

DUKE LAW MAGAZINE

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A portrait of Kerry Abrams, a woman with short blonde hair, smiling and standing in front of a bookshelf. She is wearing a dark blue top and a necklace made of silver circles and discs. Her arms are crossed.

*Kerry
Abrams*

**Duke Law's 15th dean is an
innovative scholar and teacher
and a decisive leader who listens**

From the Dean



With each new person I have met, my estimation of this institution has only grown, along with my sense of gratitude that I have been given the opportunity to steward it through the next phase of its great history.

Dear Friends:

LAST FEBRUARY, I was greatly honored to be named the next dean of Duke Law School. I knew when I accepted the position that I was joining one of the very best law schools in the country — in fact, in the world. With each new person I have met, my estimation of this institution has only grown, along with my sense of gratitude that I have been given the opportunity to steward it through the next phase of its great history. Let me share with you some of the reasons I was excited about joining the Duke Law community, and what I've come to learn about the school.

Excellent students: I knew from the outset that Duke Law had an academically excellent student body; our students arrive with diverse backgrounds and experiences and sterling academic credentials. What I didn't fully appreciate was how unusually thoughtful, mature, and professional they are. When students from both our JD and LLM programs interviewed me as part of the search process, I was struck by their care and concern for each other, their commitment to practicing law in an ethical manner, and their sense of responsibility for the profession. I discovered that the Duke Law admissions team has a conscious strategy to admit high achievers who also exhibit character, integrity, and a commitment to service. I also started to understand why our students enjoy their law school experience so much — they get to spend time with each other, building friendships that last a lifetime.

Stellar faculty: Duke Law has a collegial but rigorous scholarly culture that I had experienced firsthand when presenting my own work here, and I was well-acquainted with numerous individual professors who had reputations for leadership in their scholarly fields. But it wasn't until I started getting to know the school that I appreciated just how many top scholars Duke now has. Nor did I realize just how committed each and every faculty member is to teaching. This is a faculty that cares deeply about helping students learn, both in the classroom and beyond, and continues to celebrate successes and provide counsel through difficult times once our students become practicing lawyers. As I have met alumni around the country, I've heard the same refrain — stories of teachers and mentors who shaped their law school experiences and since then have become colleagues, collaborators, and friends.

Interdisciplinary opportunities: Duke Law is not only a world-class law school, it's also part of a top university. That connection gives the students and faculty unparalleled opportunities to collaborate

with students and faculty outside of law. Our professors co-teach and co-author with professors across the university in fields as diverse as business, public policy, psychology, medicine, engineering, and computer science. As the legal profession changes, this integration will be crucial in helping our graduates understand their clients' needs and the many contexts in which the law operates. Duke Law is also increasingly integrated into the local community — both a revitalized and growing downtown Durham and a broader Research Triangle brimming with opportunities for innovation and entrepreneurship.

Global focus: We are small compared to most other top schools, but we have a massive global reach. Our JD students and international LLM students take classes together, collaborate in clinics, pro bono projects, and student organizations, and remain connected as alumni. I've heard from many alumni how the Duke Law network has helped them all around the world. The JD/LLM program in International and Comparative Law and our summer institute, now hosted by the University of Leiden at The Hague in the Netherlands, have strengthened these connections even more.

A true family: I knew when I signed on as dean that Duke Law had an especially collegial atmosphere. What I didn't fully comprehend was that I wasn't just joining a school, I was also joining a family. Almost immediately after the announcement was made, hundreds of people — including, I'm certain, many readers of this magazine — began contacting me by phone, email, and social media to welcome me with congratulations, their memories of the Law School, and their encouragement and advice. The common theme I heard was that Duke Law is exceptional not only because of the extraordinarily high standards we set for ourselves. It's also because we are tight-knit community of people — faculty, students, alumni, and a highly skilled professional staff — who genuinely care about each other and the future of this school. Over and over I heard the message “welcome to the Duke Law family.”

In the next few months, I will be traveling around the country and I hope to meet many of you. I want to know what you love about Duke Law and what you think could make us even better. And for those of you who have already reached out or met with me — thank you for the warm welcome to the family!

A handwritten signature in blue ink, appearing to read 'K. Abrams'.

Kerry Abrams

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

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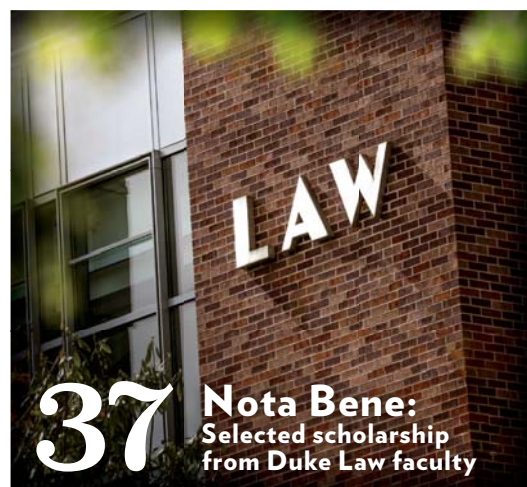
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**Four deans:
A conversation**

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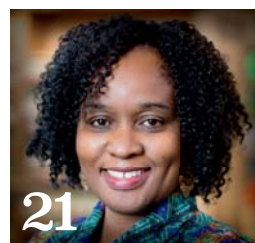
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Selected scholarship
from Duke Law faculty



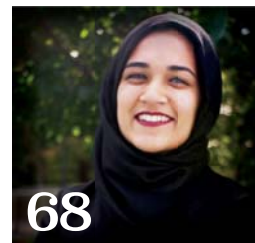
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The Commons

Ideas, achievements, and events
from around Duke Law School



David F. Levi with several current and former chairs of the Law School's Board of Visitors at a dinner in his honor on April 12. From left: Lanty Smith '67, George Krouse '70, Levi, Robert K. Montgomery '64, David Ichel '78, Susanne Haas LLM '85, JD '87 (current chair), and Peter Kahn '76

Gifts honoring Levi endow professorship, Bolch Judicial Institute directorship

ALUMNI AND FRIENDS have contributed nearly \$6 million to establish a distinguished professorship in law and judicial studies and the directorship of the Bolch Judicial Institute in honor of David F. Levi, formerly the James B. Duke and Benjamin N. Duke Dean of the School of Law. More than \$500,000 in tribute gifts to the David F. Levi and Nancy R. Ranney Scholarship Fund have also been received.

The gifts, which were announced by Peter Kahn '76 at an April dinner with members of the Law School's Board of Visitors and Law Alumni Association Board of Directors, reflect the widespread affection among alumni for Levi and his successful 11-year tenure as dean. Jim and Paula Crown and members of the Crown family, longtime donors to Duke University, led the effort.

"David became dean while I was on the Duke University Board of Trustees," said Paula Crown. "I had known David for years, as Jim had introduced him to me as a friend who would 'unquestionably leave his mark on the legal profession.' I had no idea that, 20 years later, he would be doing that at Duke!"

Added Jim Crown: "David and I became close friends as classmates at Stanford Law School. Paula and I are proud of the great job he did at Duke, and we are thrilled to be part of this effort to support his legacy."



“David built upon a very strong foundation that was Duke Law and took it to new heights. Not only did he bring his legal intellectual gravitas to the school, but his genuine enthusiasm for and towards all of the school’s constituents — students, faculty, staff, and alumni — was contagious.”

— Colin Brown ’74

Levi became the inaugural Levi Family Professor of Law & Judicial Studies and Director of the Bolch Judicial Institute when he stepped down as dean on June 30. Upon his retirement or departure from the university, the endowment funds and the positions they support will be renamed for him.

“I am still in a state of amazement and shock,” Levi said shortly after the gifts were announced. “This is just an incredible honor that leaves me in awe. I have such strong feelings of gratitude for this wonderful show of support and for what these two endowed positions will permit us to do in our new Bolch Judicial Institute in the years ahead. I am particularly grateful to the principal donors, all of whom are my close friends — Jim and Paula Crown, Colin Brown ’74, Louis DeJoy and Aldona Wos, Adrian ’95 and Anne ’94 Dollard, Jill and Mark Fishman ’78, Rick Horvitz ’78 and Erica Hartman-Horvitz, and Elizabeth and Stanley Star ’61.”

Levi, who became dean in 2007, oversaw a period of significant growth in Duke Law’s faculty, academic programs, financial aid, and fundraising. He also guided the Law School through a period of turbulence in the legal economy and legal education resulting from the global financial crisis and subsequent recession, building on Duke’s reputation as one of the world’s best law schools.

“David built upon a very strong foundation that was Duke Law and took it to new heights,” said Brown. “Not only did he bring his legal intellectual gravitas to the school, but his genuine enthusiasm for and towards all of the school’s constituents — students, faculty, staff, and alumni — was contagious. Duke would not be where it is today — financially sound, with a stellar reputation — were it not for his leadership.”

Added Duke Provost Sally Kornbluth: “David has been a truly stellar dean, building the excellence of the Law School and establishing a culture that is both intellectually rigorous

and warmly welcoming. David has also been an outstanding citizen of Duke, contributing to many facets of the university. I am thrilled that he will be building the Bolch Judicial Institute as its inaugural director and look forward to seeing the institute grow and evolve under David’s leadership.”

Before being named dean, Levi was the Chief United States District Judge for the Eastern District of California. He was appointed to the federal bench in 1990 by President George H. W. Bush; he previously served as U.S. attorney, appointed in 1986 by President Ronald Reagan. A graduate of Harvard College and Stanford Law School, he is a fellow of the American Academy of Arts and Sciences and president of the American Law Institute.

The Bolch Judicial Institute was established at Duke Law in 2018 with a \$10 million gift from Carl Bolch, Jr. ’67 and his wife, Susan Bass Bolch (see page 64). It is dedicated to bettering the human condition through studying and promoting the rule of law.

The institute’s activities include the Master of Judicial Studies, an advanced degree for sitting federal, state, and international judges; *Judicature*, Duke’s scholarly journal on judging; the annual Appellate Judges Educational Institute, one of the nation’s largest educational conferences for appellate judges and lawyers; and the Duke Conference series, which brings together lawyers, judges, and scholars to examine challenges and develop solutions for improving and advancing the administration of justice.

“I look forward to many more years of service albeit in a different capacity,” said Levi. “The future of our beloved Law School and university is bright, and we are all fortunate to be a part of something so special and dynamic. I am thankful beyond words to the entire Duke community for being so welcoming and then so supportive of me this past decade.” ♡

1GP:

New program offers professional development for first-generation law students

BOTH CHARLES BOWYER and Ocoszio Jackson arrived at Duke Law in the fall of 2014 with long records of academic success. But as the first members of their families to attend law school, they also arrived with some concerns relating to professional development that they suspected weren't shared by many of their peers in the Class of 2017.

"Law School is a very unique graduate-level program and I think that if you haven't known someone who's gone through it, you are at a bit of a disadvantage in understanding what is expected in interacting with a professor or with potential employers," said Jackson, a native of Dublin, Ga., who was a political science major at Morehouse College.

"Everyone seemed to have parents who were doctors or lawyers and had sort of a built-in familiarity with the path they were on," said Bowyer, who majored in political science at California State Polytechnic University. "Both my parents worked for the same grocery chain in California, called Stater Brothers, and so while I was doing fine academically, it was just a bit of a shock."

Bowyer, who is now an associate at Robinson Bradshaw in Charlotte, and Jackson, now an attorney in the U.S. Department of Housing and Urban Development's Legal Honors Program, had something else in common: career counseling from Jennifer Caplan '02, the Law School's assistant director for professional development programming and advising.



Jennifer Caplan '02

Caplan's conversations with Jackson, Bowyer, and other students on track to be the first lawyers or professionals in their families gave her the idea for an initiative to help them address concerns relating to classroom success and professional development. The result: First Generation Professionals (1GP), an enhancement program that pairs students in that situation with upper-year student and alumni mentors and organizes events targeted to their interests, such as small-group conversations with faculty and representatives of law firms and insights into professional etiquette. In October, Judge Todd Hughes '92 of the U.S. Court of Appeals for the Federal Circuit had lunch with the group and shared his career insights as a first-generation professional.

Zach Henson '20, a co-president of 1GP, which students lead with support from Career Center counselors, said students are often shy about seeking the kind of advice the program offers. "It's really helpful to have someone who has been there, who you can talk to completely freely," he said.

Assistant Dean for Student Affairs Lewis Hutchison, who worked with Caplan to create 1GP, knows firsthand how important that is, having been among the first in his family to attend college. "You don't know what you don't know, and so you worry about questions that might sound ridiculous," he said. "But if you're talking to someone who's been in your shoes, you're not afraid to ask."



Lewis Hutchison

Some 1GP students may also be reluctant to approach faculty for advice, said Henson, who was a history major and political science minor at Eastern Kentucky University.

"It wasn't something I was familiar with coming in," he said. "I never met with my undergrad professors unless we were assigned meetings. I figured they were busy and I didn't feel like I should take up people's time. I just did the work to the best of my abilities."

Over lunch, Professor of the Practice Donald Beskind '77 assured the group that making full use of the faculty was a crucial part of the Duke Law experience.

"When you come to law school, the classes aren't the only thing you get," Beskind said. "You get your fellow students, you get the programming, you get contacts and build networks, and if all you've gotten when you've left Duke is the classes, you've really missed a huge part of the experience. Learning how to access all these other things, particularly the faculty and resources like student services and career services, are really important skills."

Building career contacts and networks can start with professors, who, Beskind added, "derive real pleasure from helping someone get started, and feel it is a reward in and of itself."

The interviewing and resumé-writing process can be particularly daunting for 1GP students, Caplan said, because their job experience often has more to do with financially supporting themselves than with accruing law-specific experience. To that end, she enlisted attorneys at Latham & Watkins and Shearman & Sterling as well as her fellow career counselors to advise and assist students.

Diamond Zambrano '20, a 1GP co-president, said that the Shearman & Sterling event was especially helpful to her.

"They had a list of every question you might be too embarrassed to ask someone at a networking event," Zambrano said. "It was just so helpful. The firm representative was himself part of their 1GP affinity group, and that created a really comfortable space for all of us."



A first-generation professional, Judge Todd Hughes '92, of the U.S. Court of Appeals for the Federal Circuit, shared career insights with students at a 1GP lunch last October. From left: Diamond Zambrano '20, Natalie Sanchez '20, Ana Maganto Ramirez '20, Nicholas Lynch '20, Judge Hughes, Bryan Czako '19, Jennifer Thelusma '19, and Ryan Arredondo '20

Caplan also invited Bowyer back to Duke Law to share his insights at a 1GP lunchtime event. He recalled being concerned that the various jobs he held to finance his undergraduate studies — as a bartender, waiter, and mixed martial arts instructor and competitor — would not add value to his legal resume.

“It turns out they were great things to put on a resume because in interviews, people like to talk about that kind of stuff,” Bowyer said. “It shows you’re a hard worker, that you’ve developed personal skills and know how to talk to people, which can be undervalued in school yet so important when you work in a law firm. I worked at Buffalo Wild Wings as a bartender and a server, and in that kind of work you learn a lot about reading people. Some people want you there every five seconds, some want to be left alone and actually, I think that’s a skill that has been as helpful to me as many I learned in school.”

Henson, who also had waited tables, bagged groceries, and mowed lawns prior to law school, said it “took a lot of convincing” from Caplan to include those jobs on his resume. “I thought, I haven’t interned with a judge or worked at a firm, my resumé is terrible,” he said. “But she said, ‘No, what you did waiting tables was so useful in terms of client contact skills, and that’s something that

firms value. And when you show that you did all that work while in undergrad, while maintaining your academics and graduating in three years, you show that you can prioritize tasks, you are willing to work extremely hard. These are all valuable qualities that employers are seeking out.”

Jackson, who mentors a current student, said they discussed strategies for coping with the academic stress of law school.

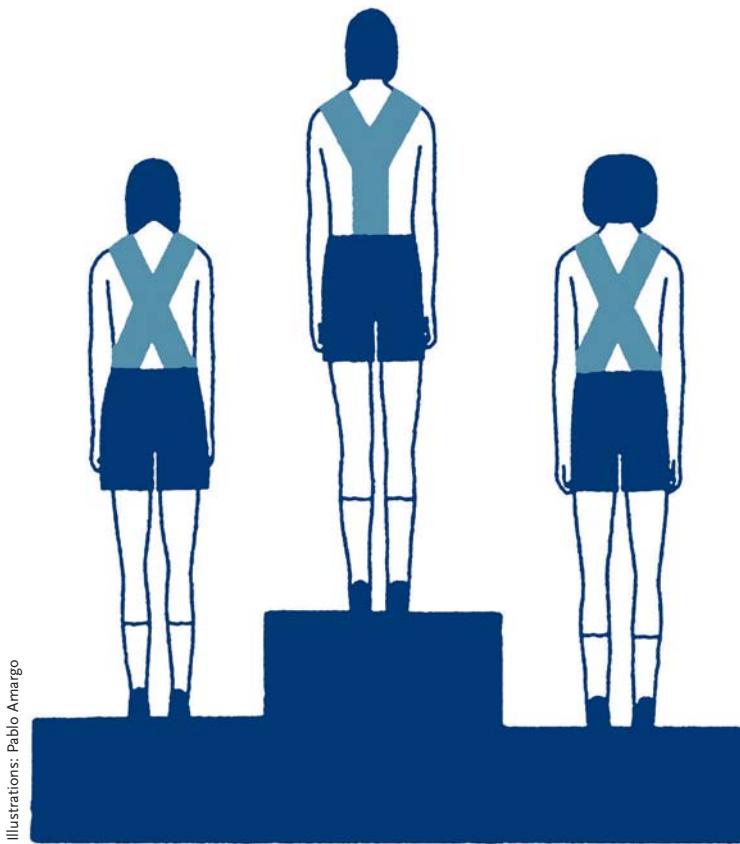
“I reached out during finals and told her, ‘You don’t need to forgo anything. Eat, take care of yourself. Also, there are resources to draw on while preparing for finals — you can work with classmates and some professors give out practice exams.’ These are things some people don’t know and might not know to ask about.”

Having engaged 30 students in its inaugural year, 1GP promises to serve an important function at Duke Law going forward, said Beskind, a member of the school’s Career Services Committee. “If law school isn’t just going to be for the children of lawyers or other professionals and if we have a commitment to broadening the base, then we have to really plan and organize ways to help people acquire the skills that will make them successful professionals.” ♡

“When you come to law school, the classes aren’t the only thing you get. You get your fellow students, you get the programming, you get contacts and build networks.”

— Professor Donald Beskind '77

Notable & Quotable



“There is no characteristic that matters more than testes and testosterone. ... Starting in puberty there will always be boys who can beat the best girls and men who can beat the best women.

“Because of this, without a women’s category based on sex, or at least these sex-linked traits, girls and women would not have the chance they have now to develop their athletic talents and reap the many benefits of participating and winning in sports and competition.”

— Professor **Doriane Coleman**, defending the International Association of Athletics Federations’ new rules that limit entry into women’s track and field events to athletes who have testosterone levels that are capable of being produced solely by ovaries. (*The New York Times*, April 30, 2018)

“[T]he way to address emerging security challenges in space is not to try to carve out another military fiefdom, but to seek holistic, cross-domain, and cross-service solutions. Further balkanization of the armed forces will only delay getting to where the nation needs to be with respect to the security challenges of space.”

— Maj. Gen. **Charles Dunlap, Jr.**, professor of the practice of law, arguing that while space is unquestionably important to military operations, creating a “Space Force” segregated from other military branches “is a bad idea ... for now anyway.” (*Lawfire*, May 3, 2018)

“With deep respect for and gratitude to former Supreme Court justice John Paul Stevens for a lifetime of distinguished service to our nation, the Second Amendment is not the problem. The Second Amendment is perfectly consistent with reasonable gun regulation, and the Supreme Court has said nothing to the contrary.

“The problem is a lack of political will in Congress and in some states to enact reasonable restrictions.”

— Professor **Neil Siegel**, responding to Justice Stevens’ call for repeal of the Second Amendment. (*Washington Post*, April 1, 2018)

“Other countries — including Germany and China — require modern methods of waste management, disposal and treatment and we should, too. The technology is available and the industry can afford it.”

— Clinical Professor **Michelle Nowlin JD/MA '92**, discussing a jury award of more than \$50 million in nuisance damages to Bladen County, N.C., homeowners harmed by inadequate management of hog waste from large-scale farms serving a subsidiary of Smithfield Foods. (*News and Observer*, May 1, 2018)

“[C]onducting clandestine research experiments and intentionally circumventing research approval and oversight practices is unethical, unwise, and does not enable adequate validation of science.”

— Professor **Nita Farahany '04**, commenting on the implications for the development of a vaccine against the herpes simplex virus, which, while promising, may have been tested on humans without the requisite regulatory oversight by a now-deceased researcher. (CNN, April 23, 2018)

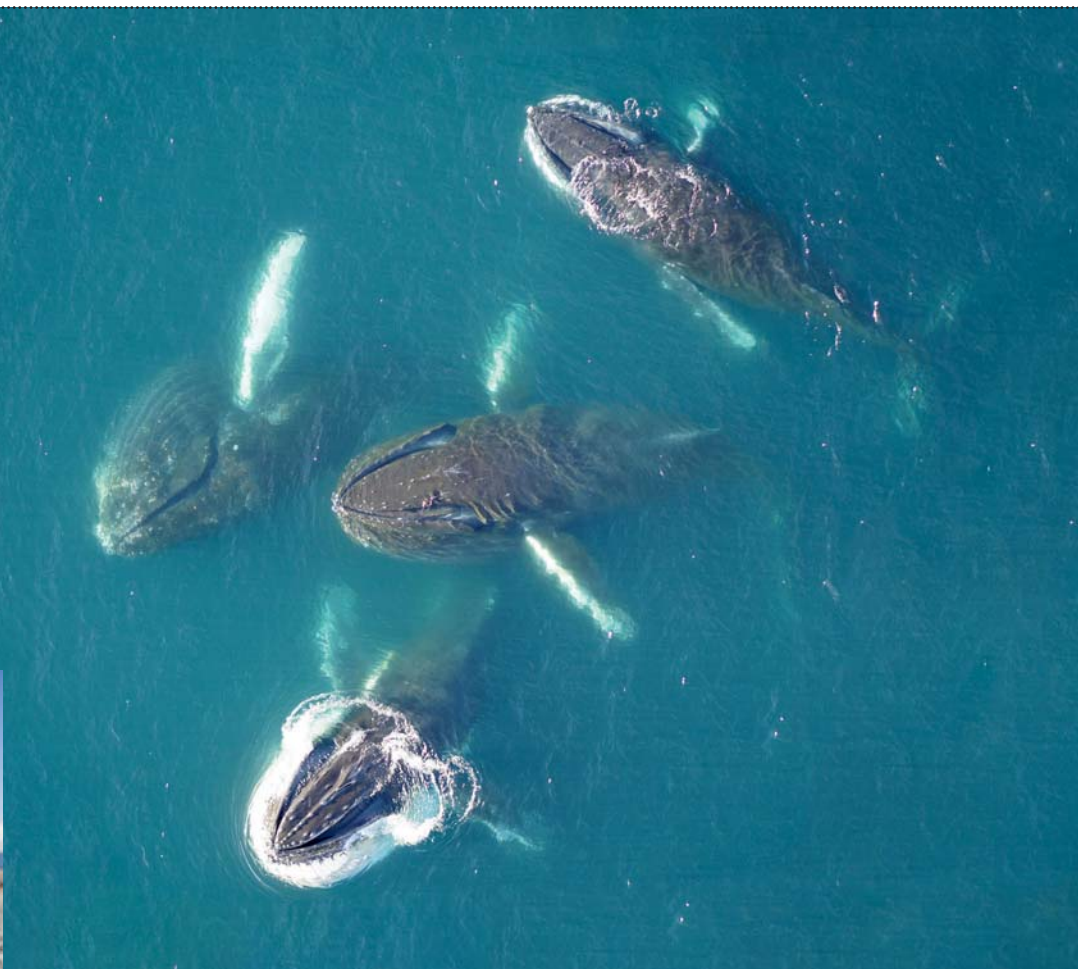
The Voting Rights Act of 1965 and the Civil Rights Act of 1964 “are the pillars of the civil rights movement: One says how government should treat its citizens, the other how citizens should treat each other. In time, they changed not just the law, but how we think about fellow citizens, how we think about parties and property and dignity. These are the temples to the marches and sit-ins, the true monuments to King — and they’re cracking.”

— Professor **Darrell Miller**, writing that 50 years after his assassination, Americans should mark the Rev. Martin Luther King’s legacy by attending to the health of his monuments “that live when we walk into the polling station, when we sit in the coffee shop.” (*Newsday*, March 31, 2018)

“Even if works from 1923 technically entered the public domain earlier because of nonrenewal, next year will be different, because then we’ll know for sure that these works are in the public domain without tedious research.”

— Clinical Professor **Jennifer Jenkins '97**, who directs the Center for the Study of the Public Domain, commenting on the imminent end, on Jan. 1, 2019, of a two-decade drought in books, films, and other works entering the public domain. (*The Atlantic*, April 8, 2018)

Clinics



Drone image of humpback whales lunge feeding in the waters of the Western Antarctica Peninsula. Dr. David Johnston, left, director of Duke University's Marine Robotics & Remote Sensing Lab, holds a fixed wing drone used to study penguins in Antarctica.

Environmental Law and Policy Clinic

Advanced students address novel set of questions stemming from drone use in marine science

Law and policy have not kept up with advances in drone capability, so students were able to drill deeply into questions raised by different maritime study scenarios.

OVER THE SPRING SEMESTER, students in the Advanced Environmental Law and Policy Clinic tackled a range of novel legal, policy, and ethical questions arising from the use of drones in marine science and the conservation-related research conducted by Duke University's Marine Robotics & Remote Sensing Lab (MaRRS Lab).

The students researched when drone usage might clash with the property and privacy rights of landowners and boaters, whether it might result in "takes" of marine wildlife as defined by such federal statutes as the Endangered Species Act and the Marine Mammal Protection Act, and whether or not the MaRRS Lab operates as a state actor if it partners with a federal or state agency in research. Supervised by Clinical Professor Michelle Nowlin JD/MA '92 and Professor of the Practice Stephen Roady '76, they produced legal memoranda detailing the constitutional, statutory, and common law implicated in each area of inquiry

and offered recommendations to help researchers avoid legal problems, with one student crafting an additional memorandum on ethical considerations emerging from drone use. The faculty and class of JD and Master in Environmental Management candidates — as well as one Duke undergraduate engineer engaged in drone design — also partnered on a list of recommended best practices for drone operation that the MaRRS Lab can refine and update as technology, practice, and law change.

The project evolved from outreach to Nowlin and Roady by Dr. David Johnston, who directs the MaRRS Lab and its use of aerial drones and other small, affordable robotic systems to study marine and coastal systems and challenges. "Drones can assess how beach morphology might change due to a storm or how big a blue whale is or how high a marsh-grass canopy might be," said Johnston, an associate professor of the practice of marine conservation ecology at the Nicholas

School of the Environment. “The majority of the applications we’re involved with tend to focus on inanimate things and non-human animals. But over the past few years, some agencies and organizations asked whether drones could be used to study how humans interact with coastal systems.”

From a technological standpoint, they can, Johnston said. “The bigger question was whether or not we *should* get involved — whether or not studying people in this way was something that erodes their privacy and security. So we posed those two missions to Steve and Michelle and basically asked them whether or not they would be legal.”

Law and policy have not kept up with advances in drone technology and capability, so Nowlin and Roady spotted a ripe opportunity for students to engage in original research and analysis, drilling deeply into the multiple legal questions raised by each maritime study scenario.

“We took what amounted to a ‘SWAT-team’ or crowd-sourcing approach to the legal questions, in which Dave Johnston’s team described what they do and our students looked into the legal questions surrounding that use,” said Nowlin. That included a trip to the MaRRS Lab, so the clinic students had a chance to observe how drones operate.

Jeremy Muhlfelder ’18 investigated privacy concerns with two other students, contributing to a memorandum that addressed two distinct scenarios: using drones to surveil and analyze the movements of visitors in national parks, and flying them over private property to monitor conservation easements for a private land trust. Their research entailed an analysis of constitutional cases pertaining to visitors’ reasonable expectations of privacy and protections from search or seizure without reasonable suspicion or a warrant, as well as the tort of invasion of privacy. They extrapolated principles from a series of cases involving shots of the exteriors of houses incidentally captured by Google Street View cars to identify areas of concern and best practice in drone use.

“Our goal from the assignment was to provide the best guidance we could on how the lab could avoid potential problems,” said Muhlfelder, who obtained an LLM in law and entrepreneurship along with his JD and found the project “perfectly aligned” with his broader interest in helping people navigate the sometimes murky legal terrain regarding emerging technology, which he will do as an associate at Wilson Sonsini in Palo Alto, Calif.

He said the project also illustrated the need for lawyers to understand the way their clients’ technology works, in order to offer informed, nuanced advice.

Roady, Nowlin, and Johnston are collaborating on a scholarly manuscript based on the clinic students’ detailed memos, with the goal of publishing it in a collection of primary conservation literature so they can inform researchers in the field of possible legal pitfalls and ways to reduce their legal risk.

“The information in the paper will at least provide them with the basics of applicable law in the United States,” said Johnston. “And if they are operating in an international context, it will give them a framework to look at their own national legislation to see whether or not they would be doing things in the right way.” ♻️



Professors Michelle Nowlin JD/MA ’92 and Stephen Roady ’76 supervised students’ research in the project participants dubbed “Game of Drones.”



Kevin Zhao ’18

Children’s Law Clinic Zhao ’18 submits amicus brief to N.C. Supreme Court on school inequality

WHEN THE CHILDREN’S LAW CLINIC was asked to file an amicus brief last spring in a North Carolina Supreme Court case based on inequity in Halifax County schools, Director Jane Wettach knew the assignment was perfect for one of her students. Before starting law school, Kevin Zhao ’18 had spent three years teaching fifth grade in Halifax County.

“He had taken Education Law the semester before, submitting a paper entitled ‘Halifax County, North Carolina: Allowing separate to remain unequal?’” said Wettach, the William B. McGuire Clinical Professor of Law. “I knew he had the right background to write the brief.”

While most North Carolina counties comprise a single school district, Halifax County has three, representing a holdover from the days of segregation, Wettach said. “The three districts are the historical legacy of segregating schools and creating districts with very different funding levels.”

Zhao, a Charlotte native who taught at a charter school focused on getting students in under-resourced areas into college, said that the public schools in two of the county’s three districts were so lacking in basic resources that the wait list for his school was in the triple digits.

“Students were chosen for the school through a lottery system — the sheriff would literally pick names out of a hat,” he said. “You saw parents cry when their

child's name wasn't picked. It was startling to see how it was completely up to chance what a kids' future was going to be."

Zhao lived in Roanoke Rapids, which had the best-resourced of the school districts — and the fewest minority residents. "The school district lines were drawn so that I lived in a nice, gentrified neighborhood in the good school district," he said. "But the district line cut a mobile home park across the street out of that district."

The clinic's brief, filed in conjunction with Advocates for Children's Services of Legal Aid of N.C. and Public Schools First, supports the plaintiffs, a coalition of parents and community groups who filed suit against the Halifax County Board of Commissioners in 2016, alleging that the trio of school districts violate the state constitution. They based their claim on N.C. Supreme Court rulings generally referred to as *Leandro I* and *Leandro II*, which upheld the state's constitutional responsibility to provide "a sound basic education" to students. But the N.C. Court of Appeals dismissed the case, finding that the constitutional duty to provide education rests only with the state, which could be the only possible defendant in such a case.

In the brief, Zhao cited two North Carolina cases that held local entities responsible for depriving students of a sound basic education. In one, the state courts upheld a student's claim against a county board of education when he was given a long-term suspension but no alternative educational placement. In the other, the courts upheld a student suit against a local school board for instituting an "instructional fee" structure that essentially left poor public school students without equal access to education.

Zhao, who is now clerking in the U.S. District Court for the Western District of North Carolina, argued in the brief that Halifax County is responsible for unconstitutionally failing to provide a sound education because the board of commissioners "can create and distribute local taxes, purchase school buses, and approve district budgets," and that chronic disrepair of facilities, buses, and materials in two of the county's three districts evidenced an unequal allocation of resources. ♡

Civil Justice Clinic Eviction Diversion Program gains support from Durham City Council amid eviction crisis

THE CIVIL JUSTICE CLINIC'S Eviction Diversion Program will receive \$200,000 from the City of Durham to support two new staff attorneys and a paralegal. Durham City Council voted to support the program on May 31, calling it an effort to stem a crisis of evictions. Durham County has the highest rate of eviction filings among North Carolina's 10 largest counties, with approximately 900 cases filed each month.

Civil Justice Clinic Director Charles Holton '73 said he was "very pleased" to receive the council's support for the Eviction Diversion Program, which was launched in late 2017 in partnership with Legal Aid of North Carolina (LANC). In its first six months of operation — still its pilot stage — the program helped clients avoid evictions in 45 of the 58 cases handled, or 79 percent, he said, with need vastly outpacing available resources.

"We received many more referrals to the program," he said. "Due to the very short windows of time involved [in evictions] and our limited resources, we were unable to make contact with many potential clients or their cases were already so far along that there was nothing that we could do."

"This funding should enable us to at least double the amount of tenants whom we are helping in the program, as well as to spread the word more broadly within the Durham community that both financial and legal help is available for those in need," said Holton.

Holton and Jesse McCoy II, a veteran LANC attorney who joined the clinic last year as the inaugural James Scott Farrin Lecturing Fellow and supervising attorney, worked with LANC to implement the pilot program, which is designed to avert eviction judgments, even if a settlement results in a tenant vacating a property voluntarily.

"An eviction judgment becomes a blot on a credit record, which then impedes an individual's future ability to lease property, to borrow money, and to get Habitat for Humanity housing, among other consequences," Holton said, noting that evictions also result in homelessness and severe family disruption.

Duke Law students enrolled in the Civil Justice Clinic handle some cases for clients of the Eviction Diversion Program. Their work includes initial client intake, investigation of claims and lease review, and appearances in court to argue eviction cases before the civil magistrates or district court judges.

Durham County commissioners are also considering support for the Eviction Diversion Program. In addition to supporting an expansion of the program's professional staff, Holton hopes the county commission will create an unrestricted funding pool that can be available for emergency rental assistance.

Farrin '90 called for public support of the Eviction Diversion Program in a May 21 essay published in the *Durham Herald-Sun*.

"The Durham Eviction Diversion Program isn't just a good idea," Farrin wrote. "It's a signpost for the kind of smart, caring and equitable community we want to be, as well as a lifeline for people who need and deserve an advocate by their side." ♡



Civil Justice Clinic Director Charles Holton '73 and Supervising Attorney Jesse McCoy II

Feb. 24, 2018



Speaking at the Center for Law, Ethics and National Security's 2018 conference titled "Complexity & Security," **Monika Bickert**, Facebook's head of global policy, explained how the social media giant tries to prevent terrorists from using its services. Her remarks came after months of revelations on Russian provocateurs' use of Facebook and other internet tools to influence the 2016 U.S. presidential election, and before news broke that Cambridge

Analytica, a political consulting firm, had mined the private data of 50 million Facebook users for the Trump campaign.

"Our approach to terrorists who would try to use our services is, first, to try to find the actual terrorists — the actual criminals — take them off the site, and refer them to law enforcement. Second, to try to remove terror propaganda, which violates our policies. We don't allow any content that praises or supports terror groups or their actions. So if we become aware of somebody posting an ISIS propaganda video, or somebody saying, 'Boy I thought that attack was great,' then we would remove that sort of content as soon as we find it.

"And then the third thing is engaging with civil society to try to help people use social media to push back on these narratives. ... There are a couple of interesting initiatives that we're doing there, including researching what kind of counter-speech actually works to reach different target audiences, and then funding or facilitating programs where the right, credible speakers can get these tools and use them." ♫

On the Record at Duke Law

March 23, 2018



Jonathan Zittrain reflected on the potential ethical and legal questions predictive artificial intelligence (AI) raises and the lessons for AI to be learned from "copyright wars" of the past when he delivered the annual David L. Lange Lecture in Intellectual Property Law. Zittrain, the George Bemis Professor of International Law and Director of the Law Library at Harvard Law School, recalled a 2010 study indicating that "one little note" regarding U.S. congressional elections pushed into the news feed of North American Facebook

users on election day could make a significant difference to the outcome of the vote.

