



DUKE IN D.C.

and the new
integrated
learning model
at Duke Law

by Frances Presma

PHOTOS: JAY MALLIN, JOSHUA COGAN



Jim Cox calls it, “hands down,” the best educational experience he’s witnessed since he entered teaching almost 40 years ago.

A few days before Thanksgiving, Cox is marveling at the insight students have brought to their research presentations in Rethinking the Regulatory State, the course he co-taught with Lawrence Baxter as part of the fall semester’s Duke in D.C. program.

“The quality of their presentations, in terms of erudition, the nature of the topics selected, and the depth of analysis has been far above what I’ve come to expect in similar papers — and I’ve always been delighted in the past, so this is off the scale,” says Cox, Duke’s Brainerd Currie Professor of Law and a leading scholar of corporate and securities law.

He offers a few examples of the issues tackled by the 12 students who spent the fall 2009 semester working full time in the nation’s capital, embedded within congressional offices and agencies in and out of government that are involved with different aspects of financial regulation. These include the Securities and Exchange Commission (SEC), the Public Company Accounting Oversight Board (PCAOB), the Office of the Comptroller of the Currency, and the Financial Services Roundtable.

SEC extern Brian Oh ’10 undertook a multi-faceted analysis of the disclosure issues that led to Judge Jed S. Rakoff’s rejection, in September, of a \$33 million settlement of the SEC’s lawsuit against Bank of America over its acquisition of Merrill Lynch. “He sifted through the strategies and issues that could have been involved in the prosecution of the case and how the trial could go forward. Brian also brought in elements of law reform into his analysis,” says Cox.

Timothy Reibold JD/LLM ’10, whose placement at the Institute of International Finance involved a review of international regulatory developments with respect to executive compensation, analyzed public reaction to executive compensation through the lens of various schools of thought in moral philosophy — his undergraduate major — making what Cox calls “a tremendously rich connection.”

Christopher Leach ’10, who worked in the SEC’s Trial Division, examined whether in today’s environment the classic “shareholder primacy” principle that corporate directors always seek to maximize shareholder wealth should remain the governing model or whether some other stakeholder model should govern decision-making for financial institutions, in particular.

“It’s another great, great topic,” says Cox. “These papers are on the edge. The students’ focus consistently was on what’s unfolding in America and how it makes us think about the regulatory system. And all of the papers also are reflecting the themes in the seminar.”

AN INTEGRATED APPROACH TO LEGAL EDUCATION

In offering students in-depth work experience concurrent with an intensive class on regulatory law and policy, Duke in D.C. is one example of the Law School’s broad effort to integrate professional-skills development into an already rigorous core curriculum. The integrated approach combines academic research and substantive law teaching with a simultaneous experience of



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— Professor Jim Cox, reflecting on Duke in D.C. students’ presentations on financial regulatory reform

lawyering in settings that call upon students to marshal their academic knowledge and analytic powers, come up with solutions to real problems, and develop skills essential to success in the law — the ability to work in teams and across disciplines, to articulate complex ideas orally and in writing, and to manage their workflow. The integrated approach thereby stitches together the varied components that make up a superior legal education.

“In one sense, our talented faculty has been using an integrated approach to legal education for many years,” says Dean David F. Levi. “It is common for faculty to include in core courses various simulations of the kinds of issues and problems that may be confronted in practice. Integrated externships and the addition of a practice unit to a core course — what we are calling ‘course plus’ — take this approach one step further by combining learning by doing and learning through study. The combination can be powerful.”

More than ever, observes Levi, law school graduates need to be “ready on day one” to step into a professional environment with a comprehensive grounding in professional skills and values as well as the ability to master complex legal issues. According to Levi, “The legal profession is changing. We know that many of our students will have to prove themselves from the very first. We want to prepare them to be up to this challenge. Fortunately for our students, Duke has a faculty that takes its teaching seriously and that embraces its obligation to prepare our students to handle the most demanding kinds of legal careers whether in government, private practice, public service, or law teaching and scholarship.”

Duke in D.C. is one of a number of such integrated courses. The Federal Defender Integrated Externship program, launched to enormous success in the fall 2009

semester, combines intensive classroom training in federal criminal law and procedure with student externships in the Office of the Federal Public Defender for the Eastern District of North Carolina. (See story, Page 17.) The “course plus” model adds a one-credit “applied law” seminar that focuses on case studies onto a traditional “black-letter law” course. (See story, Page 19.) Duke’s eight legal clinics, an array of other student-initiated capstone projects and externships, and a variety of simulation courses round out the mix.

The Law School also is making sure that getting students ready for day one of their professional careers starts on day one of their time at Duke Law; the full-time Legal Analysis, Research and Writing faculty has been expanded so that students have the benefit of smaller classes in the first year and can choose from an array of specialized legal writing and analysis classes in their upper years. (See story, Page 21.) And the newly designed Dean’s Course, which Levi teaches with Professor John Weistart ’68, is literally the first educational experience that 1Ls have at Duke. “Our goal is to expose 1Ls to the different kinds of careers and aspirations that lawyers have,” says Levi of the course that has featured a discussion of law and leadership with Ben Heineman, the former general counsel of General Electric, and leading trial lawyers Hal Haddon ’66 and Professor Michael Tigar, among others. “We invite them to reflect now, at this early point in their law studies, on what kind of path they want to follow and what they wish to accomplish in their life in the law.” (Read more about the Dean’s Course in *Duke Law Magazine* online at www.law.duke.edu/magazine.)

