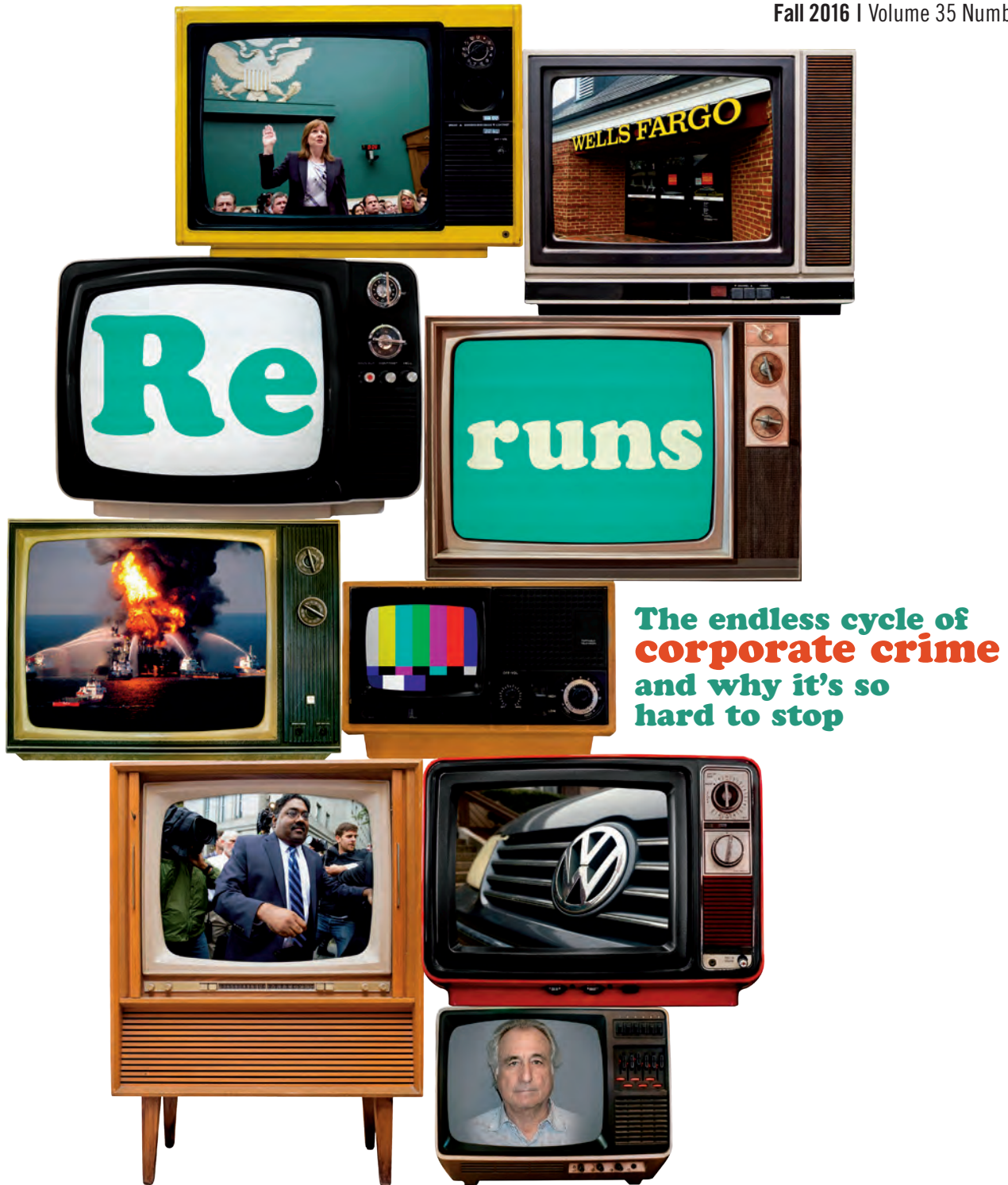


DUKE LAW MAGAZINE

Fall 2016 | Volume 35 Number 2



The endless cycle of
corporate crime
and why it's so
hard to stop

From the Dean



In this season of gratitude, I thank you for what you have done and will do for Duke Law and its faculty, staff, and students.

Dear Friends:

THIS IS THAT TIME OF YEAR when the spiritual and material realms seem to be in competition with one another. Yet they join together in happy collaboration when the topic is giving to Duke Law, where the material is an expression of the spiritual and in turn drives and makes possible a future that is the expression of our dreams and aspirations for this institution.

This is one of the last opportunities that I will have as your dean to address the *Duke Forward* campaign, which will come to an end in June 2017. We began this campaign almost seven years ago, in the midst of faltering financial markets and fears about the stability of our global economy.

And yet, thanks to the unprecedented generosity of donors around the world, the results have been spectacular. In the spring, with more than a year left in the campaign, the university reached its \$3.25 billion fundraising goal. And at press time, alumni and friends had helped the Law School surpass our \$85 million campaign goal by more than 33 percent. In fiscal year 2016 alone, we raised a record \$41.5 million, with nearly \$30 million of that in new campaign commitments.

To those of you who already have given generously, I thank you on behalf of the entire Law School community. Your giving makes possible our continued improvement, our ability to address new areas of practice and scholarship, and our enhanced support of our remarkable faculty and students. To those of you who have not yet made the commitment to *Duke Forward*, now is the time. We need you.

Achieving and maintaining excellence in higher education has always been an expensive undertaking, but it is particularly challenging today. We provide students with a rigorous educational experience. We give them access to a curriculum that prepares them to succeed in the legal profession and beyond. They learn from and are inspired by faculty who are leaders in their scholarly fields and areas of practice and dedicated teachers in the classroom.

We do all of that with an endowment that is considerably smaller than that of our peers, which means we must depend heavily on tuition dollars for our operating budget. That puts a burden on the same students we are trying to lift up, creating for many a debt load that can limit their career choices. This is why philanthropy is so important to Duke Law School, and why its benefit for our future is so significant.

Fortunately, many of you have stepped up to meet this challenge during the *Duke Forward* campaign. Your gifts have opened the doors of the Law School to students who might not otherwise afford it through 67 new scholarship and fellowship funds. Since I arrived at Duke in 2007, our total student aid has nearly tripled, to more than \$14 million annually, surely one of the proudest accomplishments of my deanship.

Campaign gifts have also established 12 new professorships, which will help to attract and retain outstanding scholars and teachers for years to come.

And *Duke Forward* support has invigorated the work of our faculty in advancing understanding of the law and challenges to it here at home and abroad, and provided them the opportunity to share their research in collaborative efforts with our students. Gifts to fund the Center for Judicial Studies, the International Human Rights Clinic, the Environmental Law and Policy Clinic, the Center for Innovation Policy, and many other academic endeavors have enabled our faculty to pursue research, writing, and speaking on important issues facing society and the potential for solutions, legal or otherwise.

These gifts make an enormous difference. At our annual Scholarship and Fellowship Luncheon in October, we heard moving talks of gratitude from graduate Nora Jordan '83 and student Megan Ault '18. Each described a path to Duke Law in which their own efforts and the dreams of their parents could not have succeeded without the critical help of Duke Law donors.

In this season of gratitude, I thank you for what you have done and will do for Duke Law and its faculty, staff, and students. We appreciate it, and we are inspired by it to do as much as we can for our school, profession, and country. Thank you and best wishes for the coming year.

A handwritten signature in dark ink that reads "David F. Levi". The signature is fluid and cursive.

David F. Levi
Dean and Professor of Law

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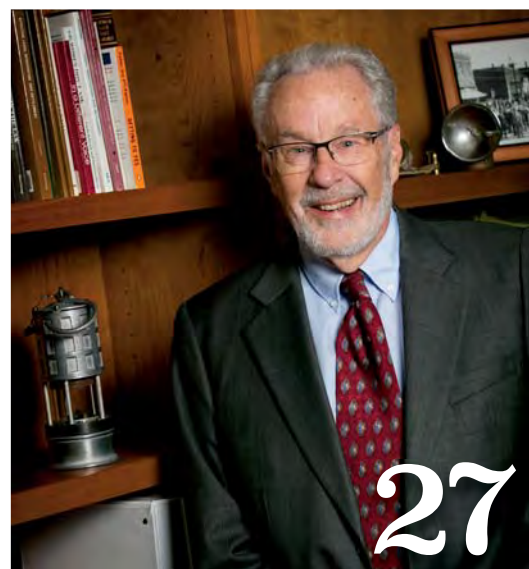
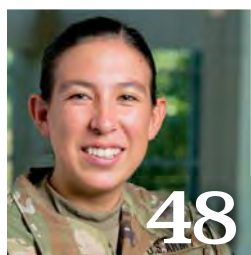


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The endless cycle of
corporate crime
and why it's so
hard to stop



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The Commons

*Ideas, achievements, and events
from around Duke Law School*



Current JD/LLMLE candidates joined students from Duke University's Pratt School of Engineering for a summer 2016 entrepreneurship experience that included a course on the creation of a new venture.

JD/LLM in Law and Entrepreneurship gives business-oriented grads an edge on the job

WHEN DYNA ZEKAOUI '16 began her 2L summer job at Linklaters in London, she quickly realized that she had an edge.

It was not just that her pursuit of an LLM in Law and Entrepreneurship along with her Duke JD gave her early exposure to business law classes and hands-on experience working in a start-up company. She also already had a grasp of terminology and techniques used in valuing and financing companies, which she learned in Advising the Entrepreneurial Client with Clinical Professor Erika Buell, and how capital markets work, thanks to Securities Regulation with James Cox,

the Brainerd Currie Professor of Law. Both are required classes for the dual degree.

"I really think the JD/LLMLE program gave me an amazing head start," said Zekaoui, who graduated in May and re-joined Linklaters in September.

"I was able to show my worth, which is that I have this financial literacy and I'm able to work with small, entrepreneurial clients, which will translate to being able to work with large companies as well."

Zekaoui was a member of the first class of Duke Law students to earn the JD/LLMLE. By the time they graduated in May, all had secured employment at major global law firms.

"We are very proud of our JD/LLMLEs and excited to see them begin their careers," said Dean David F. Levi. "With their solid grounding in the law and specialized training in business and innovation, they are well-prepared to succeed as lawyers and leaders in today's dynamic global economy."

Added Associate Dean Bruce A. Elvin '93, director of Duke Law's Career & Professional Development Center: "This joint degree allows students to demonstrate a clear interest in business and to maximize their exposure to it while in law school. Employers are impressed by this commitment and students gain confidence that they can add value on day one of their careers."

The success of the JD/LLMLE graduates in the job market capped a strong year of hiring for Duke Law graduates overall.

As of March 15, 93 percent of students in Duke Law's Class of 2015 were employed in long-term, full-time positions that required passage of the bar exam or were "JD preferred." Duke ranked fourth among all U.S. law schools on that measure, according to an analysis by *The National Law Journal*. Sixty-seven percent of 2015 graduates were working for law firms with at least 101 attorneys, and 15 percent were serving in judicial clerkships. A total of 67 Duke Law graduates clerked during the 2015-16 term, the equivalent of almost one-third of a typical graduating class.

Duke Law established the JD/LLMLE dual-degree program in 2013 to prepare students to advise, create, and lead entrepreneurial ventures. Students complete requirements for both degrees in three years of study plus a start-up immersion experience during the first half of the summer following their first year. JD/LLMLE students can elect to participate in a practicum with a start-up company, receive preferred placement in Duke Law's Start-Up Ventures Clinic, which counsels early-stage companies, and have access to special networking functions in the thriving Research Triangle Park entrepreneurial community.

Students also have the opportunity to work with the Duke Angel Network, a university-affiliated investment fund operated in partnership with Duke's campus-wide Innovation & Entrepreneurship Initiative. Dual-degree candidates can join student teams providing due diligence and market analysis for investment opportunities under consideration by the network. "It was so interesting to see the investor perspective in transactions," said Kevin Horvitz '16, who is now serving in a clerkship with Judge Gerald B. Tjoflat '57 of the 11th Circuit U.S. Court of Appeals. "When I started the program, I never

dreamed I'd be working in real time on actual deals. It's highly specialized experiences like these that make the JD/LLMLE so compelling."

The focus of the program also appealed to Steven Wright '16 when he was applying to law school. Wright had considered combining a JD and an MBA, which typically takes four years of study, but the JD/LLMLE provided "a good complement" to his undergraduate business training without the additional year of school, he said.

By the time he and his classmates began interviewing after their 1L year for 2L summer associate positions, they had a grounding in the mindset of the entrepreneur through their coursework (which included taking Business Associations in their first year rather than waiting until their second), frequent interactions with successful entrepreneurs, and the hands-on experience gained during their immersions. During his immersion, Wright helped a Durham company developing an online marketplace for day care with legal research and marketing projects.

"I think the biggest takeaway for me from [the immersion] is understanding the balancing of all the risks that go into being an entrepreneur," said Wright, who is now an associate at Paul Hastings in San Diego doing mergers and acquisitions, venture capital, and corporate securities work. "That was a big eye-opener for me, understanding what is the law, what are the risks involved, and how to communicate that to an entrepreneur — to help them make a decision that's calculated."

Trevor Kiviat '16 said he believes his JD/LLMLE experience led to his success in on-campus interviewing. In particular, it gave him the opportunity to connect his legal ambitions with his prior experiences — starting a web consulting company in college and a charter school while participating in Teach for America. He fielded multiple offers in law and consulting, ultimately spending his summer at Davis Polk & Wardwell in New York, where he is now an associate rotating between two of the firm's corporate groups.

"It came up in every single interview, I think because it's different," Kiviat said. "Interviewers see many applicants with stellar, yet all-too-similar, credentials. Here, I had a set of experiences that separated me from the pack."

Employers have begun to take note of the unique benefits of the program, too. Lila Hope '02, a partner at Cooley LLP in Silicon Valley, said that it provides a signal that a student has a plan for her legal education and is taking ownership of her career development early in law school. It also demonstrates that a student has a strong interest in serving entrepreneurial clients.

"That is very appealing to firms like ours, which work a lot with emerging-company clients as compared to other law firms that focus on large institutional clients," Hope said. "So coming in, they just sound like more informed candidates."

Cooley, a Silicon Valley mainstay that has advised Google, Facebook, and eBay, has recently hired two Duke Law JD/LLMLEs for its Palo Alto, Calif., office: Rose McKinley '17, who will join the firm as an associate after graduating, and Alex Lawrence '18, who will spend his 2L summer there.

"To be honest, if the degree had been offered when I was a student, I would have taken it," said Hope. "It's just another one of those things that the Law School has done to evolve with the business environment and the real needs of the legal market and to better prepare the students. I think it's a tremendous asset." ♡

» For more information on the JD/LLM in Law and Entrepreneurship, please visit: law.duke.edu/llmle/jd/.

Visiting Assistant Professor Program supports aspiring law faculty

VISITING ASSISTANT PROFESSOR Benjamin Ewing has spent the fall semester developing the research on culpability and punishment that was central to his PhD thesis in politics into works of legal scholarship and material for the advanced criminal law seminar he will teach in the spring.

In his doctoral dissertation Ewing, who received his PhD from Princeton University in September, examined whether criminals from abusive or socially disadvantaged backgrounds should have a claim to punishment less harsh than their culpability would ordinarily license. For Ewing, who also holds a JD from Yale Law School, a two-year appointment as a visiting assistant professor (VAP) at Duke Law allows him to apply a distinctly legal lens to this issue, to expand his research agenda, and to finesse his teaching skills.

Duke Law's VAP program prepares promising emerging scholars like Ewing for success in the legal academy with two-year faculty appointments, during which they are given research support and feedback and an opportunity to hone their teaching skills. In addition to participating in faculty workshops and conferences, they also are invited to present their work in the Law School's faculty workshop series as they prepare to enter the academic job market in their second year in residence.

Ewing is the 14th scholar that Duke Law has admitted to the VAP program since its launch in 2005. Alumni of the program — including three Law School graduates — have found positions on the law faculties of the University of Virginia, Northwestern University, Fordham University, Tulane University, and Washington University in St. Louis, among others.

Associate Professor Marin Levy, who chairs the Teaching Committee that selects and supports VAPs, said that the faculty's commitment to them is evidenced by their subsequent job-market success.

"It's not a huge program, but word is getting out as our former VAPs go on to do great things," Levy said. "Our faculty recognizes how critical it is to have quality mentorship at the beginning of one's academic career generally, and for going on the teaching market specifically."

Margaret Hu '00, now an assistant professor of law at Washington and Lee University, called the Duke faculty's investment of time and energy in each VAP



Benjamin Ewing



Margaret Hu '00



John Inazu '00



Ann Lipton

"extraordinary." Hu used her VAP residency from 2011 to 2013 to build a research agenda at the intersection of immigration policy, national security, cyber-surveillance, and civil rights, having entered the program after serving for 10 years in the U.S. Department of Justice Civil Rights Division.

"The faculty is committed to ensuring that each candidate is prepared for the intellectual rigor of the hiring process and is able to present his or her research agenda effectively," she said. "Candidates are integrated into the faculty and encouraged to participate in all aspects of intellectual life at Duke Law."

John Inazu '00, the Sally D. Danforth Distinguished Professor of Law & Religion and Professor of Political Science at Washington University School of Law (see page 57), also praised the faculty's mentorship of younger scholars. Inazu, a prolific scholar of criminal law, law and religion, and the First Amendment who recently published his second book, *Confident Pluralism: Surviving and Thriving Through Deep Difference*, became a VAP in 2010 after receiving a PhD in political science from the University of North Carolina and a legal career that included government service, practice, and clerking.

"[Professor] Guy Charles spent countless hours with me, but many other faculty took the time to read drafts of my work, offer feedback, and provide encouragement," he said. Inazu added that he also "benefitted tremendously" from faculty participating in moot interviews and job talks.

Ann Lipton's two-year VAP tenure allowed her to develop scholarship on corporate functioning and the relationships between corporations and investors — areas in which she has extensive practice experience — and to grow as a teacher.

"The VAP program was an ideal mix of teaching responsibility and scholarship," said Lipton, a former Supreme Court clerk who is now the inaugural Michael Fleishman Professor in Corporate Law & Entrepreneurship at Tulane Law School. "Teaching a new class is difficult and challenging, particularly if, as was true in my case, you've never taught before."

The VAP program is one way Duke Law contributes to the pipeline of emerging legal scholars and teachers and to diversity in the legal academy, said Stuart Benjamin, the Douglas B. Maggs Professor of Law and Associate Dean for Research. "Our VAP program is selective, but we welcome applications from all law schools and practice areas, and we encourage Duke Law graduates to apply." ♡

» For more information on the Duke Law VAP program, visit law.duke.edu/vap/.



With EDRM acquisition, Duke Law leads in e-discovery study and training

DUKE LAW'S CENTER FOR JUDICIAL STUDIES has taken over EDRM (Electronic Discovery Reference Model), a well-known organization that develops standards, guidelines, and professional resources for e-discovery. The move positions Duke Law to explore new opportunities for preparing law students to work in an increasingly technology-fueled industry and partnering with law firms, technology vendors, government agencies, and the judiciary to study e-discovery and information governance issues.

EDRM, co-founded in 2005 by Minnesota attorneys George Socha and Tom Gelbmann, has built an extensive network of e-discovery professionals. The EDRM diagram, which illustrates the conceptual framework for the iterative stages of e-discovery, is widely acclaimed and used, and the organization's website, EDRM.net, is a leading source of e-discovery standards, glossaries, guides, data sets, and other resources.

"This agreement sets the stage for an expansion of EDRM's efforts in industry education and standards," said Dean David F. Levi. "E-discovery is a major component of today's litigation practice, and EDRM provides valuable resources to educate not only experienced practitioners, but also law students and new lawyers about practical discovery problems they will encounter. This is also an important step in Duke's continued efforts to bring together the judiciary, legal practitioners, educators, scholars, and government organizations to advance the understanding of the judicial process and improve the complex processes in the administration of justice."

The partnership also gives EDRM an institutional home with the reputation, stability, and creativity needed to ensure the program's continued vitality.

"EDRM's achievements are a direct result of the hard work of many legal and technology practitioners whose efforts and expertise have improved e-discovery and information-governance practices and ultimately the judicial process," said Socha. "This arrangement will provide the growing EDRM community — working groups, sponsors, technology providers, and legal professionals — a connection with a greatly admired and respected organization."

Socha has remained with EDRM following the acquisition. EDRM co-founder Tom Gelbmann will retire after helping transition EDRM programs to Duke Law.

John Rabiej, director of the Center for Judicial Studies, said e-discovery is becoming an important tool for making litigation more just, more efficient, and less expensive. With the acquisition of EDRM, the center will foster education and cooperation among judges, attorneys, and e-discovery providers to encourage deeper understanding of the technology and to facilitate the development of standards and guidelines that can ease adoption. "Historically the center has focused on exploring broad ideas for making the courts and the legal profession more efficient," he said. "EDRM gives us an opportunity to directly tap into, learn from, and share the expertise of those who are developing technologies that are rapidly transforming the legal landscape."

Duke Law already offers several courses that address e-discovery, including a writing course and a Wintersession course. But student interest in e-discovery and law and technology is growing, said Jeff Ward '09, associate clinical professor of law and director of the Start-Up Ventures Clinic. He sees opportunities for students to get involved in both the business operations of EDRM and the substantive legal work conducted by member attorneys and organizations.

"This is an exciting step in strengthening Duke's leadership in law and technology," Ward said. "It creates new opportunities for students to develop highly marketable skills and experience in e-discovery — hands-on opportunities that no other law school can offer right now."

New areas of focus for EDRM member organizations and practitioners include cross-border discovery and predictive coding. Members also participate in annual EDRM conferences and the EDRM webinar series. Other benefits include discounts for Center for Judicial Studies programs, including the Duke Conferences and subscriptions to *Judicature*. ♡

» To join or learn more, visit **EDRM.net** or email **EDRM@law.duke.edu**.



Artist's rendering of the planned Reuse Arts District in central Durham

“In complex matters like this ... there are disorienting moments. But in the process of figuring it out — that’s when so much of the learning happens.”

— Clinical Professor
Andrew Foster

Community Enterprise Clinic handles legal details of Durham shopping center transformation

A FORLORN, LARGELY VACANT shopping center on 10 acres of asphalt in central Durham seems like an unlikely place for innovation. But Ann Woodward, executive director of the nonprofit Scrap Exchange, imagines transforming this site into a creative reuse arts district (the “RAD”). This district, an inventive mix of nonprofits, cooperatives, and for-profit companies, would not only ensure that the Lakewood Shopping Center becomes a profitable asset, but would also be the catalyst for the revitalization of the surrounding neighborhood.

Under the guidance of Clinical Professor Andrew Foster, who directs the Community Enterprise

Clinic, Duke Law students have helped manage this complicated legal project over the past year. Collectively, the clinic’s student-attorneys have taken the lead on corporate planning, due diligence, and structuring and closing the financial transaction through which the Scrap Exchange was able to buy the shopping center. Through all of this, the clinic’s work helped the Scrap Exchange complete the first phase — property acquisition — of what is likely to be a lengthy and complex process.

“Our partnership has been invaluable,” said Woodward. “I am so impressed with [the students’] attention to detail. It would not have happened without them.”



The Community Enterprise Clinic focuses on projects that can benefit low-income communities. A beloved Durham institution for 25 years, the Scrap Exchange promotes creativity and environmental awareness through reuse and upcycling of materials: Test tubes, vintage postcards, books, magazines, fabric, wood, even old negatives, get a second life in classrooms, as art projects, and in myriad other ways.

Over consecutive semesters, Foster has mentored third-year law students Alyse Young '16 and Geoffrey Wright '17 as they took on greater and more challenging responsibilities through their representation of the Scrap Exchange on the Lakewood transformation. "Alyse last spring and now Geoff this fall have been willing to push themselves way beyond their comfort zones," Foster said. "In complex matters like this, particularly where the client is looking for help on business and community concerns, as well as on legal issues, there are disorienting moments. But in the process of figuring it out — that's when so much of the learning happens."



Geoffrey Wright '17



Alyse Young '16

Young played a particularly key role in the success of the first phase of the creation of the RAD. Among other things, she helped structure and negotiate a \$2.5 million six-month bridge loan from a local community development lender. This loan enabled the Scrap Exchange, through its development subsidiary, to secure the financing needed to buy the shopping center. She also managed the tax details and timeline of the project. "It was fascinating," said Young, now an associate at Womble Carlyle in Winston-Salem. "I've been interested in nonprofits for philosophical reasons, but the structuring of the transaction and the tax implications were very interesting. It was a great fit for me."

The project involved multiple deadlines, and missing any of them could have threatened the completion. "We were trying to get \$2.5 million without a lot of resources," Woodward said. "Alyse created a timeline and kept people on task. It took a lot of heavy lifting to make the deal happen. It was one of the most intense work experiences I've had in my 13 years of being here."

"There were moments I didn't know if the deal was going to come together," Young said. "We'd get over a hurdle and then another would arise. I learned so much. It's the best law school experience I had."

Through the fall semester, Wright led the clinic's continuing work in helping to provide the project management needed to keep the next phases of the RAD creation on track. In addition to working with the Scrap Exchange to develop and manage a new timeline for the second phase of the project — renovating and leasing units in the shopping center — he advised Woodward on getting permanent financing for the RAD and on raising equity for the project from socially-motivated investors.

