

DUKE LAW MAGAZINE

Fall 2019 | Volume 38 Number 2

Q How |

- Q How **reliable is forensic evidence?**
- Q How **do courts and judges use risk assessment tools?**
- Q How **do DNA exonerations occur?**
- Q How **many states sentence juveniles to life without parole?**
- Q How **often do eyewitnesses misidentify suspects?**
- Q How **does ability to pay affect who stays in jail?**
- Q How **many times has faulty evidence led to a wrongful conviction?**

Q **How can data improve criminal justice reform?**

Research

Inside:



Celebrating
Kate Bartlett



Justice Kennedy
awarded Bolch Prize

From the Dean



The Duke Center for Science and Justice will create new opportunities for students and faculty across the university to study and improve accuracy of evidence in criminal cases, analyze the role of risk in criminal outcomes, and identify the treatment needs of individuals with mental health or substance abuse problems as an alternative to arrest and incarceration.

Dear Friends:

EARLY IN OUR RELATIONSHIP, when we were both young attorneys, I recall my husband, Brandon Garrett, telling me how excited he was to have drafted a complaint in the case brought by Yusef Salaam against the City of New York. Salaam and four other boys had been convicted and imprisoned when they were only 14 and 15 years old for a crime they did not commit — the brutal rape of jogger in Central Park. Exonerated by DNA testing in 2001, they were suing for civil damages, and Brandon was an associate on their legal team.

Sixteen years later, in early September, I had the honor of welcoming Salaam and Raymond Santana — two of the group now known as the Exonerated Five — to Duke Law School to speak to our students. In front of an overflow crowd, they recounted the story that had been so vividly brought to life in last spring's Netflix series "When They See Us," then stayed for nearly 45 minutes shaking hands and taking selfies. It was an electrifying moment for our community. I was doubly excited that the event marked the launch of the new Duke Center on Science and Justice, directed by Brandon, who is now the L. Neil Williams, Jr. Professor of Law. This new center will apply legal and scientific research to reforming the criminal justice system and eliminating errors like the ones that led to the injustices experienced by the Exonerated Five.

For years, I've witnessed Brandon's tireless work on criminal justice reform research as he has become a leading scholar on these issues. But I've also long known about the amazing work of Duke's criminal law faculty, including Sam Buell's pathbreaking work on corporate crime, Lisa Kern Griffin's investigations into truth, confession, and error in criminal cases, and Sara Sun Beale's extensive contributions to our understanding of federal criminal law. In fact, Duke's leadership in this field was one of the things that attracted Brandon and me to Durham last year.

We were also attracted by Duke Law's long history of identifying and addressing the problem of wrongful convictions, including through our clinical program and our student-led Innocence Project. These cases often require heroic efforts and take years to come to resolution. In May, our Wrongful Convictions Clinic secured the release of Ray Finch, now 81, who had served 43 years for a murder he did not commit; Professor James Coleman had worked on the case for 15 years. In August, the clinic's efforts, led by Professor Theresa Newman since 2010, freed Dontae Sharpe, who served 25 years in prison for a murder he did not commit. And as this issue of *Duke Law Magazine* was going to press, Professors Coleman, Newman, and Jamie Lau and their students were fighting on behalf of a half-dozen clients in state and federal courts and reviewing the cases of many others in the pipeline.

Science can play a key role in these cases, in both good and bad ways. DNA analysis has been a key tool for proving innocence, as it did for Salaam and Santana. But increasingly lawyers and scholars are re-examining faulty science presented at trial — both in attempts to overturn wrongful convictions as well as to prevent mistakes in the future — and using sound scientific methods and data to understand other ways in which the criminal justice system can be improved. The Duke Center for Science and Justice will create new opportunities for students and faculty across the university to study and improve accuracy of evidence in criminal cases, analyze the role of risk in criminal outcomes, and identify the treatment needs of individuals with mental health or substance abuse problems as an alternative to arrest and incarceration. It will also reach across campus to partner with colleagues in medicine, arts and sciences, public policy, and other disciplines, to generate new insights and ideas for systemic reform.

The system failed Yusef Salaam and Raymond Santana, just as it failed Ray Finch and Dontae Sharpe. But it is inspiring to see our community of lawyers, scholars, and students doing something about it. I hope you enjoy reading more about the center and the many other exciting projects going on at Duke Law. And as always, I so appreciate your friendship and support.

Regards,

A handwritten signature in black ink that reads "Kerry". The signature is fluid and cursive, with a long, sweeping underline.

Kerry Abrams
James B. Duke and Benjamin N. Duke Dean
and Professor of Law

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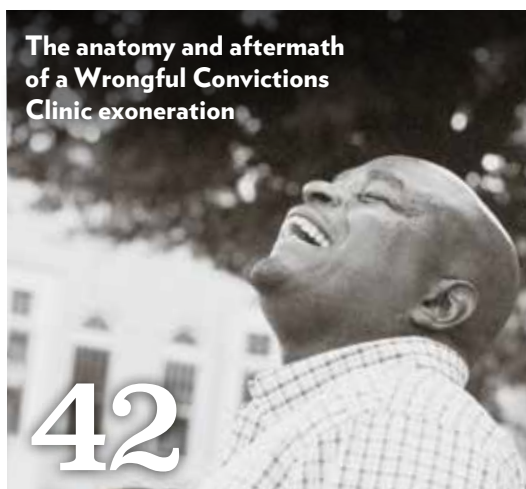
DATA DRIVEN



With the launch of the Duke Center for Science and Justice, Duke Law School is betting that empirical, interdisciplinary research can produce evidence-based reforms in the criminal justice system.

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The anatomy and aftermath of a Wrongful Convictions Clinic exoneration



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Bradley lays groundwork for new field of law



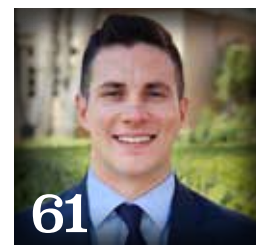
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The Commons

Ideas, achievements,
and events from around
Duke Law School



Yusef Salaam, left, and Raymond Santana, two of the “Exonerated Five,” spoke to Duke Law students Sept. 3, during an event marking the launch of the Duke Center for Science and Justice moderated by Professor Brandon Garrett, right.

New Duke Law center delves into science of criminal justice

A NEW CENTER based at Duke Law School is applying legal and scientific research to reforming the criminal justice system.

The Duke Center for Science and Justice brings together faculty and students in law, medicine, public policy, and arts and sciences to pursue research, policy and law reform, and education in three areas: accuracy of evidence in criminal cases; the role of risk in criminal outcomes; and addressing a person’s treatment needs as an alternative to arrest and incarceration. It also is examining the needs of formerly incarcerated persons who are re-entering society.

The center is led by Brandon Garrett, the L. Neil Williams, Jr. Professor of Law and a leading scholar of criminal procedure, scientific evidence, and wrongful convictions.



“We just want you to do your job to the best of your ability. Don’t cheat. Don’t cut corners.”

— Raymond Santana urged Duke Law students to remember the story of the Exonerated Five as they enter practice.

as criminal justice and policing reform, free expression, foreign policy, economic opportunity, and innovation. Additional support for Garrett’s research has been provided by Arnold Ventures and the Center for Statistics and Applications in Forensic Evidence.

“Driven by innovative, research-based programs like this one, the nation is undergoing a major rethinking about how we approach criminal justice,” said Ryan Stowers, executive director of the Charles Koch Foundation. “We are excited to support Professor Garrett and the Duke Center for Science and Justice as they bring together scholars and practitioners from different disciplines seeking to allow more Americans the opportunity of a second chance and to determine practices that will prevent individuals from getting stuck in the system in the first place.”

Exonerees urge law students to remember their story

Duke launched the center on Sept. 3 with a lunchtime conversation between Garrett and two members of the “Exonerated Five,” Yusef Salaam and Raymond Santana, who, as teenagers, were wrongfully charged and convicted, along with three others, of the brutal rape of a jogger in New York City’s Central Park. Early in his career, Garrett helped represent Salaam in his quest for exoneration.

Salaam and Santana urged the law students in the overflow audience to remember their story as they begin their careers, and said that speaking to future members of the legal profession has helped them heal the emotional trauma from their case.

“There’s not a day that goes by that we don’t think about this situation,” Santana said. “It’s constantly on our minds. But we know we have a service to fulfill. We have an obligation to tell you what happened to us. ... We just want you to do your job to the best of your ability. Don’t cheat. Don’t cut corners.”

Salaam, Santana, Korey Wise, Antron McCray, and Kevin Richardson were between ages 14 and 16 in 1989 when they were arrested for allegedly raping and beating the 28-year-old jogger. Subsequently, the convictions of the so-called “Central Park Five” were vacated in 2002 after another man whose DNA matched DNA from the scene confessed to the assault and rape. In June 2014 the men settled a civil suit with the City of New York. Since then, they have become advocates ▶

A central goal of the center is to convey the results of research to stakeholders in the criminal justice system. (Read more in “Data Driven” on page 34.)

“Duke University is a leader in fostering collaborative interdisciplinary research, and Duke Law School is known for its leading criminal law and justice faculty and pioneering Wrongful Convictions Clinic,” said Garrett. “This history of applying deep scholarly inquiry to society’s most pressing challenges makes Duke the perfect place for a center that employs science to help achieve a better criminal justice system.”

The center is supported by a \$4.7 million grant from the Charles Koch Foundation, which supports research and educational programs in areas such

for criminal justice reform and were the subjects of the Netflix series “When They See Us,” released earlier this year.

“When you go into the system at a very young age it turns you into a fighter,” Santana said. “We’ve been fighting for so long, and we don’t know when it’s time to hang up the gloves.”

Said Salaam: “We’ve been given the opportunity to turn up our lights. We are trying to break generational curses by what we are doing with our lives.”

Recounting the circumstances of their convictions, Santana and Salaam said the young teenagers confessed to the crimes under pressure by seasoned police officers using the Reid technique, a nine-step process of interrogation that includes direct confrontation and offering alternative theories of the crime to elicit an emotional response from which guilt may be inferred. The Reid technique has since been discredited for eliciting a high number of false confessions, especially among juveniles. Santana called the situation an “uneven playing field” and said the teens naively believed they would be released once the facts of the case emerged, including the fact that no blood from the victim was found on any of them.

But the teens were vilified by prosecutors and the media in the ensuing weeks, especially after Donald Trump took out a full-page ad in four New York City newspapers calling for the return of the death penalty shortly after their arrests. “The effect of false confessions is what allowed a lynch mob to form,” Salaam said, holding up a copy of the ad.

Salaam and Santana, ages 15 and 14 respectively at the time of their arrest, were sentenced as juveniles to five to 10 years in detention and served more than six years each before their sentences were vacated in 2002. After their exonerations the men faced struggles, Salaam said, including emotional trauma and financial hardship. Few employers would consider hiring them because of the case’s notoriety and 11 years passed before New York City settled their civil lawsuit, with each man receiving about \$1 million per year incarcerated.

Since then, Salaam said, their financial independence has allowed them to travel the country, speaking in public and fighting against what he called “the criminal system of injustice.”

“When you are free from your immediate task, still labor hard,” he said, translating a verse from the Quran. “I often describe being in the belly of the beast as an awakening process for me. I was being made courageous. I was being made brave. I was being shaped and formed, unbeknownst to me, to provide a service 30 years later.”

“[Its] history of applying deep scholarly inquiry to society’s most pressing challenges makes Duke the perfect place for a center that employs science to help achieve a better criminal justice system.”

— Professor Brandon Garrett

Center builds on Duke Law’s deep strengths in criminal law

In her welcoming remarks, Kerry Abrams, the James B. Duke and Benjamin N. Duke Dean of the School of Law and professor of law, highlighted the engagement of Duke Law faculty scholars and students in pursuing justice for wrongfully convicted individuals and in criminal law reform.

“Wrongful convictions are an all too well-known phenomenon and Duke Law School has been on the forefront for years in doing the difficult and often painstaking work it takes to right these wrongs,” she said.

In 1991, she noted, James Coleman, Jr., the John S. Bradway Professor of the Practice of Law, developed the first law school-based death penalty clinic in the nation. In 2007 he turned its focus to investigating claims of innocence made by incarcerated felons, establishing the Wrongful Convictions Clinic, which Coleman co-directs with Charles S. Rhyne Clinical Professor of Law Theresa Newman ’88. This summer, the clinic won its seventh and eighth exonerations with the releases of Charles Ray Finch and Dontae Sharpe, who were incarcerated for 43 and 25 years respectively. (Read more, page 42.)

The Duke Center for Science and Justice promises to build on and enhance this record, as well as the work of the Law School’s other criminal law scholars, she said.

“At Duke Law School, we are building on our deep strengths in criminal law to create new opportunities for students and faculty to take the lead in studying and shaping approaches to criminal justice reform,” Abrams said. “The Center for Science and Justice will be an integral part of educating students who aspire to make the criminal justice system of the future better and fairer for everyone.” ♡



Justice Anthony M. Kennedy

Justice Kennedy receives inaugural Bolch Prize for the Rule of Law

RETIRED UNITED STATES SUPREME COURT JUSTICE Anthony M. Kennedy received the inaugural Bolch Prize for the Rule of Law on April 11, during a ceremony with Duke Law alumni and leaders from the North Carolina judiciary and legal community. Supreme Court Associate Justice Samuel A. Alito, Jr., Judge Allyson K. Duncan '75 of the U.S. Court of Appeals for the Fourth Circuit, and Bolch Judicial Institute Director David F. Levi were among the speakers.

The Bolch Prize, which will be given annually by the Bolch Judicial Institute, honors individuals or entities who have distinguished themselves in the preservation or advancement of the rule of law. It is a central component of the institute's mission to support and further the rule of law in the United States and around the world. By honoring those who do this work, the Bolch Prize draws attention to the ideals of justice and judicial independence and to the constitutional structures and safeguards that undergird a free society. The recipient is selected by the institute's Advisory Board.

Justice Kennedy was recognized for more than four decades of service on the federal bench, including 30 years on the Supreme Court, as well as his teaching and speaking in support of rule of law principles and civic education in the United States and abroad.

Calling Justice Kennedy a “dedicated, unceasing advocate for the rule of law,” Levi, the Levi Family Professor of Law and Judicial Studies, shared a definition for the rule of law that the justice developed after visiting China. The definition has since been translated into many languages and adopted by the United Nations Commission on Legal Empowerment of the Poor.

“His definition simply and elegantly explains that the rule of law ideal includes the concepts of freedom, equal treatment, and individual dignity within a legal system that permits redress and in which the law is superior to official will,” Levi said.

Justice Kennedy said he accepted the Bolch Prize on behalf of his family, including his wife, Mary Kennedy, who also attended the ceremony. “It is accepted of course in recognition of the constant efforts by hundreds of people, thousands of people, whose names we do not know, whom we have not met, but who do work day to day in the justice system to preserve and defend the ideas that underlie the rule of law, preserve, and protect the rule of law, that is the only secure foundation for the freedom to which we must always aspire,” he said.

Noting that the rule of law is “under attack” around the world and “democracy is slipping away, in part by deliberate attack,” Justice Kennedy said the event and the prize inspired him to rededicate himself to the promotion and preservation of such principles as “the law comes from the people to the government, not the other way around. The idea of the rule of law is so essential that it is important that we always continue to define it for the rest of the nation. Both in English and in other languages, it doesn’t always convey what we know it must and should mean. Autocrats, dictators today use the law as they call it to enforce inflexible decrees, decrees designed not to promote freedom but to take it away. And so

“The idea of the rule of law is so essential that it is important that we always continue to define it for the rest of the nation.”

— Justice Anthony Kennedy



L-R: Justices Anthony Kennedy and Samuel Alito, Jr., David F. Levi, and Kerry Abrams

it is essential that we use this phrase in order to tell ourselves, in order to tell our children, in order to tell every generation, in order to tell the rest of the world how essential law is, when properly defined, to defend freedom and human dignity.”

Justice Alito, who earlier in the day joined Justice Kennedy and Levi for a discussion before an audience of Duke Law students, praised his Supreme Court colleague for his devotion to considering both sides in an argument — “a lesson that our legal system can take to the broader society” — and treating those with opposing points of view with civility and respect, which he said was fundamental to the rule of law.

“If there’s anything that Justice Kennedy’s jurisprudence has been dedicated to it is to the dignity of every single person,” said Justice Alito, who is an honorary member of the Bolch Judicial Institute Advisory Board. “He exemplifies what the rule of law means. His work will go down in the history of the Supreme Court. He is surely one of the most important Supreme Court justices of the modern era and his work will be studied by scholars for many years to come.”

Judge Duncan, who has since taken senior status on the bench, praised Justice Kennedy for his engagement with lawyers and judges internationally through his annual Salzburg Seminar and other courses. She also described efforts to extend that transnational judicial engagement through such organizations as the International Association of Judges, which she serves as vice president, and the International Judicial Relations Committee of the U.S. Judicial Conference, of which she is a past chair. She is also a member of the Bolch Judicial Institute Advisory Board and a Duke University trustee.

“Efforts like these honor the legacy of Justice Kennedy’s work and continue to strengthen the rule of law and enhance shared understandings of judicial problems that benefit everyone,” Judge Duncan said.

Kerry Abrams, the James B. Duke and Benjamin N. Duke Dean of the School of Law and professor of law, highlighted the work of the Bolch Judicial Institute and its impact on Duke Law School and the broader community. “We must extend our deep gratitude to Carl and Susan Bolch for their vision, for their generosity, and for shining a light on the slow but steady work of those who bring stability and justice to our society,” she said.

The institute — which was established at Duke Law School in 2018 with a \$10 million gift from Carl Bolch, Jr., a 1967 Duke Law graduate, and his wife, Susan Bass Bolch — develops research, scholarship, and educational programs in three focus areas: the rule of law, courts and judging, and law and technology. ♻

First Amendment Clinic

Campus speech database expands clinic's mission in second year

DUKE LAW SCHOOL'S FIRST AMENDMENT CLINIC, in which students provide free representation for clients who cannot afford an attorney in cases involving freedom of speech, press, and assembly, had a busy first year. Students who started in the clinic last fall saw a case move from intake to settlement over the course of two semesters and made it to the discovery stage in other matters after surviving motions to dismiss and other litigation obstacles. The clinic has also expanded its mission with the launch of a comprehensive database relating to free speech disputes on U.S. college campuses.

Enthusiastic student response

The clinic's caseload includes the representation of individuals in actions involving political speech; alleged defamation stemming from comments on social media; and a well-publicized lawsuit, now dropped, against the Chicago Bears for violating the plaintiff's First and 14th Amendment rights after the team refused to let him wear clothing with the Green Bay Packers insignia at Soldier Field. The clinic is also representing two journalists who are being barred from reporting activities, as well as several individuals who seek to speak publicly about their experiences of sexual harassment in light of the #MeToo movement.

Students participated in every facet of their cases, including client meetings, discussions with opposing counsel, depositions, and researching and drafting court filings and amicus briefs, under the supervision of Professor H. Jefferson Powell, the clinic's director, and Supervising Attorney and Lecturing Fellow Nicole Ligon '16. While enrollment in the clinic's first year was initially capped at four students per semester, the class grew when three fall-semester students opted to stay on through the spring.

Bryant Wright '19 called his yearlong clinic experience his best at Duke Law, noting that the experience of serving clients and working with a team offered good preparation for doing just that as an associate in the copyright and false advertising and trademark litigation group at Proskauer Rose in New York. In the fall semester, Wright and 2019 classmates Luke Morgan, Michael Fisher, and Joe Bianco authored an amicus brief which was submitted to the U.S. Supreme Court in support of a certiorari petition in *Abbott v. Pastides*, a campus free speech case originating at the University of South Carolina.

The clinic also filed an amicus brief with the Supreme Court in *Rucho v. Common Cause*, a case from the last term regarding partisan gerrymandering, and another with the criminal court in Dallas County, Texas, on whether a Twitter message that was intended to and did cause its recipient to have a seizure constitutes protected speech under the First

Amendment when sent to a known epileptic. The clinic argued that such an "assault-by-internet" is not protected.

Morgan, who argued a motion to dismiss filed by the clinic in a federal district court in South Carolina, also worked with Fisher, Wright, and Austin Brumbaugh '20 on the case that settled in April before trial. Now clerking with the U.S. District Court for the District of Connecticut before beginning an appellate clerkship with the Second Circuit Court of Appeals, Morgan called the clinic "an incredibly rewarding experience" that fits with his goal of crafting an academic career focused on First Amendment issues.

"I feel really passionate about the defamation cases, in particular," he said. "There are important purposes for it, but I feel that a lot of times defamation law is used to silence critics of powerful people just for expressing a political opinion."

Database tracks campus speech disputes

The clinic's Campus Speech Database aims to document every free speech occurrence on college campuses nationally, as well as how any resulting litigation was resolved. It also includes events that raised potential First Amendment concerns and were settled out of court, as well as events that received public backlash but no further activity.

Such a resource is sorely needed because the Supreme Court has issued little guidance on free speech issues on campus, Ligon said. "It's really ripe for review and there is a dearth of guidance on how university administrators should be approaching campus speech issues," she said. "Ultimately, we hope that it provides administrators and other university personnel with guidance on what might constitute a constitutionally permissible regulation or restriction on campus speech. We also hope it helps students better understand their free speech rights, including knowing when conduct might fall out of the First Amendment's purview." The repository will also provide guidance for practitioners litigating a campus speech claim, she added.

The database is funded by a grant from the Stanton Foundation, which also provided the initial funding for the clinic and others at numerous law schools around the country.

The Campus Speech Database "embodies both the clinic's specific mission and its participation in the wider purposes of Duke," said Powell. "As a legal clinic dedicated to the First Amendment, we are always concerned with advocating the protection of freedom of thought and expression in American life. And any part of Duke University is committed to free speech and free thought, by definition. We are very grateful to the Stanton Foundation." ♡

Environmental Law and Policy Clinic

Protecting children from lead in water

THE ENVIRONMENTAL LAW AND POLICY CLINIC played a leading role in the development of a rule recently adopted by the North Carolina Commission for Public Health that will help protect young children from hazardous lead exposure. The rule, which took effect on Oct. 1, requires state-licensed child care centers to test for lead in water used for cooking and drinking.

“Under the previous approach, a child must be poisoned before the source of contamination is identified and mitigated,” said Clinical Professor Michelle Nowlin JD/MA ’92, the clinic co-director. “This regulatory gap may result in the exposure of hundreds of children to lead, albeit at levels lower than the outdated statutory threshold for ‘poisoning,’ and highlights a distinct need for focused regulatory attention on health standards as opposed to corrosion control for drinking water.” The new

rule would help close that gap for the youngest and most vulnerable children, she said. More than 230,000 babies and young children attend licensed child care centers in North Carolina.

Fifteen clinic students from the Law School and the Nicholas School of the Environment contributed research as the rule was being developed, working closely with the clinic’s client, NC Child, as well as personnel at the N.C. Department of Health and Human Services and the N.C. Licensed Child Care Association and scientists at RTI International. They helped to identify and articulate the gaps in regulatory coverage and the associated health challenges, researched possible legislative and regulatory approaches and mitigation strategies, drafted the proposed rule language and fiscal note, and advocated for the rule’s adoption through formal written and oral comments. ♡

Civil Justice Clinic

Breaking new ground with settlement of federal discrimination lawsuit against housing authority

THE CIVIL JUSTICE CLINIC and Legal Aid of North Carolina recently settled a federal discrimination complaint filed against the Raleigh Housing Authority (RHA) on behalf of a public housing tenant who was a victim of domestic violence.

The settlement includes a Federal Consent Decree believed to be the first in the country to address a landlord’s obligations under the Federal Violence Against Women Act (VAWA), which requires housing authorities to provide specific housing protections for tenants who are victims of domestic violence. The tenant was the victim of multiple crimes at her housing unit, including violence perpetrated by an ex-boyfriend who strangled her; a home intruder who threatened her guest at gunpoint; and armed men who shot bullets into her apartment.

In the lawsuit, filed in the U.S. District Court for the Eastern District of North Carolina in 2018, the tenant alleged that RHA violated VAWA and the Federal Fair Housing Act by denying her repeated requests for an emergency transfer to a safe location. The resolution includes entry of a perma-

nent mandatory injunction against the RHA and relocation of the family to a new housing unit at a confidential location.

“We are very pleased with the results for our client and her children, and we hope that this consent decree will serve to highlight to public housing authorities across the country their obligations to comply with VAWA and fair housing laws,” said Clinical Professor Charles Holton ’73, director of the Civil Justice Clinic, who served as co-counsel in the case.

In addition to the federal action, the clinic represented the client in two separate lawsuits filed in N.C. Superior Court and in one interlocutory appeal to the N.C. Court of Appeals regarding sovereign immunity issues.

Eight clinic students have assisted with litigation on behalf of the tenant over the past two-and-a-half years, most recently Hannah Elson ’20, Charles White ’20, and Katarina Weessies ’21, who are currently enrolled. Clinic students assisted with preparation of pleadings, briefing and preparing for multiple motion hearings, preparation of and responding to extensive written discovery, taking depositions, and conducting mediations. ♡



Children's Law Clinic

Restoring disability benefits for a 6-year-old

THE CHILDREN'S LAW CLINIC won a Social Security Administration appeal in August, restoring disability benefits for a 6-year-old girl living with sickle cell anemia.

Sickle cell anemia is an inherited condition in which irregularly shaped red blood vessels make it difficult for sufficient oxygen to circulate throughout the body, causing debilitating episodes of pain, swelling of the extremities, infections, vision problems, and slowed growth in children. It is incurable but can be managed with treatment and lifestyle modifications.

The young client, who was diagnosed shortly after birth, lost her Social Security disability benefits last spring, after tests showed some improvement in her condition. Her family reached out to the clinic for help in appealing that decision. With a hearing scheduled for June, intern Bailey Sanders '21 had less than two months to conduct an investigation, develop a case theory, and prepare her brief for appeal.

Working with Senior Lecturing Fellow and Supervising Attorney Crystal Grant, Sanders combed through hundreds of pages of medical records and interviewed the child's mother and medical providers. They crafted a brief arguing that the client's symptoms, along with the regimen the child must follow to manage her condition, demonstrates marked functional limitations. In doing so, they adopted a novel interpretation of a self-care theory, building it around the finding that to manage her illness, their client would have to drink water hourly. A child her age, they argued, cannot be solely responsible for her own self-care; their client needs almost constant adult supervision, as an interruption in her hydration care schedule can result in hospitalization and work disruption for her parent.

"Dehydration can cause a pain crisis to come on, but a 6-year-old doesn't realize you have to drink water every hour and she doesn't have the maturity yet to reach out for help when she needs it," Grant said. "That's where our theory came together."

Under Grant's guidance, Sanders learned to identify evidence in the medical records, interview the child's health care providers, and construct a narrative that would convince the administrative law judge to restore benefits.

"I understand why the Social Security Administration denied her at first, because if you just look through the records and haven't talked to the provider, it looks like she's doing better," Sanders said. "But when you sift through and pull out the details it becomes clear that she's still suffering a significant detriment. I enjoyed getting to weave that story of her experiences and make the argument for why she should be receiving benefits."

Grant presented Sanders' brief in court alongside the child's mother, who conveyed how her daughter's sickle cell disease had impacted her overall health and physical well-being. In late August, they received the judge's fully favorable decision. ♡

Senior Lecturing Fellow and Children's Law Clinic Supervising Attorney Crystal Grant, right, with Samantha Smith '20



“If Trump wanted to purchase Greenland, Denmark wouldn’t be the most important party — the people of Greenland would be.”

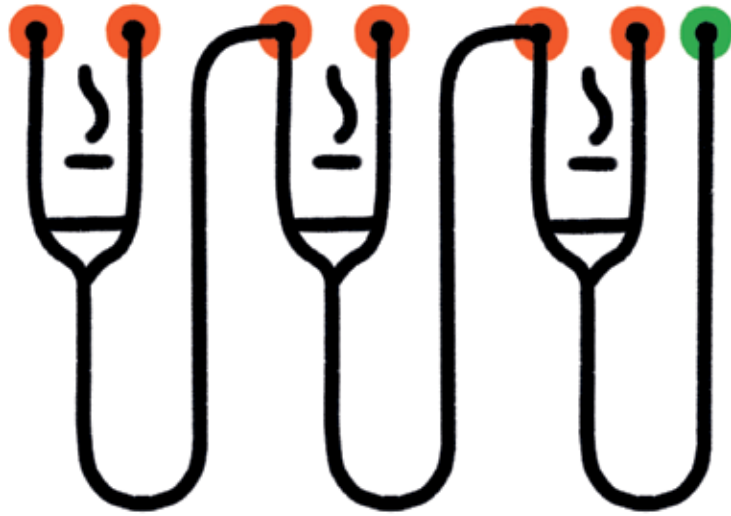
— Professors **Joseph Blocher** and **Mitu Gulati** note that the principle of self-determination — “the notion that peoples should be able to choose their sovereignty, rather than have it assigned to them” — is now a dominant consideration in transfers of sovereign territory. (*Politico*, Aug. 23, 2019)

Notable & Quotable

Illustrations: Cristina Spanò

“We don’t yet have a sense of the violation we might feel on account of the widespread use of drones. ... To protect the individual privacy that serves as an important backbone of our civil society, we should be sure that a much wider range of voices influence the decisions of our corporate boardrooms and public policy makers.”