All of these curricular developments, Levi points out, “integrate the scholarship and research of a great university with the mobilization of knowledge through professional skills including the development of some of the basic com-

munication and interpersonal skills that lawyers must have in order to succeed no matter what they do — whether they become law professors or political figures, trial lawyers or judges, transactional lawyers or entrepreneurs. They all must be able to write and to express themselves powerfully and to work in teams to be effective.”

Clinical Professor Andrew Foster, who oversees Duke’s clinical programs and directs the Community Enterprise Clinic, puts it this way: “We want to help our students move up that steep learning curve of being an early-stage professional. To do this, we need to create challenging opportunities that require them to integrate their substantive legal knowledge and intellectual skills with the interpersonal, communication, and other professional skills that are fundamental to effective lawyering. Through this process, they also will begin to develop their professional judgment, strategic thinking, and self-confidence. As a result, they will really be better positioned to be successful and effective early in their careers.” Facilitating students’ experience with different kinds of practice will also help them find the areas about which they are passionate, he adds. “Being passionate about something gives you the internal motivation to create your own career and take charge of it.”

TRAINING LEADERS

Duke Law has long emphasized leadership; Levi’s predecessor as dean, Katharine T. Bartlett, the A. Kenneth Pye Professor of Law, launched the Duke Blueprint to LEAD, embedding such values as professionalism, collaboration, engagement, and the importance of working across disciplines into the overall fabric of the Duke Law student experience. Levi is embedding them in the curriculum.

One of his first initiatives as dean was to charge a working group of faculty, administrators, alumni, and students with developing ideas and academic programs for preparing Duke Law graduates for positions of leadership.

Co-chaired by Cox and Peter Kahn ’76, a partner at Williams & Connolly in Washington, D.C., and working closely with the faculty curriculum committee chaired by Weistart, the group focused its efforts over a two-year period on developing opportunities for upper-level students, in particular, to integrate real or simulated practice-based learning with substantive learning.

This approach would be “ideal for readying students to participate in the varieties of lawyering at the highest levels, whatever form that participation takes,” the co-chairs wrote in their report to the governing faculty. “Through this integration, the power of substantive knowledge can be teamed with analytic skill, judgment, and ethical decision-making to create potential for leadership in the law.”

“In the practice of law today, lawyers are not just advisers and wise counselors, but often the decision-makers themselves,” says Kahn, a Duke University trustee and former chair of the Law School’s Board of Visitors. “As our students take on leadership roles in business, government, and law firm management, for example, they need to be prepared to make the hard calls. Students need to learn to be risk aware, but not be risk averse. Without cutting back in any way on our core legal competencies, our feeling was that we need to teach our students creative and constructive decision-making, not just critical thinking. They need to learn to work cooperatively in teams, not only with

New in spring 2010: Expanded Duke in D.C.

The **Federal Policy Process** program — first offered in the spring 2009 semester — has placed five students in externships on Capitol Hill in the personal offices of members of Congress, on the staffs of Senate and House Committees, and with organizations that engage in government liaison and lobbying work for nonprofit and for-profit organizations. As they did in the program’s inaugural semester, Professor Christopher Schroeder, President Barack Obama’s nominee to serve as head of the Office of Legal Policy in the Department of Justice, and Sen. Ted Kaufman, D-Del., are supervising the externship placements and teaching the companion course on the federal policy process.

Four more students are working within the Civil Rights Division of the Department of Justice and with civil rights organizations in the federal and nonprofit sectors through the **Examining Federal Civil Rights Law & Policy** program. Margaret Hu ’00, a special policy counsel in the Civil Rights Division, and H. Jefferson Powell, Duke’s Frederic Cleaveland Professor of Law and Divinity and former deputy U.S. solicitor general, are supervising the externship placements and teaching the companion course called Examining Federal Civil Rights Law & Policy.

Hu interned in the Civil Rights Division during her 2L summer through the DOJ’s Summer Law Intern Program, and returned through the Attorney General’s Honors Program following her clerkship with Judge Rosemary Barkett of the U.S. Court of Appeals for the Eleventh Circuit. She is certain that externships within the Division’s 10 sections will offer students substantive work experience, generate useful career contacts, and introduce them to a wealth of career possibilities within the Department of Justice.

“It’s a great place to work and a great place for a long-term career,” said Hu, now special policy counsel in the Office of Special Counsel for Immigration-Related Unfair Employment Practices.

Also new in the spring 2010 semester:

» The North Carolina Public Policy Integrated Externship

program has placed students within state legislative offices and agencies. The externship placements are bolstered by a seminar, taught by state legislator and Senior Lecturing Fellow Deborah Ross and Clinical Professor Andrew Foster, that incorporates a series of case studies to help students explore the state level public policy process from a variety of perspectives. The students also are concurrently enrolled in the Legislation and Statutory Interpretation course taught by Professor Guy-Uriel Charles.