"Fascinating study. It got me thinking, what if Facebook were to have its own dog in the fight? It prefers one candidate over another in an election, and it chooses to alert people on Facebook that it suspects or knows will vote according to Facebook's preference, that it's election day. And for the rest, it just sends them another picture of a cat.

"Would that be infringing anybody's rights? Would that be wrong, even if there weren't some actionable way of dealing with the wrong? That was the question I posed in 2014, not quite realizing what was in store in the election of 2016. And I think these questions remain largely unanswered." ♫

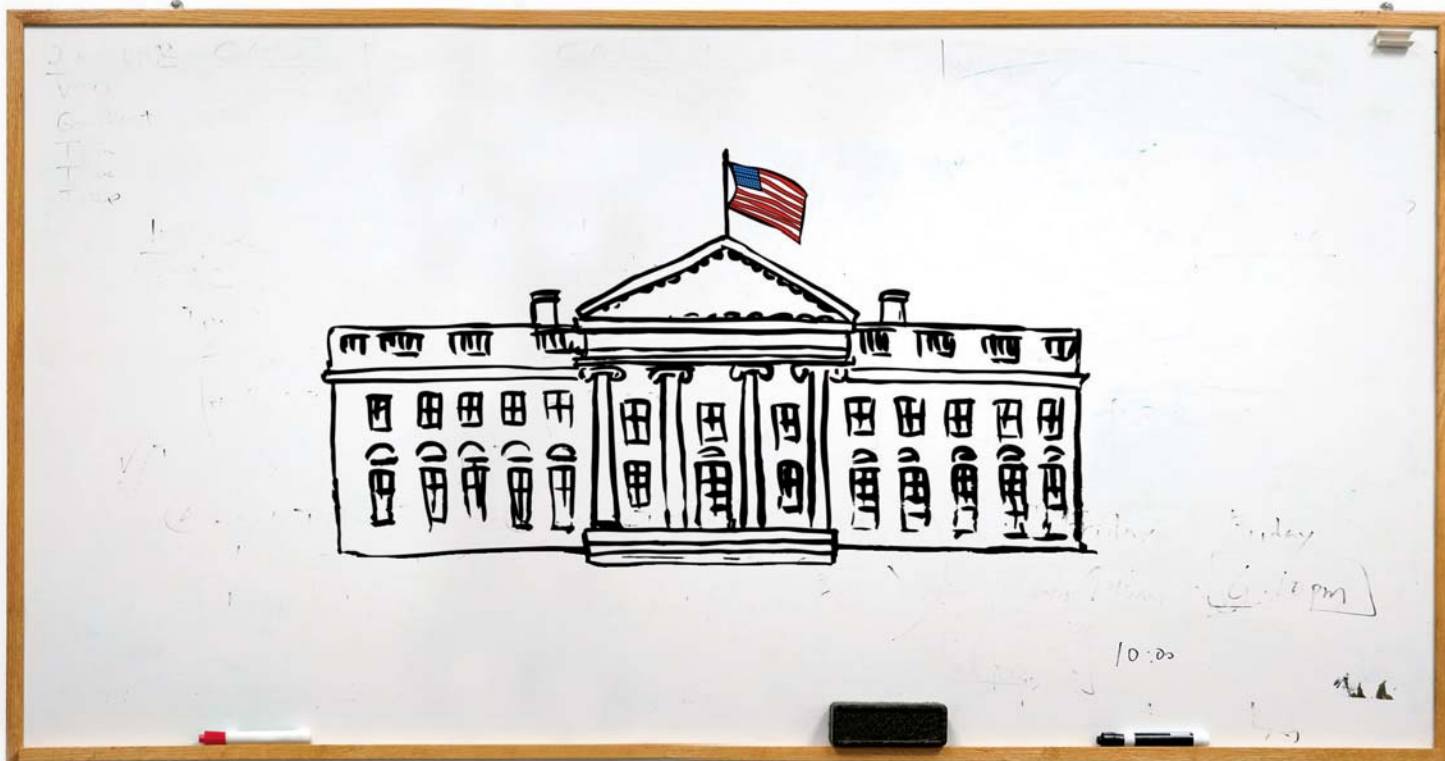
March 7, 2018

Jack Goldsmith, Harvard University's Henry L. Shattuck Professor of Law, deemed the United States' longstanding "internet freedom policy" an abject failure when he delivered the annual Brainerd Currie Memorial Lecture. The policy, which promoted the free flow of information across borders, resisted blocking most online services and "takedowns," and opposed both censorship and burdensome regulation for 20 years, from 1996 to 2016, was given its most "full-throated, explicit defense," he said, in a speech by then-Secretary of State Hillary Rodham Clinton in 2010. Clinton added two notable new dimensions: a promise that the U.S. would be proactive in promoting internet freedom abroad by giving people in authoritarian states the tools and training to maintain online anonymity and to circumvent censorship; and a resolve to pursue and promote international norms to facilitate robust cybersecurity protocols. Noting that Clinton's speech amounted to an overt declaration of the intent to use technology to effect political change abroad — exactly the behavior she decried — and the fact that widespread U.S. engagement in surveillance and other surreptitious activities in foreign networks further undercuts its moral authority to push for internet freedom in the eyes of the international community, Goldsmith added that certain characteristics of U.S. democracy make it exceptionally difficult to combat crippling cyberattacks by authoritarian adversaries.



"The digital network is in private hands. It's owned by private companies. ... It's the only channel of attack — air, space, sea, and land — where the United States government does not have control. It does not have control over the weapons coming in to war and being used against us. And there are significant legal restrictions preventing the United States from having access. And there are a lot of good reasons for this, reasons that we cherish and are very important. ... By contrast, authoritarian states don't have these problems. ... [China] is doing things about its cybersecurity problems that we could never do, [from] having a very significant digital registration process that eliminates anonymity, which makes cybersecurity easier to do, to insisting on backdoor access to encrypted communications, and insisting on backdoor access to encrypted data or that data not be encrypted, to being fully present on the network and being able to respond to malicious activity very quickly.

"So there is a serious asymmetry, because the rule of law is one side of our openness at home, our freedoms at home, but it makes cybersecurity that much harder and creates an asymmetrical weakness with our adversaries." ♫



In the classroom

The Presidency and Criminal Investigations

The seminar sought to understand the legal underpinnings and implications of a criminal inquiry involving the president, using history — Watergate and the impeachments of Presidents Bill Clinton and Andrew Johnson in particular — as the primary lens.

ZACK PARSONS '18 CAME TO LAW SCHOOL wanting to be a prosecutor, so in his final semester, he jumped at the chance to take one more class from former federal prosecutors Lisa Kern Griffin and Samuel W. Buell. The focus of their new course was also timely: What happens when the subject of a criminal investigation is the president of the United States?

"If Professor Buell and Professor Griffin had offered a class on watching paint dry I probably would have taken it, because I think that they're amazing," said Parsons, who will join the county attorney's office in Travis County, Texas, this fall. "But it is such an interesting issue that we're looking at right now and it is so much in the public zeitgeist that I was clicking the refresh button at 6:59 in the morning just hoping to get a spot."

Griffin, the Candace M. Carroll and Leonard B. Simon Professor of Law, and Buell, the Bernard M. Fishman Professor of Law, began thinking about the one-credit class after the appointment of Special Counsel Robert Mueller in early 2017. Both were beginning to field frequent inquiries from reporters and colleagues about how Mueller's investigation

into Russian meddling in the 2016 elections and allegations of collusion with the Trump campaign might unfold. What better than a seminar to help them, and their students, bone up on questions that have arisen only sporadically over the course of American history?

"We started to realize there was a series of underlying legal issues bubbling to the surface that we didn't feel we were sufficiently deep into because they're issues we don't write about in our scholarship and, because they are sort of extraordinary, they're also not issues that we dealt with in practice," said Buell, a scholar who focuses on criminal law and the regulatory state and led the U.S. Department of Justice's (DOJ) Enron Task Force. "And it seemed like a no-brainer that students would be excited about that."

Buell and Griffin decided early on that their course, *The Presidency and Criminal Investigations*, wasn't going to follow the daily twists and turns of the Mueller probe and its interaction with the White House. Instead, the seminar sought to understand the legal underpinnings and implications of a criminal inquiry involving the president, using history — Watergate and the impeachments of Presidents Bill

Clinton and Andrew Johnson in particular — as the primary lens.

“We didn’t begin any particular class or reading materials for any particular class, with ‘Guess what happened in the Trump administration last week,’” said Griffin, a scholar of evidence theory, constitutional criminal procedure, and federal criminal justice policy who worked on public corruption cases as a prosecutor in the U.S. Attorney’s office in Chicago. “The actual goal was to situate it within something more concrete than the fast-moving facts of the current special counsel investigation.

“We also were committed to focusing as much as we could on law rather than facts so that it didn’t become just a hand-wringing exercise or a political discussion.”

The students, all of whom were 3Ls and many who had taken Evidence or Criminal Procedure with Griffin or Criminal Law or Corporate Crime with Buell, led the class discussions. Each session focused on a different aspect of an investigation that touches the presidency, from the roles of lawyers and grand juries to the assertion of executive privilege, the Fifth Amendment protection against self-incrimination, and the pardon power.

Jamie Gorelick, chair of the Regulatory and Government Affairs Department at WilmerHale and deputy U.S. attorney general from 1994 to 1997, visited the class to discuss the roles and responsibilities within the DOJ. Reading materials ranged from cases, statutes, and regulations, such as the one supporting the hiring of a special counsel, to selections from the U.S. Attorney’s manual and the 1998 book *Impeachment: A Handbook*, by Yale Law Professor Charles L. Black, Jr.

The seminar often revealed a lack of clear law or legal theory on these topics, said Kelsey Schutte ’18, who will soon join Latham & Watkins in Washington. In a required research paper for the seminar, Schutte explored the relationship between the White House and the Justice Department and the constraints that historically have limited contact between the two to protect the department’s independence. In many cases, those constraints are based on norms, not laws, she found. The prohibition on the president communicating directly with line attorneys, for example, is found only in departmental memos.

“A lot of things in this area are not necessarily codified laws, and if they are, we don’t really know what they mean because they haven’t been tested,” Schutte said. “My argument was that there should be this separation and it should be, if not codified, then written in the DOJ memos, and every single new attorney general should release a memo. When you have the



Professors Samuel Buell and Lisa Kern Griffin

president calling line attorneys, he is exerting a lot of undue pressure that makes the Department of Justice look a lot less like it’s being just and fair.”

Another challenge that the class revealed: Where laws do exist, they are often limited in how they can be applied in a criminal investigation involving the president, or vague in how they might be enforced if the president has committed a crime. This has left central questions, such as whether or not a president can be indicted while in office or whether a presidential pardon can be considered obstruction of justice, so far unanswerable. Indeed, the larger question of how criminal justice is different when the presidency is concerned struck both the professors and their students as tough to answer.

“We came in through the criminal law doctrines and the evidentiary doctrines, but we kept bumping into this big constitutional law problem of ‘What is the presidency?’” said Buell. “There’s some guidance on that from the Constitution, and there’s obviously a very vast literature on presidential power. But most of those materials don’t address the kinds of questions that we’re addressing in this class.”

During the final class, third-year students Tyler Conte and Evan Glustrom led a discussion of what constitutes an impeachable offense and how Congress might weigh factors such as the severity of the misdeed, its proximity in time, and its relevance to presidential duties and authority. Glustrom then ticked off a list of hypothetical “high crimes and misdemeanors” and asked the class to raise their hands if they felt any merited removal from office, noting then-Rep. Gerald Ford’s assertion in 1970 that “an impeachable offense is whatever a majority of the House of Representatives considers it to be at a given moment in history.”

Before the class broke up, Griffin asked the students how the class had changed their views on the future of this presidency and the long-term ability to hold a president accountable.

“The students for the most part concluded that a lot of [the law] we studied either couldn’t handle the hardest questions or wasn’t going to solve the most difficult problems that we face,” she said. “The end result was — on the part of the students — a strong commitment to electoral politics and attention and energy around electoral politics, given that they were surprised by how much the extant legal remedies come up short.”

Added Parsons: “I think it’s very easy to be jaded about the efficacy of our political system and I think that that one of the things the class taught me about the current investigation is that I don’t have the luxury of being jaded. We need some idealism because I think the Founding Fathers baked a lot of idealism into their idea of how a separation of powers should occur.” ♡



Courtney Magnus '18



Members of the Class of '87 at their 30th reunion dinner.

Class of '87 funds fellowship for yearlong Legal Aid position

COURTNEY MAGNUS '18 will begin her career providing legal services to low-income individuals with mental illness and intellectual disabilities at Coast to Coast Legal Aid of South Florida, thanks to a fellowship established by members of the Duke Law Class of 1987 that will fund her salary for one year.

Magnus, the inaugural Class of '87 Legal Aid Fellowship recipient, interned at the agency in Plantation, Fla., during her 2L summer, when she primarily handled Social Security disability cases. The experience, she said, helped her appreciate the special advocacy needs of low-income disability applicants who face mental health and intellectual disability challenges.

"Mental health cases present many unique challenges arising from stigma and bias and the invisibility of the disability," she said. "And it's often difficult to obtain mental health records and treatment notes." Her fellowship project will include offering legal services at the offices of mental health providers and educating those providers about Social Security claim

requirements so they can better identify patients with strong claims.

Magnus has longed planned to become a public interest lawyer, having admired her mother's career as a Legal Aid and public interest attorney in South Dakota. She gained critical skills through enrollment in the Civil Justice Clinic and both the basic and advanced Health Justice Clinics and handling a federal Social Security disability benefits appeal as an independent study project under the supervision of clinic faculty.

"The Social Security process is very complicated and I think that makes it difficult for the people who need these benefits the most to access them," Magnus said. "Doing that type of work — in the clinic and during my internship with Coast to Coast — every day I felt like I was making a difference."

Clinical Professor Hannah Demeritt '04, who supervised Magnus' successful advocacy in three hearings that helped Health Justice Clinic clients secure Social Security disability and Medicaid benefits, said the fellowship is going to someone "truly dedicated" to helping underserved and marginalized client populations. "Working closely with Courtney on these cases, I observed that her strong advocacy skills were matched by her excellent client communication skills and exceptional empathy for her clients, each of whom had some mental health issues contributing to their disability," Demeritt said. "Courtney quickly gained clients' trust and counseled them carefully and effectively. I was thrilled when I learned that she had received a fellowship to continue this work."

The Class of '87 Legal Aid Fellowship helps a Legal Aid office with staffing and in possibly recruiting a career staffer at a time of funding and budget cuts.

Legal Aid career inspires classmates

Magnus's project excites Julie Petrini '87, who helped spearhead the establishment of the Class of '87 Legal Aid Fellowship. "I love the combination of hands-on, one-on-one advocacy and the programmatic development of the services provided by Coast to Coast," said Petrini. "Based on her background and interviews, I believe Courtney has the conviction, the ambition, and of course the education to make a real impact in this field."

Petrini said her class was inspired to establish the fellowship that funds a qualifying graduate's work in a Legal Aid position anywhere in the United States by the career of one of their own.



John Keller '87

"Our classmate, John Keller, has served as a Legal Aid advocate from day one of his time at Duke," said Petrini, who became pro bono counsel at Petrini & Associates in Framingham, Mass., after serving as vice president and

deputy general counsel at Microsoft. "Many of us have been able to include some form of pro bono or Legal Aid in our careers, but few have shown the focus and dedication that John has. In the wee hours of our 30th reunion celebration in 2017, several of his section mates were admiring the selflessness and successes of John's career, and the idea of the fellowship evolved from there."

Keller, who has spent his entire career with Legal Aid of North Carolina and directs the Wilson office, said he was "overjoyed" when he heard about the idea during a conference call with Petrini and Paul Nofer '87 a few days later. The fellowship helps a Legal Aid office with staffing and, in the longer term, in possibly recruiting a career staffer at a time when funding crises and budget cuts are limiting Legal Aid programs around the country, he said. "I have so much gratitude for my classmates." ♡

Knapp '18 selected for DOT Legal Honors Program

ERIC KNAPP '18 will enter federal government service through the U.S. Department of Transportation's (DOT) Legal Honors Program in the fall. Working out of the agency's Washington, D.C., headquarters, Knapp will spend one to two years rotating through different DOT sections, including its Office of General Counsel, gaining exposure to the agency's practice of administrative, aviation, litigation, environmental, constitutional, torts, legislation, labor and employment, and contract and procurement law.



Eric Knapp '18

Entering government service through acceptance to the highly competitive Legal Honors Program fulfills a longstanding goal for Knapp, who prepared with coursework, a 2L summer position at the Federal Communications Commission (FCC), and an externship with the Federal Trade Commission (FTC) during a third-year Duke in D.C. semester.

"I was ultimately drawn to public service in the federal government because it can address problems and help people on a large scale," said Knapp, a Memphis native, who held summer jobs at a homeless shelter and substance abuse clinic during his undergraduate years at University of Mary Washington and volunteered at the nonprofit Rappahannock Legal Services after graduating with degrees in Psychology and Religion.

At Duke Law, Knapp developed strong interests in administrative law, business law, and antitrust law, calling Professor Stuart Benjamin's Administrative Law class and Professor Barak Richman's Antitrust Law particularly inspiring. "And I learned that I find some of the more technical issues very interesting," said Knapp. "Because of Professor Benjamin's work with the FCC, he could talk a lot about how the sausage is made, and that was fascinating. I think it will be valuable when I start working for the DOT." Benjamin, the Douglas B. Maggs Professor of Law and Associate Dean for Research, served as the FCC's first Distinguished Scholar from 2009 to 2011.

During his 2L summer, Knapp worked in the FCC's Pricing Policy Division, writing comment summaries for notice-and-comment rulemaking and drafting rules and orders, then decided to follow up with a full-time Duke in D.C. externship supplemented by a course in federal policymaking. Randall Weinsten '09, a staff attorney in the Health Care Division of the FTC's Bureau of Competition, was instrumental in helping him secure and succeed in his externship with the agency, Knapp said.

"Randall helped me prep for the interview, and when I got there, he took me under his wing and was a great mentor. He would give me assignments and would go over my work with me. He helped me develop a structure for thinking about how to constantly improve my writing."

Knapp said his Duke in D.C. experience allowed him to polish his professional skills, network, and deepen his understanding of how government agencies operate and how policy is made.

Assistant Dean for Public Interest and Pro Bono Stella Boswell said Knapp's singular focus on securing a government position was the key to his success in the DOT Legal Honors application process.

"Eric definitely demonstrated a critical commitment to government work," she said. "All candidates for government Legal Honors positions have to be successful academically, but his summer job with the FCC, his Duke in D.C. experience, and a public interest job with Legal Counsel for the Elderly his 1L summer also would have factored into his success." ♡

“You must fall in love with justice. ... We need you to be something other than people who talk and don’t do. We need leaders who stand up.”

— Michael J. Sorrell '94 MPP '90



Convocation speaker Michael Sorrell

Convocation 2018

MICHAEL J. SORRELL '94 MPP '90, president of Paul Quinn College in Dallas, told Duke Law's 2018 graduates that the world needs them to “fall in love with justice” and to engage with the critical problems facing society when he spoke at their convocation ceremony on May 12.

The convocation ceremony in Cameron Indoor Stadium honored 216 JD graduates, 16 of whom also received an LLM in international and comparative law, 10 who also received an LLM in Law and Entrepreneurship, and four who also received an MA in Bioethics and Science Policy. Sixteen graduates received the new Public Interest and Public Service Law certificate.

Ninety-five international lawyers received an LLM degree, and one received the SJD, the highest degree in law. Eight graduates completed the one-year LLM in Law and Entrepreneurship, and 21 state, federal, and international judges received a Master of Judicial Studies

degree after completing eight weeks of coursework and writing a thesis based on original research over a two-year period. A posthumous Master of Legal Studies degree was awarded to Chen Sheng, a member of the Class of 2018 who died during her second year at Duke Law.

“Fall in love with the issues of the day”

Sorrell, who took the helm at Paul Quinn in 2007, described some of the steps that have helped transform the historically black college from a “failing” institution into one lauded as a model for innovative urban higher education focused on academic rigor, experiential learning, and entrepreneurship: transforming the football field into an organic farm in the middle of a “food desert,” drastically reducing tuition so that the students, 85 percent of whom qualify for Pell

grants, can graduate with less than \$10,000 in debt; and providing jobs for all residential students. He characterized his time at the college as personally transformative.

"My courtship with justice led me to Paul Quinn College, and it was there for the first time in my life that I was exposed to poverty on a daily basis, and that daily exposure to poverty changed my life," said Sorrell, who was named one of *Fortune* magazine's "50 Greatest World Leaders" in April. "Witnessing the choices people are forced to make when they live lives of scarcity, changed me."

Sorrell exhorted Duke Law graduates to use their education and skills to "repair the breaches that exist in our society" and, in that way, to seek justice for all.

"For some of you, those issues will be domestic violence, for others it will be homelessness or prison reform," he said. "For others still, your quest for justice will lead you outside the practice of law. That is what happened to me."

Sorrell brought the graduates to their feet in calling them to lead with humility, courage, vision, compassion, and love, to leave places better than they found them, and to "lift people up" along the way. "As leaders, that's what we do," he said. "We stand on the shoulders of giants, so we don't get the choice to be small. You stand up, you count, you take a stand for the things that matter.

"You must fall in love with justice," he said. "Fall in love with the issues of the day. We need you to be great. We need you to be the truest version of yourself. We need you to be something other than people who talk and don't do. We need leaders who stand up."

"It's all about the people"

Three student speakers also addressed their fellow graduates. Speaking on behalf of the Master of Judicial Studies graduates, Justice David Collins of New Zealand's High Court praised the vision of David F. Levi, then the James B. Duke and Benjamin N. Duke Dean of the School of Law, in establishing the program.

"Under the guidance of Dean Levi, Duke Law School has risen to the task and established America's leading judicial institute to foster research and understanding about the judicial branch of government," Collins said. "We, the judges who are graduating today, are the beneficiaries of Dean Levi's foresight and leadership." Levi continues to lead the program as the Levi Family Professor of Law & Judicial Studies and Director of the Bolch Judicial Institute.

David Kryzanovsky, an LLM graduate from Israel, called on his classmates to excel and lead in their respective fields and countries. "Some of us will be fighting for the constitutions of our countries, others will be promoting human rights," he said. "Some will serve as representatives of their people in the government, while others will be opinion leaders and scholars in their field."

JD speaker David Kuwabara noted that he found resonance in Levi's orientation remarks to the Class of 2018 on the importance of each one becoming a "citizen-lawyer."

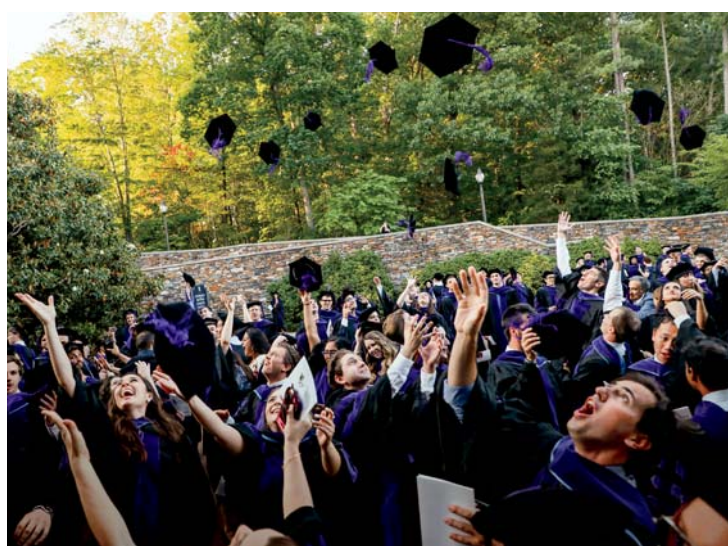
"Eventually, I learned that a citizen-lawyer is more than a legal technician, more than someone who knows the terms and conditions you never read on Amazon," he said. "A citizen-lawyer gets that it's about people." ♡



Above from left, the JD, MJS, and LLM class speakers, David Kuwabara, Justice David Collins, and David Kryzanovsky



Sydney Booker was hooded by her mother, Board of Visitors member Ava Lias-Booker T'82.



Faculty Focus

Garrett maps plan for criminal justice reform by exposing systemic flaws

“It is hard to ignore his research. He forces anyone defending the system to address the facts.”

— Professor James Coleman, Jr.

DOES THE NEAR-DEMISE of the death penalty in the United States reveal a road map for comprehensive criminal justice reform?

Brandon Garrett, a highly influential scholar of criminal justice outcomes, evidence, and constitutional rights who joined the Duke Law faculty on July 1 as the inaugural L. Neil Williams, Jr. Professor of Law, thinks so.

Death sentences have dropped by more than two-thirds since 2000, Garrett observes in *End of its Rope: How Killing the Death Penalty Can Revive Criminal Justice* (Harvard University Press, 2017). Many have been reversed on post-conviction appeal after proof surfaced they were based on false confessions, faulty forensic science or eyewitness identification, poor legal representation, or coercive plea bargains. The death penalty is now banned in 19 states and a trend

towards public funding of capital defense, allowing teams of skilled lawyers, investigators, and social workers to expose exculpatory evidence of innocence or mitigating factors, increasingly leads jurors to choose “mercy.”

In laying out the underlying systemic flaws that are causing the death penalty to wane (yet have long led to the execution of innocents and still factor into the imposition of harsh sentences, like that of life without parole), he urges the public and policymakers to seize a “special opportunity.” Garrett, who was previously the White Burkett Miller Professor of Law and Public Affairs and Justice Thurgood Marshall Distinguished Professor of Law at the University of Virginia, says it is time to rethink the morality and accuracy of the criminal justice system and do away with “blunt” mandatory punishments that lead to mass incarcer-

ation. His reform proposals extend to every aspect of the system: police investigations and interrogations, defense lawyering, prosecutorial power, the use and veracity of forensic evidence, the qualification of expert witnesses and other evidentiary matters, and policies relating to bail, parole, and prison diversion.

These are some of the issues central to his exceptionally ambitious research agenda that is now focused on forensic science, eyewitness identification, corporate crime, constitutional rights and habeas corpus, and criminal justice policy. A prolific writer whose articles are published in leading law journals, Garrett is also the author of *Convicting the Innocent: Where Criminal Prosecutions Go Wrong* (Harvard University Press, 2011), *Federal Habeas Corpus: Executive Detention and Post-Conviction Litigation* (Foundation Press, 2013) (with Lee Kovarsky), and *Too Big to Jail: How Prosecutors Compromise with Corporations* (Harvard University Press, 2014). His latest book, *The Death Penalty: Concepts and Insights* (West Academic, 2018) (with Lee Kovarsky), which is designed for classroom use, was published in July. Garrett's work is frequently cited by U.S. and international judges; *End of Its Rope* and a forthcoming article were cited by U.S. Supreme Court Justice Stephen Breyer in his dissent to the denial of an elderly death-row inmate's petition for certiorari on June 28.

Garrett often engages in original empirical research employing a variety of methodologies to expose root causes and patterns behind systemic legal problems and then advocates for solutions through policy and legislative change. He has been involved in law reform projects through the National Academy of Sciences and currently serves as Associate Reporter on an American Law Institute (ALI) project on policing, among other initiatives. He speaks on criminal justice issues frequently to legislative and policymaking bodies, attorneys, law enforcement officials, and media outlets. He also makes his original data-sets available to other scholars and researchers in law and other fields.

"Brandon is an extraordinarily productive scholar and a generous colleague," said Lisa Kern Griffin, the Candace M. Carroll and Leonard B. Simon Professor of Law, a scholar of evidence theory, constitutional criminal procedure, and federal criminal justice policy. "It is hard to think of *any* academic who has had as much impact when it comes to on-the-ground criminal procedure."

James Coleman, Jr., the John S. Bradway Professor of the Practice of Law, co-director of the Wrongful Convictions Clinic, and director of the Center for Criminal Justice and Professional Responsibility, calls Garrett an "A-list addition" to the Duke Law faculty: "His work provides the beef for those of us concerned about the criminal justice system and worried that the public is indifferent. It is hard to ignore his research. He forces anyone defending the system to address the facts — always a good place to start."

Correcting flawed forensics and eyewitness errors

A longstanding interest in the root causes of wrongful convictions is foundational to Garrett's wide-ranging studies that share, he says, "a common theme in examining sources of error and arbitrariness in systems."

Garrett, who joined the University of Virginia law faculty in 2005, received his JD at Columbia Law School, where he was an articles editor of the *Columbia Law Review* and a Kent Scholar, and

where he first wrote articles relating to the evolving law and practice surrounding racial profile litigation. He clerked for Judge Pierre N. Leval of the U.S. Court of Appeals before joining the civil rights law firm of Neufeld, Scheck & Brustin in New York. In addition to working on high-profile police-brutality lawsuits there and with another civil rights firm, Garrett litigated cases on behalf of individuals who received post-conviction exonerations based on DNA testing, and began developing related scholarship.

One of Garrett's first empirical studies, launched shortly after he joined the legal academy, examined every aspect of the cases of the first 250 people exonerated by DNA testing, providing the data for a series of articles, recommendations to a groundbreaking 2009 National Academy of Science report aimed at improving forensic evidence, and his first book. Widely praised and cited, *Convicting the Innocent* exposed critical patterns of error Garrett described as "corrupted evidence, shoddy investigative practices, unsound science, and poor lawyering." While focused on DNA exonerations, it also functions as a handbook for identifying wrongful convictions in cases that don't involve biological evidence, like those handled in the Law School's Wrongful Convictions Clinic.

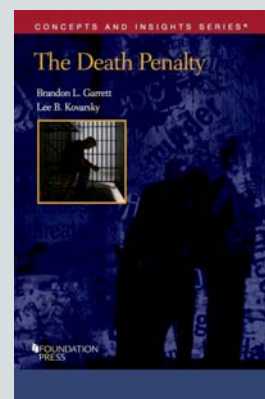
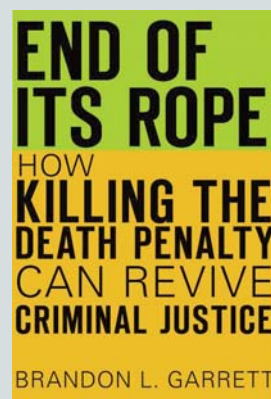
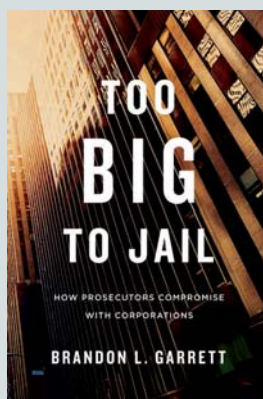
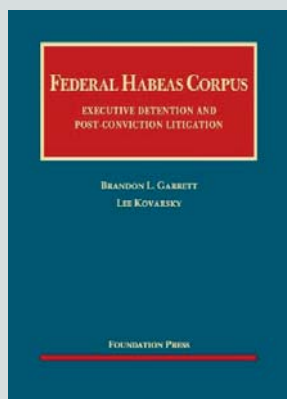
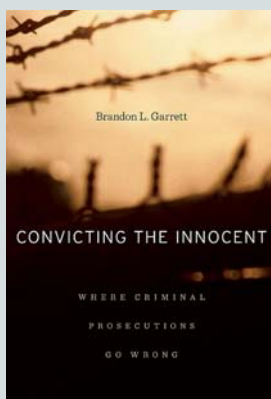
"When *Convicting the Innocent* was published we immediately adopted it as the cornerstone of the clinic's seminar component," said Theresa Newman '88, the Charles S. Rhyne Clinical Professor of Law and Wrongful Convictions Clinic co-director. "It's a remarkable text."

Several of Garrett's ongoing inquiries aim to rectify flaws in the collection, perception, and evidentiary use of forensic science. A series of articles and a forthcoming book will explore misunderstandings about the accuracy of identification evidence presented by experts in court, such as bite mark, fingerprint, firearm, tool-mark, and DNA analyses. One goal of the project is to counter the general belief that forensics are infallible, as a first step to raising the standards for (and skepticism of) science used in court.

"Too often, there is an assumption that once a 'match' is declared in the opinion of an expert, the suspect must be guilty," he said. "It is very hard to alter those entrenched attitudes, but my research shows that educating people about the sources of error, such as the fact that few crime scene fingerprints are pristine and that a lot of subjective judgment is involved in comparing imperfect crime scene prints to pristine prints, can have a real impact."

One article in progress with UVA Law colleague Gregory Mitchell and University of California, Irvine social scientist Nicholas Scurich, "Comparing Categorical and Probabilistic Fingerprint Evidence," details a novel examination of how laypeople evaluate new techniques that use algorithms to draw quantitative conclusions in comparing latent fingerprints. Another reports on an original study of jurors' reactions to information on how well forensic experts fare on tests designed to assess their individual proficiency in their disciplines.

In another collaboration with Mitchell, "The Proficiency of Experts" (166 *University of Pennsylvania Law Review*, forthcoming 2018), Garrett calls on judges to qualify as expert only those forensic investigators who demonstrate true proficiency in their disciplines. The project entailed a review of two decades of proficiency testing of latent fingerprint examiners that revealed "surprisingly high rates of false positive identifications." It underscored, said Garrett, both the fallibility of the science and the need for judges to go beyond credentials and experience in qualifying experts in civil and criminal trials (their responsibility under the federal rules of evidence and as



Books by Professor Brandon Garrett

originally defined in 1993 by the U.S. Supreme Court in *Daubert v. Merrell Dow Pharmaceuticals*).

“We’re now 25 years into the *Daubert* era, and nevertheless, the courts haven’t really been effective gatekeepers, so the responsibility has fallen to scientists and laboratories themselves to try to create standards,” said Garrett, who is engaged in a multi-year collaboration with the Houston Forensic Science Center relating to forensic analysis and innovation.

Garrett’s separate body of inquiry on the accuracy of eyewitness identification evidence includes a comprehensive review of eyewitness memory literature and a large-scale interdisciplinary study of jury-eligible adults to determine how expert evidence and jury instructions, as well as factors such as the confidence of eyewitnesses, influence jurors. In late August, Duke Law will host the study’s advisory board — judges, scientists, attorneys, law enforcement officials, and scholars — to discuss how the reliability of eyewitness evidence can be improved both during investigations and in court. And Garrett will offer two courses related to forensic evidence in the coming academic year: a short experiential course in the fall semester, *Forensics Litigation*, and a spring seminar titled *Current Issues in Forensic Science*, which he will teach with Professor of Law and Philosophy Nita Farahany ’04.

A broader focus on corporate crime, constitutional theory, and habeas corpus

Garrett is also a leading authority on the criminal prosecution of corporations: His book, *Too Big to Jail*, presented data collected from more than a decade of federal cases, analyzing the terms of settlements prosecutors negotiate with companies and finding that they often fall short in exacting punishment. Prosecutors, he argued, don’t really know how to hold complex organizations accountable, so they often use deferred prosecution agreements or structural settlements aimed at rehabilitating corporate offenders and bringing them into compliance. His “Corporate Prosecutions Registry,” created in the course of researching the book, is an authoritative resource for researchers, now with records and coded data on 3,000 corporate prosecutions since 2001 and details of deferred and non-prosecution agreements going back to 1990.

His current projects include an empirical analysis of CEO turnover and pay during and after a federal criminal prosecution and an investigation of the sorts of compliance changes companies adopt following prosecutions. Garrett is also engaged with a research consortium of compliance officers to establish standards in their field and how compliance tools can be improved.

“I’m trying to look carefully at these corporate prosecutions and figure out how we can prevent, not just punish, corporate crime,” he said. “The whole point is to prevent terribly costly crimes.”

Garrett has also tackled a range of constitutional questions throughout his career. He has written a series of articles relating to habeas corpus and the regulation of detention in various legal contexts, such as pre- and post-conviction criminal detention and immigration detention, and is working with co-author Lee Kovarsky on the second edition of their groundbreaking 2013 casebook, *Federal Habeas Corpus: Executive Detention and Post-Conviction Litigation*.

Changing criminal justice outcomes

With a research agenda dedicated to exposing error and injustice, Garrett is equally focused on practical reform. An ongoing empirical study of state-level death sentencing patterns, an outgrowth of his research for *End of Its Rope*, bolsters his argument that structural resources for defense lawyers have “an enormous impact” on sentencing outcomes. He plans further statistical analysis of the race disparities in death sentencing that he observed in his earlier research and has an ongoing empirical study of prosecutor election outcomes in all death penalty states since 1990. Garrett also anticipates a study of the geographic imposition of life-without-parole sentences also to emerge from his *End of Its Rope* research.