He said interacting with the client was particularly rewarding, as was "the hands-on experience of managing communication, especially translating the legal research into practical materials that they can use to push things forward. Through this I've been able to both learn and contribute."

The RAD currently has three tenants: Makin' Choices, a social enterprise that provides mental health services; El Centro Hispano, a nonprofit that helps the Latino community; and the Durham Economic Resource Center, a nonprofit workforce development program. When completed, it will include a shipping container mall, a black-box theater, an architectural salvage, artists' studios, affordable housing, an outdoor stage, a playground, and a skateboard park. ♡ — Lisa Sorg



Students in the Environmental Law and Policy Clinic during a 2012 site visit to the Northeast Cape Fear River. L-R: Taylor Poole MEM '13, Michael Elion '12, Heidi Cheuk LLM '12, Jennifer Nearhood '13, Clinical Professor Michelle Nowlin, PenderWatch & Conservancy President Allie Sheffield.

Environmental Law and Policy Clinic wraps eight-year opposition to cement plant

OVER AN EIGHT-YEAR PERIOD, dozens of students in the Environmental Law and Policy Clinic honed skills relating to regulatory law and environmental advocacy by working on a client's bid to stop the construction of a cement plant in eastern North Carolina.

The case wrapped up in March, when Titan America announced that it was scrapping plans to build the plant. The surprise announcement represented a victory to many residents of the coastal community of Castle Hayne and the clinic's client, PenderWatch & Conservancy, as well as its partners in a coalition of opponents to the plant.

"Titan stated the decision was the result of changing economic conditions and that it had nothing to do with the opposition," said Clinical Professor and Supervising Attorney Michelle Nowlin JD/MA '92, who heard the news as she was helping students prepare for an April court hearing on issues of standing

in the case. "The fact that they mentioned us at all suggested that perhaps opposition actually had a lot to do with it."

Nowlin has supervised students' work on the Titan case since 2008. Almost 50 students invested more than 2,000 hours in the matter, negotiating an intricate set of state and federal regulations and issues ranging from air and water quality to environmental justice. David Schwartz '15 said working on the case helped him translate theory into practical skills.

"The Titan case was my first practice-based exposure to Clean Water Act issues, and it was invaluable towards helping me solidify what I had learned about the statute in my classroom-based environmental law courses," said Schwartz, who is now a post-graduate Stanback Fellow with the clinic. "Working on these issues forced me to become skilled at understanding complex regulatory and permitting regimes in relatively short amounts of time."

The core issues in the case were compliance with the National Environmental Policy Act and its state analogue, compliance with the Federal Clean Air Act and the Clean Water Act, and environmental justice concerns, Nowlin said.

“We worked with the Southern Environmental Law Center to challenge non-compliance with the State Environmental Policy Act, and we won that case,” she said. “The court said that the company needed to conduct a comprehensive review of environmental impacts before it could proceed with any other aspect of permitting and construction. Instead of doing that, the company successfully lobbied to change the law to eliminate the triggering event of receiving economic incentives from public funds.”

At that point, clinic students shifted their focus to the air pollution control permit and impacts to public and ecological health. They participated in two rounds of public comments on the air pollution control permit, explored special protections available under the Endangered Species Act and Clean Water Act, and worked to educate the Environmental Protection Agency (EPA) about the environmental justice concerns in the community, framing those concerns within the Obama administration’s environmental justice guidelines. Doing so helped EPA regulators understand the pollution and social burdens the community faced, said Nowlin.

“When they toured the area they were able to see what a healthy ecosystem means to the community in terms of actual sustenance, as well as recreation and natural beauty,” she said.

“Residents of this community don’t have much in terms of basic amenities like paved roads or sidewalks, water and sewer services, or access to healthcare or job opportunities, yet would take the bulk of the air and water pollution from the plant, and possibly have their drinking water affected once the plant started draining around 16 million gallons of water from the local aquifer every day.”

In the last months of the case, students worked with environmental and administrative law professors from North Carolina law schools, including Duke Law’s Christopher Schroeder, the Charles S. Murphy Professor of Law and Public Policy Studies, to write an amicus brief on the history of federal standing requirements under the Clean Air Act and their relationship to delegated state programs. In that brief, filed in advance of the aborted April hearing, the legal scholars argued that the position advocated by Titan and the state permitting agency threatened to upend more than 30 years of established precedent and could undermine North Carolina’s authority to administer the federal Clean Air Act and other delegated programs.

Nowlin said the clinic and coalition partners will continue working to develop a forward-looking, environmentally sound economic development strategy for the Castle Hayne area. She said she is pleased with the range of skill-building opportunities the case afforded her students.

“They experienced how a complex piece of environmental litigation plays out, how coalitions work together, and how important boots on the ground are to community organizing and education and sustaining a community’s interest over a very long and difficult battle,” she said. “They also got to experience the intersection of state and federal agencies, how the permitting process and delegation of authority works, and how that plays out with local officials. I’m proud of the students’ work and of the results they achieved.” 🐾



Clinical Professor Michelle Nowlin JD/MA '92

A learning lab

WORKING OVER EIGHT YEARS on behalf of PenderWatch & Conservancy to oppose the construction of a cement plant in eastern North Carolina has offered students in the Environmental Law and Policy Clinic a range of skill-building opportunities. Over that time, they:

- » wrote technical comments and spoke at public hearings (to state agencies and federal agencies);
- » compiled a comprehensive assessment of wetlands in the Castle Hayne area and the functions those wetlands provide to the overall ecology, including the habitats they provide, their flood storage capacity, and their importance to aquifer recharge;
- » performed detailed examinations under a section of the Clean Water Act to determine what standards a company would have to meet for obtaining permits to ditch, drain, and develop more than 2,000 acres of wetlands, and what the EPA standards were to veto such a permit;
- » studied the presence of likely endangered or threatened species in the area and how they would be affected;
- » mastered the Obama administration’s environmental justice regulations and guidelines, and developed a corresponding set of detailed maps of the ecological and demographic features of the community;
- » met with state and federal agency officials;
- » drafted and filed briefs, petitions, and complaints;
- » advised their client and presented information to the organization’s membership;
- » mooted arguments; and
- » worked with experts to conduct air quality modeling and develop a better understanding of mercury emissions and the interface of air pollution and water quality.

Notable & Quotable

“... European women in ISIS have spoken of how alienation and restrictions on their religious practices, like the burqa ban, actually helped push them into the group. Rather than being genuine security policy, burkini bans that stigmatize all Muslims as terrorists are not only discriminatory, but also grist for the ISIS propaganda mill. ...

“When governments enact policies in the name of protecting women’s rights that actually restrict women’s choices, keep women out of public life, and make it more dangerous when they are in public, it might be time for a rethink on the values such policies purport to uphold.”

— Clinical Professor **Jayne Huckerby**, director of the International Human Rights Clinic, commenting on the bans enacted by more than 20 coastal French towns on the swimsuits favored by some Muslim women that cover the hair, arms, and legs. (*Time*)



“The framers of the Constitution thought that preserving the right to bear arms might help the populace form a militia that could fight a standing army that turned against the people. The problem with the insurrectionist theory is there is always someone who thinks that tyranny is in the present.”

— Professor **Darrell Miller**, explaining one theory of the Second Amendment in the wake of GOP candidate Donald Trump’s insinuation, during an August campaign speech, that gun activists could take up arms against a Clinton administration, or possibly against the judiciary. (Trump later said he was being sarcastic.) (*The Trace*)

“What is glaringly missing is any formal appraisal of the civilian casualties likely to occur if a strike is not conducted. ...

“... [I]n the face of adversaries who as a matter of course inflict the most unthinkable atrocities on civilians, it is time to formally incorporate (by whatever name) a ‘moral hazard’ assessment into our use-of-force policies. And, indeed, we ought to consider holding accountable those who yield to inaction when it results in misery to others.”

— Professor **Charles Dunlap Jr.**, the former deputy judge advocate of the U.S. Air Force, reacting to the Obama administration’s release of a newly declassified memo detailing the U.S. government’s policy on drone strikes that “includes the vastly-more-than-the-law-demands requirement of a ‘near certainty’ that there would be zero civilian deaths in a given strike.” (*War on the Rocks*)

“If Britain and its former EU partners do not reach a deal within 24 months — or unanimously agree to extend negotiations — the UK is out. A divorce that is finalized while the spouses are still squabbling over custody of the children and the division of marital property is messy and painful. The equivalent for a non-negotiated Brexit — the sudden re-imposition of barriers to free movement of capital, goods and labor — is an outcome that even diehard British nationalists should want to avoid.”

— Professor **Laurence Helfer** parsing international law relevant to the UK’s withdrawal from the EU following the “Brexit” vote. (*Opinio Juris*)



“Health care delivery needs to move away from the costly infrastructure of hospitals and toward more sustainable platforms. ... [P]ay physicians and physician-led groups to keep patients away from and out of hospitals, away from costly facilities and tests, and use inpatient services only when other low-cost mechanisms are not effective. Across the broader non-health care economy, this is exactly the business model that is spurring innovation across the United States: consumer-centered technologies are enabling individuals to search for and obtain the services they need while reaping the benefits of competition from multiple organizations. Why not pursue these models and concepts in health care?”

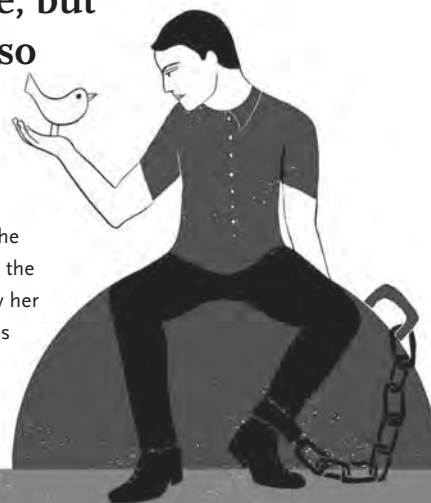
— Professor **Barak Richman** discussing the findings of a Centers for Medicare & Medicaid Innovation Medicare Shared Savings Program study indicating that the Affordable Care Act’s experiment with accountable care organizations has not succeeded. (*Journal of the American Medical Association*)

“What is a firm to do? First, realize that many ‘toxic’ cultures are created by a handful of individuals — usually high performers in key positions — whose obnoxious behavior is ignored by partners as long as the billable hours keep coming. Some claim this behavior is exacerbated because of a negative ‘lawyer personality’ that makes a mastery of relationship skills impossible, but I think it is more of a lack of awareness and training (and lack of personal well-being). Until thrust into supervisory roles, many lawyers have succeeded entirely on individual wits and determination, not interpersonal skills, and don’t have a clue how to manage people — or themselves.”

— Senior Lecturing Fellow **Daniel Bowling ’80** arguing that well-being is a critical component of a lawyer’s professional life and depends on skills and awareness that can be taught (as he does at Duke Law in a course titled Well-being and the Practice of Law). (*Law Practice Today*)

“Now I just see that their transition is so difficult. It’s wonderful to be free, but their loss has been so great, and we can’t restore any of it.”

— Clinical Professor **Theresa Newman ’88**, co-director of the Wrongful Convictions Clinic, on the post-release difficulties faced by her clients and other former inmates who have spent years in prison for crimes they did not commit. (*Greensboro News & Record*)



In the classroom

Flint crisis yields lessons in social justice, law, and policy

WHEN FLINT, MICH., CHANGED the source of its municipal water in 2014, lead from corroded pipes began to contaminate the drinking water in the city, where a majority of residents are African American and an above-average percentage live in poverty. The slow response of local and state officials and ensuing public health crisis created a national controversy that is still being debated.

Recognizing the Flint tragedy as a perfect case study of failings in a range of areas, from human rights and environmental justice to government accountability, Duke Law's clinical faculty designed an innovative new class this fall to help students to learn how lawyers and policymakers can address problems of social justice.

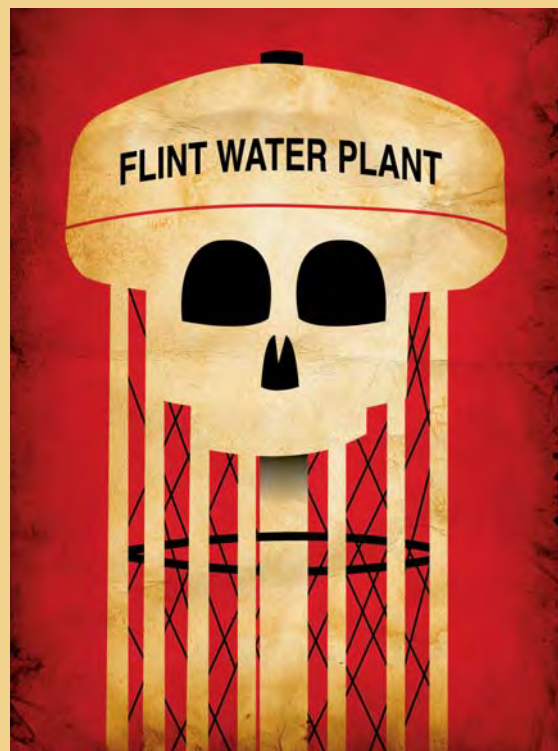
Readings in Social Justice: The Implications of the Water Crisis in Flint, Michigan analyzed the contamination of the city's water supply from a variety of angles, including race, poverty, health care, and the environment. Nine students participated in the ungraded, one-credit course, including two international LLM candidates, while 11 members of the clinical faculty took turns leading the class from a different legal or policy perspective each week.

One of the lessons that resonated most with the class, said Clinical Professor Jane Wettach, was that Flint was not unique in failing its citizens. Rather, the water crisis reflected a range of systemic problems that have disproportionately affected poor and marginalized communities for decades.

"In other law school classes, students don't have as much opportunity to think about the effect of our laws on disenfranchised communities," she said. "There are many Flints — Flint is not an isolated situation — and that was a powerful lesson for the students."

Among the instructors were Wettach and Brenda Berlin of the Children's Law Clinic; Carolyn McAllaster, of the HIV/AIDS Policy Clinic; Allison Rice and Hannah Demeritt '04 of the Health Justice Clinic; Jayne Huckerby and Sarah Adamczyk of the International Human Rights Clinic; Ryke Longest of the Environmental Law and Policy Clinic; Jamie Lau '09 of the Wrongful Convictions Clinic; and Jeff Ward '09 and Darrell Fruth of the Start-Up Ventures Clinic. Danielle Purifoy, a Duke PhD student in Environmental Policy, also co-led a class. The interdisciplinary approach "gave the students an opportunity to compare across lenses, to ask which is likely to have the most impact or how lawyers might combine these different approaches to a problem to make the most impact," Wettach said.

Students in the class said they relished the chance to have an extended discussion about a current controversy from a range of perspectives, which can be difficult to do in broad doctrinal classes. "I had heard about the Flint crisis through the media and I was interested that such a hot-button issue was being taught," said Nate Ingraham '17, whose work prior to law school involved helping low-income communities access government benefits. "It was a 360-degree view, which you don't usually get in a law school class."



During the final class meeting, students proposed policy levers that could be "pulled" to prevent future crises, such as creating a citizen review board to oversee improvement of the water system and providing tax credits or housing vouchers to help residents whose communities have previously suffered from redlining.

The presence of LLM students and the involvement of Huckerby and Adamczyk enabled the class to consider the crisis from an international human rights perspective. "I come from a country that has suffered for decades from occupation and the lack of application of human rights, which made me curious how other countries would deal with their national matters," said Sima Aljallad LLM '17, who is from Palestine. "I wanted to know more about the mechanisms to deal with such dilemmas."

The Flint crisis was especially relevant amid current debates about racial and economic disparities in other areas of law and policy, said Glenda Dieuville '17.

"I really liked when the class moved beyond just the water crisis and we started talking about different structural and systemic issues in America," she said. "I just think a lot of these issues aren't really isolated. They aren't completely new things."

Wettach said she expected the clinical faculty to offer a class looking at a single social justice issue from multiple perspectives again in future semesters. ♡

DELIVERING THE BRAINERD CURRIE MEMORIAL LECTURE, Judge Guido Calabresi of the United States Court of Appeals for the Second Circuit argued that the ideal of equality existed in the U.S. Constitution long before it was amended to ban slavery, define citizenship, and ensure voting rights for emancipated slaves. Calabresi, the former dean of Yale Law School, where he is now Sterling Professor Emeritus and Professorial Lecturer in Law, said that the First Amendment's religious liberty clauses were the most notable expression of the framers' vision of equality and a much different one than the Civil War Amendments would offer 75 years later.

"You've got to remember that more than slavery, more than anything else, what divided the colonies at the time they united was religious differences. To the Anglicans in Virginia, the Calvinism of New England was an abomination, and to the Calvinists in New England, the 'popery' of Virginia — not to mention Maryland, and those crazy Quakers in Pennsylvania, and who's to say what Rhode Island was — was extraordinarily troublesome. They had killed each other less than 100 years before on account of that. And yet ... at the federal level, they declared the highest level of equality: There are no 'we' religions, there are no 'they' religions. All religions are equal. There will be no affirmative action for any religion over any another because all religions are equally 'we' religions. And every religion has a right to flaunt — that's the free exercise clause. And what is more, Congress keep out. Congress shall make no law. The government stays out, people can be themselves, and are all equal." ♫



LEADING QUESTIONS

Intriguing ideas from Duke Law scholars

What special benefits do top-tier, "Big Law" firms offer clients in an age of increasingly sophisticated in-house counsel and a contracting overall market for legal services?



"Notwithstanding sluggish demand for law-firm services in aggregate, elite law firms in the United States continue to thrive and to dominate the market for the largest corporate transactions.

Existing accounts of the value provided by transactional lawyers do not fully explain this state-of-play, because they omit a crucial function performed by repeat-player law firms. Such firms aggregate private market information about deal terms and use this information to identify value-increasing terms for their clients and to assist with term pricing. Traditional accounts of financial contracting have failed to recognize the rapidly expanding set of transaction terms and the difficulty of pricing them, due to common misconceptions about the actual practice of transactional negotiations. To the extent that elite law firms can improve their clients' outcomes in major transactions by using market knowledge, they should remain largely immune from competition from in-house counsel, the commoditization of legal work, and client pressure to decrease fees." ♫

Source: "Law Firm Selection and the Value of Transactional Lawyering," by Associate Professor Elisabeth de Fontenay, 41 *Journal of Corporation Law* 393-430 (2015)

Hooding 2016



Hooding speaker
Charlie Rose '68, T'64

ALTHOUGH HE HAS NEVER PRACTICED LAW, Charlie Rose '68, T'64 told the Law School's 2016 graduates that his legal training at Duke was key to his success in journalism and broadcasting.

The Peabody Award-winning co-anchor of "CBS This Morning" and host of the long-running "Charlie Rose" show on PBS addressed graduates at their hooding ceremony in Cameron Indoor Stadium on May 14. At Duke Law, Rose said, he learned how to think, how to argue, how to analyze, how to listen, and, "more importantly, how to ask questions after I listen." Questions, he added, can be a metric for success: "They have the power to carry forward your curiosity," leading to innovation and discovery.

Rose spoke to graduates receiving JD, LLM, and SJD hoods after completing a range of degree programs at Duke. Among the 214 members of the JD class, 14 also earned an LLM in international and comparative law, 15 also earned a master's degree from another school at Duke University, and five also earned an LLM in law and entrepreneurship, the first graduates of the unique dual-degree program.

Ten attorneys receiving LLM hoods completed the one-year program in law and entrepreneurship and 95 lawyers from more than 40 countries were hooded after

completing the one-year LLM in American law. Three graduates received the SJD, the highest degree in law, after completing coursework, written and oral qualifying exams, and a dissertation.

Eighteen distinguished state, federal, and international judges received the degree of Master of Law in Judicial Studies after completing two summers of coursework at Duke Law, conducting original research, and completing a scholarly thesis.

Rose, known for his conversational, in-depth interviews, offered graduates a series of life lessons, which he called "Rose's rules." He counseled them to be aware of their strengths and weaknesses and true to their values; to reject limitations on their dreams; to act on opportunities without delay; to be willing to lose themselves in something larger than their ambitions; to build and maintain strong relationships; and to stay "a little crazy," because difference can fuel innovation. He stressed the importance of "grit" to success and of taking occasional, inevitable failure in stride.

"Don't be afraid to say, 'I have failed,'" he said. "Don't be afraid to let that be a motivator for you. And don't be afraid to say, 'I'm sorry for something that I've done and for something that I didn't intend to do.'"



2016 class speakers, from left: Richard Lin (JD); Dai Tajima (LLM); Judge Johnnie B. Rawlinson (Judicial Studies LLM)



"You have the right stuff," Rose told the graduates. "Do the right thing. Make your country proud, make your family proud, and ... make yourself proud."

Speaking on behalf of the Judicial Studies graduates, Judge Johnnie B. Rawlinson of the U.S. Court of Appeals for the Ninth Circuit said that she and her classmates chose to enroll in the master's program to improve as jurists, aware that each case they hear is "the most important case we will ever decide" to the litigants involved. "Through this program, we have been given a renewed confidence in our continued ability to apply the rule of law and the precepts of justice to decide each case fairly, equitably, and individually," she said.

International LLM speaker Dai Tajima, a corporate lawyer at Allen & Overy in Tokyo, noted the warm friendships his classmates forged in spite of their diverse backgrounds, nationalities, religions, and cultures. "We were able to do this because we tried our best to understand, accept, and respect our differences," he said, calling on his peers to take their commitment to forging mutual understanding back to their home countries. "Our role will be making

the world a better place. Whatever we do, whatever tough challenges we'll face, the key to overcome the challenges may be mutual understanding. What we learned at Duke is much more than just law school credits. Now it's our turn to contribute to the communities we belong to."

JD speaker Richard Lin also reflected on the quality of friendships he made among a diverse "squad" of students, analogizing their supportive alliance to that he found during 11 years as a federal law-enforcement officer. Listing their many achievements, he called his classmates "unstoppable," "selfless" in finding ways to benefit the group, and committed to bringing about societal change through action. He offered a special thanks to Clinical Professor Diane Reeves, his legal writing professor and a former prosecutor, who helped him overcome self-doubt during his first year at Duke, convincing him "that solid people who do the right thing on a daily basis can make a world of difference."

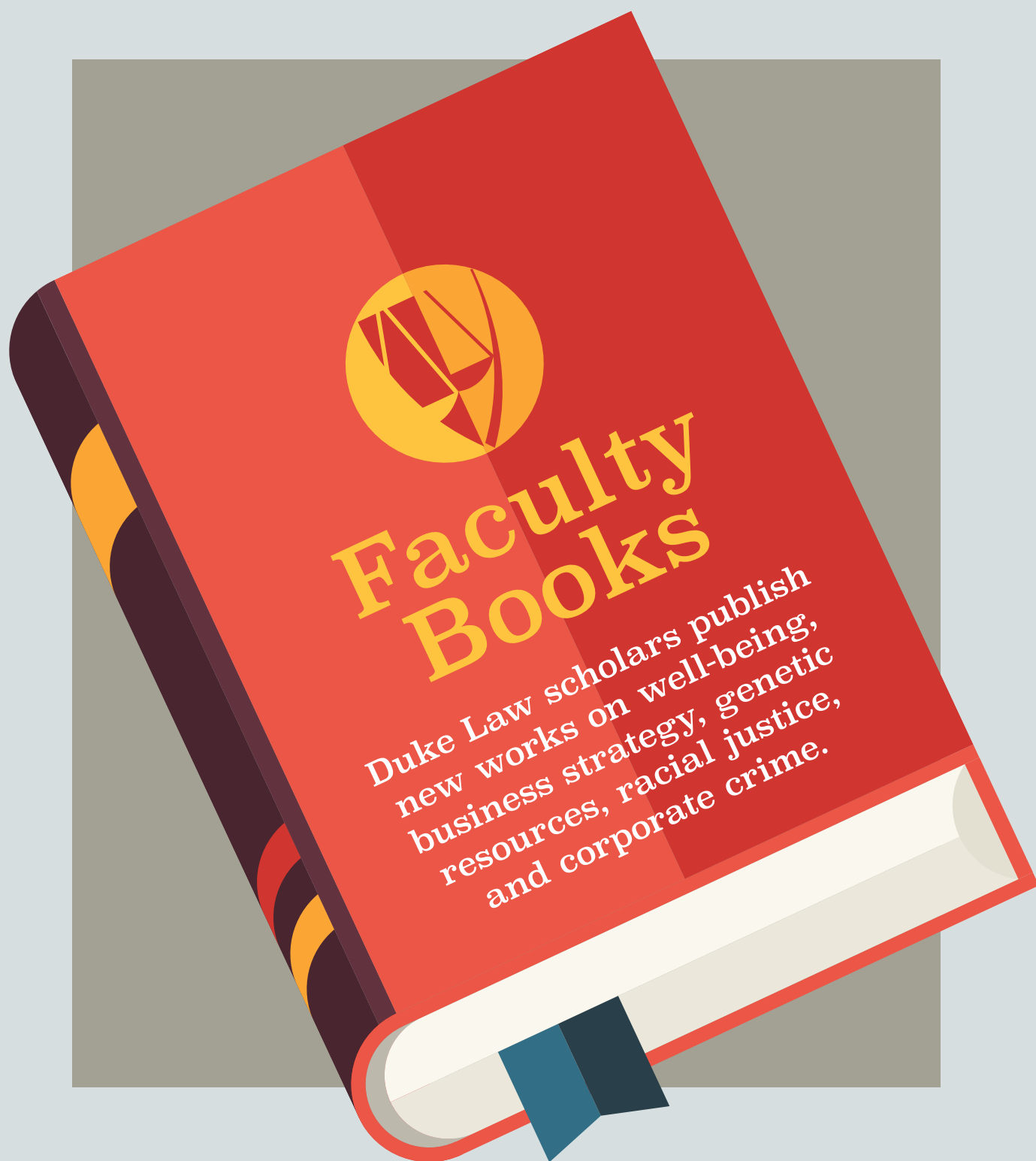
"I am here because of her guidance, and I am forever grateful that Duke Law has professors who teach, mentor, and change our lives," said Lin, who is now serving in the U.S. Navy.

