

Wake Forest Jurist

Spring, 1977

Vol. 7, No. 2



NILS F. LARSON
architect

WAKE FOREST JURIST

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STATEMENT OF PURPOSE AND POLICY

The *Wake Forest Jurist* is published twice yearly by the Wake Forest School of Law of Wake Forest University. Its main purpose is to inform the friends and alumni of the Law School about activities and events of interest at the Law School, of recent important decisions by the courts of North Carolina and other jurisdictions, and news of the achievements and activities of fellow alumni. In this way the *Jurist* seeks to provide a service and a meaningful link between the School of Law and its alumni. Also, the magazine shall provide a forum for the creative talents of students, faculty and alumni and an opportunity for legal writing by them. Opinions expressed and positions advocated herein are those of the authors and do not represent official policy of the School of Law.

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A MESSAGE FROM THE DEAN



Having reached the mandatory retirement age of 70, Dr. Robert E. Lee is completing his last year of active service as a member of our faculty. It is difficult, if not impossible, to express adequately in this brief compass what he has meant to our School over these past 32 years. First, as Dean during the difficult period following World War II, and since 1950 devoting all his efforts to teaching and writing, he has given Wake Forest the full measure of his time and talents, and thereby has enriched us all.

The chief beneficiaries of Dr. Lee's legacy are, of course, the generations of law students whom he has either terrified or inspired (accounts vary) into doing more and better than they thought they could. Not only, however, has he been outstanding in the classroom, but also he has been a superb and productive scholar and a source of strength and good counsel to his

faculty colleagues. Always his own man, he never has been slow to register disagreement with any idea that struck him as being unsound, whether the idea emanated from the administration, the faculty, or the students. Yet through thick and thin, agreement and disagreement, there never has been any doubt about his total dedication to the School of Law and to the young men and women who have flocked into his courses.

I first came to know Dr. Lee in the early part of 1970, when I was invited to Winston-Salem to interview for the deanship, Dean Weathers having announced his intention to retire at the end of the academic year. I developed a keen appreciation of his excellent judgment when during our initial conversation he proclaimed that in his opinion I should be hired immediately. We have been warm friends from that time to this, and I hope I have not given him a great deal of cause to regret his snap decision.

Although we shall sorely miss Dr. Lee's efforts in the classroom (*who* is going to keep alive the spirit of Mary Worth and the jurisprudence of Walnut Cove?), I am happy to say that he and Mrs. Lee plan to keep their home on Faculty Drive and that he will retain his office in Carswell Hall. He will continue his research and writing, and those of us connected with the School shall be privileged to continue our association with these two wise and delightful people. I know that all Dr. and Mrs. Lee's many friends will join me in wishing them many happy and productive years, secure in the knowledge of tasks well done and in the certainty of the friendship, admiration, and respect they have so richly earned.

Pasco Bonnar

THE EDITOR'S PAGE

The big news this semester is that the "Nig Lee, 57 Club" closes its membership (officially at the end of the summer session) as Dr. Robert E. Lee retires from the faculty. Featured in this issue: some of the wit and wisdom Dr. Lee used to entertain countless law students over the years.

I am pleased to announce next year's staff. Cliff Patterson will become Editor-in-Chief. Cliff is currently the Graphics Editor and has therefore been actively involved in the production of this year's issues. His opinions and ideas have been very helpful this year and his heavy involvement will insure a smooth transition of the staff and continued growth in the *Jurist's* development.

Virginia Mahoney and David Godfrey will be Co-Managing Editors. Both display an earnest interest in this publication.

John Lanham will be soliciting your ideas and contributions to the Legal Articles. John, a member of the Law Review, should be able to uncover a wide range of legal topics that warrant investigation.

Steve Shuff as the Alumni Editor will have the benefit of a direct dial telephone line to the *Jurist* office. Alumni may call (919) 761-5441 and keep Steve informed of noteworthy items of current interest to fellow classmates.

Rob Sharpe completes the new staff. Rob takes over as Law School News Editor. Rob brings publication experience which should prove very beneficial.

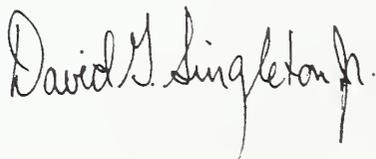
I would like to leave first and second-year students with this thought:

As you apply for jobs in your final year of law school, prospective employers will be requesting legal writing samples. Consider submitting a published article to that potential employer rather than a type-written Legal Bibliography brief. If you might be interested in writing a legal article, see John Lanham before the summer.

Since this is my final semester with the *Jurist* I would like to take this opportunity to express my sincere gratitude to the secretarial staff for their continued help in preparing this magazine. My special thanks to Nancy Moore, Dot Austin and Vicki Adams. Each of these ladies, time and again, cheerfully accepted assignments from this office.

Since I am one of the few students who has such a forum available it seems fitting to use this page to address my fellow classmates. The size of our class and the quickness with which these next few weeks will pass precludes me from seeing each of you. I would therefore like to take this opportunity to wish each of you my sincere best wishes and good luck in your new careers. It has been a pleasure being associated with each of you!

Good luck, too, to next year's staff. I look forward to my first copy of the *Jurist* received as an alumnus.



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LAW SCHOOL NEWS

Mrs. Jeanne Wilson

David Godfrey

New students and visitors to Carswell Hall soon notice there an attractive lady who is always smiling and seems to know everyone in the building. That lady is Mrs. Jeanne T. Wilson, who, with the help of Mrs. Nancy Baxley and Mrs. Doris Tyson directs the admissions, scholarship, and recruiting programs for Wake Forest Law School.

Before coming here three years ago, Mrs. Wilson allotted her time between community work, the Salem College Center, and her family. Mrs. Wilson's husband, James, is a casualty actuary with Integon. They have a daughter, Stephanie, who is a graduate of the University of Maryland, and a son, Bruce, who graduates from



Jeanne Wilson

Andover this year and is considering a legal career. Mrs. Wilson noted that in receiving her degree in political science from Oklahoma State she attended classes with many pre-law students; and although she

never entertained the thought of going on to a legal career, she confided she is "a little sorry now" that she did not. Besides her many activities here at Wake Forest, Mrs. Wilson enjoys tennis, sailing, and traveling. Having visited England last year, she hopes to join the Law School alumni trip to Italy this summer.

Mrs. Wilson credits the admissions committee with her training for her various responsibilities at the law school. The committee, which awards scholarships as well as making the admissions decisions, presently consists of Professors Divine, Shores, and Bond, along with Mrs. Wilson and Assistant Dean Herring.

Mrs. Wilson enjoys working at the law school, especially in dealing with the students, although there are hectic periods; particularly when final decisions begin to

go out as interested alumni and nervous applicants call the office. An especially delicate, but obviously necessary aspect of the admissions director's work is notifying students whose applications are declined, and she noted that sometimes this can be a difficult task. In making an admissions decision the committee examines particularly the applicant's grade point average, which should reflect the student's motivation and goals; the curriculum pursued, which in some cases may qualify the grade point average; the LSAT score; a personal statement of why the prospective student wants to attend Wake Forest; and recommendations. Observing that recommendations are probably the most overlooked aspect of an application, Mrs. Wilson emphasized the importance of selecting sources which will provide beneficial, meaningful references, and



1976-77 BOARD OF EDITORS — WAKE FOREST LAW REVIEW — B. Garland, P. Pegram, C. Hagan, S. Reynolds, D. Maraghy, J. Caruthers, J. Nobles, K. Kyre, M. Maland, R. Ramsey.



Gene Pridgen

affirmed the advisability of using alumni as references when available. Mrs. Wilson also explained that it is not coincidence that many law students have a parent who is an attorney, since the committee feels that someone involved with the law while growing up generally has a realistic, "no-illusions" attitude towards the legal profession.

The committee awards scholarships based on academic achievement and financial need. Approximately half of the law school's students shared \$150,000 in aid last year, ranging from various partial awards to full payment of tuition for the top seven students in each class. Noting that although the school could always use more money, especially in such areas as minority scholarships, Mrs. Wilson said that many people have been very generous with their support; and that everyone

hopes the program will continue the growth shown in the past five years. She also perceives a genuine interest in the students by the Dean, faculty, and alumni as benefiting Wake Forest's scholarship program.

Mrs. Wilson is especially enthusiastic over the school's recruiting program. Although many people question the need of recruiting for a law school that receives 1500 applications a year, the admissions committee feels it is necessary to attract students from various areas and schools in order to continue getting the best-qualified applicants, to get more balanced classes with a broad spectrum of backgrounds and views, and to prevent the school from becoming overly localized. The members of the recruiting team visited over 36 schools across the nation last season, and Mrs. Wilson is quite proud of her trip through the Midwest, which resulted in a sizeable increase of applications from students there. When asked what good qualities she emphasizes about Wake Forest on these trips, Mrs. Wilson explained she stresses that the school is small but excellent, the staff and students are friendly, the atmosphere is competitive but not cutthroat, the placement services are good, and the weather is nice.