He will offer the Criminal Justice Policy Lab at Duke Law in the fall semester and will lead an interdisciplinary team in North Carolina-based policy investigations on such matters as re-entry and employment outcomes for released felons, driver’s license revocation practices, and mental health and substance-abuse treatment options as alternatives to incarceration.

“Brandon’s interests are rich, his expertise is deep, and having him at Duke means unique new opportunities for students and fruitful collaborations for the law faculty,” said Griffin. “It’s an exciting development, and we are delighted to welcome him to Duke.”

Femi Cadmus named associate dean, director of Goodson Law Library

FEMI CADMUS, a leader in the field of law librarianship and legal information access, has been named the Archibald C. and Frances Fulk Ruffy Research Professor of Law, associate dean of information services and technology, and director of the J. Michael Goodson Law Library at Duke Law School. She will assume the post in November.

Cadmus comes to Duke from Cornell Law School, where she is the Edward Cornell Law Librarian, associate dean for library services, and professor of the practice. She previously served in various roles in the law libraries at Yale Law School, George Mason University School of Law, and the University of Oklahoma School of Law. In July, she became president of the American Association of Law Libraries.

"I am truly excited about becoming a vital contributor to Duke Law's forward-thinking, bold, ambitious, and strategic vision," Cadmus said. "The Goodson Law Library and its outstanding staff will continue to play an integral part in executing the Duke Law vision, serving both as catalyst and support for innovative and cutting-edge initiatives in research, scholarship, instruction, and technology."

Cadmus succeeds Richard A. Danner, who retired last year as senior associate dean for information services and library director after a renowned career in law librarianship, including 35 years at Duke. Danner, the Archibald C. and Frances Fulk Ruffy Research Professor of Law Emeritus, died Feb. 22.

"Femi Cadmus will be a wonderful director of the Duke Law library and a worthy successor to Dick Danner," said David F. Levi, the former James B. Duke and Benjamin N. Duke Dean of the School of Law, in announcing her appointment. "She will carry on our tradition of innovation and leadership in this field, including understanding how technology is transforming legal research, instruction, and practice."

Born in New York City and raised in Nigeria, Cadmus received an LLB from the University of Jos B.L Nigerian Law School and then practiced international commercial law. After completing an LLM at the University of Warwick, she became a research assistant in the University of Oklahoma Law School library, a move that eventually proved "serendipitous," she said.

"I didn't have any knowledge whatsoever of American jurisprudence or how to find the law in the U.S., but I had people coming up to me with requests, and so I quickly learned," Cadmus said. "I thought, 'This is fascinating, I could do this permanently,' and that was what led me to library school."

After earning a master's degree in Library and Information Science from the University of Oklahoma, she was hired as a law librarian at George Mason. At Yale, she served as associate law librarian for administration at Lillian Goldman Law Library and lecturer in legal research. She has directed Cornell's law library for the last seven years.

During her tenure at Cornell, Cadmus has led several efforts to use digital technology to deliver information in innovative ways. Last year, the law library and four partners launched LawArXiv, a free open access legal repository owned and maintained by members of the scholarly legal community. In 2015, it joined with Yale and the International Labor Organization to develop Global Online Access to Legal Information, or GOALI, to make law and law-related academic and professional content available for free in more than 115 low- and middle-income countries.

Cadmus also supported the development of Cornell's Legal Research Clinic, in which upper-level students work under the supervision of attorney-instructors to complete research requests from nonprofit organizations and entrepreneurs, indi-



viduals, and legal services providers in the community. "Those types of explorations for me — giving back to the community, whether it's local or whether it's global — are very satisfying and really have been the highlights of my tenure [at Cornell]," she said.

As a scholar, Cadmus has explored the impact of technology on law libraries, law librarianship, and legal instruction. She is a frequent writer and presenter on current legal research methods, the evolving role of the 21st century law library, open access to legal information, and law library management and administration. In July, Cadmus was named to the "Fastcase 50" list of entrepreneurs and innovators in law and legal technology for her efforts to promote open access to legal scholarship and information.

Cadmus' hiring capped a nationwide search led by Katharine T. Bartlett, the A. Kenneth Pye Professor of Law, and Associate Clinical Professor Jeff Ward '09, director of the Duke Center on Law & Technology.

"Given how much we value our library at Duke Law, we set out on our search with extremely high expectations for our next leader, and we found what we were looking for in Femi Cadmus," Ward said. "Femi will be a leader here at Duke, just as she is in the library community nationally and in data access communities internationally."

Added Bartlett: "Femi has the experience, drive, and reputation for excellence that we had hoped to find to carry on Duke's reputation for leadership in the law library world. I am thrilled to welcome her as a colleague." 🐾

Distinguished professorships honor research scholars and clinicians

PROFESSORS Joseph Blocher, Rachel Brewster, Brandon Garrett, Trina Jones, Theresa Newman '88, and Jane Wettach have been honored with Distinguished Chair awards from Duke University, all effective July 1. Lawrence Baxter, who previously was the William B. McGuire Professor of the Practice of Law, became the inaugural recipient of the David T. Zhang Professorship on that date.

To qualify for a Distinguished Chair as a research scholar, a faculty member must have amassed a substantial record of intellectual achievement and be one of the leaders of his or her field. Qualifying clinical faculty and professors of the practice have made outstanding contributions to clinical practice and teaching in their fields of advocacy and service.

"It gave me enormous pleasure to nominate these superb research and clinical faculty members for these Distinguished Chair awards with the wholehearted support of their faculty colleagues," said David F. Levi, then the James B. Duke and Benjamin N. Duke Dean of the School of Law. "They are each at the forefront of their respective fields and wonderful colleagues and institutional citizens. I am also grateful to the Duke Law alumni and friends whose generosity made many of these Distinguished Chair awards possible." 🐾

Jones awarded the inaugural Jerome M. Culp Professorship



Trina Jones, who focuses her scholarly research and writing on racial and socioeconomic inequality, is the inaugural recipient of the chair named for the Law School's first tenured African-American faculty member. She is a leading legal expert on colorism, the differential treatment of same-race individuals on the basis of skin color, and teaches Civil Procedure, Employment Discrimination, Race and the Law, and Critical Race Theory.

Among Jones' notable works are: "Shades of Brown: The Law of

Skin Color," 49 *Duke Law Journal* 1487-1557 (2000); "Single and Childfree! Reassessing Parental and Marital Status Discrimination," 46 *Arizona State Law Journal* 1253-1346 (2014); and *Law and Class in America: Trends Since the Cold War* (NYU Press, 2006, with Paul D. Carrington). Her current projects explore the use of the workplace as a site for the reproduction of "traditional" values, examine colorism from a comparative perspective, and consider the limitations of using enumerated classifications as a method for redressing inequality.

Jones joined the Duke Law faculty in 1995 after practicing as a general litigator at Wilmer, Cutler and Pickering (now WilmerHale) in Washington, D.C. From 2008 to 2011, she served as a founding member of the faculty at the University of California, Irvine, School of Law. She recently co-chaired the Duke University Academic Council's Task Force on Diversity.

"Trina Jones is a leading scholar of race and the law," said Levi. "Her work is well recognized both in this country and internationally. In addition to her excellent scholarship and teaching, she is also a dedicated university citizen and frequently serves on important university-wide committees. It is so wonderful for her and for us that she should be the first holder of a chair named for Professor Jerome Culp."

A native of Rock Hill, S.C., Jones received her undergraduate degree in government from Cornell University and her JD, with honors, from the University of Michigan Law School, where she served as an articles editor on the *Michigan Law Review* and was Culp's student.

"This award is especially meaningful to me because Professor Culp was not only the first African-American tenured professor at Duke Law, he was also my teacher and later became my colleague, mentor, and friend," she said. "We both came from humble beginnings — he the son of a coal miner and me the daughter of a union organizer — and shared common cause in rendering visible the voices and the experiences of those whom this society tends to marginalize and to forget. Because of Professor Culp's singular influence on my teaching and my scholarship, I am moved beyond words to know that my professional signature will include his name — and that my career will always intersect in this visible way with his." 🐾

Brewster named the first Jeffrey and Bettysue Hughes Professor of Law



Rachel Brewster's scholarly research and teaching focus on international trade and economic law. She writes on World Trade Organization law, anti-corruption law, including the Foreign Corrupt Practices Act and the OECD Anti-Bribery Treaty, and international relations theory. She serves as co-director of the Law School's Center for International and Comparative Law and co-chairs the JD/LLM Program. Brewster received

support from the Mellon Foundation to convene, with Duke History Professor Phil Stern, an interdisciplinary seminar on the corporation in international law in 2017-2018.

Brewster came to Duke Law in July 2012 from Harvard University, where she was an assistant professor of law and affiliate faculty member of The Weatherhead Center for International Affairs, taking a leave in 2008 to serve as legal counsel in the Office of the United States Trade Representative. She earlier was a Bigelow Fellow at the University of Chicago Law School and clerked for Judge Phyllis A. Kravitch of the U.S. Court of Appeals for the Eleventh Circuit. Brewster has also taught at the University of Hamburg's Institute of Law and Economics and the University of St. Gallen.

Brewster received her BA and JD from the University of Virginia, where she was an articles editor for the *Virginia Law Review*. She holds a PhD in political science from the University of North Carolina at Chapel Hill, where she received the John Patrick Hagan Award for Excellence in Undergraduate Teaching.

Said Levi: "Rachel Brewster is one of the leading scholars in her fields. She writes on important topics and her work is influential and much admired. She is a terrific and collaborative colleague in the Law School and across the university. I know that Jeff Hughes was so very pleased that Rachel would hold this chair in his and Bettysue's name."

Jeff Hughes '65, who died in February, and Bettysue Hughes WC '65, established the chair that bears their name during the *Duke Forward* fundraising campaign with support from the Stanley A. Star Matching Gift Fund. The couple have a long record of support for Duke Law, where Jeff was a life member of the Board of Visitors and a past chairman of the Global Capital Markets Center (now the Global Financial Markets Center) and chaired the Campaign for Duke Law School in the 1990s.

"Duke Law School has such an impressive record of excellence in teaching and scholarship, so it is real honor to receive a distinguished chair here," said Brewster. "I am also grateful to Jeff and Bettysue Hughes for endowing the chair. They have a long history of philanthropy and service to Duke Law School, and I hope to follow in their legacy of leadership, professionalism, and generosity." ♡

Garrett joins faculty as inaugural L. Neil Williams, Jr. Professor of Law

Brandon Garrett, previously the White Burkett Miller Professor of Law and Public Affairs and Justice Thurgood Marshall Professor of Law at the University of Virginia, is a prolific scholar on a range of matters related to criminal justice outcomes, evidence, and constitutional rights, and a renowned authority on criminal procedure, wrongful convictions, habeas corpus, corporate crime, scientific evidence, civil rights, civil procedure, and constitutional law. His ongoing projects, which employ multiple empirical research methodologies, focus on forensic science, eyewitness identification, corporate crime, constitutional rights and habeas corpus, and criminal justice policy. (Read about Garrett's scholarship on page 18.)

The L. Neil Williams, Jr. chair honors an alumnus who left a legacy of leadership and generosity at Duke Law School and Duke University. Williams, a member of the Class of 1961 who earlier majored in history at Duke University, was a partner at Alston & Bird in Atlanta. He chaired the Duke University

Board of Trustees from 1983 to 1988, was a founding member of the Duke Law Board of Visitors, and was chair of The Duke Endowment when he died in 2012.

"I could not be more gratified to be joining the Duke faculty as the inaugural L. Neil Williams, Jr. Professor of Law," said Garrett. "The chair honors Williams' leadership and service to legal education and the public interest. I hope to do justice to that remarkable legacy as part of the Duke Law community." ♡



Blocher receives inaugural Lanty L. Smith '67 Professorship

Joseph Blocher is a scholar of federal and state constitutional law, the First and Second Amendments, legal history, and property. His current scholarship addresses issues of gun rights and regulation, free speech, sovereignty, and refugee law, and regularly appears in leading law journals. He is the co-author of two books: *Free Speech Beyond Words* (NYU Press, 2017) (with Mark Tushnet and Alan Chen), and *The Positive Second Amendment: Rights, Regulation, and the Future of Heller*, forthcoming in the fall from Cambridge University Press (with Darrell Miller).

A Durham native, Blocher joined the faculty in 2009 and received the Law School's Distinguished Teaching Award in 2012. He clerked for Judge Guido Calabresi of the U.S. Court of Appeals for the Second Circuit and Judge Rosemary Barkett of the U.S. Court of Appeals for the Eleventh Circuit. He also practiced in the appellate group of O'Melveny & Myers, where he assisted the merits briefing for the District of Columbia in *District of Columbia v. Heller*.

Blocher received his BA, *magna cum laude* and Phi Beta Kappa, from Rice University, and studied law and economic development as a Fulbright Scholar in Ghana and as a Gates Scholar at Cambridge University, where he received an MPhil in Land Economy. He received his JD from Yale Law School, where he served as comments editor of the *Yale Law Journal*, symposium editor of the *Yale Law & Policy Review*, and notes editor of the *Yale Human Rights & Development Law*

Journal, participated in or directed several clinics, and was co-chair of the Legal Services Organization.

"Joseph Blocher is a wonderful scholar of the First and Second Amendments," said Levi. "He is a terrific colleague and mentor to his students. He is Durham born and bred, and it is particularly fitting that he should hold the Lanty Smith chair." Colleagues, family, and friends established the Lanty L. Smith '67 Professorship in 2017, using matching funds from The Duke Endowment to honor Smith's decades of devoted volunteer and philanthropic leadership at Duke Law School and Duke University.

"I'm thrilled and honored to receive a distinguished chair at Duke University," said Blocher. "Receiving this chair is particularly meaningful to me because of Lanty Smith's longstanding commitments and contributions to Duke Law students and to my home state of North Carolina. Having a professorship in his name sets very high expectations for accomplishment, integrity, and service, and I will do all I can to live up to them." 🐾



Wettach receives the William B. McGuire Clinical Professorship



Jane Wettach, who directs the Children's Law Clinic and teaches Education Law, is a recognized expert on issues involving the educational rights of children, especially in the areas of school discipline and special education for children with disabilities. She was the keynote speaker at the Minnesota Human Rights Symposium in December 2017, speaking on alternatives to suspensions and expulsions, and was honored by the North Carolina Justice Center with its 2010

"Defender of Justice Award" in the area of litigation.

Wettach joined the Duke Law faculty in 1994 after practicing poverty law for 13 years with Legal Aid offices in Raleigh and Winston-Salem, developing particular expertise in the law of government benefits. She has argued cases in the U.S. Supreme Court and the North Carolina Supreme Court, among other appellate courts. Prior to establishing the Children's Law Clinic in 2002, she served as supervising attorney in Duke's AIDS Legal Project and as an instructor in the Legal Writing Program.

Wettach, who received her BA in 1976 and her JD in 1981 from the University of North Carolina at Chapel Hill, is the author of A

Parents' Guide to Special Education in North Carolina and *School Vouchers in North Carolina — The First Three Years*; co-author of *Instead of Suspension: Alternative Strategies for Effective School Discipline* and *Welcoming Immigrant Children to School: A Report of North Carolina School Districts*; and a contributing author to *Special Education Advocacy* (LexisNexis, 2011) and *Guide to Student Advocacy in North Carolina*. Earlier publications included *The Advocate's Guide to Assistance Programs in North Carolina* and *A Consumer's Guide to Health Insurance and Health Programs in North Carolina*.

"Jane Wettach is a leader in the field of education law," said Levi. "She is revered for her work in the Law School clinic, and in the community more generally."

Established in 2011, the McGuire professorship is designated for an academic who also has a distinguished career in practice. McGuire, who died in 2012 at the age of 102, was a 1933 law graduate and the president of Duke Power Company from 1959 to 1971. He served in multiple leadership positions at Duke Law School and Duke University and with The Duke Endowment.

Wettach said she was "honored and humbled" to receive the chair named for McGuire, who was known for his sharp intellect, unquestionable integrity, insightful wisdom, and humble demeanor. "It is a privilege to work at Duke Law School, and I am proud to have been a part of the growth of our clinical program over the last two decades," she said. 🐾

Newman awarded the Charles S. Rhyne Clinical Professorship

Theresa Newman co-directs the Wrongful Convictions Clinic and is associate director of the Center for Criminal Justice and Professional Responsibility and faculty adviser to the student-led Innocence Project. A member of the faculty since 1990, she served as the first director of the Law School's Legal Writing Program and as associate dean for academic affairs from 1999 to 2008.

Newman is a member of the board and a past president of the international Innocence Network, an affiliation of more than 65 organizations dedicated to providing pro bono legal and investigative services to individuals seeking to prove their innocence and working to redress the causes of wrongful convictions. She has also served as president of the North Carolina Center on Actual Innocence, a nonprofit organization she helped found, which is dedicated to assisting wrongly convicted North Carolina inmates obtain relief, and a member of the N.C. Chief Justice's Criminal Justice Study Commission (formerly the Commission on Actual Innocence), the N.C. Chief Justice's Commission on Professionalism, and the N.C. Bar Association Administration of Justice Committee. In April, Newman received the Duke Law Alumni Association's A. Kenneth Pye Award for Excellence in Education.

"Theresa Newman is universally admired for her work on wrongful convictions," said Levi. "She is a dedicated colleague and teacher who inspires her students with her own passion for this work."

After graduating from Duke Law in 1988, Newman clerked for Judge J. Dickson Phillips, Jr. on the U.S. Court of Appeals for the Fourth Circuit and then practiced in the civil litigation group of Womble Carlyle Sandridge & Rice in Raleigh.

"I still remember my first day as a student at Duke Law School, many years ago now, and my feelings of excitement, awe, delight, and of course some fear," she said. "Now, being awarded the Charles S. Rhyne Clinical Professorship, I feel all but the fear once again. I love Duke Law School, and teaching our students has been the honor of my life. So, to have my role in their lives recognized this way is wonderful." 🐾



Baxter becomes first David T. Zhang Professor of the Practice of Law



Lawrence Baxter, who previously held the McGuire professorship, is the faculty director of the Global Financial Markets Center and focuses his teaching and scholarly research on the evolving regulatory environment for financial services. He also has published extensively in the areas of U.S. federal and state administrative law, domestic and global banking and regulation, fintech, comparative law, jurisprudence, criminal law

(U.S. and Australia), legal writing, constitutional law (non-U.S.), and professional training and responsibility.

A tenured member of the Duke Law faculty from 1986 to 1995, Baxter rejoined the Law School in 2009 as a visiting professor of the practice after serving in executive positions at Wachovia Bank. He teaches courses relating to domestic and international banking regulation, law, business practice, and public policy.

Baxter received his LLB and BComm, Business from the University of Natal, where he also received a PhD in Law and Government Regulation. He received his Diploma in Legal Studies and LLM at the University of Cambridge.

"Lawrence Baxter is one of our leading observers of global financial markets and institutions," said Levi. "He unites his experience in banking with his academic scholarship to develop original insights and to inform his teaching. A thoughtful and creative colleague who excels at everything he does, Professor Baxter is the perfect faculty member to inaugurate the Zhang chair."

Yibing Mao '89 and David Zhang endowed the David T. Zhang Professorship in 2016, with matching gift support from The Duke Endowment through the Duke Law Faculty Endowment Challenge. Hong Kong residents, the couple are long-time philanthropic supporters of Duke University. Mao, a member of the Law School's Board of Visitors and Global Leaders Scholarship Program selection committee, is the general counsel and senior vice president of asset management and owner relations for Marriott International. Zhang is the senior corporate partner in the Hong Kong office of Kirkland & Ellis.

"I am honored to be the first recipient of the David T. Zhang chair," said Baxter. "The gift by Yibing Mao and David Zhang could not be more timely. The worldwide enrollments for Duke Law's financial law, business, and regulation courses demonstrate how truly globalized financial services have now become. We are excited to teach students and conduct research that engages U.S. and foreign students, from wherever they hail, in virtually the same way. The enterprise is mutually inspiring for domestic and global scholars and students." 🐾



Figuring Out the Tax

Zelenak's new book recounts the early development of U.S. federal income tax

PROFESSOR LAWRENCE ZELENAK'S NEW BOOK chronicling the early development of the federal income tax grew out of his curiosity about two provisions of the law that give taxpayers basis in situations where no tax has actually been paid: the tax-free step-up in basis at death and the charitable deduction for unrealized appreciation in donated property.

"Basis, or cost of property, is a fundamental tax concept that is supposed to reflect amounts on which you've already paid tax," said Zelenak, the Pamela B. Gann Professor of Law. "These provisions, which have been around almost since the beginning of the federal income tax in 1913, seem to be the result of naïve conceptual mistakes rather than policy decisions to subsidize death in one case and charitable contributions in the other, but nobody had tracked down the details." Finding that policymakers had spotted the errors early on, he was surprised by their reaction. "In one case, the mistake was recognized but not corrected," he said. "Even though they fixed the same basic mistake regarding *inter vivos* gifts, they didn't fix the mistake regarding property transferred at death. And maybe even more surprising, in the case of the charitable deduction, they fixed the mistake in 1920 and then un-fixed it in 1923, and it's with us today."

Zelenak's delight in uncovering the story behind those early errors led him to research the source of other possibly dubious policy choices made by Congress and the U.S. Department of the Treasury in the first decade of the federal income tax regarding the treatments of marriage, capital losses, charitable contributions, homeownership, among other matters, as well as the key figures (and one newspaper's advice column) that helped draft, shape, and clarify U.S. tax law. He spoke to *Duke Law Magazine* about *Figuring Out the Tax: Congress, Treasury, and the Design of the Early Modern Income Tax* (Cambridge University Press, 2018).

DUKE LAW MAGAZINE: Your story starts with Cordell Hull writing the tax. Who was he?

LAWRENCE ZELENAK: This is a remarkable guy. He wrote the 1913 income tax almost singlehandedly as a young Democratic congressman from Tennessee. He volunteered for the task because he was obsessed with the goal of there being a federal income tax — he thought tariffs were oppressively regressive — and he was willing to do anything to make that happen. He had studied everything he could get his hands on about income tax for about 10 to 15 years prior to actually writing the 1913 income tax. Much later, Hull was Roosevelt's secretary of state, and he still is the longest-serving secretary of state in U.S. history. He won the Nobel Peace Prize in 1945 for his role in founding the United Nations. So he has a strong claim to being the father of both the federal income tax and the United Nations, which would make him more popular in some circles than in others.

I spend some time in the book, with the benefit of a century's worth of hindsight, criticizing him for having screwed up some things. In particular, it seems incredible that he seems to never have thought about the taxation of capital gains. People would ask him, "How would your income tax treat capital gains," and he gave a different answer every time.

So one can be critical, but he did a good enough job that when, four years later, the country needed a whole bunch of new revenue to finance participation in the Great War, the income tax was pressed into service for that purpose and it worked. And after that, it became the major revenue source for the federal government and has remained that for more than a century. The acorn Hull planted in 1913 has grown into, for better or worse, the oak we have today.

DLM: You note that in the beginning, exemption levels were high and tax rates were low.

LZ: Hull was up front about the fact that the tax would start on a small scale to get the technical stuff right while there weren't a whole lot of taxpayers and tax dollars involved. To paraphrase, he said, "Once we get it right, based on experimentation with a small percentage of the population and the low rate of tax, we can gradually lower the exemption levels and increase the rates." He foresaw, in 1913, that this would become the major federal revenue source eventually. I don't think a lot of other people shared his vision, but it turned out that he was absolutely right. And to some extent, it happened faster than anyone expected

because of the war. The top rate in 1913 was 7 percent. By the middle of the war, the top rate was 77 percent.

DLM: Hull favored a flat tax, but the tax enacted was progressive. How has that original choice played out?

LZ: Hull's main concern was trying to keep the tax really simple at the beginning so that it would be easy to administer, and he thought that the progressive rates would not work well with withholding. The 1913 tax had withholding, and he was absolutely right, it turned out to be kind of a disaster. By 1917 Congress ended up repealing withholding and going with just information reporting. WWII brought withholding back and it's been with us ever since. So the irony is that WWI killed withholding and then WWII brought it back.

DLM: What problem was corrected by making the income tax "tax-inclusive," as happened in 1917?

LZ: In 1913, Congress didn't even think about whether the income tax should be deductible against itself — whether you should be able to decrease the amount of income subject to tax by the amount that you pay as federal income tax. But they wrote a rule which, taken literally, allowed that deduction. That doesn't matter much when the rate of the tax for most of the people who are subject to it is just 1 percent. It matters *hugely* if the top tax rate is 77 percent. So finally, in 1917, they focused just on this question, basically because they had to. If they had continued to allow this deduction, the only way they could have raised the amount of revenue they wanted to raise would have been with tax rates over 200 percent — which would have been a political problem, right?

When World War I and the need for much more revenue forced them to focus on the issue, they finally paid attention to it and got it right, but there were a lot of strident complaints about it: "If you don't allow the deduction, then it's a tax on a tax" — which in a way is true, but I'm not sure what conclusion can be legitimately drawn from that. This is a short chapter where the story is completely told in four years.

DLM: How did a newspaper column help shape the early tax law?

LZ: In the process of researching the book, I stumbled across this *Wall Street Journal* column called "Answers to Inquirers," which had started out a decade before the enactment of the income tax as a column for asking questions about investment strategies. But when the income tax was enacted, this column started getting a lot of questions from ordinary taxpayers. Of course, to be subject to the tax at all, you had to be, certainly, within the top 5 percent of the income distribution, so let's put it this way: they were ordinary readers of the *Wall Street Journal*.

Every way that the tax impacted ordinary affluent individuals is reflected in that column over about a decade. One thing I found especially intriguing was that there were a number of instances in which Congress or Treasury came up with rules that didn't make good sense, and these ordinary taxpayers write to the *Wall Street Journal* saying, "I don't understand this rule, it's crazy," and they are absolutely right, yet Congress and Treasury don't get that it's crazy. There were a lot of instances of that.

Probably the best instance where people were writing into the *Journal* saying, 'this is crazy' where Congress in fact finally realized it was and fixed it, was the rule that was in effect from 1913 to 1921 that if you owned, say, appreciated stock, and gave it to a relative, including a spouse, and had the relative sell the property, neither you nor the relative would be taxed on the gain. So all you had to do to avoid tax on the sale of stock or real estate was to

make a gift of it to a relative and have the relative sell it. That's obviously a very pro-taxpayer rule. Nonetheless, a lot of people wrote into the *Journal*, saying, "Is this really the rule? It makes no sense." And in 1921, Congress fixed it.

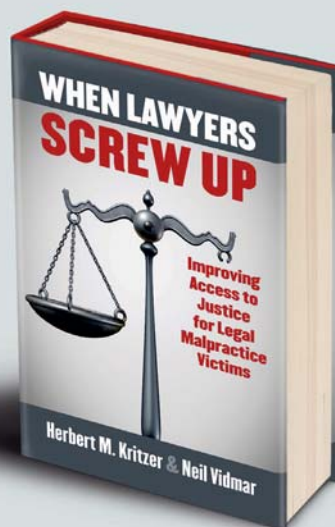
DLM: Why did some early errors get corrected while others remained?

LZ: The short version is pretty simple: Errors tended not to be corrected if two things were true. One: if they were taxpayer-favorable errors that developed constituencies. A classic example of that is the charitable deduction for unrealized appreciation of art and stock. The big constituencies are art museums and universities and their wealthy donors. But that's only one part of the two-part requirement for the error to persist. The second is that, in revenue terms, the error is small enough that the federal government can afford to live with it.

I'll give you two errors that were so expensive that they had to be corrected. One was the tax-exclusive income tax — allowing the tax to be deductible against itself. It had to be corrected because you couldn't raise the amount of revenue that you needed to raise to carry on World War I without fixing that. The other, and maybe even better example, is the contrast between the two tax-free step-up in basis rules. To have continued to allow the tax-free step-up in basis for *inter vivos* gifts would have been the functional equivalent of repealing the capital gains tax, and Congress decided it couldn't afford that. But the revenue impact of the tax-free step-up in basis at death, although very significant, wasn't of the same magnitude, because you could take advantage of it only once, when you died. And so Congress could afford to continue that, and sure enough, it did.

DLM: What lasting lesson can be drawn from the collection of errors and dubious choices you found in the early history of the federal income tax?

LZ: Going forward, the most obvious lesson probably has more application to other areas of the law than to the income tax itself. That is: When you are developing a big, important, new law from scratch — and the moral is easier to state than to follow in practice — you cannot be too careful to get it right the first time, because mistakes may develop constituencies and may become hard to fix for that reason. If you don't get it right the first time, you may never be able to fix it, or it may even result in torpedoing the whole law. I think we've seen some illustrations of that lesson in the history of Obamacare. ♡



When Lawyers Screw Up

Vidmar and co-author study legal malpractice

What happens when lawyers make mistakes? While certain professional errors may result in disciplinary action by bar regulators, lawyers' civil liability to their clients isn't always clear-cut as Professors Neil Vidmar and Herbert Kritzer observe in a new book.

Vidmar, the Russell M. Robinson II Professor Emeritus of Law, and Kritzer, the Marvin J. Sonosky Chair of Law and Public Policy at the University of Minnesota Law School, report on their comprehensive empirical study of lawyers' professional liability in *When Lawyers Screw Up: Improving Access to Justice for Legal Malpractice Victims* (University Press of Kansas, 2018). Their subtitle hints at a key finding: Some clients fail to obtain redress for their attorneys' mistakes or negligence, even when they have suffered significant harm.

Not all professional errors are actionable and legal malpractice can often be unclear, said Vidmar, who has also extensively studied medical malpractice claims and outcomes: "If a lawyer tells a client, 'Well, we couldn't do anything about your problem,' the client might be disappointed, but perhaps accept it." Actionable claims — which can arise from negligence, breach of contract, breach of fiduciary obligations, or intentional torts — also face hurdles that often preclude remedies. In some states, for example, the statute of limitations for claims begins to run from the date the error was made, a point at which clients are likely unaware of any problem, and by the time it becomes evident, the statute of limitations has expired. Generally claims arising from errors in criminal representation demand that plaintiffs essentially prove their innocence. And the key question in negligence claims is whether the client would have prevailed if the lawyer had not made the mistake.

Their study exposed major differences in the frequency, types, and results of claims faced by lawyers in the corporate services sector and by lawyers who serve individuals and small businesses, a divide corresponding to what has been called the "two hemispheres of lawyers' professional responsibility

claims." Lawyers in big firms serving corporate clients face fewer claims, possibly because review procedures are built into their teams' work flow. But a key difference between the hemispheres, write Vidmar and Kritzer, "is the ability of clients to obtain redress when an error has caused some loss."

While corporate-sector losses, when proven, tend to be far higher than those that emerge from the personal-services sector, most large law firms carry liability insurance that can be used to pay a judgment or settlement. By contrast, the few claims successfully litigated against solo practitioners and small firms often go unsatisfied due to the defendants' lack of insurance, Vidmar and Kritzer found. Those claims are seldom even brought, and the few that are often go uncollected. The authors note that as of 2016, only Oregon required all attorneys to have professional liability coverage.

Further, while many lawyers specialize in medical malpractice claims, few attorneys handle more than a handful of legal malpractice matters in their practices and many lack expertise in prosecuting claims. In fact, relatively few lawyers will take a case based on legal error unless liability is clear, damages are high — usually above \$100,000 — and (again) the defendant attorney is insured. "Sometimes they turn you away simply because the claim isn't worth their time," said Vidmar. He added that attorneys are likely to demand hourly payment for legal malpractice claims in the corporate sector; most claims in the personal services sector are based upon contingency fees, although in some instances they may convert to contingency fees after an hourly cap is reached.

Plaintiffs who file legal malpractice cases almost inevitably face motions for summary judgment, Vidmar and Kritzer report. Plaintiffs win about half of the cases that do reach trial, an unusually high percentage of which are bench trials. Their success at trial is fairly typical of torts other than medical malpractice.

The authors end their book with a series of proposals designed to mitigate the access-to-justice problem. Among these: requiring lawyers to disclose to clients whether or not they carry insurance and any lapses in coverage; strongly incentivizing insurance coverage by automatically suspending the license of a lawyer who fails to pay a malpractice settlement or judgment; implementing a form of alternative dispute resolution system for claims rooted in lawyers' professional liability; requiring lawyers found liable or who settle malpractice claims to pay the plaintiffs' reasonable legal fees; and both lengthening statutes of limitation periods for legal malpractice claims and having the "clock" start running from either the date damages accrue or when the plaintiff became aware or reasonably should have known of the error. ♡

Faculty Notes



Professor **Francis McGovern** is serving as one of three special masters helping to explore the possibilities of comprehensive settlement in the massive multidistrict litigation stemming from the opioid crisis. U.S. District Judge Dan Polster of the Northern District of Ohio, who was assigned by the Judicial Panel on Multidistrict Litigation to oversee hundreds of cases filed by governmental entities against the drug industry, appointed McGovern to the post in February.

An expert in multidistrict litigation, McGovern has pioneered the use of alternative dispute resolution (ADR) techniques to avoid or improve litigation and forged new roles for court-appointed special masters as “case managers” and “settlement masters.” As a case manager, he organizes the pre-trial administration of a case and uses ADR techniques to help the parties agree on efficient discovery approaches and schedules. As a settlement master, which has often required that he develop innovative ways to implement potential settlements, he has created sophisticated computerized models of the valuation of massive claims that help parties narrow the range of reasonable settlement amounts and settle more quickly.

McGovern has helped resolve such significant mass claim litigation as the DDT toxic exposure litigation in Alabama, the Dalkon-Shield controversy, the silicone gel breast implant litigation, the lawsuits arising out of the 2003 fire at The Station nightclub in West Warwick, R.I., and the complex claims arising from the 2010 Deepwater Horizon/BP oil spill. As special master, he is also working to reform the foster care system in Texas and abate the mold in public housing owned by the New York City Housing Authority. ♡

Dean **Kerry Abrams** and Professors **Christopher Schroeder** and **Neil Siegel** have been elected to membership in the American Law Institute (ALI).

ALI members are distinguished lawyers, judges, and legal academics who produce scholarly work to clarify, modernize, and otherwise improve the law through publication of the highly influential Restatements of the Law, model statutes, and principles of law. Abrams, Schroeder, and Siegel are among 34 individuals whose election to membership was announced by ALI on July 19.

Abrams, the James B. Duke and Benjamin N. Duke Dean of the School of Law and professor of law, teaches courses in immigration, citizenship, and family law, and is well-known for scholarly writing on family-based migration, the legal regulation of immigrant families, the history of immigration law, and constitutional family rights. She is an adviser on ALI’s Children and the Law project, which the group’s website describes as aiming “to present a contemporary conception of parental rights and authority with the promotion of child welfare as a core goal, while grappling with questions about the legal personhood of children.”



Abrams



Schroeder



Siegel

Schroeder is the Charles S. Murphy Professor of Law and Public Policy Studies and founder and longtime co-director of the Program in Public Law. He focuses his scholarship and teaching on a wide range of issues relating to presidential powers and the executive branch and environmental law, regulation, and policy. He returned to the Duke Law faculty in 2012 after serving for nearly three years as assistant attorney general in the Office of Legal Policy at the United States Department of Justice. Schroeder is an adviser on ALI’s Data Economy project, which “aims to develop a set of transnational principles to provide guidance to parties in the data economy, as well as to courts and legislators worldwide,” according to its website.

Siegel, the David W. Ichel Professor of Law and Professor of Political Science and director of the

Duke DC Summer Institute on Law and Policy, teaches and writes in the areas of U.S. constitutional law, constitutional theory, and federal courts. A former clerk to U.S. Supreme Court Associate Justice Ruth Bader Ginsburg, he is serving as special counsel to Sen. Christopher Coons during the Supreme Court confirmation hearing of Brett Kavanaugh. He previously advised Coons during the hearing of Neil M. Gorsuch and served as special counsel to Sen. Joseph R. Biden during the hearings of John G. Roberts and Samuel A. Alito. Siegel is a former co-director of the Program in Public Law.

