

# DUKE LAW MAGAZINE

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RESERVE NOTE

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## THE CREDIT MELTDOWN

A TALE of CONFLICTS and CUPIDITY

*How THE SUBPRIME MORTGAGE CRISIS  
BECAME A CREDIT CRISIS AND THREATENED  
THE U.S. FINANCIAL SYSTEM*



DEAN DAVID F. LEVI

### Dear Alumni and Friends,

When the Law School underwent its routine re-accreditation process this year, the American Bar Association's site evaluation committee filed a report praising Duke as one of the strongest schools in the country, "especially in the areas of professional culture, student and faculty quality, research centers and programs, facilities, clinical programs, and interdisciplinary programs."

The committee chair called our student culture the strongest of any law school he had ever seen. The ABA report credited our Blueprint ideals — engage intellectually, embody integrity, lead effectively, build relationships, serve the community, practice professionalism, and live with purpose — as having created a culture that emphasizes service, collegiality, and excellence.

During my first year as dean, I have come to call it "The Duke Way": a unique combination of intellectual engagement at the highest level, a commitment to serving the common good, and extraordinary collaboration and collegiality that sets us apart from other law schools.

For our faculty, "The Duke Way" is a culture that values knowledge in the service of society. Our professors routinely tackle complex, real-world problems in their research and teaching. You will read about some of their initiatives in this issue of *Duke Law Magazine*: Professor Steven Schwarcz's proposal for the estab-

lishment of a "liquidity provider of last resort" to protect the financial markets from systemic collapse ("The Credit Meltdown," Page 16); Professor James Cox's series of empirical studies of securities litigation settlements (Page 40); Professor Neil Vidmar's examination and evaluation of the American jury system (Page 32); and Professor James Boyle's commitment to the public dissemination of knowledge (Page 39). On Pages 27–31, faculty offer advice to the next U.S. president's administration on such key issues as global climate policy, democratization, and military preparedness.

For our students, "The Duke Way" is a commitment to leadership in and out of the classroom. Matt Wolfe '08, for example, completed an externship in the North Carolina Office of Administrative Hearings as he pursued a joint JD and master's degree in public policy; after his externship, he conceived and crafted a proposal to establish a State Administrative Law Clinic, through which our students would represent individuals and community groups in administrative procedures and hearings — petitioners that would otherwise appear pro se. Two other 2008 graduates, Jade Totman and Chris Dodrill, both military veterans, established a project through our Office of Public Interest and Pro Bono to help injured veterans complete their initial disability applications. (See story on Page 5.) A team of students from our Appellate Litigation Clinic briefed, argued, and won a case in the United States Court of Appeals for the Fourth Circuit that represents a significant victory for disabled prisoners; the ruling held that disabled inmates have the right to sue states under the Rehabilitation Act regarding prison accessibility issues.

For our alumni, "The Duke Way" is about risk-taking, innovation, and using their education and experience to make the world a better place. Several alumni who exemplify these ideals are profiled in this magazine (Pages 42–47), including Kendra Montgomery-Blinn '03, a former prosecutor who now heads up the nation's first state agency devoted to the cause of innocence, and Alan Bender '79, who had the vision and determination to take a risk on cell-phone technology when most people thought it would not last.

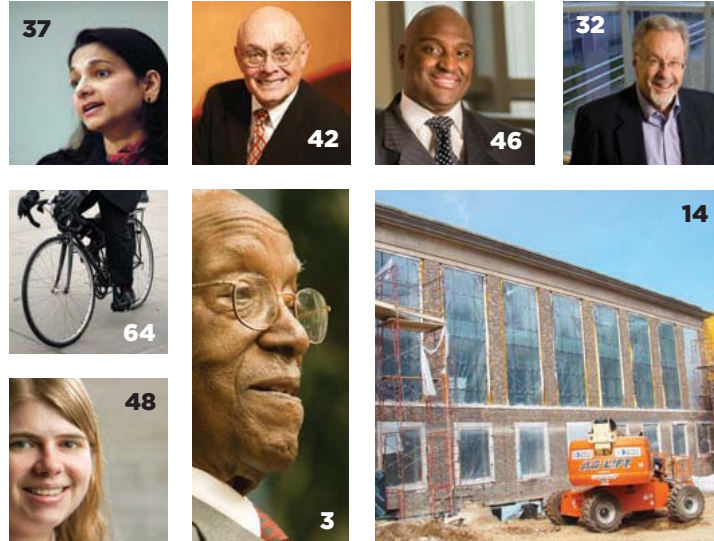
Of course, I could tell many more stories of the people in our community who exemplify "The Duke Way." Lanty Smith '67, who has served as adviser, mentor, and benefactor to this Law School and to many of our students and graduates over the years, was recently appointed chairman and interim CEO of Wachovia Corp., the country's fourth-largest bank. Gao Xiqing '86, an architect of China's securities markets who regularly returns to lecture at the Law School, now oversees the investment of China's \$200 billion sovereign wealth fund. Harrison Dillon '03 is president and chief technology officer of Solazyme, a synthetic biology company that uses marine organisms to create clean and renewable energy and industrial chemicals.

In every respect, the Duke Law community values curiosity, the common good, and the greatest tradition of the legal profession: leadership. I am privileged to be a part of this extended, international community.

Before I close, I extend a warm welcome to the newest member of the Law School's leadership team, Jeff Coates, associate dean for alumni and development. He comes to Duke after serving as assistant dean for development and alumni relations at the University of Illinois College of Law, where his record was outstanding. Jeff has a passion for legal education and ambitious ideas for enlisting you and the broader community in making Duke an even better place. I'm sure you'll hear more from him soon.

Best wishes,

David F. Levi



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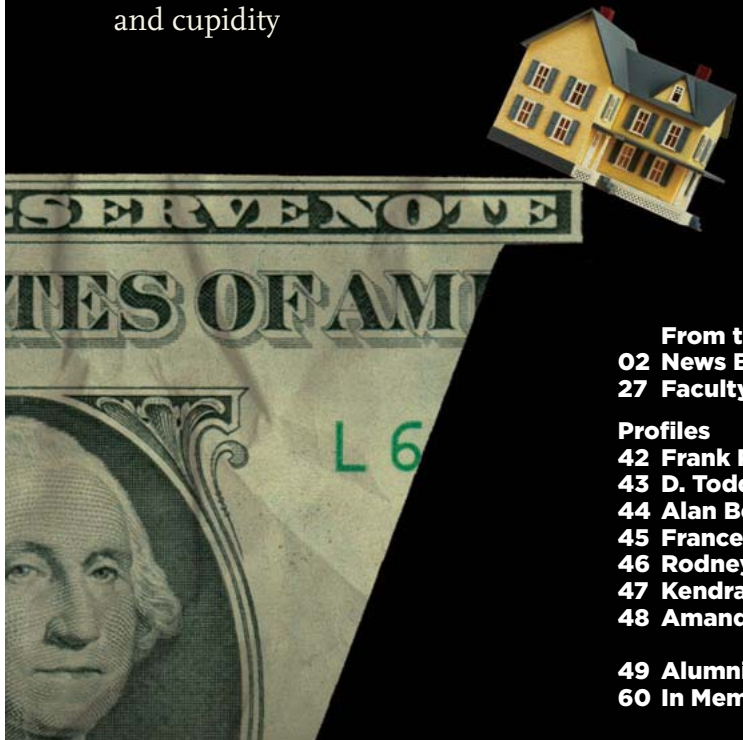
  
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# News Briefs

## Justice Alito praises Dean's Cup advocates

**B**RIAN EYINK '09 and Eugenie Montague '09 argued to a tie in the Feb. 7 final of the Dean's Cup Moot Court Competition. The event's judges — Justice Samuel Alito of the U.S. Supreme Court, Judge Jose Cabranes of the Second U.S. Circuit Court of Appeals, and Judge William Pauley '77 of the U.S. District Court for the Southern District of New York — said both students' arguments and presentations were superbly prepared and of equal, excellent quality. The judges also praised the students' mastery of the case.

"I only wish all of the cases I have heard throughout my career by real lawyers in court were as well-argued as this competition," said Alito. "Most of the time, the members of the panel have lots of questions, like we did today. The most important thing for an advocate to do is to answer those questions in a way that will satisfy judges who may be on the fence ... judges who come to the argument looking for help with real questions."

Eyink and Montague argued a case based on *United States v. Jenkins*, a Ninth U.S. Circuit Court of Appeals case in which a woman prosecuted for smuggling drugs across the U.S.-Mexico border testified that she believed she was smuggling illegal immigrants, not drugs. She had, in fact, been apprehended, but not prosecuted, twice before in the act of smuggling illegal immigrants; on the first occasion it was not clear her Miranda rights had been read, and, on the second, she claimed she did not know there were immigrants in her car. Several hours after the woman testified in the drug-smuggling case, however, the United States filed a new complaint, charging her with two counts of alien-smuggling.

Central to the arguments of both sides was the issue of vindictive prosecution, the grounds on which the trial court judge had dismissed the alien-smuggling indictments. On appeal, the government argued that



L-R: JUSTICE SAMUEL ALITO, BRIAN EYINK '09, JUDGE JOSE CABRANES, EUGENIE MONTAGUE '09, JUDGE WILLIAM PAULEY '77

Jenkins' testimony cured previous evidence deficiency in the alien-smuggling case and that this was not vindictive prosecution. (Alito emphasized that since the case is a real case, nothing the judges said during the competition should be construed as the opinion on the actual case.)

Like Alito, Cabranes and Pauley commended Eyink and Montague on their handling of the panel's questions and hypotheticals, praising the students' responsiveness and their in-depth knowledge of the case. "That is exactly what enables you to answer a quixotic or bizarre question," said Cabranes.

In addition to judging the Dean's Cup, the judges answered questions from the audience, participated in classes, and met privately with Moot Court board members. During the question and answer session, Alito discussed what he felt were the most valuable skills to develop while in law school.

"The skills that were exhibited in a competition like [moot court] are real skills that are very valuable to lawyers in many differ-

ent areas of practice," he said. "The ability to analyze difficult questions thoroughly, the ability to write well and persuasively, the ability to stand up and make an argument — those have application in any area. If you come out of law school having developed those skills, you've had a successful legal education."

Pauley counseled students to always address their adversaries with respect, while Cabranes stressed the importance of always answering the judges' questions, even if they take an attorney "off track." "If a panel takes one in a different direction ... go with it," he said.

Asked to address potential conflicts between facts and law at the appellate level, Alito noted that the Supreme Court takes cases to clarify important rules of law, not in an attempt to reach a "right result" based on the facts. The law, he said, should be informed by the facts of the particular case in question, but the justices will "test" a potential outcome being put forward by

posing hypothetical situations to the advocates during oral argument.

During an informal session with Moot Court board members, all three enthusiastically supported continuing life tenure for federal judges. "Life tenure is great!" Alito said to laughter. On a more serious note, both Pauley and Cabranes observed that it insulates judges from political intimidation or influence from "constituents" interested in the outcome of any given case. "As a judge, you make scores of decisions every day about which people are not happy," said Cabranes. Thanks to life tenure, he said, "you never have to look over your shoulder." ♣



MONIQUE MCNELLIE '09, PROFESSOR JACK GREENBERG, PROFESSOR JOHN HOPE FRANKLIN, JUDGE LEWIS POLLAK, MELVIN HINES '09

## 2007-08 MOOT COURT HIGHLIGHTS

### Hardt Cup Intramural Competition

Champion: Timothy Grinsell '10  
Finalist: Brendan Groves '10

### ELSA World Trade Organization Moot Court Competition; North American regional round, March 6, Washington, D.C.

First place: Destiny Duron Deas '08, Ryan Melliske '09, Amber Jordan '10 and David Chiang '10  
Best orator, elimination round: Destiny Duron Deas  
Coach: Jason Cross '08

### George Washington University Religious Freedom Moot Court Tournament, Feb. 22, Washington, D.C.

First place: Jessica Brumley '09 and Erin Blondel '09  
Best oral advocate: Erin Blondel  
Coach: Amanda Neely '08

### Saul Lefkowitz Competition

#### Southern Regional Round, Feb. 10, Atlanta

First place, best oral argument, best overall team: Chad Jira '09 and Jonathan Williams '09  
Coach: Kyle Pousson '08

### National Moot Court Competition

#### January 2008, New York

Semi-finalists: Natalie Hirt '08, Mike Rosenberg '08, and Tadhg Dooley '08  
Coach: James Maxwell '66  
2007-08 Moot Court Board co-chairs: Katherine Crawford '08 and Jade Totman '08

## Civil rights luminaries reflect on *Brown v. Board of Education*

On March 27, a capacity Duke Law audience heard how three key participants in *Brown v. Board of Education* viewed their roles and goals in the landmark litigation and their reactions to its contemporary interpretation by the Supreme Court in decisions striking down race-based school assignment plans.

Professor Jack Greenberg of Columbia Law School, long-time director-counsel of the NAACP Legal Defense and Educational Fund (LDF), served as co-counsel with Thurgood Marshall in *Brown*. U.S. District Court Judge Lewis Pollak was another key member of the LDF team in crafting legal strategy for the cases combined under the *Brown* umbrella. Renowned historian John Hope Franklin, James B. Duke Professor Emeritus at Duke University, helped write the plaintiffs' briefs and prepare the advocates for their Supreme Court arguments, transforming them into "experts in constitutional history," he said.

Professor Guy-Uriel Charles of the University of Minnesota School of Law opened the discussion by noting how schol-

ars variously interpret *Brown's* meaning.

While many constitutional law scholars view *Brown* as being primarily concerned with ending state-sponsored formal inequality, he said, others see it as being about equal citizenship and racial outcomes. Charles asked whether the "inequality of outcome" demonstrated by the higher infant mortality rates, fewer educational opportunities, more divorces, and shorter life spans of African Americans as compared with those of white Americans are "consistent with the meaning of *Brown* that has presaged and helped us to understand full citizenship as it should be under the Constitution."

In response, Franklin expressed disappointment at social progress subsequent to *Brown*, saying it got off to "a terrible start" with its denunciation by a large number of lawmakers from which it never recovered. "There was never a time when I thought the country was really interested in doing something significant [about segregation] in the schools or anywhere else," he said. "The Court did its job in *Brown*, but nobody else did the job that needed to be done in



**“The Court did its job in *Brown*, but nobody else did the job that needed to be done in order to move significantly toward a society of equals.”**

— John Hope Franklin

according differential treatment to American children on the basis of their color or race.” He then found that the racial classifications at issue in Seattle and Louisville also improperly told schoolchildren where they could and could not go to school based on the color of their skin.

“There are five surviving lawyers who participated in this case — and if we include John Hope Franklin there are six,” said Greenberg. “All of us have unanimously said that Chief Justice Roberts was wrong in his characterization of [our intent] in the briefs.” He pointed out that in two Supreme Court arguments and in the cases consolidated in the Supreme Court as *Brown*, the plaintiffs’ attorneys variously argued the non-discrimination, non-classification principle as well as the non-subjugation principle. “They were trying to make arguments that were persuasive to the Court — that’s what advocates do. To take one or two sentences out of the briefs [is] non-sensical,” he said.

The parties to the Louisville and Seattle cases should not have been held responsible for what the *Brown* plaintiffs may have

written, said Pollak, stating that Roberts took the language of the brief out of its historical context. “*Brown* was about the use of governmental authority to segregate people by race for the purpose of subordinating minority interests,” he said, characterizing the Seattle and Louisville plans as using race to undo forms of disadvantage that may flow from decades of disparaged treatment of blacks.

“The question of what *Brown* meant was put in focus by Professor Charles’ initial remarks when he set up two possible ways of looking at *Brown*,” said Pollak, noting that it should stand as both a declaration of commitment to formal equality and as affirmation of the plaintiff’s intent to gain, for all citizens, “full participation in the American community. That is what we hoped to achieve ... And to take the decision in a case which resolved systematic disparagement and transfer it to what contemporary communities are trying to do for all its citizens in [this context] was, in my view, highly inappropriate and demeaning of what *Brown* [sought to do].”

The extraordinary discussion of *Brown* represented the launch of the *Duke Forum on Law and Social Change (DFLSC)*, the Law School’s ninth student-run scholarly journal, and was co-sponsored by the Office of the Dean. *DFLSC* has the goal of effecting change through discussion of key social issues that affect the everyday lives of Americans and will devote its first year to a consideration of education, said Melvin Hines ’09, one of its founders. ♡

order to move significantly toward a society of equals.”

Greenberg and Pollak were blunt in stating that the Supreme Court’s 2007 plurality decision striking down race-based school assignment plans in Seattle, Wash., and Louisville, Ky., ran contrary to the intent of *Brown*, strongly disagreeing with Chief Justice John Roberts’ use of the *Brown* plaintiffs’ briefs in his opinion in *Parents Involved v. Seattle School District No. 1*. Writing for himself and Justices Scalia, Thomas, and Alito in an opinion joined by Justice Kennedy, Roberts stated that in their brief, the *Brown* plaintiffs argued that the Equal Protection Clause “prevents states from



A sampling of what guest lecturers are saying

### The road ahead for *Roe v. Wade*

“THE REAL, LOGICAL EXTENSION of the partial birth [abortion] case is not a challenge on *Roe v. Wade*. It is what you are seeing now in South Carolina, Florida, [and] Utah ... and that is a regulatory scheme put in place that is more giving of information, but compelled information.

“...I don’t see the *Roe* challenge in the next two to four [years]. But it will happen in the next 10. And then it will be question of what does the Court look like, and what does the statute that prohibits the procedure look like? And that is reading a crystal ball that I can’t read. ... It will depend largely on the next election and how the Court ends up looking.”

— **Jay Sekulow**, chief counsel for the American Center for Law and Justice, addressing the state of abortion law and speaking about Supreme Court advocacy on Oct. 2. Sekulow filed an amicus brief and helped prepare the solicitor general’s representative for oral argument in *Gonzales v. Carhart*, the 2007 decision that upheld a federal ban on a late-term abortion procedure.



# Law students help veterans with disability claims

**N**ORTH CAROLINA VETERANS seeking disability benefits can now get help, free of charge, from law students. Duke and University of North Carolina law student volunteers held a clinic at Duke Law School on April 4 to review veterans' military and medical documents and assist them in completing their initial disability applications.

Jade Totman and Chris Dodrill, both military veterans and members of the Class of 2008, worked for two years to establish the Veteran's Assistance Project at Duke. They were assisted by a \$10,000 gift from a fellow veteran, alumnus Wayne Rich '67, and training from attorneys Murray C. "Tripp" Greason III and Tim McClain of Womble Carlyle Sandridge & Rice, as well as Duke Law supervisors Anne Sherman and Carol Spruill.

Totman, a graduate of the U.S. Military Academy and former Army captain who was deployed to Iraq during five years of active service, said he and Dodrill hoped to develop a program that would give something back to veterans and share some of their knowledge and experience.

"We hope to assist vets in receiving, earlier, the benefits they're entitled to," he said. "A significant population of disadvantaged veterans exists, and it's fantastic that students have expressed an interest in assisting them."

Disability claims that have not been processed or have been processed incorrectly are common, said Totman. "Some just require amendments to their military records — it may be as simple as updating records [to reflect] the awards that veterans received, or the dates that they served," he said. "If the military has inaccurately reported [this informa-

tion], it may not process you with groups of those who are entitled to certain benefits. Even a simple clerical error may have extreme consequences."

Veterans often need help pulling together "massive amounts of documentation," to support their claims, said Dodrill, a graduate of the U.S. Naval Academy who served as a lieutenant in the Navy. "This can be especially tough for people who served in Vietnam and Korea, whose records are now sitting in a warehouse somewhere."

"Our hope is that this project will take root with some first- and second-year law students who are interested in carrying these efforts forward, making it an ongoing pro bono program at Duke," he said. Indeed, Marine Lt. Jacob Warren '09 will take over leadership of the program in the next academic year.

Greason, pro bono director for Womble Carlyle in Winston-Salem, welcomes student efforts, noting there is "a huge, acute need" for the service."

"The population of veterans in our country is now more than 25 million," he said. "Men and women in the VA and veterans service organizations, such as the American Legion, the Veterans of Foreign Wars and the Disabled Vets of America, are great and good and competent to help our vets, but there are just not enough of them to go around." Few veterans can hire a lawyer to help them, he added, due to a Reconstruction-era statute that limits attorney compensation to \$10 at the application stage.

"All evidence shows that when people in the legal community do pro bono work to assist veterans at the start, it improves their chances of a favorable decision," said McClain, a former member of the Navy Judge Advocate Corps and Vietnam veteran,



CHRIS DODRILL '08 AND JADE TOTMAN '08

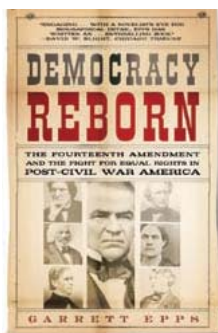
now based in Washington, D.C. He likened the filing process to that involved with Workers' Compensation claims, citing an average processing time of 125 days in North Carolina.

Veterans McClain, Dodrill, and Totman are pleased to see students from non-military backgrounds are participating in the project. "This is important to all of us because we're assisting service people whose illnesses, injuries, or disabilities were received during active duty service to our country," McClain said. "Especially for the many homeless vets, it can be life changing."

"We ask our military to sacrifice their lives, bodies and health, and then when they're done, it seems the system makes it hard for them to get compensated for it. It's an unfair paradox," Dodrill added.

Duke's April 4 clinic to assist veterans was scheduled to coincide with a statewide legal service day sponsored by the North Carolina Bar Association. The initiative of Bar Association president Janet Ward Black '85, the "4All" service day aimed to expand legal services to underserved communities. ♡

— *Debbie Selinsky*



VISITING VOICES

## A new Constitution

**“**WITHIN THE SPHERE that it operated, the 14th Amendment was really designed to change everything. It was designed to empower the federal government [and] to empower the Congress to intervene deeply in the political and social systems of the states. It was designed to ensure that American society would be run by republican rule and to ensure birth-right citizenship for every person. It was designed to protect all people in the South

and to ensure that an open political system evolved in the former dictatorships of the South, and, finally, to protect immigrants and aliens against what John Bingham called “the terrible enormity of distinguishing here in the laws between the citizen and the stranger within our gates.”

— **Garrett Epps '91**, *the Orlando John and Marian H. Hollis Professor at the University of Oregon School of Law, and author of Democracy Reborn: The Fourteenth Amendment and the Fight for Equal Rights in Post-Civil War America (St. Martin's Press). Speaking at Duke Law on Feb. 14, Epps argued that the 14th Amendment is not only the most important amendment to the United States Constitution, but it also effectively sets out all of the constitutional principles we live under today.*

PROFESSORS ANNE KLINEFELTER AND FRANCESCA BIGNAMI



**“Respect for fundamental rights is a precondition for the fight against crime — only [then] will you be sure that the criminal justice system works.”**

— Thomas Zerkick



## Conference explores transatlantic approaches to data privacy and protection

**A**mong the member states of the European Union, protection of an individual's personal data is a fundamental right. American law and policy, by contrast, focuses on data privacy, regulated on a sector-by-sector basis.

The contrasts between these approaches and attempts at harmonization in a high-tech world of transnational commerce, crime, and terrorism were examined during “Data Privacy in Transatlantic Perspective: Conflict or Cooperation?” on Jan. 28. The conference brought together American and European policymakers, business leaders, and scholars to discuss such challenges as designing comprehensive privacy laws and policies, meeting multiple — often conflicting — data privacy standards, and coping with international terrorism. Duke's Center for International and Comparative Law and Center for European Studies co-sponsored the conference, which was chaired by Professor Francesca Bignami.

### The U.S. approach: notice and consent

U.S. law and policy directed at consumer privacy is based on a system of notice and consent, explained Howard Beales, a professor of law at George Washington University. The practice of giving consumers notice of an organization's privacy policies and the choice to accept or reject them is central to the Federal Trade Commission's (FTC) oversight of unfair and deceptive commercial practices. The FTC can take action against companies that fail to comply with their own privacy policies or misuse personal information, said Beales, a former director of the FTC Bureau of Consumer Protection.

The effectiveness of that approach was questioned by a number of panelists, however. Consumer comprehension of privacy notices is extremely low and the notices rarely give consumers the information they seek, said Annie Anton, a pro-

### VISITING VOICES

#### Behind the “torture memo”

**“IT HAS A NATURAL IMPACT ON LAWYERS ...** operating in the gray areas of the law, when principles aren't crystal clear, when on the other side of the balance sheet there is a small chance a lot of people will be killed. So you combine fear with the fear of not having good information or the tools to stop it and the responsibility that the executive naturally feels for national security, and it created a panicked or paranoid atmosphere inside the government that led them to push as aggressively as they could along every dimension.

... I worried that these super broad opinions would be relied on to justify all sorts of acts other than the ones that [were] approved.”

— Former Office of Legal Counsel (OLC) chief **Jack Goldsmith**, Henry L. Shattuck Professor of Law at Harvard Law School and author of *The Terror Presidency: Law and Judgment Inside the Bush Administration*, explained how the fear of another terrorist attack, supported by threat reports delivered daily in White House briefings, may have affected decision-making within the OLC. Finding his predecessor's memorandum on acceptable interrogation techniques — the so-called “torture memo” — “deeply, deeply flawed” and overly broad, Goldsmith withdrew it in July 2004 and promptly resigned his executive branch position.



fessor of software engineering at North Carolina State University who studies the effectiveness of cybersecurity policies. Consumers, she said, want to receive information regarding transfer, notice, and storage of data, as opposed to the policies on data integrity and security, data collection, and user choice and consent that are typically emphasized.

### The European view: data protection as fundamental right

Article 8 of the Charter of Fundamental Rights of the European Union establishes an individual's rights regarding the collection, transmission, retention, and deletion of his or her personal data. It includes the right of an individual to have that data "rectified," with data protection overseen by an independent authority, and applies to public and private sectors alike. A key EU directive on data protection bars transfers of personal data to non-EU countries unless they provide "adequate" privacy protections.

Harmonization between the U.S. and European approaches has proven particularly challenging in the national security context since the Sept. 11 terrorist attacks, a situation well-illustrated by the five-year-long negotiations to reach an agreement on passenger name records, said Bignami. Faced with U.S. demands for airlines to give the Department of Homeland Security access to such information as passenger passport and credit card numbers, the European Commission protested, arguing the demands violated its data protection requirements. A compromise agreement deemed "adequate" by European standards was reached in July 2007, though the issue is likely to arise again, said Bignami.

The European panelists were unanimous in arguing the high level of protection serves the interests of justice and national security as much as it does consumers. "Public security can only be provided in the name of the law and [by] upholding the rule of law," said Thomas Zerkick, administrator of the European Commission's Directorate-General for Justice, Liberties and Security. "Respect for fundamental

rights is a precondition for the fight against crime — only [then] will you be sure that the criminal justice system works. You'll be sure that you can use evidence in court. . . . And ultimately, only if you respect those guarantees will your partners in the global fight trust you and be willing to cooperate with you."

### The search for harmonization

In the commercial context, the United States and the European Union have developed the "Safe Harbor" privacy framework in order to facilitate compliance with the European Union's requirement of "adequate" privacy protections for the transatlantic transfer of personal data. Adherence to the Safe Harbor principles is entirely voluntary, but once a company signs on to the program, the FTC gains enforcement authority, including the right to investigate complaints. Companies are joining the accord as they engage in e-discovery and as their customers demand compliance in order to complete global transactions, said Damon Greer, who directs the Safe Harbor program for the U.S. Department of Commerce. Sectors exempt from Safe Harbor include financial services, telecommunications, common carriers, insurance companies, or nonprofit institutions.

Even with Safe Harbor and other international accords, however, global data flows pose a challenge for transnational commerce, as companies operating internationally have to negotiate multiple, occasionally conflicting, and often changing data privacy standards.

"We have to figure out ways to design processes, so that when we identify personal data, we know how to handle it appropriately," said David Hoffman '93, group counsel and director of Privacy and Security Policy for Intel. "[Internet service providers] could design their systems to make their Internet protocol addresses more dynamic. People who are collecting the data can choose not to relate [it] for other purposes. It's understanding what the uses of the technology or the services are and trying to design [systems] with a maximum of privacy protection up front." ♫

## VISITING VOICES

### On terrorists and torture

**“ I DIDN'T SET OUT TO BE A POSTER-CHILD FOR HUMAN RIGHTS. . . .** I was just starting to look at the case as a trial lawyer. I wanted to know the context of those interrogations. . . . I wanted to know what was going on.

"... [Slahi] was subject to long interrogations. He was subject to isolation. Ultimately they spun a ruse with him that his mother and brother had been taken into custody. . . . I finally said that's it. What's going on here, in my view, was a violation of the U.N. Convention against Torture. I felt like he was enduring mental suffering . . . at the hands of the United States government. . . . [Slahi] could be the most despicable person on the planet, but he's got inherent human dignity. . . . to the point that we shouldn't abuse him."

— Lt. Col. **Stuart Couch**, former Marine Corps prosecutor, explaining why he refused to prosecute Mohamedou Ould Slahi, alleged organizer of the "Hamburg Cell" of terrorists, which included a hijacker of United Airlines Flight 175, the second plane to hit the World Trade Center on Sept. 11, 2001. Now a judge on the Navy-Marine Court of Criminal Appeals, Couch, a 1987 graduate of Duke University, spoke at Duke Law on Oct. 23, 2007. His visit was sponsored by the International Human Rights Law Society, the Office of Career Services, and the Duke Bar Association.

### Prosecuting Padilla

**“ WE GOT THE BINDER ADMITTED** into evidence and then had the witness walk it down to show it to the jury. The jurors were clearly fascinated by what was in this binder — it helped make what we were talking about 'real' for them. But the jurors' reaction never made it into a news story. Those kinds of things don't translate well to coverage or media reports about a case."

— **John Shipley '95**, an assistant U.S. attorney in the Southern District of Florida, who successfully prosecuted Jose Padilla on terrorism-related charges in 2007. Speaking to Duke Law students on Feb. 4, Shipley discussed the effect of one piece of evidence, a binder discovered in an Al Qaeda training camp in Kandahar, Afghanistan. It included Padilla's highly detailed application for admission to the training camp, said Shipley, one that did not use his real name, but outlined his unique characteristics, his American citizenship and Spanish fluency among them.

# Combating Terrorism

## Conference charts course for a new administration

**A**N INTERDISCIPLINARY conference April 10-11 explored strategies the new presidential administration can employ to effectively confront terrorism.

Top experts from a variety of disciplines addressed topics such as the role of the international community in fighting terrorism; the prosecution of alleged terrorists in federal courts; the “extraordinary rendition” of alleged terrorists; domestic spying; the accountability of private military contractors; and the role of lawyers in these issues. Three keynote events provided further insight into the future of U.S. foreign policy in the war on terrorism, the state of homeland security, and the state of political development in Iraq.

### Iraqi ambassador lists errors, lauds surge

Samir Sumaida'ie, Iraqi ambassador to the United States since 2006, said “the bulk of Iraqis” welcomed American intervention in their country. While he extolled the positive results of the year-and-a-half-old troop surge in combating the insurgency and securing communities, he dubbed efforts until then poorly managed and often “disastrous.”

The advice of many “well-informed, well-educated Iraqis” was not heeded, and the United States invaded Iraq without fully understanding what they were “getting



AMBASSADOR SAMIR SUMAIDA'IE

into” and what needed to be done, he said. In particular, the administration failed to understand how international sanctions had strengthened Saddam's regime while devastating the social fabric of the country, leaving corruption endemic and ingrained.