» **Deal Skills for Transactional Lawyers**, a simulation-based class designed by Sidley Austin’s Terry Hynes ’79 to give students grounding in the real world M&A process, prepare them to participate effectively in due diligence reviews, and hone their drafting and negotiating skills;

» **The Entrepreneurial Law Clinic**, led by Clinical Professor and Director of Clinical Programs Andrew Foster, in which students — already enrolled in Professor Bill Brown’s class on private equity and venture capital transactions — assist startup ventures launched by Duke University students with the formation of their companies and counsel them with respect to the protection of their intellectual property. ▽



Timothy O'Shea JD/MPP '10

spent his Duke in D.C. externship at the epicenter of financial regulatory reform working for the House Financial Services Committee chaired by Rep. Barney Frank. "I think this is one of the most remarkable legislative pushes that has probably happened in my lifetime," he says. Working under the committee's senior policy adviser, O'Shea worked particularly closely with the staff of the Subcommittee on Capital Markets, Insurance, and Government Sponsored Enterprises. He offered this mid-October snapshot. »

lawyers, but with others across disciplines including those engaged in business, engineering, and public policy."

The group sought to address a broad definition of leadership and leadership skills, says Cox: the self-confidence that comes with experience and having successful experiences in interacting with others; the ability to accurately assess one's surroundings and environment; knowing when and whom to follow when appropriate, coupled with knowing when to step forward; and maintaining an accurate assessment of one's strengths and shortcomings.

"The key, really, is to teach people how to learn," says Cox. "You have to teach them in a way that does not become rote. So what we are trying to do is develop methods in which individuals are able to leave the Law School with a greater sense of self than they came in with, on average. And we do so by testing them in a variety of different settings so they can find [what works for them]."

FACULTY AS MENTORS, GUIDES

Faculty, as always, are leading the way. Duke in D.C., for example, was launched by Christopher Schroeder, the Charles S. Murphy Professor of Law and Public Policy Studies and director of the Program in Public Law, to expose students to the reality of working in the public sector and to encourage them to consider including public service in their professional careers.

Building on one of the strongest and most creative groups of scholars in the legal academy, the Law School also has assembled a distinguished roster of professors of the practice of law who, Levi notes, "mine the seam" where the academic study of law and the thoughtful practice of it meet.

"It's a big seam, rich with ideas and possibilities that can affect the worlds of practice and scholarship alike," he says. "Our professors of the practice and clinical professors have an 'interstitial capacity' — they often have had experiences in a broad range of different kinds of law practice, they see the potential connections between that law practice and the work of our research faculty, and they often connect us to different parts of the University and the greater community."

Lawrence Baxter is one of them. An administrative law scholar, he returned to the faculty as a professor of the practice after spending more than a decade as a senior executive at Wachovia Corp., where he led e-commerce initiatives. "The experience gained from executive positions on the cutting edge of innovation and business in a leading private corporation served to complement the experience I had gained as a teacher, researcher, and consultant with government regulators and Congress," says Baxter. "The result has been to enrich deeply my understanding of the interaction between law, business, and government. This, in an increasingly complex, connected, and interdisciplinary world brings, I hope, added realism to the theory and practice of the law I teach and write about now that I am back at Duke Law."

Other recent additions to the full-time faculty include Bill Brown '80, who brings the insights of a long tenure on Wall Street and an active career as an entrepreneur and venture capitalist to classes in financial analytical techniques, accounting, fixed income markets, private equity and venture capital, and Donald Beskind '77, a leading trial lawyer and long-time director of Duke's Trial Practice Program who also teaches evidence and advocacy-related classes. (See profile, Page 25.)

I'VE BEEN WORKING on regulation of hedge funds, credit-rating agencies, derivatives, reform of securitization practices — basically the full gamut of issues that arose from the financial crisis of last fall. I've even touched a little bit on the creation of the federal insurance office that is a response not only to the [near] collapse of AIG, but also the terrorist attacks of 9/11. It's been very exciting work.

A considerable amount of my work relates to credit-rating agencies. They traditionally offer First Amendment defenses when they are sued over the performance of their ratings. I researched that after a district court judge rejected First Amendment defenses offered by ratings agencies in a motion to dismiss after being sued by investors in a special investment vehicle. He gave a few reasons why those defenses don't work the way they have in the past.

So I did the equivalent of a case note on the issue. The credit-rating agencies were hired by the investment bank to help structure the investments so that it would get an AAA rating. That means the ratings agency is actually working with the issuer and the underwriter — it wasn't just writing a newspaper editorial. It was part of the team structuring the issuance, not some disinterested analyst. The case pretty well sums up why the government — the Financial Services

Committee, at least — is trying to regulate the credit-rating agencies. ...

My job is to help prepare for hearings [relating to proposed financial regulatory legislation]. That entails researching an issue — such as private pools of capital — in detail, sometimes looking back at work the committee has already produced, and creating documents that explain the draft legislation, the purpose of the hearing, and the inquiries the hearing is going to make.

... It involves analyzing legislation. I was usually looking into two or three bills sort of simultaneously, seeing how things complemented each other. And because we're inviting leaders of the industry and relevant trade associations [to review and testify], it gave me a much better understanding of who the relevant players are.

It's the sort of environment where ... you have to understand how everything fits together. I wouldn't really understand what I was doing on credit-ratings agencies if I didn't also understand the securitization process and what the challenges are there and what the reform proposals are envisioning. So even if there are issues I am not working on directly, the nature of the work is such that you kind of have to expose yourself to everything a little bit just to make sure that your understanding of your project is complete. ♡

The Law School's ranks of adjunct faculty include distinguished practitioners and judges who further help to connect the classroom to developments in law practice here and internationally.