Thirty Duke Law faculty scholars and more than 50 alumni are members of ALI. Many faculty participate as reporters, advisers, or consulting members on the group’s projects, including current projects on sexual assault, student sexual misconduct, government ethics, policing, conflict of laws, and other topics. David F. Levi, the Levi Family Professor of Law & Judicial Studies and Director of the Bolch Judicial Institute at Duke Law, is the organization’s president. ♡



Professor **Michael Frakes** has co-authored a Brookings Institution report with proposals designed to reduce the grant of invalid patents. Frakes and Professor Melissa Wasserman, the Charles Tilford McCormick Professor of Law at the University of Texas at Austin, build on new empirical evidence to propose three changes to the patent system that would reduce the issuance of invalid patents: (1) restructuring the Patent Office's fee schedule to minimize the risk that fee collections will be insufficient to cover its operational costs, while also diminishing its financial incentive to grant patents when collections are insufficient; (2) limiting the number of repeat applications that applicants can file for the same invention; and (3) increasing the time examiners spend reviewing patent applications. The report is titled "Decreasing the patent office's incentives to grant invalid patents." ♫



Darrell Miller, the Melvin G. Shimm Professor of Law, has been appointed to a bipartisan advisory board of leading scholars to assist the National Constitution Center in the development of an exhibit devoted to exploring the constitutional debates and key figures central to the formation and ratification of the 13th, 14th, and 15th Amendments to the U.S. Constitution. Jeffrey Rosen, the center's executive director, announced plans for the exhibit, which will open next spring, as well as the formation of the advisory board on July 9, the 150th anniversary of the ratification of the 14th Amendment. Miller writes and teaches in the areas of civil rights, constitutional law, civil procedure, state and local government law, and legal history, and is a leading scholar of the Second and 13th Amendments. ♫

Clinical Professor **Allison Rice**, director of the Health Justice Clinic, received the American Bar Association's Alexander D. Forger Award for Sustained Excellence in the Provision of HIV Legal Services and Advocacy on Feb. 23 at the ABA AIDS Coordinating Committee's bi-annual HIV Law & Practice Conference in New Orleans. The Forger Awards were established in 2012 to honor individuals and organizations for their longtime provision of HIV legal services and other forms of advocacy.

In the Health Justice Clinic, Rice supervises students in their legal representation of individuals living with HIV and AIDS, cancer, and other serious health conditions. She also teaches in the HIV/AIDS Policy Clinic, where she works with students on policy projects that have included monitoring and evaluating health plans offered through the Affordable Care Act with respect to their suitability for people living with HIV and advocating with North Carolina policymakers for expanded insurance cost assistance in the North Carolina AIDS Drug Assistance Projects (ADAP) program, among others. She is engaged in state and national HIV/AIDS policy research and advocacy focused on health care access and is a regular speaker and trainer on HIV legal issues, presenting to medical providers, case managers, government officials, and community members. She has also been a board member of the North Carolina AIDS Action Network. ♫



Associate Clinical Professor **Jeff Ward JD/LLM '09**, director of the Center on Law & Technology, was named to the 2018 "Fastcase 50" list of entrepreneurs, visionaries, and innovators in the area of law and legal technology in July. Fastcase cited Ward's work in helping law students explore new technologies and understand how they will affect the law, and noted his leadership of the Duke Law Tech Lab, a pre-accelerator program for legal technology start-ups, and the Access Tech Tools initiative, which helps students employ human-focused design thinking to enhance access to legal services. Ward's courses include a seminar titled Frontier Robotics & AI: Law & Ethics, which examines the social policy implications of technology, and Designing Creative Legal Solutions, in which students work to help community organizations solve legal challenges through tech-assisted innovation. ♫

Carolyn McAllaster, the Colin W. Brown Clinical Professor of Law, received the North Carolina Justice Center's 2018 "Defender of Justice Award" in the area of policy research and advocacy on June 8. The award honors her longstanding advocacy on behalf of people living with HIV and AIDS in North Carolina and beyond. The founder of Duke Law School's Health Justice Clinic — formerly the AIDS/HIV and Cancer Legal Project — and director of the HIV/AIDS Policy Clinic, McAllaster also serves as project director for the Southern HIV/AIDS Strategy Initiative (SASI), advocating for increased federal resources to stop the spread of HIV in the South, which has the highest rates of new infection and HIV-related deaths in the United States. She also engages in national and global policy advocacy.

Kim-Marie McLellan, deputy director of gifts and endowments at the N.C. Justice Center, called McAllaster "an inspiration" in the research and advocacy field. "Her groundbreaking research has led to significant changes for those living with HIV and AIDS," said McLellan. "Most impressively, Carolyn began this work at time when no clinical education program existed in the Duke Law School. She transformed her early efforts into an AIDS law clinic at a time when there was tremendous misinformation and fear around the disease." ♡



The Wrongful Convictions Clinic received the 2018 Charles A. McLean Award from the North Carolina chapter of the NAACP on Jan. 29. Clinic faculty — co-directors **James Coleman, Jr.**, the John S. Bradway Professor of the Practice of Law, Charles S. Rhyne Clinical Professor of Law **Theresa Newman '88**, and Associate Clinical Professor and Supervising Attorney **Jamie Lau '09** — were praised for teaching students about the causes of wrongful convictions and training them to investigate and, where necessary, litigate on behalf of incarcerated clients with probable claims of innocence. The work of the Duke Center for Criminal Justice and Professional Responsibility, of which Coleman and Newman are director and associate director, respectively, was also acknowledged; the center has partnered with the chapter on amicus briefs supporting North Carolina's Racial Justice Act and public outreach aimed at improving the criminal justice system. The award is named for the chapter's first field director. ♡



Coleman

Newman

Lau

Senior Lecturing Fellow **Jennifer L. Behrens**, the interim director and head of reference services for the J. Michael Goodson Law Library, received a 2018 American Association of Law Libraries (AALL) Award for her article, "Beyond 'The Annals of Murder': The Life and Works of Thomas M. McDade," at the association's annual meeting in Baltimore in July. Behrens' article compiles McDade's body of work, including his best-known research on American murder cases, into an annotated bibliography, and examines his life and varied career as an early FBI agent, World War II veteran, corporate executive, and true crime chronicler. She writes that for more than

40 years, "McDade contributed regularly to journals and magazines on far-flung topics: true crime literature, naturally; but also book collecting, law enforcement, accounting, and Sherlock Holmes minutiae, to name a few." The manuscript is available through the Law School's open access scholarship repository.

The AALL Awards Program was established to publicly recognize the achievements of law librarians for their service to the profession and contributions to legal literature and materials. Behrens' paper won the Open Division of the 2018 AALL/LexisNexis Call for Papers Competition. ♡



Clinical Professor **Casandra "Casey" Thomson** received the Duke Bar Association's 2018 Distinguished Teaching Award on April 3.

Thomson, who was in private practice before joining the faculty in 2015, teaches first-year Legal Analysis, Research, and Writing as well as Writing in Civil Practice: Sports Arbitration and Negotiation. In nominating her for the award, students praised her mentoring skills, inspirational and creative teaching style, and "the precision and helpfulness of her feedback," said DBA Academics Chair Tanya Smith '19, who presented the award. "One student wrote: '[Professor Thomson] is warm, sharply competent, and accessible. She epitomizes Duke Law's holistic approach to teaching. She deserves this award and every award available.'"

Thomson said winning the Distinguished Teaching Award, which is supported by the Class of 1967, was "the greatest honor" of her career: "What some may call a 'job,' I consider a privilege — to spend each day in an intellectually stimulating environment surrounded by incredible scholars and accomplished practitioners who are so supportive of one another. But, more importantly, it is a privilege to work with such brilliant and talented students." ♡



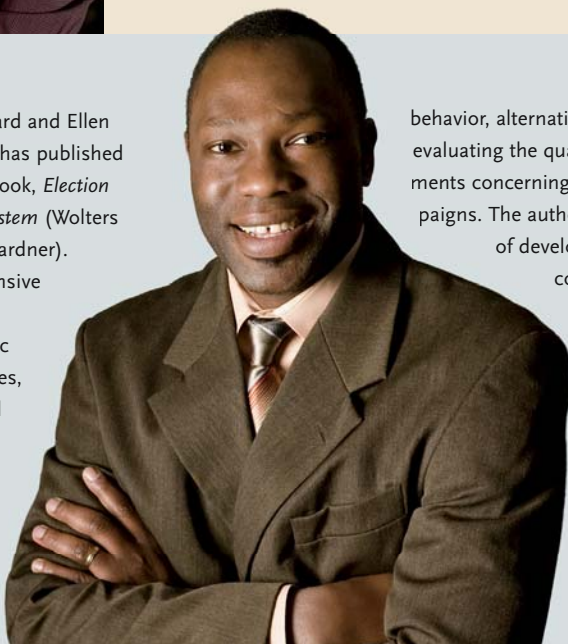
Jack Knight, the Frederic Cleveland Professor of Law and Political Science, has edited two newly published collections in the NOMOS series of thematic essays from scholars of law, political science, and philosophy affiliated with the American Society for Political and Legal Philosophy.

The eight essays in *Immigration, Emigration, and Migration* (NYU Press, 2017) (NOMOS LVII) examine questions of border control and enforcement, criminalization of borders, and how current debates and changes regarding migration and immigration can be addressed or resolved. They reflect a variety of perspectives and emerge from a range of disciplines on matters of policy, practice, and philosophy of migratory and border practices.

Compromise (NYU Press, 2018) (NOMOS LIX) offers a range of perspectives, in both disciplinary and substantive terms, on representation, political morality, disagreement, negotiation, and various forms of compromise in social and political affairs. In addition to covering such specific topics as alternative dispute resolution and conscientious objection, the 10 essays in the collection address such questions as whether lawmakers have a greater ethical obligation to compromise than do ordinary citizens, and the issues and challenges that can arise when lawmakers concede to compromise for the sake of reaching resolution.

Knight is a political scientist and legal theorist whose books include *The Priority of Democracy: Political Consequences of Pragmatism* (Princeton University Press, 2011) (with James Johnson) and *The Choices Justices Make* (Congressional Quarterly Press, 1998) (with Lee Epstein). ♡

Guy-Uriel Charles, the Edward and Ellen Schwarzman Professor of Law, has published the second edition of his casebook, *Election Law in the American Political System* (Wolters Kluwer, 2018) (with James A. Gardner). The casebook offers comprehensive coverage of the legal rules and doctrines that shape democratic participation in the United States, contextualizing topics and legal doctrine with background readings and expository material. Material new to the second edition covers such topics as identity theory of voting



behavior, alternative electoral systems, emerging metrics for evaluating the quality of election administration, and developments concerning the advent of “fake news” in election campaigns. The authors also expand the casebook’s coverage of developments regarding independent districting commissions, judicial elections, legal standards to adjudicate partisan gerrymandering, and the concept of “wisdom of the multitude.”

The founding director of the Duke Law Center on Law, Race and Politics, Charles is an expert in and frequent public commentator on constitutional law, election law, campaign finance, redistricting, politics, and race. ♡

George Christie, the James B. Duke Emeritus Professor of Law, has published the third edition of his casebook, *Advanced Torts: Cases and Materials* (West Academic Publishing, 3rd ed. 2018) (with Joseph Sanders). Designed for students who have already had a basic torts course, the book includes in-depth materials on such nuanced areas as trespass and nuisance, economic torts, products liability, insurance, tort reform and non-tort compensation systems, intentional infliction of emotional distress, defamation, privacy, misuse of legal process,

and constitutional torts. The third edition also explores the increasing importance of constitutional law when traditional tort law — particularly the torts of intentional infliction of emotional distress, defamation, and privacy — is applied to expressive activities.

Christie has published widely in his chief areas of academic interest, torts and jurisprudence. He is the author, among other books, of *Philosopher Kings? Adjudication of Conflicting Human Rights and Social Values* (Oxford University Press, 2011). ♡



Grant joins Children's Law Clinic as supervising attorney



CRYSTAL GRANT, A LONGTIME ADVOCATE for children with disabilities and clients facing special education issues, has joined Duke Law's Children's Law Clinic as supervising attorney.

Grant was previously a clinical fellow in the Pediatric Advocacy Clinic at the University of Michigan Law School. "She has just the right practice background [for our clinic], and for the past year has very intentionally been in a setting that helps develop clinical teaching skills," said William B. McGuire Clinical Professor of Law Jane Wettach, who directs the Children's Law Clinic.

In addition to advocating for low-income children on matters relating to special education and school discipline, the clinic partners with several medical practices, taking referrals to help children establish eligibility for public benefit programs or to solve legal problems that are interfering with a child's overall well-being. Grant's training in both social work and law dovetails well with the clinic's priorities, Wettach said.

Grant majored in social work at Andrews University and then pursued her Master of Social Work (MSW) at the University of Michigan, graduating in 2006. Aiming to craft a career devoted to helping children and families, she simultaneously studied law at Michigan State University, receiving her JD in 2007. Her career goals, she said, were to a great extent inspired by having witnessed her disabled brother's struggles in school.

"As I was taking courses, I saw how different systems had failed him and wanted to help change things for children like him," Grant said, noting that a lack of early intervention can lead to lifelong problems. "If you help a child get a good education, you help their future. And I think that is especially true for children in the child welfare system and children in need of special education."

After law school, Grant worked as a recipient rights officer — a municipal investigator looking into complaints made by disabled people against providers — before beginning a clerkship with Chief Judge Janelle A. Lawless in the family division of Ingham County (Mich.) Circuit Court, whose docket included juvenile law, abuse,

and neglect cases. "I learned so much from doing research and writing for her and from observing seasoned attorneys day after day and reading their pleadings," said Grant.

From 2010 until 2017, Grant represented students with disabilities in administrative proceedings, mediation, and state and federal court proceedings as the special education attorney for the Michigan Protection & Advocacy Service, Inc., an independent nonprofit designated by the governor to advocate for and protect the legal rights of people with disabilities.

"I covered the entire state, going to individualized education program meetings, trying to collaborate with parents and school districts, and when there was a dispute that needed to be resolved legally, filing complaints with the Michigan Department of Education or an administrative law judge," she said. The fundamental legal structures governing special education rights — the federal Individuals with Disabilities Education Act and the Americans with Disabilities Act — also apply to students in North Carolina, she said.

Grant said she "fell in love with the clinical model of teaching" through the Pediatric Advocacy Clinic at Michigan Law, and looks forward to working with clinic students and clients at Duke Law. "Jane has such a great reputation and the clinic has been so impactful," she said. "I'm looking forward to contributing to that."

Grant replaces Clinical Professor Brenda Berlin as supervising attorney in the Children's Law Clinic. Berlin, who co-founded the clinic with Wettach in 2002 and was instrumental in establishing Duke Law School's Certificate in Public Interest and Public Service Law in 2017, now holds the post of university ombudsperson at Stanford University. ♡

Veteran prosecutor Stansbury joins LENS as inaugural Robinson Everett Distinguished Fellow

SHANE T. STANSBURY T'95, a veteran federal prosecutor who successfully led major cases in the Southern District of New York involving terrorism, cybercrime, and espionage, has joined Duke Law School as the inaugural Robinson Everett Distinguished Fellow in the Center on Law, Ethics and National Security (LENS) and a senior lecturing fellow.

"Shane is a strong and very welcome addition to the LENS team," said LENS Executive Director Charles Dunlap, Jr., a professor of the practice of law and former Air Force deputy judge advocate. "His time as a prosecutor in one of the most high-profile U.S. attorney's offices in the nation gives him authentic, real-world expertise in the investigation and prosecution of national security cases." In the fall semester, Stansbury is teaching a course titled Investigating and

Prosecuting National Security Cases and a readings seminar that offers students an introduction to cyber law and policy.

Among the prosecutions Stansbury led as an assistant U.S. attorney in the Southern District from 2009 to 2017 were those of Alfonso Portillo, the former president of Guatemala, for money laundering relating to his receipt of millions of dollars in bribery payments; Minh Quang Pham, a former



associate of Anwar al-Awlaki and key operative for al Qaeda in the Arabian Peninsula, for terrorism offenses; Xu Jiaqiang, for his theft of highly sensitive source code with the intent to benefit the Chinese government; and Rafael Garavito-Garcia, for his role in orchestrating an international weapons-and-narcotics trafficking scheme that extended to the highest levels of the Guinea Bissau government.

While in the Southern District Stansbury also served as acting deputy chief of appeals and focused on cyber threats to national security as a member of the U.S. Justice Department's National Security Cyber Specialists Network. He received numerous awards for his government service, including the Attorney General's Distinguished Service Award, the Justice Department's second-highest award, and the Federal Law Enforcement Foundation's Prosecutor of the Year Award.

Prior to entering federal service, Stansbury was a litigator at WilmerHale, where he focused on international litigation and arbitration, foreign anti-corruption investigations, and

white-collar criminal matters. He also represented members of Congress and others in defending the constitutionality of the Bipartisan Campaign Finance Reform Act before the U.S. Supreme Court.

Stansbury clerked for Judge M. Margaret McKeown of the Ninth U.S. Circuit Court of Appeals and Judge Robert W. Sweet of the U.S. District Court for the Southern District of New York. He received his JD from Columbia Law School, where he was articles editor for the *Columbia Law Review*, an MPA from Princeton's Woodrow Wilson School of Public and International Affairs, and an AB from Duke University.

Stansbury said he is delighted to be back at Duke. "Duke has never been content with standing still, and that dynamism is what makes me most excited as I transition from government," he said. "I look forward to contributing to the Law School's already impressive work in the rapidly evolving fields of national security, cybersecurity, and criminal justice." ♡

Ligon '16 named inaugural First Amendment Fellow, clinic supervising attorney

NICOLE LIGON '16 will join the Law School's new First Amendment Clinic in September as a teaching fellow and supervising attorney. She is returning to Duke after practicing First Amendment litigation at Cahill Gordon & Reindel in New York.

As the clinic's inaugural First Amendment Fellow, Ligon will provide day-to-day oversight of students' casework on behalf of clients who claim infringements of their free speech rights, working closely with Professor H. Jefferson Powell, a distinguished scholar of constitutional law who directs the clinic. The clinic, which will welcome its first class of students in the fall semester, is funded by The Stanton Foundation.

"We are very excited that Nicole is returning to Duke Law after an exciting practice focused on first amendment law at Cahill Gordon & Reindel, where she worked with the legendary First Amendment lawyer Floyd Abrams," Powell said. "A wide range of faculty knew her as a student and everyone agrees that she is incredibly sharp and dynamic."

At Cahill, Ligon worked on First Amendment and media law matters regarding reporter's privilege, media's right of access, defamation, commercial speech regulations, and related issues. In March, she and two colleagues were honored by the Center for Appellate Litigation (CAL) for their work in helping its Books Beyond Bars project challenge proposed state packaging restrictions that would have prevented people incarcerated in New York prisons from receiving donated books by mail.

"Because Nicole is coming straight out of one of the nation's leading firms in the free speech area, she has a great sense of what are the cutting-edge issues and important areas in litigation," Powell said.

For Ligon, those include issues concerning the interaction of government and media that have emerged in recent presidential administrations, including that of



President Donald Trump. "It's sometimes alarming to see how the media has been treated," she said. "It has also been interesting to watch rising concerns over campus speech, with some colleges and universities trying to enforce speech codes. That can be problematic from a First Amendment perspective."

Ligon entered law school with a strong interest in First Amendment and media law and gained exposure to artist, recording, and performance agreements, contract drafting, and intellectual property matters during an internship in the Lincoln Center general counsel's office after her first year. In addition to her Law School courses in media law, First Amendment law, entertainment law, and "lots of writing-intensive classes," Ligon said that spending her 2L summer at Cahill helped solidify her career goals, as her responsibilities included researching and drafting memoranda on topics such as the interplay between hostile work environment regulations and the First Amendment as well as free speech issues in the election law context.

"Between the classes I was taking, my summer associate experience, and the current state of media affairs, I realized that I wanted to focus my career on First Amendment and media law issues," she said. She expressed gratitude for the early mentorship of Abrams, who has worked on some of the highest-profile media and First Amendment law cases in recent decades, as well as that of Cahill partner Joel Kurtzberg.

Having been on campus recruiting for Cahill when she first heard about the First Amendment Clinic from Powell, she is thrilled to be part of its launch: "It's an exciting time to work in the First Amendment space, and to work on these important issues at a place like Duke Law is an opportunity I couldn't pass up." ♡



Dimond retires

Dynamic teacher leaves lasting legacy in classroom and on curriculum

AS A FIRST-YEAR STUDENT at Duke Law, Frances Mock '00 found her legal writing instructor, Clinical Professor Diane Dimond, to be “everything you want” in a professor.

“She was a seasoned attorney, wickedly smart, and intensely funny — a delight in the classroom,” says Mock. “She really wanted you to succeed and she showed you how to do it.”

But as “fantastic” as Dimond was in teaching Legal Analysis, Research and Writing (LARW), she was even better at teaching the upper-level Negotiation course, according to Mock. “Each week she provided practical insights into the practice of law,” she says. “She taught us how to be effective negotiators while maintaining our sense of self and our sense of our ethical responsibilities to our clients. That can be a tricky line to navigate as a young lawyer.”

More recently, as a clinical professor who taught LARW for nine years and now teaches Negotiation, Mock discovered that her favorite professor was also a generous colleague and mentor, always willing to share teaching materials as well as strategies and insights for engaging students.

Dimond retired in June after almost 25 years on the Duke Law faculty, having served as director of the Legal Writing Program from 1998 to 2013 and taught more than 50 sections of Negotiation. Dimond, who won the Duke Bar Association’s Distinguished Teaching Award in 2004 and has also taught at the Law School’s summer institutes in Geneva and Hong Kong, has a zeal for teaching that she demonstrated through to her very last class. “She was as engaged, as thoughtful, and as invested in her students this past year as she was 20 years ago when I was a 1L,” says Mock. “She genuinely loves helping the students become lawyers.”

Shaping professionals

Dimond had enjoyed a long career as a litigator in private practice in New York and Raleigh before coming to Duke Law in 1994 to teach Negotiation, then a relatively new subject on the curriculum, as well as legal writing. Along with Clinical Professors Theresa Newman '88, Jane Wettach, and Allison Rice, she was among the first Law School faculty to make research and writing-specific pedagogy a principal professional focus, marking an institutional shift away from having legal writing taught by research faculty as an add-on to first-year doctrinal courses.

She says she found the transition from practice to teaching to be surprisingly natural: “What I had to bring to the table was knowledge of practical skills and how to practice law. In both courses, I could modify something I had done in practice for use as a classroom problem.” Dimond viewed her task as being to teach students how to be professionals, so she regularly incorporated lessons in ethics and professionalism into her classes. “I considered it my mission to tell students things that I would have liked to have known when I was a beginning lawyer,” she says.

Taking over from Newman in 1998 as director of Legal Writing, Dimond oversaw the full integration of legal research and writing into the core curriculum as skills foundational to professional success. Later, she partnered with former Dean David F. Levi to make appointments for writing full time and expand their ranks, resulting in a corresponding reduction in individual class sizes. The Law School also moved LARW from three credit hours to four to accurately reflect its rigor and developed a roster of subject- and skill-specific upper-level courses that affirm a view of legal writing and analysis as a three-year program, as opposed to a single course.

“Diane modeled everything you want to be in a faculty member. She was not only what you want as a student, but she’s also what you want to be as a professor.”

— Clinical Professor Frances Mock ’00

“Diane was an excellent advocate for the Legal Writing Program and for the recognition of the writing faculty, who are all dedicated and skillful teachers, and I truly appreciated that,” says Levi, who calls the Duke way of teaching legal writing one of the “great achievements and distinguishing characteristics” of the Law School. Dimond’s successor as director of Legal Writing, Clinical Professor Jeremy Mullem, agrees: “Under her leadership, a program that was new and ‘settling’ found its footing and became well-positioned to give students the educational experience they need in their first year.”

For Dimond, the heart of LARW — which writing faculty team-teach with research librarians — is to help students start thinking like lawyers. “I would tell my students that it’s like reading when you were in grammar school, critical to everything else,” she says. “They can’t write until they can analyze. They learn how to read a case or a statute, how to understand what it says, and then how to explain it to somebody else.” LARW helps students in all of their other courses and allows them to shine in their summer jobs, and upper-level writing courses hone and cement techniques of persuasive advocacy that are integral to career success, she says.

Mark Sigmon ’05, who specializes in complex and commercial litigation and appeals at Sigmon Law in Raleigh, says Dimond’s emphasis on the *importance* of good writing as much as the craft was invaluable. “As a litigator, I realize that most matters are determined by the papers nowadays,” he says.

Gabriela Bersuder ’14, a litigation associate at Patterson Belknap in New York who held two federal clerkships, says she thinks of Dimond every time she works on a brief — “which is most days.” Dimond’s biggest lesson is always with her, she says: “That writing is a lifelong process and something that takes a lifetime to master.”

Combining insight and humor in the classroom

For the past three years, Dimond has exclusively taught Negotiation. She was recruited to teach the course by Neil Vidmar, the Russell M. Robinson II Professor Emeritus of Law, a social scientist who had introduced it to the curriculum in 1990, and whom she had used as an expert witness in the last “mega-case” she handled in private practice. The two collaborated closely to continually develop legal scenarios of ever-increasing complexity across different practice areas in which students are assigned roles and charged with reaching settlements, alternately negotiating solo, in pairs, and in teams.

“We learned a lot from one another,” says Vidmar of their long and successful partnership on the course, which more than two-thirds of JD and LLM students now take before graduating. Dimond taught Negotiation every semester since arriving in 1994, and sometimes as many as three sections of the simulation-based

course per year. Numerous faculty now teach eight sections of the course each year to meet demand, with classes limited to 24 students.

Clinical Professor Casandra “Casey” Thomson, who joined the faculty in 2015 to teach legal writing after practicing complex commercial litigation at Latham & Watkins, was thrilled to have Dimond help her prepare to teach her first section of Negotiation the following year. She likens watching Dimond teach an entire semester of the course on video to getting a master class in teaching. “I got to watch an amazing teacher do what she does,” says Thomson, pointing out that the class discussion often focuses on things that went wrong in a negotiation. “In class, she gets the students to embrace the concept that mistakes are a part of learning. And, even though she didn’t know what students were going to say about their particular negotiation, she was always able to extract the precise learning outcomes that she wanted the students to take away from the discussion — and she made it seem effortless. She was witty and comfortable and made class feel like a conversation, and the level of student participation made it clear that they were also comfortable and engaged.

“I was watching somebody who had perfected an art, and I learned a lot about teaching, and teaching Negotiation specifically,” says Thomson, who received the 2018 DBA Distinguished Teaching Award.

Lindsay Kirton ’14, an associate at Hunton Andrews Kurth in Dallas whose practice is focused on capital finance and real estate transactions, calls herself “lucky and blessed” to have been in Dimond’s LARW and Negotiation sections, and to have been exposed to her “counsel, passion, and adventurous spirit. I learned so, so much from her as a student, personally, and professionally as an attorney.”

Dimond says she is proud of the early work she did with Newman, Wettach, and Rice, to reconceive how legal writing could be taught and how the program has continued to develop, as well as her contributions to maintaining the strength and relevance of the Negotiation course. But she says it was the opportunity to forge connections with students “that kept me going every day,” and excited about teaching until her last day in the classroom.

“Every time you do an exercise with a new class of students, new things happen and students have different experiences,” she says. “It never got boring and was very energizing, really. It’s been very gratifying to be able to work with students and learn from them and to be able to help them a little bit.” Her faculty colleagues, she adds, have also been “beyond belief. I can’t tell you how happy I am to have had such a long career at Duke.”

Mock says the Law School has benefitted from that long career at every level: “Diane modeled everything you want to be in a faculty member. She was not only what you want as a student, but she’s also what you want to be as a professor.” ♡

Nota Bene

Selected scholarship from Duke Law faculty | Summer 2018

THE EXCERPTS
COLLECTED in the
following pages from recently
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Sara Sternberg Greene,
associate professor of law

- » Recent courses: Contracts, Consumer Bankruptcy & Debt, Poverty Law
- » JD Yale Law School (2005); PhD social policy and sociology Harvard University (2014)
- » Chaired student board of directors of the Jerome N. Frank Legal Services organization and student director, Yale Housing and Community Development Clinic
- » Clerked for Judge Richard Cudahy, U.S. Court of Appeals for the Seventh Circuit
- » Focused on housing law and tax credit matters at Klein Hornig in Boston

Why consumer bankruptcy reorganization fails

Sara Sternberg Greene

CONSUMERS CONTEMPLATING BANKRUPTCY to escape unsustainable debt face a critical choice: whether to file under chapter 7 or chapter 13.

With a chapter 7 filing, their debts are forgiven and they emerge from bankruptcy in three to six months, but they must relinquish much of their property, including homes that are secured by mortgages. Under chapter 13, debtors enter into court-approved plans to repay at least some creditors a portion of the amounts owed over three to five years and homeowners must repay their mortgages in full. But if they fail to meet the requirements of their repayment plans, their remaining debts won't be forgiven.

As Professor Sara Greene and two co-authors point out in a recent article, the ability to retain assets — usually homes — while repaying a portion of their debts holds both substantive and moral appeal for many consumers. But as they write in “Cracking the Code: An Empirical Analysis of Consumer Bankruptcy Outcomes”

(101 *Minnesota Law Review* 1031-1098 (2017)), only about one-in-three chapter 13 filers successfully complete their repayment plans. “More than a million families each year struggle to repay debts in chapter 13 bankruptcy,” they write.

In the article, Greene and her colleagues, Parina Patel, an assistant teaching professor at Georgetown University, and Professor Katherine Porter of the University of California, Irvine School of Law, utilize data from the comprehensive 2007 Consumer Bankruptcy Project that supplemented information collected in the course of bankruptcy filings with surveys and interviews with filers. Using statistical methods, they predict outcomes for chapter 13 filers with considerable accuracy. Among filers they found least likely to be successful in chapter 13: debtors who file pro se, debtors who lack health insurance, parents of minor children, homeowners whose mortgages are unaffordable relative to their income, and African Americans.

Theirs is the first study based on such a detailed sample of national cases along with variables that take into account the multiple actors and processes involved in bankruptcy practice. It is also the first to use regression modeling that accounts for variation in practice across the country. The researchers' goals, said Greene, included: illuminating areas of policy and practice by judges, trustees, and attorneys that could improve chapter 13 outcomes; addressing access-to-justice issues within the system; and overcoming a pervasive belief that local and regional differences in the way bankruptcy law is applied undercut possibilities for change.

"There is often a perception among bankruptcy lawyers and judges that they know what works and what doesn't work in their regions, and is potentially better than what's happening elsewhere," said Greene. "We are saying that there is a way to look at this in a 'big' way, and there are some small things that can be done to improve the system on even a small scale."

Exploring connections between law, poverty, inequality

With "Cracking the Code," Greene adds to a body of interdisciplinary scholarship broadly focused on the relationship between law and inequality, including the role of law in perpetuating poverty and inequality. Greene's data-driven empirical research, which is bolstered by a PhD in social policy and sociology as well as experience in both private and pro bono practice, examines how financial instability affects middle class and poor families, whether government programs designed to assist them work, how design and implementation of those programs can be improved, and the civil justice gap.

Her work has caught the attention of policymakers at a national level. Greene presented her study demonstrating how negative interactions with the criminal justice system discourage poor people of color to seek legal help in civil disputes to the White House Legal Aid Interagency Roundtable. And the recommendations in her study of 194 recipients of the Earned Income Tax Credit that showed its distribution as a lump-sum annual payment left them vulnerable to mid-year "financial shocks" was incorporated into a bipartisan proposal to redirect some of the tax credit to a savings and emergency fund.

"Cracking the Code" is not the first time Greene has waded into data from the 2007 Consumer Bankruptcy Project. In "The Failed Reform: Congressional Crackdown on Repeat Chapter 13 Bankruptcy Filers" (89 *American Bankruptcy Law Journal* 241-268 (2015)), she examined the factors that motivated repeat chapter 13 filings, supplementing her analysis of a random sample of petitions with in-depth interviews with bankruptcy trustees, lawyers, and judges. The study revealed refilers' perpetual financial insecurity, not a desire to abuse the system.

"In chapter 13, you have to come up with a plan to pay creditors," said Greene, noting that most consumer bankruptcy filings are made by members of the middle class and sparked by some form of financial shock. "Within those plans, there's generally only a very small cushion, or none at all. If you suffer another financial shock — say your child gets sick and you lack paid leave but still have to take a month off work — you can no longer fulfill your plan. By then you might even be worse off, because you used your credit card to try to cover that month, so you have to file again. I don't see that as abusing the bankruptcy system, but as the bankruptcy system not being able to adjust to the realities of living paycheck to paycheck."

Greene's starting point for the research was passage of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA), which limits the automatic stay that prevents creditors from pursuing a petitioner's property after filing to 30 days, if the filing is made within a year of an earlier, failed petition. In "The Failed Reform," she reported that judges, lawyers, and trustees largely opposed BAPCPA, and observed that judges make it clear with frequent rulings extending stays that they make no presumption of abuse by debtors.

She calls it a good example of law in action: "This was a case where judges essentially asserted themselves and said, 'This new law does not make sense and does not help the bankruptcy system. There's a way around this and we are going to take advantage of it, because we understand the system and know who is, and is not, abusing it.'"

Overcoming obstacles to reform

The fact that only about one-third of consumer bankruptcy filers successfully complete their reorganization plans has been confirmed by multiple studies since the 1980s. The 2007 Consumer Bankruptcy Project, which used surveys and telephone interviews to gain details relating to such matters as demographics and housing affordability that aren't collected in court filings, gave Greene and her colleagues the chance to study exactly who chapter 13 might be helping or failing. They created a series of models based on bankruptcy theory and used the statistical method known as "fixed effects" to control for variations in local practices and to determine what is happening on the national level.

"Judges often think that system processes, such as the use of wage orders to make sure the payments to creditors are taken out of the filer's paycheck, makes chapter 13 success more likely in their local districts," said Greene, noting that only some districts use wage orders. "But that's not what our data indicated."

The researchers found that across the country, certain filers were unlikely to emerge successfully from chapter 13 bankruptcy, even taking into account differences in local legal culture: parents (particularly those with multiple children), individuals lacking health insurance, and homeowners whose monthly mortgage payments amounted to more than 30 percent of income.

If the clients' mortgage is unaffordable based on family income, their attorney should consider telling them so and presenting alternative options to chapter 13, she said — if an attorney is involved at all. But many filers lack the advice of counsel in preparing documents and developing repayment plans, even though the issues involved and the mechanics in filing are complex, with online forms relating to consumer filings mixed with those for corporate petitions. Having observed, in "The Failed Reform," that many chapter 13 repeat filers had simply made technical errors in their initial petitions, Greene pointed to her new study's finding that pro se filers are among the most vulnerable to failure. Attorneys make a difference.

"Our data offer a good reminder about just how inaccessible bankruptcy is," said Greene. "Many Legal Aid offices have stopped handling consumer bankruptcies and filing is costly. If you can't find the

“Our data offer a good reminder about just how inaccessible bankruptcy is.”

— Professor Sara Sternberg Greene

money for a lawyer, you often can’t file, and if you file a chapter 13 bankruptcy yourself, the probability of success is low. It’s definitely an access to justice issue for the poor.”

Greene said the revelation of how race factors into failure in chapter 13 is the study’s “most troubling” finding. Black debtors file in chapter 13 more frequently than white debtors do — disproportionately, in fact, based on their representation in bankruptcy. The reasons require further study, but some researchers have suggested that bankruptcy attorneys push black filers towards chapter 13 over chapter 7 which, if true, would set up a “double-whammy,” Greene said: “They’d be getting steered into it and they are not doing as well compared to whites when they’re in chapter 13.” A starting point for further research would be to collect information about race on bankruptcy forms, she said.

A central goal for Greene and her co-authors is simply to raise awareness of the ways filers often struggle in chapter 13. “Part of our argument is that there are certain things that judges and trustees and attorneys can look at,” she said. “They can look at affordability of housing and know that if it is, for the filer, unaffordable or severely unaffordable, they should consider discussing this with the debtor and presenting chapter 7 as an alternative that may have a greater likelihood of success.”

While some critics have suggested eliminating chapter 13 due to its low success rate, Greene feels that small changes could make big differences for many filers. She thinks the data presented in “Cracking the Code” can inform bankruptcy judges, trustees, and attorneys in this regard: “For example, if every district demanded some kind of cushion in repayment plans for shocks, we could see how much of a difference it makes”

Beyond that, Greene and her co-authors write that they hope their study “sparks a fiery debate,” informed by their unique data-set: “While bankruptcy may never be as ‘uniform’ as contemplated by the U.S. Constitution, the law can better serve its goals of rehabilitating debtors and repaying creditors by looking across local variation to identify levers for reform.” »

EXCERPT

Cracking the Code: An Empirical Analysis of Consumer Bankruptcy Outcomes

Sara Sternberg Greene et al.