Wake Forest is fortunate to have someone as competent as Mrs. Wilson, whose attitude is reflected in the success of the law school's admissions, scholarship, and recruiting programs.

SBA Report

Rich Manger

This year has been marked by some significant changes in SBA and SBA sponsored activities. First and most important has been the establishment of the *Hearsay* as a continuing, and at times controversial, student newspaper. The *Hearsay* started with nothing and was raised to success by Dan Rheam and Tom Stamps. Tom is continuing as editor and has assembled a talented staff of writers and

illustrators. Because of the very strong student and faculty interest in the paper, Tom is now working to make it available to alumni on a subscription basis. With famed satirist Frank Yelmini and his cohort political cartoonist, Mettie Smith, adding an extra dimension of creativity, the paper provides well-balanced and amusing reading.

The faculty evaluations sponsored by the SBA will be published for the first time in the fall of 1977 when the evaluations taken in the spring of '77 are made public. Students have been anxious to see the results of the evaluations, which they sponsor, formulate and finance. Hopefully, publishing the objective results will increase student interest and participation in the program.

The Honor Code remains stalled in committee with little hope that any version will be approved by both faculty and students this year. It looks as if next year's SBA will still be working to achieve an acceptable format.

The University has invited the SBA to appoint a representative each year to the Student Athletic Committee. This move will hopefully lead to a solution to the problems law students have in getting tickets for basketball games.

The SBA, headed by our ABA-LSD representative, Butch Elkins, launched a strong campaign earlier this year to enroll students in the Law Student Division of the ABA. The campaign was successful and for the first time in its history the Wake Forest SBA was eligible for matching funds from the ABA for our programs. The ABA has given us a \$400 grant which will be put to good use in subsidizing our Law Day activities.

Speaking of Law Day, this year it was held on April 2d at the Winston-Salem Elks Club. Professor Robert E. "Nig" Lee will be retiring at the end of this year, so our Law Day speakers paid special tribute to Professor Lee for his years of outstanding service to Wake Law School.

Elections for next year's officers of SBA have been held. Averill Harkey was elected

President; Staten Wilcox, Vice-President; Scott Stevenson, Secretary; and Rob Sharpe, Treasurer.

Overall, the year was characterized by poor attendance at speakers' programs and strong attendance at beer blasts and other social events. Open forums with the Deans were also sparsely attended. Loving the law can only go so far, I suppose.

Moot Court Team Writes Best Brief

The Wake Forest University Moot Court team of Tom Ashcraft, Morgan Scott, and Reginald Combs captured the award for BEST BRIEF at the 6th Annual Marshall-Wythe Invitational Moot Court Competition held at the College of William and Mary, February 27. The appellate problem involved in the competition dealt with whether severe corporal punishment of school children violated the cruel and unusual punishment prohibition of the 8th Amendment and the due process clause of the 14th Amendment. The team handily out-distanced seven competitors on the brief and came in third in the overall competition, losing only to the University of Richmond, who won the overall competition, by three points (354 to 351) in the third round. The team argued before such able jurists as Judge Butner of the Fourth Circuit Court of Appeals, retired Supreme Court Justice Tom Clark, and Judge Warriner of the Virginia Supreme Court.

Team advisor, Mr. Ken Zick, commented after the tournament that the Richmond round was a close one to lose. "I suspected that we had beaten Carolina in the second round, but had heard from other coaches that Richmond would be our stiffest competition. It was a hard decision to take. This team deserved to win. They worked for almost two months both writing and revising the brief and arguing numerous practice rounds. I don't think any other team had a better command of the legal issues involved in this case."

Although W.F.U. Moot Court teams



L to R — T. Ashecraft, M. Scott and R. Combs

have often come close to winning an award at previous tournaments and have a fine reputation for fielding excellent oralists, this was the first time in Wake's five year Moot Court Program that the Moot Court Board has brought home an award. Moot Court Board Advisor and the moving force of appellate advocacy at Wake Forest, Professor George Walker said of the victory, "This award is tangible evidence of the high quality that appellate advocacy programs can achieve under a competent and hard working Moot Court Board which plays an active role in managing the program, serving as advisors to students, and otherwise cooperating with the faculty in the legal education process. I have always felt that qualified law students have an important part to play in the legal education process and this handsome trophy is but one indication of that belief. I would offer my congratulations as retiring Moot Court Advisor to these students and their team advisor, Mr. Zick."

International Law Society

Jim Barton

Wake Forest University School of Law will again be represented in the annual Jessup Cup International Law Moot Court Competition. The issue posed for argument in this year's contest is the settlement of an international dispute arising from the efforts of a major power to halt the international proliferation of nuclear weapons. The team, sponsored by the International Law Society and the Moot Court Board, is composed of Mary Mac Shelton, Neil Hurley, Jack Nichols and Rick Murray. The host school for the regional competition will be Georgetown University in Washington, D.C. The Finals will be held later in the spring in San Francisco before a panel of international jurists.

Officers of the Society for 1976-1977 are Jim Barton, President; Pam Peacock, Vice-President; Martin Barrett, Treasurer; and Jennifer Parser, Secretary. The Faculty Advisor is Professor George K. Walker, who returned to Wake Forest after a year's sabbatical at Yale Law School, where he studied under the direction of the noted international law scholar, Dr. Myres MacDougald.

The society sponsored a lecture last semester on submarine warfare as governed by the laws of war. Ken Zezulka, a third year student with Navy nuclear submarine experience, added some personal reflections on undersea life. Professor Walker gave a brief lecture on the law of sea warfare based on codified international law and the unwritten code of naval conduct respected by most nations. Following this, three segments of the famous *Victory at Sea* series from early television were shown. In the spring semester, the society plans to sponsor a major speaker in cooperation with the SBA Speakers Committee, and perhaps another film/lecture combination on some aspect of international relations that will be open to the entire Law School.

RALPH JAMES SCOTT NAMED OUTSTANDING ALUMNUS

Manes M. Merritt

As part of this year's Law Day program on April 2, the SBA presented Ralph James Scott with its Outstanding Alumni Award for 1977. A native of Pinnacle, North Carolina, Mr. Scott has had a career full of distinguished public service. His record includes 16 years as Stokes County Attorney, 18 years as Solicitor, and 30 years as County Chairman of the Democratic party in Stokes County. He has also served as Congressman for the 5th Congressional District, never losing an election during his political career. Now 70 years old, Mr. Scott continues to be a student of the law. In the opinion of many members of the North Carolina Bar, he



Ralph James Scott

remains one of the most knowledgeable persons in the field of North Carolina criminal law. William H. Bobbitt, former Chief Justice of the North Carolina Supreme Court, once said that Mr. Scott could take a weak case and do more with it than any lawyer he had ever seen. Former Governor Broughton described him as the most outstanding and able Solicitor in North Carolina. We of the Jurist and of the SBA congratulate Mr. Scott on his distinguished career and this well deserved honor.

New Addition

Rob Sharpe

Plans have been announced for an addition to the Law School's southeast corner. The new space will contain an administrative center, classrooms, library additions and other facilities. The five-story complex and furnishings will cost approximately \$750,000.

The first floor, a sublevel, will contain a new student lounge. Additional locker area for students will also be available.

A ninety-seat classroom modeled after the current Room 115 will be located on the ground floor. Also included here will be a smaller seminar room with a twenty-five person capacity.

The middle floor of the addition will house the administrative complex. In an effort to centralize all administrative functions, the dean's and assistant dean's offices, the registrar's office and the admissions and placement offices will be located here. An area on this level will allow private observation of the courtroom. This will enable professors to conduct critiques of in-progress activities. Another seminar room and an interview room are also planned for this floor.

The library will gain additional space on the fourth floor. A large reserve and reading area will aid student access to reference and class materials. Audio facilities and microfilm viewers will also be of great benefit.

The top level will have five new faculty offices and a faculty secretarial area along with additional library space.

Of the \$750,000, approximately one-third has already been committed, with the Board of Visitors pledging a minimum of \$100,000. Faculty and Staff members have also made substantial commitments. Dean Bowman expects the remainder of the sum to be pledged in the near future. Groundbreaking is tentatively scheduled for early this summer with construction to take one year.