IN THE DUKE IN D.C. CLASSROOM

Throughout the fall semester, Cox and Baxter traveled to Washington each Tuesday to convene their two-hour class on regulatory policy and law around an expansive boardroom table at the Pennsylvania Avenue offices of Morgan Lewis & Bockius. Baxter began each session by asking students to report on the work they were doing at their externship placements and to point out links they could identify between their work and the class and the subject of regulatory reform.

In early October, Tim O'Shea JD/MPP '10, who worked for the House Financial Services Committee, tells his classmates that he has drafted a memorandum that was circulated to committee members before a hearing on a proposal to require most private investment vehicles to register with the SEC. The memo described existing market and regulatory conditions, the proposed legislation, and differences between the bills offered by the committee and the Obama administration. He notes that the committee moves at a fast pace; he is immediately "moving on to a new hearing that we're going to have next week on systemic risk and insurance companies." (See story above.)

Beth Landes '10 says she has volunteered to work on "some interesting enforcement matters" at the Public Company Accounting Oversight Board (PCAOB), where she is spending the semester. She notes that she has

enjoyed getting to read drafts of the briefs and engaging with colleagues in the office of the PCAOB general counsel to get their insights on the challenges and merits of a case the class is discussing, *Free Enterprise Fund v. PCAOB*. (The challenge to the constitutionality of the regulator was subsequently argued in the Supreme Court in December.)

Cox, who currently serves on the PCAOB's Standing Advisory Group, describes the regulator's formation as the centerpiece of the Sarbanes-Oxley Act, enacted in 2002 in the wake of the Enron and Worldcom scandals.

The PCAOB replaced the American Institute of Certified Public Accountants (AICPA) which previously was charged with setting auditing standards for public companies. Because the AICPA derived its funding from the accounting industry, its position frequently reflected a closer relationship to the wishes of its audit clients than to the needs of the users of audited financial statements, explains Cox.

Sarbanes-Oxley sought to remedy that situation by stipulating that the SEC can only accept as authoritative accounting pronouncements made by an organization with independent funding that operates by majority rule. It created the PCAOB as just such an independent organization, he says.

"Its members are appointed by the chair of the SEC in consultation with the secretary of the Treasury and the chairman of the Federal Reserve," says Cox. "It's funded independently by registration fees and its budget is approved by the SEC. It creates a significant body that oversees the procedures and processes of the auditors. And a key provision is that its five members aren't removable



FALL 2009 DUKE IN D.C. STUDENTS MET WEEKLY WITH PROFESSORS COX AND BAXTER AT THE OFFICES OF MORGAN LEWIS & BOCKIUS.

“In the practice of law today, lawyers are not just advisers and wise counselors, but often the decision-makers themselves. As our students take on leadership roles in business, government, and law firm management, for example, they need to be prepared to make the hard calls. Students need to learn to be risk aware, but not be risk averse.”

— Peter Kahn '76, co-chair of the Leadership Working Group

except for cause.” Landes offers her impression that the SEC, in fact, exercises “pervasive control” over the PCAOB.

The students engage in a spirited — and knowledgeable — exchange about why Congress may have made the PCAOB a self-regulatory organization, why commissioners can be removed only for cause, and the need for strict accounting standards.

“Based on the pleadings, about half the cases I’ve seen involve alleged manipulation of accounting standards,” says SEC extern Leach, adding that he is expressing his own views, not those of the agency. “They relate to inflated earnings.” As for protecting commissioners from being removed only for cause, Leach offers the view that it insulates the PCAOB from politics. “You want accounting principles to be the backstop — the numbers don’t lie, but if you allow them to be influenced by politics, they will.”

The discussion neatly reflects all of the elements that make the Duke in D.C. program effective: leadership by expert faculty who are intimately familiar with the players in and substantive law governing federal policy; students embedded in policymaking institutions and engaged as junior professionals in challenging legal and policy work; and the integration of substantive law and parallel, practical experiences in the classroom, creating a synergy of intellectual connections and mastery of the subject matter that carries back into the workplace.

THE STUDENT EXPERIENCE

On-the-job externship supervisors are enthusiastic about the quality of work they are receiving from the Duke students.

Art Lowry, a supervisory trial attorney in the Trial Unit of the SEC’s Division of Enforcement, notes that having Leach in his unit for a whole semester provided “a much needed and appreciated resource” for the trial teams, at a time when

the number and complexity of the cases they handle continues to increase. He knows that Leach also benefited from a unique learning environment. It is, he says, “an environment where the ‘rubber meets the road,’ allowing third-year law students to apply their legal training in the context of active securities law enforcement litigation.

“For example, Chris attended three depositions in connection with one of his assignments, one of which was an expert deposition,” says Lowry. “Chris used his familiarity with the facts he gained from those depositions in drafting memoranda for the trial team discussing the theories that could be used to exclude or include certain testimony at trial.” For his part, Leach welcomed the opportunity to travel to the Southern District of New York to hear argument in one motion he worked on.

Leach and his classmates, who submitted reflective reports on their externships bi-weekly and contributed to a password-protected class blog, also are uniformly enthusiastic about their semester learning from their workplaces, their professors, and each other.