101 *Minnesota Law Review* 1031-1098 (2017)

IV. Implications

In place of stale debate based largely on anecdote, this Article offers an analysis that can guide reform of chapter 13. The findings from our statistical models reinforce the allegations that chapter 13 is complex, but can also provide boundaries for debate. Until there are larger or newer studies that advance this analysis, policymakers should start debating the variables that we document as particularly useful as determinants of discharge.

A. Reform Without Revolution

Empirical studies of chapter 13 have often led to calls for dramatic reform, including the complete repeal of chapter 13. Our analysis points to a number of modest interventions that may go a long way towards improvement, including non-statutory changes. Indeed, there are multiple determinants of chapter 13 completion. Even if our analysis were widely accepted (and proved perfectly predictive in the future), it is unlikely that any single reform in chapter 13 would materially improve outcomes. This analysis shows that there is no panacea, but rather a number of possibilities for improving chapter 13. We highlight here both some strategies and some substantive reforms.

At the most obvious level, attorneys could use our findings to guide discussions with clients about anticipated outcomes. Some consumers, if they knew the odds of completion with more precision, may weigh chapter 7 more favorably. In an era of personalized medicine and individual training, law can start using data to provide information that is more tailored to each client. While consumers will still bring optimism bias to the bankruptcy decision, personalization can help people counter such cognitive traits. Our findings are tools that lawyers could use to improve client advice.

Bankruptcy law has always required that a plan be feasible for confirmation; the court must assess whether “the debtor will be able to make all payments under the plan and to comply with the plan.” Despite this requirement, less than half of confirmed plans succeed. The odds of success are equal to a coin flip, not a ruling on the merits based on evidence. The experts even give outright contrary advice in some cases, such as that a prior filing makes a successive bankruptcy more likely to result in a discharge. We conclude that the feasibility standard seems to be either underused or woefully inaccurate in application.

Our model also identifies some predictors of chapter 13 success that could be added to the law or practice to improve outcomes. For example, given the importance unaffordable housing, this ratio could be calculated on the bankruptcy forms and made salient. Judges interpreting the “regular income” standard may take a more strict interpretation that favors earned income if

they recognized the poor outcome for non-working debtors. We also strongly recommend that the bankruptcy forms collect self-reported race data. Without such information, the disparate racial effects that we identify for blacks will undoubtedly go unaddressed. Any efforts to equalize outcomes for blacks and non-blacks would be complex, but without the data and government responsibility for assessing the situation, the façade continues that bankruptcy is race neutral.

Other reforms could be stronger. The Bankruptcy Code could be amended to require attorney representation as a condition for chapter 13 eligibility. Such a requirement would sort those without attorneys into chapter 7, or more problematically, deny them bankruptcy relief. While we are emphatically not recommending that action, at least not without careful consideration of alternatives and a robust debate, our analysis is pointed in its conclusion. We cannot close an eye to the plight of pro se filers in chapter 13. Even if pro se filers are prevalent in only a few districts, our data support the need for reforms in those locations. We believe that technology may offer ways to improve the resources available to pro se parties, and that longstanding interventions in other courts, such as dedicated pro se clerks, would ease debtors' plights.

The major implication of this Article is that we can learn more about chapter 13, and then debate how to deploy that knowledge. We do not think our findings, taken alone, support the repeal of chapter 13. While this was debated in the wake of Sullivan, Warren, and Westbrook's initial findings on chapter 13 outcomes, we seek here to explain chapter 13. Eliminating it out of hand would be a sweeping form and require more study and validation. That stated, we are firm in our opinion that these findings make it inexcusable to leave chapter 13 alone under the guise that local practice is the determining factor in chapter 13 outcomes. Our analysis shows that many of the factors that vary locally and have been deemed "the" important determinant of chapter 13 outcomes do not, in fact, predict success.

B. Disruption by Data

One of the goals of this Article is to disrupt the idea that chapter 13 is impenetrably local and inexplicably varied, and that therefore it cannot be improved on a national level. We want to loosen the grip of the misinterpretation of local legal culture theory on the debate about consumer bankruptcy reform, in renewing what we believe is the crucial question: can chapter 13 law and practice be adjusted to boost its efficacy to a level (admittedly undetermined at present) high enough to justify the complexities created by the law's two-chapter approach to consumer bankruptcy?

Our findings can outline the next set of questions. The factors that we identify as influential can guide the construction of new research and even the limitations of our study can prompt replication with additional variables or alternate methodologies. Our data should disrupt the idea of local legal culture. In some ways, our call is back to the future where Sullivan, Warren, and Westbrook began. Their scholarly works on chapter 13 filing rates dislodged the idea that all bankruptcy variation could be explained by the rational choices of debtors acting with full information of their situations and the process ahead.

Indeed, we think this project is a return to the core approach of Sullivan, Warren, and Westbrook. With a random national sam-

ple and stronger statistical software, we can produce an analysis of chapter 13 that eluded them. Researchers can repeat or expand our analysis, using new samples and adding statistical tools. If the findings are robust and consistent, this Article will have provided a powerful push for reform in the directions that are most likely to prove successful.

Inspiring legal reform is difficult. Beyond the problems of political economy, the actors themselves may resist reforms. Judges, trustees, clerks of courts, and others may resist change, as illustrated by efforts to soften BAPCPA and retain prior practices. In a specialized system such as bankruptcy, the expert and repeat players — the judges, the attorneys, and the trustees — are gatekeepers to reform. The difficulty has been persuading them to move in a single direction when they believed the chapter 13 world defied rational or systemic study. As a result, the dialogue about chapter 13 is undisciplined. The debate diverges into proclamations that "I know success when I see it," and "chapter 13 works pretty well when I use it." The effect can become regional, with people resisting reforms that would change practice in their courts. In a sleight of hand, the policymaker is directed to "look under a different rock," while being reassured that all is well in a given area.

This approach to chapter 13 is not limited to geography. We ourselves have studied single factors that affect chapter 13, respectively refiling (Greene) and unaffordable mortgages (Porter), without looking at the larger picture. When a reform is attempted, the defense is that there is insufficient evidence that everybody will be better, on average or as a whole, with changes to practices. People offer up their own local legal culture as evidence that their approach is superior, at least for their location. Instead of a debate about whether a reform is desirable or practicable, the discussion devolves into finger pointing about a lack of respect for difference and allegations of turf protection.

The debate over whether a model form for the chapter 13 plan should be promulgated by the Advisory Committee on the Rules for Bankruptcy Procedure illustrates the rhetoric. A bankruptcy judge who organized a letter of 144 judges in opposition to the model form explained at a public hearing that the judges were "concerned because they feel by and large that Chapter 13 works in their jurisdictions." In counter, another judge described the problem as "local [legal] culture," calling it a "wonderful phrase to describe 'what you can do is just fine, just don't do it in my back yard.'"

We are confident that this work will upset the chapter 13 community because at least some of our findings are outside the conventional wisdom, such as regarding whether conduit payments and wage orders increase plan completion. But we are even more certain that this disruption is necessary to reset the stale debate about chapter 13. The entrenchment of the status quo is holding back reform. Without a blueprint to prompt grounded debate, chapter 13 reform faces even longer odds than chapter 13 debtors do in receiving discharges. ♡

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Can regulation spur innovation in human biomedical research?

Arti K. Rai

Elvin R. Latty Professor of Law



IN THE CONTEXT of human biomedical research, innovation depends on data pooling. A longstanding barrier to data pooling can be found in the “data silos” that arise when legal regimes conferring informed consent and privacy protections overlap with fragmented and adjacent intellectual property rights.

While many commentators have looked to public funding, collective action by research participants, or market pressures for solutions to the data-aggregation challenge, Professor Arti Rai examines the important role that risk regulators might play in “Risk Regulation and Innovation: The Case of Rights-Encumbered Biomedical Data Silos” (92 *Notre Dame Law Review* 1641-1667 (2017)). Rai, co-director of the Center for Innovation Policy, finds the precedent offered by risk regulation in the area of clinical trial data in both the United States and Europe particularly promising.

Rai is an internationally recognized expert in intellectual property law, innovation policy, administrative law, and health law whose current work focuses on theoretical and empirical analyses of patent eligibility doctrine and on patent institutions, including the Patent Trial and Appeals Board created by the America Invents Act of 2011. Her article crafts a novel direction within the body of literature that explores the potential for risk and social regulation to promote socially valuable innovation by focusing “not on innovation induced by efforts to comply with regulation but instead on regulation as a force for creating a data infrastructure for future innovation.” »

EXCERPT:

Risk Regulation and Innovation: The Case of Rights-Encumbered Biomedical Data Silos

Arti K. Rai

92 *Notre Dame Law Review* 1641-1667 (2017)

Introduction

Overlapping legal claims pervade data-based innovation. Because of its heavily regulated status, and its potential to improve human welfare, innovation based on biomedical data is a particularly notable example.

As in most other areas of innovation, intellectual property rights can overlap. Patents and trade secrecy can cover the same inventive territory simply because the U.S. Patent and Trademark Office (USPTO), litigants, and courts find it excessively expensive to police the patent statute’s complex disclosure requirements.

Moreover, precisely how much disclosure *should* be required is a policy question. Patent cases have sometimes allowed patent applicants to claim an invention that arises after patent filing without requiring disclosure of this after-arising invention. Meanwhile, the subsequent technology or information could itself be the subject of separate intellectual property, whether trade secrecy or an improvement patent.

While the caselaw trend has moved away from very broad rights, this movement has not precluded “adjacent” intellectual property rights. In these cases, the narrower patent claims do not formally cover the follow-on innovation. However, to the extent that even patent claims of moderate scope on a key research tool cannot be “invented around,” and the claims can be enforced, the practical effect may be similar.

Depending on the precise nature of the follow-on innovation generated, adjacent rights may include subsequent patents, trade secrecy, or regulatory exclusivities administered by the Food and Drug Administration (FDA). In the case of biomedical data — the focus of this Article — the adjacent right typically involves either trade secrecy or regulatory exclusivity. Both overlapping and adjacent rights have generated controversy regarding the possibility of excessive control by the initial rights holder.

In 2012 and 2013, when cases involving diagnostic testing patents ultimately brought these controversies to the U.S. Supreme Court, the Court not only struck down the individual patents involved in those cases but also suggested more generally that patents on diagnostic tools might confer undue control over future research. The Court used as its cudgel the argument that the territory covered by the patents failed to constitute patent-eligible subject matter under the so-called “law of nature” or “product of nature” doctrines.

While these Supreme Court cases address concern about excessive control by a single rights holder, there is an obvious flip side. Concentrating patent ownership in a single firm allows that firm to aggregate all of the “adjacent” data generated through use of the patent. With patents no longer serving as “data aggregators” in the area of diagnostic testing, the problem of data fragmentation in this area may become even more acute. In diagnostic testing, as in other areas of biomedicine, large data sets promote cumulative innovation.

Notably, once biomedical data becomes fragmented, overcoming fragmentation creates its own legal overlap challenge. Even with the recent Supreme Court cases, biomedical data pooling — like pooling of scientific data in other areas — will face multiple intellectual property obstacles. These include both formal intellectual property — trade secrets and narrow patents — as well as reluctance on the part of academic researchers to share what they view as their competitive advantage.

Biomedical data pooling also has to overcome relatively unique challenges posed by health privacy law. Privacy law — and related regimes of informed consent — produce an additional set of claimants, leading some to worry that these legal regimes will create a “tragedy of the anticommons” as formidable as that postulated by Michael Heller and Rebecca Eisenberg in their discussion of the challenge of assembling fragmented patent rights.

Scholars have suggested both private- and public-sector responses to the pooling challenge. On the private-sector side, some have argued in favor of stronger individual rights. On this view, individual consumers accorded control or even property rights over “their” health data might be incentivized to create pools. While proposals for some level of consumer control are interesting, according millions of individuals property rights in data is likely to exacerbate transaction cost problems, not resolve them.

Other scholars have highlighted the potential role of institutional private-sector players like insurance companies. The increasing interest shown by insurance firms in using claims data to determine the therapeutic value of medical interventions they cover is a positive development. However, it is not clear that insurance firms would necessarily be motivated to create pools across firm boundaries.

As for the public sector, many scholars (myself included) have discussed mechanisms by which public funders of data resource creation can exercise informal or formal regulatory power to promote data pooling. But public-sector funding is always a scarce resource.

One set of regulatory actors that have received less attention than they merit is risk regulators. In the data pooling context, risk regulators are part of the problem. But they are also part of the solution.

On the one hand, aggressive moves by risk regulators to control perceived risks to privacy may impair possibilities for pooling. More positively, for a significant set of biomedical data — all pre-approval biopharmaceutical data and a significant subset of diagnostic data — risk regulators like the FDA are the default data aggregators. They can use this status to promote innovation based on pooled data.

The recent history of the FDA’s role in addressing rights-encumbered biopharmaceutical clinical trial data silos highlights both the agency’s promise and its limitations as a promoter of data-based innovation infrastructure. This history also highlights the status of data as a global public good, with FDA action being supplemented, and arguably superseded, by the actions of its European counterpart, the European Medicines Agency (EMA).

The data exclusivity administered by risk regulators in the United States and other advanced economies emerges as an attractive mechanism for balancing the interests of initial and subsequent

data generators. Indeed, for purposes of promoting data pooling, the temporal overlap between patents and data exclusivity is a feature, not a bug. A similar regime of exclusivity for diagnostic data would be worth considering.

Data exclusivity does not address legal claims that emerge from the law of health privacy and informed consent. These regimes raise major transaction cost challenges, particularly to the extent data holders cannot guarantee that de-identified or anonymized data is impervious to re-identification. Unfortunately, U.S. risk regulators’ recent tool of choice for addressing potentially identifiable data — broad consent to any future research use — provides a suboptimal response. Broad consent is superior to any attempt to confer property rights on raw data inputs that will be provided by millions of different individuals. But it is inferior to a pragmatic approach that emphasizes sanctions for illegitimate re-identification and protecting those whose data is used from harm.

On balance, the contribution of risk regulators has been mixed. To some extent, risk regulators, particularly in Europe, have capitalized on their pivotal aggregation role to address the challenges posed by rights-encumbered data silos. However, even in the political environment of the Obama Administration — where the White House was a prominent advocate of open government data, and generally viewed regulatory activity as compatible with, or even a promoter of, innovation — U.S. risk regulators were cautious.

In elucidating the role of risk regulators, this Article contributes another chapter to the rich legal and economic literature discussing whether, and how, risk and social regulation can promote socially valuable innovation. As contrasted with much of this literature, however, the focus here is not on innovation induced by efforts to comply with regulation but instead on regulation as a force for creating a data infrastructure for future innovation.

Part I of this Article briefly summarizes the history of overlapping and adjacent intellectual property rights in biomedical innovation. It then discusses the manner in which the Supreme Court’s reaction to such rights concentration may exacerbate legally-encumbered diagnostic data silos. Part II outlines the basic history of biopharmaceutical trial data silos as well as the core legal and policy arguments in favor of increasing access to the aggregated data held by risk regulators. It then discusses recent developments, including the stance taken by European risk regulators. Part III discusses lessons from the biopharmaceutical trial data experience and how some of these lessons may play out in current debates over diagnostic testing silos and overlapping rights. ♡

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Assessing the employment benefits gap

Trina Jones

Jerome M. Culp Professor of Law



AMONG THE WORLD'S ADVANCED ECONOMIES, the United States has one of the lowest unemployment rates. But U.S. workers at all levels generally enjoy far fewer employment benefits than their counterparts in other developed nations, with low-wage workers faring the worst, Professor Trina Jones points out in a recent article.

In "A Different Class of Care: The Benefits Crisis and Low-Wage Workers" (66 *American University Law Review* 691-760 (2017)), Jones writes that when such benefits as paid family leave, pensions, health insurance, and flex-time are offered by employers, it is generally only to a range of relatively high-wage workers. And although such benefits have been shown to produce positive returns for employers as well as employees — and society in general — the realities of low-wage worker surplus, class-based stereotypes and bias, cost concerns, and legislative inaction are likely to ensure the status quo in this regard prevails, she writes.

Jones focuses her scholarly research and writing on racial and socioeconomic inequality and is a leading legal expert on colorism, the differential treatment of same-race individuals on the basis of skin color. Calling the benefits gap in the United States "alarming," Jones argues, in "A Different Class of Care," that federal legislation is needed to ensure that all workers have access to at least a minimum level of benefits. »

EXCERPT:

A Different Class of Care: The Benefits Crisis and Low-Wage Workers

Trina Jones

66 *American University Law Review* 691-760 (2017)

Introduction

In June 2015, Virgin announced an expansion of its parental leave policy. Working parents at Virgin, regardless of their gender, would receive a year of paid parental leave in the first year following the birth or adoption of a child. In making the announcement, Virgin's founder, Richard Branson, stated,

As a father and now a grandfather to three wonderful grandchildren, I know how magical the first year of a child's life is but also how much hard work it takes. Being able to spend as much time as possible with your loved ones is absolutely vital, especially early on.

In August 2015, Netflix also announced an expansion of its parental leave policy: new parents on its payroll would receive up to a year of paid leave. Netflix's policy allows parents to take leave, to return to work, and to go back on leave as necessary. In making the announcement, Netflix stated, "We want employees to have the flexibility and confidence to balance the needs of their growing families without worrying about work or finances."

Virgin and Netflix joined several other high profile companies that were already known for offering generous benefits, and their announcements were followed by news releases from other companies that were either trying to keep up or vying for the title of most family friendly. What is often missing in these announcements, and the ensuing press coverage, is that these benefits only go to a certain class of employees. For example, Netflix's policy initially covered only its "salaried streaming employees." It did not cover employees in Netflix's DVD distribution centers, who are generally lower-paid, hourly workers. This distinction reportedly left out 400–500 of the company's roughly 2300 workers, who would continue to receive about twelve weeks of paid maternity and paternity leave. Notably, Virgin's policy is even more limited, covering only Virgin Management, a small investment and brand licensing division that employs fewer than 140 of Virgin's 50,000 employees. Virgin's policy thus covers some high-wage employees and omits all of its low-wage workers.

Virgin and Netflix are not unique. Across the labor market, high-wage workers tend to receive greater employment benefits than low-wage workers. These benefits include not only parental leave but also sick leave, flexible work arrangements ("FWAs"), pensions, and employer-sponsored health-care plans, among other things. The benefits gap between high- and low-wage workers exists despite the fact that family-friendly policies have been shown to produce positive returns for employers in terms of employee recruitment, retention, and productivity. These policies have also helped high-wage working parents balance their familial and employment responsibilities. Indeed, as the Virgin and Netflix announcements illustrate, a primary justification for, and impetus behind, the creation of family-friendly policies has been a desire to assist

working parents in navigating these — at times conflicting — obligations. This balance has been particularly urgent for women, who continue to bear the bulk of responsibility for childbearing and childrearing in the United States.

The value that employers and employees derive from family-friendly policies raises an important question: why are benefits disproportionately bestowed upon high-wage workers over low-wage workers? This question merits attention given the recent growth in low-wage jobs. Following the Great Recession of 2007–2009, the low-wage workforce grew faster than other sectors of the U.S. labor market. According to the National Employment Law Project, although most employment losses in the recession occurred in mid-wage occupations, during the recovery, gains were concentrated in low-wage occupations, which increased 2.7 times as fast as high-wage occupations. Thus, while the U.S. unemployment rate is down with numbers approximating pre-recession figures, wages among U.S. workers have decreased or become stagnant, and a disproportionate number of new jobs have been low-wage positions.

Even without this type of growth, the benefits gap demands examination because data show that low-wage workers would benefit from workplace benefits as much as, and indeed in some cases more than, high-wage workers. For example, low-wage workers are as likely as high-wage workers to have dependent care responsibilities. They are also equally pressed for time in their personal lives, if not more so given that they often juggle multiple jobs to make ends meet. Yet with fewer financial resources, low-wage workers are less equipped to secure childcare services that might reduce the demands of providing care. Gender equity concerns are also present in low-wage workplaces because of the significant number of women and single parents employed in these settings.

This Article examines the dearth of family-friendly benefits in low-wage jobs. It seeks to understand why the benefits gap exists and what, if anything, can and should be done about it. Before proceeding, it is perhaps useful to offer a few reasons why wealthier Americans, particularly those with access to power, should care about low-wage workers (because the truth of the matter is that many such people do not). First, without adequate benefits and the kind of flexibility that enables workers to keep their jobs, many low-wage workers end up having to rely on public welfare and are unable to contribute to the country's economic growth. Second, a lack of benefits undermines childrearing and children's welfare, which can lead to health complications, poor performance in school, and delinquency. Third, the absence of workplace benefits contributes to gender inequality by reducing women's labor force participation. Fourth, with a shrinking middle class, if current disparities continue, the United States risks becoming a two-tiered society, with the rich getting richer and the poor turning into a permanent underclass. At the end of the day, Americans must decide the type of country in which they wish to live. Do Americans want to live in a plutocracy composed of a small number of wealthy elites and a vast multitude of poor people — in effect, a second gilded age? If the answer is yes, then is that outcome right, and is it fair? If the answer is no, then what can be done?

When considering these questions, it is also important to keep the larger picture in mind. The international community recognizes and supports the need of individuals to care for themselves and their families without sacrificing the security and dignity offered by gainful employment. Yet, when compared to other developed nations, the United States has some of the least favorable family-friendly policies. For example, in Europe, women generally receive fourteen to twenty weeks of paid maternity leave, and both parents have access to additional paid and unpaid parental leave, which usually amount to one year of full paid leave when combined. The United States, by contrast, is one of only two economically developed democracies that does not guarantee basic benefits like paid family leave. Even the unpaid leave that is available under U.S. federal law is much lower when compared to unpaid leave offered by other countries. Not surprisingly, researchers have found that, among developed nations, the United States has the largest happiness gap between parents and non-parents, and this gap can be entirely explained by the lack of better family-friendly policies. As the Secretary of Labor stated in a recent report, the United States has stood “still while family policy in the rest of the world passes us by.” The situation is thus grim for most workers in the United States with familial obligations and, as this Article shows, even more so for low-wage workers.

The analysis proceeds as follows. Part I describes salient characteristics of low-wage workers. Part II compares benefits that are generally available to high- and low-wage workers and shows that the latter are indeed experiencing a “benefits crisis.” Part III analyzes commonly-offered explanations for existing disparities and explains that while employers gain from family-friendly policies, they are less likely to perceive a need to adopt these policies for low-wage workers because of a surplus of low-wage workers in the labor market. This Part also explores ways in which class bias and negative views about the skill and value of low-wage labor may influence employer decision making. Part IV suggests that the likelihood of solving the benefits crisis in the near future is low given the decline of unions and limited legislative action to date. Although this Article argues for greater flexibility and benefits for low-wage workers, it does not seek to determine what the ideal level of benefits ought to be for low-wage workers or the floor beneath which benefits should not fall. Rather, the goal here is to highlight the alarming scale of the benefits gap and to encourage employers, workers, legislators, and advocacy groups to engage in serious policy work focused on this issue. This Article also does not examine wage differences because the movement for a higher minimum wage is already receiving national attention, while disparities in benefits and other terms and conditions of employment generally fly under the radar. ¶

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Using international law to embolden domestic law enforcement

Rachel Brewster

Jeffrey and Bettysue Hughes
Professor of Law



THE FOREIGN CORRUPT PRACTICES ACT (FCPA) is now one of the most prominent corporate criminal laws. Yet, for the first 20 years after it was passed, U.S. authorities rarely enforced it, as American companies complained the law banning corporate bribes to foreign government officials made it hard to compete in international markets. That changed after the United States negotiated the Organisation for Economic Co-operation and Development Anti-Bribery Convention (the OECD Convention) in 1997, Professor Rachel Brewster writes in a recent paper, because the treaty allowed American prosecutors to pursue foreign corporations as well as their domestic competitors.

Brewster, co-director of Duke's Center for International and Comparative Law and co-chair of Duke's JD/LLM Program, focuses her scholarly research and teaching on international economic law and international dispute settlement, writing on World Trade Organization (WTO) law, anti-corruption law, and international relations theory.

In "Enforcing the FCPA: International Resonance and Domestic Strategy" (103 *Virginia Law Review*, 1611 (2017)), she offers the FCPA case study as an example of the way laws can benefit from what she calls international resonance: "a domestic statute can create pressure for national leaders to conclude an international agreement, and then that agreement provides the means for the national law to develop into a robust national policy." She also offers a framework for "thinking through" the way national and international legal arrangements can interact to regulate transnational legal problems more broadly.

In outlining the effects, in the excerpt that follows, of having all major exporting countries agree that foreign bribery should be criminalized, Brewster describes how OECD member states support robust U.S. enforcement of the FCPA — even though they themselves rarely bring enforcement actions of their own. »

EXCERPT:

Enforcing the FCPA: International Resonance and Domestic Strategy

Rachel Brewster

103 *Virginia Law Review* 1611 (2017)

2. The Effects of the OECD Convention

... This Article argues that the OECD Convention is an essential part of the modern FCPA enforcement approach because it has established a clear path for prosecuting American and foreign firms equally. In this sense, other countries' enforcement was not necessary (although their cooperation with prosecutions was) for the treaty to be effective, because the United States could prosecute dominant American and foreign firms on its own. This capability to increase enforcement dramatically, but not hurt the international competitiveness of American businesses abroad, was a critical issue, one that the U.S. government and some American corporations had been working toward for years. With other major exporting countries in agreement that foreign bribery was an activity that must be condemned and prosecuted, American prosecutors had the legitimacy and the cross-national legal assistance to enforce the FCPA against foreign and domestic companies.

The OECD was decisive because it provided three valuable pieces to the enforcement puzzle: social, political, and legal justifications for American prosecutions. While U.S. prosecutors had long had broad jurisdictional authority over foreign companies, they did not have foreign government support for these claims, which made prosecutions difficult. The treaty addressed these issues and provided a path for greater American enforcement. ...

First, the OECD Convention solidified the changing social understanding of foreign corruption by NGOs, the World Bank, and development economists into a clear and unequivocal rejection of foreign bribery by OECD governments. This was a significant step in building a government consensus against tolerance of bribes. Foreign governments had resisted previous U.S. treaty overtures and anti-bribery prosecution because they did not agree with the policy. The treaty effectively eliminated the argument that the United States was being morally imperialistic and unreasonable in bringing criminal cases against firms for foreign corrupt practices.

Until the OECD Convention established that these acts should be criminalized, there was a veneer of legitimacy to foreign "improper payments." OECD governments might not accept corruption as legitimate in their own country, but it was acceptable abroad. For instance, British Trade and Industry Minister Lord Young opined, "When you are talking about kickbacks, you're talking about something [that] ... you wouldn't dream of doing ... here. But there are parts of the world I've been to where we all know it happens. And if you want to be in business, then you have to do [it]." ...

The OECD agreement was an unmistakable statement that foreign bribery was illegitimate and could not be justified by a nation's commercial interests, such as maintaining jobs or promoting exports, or foreign policy. The treaty not only crystallized the growing social opposition to foreign bribery, but it also established as a hard legal principle that all OECD states must criminalize such activity in their own national law. The OECD demand to prohibit foreign bribery was particularly strict. Article 5 of the treaty emphasized that

enforcement “shall not be influenced by considerations of national economic interest, the potential effect of relations with another State or the identity of the natural or legal persons involved.”

This joint agreement to an anti-corruption principle contradicted foreign governments’ previous position that the U.S. policy did not reflect other major exporting countries’ policies or values. The OECD Convention was a major breakthrough in constituting a new international legal regime that upended older views of corruption as harmless and acceptable. Anti-bribery efforts were no longer a naïve, overly moralistic American ideal. As a result, foreign governments were no longer able to push back against U.S. prosecutions as foreign interference that represented unique American norms or policies.

On the social dimension, the OECD Convention was itself a consequence of much of the policy debate about the harms of bribery in the World Bank and elsewhere. The treaty was clearly following the anti-corruption social movement and reflected the views of government officials that the status quo of openly permitting (if not subsidizing) foreign corruption by domestic corporations was probably unsustainable. Nonetheless, the OECD Convention was itself important because it represented a turn from a diffuse change in the social understanding of bribery to a legal regime binding on all major exporting governments. The treaty was not inevitable. The binding nature of the convention (an exception to the OECD’s normal practice of issuing nonbinding recommendations) and the strong principles against foreign bribery all represented significant moves forward in cementing a new government consensus that foreign corruption was no longer tolerable. The U.S. negotiators advocating for the treaty were not ahead of the anti-bribery social movement; however, they did not waste the opportunity presented to secure a legal agreement.

The OECD Convention also solved two political problems for OECD countries. The first was one of assurance among OECD members that they would act collectively. The OECD’s major exporting states were concerned that if they did not act in unison then they might suffer economic losses. This concern was evident in the OECD Convention’s notable provision that the treaty would not enter into force until “five of the ten countries which have the ten largest export shares ... and which represent by themselves at least sixty per cent of the combined total exports of those ten countries, have deposited their instruments of acceptance, approval, or ratification.” The treaty provided major exporters with reassurance that they would not undercut each other’s anti-bribery efforts in an attempt to win greater foreign market share.

The treaty also solved an American political problem of jurisdictional aggressiveness. While U.S. law may allow prosecutors broad extraterritorial jurisdiction or permit Congress to adopt policies that affect foreign business, such uses for adjudicative or legislative jurisdiction can lead to pushback by foreign governments. Other governments can threaten to retaliate by targeting American firms or otherwise impose political costs on the broad exercise of American jurisdictional power. Even if the foreign governments agree with the principles being promoted, they can object to the means by which countries promote these principles. The FCPA had long included jurisdiction for prosecutors to act with only minor territorial ties, but the use of this jurisdiction, without multilateral consent, could be controversial abroad and counterproductive to promoting legal assistance.

To address claims that the FCPA would be jurisdictionally overreaching by pursuing foreign persons or corporations with limited territorial ties to the United States, American negotiators included very broad bases for jurisdiction into the OECD Convention. Article 4 highlights that countries “shall take such measures as may be necessary to establish its jurisdiction over the bribery of a foreign public official when the offence is committed in whole or in part in its territory.” The official commentary states that “[t]he territorial basis for jurisdiction should be interpreted broadly so that an extensive physical connection to the bribery act is not required.” This explicit multilateral endorsement of broad jurisdictional rules provided for American FCPA enforcement when any act in furtherance of a foreign bribe touched on American territory, including uses of the American banking system. ... As Professor Mark Pieth, an observer of the negotiations, stated, “The Convention interpretation is clear: even the slightest of connections is sufficient.” By unambiguously endorsing a very broad jurisdictional approach, the OECD Convention blunted foreign government objections that the FCPA jurisdictional provisions were overly aggressive. As a result, it was politically more difficult for foreign governments to threaten retaliation in response to FCPA prosecutions.

Finally, the treaty addressed the critical legal problem of collecting evidence. Before the OECD Convention, the lack of cooperation in evidence gathering was a severe problem to bring cases against foreign corporations. OECD governments, resisting the idea that foreign bribery should be prosecuted, refused to cooperate with American efforts. Without access to key documents, prosecutors might have had the jurisdictional power to charge foreign corporations but were hamstrung in their efforts to bring FCPA cases against foreign firms.

The OECD Convention has promoted information sharing both formally and informally. On a formal level, the treaty committed governments to providing mutual legal assistance in gathering evidence and sharing information. Prosecutors can make requests to their overseas counterparts for documents or to find individuals. This formal legal assistance is frequently acknowledged by the DOJ in their settlements. Aid in evidence gathering also often occurs in a less formal and less centralized manner. Investigators and prosecutors are able to reach out to foreign counterparts without necessarily going through their national governments. As a result, cooperative relationships can form even without the encouragement (or even with the discouragement) of high-level political (and often elected) leaders.

In addition, the OECD’s requirement that countries enact domestic laws to criminalize bribery has created government offices whose regulators are responsible for investigating claims of bribery. Even if foreign governments do not prosecute many cases themselves, the fact that all OECD states have government offices with jurisdiction over foreign corrupt practices provides American officials with a host of foreign regulators who share their mandate. These foreign investigations can be fertile ground for evidence sharing. ♡

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How should we interpret legal instruments?

Stephen E. Sachs
Professor of Law



ONE PROMINENT APPROACH to interpreting legal instruments is to treat them as written in a special legal language, using specific linguistic conventions to establish their public meaning or their drafters' intent. When the instruments are still unclear, some scholars and judges argue that policy choices should guide their interpretation. Both approaches, however, fail to recognize "the most important resource available: the already applicable rules of law," Professor Stephen E. Sachs writes in a recent article co-authored with Professor William Baude of the University of Chicago Law School.

In "The Law of Interpretation" (130 *Harvard Law Review* 1079-1147 (2017)) Sachs and Baude argue that legal interpretation is shaped by existing legal rules that "tell us what legal materials to read and how to read them." In addition to reframing the theory of statutory and constitutional interpretation, they offer a framework for analyzing the canons of interpretation and explain how constitutional construction "can go beyond the text but not beyond the law."

Sachs is a scholar of civil procedure, constitutional law, Anglo-American legal history, and conflict of laws. His research spans a variety of substantive topics, focusing on the history of procedure and private law and its implications for current disputes. His interests include federal jurisdiction, constitutional interpretation, sovereign immunity, and the legal status of corporations. He is a member of the Judicial Conference's Advisory Committee on Appellate Rules, an elected member of the American Law Institute, and an adviser to the ALI's project on the *Restatement of the Law (Third), Conflict of Laws*.

In their paper, Sachs and Baude argue that the law of interpretation helps to resolve "two important confusions in public law: the existence and authority of the canons and the use of construction as a supplement to interpretation." In the following excerpt, they offer an approach to assessing the canons of interpretation. »

EXCERPT:

The Law of Interpretation

Stephen E. Sachs

130 *Harvard Law Review* 1079-1147 (2017) (with William Baude)

1. Their Authority

... As one might expect by this point, we distinguish linguistic rules, which are features of how some group of actual people actually speak, from the legal rules that regulate how a given legal system handles texts. This roughly tracks two existing categories in statutory interpretation: "linguistic" (or "textual") canons, which seek "to decipher the legislature's intent," and "substantive" canons that "promote policies external to a statute."

This division immediately raises a question of authority. Linguistic canons piggyback on the authority of whoever adopted the instrument in the first place. These canons are just attempts to read whatever the authors wrote, according to the appropriate theory of reading — authorial intention, public meaning, and so on. By definition, nonlinguistic canons attempt to do something else. So why should we apply them?

To some scholars, the answer is that "we shouldn't." Professor Amy Barrett, for example, notes that seemingly substantive canons like the rule of lenity or *Charming Betsy* have been with us since preconstitutional or early American practice. So while these canons are hard to square with a simple faithful-agency account, it seems likely that they're at least consistent with Article III's judicial power. But Barrett argues that such canons have no more legal authority to affect interpretation than would "a more general concern for equity"; those who give only modest scope to the latter must do the same for the former. Perhaps some rules can be derived from the Constitution itself, but most can't be — leading Barrett to doubt the validity even of common law defenses to criminal statutes. Others, like Professor William Eskridge, take the persistence of these canons to "negate the claims of both textualist and purposivist judges that they are nothing more than the faithful agents of legislatures or umpires calling balls and strikes."

Our view resolves this puzzle in a different way. Legal canons don't need to be recast as a form of quasi-constitutional doctrine, because they don't need to outrank the statutes to which they apply. Instead, the canons stand on their own authority as a form of common law. This authority distinguishes them from "a more general concern for equity" — unless, of course, a general concern for equity turns out to be an established rule of unwritten law.

2. Their Validity

The division between language and law also tells us how to assess each purported canon as valid or not. Much recent research focuses on "how Congress actually functions," exploring its internal dynamics and approaches to drafting. But as Gluck and Bressman helpfully acknowledge, the implications of this research for any given canon depend on that canon's role. Some canons might be effective guides to legislative intent, while others might not; they portray the latter as potentially advancing "rule of law" norms," making the legal system work better. We propose a slightly different dichotomy: canons of language and canons of law.

Because language depends on practice, a linguistic rule stands or falls by its use. ... As heuristics about actual linguistic practices, these canons should be directly falsifiable by empirical studies of the relevant community.

