districts) cannot invoke or "borrow" a state's Eleventh Amendment immunity to shield their assets from federal court civil actions brought against them by private parties. *See, e.g.*, Mount Healthy City School District Bd. v. Doyle, 429 U.S. 274 (1977); Lincoln County v. Luning, 133 U.S. 529 (1890).

7. Hans v. Louisiana, 134 U.S. 1, 12 (1890). *See also* Kimel v. Florida Bd. of Regents, 120 S. Ct. 631, 640 (2000), O'Connor, J., concurring ("[F]or over a century now, we have made clear that the Constitution does not provide for federal jurisdiction over suits against nonconsenting States").

8. Pennsylvania v. Union Gas, 491 U.S. 1 (1989).

9. Seminole Tribe v. Florida, 517 U.S. 44 (1996).

10. Here's but one example. The Fair Labor Standards Act, referred to in Professor Brown-Graham's article, was adopted in 1936 (during the New Deal), pursuant to the power vested in Congress to "regulate commerce . . . among the states." The act applied in a far-reaching manner, to be sure. It did so by decreeing the minimum wage to be paid not only by businesses engaged in *interstate* commerce (enterprises competing in national and foreign commerce) but also by more local (intrastate) commercial enterprises. Even so, Congress also carefully abstained from imposing any such demands on ordinary state and local government units as such. Congress readily recognized that these government units were *not* commercial entities, *nor were they conducting themselves as though they were*. In Congress's own understanding, that is, a state, or county, or city that merely devotes some fraction of state and local taxes to defray the expense of providing local parks or other local service (e.g., ordinary police and fire protection) was *not* "engaged in commerce" as such, according to any plausible or common understanding of that term. Nearly forty years later, however, in 1974, Congress brushed away its previous sense of self-restraint. Accordingly it abandoned its own previous understanding and presumed to treat the states as in no respect different from a mere for-profit, privately owned business enterprise, claiming a power to regulate them quite as much as it had already regulated ordinary business enterprises. This was a breathtaking step. At first, the Supreme Court balked [National League of Cities v. Usery, 426 U.S. 833 (1976)], only to reverse itself within a decade [Garcia v. San Antonio Metropolitan Transit Auth., 469 U.S. 28 (1985)], thus sanctioning a scope of congressional power over the states that even the New Deal Congress had never supposed it possessed.

11. As some readers of POPULAR GOVERNMENT may know, moreover, even these mere traffic bumps, such as they are, are now at risk. If there is replacement on the Court of a single vote, depending (of course) on whose it might be, they may be razed.

From Rigorous Researcher to Fine Art Photographer

Stevens H. Clarke

A gradual transformation, five years in the making, culminated in January 2001 when Stevens H. Clarke, professor, retired as a member of the Institute faculty and opened his first solo show as Steve Clarke, fine art photographer. The man known for his rigorous research into sensitive social issues like sentencing and recidivism now would be specializing in images of dancers and other performers.

While perhaps surprising on the surface, this redirection is not unusual or even unexpected to those at the Institute who know Clarke well. They speak of his "unique" or "rare" combination of talents. "What I find most intriguing about Steve," remarks book designer Daniel Soileau, "is the fact that his impressive work as a criminologist did not bar him from becoming an equally impressive artist/photographer." Michael R. Smith, director of the Institute, says Clarke has "brought a passion to his work that's consistent with the passion he brings to photography. He has great respect and compassion for the people he works with. When he talks with probation officers and jail officials, he's fully engaged with them. And he's recognized nationally as one of the leading evaluators of criminal justice programs. It comes from that same passion that drives all of what he does. He cares about it in the same way he cares about his photography."

Clarke himself says he has "always either been doing something in the arts or [been] unhappy because I haven't been." For a number of years, Clarke worked in community theater, until the theater's demands on his time became too great. His passion for performance is shared by his wife, Sheila Kerrigan, a writer, a teacher, and a theater director, who once toured as a mime. Photographing dancers, he finds, is somewhat like being part of a performance again.

A self-described "not very good" ballroom dancer, Clarke finds the action of dancers fascinating. "To them, what they do is routine," he says, "but to me it's like magic." He took up photography five years ago and began photographing dancers when a friend needed photographs of a performance. Although he has worked with a number of Triangle-area dancers, most of the subjects in his one-month solo show at Duke's Institute of the Arts Gallery are members of the dance department at UNC Greensboro, where he has an unpaid adjunct appointment.

Clarke also is intrigued by the problems of lighting, whether natural or artificial. He uses a Bronica 6x6 medium-format camera, does his own printing in a basement darkroom at home, and works with black-and-white silver gelatin prints more than color, preferring the abstract quality that can be achieved when light merges into dark. He has taken a few photography classes, but most of what he knows has come from trial and error and from studying the work of other photographers.

"I'm continually learning about it," he says. "Photography is complicated and difficult, frequently frustrating and humiliating, but also wonderfully exciting. It's an adventure, and I cannot tell you what a joy it is to me. I feel very, very lucky at my advanced age to be doing something that's this much fun."

Clarke came to the Institute in 1971, a few years after graduating from Columbia University's law school, to pursue his interest in criminal justice reform and crime prevention. He had majored in math as an undergraduate, however, and has always been interested in statistical, rather than legal, interpretations of public policies. "They [public policies] may sound good, but do they really give us the benefits we think they do, or are we just kidding ourselves?" he asks. Professor James C. Drennan, noting that Clarke was both a legal resource and a researcher, comments, "He has a strong commitment to helping people make decisions based on reliable, credible, factually supportable data. The