“I love hearing about what everybody else is doing. It adds tremendous value,” says Leach of his classmates. “We’re getting inside perspective on regulatory reform from across different agencies.”

“A lot of times law school classes aren’t perfectly attuned with what you actually want to do, but this [program] pretty much is,” says O’Shea, who was on the front line of reform efforts through his externship with the House Financial Services Committee and who counts working in the financial services industry as a long-term career possibility.

“In class we’re talking about the theory of regulation as regulation happens. This is one of those times when very important and comprehensive legislation [is likely to get] passed. So understanding it comprehensively can only help me going forward.” ♣



On Duke's new
**Federal Defender
Integrated Domestic
Externship,**
**the
verdict
is in**
(It's a success for students
and the system)

Along with her seven classmates in the Law School's new Federal Defender Integrated Domestic Externship program, Roberts spent 16 hours each week through the fall semester working in the Office of the Federal Public Defender (FPDO). Supervised by staff attorneys, students in the program assist with research projects, prepare sentencing memos, draft motions in felony cases, and argue motions before magistrate judges; conduct client interviews — usually in lockup; field first appearances in duty court held weekly in Raleigh; and carry misdemeanor caseloads on a military docket heard each month in Fayetteville, where Fort Bragg is located. One member of the inaugural class even made an opening statement at trial.

BETTINA ROBERTS JD/LLM '10 knows exactly what she wants to do after she graduates: "I want to be a public defender. There's absolutely no chance I'm doing anything else. Now it's just a choice between the federal system and the state system."

That's why Roberts was delighted to find out that she could follow up her 2L summer internship with the Public Defender Service for the District of Columbia with an intensive fall externship in the Office of the Federal Public Defender for the Eastern District of North Carolina, in Raleigh.

The students gather weekly at the Law School for a two-hour class where they share their experiences and observations from their work at the FPDO and delve deeply into substantive areas of federal criminal law. Taught by James Coleman, the John S. Bradway Professor of the Practice of Law, their FPDO supervisors, attorneys Lauren Brennan and Diana Pereira, and Lecturing Fellow Jennifer Dominguez, a former prosecutor, the class takes the students through issues that arise at all stages in federal criminal cases, as well as more theoretical issues such as the increasing federalization of criminal law. Guest speakers in the class have included the two U.S. magistrate judges before whom the students appear most frequently, Judge William A. Webb and Judge James E. Gates.

"It was good to be in the courtroom and it also was great to learn about the federal system," says Roberts of her externship experience. "It was absolutely perfect for me."

That sentiment was shared by all of Roberts' classmates interviewed for this story, most of whom had some prior experience and defined interest in criminal law and practice. Craig Schauer '10 says the externship provided a valuable counterpoint to his earlier summer internship in the Office of the U.S. Attorney for the Eastern District of North Carolina.

"Working with clients, actually seeing the story that goes along with the name and the alleged crime, was very eye-opening," he says. "It helped me appreciate the personal stories and the human drama behind each case." Should he choose to pursue a career as a prosecutor at some future time — he will clerk for Justice Paul M. Newby on the North Carolina Supreme Court for two years following graduation — Schauer thinks his externship could inform his approach.

"When considering what might constitute a 'fair' sentence, for example, I think I would be more sensitive to what a sentence is going to do. A specific sentence might be fair according to the facts of the case and the defendant's criminal history, but what else might be going on in that person's life? Is this somebody who actually learned a lesson prior to sentencing? Is it somebody who hasn't? Or is this somebody who genuinely was in the wrong place at the wrong time and factually and legally committed the crime but didn't really hit at the core of the crime the law was aimed to capture?"

The class, says Schauer, allows the students "to step back and explore the statutes and ask what's really going on" in court and in federal criminal law more broadly. "Not only did it fill us in on all this background information that we were expected to know, but then we also explored whether or not that's the right way for things to work. That's not necessarily what you do when you're in the office. Some things you just can't challenge in the course of a case."

In Schauer's view, the ongoing externship program is serving as a highly effective bridge to practice. "The most



obvious way is by letting a law student actually stand up in court and more or less act like a lawyer,” he says. “You aren’t expected to get it all right, but you can have someone teach you and coach you along the way. It’s a great way to integrate real-world experience with a legal education.”

REACTION FROM BENCH AND BAR

U.S. Magistrate Judge William Webb offered this assessment of Duke Law students’ courtroom appearances, in late November: “They are performing at the level of junior lawyers,” he said, commending their consistently high level of preparation for the court appearances, both academically and with respect to the facts of their cases. “There has been a clear evolution in their skills, their confidence, and the kinds of presentations they make. There have been a number of students I’ve called up and have praised the quality of their representation because they are, in fact, representing clients when they appear in court.”

Webb has viewed the externship program as a “win for us, a win for the students, and a win for the school,” ever since Dean David F. Levi first broached the idea with him over dinner last summer.

“I have long believed that lawyers and judges, in particular, have an obligation to ensure that the persons who practice before the various forums are as well prepared as they can be,” says Webb, who regularly hires interns in his chambers. “I think it exposes law students to what it’s like to be in court and how one handles oneself in court.”

It also helps de-mystify federal court practice, he adds. “A program like this guarantees that younger lawyers will have less trepidation than most about taking on a case that

should be in federal court to federal court or, when they get there, acquitting themselves well.”