By contrast, legal canons operate even if — indeed, especially if — the drafters are unaware of them. At least on our view of jurisprudence, law also depends on practice, but not in quite the same way that language does. Unlike the primary rules of a language, most legal rules derive their validity from other, higher-order rules and practices — and they remain valid even after they’ve fallen out of common use, so long as those higher-order rules have not. If nearly everyone forgot about the semicolon, it’d quickly disappear from standard English; but we can all forget some details of the U.S. Code (say, that it’s illegal to have switchblades on guano islands), so long as we remember how to look them up later. Many legal canons are common law default rules, so they keep chugging along until they’re affirmatively displaced. If anything, the lack of knowledge about a canon *reinforces* the strength of that canon: what legislators were unaware of, they’re unlikely to have displaced.

To be sure, legal canons can eventually be falsified by practice, too. Unwritten law can usually be displaced by statute (unless it’s somehow been constitutionally protected from abrogation). Or it might evolve on its own terms, depending on one’s theory of the common law. And unwritten rules, like all legal rules, could all be thrown over if we move to a different legal regime. But unless those things happen, unwritten legal rules remain in force even when we lack complete agreement about them.

We think these presumptions are implicit in our shared understanding of language and law, but the discussion is also confounded by loose talk. For instance, one often hears that Congress is “presumed” to write statutes “in light of [a] background principle” like equitable tolling. That’s fine, but it seems to invite the possibility that the presumption could be rebutted if a sufficient number of legislators were unaware of the principle. ...

We think it’s more helpful to recognize that different canons are the products of different practices in different communities. Linguistic canons are designed to handle *communications*, so their validity turns directly on the linguistic practices of those who write and read legislation. But individual legal rules are derived from broader legal conventions, so their validity turns on the recognized legal practices of those who constitute the legal system (perhaps including judges, officials, lawyers, or the legally educated public), and on inferences from these practices that the participants themselves might not have drawn. We can say that an enacting Congress “understood” or “knew” or “accepted” all these rules, but that’s true only of Congress-the-legal-entity, the artificial construct of our legal rules. The natural persons we call “members of Congress” didn’t have to know these rules at all, and it seriously confuses matters to pretend that they did.

This distinction also provides a first cut at how to understand the implications of the empirical studies. Gluck and Bressman discovered that many established canons of interpretation either are unknown to congressional staffers or don’t reflect the staffers’ claims about the drafting process. The authors correctly note that these facts, if true, could potentially undermine claims that methods of statutory interpretation can be wholly traced back to the legislative authority.

We would add that the distinction between linguistic and legal canons tells us what should come next. Because linguistic canons live or die by their usage, Gluck and Bressman’s empirical claims might be highly relevant to them. By contrast, congressional ignorance of *legal* canons is largely unmomentous. As we’ve said, legal

canons operate on a different track, so our representatives’ lack of knowledge about them is as irrelevant as their ignorance of accomplice liability or general federal question jurisdiction.

3. Some Examples

The law of interpretation lets us take stock of proposed canons by seeing whether they satisfy either of the two paths to validity: linguistic or legal. To satisfy the linguistic path is to show that the canon accurately gauges how lawmakers and law-readers communicate. To satisfy the legal path is to show that the canon meets the general standards for the validity of legal rules, as supplied by the appropriate theory of jurisprudence. (In our view, this involves being the product of secondary rules yielded by our rule of recognition; applications of your own preferred theory are left as an exercise for the reader.) Often a canon is plausible only on one path or the other; but either is sufficient to validate its use.

An example might help. Scalia and Garner list among their fifty-seven canons the “Series-Qualifier”: “When there is a straightforward, parallel construction that involves all nouns or verbs in a series, a prepositive or postpositive modifier normally applies to the entire series.” The canon’s application to a 1998 child pornography law was extensively discussed in *Lockhart v. United States*, recently decided by the Supreme Court. But, as one observer noted, nobody proposed this maxim *as a canon* until Justice Scalia “pioneered” it in his book a few years ago. What sense does it make for a Justice to propose a previously nonexistent canon in a book in 2012, and then for the Court to discuss it in 2016, in the course of interpreting a statute from 1998?

The key to making sense of this new canon is to understand its status. The series-qualifier canon purports to be “a matter of common English” that’s “highly sensitive to context” — hence, a linguistic rule. That means it stands or falls on its use. If it accurately describes how certain people speak, then it’s a valid canon of usage. The fact that it hadn’t been previously known by that name is no more defeating than the fact that a usage dictionary has a new entry in it.

Similarly, even if a linguistic canon *is* oft-recognized, that doesn’t make it right. Just as formal recognition isn’t necessary for a linguistic canon to be valid, it isn’t sufficient either. What matters is usage. Consider the more famous canon against superfluity or surplusage, which also purports to be linguistic. ... If redundancy were actually far more common than we realized among the relevant readers and speakers, then the canon against superfluity might need to be modified or abandoned.

It’s no answer to say, as some defenders of the surplusage canon do, that “[s]tatutes *should* be carefully drafted, and encouraging courts to ignore sloppily inserted words results in legislative free-riding” — or that legislators “ought to hire eagle-eyed editors” to conform draft bills to the canon. The linguistic canons were made for man, not man for the linguistic canons. Absent binding law to apply, declaring that Congress “*should*” adhere to some particular rule of usage (such as avoiding surplusage, or spelling “colour” with a “u”) would be like declaring that Congress “*should*” write all distances in furlongs and all numbers in binary — and should hire extra staffers to make it so. ♡

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Duke Law's 15th dean is an innovative scholar and teacher and a decisive leader who listens

Kerry Abrams


In the seventh grade and bored with her schoolwork, Kerry Abrams turned to college guides for entertainment. She imagined herself attending a private liberal arts school on the East Coast, far from her suburban Seattle home, and preparing for a career in politics or psychology. But there was one future she ruled out entirely.

“I didn’t want to be a lawyer,” she says, “because my parents kept saying I would be a good lawyer. I didn’t want to do what they thought I should do.” »

An accomplished pianist, Abrams worked as a church organist before attending Stanford Law School, where she occasionally played in a chamber ensemble.



by Andrew Park

A photograph of a woman with blonde hair, wearing sunglasses and a white blazer, smiling and shaking hands with a man in a striped shirt. They are at an outdoor event with other people in the background.

“I couldn’t be more honored than to lead the school at this moment.”

Abrams visited with Duke Law alumni during reunion weekend in April.

But her parents were right, and the law turned out to be a good choice for Abrams, who became the James B. Duke and Benjamin N. Duke Dean on July 1. Over the past two decades, she has excelled as a litigator, legal scholar, law teacher, and university administrator. As a professor at the University of Virginia for 13 years, she emerged as a leading voice in not one but two fields — immigration law and family law — and opened up a new frontier of thought and scholarship at their intersection. And as UVA’s vice provost for faculty affairs since 2014, she tackled some of the academy’s most difficult issues, earning praise for building consensus for positive change at a university steeped in history and tradition.

In the law’s many and varied paths, Abrams has found outlets for her prodigious talents: a keen intellect, a strong work ethic, innate curiosity and empathy, and a gift for leadership. Those qualities, combined with her diverse background, made her uniquely qualified among hundreds of candidates for her new job.

“No matter when you met her, you would have thought that Kerry had leadership potential in addition to incredibly high academic potential,” says Stanford Law Professor Emeritus Paul Brest, who was the school’s dean when Abrams was a student in the mid-1990s. “I think Duke is just really lucky to be getting her.”

As Abrams assumes her post as the 15th dean of Duke Law School, the institution may be in the strongest financial and reputational position in its history. During the 11-year tenure of her predecessor, David F. Levi, Duke Law launched a raft of new clinics,

centers, and degree programs, grew its research faculty to 50 scholars, completed a \$132 million fundraising campaign, and bested its peers on metrics such as student quality, employment outcomes, and bar passage.

But Abrams takes over at a time of tremendous change in the legal profession, including the lingering effects of the recession-era contraction in the legal economy and the looming threat of further disruption through such technologies as artificial intelligence and robotics. She is also facing increased public skepticism of the value of law school and higher education in general. Among her priorities will be to work with faculty, staff, students, and alumni to determine how to navigate those challenges while maintaining the excellence in teaching and scholarship and collegial culture that have made the institution stand out among the top law schools in the world.

“I think we are at a real turning point in a couple of ways right now and law schools can do really well or really poorly in the future,” she says. “Duke has weathered the storm brilliantly, but I don’t think the storm is over. I think the recession highlighted a lot of issues that are going to continue to be issues long into the future. We need to focus on our core doctrinal strengths, such as international law, corporate law, constitutional law, criminal justice, and intellectual property, while continuously asking ourselves how the practice of law and the structure of legal institutions are changing, and how those changes should be reflected in what we teach our students and how we teach them.

"We are living in a time where globalization and automation are changing the way we live at a remarkably rapid pace. We are also living in a time where the institutions that have supported democracies across the globe are under threat. At a time like this, we need lawyers more than ever. What Duke Law graduates bring to the table are exceptional interpersonal skills, fine-tuned professional judgment, and deep sense of responsibility for the integrity of their profession and appreciation for the role of the rule of law in a just society. I couldn't be more honored than to lead the school at this moment."

Going East

Fulfilling that ambition will require determination and drive, and Abrams has them in spades. She made good on her dream of going east for college, winning acceptance at Swarthmore College in Pennsylvania. But her family was solidly middle-class — her father was an engineer, her mother a teacher who took several years off to raise her and her sister — and her parents let her know she would have to foot half the bill herself. So she set about securing scholarships and a summer job in the local Scott Paper plant, where her father was quality control manager.

The work was difficult — her job was to grab defective paper towel rolls off the line and toss them aside, and it soon caused tendinitis in her arm — but it taught her a lesson about privilege, and she came back the next summer.

"I hadn't thought that I came from a privileged background because I was having to come up with the money for college and we were not a wealthy family," she says. "But then I realized how privileged I was. I was doing it just for the summer, and then I got to go to college, but I was working with people who were doing this



"I always had my eye out from the very beginning for people at Stanford with academic potential and Kerry just leapt out as such a person. She was linking between the practice dimensions of the school and the scholarly dimensions so smoothly that I just knew that she was an academic in the making."

— Harvard Law Professor Janet Halley, for whom Abrams was a research assistant at Stanford Law School

really difficult work for their whole lives."

At Swarthmore, Abrams thrived in the famously rigorous academic environment with classmates who were, like her, eager to engage their curiosity and immerse themselves in intellectual pursuits. She majored in English and won a spot in the honors program, where there were no grades, classes consisted of weekly seminars lasting up to six hours each, and students from different disciplines were expected to collaborate and learn from each other.

Abrams assumed she would go to graduate school in English and then into academia, but she wasn't ruling out other paths. After graduation, she found a job as an assistant in the college textbook division of St. Martin's Press in New York. Her boss, the president of the company, gave her a high-level view into the book industry, which prompted her to think about a career in business; a former lawyer, he also encouraged her to think about a JD or an MBA as a faster route to a fulfilling career than slogging through the trenches of publishing houses. She had also begun to notice how many humanities PhDs were working alongside her, surviving on low wages because they were unable to find faculty positions in their fields. Before long, she moved home and took on a series of jobs to help her pay for law school,

including organist for a local church (she was a talented pianist), secretary for an adoption agency, and department store clerk during the holiday rush.

"Law school seemed like it left all those doors open: It left the 'becoming a professor' door open, it left the 'running a business' door open, and it also opened up this whole world of law," she says. "I didn't do it because I thought I wanted to be a lawyer. I just thought that was one of many possibilities, and that I had some skills that would be appropriate to the job."

Learning a new language

During her first semester at Stanford, Abrams resisted being taught to think like a lawyer. She struggled with her first exams, thinking her professors expected her to come up with new legal theories when what they really wanted her to do was spot the legal issues. But in her spring Constitutional Law class, taught by legendary scholar and litigator Kathleen Sullivan, it began to click: Law was a foreign language and she had to learn the rules before she could engage her creativity to push the boundaries of it.

"I was seeing the social issues behind the law, the politics behind the law, the applications of political theory behind the law," she says. "And eventually, there was a space for all that. But in the first semester, I just needed to know what the Mailbox Rule was and be able to apply it."

She also recognized that while she was a strong writer, she wasn't as adept at oral advocacy. So instead of leaning into her strengths, she did moot court in her second year and was co-president of the board as a 3L. She also co-chaired Women of Stanford Law and helped start a chapter of the ACLU, which did pro bono research on LGBT rights issues. Dean Brest, upon learning of her musical ability, invited her to join a chamber group that occasionally played at his house.

But Stanford's most lasting impact on Abrams likely came through her relationship with Janet Halley, a former English professor who had earned her JD and joined the faculty to teach Family Law. Halley hired Abrams as a research assistant, asking her to delve into humanities and social science scholarship to identify theoretical work that could inform the professor's study of the legal regulation of families. They pared the resulting material — ideas about the makeup and function of the family that Abrams collected from philosophy, fiction, women's studies, and other fields — down to two binders. Halley still uses the material in her teaching and research, crediting "the Kerry Abrams binders" with helping propel her as a family law scholar.

"I always had my eye out from the very beginning for people at Stanford with academic potential and Kerry just leapt out as such a person," says Halley, now the Royall Professor of Law at Harvard. "She was linking between the practice dimensions of the school and the scholarly dimensions so smoothly that I just knew that she was an academic in the making."

"Being attuned to literature makes me alert to things that some people differently trained won't see, and Kerry was seeing those things."

Indeed, in Halley, who would become a mentor, Abrams saw the opportunity to connect disciplines to look at the law in new ways, continuing the interdisciplinary study she had begun in her Swarthmore seminars. "She helped me see how I could bridge those two worlds and how some of my literary background was applicable to thinking about law," Abrams says.

"She was very smart, she was creative, she was hard-working, and I always appreciated that she had an ability to think outside the box."

— Lisa Cleary '83, co-chair and managing partner at Patterson Belknap

Warming to legal practice

At the same time, she began warming to the idea of practicing law. She spent her 1L summer at Preston Gates and Ellis (now K&L Gates) in Seattle and thinking the book business still intrigued her, she applied for a 2L summer position at Patterson Belknap, a New York firm that counted major publishing and media companies as clients. When she didn't get a response, she contacted a partner and persuaded him to let her drop his name with the recruiter. The partner agreed, she got the job, and at the end of the summer, an offer to come back after graduation.

First, though, she clerked for U.S. District Judge Stanwood R. Duval, Jr. of the Eastern District of Louisiana. Her first round of clerkship applications had been rejected, but she kept looking until she landed one. The job, in New Orleans, introduced her to diversity jurisdiction cases and maritime and admiralty law — "it was like having a foreign exchange experience," she says — but it also showed off her writing and managerial talent. "Even as a young person, she had administrative skill, a certain way of handling things that was above her chronological age," says Duval. "It was obvious to me for many reasons she was going to do well."

When Abrams arrived at Patterson Belknap after passing the bar, she dug into the commercial litigation that was the firm's bread-and-butter: medical device patent disputes, trademark work for toy giant Hasbro, a libel suit against *Time* magazine brought by Indonesian strongman General Suharto. The firm's intelligent and friendly atmosphere and small-for-Biglaw scale suited her, and she took pleasure in helping her clients.



At the Duke Law Reunion 2018 kick-off, April 13

“She was very smart, she was creative, she was hard-working, and I always appreciated that she had an ability to think outside the box,” says Lisa Cleary ’83, Patterson Belknap’s co-chair and managing partner. “I love women like Kerry who possess great self-confidence. It’s critical to being a successful litigator and trial lawyer.”

Patterson Belknap’s commitment to pro bono work also engaged Abrams. After handling a number of eviction cases on behalf of low-income residents of New York’s Chinatown, she was asked in her second year at the firm to take on a disability case against an adult home in Queens suspected of inducing mentally disabled men to have unnecessary prostate surgeries in exchange for Medicaid kickbacks. Abrams dove into it, writing the complaint in the midst of trial in one of her patent cases, drafting the pleadings when the defendants moved to dismiss the case, and appearing in court opposite “an army” of much more experienced defense lawyers representing the home, the hospital, the doctors, the social worker, and the social work agency.

Much to her surprise, the judge denied all of the defendants’ motions. Abrams logged 800 hours that year managing discovery. The case prompted a front-page investigation in *The New York Times* and eventually was settled for nearly \$10 million in a substantial victory for clients represented by the firm and several public interest organizations. “Kerry went toe-to-toe with all of those lawyers and she was not fazed by their much more substantial experience or by their experience in this kind of case,” says Cleary, who, as pro bono partner at the time asked Abrams whether she would be interested in joining the team.

A mentor and a teacher

After three years, Abrams had developed a reputation at Patterson Belknap for raising her hand to tackle the thorniest legal questions that arose in her cases. She was fascinated by the history of civil rights statutes at the heart of the claims in the adult home case, but she was equally interested in patent procedure in an IP case. Being a lawyer was engaging her intellect and curiosity, and she had an array of career options in front of her, among them in-house counsel, prosecutor, and public interest advocate.

But for all of her success as a young associate, Abrams remained conflicted about her career. She threw herself into working with summer associates. She took charge of the first-years. She angled for a seat on the hiring committee. Her colleagues had to remind her that grooming young lawyers wasn’t her main job, litigating cases was.

“I was thinking that the thing that really gives me satisfaction is mentoring people,” she recalls. “I thought, ‘Where is *that* the main job?’”

The answer, she realized, was in the academy. That spring, she learned from a friend about an unexpected opening at New York University. In a bit of serendipity, its law school had over-enrolled its class and needed one more teacher for its 1L lawyering program. If she got the job, she could spend up to three years developing her teaching and research and readying herself to be a law professor.

“She had a way of identifying what kinds of questions were going to animate the students and get them engaged with each other. One of the hallmarks of her teaching is just this unselfish commitment to helping the students improve the quality of their thinking and improve the quality of their writing.”

— University of Virginia Law Professor Anne Coughlin

The next day she applied. She was hired, and just a few weeks later, started her new career.

At NYU, Abrams joined a cadre of talented young lawyers with their eyes on the academic job market. Their job was to teach small sections of students the basic professional skills they would need for practice, such as legal writing, negotiation, and oral advocacy. The program emphasized simulations, problem-solving, and other active learning techniques, and the instructors worked together to learn from each other's experiences in the classroom, even taking part in each other's role-playing activities. Abrams loved the collaborative environment and reveled in the freedom the job afforded her to, among other things, be a full-time mentor. At first, when students or colleagues would pop into her office, she couldn't help watching the clock in six-minute increments, as she had when she was tracking her billable time as an associate. But her body eventually got used to the fact that a big part of her job was being available to help others.

“It was clearly the right career move for me,” says Abrams. “I wasn't unhappy at the law firm, I just wasn't flourishing in the same way that I did once I became a professor.”

In 2005, with a research agenda emerging around family law and immigration law, Abrams joined the faculty at UVA along with her husband, criminal law scholar Brandon Garrett. The classes were different — she was teaching her first doctrinal courses — but she strove to incorporate the evidenced-based methods of engaging students and making abstract subject matter real that she had honed at NYU. In Immigration Law, her students began the course by investigating and writing their own families' histories of coming to North America. In Family Law, she assigned negotiation exercises in which students simulated advocating for a parenting plan for children in a divorce settlement. Her upper-level courses featured frequent writing assignments and opportunities for workshopping and feedback on papers.

“She was able to open up a space, maybe more effectively than anyone I've seen, [to get] students to talk with each other as opposed to just talking to us,” says Anne Coughlin, the Lewis F. Powell, Jr. Professor of Law at UVA, who co-taught seminars on marriage law and law and literature with Abrams. “She had a way of identifying what kinds of questions were going to animate the students and get them engaged with each other.

“One of the hallmarks of her teaching is just this unselfish commitment to helping the students improve the quality of their thinking and improve the quality of their writing.”

Says Kent Piacenti, an associate with Vinson & Elkins in Dallas who co-wrote an article with Abrams as a 3L: “She was really good at communicating her passion for her classes' subject matter and also really good at explaining how each topic fit into the big picture. She always took the time to provide thoughtful answers to students' questions.”

‘Exactly what I wanted to do’

Academia afforded Abrams an intellectual and creative freedom that she relished, too, or as she puts it, “getting to do exactly what I wanted to do.” Brest, the former Stanford dean, had encouraged her to open herself up to scholarly topics that genuinely interested her. That encouragement led her to a set of questions she had first explored as a research assistant at Stanford investigating the theoretical underpinnings of family law. How do law and culture interact? Where does one end and the other begin, and how do they influence or control each other? She began to think about how, when people move from one place to another, they bring with them certain cultural assumptions and practices, many having to do with families. What happens when those assumptions and practices, such as their vision of marriage or their approach to childrearing, come into conflict with the norms of the place to which they have migrated? How does the law respond?

“I didn't realize at the time that I was writing about immigration law,” she says. “But pretty quickly as I started working on this project, I realized, ‘OK, this is either family law or immigration law. I'm not sure which.’ And then in my scholarship, I ended up arguing that it's both and that they're related.”

Her first article traced the history of an obscure 1875 U.S. statute that denied entry to prostitutes from China. The Page Law was the federal government's first attempt at regulating its borders through restrictive immigration legislation. It was not explicitly race-based, unlike the infamous Chinese Exclusion Act enacted seven years later, but it targeted a racial and national group by enforcing a cul-



Abrams joined the UVA faculty in 2005 and was named the Albert Clark Tate, Jr. Research Professor of Law in 2011. She became vice provost for faculty affairs in 2014.

Kerry Abrams: Selected Scholarship

Family Reunification and the Security State,
42 Constitutional Commentary 247 (2017)

Immigration's Family Values (with R. Kent Piacenti),
100 Virginia Law Review 629 (2014)

What Makes the Family Special? 80 University of Chicago
Law Review 7 (2013)

Marriage Fraud, 100 California Law Review 1 (2012)

*The Hidden Dimension of Nineteenth-Century Immigration
Law*, 62 Vanderbilt Law Review 1353 (2009)

Immigration Law and the Regulation of Marriage,
91 Minnesota Law Review 1625 (2007)

*Polygamy, Prostitution, and the Federalization of
Immigration Law*, 105 Columbia Law Review 641 (2005)

tural norm of marriage: Second wives and concubines were common in Chinese society, but under the statute, they were excluded as “lewd or debauched.” By examining the Page Law in the context of an era in which the nation’s control over immigration was nascent and contested, Abrams showed how legislators used cultural norms of family structure and sexual morality to expand federal power.

A subsequent article looked at a different kind of migration — the settlement of the West. The Donation Land Act, which gave land to people who moved to the Western Territories in the 19th century, offered twice as much to men who came with wives. And unlike the restrictions placed on Chinese women who attempted to immigrate, migration of European and American white women was encouraged — even when it appeared to be coerced or the women could have been categorized as “lewd or debauched.” Abrams argued that the concept of “immigration law” should be expanded to include not only restrictive immigration laws, such as the Page Act, but also laws that fostered immigration, such as the Donation Land Act and the Homestead Act, as well as the absence of law, such as the understanding of white immigration as “settlement” seemingly not in need of legal regulation.

In addition to this historical work, Abrams analyzed how contemporary immigration law regulates the family and how cultural notions of family affect immigration law. In one early article, Abrams identified the various ways in which immigration law regulates marriage for immigrants and citizens who are married to immigrants, and how these federal immigration law rules often functionally override state family law rules. Another analyzed how immigration and citizenship law diverge from state family law rules

“A central theme in Kerry’s work has really been to engage with the complexities of the family and the border, and that’s exactly what the travel ban case involves. ... Her scholarship has always impressed me as exceptionally deep and broad at the same time. It reflects vision and perception.”

— UCLA Law Professor Hiroshi Motomura

of parentage and paternity, and one more explored the various reasons why family-based immigration would be a desirable policy tool for lawmakers.

This melding of immigration and family law scholarship, enriched by deep historical and cultural analysis, marked Abrams as a path-breaking thinker. Says Harvard’s Halley: “Kerry was the person who taught me [that] a lot of family law is not in the family law course.”

About Kerry Abrams

TITLE: James B. Duke and Benjamin N.
Duke Dean and Professor of Law

HOMETOWN: Edmonds, Washington

SPOUSE: Brandon Garrett,
L. Neil Williams, Jr. Professor of Law

HOBBIES: Hiking, playing chamber
music, reading with her sons
(*The Lord of the Rings* and
The Birchbark House recently),
watching *The Americans*
(she recently finished the series)



Paintings: Brandon Garrett

Abrams says she knew that exploring the intersection of the two fields would produce insights that would have real-world application, but the arguments she was making were largely historical and theoretical. That changed with the 2016 presidential election and its focus on immigration. In a paper delivered at the 2017 Association of American Law Schools conference in San Francisco just two months after President Trump's victory, she noted that the need for secure borders must be balanced with the longstanding national interest in keeping families together, including those separated by immigration. Three weeks later, when the Trump administration banned citizens of seven majority-Muslim nations and refugees from entering the U.S., she began working with colleagues on amicus briefs that made a similar argument in challenging the actions on constitutional grounds.

"I had been working on this subject for the last 13 years but not thinking of myself as the person who would be making these arguments to a court," she says. "But then in this moment, I was able to use what I had written for a particular purpose, which turned out to be pretty satisfying."

Says Hiroshi Motomura, an immigration scholar at UCLA Law School and a co-author on the travel ban briefs: "A central theme in Kerry's work has really been to engage with the complexities of the family and the border, and that's exactly what the travel ban case involves."

"I've learned so much from her work over the years," he adds. "Her scholarship has always impressed me as exceptionally deep and broad at the same time. It reflects vision and perception."

Listening and leading

In 2011, Abrams was named the Albert Clark Tate, Jr., Research Professor of Law at UVA, and in 2012, she won the law school's award for excellence in scholarly research. Two years later, she was asked by John Simon, UVA's provost (and a former Duke professor and administrator) if she would consider joining his office as vice provost for faculty affairs.

She had served as the law school's representative in the Faculty Senate for the prior three years, the last of them as chair of its Academic Affairs Committee, and the role had given her a new perspective on the breadth of the university and the opportunity to work with people from across the institution. But joining UVA's academic leadership would make her responsible for a range of critical issues affecting 2,800 faculty, including recruitment and retention, tenure and promotion decisions, and diversity, inclusion, and equity. With two young children at home, she wasn't sure she wanted such a demanding role, but she warmed to it as time went on.

"I had a 3-year-old and a 5-year-old, and I wasn't sure I wanted such an all-consuming job," Abrams says. "John assured me that we could work it out, and we did, and I'm really glad that I did it."

"Kerry said we need to figure out policy that enables everybody to succeed, and our goal should be to try to enable every faculty member to do their very best work and feel valued and included and want to stay here."

— University of Virginia Law Professor Molly Bishop Shadel

One of her first tasks was to revamp the university's policy on non-tenure track faculty. These faculty, many of whom are women, were sometimes treated differently than their colleagues who were eligible for tenure, or encountered limited opportunities, says Molly Bishop Shadel, a UVA law professor. Addressing the inequities required Abrams to ask uncomfortable questions and risk upsetting the friendly faculty culture, but she didn't shy away from the challenge, Shadel says.

"Kerry said we need to figure out policy that enables everybody to succeed, and our goal should be to try to enable every faculty member to do their very best work and feel valued and included and want to stay here," she says.

After hearing from a task force that looked closely at affected jobs across the institution, Abrams and her team began a years-long process of drafting and re-drafting language, sharing it in a variety of settings, and listening to feedback so they could understand people's concerns. Hundreds of faculty from throughout the university participated, with many of the final provisions appearing as a direct result of the input they provided in those sessions. In the end, the new policy established a career path and a level of status and security that hadn't existed before.

Archie Holmes, vice provost for academic affairs at UVA, connects Abrams's success collaborating broadly across disciplinary lines to solve problems to her strong sense of empathy and desire to learn about others. At his request, she regularly met with a group of student leaders who were concerned about faculty diversity, inviting their input into the university's recruiting practices. "I think you need that level of real curiosity to really try to understand what's going on so you can help people understand the options available to them and help them make the best decision," says Holmes, a professor of electrical and computer engineering.

There was adversity, too. Her tenure in the provost's office coincided with a tumultuous time for the university and its leadership that included a *Rolling Stone* article falsely accusing fraternity members of a brutal sexual assault and, last August, a rally in Charlottesville of white supremacists that erupted into deadly violence.

Says Abrams: "Although I wouldn't wish those experiences on anyone, there is always potential in a crisis to recommit to your core values and use the experience as an opportunity to improve. I

tried to respond to these events productively.” Following the *Rolling Stone* article, Abrams helped with a redrafting and implementation of the university’s sexual assault policy. She responded to the white supremacist rallies by redirecting her provost’s office team to focus on programs and courses for faculty teaching them how to discuss difficult events in the classroom and on the racial history of the town and university.

Law professor Coughlin says Abrams played a critical role in helping the faculty through the multiple crises in the community over the last several years. “She was a steady, steadfast, trustworthy presence during a very difficult period. It was a time when people were distracted and it was difficult to get work done, but she persevered and she helped us continue to flourish.”

‘Sweet spot’ for Duke

When the search began for a new dean of Duke Law School last summer, Abrams’ success in a top administrative role coupled with her reputation as a leading scholar in her field made her an obvious candidate. Laurence R. Helfer, the Harry R. Chadwick, Sr. Professor of Law and chair of the search committee, says her name came up multiple times as Duke sought recommendations from higher education leaders. As members of the committee got to know her, she quickly rose to the top of the candidate pool.

Abrams, they found, was an excellent listener. She had demonstrated an ability to build consensus at UVA through thorough close consultation with others. And she pledged to do the same as dean, saying she wanted to hear from its faculty, staff, students, and alumni before deciding what actions she might take. Her first year would be “mostly a year of listening,” she said in a visit to campus as a finalist for the job, but with an eye to nurturing those parts of the institution that had “forward momentum.”

“I think so many things are going right at Duke that I would view my role as not being a change agent so much as coming in and figuring out what is going really well and then what can I give a boost to,” she told faculty and senior staff during a Nov. 30 presentation at the Law School.

Margaret H. Lemos, the Robert G. Seaks LL.B. ’34 Professor of Law, says Abrams impressed the committee not only by asking thoughtful questions, but also by offering sound judgments quickly and decisively. It was clear that she was both a “people person” and a natural leader who could make tough decisions and get things done.

“When Kerry talked about her experiences at UVA, her leadership style really came through,” says Lemos, who Abrams tapped to be senior associate dean for faculty and research. “She talked about listening and learning, building personal relationships, and empower-

ing people — there was all this warmth and humanity and empathy. But it was also clear that she didn’t shy away from solving hard problems, and that once she had learned about an issue she was ready to tackle it head-on.”

The search committee also appreciated Abrams’ interdisciplinary perspective, on display both in her boundary-crossing scholarship and during her time in the UVA administration, Helfer says. Having worked for Simon as well as his successor as provost, former Pratt School of Engineering Dean Thomas C. Katsouleas, she knew of Duke’s collaborative culture and willingness to break down disciplinary barriers. She also spoke of the great opportunities these traits afford the Law School to advance its mission and demonstrate higher education’s value to the general public.

The priorities she voiced during her interviews also aligned with the Law School’s direction under Levi and prior deans. She saw the need to address the changing legal profession, especially the impact that technology is having on the jobs of young lawyers. She wanted to help professors expand the reach of their scholarship through collaborations with colleagues in other disciplines, such as medicine, the social sciences, and engineering, and recruit new scholars to the faculty who are recognized leaders in their fields. She wanted to build on Duke’s reputation as a hub of innovation to develop new curricula and research in areas such as cybersecurity, data privacy, financial technology, and entrepreneurship. She wanted to expand the use of experiential learning to help students devel-

op professional skills that employers say are necessary for success. And she wanted to grow opportunities for students to engage with their communities through pro bono service and to pursue public interest careers.

“She has been a full-time scholar on a law school faculty but she also has extensive experience in higher university administration,” says Helfer. “That combination was a sweet spot for the committee,” says Helfer.

For Abrams, who was announced as dean on Feb. 2, the transition to Duke has been a slow-moving whirlwind. She and Garrett, who was named the L. Neil Williams, Jr. Professor of Law (see p. 18), moved their family to Durham in June. She began her listening tour even before that, meeting

with each member of the Law School’s resident faculty and much of the senior staff during the spring and early summer. She also spoke at receptions for admitted students in New York and Washington and attended the spring meetings of the Law School’s leadership boards, reunion, and graduation. She plans to take a two-year hiatus from teaching but is looking forward to engaging with students in other ways.

“Kerry is a quick study and already has great insight into the Law School’s potential within the university,” says Levi. “She will help us continue on the great trajectory that we have been on for the last 25 years.” ♡

“Kerry is a quick study and already has great insight into the Law School’s potential within the university. She will help us continue on the great trajectory that we have been on for the last 25 years.”

— Former Dean David F. Levi



Pictured at an April 14 event, from left: Pam Gann '73, Kate Bartlett, David Levi, and Kerry Abrams

Four deans: A conversation

FOUR DUKE LAW DEANS opened the spring gathering of the alumni advisory boards on April 13 with an hour of reminiscence and reflection on leading the Law School, challenges in legal education, and words of welcome to the newest member of their cohort, Kerry Abrams.

Outgoing Dean David F. Levi moderated the conversation that included Pamela Gann '73, who was dean from 1988 to 1999 and subsequently served as president of Claremont McKenna College in California for 14 years, Katharine T. Bartlett, the A. Kenneth Pye Professor of Law, who served as dean from 2000 to 2007, and Abrams, then the dean-designate and the vice provost for faculty affairs and professor of law at the University of Virginia. Excerpts of their discussion and the audience question-and-answer session follow.

Q: What were the biggest challenges and opportunities you faced as dean?

PAM GANN: The first real problem was that we were out of space and we had an inappropriate building for the stature of what was going on in it. We were not able, in great contrast to today, to get any help from The Duke Endowment, because it wasn't permitted by the Allen Building. So we were really out there on our own, and that was the impetus for the first campaign of the Law School — to do the first building addition. We were not permitted to run a campaign at the same time [Duke] ran a campaign for Arts & Sciences because so many [alumni] had two degrees and they were worried about competition for fundraising at that time. They weren't ready for what David did in the *Duke Forward* campaign.

KATE BARTLETT: I was more familiar with the institutional challenges Duke faced when I became dean than with the expectations on me to lead the community through critical moments. Let me give one example. I was the dean on 9/11, and while we, at Duke, did not experience the impact of 9/11 as directly or severely as [people

did in] New York and Washington, it was a terrible moment in our history. Many of our students had concerns about family and friends and none of us could be sure about where this was going. In those early days, it was personally challenging for me to set aside my own need to process the shock in order to focus on the community's need for reassurance, support, and opportunities to grow from the experience.

DAVID LEVI: Some of the tensions with the rest of the university that Pam mentions have been removed in the time since she was dean. Even so, one of the continuing challenges of being dean at Duke is getting the relationship with the rest of the university right. We are a jewel in the crown of the university, and yet to a large degree, one of our biggest communication challenges is the rest of the university. We have a public policy school [at Duke], but we are also a public policy school. We have an [institute] on ethics, yet we are also a school of ethics. Trying to get this right, so that the university understands the excellence of the Law School, and then not be viewed as a source of funding for other priorities of the university is just an ongoing battle.

Q: What are some of your fondest memories?



GANN: First of all, the Board of Visitors, and its relationship to the success of the Law School and to the mentoring and support of the dean is truly important. And campaigning is hard, but it's fun. Fundraising is really fun because the worst that can happen is that somebody says "no," and what you enable donors to do, I hope, is to become incredible partners

and make a real difference in an institution and in the lives of those who pass through here. And that's just a gift that is way beyond the immediate pledge.

BARTLETT: I guess my biggest surprise on becoming dean was how much I would enjoy my relationships with you all.

LEVI: Some of my most intense and enjoyable relationships have been with the people in this room. We've just been all over the world, literally, together. Those relationships are very special to me.

ABRAMS: Even though I haven't actually started the job yet, I already have some fond memories. I met many of you in New York and Washington, D.C. when I spoke at the admitted students receptions there. One thing I wasn't expecting — I think this is what Kate was referring to — was how fun it would be to meet so many alumni. I almost felt that just signing up to be the dean meant that I had this reflected glow that is not mine but belongs to the whole school. It's the love that everyone has for the Law School — and suddenly I get to be a part of it. I feel like I've really joined a family.

Q: What was the hardest part about leaving the deanship?

GANN: For me, it was very personal. I'm an alumna. I'm very attached to this university. So it was very hard, not to leave deanship here, but to leave Duke. I felt like I had really grown up here, because I first arrived here when I was age 22, and so it was a big part of my youth, my education, my professionalization, the academic side — the research side, writing side.