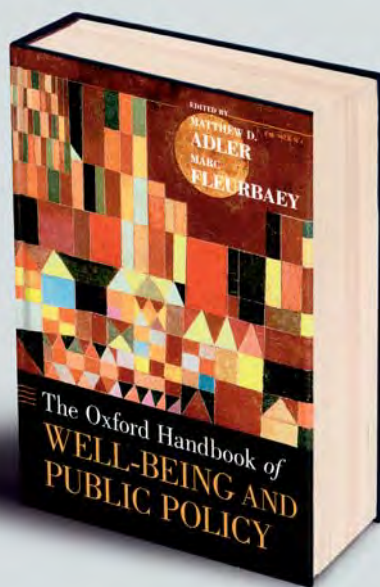
Thanking the graduates for their many positive contributions to the Law School, Dean David F. Levi invited them to remain connected in the years to come and offered them best wishes for fulfilling careers in the law.

"We hope that you will find ways to lead and to serve in your communities. There will be many times when you will face difficult challenges in your professional life. We have confidence that you will make us proud as you meet and surmount them. You have already done so." ♡

The Commons

Faculty Focus





Matthew Adler:

The Oxford Handbook of Well-Being and Public Policy moves beyond income as basis for evaluating policy

MATTHEW ADLER'S LATEST BOOK is a comprehensive research guide on existing and emerging tools for evaluating public policy in light of individual well-being. Adler, the Richard A. Horvitz Professor of Law and Professor of Economics, Philosophy, and Public Policy, is co-editor, with Marc Fleurbaey of Princeton University, of *The Oxford Handbook of Well-Being and Public Policy*. *Handbook* chapters written by internationally renowned economists and philosophers explore different methodologies for policymaking, from standard approaches such as cost-benefit analysis (CBA) and gross domestic product (GDP), to newer tools from emerging fields of research such as happiness studies.

"The jumping off point for the *Handbook* is the idea that we really need to move beyond income as the basis for policy evaluation," said Adler, the founding director of the Duke Center for Law, Economics, and Public Policy. "For example, GDP looks at the total value of marketed goods and services in a year, so it's a kind of income-based measure. There is a lot that happens in a country that affects the quality of life — such as changes in the environment or in health — which is not captured by GDP." Other traditional measurements of inequality, such as income distribution, also ignore such aspects of well-being as individual health or longevity, he said.

The complexity inherent in improved policy-relevant measures of well-being has engendered debate among scholars, which the *Handbook* addresses at length.

One approach to developing a tool for measuring policy effects on well-being calls for disaggregating multiple quality-of-life dimensions — such as income, lon-

gevity, environmental quality, educational attainment, and happiness — and then looking at a given policy's effect on each of these. Another approach calls for a combined indicator that assesses each individual's well-being as an aggregate of all of these categories. "This would result in an inclusive measure that would be based on someone's attributes on all the 'quality-of' dimensions and would assign, in principle, a single well-being number to each person," Adler said.

The importance of defining and crafting new policy-evaluation methodologies lies in their application to vital political issues such as income inequality, environmental impacts on health and quality of life, and educational access and attainment, said Adler.

The Center for Law, Economics, and Public Policy has convened a series of conferences and workshops on the questions addressed in the *Handbook*, focusing on such topics as the equality of opportunity, inequality and the economic analysis of climate change, the social cost of carbon in regulatory analysis, and new scholarship on happiness.

Reconsidering approaches to measuring well-being and developing new ones goes beyond theory, Adler said, noting that some of the newer, more nuanced approaches are gradually being adopted and used by governments and institutions.

"Starting in the 1990s the United Nations has used some of these tools in its World Development Report, looking not just at income, but life expectancy and educational attainment in different countries. More recently it's adopted a multidimensional approach to measuring poverty, in the Human Development Index." The United Kingdom, Adler said, has integrated happiness statistics into its official information and statistic gathering, and has started to shift from using traditional CBA to distributionally-weighted CBA, which is more sensitive to equity, to shape policy.

Helping governments adopt the more complex tools is among the chief goals the editors have for the book, which is unique in its synthesis of economic, philosophical, and psychological considerations.

"Inequality and poverty, and the factors such as the environment that affect them, are important topics that aren't going away," Adler said. "There is a lot of discussion in the book about how to measure poverty and how to design policy to be more sensitive to that. Governments don't really use inequality metrics much, but there is a whole body of research using those right now, and the hope is that the *Handbook* would be useful in bridging the gap between those two worlds." ♡



Jerome Reichman:

New book offers blueprint for designing a transnational microbial research commons

JEROME REICHMAN'S NEW BOOK examines how scientists share collections of microbes and related data to advance research in such areas as medicine, agriculture, and climate change, and how current systems for facilitating that transnational exchange can — and should — be improved.

Reichman, the Bunyan S. Womble Professor of Law, is the co-author of *Governing Digitally Integrated Genetic Resources, Data, and Literature: Global Intellectual Property Strategies for a Redesigned Microbial Research Commons* (Cambridge University Press, 2016). A renowned scholar of intellectual property law, he has long focused on legal and policy strategies to resolve challenges arising from the grant of exclusive property rights foundational to intellectual property law. Refining the operation of the scientific infrastructure is just such a problem.

"A lot of IP law and policy is concerned with profits from downstream inventions," he said. "In this book, we are dealing with the value of upstream scientific inputs on which all research depends."

Reichman's co-authors of the book are Paul F. Uhler, the former director of the Board on Research Data and Information at the National Academies in Washington, D.C., and of the U.S. Committee on Data for Science and Technology, and Tom Dedeurwaerdere, director of the Biodiversity Governance Unit and professor of philosophy of science at the Université catholique de Louvain in Belgium.

The specimens in public microbial culture collections are gathered primarily in biodiversity-rich developing countries by scientists. They also often seek out inputs from indigenous people as to how they have traditionally used the organisms, thus gleaning ideas from which genetic research develops and end products, such as foods, medicines, and perfumes, are made.

The Nagoya Protocol on Access and Benefits Sharing — a 2010 supplement to the 1992 Convention on Biological Diversity (CBD), which sought to ensure the conservation of the world's biodiversity resources — is a starting point for Reichman and his co-authors. The Nagoya Protocol provides a framework for ensuring that

countries where collections of seeds, microbes, and traditional knowledge originate share in the profits and other benefits gleaned from their use in one of two ways, Reichman said. Researchers can negotiate directly with governments, which would almost certainly overvalue them. Alternatively, under the Nagoya Protocol, the microbial culture collections could enter into a multilateral treaty to establish a transnational exchange and remuneration system, like that established for public seed banks in the International Treaty on Plant Genetic Resources for Food and Agriculture (the International Treaty) of 2001.

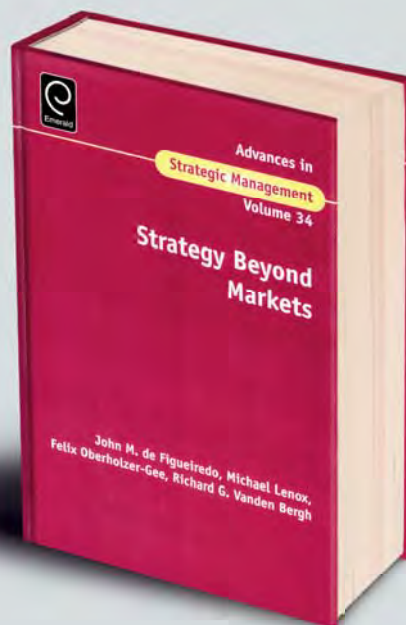
"The Nagoya Protocol was significant in its recognition of a multilateral approach to benefit-sharing," Reichman said. "It essentially codifies a 'take-and-pay' rule for these global public goods: If a plant cultivar put in a collection to be shared freely for research purposes is then used for some commercial objective, the user must pay a small percentage of the resulting proceeds, a tithe, back to the Benefit Sharing Fund of the International Treaty."

The seed banks, which are essential to world food security, were protected by the International Treaty, known also as the "Crop Commons," at a time when governments of countries where seeds originated were demanding their return with a view to reaping greater profits through bilateral negotiations for their use, Reichman said. The tithe paid for use of the seeds goes back to the treaty regime to support research.

Reichman and his co-authors argue that participants in the microbial research commons, which is still operating on a national and regional basis, should follow the example of the seed banks in adopting a multilateral take-and-pay approach. They go on to recommend a form of governance for an international commons for microbial culture collections that includes scientists in their leadership.

The authors delve into ways that data derived from genetic resources, which are also subject to the CBD and the Nagoya Protocol, should be organized and shared. In addition to examining how various voluntary and mandatory data-pooling regimes operate, they focus attention on the operations of four highly sophisticated data-sharing arrangements, which they call Transnational Open Knowledge Environments (OKEs). Reichman considers these OKEs, which require a complex legal infrastructure, to be the future for sharing both hypotheses and research inputs, including data.

"We think scientific organizers aiming to design a research commons for microbiology should make it conform not only to the legal requirements of the CBD and the Nagoya Protocol, but also design it to emulate the sharing strategies of these Open Knowledge Environments that are springing up." ♪



John de Figueiredo:

Strategy Beyond Markets parses non-traditional moves to enhance corporate value

JOHN DE FIGUEIREDO, the Edward and Ellen Marie Schwarzman Professor of Law and Professor of Strategy and Economics, has co-edited a new volume of innovative scholarship on the non-market strategies corporations use to enhance their performance and value.

Articles in the collection, titled *Strategy Beyond Markets*, focus on corporate interactions with entities other than the competitors, customers, and investors that constitute their primary market stakeholders. These “beyond-market” or non-market players include non-governmental organizations, environmental activists, communities, regulators, politicians, and the courts.

Firms’ beyond-market strategies fall into two general categories, explained de Figueiredo, who helped create the field of study in the 1990s: public non-market strategies — “public politics” — involving domestic and international policymakers, legislators, rulemakers, and the courts; and private non-market strategies — “private politics” — involving such special-interest groups as media, activists, and NGOs. Corporate strategy in the first category might include lobbying and litigating, and in the second, negotiating, self-regulating, or mounting public relations campaigns, he said. The collection organizes scholarship around those two broad areas as well as a hybrid “integrated political strategy” that bridges non-market and market-based competitive strategies.

In the volume’s first article, by Professor David Baron of the Stanford Graduate School of Business, three cases illustrate the three approaches: how Uber uses lobbying to influence regulators in the pursuit of market expansion, how Citigroup used negotiation and self-regulation to quell a campaign against its investments in developing countries by environmental activists, and how McDonald’s might respond to a campaign to raise workers’ wages.

A central goal of the book is to create a launchpad for future scholarship in the field of non-market strategy, the editors write in their introduction. While corporate managers have been crafting non-market responses to regulatory and interest-group pressures to address such matters as environmental, health, and social issues since the 1960s, scholarly research into how those strategies relate to firm performance and profitability has lagged.

“We hope that this book will set the cornerstone for establishing strategy beyond markets or non-market strategy as a mainstream branch of strategic management scholarship and will help to identify paths for future contributions to our understanding of corporate behavior and competitive strategy,” said de Figueiredo, who teaches Business Strategy for Lawyers at Duke Law. He will host a conference on the subject at the Law School next May.

Strategy Beyond Markets is a special issue in the “Advances in Strategic Management” series published by Emerald Group Publishing. de Figueiredo’s co-editors are Michael Lenox of the Darden School of Business at the University of Virginia, Felix Oberholzer-Gee of Harvard Business School, and Richard G. Vanden Bergh of the School of Business Administration at the University of Vermont. ♡



Read about *Capital Offenses: Business Crime and Punishment in America's Corporate Age* by Samuel Buell, the Bernard M. Fishman Professor of Law, page 39.



Guy-Uriel Charles:

Racial Justice and Law gives students tools to critique and solve race-related controversies

A NEW CASEBOOK co-authored by Guy-Uriel Charles, the Charles S. Rhyne Professor of Law and senior associate dean for faculty and research, uses a comprehensive survey approach to examine the role of law in reinforcing and ameliorating racial injustice.

Racial Justice and Law, Cases and Materials (Foundation Press, 2016) uses cases, statutes, theoretical works, and other sources of law, supplemented by problems, exercises, and empirical data, to equip students to both critique and construct pragmatic solutions to current race-related controversies. Charles and his co-authors, law professors Ralph Richard Banks of Stanford University, Kim Forde-Mazrui of the University of Virginia, and Cristina M. Rodriguez of Yale University, settled on this mix of materials — a novel approach for the field — in order to fully address the numerous situations in which race intersects with law and the varied tools available to address the resulting issues.

The large body of case-based statutory law established over decades of civil rights advocacy is only part of any full examination of race and the law, they write in the forward. Even laws that do not specifically reference race, such as those blocking felons from voting or tying school funding to local property taxes, involve racial conflict and tensions, said Charles, a scholar of constitutional law, election law, campaign finance, redistricting, politics, and race.

The authors employ problems, role-plays, and other exercises that require students to approach a controversy from the vantage point of different actors in the legal system who affect and interpret the content of cases, statutes, and regulations — judges; federal, state, and local legislators; government lawyers; non-elected gov-

Professor Guy-Uriel Charles was honored, in April, with the Duke Bar Association's 2016 Distinguished Teaching Award. Presenter Risha Asokan '17 read from some of his nominators' statements, noting that the majority came from former students in classes such as Constitutional Law, Race and the Law, and Campaign/Election Law. "I think that says it all," she said. "He was a thoughtful, knowledgeable, and engaging instructor. He was passionate about the subject matter and wanted to see all of his students succeed." The Margaret and Lanty Smith '67 family made an additional tribute to Charles in the form of a \$10,000 gift to the Center on Law, Race and Politics, which he directs.

ernment officials; private attorneys; business owners; and private citizens. "Law school graduates are less likely to produce social change through changing constitutional law than through one of the other mechanisms that our book identifies," said Charles, the founding director of the Center on Law, Race and Politics. He will teach from the casebook in his spring-semester Race and the Law course.

"We hope to contribute to the maturity of the field of race and the law with this casebook," he said. ♡

Roady '76 tackles pressing environmental issues with new appointments at Duke Law and Nicholas Institute

STEVE ROADY '76 brings a wealth of environmental law and policy experience to his new joint appointment at Duke Law School and Duke's Nicholas Institute for Environmental Policy Solutions.

As a professor of the practice of law on the Law School's governing faculty and a faculty fellow at the Nicholas Institute, Roady, who has taught Environmental Litigation and Ocean and Coastal Law and Policy as a senior lecturing fellow at the Law School since 2003, continues to teach. He also is working to create interdisciplinary teams to examine approaches to large-scale environmental problems.

"Providing clean drinking water on a mass scale, limiting nitrogen emissions from agriculture, these types of large-scale environmental issues could be a focus," said Roady, who has enjoyed a long career as an environmental lawyer at Earthjustice (formerly the Sierra Club Legal Defense Fund). "The idea is to identify these problems and then try to bring the brainpower available at the university to bear, tapping into different institutes, initiatives, and schools for relevant expertise."

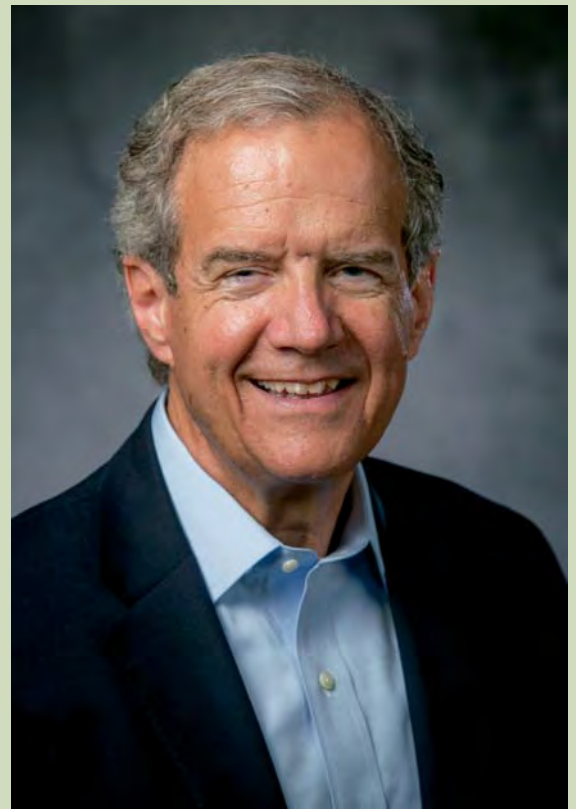
"The joint hire of Steve Roady by the Nicholas Institute and Duke Law School, supported by the provost, is a strategic move that builds on the university's historic strength in environmental law and policy," said Dean David F. Levi. Roady also works in the Environmental Law and Policy Clinic and will teach in the Law School's Duke in D.C. program.

"With his national reputation and broad knowledge of environmental law and advocacy, Steve brings new and important opportunities to our environmental law programs, faculty, and students," Levi said.

Initially focused on ocean-related litigation and policy at Earthjustice, Roady pioneered innovative litigation strategies to preserve ocean resources. He went on to litigate precedent-setting cases that protect water resources and improve the nation's air quality. More recently, he has been pursuing cases designed to protect coral reefs, and to prevent the mountains and streams of southern West Virginia from being destroyed by mountaintop removal coal mining.

"Very few have the breadth and depth of environmental law and policy experience that Steve Roady possesses," said Nicholas Institute Director Tim Profeta '97. "He has not only seen, but been involved in, the creation of many important environmental policies throughout history, and brings an unparalleled knowledge of the debates and the stakeholders to Duke. I look forward to his leadership on efforts at the Nicholas Institute to tackle new and challenging environmental problems."

From 1998 to 2000, Roady was the director of the Ocean Law Project, an initiative that employed litigation and negotiation to ensure that the U.S. government conserved ocean resources, including fisheries, marine mammals, sea turtles, and



ocean ecosystems. During 2001 and 2002, he was the first president of Oceana, a nonprofit international ocean conservation organization dedicated to protecting life in the sea through public education, advocacy, communications, science, and litigation.

In 1989 and 1990, Roady served as counsel to United States Senator John H. Chafee on a number of environmental matters in the Senate Committee on Environment and Public Works, including air quality improvement, coastal barrier island protection, water pollution control, and hazardous waste regulation. While on the Senate staff, Roady was closely involved in drafting the Clean Air Act amendments of 1990. He earlier assisted various companies with their efforts to comply with a wide range of environmental statutes.

Having started his career as the federal environmental statutory and regulatory landscape was in its infancy, Roady says the current terrain is far more complex. "We've spent 30 years or so addressing the easily identifiable problems — we have a lot less raw sewage in the rivers," he said. "Now we're looking at things in a more nuanced way, and overarching all of this is climate change, which wasn't really on the radar until very recently. It's sobering stuff." ♪



Sarah Powell '06



Diane Reeves



Jo Ann Ragazzo



Frances Mock '00



Rebecca Rich '06



Sarah Baker '06

Fifteen professional skills faculty are now clinical professors

DUKE LAW HAS ELEVATED 15 members of its full-time clinical, legal writing, and other professional skills faculty to the position of clinical professor of law (teaching).

“These longtime faculty members are all wonderful teachers who are critical to our mission: preparing students to be effective, insightful advocates from day one of their summer internships and their careers,” said Dean David F. Levi. “They bring their experience of practice into their classes, clinics, and advocacy, and continually demonstrate tremendous dedication to their students and to their instructional and supervisory roles. More broadly, these promotions reflect the Law School’s ongoing commitment to the teaching of lawyering skills, one fully supported by the members of the governing faculty.”

Clinical faculty to receive the title of clinical professor are: Sean Andrussier '92, director of the Appellate Litigation Clinic; Health Justice Clinic Director Allison Rice and Supervising Attorney Hannah Demeritt '04; Civil Justice Clinic Director Charles Holton '73; Children’s Law Clinic Supervising Attorney Brenda Berlin; and Environmental Law and Policy Clinic Supervising Attorney Michelle Nowlin JD/MA '92. Wrongful Convictions Clinic Supervising Attorney Jamie Lau '09 is now an associate clinical professor of law.

“Duke Law School has a really unmatched clinical faculty,” said Clinical Professor Andrew Foster, who directs experiential education and clinical programs. “Across the board our clinicians are great teachers,



Allison Rice



Brenda Berlin



Michelle Nowlin JD/MA '92



Charles Holton '73



Sean Andrussier '92



Hannah Demeritt '04



Jamie Lau '09



Erika Buell

terrific lawyers, and engaged community members. Most importantly, the clinical faculty are absolutely dedicated to their clients and students. I'm so pleased that the Law School has now taken the important step of formally recognizing their consistent excellence and commitment in this way."

Members of the legal writing faculty who are now clinical professors are: Jo Ann Ragazzo; Frances Mock '00; Sarah Baker '06; Sarah Powell '06; Diane Reeves; and Rebecca Rich '06, assistant director of the Law School's legal writing program.

"I join the rest of the Duke Law faculty in celebrating these promotions," said Clinical Professor and Director of Legal Writing Jeremy Mullem. "Duke Law graduates are widely regarded as being exceptionally well-prepared to practice law. And those graduates point to the writing instruction they have received at Duke as being particularly valuable. The outstanding teachers whose promotions we celebrate have devoted their

careers to the delivery of that instruction. They are an exceptional group and are the core of an institutional strength."

Jennifer Jenkins '97, director of the Center for the Study of the Public Domain, who teaches courses related to intellectual property law, and Erika Buell, who teaches in the areas of entrepreneurship, contracts, and finance, also have been named clinical professors.

"Professors Jenkins and Buell are both innovative teachers and scholars who bring extensive experience in copyright law and in working with tech companies, respectively, to their classes," said Levi. "They are also wonderful mentors to our students. We are delighted to acknowledge their excellence and commitment in this way."

All of the new clinical professors received unanimous approval for their promotions from members of the Professional Skills Appointments Committee. ♡



Jennifer Jenkins '97



Reiners leads revitalization of the Global Financial Markets Center



Lee Reiners

LEE REINERS HAS JOINED the Duke Global Financial Markets Center as director. Reiners, who previously worked for five years at the Federal Reserve Bank of New York (FRBNY), is in charge of day-to-day operations of the center, which is designed to help prepare students for careers in financial law, policy, and regulation. Lawrence Baxter, the William B. McGuire Professor of the Practice of Law, serves as the center's co-director.

At the FRBNY, Reiners served first as a supervisor of systemically important financial institutions and then as a senior associate within the executive office. In the latter capacity, he helped coordinate the FRBNY's engagement with international standard-setting bodies, such as the Bank for International Settlements and the Financial Stability Board. While at the FRBNY, Reiners, who holds an MPP with a global policy concentration from Duke University's Sanford School of Public Policy and the chartered financial analyst designation, worked closely with other federal and state regulatory agencies.

"We are delighted that Lee has come to Duke Law," Baxter said. "His background in both public policy and core regulation of big banks is ideal for our center. Lee has started strongly out of the gates and is bringing exciting new focus to the center."

Upon arriving at Duke in August, Reiners, who is also a lecturing fellow, began to develop a range of programming and scholarly presentations that bridge the divide between theory and practice in the field of financial regulation. He launched *The FinReg Blog* as a forum for center faculty and affiliated practitioners to reflect on different aspects of finance and regulation, as well as a monthly series in which scholars from the Law School and Duke's Fuqua School of Business present and discuss works in progress.

Spring semester programming includes a financial markets "boot camp" through which students will learn about financial products and the markets they trade in, as well as a new two-credit course in which prominent alumni practitioners will share insights on specific areas of financial regulation. Regular lunch-time events will highlight issues of law, business, technology, and regulation that impact financial markets and institutions. And planning is underway for the launch of a yearly spring forum on a topic of current importance to the financial markets.

Through the fall semester, Reiners led a discussion course on financial policy outcomes of the 2016 elections.

"The course provided students an opportunity to go beyond the typical horse-race media coverage and actually look at the financial policy positions of both candidates and their respective parties," he said. "Now that Republicans control

both houses of Congress and the presidency, we could potentially see a wholesale dismantling of post-crisis regulatory reforms, including the Dodd-Frank Act. During the course we discussed conservatives' critiques of Dodd-Frank and reform proposals, so students should be prepared for whatever lies ahead."

Reiners' spring center-sponsored course, Financial Law and Regulation: Practitioner's Perspective, will give students insight into the daily practice of different areas of financial law and regulation.

"The environment changes all the time, and the scope of regulatory discretion, at every level of government — state, federal, and international — is so large that successful practitioners must understand the current trends in regulatory thinking and practice," he said. "This course will allow students to dive deep into a different aspect of modern financial regulation every week."

Reiners has offered lectures in some of Baxter's Big Bank Regulation class sessions and will co-teach in such spring courses as FinTech and the Law, and Derivatives: Financial Markets, Law and Policy. "Students crave this kind of real-world experience, particularly at the hands of someone who thinks at the analytical level Lee does," said Baxter.