When Webb shared Levi’s externship idea with his colleague, Judge Gates, and Tom McNamara T’61, the federal public defender for the Eastern District of North Carolina, he found similar enthusiasm.

“It’s exciting because it gives Duke Law students an intense indoctrination into federal criminal law from the defense perspective,” says McNamara, who also has served as the U.S. attorney for North Carolina’s Eastern District. While his office routinely hires interns and externs, his staff of 55 — including 26 lawyers who manage one of the highest caseloads of any FPDO in the country — has benefited from the presence of “a concentrated group of very bright students,” he says.

“The Duke Law students have been able to get involved a little more deeply in the cases, they’ve reviewed discovery, they’ve worked on motions, they’ve been to court to see the work product develop. It definitely has helped our staff to have them here.”

Pereira, an FPDO research and writing attorney and one of their supervisors, agrees. “The students have been churning through the work faster than we can give it to them, and they’ve been producing work of a very high quality,” she says. “I think it’s been a great opportunity to ‘outsource’ things [the staff] would normally do themselves.

“They have been able to hit the ground running,” she adds. “There was a pretty steep learning curve in the beginning but they all seemed very comfortable with getting an assignment and being ready to go.”

Students, public defenders, and judges alike, are delighted to see the program continue. “It’s been great having the ‘kids,’” says Webb. ♡



WHEN IT COMES to integrating practical-skills training with substantive legal education, James Coleman, the John S. Bradway Professor of the Practice of Law, is essentially a one-stop shop, particularly in the area of criminal law. Coleman co-directs the Wrongful Convictions Clinic, the Appellate Litigation Clinic, and the Federal Defender Integrated Externship program. Each offers specialized skills training, he says.

» **Wrongful Convictions Clinic:** “The focus is on fact development and analysis. It’s an intensive course in which students get to work with facts — and that’s a lot of what lawyers do.” (Co-director: Clinical Professor Theresa Newman ’88)

» **Appellate Litigation Clinic:** “This is writing intensive, as students write appellate briefs and focus on legal issues, as opposed to fact development. This also is a course about legal advocacy at the very highest level; about collaboration — students work on cases in teams — and about professionalism, what is expected of an appellate lawyer who has a client in a case where the court has appointed us to present the legal argument.” (Co-director: Senior Lecturing Fellow Sean Andrussier ’92)

» **Federal Defender Integrated Externship:** “With its focus on trial-level advocacy, this trains students to think on their feet. Oral argument [in appellate cases] is something entirely different from what happens in a courtroom where you have to put on witnesses, undertake direct and cross examination, and argue before a judge.” ♡

Complementing an academic course with a simulation-based seminar helps students develop real-world skills

The “course plus”



SENIOR LECTURING FELLOW J. SCOTT MERRELL AND PROFESSOR JOHN WEISTART '68 TEACH A SIMULATION-BASED SEMINAR AS A SUPPLEMENT TO WEISTART'S COMMERCIAL TRANSACTIONS CLASS.



INTEGRATED
LEARNING

DESTINY DURON DEAS '08 spent a 3L semester at Peking University on her way to acquiring a dual JD and MA in East Asian studies. All are relevant to her decision to launch her own consulting business following an appellate clerkship; based in her hometown of Shreveport, La., she helps U.S. companies forge manufacturing connections in China.

But Duron Deas credits a simulation-based seminar taught by Professor John Weistart and Senior Lecturing Fellow J. Scott Merrell, a supplement to Weistart's Commercial Transactions class, with giving her the confidence to start her business.

"What we did in that seminar — Strategies in Commercial Transactions — I do right now day-to-day," says Duron Deas of the interactive exercises that involved students in negotiations and strategic decision-making. "It demystified commercial transactions.

"I don't know that I would have had the same confidence in myself and my ability to figure out an answer to a problem had I not taken the seminar. It was great having professors say, 'This worked, this didn't.' You aren't going to get that kind of feedback or that kind of criticism in the real-world setting. They asked really hard questions and pushed us and said, 'Now if this was in real life, *this* would go on.' It was great."

"That's about as good as it gets — when you can see a line of sight between experience in the classroom and

something that happens in a former student's professional life," says Merrell, of counsel at Hutchison Law Group in Raleigh and the former senior vice president, secretary, and chief legal officer at RTI International. "It's great when they can draw back and make an immediate connection with something they've learned."

Giving students a nuanced appreciation of what is involved when commercial transactions play out in the real world is exactly what Weistart was aiming for when he partnered with Merrell in crafting the seminar, which is open to a small number of students enrolled concurrently in his larger lecture-based class.

"It was my perception, over a long period of time, that the law I was teaching was much more nuanced and interesting in the real world than in the form it was taught in the classroom," says Weistart, who pioneered this "course plus" method of teaching at Duke. "Academic classes tend to be context neutral. But in the real-world application of the rules relating to commercial transactions, there are a lot of strategic decisions to be made. If I undertake one course of action in pursuit of a certain goal, what will be the trade-offs in other parts of my business?"

"In the seminar we embrace the theory taught in the class and then ask the next question: 'What constraints will arise in the real world to limit the application of that theory?'"