Women In Law

Pam Jamarik

Women in Law sponsored a variety of programs during second semester for the benefit of the law school community. On February 2, we organized a panel discussion on the Equal Rights Amendment and its legal ramifications. Speaking in favor of the Amendment were the Reverend Maria Bliss and attorney William Pfefferkorn. Ann Bagnol and attorney Clara

tives of retaining a married woman's maiden name, adopting a joint name, assuming a spouse's name, or returning to a maiden name. Name changes upon divorce and potential problems with childrens' names were also discussed.

On March 2nd, women law students met with women from the medical and business schools. Doctors Elizabeth Philp and Rachel Meschan addressed the meeting on topics ranging from general health care to the marriage concerns of the career woman. We hope to continue these joint activ-



Dean Bowman speaks with members of W.I.L.

Williamson spoke in opposition. An hour-long question and answer period followed the panel's presentation. Lively debate was the password for the evening.

At our February 14th, business meeting, several members of WIL explained the options available for women regarding their choice of name upon marriage. We discussed filing arrangements with selected governmental agencies and the necessary court procedures involved in the alterna-

ities with women from the other Wake Forest University graduate schools.

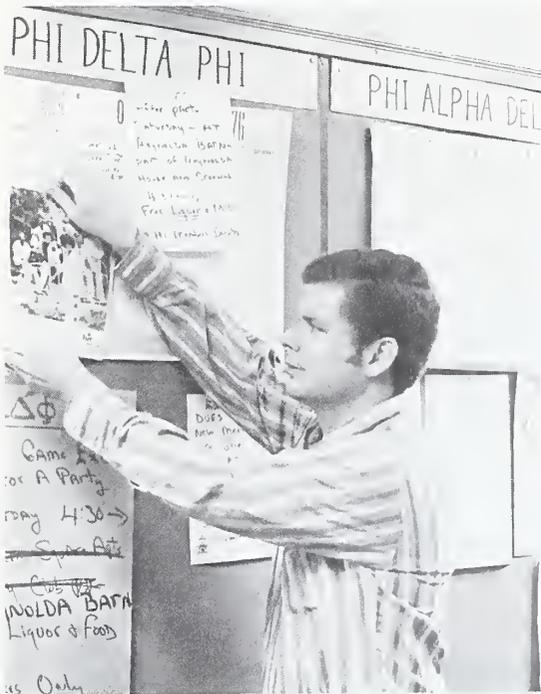
To maintain contact with women in the legal profession, two of our members attended the Eighth National Conference on Women and the Law. Students and attorneys from all over the country met in Madison, Wisconsin from March 24th-27th to discuss a wide range of legal topics.

A picnic and a pot luck supper closed out our semester activities.

BALSA

David W. Martin

The Wake Forest Chapter of the Black American Law Students Association is well on the road towards execution and completion of activities contemplated for the spring semester.



On March 18th, BALSA conducted a student-attorney symposium on Title VII of the Civil Rights Act. The two speakers were noted attorney Julius Chambers of Charlotte, N. C., and Robert Belton, a professor at Vanderbilt University School of Law in Nashville, Tennessee.

BALSA has been in contact with the president of the Student Division of the North Carolina Black Lawyer's Association in an effort to pool the resources of the two organizations. Further activities for this semester will include another speaker and a spring potluck picnic and softball game.

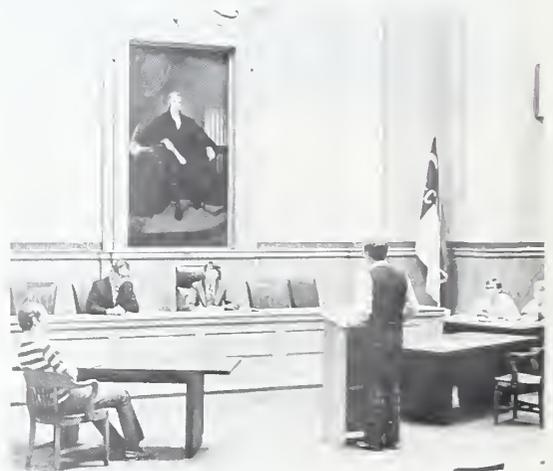
Two of the primary purposes of BALSA are: (1) to aid its members in identifying and solving problems which they have in common; and (2) to encourage more blacks

to enter the legal profession. BALSA's long range plans include a scholarship fund for qualified blacks who might not otherwise have the opportunity to attend law school. With your support of the Wake Forest University Chapter of the Black American Law Students Association, we can further these goals.

Environmental Law Society

David H. Bland, Jeremy Flachs

The Environmental Law Society is an organization creating a forum for the discussion and research of legal and non-legal issues of concern to our environment. More than sixty students have taken part in its projects this year which included a debate on the merits of nuclear power with Gerald Meisner, a physicist from UNC-G, and Henry Anderson of Duke Power Company. The society researched the North Carolina environmental protection statutes and developed support for the North Carolina "Bottle Bill." In addition, the Society sponsored outings to promote study on issues not available through the standard curriculum. A canoe trip is planned this spring on the New River. All students, faculty, and alumni are encouraged to become involved.



NATIONAL MOOT COURT TEAM

L to R — J. Kavanevsky, R. Henderson, B. Walker, B. Connelly

Phi Alpha Delta

David Brantley

On March 28, Timberlake Chapter held its Spring Banquet in Reynolda Hall. Chief Justice Susie Sharp became an Honorary Initiate of our Chapter at this event. This Award was presented to her by Dean Emeritus Carroll Weathers. Ladson Hart,



Dr. Lee, Chief Justice Sharp, Dean Emeritus Weathers

a former Timberlake Justice, was honored as our Alumnus of the Year. As an additional award we honored Professor Robert E. Lee on his retirement as a distinguished Professor of Law and a fellow member of Timberlake Chapter. Professor Lee was



*MOOT COURT EXECUTIVE COMMITTEE
L to R. — D. Singleton, B. Walker, P. Evers,
V. Lefkowitz, B. Connelly, K. Gray.*

also presented with a T-shirt and honorary citizenship from the city of Walla Walla, Washington for his praise and mention of that city during his years as a professor.

Timberlake Chapter has already con-



ducted its election for the upcoming year. The new officers are Justice, Dave Craven; Vice-Justice, Warren Kasper; Treasurer, Jeff Wood; Clerk, Davida Martin; Marshall, Peter Ehrlich; and Rush Chairman, Reg Combs. The offices were all hotly contested and portend an enthusiastic year for 1977-78. Also, the thirty-five new members will more than make up for the members lost to graduation.

Following tradition, we had two scheduled speakers for the month of March and our mock trial program is in full swing allowing high school teachers to supplement their classroom activities. Besides our Spring Banquet, our social calendar still includes a major social event to soften the anxiety of forthcoming exams. It has been a good year at Timberlake and all are looking forward to another next year.



L to R — Charles Taylor, PAD Internatinal Advocate; Dr. Robert E. Lee; James E. Sizemore, faculty advisor; Chief Justice Susie Sharp; David Brantley; Dean Emeritus Carroll W. Weathers; R. Scott Lindsay; and Ladson Hart.

Faculty Notes

Virginia Mahoney

Author, consultant, poet — these are a few of the activities and identities of the members of the law school faculty outside the familiar classroom setting. The summaries that follow reveal an often-overlooked dimension of the law professor.

James Bond — Commentator, Conference on the Philosophy of John Locke, Univ. of Maryland; Moderator, Panel on Individual Rights Litigation, Liberty Fund; Participant, Socratic Seminar on Law and Philosophy; Participant, Center for Libertarian Studies Conference on

Alternatives to the Criminal Justice System; Discussion Leader, Institute for Humane Studies, Conference on "Freedom of Contract"; Participant, V.P.I. Center for Study of Public Choice Conference on "Liberty, Ethics and Economy"; Board of Directors, N. C. Fund for Individual Rights; Board of Advisors, Law and Liberty Project Institute for Humane Studies; AALS Library Committee; SCRIBES, assistant secretary; Author, "Application of the First Amendment to Exclusive Representation Rule of the National Labor Relations Act".

Pasco Bowman — Member, N. C. Insurance Advisory Board; N. C. Bar Association Committee on Continuing Legal

Education; N. C. Bar Association Committee on Specialization and Certification; Lt. Col. Judge Advocate General Corps, U. S. Army Reserve, Reserve assignment, Judge Advocate General's School.



Prof. James Bond

Leon Corbett — Member, N. C. Criminal Code Commission; Reporter, Speedy Trial Planning Group, U. S. District Court for the Middle District of N. C.; Consultant Draftsman, N. C. Bar Association Committee on Courts and Civil Litigation project relating to statutes on execution on judgment.

Hugh Divine — Member, N. C. General Statutes Commission.