— Associate Clinical Professor **Jeff Ward** JD/LLM ’09, reacting to news that Amazon got a patent on a home surveillance drone, said that “surveillance capacity is so ubiquitous that perhaps only science fiction has suggested anything close.” (*NPR*, June 22, 2019)



“[These patients] went through internships, residencies, fellowships. They’re super informed. And even then, they’re not doing that much better.”

— Professor **Michael Frakes**, co-author of a National Bureau of Economic Research study showing that physicians are no better than other patients in following their doctors’ orders and other medical guidelines for their own health care, thus challenging the idea that better informed patients make better decisions. (*The Atlantic*, July 9, 2019)

“I don’t think anyone is really trying to get single gene patents anymore. If the information is already out there — and most of the information about the human genome at a single-gene level is already out there — you can’t patent it because it’s no longer new.”

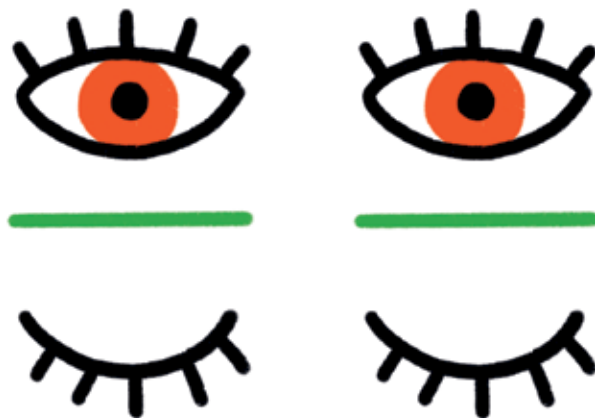
— Professor **Arti Rai**, commenting on how the scientific and business landscapes have changed since the Supreme Court ruled, in 2013, in *Association for Molecular Pathology (AMP) v. Myriad Genetics Inc.* that human genes can’t be patented because they are a “product of nature.” (*Science*, June 2, 2019)

“In my view, *Hyatt* is an unfortunate opinion — not just because some of its reasoning might be questioned, but because it makes the job of defending originalist doctrine harder. At the same time, though, it may have a silver lining: encouraging a slow, possibly generational shift in legal conservatives’ position on the common law.”

— Professor **Stephen Sachs**, who co-authored an amicus brief with the Supreme Court in *FTB v. Hyatt*, disagreed with the Court’s decision to overrule *Nevada v. Hall* and declare that states have sovereign immunity in other states’ courts on structural, as opposed to textual, concerns. (*Reason*, May 13, 2019)

“We had clear lines between ‘this is alive’ and ‘this is dead.’ How do we now think about this middle category of ‘partly alive’? We didn’t think it could exist.”

— Professor **Nita Farahany** JD/MA ’04, PhD ’06, commenting on a study in which researchers successfully restored some cellular activity in brains removed — hours earlier — from slaughtered pigs. (*The New York Times*, April 17, 2019)





L-R: Steven Schwarcz, Sarah Bloom Raskin, and James Cox

Ten years from the bottom

Duke Law financial experts analyze regulation before and after the Great Recession

CORRUPTING INCENTIVES, LACK OF TRANSPARENCY, and a dispersed, siloed system of regulatory agencies contributed to the financial crisis of 2008-2009. At a spring conference organized by the Global Financial Markets Center (GFMC), a trio of Duke Law financial experts cautioned that the current deregulatory environment could contribute to the next crisis.

Rubenstein Fellow Sarah Bloom Raskin and Professors James Cox and Steven Schwarcz spoke on the legal and regulatory impact of the financial crisis during “Ten Years from the Bottom,” held March 20 at Duke’s Fuqua School of Business. The interdisciplinary event was co-sponsored by GFMC, the Duke Financial Economics Center, the Duke Center for Political Leadership, Innovation, and Service, and Duke Corporate Education.

Introducing the panel, GFMC Executive Director Lee Reiners recounted how, in the 17 months leading up to March 2009, the value of all U.S. stocks dropped from a peak of \$22 trillion to \$9 trillion, fueled in part by a decline in home prices, a sell-off of mortgage-backed securities, the failure of Lehman Brothers, and the near failure of several other large financial institutions, including Bear Stearns, Citigroup, and AIG. The escalating crisis led to emergency legislation to stabilize the nation’s financial system, the brief suspension of the 2008 presidential campaign, and the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank), a law that overhauled the nation’s financial regulatory agencies, to ensure a similar crisis would not happen again.

Raskin, a former Federal Reserve Board governor who served as deputy treasury secretary for three years during the Obama administration, described the

pre-crisis state of federal financial regulation as dispersed between agencies overseeing different financial sectors, such as the Federal Reserve System, the Securities and Exchange Commission, and the Federal Deposit Insurance Corporation. That lack of a central authority created silos that prevented regulators from understanding what was developing between them, Raskin said.

"This is a question of systemic risk. There was no single agency responsible for financial stability."

There was also no single agency overseeing consumer protection, she noted. Instead, it was assumed that each regulatory authority would handle consumer protection concerns as an element of safety and soundness.

Today, Raskin said, the Financial Stability Oversight Council established by Dodd-Frank convenes the heads of regulatory agencies to identify any emerging risks developing between the cracks of the agencies. And the Consumer Financial Protection Bureau (CFPB), also established by Dodd-Frank, has jurisdiction over banks, securities firms, mortgage servicers, and other types of financial firms that serve consumers.

Home financing before the crisis was driven by government-sponsored enterprises (GSEs) Fannie Mae and Freddie Mac, along with the private mortgage market. The fact that it was assumed by market participants that the GSEs enjoyed the full faith and credit of the U.S. government skewed the agencies' mortgage lending and underwriting, Raskin said. Fannie Mae and Freddie Mac remain under conservatorship, despite several attempts by Congress to take them out of government control.

Schwarcz, the Stanley A. Star Professor of Law & Business, noted that even before the crisis, most corporate lending came through capital markets, not banks. Wholesale funding markets weren't well understood at that point and did not have a regulatory home, he said.

Securitization — the sale of packages of loans to investors — is often blamed for creating a moral hazard in that the lenders were not ultimately responsible for the creditworthiness of the loans, which meant that poor-quality loans were made, Schwarcz said. Unregulated institutions originated home loans, some of them risky, and packaged them as mortgage-backed securities.

And the fact that many securities that were highly rated by agencies such as Standard & Poor's and Moody's were later downgraded suggests that the ratings were inflated, the agencies underestimated how much the housing market could decline, or both, Schwarcz said.

"S&P ratings for these securitization transactions pre-crisis, especially those backed by mortgage loans, assumed the housing market could decline by as

"How can we build resilience, that bounce-back? We are taking off a lot of the guardrails from a financial regulatory perspective."

— Rubenstein Fellow Sarah Bloom Raskin

much as 20%. Ultimately the housing market declined by 30%, more than during the Great Depression, and one would question whether you ever could predict something like that. That does call into question a number of things, such as, why didn't the investors who ultimately took the risk engage in due diligence, and why didn't the insurance companies that insured many of these deals adequately assess the risk?"

Consequences of the financial crisis included a loss of faith in credit ratings, mortgage-backed and other types of debt securities, and even the commercial paper funding market — short-term promissory notes issued by companies to fund themselves, Schwarcz said. This loss of capital market funding made it hard for companies to borrow, he observed, reinforcing the economic collapse.

Cox, the Brainerd Currie Professor of Law, voiced concern over a recent increase in corporate lending through the private sector, funded by asset-backed securities of unknown composition.

"What keeps me awake at night is not knowing what's happening out there and the degree of leverage that's going on," he said. "We know that huge amounts of corporate lending are going through the private sector. The private markets, by definition, are not very transparent. And they have grown substantially since 2010."

"We've actually done things that made the private market even bigger. So if the economy is slowing down, or even if the economy doesn't slow down, we're really going to have a problem."

Asked to identify the most important change that has occurred since the crisis, Schwarcz said the Dodd-Frank Act made some improvements but weakened Federal Reserve Act Section 13(3), which allows the Federal Reserve to step in as a lender of last resort to financial institutions. "This means that the Fed is not going to have the authority to step in if there is another crisis," he said.

The Trump administration has moved to weaken Dodd-Frank regulations, and in April the Federal Reserve Board proposed further rollbacks. While Raskin observed that firms now appear to be taking internal controls and risk management more seriously than they did prior to the financial crisis, she expressed concern over the economy's ability to recover quickly in the face of a major shock, such as a cyberattack that freezes liquidity, describing the desired "V-shape downturn," in which there is a downturn followed by a sharp bounce-back.

"When you have a long-term downturn, expectations change," she said. "Behaviors change. There are huge costs and damage done. So we want any downturn to be short-lived. How can we build resilience, that bounce-back? How do we ensure that it is going to be short? We are taking off a lot of the guardrails from a financial regulatory perspective." ♡



L–R: 2019 JD class speaker Bryant Wright, LLM class speaker Ross Hollingworth, and Judge Allyson K. Duncan '75

Convocation 2019

DUNCAN '75 TELLS GRADS TO VALUE SERENDIPITY, SEIZE OPPORTUNITIES THAT COME THEIR WAY

JUDGE ALLYSON K. DUNCAN '75 of the United States Court of Appeals for the Fourth Circuit advised Duke Law's 2019 graduates to keep themselves open to "inspiring challenges and discoveries" in the course of their careers when she spoke at their convocation ceremony on May 11.

"I want to implore you to never underestimate the value of serendipity, and the fulfillment that awaits along the road less traveled," said Duncan.

The convocation ceremony in Cameron Indoor Stadium honored 218 JD graduates, 16 of whom also earned an LLM in international and comparative law, and six who also received an LLM in law and entrepreneurship. Two graduates earned the Law School's LLM in law and entrepreneurship for graduate attorneys. Nineteen JD graduates received the Public Interest and Public Service Law certificate. And nine earned graduate degrees from other departments and schools at Duke University in addition to their JDs.

Of the 88 internationally trained lawyers from 35 nations honored at convocation who received the LLM degree, 19 received the Law School's certificate in business law and three received the certificate in intellectual property law. Two graduates had already received the SJD, the highest degree in law.

An idiosyncratic, yet fulfilling, career path

Duncan told the graduates she "literally grew up" in Durham's historically black North Carolina Central University (NCCU) Law School, where her mother taught for more than 20 years. It was a time "when those students would not have been welcome here," she said, referring to Duke Law where, years later, she felt both welcomed and nurtured.

Still, as one of the first five African American women to graduate from Duke Law, "the traditional law firm route" was not a realistic path for her, Duncan said. She ticked off her varied professional positions: editor at a legal publishing company, appellate law clerk, federal appellate attorney and then legal counsel for the U.S. Equal Employment Opportunity Commission, law professor at NCCU, state appeals court judge, and commissioner on the North Carolina Utilities Commission — both unexpected appointments by the state governor — partner in a large law firm, and federal appellate judge. In fact, Duncan was the first African American woman to serve as a justice on the N.C. Court of Appeals and on the Fourth Circuit.

There was no "discernible game plan" dictating her career moves, she said. "Rather, I took advantage of these opportunities for no

more compelling a reason than a) that they sounded interesting and b) could conceivably contribute to some greater good.”

Each post afforded useful training for the next and brought her enormous personal satisfaction, Duncan said. Becoming a utilities commissioner, for example, just as competition was about to disrupt the “stodgy” telecommunications, natural gas, and electricity industries provided critical experience that facilitated her success in private practice. But that “lucrative” period was cut short by her unexpected nomination to the Fourth Circuit by President George W. Bush. “Serving on the Fourth Circuit, with as thoughtful and collegial a group of people as one can imagine, has left me with powerful memories and lifelong friends,” she said. “It has also been the site of my most meaningful serendipitous intervention.”

That came by way of her appointment, by Chief Justice John Roberts, Jr., to the International Judicial Relations Committee of the United States Judicial Conference. Duncan seized an unexpected opportunity to plead her case for the coveted post directly to the chief justice over dinner at her home when he was in Durham to judge an NCCU moot court competition. He not only granted her request to join the committee, but subsequently made her its chair.

“The experience of traveling around the world, interacting with judges and prosecutors facing unimaginable challenges in situations more daunting than any we will know, has been life altering,” said Duncan, a member of the Law School’s Board of Visitors and a Duke University trustee. “It has given me the highest regard, not only for my American colleagues who have worked throughout the world — in countries like the Sudan, Afghanistan, Iraq, and Yemen — but also for the judges in those countries, some of whom are now imprisoned, who are still struggling against all odds to uphold the rule of law. There is no greater source of perspective — and humility — than being exposed to the views, cultures, and languages of other people.

“What I have learned throughout my career is the value of keeping your eyes open for the exact moment when serendipity might appear — often in a guise you least expect,” said Duncan, who retired from active service on the court on July 30. Only by “working hard at everything you do while remaining open to the development of new opportunities” can one be in a position to benefit from serendipity, she said. She reminded the graduates that one such opportunity involves paying it forward.

“As a Law School graduate, you are in a position of privilege. You have learned how to navigate the system to set yourself up for success. You now have an obligation to use that knowledge to give back to your school and to others — whether through mentorship, financial support, or involvement with organizations that work to help others achieve the same success.”

“Be present,” make a difference in the lives of others

LLM class speaker Ross Hollingworth, a South African attorney, commended his classmates both for their professional and scholarly accomplishments and for their academic success. He called himself “humbled” by their discipline and compassion: “Despite being divided by six continents, 35 countries, and 24 languages, you have shown a shared commitment for mutual understanding and respect for everyone around you.” All have proven that they know what it means to take risks, to work hard, “and what it means to pour everything you have into the pursuit of success,” added Hollingworth, an aviation lawyer. “All I ask of you is this: Know your worth. Don’t doubt yourselves. Be bold. Be brave. And don’t leave your future in someone else’s hands.”

Hollingworth, who began his remarks by quoting former South African President Nelson Mandela framing education as the most powerful weapon for world change, closed with another of the statesman’s observations: “What counts in life is not the mere fact that we have lived. It is what difference we have made to the lives of others that will determine the significance of the life we lead.”

JD class speaker Bryant Wright, a classically trained violist, referenced several musicians, including Beyoncé, Mozart, and Duke Ellington, as he shared four maxims he uses to remind himself to be present. “First, every wall is a door,” he



Kerry Abrams presided over her first convocation as dean.



said. “Many obstacles impede our paths. But these walls are merely doors to be opened if we imagine a better world on the other side. ... At the end of three of the quickest yet longest years of our lives, we all successfully re-imagined the wall we encountered in August 2016 into the door we opened today.”

Wright’s second maxim involved self-care. “The first wealth is health,” he said. His third: “Choose love.” Citing Cornel West for the proposition that “‘justice’ is simply what love looks like in public,” Wright urged his classmates to look beyond people who are valuable to their careers and instead acknowledge the many people they interact with daily who also deserve attention and respect. He acknowledged, by name, members of the Law School’s custodial and café staffs, as well as several faculty assistants and administrators who connected students with resources. “Choosing love means recognizing all of the people around you for their contributions to your success,” he said.

Wright’s final maxim reminded his classmates that they only live once. “Take risks,” he said. “Embrace new experiences often even when they challenge you in fundamental ways, like that time in our first year when we all had to re-learn how to read.

“So, Class of 2019, I submit we’ve finally made it to the *beginning* of careers filled with growth and learning, peace and trouble, tears and laughter. ... Life runs directly at you. Be present in each moment and let love be your managing framework.” 🍷

Faculty Focus



Professor Curtis Bradley speaks at a launch event for his book, *The Oxford Handbook of Comparative Foreign Relations Law*, held in The Hague on July 2 in conjunction with the Duke-Leiden Institute in Global and Transnational Law

With *Oxford Handbook*, Bradley lays groundwork for new field of comparative foreign relations law

FOR CURTIS BRADLEY, publication of *The Oxford Handbook of Comparative Foreign Relations Law* — of which he is editor — represents the culmination of a five year scholarly effort and the realization of a lofty goal: to lay the groundwork for a new field of study and teaching.

"I have been writing about and teaching U.S. foreign relations law since I started in academia more than 20 years ago, and I have become increasingly interested in the extent to which other countries face similar issues to those that we think about here, including how much authority to distribute between the legislative branch and the executive branch in handling foreign relations," said Bradley, the William Van Alstyne Professor of Law and Professor of Public Policy Studies. "This project stems, in part, from my desire to learn more and find out whether there were comparisons and contrasts that would be interesting."

A founder and co-director of Duke's Center for International and Comparative Law, Bradley's scholarly expertise spans the areas of international law in the U.S. legal system, the constitutional law of foreign affairs, and federal jurisdiction, and his courses include International Law, Foreign Relations Law, and Federal Courts. In addition to directing the Duke-Leiden Institute in Global and Transnational Law for the past two years and serving on the executive board of the Center on Law, Ethics and National Security, he is co-editor-in-chief of the *American Journal of International Law* (AJIL) and served as a reporter on the American Law Institute's Restatement of the Law Fourth, The Foreign Relations Law of the United States, which was published last November. He is also a longtime member of the Secretary of State's Advisory Committee on International Law.

After confirming that the topic was, indeed, ripe for exploration with a July 2015 conference of scholars from the United States, Canada, and Europe that he organized in Geneva (where the Law School's summer institute was then located), Bradley crafted an ambitious proposal for a global project that would help define and develop the relatively new field of comparative foreign relations law. Subsequently named an Andrew Carnegie Fellow by the Carnegie Corporation of New York, he used his award to help fund an annual series of conferences — held respectively in Tokyo, Pretoria, and Leiden — where leading international experts gathered to discuss related issues. They also workshopped draft papers, many of which are now among the book's 46 chapters.

The result, which runs almost 900 pages, is divided into sections that offer a mix of theory, comparative empirical analysis, and country-specific case studies on such topics as entering into and exiting treaties, using military force, extending or refusing immunity to foreign governments and their officials, the impact of federalism on foreign affairs, and the practices of non-nation, supranational bodies like the European Union. An introductory section examines the nature of foreign relations law as a field: how to define it, where it might be going, and areas where scholars, foreign ministry lawyers, and others could benefit from understanding the similarities and differences between the practices of different nations.

"The handbook reflects a lot of dialogue between the authors of the various chapters who were meeting at our conferences, and they often draw connections to what they found in one another's work," said Bradley, adding that the project's collaborative nature enhanced its overall quality.

Advance praise heralded the book as the first work in this new scholarly sphere.

"This *Oxford Handbook* is the first truly comparative effort in the field of foreign relations law," wrote Helmut Aust, professor of law at Freie Universität Berlin. "The result is a *tour de force*, a reference work that is innovative in its theoretical and conceptual approaches as well as diverse in the positions individual contributors take."

The utility of a comparative approach

Bradley, who wrote the book's preface and a chapter on U.S. war powers and the potential benefits of comparativism, also contributed an introductory chapter that defines foreign relations law and traces its development in the U.S., where it is better established as a field than it is elsewhere in the world.

Foreign relations law is not international law, although the two frequently intersect, he said. "It's much more about domestic law and issues about distributing authority between the executive, the legislature, and the courts. If it's a federal government like that in the U.S., Canada, Switzerland, or Germany, there are also vertical issues between the national government and the state governments in their dealings with the rest of the world. And there are also issues about the status of international law internally within each of these countries and how that might be similar or different."

The legal materials that make up a nation's foreign relations law can include, among other things, constitutional law, statutory law, administrative law, and judicial precedent, he said. "In my first chapter I point out the importance of comparative study in this area — it can allow us to better understand the foreign relations practices of other countries. Because each nation structures these things differently and has its own set of legal issues and legal environment, it's important for lawyers in foreign ministries and departments of state, for example, to have a sense of what their counterparts' authority might be."

He pointed to the laws and practices relating to the making and termination of treaties as one that varies country-to-country, particularly regarding the parameters of executive authority to do so. "And there is some movement in the law on that topic internationally," he said, noting the 2017 ruling by the Supreme Court of the United Kingdom ordering the prime minister to seek parliamentary approval to exit from the European Union treaty in spite of the country's tradition of executive suprema-

cy in foreign affairs. A South African court similarly ruled against that country's executive in its efforts to exit the International Criminal Court treaty without legislative approval, and the issue has particular currency given the Trump administration's actions to withdraw the United States from a number of international agreements.

"But the president's authority to do so has not been fully resolved in U.S. courts," Bradley said. "I think litigants might invite the Supreme Court to consider — as instructive, though not as binding — that some major courts in other countries have faced similar issues recently and have found it important to keep the legislatures involved."

In his chapter on war powers, Bradley highlighted Germany as offering a useful contrast to U.S. law and practice, which have frequently diverged when presidents have perceived a need to intervene abroad. "It's a messy area of law for the United States, because the Constitution seems to suggest that the legislature has predominant control, and the War Powers Act, passed near the end of the Vietnam War, also seems to insist that Congress has a major role in deciding whether to use force," he said. "But in practice, successive presidents since World War II have often used military force without going to Congress. And U.S. courts have generally declined to hear cases challenging presidential military actions."

The War Powers Act, too, uses terms "that are too easily avoided," he added. "For instance, it only gets triggered when we go into 'hostilities.' A few years ago, the Obama administration said it was not bound by the statute because in merely bombing Libya we weren't in hostilities because they couldn't bomb us back, an argument that a lot of people thought was not very persuasive, but the courts weren't involved." In Germany, by contrast, courts regularly look at the executive's power to use force and the war powers statute is more tightly drafted. "It says, basically, that any time you move your armed forces into an area in which there is any kind of conflict going on the parliament has to be involved."

"I think that if we ever tried to revise the U.S. war powers statute," Bradley said, "it would make good sense to look to countries that have tried to do better at drafting."

Developing the field

Bradley received an enthusiastic response to the project from the dozens of contributing scholars. He specifically commended the contributions made by two of his Duke Law colleagues: Alston & Bird Professor Ernest Young, whose chapter on U.S. federalism and foreign affairs, Bradley said, will be highly instructive to lawyers in foreign ministries, among others; and Harry S. Chadwick, Sr., Professor Laurence Helfer, ▶

whose chapter titled “Treaty Exit and Intrabran­ch Conflict at the Interface of International and Domestic Law” brings in insights from regions such as Latin America, where courts have, on occasion, mandated a country’s treaty withdrawal.

Helfer, who co-directs CICL and serves as *AJIL* co-editor-in-chief with Bradley, was deeply involved with the project from the beginning. “He was at every conference and helped advise me throughout,” Bradley said. “He’s been a great collaborator.”

Helfer, an expert in the areas of international law and institutions, international adjudication and dispute settlement, human rights, and international intellectual property law and policy, praised Bradley’s stewardship of the project and said that he emerged with an enriched understanding of a familiar topic. “Although I have extensively studied the international law of treaty withdrawal, I never considered the foreign relations dimensions of the topic, in particular which branches of government decide whether and how states exit from international agreements.”

Two launch events that were attended by contributors and other interested scholars followed *The Oxford Handbook’s* spring publication: one in London on June 28 at the Center for Transnational Legal Studies; and a panel discussion on July 2 at the Duke-Leiden Institute in Global and Transnational Law, where Bradley taught a course on comparative foreign relations law with Joris Larik of Leiden University, an expert on the external relations of the European Union and a contributor to the project.

“It isn’t just a book,” Larik said at the event. “It’s really something quite new, something that defines a new field of study that wasn’t there before.”

Panelist David Stewart, a professor at the Georgetown Law Center whose chapter on international immunity was informed by his long career in the U.S. Department of State, said that a comparative approach is crucial for effective diplomacy.

“If you want to negotiate and come to agreement with other countries, you need to try to put yourself in the other person’s shoes — to understand their system, why they are approaching something the way they do. If you want to achieve an agreement, say a multilateral agreement, it really is important to understand what the approaches are of various governments around the world, why nations want to do something a certain way.”

As he wrote in the preface and reiterated at the launch events, Bradley sees the book as only the initial foundation for a new field of teaching and scholarship. “We view this as the very first stage of the development of this area of study, not the final stage by any means, and not the last word,” he said in *The Hague*. “I am actually quite interested in seeing how this develops. There’s a lot we don’t yet know about the foreign relations laws of many countries and certain regions, particularly in a deep sense.”

He also hopes to see the development of new approaches to empirical work in the field. But he is satisfied that his initial mission has been accomplished, and others agree.

“This is the book on which comparative foreign relations scholars will build their future work,” wrote Ashley Deeks, E. James Kelly, Jr. – Class of 1965 Research Professor of Law at the University of Virginia. ♡ — *Frances Presma*



Measuring social welfare

ADLER PROPOSES FRAMEWORK FOR POLICY EVALUATION THAT FACTORS INDIVIDUAL WELL-BEING

“**H**OW SHOULD WE EVALUATE proposed governmental policies?” Matthew Adler asks at the start of his new book, *Measuring Social Welfare: An Introduction* (Oxford University Press, 2019). “What methodology should we use to assess whether one policy is better or worse than a second, or than the status quo?”

For nearly 40 years, every regulation of the U.S. government originating in the executive branch has been evaluated using the same standard: cost-benefit analysis. A 1981 executive order signed by President Ronald Reagan requires it. But Adler, whose interdisciplinary research focuses on improving frameworks for policy analysis — and who draws from welfare economics, normative ethics, and legal theory — has long advocated for a different methodology. His framework, known as the social welfare function, significantly improves on cost-benefit analysis by factoring individual well-being into policy evaluation and addressing questions of societal inequity.

In his new book, Adler offers the theoretical underpinnings of two social welfare function measures. The first, utilitarianism, originated with the 18th century philosopher and social reformer Jeremy Bentham, and advocates policy choices that would satisfy the preferences of the greatest number of people. The second, “prioritarianism,” is a refinement to utilitarianism that gives extra

“To be clear, the social welfare function approach might not change the kinds of policies that government enacts. But it could or, in my view, should change how the government assesses the set of policy options on the table.”

weight — priority — to the worse off. Through a detailed case-study of fatality risk-regulation, Adler’s book illustrates how both operate and how their outcomes compare to cost-benefit analysis.

Adler, the Richard A. Horvitz Professor of Law and Professor of Economics, Philosophy and Public Policy, is the author of *Well-Being and Fair Distribution: Beyond Cost-Benefit Analysis*, which systematically discusses how to integrate considerations of fair distribution into policy analysis (Oxford, 2012), and *New Foundations of Cost-Benefit Analysis* (Harvard, 2006; co-authored with Eric Posner). He also edited the *Oxford Handbook of Well-Being and Public Policy* (2016) with Marc Fleurbaey. The founding director of the Duke Center for Law, Economics, and Public Policy, Adler is a leading proponent of prioritarianism and has published multiple articles on its application to a variety of policy domains, including climate change, risk regulation, and health policy. He is also the co-founder of the international Prioritarianism in Practice Research Network; affiliates’ work will appear in a forthcoming edited volume from Cambridge University Press.

Fleurbaey, Robert E. Kuenne Professor in Economics and Humanistic Studies at Princeton University’s Woodrow Wilson School, says *Measuring Social Welfare* “enhances our ability to assess complex social situations, taking into account efficiency and equity simultaneously, and provides a toolkit that increases our ability to assess options, trade-offs, and fairness.” And reviewer Cass Sunstein of Harvard Law School, a former administrator of the White House Office of Information and Regulatory Affairs, calls it a “pathbreaking, state-of-the-art exploration of the idea of social welfare, with major theoretical advances and lots of implications for actual practice.”

Adler spoke with *Duke Law Magazine* about his book and his broader goals to improve policy assessment.

DUKE LAW MAGAZINE: How does the social welfare function framework improve on cost-benefit analysis?

MATTHEW ADLER: Cost-benefit analysis uses money as the central metric for assessing policy choices of all kinds. A policy might improve people’s health; it might reduce pollution and thereby reduce fatalities and improve environmental quality; it might improve infrastructure and ease commutes and traffic congestion; and so forth. But none of these benefits are free, so the policy will also likely reduce people’s incomes. Cost-benefit analysis is biased in favor of those who have more money and is completely insensitive to how costs are distributed. Those with more money tend to be willing to pay more for the benefits of governmental policy. Moreover, if \$100 in costs is involved, cost-benefit analysis doesn’t care whether this \$100 falls on a rich person or a poor person — it’s just neutral. But a dollar — or \$10 or \$100 — has a bigger well-being effect for someone who has a lower income than for someone who has a higher income.