Baxter added that it's an optimal time for the Global Financial Markets Center, which has been under his guidance since 2010, to ramp up its examination of the financial market landscape and regulatory structure. "In the aftermath of the financial crisis of 2008, we were focused on the 'smoking guns' — the subprime crisis, the mortgage-lending fiasco, and collapse of derivatives — which are all, really, just different components of a larger disaster." With a new model of financial regulation now in place due to the implementation of Dodd-Frank and acceptance of the Basel III capital and liquidity standards for internationally active banks, scholars are able to apply "more sober-minded metrics" to the issue of financial law and regulation.

"Our location outside of D.C. and New York, and our excellent contacts in both places, give us an opportunity to provide a non-partisan think-tank forum on financial matters," he said. ♡

Professor **Rachel Brewster**, co-director of the Center for International and Comparative Law and a scholar of international economic law and international relations theory, will co-organize a yearlong Sawyer Seminar to address complex issues about the global corporation. Philip J. Stern, the Dalton Robinson Associate Professor of History, will co-organize the seminar, which is supported by a \$175,000 grant to Duke University from the Andrew W. Mellon Foundation.

Titled “Corporate Rights and International Law: Past, Present, and Future,” the seminar will bring together an interdisciplinary community of scholars to explore how international, commercial, and political rights have shaped corporate power, and consider how corporations should govern, and be governed, in an ever-globalizing world.

The Center for International and Comparative Law and the Franklin Humanities Institute will host events. The seminar will take place throughout the 2017-2018 academic year through an ambitious program of meetings and keynote addresses. It will conclude with a daylong roundtable on the intersection of corporate history and the history of human rights, and the effect of both on structuring corporate responsibility and accountability.

Sawyer Seminar awards include support for a postdoctoral fellow and for the dissertation research of two graduate students. ♡



Margaret Lemos, the Robert G. Seaks LLB '34 Professor of Law, has been elected to membership in the American Law Institute (ALI). She is a scholar of constitutional law, legal institutions, and procedure. Her scholarship focuses on the institutions of law interpretation and enforcement and their effects on substantive rights. She writes in four related fields: federalism; administrative law, including the relationship between courts and agencies; statutory interpretation; and civil procedure. She was awarded Duke's Distinguished Teaching Award in 2013.

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. Twenty-three Duke Law scholars are ALI members, as are more than 50 alumni of the Law School. Dean David F. Levi is a member of the ALI Council and the organization's president-designate. ♡



Colleagues, former students, friends, and family gathered at the Washington Duke Inn on May 1 to honor **David L. Lange**, the Melvin G. Shimm Emeritus Professor of Law, who retired from teaching at the end of 2015 after 44 years on the faculty. In addition to celebrating Lange's “transformational” scholarship in the areas of intellectual property and the public domain, Dean David F. Levi announced the establishment of the David L. Lange Scholarship Endowment. Contributions have so far totaled nearly \$130,000. Professor Kip Frey '85, director of the Law & Entrepreneurship Program, described Lange as an inspirational teacher who had an immeasurable impact on his students, and announced that the annual endowed Kip and Meredith Frey Lecture in Intellectual Property would be renamed in Lange's honor. ♡

» For more information on the David L. Lange Scholarship Fund, or to make a donation, please contact Associate Dean of Alumni & Development Kate Buchanan at buchanan@law.duke.edu.

The Commons | Faculty Focus

Arti Rai, the Elvin R. Latty Professor of Law and co-director of the Center for Innovation Policy, has joined with three other distinguished intellectual property scholars to craft the first set of ethical norms for legal scholarship in their field. Rai and Professors Robin Feldman (UC Hastings), Mark A. Lemley (Stanford), and Jonathan Masur (University of Chicago) cite their concern about the increasing influx of corporate and private funding into empirical and policy research as motivation for writing the “Open Letter on Ethical Norms in Intellectual Property Scholarship.” More than 40 other academics had also signed on when it was published in the *Harvard Journal of Law & Technology* in July.

The letter promotes three related objectives: transparency, through the disclosure of monetary or related inducements that might influence or create the perception of influence on scholarly research; minimization of bias by eliminating outside influences that might inject bias or the appearance of bias into research, whether overt or subconscious; and facilitation of replicability and examination of existing research by requiring the disclosure of underlying data, “to the fullest extent possible.” ♪



Donald Horowitz, the James B. Duke Emeritus Professor of Law and Political Science, delivered Yale University's 2016 Castle Lectures in Ethics, Politics and Economics, in late September.

Horowitz titled the series of three lectures “Constitutional Design for Severely Divided Societies: Many Architects, Few Buildings,” framing them around issues he is developing for a book forthcoming from Yale University Press. Horowitz has advised on constitutional design and process in a number of countries. Too often, he said, institutions to reduce conflict are not adopted in countries experiencing considerable conflict between ethnic or religious groups.

In his first lecture, titled “Prescriptions without Politics,” Horowitz offered examples of societies that face polarization, as well as the unsuccessful recommendations for constitutional design that have been put forward. In his second lecture, titled “The Difficult Politics of Institutional Adoption,” he specified the obstacles to adopting either of these prescriptions in constitutional processes, such as letting historical memories of institutional failure or past promises of certain systems of government drive negotiations, or simply adopting institutions with which the drafters are familiar.

Horowitz then outlined some positive approaches to and some hazards in the process in the third lecture, titled “Constitutional Process: A Fraught Experience.” While a “good” process is generally considered to be one that is inclusive, elected, and makes room for deliberation and negotiation, he said, it can hold inherent pitfalls. “The more inclusive the process is, the less likely consensus is,” he said. ♪



Laurence Helfer, the Harry R. Chadwick, Sr. Professor of Law, was one of four legal experts asked by the World Blind Union (WBU) to prepare an implementation guide for a new treaty on exceptions to copyright for individuals with visual disabilities. The Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled was adopted in 2013 and went into effect on Sept. 30, 2016.

The treaty, administered by the World Intellectual Property Organization, encourages the creation and trans-border dissemination of books and other cultural materials in accessible formats — including Braille, large-print text, and audio books — for use by print-disabled people. The WBU Guide to the Marrakesh Treaty will be published by Oxford University Press in early 2017.

Helfer said in an interview with *Intellectual Property Watch* that the treaty should “not be seen as only an IP treaty, but also as an agreement that uses copyright to achieve human rights objectives.” This is the central message of the WBU Guide, which urges governments to implement the treaty in ways that enhance the ability of print-disabled persons to create, read, and share books in accessible formats. ♪

Neil Vidmar

A social scientist leaves ‘an invaluable legacy’ at Duke Law

ASKED WHAT’S DRIVEN his success over almost 50 years as a scholar, teacher, and empirical researcher at the intersection of social psychology and law, Neil Vidmar answers quickly.

“Academics have a great privilege to follow their curiosity,” says Vidmar, the Russell M. Robinson II Professor of Law and Professor of Psychology.

A social psychologist by training who serves as research director for the Duke Law Center for Criminal Justice and Professional Responsibility, Vidmar is a leading expert on jury behavior and outcomes and has extensively studied medical malpractice litigation, punitive damages, dispute resolution, and the social psychology of retribution and revenge. His recent projects have focused on such issues as pro se litigants, legal malpractice, the process of decision-making within the criminal justice system, and racial bias in capital jury selection.

After more than a quarter-century at Duke Law, Vidmar will take emeritus status at the end of the year. He says joining the faculty in 1989 opened myriad avenues for novel empirical study, often across disciplines and in collaboration with colleagues and students. “I had such great students,” he says. “Sometimes they’d come to me with questions and I’d say, ‘Why don’t we do a study on that?’”



Professor Neil Vidmar keeps mementoes from his coal-mining background, like the miner's lamp, at left, in his office.

Crossing disciplines

The son of an Illinois coal miner, Vidmar worked three summers in the mines during college and still proudly displays his miner's certificate and lamp in his office. He describes his undergraduate years at McMurray College, where he got hooked on social science, as “life-changing” in exposing him to a more diverse world than he had previously known. Vidmar went on to graduate from the University of Illinois in 1967 with a PhD in social psychology and a secondary specialty in experimental psychology; he then landed a tenure-track position at the University of Western Ontario (now Western University) in London, Canada, where his early research focused on conflict and group decision-making in areas unrelated to law. The legal connection happened by chance, when he accompanied a colleague to the 1970 trial, in Toledo, Ohio, of a Black Panther member accused of killing a police officer.

“When you talk with [Neil] you can feel his devotion to his field and his role as a teacher.”

— Mong-Hwa Chin
LLM '11, SJD '14

“I had never been to a trial, or even in a courtroom,” says Vidmar. Hearing about Vidmar’s work on the so-called “polarization shift,” a phenomenon whereby a group tends to make decisions that are more extreme than the individual inclinations of its members, the defense attorney added him to the witness list. “I just talked about the fact that when you have a group of people who have attitudes in one direction, they tend to shift towards the extreme ends,” Vidmar says. “I don’t think my testimony lasted more than half an hour. But I was instantly hooked.”

Back in London, Vidmar headed to the courthouse “every spare moment I had,” to observe trials. He began to interview parties to lawsuits in small claims court at each stage of the litigation process — after the pleadings were filed, during the process of mandatory mediation, during trial, if the case failed to settle, and afterwards — delving into their motives and perceptions about their cases and the legal process. That early work on litigant behavior led Vidmar to craft a well-received research agenda that extended to such matters as alternative methods of dispute resolution, the use of expert witnesses in court, how juries process discredited eyewitness testimony, and how jurors are selected. He also became affiliated with Western’s law school and involved in Canadian jury-reform efforts. Vidmar published the first of his four books on juries, *Judging the Jury* (Plenum Press), co-authored with Valerie P. Hans, in 1986.

Innovating in the classroom

After visiting Duke as a professor of law and social science for two years, Vidmar joined the governing faculty in 1989 and in 1994 was appointed as the Russell M. Robinson II Professor of Law. Vidmar, who also held a secondary appointment in Duke’s Department of Psychology, was the first non-lawyer on the Duke Law faculty and one of the first at any U.S. law school. It isn’t surprising, then, that he developed one of the first courses to be offered on a law school curriculum about the use of social science evidence and the law.

“When I enrolled in Professor Vidmar’s Social Science Evidence & the Law course in the 1980s, it was a bit of a gamble,” said Clinical Professor and Wrongful Convictions Clinic Co-director Theresa Newman ’88, who has worked extensively with Vidmar in the years since. “He was a visiting faculty member at the time, so no students knew him, and there were no other courses with ‘social science’ in

the title. But it turned out to be a great course, and one that continues to inform me in the work I do in the Wrongful Convictions Clinic. Maybe more important than the substance of the course was Neil’s unbounded enthusiasm for the intersection of law and psychology. Even today, that enthusiasm leads to new avenues to explore together. I cherish his mentorship and friendship.”

The course in negotiation was another law school novelty when Vidmar developed it in 1990, yet it quickly became one of the most popular on the curriculum. With four small sections of 24 students apiece offered each semester to meet constant demand, approximately two-thirds of every Duke Law class now takes Negotiation prior to graduating.

“It took off right from the start,” Vidmar says. “Much of what lawyers do is based in negotiation, whether they are criminal or civil lawyers, or whether they are trying to develop contracts.”

In the simulation-based course, students are assigned roles and negotiate against each other to reach a settlement in legal scenarios that gain complexity as the semester progresses.

“It is not unusual for students to comment that the course is one of the most valuable they have taken in law school,” says Clinical Professor Diane Dimond, who started teaching Negotiation with Vidmar when she joined the faculty in 1994 and is now one of several Duke Law teachers who follow his model. “They note that the skills they have learned help them not only in their legal practice, but in their personal interactions as well.

“While Neil cannot be replaced, in this course alone he leaves an invaluable legacy to the school and its students,” Dimond says.

A collaborative empirical researcher

Empirical research across a broad spectrum of topics in civil and criminal law has been a hallmark of Vidmar’s scholarly agenda, which has continually included jury behavior and litigation outcomes. He led a groundbreaking four-year study of jury deliberations in Arizona that involved extensive interviews with jurors and cemented his faith in the system. “That project helped me realize how seriously jurors take their task,” he says, noting their willingness and tendency to become well-educated on the issues, thorough in their review of evidence, and insightful in questions to judges presiding over trials. Two decades of study-

ing the way juries handle medical malpractice cases found jurors siding with doctors in three out of four cases that go to trial, leading him to conclude that juries “are anything but irresponsible,” as tort reform advocates claim. He has shared that finding with lawmakers in Capitol Hill testimony related to reform efforts.

In *American Juries: The Verdict* (Prometheus Books, 2008), Vidmar laid out, for a general audience, how the U.S. jury system evolved, how juries operate, and how they reach verdicts and make awards. He again co-wrote the book with longtime colleague Hans, a professor at Cornell University Law School.

Also a renowned jury expert, Hans recalls meeting Vidmar in the late 1970s when they were both involved in jury reform efforts in Canada as psychologists “with a passion for law.” He introduced her to the new Law and Society Association, which brought together scholars from multiple disciplines who studied law and legal institutions (and which she now heads as president), and invited her to co-author first a book chapter and then *Judging the Jury* with him.

“It was a wonderful experience for me to work with someone who was so gifted as a writer and thinker,” she says. “I learned a great deal from him — and have continued to learn from him to this day.”

In recent years, Vidmar has developed a range of projects pertaining to criminal law, working closely with James Coleman, the John S. Bradley Professor of the Practice of Law and director of the Duke Center for Criminal Justice and Professional Responsibility, and Newman, the center’s associate director. In addition to collaborating with them on articles and amicus briefs on the questionable reliability of eyewitness identification and the problem of racial bias in selecting death-qualified jurors, Vidmar has helped them address broader questions of decision-making in criminal law. He started by connecting them with his colleagues at the Duke Institute for Brain Sciences.

“We realized the synergy between what they were doing, in terms of pure research, and what we were doing in trying to improve the criminal justice system and to find some way to use science,” Coleman says. “We thought if there is some way we can use science to convince prosecutors and judges and jurors that there was a better way to do things than how we had traditionally done them, then that would be a really important contribution.”

Vidmar “jumped into it completely,” Coleman says, helping convene conferences with scientists,

prosecutors, and law enforcement officials to examine how decisions are made in the criminal justice system. “I think he’s loved the opportunity to work in his discipline on different problems, and he’s helped us think about these issues in a way that goes beyond just criminal law.”

Infectious enthusiasm

Vidmar’s enthusiastic embrace of new research projects and his ongoing endeavors has left an indelible impression on his many colleagues.

“Neil takes such great joy in his work,” says Hans. “He never seems happier than when he has a new project to develop.” Dimond also admires the unflagging energy and commitment to excellence he’s brought to their longtime teaching partnership: “Working with Neil over the years to develop and keep the Negotiation course fresh has been a privilege. As a colleague, he is generous with his time and talents. He focuses on student needs, interests, and outcomes. He is smart, kind, easy to work with, and wickedly funny.”

Mong-hwa Chin LLM ’11, SJD ’14, who has been Vidmar’s student, SJD advisee, research collaborator, and co-author, says Vidmar’s upbeat personality, patience, and positive attitude towards work make him a great teacher and supervisor.

“When he accepted me as his student, I really knew nothing about social psychology and decision-making,” says Chin, now an assistant professor at National Chiao Tung University School of Law in Taiwan. “When I first met him, in order to let me feel more comfortable, he emphasized more than once that he is a law professor who does not have a law degree. Over the years, he guided me through the fundamentals of this field and introduced me to the idea of ‘irrational decision-making,’ which became the core concept of my dissertation.” Chin and Vidmar jointly presented research on the jury system to Taiwanese jurists and international scholars in 2014, as Taiwan considered allowing laypersons to hear trial evidence along with judges in its traditionally inquisitorial trial system.

“Neil is such an easygoing and accessible person,” says Chin. “He was always eager to share his experiences and the exciting findings that he recently learned from a paper. When you talk with him, you can feel his devotion in his field and his role as a teacher.” ♡



The endless cycle of corporate crime and why it's so hard to stop

by **Andrew Park**

ON SEPT. 19, following the announcement that Wells Fargo & Co. would pay \$185 million in fines for opening nearly two million bank and credit card accounts on behalf of customers without their consent, Chief Executive John G. Stumpf appeared before the Senate Banking Committee. Sen. Elizabeth Warren, D-Mass., a persistent critic of big banks, tore into the CEO and corporate sales incentive programs she said pushed low-level Wells Fargo employees to defraud consumers. Stumpf “squeezed ... employees to the breaking point” to drive up the company’s stock and enrich himself and “should be criminally investigated,” she said. “The only way that Wall Street will change is if executives face jail time when they preside over massive frauds.” »

“Enron was only a single canary in the cavernous coal mine of America’s financial markets. From the bird’s death, nobody had learned a thing.”

— **Professor Samuel Buell**, writing in his new book, *Capital Offenses: Business Crime and Punishment in America’s Corporate Age* (W.W. Norton & Co. 2016)

Raj Rajaratnam, founder of the Galleon Group, a hedge-fund management firm, was arrested in 2009 for insider trading. He is currently serving 11 years in federal prison.

(AP Photo/Jin Lee)



Ten days later, when Stumpf testified in front of the House Financial Services Committee, he may have been hoping for a friendlier reception. The chairman of the panel, Rep. Jeb Hensarling, R-Texas, had recently introduced a bill to scale back the 2010 Dodd-Frank banking reforms. But instead of defending Wells Fargo, Hensarling chastised the bank and decried the broken record of corporate crime and punishment in America. “To the American people, this kind of feels like déjà vu all over again,” he said. “Some institution is found engaging in terrible activities. There is a headline, fine, and yet no one seems to be held accountable.”

In the eight years since the collapse of the mortgage-backed securities market precipitated the worst financial crisis since the Great Depression, authorities have gone after business misconduct with unprecedented vigor. They’ve levied an estimated \$200 billion in fines on U.S. banks for conduct before, during, and after the crisis, including rigging interest rates and laundering money for drug cartels. They’ve gone after corporate titans and hedge-fund kings for insider trading. They’ve wrung massive penalties from General Motors for covering up faulty ignition switches and Volkswagen for cheating on emissions tests. And they’ve wrested a \$20 billion settlement from BP over the Deepwater Horizon oil spill in the Gulf of Mexico.

More significantly, Congress and the Obama administration have beefed up the investigative and enforcement capabilities of regulatory bodies addressing violations of environmental, product safety, securities, anti-bribery, and banking laws, including the new Consumer Financial Protection Bureau, which led the charge against Wells Fargo. The result: record numbers of enforcement actions, unprecedented fines, and greatly expanded payouts to whistleblowers.

Yet as Hensarling noted, this crackdown seems to have done little to stem the tide of bad behavior in American business. In scandal after scandal, going back at least to the insider trading wave of the 1980s, big corporations or their employees are found to be flouting laws, often at the expense of consumers or investors, and the government vows to come down hard on the perpetrators. But despite public pressure and ever-expanding tools and powers to go after corporate wrongdoing, in most cases, the company pays a large fine and promises to clean up its act while top executives escape punishment. Most notable among them have been the Wall Street CEOs at the center of the subprime mortgage market. (Stumpf, for his part, resigned on Oct. 12.)

Indeed, despite recent reforms implemented since the crisis, such as the Dodd-Frank Wall Street Reform and Consumer Protection Act, which imposed new regulatory requirements on financial institutions and gave new tools to the Securities and Exchange Commission and other federal agencies to go after wrongdoers, the government is still constrained in its ability to fight business crime. (For more on a new Dodd-Frank rule, see page 41.) Prosecutors have limited resources and generally only bring cases they believe they can win. Even then, the high evidentiary standards in federal criminal court make establishing culpability a challenge, particularly in large, complex corporations where decisions are often made by committee. And in industries such as finance, innovation has stayed a step ahead of the law, with managers incentivized to find new ways to take risks without running afoul of authorities, even if they cause societal harm (such as the cross-selling push that appears to have inspired the fraudulent accounts at Wells Fargo). With fewer white-collar perp walks than many in the public would like to see, there is a widespread perception that the government hasn’t been willing to take on the real bad guys.

For many lawyers and legal scholars, this state of affairs represents a conundrum that is actually more confounding: Why does business crime continue to flourish despite ever-expanding efforts to fight it? “We look across the major industries and we’ve got some example in almost every one of them of a fiasco that

results not from Enron-style corrupt management but from ineffective management and incentives that operate at lower levels of the company that in retrospect seemed almost inevitable to produce wrongdoing,” says Samuel W. Buell, the Bernard M. Fishman Professor of Law.

Before entering academia, Buell was the lead prosecutor on the U.S. Department of Justice’s Enron Task Force, which brought charges against more than 30 individuals following the energy company’s collapse, including its top two executives. As the 2008 financial crisis unfolded and details emerged about the wrongdoing that precipitated it, which Buell describes as a “risk fiesta,” he was struck by the fact that the investment bank Lehman Brothers had used an accounting trick to hide its mounting debt as it spiraled towards bankruptcy, just as Enron had a decade earlier.

“The unprecedented vanishing of America’s seventh-largest company in 2001,” he writes in his new book, *Capital Offenses: Business Crime and Punishment in America’s Corporate Age* (W.W. Norton & Co. 2016) (see page 39), “the severe prosecutions with long prison times, the bitter congressional hearings, the regulatory reforms — none of it did anything to stop this. Enron was only a single canary in the cavernous coal mine of America’s financial markets. From the bird’s death, nobody had learned a thing.”

The limits of the law

Buell has focused his teaching and scholarship on criminal law and the regulatory system, recently emphasizing how the criminal justice system treats corporations and white-collar offenders. To him, a key limitation that prosecutors face in cracking down on business crime is the law itself, specifically how society applies criminal law to business, an activity that is not inherently in conflict with our morals or values (unlike, say, robbery). In the zeal to prevent and punish wrongdoers across the economy, Congress has enacted many laws and regulations, he says. But there are still many unseemly behaviors that are tolerated in business, sometimes because they are not deemed harmful enough to outlaw, sometimes because they are considered an acceptable by-product of a desired behavior, sometimes because the law hasn’t yet caught up with them. And companies often incentivize their employees to get as close to the legal lines that exist as they can — without stepping over them.

Consider a “run-of-the-mill” white-collar crime, such as bribery or collusion. In a large corporation, it isn’t always easy to establish the fundamental

“In my experience over the 30 years of my practice, I think that fraud really plays a much smaller role in financial crises than people like to think.”

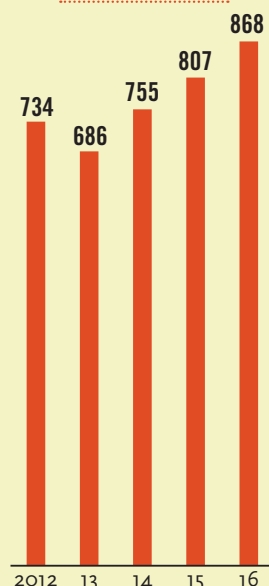
— **Michael H. Krimminger ’82**, a partner at Cleary Gottlieb and former general counsel of the Federal Deposit Insurance Corporation

requirement for culpability in our legal system, intention, particularly among managers or executives whose decision-making is far removed from the criminal act. And, Buell says, monitoring business actively closely enough to ensure blame can be established when wrongdoing happens would require an intrusion in the economy that our capitalist system would not abide. Add to that the higher standards for evidence in criminal court than in private lawsuits, the fear of the systemic impacts of dealing a blow to a company’s reputation or taking it down altogether, and the substantial discretion that federal prosecutors enjoy to pass on cases that they don’t think they can win, and the limitations of the law to address corporate malfeasance become apparent.

Buell cites fraud, which he calls “a simple idea with endlessly complex manifestations,” as the classic example of the challenges in prosecuting business crime that are inherent in the law itself. We all know what fraud is at its heart, he says: deception with the intent to gain something that doesn’t belong to us. But the law of fraud leaves it to the courts to decide what constitutes intentional deception and what, in the context of business, is just aggressive marketing. And while fraud can be applied to all manner of business activities, actually proving it can be quite difficult, even in cases where it seems all but certain to an outsider. An area of law that is both flexible and unstable can cause problems for those tasked with applying it.

In the notorious mortgage-backed securities transactions that helped create the financial crisis, banks sold financial products based on subprime home

Securities Enforcement Actions



Source: Securities and Exchange Commission

“When [deferred prosecution agreements] get challenged ... there are a few judges who really put the government to the task of demonstrating why certain types of agreements are in the public interest and I think when you see a little more of that we’ll see the government be more careful in how and when it applies them.”

— **Tom Hanusik ’90**, a partner at Crowell & Moring and former Enron prosecutor at the U.S. Department of Justice

loans despite knowing that a crash in the housing market was imminent and would render many of those loans insolvent. While that might look like deception to an outsider, Buell points out that prosecutors have uncovered little hard evidence that banks intended to deceive customers regarding securitizations. And, he argues, the traders who bought those securities were sophisticated enough to have known the risks they were taking, that they could lose a lot of money, and that big losses might threaten the stability of their banks. “Unless the seller of the security lied about the nature or quality of the mortgages underlying the product, even the late-in-the-game player who was still buying when the rest of the world was selling is dumb but not defrauded,” he says.