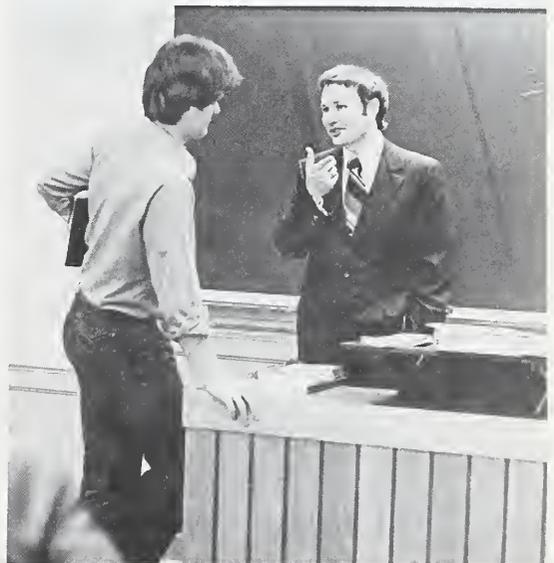
E. McGruder Faris — Visiting Professor of Law, Drake University, summer 1976, teaching Agency and Partnership; Visiting Professor of Law, U.N.C. Law School, 1976-1977; Author, Accounting for Lawyers; Author, chapter in *Tax Planning Techniques* by J. K. Lasser; Leader, Bar Association Seminar, "Estate Planning Under the 1976 Tax Reform Act"; Program

Chairman-Moderator, joint meeting of the Association of American Law Schools sections on "Teaching Law Outside of Law Schools" and "Law and Education", AALS annual meeting; Member, N. C. Bar Association Committee on Business and Banking Law; Member, National Task Force of Law in American Society Foundation.

Henry Lauerman — Author, "The Role of the Judiciary in the Desegregation of the Winston-Salem/Forsyth County Schools," written for the Institute for Judicial Administration; Article in progress, "N. C. Products Liability Law"; Member, Executive Committee, Forsyth Health Planning Council.

Robert E. Lee — Chairman, Drafting Committee, N. C. General Statutes Commission, (Decedents Estates and Trusts); Author, "This is the Law", a weekly column published in 80 newspapers and taped for radio; Member, Commercial Banking and Business Law Committees of N. C. Bar Association; Arbitrator, Labor Disputes; Mrs. Lee's yard man; Consultations and written memoranda for practicing attorneys.

Howard Oleck — Consultant, California Law Revision Commission (Non-Profit Corp. Act); Trustee and Past President,



Prof. Leon Corbett

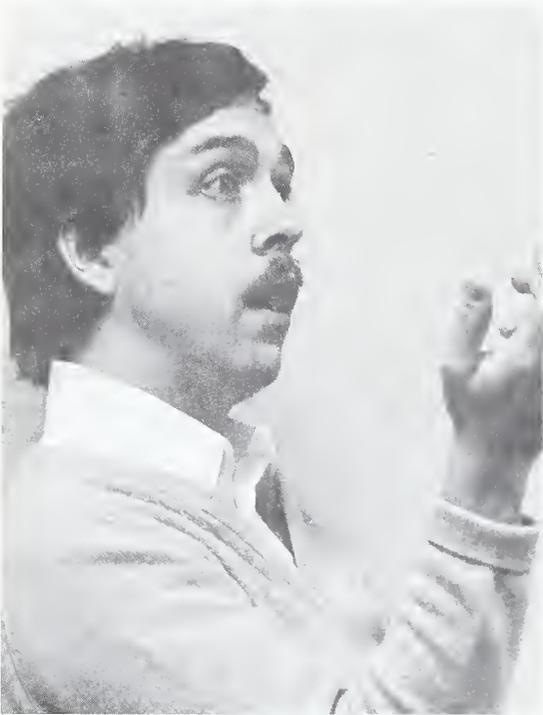
SCRIBES; Planning Chairman, ALI-ABA, various symposia; Chairman, Legal Advisors, Society for Animal Rights; Advisory Board, Goodwill Industries of America; Trustee, Unitarian Fellowship of Winston-Salem; *Who's Who in America*, since 1952; Consultant, University of Texas Center for Communication Research, "Study of the Future of the Legal Profession"; Resource Person, N. C. Humanities Committee, (Law Problems); Honorary Member, American Trial Law-

Living", a weekly column for the Winston-Salem Suburbanite; *National Index to Insurance Laws*.

Sylvester Petro — Research on the administration of labor relations law.

Edwin Vieira — Litigation in the area of constitutional rights; research in legal history and philosophy with special emphasis on labor and constitutional law; consultation.

George Walker — Sterling Fellowship, Yale Law School, J.S.D. program; Author, four recent articles on student practice; Book review on international law casebook; Reporter, Professor Eugene Rostow's seminar, "Rules for Unarmed Conflict in the Intermediate Status Between



Prof. Edwin Vieira

yers Ass'n.; Speaker, WFU Law School Course (CLE) on Tort Trends 1976-77; Lecturer, WFU Experimental College, "Lawful Living"; AALS Corporations section, speaker on "Teaching Professional Responsibility"; Speaker, WFU Alumni Meeting, on "Tort Trends"; Author, 32 books, 300 articles, 1000 newspaper articles and 18 poems; Recent publications include, *Non-Profit Organization Trends*, primarily written by students in the Non-Profit Organizations Seminar, edited by Oleck; *Lion of Islam*, a historical novel slated for publication in 1977; "Law for



Prof Charles Rose

Peace and War", American Society of International Law annual meeting, 1976; Speaker, Forsyth County Bar Ass'n. on "The Response of the Legal Profession to Charges of Incompetence of the Trial

Bar"; Nominated *Who's Who in the South and Southwest*, 1976; *Who's Who in N. C.*, 1977; Consultant, Naval War College, Newport, Rhode Island; Commander,



Prof. Sylvester Petro

Naval Reserve; Licensed law reader, Episcopal Diocese of N. C.; Law Faculty representative on the University Grievance Committee.

SUBSCRIPTIONS

AVAILABLE
TO THE
HEARSAY

To the Alumni:

The *Hearsay*, the Wake Forest Law School newspaper, is currently publishing three issues a semester and has been well received by both the Wake Forest students and other law school newspapers. The *Hearsay* takes this opportunity to extend an invitation to all Wake Forest alumni to submit articles, letters and information to the newspaper. One year subscriptions are now available to anyone who is interested in what is going on at the Law School. To receive your copy of the *Hearsay* throughout the year, send your name and address and five dollars (\$5.00) to:

The Hearsay
Wake Forest University School of Law
Box 7206
Reynolda Station
Winston-Salem, N. C. 27109

Thank you,
Thomas P. Stamps
Editor

1977 SUMMER SESSION

The Law School announces the following summer school schedule:

Future Interests, Professor Webster — 8:15 - 9:30 a.m.

Civil Procedure I, Professor Sizemore — 9:35 - 10:50 a.m.

Real Property II, Professor Webster — 11:00 - 12:15 p.m.

Trusts, Professor Lee — 7:00 - 8:15 p.m.

Classes will be held from May 24th through July 22nd and will meet Mondays through Thursdays. Tuition is \$575.00 (\$287.50 for three hours or less).

Dr. Lee Retires

Doris Shaw

This spring Wake Forest Law School will suffer a great loss as Dr. Robert E. Lee retires from teaching. "The Nig" has been a cornerstone of Wake Forest Law School for over 30 years and during that time he has well demonstrated his true character as a Southern gentleman and scholar. Dr. Lee's association with Wake Forest has been a long and distinguished one. He graduated from Wake Forest College and Law School in 1928, and any alumnus who has been a student of his can recall the fond memories Dr. Lee has of Old Wake Forest. Later, Dr. Lee received his S.J.D. from Duke University and did further graduate work at New York University and the University of Pennsylvania. He instructed in the law at Temple University as well as the U. S. Army University of Shriveham, England before returning to Wake Forest as Dean and Professor of Law.



Dr. Robert E. Lee

Dr. Lee is truly an internationally known scholar especially in the area of domestic relations. As recently as 1975, he lectured in Berlin, Germany to an international group concerning the dilemma of the illegitimate child in the law.



In class, Dr. Lee has perfected the wisdom of Harry Cockran, the Dean of Temple University School of Law when Dr. Lee began his teaching profession. He was told the best teaching method was to entertain his students. How true it has proven to be! Over the years Dr. Lee has spiced his lectures with stories and colorful anecdotes, making both the law and his teaching of it memorable. In tribute to our revered professor, here are just a few of those tall tales.

* * * * *



* * * *

A circus was passing through a small rural town in North Carolina when an elephant belonging to the group escaped. The circus people and the local sheriff made an extensive search for the beast, but there was no sign of the animal.