The invasion, with insufficient force to maintain law and order, followed by the disbanding of the army and the effective disbanding of the police, left communities unprotected. The resulting “lawlessness” gave rise to the insurgency and allowed Al

Qaeda to gain a foothold in a country already undermined by two wars, said Sumaida'ie.

The Coalition Provisional Authority's treatment of Iraq cast the nascent government in the role of collaborators and the terrorists and insurgents in the role of freedom fighters, a view fanned by Arab and Al Qaeda media, he said. “We are still fighting this label of occupation.” He added that mistakes were compounded when the U.S. pushed for elections while ethnic and sectarian tensions were still overly volatile,

### A “non-obvious” discussion of patents

**“**OFTEN WE THINK OF PATENT BREADTH as being the problem, not the solution [to stifling progress]. Because patents create the right to exclude from the market — that's what a patent is, after all — we often think that the way patents will be exercised is to do so. But that ... is a contradiction. Because if you exercise the patent right by excluding everybody from the market, you're not making any profit. ... The way to make profit and use the exclusive right to make profit is to license. ... And if you believe that, then broad patent infringement — creating infringement — is not the problem, it's the solution.

“So here we have broad patents — you get rights, and you get the right to exclude over products that are better than the one you created. ... It means that when they invent [those better products] you get to consolidate those improvements into your patent via a licensing agreement.”

— **Suzanne Scotchmer**, professor of economics and public policy at the University of California, Berkeley, delivering the seventh annual Meredith and Kip Frey Lecture in Intellectual Property, April 3. Taking the role of a “transactions optimist,” Scotchmer argued that on a “quality ladder,” breadth and patentability standards are substitute ways to protect innovation.

VISITING VOICES

leading to “a dysfunctional parliament and a dysfunctional government.”

The pattern of awarding major contracts for services and infrastructure in Washington and then allowing them to be subcontracted without oversight meant that U.S. tax dollars were spent with little effect, said Sumaida’ie. In the communications context it led to the loss of the “public information war,” he said, leaving the government unable to counteract the messages of “Saddamists” and anti-American voices from other Arab countries.

Emphasizing that the counterinsurgency tactics employed since the surge have been remarkably effective in eradicating safe havens for terrorists and securing communities, Sumaida’ie said that Iraq is now on an “upward spiral,” though progress will be “slow and incremental.”

### Speakers offer strategies for combating terrorism

During another keynote discussion, Duke University public policy scholars and political scientists Peter D. Feaver and Bruce W. Jentleson explored how the next administration can shape U.S. foreign policy for the continuing war on terrorism. They agreed that the highest priority should be given to avoiding a “catastrophic terrorism event” and on the need to continue to adapt mili-

tary doctrine, training, capabilities, and force structure to fit the counterterrorism duties, as global challenges increasingly take the form of “asymmetric warfare.”

With early victories in Afghanistan eroded, America needs more allied partners “buying into the hard parts of the mission,” said Jentleson who, with Feaver, directed a research project funded by the Carnegie Corp. called “Wielding American Power: Managing Interventions after September 11.” The mission itself, he suggested, should address political, economic, and civil-action objectives — areas where the U.S. can learn from NATO allies — in addition to military objectives.

Feaver, who worked as the special adviser for strategic planning and institutional reform on the National Security Council staff at the White House, said the next administration must build a stable, bipartisan legal foundation or framework for the war on terror, both domestic and international, and focus on the area of public diplomacy.

“The next administration must make more progress on the war of ideas than this administration has,” said Feaver. The United States has to understand what cultural, nationalistic, and economic conditions exist and may be fomenting terrorism, added Jentleson.

Paul Rosensweig, deputy assistant secretary for policy in the U.S. Department of Homeland Security (DHS), predicted a shift in counterterrorism strategy and activity from one that is primarily defensive to one that is offensive, focused on the active disruption of terrorism.

“In other parts of the government, they’ve been actively disrupting terrorism for some time,” said Rosensweig, detailing activities that have hobbled financing and communications networks and forced terrorists to travel the world carrying both messages and funds. In such a climate, passenger data regarding credit card numbers and traveling companions that is supplied to carriers prior to travel — so-called “passenger name records” or PNR — becomes very important. “PNR allows us, through link analysis, to link people on watch lists to unknown individuals,” he said. Passenger data is currently an issue high on the transatlantic agenda, he observed.

Principally organized by Scott Silliman, executive director the Center on Law, Ethics and National Security (LENS), the conference was co-sponsored by LENS, the Center for International and Comparative Law, and the Program in Public Law at Duke Law School, and was financially supported by other Duke organizations. ♣

### Beyond a black-white conversation on race

**“WE UNDERSTAND RACE PRINCIPALLY** — sometimes exclusively — in terms of relationships between blacks and whites. If you think about it, obviously that’s under-inclusive. Yet our discourse time and time again really is limited in that way, and I think that limits the ways we understand race.”

— **Juan F. Perea**, *the Cone, Wagner, Nugent, Johnson, Hazouri & Roth Professor of Law at the University of Florida Levin College of Law*, speaking on March 20, as part of the *Jean E. and Christine P. Mills Conversation Series on Race*. A constitutional and immigration law scholar who has written extensively on issues relating to Latinos and Latinas in the United States, Perea addressed themes raised by presidential candidate Barack Obama’s March 18 address on race. The series, which also featured a discussion of U.S. immigration policy and the variously controversial and conciliatory aspects of hip-hop, is endowed by Amos Mills ’72.

VISITING  
VOICES





PROFESSOR ROBINSON O. EVERETT WAS HONORED FOR HIS 50 YEARS ON THE DUKE LAW FACULTY



## Reunion 2008

**M**ORE THAN 600 Duke Law graduates, family members, and friends attended Reunion 2008 on April 11-13. Weekend highlights included an alumni gala and awards ceremony at Duke University's Nasher Museum of Art, class dinners, tours of the magnificent Star Commons and Goodson Law Library, now nearing completion, and CLE sessions on climate change, doping in sports, and the "Roberts Court" led by faculty and alumni, such as top Supreme Court advocates Kenneth Starr '73, now dean of Pepperdine University School of Law, and Professor Walter Dellinger.

Alumni paid a special tribute to Professor Robinson O. Everett LLM '59, the recipient of the A. Kenneth Pye Award, in honor of his 50 years on the Duke Law School faculty.

"It is an understatement to say that Judge Everett has served this institution," said Dean David F. Levi. "About 97 percent of all living alumni attended the Law School during the 'Judge Everett era.'" Levi commended Everett — who joined the faculty at age 22 — for his compassion toward students in the course of his long scholarly career, through which he has also served as a judge and chief judge of the United States Court of Military Appeals, and maintained a private law practice in Durham.

In a personal tribute, U.S. District Court Judge James C. Dever III '87 called Everett a teacher, mentor, colleague, and friend, reviewing their contacts and collaboration in the military justice system, private practice, and on the federal bench. Dever recalled Everett's kindness to him as a student, warmth he realized extended to many



in the Duke Law community when his professor brought him home, unannounced, for dinner. "He introduced me to his wife, Lynn, and said 'I've brought Jim home for dinner.' She calmly said, 'We'll just set another place at the table,' and I realized that he had done this many times before."

The Pye Award honors a member of the Duke Law community whose work in education reflects the life and ideals exemplified by former Dean A. Kenneth Pye, remembered for his personal integrity, vigorous intellect, and compassion towards students. ♫



## 2008 Law Alumni Awards

**Letty M. Tanchum '73** received the Charles S. Murphy Award, which honors a graduate whose dedication to education or public service reflects the ideals exemplified by Charles S. Murphy '34. Formerly vice president and general counsel and now special counsel for Oprah Winfrey's Harpo Productions, Inc., Tanchum is the vice president and general counsel of The Oprah Winfrey Foundations. In addition to other Foundation projects in the United States and abroad, she helped establish the Oprah Winfrey Leadership Academy for Girls in South Africa, which offers young women a top-flight education as well as an escape from poverty, abuse, or dire family situations for many of its students.

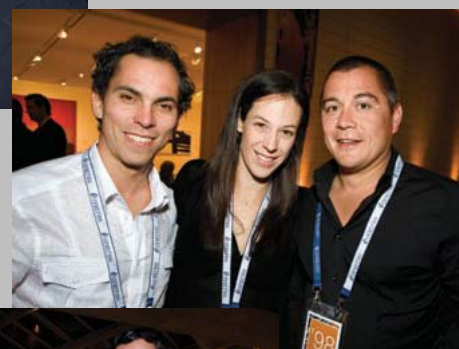
An honorary life member of the Law School's Board of Visitors and a devoted member of the community, Tanchum and her husband, Michael '72, support and host an annual Duke Law Passover seder, "a small but immensely appreciated gesture reflecting a commitment to making the Duke Law experience one that goes far beyond that of academic and intellectual stimulation," said Levi.

**Glenn E. Ketner Jr. '63** was honored with the Charles S. Rhyne Award, which is presented to a graduate whose career as a practicing attorney exemplifies the highest standards of professional ability and personal integrity, and who has made significant contributions to community service. A private practitioner in Salisbury, N.C., Ketner serves on the Law School Board of Visitors and the Duke Estate Planning Council. He also chaired his Law Reunion Committee and recently established a scholarship fund for law students. He has previously served on the Law Annual Fund Council, the Annual Fund Comprehensive Trinity Committee, and the Annual Fund Executive Committee for Duke University. President and director of the Ketner Family Foundation, Ketner is also a trustee of Catawba College, Rowan Cabarrus Community College, and the Rowan Regional Medical Center. He is a former board member of North Carolina Citizens for Business & Industry and a member of the local, state, and national bar associations.

"I often talk about leadership, and the ways in which lawyers serve as leaders, not just in the legal profession, but also in our communities, our nation, and our world," said Levi. "In ways both large and small, Glenn embodies the ideals of leadership that I hope we all aspire to."

**Jennifer L. Franklin '98** received the Young Alumni Award, given to an individual who graduated within the past 15 years, has achieved professional distinction, and has made significant contributions of leadership and service to Duke Law School. Counsel at Simpson Thacher & Bartlett in New York, Franklin practices in the Exempt Organizations Department, focusing on corporate tax law, charitable economic development and gift-planning, and taxation relating to mergers and acquisitions. She serves the profession as a member and leader of several American Bar Association committees. She serves the greater community by helping to educate nonprofit organizations on legal and taxation issues and through her leadership on the board of a New York nonprofit that provides needy families with baby clothing and supplies.

Levi noted Franklin's commitment to Duke Law School and the future of the profession as demonstrated by her service to students through mentoring. One recent graduate, he said, appreciated being able to call on "Jennifer's care and wisdom" for advice of any kind. "Sometimes these are the very things that make all the difference to a student and the way he or she experiences law school."



Save the Date for  
**Reunion 2009**  
**April 17-19, 2009**  
 Classes ending in "4" or "9"  
 and the Half-Century Club

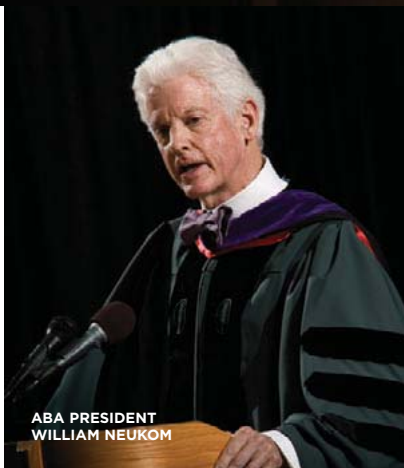


## Honoring the talented

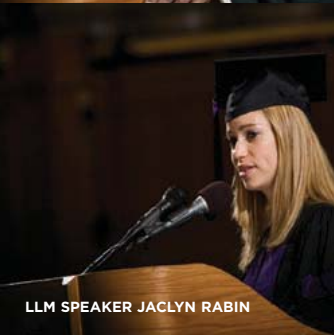
# CLASS OF 2008



JD SPEAKER JOSHUA "BRANDON" NEAL AND DEAN DAVID LEVI



ABA PRESIDENT WILLIAM NEUKOM



LLM SPEAKER JACLYN RABIN

**A**MERICAN BAR ASSOCIATION President William H. Neukom urged members of the Class of 2008 to serve as “useful citizens” through volunteerism and pro bono service, and to commit themselves to preserving and advancing the rule of law at home and abroad, when he addressed them at their hooding ceremony on May 10.

The event in Cameron Indoor Stadium honored 201 JD graduates, 17 of whom also received LLM degrees in international and comparative law and 38 of whom also earned degrees from other Duke University schools and programs, and 81 lawyers from 34 countries who earned an LLM in American law.

Neukom described the rule of law as a central foundation for “communities of hope and purpose,” as opposed to those beset by violence, corruption, and rampant poverty, among other social ills. He called on the graduates to be leaders of a

“multi-disciplinary movement” dedicated to stewardship of the rule of law, one that engages educators, members of the clergy and media, scientists, and military leaders, among others. “[Reach] out to colleagues from those kinds of disciplines — I encourage you to do that starting tomorrow,” said Neukom, a partner with Kirkpatrick & Lockhart Preston Gates Ellis in Seattle, and former lead counsel for Microsoft.

Noting that 80 percent of indigent Americans lack access to civil justice and many criminal defendants lack access to “competent representation,” Neukom reminded the graduates that pro bono service is “the highest calling” of the bar. “Lawyers have the central role in delivering access to justice to everyone in the communities where we work and live,” he said. “Pro bono work should go beyond the representation of individuals and small groups. It should include interventions that can



bring about genuine, large-scale change. That means class action litigation, lawsuits, and lobbying.

“As John F. Kennedy may have said to you, ‘Do not shy away from leadership. You are well equipped to lead,’” said Neukom, adding that maintaining work-life balance by nurturing hobbies, humor, family, and friends is also important. “Make time to take care of your private self. Keep that basketball pumped up.”

Dean David F. Levi commended the graduates for the excellence of their contributions to the academic and intellectual life of the Law School through their scholarly journals and initiative in arranging talks, conferences, and symposia. He also praised their commitment to community service sparked in the aftermath of Hurricane Katrina, which struck the Gulf Coast just days after the JD class started their rL studies, motivating students to lead Duke University’s hurricane relief efforts.

“Katrina sparked a commitment in you to community service that has not waned,” he said. “Many of you gave up your spring breaks to work in underserved communities ... including areas still struggling to recover from Katrina.” Levi noted that over their law school years, the number of pro bono groups more than doubled, with the graduates devoting more than 18,700 hours of pro bono and community service through clinical programs.

Speaking on behalf of the JD class, Joshua “Brandon” Neal suggested to his classmates that they view the societal “storms all about us” — turmoil in the economy, wars, rising food and gas prices, and shake-ups in the legal market — as

opportunities. “The best time to leave a lasting footprint is during a storm,” Neal said. “I propose to you today that there is no better time for the Class of 2008 to leave our footprint on this world than right now in the midst of all this adversity. ... I know our community, our country, our world will be a better place in part because of Duke Law’s Class of 2008.”

Jaclyn Rabin, speaking for the LLM graduates, remarked on the personal and professional bonds formed among the group of lawyers “from every corner of the world,” in some cases from countries and cultures in conflict. Noting their exceptional talents and depth of experience, she urged them to let themselves “get a little messy in life. Do not simply fit neatly into a box that has been created by you or proscribed by those who view you. Embrace your differences and ... never be afraid to say what needs to be said.”

After being welcomed into the “family” of Duke Law alumni by Board of Visitors Chairman Michael Dockterman ’78, who encouraged the graduates to view the Law School as a “haven” where they can return and refresh throughout their careers, Levi offered parting advice.

“You now have the skill and you will soon have the duty to preserve the Constitution and to heal the social fabric. Do not hesitate to do so,” he said. “Approach your career and your life in the law with a spirit of adventure and optimism. Do not be frightened to try different kinds of law practice, including public service. You are ... capable of adapting to new situations and challenges by using the professional tools and judgment that you have learned here at Duke Law School.” ♣



**Class of 2008 honorees**

**The Justin Miller Awards** honor members of the graduating class who Duke Law students indicate have made significant contributions to the Law School community.

- Integrity — Jennifer Avery
- Intellectual curiosity — Jennifer Wimsatt
- Citizenship — Matthew Wolfe
- Leadership — Kristina Johnson

The **LLM Award for Leadership and Community Participation** was shared by Carlos Gabriel Kaplan and Masaya Tsuda.

**Faculty awards for student service and intellectual contributions:**

- Advocacy — Katherine Crawford
- Community service — Kristina Johnson
- Pro bono service — Matthew Wolfe
- Public service — Emily Jura
- Business organization and finance — Travis Souza
- Clinical practice — Christopher Lott
- Commercial transactions and bankruptcy — Sean Memon
- Constitutional law and civil rights — Abby Dennis
- Criminal law and procedure — Jerome Maiatico
- Dispute resolution — Pamela Sisson
- Environmental law — Marjorie Mulhall and Sean Roberts
- Family law — Meredith Levy
- Intellectual property and technology — Daniel Simon
- Interdisciplinary studies — Samuel Burr Eckstut
- International, transnational, and comparative law — Catherine Gibson
- Labor and employment law — Michael Oswalt
- Legal theory — Kish Vinayagamoorthy
- Property law — Alexandra Wyatt
- Regulatory law — Jade Totman
- Tax and estate planning — Ann Marie Tigani





### Building update

## Commons, library near completion

**W**ORK IS PROGRESSING quickly on the Law School's Star Commons and renovated law library. The projects are to open at the start of the 2008–09 academic year. Duke Law will celebrate the completion of these projects, destined to be hubs of community life, with a building dedication weekend, Nov. 6–8, at which U.S. Supreme Court Associate Justice Anthony Kennedy will be the guest of honor. ♡



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VISITING VOICES

Using international law in U.S. courts

“WHAT DOES IT REALLY MEAN to say something is ‘cruel and unusual?’ Is there any place in the debate for international opinion and international law? Some justices think, ‘No. This is U.S. law ... and the people who wrote the Constitution weren’t thinking about that.’ Other people think differently — as Justice Ginsburg puts it, a decent respect for the opinions of humankind suggests that it doesn’t have to be dispositive, but you should at least know [whether you are an outlier like North Korea or part of the mainstream.]”

— Judge **Diane P. Wood** of the United States Court of Appeals for the Seventh Circuit, addressing the role of international law in U.S. courts on Nov. 5, and discussing *Medellin v. Texas*, then under consideration by the Supreme Court. While there are many noncontroversial issues on which international and foreign law would apply, she said, “some of the greatest passions” have centered on what the Eighth Amendment really requires.

Exposed today, grandchildren pay

“MANY OF THE SUBSTANCES SHOWN TO CAUSE EPIGENETIC HARM, such as pesticides, toxic chemicals, diesel exhaust, and airborne pollutants, are not distributed randomly in our society. Exposures are often linked with poverty, discriminatory land use, and sub-standard living and working conditions. The populations who are exposed to these substances that cause epigenetic harms are also more likely to have pre-existing health conditions, and less likely to have ongoing and effective comprehensive medical care. ... A just society ought not to permit future generations to experience the debilitating health effects caused by current environmental exposures when the health effects are known or knowable and the environmental conditions are preventable or remediable.”

— Medical ethicist **Mark Rothstein**, discussing the downside of epigenetics — modifications of gene expression that do not involve changes in the DNA sequence. While epigenetics contains tremendous promise for identifying the cause of many serious diseases and possibly leading to cures, it also raises serious ethical and legal challenges including those relating to environmental justice and the need for universal health care, said Rothstein. The Herbert F. Boehl Chair of Law and Medicine and director of the Institute for Bioethics, Health Policy and Law at the University of Louisville School of Medicine, Rothstein delivered Duke Law School’s seventh annual Rabbi Seymour Siegel Memorial Lecture in Ethics on Feb. 26. The lecture is endowed by labor lawyer Allen Siegel ’60.





What brought about the subprime crisis? **CONFLICTS** between the interests of mortgage lenders and investors; **COMPLACENCY** on the part of investors; and **COMPLEXITY** in the bundled mortgage products they purchased that made it difficult to assess the risk. The motive underlying it all: **CUPIDITY.**"

— Professor Steven L. Schwarcz, Stanley A. Star Professor of Law & Business



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# THE CREDIT MELTDOWN

## A TALE of CONFLICTS and CUPIDITY

*HOW THE SUBPRIME MORTGAGE CRISIS  
BECAME A CREDIT CRISIS AND THREATENED  
THE U.S. FINANCIAL SYSTEM*

by **DEBRA CASSENS WEISS**

**A** LUNCHTIME PANEL DISCUSSION on the subprime mortgage crisis drew a standing-room-only student audience on a rainy Friday in early April. As moderator, Professor John Weistart, who teaches consumer transactions, was quick to put a human face on the crisis.

“Statistics suggest that in 2007, about 1.3 million households received some sort of notification that foreclosure was imminent, indicating that they are in default. The numbers are likely to be higher this year,” said Weistart ’68. “This is a topic that is very, very important to a lot of ordinary people who are leading ordinary lives — consumers who are really the core of our economy. Right now, they are feeling tremendous amounts of pressure. What is the effect of the pressure that comes from loan defaults and foreclosures on divorce? What effect does that have on children? What effect does that have on movement and opportunity and upward mobility?”

Many of these subprime borrowers were and are “credit challenged,” noted panelist Donald Lampe ’82, a partner with Womble Carlyle Sandridge & Rice and a specialist in consumer credit, among other areas. “They are often living paycheck to paycheck and have little margin for error,” said Lampe, who chairs the American Bar Association’s Consumer Financial Services Committee’s Predatory Lending Task Force. “Job loss, divorce, illness, or any change in life circumstances that leads you not to have the same paycheck, puts you in trouble very quickly.”

Eventually it will not just be “consumers” who will be harmed, cautioned panelist Keith Ernst JD/MPP ’96, senior counsel for the nonprofit Center for Responsible Lending, which advises policymakers on predatory lending issues. “It will be *neighbors*. It will be children that grow up on a block with eight boarded-up houses and the graffiti and crime that accompany them.”

The view is grim beyond neighborhood streets. On Wall Street, the housing boom of the late 1990s and early 2000s has become a bust that continues to reverberate around the country and the world.

How did this happen? And what can be done? Answers and ideas abound among Duke Law scholars, alumni, and members of the Global Capital Markets Center (GCMC) advisory board — many of whom have witnessed the run-up to the meltdown first-hand.

Steven L. Schwarcz, the Stanley A. Star Professor of Law & Business and the founding director of GCMC, began studying the potential for a financial crisis before it was “a twinkling in anyone’s eye,” he said. His summation of what went wrong: *conflicts* between the interests of mortgage lenders and investors; *complacency* on the part of investors; and *complexity* in the bundled mortgage products they purchased that made it difficult to assess the risk. The motive underlying it all: *cupidity*.

### Apportioning blame: greed and regulatory gaps

Some critics blame former Federal Reserve Chairman Alan Greenspan for helping spark the subprime mortgage crisis. He created a housing “bubble,” the critics say, by slashing interest rates after the Sept. 11 attacks. With easy access to credit, more people jumped into the housing market, sometimes on a speculative basis, and bid on homes for sale, causing housing prices to climb.

With the boom came a big increase in home ownership, pleasing politicians who didn’t want to question whether there was a downside. By 2005, 69 percent of Americans owned their own homes, giving the U.S. one of the highest home ownership rates in the world.

“The purchase of homes and the financing of homes were the key engines of growth,” said James D. Cox, Brainerd Currie Professor of Law and an expert in corporate and securities law. “There was no reason to shoot this goose that was laying this golden egg, certainly not as you go into the election period in 2004.”

The run-up in housing prices and a free-for-all lending environment caused everyone to want a piece of the action. Borrowers wanted more home than they could afford. Mortgage brokers churned out loans with onerous terms to make more money. Lenders quickly sold off mortgages to clear their books so they could make new loans and earn more fees. And investors who bought bundled mortgages sought high returns on their investment, with little regard for risk.

Some of those who point a finger at Greenspan — who in turn blames global forces for the low rates — see his actions as emblematic of a lax regulatory environment created by the federal government. Ernst, whose organization aims to encourage home ownership and help homebuyers accumulate equity in their homes, is one of them.

Ernst believes the national regulators

stood in the way of landmark state lending laws when the Office of the Comptroller of the Currency declared, in 2004, that nationally chartered banks and their subsidiaries were exempt from state legislation.

These federally regulated banks weren’t subject to anti-predatory lending laws in the states that enacted them, discouraging state regulators who wanted to improve standards in the subprime market, Ernst said. “Federal preemption proved challenging for state regulators. On the one hand, they wanted to improve standards in the subprime market. On the other, preemption made it difficult for them to feel like they could maintain a level playing field, since national banks were exempt.”

But not everyone is so hard on Greenspan and the federal government. “It’s very easy to say there’s a bubble in retrospect, but when home prices or asset prices are going up, it’s very hard to say,” said Paul Bennett, senior vice president and chief economist of NYSE Euronext and a GCMC board member. Unregulated lenders and independent brokers also played a significant role.

### “Bubbles,” borrowers, brokers and big bucks

Profits were plentiful in the run-up to the housing bubble, said George Krouse Jr. ’70, of counsel at Simpson Thacher & Bartlett in New York and a GCMC board member.

“The subprime market really started to take off in 2004 and 2005, and that was accompanied by a lot of entrants into the mortgage origination business who were not necessarily the traditional makers of mortgage loans,” said Krouse. “The newcomers included a proliferation of mortgage brokers, largely unregulated and unlicensed, staffed by personnel with little or no prior experience in the mortgage lending area and having little or no concern regarding the borrower’s ultimate ability to repay the loan.”

**MANY SUBPRIME BORROWERS were and are credit challenged.**

**“Job loss, divorce, illness, or any change in life circumstances that leads you not to have the same paycheck, puts you in trouble very quickly.”** — Donald Lampe ’82, chair of

the ABA’s Consumer Financial Services Committee’s Predatory Lending Task Force







**THE SUBPRIME MARKET** attracted newcomers to the mortgage origination business. “[These] included a proliferation of mortgage brokers, largely unregulated and unlicensed, staffed by personnel with little or no prior experience ... and having little or no concern regarding the borrower’s ultimate ability to repay the loan.”

— George Krouse Jr. '70, of counsel, Simpson Thacher & Bartlett

Ernst added that these brokers made money based on the number of loans they produced, and often made bonuses when borrowers accepted higher interest rates and fees.

The Center for Responsible Lending found certain loans particularly troublesome, he said. These included loans with low teaser rates that reset in two or three years to a higher amount, penalties for prepaying loans early, interest-only loans in which the principal wasn't amortized, and balloon loans with lower interest rates that require all of the money to be repaid in one fell swoop.

“On one hand, the subprime market held out a promise for the democratization of credit,” said Ernst. “It made home loans and lending credit available to communities that had traditionally been denied credit. Over time, however, that challenge changed from access to credit to understanding the terms, suitability, and sustainability of credit.”

If some borrowers weren't able to figure out the fine print or the risk their loans carried, others didn't care. “Because of the increasing appreciation in home values, they expected to be able to resell their house at a higher price, repay the loan, and pocket the profit,” explained Krouse.

These buyers never expected the housing bubble to burst, Cox added. “They suffered from an acute case of over-optimism. And there was nothing in lending practices to tell people to step back and take a deep breath,” he said, “because there was too much money to be made.”

When lower introductory interest rates began to reset to higher levels in 2005 and 2006, some borrowers couldn't pay. Those who thought refinancing would be an option often ran into another problem: Their home values had plummeted and they owed more than their homes



were worth. Lenders weren't willing to refinance.

Some borrowers had trouble from the get-go because they had lied about their income and assets, and some brokers who were eager to collect commissions effectively sanctioned the practice by not requiring documentation. And lenders also didn't always insist on documentation, according to Ernst, fearing that if they sought to tighten up on brokers' practices, the “mortgage brokers would simply take their business elsewhere.”

Changes in the loan market also affected lenders' oversight. Just 30 years ago, lenders held on to the mortgage loans they originated, and they had an incentive to make sure the borrower could pay. But in the next few decades, that changed. Mortgage loans began to be sold, bundled, “sliced and diced,” and sold again, in bits and pieces, to investors as securities.

### **Mortgage securitization: increased loans, decreased accountability**

The process of bundling and selling income-producing assets is known as securitization. Before he entered the legal academy, Schwarcz helped pioneer the industry while representing many of the world's leading banks and financial institutions in structuring innovative capital market financing transactions. He explained how it operates in a 1994 article: Lenders sell assets such as mortgages or credit-card receivables to investment banks, which bundle and transfer them to a trust known as a special purpose vehicle. The trust issues securities — either “mortgage-backed” or “asset-backed” securities — and sells them to investors such as insurance companies, hedge funds, and pension funds.

The securities are issued by classes of payment priority known as “tranches.” Purchasers of senior securities are first in line for payment if some of the receivables go into default, while those who buy the lower junior or mezzanine levels are further along in the payment line. The trust pays the investors with cash flow from the assets that it holds. If the trust that holds the assets goes belly up, creditors can't come after the original lender.

Currently four out of five mortgages are securitized, including a large share of subprime mortgages. Michael H. Krimminger '82, special adviser for policy to the chairperson of the Federal Deposit Insurance Corp., cited estimates that by 2007, almost 100 percent of subprime and other high-risk mortgages were securitized, up from 73 percent in 2004.

When everything goes right, everyone in the securitization chain can profit, said Cox. Lenders earn fees for originating and servicing the mortgages, and then sell the loans at a profit. The lenders then use the cash received from the trust public offering to make more loans. Ratings agencies such as Standard & Poor's evaluate the securities, earning fees from the investment banks. “And the investment banks are more than happy to peddle the stuff and make their underwriting commissions along the way,” he said.

“There's a lot of self-interest in the financial markets, particularly if people can make money and pass the risk on to someone else,” observed Cox. “The people generating this paper and selling this stuff all made money and didn't have to suffer consequences when the chickens came home to roost.”

In the early 1980s, legal and regulatory changes cleared the way for banks to engage in securitization, introducing the practice into the mortgage market. Lenders bundled and sold their mortgages to the government-sponsored mortgage company, Fannie Mae, which had established mortgage lending guidelines that had to



**MORTGAGE SECURITIZATION** has created a disconnect between investors and banks originating loans. “The investors ... are not coming through the local community but through Wall Street or, increasingly, from foreign countries. There is some problem communicating and evaluating the risk over the long psychic and physical distance between who is choosing the borrowers and who is putting in the money.”

— Professor John Weistart '68

be satisfied. Traditional guidelines capped mortgage amounts at two or two-and-a-half times a borrower's income.

Then, in the 1990s, other buyers, such as hedge funds eager to buy high-yield debt, began to snap up these securities and the underwriting guidelines went by the wayside. In recent years, global investors entered the game and mortgage securitization flourished as “the entire world became one capital market,” said Jason H.P. Kravitt, deputy chair of the American Securitization Forum, founder of the securitization practice at Mayer Brown, and a GCMC board member.

As underwriting standards waned, another change was taking place: A newer and riskier securitized product was created that combined asset-backed and residential mortgage-backed securities and put the riskiest tranches back into the securitization blender. The senior 80 percent to 90 percent of these pooled lower-level tranches would get a top AAA rating from the bond ratings agencies. These products were known as collateralized debt obligations (CDOs) of asset-backed securities.

Investors who bought a senior interest in these CDOs relied on ratings that were higher than the ones given to the underlying securities. In effect, they had senior rights to the worst security tranches. “Now you've added leverage on leverage,” explained Robert Cochran '74, the chairman and chief executive officer of Financial Security Assurance Holdings Ltd., another GCMC board member. “Things have to go very right not to have losses.”