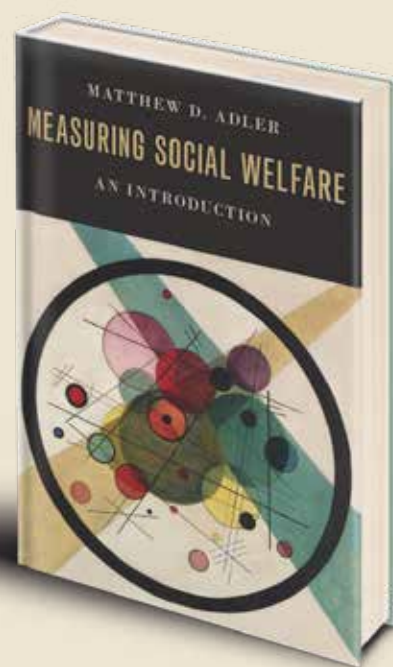
Rather than measuring effects in dollars, social welfare functions measure effects in terms of individual well-being and are sensitive to distribution. So when it comes to imposing costs, social welfare functions prefer that any given reduc-

tion of income — by \$100, say — is borne by a richer person as opposed to a poor person. In that way, the social welfare function framework is useful for taking account of inequality.

DLM: This book is very much a “how-to” manual. Take us through your fatality risk-regulation case study.

MA: Risk regulation is basically doing three things: It’s reducing people’s fatality risks — for different people in different groups. It may also be improving their health, that is, reducing the non-fatal diseases that people experience. Finally, it’s imposing costs — on different people in different groups. So there’s the benefit side (fatality risk reduction and health improvement) and then the income-reduction side. As an example, consider the Environmental Protection Agency’s regulations that reduce air pollution. Air pollution causes premature death and health harms, but reducing pollution is costly, since doing so means installing costly pollution-control equipment, and these costs will be incurred in the form of lower incomes for workers, shareholders, or consumers.

This can be thought about a bit more abstractly. Let’s say that in the baseline, each person or each similar group of people faces a sort of longevity-health-income lottery. Basically each has a chance of living to various possible lifespans (a lifespan of 1, 2 ... 100 years). For each possible lifespan, there is a chance of various different health states and income amounts during each year alive. What a pollution policy or other kind of risk-reduction policy does is to change the lottery. So people now have better life chances, which means they have a greater chance of ▶



“[S]hifting from the use of cost-benefit analysis to the use of a utilitarian or prioritarian social welfare function meshes with larger concerns about inequality.”

living longer and perhaps a better chance for any lifespan of having better health. But they're also going to have lower income.

How do you make that tradeoff? There are really two things going on. One is just the predictive question of how exactly the policy affects these different groups. But then we have this issue of valuation, and that's really what the social welfare function framework does. Assume that a policy is going to change people's lotteries over these “packages” of longevity, health, and income in various ways. How do we value that?

The social welfare function approach says two things. First, we need to figure out what people's preferences are and measure well-being in terms of those preferences. And then we need to pick a particular form for the social welfare function, whether it's utilitarian, prioritarian, or something else, and then apply it to value this policy, understood as a kind of change to the longevity-health-income lottery that people in these different groups face.

My case study works through that in a very specific way using actual data, and then I specifically apply the valuation methodology, both of the social welfare function — utilitarianism and prioritarianism — and of cost-benefit analysis. And the case study demonstrates that cost-benefit analysis is biased towards the rich in valuing risk reductions, even as compared to utilitarianism, which already is somewhat biased. But because cost-benefit analysis measures all effects in dollars and utilitarianism measures them in terms of well-being, cost-benefit is far more biased towards the rich. Prioritarianism goes in the other direction. Depending on the degree of priority for those at a lower well-being level, it may be neutral with respect to income in valuing risk reduction, or prefer that risk reduction be channeled to those with lower income.

DLM: How did you come to put ethics — and inequality — front and center in evaluating policy?

MA: There's a long story about why we engage in cost-benefit analysis. The short version of that is that after World War II, when public economics really becomes influential in the U.S., a lot of economists were skeptical of comparing well-being between people for various reasons. Cost-benefit analysis was seen as a way to give policy advice without doing that.

My 2006 book with Eric Posner, which emerged from prior work, offered a new account of cost-benefit analysis. We thought it was silly to think you can't make well-being comparisons between

people. We said: “Consider someone who is high income, has a good family life, a good career, and is happy, as compared to somebody who has none of those things. Of course we can say that the one person is better off than the other.” So you can make an interpersonal comparison, and we should think of cost-benefit analysis as a kind of a rough proxy for overall well-being. And that book had a fair bit of impact on cost-benefit theory.

And then, in terms of my own thinking, I began to wonder whether we could do better. In a lot of ways, the story here is *back* to utilitarianism. It's *back* to Bentham's idea that we should think about policy in terms of the effects on people's well-being. When Bentham was doing that, he had no doubt that one could make interpersonal comparisons. And I'm sort of bringing us back to utilitarianism, but then moving beyond it, because I'm saying we can be prioritarians. Once we can measure and compare well-being, there are different approaches.

To be clear, the social welfare function approach might not change the kinds of policies that government enacts. But it could or, in my view, should change how the government *assesses* the set of policy options on the table, be they different possible pollution regulations, infrastructure plans, or tax policies. Just as importantly, shifting from the use of cost-benefit analysis to the use of a utilitarian or prioritarian social welfare function meshes with larger concerns about inequality.

DLM: What's the first step in bringing the social welfare function into agency policy deliberations?

MA: Whenever an agency issues a major rule, it has to prepare hundreds of pages of documents about the costs and the benefits. But those documents do not, at least systematically, give information about the *distribution* of both costs and benefits across different socioeconomic groups and regional groups and so forth. It's important to find that out. Who will bear the cost of a proposed regulation? Who's going to reap the benefits? How would they be distributed? Is this something which is going to be especially helpful to or especially burdensome for people in lower income groups?

So the first thing is to start getting the information and then once we have a sense of how the policy impacts people both on the cost side and on the benefits side across different socioeconomic groups, we can then think about how to weight those. ♡ — Frances Presma

Evans tapped to head new Immigrant Rights Clinic

KATE EVANS JOINED the Duke Law faculty on July 1 as a clinical professor and director of a new clinic focused on immigration law and policy.

"I am delighted that Kate Evans has joined us at Duke and is launching our Immigrant Rights Clinic," said Kerry Abrams, the James B. Duke and Benjamin N. Duke Dean of the School of Law and professor of law, who announced the establishment of the clinic shortly after becoming dean in 2018 in response to interest from students and the need for legal services for immigrants in Durham.

"Professor Evans is a passionate and accomplished clinical teacher and advocate for immigrant rights. She is an exceptional choice to lead this new and important addition to our outstanding clinical program."

Evans is a nationally recognized clinician and immigration advocate. A graduate of New York University School of Law, where she was a student leader in the Immigrant Rights Clinic, Evans has a distinguished and diverse background as a lawyer and teacher.

"Kate has a keen sense of how to build a program that will serve important needs, build collaborations, and teach the next generation of leading advocates for immigrant rights," said Professor Nancy Morawetz, co-founder and longtime co-director of NYU's Immigrant Rights Clinic. "I cannot begin to express how great it will be to have her leading Duke Law's new clinic."

A clinical professor since 2012, Evans helped to launch immigration law clinics at the University of Idaho College of Law and University of Minnesota Law School. She has also published immigration law scholarship in the *NYU Review of Law and Social Change*, *Minnesota Law Review*, *Brooklyn Law Review*, and several practitioner-oriented publications.

Evans and her students have been involved in cutting-edge work, from grassroots community empowerment efforts to litigation before the U.S. Supreme Court. She plans to bring this multi-faceted approach to Duke, and is seeking to partner closely with the local immigration bar and immigrant rights organizations, as she did in Idaho and Minnesota.

"There are amazing organizations in Durham and throughout North Carolina working to promote the

rights of immigrants," Evans said. "I'm excited to get to know these groups, figure out how we can best join these efforts, and expand their reach."

The Immigrant Rights Clinic, Duke's 11th clinical program, will offer students the opportunity to develop critical professional skills and deepen their knowledge while providing free legal services to immigrants who could not otherwise afford a lawyer. Supervised by clinic faculty, student-attorneys in the clinic will primarily represent individuals seeking asylum or facing deportation.

Students are enrolling in the clinic for the spring 2020 semester. In addition to Evans, a supervising attorney will be hired to manage day-to-day operations, and as the clinic develops, it may expand into research, policy, and impact litigation. Evans is also teaching Cimmigration Law, a seminar exploring how the criminal justice system functions for non-citizens, in the fall semester.

"It is just terrific that Professor Evans has joined the Duke Law faculty to lead our newest clinic," said Clinical Professor Andrew Foster, director of experiential education and clinical programs. "She brings a unique mix of vision, experience, passion, and drive to this work. It is exciting to think of the difference she and her students will make through their work in partnership with clients, the broader community, and other clinics and immigrant rights advocates."

Evans earned her bachelor's degree with honors from Brown University, where she majored in international development studies, and later worked for Doctors Without Borders in New York, Guatemala, and Uganda as an advocate and administrator. She graduated *magna cum laude* from NYU Law, where she was a Root-Tilden Kern Scholar and a member of the Order of the Coif and won the dean's award for exceptional work in the Immigrant Rights Clinic.

After graduation from law school, Evans clerked for Judges Harriet Lansing and Thomas Kalitowski on the Minnesota Court of Appeals and Diana Murphy on the U.S. Court of Appeals for the Eighth Circuit.

"Professor Evans is an extraordinary addition to Duke Law's clinical faculty," said Jayne Huckerby, clinical professor and director of the International Human Rights Clinic, who led the search for an Immigrant Rights Clinic director. "Under her leadership, our new experiential program focused on immigration law will provide critical learning opportunities for students as well as significant service outcomes in partnership with affected communities." ♡ — Andrew Park



Faculty Notes



Photo: Lorin Granger

Bunyan S. Womble Professor of Law **Jerome H. Reichman**, a renowned and pathbreaking scholar of intellectual property law, was honored with a two-day conference at Harvard Law School in late September.

Leading academics and policymakers from around the world, many of them his research partners and co-authors and editors, convened in Cambridge on Sept. 26 and 27 for “Innovation, Justice, and Globalization — A Celebration of J. H. Reichman.” The theme for the conference and its programming reflected the innovative and influential nature of Reichman’s scholarship, which has long focused on legal and policy strategies to resolve challenges arising from the grant of exclusive property rights foundational to intellectual property law, such as access to patent-protected essential medicines in developing countries.

Dozens of scholars addressed discrete aspects of Reichman’s work during moderated sessions organized around seven themes: the economics of innovation and development; whether antitrust and competition law trust intellectual property law too much; the puzzles of overlapping and hybrid intellectual property rights; the World Trade Organization’s Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) and the role of intellectual property rights in developing countries; challenges facing the digital commons; non-voluntary licensing of pharmaceutical patents; and

property rights versus liability rules — theories and practical implications.

Keynote addresses at the conference were delivered by Judge Guido Calabresi of the U.S. Court of Appeals for the Second Circuit and Yochai Benkler, the Berkman Professor of Entrepreneurial Legal Studies at Harvard Law.

Reichman’s 10 books include: *Governing Digitally Integrated Genetic Resources, Data, and Literature: Global Intellectual Property Strategies for a Redesigned Microbial Research Commons* (Cambridge University Press, 2016, with Paul F. Uhrlir and Tom Dedeurwaerdere), which 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; and *International Public Goods and Transfer of Technology Under a Globalized Intellectual Property Regime* (Cambridge University Press, 2005, editor with Keith Maskus), which emerged from his work addressing the problems that developing countries face in implementing TRIPS.

The conference, organized as a surprise and dubbed “Jerryfest” by participants, also celebrated Reichman’s kindness and generosity towards students and fellow scholars alike. ♡



Steven L. Schwarcz, the Stanley A. Star Professor of Law & Business, has been honored by Durham University in Durham, U.K., with a distinguished honorary professorship. Durham University also hosted a daylong symposium on May 28 titled “Financial Inclusion and Access to Credit” to mark Schwarcz’s inauguration as Distinguished Honorary Professor, at which he delivered the keynote address.

Schwarcz’s scholarship includes such diverse areas as insolvency and bankruptcy law, international finance, capital markets, systemic risk, corporate governance, and commercial law. He has written extensively and testified before the U.S. Congress on topics including systemic risk, securitization, credit rating agencies, and financial regulation, and has advised several U.S. and foreign governmental agencies on the financial crisis and shadow banking. Schwarcz, who was the founding director of Duke’s interdisciplinary Global Capital Markets Center (now the Global Financial Markets Center), is also a senior fellow of the Centre for International Governance Innovation (CIGI), among many other professional affiliations and honors.

Durham University confers honorary professorships on individuals who are of equivalent national or international standing in their fields as the institution’s faculty are in theirs. They are additionally based on the recipient’s outstanding professional achievement and recognition as leading experts within their professions and occupations, according to the university’s website. John Linarelli, professor of commercial law at Durham Law School, called Schwarcz “one of the very top global authorities” on financial law and regulation and the author of groundbreaking scholarship that has made a profound impact.

The symposium on financial inclusion, held under the auspices of Durham University’s Institute for Commercial and Corporate Law and supported in part by the transatlantic law firm of Womble Bond Dickinson, highlighted both an important subject in financial regulation and the policy-oriented focus of Schwarcz’s recent scholarship, Linarelli added.

Schwarcz’s keynote address, officially the University of Durham Honorary Professorship Inaugural Lecture, was based on his article titled “Empowering the Poor: Turning De Facto Rights into Collateralized Credit” 95 *Notre Dame Law Review* 1 (forthcoming 2019). The article expands on an earlier policy brief he authored for CIGI, “Creating Credit from De Facto Collateral Rights,” that was included in *G20 Insights* in July 2018. Both works, Schwarcz explained, outline how commercial law can be deployed to allow the poor “to use the property they inhabit, but do not legally own, as collateral to borrow, in order to start small businesses and become upwardly mobile.”

Over the past summer, Schwarcz also served as the McCormick Visiting Fellow at the University of Edinburgh School of Law. ♫



Professor **Doriane Lambelet Coleman** testified before the full U.S. House Committee on the Judiciary on April 2 on the matter of H.R. 5, the “Equality Act.” Introduced in the House on March 13 and sponsored by Rep. David Cicilline, D.-R.I., the Equality Act proposes to prohibit discrimination on the basis of sex, gender identity, and sexual orientation, “and for other purposes.” In her testimony, Coleman addressed the bill’s implications for women’s sports, as she also has in numerous media outlets.

Coleman, a former national collegiate track champion who competed internationally, is an expert in anti-doping rules who has practiced, taught, and written about sports law with a focus on the Olympic movement and eligibility issues. Her current work focuses on the differences between biological sex and gender identity and the implications of those differences for institutions ranging from elite sport to education and medicine. She is the author of “Sex in Sport,” 80 *Law & Contemporary Problems* 63-126 (2017), and has written recently on the topic for *The Volokh Conspiracy* and *The New York Times*.

“I support equality including for the LGBTQ community,” Coleman stated in her written testimony. “But I don’t support the current version of H.R. 5 because — and I say this with enormous respect for everyone who cares about and is working on the bill — it elides sex, sexual orientation, and gender identity: It’s all sex discrimination, and, at least impliedly, we’re all the same. In opting for what is in effect a sex blind approach to sex discrimination law, the legislation would serve as cover for disparities on the basis of sex.

“Females have and continue to be treated differently precisely because of our reproductive biology and stereotypes about that biology. Pretending that biological females and women with testes are the same for all purposes will take us backward not forward.” The data are clear, she testified, that if sport were not segregated on the basis of sex, “even at their absolute best,” the fastest women on the planet would routinely lose to thousands of even second-tier males. “And because it only takes three male-bodied athletes to preclude the best females from the medal stand, and eight to exclude them from the track, it doesn’t matter if only a handful turn out to be gender nonconforming.” ♫

Professor **Elisabeth de Fontenay** testified on Capitol Hill on Sept. 11 that easing restrictions on the sale of unregistered securities could be harmful to retail investors and the public securities markets.

De Fontenay provided oral and written testimony to a hearing of the U.S. House Committee on Financial Services Subcommittee on Investor Protection, Entrepreneurship, and Capital Markets. She was one of several panelists invited to speak on proposals that would loosen federal securities regulations that restrict private investments to institutional investors and wealthier individuals during the hearing titled “Examining Private Market Exemptions as a Barrier to IPOs and Retail Investment.”

Retail investors can typically invest only in securities traded on public markets, where disclosure requirements are much stronger. However, the number of public companies is in decline, and capital has increasingly flowed into unregistered securities, de Fontenay noted.

“There is considerable room for disagreement over whether public companies and the public markets are subject to too much regulation,” she stated in her written testimony. “The same cannot be said for whether increasing retail-investor presence in the private markets would be good for investors or good for capital allocation.

“If Congress and the SEC are concerned about shrinking investment opportunities for retail investors, the solution lies not in throwing retail investors to the wolves in the private markets, but rather in ensuring a healthy pipeline of companies going and remaining public.”

De Fontenay teaches and writes in the areas of corporate finance, corporate law, and private investment funds. Her scholarship focuses on how market actors behave in the less-regulated spaces of the financial markets, including “The Deregulation of Private Capital and the Decline of the Public Company,” *68 Hastings Law Journal* 445-502 (2017).

On Sept. 19, de Fontenay took part in a panel discussion before the Securities and Exchange Commission’s Investor Advisory Committee on the matter of the increased use of leveraged loans and its possible effect on future regulatory efforts. 📖



Femi Cadmus, Archibald C. and Frances Fulk Ruffy research professor of law, associate dean of information services and technology, and director of the J. Michael Goodson Law Library, testified before the U.S. House Appropriations Legislative Branch Subcommittee on April 2, in support of funding requests of the U.S. Government Publishing Office (GPO) and Library of Congress.

Cadmus, who is now immediate past president of the American Association of Law Libraries (AALL), was testifying in her capacity as president. In her testimony she emphasized the importance of the GPO’s Public Information Programs account that supports the Federal Depository Library Program (FDLP) to law libraries. “Approximately 200 law libraries participate in FDLP, including academic, state, court, county, and government law libraries,” according to an AALL statement. “Those libraries rely on GPO for distribution of specific tangible materials, such as core legal titles in print, as well as access to official, authentic material online through GPO’s govinfo.gov website.” Cadmus also addressed AALL members’ reliance on the GPO, the Library of Congress, and the Law Library of Congress “for access to and preservation of official, trustworthy government information,” stating that adequate funding for the agencies ensures access to information that in turn supports access to justice and preserves the rule of law. 📖



Associate Clinical Professor **Jeff Ward** JD/LLM '09 spent two weeks over May and June teaching in Germany and Poland in a program designed to give lawyers and other professionals insights and tools to combat the erosion of ethical norms. Ward, the associate dean for technology and innovation and director of the Duke Center on Law & Technology, was one of two members of the law faculty in the Fellowships at Auschwitz for the Study of Professional Ethics (FASPE).

FASPE fellowship recipients are students and early career practitioners in law, medicine, business, journalism, and seminary, who study the perpetrators of the Holocaust to understand how the ethical lapses of their professional counterparts allowed the normalization of Nazi policies and enabled Nazi-era crimes. Through historical study, discussion, and exploration of key sites in Berlin and Krakow as well as the Auschwitz concentration camp, fellows apply lessons from those ethical breakdowns to contemporary challenges facing their respective fields.

Ward focuses his scholarship and professional activities on the law, policy, and ethics of emerging technologies, the future of lawyering, and the socio-economic effects of rapid technological change, with a focus on ensuring equitable access to the tools of economic growth and the resources of the law. Some of his current research examines the implications of advanced systems of artificial intelligence that can autonomously generate highly realistic digital artifacts, or deep fakes. 🐦



A book on gun rights and regulations co-authored by Professors **Joseph Blocher** and **Darrell Miller** has been named to an influential annual list of the best legal writing.

The Positive Second Amendment: Rights, Regulation and the Future of Heller (Cambridge University Press, 2018) was picked for *The Green Bag's* list of "Exemplary Legal Writing" that appears in its 2019 *Almanac & Reader*.

Blocher and Miller, who co-direct the Duke Center for Firearms Law, are leading constitutional scholars who have written extensively about the Second Amendment. *The Positive Second Amendment* offers the first comprehensive account of the history, theory, and law of the right to keep and bear arms in the aftermath of *District of Columbia v. Heller*, the Supreme Court's 2008 ruling that the Second Amendment protects a private, personal right to own guns.

Blocher, the Lanty L. Smith '67 Professor of Law, has published articles in the *Harvard Law Review*, *Yale Law Journal*, *Stanford Law Review*, *Duke Law Journal*, *Yale Journal of International Law*, and other leading journals. He is co-author, with Mark Tushnet and Alan Chen, of *Free Speech Beyond Words* (NYU Press, 2017).

Scholarship by Miller, the Melvin G. Shimm Professor of Law, has been published

in the *Yale Law Journal*, the *University of Chicago Law Review*, and the *Columbia Law Review*, and has been cited by the Supreme Court of the United States, the United States Courts of Appeals, the United States District Courts, and in congressional testimony and legal briefs.

The Green Bag is a quarterly journal that features "short, readable, useful, and sometimes entertaining legal scholarship," and its annual almanac highlights judicial opinions and books recommended as the year's "Exemplary Legal Writing" by its contributors. *The Positive Second Amendment* was one of five books recommended by Femi Cadmus, a longtime contributor to *The Green Bag* who joined the Duke Law faculty last year as Archibald C. and Frances Fulk Ruffy Research Professor of Law and director of the J. Michael Goodson Law Library, and Cas Laskowski, technology and research services librarian and lecturing fellow. Cadmus said

she had never before selected a book written by authors at her own law school.

"I selected *The Positive Second Amendment* for inclusion as an exemplary work because it very skillfully analyzes a highly polarized issue without getting bogged down in the process," she said. "In addition, it is written clearly enough to appeal to a broad spectrum of readers." 🐦





McAllaster leaves legacy as transformative clinician, social justice warrior, and policy advocate

COLIN W. BROWN CLINICAL PROFESSOR of Law Carolyn McAllaster retired June 30 after 31 years on the faculty, leaving a lasting legacy at Duke Law through her leadership of the Health Justice Clinic and the HIV/AIDS Policy Clinic and having helped build a policy framework and infrastructure to benefit people living with HIV and AIDS across the South.

Committed to social justice throughout a career that began in private practice, she impressed on her students the importance of empathy and compassion in the practice of law. “Carolyn has been a tireless champion for persons who historically haven’t had a powerful advocate, and she has inspired multiple generations of Duke Law students to do the same,” says Dr. John Bartlett, an early clinical collaborator at Duke University Medical Center.

No less significant is her impact on the Law School’s clinical program. The AIDS Legal Project (now the Health Justice Clinic) was one of the first clinics in the country focused on the legal needs of clients with HIV and AIDS when she started it in 1996, reviving clinical education at Duke Law, which now has 11 clinics.

“We have some of the strongest clinics of any law school and that is largely due to the example that Carolyn set,” says Kerry Abrams, the James B. Duke and Benjamin N. Duke Dean of the School of Law and professor of law. “She’s as responsible as any-

one for the strength of the clinical program and the Law School’s commitment to service, particularly to those who are marginalized and stigmatized.”

“The quietest radical you’ll ever meet”

McAllaster, who hails from Gouverneur, New York, entered the University of North Carolina at Chapel Hill’s four-year program in nursing but switched her interest to law as a more flexible career that would still allow her to help people. About a third of her classmates at UNC Law School were women.

“We were at the beginning of the wave of women coming to law school,” McAllaster recalls. “*Roe v. Wade* had just been decided, and I remember Ruth Bader Ginsburg as a litigator fighting sex discrimination cases. It was an exciting time to be a woman.”

After graduating with her JD in 1976 she began a practice representing plaintiffs in civil cases and defendants in criminal cases. In 1978, she co-founded the North Carolina Association of Women Attorneys, becoming its first president.

“She was always very attuned to women not being treated as they should in the legal profession,” says longtime colleague and friend Jane Wettach, the William B. McGuire Clinical Professor of Law and director of the Children’s Law Clinic, who served as association

president in 1987. “She has always been attuned to people being discriminated against, to creating inclusive environments, and trying to make sure that race, religion, and other factors did not impede people from being recognized.

“She is the quietest radical you’ll ever meet.”

As a trial attorney, McAllaster was a member of the legal team in a civil trial representing victims of the Nov. 3, 1979, Greensboro Massacre, in which five self-identified Communists were killed by members of the Ku Klux Klan and neo-Nazis during an anti-Klan demonstration. State and federal criminal trials had already resulted in acquittals.

“It was an unpopular cause at the time, even within the progressive community,” McAllaster told *Duke Law Magazine* in 2017. “There was incredibly strong bias against the demonstrators because they were Communists. People said to me, ‘You’re going to hurt your reputation — this will be bad for your career.’”

“That didn’t bother her,” says Wettach, who lived next door to McAllaster at the time. “What happened to them was wrong and she was going to try to make it right.”

McAllaster helped obtain civil judgments for negligence against the city of Greensboro, several members of the Klan, and other parties. The litigation took five years and exacted “a pound of flesh,” she says, but it also helped her develop the skills to transition into teaching. She juggled adjunct positions at four different law schools until 1995, when she began teaching pre-trial and trial practice at Duke Law full time.

By then McAllaster’s brother Joseph, a gregarious Boston restaurateur to whom she was close, had been diagnosed with HIV. He died at 38, on June 18, 1993.

“Joseph’s death was tragic and heart-wrenching for her,” says Wettach. “But it changed her life. It gave a focus to the whole rest of her career, and she has honored him throughout.”

Revitalizing the Duke Legal Clinics

McAllaster’s first step: volunteering to write wills and powers of attorney at Blevins House, a group home in Durham for people dying of AIDS. The need was great, so in 1993 McAllaster launched the volunteer AIDS Wills Project at Duke Law, working closely with clinicians and social workers throughout the Triangle to identify patients in need of assistance. Thirty-five students showed up at her first training session.

Bartlett, now Professor of Medicine, Global Health and Nursing and a leader in the university’s Center for AIDS Research and Global Health Institute, says McAllaster and her students served many clients who were estranged from their families, but whose same-sex partners lacked rights to visit and make end-of-life decisions.

“Carolyn was able to set up health care powers of attorney and this was critically important to gay couples because otherwise decisions about health would default to the family,” he says.

Trish Bartlett, a licensed clinical social worker at Duke Health, recalls how McAllaster and her students gained the trust of wary patients: “The students spent so much time on the cases that pretty soon the word got out and [patients] started calling them, ‘my lawyers.’ It gave them some element of control over their lives.”

As other legal needs emerged concerning such issues as guardianship, benefits, and employment discrimination, McAllaster began laying the groundwork for a formal clinic. Professor John S. Bradway

had established one of the first law school-connected Legal Aid clinics in the country at Duke in 1931, but though it was resurgent elsewhere and strongly supported by the American Bar Association, clinical education had long been dormant at the Law School.

Wettach, who then taught legal writing, noted opposition to clinics among some members of the governing faculty. “Carolyn had the job not only of convincing the faculty of the value of clinical education, but of the acceptability of an in-house clinic dedicated to serving people with HIV and AIDS,” Wettach says. “This took diplomacy, persuasiveness, and, above all, perseverance.”

McAllaster recalls that opposition was countered by strong support from some faculty colleagues and administrators, including Katharine Bartlett, now the A. Kenneth Pye Emerita Professor of Law who was then senior associate dean, and then-Dean Pamela Gann ’73. Gann approved the clinic proposal as long as McAllaster could find a way to fund it, which she did, cultivating donors and submitting grant proposals while teaching a full course load. The AIDS Legal Project launched in January 1996, led by McAllaster as director and Wettach as supervising attorney. For the next six years, it was the Law School’s only in-house clinic, offering students insights into the health care system, health insurance, and the experience of navigating serious illness for indigent and marginalized people, as well as practical skills training in the law relating to HIV and AIDS.

For Lei Mei ’05, helping to win Social Security disability benefits for an indigent client was “the moment I started to feel like a lawyer.” Mei, a patent attorney and founder of Mei & Mark in Washington, D.C., says McAllaster’s lessons went beyond legal skills. “More importantly, she taught compassionate empathy toward those who need legal help but otherwise cannot afford it. That really stuck with me.”

On policy: “a great strategist”

Duke Law’s clinical program expanded and gained dedicated space while Kate Bartlett served as dean from 2000 to 2007 and was further bolstered by her successor, David F. Levi, now the Levi Family Professor of Law and Judicial Studies and director of the Bolch Judicial Institute, who made clinic funding part of the Law School’s budget.