For Buell, the crash of that market, and its ultimate cratering of the global economy, was not the result of widespread criminal fraud, as many allege. Instead, he says, it was banks taking on too much risk and operating under too little regulation in their marketing of complex products that, while difficult for ordinary investors to understand, were not on their own illegal (not unlike Enron’s obscuring of its indebtedness, which also wasn’t deemed criminally fraudulent). Many in the government and private practice agree, which is why the suggestion of locking up Wall Street CEOs for defrauding investors is so often met with eye rolls. The evidence simply doesn’t support such a proposition, and in at least one recent case, a civil mortgage-fraud suit the Justice

Department brought against Bank of America and one of its executives, an appellate court agreed, throwing out a judgment in May.

“In my experience over the 30 years of my practice, I think that fraud really plays a much smaller role in financial crises than people like to think,” says Michael H. Krimminger ’82, a partner at Cleary Gottlieb in Washington who served as general counsel of the Federal Deposit Insurance Corporation from 2010 to 2012 and earlier was a deputy to the chairman for policy. “This crisis was based upon a combination of factors and a failure of the market, failures of the regulators, failure of some of the market structures, and failures of some of the types of securitization structures. It was principally a product of the usual things that create crises: too much risk and the failure to accurately price the risk. As a result, people aren’t paying enough for the risk and therefore things continue to get riskier and riskier and riskier and eventually it collapses. That to me is the much bigger story rather than fraud.”

Placing blame

Of course, that hasn’t stopped the banks from paying massive settlements to the government to put probes of their crisis-related activities behind them. Krimminger, who spent 21 years at the FDIC and now helps large U.S. and international banks navigate the post-crisis legal and regulatory landscape, says the proliferation of fines and penalties has had an enormous impact on the conduct of management and employees within financial institutions. These include \$16.65 billion paid by Bank of America, \$5 billion paid by Goldman Sachs, and more than \$23 billion paid together by Citigroup, J.P. Morgan Chase, and Morgan Stanley. In September, the Justice Department announced its opening bid in talks to settle its claims against Deutsche Bank: \$14 billion.

“I think many, many institutions have made tremendous progress both in the way they compensate people as well as in the way they train people, because frankly, it’s become an enormous, expensive tax,” Krimminger says. “Some of the fines and penalties that have been imposed on institutions in the last five years are so much greater than any fines and penalties that have ever been imposed in the past, that it has gotten people’s attention, as it should.”

Increasingly, the government is settling criminal claims through deferred prosecution agreements (DPAs). Once a way for low-level drug offenders to



avoid incarceration by accepting probation, in the early 1990s, corporations began negotiating DPAs that allowed them to escape conviction by accepting liability, paying a hefty fine, and cooperating with the government. Typically, “cooperation” has meant the company conducts a wide-ranging internal investigation to ascertain what went wrong and who was at fault, sets forth a plan of reform, and submits to a government-designated monitor to ensure compliance.

DPAs have become a staple of white-collar cases and the vehicle by which the government has settled cases against many of the major banks as well as giants in the auto, pharmaceutical, energy, technology, and aviation industries. A Manhattan Institute report found that the government negotiated 303 DPAs and NPAs (non-prosecution agreements) between 2004 and 2014, and 16 of the Fortune 100 were under one in 2015. But defense attorneys complain that they represent nothing short of a threat — cooperate or die — and invite prosecutors into the executive suite to dictate how their clients reform. And scholars have noted that their proliferation has put prosecutors into the role of regulator, with little oversight.

“They can be frankly life-threatening and not always advantageous to shareholders either,” says Tom Hanusik ’90, an Enron prosecutor at DOJ and senior counsel in the SEC’s Division of Enforcement who is now co-chair of the white-collar and regulatory enforcement group at Crowell & Moring in Washington. “When DPAs get challenged, which has happened a few times, there are a few judges who really put the government to the task of demonstrating why certain types of agreements are in the public interest and I think when you see a little more of that we’ll see the government being more careful in how and when it applies them.”

But to others, the deals the government cuts are too often toothless and inefficient, overly friendly to business, and a “get-out-of-jail-free” card for penitent CEOs. It would be better, say critics such as Judge Jed Rakoff of the U.S. District Court for the Southern District of New York, to limit criminal charges to individuals and corporate liability to civil claims.

Indeed, the larger question of assigning criminal liability to a corporation remains a matter of considerable controversy. Based on the tort law concept of *respondeat superior* — “let the master answer” — corporate criminal liability first appeared in federal law during an earlier era of concern over unbridled business power and its harmful effects on society. The Elkins Act of 1903 stated that any misdemeanor committed by person employed by or acting on behalf of a railroad “shall also be held to be a misdemeanor committed by such corporation.” Six years later, the U.S. Supreme Court affirmed the statute as constitutional, holding the New York Central & Hudson River Railroad liable for rebates on shipping that two employees illegally offered customers. The ruling made *respondeat superior* the standard for corporate criminal liability — holding companies responsible when employees or other agents commit crimes in the course of their employment — that has stood for over a century.

Legal scholars have railed against the doctrine for decades, says Sara Sun Beale, the Charles B. Lownes Professor Law, an expert in federal criminal law and criminal procedure. Corporations cannot demonstrate *mens rea* and cannot be imprisoned, two concepts that are fundamental to criminal law. Other methods of punishment, such as large fines or debarment, may unfairly harm innocents such as shareholders or employees who played no role in the crime. And, these critics say, courts have applied it too broadly, sweeping all manner of crimes up under its umbrella. Some have even imposed it on corporations without charging any individuals with crimes on the theory that the companies bore responsibility for the collective knowledge or action of multiple employees who on their own

“To put it simply, you need every tool in the toolkit” to address wrongdoing in business, including corporate criminal liability.

— Professor Sara Sun Beale

Wells Fargo has agreed to pay \$185 million in fines for opening nearly two million bank and credit-card accounts without customers’ knowledge.



“The SEC has a whole range of things it can do, but the most important thing it can do is get a headline.”

— **Professor James Cox** on how the SEC can use its enforcement function to deter future wrongdoers

were blameless. Beale, however, defends the use of corporate criminal liability as a necessary method with which the government can address wrongdoing in business, if not the only one. “To put it simply, you need every tool in the toolkit,” says Beale, who in her scholarship has noted a recent trend of European countries adopting corporate criminal liability where it hadn’t previously existed. “The decision in the U.S., as in other countries, should be a pragmatic one about the sanctions that are needed to deal with the enormous power wielded by corporations and the potential for harm to the public. Sanctions against corporations should not be judged by the same standards as those governing *individual* responsibility.”

Still, the trend of executives or managers skirting culpability for a company’s misdeeds strikes many in the public as both illogical and unfair, and that perception has put pressure on the government. In a September 2015 memo, the Justice Department instructed federal prosecutors to focus on individuals from the beginnings of investigations and refuse cooperation credit for corporations that fail to identify all individuals connected to wrongdoing. The guidance applied to civil attorneys, as well. The memo’s author, Deputy Attorney General Sally Quillian Yates, acknowledged the inherent challenges in establishing who was responsible for an act of corporate malfeasance, including piecing together information that is diffused around the organization and finding proof of knowledge and intent, particularly in the executive suite. “These challenges make it all the more important that the Department fully leverage its resources to identify culpable individuals working at all levels in corporate cases,” she wrote.

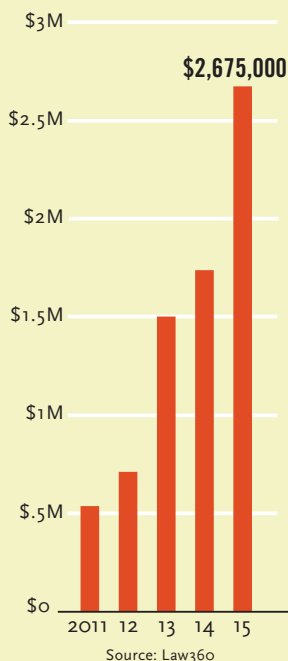
Despite being adopted as policy by lawyers focused on securities, antitrust, foreign bribery, and environmental prosecutions as well as on banking, the Yates Memo has not produced a significant uptick in prosecutions of individuals. Nor are there signs

that government is reducing its reliance on corporate criminal liability to resolve major business cases. But that has not quelled concern among defense attorneys that the more aggressive pursuit of individuals will increase the burden on companies that choose to cooperate with the government and risks pitting them against their own employees, which could hinder the internal investigations required under DPAs.

Meanwhile, scholars and practitioners have begun to look more closely at an even more stringent approach: holding managers in some areas of corporate activity liable for crimes committed on their watch whether or not they were involved. In food and drug laws and some environmental laws, the Responsible Corporate Officer (RCO) doctrine establishes punishment of officers and directors if prosecutors can establish that they failed to act to prevent a misdeed by an employee on behalf of the company. In July, the U.S. Court of Appeals for the Eighth Circuit affirmed this doctrine as it applies to the Food, Drug, and Cosmetic Act when it upheld the conviction of two executives at a commercial farm company that sold eggs contaminated with salmonella. Buell says courts could expand its use but doing so could raise troubling questions depending on how far they went.

“RCO, at least as articulated in the holding of the foundational *U.S. v. Park* case, dispenses with both act and mental state to an alarming degree,” he wrote in a blog post in September. “I am aware of no other area in which American criminal law has imposed strict liability for omission to act — at least enduringly, modernly, and constitutionally.”

Average Civil Settlement in Product Safety Cases



The role of regulation

Will criminalizing management neglect really stem the tide of businesses behaving badly? As Buell points out, after each new scandal, Congress has expanded the laws governing corporate conduct, opening up new avenues for enforcement actions or prosecution, and mirroring the impulse to overcriminalize seen in other areas of the law. Following the Enron and WorldCom meltdowns, it was Sarbanes-Oxley which, among other things, instituted extensive new requirements on public companies to disclose information to shareholders and prevent accounting fraud. And yet just six years later, another meltdown occurred. That leads many scholars to believe that it is regulation, and not prosecution, that must do a better job of policing business in the first place.

Federal regulators were widely criticized in the wake of the 2008 crisis — of a failure to act, of “capture” by industry, of corruption encouraged by the

revolving door between government and regulated entities. Take the Securities and Exchange Commission. The agency has been far too friendly to the industry for the last 20 to 30 years, says James D. Cox, the Brainerd Currie Professor of Law, an expert in securities regulation. That has made it less willing than it was in the past to bring enforcement actions, such as those to restrain the fees that mutual funds charge retail investors or to crack down on companies that use alternative disclosure methods and non-standard accounting, which are violations of SEC rules.

“There is reluctance or a recalcitrance to push an investigation, push things a little bit further, go into the realm of uncertainty,” says Cox. “A big part of regulation is through enforcement and making law in the courts, and historically the enforcement staff has been a willing participant in pushing the envelope. You don’t see that as often now.”

In the wake of the financial crisis and the Bernard Madoff scandal, the SEC reorganized its enforcement division, moving about 20 percent of its enforcement staff into five specialized units, notes Julie M. Riewe JD/MPP ’99, T’93, who was co-chief of the Asset Management Unit from 2013 to 2016. In addition, the division began hiring securities market experts to help the staff become more proactive in uncovering wrongdoing, including by using data analytics to identify potential misconduct or rule violations.

“The agency hires experts directly from the industry because it believes they know how to identify possible hot spots in a way that lawyers at a government agency simply don’t,” said Riewe, who joined Debevoise & Plimpton in March as a litigation partner in the firm’s white collar and regulatory defense group. “The experts’ facility with data analytics has enabled the agency to be more sophisticated in how it targets potential violations, including by directing scarce staff resources to what the SEC believes to be high-risk areas.”

In fact, Riewe says, there is now a feeling in the defense bar, thanks in part to Dodd-Frank reforms that required most private fund managers to register with the SEC for the first time and created a whistleblower program that rewards tips that lead to enforcement actions, that the agency is “willing to pursue any violation, no matter how small, particularly if the conduct or violation is novel or if the agency thinks that the case will send a broader message to the industry.” Indeed, last year, the SEC brought the highest number of enforcement actions in its history.

Cox says he would like to see the agency more frequently use its enforcement function to bring high-profile attention to abuses that will deter future wrongdoers: “The SEC has a whole range of things it can do, but the most important thing it can do is get a headline.” But he sees an even more glaring area of weakness at the Commodities Futures Trading Commission (CFTC). As the agency that regulates the derivatives market, the CFTC was the target of intense criticism for not raising red flags about the proliferation of high-risk credit default swaps in the mortgage-backed securities market in the 2000s. Yet today, the agency remains understaffed, he says, with about one-sixth the personnel that the SEC has, despite the more volatile and dangerous nature of derivatives.

“What the SEC manages is kind of mundane — it’s unlikely to blow up the system,” Cox says. “What the CFTC manages, as we saw last time, did blow up the system, so I think that’s where they ought to put resources.”

In the future, it may not be enough to throw more bodies at regulatory weaknesses, says Lawrence Baxter, the William B. McGuire Professor of the Practice of Law and co-director of the Global Financial Markets Center. In a forthcoming article in *Duke Law Journal*, Baxter argues for using emerging technologies such as automation, big data, and artificial intelligence to monitor financial institutions. The development of “RegTech,” he says, would mirror the industry’s recent focus on “FinTech,” or financial technology, to deliver services faster, more efficiently, and more flexibly. It already exists in the way that the government monitors cur-

“The big banks know the government can’t do without them. The government knows that they can’t do without the banks. And despite all the rhetoric and pressure ... I don’t think we have any sort of silver bullets that would fix the situation.”

— Professor Lawrence Baxter

General Motors CEO Mary Barra testified before a House subcommittee on the carmaker’s failure to act on its knowledge of faulty ignition switches linked to 13 deaths.



(AP Photo/Cliff Owen, File)

“It makes you wonder if this institution, the corporation, has developed in such a way and grown to such a scale that it’s beyond the capacity of individuals and small groups of individuals to manage.”

— Professor Samuel Buell

In 2015, Volkswagen was found to have programmed engines in about 500,000 diesel-powered cars in the United States — and 11 million worldwide — to activate some emissions controls only during testing.



rency transactions and high-frequency trading. In Britain, the Financial Conduct Authority is working with the banks to test new ways of doing this, and Malaysia and Hong Kong have sponsored their own pilots.

“The tedious tasks, the ones that are manually performed now, need to be automated, so we don’t have so many people sitting there going through books all the time, so that the regulators can then exercise real discretion on the reports that come from automated monitoring,” Baxter says.

“Locked in this embrace”

Indeed, behind the argument for adopting more sophisticated methods of regulation is a recognition of the failure of the justice system to stop bad behavior at the root of market turmoil. In particular, financial institutions’ constant adaptation to market realities means that rules imposed from the top down will never be able to keep up with changes in conduct, Baxter says. The regulators can’t act as fast as the banks adapt. It’s also a recognition of the interdependence of government and big banks. It’s not just that the banks are so large that their failure would be catastrophic for the global economy, he adds. They are intertwined with government in a multitude of ways, from underwriting public debt to serving as the agents of bailouts when other institutions fail. In the banking industry, regulators are already constantly supervising institutions and perhaps even condoning bad behavior.

“We are locked in this embrace,” he says. “The big banks know the government can’t do without them. The government knows that they can’t do without the banks. And despite all the rhetoric and pressure the regulators have put on them, I don’t think we have any sort of silver bullets that would fix the situation.”

The same could be said of giant corporations regardless of industry. The outsized role they play in society — employing workers, enriching investors, supporting communities — makes many of them “too big to jail.” As Buell notes, they have been massively successful at building wealth and driving innovation, but they are structured to help their owners avoid legal liability. Now that they are among the largest and most powerful forces in the world, and irreversibly enmeshed with the institutions of government that regulate and police them, it may be impossible to hold them to account when they or their employees behave badly.

Instead, Buell says, we may have to look at other remedies, such as stipulating the duties and obligations of corporate managers, including, perhaps, establishing that they have duties to the public and not just their shareholders, as proposed by Steven Schwarcz, the Stanley A. Star Professor of Law & Business (see page 42). Or perhaps the government should draw lines to keep corporations from engaging in certain businesses, as the Glass-Steagall Act, which prohibited commercial banks from offering investments, did before Congress repealed it in 1999. But those ideas may now be non-starters: As this issue of *Duke Law Magazine* was going to press, President-elect Donald J. Trump was promising to dismantle much of the regulatory state, including Dodd-Frank, a nod to persistent complaints that corporations face too many constraints, not too few.

“It makes you wonder if this institution, the corporation, has developed in such a way and grown to such a scale that it’s beyond the capacity of individuals or small groups of individuals to manage,” Buell says. “We have been in this constant conversation about the criminal justice system’s relationship to corporations, which is by its structure a conversation about individuals and bad behavior. And the problem with that conversation is that it would lead one to think that the problem is we’ve just got badly behaving individuals, and if we could just get people to behave, these problems would go away, when in fact the people are fungible and the problems are a result of the incentives and the effects of the corporate institution at its current size and scope.” ♡



Talking corporate crime with Professor Sam Buell

BEFORE THE FINANCIAL CRISIS of 2008 and the rampant public perception that fraud was at the heart of it, Enron was the most notorious case of corporate wrongdoing the world had ever seen, and Sam Buell had a front-row seat. As a federal prosecutor on the government's Enron Task Force, Buell led the investigation that resulted in the indictment of Enron's chief executive, Jeffrey Skilling, and tried the case against the company's accountants, Arthur Andersen.

Buell, the Bernard M. Fishman Professor of Law, is now one of the nation's leading scholars of white-collar crime, writing recently on such issues as the conceptual structure of white-collar offenses, the problem of behaviors that evolve to avoid legal control, and the treatment of corporations and white-collar offenders in the criminal justice system. In his new book, *Capital Offenses: Business Crime and Punishment in America's Corporate Age* (W.W. Norton & Co. 2016), he undertakes an overview of his field for a general audience. He recently talked to *Duke Law Magazine* about the troubling persistence of corporate malfeasance and what can be done to combat it.

DUKE LAW MAGAZINE: Why do we continue to go through these cycles of scandal?

SAM BUELL: I think one of the more controversial things that I say in the book is that it's possible that the fixation on criminal justice is actually in a strange way redounding to the benefit of corporate management in the sense that it displaces conversation about more extensive and perhaps more costly and more uncomfortable forms of regulation. Over the last couple of decades, after each one of these rounds of scandal, we have extensive conversations about regulatory change, which result in some change but maybe not as much as proponents of stronger regulation would like or ask for. Yet during that whole time, it's hard to find a single example where industry has succeeded or even tried very hard to get Congress to cut back on either the scope or the severity of white-collar criminal laws.

DLM: Is the government's recent pursuit of corporate crime a good and sustainable practice?

SB: I see it as kind of a gap-filler and perhaps evidence that regulation isn't working in the way that it ordinarily used to or would be



expected to. By definition, every time you have some fiasco erupt, it looks like a failure of regulation. If regulation had been effective, this wouldn't have happened, right? So I think prosecutors see themselves as problem-solvers and they try to step in and do something about that. The whole thing has developed a little bit organically. It's a ground-up kind of process that's driven by prosecutors and the way they think. And Congress has allowed it to continue.

I was talking to my students about how influential the defense bar has been in this whole story. The deferred prosecution agreement has its origins in the early 1990s in a case in the Southern District of New York involving a financial services company. Mary Jo White [who now heads the SEC] was the U.S. Attorney at the time. The government had told this company that they really needed a conviction in the case, it was serious enough that there was going to have to be some kind of a guilty plea or they were going to get indicted. And the company said, 'We can't have that — we're out of business if that happens. What do we do?' Some creative lawyers on the defense side, former prosecutors, said, 'What about the deferred prosecution we used to offer lower-level drug defendants, where we'd file the charges but then we'd put them on probation and if they passed regular drug tests for a year and didn't get in trouble with the law, then the case would be dismissed?' Each side gets a little something. So it was the defense lawyers who initially drafted that agreement and sent it over to the government. And then that template started getting used over again in the Southern District and then [became widely used elsewhere]. It's become very controversial.

So it's the defense bar that's been as influential as prosecutors in terms of setting expectations of what

companies will agree to, what they won't agree to, what should go in these agreements, what shouldn't, and of course most of these defense lawyers are former prosecutors. It's an interesting story about an organic development of a quasi-regulatory system that was created by a subset of the legal profession, without any legislation, without any court involvement to speak of.

DLM: Do you find yourself defending prosecutors in this debate?

SB: I am skeptical of explanations that are grounded in either a story about incompetence or a story about regulatory capture. Having been in the Justice Department, having seen intimately for many years how things work there, knowing the kind of people who go into those jobs and what motivates them, it's very hard for me to think that people are sitting around being lazy, and even harder to think that they're somehow influenced by industry. Justice Department prosecutors don't have the same kind relationship with industry that regulators in the other agencies do. They're not beholden to any particular industry.

I get frustrated not just with public perceptions but also with perceptions of journalists who cover it a fair amount and don't, I think, have a full enough appreciation for how difficult it is to win a case at trial and the gap between what we think happened versus what you can prove in a courtroom. When prosecutors don't bring a case, it doesn't mean they're approving of the behavior. They just don't like to lose. Now I think there's a legitimate debate to be had about whether prosecutors are too risk-averse. But the professional rule is that they're not supposed to bring a charge unless they believe they have proof beyond a reasonable doubt. In other words, a jury will convict.

I think that part of the frustration in the wake of the financial crisis was people wanted there to be more trials because at least there would have been a more public airing of some of this stuff. And I agree with that. I wish there was more of a public airing. There are other forums for that, such as civil cases, but of course they settle so you don't get trials out of those for the most part. Another forum is congressional hearings, which used to offer a more serious, deeper investigation than they do now. They were for the purpose of outing the facts, and we'd learn from them. Prosecutors are not in the business — and shouldn't be — of indicting people just so we can have trials.

DLM: If criminal prosecution is not the answer to corporate misconduct, what is?

SB: I go back to first principles here: If we've lost control of the large corporation in some sense, should we be thinking about the basic rules for how corporations are structured and what the obligations of managers are? In case after case we've seen even the best-intentioned corporate executives unable to prevent serious crimes that cause extensive harm. I think about the conversation we had in this country at the turn of the last century, when we first had to deal with harmful by-products of large-scale corporate activities and got regulation and antitrust law and the ideas that the market's not perfect and size can be a problem. That's the kind of conversation that we as a society need to be having now. It perhaps re-conceives our relationship to the corporation or questions it in a more fundamental way.

Think about the conversation we had about breaking up the banks after the financial crisis and our decision not to do that. That might have been a mistake not to scale down that industry in some way that would make it more manageable to both regulators and bank executives. We've seen the banks with a whole series of misconduct scandals since the financial crisis in spite of the fact that they were nearly put out of business, severely sanctioned, had extensive management changes, massive economic losses, and yet still, they don't seem to be able to get themselves under control. ♡

New reg aims to make banking fraud less lucrative

by Lee Reiners

CARRIE TOLSTEDT, the former head of Wells Fargo's community banking division, was required to forfeit \$19 million in compensation after the company came under intense public scrutiny for opening over two million unauthorized customer accounts. From 2011 to 2016, while the bank was firing over 5,000 low-level branch employees for engaging in this fraud, it paid her more than \$36 million in incentive-based compensation, largely due to her success in meeting the company's goal of "cross-selling" its products to customers. Tolstedt's potential gains from the practice likely influenced the setting of unrealistic sales goals that drove so many employees to commit fraud.

Compensating executives through stock awards and options theoretically aligns the interests of managers with those of shareholders — both share a desire to see the company's stock price increase. However, the financial crisis revealed that what is known as the principal-agent problem cannot be solved so easily. Complex incentive-based compensation structures drove many on Wall Street to engage in excessive risk-taking designed to boost short-term earnings and stock prices while ignoring the long-term implications of their actions. The consequences of this short-termism proved catastrophic for the financial system and the world economy.

Aiming to address some of the pre-crisis excesses, Section 956 of the Dodd-Frank Act required federal regulators to develop rules that prohibit incentive-based compensation arrangements that encourage excessive risk-taking by covered financial institutions. A draft rule was released in April and is scheduled to be finalized in January, although many firms claim to already be in adherence with the rule's main provisions. Its goal: to ensure that bank managers make decisions that are in the long-term interest of the company.

At the largest banks, those with over \$250 billion in consolidated assets, the rule's provisions cover all

employees who receive incentive-based compensation, with enhanced requirements for "senior executive officers" (SEOs) and "significant risk takers" (SRTs). For these employees, incentive-based compensation would be subject to requirements such as a deferral period, forfeiture, and clawbacks.

For SEOs at the largest banks, the rule requires that at least 60 percent of qualifying incentive-based compensation be deferred for a period of no less than four years (the requirement is 50 percent for SRTs). For an example of what this means in practice, assume that a CEO will receive \$10 million in stock options if the company meets certain performance targets in 2016, such as return-on-equity. If these goals are reached, \$6 million of the options wouldn't be paid until 2020.

If, during the deferral period, the company uncovered misconduct by the CEO or suffered from a risk-management failure, then the CEO could be forced to forfeit some or all of the \$6 million in unvested stock options. Even after the four-year deferral period, the proposed rule allows companies to claw back vested incentive-based compensation if specific conditions are met.

The proposed incentive-based compensation rule may discourage some of the risky behavior that led up to the crisis, but will likely not be enough to prevent financial industry fraud. Still, by requiring firms to take back previously awarded compensation, as Wells Fargo did with Tolstedt, it will help make fraud less profitable. ♡

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Lee Reiners co-directs the Duke Global Financial Markets Center and is a lecturing fellow at Duke Law. He previously worked for five years at the Federal Reserve Bank of New York. Read more of his commentary at The FinReg Blog.