A subsidiary of Cochran's company that insures investors in securities backed by mortgages and other assets, refuses to insure any interest in mezzanine-level securities issued through CDOs, he said. “We saw this as a form of double leverage that would potentially have high loss severity.”

There is general agreement that securitization has been a boon to the economy,

funneling more money to lenders and enabling them to make credit available to more people more quickly than ever before. “The most important role of securitization is to make credit available very broadly, and this is a good thing,” said Bennett of NYSE Euronext. Corporations also increasingly rely on the practice to access money.

“Securitization has done a terrific job at expanding credit and making it less expensive,” agreed Kravitt. “Nobody that I know of is proposing to end securitization.”

Its downside, however, has been creating a disconnect between the financial interests of the ultimate investors and those of banks originating the loans. “The incentives for care have been diffused,” said Weistart. “The investors — the people coming up with cash for their mortgages — are not coming through the local community but through Wall Street or, increasingly, from foreign countries. There is some problem communicating and evaluating the risk over the long psychic and physical distance between who is choosing the borrowers and who is putting in the money.”

### **Breaks in the securitization chain**

The leading ratings agencies gave high grades to some mortgage-backed investments that later went bad, particularly in the case of collateralized debt obligations. Standard & Poor's, for example, has downgraded nearly \$200 billion in CDOs.

Cox suggested the ratings companies may have been pressured by investment banks to rate the CDOs highly. “The underwriters would go out and shop for a favorable high rating, and the ratings agencies realized that if they didn't give them the rating [sought] they wouldn't get paid for it,” he said.

Schwarcz observed the temptation may have been greater in the case of

CDOs because the slicing and dicing created many different kinds of securities. Still, in an article forthcoming in the *Minnesota Law Review*, he speculates that the fear of damaged reputations may have outweighed profit motives. He posits instead that the ratings agencies simply may not have foreseen the depth of the housing market collapse and the full extent of fraud by borrowers, or perhaps even failed to understand that a failure of mortgage-backed securities held by CDOs would in turn affect the value of other securities in these investment vehicles.

The ratings agencies evaluated pooled loans with the help of the computer models. But the historical data fed into the computers didn't include loans made to borrowers who were unlikely to repay. Before subprime mortgages became a substantial part of the mortgage business, mortgages were considered a golden asset. “Traditionally the risk was that people would prepay their mortgages faster than the investor had expected,” said Bennett. “You didn't see many people defaulting.”

Even if ratings agencies led unsuspecting CDO investors down a primrose path, why didn't those investors, prospectuses in hand, do their own due diligence? In his forthcoming article, Schwarcz speculates that investors may not have understood the complex security transactions or the complicated prospectuses, sometimes hundreds of pages in length, or may have been swept up in the euphoria that accompanied the housing bubble. In any event, he said, they didn't consider the possibility of worst-case scenarios.

Schwarcz has been thinking about those for the past year. He poses one in which the subprime crisis spins out of control, causing the components of the world's financial system to collapse like so many rows of dominoes. His article, “Systemic Risk,” is slated for publication in the *Georgetown Law Journal*.



**ONCE INVESTORS REALIZED that highly-rated subprime mortgage-backed securities could lose money, they began shunning all complex securitization products. There was basically a contagion effect and, as a result, market prices started plummeting.”** — Professor Steven Schwarcz

### The subprime spiral

With lenders having suffered well over \$100 billion in losses from subprime mortgages and securitized products, the outlook on Wall Street is bleak. “The big write-downs affect not only the reported earnings of these companies but their capital base, which causes them to be much more conservative in their lending activities,” Krouse explained. “Even though interest rates have come down quite a bit, liquidity is very limited.”

It is the modern-day equivalent of the old-fashioned bank run, played out in a system where investors, rather than banks, are supplying money to lenders by investing in their securitized assets through the capital markets. Seeing losses in mortgage-backed securities, fearful investors stopped buying them. Some investors started to sell, but the sell-off wasn’t confined to securities based on bad mortgages.

“Once investors realized that highly-rated subprime mortgage-backed securities could lose money, they began shunning all complex securitization products,” according to Schwarcz. “There was basically a contagion effect and, as a result, market prices started plummeting.”

Hedge funds holding these securities had another problem. They were able to leverage their wealthy clients’ money with bank loans that helped them make more investments, and they often pledged their securities as collateral. When these began to plunge in value, the banks asked the hedge funds to put up more money or assets. To comply, the hedge funds had to sell even more securities, driving down the prices further. It became a vicious cycle.

“I compare this to a massive game of musical chairs where over a short period of time half the chairs in the room were removed,” said Cochran. “There isn’t enough stable funding available to buy all of the securities that have been created. The market prices must go down until a new equilibrium is reached and investors say, ‘At that price I can afford to take the risk.’”

If hedge funds can’t produce enough money to meet the margin calls, banks

could end up seizing the securities that had been pledged and being forced to take even more write-downs.

But many banks are already affected because of their connection to affiliated off-balance sheet entities known as structured investment vehicles (SIVs). These vehicles help more highly regulated banks compete with investment banks, which are permitted to operate with higher debt and lower capital reserves. While they helped banks keep certain high-risk investments off of their balance sheets, the current crisis has led many to pull them back in, replacing capital raised through SIVs with depositor funding.

“As banks put these assets back on their balance sheets, requiring additional regulatory capital, their appetite to make new mortgage loans and corporate loans has dramatically diminished,” Cochran explained.

For several months, Schwarcz has seen conditions that could portend a systemic collapse of the financial markets. He said his wife asked him to estimate the chances of such a collapse. “I told her about 25 percent.” He took his warning about the threat of economics shocks — such as market panic or institutional failure — triggering the failure of a chain of markets or institutions that could threaten the whole economy to Capitol Hill, when he testified before the U.S. House of Representatives Committee on Financial Services last October, and has written extensively about it since.

He also has crafted a proposal to help prevent a systemic collapse of the financial markets through federal regulation. He is backing the creation of a “liquidity provider of last resort” that could swoop in and buy securities in failing markets, helping to stabilize values.

“The liquidity provider of last resort would provide liquidity to help prevent critical financial intermediaries from defaulting and to help prevent defaulting critical financial intermediaries from failing. It also would provide liquidity to capital markets as necessary to keep them functioning,” he said in his testimony. “This approach should be supplemented by a market-

discipline approach under which regulators would attempt to ensure that market participants exercise the type of diligence that enables the markets to work efficiently.”

Schwarcz views the Federal Reserve as the most logical agency to play the role of liquidity provider, but he believes the function also could be privatized or could be administered by an international entity. The new entity could be funded with premiums charged to market participants or other measures that don’t burden the taxpayers.

### Action ... and reaction

At press time, the Federal Reserve had already taken several unprecedented steps in an effort to avert a financial crisis.

The Fed cut its benchmark interest rate and began lending money to banks through a new program called the Term Auction Facility. In March it agreed to extend up to \$200 billion in credit for the first time to top investment banks and accepted securitized mortgages as collateral. And it encouraged the sale of Bear Stearns with a \$30 billion guarantee.

The Fed is also considering regulatory changes. Concerns about misleading mortgage ads would be addressed through additional regulations under the Truth in Lending Act. And proposed regulatory

#### Scholarship forthcoming from Professor Steven L. Schwarcz relating to the subprime crisis:

*Systemic Risk*, 97 Georgetown Law Journal (2008)

*Protecting Financial Markets: Lessons from the Subprime Mortgage Meltdown*, 93 Minnesota Law Review (2008)

*Markets, Systemic Risk, and the Subprime Mortgage Crisis*, 61 Southern Methodist University Law Review (2008)

*Disclosure’s Failure in the Subprime Mortgage Crisis*, 2008 Utah Law Review





**NOT EVERYONE can afford to own and maintain a house, but we shouldn't make it unattainable because of this crisis. Many Americans can maintain a home and a mortgage if given suitable products. The problem is not the extension of credit to these consumers, but the extension of *this* credit."**

— Keith Ernst '96, senior counsel for the Center for Responsible Lending



gies and what proposals are politically feasible."

Under Treasury Secretary Henry Paulson's sweeping proposal, the Fed would act as a "market stability" sheriff that could monitor any company that could destabilize the markets. He also would create a Mortgage Origination Commission that grades the states on their subprime oversight, a tool that would help investors evaluate which states allow risky mortgage practices.

Schwarcz has reviewed Paulson's proposal and said it "appears to contemplate the Fed gaining the power to act as a liquidity provider of last resort potentially along the lines I propose."

At the Law School's April lunchtime forum, Keith Ernst and Donald Lampe — both of whom have testified in Congress on issues related to subprime mortgage lending — outlined their preferences and concerns regarding the flurry of proposals. While he hopes to see "thoughtful systemic risk regulation that will come from a very high level," free-market supporter Lampe said that if investment banks accept government funds to help resolve liquidity shortfalls, then the firms should be included in any strong, top-down regulation.

"I don't believe you can have it both ways," said Lampe, noting that the subprime crisis is just the latest disaster to rock

Wall Street. "If my tax dollars are going to be used to bail these guys out, I don't want them coming back to the till during the next crisis because they were not subject to appropriate supervision."

At the level of retail mortgage lending, he said, "overwhelming regulation" has rendered the process incomprehensible. "We should scrap what we're doing and settle on something that is consumer focused, simple, transparent, and comprehensible for the average person." Not everyone might be able to own a home, Lampe added, suggesting that there may be a need for more affordable, quality rental housing.

"Not everyone can afford to own and maintain a house, but we shouldn't make it unattainable because of this crisis," Ernst countered, adding that his organization is pushing for policy reforms that will encourage lenders to lend responsibly. "We need to take the worst options off the table. We need to get pricing where consumers can see it — in interest rates, so that it shows up in the monthly payments — and not have it hidden in pre-payment penalties and elsewhere. Incentives need to be aligned so we have lenders who are doing their jobs and borrowers have a fighting chance to make it through that loan. That's where we start.

"Many Americans can maintain a home and a mortgage if given suitable products," he said. "The problem is not the extension of credit to these consumers, but the extension of *this* credit." ♣

— Debra Cassens Weiss is a freelance writer and senior writer for the ABA Journal.

changes under the Home Ownership and Equity Protection Act (HOEPA) would help address abuses related to prepayment penalties, lending based on little or no documentation, and lenders' failure to consider borrowers' ability to repay their loans, said Krimminger of the FDIC. HOEPA is a federal law that applies to both federally- and state-chartered lenders that make high-interest loans.

Congress continues to debate new laws that would help struggling homeowners and reform mortgage lending practices. The Senate passed a bill in April that would provide \$150 million for mortgage counseling, \$10 billion in tax-exempt bonding authority for states to refinance mortgages, a tax credit for buyers of foreclosed homes and a tax break for home building. Other congressional proposals would establish duties of fair dealing for lenders and require licensing of mortgage loan originators.

The Center for Responsible Lending's Ernst said the proposals could change before they are finalized. "Things are fluid and changing on a weekly basis as people try to identify both what are the best strate-

### Duke's Global Capital Markets Center

Taking an interdisciplinary approach that encompasses business, finance, legal, and public policy perspectives, the Global Capital Markets Center blends the strengths of Duke University's Law School and the Fuqua School of Business to examine capital markets and their global connections. In addition to its focus on corporate governance, the GCMC conducts research and develops curriculum in the areas of global debt and equity capital markets, venture capital and private equity, structured finance and securitization, and securities regulation. The GCMC's advisory board includes jurists and leaders from some of the world's top law firms and corporations, a number of whom are alumni. ♣

**L**AWYERS SHOULD ASPIRE to be not just “wise counselors” but “leaders with accountability and responsibility,” according to Benjamin Heineman Jr., former senior vice president and general counsel for GE. Heineman has challenged law schools to do more to prepare lawyers for leadership positions in civic and professional life.



It is a vision shared by Duke Law Dean David F. Levi. As a judge, a legal historian, and a leader in the legal academy, Levi has had ample opportunity to observe the ways in which lawyers serve as leaders, both within and beyond the legal profession. Now, he’s taking advantage of his role as dean at Duke Law to study the reasons that lawyers are so uniquely suited to leadership, to explore opportunities for better preparing law students for leadership roles, and to help instill in students a sense of responsibility to serve as leaders within their communities and their profession.

“At all levels of society and in a broad range of endeavors, lawyers innovate, problem solve, clarify, persuade, and defend,” Levi says. “They knit together our social fabric, working in the interstices between groups, classes, races and institutions.”

## REFORMING LEGAL EDUCATION: **Lawyers as Leaders** *a CONVERSATION with* BEN W. HEINEMAN JR.



Lawyers are the “go-to guys” in society, Levi notes, because of the unique training they receive. “Clarity of thought, the ability to simplify, to articulate, and to persuade, are part of this training,” he says. “The courage to take a position and the equal courage to modify and compromise in the face of reasoned opposition are also part of the lawyer’s tool kit and part of what we teach.”

But that training must continue to evolve as lawyers practice in a more interdisciplinary, more international, and more interdependent political, economic, and legal landscape. To explore how leadership development can best be addressed at Duke Law, Levi has created the Leadership Working Group, a task force of faculty, students, staff, and alumni co-chaired by James Cox, Brainerd Currie Professor of Law, and Peter Kahn ’76, the former chair of the Law School’s Board of Visitors and a partner at Williams & Connolly in Washington, D.C. The group is considering new programs, a lecture series, and curricular changes that could provide leadership development opportunities for students and graduates.

The group brought Heineman to the Law School in January to share his views on law and leadership with students and faculty. A senior fellow at Harvard Law School and Harvard’s Kennedy School of Government, and former GE general counsel, Heineman is a leading advocate for rethinking legal education to prepare lawyers for civic and professional leadership. His article on “Law and Leadership” was published recently in the *Journal of Legal Education*.

Heineman urged law students to seek leadership opportunities throughout their lives and professional careers, and challenged law schools to do more to “prepare and inspire” their graduates

in this regard — helping them understand the inherent value of taking risks and adapt to new organizations and cultures, and “develop different perspectives on problems because of different institutional roles.”

He has done just that throughout his own career. Having started out as a public interest lawyer litigating for the rights of the mentally handicapped, Heineman later served as an assistant secretary for policy at the Department of Health, Education and Welfare and then as a constitutional litigator in private practice. These experiences helped him become “a better general counsel” at a huge multinational corporation, he told law students.

Heineman is a graduate of Harvard College and Oxford University, where he was a Rhodes Scholar, and Yale Law School, where he was editor in chief of the *Yale Law Journal*. He served as a law clerk to United States Supreme Court Justice Potter Stewart.

Today he serves as a senior fellow at the Belfer Center for Science and International Affairs at Harvard’s John F. Kennedy School of Government, a distinguished senior fellow in Harvard Law School’s Program on the Legal Profession, and a senior adviser to the Center for Strategic and International Studies. His research focus includes globalization, anticorruption, corporate citizenship, dispute resolution, and the legal profession. His latest book, on global ethics, is *High Performance with High Integrity* (Harvard Business Press, June 2008).

Heineman sat down for an informal chat about law and leadership development with Levi, Cox, and Kahn.



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**DAVID LEVI:** Why, at this point in your career, have you decided to focus on this issue — the leadership capacity of the legal profession?

**BEN HEINEMAN:** I started out as a public interest lawyer and I ended up as the general counsel of one of the biggest companies in the world. I have worked in law firms and government. I feel deeply that lawyers have enormous talent but often don't receive the proper training at a young age to be leaders as they mature and advance in different institutions. So I think it is an extremely important subject for law schools to address because people need a vision when they're young. As they get older they'll have positions of greater responsibility, and they'll need a different set of skills than just knowing the case method.

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**LEVI:** What is it that lawyers offer that other professions can't?

**HEINEMAN:** I think all professions have the possibility of creating leaders. Indeed, public policy schools and business schools usually say they are developing leaders and law schools rarely do. Duke Law is a notable and wonderful exception with the Duke Blueprint.

My concern is much more about having the skills and capabilities to be a leader when you get there, rather than matters of leadership style. It's really about how to manage an organization and the "qualities of mind" that give you a breadth of vision in terms of how you define problems and how society works. What kind of perspective do you have on society? What kind of knowledge do you have? How do you define problems? How do you mobilize people, which is partly leadership? How are you able to answer questions about what is right, not just what is legal? These are all the aspects of leadership aptitude and capacity.

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**LEVI:** You seem to have a democratic view of leadership. You are talking about wisdom, you are talking about being visionary, you are talking about people who are able to see across traditional boundaries and who have interdisciplinary skills, and who are curious about other people and other cultures. And that's something that I think any law graduate can aspire to. You aren't taking a "triumphalist" view of the single leader at the helm of an organization.

**HEINEMAN:** I agree. We need a very broad view of what leadership means.

We are taught in law school that Learned Hand, Justice Brandeis, Justice Frankfurter, and Justice Douglas, are heroes. But there are many other heroes who have been lawyers — who have occupied jobs in the private sector, the nonprofit sector, the international world — who are not just in the court system but are in the legislatures and in the executive branch, who are leaders of intellectual movements that are aimed at changing the world. People need a sense of the different kinds of careers that you can have with a law degree, rather than just the traditional ones of joining a private firm or taking legal jobs in the government.

We have to excite people about all these possibilities. We have to give them the capacity when they get there to at least understand how to define the world — how to see the world. I think law schools are still stuck in the case law method. They've got to broaden the vision of their students.

I believe deeply in what I would call a "general professional education," where students gain a sense not only of the core competencies of the law, but the perspectives, at a minimum, of other professional schools — for example, public policy and business. I've been in "big law," "big business," and "big government," and virtually every problem I had involved public policy questions, technical legal questions, and things that would impact the economy and business. You need to understand those implications to be effective and create durable solutions that really work.

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**LEVI:** So what sorts of advice do you have for a law school that would like to do more?

**HEINEMAN:** I admire what you're doing already, which is to focus on giving people really different alternatives in the third year. Clinical work is important because it gives people a sense of what it's actually like to practice and it's a great way to learn. But I also think in the third year it's possible for people to explore other disciplines and other ways of thinking about problems so they develop this breadth of vision, this generalist capacity that they're going to need even if they go out and specialize, because they will come back and be generalists later.

Third year can be spent broadly learning how to integrate many different perspectives and define problems correctly to get to the right solutions. I think that's a very important mission for the law school to pursue.

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**JAMES COX:** Financial security and independence now loom very large in students' minds. To a great extent it arises from accumulated college and law school debt. But part of it reflects what's going on in society, I think — more uncertainty, possible financial insecurity at home. How can we instill in the students a broader civic-mindedness?

**HEINEMAN:** I agree — everybody is preoccupied with money. Materialism has been a constant theme in American history, and we're now at the height of the cycle in terms of avarice. Students are inundated with offers from law firms. Recruiters show up in legion on campuses with all sorts of blandishments and summer job perks. "Recruiters" don't come from the public and non-profit sectors, so the alternatives are not presented as vividly.

I think one approach is to present a course on "heroes" in the law, where you give people a sense that there are lawyers, other than Supreme Court justices, who have had remarkable, impactful careers in many different ways. That would be a kind of intellectual history of great people.



And you have to show students, through career counseling, that other alternatives exist. The public interest firms, the public defender, the U.S. attorney, the legal adviser to the State Department, the World Bank, the European Bank for Reconstruction and Development — these are places that don't recruit, so you've got to go find them. I think the school has a great obligation to present students with a whole array of careers in public service, the nonprofit world, and even non-legal jobs.

In addition to learning about rules and norms, lawyers should be learning about how organizations work and about how to get things done, not only in an organizational way, but in a political way. And the law school should be presenting to them opportunities where they can use the skill they have — how to reason about rules — but in broader institutional contexts where many other skills are also required.

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**PETER KAHN:** What are your thoughts on how we bring the law school closer to the profession and the alumni? What role do you see alumni having, if any?

**HEINEMAN:** I believe strongly that we've got to offer more in law classes than just appellate cases. We should have people come in to develop new cases with the professors that would be enormously rich in terms of uncovering the multiplicity of factors in real world decisions.

We should basically define a problem, like global sourcing, that raises every issue from the fundamentals of globalization down to the technicalities of how do you deal with third-tier suppliers in western

China. A practitioner who's been involved in that could come in and develop a module for an international policy course, collaborating with a law professor to produce a stimulating case that would let the students look at how to deal with this issue from the point of view of an NGO, from the point of view of the Chinese government, from the point of view of this government, from the point of view of the CEO, from the point of view of the board of directors, and from the point of view of the general counsel. There are a lot of different roles that people play, and working out the issue will involve law, ethics, reputation, business and geopolitical risk, among other considerations. You would have a very rich discussion over a period of time, ranging from the high policy to the very detailed implementation questions.

Another way to connect with the profession would be to have a systematic way of agenda-setting for the professors. At regular intervals gather together a group of 10 great people in the profession — in environmental law, in the securities area, in global competition law, in business ethics, drawing from firms and corporations — people who are really on the front lines, to outline the issues that they are facing. Some of that will be articulated as practical issues that the academics may turn into broader problems, but hearing the particular challenges people in the real world are struggling with and how they work through those issues may generate all sorts of interesting ideas about research and analysis that could fertilize, if you will, the academic soil.

I have this old-fashioned view that law professors should be public intellectuals. The critical mass of law school ought to be dealing at a very sophisticated intellectual

and empirical level with some of the hardest problems we're facing, whether they are domestic problems or global issues that business people on the front lines don't understand. GE is on the forefront of globalization: I had to race to keep up, running a huge organization and trying to read and learn at breakneck speed. So much was happening so fast. We definitely need help from people who can step back, but who are answering questions that are very sophisticated and analytic in an empirical way — questions, I must stress, that are of value to us.

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**KAHN:** What training should we offer our graduates — lawyers five years out or more?

**HEINEMAN:** Don't bring them back just to refresh them on the law. Offer them a chance to gain a broader experience with other professions and disciplines. There would be some combination of executive education, because business schools and public policy schools obviously have programs for people in mid-career, and if you could add the law to that and add lawyers to the mix, and even have some courses where you have lawyers, public policy types and business types, so there was a mix [of all three disciplines], then I think it could be really interesting — and very stimulating for participants. ♣

# Advice for a new administration

P.O.T.U.S.



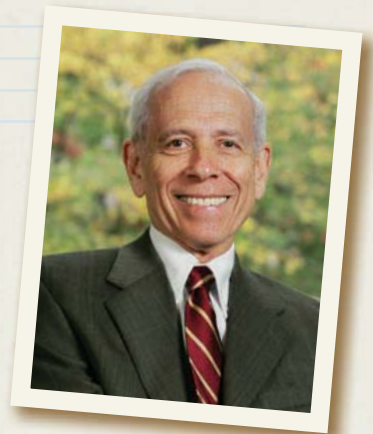
**DUKE LAW  
FACULTY MEMBERS  
OFFER INSIGHTS  
ON PRESSING ISSUES  
THAT WILL FACE THE  
NEW PRESIDENT**

From: Donald L. Horowitz

Re: Democratization policy

Advice: Embrace liberalization,  
de-emphasize elections,  
let constitutions evolve

**T**HE NEXT PRESIDENT should rethink democratization policy in a more subtle way than we've seen in the recent past. We should reduce our intense focus on elections and constitutions and instead encourage liberalization when democratization is not in American interests. Where possible, we should facilitate the maximum dissemination of "neighborhood effects" — positive developments in one country that can influence others within a region.



Our democratization policy has long included an addiction to early constitution writing. It's often better to proceed slowly and let constitutions evolve over a period of years. In Iraq we unnecessarily rushed the process, largely for domestic reasons; the transitional administrative law would have worked just fine. The constitutional regime that resulted is essentially a deal between the Shi'a and Kurds and lacks the support of Iraqi Sunnis, who entered the process at a very late stage. They were promised constitutional amendments that are not likely to materialize any time soon, as the Kurds



## Faculty Focus

### Advice for a new administration

are reluctant to make necessary concessions. Constitutions cannot be written contrary to the interests of any major constituent groups in a region.

The next administration should also reconsider our focus on elections as the cornerstone of democratization policy. Democracy is not just about elections. In Pakistan, for example, we focused our considerable influence solely on the electoral process, whereas it should have been used to help restore an independent judiciary and a free press before a vote was held. Press freedom and the judiciary will continue to be divisive issues there, even if the coalition government that is being formed between two highly disparate parties, against all odds, manages to survive.

I hope a new administration will recognize that liberalization is sometimes preferable to democratization from the standpoint of American interests. Last year, we pressured the Palestinian Authority to hold early elections with the result that Hamas won in Gaza. Elections should have been preceded by cleaning up corruption and promoting liberalization and pluralization, and gaining a commitment from all parties to participate in a democratic regime. As it stands, Hamas has never made such a commitment.

Pursuing democratization in Syria also would almost certainly produce a radical Sunni Islamist government, as that country is now ruled by a very small Alawi minority. A more sensible objective would be to use the same pressures to liberalize the Syrian regime and limit its autocracy and repression of its own population.

Finally, a new administration should try to encourage international neighborhood effects, which can influence democratization within a region. These were extremely effective in Latin America in the 1980s and I think could be again in Southeast Asia. Dissemination of the fact that Thailand has just restored a democratic regime could well have a big influence on Burma, for example. Likewise, if ordinary Malaysians knew how, against all odds, a consolidated democratic regime has produced positive change in Indonesia, they would be very impressed. ♡

*The James B. Duke Professor of Law and Political Science, Donald Horowitz is an expert on constitution building and ethnic strife. He is a member of the Secretary of State's Advisory Committee on Democracy Promotion.*



**From: Scott L. Silliman**

**Re: National Security**

**Advice: Change how we conduct  
our military operations in the  
war on terror**

**T**HE UNITED STATES has endured more than seven years of continuous combat operations, and the toll upon our armed forces has been great. More than 4,000 have died and the services are now strained both in personnel and equipment. The financial cost of these ongoing engagements continues to escalate, yet military progress in Afghanistan and Iraq has been difficult to achieve.

The current administration has transformed the military into a force trained and equipped primarily for dealing with insurgencies. The risk in such a major transformation is that it erodes our traditional capability — our superior air power and land-based firepower — which we have always relied upon to gain victory when threatened or attacked by another country in conventional armed conflict. This is a grave mistake; we must be prepared for both contingencies.

In trying to alleviate some of the strain upon the active duty force caused by the ongoing conflict in Southwest Asia, there has been an increasing reliance upon private military contractors to assume tasks traditionally done by uniformed personnel, including such core military functions as the use of lethal force and interrogation of detainees. There is much confusion as to the legal status and accountability of these contractors, and incidents involving their alleged violations of the laws of war have created intense criticism both here and abroad.

What should the new administration do to preserve our military readiness while reducing the adverse effects of continuing operations upon our armed forces? American involvement must be reduced and a more multinational force employed in both Afghanistan and Iraq; at the same time, a greater commit-



ment must be fostered on the part of the global community to bring peace and security to the entire region.

Convincing our allies to change American uniforms for those of their own will not be easy. We must find ways to assuage the widespread criticism of the United States prompted by our perceived disregard of international law in the war on terror. To that end, our treatment of the detainees at Guantanamo Bay must be humane, and our movement of suspected terrorists from one country to another for interrogation must be consistent with treaties to which we are a party. We must also ensure that the prosecutions by military commission of those we charge with war crimes are transparent and fair in the eyes of the international observer. Most important, we must return to the United Nations as a full partner, seeking to act collectively with other members in the Security Council in decisions on the use of military force, rather than individually as we have in the past several years.

We are not the only victims in the global war on terror. Other countries have suffered terrorist attacks as well. We therefore cannot afford to stand alone in trying to defeat those who would do us all harm. ♡

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*Scott L. Silliman is a professor of the practice of law and the executive director of Duke's Center on Law, Ethics and National Security. He is a member of the American Bar Association's Standing Committee on Law and National Security.*



From: Ernest Young

Re: Working with Congress

Advice: Choose separation of powers battles carefully

**T**HE NEXT PRESIDENT will take office following a period of intense controversy concerning the allocation of powers among the three branches of the national government. While these separation of powers controversies — as prevalent in the Clinton administration as that of George W. Bush — have been manna from heaven for constitutional law scholars, the next president would be well-advised to try to reduce the level of tension. One way to do that would be to change how we think about the notion of executive precedent.

Many separation of powers questions seldom, if ever, wind up in court. On questions about power to use military force, the treatment of persons apprehended in wartime, or, more prosaically, the internal operations of the executive branch, the guiding “precedents” come from practice. On many issues concerning the interaction of the executive and legislative branches, for example, the leading source of law is simply what was done by the relevant actors in similar past circumstances. The 1868 impeachment of Andrew Johnson and the Watergate controversy provided precedential guidance for the Clinton impeachment, for example. The practice of the political branches — Congress and the president — thus sets an important precedent for future disputes about constitutional power.

The problem is that the use of congressional and executive precedent can create perverse incentives for one branch *not* to cooperate with the other, lest that branch be viewed as conceding that it lacks constitutional authority to act unilaterally. This is surely one reason — although probably not the only one — that President Bush did not seek authorization from Congress

before establishing a system of military commissions to try suspected terrorists or undertaking a widespread system of domestic antiterrorist surveillance. It seems likely that if the president had gone to Congress in the early days of the war on terror and sought authorization for these initiatives, Congress would have acceded. But we also know that the president’s failure to secure such approval initially proved costly in terms of both time and scarce political capital.

We need a way for the president to be able to work with Congress (when that is politically possible) without conceding limits on his unilateral powers that may come back to haunt him in the future. Both Presidents Bush were able to do this on the vital question of war powers; prior to each of the Iraq wars, the president sought authorization from Congress while stating clearly that, in his view, the president would also have had power to act unilaterally. By not forcing the issue, each President Bush avoided



a constitutional crisis and gained the substantial political advantage of congressional support.

The next president should find ways to do this more often. When the president and Congress are in agreement on a course of action — and they often are — there is no need to resolve separation of powers questions. Needless disputes could be avoided through the use of presidential signing statements to “reserve the president’s rights” to insist on unilateral authority in future cases. Although such statements have been controversial in other contexts, in this situation they would simply postpone constitutional controversy until an issue really becomes worth fighting about. That will make life less interesting for law professors, alas, but might pave the way for more collegial and effective government. ♣

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*Professor Ernest Young is a scholar of constitutional law, the federal courts, and foreign relations law.*



**From: Jonathan B. Wiener**

**Re: Global climate policy**

**Advice: Achieve progress on climate change through policy and power**

**T**HE NEXT U.S. PRESIDENT will take office at a prime moment for climate change policy. Major climate legislation will return in the new Congress and 2009 is also the year that the Bali Action Plan, adopted in December 2007, calls for negotiation of a new treaty to follow the Kyoto Protocol.

A serious, well-designed policy to combat climate change should address the climate problem effectively and efficiently. It also should reform and revitalize the structure of environmental governance.

Much of past environmental law has suffered from fragmentation of authority, neglect of tradeoffs, rigid dictates, and mismatched scale. Some progress has been made, such as the cap-and-trade system used to reduce acid rain, the information disclosure policy for air toxics, and the executive orders requiring policy evaluation under every president of both parties for the last 40 years. But comprehensive reform remains elusive. Meanwhile, important environmental issues have gone unaddressed — most notably, climate change.

On the bright side, through years of research and policy experimentation, we have learned a great deal about regulatory design. We know how to make the regulatory system better, stronger, and less costly than it was before.