BARTLETT: My situation was pretty different in that I wasn't leaving Duke, and I knew that in terms of the faculty, the alumni, this institution, I would continue to have a close association with it. That part wasn't the hard part. But I was surprised at how long it took me to get back to being a scholar. When I became dean, I had a number of projects in the pipeline that I needed to finish, but once I had, I devoted the rest of my time, full-time, to the deanship. So I had to start with something fresh when I rotated out and it took me a couple of years, really, to get my momentum going again.

Q: What does the future hold for the legal profession, higher education, and law schools?

GANN: One question I have is whether the brightest and best [young people] in our country and outside our country are going to be really committed to law and the legal profession. Having paid a lot of attention to very talented college students, I would say that over the last decade there has been a declining interest, on balance, in actually going to law school. A lot of young people today are really interested in the modern industries of technology. That is really a lot of what's on their minds.



BARTLETT: I think the biggest issue is access to law school. I'll bet there are a lot of people in the room like me, whose parents weren't able to help with college and law school, and you

were able to — through scholarships and work study and jobs and manageable loans — get through school. As you all know, that just isn't possible anymore. David has put a lot of emphasis into scholarships, and among many things, I think that's one of the best things that [he's] done.

ABRAMS: One big issue confronting the legal profession is the change in what lawyers actually do. Some of the things that lawyers did when I graduated from law school are now done by computers. There's not as much room to hide if your higher-level skills, such as interpersonal skills, professional judgment, and emotional intelligence aren't up to snuff. For example, a firm can't afford to hide a



junior lawyer away from clients by putting them on document production for three years the way they could have, maybe 20 years ago. The same pressures of automation and globalization that are affecting other professions and industries have hit the legal profession. Law schools have to think hard about what lawyers need to know the moment they enter practice.

I think another issue is the distinction between legal education for lawyers and legal education more broadly. A lot of other schools at universities educate people who aren't getting degrees in the subject that that school teaches. Law schools have largely stuck with legal degrees. And so one possible trend down the line may be law schools teaching people who aren't lawyers, or maybe law schools engaging in executive education for people who have JDs but need to move into new skill-sets or new areas as they develop. The world is changing so quickly, there are a lot of areas of law that didn't exist when most of us were in law school that some practicing lawyers may want to earn certificates [in] or go back to school to learn new things that can help them. That's not something that most law schools have done much of in the past.

LEVI: We went through a period during the downturn when people were saying, "Why can't law school be two years?" This was largely to address Kate's concern that the cost of higher education is so



great. And we're at a point in time when we're not on top of this issue — we don't have the models yet for providing higher education at a reasonable cost. I think it is one of the great challenges of our time. We have tried to find new income streams that are not based on

tuition. We have also raised a lot of scholarship support from alumni.

But it is difficult to significantly lower the cost of a legal education. For example, now, you don't hear so much, "Gee, why can't we do this in two years?" Now it's actually the reverse problem, which is in order to add value to law practice now, as we project it out, a law graduate needs to know so much, that it's not even possible to do it in three years! The expectations are now that a graduate has skill in data analytics and, to some extent, in higher mathematics, has a deep understanding of the world, data privacy, what's going on in Europe, what's going on around the world. It's a big challenge, even in three years.

Q: (To Abrams) What are your views on civility and discourse that you'd expect to see at Duke? You have gone through an experience in Charlottesville — [the violent August 2017 white nationalist march on the University of Virginia] — that I'm sure has taught you a lot.

ABRAMS: I think that civil discourse is critical for universities in order to do their work. Universities are supposed to be places in which we can test out new ideas and argue about them with other people. You have to have a space for that to happen without people being shut down. One great thing about law schools is that we teach civil argumentation really well. So law schools are not only a space for civility and reasoned discourse — law schools can be leaders in showing the rest of the university how to do this really well.



There are moments, like when white supremacists march through your town, when I don't think the issue is civility. In Charlottesville, these were people who intended to do the community harm, and this was a moment when it was important for our leaders to stand up and name this behavior for what it was — evil. This was not a time to try to bring out the best arguments on "both sides" of an issue.

But most of the time at universities that's not what's happening. Most of the time, people are genuinely trying to test out new ideas and figure out what they think the right answer is. And especially with college students and law students, they're at places in their lives where they are testing the waters and they need a space to let that happen. ♡

Profiles



Carl Bolch, Jr. '67 and Susan Bass Bolch

Carl Bolch, Jr. '67 and Susan Bass Bolch established the Bolch Judicial Institute in January with a \$10 million gift to Duke Law.

JUST A FEW YEARS after he took over his family's business operating gas stations — and not long after he graduated from law school at Duke — Carl Bolch Jr. made what some called a crazy decision: to offer self-serve gasoline at the pump.

"People said I would lose money, that customers would just drive off after pumping gas," he recalls. At the time, just a few companies were offering self-service, and most were in the West and Southwest. For many Southern states, self-service gasoline was unheard of and, in some cases, barred by law. But Bolch pressed on, making his gas stations the first in Alabama, Georgia, and Florida to offer self-service and lobbying to change laws where needed. "We not only didn't lose money, it was the best business decision I ever made," he says.

People didn't drive off. They pumped their gas and came inside to pay. Then they started buying other items while inside. Today, his company, RaceTrac Petroleum, Inc., is a \$9-billion family business operating more than 750 stores in 12 Southern states, and self-serve gasoline is the overwhelming standard in all but two states in the U.S.

Why did self-service work? Why *didn't* people just drive off? For Bolch, the answer is obvious.

"It comes down to the rule of law," he says — a system of laws and understood repercussions for breaking those laws that frames our business and personal interactions and creates a moral code of behavior that the vast majority of us not only observe but cherish.

Bolch, who earned a BS from the Wharton School of Business before coming to Duke Law, sees his success as the direct result of the strength of the rule of law in the United States. That view has been reinforced by global travel, a passion he shares with his wife, Susan Bass Bolch, a lawyer who serves as secretary and member of the board of directors of Racetrac.

“Our interest in the rule of law and what it does domestically and globally stems from our curiosity in our travels,” he says. “We make two trips around the world each year. The people themselves don’t seem to change that much, but their prosperity, their society, their situations change drastically depending on the strength of the legal framework.

“I have had success in business that I couldn’t have dreamed I’d have, largely because of a system built on the rule of law and a society that respects the rule of law. It is the foundation for the stability of society, human rights, a growing economy, and flourishing culture and artistic life.”

Establishing the Bolch Judicial Institute at Duke Law devoted to protecting and advancing the rule of law worldwide is, for the Bolches, a way to both strengthen the system that has provided them with so much opportunity and extend that opportunity to the far corners of the planet where a system of laws and justice could undergird and foster societal transformation.

“An independent and fair judiciary is critical to the stability of a society and the rule of law,” says Susan Bolch. “It’s the difference between feeling disappointed in a judge’s decision and thinking a judge’s decision is corrupt or based on a secret direction from some government official. We have to have the belief, the knowledge really, that our laws are stronger than any one person, that our judges are impartial and responsible to the law and nothing else.”

A graduate of Barnard College and Georgetown Law School, Susan Bolch spent much of her early career practicing energy and environmental law. As a young associate at the Washington, D.C., firm of Collier, Shannon, Rill and Scott, she aspired to be an antitrust lawyer, but the energy crisis of the late 1970s propelled her in a different direction. “I’d been with my firm for just a few weeks when the government put price and allocation controls on all petroleum products. The environmental partner called me to help churn out memoranda relating to all the new regulations. I remember going home and calling my dad and saying, ‘I don’t know anything about this!’ His response was, ‘No one does!’ It was an upending time in the industry.”

Carl and Susan met at energy industry trade conferences. “I met Suzy in New York, and she met me

“I have had success in business that I couldn’t have dreamed I’d have, largely because of a system built on the rule of law and a society that respects the rule of law.”

— Carl Bolch, Jr. ’67

in San Francisco,” Carl jokes. “I saw her in New York and thought she was interesting. She thought I was just a guy.” After they married, Susan moved to Atlanta and joined King & Spalding as a senior associate in litigation. In 1982, she became general counsel for Racetrac and two years later assumed her current role.

Away from the office, Susan serves on the board of directors for Camp Sunshine, which provides retreats for children suffering from life-threatening illnesses and their families, and as chair of the board for the Boys & Girls Club of Collier County, Fla. (BGCCC), where she helps lead the organization’s efforts to provide safe space and programming for children. The club’s new Immokalee, Fla., campus bears the Bolch name, in recognition of the couple’s philanthropy and dedication to the organization and the children it serves.

“We believe that the mission of the BGCCC comports with our family values that support hard work, education, building self-confidence, and helping those who endeavor to help themselves despite circumstances that might otherwise disadvantage them,” Susan told the *Naples Herald* when the Immokalee campus opened in 2016.

Creating the multidisciplinary institute at Duke Law seemed to be a similar opportunity for Carl and Susan to advance their personal philanthropy in a way that reflects their shared values, Susan says. “We have found the causes that we embrace — children’s health, education, the rule of law — have something in common. A volunteer [at the Boys & Girls Club of Collier County] put it this way: ‘If we work to make children strong, we won’t have to fix broken men and women.’ In the same way, if you promote and defend the rule of law, you won’t have to fix a broken society. We are really interested in these foundational, and therefore transformational, endeavors.”

These endeavors also reflect the couple’s holistic view of philanthropy — that when you are able, you should give of your time, talent, *and* treasure. “We are at a point in our lives and careers where we have the ability to give on all three counts. For us, that sort of participatory philanthropy is both exciting and rewarding,” Susan says.

At Duke, the Bolches have delighted in meeting with and learning from the faculty whose scholarship will form the academic core of the Bolch Judicial Institute, which will focus on the study of judges and judicial institutions, judicial training and education, and law reform that strengthens and advances the administration of justice in the U.S. and around the world. With former Dean David F. Levi at its helm as director (see page 2), they are certain that the institute is well-positioned to stake its claim on a field of inquiry that has particular resonance in today’s uncertain political world.

“I learned quickly in my business the value of having good people around you,” Carl Bolch says. “You need multipliers to make something great. I thought David Levi would be a hell of a multiplier.” ♡ — Melinda Myers Vaughn



Scott Mikkelsen '06

IN TODAY'S CHARGED political atmosphere, leaders who bring people together to solve problems and implement positive change can be hard to find. Scott Mikkelsen '06 avoided the rancor that seems synonymous with politics after no one filed to run against him for mayor of Grimes, Iowa, last November.

"Local politics doesn't have the same toxicity right now as state or national politics," says Mikkelsen, who took office in Grimes, one of the fastest-growing cities in Iowa, in January. "You're still able to say, 'Look, we're trying to solve problems and come up with solutions for everyone.' I think some of the real creative solutions happen at the local level."

Mikkelsen has applied a similar philosophy to his business career. His firm, Midwest Renewable Capital (MRC), leverages a federal tax credit designed to foster investment and economic growth in underserved rural and urban areas to raise capital to invest in renewable energy and clean-tech businesses; a second firm, C9 Capital, is devoted to impact investment venture capital.

MRC now manages more than \$350 million worth of investments, much of it in wind, solar, and other environmentally friendly sectors. Mikkelsen says the idea for the company, which uses a combination of private capital and tax credit-enhanced capital, came to him in a Duke Law classroom.

"Our focus has always been triple bottom line," he says. "We want an environmental return, we want some kind of community return — typically good, quality jobs — and we want business growth and return."

Maximizing opportunities

Mikkelsen grew up in Dike, Iowa, a farming community of about 1,000 people. When he wasn't focusing on school or sports, he was, he says, "detasseling corn, 'walking' beans, shoveling grain at the co-op — things that are a normal part of growing up in the rural Midwest."

Recognizing at an early age that he had an interest in business and "a knack" for numbers, he majored in finance at the University of Northern Iowa. An internship with the university controller's office, during which he worked on a portfolio of fixed-income securities, deepened his interest in finance and led him to obtain a graduate degree in economics at the University of Manchester in the U.K. before joining an institutional research and trading firm in Chicago. A desire to "have a broader impact" subsequently brought Mikkelsen to Duke Law, where the former college football player says he found the faculty equivalent of an "all-star lineup."

“Scott took ... lessons from Durham and applied them in a totally different context. ... His success shows what it means to be a lawyer-leader.”

— Clinical Professor Andrew Foster, director of the Community Enterprise Clinic

“I had Constitutional Law with William Van Alstyne, Torts with James Boyle, and Contracts with Jerome Reichman,” Mikkelsen recalls. “It was such a great education in thinking deeply and critically, and it has translated into everything else I’ve done.” Working with faculty adviser Erwin Chemerinsky (now the dean of Berkeley Law and another “all star”) to establish the *Duke Journal of Constitutional Law and Public Policy* was another memorable Duke Law experience, he says.

But Mikkelsen found his calling through Clinical Professor Andrew Foster’s Community Economic Development course and his enrollment in the Community Enterprise Clinic that Foster directs.

While exploring strategies for financing economic opportunity in low-income communities, he learned about how tax credits, including the New Market Tax Credit, can be used to incentivize investment in community redevelopment projects.

Foster showed his students how tax credit-based investment was transforming Durham through such marquee projects as the American Tobacco Campus that anchors the downtown entertainment district and the Golden Belt complex that houses artists’ studios, businesses, and lofts in a refurbished textile mill.

“When Scott was in the class, we went over to Golden Belt on the first day, and they were in the early stages of developing it,” Foster says. “Hearing the developer talk about what it would be like, what they were going to do with all these buildings, how it led to redevelopment of the single-family housing around it, how New Market and Historic Tax Credits helped fuel that project, made it all much more concrete. You really see this concentrated effect of what you can achieve when you bring a lot of resources into one community.”

“It was like a lightbulb went on,” Mikkelsen says. “I thought, ‘I’ve got this private market experience, but I’m also interested in how to solve social problems and public problems.’ The class married those problems and possible solutions, and it grabbed me.”

Bringing it home

Mikkelsen quickly saw the potential New Market Tax Credits held for building businesses in rural communities and for promoting environmental sustainability. Upon graduating from Duke Law in 2006, he headed back to Iowa to practice law and started work on establishing a tax-advantaged fund. He initially focused on wind power, and by 2010 MRC was funding renewable energy businesses and environmentally friendly real estate projects, primarily in the Midwest.

“In 2009, Treasury awarded us the ability to offer partial credit on up to \$65 million in investment,” Mikkelsen says. “To that point we’d had commitments from private investors, but everything kind of came to fruition in late 2009. In 2010, Midwest Renewable Capital was going full-time.”

MRC found itself at the forefront in developing early wind projects, he says. But as the sector evolved and became focused on

utility projects, Mikkelsen expanded the company’s purview and geographic reach, using New Market Tax Credits for other clean energy, advanced manufacturing, and clean-tech endeavors. This has included companies converting solid waste into biofuels, recycling glass into reflective paint, and converting wood waste into wood pellets. Over the last three years, Mikkelsen has expanded into more traditional venture capital in the clean-tech, ag-tech, and sport-tech sectors through C9 Capital. Collectively, these entities have around \$480 million in investments. “We still remain impact investors at our core, we have just expanded our reach,” he says.

Foster says Mikkelsen’s vision for tax credit investment in environmentally sound rural projects was unique, and credits his forward-thinking outlook for his political and business success.

“The New Market Tax Credit has mostly been used for projects like brick-and-mortar redevelopment, and he’s really found a way to fund business activity in the renewable energy space, which lots of people are excited about,” Foster says. “Scott took those lessons from Durham and applied them in a totally different context, which is, I think, one of the things that has made him so successful. His success shows what it means to be a lawyer-leader.”

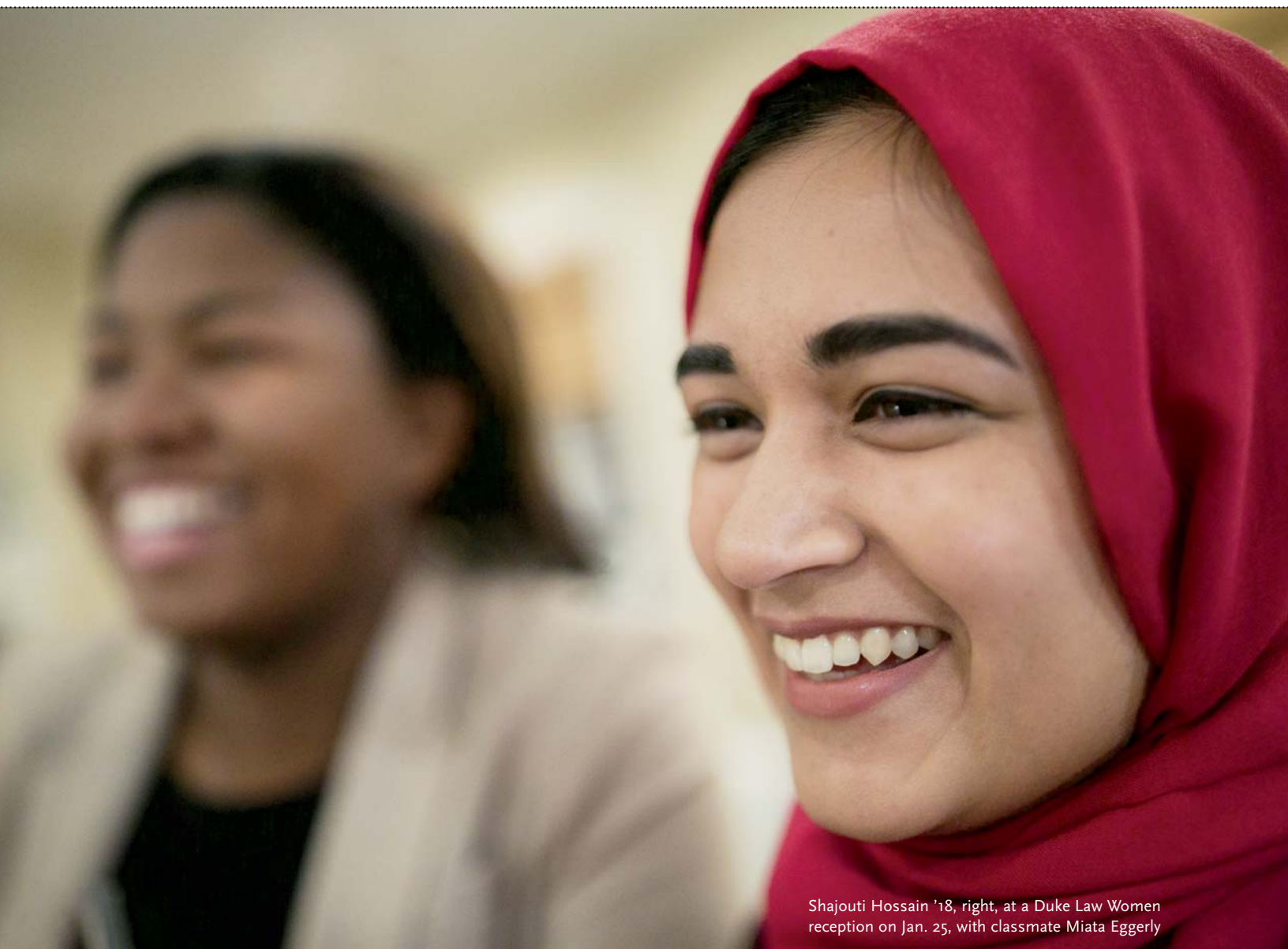
A new path

Mikkelsen, who claims that just living in Iowa entails paying attention to a “permanent, public political discourse,” found that his longstanding interest in politics deepened and was supplemented by an acute interest in public policy during his time at Duke Law. He got involved in grassroots politics as soon as he and his wife, Amber, moved to Grimes in 2006.

“We are lucky because we have presidential campaigns coming through here every couple years,” he says. “There are a lot of ways to get involved in the political process.”

Raising his four children in a town undergoing explosive growth — Grimes has doubled in size over the past 10 years and is projected to double again in the next 10 — made the decision to run for mayor easy. It also shaped the issues Mikkelsen chose to prioritize: lowering taxes and developing a strategic vision to channel the city’s growth. He says he is focused on vital infrastructure, like roads, and quality-of-life amenities, such as the parks, ball fields, and bike paths that sustain families like his. “I’ve coached my kids’ football, baseball, and basketball teams, and I was an athlete in high school and college, so I know how important those things can be to a community,” he says.

From Grimes, Iowa, to other communities across the country, Mikkelsen is working with local leaders to solve social and public problems. In his business and public leadership roles, Mikkelsen says, “I utilize the same set of problem-solving skills and critical thinking I honed at Duke Law to build teams that implement positive, sustainable solutions.” 🐾 — *Forrest Norman*



Shajouti Hossain '18, right, at a Duke Law Women reception on Jan. 25, with classmate Miata Eggerly

Shajuti Hossain '18

THE MURDER OF THREE YOUNG PEOPLE by a neighbor at a Chapel Hill apartment complex on Feb. 10, 2015, shocked the Triangle, garnered national headlines, and profoundly influenced both Shajuti Hossain's academic and extracurricular focus at Duke Law.

The tragedy hit particularly close to home for Hossain, then a Duke University senior majoring in economics and public policy. Like her, the victims, Deah Barakat, his wife, Yusor Abu-Salha, and her sister, Razan, grew up in Raleigh's Muslim community, and they had friends in common. Her brother had also once lived in the complex where the three were shot by a man who had exhibited hostility toward them on several prior occasions and who expressed disdain for religion on social media.

"It was definitely a life-changing experience to have that happen in our backyard," said Hossain who observed that the murders coincided with an escalation of anti-Muslim rhetoric during the presidential primary campaign. Newly admitted to Duke Law, she resolved to do what she could to foster a sense of fellowship among Muslim law students, while also building bridges with the broader community, leading her to co-found the Muslim Law Students Association (MLSA) in her first year. And she was inspired by the victims' deep commitment to community service

to use her legal studies to further social justice in a variety of ways.

Hossain, who held leadership positions with Duke's Muslim Students Association during her sophomore, junior, and senior years, said she was gratified by the support and goodwill she found for MLSA at Duke Law. "To start a student organization, you have to get 30 signatures from students interested in becoming members, and we got what we needed overnight, just through a Facebook post," she said, also noting enthusiastic faculty support from Guy-Uriel Charles, the Edward and Ellen Schwarzman Professor of Law, and Clinical Professor Jayne Huckerby, who directs the International Human Rights Clinic and serves as faculty advisor for the organization.

MLSA's first large event, a panel discussion on the legal questions involved in hate crime legislation and

“Shajuti keeps asking, ‘Who are the most marginalized, and how can we make a difference for them?’”

— Assistant Dean for Public Interest and Pro Bono Stella Boswell

other issues raised by the Chapel Hill murders that had occurred exactly a year earlier, was co-sponsored by the Duke Bar Association and the Light House Project, a Muslim outreach initiative founded by family members of the victims. The discussion drew more than 200 people to Duke Law on a Friday evening. Hossain has since helped organize events on countering anti-Muslim bias in policy, an introduction to Islamic law, and family law in Islam, as well as a discussion of religious freedom held in conjunction with the Duke Law chapters of the Christian Legal Society and the American Constitution Society.

In April 2016, MLSA was honored by the Duke Bar Association for highlighting the value of community and fellowship at the Law School. “This organization is new to Duke Law, and this award speaks to the impact it has already had on students,” said Risha Asokan ’17 in presenting the award. “As one student put it, ‘at a time when Islamophobia is rampant, they are doing a great job at developing a competing and compelling narrative.’”

Having examined environmental and social justice extensively as an undergraduate, Hossain opted to explore other civil rights and human rights issues in law school, citing the examples of Barakat and the Abu-Salha sisters, who worked with refugees abroad and fed homeless people in Raleigh. “There is so much more good work to be done,” she said.

Over her 1L summer, Hossain worked on increasing school diversity with the Educational Opportunities Project of the Lawyers Committee for Civil Rights Under Law in Washington, D.C., helping to draft a training manual for staff attorneys serving students and parents. “I learned a lot about the existing laws, and framed them in a way that would be accessible to parents and students,” she said. “Our job was to turn legalese into common language.”

In her second year, Hossain undertook an independent study project on discrimination in public schools, for which she wrote a guide for lawyers on how to counsel Muslim students who have faced discrimination in U.S. public schools. The paper includes tips on administrative remedies, litigation, and working directly with schools, as well as policy recommendations for lawmakers. Last fall she helped revise North Carolina’s policies relating to homeless students during an externship with the state Board of Education, after specifically requesting to address issues relating to the most marginalized populations.

“I learned that the dispute resolution policy for students and families experiencing homelessness is inconsistent across the state and very difficult for the schools and students to understand and use,” she said. “The policy didn’t give enough specific direction about how process was supposed to work. So, in consultation with the state coordinator for homeless education and some of the district staff who help homeless students, I redrafted that policy.”

Hossain also gained a new interest in employment law as a 2L through Professor Trina Jones’ Employment Discrimination course. “My favorite classes have always been the ones where we look at the societal implications of laws and the role we can play as attorneys in either changing the laws or advocating for our clients, or both,” she said. “In Professor Jones’ class, we really looked at how these laws

affected people.” She spent the following summer at Goldstein, Borgen, Dardarian, and Ho, a plaintiff-side employment firm in Oakland, Calif., where she drafted declarations, motions, and discovery responses for wage and hour cases, and drafted sections of a forthcoming American Bar Association treatise on opposing employers’ summary judgment motions in sexual harassment, equal pay, and retaliation cases.

Hossain handled employment law and housing cases during a third-year semester in the Civil Justice Clinic and engaged in litigation on behalf of farm workers and construction workers in an externship at the N.C. Justice Center’s Workers’ Rights Program. “A lot of them have immigrant backgrounds or are here on work visas,” she said. “I learned a lot about the Fair Labor Standards Act, the Migrant and Seasonal Worker Protection Act, and North Carolina wage and hour law, essentially refining some of what I’d learned during my summer job in the Bay Area.” She plans to return to start her career in the Bay Area in an employment law practice.

Huckerby, who has overseen Hossain’s work with MLSA, praised her efforts to bridge Duke Law with the broader community at Duke and in the Triangle and her commitment to linking lawyering and social movements. Added Stella Boswell, assistant dean for public interest and pro bono: “Shajuti keeps asking, ‘Who are the most marginalized, and how can we make a difference for them?’”

Hossain will have a chance to do just that when she begins a yearlong fellowship on Sept. 4 with Public Advocates in San Francisco, where she will work on affordable housing matters with the organization’s metropolitan equity team.

In April, Hossain received the 2018 Forever Duke Student Leadership Award from the Duke Alumni Association for her integrity, service to the Duke community, and embodiment of the university’s guiding principle of “knowledge in the service of society.” Prior to graduation, she also received awards for her public service at Duke Law and for outstanding academic achievement in the area of labor and employment law.

“Shajuti is one of only a few Muslim women in the class of 2018,” said Jones in presenting the academic award. “With such small numbers, a student might justifiably be tempted to sit back, observe, and downplay her difference. That is not, however, Shajuti’s way. Shajuti does not sit back; she jumps in. She does not observe; she transforms. She does not minimize differences; she celebrates them.” ♡

— Forrest Norman

Alumni Notes

This section reflects notifications received between Sept. 1, 2017 and April 30, 2018.

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

Russell M. Robinson II '56 was awarded an honorary degree by Duke University at its commencement ceremony on May 13. A founding partner of Robinson, Bradshaw & Hinson, one of the largest law firms in North Carolina, and author of *Robinson on North Carolina Corporation Law*, which is now in its seventh edition, Russell has long been active as a community leader and philanthropist. He served for 30 years as a trustee and 11 years as chair of The Duke Endowment, and on the boards of Duke Law School, UNC Charlotte, and Johnson C. Smith University.

In January, Russell received the 2017 North Carolina Chief Justice's Professionalism Award, which honors members of the legal community whose careers model commitment to "genuine professionalism and the highest standards of legal ethics." North Carolina Chief Justice Mark D. Martin presented the award to him Jan. 24 at the annual joint dinner between the North Carolina State Bar and the North Carolina Bar Association. **BOV**



1963

Julian Juergensmeyer has co-authored *Market Demand-Based Planning and Permitting* (American Bar Association, 2017). He is professor and Ben F. Johnson, Jr. Chair in Law at Georgia State University.



J. David Ross has authored and published *Outrageous Ambition: The History of the Development*

Program at Duke University (December, 2017). One chapter traces the establishment of the Office of Alumni and Development at Duke Law School. **BOV**

1968

Randy Rollins was honored, last fall, by Virginia Gov. Terry McAuliffe at a 10-year anniversary celebration of Drive-to-Work, a nonprofit program that assists low-income or previously

incarcerated Virginians with restoring driving privileges so they may get back to work. Randy, a retired partner in the Richmond office of McGuireWoods, founded the program in 2007.

1971

Mary Joyce Carlson, counsel to the advocacy group Fight for \$15, has received the 2018 George Barrett Award for Public Interest Law given by The Sidney Hillman Foundation. Mary, who has worked for many of the nation's labor unions and served a seven-year term as deputy general counsel of the National Labor Relations Board, was recognized for her "indefatigable efforts to confront poverty, discrimination, and other injustices."

1972

David Drake has been honored by the University of Iowa with a 2017 Hawkeye Distinguished Veterans Memorial Award. David served in the

Army in both Vietnam and Cambodia and served as assistant town attorney in Chapel Hill after completing law school. He is an author, based in rural North Carolina, whose *Hammer's Slammers* series is credited with creating the genre of modern military science fiction.

1974

Colin Brown, chairman and chief executive officer of JM Family Enterprises Inc., was named the 2017 Business Leader of the Year by the Florida Atlantic University College of Business. He was recognized for his industry acumen, leadership, and community outreach at an event on Jan. 26 in Boca Raton. **BOV**

David Poe, a partner in Bracewell's energy regulatory practice, received the Samuel H. Porter Award from the Infrastructure and Regulated Industries Section of the American Bar Association, in recognition of his leadership in developing

law with respect to infrastructure industries and his longstanding commitment to the section. David's clients include industrial companies, electric utilities and hydroelectric generators, and telecommunications companies that own infrastructure assets subject to governmental regulation.


Larry Shelton retired in May after serving, since 2005, as the federal public defender for the Western District of Virginia. He previously led the Norfolk office for the federal public defender of the Eastern District of Virginia.

1975

Gary Lynch rejoined Davis Polk in New York in March as counsel in the firm's litigation department, after serving as vice chairman and general counsel of Bank of America. He earlier served in those positions at Morgan Stanley and as executive vice chairman and general counsel of Credit Suisse First Boston. Gary was



Andrew Peck '77 retired in February after serving for more than 23 years as a federal magistrate judge for the Southern District of New York. He has joined DLA Piper as senior counsel.

On his retirement, the *New York Law Journal* hailed Judge Peck as “the author of e-discovery’s most influential opinions” and responsible for bringing e-discovery competency to the attention of both the judiciary and the bar in the United States and internationally. The first judge to write about predictive coding and the author of the first decision approving the use of technology assisted review (TAR) and two subsequent opinions on the issue that have been cited internationally, Peck also speaks frequently about e-discovery. He has also been nominated to the Sedona Conference Working Group 1 Steering Committee, which develops guidance on e-discovery in litigation, investigations, and dispute resolution. The author of approximately 1,500 decisions, Peck is also a member of the Baker Street Irregulars, an international group of Sherlock Holmes aficionados; he told the *New York Law Journal* that he’s made Holmes references into at least two of his opinions. **BOV** 

a partner at Davis Polk from 1989 to 2001, after serving as director of enforcement at the Securities and Exchange Commission. **BOV** 

Rodney May retired in December after a 14-year term as a U.S. bankruptcy judge for the Middle District of Florida based in Tampa. Prior to joining the bench, he was in private practice in Orlando and a lecturer at the University of Florida College of Law.

Thomas Miller co-taught a seminar in health care law and policy at Duke Law School during the fall 2017 semester, along with **Matthew Wolfe '08** and Professors Barak Richman and Michael Frakes.

1976

Ross Arnold and his wife, Yum, received a 2017 Charles A. Dukes Award for Outstanding Volunteer Service to Duke University. The Arnolds were recognized for their service on several university boards, and for inspiring others to volunteer and financially support Duke.

Dean Cordiano has been elected president of the Oliver Ellsworth Inn of Court in Hartford, Conn. His term ends in January 2019.

Gray Wilson was sworn in as president-elect of the North Carolina State Bar in October. Gray, a partner and member of the litigation group at Nelson Mullins Riley & Scarborough in Winston-Salem, previously served as president and a member of the board of governors of the North Carolina Bar Association. He is currently board chair at Lawyers Mutual Liability Insurance Company.

1978

Bill Anlyan is the managing member of Lumina Wealth Management, a firm he co-founded in Wilmington, N.C. Bill has been a leader in higher education and arts administration, holding positions at Duke University, the North Carolina Museum of Art, and the University of North Carolina at Wilmington.

David Bernat has retired after a career on Wall Street and in a financial start-up. He lives in Stamford, Conn.

1979



James Williams, who retired in May 2017 as chief public defender of Orange and Chatham counties in North

Carolina, has been elected chair of the North Carolina Commission on Racial and Ethnic Disparities in the Criminal Justice System (NC-CRED), a group of stakeholders — Supreme, Superior, and District Court judges, police chiefs, defense attorneys, academics, prosecutors, and public defenders — concerned about racial and ethnic disparities in the criminal and juvenile justice systems. In October 2017, James received the Frank Porter Graham Award for Lifetime Achievement from the North Carolina ACLU.

1980



John (Jack) Hickey served as a panelist discussing cruise industry passenger and seafarer claims at a seminar organized by the Florida Bar Admiralty Law Committee and ABA TIPS Admiralty and Maritime Law Committee.



Andromeda Monroe has been elevated to of counsel in the Ft. Lauderdale office of Greenberg

Taurig, where she is a member of the insurance practice.

Lisa Smith received the Kay Crawford Murray Award, in January, from the New York State Bar Association’s Committee on Women and the Law. The award honors women lawyers for their dedication to advancing diversity and professional development of women attorneys. Lisa is a federal magistrate judge for the U.S. Court of Appeals for the Southern District of New York.

1982

Peter Sachs has been elected to the board of directors of Jones, Foster, Johnston & Stubbs in West Palm Beach, Fla. Peter represents individuals and institutions in the prosecution and defense of complex trust and estate, guardianship, and commercial litigation matters.

» **For Super Lawyers and other professional kudos, see page 77.**



On the Record at Duke Law

April 12, 2018

Ben Fountain '83 read from his acclaimed 2012 novel, *Billy Lynn's Long Halftime Walk*, and his forthcoming collection of essays on the 2016 presidential election, *Beautiful Country, Burn Again*, during the Goodson Law Library's annual alumni author event celebrating National Library Week. He also discussed his 20-year path to success as a writer — his wait for “validation by the outside culture” — after he left his real estate financing practice in Dallas. While going to law school and practicing law may have slowed his development as a writer of fiction and embrace of its non-linear “emotional logic,” Fountain ultimately found himself grateful for both his legal education and work experience, he said.

“It was an education in the world. It's an entrée into getting some handle on how things work in the world. I especially appreciate it the last two years. It's a lens through which to view, to me, the utterly insane turns that American society has taken, not just in the last two years, but really since the early 80s. And so I think law is a useful thing to have in your head, to think with as you're watching all this. And as traditions, norms, and society continue to fray, it's helpful to have a legal education, to have some idea of where you stand, because I think it's going to get worse before it gets better — if it gets better.” 🐾

1983

Rich Baer is serving as chair of the board of directors of National Jewish Health, a leading respiratory hospital in Denver. Rich served on the board from 2005 to 2010 and rejoined in 2013. He is chief legal officer for Liberty Media Corporation and a number of other related companies.

Kim Hoover has been appointed to the board of directors of Lambda Literary, a national nonprofit advancing LGBTQ literature. Kim started and runs the real estate operating company, RED Multifamily, in Washington, D.C., and co-founded Allyson Capital, a private real estate equity firm.

Bellanne “Belle” Toren '85, below, completed the third annual Marathon of Afghanistan on Oct. 27. Held in the Bamiyan Valley, a UNESCO heritage site famed for the ancient Buddhas of Bamiyan statues destroyed by the Taliban in 2001, the marathon is Afghanistan's only mixed-gender sporting event. Belle, one of 15 international runners to compete through the adventure-travel group Untamed Borders, calls it “safe to say” that at 65, she was the oldest competitor and finisher in the marathon — and she followed up the high-elevation race by running the Desert Half Marathon in Eilat, Israel, three weeks later.