A few hours after the search began, the sheriff received a phone call from a hysterical woman.

“Sheriff, there’s a huge creature in my cabbage patch.”

“Well, what does it look like?”

“Well, it’s big, and gray, and it has two tails, and he is pulling up all of my cabbages with one of them.”

“What is he doing with your cabbages?”

“If I told you where he was stuffing them, you wouldn’t believe me.”

A farmer had for some time suspected his wife and a neighbor of having an affair behind his back; however, he was never able to catch them in the act. The farmer carefully watched his wife but could not account for her actions while he was gone from the house.



To test his wife's faithfulness he contrived an out of town trip and told her that he would be gone for several days. Just before he left the farmer placed a bucket of milk under the bed. Over the bucket he tied an apple so that any movement of the mattress would leave a telltale coat of milk on the fruit.

The farmer then left home, giving his wife ample opportunity for mischief. He hurried back early the next morning, hoping that his wife had been faithful to him. He ran to the bedroom and pulled the apple out from under the mattress. There was no sign of milk on the apple, assuring the farmer that his suspicions were false and that his wife had been faithful all along. Then he removed the bucket and in the bottom lay a pound of churned butter.

Mary Worth . . . pure as the driven snow on a convent roof.

Comment on Supreme Court Justices . . . you can never tell how far a frog will jump by looking at him.

Attorney's prayer . . . O Lord, sow strife among thy people so thy servant may eat.

There are no illegitimate children, just illegitimate parents.

* * * *

On preparation . . .

During Nig's first week at Old Wake Forest College the freshmen were expected to know all the members of the football



"Nig" and Chub Seawell

* * * *

Quotable Quotes . . .

New York City is owned by the Jews, run by the Catholics, and wholesomely enjoyed by the Southern Negro.

team and where each man was from. An upperclassman stopped the Nig and told him to sound off each football player and his credentials. Nig diligently recited each player but one. The upperclassman told Nig to lean over and grab the bottom rung

of a chair, then proceeded to firmly implant that last player's name on Nig's memory with a hickory paddle.

* * * *

On Women in Law . . .

Chub Seawell and Dr. Lee agreed one time that perhaps the first woman lawyer was a woman by the name of Salome. It is recorded in both sacred and profane history that her motions before the court met with great approval.

* * * *

On the facts of life . . .

One of the parties to a lawsuit rushed up to the judge in utter desperation. "Your Honor, please may I be excused? My wife is getting ready to conceive!" The judge replied in amusement, "I don't know whether your wife is getting ready to conceive or give birth — but in either case you need to be with her!!"

* * * *



On professional courtesy . . .

One day an attorney and a doctor friend of his were fishing off the coast of eastern North Carolina. After a slow morning the attorney was taken by surprise when a strong sudden heave on the end of his line pulled him over the edge of his boat and into the ocean. In concern for his friend the doctor yelled for the attorney to watch out

for the sharks. But the sharks lined up on either side of the attorney allowing him to swim safely back to the boat. The doctor collapsed with laughter, "That's the best example of professional courtesy I've ever seen!"



On Friday night in September, 1924, a Wake Forest freshman, pictured above, climbed the water tank on the College's old campus on the night before the homecoming game with Carolina and painted out the sophomore class numerals and substituted those of his own class.

Bedlam broke out the next day in the little college town. During the early afternoon the Demon Deacon football team defeated the University of North Carolina for the first time in thirty-five years by the score of 7-6. The outraged sophomores, humiliated before so many returning alumni, tracked down the guilty party. Several months later masked sophomores caught the freshman and cut off most of his black hair - a type of hazing reserved for serious offenses. Automatically, the freshman became the junior member of the local cueball club.

His hair grew back parted down the middle. The once-upon-a-time freshman will be leaving the faculty of the Wake Forest Law School in May, 1977, after 48 years of teaching law. He recently proclaimed, "The Class of 1977 — that's my class!"



Ron Meyers



Larry Williams



L to R — Horance Kornegay, George Anderson, and Bernard Harrell.

Law Day 1977





Justice Beverly Lake and President James Ralph Scales.



Mr. and Mrs Richard Beyer



Woody Tilley



Third Year Students



Judy Lambeth and Louise Lee



SBA President Rich Manger



Jim Humphreys and Dr. Wellis "Doc" Murphy



C. D. Clark and Dr. Robert E. Lee

Summer Clerkships— Abolishing The Myths

John Lewis

Summer holds a special meaning to first and second-year law students at Wake Forest. To them, summer means the chance to gain invaluable legal experience through summer clerkships. Clerking is the best, if not the only way, for the law student to gain first-hand knowledge and experience with the actual workings of the legal profession.

However, a summer clerkship is not a one-way street. The attorney or firm receives a valuable assistant in its practice or business in return. Routine and burdensome duties may be delegated to the clerk, thus allowing the attorney to devote time to the more complicated and demanding aspects of his practice.

Many law students, though, are unable to find law-related jobs for the summer. While this may be the result of increased enrollment, it may also be attributed to attorneys who have never hired or considered hiring a summer clerk because of myths which have evolved about clerkships. These myths are certainly invalid today, if indeed they were ever viable. Jobs held by Wake Forest students last summer are illustrative of the variety of positions available and of the need to abolish these myths.

Myth #1. Clerks are expensive and thus impracticable.

Summer clerks are not a luxury. They pay their own way. Like any other member of the attorney's staff, clerks contribute to the overall efficiency of the office and increase, rather than reduce, profits. Clerks increase the capacity and output of the firm by allowing the attorney's time to be spent more efficiently and profitably. Increased output means increased fees. The quality of the work-product, as well as the quantity, is enhanced since the law clerk performs many duties which would otherwise go unattended in a busy prac-

tice. Yet, the cost of hiring a clerk is relatively inexpensive. On the average, clerks were paid \$100 - \$125 per week last summer. The highest salaries received were approximately \$200 - \$250 per week. Because students realize that experience is part of their remuneration, they do not seek exorbitant salaries.

Myth #2: Summer clerks are only for the larger firms.

In fact, the opposite is true. Small firms and sole practitioners comprise the largest group that hired Wake Forest students as summer clerks. Many students are more interested in the smaller firms and would rather clerk for them. Clerks may actually be more useful to small firms since these firms usually have less time to devote to research, investigation and other routine matters to which clerks can attend. This is not to say that Wake Forest students do not clerk with large firms. Several students clerked for firms with thirty or more attorneys. In actuality, clerks can be useful regardless of a firm's size. Each firm should analyze its own practice and determine how summer clerks may be useful to it.

Myth #3: Summer clerks are only interested in private practice.

While the majority of students clerk for firms engaged in private practice, many work in law-related areas in other fields. Last summer, the school had students employed by district attorneys, United States attorneys, court clerks, state and federal agencies, insurance companies, accounting firms, pension consultants and other fields in which the students could apply their legal skills. Some students taught at colleges and technical schools. One student worked as a bail bondsman while others worked as policemen and deputy sheriffs. All businesses are affected by the legal system in some manner. Consequently, most businesses or firms can find use for a summer clerk. Each alumnus is encouraged to examine his own firm or business to consider this possibility.

Myth #4: *Summer clerks are not interested in working in other geographical areas.*

In recent years the law school's enrollment has included students from diverse areas of the nation. Consequently, students are interested in clerking in areas of the country other than North Carolina. Last summer Wake Forest placed clerks in many areas outside the state. Firms in New York City, Philadelphia, Washington D.C., and Boston hired Wake Forest law students. The alumnus who does not practice in North Carolina should not be hesitant to solicit resumes or interview Wake Forest students.

Myth #5: *Summer clerks are only useful for research.*

While effective legal research is certainly a major function of a summer clerk, it is not an exclusive one. Attorneys whose practice requires more than research should be aware of other duties which a clerk can perform. These include:

- (1) Research and preparation of trial and appellate briefs, client opinion letters and inter-office memoranda;
- (2) Investigation, interviewing of witnesses, collection of documents and physical evidence and preparation of trial exhibits;
- (3) Drafting of contracts, pleadings, documents of title and other legal instruments;
- (4) Assisting the attorney in all phases of trial preparation, at trial and during the collection process, supervising process service, scanning advance sheets, title research and reviewing of files.

In short, the summer clerk can be useful in all aspects of an attorney's practice.

Myth #6: *An attorney must hire a summer clerk months in advance.*

Interviews for summer clerkships begin shortly after the start of the fall semester.

The majority of these early interviews are conducted by the larger firms who have more defined summer programs. However, a great number of interviews are held during the spring and continue up until the end of the semester. In the past, several students have found clerkships after the close of the school year. An attorney should not feel that it is too late to hire a clerk just because the summer is about to begin. He will find that he will have fewer students to choose from since many will have already accepted positions. For this reason the school encourages interviewing as early as possible.