Schwarcz: Managers of systemically important firms should have a “public governance duty”



“... [T]he financial crisis shows that we need some way to protect the public from the kinds of excessive risk-taking that could drastically harm the economy.”

— Professor Steven Schwarcz

BECAUSE THE COLLAPSE of systemically important firms like big banks can cause hardship for millions of people, “addressing the problem becomes a humanitarian concern,” says Professor Steven L. Schwarcz. And while regulations that make certain actions by these firms illegal or tortious may not be enough to deter excessive risk-taking, regulations aimed at improving corporate governance can add real value, he says.

In a new article in 92 *Notre Dame Law Review* titled “Misalignment: Corporate Risk-Taking and Public Duty,” Schwarcz, the Stanley A. Star Professor of Law & Business, proposes redesigning financial regulations to impose a duty to society — a “public governance duty” — on managers of systemically important firms. Under his proposal, these corporate executives would have to assess certain risk-taking using a simplified cost-benefit analysis to take into account systemic harm to the public. Schwarcz, a founding director of the Global Financial Markets Center and a senior fellow of the Centre for International Governance Innovation, a leading international think tank, argues that encouraging corporate responsibility in this way should not unduly impede profitability or undermine the managers’ duty to shareholders, and would be “a step towards shaping corporate governance norms to begin to take the public into account.”

Discussing his proposal last June in the keynote address to the National Business Law Scholars Conference held at the University of Chicago Law School, Schwarcz explained that corporate governance

law currently creates a misalignment by requiring managers of systemically important firms to view the consequences of their firm’s actions only from the standpoint of the firm and its investors. That ignores the reality that the public, and the larger economy, bear much of the harm from such a firm’s failure. Systemically important firms therefore engage in risk-taking that is expected to benefit shareholders but may harm — and so should be regarded as excessive from the standpoint of — the public.

Schwarcz argues that a public governance duty could help not only to reduce this misalignment of private and public interests but also to mitigate the problem of financial innovation outpacing regulation. Existing financial regulation is tied to the particular financial architecture at the time the regulation is promulgated, but that architecture constantly changes. As a result, financial regulation usually lags behind financial innovation. A public governance duty could overcome that regulatory time lag because managers contemplating financially innovative but risky projects must try to understand the innovation and its consequences.

Schwarcz also has considered the practicalities of designing and implementing a public governance duty, including enforcing such a duty (shareholders, for example, would be unlikely to sue managers for externalizing systemic harm) and the applicability and possible limitations of using the “business judgment rule” as a defense.

In another article, titled “Rethinking Corporate Governance for a Bondholder Financed, Systemically Risky World” (*William & Mary Law Review*, forthcoming), Schwarcz examines the possibility of including bondholders, who are more risk-averse than shareholders, in the governance of systemically important firms. In addition to reducing risk-taking that could cause systemic harm, their inclusion would address two ongoing developments in bond markets: Bonds have been dwarfing equity shares as the source of corporate financing, and bondholders increasingly trade their securities before maturity, giving them more of a vested interest in the firm’s performance.

According to Schwarcz, some risk-taking by managers of systemically important firms is necessary, even desirable. “But the financial crisis showed that we need some way to protect the public from the kinds of excessive risk-taking that could drastically harm the economy,” he says. ♣

Profiles



Jonathan Aronie '93

AT A TIME OF RISING NATIONAL CONCERN about police-community relations and fairness in the criminal justice system, Jonathan Aronie '93 has been integrally involved in overseeing the transformation of what has historically been one of the nation's most troubled law enforcement agencies.

In 2011, an investigation of the New Orleans Police Department by the U.S. Department of Justice found a lack of clear policies, accountability, training, and public confidence, as well as routine violations of civil rights. Entrenched practices had given rise to a pattern of unconstitutional conduct and violations of federal law, the DOJ report said. A subsequent consent decree between the City of New Orleans and the Justice Department mandated sweeping reforms and oversight by U.S. District Judge Susie Morgan, which the NOPD has spent the last three-and-a-half years implementing.

As the head of a 10-person team appointed to monitor the NOPD's compliance with the consent decree, Aronie has been "the court's eyes and ears" in reviewing,

auditing, and assessing the progress of reform, says Judge Morgan. The co-managing partner of Sheppard Mullin's Washington, D.C., office, Aronie spends hours every week keeping a multitude of complicated monitoring tasks moving forward. He also typically spends one week each month in New Orleans, talking to and riding along with police officers, meeting with citizens and business leaders, and often working out of the conference room in Judge Morgan's chambers.

Aronie, who specializes in government contracts, internal investigations, and fraud defense in his practice, says there's no other way to do the job. "Anyone who tries to do a project this big from a desk will fail. We need to understand what is affecting people's lives on the street, not how things look on paper." Besides, he adds, the case involves key constitutional issues of the day: "We treat it, and the judge treats it, no differently from a voting rights or school desegregation case. And the idea that I get to help protect the constitutional rights of 380,000 people, is pretty darned cool."

Judge Morgan calls Aronie an "invaluable asset," both to her and to the police department in implementing the decree. "He has given me not only advice on policies but insight into the day-to-day operations of the police force and how to change the culture of a department with a troubled past," she says.

A bleak history, an expansive plan for reform

The consent decree Aronie helps administer is the result of a lengthy investigation into NOPD practices and policies by the DOJ's Civil Rights Division launched in May 2010 at the request of the city's mayor. Reporting on its findings in March 2011, the DOJ cited patterns and practices of excessive force; illegal stops, searches, and arrests; gender discrimination due to under-enforcement and under-investigation of violence against women; and "strong indications of discriminatory policing" based on racial, ethnic, and LGBT bias, and a failure to provide police services to members of language minorities.

A misguided "organizational focus on arrests," for example, combined with poor training and policies, encouraged "stops without reasonable suspicion, illegal pat downs, and arrests without probable cause," including a "staggering volume" for low-level crimes, the report stated. And one finding of discriminatory

Profiles

policing is revealing: In 2009, the rate of arrest for African American young people under the age of 17 for so-called serious offenses compared to their white counterparts was 16-to-one, a stark contrast to the national rate at the time of about three-to-one.

After extensive negotiations, the city entered into the consent decree with the DOJ. Outlining 492 separate points for reform over 122 pages, it amounts to the most comprehensive police reform plan in the country. But even after agreeing to a reform plan, the city contested it for another six months before Judge Morgan signed it into effect as a court order.

“‘Consent’ makes it sound easy — like there was clear agreement about what needed to be done,” says Mary Howell, a civil rights attorney in New Orleans who has represented and counseled many clients over NOPD abuses. “That wasn’t the situation at all.

“We’ve been through decades of serious problems with our police department, along with various reform efforts which never seemed to stick. We knew from experience that we needed a consent decree if we wanted to have any chance of lasting reform here. We also knew that if we did not have a very top team in here to ensure that the changes taking place were real, that we would not succeed.”

Putting private-practice skills to public use

The search for a consent decree monitoring team came about just as Aronie felt the pull to take on a public interest case. A decade before, he had served as deputy independent monitor over the Metropolitan Police Department pursuant to an agreement between the DOJ and the District of Columbia, and he welcomed another chance to put his extensive experience with complex internal investigations to public use.

“I saw this as something within my skill set that I could really contribute to and, in that way, give back to the community,” he says. “So I decided I’d put a team together and see if people were interested in our services.” The team received the endorsement of the DOJ before prevailing over 11 others (and one other finalist) in a competitive bidding and public vetting process for the monitorship. Dennis Nowicki, the former police chief of Charlotte-Mecklenburg, N.C., with whom Aronie had worked on the earlier police oversight, and Aronie’s law partner, David Douglass, a former federal prosecutor with civil rights expertise, are the deputy monitors on the 10-member “Sheppard Mullin team.”

Since their appointment, Aronie, often with other members of his team, has been highly visible in New Orleans. He is adamant about the importance of transparency to the process as well; all significant

documents, developments, and minutes of community meetings relating to the consent decree and the monitorship are posted online.

At quarterly public meetings, Aronie and his team offer updates on progress and invite community feedback, and they get it. It’s one of the things Aronie says he loves about the job — and New Orleans.

“It’s a city of people who are very loyal and passionate,” he says. “The passion that comes from the people who attend our meetings is wonderful to see, even when those passionate people are yelling at me because sometimes they might not think my team is doing something fast enough, for example. Even when I’m being yelled at, the passion is impressive.”

Says Howell: “This was a very high stakes situation, and it was very fraught when Jonathan first came in. There was a lot of skepticism in the community about whether the efforts to transform the department were real or just going through the motions. This whole effort could have easily gone awry in less skilled or thoughtful hands.

“The team he put together has been exceptional, as has been his leadership,” she says. “You constantly get a sense that this is not just a process in which they are checking things off a list. There is a real commitment to struggling with these issues of how do you actually change culture, how do you actually change attitudes, how do you change behavior, and what’s the role of the police, the city, and the community in that process?”

Embracing innovation

Aronie is quick to praise a number of NOPD initiatives and innovations. In a recent essay, he lauds several: the department’s appointment of a civilian independent police monitor to ensure community concerns are addressed; its embrace, since 2012, of body-worn cameras; its adoption and implementation of policies that conform with national best practices regarding vehicle pursuits, use of force, and misconduct investigations and discipline; and its recent implementation of a formal policy promoting “the prompt, voluntary public release of critical incident videos,” at a time when most police departments are not doing so. “Each of these actions shows courage, commitment, and confidence,” he writes.

About a peer-intervention training program initiated by the department he is nothing short of passionate. The “Ethical Policing is Courageous” peer-intervention program — “EPIC” — teaches officers to become “active bystanders” who intervene to stop fellow officers from making mistakes or engaging in actions or misconduct that might cause them to inappropriately escalate a situation, putting others’ lives (and their own jobs) at risk.

“I love my practice, but every once in a while, it’s helpful to say, ‘If I want to stay sharp, if I want to continue to better myself and my practice and my skills, I need to do something new.’”

— Jonathan Aronie ’93

"The program identifies inhibitors to intervention and takes those head on. It trains officers how to overcome those inhibitors," he says. Rank structure is one of the biggest: "A junior officer has a hard time intervening on a senior officer. One way EPIC addresses the problem is by creating a structure through which the senior officer signals that intervention is OK — he or she wears an EPIC pin. It gives the junior officer permission to intervene.

"That's a very powerful concept: Once you realize you have permission, you are more likely to do it."

Police have long trained to protect themselves against violence, but they are "far, far more likely to lose their jobs to misconduct than they are to lose their lives to violence," Aronie adds. "That leaves a family without a wage earner, and the loss of a job can lead to depression, domestic violence, and stress. And considering how stressful police-community relations are now around the country, we can't lose good cops.

"I have had police officers say to me, 'If only a colleague had put his hand on my shoulder, I would still be employed.' And I think if more communities and police departments engaged in programs like this on their own, there would be less need for the DOJ to come in and there would be fewer consent decrees."

Aronie's belief in the program is so firm that he supports its implementation pro bono, outside of his work as lead consent decree monitor.

"I believe the EPIC program will be essential to changing the NOPD and making sure that those changes remain in place after the consent decree has been satisfied," says Judge Morgan. "This initiative would never have happened without Jonathan's inspiration and his determination to see it through."

Finding the "magic formula" for change

Although Aronie admits impatience with the pace of progress during his first year as lead monitor, he says the process is now one of cooperation and commitment to reform.

"We have an active judge, a police department leadership team that is now truly committed to reform, a monitoring team that wants to 'roll in the same direction' with the police department, rather than be in conflict, and a Department of Justice team that also wants to work cooperatively with the police department," he says.

"I think one of the key takeaways in these situations is that institutional and cultural change is very difficult. But it happens when the local community and the local government and the federal government and the monitor and the judge all work together. That really seems to be the magic formula."



Photo: Ken Daley / The Times-Picayune

Aronie, right, and his law partner, David Douglass, a deputy consent decree monitor, at a public meeting in New Orleans

Judge Morgan gives Aronie tremendous credit for bringing about change.

"As a citizen of New Orleans, I am proud of the progress that our police department has made over the last few years," she says. "As the Department of Justice acknowledged at our last public hearing, the NOPD is now setting an example for other departments. This is quite an astonishing change and one that Jonathan and his team can be proud of, as am I."

"Do one thing every day that scares you"

Aronie admits that taking on a project of the scope of the police monitorship is "not something that I ever saw myself doing early on." He is grateful, he says, for the models of public service he saw in several of his law professors, such as that of James Coleman and Theresa Newman, who were deeply involved in death penalty and wrongful convictions work, and H. Jefferson Powell and Christopher Schroeder, who served at high levels of the executive branch during the Clinton administration.

"I am so thankful to them and others for leading me to be in a place where I can be a corporate lawyer, I can be a co-managing partner, and yet I can still see the importance of public interest work."

Writing in the September issue of *The Federal Lawyer*, Aronie urged lawyers to periodically take on projects that take them out of their comfort zone. He began his essay with a quote from Eleanor Roosevelt: "Do one thing every day that scares you."

"I love my practice," he says, "but every once in a while, it's helpful to say, 'If I want to stay sharp, if I want to continue to better myself and my practice and my skills, I need to do something new. Although this project is scary and risky, I wouldn't trade it for the world. And I'll tell you, it's made me a better corporate lawyer. After holding public meetings, there is not a boardroom in the world that can frighten me.'" ♡ — Frances Presma



Lori Andrus '99

“Lori is a champion of people’s rights. She clearly enjoys rising to the challenge of fighting for whoever needs the help.”

— Attorney Karen Menzies, who nominated Lori Andrus for the ABA Tort Trial and Insurance Practice Section’s 2016 Pursuit of Justice Award

THE LEAD PLAINTIFF in *Coates v. Farmers Group, Inc.*, a veteran in-house attorney at Farmers Insurance, learned she was earning substantially less than less-experienced male colleagues when one of them made a joke about his salary. “She’d been working there for years and didn’t know,” marvels Lori Andrus ’99, who served as co-lead counsel in the gender-discrimination lawsuit that followed the revelation.

A plaintiff’s litigator who specializes in mass tort, class actions, and complex litigation at the San Francisco firm she co-founded in 2007, Andrus recently negotiated a significant settlement on behalf of 300 female attorneys, all current and former Farmers employees.

The \$4 million settlement, which also requires Farmers to modify its compensation policies and use best efforts to promote qualified women, is already being used as a model in other gender wage discrimination suits.

The complaint alleged violations of the federal Equal Pay Act and Title VII of the Civil Rights Act, as well as California’s strict new Fair Pay Act, which requires employers to show employees are being paid equally for “substantially similar” work, effectively shifting the burden of proof to the defendant to prove equal treatment.

Andrus says she was thrilled to hear that a friend has already used the settlement language of her “new favorite case” to draft a proposal in a similar action. She is quick to share the credit: “I absolutely relied on the language of settlements from previous cases — like *Butler v. Home Depot*. The lawyers from these cases are amazing, my personal heroes.”

Having served as a lead attorney in cases involving a range of issues, including defective pharmaceuticals and medical devices, consumer fraud, and defective

products, Andrus was named one of the nation's 75 "Outstanding Women Lawyers" by the *National Law Journal* in 2015. In a June profile in *Plaintiff Magazine*, Andrus and her law partner, Jennie Anderson, were hailed as "one of the Bay Area's top plaintiff's litigation teams." And in August, close on the heels of the *Farmers* settlement, Andrus received the Pursuit of Justice Award from the Tort Trial and Insurance Practice Section of the American Bar Association.

"Lori is a champion of people's rights," says fellow mass torts litigator Karen Menzies, who nominated Andrus for the award. "She clearly enjoys rising to the challenge of fighting for whoever needs the help." Along with her litigation expertise, Andrus is "wonderfully personable," and always interested in advancing the interests of colleagues as well as clients, Menzies adds. "She's a nucleus. She connects people extremely well."

Andrus advocates passionately for women's rights and professional advancement both in and out of the courtroom. She first found her voice, she says, when she stuck a 'Pro-Choice Y'all' button on her backpack as a teenager in Lafayette, Louisiana. And she recalls marching on Washington for reproductive rights in 1992, the year a record number of women were elected to the Senate. "That was supposed to be the 'Year of the Women' in politics, but things have really stagnated since then in Congress and state seats."

She spent three years after graduating from Boston University on Capitol Hill as a congressional aide. Initially, she had no intention of going to law school. "Then I began to notice that the women who were really getting things done, and who were in positions of leadership, all had law degrees," she says. Andrus chose Duke after a friend shared an article from a fashion magazine — "*Vogue* or *Cosmo*" — ranking law schools based on how successful the schools' female students were, on campus and after graduation. "Duke was number one," she says. "After that, I applied and knew it was the only school I'd go to."

At Duke Law, Andrus was inspired by Professor Trina Jones' employment law course and Professor Tom Rowe's course on complex litigation. Spending her 2L summer at Lieff Cabraser Heimann & Bernstein in San Francisco got her hooked on mass tort law, and in Elizabeth Cabraser — a renowned litigator since the early 1980s who was recently chosen to lead the consumer fraud case against Volkswagen — Andrus found a role model and a champion.

Andrus returned to Lieff Cabraser as an associate, rocketing to partnership in five years. Early on, Cabraser urged her to start taking leadership roles on cases. "She told me I just had to go for it," Andrus says. And when she heard about a class action suit

involving women injured by a defective birth control device, Ortho Evra patch, Andrus knew it was the right case. "I had used [the patch] briefly myself," she says, likening it to an "estrogen bomb" that caused women to suffer heart attacks and strokes. "I was furious on behalf of those injured women." She called the attorney committee for the case and let them know she wanted a lead role, and to her surprise, they said yes without hesitation. "They knew I had Elizabeth's support," she says. "That case was a game-changer for me."

Andrus' success in the Ortho Evra case, which Johnson & Johnson settled for more than \$70 million, was followed by more leadership appointments. It was the desire to have more freedom to find and pursue her own cases that led Andrus to launch her firm with former Lieff Cabraser colleague Anderson and with her mentor, Cabraser's, full support.

Hoping to increase the number of women in mass torts and class-action specialties — a 2015 ABA study estimated that women held lead counsel roles in only 18 percent of class-action suits — Andrus will take part in an upcoming conference organized by the Duke Law Center for Judicial Studies that will consider how judges should choose lead attorneys in multi-district litigation, and how they might diversify their choices. "She has an exhaustive knowledge of the mass torts field," says John Rabiej, the center's director. "We'll be relying on her expertise."

Andrus was instrumental in helping another lawyer establish Women en Mass, an annual retreat for female mass tort attorneys to discuss issues that affect women. "The first year, there were 90 women," Andrus says. "The next year it had doubled. Then there were 250. It's a fantastically supportive group."

Still politically engaged, Andrus is involved with Emerge America, a nonprofit organization focused on training and assisting Democratic women to run for office. "Women win campaigns in the same numbers as men," she says. "The problem is, women aren't running. Women need to be asked repeatedly to run for office — on average seven times — while men tend to nominate themselves. Emerge teaches women campaign strategy, how to use social media, and teaches public speaking skills. Everything. It has programs in 16 or 17 states and it's really beginning to make a difference." Andrus, who went through the training in 2005, currently serves on the Advisory Board of Emerge California.

"Politics is in my blood," she says, though she has no plans to run for office anytime soon. "I'm too happy doing what I'm doing. I wouldn't want to give this up." ♡ — Caitlin Wheeler '97



Gabrielle Lucero JD/MPP '17

GABS LUCERO FIRST LEARNED about sexual assault as a sixth-grader in Fort Collins, Colo., when a friend told her she'd been abused. "I didn't know what sexual abuse was, but as I learned more about it over time, I realized just how common — and how big — of a problem it was," she recalls.

That early realization sparked a resolve to aid victims of sexual assault that has given Lucero an unwavering sense of direction in her activities, education, and career plans, from her high school advocacy for awareness and prevention of sexual assault,

to her decision to study law and policy at Duke, to her goal of becoming a special victims' prosecutor in the U.S. Army JAG Corps. "I was fortunate to have had something I was really passionate about when I was pretty young," she says.

At Columbia University, where she majored in gender studies and sociocultural anthropology, Lucero served as a campus rape crisis advocate, manning a hotline, responding to hospital calls, and accompanying victims to court. By her sophomore year, her volunteer work got her thinking about becoming a lawyer.

"I saw how the legal framework surrounding issues of sexual assault could either help or hurt them," she says. "I hope to be on the helping side."

Around the same time, Lucero began considering a career in the Army, having been impressed by her interactions with students who were veterans or on active duty in the service. "They always seemed like people who I'd want to work with and that inspired me," she says. They also told her about the JAG Corps. "Learning more about sexual assault and about the JAG Corps in college confirmed my decision to go to law school."

Learning, through media coverage, that the Armed Forces were developing new policies to address the problem of sexual assault within their ranks, Lucero spotted an opportunity that, she says, married her interests: "I realized that if I started my graduate studies as new policies about sexual assault were being implemented, by the time I entered the military four years later, I'd be able to see the trickle-down effects. I would be able to see whether they were actually working."

Lucero entered Duke University's Army ROTC program as soon as she arrived on campus to pursue her master's in public policy along with her JD. It has proven to be a perfect fit; in the fall semester of her third year, the seniors honored her with the ROTC Leadership Award. "It meant a lot to me that they thought I deserved that," says Lucero, who is

now the cadet battalion commander for the Duke Army ROTC Blue Devil Eagle Battalion.

She has received guidance from several faculty members with military ties, including Professor Tom Taylor at the Sanford School of Public Policy, who served as an Army attorney and in the Pentagon, and Professor and Maj. Gen. Charles Dunlap, director of the Center on Law, Ethics and National Security and a former Air Force deputy judge advocate general. Lucero credits her ROTC professor of military science, Lt. Col. Keirya Langkamp, with clarifying the privilege of being an officer. “She pushed all of us to understand the challenge and the reward of being responsible for people below you, having that kind of structure and knowing what that means,” Lucero says. “That was really inspiring and pushed me both in ROTC and elsewhere by realizing the kind of impact I could have.”

Langkamp describes Lucero as an exceptional young leader and an excellent role model of the Army’s seven values: loyalty, duty, respect, selfless service, honor, integrity, and personal courage. “She is both self-aware and regulated — poised we call it in the Army — and demonstrates a high degree of empathy,” Langkamp says. “Cadet Lucero’s emotional intelligence will serve as a force multiplier for the Army, both as a leader and a future JAG officer.”

Lucero, who describes herself as “a really people-driven person,” has assumed multiple leadership positions at Duke Law, serving as director of the Coalition Against Gendered Violence, as a Mock Trial Board member, as vice president of the Government and Public Service Society, and as co-editor-in-chief of the *Duke Journal of Gender Law & Policy*. As co-director of the Veteran’s Assistance Project (VAP) in her second year at Duke Law, Lucero worked successfully with her classmate Sarah Williamson and Matt Wilcut, a staff attorney at Legal Aid of North Carolina and VAP supervisor, to redesign the program so that more students could be recruited and trained to effectively serve more veterans. “Gabs was tireless and committed throughout the design process and as a leader of the project,” says Wilcut, who also praised Lucero’s ingenuity in addressing client problems and her willingness to recruit and mentor volunteers. “Her personal enthusiasm and commitment has a great deal to do with the success of the project.”

Wilcut selected Lucero to handle the project’s first military sexual trauma case, saying she produced legal research that will be helpful in all similar cases. Her analysis of the issues was “spot on,” says Wilcut, and persuaded the Veterans’ Administration

to reverse its earlier refusal of benefits to the client. As a leader and advocate, Wilcut adds, Lucero “has produced the greatest single-student contribution to the Veteran’s Assistance Project in terms of project sustainability and client success.”

Off campus, Lucero serves as a hospital responder for the Durham Crisis Response Center and coaches a girls’ youth basketball team at the YMCA. “It’s such a nice reminder of the world outside,” she says. “For kids at that age, having someone to listen to them makes a world of difference. All they care about is that you’re there.” Lucero, who received the 2015 Sarah Parker Scholarship Award from the North Carolina Association of Women Attorneys, was honored with the National Association for Law Placement’s Pro Bono Publico Award in October.

“I don’t know how Gabs manages to do it all,” says Stella Boswell, assistant dean of Public Interest and Career Development, who nominated Lucero for the NALP award. “She came into law school with clear career goals and focus, and has helped build and support the public interest community here through involvement with the Government and Public Service Society, recruiting others to be involved in GPS and pro bono, repeatedly sitting on panels to advise other students, and taking time to consult with us on expansions to public interest and pro bono at Duke. The depth of Gabs’ commitment to service is really outstanding.”

Throughout her law and policy studies, Lucero has continually deepened her academic investigation of issues surrounding sexual assault and prevention. In one policy paper, she threaded together victims’ stories with scholarly research to illuminate the pervasiveness of rape culture in the military and how it impacts low reporting rates. “One of the things I was trying to focus on was to get people to pay attention to what the victims are saying they need,” she says. Her paper, titled “Military Sexual Assault: Reporting and Rape Culture,” was published in the Winter 2015 edition of the *Sanford Journal of Public Policy* (Vol. 6 No. 1) and reprinted in *Sex, Gender, and Sexuality: The New Basics*, an anthology published in September.