Climate policy offers the biggest challenge — and the best opportunity yet — to achieve systematic reforms that protect the environment more at less cost through better regulation. Effective climate policy must:

- (1) Comprehensively cover all greenhouse gases, their sources and sinks, as well as multiple sectors (economy-wide), integrating issues currently scattered across separate agencies. Doing so would increase environmental benefits while cutting costs by over half, compared to a narrow piecemeal approach.
- (2) Pay explicit attention to tradeoffs, both benefit-cost and risk-risk (including ancillary harms and ancillary benefits), in setting the goals and boundaries of climate policy.
- (3) Use flexible market-based incentives through an efficient cap-and-trade system (cutting costs by another half or more when compared to no trading). Allowances should be mostly auctioned (raising revenues that can be used to reduce taxes) and partly allocated to enlist opponents, as was done in the U.S. acid rain trading program.
- (4) Tackle the climate problem on a global scale, engaging all major emitting countries (including the U.S., China, India, and other major developing countries — using the allowance allocation as one carrot), with coordinated national and subnational implementation (rather than a patchwork of disjointed local efforts that induce emissions to “leak” unregulated to other places).

With these strategies, the next president and Congress could launch the most important U.S. environmental law since 1990, or perhaps ever. And the benefits may radiate further, inducing wider reform of U.S. environmental governance on similar design principles.

That task is daunting enough, but the next president’s challenge will be larger still. A global climate regime requires a strategy for relations among the great powers. The year 2009 may resemble 1815, when Prince von Metternich shrewdly designed the multipolar regime that kept peace in Europe for a century. To engage the major emitters in a global climate accord — including the U.S., China, India, Brazil, and Indonesia, as well as Europe, Japan, Canada, and Russia — we will need to apply the best regulatory design and the best international diplomacy, in a way that safeguards the planet while fostering prosperity and equity. We will need no less than a modern Metternich. ♣

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*Jonathan B. Wiener is the William R. and Thomas L. Perkins Professor of Law at Duke Law School, professor of environmental policy at the Nicholas School of the Environment, and professor of public policy studies at the Terry Sanford Institute of Public Policy. For a more detailed discussion, see Jonathan B. Wiener, “Radiative Forcing: Climate Policy to Break the Logjam in Environmental Law,” NYU Environmental Law Journal and Richard B. Stewart and Jonathan B. Wiener, *Reconstructing Climate Policy* (2003).*



## Advice for a new administration

From: Barak Richman

Re: Health care policy

Advice: Reorganize the marketplace



**T**HE TRADITIONAL APPROACH to covering the uninsured has been to expand insurance programs. But it is equally important to organize the market for health care services so insurance and care become more affordable. Currently, the middle class and small businesses are being priced out of health care. The rising number of uninsured and rising healthcare costs are two sides of the same coin.

The most urgent need is to organize the marketplace so competition stimulates the offering of affordable insurance products. Doctors and hospital systems should compete with each other — for patients and for insurance networks. However, rather than competing with each other, providers have instead preferred to merge, causing monopoly prices to become a staple of most health care markets. Antitrust policy has been unfortunately ineffective in this sector, and insurers have been forced to cover expanded and monopoly-priced services. This makes insurance all the more inaccessible.

Insurers also have done little to stimulate competition among providers. They traditionally have resisted developing innovative low-cost options, which might limit coverage for expensive or experimental care, and instead have succumbed to providers' monopoly prices and comprehensive offerings, passing on cost increases to consumers. Rather, insurers should think creatively about offering plans that get patients the care they need at prices they can afford. They should organize provider networks so providers compete, bundle coverage so providers cannot leverage monopoly power to dominate potentially competitive markets, and develop systems that encourage subscribers to get preventive care and independently manage their health needs.

The regulatory structure is largely to blame for the lack of competition. It has ossified insurance policies, discouraged innovation, and made it very difficult for new low-cost provider systems to emerge. For example, professional licensure requirements, Medicare price regulation, certificate-of-need rules, and weak antitrust policy have made it very hard for integrated health care systems to enter the marketplace. So innovative re-regulation and deregulation may be needed to force providers and insurance companies to think creatively, and federal regulation can pre-empt many of the state regulations that currently prevent insurers from innovating.

But the main reason insurers don't fight for cost containment through competition is because the cost of health insurance is hidden from most Americans. Under current law, an employer's contributions to an employee's insurance coverage are not taxed, so employers and employees are mutually encouraged to have employers compensate workers with insurance rather than wages. Economists have long observed that this creates incentives for excessive insurance and introduces distortions in health services markets. But it also effectively hides the cost of health care from most Americans. Removing the tax exclusion would both expose that cost and enable individuals to realize how much income they lose to rising insurance premiums. In 2005, the President's Advisory Panel on Federal Tax Reform strongly encouraged at least limiting the exclusion, noting that it is one of the most expensive and distortive deductions in the tax system. Few politicians listened — adopting the recommendation would certainly be politically controversial — but it would be a bold and honest step for a new administration. ♡

*Professor Barak Richman's research interests include the economics of contracting, new institutional economics, antitrust, and health care policy.*

# The American jury: not guilty as charged

Book review by Donald H. Beskind LLM '77

**Neil Vidmar and  
Valerie P. Hans**  
*American Juries: The Verdict*  
(Prometheus Books, 2007)

**R**EADING NEIL VIDMAR and Valerie Hans' fascinating new book, *American Juries: The Verdict*, evoked the voice of Cassius saying, "The fault, dear Brutus, is not in our stars, But in ourselves..." (William Shakespeare, *Julius Caesar* Act I, Scene 2). But let's return to that later.

Vidmar and Hans' new work picks up where their comprehensive 1986 book, *Judging the Jury*, left off. In their first four masterful chapters, they comprehensively review the history of the jury from trial by ordeal through those of Enron's Skilling and Lay. For lay and lawyer audiences alike, I cannot imagine a better treatise on the jury's history. Were historical reportage the book's sole accomplishment, it would be well worth reading, but to Vidmar and Hans, history is but prologue.

The bulk of this book is devoted to the litany of crimes with which the American jury has been charged by its critics: over-influence by pretrial publicity; incorrect determination of facts; inability or unwillingness to follow the law; inability to comprehend complex scientific evidence; inability to assess expert credibility and testimony; wrongful convictions and acquittals; jury nullification; prejudice in death-penalty cases; excessive compensatory and punitive damages; and anti-doctor bias in medical malpractice cases. With each charge, Vidmar and Hans carefully assess the accusation, review the relevant history of the jury's role in the area and then examine the scientific research — their own and that of other researchers.

As they go about trying the case against the jury on each count, the authors make illustrative use of actual transcripts of jurors deciding cases. For the first time, the secrecy of the jury deliberation room was breached — with the approval of Arizona judges and juries, Vidmar led a systematic



study of 50 jury deliberations. The transcripts are fascinating. We see how jurors use the jury instructions in their deliberations to stay true to the burden of proof and how they apply evidentiary standards. We see how they evaluate the credibility of witnesses and how they use physical evidence to make informed assessments of experts' opinions. And we see how jurors bring common sense and everyday experience

into their assessment of the parties' contentions about the evidence. Particularly fascinating for me was the remarkable consistency of these deliberations with those I and Duke's trial practice students have seen for 30 years on watching the students' mock-trial jurors on closed circuit television.

Though jury critics have leveled charges at everything from jury competence to jury fairness, Vidmar and Hans' conclusions



**On the charge of anti-doctor bias: not guilty. Jury verdicts on liability compare favorably with medical experts' assessments. Jury verdicts on damages are consistent with judges' assessments of pretrial settlements for similar injuries and of verdicts in auto crashes with similar injuries.**

disprove such skepticism. A few of their specific conclusions are worth mentioning.

On the charge of inability to handle scientific and expert evidence: not guilty. In studies of how judges would decide cases versus how jurors would decide them, the correlation is strong. That correlation is not affected by the complexity of the trial or the number of expert witnesses. This refutes assertions that jurors are not up to handling complexity and scientific evidence, and that judges, instead, should hear medical malpractice and similar cases.

On the charge of "jackpot" or "lottery" justice: not guilty. Juries are more often conservative in damage awards than generous. Punitive damages are rare, and, if left to judges rather than to juries, the ratio of punitive damages to compensatory damages would not vary significantly.

On the charge of anti-doctor bias: not guilty. Vidmar and Hans find no evidence to support the charge that juries are anti-doctor or patient-friendly in medical malpractice cases. Jury verdicts on liability compare favorably with medical experts' assessments. Jury verdicts on damages are consistent with judges' assessments of pretrial settlements for similar injuries and of verdicts in auto crashes with similar injuries.

As *American Juries: The Verdict* reveals, the six- or 12-person jury organism, especially when demographically diverse, proves to be a remarkably accurate way of resolving factual conflicts within a legal framework. Vidmar and Hans recognize some areas in which the jury is imperfect. But, to recall Cassius' observation, the fault, dear Americans, is not with the jury, but with us.

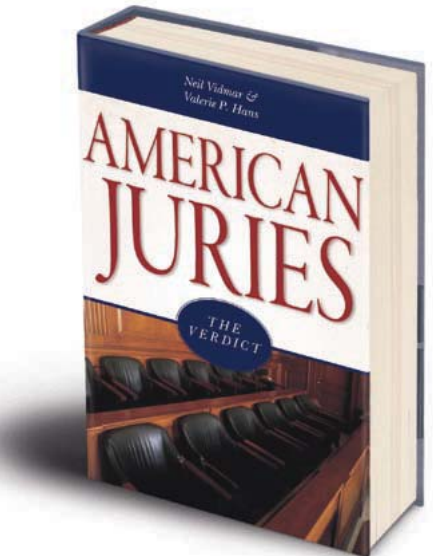
The research Vidmar and Hans document shows that jurors bring to the jury their ways of viewing the world — sometimes called their "prejudices" — but so

do judges, despite being better educated than the average juror. Coming to decision-making is a human problem, not a jury problem. The use of lawyer-conducted jury selection with peremptory strikes and challenges for cause helps eliminate strongly held juror prejudices, but complete elimination of juror bias is impossible in a system involving humans.

The antidote is not aggregating decision-making in the hands of sole judges (where one person's prejudices predominate) or even in a group of experts (where the prejudices are perhaps shared, perhaps conflicting), but aggregating diverse views in a jury box of six or 12 to minimize the effect of any one person's prejudices. Perhaps an aggregation of an equal number of judges might serve the same result — but at what cost financially or, even more importantly, to participatory democracy? As it is, we are underpaying judges and under-financing courts while Americans not among the elites are increasingly more removed from the operation of any branch of government.

Based on the evidence, Vidmar and Hans' unanimous verdict is "strongly in favor of the American jury." In reaching it, the authors recognize that juries occasionally get it wrong. When that happens, rather than criticize the jurors, we ought to be looking for fault in ourselves — the judges and lawyers who control what a jury gets to see and hear.

Though jury decision-making is a human endeavor, in some respects each



jury is like a computer with its programming set by the judge's instructions. Vidmar and Hans show that judges can better program the jury with understandable instructions to help the jury put the evidence in its proper legal context. Conversely, the computer adage, "garbage in, garbage out," applies to the evidence a jury hears. Experienced advocates know that if a jury gets it wrong, often the lawyers in their zeal not to miss any fact failed to focus their evidence and arguments on the critical issues the jurors had to decide.

There is nothing inherently wrong with the jury, as Vidmar and Hans make clear, but we can make it better. ♡

— Donald H. Beskind LL.M. '77 is a partner with *Twiggs, Beskind, Strickland & Rabenau* in Raleigh and a senior lecturing fellow and director of the Trial Practice Program at Duke Law School.

*American Juries: The Verdict*, by Neil Vidmar and Valerie P. Hans, was the subject of a session led by six top scholars at the joint annual meetings of the Law & Society Association (U.S.) and the Canadian Law & Society Association, held in Montreal on May 29. On Oct. 24, 2008, it will be the focal point of a conference at Suffolk University Law School, on "Successful Strategies for Jury Trials," co-sponsored by the Macaronis Institute for Trial and Appellate Advocacy and the Massachusetts Academy of Trial Attorneys.



# Lisa Kern Griffin

## Scholar of federal criminal law joins Duke Law faculty

LISA KERN GRIFFIN HAS a graduate degree in English, but she also thinks of the five years she spent as a federal prosecutor in Chicago as a sort of advanced degree in federal criminal law, her chosen area of scholarship.

“My scholarship and my teaching are informed by the institutional knowledge I gained in Chicago,” says Griffin, the newest addition to the Duke Law faculty. Having joined the U.S. Attorney’s Office in 1999 following a clerkship on the United States Supreme Court with former Associate Justice Sandra Day O’Connor, Griffin worked on a range of federal crimes, eventually specializing in cybercrime and public corruption. She has led 12 jury trials, including one of the first federal trials for Internet software piracy, prosecuted more than 100 defendants, and argued several cases before the United States Court of Appeals for the Seventh Circuit.

“I originally chose to be a federal prosecutor precisely because I had an academic interest in criminal law and procedure and felt I could benefit from on-the-ground experience,” says Griffin, a graduate of Stanford Law School, where she was president of the *Stanford Law Review*. “But I stayed in the U.S. Attorney’s office — and enjoyed every day there — not only because the work was substantively engaging but also because I was surrounded by truly great lawyers and colleagues.”

Since joining the UCLA law faculty in 2005, Griffin has examined the political and social meanings and consequences of federal criminal enforcement through her scholarship. “I have great admiration for federal prosecutors and generally believe that they act in good faith,” she says. “But there are institutional failings, and I’m interested in exploring the balance of power within the system — in thinking about how best to calibrate the relationship between legislators, prosecutors, judges, juries, and defendants.”

Griffin’s 2007 article, “Compelled Cooperation and the New Corporate

Criminal Procedure,” published in the *New York University Law Review*, critiques the federal government’s recent use of deferred prosecution agreements (DPAs) in response to Enron-era frauds. The government agrees to defer or dismiss charges against corporations that meet stringent cooperation requirements and identify employee targets. This compelled partnership between “public governmental investigations and private corporate compliance efforts” has developed, Griffin theorizes, without adequate consideration of the procedural protections that should apply.

“The use of DPAs has shifted a number of interactions and incentives into the investigative stage of prosecution. Many of these issues would previously have arisen when determining liability — in plea negotiations or at trial — or at the sentencing phase,” Griffin explains. “The investigative stage lies further below the radar. And because there is no judicial oversight at that point, there is also little recourse for individual defendants.” Further, she said, there has been insufficient attention given to whether the use of DPAs in this way is accomplishing the broader goal of increasing proactive compliance with investigators.

Griffin’s current project, titled “The Social Meaning of Criminal Lying,” carries forward certain strands from her research into compelled cooperation,



notably “the nature of the process crimes that arise organically from interactions between defendants and prosecutors or agents,” she says. “I analyze the creation and definition of actionable falsehoods in federal investigations, including recent cases involving celebrity athletes, corporate leaders, and politicians. Drawing on criminal law theory and social psychology, I consider the role of authority, efficiency, and apology in the false statement charges, and suggest that expressive harm might result from pretextual prosecutions for defensive lies.”

In teaching evidence, Griffin also draws extensively from her experience, encouraging her students to think about the wider social context for the rules. She likes to use clips from movies and media depictions of the justice system as hypotheticals and conversation sparks. “A bit of pop culture

also helps leaven a very rigorous class,” notes Griffin, who counts the movie “My Cousin Vinny” as one of her favorite classroom “aides.” She also shows scenes from films like “To Kill a Mockingbird,” “A Few Good Men,” and “Legally Blonde” when discussing cross-examination techniques and impeachment.

Griffin says her approach to law and legal scholarship has been significantly influenced by Justice O’Connor and Judge Dorothy Nelson of the Ninth U.S. Circuit Court of Appeals, for whom she clerked. “In my scholarship I reference my faith in judicial oversight. That perspective has certainly been informed by my clerkships with Justice O’Connor and Judge Nelson. Frankly, they are the ‘aspirational judges’ I have in mind when I write about judicial review.

“Justice O’Connor combines intellectual integrity and devotion to the law with respect and understanding for individual litigants,” continues Griffin. “I learned a great deal from her jurisprudence, of course, but even more from her personal strength, legendary work ethic, and incredible grace. She sets the example for a life in the law, and I often think of her encouragement to do your best and hold your own, whatever the task.

“Like Justice O’Connor, Judge Nelson is fair-minded, pragmatic, and a generous teacher and colleague. I have been extremely fortunate in my mentors, and I hope to be able to give some measure of that back to my students.” ♡

## Lisa Kern Griffin

### Recent scholarship

*Compelled Cooperation and the New Corporate Criminal Procedure*, 82 New York University Law Review 311 (2007)

*Circling Around the Confrontation Clause: Redefined Reach But Not a Robust Right*, 105 Michigan Law Review First Impressions 16 (2006)

*The Image We See Is Our Own: Defending the Jury’s Territory at the Heart of the Democratic Process*, 75 Nebraska Law Review 332 (1996), excerpted in *Law and Popular Culture: Text, Notes and Questions* (2007)



## Michael E. Tigar

### Renowned litigator joins faculty

**O**VER 40 YEARS as a litigator, Michael E. Tigar has represented such high-profile — and often controversial — clients as Angela Davis, John Demjanjuk, Allen Ginsberg, H. Rap Brown, Sen. Kay Bailey Hutchison, and Oklahoma City co-conspirator Terry Lynn Nichols. “Everyone is entitled to a fair trial,” he says, simply.

At the age of 67, Tigar says he still enjoys pursuing justice, but chooses not to take on the lengthy, high-profile cases that made him famous. “I’m like an old dog that always pursued cars — now I’m sitting on the porch and barking as they

go by,” he jokes. In fact, he’s busy training the next generation of trial lawyers at Duke Law School.

After serving as a visiting professor at Duke since 2006 — and deciding to settle in North Carolina with his wife, Jane, an attorney, author, and yoga teacher — Tigar has joined the faculty as a professor of the practice of law. He will teach appellate litigation in the coming academic year, thus helping students master the finer points of top-level advocacy through advanced seminars. Litigation should be taught in levels, says Tigar, a former chair of the Litigation Section of the American Bar Association.

“First we need to make sure that students care about the basic building-blocks of substance and procedure rulings,” he explains. “Then, we have to talk about the tools a litigator uses, such as direct evidence, cross examination, and rules of evidence.” A third level, he says, is teaching students to “listen and to care, to understand the human stories — of defendants, victims, and witnesses.”

It’s important for students to understand how judges, juries, defendants, and attorneys make choices about how to deal with cases, says Tigar. “I want to help them understand how the operation of the system that calls itself ‘criminal justice’ has real effects on people. The best lawyering takes into account whether it will improve the human condition and further claims for justice.”

Tigar says he also wants students to appreciate the social importance of litigation, what he terms the “fourth level” of advocacy teaching. “In this country, to a degree not found in any other, great social issues take the form of litigated cases,” he says. “Great social struggles are reflected and embodied in such cases as *Amistad*, *Dred Scott*, the great civil rights rulings, and the issues being argued before the Supreme Court today. ... To be a constructive participant in this kind of litigation, you must understand what Martin Luther King called the ‘arc of history.’”

A native of Glendale, Calif., Tigar earned a degree in political science at the University of California, Berkeley, while working as a journalist for a nonprofit radio station. After working abroad, he had to choose between journalism, history, or law as a profession.

“I thought, a journalist has lots of access and can write things — be involved as an observer. A scholar can teach students and publish, but with a law degree, you could do it all,” he says.

He was influenced, too, by the era — the height of the civil rights direct-action movement. “I became a lawyer because I wanted to participate in the struggle for human

rights,” he says. “I met a lot of folks and read a lot of books that helped deepen my understanding of how I might be a constructive contributor.”

After graduating first in his law school class at Boalt Hall, Tigar joined the firm now known as Williams & Connolly, where he practiced for several years before starting his own firm. He later taught at UCLA and lived in France while working on a book on European legal history, *Law and the Rise of Capitalism*. He returned to the United States to represent Cesar Chavez’s son, Fernando, who had refused induction into the Army, and to argue the case of *Gelbard v. United States*, one of seven he has argued before the Supreme Court.

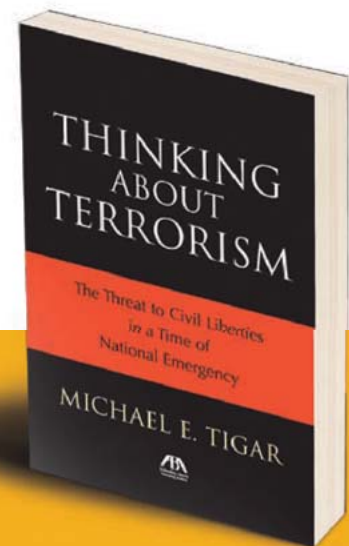
Tigar has balanced scholarship, teaching, and advocacy throughout his career. He has taught at American University’s Washington School of Law, where he remains professor emeritus of law, and from 1987–1998 held the Joseph Jamail Centennial Chair in Law at the University of Texas Law School. He also has been a visiting professor at the Faculty of Law in Aix-en-Provence, France. He retains ties to Austin where the Texas Civil Rights Project’s new building is named for him — the Michael E. Tigar Human Rights Center.

Having spent more than 40 years with “one foot in the academic world and the other in the world of law practice,” Tigar says he’s had about as much fun in his career as a person could have. “And I’ve been able to do it all because I have a law degree.” ♫ — *Debbie Selinsky*

### Courses 2008–09:

**Storytelling in Advocacy:** Students review transcripts of significant trials, analyzing the advocates’ approaches to their cases.

**Appellate Practice Seminar:** Students take a current case, write an appellant’s or respondent’s brief, and argue before federal appellate judges.

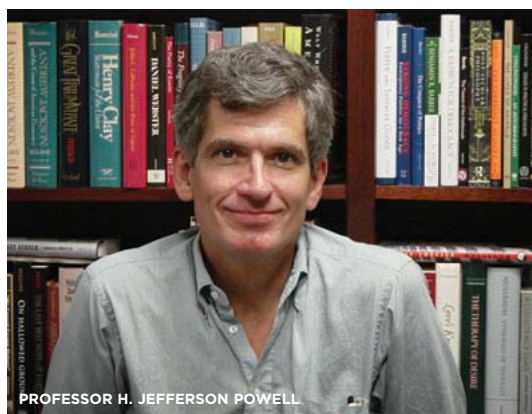


**H**AVING WRITTEN an autobiography, *Fighting Injustice*, and several books about advocacy, Tigar’s latest book is *Thinking About Terrorism: The Threat to Civil Liberties in Times of National Emergency*, published by the ABA in 2007.

In addition to offering historical perspective that he feels has been lacking in the public discourse, Tigar examines both “group and individual terrorism” and what he calls “state-sponsored terrorism” or “the repressive ways regimes deal with their own people.” “No country can say it opposes terrorism unless it is willing to oppose all forms of it wherever it appears,” he says. “The system of military commissions should be disbanded and people believed to commit crimes should be tried according to procedures established in the U.S. Constitution.”

In *Thinking About Terrorism*, Tigar also contends that torture “violates the fundamental norms of international law, accomplishes nothing worthwhile, diminishes the respect in which the country practicing it is held, and makes that country unable to create genuine alliances to address the underlying issues.” ♫

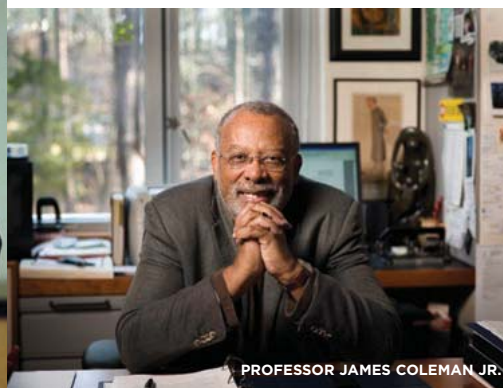




PROFESSOR H. JEFFERSON POWELL



PROFESSOR ARTI RAI



PROFESSOR JAMES COLEMAN JR.

## Powell, Coleman, and Rai honored with distinguished professorships

Professors H. Jefferson Powell, James Coleman Jr., and Arti Rai have been honored with distinguished professorships. The honors were announced at a Duke University ceremony on April 28.

Powell was awarded the university's Frederic Cleveland Chair in Law and Divinity, which recognizes his contributions to both disciplines through appointments at the law and divinity schools. His recent legal scholarship has focused on the constitutional law governing foreign policy, the role of history and politics in constitutional decision-making, and the moral choices involved in being a lawyer. At the Divinity School, his teaching and research interests involve Christian theological ethics and the theological interpretation of contemporary society. A prolific writer, Powell is the author of *A Community Built on Words: The Constitution in History and Politics*, and *The President's Authority Over Foreign Affairs: An Essay in Constitutional Interpretation*, among many other books and articles. His latest book is *Constitutional Conscience: The Moral Dimension of Judicial Decision* (University of Chicago Press, 2008).

Powell has served in both the federal and state governments, as a deputy assistant attorney general and principal deputy solicitor general in the U.S. Department of Justice, and as special counsel to the attorney general of North Carolina. He has briefed and argued cases in both federal and state courts, including the Supreme Court of the United States. In 2001-02, he was named Duke's University Scholar/Teacher of the Year.

"Professor Powell is a wonderfully gifted scholar," said Duke Law Dean David Levi. "His contributions

to the fields of law and theology are profound and influential. He also is a marvelous teacher. While we honor him with this distinguished professorship, the truth is that he honors us through his work and devotion to this university."

Coleman received the Law School's John S. Bradway Chair, which recognizes a commitment to clinical education and public service. A pioneer in legal aid and clinical education, Bradway established the school's first clinical program during the 1930s.

An expert in criminal law, wrongful convictions, issues relating to the death penalty, and doping in sports, Coleman is co-director of the Law School's Appellate Litigation Clinic and Wrongful Convictions Clinic. He also teaches in the areas of legal ethics, negotiation, and mediation.

Coleman joined the Duke Law faculty after a lengthy career in private practice, during which he specialized in federal court and administrative litigation, and represented criminal defendants in capital collateral proceedings. He also has a range of government experience, including service as chief counsel for the U.S. House of Representatives' Committee on Standards of Official Conduct and deputy general counsel for the U.S. Department of Education during the Carter administration. Coleman has chaired the American Bar Association Section on Individual Rights and Responsibilities and Death Penalty Moratorium Implementation Project.

"I can think of no person more fit for the inaugural John Bradway professorship than Professor Coleman," said Levi. "He lives a life dedicated to the ideals on which Bradway helped develop much of the Law School's curriculum and commitment to public

service. Through his death penalty-related work, his leadership in the area of wrongful convictions, and his remarkable commitment to public service, Professor Coleman models the professionalism and integrity we hope to instill in our students."

Rai received the Elvin R. Latty Professorship, named in honor of a former dean of the Law School, and previously held by the recently retired Professor Thomas Rowe. A leading scholar of patent law, law and the biopharmaceutical industry, and health care regulation, Rai's current research, funded by the National Institutes of Health, focuses on intellectual property issues raised by collaborative research and development in areas ranging from synthetic biology to drug development.

Rai's recent publications include "Who's Afraid of the APA? What the Patent System Can Learn from Administrative Law," 95 *Georgetown Law Journal* 269 (2007) (with Stuart Benjamin); "Open and Collaborative Research: A New Model for Biomedicine," in *Intellectual Property Rights in Frontier Industries: Biotech and Software* (AEI-Brookings Press, 2005); and "Finding Cures for Tropical Diseases: Is Open Source an Answer?" *Public Library of Science: Medicine* (2004) (with Stephen M. Maurer and Andrej Sali).

"Professor Rai is among the most creative scholars in the country," said Levi. "The real-world impact of her work in law, innovation, and biotechnology exemplifies the value and power of interdisciplinary collaboration. Her presence here has helped to establish Duke Law as one of the most exciting schools anywhere to study and teach intellectual property." ♡

# Duke Law welcomes distinguished visiting scholars in 2008-09

## John Dugard: Renowned scholar of international law and human rights

**P**ROFESSOR JOHN DUGARD recently retired from the University of Leiden where he held the Chair in Public International Law, and is a professor of law in the Center for Human Rights at the University of Pretoria. He has served as a judge ad hoc on the International Court of Justice, as special rapporteur on diplomatic protection for the United Nations International Law Commission, and as special rapporteur for the U.N. Commission on Human Rights, regarding the situation in the disputed Israeli-Palestinian territories.

Dugard is a former professor of law and dean at the University of Witwatersrand in Johannesburg, South Africa, and the former director of its Centre for Applied Legal Studies, a research center committed to the promotion of human rights in that country. He played a role in formulating the South African constitution following the end of apartheid. Dugard has written extensively on apartheid, jurisprudence, Roman-Dutch law, criminal procedure, international criminal law, human rights law, and public international law. He has also served as the director of the Lauterpacht Research Center for International Law at Cambridge University.

As a visiting distinguished professor, Dugard will teach Public International Law, International Criminal Law, and International Human Rights Law during the 2008-09 academic year. ♡



THE LEIDEN JOURNAL OF INTERNATIONAL LAW RECENTLY HONORED PROFESSOR JOHN DUGARD WITH A VOLUME OF ESSAYS ON THE THEME OF THE PROTECTION OF THE INDIVIDUAL IN INTERNATIONAL LAW.

## Guy-Uriel E. Charles: Scholar of constitutional and election law, race and the law



**G**UY-URIEL CHARLES is the Russell M. and Elizabeth M. Bennett Professor of Law at the University of Minnesota, and a former interim dean of the law school. A nationally-known scholar on issues relating to constitutional law, election law, campaign finance, redistricting, politics, and race, Charles was a member of the National Research Commission on Elections and Voting and the Century Foundation Working Group on Election Reform. He is the director of the Institute for Law & Politics, a senior fellow in law and politics at the Institute on Race and Poverty, and a law school faculty affiliate at the Center for the Study of Political Psychology at the University of Minnesota.