In view of the above, every alumnus should reconsider his firm's plans to hire a summer clerk. He should also consider his duty to the profession itself. Without the insights and experience gained through clerkships, law students may graduate and enter the practice of law without ever having directly participated in the legal system. The resulting naivete may hinder a promising career. By hiring clerks, attorneys are able to improve their practice, contribute to effective legal training, and possibly discover a future partner.

A final note:

The Placement Office is ready to assist you in your efforts to hire a summer clerk. Facilities for on-campus interviewing are available and this procedure is encouraged. In addition, information concerning summer opportunities is made available to all students and the resumes of interested students will be collected and forwarded. For additional information and assistance contact Mrs. Gail O. Donaway, Director of Placement, P.O. Box 7206, Winston-Salem, North Carolina 27109 (919) 761-5434.



The *JURIST* Looks Back . . .



Orientation for the Class of 1976

LEGAL ARTICLES

In Re Spinks: An Adoptee's Search for Roots

Thou knowest not how came ye, hence callest thyself unbegotten; certainly knowest not thy beginning, hence callest thyself unbegun. Melville, *Moby Dick*.

I. INTRODUCTION

In the recent case of *In re Spinks*,¹ the North Carolina Court of Appeals considered for the first time whether, and under what circumstances, an adopted child should be allowed access to the records of her adoption for the purpose of determining the identity of her natural parents. The Court held that confidentiality should be maintained except in "compelling cases" where the interest of the child, the adoptive parents, the natural parents and the public have been carefully weighed.

II. BACKGROUND

When a child first learns that he has been adopted he understandably faces a period of disorientation with respect to his sense of self-identity. His first inclination may be to search for his natural parents since they hold the keys to his biological heritage.

The search must begin in the adoption records for it is there, and only there, that the names of the natural parents are kept. However, in most states adoption records are sealed by statute.² Disclosure may be obtained only by court order based upon a showing of "good cause" or some similar requirement.³

In North Carolina it is a misdemeanor for any person having charge of adoption records to divulge the contents in the absence of a court order.⁴ The court order

may be obtained only if a Superior court judge determines that disclosure is in the best interest of the child and public.⁵ The rationale of these sealed record statutes is that confidentiality protects the interests of all parties in the adoption triangle, i.e. the child, the natural parents and the adoptive parents.⁶

These statutes have come under increasing attack from the academic community.⁷ Arguments being advanced vary from the constitutional to the sociological and psychological. For example, it has been argued by one author that the adoptee's right to equal protection under the Fourteenth Amendment is violated in that he is denied access to biological information on the basis of his status as an adopted child. According to the author, that status should be declared a suspect classification.⁸ Others have argued that the adoptee suffers severe emotional trauma as a result of his "genealogical bewilderment."⁹ Most of the scholars recognize that interests of other persons in the adoption triangle are involved, but dismiss these as trivial when compared to those of the adoptee.¹⁰

Until recently, there was no case law to be found on this issue. However, within the past few months several actions were commenced by adoptees attempting to force disclosure of their natural parents' identities. With the exception of *In re Spinks*,¹¹ none of these cases have been decided at the appellate level.

In New York, two Surrogate Courts have allowed disclosure of the adoptee's records.¹² However, in the first case the records contained only sparse information which would not have revealed the natural parents' identities. In the second case, the adoptee had already located her natural mother who appeared in court and consented to disclosure.

More recently, the Surrogate's Court for Queens County, New York, held that the natural parents are necessary parties to any action for disclosure and that the Court would appoint a guardian ad litem as process agent to preserve the natural parents' anonymity prior to decision.¹³

In Washington, D.C. the District of Columbia Superior Court denied an adoptee's petition for disclosure of her natural parents' identities by refusing to find that the adoptee had any legal or constitutional right to the information sought.¹⁴ The Court pointed out that the promise of confidentiality encourages adoption by insuring the natural parents' continued anonymity on the one hand and by freeing the adoptive parents from the possibility of confrontation with the biological parents on the other.

A Superior Court Judge in New Jersey recently held that an adopted person must be granted access to his original birth records unless the adoption agency determined that disclosure would be harmful to the natural parents or to the child.¹⁵ The burden of proof is on the state to support its determination against disclosure. Yet to be decided is a case instituted by an organization representing 600 adoptees in the Federal District for Chicago, Illinois.¹⁶

III. THE CASE

Early in the summer of 1976, Nancy Margaret Spinks, an 18 year old adoptee, filed a motion pursuant to G.S. 48-26¹⁷ with the clerk of Superior Court of Montgomery County requesting that the Department of Social Services be ordered to reveal the identity of her natural parents. The clerk summarily denied the motion.

Miss Spinks then appealed to the Superior Court judge under G.S. 48-26(b)¹⁸ which provides,

. . . If the clerk shall refuse to issue such order, the party requesting such order may appeal to the judge who may order that the record be opened, *if in his opinion, it be to the best interest of the child or of the public.* (emphasis supplied)

After a hearing was held, the trial judge entered an order requesting disclosure based on the following "findings of fact" and "conclusion of law":

FINDINGS OF FACT

1. That the petitioner/adopted child has repeatedly been the victim of rumors concerning the identity of her natural parents and has suffered great mental torment due to these unfounded rumors.



2. That the petitioner/adopted child has made diligent and consistent efforts to find out the true identity of her natural parents.
3. That the petitioner/adopted child has a disturbed emotional and mental outlook as a result of not being able to correctly ascertain the true identity of her natural parents.
4. That the petitioner/adopted child is not able to accept her adoptive status but continually and persistently has made attempts to find out the identity of her natural parents.
5. The adoptive parents, Mr. and Mrs. Russell Spinks, have fully consented to and encouraged their adopted child, Nancy Margaret Spinks, to petition this Court to find out the whereabouts and true identity of her natural parents.
6. That the Montgomery County Department of Social Services has encouraged both the adopted parents and adopted child to seek legal counsel in order to initiate these proceedings pursuant to G.S. 48-26.

CONCLUSION OF LAW

1. That pursuant to the applicable statutory authority, G.S. 48-26, his Honor was obliged only to consider the benefit or lack thereof resulting from the revelation of this information to the petitioner and/or society; however, he was unable to consider the effect, if any, upon the petitioner's natural parents for their identity was not known to his Honor nor were they before the Court as provided for in G.S. 48-26.

The Court of Appeals held, without dissent, that both the findings of fact and conclusion of law were insufficient to support the order. The order was vacated and the cause was remanded.

Judge Britt, speaking for the Court, said that "there must be a finding of fact that the information sought to be revealed is necessary for the best interest of the child

or the public before an order can be entered requiring disclosure of the information." Similarly, the trial judge's conclusion that "his Honor was obliged only to consider the benefit or lack thereof resulting from the revelation of this information" was completely inadequate.

In making the determination of best interests, the trial judge is to be guided by the following considerations set forth in the opinion.

First, confidentiality should be protected except in compelling cases since continued secrecy "helps the adoptive



family establish itself as a social unit free from outside interference and provides an environment in which the child is encouraged to identify with his adoptive home."

Second, the judge must carefully weigh the interests of the child and the public including those of the adoptive and natural parents. From the child's standpoint, age and mental ability to deal with disclosure are important factors. Judge Britt suggested that medical necessity such as the need for a specific blood type would be



a situation warranting a finding of best interests. Disclosure might also be allowed where the child has developed *severe* emotional difficulties from preoccupation with the desire to know his biological origin. The adoptive parents' interest in freedom from interference from the natural parents is an important factor (although not an issue here since the Spinks had consented to disclosure).

Judge Britt also recognized that the natural parents may have relied on the assurance of anonymity in making a decision to give up the child for adoption. If they were to perceive that confidentiality would not be maintained, the parents might opt for abortion. This certainly would not be in the best interest of the child and would run contra to the public policy favoring adoption.

In any case, since the natural parents are not before the court to express their desires, the trial judge must "temper" his determination by the knowledge that they will necessarily be affected by a disclosure of their identities.

IV. CONCLUSION

While the adopted child has not been entirely foreclosed from obtaining the identity of his natural parents, his task will not be easy. Disclosure will be allowed only in "compelling cases" of medical necessity

or where severe emotional difficulties have arisen as a consequent of the child's desire to establish a biological heritage. Clearly, mere curiosity on the part of the adoptee will be insufficient basis for a disclosure order.