Lucero, who interned with the Army JAG Office of the Staff Judge Advocate in Fort Knox, Ky., during her 2L summer, aspires to become a special victims’ prosecutor to continue her advocacy work while still influencing policy. “I’d like to figure out the best ways to deal with sexual assault as a crime in the military,” she says. “I’m just tired of seeing people disheartened by the legal system.” ♡ — Rachel Flores

“Cadet Lucero’s emotional intelligence will serve as a force multiplier for the Army, both as a leader and a future JAG officer.”

— Lt. Col. Keirya Langkamp



John Semonche '67, left, and Nick Galifianakis '53

Nick Galifianakis '53 and John Semonche '67

NICK GALIFIANAKIS '53 AND JOHN SEMONCHE '67 have been talking about politics as friends and next-door neighbors in Durham for 46 years. Both Democrats, they met when Galifianakis was entering his third term in the U.S. House of Representatives, having earlier served three terms in the North Carolina General Assembly. Two years later, he was defeated in his race for the U.S. Senate by Republican Jesse Helms, whose savvy use of media (and money) and pugnacious campaign style helped usher in Republican dominance in the South.

Semonche, now retired as a professor of history at the University of North Carolina at Chapel Hill, has paid tribute to his friend's considerable political success and the significance of that last campaign in a new book, *Pick Nick: The Political Odyssey of Nick Galifianakis from Immigrant Son to Congressman* (Tidal Press, 2016). In addition to paving the way for the "politics of fear" that has characterized recent election cycles, the 1972 race marked the ascendance of media as a tool of political warfare.

"Nick's is a story about an individual in a changing world," says Semonche. "Nick was the sort of ideal politician in the old mold of 'Mr. Smith Goes to Washington' and the old mold was breaking."





Galifianakis, left, brought an entertaining style to the campaign trail.

Mr. G. goes to Raleigh — and then to Washington

The gregarious son of Greek immigrants who owned and operated the Lincoln Café on South Mangum Street in Durham, Galifianakis had been elected president of his undergraduate class at Duke but assumed that his unusual name might be a hindrance to his pursuit of higher political office. His friends disagreed; while he was teaching a course in business law at Duke as an attorney-instructor in 1960, 36 of his colleagues secretly contributed 50 cents apiece to cover the \$18 filing fee and registered Galifianakis as a candidate for the state house of representatives. He took matters from there, introducing himself to local politicians and people of influence, to millworkers during their shift changes, and even to a farmer working his field on a tractor.

In fact, Galifianakis was a natural, “old fashioned” politician who had a sense that any voters who met him would like him, Semonche says. During three terms in the General Assembly that coincided with the tenure of the progressive Gov. Terry Sanford, Galifianakis mastered legislative procedure. Legislation he introduced left an enduring legacy that includes Research Triangle Park’s focus on science and technology, the establishment of an administrative structure to support the state’s nascent community college system, and reforms that resulted in a uniform state-supported court system, informed by his work as a general practitioner in Durham County courts, in which justices of the peace and clerks were not lawyers. “The court system was horrifying,” Galifianakis says. “The prosecutions in Durham’s ‘Records Court’ were primarily of poor blacks who were inevitably found guilty and charged \$30 and \$50 fines, which was horrifying.”

Having gained a reputation as an effective legislator, Galifianakis ran successfully for Congress in 1966. In that race and two that followed, he relied on a tireless meet-

and-greet style and a sense of fun, campaigning with flatbed trucks of dancers, treating voters to baseball games, and deploying inventive buttons and jingles to ensure they remembered his unusual name.

In Washington, he sought to improve federal programs, such as housing for poor urban residents and, as a member of the Banking and Currency Committee, he tried to tackle some questionable practices of the rapidly growing credit-card industry. A Marine Corps veteran, Galifianakis became the first member of the North Carolina delegation to oppose the Vietnam War and to voice his opposition to the draft. He also broke with the state delegation on the Equal Rights Amendment, explaining to Sen. Sam Ervin that he not only supported women in their quest for equality, but that his wife, Louise, would be extremely upset if he voted against it.

In 1968, Galifianakis received a special visit on the House floor from the newly elected president, Richard Nixon ’37, who wanted to meet his fellow Duke Law graduate. Multiple invitations for dinner at the White House followed, as were rides home on Air Force One whenever the president was headed to North Carolina. (Galifianakis was surprised and

“Nick respected members of the other party. He saw that politics was really the art of compromise, and you may have your views, but those views were really always subject to change on the basis of intelligent input from the other side.”

— John Semonche '67

dismayed when Helms' 1972 campaign posters carried an admonition from President Nixon that “I need Jesse Helms in Washington.”)

Semonche points to bipartisanship as a hallmark of his friend's political career. “Nick respected members of the other party,” he says. “He saw that politics was really the art of compromise, and you may have your views, but those views were really always subject to change on the basis of intelligent input from the other side.”

Confronting the changing South

With redistricting putting his House seat in continual jeopardy, Galifianakis decided to run for the Senate in 1972, and unseated a longtime incumbent, Sen. B. Everett Jordan, in the Democratic primary. Helms, a prominent radio and television commentator known for his virulent anti-communist rhetoric, had long targeted Galifianakis for his opposition to the Vietnam War. Except for national defense, Helms opposed all federal government action — he characterized affirmative action as reverse discrimination — and advocated for a “spiritual rebirth” of the country.

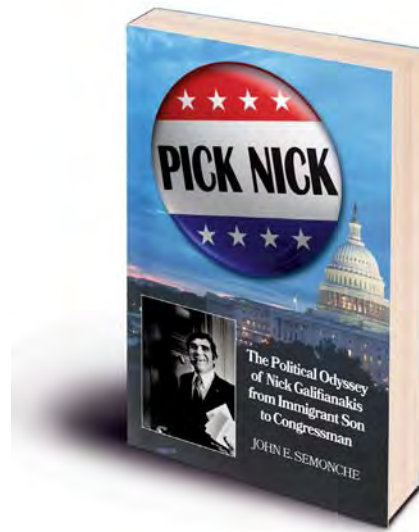
Determined to run a positive campaign, Galifianakis maintained his personal and personable style of connecting with voters. He traveled the state in a motorhome named “Miss Sophie,” in honor of his mother, believing, Semonche says, that person-to-person contact would always be more effective than media outreach. On Oct. 3, he led Helms in polling, 51 percent to 28 percent.

A month later, though, the tide had turned against Galifianakis. Helms out-raised him and poured millions into radio and television advertising, a relatively innovative strategy for the time, Semonche says. “Nick and I have argued at times at how much money was a factor in the election of 1972,” Semonche says. “It's not money as such, but what money buys: control of your ability to characterize your opponent and put your opponent on the defensive.”

By Nov. 3, Galifianakis trailed by 10 percentage points and he ultimately lost to Helms by eight, despite receiving almost 90 percent of the African American vote.

While he refused to debate Galifianakis, Helms characterized his opponent as being not only too liberal to represent a conservative Southern state, but as alien. His campaign slogan was “Vote for Jesse Helms: He's one of us,” implying that Galifianakis wasn't.

“It meant a few things: he's too liberal, he's not a Southerner, and he's not Southern Baptist,” Semonche says. “He doesn't have a name like those of other Southern politicians. These things would be nonsensical to anyone who had come into contact with Nick, but Nick couldn't come into contact



with all the voters in the state.” Galifianakis, who was nationally prominent among members of the Greek Orthodox faith, goes further, saying the slogan implied that he was not, in fact, Christian.

Helms' approach to campaigning in 1972, which he perfected over another four successful runs, was the beginning of a lasting change that persists today, says Semonche. Helms introduced an “evangelistic fervor” to the conservative movement that framed social and economic issues as an important rallying point and heightened the party's ties to a religious base.

“Jesse Helms and the campaign apparatus that he built was really an important part of the foundation of the modern Republican Party,” says Semonche, who ties the Galifianakis-Helms race to the current political landscape. “Negative campaigning works, and the sooner it's employed the better. Positions on issues and experience are of lessening importance — and we've certainly seen that to be true in 2016, as money has become increasingly important because of the expense of media advertising and using the media to fix the image of one's opponent.”

Semonche, who specializes in constitutional history and the Supreme Court and pursued his JD at Duke while teaching full-time at UNC, aimed to highlight more than just the ongoing significance of Galifianakis's loss to Helms with *Pick Nick*. “There was more to Nick's political career and his political style that may be past, but is still appealing,” he says.

After leaving politics, Galifianakis returned to the practice of law in Durham, taking every kind of client and case that came his way until finally retiring in his mid-80s. Even at 88, Semonche writes at the end of the book, Galifianakis is “stopped by people who remember his time in politics, some of whom can still sing his campaign song in its entirety.” ♡

— Frances Presma

Alumni Notes

This section reflects notifications received between Feb. 1 and July 31, 2016.

BOV denotes membership on the Law School's Board of Visitors.

1959

Bernard Strasser retired in the spring after 56 years of practicing real estate, estate, and probate law in Ormond Beach, Fla.

1963

Glenn Ketner, a member and past chairman of the board of trustees at Novant Health Rowan Medical Center, has received the North Carolina Hospital Association Trustee Service Award for 2016. **BOV**

1966

David Noble received the 2015 Friends of Philanthropy Award from the Wayne County (Ohio) Community Foundation on behalf of his family. The family and its Donald and Alice Noble Foundation have supported numerous charities in the local community. **BOV**

» For *Super Lawyers* and other professional kudos, see page 58.

1967

Robert Rieder retired in August as chief university counsel after a 40-year career at the University of Alabama in Huntsville.



Bill Womble Jr., left, received the Order of the Long Leaf Pine from North Carolina Gov. Pat McCrory in February. The recognition is one of the highest honors the governor can bestow and is awarded to individuals who provide exemplary service to the state. Bill is a partner in the Winston-Salem office of Womble Carlyle Sandridge & Rice. **BOV**

1969



Charles Becton received the Lake Family Public Service Award at the North Carolina Bar

Association (NCBA) June annual meeting in Charlotte. The award honors an outstanding lawyer in North Carolina who has performed exemplary public service in his or her community. Becton is a past president of the NCBA and former judge on the North Carolina Court of Appeals who has served as interim chancellor at North Carolina Central University and Elizabeth City State University.

1972

Ron Frank has joined Blank Rome as a partner in the corporate, M&A, and securities group in the firm's Pittsburgh office. He previously was a partner at Reed Smith for more than 16 years. **BOV**

Cary Moomjian, president of CAM OilServ Advisors, has launched a new division that provides expert witness services in disputes relating to offshore rig shipyard construction contract cancellations. The new division supplements the firm's drilling contract consultancy and expert witness services.

Larry Tucker, managing attorney and member of the executive committee at Armstrong Teasdale in Kansas City, received the Richard S. Arnold Award for Distinguished Service during the Eighth Circuit Judicial Conference in May. The award recognizes one attorney from each of the districts within the Eighth Circuit who has achieved professional excellence, is a leader in the legal community, has made significant contributions to pro bono cases, and mentored young attorneys.

1974

Lawrence Gostin has been appointed by President Obama to serve as a member of the National Cancer Advisory Board. He is the faculty director of the O'Neill Institute for National and Global Health Law, as well as the founding O'Neill Chair in Global Health Law at Georgetown University Law Center. Larry is also a professor of medicine at Georgetown University, professor of public health at The Johns Hopkins University, and the director of the World Health Organization Collaborating Center on Public Health Law and Human Rights.

Let your
classmates
know how
you've been!

New position?
Promotion?
Life changes?
Awards?
Adventures?

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



DEPUTY U.S. SOLICITOR GENERAL **Michael Dreeben '81** made his 100th appearance before the United States Supreme Court on April 27. He was subsequently honored at a reception at Georgetown University Law Center where he was praised by Associate Justices Ruth Bader Ginsburg, Stephen Breyer, and Elena Kagan. "He's made these 100 arguments — fabulous — and he's remained sane," Justice Breyer said, according to a report in *THE NATIONAL LAW JOURNAL*. Then-U.S. Solicitor General Donald Verrilli also praised Dreeben's "keen intellect and unimpeachable integrity," his "precisely honed" style of argument, and his excellent management of the government's criminal docket.

Dreeben made his first appearance before the Court in 1989. ♡

Roger Ferland has been inducted into the Arizona Veterans Hall of Fame. Retired from partnership in Quarles & Brady's Phoenix office, Roger was instrumental in the creation of several clinics that provide pro bono legal assistance to veterans. He received the Bronze Star for combat heroism in Vietnam, as well as the Purple Heart and Combat Infantry Badge.

1976

Allard Allston is serving as pro bono corporate counsel for the Nottoway Indian Tribe of Virginia, Inc.

1977

Carolyn Kuhl, presiding judge for the Superior Court of the State of California for the County of Los Angeles, was the keynote speaker in April at the Fourth Civil Justice Reform Summit hosted by the Institute for Advancement of the American Legal System. **BOV**

Roberto Pineiro, a former Miami-Dade circuit judge, was honored posthumously with the HistoryMiami Museum's 2016 Legal Legend Award, which recognizes substantial contributions made by lawyers, judges, and community activists to the law, legal system, and administration of justice in South Florida. Roberto, who died on Dec. 9, 2010, served as a state and federal prosecutor and as a private practitioner before he was appointed a county court judge in 1989 and then a circuit court judge in 1996. The Museum called him "one of the 11th Circuit's brightest, fairest, and most efficient judges."

1980

Jack Hickey participated in a panel discussion on settlement negotiation at the American Association for Justice winter convention in March.



Justin Klimko, president and managing shareholder of Butzel Long, received the Meritorious Service Award

from the Association for Corporate Growth (ACG) Detroit in February. Justin is a board member and secretary of ACG Detroit.

James Crouse has authored his debut novel, *Broken Eagle* (Catamount Island Publishing, 2016), described as "a hard-hitting story with a military-legal theme." Jim practiced aviation law for more than 30 years and has taught classes in that subject at Duke Law and The George Washington University Law School. He is the co-author of the casebook, *Aviation Law: Cases and Materials* (Carolina Academic Press, 2006).

Jack Marin retired in March from Williams Mullen in Raleigh, where he had practiced for 30 years. Jack played in the NBA for 11 years after an All-American career at Duke, and focused his practice on sports and contract law. He was outside counsel to the National Basketball Retired Players Association. In retirement, he continues as chairman of the board of Hope for the Warriors, a national nonprofit that serves active post-9/11 service members, reservists, veterans, and their families.

Have news to share?

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



James Felman '87 was honored with the American Bar Association Criminal Justice Section's 2016 Charles R. English Award on Nov. 4. The award, presented at a luncheon during the Section's annual Fall Institute in Washington, D.C., recognizes distinguished work in the field of criminal justice by judges, prosecutors, defense attorneys, and academics. Felman is a partner at Kynes Markman and Felman in Tampa, where he specializes in the defense of complex criminal matters and related civil litigation. He is the immediate past chair of the Criminal Justice Section and serves as the ABA's liaison to the United States Sentencing Commission. He also serves as a member of the Steering Committee of Clemency Project 2014. 🐾

1983

Bill Blancato, a partner at Doughton Blancato in Winston-Salem, has received a 2016 Pro Bono Attorney Award from the Children's Law Center of Central North Carolina, where he serves as a guardian ad litem.

Richard Riley has been appointed to the board of directors for Acuity Insurance. He remains a partner with Foley & Lardner in Washington, D.C. where he focuses his practice on tax and corporate matters for property and casualty insurance companies.

Robert Fuller has been named Elite Outside Counsel in *Sports Business Journal's* Power Player series. The list recognizes the sports industry's top law firms and attorneys, and Robert was noted for his prominent work in college athletics. He is an attorney in the Charlotte office of Robinson Bradshaw.

1984

Peter Verniero has been awarded the Medal of Honor by the New Jersey State Bar Foundation. Peter is chair of the corporate internal investigations and appellate practice groups at Sills Cummis & Gross in Newark and a retired associate

justice of the New Jersey Supreme Court. The Medal of Honor is given each year to those who have made exemplary contributions to improving the justice system and enhancing New Jersey's legal legacy, according to a Bar Foundation statement.

1985

Gill Beck, an assistant United States attorney in Asheville, was honored as a 2016 Citizen Lawyer at the annual meeting of the North Carolina Bar Association (NCBA) in June. A major general in the U.S. Army Reserves, Gill has held a number of leadership positions with both the NCBA and the State Bar. Since 2007, he has served as the executive director of the State Bar's Legal Assistance for Military Personnel (LAMP) Committee, an organization dedicated to ensuring effective access to the legal system for military service members and their families.

Janet Ward Black has received Hood Theological Seminary's 12th Annual Bishop's Award in recognition of her commitment to the seminary, located in Salisbury, N.C., and to her community. Janet is the founder of Ward Black Law, a 36-person firm in Greensboro.

Eric Isaacson opened a solo practice in La Jolla, Calif., in March, where he focuses on appellate work and class actions. He previously was a founding partner of Robbins Geller Rudman & Dowd. Eric has recently published two articles: "The Roberts Court and Securities Class Actions: Reaffirming Basic Principles," 48 *Akron L. Rev.* 923 (2015); and "Free Exercise for Whom? — Could the Religious-Liberty Principle that Catholics Established in *Perez v. Sharp* Also Protect Same-Sex Couples' Right to Marry?" 92 *U. Det. Mercy L. Rev.* 29 (2015).

1986

Joel Heusinger, a partner in the Lincoln, Neb., office of Woods & Aitken, has been elected a fellow of the American College of Construction Lawyers.

Christopher M. Kelly has been appointed to Jones Day's partnership committee. A partner in the Cleveland office, Chris oversees the U.S. side of the firm's capital markets practice. He was a co-chair of the Host Committee for the 2016 Republican National Convention.

David McKean was sworn in as the 22nd United States Ambassador to Luxembourg by Secretary of State John Kerry on March 14. David has held several positions at the U.S. State Department, including director of policy planning since 2012; he served as Kerry's chief of staff from 1999 to 2008.

1987

Chris Petrini received an Amicus Service Award from the International Municipal Lawyers Association (IMLA) for his pro bono co-authorship of an amicus brief on behalf of IMLA and several other parties in *Lopez et al v. City of Lawrence et al*, an appeal before the First Circuit Court of Appeals. Chris founded Framingham, Mass.-based Petrini & Associates in 2004 and represents cities and towns as town counsel and as special counsel in various litigation matters.

1989



Debby Stone has published her first book, *The Art of Self-Promotion: Tell Your Story, Transform Your Career*. Debby is a principal with

Novateur Partners, an Atlanta-based company that provides executive coaching and leadership development to lawyers and the organizations in which they work.

1990

Steven Chabinsky has been appointed by President Obama as a member of the White House Commission on Enhancing National Cybersecurity. Steve is general counsel and chief risk officer for the cybersecurity technology firm CrowdStrike, which he joined in 2012. He has also served as a columnist for *Security Magazine* since 2013 and as an adjunct faculty member at The George Washington University since 2012.

Michael Kabat is a founding partner of Kabat Chapman & Ozmer, a 10-attorney law firm with offices in Atlanta and Los Angeles. The firm focuses on labor and employment law, complex business litigation, and class- and collective-action litigation.

1991

Colm Connolly, a partner in the Wilmington, Del., office of Morgan Lewis, has been inducted as a fellow in the American College of Trial Lawyers.

Shawn Flatt has been named the political economic counselor at the United States Embassy in Guatemala. He joined the State Department in 2005 and most recently was a political counselor at the United States Embassy in Nigeria.

Maurice 'Mo' Green has received the 2016 Excellence in Equity Award from the North Carolina Association of Educators. Mo served for seven years as superintendent of Guilford County (N.C.) Schools before becoming executive director of the Z. Smith Reynolds Foundation earlier this year.



Caryn Coppedge McNeill is serving as president-elect of the North Carolina Bar

Association (NCBA), after being elected to the post at the association's June annual meeting in Charlotte. Caryn is a partner at Smith Anderson in Raleigh, where she leads the firm's employee benefits and executive compensation practice group. She has an extensive record of service with the NCBA and chairs the Board of Trustees at Ravenscroft School in Raleigh.

1992

Sam Braverman, a partner at Fasulo Braverman & Di Maggio in New York City, completed his term as president of the Bronx County Bar Association and is a member of the House of Delegates of the New York State Bar Association.

John Hoffman was named senior vice president and general counsel of Rutgers University in New Brunswick, N.J., in March. He had previously served as acting attorney general of New Jersey since 2013.

Steven Marks has been promoted from executive vice president and general counsel to chief, digital business and general counsel of the Recording Industry Association of America (RIAA). Among other duties, Steven oversees industry-wide initiatives aimed at expanding the digital music marketplace and new revenue streams that are critical to the music business. He led the creation of the license for Internet radio and other services now administered by SoundExchange and serves as chair of that organization's licensing committee and on its board of directors.



David Van Pelt has joined the labor and employment practice group at Kelley Drye & Warren in Los

Angeles as special counsel. He previously practiced at Sheppard Mullin.



Geovette Washington has been nominated by President Obama to serve as a member of the

Council of the Administrative Conference of the United States. She has been a member of the conference since 2013. Geovette is the senior vice chancellor and chief legal officer of the University of Pittsburgh and served as general counsel for the White House Office of Management and Budget from 2013 to 2015.

Paige Whitaker, a Fulton County deputy district attorney, began service in July as a member of the Board of Governors of the 48,000-member State Bar of Georgia.

1993

Alan Gallatin, a partner and the Detroit tax practice leader of Grant Thornton, has joined the faculty of Walsh College as an adjunct assistant professor in its accounting and tax departments.

Eduardo Hauser joined Scripps Networks Interactive in March as managing director for Latin America and the Caribbean. He is responsible for the strategic direction and daily operation of the company's businesses across Latin America, which currently include Food Network as well as the company's distribution across the Caribbean. He previously was

managing partner of Hauser & Co., a specialized investment and advisory firm focused on media, technology, education, and hospitality. **BOV**

Linda Liu Kordziel, a principal in the Washington, D.C., office of Fish & Richardson, has been named a recipient of the 2016 "Women Worth Watching" award by *Profiles in Diversity Journal*. Linda focuses her practice on intellectual property and patent litigation.

1994

Paul Genender joined the Dallas office of Weil, Gotshal & Manges in February as a litigation partner. Paul was previously a partner at K&L Gates. **BOV**



Michael Sorrell, president of Paul Quinn College in Dallas, was named the Historically Black

Colleges and Universities 2016 Male President of the Year. He has been nominated for the award five times in the six years it's been given by the *HBCU Digest* and is the first recipient to be honored twice. Michael has been widely recognized for his leadership and the many initiatives he has backed both at Paul Quinn and in its surrounding community, such as the New Urban College Model and the school's organic farm.

1995

Wiley Boston, a partner in the Orlando office of Holland & Knight, is president of the Orange County Bar Association, a 3,500-member voluntary bar in central Florida. He has also been board-certified in real estate law by the Florida Bar.

1996

Jennifer Slone Tobin, partner at Shutts & Bowen in Orlando, has been installed as chair of Boys & Girls Clubs of Central Florida, a

John Inazu '00 was installed as the Sally D. Danforth Distinguished Professor of Law and Religion at Washington University in St. Louis on Sept. 7. His distinguished chair reflects a dual appointment at Washington University's School of Law and the Center on Religion and Politics. He is also a professor of political science, teaching courses in criminal law, law and religion, and the First Amendment. His scholarship focuses on the First Amendment freedoms of speech, assembly, and religion, and related issues of political and legal theory. He is also a senior fellow at the Institute for Advanced Studies in Culture at the University of Virginia. He was a visiting assistant professor at Duke Law in 2010 and 2011. (See page 4.)

Inazu has recently published his second book, *Confident Pluralism: Surviving and Thriving Through Deep Difference* (University of Chicago Press, 2016), in which he reviews current divisions within the United States evident in such conflicts as those over LGBTQ rights, religious liberty, abortion, and tensions between police and minority communities. He analyzes these tensions within the nation's broader history and explores the ways that Americans can — and must — live together peaceably despite their deep differences. 📖



nonprofit organization serving and mentoring more than 13,000 youth members. She has been a member of the board of directors since 2010, most recently as chair-elect and as co-chair of Celebrate the Children, the organization's signature fundraising event.

1997



Tim Profeta has been reappointed to a third five-year term as director of Duke University's

Nicholas Institute

for Environmental Policy Solutions. Tim is the founding director of the Nicholas Institute, which works to help decision-makers create timely, effective, and economically practical solutions to the world's critical environmental challenges.

1998

Bill Howell has joined Sidley Austin in Dallas as a partner. He has a global corporate finance, private equity, and M&A practice and was previously a partner at Baker Botts.

Jill Steinberg, associate deputy attorney general in the U.S. Department of Justice, testified, in June, before the Senate Judiciary Committee on human trafficking and the department's implementation of the Justice for Victims of Trafficking Act.

Peggy Wang joined the Hong Kong office of White & Case in April 2015 as a partner in the mergers and acquisitions and private equity practice in Asia and head of Asia private equity. She previously was a partner at Linklaters in Hong Kong.

1999

Noriaki Abe has been assigned to the Japanese Delegation to the Organisation for Economic Cooperation & Development (OECD) in Paris since September 2015.

Anne Chapman has joined criminal defense firm Mitchell Stein Carey as a partner in Phoenix. Anne's practice focuses on internal and governmental investigations and white collar criminal defense.

Felicia Gross has joined the Manhattan office of the New York State Attorney General's Office in the Litigation Bureau.