Charles will teach Race and the Law during the 2008-09 academic year. ♡

## Abraham L. Wickelgren, Northwestern University School of Law

**Scholarly focus:** law and economics, contract theory, bargaining theory, and media economics  
**Courses at Duke:** Contracts and Antitrust

## Ehud Guttel, Hebrew University

**Scholarly focus:** torts, law enforcement, economic analysis of law, and behavioral law and economics  
**Courses at Duke:** Law and Economics, Behavioral Economics and the Law, and Advanced Torts

## Kimberly D. Krawiec, University of North Carolina — Chapel Hill

**Scholarly focus:** empirical analysis of contract disputes, the choice of organizational form by professional service firms, banned commercial exchanges, corporate compliance systems, insider trading, derivatives, hedging practices, and “rogue” trading  
**Courses at Duke (Spring 2009):** Derivatives

## Youngjin Jung, Yulchon Law Firm (Seoul, Korea)

**Scholarly focus and areas of practice:** antitrust, telecommunications, international trade, international arbitration, and the high-tech, aviation, and chemical-industry sectors  
**Courses at Duke (Fall 2008):** International Trade Law

## John Hasnas '78, McDonough School of Business, Georgetown University

**Scholarly focus:** ethics and white-collar crime, jurisprudence, and legal history  
**Courses at Duke (Spring 2009):** Torts and Criminal Law

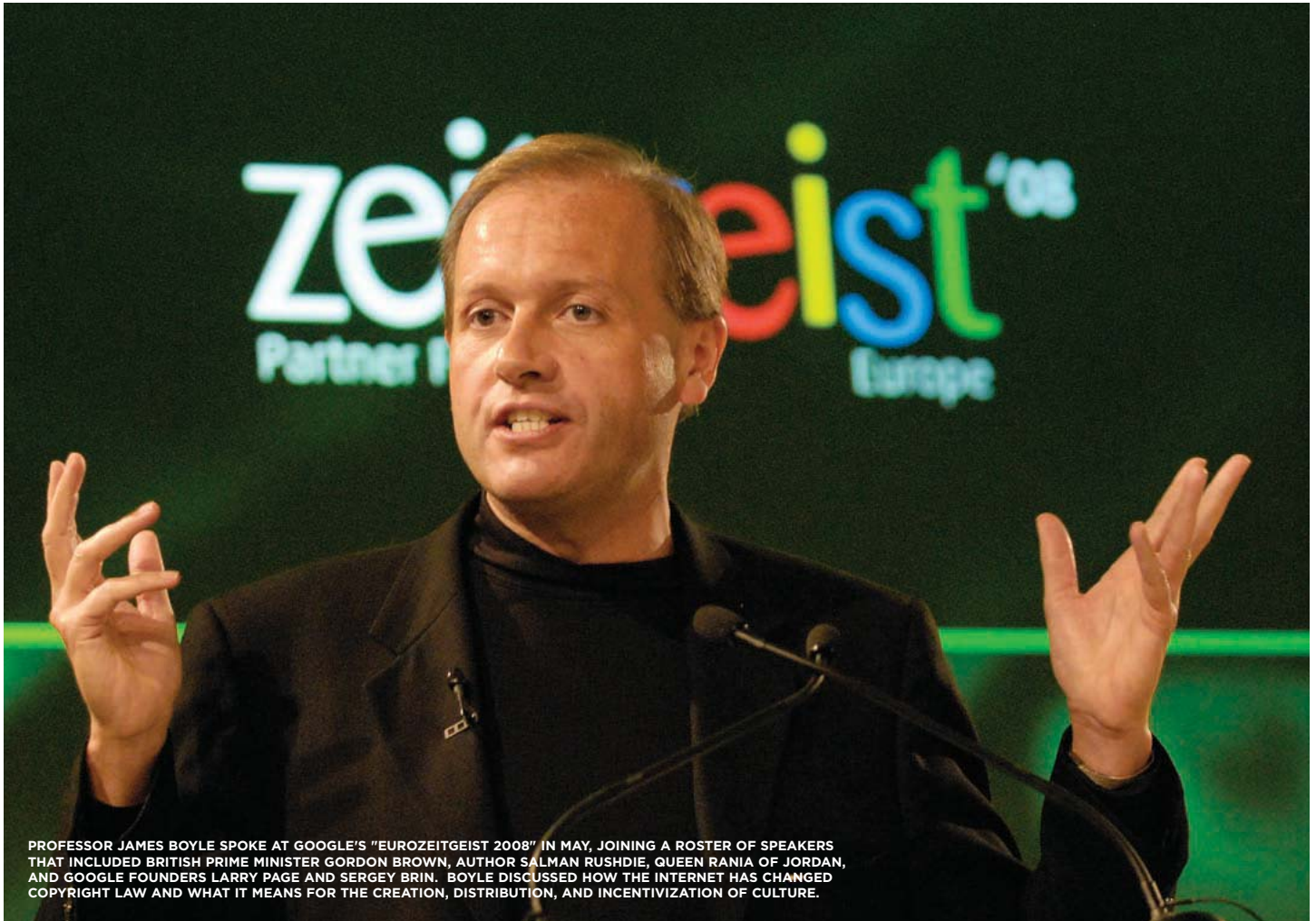
## Scott Dodson '00, University of Arkansas School of Law

**Scholarly focus:** federal jurisdiction and civil procedure  
**Courses at Duke (Fall 2008):** Civil Procedure

## Nils Jansen, University of Münster, Germany

**Scholarly focus:** comparative law, European private law, legal history  
**Courses at Duke (Fall 2008):** Private Law Beyond the State (seminar) and European Private Law





## Boyle appointed chairman of the board, Creative Commons, and board member, Public Library of Science

**T**HIS SPRING, JAMES BOYLE, the William Neal Reynolds Professor of Law, was named chairman of the board of Creative Commons and was appointed to the board of the Public Library of Science (PLoS).

Creative Commons is a nonprofit organization that works to expand the body of creative work available to the public for legal sharing and use. Boyle was one of the organization's founding board members and co-founded subsidiary divisions, Science Commons and ccLearn, devoted to science and open educational resources. "Jamie has demonstrated his commitment to Creative Commons from its founding," said Larry Lessig, the founder of Creative Commons, in endorsing Boyle's appointment as board chair.

Now one of the largest international networks working on these issues, Creative Commons pioneered the use of free copyright licenses to offer creators — authors, scientists, artists, and educators — the choice of a flexible range of protec-

tions and freedoms for re-use of their work. Tens of millions of works — from songs and movies to textbooks, photographs, and scholarly journals — have been licensed under Creative Commons licenses, which allow others to copy, share, and in some cases customize copyrighted works. In Boyle's words, "We are building on the 'all rights reserved' concept of traditional copyright to enable a voluntary 'some rights reserved' approach; the result is a global 'creative commons' of material you can use and share because permission has been granted in advance."

Co-founded by Harold Varmus, a Nobel laureate and former National Institutes of Health director, PLoS is a nonprofit organization of scientists and physicians committed to supporting open access to scientific, particularly medical, research. The seven PLoS publications are high-quality, peer-reviewed scholarly journals that are available online in full with no charges for access or restrictions

on reprinting or use, as long as the terms of the Creative Commons attribution licenses are met: The authors and sources must be cited.

"As scholars we are committed to the dissemination of knowledge," said Boyle. The enormously high prices of scholarly journals — some subscriptions cost \$10,000-20,000 a year — hardly seems compatible with that goal, particularly in the biological and medical sciences where access to knowledge could eventually save lives. But it is important in law too. I am delighted to say Duke was the first law school to commit to open access. All of our journals have been made freely available online since 1997."

Co-founder and faculty director of the Law School's Center for the Study of the Public Domain, Boyle's forthcoming book is *The Public Domain: Enclosing the Commons of the Mind*, which will be published by Yale University Press this fall. It will be freely available online under a Creative Commons license, Boyle says. "That seemed only fair." 🐾



### Bartlett honored by alma mater Wheaton College



**K**ATHARINE T. BARTLETT, A. Kenneth Pye Professor of Law and former dean of Duke Law School, was awarded an honorary Doctor of Laws degree by Wheaton College on May 17. A 1968 graduate of

the liberal arts college in Norton, Mass., Bartlett also delivered the keynote address at the commencement ceremony honoring Wheaton's Class of 2008.

"Through your example as a lawyer, legal scholar, educator, and citizen, you encourage us to reach for our best selves," said Wheaton College President Ronald A. Crutcher in presenting Bartlett with her degree. "The sharp intellect with which you earned high honors at Wheaton now focuses on the rights of women, children, and individuals who have been marginalized." Crutcher noted that one of Bartlett's many articles, "Feminist Legal Methods," is among the most cited law review articles on any subject. He also praised Bartlett's achievements as dean of Duke Law School, observing that the seven new law clinics established during her tenure "enhanced its capacity for building civil society."



### Cox has 'Top 10' corporate and securities article of 2007

**A**N ARTICLE CO-AUTHORED by James D. Cox, Brainerd Currie Professor of Law, has been selected as one of the "Top 10 Corporate and Securities Articles of 2007" by *Corporate Practice Commentator*. Cox wrote "Does the Plaintiff Matter? An Empirical Analysis of Lead Plaintiffs in Securities Class Actions," originally published in the *Columbia Law Review*, with Randall S. Thomas, the John S. Beasley II Professor of Law and Business at Vanderbilt School of Law.

This is the second *Commentator* honor for Cox and Thomas, who collaborate frequently. An article

published in the *Stanford Law Review*, "Letting Billions Slip Through Your Fingers: Empirical Evidence and Legal Implications of the Failure of Financial Institutions to Participate in Securities Class Action Settlements," was selected as one of the "Top 10 Corporate and Securities Articles of 2006."

A third paper co-authored by the pair is currently one of the Social Science Research Network's most downloaded papers in its category. "An Empirical Analysis of Institutional Investors' Impact as Lead Plaintiffs in Securities Fraud Class Actions" is forthcoming in the *Vanderbilt Law Review*.

"This is the sixth empirical study of securities litigation settlements we have published," said Cox. "When we started down this path five years ago we thought we would carry out a couple of projects. Now, six published papers later, we have four in different stages of completion, a couple of more on the drawing board, and are contemplating a book project." ♣ — *B.C.*

### Bradley elected to ASIL council, board of editors



**C**URTIS BRADLEY, Richard and Marcy Horvitz Professor of Law and professor of public policy studies, was recently elected to serve on both the American Society of International Law (ASIL) executive council and the board of editors of the *American Journal of International Law*.

"It is an honor to be elected to these two positions," said Bradley, who is also senior associate dean for academic affairs. "I am looking forward to playing a more active role in both maintaining the fine traditions of the society and the *Journal* and in deliberating about their future directions."

Bradley served as counselor on international law in the Legal Adviser's Office of the U.S. State Department in 2004 and is currently a member of the Secretary of State's Advisory Committee on International Law. The author of two casebooks, *Foreign Relations Law: Cases and Materials* (Aspen Press 2d ed. 2006 with Jack Goldsmith) and *International Law* (Aspen Press 4th ed. 2003 with Barry Carter and Phillip Trimble), Bradley also has written numerous articles concerning both international law and U.S. foreign relations law. At Duke, Bradley teaches international law, foreign relations law, and federal courts. He was a visiting scholar at Harvard Law School during the spring 2008 semester. ♣ — *B.C.*

### ABA honors Fleishman



**T**HE AMERICAN BAR ASSOCIATION has honored Professor Joel L. Fleishman with its 2008 Outstanding Nonprofit Lawyer Award.

A professor of law and public policy studies, Fleishman serves as director of the Samuel and Ronnie Heyman Center for Ethics, Public Policy, and the Professions at Duke University's Terry Sanford Institute of Public Policy. He is also director of the Foundation Strategy and Impact Research Program in Durham.

A prolific writer, Fleishman's recent scholarship focuses on public trust in not-for-profit organizations. His latest book is *The Foundation: A Great American Secret — How Private Wealth is Changing the World* (Public Affairs Books, 2007).

"The fact that the ABA is now giving awards to those of us who are making nonprofit law our major focus suggests that our field is gaining both more acceptance in the profession and that a larger number of lawyers and law students are choosing to practice in the field," Fleishman said of the award, one of four granted by the ABA's Nonprofit Corporations Committee.

"In view of the growth in the number of U.S. nonprofits — now about two million organizations — and in the size of annual nonprofits' expenditures — about \$1.6 trillion annually — the need for skilled legal counseling is greater than ever. Awards such as [these] can help accelerate the fulfillment of that need," he said. ♣ — *B.C.*

### Faculty bid farewell to retiring Rowe

**O**N APRIL 27 the faculty paid tribute to Thomas D. Rowe Jr., Elvin R. Latty Emeritus Professor of Law, who officially retired in December 2007. A former Rhodes Scholar and clerk for Supreme Court Associate Justice Potter Stewart, Rowe enjoyed a 32-year career on the Duke faculty.

"It has been an honor to have Tom as a colleague, and I offer him to others as a role model of a law professor who has devoted himself to making better law," said Professor Paul Carrington, who thanked Rowe for his three-year service as associate dean during his own tenure as dean. Carrington also praised Rowe's law reform activities and contributions to legal instruction through teaching and authorship of leading casebooks and texts in civil procedure, federal courts, and constitutional law.

FACULTY NEWS BRIEFS

A life member of the American Law Institute, Rowe has been active in a number of its initiatives, notably its complex litigation projects. Also active in the Association of American Law Schools (AALS), he has chaired the civil procedure, federal courts, and professional development sections. As a member of the International Association of Procedural Law, Rowe represented the United States as co-reporter on summary proceedings for its 2003 World Congress.



PROFESSORS DEBORAH DEMOTT AND THOMAS ROWE AT ROWE'S RETIREMENT PARTY

Dean David Levi recalled his work with Rowe on the Federal Civil Rules Advisory Committee. "Tom's work on the Rules Committee and on law reform was just invaluable," said Levi. "Like the best proceduralists, Tom has the ability to see the big picture

while keeping track of the details. All judges, lawyers, and law students are deeply in Tom's debt for participating in the drafting of the supplemental jurisdiction statute, which did away with pendent and ancillary claims and parties and the most confusing set of formal distinctions. "Tom was also the conscience of the committee," added Levi. "He cared deeply about making sure that any proposal was thoroughly vetted and justified."

Rowe and his wife, Professor Susan French of the University of California, Los Angeles Law School, will settle on the West Coast. "This is a wonderful time in Tom's life, full of possibility, adventure, and companionship," said Levi. ♡

### Thomas Rowe Jr. Recent scholarship

CONSTITUTIONAL THEORY: ARGUMENTS AND PERSPECTIVES (LexisNexis, 3d ed. 2007) (with Michael J. Gerhardt & Stephen M. Griffin)

FEDERAL COURTS IN THE TWENTY-FIRST CENTURY (2d ed. 2002, 3d ed. 2007) (with others)

*'Inextricably Intertwined,' Explicable at Last?*, Rooker-Feldman Analysis after the Supreme Court's Exxon Mobil Decision, 2006 FEDERAL COURTS LAW REVIEW 1 (with Edward L. Baskauskas)

CONSTITUTIONAL THEORY: ARGUMENTS AND PERSPECTIVE (1993, 2d ed. 2000) (with Michael J. Gerhardt)

CIVIL PROCEDURE (with Suzanna Sherry & Jay H. Tidmarsh) (Foundation Press 2004), with 2007 supplement

GILBERT LAW SUMMARIES: CIVIL PROCEDURE (15th ed. 1995, 16th ed. 2002) (with R. Marcus)



### Charitable Gift Annuities: Supplementing Retirement Income and Supporting Duke Law

When you make a gift of \$10,000 or more, Duke can offer you (and/or your loved ones) a fixed income for life. A charitable gift annuity will also generate a tax deduction and can reduce capital gains. Your ages, financial needs, and current interest rates determine the annuity rate Duke can offer. Some sample rates:

YOUR AGE(S):	ANNUITY:
65	6.0%
75	7.1%
85	9.5%
70/68	5.8%

Annuity rates are subject to change. Once your gift is made, the annuity rate remains fixed.

"Deferred" gift annuities can be a great retirement planning tool for younger donors who wish to utilize a current tax deduction in higher earning years and defer payments in order to supplement future retirement income.

For a personalized illustration or more information, please contact Kate Buchanan JD (T '92) at (919) 613-7217 or [buchanan@law.duke.edu](mailto:buchanan@law.duke.edu).



# Frank Read '63

## Defending the profession

AFTER 40 YEARS as a law professor — 29 of them as a dean at five different law schools — Frank “Tom” Read is retiring this summer. Although he still enjoys teaching his core subjects of evidence, professional responsibility, and torts, he says that it’s time to make good on his long-standing complaint about the “graying” of the legal academy. “Bright young people need to get in with new ideas to refresh the ranks of our law schools,” says Read, who is on the faculty of the South Texas College of Law, where he previously served as president and dean.

Read may be heading into retirement willingly, but he’s not going quietly. His new book, *The Lawyer Myth*, co-authored with Rennard Strickland, professor and dean emeritus at the University of Oregon School of Law, is an exhaustive yet accessible explanation of the key role lawyers, juries, and judges play in modern American life.

**ALUMNI PROFILE**

The book started out as a “rant,” Read says, set off by the lawyer jokes he and Strickland heard flying around at a national meeting of law school deans. They decided the self-deprecating humor was just one manifestation of a widespread and undeserved disregard for the legal profession. “If we can’t defend the profession, who else will make the case to the general public that lawyers are essential to this democracy?” asks Read, who has also served as president of the Law School Admissions Council, chairman of the board of Law Access, Inc., and in leadership posts in the American Bar Association.

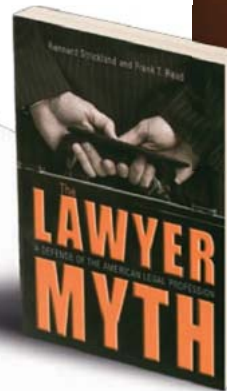
Their “case” is targeted at a number of specific audiences, among them prospective law students and lawyers “who need a pat on the back and a reminder of what their larger role is,” explains Read. Lawyers help keep social change peaceful, facilitate compromise, and keep the public informed, he says. “Since World War II [American] society, more than any in recorded history, has suffered monumental change. And on both sides [of any proposal for change] lawyers provide the grease that keeps things from erupting into the violence or insurrection that epitomizes other societies.”

The classic example he offers is *Brown v. Board of Education*, once a focus of his legal scholarship. The NAACP team of lawyers led by Thurgood Marshall emerged as heroes, as did the judges who ensured the Supreme Court’s judgment was carried out in the Deep South. “There were some violent protests and lynchings, and it took a long time,” says Read. “But no society, as I know it, has had a change that has been as deeply resented by some and so aggressively pushed by others that, nevertheless, has been handled as peacefully and as successfully.”

In their book, Read and Strickland take on “myths” about lawyers and law — that juries are out of control, there are too many lawyers, and there are no more legal heroes. Their starting point is the story of two lawyers in Kokomo, Ind., who in the early 1980s took on the case of Ryan White, who had been expelled from school because he had AIDS. “It’s a stunning story,” says Read. “Two small-town lawyers changed the views of a whole country towards kids with AIDS. When people say there are no more heroes, we want them to know they’re there.”

A life member of the Law School’s Board of Visitors, Read also launched his academic career at Duke. While practicing on Wall Street in the late 1960s, he was recruited by former Dean F. Hodge O’Neal to join the faculty and serve as assistant dean. Read returned to Duke in July 1968 — after O’Neal had stepped down as dean and prior to the arrival of A. Kenneth Pye, his successor. Read says both men became friends and mentors, offering key advice as he started his first deanship at age 34.

O’Neal’s advice, “delivered with great good humor in a deep Southern drawl,” concerned the need for a dean to bring people together and create a common sense of enterprise, Read says. “Ken Pye



taught me everything I know about administration, good and bad. He had two rules: ‘Take nothing personally,’ because the dean gets blamed for everything, and ‘never retaliate.’ You might have to impose order and discipline in some cases, but never do it disproportionately to the ‘particular sin’ you’re dealing with. That advice stayed with me through all my deanships.” (In 2003 Read was honored with the Law Alumni Association’s A. Kenneth Pye Award recognizing his contributions to the field of legal education.)

Having served as dean at law schools both big and small — at the universities of Florida, California-Hastings, Tulsa, and Indiana-Indianapolis, in addition to South Texas, where he holds the title president and dean emeritus — Read estimates that he’s helped train as many as 20,000 lawyers in his career. “Students taught me to keep a sense of humor and, occasionally, a bit of pride and humility,” he says. His interaction with students also has convinced him that tomorrow’s legal professionals will continue to be a source of “heroes.”

“More than most graduate-level students, they are morally centered, deeply committed, idealistic, hard-working, and do a really good job of living their lives in a higher sense.” ♣

*The Lawyer Myth* is published by Ohio University Press and Swallow Press.



## D. Todd Christofferson '72

### Sacred calling



**W**HEN D. TODD CHRISTOFFERSON describes his work, one imagines him as a combination of a diplomat and international executive. As a member of the First Quorum of the Seventy and later part of the Presidency of the Seventy, two of the governing bodies of the Church of Jesus Christ of Latter-day Saints, Christofferson has traveled to about 44 countries since 1993, visiting church members and missionaries, meeting with government leaders, coordinating humanitarian efforts, and, in some cases, facilitating recognition of the church as a legal entity within a foreign jurisdiction.

In early April, Christofferson became a church apostle, the newest member of the Quorum of the Twelve Apostles (the Twelve), serving directly under the three-member First Presidency, led by Church President Thomas S. Monson. Somewhat akin to a board of directors, the Twelve oversee international missions and congregations and direct church policy and business, but their greater purpose is spiritual, Christofferson says.

“The apostles are patterned after the model in the New Testament. Our main responsibility is, and always will be, to represent the Lord, to try to establish His

work wherever it can be done, to do what He would do in blessing other people’s lives and trying to make things better whenever we can have an influence, and to be witnesses to Him.” It isn’t a job one applies for, he adds, but a “calling” extended directly by Monson. It was a call that he says he did not expect, but was prepared to answer.

It was a similar call to join the First Quorum of the Seventy in 1993 that brought an end to Christofferson’s successful legal career, one that included litigation and mergers and acquisitions practice in Washington, D.C., in-house work for Hospital Corporation of America, service as general counsel for Commerce Union Bank in Nashville, and as associate general counsel of NationsBank Corp. (now Bank of America), in Charlotte. However demanding his professional work and his family of four sons and a daughter, he took on leadership roles in his church at the congregational and regional levels.

A Utah native, Christofferson moved to New Brunswick, N. J., as a teenager. Away from “a majority Mormon environment” (and, in fact, the only Mormon in his high school class), he admits to having had his beliefs challenged at times. “I realized this is not the only way people live and believe, contrary to my experience up until that point. I had to think more deeply about [my faith] and pray about it with real seriousness,” he says, noting that in the end, his faith emerged stronger than ever.

During his years of service in the Presidency of the Seventy, Christofferson worked closely with members of the Twelve, several of whom became and continue to be mentors. Another mentor of years past was Judge John J. Sirica of the District of Columbia District Court, for whom Christofferson clerked for two years after graduating from law school — the period during which Sirica presided over Watergate-related matters. “His style was so personal and open that he included me in everything. He really drew me in and made sure I got the full benefit of that experience,” recalls Christofferson. “I’m

still drawing on the benefits of his tutelage. Just to be able to observe him up close and many others we saw in that period, such as Archibald Cox, Leon Jaworski, and Charles Alan Wright, was a great privilege.

“I wondered sometimes, as Watergate got started, whether I had chosen the right profession, because some lawyers really disgraced it,” he adds. “On the other hand, I saw some who did great credit to it. I came away being proud of the profession I had picked, and I’ve been that way ever since.”

Although he is now years removed from practice, he observes that he routinely uses the analytical, oral, writing, and conflict resolution skills he first learned in law school. “I often look back on it and say, ‘That Duke Law education was tremendously beneficial.’ A law school education helps you learn to deal with conflict and respect people of very different backgrounds, opinions, and circumstances, and work to make something good happen out of challenges,” says Christofferson whose son, Peter, is a 2003 Duke Law graduate. “All of that has been extremely helpful in these past years.”

In 2003, for example, he helped resolve concerns of national Jewish leaders that Holocaust victims were being posthumously baptized into the Mormon church, contrary to a 1995 agreement; while baptism of the dead is a sacred duty for Mormons, the church had agreed not to baptize Holocaust victims unless they were proven to be direct ancestors of current church members. That experience, says Christofferson, led to stronger interfaith ties, and a number of close personal friendships.

“My experience is that the more people understand each other, the better they get along,” he says, noting that the scrutiny given to Mormonism during Mitt Romney’s bid for the Republican presidential nomination has helped build understanding of the faith. “In the course of that discussion and occasional verbal conflict, people became better acquainted with each other and more familiar with what we believe, who we are, and what we’re like, as opposed to what they may have heard.” ♣

#### ALUMNI PROFILE

# Alan Bender '79

## A gamble on cell-phone technology pays off

**I**N 1989, ALAN BENDER left a senior position at Kaye Scholer in New York to join General Cellular Corp. (GCC), a wireless start-up based in San Francisco. It was an extremely risky move, he told Duke Law students in February as the keynote speaker at ESQ, the Business Law Society's annual career symposium. He had a young family, and cell-phone technology was then viewed "as a rich plaything" that would likely be a passing fad.

"But my passion was to be able to guide the business through stages of rapid growth and profitability and to do it in a way that had my fingerprints firmly planted upon it," he said. "I wanted the opportunity to impact each and every significant development of the company that we came to think of as our corporate baby. I also wanted exposure to the wide and varied legal issues that were going to arise."

Bender got exactly what he wanted. Initially focused on establishing a market in rural cellular communications, he and his partners — a small group with complementary areas of expertise in business, finance, engineering, investment banking and law — eventually built the telecommunications giants Western Wireless Corp. (now Alltel) and VoiceStream (now T-Mobile).

The early days of the venture were marked by setbacks as well as success. After the Federal Communications Commission (FCC) gave spectrum away through a lottery, Bender and his partners offered company stock to some of the winners. In return, they gained ownership of a series of strategically chosen cellular markets. Still, faced with an equity and credit market shaken by the Persian Gulf War and an economic downturn, GCC went into Chapter 11 bankruptcy in 1991, he said.

With a solid business plan, the company was able to restructure and attract venture capital, emerging a year later as a stronger company, with an equity compensation arrangement for management that garnered value only if the shareholders' stock

grew in value. "Management's incentives were totally aligned with its shareholders' interests," said Bender, who observed that "you never become a better negotiator than when your back is firmly up against the wall." The original management team remained intact, with Bender serving as general counsel and head of regulatory affairs, risk management, facilities management, administration, and human resources, which he described as "the toughest job in the world."

Western Wireless Corp. was founded in 1994 when the newly prospering GCC merged with a Seattle-based company to take a leading share of cellular markets in the rural, western United States. Bender's group took Western Wireless public in 1996 in the largest public offering in the state of Washington at that point. VoiceStream, founded as a subsidiary of Western Wireless in the mid-1990s, later became an independent public company and a member of the NASDAQ 100 in 1999.

An infusion of capital from Hong Kong-based Hutchison Whampoa allowed VoiceStream to go on an "acquisition binge" in 2000, Bender said. Using its publicly traded stock, VoiceStream bought up all the other companies in the U.S. that used its global systems mobile (GSM) technology. That "national GSM footprint" attracted enormous attention from global telecommunications companies seeking a U.S. foothold. In 2000, the VoiceStream board accepted a \$52 billion buyout bid from Deutsche Telekom, making it the second-largest cross-border merger in U.S. history at that time.

"I spent the next year explaining to Congress and the FCC why this deal was in the public interest and deserved approval," said Bender, explaining that FCC regulations limit the control of U.S. telecommunications spectrum by foreign governments. It closed on May 31, 2001. "We pushed to get that deal closed because you never know what's around the next corner," he said. "Had Sept. 11 occurred before we closed,



ALAN BENDER '79 AND HIS WIFE HAVE ESTABLISHED THE ALAN R. AND JOYCE S. BENDER SCHOLARSHIP AT DUKE LAW SCHOOL. IT WAS FIRST AWARDED IN 2007.

there's no way the FCC would have permitted a foreign government-controlled entity to control U.S. spectrum."

Due to their "great trust and faith in each other," Bender and his original handful of partners formed the Trilogy Partnership, through which they operate wireless markets in third-world countries such as Bolivia and Haiti and invest in early-stage start-ups through a private equity fund. "It's our opportunity to be on the other side of the stage, offering capital and guidance, sitting on the boards, opening some doors and helping young entrepreneurs who have brilliant ideas and wonderful energy," he said.

Bender credited his success to many factors, among them a continual appetite for learning and "outworking" everyone else, an honest evaluation of his own career goals, a firm belief in the business plan that he and his colleagues had put together, and their commitment to the highest standards of integrity in their business dealings. The support of his family — wife, Joyce, daughter Mallory, and son, Adam — was invaluable, he said.

"Joyce encouraged me to take some calculated risks and understood the uncertainties. She also understood the time demands necessary in driving for success. You have to have that very clear understanding within your household about how is this going to play out and what the costs are. I was fortunate in that I think it played out pretty well." ♡

## Frances Pratt '93

### Making the case on appeal

AS AN ASSISTANT FEDERAL public defender, Fran Pratt counts the Supreme Court's December 2007 ruling in *Kimbrough v. United States* as a sound and satisfying victory.

In a 7-2 decision, the Court held that the sentencing formula set out in the U.S. Sentencing Guidelines for cocaine offenses was advisory only. Under the guidelines, any given amount of crack cocaine can trigger the same sentence as an offense involving 100 times that amount of powder cocaine, yielding sentences three to six times longer for crack than for powder. The justices held that district courts may disagree with the "100-1 ratio" when sentencing defendants under the guidelines.

"The opinion was a very strong one," says Pratt, who was counsel of record and principal author of the appellate briefs in the case. "It refuted every point the government had made, and vindicated all of our points regarding the Fourth Circuit's interpretation of the guidelines." The United States Court of Appeals for the Fourth Circuit had held the 100-1 ratio was mandatory.

Coming at a time when the U.S. Sentencing Commission had reduced the 100-1 ratio in the guidelines, and Congress is considering proposals to change the statutory scheme, it remains to be seen what impact the *Kimbrough* ruling will have on the individuals — mostly African Americans — who receive the longer sentences. "*Kimbrough's* most significant aspect may be the amount of attention it brought to the issue," says Pratt, a member of the Office of the Federal Public Defender in Alexandria, Va. But such a clear vindication of her team's position was still a terrific outcome, she adds.

While Pratt is emphatic that "it took a village" of lawyers to make the briefing and oral argument as strong as they were, taking the lead on *Kimbrough* gave her the opportunity to immerse herself in her favorite part of appellate defense practice: the legal research and writing. "I enjoy figuring out what argument I want to make, then researching the law to see whether I can make the argument persuasively," she



FRAN PRATT'S DESIRE TO PLAY DUKE CHAPEL'S FLENTROP ORGAN FACTORED INTO HER DECISION TO ATTEND THE UNIVERSITY AS AN UNDERGRADUATE.

says. "Often the law is terrible and I have to go ahead and make the argument anyway. But that makes the times where I have good law on my side much more fun."

Pratt credits Professor Sara Beale, who taught her first-year legal writing as well as criminal law, for starting her on her career path by passing on "contagious" enthusiasm for her subjects. After working as Beale's research assistant and taking every law school course she could relating to criminal law, a summer internship with the North Carolina Appellate Defender's Office confirmed Pratt's keen interest in appellate practice. A clerkship with Judge William Osteen Sr. in the U.S. District Court for the Middle District of North Carolina in Greensboro then helped her plot her course.

"During my clerkship, I got to know the lawyers in the Federal Public Defender's Office," she says. "I saw what they could accomplish in court and what a difference a good defense attorney makes. It didn't mean their clients would be acquitted, but there were certainly cases where good defense work made it a whole lot harder for the jury [to convict]. What they did stood in pretty stark contrast, at times, to what other

lawyers would do. Being part of that kind of an office seemed very appealing."

After a post-clerkship position at the North Carolina Resource Center that focused on death penalty cases, Pratt worked for several years in the national training office of the Federal Defender Program, fielding "hotline" calls from defense attorneys around the country regarding the sentencing guidelines. By 2002, when she took her current position with the program's newly opened office in the Eastern District of Virginia, she had a considerable degree of expertise with the guidelines. "I certainly had a lot of exposure to many of the issues we deal with," she said. "Coming over as the principal appellate lawyer was a very good fit for me." And as *Kimbrough*, among other cases, makes clear, it was an effective fit.

Pratt says her approach to legal research, analysis, and writing, still shows the influence of her undergraduate background as a music and art history major at Duke.

"When studying a piece of art or music, you have to look at the piece for what it has within itself and for its historical placement," says Pratt, who focused on organ performance and Romanesque and Gothic architecture. "That's what you do when you analyze a case. You see what it says and holds by itself, and then put it into a larger context.

"My approach to writing, too, is very similar to the way that I approached learning a piece of music — or jigsaw puzzles," she continues. "I tried to get an overall sense of what the piece was about just as I try to get an overall sense of what I want to say in a brief or a presentation. But then I have to break it down into its components, whether it's a sentence in a brief or a particular measure or passage in a piece of music. Once I have the little pieces under control, then I have to build it back up and get it back to that whole."

Pratt attributes her success as a musician to "hard work and determination," and says it's the same with appeals. "For the most part, I can manage to convey thoughts in a clear and straightforward way that people can understand. It's just plain hard work." ♪

#### ALUMNI PROFILE



# Rodney Bullard '01

## A perspective on leadership

**R**ODNEY BULLARD HAS three guiding principles: Lead with your strengths; follow your passions; and life is all about perspective.