Lucien Capone

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1. No. 7619SC728 (N.C. Ct. App., filed Mar. 2, 1977).
2. Only four states, Alabama, Kansas, South Dakota and Virginia allow the adoptee to inspect his adoption records without a court order.
3. *See., e.g.*, N. J. S. A. §9:3-31 (1976).
4. N. C. Gen. Stat. §48-25 (1976).
5. N. C. Gen. Stat. §48-26 (1976).
6. *People v. Doe*, 138 N.Y.S.2d 307 (Erie County Ct. 1955). In what is now the textbook statement, the Court said,
The Legislature has assured the mother, who has given birth to a child born out of wedlock and finds that she cannot properly take care of the child, that instead of secreting the child or placing it with persons haphazardly, if she wishes to permit suitable . . . and qualified persons to adopt the infant her indiscretion will not be divulged. It further assures her that the interests of the child will be protected in that no one will ever know by means of the adoption proceedings that the child is illegitimate. It assures the foster parents that they may treat the child as their own in all respects and need not fear that the adoption records will be a means of hurting the child, which has become by this proceeding their child, or of harming themselves. It assures all persons connected with the adoption that the records will be and remain sealed and secret.
7. *See, eg., Sealed Records In Adoptions: The Need For Legislative Reform*, 21 Catholic Lawyer 211 (1975); Note, *The Adult Adoptee's Constitutional Right To Know His Origins*, 48 S. Cal. L. Rev. 1196 (1975).
8. Note, *The Adoptee's Right To Know His Natural Heritage*, 19 N.Y.L. Forum 137 (1973).
9. *Sealed Records In Adoptions: The Need For Legislative Reform*, 21 Catholic Lawyer 211, at 218 (1975).
10. *Id.*
11. No. 7619SC728 (N.C. Ct. App. filed, Mar. 2, 1977).
12. *In re Carol S.*, 172 N.Y.L.J. 31, Aug. 13, 1974 (Sur. Ct. Bronx County); *Estate of Maxtone-Graham*, 173 N.Y.L.J. 66, Apr. 7, 1975, (Sur. Ct. N.Y. County).
13. *In re Anonymous*, 3 Fam. L. Rep. 2176 (Sur. Ct. Queens County Dec. 14, 1976).
14. *In re Female Infant*, 3 Fam. L. Rep. 2221 (D.C. Super Ct. Fam. Div. Jan. 12, 1977).
15. *Id.* at 2222.
16. *Winston-Salem Journal*, Feb. 7, 1977. (*Lovallo v. State Registrar of New Jersey*)
17. N. C. Gen. Stat. §48-26 (1976).
18. N. C. Gen. Stat. §48-26(b) (1976).

Age Discrimination In Employment

I. INTRODUCTION

Close to fifty percent of today's workers are over age forty-five and between 350,000 and 400,000 individuals retire each year with an increasing number of them living longer than their counterparts of past generations. Many of the persons in these groups are still capable and desirous of making significant contributions within today's labor force; indeed, at age forty-five, many individuals are at their peak of productivity. Despite these facts, however, there is a limit to the number and kinds of opportunities available to these persons as society seeks to arbitrarily exclude them from the labor force without regard to talent, experience or contribution.

When the older worker becomes faced with such a situation, feelings of uselessness, rejection and morose depression often set in with a potential catalytic effect on the process of senility. Theorists in the behavioral and social sciences urge that the mind and body should continue to be challenged as long as they are able. They suggest that infirmities set in and body functions decline more rapidly in the absence of continued activity that demand alertness and a certain level of enthusiasm. The practice of arbitrary discrimination in employment based on age creates not only social and emotional problems for the older worker but, perhaps more immediately, a problem of economic security as well and thus a burden on society in general.

The Employment Security Commission and related agencies, the Medicare programs and pension and retirement fund programs are not successfully meeting the necessary expenses of the aged. Indeed, the system would better serve itself by protecting the economic security of these individuals who could thus maintain their independence and status as contributors to the system rather than a burden upon it.

As Mr. Justice Douglas stated in *Barsky v. Board of Regents*:¹

Man has indeed as much right to work as he has to live, to be free, to own property. . . . To work means to eat. It also means to live. . . . The great values of freedom are in the opportunities afforded man to press to new horizons, to pit his strength against the forces of nature, to match skills with his fellow man.²

II. THE FEDERAL AGE DISCRIMINATION IN EMPLOYMENT ACT

Opponents of discrimination based on race, creed, or color have long fought to prevent such practices and to protect those individuals who have been injured as a result of these practices. Radical adjustments have been urged and accomplished in the area of sexist attitudes as well. However, the need for equitable treatment of those persons comprising the older segment of the labor force has only recently attracted significant attention.

Congress attempted to meet this need with its 1969 enactment of the Federal Age Discrimination in Employment Act (hereinafter referred to as the Act).³ This action was prompted by the findings of a report, *The Older American Worker - - Age Discrimination in Employment*, of the results from an in-depth study of the problem, as called for in the Civil Rights Act of 1964.

The purpose of the Act is:

To promote the employment of older workers based on their ability. . . . through an education and information program to assist employers and employees in meeting employment problems which are real and dispelling those which are illusory, and through the utilization of informal and formal remedial procedures. The prohibitions in the bill apply to employers, employment agencies and labor organizations.⁴

The major provisions set forth in the Act authorize an education and research pro-



gram under section 3 "as a means of affecting salutary changes in attitude which will induce compliance . . . , thereby making enforcement measures unnecessary" and, under section 4, prohibit the general practice of age discrimination in employment.⁵

There are also certain notable exceptions which must be considered in making a fair interpretation of the terms of the Act and a subsequent determination as to its applicability. These include:

1. Where age is a bona fide occupational qualification reasonably necessary to the particular business.
2. Where differentiation is based on reasonable factors other than age.
3. To comply with the terms of any bona fide seniority system or employee benefit plan which is not a subterfuge to evade the purposes of this act, except that no employee benefit plan shall excuse the failure to hire an individual.
4. To discharge or discipline an individual for good cause.⁶

The provisions of the Act are necessarily administered on a case-by-case basis in order to accommodate the satisfactory solution of problems which may arise in a variety of situations. However, it is immensely important that we now have a national policy against age discrimination in employment which provides guidelines for its applicability and a means of enforcement.

The Act has not been in existence quite long enough to provide a basis for evalua-

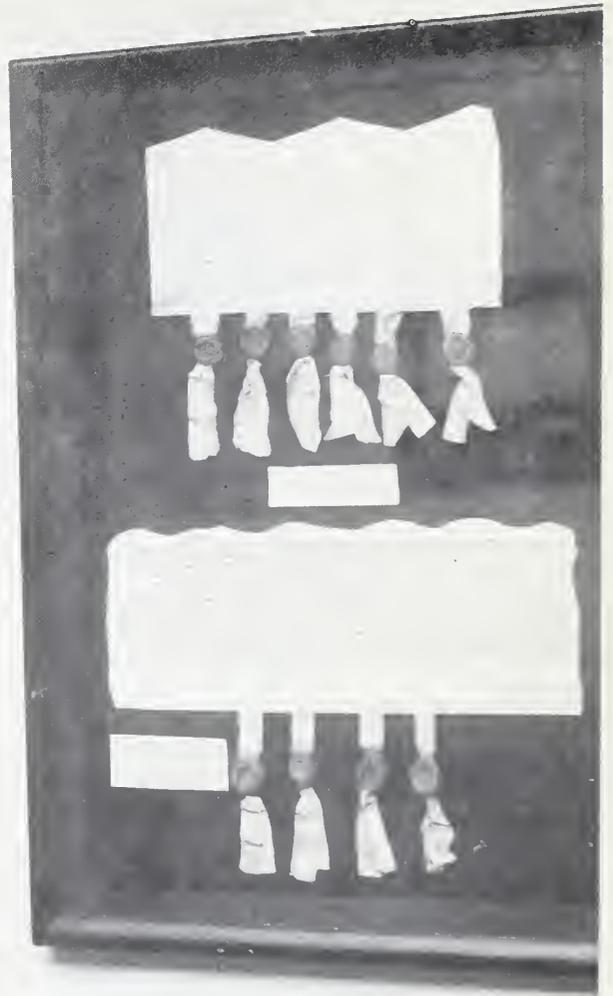
ting its total effectiveness. However, it has been repeatedly noted that the overall degree of effectiveness depends, at least to some extent, on the careful delineation of federal and state roles.

About half of the states now have some form of legislation prohibiting discrimination in employment based on age. At best these acts deal only with local problems. A uniform state act would facilitate solving problems arising out of interstate commerce. Additionally, such an act would facilitate the problems arising out of an increased mobility of unemployed older workers.