In 2011, McAllaster launched a second clinic that engaged students in policy development surrounding HIV and AIDS. She was encouraged to do so by Harvard Law School Clinical Professor Robert Greenwald, who had established a policy center at Harvard and was working on numerous policy initiatives in the South, which has the nation’s highest rates of new HIV infection and fatalities, especially among minorities.

The HIV/AIDS Policy Clinic initially focused on North Carolina but was later selected by the Ford Foundation to lead the Southern HIV/AIDS Strategy Initiative (SASI), a coalition of HIV/AIDS advocates and researchers based in the Duke Global Health Institute that develops policy and strategy recommendations aimed at securing federal resources. McAllaster served as program director until her retirement.

“Direct legal service work is critically important, but you can also help to address inequities through systemic policy reforms, and that is something that Carolyn just excelled at,” Greenwald says. “She is a great facilitator and a great strategist. She has the capacity to talk about complex law and policy issues in a way that makes them accessible, and as a result Carolyn has been able to build strong and diverse coalitions of advocates who have made a significant differ-

ence in addressing the critical needs of people living with and at risk for HIV in the South.”

Kathie Hiers, chief executive officer of AIDS Alabama, says SASI’s research and McAllaster’s outreach have brought national attention to the HIV epidemic in the South and rural areas and given HIV/AIDS advocates a voice in high-level policy discussions. Hiers credits McAllaster with helping pass the Housing Opportunities for Persons with AIDS Modernization Act of 2016, which directed more federal Housing and Urban Development funds toward the South, and securing \$44 million for the Care and Prevention in the United States (CAPUS) demonstration project, with most of the money going to Southern states.

“With Carolyn came the research team at Duke, which has just been phenomenal,” says Hiers. “Duke brings credibility, and then you add to that Carolyn’s personality. She’s succinct and clear. People listen when she talks. And she always makes sure that we have a diverse table and that people living with the disease have a lot of input.”

McAllaster’s input was vital to shaping North Carolina’s response to HIV/AIDS, says Evelyn Foust, head of the state Division of Public Health’s Communicable Disease branch. McAllaster’s efforts early in the epidemic helped eliminate the waiting list for the state’s HIV medication assistance program. Getting people access to care and a consistent supply of medication is critical to eradicating the virus because today’s medications reduce the viral load to where it cannot be transmitted, Foust says.

“If people access care they can become virally suppressed and live long, healthy lives. Carolyn’s advocacy at the state and, eventually, the national level made all the difference.”

In recent years SASI research has focused on stigma, which remains a barrier to care for people with HIV, especially in rural areas, says Clinical Professor Allison Rice, director of the Health Justice Clinic, who has worked with McAllaster since 2002. “People will travel to a big medical center from three hours away because they do not want to be seen walking into the health department or HIV clinic in their community. People lose their jobs, people are shunned, people are thrown out of their church.”

In 2017, McAllaster and Rice helped draft new state control measures, regulations that had long criminalized certain behaviors by people with HIV in an attempt to reduce transmissions. The new regulations, which went into effect in 2018, removed stigmatizing language and reflect scientific advances in HIV treatment.

“In so many ways, Carolyn is responsible for one of the most progressive laws in the South and one of the most forward-thinking in the country,” says Lee Storrow, executive director of the North Carolina AIDS Action Network (NCAAN), which McAllaster and Rice helped found in 2010.

To honor her work, NCAAN, which named her its 2018 Advocate of the Year, has created the Carolyn McAllaster Scholarship to send one person each year to AIDSWatch, the nation’s largest HIV/AIDS advocacy event. That scholarship is partially underwritten by a \$75,000 grant made in McAllaster’s honor by the Elton John AIDS Foundation. She also received the ABA’s 2014 Alexander D. Forger Award for Sustained Excellence in the Provision of HIV Legal Services and Advocacy and the North Carolina Justice Center’s 2018 Defender of Justice Award. In June 2019 she was awarded the Order of the Long Leaf Pine, one of North Carolina’s highest honors, for extraordinary service to the state.

Leaving a lasting impact on students

Following McAllaster’s retirement, the HIV/AIDS Policy Clinic and Health Justice Clinic at Duke Law have been consolidated under Rice’s leadership, and the Southern AIDS Coalition, where McAllaster remains a board member, is overseeing SASI’s research initiatives.

“I feel very lucky to have been able to do work that I really felt strongly about and believed in,” says McAllaster, who also taught a seminar on transgender issues for two years. “Duke has been a remarkable place to do the work. I’ve had five deans, every one of them supportive.

“I wasn’t happy with the circumstance that led to me getting involved in this issue but I’ve always been happy doing the work. And I still love it.”

McAllaster is especially proud of the attention and resources SASI’s work has drawn to the HIV epidemic in the South. She is equally proud of the lasting effect their clinic work had on many of her students.

“The clinic is the first time that most of them have worked with individual clients and seeing the impact of their work is powerful for them,” she says. “I hope, in a small way, I’ve helped create a more tolerant world through the students.”

Scott Skinner-Thompson ’08, a professor at the University of Colorado Law School, says McAllaster has been an important mentor in his academic career. His scholarship and teaching focuses on constitutional law, civil rights, and privacy law, particularly LGBTQ and HIV issues.

“She really models what it means to be a social justice lawyer,” he says. “In the clinic and her doctrinal classes, she’s emphasized not only how to make concrete changes for individual clients but also to think more broadly about the structures that impede health benefits, disability benefits, and lived equality for those individuals.”

Mei has continued his pro bono work representing clients in Washington, D.C.’s HIV and immigrant communities. He says his clinic experience also influenced his work as a patent litigator.

“We typically represent smaller companies against big companies, and I always remind myself, ‘If I don’t do well our client may have to close the doors and people will lose their jobs,’” he says. “So the same compassion and empathy that I treasure so much from my clinical days continues on in my work life.”

At McAllaster’s retirement party in April, Mei, a steadfast financial supporter of her clinic, surprised her with the announcement of a major gift to launch a scholarship fund in her name. Thanks to his gift and those of other alumni, colleagues, and admirers, the Carolyn McAllaster Law Scholarship Fund will provide financial aid for generations of Duke Law students, ensuring that her legacy — and her brother’s — continues for years to come.

“It’s been my greatest honor to do the work that I have done on behalf of people living with HIV in memory of Joseph,” McAllaster says, displaying a ring he bought her during the final months of his life and which never leaves her hand.

“My brother was a great communicator and he shared everything that was going on with his disease, so he was a real teacher. It would have been really fun to do this with him — but he’s been with me every day in the work.” ♡ — Jeannie Naujeck



Celebrating Kate Bartlett:

**A remarkable scholar,
colleague, mentor, and dean**

ON HER WAY to teach her late-afternoon class in law and literature on April 22, Professor Katharine T. Bartlett was met with an excited crowd. As soon as she stepped into view, faculty, staff, and students lining the corridor outside her fourth-floor classroom began clapping and chanting “Kate, Kate, Kate.”

Bartlett responded with laughter, a few hugs and high-fives, and a joking acknowledgment that the occasion must indeed be special to have drawn one somewhat reclusive colleague from his office. And it was: she was teaching her last class at Duke Law after more than 35 years on the faculty. ▶

By her own admission, Bartlett arrived in Durham in 1979 as a “trailing spouse” caring for two small children (with a third to follow) after husband Christopher Schroeder, now the Charles S. Murphy Professor of Law and Public Policy Studies, accepted a faculty post at the Law School. She enters retirement as a Duke Law legend: a preeminent scholar in family law, employment law, feminist theory, and gender law; an award-winning teacher; a transformational leader whose tenure as dean from 2000 to 2007 cemented Duke’s position as a top-tier law school; and a cherished member of the community.

“Kate had a remarkable ability to identify the best outcome for the Law School in a particular situation and work tirelessly to achieve it, yet all the while connecting on a very human level to the people working with her,” says Charles S. Rhyne Clinical Professor of Law Theresa Newman ’88, who calls herself privileged to have served as Bartlett’s associate dean. “She wanted everyone to succeed professionally — and personally — and she regularly worked quietly to help make that happen, never wanting any gratitude or even recognition for doing so.” And it’s an approach Bartlett applies to all her interactions and endeavors, Newman observes.

A foundational and innovative scholar

For Bartlett, who earned an MA in history at Harvard after graduating from Wheaton College, law was an afterthought. After graduate school, she taught history at the same high school in Guilford, Conn., she had attended while growing up on her family’s farm. She wanted to move on, but was unable to land a big city teaching post, so instead enrolled in law school at the University of California, Berkeley. It was a transformative experience, she told an alumni audience in 2007 during a public conversation celebrating her career.

“I absolutely loved law school,” she said. “It was exciting and exhilarating and opened up a whole new way of thinking for me.”

After graduating, Bartlett spent a year as a law clerk on the California Supreme Court and then joined the Legal Services office where she had done clinical work as a 3L. When she arrived in North Carolina, she hoped to resume her career as a public interest attorney, but again came up empty. Academia only entered the picture when Paul Carrington, then dean of Duke Law, invited her to teach pre-trial litigation. “I probably wasn’t a hundred percent qualified for the position, but I did take it,” Bartlett joked in 2007. After a couple years of teaching part-time, she joined the governing faculty as an associate professor in 1983, moving on to teach subjects in line with her growing body of scholarship and gaining

tenure in 1987. She was awarded the distinguished A. Kenneth Pye Professorship in 1995.

With a longstanding interest in family law, the focus of her student scholarship and her early teaching as a full-time professor, Bartlett quickly emerged as a highly influential scholar in the area of child custody. She published seminal articles advocating for the legal recognition of non-biological “functional” parents, starting with “Rethinking Parenthood as an Exclusive Status: The Need for Legal Alternatives When the Premise of the Nuclear Family Has Failed,” 70 *Virginia Law Review* 879 (1984). While rising divorce rates were causing many children to “form attachments to adults outside the conjugal nuclear family — to stepparents, foster parents, and other caretakers,” she wrote, “current law provides virtually no satisfactory means of accommodating such extra-parental attachments ... because the presumption of exclusive parenthood requires that these relationships compete with others for legal recognition.”

In another influential article, “Re-Expressing Parenthood,” 98 *Yale Law Journal* 293-340 (1988), Bartlett proposed an attempt “to redirect the applicable disputes over parental status toward a view of parenthood based on responsibility and connection.”

“I was asking at what point has an individual earned the role of parent and the legal recognition of parent simply by virtue of the way they have acted, and how that might speak to the continuing roles of biological parents and same-sex couples, custody issues, and so on?” she explains in a recent interview in her office. “I was an early mover in advocating some legal recognition of functional parenthood.”

Her work in this regard, as well as her broader family law scholarship, remains authoritative. Kerry Abrams, the James B. Duke and Benjamin N. Duke Dean of the School of Law and professor of law, credits Bartlett’s work as inspiration for her entry into the field. “As a junior family law scholar I experienced more than one moment of despair when I worried that there were no interesting questions left to explore. It seemed that she had already written the definitive work on every issue in family law.”

Bartlett was responsible for the provisions relating to child custody in the American Law Institute’s *Principles of the Law of Family Dissolution* (2002) for which she served as reporter. For her work on the project, she was named the ALI R. Ammi Cutter Chair in 1998.

Bartlett’s interest in gender issues and feminist jurisprudence grew out of her engagement with family law and she also emerged as a leading scholar in that field. Her most frequently cited article is “Feminist Legal Methods,” 103 *Harvard Law Review* 829-888 (1989), in which she argued that an examination of methods mat-

“Kate had a remarkable ability to identify the best outcome for the Law School in a particular situation and work tirelessly to achieve it, yet all the while connecting on a very human level to the people working with her. She wanted everyone to succeed professionally — and personally — and she regularly worked quietly to help make that happen, never wanting any gratitude or even recognition for doing so.” — Professor Theresa Newman ’88

In class, “her intellectual incisiveness was matched only by a genuine desire to listen to our viewpoints.” — Khahilia Shaw ’17

ters because they “shape one’s view of the possibilities for legal practice and reform.”

A key insight of that article was Bartlett’s development of positionality “as a stance toward knowledge from which feminists may trust and act upon [what they know], but still must acknowledge and seek to improve their social groundings.” Positionality, she wrote, “imposes a twin obligation to make commitments based on the current truths and values that have emerged from methods of feminism, and to be open to previously unseen perspectives that might come to alter these commitments ... [setting] an ideal of self-critical commitment whereby I act, but consider the truths upon which I act subject to further refinement, amendment, and correction.”

The author or editor of six books, including casebooks on family law and feminist legal theory, Bartlett points to her casebook, *Gender and Law: Theory, Doctrine, Commentary*, completed as a National Humanities Center Fellow in 1992-1993, as the publication of which she is most proud. She was the sole author of the first edition, published in 1993, in which she reorganized the field by theoretical category, with each chapter addressing a different set of premises and goals about the relationship between gender and the law. Her approach represented a significant scholarly innovation, and it remains the leading casebook in the field.

“Before my book, the field was organized by taking pieces of already existing fields impacting especially on women — like family law, criminal law, and employment discrimination — and putting them together,” says Bartlett, who had been in a student in the first sex-discrimination course that was taught from published materials by their author, Berkeley Professor Herma Hill Kay.

“What my book did was organize the field more theoretically, making gender in the law a subject of study in its own right rather than a pastiche of other fields. The idea is that each chapter understands differently what the relationship between gender and law ought to be.”

Successive editions — the eighth is forthcoming in 2020 from Aspen Publishers — reflect changes in understandings about the intersection of gender, race, religion, and class, as well as appreciation of non-binary gender identification, and the ways the construction of gender harms men as well as women.

“I have learned more than I can ever express from Kate’s intellectual approach to gender issues and from her commitment to teaching, social justice, and law school leadership,” says Deborah Rhode, the Ernest W. McFarland Professor of Law at Stanford Law School,

who joined Bartlett as co-author of the casebook’s third edition in 2003; the two also co-authored *Gender Law and Policy*, which was first published in 2010. “She has been an invaluable guide to me and so many others on how to use law to make a difference in the world. We are all in her debt.”

For students, a mentor and guide

Margaret Hu ’00 says she chose to study law at Duke largely because of her familiarity with Bartlett’s influential body of scholarship, which also includes works on employment law and legal education.

“When I was in my senior year of college, a professor assigned Kate’s article ‘Feminist Legal Methods,’ and gave me her book, *Feminist Legal Theory*, as a college graduation gift,” says Hu, now an associate professor at Washington and Lee University School of Law. “I took multiple classes with Kate, including her gender law course where we used her casebook. She was an amazing teacher — brilliant, as I had expected, but also so warm and funny, which I had not expected.”

Hu says Bartlett stayed a “generous mentor” long after she graduated: “She has encouraged and supported me at every stage of my professional career. Now, as a tenured professor of law, her scholarship and friendship continue to inspire me. I am consistently relying upon her work in my own research.”

In addition to teaching Family Law, Employment Discrimination, and her signature classes relating to gender and the law, Bartlett, who received Duke’s University Scholar/Teacher of the Year Award in 1994, says she derived enormous gratification from regularly teaching Contracts to a small section of first-year students and helping them get “from zero-to-60” in terms of their knowledge in a very short time.

David Bowsher ’99 calls it a matter of good fortune to have landed in Bartlett’s section for the foundational 1L course, describing her teaching skills as “magical” and her approach deeply respectful to students.

“Contracts is a course that invites differing views and differing policy perspectives on what should happen around the agreements that people reach,” says Bowsher, a corporate and bankruptcy specialist and partner in charge at Adams and Reese in Birmingham, Ala., who later happily accepted Dean Bartlett’s invitation to serve on an alumni board. “She never put her thumb on the scale to advocate for a particular viewpoint or a particular lens through which to view it, but was always pushing you to think more critically. ▶

“She was going to meet you were you were. It didn’t matter a whit what you thought as long as it was heartfelt and you’d thought it through. And I think that’s rare and special.”

On her return to teaching following her deanship, Bartlett regularly taught Law and Literature, focusing on works that raise issues of sex and race. Intellectually and emotionally, she says, the upper-year course yielded “my best teaching moments” as students grappled with the ethical questions raised by such novels as Margaret Atwood’s *The Handmaid’s Tale* and *Stones from the River*, by Ursula Hegi.

“These students have been studying law for two-and-a-half years and are just about to enter the world of practice,” she says. “This class helps them to situate themselves as lawyers in a larger world that has lots of injustice.”

“There’s something about literature that lends itself to asking not just ‘What would you do if you were in this situation?’ but ‘Who are you rooting for?’ And it’s often the person who is *breaking* the law. Literature is both a pathway to self-knowledge and a great entryway into talking about the ethics of being a lawyer.”

Says Khahilia Shaw ’17, who had three courses with Bartlett: “I was hooked after my first class. Professor Bartlett treated her students as colleagues. She comfortably and respectfully facilitated often-difficult conversations. Her intellectual incisiveness was matched only by a genuine desire to listen to our viewpoints. And she set herself forth as a mentor and a guide.”

A transformational leader

After holding the post of associate dean, Bartlett was recruited by faculty colleagues and university administrators to become the Law School’s 13th dean, and she proved to be a superb institutional steward. Highlights of her tenure as dean included: recruiting 17 scholars to the faculty; significantly expanding the clinical program and emphasizing the importance of engaging in public service in law school and beyond; introducing a focus on student leadership and ownership of the law school experience through the Duke Blueprint to LEAD; overseeing a major building expansion and renovation; and excelling in fundraising and financial management.

The distinguished interdisciplinary scholars who joined the faculty during Bartlett’s tenure as dean helped cement Duke’s strength in such strategic areas as intellectual property, international and comparative law, constitutional law, business and finance, and national security. In addition to bolstering such existing research centers as the Program in Public Law and the Center on Law, Ethics and National Security, Bartlett supported the creation of several new ones, including the Center for the Study of the Public Domain and the Center for International and Comparative Law.

Many faculty commended Bartlett’s adroit expansion of their ranks without compromising their cherished shared sense of collegiality, as well as her innate ability to broker consensus among them. Reflecting on her deanship as it was coming to an end, Brainerd Currie Professor of Law James Cox said Bartlett’s deep knowledge of and respect for Duke Law’s institutional culture was a key to her success in facilitating strategic changes. “She is by nature an individual who works best as a consensus builder, but in her quiet ways she is able to move that consensus by whom she puts in important

“I really hate to see her retire, because she’s the best: both the best friend one could have, and the best law school colleague and leader.”

— Professor Sara Sun Beale

or visible leadership roles,” he told *Duke Law Magazine*. “She is also eclectic in her understanding of legal scholarship and teaching, and has a broad vision about how people can make different contributions, even though they don’t always agree with one another.” The faculty also appreciated her support for fundamental, highly visible scholarship and their engagement in issues of public concern and national regulatory movements, he said.

Bartlett was equally effective in building consensus and community within the broader network of Duke Law alumni and friends, a factor essential to the success of facilities upgrades for which she raised more than \$20 million. These included the addition of 30,000 square feet of office and clinic space, classroom renovations with installation of state-of-the-art technology, and planning and starting the complete renovation of the library, the exterior gardens, and the 4,200 square-foot Star Commons that is now the social hub of the Law School.

Board of Visitors honorary member Richard Horvitz ’78, who endowed “Marcy’s Garden” in front of Star Commons, noted the effectiveness of Bartlett’s continual consultation and dialogue with donors and advisors, saying the iterative nature of the design process improved it. “Kate [was] never stubborn about any aspect of it,” he told *Duke Law Magazine*. “She listens to people, takes them seriously, and makes the Board feel their ideas are welcome — that we’re in a partnership. It helps impart a sense of ownership of the project and the future.”

Bartlett also built a strong partnership with the alumni leadership boards and became expert at recruiting volunteers and fundraising. During her tenure, even while she was soliciting donations for the renovation, the Law School was able to more than double contributions to the Annual Fund, double the book value of the Law School’s endowment, and raise \$9 million towards student financial aid. “Nobody wants to say ‘no’ to Kate” when asked to give their money, time, or expertise to advance the Law School’s success, and that, said former BOV member and chair Michael Dockterman ’78, spoke to “the tremendous respect that everybody has for her as a member of the academy and, more importantly, as somebody who deeply believes in the mission of the Law School.”

When she stepped down as dean, alumni honored Bartlett with their endowment of a distinguished professorship. The chair was named for her parents while she was an active faculty member and awarded to Professor Barak Richman in 2013; it became the Katharine T. Bartlett Professorship when she assumed emerita status this year.

Apart from making faculty hires who introduced new curricular and interdisciplinary research opportunities for students and

changing their physical surroundings, Bartlett is responsible for several initiatives that remain central to the student experience at Duke Law. One is her introduction, in 2002, of the Duke Blueprint to LEAD (Lawyer Education and Development) as a guiding framework for students' ethical growth, engagement, and professional development.

The Blueprint's six principles — to engage intellectually, embody integrity, lead with intention, build relationships, serve the community, and live with purpose — have come to serve as a mission statement for student engagement in class and out, a call to leadership, service, and ethical reflection, and a reminder of the importance of self-care and developing as well-rounded individuals while undertaking a challenging course of study. It remains the embodiment of Bartlett's tradition of challenging each entering first-year student to take ownership of their time at Duke Law — "to become the person you wish to become."

Bartlett's investment in the growth of clinical programs also had profound implications for both education and access to justice. Taking the helm at Duke Law when the AIDS Legal Project (now the Health Justice Clinic) and the Death Penalty Clinic were the only two offerings that allowed students to serve clients directly, she oversaw the launch of clinics focused on children's law, community economic development and transactional law, animal law, tax law, and the defense of Guantanamo detainees, as well as the planning for one focused on environmental law and policy.

John S. Bradway Professor of the Practice of Law James Coleman, Jr., who started the Appellate Litigation Clinic and the Death Penalty Clinic and now co-directs the Wrongful Convictions Clinic, told *Duke Law Magazine* in 2007 that Bartlett recognized the need to prepare students to adapt to a rapidly changing profession. "What she has done for the clinics has been important, even foundational, as experiential learning is crucial for students."

For her part, Bartlett admitted as she wrapped up her deanship that she came to a gradual appreciation of the value of clinical education: "It seemed like a very expensive way to educate law students, but I've come to see that there is no substitute for what we provide our students in the clinics." Particularly as law firms were increasingly expecting new associates to "hit the ground running," she saw clinical work as a way for students to learn about teamwork,

pragmatic problem-solving, and leadership. Clinics, she said, offer "a certain kind of teaching environment where they can make mistakes and not be penalized, and where they can learn from one another in helping and supporting roles."

The clinical expansion and the Blueprint's emphasis on leader-

ship, community support, and engagement with public issues underscored an emphasis on service that remains a cornerstone of a Duke Law education. Bartlett encouraged students to make community service an active part of their lives at Duke through participation in public interest and pro bono programs, and beyond. And she led by example, serving on the Durham (County) Social Services Board from 1999 to 2005 and as its chair for one year. To promote the viability of careers in public interest and public service law, Bartlett rallied alumni support both for the Public Interest Law Foundation, which provides grants to students engaged in summer public interest work, and the Loan Repayment Assistance Program (LRAP), which helps lawyers in these sectors pay or gain forgiveness on student loans. Bartlett and Schroeder committed \$100,000 to establish an endowment for LRAP for Duke Law students bound for

public interest careers, which sparked other substantial donations, including a directed gift from the Class of 2006. Equal Justice Works honored Bartlett with the 2006 Dean John R. Kramer Award for leadership in public service in legal education.

Bartlett is now finding new pursuits and social action projects, many of them near the summer cottage that she shares with Schroeder in Belfast, Maine. But she remains an important presence at Duke Law.

"Kate's the person I turn to for advice and confide in when things get tough," says Charles L. B. Lowndes Professor of Law Sara Sun Beale, who joined the faculty in 1979. "She has tremendous empathy and warmth — leavened with her sharp wit. Many of these same qualities make Kate a tremendous colleague, and a leader within the law school, before, during, and after her deanship."

"I really hate to see her retire, because she's the best: both the best friend one could have, and the best law school colleague and leader." ♡ — Frances Presma



Dean Katharine T. Bartlett, 2002

6' 6"

6' 0"

5' 6"

5' 0"

4' 6"

4' 0"



With the launch of the Duke Center for Science and Justice, Duke Law School is betting that empirical, interdisciplinary research can produce evidence-based reforms in the criminal justice system.

Professor Brandon Garrett, right, meets with research associates in the Duke Center for Science and Justice. From left: postdoctoral research fellows William Crozier and Karima Modjadidi, and Arvind Krishnamurthy, a political science PhD candidate at Duke.





DURING THE YEARS she drove on a suspended license, Andrèa “Muffin” Hudson lived in constant fear. Each time she got in her car to run errands in Durham or head to work, she would drive well below the speed limit and stop at yellow lights to avoid getting pulled over.

But it didn’t always work. “When you don’t have a driver’s license you ‘drive nervous,’” Hudson says. “Police pick up on that and it gives them a reason to run your tag.” She racked up dozens of tickets over more than a decade, including some 60 in Durham County, and spent 10 days in jail for repeatedly driving on a suspended license, all because she couldn’t pay her fines.

A civil rights activist, Hudson shared her story at Duke Law on March 25 during a lunchtime event marking the release of a report examining drivers’ license suspensions in North Carolina co-authored by L. Neil Williams, Jr. Professor of Law Brandon Garrett and William Crozier, a postdoctoral fellow in empirical legal research. The report places Hudson, now director of the North Carolina Community Bail Fund of Durham, among more than 1.2 million residents who lost driving privileges under a state law that triggers automatic, indefinite license suspension for reasons unrelated to driving. Those reasons include failing to pay traffic fines and court costs and failing to appear in court for traffic offenses.

Noting a U.S. Supreme Court finding that driver’s license suspensions cause “inconvenience and economic hardship,” Garrett and Crozier analyzed the demographic and geographic distribution of suspensions between 2010 and 2017 using ►

by JEANNIE NAUJECK

data obtained from the North Carolina Administrative Office of the Courts by the N.C. Justice Center, a research partner. A key finding: Poor and minority drivers suffer the vast majority of suspensions, receiving disproportionately more than poor white drivers.

“The harm from license suspensions is deeply felt,” Garrett says. “In most communities, particularly outside urban areas, people cannot easily fulfill the myriad obligations of everyday life — such as going to work, school, medical appointments, day care, and even the grocery store — without driving. Employers may require employees to have valid driver’s licenses. The effects go beyond the personal and are also felt in the broader economy.”

The report, “Driven to Failure: Analysis of Failure to Appear and Pay Driver’s License Suspension Policy in North Carolina,” concludes by setting out questions for future research and describing both law and policy responses to driver’s license suspensions in other jurisdictions, including constitutional challenges, restoration efforts, dismissals of charges, and legislative attempts to restore licenses and end suspensions for non-driving related traffic offenses.

Building on interdisciplinary strength

Garrett’s study of driver’s license suspensions is just one of several empirical research projects he has initiated since joining the Duke Law faculty in 2018, all aimed at informing criminal justice reform. And with the launch of the Duke Center for Science and Justice, which Garrett directs, Duke Law is poised to expand its role in the effort to craft policy solutions based on empirical evidence for other problems and inequities throughout the criminal justice system in North Carolina and beyond. The interdisciplinary center focuses on three signature areas: accuracy of evidence in criminal cases, the role of risk in criminal outcomes, and addressing a person’s treatment needs. (See sidebar and read more about the center’s launch on page 2.)

The center builds on the substantial body of criminal justice work already being done at the Law School, including that of the Center for Criminal Justice and Professional Responsibility, which engages in training students, lawyers, prosecutors, judges, and the general public to identify, remedy, and prevent the wrongful convictions, and the Wrongful Convictions Clinic, which has won release for eight clients, most recently Charles Ray Finch in May, and Dontae Sharpe in August, who respectively spent 43 years and 25 years incarcerated for murders they did not commit. (See story on page 42.)

Kerry Abrams, the James B. Duke and Benjamin N. Duke Dean of the School of Law and professor of law, calls Duke Law “the leader in criminal justice research nationwide,” citing scholar-



A central goal of the Duke Center for Science and Justice is to convey the results of research to stakeholders in the criminal justice system.

Examples of this work include:

Accuracy

Building on Professor Brandon Garrett’s studies of the causes of wrongful convictions in cases of people exonerated by post-conviction DNA testing, Duke researchers are studying how to better explain to jurors the fallibility of evidence such as eyewitness memory and fingerprint comparisons.

Risk

Duke researchers are studying why judges often do not follow recommendations of risk assessments to divert offenders from prison to the community, and why more resources may be needed to promote alternatives to incarceration. Researchers are collaborating with the Durham County District Attorney’s Office to implement and study alternatives to pre-trial detention and to incarceration.