The centerpiece of the seminar is a simulation involving a company that seeks to upgrade its production technology in order to reduce waste and errors and maximize production and profit. “This company is facing the same problem that virtually every company does, which is to try to gain access to capital for growth,” Merrell observes. In a series of exercises, students variously assume the roles of corporate principals, officers and directors, bankers, shareholders — venture capitalists — and board counsel, and have to investigate and negotiate terms of financing, advise clients, and secure shareholder approval for their actions, all while making strategic trade-offs and navigating competing interests, goals, and potential conflicts. Weistart and Merrell add twists to the problem as the seminar progresses so that the parties have to continually reassess their positions.

“It’s rarely in anyone’s good fortune to have the path originally embarked upon be exactly the path they follow,” says Merrell, who adds that he has seen all of the scenarios used in class play out in practice — though on occasion, his students come up with creative solutions to problems that didn’t occur to the real players.

“That’s one of the great benefits and rewards of doing this seminar,” he says. “The creative energy students bring to questions that the profession grapples with helps you realize there are different ways to do this.”

Merrell’s practitioner’s insight adds tremendous value to the seminar, says Weistart.

“Among other things, Scott is very good at pointing out the various ethical conflicts that seep into any complex business transaction — they can be very subtle. He can see the strategies that have significant ethical components. And *that’s* the real world.

“This is a way that a law school can provide added value to students’ experience,” Weistart remarks of partnering

the simulation-based seminar with an academic course. “Students’ jobs aren’t on the line, but they are being guided and mentored.” A number of practical benefits flow from that, he adds.

First, when students are asked to identify with a specific interest in the problem and make decisions for it, advocate it, and then exercise their skills at negotiation and presentation to get the results they want, they gain a deeper understanding of the rules they learn in the Commercial Transactions class, which they frequently bring back in a constructive way to elevate the larger classroom discussion.

Second, they build solid practical skills. “We expand the number of skills they come away with,” says Weistart. “We’re talking about negotiating skills, decision-making skills, persuasiveness skills, motivational skills. By the time they head into practice, they have had a much broader exposure to the vocabulary and concepts and legal devices that their supervising partners are talking about than would be typical for a JD graduate.”

Perhaps more significantly, he points out, the exercises often uncover students’ skills and strengths that can be overlooked in traditional classes.

“There are people in our student body who have exceptionally strong skills in areas of strategy, organizational behavior, decision making, and execution that they don’t get to exhibit when they are evaluated solely on the traditional grounds used in the large classroom.” He credits Merrell, in particular, with offering direction to students to help them maximize their use of these skills in practice. “Scott plays an important role in mentoring students who are thinking about going into these areas — helping them figure out which part of commercial financing they are most attracted to [or have a particular facility for], and how they might move in that direction.”

Duron Deas agrees with Weistart’s assessment on all counts. “It was the biggest confidence boost for me to have them affirm my style of negotiating and communicating and the way I saw the problems. I had no idea how that would translate,” she says.

“It’s not enough to know the law and the way things should work. [The simulations] affirmed that a lot of what we do as lawyers and in the business realm is personal relations. It’s the ability to talk and to communicate in a way that is pleasing to other people and that persuades them, regardless of what the law says.” ♡

“In the seminar we embrace the theory taught in the class and then ask the next question: ‘What are the constraints that will arise in the real world that will limit the application of that theory?’”

— Professor John Weistart '68



“Employers tell us that ‘Dukies’ know how to write.”

— Diane Dimond, Clinical Professor and Legal Writing Director



INTEGRATED
LEARNING



WHAT DO LAW FIRMS WANT in new recruits — and what skill do they often find lacking? Good writing, according to a survey of practice chairs, hiring partners, and recruiters reported in the April 2009 issue of the *New York Law Journal*, which singled out Duke Law for “going beyond the typical first-year writing class” with a range of upper-year courses that help students hone their skills.

At Duke Law, writing matters

That Duke’s curriculum is getting noticed doesn’t surprise Clinical Professor and Legal Writing Director Diane Dimond. “Employers tell us that ‘Dukies’ know how to write,” she says.

Dimond credits Dean David F. Levi’s “acute awareness” of the importance of teaching analytical and writing skills with helping drive expansion of the program over the past two years. Key developments include the hiring of additional writing faculty, making all writing faculty full time, and creating an upper-year curriculum to focus on specific aspects of writing craft and analysis.

“Duke has long been recognized for its strong legal writing program,” says Levi. “We are building on that foundation. I am very proud of the faculty we have assembled and of the leadership provided by Professor Dimond. We are committed to providing our students with superb, comprehensive

SENIOR LECTURING FELLOW ALLISON KORT, CENTER, WORKS WITH TEACHING ASSISTANTS ANDREA COLOFF ’10 AND JOSHUA MITCHELL JD/LLM ’11.

training in legal writing. This is one of the cornerstones of a Duke legal education and will serve our graduates well in whatever career in the law they pursue.”

NEW LEGAL WRITING FACULTY

The latest recruits to the legal writing faculty are Lecturing Fellow Rebecca Rich ’06 and Senior Lecturing Fellow Sean Andrussier ’92.

Rich returns to Duke after a clerkship with Justice Patricia Timmons-Goodson of the North Carolina Supreme Court and two years of litigation practice. In addition to teaching Legal Analysis, Research and Writing to 1Ls, she teaches Writing: Electronic Discovery for upper-level students.

Andrussier returns to Duke after serving as co-chair of the appellate practice group at Womble, Carlyle, Sandridge & Rice in Raleigh. He previously was an appellate lawyer in the appellate and constitutional law practice of Gibson, Dunn & Crutcher in Washington, D.C., where he worked with former U.S. Solicitor General Theodore Olson.