III. NORTH CAROLINA AND AGE DISCRIMINATION IN EMPLOYMENT

N. C. Gen. Stat. §126-16 (1971) provides for equal opportunity for employment without regard to "race, religion, color, creed, national origin or sex . . ." To date, however, the state of North Carolina has no statutory provision which prohibits discrimination in employment on the basis of age.

An aggrieved party may certainly seek redress in the forum of the federal courts if the jurisdictional requirements are met. However, failure to meet those requirements leaves little opportunity for fair relief to the majority of individuals in the state. North Carolina would do well, therefore, to adopt a view expressed by the Supreme Court of Wisconsin in the case of *Walker Manufacturing Co. v. Industrial Commission of Wisconsin*.⁷ That 1965 decision affirmed a circuit court ruling⁸ reversing an order from the state Industrial Commission requiring an employer to reinstate employees on the ground that its mandatory retirement of employees violated the age discrimination provisions of the Wisconsin Fair Employment Act. However, this result was predicated on the fact that the retirement of those employees was pursuant to an option provision of a pension agreement negotiated with their labor union. But while the court upheld the concept of freedom to contract, it recognizes, too, that



The State . . . has a legitimate interest to exercise its police power in the promotion of the general welfare to protect employees of this upper age group against the possibility of being out of employment, with resulting deprivation to their families.⁹

This broad grant of authority to the states is implicit under the provisions of the United States Constitution and has certainly been readily exercised in less compelling situations. The United States Supreme Court has frequently interpreted the Fourteenth Amendment as imposing, via either its Due Process Clause or the

Equal Protection Clause, certain limitations on a state's authority to restrict the rights of private individuals or institutions. However, such cases involve state action which unduly restrains the exercise of one's fundamental rights.

The problem in North Carolina with respect to age discrimination in employment is that of state inaction - - i.e., the state's failure to exercise its police power for the benefit of its citizens. May such failure be fairly regarded as an affirmative act of denial of the rights of life, liberty, or property to a certain isolated segment of the population?

Certainly, the argument is a plausible one, but the courts have yet to decide that specific question. Modern courts are apt to consider it, but nevertheless, the outcome is speculative at best. Meanwhile, when combined with an effective and comprehensive program for handling the problems encountered by the older worker, the statutory prohibition of aged discrimination in employment remains a most valuable remedy for those who are aggrieved. That objective of insuring fairness with respect to employment opportunities for qualified older workers must now be coupled with an effort to raise to a competitive level the skills

of those who are less qualified or who lack marketable assets.

Marva Liston McKinnon

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5. *Id.* at 2216.
6. *Id.* at 2217.
7. 27 Wis. 2d 669, 135 N.W.2d 307 (1965).
8. *Hodgson v. Approved Personnel Service, Inc.*, 529 F2d 760 (4th cir. 1975).
9. *Id.* at 761 (dissenting opinion).



CLASS NOTES

1956

Georgia McNemar is employed with the U. S. Department of Justice in Washington, D. C.

1963

James E. Ezzell, Jr. is currently a member of the law firm of Ezzell, Henson & Fuerst in Rocky Mount, N. C. He is married to the former Patsy Wall of High Point, N. C. They have three children. Mr. Ezzell is a member of the 1977 North Carolina House of Representatives.

Warren R. McGraw is another state legislator of whom we are very proud. He has served West Virginia as a member of the House of Delegates and is currently serving as a member of the West Virginia Senate.

1964

Sidney S. Eagles, Jr. resigned as Special Deputy Attorney General for Special Prosecutions in North Carolina as of November 30, 1976. He has assumed duties as Counsel to the Speaker of the House in North Carolina and has opened his own law practice in Raleigh, N. C.

1965

J. Michael Randleman is a partner in the firm of Randleman, Randleman & Randleman in Jonesville, N.C. He and his wife, Elizabeth, announce the birth of a daughter, Allison Penland Randleman. Allison was born on May 14, 1976.

1966

Maurice W. Horne, Deputy General Counsel of the N. C. Utilities Commission, has been appointed as Chairman of the national Law Committee of the National Association of Regulatory Utility Com-

missioners. The Law Committee is composed of attorneys working for or with state and federal regulatory agencies. Under his leadership last year, the Law Committee published Model Rules of Procedure for the use of all state and federal regulatory agencies. Maurice, Glenda and their two sons reside in Raleigh, N. C.

Edward E. White, Jr. is living in Potomac, Maryland. He was promoted in January of 1977 to Chief, Division of Legal Medicine, Armed Forces Institute of Pathology.

1967

A. Doyle Early, Jr. was Vice President of the Chamber of Commerce in High Point, N.C. from 1974 through 1976. He has also served as Chairman of the Board of the High Point Legal Aid Commission.

1970

H. Jones Norris, Jr. has assumed the position of Vice President & Controller at First National Bank of Bluefield in West Virginia. On February 9, 1976 his son James Derek Norris was born.

Chester Gitt Schultz and his wife Sally announce the birth of a daughter, Sarah Robinson Schultz. Mr. Schultz is practicing law in Gettysburg, Pa. with the firm of Bulleit & Schultz.

1972

William H. Andrews has been recently re-elected as District Attorney of the Fourth Judicial District of North Carolina.

John P. Simpson has withdrawn from the firm of Bennett, McConkey & Simpson and has opened his own office in the Professional Building in Morehead City, N. C.

1974

Joel C. McConnell, Jr. has recently left the firm of Peebles & McConnell in Winston-Salem, N. C. to join the staff of Senator Robert Morgan in Washington, D.C.

1975

H. Denton Bumgardner and his wife Sandra are currently living in Maine, as reported in our last issue. Sandra is expecting their first child.

James F. Bailey is now serving as Assistant Attorney General in the state of Delaware.

Carl William Gray was recently made a partner in the firm of Stoner, Bowers & Gray in Lexington, N.C. He and his wife also announce the birth of Anna Catherine Gray on October 28, 1976.

Michael Joseph is newly associated with the Public Defender's staff in Greensboro, N. C. as an Assistant Public Defender.

William E. Martin is presently an instructor and Director of Research at Campbell Law School in Buies Creek, N. C. He married Sonja Beckham, a former teacher who is currently enrolled as a student at

Campbell Law School. They met in August of 1976 and were married on September 29, 1976.

Anne Page Watson is an associate of Nancy Fields Fadum in Raleigh; N. C. engaged in the general practice of law. She married Richard N. Watson on August 1, 1976. Mr. Watson is an attorney in Durham, N. C.

1976

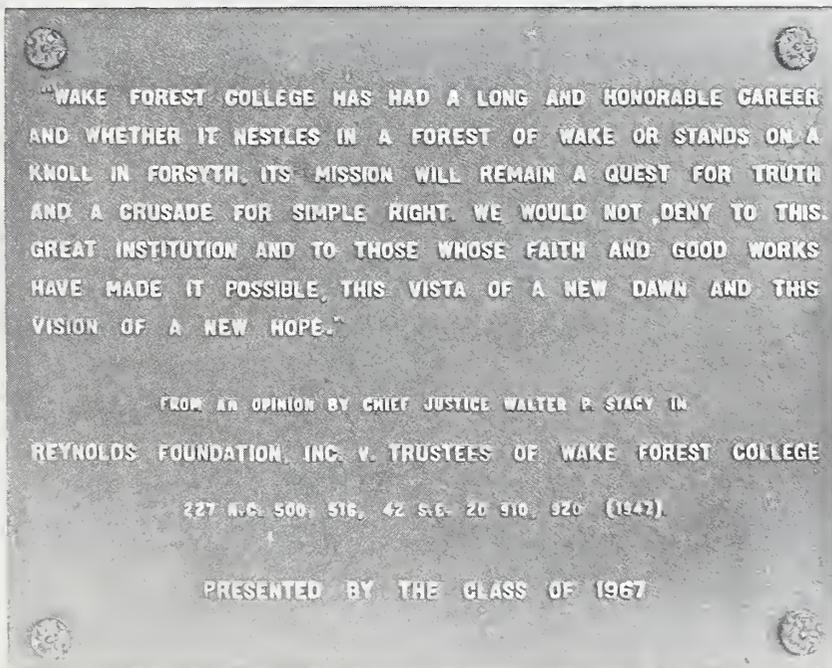
Michael Barker is now associated with the firm of Burke, Donaldson & Holsouser in Salisbury, N. C.

Myra J. DeLapp has joined the staff of Security National Bank in Washington, D. C. as Assistant Director of Federal Government Relations.

Gordon M. Gillies announces the opening of his office for the general practice of law in Bethel, Maine.

Bob Hulbert has recently become associated with the firm of Love and Milliken in Monroe, N. C.

John R. Kummer has joined the firm of Ware, Bryson, Nolan, West, & Hiltz located in the First National Bank Building in Covington, Ky.



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