Needs

A report released by Garrett and his team documented how more than 1.2 million people in North Carolina have suspended driver’s licenses, the long-term consequences of those suspensions, and the resulting racial and class-based disparities. The study was made possible through a collaboration with the N.C. Justice Center and the N.C. Supreme Court’s Access to Justice Commission.

ship by Charles L. B. Lowndes Professor of Law Sara Sun Beale on prosecutorial discretion; Candace M. Carroll and Leonard B. Simon Professor of Law Lisa Kern Griffin on the relationship between narrative and factual accuracy in the courtroom; Bernard M. Fishman Professor of Law Samuel W. Buell on the conceptual structure of white collar offenses; Professor of Law and Professor of Philosophy Nita Farahany JD/MA ’04, PhD ’06 on the ethical dimensions of emerging technologies in criminal law and the use of neuroscience in criminal trials; and Associate Professor of Law Ben Grunwald on the movement of convicted officers within the law enforcement labor market.

“Mass incarceration is not only a justice issue, but a costly public health problem. It can have long-term ill effects on the physical and mental well-being of some of our most vulnerable and marginalized populations. Building evidence for interventions, public policies, and legal reforms to mitigate these consequences ... is an interdisciplinary challenge, and an exciting opportunity for health services researchers and legal scholars working together in this center.” — Dr. Jeffrey Swanson

The work of a number of Duke faculty in other disciplines intersects with criminal justice, such as Professor of Economics Patrick Bayer, who has studied the effects of racial inequality on the criminal justice system, and ITT/Terry Sanford Professor Emeritus of Public Policy Studies Philip J. Cook, a renowned scholar of crime, crime prevention, violence, firearms and crime, and the economics of crime. Garrett's research team includes postdoctoral research fellows Crozier and Karima Modjadidi as well as faculty in medicine, undergraduate and graduate research assistants, and law students enrolled in his Criminal Justice Policy Lab.

Leading researchers from Duke's renowned School of Medicine are closely involved in the center's work, providing platforms for criminal justice research informed by a public health perspective. Over the past year, Drs. Marvin Swartz, Jeffrey Swanson, Michele Easter, and Allison Robertson from the Services Effectiveness Research Program in the Department of Psychiatry and Behavioral Sciences have been working with research teams at Duke Law on a series of projects at the intersection of law and medicine, behavioral health, and criminal justice. The psychiatry group has longstanding interest in the effects of legal policies and intervention on behavioral health services that divert persons with mental illness or substance use conditions out of incarceration and into community-based treatment programs, and the use of alternative, or recovery, courts such as drug courts, mental health courts, and veterans courts.

"For whom and under what conditions are these programs effective in reducing criminal justice recidivism?" asks Swartz. "What are the

critical ingredients in these programs? Do and, if so, how do treatment programs need to be modified to address these populations? We are excited to undertake this work with colleagues across the university."

The answers to researchers' questions will enhance accountability for community-based programs that seek to create better outcomes for offenders, break the cycle of recidivism, and alleviate jail overcrowding and the social problems that accompany mass incarceration, including loss of jobs and housing and the breaking up of families, while posing minimal risk to public safety. Indeed, efficacy data is increasingly becoming a requirement for the implementation of new reforms: For example, in Mecklenburg County's pretrial risk assessment pilot program, funded by the Laura and John Arnold Foundation, eligibility restrictions were required to be supported by research. That program, started in 2014, reduced the jail population with no significant accompanying impact on public safety or increase in failures to appear in court, according to county reports.

"Mass incarceration is not only a justice issue, but a costly public health problem. It can have long-term ill effects on the physical and mental well-being of some of our most vulnerable and marginalized populations," Swanson says. "Building evidence for interventions, public policies, and legal reforms to mitigate these consequences — or ideally to prevent criminal justice involvement in the first place — is an interdisciplinary challenge, and an exciting opportunity for health services researchers and legal scholars working together in this center."

Durham Expunction & Restoration Program provides pro bono opportunities

Durham County District Attorney Satana Deberry '94 launched the Durham Expunction & Restoration Program (DEAR) with a view to restoring driving privileges for 15,000 people whose licenses were suspended after failure to pay fines and fees and whose cases are more than two years old. Andrea "Muffin" Hudson (see page 34) got her license back through DEAR after driving on a suspended license for more than 10 years.

Duke Law students can earn externship credits by volunteering with DEAR, which is based in the Durham County Courthouse, and staffed by attorneys from the City of Durham, Legal Aid of North Carolina, and the N.C. Justice Center. Meredith George '19 says she was struck, while working with DEAR, by the sheer number of clients risking additional tickets and fines every time they got in their cars to perform the everyday tasks of living — work, school, appointments, and errands. She found their licenses had often been suspended for minor offenses. One client, she recalls, had her license automatically suspended because she could not afford a \$200 fine and court fees to satisfy a ticket for driving five miles above the speed limit.

"It was crazy — two years of not being able to drive to work, paying for Ubers or pay someone for gas because she went 30 in a 25. It just seems so punitive for such a small crime, if you can even call it that."

— Meredith George '19

"It was crazy — two years of not being able to drive to work, paying for Ubers or pay someone for gas because she went 30 in a 25," George says. "It just seems so punitive for such a small crime, if you can even call it that."

"We would see people who'd never had a single ticket besides driving while license revoked but they may have had 20 of those, which basically says they've never had the money to pay off the tickets and that was their only offense."

Elizabeth Tobierre '19, T '14 also participated in the semester-long externship, putting in more than 120 hours filing expunction petitions to clear criminal charges and convictions and restore suspended or revoked driver's licenses. The experience, she says, exposed her to a segment of society that is largely ignored.

"There's so much need out there, so to be able to listen to people's stories and actually help was wonderful — it's the kind of thing I always wanted law school to be about," Tobierre says.

"The power of their stories just really impacts your work." 🗣️

Building toward statewide solutions

The March release of the report on driver's license suspensions helped build momentum for bills introduced in the North Carolina General Assembly last term, including a "Second Chance" law that would end automatic suspensions for failure to pay traffic fines. Of the Senate bill's 14 sponsors, five were Republicans, including the Senate majority whip and the co-chair of the Senate Judiciary Committee.

"We are trying to make this a bipartisan or non-partisan effort and movement, and so having Brandon come in with his credibility and platform was a huge benefit," says Daniel Bowes T'07, senior attorney at the N.C. Justice Center, which has long advocated for legislators to remedy the problem of rampant suspensions that can stem from such small infractions as cracked tail lights. Bowes says analysis of the data shows that using suspension as a coercive tactic doesn't work.

N.C. Rep. Marcia Morey, a Democrat, filed bills in the state House of Representatives during the past session that would ease expunction proceedings and cap the length of suspensions. "This movement is getting the attention of all sides of the aisle and I hope we can get some positive legislation passed through," she says.

Follow-up projects at Duke Law include surveying individuals who had their licenses suspended on the collateral consequences it had on their lives, including effects on mobility, employment, family relationships, health, and housing. Garrett's research team hopes in the future to conduct detailed interviews with respondents, partnering with Professor Sara Sternberg Greene, who specializes in large-scale qualitative research on poverty, to better understand the impact of fines and fees on individuals and communities. The project may be expanded to other states to help build on momentum to end automatic license suspension policies; similar license suspension practices have ended recently in Virginia and Texas.

On July 1, Virginia Gov. Ralph Northam restored driving privileges for at least a year for residents who had their licenses suspended for unpaid court fees and fines; the Legal Aid Justice Center estimates more than 940,000 people had been affected. And on Sept. 1, more than 600,000 Texas drivers became eligible to have their licenses reinstated after Gov. Greg Abbott signed into law a bill ending the state's Driver Responsibility Program, which added surcharges that could run into the thousands of dollars to traffic ticket fees, resulting in license suspensions for those who did not pay in a timely manner.

Locally, Garrett has forged a strong relationship with the Durham County District Attorney's Office, led by Satana Deberry '94, who took office in January 2019 with an agenda for progressive criminal justice reform, including driver's license restoration (see sidebar, page 37). He and his team regularly meet with members of her office to discuss policies and research on such topics as police practices, jury selection and plea bargaining, the expansion of diversion opportunities, and pretrial decision-making. They continue to explore methods and outside resources that could make such new initiatives possible.

"Brandon is very smart about data and the power of data," says Alyson Grine, assistant district attorney and Deberry's team lead for policy and training. "At the outset of this administration, we sought to put in place a process for collecting data so that in a year or two

REPORT



Juvenile Life Without Parole in North Carolina

This report examined the cases of 94 people in North Carolina who were sentenced to life without parole for offenses committed between the ages of 13 to 17. Under current North Carolina law, judges are required to hold hearings and make findings regarding juvenile life without parole sentencing for all new cases as well as old ones. However, courts are processing these complex cases inconsistently, and the state may spend millions of dollars litigating the remaining 51 sentences over the coming years.

Among the study's key findings:

Of the 94 people sentenced to life without parole as juveniles in North Carolina:

- » **51** are currently serving those sentences
- » **42** have been re-sentenced to non-LWOP sentences
- » **1** is awaiting a new trial.

In North Carolina, more than **60%** of the JLWOP sentences studied were concentrated in just **11 counties**.

This is due in part to the "inertia effect": once a county began to impose a juvenile life without parole sentence, it was more likely to continue doing so.

Juvenile life without parole sentences have become exceedingly rare. Since 2011, there have only been **five** such sentences in the entire state, averaging less than one per year.

The report posits that the United States treats juveniles who come into conflict with the law in ways that disregard their age, human rights, and differences from adults; that imposition of these sentences is fundamentally unfair, as it varies significantly based on geography, quality of legal representation, child's economic status, and race; and because children's brains are still forming, they lack the ability to assess risks and use good judgment yet are also more capable of rehabilitation. The report recommends that juveniles should be held accountable for their offenses in age-appropriate ways that focus on reintegrating them into society, are applied fairly and consistently, and are more cost-effective for the state.

Source: Finholt, Ben and Garrett, Brandon L. and Modjadidi, Karima and Renberg, Kristen, "Juvenile Life Without Parole in North Carolina" (February 11, 2019). Duke Law School Public Law & Legal Theory Series No. 2019-16

we can measure the new initiatives we are putting into place and how it's impacting the criminal justice system and the community. He's got a skill set that is really important for us in these efforts and he's been very generous with his time."

As part of her effort to transform the office, in May Deberry announced new pretrial policies that include ending cash bail for most misdemeanors and low-level felonies except those involving domestic violence or physical harm. In fact, Garrett's team had begun collecting data on pretrial outcomes over a year ago, before those policies took effect. The Duke group is collecting and analyzing data from the Durham County jail to check for disparities in how bail is ordered by different judges and identify factors that might lead to higher or lower bail, using a "webscraping" program set up by digital resource librarian Sean Chen that automatically scans the jail site for new entries and collects and records the data. Garrett, Crozier, and Modjadidi, with Duke political science graduate student Arvind Krishnamurthy, have been analyzing these data and will soon present their findings to local stakeholders. The research team also plans to analyze data on plea-bargaining outcomes.

Garrett has also served as a connector in the Durham criminal justice community, Grine says. "He has a very collaborative style that is really helpful."

Sentencing initiatives

Garrett's work on sentencing reform in North Carolina has been focused on the most serious sentence short of capital punishment: life without parole (LWOP). His research in this area is novel, as there have been no prior known studies of case-level data on LWOP sentencing. Partnering with Ben Finholt, staff attorney with North Carolina Prisoner Legal Services, Garrett's team — Modjadidi and Duke political science PhD candidate Kristen Renberg, who is now also pursuing a JD — examined 94 cases statewide in which the sentence was applied to juvenile offenders. They found that county-level preferences, like those of prosecutors, drive these most-serious juvenile sentences: counties that had imposed life without parole sentences on juveniles were highly likely to continue doing so, leading to a concentration of LWOP sentences in just a handful of counties. They also found that it is now rare for such sentences to be imposed, and most of the older juvenile LWOP sentences reviewed on appeal have been reversed in recent years.

The investigators discussed their report, titled "Juvenile Life Without Parole in North Carolina," at a Duke Law event last February that was attended by legislators and garnered extensive coverage that has already made an impact; Finholt notes that since its release, at least one district attorney has consented to a lesser sentence when he had the option to ask for life without parole.

"Since Brandon got involved, we have seen movement in the juvenile life without parole space that I don't think we would have gotten otherwise," Finholt says. "Every other time they had always asked for life without parole and this was the first time they didn't. His involvement has taken the message that we were trying to promote and gotten attention that we as litigators just didn't have either the platform or the time to do."

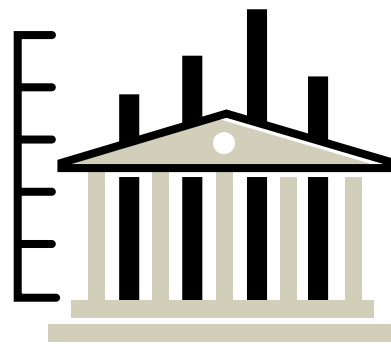
Finholt credits the publicity generated by the report and event, combined with Garrett's credibility and backing from a diverse

group of funders, with bringing awareness to an issue that he's long pressed legislators to consider. In April, Democratic Rep. Morey filed a bill in the N.C. House of Representatives that would eliminate life without parole for juveniles and replace it with parole eligibility. The bill's three co-sponsors are Republicans.

Kristin Parks, a longtime attorney for North Carolina death row inmates and one of the bill's authors, says Garrett contributed valuable assistance not only with its language but also with its fiscal note, an important consideration for a legislature that adjourned Oct. 31 without approving a state budget for the fiscal year that began July 1. "It is invaluable to have someone who can crunch numbers and come up with estimates of cost savings on a bill that we think is good policy," Parks says. "The issues that we've been talking about for years went nowhere, and now all of a sudden people are willing to listen."

"I appreciate all he's done because it is really important in moving our state forward and educating people who are new to these issues in different and important ways."

Garrett's team is currently extending the work more broadly to some 1,600 inmates serving sentences of life without parole, comparing corrections data with data concerning death-eligible cases in North Carolina. Such a detailed quantitative analysis of LWOP sentencing has not previously been conducted. They have found that LWOP sentences were strongly associated with prior practices at the county level, suggesting that local prosecutors' preferences matter a great deal. They have also found that LWOP sentencing is affected by the race of homicide victims in a county, and by the race of defendants in cases in which the prosecutors sought the death penalty. The researchers presented a draft article with the results in September at a new Triangle-area criminal law works-in-progress series that is hosted by the Duke Center for Science and Justice. The article is forthcoming in the *Journal of Criminal Law and Criminology*.



A bipartisan push for criminal justice reform

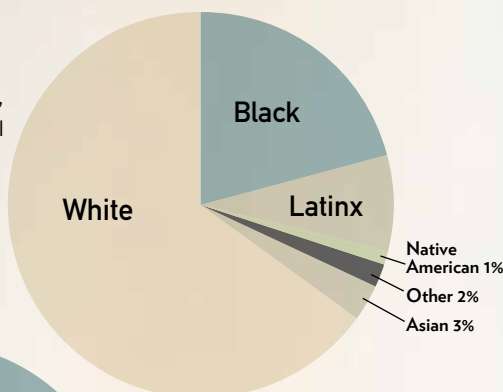
The new center launches as mass incarceration, policing, and laws that disproportionately impact the poor are in the national spotlight. With 2.2 million incarcerated adults in the United States, and more than \$80 billion spent annually on jails, prisons, probation, and parole, a diverse group of stakeholders is coalescing around criminal justice reform. In December 2018 President Donald Trump signed into law the First Step Act, which increases judges' discretion to

Driver's License Suspension Policy in North Carolina

There are **1,225,000 active driver's license suspensions** in North Carolina for non-driving related reasons, including failure to pay traffic fines and court costs, and failure to appear in court for traffic offenses. These suspensions constitute about 15 percent of all adult drivers in the state. This report analyzed those suspensions and found disproportionate suspensions among minority drivers and in counties with a higher percentage of people in poverty.

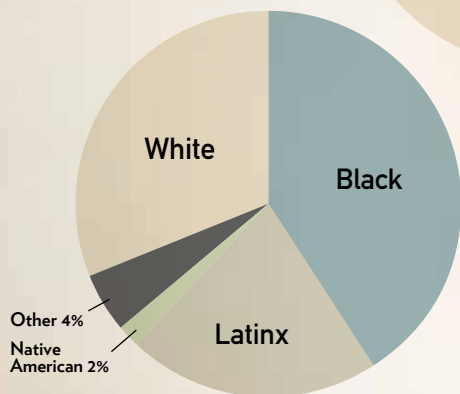
Suspensions are disproportionately imposed on minority residents.

Between 2010 and 2017, of North Carolina's total **DRIVING AGE POPULATION**, **65%** were white, **21%** were black, and **8%** were Latinx. »



Of those who had their driver's licenses suspended over **FAILURE TO APPEAR**, **33%** were black, **24%** were Latinx, and **35%** were white.

Of those who had their driver's licenses suspended over **FAILURE TO COMPLY**, **47%** were black, **11%** were Latinx, and **37%** were white.



« However, of those who have had their driver's licenses **SUSPENDED FOR NON-PAYMENT** of fines and fees, **47%** were black, **37%** were white, and **11%** were Latinx.

The more serious charge of **DRIVING WITH LICENSE REVOKED (DWLR)** also falls disproportionately on minority residents. Among those charged with DWLR from 2013-2017, **39%** were white, **54%** were black, and **7%** were Latinx.

Of the license suspensions: **827,000** are for **FAILURE TO APPEAR IN COURT**; **263,000** for **FAILURE TO COMPLY** with orders to pay traffic costs, fines and fees; and **135,000** for **BOTH**.

Source: Garrett, Brandon L. and Crozier, William, "Driver's License Suspension in North Carolina" (March 19, 2019). Duke Law School Public Law & Legal Theory Series No. 2019-27

impose shorter prison sentences and allows federal prisoners, who currently number about 180,000, to earn credits toward early release based on rehabilitative programs and their risk of reoffending. Organizations as disparate as the American Civil Liberties Union and Right on Crime had joined to lobby Congress for its passage.

Writing in *Slate* after the First Step Act was signed, Garrett called for sound scientific and public oversight of tools used to assess offender risk. "The statute states that an

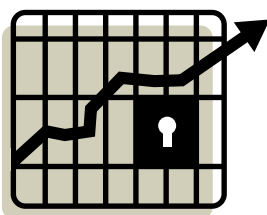
algorithm will be used to score every prisoner as minimum, low, medium, or high risk," he wrote. "But the legislation does not say how this algorithm will be designed. ... The right tools need to be used." In September, Garrett and George Mason University law professor Megan Stevenson wrote a public comment on the risk assessment system

proposed to the Department of Justice. In it they raised concerns regarding the types of risk being measured, the risk cut-offs, and the adequacy of resources for rehabilitative programming.

Garrett's cautions are based on his previous research on the implementation of risk assessment at sentencing. In a paper co-au-

thored with University of Virginia professor of law and psychology John Monahan, he described wide variation in its application by courts and judges in Virginia and a correlation between the availability of treatment resources in a community and judicial use of risk assessment to sentence drug and property offenders to non-jail alternatives.

Reforming long-held policies — and getting those reforms right — involves analyzing the vast troves of data collected by numerous actors in the criminal justice system, including thousands of institutions, agencies, and jurisdictions. Toward that end, grant-making organizations have ramped up funding of empirical research at academic institutions. Some of the largest funders of criminal justice research include Arnold Ventures, which has provided support for Garrett's research on eyewitness evidence, and the Charles Koch Foundation, which supports research and educational programs in areas such as criminal justice and policing reform, free expression, foreign policy, economic opportunity, and innovation, and is providing a \$4.7 million grant for the Center for Science and Justice. Garrett is also a principal investigator and on the leadership team for the Center for Statistics and Applications in Forensic Evidence (CSAFE), a collaboration funded by the National Institute for



Standards and Technology. That federally-supported effort includes work to improve how forensic evidence is used in court and to introduce statistical methods to forensic labs.

"There has definitely been more funding in this area over the last couple of years," says Grunwald, whose recent quantitative research projects include empirical studies of plea discounts and trial penalties and an analysis of the reasoning behind more than 2 million investigative stops by the New York City Police Department.

"For the past few years there has been bipartisan support for a certain kind of criminal justice reform, and it's not all that surprising. There are lots of different reasons to think the criminal justice system needs to be fixed, and people with different ideological backgrounds don't have to hook into all of them to recognize that something's got to change."

Duke increases empirical research support

Historically, criminal justice data — from crime statistics to bail and sentencing information — has been difficult to access and analyze because it is collected by numerous agencies in multiple jurisdictions, often in differing formats.

"The criminal justice system is divided into a lot of big institutions and sometimes you need data from multiple ones to really study the question you want rigorously," says Grunwald, who estimates he spends 85% of his time on projects processing data.

"It feels very hard to get data. And even if you get data from one state there are still 49 other states and their data is all totally different. So it's quite a challenge. Even when the data exists, it could take months for a researcher to access it."

To enhance empirical scholarship, Duke Law recently hired Alex Jakubow as associate director of empirical research and data support services, a newly created position in the J. Michael Goodson Law Library. In his previous post as empirical research librarian at the University of Virginia Law School, Jakubow helped create its Legal Data Lab that houses databases including a corporate prosecution registry maintained in collaboration with Duke Law. At UVA, Jakubow also collaborated with Garrett on a paper on the decline of the death penalty in the U.S. and the paper involving the use of risk assessment tools in Virginia. At Duke, Jakubow is already working with the new center on a project tracking outcomes in district attorney elections.

Jakubow says his team will help faculty and students define their research questions in empirical terms, identify data sources, extract data and work to get it into a usable format, and assist with analyzing it.

"There's so much data out there but a lot of it is embedded in formats that aren't necessarily accessible or don't lend themselves to analysis," he says. "The role of the library is to support empirical research during the entire life cycle of a project. Fundamentally, it's about empowering our faculty to do what they do best, in any way that we can help with that quantitative research part."

For the driver's license project, Crozier spent two months cleansing and putting data from the state Administrative Office of the Courts in a format that could be analyzed. That analysis revealed correlations between race, poverty, and suspension rates that illustrate why problems like North Carolina's high

rate of license suspension require solid empirical research and a thoughtful approach to finding effective solutions.

"If you look at the numbers, you can clearly see the racial disparity: white people are not being suspended at the same rate they should be if it's just randomly based on the population," Crozier says. "I think you get a really good feel for how broad this problem is and how much work needs to go into finding solutions. It shows, I think, that a solution might not be as easy as finding the poorest people in the county and giving them money to pay off their suspensions." (See page 40.)

Science and justice in the classroom

With rising interest in criminal justice reform, the Center for Science and Justice will further engage students at Duke Law through courses and in research outside of class in efforts to improve the system.

This fall Garrett is collaborating with Farahany, who directs the Duke Science and Society Initiative, to teach an Amicus Lab course in which Duke Law students draft amicus briefs to educate courts on law, science, and technology issues in appellate cases in several states.

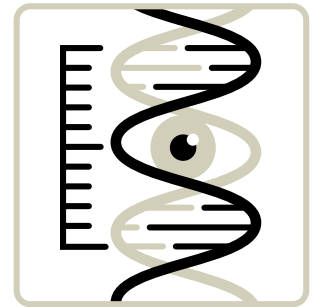
As of mid November, the class had filed three briefs: one presenting current research on blood pattern analysis that refutes testimony used to convict a Texas man of murder in 1986 and 1989; one presenting scientific studies on genetic predisposition toward antisocial and aggressive behaviors that challenges the exclusion of such evidence in the trial of a New Mexico man convicted of second-degree murder; and one presenting research on eyewitness memory that challenges the in-court identification of a Colorado man petitioning the U.S. Supreme Court for review of his conviction.

Law students also recently participated with practicing lawyers in a three-day forensics litigation course, supported by CSAFE, in which they prepared for a mock trial and had the opportunity to cross-examine a fingerprint analyst. In the spring semester, students in Garrett's Criminal Justice Policy Lab will hear from North Carolina judges, lawyers, and lawmakers as they craft policy proposals to improve the system.

Through additional philanthropic support, Duke hopes to expand the educational component of the Center for Science and Justice in a second phase, supporting students who are entering criminal justice careers through scholarship aid, internship funding, a criminal-justice focused curriculum, and opportunities for interdisciplinary engagement with graduate and undergraduate students. The Law School also hopes to launch a criminal justice clinic to provide training in how to litigate a criminal case at the pre-trial and trial stage.

Abrams calls the launch of the center "extraordinarily exciting and important for Duke Law and the study and reform of criminal justice around the world."

"There couldn't be a better place to host a major center for the study of the role of science in criminal justice reform," she says. "We very much hope that additional foundations and individuals will follow in contributing resources to support its mission." ♡



He spent 25 years in prison for a 1994 murder he didn't commit. Police had the evidence absolving him in hand long before he was ever charged.

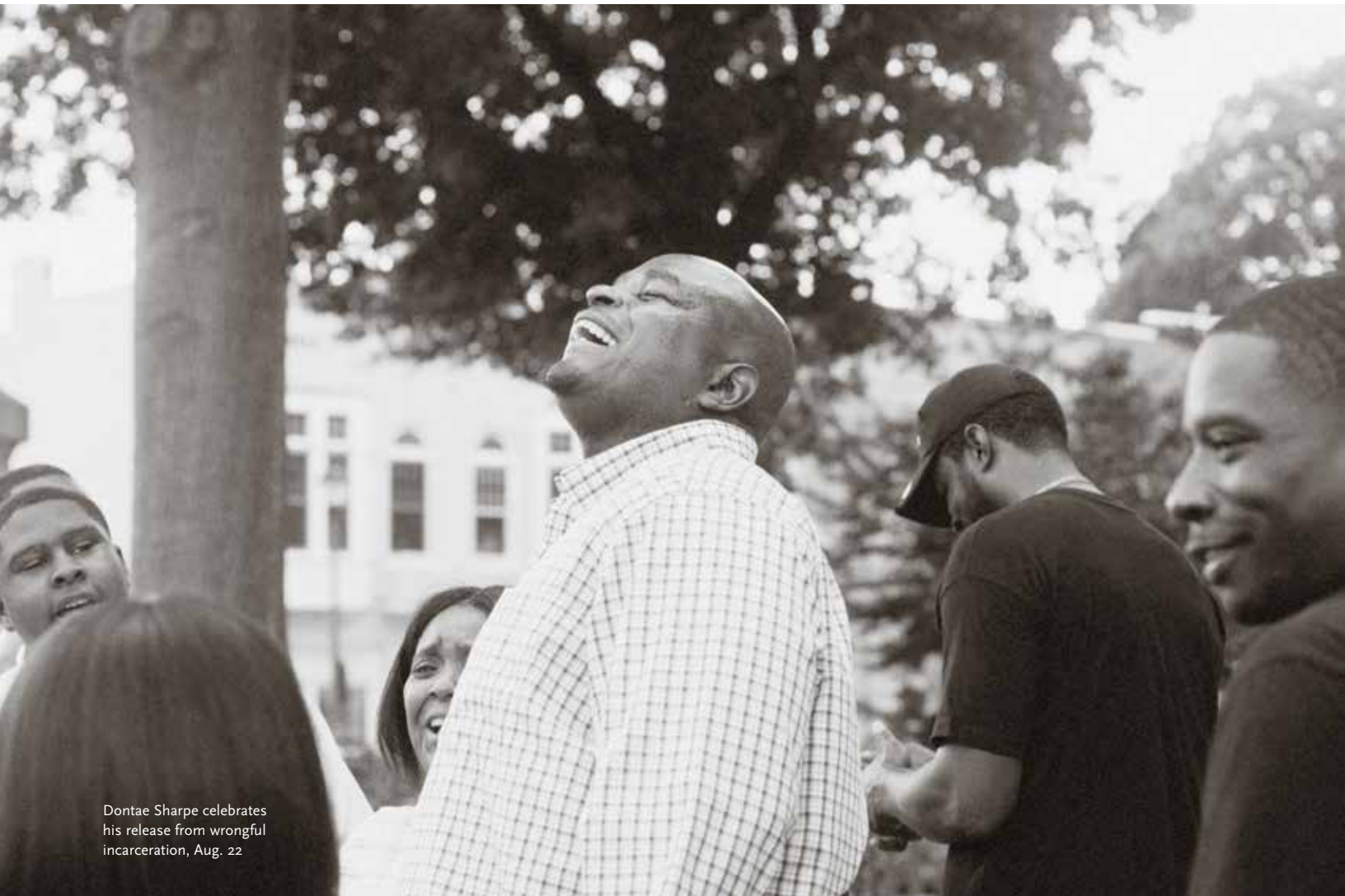
Dontae Sharpe's long road

The anatomy and aftermath
of a Wrongful Convictions
Clinic exoneration

DONTAE SHARPE'S QUEST FOR FREEDOM after being wrongfully convicted of a 1994 murder took a procedural path his lawyer calls "tortured." But on Aug. 22, 2019, a judge in Greenville, N.C., found that newly discovered evidence presented on Sharpe's behalf by the Duke Law Wrongful Convictions Clinic "destroys the State's entire theory of the case" against him.