A leading appellate litigator who has held two federal clerkships, Andrussier teaches Legal Analysis, Research, and Writing and continues to co-direct Duke’s Appellate Litigation Clinic, as he did in the 2008–2009 academic year.

The value of good writing becomes clear quickly to students in the clinic, which handles cases assigned by



the U.S. Court of Appeals for the Fourth and D.C. Circuits. Under the supervision of Andrussier and James Coleman, Duke's John S. Bradway Professor of the Practice of Law, students have to digest, translate, and synthesize their arguments in briefs worthy of top-level advocates; with the interests of real clients at stake, these are not academic exercises, Andrussier points out, and the quality of the briefs is key.

"Oral argument is increasingly less frequent in appellate cases," says Andrussier. "Even when cases are scheduled for argument, as all our clinic cases have been, the time is very limited. The D.C. Circuit, for example, allots only 15 minutes for argument. So the emphasis is on written analysis."

The importance of writing of all kinds — from the quality of email correspondence between far-flung law-firm colleagues to client memos and briefs — from day one of legal practice is a subject about which Andrussier is nothing short of passionate. As a law-firm partner, he says, he expected associates' writing "to reflect an analysis of law and facts that is clear, precise, thorough, creative, and candid. Senior lawyers need to have confidence in the work of young lawyers. It's critically important."

SMALL CLASSES, INDIVIDUALIZED INSTRUCTION

To help ensure that all Duke Law students develop this critically important skill, eight faculty members teach in the legal writing program. Each section of Legal Analysis, Research and Writing, a required first-year course, has fewer than 35 students. The small class size allows writing teachers, who each partner with a research librarian in teaching research and analysis, to offer students more individualized feedback on their multiple written assignments, which range from internal law-firm memoranda to appellate briefs.

Natalie Bedoya '10, editor-in-chief of the *Duke Law Journal*, recalls arriving at Duke as an English major with a fondness for "long and flowery" phrases. "With legal writing class, I learned to write succinctly and clearly and to get to the point right away," she says. "I learned to distill my thoughts and present them clearly and precisely."

Recalling how her instructor, Senior Lecturing Fellow JoAnn Ragazzo, would emphasize the importance of reading opinions multiple times to fully understand them, Bedoya observes how essential the skills she gained in her first-year class have been to her editorial work and are likely to be to her future career. "Legal writing is infinitely rewarding. And while the law changes, the fundamental skills of close and careful reading and analysis don't."

Upper-level classes and seminars offer the same opportunities for individualized instruction as well as the chance to further hone skills that translate directly to practice. Stephanie Lam '10 calls Legal Writing for Civil Practice one of the most "relevant" classes she's taken in law school.

"I represented a 'client' for whom I developed a real working file, drafted a real demand letter — and later a civil

claim petition — and argued a motion for summary judgment," says Lam. "As a summer associate this past summer, I was able to take these 'lawyering' lessons and apply them to my real-world assignments. It was fortunate that I didn't have to learn the importance of court rules, clear syntax, and prepared arguments the hard way. Instead, I [had already] developed my writing skills in a collaborative environment."

A RANGE OF COURSES

Duke Law's legal writing instructors — most of whom teach the first-year Legal Analysis, Research and Writing course — have drawn on their deep professional experience in developing upper-year courses and other special writing programs.

A veteran litigator, Ragazzo designed Legal Writing for Civil Practice, an advanced course that helps prepare students for general civil practice. Writing assignments include opinion and demand letters, pleadings, motions, and trial briefs.

Senior Lecturing Fellow Allison Kort, who practiced white-collar criminal defense and securities class-action litigation at two New York firms prior to joining the Duke faculty, focuses on the writing challenges specific to litigating large federal cases in her course, Writing: Federal Litigation.

Senior Lecturing Fellow Jeremy Mullem — a legal writing scholar whose own research focuses on the development of scholarly legal writing and rhetoric and on legal research and writing pedagogy — teaches a seminar called Writing for Publication, through which students develop and workshop articles intended for publication in scholarly journals.

Dimond, who regularly teaches Negotiation to upper-year students, periodically offers a seminar in Contract Drafting.

Joan Magat, a senior lecturing fellow who also serves as general editor of Duke's *Law & Contemporary Problems* journal, teaches two courses for second- and third-year students that draw on her expertise in academic writing and long service as a clerk to several justices on the North Carolina Supreme Court. In Legal Writing: Craft & Style, students hone their legal writing or editing skills. Judicial Writing allows students — many of them bound for clerkships — to study judicial opinions and draft bench briefs, analytic papers, and an appellate-court opinion.

Senior Lecturing Fellow Hans Linnartz '80 directs Duke's Summer Institute on Law, Language, and Culture, which offers Duke's international LLM students an opportunity to hone legal writing and language skills prior to the start of the academic year.

And finally, in addition to the formal legal writing curriculum, Duke Law offers a unique resource through its affiliation with Duke English Professor George Gopen, a nationally-recognized expert in the field of writing across a range of disciplines, including law. Gopen holds weekly office hours for individual and small groups of students seeking feedback on their writing and offers an annual series of lectures on effective writing from the reader's perspective, open to all members of the Law School community. ♡