Sebastian Guerrero has established the law firm of Guerrero Valle Garces in Santiago, Chile, which focuses on family issues, tax, and wealth management. He was previously with Guerrero, Olivos, Novoa & Errazuriz.

Julie Riewe, former co-chief of the asset management unit of the Securities & Exchange Commission's Division of Enforcement, joined the Washington, D.C. office of Debevoise & Plimpton in March as a partner in the white collar and regulatory defense group. Julie spent 11 years at the SEC, rising through the ranks and receiving commendations, the most recent the Chairman's Award for Excellence in Leadership in 2015.

Gordon Walker is a professor of law at Hamad Bin Khalifa University in association with Northwestern University Pritzker School of Law, in Doha, Qatar. He is an emeritus professor of law at La Trobe University School of Law, Melbourne, Australia, where he previously was the Chair Professor of Commercial Law and director of the LLM in Global Business Law and the LLM for International Students programs. Gordon is a scholar of securities regulation, corporate law and governance, and commercial law reform.

2000

Nicole Clement became general counsel of Rhode Island Housing on March 1. She previously was senior counsel for Klein Hornig, a Boston-based firm specializing in affordable housing and community development.



Margaret Hu, assistant professor of law at Washington and Lee School of Law, has published "Big Data

Blacklisting," 67 *Florida Law Review* 1735 (September 2015), for which she received the Young Scholar's Award at the 8th Annual Privacy Law Scholars Conference in June 2015.

Janaina Dellape Fernandes

Pita is a partner in the corporate department of Dias Munhoz in Sao Paulo, Brazil.

Andy Roberts has been appointed by Gov. Pat McCrory to the North Carolina State Ethics Commission. Andy is the founder of Roberts Law Group, a criminal defense law firm with offices in Raleigh, Greensboro, and Charlotte. He previously served as an assistant district attorney in three N.C. jurisdictions.

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 *Thomson Reuters*. See details at law.duke.edu/alumni/news/classnotes. This list reflects notifications received by July 31, 2016, and includes such designations as "Rising Stars."

Donald Mewhort '65
Ward Greene '73
John Keller '75
Steven Wasserman '79
Robert W. Fuller '83
Cynthia Rerucha '84
Scott Cammarn '87
Joey Morris '88
Steven R. Shoemate '88
Gary Qualls '89
Matthew Sawchak '89
Scott Creasman '90
Margaret Rowlett '90
Amy Meyers Batten '92
Sam Braverman '92
David Cox '93
Derrick Williamson '93
Jennifer Slone Tobin '96
David Lindsay '97
George Donnini '98
Kimberly Schaefer '98
Mechelle Zarou '00
Seth Safra '01
Nicole Crawford '03
Chris Mills '04
Yendelela Neely Anderson '06
Isaac Linnartz '09

David Szekeres has been named senior vice president of business development, general counsel, and corporate secretary for Heron Therapeutics in Redwood City, Calif. David previously was general counsel, chief business officer, principal financial officer, and corporate secretary at Regulus Therapeutics.



Mechelle Zarou, a partner in the Toledo, Ohio, office of Shumaker, Loop & Kendrick has

been inducted as a fellow of the Ohio State Bar Foundation, the charitable arm of the Ohio State Bar Association. Mechelle is co-chair of her firm's labor and employment department and immigration practice group.

2001

David Borde was named vice president of investor relations at Entergy Corporation in New Orleans in March. Since joining Entergy in 2009, David has held leadership positions in corporate development and finance, most recently as director of its utility finance business partners.



Rodney Bullard, executive director of the Chick-fil-A Foundation and vice president of community

affairs at Chick-fil-A, is a member of the second class of the Presidential Leadership Scholars program, an initiative that draws upon the resources of the presidential centers of Lyndon B. Johnson, George H.W. Bush, William J. Clinton, and George W. Bush. Over the course of several months, the 61 scholars are traveling to each participating presidential center to learn from former presidents, key administration officials, and leading academics. In April, Rodney received the Duke Law

Alumni Association's Young Alumni Award, acknowledging his significant leadership and service contributions to the Law School and the legal profession.

Kerstin Henrich has joined the Dusseldorf, Germany, office of Jones Day as a partner and member of the firm's M&A group. Kerstin's practice focuses on complex M&A transactions, transactions in the renewable energy sector, and general corporate counseling. She was previously a partner at Orrick, Herrington & Sutcliffe.

D'Lorah Hughes has been named director of externships and adjunct professor of law at the University of California, Irvine School of Law. Prior to joining UCI Law on July 1, she was director of clinical education at Wayne State Law School. She has also held academic positions at the University of Arkansas School of Law-Fayetteville, Case Western Reserve University School of Law, and Whittier Law School.

Daniel Klein has joined Proskauer Rose's Boston office as senior patent counsel in the litigation department, and a member of the life sciences patent practice. He previously practiced at Choate Hall & Stewart.

Mary Richardson has joined Clark University in Worcester, Mass., as director of planned giving and principal gifts. She previously held development and alumni relations positions at Williams College and Bowdoin College.



Seth Safra has joined Proskauer Rose as a partner in its employee benefits and executive compensation group,

resident in Washington, D.C. He was previously a partner at Covington & Burling.

2003

Colin Crossman and his wife, Deanna, welcomed a son, Xander Quinn, on June 23, 2016. They opened their second boutique hotel, The Mayton Inn, in Cary, N.C., in February. They also own The King's Daughters Inn in Durham.

Paul Ervin and his wife, Helia, welcomed a son, Isaac Rahim, on Feb. 8, 2016.

Elizabeth Perry is a doctoral student in the Department of Law at Umea University in Sweden, writing her dissertation on "Children's Access to Parental Financial Support: A Comparative Assessment in California and Sweden."



Sonia Macias Steele has joined the Boston office of Murtha Cullina as ERISA counsel in the firm's business

and finance department. She previously practiced at Goulston & Storrs.

2004

Brian Berman and his wife, Katherine, welcomed a son, Finley Price, on March 6, 2016. He joins older brother Jackson.

Phil Bezanson and his wife, Thea Handelman, welcomed a son, Dashiell "Dash" Henry, on March 24, 2016. He joins older brother Elias. They live in Seattle, where Phil is managing partner of the Seattle office of Bracewell.

Josh Bryant, a partner in the Raleigh office of Smith Anderson, assumed the chairmanship of the Tax Section of the North Carolina Bar Association in July. He has been a member of the Tax Section Council since 2006.

2005

Sam Forehand and his wife, Yasmin, welcomed a son, Jackson Baha, on Feb. 10, 2016. He joins siblings William and Ella Anne.

Gulnara Iskakova is the ambassador of the Kyrgyz Republic in Great Britain and Northern Ireland. She has previously served as vice president and rapporteur at the United Nations Human Rights Council and as the Kyrgyz Permanent Representative to the U.N.

Jennifer Plappert King and her husband, Kenneth, welcomed a daughter, Juliet, on May 17, 2016.

Mangyo Kinoshita has co-founded and is managing partner of southgate, a boutique M&A law firm in Tokyo. He previously was a partner at O'Melveny & Myers and White & Case. Mangyo has co-authored two recent articles: "International M&A Study Group Report on ABA Model Stock Purchase Agreement: MAC Clause," *International Business Law*, July 2016, and "Recent Trends Regarding US Regulatory Authorities' Review of M&A Transactions," *Mergers & Acquisitions Research Report Online*, June 2016.



Ryan Levy, a shareholder at Patterson Intellectual Property Law, has been named a fellow of the

Nashville Bar Foundation. He also has been elected to the Nashville Bar Association's Board of Directors and serves on both the executive and social committees.

Chris Machera has joined Weil Gotshal & Manges as a partner in its private equity practice based in the New York office. Chris previously was a vice president and associate general counsel at Goldman Sachs.

2006

Yendelela Neely Anderson has been elected to the Board of Trustees of Furman University in Greenville, S.C. A 2003 Furman graduate, Yendelela is executive director and senior legal counsel at AT&T Services, Inc., in Atlanta, where she manages the defense of employment class and collective actions as well as systemic EEOC litigation. She was formerly a partner at Kilpatrick Townsend & Stockton.

Sarah Walker Baker and her husband, Jason, welcomed a son, Robert 'Hawes', on June 22, 2016. He joins siblings Davis, James, and Ballard.

David Breau was named general counsel of Straight Path Communications in February. He previously practiced at Sidley Austin in New York City.

Audry Casusol has joined the New York office of Greenberg Traurig as a shareholder in its corporate and securities practice. She previously practiced at Cravath, Swaine & Moore.

Kenny Ching has authored *Shattered Prayers: The Testing of a Father's Faith* (Kirkdale Press, 2016), a memoir chronicling how his son's health crisis affected his relationship with God.

Amy Kalman has been elected incoming president of the Arizona Attorneys for Criminal Justice, the state affiliate of the National Association of Criminal Defense Lawyers, and will serve her term in 2017. Amy is a defender in the Maricopa County Public Defender's Office in Phoenix.

2007

Jeffrey DiChiara has been promoted from associate to special counsel in the Miami office of Kasowitz Benson Torres & Friedman, where his practice focuses

on representing clients in real estate matters, including leasing transactions, acquisition and sales of property, joint venture agreements, origination and restructuring of loans, and loan workouts.

Ian Miller is vice president, business affairs and general counsel at Epic Sciences, Inc. in San Diego. He previously practiced at Covington & Burling.

Lucas Przymusinski has been promoted to partner in the New York office of DLA Piper where his practice focuses on drug and device litigation, mass torts, and product liability.

Kristin Seeger was named a partner at Orrick Herrington & Sutcliffe, where she is a member of the energy and infrastructure group in San Francisco. Her practice focuses on the acquisition and sale of domestic and international renewable energy projects as well as project financing (including tax equity financing arrangements) in the renewable energy sector.

2008

Cliff Gardner has been promoted to litigation counsel in the Wilmington, Del., office of Skadden Arps Slate Meagher & Flom.

Eileen Kuo has been elected to the board and as 2016 vice president of the Memphis Chapter of the Association for Women Attorneys. She is an associate at Jackson Lewis, a workplace law firm that represents employers.



Shane Tintle has been elected partner in the corporate department of the New York office of Davis Polk &

Wardwell, where he practices in the capital markets group.



Patrick Wooten has been elected to partnership by Nelson Mullins Riley & Scarborough, where he practices in Charleston, S.C., in the areas of business litigation, general litigation, antitrust law, and trust litigation. He has also been elected as a fellow of the American Bar Foundation.

2009

Erin Blondel and her husband, Ernie Young, welcomed a daughter, Caroline Josephine Young, on April 5, 2016.

Sharath Chandrashekhar has joined HSA Advocates as a partner in the firm's newly-opened office in Bengaluru, India. Prior to joining HSA, Sharath was one of the founding partners at Citius Law Advocates. He has previously worked at J. Sagar Associates and Axis Bank, with a focus on banking and finance, real estate, private equity, and venture capital transactions.

Josh Chinsky has joined Butzel Long in the firm's Detroit office, where his practice focuses on white collar criminal defense and aerospace and defense industry matters. Previously he was corporate counsel and deputy director for a Washington, D.C.-area consulting company.

Isaac Linnartz is a member of the 2016 North Carolina Bar Association Leadership Academy. He is an associate in the Raleigh office of Smith Anderson, where his practice focuses on business litigation and employment litigation.

2010

Stuart Duguid has joined WME/IMG as an agent in the Los Angeles office, where he primarily represents tennis players. He previously was a vice president for tennis at Lagadere Unlimited.



Kat Shea '10, left, and Caroline Gottschalk '90

Gottschalk '90 and Shea '10 honored with DAA's "Forever Duke" awards for volunteer service

Caroline Gottschalk '90 and Katherine "Kat" Shea '10 were honored by the Duke Alumni Association on Oct. 1 with "Forever Duke" awards.

Presented during Duke's Homecoming weekend, the awards honor alumni for their ongoing dedication to the university and who advance the Duke ideal of knowledge in service to society.

Gottschalk, a partner at Simpson Thacher in New York who specializes in mergers and acquisitions, has served on the Duke Law Board of Visitors since 2009 and is a tireless Law School volunteer. She served on the Law Alumni Association (LAA) Board of Directors from 2005 to 2009, serves on the Duke Forward campaign committee for the Law School, and has served on several of her class reunion committees, chairing the reunion committee in 2015. An active member of Duke's new Women's Impact Network Leadership Council, Gottschalk also is a founding member and on the board of advisors for the Duke Law Club of New York.

"It is a privilege to be able to give back to the institution that has provided me with so much," Gottschalk said. "I love having the opportunity to connect with and support students and young alumni as they learn and explore their own career paths and personal interests. Duke offers such a wide range of

opportunities for alumni engagement that I have found it easy to find fulfilling ways to become and remain involved."

Shea, an assistant federal public defender at the Office of the Federal Public Defender in Raleigh, served as chair of the LAA's New Lawyers Division from 2013 to 2015. During that time, she spearheaded an initiative to recruit alumni with recent clerkship experience to volunteer to hold mock interviews for students aspiring to clerk and to answer questions about the experience. She co-chairs the reunion committee for her class. Shea's volunteer record during her student days at Duke Law include serving as the co-chair of the class gift committee, Innocence Project training director, and Street Law co-chair. She also was editor-in-chief for *Law & Contemporary Problems*.

"Honestly, it's a privilege and a pleasure to serve Duke Law as a volunteer," she said. "Duke instilled in me a love and passion for the law. It led me to a career that challenges and inspires me. It gave me professors who continue to serve as mentors and friends. Duke introduced me to some of my very best friends, including my husband. I am so indebted to this institution that gave me so much, and in some small way, it's an honor to give back." ♡

Virginia Fitt has been promoted to senior counsel in U.S. legal operations with GlaxoSmithKline in Research Triangle Park, N.C.

Jie (Jeanne) Huang has joined the law faculty of the University of New South Wales Law School in Sydney, Australia. Her teaching and research focus on the fields of international investment law and dispute resolution, specifically international litigation and arbitration. She previously was associate professor and associate dean at Shanghai University of International Business and Economics School of Law in China.

Jenny Liang has joined Triple Five Group as associate counsel for American Dream, a shopping and entertainment complex opening in the New York metro area. She previously was an associate at Greenberg Traurig.

2011

Andres Osornio has joined the New York City office of Milbank, Tweed, Hadley & McCloy as an associate in the capital markets group. He previously practiced with Mijares, Angoitia, Cortes & Fuentes in Mexico City.



Rocío Perez has joined Providence Law Asia in Singapore as U.S. counsel, where she focuses on interna-

tional arbitrations between Latin American and Asian parties, as well as asset tracing, economic crimes, and regulatory investigations. Rocío previously was a foreign legal associate at Arias & Munoz in Costa Rico, where she also directed the firm's global legal skills program.



Adam Schupack and his wife, Rachel, welcomed a daughter, Harper Kate, on June 26, 2016. She joins big brother Teddy.

Lila Zhao has joined the Gerson Law Firm in San Diego, where she represents clients in commercial real estate transactions and finance. She previously practiced at McCarthy & Holthus, also in San Diego.

2012

Kevin Elliott and **Sarah Naseman Elliott** welcomed a daughter, Kathryn Claire, on March 30, 2016. Sarah is an associate at Simpson Thacher & Bartlett in Houston. Kevin has joined the debt finance group in the Houston office of Kirkland & Ellis. He previously practiced at Simpson Thacher.

Will Hellmuth has joined Davis Wright Tremaine as an associate in the firm's Washington, D.C., office, where he concentrates his practice on privacy and data protection laws. He previously was an associate at Baker & Hostetler.

Shine Chen Schattgen has joined the Memphis office of Bass, Berry & Sims as an associate in the firm's health care group. She previously practiced in the Boston office of Ropes & Gray.



Olivier Bühlmann LLM '12 (in photo at left) was sworn in as a member of the Papal Swiss Guard at the Vatican on May 6. One of the oldest and smallest armies in the world (also known as the Pontifical Swiss Guard), the force, which dates back to the 15th century, is responsible for the protection of the Pope. Bühlmann anticipates returning to the legal profession in 2018. ♡

2013

Suzanne Gainey has joined the Charlotte office of Moore & Van Allen, where she is an associate and works in both the commercial & technology transactions and privacy & data security groups.

Andrew Hand has joined the Charlotte office of McGuireWoods after a two-year clerkship with Senior Judge **Graham C. Mullen '69** of the U.S. District Court for the Western District of North Carolina.

Seth Reich, an associate in the Dallas office of Sidley Austin, received the Dallas Association of Young Lawyers' Pro Bono Service award for 2016. Seth maintains an active pro bono caseload and has worked on immigration proceedings, death penalty litigation, and cases in Texas state court.

Johanna Roldan has been reassigned as desk officer at the United Nations High Commissioner for Refugees (UNHCR) Bureau for the Americas in Geneva. Johanna has held several positions at the UNHCR, most recently as an associate protection officer in Rwanda.

Robert Whitney married Anne Maness on Aug. 15, 2015 in Chapel Hill. They reside in Oakland, Calif.

2014

Eric Lauritsen has joined the Los Angeles office of Greenberg Traurig as an associate in the entertainment and media group. He shared the 2016 Equal Justice Advocacy Award from the ACLU of Southern California with colleagues from Latham & Watkins who worked pro bono on behalf of a client seeking a U-visa after suffering workplace retaliation.

Nicolas Melki has joined the Dubai office of Baker Botts. He previously worked in the legal department of Petrofac International.

Patricia Timmons-Goodson has been nominated by President Obama to fill a vacancy on the U.S. District Court for the Eastern District of North Carolina. She has served as the vice chair of the U.S. Commission on Civil Rights since 2015 and commissioner from 2014 to 2015. She served as an associate justice for the Supreme Court of North Carolina from 2006 to 2012.

2015

Ruslan Abdirashid is working at the Ministry of Justice for Kazakhstan in the state property rights protection department.



Caryn Devins '13 began her term, in August, as the 2016–17 Supreme Court Fellow assigned to the Administrative Office of the United States Courts in Washington, D.C., the central support entity for the Judicial Branch. She is one of a class of four fellows selected to work with top officials in the federal courts. Prior to her fellowship, Devins completed clerkships with Judge Peter W. Hall of the U.S. Court of Appeals for the Second Circuit, Judge James P. Jones of the U.S. District Court for the Western District of Virginia, and Chief Justice Paul Reiber of the Vermont Supreme Court.

The Supreme Court Fellows Program, founded in 1973, offers mid-career professionals, recent law school graduates, and doctoral degree holders from the law and political science fields an opportunity to broaden their understanding of the judicial system through exposure to federal court administration. In addition to the federal courts' Administrative Office, fellows are placed in the Supreme Court of the United States, the Federal Judicial Center, and with the U.S. Sentencing Commission to gain practical experience in judicial administration, policy development, administration, and to undertake academic research. ♡

Milot Ahma has joined the European Bank for Reconstruction and Development in London as a legal associate. After graduation, he worked for Pallaska and Associates in Kosovo, the firm where he worked before studying at Duke Law.

Taylor Bartholomew has joined Morris, Nichols, Arsht & Tunnell as an associate in the Delaware corporate law counseling group.

Bezaliel Erlan is an associate at SSEK Legal Consultants in the Jakarta, Indonesia, office, where he specializes in foreign investment, banking and finance, and insurance law, as well as general corporate law.

Chris Girouard earned an LLM degree from New York University in May and has joined Bryan Cave in St. Louis as a tax associate.

Cristobal Ramirez has joined Hewlett Packard as Chilean legal counsel based in Santiago.

Jeffrey Rood joined GrayRobinson in Jacksonville, Fla., as an associate focusing on commercial real estate law, including acquisitions, dispositions, land development, financing, and leasing.

Brett Schroeder is an associate in the Chicago office of Latham & Watkins.

Tell us how you're doing!

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

Pate Skene '14 began serving, in September, as the 2016–17 Judicial Branch Fellow through the American Association for the Advancement of Science (AAAS) Science & Technology Policy Fellows program.

Skene, an associate research professor of neurobiology at Duke University who studies the neural mechanisms involved in making legal decisions, is only the second fellow assigned to the judicial branch — and the first laboratory scientist — since the program began in 1973.

During his fellowship Skene is based at the Federal Judicial Center in Washington, D.C., where he is contributing to ongoing research projects, including investigating the way courts manage the use of scientific and statistical evidence in complex litigation and applying insights from cognitive neuroscience to understand judicial decision-making.

The fellows program facilitates the association's mandate to advance science and serve society and helps connect science and technology with public policy. Skene is among 266 scientists and engineers who will spend a year serving professionally in federal agencies and congressional offices. ♡



In Memoriam

Received March 22, 2016 — November 6, 2016

Class of '39

William F. Womble Sr.
September 16, 2016

Class of '45

Craig G. Dalton
March 30, 2016

Class of '46

Elizabeth Parker Engle
January 26, 2016

Jeroll R. Silverberg
June 23, 2016

Class of '47

Jack D. Hawkins
February 24, 2016

Class of '48

Richard T. Marquise
May 2, 2016

Class of '49

Clifford Charles Benson
July 11, 2016

Class of '51

William H. Stevenson Jr.
October 12, 2016

Class of '52

Charles A. Comer Jr.
October 20, 2016

J. Bruce Gilman Jr.
November 3, 2016

Robert C. Taylor
March 12, 2016

James E. Thompson
June 12, 2016

Class of '53

Harry Hagel
July 21, 2016

Class of '55

Hans Baade
September 14, 2016

Thomas Bell Graham
September 27, 2015

Class of '56

David Boyette Stevens Sr.
July 4, 2016

Class of '57

Merle De Vere (Dee) Evans Jr.
May 23, 2016

Elliott T. Halio
June 20, 2016

Donald C. Knickerbocker
April 19, 2016

William Louis-Dreyfus
September 16, 2016

Class of '58

Robert Drake Stewart
October 15, 2016

Class of '59

Alvin Benis Fox
April 18, 2016

Arnold E. Greenberg
June 14, 2016

William A. Sumpter
April 18, 2016

Class of '61

Carl K. Staas
November 6, 2016

Class of '63

Thomas Langston Bass
November 3, 2016

Class of '69

John K. Anderson
March 15, 2016

Class of '72

Robert J. Winge
August 12, 2016

Class of '73

Wayne Everett Crumwell
November 6, 2016

Class of '74

Christopher B. Pascal
March 24, 2016

Class of '75

Bruce A. Christensen
April 18, 2016

Class of '76

Lonzy F. Edwards
April 29, 2016

Class of '98

Charles A. Stewart Sr.
November 14, 2016

Class of '11

Angela L. Harper
August 16, 2016

Class of '16

Ryan N. Smith
October 11, 2016

Sua Sponte



“The Diversity of Thought event brought up many issues that the legal community frequently experiences but rarely discusses. It is necessary for all students to embrace discomfort in order to become appreciative of diversity and differences.”

— **Shajuti Hossain '18** said she often feels discomfort in social and networking events that serve alcohol because she does not drink.



“A lot of times I am very aware [that] I’m often the only black person in the room. It’s just something I have to deal with. I’ve had to take affirmative steps to get closer. So I’ll talk about some of my travels, for example, to bridge the gap.”

— **Charles Thompson, II '17**, one of two students who spoke about their experiences as members of underrepresented populations in law school and in their earlier jobs, described feeling self-conscious about being an African-American male during a political conversation with white colleagues.



**On diversity,
“uncomfortable
conversations”
spark
understanding**

DURING A LUNCHTIME CONVERSATION on Oct. 18, members of the Duke Law community explored the challenges to finding common ground in a diverse community while still embracing differences.

The event's facilitator, Paul James, assistant vice president for diversity, equity and inclusion in Duke's Office of Institutional Equity, described the key to communication as being understanding, as opposed to neutrality, which is a negation of differences. He counseled students to be patient with awkward moments that arise when friends or colleagues are trying to understand differences, contrasting good-faith curiosity, or “righteous diversity inquiries,” with expressions of prejudice or malice that should not be tolerated.

“I didn't say be patient with one person's ignorance,” he said. “I'm saying be patient with righteous curiosity, people who want to understand my lived experience. Someone asking me in a deep reflective way what it means to be a black male is different from assuming I am representative of all black males.”

The event, titled Diversity of Thought: Finding Common Ground, was sponsored by the Career and Professional Development Center, the Office of Student Affairs, and the Center for Law, Race and Politics. ♣



» MOVING DUKE LAW FORWARD

THANKS TO YOUR SUPPORT, *Duke Forward* campaign progress has been remarkable:

- » More than **\$112 MILLION** has been raised (as of Dec. 1, 2016).
- » Alumni and friends have established **12** new professorship endowments and **67** new scholarship and fellowship endowments.
- » Duke Law awarded **\$14 MILLION** in student financial aid in the current academic year.

WE HAVE MORE TO DO to meet all of our strategic objectives before the campaign concludes on June 30, 2017. Please help:

- » Enhance financial aid and programmatic initiatives;
- » Support legal clinics, public interest opportunities, and skills development;
- » Sustain excellence in faculty teaching and innovative research.

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A stylized illustration of a red book with a yellow circular logo on the cover. The logo contains a stylized 'D' and 'L' in red. The text "Faculty Books" is written in a large, yellow, serif font across the cover. The book is shown at an angle, with its white pages and a blue bookmark visible at the bottom.

Faculty Books

Duke Law scholars
publish new works
on well-being,
business strategy,
genetic resources,
racial justice, and
corporate crime.

**pages 16
and 39**