As Sharpe's lead counsel, Charles S. Rhyne Clinical Professor of Law Theresa Newman '88, explained to the court, the state's expert witness at trial testified in a way that she wouldn't have if she had known the state's theory of the case. If medical examiner Mary Gilliland had known the prosecution based its case on an eyewitness statement that Sharpe shot the victim while they were standing face-to-face, she would told prosecutors that account was "medically and scientifically impossible."

"It's kind of a tiny pin to stand on, yet it truly unravels the entire case," said Newman, who co-directs the Wrongful Convictions Clinic and has been working to free Sharpe since 2010. "At trial, Dr. Gilliland testified in a way that tacitly supported the state's theory because she was testifying about medical evidence and did not know the state's theory."



Dontae Sharpe celebrates his release from wrongful incarceration, Aug. 22

Photo: Deborah Griffin/The Daily Reflector

Compounding the injustice of the wrongful conviction and long incarceration: the state had the medical and scientific evidence in hand within three days of the murder of George Radcliffe, Newman said. That was two months before an emotionally and psychologically troubled 14-year-old girl named Charlene Johnson made her inconsistent eyewitness statement implicating Sharpe. He was arrested the same day and spent the next 25 years locked up.

"Ms. Johnson provides a statement that is utterly inconsistent with the known facts that were collected over the three days following the murder, and nobody ever looked backward," said Newman. "The prosecution of Mr. Sharpe should have stopped on April 7, 1994, the day Ms. Johnson gave the statement. He should never have been arrested that afternoon."

Deconstructing a conviction

Radcliffe was found dead on Feb. 11, 1994, slumped sideways into the passenger well of his small Mazda pickup truck, which had apparently rolled into a chain-link fence in Greenville. The driver-side window was rolled partway down. While investigators initially surmised that Radcliffe, a white man, had innocently driven into "the wrong neighborhood at the wrong time," they soon learned that he was a frequent drug user whose presence in North Carolina violated the terms of his parole for drug convictions in Florida.

The autopsy report indicated that Radcliffe was shot in his upper left arm, with the bullet traveling in a straight line through his upper torso and almost through his upper right arm. "It became our theory based on the physical evidence that George Radcliffe was shot while sitting in his truck," Newman said. "His hands might have been on the steering wheel, but his upper arms would have been tight at his side. The autopsy confirmed the absolute natural suggestion issuing from these facts that the man was in his truck and he had rolled down his window in order to buy drugs without having to get out."

But that isn't what Johnson told police — without a parent, guardian, or attorney present — after they picked her up on an unrelated matter two months later. In a handwritten statement (using some language Newman doubts could have been her own), she wrote that she saw "Donta" [sic] and a man named Mark arguing with a "white male" who was \$2 short on the cost of a "rock" of cocaine he was purchasing. Donta, whose last name was never used, pushed the white male and then pulled out a gun and shot him, she wrote. Four minutes after she signed the short statement, she added another, indicating that following the shooting, Donta drove the victim's truck into the fence before he and his companion picked the white male up and carried him across the street to put him in the truck. Then "Donta throw the keys and the gun somewhere," she wrote.

While for Newman it remains unclear as to how exactly Johnson emerged as a prosecution witness, she said it should have been clear to investigators from the start that the teen's statement was unreliable; not only was it inconsistent with the medical evidence in the case, but she was emotionally unstable and had recently been admitted to a psychiatric facility. She ended up being a reluctant prosecution witness at trial; police brought her to court on a warrant, again with no parent or guardian present, after she refused to come voluntarily. And her trial testimony differed substantially from her statement, Newman pointed out: She said that after shooting Radcliffe

and putting him in his truck, so that his feet were hanging out one door, one of the men got in on top of him and drove the truck into the fence before fleeing.

"Charlene uses the word 'probably' all through her testimony," Newman added. "It was clear she was a child making it up."

Johnson recanted her testimony weeks after trial. A hearing on her disavowal was held in 1997, when she was 17, but the presiding judge determined that it was her recantation, not her original testimony, that was false. Noting that the judge arguably had a conflict of interest regarding the recantation evidence due to his ruling in a different case that arose from Radcliffe's murder, false and misleading evidence presented at that hearing "truly tainted all of Mr. Sharpe's efforts the next 22 years, from 1997 to 2019," Newman said. Johnson, she added, stayed resolute in her recantation and demands for Sharpe's release.

"The prosecution of Mr. Sharpe should have stopped on April 7, 1994, the day Ms. Johnson gave the statement. He should never have been arrested that afternoon."

— Professor Theresa Newman



A tortured procedural path

Following the 1997 recantation hearing, Sharpe filed a habeas claim in federal court that was remanded to state court, rejected there, and then rejected again upon return to federal court. But that disposition was successfully appealed by lawyers in private practice to the U.S. Court of Appeals for the Fourth Circuit. Sharpe's case was then returned to the federal trial court, where Sharpe prevailed and the court ordered his release. He remained in custody, however, when prosecutors successfully appealed the district court's favorable disposition of Sharpe's habeas petition.

Since the clinic joined the case in 2010, Newman has supervised multiple student teams in a "ground-up" reinvestigation of the case that ultimately uncovered proof of the use of false and misleading evidence at trial and the various hearings afterward, and in their close contact with Sharpe and his family. Caitlin Swain-McSurely '12, who was, Newman said, "all over Greenville investigating" with her clinic partner Nakita Cuttino '12, has remained continuously involved with Sharpe's case since, most recently helping it garner national attention as co-director of Forward Justice, a Durham law, policy, and strategy organization that focuses on matters of racial, social, and economic justice.

Swain-McSurely and other students joined Newman in 2013 in presenting their evidence concerning Sharpe's innocence to the Pitt County district attorney, pointing out that their client's sole connection to Radcliffe's murder came through Johnson's recanted testimony. But the district attorney declined to support the clinic's effort, and in 2014, the clinic filed a Motion for Appropriate Relief (MAR) on Sharpe's behalf setting out "serious constitutional violations" at his trial and subsequent evidentiary hearings that were supported by new material evidence uncovered by the clinic.

At that point, the district attorney ordered a limited reinvestigation of the case. Multiple people interviewed during that effort, Newman noted in a subsequent filing, unequivocally stated that "it wasn't Dontae" who killed Radcliffe. One of them, whose coat was found in Radcliffe's car, emerged as likely having been at the scene when the shooting took place, but told the detectives conducting the reinvestigation that he had no intention of "trading places" with Sharpe. (He has since died.) And during the reinvestigation Johnson forcefully affirmed her recantation, telling officers that the only way to resolve the case would be to "let Dontae out," Newman said.

Pitt County Senior Resident Superior Court Judge Wilton Russell "Rusty" Duke, Jr., the same judge who had handled the 1997 recantation hearing, dismissed the clinic's motion on Feb. 29, 2016, during his last hours on the bench, without holding an evidentiary hearing or even having responded to Newman's three requests to meet.

But the clinic's motto is, said Newman, "We never, never, never give up." In fact, the clinic team found reason for optimism in an examination of Sharpe's case by the Oxygen Network's "Final

Appeal" series that aired in early 2018 and featured Gilliland, the medical examiner who testified at Sharpe's trial, who had declined the clinic's earlier interview request. The clinic asked to meet and this time she agreed. That meeting revealed the pivotal new evidence: that Gilliland had not known Johnson's account of Radcliffe's murder at the time she testified, and, if she had, she would have said then that it could not have happened that way.

In June of that year, Newman and her co-counsel — Clinical Professor Jamie Lau '09, the clinic's supervising attorney, and E. Spencer Parris, a Wrightsville Beach, N.C., lawyer acting pro bono — filed a new MAR on Sharpe's behalf in Pitt County Superior Court. At 344 pages long with exhibits, it reflected every aspect of his long legal ordeal to that date, stating that he had "obtained new material evidence justifying relief." In addition to Gilliland's testimony, the MAR also presented evidence the clinic had collected of a confession to Radcliffe's murder by an individual who had subsequently died. Finally, it succinctly addressed a seven-point legal test regarding the newly uncovered evidence that needed to be met in order for Sharpe's request for a new trial to succeed.

The 2018 MAR landed on the docket of a judge new to Sharpe's case, Wake County Superior Court Judge Bryan Collins, sitting in Pitt County, and a new team from the district attorney's office handled the state's reply. The only point in serious dispute at the hearing on May 17 in which Gilliland testified was whether the evidence presented was new and therefore justified granting Sharpe's request for a new trial. Said Newman: "When the state argued that the evidence was not 'new,' we amended our MAR with a claim that the prose-

UPDATE

Wrongful Convictions Clinic secures release of client Charles Ray Finch after 43 years in prison



Charles Ray Finch, center, was greeted by family members following his May 23 release.

A FEDERAL JUDGE IN RALEIGH vacated the murder conviction and ordered the release on May 23 of Wrongful Convictions Clinic client Charles Ray Finch, who served 43 years in prison for a murder he did not commit. Finch, 81, was released from Greene Correctional Institution later that day.

John S. Bradway Professor of the Practice of Law James Coleman, Jr., the clinic's co-director, served as Finch's lead counsel at the hearing. Charles S. Rhyne Clinical Professor of Law Theresa Newman '88, the clinic co-director, and Supervising Attorney Jamie Lau '09 also were in the courtroom; both represented Finch during state court proceedings. Duke Law graduates who had worked on the case through the clinic attended as well.

Finch's release was the culmination of a 15-year legal battle for Coleman, who took up his case before the clinic was established in 2007. "Ray was unwavering in maintaining his innocence and today proves that he was, and he's been vindicated," Coleman told reporters outside the courthouse after the ruling.

Finch was convicted in 1976 for the murder of Richard Holloman, a Wilson County, N.C., gas station owner who was killed in his store during a robbery attempt. He had originally received a mandatory death sentence, but in 1977 the state Supreme Court commuted the sentence to life in prison after North Carolina's statute was declared unconstitutional by the U.S. Supreme Court.

Over the years Finch had filed motions for relief, both pro se and through counsel, and been denied. In December 2015, a habeas petition the clinic made on Finch's behalf to the U.S. District Court for the Eastern District of North Carolina was again denied, but the Fourth Circuit Court of Appeals reversed the district court's decision in January.

cution used false evidence at trial, because if the court found Dr. Gilliland's evidence wasn't new, that it was plain from her testimony that Charlene's testimony was impossible, then proceeding to verdict with it meant the state used false evidence at trial."

After the May hearing, Judge Collins ruled that the evidence was, indeed, new and ordered a second hearing to assess whether it warranted overturning Sharpe's conviction and ordering a new trial.

At that second hearing, on Aug. 22, Joseph "Joe" Blount Cheshire V, a veteran Raleigh criminal defense attorney, testified to satisfy the court that Sharpe's trial counsel had handled his case with due diligence in his initial cross-examination of Gilliland and hadn't been, essentially, the source of the error that landed his client in prison for 25 years. "As Joe testified, he persuaded the court that Sharpe's trial counsel did just about the best he could at the time," Newman said. "Joe testified that the lawyer probably never imagined that the medical examiner didn't know the state's theory of the case."

In her closing argument on Aug. 22, Newman noted the way a case with a complicated procedural history turned on one fact, "almost elegant in its simplicity," that pointed to a clear resolution. Judge Collins agreed, stating that the newly discovered evidence destroyed the state's entire case. He ordered Sharpe to be released on a \$100,000 bond pending a new trial, but the assistant district attorney immediately announced the state was dismissing all charges against him due to a lack of evidence. "It happened so fast I almost missed it," Newman said.

Considering evidence and testimony from the 1976 trial, the three-judge panel found issues including an "impermissibly suggestive" police line-up, ballistic evidence that failed to connect a shotgun shell from Finch's car with the crime scene, and significant credibility problems with the state's only eyewitness, according to the opinion. In addition, the opinion noted that new evidence also undermined the credibility of the Wilson County chief deputy, Tony Owens.

Writing for the panel, Fourth Circuit Chief Judge Roger L. Gregory said, "Finch has overcome the exacting standard for actual innocence through sufficiently alleging and providing new evidence of a constitutional violation and through demonstrating that the totality of the evidence, both old and new, would likely fail to convince any reasonable juror of his guilt beyond a reasonable doubt." (Read more in the Spring 2019 issue of *Duke Law Magazine*.)

At the May 23 hearing, N.C. Assistant Attorney General Leslie Cooley Dismukes '05 told U.S. District Judge Terrence Boyle that the state did not believe it could succeed in an evidentiary hearing against Finch. She said the state would not object to Finch's release. The state has since declined to retry him.

Finch's daughter, Katherine Jones-Bailey, was two years old when her father went to prison — initially to Death Row. "I know some people do horrible things to other people and their families deserve justice," she said. "But every time I went over my dad's case, I never thought that he did this. So they still didn't get justice. We all ended up suffering." She said she has forgiven those responsible for his incarceration.

Sarah Milkovich '19, who worked on Finch's case along with Eileen Ulate '19, called the resolution "the ultimate graduation gift."

"No way to restore what was lost"

Sharpe and his many supporters in the courtroom, including his mother and stepfather, Sarah and Melvin Blakely, and Swain-McSurely, did not miss it. Speaking to Wrongful Convictions Clinic students in their class three weeks later, Sharpe, who had rejected multiple offers for a shorter sentence in return for an admission of guilt, recalled putting his head down on the counsel table and crying. "Every time I went before a judge, it felt like he's got my life in his hands," he said. It felt unreal to get his life back, he added.

During that meeting and on Oct. 2, when Sharpe and his mother addressed students in the clinic and Duke Law's Innocence Project chapter as guests of honor for Wrongful Convictions Day, they were frank about the challenges of adjusting to family life and freedom after such a long period of incarceration. Sharpe is just getting to know and bond with his daughter — now a mother of two — who wasn't yet born when he was arrested. "I still see her as a baby," he said. "Seeing my little brothers grown makes me cry a bit." He confessed to being "addicted" to his iPhone and obsessive about locking doors: "In prison, guards lock the doors. You're safe in prison at night. Now I look out for my own security." And he admitted to being challenged by the positive attention (including many requests for selfies and spontaneous hugs) he receives when out and about in his hometown of Greenville; he is considered a hero by many in the community for his refusal to take a plea deal to facilitate his freedom.

"I was just a boy who stood up for myself," he said. "I stood up to a bully and took my life back." Addressing the plea offers, he said, ▶

Photo: Drew Wilson/Wilson Times



Sarah Milkovich and Eileen Ulate, who worked on Finch's case, were on hand as he was released from prison on May 23, along with Professors Jamie Lau and James Coleman.

"It's truly an honor to have been any part of it," she said. "So many students have gone before us and done so much hard work, and Eileen and I got to have this celebratory moment on behalf of all of them. It was the perfect way to finish off an education here." ♡

“Keep your word, Be straight up and to the point. Don’t beat around the bush, don’t hide things. If you lie, the trust is gone. Be as genuine as you can with your client, and ‘be real’ with the D.A., too.”

— Dontae Sharpe, advising Wrongful Convictions Clinic students on how best to interact with their clients



Dontae Sharpe, right, and his mother, Sarah Blakely, center, joined Professor Theresa Newman for a lunchtime discussion of his case on Wrongful Convictions Day, Oct. 2

“It was too easy for them to convict me. I am not making it easy for them to get rid of me.”

Clinic faculty and students are currently working on Sharpe’s application for a pardon of innocence from Gov. Roy Cooper, a complex and cumbersome legal process that is a requisite first step to getting state compensation for his wrongful conviction, and one that frustrates him. “I don’t understand how you can know somebody’s innocent and still have all this red tape,” he told the class. “The system seems set up to try to discourage you. You need something when you get out because it’s a whole new world. Not everybody has money. It should be cut and dried.” The state has yet to give him the \$45 given to all inmates on their release from prison, he said.

Asked what sustained him through his incarceration and what positive lessons he may have learned from his ordeal, Sharpe acknowledged his mother’s unwavering support and deep faith, as well as his own. “Don’t be a follower,” was a key lesson, he said. “Define who you are. You’ve got so much time to think in prison, to look inside yourself and find out who you really are. I chose God, Jesus Christ.” He also stayed busy — “to control the time so it goes faster” — and read voraciously, thanks in part to a steady stream of books collected by clinic alumni who had worked on his case.

Both Sharpe and his mother praised the work their faculty and student attorneys had done on their behalf. Blakely called Newman, Swain-McSurely, and Lau members of their family. “I don’t look for miracles from them, I look for miracles from God,” she said. “He sent the people he wanted to work for Dontae’s case.”

Asked by students for advice on how to interact with clients and their families, both Sharpe and his mother were clear.

“Keep your word,” said Sharpe, who hopes to work with the renowned theologian and activist the Rev. William Barber II, one of the champions of his case, on advocacy relating to prison reform and wrongful convictions. “Be straight up and to the point. Don’t beat around the bush, don’t hide things. If you lie, the trust is gone. Be as genuine as you can with your client, and ‘be real’ with the D.A., too.”

“Find out what you can about the client from the family,” added Blakely, who said her passion for her work with children and families affected by substance abuse helped her get through the ordeal of fighting for her son’s innocence. “The students showed support. They visited, sent cards and books. I think that’s the thing that really made Dontae stay the person he stayed.

“You’ve got to be a protector for your client,” she said. “That’s what Theresa did. From the first day she said she believed in him. I felt it.”

Considering what was lost, Newman welcomed two other guests at Duke Law School on Wrongful Convictions Day: 81-year-old Charles Ray Finch, another clinic client, who was released on May 23 after serving 43 years in prison for a murder he did not commit, and his son, Calvin Jones, who was six when his father was sent to Death Row. (See page 44.)

“These two men have spent almost 69 years, combined, in prison,” she said of Finch and Sharpe. “It is appropriate to celebrate them being here with us but there is no way to restore what was lost.” ♡ — Frances Presma

Profiles



CRAFTING A CAREER:

PRIVATE PRACTICE

Corporate litigation
associate, Alston &
Bird, Atlanta

FIRST IN-HOUSE JOB

Worldspan, L.P., a
computer reservation
system for the
travel industry

THE COCA-COLA COMPANY

One highlight: leading
the women's business
resource group globally
and helping to support
the company's efforts to
build a pipeline of female
leadership and influence
policies supportive
of women.

Q AND A:

Dara Redler '91

GC discusses steering cannabis company into new era of legalization

DARA REDLER NEVER IMAGINED that cannabis would figure into her career in corporate law, but helping a company enter a market that didn't exist until a year ago provides a certain thrill. "What I'm really excited about," says Redler, who in January became general counsel and corporate secretary of Tilray, Inc., "is having the opportunity to play a part in shaping the future of an entire industry from its very early stages."

Tilray, a five-year-old cannabis company based in Nanaimo, B.C., was already established in the medical sector with a line of therapeutic products marketed internationally. On Oct. 17, 2018, when Canada became only the second country to legalize adult recreational use nationally, the company's wholly-owned subsidiary, High Park Company, celebrated by launching five recreational brands and an array of products.

"We're witnessing a global paradigm shift from a state of prohibition to legalization," says Redler, who is based in Toronto. It's one, she notes, that demands navigating an evolving

federal regulatory landscape, differing access rules that are set by individual provinces and territories, and the strict laws and regulations of the ever-growing number of countries legalizing medical cannabis.

Redler had spent the previous 17 years in-house at The Coca-Cola Company, where her responsibilities over time included supporting its food service business and restaurant customers, its national retail customers, its chief digital officer, and the bottling system, and leading a legal team supporting the marketing of flagship brands of sparkling beverages. "All of these roles helped me learn about customer-first support, which I'm able to leverage in my current role," she says. "I feel I am bringing my 28 years of diverse and global legal experience to bear to help guide a new company in a new industry."

Redler spoke with *Duke Law Magazine* about some of the opportunities and challenges she faces in her new role, and how lawyers might prepare to enter a growing corporate field. ►

DUKE LAW MAGAZINE: What new legal and strategic issues are you facing in the cannabis sector, and how do they differ from those you dealt with in the food and beverage industry?

DARA REDLER: While there are similarities between the cannabis and consumer packaged goods industries in terms of our adult recreation business in Canada and Tilray's CBD — cannabidiol — business in the U.S., cannabis also has an important role in the medical space, which is a completely new industry for me. The cannabis industry faces extensive, evolving regulations globally, which bring with them a wide set of legal considerations affecting every aspect of our business.

The laws around cannabis differ from country to country. In Canada, specifically, cannabis only recently moved out of a state of prohibition where rules and regulations are evolving as the industry matures. However, our adult-use business in Canada is just one facet of our organization. Tilray product is currently available in 13 countries across the world for medical use with more countries looking at legalizing medical cannabis. Each market we enter presents a new set of regulations and industry best practices around what product we can make available, how we import our product, how we distribute to patients, our packaging, how we engage with stakeholders, and more. So our legal team is incredibly tuned in to every business line in our company to ensure complete compliance, which is daunting but exciting.

DLM: What are the key commercial opportunities and challenges?

DR: On the medical side, we're seeing more and more countries across the world legalize cannabis for medical use. This presents a massive opportunity for us to expand our global reach and help more patients in need. Tilray is currently participating in seven clinical studies in an effort to open up potential life-saving treatment options for patients and increase the credibility of medical cannabis in the mainstream medical community. To help support this opportunity is a gift.

On the adult-use side, we have an opportunity to help shape an evolving industry from the ground up. Since Canada is the first G-7 nation in the world to legalize cannabis at a federal level, we are well-positioned to become global market leaders as more countries move towards legalization.

High Park's five recreational brands include whole flower, pre-rolls, and oil products. We anticipate that alternative form factors such as edibles and cannabis extracts for vaporization present an even bigger opportunity to lead the market, while also bringing forward new challenges from a regulatory and compliance perspective. The Canadian government is rolling out new legislation to regulate and introduce these new form factors to market.

Unlike the food and beverage or CPG industry, we don't have 100+ years of manufacturing, packaging, processing, and distribution experience under our belt. We have to be very agile, adaptable, and innovative when it comes to launching products and brands.

The current laws are largely in place to protect underage people from being exposed to cannabis, eliminate the illicit market, provide

people with access to quality-controlled and safe cannabis products, and enhance public awareness of any health risks associated with use. As such, the current laws around cannabis in Canada put limitations on branding, promotion, packaging and labelling, selling and distribution, etc.

DLM: What issues are you encountering on the medicinal and therapeutic side?

DR: One of the challenges we face on the medical side is the legalities around importing our products into new markets. Additionally, despite the growing popularity of medical cannabis, which is now legal in over 40 countries, this is still a stigmatized treatment option and, as such, is governed by highly restrictive regulations around marketing and branding. This creates challenges in educating patients, health care providers, and the general public about its therapeutic potential, and often leads to unique obstacles around branding and marketing of cannabis-based medicines.

DLM: What are other cross-border challenges facing the industry?

DR: For example, the regulation of CBD and hemp extract in the United States is a tangled web of federal and state laws, regulations, policies, and guidance. The recent enactment of the 2018 Farm Bill removed concerns over the possible treatment of hemp and CBD at levels of .3% THC or lower as a Schedule 1 controlled substance. Suddenly we could look at doing business in the U.S. with hemp extract and CBD from a federal perspective, while still watching state laws. There are vast differences in how individual states currently handle the regulation of CBD and hemp extract.

Through our subsidiary Manitoba Harvest, we recently launched broad spectrum hemp-extract CBD products in the U.S., opening up a new market for Tilray. We took our experience from the medical side to bring trusted CBD products to the U.S., and will continue expanding with different form factors including ingestibles and topicals.

DLM: What is your advice to lawyers interested in serving the cannabis industry — in the U.S., in particular?

DR: The opportunities in the cannabis industry are vast across many sectors. For legal professionals, specifically, this is an exciting time to navigate a new industry. You see many law firms now establishing cannabis practice groups to be able to handle the demand of work coming from this industry. Since most attorneys in the cannabis field are learning side-by-side with you, there is great collaboration and thinking on how best to navigate.

An ideal candidate would be adaptable to the evolving business demands, regulatory changes, and shifting legal framework of this industry; be able to provide strategic and legal guidance on marketing, advertising, and product claims for new brands and products where none existed before; and provide practical business-oriented advice and counsel on interpretation of laws and policies across multiple jurisdictions. I tell my legal team they are "trailblazers" in the legal profession, and that is absolutely true. ♡ — Frances Presma



Photo: Joseph Gergel

Judge Richard M. Gergel '79, T'75

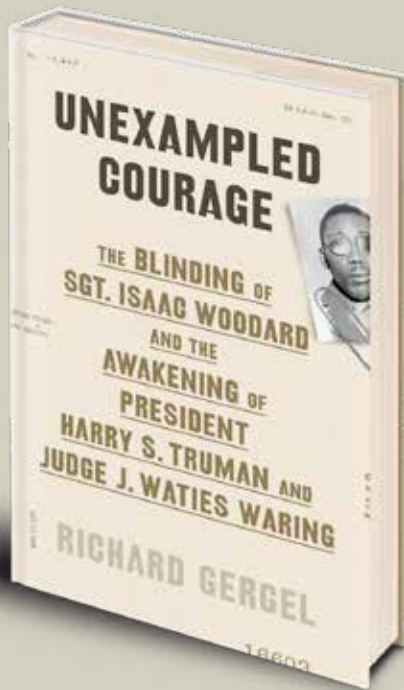
AWAITING SENATE CONFIRMATION to a seat on the U.S. District Court for the District of South Carolina in 2010, Richard Gergel, then a litigator in Columbia, found himself with time on his hands. He decided to read all he could about J. Waties Waring, the first of the great Southern civil rights judges who presided in the Charleston Federal Courthouse from 1942 to 1952. Waring had somehow transformed from a product of the segregated South — his father fought for the Confederacy — to a hero of the civil rights movement who eventually declared segregation “an evil that must eradicated.” Gergel, who was assigned in August 2010 to the Charleston Courthouse where Waring presided, was intrigued. What motivated this massive change in perspective? Although Waring’s transformation had been documented by a few historians, he remained largely an enigma, with the central question of what had led to his extraordinary journey on race and justice remaining largely unaddressed.

Gergel’s curiosity launched a seven-year project that led all the way to the White House and the records of the Library of Congress, National Archives, and numerous research libraries. As it turned out, Waring had presided over a 1946 civil rights prosecution that had been initiated as a result of the personal intervention of

President Harry Truman. That case is the starting point for Gergel’s new book, *Unexampled Courage: The Blinding of Sgt. Isaac Woodard and the Awakening of President Harry S. Truman and Judge J. Waties Waring* (Farrar, Straus and Giroux 2019).

“The original focus of my research was on what changed Judge Waring,” says Gergel, whose chambers are, fittingly, located in the recently renamed J. Waties Waring Judicial Center in Charleston. Waring was a national figure in the 1940s and 1950s, and he was often asked the same question by journalists of that time. But, like many judges, Waring was reticent to speak about the cases that came before him. So during his lifetime, he gave a stock answer: “While on the bench, I developed a passion for justice.” Gergel was not satisfied: “That told me nothing.”

Gergel unearthed hundreds of news articles in the course of his research — many from the African American press — as well as investigative files of the FBI and the Department of Justice, Waring’s personal papers at Howard University, and various oral histories that helped him uncover the origins of Waring’s remarkable evolution. Gergel also discovered a meeting between President Truman and civil rights leaders in September 1946, where the president first learned of the story of the blinding of Isaac Woodard. Woodard, a



“In some ways, Judge Waring asks all of us for our better angels ... that we would show ‘unexampled courage,’ which is the term he used to refer to the plaintiffs in *Briggs v. Elliott* ...

decorated African American sergeant, had just been discharged when he was beaten and blinded by the police chief of Batesburg, S.C. He was still wearing his U.S. Army uniform.

On Feb. 12, 1946, Sgt. Woodard boarded a Greyhound bus in Augusta, Ga., after discharge earlier that day from nearby Camp Gordon, with a planned trip to Columbia, S.C., and then on to his hometown of Winnsboro, S.C., where he was to rendezvous with his wife after several years of separation due to his military service. Woodard asked the bus driver, during one of the frequent local stops, if he could step off to relieve himself. Contrary to company policy, the bus driver refused, and following a heated verbal exchange, summoned the police during a stop in Batesburg. After forcing Woodard off the bus, the Batesburg police chief, Lynwood Shull, arrested and beat him repeatedly with his blackjack, ultimately thrusting the baton so hard into Woodard’s eyes that it broke.