Bullard says his strength — oratory — stems from his Atlanta upbringing in the shadow of civil rights leaders and around Baptist ministers, like his father. “People say that my litigation style still has a Baptist minister in it,” he jokes. “I just didn’t think I wanted to be one.” Instead, he got a taste for legal oratory when he joined a mock trial team in eighth grade, enjoying it so much that he started a team at his high school.

Recruited by a number of colleges as an academic all-state football player, he settled on the Air Force Academy because it also supported mock trial. Football took up all of his attention, though, until an injury sidelined him during his junior season. Unable to get a place on an already established mock trial team, he started his own.

“There weren’t a lot of people interested in litigating cases, so I just looked for people with personality and who were characters by nature,” he recalls, describing a “rag-tag” team of novice underclassmen that went on to place second in a national competition, with Bullard named an all-American attorney and first in his region. “We were competing against everyone in the country — Harvard and Duke included. It was a wonderful experience for us.”

It also was an experience that made Bullard a natural to choose a career as a litigator — an Air Force judge advocate — after law school. He admits having had second thoughts on arriving at a training base in Biloxi, Miss. “Even being from the South, Biloxi was 50 years behind anything I had ever experienced. I thought, ‘Oh, Lord, I should have gone to a firm,’” he says with a laugh.

Bullard prosecuted his first trial on Sept. 11, 2001. When a witness failed to respond to a call to the stand, he found her fixed on the courthouse television, watching an airplane fly into the World Trade Center. “After that case concluded, I

realized my service in the military involved more than the practice of law,” he says. “It made me think about who I really am, what I want in life, and what my purpose is. And I concluded that my purpose, really, is to be a leader — and that law and leadership went hand in hand. All my fears and thoughts about whether or not I made the wrong decision going into the JAG Corps really subsided.”

In fact, the Biloxi base was the perfect place to “try cases on my feet,” he says, noting that in a three-year period he handled almost 50 jury trials as prosecutor or defense counsel. His courtroom skills landed him a job as an Air Force circuit trial prosecutor, trying complex cases around the world.

Confident in his abilities as a litigator, Bullard set out to follow his passion: leadership. Encouraged by a mentor, he pursued and won a fellowship in the prestigious White House Fellowship Program, beginning in August 2005. The program, which aims to give promising young leaders a chance to experience and engage in federal service at its highest level, took Bullard back to a place he had come to love — Biloxi — in the immediate aftermath of Hurricane Katrina, where he helped volunteers find housing in Gulf Coast communities.

“My knowledge of the area was put to good use,” he says. “That was a wonderful opportunity.” Bullard also served under the chief of staff of NASA during his fellowship year, honing skills in public administration, management, and public affairs.

Now a congressional liaison, Bullard serves as a lobbyist for the Air Force and is based at the Pentagon, where he spent his 1L and 2L summers. In this role, he seeks to advance legislative proposals to aid wounded soldiers and support for the “joint-strike” initiative that will standardize fighter jets among the various branches of the U.S. armed forces and their allies.



What about “perspective?” Long involved in mentoring and always looking for opportunities, Bullard says his true passion is helping young people gain perspective. He got his start while working in admissions at the Air Force Academy prior to law school, when he would travel the country talking to minority students, many of whom were “trapped in poverty,” he recalls. “I wanted them to know there was a black male out there who was a role model, and that there were places like the Air Force Academy: ‘This is what education could do for you.’”

Bullard says he owes a lot to his “wonderful parents who showed me the world” through travel. “But I grew up in a neighborhood where a lot of people really didn’t have the same perspective I did,” he says. “I was told about the White House Fellows Program and about Duke and the Air Force Academy. Perspective helps you see that anything is possible.

“It’s incumbent upon those who have had some measure of success to go back and say, ‘these are opportunities — this is a road you can take.’ That’s part of leadership as well: educating your people.” ♣

ALUMNI PROFILE

## Kendra Montgomery-Blinn '03 Representing justice

**H**AVING STUDIED criminal psychology at Purdue University before coming to Duke, Kendra Montgomery-Blinn always knew her interest lay in criminal law. She signed on as an Innocence Project volunteer in her first week of law school, taking on the investigation of a case that she carried throughout her three years at Duke. “As a lawyer, I ‘cut my teeth’ on innocence issues,” she says, recalling numerous conversations she had with Professors James Coleman and Theresa Newman, the faculty directors of the Innocence Project.

“We took a lot of car trips to see inmates in prison and to interview witnesses, and all the while we’d talk about the justice system and how it needed to be improved,” says Montgomery-Blinn, who eventually became the Innocence Project’s student director. That early immersion shaped her approach to prosecution during four years as an assistant district attorney in Durham County, she says. Last spring, it helped her land her current job as executive director of the newly launched North Carolina Innocence Inquiry Commission, the nation’s first state agency devoted to the cause of innocence.

Montgomery-Blinn and her staff investigate plausible claims of actual innocence by individuals convicted of felonies in North Carolina state courts. She then presents worthy claims to the eight commissioners — judges, prosecution and defense attorneys, and representatives from the law enforcement, legal, and broader communities — who decide whether the case should receive formal judicial review.

“We do not advocate,” she says. “We try to find out what the truth is about a crime and a conviction, in order to achieve justice.” Montgomery-Blinn and her staff — an investigator and office manager — will acknowledge fresh evidence of guilt as well, she says. “The cases that come to us involve an element of doubt, and we aim to put that doubt to rest. If we can resolve it by establishing the innocence or guilt of the convicted person, justice has been done.”

The commission is committed to doing “whatever needs to be done” on a given case, she says. Subpoena power gives the commission the ability to make good on that promise. “Our statute gives us standing to go to court and ask for an order seeking documentation or compelling witnesses to testify. The student-run Innocence Projects do fabulous work but sometimes hit brick walls in their cases. They’ll know there is information out there, but [they] don’t have any standing to be granted access to it.” They also can’t take on cases that have been resolved by plea bargains, she adds. “There are a number of reasons an innocent person may plead guilty, and if new evidence surfaces we can look at it. So we really have a broad ability to investigate and hammer through those brick walls.”

### ALUMNI PROFILE

Duke’s Innocence Project and those at other state law schools still have a key role to play in the commission’s work. Except for cases referred to the commission by victims, law-enforcement officials, prosecutors, and judges, all of which stay with Montgomery-Blinn for review and investigation, the nonprofit North Carolina Center for Actual Innocence undertakes initial screening of cases and, if warranted, assigns them to law students for review.

“Students summarize what was known at trial, review the court records and assemble other documentation, outline the innocence issues, and make suggestions for following them up,” says Montgomery-Blinn. Having received more than 240 claims of innocence in the commission’s first six months of operation, she adds that the students’ assistance is essential.

The North Carolina Innocence Inquiry Commission, which is being followed closely by other states considering similar agencies, arose as a result of a three-year inquiry into the prevalence of wrongful convictions initiated by former Chief Justice I. Beverly Lake. Duke Law Professors and Associate Deans James Coleman and Theresa Newman were members of the chief justice’s commission, as was Chris Mumma, legal counsel to the North Carolina Center on Actual Innocence, which oversees Innocence Projects at state law schools. “These are all people who are at the front of the innocence movement,” according to Montgomery-Blinn, who calls them all friends and mentors from her years at Duke Law. ♡



It’s also great training, she maintains. “These students are our future prosecutors, defense attorneys, and judges. They need to become aware of these issues. I was a far better assistant district attorney for having been aware of them.” Serving justice and looking at innocence and serving justice and working in prosecution are two sides of the same coin, she observes. “You are just trying to get the truth.”

Work with the commission is a bit like a homecoming — and the best possible kind, Montgomery-Blinn says. “Being part of a neutral fact-finding agency, I don’t represent the defense or the prosecution. I represent justice. We’re like the guardian ad litem for criminal law. It doesn’t get any better!” ♡



## Amanda McRae '09 Human rights activist

**F**IVE MINUTES with Amanda McRae will inspire you. McRae is a rising 3L on a mission — or rather, many missions — to promote public interest work among her peers, increase awareness about and enthusiasm for international human rights law, expand the pro bono offerings at Duke Law, and ultimately pursue a career in international human rights.

“I didn’t come to law school to be a lawyer,” she says. “I came to be a human rights activist.”

McRae began her undergraduate experience at Carleton College in Northfield, Minn., intending to major in physics, but a desire to learn about the world beyond her native Kansas and the events of Sept. 11 changed her plans. “My second day of freshman year was Sept. 11, 2001,” she says. “I was already in this crazy new situation, trying to figure out what I wanted to do. When that happened, I think it opened my eyes to politics, in particular, but also to the rest of the

world.” McRae says she intentionally took classes about the history and culture of other countries and developed a penchant for travel that led her to study abroad in China, Vietnam, Thailand, Turkey, the Netherlands, and Belgium.

After graduating with a degree in international relations, McRae became an AmeriCorps VISTA member, dividing her time between two organizations: Minnesota Advocates for Human Rights (MAHR) and the Immigrant Law Center of Minnesota. The former confirmed her desire to attend law school, while the

latter gave her the tools to jump into pro bono work at Duke Law when she arrived.

At MAHR, McRae saw lawyers involved in various international human rights issues, from drafting domestic violence laws in Tajikistan and Hungary to setting up the Truth and Reconciliation Commission in Liberia. “International human rights brought this interest in travel and going to places to learn about them to a level where I could get my heart and my passion to help people involved, too,” she says.

At the Immigrant Law Center of Minnesota, McRae helped develop the curriculum for an immigration education project. She brought the materials with her to law school after learning that North Carolina has the fastest-growing immigrant population in the country. On the second day of her 1L year, she knocked on the door of the Public Interest and Pro Bono Office to ask if the School did any immigration education work and, if not, could she start something?

Two years later, students participating in the Duke Law Immigration Education Project visit English as a second language (ESL) classes at area schools and community colleges to give hour-long presentations about immigration law and civil rights issues. “We try to cover a broad range of issues in an hour,” McRae says. “First, we give the basics of immigration. Where do you go to apply for visas? What do the immigration and customs enforcement people look like? What are the different kinds of immigrants and what are the differences? How do people get green cards and how do you become a citizen once you get [one]?”

The presenters also discuss the risks of deportation and the rights immigrants have, including the right to emergency medical care, the right to go to public schools and be safe while they are there, and what immigrants can and should do if they become a victim of crime, she says.

In addition to leading the Immigration Education Project, McRae has served as a co-chair of the Duke Law ACLU; was recently elected co-chair of Duke’s Public Interest Law Foundation; co-coordinates the Human Rights Working Group, a university-wide graduate student group; and co-founded Duke’s International Human Rights Law Society, an organization dedicated to presenting issues pertinent to the public side of international law to Duke Law students and faculty. She spent her 1L summer with the AIDS Legal Project and is traveling to Nepal this summer to work with The Advocacy Forum, a nonprofit human rights organization.

“I don’t think I could be someone who just went to class and went home,” McRae says. “When I am at a place where there are so many opportunities to take advantage of, I feel like I should do it.” She notes that she sees an increasing number of students coming to law school with public interest work in mind and that Law School administrators have proven supportive and enthusiastic about the field.

“I think this is a really exciting time to be here,” she says. “There is so much going on in the world right now; so many people out there could use a good lawyer.” ♣ —T.W.B.

**STUDENT PROFILE**



# Alumni Notes

WE MISS YOU! PLEASE WRITE:  
[www.law.duke.edu/alumni](http://www.law.duke.edu/alumni)

## Half Century Club

**David H. Henderson '37** of Charlotte, N.C., continues to write and do some woodworking.

## Class of '60

**Herbert O. Davis**, a partner at Smith Moore in Greensboro, N.C., was named to the 2008 edition of *The Best Lawyers in America* in banking and corporate law.

## Class of '63

**Tom Menaker** is practicing part-time as an arbitrator in medical and hospital disputes. He is based in Marco Island, Fla.

**F. Roger Thaler** climbed Mount Kilimanjaro with his son in January 2008.

## Class of '64

**Nick Gaede Jr.** has been named vice president and general counsel of BE&K Inc. in Birmingham, Ala. Nick was previously a managing partner of the Birmingham office, and senior member of the construction group for Bradley Arant Rose & White. He is the immediate past president of the American College of Construction Lawyers.

## Class of '65

**D. Kerry Crenshaw**, a member of Clark Hill in Detroit, was chosen to serve as president of Globalaw Ltd. for the 2007-2008 term. Globalaw is a worldwide network of independent law firms located in 90 jurisdictions. Kerry is a member and past chairman of Clark Hill's corporate practice group.

**Thomas A. Edmonds**, executive director of the Virginia State Bar, was awarded the National Association of Bar Executives' Bolton Award for Outstanding Bar Leadership. The Bolton Award is the NABE's highest accolade, and is presented annually. Tom received the award in August, during the NABE annual meeting in San Francisco.

## Class of '66

**John Cairns** of Minneapolis has launched his own law firm after 19 years with Briggs and Morgan. John's practice focuses on issues relating to charter schools, marriage dissolution, government land use, and licensing approvals.

**E.D. (Ed) Gaskins Jr.**, a founding partner with Everett, Gaskins, Hancock & Stevens in Raleigh, is sharing the office of president-elect for the Wake County Bar Association and the Tenth Judicial District Bar for 2008.

## Class of '67



**John L. Crill** joined Parker Poe Adams & Bernstein in Raleigh as special counsel in the government and public policy practice group and as a member of the health care industry team. John was previously with Wyrick Robbins Yates & Ponton. He was named to the 2008 edition of *The Best Lawyers in America* and as a North Carolina "Super Lawyer" in health care.

**John Semonche**, a professor of American legal and constitutional history at the University of North Carolina - Chapel Hill, has written *Censoring Sex: A Historical Journey through American Media*, published by Rowman & Littlefield.

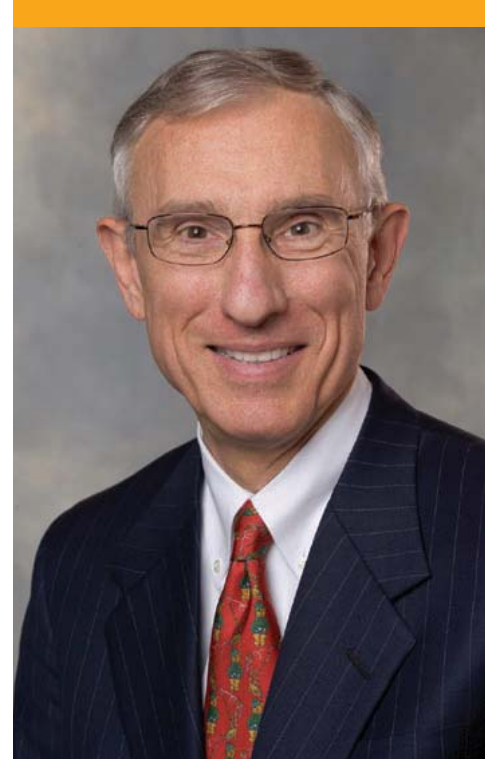
**Dennis Yule**, a Superior Court judge in Washington State, received the 2008 Martin Luther King Jr. Spirit Award in January from Columbia Basin College in Pasco, Wash.

## Class of '68

**Michael P. Angelini**, partner and chairman with Bowditch & Dewey in Worcester, Mass., has been appointed to the Massachusetts Turnpike Authority (MTA) board of directors by Gov. Deval Patrick. Michael is past president of the Worcester County Bar Association and a former member of the state's Judicial Nominating Committee. A fellow of the American College of Trial Lawyers, Michael specializes in business trial and transaction work.

**P. Thomas Boroughs**, a partner with Holland & Knight in Orlando, Fla., has been appointed by Gov. Charlie Crist to the Florida Governor's Action Team on Energy and Climate Change. Tommy is also the chair of the Florida Energy Commission.

**Robert Fox** of St. Paul, Minn., is a longtime Metropolitan State University professor and administrative leader. He is also the official chaperone of the U.S. table tennis team heading to the Beijing Olympics.



## Lanty Smith '67

**L**ANTY SMITH HAS BEEN NAMED chairman and interim CEO of Wachovia Corp. Lanty has been a director of the Charlotte, N.C.-based bank since 1987 and a lead independent director since 2000. He also serves as chairman of Wachovia's executive committee. A life member of the Law School's Board of Visitors, Lanty is founder, chairman, and CEO of Tippet Capital, an investment and merchant banking firm headquartered in Raleigh.

A 1964 graduate of Wittenberg University in Springfield, Ohio, Lanty received that university's most prestigious recognition, its Class of 1914 Award, during its 2007 homecoming weekend. On Feb. 23, he delivered the keynote address at Duke Law School's scholarship luncheon. ♣

# Alumni Notes



**James H. Kelly Jr.**, a partner with Kilpatrick Stockton in Winston-Salem, N.C., was named to the 2008 edition of *The Best Lawyers in America* in commercial litigation, insurance law, and personal injury litigation.

**John Kirby** of Chisago City, Minn., climbed Mount Kilimanjaro in February.

**Charlie Rose**, host and producer of the PBS daily interview program "Charlie Rose" since 1991, will contribute stories to "60 Minutes" on CBS beginning with the program's 2008 season. Rose previously filled a similar role as a correspondent on "60 Minutes II," from 1999-2005. Highlights of those years include an exclusive interview with President Bill Clinton and an Emmy Award-winning story about eBay.

## Class of '69

**Jim Alexander** has joined Littler Mendelson as a shareholder in the Birmingham, Ala. office. Jim advises employers on labor and employment law issues and litigates at both the trial and appellate level. Jim also maintains an active ADR practice as an arbitrator. He is a fellow in the College of Labor and Employment Lawyers and has been named to *The Best Lawyers in America* in every published edition.



**Frank Mock** joined the corporate and business law practice of Lowndes, Drosdick, Doster, Kantor & Reed in Orlando, Fla., as of counsel. Frank's practice focuses on

real estate transactions, development and finance, corporate and securities, healthcare, and general litigation.

## Class of '70

**Donald Frederick** has retired from his position as an antitrust and tax policy adviser at the U.S. Department of Agriculture. He is working part time as director of education for the National Society of Accountants for Cooperatives, a professional association.

## Class of '71

**Paul R. Caldwell** is a doctoral candidate in theology at Marquette University in Milwaukee. Paul spent the summer of 2006 in Paris with the Salesian Fathers.

**Michael Conlon**, partner-in-charge at Fulbright & Jaworski's Houston office, has been named a 2007 Texas "Super Lawyer" as published in *Texas Monthly*.

**Christine Durham**, chief justice of the Utah Supreme Court, received the 2007 William H. Rehnquist Award for Judicial Excellence by the National Center for State Courts. This prestigious judicial award is presented annually to a state court

jurist who exemplifies the highest level of judicial excellence, integrity, fairness, and professional ethics.

**James R. Fox**, of counsel with Bell, Davis & Pitt in Winston-Salem, N.C., was named to the 2008 edition of *The Best Lawyers in America* and North Carolina's "Legal Elite" as published in the January 2008 issue of *Business North Carolina*.

**Robert C. Mueller**, senior commissioner of the U.S. Court of Appeals for the Armed Forces, has been awarded the Earl W. Kintner Award by the Federal Bar Association for his many years of service to the organization. During Bob's 25 years, he has held several leadership positions within the organization including president.

## Class of '72

**Thomas W.H. Barlow**, principal and founder of Barlow, P.C., Attorneys at Law in Troy, Mich., has been named a Michigan "Super Lawyer" for 2007. Thomas specializes in representing management in all aspects of employment and labor law, and provides counsel on business, corporate, health care, and commercial litigation matters.

## Class of '73

**Daniel T. Blue Jr.** received the 2007 Defenders of Justice Award for Legislative Advocacy from the North Carolina Justice Center in October. The awards are given to those who have made significant contributions in the fight against poverty in four areas that reflect the scope of the Justice Center's work.

**Don Mayer** is professor in residence at Daniels College of Business, University of Denver. His article on "Trustworthy Capitalism" was recognized as the "Best Article" in the *American Business Law Journal* for 2007.

## Class of '74



**Roger K. Ferland**, a partner with Quarles & Brady in Phoenix, was named to the 2008 edition of *The Best Lawyers in America*.

**Philip H. Moise**, vice president, general counsel, and secretary of Immucor, Inc. in Norcross, Ga., is one of two recipients of the 2008 Georgia Bio Industry Growth Awards, an honor recognizing individuals who have made extraordinary contributions to the growth of Georgia's life sciences industry.

## Class of '75

**T. Nelson Mann** of Kansas City, Mo., has left Stinson Morrison Hecker after 32 years to concentrate on advising private companies.

**Thomas P. Miller** has been appointed to a three-year term on the National Advisory Council for the Agency of Healthcare Research and Quality. His article, "Measuring Distributive Injustice on a Different Scale," was published in the fall 2006 issue of *Law and Contemporary Problems*.

## Class of '76

**John C. Beeler**, a partner with Porter Wright Morris & Arthur in Columbus, Ohio, was named to the 2008 edition of *The Best Lawyers in America*, in the area of corporate law.

**Peter C. Buck** of Robinson, Bradshaw & Hinson in Charlotte has been named one of *Business North Carolina's* "Legal Elite" for 2008.

**Kenneth C. Hunt** of Milwaukee, joined Manpower Inc. as senior vice president and chief legal officer. His new role will include serving as the company's general counsel and leading Manpower's overall legal plan and structure, as well as managing corporate governance and securities. Ken was previously an attorney with Godfrey & Kahn.

**Arlinda F. Locklear** of Jefferson, Md., received the Kate Stoneman Award from Albany Law School, for her work as an American Indian legal pioneer. The award is presented to members of the legal profession who demonstrate a commitment to change and expanded opportunities for women. Arlinda has represented tribes in federal and state courts for more than 35 years. A member of North Carolina's Lumbee tribe, in 1984, she became the first American Indian woman to argue before the U.S. Supreme Court.

**Steven M. Shaber**, an attorney with Poyner & Spruill in Raleigh, was named to the 2008 edition of *The Best Lawyers in America* for administrative law.

## Class of '77

**Henry D. Blinder**, city attorney for Durham, has retired after 30 years of public service. Henry worked for the city since 1984 and previously served as deputy attorney general for the State of New Jersey.

**Michael Ellis**, a partner in the Cleveland office of Porter Wright Morris & Arthur, was named to the 2008 edition of *The Best Lawyers in America*, in corporate law.

**W. Bruce Johnson** of Sears Holdings Corporation in Chicago, has been appointed interim chief executive officer and president in addition to his role as executive vice president: supply chain and operations.

**Ember Reichgott Junge** of Minneapolis, has been named chief advancement officer of the Lutheran Social Service of Minnesota. Her duties include fundraising, communications, marketing, public policy, advocacy, and volunteer coordination for the statewide organization that assists approximately 100,000 Minnesotans each year.

## Class of '78

**Rodney Dillman**, general counsel at Babson Capital in Springfield, Mass., is the author of *The Lease Manual, A Practical Guide to Negotiating Office, Retail and Industrial Leases*, published by ABA Publishing.

**Michael Jenkins** of Manhattan Beach, Calif., continues to practice municipal law at the firm he established in 2001 with his wife, Christi Hogin. He also teaches local government law at the University of Southern California's Gould School of Law. Michael recently completed two years of service on the board of directors of the League of California Cities.

**James Jones**, a professor at the University of Louisville Brandeis School of Law, has published an article entitled "Mental Illness, Stigma, and the Person in the Office Next Door" in the *Louisville Courier-Journal*. Another article based on his own experience, "Walking the Tightrope of Bipolar Disorder: The Secret Life of a Law Professor," appeared in the *Journal of Legal Education* in February. Professor Jones recently spoke about "Severe Mental Illness in the Academy: A Law Professor's Story" at the Gould School of Law at the University of Southern California.



**Renee J. Montgomery**, a partner at Parker Poe Adams & Bernstein in Raleigh, has been recognized as a North Carolina "Super Lawyer" for 2008 by *Law and Politics* magazine for health care law.

**Christopher Glenn Sawyer**, a partner at Alston & Bird in Atlanta, received the Justice Robert Benham Award for Community Service from the State Bar of Georgia and the Chief Justice's Commission on Professionalism in January. This award honors Georgia lawyers and judges who have made significant contributions to their communities beyond their legal or official work.

## Class of '79

**Judy Herrin** joined Holland & Knight in Jacksonville, Fla., as special projects counsel.

**Mark High**, a member of Dickinson Wright in Detroit, has completed a year as chair of the Business Law Section of the State Bar of Michigan.

**Peter R. Pendergast**, former Massachusetts Turnpike Authority general counsel, has rejoined Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, in Boston, as of counsel.

**Brian Tucker**, an attorney with Rath, Pignatelli & Young of Concord, N.H., has been confirmed by the Executive Council of New Hampshire as a superior court judge. Brian has previously served as chief of the Criminal Bureau of the New Hampshire Department of Justice, deputy attorney general, and assistant U.S. attorney for New Hampshire.



**Thomas R. West**, an attorney with Poyner & Spruill in Raleigh, was named to the 2008 edition of *The Best Lawyers in America* in administrative law.

**Mark L. Weyman** joined ReedSmith in New York as partner in the firm's commercial litigation group. He was formerly co-chair of the antitrust/unfair competition group of Anderson Kill & Olick, where he was a member of the firm's ethics committee and chairman of its evaluation committee. Mark has practiced for over 25 years in the area of corporate and commercial litigation.

**Jon Yergler**, a partner with Lowndes, Drosdick, Doster, Kantor & Reed in Orlando, has been named a Florida "Super Lawyer" for 2007.

## Class of '81

**Paul Arne**, a partner with Morris, Manning & Martin in Atlanta, was a recent panelist at "Cyber Risk Management," a seminar for Atlanta business leaders. Paul co-chairs his firm's privacy and security group and is involved in its establishment of a video game and digital entertainment practice group.

**Wayne Jones** has joined Squire, Sanders & Dempsey in Palo Alto, Calif. Wayne was previously a partner and head of intellectual property at Greenberg Traurig's Silicon Valley office.

**Thomas Richelo** joined Schulten Ward & Turner in Atlanta as of counsel, as the result of its merger with Richelo Law Group. Tom's practice areas include construction and design law, surety law, commercial and business litigation, mediation, and arbitration.

**Jeffrey Wolff**, a partner with Fulbright & Jaworski in Houston, has been named a 2007 Texas "Super Lawyer" as published in *Texas Monthly*.

**John Yates**, a partner with Morris, Manning & Martin in Atlanta, has been recognized as a technology "legend" by the Southeastern chapter of the American Electronics Association. John was recognized as

a "pioneer in technology law," and was named a finalist in the technology leadership category in the organization's Spirit of Endeavor awards. John, who chairs his firm's technology group, is involved in the firm's efforts to establish a video game and digital entertainment practice group.

## Class of '82

**P. Russell Hardin**, president of the Robert W. Woodruff Foundation in Atlanta, has been named one of the 100 Most Influential Georgians by *Georgia Trends Magazine*.

**Barbara Esbin** has joined the Progress & Freedom Foundation (PFF) in Washington, D.C., as senior fellow and director of the Center for Communications and Competition Policy. She previously served in a senior position with the Federal Communications Commission. At PFF, she focuses on a number of policy areas, including broadband deployment, telecommunications competition policy, spectrum policy, and FCC reform.

**Mark D. Shepard**, a lawyer with Babst, Calland, Clements & Zomnir in Pittsburgh, was named to the 2008 edition of *The Best Lawyers in America*. Mark focuses his practice in the areas of commercial, toxic tort and environmental litigation, and has mediated commercial, securities, and natural resources cases.

## Class of '83

**Dean Blythe** has been named CEO of Harte-Hanks in San Antonio, Texas, a global direct marketing company. He also serves as president.

**John R. Knight** has joined The Rohatyn Group, a New York-based emerging markets investment firm, in its Singapore office. John was previously with J.P. Morgan Chase Bank, also in Singapore.



**Bruce J. Ruzinsky**, a partner with Jackson Walker in Houston, was named to the 2008 edition of *The Best Lawyers in America*. Bruce heads the firm's bankruptcy section and chairs its diversity committee.

**Serena G. Simons**, a partner with Venable in Washington, D.C., was named to the 2008 edition of *The Best Lawyers in America* in employee benefits law.

**Bruce Wynn**, a partner with Morris, Manning & Martin in Atlanta, was a recent panelist on the importance of alternative compensation plans for employees at a Technology Association of Georgia event. Bruce has more than 20 years experience with employee benefits and executive compensation issues.





### Gao Xiqing '86 Heading up China's sovereign wealth fund

**G**AO XIQING '86 is the general manager of the China Investment Corp., China's sovereign investment fund. He previously served as vice-chairman of the National Council for Social Security Fund from 2003–2007.

Gao became the first Chinese national admitted to the New York State Bar in 1986, after which he spent two years as an associate with Mudge Rose Guthrie Alexander & Ferdon. Returning to China in 1988, he took a leadership role in drafting China's initial securities rules in 1989 and

helping establish China's stock exchanges. He served as vice chairman of the China Securities Regulatory Commission (CSRC) from 1999–2003, having previously served as the director of its Public Offerings Supervision Department. He has been an adjunct professor of law and finance at Beijing University, Tsinghua University, and the University of International Business and Economics in Beijing, and regularly teaches Chinese company and securities law and Chinese law and society at Duke Law School. ♣

**Nancy Zisk** has been promoted to associate professor at the Charleston School of Law, where she also serves as associate dean for academic affairs. Nancy joined the school in 2004 after practicing employment and complex insurance coverage litigation in Washington, D.C.

### Class of '84

**Mark Baker**, a partner with Fulbright & Jaworski in Houston, has been named a 2007 Texas "Super Lawyer" as published in *Texas Monthly*.

**Michael Harvey's** debut novel, *The Chicago Way*, has been published by Knopf Publishing. It received rave reviews from *Publisher's Weekly*, *USA Today*, the *Wall Street Journal*, *The Boston Globe*, *The Boston Herald*, and the *Chicago Sun*. John Grisham called it "a magnificent debut."

**Barbara T. Ilsen**, a partner at Dilworth Paxson in Philadelphia, was recently named to the board of directors of MANNA, a non-profit organization that provides home-delivered, medically appropriate meals and nutritional counseling to people with life-threatening illnesses.

**Patricia Lehtola**, a partner with Godwin Pappas Ronquillo in Dallas, was named vice-chair of the labor and employment section and elected to the executive committee of the firm.

**Geoff Weirich**, a partner at Paul, Hastings, Janofsky & Walker in Atlanta, is the editor-in-chief of the recently published fourth edition of *Lindemann & Grossman, Employment Discrimination Law*, a two-volume treatise that has been cited by the U.S. Supreme Court and the federal appellate courts.

### Class of '85

**Eric Alan Isaacson**, a partner with Lerach Coughlin Stoia Geller Rudman & Robbins in San Diego, has recently published an article "Traditional Values, or a New Tradition of Prejudice? The Boy Scouts of America vs. The Unitarian Universalist Association of Congregations," in Volume 17 of the *George Mason University Civil Rights Law Journal*, and a book review essay, "Assaulting America's Mainstream Values: Hans Zeiger's Get Off My Honor: The Assault on the Boy Scouts of America" in Volume 5 of the *Pierce Law Review*.

**Jeffrey Lawyer** joined Womble Carlyle Sandridge & Rice as a member of the tax practice group in the Winston-Salem office. Jeff's practice focuses on federal and state tax planning for mergers and acquisitions, real estate transactions, joint venture formations, partnerships, and choice of entity and financing for public and private clients.