Since 2009, Belle has maintained her own practice as an international petroleum consultant in Canmore, Alberta, which included serving as the chief legal officer for Central European Petroleum Ltd. and working on projects in Germany and sub-Saharan Africa. She previously worked in the Calgary office of Gowling Lafleur Henderson on projects in Tanzania and Mozambique. Before moving to Canada in 2006, she was vice president-legal of Triton Energy Ltd. in Dallas and, after its 2001 acquisition by Hess Corporation, director of international negotiations. Her practice was featured by the Association of International Petroleum Negotiators. 🐾



1984



George McFarland, Jr. became CEO of Pennsylvania Trust, a Philadelphia-area wealth manage-

ment fund, on Jan. 1. He oversees the fund's management and investment policy and strategy. He previously served as president and chief investment officer.

Harry Munsinger has written *The Texas Divorce Guide* (Archway Publishing, 2018) to help couples manage the divorce process with minimal stress and financial loss. He practices at the Law Offices of Harry L. Munsinger in San Antonio, where he has twice served as president of the Collaborative Divorce San Antonio professional practice group and is a member of the board of trustees of Collaborative Divorce Texas. Harry has also taught as an adjunct professor of law at the University of Texas and St. Mary's University.



On the Record at Duke Law

Feb. 2, 2018

Kathy Payne '87, head of content acquisition management for Amazon Video Channels, offered advice to students on succeeding in the business world as lawyers and deal-makers when she delivered the keynote address at the Business Law Society's 16th annual ESQ Career Symposium. Tracing her moves from law practice to the business side of cable television to a position where she's "reinventing" TV, Payne counseled students to identify mentors and sponsors to help them advance in their careers, to speak up with confidence, and to seize unexpected opportunities when they arise. That's how she came to take



a job with (and equity share in) a start-up after being passed over for a coveted promotion at a much bigger company.

"What I've learned is that in your life and in your career, you just can't be too risk-averse. You've got to take smart, calculated risks to move ahead, and you can't overthink each situation. ...

"Try a lot of different things and expand your skill-set whenever you can. ... At forks, take risks, ask for advice, and do what makes you want to get out of bed in the morning. I was afraid that if I moved to the business side, I would lose what I knew about being a lawyer. It transformed my career. What I learned: Big risks have big rewards. ...

"Every risk and transformation along the way made the next one easier for me and positioned me for more growth and opportunity. And by taking risks and asking what I had to gain, I was able to reinvent myself and have the privilege to reinvent television." ♡

1985



Janet Ward Black has received The Advocate's Award from the Litigation Section of the

North Carolina Bar Association (NCBA), which recognizes "super-stars" of the section and the legal profession. She is the first woman to receive the award. Janet, the principal owner of Ward Black Law in Greensboro, has also received the North Carolina Advocates for Justice's 2018 Ebbie Award, which recognized her as a "selfless public servant and fierce advocate for justice for those who have been injured by the wrongdoing of others." She is a past president of the NCBA and the N.C. Bar Foundation.

Law at Washington & Lee University, where his teaching and scholarship focus on taxation and trusts and estates. He also has served as the school's associate dean for academic affairs.

Chris Hagan has joined Perkins Coie in Washington, D.C., as a partner and member of the corporate practice specializing in private equity matters and mergers and acquisitions. Chris was previously a partner at Brown Rudnick.

Michael Kaplowitz has been named one of Michigan State University's faculty athletic representatives, serving as a senior adviser to MSU's president and director of intercollegiate athletics. Michael earned his doctorate from MSU in 1997 and joined the faculty the same year. He is a professor of environmental policy and international development in the Community Sustainability Department and adjunct professor in the College of Law.

Filip Klavins has been awarded the Cross of Recognition by the Republic of Latvia for faithful, meritorious and loyal service and work. Filip is managing partner of Ellex & Klavins in Riga.

1987

Chris Petrini, the city solicitor of Framingham, Mass., has received the President's Award from the Massachusetts Municipal Lawyers Association. The association's highest award recognizes "leadership, unwavering commitment to the advancement of municipal law and outstanding service to local government." Chris served as counsel to the Town of Framingham from 2001 to 2017 before becoming the first city solicitor in its 317-year history.

1988

Mark Califano has joined Nardello & Co., a global investment firm, as its chief legal officer and regional managing director of the Americas. He was previously senior vice-president and managing counsel in charge of global litigation and government investigations at American Express.



Kodwo Ghartey-Tagoe was awarded an honorary degree and delivered the address at Francis Marion University's

December commencement ceremonies in Florence, S.C. Kodwo is Duke Energy's state president for South Carolina operations. [BOV](#)



Jo Ellen Whitney (with son Cam, above), chair of the Davis Brown employment and labor law department in Des Moines, Iowa, was honored, in March, by the National Sheriffs' Association (NSA) at a swearing in before justices of the U.S. Supreme Court. The NSA is one of a small number of organizations to sponsor a group of attorneys to become new members of the Supreme Court Bar.

1986



Robert Danforth has been named the John Lucian Smith, Jr. Memorial Professor of

1989

Scott Arenare has been named general counsel at Willkie Farr & Gallagher in New York, where he practices in the asset management

group and focuses on private equity. He was previously a managing director and general counsel at Warburg Pincus.

Alfonso de Orbegoso has been named chairman of the risks, compliance and sustainability committee of the Graña y Montero Group, a Latin American real estate and construction firm based in Lima, Peru.

Allen Nelson has joined Taylor English Duma in Atlanta as a partner in the corporate practice group. He previously served in-house as executive vice president, general counsel, corporate secretary and chief administrative officer at Crawford & Company. Allen received a 2017 Forever Duke Award, and has been named a member-at-large of the board of directors of the Duke Alumni Association.

1990

Steven Chabinsky and three of his White & Case partners received a 2018 Law360 Distinguished Legal Writing Award for their article "Managing AI Risk in Financial Services," published by *Bloomberg BNA Privacy & Security Law Report*, August 21, 2017.

Tom Hanusik has been named, for the second time, to *Securities Docket's* "Enforcement 40" list of the 40 top securities enforcement defense attorneys in the industry. Tom is a partner in the Washington, D.C., office of Crowell & Moring, where he is a member of the white collar & regulatory enforcement group. He has more than a dozen years of government experience at the U.S. Department of Justice and the Securities and Exchange Commission.

Terri Harris has been selected by *Triad Business Journal* as a 2018 Outstanding Women in Business award winner. She is the part-

ner-in-charge of Smith Moore Leatherwood's Greensboro, N.C., office and a member of the firm's management committee.

Scott Kaufman has joined, as partner, Sullivan & Worcester and ZAG-S&W, a joint venture between that international law firm and Tel Aviv-based Zysman, Aharoni, Gayer & Co. Scott is a member of the mergers & acquisitions and corporate practice groups and leads the firm's emerging companies & venture capital practice in New York.

Bob Van Kirk, a partner at Williams & Connolly in Washington, D.C., has been named co-chair of the firm's complex commercial litigation practice group, as well as its securities litigation and enforcement practice group.

1992



Jennifer Baltimore, senior vice president for business and legal affairs at Universal Music Group in Santa

Monica, Calif., was named to *Billboard's* 2017 Women in Music, a list of the most powerful executives in the industry.

Sandra Rosen has been promoted to general counsel of McKay Brothers and Quincy Data, private low-latency network and market data providers based in Oakland, Calif., and Paris, France.

Geovette Washington, senior vice chancellor and chief legal officer for the University of Pittsburgh, was the keynote speaker at the annual April SHARE event that brings together prominent Pittsburgh corporations and institutions with Minority Women Disadvantaged Business Enterprises suppliers.

1993

Wendy Hartman del Real received a 2017 Forever Duke Award for excellent volunteer service to Duke. Wendy serves on Duke's Boston regional leadership board.

Jim Stuckey has been appointed senior vice president and general counsel at SCANA Corp., in Columbia, S.C. He previously was deputy general counsel and director of the legal department.

1994

Elizabeth Barry has joined Berkshire Hathaway HomeServices YSU Realty in Durham as an agent. She previously worked as an IT professional at Duke.

Kathy Wood Schill received the 2017 Mentoring Award from the Association for Women Lawyers. Kathy was also named a 2016 Woman in the Law by the *Wisconsin Law Journal*. She chairs the intellectual property litigation group at Michael Best & Friedrich in Milwaukee.

1995

Rob Curtis has joined Frontier Communications Corp. as senior vice president and chief marketing officer. Most recently, he led customer strategy and marketing and telecommunications practices at Bain & Company.

Sophie Gioanni is a founding partner of VerticalSoft, a cloud-based application for charities and foundations which uses new technologies for better management to increase fundraising and impact. Based in Paris, she previously worked for two capital management firms.

1996

Sean Murphy has served as mayor of Telluride, Colo., since November 2015. He also practices tax law as of counsel at Tueller & Gibbs in Mountain Village, Colo.

1997



Kirkland Hicks, executive vice president and general counsel at Lincoln Financial Group, has been named

to *Black Enterprise* magazine's list of the 300 most powerful black executives in America. **BOV**

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classmates
know how
you've been!

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Promotion?
Life changes?
Awards?
Adventures?

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law.duke.edu/alumni.

1998

Scott Carroll has joined Global Container Terminals Inc. on Staten Island, N.Y., as chief human resources officer. He previously served in-house as labor and employment law counsel for several global corporations.



Anders Walker has authored *The Burning House: Jim Crow and the Making of Modern America* (Yale University Press,

2018). Anders is on the law and history faculties at Saint Louis University, and law school associate dean for research and engagement.

1999

Bernhard Welten, partner of the firm Kanzlei Welten in Bern, Switzerland, served as one of nine arbitrators for the Court of Arbitration for Sport at the Winter Olympic Games held in February in South Korea.

2000



Christine Bromberg has been appointed to the board of directors of The Connecticut Children's

Medical Center Foundation. She is a member of Robinson+Cole's tax group, in Hartford, where she represents clients in connection with a broad range of federal income tax matters.

Scott Dodson has been appointed the inaugural Geoffrey C. Hazard, Jr. Distinguished Professor of Law at the University of California Hastings College of the Law, where he also serves as associate dean of research.

Chris Van Tuyl has joined biopharmaceutical company Dermavant Sciences as general counsel, located in Phoenix. He joined Dermavant from Sacks Tierney, where he was a partner in the firm's corporate practice group. He earlier served in-house at Rayonier, Inc., and Medicis Pharmaceuticals.

Paul Wu has opened L'International Legal & Partners in Taiwan, where he advises issuers and underwriters on capital markets transactions and securities, and corporate and governance matters in the Greater China region. He previously served as lead counsel at Intel.

2001



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

Foundation, has authored *Heroes Wanted: Why the World Needs You to Live Your Heart Out* (Harvest House Publishers, 2018). He also was elected to the boards of directors of Fidelity Southern Corp. and Fidelity Bank.

Kamau Coar has been promoted to general counsel, responsible for global legal and regulatory matters, at Heidrick & Struggles in Chicago. He joined the executive search firm in 2012 as associate general counsel, most recently serving on the leadership team for its Asia Pacific region, based in Singapore.

Rawen James, Jr. is featured in the new PBS Independent Lens documentary *Tell Them We Are Rising: The Story of Black Colleges and Universities*. James is a civilian attorney for the Department of the Navy, and is the author of *Root and Branch: Charles Hamilton Houston and the Struggle to End Segregation*

and *The Double V: How Wars, Protest and Harry Truman Desegregated America's Military*, both published by Bloomsbury.

Randy Katz, a federal prosecutor in the Southern District of Florida, was awarded the Assistant Attorney General's Award for Distinguished Service, for prosecuting what Deputy Attorney General Rod Rosenstein called "one of the most significant Bank Secrecy Act and consumer fraud cases in history."

Jamieson Smith has been named chief suspension and debarment officer at the World Bank, responsible for reviewing World Bank sanctions cases and determining whether to suspend the contracting eligibility of respondents accused of fraudulent, corrupt, and collusive practices.

2002



Nathan Christensen has been promoted to senior vice president and general counsel of Hunt

Consolidated, Inc., located in Dallas.

Forrest Deegan is chief ethics and compliance officer for Abercrombie & Fitch, located in Columbus, Ohio. He practiced at Arnold & Porter prior to joining the company in 2015.



Jill Fraley, associate professor of law at Washington & Lee University, received a 2017 Lewis Prize for

Excellence in Legal Scholarship from the Frances Lewis Law Center, the law school's independently-funded faculty research and support arm. Jill's award recognizes her property law scholarship, which has focused

on such issues as land use, environmental harms, law and geography, water rights, and theories of property and property rights.

Jaime Hammer has been named general counsel of Auburn University. She previously served as associate general counsel at the University of Oklahoma and worked for law firms in Dallas and San Diego.

Eli Mazur, a partner at YKVN, the largest law firm in Vietnam, has been named a "Leading Lawyer" in corporate and M&A by *Asia Law*. He was also named the "Best Pharmaceutical Advisor in Vietnam" by multiple organizations. Eli represents U.S. pharmaceutical companies in Vietnam and is the external in-house counsel for the Pharma Group, comprising 24 pharmaceutical companies in Vietnam.



James Segroves has joined Reed Smith's life sciences health industry group as a partner in the firm's Washington,

D.C., office. Previously a partner at Hooper, Lundy & Bookman, James has extensive experience in representing health care companies in False Claims Act cases as well as regulatory matters.

Tricia Smock has joined Fiduciary Trust Company in Boston as vice president and trust counsel. She previously worked at Cambridge Associates.

2003

Dana Buschmann opened DZ Buschmann Law in Houston last October. The firm specializes in patent evaluation, drafting, and prosecution.

Mark Fazio has been elected partner in Porter Wright Morris & Arthur. Based in the firm's Cleveland and Pittsburgh offices, Mark represents clients on an array of corporate and business law matters.

James Insko has joined Gordon Rees as a partner in the Pittsburgh and Louisville offices, where he is a member of the environmental/toxic tort and tort & product liability practice groups. James previously practiced at K&L Gates.



Lewis Schlossberg has been named of counsel at Blank Rome in Philadelphia, where he

concentrates his practice in the areas of complex commercial, tort, and products liability litigation.

2004

Torrey Dixon, an attorney for the North Carolina Department of Justice, was the keynote speaker at the 64th anniversary luncheon of The Links Inc., Danville (Va.) chapter in November. He urged the attendees to "strengthen the links between us" and to follow what he called "The Good Samaritan Philosophy."

Edmund Robb was elected partner in the Houston office of Bracewell, where he litigates complex energy, construction and municipal litigation matters. He also is a member of the board of directors of The Woodlands Bar Association (WBA), and chair of the WBA Energy Resources Section.

Terry Tucker became CEO, in October, of Atlanta's Families First, a nonprofit that promotes family self-sufficiency and helps provide stable homes for children through adoption and foster care. He previously was chief strategy officer and general counsel with the City of Refuge.

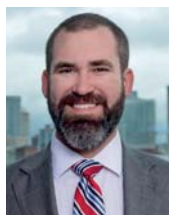
2005



Britt Whitesell Biles has joined Washington, D.C.-based Stein Mitchell Cipollone Beato & Missner as a litigation

partner. She is former assistant chief litigation counsel at the Securities & Exchange Commission.

Reed Clay became counselor and chief operating officer to Texas Gov. Greg Abbott in September 2017, after serving as Abbott's chief of staff. Reed worked with Abbott in the Texas Attorney General's Office prior to transitioning to his gubernatorial administration in 2015.



Ryan Levy has been named managing shareholder at Patterson Intellectual Property Law in Nashville, Tenn.

He also serves as co-chair of the firm's litigation practice group. He joined the firm in 2005.

Samantha Lunn has been elected partner at Husch Blackwell. She is a member of the financial services & capital markets team in the firm's Chattanooga, Tenn., office.

Rebecca Marques has joined Milbank, Tweed, Hadley & McCloy in London as a partner in the global capital markets group. She previously practiced at Shearman & Sterling.

2006

Lauren DeSantis-Then and **Corey Then** welcomed their second daughter, Francesca Lucia Then, in July 2017.

Cari Stern Grieb has joined the adjunct faculty at Northwestern University's Masters in Sports Administration Program. She is a partner at Chapman and Cutler in Chicago, where she specializes in

sports finance and leveraged lending. Since 2010, she has also been an adjunct sports law professor at The John Marshall Law School.

James Nowlin has been named to *Business Equality Magazine's* list of "40 LGBTQ Leaders Under 40." James is CEO and managing principal at Excel Global Partners, an executive consulting firm, in Austin, Texas.

Paul Pasquali has been named head of the newly-established group governmental and public affairs division of Raiffeisen Bank International (RBI), where he has previously served as head of the EU liaison office in Brussels and in the management secretariat.



Anna Rips has been promoted to partner in the New York office of Skadden, where her practice focuses on investment management.

2007

Ujin Ahn has joined Kim & Chang in its Seoul headquarters, with plans to relocate to Ho Chi Minh City, Vietnam, as the firm builds its presence there. He previously was a partner at the Yulchon firm in Yangon, Myanmar.

Reeve Bull, research director for the Administrative Conference of the United States, was elected, in October, to membership in the American Law Institute. Reeve is co-chair of the ABA Administrative Law and Regulatory Practice Section's E-Rulemaking Committee, and has taught as an adjunct professor at George Mason University Law School.

Richard Chang has joined the Hong Kong office of Goodwin Procter as an associate in the business law department and member of its private equity group. He previously was an associate at Skadden Arps in Hong Kong.

2008

Burr Eckstut has joined Covington & Burling in New York City as special counsel in the technology and IP transactions group where he focuses on data-oriented partnerships and fintech. He previously was corporate counsel at Bloomberg.

Cliff Gardner has been promoted to litigation partner at Skadden's Wilmington, Del., office, where he concentrates on representing corporations and their directors and officers in merger and acquisition-related litigation, stockholder derivative lawsuits, complex commercial disputes, and securities class actions.

Jennifer Giordano-Coltart has been elected partner at Kilpatrick Townsend. She is resident in the firm's Raleigh office and a member of the chemistry and life sciences team.

Eileen Kuo (LLM 2009), an associate at Jackson Lewis, a labor and employment firm in Memphis, is serving as the 2018 president of the local chapter of the Association of Women Attorneys.



Patrick Wooten, partner in Nelson Mullins Riley & Scarborough's Charleston, S.C., office, has been selected as a

2018 Forty Under 40 winner by the *Charleston Regional Business Journal*. He practices business and trust and fiduciary litigation.

Have news to share?

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

2009

Adam Cooper and his wife, Sharon, welcomed a son, Miles Brett Cooper, on Nov. 18, 2017, in Los Angeles, where Adam is an entertainment attorney at Jackoway Tyerman Wertheimer Austen Mandelbaum Morris & Klein.

Isaac Linnartz has been admitted to partnership in the Raleigh office of Smith Anderson, where he practices in the areas of business litigation and employment litigation, and serves on the firm's recruiting committee.

Adam Martin has been elected shareholder at Robinson Bradshaw where he focuses on corporate finance, mergers and acquisitions, general corporate matters and privacy law in the firm's Research Triangle, N.C., office.

Dian Shah (SJD '14) has authored *Constitutions, Religion and Politics in Asia: Indonesia, Malaysia and Sri Lanka* (Cambridge University Press, 2017). Dian was recently appointed assistant professor of law at the National University of Singapore after serving as a research fellow at NSU's Centre for Asian Legal Studies.

2010

Jordan A. Botjer and **Alexander Eskandar Sadighi** welcomed a daughter, Caibry Keeler Sadighi, on Jan. 12, 2017. She joins big brother Mateo.

Catherine Singer and **Daniel Singer** welcomed their first child, Layla Blair Singer, on Jan. 8, 2018. Catherine is an associate in the Kansas City office of German May where she focuses her practice on complex business and commercial litigation. Daniel has been elected partner at Shamberg, Johnson & Bergman in Kansas City, where he practices personal injury litigation, primarily focusing on medical negligence and automobile/trucking accident cases.

Chris Suedekum has been elected partner in Burr & Forman's Nashville office, where his practice in the financial services litigation group focuses on defending class action lawsuits, complex business litigation, and consumer financial services.

Kendrea Tannis, a litigation associate with Akin Gump Strauss Hauer & Feld in Dallas, was seconded, for three months in 2017, to the Dallas County District Attorney's Office where she served as an assistant district attorney. She was featured in the November 2017 issue of *Texas Lawyer Magazine* for her work as a line misdemeanor prosecutor in the DA's office.

2011

Cerretta Amos has joined the real estate development practice of Smith Anderson in the firm's Raleigh office. She previously practiced at Rogers Townsend & Thomas in Charlotte.



John Brumberg has been elected partner at Pietragallo Gordon Alfano Bosick & Raspanti in

Pittsburgh, where he is a member of the litigation practice group.

Lauren Fine received a 2017 Duke Alumni Association Beyond Duke Service and Leadership Award for "Service by a Young Alumna." She was recognized as co-founder of the Youth Sentencing & Reentry Project, a Philadelphia nonprofit that works to move juveniles out of the adult justice system and ensure that individuals who were sentenced to life without parole as children have the opportunity for a resentencing hearing.

Rebecca Friedman Holljes and her husband, Ian Holljes, welcomed a son, Leo Richman, on Oct. 6, 2017.

Naokuni Kuwagata, an associate in the Tokyo office of Nishimura & Asahi, was a coordinator for the energy and resource session at LAWASIA Tokyo 2017. The annual conference brings together bar leaders, corporate members, and individual lawyers from across the Asia Pacific.

Cassie Webster Lenning has joined the individual employees practice group of Outten & Golden in Washington, D.C. She previously practiced at Conrad & Scherer.

Almira Moronne has joined the natural resources department of Davis Graham & Stubbs in Denver. She previously was a foreign legal advisor at a law firm in Jakarta, Indonesia, and a policy advisor to the World Wide Fund for Nature-Indonesia, helping the organization develop guidelines on land use and marine conservation.

Adam Schupack was elected, last fall, to the Colonial School Board, which serves approximately 5,000 K-12 students in Conshohocken, Plymouth, and Whitemarsh, Pennsylvania. Adam is a litigation associate at Hanglely Aronchick Segal Pudlin & Schiller in Philadelphia.

2012

Rick Arnold has been named general counsel of Quanenergy Systems, Inc., in Sunnyvale, Calif. He previously was general counsel and secretary at Silver Spring Networks, Inc., and vice president and associate general counsel for mergers and acquisitions at Hewlett-Packard.

Jonathan Frodella has joined the commercial litigation practice group of Laddey, Clark & Ryan in Sparta, N.J. He previously practiced at Morgan, Lewis & Bockius.

Nicholas Hailey and his wife, Katherine, welcomed a son, Thomas Matthew, on March 20, 2017.

Kudos

The following alumni have been recognized by their peers for excellence in their respective specialty areas as listed in such publications as *Best Lawyers in America*, *Super Lawyers*, *Chambers USA*, *Law 360*, *BTI Client Service All Stars*, *D Magazine*, and *Thomson Reuters*. See details at law.duke.edu/alumni/news/classnotes. This list reflects notifications received by April 30, 2018, and includes such designations as "Rising Stars."

Steven Murphy '76
Wilson Schooley '84
Robert Vieth '84
Chris Petrini '87
Harlan Prater '87
Thomas Hanusik '90
Bob Van Kirk '90
Caryn Coppedge McNeill '91
David Cox '93
Larry Organ '94
Jackson Moore '95
Nicole Crawford '03
Kelli Ovies '06
Justin Outling '08
Joshua Chinsky '09
Isaac Linnartz '09
Toby Coleman '10
Kristin Cope '10
William Dowling '10

Grant Reid has been named general counsel of Cabify, a global ride-sharing company, based in Madrid, Spain. He previously practiced at Wilson, Sonsini in San Francisco.

2013

Michele Dunskey Adams married Daniel Adams on July 1, 2017, in Grosse Pointe Farms, Mich. Michele is an attorney at LeDuc Frank.

Seth Reich has joined Dallas-based Caldwell Cassidy & Curry as an associate. His practice focuses on patent litigation and complex commercial litigation. He previously was with Sidley Austin in Dallas.

Ligia Schlittler is a senior attorney at TozziniFreire Advogados in São Paulo, Brazil, where she does corporate and M&A work, with a focus on the renewable energy sector and infrastructure projects.

2014

Dennis Adjei (MJS '14) has authored *Contemporary Criminal Law in Ghana* (Adwinsa Publications (Gh) Ltd., 2017). Justice Adjei serves on the Court of Appeal in Ghana, is a director of the Judicial Training Institute, and an adjunct faculty member at the University of Cape Coast, Kwame Nkrumah University of Science and Technology, and Ghana School of Law.

Nicolas Melki has joined the Dubai office of Pillsbury Winthrop Shaw Pittman as a corporate associate. He previously was an associate at Baker Botts.

Catalina Milos Sotomayor is an SJD candidate at George Washington University Law School.

Conor Reardon has joined the issues and appeals practice at Jones Day in New York after completing a clerkship with United States Chief Justice John Roberts, Jr. He previously clerked for Judge José Cabranes

of the U.S. Court of Appeals for the Second Circuit and Judge Robert Chatigny of the U.S. District Court for the District of Connecticut.

Dian Shah (SJD '14) has authored *Constitutions, Religion and Politics in Asia: Indonesia, Malaysia and Sri Lanka* (Cambridge University Press, 2017). Dian was recently appointed assistant professor of law at the National University of Singapore after serving as a research fellow at NSU's Centre for Asian Legal Studies.

Emily Spiegel has joined the faculty of Vermont Law School as an assistant professor of law and an affiliate with its Center for Agriculture and Food Systems and Environmental Law Center. She previously was a consultant and Stanback Fellow in the Duke Environmental Law and Policy Clinic.

Alan Troib has joined Uber as regulatory counsel in São Paulo, Brazil, where he previously was in private practice.

Sauna Woods married Alexander Smith on Sept. 16, 2017, in Santa Barbara, Calif. Sauna is an associate in the business litigation and securities and white collar litigation groups at Goodwin Procter in Los Angeles.

Brandee Woolard joined the Start-Up Ventures Clinic at Duke Law as a lecturing fellow in Fall 2017. Brandee is an associate at Coats & Bennett in Cary, N.C., where she specializes in patent prosecution and litigation proceedings related to telecommunication and networked technologies.

2015

Christopher Grice was chosen as the *News & Observer's* March 3 "Tar Heel of the Week" for leading the charge to get more male volunteers involved with Big Brothers Big Sisters of the Triangle, where he chairs its Emerging Leaders Board. Chris has joined Sage Patent Group in Raleigh

as an associate. He previously practiced at Kilpatrick Townsend.

Niso Matari has joined Allen & Overy as an associate in the projects, energy & infrastructure group in the New York office. He previously practiced at Paul Hastings.

Daniel Rice has joined the Institute for Constitutional Advocacy and Protection at the Georgetown University Law Center as a fellow.

2016

Stewart Day and **Erin Malone-Smolla** were married Sept. 17, 2017, in Nashville, Tenn., where Erin is an associate in the litigation and bankruptcy practice groups at Bradley Arant Boult Cummings, and Stewart is an associate with Bass, Berry & Sims.

Brian McCracken has joined FordHarrison as a labor and employment associate in Spartanburg, S.C.

Seth Pearson has been named to *Business Equality Magazine's* list of "40 LGBTQ Leaders Under 40." Seth is an associate with Foley & Lardner in Boston, where he is a member of the firm's private equity & venture capital practice.

Joe Webster (MJS '16) has authored *The Making and Measure of a Judge: Biography of the Honorable Sammie Chess, Jr.* (Chapel Hill Press, Inc., 2017), a biography of North Carolina's first African American superior court judge. Judge Webster is a mag-

istrate judge of the U.S. District Court for the Middle District of North Carolina, with chambers in Durham.

2017

Eleni Bakst researched and coauthored "Ailing Justice — New Jersey: Inadequate Healthcare, Indifference, and Indefinite Confinement in Immigration Detention," published in February by Human Rights First, where Eleni is an Equal Justice Works fellow.

Kyle Doiron has joined the Nashville, Tenn., office of Bradley Arant Boult Cummings as an associate in the litigation practice group.

Sarah Williamson Kirwin married Kevin Kirwin on Sept. 2, 2017. Sarah is an international trade practice associate in Akin Gump's Washington, D.C. office.

Riccardo Maggi Novaretti is an international clerk in the securities practice group at White & Case in New York.

Bryan O'Brien has joined Preti Flaherty in Portland, Maine, as a business law associate representing clients in matters involving business formation, commercial contracts, labor dispute resolution, cross-border transactional matters, and IP licensing agreements.

Will Robinson has joined the mergers and acquisitions and data use, privacy, and security practices of Smith Anderson in the firm's Raleigh office.

Lea F. Courington '77 died on June 30, 2018. Senior counsel at Dykema in Dallas, she was a respected health care and trial lawyer whose practice also included government investigations, white collar criminal defense, antitrust, and pharmaceutical matters. She was also a devoted Duke supporter and at the time of her death was serving as president of the Duke Law Alumni Association. She was honored with a 2017 Forever Duke Award last September in recognition of her dedicated volunteer service to Duke. ♡

In Memoriam

(Received January 13, 2018–July 31, 2018)

Class of '51

George W. Martin

April 4, 2018

Class of '53

Jack H. Chambers

August 22, 2016

Class of '55

Forrest Edwin Campbell

February 15, 2018

Theodore A. “Ted” Snyder, Jr.

June 29, 2018

Class of '58

Calvin A. Pope

June 11, 2018

Class of '59

Konrad K. Fish

February 21, 2018

Class of '60

Edward Thornhill III

March 31, 2018

Class of '61

David A. Quattlebaum III

June 27, 2018

Class of '64

Patrick Harvey Bowen

January 30, 2018

John C. Carlyle

April 22, 2018

Robert K. Drummond

July 1, 2018

Donald Arthur Gary

July 5, 2018

Class of '65

Jeffrey P. Hughes

February 28, 2018

Charles B. Mills, Jr.

February 23, 2018

Class of '67

Robert G.M. Keating

July 14, 2018

Class of '68

David W. Carstetter

July 11, 2018

Class of '69

James Wallace Dunlap

July 28, 2017

Clarence L. Ledbetter

June 29, 2018

Class of '72

Robert T. Brousseau

March 30, 2018

Class of '73

Howard C. “Kerry” Wiener III

July 9, 2018

Class of '77

Lea F. Courington

June 30, 2018

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Class of '78

James Thomas Royster Jones

May 3, 2018

Clare Frances Jupiter

May 18, 2018

Class of '81

James Albert Fieber

July 14, 2018

William K. Richardson

November 10, 2017

Class of '84

Jin-Fang Lin (LLM '84, SJD '89)

February 15, 2018

Class of '85

Andrew Lewis Shapiro

March 16, 2018

Class of '86

Jeffrey David Jones

March 9, 2018

Class of '87

John Arthur Flyger

July 8, 2018

Class of '90

Victoria Jeanne Franklin Sisson

June 12, 2018

Class of '99

William John Colwell, Jr.

July 15, 2018

Class of '00

Stephan Strnad

February 24, 2018

Staff

Adriane Kyropoulos T'89

**Director of Recruitment
and Employer Relations**

May 11, 2018

Sua Sponte

Duke Law Women: An integrated admissions-to-alumnae experience

Students and faculty celebrated the launch of the Duke Law Women initiative with a Jan. 25 reception at the home of Lisa Kern Griffin, the Candace M. Carroll and Leonard B. Simon Professor of Law. Managed by committed faculty and administrators, Duke Law Women provides a forum for professional and social programming for women students and graduates to facilitate an integrated admissions-to-alumnae experience that recognizes both women's essential role in the profession and their still-salient challenges. Events in its inaugural semester included a reception with then Dean-designate Kerry Abrams and a community-wide lunchtime discussion on confronting sexual harassment in the legal profession. ♡



Dean Abrams is coming to a city near you!

Charlotte, NC	October 2, 2018
New York, NY	October 9, 2018
Washington, DC	October 11, 2018
Los Angeles, CA	November 13, 2018
San Francisco, CA	November 14, 2018
Palo Alto, CA	November 15, 2018
Tampa, FL	January 15, 2019
Miami, FL	January 16, 2019
Atlanta, GA	February 27, 2019
Dallas, TX	May 1, 2019
Houston, TX	May 2, 2019

Save the date and join fellow alumni and friends for a special celebration to welcome Duke Law School's 15th dean, **Kerry Abrams**, to the Duke Law community.

For additional information about these and other regional alumni events, please update your preferred contact information at <https://law.duke.edu/alumni/alumdir/update/>.

Questions?

Contact the Alumni & Development Office at alumni_office@law.duke.edu or **888-LAW-ALUM**.

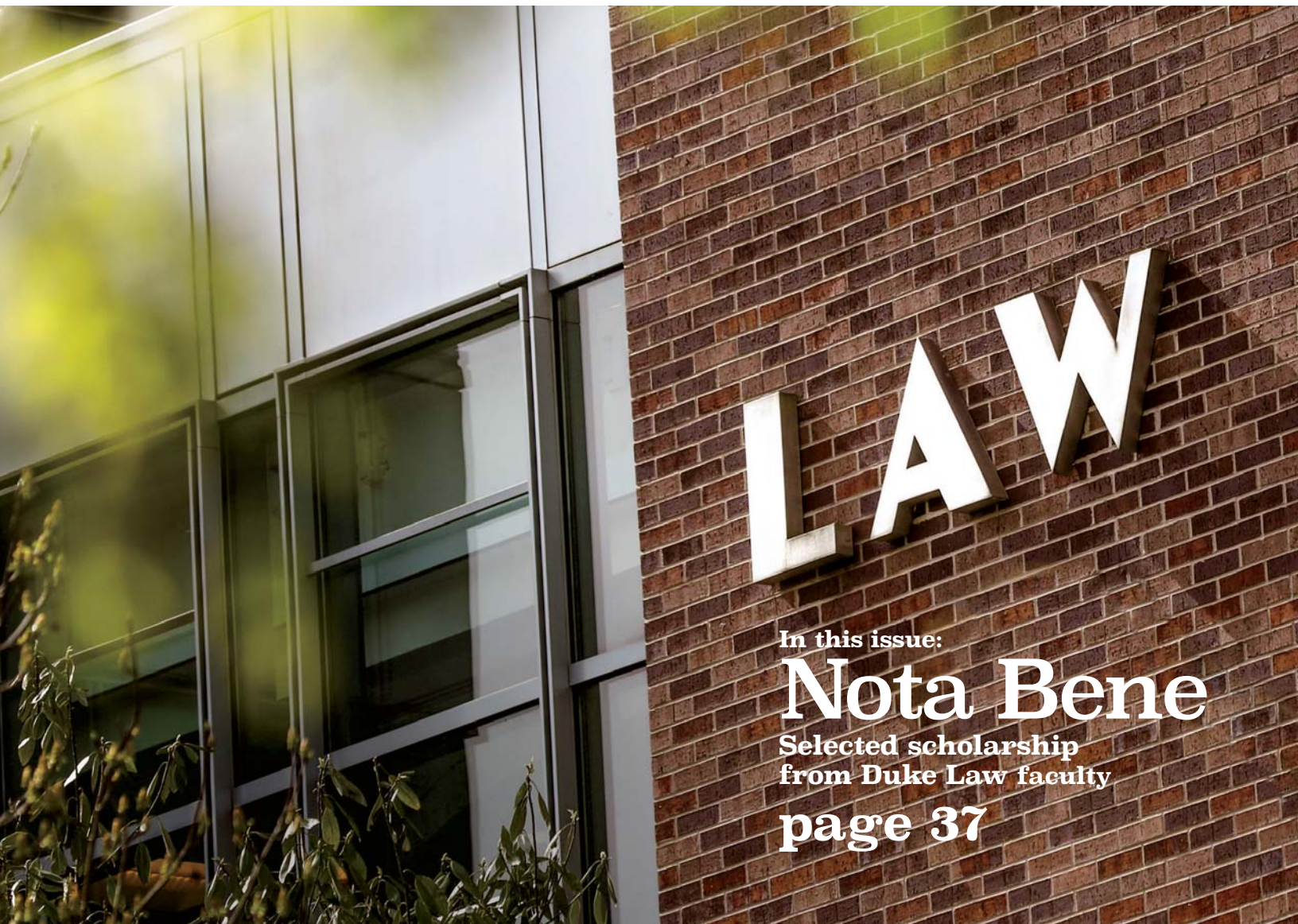




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Nota Bene

Selected scholarship
from Duke Law faculty

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