Earle McGee Rice
August 28, 2015

Class of ’48

Jerry Broadwell Stone
July 10, 2015

Class of ’51

Robert W. Foster
May 17, 2015

Harold M. “Billy” Richman
December 28, 2014

James Franklin Perry
January 7, 2015

Class of ‘52

Duane N. Ivester
January 4, 2015

Edward Norwood Robinson
July 18, 2015

Class of ’55

Robert M. Frisch
March 13, 2015

Class of ’56

John A. Reed Jr.
February 19, 2015

Class of ’57

Louis Thomas Gallo
May 20, 2014

Harvey Ruddy “Red” Robinson
April 25, 2015

Class of ’58

Eugene “Gene” Gartly Partain
March 7, 2015

Class of ’60

Jay Thomas Rouland
March 30, 2015

Class of ’61

Arthur B. “Jim” Parkhurst
February 25, 2015

Class of ’62

Robert Andrew “Andy” Gordon Jr.
February 16, 2015

Class of ’64

Arthur A. Kola
February 15, 2015

Robert “Bob” Earl Shoun
July 22, 2015

Class of ’66

Robert C. Roos Jr.
February 15, 2015

Class of ’68

Kent E. Mast
April 24, 2014

Class of ’70

E. William “Bill” Haffke Jr.
April 17, 2015

Keith K. Hilbig
August 22, 2015

Class of ’72

Richard D. Huff
August 19, 2015

Class of ’74

Jean Ellen Vernet Jr.
July 22, 2015

Class of ’77

Brenda Carol Brisbon Fall
January 18, 2015

Class of ’85

David C. Profilet
April 2, 2015

Class of ’97

Alicia Marti Pommerening
March 26, 2015

Sua Sponte

LLM CANDIDATE Dan Miyagishi trains in long jump daily at Duke's Morris Williams Track and Field Stadium with the goal of competing for Japan at the 2016 Olympics in Rio de Janeiro. Miyagishi, a former legal and loan officer at Japan Bank for International Cooperation, won gold medals in long jumping at the 2010 All Japan University Track and Field Championship and the 2012 Singapore Track and Field Championship. He will compete in June Olympic qualifying tests in Tokyo. Following the trials, he plans to take the New York bar exam.

Through the tremendous generosity of The Duke Endowment, the Law School is pleased to announce **The Duke Law Faculty Endowment Challenge!**

This new $5 million matching gift challenge program has been established to incentivize donor gifts to the Law School to create new named endowed faculty positions, including full professorships, professors of the practice, a director of clinical education position, and clinical professors of law.

The matching funds provided by the Duke Law Faculty Endowment Challenge, allocated on a dollar-to-dollar basis, will assist the Law School in fulfilling one of its primary goals in the *Duke Forward* campaign — establishing new faculty positions.

All of us at Duke Law School extend our heartfelt thanks to our friends at The Duke Endowment for paving the way to success with this important new venture!

» **To make a gift:** Please contact Associate Dean Jeff Coates at **(919) 613-7175** or **coates@law.duke.edu.**

DUKE LAW

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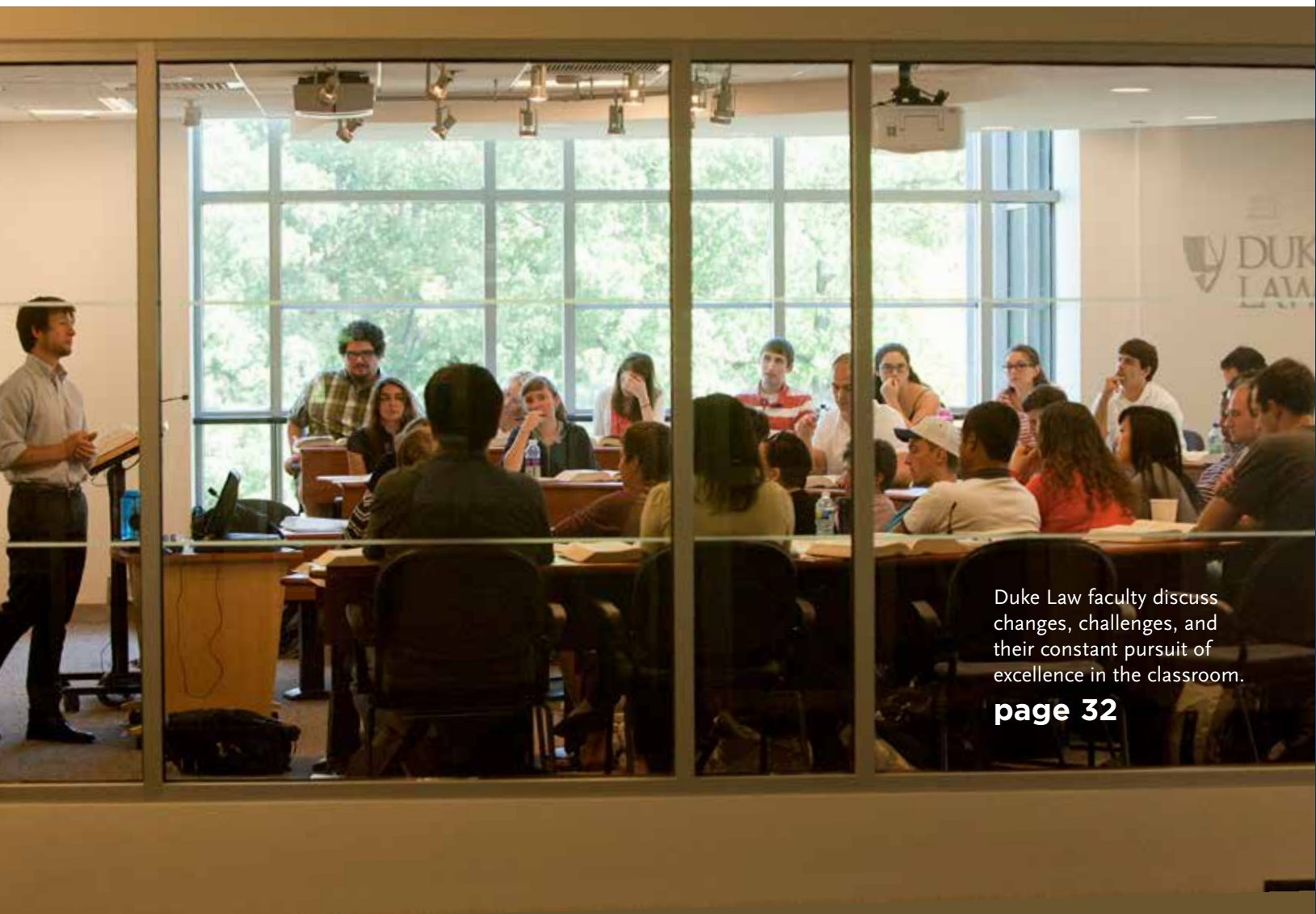

Duke Law faculty discuss changes, challenges, and their constant pursuit of excellence in the classroom.

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