**Marcia Swihart Orgill** joined Danna McKittrick as an associate in the firm's transactional department in St. Louis, Mo. Marcia's practice focuses in the areas of estate, gift, and international tax issues for high net-worth individuals. Marcia put her legal work on hold while she taught English and served on the school board of the International School of Kuala Lumpur, Malaysia. Upon her return to the U.S. she earned her LLM in taxation from Washington University School of Law.

**Sonja Steptoe** has joined O'Melveny & Myers in Los Angeles as client development manager. She was previously a senior correspondent and deputy news director for *Time Magazine*. Sonja also has been appointed to The Knight Foundation's Commission on Intercollegiate Athletics. The commission works to increase presidential control, academic integrity, financial integrity, and independent certification of athletics programs.

**Bellanne Toren** was admitted to the bar of Alberta, Canada, as a barrister and solicitor. She remains an active member of the State Bar of Texas, where she was admitted in 1985. She is currently practicing international energy law at Gowling Lafleur Henderson in Calgary.

## Class of '86

**Stephen A. Labaton**, a reporter in the Washington bureau of *The New York Times* who focuses on political, regulatory, and corporate financial issues, received the 2008 Futrell Award in Communications and Journalism from Duke University's Sanford Institute's DeWitt Wallace Center for Media and Democracy on March 17. The award honors a Duke alumnus who has excelled in journalism and communications. Steve delivered a public lecture, "*The New York Times* and John McCain: A Reporter's Perspective."

**Mark Reeth** has joined Salix Pharmaceuticals as general counsel and vice president in Research Triangle Park.

## Class of '87

**Michael J. Andreana** has joined Pullman & Comley in Bridgeport, Conn., where he practices in the area of public finance in the firm's public and commercial finance department. Michael provides tax guidance and analysis to many of the department's tax-exempt issuers.

## Class of '88



**Jonathan M. Crotty**, a partner with Parker Poe Adams & Bernstein in Charlotte, has been recognized as a 2008 North Carolina "Super Lawyer" by *Law and Politics* magazine for employment and labor law.

**Jonathan Kamisar** is special counsel at Thelen Reid Brown Raysman & Steiner in Hartford, Conn. His practice areas include general corporate law, mergers and acquisitions, third-party manufacturing for alcohol beverage clients, and outsourcing transactions.

**Emily Karr**, a partner at Stoel Rives in Portland, Ore., has been elected to the Library Foundation's board of trustees. Emily practices in the areas of estate planning, intentional tax planning, and administration of estates and trusts. Emily is on the boards of Northwest Academy, and Northwest Business for Culture and the Arts, and has just completed service for the Oregon Ballet Theatre as secretary and chair of the planned giving committee.

**Thomas Rohe** has been elected a shareholder at his firm Kasdorf, Lewis and Swietlik of Milwaukee. He focuses his practice on workers' compensation law.

**Lionel Simon III** has been appointed a workers' compensation judge with the State of New Jersey Department of Labor.

## Class of '89

**Bill Brian**, a partner with Kennedy Covington in Research Triangle Park, has been named head of the firm's land use and zoning practice. Bill has also recently been named chair of the North Carolina Bar Association's zoning, planning, and land use section. He is listed in *Chamber's USA, America's Leading Lawyers in Business* for land use and zoning.

**Sean Callinicos** and his wife, Carolina Leal Callinicos, announce the birth of their first child, Alexandra Leal Callinicos, on Dec. 24, 2006, in Washington, D.C. Sean is vice president of federal government affairs for the vaccine company Sanofi Pasteur, a unit of Paris-based Sanofi-Aventis.

**Wendy Sartory Link**, managing partner of Ackerman, Link & Sartory in West Palm Beach, Fla., was appointed by Gov. Charlie Crist to the Palm Beach Community College board of trustees. Her term will run through May 2011.

**Allen W. Nelson** of Atlanta, has added the title and responsibilities of chief administrative officer to his other roles as executive vice president, general counsel, and corporate secretary at Crawford & Company, an international insurance services firm. Allen is responsible for

these areas in all 63 countries in which Crawford operates.

**Susan Prosnitz** of Boston, is the first executive director of the Jerome Lyle Rappaport Center for Law and Public Service at Suffolk Law School. The center, which was established in 2006, advances opportunities for law students and lawyers to engage in public service. Susan was previously general counsel for the state Executive Office of Public Safety.

**Debby Stone**, president of InterVision Group, a professional coaching and facilitation company in Alpharetta, Ga., was honored as a "Phenomenal Woman of North Fulton" by the American Business Women's Association. Debby is also a partner in GROWE, an entrepreneurial mentoring organization. Debby leads corporate skill-building workshops and provides individual coaching to business owners and executives.

**Frank S. Tomkins** has been elected a member of Gust Rosenfeld in Phoenix, where he focuses on real estate and corporate law.

## Class of '90

**Darius Amjadi** has been named chief of clinical pathology at the U.S. Army's Heidelberg Medical Department Activity in Heidelberg, Germany.

**John Childress** of Springfield, Ill., has been elected associate judge in the Seventh Judicial Circuit. John was previously an assistant U.S. attorney for the Central District of Illinois.

**Frank Chut**, a former assistant district attorney from Guilford County, N.C., has joined the criminal division of the U.S. Attorney's Office for the Western District of North Carolina. Frank was sworn into office on Oct. 12, 2007.

**Terrill Johnson Harris**, an attorney with Smith Moore in Greensboro, N.C., was named to the 2008 edition of *The Best Lawyers in America* in health care law.

**Felix J. L. Mello** is in private practice in the firm he founded four years ago, Guido & Mello Abogados in Buenos Aires, Argentina.

**Mark Redmiles** has been appointed as deputy director of the executive office for United States Trustees. The U.S. Trustee Program is the component of the Justice Department that protects the integrity of the bankruptcy system by overseeing case administration and litigating to enforce the bankruptcy laws.

**Jacqueline O. Shogan** has been elected judge of the Superior Court of Pennsylvania. Her term began Jan. 7, 2008.

# Alumni Notes

**Lawrence D. Silverman**, previously a litigation shareholder at Akerman Senterfitt, has formed a new boutique firm with **James Sammataro '99**, in Miami. Silverman, Cosgrove & Sammataro specializes in high-stakes litigation. Larry has received national recognition for his pro-bono work and, in 2007, was a finalist in the *Daily Business Review's* "Most Effective Lawyer" contest.

**Anne Marie Towle**, of counsel at Choate Hall & Stewart in Boston, has been named co-chair of the Estate Planning Committee of the Trust & Estates Section of the Boston Bar Association. The committee meets regularly to exchange tax-planning ideas and to discuss common problems among lawyers specializing in estate planning.

## Class of '91

**Brenda Kay Brown** joined Winstead Attorneys in Dallas, as of counsel in the real estate banking, insurance company, and fund adviser practice group.

**Douglas Gooding**, a member of the hiring committee at Choate, Hall & Stewart in Boston, has been named chair of the firm's finance and restructuring group. Doug is also listed in *Chambers USA*, *The Best Lawyers in America*, and *Massachusetts Super Lawyers*.

**Melissa Engelberth McIlwain** and John McIlwain, announce the birth of their daughter, Juliet, on March 30, 2007.

**Dara Redler**, senior corporate counsel for The Coca-Cola Co. in Atlanta, has been recognized for her volunteer service by the Pro Bono Partnership of Atlanta. Dara received the 2007 Corporate Attorney of the Year Award for work with four different nonprofit organizations.

**Andrew Slutkin** joined the Baltimore-Washington based law firm of Silverman Thompson & White as a partner. The firm is now known as Silverman Thompson Slutkin & White. Andy focuses on representing plaintiffs in catastrophic injury and business litigation matters.

**W. Allen Woolley** joined the Chicago firm of Wildman Harrold as partner. Allen was previously partner in Kirkland & Ellis's Chicago office. His practice focuses on commercial litigation and environmental litigation.

## Class of '92

**Jay Bilas**, an ESPN basketball commentator, served as Ohio Valley University's 2008 commencement speaker on May 3.

**David Maxwell** joined Duane Morris as a trial partner in Atlanta. David was previously with Alston & Bird and focuses his practice on patent, trademark, copyright, and other complex business litigation, licensing, and counseling matters.

**Karl Metzner** married Caroline Lisa Werner on Jan. 5, 2008, in Manhattan. Karl is a deputy chief of the criminal division of the United States Attorney's Office for the Southern District of New York.

## Class of '93



**Jeffrey A. Benson**, a partner with Kilpatrick Stockton in Raleigh, was named to the 2008 edition of *The Best Lawyers in America* in real estate law.

**Adam Cohen**, director of legal and public affairs at the Oklahoma Medical Research Foundation, achieved his goal of running 2,000 miles in one year at 11:53 pm on New Year's Eve 2006. Adam has competed in more than 30 races and is a two-time winner of the Oklahoma Marathon. He also took first place at the Andy Payne Memorial at Lake Overholser, Okla.

**Philip Cooper** and his wife, Karen, announce the birth of their daughter, Madeline Dorothy, on July 11, 2007. Madeline joins her 3-year-old brother Dylan. Phil is a partner in the corporate department of Locke Lord Bissell & Liddell in Atlanta.

**Matthew Heller** and his wife, Ilene, announce the birth of their first child, Andrew Ruben, on May 1, 2007.

**Robert R. Marcus**, an attorney with Smith Moore in Charlotte, was named to the 2008 edition of *The Best Lawyers in America* in commercial litigation and mass tort litigation.



**Avis Kinard McAllister** and her husband, Lonnie, announce the birth of their first child, Lonnie Julius "LJ" McAllister III, on May 12, 2007.

**Rebecca Denson Nelson** and **David Curtis Nelson '94**, announce the birth of Caroline Courtney, on Feb. 3, 2008. She joins siblings, Zoe, John, and Hannah.

**Alex Simpson** has given up his solo law practice to go in-house as vice president and general counsel of Reis, Inc, a Nasdaq-listed provider of commercial real estate information. Alex's wife, **Lisa '94**, is a partner at Orrick Herrington & Sutcliffe in New York. They have a daughter, Shae, and son, Austin.

**Philip Strauss** is a practice director at the e-discovery company H5 in San Francisco.

## Class of '94

**Joseph Bach** has been named partner at Nixon Peabody's Silicon Valley office. Joseph joins the firm's technology and intellectual property group, where he

focuses on counseling and transactions. He was previously a partner at Sughrue Mion.

**Iлона Banhegyi** lives in Budapest, Hungary with her husband, Abel Galacz, and their son, Akos, who was born in 2006.

**Edward A. Bekeschenco** has been named a partner at Baker & McKenzie in Moscow. Edward specializes in litigation and arbitration, IT/telecommunications, and commercial contracts.

**Rindala Beydoun** joined Latham & Watkins in its Middle East practice. Rindala serves as the managing partner for three new offices in Dubai, Abu Dhabi, UAE, and Doha, Qatar. Rindala was previously a partner with Vinson & Elkins in Dubai.

**Theodore Edwards**, a partner with Smith Moore in Raleigh, has been included in the 2008 "Legal Elite" as published by *Business North Carolina*.

**Seth Gardner**, managing director and associate general counsel at Cerberus Capital Management, in New York, has been appointed to the board of directors of Scottish Re Group Limited, a global life reinsurance specialist.

**Paul Genender** became a partner with Kirkpatrick & Lockhart Preston Gates Ellis (K&L Gates) in Dallas, when it merged with Hughes & Luce in January. Paul and his wife, Anice, have two sons, Jack and George.



**Russell B. Killen**, a partner at Parker Poe Adams & Bernstein in Raleigh, has been recognized as a 2008 North Carolina "Super Lawyer" by *Law and Politics* magazine for construction litigation.

**Kevin M. Lally** of Los Angeles, was named deputy chief of the violent and organized crime section of the U.S. Attorney's Office for the Central District of California in fall 2007. Kevin had served as acting deputy chief since spring 2006.

**Russell A. Miller**, associate professor of law at the University of Idaho College of Law, is a visiting associate professor at Washington & Lee School of Law in Lexington, Va. for the 2007-2008 academic year.

**David Curtis Nelson** and **Rebecca Denson Nelson '93**, announce the birth of Caroline Courtney on Feb. 3, 2008. She joins siblings, Zoe, John, and Hannah.

**Joelle Sharman** has joined Ford & Harrison in Atlanta as partner. Joelle's practice is in ERISA and life, health, and disability law litigation.

**Christopher J. Vaughn**, a director with Carruthers and Roth in Greensboro, N.C., was named to the 2008 edition of *The Best Lawyers in America* in real estate law.



## Class of '95

**R. Lance Boldrey**, a member in the Lansing, Mich. office of Dykema Gossett, was named to the 2008 edition of *The Best Lawyers in America* in gaming law.

**Carol Brown** joined the faculty of the University of North Carolina-Chapel Hill School of Law in July 2007. She was previously at the University of Alabama School of Law. Carol is the secretary of the Property Section of the Association of American Law Schools and is a member of the board of trustees of Heifer International Foundation.

**Mark Dolins** has joined Lazard Ltd., as director of the Boston office. Mark was previously head of the software investment-banking group at Cowen and Company. Lazard is a financial advisory and asset management firm.

**Paul Hespel**, a partner with Goodwin Procter in New York, has been named a New York "Super Lawyer" for 2007.

## Class of '96

**Julian Hammar** was appointed assistant general counsel with the U.S. Commodity Futures Trading Commission.

**Vandana Shah** has been appointed executive director of the North Carolina Health and Wellness Trust Fund. She has served as policy director and attorney for the Trust since its creation in 2001. Vandana was previously an associate attorney general in the North Carolina Department of Justice.

## Class of '97

**Jennifer Yelton Henry** and her husband, Kyle, announce the birth of their first child, Evelyn Nicole, on Nov. 1, 2007. They live in Dallas.

**Kirkland L. Hicks**, senior counsel at Watson Wyatt Worldwide, a global consulting firm focused on human capital and financial management in Arlington, Va., was appointed head of the commercial law group in the general counsel's office.

**Eric Hone** joined Lewis and Roca in Las Vegas as a partner in the firm's commercial litigation and sports and entertainment practice groups. Eric was previously with Beckley Singleton, which partnered with Lewis and Roca in 2007.

**Derek S. Hughey** and Shanna Singh were married on Sept. 2, 2007 in Michigan and are on a yearlong round-the-world honeymoon. Derek and Shanna are chronicling their travels on their blog, [www.oneyearonearth.com](http://www.oneyearonearth.com).

**Canaan Huie** was appointed house finance counsel in the office of Speaker Joe Hackney of the North Carolina House

of Representatives. He was also recently elected vice-chair of the Alliance of AIDS Services-Carolina.

**Faith Kasparian** and her husband, Erik Weisman, announce the birth of their son, Ethan, on Oct. 14, 2005. Ethan joins brother Frank. Faith and her family live in Arlington, Mass.

**Geoffrey R. Krouse** has been named partner at Smith Anderson in Raleigh. Geoff practices in the area of corporate law, securities law, and mergers and acquisitions. He joined the firm in 2005 after almost eight years of practice in New York. Geoff and his wife, **Anne Emmert Krouse '97**, announce the birth of Katherine "Kate" on April 22, 2008. She joins twin sisters Grace and Caroline.

**Anneli Lemmer** and her husband, Pierré van Tonder, announce the birth of their daughter, Sandra Malaika, on June 15, 2007.

**Patricia Northrop** of Brooklyn, joined the New York State Attorney General's Office as an assistant attorney general in the Charities Bureau. Pat was previously with Richards Spears Kibbe & Orbe.

**Jeremy Rosen** has been named partner at Horvitz & Levy in Encino, Calif. Jeremy is president of the Los Angeles Lawyers' Division of the Federalist Society and previously served as an adjunct professor at Pepperdine Law School and the Phillips Graduate Institute. In 2007, the *Los Angeles Daily Journal* honored Jeremy by naming him to its "Top 20 Under 40" list of California attorneys. He was also named a California "Super Lawyer Rising Star" in 2006 and 2007.

**Rochael Soper** of Palo Alto, Calif., has recently been hired as an adjunct professor at University of California-Hastings College of the Law. Rochael will be teaching negotiation and settlement in fall 2008. She attended the TED (Technology Entertainment Design) Conference in Monterey in February.

## Class of '98

**Heather Bell Adams** was named partner at Smith Anderson in Raleigh, where she practices business and intellectual property litigation.

**Benoit Allemeersch**, an attorney with Clifford Chance in Brussels, has successfully defended his PhD thesis and has been appointed professor of civil procedure law at the Catholic University of Leuven. Benoit was an exchange student from Belgium in 1998.

**Jamie Eisner** and **Alice Shih** were married in April 2006. 1998 classmates attending the wedding were **Susan Shelton, Jennifer Franklin, Shawn and Ellen (Dunham)**

**Bryant, Bob Ghoorah, Sarah Solum, Kathleen Gutman, Jennifer Draffen, Amy Kiesel, Patricia Dolan, and Mark Daly.**

**Emily Friedman** and Dan Protes announce the birth of their daughter, Ella Friedman Protes, on Oct. 15, 2007.

**Arnaldo Gorziglia** has formed a new law firm, Arteaga Gorziglia & Compañía Limitada, in Santiago, Chile. The firm focuses on corporate and regulatory matters.

**Eric Gribbin** has been named senior counsel at HSBC Finance Corporation in Prospect Heights, Ill.

**Melissa M. Hayworth** joined Crowell & Moring in Washington, D.C. as partner. A member of the intellectual property group, Melissa focuses her practice on organic chemistry, petroleum chemistry, and biochemistry.

**Seth Jaffe** was named associate general counsel in the Office of the General Counsel and Legal Policy at the U.S. Office of Government Ethics. The U.S. Office of Government Ethics is responsible for interpreting federal ethics laws and setting legal policy for executive branch employees.

**Avi Ortal** has been named director of Limco-Piedmont Inc., a leading provider of maintenance, repair and overhaul services, and parts supply to the aerospace industry. Avi currently serves as the CEO of Mofet Holdings Ltd., a subsidiary of Kaman Holdings Ltd., based in Herzlia Pituach, Israel.

**Jessica Pfeiffer** is the executive director of the Southeast Michigan Entrepreneurial Opportunities Program, a program implementing the Department of Labor's Workforce Innovation in Regional Economic Development initiatives. Jessica is also an adjunct faculty member at the University of Detroit Mercy School of Law where she teaches international business transactions in the Innovation Law Firm Program.

**Kimberly J. Schaefer** has been named partner at Vorys, Sater, Seymour and Pease in Cincinnati, where she is a member of the corporate and finance group. Her practice includes general corporate law, securities law, banking law, and franchising regulation.

**Ken Schwartz** joined Piedmont Healthcare, Inc. in Atlanta in August 2007 as vice president of compliance.

**Tingting Shi** joined GE Aviation as China counsel in September 2007.

**Sarah K. Solum** has been elected partner at Davis Polk & Wardwell in the Menlo Park, Calif. office. Sarah is a member of the corporate department.

## Alumni Notes

**Arthur Swanson** was named vice president and assistant general counsel for Cadbury Schweppes Americas Beverages. Arthur was also named a "Texas Rising Star" for 2006 as published in *Texas SuperLawyers* magazine.

**Aaron J. Tehan** has been named partner at Vinson & Elkins. Aaron is a member of the firm's corporate finance and securities law section in the New York office.

**Gregory L. Watts** has been named partner at Wilson Sonsini Goodrich & Rosati in Palo Alto, Calif. Greg focuses his practice on business-related disputes and securities litigation, primarily defending corporations and their directors and officers in securities class actions, shareholder derivative actions, and SEC investigations and enforcement actions.

**Ronald Wolf** married Stephanie Tanger in April 2007. Guests included **Omer Oztan '98**, **Eric Gribbin '98**, **Layth Elhassani '99**, **Gary Eisenberg '99**, and **Michael Torosian '00**. Ron is a partner at Hawkins Delafield & Wood, a public finance law firm in San Francisco.

### Class of '99

**Christian Broadbent** is senior special counsel in the Division of Investment Management's Office of Special Projects and Exemptive Applications at the SEC.

He previously worked in the office of SEC Commissioner Annette Nazareth.

**Les** and **Theresa Carnegie** announce the birth of their son, Charles Carter, on Oct. 4, 2007.

**Howard A. Cohen** has been named counsel at Drinker Biddle in Wilmington, Del. Howard is a member of the corporate restructuring practice group.

**William Colwell** joined the Boeing Company as counsel to its Phantom Works advanced research and development division. Bill, his wife Robin, and twin daughters, Anna and Lauren, live in the Seattle area.

**Jennifer Kinsley** has been elected partner at Sirkin Pinales & Schwartz in Cincinnati. Jenni was also named a "2007 Rising Star" in the area of civil rights and is treasurer of the First Amendment Lawyers Association.

**Craig Kornreich** has been named partner at Vinson & Elkins in Houston. Craig is a member of the firm's business and international law section. He focuses his practice on representing lenders and borrowers in syndicated financings.

**Andrew McNee** has left Blue Chip Financial Solutions in Sydney, Australia, to establish a boutique investment company with two other partners. The company, Genero Group Limited, focuses on development

of financial products for the wealth management industry, and mergers and acquisitions/private equity.

**Robert Milbourne** is general counsel for Vale (formerly Companhia Vale do Rio Doce or CVRD) Australia. He was previously with CVRD in Brazil.

**James O'Doherty** has been named equity partner by the law firm Shumaker, Loop & Kendrick in Toledo, Ohio. Jim practices in the firm's litigation department.

**Lisa Levin Reichmann** and her husband, Daniel, welcomed their third child and second daughter, Kira Levin Reichmann, on Nov. 1, 2007.

**James G. Sammataro**, previously a shareholder at Akerman Senterfitt, has formed a new boutique firm with **Lawrence Silverman '90**, in Miami. Silverman, Cosgrove & Sammataro specializes in high-stakes litigation. James focuses his practice on commercial and intellectual property litigation, as well as sports and entertainment law.

**Michael P. Seaman** has been promoted to counsel in the corporate and financial institutions practice group of Thacher Proffitt & Wood in Washington, D.C. Michael focuses on general corporate and securities law, mergers and acquisitions, and capital



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markets transactions, with an emphasis on financial institutions clients.

**Luis E. Sprovieri**, an attorney with Baker & McKenzie in Buenos Aires, Argentina, addressed a plenary session at the International Association of Law Schools meeting in Suzhou, China, in October 2007. Luis has recently co-authored *Practical Global Tort Litigation: United States, Germany and Argentina* with Andrew J. McClurg of Florida International University. It was published by Carolina Academic Press.

**Dara Steele-Belkin** joined the legal department of Global Payments, Inc. as senior attorney. Dara, her husband, Jeff, and their two daughters reside in Atlanta.

**Chris Stidvent** and his wife, Veronica, announce the birth of their second child, Evelyn Rey, on Sept. 27, 2007 in Austin, Texas. Evelyn joins sister Charlotte Marie.

### Class of '00

**Amanda S. Amert** has been named partner at Jenner & Block in Chicago. Amanda's work at the firm focuses on litigation and arbitration of domestic and international practices.

**Alison Conlon** has been named partner of the Chicago-based firm Wildman Harrold. Alison, a member of the litigation practice group, handles complex litigation and arbitration.

**Crystal Wells Cook** joined Locke Lord Bissell & Liddell as a member of its real estate practice team in Atlanta. She practices primarily in the areas of financial products and real estate law. Crystal was previously an associate at Powell Goldstein.

**Jason W. Goode** has been named partner at Alston & Bird. Based in Atlanta, Jason is a member of the firm's corporate transactions and securities group.

**Michael LeVine** has taken a new position as Pacific counsel and senior adviser for Oceana, an international nonprofit organization dedicated to protecting the world's oceans. He lives in Juneau, Alaska.

**Adam Miller** and his wife, Kristy, announce the birth of twin girls, Lauren and Claire, on Dec. 24, 2007. Adam is an attorney with Mayer Brown in Washington, D.C.

**David Morris**, founder and managing director of Oracle Capital Partners, a Detroit-based private equity firm, was selected to *Diversity MBA Magazine's* annual "50 Under 50 Corporate Executives" list and to *Crain's Detroit Business* "40 Under 40 Class of 2007." David was also appointed to the Investment Review Board of the Michigan Pre-seed Capital Fund, which provides early stage financing to life science technology and advanced

manufacturing companies, and is funded by the state of Michigan.

**Nathan A. Sales**, a former official at the U.S. Department of Homeland Security and the U.S. Department of Justice, joined the faculty of George Mason University School of Law as an assistant professor at the start of the spring 2008 semester. He teaches national security law and administrative law.

**Sarah E. Schott** joined the law department of The Northwestern Mutual Life Insurance Company in Milwaukee as an assistant general counsel and assistant secretary on the investment products and services team. Her practice focuses on investment adviser and broker-dealer matters. Sarah was previously general counsel, senior managing director, and corporate secretary for B.C. Ziegler and Company in Milwaukee.

### Class of '01



**Kamla Alexander** and **Antony Sanacory** announce the birth of their daughter, Marley Grace Sereni Sanacory, on July 9, 2007 in Atlanta.

**Kristi L. Bowman** has joined the law faculty of Michigan State University College of Law as an assistant professor of law. Prior to joining MSU, Kristi taught property, education law, and civil rights as a visiting professor at University of Mississippi School of Law and as an assistant professor at Drake University Law School.

**Rodney Bullard** and his wife, Silvette, announce the birth of their son, Brendan James, on Aug. 29, 2007. (See profile, Page 46.)

**Alan Dickinson** joined the Winston-Salem/Forsyth County Schools as associate counsel. Alan was formerly with Comerford and Britt in Winston-Salem.

**D'lorah Hughes** will join the law faculty at the University of Arkansas, where she will supervise their prosecution and juvenile defense clinics.

**Rawn James** has joined the Office of the General Counsel for the Department of the Navy as a trial attorney. He previously served as an assistant attorney general for the District of Columbia. Rawn has signed a contract with Bloomsbury to publish his first book, *Free to Hit and Fight: Charles Hamilton Houston, Thurgood Marshall and the Struggle to End Segregation*. He anticipates an early 2010 publication date.

**Randy Katz** is an assistant U.S. attorney and was recently promoted to the Economics Crimes Section in the U.S. Attorney's Office in the Southern District of Florida.

**Steve Martin** and his wife, Sara, announce the birth of their second daughter, Skyla Aerin, on Sept. 5, 2007. Steve serves as vice president-corporate counsel at Accuride Corporation in Evansville, Ind.

**Evans Rice**, formerly with the U.S. Department of Justice in the Civil Rights Division, has taken a position as counsel for the United States Senate Judiciary Committee's Subcommittee on Administrative Oversight and the Courts.

**Mary Richardson** joined Maine Initiatives as executive director. Maine Initiatives is a community fund supporting social, economic, and environmental justice. Mary was previously director of the Maine Volunteer Lawyers Project.

**Jamieson A. Smith** and his wife, Komal, announce the birth of their son, Jahan Kumar Smith, on Sept. 19, 2007.

### Class of '02

**Jessica Faye Carter** adapted "Secrets of Success," an article in the June/July 2008 issue of *Working Mother Magazine*, from her book, *Double Outsiders: How Women of Color Can Succeed in Corporate America*. She has recently been quoted extensively in pieces in *Essence* and *Working Mother*, among other publications.

**Ryan DiSantis** joined the United States Attorney's Office for the District of Massachusetts as an assistant U.S. attorney in the Economic Crimes Unit. Ryan was previously an associate at Ropes & Gray in Boston.

**Maureen James** joined the Office of the General Counsel for the Department of Agriculture in Washington, D.C. Maureen previously served as an associate attorney for the National Legal Aid & Defender Association.

**Christy E. Kiely**, an associate with Hunton & Williams in Richmond, Va., received the Sandra Day O'Connor Award for Professional Service from the American Inns of Court. The award honors exemplary service by an Inn member, as well as Justice O'Connor, for being a paragon of professional service throughout her distinguished career, while exemplifying legal excellence, civility, ethics, and professionalism.

**Eli Mazur** joined the corporate practice group of Freshfields Bruckhaus Deringer in Hanoi, Vietnam.

**Kevin Paul** joined Special Counsel in Atlanta as an attorney recruiter.

**Mary Roccapriore Pelletier** and husband **James Pelletier '03**, announce the birth of their son, Ethan James, on June 4, 2007.

**Victoria von Portatius** of Vienna, Austria, married Anders Rosengren on July 21, 2007.



## Leah Nicholls '07

**L**EAH NICHOLLS' first experiences with lawyers involved efforts to obtain special education programs for her sister. Her parents at times had to push schools to provide the support and education to which her sister was legally entitled. In some cases they hired a lawyer, and then "things got so much easier," Leah recalls. "My sister benefited immensely."

She was impressed by "the impact hiring a lawyer for even such a short time could have," she says.

Leah will have an opportunity to make an impact herself as she pursues public interest law. Thanks to a Supreme Court Assistance Project Fellowship, she will begin work at the Public Citizen Litigation Group in Washington, D.C., in August.

The litigation group, part of the nonprofit advocacy organization Public Citizen, focuses on consumer rights, open government, health and safety regulations, and the First Amendment. As a fellow, Leah, who now clerks for a justice of the Supreme Court of Texas, will evaluate U.S. Supreme Court petitions for certiorari to determine which cases Public Citizen might be interested in; she'll also serve as the contact person for any resulting aid.

"It seems like a really good combination of all the disparate things I like about legal work," says Leah, who plans to stay in Washington after her fellowship ends to pursue work in civil rights or international human rights. "I went to law school to do public interest legal work. This is fulfilling my dream in that sense."

Leah says her work with Duke Law's Guantanamo Defense Clinic and Children's Law Clinic helped solidify her commitment to public interest work. She particularly credits Associate Dean Carol Spruill for creating an environment that supports public interest. "She really seeks to inspire and make possible opportunities for public interest work for law students," Leah says. ♡ — *Jess Clarke*



**Max Pasquali** announces the birth of his daughter, Amelia Francesca, on May 26, 2007.

**James Pelletier** and his wife, **Mary Roccapriore Pelletier '02**, announce the birth of their son, Ethan James, on June 4, 2007.

**Kelly Townsend** and her husband, Brent, announce the birth of their son, Alexander, on Aug. 19, 2007.

## Class of '04

**Caroline Belk**, her husband Chris Belk, and their son, Max, welcome the arrival of Chloe Hanan on May 4, 2007.

**Sarah E. Bell** has joined Pryor Cashman in New York as a litigation associate.

**Kimberly Drake** has joined MicroStrategy Incorporated in McLean, Va. as in-house corporate counsel. Kimberly was previously with Pillsbury Winthrop Shaw Pittman. MicroStrategy is a business intelligence software company.

**John Fred** and his wife, Ann Marie, announce the birth of their daughter, Juliana Marie, on Sept. 3, 2007. John joined Jones Day in Washington, D.C., as an associate in the antitrust and competition law practice group.

**Robert John Gallagher** and his wife, Lauren, announce the birth of their first child, Margaret Grace, on Aug. 31, 2007.

**Dimitri Herbosch** is establishing a private investment firm in Geneva, Switzerland. He was previously with the law firm Laga, in Belgium.

**Sebastian Kielmanovich** was named assistant district attorney for the Wake County District Attorney's Office in Raleigh.

**Justin C. Letts** has joined the criminal division of the United States attorney in the Eastern District of Michigan, in Detroit, as an assistant United States attorney. He was previously a litigation associate with Jones Day in Columbus, Ohio.

**Fiona O'Donnell** and her husband, **Chris Beatty**, have moved to Sydney, Australia, from New York. Fiona is a solicitor with Mallesons Stephen Jaques, while Chris is working at Sullivan & Cromwell's Sydney office.