A day after learning of the Woodard incident, President Truman wrote his attorney general, Tom Clark, and shared with him the story of the blinding of Sgt. Woodard — noting that the police officer had intentionally put out Woodard’s eyes. Within three business days, the Department of Justice initiated criminal charges against Shull for the deprivation of Woodard’s civil rights. Gergel notes that civil rights prosecutions were rare in 1946, but President Truman was persuaded that the time for federal action had arrived.

The evidence left little doubt of guilt, but the all-white jury acquitted the police chief after 28 minutes of deliberations, and Waring was left conscience stricken. Almost poetically, the blinding of Woodard had forced him to look at segregation, Gergel says. “He [had] never questioned it, but then he observed this manifest injustice in the Woodard case. He began doubting and questioning this segregated

world he lived in.” Waring’s questions had no satisfying answers, Gergel adds. “Once you recognize this whole system of disenfranchisement and segregation, and once you start questioning it, there’s no backstop. You just sort of say, ‘This whole thing is wrong.’ That’s really where he ended up. There was no way to split the difference.”

Waring thereafter began issuing landmark civil rights decisions in the areas of voting rights, equal access to higher education, and school desegregation. His 1951 dissent in *Briggs v. Elliott*, the first of five cases that made up *Brown v. Board of Education*, declared all government-mandated segregation a per se violation of the 14th Amendment, using the memorable phrase “segregation is per se inequality.” Waring’s dissent was the first challenge by a federal judge to the separate but equal doctrine of *Plessy v. Ferguson* since the great dissent of Justice Harlan in *Plessy* 55 years earlier. Three years later Waring’s per se rule would appear once again, as the central holding in *Brown v. Board of Education*, the most important case in American history.

A story with personal resonance

For Gergel, Waring’s other legacy is the challenge he left behind: “In some ways, Judge Waring asks all of us for our better angels, right? That we would show ‘unexampled courage,’ which is the term he used to refer to the plaintiffs in *Briggs v. Elliott*, who he knew had suffered severe retaliation for their courageous participation in the landmark case. When the time and the person meet and the times demand you to do something that is against your personal interest but for a higher good — that you would step up. All of us hope we would do that. We don’t ever really know until that moment arrives.” His colleagues, he says, agree. “I speak to groups of judges all the time and they love the story for the same reason. It’s the highest calling of what we do.”

Gergel has long been drawn to such a calling. Growing up in Columbia in a progressive Jewish family, he admired Dr. Martin Luther King, Jr., who, along with Gandhi and other civil rights heroes, was often the subject of his reading. Gergel’s grandparents had emigrated from Poland in the early 20th century, and several family members they left behind perished in the Holocaust. Their fate was openly discussed in his home.

“That was very much known to me as a child,” says Gergel. “I think a lot of my parents’ feelings about the dangers of intolerance came from the experiences of their own families, because this wasn’t something that was hypothetical or a matter of history. It



Judge J. Waties Waring

When the time and the person meet and the times demand you to do something that is against your personal interest but for a higher good — that you would step up.”

— Judge Richard Gergel

was a matter of family.” He imagines that the generation of judges of which Waring was a part was undoubtedly influenced by the Holocaust, too.

For Gergel, Waring’s experience in a segregated South Carolina was also particularly salient. Gergel attended high school in Columbia in the early years of genuine desegregation — the law was, for some years after *Brown*, largely aspirational — and was elected president of a student body that was roughly half white and half African American. “I was very engaged then in efforts to make school desegregation work,” he recalls. His efforts were formative: “It was a quite moving experience to be involved in it, and it was an important experience. I was at the frontiers of the new South.” And while mindful, always, of the privileges his skin color bestowed on him, elements of his black classmates’ experiences resonated with him.

“Being a Southern Jew, you knew something about being an outsider to some degree and had a sense of identity of being different,” Gergel says. “That made you naturally sympathetic to other people who were not mainstream. But I don’t want to suggest even for a moment that my status would have been the same as an African American student. I was white in the South — that made things a lot easier.”

Gergel realized that he would be a lifelong Southerner when his father, who had never attended college but urged his children to pursue education, took him to see several Northern schools in a driving snow storm. “He took me to Duke on a beautiful, crisp fall day and the rest is history,” Gergel says.

His father also inspired his decision to attend law school after majoring in history. “He was a very successful businessman, but he always felt that somehow he had not done what he could have done,” says Gergel. “He would have loved to have been a lawyer.”

At Duke Law, Gergel made sure to take every course he could with the renowned constitutional law scholar William Van Alstyne. “He had great ideas, and his classes were always characterized by interesting discussions and stimulating debate.”

Gergel’s inclination for intellectual argument served him well in his career, first as a litigator at Gergel, Nickles and Solomon in Columbia, and now as a judge, a post he loves. “You get to do the right thing every day,” he says. “I can’t say I get it right every time, but I have the opportunity to get it right every time.”

His decisions have been followed more closely lately, as he presided over the case of Dylann Roof, the young white man who in 2015 shot and killed nine African American congregants in a Charleston church. Gergel won’t discuss the case, as Waring long ago demurred from discussing his. But the facts of the Roof case seem to echo the kind of “evil” that Woodard suffered so brutally and that Waring sought so desperately to root out in the same city nearly 70 years ago. Certainly the crime punctuates the question of why some people change despite the evil that surrounds them, while others are consumed by it. ♡

— Amelia Ashton Thorn ’10



Susan Bysiewicz '86

AS CONNECTICUT'S LIEUTENANT GOVERNOR, Susan Bysiewicz presides over the state Senate, serves as acting governor as needed, and is charged with overseeing preparations for the 2020 census, among other official duties. The Democrat also leads the Governor's Council on Women and Girls.

She and running mate Gov. Ned Lamont launched the council shortly after they were inaugurated in early January. Made up of legislators and leaders from around the state, the council is charged with providing a coordinated state response to issues that could affect women, girls, and their families. Its focus includes everything from eradicating potential discrimination in policies and programs and encouraging women's empowerment and advancement through education to workforce equity and entrepreneurship, leadership, and facilitating their health and safety, reflecting themes the executive team heard from hundreds of individuals and organizations they consulted during their transition period.

While it's just one of her varied responsibilities as lieutenant governor, the council is close to the heart of Bysiewicz, who has divided her career between the practice of business law and pub-

lic service. Before taking office in January she was a partner at Pastore & Dailey; prior to that she served 12 years (three terms) as Connecticut's secretary of the state, six years in the state legislature, and several years as an associate at the law firms of White and Case in New York and Robinson and Cole in Hartford, Conn. Not only has she made advancing opportunities for women central, she says, to every position she's held, but she found models for her own career interests in those of two path-breaking women: Connecticut Gov. Ella Grasso, the first woman elected to lead a state; and her mother, Shirley Raissi Bysiewicz, the first tenured female law professor at the University of Connecticut School of Law.

"Women's issues are economic issues, and if you uplift women and girls, you'll be uplifting families," Bysiewicz says in an interview. "When I was secretary of the state, I was the state's chief business registrar. We started a small business unit where we particularly tried to help women-owned, minority-owned, and veteran-owned businesses. I had the opportunity in that office to help thousands of people start businesses and grow them. And as Gov. Lamont can tell you, I am always advocating for competent women and for diversity

as we appoint hundreds of people to volunteer boards and commissions in state government and also as we consider judicial and other leadership appointments.”

Bysiewicz says she’s excited that women occupy half of executive leadership positions and people of color comprise nearly 40% of Connecticut’s cabinet level positions and believes that this is historic. “Our government will be better and our private sector, for that matter, will be better if there are more women and there is diversity both in our public and private sectors.” She is active in her state’s promotion of the “Paradigm for Parity” movement that seeks to close the gender gap in corporate leadership and achieve parity by 2030, and is actively working with companies in Connecticut to sign on to that pledge and engage in other state initiatives regarding workforce equity and economic empowerment. Bysiewicz also highlights two recent legislative victories that help advance the council’s goals: the establishment of a \$15 minimum wage and passage of a paid family and medical leave law that has been described as the most progressive in the country.

“We’re really proud of that,” she says. “People have been trying for years to get a paid family and medical leave program in place.”

Pay equity is another policy focus; Bysiewicz says she and Lamont want the executive branch to lead their state’s public and private sectors by example. A recent study showed that, on average, white women employed by the executive branch are paid slightly above white men doing the same work, but African American and Hispanic women are paid 90 cents on the dollar as compared to white men. “Compared to the federal government and other states, that’s really good, but clearly we have more work to do,” she says.

Finding inspiration

Bysiewicz, who recently completed a six-year term on the Duke Law Board of Visitors, found a model for a life in public service from Grasso, Connecticut’s governor from 1975 to 1980, whom Bysiewicz met in high school through a youth in government program. “I remember her speaking about what she did as governor and how she had the opportunity to help people every day,” she says. “I always admired her compassion for people and her strength as a leader during some very difficult times.” After making Grasso, a Democrat, the subject of her senior paper at Yale University, Bysiewicz published *Ella: A Biography of Ella Grasso*, while she was in law school.

Bysiewicz traces her interest in law and passion for women’s rights to her mother, whose Greek immigrant parents lacked education but believed in it fiercely for their son and five daughters, all of whom became professionals. Like Ruth Bader Ginsburg, a fellow academic who became a good friend, Shirley Bysiewicz graduated law school in the 1950s but could not find a private law firm that would hire a woman. “But my mother loved teaching and she loved writing, and she particularly loved encouraging women to go into the legal profession,” Bysiewicz says.

Her mother, who also served as law librarian for more than 30 years while teaching courses that included gender discrimination when the topic was in its infancy, was intent on advancing women’s rights, including advocating for the Equal Rights Amendment when Connecticut lawmakers were debating prior to ratifying it in March 1973. “She would take us to the state capital with her,” Bysiewicz says. “We knew she was always fighting for the rights of women.”



Lt. Gov. Susan Bysiewicz launched the 2020 Census Committee for Connecticut on Feb. 4

Among other public boards, Bysiewicz’s mother was appointed by Grasso to Connecticut’s Permanent Commission on the Status of Women, and by Gov. William O’Neil to the Judicial Selection Commission, giving her platforms to encourage women to go into law and to become judges.

The encouragement worked on Bysiewicz and her sister, Karen, a member of the Duke Law Class of 1991. Growing up on a farm offered further incentive to pursue a legal career, she says. “If you have ever picked potatoes in August from 7:30 a.m. until dark, you will soon decide that working with your brain is much easier than working with your back.”

Bysiewicz, who still lives in her hometown of Middletown with husband David Donaldson JD/MBA ’87, who she met at Duke, says they both continue to see Duke as “an incredibly inspiring place” that laid the groundwork for her later achievements.

“What I got from Duke Law School was the opportunity to be around some incredibly smart, articulate, and creative people, and then I had the opportunity to work at some great firms because of my Duke Law education,” she says. “I was used to working at a very high level with people who had the highest ethical standards and the highest expectations, and I’ve taken that set of high standards with me to the private and public sectors.” And she uses daily the professional skills she learned at Duke for assimilating vast amounts of information and then distilling it down to tell a simple and powerful story.

“That’s what makes for good advocacy, whether it’s in a legal setting or whether it’s before the legislature or with the public about policies,” she says. “Law school also teaches you about speaking in public and about collaborating with other people and groups to get a successful outcome. So I feel like what I do every day in public service was informed by what I did in law school and what I learned in law school.” ♡ — Frances Presma



Bryant Wright '19

WHEN BRYANT WRIGHT LEFT DUKE LAW, many on staff noted a conspicuous absence in the back corner of the second-floor Blue Lounge. Every morning for three years, Wright set up shop there with his books, laptop, and speakers playing everything from Mozart to Jay-Z. For Wright, a classically trained violist, music helped him focus on his studies and process concepts.

"I started off studying in the library and thought, 'It's way too quiet in here. There's no way I'm going to get anything done,'" Wright says. "Plus, everyone knew exactly where to find me, Monday to Friday. I literally saw everyone in the building." Unsurprisingly, Wright's classmates selected him to be JD speaker at the Law School Convocation on May 11. (See page 14.)

Wright's gregarious nature led him to law as a departure from a long-planned career as a professional musician. He started playing viola in fifth grade and studied the instrument through the Atlanta Symphony Orchestra's Talent Development Program. That led to admission to Harvard University and the New England Conservatory, where he studied with the renowned violist Kim Kashkashian and earned both his undergraduate and master's degrees in five years. But that last intense year of practice also brought a revelation.

"I decided, 'I don't want this life for myself. It's way too isolating,'" Wright says. "I like working on teams of people, and much of the classical musician's life is spending 60 to 80 hours a week by yourself in a practice room just to get on stage and, again, be by yourself in front of an audience. That's not how I want to experience music."

Now Wright is channeling that love of music into a career in entertainment law. This fall he joined Proskauer Rose in New York, where he spent his 2L summer, to work in its copyright, trademark, and false advertising litigation group. Proskauer is a heavyweight in the entertainment industry, representing such A-list artists as U2 and Madonna.

"One of the biggest challenges of the industry is finding your way into it through a position that doesn't feel peripheral to the industry," Wright says. "I see myself as a key player on the legal side of the industry, or working for a key player in the industry — a major label or a major artist."

Wright calls his work on a First Amendment Clinic case that moved from intake to settlement over the course of two semesters the most rewarding experience of his time at Duke Law.

"Serving a client, working on details of one small part of something as part of a team — that dynamic you cannot get in a lecture, and those are the things that are probably the most difficult to learn for people when they actually get to a real job," he says. "So you need to be prepping for that."

And while First Amendment work is certainly relevant to his career path, Wright says he also jumped at the chance to work with Professor Jeff Powell, the clinic director, who taught Wright's first year Constitutional Law class.

"It was one of my favorite classes and he's one of my favorite pedagogues here, one of my favorite mentors because he's just great," Wright says. "And it was a phenomenal experience."

As for music, while Wright doesn't perform professionally anymore, he says playing in his downtime helps him process the day and make sense of the world — even make sense of the law.

"An opinion looks like a piece of music to me and it can be digested the same way a piece of music can," he says. "The way dicta come out in certain conclusions, it's literally like looking at a cadence. Music flows and an opinion can flow like that in patterns."

Wright was excited to return to New York, where he spent three years in a Brooklyn classroom with Teach for America before arriving at Duke Law. He says the city is a good fit with his personality. "I'm not done with New York and New York is not done with me."

At graduation, Wright wasn't quite done with the Blue Lounge either. He spent part of the summer in his familiar corner playing music while studying for the bar exam.

"You'll have to find someone to replace me," Wright says with a grin. ▮
— Jeannie Naujeck

Alumni Notes

This section reflects notifications received between Nov. 16, 2018 and May 15, 2019.

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



1956

David Allard, retired administrative law judge, has received an Albert Nelson Marquis Lifetime Achievement Award from Marquis Who's Who, and was profiled in the "Executive Spotlight" of the publisher's *A Lifetime of Achievement: Our Collection of Prestigious Listees* (Vol. II, 2019).

1966

Bill Porter, chairman emeritus of Porter Hedges in Houston, received an Albert Nelson Marquis Lifetime Achievement Award from Marquis Who's Who. Bill was a partner at Porter Hedges from 1981 to 2009, and chaired the firm from 2000 to 2009. **BOV**

1967

William Womble, Jr. stepped down as partner after 47 years of trial, litigation, and regulatory practice with the firm Womble Bond Dickinson (formerly Womble Carlyle Sandridge & Rice) in Winston-Salem, N.C. During his career, Bill was a charter member and past president of the N.C. Association of Defense Attorneys, a vice president of the N.C. Bar Association (NCBA), a recipient of the NCBA's Advocate's Award, as well as a recipient of The Order of the Long Leaf Pine, which is one of the highest honors given by the Governor of North Carolina in recognition of service to the

state. He has joined Clearly Bespoke Strategies, Inc., a niche strategic advising company, as co-president, with his wife, Erna. **BOV**

1969

Alan Goldsberry was recognized in March by the Ohio State Bar Association for his 50 years of service to the community and the legal profession. He served on the bench of the Athens County Common Pleas Court from 1987 until his retirement in 2015 and continues as Athens County law librarian and acting municipal judge.

» For Super Lawyers and other professional kudos, see page 61.



Michael Dreeben speaking at Duke Law on Sept. 26

Michael Dreeben '81 has retired from the U.S. Department of Justice after 31 years. He most recently served as deputy solicitor general responsible for the criminal docket and has represented the federal government in 105 cases before the Supreme Court. Immediately prior to his retirement, Michael served on special counsel Robert S. Mueller III's investigation team.

Michael's career was celebrated by colleagues, jurists, and friends with tributes on Scotusblog where U.S. Solicitor General Noel Francisco wrote, "Michael Dreeben knows more about criminal law than anyone else on Earth. But it's not only his knowledge that sets him apart. It's also his talent as an advocate, and his tireless devotion to his craft." Wrote former U.S. Solicitor General Donald Verrilli: "Those of us who have had the privilege of working with Michael over the years are better for it, much better. And so is our country. We all owe Michael a great deal."

Michael, who is currently a Distinguished Lecturer from Government at the Georgetown University Law Center, returned to Duke Law on Sept. 26 to speak at a reception for students interested in careers in public service and for a lunchtime "Lives in the Law" conversation with Dean Kerry Abrams.

During that conversation, Michael drew laughter from his student audience by recalling the "high level of terror" he felt in advance of his first Supreme Court appearance in a case that he took on after it had been briefed that demanded he make arguments likely to be received skeptically by the justices. Noting that his opposing counsel was John Roberts, Jr., the future chief justice, displaying a similar level of terror in his first appearance before the Court, Michael said his fears were justified shortly after he started speaking. He lost that case — unanimously.

Asked by Abrams to describe the Office of the Solicitor General's role in developing the law, Michael pointed to its unique function "as a translator and communicator of what the Supreme Court is saying.

"As an advocate before the Court, I learned about the cases from people who knew a whole lot more about them than I did, but it was then my job to translate them and speak to the Court in language that the Court was comfortable with. The Court's commitments were not aligned with the viewpoints of the agencies that I had to represent. They wanted to get the law right. So in order to advance the interests of the clients, I had to be able to synthesize it and put it in the framework of law that the Court would go with.

"And sometimes the Court's law would push back. And you had to be able to go back to the client and say, 'This isn't going to work. We're actually going to have to change our position — and you know what? Even though they are the Article III branch and we're the Article II branch and have our own responsibilities, we are part of one United States government. And my ultimate client here is the United States, not a particular agency or particular prosecutor.'" ♫

1971

Kenneth Rice has retired from law practice in Kennewick, Wash.

1974

Tom Stevens has been elected to the board of trustees of New England College (NEC). He previously chaired the board of the New Hampshire Institute of Art, which has merged with NEC. He served as vice chairman of the board of directors and chief administrative officer of KeyCorp from 2001 to 2013. Before joining KeyCorp in 1996, Tom was the managing partner of Thompson Hine.

1976

Reeve Kelsey retired, in December, after 20 years as a judge on the common pleas court in Wood County, Ohio. He previously served as the mayor and on the city council of Perrysburg, Ohio, and as an assistant attorney general for the Toledo Region.

1978



Jan Adler has joined the roster of neutrals at Judicate West, a private dispute resolution service in California. He

served as a magistrate judge for the Southern District of California for over 15 years, including two as presiding magistrate judge before retiring in 2018. Prior to joining the bench, he was a trial lawyer litigating complex civil matters.

1979

Richard Gergel, United States district judge for the U.S. District Court for the District of South Carolina, has authored *Unexamined Courage: The Blinding of Sgt. Isaac Woodard and the Awakening of President Harry S. Truman and Judge J. Waties Waring* (Farrar, Straus & Giroux, 2019). The book

reinvestigates an unpunished crime that, in Judge Gergel's telling, ignited the modern civil rights movement. (Read profile, page 49.)

Randall Trautwein, a member of the Huntington, W. Va., firm of Lamp Bartram Levy Trautwein and Perry, has been appointed to fill a term, expiring in 2020, on the Wayne County Board of Education.

1980

Eric Holshouser has joined Rogers Towers in Jacksonville, Fla., as a shareholder practicing labor and employment law. He was previously a shareholder at Buchanan Ingersoll. Eric is the 2019 president of the board of the Academy of Florida Management Attorneys.

1982

Stan Padgett has authored *Unveiled: Secrets to a Marriage That Lasts Forever* (Beyond Publishing, 2019). Stan, who has been married to his wife, Linda, for 42 years, is the managing partner of Padgett Law, P.A. in Tampa, Fla.

1983

Jean Gordon Carter, a partner at McGuireWoods and Raleigh-based co-chair of the firm's private wealth services group, has been included on *Business North Carolina's* 2019 Legal Elite list and named Lawyer of the Year in the tax/estate planning area. *The National Law Journal* also recently honored her as a Trusts and Estates Trailblazer.

Valerie Mason has received a 2019 OTTY (*Our Town* Thanks You) Award from *Our Town*, a publication serving New York's Upper East Side. She was recognized for her activism as the founder and president of the East 72nd Street Neighborhood Association. Val is a partner at Otterbourg, specializing in the complex structuring and restructuring of financing transactions.

Carolyn Woodruff, president of Woodruff Family Law Group in Greensboro, has been appointed to the board of directors of Blue Ridge Bankshares, Inc. She also serves on the board for Carolina State Bank, a division of Blue Ridge Bank. Carolyn is a frequent writer and lecturer on business valuation and federal taxation.

1984

Floyd McKissick was the keynote speaker at the Burke County, N.C., banquet honoring the Rev. Dr. Martin Luther King Jr., on Jan. 19. Floyd has served in the N.C. State Senate since 2007, representing District 20, which includes Durham and Granville counties. He is the senior deputy Democratic leader in the Senate. His nomination to the seven-member N.C. Utilities Commission by Gov. Roy Cooper is awaiting Senate approval.

Wilson Schooley has been elected chair of the ABA Section of Civil Rights and Social Justice. He is also serving a term on the *ABA Journal* Board of Editors. Wilson is the owner/managing partner of Schooley Law Firm in La Mesa, Calif., an appellate and litigation practice.

1985



Cassandra Franklin has joined the Los Angeles panel of JAMS, a private provider of alternative dispute resolution services. She was previously a partner and deputy chair of Dickstein Shapiro's insurance coverage practice, and managing attorney of the claims coverage counsel group at Allianz Global Corporate & Specialty and Fireman's Fund Insurance Company.

Jonathan Nase has been named partner at Cozen & O'Connor in Haverford, Penn. Prior to joining the firm in 2017 as of counsel, he was deputy director – legal of the Pennsylvania Public Utility Commission's Office of Special Assistants.

1986

Toni Jaeger-Fine has published *Becoming a Lawyer: Discovering and Defining Your Professional Persona* (West Academic Publishing, 2018). Toni is assistant dean for international and non-JD programs at Fordham Law School, where she also is director of the International Judicial Research and Training Program, director of Recent Developments in U.S. Law, and co-director of the Summer Institute in New York City. Her book's publication was celebrated during a panel discussion at Fordham in March.

1987

Timothy Johnson has been assigned by the U.S. Department of State as an international relations officer with the Office of Foreign Missions in Washington, D.C. Tim is a career foreign service officer.

Brian Rubin, a partner at Eversheds Sutherland in Washington, D.C., and two colleagues received the *Law360* Distinguished Legal Writing Award for their article, "When Precedent Doesn't Really Stand for That Proposition: FINRA's Suitability Rule and the Meaning of 'Best Interest,'" published by *Bloomberg Law* in December 2018. Brian is the Washington office leader of the firm's litigation group and the head of its Securities and Exchange Commission, Financial Industry Regulatory Authority, and state securities enforcement practice.

1988

Steve Doyle was sworn in, on Jan. 7, as a U.S. magistrate judge for the Middle District of Alabama. Prior to taking the bench, Steve practiced for over 28 years with the U.S. Department of Justice in a variety of positions in the Civil and Criminal Divisions. Most recently, he was civil chief in the U.S. Attorney's Office for the Middle District of Alabama. Steve is also a colonel in the Army National Guard.

1989

Wendy Sartory Link was appointed, in January, by Florida Gov. Ron DeSantis to serve as supervisor of elections in Palm Beach County through 2020, completing the unexpired term of the previous supervisor. Wendy manages her own firm, of which she is president, that focuses on commercial real estate, asset-based financing, title insurance, business transactions and corporate issues. She sits on the State University System Board of Governors, is a trustee of Palm Beach State College, and is on the board of the Economic Council of the Palm Beaches, where she served as chair.

1990

Timothy Crisp has joined Holland & Hart as a partner practicing in the areas of banking and financial services, corporate, compliance services, and commercial finance. He is based in the firm's Santa Fe, N.M., office, as well as in Denver and Salt Lake City. He was previously a partner with Foley & Lardner in Madison, Wisc.

1991

Dara Redler has joined Tilray, Inc., a pioneer in the cannabis industry, as general counsel and corporate secretary. Based in Toronto, she oversees the company's strategic growth. Dara most recently served as vice president and senior counsel for

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*, *D Magazine*, and *Thomson Reuters*. See details at law.duke.edu/alumni/news/classnotes. This list reflects notifications received by May 15, 2019, and includes such designations as “Rising Stars.”

Samuel Johnson '72
Candace Carroll '74
Steve Shaber '76
David Dreifus '80
Eric Holshouser '80
Mark Prak '80
Rick Robinson '82
Valerie Mason '83
Jean Gordon Carter '83
Joel Heusinger '86
David Cox '93
Jeff Layne '94
David Kushner '96
Norwood Blanchard '99
Krista Enns '99
Amanda Amert '00
Alex Dale '01
Lauren Linder '07
Karen Beach '11
John Brumberg '11

Coca-Cola North America, holding a number of leadership roles in the legal division during her 17-year tenure at The Coca-Cola Company. (Read Q and A, page 47.)

1992

Stefan Kenn has joined Daikan, Inc. as director of legal affairs. He previously was a senior director at Walmart, dealing with international compliance, product regulation, and safety.

1993

Adam Cohen has joined Redgrave LLP as a partner in the New York office, which focuses exclusively on eDiscovery and information law. Adam assists clients with cybersecurity, digital forensics, and eDiscovery, data privacy, information governance, and records management. He also teaches as an adjunct faculty member at Fordham and Cardozo Law Schools.

Colin P.A. Jones has co-authored *The Japanese Legal System* (Hornbook Series, West Academic Publishing, 2018). Colin is a member of the faculty of law at Doshisha University in Kyoto, Japan.

1994

Randall Clark has been promoted to deputy general counsel and chief human resources officer at Semptra Energy, a Fortune 500 energy company headquartered in San Diego. He has served in various leadership and legal capacities at the Semptra Energy family of companies over the last 18 years.

Cameron Young has been named COO of CEIBA Investments, Ltd., which invests in Cuba's commercial real estate and tourism sectors, among others. He previously practiced at Berger, Young & Associates.

1995

Cristina Arumi has rejoined Hogan Lovells, where she heads the firm's U.S. REIT tax practice. She earlier spent 17 years at the firm, focusing her practice on the tax aspects of capital markets and M&A transactions. She joined Ernst & Young in 2013.

Hitomi Yoshida has been elected dean of the graduate school at Kanto-Gakuin University in Kanagawa, Japan, where she is a law professor.

1996

Marcel Imery's law firm, Imery Urdaneta, merged, in April, with one of Venezuela's largest law firms, Lega. Marcel has joined the new firm as a consultant in the Caracas office, specializing in corporate and tax law.

David Kushner, a partner in the Raleigh office of Brooks Pierce, has been appointed to the board of directors of the Raleigh-Durham Airport Authority. His law practice focuses on issues related to broadcasting, media policy, First Amendment matters, and defamation.

Erik Moses has been named president of the XFL football team in Washington, D.C., which will take the field in February for its inaugural season. Erik is responsible for the team's fan engagement and business operations, including ticket sales, corporate partnerships, marketing, content, communications, community relations, and the game-day experience. He most recently was the senior vice president and managing director of sports, entertainment & special events for Events DC.

1998

David Archey has been named, by FBI Director Christopher Wray, as special agent in charge of the Richmond Field Office. He most recently served as a deputy assistant director in the Counterintelligence Division at FBI Headquarters and was the FBI senior lead at the Special Counsel's Office. He joined the FBI in 2001.

Bobby Sharma has joined Foley & Lardner as special adviser to its sports industry team, based in the New York office. Bobby is founding partner of Electronic Sports Group (ESG), an esports advisory firm, a partner at GACP Sports, a sports-related private equity firm, and the chairman of Blue Devil Holdings, an international sports, media, and entertainment investment company.

Jesus Villa has joined the Wisconsin Department of Workforce Development as Equal Rights Division administrator. He previously was lead employee relations consultant and equal employment opportunity officer at Northwestern Mutual.