**Robert J. Yamasaki** joined Woodcock Washburn in Seattle as an associate. Robert specializes in patent procurement, strategic counseling and portfolio management, licensing, and intellectual property due diligence.

environmental laws and matters concerning natural resource damages.

**Matt Jones** has joined Frost Brown Todd as an associate in the litigation department in Louisville, Ky. Matt began his legal career clerking for Judge A. Raymond Randolph on the United States Court of Appeals for the District of Columbia. He then clerked for **Judge Allyson Duncan '75**, on the U.S. Court of Appeals for the Fourth Circuit. He most recently clerked for Judge Karen Caldwell on the U.S. District Court for the Eastern District of Kentucky.

## Class of '03

**Molley Clarkson** and her husband, Edward, announce the birth of their daughter, Elizabeth Smoak Clarkson, on Nov. 22, 2007. Molley is an attorney at Sutherland Asbill & Brennan in Atlanta.

**Amy Horner** is an attorney-adviser in the environmental restoration branch of the Division of Parks and Wildlife of the Solicitor's Office of the U.S. Department of the Interior. Amy advises the National Park Service and the U.S. Fish and Wildlife Service, among other clients, on

## Class of '05

**Demarron Berkley** and his wife, Juakita, announce the birth of their second daughter, Nylah Amina, born on June 8, 2007.

**Eric Chiu** and **Michelle Park '06** were married at Duke Chapel on Sept. 8, 2007. Michelle and Eric are currently practicing in Washington, D.C.

**Jeremy David Eicher** joined Morris Nichols Arshnt & Tunnell in Wilmington, N.C. as part of the firm's corporate and business litigation group.

**Christopher Farmer** has joined Baker & McKenzie in Washington, D.C. as an associate in the international trade compliance group. Christopher specializes in export controls, sanctions and embargoes, and anti-corruption laws.

**Matthew F. Hanchey** and **Utawka B. Allen**, associates with Hunton & Williams in Raleigh, participated in a firm-sponsored launch of Duke Law School's 2007 LEAD Week. Utawka and Matt helped with activities promoting leadership, ethical practice, educational development, and service.

**Daniel Harpole** and **Jennifer Schaum** were married June 9, 2007 in Alexandria, Va. Members of the wedding party included classmates **Anna Smith**, **Meredith Robinson**, **Nicoleen DePersis Creech**, and **Hayley Weimer**. Guests included classmates **Leslie Cooley**, **Bestin Ennacheril**, **Megan Gaudette**, **Jason Gelman**, **Michael Lodzinski**, **Brandon Long**, **Scott Meselson**, **Jessica Nielsen**, **David Prestwood**, **Jeremy Reckmeyer**, **Pamela Reyburn**, **Elizabeth Shaw**, **David Tkach**, and **Wesley White**. **Joseph Creech '04** also attended. The couple resides in Denver, Colo., where Daniel is an associate with Holland & Hart and Jennifer is an associate with Jackson Lewis.

**Taka Maruyama** and his wife, Atsuko, announce the birth of their son, Genki Randy Maruyama, on March 7, 2007 in Cary, N.C.

**Alicia Swingle Rineer** and her husband, Craig, announce the birth of their daughter, Ava, on March 19, 2007.

**Daniel Weiner** joined Freshfields Bruckhaus Deringer's structured finance group in London. Daniel was previously with Orrick, Herrington & Sutcliffe.

## Class of '06

**Sarah Walker Baker** completed her clerkship with **Judge Allyson Duncan '75** on the U.S. Court of Appeals for the Fourth Circuit, and joined Smith Anderson in Raleigh as a litigation associate.

**Ryan Bates** joined the appellate practice at Yetter & Warden in Austin, Texas, after one year clerking for Judge David M. Ebel on the U.S. Court of Appeals for the Tenth Circuit in Denver.

**Lauren DeSantis-Then**, **Corey Then**, **Emily Smith**, and **Randy Cook '04** participated in a panel for the Law and Justice in a Democracy Program in Washington, D.C. on June 27, 2007. The panel gave students from the Presidential Classroom the opportunity to learn what attorneys do. All four Duke Law alumni are associates in law firms in Washington.

**Adam Doerr** joined Robinson, Bradshaw & Hinson in Charlotte, after a year clerking for Judge Stanley Marcus on the U.S. Court of Appeals for the Eleventh Circuit.

**Jeffrey Goldman** and his wife, Juliette, announce the birth of their daughter, Emma Caroline Goldman, on April 14, 2007. Jeff joined Gunderson Dettmer in Menlo Park, Calif. in May 2007.

**Michelle Park** and **Eric Chiu '05** were married at Duke Chapel on Sept. 8, 2007. Michelle and Eric are currently practicing in Washington, D.C.

**Randy Stoker** accepted a position as an assistant United States attorney in Norfolk, Va. His work is focused in the criminal division, specifically drugs and guns and white-collar cases. Randy was previously a law clerk for a federal magistrate judge in Norfolk.

**Ellen Zajac** and **Teddy Schwarzman** were married on Nov. 10, 2007. Ellen and Teddy both practice law in New York.

## Class of '07

**Reeve Tyler Bull** and **Garrick Alcaez Sevilla** shared the Law School's Willis Smith Award for 2007. The award, named for the late **Willis Smith Jr. '47**, a North Carolina attorney and former United States senator, is given to the graduating students who compiled the most outstanding academic records. Reeve is clerking for Federal Circuit Court Judge Alvin Schall in Washington, D.C. Garrick is clerking for Judge Janice Rogers Brown on the U.S. Court of Appeals for the D.C. Circuit.

**Spencer Fielding** joined Thompson & Knight as an associate in the firm's corporate and securities practice group in Dallas.

**Patrick Hansen** joined Sterne, Kessler, Goldstein & Fox in Washington, D.C.

**Hankil Kang** has joined the intellectual property, media and technology department of McDermott Will & Emery in Washington, D.C.

**Kooshan Nayerahmadi** and Lauren Westfield were married on July 7, 2007. Kooshan is an associate with Drinker, Biddle and Reath in Philadelphia.

**Adam Tarosky** is clerking for Judge Thomas M. Hardiman of the Third Circuit Court of Appeals.

**Yasmin Zohar** has joined the corporate department of McDermott Will & Emery in New York.

# In Memoriam

## Class of '41

**Norton Jerome Arst**, 90, of Lafayette, Calif., died Oct. 16, 2007. He graduated from Louisiana State University and Harvard Business School in addition to Duke Law School. A World War II veteran, he was a career naval officer, serving as a supply officer on aircraft carriers in the Atlantic, Pacific, and Mediterranean, as well as at the U.S. base in Morocco, and in supply and staff positions in Naples, Italy, Seattle, Philadelphia, and Norfolk. In Washington, D.C., Capt. Arst served in the Bureau of Naval Personnel, Bureau of Supplies and Accounts and on a study group to reorganize the Navy Department, and was attached to the Secretary of the Navy's Office, the Secretary of Defense's Office, and on the staff of the Joint Chiefs of Staff. He taught at the Naval War College in Newport, R.I., and after retiring from the Navy served as a supply officer of Naval Air Station Alameda.

Capt. Arst was preceded in death by his wife, Ann. He is survived by his daughter, Heather, and one granddaughter.

**Guillermo Moscoso**, 94, of San Juan, Puerto Rico, died on Jan. 29, 2008. Having focused his career as a lawyer and executive on the oil industry and banking, he was active as a political analyst and columnist. Mr. Moscoso is survived by his wife, Kitty Kerrigan, and daughters Sandra, Brenda, Bettina, and Mariela.

## Class of '42

**Robert James Everett**, 89, of Potomac Falls, Va., died Dec. 23, 2007. Having received his undergraduate degree at Duke University, he began law school at Duke but left to join the U.S. Navy. During his 34-year naval career, he earned an MBA from Stanford University and served as submarine force Pacific supply officer and commanding officer at the Naval Supply Center, Subic Bay. After retiring from the Navy, Capt. Everett served as vice president of Honolulu Gas Company and as a mediator in the Hawaiian court system. He is survived by his wife of 66 years, Helene Gregory Everett; children Lynn Cheney, Diane Blair and Greg Everett; six grandchildren; and seven great-grandchildren.

**William James Lohr**, 89, died Oct. 4, 2007. At Baldwin-Wallace College in Berea, Ohio, he served as president of his fraternity and was an outstanding track star, holding four school records. He later was elected to the B-W Sports Hall of Fame and received an alumni merit award from the college where he served as a trustee and funded a scholarship. At Duke Law School he wrote for the law review. He transferred to Ohio

State University College of Law for his final year, where he also wrote for the law review. Mr. Lohr served as a special agent of the F.B.I. for six years. In 1948 he became vice president of Harris, Inc., and in 1951 joined the Franklin County (Ohio) Prosecutor's Office. He was a sole practitioner from 1952 until his retirement in 1988. He was a member of the Young Businessmen's Club; the Benjamin Franklin Chapter, Sons of the American Revolution; and was a 32nd Degree Mason.

Mr. Lohr is survived by wife of 64 years, Patricia; children Donna Brown, William, and Molly Wood; and four grandchildren.

## Class of '47

**Foster Joseph Fludine**, 87, of Pinehurst, N.C. died April 4, 2008. Mr. Fludine attended Kent State University and Western Reserve University, Cleveland, before attending Duke Law School. He served in the United States Army during World War II and later as a judge advocate with the Ohio National Guard. He held positions as assistant attorney general with the State of Ohio and assistant county prosecutor with the Stark County (Ohio) Prosecutors Office, before joining a Cleveland firm that became Bertsch, Fludine, Millican and O'Malley. Mr. Fludine was awarded the highest honor given to an attorney by the American Defense Lawyers Association for integrity, character, and professionalism.

Mr. Fludine moved to Pinehurst, N.C. following his 1986 retirement, where he was active in the Elks Lodge and an avid golfer. He advised various Pinehurst community groups and served, by appointment of the governor, on the Hoke Correctional Institution's Community Resource Committee.

Mr. Fludine is survived by his wife of 64 years, Barbara Elaine Colley Fludine; sons John and Robert, and two grandsons.

**Calder Womble**, 85, died on March 19, 2008. He received his BA degree from Duke University in 1943 prior to attending law school. After serving in the U.S. Air Force and in the Office of the Attorney General of North Carolina, he joined the Winston-Salem law firm of Womble, Carlyle, Martin & Sandridge (now Womble Carlyle Sandridge & Rice), where he practiced for more than 50 years. Mr. Womble served on the firm's management committee for many years and as its chairman from 1982 to 1987. He also served on the boards of directors of Piedmont Aviation, Chatham Manufacturing, the Hanes Companies, Turnpike Properties, Wachovia Realty Investments, Brad Ragan, Inc., British-American Insurance Company and as chair of the regional boards of directors of Wachovia Bank and

the Wachovia Trust Advisory Committee. Active in community organizations, Mr. Womble served as campaign chairman of the United Fund (now United Way) of Winston-Salem in 1960 and the Red Cross in 1953. He was the driving force behind and first chairman of Winston-Salem Civic Ventures, an early downtown development organization spearheading the redevelopment of much of downtown Winston-Salem. He provided counsel and leadership to Salem Academy and College beginning with his term as a trustee in 1963. After his term as chair ended in 1993, he was elected a lifetime member of the board, the only trustee ever so honored.

Mr. Womble is survived by his wife, Martha Hanes Womble; son, Ralph; daughters, Edith Womble, Joan Womble Stone, and Gwyn Womble Dunn; brother, **William F. Womble '39**; sister, Edith Womble Chatham; and several grandchildren.

## Class of '49

**Nathaniel Beaman III**, 82, of Norfolk, Va., died Sept. 21, 2007. Mr. Beaman was educated at Norfolk Academy and graduated from Staunton Military Academy in 1941. He attended the Virginia Military Institute and graduated from Duke University with a BA before attending law school. Having served in the U.S. Navy during World War II, Mr. Beaman was recalled to active duty during the Korean conflict. He served as a naval intelligence officer in Washington, D.C., and later as an officer in the Coast Guard Reserve.

Mr. Beaman served for seven years as vice president in charge of the Trust Department of the Southern Bank of Norfolk. After several years in the private practice of trust and estate law, he spent 16 years with First and Merchants National Bank as vice president in charge of their Tidewater, Va., regional trust operation and as a member of the regional board of directors. In retirement, Mr. Beaman was active in the Coast Guard Auxiliary, attaining the position of division captain and receiving a Navy commendation and several Coast Guard commendations for his service. Mr. Beaman was also an active member of St. Andrews Episcopal Church of Norfolk, and a number of other organizations.

He is survived by his wife, Elizabeth Dashiell Beaman; sons Nathaniel and William; daughter Elizabeth Beaman Braden; and six grandchildren.

**Leila Sears**, 89, died Feb. 17, 2008. She was a 1937 graduate of Concord Academy and a 1943 graduate of Radcliffe College. She served in the U.S. Navy during World War II. She was elected town clerk of Wayland,



Mass., in 1952, and held the position for 20 years. Ms. Sears raised golden retrievers and West Highland white terriers at her Kingoldrum Kennel. She was a member of the executive staff of the American Kennel Club in New York City and the North Pomfret Ladies Circle. An avid gardener, she was active with Vermont Public Radio, the First Parish Unitarian Church of Wayland, and the Elbanobscot Foundation of Sudbury. She was predeceased by her sister, Mary Sears. She is survived by her sister, Elisabeth Sears; and several nephews and nieces.

**Joe Park Whitener**, 82, died February 28, 2008. A World War II veteran, he practiced law in Hickory, N.C., from 1949 until his retirement in 2005, and was qualified for practice before the U.S. Court of Appeals and the U.S. Supreme Court. Mr. Whitener was a member of the North Carolina Bar Association and past president of the Catawba County Bar Association. A former City of Hickory municipal court judge, Mr. Whitener was attorney for the Town of Longview for 30 years. He was part owner of Carving Craft, Inc. and American Slate and Marble, Inc. He was active in the Bethel United Methodist Church and was a member of the Hickory Exchange Club where he served as past president. He was an avid pool player who spent his lunch hour for more than 50 years at Arcade Billiards, where his tomato and lettuce sandwich was named "The Perry Mason."

Mr. Whitener is survived by his wife of 62 years, Ruby Propst Whitener; a son, Michael J. Whitener; daughter Susan W. Denning; and two grandchildren.

**Robert S. Wolff**, 82, of Southport, N.C., died October 22, 2007. He received his BA from Duke University in 1947. After graduating from Duke Law School, Mr. Wolff worked with the American Arbitration Association in New York, and then joined John Deere & Company in Moline, Ill., where he became director of industrial relations. From 1970-71, Mr. Wolff worked for Litton Industries in Milwaukee, as vice president for industrial relations, and for Simplicity Pattern Company in Niles, Mich. In 1976 he joined Wolverine World Wide, Inc., based in Rockford, Mich. He retired to Southport, N.C. in 1992.

An avid golfer, traveler, and Duke basketball fan, Mr. Wolff was interested in politics, history, choral singing, and reading. He was preceded in death by his wife of 57 years, Shirley Keel Wolff WC'48. He is survived by his daughter, Susan T'74; sister, Doris E. Wolff; and three grandchildren.



## Judge Joseph Tyree Sneed III, former Duke Law dean

Joseph T. Sneed III, 87, of San Francisco, died Feb. 9, 2008. A senior judge on the United States Court of Appeals for the Ninth Circuit, Judge Sneed served as dean of Duke Law School from 1971-73.

A native of Calvert, Texas, and a World War II veteran, Judge Sneed was a 1947 graduate of the University of Texas School of Law, where he subsequently taught. As a specialist in tax law, he also served on the faculties of Stanford, Cornell, and Yale universities and taught at the London School of Economics and the University of Ghana. He left his deanship at Duke to become the deputy attorney general of the United States. President Nixon appointed him to the Ninth Circuit in August 1973. He took senior status on that court in 1987.

Judge Sneed was predeceased by his wife of 54 years, Madelon Juergens. He is survived by children Clara Sneed, Carly Fiorina, and Joseph Sneed IV, and two grandchildren.

## Class of '51

**Frank Dawson Hall**, 80, of Arcadia, Fla., died on April 5. He received a BA from Duke University and started law school at Duke before transferring to the University of Florida. After serving as an Army judge advocate during the Korean conflict, he practiced law with his father and two brothers in Miami before joining the Howard Johnson Company in New York as vice president and general counsel. With expertise in franchise law, he returned to Florida and joined Hall and Swann, where he practiced until 1995. Mr. Hall was active with the American Bar Association General Practice Section and the Florida Bar's General Practice Solo and Small Firm Section. He also served as the honorary counsel general of Thailand for Florida, from 1978-2000, during which time the King of Thailand honored him for distinguished service. After retiring, Mr. Hall enjoyed fishing and hunting at his Arcadia ranch.

Mr. Hall is survived by his wife Rebecca Gessaman Hall; daughter Laurie Dawson Hall; siblings M. Lewis Hall, Jr., **Vincent T. Hall T'54, L'56**, Lewshane Hall, Shawney Norris, Kim Volkheimer, and Dale Gessaman Jr.

**Walton Hardin**, 86, of Washington, Ga., died Dec. 11, 2007. He received the Distinguished Flying Cross in 1944 for his service during World War II. He graduated from Georgia Tech, the University of Georgia's School of Business, and Stetson University Law School, before receiving his LLM at Duke. He was a member of the Bethel Methodist Church, the Washington Rotary Club, the State Bar of Georgia, the Toombs Circuit Bar Association, and the Wilkes County Cattlemen's Association.

Mr. Hardin is survived by his children, Walton (Chip) Jr., Ken, and Joni.

**Robert Lee "Bob" Styers**, 79, of Winston-Salem, died Nov. 28, 2007. He received his undergraduate degree from Duke University in 1948, and opened a private practice in Winston-Salem following his graduation from Duke Law. In the early 1960s, he founded the Motel Equipment Leasing Corp. (MELCO) and later, Technical Video Systems (TVS).

Mr. Styers was an accomplished singer, pianist, and bridge player, becoming Winston-Salem's youngest Life Master in Duplicate Bridge in the 1950s. He was an avid traveler, golfer, and NASCAR enthusiast, and a member of the N.C. Bar Association, the Winston-Salem Sertoma Club, Bobs International, and the POETS Club. He was passionate about Duke basketball.

He is survived by his wife, Norma Costen Greenwood Styers; daughters, Betsy Paul and Melissa Childers; stepson, Robbin Greenwood; brother Thomas R. Styers Jr.; four grandchildren, three step-grandchildren and two great-step grandchildren.

**James Victor Wright** of Williamsburg, Va., died on Nov. 8, 2007. He attended Mars Hill College and The College of William and Mary until he was drafted into the United States Army. He received his BA from Duke University in 1948 before attending Duke Law School. Mr. Wright worked as an attorney and judge in Washington, D.C. while he resided in Fairfax County. He was predeceased by his wife, Mildred Owen Wright.

## Class of '52

**Robert C. Oshiro**, 83, died Feb. 12, 2008. Mr. Oshiro was elected to the Hawaii House of Representatives in 1959, the year Hawaii became a state. He represented the plantation towns of Wahiawa and Waiialua in the House for three years and was chosen state Democratic Party chairman in 1962. Mr. Oshiro managed the campaigns of Democratic governors John A. Burns, George Ariyoshi and John Waihee. He later served as chairman of The Queen's Health Systems and the Queen Emma Foundation. He was trustee of The Queen's Health Systems from 1976 until his retirement in 2003. He is survived by wife Ruth; children Marcus, Roberta, and Susan; and four grandchildren.

## Class of '53

**Robert Stipe**, 79, of Chapel Hill, N.C. died Sept. 23, 2007. He earned a BA in economics from Duke University in 1950. After his law school graduation and a clerkship in Pennsylvania, he studied urban and regional planning at the University of North Carolina-Chapel Hill. In 1957, he joined UNC's Institute of Government, where he was assistant director and a professor of public law until 1975. During the mid-70s, he taught courses at UNC in historical preservation and helped develop an annual short-course program that brought guest lecturers and students from all over the country.

Professor Stipe served on the Chapel Hill Preservation Society in addition to helping preserve many historic properties in North Carolina and across the country. He helped write the laws governing the authority of historical commissions, was the author of hundreds of articles and essays, and edited *A Richer Heritage*, a collection of essays widely used as a preservation textbook. He served as director of the

Division of Archives and History; as a visiting professor in the city and regional planning department at UNC; and as a professor in the landscape architecture department at N.C. State University. Professor Stipe served on the boards of more than a dozen national preservation groups as well as Old Salem, Stagville, and the Conservation Trust for North Carolina. Among the honors he received was the Louise DuPont Crowninshield Award for Superlative Lifetime Achievement in Historic Preservation. The Duke Law Alumni Association honored Professor Stipe with its Charles S. Murphy Award in 2003.

Professor Stipe is survived by his wife of 55 years, Josephine Davis Weedon WC '52, and sons, Daniel and Frederick Stipe.

## Class of '54

**John Scott Street**, 79, of Chillicothe, Ohio, died Jan. 26, 2008. A 1951 graduate of Duke University, Mr. Street served in the Army before returning to his hometown to work first as an attorney for the Highway Department, and then as an independent practitioner. In 1962, he co-founded the Phillips and Street Law Firm. Mr. Street was licensed to practice law in the State of Ohio, the Federal District Court for the Southern District of Ohio, and the United States Supreme Court. He was a member of the Ohio State Bar Association and was a past president of the Ross County Bar Association. Mr. Street was a member of the Chillicothe Anglican Fellowship, the Chillicothe Rotary Club, the Ross County Historical Society, the Sunset Club and the Chillicothe Jaycees.

Mr. Street is survived by his wife of 53 years, Madge Crawford; his children, John, Barry, and Madge Vail; his seven grandchildren; and by his sister, Jerry Leshner. He was predeceased by his sister Betty Oakes.

## Class of '56

**Duncan O. McKee** of Levittown, Pa., died Feb. 25, 2008. He graduated in 1953 Phi Beta Kappa and with departmental honors from the College of Wooster in Ohio. At Duke Law School he wrote for the law review and graduated Order of the Coif. He spent his entire career at Ballard, Spahr, Andrews and Ingersoll in Philadelphia, where he specialized in corporate finance. He also helped form and served on the boards of directors of a number of major corporations.

Mr. McKee was active with the Scotch-Irish Society and with the First Presbyterian Church of Levittown. He also enjoyed tending to his land and trees in Potter County, Pa. He spearheaded a campaign to stop the injection of brine into the many

empty wells in Potter County, which would have polluted the ground water.

Mr. McKee was preceded in death by his wife, Lois, and his daughter, Susan. He is survived by his children Paul, Martha, Glenn, Duncan; six grandchildren; and two great grandchildren.

## Class of '59

**Robert C. Baxter Jr.**, 77, of Elon, N.C., died Oct. 4, 2007. A veteran of the Korean War, Professor Baxter joined Elon University as its director of development after graduating from Duke Law School. He served as assistant to the president, vice president of the college, vice president of legal affairs and college attorney over a 47-year career at the university, teaching courses in business, economics, and political science in addition to his leadership positions. He was chosen by students as Elon University's "Professor of the Year" several times and received the Elon Medallion in 2003 in recognition of his service to the institution. At the time of his death he was associate professor emeritus of business law. Professor Baxter was active in the Southern Conference of the United Church of Christ, including Elon Community Church. He was also active in the Chamber of Commerce, Hospice, Kiwanis, and the N.C. Council of Churches.

Professor Baxter is survived by his wife, Gwen Marco Baxter; children, John, Lynn, Bonnie, and Andy; and five grandchildren.

## Class of '61

**William Yates Manson**, 72, died Dec. 29, 2007. In 1961, he began practicing law in Durham with Judge Robinson O. Everett at the law firm of Everett, Everett and Everett. He later co-founded the law firm of Edwards and Manson. In 1989 he was appointed by Gov. James G. Martin to a district court judgeship where he served until his retirement in 1996. He participated in many community activities and civic organizations, including the Durham Civitan Club, and was a member of district, state and national bar associations.

Judge Manson is survived by his wife, Patricia; and his brother, Joseph.

## Class of '62

**Larry Dow Chisholm Sr.**, 81, died Dec. 26, 2007. A World War II veteran, he worked for several years with Southern Railroad before settling in his hometown of Charlotte, N.C. He retired after many years as a realtor.

Mr. Chisholm is survived by his wife, Margaret; sons, Larry Jr., John, and Richard; daughters, Helen Black and Carolyn Usinger; two grandchildren; and siblings Thomas and Marlene Cooley.

## Class of '64

**David Nesbit Edwards Jr.**, died March 24, 2008. He graduated from Davidson College in 1961 with a degree in English. He served in the military as an officer stationed in El Paso, Texas, for several years following his law school graduation. He served as director of field experience at Elmira College in New York, and played trumpet in the Elmira Symphony, where he met his wife, Marcia. Mr. Edwards worked for the University of North Carolina General Administration for 28 years, retiring in 2001 as senior associate vice president for legal affairs. He served as a deacon and elder at Westminster Presbyterian Church and was active in the choir, as well as in the Gideons International organization. He eventually became an ordained lay pastor, committing his service to small congregations. He enjoyed travel and was an avid Duke basketball fan.

Mr. Edwards is survived by his wife, Marcia; daughters Holly Edwards and Lisa Pascoe; and sister Martha Barringer.

## Class of '65

**C. Nicholas Revelos** died on Nov. 3, 2007. He earned his AB from Bowdoin College in 1961 and an LL.M. from the University of California at Berkeley in 1971. He served as an associate professor, then dean, of Chase College of Law from 1967-70, and joined the faculty at Michigan State University College of Law in 1971, where he remained until his retirement in 2006, teaching commercial, business, and international law. Professor Revelos spoke, taught, and published articles around the world, and authored a legal treatise on Michigan corporation law. He served as director of the College of Law's Kings Scholar Program from 1996-2005 and mentored new faculty members. A member of the American Bar Association, Michigan and Ohio Bars, the American Bankruptcy Institute, and Commercial Law League of America, Professor Revelos also served as an arbitrator on the New York Stock Exchange.

Professor Revelos is survived by his mother, Frosine Revelos; three brothers, George, Mike, and Chris; and a sister, Lula Poulas.

## Class of '67

**David Meyers**, 65, died on March 13, 2008. He received his undergraduate degree from Tulane University and was a member of the Washington, D.C., and Virginia Bar Associations. He was in private practice for many years, later joining the Federal Communications Commission from which he retired in 1996.

Mr. Meyers represented Florida in the National Spelling Bee in 1956. He was an avid runner and competed in numerous 10K races in the Washington, D.C. area. He was an accomplished guitarist and a member of the Northern Virginia Hebrew Congregation's choral group. Mr. Meyers also performed Handel's "Messiah" at the Christ Church in Alexandria during the holiday season and he enjoyed a wide variety of music. For many years, he volunteered for So Others Might Eat (SOME) in Washington, D.C.

Mr. Meyers was preceded in death by his first wife, Roberta Jane Hobson. He is survived by his wife, Ann; children Craig and Robin; and brother, Martin.

## Class of '76

**Griffith Townsend Parry**, 61, of Troy, N.Y. died on March 18, 2008. He earned a bachelor of arts degree from Trinity University in 1969. He served in the armed forces as a second lieutenant and in the Army Reserves until 1990, attaining the rank of major. Mr. Parry joined Metropolitan Insurance Company after his graduation from law school, eventually specializing in reinsurance at the Swiss Reinsurance Company in New York, and at Ranger Insurance Company, which he joined in 1986. Mr. Parry was in private practice from 1997 until his death and was a certified arbitrator with the Association Internationale de Droit des Assurances (AIDA) and Reinsurance and Insurance Arbitration Society (ARIAS). He was an avid reader, particularly of economics and history.

Mr. Parry is survived by his wife, Deborah; brothers, Edward and Hugh; and sister, Elizabeth Rohn.





WALTER E. DELLINGER III, DOUGLAS B. MAGGS PROFESSOR EMERITUS OF LAW, ARRIVING AT THE UNITED STATES SUPREME COURT ON MARCH 18, 2008, PRIOR TO ORAL ARGUMENT IN *DISTRICT OF COLUMBIA V. HELLER*. DELLINGER DEFENDED THE DISTRICT OF COLUMBIA'S BAN ON HANDGUNS, THE COURT'S FIRST CONSIDERATION OF THE SECOND AMENDMENT IN ALMOST 70 YEARS. CYCLING IS DELLINGER'S PREFERRED WAY OF GETTING AROUND WASHINGTON, D.C. — IT'S A GREAT WAY TO "CLEAR MY HEAD," HE TOLD THE ONLINE MAGAZINE *BICYCLING*.

Jay Mallin

## Highlights from the 2007-08 academic year

### Speakers and panels

**4/08/08 The future of EU-U.S. relations**  
Angelos Pangratis, deputy head of the European Union's delegation to the United States

**3/28/08 Bring 'em back alive: Extraordinary rendition in the war on terror**  
Judge David Sentelle, chief judge of the U.S. Court of Appeals for the D.C. Circuit

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**THE JEAN E. AND CHRISTINE P. MILLS CONVERSATION SERIES ON RACE**

**3/26/08 Hip-hop culture: Convenient scapegoat or contributor to inequality?**  
Professor Mario Barnes, University of Miami School of Law, and Professor Mark Anthony Neal, Duke University

**3/20/08 The browning of America**  
Professor Juan F. Perea, University of Florida Levin College of Law

**3/05/08 The racial dynamics of the immigration debate**  
Professor Kevin R. Johnson, University of California-Davis School of Law

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**2/28/08 An address by Paul D. Clement, solicitor general of the United States**

**11/06/07 Deciding death**  
Professor Corinna Lain, University of Richmond School of Law

**10/03/07 Musicians in copyright's federated domain**  
Professor Michael Carroll, Villanova University School of Law

### Conferences and symposia

**4/15/08 Administrative law, preemption, and federalism**  
*Duke Law Journal* administrative law symposium

**2/09/08 The new European choice-of-law movement: Lessons for the United States?**  
Center for International and Comparative Law

**11/16/07 A charged atmosphere: The future of U.S. policy on global warming**  
*Duke Environmental Law and Policy Forum* symposium

**11/09/07 Animals and bioengineering: A consideration of law, ethics, and science**  
Duke Animal Law Project and the American Bar Association

Many of these and other Duke Law events may be viewed online at

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



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# LESSONS LEARNED

Examining the legacy of the Bush Administration

- 9/10 **The Bush Administration and the Supreme Court: Lessons Learned**  
David A. Strauss, Gerald Ratner Distinguished Service Professor of Law, University of Chicago
- 9/17 **The Bush Administration and Voting Rights: Lessons Learned**  
Pamela S. Karlan, Kenneth and Harle Montgomery Professor of Public Interest Law, Stanford University
- 10/7 **The Bush Administration and Science: Lessons Learned**  
Sidney Shapiro, University Distinguished Chair in Law, Wake Forest University
- 10/22 **The Bush Administration and Civil Rights: Lessons Learned**  
Goodwin Liu, Assistant Professor, Boalt Hall, University of California — Berkeley
- 11/2 **The Bush Administration and Executive Power: Lessons Learned**  
Neil J. Kinkopf, Professor of Law, Georgia State University
- 11/19 **The Bush Administration and International Law: Lessons Learned**  
Curtis A. Bradley, Richard and Marcy Horvitz Professor of Law, Duke University
- 12/4 **The Bush Administration and Gender and Reproductive Rights: Lessons Learned**  
Reva Siegel, Nicholas deB. Katzenbach Professor of Law and American Studies, Yale University

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