1999

Krista Enns has been named administrative partner at Benesch Law and led the recent opening of the firm's San Francisco office. Krista concentrates her litigation practice on complex commercial matters.

James Sammataro has joined Pryor Cashman as partner and co-head of the firm's media + entertainment group, dividing his time between the firm's Los Angeles and Miami offices. James has been named to *Billboard's* 2019 list of Top Music Lawyers. He was previously a managing partner at Strook & Strook & Lavin.

2000

Kevin Anderson has joined Duane Morris as a partner in the firm's intellectual property practice group based in Washington, D.C. He was previously a partner with Wiley Rein where he chaired the patent litigation practice.

Gregg Behr, executive director of The Grable Foundation in Pittsburgh, has been named a member of the 2019 Distinguished Alumni Class of the North Allegheny Foundation. Gregg manages a grant-making portfolio advancing high-quality early childhood education, improved teaching and learning in public schools, and robust out-of-school time support. In 2016, the White House recognized him as a Champion of Change for his efforts to advance learning.

Alaina Brooks was named “General Counsel of the Year” by the Association of Corporate Counsel's Dallas-Fort Worth chapter. Alaina is



Allison Jones Rushing '07 was confirmed by the U.S. Senate to a seat on the U.S. Court of Appeals for the Fourth Circuit on March 5. Judge Rushing was nominated by President Donald Trump to fill the seat vacated by the assumption of senior status of Judge Allyson K. Duncan '75. She assumed office on March 21.

At the time of her nomination, Judge Rushing was a litigation partner at Williams & Connolly in Washington, D.C. A native of East Flat Rock, N.C., she graduated from Wake Forest University, *summa cum laude*, with a BA in music before attending Duke Law where she served as executive editor of the *Duke Law Journal*.

After earning her JD *magna cum laude*, Judge Rushing clerked for then-Judge Neil Gorsuch of the U.S. Court of Appeals for the 10th Circuit and Judge David B. Sentelle of the U.S. Court of Appeals for the District of Columbia Circuit. She practiced litigation at Williams & Connolly as an associate before clerking for U.S. Supreme Court Associate Justice Clarence Thomas during the 2010-2011 term of the Court. 📖

executive vice president, chief legal and administrative officer, secretary, and member of the executive leadership team of EnLink Midstream.

David Szekeres, senior vice president for business development and general counsel for Heron Therapeutics, Inc., has been appointed to the board of trustees of the Sanford Burnham Prebys Medical Discovery Institute (SBP). The institute, located in San Diego, is a non-profit biomedical research institute dedicated to understanding basic human biology and disease and advancing scientific discoveries to impact human health.

2001

Rodney Bullard, vice president of community affairs for Chick-fil-A and the executive director of the Chick-fil-A Foundation, was recognized by *Atlanta* magazine as one of the city's 500 most influential leaders and profiled in the January 2019 issue. Rodney, who leads his company's corporate community and philanthropy strategy focused on fostering youth and furthering education, also recently received the lifetime honor

of "Outstanding Georgian" from the Georgia Senate and the E. Dale Threadgill Community Service Award from Leadership Georgia.

Timothy Johnson has been named executive vice president and general counsel of Raleigh-based BMC Stock Holdings, Inc., a provider of diversified lumber and building materials. He manages the company's legal matters, including corporate governance, acquisitions, and litigation. Tim joins BMC from Ply Gem, a manufacturer of building products based in Cary, N.C., where he has served as senior vice president and general counsel since 2008.

2002



David Searle has joined Walmart as vice president and international chief ethics & compliance officer. He was previously with the Bristow Group, an industrial aviation services company, where he served as chief compliance officer and associate general counsel.

2003

Matthew Kane has been promoted to general counsel and chief compliance officer at Z Capital Group, where he has also been appointed to the firm's management committee. He joined Z Capital as deputy general counsel in 2014.

Eric Spencer has been elected partner in the Phoenix office of Snell & Wilmer, where he co-chairs the firm's political law group. He previously served as state election director and in-house counsel for the Arizona secretary of state's office.

2004

David Andreassen has joined the board of directors of the Environmental Defense Center, a nonprofit dedicated to protecting the environment of California's south central coast. David specializes in criminal appeals in his private practice in Santa Barbara.

Trey Childress is serving as counselor on international law at the U.S. Department of State while on sabbatical from Pepperdine University School of Law where he is a profes-

sor of law and has served as dean of faculty. Last fall, Trey argued before the International Court of Justice in The Hague.

Cory Kampfer has been appointed chief operating officer and general counsel of On Deck Capital, Inc. He first joined the company in 2011, and is located in Denver.

William Kirby has joined Petrelli Previtera Schimmel's Philadelphia office, where he focuses his practice on family law, including such matters as divorce, separation, child custody, support disputes, and property division. Bill previously practiced at Ansa Assuncao, also in Philadelphia.

Phillip Nelson has joined Holland & Knight as senior counsel in the firm's Chicago office. A bankruptcy attorney, he advises clients in distressed debt, restructuring, and insolvency matters. He previously practiced at Locke Lord.

Kristi Guillory Reid has authored *Harper Counts Her Blessings*, a children's book published by Mama's Boyz, Inc. (2018). The book focuses on learning to be thankful. Kristi is senior associate director, policy development for the Alzheimer's Association in Washington, D.C.

2005

Ron Aizen has joined the New York office of Morrison & Foerster as a partner in the firm's executive compensation + ERISA group. He advises clients involved in mergers and acquisitions, corporate restructurings and bankruptcies, and equity capital markets matters, such as initial public offerings. He previously practiced at Davis Polk.

Gretchen Bellamy joined the University of North Carolina at Chapel Hill's Office for Diversity Inclusion in June 2018 as the senior director – education, operations & initiatives. She previously was senior strategist for Walmart Inc.'s Global Office of Culture, Diversity and Inclusion, and assistant general counsel in its Legal Operations Group.

Elizabeth Noble has been named an assistant district attorney in Maine's Midcoast district. Based in Belfast, she serves Waldo County. She previously practiced with Harmon, Jones & Sanford in Camden.

2006

Amy Kalman has been appointed a commissioner of the Maricopa County (Ariz.) Superior Court. She is assigned to the Probate/Mental Health Division, where she presides over a mixed calendar of civil commitments, guardianships, conservatorships, trusts and estates, and other related cases.

Garrett Levin has joined the Digital Media Association, a trade group, as CEO. He previously was senior vice president/deputy general counsel for intellectual property law and policy at the National Association of Broadcasters.

2007

Christian Dysart's firm, which has offices in Raleigh and Henderson, N.C., has been renamed Dysart Willis Houchin & Hubbard, with the addition of two named partners.

Sylvia Winston Nichols, a member of Jackson Kelly based in Morganton, W. Va., is participating in the Leadership Council on Legal Diversity's Fellows Program designed

to identify, train, and advance the next generation of leaders in the legal profession. Sylvia's practice is focused on civil litigation.

2008

Emilia Beskind welcomed a daughter, Annabella Rose Beskind, on Feb. 28, 2019. Emilia is of counsel at Thomas, Ferguson & Mullins in Durham.

Chris Dodrill has joined the Dallas office of Greenberg Traurig as a litigation attorney. Chris previously practiced at Jones Day, and was a deputy attorney general and division director for the State of West Virginia.



Tadhg Dooley has been promoted to partner in the litigation department of Wiggin and Dana in New Haven,

Conn., where his practice focuses on appeals and complex civil litigation. A member of the firm's appellate practice group, Tadhg co-directs the Appellate Litigation Project at Yale Law School and co-authors his firm's Supreme Court Update.



Jessica Eaglin received a 2019 Indiana University Bloomington Outstanding Junior Faculty

Award. Given to promising tenure-track faculty, the award includes a grant to support future research. An associate professor who joined the Maurer School of Law in 2015, Jessica's scholarship lies at the intersection of technology and its implications for criminal justice and social justice.



Leanne Reagan has joined the employee benefits and compensation practice of Greenberg Traurig as a

shareholder in the Miami office. She previously was a partner at Akerman.

2009

Sharath Chandrasekhar has joined DSK Legal as a partner in the Mumbai, India, office, where he specializes in corporate commercial work. He previously was a partner with HSA Advocates.

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

Let your classmates
know how you've been!

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

Ryan Purcell has been promoted to partner in Gunderson Dettmer's New York office. His practice focuses on the representation of emerging growth companies, as well as venture capital and growth equity funds.

Conrad van Loggerenberg

has been elected partner in the corporate department of Paul Weiss, resident in the firm's New York office. A member of the private funds group, he advises on the formation of private investment funds, as well as investment management M&A transactions and other funds-related matters.

2010

Virginia Fitt has joined Alexion Pharmaceuticals in Boston as senior director, U.S. commercial counsel. She previously was senior counsel with GlaxoSmithKline in Durham.

Waverly Gordon has been promoted to deputy chief counsel of the Committee on Energy and Commerce in the U.S. House of Representatives. She previously served the committee as health counsel.

Peter McCary is serving a two-year detail as a staff attorney to the Assistant Division Counsel for Tax Litigation, Small Business/Self-Employed Division, I.R.S. Office of Chief Counsel in Jacksonville, Fla. In May 2018, Peter married Jennifer Summers in Ponte Vedra, Fla.



Kip Nelson has earned certification as an appellate specialist from the North Carolina State Bar Board of Legal Specialization. Kip is an associate attorney with Fox Rothschild. He joined the firm through its recent merger with Smith Moore Leatherwood.

Adam Zwecker has been promoted to partner in the Miami office of Akerman, where he specializes in real estate leasing, purchase and sale, and finance transactions.

2011

Mong-Hwa Chin (LLM '01, SJD '14) was promoted to associate professor, a tenured position, at National Chiao Tung University School of Law in Taipei, Taiwan, where he is also division director of the Office of International Affairs.

Naokuni Kuwagata has joined Panasonic Corp. as a manager in Tokyo. He previously worked at the Development Bank of Japan.

Ryan Stoa has published *Craft Weed: Family Farming and the Future of the Marijuana Industry* (MIT Press, 2018). The book reflects on the future of post-legalization marijuana farming. Ryan is an associate professor of law at Concordia University School of Law in Boise, Idaho, where his scholarly interests are in the field of environmental and natural resources law. He previously held a joint appointment with the College of Law and the College of Arts and Sciences at Florida International University.

2012

Luca Bertazzo and his wife, Sophie, welcomed a daughter, Daphne Alexandra, on Oct. 23, 2018.

Will Hellmuth has joined Adobe in San Francisco as legal counsel, privacy & security. He previously was an associate at Davis Wright Tremaine in Washington, D.C.

Hiroko Jimbo has been appointed partner at Hishimura & Asahi in Tokyo, where her team won an *International Financial Law Review* Asia-Pacific Award 2019 for M&A and private equity.



Hunter Bruton '16 is clerking for Associate Justice Samuel A. Alito, Jr. of the U.S. Supreme Court for the 2019-2020 term. Bruton began his clerkship in July after serving as a Bristow Fellow in the U.S. Department of Justice. He is the fourth Duke Law graduate to clerk for Justice Alito.

"It's a great honor and it's hard to put into words how much it means to me to have this opportunity," said Bruton, who first met the justice in his third year at Duke Law when he took his seminar, Current Issues in Constitutional Interpretation. "I was very excited when I heard about the opportunity to clerk for Justice Alito."

Prior to beginning his yearlong fellowship in the Office of the Solicitor General, where he focused on government appellate work, Bruton clerked for Judge Ellen Huvelle on the U.S. District Court for the District of Columbia and also spent time in the chambers of her colleague, Judge Thomas Hogan. He earlier clerked for Judge Allyson K. Duncan '75 of the U.S. Court of Appeals for the Fourth Circuit.

"Since graduating from Duke Law, Hunter has garnered a stellar range of experience in litigation and appellate litigation in particular," said Kerry Abrams, the James B. Duke and Benjamin N. Duke Dean of the School of Law. "His career trajectory is a testament to his superior legal intellect, superb research and writing skills, a readiness to absorb feedback, and really hard work. It is gratifying to know that the instruction and support he received at Duke Law School has played a role in helping him achieve his goals."

Bruton said he is grateful to the three judges he clerked for and his DOJ mentors for supporting and encouraging his application to clerk for Justice Alito. He added that he is similarly grateful for the help he has received from faculty and administrators at Duke Law, including David F. Levi, the Levi Family Professor of Law and Judicial Studies and director of the Bolch Judicial Institute, who stepped down as dean in 2018. He called Duncan and Judy Hammerschmidt, who was the Law School's clerkship coordinator during his first and second years, his biggest advocates. "They have stayed on top of me, always helping push me to the next level." ♡

2013



Michele Dunskey Adams has joined the transportation law practice group of Plunkett Cooney's Bloomfield Hills,

Mich., office. She focuses her practice in the areas of first- and third-party motor vehicle liability and no fault law, resolving medical provider and policyholder claims for personal injury protection benefits in automobile lawsuits.

Zach Kleiman has been named executive vice president of basketball operations for the NBA's Memphis Grizzlies. He most recently served the organization as team counsel and assistant general manager.



Tori Simmons has received a 2019 Florida Bar Young Lawyers Division Pro Bono Service Award.

Tori is an associate for the litigation group at Hill Ward Henderson in Tampa, where she focuses on complex commercial business litigation and, since 2015,



Cheri Beasley LLM '18 was appointed chief justice of North Carolina by Gov. Roy Cooper on Feb. 12. A member of the court since 2012, Chief Justice Beasley is the first black woman appointed to the post.

Chief Justice Beasley has been a judge for 20 years; she was a District Court judge in Cumberland County, N.C., from 1999 to 2008 when she was elected to the N.C. Court of Appeals, becoming the first black woman to win a statewide election without first being appointed by a governor. Before becoming a judge she was a public defender in Fayetteville, N.C.

A native of Nashville, Tenn., Chief Justice Beasley received her BA at Rutgers University and her JD at the University of Tennessee, Knoxville. She began her master of judicial studies courses at Duke Law in 2016. ♡

serves as the firm's pro bono coordinator. She consistently donates over 150 pro bono hours each year to individual clients, nonprofit organizations, and children in foster care.

2015

Brittany Raway has moved to Denver, joining Hogan Lovells as an associate. She was previously an associate at Alston & Bird in Atlanta.

Alissa Kelso has joined the Clayton, Mo., office of Spencer Kane as an associate in the litigation practice group. She was previously at Riley Safer in Chicago.

2016

Matthew Sloan has joined Seyfarth Shaw's Chicago office, where he is an associate in the labor & employment department and the workplace safety and health (OSHA/MSHA) practice group. He previously was an associate at Quarles and Brady.

2017

Laura Lozano Bustos serves on the legal team for EMEA and Latin America at software development company Bentley Systems. She is based in Dublin, Ireland.

Andrew Lowdon has joined the Washington, D.C. office of Boies Schiller Flexner where his practice focuses on high-stakes complex litigation.

2018

Andres Ortiz has joined Bank of America as a compliance specialist, located in Charlotte.

Mark Davis LLM '18 was appointed by N.C. Gov. Roy Cooper as an associate justice of the N.C. Supreme Court on March 11. He assumed office on April 18, taking the seat opened when his master of judicial studies classmate, Cheri Beasley, became N.C. chief justice. He became the state's first Jewish justice on the court.

Justice Davis had served, since January 2013, as a judge on the N.C. Court of Appeals. From 2006 until 2011 he was a special deputy attorney general in the N.C. Department of Justice and served as general counsel for Gov. Beverly Perdue during her last two years in office. He was earlier in private practice.

A graduate of the University of North Carolina — Chapel Hill and the University of North Carolina School of Law, Justice Davis clerked for U.S. District Judge Franklin Dupree of the U.S. District Court for the Eastern District of North Carolina.

Justice Davis is the author of *A Warren Court of Our Own: The Exum Court and the Expansion of Individual Rights in North Carolina* (Carolina Academic Press, 2019), a book about developments on the court under Chief Justice Jim Exum, who assumed that post in 1986. The book arose out of Justice Davis's thesis for the Duke master of judicial studies program. ♡



In Memoriam

Received between March 9, 2019 and October 28, 2019)

Class of '41

Benjamin S. Horack, Sr.

May 3, 2019

Class of '48

John A. Simpson

March 15, 2019

Class of '49

John Thomas Page, Jr.

October 10, 2019

Class of '51

Vasil Fisanick

June 18, 2019

Class of '56

James Harrison Atkins

May 26, 2019

John S. Neely, Jr.

May 22, 2019

Richard T. Shankweiler

October 9, 2019

Class of '59

Robert B. Berger

September 25, 2019

Class of '62

Allen G. Burgoyne

March 31, 2019

James E. Elliott, Jr.

April 13, 2018

Class of '63

Harry L. (Buck) Griffin, Jr.

July 9, 2019

Richard Rockwell Swann

August 21, 2019

Class of '67

Thomas H. Melton

September 3, 2019

Class of '70

Paul Mitchell (Bill) Glenn

July 7, 2019

Class of '71

Alan G. Keith

October 4, 2019

Class of '75

Laurence D. Colbert

October 12, 2019

Class of '76

Bruce Sheridan Scolton

April 24, 2019

Class of '80

Maria C. Iacovazzi

September 4, 2019

Class of '81

Cynthia Leigh Wittmer

July 20, 2019

Class of '82

Richard Ryan (Rick) Hofstetter

October 1, 2019

Class of '86

Jonathan Robert Spencer

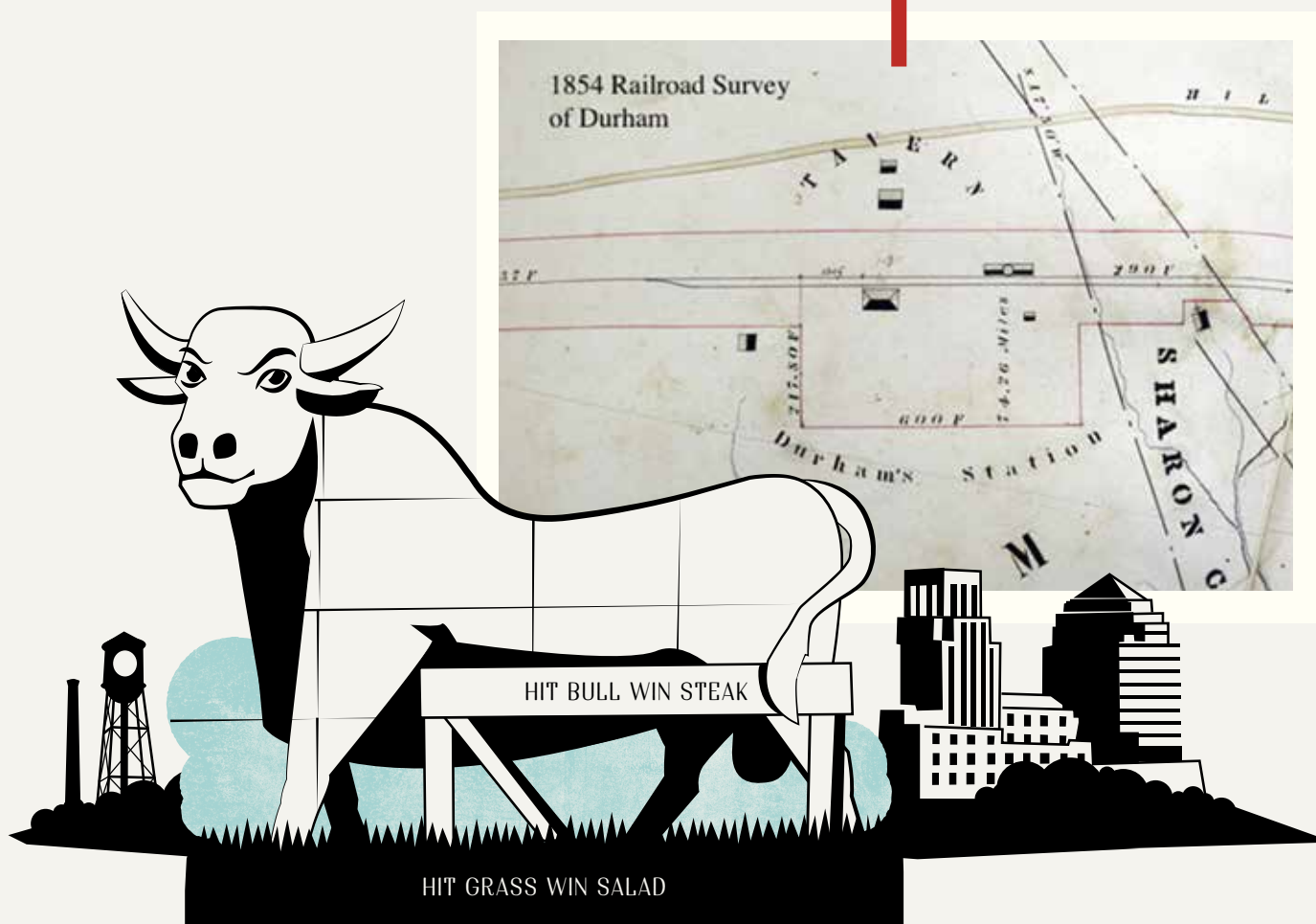
May 13, 2019

Class of '14

David S. Francazio

September 5, 2019

Sua Sponte



Using law to understand place, and vice versa

by Joseph Blocher



Lanty L. Smith '67 Professor of Law Joseph Blocher, the only Durham native on the Duke Law faculty, makes the legal issues relating to the city's political, social, and economic development the focus of his Urban Legal History research seminar. Blocher is serving as co-chair of the Durham Sesquicentennial Honors Commission.



TEACHING AND LECTURING ON LAW AND DURHAM is really a way to explore both concepts: to use law to understand place, and use place to understand the law.

Obviously one goal is to explore Durham's identity and development as a matter of law. Over the past 150 years, this town — my hometown — has been the site of, and a participant in, some truly extraordinary history — the end of the Civil War, the rise and fall of the tobacco industry, the remarkable success of the Duke family and Black Wall Street — and the scene for remarkable moments in civil rights, arts, education, sports, and other areas.

But the more subtle goal is to use place to understand law. Partly because of the way the case method and the standard legal curriculum have evolved, it can be easy to get caught up in conceptual labels — like asking whether a case is about “torts” or “property” — and lose sight of the ways in which law both shapes and is shaped by the real world. It's really important to know the map, but there's no substitute for knowing the territory itself.

So the point is not only to explain how Durham got its borders and what has happened within them, but also to make the law visible. In keeping with that theme, it is probably better to show what I mean than to say it. Here are a few examples.

Illustration: Marc Harkness

DURHAM HAS ITS NAME because Dr. Bartlett Durham sold a small parcel of land to the N.C. Railroad, which built a station here and named it in his honor. Just a few years earlier, William Pratt had been approached with a similar proposal, but set his price too high, supposedly because he was worried that the noise of the trains would scare his customers' horses. If he had been less concerned about the quiet enjoyment of land (a fundamental concept in **nuisance law**, of course), Duke University might be in Prattsburg instead of Durham.



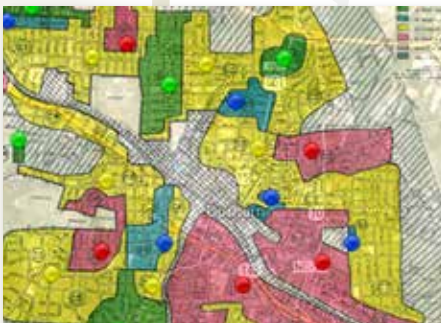
Just north of town, the **STAGVILLE PLANTATION** was a vast plantation complex that included nearly 30,000 acres and 900 enslaved people. It is important to remember the ways in which law, lawyers, and judges were a part of the system of **slavery**. In 1834, the N.C. Supreme Court decided *State v. Mann*, one of the most notorious slave cases, in which it held, "The power of the master must be absolute in order to render the submission of the slave perfect."



Some of the most intense legal battles in Durham's early years were about **intellectual property** — and, in particular, the right to control the Durham brand and the image of the bull. Many of these cases (including those between the Wright mark and the Blackwell mark, pictured) were litigated right around the time that the first federal trademark law was passed in 1870.



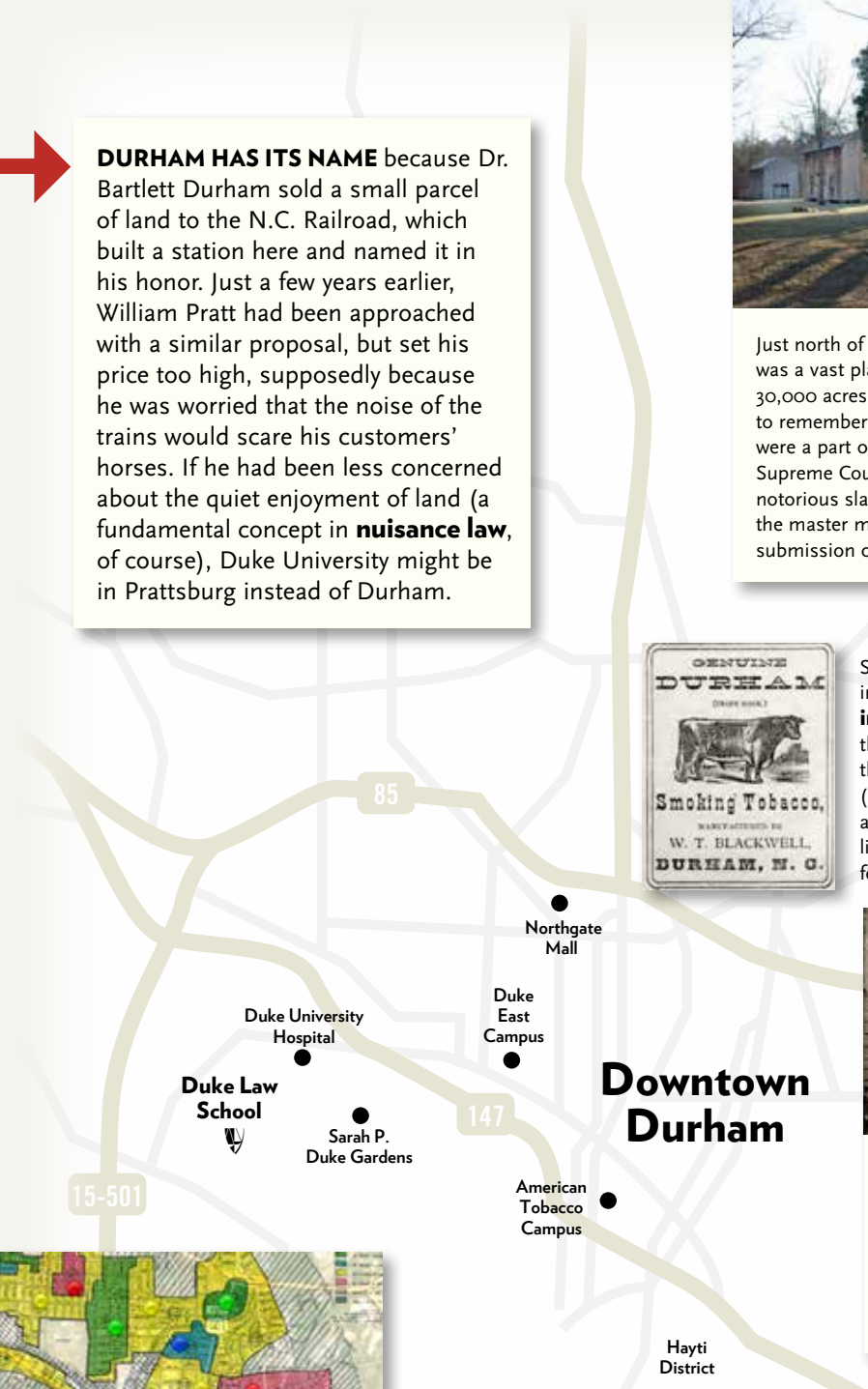
The Duke family's success is well known, but in some respects the most remarkable story of business success in Durham is that of **BLACK WALL STREET** and the companies — N.C. Mutual, Mechanics and Farmers, and others — that made it possible.



The contemporary debate about gentrification in Durham has roots that go back at least to the 1930s and to the implementation of federal policy. The "**redlining**" maps from that era are still a relatively accurate guide to the areas where that debate is alive today.



Like many places, Durham embraced — and still feels the effects of — "urban renewal" and highway construction, both of which were constructed through the power of **eminent domain**. As a result, neighborhoods like this one (Brookstown, which is currently underneath N.C. 147) have disappeared. Whether or not that kind of change is justified is a hard question, but it is undoubtedly a testament to understanding the importance of the relationship between law and place.



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Dontae Sharpe's long road

The anatomy and aftermath of a
Wrongful Convictions Clinic exoneration page 42

